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Annex

Nicotine in Cigarettes and Smokeless Tobacco Is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act: Jurisdictional Determination

August 1996

DEPARTMENT OF HEALTH AND HUMAN SERVICES
U.S. Food and Drug Administration

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EXECUTIVE SUMMARY

This document explains the basis for the Food and Drug Administration's assertion of jurisdiction over cigarettes and smokeless tobacco under the Federal Food, Drug, and Cosmetic Act (the Act). FDA regulates a diverse range of products under the Act, including foods, drugs, medical devices, and cosmetics. The distinguishing feature that characterizes these products is their intimate and potentially harmful relationship with the human body. The products that FDA regulates include those that are ingested, inhaled, implanted, or otherwise used in close contact with the human body.

Cigarettes, which deliver a pharmacologically active dose of nicotine to the body through inhalation, and smokeless tobacco, which delivers a pharmacologically active dose of nicotine to the body through buccal absorption, share this distinguishing feature. Like the products that FDA traditionally regulates, cigarettes and smokeless tobacco are inhaled or placed within the human body; like many of these products, they deliver a pharmacologically active substance to the bloodstream; and like these products, they have potentially dangerous effects. Indeed, no products cause more death and disease than cigarettes and smokeless tobacco.

FDA is asserting jurisdiction over cigarettes and smokeless tobacco under the drug and device provisions of the Act. Specifically, FDA has concluded that cigarettes and smokeless tobacco are combination products consisting of nicotine, a drug that causes addiction and other significant pharmacological effects on the human body, and device components that deliver nicotine to the body. FDA last considered whether cigarettes were drugs or devices in the late 1970's. *See Action on Smoking and Health v. Harris,*

655 F.2d 236 (D.C. Cir. 1980). Since that time, substantial new evidence has become available to FDA. This evidence includes the emergence of a scientific consensus that cigarettes and smokeless tobacco cause addiction to nicotine and the disclosure of thousands of pages of internal tobacco company documents detailing that these products are intended by the manufacturers to affect the structure and function of the human body. This new evidence justifies the Agency's determination that cigarettes and smokeless tobacco are delivery systems for the drug nicotine.

Under the Act, a product is a drug or device if it is an article (other than food) "intended to affect the structure or any function of the body." Sections 201(g)(1)(C), 201(h)(3). The statutory definition is "intended to define 'drug' far more broadly than does the medical profession." *United States v. An Article of Drug . . . Bacto-Unidisk*, 394 U.S. 784, 793, 798 (1969). The legal question of whether cigarettes and smokeless tobacco are subject to FDA jurisdiction is one that "FDA has jurisdiction to decide with administrative finality." *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973).

After intensive investigation and careful consideration of the public comments, FDA concludes that cigarettes and smokeless tobacco meet the statutory definition of a drug and a device. This conclusion is based on two determinations: (1) nicotine in cigarettes and smokeless tobacco does "affect the structure or any function of the body," and (2) these effects on the structure and function of the body are "intended" by the manufacturers.

The Agency's determination that nicotine in cigarettes and smokeless tobacco does "affect the structure or any function of the body" is based on three central findings:

1. Nicotine in cigarettes and smokeless tobacco causes and sustains addiction.

2. Nicotine in cigarettes and smokeless tobacco causes other psychoactive (mood-altering) effects, including tranquilization and stimulation.

3. Nicotine in cigarettes and smokeless tobacco controls weight.

The Agency's determination that the manufacturers of cigarettes and smokeless tobacco "intend" these effects is based on five central findings:

1. The addictive and other pharmacological effects of nicotine are so widely known and accepted that it is foreseeable to a reasonable manufacturer that cigarettes and smokeless tobacco will cause addiction to nicotine and other significant pharmacological effects and will be used by consumers for pharmacological purposes, including sustaining their addiction to nicotine.

2. Consumers use cigarettes and smokeless tobacco predominantly for pharmacological purposes, including sustaining their addiction to nicotine, mood alteration, and weight loss.

3. Manufacturers of cigarettes and smokeless tobacco know that nicotine in their products causes pharmacological effects in consumers, including addiction to nicotine and mood alteration, and that consumers use their products primarily to obtain the pharmacological effects of nicotine.

4. Manufacturers of cigarettes and smokeless tobacco design their products to provide consumers with a pharmacologically active dose of nicotine.

5. An inevitable consequence of the design of cigarettes and smokeless tobacco to provide consumers with a pharmacologically active dose of nicotine is to keep

consumers using cigarettes and smokeless tobacco by sustaining their addiction to nicotine.

This document is divided into six sections. Section I describes the evidence and legal basis supporting the Agency's finding that cigarettes and smokeless tobacco "affect the structure or any function of the body." Section II describes the evidence and legal basis supporting the Agency's finding that the manufacturers "intend" these effects on the structure and function of the body. Section III explains the Agency's conclusion that cigarettes and smokeless tobacco are combination products that contain a "drug" and a "device." Section IV explains why the Agency's decision to assert jurisdiction over cigarettes and smokeless tobacco is justified by the new evidence now available to the Agency. Section V demonstrates that Congress has not precluded or preempted the Agency's assertion of jurisdiction over cigarettes and smokeless tobacco. Section VI addresses procedural issues relating to the Agency's assertion of jurisdiction over cigarettes and smokeless tobacco. These sections are summarized below.

I. Cigarettes and Smokeless Tobacco "Affect the Structure or any Function of the Body" Within the Meaning of the Act

The nicotine delivered by cigarettes and smokeless tobacco has significant pharmacological effects on the structure and function of the body.

First, the nicotine in cigarettes and smokeless tobacco causes and sustains addiction. Nicotine exerts psychoactive, or mood-altering, effects on the brain that motivate repeated, compulsive use of the substance. These pharmacological effects create dependence in the user. The pharmacological processes that cause this addiction to nicotine are similar to those that cause addiction to heroin and cocaine.

Second, the nicotine in cigarettes and smokeless tobacco produces other important pharmacological effects on the central nervous system. Under some circumstances and doses, the nicotine has a sedating or tranquilizing effect on mood and brain activity. Under other circumstances and doses, the nicotine has a stimulant or arousal-inducing effect on mood and brain activity.

Third, the nicotine in cigarettes and smokeless tobacco affects body weight.

These effects on the structure and function of the body are significant and quintessentially drug-like. Moreover, these effects are the same as the effects of other drugs that FDA has traditionally regulated, including stimulants, tranquilizers, appetite suppressants, and products, such as methadone, used in the maintenance of addiction. For these reasons, the Agency finds that cigarettes and smokeless tobacco "affect the structure or any function of the body" within the meaning of the Act.

II. Cigarettes and Smokeless Tobacco Are "Intended" to Affect the Structure and Function of the Body Within the Meaning of the Act

To determine whether effects on the structure or function of the body are "intended" by the manufacturer, the Agency must objectively evaluate all the relevant evidence of intent in the record before it. "The FDA is not bound by the manufacturer's subjective claims of intent," but rather can find actual intent "on the basis of objective evidence." *National Nutritional Foods Ass'n v. Matthews*, 557 F.2d 325, 334 (2d Cir. 1977). In the case of cigarettes and smokeless tobacco, the Agency finds that three types of objective evidence provide independent bases for finding that the manufacturers intend to affect the structure and function of the body: (1) the evidence of the foreseeable pharmacological effects and uses of cigarettes and smokeless tobacco; (2) the evidence of

the actual consumer use of cigarettes and smokeless tobacco for pharmacological purposes; and (3) the evidence of the statements, research, and actions of the manufacturers themselves. Considered independently or cumulatively, this evidence convincingly demonstrates that cigarettes and smokeless tobacco are intended to be used for pharmacological purposes.

A. *A Reasonable Manufacturer Would Foresee that Tobacco Products Will Cause Addiction and Other Pharmacological Effects and Will Be Used by Consumers for Pharmacological Purposes*

When Congress enacted the current definition of "drug" in 1938, it was well understood that "[t]he law presumes that every man *intends* the legitimate consequences of his own acts." *Agnew v. United States*, 165 U.S. 36, 53 (1897). Consistent with this common understanding, FDA's regulations provide that a product's intended pharmacological use may be established by evidence that the manufacturer "knows, or has knowledge of facts that would give him notice," that the product is being widely used for a pharmacological purpose, even if the product is not being promoted for this purpose. 21 CFR 201.128, 801.4. Thus, FDA may find that a manufacturer intends its product to affect the structure or function of the body when it would be foreseeable to a reasonable manufacturer that the product will (1) affect the structure or function of the body and (2) be used by a substantial proportion of consumers to obtain these effects. For example, when it is foreseeable to a reasonable manufacturer that a product will produce drug effects in consumers and be purchased by a substantial proportion of consumers for drug purposes, FDA may consider the product a "drug."

In the case of cigarettes and smokeless tobacco, no reasonable manufacturer could fail to foresee that these products will have significant pharmacological effects on consumers and be widely used by consumers for pharmacological purposes. All major public health organizations in the United States and abroad with expertise in tobacco or drug addiction now recognize that the nicotine delivered by cigarettes and smokeless tobacco is addictive. The first major organization to do so was the American Psychiatric Association, which in 1980 defined the "tobacco dependence disorder" and the "tobacco withdrawal syndrome." Since 1980, nicotine in tobacco products has also been recognized as addictive by the U.S. Surgeon General (1986 and 1988), the American Psychological Association (1988), the Royal Society of Canada (1989), the World Health Organization (1992), the American Medical Association (1993), and the Medical Research Council in the United Kingdom (1994). Every expert medical organization that submitted comments to FDA on whether nicotine is addictive concluded that it is. The tobacco industry's public position that nicotine is not addictive is simply not credible in light of this overwhelming scientific consensus.

The scientific consensus that cigarettes and smokeless tobacco cause addiction to nicotine makes it foreseeable to a reasonable manufacturer that these products will affect the structure and function of the body. This scientific consensus also makes it foreseeable that cigarettes and smokeless tobacco will be used by a substantial proportion of consumers for a pharmacological purpose—namely, to satisfy their addiction.

It is also foreseeable that the nicotine in cigarettes and smokeless tobacco will cause, and be used for, other significant pharmacological effects. It is well established that

the nicotine in cigarettes and smokeless tobacco has psychoactive or mood-altering effects in the brain. Under some circumstances, nicotine can have a sedative or tranquilizing effect on the brain; under other circumstances, nicotine can have a stimulating or arousal-inducing effect. In this regard, nicotine is similar to other addictive drugs such as opiates, which can have both stimulating and sedating effects. In addition, nicotine plays a role in weight regulation, with substantial evidence demonstrating that cigarette smoking leads to weight loss.

Because a reasonable manufacturer would foresee that cigarettes and smokeless tobacco will cause and be used for these well-established pharmacological effects in a substantial proportion of consumers, the Agency finds that these drug effects and drug uses are intended by the manufacturers.

B. Consumers Use Tobacco Products to Obtain the Pharmacological Effects of Nicotine and to Satisfy Their Addiction

A second basis for establishing that a product is intended to affect the structure or function of the body is evidence showing that consumers actually use the product for pharmacological purposes. In fact, courts have recognized that even in the absence of any other evidence of intent to affect the structure or function of the body, such an intent may be established by evidence showing that consumers use the product "predominantly" for pharmacological purposes. *ASH*, 655 F.2d at 239-240.

In the case of cigarettes and smokeless tobacco, the evidence establishes that consumers do use these products "predominantly" for pharmacological purposes. Major recent studies have concluded that 77% to 92% of smokers are addicted to nicotine in cigarettes. The U.S. Department of Health and Human Services estimates that 75% of

young regular users of smokeless tobacco are addicted to nicotine in these products. The comments from the American Heart Association, the American Lung Association, and the American Cancer Society, whose member physicians provide health care for tobacco users in the United States, confirm that "the vast majority of people who use nicotine containing cigarettes and smokeless tobacco do so to satisfy their craving for the pharmacological effects of nicotine; that is, to satisfy their drug dependence or addiction."

In addition, a large proportion of consumers also use cigarettes and smokeless tobacco for other pharmacological purposes. A recent survey found that over 70% of young people 10 to 22 years old who are daily smokers reported that they use cigarettes for relaxation. The same survey found that over 50% of young people who are daily users of smokeless tobacco reported that they use smokeless tobacco for relaxation. Other surveys show that between one-third and one-half of young smokers report that weight control is a reason for their smoking.

This evidence that consumers actually use cigarettes and smokeless tobacco predominantly to obtain the pharmacological effects of nicotine leads FDA to find that cigarettes and smokeless tobacco are intended to affect the structure and function of the body.

C. *The Statements, Research, and Actions of the Cigarette Manufacturers Show that the Manufacturers Intend to Affect the Structure and Function of the Body*

A third basis for establishing that a manufacturer intends to affect the structure or function of the body is evidence from the statements, research, and actions of the manufacturer that reveals that the manufacturer knows that its product will, or designs its

product to, affect the structure or function of the body. It is a canon of statutory construction that words used by Congress should ordinarily be interpreted in accordance with their plain meaning. The plain meaning of "intend" includes "to have in mind" or "to design" for a particular use. The *American Heritage Dictionary*, for instance, defines "intend" as: "1. To have in mind; plan. 2.a. To design for a specific purpose. b. To have in mind for a particular use." Consistent with the plain meaning of "intend," FDA may consider whether the statements, research, and actions of the manufacturer show that the manufacturer "has in mind" that its product will, or "designs" its product to, affect the structure or function of the body.

The administrative record contains three decades of documents and other evidence from the major cigarette manufacturers. This evidence, most of which has only recently become available, establishes that the manufacturers do "have in mind" that their products will have and be used for pharmacological effects. First, the evidence shows that the cigarette manufacturers know that nicotine is a pharmacologically active drug. In internal documents, for instance, researchers for Philip Morris Inc. call nicotine "a powerful pharmacological agent with multiple sites of action" and "a physiologically active . . . substance . . . [which] alters the state of the smoker by becoming a neurotransmitter and a stimulant"; a researcher for R.J. Reynolds Tobacco Co. (RJR) calls nicotine "a potent drug with a variety of physiological effects"; and researchers for Brown & Williamson Tobacco Corp. and its parent company, BAT Industries PLC (formerly the British-American Tobacco Co.) (BATCO), call nicotine "pharmacologically active in the brain"

and "an extremely biologically active compound capable of eliciting a range of pharmacological, biochemical, and physiological responses."

Second, the evidence establishes that the cigarette manufacturers have conducted extensive research to understand precisely how nicotine affects the structure and function of the body. In one year alone, Philip Morris conducted 16 different studies on the effects of nicotine, including 5 experiments to determine the pharmacological effects of nicotine on the human brain. RJR's similarly extensive research found that the nicotine in cigarettes produces measurable changes in brain wave activity, such as "a significant increase in beta2 magnitude" (an effect associated with anxiety relief) and "a significant decrease in delta magnitude" (an effect associated with improved mental condition). Through the Council for Tobacco Research, an organization formed by the major tobacco companies, the manufacturers funded dozens of sophisticated investigations concerning nicotine, including numerous studies that demonstrate nicotine's ability to alter the function of the human brain.

Third, the evidence shows that the manufacturers know that one of the pharmacological effects of nicotine is to cause and sustain addiction. Researchers and senior officials of Brown & Williamson and BATCO expressly acknowledge this fact in their internal documents, stating that "smoking is a habit of addiction" and that "nicotine is addictive." Philip Morris scientists also know of nicotine's addiction potential. They conducted a series of nicotine "self-administration" experiments using the tests used by the National Institute on Drug Abuse to determine whether a substance has addiction potential. These studies found that rats would self-administer nicotine, which is one of the

hallmark characteristics of an addictive drug. Moreover, through the Council for Tobacco Research, the cigarette manufacturers funded research that reported that "smoking is a form of dependence no less binding than that of other addictive drugs."

Fourth, the evidence shows that the manufacturers know that consumers smoke cigarettes primarily to obtain the pharmacological effects of nicotine. This point is repeatedly acknowledged in internal company documents. For example, researchers for Philip Morris have stated that nicotine is "the primary reason why people smoke" and that nicotine is "the physiologically active component of smoke having the greatest consequence to the consumer"; researchers for RJR have stated that "the confirmed user of tobacco is primarily seeking the physiological 'satisfaction' derived from nicotine" and that "[w]ithout any question, the desire to smoke is based upon the effect of nicotine on the body"; and BATCO's director of research has stated that "[t]he tobacco smoking habit is reinforced or dependent upon the psycho-pharmacological effects mainly of nicotine." This knowledge of the central role of nicotine in cigarette smoking was communicated to the highest levels of the companies. In 1969, for instance, Philip Morris' vice president for research and development told the Philip Morris board of directors that "the ultimate explanation for the perpetuated cigarette habit resides in the pharmacological effect of smoke upon the body of the smoker."

Fifth, the evidence shows that in their internal documents, the cigarette manufacturers expressly refer to cigarettes as devices for the delivery of nicotine. For instance, researchers for Philip Morris have described cigarettes as a "dispenser for a dose unit of nicotine" and as a "nicotine delivery device"; a senior researcher for RJR has

described cigarettes as a "vehicle for delivering nicotine"; and researchers for BATCO have described cigarettes as the "means of providing nicotine dose in a metered fashion" and as a device that provides the smoker "very flexible control over titrating his desired dose of nicotine."

This evidence establishes that cigarettes are intended by the manufacturers to affect the structure and function of the body. It demonstrates that the manufacturers know that nicotine is pharmacologically active; that consumers smoke primarily to obtain the pharmacological effects of nicotine; and that cigarettes function as devices for the delivery of nicotine. The evidence thus shows that when the manufacturers offer cigarettes for sale, they "have in mind" that their products will be used for the particular purpose of affecting the structure and function of the body.

In addition to the evidence showing that cigarette manufacturers "have in mind" the use of cigarettes for pharmacological purposes, the record shows that the manufacturers "design" cigarettes to ensure the delivery of a pharmacologically active dose of nicotine to the smoker. The evidence in the record shows that the manufacturers have conducted extensive product research and development to find ways to maintain adequate nicotine levels in low-tar cigarettes. According to one former senior official at Philip Morris, "a key objective of the cigarette industry over the last 20-30 years" was "maintaining an acceptable and pharmacologically active nicotine level" in low-tar cigarettes. Internal industry documents in the record disclose research to determine the dose of nicotine that must be delivered to provide "pharmacological satisfaction" to the

smoker, as well as estimates by industry scientists of the minimum and optimum doses of nicotine that cigarettes must deliver.

Among the many examples in the record of product research and development to enhance relative nicotine deliveries, Philip Morris conducted extensive research to identify "the optimal nicotine/tar ratios for cigarette acceptability of relatively low-delivery cigarettes"; RJR developed alternative tobacco products that provide a "more efficient and direct way to provide the desired nicotine dosage than the present system involving combustion of tobacco"; and Brown & Williamson investigated chemical manipulation to raise smoke pH, thereby increasing "free" nicotine delivery, and used genetic engineering to breed a high-nicotine tobacco plant called Y-1.

The record before the Agency shows that several methods of enhancing nicotine deliveries are used in the manufacture of commercial cigarettes. Tobacco blending to raise the nicotine concentration in low-tar cigarettes is common. As the vice chairman and chief operating officer of Lorillard Tobacco Co. has stated, "the lowest tar segment is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine." Another common technique for enhancing nicotine deliveries in low-tar cigarettes is the use of filter and ventilation systems that by design remove a higher percentage of tar than nicotine. Yet a third type of nicotine manipulation is the addition of ammonia compounds that increase the delivery of "free" nicotine to smokers by raising the alkalinity or pH of tobacco smoke. These ammonia technologies are widely used within the industry.

The record establishes that an important reason why the manufacturers design cigarettes that provide pharmacologically active doses of nicotine is to satisfy the demands

of users. The manufacturers concede in their comments that their "intent is to design, manufacture and market . . . cigarettes to meet the preferences of adult smokers." The preferences of most smokers, however, include obtaining sufficient nicotine to sustain their addiction and to experience nicotine's mood-altering effects. What the cigarette manufacturers describe as producing cigarettes that satisfy consumer preferences is, in reality, producing cigarettes that provide the pharmacological effects of nicotine sought by consumers. The effect of maintaining a pharmacologically active dose of nicotine in cigarettes is to keep consumers smoking by sustaining their addiction.

The evidence that the manufacturers "design" cigarettes to provide a pharmacologically active dose of nicotine is further proof that the manufacturers intend cigarettes to affect the structure and function of the body. Taken together, the evidence shows that the cigarette manufacturers: (1) "have in mind" the use of cigarettes for the particular purpose of delivering the pharmacological effects of nicotine, and (2) "design" their products to provide these effects. This evidence convincingly demonstrates that the pharmacological effects of cigarettes are "intended" by the manufacturers.

D. The Statements, Research, and Actions of the Smokeless Tobacco Manufacturers Show that the Manufacturers Intend their Products to Affect the Structure and Function of the Body

The administrative record also contains evidence of the statements, research, and actions of the smokeless tobacco manufacturers. Like the evidence of the statements, research, and actions of the cigarette manufacturers, this evidence establishes that the smokeless tobacco manufacturers intend to affect the structure and function of the body.

First, the evidence in the record shows that the smokeless tobacco manufacturers know that nicotine is a pharmacologically active drug and that consumers use smokeless tobacco to obtain the pharmacological effects of nicotine. As a senior vice president for United States Tobacco Co. (UST) stated, "virtually all tobacco usage is based upon nicotine, 'the kick,' satisfaction." Researchers affiliated with Brown & Williamson acknowledge that "nicotine . . . absorbed through . . . the lining of the nose or mouth . . . will quickly enter a direct route, in the blood, to the brain."

Second, the evidence shows that the smokeless tobacco manufacturers manipulate the nicotine delivery of their products in a manner that promotes tolerance and addiction to nicotine. This manipulation is accomplished through the use of chemicals that alter the pH of the smokeless tobacco. Moist snuff brands that are marketed as "starter" brands have a low pH and consequently deliver a low level of "free" nicotine to the user, limiting the absorption of nicotine in the mouth. The low nicotine deliveries allow the new user to develop a tolerance to nicotine without experiencing adverse reactions such as nausea and vomiting. In contrast, moist snuff brands that are marketed to experienced users have a high pH and consequently deliver a high level of "free" nicotine to the user, increasing the amount of nicotine available for absorption. The increased nicotine deliveries provide sufficient nicotine to sustain the user's addiction.

Third, the evidence shows that smokeless tobacco use and addiction to nicotine has substantially increased among teenagers since the manufacturers began to manipulate nicotine deliveries. Before the introduction of starter brands with low levels of nicotine delivery, virtually no teenagers and young adults used smokeless tobacco. After the

smokeless tobacco manufacturers began to market low-nicotine "starter" brands in the 1970's, however, use of smokeless tobacco by teenagers rose dramatically. Use of smokeless tobacco by adolescent males aged 18 to 19, for instance, increased almost 1,500% between 1971 and 1991. Most of the regular teenage users of smokeless tobacco graduate to higher nicotine brands. An analysis by the Centers for Disease Control and Prevention found that the pattern of smokeless tobacco use by teenagers "support[s] the hypothesis that snuff users in earlier stages of tobacco use and nicotine addiction use brands with low levels of free nicotine and then 'graduate' to brands with high levels."

This evidence of: (1) knowledge of nicotine pharmacology, (2) manipulation of nicotine deliveries, and (3) graduation to higher nicotine brands among young users is a sufficient basis to establish that the smokeless tobacco manufacturers intend to affect the structure and function of the body.

In addition to this industry-wide evidence of intended use, the record contains numerous documents from the nation's largest smokeless tobacco manufacturer, UST.

The UST documents in the record show that:

- UST officials in the early 1970's recommended the development of products with "three different . . . strengths of nicotine[:] . . . a. High nicotine, strong tobacco flavor . . . b. Medium strength of nicotine . . . c. Low nicotine, sweet product." In particular, UST officials recommended the development of a product that provided "mild" nicotine satisfaction targeted at "new users . . . age group 15-35."

- Shortly after these recommendations, UST began aggressively to market low-nicotine products, targeted "for you guys just starting out." Marketing techniques included free sampling on college campuses and at sports events. Advertisements included instructions on use for new users.

- Numerous UST documents and statements refer to an explicit "graduation process" in which users of smokeless tobacco are encouraged to start with low-nicotine starter brands and then progress to higher nicotine brands. For

instance, a UST vice president has stated that Skoal Bandits, one of UST's low-nicotine brands, "is the introductory product, and we look towards establishing a normal graduation process."

These UST documents confirm that smokeless tobacco manufacturers deliberately produce brands with a range of nicotine deliveries in order to allow users to progress (or "graduate") from low-delivery products to high-delivery products. They thus corroborate the Agency's finding that smokeless tobacco is intended to affect the structure and function of the body.

E. The "Intended Use" of a Product Is Not Determined Only on the Basis of Promotional Claims

The principal legal argument of the tobacco industry is that the intended use of a product must be determined exclusively on the basis of the promotional claims made by the manufacturer. Under the industry's legal theory, the Agency must disregard the voluminous internal tobacco industry documents showing that the manufacturers have in mind, and design their products to provide, the pharmacological effects of nicotine. The tobacco industry also urges the Agency to disregard the evidence of the foreseeable pharmacological effects and uses of cigarettes and smokeless tobacco, as well as the evidence of the actual consumer use of these products for pharmacological purposes.

The Agency rejects the industry's legal argument. First, the industry's position is contrary to the plain language of the Act. The Act does not say that only products "promoted" to affect the structure or function of the body are drugs or devices. Rather, the Act says that products "intended" to affect the structure or function of the body are drugs or devices. The plain meaning of "intend" is significantly broader than the meaning of "promote." As summarized above, the plain meaning of "intend" includes "to have in

mind" and "to design" for a particular use. The evidence that is relevant to determining the uses that a manufacturer "has in mind" or "designs" includes not just the promotional claims of the manufacturer, but also the internal statements of the manufacturer, as well as the manufacturer's research and actions. Moreover, the ordinary meaning of "intend" also encompasses the reasonably foreseeable consequences of the manufacturer's actions, thereby making consideration of the foreseeable pharmacological effects and uses of a product relevant to its intended use.

Second, the industry's position is contrary to FDA's regulations. These regulations provide that the term "intended use" refers to the "objective intent" of the manufacturer. Under these regulations, the Agency determines the intent of the manufacturer objectively by evaluating all of the relevant evidence in the record from the perspective of a reasonable fact-finder. FDA's regulations expressly direct the Agency to consider the manufacturer's "knowledge" of the use of the product; the manufacturer's "expressions" and "oral or written statements"; and the "circumstances surrounding the distribution of the article." 21 CFR 201.128, 801.4. Thus, the regulations expressly provide that the Agency should consider a broad range of evidence in determining intended use, not merely the manufacturer's promotional claims.

Third, the industry's position is contrary to judicial decisions interpreting the Act. These decisions have applied the Act's definitions of drug and device to two different types of products. The first type of product is one that contains no known drug ingredients and has no known pharmacological effects or uses. In cases involving such products, the courts recognize that a manufacturer's promotional claims have a crucial

role in establishing intended use. Even a product like mineral water can be brought within FDA's jurisdiction by advertisements that make pharmacological claims. *See Bradley v. United States*, 264 F. 79 (5th Cir. 1920).

The situation is fundamentally different, however, when the product contains a known drug ingredient like nicotine that has known pharmacological effects and uses. When a product is pharmacologically active, the courts have recognized that "a fact finder should be free to pierce . . . a manufacturer's misleading . . . labels to find actual therapeutic intent on the basis of objective evidence." *National Nutritional Foods Ass'n v. FDA*, 504 F.2d 761, 789 (2d Cir. 1974). Thus, contrary to the industry's contention, the courts have recognized that in determining intended use, FDA may consider a wide range of evidence beyond the manufacturer's promotional claims, including evidence of the pharmacological effects of the product, *e.g., United States v. Undetermined Quantities . . . "Pets Smellfree,"* 22 F.3d 235, 240 (10th Cir. 1994); the purposes for which consumers actually use the product, *e.g., ASH*, 655 F.2d at 239-240; the medical use of the product, *e.g., United States v. An Article of Device . . . Toftness Radiation Detector*, 731 F.2d 1253, 1257 (7th Cir. 1984); and how the product was formulated, *e.g., American Health Products Co. v. Hayes*, 574 F. Supp. 1498, 1508 (S.D.N.Y. 1983).

Fourth, the industry's position is contrary to FDA's administrative precedent. In a broad range of instances, FDA has asserted jurisdiction over products based on the likely pharmacological effects and uses of the product—not express promotional claims. Indeed, in many of these instances, the manufacturer's promotional claims were designed to disguise the actual intended use of the product.

Fifth, the industry's position is contrary to the public health objectives of the Act. If promotional claims alone determined the intended use of a product, virtually any manufacturer of drugs or devices could avoid the Act's reach by simply refraining from making pharmacological claims for the product. For instance, under the industry's interpretation, a company could market a potent tranquilizer or amphetamine for its "pleasurable" effect and escape FDA regulation. To protect the public from the unregulated distribution of products with pharmacologically active ingredients, the Agency must be able to look beyond a manufacturer's promotional claims when determining whether to regulate such products.

For these reasons, the Agency rejects the tobacco industry's legal theory that intended use is determined exclusively on the basis of promotional claims. The Agency also rejects the premise of the industry's position—namely, that their promotional claims demonstrate that cigarettes and smokeless tobacco are not intended to affect the structure and function of the body. To the contrary, as internal tobacco company documents indicate, promises of "satisfaction" in tobacco advertisements imply that cigarettes and smokeless tobacco will provide consumers with desired pharmacological effects of nicotine. These implied drug claims lend support to the Agency's finding that cigarettes and smokeless tobacco are intended to affect the structure and function of the body.

F. Response to Additional Comments

This section responds to additional comments regarding the evidence of the intended use of cigarettes and smokeless tobacco and the Agency's use of this evidence.

G. Considered Cumulatively, the Evidence Overwhelmingly Demonstrates that Cigarettes and Smokeless Tobacco Are Intended to Affect the Structure and Function of the Body

As summarized above, the evidence in the record provides several independent bases for the Agency's finding that cigarettes and smokeless tobacco are "intended" to affect the structure and function of the body. Independently, each of these distinct categories of evidence is a strong and sufficient basis for the Agency's conclusion that the manufacturers of cigarettes and smokeless tobacco intend the pharmacological effects and uses of their products. Considered together, they are mutually corroborating. Both independently and taken as a whole, therefore, the evidence in the administrative record overwhelmingly establishes that cigarettes and smokeless tobacco are "intended to affect the structure or any function of the body" within the meaning of the Act.

III. Cigarettes and Smokeless Tobacco Are Combination Products Consisting of "Drug" and "Device" Components

The Agency's findings in sections I and II establish that the nicotine in cigarettes and smokeless tobacco is a "drug" under section 201(g)(1)(C) of the Act. These findings show that the nicotine in cigarettes and smokeless tobacco "affect[s] the structure or any function of the body" and that these effects are "intended." These findings thus demonstrate that the nicotine in cigarettes and smokeless tobacco meets the statutory definition of a "drug."

Cigarettes and smokeless tobacco are not simply packaged nicotine, however. They also include delivery devices that deliver nicotine to the body. Section 201(h)(3), 21 U.S.C. 321(h)(3). In the case of cigarettes, the device components work together upon combustion outside the body to form a nicotine-containing aerosol, which then delivers

nicotine to the body when inhaled by the smoker. In the case of smokeless tobacco, the device components function by presenting nicotine to the consumer in a form that is palatable and absorbable by the buccal mucosa. Unlike the drug nicotine, these device components achieve their primary intended purpose without chemical action in or on the body and without being metabolized.

The presence of both drug and device components in cigarettes and smokeless tobacco make these products "combination products" under section 503(g) the Act, 21 U.S.C. 353(g)(1).

IV. FDA's Assertion of Jurisdiction Over Cigarettes and Smokeless Tobacco at This Time Is Justified

FDA has always exercised jurisdiction over tobacco products when there is sufficient evidence in the record to establish that these products are "intended" to treat or prevent disease or to affect the structure or function of the body. Over thirty years ago, for instance, the Agency asserted jurisdiction over a brand of cigarettes when the evidence established that the brand was intended to reduce body weight. *United States v. 354 Bulk Cartons . . . Trim Reducing-Aid Cigarettes*, 178 F. Supp. 847 (D.N.J. 1959).

The Agency last considered whether to regulate cigarettes in the late 1970's, when the Agency rejected petitions by Action on Smoking and Health (ASH) urging the Agency to regulate cigarettes as drugs or devices. The Agency agreed with ASH that "objective evidence other than manufacturers' claims can be material to a determination of intended use" and that "evidence of consumer use can be one element of objective evidence to be weighed in determining if the intended purpose of a product subjects it to regulation under the Act." However, the Agency concluded that the evidence presented by ASH in the

petition was insufficient to establish that cigarettes and smokeless tobacco were in fact intended to affect the structure and function of the body. The court deferred to the Agency's determination not to regulate cigarettes as drugs but expressly left open the possibility that FDA might, at a later date, revisit its decision and determine that it did indeed have jurisdiction over cigarettes. *ASH v. Harris*, 655 F.2d 236 (D.C. Cir. 1980).

The evidence regarding the intended use of cigarettes and smokeless tobacco has changed dramatically since *ASH*. First, a scientific consensus has emerged since 1980 that nicotine is addictive and has other significant pharmacological effects and that cigarettes and smokeless tobacco are used by consumers to obtain pharmacological effects. As summarized above, no major public health organization had determined that nicotine was an addictive drug before 1980. Between 1980 and 1994, however, every leading scientific organization with expertise in addiction concluded that nicotine is addictive. This new evidence thus shows that the pharmacological effects and uses of cigarettes and smokeless tobacco have become foreseeable.

Second, scientific evidence accumulated since 1980 has shown that the vast majority of people who use cigarettes and smokeless tobacco use these products to satisfy addiction or to obtain other pharmacological effects. As summarized above, this new evidence now shows that 77% to 92% of smokers are addicted to nicotine and provides a basis for estimating that 75% of young regular smokeless tobacco users are addicted to nicotine. This new evidence establishes that consumers use cigarettes and smokeless tobacco predominantly for pharmacological purposes.

Third, FDA, congressional, and other investigations have recently uncovered a wealth of documents from a wide range of tobacco companies that show that the manufacturers have long known of the pharmacological effects and uses of nicotine and have designed their products to provide pharmacologically active doses of nicotine to consumers. Virtually none of this information was available to FDA in 1980.

Information developed since 1980 also demonstrates that the Agency has a unique public health opportunity to reduce substantially the more than 400,000 deaths from tobacco use each year in the United States. This information shows that for most people tobacco use and nicotine addiction begin in childhood and adolescence, and that an increasing number of American children and adolescents are using cigarettes and smokeless tobacco. The data now suggest that if children and adolescents can be prevented from initiating tobacco use during their teenage years, they are unlikely to begin tobacco use later in life, thereby preventing the onset of tobacco-related disease and premature death.

Before the importance of youth-centered interventions was identified, most of the regulatory approaches available under the Federal Food, Drug, and Cosmetic Act to address tobacco-related disease and death, such as removal of the products from the market, were not believed to be feasible solutions. It is now apparent, however, that FDA's authority to restrict the sale, distribution, and use of cigarettes and smokeless tobacco to people under the age of eighteen is an effective tool to reduce the adverse health consequences of tobacco use. Thus, asserting jurisdiction over cigarettes and

smokeless tobacco now presents an opportunity to use the Agency's resources effectively for substantial public health gains.

The court in *ASH* specifically recognized that FDA was permitted to modify its position and that any new FDA position would be accorded deference by the courts. *Id.* at 242 n.10. In light of the substantial new information, FDA has reviewed its earlier determination not to assert jurisdiction over tobacco products. The new evidence persuades the Agency to conclude that its previous position is no longer consistent with the relevant facts and should be changed. The evidence before the Agency is now sufficient to establish that cigarettes and smokeless tobacco are in fact intended to affect the structure and function of the body.

V. *Congress Has Not Precluded or Preempted FDA from Regulating Cigarettes and Smokeless Tobacco*

FDA disagrees with the comments of the tobacco industry that assert that Congress has precluded or preempted FDA from regulating cigarettes and smokeless tobacco. The plain language of the Act does not exclude cigarettes or smokeless tobacco from FDA jurisdiction. Tobacco products are expressly excluded from the jurisdiction of the Consumer Product Safety Commission under the Federal Hazardous Substances Act and from the jurisdiction of the Environmental Protection Agency under the Toxic Substances Control Act. The absence of any similar exclusion in the Federal Food, Drug, and Cosmetic Act demonstrates that Congress has not chosen to exclude cigarettes and smokeless tobacco from FDA jurisdiction.

The legislative history of the Act confirms that the Act should not be interpreted to preclude FDA jurisdiction over tobacco products. Congress has long known that FDA

will assert jurisdiction over cigarettes when the evidence establishes that the cigarettes are intended to affect the structure or function of the body. For instance, FDA asserted jurisdiction more than 30 years ago over cigarettes that were intended to reduce weight. This demonstrates that Congress has not "ratified" or "acquiesced in" an interpretation of the Act that would preclude FDA from regulating tobacco products intended to affect the structure or function of the body.

Moreover, even if Congress had acquiesced in such an interpretation of the Act, congressional acquiescence in a prior agency interpretation does not prevent an agency from changing its interpretation. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 45 (1983). In the case of cigarettes and smokeless tobacco, a change in interpretation would be justified by the new evidence in the record—evidence never previously before either the Agency or Congress.

The Agency also disagrees that other federal statutes preempt FDA jurisdiction over cigarettes and smokeless tobacco. Both the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act have provisions that expressly specify the limited extent to which these laws preempt FDA and other federal agencies from regulating cigarettes or smokeless tobacco. In the Federal Cigarette Labeling and Advertising Act, for instance, federal agencies are preempted only from requiring "statement[s] relating to smoking and health . . . on any cigarette package." 15 U.S.C. 1334(a). The narrow preemption provisions that Congress expressly included in these statutes do not apply to FDA's assertion of jurisdiction over cigarettes and smokeless tobacco.

No other federal statutes contain provisions preempting FDA regulation of tobacco products. In the absence of an express preemption provision, one federal statute preempts another federal statute only where there is an irreconcilable conflict between the two laws. *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992). There is no irreconcilable conflict between FDA jurisdiction and other federal statutes.

VI. FDA Employed Procedures That Provided an Opportunity for Full Public Participation and Exceeded All Legal Requirements

FDA went to great lengths to involve the public in the process by which the Agency made its final jurisdictional determination. The Commissioner made public his intention to investigate the role of nicotine in tobacco products, testified twice before Congress on the Agency's findings, wrote to all the major cigarette and tobacco companies requesting information on the role of nicotine in their products, and held a public advisory committee meeting on the abuse potential of nicotine. Although the Agency is not required to undertake rulemaking to establish jurisdiction over new products, the Agency published in the *Federal Register* its initial jurisdictional findings and comprehensive legal analysis in a 325-page document, supported by over 600 footnotes, and sought public comment on those findings. The Agency placed over 210,000 pages of supporting documents in a public docket. FDA received over 700,000 comments on the Jurisdictional Analysis and the accompanying proposed rule. The Agency has responded to substantive comments in this Annex and in the preamble to the Final Rule.

FDA disagrees with the comments of the tobacco industry that the record supporting the Jurisdictional Analysis or the procedures the Agency followed were inadequate. The procedures the Agency employed in reaching its final determination

exceeded the requirements of the Administrative Procedures Act (APA) and the Agency's own procedural requirements.

INTRODUCTION

On August 11, 1995, the Food and Drug Administration (hereinafter FDA or the Agency) announced the results of its extensive investigation and comprehensive legal analysis regarding the Agency's jurisdiction over cigarettes and smokeless tobacco in a document entitled, "Nicotine in Cigarettes and Smokeless Tobacco Products Is a Drug and These Products Are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act" (hereinafter referred to as the "Jurisdictional Analysis"). 60 FR 41453–41787 (Aug. 11, 1995). The Agency reported that its investigation and analysis supported a finding at that time that nicotine in cigarettes and smokeless tobacco is a drug and that these products are drug delivery devices within the meaning of the Federal Food, Drug, and Cosmetic Act (hereinafter the Act). Because of the unique importance of the jurisdictional issue, the Agency invited comment on this finding.

The public comment period closed on January 2, 1996. 60 FR 53620 (Oct. 16, 1995). On March 20, 1996, the Agency published in the *Federal Register* notice of an additional 30 day comment period, until April 19, 1996, limited to specific documents the Agency added to the docket in support of the Agency's analysis of jurisdiction. 61 FR 11419 (Mar. 20, 1996). The Agency received over 700,000 comments on its Jurisdictional Analysis and its Proposed Rule restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. The Agency has carefully considered these comments.

This final jurisdictional determination responds to the public comments and reports the Agency's conclusion that the nicotine in cigarettes and smokeless tobacco is a drug and that cigarettes and smokeless tobacco are drug delivery devices whose purpose is to

deliver nicotine to the body in a manner in which it can be readily absorbed. These products, therefore, are subject to FDA regulation under the Act.

The legal question of whether cigarettes and smokeless tobacco are drugs and devices subject to FDA regulation is one that "FDA has jurisdiction to decide with administrative finality." *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973). The Act defines a "drug" as (1) an article "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals," or (2) an article (other than food) "*intended to affect the structure or any function of the body of man or other animals.*" Section 201(g)(1)(B) and (C), 21 U.S.C. 321(g)(1)(B) and (C) (emphasis added). The Act's device definition parallels the drug definition and provides that an instrument, apparatus, or other similar article is a "device" if it is (1) "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals," or (2) "*intended to affect the structure or any function of the body of man or other animals.*" Section 201(h)(2) and (3), 21 U.S.C. 321(h)(2) and (3) (emphasis added). These definitions are intended to be broad in scope and to encompass products that are not within the ordinary medical definitions of drugs and devices. *See United States v. An Article of Drug . . . Bacto-Unidisk*, 394 U.S. 784, 793 (1969) ("we think it plain that Congress intended to define 'drug' far more broadly than does the medical profession").

In applying these legal standards to cigarettes and smokeless tobacco, the Agency has focused on the second prong of the definition of drug and device: whether cigarettes and smokeless tobacco are "intended to affect the structure or any function of the body." Historically, the Agency has regulated tobacco products whenever the evidence before the

Agency was sufficient to establish that the products were intended to affect the structure or function of the body. FDA last considered whether cigarettes were drugs or devices in the late 1970's, determining that the limited evidence then before the Agency was insufficient to demonstrate that these products were intended to affect the structure or function of the body. *See Action on Smoking and Health v. Harris*, 655 F.2d 236 (D.C. Cir. 1980). Since that time, substantial new evidence has become available to FDA. This evidence includes the emergence of a scientific consensus that cigarettes and smokeless tobacco cause addiction to nicotine and the disclosure of thousands of pages of internal tobacco company documents detailing that the manufacturers intend to affect the structure and function of the human body.

The determination whether a product is subject to FDA jurisdiction often requires the Agency to make difficult factual judgments, including judgments regarding the intended use of the product. The Agency must have enough evidence to show that these factual judgments are rational and not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. 706(2)(A); *see National Nutritional Foods Ass'n v. Weinberger*, 512 F.2d 688, 700-701 (2d Cir. 1975), *cert. denied*, 423 U.S. 827 (1975). The Agency must provide some evidentiary support for its factual judgments, and there must be a rational connection between these judgments and the conclusions reached. *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983). The Agency should also have considered all the relevant data and the relevant aspects of the issue. *Id.*; *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). An agency's factual judgments made in the context of an informal agency action ordinarily need only be supported by a record that

shows a "rational basis" for the agency's decision, *Natural Resources Defense Council, Inc. v. EPA*, 16 F.3d 1395, 1401 (4th Cir. 1993), or by a record consisting of "some evidence" in support of the agency's decision. *Aman v. FAA*, 856 F.2d 946, 950 n.3 (7th Cir. 1988) (while an agency determination need only have "some evidentiary basis to avoid being held 'arbitrary and capricious,' [t]he difference between 'some' and 'substantial' probably cannot be precisely stated except in the context of particular cases. . . ."). Several courts, however, have held that an agency's factual judgments must always be supported by "substantial evidence," even though that standard is intended to be applied only to formal "on the record" agency actions, *see* 5 U.S.C. 706(2)(E).[1]

In this case, the Agency's evidentiary record exceeds these standards. That is, FDA has concluded that the evidence now before the Agency supports a finding of jurisdiction over these products. In assessing the new evidence, FDA has used a two-step approach, evaluating first whether the nicotine in these products "affects the structure or

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[1] *See, e.g., Ass'n of Data Processing Service Organizations, Inc. v. Board of Governors*, 745 F.2d 677, 683-684 (D.C. Cir. 1984) (Scalia, J) ("When the arbitrary or capricious standard is performing that function of assuring factual support, there is no substantive difference between what it requires and what would be required by the substantial evidence test, since it is impossible to conceive of a 'nonarbitrary' factual judgment supported only by evidence that is not substantial in the APA sense . . . ."). *Contra Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1213-1214 and n.17 (5th Cir. 1991) (declining to find that the substantial evidence standard and the arbitrary and capricious standard "are in fact one and the same"); *Am. Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 412 n.7 (1983) (in the absence of a specific command in the statute to employ a particular standard of review, the Court of Appeals should have applied the more lenient arbitrary and capricious standard in evaluating the factual basis supporting an agency's informal rulemaking).

The difference in the case law, however, is of no consequence here because FDA's evidentiary record exceeds the "substantial evidence" standard—the more stringent of the two standards. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 619-620 (1966) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)), even if two inconsistent conclusions might be inferred from the same evidence. *See Consolo*, 383 U.S. at 620; *NLRB v. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106 (1942). Under the substantial evidence standard, an agency's factual determinations are conclusive even if supported by "something *less than the weight of the evidence* . . . ." *Consolo*, 383 U.S. at 620 (emphasis added).

any function of the body" and second whether these effects are "intended." FDA has determined that the evidence overwhelmingly demonstrates that (1) nicotine in cigarettes and smokeless tobacco has significant effects on the structure and function of the body and (2) these effects are intended by the manufacturers of these products.

The Agency's determination that nicotine in cigarettes and smokeless tobacco "affect[s] the structure or any function of the body" is based on three central findings:

1. Nicotine in cigarettes and smokeless tobacco causes and sustains addiction.

2. Nicotine in cigarettes and smokeless tobacco causes other psychoactive (mood-altering) effects, including tranquilization and stimulation.

3. Nicotine in cigarettes and smokeless tobacco controls weight.

These findings demonstrate that nicotine in cigarettes and smokeless tobacco has the same pharmacological effects as other drugs that FDA has traditionally regulated, including tranquilizers, stimulants, appetite suppressants, and products used in the maintenance of addiction such as methadone. Thus, the effects of nicotine in cigarettes and smokeless tobacco on the structure and function of the body are within FDA's jurisdiction.

FDA's determination that the manufacturers of cigarettes and smokeless tobacco "intend" the effects of nicotine on the structure and function of the body is based on five central findings:

1. The addictive and other pharmacological effects of nicotine are so widely known and accepted that it is foreseeable to a reasonable manufacturer that cigarettes and smokeless tobacco will cause addiction to nicotine and other significant pharmacological effects and will be used by

consumers for pharmacological purposes, including sustaining their addiction to nicotine.

2. Consumers use cigarettes and smokeless tobacco predominantly for pharmacological purposes, including sustaining their addiction to nicotine, mood alteration, and weight loss.

3. Manufacturers of cigarettes and smokeless tobacco know that nicotine in their products causes pharmacological effects in consumers, including addiction to nicotine and mood alteration, and that consumers use their products primarily to obtain the pharmacological effects of nicotine.

4. Manufacturers of cigarettes and smokeless tobacco design their products to provide consumers with a pharmacologically active dose of nicotine.

5. An inevitable consequence of the design of cigarettes and smokeless tobacco to provide pharmacologically active doses of nicotine is to keep consumers using cigarettes and smokeless tobacco by sustaining their addiction to nicotine.

Each of these findings provides an independent basis for establishing that the manufacturers of cigarettes and smokeless tobacco "intend" to affect the structure and function of the body. Taken together, the cumulative weight of the evidence convincingly supports the determination that the effects of nicotine on the structure and function of the body are "intended" by the manufacturers.

FDA's assertion of jurisdiction over cigarettes and smokeless tobacco is consistent with the Agency's assertion of jurisdiction over other similar products. FDA regulates a diverse range of products under the Act. These products—foods, drugs, devices, cosmetics, and radiation-emitting electronic products—all "affect the health and well-being of the public." *United States v. Park*, 421 U.S. 658, 672 (1975). The common feature that distinguishes these products is their intimate and potentially harmful contact

with the human body. *See id.* at 668. FDA-regulated products include those that are intended to be ingested, inhaled, applied to the skin, implanted, or otherwise used in close contact with the body. Cigarettes, which deliver a pharmacologically active dose of nicotine to the body through inhalation, and smokeless tobacco, which delivers a pharmacologically active dose of nicotine through buccal absorption, share this distinguishing feature and thus are properly subject to FDA jurisdiction.

The determinations that (1) the nicotine in cigarettes and smokeless tobacco "affects the structure or any function of the body" and (2) these effects are "intended" by the manufacturers satisfy the legal requirements under the Act for FDA jurisdiction. FDA has also determined that cigarettes and smokeless tobacco contain both a "drug" and a "device" and are thus combination products within the meaning of the Act. Accordingly, the Agency has concluded that the nicotine in cigarettes and smokeless tobacco is a drug and that cigarettes and smokeless tobacco are drug delivery devices under the Federal Food, Drug, and Cosmetic Act.

I. CIGARETTES AND SMOKELESS TOBACCO "AFFECT THE STRUCTURE OR ANY FUNCTION OF THE BODY" WITHIN THE MEANING OF THE ACT

In the Jurisdictional Analysis, FDA found, based on the evidence available to it at the time, that nicotine in cigarettes and smokeless tobacco is "highly addictive, causes other psychoactive effects, such as relaxation and stimulation, and affects weight regulation." *See* Jurisdictional Analysis, 60 FR 41464 (Aug. 11, 1995). The Agency found that the nicotine in these products "has pharmacological effects on both the structure and function of the central nervous system, particularly the brain," and that "[a]ddiction is a direct result of nicotine's effects on the structure and function of the body." *Id.* at 41470. Based on these findings of pharmacological effects, the Agency found that cigarettes and smokeless tobacco "*affect the structure or any function of the body.*" *Id.* (emphasis added).

As described more fully below, the Agency received comments that agreed and disagreed with the Agency's position.[2] After considering the evidence in the administrative record,[3] including the public comments, the Agency finds that cigarettes and

[2] The Agency received a consolidated comment of the cigarette industry (Brown & Williamson Tobacco Corp., Liggett Group Inc., Lorillard Tobacco Co., Philip Morris Inc., R.J. Reynolds Tobacco Co., Tobacco Institute Inc.) (Jan. 2, 1996) (hereinafter Joint Comments of the Cigarette Manufacturers). *See* AR (Vol. 535 Ref. 96). The Agency also received a consolidated comment of the smokeless tobacco industry (Smokeless Tobacco Council. Inc., Brown & Williamson Tobacco Corp., Conwood Co., L.P., National Tobacco Co., L.P., the Pinkerton Tobacco Co., R.C. Owen Co., Swisher International, Inc., United States Tobacco Co.) (Jan. 2, 1996) (hereinafter Joint Comments of the Smokeless Tobacco Manufacturers). *See* AR (Vol. 526 Ref. 95).

[3] In the footnotes of this document, cites to the administrative record (AR) specify both the number of the reference and the volume of the AR in which the reference is found. The reference may contain the full document or a partial document. Where the reference contains a partial document, the full document may be found elsewhere in the AR. In a small number of cases, a reference will occupy several volumes of the AR, for example, the Joint Comments of the Cigarette Manufacturers. In these cases, the cite will specify the volume of the AR in which the reference begins.

smokeless tobacco do indeed "affect the structure or any function of the body" within the meaning of sections 201(g)(1)(C) and 201(h)(3) of the Act, 21 U.S.C. 321(g)(1)(C), 321(h)(3).

To interpret the Federal Food, Drug, and Cosmetic Act in a manner that excludes the effects of these products from the scope of the structure-function prong of the drug and device definitions would be inconsistent with the plain meaning of the Act, its legislative history, case law interpreting the structure-function prong, and the Agency's past applications of that provision. The Agency's conclusions are summarized in section I.A., followed by a detailed discussion of the comments and the Agency's responses to them in section I.B.

A. THE PHARMACOLOGICAL EFFECTS OF THE NICOTINE IN CIGARETTES AND SMOKELESS TOBACCO ON THE BODY ARE SIGNIFICANT

Cigarettes and smokeless tobacco contain nicotine, an addictive and pharmacologically active drug. *See* section II.A., below. Nicotine is the active ingredient in several products regulated as drugs by the Agency, including nicotine transdermal patches, nicotine chewing gums, nicotine nasal spray, and Favor, a hollow paper tube with nicotine impregnated in the mouthpiece. *See* Jurisdictional Analysis, 60 FR 41482, 41549-41550. The effects of the nicotine in cigarettes and smokeless tobacco greatly exceed those exerted by the nicotine-containing products already regulated by the Agency.[4]

Nicotine in cigarettes and smokeless tobacco produces significant pharmacological effects on the human body. First, nicotine causes and sustains addiction. The processes

[4] Nicotine-use cessation products are discussed in section II.A.5., below.

that lead to addiction to nicotine in cigarettes and smokeless tobacco are similar to those that lead to addiction to products such as morphine and opium. *See* section II.A.2., below. Like other addictive substances, nicotine in cigarettes and smokeless tobacco achieves its addictive effects by exerting psychoactive, or mood-altering, effects on the brain and by producing chemical reactions in the brain that motivate repeated, compulsive use of the substance. *See* section II.A.3., below. These pharmacological effects create dependence in the user. *Id.*

In addition to creating and sustaining addiction, cigarettes and smokeless tobacco produce other significant pharmacological effects. For example, under some circumstances, nicotine in cigarettes and smokeless tobacco has a sedating or tranquilizing effect on mood and brain activity. *See* section II.A.4., below. Under other circumstances, nicotine in cigarettes and smokeless tobacco has a stimulant or arousal-increasing effect on the body. *Id.*

Nicotine in cigarettes and smokeless tobacco also controls body weight. *Id.* Clinical and animal studies indicate that nicotine administration causes weight loss and that cessation of nicotine administration results in weight gain. *Id.*

These effects on the structure and function of the body are significant and quintessentially drug-like. They produce immediate pharmacological changes in the function of the brain (depressing or stimulating arousal); they change the physical structure of the body (increased growth of nicotine receptors in the brain, weight loss); and they cause drug dependence (addiction). *Id.*

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The tobacco industry comments argue that "remote" or "insignificant" pharmacological effects are not subject to FDA jurisdiction. Although "remote physical effect[s] upon the body" may not be covered by the structure-function provision, *see E.R. Squibb & Sons, Inc. v. Bowen*, 870 F.2d 678, 682 (D.C. Cir. 1989), the pharmacological effects of cigarettes and smokeless tobacco are not "remote" or insignificant. Indeed, they are powerful and immediate pharmacological effects that are not qualitatively or quantitatively different from the effects of other drugs subject to FDA jurisdiction.

In fact, the effects of cigarettes and smokeless tobacco—addiction, sedation, stimulation, and weight loss—are precisely the types of effects the Agency traditionally regulates. It is well established that the Agency has the authority to regulate, and has regulated, products that sedate, tranquilize, or reduce anxiety (e.g., Valium and other benzodiazepines); products that stimulate or restore mental alertness (e.g., caffeine-containing pills such as NoDoz, *see* Stimulant Drug Products for Over-the-Counter Human Use, Final Monograph, 53 FR 6100 (February 29, 1988); 21 CFR Part 340);[5] products that cause weight loss (*see* Weight Control Products for Over-the-Counter Human Use, Certain Active Ingredients, 56 FR 37792 (August 8, 1991); 21 CFR 310.545(a)(20); *see also United States v. 354 Bulk Cartons . . . Trim Reducing-Aid Cigarettes,* 178 F. Supp. 847, 851 (D.N.J. 1959)); and products that are used for maintenance treatment of addiction (e.g., methadone and other "narcotic drugs [used] in the medical treatment of narcotic addiction," 21 CFR 291.501). The approved uses of these products include uses to "affect the structure or any function of the body" under

[5] A more detailed discussion of the Agency's regulation of caffeine and caffeine-containing products is contained in section I.B., below.

section 201(g)(1)(C) of the Act. Thus, cigarettes and smokeless tobacco have the same effects as products that are undeniably within FDA's jurisdiction.

Indeed, internal tobacco company documents reveal that tobacco industry scientists understand that the nicotine in tobacco produces pharmacological effects no different from those produced by approved drugs. These industry scientists viewed prescription drugs as competing products.[6] Over three decades ago, the British American Tobacco Company (BATCO), the parent of Brown & Williamson Tobacco Corporation, commissioned a study to compare the effects of nicotine with those of tranquilizers, "which might supersede tobacco habits in the near future."[7] The study concluded that nicotine was "more beneficial or less noxious—than the new tranquilizers" because it reduced stress and regulated weight.[8]

Philip Morris and R.J. Reynolds Tobacco Company (RJR) also have repeatedly compared the effects of nicotine from tobacco to the effects of drugs regulated by FDA. For example, Philip Morris researchers and officials have concluded that smokers use cigarettes as "a narcotic, tranquilizer, or sedative"[9] and that "[nicotine] is a physiologically active, nitrogen containing substance. *Similar organic chemicals include . . . quinine,*

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[6] These documents, and the conclusions the Agency has drawn from them, are described in detail in sections II.C. and II.D., below.

[7] Haselbach CH, Libert O, *Final Report on Project HIPPO II* (Geneva: Battelle Memorial Institute, International Division, Mar. 1963), at 1. *See* AR (Vol. 64 Ref. 321).

[8] *Id.* at 2.

[9] Udow A, *Why People Start to Smoke* (Jun. 2, 1976), in 141 Cong. Rec. H7664 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

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cocaine, atropine and morphine. While each of these substances can be used to affect human physiology, *nicotine has a particularly broad range of influence.*"[10]

Similarly, RJR scientists have reported that smokers who inhale lightly appear to use tobacco to achieve "mental activation and performance enhancement" whereas those who inhale more deeply show brain effects that "may reflect the anxiolytic properties of benzodiazepines,"[11] prescription drugs used to alleviate anxiety. Another RJR researcher has stated:

> [I]n different situations and at different dose levels, *nicotine appears to act as a stimulant, depressant, tranquilizer, psychic energizer, appetite reducer, anti-fatigue agent, or energizer. . . .* Therefore, in addition to competing with products of the tobacco industry, *our products may, in a sense, compete with a variety of other products with certain types of drug action.*[12]

Thus, the industry's own documents acknowledge that the pharmacological effects of their products are the same as the effects the Agency has considered to be structure-function effects within the meaning of section 201(g)(1)(C). Notwithstanding the views of their own scientists, the tobacco industry comments publicly assert that cigarettes and smokeless tobacco do not affect the structure or any function of the body within the meaning of the Act because their effects are too "remote" or not therapeutic or beneficial.

The ramifications of the tobacco industry's position are far-reaching. If the Agency were to determine that the pharmacological effects of cigarettes and smokeless

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[10] Philip Morris Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table* (emphasis added). *See* AR (Vol. 531 Ref. 122).

[11] Pritchard WS, R.J. Reynolds Tobacco Co., Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485, at 488. *See* AR (Vol. 3 Ref. 23-2).

[12] Teague CE, R.J. Reynolds Tobacco Co., *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 1-2 (emphasis added). *See* AR (Vol. 531 Ref. 125).

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tobacco are not effects on the structure and function of the body, or are not significant effects, the Agency's authority to regulate other products with like pharmacological effects—sedation, stimulation, weight loss, and satisfaction of addiction—would be called into question. Under the industry's characterization of the effects of their products, even if the pharmacological effects of sedation, stimulation, weight loss, or satisfaction of addiction were expressly promoted or otherwise intended, products producing the same effects could not be regulated under section 201(g)(1)(C) or 201(h)(3) because, by the industry's definition, these products would not "affect the structure or any function of the body." This view, if accepted, could undermine the Agency's ability to regulate drugs and devices that are not used in the diagnosis or treatment of disease, but significantly affect the structure or any function of the body. Further, such an interpretation would be inconsistent with over 50 years of Agency practice since passage of the Act in 1938.

In sum, cigarettes and smokeless tobacco do affect the structure and function of the body within the meaning of the Act. The pharmacological effects of nicotine-containing tobacco products are significant and the same as the effects of other products traditionally regulated by FDA. Because these effects are "intended" within the meaning of the Act—the issue discussed in section II., below—cigarettes and smokeless tobacco fall within the jurisdiction of the Agency under the Act.

B. RESPONSE TO COMMENTS

1. As noted in section I.A., above, tobacco industry comments and others argue that the effects of nicotine delivered from cigarettes and smokeless tobacco are too remote or insignificant to be subject to the Act. These comments minimize nicotine's

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effects and argue that nicotine-containing tobacco products "stimulate the senses" and "calm[] feelings of stress," more like the effects of "hammocks [and] gardening tools" than those of products within FDA's jurisdiction.[13] The industry comments urge the Agency to follow the holding of *FTC v. Liggett & Myers Tobacco Co.*, 108 F. Supp. 573 (S.D.N.Y. 1952), *aff'd*, 203 F.2d 955 (1953), where the court concluded that the "soothing" effects of cigarettes do not affect the structure and function of the body.

FDA disagrees with these comments. As described earlier in this section, nicotine's effects on the structure and function of the body are comparable both in quality and quantity to those of tranquilizers, stimulants, weight control products, and products for long-term maintenance of addiction. These effects have long been recognized as effects on the structure or function of the body that are within FDA's jurisdiction. In addition, the Act's legislative history and case law interpreting the Act provide ample support for the conclusion that nicotine's effects are significant and within the scope of the Act. While "remote physical effect[s] on the body" may not be sufficient to invoke the Act's jurisdiction, *see Squibb*, 870 F.2d at 682, nicotine produces significant pharmacological and physiological effects on the structure and function of the body, and these effects clearly fall within sections 201(g)(1)(C) and 201(h)(3).

The courts have held that effects much less significant than those of nicotine are effects on the structure or function of the body and are within FDA's jurisdiction.

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[13] Joint Comments of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 241. *See* AR (Vol. 526 Ref. 95).

Joint Comments of the Cigarette Manufacturers, Comment (Jan. 2, 1996), vol. II, at 65-66. *See* AR (Vol. 535 Ref. 96).

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Products whose effects have been found sufficient to fall within the scope of sections 201(g)(1)(c) and 201(h)(3) include those for temporary smoothing of wrinkles, *United States v. . . . "Line Away, Temporary Wrinkle Smoother,"* 284 F. Supp. 107 (D. Del. 1968), *aff'd*, 415 F.2d 369 (3d Cir. 1969); *United States v. . . . "Sudden Change,"* 409 F.2d 734 (2d Cir. 1969); and products that deliver low levels of oxygen for recreational use to enhance athletic performance, *United States v. . . . "Sports Oxygen,"* Civ. No. 89-2085 (D.N.J. Oct. 27, 1992), *reprinted in Federal Food, Drug, and Cosmetic Act: A Judicial Record, 1991-92,* 110-119. These effects are plainly less significant than the potent psychoactive, addictive, and weight-regulating effects of nicotine.

Weight loss is one of the effects of cigarettes and smokeless tobacco. *See* section II.A.4., below. Courts have held that this type of effect alone is sufficient to make cigarettes a drug when the product is "intended to affect the structure and functions of the human body by . . . achieving a reduction in the body's weight." *United States v. 354 Bulk Cartons . . . "Trim Reducing-Aid Cigarettes,"* 178 F. Supp. 847, 851 (D.N.J. 1959). Similarly, the legislative history of section 201(g)(1)(C) also demonstrates that weight loss alone is an effect on the structure and function of the body within the meaning of the Act. Indeed, one of the principal reasons cited by Congress for broadening the definition of "drug" to include products that affect the structure or function of the body was to bring weight control products within FDA's jurisdiction. *See* 78 Cong. Rec. 8960, 73d Cong., 2d Sess. (May 16, 1934) (statement of Senator Copeland), *reprinted in A Legislative History of the Federal Food, Drug, and Cosmetic Act and Its Amendments* (hereinafter Legislative History), vol. 2, at 831.

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The Agency disagrees that the effects of nicotine in cigarettes and smokeless tobacco are comparable to those produced by hammocks, gardening tools, or other similar articles. First, such articles do not introduce chemical ingredients into the body. By contrast, cigarettes and smokeless tobacco deliver a potent chemical ingredient, nicotine, whose significant pharmacological effects on the human body are widely recognized in the scientific community. Second, the powerful psychoactive effects produced by nicotine in cigarettes and smokeless tobacco are comparable to those produced by tranquilizers, stimulants, weight management agents, and drugs used for long-term maintenance of addiction, all of which are indisputably within FDA's jurisdiction. Third, as described in section I.A., above, tobacco industry officials have acknowledged that nicotine's effects are comparable to those of prescription drug products.

FDA also disagrees that the 1952 decision, *Liggett & Myers*, 108 F. Supp. 573, represents a controlling determination that cigarettes do not affect the structure or function of the body within the Act's meaning. Much less was known about the addictive, psychoactive, and weight-regulating effects of nicotine when the court decided *Liggett* in 1952 than is known today. The kinds of effects that were alleged in *Liggett* (lack of irritation to the respiratory system and "soothing" effects) are far different from the addicting and other psychoactive and weight-regulating effects now known to be caused by nicotine in cigarettes. *See* sections II.A.1. and IV., below. Moreover, *Liggett* was decided before FDA regulated nicotine. The Agency now regulates nicotine-containing products such as nicotine transdermal patches and nicotine nasal spray intended to treat nicotine addiction. If nicotine were not a powerful pharmacological agent with addictive

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properties, nicotine cessation products would be unnecessary. Further, the *Liggett* opinion does not suggest that the definition of "drug" would preclude treating cigarettes as drugs if new evidence concerning cigarettes' effects became known. *See* section IV., below.

Accordingly, FDA concludes that nicotine's significant pharmacological effects are effects on the structure or function of the body within the Act's meaning.

2. Tobacco industry comments contend that Congress intended to limit the drugs and devices covered by sections 201(g)(1)(C) and 201(h)(3) (products "intended to affect the structure or any function of the body") to products with "therapeutic" or "medical" uses. One industry comment further elaborates that the structure-function provision was added to the Federal Food, Drug, and Cosmetic Act in 1938 only as a result of concern that certain "therapeutic" products used for weight management purposes had escaped regulation under the 1906 Pure Food and Drug Act because obesity and leanness were not considered to be diseases. Consequently, this comment argues, the structure-function provision encompasses only products intended for "therapeutic" or "medical" use in "disease-treatment" conditions.[14]

This industry comment also makes a related argument that effects on the structure or function of the body must be "beneficial," or "drug-like," and not "destructive or toxic." According to this comment, "FDA views 'addictiveness' as an undesirable characteristic, not as a beneficial effect, and therefore more as a form of toxicity."[15] This

[14] Joint Comments of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 145-146. *See* AR (Vol. 526 Ref. 95).

[15] *Id.* at 151.

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comment argues that the effects of cigarettes and smokeless tobacco are therefore outside the scope of the Act.

Conversely, one public interest group comment argues that construing sections 201(g)(1)(C) and 201(h)(3) as requiring a "therapeutic" effect would make these sections redundant of sections 201(g)(1)(B) and 201(h)(2), which define drugs and devices as products "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease." According to this comment, such an interpretation would violate basic rules of statutory construction.

The Agency disagrees with the tobacco industry's narrow reading of the structure-function provision. Neither the language of the statute, its legislative history, nor the case law supports the position that drugs and devices must have "therapeutic," "medical," or "beneficial" effects or purposes in order to "affect the structure or any function of the body."

The plain language of the statute provides no support for the tobacco industry's position. The terms, "therapeutic," "medical," and "beneficial," or words of similar import, do not appear anywhere in section 201(g)(1)(C) or 201(h)(3). FDA agrees with the comments that assert that construing the "structure or any function" language to require a therapeutic or medical effect would make these provisions essentially identical in scope and meaning to sections 201(g)(1)(B) and 201(h)(2). To do so would violate the well-accepted principle that "a legislature is presumed to have used no superfluous words." *Bailey v. United States*, 116 S.Ct. 501, 507 (1995).

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The legislative history is also inconsistent with the tobacco industry's position. Congress added sections 201(g)(1)(C) and 201(h)(3) to broaden the coverage of the Act to include a "comprehensive class of preparations which were intended to affect the structure or function of the body." "*Line Away,*" 284 F. Supp. at 110 (citations omitted). The Act's legislative history makes clear that Congress intended to *expand* the Act's jurisdiction, rather than merely "close a loop-hole" in subsection 201(g)(1)(B). *See, e.g.*, H.R. Rep. No. 2139, 75th Cong., 3d Sess. 2 (1938), *reprinted in* 6 Legislative History 301 ("Drugs intended . . . for remedying underweight or overweight or for *otherwise* affecting bodily structure or function are subject to regulation") (emphasis added); *see also American Health Products Co. v. Hayes,* 574 F. Supp. 1498, 1506 (S.D.N.Y. 1983) (The structure-function provision was enacted to "reach those products . . . which evaded regulation altogether because they were neither foods *nor therapeutic agents*") (emphasis added).

The inclusive nature of the structure-function provision was raised several times during the hearings that led to enactment of the 1938 Act. *See Hearings on S. 1944, Senate Subcomm. of the Comm. on Commerce,* 73d Cong., 2d Sess. 15 (1933), *reprinted in* 1 Legislative History 107 ("The definition of the term 'drug' has been widened"); *Hearings on S. 2800, Senate Comm. on Commerce*, 73d Cong., 2d Sess. 516 (1934), *reprinted in* 2 Legislative History 519 ("This definition of 'drugs' is all-inclusive"); *Hearings on S. 5, Senate Comm. on Commerce*, 74th Cong., 1st Sess. 352 (1935), *reprinted in* 3 Legislative History 546 ("There is a universal recognition that the definition of the term 'drug' in the third subdivision is inclusive"). Congress consistently rejected

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suggestions to limit the drug definition to products with medical or medicinal purposes. *See, e.g., Hearings on S. 2800, Senate Comm. on Commerce*, 73d Cong., 2d Sess. 515-516 (1934), *reprinted in* 2 Legislative History 518-519.

Judicial decisions and Agency practice also conflict with the narrow interpretation urged by the manufacturers. As the Supreme Court has stated:

> Viewing the structure, the legislative history, and the remedial nature of the Act, . . . it [is] plain that Congress intended to define "drug" far more broadly than does the medical profession. . . .
>
> . . . the word "drug" is a term of art for the purposes of the Act, encompassing far more than the strict medical definition of that word. If Congress had intended to limit the statutory definition to the medical one, it could have so stated explicitly.

United States v. An Article of Drug . . . Bacto-Unidisk, 394 U.S. 784, 793 (1969).

The structure-function provision has been applied since 1938 to a wide assortment of products with a range of uses and effects, many of which cannot be considered "therapeutic." For example, products that have been found to be within this provision include those with cosmetic, recreational, economic, or other nontherapeutic purposes. These products include tanning booths; sunscreens; breast implants; injectable collagen; birth control pills; products purporting to remove wrinkles temporarily, *e.g., "Line Away," "Sudden Change";* products intended to eliminate pet odors, *e.g., United States v. Undetermined Quantities . . . "Pets Smellfree,"* 22 F.3d 235, 240 (10th Cir. 1994); products intended to grow hair, *e.g., United States v. Kasz Enterprises, Inc.*, 855 F. Supp. 534, 540 (D.R.I.), *modified on other grounds,* 862 F. Supp. 717 (D.R.I. 1994); products intended as aphrodisiacs, *see* 54 FR 28780 (July 7, 1989), 21 CFR 310.528; products intended to enhance athletic performance by delivering a low, non-therapeutic level of

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oxygen, *e.g.*, *"Sports Oxygen"*; and veterinary products intended to increase milk production, *e.g.*, *United States v. Pro-Ag, Inc.*, 796 F. Supp. 1219 (D. Minn. 1991), *aff'd*, 968 F.2d 681 (8th Cir. 1992).

In the case of tanning booths, the Agency considers the product to be a "device" intended to affect the structure or any function of the body despite the fact that the American Academy of Dermatology considers tanning booths to be a potential health hazard and discourages their use.[16] FDA even regulates veterinary products intended to induce death in animals by humane means—an intended use that is indisputably not therapeutic. *See United States v. Articles of Drug . . . "Beuthanasia-D Regular,"* Civ. No. 77-0-396 (D. Neb. August 1, 1979), *reprinted in Federal Food, Drug, and Cosmetic Act: A Judicial Record, 1978-80*, 83-89.

The nature of a product's effect on the structure or function of the body—therapeutic or non-therapeutic, beneficial or adverse—thus does not determine FDA's jurisdiction. The relevant inquiry is simply whether a product has an effect on the structure or any function of the body. Cigarettes and smokeless tobacco do have such effects and, moreover, the effects are achieved through pharmacological means. The tobacco industry comments admit that products with "drug-type characteristics" (i.e., pharmacological action) are within the Act's jurisdiction.

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[16] Photobiology Task Force of the American Academy of Dermatology, Risks and benefits from high-intensity ultraviolet A sources used for cosmetic purposes: special report, *Journal of the American Academy of Dermatology* 1985;12:380-381. *See* AR (Vol. 711 Ref. 17).

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The argument that a product's effects must be therapeutic or medical is also inconsistent with FDA's assertion of jurisdiction over products with cosmetic, recreational, and economic uses. Notably, the comments that contend that effects on the structure or function of the body must be therapeutic or medical and also beneficial do not claim that FDA incorrectly applied the structure-function provision to products with cosmetic, recreational, or economic uses. Instead, these comments attempt to avoid the inconsistency between their arguments and these precedents by expansively interpreting "therapeutic" and "medical" to encompass products with cosmetic, recreational, economic, and other apparently non-therapeutic purposes or effects. Moreover, these comments do not provide any rationale to support the position that products regulating weight are subject to the Act, but that nicotine-containing cigarettes and smokeless tobacco, which also affect weight regulation, are not. Instead, the comments assert that the weight control effects of cigarettes and smokeless tobacco are too minor to be subject to the Act's jurisdiction. This argument is refuted in section II.A.4., below.

The Agency rejects the legal premise that effects on the structure or function of the body must be therapeutic or beneficial. However, even if the Agency were to accept the manufacturers' legal premise, this would not change the Agency's decision with respect to cigarettes and smokeless tobacco. As noted previously, cigarettes and smokeless tobacco produce pharmacological effects on the structure and function of the body that are indistinguishable from the effects of a wide range of products regulated by FDA, including sedation, stimulation, weight loss, and sustaining addiction. These pharmacological effects are as "therapeutic" or "beneficial" as many effects currently regulated under the

Act, and would be sufficient to satisfy a requirement that products regulated as drug delivery devices have beneficial or therapeutic effects. Tobacco industry scientists have themselves argued that tobacco products provide "needed psychological benefits (increased mental alertness; anxiety reduction, coping with stress)"[17] and that "nicotine is a very remarkable beneficent drug."[18]

Indeed, if a new product with the powerful pharmacological effects of cigarettes and smokeless tobacco—sedation, stimulation, weight loss, and sustaining addiction—suddenly began to be distributed in the United States, there would be no question that the product would be subject to regulation under the Act because it "affect[s] the structure or any function of the body" within the Act's meaning. For example, the Agency has regulated gamma hydroxybutrate and gamma hydroxybutyric acid (collectively, GHB), a product intended to affect the structure or function of the body by promoting weight loss and muscle gain. The product is also used as a relaxant and sleep aid. GHB emerged as a steroid alternative after anabolic steroids became controlled substances. Very little was known about the product when GHB first entered the market because it was manufactured in clandestine laboratories (e.g., basements and kitchens), obtained from other black market sources, and usually distributed at health and sporting stores and clubs without labeling. The use of GHB as a steroid alternative and body-building aid is not "therapeutic"; nonetheless, the Agency successfully undertook regulatory actions against

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[17] Robinson JH, Pritchard WS, The role of nicotine in tobacco use, *Psychopharmacology* 1992;108:397-407, at 398. *See* AR (Vol. 66 Ref. 31-1).

[18] Ellis C, Science Advisor to the BATCO Board, *The Smoking and Health Problem*, presented at the BATCO Research Conference, Southampton, England (1962), at 15. *See* AR (Vol. 15 Ref. 190).

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GHB pursuant to the Act's drug authorities. *See United States v. Wood*, Nos. 92-50512, 92-50514 (9th Cir. Oct. 21, 1993); 58 FR 33690, 33699 (Jun. 18, 1993); FDA Quarterly Activities Report, First Quarter, FY 1991 (Oct.-Dec. 1990).

3. One comment contends that the structure-function provision is limited to products that "purport to *change* the physical structure of the body."[19] The Agency disagrees. Although the provision covers products that change a structure or function of the body, it is not limited to such effects. Courts have rejected the view that section 201(g)(1)(C) requires an actual "change [in] the physical structure or function of the [ ] body." *"Pets Smellfree,"* 22 F.3d at 237. Moreover, cigarettes and smokeless tobacco do in fact change the physical structure of the body by, for example, affecting brain chemistry and electrical activity in the brain, reducing weight, and increasing the growth of nicotine receptors in the central nervous system.

4. One comment asserts that the structure-function provision "is not intended to authorize the regulation of products solely because FDA believes their use is harmful and undesirable."[20] The Agency agrees. However, if a particular product meets the statutory definition of drug or device, the fact that it is also associated with harms to health is a reasonable consideration for the Agency in deciding to regulate the product. The Act's legislative history supports this view. As noted, concern about weight loss products that escaped regulation in the 1906 Pure Food and Drug Act was an impetus for

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[19] Joint Comments of the Cigarette Manufacturers, Comment (Jan. 2, 1996), vol. II, at 83 (emphasis added). *See* AR (Vol. 535 Ref. 96).

[20] Joint Comments of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 152. *See* AR (Vol. 526 Ref. 95).

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broadening the definition of "drug" to include products that affect the structure or function of the body. Congress was concerned not so much with the weight-reduction effects of weight loss products but with the serious and undesirable harms to health that resulted from their use. *See, e.g., Hearing on H.R. 6906, H.R. 8805, H.R. 8941, and S. 5 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 74th Cong., 1st Sess. 55 (1935) (statement of FDA Chief Walter Campbell), *reprinted in* 4 Legislative History 370.

5. Some comments state that FDA's determination that cigarettes and smokeless tobacco are "drugs" and "devices" would obligate the Agency to regulate caffeine and caffeine-containing products as drugs or drug delivery devices. These comments assert that for this reason the Agency should not regulate tobacco products as drugs or devices. The Agency disagrees that a comparison to caffeine provides a reason not to regulate nicotine-containing cigarettes and smokeless tobacco.

Caffeine is the active ingredient in several products regulated as drugs by the Agency. For instance, caffeine is the active ingredient in NoDoz, an over-the-counter stimulant that is regulated for its effects on the structure and function of the body. Caffeine is also an ingredient in internal analgesics and menstrual discomfort relief products.

Although these products are regulated as drugs, the effects of these caffeine-containing products on the structure and function of the body are significantly less than those of nicotine. *See* section II.A.3.c.i., below. For instance, unlike nicotine, caffeine is not recognized at this time as an addictive drug by health organizations such as the

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American Psychiatric Association or the World Health Organization. Indeed, even an internal Philip Morris report comparing smoking and caffeine found that nicotine has a stronger stimulant effect than caffeine and that the stimulant effects of caffeine are "more like those of . . . placebo" than of nicotine.[21] The implication for nicotine-containing cigarettes and smokeless tobacco is clear: if caffeine in products such as NoDoz "affect[s] the structure or any function of the body within the meaning of the Act," then *a fortiori* nicotine-containing cigarettes and smokeless tobacco "affect the structure or any function of the body" as well.

Caffeine naturally occurs in coffee, tea, and other foods, and is used as an ingredient in soft drinks. The Act defines "food" as "articles used for food or drink for man or other animals." *See* section 201(f)(1) of the Act, 21 U.S.C. 321(f)(1). The statutory definition "includes articles used by people in the ordinary way most people use food—primarily for taste, aroma, or nutritive value." *Nutrilab v. Schweiker*, 713 F.2d 335, 338 (7th Cir. 1983). When caffeine is used in soft drink products in accordance with section 402 of the Act, 21 U.S.C. 342, and when it naturally occurs in other products that are foods, such as coffee, the product is a "food" under section 201(f)(1) of the Act, 21 U.S.C. 321(f)(1), and is explicitly excepted from the definition of drug in section 201(g)(1)(C), 21 U.S.C. 321(g)(1)(C) ("articles, *other than food*, intended to affect the structure or any function of the body") (emphasis added). The Agency's treatment of caffeine in beverages consequently has no bearing on how cigarettes and smokeless tobacco should be regulated.

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[21] Memorandum from Schori TR to Dunn WL, *Smoking and Caffeine: A Comparison of Physiological Arousal Effects* (May 17, 1972), at 1-2. *See* AR (Vol. 15 Ref. 189-7).

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6. Several comments assert that if FDA regulates nicotine-containing cigarettes and smokeless tobacco, it must also regulate the nicotine that occurs naturally in food products such as tomatoes, potatoes, eggplant, and cauliflower. The Agency disagrees. As noted above in response 5, section 201(g)(1)(C) specifically excludes from its coverage products that are "foods" under the Act. Tomatoes, potatoes, eggplant, and cauliflower are "foods" within the meaning of the Act because they are "articles used for food . . . for man." *See* section 201(f)(1), 21 U.S.C. 321(f)(1). While these vegetables do contain trace amounts of nicotine, a person would have to consume 206 pounds of tomatoes, 309 pounds of potatoes, 22 pounds of eggplant, or 355 pounds of cauliflower to obtain the same amount of nicotine as in one cigarette.[22] Thus, these products are appropriately regulated as foods.

7. Some comments question whether applying the structure-function provision to nicotine-containing cigarettes and smokeless tobacco might provide precedent for applying the provision to a wide range of products that have effects on the structure or function of the body—including guns and other weapons, products that prevent injury, such as airbags, and chemical sprays used for self-defense or law enforcement purposes.

The Agency has never construed the structure-function provision to include products such as guns, airbags, and chemical sprays, and applying the structure-function provision to nicotine-delivering tobacco products will not provide any precedent for doing

[22] Chart Y, prepared in conjunction with the testimony of David Kessler before the Subcommittee on Health and the Environment, Committee on Energy and Commerce, U.S. House of Representatives (Mar. 25, 1994). *See* AR (Vol. 296 Ref. 4175).

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so. Moreover, there are fundamental distinctions between these products and nicotine-delivering tobacco products. Cigarettes deliver a pharmacologically active dose of the drug nicotine to the body through inhalation. Smokeless tobacco delivers a pharmacologically active dose of the same drug through buccal absorption. Collectively, tobacco products achieve their effects on the structure and function of the body through nicotine's pharmacological effects. These include sedation, stimulation, weight control, and maintenance of addiction. Tobacco products are thus indistinguishable from products that the Agency has traditionally regulated as drugs and devices. In contrast, guns, airbags, and chemical sprays are markedly different and distinguishable from such products.

II. CIGARETTES AND SMOKELESS TOBACCO ARE "INTENDED" TO AFFECT THE STRUCTURE AND FUNCTION OF THE BODY WITHIN THE MEANING OF THE ACT

Cigarettes and smokeless tobacco clearly "affect the structure or any function of the body." The principal issue before the Food and Drug Administration (FDA) is thus whether these effects are "intended" within the meaning of the Federal Food, Drug, and Cosmetic Act (the Act).

The Act's drug and device definitions provide in pertinent part that an article is a drug or device if it is "*intended* to affect the structure or any function of the body." Sections 201(g)(1)(C) and 201(h)(3), 21 U.S.C. 321(g)(1)(C) and (h)(3) (emphasis added). In determining whether an article is "intended" to affect the structure or function of the body, "the FDA is not bound by the manufacturer's subjective claims of intent," but rather can find actual intent "on the basis of objective evidence." *National Nutritional Foods Ass'n (NNFA) v. Mathews*, 557 F.2d 325, 334 (2d Cir. 1977). That is, the Agency determines the intent of the manufacturers objectively by evaluating all of the relevant evidence in the record from the perspective of a reasonable fact finder. *See* 21 CFR 201.128, 801.4. In determining intended use, the Agency may "examine a wide range of evidence." *United States v. Two Plastic Drums . . . Black Currant Oil*, 761 F. Supp. 70, 72 (C. D. Ill. 1991), *aff'd*, 984 F.2d 814 (7th Cir. 1993).

In the Jurisdictional Analysis, 60 FR 41453–41787, the Agency determined, based on the evidence then available to it, that cigarettes and smokeless tobacco are "intended" to affect the structure and function of the body. This determination was based on three grounds:

II.

(1) The addictive, psychoactive, and other significant pharmacological effects of cigarettes and smokeless tobacco are so widely known and foreseeable that these effects may be deemed to have been intended by the manufacturers, *see* Jurisdictional Analysis, 60 FR 41483–41490;

(2) Such a large percentage of consumers use cigarettes and smokeless tobacco to satisfy their addiction or to obtain other pharmacological effects that the manufacturers may be deemed to intend that their products will be used for such purposes, *see* Jurisdictional Analysis, 60 FR 41490–41491; and

(3) The statements, research, and actions of the tobacco manufacturers show that the manufacturers actually intend their products to affect the structure or any function of the body, *see* Jurisdictional Analysis, 60 FR 41491–41520.

FDA received comments on its findings from the tobacco industry, public health organizations, and other interest groups and members of the public.

In this section, the Agency considers, in light of the public comments, the objective evidence in the administrative record relevant to whether cigarette and smokeless tobacco manufacturers intend their products to affect the structure or any function of the body, including new evidence that has become available since the issuance of the Jurisdictional Analysis. The Agency also discusses the legal standard for establishing the intended use of cigarettes and smokeless tobacco, and responds to the substantive comments received by the Agency on the evidence and the legal standard. Specifically:

- Section II.A. discusses the evidence supporting FDA's finding that it is foreseeable to a reasonable tobacco manufacturer that the nicotine in cigarettes and smokeless tobacco will cause pharmacological effects and will be used by consumers for those effects and responds to comments on this issue;

II.

- Section II.B. discusses the evidence supporting FDA's finding that consumers use cigarettes and smokeless tobacco predominantly to obtain the pharmacological effects of nicotine and responds to comments on this issue;
- Section II.C. discusses the evidence supporting FDA's finding that cigarette manufacturers' statements, research, and actions show that they intend their products to be used for the pharmacological effects of nicotine and responds to comments on this issue;
- Section II.D. discusses the evidence supporting FDA's finding that smokeless tobacco manufacturers' statements, research, and actions show that they intend their products to be used for the pharmacological effects of nicotine and responds to comments on this issue;
- Sections II.E. and F. respond to comments, not already addressed in the foregoing sections, on the legal standard for evaluating intended use; and
- Section II.G. discusses the cumulative evidence of intended use.

Except as modified below, FDA confirms its prior findings and incorporates them by reference. FDA concludes that the evidence on the foreseeability of nicotine's effects, actual consumer use of tobacco for those effects, and evidence of intended use based on industry statements, research, and actions each provides an independent basis for the determination that the manufacturers of cigarettes and smokeless tobacco intend their products to affect the structure of function of the body.

Although the evidence thus provides several independent bases for establishing that cigarettes and smokeless tobacco are intended to affect the structure and function of the body, the Agency also looks at the objective evidence of intent as a whole. The

II.

Agency finds that, both independently and cumulatively, the evidence of foreseeable pharmacological effects and uses, actual consumer use for pharmacological purposes, and manufacturer intent as revealed through the statements, research, and actions of the manufacturers convincingly supports the Agency's determination that cigarettes and smokeless tobacco are intended to affect the structure and function of the body.

A. A REASONABLE MANUFACTURER WOULD FORESEE THAT CIGARETTES AND SMOKELESS TOBACCO WILL CAUSE ADDICTION AND OTHER PHARMACOLOGICAL EFFECTS AND WILL BE USED BY CONSUMERS FOR PHARMACOLOGICAL PURPOSES

FDA may conclude that a product is intended to affect the structure or function of the body if a reasonable person in the position of the manufacturer would foresee that the product will have pharmacological effects and that a substantial proportion of consumers will use the product for those effects. In the Jurisdictional Analysis, the Agency made extensive findings, based on the evidence then available, regarding the pharmacological effects of tobacco on the human body. *See* Jurisdictional Analysis, 60 FR 41534–41575. FDA received comments on these findings from the tobacco industry, many medical and public health organizations and medical practitioners, and from other members of the public. The administrative record includes extensive, publicly disseminated evidence from scientific studies and expert panels on the subject of tobacco's pharmacological effects on the human body.

After considering the administrative record and reviewing public comments, the Agency finds that the evidence clearly demonstrates that a reasonable tobacco manufacturer would foresee that cigarettes and smokeless tobacco will cause and sustain addiction, produce other psychoactive effects, and control weight and be used by consumers for these effects. This finding provides an independent basis for the Agency's conclusion that cigarettes and smokeless tobacco are intended to affect the structure and function of the body.

II.A.1.

In section II.A.1., below, FDA describes the legal basis for considering evidence of the foreseeable effects and uses of a product. FDA presents its major findings and responds to significant comments in sections II.A.2. through II.A.6. In section II.A.7., FDA responds to the remaining relevant substantive comments.

1. "Intended Use" May Be Established on the Basis of Foreseeable Pharmacological Effects and Uses

The Agency's legal authority to establish intended use based on the foreseeable effects and the foreseeable uses of a product comes from the plain language of the Act, as well as from FDA's regulations, case law, administrative precedent, and the public health purposes of the Act.

The plain language of the Act provides that a drug or device is an article "*intended* to affect the structure or any function of the body." Sections 201(g)(1)(c) and 201(h)(3) of the Act, 21 U.S.C. 321(g)(1)(C), 321(h)(3) (emphasis added). It is a widely accepted legal principle that persons can be held to "intend" the reasonably foreseeable consequences of their actions. In 1938, when Congress defined drugs and devices as articles "intended" to affect the structure or any function of the body of man, it was well established that "[t]he law presumes that every man *intends* the legitimate consequences of his own acts." *Agnew v. United States*, 165 U.S. 36, 53 (1897); *accord Fanning v. United States*, 72 F.2d 929, 932 (4th Cir. 1934) ("the law imputes an intent to accomplish the natural results of one's own act") (citations omitted); *Eastern Drug Co. v. Bieringer-Hanauer Co.*, 8 F.2d 838, 839 (1st Cir. 1925) ("presumption that one intends the natural and probable consequences of his acts"); *see also* 4 *Wigmore on Evidence* 3388-3390

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(1904-1905) (intent is "a volition having consequences which ought reasonably to have been foreseen"), *quoted in Rushmore v. Saxon,* 158 F. 499, 506 (C.C.S.D.N.Y. 1908).

In accordance with this well-accepted legal principle, FDA may establish that a manufacturer "intends" that its product affect the structure or function of the body when it is foreseeable that the product will in fact affect the structure or function of the body in a drug-like manner. The case for establishing intent through foreseeability is especially strong when a reasonable manufacturer would foresee that a product will *both* act like a drug *and* be commonly used like a drug. Where it is foreseeable that a product will have pharmacological effects on a significant proportion of consumers and will be used by these consumers to obtain these pharmacological effects, the statute allows FDA to recognize reality and find that the manufacturer "intends" its product to be used as a drug.

Consistent with this well-established understanding of "intent," FDA's regulations defining "intended use" contemplate that foreseeability can be a basis for establishing the objective intent of the manufacturer. These regulations require product labeling to include adequate directions for all "intended uses." 21 CFR 201.5 (drugs); 21 CFR 801.5 (devices). The intended uses of a drug or device that must be included on the label are defined to include those that are, or that reasonably can be, anticipated by the manufacturer.

The definition of "intended uses" for drugs establishes an "objective intent" standard. Specifically, the regulations provides:

> The words "intended use" or words of similar import . . . refer to the objective intent of the persons legally responsible for the labeling of drugs. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example,

> be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It may be shown by the circumstances that the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he received the drug, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses. But *if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it*, he is required to provide adequate labeling for such a drug which accords with such other uses to which the article is to be put.

21 CFR 201.128 (emphasis added). The definition of "intended uses" for devices is essentially identical. 21 CFR 801.4. Thus, under these regulatory provisions, objective intent can be established by evidence showing that the manufacturer "knows" or "has knowledge of facts that would give him notice," i.e., that a reasonable manufacturer would foresee that consumers will use a product for drug or device uses.[23]

Other parts of the regulations also provide that foreseeable pharmacological uses should be considered to be intended by the manufacturer. Section 201.128, for instance,

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[23] The Agency disagrees with the tobacco industry's suggestion that this foreseeability test must be interpreted to apply only to products that are already classified as "drugs" or "devices." The Agency regularly uses the regulatory definition of "intended uses" to determine whether products should be classified as drugs or devices. *See, e.g., United States v. Articles of Drug*, 625 F.2d 665, 668 n.5 (5th Cir. 1980); *United States v. Undetermined Quantities of An Article or Drug Labeled as "Exachol,"* 716 F. Supp. 787, 791 (S.D.N.Y. 1989); *United States v. 22 . . . devices . . . "The Ster-o-lizer MD-200,"* 714 F. Supp. 1159, 1165 (D. Utah 1989); *United States v. Kasz Enterprises*, 855 F. Supp. 534, 539 (D.R.I. 1994), modified on other grounds, 862 F. Supp. 717 (D.R.I. 1994); *United States v. Articles of Food and Drug Consisting of . . . Apricots*, 444 F. Supp. 266, 273 (E.D. Wis. 1977). Thus, the Agency relies on the test of objective intent in the regulation (including the foreseeability standard described above) to establish: (1) in the case of products already classified as drugs or devices, the intended uses that must appear on the product labeling; and (2) in the case of products not yet classified as drugs or devices, the intended uses that determine whether the product should be classified as a drug or device. The Agency's interpretation of its own regulation is reasonable and entitled to "controlling weight." *Thomas Jefferson Univ.* 114 S. Ct. 2381, 2386 (1994).

further provides that "objective intent . . . may be shown by the circumstance that the article is, *with the knowledge of such persons* or their representatives, *offered and used for a purpose for which it is neither labeled nor advertised.*"[24] 21 CFR 201.128 (emphasis added).

The case law and administrative precedent interpreting the Act recognize that the foreseeable pharmacological effects and uses of a product are proper grounds for establishing intent. These precedents recognize that the Agency may consider evidence of the likely consumer use of a product in determining intended use. *See, e.g., Two Plastic Drums*, 761 F. Supp. at 72; *Kasz*, 855 F. Supp. at 539. They also recognize that a foreseeable drug effect is generally persuasive evidence that the product is intended to affect the structure and function of the body. For example, the court in *United States v. Undetermined Quantities . . . "Pets Smellfree"* found that the presence of chlortetracycline, a drug ingredient, at doses sufficient to reduce the level of bacteria in animal intestines was evidence that the product was intended to affect the structure and function of the body. 22 F.3d 235, 240 (10th Cir. 1994).[25] Indeed, the court found this evidence to be relevent even though the dose of chlortetracycline in the product was "subtherapeutic"—that is, the dose was sufficient to reduce bacteria levels, but not to cure

[24] The tobacco industry contends that the requirement that the product must be "offered" as well as used for an unlabeled or unadvertised use means that there must be a specific marketing representation promoting the use. The Agency does not so interpret the regulation. The ordinary definition of the word "offer" means simply "[t]o present for acceptance or rejection." *American Heritage Dictionary of the English Language* (3d ed. 1992) at 1255. Moreover, the tobacco industry's interpretation conflicts with the language in the regulation that provides that the use for which the product is offered is a use "for which it is neither labeled nor advertised." Consistent with the language of the regulation, the Agency interprets the requirement that the product be "offered" to mean simply that the product be presented to the consumer for purchase.

[25] *See* section II.E., below, for an additional discussion of the relevant case law and administrative precedent.

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or treat a disease. *Id.* Administratively, the Agency has asserted jurisdiction over products such as khat, imitation cocaine, hormone-containing skin creams, and fluoride-containing toothpastes based primarily, if not exclusively, on evidence that these products have foreseeable drug effects and drug uses. *See* section II.E.1.e., below.

Cases interpreting other public health statutes establish a test for determining intended use that is the same as the one used by FDA and that permits reliance on foreseeable uses. In *N. Jonas & Co. v. EPA*, 666 F.2d 829 (3d Cir. 1981), for example, the court held that a product was "intended for use" as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) based on its foreseeable consumer use—even though the manufacturer did not promote the product as a pesticide (and even disclaimed use as a pesticide on the label). The court stated:

> The Act [and] the regulations . . . focus inquiry on the intended use, implicit or expressed. *We take this to mean the use which a reasonable consumer would undertake . . . . In determining intent objectively, the inquiry cannot be restricted to a product's label and to the producer's representations. Industry claims and general public knowledge can make a product pesticidal notwithstanding the lack of express pesticidal claims by the producer itself.*

Id. at 833 (emphasis added).

Similarly, in *United States v. Focht*, 882 F.2d 55, 60 (3d Cir. 1989), the court held that under the Federal Hazardous Substances Act (FHSA), "[i]ntended use . . . , objectively defined, necessarily encompasses foreseeability." In this case, the Consumer Product Safety Commission sought to take action against fireworks components that could be assembled to make banned fireworks. The court found that the testimony that 90% of consumers who order the components will use the components to make illegal fireworks "makes it foreseeable that the components in question will be used to build

banned fireworks. Such knowledge must be attributed to [the defendants]." *Id.; accord United States v. Articles of Banned Hazardous Substances . . . Baby Rattles,* 614 F. Supp. 226 (E.D.N.Y. 1985).

The tobacco industry argues that the Agency may not rely on the interpretation of "intended use" in other statutes to interpret "intended use" under the Federal Food, Drug, and Cosmetic Act. The fact that FDA's interpretation of "intended use" under the Federal Food, Drug, and Cosmetic Act parallels the interpretation under other public health statutes, however, strongly supports the reasonableness of the Agency's analysis. Indeed, the court in *Jonas* relied in part on cases interpreting intended use under the Federal Food, Drug, and Cosmetic Act in holding that intended uses encompass readily foreseeable consumer uses, specifically citing *National Nutritional Foods Ass'n (NNFA) v. Mathews,* 557 F.2d 325, 334 (2d Cir. 1977), for the proposition that "FDA [is] not bound by manufacturer's subjective claims of intent in assessing whether product is intended as a drug," and *Bacto-Unidisk,* 394 U.S. 784 (1969), for the proposition that "the definition of drug [is] to be given liberal interpretation in light of remedial purpose of Federal Food, Drug and Cosmetic Act." 666 F.2d at 833.[26]

Moreover, contrary to the tobacco industry's contention, the FHSA and FIFRA cannot be distinguished from the Federal Food, Drug, and Cosmetic Act on the ground that foreseeability principles are alien to the Federal Food, Drug, and Cosmetic Act. Several other provisions of the Act contemplate foreseeability principles. *See, e.g.,* 21

[26] Similarly, courts interpreting the Federal Food, Drug, and Cosmetic Act rely on interpretations of analogous consumer protection statutes. *See, e.g., "Sudden Change,"* 409 F.2d 734, 741 n.8 (2d Cir. 1969) (citing a case interpreting the Federal Trade Commission Act because "the remedial purpose of the Federal Trade Commission Act is sufficiently analogous").

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U.S.C. 321(n) (an article may be misbranded if its labeling and advertising fail to reveal "consequences which may result from . . . such conditions of use as are customary or usual"); 21 U.S.C. 360h (FDA authorized to recall devices that "present[] an unreasonable risk of substantial harm").

Indeed, in *United States v. Park*, 421 U.S. 658 (1975), the Supreme Court concluded that the Federal Food, Drug, and Cosmetic Act imposes "requirements of foresight and vigilance" on manufacturers, stating:

> the Act imposes not only a positive duty to seek out and remedy violations when they occur but also, and primarily, a duty to implement measures that will insure that violations will not occur. The requirements of *foresight and vigilance* imposed on responsible corporate officials are beyond question demanding, and perhaps onerous, but they are no more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them.

Id. at 672 (emphasis added).

Compelling policy reasons support the Agency's interpretation that it may establish that a product is intended to affect the structure or function of the body when it is foreseeable that a product will produce significant pharmacological effects in consumers and be widely used by consumers for these effects. The manufacturers' position is that they may ignore overwhelming scientific evidence that their product will have and be used for pharmacological effects so long as they avoid promoting their product for these pharmacological effects. Under this interpretation, however, the manufacturer of virtually any drug or device could avoid regulation under the Act—no matter how substantial and well-established the pharmacological effects and uses of the product—by simply avoiding making certain claims in the product's labeling and advertising. For example, it is not

difficult to imagine a manufacturer of a generic version of a drug like Prozac (fluoxetine hydrochloride), an antidepressant drug currently available only by prescription, seeking to avoid FDA regulation by advertising its product as intended solely for the "pleasure" of its consumers. *See* section II.F.1.e., below.

Accepting the manufacturers' position would leave the public vulnerable to the unregulated distribution of products with known pharmacologically active ingredients. Moreover, it would reward manufacturers who deny the obvious pharmacological effects and uses of their products in their public statements, labeling, and advertising. Thus, the Agency concludes that the public health objectives of the Act require the Agency to regulate as "drugs" or "devices" products that can be foreseen to have widespread pharmacological effects and uses.

2. The Significant Pharmacological Effects and Uses of Cigarettes and Smokeless Tobacco Are Foreseeable

The evidence in the administrative record establishes that the pharmacological effects and uses of cigarettes and smokeless tobacco are so widespread and well-known that a reasonable manufacturer would foresee them. Since the Agency last considered the issue of whether cigarettes are drugs over 15 years ago, a scientific consensus has emerged that nicotine is addictive and has other significant pharmacological effects.

Nicotine—the essential ingredient in cigarettes and smokeless tobacco—is a pharmacological agent that substantially alters the structure and function of the brain and other systems of the body. After a single puff inhaled from a cigarette, nicotine enters the mouth, passes into the lungs, is absorbed from the lungs into the bloodstream, and diffuses

from the blood into the brain. This process takes about 11 seconds.[27] When consumed in smokeless tobacco, nicotine is absorbed through the lining of the mouth into the bloodstream and flows to the brain.

Once inside the human brain, nicotine binds to unique receptors on the surfaces of brain cells. These nicotinic receptors normally interact with a natural chemical messenger called acetylcholine, but can also be stimulated by nicotine to alter mood, alertness, and cognition. Exposure to nicotine causes the number of nicotinic receptors on the surfaces of brain cells to increase[28] and significantly alters the brain's normal electrical and metabolic activity.[29] Nicotine's actions on the central nervous system produce both

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[27] Department of Health and Human Services, Office on Smoking and Health, *The Health Consequences of Smoking: Nicotine Addiction, a Report of the Surgeon General* (Jul. 29, 1988), DHHS Publication No. (CDC) 88-8406 (Washington DC: GPO, 1988), at 13-14 (hereinafter cited as Surgeon General's Report, 1988). *See* AR (Vol. 129 Ref. 1592).

Benowitz NL, *Clinical Pharmacology of Inhaled Drugs of Abuse: Implications in Understanding Nicotine Dependence*, NIDA Research Monograph 99 (Rockville MD: National Institute on Drug Abuse, 1990), at 17. *See* AR (Vol. 3 Ref. 18).

[28] Benwell MEM, Balfour DJK, Anderson JM, Evidence that tobacco smoking increases the density of (–)-[^{3}H]nicotine binding sites in human brain, *Journal of Neurochemistry* 1988;50:1243-1247. *See* AR (Vol. 136 Ref. 1570).

[29] Surgeon General's Report, 1988, at 79-123. *See* AR (Vol. 129 Ref. 1592).

sedating and stimulating effects, depending on dose and circumstances.[30] Nicotine also plays a role in weight regulation.[31]

In addition to its sedating and stimulating effects, nicotine causes and sustains addiction. Nicotine directly affects an intrinsic brain system, known as the mesolimbic system, that signals pleasure and reward and modulates emotions. When stimulated by an addictive substance, the mesolimbic system responds by rewarding the repeated consumption of the substance.[32] It is widely believed that amphetamine, cocaine, and nicotine all cause the compulsive drug-seeking behavior of drug addiction through the same mechanism: increasing the activity of the neurotransmitter dopamine within the mesolimbic system.[33]

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[30] Pritchard WS, Gilbert DG, Duke DW, Flexible effects of quantified cigarette-smoke delivery on EEG dimensional complexity, *Psychopharmacology* 1993;113:95-102. *See* AR (Vol. 3 Ref. 23-1).

Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490. *See* AR (Vol. 105 Ref. 965).

Norton R, Brown K, Howard R, Smoking, nicotine dose and the lateralisation of electrocortical activity, *Psychopharmacology* 1992;108:473-479. *See* AR (Vol. 3 Ref. 22).

Golding JF, Effects of cigarette smoking on resting EEG, visual evoked potentials and photic driving, *Pharmacology, Biochemistry and Behavior* 1988;29:23-32. *See* AR (Vol. 3 Ref. 23-3).

[31] Surgeon General's Report, 1988, at 431-432. *See* AR (Vol. 129 Ref. 1592).

[32] Pomerleau OF, Pomerleau CS, Neuroregulators and the reinforcement of smoking: towards a biobehavioral explanation, *Neuroscience and Biobehavioral Reviews* 1984;8:503-513. *See* AR (Vol. 3 Ref. 20-1).

Wise RA, Rompre PP, Brain dopamine and reward, *Annual Review of Psychology* 1989;40:191-225. *See* AR (Vol. 3 Ref. 19-1).

Clarke PBS, Mesolimbic dopamine activation—the key to nicotine reinforcement? *CIBA Foundation Symposium* 1990;152:153-168. *See* AR (Vol. 3 Ref. 19-2).

[33] *Id.*

Pontieri FE, Tanda G, Orzi F, *et al.*, Effects of nicotine on the nucleus accumbens and similarity to those of addictive drugs, *Nature* 1996;382:255-257. *See* AR (Vol. 711 Ref. 51).

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Extensive scientific evidence demonstrating the significant effects of nicotine in tobacco products on the structure and function of the body is discussed in detail in the remainder of this section. The magnitude and wide dissemination of the scientific evidence demonstrates that it is foreseeable to a reasonable person in the position of tobacco manufacturer that many consumers will use tobacco products for these pharmacological effects.

3. Nicotine Is Widely Recognized as Addictive, and It Is Foreseeable That Consumers Will Use Cigarettes and Smokeless Tobacco To Satisfy an Addiction

Nicotine's effects on the brain are the biological basis of nicotine addiction—an addiction that has been proven by a wealth of laboratory and epidemiological evidence and recognized by every major independent medical organization that has studied the question. Nicotine's widely recognized addictive properties make it foreseeable to any reasonable person that a substantial proportion of users of tobacco products will consume these products to satisfy their addiction.[34]

a. Scientific Consensus

Overwhelming scientific evidence and broad recognition that nicotine is an

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Di Chiara G, Imperato A, Drugs abused by humans preferentially increase synaptic dopamine concentrations in the mesolimbic system of freely moving rats, *Proceedings of the National Academy of Sciences of the United States of America* 1988;85:5274-5278. *See* AR (Vol. 66 Ref. 26).

Corrigall WA, Franklin KBJ, Coen KM, *et al.*, The mesolimbic dopaminergic system is implicated in the reinforcing effects of nicotine, *Psychopharmacology* 1992;107:285-289. *See* AR (Vol. 8 Ref. 93-4).

[34] FDA's conclusion that the pharmacological effects and uses of nicotine in cigarettes and smokeless tobacco are foreseeable rests on published literature, including widely disseminated government reports. FDA's conclusion that the tobacco industry knows that nicotine has substantial pharmacological effects and that consumers use tobacco for these effects, *see* section II.C., below, is based largely on internal company documents.

addictive, dependence-producing substance emerged in the 1980's.[35] All leading expert and public health organizations in the United States and the international community with expertise in tobacco or drug addiction now recognize that nicotine is addictive. The first major organization to do so was the American Psychiatric Association in 1980, when its *Diagnostic and Statistical Manual of Mental Disorders, Third Edition* (DSM-III), defined the Tobacco Dependence Disorder and the Tobacco Withdrawal Syndrome.[36] Since 1980, nicotine in tobacco products has also been recognized as addictive by the U.S. Surgeon General (1986 and 1988)[37]American Psychological Association (1988),[38] the Royal Society of Canada (1989),[39] the World Health Organization (WHO) (1992),[40] the

[35] The terms "addictive" and "dependence-producing" are used interchangeably among experts and scientific organizations and generally refer to the persistent and repetitive intake of a psychoactive substance despite evidence of harm and a desire to quit. In this document, FDA also uses both terms interchangeably. The term "abuse liability" also refers to a substance's ability to produce dependence or addiction.

[36] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 3d ed. (Washington DC: American Psychiatric Association, 1987), at 159-160, 176-178. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[37] Department of Health and Human Services, Office on Smoking and Health, The Health Consequences of Using Smokeless Tobacco, A Report of the Advisory Committee to the Surgeon General (Apr. 1986), NIH Publication No. 86-2874 (Bethesda, MD:1986). *See* AR (Vol. 128 Ref. 1591)

Surgeon General's Report, 1988. *See* AR (Vol. 129 Ref. 1592).

[38] *Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce*, U.S. House of Representatives, 100th Cong., 1st Sess. 1 (Jul. 29, 1988) (statement of the American Psychological Association). *See* AR (Vol. 5 Ref. 43-5).

[39] Royal Society of Canada, *Tobacco, Nicotine, and Addiction: A Committee Report*, prepared at the request of the Royal Society of Canada for the Health Protection Branch, Health and Welfare Canada (Aug. 31, 1989), at v-vi. *See* AR (Vol. 62 Ref. 814).

[40] WHO, *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines* (Geneva: World Health Organization, 1992), at 76. *See* AR (Vol. 43 Ref. 175).

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American Medical Association (1993),[41] and the Medical Research Council in the United Kingdom (1994).[42] Every expert organization that has commented on whether nicotine is addictive has concluded that it is.

Recognition of nicotine addiction is now so universal that even the vast majority of scientists who have received funding from the tobacco industry believe that nicotine is addictive. In a survey of principal investigators of research projects funded by the tobacco industry in 1989, 83.3% agreed strongly and an additional 15.3% agreed somewhat that cigarette smoking is addictive.[43] Moreover, as demonstrated in section II.C., below, the tobacco industry itself, despite public pronouncements to the contrary, has long known nicotine to be addictive.

Salient findings that reflect nicotine's addictiveness include the following:

Epidemiological Evidence.

- Persons who have smoked at least one cigarette are about twice as likely to develop dependence as are persons who have ever tried cocaine or alcohol.[44]

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[41] American Medical Association, Ethyl alcohol and nicotine as addictive drugs, in *1993 AMA Policy Compendium* (Chicago: AMA, 1993), at 35. *See* AR (Vol. 37 Ref. 2).

[42] Medical Research Council, *The Basis of Drug Dependence*, MRC Field Review (London: Medical Research Council, 1994), at 11. *See* AR (Vol. 41 Ref. 105).

[43] Cummings KM, Sciandra R, Gingrass A, *et al.*, What scientists funded by the tobacco industry believe about the hazards of cigarette smoking, *American Journal of Public Health*, 1991;81(7):894-896. *See* AR (Vol. 5 Ref. 44).

[44] Anthony JC, Warner LA, Kessler RC, Comparative epidemiology of dependence on tobacco, alcohol, controlled substances and inhalants: basic findings from the National Comorbidity Survey, *Experimental and Clinical Psychopharmacology* 1994;2:244-268. *See* AR (Vol. 37 Ref. 4).

- More than half of people presenting for treatment of alcohol or drug abuse who also smoke cigarettes report that quitting smoking would be harder than giving up their other drug of abuse.[45]
- Despite the interest of 70% of smokers in quitting smoking, fewer than 3% succeed per year.[46]
- About two of every five users of smokeless tobacco have attempted to quit and failed,[47] and 68% of smokeless tobacco users who have attempted to quit report an average of four such attempts.[48]
- About 50% of smokers recovering from surgery for a smoking-related disease (e.g., lung cancer) and whose prognosis and symptoms would be improved by abstinence resume smoking.[49]

Evidence from Animal and Human Laboratory Studies.

- Nicotine has been determined to have significant potential to produce addiction in humans on the basis of the same screening tests used to evaluate the addictive potential of any drug by the World Health Organization, the Drug Enforcement Administration,

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[45] Kozlowski LT, Wilkinson A, Skinner W, *et al.*, Comparing tobacco cigarette dependence with other drug dependencies, *Journal of the American Medical Association* 1989;261(6):898-901. *See* AR (Vol. 41 Ref. 92).

[46] Centers for Disease Control and Prevention, Cigarette smoking among adults—United States, 1993, *Morbidity and Mortality Weekly Report* 1994 (Dec. 23);43:925-930. *See* AR (Vol. 36 Ref. 616-1).

[47] Novotny TE, Pierce JP, Fiore MC, *et al.*, Smokeless tobacco use in the United States: the adult use of tobacco surveys, *Monographs/National Cancer Institute* 1989;8:25-28. *See* AR (Vol. 41 Ref. 109).

[48] Severson HH, Enough snuff: ST cessation from the behavioral, clinical, and public health perspectives, in *Smokeless Tobacco or Health, An International Perspective*, Smoking and Tobacco Control Monograph 2, NIH Publication No. 93-3461 (Washington DC: DHHS, 1993), at 281-282. *See* AR (Vol. 18 Ref. 5-1).

[49] Surgeon General's Report, 1988, at 150. *See* AR (Vol. 129 Ref. 1592).

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the National Institute on Drug Abuse (NIDA), the College on Problems of Drug Dependence, pharmaceutical companies, and FDA's Drug Abuse Advisory Committee (the Committee).[50] *See* section II.A.3.c.i., below.

- Nicotine's effects in the brain have been shown to be critical in the self-administration of nicotine by both animals and humans.[51] (The tendency of a substance to be self-administered demonstrates its ability to cause an animal or human to seek repeated doses of the substance.) This finding is a key element of addiction.
- The ability of nicotine to produce strong physiological and behavioral effects, including death at high doses, is no less than that of amphetamine or morphine.[52]

Other Biological Evidence.

- Nicotine increases dopamine activity in the mesolimbic system of the brain. As with cocaine, amphetamine, and other drugs, this effect is believed to contribute to the compulsive drug-seeking behavior of addiction.[53]
- Chronic nicotine exposure causes the number of nicotinic receptors on the surfaces of brain cells to increase. This phenomenon is associated with tolerance to the effects of nicotine and has been well documented in animals and people.[54]

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[50] *Id.* at 270.

[51] *Id.* at 166, 173-175, 182-192.

Corrigall WA, Coen KM, Nicotine maintains robust self-administration in rats on a limited access schedule, *Psychopharmacology* 1989;99:473-478. *See* AR (Vol. 136 Ref. 1561).

[52] Surgeon General's Report, 1988, at 272-274, 594. *See* AR (Vol. 129 Ref. 1592).

[53] Corrigall WA, Franklin KBJ, Coen KM, *et al.*, The mesolimbic dopaminergic system is implicated in the reinforcing effects of nicotine, *Psychopharmacology* 1992;107:285-289. *See* AR (Vol. 8 Ref. 93-4).

[54] Marks MJ, Burch JB, Collins AC, Effects of chronic nicotine infusion on tolerance development and nicotine receptors, *Journal of Pharmacology and Experimental Therapeutics* 1983;226:817-825. *See* AR (Vol. 41 Ref. 103).

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Commercial Evidence.

- Non–nicotine-containing tobacco products have never proved successful substitutes for tobacco despite the sophistication of some of them (e.g., Philip Morris' Next) in mimicking the non–nicotine-mediated effects of conventional cigarettes.

These data are just a few selections from the overwhelming evidence that has led the world's health authorities to classify nicotine as addictive. The following sections describe in detail the definition of addiction and how the widely known scientific evidence would lead any reasonable manufacturer to foresee that a significant proportion of tobacco consumers will become addicted to nicotine and will use tobacco products to satisfy their addiction.

b. Definition of Addiction

The tobacco industry is virtually alone in publicly contending that nicotine is not addictive. Its primary argument for rejecting the massive body of research and the expert opinion of every authoritative medical organization that has considered the issue is to claim that the entire scientific community is using the wrong definition of addiction.[55] According to the tobacco industry, the "traditional criteria" of addiction are "meaningful

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Surgeon General's Report, 1988, at 53-54. *See* AR (Vol. 129 Ref. 1592).

Benwell MEM, Balfour DJK, Anderson JM, Evidence that tobacco smoking increases the density of (–)-[^{3}H]nicotine binding sites in human brain, *Journal of Neurochemistry* 1988;50:1243-1247. *See* AR (Vol. 136 Ref. 1570).

[55] The tobacco industry cites the opinions of several physicians and scientists to support the contention that nicotine is not addictive. In most cases, as described below, the opinions have been taken out of context, and the cited individuals are on record as believing that nicotine is addictive. Those individuals who agree with the industry that nicotine is not addictive comprise a "handful of scientific supporters." Hwang SL, Ono Y, Tobacco dream team: experts who insist nicotine isn't addictive, *Wall Street Journal* (Mar. 23, 1995). *See* AR (Vol. 711 Ref. 29).

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intoxication, withdrawal, and tolerance." Although withdrawal and tolerance are still considered criteria for addiction, "intoxication" has not been considered a necessary criterion for over thirty years. The industry cites no medical dictionary, expert panel, or scientific organization for this specific definition; the "criteria" are instead extracted from portions of a definition developed in the 1950's and used by the editors of the 1964 Surgeon General's Report on tobacco.[56] This definition was premised on the now-discarded, early twentieth-century conception of drug addiction as a personality disorder characterized by weakness of will, immaturity of character development, and immorality.[57]

Within months of publication of the Surgeon General's Report in 1964, its definition of addiction was cast aside by the scientific community. In a major report, the World Health Organization (WHO) recognized that intoxication was not a distinguishing characteristic of dependence for any drug under its purview.[58] Indeed, people dependent on stable daily doses of opiates may display no observable signs of intoxication.[59] Conversely, it is widely known that nonaddicting drugs such as antihistamines and atropine and scopolamine preparations can produce intoxication.[60] Moreover, under the

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[56] Department of Health, Education, and Welfare, Public Health Service, *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service* (Washington DC: GPO, 1964), at 349-352. *See* AR (Vol. 43 Ref. 156).

[57] Surgeon General's Report, 1988, at 248. *See* AR (Vol. 129 Ref. 1592).

[58] WHO Expert Committee on Addiction-Producing Drugs, *WHO 1964*, World Health Organization Technical Report Series No. 273, Thirteenth Report (Geneva: World Health Organization, 1964), at 3-20. *See* AR (Vol. 43 Ref. 169).

[59] Surgeon General's Report, 1988, at 251. *See* AR (Vol. 129 Ref. 1592).

[60] Garrison JC, Histamine, bradykinin, 5-hydroxytryptamine, and their antagonists, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 23, at 584, 586. *See* AR (Vol. 711 Ref. 14).

old definition, cocaine and amphetamines would not clearly have been considered addictive because of lack of evidence at the time demonstrating physical dependence.[61] The scientific community thus rejected the old definition of addiction because of new scientific insights about the nature of addiction, more than 15 years before finding nicotine to be addictive.

Today, drug addiction has been defined by scientific organizations from both laboratory and clinical perspectives. The laboratory perspective assesses experimentally whether a substance alters the central nervous system in a manner that can produce characteristic addictive behavior in humans.

While the laboratory perspective focuses on the chemical substance, the clinical perspective on drug addiction assesses whether an individual in society consumes the substance in a manner that demonstrates addiction. Consensus clinical criteria for diagnosing addiction have been developed by the American Psychiatric Association and were most recently published in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV) in 1994:

> Criteria for Substance Dependence
>
> A maladaptive pattern of substance use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:
>
> (1) tolerance, as defined by either of the following:

Brown JH, Atropine, scopalomine, and related antimuscarinic drugs, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 8, at 157. *See* AR (Vol. 711 Ref. 14).

[61] WHO Expert Committee on Addiction-Producing Drugs, *WHO 1964*, World Health Organization Technical Report Series No. 273, Thirteenth Report (Geneva: World Health Organization, 1964), at 3-20. *See* AR (Vol. 43 Ref. 169).

(a) a need for markedly increased amounts of the substance to achieve intoxication or desired effect

(b) markedly diminished effect with continued use of the same amount of the substance

(2) withdrawal, as manifested by either of the following

(a) the characteristic withdrawal syndrome for the substance . . .

(b) the same (or a closely related) substance is taken to relieve or avoid withdrawal symptoms

(3) the substance is often taken in larger amounts or over a longer period than was intended

(4) there is a persistent desire or unsuccessful efforts to cut down or control substance use

(5) a great deal of time is spent in activities necessary to obtain the substance (e.g., visiting multiple doctors or driving long distances), use the substance (e.g., chain-smoking), or recover from its effects

(6) important social, occupational, or recreational activities are given up or reduced because of substance use

(7) the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance (e.g., current cocaine use despite recognition of cocaine-induced depression, or continued drinking despite recognition that an ulcer was made worse by alcohol consumption)[62]

Clinicians rely on these criteria to identify addictive behavior in patients.

In 1988, the U.S. Surgeon General used the most up-to-date laboratory tests and clinical criteria to develop the following consensus set of criteria for drug dependence:

Criteria for Drug Dependence.

Primary Criteria
- Highly controlled or compulsive use
- Psychoactive effects
- Drug-reinforced behavior

Additional Criteria
- Addictive behavior often involves:

[62] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 181. *See* AR (Vol. 37 Ref. 8).

-stereotypic patterns of use
-use despite harmful effects
-relapse following abstinence
-recurrent drug cravings

- Dependence-producing drugs often produce:
-tolerance
-physical dependence
-pleasant (euphoriant) effects[63]

The laboratory and clinical perspectives on drug addiction embodied in the criteria of the U.S. Surgeon General and the American Psychiatric Association are entirely consistent. Moreover, the definitions of addiction used by all other world scientific authorities, such as WHO[64] and the Royal Society of Canada,[65] share the same principles, differing from each other only in wording and emphasis.

To assess whether nicotine is addictive and whether consumers are addicted to nicotine, FDA utilized these modern laboratory and clinical perspectives on addiction supported in principle by every relevant medical authority in the world.

The modern conception of addiction is not hazy. It does not—as the tobacco industry asserts in its comments—encompass food ingredients, activities, or daily rituals. The scientifically accepted method of identifying addictive drugs emphasizes the *pharmacological* basis of addiction, rather than the simple observation of compulsive-appearing behavior. Addictive drugs are now known to exert "psychoactive" or mood-

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[63] Surgeon General's Report, 1988, at 7. *See* AR (Vol. 129 Ref. 1592).

[64] WHO, *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines* (Geneva: World Health Organization, 1992), at 75-76. *See* AR (Vol. 43 Ref. 175).

[65] Royal Society of Canada, *Tobacco, Nicotine, and Addiction: A Committee Report*, prepared at the request of the Royal Society of Canada for the Health Protection Branch, Health and Welfare Canada (Aug. 31, 1989), at v. *See* AR (Vol. 62 Ref. 814).

altering effects and to affect the structure and function of certain key portions of the brain that motivate repeated, compulsive use of the substance. By activating, inhibiting, or mimicking normal central nervous system processes, dependence-producing drugs exert control over the behavior of users. Consumers are strongly compelled to consume these substances for the pharmacological effect of satisfying addiction. Methods used to identify addictive drugs effectively exclude jogging, eating chocolate, playing computer games, or similar activities because these activities do not depend upon an exogenously administered drug.

Contrary to the suggestion of the tobacco industry, application of the criteria for identifying addictive drugs by the expert organizations responsible for this task[66] shows remarkable consistency across organizations and has resulted in the current identification of a very small number of truly dependence-producing drugs and drug types. These are cocaine, amphetamines, nicotine/tobacco, alcohol, hallucinogens, inhalants, cannabis, phencyclidine, opioids (including morphine and heroin), and the class of sedatives, hypnotics, and anxiolytics.[67] Application of the criteria has not led to the classification of

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[66] These organizations include the World Health Organization's Expert Committee on Drug Dependence, the U.S. Drug Enforcement Administration, the National Institute on Drug Abuse, and the Food and Drug Administration.

[67] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 175-177. *See* AR (Vol. 37 Ref. 8).

WHO, *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines* (Geneva: World Health Organization, 1992), at 75-76. *See* AR (Vol. 43 Ref. 175).

Since no two of these substances are chemically or biologically identical, no two addictions are exactly the same. The observation that dependence on nicotine can be distinguished in some respects from other addictions (as repeatedly asserted by tobacco industry comments) is thus irrelevant to whether nicotine should be classified as addictive.

carrots or jogging or any of the other activities claimed by the tobacco industry in its comments as "addictive drugs." A key reason for the reliability and validity of the modern definition of drug addiction is that scientific organizations rely upon the convergence of results from several different test procedures before determining that a substance is addictive. In assessing whether nicotine is addictive, FDA examined a wide range of such laboratory evidence, as well as epidemiological evidence of whether consumers are addicted to tobacco products.

c. Data Establish That Nicotine Is Addictive and That Consumers Use Cigarettes and Smokeless Tobacco To Satisfy an Addiction

Animal and human studies demonstrate that nicotine is a powerful psychoactive agent that can cause dependence by producing effects in the brain characteristic of other addictive substances. These findings have been widely published and presented and discussed at major international scientific and medical meetings since the 1980's. Numerous laboratories throughout the world have replicated the core findings using a variety of techniques and have produced convergent results, demonstrating that the findings are reliable and valid. A wealth of epidemiological studies complements these laboratory data by showing that smokers and users of smokeless tobacco display clinical signs and symptoms of addiction. The evidence that has led to the nearly universal scientific conclusion that nicotine is addictive is discussed in the following sections.

i. Laboratory Studies Establish That Nicotine Produces Pharmacological Effects Similar to Those of Other Addictive Substances. The tests used by the U.S. Surgeon General to develop its consensus definition of drug dependence are the following:

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- Animal and human "drug discrimination" tests, which assess a substance's ability to produce psychoactive effects that can be distinguished from those of other psychoactive substances;
- Tests of human psychoactive or "subjective" effects, which assess a substance's ability to produce changes in perception, mood, and behavior;
- Human and animal drug "self-administration" tests, which assess a substance's ability to induce repeated, compulsive use by functioning as a "positive reinforcer"; and
- Tests for physiological dependence, which assess a substance's ability to produce tolerance and a withdrawal syndrome.

These tests of an addictive drug are widely accepted for their validity.[68] They are the screening tests for addictiveness used most commonly by pharmaceutical manufacturers and regulatory agencies, as evidenced by their prominence in reports by WHO, reviews by the National Institute on Drug Abuse (NIDA) and the College on Problems of Drug Dependence, and deliberations by the Drug Abuse Advisory Committee, which primarily serves FDA.[69]

Thus, these tests were not invented or selectively used to evaluate nicotine. Rather, they have been used to screen drugs of abuse for more than two decades before FDA's current deliberations concerning nicotine. Upon review of the evidence in the

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[68] Surgeon General's Report, 1988, at 270-296. *See* AR (Vol. 129 Ref. 1592).

Balster RL, Drug abuse potential evaluation in animals, *British Journal of Addiction* 1991;86:1549-1558. *See* AR (Vol. 8 Ref. 89).

[69] Surgeon General's Report, 1988, at 269-270. *See* AR (Vol. 129 Ref. 1592).

administrative record, FDA concludes that nicotine tests positive in all relevant laboratory tests for addictive potential.

Testing for psychoactivity. Psychoactivity is a hallmark characteristic of all dependence-producing drugs. Psychoactive effects (sometimes also referred to as "subjective effects") are changes in mood or feelings that result from the pharmacological effects of the substance on the central nervous system. Changes in mood or feelings that are not produced pharmacologically are not considered psychoactive effects. The psychoactivity of a drug is evaluated in "drug discrimination" studies and "subjective effects" studies.

Drug discrimination studies. Drug discrimination studies evaluate the psychoactivity of a drug by testing whether animal or human subjects can reliably differentiate the drug from placebo. A drug that can be so differentiated is considered a "discriminative stimulus." The tests allow direct comparisons of a drug's effects to known dependence-producing drugs.[70] The drug discrimination paradigm is routinely used in preclinical assessment of the abuse potential of a drug and is considered to be an animal model for human subjective reactions to drugs.[71]

Like other dependence-producing drugs, including cocaine, amphetamine, morphine, marijuana, and alcohol, nicotine tests positive in animal drug discrimination tests. FDA referred to numerous studies documenting this result in the Jurisdictional Analysis and its appendix.[72] Using a variety of drug discrimination paradigms, researchers have shown that

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[70] Balster RL, Drug abuse potential evaluation in animals, *British Journal of Addiction* 1991;86:1549-1558. *See* AR (Vol. 8 Ref. 89).

[71] Surgeon General's Report, 1988, at 274-275. *See* AR (Vol. 129 Ref. 1592).

[72] *See* appendix 1 to Jurisdictional Analysis at 23-25. *See* AR (Vol. 1 Appendix 1).

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nicotine can serve as a discriminative stimulus in rats[73] and squirrel monkeys.[74] Comparative studies have demonstrated that, although nicotine's stimulus effects are unique, they more closely resemble the stimulus effects elicited by amphetamine[75] than those of opioids, sedatives, or hallucinogens.[76]

Nicotine's positive results in these drug discrimination tests are a consequence of its action in the central nervous system. Mecamylamine, a nicotine antagonist that acts in the brain, attenuates nicotine's ability to serve as a discriminative stimulus, whereas the peripheral antagonist hexamethonium—which does not enter the brain—does not affect nicotine

[73] Morrison CF, Stephenson JA, Nicotine injections as the conditioned stimulus in discrimination learning, *Psychopharmacologia* 1969;15:351-360. *See* AR (Vol. 41 Ref. 107).

Chance WT, Murfin D, Krynock GM, *et al.*, A description of the nicotine stimulus and tests of its generalization to amphetamine, *Psychopharmacology* 1977;55:19-26. *See* AR (Vol. 37 Ref. 22).

Stolerman IP, Discriminative stimulus effects of nicotine in rats trained under different schedules of reinforcement, *Psychopharmacology* 1989;97:131-138. *See* AR (Vol. 42 Ref. 152).

Craft RM, Howard JL, Cue properties of oral and transdermal nicotine in the rat, *Psychopharmacology* 1988;96:281-284. *See* AR (Vol. 74 Ref. 115).

Stolerman IP, Garcha HS, Pratt JA, *et al.*, Role of training dose in discrimination of nicotine and related compounds by rats, *Psychopharmocology* 1984;84:413-419. *See* AR (Vol. 8 Ref. 90-5).

Garcha HS, Goldberg SR, Reavill C, *et al.*, Behavioral effects of the optical isomers of nicotine and nornicotine, and cotinine, in rats, *British Journal of Pharmacology* 1986;88:298. *See* AR (Vol. 38 Ref. 44).

[74] Takada K, Swedberg MDB, Goldberg SR, *et al.*, Discriminative stimulus effects of intavenous l-nicotine and nicotine analogs or metabolites in squirrel monkeys, *Psychopharmacology* 1989;99:208-212. *See* AR (Vol. 43 Ref. 153).

[75] Chance WT, Murfin D, Krynock GM, *et al.*, A description of the nicotine stimulus and tests of its generalization to amphetamine, *Psychopharmacology* 1977;55:19-26. *See* AR (Vol. 37 Ref. 22).

[76] Rosecrans JA, Meltzer LT, Central sites and mechanism of action of nicotine, *Neuroscience and Biobehavioral Reviews* 1981;5(4):497-501. *See* AR (Vol. 42 Ref. 127).

Pratt JA, Stolerman IP, Garcha HS, *et al.*, Discriminative stimulus properties of nicotine: further evidence for mediation at a cholinergic receptor, *Psychopharmacology* 1983;81:54-60. *See* AR (Vol. 8 Ref. 90-2).

discrimination.[77] These studies demonstrate that nicotine's psychoactive effects are the direct results of its actions in the brain.

Human drug discrimination tests for nicotine are also positive. Using a drug discrimination procedure analogous to those employed with animals, Kallman and colleagues originally demonstrated that nicotine, as delivered by the inhalation of tobacco smoke, acts as a discriminative stimulus in humans.[78] Recently, Perkins *et al.* demonstrated that intranasally administered nicotine also functions as a discriminative stimulus in human volunteers. This result from a product that produces no sensory effects from smoke confirms that the pharmacological action of nicotine—rather than the taste or flavor of tobacco smoke—produces these hallmark psychoactive effects.[79]

Psychoactive effects. Psychoactive or subjective effects produced by addictive drugs may range from very mild relaxation to intense intoxication or impaired cognitive abilities.[80] Assessment in humans of the subjective effects of addictive drugs involves giving either drug or placebo to volunteers and then asking them to report what they feel.

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[77] Rosecrans JA, Chance WT, Cholinergic and non-cholinergic aspects of the discriminative stimulus properties of nicotine, in *Discriminative Stimulus Properties of Drugs*, ed. Lal H (New York: Plenum Press, 1977), at 155-185. *See* AR (Vol. 42 Ref. 126).

Rosecrans JA, Meltzer LT, Central sites and mechanism of action of nicotine, *Neuroscience and Biobehavioral Reviews* 1981;5(4):497-501. *See* AR (Vol. 42 Ref. 127).

Meltzer LT, Rosecrans JA, Aceto MD, *et al.*, Discriminative stimulus properties of the optical isomers of nicotine, *Psychopharmacology* 1980;68:283-286. *See* AR (Vol. 41 Ref. 106).

[78] Kallman WM, Kallman MJ, Harry GJ, *et al.*, Nicotine as a discriminative stimulus in human subjects, in *Drug Discrimination: Applications in CNS Pharmacology*, eds. Colpaert FC, Slangen JL (Amsterdam: Elsevier Biomedical Press, 1982), at 211-218. *See* AR (Vol. 41 Ref. 89).

[79] Perkins K, Grobe J, Scierka A, *et al.*, Discriminative stimulus effects of nicotine in smokers, in *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II*, eds. Clarke PBS, Quik M, Thurau K, Adlkofer F (Basel: Birkhauser Verlag, 1994), at 111. *See* AR (Vol. 42 Ref. 111).

[80] Surgeon General's Report, 1988, at 270. *See* AR (Vol. 129 Ref. 1592).

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Individuals with histories of addictive drug use report what drug, if any, the test drug feels like. This testing helps determine whether the test drug produces any effects on mood and feeling that resemble those of previously studied drugs. Individuals with histories of using a variety of addictive drugs and who report "liking" the effects of several types of drugs help assess the addictiveness of the test drug. These individuals are asked to evaluate the ability to feel a drug effect, to rate how much they "like" the drug effect, and to attempt to identify the drug that was given from a list of widely used and abused drugs. Results that show consistent kinds of effects across drugs confirm that these drugs are appropriately categorized together as addicting drugs.[81]

Nicotine produces significant psychological sensations whether inhaled or injected. In one study, smokers with histories of abuse of other drugs identified intravenous or inhaled nicotine as being a euphoriant similar to cocaine or amphetamine.[82] With a common measure of the subjective effects of addictive drugs (the Addiction Research Center Inventory), nicotine produced dose-related increases in the "euphoria" scale (also known as the Morphine-Benzedrine Group Scale or MBG) and the "liking" scale, showing that nicotine produces subjective effects similar to those of other addictive drugs. This study essentially extended the original finding of Johnston in 1942, who had argued from the premise that "smoking tobacco is essentially a means of administering nicotine, just as smoking opium is a means of administering morphine."[83] In his study, Johnston administered intravenous injections

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[81] *Id.* at 271-272.

[82] Henningfield JE, Miyasato K, Jasinski DR, Abuse liability and pharmacodynamic characteristics of intravenous and inhaled nicotine, *Journal of Pharmacology and Experimental Therapeutics* 1985;234:1-12. *See* AR (Vol. 39 Ref. 69).

[83] Johnston LM, Tobacco smoking and nicotine, *Lancet* 1942;2:742. *See* AR (Vol. 278 Ref. 3947).

of nicotine, in doses comparable to those that people obtain from cigarettes or smokeless tobacco, to cigarette smokers to determine both nicotine's effects and its potential usefulness in helping people abstain from tobacco. He found that the nicotine injections produced "psychic" effects that "closely resembled" those of cigarette smoke inhalation, were pleasant for smokers, and left the smokers "disinclined to smoke." *See also* section II.C.6.b. (comment 1).

Similar findings were also obtained in a study by Jones *et al.*, who found that intravenous nicotine injections in doses comparable to those that people obtain from cigarettes or smokeless tobacco produced "a pleasurable stimulant-like sensation that many of them termed a 'rush.'" Half of the subjects tested requested substantially higher doses.[84] More recently, these early results have been confirmed by Pomerleau and Pomerleau, Perkins *et al.*, and Sutherland *et al.*, who have found that nicotine delivered from cigarettes, intravenous injection, and intranasal spray produces psychoactive and mood-altering effects consistent with those of other addictive drugs.[85]

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[84] Jones RT, Farrell TR III, Herning RI, Tobacco smoking and nicotine tolerance, in *Self-Administration of Abused Substances: Methods for Study*, ed. Krasnego NA, NIDA Research Monograph 20 (Rockville MD: National Institute on Drug Abuse, 1978), at 202-208. *See* AR (Vol. 41 Ref. 88).

[85] Pomerleau CS, Pomerleau OF, Euphoriant effects of nicotine in smokers, *Psychopharmacology* 1992;108:460-465. *See* AR (Vol. 87 Ref. 426).

Perkins KA, Grobe JE, Epstein LH, *et al.*, Effects of nicotine on subjective arousal may be dependent on baseline subjective state, *Journal of Substance Abuse* 1992;4:131-141. *See* AR (Vol. 348 Ref. 5516).

Perkins KA, Grobe JE, Epstein LH, *et al.*, Chronic and acute tolerance to subjective effects of nicotine, *Pharmacology, Biochemistry and Behavior* 1993;45:375-381. *See* AR (Vol. 271 Ref. 3728).

Sutherland G, Stapleton JA, Russell MAH, *et al.*, Randomised controlled trial of nasal nicotine spray in smoking cessation, *Lancet* 1992;340:324-329. *See* AR (Vol. 91 Ref. 527).

Sutherland G, Russell MA, Stapleton J, *et al.*, Nasal nicotine spray: a rapid nicotine delivery system, *Psychopharmacology* 1992;108:512-518. *See* AR (Vol. 91 Ref. 526).

The tobacco industry contends that tobacco is used for pleasure. So, too, is cocaine used for pleasure. These data establish, however, that receiving nicotine through a route that does not provide any sensory qualities of tobacco use (e.g., through the venous system) also is pleasurable. Thus, the pharmacological effects of nicotine administered through non-inhalation routes are able to produce the characteristic psychoactive effects of tobacco use.

Self-administration testing. In self-administration testing, human or animal subjects are given access to a drug and then evaluated for their tendency to seek repeated doses of the drug. The self-administration test determines the ability of a drug to sustain drug-seeking behavior—one of the key distinguishing features of drug dependence. The self-administration test is widely used to determine whether a drug can control behavior; a drug whose intake leads to more consumption is called a "positive reinforcer." It is generally accepted in the scientific community that the ability of addictive drugs to serve as positive reinforcers is the core property that promotes the development and maintenance of addiction.[86]

Self-administration procedures using primates and rats have been shown to be valid and reliable predictors of the potential for a compound to result in drug dependence. There is a strong correlation between the types of drugs that serve as reinforcers in animals and the drugs associated with addiction in humans.[87]

Henningfield JE, Miyasato K, Jasinski DR, Abuse liability and pharmacodynamic characteristics of intravenous and inhaled nicotine, *Journal of Pharmacology and Experimental Therapeutics*, 1985;234(1):1-12. *See* AR (Vol. 39 Ref. 69).

[86] Balster RL, Drug abuse potential evaluation in animals, *British Journal of Addiction* 1991;86:1549-1558. *See* AR (Vol. 8 Ref, 89).

[87] Griffiths RR, Bigelow GE, Henningfield JE, Similarities in animal and human drug-taking behavior, *Advances in Substance Abuse* 1980;1:1-90. *See* AR (Vol. 8 Ref. 91-2).

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Animal self-administration studies, using a variety of administration schedules and controls, have shown that nicotine functions as a positive reinforcer across several species.[88] Nicotine is more avidly self-administered when available on an intermittent schedule than when freely available.[89] Since tobacco users self-administer intermittent doses of nicotine per cigarette or pinch of smokeless tobacco, the schedule of nicotine administration that is most reinforcing in animals corresponds to the pattern of actual tobacco consumption.

Consistent with animal self-administration studies, analogous studies with humans in the 1980's demonstrated that nicotine serves as a positive reinforcer under controlled laboratory conditions.[90] Subjects self-administered intravenous nicotine in a regular and

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Woolverton WL, Nader MA, Experimental evaluation of the reinforcing effects of drugs, in *Modern Methods in Pharmacology*, eds. Adler MW, Cowen A (New York: Wiley-Liss, 1990), 6:165-192. *See* AR (Vol. 535 Ref. 96, vol. III.N).

[88] Goldberg SR, Spealman RD, Goldberg DM, Persistent behavior at high rates maintained by intravenous self-administration of nicotine, *Science* 1981;214:573-575. *See* AR (Vol. 5 Ref. 35-2).

Goldberg SR, Spealman RD, Maintenance and suppression of behavior by intravenous nicotine injections in squirrel monkeys, *Federation Proceedings* 1982;41(2):216-220. *See* AR (Vol. 39 Ref. 52).

Spealman RD, Goldberg SR, Maintenance of scheduled-controlled behavior by intravenous injections of nicotine in squirrel monkeys, *Journal of Pharmacology and Experimental Therapeutics* 1982;223(2):402-408. *See* AR (Vol. 42 Ref. 146).

Risner ME, Goldberg SR, A comparison of nicotine and cocaine self-administration in the dog: fixed-ratio and progressive-ratio schedules of intravenous drug infusion, *Journal of Pharmacology and Experimental Therapeutics* 1983;224(2):319-326. *See* AR (Vol. 42 Ref. 119).

Cox BM, Goldstein A, Nelson WT, Nicotine self-administration in rats, *British Journal of Pharmacology* 1984;83:49-55. *See* AR (Vol. 8 Ref. 93-1).

Slifer BL, Balster RL, Intravenous self-administration of nicotine: with and without schedule-induction, *Pharmacology, Biochemistry and Behavior* 1985;22:61-69. *See* AR (Vol. 8 Ref. 93-3).

Corrigall WA, Coen KM, Nicotine maintains robust self-administration in rats on a limited access schedule, *Psychopharmacology* 1989;99:473-478. *See* AR (Vol. 347 Ref. 5495).

[89] Surgeon General's Report, 1988, at 182-189. *See* AR (Vol. 129 Ref. 1592).

[90] Henningfield JE, Miyasoto K, Jasinski DR, Cigarette smokers self-administer intravenous nicotine, *Pharmacology, Biochemistry and Behavior* 1983;19:887-890. *See* AR (Vol. 8 Ref. 97).

orderly pattern, giving themselves amounts of nicotine comparable to those they were accustomed to receiving from their cigarettes. These studies demonstrate that the pharmacological effects of nicotine can explain why people engage in compulsive consumption of tobacco.

At a molecular level, nicotine's reinforcing effects are widely believed to be a consequence of its actions on specific areas in the central nervous system. Within the scientific community, a consensus has emerged that nicotine, like other addictive drugs such as cocaine, amphetamine, and morphine, causes addiction by increasing the activity of the neurotransmitter dopamine within the mesolimbic system of the brain.[91] A very recent study, which expands on and confirms earlier studies, has demonstrated that nicotine, at doses known to be self-administered, mimics the effects of cocaine, morphine, and amphetamines in the mesolimbic system, by selectively increasing dopamine transmission and energy metabolism in a specific region of the nucleus accumbens previously shown to be important in mediating the addictive effects of these drugs.[92]

Surgeon General's Report, 1988, at 192. *See* AR (Vol. 129 Ref. 1592).

[91] Clarke PBS, Mesolimbic dopamine activation—the key to nicotine reinforcement? *CIBA Foundation Symposium* 1990;152:153-168. *See* AR (Vol. 3 Ref. 19-2).

Corrigall WA, Coen KM, Selective dopamine antagonists reduce nicotine self-administration, *Psychopharmacology* 1991;104:171-176. *See* AR (Vol. 66 Ref. 30).

Corrigall WA, Franklin KBJ, Coen KM, *et al.*, The mesolimbic dopaminergic system is implicated in the reinforcing effects of nicotine, *Psychopharmacology* 1992;107:285-289. *See* AR (Vol. 8 Ref. 93-4).

Iverson LL, . . . harmful to the brain, *Nature* 1996;382:206-207. *See* AR (Vol. 711 Ref. 51).

[92] Pontieri FE, Tanda G, Orzi F, *et al.*, Effects of nicotine on the nucleus accumbens and similarity to those of addictive drugs, *Nature* 1996;382:255-257. *See* AR (Vol. 711 Ref. 51).

Observing that food, water, and salt also increase dopamine activity in the mesolimbic system, the tobacco industry comments that nicotine's action is not unique. FDA's finding, however, is not that nicotine's role in this system is unique, but that it is *significant*. Indeed, the tobacco industry's own observation on food, water, and salt reflects the significance of nicotine's action. As researchers have noted, the mesolimbic "reward" system of the brain naturally reinforces the intake of essential substances (such as food, water, and salt) because these substances are necessary for human existence. Without an intrinsic reward for eating and drinking, humans would perish. Researchers believe that addictive substances such as nicotine, amphetamine, cocaine, and morphine are so powerful precisely because they activate and even control this natural system of reward. Indeed, the same scientists quoted by the tobacco industry state that "nicotine could substitute for food or other reinforcers" in the mesolimbic system.[93] That nicotine can mimic life-sustaining substances and alter such a pivotal neurological system demonstrates its substantial effect on the structure and function of the human body.

Withdrawal and tolerance. Documentation of a drug withdrawal syndrome is the primary method of establishing that a substance causes physical dependence. According to the Surgeon General, "[m]easurement of drug withdrawal phenomena entails recording physiological, subjective, and behavioral responses that occur when drug administration is terminated."[94] Numerous studies document a characteristic withdrawal syndrome,

[93] Mifsud JC, Hernandez L, Hoebel BG, Nicotine infused into the nucleus accumbens increases synaptic dopamine as measured by in vivo microdialysis, *Brain Research* 1989;478(2):365-367, at 367. *See* AR (Vol. 535 Ref. 96, vol. IILJ).

[94] Surgeon General's Report, 1988, at 291. *See* AR (Vol. 129 Ref. 1592).

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including both physiological and psychological symptoms, associated with nicotine abstinence.[95] Widely used criteria for diagnosing withdrawal come from the American Psychiatric Association's DSM-IV, which defines Nicotine Withdrawal Syndrome as four (or more) of the following symptoms within 24 hours after cessation of use: dysphoric or depressed mood; insomnia; irritability, frustration, or anger; anxiety; difficulty concentrating; restlessness; decreased heart rate; increased appetite or weight gain.[96] Although nicotine withdrawal is not as life-threatening as withdrawal from alcohol or some barbiturates, it is comparable to or stronger than withdrawal from such other stimulants as cocaine and can be highly disruptive to personal life.[97] After several weeks of nicotine exposure, users who are deprived of nicotine for more than a few hours can develop withdrawal symptoms.[98] Withdrawal symptoms after quitting tobacco use can persist for months.[99]

The tobacco industry contends that nicotine withdrawal is associated only with psychological changes; the evidence, however, demonstrates that tobacco abstinence also causes significant physiological effects on the body. These effects include decreased heart

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[95] *Id.* at 197-207.

[96] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 244-245. *See* AR (Vol. 37 Ref. 8).

[97] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[98] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573), at 548. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[99] Ryan FJ, Cold turkey in Greenfield, Iowa: a follow-up study, in *Smoking Behavior: Motives and Incentives*, ed. Dunn WL (Washington DC: VH Winston & Sons, 1973), at 231-234. *See* AR (Vol. 8 Ref. 105).

rate at rest and after standing, alteration of the electroencephalogram (EEG, a measure of brain electrical activity), skin temperature changes, and disruptions in sleep patterns.[100] Studies have also demonstrated that tobacco withdrawal can cause an increase in weight. This weight increase may be attributed to increased caloric intake, decreased metabolism, and decreased energy expenditure during nicotine withdrawal.[101] The physiological signs of nicotine withdrawal are substantially reversed when nicotine is given in a form other than tobacco.[102]

Significant behavioral and subjective symptoms common to nicotine withdrawal include depression, anger, irritability, anxiety, poor concentration, and restlessness.[103]

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[100] West RJ, Jarvis MJ, Russell MAH, *et al.*, Effect of nicotine replacement on the cigarette withdrawal syndrome, *British Journal of Addiction* 1984;79(2):215-219. *See* AR (Vol. 8 Ref. 102-1).

Hughes JR, Hatsukami D, Signs and symptoms of tobacco withdrawal, *Archives of General Psychiatry* 1986;43:289-294. *See* AR (Vol. 8 Ref. 102-2).

Hughes JR, Higgins ST, Hatsukami D, Effects of abstinence from tobacco: a critical review, *Research Advances in Alcohol and Drug Problems* 1990;10:317-398, at 382. *See* AR (Vol 535 Ref. 96, vol. III.G).

[101] Wack JT, Rodin J, Smoking and its effect on body weight and the systems of caloric regulations, *American Journal of Clinical Nutrition* 1982;35(2):366-380. *See* AR (Vol. 8 Ref. 103-1).

Glauser SC, Glauser EM, Reidenberg MM, *et al.*, Metabolic changes associated with the cessation of cigarette smoking, *Archives of Environmental Health* 1970;20:377-381. *See* AR (Vol. 8 Ref. 103-2).

[102] Surgeon General's Report, 1988, at 208. *See* AR (Vol. 129 Ref. 1592).

[103] *See, e.g.*, Hughes JR, Hatsukami D, Signs and symptoms of tobacco withdrawal, *Archives of General Psychiatry* 1986;43:289-294. *See* AR (Vol. 8 Ref. 102-2).

Centers for Disease Control and Prevention, Reasons for tobacco use and symptoms of nicotine withdrawal among adolescent and young adult tobacco users-United States, 1993, *Morbidity and Mortality Weekly Report* 1994;43(41):745-750. *See* AR (Vol. 7 Ref. 86).

Hughes JR, Nicotine withdrawal, dependence, and abuse, in *DSM-IV Sourcebook*, eds. Widiger T, Frances A, *et al.* (Washington DC: American Psychiatric Association, 1994), 1:109-116. *See* AR (Vol. 535 Ref. 96, vol. III.F).

West RJ, Jarvis MJ, Russell MAH, *et al.*, Effect of nicotine replacement on the cigarette withdrawal syndrome, *British Journal of Addiction* 1984;79(2):215-219. *See* AR (Vol. 8 Ref. 102-1).

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Dependent smokers also show substantial withdrawal symptoms within a day of nicotine abstinence.[104] These psychological symptoms are substantially reversible or preventable by providing nicotine in the form of conventional cigarettes or by providing equivalent or lower doses of nicotine in other forms (e.g., nicotine gum) including forms without the taste of nicotine (e.g., nicotine patches).[105]

Withdrawal from smokeless tobacco also causes physiological changes attributable to nicotine abstinence. Hatsukami and colleagues showed the following changes in users deprived of chewing tobacco: (1) decreased heart rate at rest and after standing; (2) increased craving for tobacco; (3) increased confusion score on the Profile of Mood States (POMS) (this measures tension/anxiety, depression/dejection, confusion, anger/hostility, vigor, and fatigue); (4) increased eating; (5) increased number of sleep interruptions; and (6) increased total scores on a withdrawal symptom checklist for both self-rated and observer-rated measures.[106]

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[104] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573), at 548. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[105] Surgeon General's Report, 1988, at 470-485. *See* AR (Vol. 129 Ref. 1592).

Robinson JH, Pritchard WS, Davis RA, Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine, *Psychopharmacology* 1992;108:466-472. *See* AR (Vol. 59 Ref. 236).

Fagerstrom KO, Sawe U, Tonnesen P, Therapeutic use of nicotine patches: efficacy and safety, *Journal of Drug Development* 1993;5:191-205. *See* AR (Vol. 76 Ref. 156).

Fiore MC, Jorenby DE, Baker TB, *et al.*, Tobacco dependence and the nicotine patch, *Journal of the American Medical Association* 1992;268:2687-2694. *See* AR (Vol. 351 Ref. 5609).

[106] Hatsukami DK, Gust SW, Keenan RM, Physiologic and subjective changes from smokeless tobacco withdrawal, *Clinical Pharmacology and Therapeutics* 1987;41:103-107. *See* AR (Vol. 7 Ref. 73).

A second key test of a substance's ability to produce physical dependence is whether it promotes tolerance.[107] Tolerance occurs when responses produced by an initial dose are diminished with repeated doses, so that increasing doses are necessary to reproduce the initial effects. Tolerance to some effects of a substance can be acute, occurring within hours to days, while tolerance to other effects develops chronically as a result of long-term substance exposure.

Tobacco users become tolerant to nicotine both acutely and chronically.[108] After a single night of abstinence, the nervous system[109] and the cardiovascular system[110] are highly responsive to small doses of nicotine. But after the administration of the equivalent of a few cigarettes, the responsiveness of the human body to nicotine declines markedly. Thus, a cigarette smoked in the middle of the day may not elicit the same psychological or physiological response in a cigarette smoker as one smoked earlier in the morning. This severe degree of acute tolerance seems to greatly exceed that produced by cocaine and to be more comparable to that produced by morphine.[111]

Tolerance to other effects of nicotine develops over weeks and months. For example, new smokers often experience nicotine-related effects such as dizziness, nausea, intoxication, vomiting, and headaches—symptoms that disappear eventually as the

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[107] Surgeon General's Report, 1988, at 50-54. *See* AR (Vol. 129 Ref. 1592).

[108] Perkins KA, Grobe JE, Epstein LH, *et al.*, Chronic and acute tolerance to subjective effects of nicotine, *Pharmacology, Biochemistry and Behavior* 1993;45:375-381. *See* AR (Vol. 271 Ref. 3728).

[109] *Id.*

[110] Surgeon General's Report, 1988, at 47-48. *See* AR (Vol. 129 Ref. 1592).

[111] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522–573), at 533, 543, 548. *See* AR (Vol. 535 Ref. 96, vol. III.G).

smokers' bodies adapt to nicotine and tolerance to these effects develops.[112] These and other examples of chronic tolerance (such as faster nicotine metabolism among experienced smokers) are consistent with laboratory evidence of long-term structural changes in the brain and other parts of the body from nicotine use.[113]

There is also epidemiological evidence that the vast majority of smokers and smokeless tobacco users increase their consumption and usage of tobacco products over time. *See* section II.A.3.c.ii., below. This escalation of dose is an additional demonstration of the development of tolerance. Like users of other addictive drugs, tobacco users eventually reach a stable level of consumption.[114]

Laboratory studies on drug discrimination, psychoactive/subjective effects, self-administration, and withdrawal and tolerance thus demonstrate that nicotine has the properties of an addictive drug.

Nicotine compared to saccharin and caffeine. In its comments, the tobacco industry attempts to discount a multitude of laboratory studies of nicotine by selectively pointing to a single test used to screen for addictive substances and arguing that, in that test, nicotine's effect was similar to saccharin's. From this premise, the industry concludes that nicotine is no more addictive than saccharin. This argument misrepresents the published data on saccharin's and nicotine's properties and overlooks fundamental

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[112] Department of Health and Human Services, Office on Smoking and Health, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* (Washington DC: Government Printing Office, 1994), at 138. *See* AR (Vol. 133 Ref. 1596).

[113] *See* section II.A.3.i. and ii., below, for a more detailed discussion.

[114] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-532). *See* AR (Vol. 535 Ref. 96, vol. III.G).

differences between saccharin and nicotine. Contrary to the tobacco industry's argument, saccharin has not been shown to meet the most fundamental test of an addictive drug, namely, psychoactive effects in the brain that account for its appeal to humans and animals. Nicotine *has* been shown to have these effects.

In contrast to nicotine, which can be pleasurable even when injected intravenously, saccharin is liked primarily because of its taste. For example, rats can be trained to self-administer oral doses of saccharin in preference to water, demonstrating only that rats prefer the taste of saccharin to that of water. FDA is unaware of any studies, and the tobacco industry cites none, in which rats have self-administered saccharin intravenously. Such a study would be an essential step in proving that saccharin's appeal lies in its effects on the brain. Moreover, there is no evidence that saccharin produces any psychoactive effects. In contrast, nicotine, which produces no such pleasant taste, demonstrates all of the properties of an addictive drug, including self-administration and psychoactivity, through its actions on the central nervous system.

The tobacco industry also argues that nicotine is similar to caffeine in tests of addictive potential. FDA disagrees. In comparison to the more orderly pattern of self-administration observed with nicotine and stimulant drugs, the pattern of caffeine self-administration is generally weak and sporadic in animals.[115] Hence, in comparison to known

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[115] Heishman SJ, Henningfield JE, Stimulus functions of caffeine in humans: relation to dependence potential, *Neuroscience and Biobehavioral Reviews* 1992;16:273-287. *See* AR (Vol. 79 Ref. 230).

Griffiths RR, Woodson PP, Reinforcing properties of caffeine: studies in humans and laboratory animals, *Pharmacology, Biochemistry and Behavior* 1988;29(2):419-427. *See* AR (Vol. 535 Ref. 96, vol. III.E).

Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522–573), at 524. *See* AR (Vol. 535 Ref. 96, vol. III.G).

drugs of dependence (e.g., cocaine, morphine, and nicotine), caffeine has a lower relative dependence potential as well as a low risk of adverse effects in amounts currently permitted in foods and beverages.[116] Unlike nicotine, caffeine is not recognized as a dependence-producing substance by the American Psychiatric Association[117] and the World Health Organization.[118]

The laboratory differences between nicotine and caffeine are reflected in the different patterns of substance consumption. Neal Benowitz, a prominent addiction researcher, noted that, "[i]n contrast to coffee drinkers, the vast majority of cigarette smokers exhibit addictive behavior."[119] The wide acceptance of decaffeinated beverages demonstrates a much more general ability to control intake and minimize undesirable effects of caffeine. Moreover, while nicotine/tobacco addiction is estimated to be one of the leading causes of premature death in the United States,[120] caffeine at customary doses poses few risks to the individual or to society.

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[116] Heishman SJ, Henningfield JE, Stimulus functions of caffeine in humans: relation to dependence potential, *Neuroscience and Biobehavioral Reviews* 1992;16:273-287. *See* AR (Vol. 79 Ref. 230).

Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[117] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 176. *See* AR (Vol. 37 Ref. 8).

[118] WHO, *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines* (Geneva: World Health Organization, 1992), at 75-76. *See* AR (Vol. 43 Ref. 175).

[119] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437, at 430. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[120] McGinnis JM, Foege WH, Actual causes of death in the United States, *Journal of the American Medical Association* 1993;270(18):2207-2212. *See* AR (Vol. 2 Ref. 15-1).

Hearing on Preventive Health: An Ounce of Prevention Saves a Pound of Cure, Before the Special Committee on Aging, U.S. Senate, 103d Cong., 1st Sess. 2 (May 6, 1993) (statement of Roger Herdman, Maria Hewitt, Mary Laschober, on smoking-related deaths and financial costs: Office of Technology Assessment estimates for 1990). *See* AR (Vol. 170 Ref. 2024).

Thus, the average tobacco consumer—but not the average coffee drinker—uses tobacco despite severe health risks, a clinical sign of addiction.[121]

In summary, widely publicized laboratory studies show that tobacco use, like heroin and cocaine use, is a behavioral-pharmacological process in which the individual's continued consumption of tobacco is controlled by a psychoactive and reinforcing drug that exerts its control through the central nervous system. Thus, nicotine is similar to other addictive drugs in every relevant aspect. For this reason, every scientific authority that has reviewed the results of the laboratory evidence has concluded that nicotine is addictive.

ii. Epidemiological Data Establish That Many Tobacco Users Are Addicted. Numerous well-publicized studies and health surveys have documented the characteristics of nicotine dependence among tobacco users. In the United States, clinical criteria to assess addiction come from the DSM-IV published by the American Psychiatric Association.

Several large studies have confirmed that most cigarette smokers qualify for a diagnosis of nicotine dependence. As described in depth in the appendix to the Jurisdictional Analysis, and discussed further in section II.B.2.a., below, as many as 92% of smokers are addicted to cigarettes.[122] Smokers are more likely to become addicted than

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[121] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 181. *See* AR (Vol. 37 Ref. 8).

[122] *See* appendix 1 to Jurisdictional Analysis, at 42-47. *See* AR (Vol. 1 Appendix 1).

In the Jurisdictional Analysis (60 FR 41576), FDA referred to rates of dependence among "frequent smokers" as being in the range of 75% to 90%. In this document, FDA does not use "frequent" but rather describes the definition of smokers used in each study. *See* section II.B.2., below.

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users of other dependence-producing drugs, including cocaine, alcohol, marijuana, inhalants, and heroin.[123] Consistent with the results from these large studies, which assessed the prevalence of nicotine dependence as defined by meeting three or more of the seven criteria for addiction, are the findings of other studies that assessed the proportion of tobacco users meeting individual criteria. Of the seven criteria listed in section II.A.3.b., above, DSM-IV observes that six are readily apparent among tobacco users: desire to quit or unsuccessful efforts to cut down, use continued despite medical problems, a great deal of time spent using, use of substance in larger amounts and longer than intended, withdrawal, and tolerance.[124] These results strongly support the conclusion that addiction to nicotine is widespread among smokers.

Although there have been no population-based studies using criteria from the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) to assess rates of addiction to smokeless tobacco, substantial evidence demonstrates that a high proportion of smokeless tobacco users meet individual DSM criteria for addiction. This evidence strongly supports the conclusion that a substantial proportion of such users are addicted. In 1992, the Inspector General of the Department of Health and Human Services estimated that approximately 75% of young regular users of smokeless tobacco are addicted.[125]

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[123] Anthony JC, Warner LA, Kessler RC, Comparative epidemiology of dependence on tobacco, alcohol, controlled substances and inhalants: basic findings from the National Comorbidity Survey, *Experimental and Clinical Psychopharmacology* 1994;2:244-268. *See* AR (Vol. 37 Ref. 4).

[124] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 243. *See* AR (Vol. 37 Ref. 8).

[125] Department of Health and Human Services, Office on Smoking and Health, *Spit Tobacco and Youth* (Washington DC: GPO, 1992), at 8. *See* AR (Vol. 7 Ref. 76).

Data demonstrating that a high proportion of smokers and users of smokeless tobacco meet individual DSM criteria for addiction are now discussed.

Desire to quit or unsuccessful efforts to cut down. Each year, more than 15 million people in the United States—almost one-third of all daily smokers—try to quit smoking. Fewer than 3% of smokers achieve 1 year of abstinence.[126]

Quitting smokeless tobacco is also difficult. In one study, only 2.3% of smokeless tobacco users at a cessation clinic were able to remain abstinent for 6 months; the study concluded that using smokeless tobacco may be more addicting than cigarette smoking.[127]

The Centers for Disease Control and Prevention (CDC) found that the greater the level of use of the tobacco product, the more likely young people were to report that "it's really hard to quit." This increase in difficulty quitting as the amount of tobacco consumed increases demonstrates a dose-response relationship, one of the characteristic features of pharmacological effects. This dose-response relationship holds true for both cigarettes and smokeless tobacco used by 10- to 22-year-olds. For example, 74% of young people who used smokeless tobacco every day reported that it was very difficult to quit, compared to only 11% who used smokeless tobacco 1 to 14 days a month.[128]

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[126] Centers for Disease Control and Prevention, Smoking cessation during previous year among adults—United States, 1990 and 1991, *Morbidity and Mortality Weekly Report* 1993;42(26):504-507. *See* AR (Vol. 66 Ref. 2).

[127] Glover ED, Glover PN, Smokeless tobacco cessation and nicotine reduction therapy, in *Smokeless Tobacco or Health, an International Perspective*, Smoking and Tobacco Control, *NIDA Research Monograph* 2, NIH Publication No. 93-3461 (Rockville MD: Government Printing Office, 1993), at 291-295. *See* AR (Vol. 7 Ref. 79-1).

[128] Centers for Disease Control and Prevention, Reasons for tobacco use and symptoms of nicotine withdrawal among adolescents and young adult tobacco users—United States, 1993, *Morbidity and Mortality Weekly Report* 1994;43(41):745-750. *See* AR (Vol. 7 Ref. 86).

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Additional studies on the common desire to quit and the failure of the vast majority of attempts can be found in appendix 1 to Jurisdictional Analysis.[129]

Use continued despite medical problems. As many as 90% of smokers know that tobacco products are harmful to their own health, 65% of current smokers believe that smoking "has already affected" their health, and 77% of smokers believe that they could "avoid or decrease serious health problems from smoking" if they quit.[130] Yet they keep smoking.

Consumers of smokeless tobacco also recognize the health risks of their tobacco use, but do not stop. In one study, 96% of young men who regularly used smokeless tobacco agreed that chewing tobacco and snuff can cause cancer.[131] Another study of users age 17 and over revealed that 77.4% believe that smokeless tobacco is a health hazard.[132]

People even continue tobacco use in the face of life-threatening, tobacco-related illnesses. For example, studies have shown that about half of smokers who have had

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[129] *See* appendix 1 to Jurisdictional Analysis, at 52-55. *See* AR (Vol. 1 Appendix 1).

[130] Gallup GH, *Smoking Prevalence, Beliefs, and Activities by Gender and Other Demographic Indicators* (Princeton NJ: Gallup Organization, 1993). *See* AR (Vol. 38 Ref. 43a).

[131] Department of Health and Human Services, Office on Smoking and Health, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* (Washington DC: Government Printing Office, 1994), at 101. *See* AR (Vol. 133 Ref. 1596).

[132] Novotny TE, Pierce JP, Fiore MC, *et al.*, Smokeless tobacco use in the United States: the adult use of tobacco surveys, *Monographs/National Cancer Institute* 1989;8:25-28. *See* AR (Vol. 41 Ref. 109).

surgery for lung cancer resume smoking[133] and that almost 40% of smokers who have had their larynxes removed try smoking again.[134]

Additional data on the use of tobacco products despite the health problems they have caused are presented in appendix 1 to the Jurisdictional Analysis.[135]

Great deal of time spent using. Studies have demonstrated that tobacco users consume tobacco regularly and compulsively. For example, 90% of smokers consume five or more cigarettes every day.[136] Over two-thirds of smokers who consume five cigarettes a day smoke their first cigarette within the first half-hour after awakening;[137] according to many experts, this need is a key symptom indicating a very significant level of dependence.[138]

Among users of chewing tobacco and moist snuff over 18, half use the products every day, and the proportion of daily users rises with age.[139] The Inspector General of

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[133] Davison G, Duffy M, Smoking habits of long term survivors of surgery for lung cancer, *Thorax* 1982;37:331-333. *See* AR (Vol. 6 Ref. 58).

[134] West R, Himbury S, Smoking habits after laryngectomy, *British Medical Journal* 1985;291:514-515. *See* AR (Vol. 6 Ref. 59).

[135] *See* appendix 1 to Jurisdictional Analysis, at 56-58. *See* AR (Vol. 1 Appendix 1).

[136] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

[137] Giovino GA, Zhu BP, Tomar S, *et al.*, *Epidemiology of Tobacco Use and Symptoms of Nicotine Addiction in the United States: A Compilation of Data from Large National Surveys*, presentation of the Centers for Disease Control and Prevention to the FDA's Drug Abuse Advisory Committee (Aug. 2, 1994), slide 19 (from National Health Interview Survey 1987). *See* AR (Vol. 459 Ref. 7820).

[138] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), 245. *See* AR (Vol. 37 Ref. 8).

[139] Department of Health and Human Services, National Center for Health Statistics, *Vital and Health Statistics: Smoking and Other Tobacco Use: United States, 1987*, Series 10: Data from the National

the U.S. Department of Health and Human Services reported that "our 1986 and 1992 users typically held their dip or chaw 25 to 30 minutes, with most keeping it in over 30 minutes, and often up to one hour."[140]

Use of substance in larger amounts or longer than intended. Few beginning smokers plan to become daily smokers. Yet 90% of current smokers consume at least five cigarettes a day.[141] Smokers also smoke for longer periods than they intend. Among high school seniors from the Monitoring the Future Project (1976–86), almost half of the daily smokers reported that they would either probably or definitely not be smoking 5 years after graduation.[142] In a follow-up study conducted 5 to 6 years after graduation, more than two-thirds were smoking as frequently or more frequently than they had in high school (26% were smoking at the same level, and 40% were smoking more).[143]

Other evidence that users of cigarettes and smokeless tobacco consume more than they intend comes from surveys demonstrating that many people try to quit but fail. For

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Health Survey, No. 169, Sep. 1989, DHHS Publication No. (PHS) 89-1597 (Washington DC: Government Printing Office, 1989), at 24, 26. *See* AR (Vol. 711 Ref. 9).

[140] Department of Health and Human Services, Office on Smoking and Health, *Spit Tobacco and Youth* (Washington DC: Government Printing Office, 1992), at 7. *See* AR (Vol. 7 Ref. 76).

[141] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

[142] Elders MJ, Perry CL, Eriksen MP, *et al.*, The report of the Surgeon General: preventing tobacco use among young people, *American Journal of Public Health* 1994;84(4):543-547, at 544. *See* AR (Vol. 38 Ref. 39).

[143] *Id.*

example, two of every five adult users of smokeless tobacco have tried to quit.[144] Additional studies are discussed in detail in appendix 1 to the Jurisdictional Analysis.[145]

Withdrawal. In addition to experimental evidence of withdrawal from nicotine described in section II.A.3.c.i., above, persuasive data from epidemiological studies also demonstrate that the vast majority of consumers who abstain from tobacco products experience withdrawal symptoms.[146]

Studies show that the symptoms of irritability, nervousness, restlessness, and increased appetite each affect over half of abstinent smokers; indeed, about half of abstinent smokers qualify for a formal diagnosis of Nicotine Withdrawal Syndrome under the *Diagnostic and Statistical Manual of Mental Disorders,* 3d ed., revised (DSM-III-R).[147] Withdrawal symptoms show a dose-response relationship; heavier smokers are more likely than light smokers to experience the symptoms of difficulty concentrating, hunger, irritability, restlessness, and sadness when they try to quit.[148] A similar dose-response relationship between the likelihood of withdrawal symptoms and the level of

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[144] Novotny TE, Pierce JP, Fiore MC, *et al.*, Smokeless tobacco use in the United States: the adult use of tobacco surveys, *Monographs/National Cancer Institute* 1989;8:25-28. *See* AR (Vol. 41 Ref. 109).

[145] *See* appendix 1 to Jurisdictional Analysis, at 48-55. *See* AR (Vol. 1 Appendix 1).

[146] *See* appendix 1 to Jurisdictional Analysis, at 58-61. *See* AR (Vol. 1 Appendix 1).

[147] Breslau N, Kilbey MM, Andreski MA, Nicotine withdrawal symptoms and psychiatric disorders: findings from an epidemiologic study of young adults, *American Journal of Psychiatry* 1992;149(4):464-469. *See* AR (Vol. 37 Ref. 18).

[148] Giovino GA, Zhu BP, Tomar S, *et al.*, *Epidemiology of Tobacco Use and Symptoms of Nicotine Addiction in the United States: A Compilation of Data from Large National Surveys*, presentation of the Centers for Disease Control and Prevention to the FDA's Drug Abuse Advisory Committee (Aug. 2, 1994), slides 27-32. *See* AR (Vol. 459 Ref. 7820).

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nicotine intake was found among British schoolgirls[149] and other populations studied.[150] Most people who quit smoking relapse within 1 week,[151] when withdrawal symptoms are at or near their peak.[152]

Smokeless tobacco users typically experience withdrawal symptoms similar to those reported by smokers. In a study of young smokeless tobacco users, over 90% of daily users reported at least one symptom of nicotine withdrawal when trying to discontinue use. Restlessness and irritability were reported by half of daily users during abstinence.[153]

Tolerance. In addition to laboratory measures of tolerance to nicotine described in section II.A.3.c.i., above, epidemiological studies show that users of tobacco products require increasing amounts to maintain the same effects. The 1991 and 1992 National Household Survey on Drug Abuse found that 12% of smokers 25 years or older and 20% of smokers 12 to 24 years of age who smoke 16 to 25 cigarettes per day report feeling the need for an increased number of cigarettes over time to obtain the desired effects.[154]

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[149] McNeill AD, West RJ, Jarvis M, *et al.*, Cigarette withdrawal symptoms in adolescent smokers, *Psychopharmacology* 1986;90(4):533-536. *See* AR (Vol. 95 Ref. 683).

[150] Surgeon General's Report, 1988, at 206-207. *See* AR (Vol. 129 Ref. 1592).

[151] Hughes JR, Gulliver SB, Fenwick JW, *et al.*, Smoking cessation among self-quitters, *Health Psychology* 1992;11:331-334. *See* AR (Vol. 348 Ref. 5512).

[152] Hughes JR, Gust SW, Skoog K, *et al.*, Symptoms of tobacco withdrawal: a replication and extension, *Archives of General Psychiatry* 1991;48:52-59. *See* AR (Vol. 129 Ref. 1404).

[153] Centers for Disease Control and Prevention, Reasons for tobacco use and symptoms of nicotine withdrawal among adolescents and young adult tobacco users—United States, 1993, *Morbidity and Mortality Weekly Report* 1994;43(41):745-750. *See* AR (Vol. 7 Ref. 86).

[154] Giovino GA, Zhu BP, Tomar S, *et al.*, *Epidemiology of Tobacco Use and Symptoms of Nicotine Addiction in the United States: A Compilation of Data from Large National Surveys*, presentation of the Centers for Disease Control and Prevention to the FDA's Drug Abuse Advisory Committee (Aug. 2, 1994), slide 24. *See* AR (Vol. 459 Ref. 7820).

Among those who have tried an addictive substance at least once, people who have tried cigarettes are more likely to report the need for larger doses to get the same effect than people who have tried cocaine, marijuana, and alcohol.[155]

Most consumers of tobacco products escalate their doses over time. Whereas few cigarette smokers initially plan to be regular daily users, approximately 90% of them consume more than five cigarettes every day.[156]

Smokeless tobacco users also increase their dose of nicotine. One study showed a positive relationship among the number of years of smokeless tobacco use, the number of minutes per day of reported use, and urinary nicotine and cotinine levels.[157] (Cotinine is a major metabolite of nicotine and an indicator of nicotine absorption.) Other studies on dose escalation of tobacco products can be found in appendix 1 to the Jurisdictional Analysis.[158]

The epidemiological data demonstrate that a large proportion of tobacco users are dependent on nicotine and that overwhelming numbers of users show signs of addiction. These data complement laboratory evidence proving that nicotine is an addictive substance and have led to the nearly universal scientific recognition of nicotine as a drug whose

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[155] Henningfield JE, Clayton R, Pollin W, Involvement of tobacco in alcoholism and illicit drug use, *British Journal of Addiction* 1990;85:279-292. *See* AR (Vol. 39 Ref. 66).

[156] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

[157] World Health Organization, *Smokeless Tobacco Control: Report of a WHO Study Group*, WHO Technical Report Series No. 773 (Geneva: WHO, 1988), 36. *See* AR (Vol. 7 Ref. 83).

[158] *See* appendix 1 to Jurisdictional Analysis, at 48-51. *See* AR (Vol. 1 Appendix 1).

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pharmacological effects compel continued use. These widely disseminated public findings establish that a reasonable person in the position of a tobacco manufacturer would foresee that tobacco products would be consumed to satisfy an addiction to nicotine.[159]

4. It Is Foreseeable That Consumers Will Use Cigarettes and Smokeless Tobacco for Other Pharmacological Purposes

In addition to its foreseeable addictive effects, nicotine produces a range of other well-known and foreseeable significant pharmacological effects of importance to tobacco users. Evidence demonstrating that consumers actually use tobacco products for these effects is discussed in section II.B.2., below.

Central Nervous System Effects: Sedation, Stimulation, Mood, and Cognition. Nicotine significantly alters the structure and function of the brain. At the molecular level, nicotine acts by stimulating receptors on the surfaces of brain cells intended for natural neurotransmitters such as acetylcholine and by stimulating the release of other key substances such as dopamine.[160] Nicotine also changes the brain's molecular structure. Extensive animal research by both the tobacco industry and other researchers shows that nicotine exposure, ranging from a few days to a few weeks, within the range of doses equivalent to those received from smoking cigarettes, increases the number and changes the functional activity of nicotine receptors in the brain.[161] In one study, doses of nicotine

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[159] FDA notes that at least one major tobacco company appears to agree that information about the "addicting" properties of cigarettes is so widely disseminated that it must be considered foreseeable. In a lawsuit brought against RJR by a smoker, RJR argued that the "alleged habituating or 'addicting'" qualities of cigarette smoking are so well known that smokers must be held to have foreseen them. *See* section II.C.2.b.iv., below.

[160] *See* the discussion of dopamine in the mesolimbic system, section II.A.3.c.i., above.

[161] Marks MJ, Burch JB, Collins AC, Effects of chronic nicotine infusion on tolerance development and nicotine receptors, *Journal of Pharmacology and Experimental Therapeutics* 1983;226:817-825. *See* AR (Vol. 41 Ref. 103).

considered equivalent to those received by a fetus of a smoking mother increase the number of nicotine receptors in the brains of newborn rats.[162] Consistent with animal data, cigarette smokers show clear evidence of increased numbers of cerebral nicotine receptors as a consequence of their smoking.[163]

The result of these molecular actions is that nicotine clinically affects arousal, attention, mood, and, under certain conditions, cognition. Depending on the dose and the circumstances, nicotine delivered by cigarette smoking can have an arousal-increasing or arousal-reducing effect.[164] This is another respect in which nicotine is similar to such other addictive drugs as opiates, which can have both stimulating and sedating effects.

Nicotine's effects on mood and arousal have been confirmed using electroencephalographic (EEG) analysis, a measurement of electrical activity in the brain.[165] When smokers are placed in a stressful situation, smoking can have a depressant

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Surgeon General's Report, 1988, at 53-54. *See* AR (Vol. 129 Ref. 1592).

Department of Health and Human Services, Office on Smoking and Health, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* (Washington DC: GPO, 1994), at 32-33. *See* AR (Vol. 133 Ref. 1596).

[162] Slotkin TA, Orband-Miller L, Queen KL, Development of (^{3}H)nicotine binding sites in brain regions of rats exposed to nicotine prenatally via maternal injections or infusions, *Journal of Pharmacology and Experimental Therapeutics* 1987;242:232-237. *See* AR (Vol. 140 Ref. 1656).

[163] Benwell MEM, Balfour DJK, Anderson JM, Evidence that tobacco smoking increases the density of (–)-[^{3}H]nicotine binding sites in human brain, *Journal of Neurochemistry* 1988;50:1243-1247. *See* AR (Vol. 136 Ref. 1570).

[164] Norton R, Brown K, Howard R, Smoking, nicotine dose and the lateralisation of electrocortical activity, *Psychopharmacology* 1992;108:473-479. *See* AR (Vol. 3 Ref. 22).

[165] Pritchard WS, Gilbert DG, Duke DW, Flexible effects of quantified cigarette-smoke delivery on EEG dimensional complexity, *Psychopharmacology* 1993;113:95-102. *See* AR (Vol. 3 Ref. 23-1).

Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490. *See* AR (Vol. 105 Ref. 965).

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effect on the EEG profile.[166] When smokers are placed in conditions of low arousal induced by mild sensory isolation, cigarette smoking can have a stimulant effect.[167] In other words, smoking can have a relaxing effect in stressful situations and a stimulating effect in otherwise nonstimulating circumstances.

The tobacco industry correctly observes that many substances affect the EEG. But what is significant is not *that* nicotine affects the EEG, but *how* nicotine does so. Nicotine's impact on the EEG: (1) is reproducible, (2) is clinically significant, (3) corresponds to other physiological and psychological changes of smoking, and (4) is similar to certain EEG changes associated with other addictive drugs such as benzodiazepines.[168] Altered electrical activity of the brain as demonstrated by EEG is convincing evidence of nicotine's significant pharmacological effects on the structure and function of the body.

Smokers perform better on some cognitive tests than do deprived smokers, but nicotine does not improve general learning or make smokers generally perform better than nonsmokers.[169] One leading researcher noted that, after a few hours of abstinence, "[P]eople are reporting they can't concentrate as well, they can't get the tasks done as

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Golding JF, Effects of cigarette smoking on resting EEG, visual evoked potentials and photic driving, *Pharmacology, Biochemistry and Behavior* 1988;29:23-32. *See* AR (Vol. 3 Ref. 23-3).

[166] Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490. *See* AR (Vol. 105 Ref. 965).

[167] Golding J, Mangan GL, Arousing and de-arousing effects of cigarette smoking under conditions of stress and mild sensory isolation, *Psychophysiology* 1982;19(4):449-456. *See* AR (Vol. 48 Ref. 101).

[168] Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490, at 485, 488. *See* AR (Vol. 105 Ref. 965).

[169] Surgeon General's Report, 1988, at 441. *See* AR (Vol. 129 Ref. 1592).

well, and our objective performance batteries confirm that. They're right . . . it's not just a psychological effect. They really aren't functioning as well."[170]

Evidence on nicotine's effects on mood and cognition is strongly supported by the work of tobacco industry researchers, who concur that people use tobacco for the psychoactive effects of nicotine. These researchers contend that nicotine delivered by tobacco produces psychoactive effects comparable to the effects of prescription tranquilizers. For example, a researcher for the R.J. Reynolds Tobacco Company (RJR), W. S. Pritchard, reported that smoking cigarettes could produce "an EEG effect that in the benzodiazepine literature is associated with anxiety relief," leading him to conclude that "an important smoking motive for deep inhaling smokers might be anxiety reduction" and that his results were consistent with the theory that smoking provides beneficial psychological effects ("psychological tools" or "resources").[171]

In a significant extension of this work, Robinson *et al.* concluded that "the beneficial effects of smoking on cognitive performance are a function of nicotine absorbed from cigarette smoke upon inhalation."[172] These RJR researchers performed their study because they thought that, although earlier work with various nicotine preparations was consistent with the hypothesis that people smoked for "psychopharmacological effects,"

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[170] Hemingfield J, Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products" (Aug. 2, 1994), at 309. *See* AR (Vol. 255 Ref. 3445).

[171] Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490, at 485, 488. *See* AR (Vol. 105 Ref. 965).

[172] Robinson JH, Pritchard WS, Davis RA, Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine, *Psychopharmacology* 1992;108:466-472. *See* AR (Vol. 59 Ref. 236).

the role of nicotine in cigarettes was inconclusive. They therefore compared standard nicotine-delivering cigarettes to cigarettes that were similar in all other relevant characteristics (e.g., similar gases, tar, etc.) but that provided only "trace" or "minimal" levels of nicotine. The regular cigarettes provided psychopharmacological effects, while the minimal nicotine cigarettes did not.

One of the leading tobacco industry-funded proponents of the contention that nicotine is not addictive, D. M. Warburton, is also one of the leading proponents of the view that people smoke because of the pharmacological actions of nicotine in the brain, rather than in the mouth.[173] Warburton argues that nicotine is a "therapeutic agent" that is self-administered by smokers to "control their bodily state"[174] and that "the rapid absorption and rapid metabolism make this substance suitable for hour-by-hour self-medication because of the personal control [over dosage needs] that can be exercised. In this respect nicotine is superior to other compounds for medication."[175] Thus, the conclusions of tobacco industry-funded researchers support FDA's finding that a reasonable manufacturer would foresee that nicotine in tobacco products produces significant pharmacological effects important to users.

Other Effects: Weight Regulation. Nicotine also plays a role in weight regulation. The 1988 Surgeon General's Report summarized the available data:

> In summary, there is substantial evidence of an inverse relationship between cigarette smoking and body weight. Of 71 studies reported since 1970, 62 (87%) collectively indicate that smokers

[173] Warburton DM, Nicotine: an addictive substance or a therapeutic agent, *Progress in Drug Research* 1989;33:9-41. *See* AR (Vol. 140 Ref. 1657).

[174] *Id.* at 11.

[175] *Id.* at 37.

> weigh less than nonsmokers and that people who quit smoking gain weight. . . .
>
> Animal studies indicate that nicotine administration results in weight loss or decreased weight gains and that cessation of nicotine results in body weight gains greater than those of controls [animals that did not receive nicotine]. . . .
>
> Recent research on nicotine polacrilex gum with humans corroborates the role of nicotine in body weight effects.[176]

Numerous studies show that many tobacco consumers use tobacco to control their weight. For example, in two surveys, between one-third and one-half of young people reported that controlling weight was one of their reasons for smoking.[177]

An extensive discussion of the physiological and central nervous system effects of nicotine is available in the 1988 Surgeon General's Report.[178]

Thus, aside from addiction, there are other foreseeable pharmacological effects of nicotine use that are important to users; that these effects are actual reasons for consumption is discussed in section II.B.3., below.

5. Cigarettes and Smokeless Tobacco Deliver Pharmacologically Active Doses of Nicotine

Currently marketed cigarettes and smokeless tobacco deliver sufficient doses of nicotine to cause addiction and lead to other significant pharmacological effects that cause continued use of the products. This robust conclusion is supported by published research presented in section II.A., above, and thus is foreseeable to a reasonable tobacco manufacturer. For example, laboratory studies using commercial cigarettes demonstrate that the products contain pharmacologically active levels of nicotine; epidemiological data

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[176] Surgeon General's Report, 1988, at 431-432. *See* AR (Vol. 129 Ref. 1592).

[177] *Id.* at 438-440.

[178] *Id.* at 381-458.

show that actual tobacco consumers do become addicted. Four additional types of evidence conclusively demonstrate that tobacco products deliver sufficient doses of nicotine: (1) measurements of blood nicotine levels after consumption of tobacco products; (2) laboratory studies using doses of nicotine that are equivalent to those imparted by tobacco use; (3) studies demonstrating that nicotine levels control tobacco consumption behavior (known as "compensation"); and (4) studies of nicotine replacement therapy.

Measurement of Blood Nicotine Levels. Evidence demonstrates that tobacco users receive pharmacological doses of nicotine when they consume cigarettes and smokeless tobacco. A currently marketed cigarette typically delivers about 1 mg of nicotine to the bloodstream of a smoker,[179] with individual intake ranging from 0.3 to 3.2 mg of nicotine per cigarette.[180] Studies have also revealed that, with regular use throughout the day, the levels of nicotine in the blood of smokeless tobacco users are similar to those observed in cigarette smokers. Data demonstrating that these products deliver substantial, pharmacologically active doses of nicotine are summarized in the Jurisdictional Analysis. *See* 60 FR 41571–41575.

Laboratory Studies. Long before evidence emerged that nicotine is addictive, studies demonstrated that the quantitative and even qualitative nature of the effects of

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[179] Benowitz NL, Henningfield JE, Establishing a nicotine threshold for addiction, *New England Journal of Medicine* 1994;331:123-125. *See* AR (Vol. 12 Ref. 130).

Gori GB, Lynch CJ, Analytical cigarette yields as predictors of smoke bioavailability, *Regulatory Toxicology and Pharmacology* 1985;5:314-326. *See* AR (Vol. 12 Ref. 142).

[180] Benowitz NL, Henningfield JE, Establishing a nicotine threshold for addiction, *New England Journal of Medicine* 1994;331:123-125. *See* AR (Vol. 12 Ref. 130).

nicotine were dependent on the dose.[181] In the 1980's, particularly important discoveries provided indisputable proof that the nicotine dose levels produced by cigarette smoking affect the structure and function of the body, and that many of these effects are similar to those of prototypic addictive drugs. For example, nicotine, administered in doses considered biologically equivalent to those from tobacco use, was found to affect the brain's use of energy (cerebral glucose utilization).[182] Additionally, nicotine exposure at doses equivalent to those from tobacco use altered the brain so that excess nicotine receptors appeared on the surfaces of brain cells; this structural change was associated with altered responsiveness to nicotine.[183]

In addition, nicotine administered to animals in doses and at intervals comparable to those humans obtain from smoking produces one of the hallmark effects of addictive drugs: brain-mediated reinforcement of self-administration behavior. In the early 1980's, Goldberg and colleagues at Harvard and the National Institute on Drug Abuse provided unequivocal evidence that nicotine in doses comparable to those obtained in humans could

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[181] *See* Surgeon General's Report, 1988, chaps. 2-6. *See* AR (Vol. 129 Ref. 1592).

[182] *Id.* at 85-88.

[183] Marks MJ, Burch JB, Collins AC, Effects of chronic nicotine infusion on tolerance development and nicotine receptors, *Journal of Pharmacology and Experimental Therapeutics* 1983;226:817-825. *See* AR (Vol. 41 Ref. 103).

Surgeon General's Report, 1988, at 53-54. *See* AR (Vol. 129 Ref. 1592).

Id. at 32-33.

Benwell MEM, Balfour DJK, Anderson JM, Evidence that tobacco smoking increases the density of (–)-[^{3}H]nicotine binding sites in human brain, *Journal of Neurochemistry* 1988;50:1243-1247. *See* AR (Vol. 136 Ref. 1570).

function powerfully to engender repetitive drug-seeking behavior in monkeys.[184] In the late 1980's, Corrigall and Coen developed a rat model utilizing key dosing parameters of cigarette smoking and smokeless tobacco use. This model provided for the delivery of very rapid and small doses and led the animals to repeatedly administer nicotine to themselves.[185]

Nicotine Control of Tobacco Use. Nicotine's key pharmacological role in actual tobacco products is also confirmed by evidence that tobacco users adjust their consumption based on the products' nicotine levels. Manipulation of nicotine levels in cigarettes while holding the tar content constant has shown that nicotine is responsible for the maintenance of cigarette smoking behavior. Cigarette smokers given cigarettes with a high nicotine content decrease the number of cigarettes smoked.[186] Modifying the amount of nicotine available by varying the length of cigarette smoked will influence the amount of the cigarette smoked[187] and the characteristics of smoking (e.g., number of puffs, puff duration, puff size, depth of inhalation, amount of tobacco smoked).[188] When cigarettes are shorter,

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[184] Goldberg SR, Spealman RD, Goldberg DM, Persistent behavior at high rates maintained by intravenous self-administration of nicotine, *Science* 1981;214:573-575. *See* AR (Vol. 5 Ref. 35-2).

[185] Corrigall WA, Coen KM, Nicotine maintains robust self-administration in rats on a limited access schedule, *Psychopharmacology* 1989;99:473-478. *See* AR (Vol. 347 Ref. 5495).

[186] Goldfarb T, Gritz ER, Jarvik ME, *et al.*, Reactions to cigarettes as a function of nicotine and "tar," *Clinical Pharmacology and Therapeutics* 1976;19:767-772. *See* AR (Vol. 39 Ref. 53).

[187] Jarvik ME, Popek P, Schneider NG, *et al.*, Can cigarette size and nicotine content influence smoking and puffing rates? *Psychopharmacology* 1978;58:303-306. *See* AR (Vol. 41 Ref. 86).

[188] Surgeon General's Report, 1988, at 158-163. *See* AR (Vol. 129 Ref. 1592).

people smoke more of them.[189] Nemeth-Coslett and Griffiths showed that puff duration and puff volume are inversely proportional to the length of the cigarette.[190]

Studies conducted by Stolerman,[191] Nemeth-Coslett *et al.*,[192] and Pomerleau *et al.*[193] provide convincing evidence that tobacco products provide pharmacologically active doses of nicotine. Pretreatment of cigarette smokers with mecamylamine, an antagonist to nicotine that enters the brain, produced a dose-dependent increase in cigarette smoking (i.e., increases in puffs per cigarette, puff duration, and cigarettes per session and decreases in intercigarette interval and interpuff interval) that resembled what one would expect to see if the nicotine dose in the cigarette had been decreased. An increase in nicotine plasma levels also accompanied the increase in cigarette consumption. Pretreatment with another nicotine antagonist that did not enter the brain had no such effects. These studies clearly demonstrate that obtaining a pharmacologically active dose of nicotine in the brain motivates the amount of tobacco consumed on a daily basis.

Evidence from Nicotine Replacement Products. As described in the Jurisdictional Analysis, 60 FR 41565–41566, the ability of nicotine nasal spray to produce some of the classic characteristics of addiction to nicotine supports the position that tobacco users

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[189] Jarvik ME, Popek P, Schneider NG, *et al.*, Can cigarette size and nicotine content influence smoking and puffing rates? *Psychopharmacology* 1978;58:303-306. *See* AR (Vol. 41 Ref. 86).

[190] Surgeon General's Report, 1988, at 161. *See* AR (Vol. 129 Ref. 1592).

[191] Stolerman IP, Goldfarb T, Fink R, *et al.*, Influencing cigarette smoking with nicotine antagonists, *Psychopharmacologia* 1973;28:247-259. *See* AR (Vol. 42 Ref. 149).

[192] Nemeth-Coslett R, Henningfield JE, O'Keffe MK, *et al.*, Effects of mecamylamine on human cigarette smoking and subjective ratings, *Psychopharmacology* 1986;88:420-425. *See* AR (Vol. 41 Ref. 108).

[193] Pomerleau CS, Pomerleau OF, Majchrzak MJ, Mecamylamine pretreatment increases subsequent nicotine self-administration as indicated by changes in plasma nicotine level, *Psychopharmacology* 1987;91:391-393. *See* AR (Vol. 42 Ref. 112).

seek nicotine primarily for its systemic pharmacological effects and not for its acute sensory effects. In contrast to cigarette smoke, aqueous nicotine spray does not provide the user any pleasing sensory characteristics. In fact, the spray can be irritating and unpleasant to use, and excessive use can cause ulcerations of the nasal mucosa. Notwithstanding the unpleasantness of the nicotine delivery mechanism and the presence of painful ulcerations that were further aggravated by its continued use, the spray was used to maintain nicotine dependence for some participants in clinical trials submitted to FDA.[194]

Studies of nicotine replacement therapies also demonstrate efficacy in maintaining abstinence from smoking.[195] The ability of nicotine to promote abstinence, even when delivered through the skin, without any taste or flavor, demonstrates its key role as a reinforcer of tobacco consumption. Based on these data, among others, organizations with expertise in pharmacology and addiction have determined that cigarettes and smokeless tobacco deliver pharmacologically active doses of nicotine. In the 1986 analysis of smokeless tobacco, the Surgeon General determined that smokeless tobacco use can be addictive.[196] In 1988, after an even more extensive consideration of the potential addictiveness of nicotine, the Surgeon General determined that: (1) "cigarettes and other forms of tobacco are addicting;" (2) "nicotine is the drug in tobacco that causes

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[194] FDA Drug Abuse Advisory Committee Background Information (Aug. 1, 1994), Joint Abuse Liability Review of Nicotine Nasal Spray. *See* AR (Vol. 9 Ref. 117).

[195] *See* appendix 1 to Jurisdictional Analysis. *See* AR (Vol. 1 Appendix 1).

[196] Department of Health and Human Services, Public Health Service, *The Health Consequences of Using Smokeless Tobacco: A Report of the Advisory Committee to the Surgeon General, 1986,* NIH Publication No. 86-2874 (Bethesda MD: DHHS, PHS, 1986) (hereinafter cited as Surgeon General's Report, *Smokeless Tobacco,* 1986), at viii. *See* AR (Vol. 128 Ref. 1591).

addiction;" and (3) "the pharmacological and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine."[197] On August 2, 1994, FDA's Drug Abuse Advisory Committee, an independent group composed primarily of experts on addiction science, concluded that nicotine as delivered by commonly used tobacco products can produce strong physiological effects, including addiction.[198]

6. Conclusion

Nicotine is addictive and produces foreseeable psychoactive and pharmacological effects in a substantial proportion of tobacco users. This conclusion is so robust—and the evidence for it is so voluminous—that every major public health organization and relevant scientific authority in the world is in agreement. It is FDA's responsibility to base its regulatory actions on well-founded and accepted scientific facts. In this case, FDA believes that a very strong scientific basis exists on which to conclude that it is foreseeable that nicotine will produce pharmacological effects in a substantial number of tobacco consumers and that those consumers will use tobacco products to satisfy their addiction and to obtain the other pharmacological effects of nicotine. To conclude otherwise would not be credible.

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[197] Surgeon General's Report, 1988, at 13-17. *See* AR (Vol. 129 Ref. 1592).

[198] Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products" (Aug. 2, 1994), at 336-342. *See* AR (Vol. 255 Ref. 3445).

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7. Response to Additional Comments

a. Comments on the Professional Consensus That Nicotine Is Addictive

1. More than 150 professional health organizations or chapters, representing over 600,000 individuals and organizations, commented on whether nicotine is addictive. Virtually all concluded that it is. These groups include the following:

- The American Cancer Society
- The American College of Physicians
- The American Heart Association
- The American Lung Association
- The American Medical Association
- The American Psychiatric Association
- The American Psychological Association
- The American Society of Addiction Medicine
- The College on Problems of Drug Dependence
- The Society of General Internal Medicine
- The Society for Head and Neck Surgeons
- The Society for Research on Nicotine and Tobacco
- The Virginia Society of Hospital Pharmacists

FDA also notes that, of the more than 1,100 physicians, pharmacists, and other health professionals who commented on whether nicotine is addictive, virtually all agreed that it is.

The Agency concurs with the unanimous conclusion of these organizations, most of which have expertise in this area. FDA notes that organizations with vast experience

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examining other addictive drugs reached the same conclusion as organizations with vast experience studying nicotine. The former organizations include the American Psychiatric Association, the American Society of Addiction Medicine, the National Institute on Drug Abuse, and the World Health Organization. The latter include the American College of Chest Physicians and the Surgeon General's expert committees on tobacco.

2. The tobacco industry disputes the process by which the American Psychiatric Association concluded that nicotine is addictive. The industry quotes several critical comments about the *Diagnostic and Statistical Manual* to suggest that the entire DSM structure of classifying all psychiatric diagnoses is flawed. This position, held by a small minority of psychiatrists, has been decisively rejected by the profession as a whole. The DSM-IV is now used throughout the world to classify psychiatric disorders, including drug dependence.

FDA notes that, aside from this argument against the American Psychiatric Association, the industry does not dispute the expertise or decision-making capabilities of any of the other medical authorities originally cited by FDA. These authorities—which unanimously have concluded that nicotine is addictive—include the U.S. Surgeon General, the World Health Organization, the American Medical Association, the American Psychological Association, the Royal Society of Canada, and the Medical Research Council of the United Kingdom.

b. Comments on the Definition of Addiction

1. Several tobacco industry comments argue that cigarettes and smokeless tobacco are not addictive under a now-discarded definition of addiction developed in the 1950's and used by the U.S. Surgeon General in 1964.

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FDA disagrees with these comments. First, the tobacco industry borrows only selectively from the 1950's definition of addiction, emphasizing only certain criteria from that definition. Second, while the scientific community has rejected this historical definition in part because it failed to clearly classify cocaine and amphetamines as addictive, *see* section II.A.3.b., above, subsequent evidence has shown that nicotine would now qualify as addictive *even by this outdated definition.* The criteria cited by the Surgeon General,[199] which were not met by nicotine on the basis of data available in the early 1960's, are all met on the basis of data available today. These include the following:

- Surgeon General's 1964 conclusion: No overpowering compulsion to use the drug.

  Subsequent data: Ample documentation exists today that persons dependent upon cocaine, heroin, or alcohol find it as difficult to abstain from tobacco as from these other drugs and that persons who know that their lives are in imminent danger from smoking nevertheless continue to smoke.[200]

- Surgeon General's 1964 conclusion: No tendency to increase the dose.

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[199] Department of Health, Education, and Welfare, Public Health Service, *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service* (Washington DC: GPO, 1964), at 349-352. *See* AR (Vol. 43 Ref. 156).

[200] Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

Kozlowski LT, Wilkinson DA, Skinner W, *et al.*, Comparing tobacco cigarette dependence with other drug dependencies, *Journal of the American Medical Association* 1989;261:898-901. *See* AR (Vol. 84 Ref. 350).

West R, Himbury S, Smoking habits after laryngectomy, *British Medical Journal* 1985;291:514-515. *See* AR (Vol. 6 Ref. 59).

Davison G, Duffy M, Smoking habits of long term survivors of surgery for lung cancer, *Thorax* 1982;37:331-333. *See* AR (Vol. 6 Ref. 58).

Subsequent data: We now know that only about 10% of cigarette smokers are able to sustain a level of intake of five or fewer cigarettes per day. For example, one study found that 90% of people who smoke escalate to daily doses of five or more cigarettes.[201] Cigarettes are similar to morphine-like drugs in that, when either substance is readily available to the user, intake often escalates over a period of months or years and then stabilizes at a level that may vary little from day to day for many years.[202]

- Surgeon General's 1964 conclusion: No physical dependence on the effects of the drug.

Subsequent data: The documentation that nicotine produces physical dependence has now been provided by scores of clinical treatment studies and laboratory studies with humans and animals.[203] There is a characteristic

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[201] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

[202] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573). *See* AR (Vol. 535 Ref. 96, vol. III.G).

[203] Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

Kozlowski LT, Wilkinson DA, Skinner W, *et al.*, Comparing tobacco cigarette dependence with other drug dependencies, *Journal of the American Medical Association* 1989;261:898-901. *See* AR (Vol. 84 Ref. 350).

Surgeon General's Report, 1988, at 145-240. *See* AR (Vol. 129 Ref. 1592).

Corrigall WA, Herling S, Coen KM, Evidence for a behavioral deficit during withdrawal from nicotine treatment, *Pharmacology Biochemistry and Behavior* 1989; 33:559-562. *See* AR (Vol. 139 Ref. 1626).

tobacco withdrawal syndrome that has been recognized by leading medical organizations.[204]

- Surgeon General's 1964 conclusion: Detrimental effects on society are not well documented.

  Subsequent data: The detrimental effects on smokers themselves were recognized in 1964; however, it was not until the 1980's that the direct adverse effects of smoking upon nonsmokers and the fetuses of pregnant smokers were unequivocally documented.[205] Moreover, it is now recognized that nicotine has a severe adverse economic impact on many aspects of society.[206]

In addition to these four specific criteria, the Surgeon General in 1964 mentioned several other reasons for failing to categorize nicotine as addicting. These conclusions and the current data are as follows:

- Surgeon General's 1964 conclusion: Cigarette smokers did not become intoxicated.

Levin ED, Morgan MM, Galvez C, *et al.*, Chronic nicotine and withdrawal effects on body weight and food and water consumption in female rats, *Physiology and Behavior* 1987; 39:441-444. *See* AR (Vol. 278 Ref. 3932)

[204] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 244-245. *See* AR (Vol. 37 Ref. 8).

[205] Department of Health and Human Services, Office on Smoking and Health, *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General* (Atlanta: DHHS, 1986) (hereinafter cited as Surgeon General's Report, *Involuntary Smoking*, 1986). *See* AR (Vol. 128 Ref. 1591).

[206] McGinnis JM, Foege WH, Actual causes of death in the United States, *Journal of the American Medical Association* 1993;270(18):2207-2212. *See* AR (Vol. 2 Ref. 15-1).

Hearing on Preventive Health: An Ounce of Prevention Saves a Pound of Cure, Before the Special Committee on Aging, U.S. Senate, 103d Cong., 1st Sess. 2 (May 6, 1993) (statement of Roger Herdman, Maria Hewitt, Mary Laschober on smoking-related deaths and financial costs: Office of Technology Assessment Estimates for 1990). *See* AR (Vol. 170 Ref. 2024).

Hodgson TA, Cigarette smoking and lifetime medical expenditures, National Center for Health Statistics, *Milbank Quarterly* 1992;70(1):81-125. *See* AR (Vol. 19 Ref. 22).

Subsequent data: It is now well understood that nicotine can intoxicate, intoxication is a sign of nicotine overdose, and first-time users often become intoxicated.[207] The ability of nicotine to produce strong physiological and behavioral effects, including death at high doses, is no less than that of amphetamine or morphine.[208] In practice, intoxication is rarely evident in regular users because they have developed an extremely high level of tolerance to this effect of nicotine.[209]

- Surgeon General's 1964 conclusion: Subjective effects of nicotine itself were not well documented. The 1942 study by Johnston showing that intravenous nicotine could mimic the effects of smoking[210] was apparently given little weight because the study did not have the appropriate control conditions to rule out bias.

Subsequent data: By the 1980's and 1990's, many properly controlled studies using nicotine delivered intravenously, intranasally, and by inhalation essentially confirmed Johnston's findings.[211]

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[207] Surgeon General's Report, 1988, at 593-594. *See* AR (Vol. 129 Ref. 1592).

[208] *Id.* at 272-274, 594.

[209] *Id.* at 593-595.

[210] Johnston LM, Tobacco smoking and nicotine, *Lancet* 1942;2:742. *See* AR (Vol. 278 Ref. 3947).

[211] *See, e.g.*, Jones RT, Farrell TR III, Herning RI, Tobacco smoking and nicotine tolerance, in *Self-Administration of Abused Substances: Methods for Study*, ed. Krasnegor NA, NIDA Research Monograph 20 (Rockville MD: National Institute on Drug Abuse, 1978), at 202-208. *See* AR (Vol. 41 Ref. 88).

Henningfield JE, Miyasato K, Jansinski DR, Abuse liability and pharmacodynamic characteristics of intravenous and inhaled nicotine, *Journal of Pharmacology and Experimental Therapeutics* 1985;234:1-12. *See* AR (Vol. 39 Ref. 69).

Pomerleau CS, Pomerleau OF, Euphoriant effect of nicotine in smokers, *Psychopharmacology* 1992;108:460-465. *See* AR (Vol. 87 Ref. 426).

Perkins KA, Grobe JE, Epstein LH, *et al.*, Chronic and acute tolerance to subjective effects of nicotine, *Pharmocology, Biochemistry and Behavior* 1993;45:375-381. *See* AR (Vol. 271 Ref. 3728).

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- Surgeon General's 1964 conclusion: No well-controlled demonstration that nicotine substitution could facilitate tobacco abstinence.

  Subsequent data: The absence of a nicotine-delivering medication effective in helping people to achieve abstinence was also noted in the 1964 report. There is now powerful evidence that products devoid of any tobacco constituent except nicotine are effective aids to smoking cessation and to providing relief of withdrawal symptoms.[212]

- Surgeon General's 1964 conclusion: Personality deficit criteria did not appear satisfied.

  Subsequent data: It was noted that not categorizing tobacco use as an addiction avoided the inference that smokers would be considered to have "serious personality defects" under the definition of addiction then in place. We now understand that many people who develop addictions to cocaine, heroin, alcohol, or nicotine have no documented underlying personality disorder. Rather, the major cause of addiction is

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Perkins KA, Grobe JE, Epstein LH, *et al.*, Effects of nicotine on subjective arousal may be dependent on baseline subjective state, *Journal of Substance Abuse* 1992;4:131-141. *See* AR (Vol. 348 Ref. 5516).

Sutherland G, Stapleton JA, Russell MAH, *et al.*, Randomised controlled trial of nasal nicotine spray in smoking cessation, *Lancet* 1992;340:324-329. *See* AR (Vol. 91 Ref. 527).

Sutherland G, Russell MA, Stapleton J, *et al.*, Nasal nicotine spray: a rapid nicotine delivery system, *Psychopharmacology* 1992;108:512-518. *See* AR (Vol. 91 Ref. 526).

[212] Fagerstrom KO, Sawe U, Tonnesen P, Therapeutic use of nicotine patches: efficacy and safety, *Journal of Drug Development* 1993;5:191-205. *See* AR (Vol. 76 Ref. 156).

Fiore MC, Smith SS, Jorenby DE, *et al.*, The effectiveness of the nicotine patch for smoking cessation: a meta-analysis, *Journal of the American Medical Association* 1994;271:1940-1947. *See* AR (Vol. 6 Ref. 64-1).

Fiore MC, Jorenby DE, Baker TB, *et al.*, Tobacco dependence and the nicotine patch, *Journal of the American Medical Association* 1992;268:2687-2694. *See* AR (Vol. 351 Ref. 5609).

Surgeon General's Report, 1988, at 208. *See* AR (Vol. 129 Ref. 1592).

the presence of a psychoactive, reinforcing drug and adequate access to the drug to enable the development and sustenance of addiction.

Thus, it is virtually certain that tobacco use would be considered an addiction under the definition used by the Surgeon General in 1964. Indeed, FDA notes that a study sponsored by the tobacco industry in 1963 concluded that tobacco was addictive under the same definition used by the Surgeon General in 1964.[213]

2. The tobacco industry observes that definitions of addiction from several medical authorities are not identical, quotes several experts stating that whether tobacco is addictive depends on the definition of addiction, and presents excerpts from several scientific publications to suggest that no precise definition of addiction exists. The industry also argues that the use of the word "addiction" rather than "dependence" is political and claims that the modern definition of addiction is motivated by public health goals, morality, and lawsuits. The industry concludes that the modern definition of addiction is inappropriate for use in considering whether a product is a drug under the Act.

FDA disagrees. As discussed in section II.A.3.b., above, there is remarkable consensus among medical authorities around the world on the meaning of addiction. The subtle variations among written definitions reflect wording and emphasis, not significant differences in concepts; such variations are not surprising, given that medical organizations often write their own definitions of diseases and disease progression. International consistency on the meaning of addiction is demonstrated by the fact that all relevant

[213] Knapp PH, Bliss CM, Wells H, Addictive aspects in heavy cigarette smoking, *American Journal of Psychiatry* 1963;119:966. *See* AR (Vol. 528 Ref. 97, appendix 16).

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scientific bodies have concluded that nicotine is addictive. Indeed, the tobacco industry fails to suggest any reason to believe that the current international understanding of nicotine as addictive will change in the future.

The industry's quoting of addiction experts on the importance of defining addiction is not an argument against FDA's position. It is axiomatic that whether nicotine is addictive depends on the definition of addiction. The industry fails, however, to show that nicotine would not be considered addictive under any of the current definitions of addiction.

The industry's use of an article from the *Journal of the American Medical Association* to show that the definition of addiction is imprecise is equally unpersuasive.[214] The article describes how a national panel was appointed in 1983 to try to settle variations in definitions relating to substance abuse. The panel surveyed dozens of experts from major scientific organizations and produced a consensus definition of addiction: "A chronic disorder characterized by the compulsive use of a substance resulting in physical, psychological, or social harm to the user and continued use despite that harm."[215] This definition again is entirely consistent with the modern definition of addiction relied on by FDA, not the tobacco industry's preferred version from the 1950's.

The industry selectively quotes from several scientific publications that discuss subtle arguments over the precise definition of addiction. But these debates occur within a

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[214] Rinaldi RC, Steindler EM, Wilford BB, *et al.*, Clarification and standardization of substance abuse terminology, *Journal of the American Medical Association* 1988;259(4):555-557. *See* AR (Vol. 535 Ref. 96 vol. III.L).

[215] *Id.*

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broad understanding of addiction that has garnered overwhelming consensus. This understanding universally considers nicotine to be addictive.

FDA, like many scientific and public health authorities, uses "addiction" and "dependence" interchangeably. Regardless of the terminology used, the concept that nicotine has substantial pharmacological effects on the brains of users that cause people to use tobacco compulsively is the same. Furthermore, any implication that the modern scientific understanding of addiction is motivated by public health goals, morals, or lawsuits is mistaken. As discussed in section II.A.3.b., above, the tobacco industry's preferred definition was discarded on scientific grounds in 1964, 15 years before nicotine was first considered addictive.

Thus, there is no basis upon which to conclude that FDA's finding that nicotine is addictive—a conclusion with nearly universal scientific backing—is not useful in determining whether nicotine is a "drug" under the Act. The fact that nicotine meets all currently accepted scientific definitions of a dependence-producing drug and that these definitions include as a criterion psychoactive effects on the brain is highly relevant to the Agency's inquiry.

c. General Comments on Laboratory Evidence of Addictive Potential

1. Comments from numerous health professionals and scientists agree with FDA that laboratory data in animals and humans provide compelling evidence that nicotine in cigarettes and smokeless tobacco is a pharmacologically active agent that causes addiction. For example, the American Medical Association stated that it "concurs with the scientific rationale and legal basis for the FDA proposed action," and that it "strongly supports the scientific basis regarding nicotine . . . and its essential role in maintaining demand for tobacco

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products." Similarly, the Coalition on Smoking OR Health—an organization representing the American Heart Association, American Lung Association, and American Cancer Society—carefully reviewed the Jurisdictional Analysis "for accuracy, objectivity, and completeness" and concluded that "the FDA documents represent the most comprehensive, objective and scientifically accurate analysis of the impact of nicotine containing cigarettes and smokeless tobacco on the body ever conducted."

2. The tobacco industry repeatedly comments that evidence from one laboratory test *by itself* is not enough to justify the conclusion that nicotine is addictive. For example, the industry argues that positive results in drug discrimination tests in animals are not sufficient to prove that nicotine is addictive, as some nonaddictive substances also test positive. The industry repeats this same argument for subjective effects testing and animal self-administration studies. On several occasions, the industry uses quotations from addiction experts to support these arguments.

FDA agrees that evidence from each test *alone* may not prove conclusively that nicotine is addictive. But addiction authorities around the world determine whether a substance is addicting by considering results from all of the tests *together*. Nicotine tests positive in animal and human drug discrimination tests, subjective effects tests, and animal and human self-administration tests. Considering such evidence, the scientific community has overwhelmingly concluded that nicotine is addictive.

The tobacco industry's selective use of quotations from addiction experts illustrates the point. On several occasions, the industry tries to make it appear that the individuals quoted believe that addiction testing methods are not reliable or that nicotine is not addictive. In fact, these individuals are on record as reaching the opposite conclusions. For example, the

tobacco industry selectively quotes from the work of Balster that "[t]he results of self-administration studies should not be used alone for evaluating abuse potential. A number of drugs which probably possess minimal or no abuse potential have been shown to function as reinforcers in preclinical drug self-administration studies." [216] The industry also culls a quote from Woods that "[i]t should be clear that the proposition, *viz.*, that the drugs that serve as reinforcers in animals are abused by humans, is greatly oversimplified."[217] In both cases, however, the authors believe that demonstrating that a drug tests positive in both self-administration studies *and* drug discrimination studies is sufficient evidence of its abuse liability.[218] Nicotine has repeatedly proved positive in both tests.

d. Comments on Tests of Psychoactivity

1. The tobacco industry disputes FDA's analysis of drug discrimination tests in animals. The industry argues that the purpose of drug discrimination studies is merely to demonstrate that the test subject "recognizes" or "identifies" a substance that has been administered. The industry further claims that laboratory animals have been able to

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[216] Balster RL, Drug abuse potential evaluation in animals, *British Journal of Addiction* 1991;86:1549-1558, at 1555. *See* AR (Vol. 8 Ref. 89).

[217] Woods J, Some thoughts on the relations between animal and human drug-taking, *Progress in Neuro-psychopharmacology and Biological Psychiatry* 1983;7:577-584, at 582. *See* AR (Vol. 535 Ref. 96, vol. III.N).

[218] Balster RL, Drug abuse potential evaluation in animals, *British Journal of Addiction* 1991;86:1549-1558, at 1555. *See* AR (Vol. 8 Ref. 89).

Woods J, Some thoughts on the relations between animal and human drug-taking, *Progress in Neuro-psychopharmacology and Biological Psychiatry* 1983;7:577-584, at 582. *See* AR (Vol. 535 Ref. 96, vol. III.N).

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discriminate nicotine in the studies cited by FDA because researchers used amounts of nicotine that vastly exceed the nicotine yields in commercial cigarettes.

FDA disagrees. Drug discrimination studies are not just a measure of whether or not the subject can "recognize" or "identify" a substance; these studies assess the psychoactivity of a drug. Drugs that can be successfully discriminated from placebo are psychoactive.[219]

FDA also disagrees that animals can discriminate nicotine's stimulus properties only when receiving doses that vastly exceed those absorbed by human smokers. It is misleading to make a direct comparison between the training dose administered to animals and the nicotine yields of commercial cigarettes. Pharmacological effects elicited by a drug are the result of its plasma concentration and the amount of drug at the receptor site (i.e., site of action), not necessarily of how much drug is in the product or the amount of drug administered per kilogram of body weight. This distinction becomes critical when comparing animals with different abilities to metabolize drugs. The same amount of drug per kilogram administered to two species may lead to radically different plasma concentrations, for example, if one species breaks down and excretes the drug faster than the other.

A study by Pratt *et al.*[220] cited by the comment actually demonstrates that doses of nicotine that can be discriminated by rats yield a plasma concentration of nicotine that is comparable to the plasma concentration of nicotine in human smokers. Accordingly, rats *can* learn to discriminate a dose of nicotine physiologically comparable to the dose received by

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[219] Surgeon General's Report, 1988, at 170-171. *See* AR (Vol. 129 Ref. 1592).

[220] Pratt JA, Stolerman IP, Garcha HS, *et al.*, Discriminative stimulus properties of nicotine: further evidence for mediation at a cholinergic receptor, *Psychopharmacology* 1983;81:54-60. *See* AR (Vol. 8 Ref. 90-2).

cigarette smokers and smokeless tobacco users. Two studies by Stolerman *et al.*[221] also demonstrated that rats can discriminate from saline a dose of nicotine that is comparable to the dose delivered to human tobacco users.

2. The tobacco industry argues that nicotine's action as a discriminative stimulus is not exactly the same as that of cocaine and amphetamine.

It is well known that nicotine does not behave identically to cocaine and amphetamine in drug discrimination experiments. This difference does not mean that nicotine is not an addictive drug, however. Amphetamine, morphine, alcohol, and nicotine can all be differentiated from one another by animals and humans because of their unique effects. The fact that nicotine is not identical to cocaine is no more relevant than the fact that cocaine is not identical to morphine. What is critical is that all of these drugs are psychoactive because of their effects on the brain. The published data have shown that there are qualitative differences in these drugs' discriminative stimulus effects and that nicotine produces effects more amphetamine-like than morphine-like in animals and humans.[222] Thus, while nicotine's discriminative stimulus effects are unique, they resemble the effects of stimulants more closely than those of sedatives. These data confirm that nicotine produces critical discriminative and subjective effects shared by dependence-producing drugs.

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[221] Stolerman IP, Garcha HS, Pratt JA, *et al.*, Role of training dose in discrimination of nicotine and related compounds by rats, *Psychopharmocology* 1984;84:413-419. *See* AR (Vol. 8 Ref. 90-5).

Stolerman IP, Discriminative stimulus effects of nicotine in rats trained under different schedules of reinforcement, *Psychopharmacology* 1989;97:131-138. *See* AR (Vol. 9 Ref. 90-6).

[222] Pratt JA, Stolerman IP, Garcha HS, *et al.*, Discriminative stimulus properties of nicotine: further evidence for mediation at a cholinergic receptor, *Psychopharmacology* 1983;81:54-60. *See* AR (Vol. 8 Ref. 90-2).

Stolerman IP, Garcha HS, Pratt JA, *et al.*, Role of training dose in discrimination of nicotine and related compounds by rats, *Psychopharmocology* 1984;84:413-419. *See* AR (Vol. 8 Ref. 90-5).

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3. The tobacco industry contests FDA's interpretation of three studies on drug discrimination in humans cited in the Jurisdictional Analysis. The industry concludes that there is no evidence to suggest that nicotine functions as a discriminative stimulus in humans.

Upon review of these studies and the administrative record, FDA concludes that there is convincing evidence that nicotine tests positive in human drug discrimination studies. The industry disputes the conclusion that a study by Kallman *et al.* proved that discrimination occurred in the central nervous system.[223] FDA, however, never drew this conclusion. FDA cited this study to demonstrate that smokers can differentiate between high- and low-nicotine cigarettes, a finding conceded by the industry. Much other evidence in the administrative record, described in section II.A.3.c.i. of this document and in the 1988 Surgeon General's report,[224] demonstrates that the discrimination occurs in the central nervous system.

The industry also claims that a study by Perkins *et al.* did not demonstrate discrimination.[225] Noting that male subjects identified 2 ug/kg of nicotine (administered by nasal spray) versus placebo correctly 50% of the time, the industry claims that this is exactly the percentage that would do so by chance. The industry concludes that the drug discrimination demonstrated by this study was due purely to chance and was not due to any effects of nicotine in the brain.

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[223] Kallman WM, Kallman MJ, Harry GJ, *et al.*, Nicotine as a discriminative stimulus in human subjects, in *Drug Discrimination: Applications in CNS Pharmacology*, eds. Colpaert FC, Slangen JL (Amsterdam: Elsevier Biomedical Press, 1982), at 211-218. *See* AR (Vol. 41 Ref. 89).

[224] Surgeon General's Report, 1988, at 176-178. *See* AR (Vol. 129 Ref. 1592).

[225] Perkins K, Grobe J, Scierka A, *et al.*, Discriminative stimulus effects of nicotine in smokers, in *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II*, eds. Clarke PBS, Quik M, Thurau K, *et al.* (Basel: Birkhauser Verlag, 1994), at 111. *See* AR (Vol. 42 Ref. 111).

Upon review of the Perkins study, FDA notes that the industry has seriously misinterpreted its results. The study's objective was to determine whether subjects could differentiate the low dose of 12 ug/kg of nicotine versus placebo, and its finding was that 100% of all subjects correctly identified nicotine at this dose at least 80% of the time. The authors concluded, "These findings indicate that humans are able to discriminate among low doses of nicotine."[226] (The dose of 12 ug/kg of nicotine is less than the typical dose of nicotine received from a cigarette.[227]) Having demonstrated this finding, the authors went on to test even smaller doses to determine the lowest dose of effective discrimination, that is, the dose at which subjects discriminated nicotine at least 50% of the time. That such a dose exists does not disprove nicotine's role as a discriminative stimulus, as implied by the tobacco industry; a minimal dose that cannot be differentiated from placebo exists for *all* psychoactive drugs.

Finally, the industry contends that a study by Goldfarb *et al.*[228] is not a formal "discrimination" study. The Goldfarb study was cited not as a discrimination study but to demonstrate that humans can differentiate between cigarettes with different nicotine yields, a conclusion conceded by the industry.

4. The tobacco industry argues that studies of the "subjective effects" of nicotine have vague methods and use subjects who are not representative of all smokers. These

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[226] *Id.* at 111.

[227] Perkins KA, Grobe JE, Epstein LH, *et al.*, Chronic and acute tolerance to subjective effects of nicotine, *Pharmacology, Biochemistry and Behavior* 1993;45:375-381. *See* AR (Vol. 271 Ref. 3728).

[228] Goldfarb TL, Gritz ER, Jarvik ME, *et al.*, Reactions to cigarettes as a function of nicotine and "tar," *Clinical Pharmacology and Therapeutics* 1976;19:767-772. *See* AR (Vol. 39 Ref. 53).

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comments criticize a study by Henningfield *et al.*[229] which was cited by the Agency. The industry further argues that the "subjective effects" of cigarettes could be secondary to tar and cites a study to suggest that nicotine-free cigarettes cause "liking."[230] The industry thus disputes FDA's conclusion that nicotine produces subjective effects that are similar to those of other addictive drugs.

FDA disagrees. A wide range of evidence, discussed in section II.A.3.c.i., above, demonstrates that nicotine, whether administered alone or in a cigarette, behaves like other addictive drugs in "subjective effects" testing. Upon review of this evidence, FDA notes that the industry criticized only one of its cited studies.

FDA further concludes that the Henningfield study is accurate and consistent with the findings of other researchers. The study design used by Henningfield *et al.* is a standardized procedure for qualifying the abuse liability of drugs in humans; it is used nationally and internationally by addiction researchers.[231] The use of subjects with histories of drug abuse is also standard practice in such studies; indeed, as described in section II.A.3.c.i., above, these subjects are employed because they can use their history to distinguish the psychoactive effects of different drugs. Thus, for this type of abuse liability testing, it is critical that the population be composed of smokers with experience with other addictive drugs to enable them to compare the effects of nicotine to those of other drugs.

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[229] Henningfield JE, Miyasato K, Jasinski DR, Abuse liability and pharmacodynamic characteristics of intravenous and inhaled nicotine, *Journal of Pharmacology and Experimental Therapeutics* 1985;234:1-12. *See* AR (Vol. 39 Ref. 69).

[230] *See* section II.A.3.c.i., above, for a description of the term "liking."

[231] Jasinski DR, Henningfield JE, Human abuse liability assessment by measurement of subjective and physiological effects, in *Testing for Abuse Liability of Drugs in Humans*, eds. Fischman MW, Mello NK, NIDA Research Monograph 92 (Rockville MD: National Institute on Drug Abuse, 1989). *See* AR (Vol. 76 Ref. 172).

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The results from the study by Henningfield *et al.* demonstrate that nicotine, delivered by intravenous injection or by inhalation of tobacco smoke, produces similar subjective effects. These effects include dose-related elevation in the Morphine-Benzedrine Group Scale and the "liking" scale. There is no possibility that the subjects were responding to the "flavor" of nicotine or tar when they were able to discriminate nicotine injected intravenously. Nicotine produced results similar to those of other dependence-producing drugs (e.g., morphine, cocaine, and amphetamine) on the scales used in this study.

Furthermore, researchers who preceded and followed Henningfield obtained consistent findings. Researchers other than Henningfield *et al.*, using methods other than the MBG and the "liking" scale, also confirmed that nicotine produces positive subjective effects after intranasal and intravenous administration.[232] Subjects in these studies used the following adjectives to describe the positive subjective effects of nicotine: "head rush," "feeling good," or "high." This evidence strongly demonstrates that nicotine—and not tar—is responsible for the "subjective effects" of cigarettes.

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[232] Sutherland G, Stapleton JA, Russell MAH, *et al.*, Randomised controlled trial of nasal nicotine spray in smoking cessation, *Lancet* 1992;340:324-329. *See* AR (Vol. 91 Ref. 527).

Sutherland G, Russell MA, Stapleton J, *et al.*, Nasal nicotine spray: a rapid nicotine delivery system, *Psychopharmacology* 1992;108:512-518. *See* AR (Vol. 91 Ref. 526).

Perkins KA, Grobe JE, Epstein LH, *et al.*, Chronic and acute tolerance to subjective effects of nicotine, *Pharmacology, Biochemistry and Behavior* 1993;45:375-381. *See* AR (Vol. 271 Ref. 3728).

Perkins KA, Grobe JE, Epstein LH, *et al.*, Effects of nicotine on subjective arousal may be dependent on baseline subjective state, *Journal of Substance Abuse* 1992;4:131-141. *See* AR (Vol. 348 Ref. 5516).

Johnston LM, Tobacco smoking and nicotine, *Lancet* 1942;2:742. *See* AR (Vol. 278 Ref. 3947).

Jones RT, Farrell TR III, Herning RI, Tobacco smoking and nicotine tolerance, in *Self-Administration of Abused Substances: Methods for Study*, ed. Krasnegor NA, NIDA Research Monograph 20 (Rockville MD: National Institute on Drug Abuse, 1978), at 202-208. *See* AR (Vol. 41 Ref. 88).

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Finally, the industry cites a study by Butschky *et al.*[233] to suggest that nicotine-free cigarettes cause "liking" too. What the industry does not mention is that the study was conducted in newly abstinent smokers and that these nicotine-free cigarettes were "liked" only when compared to lettuce cigarettes that the researchers acknowledged to be unpalatable. As described in section II.B.3., below, the repeated association of pharmacological effects and sensory effects over thousands of repetitions causes the sensory aspects of addictive behaviors (such as taste) to come to be associated with the pharmacological effect (such as "liking") of addictive substances. Much as Pavlov's dog salivated at the sound of the bell (a conditioned response), individuals addicted to drugs actually experience some of the effects of the psychoactive drug by conditioned cues associated with the act of self-administering the drug in the early stages of abstinence.[234] This phenomenon has been described for many drugs, including heroin.[235] Just as a heroin addict may experience a rush simply by injecting a saline solution, a cigarette smoker may experience pleasure when smoking a denicotinized cigarette. Thus, the finding that a denicotinized cigarette can trigger "liking" during withdrawal does not call into question the conclusion that nicotine has "subjective effects" in humans.

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[233] Butschky MF, Bailey D, Henningfield JE, *et al.*, Smoking without nicotine delivery decreases withdrawal in 12-hour abstinent smokers, *Pharmacology, Biochemistry and Behavior* 1995;50(1):91-96. *See* AR (Vol. 442 Ref. 7484).

[234] O'Brien CP, Testa T, Ternes J, *et al.*, Conditioning effects of narcotics in humans, in *Behavioral Tolerance: Research and Treatment Implications*, NIDA Research Monograph 18 (Washington DC: Government Printing Office No. 017-024-00899-8, Jan. 1978), at 67-71. *See* AR (Vol. 535 Ref. 96, vol. III.L).

[235] Surgeon General's Report, 1988, at 308-311. *See* AR (Vol. 129 Ref. 1592).

e. Comments on Self-Administration and Reinforcement

1. The tobacco industry argues that nicotine's reinforcing effects are different from those of heroin and cocaine, that animals need to be trained to self-administer nicotine, that the reinforcing efficacy of nicotine is more like that of caffeine, and that in one study cited by FDA a light stimulus associated with nicotine was required for self-administration. The industry concludes that animal self-administration studies do not support the finding that nicotine is addictive.

FDA disagrees. Upon review of the evidence in the administrative record, FDA notes that there are over ten studies demonstrating self-administration of nicotine by animals.[236] Only one of these is specifically contested by the tobacco industry. Furthermore, none of the industry's arguments seriously call into question FDA's finding that animals self-administer nicotine in a manner consistent with other addictive substances.

It is true that the reinforcing effects of nicotine do differ from those of cocaine and heroin; all dependence-producing drugs are not alike. In fact, FDA noted that the range of environmental conditions under which nicotine functions as a positive reinforcer appears more limited than for cocaine.[237] The limited conditions under which animals self-administer nicotine, however, closely correspond to the conditions of human tobacco use. That is, animals self-administer nicotine when it is given intermittently—in a fashion similar to nicotine delivery from cigarettes and smokeless tobacco.

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[236] *See* appendix 1 to Jurisdictional Analysis. *See* AR (Vol. 1 Appendix 1).

[237] *Id.*

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FDA agrees that animals can be trained to self-administer nicotine. This method is widely accepted as standard practice in self-administration testing in animals. What is important is that, under these conditions, nicotine is self-administered significantly more than placebo and in a manner consistent with other addictive substances.

The tobacco industry cites a review chapter in a textbook on psychopharmacology to suggest that caffeine and nicotine self-administration are similar. The review article cited focuses on whether caffeine is a drug of abuse and, while casually noting similarities between some data on nicotine and caffeine, does not purport to analyze the studies on nicotine at all.[238] Indeed, caffeine self-administration in animals is weak and sporadic.[239] FDA further notes that the chapter on nicotine in this same textbook unequivocally concludes that nicotine is addictive.[240]

Finally, FDA agrees that the study by Goldberg *et al.*[241] showed that squirrel monkeys self-administer nicotine most actively when associated with a light stimulus. The tobacco

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[238] Griffiths RR, Mumford GK, Caffeine—A drug of abuse?, in *Psychopharmacology: The Fourth Generation of Progress*, eds. Bloom FE, Kupfer DJ (New York: Raven Press, 1995), at 1699-1713. *See* AR (Vol. 535 Ref. 96, vol. III.E).

[239] Heishman SJ, Henningfield JE, Stimulus functions of caffeine in humans: relation to dependence potential, *Neuroscience and Biobehavioral Reviews* 1992;16:273-287. *See* AR (Vol. 79 Ref. 230).

Griffiths RR, Woodson PP, Reinforcing properties of caffeine: studies in humans and laboratory animals, *Pharmacology, Biochemistry and Behavior* 1988;29(2):419-427. *See* AR (Vol. 535 Ref. 96, vol. III.E).

Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573), at 524. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[240] Henningfield JE, Schuh LM, Jarvik ME, Pathophysiology of tobacco dependence, in *Psychopharmacology: The Fourth Generation of Progress*, eds. Bloom FE, Kupfer DJ (New York: Raven Press, 1995), at 1715-1729. *See* AR (Vol. 39 Ref. 72).

[241] Goldberg SR, Spealman RD, Goldberg DM, Persistent behavior at high rates maintained by intravenous self-administration of nicotine, *Science* 1981;214:573-575. *See* AR (Vol. 5 Ref. 35-2).

industry implies that this finding means that the light stimulus—not nicotine—was responsible for nicotine self-administration in this study. FDA disagrees. Rates of self-administration of nicotine with the light stimulus *were markedly higher than rates of self-administration of placebo* with the light stimulus. Indeed, the monkeys' self-administration of nicotine was so intense that it resembled cocaine use. Thus, the conclusion that nicotine was not self-administered is incorrect; the correct conclusion is that nicotine self-administration was most dramatic when associated with environmental cues that had been linked to nicotine injections.

2. The smokeless tobacco industry claims that its products provide a constant dose of nicotine, a regimen that animals did not self-administer. This claim is contrary to the evidence. As described in section II.D., below, moist snuff and chewing tobacco do not provide uniform release of nicotine from the products. In fact, each pinch of smokeless tobacco provides nicotine that is absorbed rapidly for the first 5 minutes; the rate of absorption then tapers off until the next pinch is consumed. This pattern of nicotine consumption is similar to the regimen that was self-administered by animals.

3. The tobacco industry criticizes the human self-administration study conducted by Henningfield *et al.*[242] on the grounds that the number of subjects used in the study was too small, that the study should have been conducted with subjects without a history of drug abuse, and that the subjects also self-administered saline.

FDA believes that the study's design was sound and that the results are reliable. The procedure utilized by these researchers is the standard procedure utilized by all investigators evaluating the abuse liability of a compound in humans. This well-

[242] Henningfield JE, Miyasoto K, Jasinski DR, Cigarette smokers self-administer intravenous nicotine, *Pharmacology, Biochemistry and Behavior* 1983;19:887-890. *See* AR (Vol. 39 Ref. 71).

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established procedure has been used to examine the abuse potential of a variety of compounds, such as alcohol, marijuana, heroin, and sedatives, in both inpatient and outpatient settings. In the evaluation of a new molecular entity (NME) that shows some structural and/or pharmacological similarities to known drugs of abuse, FDA requires that studies similar to this one be conducted in order to reach a regulatory decision on the abuse potential of the NME being considered for drug approval.[243]

In response to the concerns of the tobacco industry about the study methodology, the sample size of six is acceptable and the use of volunteers with histories of drug abuse is a valid method of conducting such research, according to the National Institute on Drug Abuse.[244] Human studies evaluating the abuse potential of a compound in subjects without a history of drug abuse do not produce valid results. Such tests in non-drug abusers could lead to the conclusion that drugs, including heroin, have a low potential to produce dependence because first-time users may not find them pleasant.[245]

With respect to the self-administration of saline, the comment overlooks major distinctions between nicotine and saline: (1) "subjective effects" were not associated with the saline deliveries, thus saline was not psychoactive; (2) in comparison to the orderly pattern of self-administration observed with the nicotine injections, the pattern of saline deliveries was highly variable; (3) the number of self-administered saline injections

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[243] *See* Surgeon General's Report, 1988, at 270. *See* AR (Vol. 129 Ref. 1592).

[244] Jasinski DR, Henningfield JE, Human abuse liability assessment by measurement of subjective and physiological effects, in *Testing for Abuse Liability of Drugs in Humans*, eds. Fischman MW, Mello NK, NIDA Research Monograph 92 (Rockville MD: National Institute on Drug Abuse, 1989). *See* AR (Vol. 76 Ref. 172).

[245] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573), at 529. *See* AR (Vol. 535 Ref. 96, vol. III.G).

decreased across sessions while nicotine injections were constant in those subjects who were tested repetitively with saline and nicotine; and (4) when saline and nicotine were simultaneously available in a follow-up study, the volunteers self-administered nicotine almost exclusively and not saline.[246] Thus, saline was not psychoactive and did not function as a "positive reinforcer."

4. The tobacco industry argues that caffeine, rapid eye movement (REM) sleep, magnetic fields, and stress increase dopamine levels in the brain. According to the industry, then, nicotine's effect on dopamine activity is shared by several other compounds or experiences.

This argument is based on a mischaracterization of the relationship between addictive substances and dopamine activity. FDA found that nicotine and other addictive substances do more than increase dopamine levels in the brain; they increase dopamine activity in a specific system that signals reward and pleasure, thus leading to reinforcing behavior. Nicotine's effect in this system is similar to that of other dependence-producing substances. These conclusions are based on reproducible studies and are widely accepted in the scientific community. Indeed, none of the industry's cited studies casts any doubt on the profound effects of nicotine on this brain system.

One study, cited by the industry as proof of the effect of caffeine on dopamine levels, actually examined the effect of caffeine on aggressive behavior of rats. Dopamine levels were not even measured. The authors merely speculated at the end of the article

[246] Surgeon General's Report, 1988, at 192. *See* AR (Vol. 129 Ref. 1592).

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that caffeine may affect rat aggression via dopamine. Moreover, they did not extend their speculation to reward or reinforcement.[247]

Another study, cited by the industry as proof of the effect of REM sleep and magnetic fields on dopamine, actually described two patients treated with magnetic fields—without any control group. The authors merely speculated that REM sleep deprivation and magnetic fields may affect dopamine in the mesolimbic system. But without a control group, it is impossible to assess whether there was *any* true response to magnetic fields.[248]

The industry cites a third study to suggest that stress increases dopamine levels.[249] This study delivered severe stimuli such as electric shocks to mice and studied dopamine responses. The authors concluded that a dopamine-based reward pathway exists and is altered under conditions of severe stress. This conclusion casts no doubt on the finding that nicotine also critically affects this pathway.

5. In a footnote, the tobacco industry argues that "it is not clear that nicotine's effects on dopaminergic mechanisms play a significant role in smoking behavior." This argument refers to a study by Corrigall and Coen.[250]

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[247] Petkov VV, Rousseva S, Effects of caffeine on aggressive behavior and avoidance learning of rats with isolation syndrome, *Methods and Findings in Experimental and Clinical Pharmacology* 1984;6(8):433-436. *See* AR (Vol. 535 Ref. 96, vol. III.L).

[248] Sandyk R, Tsagas N, Anninos PA, *et al.*, Magnetic fields mimic the behavioral effects of REM sleep deprivation in humans, *International Journal of Neuroscience* 1992;65(1-4):61-68. *See* AR (Vol. 535 Ref. 96, vol. III.L).

[249] Puglisi-Allegra S, Kempf E, Cabib S, Role of genotype in the adaptation of the brain dopamine system to stress, *Neuroscience and Biobehavioral Reviews* 1990;14(4):523-528. *See* AR (Vol. 535 Ref. 96, vol. III.L).

[250] Corrigall W, Coen K, Dopamine mechanisms play at best a small role in the nicotine discriminative stimulus, *Pharmacology, Biochemistry and Behavior* 1994;48(3):817-820. *See* AR (Vol. 535 Ref. 96, vol. III.B).

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FDA has reviewed the study in question and concludes that the tobacco industry's conclusion seriously misrepresents the research. In this paper, the authors suggested that dopamine activity may not explain why smokers recognize low doses of nicotine in their brain, but the authors never doubted that dopamine activity is essential to the reward associated with smoking. The same article cited by the industry includes the statement that "the reinforcing effects of nicotine have a dopaminergic substrate, likely the ascending mesolimbic dopamine system"[251]—exactly the finding of FDA. These researchers, misrepresented by the industry to suggest a small role for dopamine in smoking behavior, have demonstrated in their own laboratory that dopamine activity significantly affects nicotine consumption.[252]

f. Comments on Withdrawal, Tolerance, and Nicotine Replacement

1. The tobacco industry argues that the effects of withdrawal from nicotine are not substantial. This argument is based upon multiple overlapping and sometimes contradictory contentions: (1) nicotine withdrawal is not as severe as withdrawal from certain other drugs, and some people quit smoking easily; (2) physical and psychological symptoms experienced during nicotine withdrawal are not the same among all abstinent users; (3) withdrawal from nicotine produces psychological but not physical symptoms; (4) the psychological symptoms of abstinence may actually be a psychopathological condition previously suppressed by nicotine or may be frustration with losing a pleasurable activity; (5) what is thought to be nicotine withdrawal may actually be caffeine withdrawal

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[251] *Id.* at 817.

[252] Corrigall WA, Franklin KBJ, Coen KM, *et al.*, The mesolimbic dopaminergic system is implicated in the reinforcing effects of nicotine, *Psychopharmacology* 1992;107:285-289. *See* AR (Vol. 8 Ref. 93-4).

or caffeine toxicity; (6) the severity of withdrawal symptoms does not always correlate with relapse; and (7) epidemiological studies cited by FDA do not prove a substantial withdrawal syndrome.

Upon careful review of the industry's comments and the administrative record, FDA finds that nicotine clearly produces a withdrawal syndrome among abstinent tobacco users. This syndrome—which includes both psychological and physiological symptoms—is described in numerous scientific articles and reviews cited by FDA,[253] only a few of which were criticized by the tobacco industry. Of the studies on withdrawal from smokeless tobacco cited by FDA, none is contested by the industry. The tobacco industry also accepts FDA's finding that tobacco withdrawal causes many significant autonomic changes, such as changes in heart rate. Several of the industry's arguments do not seriously contest the fact that nicotine has a substantial withdrawal syndrome. The remaining arguments contradict each other. The Agency's specific responses to the major industry contentions are as follows:

- Nicotine withdrawal is not as severe as withdrawal from certain other drugs, and some people quit smoking easily.

FDA agrees that withdrawal from nicotine is not as acutely life-threatening as withdrawal from certain addictive drugs such as alcohol or short-acting barbiturates. But the severity of nicotine withdrawal *is* comparable to that of other addictive drugs such as

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[253] *See* Jurisdictional Analysis, 60 FR 41560–41562

See also Surgeon General's Report, 1988, at 197-207. *See* AR (Vol. 129 Ref. 1592).

American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 244-245. *See* AR (Vol. 37 Ref. 8).

cocaine.[254] Medical authorities around the world have recognized the existence of a nicotine withdrawal syndrome that causes "clinically significant distress or impairment in social, occupational, or other areas of functioning."[255]

FDA agrees that some people quit tobacco products easily. Similarly, some people quit cocaine and other addictive substances easily.[256] However, for most addicted users of tobacco, quitting is very difficult. *See* section II.A.3.c.ii., above. The characteristic feature of an addictive substance is that it is difficult for most people to quit. Thus, the fact that some people can quit smoking easily is irrelevant to nicotine's addictiveness and to the scientific consensus supporting a nicotine withdrawal syndrome. Moreover, it may actually be easier to quit other powerful substances than to quit nicotine. Smokers who consume about a pack or more of cigarettes per day are more than twice as likely to report withdrawal symptoms during abstinence as people who consume five or more drinks on five or more occasions in a month, people who repeatedly use cocaine, and people who repeatedly use marijuana.[257]

- Physical and psychological symptoms experienced during nicotine withdrawal are not the same among all abstinent users.

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[254] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437, at 429. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[255] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 245. *See* AR (Vol. 37 Ref. 8).

[256] Kleber H, Don't you believe that nicotine isn't addictive, *New York Times*, Apr. 4, 1994. *See* AR (Vol. 196 Ref. 2497).

Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437, at 429. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[257] Henningfield JE, Clayton R, Pollin W, Involvement of tobacco in alcoholism and illicit drug use, *British Journal of Addiction* 1990;85:279-292, at 280-281. *See* AR (Vol. 39 Ref. 66).

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FDA agrees that there is variation among tobacco users' physical and psychological responses to abstinence. But, as described in section II.A.3.c.i., above, and in reviews cited by the Agency, several symptoms are so common as to be part of a defined syndrome.[258] These symptoms include depressed mood, insomnia, irritability, anxiety, difficulty concentrating, restlessness, decreased heart rate, and increased appetite. Thousands of individuals around the world have reported these symptoms in studies of tobacco abstinence.

- Withdrawal from nicotine produces psychological but not physical symptoms.

The tobacco industry goes on to quote selectively from some researchers to suggest that nicotine withdrawal does not produce physical symptoms. This argument is at odds not only with the consensus understanding of nicotine withdrawal, but also with other quotations used by the tobacco industry in the same comment, which suggests that common withdrawal symptoms include, for example, "headache."[259]

Indeed, the very sources cited by the tobacco industry clearly agree with FDA's finding of a substantial tobacco withdrawal syndrome. For example, Balfour, who is quoted by the industry to suggest that withdrawal is mainly psychological, states that "many habitual smokers *experience significant and unpleasant withdrawal effects* when they first stop smoking which can be ameliorated by giving nicotine in another form."[260]

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[258] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 244-245. *See* AR (Vol. 37 Ref. 8).

[259] Clark WG, Brater DC, Johnson AR, Drug abuse and dependence, in *Goth's Medical Pharmacology* (Baltimore: Mosby), 336-352, at 347. *See* AR (Vol. 535 Ref. 96, vol. III.B).

[260] Balfour DJK, The neurochemical mechanisms underlying nicotine tolerance and dependence, in *The Biological Bases of Drug Tolerance and Dependence*, ed. Pratt JA (New York: Academic Press, 1991), 121-151, at 123 (citation omitted) (emphasis added). *See* AR (Vol. 535 Ref. 96, vol. III.A).

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Similarly, a quotation culled from a review by Hughes *et al.* is used to support the conclusion that the effects of nicotine withdrawal are not substantial. In fact, Hughes *et al.* attribute multiple physical and psychological symptoms to nicotine withdrawal and conclude that some symptoms can be so severe that they may "prevent smoking cessation."[261]

- The psychological symptoms of abstinence actually may be a psychopathological condition previously suppressed by nicotine or may be frustration with losing a pleasurable activity.

The tobacco industry cites the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association for this assertion, but offers no evidence to suggest that any significant number of quitting smokers have psychiatric diagnoses or are just frustrated. Nor does the DSM. Its actual text merely alerts clinicians not to mistake symptoms of abstinence for psychopathology or frustration "in any given case."[262]

- What is thought to be nicotine withdrawal may actually be caffeine withdrawal or caffeine toxicity.

FDA agrees that some symptoms are common to caffeine and nicotine withdrawal, and some are common to nicotine withdrawal and caffeine toxicity. Withdrawal from nicotine and cocaine also causes common symptoms of depressed mood, increased

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[261] Hughes JR, Higgins ST, Hatsukami D, Effects of abstinence from tobacco: a critical review, *Research Advances in Alcohol and Drug Problems* 1990;10:317-398, at 381. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[262] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 3d ed., revised (Washington DC: American Psychiatric Association, 1987), at 150. *See* AR (Vol. 535 Ref. 96, vol. III.A).

appetite, and insomnia.[263] Such overlap has not led any credible scientific source to conclude that nicotine withdrawal has been confused with another drug's syndrome and therefore does not exist.

- The severity of withdrawal symptoms does not always correlate with relapse.

On several occasions in its comments, the tobacco industry claims that the severity of withdrawal does not directly predict relapse. Based on this observation, the industry concludes that the symptoms of withdrawal from tobacco are not significant and that physical dependence to nicotine is not real.

FDA disagrees. Severity of withdrawal does predict relapse; most people who quit smoking relapse within 1 week,[264] when withdrawal symptoms are at or near their peak.[265] Moreover, studies indicate that light smokers, who are less likely to suffer withdrawal symptoms, are more likely to succeed in quitting than are heavier smokers.[266]

The industry's argument is based on the mistaken assumption that, if withdrawal symptoms were significant, their presence would perfectly correlate with relapse. But, as described in depth in the 1988 Surgeon General's Report, multiple confounding factors are associated with relapse to use of *any* addictive substance, no matter how significant the withdrawal syndrome.[267] These factors include psychiatric impairment, expectations,

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[263] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994). *See* AR (Vol. 535 Ref. 96, vol. III.B).

[264] Hughes JR, Gulliver SB, Fenwick JW, *et al.*, Smoking cessation among self-quitters, *Health Psychology* 1992;11:331-334, at 333. *See* AR (Vol. 348 Ref. 5512).

[265] Hughes JR, Gust SW, Skoog K, *et al.*, Symptoms of tobacco withdrawal: a replication and extension, *Archives of General Psychiatry* 1991;48:52-59, at 56. *See* AR (Vol. 129 Ref. 1404).

[266] Surgeon General's Report, 1988, at 315-316. *See* AR (Vol. 129 Ref. 1592).

[267] *Id.* at 315-324.

demographics, enrollment in treatment programs, peer influence, and social support. Even life-threatening withdrawal symptoms associated with drugs such as alcohol do not necessarily lead to relapse. After a complete review of available evidence, the Surgeon General concluded that nicotine's pharmacological role in relapse is similar to the role of opioids and alcohol.[268] Thus, the absence of a perfect correlation between withdrawal severity and the precise timing of a relapse does not compel the conclusion that withdrawal symptoms are insignificant or that physical dependence to nicotine is not real.

- Epidemiological studies cited by FDA do not prove a substantial withdrawal syndrome.

The tobacco industry criticizes several studies cited by FDA in support of a tobacco withdrawal syndrome. Upon review of these studies, FDA finds that the industry's comments take quotations out of context and make inappropriate inferences from researchers' findings. For example, the industry objects to a study by Hughes *et al.*[269] on the grounds that the researchers tabulated withdrawal symptoms on only 105 of the 315 subjects. In fact, the analysis of withdrawal appropriately included *every subject* in the study who was abstinent from both tobacco and nicotine. The other 210 subjects received nicotine gum to reduce their withdrawal symptoms; these subjects were thus inappropriate for research on the severity of withdrawal.

Similarly, the industry claims to provide data to contradict FDA's citation of the 1991 and 1992 National Household Surveys. But FDA's data reported the prevalence of withdrawal symptoms for smokers who consume sixteen to twenty-five cigarettes per day.

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[268] *Id.* at 323.

[269] Hughes JR, Gust SW, Skoog K, *et al.*, Symptoms of tobacco withdrawal: a replication and extension, *Archives of General Psychiatry* 1991;48:52-59. *See* AR (Vol. 129 Ref. 1404).

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The industry's data are based on a different set of smokers and, at any rate, are hardly different from FDA's.

Such arguments cannot seriously challenge the scientific consensus that led the American Psychiatric Association to define Tobacco Withdrawal Syndrome in 1980 and to ratify its decision again as recently as 1994 in DSM-IV.

2. The tobacco industry argues that nicotine does not induce pharmacological tolerance. This conclusion is based upon several arguments: (1) tolerance can be both pharmacological and nonpharmacological; (2) smokers and users of smokeless tobacco do not continue to increase their tobacco consumption over the course of their lives and thus do not escalate their dose; (3) FDA's studies on dose escalation are not persuasive; and (4) a study on low-nicotine snuff disproves tolerance.

FDA disagrees with the industry's analysis and conclusion. Much uncontested evidence in the administrative record demonstrates conclusively that nicotine causes tolerance in tobacco users. For example, the industry does not dispute evidence of diminished cardiovascular and nervous system responses to nicotine over the course of a day. Nor does the industry deny that many cigarette smokers escalate their doses of nicotine to daily use[270] or that the age of young consumers of smokeless tobacco correlates with the amount of use.[271] Furthermore, the arguments that the industry does make are not persuasive, as discussed below.

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[270] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

[271] World Health Organization, *Smokeless Tobacco Control: Report of a WHO Study Group*, WHO Technical Report Series No. 773 (Geneva: WHO, 1988), at 36. *See* AR (Vol. 7 Ref. 83).

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The industry's description of two kinds of tolerance is irrelevant. Sources in the administrative record cited by FDA refer exclusively to pharmacological tolerance. *See* sections II.A.3.c.i. and II.A.3.c.ii., above.

The tobacco industry makes the observation that smoking behavior reaches a plateau as the smoker grows older. Similarly, the smokeless tobacco industry points out that middle-aged users may consume less than young adults. But these observations do not disprove the existence of tolerance, which does not require forever-increasing consumption of a substance. Tolerance is a phenomenon that develops rapidly, leads the vast majority of beginning tobacco users to escalate their dose, and then can eventually result in a stable pattern of consumption. Some heroin addicts also eventually reach a level of consumption that may remain constant for years.[272]

The tobacco industry asserts that a study cited by FDA on the proportion of smokers who report needing more cigarettes to obtain desired effects does not support the idea of tolerance to nicotine and also does not prove that such tolerance is widespread or marked. FDA disagrees with these assertions. The industry cites no data or references to explain why the study does not demonstrate tolerance. In fact, the study's findings perfectly fit the tobacco industry's *own* definition of tolerance that "more drug is necessary to produce the desired effect." People who have tried cigarettes at least once are more likely to report the need for larger doses to get the same effect than people who have tried

[272] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573), at 531-532. *See* AR (Vol. 535 Ref. 96, vol. III.G).

cocaine, marijuana, and alcohol at least once.[273] Moreover, FDA notes that epidemiological data are just one demonstration of tolerance; most of the evidence on tolerance to nicotine presented by FDA is uncontested by the tobacco industry.

Finally, the smokeless tobacco industry cites a study that measures the response of oral tobacco users to a low-nicotine snuff. In the study, users increased their consumption of tobacco to compensate for its lower nicotine content. The industry's argument here confuses tolerance with compensation. FDA addresses the industry's comments on compensation in section II.A.7.i., above.

3. The tobacco industry cites research on nicotine replacement therapies to argue that nicotine is not a key reason for tobacco use. According to the industry, if nicotine were central to tobacco consumption, providing nicotine replacement should eliminate smoking behavior and all withdrawal symptoms. The industry contends that nicotine replacement trials cited by FDA do not demonstrate either efficacy of replacement therapy or elimination of withdrawal symptoms. The industry disputes FDA's summary of nicotine replacement trials and makes multiple objections to individual studies. The industry also contends that the study population is not generalizable to the entire smoking population.

Upon review of the industry's detailed comments and the data in the administrative record, FDA disagrees with the industry's position on nicotine replacement therapies. Scientific consensus supports the view that such therapies not only reduce withdrawal symptoms but increase abstinence. An extensive preapproval evaluation of such therapies

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[273] Henningfield JE, Clayton R, Pollin W, Involvement of tobacco in alcoholism and illicit drug use, *British Journal of Addiction* 1990;85:279-292. *See* AR (Vol. 39 Ref. 66).

by FDA also concluded that they were safe and effective, and even sources cited by the tobacco industry agree. The efficacy of nicotine replacement therapies is strong proof of the central role of nicotine in tobacco consumption. The industry's position is based upon mistaken assumptions, misinterpretation of clinical trials, and misuse of FDA reviews.

According to the tobacco industry, replacing one form of an addictive substance with another form should completely eliminate the addict's desire to use the substance. If this assumption were correct, then no methadone user would ever relapse to heroin. In fact, providing oral methadone in substance abuse clinics helps only some opioid users to remain totally abstinent,[274] and abstinence rates of former heroin users on methadone are similar to those of former smokers receiving nicotine replacement therapy.[275] The industry's simplistic formulation ignores many factors, such as the importance of the route and speed of drug administration. Just as a heroin addict may want a "rush" from injection and reject the steady dose of oral methadone, a tobacco user may prefer the "rapid, peaking" dose of inhaled nicotine over the more steady dose from replacement therapy.[276] Given the strength of addiction to tobacco products, it is noteworthy that there is a

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[274] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573), at 531-532. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[275] Henningfield JE, Griffiths RR, Jasinski DR, Cigarette smoking and opioid dependence: common factors, Presented at the meeting of the American Psychological Association (Sep. 2, 1980). *See* AR (Vol. 80 Ref. 254).

Surgeon General's Report, *Smokeless Tobacco*, 1986, at 155. *See* AR (Vol. 128 Ref. 1591).

Gorelick D, Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products" (Aug. 2, 1994), 292. *See* AR (Vol. 255 Ref. 3445).

[276] Research and Development/Quality, Transdermal Nicotine, at 3. *See* AR (Vol. 531 Ref. 124).

significant increase in abstinence with replacement therapy, but it is not surprising that these products are not always effective.

The industry also argues that replacing an addictive substance with another form should eliminate all withdrawal symptoms. In fact, providing nicotine does dramatically reduce physiological withdrawal symptoms.[277] Psychological withdrawal is reduced but not eliminated, primarily because users have associated tobacco consumption with certain stimuli, such as taste and ritual. Such "conditioned" cues become part of the tobacco consumption experience, and the denial of such cues can lead to behavioral symptoms. In this sense, nicotine is like other addictive drugs.[278]

The industry misinterprets data on the efficacy of nicotine replacement therapies. First, the industry argues that FDA's data do not support the conclusion that the initial quit rate is "about 50%." The actual studies cited 1-month quit rates of 35%, 61%, 50%, 50%, 26%, 57%, 47%, and 36%. The overall average for all studies was 49%.[279]

Second, the industry argues that some individual studies do not show a statistically significant increased quit rate with nicotine replacement therapy. The Jurisdictional Analysis, however, included a chart showing the overwhelming consistency among nineteen studies on nicotine replacement therapies in demonstrating efficacy.[280]

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[277] Surgeon General's Report, 1988, at 208. *See* AR (Vol. 129 Ref. 1592).

[278] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437, at 418. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[279] *See* appendix 1 to Jurisdictional Analysis. *See* AR (Vol. 1 Appendix 1).

[280] *Id.*

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A definitive meta-analysis on the efficacy of the nicotine patch was cited by FDA, and its methods and results were not disputed by the tobacco industry. This study, published in the *Journal of the American Medical Association*, reviewed seventeen studies involving *over 5,000* patients and concluded that "this meta-analysis provides *compelling evidence that the nicotine patch is a consistently effective aid to smoking cessation.* Individuals wearing the active nicotine patch were more than twice as likely to quit smoking as were individuals wearing a placebo patch."[281]

Third, the industry makes multiple objections to individual studies on nicotine replacement therapy. These objections dispute fine points of methodology and often cite FDA reviewers' own criticisms of the studies. To the extent that the industry heavily relies on FDA's critique of the studies, the industry should accept FDA's conclusion that the studies demonstrate the efficacy of nicotine replacement therapy. Indeed, FDA has not only the statutory authority but also the expertise to determine whether a new drug therapy is efficacious. After extensive premarket review, FDA concluded that nicotine replacement therapies are efficacious. FDA's conclusion is consistent with scientific consensus.

The tobacco industry also argues that the subjects in trials on nicotine replacement therapy are not representative of all smokers. But FDA's reason for citing the research was to demonstrate that providing nicotine by another means enhances abstinence and reduces withdrawal where it has been studied. These results show the critical

[281] Fiore MC, Smith SS, Jorenby DE, *et al.*, The effectiveness of the nicotine patch for smoking cessation: a meta-analysis, *Journal of the American Medical Association* 1994;271:1940-1947, at 1945 (emphasis added). *See* AR (Vol. 6 Ref. 64-1).

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pharmacological role of nicotine in tobacco use. Indeed, if the tobacco industry were correct that nicotine's only important role in tobacco is for "flavor," then there should be absolutely no benefits in *any* study of transdermal nicotine replacement therapy. That nicotine replacement is effective is conclusive evidence of nicotine's role as a pharmacological reinforcer.

4. The tobacco industry argues that studies on nicotine replacement therapy cannot be relied upon to demonstrate that a high proportion of smokers are addicted.

FDA agrees with this comment. Other studies, cited in section II.B.2.a., below, however, do demonstrate that a high proportion of smokers are addicted.

g. Comments on Epidemiological Studies

1. The tobacco industry claims that studies of individual DSM criteria do not demonstrate that any group of smokers satisfied sufficient criteria to qualify for the diagnosis of addiction.

FDA cited these studies as support for the conclusion that a significant proportion of tobacco consumers are addicted to nicotine. This conclusion is primarily demonstrated by population-based studies, including the DSM-IV field trial, which show that the vast majority of smokers do meet sufficient DSM criteria to be considered nicotine dependent, discussed in more detail in section II.B., below. The field trial was a large, multicenter study conducted in 1991 and 1992 at five sites across the country (Burlington, VT; Philadelphia, PA; Denver, CO; St. Louis, MO; and San Diego, CA).[282] The population

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[282] Woody GE, Cottler LB, Cacciola J, Severity of dependence: data from the DSM-IV field trials, *Addiction* 1993;88:1573-1579. *See* AR (Vol. 13 Ref. 150).

Cottler L, Comparing DSM-III-R and ICD-10 substance use disorders, *Addiction* 1993;88:689-696. *See* AR (Vol. 13 Ref. 149).

studied represented a diverse sample and included African-Americans, women, others randomly selected from the general population, and still others with a range of diagnoses and substance use patterns. The field trial documents that 80% to 87% of smokers studied qualified for the diagnosis of nicotine dependence. In its comments, the American Psychiatric Association concurs with the Agency's findings: "DSM based studies also found that 80% to 90% of adult smokers are nicotine dependent."[283]

The tobacco industry's comments on population-based studies are addressed in section II.B.4.b., below. It is relevant to mention here that, if the industry's assertion that these population-based studies are not representative of all smokers is correct, then large surveys of whether all smokers meet individual DSM criteria would show inconsistent results. But this is not the case. Overwhelming evidence, cited in section II.A.3.c.ii., above, conclusively demonstrates that the vast majority of tobacco consumers meet individual criteria for addiction.

2. The tobacco industry disputes that use of tobacco products persists longer and in greater amounts than the user intends. According to the industry, studies cited by FDA demonstrate that, at most, 30% of people who have ever tried tobacco become "dependent" by FDA's definition. The industry also argues that the desire to quit is not evidence of intent to cut down.

FDA disagrees with the industry's position. It is widely accepted that users of tobacco products consume more than they originally intended.[284] Longitudinal data, cited

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[283] American Psychiatric Association, Comment (Jan. 2, 1996), at 2. *See* AR (Vol. 700 Ref. 1020).

[284] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 243. *See* AR (Vol. 37 Ref. 8).

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in section II.A.3.c.ii., above, demonstrate that smokers frequently underestimate how much they will be smoking in the future. As many as 90% of current users smoke more than five cigarettes a day,[285] despite the evidence that nearly half of young consumers do not intend to become daily smokers.[286] Although estimates vary from study to study, persons who have smoked at least one cigarette are about twice as likely to develop dependence as are persons who have ever tried cocaine or alcohol.[287]

If an individual wants to quit smoking but cannot, then the individual is smoking more than he or she intends. The overwhelming evidence presented in section II.A.3.c.ii., above, that many would-be quitters cannot attain abstinence supports the contention that consumers use cigarettes longer and in greater amounts than intended.

3. The tobacco industry disputes that tobacco use continues despite attempts to quit. The industry observes that 90% of cigarette smokers who quit succeed by themselves, and the smokeless tobacco industry suggests that 75% of successful quitters find it easy to quit. The tobacco industry also alleges that FDA mischaracterizes data on self-reports of dependence from the National Household Surveys and misrepresents

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[285] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

Henningfield JE, Cohen C, Slade JD, Is nicotine more addictive than cocaine? *British Journal of Addiction* 1991;86:565-569. *See* AR (Vol. 277 Ref. 3904).

[286] Elders MJ, Perry CL, Eriksen MP, *et al.*, The report of the Surgeon General: preventing tobacco use among young people, *American Journal of Public Health* 1994;84(4):543-547, at 544. *See* AR (Vol. 38 Ref. 39).

[287] Anthony JC, Warner LA, Kessler RC, Comparative epidemiology of dependence on tobacco, alcohol, controlled substances and inhalants: basic findings from the National Comorbidity Survey, *Experimental and Clinical Psychopharmacology* 1994;2:244-268. *See* AR (Vol. 37 Ref. 4).

abstinence failure rates from a CDC study. The industry further argues that smokers may lie on surveys about their desire to quit.

After reviewing industry comments and the administrative record, FDA concludes that there is overwhelming evidence that tobacco use continues despite attempts to quit. Indeed, this fact is well known to the tobacco industry. For example, Brown & Williamson's data show that, while *32 million* Americans attempted to quit each year from 1981 to 1983, fewer than a third were successful for 6 months. *See* Jurisdictional Analysis, 60 FR 41668. Philip Morris' data show similar success rates.[288]

The argument that most smokers and users of smokeless tobacco who quit do so without assistance relies on surveys of the small proportion of tobacco users who are able to quit each year. This population is not representative of the vast majority of current tobacco users, who have tremendous difficulty quitting. Furthermore, the fact that some smokers are able to quit without assistance does not reveal the difficulty experienced by these individuals or the extent to which they have previously relapsed. More than half of people presenting for treatment of alcohol or drug abuse who also smoke cigarettes report that quitting smoking would be harder than giving up their other drug of abuse.[289] Two-thirds of smokers who try to quit on their own relapse within 2 days, and approximately

[288] Ryan FJ (Philip Morris Inc.), Cold turkey in Greenfield, Iowa: a follow-up study, in *Smoking Behavior: Motives and Incentives*, ed. Dunn WL (Washington DC: VH Winston & Sons, 1973), at 231-234. *See* AR (Vol. 8 Ref. 105).

[289] Kozlowski LT, Wilkinson A, Skinner W, *et al.*, Comparing tobacco cigarette dependence with other drug dependencies, *Journal of the American Medical Association* 1989;261:898-901. *See* AR (Vol. 41 Ref. 92).

90% relapse within 3 months.[290] Sixty-eight percent of smokeless tobacco users who have attempted to quit have tried to do so an average of four times.[291]

The industry disputes FDA's analysis of 1991 and 1992 National Household Survey data, which reveal that 83% to 87% of moderate to heavy smokers feel addicted. The industry first argues that the question to smokers has no validity; FDA disagrees and notes that the industry cited the same survey result from the 1985 survey at another point in its comments. The industry then suggests that FDA's analysis of the 1991 and 1992 data is inconsistent with published reports. This is not true. The Substance Abuse and Mental Health Services Administration (SAMHSA) conducted two National Household Surveys, one in 1991 and another in 1992. The data referred to in the Proposed Rule were a calculation by the Centers for Disease Control and Prevention (CDC) of raw data obtained in the 1991 and 1992 surveys and presented at FDA's Drug Abuse Advisory Committee meeting in August 1994.[292] The CDC pooled the raw data from both surveys, weighted them accordingly, and then evaluated the data using parameters different from those outlined in the main findings of each survey. The CDC used the data to look at different age groups of users and different numbers of cigarettes smoked per day than did SAMHSA. Even if the calculations performed by SAMHSA had been used, the data

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[290] Hughes JR, Gulliver SB, Fenwick JW, *et al.*, Smoking cessation among self-quitters, *Health Psychology* 1992;11:331-334. *See* AR (Vol. 348 Ref. 5512).

[291] Severson HH, Enough snuff: ST cessation from the behavioral, clinical, and public health perspectives, in *Smokeless Tobacco or Health, an International Perspective*, Smoking and Tobacco Control Monograph 2, NIH Publication No. 93-3461 (Washington DC: GPO, 1993), at 281-282. *See* AR (Vol. 18 Ref. 5-1).

[292] Giovino GA, Zhu BP, Tomar S, *et al.*, *Epidemiology of Tobacco Use and Symptoms of Nicotine Addiction in the United States: A Compilation of Data from Large National Surveys*, presentation of the Centers for Disease Control and Prevention to the FDA's Drug Abuse Advisory Committee (Aug. 2, 1994). *See* AR (Vol. 459 Ref. 7820).

would still show that, among those who smoke about a pack or more of cigarettes per day, 81% report feeling dependent.[293]

The tobacco industry also argues that FDA mischaracterized a 1993 report from the CDC that FDA cited in the Jurisdictional Analysis for the statement that more than 15 million Americans "tried to quit" each year and about 3% ultimately succeeded.[294] The industry contends that the survey did not ask specifically whether smokers had tried to quit, but whether smokers did not smoke at least 1 day during the preceding year. The industry concludes that this report is not relevant to whether smokers try to quit.

FDA disagrees. For daily smokers, the CDC counted one day of abstinence only if the smokers stated "they *quit* for at least 1 day."[295] The CDC logically interpreted these results as showing that 17 million daily smokers who reported not smoking for at least 1 day made an attempt to quit. According to the report, "the findings from this survey indicate that, in 1990 and 1991, approximately 42% of daily smokers abstained from smoking cigarettes for at least 1 day but that approximately 86% of these persons subsequently resumed smoking. The high rate of relapse is likely because of the addictive nature of nicotine."[296] FDA accepts CDC's interpretation of its survey.

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[293] Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *National Household Survey on Drug Abuse: Main Findings, 1991*, DHHS Publication Number (SMA)93-1980 (Rockville MD: DHHS, Public Health Service, 1993), at 127. *See* AR (Vol. 535 Ref. 96, vol. III.M).

[294] Centers for Disease Control and Prevention, Smoking cessation during previous year among adults—United States, 1990 and 1991, *Morbidity and Mortality Weekly Report* 1993;42(26):504-507. *See* AR (Vol. 66 Ref. 2).

[295] *Id.* at 504.

[296] *Id.* at 504-507.

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FDA also notes that CDC's estimate is consistent with other published estimates[297] and the tobacco industry's own tabulations of long-term quit rates. For example, a tobacco company has estimated that fewer than 4% of smokers who attempt to quit are able to quit permanently. *See* Jurisdictional Analysis, 60 FR 41668–41669.

FDA disagrees that survey results significantly distort the numbers of smokers who want to and have tried to quit. This method of data collection is a scientifically recognized and accepted mode of inquiry for prevalence studies, which is relied upon to determine the population prevalence of other disorders, including alcohol dependence, cocaine dependence, and depression.[298] Some of these are disorders for which, compared to tobacco use, interview methods would be less likely to reveal accurate results because of the criminal consequences associated with illicit drug use. Moreover, the authors of a study on this subject cited by the tobacco industry merely speculate that *some* smokers who say they want to quit *may* be dissembling, primarily on the basis of evidence that some smokers who claim to have quit smoking have been shown to be still smoking. At no time do these authors suggest that most smokers do not want to quit.[299]

4. The tobacco industry disputes that tobacco consumers continue to use despite knowledge of physical problems attributable to tobacco. The industry notes that, in one survey, a majority of smokers rated their overall health as good or excellent and

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[297] *See*, e.g., Hughes JR, Gulliver SB, Fenwick JW, *et al.*, Smoking cessation among self-quitters, *Health Psychology* 1992;11:331-334. *See* AR (Vol. 348 Ref. 5512).

[298] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 175-272. *See* AR (Vol. 535 Ref. 96, vol. III.B).

[299] Kozlowski LT, Herman CP, Frecker RC, What researchers make of what cigarette smokers say: filtering smokers' hot air, *Lancet* 1980;1(8170):699-700. *See* AR (Vol. 535 Ref. 96, vol. III.I).

concludes from this that the smokers were not suffering ill health from tobacco use. The industry also criticizes studies cited by FDA that document high rates of smoking after catastrophic illness on the basis that (1) the sample sizes were small; and (2) some fraction of the subjects in the studies were able to quit.

After reviewing the evidence in the administrative record, FDA disagrees with the industry's position. To argue that a majority of smokers generally believe themselves in "good" or "excellent" health, the industry cites a Gallup poll originally cited by FDA.[300] In fact, contrary to the industry's argument, this Gallup poll demonstrates that smokers continue to use tobacco despite health problems. Sixty-five percent of smokers in the survey admitted that "smoking has already affected their health." Moreover, the data reveal that: (1) *significantly fewer* smokers than nonsmokers rated their health as "excellent"; and (2) smokers rated their overall condition as *significantly less healthy* than nonsmokers did. Thus, this survey supports FDA's contention that smokers persist in using tobacco despite knowledge that their health has been harmed by smoking.

The industry's criticism of data cited by FDA on smokers continuing to use tobacco after myocardial infarction, lung cancer, and laryngeal cancer is not persuasive. The industry offers no contradicting evidence, nor does it suggest any reason why the studies cited by FDA might not be generalizable to the larger population. In the absence of such reasons, FDA believes that the sample sizes were adequate to permit such generalization.

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[300] Gallup GH, *Smoking Prevalence, Beliefs, and Activities by Gender and Other Demographic Indicators* (Princeton NJ: Gallup Organization, 1993), at 20, 37. *See* AR (Vol. 86 Ref. 1165).

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The industry finally makes the argument that some people with devastating disease from tobacco are able to quit smoking. This contention misses the point. Even in the most drastic of circumstances, when patients have lost part of their body to cancer from smoking or had part of their heart muscle die from smoking, many still cannot stop. That any significant number of people return to smoking after such devastating tobacco-related disease is a powerful illustration of the addictiveness of nicotine.

h. Comments on Nicotine's Other Significant Pharmacological Effects

1. The tobacco industry argues that many substances and activities tangentially affect the brain, but that a reliable criterion for a "substantial" pharmacological effect is intoxication. According to the comment, nicotine does not produce intoxication, and therefore its pharmacological effects are not substantial.

FDA disagrees. FDA has presented dozens of scientific studies and reviews to show that nicotine has numerous substantial pharmacological effects on the human body. The most significant of these is addiction, discussed at length in section II.A.3., above. Other examples of substantial effects include significant molecular changes in the brain, effects on weight regulation, and substantial alterations of mood, alertness, and cognition, none of which the industry contests. The vast majority of drugs that FDA already regulates, whose pharmacological effects are indisputable, do not produce intoxication. FDA notes that nicotine can cause intoxication. Indeed, first-time users often become intoxicated.[301] Regular users do so rarely because they have developed an extremely high level of tolerance to this effect of nicotine.[302]

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[301] Surgeon General's Report, 1988, at 594. *See* AR (Vol. 129 Ref. 1592).

[302] *Id.* at 593-596.

i. Comments on Whether Cigarettes and Smokeless Tobacco Deliver Pharmacologically Active Doses of Nicotine

1. Several professional organizations with expertise in pharmacology and addiction comment on the ability of cigarettes and smokeless tobacco to provide addictive doses of nicotine. These comments uniformly agree with the conclusion that cigarettes and smokeless tobacco do provide pharmacologically active doses of nicotine capable of producing addiction. These organizations include the College on Problems of Drug Dependence, which states:

> Nicotine is appropriately categorized as an addictive drug. Data from both animals and humans indicate that nicotine produces tolerance, physical dependence, reinforcing psychoactive effects and it thus has the potential for becoming an abused substance. Regular cigarette smokers and habitual smokeless tobacco users obtain sufficient quantities of nicotine to produce these effects . . . . *Cigarettes and smokeless tobacco serve as highly effective and efficient drug delivery devices. They provide nicotine in quantities and patterns that enable users readily to develop and sustain dependence.*[303]

The American Society of Addiction Medicine concludes that *"nicotine in cigarettes and in smokeless tobacco is a pharmacologically active agent that causes addiction in a high proportion of users."*[304]

Similar conclusions were reached by the American Psychological Association, which observes that *"[c]igarettes and smokeless tobacco serve as highly effective and*

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[303] College on Problems of Drug Dependence, Comment (Nov. 6, 1995), at 1 (emphasis added). *See* AR (Vol. 700 Ref. 1021).

[304] American Society of Addiction Medicine, Comment (Dec. 29, 1995), at 1 (emphasis added). *See* AR (Vol. 528 Ref. 97).

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efficient drug delivery systems, which by their very design enable people to readily develop and sustain nicotine addiction."[305]

FDA agrees with these independent scientific bodies.

2. The tobacco industry takes issue with FDA's citations of studies to show that certain levels of nicotine cause pharmacological effects.

The tobacco industry argues that three studies cited by FDA to estimate the minimum pharmacological dose of nicotine do not show that tobacco products cause significant pharmacological effects. The industry also contends that two studies cited by FDA to show that smokers can control their nicotine intake do not reflect common tobacco consumption behavior.

The industry mischaracterizes FDA's reasons for citing the studies. FDA did not cite animal research and a study on the nicotine nasal spray to prove that cigarettes cause pharmacological effects in humans. Rather, the studies were cited to demonstrate that a very low blood level of nicotine that is easily attainable with cigarettes produces pharmacological effects across species. This observation complements overwhelming evidence from clinical, epidemiological, and laboratory studies showing that cigarettes and smokeless tobacco cause significant pharmacological effects in humans.

Similarly, FDA did not cite studies on the extremes of nicotine intake to demonstrate exactly how much nicotine every smoker obtains. Rather, the studies were cited to demonstrate that nicotine intake from cigarettes has the potential to vary widely across a range of levels that produce significant pharmacological effects in humans.

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[305] American Psychological Association, Comment (Dec. 28, 1995), at 2 (emphasis added). *See* AR (Vol. 531 Ref. 123).

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FDA also notes that the industry offers no data contradicting FDA's studies. The industry also fails to contest other sources cited by FDA—including some from the tobacco industry—that clearly support the conclusion that nicotine levels in commercial tobacco products produce significant pharmacological effects in consumers. *See* Jurisdictional Analysis, 60 FR 41571–41572, 41632–41640.

Finally, FDA notes that the industry misinterprets a study by Perkins *et al.*[306] on nicotine nasal spray. *See* section II.A.7.d., above.

3. The industry contends that nicotine doses provided by cigarettes produce only a "minimal response in laboratory animals and a small number of human subjects" and that, therefore, FDA has not established that nicotine doses delivered by cigarettes produce substantial pharmacological effects.

FDA disagrees. Many studies demonstrate such significant effects as systemic cardiovascular reactions in nontolerant humans and animals,[307] sickness produced by a single tobacco exposure in nontolerant individuals,[308] and changes in brain electrical activity comparable to those produced by other addictive drugs.[309] As described in sections II.A.4., above, and II.B.2., below, use of tobacco also produces significant effects on attention, mood, cognition, and weight regulation. These are not minimal effects.

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[306] Perkins K, Grobe J, Scierka A, *et al.*, Discriminative stimulus effects of nicotine in smokers, in *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II*, eds. Clarke PBS, Quik M, Thurau K, Adlkofer F (Basel: Birkhauser Verlag, 1994), at 111. *See* AR (Vol. 42 Ref. 111).

[307] Surgeon General's Report, 1988, at 47. *See* AR (Vol. 129 Ref. 1592).

[308] *Id.* at 594.

[309] Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490, at 485, 488. *See* AR (Vol. 105 Ref. 965).

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Nicotine's capacity to produce and sustain addiction, as described in section II.A.2., above, is another example of a significant pharmacological effect.

Because the vast majority of chronic smokers are highly tolerant to nicotine, not all of the pharmacological effects of nicotine are evident with every cigarette and pinch of smokeless tobacco. As described in section II.A.3.c.i., above, the severe degree of tolerance produced by nicotine seems to greatly exceed that produced by cocaine and to be more comparable to that produced by morphine in the reduction of responsiveness to acute doses after a period of repeated exposure.

4. The tobacco industry argues that there is no "addictive level" of nicotine. This contention is partly based on the claim that nicotine intake is not well correlated with quitting success. The industry also argues that FDA's Drug Abuse Advisory Committee did not identify a threshold addictive dose of nicotine. Without such an "addictive level," the industry concludes, the nicotine in tobacco products cannot have a substantial pharmacological effect.

FDA disagrees. The tobacco industry misinterprets the scientific literature on cessation studies, the actual conclusion reached by the Committee, and the concept of "addictive level."

A large body of literature has shown that nicotine dependence level is among the strongest general predictors of withdrawal severity and duration of abstinence. *See* section II.A.7.f., above.[310] These data support the conclusion that the relationship between level of drug intake and dependence level is similar to that observed with other

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[310] Surgeon General's Report, 1988, at 315-321, 522-523. *See* AR (Vol. 129 Ref. 1592).

forms of drug addiction, namely that level of drug intake is generally but not precisely correlated positively with dependence level and that there is wide individual variability.[311] It is because drug intake alone is not a perfect measure of dependence that diagnostic instruments such as the DSM are necessary for clinical practice.

The industry also misrepresents the findings of the FDA Committee, which concluded that all currently marketed cigarettes contain an addictive dose of nicotine, but that the data were not sufficient to determine a threshold dose below which the product would *not* pose a risk of addiction.[312] The main concern of the Committee was that, in attempting to set a lower limit, any error on the high side would permit the industry to market products that would be addictive to some persons. The Committee was particularly concerned that persons who have not developed tolerance to nicotine, such as children, might find even the doses posed by Benowitz and Henningfield (approximately one-tenth of the delivery of a typical cigarette) to be addictive.[313]

FDA concurs with the Committee that all currently marketed cigarettes contain addictive levels of nicotine.

5. The tobacco industry argues that any compensation occurring in response to cigarettes with lower yields of tar and nicotine is limited and of short duration. Thus, according to the industry, smokers of low-yield cigarettes do not obtain pharmacologically active doses of nicotine. The industry contends that this proposition is supported by an

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[311] *Id.* at 315-321.

[312] Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products" (Aug. 2, 1994), at 346-353. *See* AR (Vol. 255 Ref. 3445).

[313] *Id.* at 346-353.

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article by Benowitz and Henningfield.[314] The industry also argues that smokers actually compensate for changes in tar delivery rather than nicotine delivery. Furthermore, it denies that cigarette vent-hole blocking is a significant means of compensation. The industry thus argues that compensation for nicotine does not occur.

FDA disagrees. Tobacco industry research demonstrates that smokers significantly compensate for nicotine. For example, research presented at a tobacco industry conference in 1974 demonstrated that, "whatever the characteristics of cigarettes as determined by smoking machines, the smoker adjusts his pattern to deliver his own nicotine requirements." *See* Jurisdictional Analysis, 60 FR 41663. Other examples of the tobacco industry's understanding of compensation are documented in the Jurisdictional Analysis. *See* 60 FR 41572–41575.

Furthermore, FDA cited research in the Jurisdictional Analysis demonstrating that the actual amount of nicotine delivered to the smoker does not correlate with the machine-measured yield of the cigarette and that smokers who smoke "low-yield" cigarettes have been shown to obtain substantially more nicotine than the advertised yield. *See* 60 FR 41659-41665. In one study, for example, the advertised yield of tested cigarettes ranged from 0.1 to 1.6 mg of nicotine, but the actual nicotine intake by the smokers asked to smoke these cigarettes ranged from 0.75 to 1.25 mg.[315] Other studies have also found that the nicotine levels measured in smokers' blood bear either no relationship or a minimal

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[314] Benowitz NL, Henningfield JE, Establishing a nicotine threshold for addiction, *New England Journal of Medicine* 1994;331:123-125. *See* AR (Vol. 28 Ref. 218).

[315] Gori GB, Lynch CJ, Analytical cigarette yields as predictors of smoke bioavailablity, *Regulatory Toxicology and Pharmacology* 1985;5:314-326. *See* AR (Vol. 12 Ref. 142).

relationship to the nicotine yield of the cigarettes being smoked and that machine-measured yields of low-tar/low-nicotine cigarettes significantly underestimate true rates of nicotine absorption. In most of these studies, the subjects were people who were smoking their usual brand of cigarettes and showed levels of nicotine not related to Federal Trade Commission (FTC) yields, thus refuting the suggestion that compensation is short-lived.[316]

The tobacco industry misrepresents the position of Benowitz and Henningfield on compensation. These authors have repeatedly published research demonstrating that smokers compensate with current cigarettes by smoking harder or by blocking the vent holes.[317]

In the Benowitz and Henningfield paper cited by the tobacco industry, the authors were discussing cigarettes—not currently on the market—with so little available nicotine that it would be impossible to compensate for reduced nicotine except by smoking an impractical number of cigarettes. The total nicotine content of these cigarettes would have been only about 5% of the content of currently marketed cigarettes and would have permitted a maximum delivery of only about 10% that of current cigarettes. The authors predicted that few smokers would permanently smoke the 200 or more cigarettes needed to obtain the nicotine intake typically delivered by 20 conventional cigarettes. Thus, Benowitz and Henningfield believed that, if denied access to regular nicotine cigarettes, smokers would either quit or adjust over time to substantially reduced nicotine intake.

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[316] Surgeon General's Report, 1988, at 158-159. *See* AR (Vol. 129 Ref. 1592).

[317] *Id.* at 158-163.

Henningfield JE, Kozlowski LT, Benowitz NL, A proposal to develop meaningful labeling for cigarettes, *Journal of the American Medical Association* 1994;272:312-314. *See* AR (Vol. 313 Ref. 4846).

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This prediction is entirely inapplicable to currently marketed "low-yield" cigarettes delivering 0.1 mg of nicotine as measured by the smoking machine; a smoker need smoke only about 30 of these to obtain the amount of nicotine obtained with 20 "full flavor" cigarettes.[318]

The tobacco industry's denial that vent blocking occurs misses important points of FDA's position on this issue. FDA has simply posed vent blocking as the most likely explanation for the well-documented fact that there is almost no difference in the nicotine levels observed in the bodies of smokers who smoke brands with widely varying FTC yields. Smoking more cigarettes is only one means by which smokers compensate. Vent blocking is another means at the smoker's disposal to compensate. Indeed, the studies relied on by the tobacco industry suggest that the frequency of vent blocking is inversely proportional to the yield of the cigarette. In other words, the lower the tar and nicotine yield of the cigarette, the more the smoker blocks the vent holes. These data support the position that vent blocking plays an important role in compensation. There are, in addition, other compensation mechanisms, such as smoking more of the cigarette than is smoked in testing machines, smoking more aggressively, and taking deeper inhalations.[319]

The tobacco industry contends that smokers may compensate for tar rather than for nicotine. This contention is contradicted by a very extensive body of literature, documented in detail in the 1988 Surgeon General's Report,[320] showing that, when the

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[318] Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products" (Aug. 2, 1994), at 106. *See* AR (Vol. 255 Ref. 3445).

[319] Surgeon General's Report, 1988, at 153-158. *See* AR (Vol. 129 Ref. 1592).

[320] *Id.* at 153-169, 282-283.

level of nicotine in cigarettes is manipulated, smokers alter their smoke intake. Although the relationship is not perfect, it is similar to that which has been observed with other addictive drugs in numerous animal studies and some human studies. That is, when the dose of the drug in the cigarette is increased, the number of unit doses that are self-administered decreases generally, although not proportionally. This results in the frequent observation of increased overall drug intake.[321]

Conversely, when the dose is decreased, the number of unit doses that are self-administered generally increases, although usually not proportionally. The relationship has been demonstrated with respect to cigarette smoking by: (1) administering nicotine to smokers via other routes, which results in decreased smoking; and (2) administering the nicotine blocker mecamylamine to smokers (which reduces the effects of nicotine on receptors in the brain), resulting in increased smoking.[322] A study on compensation for smokeless tobacco cited by the smokeless tobacco industry showed that users increased their consumption when switched to a low-nicotine product.[323]

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[321] *Id.* at 282-283.

[322] *Id.* at 165-169.

[323] Andersson G, Axell T, Curvall M, Reduction in nicotine intake and oral mucosal changes among users of Swedish oral moist snuff after switching to a low-nicotine product, *Journal of Oral Pathology & Medicine* 1995;24:244-250. *See* AR (Vol. 526 Ref. 95, vol. VII).

The low-nicotine product had a lower pH than the higher-nicotine product. Because lower pH reduces absorption *see* section II.D., below, measurements of nicotine intake cited by the industry do not accurately reflect compensation in this study.

B. CONSUMERS USE CIGARETTES AND SMOKELESS TOBACCO TO OBTAIN THE PHARMACOLOGICAL EFFECTS OF NICOTINE AND TO SATISFY THEIR ADDICTION

In section II.A., above, the Agency concludes that the foreseeable pharmacological uses of cigarettes and smokeless tobacco establish that tobacco manufacturers intend their products to affect the structure and function of the body. The Agency may find additional evidence of such intent through evidence that consumers commonly use tobacco products for pharmacological effects. Where consumers use a product predominantly or nearly exclusively to obtain any of the effects on the structure or function of the body produced by a substance, such evidence would alone be sufficient to establish manufacturer intent. *See ASH v. Harris,* 655 F.2d 239-240.

The Agency made extensive findings regarding consumer use of tobacco products in the Jurisdictional Analysis. *See* 60 FR 41576-41581. FDA received comments from the tobacco industry, public health and medical organizations and practitioners, and other members of the public. Upon review of the evidence in the administrative record and careful analysis of the comments on the Jurisdictional Analysis, the Agency concludes that the evidence demonstrates that consumer use of cigarettes and smokeless tobacco for the pharmacological effects of nicotine is predominant, in fact nearly exclusive. Moreover, the Agency finds that other factors associated with tobacco use—including taste and habit—are significant to almost all consumers only by their association with nicotine's pharmacological effects on the brain. Thus, FDA finds that actual consumer use of cigarettes and smokeless tobacco for the pharmacological effects of nicotine provides an

independent basis for the conclusion that these products are intended to affect the structure and function of the human body.[324]

In section II.B.1., below, FDA discusses its authority to consider evidence of consumer use in establishing intended use. FDA presents its major findings and responds to significant comments in sections II.B.2. and 3., below. In section II.B.4., below, FDA responds to all other substantive comments.

1. "Intended Use" May Be Established on the Basis of Actual Consumer Use

The legislative history of the Act clearly states that consumer use can be probative of a product's intended use. For example, the House Report on the Medical Device Amendments of 1976 states that "*[t]he Secretary may consider . . . use of a product in determining whether or not it is a device.*" H.R. Rep. 853, 94th Cong., 2d Sess. 14 (1976) (emphasis added), *reprinted in* An Analytical Legislative History of the Medical Device Amendments of 1976, Appendix III (Daniel F. O'Keefe, Jr. & Robert A. Spiegel, eds. 1976). Similarly, the legislative history of the 1938 Act states expressly that "the *use* to which the product is to be put *will determine the category into which it will fall.*" S. Rep. No. 361, 74th Cong., 1st Sess. 4 (1935) (emphasis added), *reprinted in* 3 Legislative History 660, 663.

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[324] In this case, there is evidence not only of actual consumer use, but other evidence of manufacturer intent, including: (1) evidence that nicotine's addictive properties and other pharmacological effects are foreseeable to a reasonable tobacco manufacturer; and (2) evidence from the statements, research, and actions of manufacturers establishing that they intend their products to affect the structure or function of the bodies of tobacco users. *See* sections II.A., C., and D. Thus, although the evidence establishes that consumers use cigarettes and smokeless tobacco predominantly or nearly exclusively for the pharmacological effects of nicotine, this finding is not necessary to permit reliance on the evidence of actual consumer use. Relied on in conjunction with the other evidence of manufacturer intent, evidence of actual consumer use provides substantial additional support for the Agency's conclusion.

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Like the legislative history, FDA's regulations on adequate directions for the use of drugs and devices also demonstrate that actual consumer use can be a basis for establishing a product's intended use. 21 CFR 201.5 (drugs); 21 CFR 801.5 (devices). Section 201.5, which specifies the "adequate directions" that must be provided on drug labeling, provides examples of the "intended uses" of a drug that must be included in any adequate labeling. These intended uses include both: (1) "uses for which it is prescribed, recommended, or suggested in its oral, written, print, or graphic advertising;" and (2) "*uses for which the drug is commonly used.*" 21 CFR 201.5 (emphasis added). Section 801.5 contains parallel provisions for devices. Because adequate directions for use are required only for the intended uses of a product, these regulations make the "common use" of a product a basis for determining "intended use."

Courts have also recognized that actual consumer use can be a persuasive basis for determining intent—even in the absence of other evidence that the manufacturer intends to affect the structure or function of the body. In *ASH*, the court explicitly recognized that actual "consumer intent" by itself could be a basis for imputing intent to the manufacturer:

> Clearly, it is well established "that the 'intended use' of a product, within the meaning of the Act, is determined from its label, accompanying labeling, promotional claims, advertising, and any other relevant source." *Whether evidence of consumer intent is a "relevant source" for these purposes depends upon whether such evidence is strong enough to justify an inference as to the vendors' intent.* This requires a substantial showing. . . . In cases such as the one at hand, consumers must use the product predominantly—and in fact nearly exclusively—with the appropriate intent before the requisite statutory intent can be inferred.

655 F.2d at 239-240 (emphasis added). Similarly, in *NNFA v. Weinberger*, the court held that evidence before the Commissioner that vitamins "were used almost exclusively for

therapeutic purposes" could be a proper basis to determine that the manufacturer intended a pharmacological use. 512 F.2d at 703.

When a finding of an intent to affect the structure and function of the body is based exclusively on evidence of actual consumer use, the evidence must meet a high threshold. As quoted above, the courts in *ASH* and *NNFA* have indicated that the evidence should show that the actual consumer use for drug purposes is "predominant" or "nearly exclusive." FDA's regulations contemplate that the use be shown to be at least "common." 21 CFR 201.5.

There is no requirement, however, that a product be used nearly exclusively as a drug before FDA may regulate it as a drug. To the contrary, a product that has both pharmacological uses and nonpharmacological uses can be regulated as a drug. *See United States v. Guardian Chemical Corp.*, 410 F.2d 157, 162-163 (2d Cir. 1969)(a solvent used both to dissolve kidney stones (a drug use) and to clean instruments (a nondrug use) was properly regulated as a drug). Consistent with this principle, the courts recognize that where, as here, there is other evidence of manufacturer intent, consumer use for drug purposes may be relevent evidence of intended use even if that use is not predominant or nearly exclusive. *See, e.g., United States v. An Article of Device . . . Toftness Radiation Detector*, 731 F.2d 1253, 1257 (7th Cir. 1984); *United States v. 789 Cases . . . Latex Surgeons' Gloves*, 799 F. Supp. 1275, 1285, 1294-95 (D.P.R. 1992); *United States v. 22 . . . devices . . . "The Ster-o-lizer MD-200,"* 714 F. Supp. at 1165; *United States v. An Article of Device . . . "Cameron Spitler Amblo-Syntonizer,"* 261 F. Supp. 243, 245 (D. Neb. 1966).

Consistent with these authorities, the Agency finds that actual consumer use can be a basis for establishing the manufacturer's intended use for the product. Where the only evidence of intended use is the actual consumer use of the product, the Agency may need to show that the use of the product for pharmacological purposes is "predominant" or "nearly exclusive" before establishing that a product is intended to affect the structure or any function of the body. At a minimum, as set forth in FDA's regulations, the Agency should show that the use is "common" before relying exclusively on evidence of consumer use to establish intended use. Where, however, actual consumer use is only one of several types of evidence relied upon by the Agency, more limited evidence of consumer use can be used to support a finding that a product is "intended to affect the structure or any function of the body."

In the case of cigarettes and smokeless tobacco, as discussed below, the evidence establishes that the standard of "predominant" or "nearly exclusive" consumer use is met even though other types of evidence exist. Thus, the evidence of actual consumer use of cigarettes and smokeless tobacco provides an independent basis for establishing these products' intended pharmacological uses.

2. Consumers Use Cigarettes and Smokeless Tobacco for the Pharmacological Effects of Nicotine

The evidence on consumer use of cigarettes and smokeless tobacco convincingly demonstrates the intended use of such products for pharmacological purposes. In the following sections, FDA explains this conclusion and the epidemiological and experimental data that confirm that consumers *do* use cigarettes and smokeless tobacco predominantly for one or more of the pharmacological effects of nicotine.

a. Epidemiological Evidence Shows That Consumers Use Cigarettes and Smokeless Tobacco for Pharmacological Effects

Epidemiological studies establish that the vast majority of consumers use tobacco for at least one of three pharmacological purposes: to satisfy a nicotine addiction; to receive the accompanying psychoactive effects, such as relaxation and stimulation; or to control weight.

To satisfy nicotine addiction. If a tobacco consumer is addicted to nicotine, then the key reason for use of the tobacco product is a pharmacological effect: the satisfaction of the addiction.

Based upon internationally accepted definitions of addiction from the American Psychiatric Association and the World Health Organization (WHO), major recent studies show that 77% to 92% of smokers are addicted to cigarettes. In various studies, smokers who met the criteria for addiction included those identified by self-report (90% addicted),[325] those who used tobacco six or more times (87% addicted),[326] those who were daily users for at least one month (77% to 92% addicted),[327] and those who reported any current use of cigarettes (80% addicted).[328] Studies show a *higher* percentage of

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[325] Hughes JR, Gust SW, Pechacek TF, Prevalence of tobacco dependence and withdrawal, *American Journal of Psychiatry* 1987;144(2):205-208. *See* AR (Vol. 81 Ref. 292).

[326] Woody GE, Cottler LB, Cacciola J, Severity of dependence: data from the DSM-IV field trials, *Addiction* 1993;88:1573-1579. *See* AR (Vol. 13 Ref. 150).

[327] Cottler L, Comparing DSM-III-R and ICD-10 substance use disorders, *Addiction* 1993;88:689-696. *See* AR (Vol. 13 Ref. 149).

[328] Hale KL, Hughes JR, Oliveto AH, Helzar JE, Higgins ST, Bickel WK, Cottler LB, Nicotine dependence in a population-based sample, in *Problems of Drug Dependence, 1992*, NIDA Research Monograph 132 (Washington DC: Government Printing Office, 1993). *See* AR (Vol. 39 Ref. 60).

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addiction among tobacco users than among users of other addictive drugs, including cocaine and heroin.[329]

Although there have been no population-based studies using DSM or WHO criteria to assess rates of addiction to smokeless tobacco, substantial evidence demonstrates that a high proportion of smokeless tobacco users meet individual criteria for addiction. *See* section II.A.3.c.ii., above. This evidence strongly supports the conclusion that a substantial proportion of such users are addicted.[330] In 1992, the Inspector General of the U.S. Department of Health and Human Services estimated that approximately 75% of young regular users of smokeless tobacco are addicted.[331]

Evidence also demonstrates that many tobacco users continue to consume tobacco for an additional pharmacological reason related to addiction: to avoid withdrawal symptoms.[332] As addiction specialist Jerome Jaffe has noted, "[w]ithdrawal from nicotine . . . regularly motivates continued smoking."[333]

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[329] Anthony JC, Warner LA, Kessler RC, Comparative epidemiology of dependence on tobacco, alcohol, controlled substances and inhalants: basic findings from the National Comorbidity Survey, *Experimental and Clinical Psychopharmacology* 1994;2:244-268. *See* AR (Vol. 37 Ref. 4).

[330] Benowitz NL, Pharmacology of smokeless tobacco use: nicotine addiction and nicotine-related health consequence, in *Smokeless Tobacco or Health*, Smoking and Tobacco Control Monograph 2 (Washington DC: Government Printing Office, 1993), at 224. *See* AR (Vol. 93 Ref. 606).

[331] Department of Health and Human Services, Office on Smoking and Health, *Spit Tobacco and Youth* (Washington DC: Government Printing Office, 1992), at 8. *See* AR (Vol. 7 Ref. 76).

[332] Hughes JR, Higgins ST, Hatsukami D, Effects of abstinence from tobacco: a critical review, *Research Advances in Alcohol and Drug Problems* 1990;10:3170398, at 381. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[333] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522-573), at 529. *See* AR (Vol. 535 Ref. 96, vol. III.G).

For stimulation, sedation, mood alteration, and cognition. Studies also reveal that a large proportion of consumers use tobacco for other psychoactive effects. For example, a recent survey of young people 10 to 22 years old found that 72.8% of daily smokers and 53.8% of daily consumers of smokeless tobacco said they used tobacco for relaxation.[334] The 1988 Surgeon General's Report reviewed the epidemiological literature on the effects of smoking on mood: "The conclusion from this literature is that in the general population, persons perceive that smoking has functions that are relevant for mood regulation. Persons report that they smoke more in situations involving negative mood, and they perceive that smoking helps them to feel better in such situations."[335] The Surgeon General's Report also noted that "some cigarette smokers believe that smoking helps them to think and concentrate."[336] This is the belief of several prominent tobacco industry researchers.[337] Data demonstrating significant consumer use for the pharmacologically mediated effects of nicotine on mood and arousal are summarized in the Jurisdictional Analysis. *See* 60 FR 41579–41580.

To control weight. Numerous studies show that tobacco use by many people is at least partially motivated by their belief that tobacco will help them control their weight.

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[334] Centers for Disease Control and Prevention, Reasons for tobacco use and symptoms of nicotine withdrawal among adolescents and young adult tobacco users—United States, 1993, *Morbidity and Mortality Weekly Report* 1994;43(41):745-750. *See* AR (Vol. 43 Ref. 162).

[335] Surgeon General's Report, 1988, at 399. *See* AR (Vol. 129 Ref. 1592).

[336] *Id.* at 382.

[337] Robinson J, Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products" (Aug. 2, 1994), at 227. *See* AR (Vol. 255 Ref. 3445).

Warburton DM, Nicotine: an addictive substance or a therapeutic agent, *Progress in Drug Research* 1989;33:9-41, at 25. *See* AR (Vol. 140 Ref. 1657).

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For example, in two surveys of young people, between one-third and one-half of smokers said that weight control was a reason for their smoking.[338] Additional data on the use of tobacco products for weight control are summarized in the Jurisdictional Analysis. *See* 60 FR 41580–41581.

b. Experimental Evidence Shows That Consumers Use Cigarettes and Smokeless Tobacco Products for Pharmacological Effects

As described in section II.A.3.c.i., above, overwhelming laboratory data demonstrate that nicotine's pharmacological effects are central to tobacco use. Three findings from experimental studies particularly show that consumers smoke cigarettes and consume smokeless tobacco for the pharmacological effects of nicotine.

Nicotine reinforces tobacco consumption. Like other addictive substances such as amphetamine, morphine, and cocaine, nicotine acts on a key "reward" pathway in the brain—known as the mesolimbic system—to reinforce its own consumption.[339] As even the tobacco industry has noted, the "reward" generated by this pathway may explain why people eat food, drink water, and consume salt. The ability of nicotine to generate a similar "reward" for tobacco consumption reflects its pharmacological power and represents a clear reason why consumers use tobacco products. The data supporting nicotine's role in the "reward" system are discussed in section II.A.3.c.i., above.

Nicotine controls smoking behavior. It has been convincingly demonstrated that smokers adapt their cigarette consumption to maintain the pharmacological effect of nicotine in

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[338] Surgeon General's Report, 1988, at 438-441. *See* AR (Vol. 129 Ref. 1592).

[339] *See, e.g.*, Corrigall WA, Franklin KBJ, Coen KM, *et al.*, The mesolimbic dopaminergic system is implicated in the reinforcing effects of nicotine, *Psychopharmacology* 1992;107:285-289. *See* AR (Vol. 8 Ref. 93-4).

the brain. Thus, smokers given cigarettes lower in nicotine change their smoking behavior to obtain more nicotine, and those given cigarettes higher in nicotine than their usual brand modify their behavior to obtain less. When given a drug to reduce the effect of nicotine in the brain, smokers will consume more of the same cigarettes, even though nothing else has changed. This is compelling evidence that nicotine plays a pivotal role in why consumers use tobacco products. These data are discussed in detail in section II.A.5., above.

Nicotine in other forms affects tobacco consumers. The ability of nicotine nasal spray to produce some of the classic characteristics of addiction to nicotine supports the position that tobacco users seek tobacco primarily for the systemic pharmacological effects of nicotine. In contrast to cigarette smoke, aqueous nicotine spray does not provide any pleasing sensory characteristics. In fact, the spray can be irritating and unpleasant to use, and excessive use can cause nasal ulcerations. Notwithstanding the unpleasantness of the nicotine delivery mechanism and the presence of painful ulcerations that were further aggravated by continued use of the spray, some participants in clinical trials submitted to FDA used the spray to maintain nicotine dependence.[340]

Studies on nicotine replacement therapies also demonstrate efficacy in maintaining abstinence from smoking.[341] The ability of nicotine to promote abstinence, even when delivered through the skin, without any taste or flavor, demonstrates its key role in maintaining tobacco consumption.

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[340] FDA Drug Abuse Advisory Committee background information (Aug. 1, 1994), Joint Abuse Liability Review of Nicotine Nasal Spray. *See* AR (Vol. 9 Ref. 117).

[341] *See* appendix 1 to Jurisdictional Analysis at 62-82. *See* AR (Vol. 1 Appendix 1).

c. The Data Do Not Support the Industry's Claim That Consumers Seek Nicotine for Its Sensory Effects Rather than Its Pharmacological Effects

The tobacco industry responds to the overwhelming evidence that nicotine's pharmacological actions are central reasons for tobacco consumption by arguing instead that nicotine's key role in tobacco products is for flavor. According to the industry, the nonpharmacological actions of nicotine such as "flavor" are so essential to consumers that the nicotine level in each cigarette and unit of smokeless tobacco must be carefully controlled.

This argument in no way contradicts any of the experimental and epidemiological evidence showing that consumers use tobacco products for the pharmacological effects of nicotine. These studies prove nicotine's central pharmacological importance by demonstrating, for example, that: (1) nicotine causes psychoactive effects characteristic of addiction even when delivered by nonoral routes, where there is no "flavor" at all; and (2) the vast majority of smokers are addicted to tobacco products.

Moreover, the industry's position that nicotine's primary role is to provide flavor is inconsistent with the evidence. First, the industry's position is flatly contradicted by numerous statements of its own scientists and executives. Several industry documents dismiss the role of nicotine in flavor. For example, in 1974, an American Tobacco Company manager concluded that Pall Mall and Lucky Strike cigarettes tasted virtually the same even after the addition of extraneous nicotine (referred to as "Compound W"); according to the manager, "increasing the level of nicotine in the smoke by the addition of

Compound W has *little, if any,* effect on taste."[342] A Philip Morris presentation that discusses the importance of flavor in ultra-low cigarettes states flatly that "nicotine is an inexpensive, *tasteless* constituent."[343] Philip Morris' comments similarly contradict the industry's position that nicotine has a significant role in the flavor of cigarettes. These comments state that Philip Morris conducted extensive investigations into the flavors in cigarette smoke using an "olfactometer," yet Philip Morris claims that "[n]one of that olfactometer work involved nicotine at all," an unlikely omission if nicotine is an important flavor component.[344]

Tobacco industry documents also reveal that the industry draws a consistent distinction between nicotine's role in tobacco use and the role of flavor. A Brown & Williamson study emphasized the importance of nicotine delivery over all other product features and specifically distinguished the effects of nicotine from the taste and flavor characteristics of tobacco:

> In considering which product features are important in terms of consumer acceptance, the nicotine delivery is one of the more obvious candidates. *Others include the taste and flavour characteristics* of the smoke, physical features such as draw resistance and rate of burn, and the general uniformity of the product, to name but a few. The importance of nicotine hardly needs to be stressed, as it is so widely recognised.[345]

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[342] Memorandum from Irby RM (manager, new products division) to McCarthy JB (executive vice president, research and development), *Nicotine Content of Reconstituted Tobacco* (Jun. 5, 1974), at 3-4 (emphasis added). *See* AR (Vol. 26 Ref. 357-3)

[343] Philip Morris Inc., First Speaker, Merit Team Remarks (Jan. 14, 1976), at 3 (emphasis added). *See* AR (Vol. 640 Ref. 2).

[344] Philip Morris Inc., Comment (Apr. 19, 1996), at 47. *See* AR (Vol. 700 Ref. 226).

[345] BATCO, *Project Wheat-Part 1: Cluster profiles of U.K. male smokers and their general smoking habits,* Southampton, England (Jul. 10, 1975), at 3-4 (emphasis added). *See* AR (Vol. 20 Ref. 204-1).

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An internal RJR document shows that the industry views nicotine's role as pharmacological and distinct from the smoke components that provide flavor:

> If nicotine is the sine qua non of tobacco products, and tobacco products are recognized as being attractive dosage forms of nicotine, then it is logical to design our product - and where possible our advertising - *around nicotine delivery rather than tar delivery or flavor.*[346]

Other industry documents further demonstrate that the industry understands that nicotine's role is primarily pharmacological and that any sensory role is secondary. A variety of industry documents shows that industry knows that "satisfaction" comes from inhalation of nicotine into the lungs and absorption into the bloodstream. *See* Jurisdictional Analysis, 60 FR 41773–41774. Inhalation is necessary only to provide systemic pharmacological effects; it would be unnecessary if nicotine's role were to provide sensory effects. The statements of tobacco industry scientists confirm that nicotine's pharmacological effects are the primary reason for tobacco use. A leading tobacco research director noted as early as 1972 that "[t]he primary incentive to cigarette smoking is the immediate salutary effect of inhaled smoke upon body function . . . . *the physiological effect serves as the primary incentive; all other incentives are secondary.*"[347] As recently as 1992, RJR researchers recognized that "smokers use cigarettes primarily as a 'tool' or 'resource' that provides them with needed psychological benefits (increased mental alertness; anxiety reduction, coping with stress)."[348]

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[346] Teague CE, *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Feb. 2, 1973), at 3 (emphasis added). *See* AR (Vol. 531 Ref. 125).

[347] Dunn WL, Philip Morris Research Center, *Motives and Incentives in Cigarette Smoking* (1972), at 3-4 (emphasis added). *See* AR (Vol. 34 Ref. 582).

[348] Robinson JH, Pritchard WS, The role of nicotine in tobacco use, *Psychopharmacology* 1992; 108: 397-407 (emphasis added). *See* AR (Vol. 104 Ref. 945).

Literally dozens of such statements—made over decades by tobacco researchers and executives from virtually every major company—expose the industry's knowledge that consumers use tobacco products primarily for pharmacological effects. These statements are analyzed in depth in section II.C.2., below. By contrast, over this long period, there are virtually no tobacco company studies supporting the importance of the purported "sensory effects" of nicotine.

Second, the industry offers no persuasive data that nicotine contributes significantly to desirable flavor. FDA has reviewed all seven studies cited by the tobacco industry to demonstrate a significant "sensory" role for nicotine and finds them unpersuasive.

The industry cites a single abstract, based on research partially funded by RJR, to justify the claim that nicotine provides "trigeminal ('throat grab') stimulation that is enjoyed by smokers." The abstract describes a single study of trigeminal nerve manipulation in rats.[349] It is impossible to conclude from this study that nicotine stimulates the human trigeminal nerve in any manner significant to smokers.[350]

The industry cites a single paper to show that nicotine provides aroma "that is enjoyed by smokers." This research is based on recordings of the olfactory nerve in frogs.

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[349] Silver WL, Walker DB, *Nasal trigeminal chemoreception: response to nicotine*, presented at the Ninth Annual Meeting of the Association for Chemoreceptor Sciences, Sarasota FL (1987). *See* AR (Vol. 535 Ref. 96, vol. III.M).

[350] The industry's "trigeminal nerve" theory seems to be based in part on an anatomic misunderstanding. The industry proposes that the sensation of "throat grab" is caused by nicotine stimulation "in the back of the throat (where trigeminal nerve endings are located)." In fact, sensation to the back of the throat (pharynx) in humans is provided by the glossopharyngeal nerve, not by the trigeminal nerve. *See* Williams PL, Warwick R, eds., *Gray's Anatomy*, 37th ed. (Philadelphia: WB Saunders, 1989), at 1112. *See* AR (Vol. 711 Ref. 8).

It is impossible to conclude from this study that nicotine creates an aroma of any significance to smokers.[351] Indeed, another study also cited by the industry concluded that reducing the olfactory stimulus of cigarettes had a minor effect on smoking behavior.[352]

RJR cites one article from 1952 and three recent studies to support the contention that the sensory aspects of nicotine consumption are more important to users than its pharmacological effects.

In a 1952 article cited by RJR for the proposition that nicotine plays an important role in the taste and flavor of cigarette smoke, there are no data on this subject.[353] The relevant statements are merely the authors' speculations. In fact, the authors speculated about the flavors of various types of tobacco leaves, not about the specific flavor of nicotine. Nor did the authors distinguish between flavor and pharmacological effects of nicotine; to the contrary, a portion of the article omitted by the comment states that "the smoker's desires are not satiated by" a low-nicotine leaf. This observation is consistent with the conclusion that consumers value nicotine for its pharmacological effects.

A more recent study cited by RJR attempted to quantify the sensory responses to cigarettes containing varying levels of nicotine.[354] This study did not even consider

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[351] Thurauf N, Renner B, Kobal G, Responses recorded from the frog olfactory epithelium after stimulation with r(+) - and S(–) - nicotine, *Chemical Senses* 1995;20(3):337-344, at 342. *See* AR (Vol. 535 Ref. 96, vol. III.M).

[352] Baldinger B, Hasenfratz M, Battig K, Switching to ultralow nicotine cigarettes: effects of different tar yields and blocking of olfactory cues, *Pharmacology, Biochemistry and Behavior* 1995;50(2):233-239, at 238. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[353] Darkis FR, Baisden LA, Gross PM, Wolf FA, Flue-cured tobacco: chemical composition of rib and blade tissue, *Industrial and Engineering Chemistry* 1952;44(2):297-301, at 300-301. *See* AR (Vol. 519 Ref. 103, vol. II).

[354] Gordin HH, Perfetti TA, Mangan PP, A quantification of sensory responses related to dynamic cigarette performance variables, *Tobacco Science* 1987;31:23-27. *See* AR (Vol. 519 Ref. 103, vol. II).

whether any sensory responses to nicotine are important to smokers. The authors did not mention the number of subjects in the study. Nor did they account for the fact that cigarettes with varying nicotine levels also were different in many other ways; for example, they had different tip drafts, tipping porosities, plug wraps, and air dilution. Much of the data were not published with the study. FDA notes that this study—despite serious flaws—still found that tobacco taste was *not* associated with nicotine content.

A second recent study cited by RJR attempted to determine the smallest amount of nicotine change detectable to the user.[355] It did not address whether any nicotine change produces any important sensory effects. The authors concluded only that there is a detectable "perceptual response" to nicotine, which could be described as either throat harshness or "strength." The study did not distinguish between sensory and central pharmacological effects of nicotine.

The third recent study is an RJR presentation at a conference held in 1994, after FDA's investigation into nicotine was under way.[356] The presentation purported to show that nicotine's sensory effects are important in a consumer's acceptance of tobacco products, but the study failed to support this claim. Indeed, a principal author of the study conceded to FDA in 1994 that "we were not able to separate out the importance of the

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[355] Gordin HH, Perfetti TA, Hawley RW, Nicotine just noticeable difference study of full flavor low "tar" and ultra low "tar" non-menthol 85mm products, *Tobacco Science* 1988;32:62-65. *See* AR (Vol. 519 Ref. 103, vol. II).

[356] Pritchard WS, Robinson JH, *The Sensory Role of Nicotine in Cigarette "Taste," Smoking Satisfaction and Desire to Smoke*, presented at the International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II, Montreal (Jul. 21-24, 1994). *See* AR (Vol. 519 Ref. 103, vol. II).

sensory aspects versus the pharmacological."[357] FDA notes that this study, despite serious flaws, still found that nicotine levels had *no* effect on smooth taste, harsh taste, or aftertaste of cigarettes.

Thus, the industry has presented no data that show that nicotine's flavor or sensory effects are important to consumer acceptance. Even if the industry had produced evidence to support its position, however, nicotine's pharmacological effects would still explain virtually all consumer use. As described in section II.B.3., below, the sensory aspects of tobacco consumption are important to consumers only in how they are linked to the pharmacological effects of nicotine.

Compared with the hundreds of studies conducted around the world demonstrating the pharmacological significance of nicotine to tobacco consumers—a conclusion that reflects universal scientific agreement—the evidence to support the assertion that nicotine's sensory role is important to consumers is unconvincing. Thus, the industry has provided no basis to conclude that nicotine's role in tobacco use is to provide taste, flavor, or any other nonpharmacological sensation.

3. Other Factors Associated with Tobacco Use Are Secondary to Pharmacological Effects

FDA has established above that consumers use tobacco products for the pharmacological effects of nicotine. The tobacco industry argues that consumers use tobacco for a variety of nonpharmacological purposes, including for taste, out of habit and ritual, and for social reasons. The Agency recognizes that there are many effects of

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[357] Robinson J, Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products" (Aug. 2, 1994), at 228. *See* AR (Vol. 255 Ref. 3445).

tobacco use perceived by some consumers as nonpharmacological in nature. In surveys, for example, some tobacco users say they like the taste of the product; others report enjoying the ritual involved in its consumption. The evidence before the Agency demonstrates, however, that the nonpharmacological factors associated with tobacco consumption are secondary to the pharmacological reasons for consumer use of tobacco. Indeed, FDA concludes that consumers use tobacco products "nearly exclusively" for the pharmacological effects of nicotine.

This conclusion is supported by comments from the Coalition on Smoking OR Health, representing the American Heart Association, American Lung Association, and American Cancer Society. The Coalition explains:

> The physicians and health professionals who comprise our organizations provide the health care for virtually all tobacco users in the United States. Based upon our long term experience as well as our review of the scientific literature, it is our conclusion that the *vast majority of people who use nicotine containing cigarettes and smokeless tobacco products do so to satisfy their craving for the pharmacological effects of nicotine*; that is, to satisfy their drug dependence or addiction. While the published scientific literature on the point is conclusive in our scientific opinion, there may be no better evidence of the reason people use these products than the accumulative, daily experience of the health care professionals who are our members.[358]

One basis for FDA's finding of nearly exclusive tobacco use for nicotine's pharmacological effects is that tobacco products do not exist commercially without nicotine. If taste, for example, were an independent reason for use of tobacco products—as claimed by the industry—one would expect to find that very-low-nicotine products that

[358] Coalition on Smoking or Health, Comment (Jan. 2, 1996), at 6 (emphasis added). *See* AR (Vol. 533 Ref. 102).

preserve tobacco taste would be popular on the market. But there are no such products. The tobacco industry itself knows that a tobacco product without nicotine is not acceptable to consumers. For example, an attorney representing RJR stated that the company would never eliminate nicotine from its cigarette alternative, because "without nicotine, you don't have a cigarette."[359] A former Philip Morris researcher similarly stated that it was well-known within Philip Morris that nicotine delivery was more important than flavor in consumer acceptance of cigarettes. According to this researcher, it was believed within the company that while consumers might accept a cigarette that had adequate nicotine but marginal flavor, they were unlikely to accept a cigarette with relatively good flavor but "not enough" nicotine.[360]

A second basis for FDA's finding is that the details of tobacco use can be distinguished from the basic motivation for tobacco use. For example, researchers have demonstrated that consumers will pick a favorite cigarette brand among several that deliver adequate nicotine.[361] Habits may also explain specific patterns of cigarette consumption. For example, a smoker may enjoy smoking during his afternoon work break; another may like to smoke in the company of a particular friend. These factors commonly determine the details of use of many addictive substances, including opioids

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[359] Memorandum of meeting between Hutt PB, representing RJR Nabisco Inc., and FDA representatives (Oct. 23, 1987). *See* AR (Vol. 34 Ref. 558).

[360] Declaration of Uydess IL (Feb. 29, 1996), at 11-14. Comments concerning this declaration are addressed in section II.C.6., below. *See* AR (Vol. 638 Ref. 1).

[361] Boren JJ, Stitzer ML, Henningfield JE, Preference among research cigarettes with varying nicotine yields, *Pharmacology, Biochemistry and Behavior* 1990;36(1):191-193. *See* AR (Vol. 535 Ref. 96, vol. III.A).

and alcohol.[362] But they are separate from the underlying reason for such use, the pharmacological effects of the drugs.

Third, FDA agrees with experts in the field of addiction medicine that nonpharmacological factors associated with tobacco use are important to consumers only because they have become inextricably linked to nicotine's pharmacological effects. Extensive research in the field of behavioral psychology has demonstrated how animals and people come to associate environmental stimuli (taste, rituals, etc.) with the pharmacological effects of addictive drugs. In the extreme form, providing the stimulus alone leads to the user experiencing the pharmacological effect of the drug. This is called a "conditioned response." Thus, a heroin user who says he likes the feel of the needle in his arm has linked the sensation with the pharmacological "high" that inevitably follows. This heroin addict may even report a "high" after the injection of saline.[363] But he or she still injects "nearly exclusively" for the pharmacological effects of heroin.

Similarly, evidence in animals and humans demonstrates that nonpharmacological factors such as taste and habit are important to tobacco consumers only because they have become inextricably linked to the effects of the addictive drug. As one prominent addiction specialist noted, "Animal experiments support the view that the sensory and

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[362] Surgeon General's Report, 1988, at 15. *See* AR (Vol. 129 Ref. 1592).

[363] O'Brien CP, Testa T, Ternes J, Greenstein R, Conditioning Effects of Narcotics in Humans, in *Behavioral Tolerance: Research and Treatment Implications*, NIDA Research Monograph 18 (Washington DC: Government Printing Office No. 017-024-00899-8, Jan. 1978), at 67-71. *See* AR (Vol. 535 Ref. 96, vol. III.L).

olfactory stimuli associated with tobacco-using behavior function as conditioned stimuli due to their previous association with nicotine."[364]

Clinicians who treat patients dependent upon tobacco products have reached the same conclusion.[365] For example, some smokers identify the sensation of "tracheal scratch" associated with inhalation as pleasurable. But, as the American Society of Addiction Medicine (ASAM) comments:

> The tracheal 'scratch' which arises from the inhalation of cigarette smoke is a sensation which has become paired with the absorption of nicotine into the bloodstream and the consequent effects of nicotine on the brain. *People do not smoke for the 'scratch'; they smoke for the nicotine.* The "scratch" tells the smoker that nicotine is on its way to the brain and provides some indication of the relative dose which will shortly be coming.[366]

Other evidence of "conditioned responses" comes from studies of the early stages of tobacco withdrawal, when providing the environmental stimuli of smoking without nicotine (i.e., very-low-nicotine cigarettes) alleviates some of the abstinent smokers' discomfort.[367] This is analogous to heroin users feeling a psychological benefit from injecting saline when heroin is not available.[368] In both cases, the benefits of the

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[364] Jaffe JH, Tobacco smoking and nicotine dependence, in *Nicotine Psychopharmacology* (Oxford: Oxford University Press, 1990), 1-29, at 14. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[365] Benowitz NL, Cigarette smoking and nicotine addiction, *Medical Clinics of North America* 1992;76(2):415-437. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[366] American Society of Addiction Medicine, Comment (Dec. 29, 1995), at 5 (emphasis added). *See* AR (Vol. 528 Ref. 97).

[367] Butschky MF, Bailey D, Henningfield JE, Pickworth WB, Smoking without nicotine delivery decreases withdrawal in 12-hour abstinent smokers, *Pharmacology, Biochemistry and Behavior* 1995;50(1):91-96. *See* AR (Vol. 442 Ref. 7484).

[368] O'Brien CP, Testa T, Ternes J, Greenstein R, Conditioning Effects of Narcotics in Humans, in *Behavioral Tolerance: Research and Treatment Implications,* NIDA Research Monograph 18 (Washington DC: Government Printing Office No. 017-024-00899-8, Jan. 1978), at 67-71. *See* AR (Vol. 535 Ref. 96, vol. III.L).

nonpharmacological stimuli rapidly decrease as the stimuli are no longer associated with the drug's effects.[369]

ASAM concluded: "People who use tobacco products build up rituals around nicotine ingestion and experience sensations in the process of using tobacco that become valuable to them. However, *these rituals would not exist, and the sensations would be of no value, but for the associated delivery of nicotine to the brain.*"[370] Thus, when someone says he or she smokes for the "taste" or "feel" or "ritual" of cigarette consumption, these "reasons for use" are inextricably tied to the pharmacological effects of nicotine.[371]

Accordingly, FDA concludes that consumers use tobacco products "predominantly" and "nearly exclusively" for one or more of the pharmacological effects of nicotine.

4. Responses to Additional Comments

a. General Comments on Consumer Use

1. The American Society of Addiction Medicine (ASAM) argues that the common practice of inhaling cigarette smoke demonstrates that consumers use cigarettes for the pharmacological effects of nicotine. According to ASAM, because of the relatively

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[369] *Id.*

Butschky MF, Bailey D, Henningfield JE, Pickworth WB, Smoking without nicotine delivery decreases withdrawal in 12-hour abstinent smokers, *Pharmacology, Biochemistry and Behavior* 1995;50(1):91-96. *See* AR (Vol. 442 Ref. 7484).

[370] American Society of Addiction Medicine, Comment (Dec. 29, 1995), at 14 (emphasis added). *See* AR (Vol. 528 Ref. 97).

[371] Surgeon General's Report, 1988, at 58-59. *See* AR (Vol. 129 Ref. 1592).

low pH of cigarette smoke, nicotine absorption occurs to a significant extent only in the lungs. Conversely, ASAM notes that no important sensory effects are known to result from cigarette smoke in the lungs. Thus, ASAM concludes that "inhalation is the key to nicotine absorption from cigarettes, and there is no reason other than nicotine absorption for the consumer to inhale the smoke."[372]

ASAM further notes that tobacco advertisements historically encouraged consumers to inhale cigarette smoke; according to ASAM, such evidence demonstrates industry intent to ensure adequate nicotine delivery to smokers and thereby achieve substantial pharmacological effects.

FDA agrees that inhalation demonstrates that consumers use cigarettes for substantial pharmacological effects. According to *Gray's Anatomy*, there are no taste or smell receptors below the level of the larynx.[373] No evidence suggests that smokers enjoy any physical sensations associated with smoke in their lungs other than by association with the pharmacological effects of nicotine. Yet smokers learn to inhale—despite such unpleasant reactions as coughing—when the only reason to do so is nicotine absorption.

Indeed, the industry itself has recognized that nicotine absorption is the reason people inhale smoke. In 1982, a leading industry researcher wrote that "[i]t is well known that nicotine can be removed from smoke by the lung and transmitted to the brain within seconds of smoke inhalation. Since it is the major or sole pharmacologically active agent

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[372] American Society of Addiction Medicine, Comment (Dec. 29, 1995), at 5. *See* AR (Vol. 528 Ref. 97).

[373] Williams PL, Warwick R, eds., *Gray's Anatomy*, 37th ed. (Philadelphia: WB Saunders, 1989), at 1169-1180. *See* AR (Vol. 711 Ref. 8).

in smoke, it must be presumed that this is its preferred method of absorption and *thus why people inhale smoke*."[374]

2. The smokeless tobacco industry argues that FDA fails to distinguish among different smokeless tobacco products. The comment contends that FDA has based its conclusions entirely on evidence about moist snuff and that this evidence is inapplicable to chewing tobacco.

FDA disagrees that it has ignored the distinction between moist snuff and chewing tobacco or that its evidence applies only to moist snuff. As described in the Jurisdictional Analysis, Benowitz and colleagues found that the rate and amount of nicotine absorption was similar for oral snuff and chewing tobacco in ten healthy volunteers.[375] See Jurisdictional Analysis, 60 FR 41572. The total amount of nicotine absorbed from snuff and chewing tobacco was estimated to be 3.6 mg and 4.5 mg, respectively.[376] This study confirms that as much or more nicotine is absorbed from each of these products as from cigarettes.

Additionally, in a study submitted by the industry, Walsh and colleagues reported on the use of smokeless tobacco in 1,300 U.S. college athletes.[377] Of those surveyed who

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[374] Letter from Ayres CI (BATCO) to Kohnhorst EE (Brown & Williamson), transmitting partial summary of issues presented at Montebello Research Conference in 1982, at BW-W2-03949 (emphasis added). *See* AR (Vol. 34 Ref. 584-1).

[375] Benowitz NL, Porchet H, Sheiner L, *et al.*, Nicotine absorption and cardiovascular effects with smokeless tobacco use: comparison with cigarettes and nicotine gum, *Clinical Pharmacology and Therapeutics* 1988;44:23-28. *See* AR (Vol. 12 Ref. 134-1).

[376] *Id.*

[377] Walsh MM, Hilton JF, Ernster VL, Masouredis CM, Grady DG, Prevalence, patterns, and correlates of spit tobacco use in a college athlete population, *Addictive Behavior* 1994;19:411-427. *See* AR (Vol. 526 Ref. 95, appendix VIII).

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used smokeless tobacco, 39% reported using snuff only, 41% reported using both snuff and chewing tobacco, and 16% reported using chewing tobacco only. (Four percent failed to indicate the type of smokeless tobacco used.) Athletes who used both snuff and chewing tobacco generally reported patterns of use that were similar to those of athletes who used snuff only. This study supports similar patterns of use in both snuff and chewing tobacco users and demonstrates use of either moist snuff or chewing tobacco for similar pharmacological effects, such as relieving stress, satisfying strong cravings, and relieving the discomfort of withdrawal.

Thus the use, effects, and nicotine absorption from chewing tobacco compare with moist snuff and cigarettes. *See also* section II.D., below.

b. Comments on Tobacco Use To Satisfy Addiction

1. The tobacco industry argues that FDA's claim in the Jurisdictional Analysis that 75% to 90% of smokers consume cigarettes to satisfy addiction is factually unsupported. The industry contends that FDA selectively extracted pieces of data from various studies to support this rate of nicotine dependence and that the studies FDA relied upon were conducted in sample populations of patients of substance abuse clinics who would have higher "scales of dependence" than the general population.

FDA disagrees. The Agency did not selectively choose studies or selectively extract data from the studies on which it relied to support the reported rates of nicotine dependence. Rather, FDA chose from the published literature those studies that met the following criteria: the study used a definition of addiction established internationally by major public health organizations, the study was capable of estimating the prevalence of nicotine addiction in a well-defined population, and the study used appropriate research

methods, such as random sampling of a well-defined population, to estimate the prevalence of nicotine addiction. No study relied on surveying smokers at tobacco cessation clinics.

The four studies identified by FDA as satisfying the stated selection criteria for determining the population prevalence of nicotine addiction utilize two data sets and smoking populations. These sample populations represent a generalizable spectrum of smokers.

One of these populations (utilized in a study by Hughes *et al.*)[378] included otherwise healthy, non–drug-abusing patients representative of a well-defined population. This was not a selectively extracted population, nor did it have an elevated prevalence of nicotine addiction, as argued by the tobacco industry. It consisted of over 1,000 middle-aged smokers randomly sampled from a well-defined population of male heads of households, who were otherwise representative of men of that age. The men entered the study by identifying themselves as smokers. These men, on average about 51.1 years of age, were estimated to have a lifetime prevalence of nicotine addiction of 90%. The authors report that smoking habits of the men in this study were similar to those reported in previous studies of middle-aged men.

The tobacco industry contests these data on the grounds that: (1) the subjects are representative of the heaviest 22% of U.S. smokers; and (2) the authors at the time argued that the DSM criteria for nicotine addiction were too expansive. The industry's first point is based on a statistical misinterpretation. The industry argues that since the average

[378] Hughes JR, Gust SW, Pechacek TF, Prevalence of tobacco dependence and withdrawal, *American Journal of Psychiatry* 1987;144(2):205-208. *See* AR (Vol. 81 Ref. 292).

cigarette consumption in the study was 28 cigarettes per day, and because 22% of smokers in 1991 consumed over 25 cigarettes per day, then the study applies to "at most, 22 percent of smokers." But this reasoning confuses average and median consumption. The heaviest 22% of smokers, on average, consume far more than 25 or 28 cigarettes per day. For example, in 1985, almost half of the smokers in the group who smoked more than 21 cigarettes per day reported smoking 40 or more cigarettes a day.[379] Thus, the average number of cigarettes smoked by heavy smokers is well above 28 per day. Accordingly, the smokers represented in the Hughes study smoke less, on average, than "the heaviest" smokers identified by the comment.

The industry's second argument concerning the authors' view of the DSM criteria is irrelevant. Although the researchers were initially surprised at the high rates of dependence revealed in this study, the DSM criteria have retained credibility and are widely accepted by clinicians for diagnosing substance dependence.

The second sample of data (utilized in studies by Woody *et al.*, Cottler, and Hale *et al.*)[380] is derived from a population studied during the Substance Abuse Disorders Field Trials for DSM-IV. This sample population came from five sites around the United States

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[379] Department of Health and Human Services, Public Health Service, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, *Reducing the Health Consequences of Smoking—25 Years of Progress, a Report of the Surgeon General* (Atlanta: 1989), at 295. *See* AR (Vol. 130 Ref. 1593).

[380] Woody GE, Cottler LB, Cacciola J, Severity of dependence: data from the DSM-IV field trials, *Addiction* 1993;88:1573-1579. *See* AR (Vol. 13 Ref. 150).

Cottler L, Comparing DSM-III-R and ICD-10 substance use disorders, *Addiction* 1993;88:689-696. *See* AR (Vol. 13 Ref. 149).

Hale KL, Hughes JR, Oliveto AH, Helzar JE, Higgins ST, Bickel WK, Cottler LB, Nicotine dependence in a population-based sample, in *Problems of Drug Dependence, 1992*, NIDA Research Monograph 132, (Washington DC: Government Printing Office, 1993). *See* AR (Vol. 39 Ref. 60).

and ranged in age from 18 to 44 years. Some of the subjects were from the general population, and others were selected, by a random digit dialing method, from subjects treated for substance abuse. Three separate analyses, using different assumptions and methods, were performed on these data, and the estimates of nicotine dependence reported in three published articles ranged from 77% to 92%. There is no evidence that these rates of nicotine dependence in these sample populations are greater than those for a nonpredisposed population that smoked for the same period. Indeed, the population of non–drug-abusing middle-aged men studied by Hughes *et al.* had a rate of nicotine dependence that was consistent with, and even higher than, the rates found in the Woody *et al.*, Cottler, and Hale *et al.* studies.

One study of nicotine addiction rates cannot be used to establish the prevalence of nicotine addiction because the population examined was not representative of the spectrum of smokers. The sample population in this study by Breslau *et al.* consisted of 394 smokers 21 to 30 years of age who were randomly selected from a well-defined population in a health maintenance organization (HMO).[381] The median age was 26 years, and 51% of the smokers were addicted to nicotine. These studies reflect that rates of dependence on nicotine increase substantially with duration of exposure and with the smoker's age. Although 51% of these young smokers were dependent on nicotine, fully 90% of the middle-aged smokers in the study by Hughes *et al.* were dependent on nicotine. Moreover, Breslau *et al.* acknowledge that the rate of dependence found in this sample of young smokers may not be representative of the rate among all smokers.

[381] Breslau N, Kilbey MM, Andreski MA, Nicotine dependence, major depression, and anxiety in young adults, *Archives of General Psychiatry* 1991;48:1069-1074. *See* AR (Vol. 37 Ref. 17).

In conclusion, the studies relied on by FDA were not chosen in a preferentially selected manner, but on the basis of study design and methodological considerations. The data sets reflect populations that can be considered representative of cross sections of the U.S. smoking population. There is no evidence to suggest that these studies are not generalizable to the population of smokers. FDA believes that these studies support the claim that 75% to 90% of smokers consume cigarettes to satisfy nicotine addiction. Comments of the American Psychiatric Association agree with this assessment, stating that "DSM based studies . . . found that 80%-90% of adult smokers are nicotine dependent."[382]

2. The tobacco industry argues that dependence can never be measured in a large population. This contention is disproved by the successful population-based studies just described. The industry's comments were premised on selective quotations from researchers, none of whom were actually agreeing with the assertion that all such studies are impossible or invalid.

3. The tobacco industry criticizes the data collection methods in the population studies FDA relied upon to support tobacco dependence rates. The industry argues that self-reporting results in inaccurate conclusions and cites an article by Kozlowski *et al.* to support this contention.[383]

FDA disagrees. This method of data collection is a scientifically recognized and accepted mode of inquiry for prevalence studies and is relied upon to determine the

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[382] American Psychiatric Association, Comment (Jan. 2, 1996), at 2. *See* AR (Vol. 700 Ref. 1020).

[383] Kozlowski LT, Herman CP, Frecker RC, What researchers make of what cigarette smokers say: filtering smokers' hot air, *Lancet* 1980;1(8170):699-700. *See* AR (Vol. 535 Ref. 96, vol. III.I).

population prevalence of other disorders, including alcohol dependence, cocaine dependence, and depression.[384] Some of these are disorders for which, compared to tobacco use, interview methods would be less likely to reveal accurate results because of the criminal consequences associated with illicit drug use. Moreover, agencies that have expertise in tracking the prevalence of disease in this country, such as the Centers for Disease Control and Prevention, rely on such studies.[385] The tobacco industry itself cites multiple surveys based on self-reporting in its comments.

The industry also mischaracterizes the article by Kozlowski *et al.* The article does not support the industry's argument that all self-reported data in population studies are inaccurate. In the article, the authors suggest that self-reports of abstinence among people quitting smoking may be inflated. The authors do not suggest that any other information obtained by self-reporting is unreliable, nor do they give any reason to extrapolate their observations to reporting of other information about smoking behavior. Finally, despite their belief that some smokers may exaggerate the number and success of their attempts at abstinence, the authors never doubt that a large proportion of smokers try to quit.

Accordingly, FDA concludes that the methods used in the population prevalence studies are accepted and reliable.

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[384] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 175-272. See AR (Vol. 535 Ref. 96, vol. III.B).

[385] *See, e.g.*, Centers for Disease Control and Prevention, Reasons for tobacco use and symptoms of nicotine withdrawal among adolescents and young adult tobacco users—United States, 1993, *Morbidity and Mortality Weekly Report* 1994;43(41):745-750. *See* AR (Vol. 43 Ref. 162).

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c. Comments on Tobacco Use for Effects on Mood and Weight

1. The tobacco industry contends that FDA has not established that consumers use cigarettes or smokeless tobacco nearly exclusively either to affect mood or to control weight. According to the comment, the studies cited by FDA do not show that a high percentage of consumers use tobacco to affect mood or control weight and that there are an insufficient number of such studies upon which to base a conclusion.

This comment misinterprets the standard for establishing that a product is "intended to affect the structure or any function of the body" through consumer use. As noted in section II.B.1., above, some courts have suggested that where the Agency relies solely on consumer use to establish intended use, consumers must use the product predominantly or nearly exclusively for pharmacological purposes. These cases contain no requirement, however, that consumers use the product in question nearly exclusively for *each* individual pharmacological effect the product produces. Thus, there is no requirement that consumers use nicotine nearly exclusively for each of its pharmacological effects. It is sufficient to establish that consumers as a group use tobacco to obtain any of the several effects on structure or function sought by consumers (for example, to satisfy addiction, for other psychoactive effects, and to control weight). *See ASH v. Harris*, 655 F.2d at 240; *NNFA v. Mathews*, 557 F.2d at 334-336.

FDA also disagrees that there are insufficient studies to support the conclusion that consumers use tobacco to affect mood and control weight. The many studies cited by FDA conclusively show that the majority of tobacco consumers rely on tobacco products to achieve a relaxing or calming effect. *See* Jurisdictional Analysis, 60 FR 41579–41580.

For example, one survey found that over 60% of smokers aged 16 to 44 believe that smoking reduces nervous irritation.[386]

The use of cigarettes for weight control is similarly established in numerous studies. These studies show that smokers believe that smoking keeps weight down and that weight control is a significant motivation to continue smoking. The Surgeon General's 1988 Report on Nicotine Addiction reviewed a large number of studies demonstrating that weight control is a powerful motivator for initiation and maintenance of smoking in as many as one-third to one-half of young smokers.[387]

d. Comments on Nonpharmacological Factors Associated with Tobacco Use

1. The tobacco industry quotes several addiction experts stating that there are social, emotional, and behavioral variables that explain patterns of tobacco use. The industry concludes that consumers do not use tobacco products "nearly exclusively" for the pharmacological effects of nicotine.

FDA disagrees. The industry confuses the details of tobacco use with the reason for use. While multiple factors may explain why a particular person decides to smoke a particular cigarette at a particular moment, data support only one reason why the vast majority of consumers use tobacco products day after day, year after year: to obtain the drug effects of nicotine.

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[386] McKennell AC, Smoking motivation factors, *British Journal of Social and Clinical Psychology* 1970;49(1):8-22. *See* AR (Vol. 13 Ref. 152-1).

[387] Surgeon General's Report, 1988, at 438-439. *See* AR (Vol. 129 Ref. 1592).

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Indeed, the scientific consensus holds that nonpharmacological factors are important to consumers only because they are linked to the pharmacological effects of nicotine. Thus, Jed Rose, one of the key researchers cited by the industry to support the contention that consumers use tobacco for nonpharmacological reasons, refers to nonpharmacological factors as "sensory cues" that are used to meter nicotine intake.[388]

As described in section II.B.3., above, such cues become "conditioned" as they are associated with the pharmacological effects of nicotine on the brain. These environmental factors are certainly important to tobacco consumers, as they are to users of other addictive drugs,[389] but they are not the primary reasons for use. As a tobacco industry executive in a speech to the company's board of directors said:

> [T]he psychosocial motive is not enough to explain continued smoking. Some other motive force takes over to make smoking rewarding in its own right. Long after adolescent preoccupation with self-image has subsided, the cigarette will even preempt food in times of scarcity on the smoker's priority list . . .We are of the conviction . . . that the ultimate explanation for the perpetuated cigarette habit resides in the pharmacological effect of smoke upon the body of the smoker, the effect being most rewarding to the individual under stress.[390]

2. The cigarette manufacturers cite research suggesting that nicotine-free cigarettes have flavor[391] and may help smokers to quit.[392] They draw particular attention

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[388] Rose JE, Behm FM, Levin ED, Role of nicotine dose and sensory cues in the regulation of smoke intake, *Pharmacology, Biochemistry and Behavior* 1993;44:891-900. *See* AR (Vol. 8 Ref. 100).

[389] Surgeon General's Report, 1988, at 59. *See* AR (Vol. 129 Ref. 1592).

[390] Wakeham H (Philip Morris, Inc.), *Smoker Psychology Research,* presented to Philip Morris board of directors (Nov. 26, 1969), at 237, 240. *See* AR (Vol. 11 Ref. 142).

[391] Levin ED, Behm FM, Rose JE, The use of flavor in cigarette substitutes, *Drug and Alcohol Dependence* 1990;26:155-160, at 159. *See* AR (Vol. 535 Ref. 96, III.J).

[392] Butschky MF, Bailey D, Henningfield JE, Pickworth WB, Smoking without nicotine delivery decreases withdrawal in 12-hour abstinent smokers, *Pharmacology, Biochemistry and Behavior* 1995;50(1):91-96. *See* AR (Vol. 442 Ref. 7484).

to a recent presentation by Rose *et al.*, in which smokers given a denicotinized cigarette reported the same or slightly less relief of craving than smokers given intravenous nicotine, and less relief than smokers given their usual brand of cigarettes.[393] They also reported more immediate satisfaction from the denicotinized cigarette than from intravenous nicotine, although less than from their usual brand. The denicotinized cigarette provided less psychological reward than did intravenous nicotine. The smokeless tobacco manufacturers also suggest that no-nicotine substitutes for smokeless tobacco may have helped some users remain abstinent. According to the industry, this research demonstrates that consumers use tobacco products for reasons other than nicotine.

FDA disagrees. The cited studies do suggest that low- or no-nicotine products can be used in research and in a small proportion of former users of tobacco products. Yet the products have been uniformly rejected *by tobacco consumers*, who do not view them as acceptable substitutes for cigarettes. When given a choice, tobacco users will not abandon nicotine for flavor, demonstrating the real reason they smoke. For example, Next, a denicotinized cigarette that was briefly marketed by Philip Morris, was removed from the market because, according to the company, it was not accepted by consumers.

The cited studies replicate many others that show that the most consistent and strongest effects are produced by nicotine-delivering cigarettes. It is not surprising that nicotine injections, which, according to the studies produced significant pain and burning at the site of injection, do not produce all the satisfaction of smoking nor duplicate the

[393] Rose JE, Westman EC, Behm FM, Comparative effects of intravenous nicotine and de-nicotinized cigarette smoke, poster presented at the annual meeting of the Society for Research on Nicotine and Tobacco (Mar. 15-17, 1996), Washington, D.C. *See* AR (Vol. 711 Ref. 21).

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taste and throat sensations of smoking. As described in section II.B.3., above, the efficacy of nicotine-free cigarettes in alleviating some of the symptoms of withdrawal is consistent with the conclusion that social and environmental factors become associated with obtaining the pharmacological effects of nicotine, and thus are perceived as pleasurable as a "conditioned response," but in and of themselves are not the reason people smoke. Low- or no-nicotine cigarettes may temporarily provide some relief to consumers as a result of the conditioned response to the sensorimotor aspects of smoking, but this response is subject to "rapid extinction" when nicotine is withheld.[394] This phenomenon is similar to the temporary finding that heroin addicts feel pleasure from injecting themselves with saline.[395]

The study by Rose is entirely consistent with these findings. The study evaluated only the immediate effects of a denicotinized cigarette on craving reduction, satisfaction, and psychological reward. It did not attempt to evaluate any effects of denicotinized cigarettes on sustained satisfaction or relief of withdrawal symptoms. Rose himself has stated that smokers seek the sensory cues of smoking because "the repetition of the smoking act thousands of times per year by a moderately heavy smoker leads to a strong conditioned association between the sensory aspects of smoking . . . and the pharmacological effects of nicotine."[396] Therefore, according to Rose, "effective

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[394] *Id.*

[395] O'Brien CP, Testa T, Ternes J, Greenstein R, Conditioning effects of narcotics in humans, in *Behavioral Tolerance: Research and Treatment Implications*, NIDA Research Monograph 18 (Washington DC: Government Printing Office No. 017-024-00899-8, Jan. 1978), at 67-71. *See* AR (Vol. 535 Ref. 96, vol. III.L).

[396] Rose JE, Levin ED, Inter-relationships between conditioned and primary reinforcement in the maintenance of cigarette smoking, *British Journal of Addiction* 1991;86:605-609, at 605. *See* AR (Vol. 67 Ref. 58).

treatment of tobacco abuse needs to take into account the influence of these sensory cues,"[397] by, for example, providing the smoker with de-nicotinized cigarettes, in addition to strategies to eliminate nicotine dependency.[398] He is explicit, however, that nicotine is the primary reinforcer of smoking behavior, and that desire for the sensory aspects of tobacco use is the result of conditioned reinforcement maintained by nicotine's primary reinforcement.[399]

3. To support the argument that consumers use tobacco products for flavor, the tobacco industry cites research in which smokers' satisfaction with smoking decreased when their upper airways were anesthetized.

Upon review of this research, FDA finds that the studies do not support the contention that consumers smoke cigarettes primarily for flavor. As described above, the researcher who led the study, Rose, believes that nonpharmacological factors associated with tobacco consumption are "cues" important to smokers only by association with nicotine's pharmacological impact.

Moreover, the research cited does not establish that the reason for the drop in smoking satisfaction upon airway anesthetization was the blockade of sensory input from smoke. These decreases in satisfaction might have been due simply to the unpleasant sensation of upper airway anesthetization, not to any blockade of sensory input from smoke. In this study, satisfaction with "sham smoke" also dropped with anesthesia. Sham smoke was so diluted as to provide few pharmacological or sensory effects. Thus,

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[397] *Id.*

[398] *Id.* at 607.

[399] *Id.* at 605-606.

providing anesthesia decreased the satisfaction of consuming real cigarette smoke *and placebo smoke.*[400]

The study does, however, provide data addressing the importance of the pharmacological aspects of smoking. Thirty minutes after smoking, the subjects who had received smoke delivering nicotine—*regardless of whether their throats had been anesthetized*—felt similarly satisfied. And their satisfaction was greater than that of those who had received "sham smoke." Thus, the study indicated that nicotine produces smoking satisfaction *even in the absence of mouth and throat sensation.*

4. The tobacco industry cites three studies to support the argument that consumers use tobacco products out of "habit and ritual."

Upon review of these studies, FDA concludes that they provide no evidence that "habit and ritual" are the primary motivation for use of tobacco products. As described at length above, "habit and ritual" are important to consumers of all addictive drugs, but only through their linkage to the pharmacological effects of the drug.

First, the industry cites a study in which some smokers did not consider the first cigarette of the day their favorite.[401] The observation relates to a detail of smoking rather than to underlying motivation; as described in section II.B.3., above, there are many reasons why an individual may desire a particular cigarette at a particular time. This is not evidence that "habit or ritual" is the driving biological force for maintenance of tobacco use.

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[400] Rose JE, Tashkin DP, Ertle A, Zinser MC, Lafer R, Sensory blockade of smoking satisfaction, *Pharmacology, Biochemistry and Behavior* 1985;23:289-293, at 290 (emphasis added). *See* AR (Vol. 42 Ref. 124).

[401] Jarvik M, Killen JD, Varady A, Fortmann SP, The favorite cigarette of the day, *Journal of Behavioral Medicine* 1993;16:413-422. *See* AR (Vol. 535 Ref. 96, III.A).

The industry then quotes the speculative conclusion of a study without any description of the research. In fact, the study's main finding was that the smell of cigarettes was *not* important for smoking behavior.[402]

The industry cites another conclusion of a study without any description of the research.[403] One of the study's major findings was that enforced abstinence (smokers were not allowed to smoke for an afternoon) had different effects on subsequent smoking behavior than natural abstinence (smokers did not smoke while asleep at night). Basic biological imperatives undoubtedly affect the details of smoking behavior but certainly cannot explain the reason for tobacco use.

5. The tobacco industry argues that the "social aspects" of smoking explain consumer use of tobacco. No studies are cited to support this conclusion. As the Surgeon General's Report noted in 1988, social factors influence initiation and patterns of use of many addictive drugs;[404] the primary reason for the drug's use, however, is pharmacological. In this respect, nicotine is similar to heroin.[405]

6. The smokeless tobacco industry argues that the evidence cited by FDA in support of its conclusion that consumers use tobacco products nearly exclusively for pharmacological effects has little to do with smokeless tobacco. Five studies were

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[402] Baldinger B, Hasenfratz M, Battig K, Switching to ultralow nicotine cigarettes: effects of different tar yields and blocking of olfactory cues, *Pharmacology, Biochemistry and Behavior* 1995;50(2):233-239, at 238. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[403] Jacober A, Hasenfratz M, Battig K, Cigarette smoking: habit of nicotine maintenance? *Human Psychopharmacology* 1994;9:117-123, at 117. *See* AR (Vol. 535 Ref. 96, vol. III.G).

[404] Surgeon General's Report, 1988, at 15. *See* AR (Vol. 129 Ref. 1592).

[405] Jaffe JH, Drug addiction and drug abuse, in *Goodman and Gilman's The Pharmacological Basis of Therapeutics*, 8th ed. (New York: Pergamon Press, 1990), chap. 22 (522–573), at 529. *See* AR (Vol. 535 Ref. 96, vol. III.G).

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submitted with the comment that are claimed to demonstrate that smokeless tobacco consumers use those products because they "enjoy the taste" or simply "like it," not for any "pharmacological effects."[406]

FDA disagrees with the industry's interpretation of these studies. As discussed in section II.B.3., above, when people use drugs with powerful pharmacological effects such as nicotine they commonly associate many environmental stimuli with the pleasurable experience of consuming the substance. Thus, a survey result that consumers "enjoy the taste" indicates only that a significant portion of consumers have linked the sensory cues to the pharmacological effects of nicotine.

None of the five studies cited by the industry noted whether users who did not give pharmacological reasons for using smokeless tobacco had ever tried to quit. Thus, many of these users may not have been aware of their pharmacological addiction. As an expert quoted by the Inspector General of the Department of Health and Human Services

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[406] Walsh MM, Hilton JF, Ernster VL, Masouredis CM, Grady DG, Prevalence, patterns, and correlates of spit tobacco use in a college athlete population, *Addictive Behavior* 1994;19:411-427. *See* AR (Vol. 526 Ref. 95, vol. VIII).

Lopez LC, Smokeless tobacco consumption by Mexican-American university students, *Psychology Reports* 1994;75:279-284. *See* AR (Vol. 526 Ref. 95, vol. VIII).

Glover ED, Laflin M, Flannery D, Albritton DL, Smokeless tobacco use among American college students, *Journal of American College Health* 1989;38:81-84. *See* AR (Vol. 526 Ref. 95, vol. VII).

Wisniewski JF, Bartolucci AA, Comparative patterns of smokeless tobacco usage among major league baseball personnel, *Journal of Oral Pathology and Medicine* 1989;18:322. *See* AR (Vol. 526 Ref. 95, vol. VIII).

Connolly GN, Orleans GT, Kogan M, Use of smokeless tobacco in major-league baseball, *New England Journal of Medicine* 1988;318(19):1281-1285. *See* AR (Vol. 526 Ref. 95, vol. VII).

explained, "Many haven't tried to quit. But when we tell them the health consequences, and then they try to quit, they can't."[407]

In studies cited by the industry, some users of smokeless tobacco stated that they "enjoy the taste," but a significant percentage of these users also reported that they use smokeless tobacco for psychological reasons. For example, in one study, a majority of 195 users of snuff and chewing tobacco reported using tobacco for one or more pharmacological effects, including relieving stress, relief of "strong cravings," and relieving the discomfort of withdrawal.[408] These statements support the conclusion that the majority of people who use smokeless tobacco do so for the well-established pharmacological effects of nicotine: stimulation, sedation, and addiction. These studies thus constitute additional evidence that smokeless tobacco is primarily used by consumers to obtain the pharmacological effects of nicotine.

[407] Department of Health and Human Services, Office on Smoking and Health, *Spit Tobacco and Youth* (Washington DC: Government Printing Office, 1992), at 8. *See* AR (Vol. 7 Ref. 76).

[408] Walsh MM, Hilton JF, Ernster VL, Masouredis CM, Grady DG, Prevalence, patterns, and correlates of spit tobacco use in a college athlete population, *Addictive Behavior* 1994;19:411-427. *See* AR (Vol. 526 Ref. 95, vol. VIII).

C. THE STATEMENTS, RESEARCH, AND ACTIONS OF THE CIGARETTE MANUFACTURERS SHOW THAT THE MANUFACTURERS INTEND THEIR PRODUCTS TO AFFECT THE STRUCTURE AND FUNCTION OF THE BODY

In sections II.A. and II.B., above, the Agency has concluded that cigarettes and smokeless tobacco are intended to affect the structure and function of the body on the basis of the foreseeable pharmacological effects and uses of cigarettes and smokeless tobacco and the widespread actual use of cigarettes and smokeless tobacco by consumers for pharmacological purposes. In this section, the Agency considers another category of persuasive evidence of intended use: the statements, research, and actions of the cigarette manufacturers themselves. In section II.D., below, the Agency considers the statements, research, and actions of the smokeless tobacco manufacturers.

The administrative record includes extensive evidence of the cigarette manufacturers' statements, research, and manufacturing practices. Much of this evidence has only recently become available as a result of the Agency's investigation, congressional hearings, and other investigations and sources. This evidence is part of the relevant objective evidence that the Agency may consider in determining the manufacturer's "intended uses" of a product.

In the Jurisdictional Analysis, the Agency made extensive findings based on the evidence then available regarding the statements, research, and actions of the cigarette manufacturers. FDA received comments on these findings from the individual tobacco companies and tobacco industry trade associations, as well as from public health organizations and other interested groups and members of the public. After careful consideration of the evidence in the record and the public comments, the Agency finds that

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the evidence described in this section provides a third independent basis for concluding that cigarettes are in fact intended to affect the structure and function of the bodies of smokers.

In section II.C.1., FDA discusses its legal authority to consider evidence of the manufacturers' statements, research, and actions in establishing intended use. This discussion shows that an intent to affect the structure or function of the body can be established by evidence showing that (1) the manufacturer "has in mind" that the product will be used by consumers for pharmacological purposes, or (2) the manufacturer has "designed" the product to provide pharmacological effects. The Agency's role in making these determinations is that of a fact finder. It weighs the statements, research, and actions of the manufacturer to determine the particular uses the manufacturer has in mind or designs its product to provide.

The Agency's fact-finding task has been made more difficult by the manufacturers' general refusal to cooperate with the Agency's investigation. Although some manufacturers did permit FDA investigators to visit their manufacturing plants in the spring of 1994, the manufacturers have failed to provide FDA with information and documents requested by FDA in July 1994 regarding nicotine in cigarettes.[409] In particular, the manufacturers have failed to comply with FDA's request for company documents regarding the pharmacological effects of nicotine and the role of nicotine in cigarette design and manufacturing. The limited number of company documents provided

[409] *See, e.g.,* Letter from Chesemore RG (FDA) to Bible GC (Philip Morris Inc.) (Jul. 11, 1994). *See* AR (Vol. 54 Ref. 617). Similar letters were sent to other cigarette and smokeless tobacco manufacturers.

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by the manufacturers with their comments sheds little light on the role of nicotine in cigarettes and does not significantly change the evidence in the record.

The Agency's discussion of the evidence of the manufacturers' statements, research, and actions is divided into several parts. In section II.C.2., the Agency discusses the statements and research of each of the major cigarette companies and the Council for Tobacco Research, a trade association to which they belong. This evidence shows that the manufacturers have known for decades that nicotine has the characteristics of addictive drugs and causes other significant pharmacological effects and that consumers use cigarettes primarily to obtain the pharmacological effects of nicotine, including satisfaction of their addiction. This evidence also shows that in internal discussions, senior researchers for the cigarette manufacturers refer to cigarettes as drug delivery systems, calling them a "dispenser for a dose unit of nicotine,"[410] a vehicle for delivery of nicotine,"[411] and other similar terms. This evidence is sufficient by itself to establish that cigarettes are intended to affect the structure and function of the body, because it shows that the manufacturers "have in mind" that their products will be used specifically for pharmacological purposes.

In sections II.C.3. and II.C.4., the Agency discusses the second basis for determining the manufacturers' intent through their statements, research, and actions—namely, the evidence that manufacturers have "designed" cigarettes to provide pharmacologically active doses of nicotine to consumers. In section II.C.3., the Agency discusses the product research and development activities of the manufacturers. This

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[410] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 5. *See* AR (Vol. 12 Ref. 133).

[411] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on The Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 1. *See* AR (Vol. 531 Ref. 125).

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evidence shows that the manufacturers have conducted extensive product research and development to establish the dose of nicotine necessary to produce pharmacological effects and to optimize the delivery of nicotine to consumers.

In section II.C.4., the Agency discusses the evidence that the manufacturers do in fact manipulate and control nicotine deliveries in their commercial cigarettes. This evidence supports a finding that the manufacturers manipulate and control the delivery of nicotine in commercial cigarettes to provide a pharmacologically active dose of nicotine to consumers. Taken together, the evidence in sections II.C.3. and II.C.4. establishes yet another basis for finding that cigarettes are intended to affect the structure and function of the body.

In section II.C.5., the Agency concludes that, when considered cumulatively, the evidence from the statements, research, and actions of the manufacturers is internally consistent and mutually corroborating, further supporting the finding that the effects of cigarettes on the structure and function of the body are "intended" by the manufacturers. Finally, in section II.C.6., the Agency responds to substantive comments concerning the evidence of the manufacturers' statements, research, and actions that are not addressed in sections II.C.2. to II.C.5.[412]

[412] The discussion of the statements, research, and actions of the manufacturers in this section cites hundreds of documents. It is the totality of the evidence from these documents that the Agency relies upon. No single document cited by the Agency is essential to the Agency's conclusion in section II.C. that the manufacturers intend their products to affect the structure and function of the body. In particular, although considerable evidence of the statements, research, and actions of the manufacturers was submitted to the Agency after the publication of the Jurisdictional Analysis on August 11, 1995, none of this evidence is essential to the Agency's finding of intended use in section II.C. The new evidence is summarized below because it provides persuasive corroboration that the cigarette manufacturers do intend to affect the structure and function of the body. However, the Agency would reach the same conclusions regarding the intent of the manufacturers even without this additional evidence. In addition, none of the documents in the Agency's docket of confidential documents is essential to the Agency's determination. *See* AR (Vol. 505-518).

II.C.1.

1. "Intended Use" May Be Established on the Basis of the Statements, Actions, and Research of the Manufacturers

Reliance on the statements, research, and actions of manufacturers to establish intended use is consistent with the plain language of the statute. The statute provides that products "intended" to affect the structure or any function of the body are drugs or devices. Sections 201(g)(1)(C) and 201(h)(3). According to a canon of statutory construction, words used by Congress, unless otherwise defined, will be interpreted as taking their ordinary meaning. *See, e.g., Smith v. United States*, 508 U.S. 223, 228 (1993); *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 860 (1984). In this case, the ordinary meaning of "intend" includes "to have in mind" and "to design" for a particular use. These plain meanings allow the Agency to consider the manufacturer's statements, research, and actions in determining intended use.

The *American Heritage Dictionary,* for instance, defines "intend" as: "1. To have in mind; plan. 2.a. To design for a specific purpose. b. To have in mind for a particular use. . . ."[413] Consistent with this meaning, the Agency interprets "intended" uses to include those specific uses that are "in the mind" of the manufacturer or for which the manufacturer "designs" the product. The plain meaning of the statute thus permits the Agency to inquire into the statements, research, and actions of the manufacturer. What the manufacturer says in internal documents, the kind of research the manufacturer conducts, and the actions of the manufacturer in producing its product can all be evidence

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[413] *The American Heritage Dictionary of the English Language,* 2d ed. (Boston: Houghton Mifflin Co., 1991), 668. *See* AR (Vol. 526 Ref. 95, vol. V). Other dictionary definitions are similar. *See, e.g., Webster's New World Dictionary of American English,* 3d college ed. (New York: Simon & Schuster, Inc., 1988), 702 ("intend 1. *to have in mind as a purpose;* plan 2. to mean (something) to be *or be used (for); design. . . .*") (emphasis added).

of the particular uses the manufacturer has in mind or for which the manufacturer has designed the product.

FDA's regulations on the meaning of "intended uses" are consistent with the statutory language and explicitly contemplate that FDA may examine the knowledge, actions, and expressions of manufacturers and other vendors. 21 CFR 201.128 and 801.4. These regulations state that intended uses are to be established on the basis of "objective intent." FDA's "objective intent" standard means that the Agency may consider objective evidence to determine a manufacturer's intent, notwithstanding the manufacturer's assertions that pharmacological effects and uses are not intended. As the courts have recognized, "FDA is not bound by the manufacturer's subjective claims of intent but *can find actual therapeutic intent on the basis of objective evidence*." *NNFA v. Mathews*, 557 F.2d at 334 (emphasis added); *accord United States v. Storage Spaces Designated Nos. "8" and "49,"* 777 F.2d 1363, 1366 n. 5 (9th Cir. 1985) ("self-serving labels cannot be used to mask true intent"), *cert. denied*, 479 U.S. 1086 (1987).

The regulations recognize that as a fact finder, FDA may consider a broad range of evidence of intended use, including evidence of the statements, research, and actions of the manufacturer. For example, the regulations state that "the objective intent is determined by such persons' *expressions . . . or oral or written statements.*" 21 CFR 201.128 (emphasis added). These "expressions" and "oral or written statements" can include relevant and probative intracompany memoranda or research.

Indeed, the regulations provide express authority for FDA to consider evidence of the manufacturer's actual intent. The regulations state that "objective intent . . . may be shown by the circumstances that the article is, *with the knowledge of [the manufacturer]*,

offered and used for a purpose for which it is neither labeled nor advertised." *Id.* (emphasis added). The regulations also direct FDA to consider circumstances in which the manufacturer "*knows*, or *has knowledge of facts* that would give him notice" that a product is to be used for purposes other than those expressly promoted by the manufacturer. *Id.* (emphasis added). Proving whether a manufacturer "knows" or has "knowledge of facts that would give him notice" of pharmacological uses of a product can include an inquiry into the actual understanding of the manufacturer, including consideration of the statements, research, and actions that may be probative of the manufacturer's actual knowledge.

Moreover, the regulations provide that objective intent may be shown by the "*circumstances surrounding the distribution of the article.*" *Id.* (emphasis added). This broad phrase allows the fact finder to infer the intended uses of a product based on, among other factors, the conduct of the manufacturer that occurs prior to distribution. For example, evidence that shows how distributed tobacco products are designed and formulated is reasonably considered a "circumstance surrounding distribution of the article."

Courts have also recognized that the Agency may consider "objective evidence" to determine a manufacturer's intent. *See NNFA v. Mathews*, 557 F.2d at 334; *United States v. Storage Spaces*, 777 F.2d at 1366; *Latex Surgeons' Gloves*, 799 F. Supp. at 1295 (circumstances surrounding manufacture and distribution of product demonstrated intended use despite manufacturer's claim to FDA that product was not a device); *Hanson*, 417 F. Supp. at 35 (statements by plaintiff distributors and importers that drug was needed by patients to treat cancer is relevant to intended use).

The Agency's role in determining intended use on the basis of the statements, research, and actions of the manufacturer is that of a fact finder. The Agency's responsibility is to reach the best factual judgments it can from the record of the statements, research, and actions before it, including evidence submitted during the comment period.

2. The Cigarette Manufacturers Understand That Nicotine Has Addictive and Other Pharmacological Effects and That Smokers Use Cigarettes To Obtain These Effects

As discussed below, the evidence in the record shows that the cigarette manufacturers have extensive knowledge of effects of nicotine on smokers. The manufacturers know that nicotine has the characteristics of other addictive drugs; that it provides other significant pharmacological effects; and that it is the primary reason that smokers use cigarettes. This evidence establishes that when the manufacturers offer cigarettes to the public, they "have in mind" that their cigarettes will be used by smokers to obtain the pharmacological effects of nicotine. This evidence is thus sufficient by itself to establish that the manufacturers intend the pharmacological uses of their products.

a. The Statements and Research of Philip Morris

The administrative record includes over three decades of internal statements and research on nicotine by Philip Morris, the nation's largest cigarette manufacturer. These documents indicate that senior researchers and officials at Philip Morris have long viewed nicotine as a "powerful pharmacological agent"[414] and "the primary reason"[415] people

[414] Charles JL (Philip Morris Inc.), *Nicotine Receptor Program-University of Rochester* (Mar. 18, 1980), in 141 Cong. Rec. H7680 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[415] Philip Morris Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table*, at 1. *See* AR (Vol. 531 Ref. 122).

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smoke. This knowledge shows that Philip Morris understands that its product will affect the structure and function of the body and will be used by consumers for these drug effects.

i. The Views of Senior Researchers and Officials. Philip Morris officials recognized the importance of the pharmacological effects of nicotine in cigarettes as early as 1961. That year, Helmut Wakeham, a senior Philip Morris research scientist, informed the company's research and development committee that "nicotine is believed essential to cigarette acceptability."[416] Wakeham also explained the pharmacological effects of nicotine, stating that "low nicotine doses stimulate, but high doses depress functions" and that nicotine contributes to the "pleasurable reactions or tranquillity" produced by smoking.[417]

By 1969, the views of the Philip Morris scientists on the pharmacological effects of cigarettes were communicated to the Philip Morris board of directors. During that year, Wakeham, who was then vice president for research and development, briefed the Philip Morris board of directors on why people smoke. He expressed his department's "conviction" that "the ultimate explanation for the perpetuated cigaret habit resides in the pharmacological effect of smoke upon the body of the smoker." He further stated that smokers' craving for cigarettes is so strong that "the cigaret will even preempt food in times of scarcity":

Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 6. *See* AR (Vol. 638 Ref. 2).

[416] Wakeham H (Philip Morris Inc.), *Tobacco and Health—R&D Approach* (Nov. 15, 1961), at 43. *See* AR (Vol. 125 Ref. 1314).

[417] *Id.* at 40.

> [T]he psychosocial motive is not enough to explain continued smoking. Some other motive force takes over to make smoking rewarding in its own right. Long after adolescent preoccupation with self-image has subsided, the cigaret will even preempt food in times of scarcity on the smoker's priority list. . . . The question is "Why?"
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> . . . .We are of the conviction, . . . that the ultimate explanation for the perpetuated cigaret habit resides in the pharmacological effect of smoke upon the body of the smoker, the effect being most rewarding to the individual under stress.[418]

Wakeham's views on the central importance of the "pharmacological effect" of nicotine were shared by other senior researchers and officials at Philip Morris, as the following examples demonstrate:

- In 1972, Philip Morris scientist William Dunn characterized cigarettes as a nicotine delivery system in the following language:

> Think of the cigarette pack as a storage container for a day's supply of nicotine. . . .
>
> *Think of the cigarette as a dispenser for a dose unit of nicotine. . . .*
>
> Think of a puff of smoke as the vehicle of nicotine . . . .
>
> *Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke.*[419]

- In 1974, Philip Morris' director of research, Thomas Osdene, who subsequently became vice president for science and technology, approved and sent to Wakeham and other senior Philip Morris officials a report that analogized smoking to drug use. The report's "working hypothesis" is that "[d]ose-control continues even after the puff of smoke is drawn into the mouth." The report postulates that the consumer regulates

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[418] Wakeham H (Philip Morris Inc.), *Smoker Psychology Research*, presented to Philip Morris board of directors (Nov. 26, 1969), at 237, 240. *See* AR (Vol. 11 Ref. 142).

[419] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 5-6 (emphasis added). *See* AR (Vol. 12 Ref. 133).

smoke intake "to achieve his habitual quota of the pharmacological action," and notes that if smokers deprived of cigarettes display an increase in aggression, it may be explained as "the emergence of reactions . . . not unlike those to be observed upon withdrawal from any of a number of habituating pharmacological agents."[420]

- In 1976, Philip Morris researcher A. Udow wrote a memorandum on "Why People Start To Smoke." The memorandum observes that once people start to smoke, one of the reasons they will continue to smoke is that cigarettes serve as "*a narcotic, tranquilizer, or sedative.*"[421]
- In 1978, the authors of Philip Morris' 5-year plan for research and development stated that "*nicotine may be the physiologically active component of smoke having the greatest consequence to the consumer.*"[422]
- In 1980, Philip Morris researcher Jim Charles, who subsequently became vice president for research and development, wrote the then vice president for research and development, Robert Seligman, that:

> *Nicotine is a powerful pharmacological agent with multiple sites of action and may be the most important component of cigarette smoke. Nicotine and an understanding of its properties are important to the continued well being of our cigarette business since this alkaloid has been cited often as "the reason for smoking."*. . . Nicotine is known to have effects on the central and

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[420] Philip Morris Research Center, *Behavioral Research Annual Report, Part II* (Nov. 1, 1974) (approved by Osdene TS), in 141 Cong. Rec. H7658, H7660 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[421] Udow A (Philip Morris Inc.), *Why People Start to Smoke* (Jun. 2, 1976), in 141 Cong. Rec. H7664 (daily ed. Jul. 25, 1995) (emphasis added). *See* AR (Vol. 14 Ref. 175a).

[422] Philip Morris Inc., *Research and Development Five-Year Plan, 1979-1983* (Sep. 1978), in 141 Cong. Rec. H7668 (daily ed. Jul. 25, 1995) (emphasis added). *See* AR (Vol. 14 Ref. 175a).

peripheral nervous system as well as influencing memory, learning, pain perception, response to stress and level of arousal.[423]

A statement that the Agency received from a former Philip Morris research director, William Farone, expresses similar views. Farone was the director of applied research at Philip Morris from 1976-1984, during which period he supervised five divisions and 150 employees. According to Farone's statement:

> It is well recognized within the cigarette industry that *there is one principal reason why people smoke—to experience the effects of nicotine*, a known pharmacologically active constituent in tobacco. . . .
>
> . . . .
>
> *The strongly held conviction of most industry scientists and product developers was that nicotine was the primary reason why people smoked.*[424]

The administrative record contains many additional statements by Philip Morris researchers and officials acknowledging the significant pharmacological effects of nicotine and their importance to the smoker. *See, e.g.*, 60 FR 41584–41603, 41621–41667. Collectively, these statements show that Philip Morris' senior scientists and officials have known for decades that cigarettes function as a drug delivery system, providing the pharmacological effects of nicotine to consumers who smoke cigarettes for the primary purpose of obtaining these effects.

ii. Research into Nicotine Pharmacology. The foregoing views of Philip Morris' top research scientists and officials were based on extensive in-house research on

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[423] Charles JL (Philip Morris Inc.), *Nicotine Receptor Program-University of Rochester* (Mar. 18, 1980), in 141 Cong. Rec. H7680 (daily ed. Jul. 25, 1995) (emphasis added). *See* AR (Vol. 14 Ref. 175a).

[424] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 1,6 (emphasis added). *See* AR (Vol. 638 Ref. 2).

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nicotine pharmacology. The studies conducted by Philip Morris ranged from traditional pharmacology involving animal experiments to EEG experiments.

Philip Morris conducted a large number of studies. In 1979 alone at least 16 different studies on nicotine pharmacology were conducted by three different research groups within Philip Morris' Behavioral Research Laboratory.[425] The Animal Behavior Group conducted six experiments on the drug effects of nicotine in rats. The Neuropsychology Laboratory conducted five experiments to determine the pharmacological effects of nicotine on the human brain, including experiments on "[t]he Effects of Cigarette Smoking on the Electroencephalogram" and "[L]ong-Term Smoke Deprivation and the Electrical Activity of the Brain."[426] The Smoking Behavior Group conducted studies on the behavioral consequences of smoking, including studies to determine the consequences of smoking low-nicotine cigarettes.

Beginning before 1980 and continuing until 1984, Philip Morris conducted research in search of a "nicotine analogue." This research demonstrates Philip Morris' knowledge that nicotine has the hallmark properties of a drug of abuse and shows the company's intention to preserve these properties in new products. As described by former Philip Morris scientist Victor DeNoble, the purpose of the research was "to come up with a molecule that would *mimic nicotine's effect in the brain*, and would not affect the peripheral nervous system and therefore not have cardiovascular liability."[427] Thus, while

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[425] Dunn WL (Philip Morris Inc.), *Plans and Objectives–1979* (Dec. 6, 1978), in 141 Cong. Rec. H7668-7670 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[426] *Id.* at H7669-7670.

[427] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 33 (Apr. 28, 1994) (testimony of Victor DeNoble) (emphasis added). *See* AR (Vol. 708 Ref. 2).

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the company attempted to eliminate an adverse effect of nicotine, it deliberately sought to retain nicotine's effects on the brain.

To conduct this work, Philip Morris scientists had to identify and compare the pharmacological and behavioral effects of nicotine on the brain. The pharmacological and behavioral profiles of the nicotine analogues synthesized by Philip Morris chemists were then compared to those of nicotine.[428] Since the primary goal of the nicotine analogue program was to develop a nicotine analogue that would retain the physiological and behavioral effects of nicotine on the brain, especially its reinforcing properties, the newly synthesized nicotine analogues were screened in animal behavioral tests designed to assess their reinforcing properties. (A substance has reinforcing properties if it is able to induce repeated, compulsive use. *See* section II.A.3.c.i., above.) The tests used were "exactly the same tests" that the National Institute on Drug Abuse (NIDA) uses "to determine if a drug has an abuse potential."[429]

One of the principal NIDA tests used by Philip Morris was a series of "self-administration" experiments with rats. These studies determine addiction potential by assessing whether rats will press a lever to give themselves repeated injections of the test substance. There is a strong correlation between substances that are found to be self-

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[428] *Id.* at 5.

See also Declaration of Victor DeNoble of Feb. 2, 1995, at 2-9. *See* AR (Vol. 31 Ref. 524-5).

[429] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 17 (Apr. 28, 1994) (testimony of Victor DeNoble). *See* AR (Vol. 708 Ref. 2).

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administered in rats and substances that are addictive in humans.[430] Philip Morris found that rats would self-administer nicotine.[431] According to the director of NIDA, "[t]hese findings from the DeNoble study indicate that nicotine has reinforcing properties, *one of the hallmark characteristics of an addictive drug.*"[432] The Philip Morris researchers also found that rats would develop a tolerance to nicotine, another characteristic of an addictive drug.[433]

The senior management and top officials of Philip Morris "continually reviewed . . . and approved" this research.[434] In fact, in November 1983, the president of Philip Morris, Shep Pollack, visited the laboratory conducting the self-administration experiments and watched rats inject themselves with nicotine. Pollack was informed by the Philip Morris researcher in charge of the study, Victor DeNoble, that Philip Morris' self-administration studies followed "the exact procedure that NIDA would use to demonstrate abuse liability," and that the studies demonstrated that nicotine is "a reinforcing agent."[435] DeNoble further informed Pollack that although a finding of self-

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[430] Gardner EL, Brain reward mechanism, in *Substance Abuse, A Comprehensive Textbook*, 2d ed., eds. Lowinson JH, Ruiz P, Millman RB, *et al.* (Baltimore: Williams and Wilkins 1992), at 70. *See* AR (Vol. 8 Ref. 88).

See also section II.A.3.c.i.

[431] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 5 (Apr. 28, 1994) (testimony of Victor DeNoble). *See* AR (Vol. 708 Ref. 2).

[432] *Id.* at 20 (letter from Leshner AI (NIDA) to Waxman HA (Apr. 13, 1994) (emphasis added)).

[433] *Id.* at 5 (testimony of Victor DeNoble). The Philip Morris researchers did not, however, find evidence of nicotine withdrawal.

[434] *Id.* at 5-6.

[435] *Id.* at 54.

administration does not by itself prove that nicotine is addictive, it "predicts abuse liability."[436] Despite several attempts, DeNoble and his colleague Paul Mele were not allowed to publish the results of their self-administration studies or present their results at a meeting sponsored by the American Psychological Association.[437]

These studies were conducted for their potential commercial applicability. The memorandum describing the "plans and objectives" for the Behavioral Research Laboratory in 1979 states expressly that "the rationale for the program rests on the premise that such knowledge will strengthen Philip Morris R&D capability in developing new and improved smoking products."[438]

Some of Philip Morris' research attempted to assess the pharmacological effects of nicotine on youths. One study on the hyperkinetic child as prospective smoker observed that "amphetamines, which are strong stimulants, have the anomalous effect of quieting these children down"; the Philip Morris researchers initiated a study to determine "whether such children may not eventually become cigarette smokers in their teenage years as they discover *the advantage of self-stimulation via nicotine*."[439] This study was apparently

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[436] *Id.*

[437] *Id.* at 51-52, 57-94.

[438] Dunn WL, *Plans and Objectives--1979* (Dec. 6, 1978), in 141 Cong. Rec. H7669. *See* AR (Vol. 14 Ref. 175a).

[439] Ryan FJ (Philip Morris Inc.), Relationship between smoking and personality, in *Smoker Psychology/May 1-31, 1974* (Jun. 10, 1974), in 141 Cong. Rec. H7651 (daily ed. Jul. 25, 1995) (emphasis added). *See* AR (Vol. 14 Ref. 175a).

For a further description of Philip Morris' research into hyperkinetic children, *see* the following documents reprinted in 141 Cong. Rec. H7651-7657 (daily ed. Jul. 25, 1995):

> Ryan FJ (Philip Morris Inc.), Relationship between smoking and personality, in *Smoker Psychology/May 1-31, 1974* (Jun. 10, 1974). *See* AR (Vol. 14 Ref. 175a).

never completed because "[o]bstacles presented by school systems and physicians . . . have made it very difficult for us to conduct studies using school and medical records of minors."[440] Another study initiated by Philip Morris involved administering "painful" electric shocks to college students to determine the anxiety-reducing effects of cigarettes.[441] Although preliminary findings supported the hypothesis that students with a high anxiety factor on personality tests would puff more frequently,[442] the study apparently had to be discontinued because "fear of shock is scaring away some of our more valuable

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Ryan FJ (Philip Morris Inc.), Hyperkinesis as a precursor of smoking, in *Smoker Psychology/Feb. 1-28, 1975* (Mar. 10, 1975). *See* AR (Vol. 14 Ref. 175a).

Philip Morris Research Center, *Behavioral Research Annual Report* (Jul. 18, 1975) (approved by Dunn WL). *See* AR (Vol. 14 Ref. 175a).

Ryan FJ (Philip Morris Inc.), Hyperactivity, in *Smoker Psychology/Apr. 1-30, 1977* (May 13, 1977). *See* AR (Vol. 14 Ref. 175a).

Ryan FJ (Philip Morris Inc.), Hyperkinetic children, in *Smoker Psychology/Feb. 1-28, 1978* (Mar. 10, 1978). *See* AR (Vol. 14 Ref. 175a).

[440] Ryan FJ (Philip Morris Inc.), Hyperkinetic children, in *Smoker Psychology/Feb. 1-28, 1978* (Mar. 10, 1978), in 141 Cong. Rec. H7657 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[441] Ryan FJ (Philip Morris Inc.), *Proposed Research Project: Smoking and Anxiety* (Dec. 23, 1969), in 141 Cong. Rec. H7648 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

For a further description of Philip Morris' research involving the administration of electric shocks, *see* the following documents printed in 141 Cong. Rec. H7648-7649 (daily ed. Jul. 25, 1995):

Ryan FJ (Philip Morris Inc.), Shock I, II, III, and IV, in *Consumer Psychology* (Sep. 16 - Oct.15, 1971). *See* AR (Vol. 14 Ref. 175a).

Ryan FJ (Philip Morris Inc.), Shock V, in *Consumer Psychology* (Jan. 15 - Feb. 15, 1972). *See* AR (Vol. 14 Ref. 175a).

Dunn WL (Philip Morris Inc.), *Quarterly Report-Projects 1600 and 2302* (Oct. 5, 1972). *See* AR (Vol. 14 Ref. 175a).

[442] Ryan FJ (Philip Morris Inc.), Shock I, II, III, and IV, in *Consumer Psychology Monthly Report* (Sep. 16 - Oct. 15, 1971), in 141 Cong. Rec. H7648-7649 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

subjects."[443] In another study, Philip Morris proposed injecting nicotine into human subjects in order "to yield a broader picture of the role of the spike, the level, and the reinforcement characteristics of the substance."[444]

In congressional testimony, the former Philip Morris president, William Campbell, testified that to the extent that Philip Morris controls nicotine levels in cigarettes through blending, this is done "for taste."[445] Philip Morris's research program does not support this statement, however. The internal research documents in the administrative record show that Philip Morris exhaustively investigated the pharmacological properties of nicotine—not its gustatory properties. The intensive focus on nicotine pharmacology reflected in the documents indicates that Philip Morris regarded nicotine's contribution to cigarettes as pharmacological, not taste-related. Moreover, in its comments Philip Morris did not provide evidence of internal Philip Morris research into the taste characteristics of nicotine.

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[443] Eichorn PA, Dunn WL (Philip Morris Inc.), *Quarterly Reports–Projects 1600 and 2302* (Oct. 5, 1972), in 141 Cong. Rec. H7649 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[444] Dunn WL (Philip Morris Inc.), *Plans and Objectives–1981* (Nov. 26, 1980), in 141 Cong. Rec. H7682 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

For a further description of Philip Morris' proposed research involving nicotine injections, *see*:

> Dunn WL (Philip Morris Inc.), *Behavioral Research Accomplishments, 1977* (Dec. 19, 1977), in 141 Cong. Rec. H7666 (daily ed. Jul. 25, 1995). *See* AR. (Vol. 14 Ref. 175a).
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> Dunn WL (Philip Morris Inc.), *Plans and Objectives–1979* (Dec. 6, 1978), in 141 Cong. Rec. H7669 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[445] *Regulation of Tobacco Products (Part 1): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 764 (Apr. 14, 1994) (testimony of William Campbell). *See* AR (Vol. 707 Ref. 1).

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Further examples of Philip Morris' research on nicotine pharmacology are presented in the Jurisdictional Analysis. *See* 60 FR 41590–41591, 41595–41599. Taken together, these studies show that Philip Morris conducted an extensive, sustained, and sophisticated investigation into the pharmacological effects of nicotine that gave the company knowledge that nicotine has significant pharmacological effects on smokers, including reinforcing effects. The research was conducted because of its commercial significance to Philip Morris; used techniques that are employed by government agencies to identify the "abuse potential" of drugs; and found that nicotine has hallmark characteristics of an addictive drug, including reinforcing effects and the development of tolerance.

iii. Project Table. Philip Morris' recognition of the important pharmacological role of nicotine in cigarettes has been consistent for over three decades. New evidence received by the Agency during the comment period, for instance, indicates that officials inside Philip Morris continued to recognize the importance of nicotine's pharmacological effects and uses in the 1990's.

A draft Philip Morris report on "Project Table," a proposal to develop "a nicotine delivery device" that relies on "heating rather than burning the tobacco" to "produce[] a cleaner, safer smoking experience," written around 1992, acknowledges that although "[d]ifferent people smoke for different reasons. . . . *the primary reason is to deliver nicotine into their bodies.*"[446] The report describes nicotine in cigarettes in explicit drug-like terms:

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[446] Philip Morris, Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table*, at 1,5 (emphasis added). *See* AR (Vol. 531 Ref. 122).

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> Nicotine . . . is a physiologically active, nitrogen containing substance. *Similar organic chemicals include . . . quinine, cocaine, atropine and morphine.* While each of these substances can be used to affect human physiology, nicotine has a particularly broad range of influence.[447]

Project Table provides a detailed description of the pharmacological action of nicotine on the brain:

> *During the smoking act, nicotine is inhaled into the lungs in smoke, enters the bloodstream and travels to the brain in about eight to ten seconds.* The nicotine alters the state of the smoker by becoming a neurotransmitter and a stimulant. *Nicotine mimics the body's most important neurotransmitter, acetycholine (ACH), which controls heart rate and message sending within the brain. The nicotine is used to change physiological states leading to enhanced mental performance and relaxation.* A little nicotine seems to stimulate, while a lot sedates a person.[448]

The report also expressly places cigarettes and smokeless tobacco products in the same category of "nicotine delivery devices" that includes nicotine patches and inhalers, stating that "nicotine delivery devices range from snuff, chewing tobacco, cigars, pipes and conventional cigarettes to unique smoking articles, chewing gum, patches, aerosol sprays and inhalers."[449] The report thus indicates that the views of Philip Morris on the role of nicotine in cigarettes have been remarkably consistent. Twenty years after senior Philip Morris scientist William Dunn called cigarettes "a dispenser for a dose unit of nicotine,"[450] Philip Morris officials continue to regard nicotine as a drug and cigarettes as a "nicotine delivery device." The evidence of Philip Morris' statements and research on

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[447] *Id.* at 1 (emphasis added).

[448] *Id.* (emphasis added).

[449] *Id.* at 2.

[450] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 5. *See* AR (Vol. 12 Ref. 133).

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nicotine pharmacology persuasively documents that its cigarettes are intended to affect the structure or function of the body.

b. The Statements and Research of R. J. Reynolds

R.J. Reynolds Tobacco Company (RJR) is the nation's second largest cigarette manufacturer. The information in the administrative record shows that researchers and senior officials at RJR hold views on the pharmacological effects and uses of nicotine in cigarettes that are similar to those of the researchers and senior officials at Philip Morris.

i. The Teague Memoranda. During the comment period, FDA received two documents written by Claude Teague in 1972 and 1973, when he was the assistant director of research at RJR. Teague was subsequently promoted to director of corporate research in 1978.[451] These internal memoranda show that RJR scientists regarded nicotine as a "potent" and "habit-forming" drug; considered cigarettes to be "a vehicle for delivery of nicotine"; and conceived of the tobacco industry itself as "a specialized, highly ritualized and stylized segment of the pharmaceutical industry."

Teague's 1972 memorandum, entitled "Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein," makes four significant points. First, the memorandum describes nicotine as a powerful and habituating drug. According to the memorandum, nicotine is "a potent drug with a variety of physiological effects."[452] It is also "*known to be a habit-forming alkaloid.*"[453] Nicotine's specific effects on the body are described as follows:

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[451] *American Men and Women of Science, 1995-1996,* 19th ed. (New Providence: R.R. Bowker, 1995), 7:62. *See* AR (Vol. 711 Ref. 13).

[452] Teague CE, (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 1. *See* AR (Vol. 531 Ref. 125).

> The habituated user of tobacco products is said to derive "satisfaction" from nicotine. Although much studied, the physiological actions of nicotine are still poorly understood and appear to be many and varied. For example, . . . *at different dose levels, nicotine appears to act as a stimulant, depressant, tranquilizer, psychic energizer, appetite reducer, anti-fatigue agent, or energizer*, to name but a few of the varied and often contradictory effects attributed to it."[454]

Second, the memorandum acknowledges that nicotine is the "primary" reason for smoking. According to the memorandum:

> *[T]he confirmed user of tobacco products is primarily seeking the physiological "satisfaction" derived from nicotine*—and perhaps other active compounds. *His choice of product and pattern of usage are primarily determined by his individual nicotine dosage requirements. . . .*[455]

Third, the Teague memorandum describes cigarettes as drug delivery systems. According to the memorandum, "*a tobacco product is, in essence, a vehicle for delivery of nicotine*, designed to deliver the nicotine in a generally acceptable and attractive form."[456] The memorandum further states:

> If what we have said about the habituated smoker is true, then products designed for him should emphasize nicotine, nicotine delivery efficiency, nicotine satisfaction, and the like. *What we should really make and sell would be the proper dosage form of nicotine with as many other built-in attractions and gratifications as possible*—that is, an efficient nicotine delivery system with satisfactory flavor, mildness, convenience, cost, etc. . . . *Would it not be better, in the long run, to identify in our minds and in the minds of our customers what we are really selling, i.e., nicotine satisfaction?*[457]

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[453] *Id.* (emphasis added).

[454] *Id.* at 1-2 (emphasis added).

[455] *Id.* at 1 (emphasis added).

[456] *Id.*

[457] *Id.* at 5 (emphasis added).

Indeed, the memorandum describes the tobacco industry itself as a "segment of the pharmaceutical industry":[458]

> In a sense, *the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry*. . . . Our Industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our Company's position in our Industry is determined by our ability to produce dosage forms of nicotine which have more overall value, tangible or intangible, to the consumer than those of our competitors.[459]

Finally, the memorandum recommends improvements in the delivery of nicotine to consumers. In the short term, the memorandum recommends reducing tar levels while maintaining nicotine levels in cigarettes:

> Our critics have lumped "tar" and nicotine together in their allegations about health hazards. . . . *An accompanying Research Planning Memorandum suggests an approach to reducing the amount of "tar" in cigarette smoke per unit of nicotine*. That is probably the most realistic approach in today's market for conventional cigarette products.[460]

In the long term, the memorandum recommends a "more futuristic approach":[461]

> *If our business is fundamentally that of supplying nicotine in useful dosage form, why is it really necessary that allegedly harmful "tar" accompany that nicotine*? There should be some simpler, "cleaner", more efficient and direct way to provide the desired nicotine dosage than the present system involving combustion of tobacco or even chewing of tobacco. . . . It should be possible to obtain pure nicotine by synthesis or from high-nicotine tobacco. *It should then be possible, using modifications of techniques developed by the pharmaceutical and other*

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[458] *Id.* at 2.

[459] *Id.* (emphasis added).

[460] *Id.* at 6 (emphasis added).

[461] *Id.*

> *industries, to deliver that nicotine to the user in efficient, effective, attractive dosage form, accompanied by no "tar", gas phase, or other allegedly harmful substances.* The dosage form could incorporate various flavorants, enhancers, and like desirable additives, and would *be designed to deliver the minimum effective amount of nicotine at the desired release-rate to supply the "satisfaction" desired by the user.* Such a product would maximize the benefits derived from nicotine, minimize allegedly undesirable over-dosage side effects from nicotine, and eliminate exposure to other materials alleged to be harmful to the user.[462]

Evidence in the record indicates that RJR acted on both of these recommendations. *See* sections II.C.2.b.iii. and II.C.3.b., below.

Claude Teague's 1973 memorandum, entitled "Some Thoughts about New Brands of Cigarettes for the Youth Market," recommends that RJR develop "new brands tailored to the youth market."[463] According to the memorandum, one of the design features that should be tailored to the youth market is nicotine delivery. The memorandum reaffirms that the "nicotine effects" and the other physical effects of smoking are "highly desirable to the confirmed smoker."[464] For the "pre-smoker" or "learner," however, the memorandum states that the physical effects of smoking, including the effects of nicotine, are "largely unknown, unneeded, or actually quite unpleasant or awkward."[465] Consequently, the memorandum recommends that "the effort here should be to affect a compromise to minimize the undesirable effects while retaining these which later become

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[462] *Id.* at 7 (emphasis added).

[463] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on Some Thoughts about New Brands of Cigarettes for the Youth Market* (Feb. 2, 1973), at 1. *See* AR (Vol. 531 Ref. 125).

[464] *Id.* at 4.

[465] *Id.* at 2, 4.

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desirable."[466] With respect to nicotine, the memorandum recommends that "nicotine should be delivered at about 1.0-1.3 mg/cigarette, the minimum for confirmed smokers. The rate of absorption of nicotine should be kept low by holding pH down, probably below 6."[467]

Teague's analysis shows that, as at Philip Morris, scientists at RJR have long understood that nicotine has significant pharmacological effects on the body and is the "primary" reason people smoke. His analysis further shows that, like Philip Morris scientists, RJR scientists also expressly conceived of cigarettes as a drug delivery system.

ii. Other Statements and Research of RJR Scientists and Officials. The views in the Teague memoranda about the "crucial role" of the pharmacological effects of nicotine continued to be expressed within RJR in later years. In approximately 1977, for instance, RJR researchers told the RJR marketing department that "*[w]ithout any question, the desire to smoke is based on the effect of nicotine on the body*";[468] that "*a confirmed smoker attempts to get a certain desired level of nicotine*";[469] and that "[t]he nicotine in the blood acts upon the central nervous system and produces in the average smoker a sensation one could describe as either stimulating or relaxing."[470] According to the RJR researchers, while nicotine has a role in "mouth taste" and "mouth satisfaction,"

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[466] *Id.* at 4.

[467] *Id.*

[468] Senkus M (R. J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 4 (emphasis added). *See* AR (Vol. 700 Ref. 593).

[469] *Id.* at 5 (emphasis added).

[470] *Id.* at 3.

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that is not nicotine's primary role; rather, "the ultimate satisfaction comes from the nicotine which is extracted . . . *in the lungs.*"[471]

In the late 1980's and early 1990's, moreover, RJR researchers conducted a series of experiments on how nicotine affects the brain. The published reports from these experiments revealed that 20 years after the Teague memoranda, RJR researchers continued to believe that: (1) nicotine has pharmacological effects on the brain; and (2) smokers smoke cigarettes primarily to obtain these pharmacological effects.

In a 1989 report entitled "Effects of Smoking/Nicotine on Anxiety, Heart Rate, and Lateralization of EEG During a Stressful Movie," RJR used an EEG to test its hypothesis that "nicotine and smoking help smokers to relax and cope with stress and negative affect" through "activation-reducing effects on the EEG."[472] The experiment's results supported RJR's hypothesis, indicating that nicotine produced the expected "anxiolytic" or anxiety-reducing effects in the brain:

> The present results support the view that the electrocortical effects of smoking are a function of environmental stress level, cigarette nicotine delivery, and cortical site. *They are also consistent with previous evidence that nicotine reduces anxiety and with our hypothesis that nicotine's anxiolytic properties are mediated by the right hemisphere.* Normal/high-nicotine delivery cigarettes, relative to low-nicotine control cigarettes, produced cortical activation (decreased alpha power) in both hemispheres during the no-stress control condition . . . but produced the opposite effect, decreased activation (increased alpha power), at the right parietal site during the three stressful movie scenes.[473]

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[471] *Id.* at 7-9 (emphasis added).

[472] Gilbert DG, Robinson JH, Chamberlin CL (R.J. Reynolds Tobacco Co.), *et al.*, Effects of smoking/nicotine on anxiety, heart rate, and lateralization of EEG during a stressful movie, *Psychophysiology* 1989;26(3):311-319, at 311. *See* AR (Vol. 14 Ref. 174-2).

[473] *Id.* at 316 (citation omitted) (emphasis added).

The 1989 study used the EEG to measure smokers' brain waves while they watched a film containing graphic images of industrial accidents. In a 1991 study entitled "Electroencephalographic Effects of Cigarette Smoking," RJR researchers measured the effects of smoking on brain waves under "levels of mental workload representative of those encountered in day-to-day living."[474] They found that the pharmacological effects of smoking are affected by how deeply the smoker inhaled. According to the report:

> In light inhaling smokers, . . . smoking was found to attenuate EEG activity in the delta, theta, and alpha frequency bands . . . . In deep inhaling smokers, smoking produced a symmetrical central midline increase in beta2 magnitude, *an EEG effect that . . . is associated with anxiety relief.*[475]

These results led the RJR researchers to propose that light inhalers and deep inhalers smoke to obtain different pharmacological effects from nicotine and that the effects produced in deep-inhalers were comparable to the effects of benzodiazepines, a class of addictive drugs used for anxiety relief. According to the report:

> The results of the present investigation indicate that *light inhaling . . . smokers may smoke primarily for purposes of mental activation and performance enhancement.* This does not appear to be the case for deeper inhaling . . . smokers. . . . An extensive literature suggests that increased beta2 activity may reflect the anxiolytic properties of the benzodiazepines independently of sedative effects. *Thus, an important smoking motive for deep inhaling smokers might be anxiety reduction.*[476]

A year later, the RJR researchers reported the results of a study designed to isolate the precise effects of nicotine on the brain. In this study, some smokers were given

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[474] Pritchard WS (R.J. Reynolds Tobacco Co.), Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490, at 486. *See* AR (Vol. 3 Ref. 23-2).

[475] *Id.* at 485 (emphasis added).

[476] *Id.* at 488 (citations omitted) (emphasis added).

regular "light" cigarettes to smoke while others were given experimental cigarettes with virtually no nicotine. The results from the EEG showed that the regular "light" cigarette produced "a significant increase in beta2 magnitude," an effect associated with anxiety relief, and "a significant decrease in delta magnitude," an effect associated with improved mental alertness.[477] According to the researchers, "*this indicates that the beneficial effects of smoking on cognitive performance . . . are a function of nicotine absorbed from cigarette smoke upon inhalation.*"[478]

In another report written in 1992, the RJR researchers addressed the question "why do people smoke?" The researchers reject the claim that people smoke to satisfy an addiction, but they do not reject the claim that people smoke to obtain other pharmacological effects from nicotine. To the contrary, as Claude Teague did 20 years earlier, they assert that the reason people smoke is precisely to obtain these pharmacological effects:

> We believe that a more reasonable hypothesis concerning why people smoke . . . is that *smokers use cigarettes primarily as a 'tool' or 'resource' that provides them with needed psychological benefits (increased mental alertness, anxiety reduction, coping with stress).*[479]

In its comments, RJR asserts that nicotine is important in cigarettes because "nicotine plays an important role in the taste and flavor of cigarette smoke."[480] The

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[477] Robinson JH, Pritchard WS, Davis RA (R.J. Reynolds Tobacco Co.), Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine, *Psychopharmacology* 1992;108:466-472, at 469. *See* AR (Vol. 11 Ref. 129-3).

[478] *Id.* at 471 (emphasis added).

[479] Robinson J, Pritchard W (R.J. Reynolds Tobacco Co.), The role of nicotine in tobacco use, *Psychopharmacology* 1992;108:397-407, at 398 (emphasis added). *See* AR (Vol. 34 Ref. 589).

[480] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 50. *See* AR (Vol. 519 Ref. 103).

history of RJR's research does not support the company's public position, however. If nicotine were important because of its role in taste, FDA would expect to find that RJR's research would focus on nicotine's impact on taste. The administrative record, however, contains virtually no RJR research demonstrating or investigating nicotine's influence on taste.[481] In contrast, RJR has extensively investigated the pharmacological impacts of nicotine. In total, the administrative record before FDA contains more than 20 studies published or funded by RJR on the effects of nicotine on the body.[482] The actual number

[481] There is little scientific support for the proposition that nicotine has an important role in cigarette taste. The four studies cited by RJR are all discussed in section II.B.2.c, above. Only one of the studies relied upon by RJR was actually conducted by RJR. This limited investigation by RJR into nicotine's role in taste was presented *after FDA's investigation had commenced.* Pritchard, WS, Robinson, JH, *The Sensory Role of Nicotine in Cigarette "Taste," Smoking Satisfaction and Desire to Smoke*, presented at the International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II (Montreal: Jul. 21-24, 1994). *See* AR (Vol. 519 Ref. 103, vol. II). As discussed in section II.B.2.c., above, RJR researchers conceded that the study was unable to distinguish the importance of any sensory aspects of nicotine from its pharmacological effects.

[482] Bjercke RJ, Langone JJ, Anti-idiotypic antibody probes of neuronal nicotinic receptors, *Biochem Biophys Res Commun* 1989;162(3):1085-1092. *See* AR (Vol. 46 Ref. 53).

Brazell MP, Mitchell SN, Gray JA, Effect of acute administration of nicotine on in vivo release of noradrenaline in the hippocampus of freely moving rats: a dose-response and antagonist study, *Neuropharmacology* 1991;30(8):823-833. *See* AR (Vol. 46 Ref. 58).

Byrd GD, Chang KM, Greene JM, *et al.*, Evidence for urinary excretion of glucuronide conjugates of nicotine, cotinine, and trans-3'-hydroxycotinine in smokers, *Drug Metab Dispos Biol Fate Chem* 1992;20(2):192-197. *See* AR (Vol. 120 Ref. 1131).

Caldwell WS, Green JM, Byrd GD, *et al.*, Characterization of the glucuronide conjugate of cotinine: a previously unidentified major metabolize of nicotine in smokers' urine, *Chem Res Toxicol* 1992;5(2):280-285. *See* AR (Vol. 46 Ref. 62).

Caldwell WS, Greene JM, Dobson GP, *et al.*, Intragastric nitrosation of nicotine is not a significant contributor to nitrosamine exposure, *Ann NY Acad Sci* 1993;686:213-227. *See* AR (Vol. 128 Ref. 1388).

Collins AC, Bhat RV, Pauly JR, *et al.*, Modulation of nicotine receptors by chronic exposure to nicotinic agonists and antagonists, in *The Biology of Nicotine Dependence*, eds. Bock G, Marsh J (CIBA Foundation Symposium 152, 1990), at 68-82. *See* AR (Vol. 47 Ref. 71).

deBethizy JD, Borgerding MF, Doolittle DJ, Chemical and biological studies of a cigarette that heats rather than burns tobacco, *J Clin Pharmacol* 1990;30(8):755-763. *See* AR (Vol. 47 Ref. 78).

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deBethizy JD, Robinson JH, Davis RA, *et al.*, Absorption of nicotine from a cigarette that does not burn tobacco, *Pharmacology* 1988;37(5):328-332. *See* AR (Vol. 47 Ref. 79).

Gilbert DG, Robinson JH, Chamberlin CL, *et al.*, Effects of smoking/nicotine on anxiety, heart rate, and lateralization of EEG during a stressful movie, *Psychophysiology* 1989;26(3):311-319. *See* AR (Vol. 14 Ref. 174-2).

Hammond DK, Bjercke RJ, Langone JJ, *et al.*, Metabolism of nicotine by rat liver cytochromes P-450, Assessment utilizing monoclonal antibodies to nicotine and cotinine, *Drug Metab Dispos Biol Fate Chem* 1991;19(4):804-808. *See* AR (Vol. 48 Ref. 110).

Kyerematen GA, Morgan ML, Chattopadhyay B, *et al.*, Disposition of nicotine and eight metabolites in smokers and nonsmokers, *Clin Pharmacol Ther* 1990;48(6):641-651. *See* AR (Vol. 49 Ref. 146).

Kyerematen GA, Taylor LH, deBethizy JD, *et al.*, Pharmacokinetics of nicotine and 12 metabolites in the rat, Application of a new radiometric high performance liquid chromatography assay, *Drug Metab Dispos Biol Fate Chem* 1988;16(1):125-129. *See* AR (Vol. 49 Ref. 145).

Lippiello PM, Femandes KG, The binding of L-[3H]nicotine to a single class of high affinity sites in rat brain membranes, *Mol Pharmacol* 1986;29(5):448-454. *See* AR (Vol. 55 Ref. 165).

Lippiello PM, Mencherif M, Prince RJ, The role of desensitization in CNS nicotinic receptor function, in *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems* 1994, S11. *See* AR (Vol. 55 Ref. 166).

Lippiello PM, Sears SB, Femandes KG, Kinetics and mechanism of L-[3H]nicotine binding to putative high affinity receptor sites in rat brain, *Mol Pharmacol* 1987;31(4):392-400. *See* AR (Vol. 55 Ref. 162).

Marks MJ, Grady SR, Collins AC, Downregulation of nicotinic receptor function after chronic nicotine infusion, *J Pharmacol Exp Ther* 1993;266(3):1268-1276. *See* AR (Vol. 55 Ref. 176).

Mitchell SN, Brazell MP, Joseph MH, *et al.*, Regionally specific effects of acute and chronic nicotine on rates of catecholamine and 5-hydroxytxyptamine synthesis in rat brain, *Eur J Pharmacol* 1989;167(3):311-322. *See* AR (Vol. 57 Ref. 200).

Mitchell SN, Brazell MP, Schugens MM, *et al.*, Nicotine-induced catecholamine synthesis after lesions to the dorsal or ventral noradrenergic bundle, *European Journal of Pharmacology* 1990;179(3):383-391. *See* AR (Vol. 57 Ref. 197).

Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490. *See* AR (Vol. 3 Ref. 23-2).

Pritchard WS, Gilbert DG, Duke DW, Flexible effects of quantified cigarette smoke delivery on EEG dimensional complexity, *Psychopharmacology* 1993;113:95-102. *See* AR (Vol. 3 Ref. 23-1).

Pritchard WS, Robinson JH, Guy TD, Enhancement of continuous performance task reaction time by smoking in non-deprived smokers, *Psychopharmacology* 1992;108:437-442. *See* AR (Vol. 67 Ref. 72).

Robinson JH, Pritchard WS, Davis RA, Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine, *Psychopharmacology* 1992;108:466-472. *See* AR (Vol. 59 Ref. 236).

of RJR studies may be much higher. According to an RJR spokesperson, "[w]e've not only done research on the pharmacological effects of nicotine but we've published it in at least 250 peer-reviewed journals and symposia."[483]

RJR's sustained and sophisticated research into nicotine pharmacology demonstrates that RJR knows that (1) its product will affect consumers in a drug-like manner and (2) consumers will use its product to obtain these drug effects.

iii. RJR's Alternative Tobacco Products. Further evidence of RJR's understanding of the central role of nicotine in smoking is provided by RJR's development of alternative tobacco products that are designed to deliver nicotine, but not other constituents of cigarette smoke, to the consumer.

RJR's efforts to develop alternative nicotine delivery systems began more than 20 years ago. As noted above, Claude Teague recommended in 1972 that RJR develop "some simpler, 'cleaner', more efficient and direct way to *provide the desired nicotine dosage* than the present system involving combustion of tobacco."[484] In recent years, RJR has developed at least two alternative tobacco products.

Smith KM, Mitchell SN, Joseph MH, Effects of chronic and subchronic nicotine on tyrosine hydroxylase activity in noradrenergic and dopaminergic neurones in the rat brain, *J Neurochem* 1991;57(5):1750-1756. *See* AR (Vol. 60 Ref. 266).

Wonnacott S, Drasdo AL, Presynaptic actions of nicotine in the CNS, in *Effects of Nicotine on Biological Systems*, eds. Adlkofer F, Thurau K (1991), at 295-305. *See* AR (Vol. 62 Ref. 302).

[483] Collins G, Legal attack on tobacco intensifies, *New York Times*, Jun. 9, 1995. *See* AR (Vol. 21 Ref. 240a).

[484] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 7 (emphasis added). *See* AR (Vol. 531 Ref. 125).

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First, in the late 1980's, RJR developed and briefly marketed Premier, a product that worked by heating nicotine and glycerol-coated aluminum beads contained in an aluminum cylinder rather than by burning tobacco. Premier resembled a conventional cigarette in appearance only. Inside, it contained a carbon tip, which served as the heat source for the aluminum cylinder.[485] RJR documents show that RJR was acutely interested in Premier's ability to deliver nicotine to the smoker's blood and brain. For instance, RJR conducted extensive plasma studies to show that smokers using Premier would achieve approximately the same level of nicotine in their blood as smokers using conventional cigarettes.[486] Other smoke components, however, were reduced by about 90%.[487] Premier functioned like the alternative nicotine delivery system recommended by Teague. Indeed, RJR used Teague's terminology to market Premier, advertising the product as a "cleaner" cigarette.[488]

More recently, RJR has begun test-marketing a low-smoke product called Eclipse.[489] Like Premier, Eclipse relies on a carbon tip as a heat source. The tip heats a

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[485] *Chemical and Biological Studies on New Cigarette Prototypes that Heat Instead of Burn Tobacco* (Winston-Salem NC: R.J. Reynolds Tobacco Co., 1988), at 1-10. *See* AR (Vol. 107 Ref. 980).

[486] *Id.* at vii, 457-458, 479-483, 490-492.

deBethizy JD, Borgerding MF, Doolittle DJ, *et al.* (R.J. Reynolds), Chemical and Biological Studies of a Cigarette that Heats Rather than Burns Tobacco, *J. Clin. Pharmacol.*, 1990;30:755-763. *See* AR (Vol. 47 Ref. 78).

[487] *Id.* at 757.

[488] Pollay RW, Carter-Whitney D, *More Chronological Notes on the Promotion of Cigarettes* (History of Advertising Archives, Aug. 1990), at 29. *See* AR (Vol. 215 Ref. 2891).

[489] Cabell B, Smokeless cigarette makers hope to Eclipse market, Live Report (Jun. 3, 1996). *See* AR (Vol. 711 Ref. 11).

Jones C, Reynolds not blowing smoke when it comes to keeping a lid on Eclipse, *The Richmond Times Dispatch* (Jun. 10, 1996). *See* AR (Vol. 711 Ref. 12).

glycerin supply in the cigarette rod, which vaporizes and extracts nicotine, but is intended to produce very little of the normal constituents of tar, as it passes through the rod to the smoker's mouth. The final Eclipse smoke vapor is 85% water, glycerol, and nicotine (versus 25% in standard cigarette smoke) and only 15% tar (versus 75% in standard smoke).[490] Thus, Eclipse is intended to deliver nicotine at levels similar to conventional ultra-low-tar cigarettes, but much lower levels of tar.[491]

In its comments, RJR asserts that "Premier *was* a cigarette" because it provided the smoker with "smoking taste and pleasure."[492] Likewise, RJR asserts that "Eclipse is a cigarette."[493] But the major similarity in the vapor from Premier and Eclipse and the smoke from a conventional cigarette is the nicotine delivery. The implication of RJR's work on Premier and Eclipse is that nicotine delivery is the defining characteristic of a cigarette. As RJR informed FDA officials during the launch of Premier, "without nicotine, you don't have a cigarette."[494] Premier and Eclipse are thus evidence that conventional cigarettes are, in effect, simply nicotine delivery systems.

iv. RJR's Legal Briefs. Before the Agency, RJR argues that nicotine is not addictive and that the Agency should not believe the widespread "allegations" to the

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[490] Hilts P, Little smoke, but still lots of nicotine, *New York Times*, Nov. 27, 1994. See AR (Vol. 34 Ref. 568).

[491] Feder BJ, Ready to test new cigarette, maker fears tough rules, *New York Times*, Apr. 8, 1996. *See* AR (Vol. 700 Ref. 225).

[492] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 34-35 (emphasis added). *See* AR (Vol. 519 Ref. 103).

[493] R.J. Reynolds Tobacco Co., Comment (Apr. 19, 1996). *See* AR (Vol. 700 Ref. 225).

[494] Department of Health and Human Services, Memorandum of meeting, *RJR's "Smokeless" Cigarette* (Oct. 23, 1987), at 3. *See* AR (Vol. 34 Ref. 558-2).

contrary. However, RJR has taken exactly the opposite position in court cases. There RJR argues that the risk of becoming addicted to cigarettes is so foreseeable to consumers that consumers must be held to have assumed the risk. For instance, in one case RJR argued that consumers should not be allowed to sue cigarette manufacturers on the grounds that they become addicted, because they should have foreseen this risk:

> There can be no serious suggestion that ordinary consumers do not expect to find nicotine in cigarettes, or that ordinary consumers have not long been well aware that it may be very difficult to stop smoking. *The common knowledge of the alleged habituating or "addicting" properties of cigarettes has resulted in almost casual references to these properties in decisions from around the country throughout this century.*[495]

RJR asserts that this statement does not acknowledge addiction because RJR is merely stating that "allegations" concerning the addictive properties of cigarettes are well known. However, RJR's position in the litigation and its position before the Agency are in fundamental conflict. RJR cannot consistently deny its awareness of nicotine's addictive properties while at the same time claiming that its consumers should be deemed to have an awareness of these properties. RJR's recognition of "the common knowledge of the alleged habituating or 'addicting' properties of cigarettes" is thus further evidence of RJR's awareness of the addictive and other pharmacological effects of cigarettes.

In sum, the internal RJR memoranda in the administrative record, RJR's published research into nicotine pharmacology, RJR's development of alternative tobacco products that function as nicotine delivery devices, and even RJR's litigation briefs all point to the

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[495] Appellees brief in reply to appellants' opposition to petition for transfer, *Rogers v. R.J. Reynolds et al.* (Sup. Ct. Ind.) (No. 49A02-8904 CV 164) (1990), at 7-8 (citation omitted) (emphasis added). *See* AR (Vol. 21 Ref. 229).

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conclusion that RJR knows that its cigarettes will have pharmacological effects, that consumers will purchase its products to obtain these effects, and that, in essence, its cigarettes function as nicotine delivery devices. This is persuasive evidence that RJR intends its product to affect the structure and function of the body.

c. The Statements and Research of Brown & Williamson

The administrative record includes a large array of documents from the Brown & Williamson Tobacco Corporation, the third largest cigarette manufacturer in the United States, and its corporate parent, BAT Industries PLC, formerly British-American Tobacco Company (BATCO). These documents show that Brown & Williamson and BATCO have conducted extensive research on nicotine's pharmacological effects and that for over 30 years senior researchers and officials at Brown & Williamson and BATCO have considered nicotine to be "addictive;"[496] "an extremely biologically active compound capable of eliciting a range of pharmacological, biochemical and physiological responses"[497] and the reason "why people inhale smoke."[498]

The documents from Brown & Williamson and BATCO in the administrative record include many unpublished reports from company research, internal memoranda, and reports from conferences of company scientists. These documents are summarized in the following chronology, which illustrates that the companies have long regarded

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[496] *See, e.g.*, Yeaman A (Brown & Williamson), *Implications of Battelle Hippo I and II and the Griffith Filter* (Jul. 17, 1963), at 4. *See* AR (Vol. 21 Ref. 221).

[497] BATCO Group R&D, *Method for Nicotine and Cotinine in Blood and Urine* (May 21, 1980), at 2. *See* AR (Vol. 23 Ref. 300-1).

[498] Greig CC (BATCO), *Short Lived Species in Smoke* (Jan. 26, 1984), attached to letter from Ayres CI (BATCO) to Kohnhorst EE (Brown & Williamson) (Feb. 9, 1984), at 10. *See* AR (Vol. 34 Ref. 584).

themselves as "in a nicotine rather than a tobacco industry."[499] Although the statements of company scientists and officials seem to become somewhat more guarded with time, the documents show a consistent recognition of nicotine's pharmacological effects and uses, including its role in causing and sustaining addiction.

i. Statements and Research in the 1960's. In the 1960's, senior officials at BATCO and Brown & Williamson and their senior researchers candidly discussed nicotine's "addictive" and "drug" effects in internal meetings. In a 1962 conference of BATCO researchers, for instance, Charles Ellis, the science advisor to the BATCO board, acknowledged that "*smoking is a habit of addiction.*"[500] He described the role of nicotine in cigarettes as follows:

> *It is my conviction that nicotine is a very remarkable beneficent drug that both helps the body to resist external stress and also can as a result show a pronounced tranquillising effect. . . . Nicotine is not only a very fine drug, but the techniques of administration by smoking has [sic] considerable psychological advantages and a built-in control against excessive absorption.* It is almost impossible to take an overdose of nicotine in the way it is only too easy to do with sleeping pills.[501]

Charles Ellis recommended that BATCO conduct research "to investigate whether cigarette smoke produces effects on the central nervous system characteristic of tranquilising or stimulating drugs and, if so, to see if such activity is due solely to nicotine."[502] The Battelle Memorial Institute in Geneva, Switzerland, conducted this

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[499] Johnson RR (BATCO), *Comments on Nicotine* (Jun. 30, 1963), at 10-11. *See* AR (Vol. 21 Ref. 242).

[500] Ellis C (BATCO), *The smoking and health problem,* in *Smoking and Health–Policy on Research,* Research Conference, Southampton, England (1962), at 4 (emphasis added). *See* AR (Vol. 21 Ref. 220).

[501] *Id.* at 15-16 (emphasis added).

[502] *Id.* at 16.

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research for BATCO, producing a series of reports in 1963 called "HIPPO I," "HIPPO II," "The Fate of Nicotine in the Body," and "A Tentative Hypothesis on Nicotine Addiction."

These reports substantiated and explained nicotine's drug-like and addictive effects. "HIPPO II," for instance, suggested that "*the key to the explanation of both phenomena of tolerance and of addiction*" to nicotine could be found through "[a] quantitative investigation of the relations with time of nicotine—and of some possible brain mediators—on adreno-corticotrophic activity."[503] The report further stated that "the so-called 'beneficial effects' of nicotine are of two kinds: 1. Enhancing effect on the pituitary-adrenal response to stress; 2. Regulation of body weight."[504]

Similarly, "The Fate of Nicotine in the Body" found that nicotine "*appears to be intimately connected with the phenomena of tobacco habituation (tolerance) and/or addiction.*"[505] It also reported "[t]here is increasing evidence that *nicotine is the key factor in controlling, through the central nervous system, a number of beneficial effects of tobacco smoke*, including its action in the presence of stress situations."[506]

"A Tentative Hypothesis on Nicotine Addiction" stated that "the hypothalomo-pituitary stimulation of nicotine is *the beneficial mechanism which makes people smoke,*

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[503] Haselbach C, Libert O, *Final Report on Project HIPPO II* (Mar. 1963), at 4 (emphasis added). *See* AR (Vol. 64 Ref. 321).

[504] *Id.* at 2.

[505] Geissbuhler H, Haselbach C, *The Fate of Nicotine in the Body* (May 1963), at 1 (emphasis added). *See* AR (Vol. 21 Ref. 243).

[506] *Id.* at 1 (emphasis added).

in other words, nicotine helps people to cope with stress."[507] The report then suggested that nicotine addiction could be explained as follows:

> If nicotine intake, however, is prohibited to chronic smokers, the corticotropin-releasing ability of the hypothalmus is greatly reduced, so that these individuals are left with an unbalanced endocrine system. *A body left in this unbalanced status craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine.*[508]

The Battelle reports were distributed to the top officials at Brown & Williamson and other tobacco companies. Charles Ellis sent copies of the Battelle reports to the president of Brown & Williamson, William S. Cutchins. Brown & Williamson in turn sent the Project Hippo reports to RJR.[509]

In July 1963, Brown & Williamson's general counsel, Addison Yeaman, wrote an internal memorandum entitled "Implications of Battelle Hippo I and II and the Griffith Filter." He stated that "*nicotine is addictive*" and that "*[w]e are, then, in the business of selling nicotine, an addictive drug . . .* "[510]

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[507] Haselbach C, Libert O, *A Tentative Hypothesis on Nicotine Addiction* (May 30, 1963), at 1 (emphasis added). *See* AR (Vol. 20 Ref. 197).

[508] *Id.* at 2 (emphasis added).

[509] Note to Cutchins WS (Brown & Williamson) (Jun. 19, 1963). *See* AR (Vol. 14, Ref. 165-4).

Letter from Ellis C (BATCO) to Yeaman AY (Brown & Williamson) (Jun. 28, 1963). *See* AR (Vol. 14 Ref. 165-2).

Letter from Yeaman AY (Brown & Williamson) to Jacob EJ (R.J. Reynolds Co.) (Aug. 5, 1963). *See* AR (Vol. 14 Ref. 165-3).

[510] Yeaman AY (Brown & Williamson), *Implications of Battelle Hippo I and II and the Griffith Filter* (Jul. 17, 1963), at 4 (emphasis added). *See* AR (Vol. 21 Ref. 221).

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These views were frequently reiterated. In June of 1967, Charles Ellis stated, "*we are in a nicotine rather than a tobacco industry.*"[511] Several months later, at an October 1967 meeting, BATCO researchers agreed that "*[s]moking is an addictive habit attributable to nicotine.*"[512]

In 1968, Sidney J. Green, who was a member of BATCO's board as well as the company's director of research, acknowledged that one "recognisable type" of smoking behavior is "*addictive*" smoking. He added, "it seems a good assumption that *nicotine plays a predominant role for many smokers. . . . [A] good part of the tobacco industry is concerned with the administration of nicotine to consumers.*"[513]

Similarly, at another BATCO research conference in 1968, the researchers agreed that nicotine has "*pre-eminent importance*" and that "the pharmacology of nicotine should continue to be kept under review."[514]

A year later, at a 1969 meeting of BATCO researchers, BATCO scientist D. J. Wood stated:

> The presence of nicotine is the reason why the tobacco plant was singled out from all other plants for consumption in this rather unusual way.
>
> *Nicotine has well documented pharmacological action. It is claimed to have a dual effect, acting both as a stimulant and a tranquilliser. It is believed to be responsible for the "satisfaction"*

[511] Johnson RR (BATCO), *Comments on Nicotine* (Jun. 30, 1963), at 10 (emphasis added). *See* AR (Vol. 21 Ref. 242).

[512] Minutes of BATCO Group R&D Conference at Montreal, Canada (Oct. 24, 1967), at 2 (emphasis added). *See* AR (Vol. 21 Ref. 206-4). FDA notes that the version of this document made public by Congress contains a handwritten edit changing "an addictive habit" to "a habit."

[513] Green SJ (BATCO), *BAT Group Research* (Sep. 4, 1968), at 1-2 (emphasis added). *See* AR (Vol. 15 Ref. 192).

[514] Minutes of BATCO Research Conference at Hilton Head, SC (Sep. 24-30, 1968), at 3 (emphasis added). *See* AR (Vol. 31 Ref. 525-1).

of smoking, using this term in the physiological rather than the psychological sense.[515]

And at another 1969 conference of BATCO scientists, the following conclusion was reached: "*[t]he Conference agreed that all the evidence continues to demonstrate the importance of nicotine to the smoker. . . .*"[516]

Numerous other similar statements were made by Brown & Williamson and BATCO researchers and officials in the 1960's. They are described in the Jurisdictional Analysis. *See* 60 FR 41584–41586. Collectively, these statements show that even as early as the 1960's, Brown & Williamson and BATCO officials knew the addictive and other pharmacological effects of nicotine, knew that consumers smoked cigarettes for these effects, and viewed themselves as in the drug delivery business.

ii. Statements and Research in the 1970's and 1980's. Throughout the 1970's and 1980's, Brown & Williamson and BATCO officials continued to emphasize the importance of nicotine in cigarettes. At a 1970 conference of BATCO researchers, for instance, the researchers postulated that "*[n]icotine is important, and there is probably a minimum level necessary for consumer acceptance in any given market.*"[517]

In 1972, S.J. Green, the BATCO board member and research director, stated that "*[t]he tobacco smoking habit is reinforced or dependent upon the psycho-*

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[515] Wood DJ (BATCO), *Aspects of the R&DE Function*, Notes for a talk given by Wood DJ at Chelwood, Sep. 1969 (Jul. 20, 1970), at 7 (emphasis added). *See* AR (Vol. 22 Ref. 287).

[516] Minutes of BATCO Research Conference at Kronberg (Jun. 2-6, 1969), at 7 (emphasis added). *See* AR (Vol. 14 Ref. 172-4).

[517] Summary and conclusions of BAT Group Research Conference at St. Adele, Quebec (Nov. 9-13, 1970), at 1 (emphasis added). *See* AR (Vol. 23 Ref. 294).

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pharmacological effects mainly of nicotine."[518] Similarly, a 1972 BATCO research report observed:

> It has been suggested that *a considerable proportion of smokers depend on the pharmacological action of nicotine for their motivation to continue smoking.*
>
> If this view is correct, *the present scale of the tobacco industry is largely dependent on the intensity and nature of the pharmacological action of nicotine.*[519]

These statements demonstrate an awareness that nicotine has "reinforcing" effects, one of the hallmarks of an addictive substance, and that the tobacco industry is built upon these effects.

At a 1974 BATCO conference, company scientists reported that BATCO research had found that consumers appear to smoke to fulfill their "nicotine requirements," stating that "the Kippa study suggests that whatever the characteristics of cigarettes as determined by smoking machines, *the smoker adjusts his pattern to deliver his own nicotine requirements (about 0.8 mg per cigarette).*"[520]

At a 1976 BATCO conference on smoking behavior, the researchers again stated that nicotine has reinforcing effects on smokers, observing that nicotine is "*known to be pharmacologically active in the brain*" and is "*considered to be the reinforcing factor in the smoking habit for at least 80% of smokers.*"[521]

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[518] Green SJ (BATCO), *The Association of Smoking and Disease* (Jul. 26, 1972), at 1 (emphasis added). *See* AR (Vol. 15 Ref. 193).

[519] Kilburn KD, Underwood JG (BATCO), *Preparation and Properties of Nicotine Analogues* (Nov. 9, 1972), at 2 (citations omitted) (emphasis added). *See* AR (Vol. 31 Ref. 524-1).

[520] Notes on BATCO Group R&D Conference at Duck Key, FL (Jan. 12-18, 1974), at 2 (emphasis added). *See* AR (Vol. 25 Ref. 327).

[521] Minutes of BATCO Group R&D Conference on Smoking Behaviour at Southampton, England (Oct. 11-12, 1976), at BW-W2-02145, BW-W2-02152–BW-W2-02153 (emphasis added). *See* AR (Vol. 14 Ref. 180).

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At a 1977 conference, nicotine was once more the "focal point." A Brown & Williamson summary of the conference stated that "[i]n many cases, psychological and physiological changes observed in subjects . . . were shown to be due to nicotine" and "[m]ost researchers conclude that *the nicotine effect is biphasic and dosage dependent; small doses stimulate and large doses depress.*"[522]

A year later, BATCO board member and chief researcher S.J. Green explicitly acknowledged that nicotine is addictive. Specifically, he wrote "*[t]he strong addiction to cigarette[s] removes freedom of choice from many individuals.*"[523]

A 1980 BATCO research report stated that "*[n]icotine is an extremely biologically active compound capable of eliciting a range of pharmacological, biochemical and physiological responses in vivo.*"[524]

A 1981 report on the pharmacology of nicotine by the Tobacco Advisory Council, which represents U.K. tobacco manufacturers including BATCO, stated that "*nicotine is regarded as the most pharmacologically-active compound in tobacco smoke*" and concluded that "*[i]n a nutshell, our approach has been to regard nicotine as a 'drug.'*"[525]

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[522] Trip report of BATCO International Smoking Behavior Conference at Chelwood Vachery, England (Jan. 6, 1978), at 1-2 (emphasis added). *See* AR (Vol. 178 Ref. 2075).

[523] Notes of Green SJ (1978) (emphasis added). *See* AR (Vol. 528 Ref. 97, appendix 18).

[524] BATCO Group R&D, *Method for Nicotine and Cotinine in Blood and Urine* (May 21, 1980), at 2 (emphasis added). *See* AR (Vol. 23, Ref. 300-1).

[525] Cohen AJ, Roe FJC (Tobacco Advisory Council), *Monograph on the Pharmacology and Toxicology of Nicotine* (1981), at 1, 17 (emphasis added). *See* AR (Vol. 14 Ref 184).

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In 1982, a market research report for Imperial Tobacco Ltd., BATCO's Canadian subsidiary, referred to attitudes of adolescents "[o]nce addiction does take place," and states that "addicted they do indeed become."[526] The report goes on:

> Recidivism has several causes . . . [including] the belief that after a few weeks off cigarettes, one could begin again to smoke 'just a few.' . . . This 'just a few' business is actually *a surrender to addiction* while trying to . . . *pretend to oneself and to others that addiction is no longer present, which is nonsense.*[527]

At a 1983 BATCO research conference, the minutes of the proceedings state that "*[t]he basic assumption is that nicotine . . . is almost certainly the key smoke component for satisfaction . . .*"[528]

In a 1984 letter, C. I. Ayres of BATCO wrote to E. E. Kohnhorst, the executive vice president and chief operating officer of Brown & Williamson, enclosing a report stating that nicotine is "why people inhale smoke":

> *It is well known that nicotine can be removed from smoke by the lung and transmitted to the brain within seconds of smoke inhalation.* Since it is the major or sole pharmacologically active agent in smoke, *it must be presumed that this is its preferred method of absorption and thus why people inhale smoke.*[529]

In 1984, BATCO also held two research conferences at which nicotine was extensively discussed. At the first conference, BATCO researchers held sessions on

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[526] Kwechansky Marketing Research (report prepared for Imperial Tobacco Ltd.), *Project Plus/Minus* (May 7, 1982), at i, 26 (emphasis added). *See* AR (Vol. 108 Ref. 1571).

[527] *Id.* at 36-37 (emphasis added).

[528] Minutes of BATCO Research Conference at Rio de Janeiro (Aug. 22-26, 1983), at 10 (emphasis added). *See* AR (Vol. 179 Ref. 2087).

[529] Greig CC, *Short Lived Species in Smoke* (Jan. 26, 1984), attached to letter from Ayres CI (BATCO) to Kohnhorst EE (Brown & Williamson) (Feb. 9, 1984), at 10 (emphasis added). *See* AR (Vol. 34 Ref. 584).

"Nicotine Dose Requirement-Background," "Nicotine Dose Estimation," "Effects of Nicotine—Interaction with the Brain (Pharmacology)," and "Product Modification for Maximal Nicotine Effects."[530] The researchers reported that *"[i]ntuitively it is felt that 'satisfaction' must be related to nicotine. Many people believe it [is] a 'whole body response' and involves the action of nicotine in the brain."*[531] They also acknowledged *"the central role of nicotine in the smoking process and our business generally."*[532]

At the second conference, BATCO researchers reported that *"in its simplest sense puffing behaviour is the means of providing nicotine dose in a metered fashion."*[533] According to one BATCO researcher speaking at the conference:

> Smoking is . . . a personal tool used by the smoker to refine his behaviour and reactions to the world at large.
>
> It is apparent that *nicotine largely underpins these contributions through its role as a generator of central physiological arousal effects* which express themselves as changes in human performance and psychological well-being."[534]

Other similar statements are summarized in the Jurisdictional Analysis. *See* 60 FR 41584-41666. Like the statements quoted above, they show that scientists at Brown &

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[530] Ayres CI (BATCO), Notes from the GR&DC [Group Research and Development Centre] Nicotine Conference at Southampton, England (Jul. 9-12, 1984) (slide), at BW-W2-02639. *See* AR (Vol. 14 Ref. 172).

[531] Minutes of BATCO Nicotine Conference at Southampton, England (Jun. 6-8, 1984), at BW-W2-01977 (emphasis added). *See* AR (Vol. 22 Ref. 287-6).

[532] Ayres CI (BATCO), Notes from the GR&DC [Group Research and Development Centre] Nicotine Conference at Southampton, England (Jul. 9-12, 1984), at 62 (emphasis added). *See* AR (Vol. 14 Ref. 172-1).

[533] Proceedings of BATCO Group R&D Smoking Behaviour-Marketing Conference, Session I (Jul. 9-12, 1984) (slide), at BW-W2-03242 (emphasis added). *See* AR (Vol. 21 Ref. 238).

[534] Ferris RP, *The role of smoking behaviour in product development: some observations on the psychological aspects of smoking behaviour*, in Proceedings of BATCO Group R&D Smoking Behaviour-Marketing Conference, Session III (Jul. 9-12, 1984), at 79 (emphasis added). *See* AR (Vol. 192 Ref. 2172).

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Williamson and BATCO devoted extensive attention to understanding the pharmacological effects and uses of nicotine, consistently regarded nicotine as being the primary reason consumers smoked, and viewed cigarettes as nicotine delivery devices.

iii. Statements and Research in the 1990's. New documents received by FDA during the public comment period demonstrate that researchers and officials of Brown & Williamson and BATCO continue to hold similar views about nicotine in cigarettes in the 1990's. The new documents are a series of memoranda relating to the potential purchase in 1992 by BATCO of a manufacturer of nicotine patches, Stowic Resources Ltd.[535]

Brown & Williamson's research department evaluated the potential purchase in a memorandum entitled "Transdermal Nicotine Patches." Brown & Williamson researchers observed that "[t]here is currently a void in the market for a product that provides tobacco satisfaction in a form that is acceptable and available to many segments of the market" and recommended that "[w]e should be looking for opportunities to fill the void."[536] However, Brown & Williamson researchers expressed doubts that a nicotine patch could provide consumers with the same pharmacological effects obtained by smoking:

> The pattern of the blood nicotine concentrations attained by smoking vs the patch, however, are different. *With smoking, blood nicotine absorption is very rapid.* Blood nicotine concentrations go through a series of peaks and troughs with successive cigarette smoking throughout the day. . . . With the patch, nicotine absorption is relatively slow and continuous and peak blood levels are not as high as with cigarette smoking. *A major advantage of cigarette smoking over the nicotine patch system is the ability for*

[535] Salter R, *Transdermal Nicotine* (Apr. 3, 1992); Research and Development, *Response to BAT Industries Note on Transdermal Nicotine (28.02.92)* (Mar. 27, 1992); Kausch, Research and Development/Quality, *Transdermal Nicotine;* Research and Development/Quality, *Transdermal Nicotine Patches;* McGraw M (Brown & Williamson), *Nicotine Delivery Systems* (Apr. 24, 1992). *See* AR (Vol. 531 Ref. 124).

[536] *Transdermal Nicotine Patches*, at 3. *See* AR (Vol. 531 Ref. 124).

the smoker to have very flexible control over titrating his desired dose of nicotine.[537]

Similar views were expressed by other BAT Industries subsidiaries. BAT Industries' German subsidiary, for instance, stated that "*[t]he rapid, peaking intake of nicotine which the smoker clearly wants cannot be achieved with nicotine application via . . . plaster.*"[538]

The German subsidiary further acknowledged that nicotine can produce dependency and addiction. According to the German report, which was distributed by BAT Industries to the then president of Brown & Williamson, R. J. Pritchard, "*[t]he disadvantage of rapid nicotine intake similar to that achieved with a cigarette is seen in the danger of people possibly becoming dependent on it.*"[539] The German subsidiary observed that even with nicotine gum there is a "*danger of addiction,*" stating that "the smoker can organize intake to suit himself" and achieve "[a]ctive control over intake and the condition it produces."[540]

Brown & Williamson's legal department argued against the purchase of Stowic on legal grounds, warning that it would suggest that Brown & Williamson is in "the nicotine delivery business" and cause Brown & Williamson to "*run a serious risk of facing FDA jurisdiction.*" The lawyers also argued that the purchase of Stowic would have "disastrous" implications for product liability litigation because "*[t]he marketing of any*

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[537] *Id.* at 2 (emphasis added).

[538] Research and Development/Quality, *Re: Transdermal Nicotine*, at 3 (emphasis added). *See* AR (Vol. 531 Ref. 124).

[539] *Id.* at 3 (emphasis added).

[540] *Id.* at 2.

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nicotine delivery system undercuts our position on addiction."[541] Ultimately, BAT Industries rejected the purchase of Stowic.

iv. The Wigand Deposition. A comment from public health organizations has also urged FDA to consider a 1995 deposition of Jeffrey S. Wigand, the vice president of research and development at Brown & Williamson from 1989 to 1993. According to Wigand's deposition, which was submitted to the Agency with the comment, and which has been widely publicized in the media, a number of officers of Brown & Williamson, including Thomas Sandefur, the company president and chief executive officer, made "numerous statements . . . that *we're in the nicotine delivery business.*"[542] Wigand also testified in the deposition that Sandefur "frequently" stated the opinion and belief that nicotine is "*addictive*";[543] that Brown & Williamson manipulates nicotine levels in tobacco, using various techniques including blending of tobacco leaves and adding ammonia compounds to change the pH of smoke;[544] that BATCO scientists had done studies to identify "the boundaries of nicotine pharmacology," and that BATCO showed that nicotine below "0.4 milligrams does not sustain satisfaction."[545]

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[541] McGraw M (Brown & Williamson), *Nicotine Delivery Systems* (Apr. 24, 1992), at 1-2 (emphasis added). *See* AR (Vol. 531 Ref. 124).

[542] Deposition transcript of Wigand JS (Nov. 29, 1995), at 12 (emphasis added). *See* AR (Vol. 700 Ref. 224, exhibit 2).

[543] *Id.* at 12-13.

[544] *Id.* at 27-29.

[545] *Id.* at 27, 33.

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Wigand's assertions in the deposition have been disputed by Brown & Williamson, which contends that they are untrue.[546] His statements, however, are consistent with and corroborated by the views expressed by Brown & Williamson and BAT Industries officials since the 1960's. Although the Agency finds Wigand's testimony to be additional relevant evidence of the manufacturers' intent to affect the structure and function of the body, his testimony is not essential to any of the Agency's determinations.

Cumulatively, the three decades of documents from Brown & Williamson, BATCO, and BAT Industries demonstrate that these companies have long understood that nicotine is addictive and has other significant pharmacological effects; that consumers smoke cigarettes to obtain the drug effects of nicotine; and that cigarettes are a drug delivery system, functioning as "the means of providing nicotine in a metered fashion."[547]

d. The Statements and Research of Other Cigarette Manufacturers

The administrative record establishes that the other major cigarette companies, the American Tobacco Company, the Lorillard Tobacco Company, and the Liggett Group Inc., funded research studies similar to the research conducted by Philip Morris, RJR, and Brown & Williamson, and as a result of the research have acquired a detailed knowledge of the pharmacological effects of nicotine on the brain.

For instance, American Tobacco which merged with Brown & Williamson in 1995, funded extensive research on nicotine pharmacology. From 1940 through 1970, American

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[546] *See, e.g.*, Freedman AM, Cigarette defector says CEO lied to Congress about view of nicotine, *Wall Street Journal*, Jan. 26, 1996. *See* AR (Vol. 639 Ref. 2).

[547] Proceedings of BATCO Group R&D Smoking Behaviour Marketing Conference, Session I (Jul. 9-12, 1984) (slide), at BW-W2-03242. *See* AR (Vol. 24 Ref. 316).

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Tobacco funded 111 studies on the biological effects of cigarettes.[548] According to a staff report of the House Subcommittee on Health and the Environment, ninety-three of these studies (over 80%) related to the effects of nicotine on the body.[549] In one 1945 study funded by the company, entitled "The Role of Nicotine in the Cigarette Habit," smokers were given cigarettes with extremely low levels of nicotine. The study found that half of the subjects "definitely missed the nicotine."[550]

The activities of the Council for Tobacco Research (CTR), an industry trade association that conducts research on behalf of the major tobacco producers in the United States,[551] are further evidence of the extent of the industry's knowledge of the pharmacological effects of nicotine on the human brain. On behalf of the tobacco industry, CTR has funded numerous studies on the pharmacology of nicotine. The goal of these studies was to learn why nicotine makes people want to smoke:

> Most of the pharmacological studies currently being supported by The Council are concerned with the effects of nicotine and/or smoking on the central nervous system (the brain) with *the object of learning more about why people like, want or need to smoke.*[552]

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[548] Staff Report, *Evidence of Nicotine Manipulation by the American Tobacco Company*, and exhibits, prepared by the Majority Staff Subcommittee on Health and the Environment (Dec. 20, 1994), at 3. *See* AR (Vol. 292 Ref. 4064-4066).

[549] *Id.*

[550] Finnegan JK, Larson PS, Haag HB (American Tobacco Co.), The role of nicotine in the cigarette habit, in *Biologic Research on Tobacco* (American Tobacco Company: 1962), at 65-66 (originally published in *Science* 1945;102). *See* AR (Vol. 14 Ref. 178-1).

[551] All the major cigarette manufacturers have participated in CTR. The current members include Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard Tobacco Co. Although the Liggett Group is not currently a member of CTR, it has been so in the past. *See* Letter from Yeaman to Ahrensfeld *et al.* of Dec. 6, 1977. *See* AR (Vol. 478 Ref. 8069).

[552] Council for Tobacco Research, *Report of the Scientific Director, 1969-1970*, at 13 (emphasis added). *See* AR (Vol. 16 Ref. 195-4).

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The body of CTR research on nicotine pharmacology is extensive. For example:

- Thirty-nine CTR studies identify the sites and mechanisms of nicotine receptors in the brain;[553]

[553] These CTR documents, along with the other CTR documents cited in this section, can be found in the administrative record, Volumes 45-64 of Docket 95N0253J:

Abood LG, Grassi S, Noggle HD, Comparison of the binding of optically pure (-)- and (+)-[3H] nicotine to rat brain membranes, *Neurochem Res* 1985;10(2):259-267.

Abood LG, Lowy K, Tometsko A, *et al.*, Electrophysiological, behavioral, and chemical evidence for a noncholinergic, stereospecific site for nicotine in rat brain, *J Neurosci Res* 1978;3(5-6):327-333.

Abood LG, Lowy K, Tometsko A, *et al.*, Evidence for a noncholinergic site for nicotine's action in brain: Psychopharmacological, electrophysiological and receptor binding studies, *Arch Int Pharmacodyn Ther* 1979;237(2):213-229.

Abood LG, Grassi S, Tritiated Methylcarbamylcholine a new radioligand for studying brain nicotinic receptors, *Biochem Pharmacol* 1990;35(23):4199-4202.

Andersson K, Siegel R, Fuxe K, *et al.*, Intravenous injections of nicotine induce very rapid and discrete reductions of hypothalamic catecholamine levels associated with increases of ACTH, vasopressin, and prolactin secretion, *Acta Physiol Scand* 1983;118(1)35-40.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute central and peripheral administration of nicotine on hypothalamic catecholamine nerve terminal systems and on the secretion of adenohypophyseal hormones in the male rat, *Med Biol* 1982;60(2):98-111.

Andersson K, Eneroth P, Agnati LF, Nicotine-induced increases of noradrenaline turnover in discrete noradrenaline nerve terminal systems of the hypothalamus and the median eminence of the rat and their relationship to changes in the secretion of adenohypophyseal hormones, *Acta Physiol Scand* 1981; 113:227-231.

Andersson K, Fuxe K, Agnati LF, Effects of single injections of nicotine on the ascending dopamine pathways in the rat. Evidence for increases of dopamine turnover in the mesostriatal and mesolimbic dopamine neurons, *Acta Physiol Scand* 1981;112(3):345-347.

Andersson K, Fuxe K, Agnati LF, *et al.*, Effects of acute central and peripheral administration of nicotine on ascending dopamine pathways in the male rat brain. Evidence for nicotine induced increases of dopamine turnover in various telencephalic dopamine nerve terminal systems, *Med Biol* 1981;59(3): 170-176.

Britto LR, Keyser KT, Lindstrom JM, *et al.*, Immunohistochemical localization of nicotinic acetylcholine receptor subunits in the mesencephalon and diencephalon of the chick (Gallus gallus), *J Comp Neurol* 1992;317(4):325-340.

Chance WT, Kallman MD, Rosecrans JA, *et al.*, A comparison of nicotine and structurally related compounds as discriminative stimuli, *Br J Pharmacol* 1978;63(4):609-616.

Davies BD, Hess W, Lin JP, *et al.*, Evidence for a noncholinergic nicotine receptor on human phagocytic leukocytes, *Mol Cell Biochem* 1982;44(1):23-31.

Fuxe K, Andersson K, Eneroth P, *et al.*, Neuroendocrine actions of nicotine and of exposure to cigarette smoke: medical implications, *Psychoneuroendocrinology* 1989;14(1-2):19-41.

Fuxe K, Andersson K, Eneroth P, *et al.*, Neurochemical mechanisms underlying the neuroendocrine actions of nicotine: focus on the plasticity of central cholinergic nicotinic receptors, *Prog Brain Res* 1989;79:197-207.

Harfstrand A, Adem A, Fuxe K, *et al.*, Distribution of nicotinic cholinergic receptors in the rat tel-and diencephalon: a quantitative receptor autoradiographical study using [3H]-acetylcholine, [alpha-1251] bungarotoxin and [3H] nicotine, *Acta Physiol Scand* 1988;132(1):1-14.

Huganir RL, Delcour AH, Greengard P, *et al.*, Phosphorylation of the nicotinic acetylcholine receptor regulates its rate of desensitization, *Nature* 1986;321:774-776.

Lapin EP, Maker HS, Sershen H, *et al.*, Action of nicotine on accumbens dopamine and attenuation with repeated administration, *Eur J Pharmacol* 1989:160(1):53-59.

Lindstrom J, Schoepfer R, Conroy WG, *et al.*, Structural and functional heterogeneity of nicotinic receptors, in *The Biology of Nicotine Dependence*, eds. Bock G, Marsh J, Ciba Foundation Symposium 1990:23-42, 152.

Lukas RJ, Heterogeneity of high-affinity nicotinic [3H]acetylcholine binding sites, *J Pharmacol Exp Ther* 1990;253(1):51-57.

Lukas RJ, Pharmacological distinctions between functional nicotinic acetylcholine receptors on the PC12 rat pheochromocytoma and the TE671 human medulloblastoma, *J Pharmacol Exp Ther* 1989;251(1):175-182.

Marks MJ, Collins AC, Characterization of nicotine binding in mouse brain and comparison with the binding of alpha-bungarotoxin and quinuclidinyl benzilate, *Mol Pharmacol* 1982:554-564.

Martin BR, Aceto MD, Nicotine binding sites and their localization in the central nervous system, *Neurosci Biobehav Rev* 1981;5:473-478.

Mitchell SN, Smith KM, Joseph MH, *et al.*, Increases in tyrosine hydroxylase messenger RNA in the locus coeruleus after a single dose of nicotine are followed by time-dependent increases in enzyme activity and noradrenaline release, *Neuroscience* 1993;56(4):989-997.

Mitchell SN, Role of the locus coeruleus in the noradrenergic response to a systemic administration of nicotine, *Neuropharmacology* 1993;32(10):937-949.

Owman C, Fuxe K, Janson AM, *et al.*, Chronic nicotine treatment eliminates asymmetry in striatal glucose utilization following unilateral transection of the mesostriatal dopamine pathway in rats, *Neurosci Lett* 1989;102(2-3):279-283.

Pradhan SN, Bowling C, Effects of nicotine on self-stimulation in rats, *J Pharmacol Exp Ther* 1971;176(1):229-243.

Rosecrans JA, Nicotine as a discriminative stimulus: a neurobehavioral approach to studying central cholinergic mechanisms, *J Subst Abuse* 1989;1(3):287-300.

II.C.2.

- Thirty-six CTR studies show that nicotine produces neurochemical and metabolic effects in the brain;[554]

Rosecrans JA, Noncholinergic mechanisms involved in the behavioral and stimulus effects of nicotine, and relationships to the process of nicotine dependence, in *Tobacco Smoking and Nicotine: A Neurobiological Approach*, eds. Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987:125-139.

Schaeppi U, Nicotine treatment of selected areas of the cat brain: effects upon EEG and autonomic system, *Int J Neuropharmacol* 1968;7(3):207-220.

Sershen H, Lajtha A, Nicotinic Binding Sites in the brain: properties, regulation, and putative endogenous ligands, in, *Tobacco Smoking and Nicotine: A Neurobiological Approach, eds.* Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987:481-491.

Sershen H, Reith ME, Lajtha A, *et al.*, Noncholinergic, saturable binding of (+/-)-[3H] nicotine to mouse brain, *J Recept Res* 1981:1-15.

Sorenson EM, Gallagher JP, The reducing agent dithiothreitol (DTT) does not abolish the inhibitory nicotinic response recorded from rat dorsolateral septal neurons, *Neurosci Lett* 1993;152(1-2):137-140.

Stitzer M, Morrison J, Domino EF, Effects of nicotine on fixed-interval behavior and their modification by cholinergic antagonists, *J Pharmacol Exp Ther* 1970;171(2):166-177.

Sugiyama H, Hagino N, Moore G, *et al.*, [3-H] Nicotine binding sites in developing fetal brains in rats, *Neurosci Res*1985;2(5):387-392.

Svensson TH, Grenhoff J, Engberg G, Effect of nicotine on dynamic function of brain catecholamine neurons, in The *Biology of Nicotine Dependence*, eds. Bock G, Marsh J., *CIBA Foundation Symposium* 1990;152:169-180.

Toth E, Vizi ES, Lajtha A, Effect of nicotine on levels of extracellular amino acids in regions of the rat brain in vivo, *Neuropharmacology* 1993;32(8):827-832.

Whiting PJ, Schoepfer R, Conroy WG, *et al.*, Expression of nicotinic acetylcholine receptor subtypes in brain and retina, *Brain Res Mol Brain Res* 1991;10(1):61-70.

Wong LA, Gallagher JP, A direct nicotinic receptor-mediated inhibition recorded intracellularly in vitro, *Nature* 1989;341(6241):439-442.

Wong LA, Gallagher JP, Pharmacology of nicotinic receptor-mediated inhibition in rat dorsolateral septal neurones, *J Physiol (Lond)* 1991;436:325-346.

[554] Andersson K, Fuxe K, Agnati LF, *et al.*, Effects of acute central and peripheral administration of nicotine on ascending dopamine pathways in the male rat brain. Evidence for nicotine induced increases of dopamine turnover in various telencephalic dopamine nerve terminal systems, *Med Biol* 1981;59(3):170-176.

Andersson K, Mecamylamine pretreatment counteracts cigarette smoke induced changes in hypothalamic catecholamine neuron systems and in anterior pituitary function, *Acta Physiol Scand* 1985;125(3):445-452.

II.C.2.

Andersson K, Siegel R, Fuxe K, *et al.*, Intravenous injections of nicotine induce very rapid and discrete reductions of hypothalamic catecholamine levels associated with increases of ACTH , vasopressin, and prolactin secretion, *Acta Physiol Scand* 1983;118(1):35-40.

Andersson K, Fuxe K, Eneroth P, *et al.*, Involvement of cholinergic nicotine-like receptors as modulators of amine turnover in various types of hypothalamic dopamine and noradrenaline nerve terminal systems and of prolactin, LH, FSH and TSH secretion in the castrated male rat, *Acta Physiol Scand* 1982;116(1):41-50.

Andersson K, Fuxe K, Eneroth P, *et al.*, Gustafsson JA, Interactions of nicotine and pentobarbitone in the regulation of telencephalic and hypothalamic catecholamine levels and turnover and of adenohypophyseal hormone secretion in the normal male rat, *Naunyn Schmiedebergs Arch Pharmacol* 1982;321(4):287-292.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute central and peripheral administration of nicotine on hypothalamic catecholamine nerve terminal systems and on the secretion of adenohypophyseal hormones in the male rat, *Med Biol* 1982;60(2):98-111.

Andersson K, Fuxe K, Agnati LF, Effects of single injections of nicotine on the ascending dopamine pathways in the rat. Evidence for increases of dopamine turnover in the mesostriatal and mesolimbic dopamine neurons, *Acta Physiol Scand* 1981;112(3):345-347.

Andersson K, Eneroth P, Agnati LF, Nicotine-induced increases of noradrenaline turnover in discrete noradrenaline nerve terminal systems of the hypothalamus and the median eminence of the rat and their relationship to changes in the secretion of adenohypophyseal hormones, *Acta Physiol Scand* 1981;113:227-231.

Andersson K, Fuxe K, Eneroth P, *et al.*, Mecamylamine induced blockade of nicotine induced inhibition of gonadotrophin and TSH secretion and of nicotine induced increases of catecholamine turnover in the rat hypothalamus, *Acta Physiol Scand Suppl* 1980;479:27-29.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone, *Acta Physiol Scand* 1985;124(2):277-285.

Andersson K, Eneroth P, Fuxe K, *et al.*, Effects of chronic exposure to cigarette smoke on amine levels and turnover in various hypothalamic catecholamine nerve terminal systems and on the secretion of pituitary hormones in the male rat, *Neuroendocrinology* 1985;41(6):462-466.

Bhagat B, Influence of chronic administration of nicotine on the turnover and metabolism of noradrenaline in the rat brain, *Psychopharmacologia* 1970;18(4):325-332.

Bhagat B, Rana MW, Effect of chronic administration of nicotine on the concentrations of adrenal enzymes involved in the synthesis and metabolism of adrenaline, *Br J Pharmacol* 1971;43(1):250-251.

Bhagat B, Effects of chronic administration of nicotine on storage and synthesis of noradrenaline in rat brain, *Br J Pharmacol* 1970;38(1):86-92.

Chang PL, Bhagat B, Taylor JJ, Effect of chronic administration of nicotine on acetylcholinesterase activity in the hypothalamus and medulla oblongata of the rat brain, An ultrastructural study, *Brain Res* 1973;54:75-84.

Chiou CY, Long JP, Potrepka R, *et al.*, The ability of various nicotinic agents to release acetylcholine from synaptic vesicles, *Arch Int Pharmacodyn Ther* 1970;187(1):88-96.

Erwin VG, Cornell K, Towell JF, Nicotine alters catecholamines and electrocortical activity in pefused mouse brain, *Pharmacol Biochem Behav* 1986;24(1):99-105.

Essman WB, Changes in cholinergic activity and avoidance behavior by nicotine in differentially housed mice, *Int J Neurosci* 1971;2(4):199-205.

Fuxe K, Andersson K, Harfstrand A, *et al.*, Increases in dopamine utilization in certain limbic dopamine terminal populations after a short period of intermittent exposure of male rats to cigarette smoke, *J Neural Transm* 1986;67(1-2):15-29.

Grenhoff J, Janson AM, Svensson TH, *et al.*, Chronic continuous nicotine treatment causes decreased burst firing of nigral dopamine neurons in rats partially hemitransected at the meso-diencephalic junction, *Brain Res* 1991;562(2):347-351.

Grenhoff J, Svensson TH, Selective stimulation of limbic dopamine activity by nicotine, *Acta Physiol Scand* 1988;133(4):595-596.

Harsing LG, Sershen H, Lajtha A, Dopamine efflux from striatum after chronic nicotine: evidence for autoreceptor desensitization, *J Neurochem* 1992;59(1):48-54.

Knapp DE, Domino EF, Action of nicotine on the ascending reticular activating system, *Int J Neuropharmacology* 1962;333-351.

Lapin EP, Maker HS, Sershen H, *et al.*, Dopamine-like action of nicotine: lack of tolerance and reverse tolerance, *Brain Res* 1987;407(2):351-363.

Lapin EP, Maker HS, Sershen H, *et al.*, Action of nicotine on accumbens dopamine and attenuation with repeated administration, *Eur J Pharmacol* 1989;160(1):53-59.

Lowy K, Abood ME, Drexler M, *et al.*, Antagonism by cholinergic drugs of behavioral effects in cats of an anticholnergic psychotomimetic drug and enhancement by nicotine, *Neuropharmacology* 1977;16(6):399-403.

Marty MA, Erwin VG, Cornell K, *et al.*, Effects of nicotine on beta-endorphin, alpha MSH, and ACTH secretion by isolated perfused mouse brains and pituitary glands, in vitro, *Pharmacol Biochem Behav* 1985;22(2):317-325.

Mitchell SN, Smith KM, Joseph MH, *et al.*, Increases in tyrosine hydroxylase messenger RNA in the locus coeruleus after a single dose of nicotine are followed by time-dependent increases in enzyme activity and noradrenaline release, *Neuroscience* 1993;56(4):989-997.

Mitchell SN, Role of the locus coeruleus in the noradrenergic response to a systemic administration of nicotine, *Neuropharmacology* 1993;32(10):937-949.

Naftchi NE, Maker H, Lapin E, *et al.*, Acute reduction of brain substance P induced by nicotine. *Neurochem Res* 1988;13(4):305-309.

Siegel RA, Andersson K, Fuxe K, *et al.*, Rapid and discrete changes in hypothalamic catecholamine nerve terminal systems induced by audiogenic stress, and their modulation by nicotine-relationship to neuroendocrine function, *Eur J Pharmacol* 1983;91:49-56.

II.C.2.

- Fifteen CTR studies demonstrate that nicotine affects hormone secretion and endocrine functions involved in modulation of mood and behavior;[555]

Toth E, Sershen H, Hashim A, *et al.*, Effect of nicotine on extracellular levels of neurotransmitters assessed by microdialysis in various brain regions: role of glutamic acid, *Neurochem Res* 1992;17(3):265-271.

Toth E, Vizi ES, Lajtha A, Effect of nicotine on levels of extracellular amino acids in regions of the rat brain in vivo, *Neuropharmacology* 1993;32(8):827-832.

Tung CS, Ugedo L, Grenhoff J, *et al.*, Peripheral induction burst firing in locus coeruleus neurons by nicotine mediated via excitatory amino acids, *Synapse* 1989;4(4):313-318.

Westfall TC, Fleming RM, Fudger MF, *et al.*, Effect of nicotine and related substances upon amine levels in the brain, *Ann N Y Acad Sci* 1967;142:83-100.

Westfall TC, Effect of nicotine and other drugs on the release of 3H-norepinephrine and 3H-dopamine from rat brain slices, *Neuropharmacology* 1974;13(8):693-700.

[555] Andersson K, Fuxe K, Eneroth P, *et al.*, Involvement of D1 dopamine receptors in the nicotine-induced neuro-endocrine effects and depletion of diencephalic catecholamine stores in the male rat, *Neuroendocrinology* 1988;48(2):188-200.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catecholamine, nerve terminal systems and on the secretion of pituitary hormones in the male, *Naunyn Schmiedebergs Arch Pharmacol* 1989;339(4):387-396.

Andersson K, Eneroth P, Agnati LF, Nicotine-induced increases of noradrenaline turnover in discrete noradrenaline nerve terminal systems of the hypothalamus and the median eminence of the rat and their relationship to changes in the secretion of adenohypophyseal hormones, *Acta Physiol Scand* 1981;113:227-231.

Andersson K, Fuxe K, Eneroth P, *et al.*, Mecamylamine induced blockade of nicotine induced inhibition of gonadotrophin and TSH secretion and of nicotine induced increases of catecholamine turnover in the rat hypothalamus, *Acta Physiol Scand Suppl* 1980;479:27-29.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone, *Acta Physiol Scand* 1985;124(2):277-285.

Andersson K, Fuxe K, Eneroth P, *et al.*, Involvement of cholinergic nicotine-like receptors as modulators of amine turnover in various types of hypothalamic dopamine and noradrenaline nerve terminal systems and of prolactin, LH, FSH and TSH secretion in the castrated male rat, *Acta Physiol Scand* 1982;116(1):41-50.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute central and peripheral administration of nicotine on hypothalamic catecholamine nerve terminal systems and on the secretion of adenohypophyseal hormones in the male rat, *Med Biol* 1982;60(2):98-111.

II.C.2.

- Nine CTR studies show that nicotine induces both arousal and calming effects;[556]

Fuxe K, Andersson K, Eneroth P, *et al.*, Neuroendocrine actions of nicotine and of exposure to cigarette smoke: medical implications, *Psychoneuroendocrinology* 1989;14(1-2):19-41.

Fuxe K, Andersson K, Eneroth P, *et al.*, Neurochemical mechanisms underlying the neuroendocrine actions of nicotine: focus on the plasticity of central cholinergic nicotinic receptors, *Prog Brain Res* 1989;79: 197-207.

Fuxe K, Andersson K, Eneroth P, *et al.*, Effects of Nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: Relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain, in *Tobacco Smoking and Nicotine: A Neurobiological Approach*, eds. Martin WR, Van Loo G, Iwamoto ET, Davis L, 1987:225-262.

Marty MA, Erwin VG, Cornell K, *et al.*, Effects of nicotine on beta-endorphin, alpha MSH, and ACTH secretion by isolated perfused mouse brains and pituitary glands, in vitro, *Pharmacol Biochem Behav* 1985;22(2):317-325.

Rubin RP, Warner W, Nicotine-induced stimulation of steroidogenesis in adrenocortical cells of the cat. *Br J Pharmacol* 1975;53(3):357-362.

Siegel RA, Andersson K, Fuxe K, *et al.*, Rapid and discrete changes in hypothalamic catecholamine nerve terminal systems induced by audiogenic stress, and their modulation by nicotine-relationship to neuroendocrine function, *Eur J Pharmacol* 1983 ;91:49-56.

Westfall TC, Brasted M, Effect of 4,4'-biphenylenebis-((2-oxoethylene)-bis-(2,2- diethoxyethyl)) dimethylammonium dibromide (DMAE) on accumulation and nicotine-induced release of norepinephrine in the heart, *J Pharmacol Exp Ther* 1973;184:198-204.

Westfall TC, Brasted M, Specificity of blockade of the nicotine-induced release of 3H-norepinephrine from adrenergic neurons of the guinea-pig heart by various pharmacological agents, *J Pharmacol Exp Ther* 1974; 189(3):659-664.

[556] Domino EF, Electroencephalographic and behavioral arousal effects of small doses of nicotine: a neuropsychopharmacological study. The effects of nicotine and smoking on the central nervous system, *Ann N Y Acad Sci* 1967;142:216-244.

Heimstra NW, Fallesen JJ, Kinsley SA, *et al.*, The effects of deprivation of cigarette smoking on psychomotor performance, *Ergonomics* 1980;23(11):1047-1055.

Marks MJ, Burch JB, Collins AC, Genetics of nicotine response in four inbred strains of mice, *J Pharmacol Exp Ther* 1983 ;226(1):291-302.

Nelsen JM, Goldstein L, Improvement of performance on an attention task with chronic nicotine treatment in rats, *Psychopharmacologia* 1972;26(4):347-360.

Pradhan SN, Effects of nicotine on several schedules of behavior in rats, *Arch Int Pharmacodyn Ther* 1970; 183(1):127-138.

Schaeppi U, Nicotine treatment of selected areas of the cat brain: effects upon EEG and autonomic system, *Int J Neuropharmacol* 1968;7(3):207-220.

II.C.2.

- Nine CTR studies use an EEG to examine the effects of nicotine on brain waves;[557]
- Nine CTR studies investigate the physiological effects of nicotine on the brain and their time course;[558]

Stadnicki SW, Schaeppi UH, Nicotinic changes in EEG and behavior after intravenous infusion in awake unrestrained cats, *Arch Int Pharmacodyn Ther* 1972;197(1):72-85.

Stadnicki SW, Schaeppi U, Nicotine infusion into the fourth ventricle of unrestrained cats: changes in EEG and behavior, *Arch Int Pharmacodyn Ther* 1970; 183(2):277-288.

Yamamoto KI, Domino EF, Nicotine-induced EEG and behavioral arousal. *Int J Neuropharmacol* 1965;4(6):359-373.

[557] Domino EF, Electroencephalographic and behavioral arousal effects of small doses of nicotine: a neuropsychopharmacological study. The effects of nicotine and smoking on the central nervous system, *Ann N Y Acad Sci* 1967;142:216-244.

Erwin VG, Cornell K, Towell JF, Nicotine alters catecholamines and electrocortical activity in perfused mouse brain, *Pharmacol Biochem Behav* 1986;24(1):99-105.

Kawamura H Somino EF, Differential actions of m and n cholinergic agonists on the brainstem activating system, *Int J Neuropharmacol* 1969;8(2):105-115.

Marty MA, Erwin VG, Cornell K, *et al.*, Effects of nicotine on beta-endorphin, alpha MSH, and ACTH secretion by isolated perfused mouse brains and pituitary glands, in vitro, *Pharmacol Biochem Behav* 1985;22(2):3 17-325.

Nelsen JM, Pelley K, Goldstein L, Chronic nicotine treatment in rats 2. Electroencephalographic amplitude and variability changes occurring within and between structures, *Res Commun Chem Pathol Pharmacol* 1973;5(3):694-704.

Schaeppi U, Nicotine treatment of selected areas of the cat brain: effects upon EEG and autonomic system, *Int J Neuropharmacol* 1968;7(3):207-220.

Stadnicki SW, Schaeppi UH, Nicotinic changes in EEG and behavior after intravenous infusion in awake unrestrained cats, *Arch Int Pharmacodyn Ther* 1972;197(1):72-85.

Stadnicki SW, Schaeppi U, Nicotine infusion into the fourth ventricle of unrestrained cats: changes in EEG and behavior, *Arch Int Pharmacodyn Ther* 1970;183(2):277-288.

Yamamoto KI, Domino EF, Nicotine-induced EEG and behavioral arousal, *Int J Neuropharmacol* 1965;4(6):359-373.

[558] Abood LG, Grassi S, Noggle HD, Comparison of the binding of optically pure (-)- and (+)-[3H] nicotine to rat brain membranes, *Neurochem Res* 1985;10(2):259-267.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catecholamine, nerve terminal systems and on the secretion of pituitary hormones in the male, *Naunyn Schmiedebergs Arch Pharmacol* 1989;339(4):387-396.

II.C.2.

- Six CTR studies characterize the effect of nicotine on behavioral performance and cognitive function;[559]
- Six CTR studies research the general pharmacokinetics of nicotine; [560]

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone, *Acta Physiol Scand* 1985;124(2):277-285.

Bhagat B, Influence of chronic administration of nicotine on the turnover and metabolism of noradrenaline in the rat brain, *Psychopharmacologia* 1970;18(4):325-332.

Fuxe K, Andersson K, Harfstrand A, *et al.*, Increases in dopamine utilization in certain limbic dopamine terminal populations after a short period of intermittent exposure of male rats to cigarette smoke, *J Neural Transm* 1986;67(1-2):15-29.

Fuxe K, Andersson K, Eneroth P, *et al.*, Effects of Nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: Relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain, in *Tobacco Smoking and Nicotine: A Neurobiological Approach,* eds. Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987:225-262.

Tung CS, Ugedo L, Grenhoff J, *et al.*, Peripheral induction burst firing in locus coeruleus neurons by nicotine mediated via excitatory amino acids, *Synapse* 1989;4(4):313-318.

Wong LA, Gallagher JP, Pharmacology of nicotinic receptor-mediated inhibition in rat dorsolateral septal neurones, *J Physiol (Lond)* 1991;436:325-346.

Yamamoto KI, Domino EF, Nicotine-induced EEG and behavioral arousal, *Int J Neuropharmacol* 1965;4(6):359-373.

[559] Bhagat B, Wheeler N, Effect of nicotine on the swimming endurance of rats, *Neuropharmacology* 1973;12(12):1161-1165.

Heimstra NW, Fallesen JJ, Kinsley SA, *et al.*, The effects of deprivation of cigarette smoking on psychomotor performance, *Ergonomics* 1980;23(11):1047-1055.

Marks MJ, Burch JB, Collins AC, Genetics of nicotine response in four inbred strains of mice, *J Pharmacol Exp Ther* 1983 ;226(1):291-302.

Nelsen JM, Pelley K, Goldstein L, Chronic nicotine treatment in rats 2. Electroencephalographic amplitude and variability changes occurring within and between structures, *Res Commun Chem Pathol Pharmacol* 1973;5(3):694-704.

Nelsen JM, Pelley K, Goldstein L, Protection by nicotine from behavioral disruption caused by reticular formation stimulation in the rat, *Pharmacol Biochem Behav* 1975;3(5):749-754.

Nelsen JM, Goldstein L, Improvement of performance on an attention task with chronic nicotine treatment in rats, *Psychopharmacologia* 1972;26(4):347-360.

II.C.2.

- Five CTR studies describe the development of sophisticated techniques for determining the presence of nicotine in body fluids; [561]
- Four CTR studies evaluate plasma profiles of nicotine; [562]

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[560] Becker RF, King JE, Studies on nicotine absorption during pregnancy. II. The effects of acute heavy doses on mother and neonates, *Am J Obstet Gynecol* 1966;95(4):515-522.

Haines CF Jr, Mahajan DK, Miljkovc D, *et al.*, Radioimmunoassay of plasma nicotine in habituated and naive smokers, *Clin Pharmacol Ther* 1974;16(6):1083-1089.

Hibberd AR, Gorrod JW, Enzymology of the metabolic pathway from nicotine to cotinine, in vitro, *Eur J Drug Metab Pharmacokinet* 1983;8:151-162.

Kershbaum A, Bellet S, Cigarette, cigar, and pipe smoking. Some differences in biochemical effects, *Geriatrics* 1968;23(3):126-134.

Monji N, Castro A, Plasma nicotine pharmacokinetics in dogs after intravenous administration: determination by radioimmunoassay, *Res Commun Chem Pathol Pharmacol* 1979;23(2):267-277.

Rama Sastry BV, Chance MB, Singh G, *et al.*, Distribution and retention of nicotine and its major metabolize cotinine in the rat as a function of time, in *International Symposium on Nicotine*, eds. Clarke PBS, Quik M, Thurau K, *et al.*, 1994:125.

[561] Castro A, Monji N, Nicotine enzyme immunoassay, *Res Commun Chem Pathol Pharmacol* 1986; 51(3):393-404.

Castro A, Malkus H, Radioimmunoassays of drugs of abuse in humans: a review, *Res Commun Chem Pathol Pharmacol* 1977;16(2):291-309.

Haines CF Jr, Mahajan DK, Miljkovc D, *et al.*, Radioimmunoassay of plasma nicotine in habituated and naive smokers, *Clin Pharmacol Ther* 1974;16(6):1083-1089.

McNiven NL, Raisinghani KH, Patashnik S, *et al.*, Determination of nicotine in smokers' urine by gas chromatography, *Nature* 1965;208:788-789.

Monji N, Castro A, Plasma nicotine pharmacokinetics in dogs after intravenous administration: determination by radioimmunoassay, *Res Commun Chem Pathol Pharmacol* 1979;23(2):267-277.

[562] Castro A, Monji N, Nicotine enzyme immunoassay, *Res Commun Chem Pathol Pharmacol* 1986; 51(3):393-404.

Haines CF Jr, Mahajan DK, Miljkovc D, *et al.*, Radioimmunoassay of plasma nicotine in habituated and naive smokers, *Clin Pharmacol Ther* 1974;16(6):1083-1089.

Monji N, Castro A, Plasma nicotine pharmacokinetics in dogs after intravenous administration: determination by radioimmunoassay, *Res Commun Chem Pathol Pharmacol* 1979;23(2):267-277.

Rama Sastry BV, Chance MB, Singh G, *et al.*, Distribution and retention of nicotine and its major metabolize cotinine in the rat as a function of time, in *International Symposium on Nicotine*, eds. Clarke PBS, Quik M, Thurau K, *et al.*, 1994:125.

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- Four CTR studies research the factors affecting the onset and duration of nicotine's effects on the body;[563]
- Three CTR studies investigate the metabolic fate of nicotine;[564]
- Two CTR studies specifically investigate the enzymatic systems involved in nicotine metabolism;[565]
- Two CTR studies show that smokers metabolize nicotine faster than nonsmokers;[566]
- Two CTR studies examine the factors affecting the absorption of nicotine into the bloodstream;[567]

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[563] Domino EF, Electroencephalographic and behavioral arousal effects of small doses of nicotine: A neuropsychopharmacological study. The effects of nicotine and smoking on the central nervous system, *Ann N Y Acad Sci* 1967;142:216-244.

Hoff EC, Hockman CH, Neurophysiological aspects of the action of nicotine. The effects of nicotine and smoking on the central nervous system, *Ann N Y Acad Sci* 1967;142:121-125.

Lapin EP, Maker HS, Sershen H, *et al.*, Dopamine-like action of nicotine: lack of tolerance and reverse tolerance, *Brain Res* 1987;407(2):351-363.

Stitzer M, Morrison J, Domino EF, Effects of nicotine on fixed-interval behavior and their modification by cholinergic antagonists, *J Pharmacol Exp Ther* 1970;171(2):166-177.

[564] Abood LG, Grassi S, Junig J, *et al.*, Specific binding and metabolism of (-)- and (+)-[3H] nicotine in isolated rat hepatocytes and hepatocyte membranes, *Arch Int Pharmacodyn Ther* 1985;273(1):62-73.

Hibberd AR, Gomod JW, Nicotine delta 1 '(5)' iminium ion: a reactive intermediate in nicotine metabolism, *Adv Exp Med Biol* 1981:1121-1131.

Vincek WC, Martin BR, Aceto MD, *et al.*, Synthesis of 4,4-ditritio-(+)-nicotine: comparative binding and distribution studies with natural enantiomer, *J Pharm Sci* 1981;70(11):1292-1293.

[565] Hibberd AR, Gorrod JW, Enzymology of the metabolic pathway from nicotine to cotinine, in vitro, *Eur J Drug Metab Pharmacokinet* 1983;8:151-162.

Wilson KL Jr, Chang, RS, Bowman ER, *et al.*, Nicotine-like actions of cis-metanicotine and trans-metanicotine, *J Pharmacol Exp Ther* 1976;196(3):685-696.

[566] Hatchell PC, Collins AC, The influence of genotype and sex on behavioral sensitivity to nicotine in mice, *Psychopharmacology (Berl)* 1980;71(1):45-49.

Jusko WJ, Role of tobacco smoking in pharmacokinetics, *J Pharmacokinet Biopharm* 1978;6(1):7-39.

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- Two CTR studies examine the distribution of nicotine to the brain;[568]
- Two CTR studies research the relationship of nicotine's physiological effects on the body to nicotine blood levels;[569] and
- One CTR study shows that there may be gender differences in the metabolism of nicotine.[570]

The results of the CTR-funded research show that nicotine has significant pharmacological effects on the body. In fact, numerous CTR studies demonstrate that nicotine produces pharmacological effects similar to those of other addictive substances. For example:

- Thirteen CTR studies demonstrate that nicotine, like other addictive drugs, acts on dopaminergic receptors in the brain to release dopamine, a chemical in the brain's reward system that reinforces the intake of certain substances;[571]

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[567] Haines CF Jr, Mahajan DK, Miljkovc D, *et al.*, Radioimmunoassay of plasma nicotine in habituated and naive smokers, *Clin Pharmacol Ther* 1974;16(6):1083-1089.

Kershbaum A, Bellet S, Cigarette, cigar, and pipe smoking. Some differences in biochemical effects, *Geriatrics* 1968;23(3):126-134.

[568] Hatchell PC, Collins AC, The influence of genotype and sex on behavioral sensitivity to nicotine in mice, *Psychopharmacology (Berl)* 1980;71(1):45-49.

Vincek WC, Martin BR, Aceto MD, *et al.*, Synthesis of 4,4-ditritio-(+)-nicotine: comparative binding and distribution studies with natural enantiomer, *J Pharm Sci* 1981;70(11):1292-1293.

[569] Hatchell PC, Collins AC, The influence of genotype and sex on behavioral sensitivity to nicotine in mice, *Psychopharmacology (Berl)* 1980;71(1):45-49.

Westfall TC, Anderson GP, Influence of nicotine on catecholamine metabolism in the rat, *Arch Int Pharmacodyn Ther* 1967;169(2):421-428.

[570] Jusko WJ, Role of tobacco smoking in pharmacokinetics, *J Pharmacokinet Biopharm* 1978;6(1):7-39.

[571] Abood LG, Lu X, Banerjee S, Receptor binding characteristics of a 3H-labeled azetidine analogue of nicotine, *Biochem Pharmacol* 1987;36(14):2337-2341.

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- Twelve CTR studies demonstrate that tolerance to nicotine occurs;[572]

Andersson K, Fuxe K, Eneroth P, *et al.*, Mecamylamine induced blockade of nicotine induced inhibition of gonadotrophin and TSH secretion and of nicotine induced increases of catecholamine turnover in the rat hypothalamus, *Acta Physiol Scand Suppl* 1980;479:27-29.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute intermittent exposure to cigarette smoke on catecholamine levels and turnover in various types of hypothalamic DA and NA nerve terminal systems as well as on the secretion of adenohypophyseal hormones and corticosterone, *Acta Physiol Scand* 1985;124(2):277-285.

Andersson K, Fuxe K, Eneroth P, *et al.*, Involvement of cholinergic nicotine-like receptors as modulators of amine turnover in various types of hypothalamic dopamine and noradrenaline nerve terminal systems and of prolactin, LH, FSH and TSH secretion in the castrated male rat, *Acta Physiol Scand* 1982;116(1):41-50.

Andersson K, Fuxe K, Eneroth P, *et al.*, Interactions of nicotine and pentobarbitone in the regulation of telencephalic and hypothalamic catecholamine levels and turnover and of adenohypophyseal hormone secretion in the normal male rat, *Naunyn Schmiedebergs Arch Pharmacol* 1982;321(4):287-292.

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of acute central and peripheral administration of nicotine on hypothalamic catecholamine nerve terminal systems and on the secretion of adenohypophyseal hormones in the male rat, *Med Biol* 1982;60(2):98-111.

Erwin VG, Cornell K, Towell JF, Nicotine alters catecholamines and electrocortical activity in pefused mouse brain, *Pharmacol Biochem Behav* 1986;24(1):99-105.

Fuxe K, Andersson K, Harfstrand A, *et al.*, Increases in dopamine utilization in certain limbic dopamine terminal populations after a short period of intermittent exposure of male rats to cigarette smoke, *J Neural Transm* 1986;67(1-2):15-29.

Grenhoff J, Svensson TH, Selective stimulation of limbic dopamine activity by nicotine, *Acta Physiol Scand* 1988;133(4):595-596.

Harsing LG, Sershen H, Vizi SE, *et al.*, N-type calcium channels are involved in the dopamine releasing effect of nicotine, *Neurochem Res* 1992;17(7):729-734.

Lapin EP, Maker HS, Sershen H, *et al.*, Action of nicotine on accumbens dopamine and attenuation with repeated administration, *Eur J Pharmacol* 1989;160(1):53-59.

Lapin EP, Maker HS, Sershen H, *et al.*, Dopamine-like action of nicotine: lack of tolerance and reverse tolerance, *Brain Res* 1987;407(2):351-363.

Westfall TC, Effect of nicotine and other drugs on the release of 3H-norepinephrine and 3H-dopamine from rat brain slices, *Neuropharmacology* 1974;13(8):693-700.

[572] Abood LG, Lowy K, Booth H, Acute and chronic effects of nicotine in rats and evidence for a non-cholinergic site of action, *NIDA Res Monogr* 1979:136-149.

Abood LG, Grassi S, Costanzo M, *et al.*, Behavioral and biochemical studies in rats after chronic exposure to nicotine, *NIDA Res Monogr* 1984;54:348-355.

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- Three CTR studies research the neurochemical mechanisms of nicotine withdrawal;[573]

Andersson K, Fuxe K, Eneroth P, *et al.*, Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catecholamine, nerve terminal systems . and on the secretion of pituitary hormones in the male, *Naunyn Schmiedebergs Arch Pharmacol* 1989;339(4):387-396.

Cronan T, Conrad J, Bryson R, Effects of chronically administered nicotine and saline on motor activity in rats, *Pharmacol Biochem Behav* 1985;22(5):897-899.

Domino EF, Lutz MP, Tolerance to the effects of daily nicotine on rat bar pressing behavior for water reinforcement, *Pharmacol Biochem Behav* 1973; 1(4):445-448.

Fuxe K, Andersson K, Eneroth P, *et al.*, Effects of Nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: Relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain, in *Tobacco Smoking and Nicotine: A Neurobiological Approach*, eds. Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987;225-262.

Lapin EP, Maker HS, Sershen H, *et al.*, Dopamine-like action of nicotine: lack of tolerance and reverse tolerance, *Brain Res* 1987;407(2):351-363.

Nelsen JM, Goldstein L, Improvement of performance on an attention task with chronic nicotine treatment in rats, *Psychopharmacologia* 1972;26(4):347-360.

Rosecrans JA, Noncholinergic mechanisms involved in the behavioral and stimulus effects of nicotine, and relationships to the process of nicotine dependence, in *Tobacco Smoking and Nicotine: A Neurobiological Approach*, eds. Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987:125-139.

Stitzer M, Morrison J, Domino EF, Effects of nicotine on fixed-interval behavior and their modification by cholinergic antagonists, *J Pharmacol Exp Ther* 1970;171(2):166-177.

Wenzel DG, Azmeh N, Clark IJ, Studies on the acute and chronic depressor actions of nicotine in the rat, *Arch Int Pharmacodyn Ther* 1971;193(1):23-36.

Westfall TC, Brase DA, Studies on the mechanism of tolerance to nicotine-induced elevations of urinary catecholamines, *Biochem Pharmacol* 1971;20(7):1627-1635.

[573] Andersson K, Effects of withdrawal from chronic exposure to cigarette smoke on hypothalamic and preoptic catechalamine nerve terminal systems and the secretion of pituitary hormones in the male, *Naunyn Schmiedebergs Arch Pharmacol* 1989;339(4):387-396.

Fuxe K, Effects of Nicotine and exposure to cigarette smoke on discrete dopamine and noradrenaline nerve terminal systems of the telencephalon and diencephalon of the rat: relationship to reward mechanisms and neuroendocrine functions and distribution of nicotinic binding sites in brain, in *Tobacco Smoking and Nicotine: A Neurobiological Approach,* eds. Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987:225-262.

Rosecrans JA, Noncholinergic mechanisms involved in the behavioral and stimulus effects of nicotine, and relationships to the process of nicotine dependence, in *Tobacco Smoking and Nicotine: A Neurobiological Approach,* eds, Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987;125-139.

- Two CTR studies investigate the effects of nicotine withdrawal on performance;[574]
- Two CTR studies show that nicotine is psychoactive and produces clearly discriminable stimulus effects;[575] and
- Two CTR studies show that nicotine can enhance the rewarding effects of electrical brain stimulation.[576]

Indeed, seven CTR studies state expressly that nicotine is an addictive or dependence-producing drug.[577] For instance, one CTR-funded study stated that "*smoking*

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[574] Heimstra NW, Fallesen JJ, Kinsley SA, *et al.*, The effects of deprivation of cigarette smoking on psychomotor performance, *Ergonomics* 1980;23(11):1047-1055.

Heimstra NW, Bancroft NR, DeKock AR, Effects of smoking upon sustained performance in a simulated driving task, in the effects of nicotine and smoking on the central nervous system, *Ann NY Acad Sci* 1967;142:295-307.

[575] Chance WT, Kallman MD, Rosecrans JA, *et al.*, A comparison of nicotine and structurally related compounds as discriminative stimuli, *Br J Pharmacol* 1978;63(4):609-616.

Rosecrans JA, Nicotine as a discriminative stimulus: a neurobehavioral approach to studying central cholinergic mechanisms, *J Subst Abuse* 1989;1(3):287-300.

[576] Olds ME, Domino EF, Comparison of muscarinic and nicotinic cholinergic agonists on self-stimulation behavior, *J Pharmacol Exp Ther* 1969;166(2):189-204.

Pradhan SN, Bowling C, Effects of nicotine on self-stimulation in rats, *J Pharmacol Exp Ther* 1971;176(1):229-243.

Deneau GA, Inoki R, Nicotine self-administration in monkeys, in The effects of nicotine and smoking on the central nervous system, *Ann N Y Acad Sci* 1967;142:277-279.

Other research jointly funded by the tobacco industry examines nicotine's ability to serve as a positive reinforcer in self-administration studies involving monkeys. *See* 60 FR 41642.

[577] Bosse R Gamery AJ, Glynn RJ, Age and addiction to smoking, *Addict Behav* 1980;5(4):341-351.

Martin WR, Van Loo GR, Iwamoto ET, *et al.*, *Tobacco Smoking and Nicotine: A Neurobiological Approach* (New York: Plenum Press, 1987).

Rosecrans JA, Noncholinergic mechanisms involved in the behavioral and stimulus effects of nicotine, and relationships to the process of nicotine dependence, in *Tobacco Smoking and Nicotine: A Neurobiological Approach*, eds. Martin WR, Van Loo GR, Iwamoto ET, *et al.*, 1987:125-139.

Rosecrans JA, Nicotine as a discriminative stimulus: a neurobehavioral approach to studying central cholinergic mechanisms, *J Subst Abuse* 1989;1(3):287-300.

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is a form of dependence no less binding than that of other addictive drugs."[578] Similarly, another CTR-funded study observed that "*compelling evidence now exists that regular smoking is a form of drug addiction to nicotine."*[579]

The Agency received no comments disputing FDA's characterization in the Jurisdictional Analysis of any of these CTR-funded studies. Thus, these uncontested studies demonstrate that the entire cigarette industry had detailed knowledge of the pharmacological effects of nicotine on the brain, including knowledge of research funded by the industry that found nicotine to be an addictive drug.

Collectively, these CTR studies and the studies conducted by individual cigarette manufacturers show that the cigarette manufacturers have acted like traditional pharmaceutical companies. Before marketing a prescription drug, a pharmaceutical company studies the pharmacokinetics of the drug (how it is absorbed into the body, metabolized, and excreted), the pharmacodynamics of the drug (what specific effects the drug has on the body's chemistry and metabolism as it makes its way through the body), and the clinical effects of the drug (whether the drug is effective in producing the desired

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Svensson TH, Grenhoff J, Engberg G, Effect of nicotine on dynamic function of brain catecholamine neurons, in *The Biology of Nicotine Dependence*, eds. Bock G, Marsh J, *CIBA Foundation Symposium* 1990;152:169-180.

Tung CS, Ugedo L, Grenhoff J, *et al.*, Peripheral induction burst firing in locus coeruleus neurons by nicotine mediated via excitatory amino acids, *Synapse* 1989;4(4):313-318.

Williams JS, Crumpacker DW, Krier MJ, Stability of a factor-analytic description of smoking behavior, *Drug Alcohol Depend* 1980;5(6):467-478.

[578] Bosse R Gamery AJ, Glynn RJ, Age and addiction to smoking, *Addict Behav* 1980;5(4):341-351 (emphasis added).

[579] Svensson TH, Grenhoff J, Engberg G, Effect of nicotine on dynamic function of brain catecholamine neurons, in The *Biology of Nicotine Dependence*, eds. Bock G, Marsh J, *CIBA Foundation Symposium* 1990;152:169-180 (emphasis added).

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therapeutic or physiological effects). The cigarette manufacturers have conducted or funded the same studies for nicotine. As a result, the cigarette manufacturers' understanding of the pharmacological effects and uses of nicotine are closely analogous to—if not more extensive and sophisticated than—the understanding any pharmaceutical company has of traditional drug products.

e. Three Decades of Statements and Research by Cigarette Manufacturers Are Sufficient to Establish Intent

As discussed in section II.C.1., above, the statements and research of a manufacturer are relevant evidence of the uses of a product that are "intended" by the manufacturer. This evidence shows that when the manufacturers offer cigarettes for sale, they "have in mind" that their products will be purchased for specific pharmacological uses by consumers. Hence, the evidence is sufficient to establish that the effects of cigarettes on the structure and function of the body are "intended" by the manufacturers.

The cigarette manufacturers assert, however, that the statements and research relied upon by the Agency are not reliable evidence of the cigarette manufacturers' intent in this case. Among other things, they argue that the three decades of tobacco company statements and research on the addictive and other pharmacological effects of nicotine contained in the administrative record are irrelevant to the intended use of cigarettes and smokeless tobacco because the statements were made and the research was conducted over a period of many years and are not contemporaneous with the sale of currently marketed products.[580]

[580] Other arguments of the manufacturers concerning the evidence that may be used to establish intended use are addressed in section II.E., below.

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FDA disagrees. The extensiveness of the statements and research of the cigarette manufacturers in the administrative record, most of which have only recently become available, reflects a remarkably consistent pattern of the industry's views, repeated frequently over time. These documents and statements establish the knowledge and belief of tobacco company officials that cigarettes have, and are predominantly used by consumers for, pharmacological effects. The fact that these statements span three decades simply demonstrates that the companies' knowledge and beliefs about the pharmacological effects and uses of cigarettes are both long-standing and consistent. As described in section II.A.5., above, commercial cigarettes marketed today contain a level of nicotine that is sufficient to produce addiction and other pharmacological effects. Thus, statements made 30 years ago about the pharmacological effects of nicotine in cigarettes are equally relevant to the cigarettes being marketed today. Moreover, as discussed above, many of the statements and research relied upon by FDA are of recent origin.

Tobacco industry comments also argue that statements of individuals employed, or formerly employed, by the manufacturers are not relevant to establishing the intent of any manufacturer because they are not formal statements of company policy. According to one manufacturer's comments, the only statements that are evidence of the manufacturer's "institutional intent" are those that have been adopted by the manufacturer "after whatever formalities required by the decision-making procedures of the institution have been followed."[581]

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[581] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 24. *See* AR (Vol. 519 Ref. 103).

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FDA disagrees that the statements of tobacco industry employees are not evidence of the intended use of the product. FDA is relying on the statements as evidence that the tobacco companies know that nicotine in tobacco has pharmacological effects and that consumers use tobacco to obtain those effects. Many of the statements come from executives at the companies. As one court observed, in a case relied upon by a tobacco company comment:

> When a major company executive speaks, "everybody listens" in the corporate hierarchy, and when an executive's comments prove to be disadvantageous to a company's subsequent litigation posture, it cannot compartmentalize this executive as if he had nothing more to do with company policy than the janitor or watchman.

Ezold v. Wolf, 983 F.2d 509, 546 (3d Cir. 1992) (internal citation omitted).

Moreover, many of the statements relied upon by FDA come from individuals whose function within the company was to research and understand the motives for smoking and who regularly communicated those views to company management. A corporation ordinarily relies on its research department to answer scientific questions, such as the pharmacologic effects of its product on users and the purposes for which consumers use the product. The statements quoted by FDA show a highly consistent pattern of views within and among the research departments of the cigarette companies, demonstrating that the statements are not the idiosyncratic opinions of a few individuals within one company, but widely shared views.

Indeed, the record shows that the cigarette manufacturers did in fact rely upon and regularly consult with their research scientists. In the case of Philip Morris, for instance, the CEO of Philip Morris, the president of Philip Morris USA, and vice presidents and directors from functions such as marketing met on a monthly basis with senior officials and

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scientists from the company's research and development department to discuss Philip Morris' basic and applied research and other topics.[582] These regular meetings, the occurrence of which Philip Morris does not dispute, show that the knowledge and views of the Philip Morris scientists were regularly sought by and communicated to the officers at the head of the company.

For these reasons, the statements and research of the cigarette manufacturers are sufficient evidence to establish that the manufacturers intend to affect the structure and function of the body. As FDA's regulations recognize, "objective intent" can be established by evidence that "a manufacturer knows, or has knowledge of, facts that would give him notice," that a product will be used for pharmacological purposes. 21 CFR 201.128, 801.4.[583]

3. The Cigarette Manufacturers Have Conducted Extensive Product Research and Development To Optimize the Delivery of Nicotine

The tobacco industry documents in the administrative record show not only that the cigarette manufacturers "have in mind" that cigarettes will be used for specific pharmacological purposes, but also that they have "designed" cigarettes to ensure that smokers receive a pharmacologically active dose of nicotine. The evidence in the record contains two categories of evidence of the manufacturers' design: (1) the evidence of the

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[582] Declaration of Uydess IL (Feb. 29, 1996), at 22-23. *See* AR (Vol. 638 Ref. 1).

[583] The Freedom of Information Act (FOIA) and Title VII cases cited by the comments do not purport to set forth a standard for assessing objective intent under public health statutes like the Federal Food, Drug, and Cosmetic Act, and the two statutes serve different purposes than the Act. They are, therefore, not controlling here. The FDA regulation cited by the comments is similarly inapplicable to the question of what evidence is relevant to establishing intended use. FDA is not contending that the statements of a single tobacco company employee can bind the company in such a way that the totality of the remaining evidence of intent can be overridden. Here, however, there is a consistent pattern of internal statements that, taken as a whole, are highly relevant to intent.

manufacturers' extensive product research and development to identify the doses of nicotine needed to produce pharmacological effects and to optimize the delivery of nicotine to smokers, which is discussed below; and (2) the evidence of the manufacturers' control and manipulation of nicotine in marketed cigarettes, which is discussed in section II.C.4., below.

The product research and development efforts described in the administrative record indicate that for three decades the cigarette manufacturers have strived to develop ways to maintain pharmacologically active doses of nicotine despite consumer demands for "healthier," lower-yield products. A primary focus of the cigarette manufacturers' efforts has been to deliver sufficient nicotine to provide the desired pharmacological effects of nicotine while at the same responding to consumer health concerns by reducing tar deliveries. Industry documents disclose research to determine the dose of nicotine that must be delivered to ensure "pharmacological satisfaction,"[584] as well as estimates by company scientists of the range of acceptable nicotine doses to produce pharmacological effects. These documents show that the manufacturers are aware that consumers will not accept cigarettes that do not deliver a pharmacologically active dose of nicotine.

The manufacturers' product research and development efforts have involved a wide variety of approaches to ensure delivery of an adequate dose of nicotine, including changes in tobacco blends; chemical manipulation to liberate "free" nicotine; filter and ventilation designs that selectively remove more tar than nicotine; the development of high-technology nicotine delivery devices that provide smokers nicotine but virtually no

[584] BATCO Group R&D Research Programme, 1984: Proposed revisions for 1985-87, Research Conference, Southampton, England (Sep. 1984), at 2. *See* AR (Vol. 26 Ref. 369-1).

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tar; genetic engineering of tobacco plants to enhance nicotine content; the search for nicotine "analogues" that retain nicotine's reinforcing abilities; and research into compounds that act synergistically to strengthen nicotine's pharmacological effects. As discussed in section II.C.4., below, many (but not all) of these methods are used in cigarettes currently marketed to the public.[585]

a. Philip Morris' Product Research and Development Efforts

Evidence on the research and development efforts of Philip Morris demonstrates that the company believes that cigarettes must deliver sufficient nicotine to produce pharmacological effects in smokers and that the company conducted extensive research to optimize nicotine delivery from its cigarettes.

In a 1972 document, Philip Morris senior scientist William Dunn discussed the basis for the company's concerns about lowering nicotine levels below a certain minimum. Dunn related consumers' lack of interest in cigarettes providing less than 1 mg of nicotine to the fact that 1 mg of nicotine "readily" produces the desired "physiological response":

> Despite many low nicotine brand entries into the marketplace, none of them have captured a substantial segment of the market. In fact, critics of the industry would do well to reflect upon the indifference of the consumer to the industry's efforts to sell low-delivery brands. 94% of the cigarettes sold in the U.S. deliver more than 1 mg of nicotine. 98.5% deliver more than 0.9 mg.[586] *The physiological response to nicotine can readily be elicited by cigarettes delivering in the range of 1 mg of nicotine.*[587]

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[585] The evidence discussed in section II.C.3. is also relevant to, and provides further support for, the Agency's finding that the cigarette manufacturers "have in mind" that their products will be used for pharmacological purposes.

[586] Dunn WL, *Motives and Incentives in Cigarette Smoking* (1972) (summary of CTR-sponsored conference in St. Martin), at 4. *See* AR (Vol. 12 Ref. 133).

[587] *Id.* (emphasis added).

A 1978 Philip Morris document shows a similar focus on identifying the minimum amount of nicotine necessary to produce pharmacological effects, referred to as the threshold level of nicotine in the body that satisfies consumers' "nicotine need."[588] The document discussed plans to study cigarettes in which the tar level was kept constant, but the nicotine level was varied. The purpose of the study was to determine how smokers react to levels of nicotine so close to the minimum that "the total nicotine in the [smoker's] system remains at or near the nicotine need threshold."[589]

This focus on producing cigarettes that provide pharmacologically active doses of nicotine is a prominent feature of Philip Morris' development of low-tar cigarettes. William Farone, the former director of applied research at Philip Morris, described the goals of Philip Morris' product research and development efforts in a statement submitted to the Agency. According to Farone, "*a key objective of the cigarette industry over the last 20-30 years*" was decreasing tar while maintaining the delivery of nicotine, and that tobacco company researchers therefore considered it a "top priority" to "[m]inimiz[e] the exposure to the potential negative health effects of the undesirable chemical components in tar *while maintaining an acceptable and pharmacologically active nicotine level.*"[590] This involved extensive product research and development. Farone stated:

> Extensive, in some instances ground breaking, research by the tobacco industry was necessary to construct a cigarette that ensured an adequate delivery of nicotine as the cigarette market evolved from the traditional full flavored, unfiltered product of the

[588] Dunn WL, *Plans and Objectives–1979* (Dec. 6, 1978), in 141 Cong. Rec. H7670 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[589] *Id.*

[590] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 4 (emphasis added). *See* AR (Vol. 638 Ref. 2).

> 1950's to the filtered, low tar cigarette demanded by many smokers for the last 30-40 years. *The objective of industry scientists and product developers, simply stated, was to provide the consumer with the same pharmacological satisfaction derived from nicotine* in the natural blends and flavor of the full strength cigarettes of the 1950's as the marketplace shifted to the naturally less flavorful and satisfying low tar and nicotine cigarette demanded by the more health conscious consumer.[591]

The declaration of Ian Uydess, an associate senior scientist at Philip Morris from 1977 to 1989, confirms the company's extensive interest in nicotine delivery. According to Uydess, "*Philip Morris wanted to know everything there was to know about nicotine.*"[592] Sophisticated equipment, such as liquid and gas chromatographs, mass spectrometers, infra-red spectrometers, and nuclear magnetic resonance instruments, was acquired by Philip Morris to research questions such as:

> (1) How nicotine levels varied in the tobacco plant with regard to cultivar, stalk position, seasonal variations and 'ripeness,' (2) What happened to nicotine after 'curing' and during processing, (3) What chemical 'forms' was it in, and (4) How much of it wound up in the smoke when burned under different conditions (such as . . . in the presence . . . of varying amounts of other tobacco constituents, etc.).[593]

The evidence in the administrative record shows that to achieve the goal of maintaining an acceptable and pharmacologically active nicotine level, Philip Morris developed ways to manipulate the ratio of nicotine to tar delivered by the cigarette. This

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[591] *Id.* at 7 (emphasis added). These statements and those by another former Philip Morris employee discussed below corroborate the other evidence before the Agency indicating that the tobacco industry conducted extensive research on nicotine levels.

[592] Declaration of Uydess II. (Feb. 29, 1996), at 14 (emphasis added). *See* AR (Vol. 638 Ref. 1).

[593] *Id.* at 14.

research was conducted in the 1970's and had as its goal "to determine what combinations of tar and nicotine make for optimal acceptability in a low delivery cigarette."[594]

The nicotine/tar ratio in cigarettes compares the amount of nicotine delivered by a cigarette with the amount of tar delivered by the cigarette. In public statements, officials of the tobacco industry have maintained that, as tar levels have been reduced through techniques such as filtration and ventilation, nicotine levels have been automatically reduced by a corresponding amount. For instance, one industry executive testified before Congress in 1994, "[w]e do not set levels of nicotine for particular brands of cigarettes. Nicotine follows the tar levels. . . . The correlation . . . is essentially perfect correlation between tar and nicotine and shows that there is no manipulation of nicotine."[595] Thus, according to the cigarette manufacturers, a proportional reduction of tar and nicotine demonstrates that the industry has not manipulated nicotine deliveries.

The goal of Philip Morris' research, however, was to determine whether cigarette acceptability could be improved by changing this "essentially perfect correlation" between tar and nicotine, i.e., by allowing tar to fall but maintaining a *disproportionately* high level

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[594] Dunn WL, *et al.* (Philip Morris Inc.), *Plans for 1972* (Sep. 8, 1971), in 141 Cong. Rec. H8128 (daily ed. Aug. 1, 1995). *See* AR (Vol. 711 Ref. 6).

There is evidence that Philip Morris' product research and development on maintaining adequate nicotine deliveries may have begun before the 1970's. A comment submitted to the Agency the handwritten notes of a Philip Morris research executive, Ronald A. Tamol. According to 1965 note from Tamol, an objective of his research at that time was to "*determine minimum nicotine. . . to keep normal smoker 'hooked.'*" Tamol RA (Philip Morris), Handwritten Notes (Feb. 1, 1965) (emphasis added). *See* AR (Vol. 700 Ref. 593). The Agency is not relying on these notes, however, because it has not independently authenticated the notes.

[595] *Regulation of Tobacco Products (Part 1): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 143, 378 (Mar. 25, 1994) (statement of Alexander Spears). *See* AR (Vol. 707 Ref. 1).

of nicotine. To this end, Philip Morris researchers in 1970 began to alter cigarette designs to study:

> *the effect of systematic variation of the nicotine/tar ratios upon smoking rate and acceptability measures.* Using the Marlboro as a base cigarette, *we will reduce the tar delivery incrementally by filtration and increase the nicotine delivery incrementally by adding a nicotine salt.* All cigarettes will be smoked for several days by each of a panel of 150 selected volunteers.[596]

The search for the optimal nicotine/tar ratio was a significant research priority at Philip Morris. In 1973, a 5-year research and development plan stated: "This program comprises a number of studies expected to provide insight leading to new cigaret designs. These include *studies of optimum nicotine/tar ratios, [and] nicotine/menthol relationships.*"[597]

That same year, the director of research at Philip Morris, Thomas Osdene, distributed a five-year plan stating that "R&D management will concentrate a large part of the resources at its disposal" on two "major long-range" programs, one of which was directed at achieving:

> *a dramatic reduction in cigaret tar level while maintaining the subjective responses equal to our present major brands . . . . The task requires . . . discovering which constituents contribute positively to the smoker's response . . . and . . . developing means of increasing the relative concentration of desirable constituents.*[598]

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[596] Eichorn PA, Dunn WL (Philip Morris Inc.), *Quarterly Report of Projects 1600 and 2302* (Dec. 31, 1970), in 141 Cong. Rec. H8127-8128 (daily ed. Aug. 1, 1995) (emphasis added). *See* AR (Vol. 711 Ref. 6).

[597] Philip Morris USA, *Research and Development Five Year Plan, 1974-1978* (May 1973), in 141 Cong. Rec. H8130-8131 (daily ed. Aug. 1, 1995) (emphasis added). *See* AR (Vol. 711 Ref. 6).

[598] Osdene TS (Philip Morris Inc.), *Five-Year Plan* (Oct. 29, 1973) attaching Dunn WL, Lowitz DA, Will F, *R&D Strategy Outline*, in 141 Cong. Rec. H8131-8132 (daily ed. Aug. 1, 1995) (emphasis added). *See* AR (Vol. 711 Ref. 6).

According to the Philip Morris researchers, the natural nicotine/tar ratio in tobacco is about 0.07.[599] By 1974, the researchers found that by boosting this natural ratio to about 0.12 (i.e., by raising the level of nicotine in relation to the level of tar) they could make a low-delivery cigarette that was "comparable to the Marlboro in terms of both subjective acceptability and strength."[600] A follow-up study in 1975 also found "evidence that *the optimum nicotine to tar (N/T) ratio for a [low-delivery] tar cigarette is somewhat higher than that occurring in smoke from the natural state of tobacco.*"[601] Thus, Philip Morris' research showed that for low-tar cigarettes, it was "optimal" to supply a higher proportion of nicotine than would occur naturally. The distribution lists accompanying both the 1974 study and the 1975 follow-up show these studies were distributed to senior officials at Philip Morris, including Helmut Wakeham, the vice president for research and development.

As Philip Morris enhanced its ability to reduce tar levels, it continued to research the optimum nicotine levels to accompany these ever-lower tar levels. It also conducted research on nicotine deliveries in its competitors' low-tar brands. The Philip Morris researchers concluded that the nicotine-to-tar ratios in their competitors' products "go up as tar goes down."[602] They further stated that "the mechanics of cigarette engineering

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[599] Dunn WL, Johnston M, Ryan F, *et al.* (Philip Morris Inc.), *Plans for 1972* (Sep. 8, 1971), in 141 Cong. Rec. H8128 (daily ed. Aug. 1, 1995). *See* AR (Vol. 711 Ref. 6).

[600] Philip Morris Research Center, *Behavioral Research Annual Report (Part II)*, distributed by Osdene TS (Nov. 1, 1974), in 141 Cong. Rec. H7659 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[601] Jones B, Houck W, Martin P (Philip Morris Inc.), *Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication* (Oct. 1975), in 141 Cong. Rec. H8132 (daily ed. Aug. 1, 1995) (emphasis added). *See* AR (Vol. 711 Ref. 6).

[602] Dunn WL (Philip Morris Inc.), *Plans and Objectives–1979* (Dec. 6, 1978), in 141 Cong. Rec. H7670 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

and the deliberate decisions of our competitors are such as to suggest that *high* nicotine/tar ratios be used at ultra low tar levels."[603]

This extensive research on deliberately altering nicotine/tar ratios shows that Philip Morris did not, in fact, want to allow nicotine to "follow the tar level" but instead wanted to supply an optimum nicotine level that required independent manipulation of the nicotine delivery of cigarettes. In addition to the research on optimal nicotine/tar ratios, Philip Morris scientists have conducted other product development research relating to the delivery of nicotine. In the 1980's, Philip Morris conducted extensive research to find "nicotine analogues" that could replace nicotine in cigarettes. As described in section II.C.2.a.ii., above, this research was designed to find analogues that would specifically retain nicotine's pharmacological effects on the brain, revealing both Philip Morris' recognition of the pharmacological effects of nicotine and its intent to maintain these pharmacological effects even if compelled to cease the use of nicotine.

Philip Morris also conducted research to determine whether a second component of tobacco smoke, acetaldehyde, acted synergistically with nicotine to produce reinforcing effects on the brain. The culmination of this research was Philip Morris' attempt to establish the "maximally reinforcing" ratio of acetaldehyde to nicotine in cigarette smoke. This research demonstrates again Philip Morris' objective of identifying pharmacologically active doses of nicotine and of enhancing those effects where possible. A 1982 Philip Morris report on research plans and objectives stated:

> Since both acetaldehyde and nicotine are reinforcing agents and each are contained in smoke *it becomes important to determine ratio[s] of acetaldehyde to nicotine which produce maximal*

[603] *Id.* at H7670 (emphasis added).

reinforcing effects . . . . This will allow us to determine the optimum ratio of acetaldehyde to nicotine that maintains the most behavior.[604]

Philip Morris' patents further reflect and corroborate its interest in developing methods of enhancing nicotine deliveries. For example, among other patents related to nicotine, Philip Morris holds patents to permit the "release in controlled amounts and when desired of nicotine"[605] and for "releasing nicotine into tobacco smoke."[606] The purpose of the patented method is to "*[m]aintain[] the nicotine content at a sufficiently high level to provide the desired physiological activity*, taste and odor which this material imparts."[607]

Collectively, the documents in the administrative record show that ensuring an adequate delivery of nicotine has been a dominant consideration in Philip Morris product research and development for nearly 30 years. As Project Table indicates, Philip Morris' research on the optimum way to deliver nicotine to smokers continues to this day.

See section II.C.2.a.iii., above.

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[604] DeNoble VJ (Philip Morris Inc.), *Project Number 1610 (Behavioral Pharmacology) Objectives and Plans–1982-1983* (Jul. 20, 1982), at 2 (emphasis added). *See* AR (Vol. 54 Ref. 1921).

[605] U.S. Patent No. 3,280,823, Bavley A, Air B, Robb II EW, assigned to Philip Morris Inc., *Additive-Releasing Filter for Releasing Additives into Tobacco Smoke* (Oct. 25, 1966), at C2:39-40. *See* AR (Vol. 26 Ref. 352).

[606] U.S. Patent No. 3,584,630, Inskeep GE, assigned to Philip Morris Inc., *Tobacco Product Having Low Nicotine Content Associated with a Release Agent Having Nicotine Weakly Absorbed Thereon* (Jun. 15, 1971), at C2:5-15. *See* AR (Vol. 27 Ref. 387).

[607] *Id.* at C1:39-41 (emphasis added).

U.S. Patent No. 3,280,823, Bavley A, Air B, Robb II EW, assigned to Philip Morris Inc., *Additive-Releasing Filter for Releasing Additives into Tobacco Smoke* (Oct. 25, 1966), at C1:43-45. *See* AR (Vol. 26 Ref. 352).

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b. RJR's Product Research and Development Efforts

RJR has also conducted product research and development to ensure that its cigarettes deliver levels of nicotine to smokers that provide desired pharmacological effects. A presentation from RJR's researchers to its marketing department in approximately 1977, for example, reveals that RJR understood the importance of maintaining adequate nicotine deliveries as tar deliveries declined and had identified a range of nicotine delivery levels capable of producing pharmacological effects. According to this presentation, nicotine has two roles in cigarettes. First, it contributes to the "mouth taste" or "mouth satisfaction" derived from a cigarette.[608] Second, and even more important, it "acts upon the central nervous system and produces in the average smoker a sensation one could describe as either stimulating or relaxing."[609] Moreover, according to the presentation, "a confirmed smoker attempts to get a certain desired level of nicotine. About one half hour after smoking, after all the nicotine has been biologically or pharmacologically inactivated, the smoker experiences a need for nicotine and lights up another cigarette."[610] For these reasons, the researchers reported that "a zero nicotine cigarette . . . really has no potential to provide smoking satisfaction. It produces no taste in the mouth, but even more seriously *it fails to provide the ultimate satisfaction in the lungs.*"[611]

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[608] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking*, (1976/1977), at 7-9. *See* AR (Vol. 700 Ref. 593).

[609] *Id.* at 3.

[610] *Id.* at 5.

[611] *Id.* at 9 (emphasis added).

The researchers observed that RJR's competitors "*are fully aware of the advisability of maintaining a low tar value and also maintaining the nicotine as high as possible.*"[612] They cited True, which is produced by Lorillard Tobacco Co., as an example of a cigarette in which tar levels had been reduced dramatically while nicotine levels had been left essentially unchanged, stating:

> [T]he old True had 11 mg tar [and] .6 mg nicotine -- the new True is 5 mg tar [and] .5 mg nicotine. So although the tar was reduced 6 mg from 11 mg to 5 mg, *nicotine was dropped only .1 mg. . . .*[613]

The researchers then recommended that RJR develop cigarettes that reduced tar but maintained nicotine at levels sufficient to provide "(1) mouth satisfaction—quality of nicotine" and "(2) ultimate physiological satisfaction—quantity of nicotine."[614] Specifically, RJR recommended that a new brand deliver 5 mg tar and 0.5 to 0.8 mg nicotine, stating that "*on inhalation into the lungs, 0.5 mg to 0.8 mg of nicotine would provide sufficient nicotine to the blood to produce the stimulation and relaxation effects desired by the smoker.*"[615] As discussed in section II.C.4.a.ii., below, RJR appears to have implemented these recommendations.

Similar recommendations were made by Claude Teague, Jr., RJR's assistant director for research. As noted in section II.C.2.b.i., above, a 1972 memorandum written by RJR's assistant director for research, Charles Teague, referred to efforts at RJR to

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[612] *Id.* at 10 (emphasis added).

[613] *Id.* (emphasis added).

[614] *Id.* at 11.

[615] *Id.* at 11-12 (emphasis added).

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"reduc[e] the amount of 'tar' in cigarette smoke per unit of nicotine."[616] In its comments, RJR confirms that it has conducted research on cigarettes with enhanced nicotine-to-tar ratios.[617]

In addition to developing low-tar cigarettes that maintain adequate nicotine deliveries, RJR has been particularly active in developing novel tobacco products that deliver nicotine but few other components of tobacco smoke. As noted in section II.C.2.b.i., above, Teague first recommended such a "futuristic" product in 1972, urging that *"[t]here should be some simpler, 'cleaner', more efficient and direct way to provide the desired nicotine dosage than the present system involving combustion of tobacco."*[618]

RJR actually developed and marketed such an alternative tobacco product, called Premier, in the late 1980's. As described in section II.C.2.b.iii., above, RJR conducted comparative studies of the blood levels of nicotine produced by Premier and by conventional cigarettes to ensure that Premier delivered normal doses of nicotine to the user. However, because the tobacco in the product was heated rather than burned, it delivered the vapor recommended by Teague, with virtually no tar and other non-nicotine components of normal tobacco smoke.

Currently, RJR is test-marketing a similar product, "Eclipse." As described in section II.C.2.b.iii., above, Eclipse, like Premier, is intended to rely primarily on heating

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[616] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 6 (emphasis added). *See* AR (Vol. 531 Ref. 125).

[617] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 3. *See* AR (Vol. 519 Ref. 103).

[618] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on The Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 7 (emphasis added). *See* AR (Vol. 531 Ref. 125).

rather than burning tobacco and to deliver levels of nicotine similar to a conventional ultra-low-tar cigarette, but much reduced levels of other cigarette smoke constituents.

RJR's extensive efforts to develop and market alternative cigarettes that deliver nicotine and little else show that it regards nicotine as the essential ingredient of tobacco. The efforts also show that RJR regards cigarettes as, in effect, devices for the delivery of nicotine.

Like Philip Morris, RJR also holds various patents on ways to manipulate nicotine deliveries, including patents intended to "provide a cigarette which delivers a larger amount of nicotine in the first few puffs than in the last few puffs"[619] and intended to mask the harsh flavor of cigarettes with increased levels of nicotine.[620] Regardless of whether the patents have been actually used in commercial cigarettes, they are further evidence of RJR's interest in developing ways to control and manipulate nicotine deliveries.

c. Brown & Williamson's Product Research and Development Efforts

Like Philip Morris and RJR, Brown & Williamson and its parent BATCO have conducted research to identify the minimum and optimum doses of nicotine necessary to produce desired pharmacological effects and they have invested considerable resources to develop cigarettes that optimize the delivery of nicotine to smokers. In the case of Brown & Williamson and BATCO, these efforts have spanned over three decades and show a consistent focus on methods to maintain nicotine deliveries at levels sufficient to provide

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[619] U.S. Patent No. 4,595,024, Greene TB, Townsend DE, Perfetti TA, assigned to R.J. Reynolds Tobacco Company, *Segmented Cigarette*, (Jun. 17, 1986), at C2:23-26. *See* AR (Vol. 26 Ref. 370).

[620] U.S. Patent No. 4,830,028, Lawson JW, Bullings BR, Perfetti TA, assigned to R.J. Reynolds Tobacco Company, *Salts Provided from Nicotine and Organic Acid as Cigarette Additives* (May 16, 1989), at C1. *See* AR (Vol. 34 Ref. 593).

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pharmacological satisfaction while reducing tar deliveries. These product research and development efforts cover a wide variety of strategies to enhance nicotine deliveries, including the use of nicotine-rich tobacco blends, genetic manipulation of tobacco plants, chemical manipulation of tobacco blends, and novel filter designs.

i. Product Research and Development in the 1960's. BATCO's product research and development efforts to optimize nicotine delivery in the 1960's focused on three areas. According to an internal Brown & Williamson memorandum written in 1965, one goal of BATCO research was to "*find ways of obtaining maximum nicotine for minimum tar.*"[621] The approaches then under consideration for maximizing nicotine and minimizing tar included "alteration of blends," "addition of nicotine containing powders to tobacco," and "nicotine fortification of cigarette papers."[622] Similarly, at a 1967 BATCO conference, the researchers urged that "*[t]he development of low TPM, normal nicotine cigarettes should continue.*"[623]

As part of its effort in the 1960's to maximize nicotine while minimizing tar, BATCO investigated whether nicotine delivery could be controlled by increasing the proportion of "extractable nicotine" (also known as "free nicotine") in the smoke through increases in the alkalinity or pH of tobacco smoke. By changing the chemical characteristics of the smoke, this technique would increase the amount of nicotine

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[621] Griffith RB (Brown & Williamson), *Report to Executive Committee* (Jul. 1, 1965), at 2 (emphasis added). *See* AR (Vol. 27 Ref. 377).

[622] *Id.*

[623] Minutes of BATCO Group R&D Conference at Montreal, Canada (Oct. 25, 1967), at 4 (emphasis added). *See* AR (Vol. 27 Ref. 378-1). A "low TPM" cigarette refers to a cigarette low in "total particulate matter" or "tar."

absorbed by the smoker without raising the level of nicotine in the cigarette. A 1966 BATCO study confirmed that "the reaction of a smoker to the strength of the smoke from a cigarette could be correlated to *the amount of 'extractable' nicotine in the smoke, rather than to the total nicotine content*," further explaining that "it would appear that the increased smoker response is associated with *nicotine reaching the brain more quickly.*"[624] A 1967 BATCO study found that the addition of PEI (polyethyleneimine) to filters caused a significant increase in the delivery of "extractable nicotine" to the smoker.[625] And a 1968 study reported a direct correlation between smoke pH and nicotine absorption in the mouth, stating that "*[n]icotine retention appears to be dependent principally on smoke pH and nicotine content.*"[626]

BATCO's second objective was to develop an alternative tobacco product that delivered nicotine but not tar. In the 1960's, BATCO's Charles Ellis worked on Project ARIEL, an early Premier-like tobacco product that involved heating rather than burning nicotine-enriched tobacco. According to a 1967 patent, "the invention . . . seeks primarily to furnish *a smoking device which will yield nicotine in an acceptable form, both psychologically and physiologically*, but without the necessity for taking into the system so much of the products of combustion as is usual when smoking a conventional

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[624] BATCO, *Further Work on 'Extractable' Nicotine* (Sep. 30,1966), at BW-W2-11617 (emphasis added). *See* AR (Vol. 62 Ref. 308).

[625] BATCO, *Relation between 'Extractable Nicotine' Content of Smoke and Panel Response* (Mar. 17, 1967), at 2. *See* AR (Vol. 176 Ref. 2045).

[626] BATCO, *The Retention of Nicotine and Phenols in the Human Mouth* (1968), at BW-W2-11691 (emphasis added). *See* AR (Vol. 445 Ref. 7593).

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cigarette."[627] Although ARIEL was never commercialized, Brown & Williamson continues to develop and patent similar tobacco products to this day.[628] Like RJR's development of Premier and Eclipse, Brown & Williamson and BATCO's development of these alternative tobacco products that deliver little more than nicotine shows that the companies regard cigarettes as, in effect, devices for the delivery of nicotine.

Third, BATCO launched efforts to find a nicotine analogue. A 1968 conference of BATCO researchers recommended:

> In view of its pre-eminent importance, the pharmacology of nicotine should continue to be kept under review and *attention paid to the possible discovery of other substances possessing the desired features of brain stimulation and stress-relief without direct effects on the circulatory system.*[629]

BATCO's interest in nicotine analogues led to a 1972 BATCO report that "concluded that substances closely related to nicotine in structure (nicotine analogues) could be important" because "[s]hould nicotine become less attractive to smokers, the future of the tobacco industry would become less secure."[630] Thus, as with Philip Morris,

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[627] U.S. Patent No. 3,356,094, Ellis CD, Dean C, Hughes IW, assigned to Battelle Memorial Institute, *Smoking Devices* (Dec. 5, 1967), at C2:66-71 (emphasis added). *See* AR (Vol. 34 Ref. 571).

[628] Philip Morris Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table*, at 5 (stating that "[O]ther tobacco industry patent activity by . . . Brown & Williamson illustrates extensive interest in the development of a superior nicotine delivery device with or without a tobacco base"). *See* AR (Vol. 531 Ref. 122).

Slade J, Bero LA, Hanauer P, *et al.*, Nicotine and Addiction, the Brown & Williamson documents, *Journal of the American Medical Association* 1995;274(3):225-233, at 228. *See* AR (Vol. 528 Ref. 97).

[629] Minutes of BATCO Research Conference at Hilton Head, SC (Sep. 24-30, 1968), at 3 (emphasis added). *See* AR (Vol. 31 Ref. 525-1).

[630] Kilburn KD, Underwood JG (BATCO), *Preparation and Properties of Nicotine Analogues* (Nov. 9, 1972), at 1. *See* AR (Vol. 31 Ref. 524-1).

Brown & Williamson's nicotine analogue research demonstrated the company's intention to preserve the effects of nicotine on the brain in new tobacco products.

Collectively, the three areas of product development research related to nicotine delivery in the 1960's show Brown & Williamson's long-standing focus on delivering pharmacologically active doses of nicotine to smokers.

ii. Product Research and Development to Maintain Pharmacologically Satisfying Doses of Nicotine while Lowering Tar. Documents in the administrative record indicate that BATCO's efforts in the 1970's coalesced around the objective of maintaining nicotine deliveries in lower-tar cigarettes. The minutes of a 1975 BATCO research conference, for instance, observed that "*[o]nce again the need for normal nicotine low tar cigarettes which appeal to the consumer was identified.*"[631] A year later, at a 1976 BATCO conference, the researchers predicted a "*clear opportunity*" for low-tar, normal-nicotine cigarettes "[p]rovided we can get smokers to dissociate tar from nicotine in their minds in terms of a possible health hazard."[632] At another 1976 conference, the researchers stated:

> [I]n that the 'benefits' of smoking appear to be related to nicotine, we can infer that the 'benefits' of smoking might disappear if cigarettes with low levels of nicotine became the norm . . .[633]

In conjunction with their efforts to develop cigarettes that were low in tar but maintained nicotine delivery, Brown & Williamson and BATCO conducted product

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[631] Minutes of BATCO Group R&D Conference at Merano, Italy (Apr. 2-8, 1975), at 4 (emphasis added). *See* AR (Vol. 27 Ref. 379-1).

[632] Minutes of BATCO Group R&D Conference on Smoking Behaviour at Southampton, England (Oct. 11-12, 1976), at 8. *See* AR (Vol. 27 Ref. 379-2).

[633] *Id.* at 4.

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development research in the 1970's and 1980's to determine the dose of nicotine required to produce satisfying pharmacological effects in smokers. Project Wheat was central to these efforts. The multiyear project had two parts. In Part 1, the attitudes of over 1,000 smokers were surveyed to assess their "inner need" to smoke.[634] In Part 2, the smokers were asked to assess experimental cigarettes with different nicotine deliveries.[635]

According to BATCO:

> The purpose of the survey was to classify smokers into a number of categories showing distinct patterns of motivation, and different levels of so-called Inner Need, as a first step towards testing the hypothesis that *a smoker's Inner Need level is related to his preferred nicotine delivery.* [636]

Project Wheat was thus designed to determine the optimum dose of nicotine delivered by cigarettes for individual smokers as a function of the strength of their "inner need" to smoke. BATCO researchers defined "inner need" as the smoker's use of cigarettes to relieve stress, aid concentration, control appetite, and relieve craving.[637] These are the characteristic pharmacological effects of nicotine. *See* section II.B., above. They also described "the 'inner need' dimension" as correlating "with the extent of inhalation, with *the craving for cigarettes when these are not available,* and with *the*

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[634] Wood DJ, Wilkes EB (BATCO), *Project Wheat - Part 1: Cluster Profiles of U.K. Male Smokers and their General Smoking Habits* (Jul. 10, 1975), at 1. *See* AR (Vol. 20 Ref. 204-1).

[635] Wood DJ (BATCO), *Project Wheat - Part 2: U.K. Male Smokers: Their Reactions to Cigarettes of Different Nicotine Delivery as Influenced by Inner Need* (Jan. 30, 1976). *See* AR (Vol. 20 Ref. 204-2).

[636] Wood DJ, Wilkes EB (BATCO), *Project Wheat - Part 1: Cluster Profiles of U.K. Male Smokers and their General Smoking Habits* (Jul. 10, 1975), at 1 (emphasis added). *See* AR (Vol. 20 Ref. 204-1).

[637] Wood DJ (BATCO), Project Wheat (Jan. 10, 1974). *See* AR (Vol. 177 Ref. 2056).

difficulty which consumers anticipate in giving up smoking."[638] Thus, a nicotine level that satisfies "inner need" is one that provides desired pharmacological effects.

According to the BATCO researchers, the hypothesis that "inner need" is related to nicotine delivery should be "seen as part of a general approach to the problem of designing cigarettes of increased consumer acceptance."[639] They further explained: "*In considering which product features are important in terms of consumer acceptance, the nicotine delivery is one of the more obvious candidates. . . . The importance of nicotine hardly needs to be stressed, as it is so widely recognised.*"[640]

Project Wheat found that "[a]s predicted by the hypothesis, *High Need clusters tend to prefer relatively high nicotine cigarettes*, their optimum nicotine delivery being higher than that of Low Need clusters."[641] Project Wheat also found that there was a conflict between smokers' concern for health, which led them to favor low-tar brands of cigarettes, and their "inner need" to smoke, which led them to seek higher nicotine levels.

According to the project report:

> Concern for the possible health risks of smoking influences consumers in the direction of trying low delivery brands. . . . However there is evidence of a conflict between concern for health and the desire for a satisfying cigarette, from which it follows that low tar brands would be much more widely accepted if their

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[638] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 438 (Jun. 21 and 23, 1994) (emphasis added). *See* AR (Vol. 709 Ref. 3).

[639] Wood DJ, Wilkes EB (BATCO), *Project Wheat - Part 1: Cluster Profiles of U.K. Male Smokers and their General Smoking Habits* (Jul. 10, 1975), at 1. *See* AR (Vol. 20 Ref. 204-1).

[640] *Id.* at 3 (emphasis added).

[641] Wood DL(BATCO), *Project Wheat - Part 2: U.K. Male Smokers: Their Reactions to Cigarettes of Different Nicotine Delivery as Influenced by Inner Need* (Jan. 30, 1976), at 1 (emphasis added). *See* AR (Vol. 20 Ref. 204-2).

> nicotine deliveries could be brought within the range required by groups of consumer[s]. [642]

Most important, the project developed a model of the cigarette market that showed a "substantial potential" for cigarettes that attract smokers concerned about both their health and satisfying their "inner need" for nicotine. According to the project report:

> *A model of the market is now proposed in which two major determinants of the type of cigarette which best suits a smoker's requirements are Inner Need and concern for health.* This model leads to the conclusion that *there is a substantial potential for a range of cigarettes which at present is not available. These cigarettes range from some with low tar and medium nicotine deliveries to others with medium tar and high nicotine deliveries,* and are visualised as attracting those smokers who combine above average Inner Need with above average concern for health.[643]

A chart in the Project Wheat report showed the magnitude of this new potential market. According to the chart, over 40% of smokers want a cigarette with lower tar and higher nicotine than currently available.[644]

Project Wheat is persuasive evidence of the extensive product research and development by Brown & Williamson and BATCO to manipulate nicotine levels to provide pharmacologically active doses of nicotine. Project Wheat's "model of the market" showed the companies that there existed a significant market for cigarettes with low-tar levels but relatively enhanced nicotine levels.

Brown & Williamson and BATCO conducted additional research designed to correlate nicotine dose and pharmacological effects. For example, a 1980 BATCO Group

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[642] *Id.* at 48.

[643] *Id.* at 2 (emphasis added).

[644] *Id.* at 50-51.

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R&D report describes BATCO's successful effort to develop an improved method for measuring nicotine and its metabolites in the body. The method was developed to study the pharmacological effects of nicotine and their relationship to nicotine dose.

The report states that in some cases:

> the pharmacological response of smokers to nicotine is believed to be responsible for an individual's smoking behaviour, providing the motivation for and the degree of satisfaction required by the smoker.
>
> . . . .
>
> [W]here the causal relationship between nicotine and individual biochemical physiological or psychological responses are to be investigated, accurate information regarding nicotine dose is essential.[645]

A related study was designed to provide an animal model that would allow BATCO to estimate human nicotine doses and to aid in understanding the relationship between the dose of nicotine delivered by cigarettes and smokers' choice of particular brands.[646]

A session on "Nicotine Dose Estimation" at BATCO's 1984 Smoking Behaviour-Marketing Conference was intended "to review the current status of plasma/urinary measures . . . of nicotine dose and to identify the significance for the smoker and product design."[647] That same year, BATCO described its proposed research agenda for 1985-1987 as including studies "to establish the *minimum dose of smoke nicotine that can provide pharmacological satisfaction* for the smoker."[648]

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[645] Read GA, Anderson IGM (BATCO Group R&D), *Method for Nicotine and Cotinine in Blood and Urine* (May 21, 1980), at 2-3. *See* AR (Vol. 59 Ref. 235).

[646] Read GA, Anderson IGM, Chapman RE (BATCO Group R&D), *Nicotine Studies: A Second Report. Estimation of Whole Body Nicotine Dose by Urinary Nicotine and Cotinine Measurement* (Mar. 3, 1981), at 9-10. *See* AR (Vol. 59 Ref. 234).

[647] Proceedings of BATCO Group R&D Smoking Behaviour-Marketing Conference, Session II, Montreal, Canada (Jul. 9-12, 1984) (slide), at BW-W2-02641. *See* AR (Vol. 23 Ref. 305).

[648] BATCO Group R&D Research Programme, 1984: Proposed revisions for 1985-87, Research Conference, Southampton, England (Sep. 1984), at 2 (emphasis added). *See* AR (Vol. 22 Ref. 280).

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As described below, Brown & Williamson and BATCO pursued three different strategies in the late 1970's and 1980's for reducing tar deliveries in cigarettes while maintaining adequate nicotine deliveries.

iii. Blending and "Y-1." One approach to reducing tar levels while maintaining adequate nicotine levels is through blending. As noted above in section II.C.3.c.i., BATCO researchers first investigated this approach 30 years ago, when they recommended "alteration of blends" as one way to obtain "maximum nicotine for minimum tar."[649] By 1976, they had concluded that "*there would appear to be a forthcoming demand for high nicotine tobaccos*" in view of the interest in increasing the nicotine/tar ratios in low tar cigarettes.[650]

By the late 1970's, Brown & Williamson had begun a decade-long effort to develop a high-nicotine flue-cured tobacco plant that came to be named "Y-1." As described in the Jurisdictional Analysis, the Agency found that the company used conventional and advanced genetic breeding techniques to develop a commercially viable plant that had almost twice the nicotine content of domestically grown varieties of flue cured tobacco. *See* 60 FR 41700–41702. Whereas typical domestic varieties of tobacco contain between 2.5% to 3.5% nicotine, Brown & Williamson's patent for Y-1 indicated that the company had succeeded in raising the nicotine level to about 6% by weight.[651] Brown & Williamson achieved this objective by cross-breeding commercial varieties of

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[649] Griffith RB (BATCO), *Report to Executive Committee* (Jul. 1, 1965), at 2. *See* AR (Vol. 27 Ref. 377).

[650] Minutes of BATCO Group R&D Conference on Smoking and Behaviour at Southampton, England (Oct. 11-12, 1976) at BW-W2-02311 (emphasis added). *See* AR (Vol. 27 Ref. 381).

[651] U.S. Patent application, Fisher PR, Hardison HA, Bravo JE, New Variety of Tobacco Plant, assigned to Brown & Williamson Tobacco Corp. (1991), at 1. *See* AR (Vol. 68 Ref. 14).

tobacco with *Nicotiana rustica*, a wild tobacco variety that is very high in nicotine but is not used in commercial cigarettes because of its harshness.

Brown & Williamson had Y-1 made into a male sterile plant, a technique that ensures that when the plant is grown it will not produce seeds that can be appropriated by others.[652] Brown & Williamson grew the plant in Brazil.[653] The Agency further found, and the company does not dispute, that Y-1 was eventually used in five different brands of cigarettes in 1993, and that as of mid-1994 Brown & Williamson still had 3.5 million to 4 million pounds of additional Y-1 in storage.[654]

The purpose of Y-1 was to develop a high-nicotine tobacco that could be used as a "blending tool" so that products could be designed that were lower in tar but not lower in nicotine.[655] Although Brown & Williamson asserts that it never used Y-1 in commercial cigarettes to raise nicotine/tar ratios, the company does not dispute that its goal was to deliberately alter the traditional relationship between tar and nicotine. Indeed, Brown & Williamson implicitly concedes that the company used Y-1 to develop "prototypes" with increased nicotine/tar ratios and tested them on consumer panels.[656] The development of Y-1 thus provides direct evidence of Brown & Williamson's intention to enhance nicotine deliveries.

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[652] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103 Cong., 2d Sess. 18 (Jun. 21, 1994) (testimony of David Kessler). *See* AR (Vol. 709 Ref. 3).

[653] *Id.* at 142 (testimony of Thomas Sandefur, chairman and CEO, Brown & Williamson).

[654] Transcript of FDA Meeting with Brown & Williamson (Jun. 17, 1994), at 124-125. *See* AR (Vol. 28 Ref. 414).

[655] *Id.* at 85-86.

[656] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 32. *See* AR (Vol. 529 Ref. 104).

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iv. Chemical Manipulation. Another approach to reducing tar while maintaining adequate nicotine for the smoker is to alter the chemistry of tobacco smoke in a manner that increases the transfer of nicotine to the smoker. As discussed above, BATCO did work in this area in the 1960's, which suggested that increasing the percentage of "extractable nicotine" delivered to the smoker resulted in "nicotine reaching the brain more quickly."[657]

BATCO's research and development efforts continued in the 1970's and 1980's. In a 1976 research conference, BATCO researchers discussed how the use of a filter additive PEI or "alkali treatment" could "maintain normal nicotine reaction for the smoker while actually reducing the amount of nicotine per cigarette":

> A second approach . . . is to aim at a lower smoke production per cigarette (i.e. lower tar) while maintaining "normal" nicotine. Work along these lines is already going on. *A further modification of this approach is to maintain normal nicotine reaction for the smoker while actually reducing the total amount of nicotine per cigarette.* It is believed that this can be done, e.g. by the use of P.E.I. or by alkali treatment of tobacco stems. [658]

Similar observations were made at other research conferences. In 1978, for instance, BATCO researchers stated: "With conventional cigarettes, the transfer of nicotine to the smoker from the tobacco has very low efficiency. Potentially, therefore, *opportunities exist for very big savings in tobacco if this low efficiency can be greatly increased.*"[659]

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[657] BATCO, *Further Work on 'Extractable' Nicotine* (1966), at BW-W2-11621. *See* AR (Vol. 62 Ref. 308).

[658] Morini HA (BATCO), *Cigarettes with Health Reassurance* (1976), at 1 (emphasis added). *See* AR (Vol. 27 Ref. 380).

[659] Notes on BATCO Group R&D Conference at Sydney, Australia (Mar. 1978), at 4 (emphasis added). *See* AR (Vol. 26 Ref. 367).

This would not be an "opportunity" if the company did not recognize that nicotine was the essential active ingredient intended to be delivered.

In 1982, BATCO researchers urged that a design objective for new products should be "to enhance or maximise sensory and pharmacological sensations, i.e., '*to make the smoke work harder*' so as to achieve maximum sensation at a given delivery level."[660] And in 1984, BATCO researchers discussed a study in which "*experimental cigarettes . . . will . . . be used to improve the efficient use of smoke nicotine through pH modification.*"[661]

v. "Elasticity" Technologies. A third approach to lowering tar while maintaining an adequate nicotine delivery is to increase the "elasticity" of cigarettes. "Elasticity" refers to the ability of a cigarette, whatever its nicotine yield as measured by a smoking machine, to deliver enough smoke to permit a smoker to obtain the nicotine the smoker needs. The elasticity of a cigarette can be increased, for instance, by placing ventilation holes in the filter. These holes allow fresh air to be pulled into the smoking machine during inhalation, thereby diluting the smoke and reducing the measured yields. However, the holes can be blocked by smokers' fingers or lips, allowing the smoker to obtain more nicotine than the machine measured delivery. *See* 60 FR 41716–41718. Brown & Williamson and BATCO sought to develop elasticity technologies. During a 1983 BATCO conference, BATCO researchers observed that "[e]lasticity can be designed

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[660] Minutes of BATCO Research Conference at Montebello, Canada (Aug. 30-Sep. 3, 1982), at 3 (emphasis added). *See* AR (Vol. 179 Ref. 2082).

[661] BATCO, *Proposed Revisions for 1985-1987* (Sep. 1984), at 1-2 (emphasis added). *See* AR (Vol. 26 Ref. 369-1).

into a cigarette using tobacco blend and pressure drop components."[662] A year later, at a 1984 conference, BATCO researchers elaborated:

> Compensation by modifying smoking regime . . . is a topic which is being explored . . . and *this includes designing products which aid smoker compensation.*
>
> The marketing policy concerning this type of product is not clear but it is believed it will depend largely on the degree of elasticity in the design and how overtly this elasticity is achieved. *The consensus is that small improvements in elasticity which are less obvious, visually or otherwise is likely to be an acceptable route.*[663]

Taken together, Brown & Williamson and BATCO's product research and development efforts exhibit a sustained focus on nicotine over the course of three decades. The companies recognized through their research that significant marketing opportunities existed for cigarettes that reduced tar deliveries but maintained nicotine deliveries at levels high enough to satisfy smokers' "inner need" for nicotine. They then developed a broad range of techniques for enhancing nicotine deliveries. These extensive efforts are evidence of a "design" or "plan" to manipulate and control nicotine deliveries to provide a pharmacologically active dose of nicotine.

d. Other Cigarette Manufacturers' Product Research and Development Efforts

i. American Tobacco Company. The American Tobacco Company (American Tobacco) also conducted extensive research and development on ways to increase and optimize nicotine deliveries. In 1969, for instance, the company

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[662] BATCO, *Smoking Behavior Conference: Overview* (1983), at BW-W2-03292. *See* AR (Vol. 27 Ref. 392).

[663] Proceedings of BATCO Group R&D Smoking Behaviour-Marketing Conference, Session III (Jul. 9-12, 1984), at 55 (emphasis added). *See* AR (Vol. 27 Ref. 391).

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manufactured Lucky Strike cigarettes enriched with a nicotine salt (nicotine malate) and sold them in the Seattle market.[664]

In 1974, the company's manager of new products, R. M. Irby, wrote to the vice president of manufacture and leaf, J. B. McCarthy, to summarize "our current knowledge regarding increasing the nicotine content of reconstituted tobacco."[665] Irby's memorandum stated that nicotine in reconstituted tobacco could be increased either by adding "Compound W," a code name for nicotine, to the reconstituted tobacco or by replacing "the lower nicotine-containing leaf components such as Turkish . . . with high nicotine tobacco such as Malawi sun-cured scrap (5% nicotine)."[666]

Three years later, American Tobacco researchers wrote a memorandum describing "suggested" ways of increasing the nicotine/tar ratio in cigarettes. The methods included the "addition of ammonia salts . . . to tobacco, which on smoking would free the ammonia and thereby cause an increase in nicotine transfer to the smoke."[667]

By 1980, American Tobacco was conducting experiments on this idea by adding a salt (potassium carbonate) to its Tareyton blend. According to the research memorandum describing the experiment, "[s]ince most nicotine in tobacco is a non-volatile salt, *it was*

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[664] Letter to Waxman HA, on behalf of the American Tobacco Company (Oct. 14, 1994), at 3. *See* AR (Vol. 26 Ref. 355).

[665] Irby RM Jr. (American Tobacco), *Nicotine Content of Reconstituted Tobacco* (Jun. 5, 1974), at 1. *See* AR (Vol. 26 Ref. 357-3).

[666] *Id.* at 1-2.

[667] Pederson PM (American Tobacco), *A Study of the Nicotine to Tar Ratio* (Apr. 18, 1977), at 4. *See* AR (Vol. 26 Ref. 365).

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thought that a greater transfer would take place if the tobacco was made basic causing the nicotine to volatilize when the cigarette is smoked." [668]

Other efforts by American Tobacco to increase the amount of nicotine delivered by its cigarettes are described in the Jurisdictional Analysis. *See* 60 FR 41675–41677. These efforts show that like Philip Morris, RJR, and Brown & Williamson, American Tobacco has designed and planned ways to enhance nicotine deliveries to smokers.

ii. Lorillard Tobacco Company. Like the other cigarette manufacturers, the Lorillard Tobacco Company developed knowledge about numerous ways to manipulate and control nicotine deliveries. For instance, in a 1975 presentation, Alexander Spears, the vice chairman and chief operating officer of Lorillard, stated that "[t]hrough [a] combination of . . . variables, . . . *it is possible to manipulate the yield of nicotine from about .1 mg to 4 mg per cigarette.*"[669] The variables cited by Spears as controlling nicotine deliveries included "the nicotine content of the tobacco"; "[the] porosity of the wrapper and/or ventilation at the filter"; "the affinity of the filter material for nicotine, particularly as a function of smoke pH"; and "plant genetics."[670]

In a 1981 paper on tobacco leaf blending, Spears further described "*the ways in which higher nicotine levels can be achieved.*"[671] Spears explained that nicotine

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[668] Bodenhamer NL (American Tobacco), *Leaf Services Monthly Report for June* (Jun. 30, 1980) (emphasis added). *See* AR (Vol. 27 Ref. 385)

[669] Spears AW (Lorillard Tobacco Co.), *Factors Affecting Smoke Delivery of Nicotine and Carbon Monoxide*, presented at the 1975 Symposium-Nicotine and Carbon Dioxide (Nov. 17-18, 1975), in Symposium Proceedings-1, at 13 (emphasis added). *See* AR (Vol. 27 Ref. 395a).

[670] *Id.*

[671] Spears AW, Jones ST (Lorillard Tobacco Co.), Chemical and Physical Criterias for Tobacco Leaf of Modern Day Cigarettes, *Recent Advances in Tobacco Science*, Oct. 6-9, 1981;7:19-39, at 23. *See* AR (Vol. 26 Ref. 373-1).

concentrations of tobaccos vary widely, from 3.65% nicotine in upper-stalk Burley tobacco and 3.26% in upper-stalk flue-cured tobacco to 0.95% in Oriental tobacco and 0.85% in stem-sheet or reconstituted tobacco. According to Spears, "*[h]igher nicotine levels can be achieved* by decreasing Oriental and the stem and tobacco sheet and increasing the Burley and upper stalk positions of both the Flue-cured and the Burley tobacco."[672] He further observed that "*current research is directed toward increasing the nicotine levels* while maintaining or marginally reducing the 'tar' deliveries."[673]

The administrative record thus reveals that the cigarette manufacturers have consistently focused their product research and development efforts on developing methods to maintain or enhance nicotine deliveries. These activities are remarkable for their sustained duration and for the fact that each cigarette manufacturer independently acquired similar capabilities to manipulate and control nicotine deliveries. This again demonstrates the central role of nicotine delivery in the design of cigarettes.

e. Filter and Paper Suppliers' Product Research and Development Efforts

The filter and paper suppliers for cigarette manufacturers also developed products to enhance nicotine deliveries, including methods for "increasing nicotine delivery *without* changing tar delivery[674] and for "alter[ing] cigarette nicotine delivery *independently* of tar

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[672] *Id.* at 24 (emphasis added).

[673] *Id.* at 31 (emphasis added).

[674] Selke WA, Making the cigarette do just what you want it to do, *Journal Tobacco International*, 1983:12 (emphasis added). *See* AR (Vol. 102 Ref. 896).

delivery."[675] These efforts are not direct evidence of the manufacturers' intent, because the product development was conducted by suppliers, rather than the manufacturers themselves. Nevertheless, the suppliers' efforts corroborate the Agency's finding that the cigarette manufacturers seek the capability to enhance nicotine deliveries in low-tar cigarettes. They show that the suppliers understood manufacturers to be interested in acquiring products that would enable the manufacturers to selectively remove more tar than nicotine from cigarette smoke.

To develop products with enhanced nicotine deliveries, the filter and paper suppliers altered the filtration and ventilation systems in cigarettes. Filters are used to trap smoke particles before they enter the mouths of smokers. Ventilation technologies draw air into the cigarette through holes in the filter or through porous cigarette paper, diluting the smoke. The suppliers found that these systems could be manipulated to selectively remove more tar than nicotine, thereby increasing the nicotine/tar ratio in the smoke.

Documents in the administrative record describe several of the methods developed for increasing nicotine delivery relative to tar. According to one report, "[s]imply changing the location of the vents in a . . . filter has a measurable effect on the cigarette performance," with "the nicotine content [being]. . . greatest when the vents were positioned where the tobacco and filter were joined."[676] The same effect could be achieved by perforating the cigarette paper. One report found that "[i]ncreasingly porous

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[675] Lee BM (Eastman Kodak Company), *Modification of Nicotine to Tar Ratio in Cigarette Smoke*, 42nd Tobacco Chemists' Research Conference, Lexington, Kentucky (Oct. 2-5, 1988), at 33 (emphasis added). *See* AR (Vol. 639 Ref. 2).

[676] Kiefer JE, Ventilated Filters and Their Effect on Smoke Composition, *Recent Advances in Tobacco Science* (1979), at 79. *See* AR (Vol. 28 Ref. 465).

perforated papers . . . *selectively increase nicotine*. . . ."[677] Research by a tobacco company confirmed the influence of paper design on tar and nicotine deliveries, finding that "tar/nicotine ratios are determined primarily by paper permeability; high permeability produces the lowest tar/nicotine ratios."[678] A low tar/nicotine ratio is mathematically equivalent to a high nicotine/tar ratio.

Other reports have shown that cigarettes designed with increased ventilation and less filtration will "increas[e] nicotine delivery without changing tar delivery;"[679] and that the use of additives to increase the pH of the filter will alter cigarette nicotine delivery independently of tar delivery, increasing the nicotine/tar ratio by up to 15%.[680]

f. These Product Research and Development Efforts Were Undertaken for Commercial Reasons

The cigarette manufacturers do not generally dispute that they engaged in the product research and development activities described above. Instead, they argue that their research on increasing or maintaining nicotine delivery while lowering tar was largely in response to "government" initiatives. In support of this claim, these comments refer to

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[677] Owens Jr. WF (Ecusta Paper and Film Group), *Effect of Cigarette Paper on Smoke Yield and Composition*, 32d Tobacco Chemists' Research Conference, Montreal, Canada (1978) (emphasis added). *See* AR (Vol. 639 Ref. 2).

[678] McMurtrie A, Litringer EF, and Wu DT, *Cigarette Paper Effects on Tar/Nicotine and CO/Tar Ratios*, 35th Tobacco Chemists' Research Conference, Winston-Salem, North Carolina (1981). *See* AR (Vol. 639 Ref. 2).

[679] Selke WA, Making the cigarette do just what you want it to do, *Journal Tobacco International* 1983:12. *See* AR (Vol. 102 Ref. 896).

Browne CL (Hoechst Celanese), *The Design of Cigarettes*, at 72. *See* AR (Vol. 27 Ref. 399).

[680] Lee BM (Eastman Kodak Company), *Modification of Nicotine to Tar Ratio in Cigarette Smoke*, 42nd Tobacco Chemists' Research Conference, Lexington, Kentucky (Oct. 2-5, 1988), at 33. *See* AR (Vol. 639 Ref. 2).

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a few sentences in a 1981 report of the U.S. Surgeon General, the recommendation of a scientist at NIH in 1976, and a few scattered articles from nongovernment researchers beginning in 1973. The comments offer no evidence from company documents to show that any part of the industry's extensive research on increasing nicotine delivery from low-tar cigarettes was actually motivated by the cited "initiatives."

The evidence in the administrative record also fails to support the industry's claims. The large number of internal tobacco company documents available to FDA indicates that the companies' product research and development was conducted for commercial reasons. Philip Morris, for instance, stated that "the rationale" for its research and development efforts "rests on the premise that such knowledge will strengthen Philip Morris R&D capability in developing new and improved smoking products."[681]

The driving force behind the efforts to enhance nicotine delivery in low-tar products was the industry's knowledge that people use tobacco for nicotine and that below a certain nicotine level, the motivation for tobacco use, and the market for tobacco products will disappear. RJR researchers knew in the 1970's that "a zero nicotine cigarette . . . fails to provide the ultimate satisfaction in the lungs;" hence they recommended "*maintaining the nicotine as high as possible*" in low-tar cigarettes.[682] Similarly, a 1976 BATCO "Smoking Behaviour" conference report shows that BATCO was aware of the need to maintain adequate nicotine deliveries, stating that "the 'benefits' of smoking appear to be related to nicotine, [and] we can infer that the 'benefits' of

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[681] Dunn WL, *Plans and Objectives–1979* (Dec. 6, 1978), in 141 Cong. Rec. H7669 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[682] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 9, 10 (emphasis added). *See* AR (Vol. 700 Ref. 593).

smoking might disappear if cigarettes with low levels of nicotine became the norm."[683] Likewise, a 1972 Philip Morris presentation indicates that Philip Morris knew that cigarettes with inadequate levels of nicotine would not be purchased by smokers.[684]

Moreover, the industry's research on selectively increasing or maintaining nicotine while lowering tar cannot be attributed to government initiatives because it began before the earliest government "initiative" cited by the comments. For example, as noted in section II.C.3.c.i. above, Brown & Williamson was developing "ways of obtaining maximum nicotine for minimum tar" at least as early as 1965[685]—well before the 1976 NIH and the 1981 Surgeon's General documents cited by the industry. Similarly, Philip Morris was working on increasing nicotine levels in relation to tar as early as 1970, when it began experimentally altering the nicotine/tar ratio of Marlboro cigarettes by "reduc[ing] the tar delivery incrementally . . . and increas[ing] the nicotine delivery incrementally by adding a nicotine salt."[686] Thus, the industry was plainly developing low-tar, enhanced-nicotine products before any of the cited "government initiatives."

Finally, FDA notes that to the extent that the industry accepted the recommendations of outside researchers who suggested the development of low-tar, high-nicotine products, those recommendations were based on the researchers' conclusion that

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[683] Minutes of BATCO Group R&D Conference on Smoking and Behaviour at Southampton, England (Oct. 11-12, 1976), at 4. *See* AR (Vol. 27 Ref. 376).

[684] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 4 (emphasis added). *See* AR (Vol. 12 Ref. 133).

[685] Griffith RB (BATCO), *Report to Executive Committee* (Jul. 1, 1965), at 2. *See* AR (Vol. 27 Ref. 377).

[686] Eichorn PA, Dunn WL (Philip Morris Inc.), *Quarterly Report of Projects 1600 and 2302–Oct. 1-Dec. 31, 1970* (Dec. 31, 1970), in 141 Cong. Rec. H8128 (daily ed. Aug. 1, 1995). *See* AR (Vol. 27 Ref. 376).

smokers seek adequate doses of nicotine to satisfy dependence and will compensate to achieve those doses when given a low-nicotine cigarette.[687] The cigarette industry, in contrast, denies that smokers compensate for nicotine to any significant extent. It is not credible that the industry would have accepted and acted on outsiders' recommendations while rejecting the fundamental premises on which the recommendations were based. Moreover, the Surgeon General, while suggesting that cigarettes with a lower tar-to-nicotine ratio should be investigated, specifically cautioned against achieving this goal through strategies that reduced tar while maintaining a normal nicotine yield:

> [F]actors of "smoker compensation" must be considered in the evaluation of lower "tar" and nicotine cigarettes. Filtered, lower "tar" and nicotine cigarettes that are less vulnerable to increasing the smoke and nicotine deliveries are needed. . . . Attempting to minimize smoker compensation by selectively reducing "tar" and other smoke compounds while maintaining nicotine yield may carry serious disadvantages. First, maintaining nicotine delivery may reinfore physiologic habituation, and interfere with smoking cessation attempts. Second, nicotine gives rise to the tobacco-specific carcinogenic N-nitrosamines . . . Finally, nicotine is suspected to be a major smoke constituent correlated with the increased risk of cardiovascular disease among cigarette smokers.[688]

Accordingly, the evidence establishes that the industry researched and developed methods to increase relative nicotine deliveries while decreasing tar deliveries for a commercial purpose—to ensure that cigarettes provide pharmacologically satisfying doses of nicotine.

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[687] *See, e.g.*, Russell MAH, *et al.*, Comparison of effect on tobacco consumption and carbon monoxide absorption of changing to high and low nicotine cigarettes, *British Medical Journal* 1973;4:512-516. *See* AR (Vol. 89 Ref. 485).

Gori G, Low risk cigarettes: a prescription, *Science* 1976;94(4271):1243-1246. *See* AR (Vol. 535 Ref. 96, vol. IV.D, at 1-5).

[688] Department of Health and Human Services, *The Health Consequences of Smoking: The Changing Cigarette, A Report of the Surgeon General, 1981*, at 98 (citation omitted). *See* AR (Vol. 123 Ref. 1586).

4. The Cigarette Manufacturers Design Commercially Marketed Cigarettes to Provide a Pharmacologically Active Dose of Nicotine

The evidence summarized in section II.C.3. that the manufacturers have conducted product research and development to establish the doses of nicotine needed to produce pharmacological effects and to optimize nicotine deliveries to consumers establishes that the manufacturers have the capacity to design cigarettes that provide pharmacologically active doses of nicotine. In this section, the Agency evaluates the evidence in the record regarding the manipulation and control of nicotine in commercial cigarettes.[689]

As discussed below, the evidence in the administrative record establishes that many of the product research and development efforts described in section II.C.3. are used in important ways in the commercial cigarettes marketed today. The available evidence shows that the cigarette manufacturers pay careful attention to nicotine in all phases of cigarette manufacture. As described in the Jurisdictional Analysis, the focus on nicotine is apparent at each step—from the growing and purchasing of tobacco leaves, to the blending of different tobacco varieties, to the design and manufacture of the finished cigarette. *See* 60 FR 41693–41733.

The evidence in the record further demonstrates that the final products—the finished cigarettes sold to consumers—reflect the manufacturers' careful attention to

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[689] The evidence in section II.C.2., supported by the evidence in section II.C.3. that the manufacturers "have in mind" that these products will have and be used for pharmacological effects, is sufficient by itself to establish intended pharmacological use. It is thus not necessary for the Agency to establish that commercial cigarettes have been affirmatively designed to provide a pharmacologically active dose of nicotine to show that the manufacturers "intend" the pharmacological effects and uses of cigarettes. For example, a manufacturer of a traditional full-strength cigarette may not need to take any specific design steps to insure that the cigarette provides a pharmacologically active dose of nicotine. Nevertheless, this manufacturer's understanding and expectation that the full-strength cigarette will be used by consumers for drug purposes would be sufficient to establish the cigarette's intended pharmacological use.

nicotine. Manufacturers of commercially marketed cigarettes commonly manipulate nicotine deliveries to provide remarkably precise, pharmacologically active doses of nicotine to consumers. The principal techniques that are used to control and manipulate nicotine deliveries include: (1) the use of nicotine-rich tobacco blends in low-tar cigarettes; (2) the use of filtration and ventilation technologies that selectively remove more tar from smoke than nicotine; and (3) the use of chemical additives that increase the percentage of "free" nicotine in cigarette smoke. Control is also achieved as a result of extensive attention to nicotine in tobacco breeding, leaf purchasing, leaf blending, and the manufacture of reconstituted tobacco.

Indeed, the evidence in the record establishes that cigarette designs in recent decades have been driven by the manufacturers' desire to maintain nicotine deliveries at pharmacologically active levels. As consumer awareness of the health effects of smoking has increased, the cigarette manufacturers have responded by adding filters and using ventilation to reduce tar deliveries. However, the manufacturers have not reduced nicotine deliveries proportionately. Rather, the evidence available to the Agency indicates that they have strived to ensure that nicotine deliveries remain at a pharmacologically active level.[690]

a. The Manufacturers Use Nicotine-Rich Tobacco Blends in Low-Tar Cigarettes

Perhaps the clearest example of deliberate manipulation and control to maintain nicotine deliveries at levels sufficient to provide pharmacological satisfaction occurs in the

[690] RJR's Eclipse, the new tobacco product that is being test-marketed, carries this effort to close to its logical conclusion—maintaining nicotine deliveries at the level of conventional ultra-low-tar cigarettes while allegedly reducing many of the tar components of tobacco smoke substantially below these levels. Eclipse is discussed further in section II.C.3.b., above (product research and development).

manufacture of low-tar cigarettes. The evidence in the administrative record indicates that cigarette manufacturers commonly use nicotine-rich tobacco blends in these products. Approximately 80% of the cigarettes on the market today are either low-tar (6 to 15 mg tar) or ultra-low-tar (less than 6 mg tar).[691]

i. The Use of Nicotine-Rich Tobacco Blends in the 1950's. The evidence in the record indicates that the use of richer nicotine blends first occurred in the 1950's, when filters were first added to cigarettes. Documents provided to the Agency by the tobacco industry show that a shift to higher nicotine blends occurred to offset the reductions in nicotine deliveries caused by the use of filters. According to one 1956 document: "*With the increase in production of filter tip cigarettes, . . . demand has increased for heavier-bodied [tobacco] types that have* full aroma and flavor and *a relatively high nicotine content.*"[692]

As early as 1957, the U.S. Department of Agriculture (USDA) recognized that the introduction of filters was causing increased demand for higher nicotine tobacco. That year, the director of the tobacco division of USDA's Agricultural Marketing Service, Stephen E. Wrather, testified before Congress that the industry had "moved up the stalk"

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[691] Federal Trade Commission, *Report of "Tar," Nicotine, and Carbon Monoxide of the Smoke of 1107 Varieties of Domestic Cigarettes* (1995). *See* AR (Vol. 535 Ref. 96, vol. IV.B).

[692] Jones GL, Collins WK, *Measured Crop Performance Tobacco 1956*, Department of Field Crops, N.C., State College, Raleigh N.C., Research Report No. 4 (Dec. 1956), at 1 (emphasis added). *See* AR (Vol. 535 Ref. 96, vol. IV.K).

in blending tobacco for use in filter cigarettes.[693] "Moving up the stalk" is a reference to the higher nicotine content in the upper leaves of tobacco plants.[694]

Wrather also indicated that using this higher nicotine tobacco in the blend for filtered cigarettes enabled manufacturers to maintain the same "strength" levels in the smoke that existed in unfiltered cigarettes.[695] A 1957 *Consumer Reports* analysis of nicotine levels in filtered and unfiltered cigarettes placed in the record of the hearing showed that the average nicotine content in regular-size cigarettes with filters was higher than in regular-size cigarettes without filters.[696] This could only have been accomplished through the use of higher nicotine tobacco leaves in the blend for filtered cigarettes.

ii. The Use of Nicotine-Rich Tobacco Blends Today. During the 1960's and 1970's, the demand of consumers for "healthier" cigarettes led to further declines in tar yields. As described above in section II.C.3., this caused the cigarette manufacturers to develop methods to ensure that the nicotine levels in cigarettes did not drop below acceptable levels.[697]

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[693] *False and Misleading Advertising (Filter-tip Cigarettes): Hearings Before the Subcommittee of the Committee on Government Operations, U.S. House of Representatives*, 85th Cong., 1st Sess. 189 (1957) (testimony of Stephen E. Wrather). *See* AR (Vol. 172, Ref. 2035).

[694] *See, e.g.*, Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 10 ("Higher stalk tobacco leaves do have more nicotine than lower stalk leaves on the same plant"). *See* AR (Vol. 529 Ref. 104).

[695] *False and Misleading Advertising (Filter-tip Cigarettes): Hearings Before the Subcommittee of the Committee on Government Operations, U.S. House of Representatives*, 85th Cong., 1st Sess. 196 (1957) (testimony of Stephen E. Wrather). *See* AR (Vol. 172, Ref. 2035).

[696] *Id.* at 662 (exhibit 15c).

[697] Philip Morris USA, Research and Development Five Year Plan, 1974-1978 (May 1973), in 141 Cong. Rec. H8130-8131 (daily ed. Aug. 1, 1995). *See* AR (Vol. 711 Ref. 6).

See also Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication (Oct. 1975), in 141 Cong. Rec. H8009 (daily ed. Jul. 31, 1995). *See* AR (Vol. 27 Ref. 376a).

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The evidence in the record indicates that the low-tar cigarettes on the market today reflect the industry's concerns with providing an acceptable nicotine level. As numerous documents in the record reveal, low-tar cigarettes are specifically blended to increase their nicotine concentrations. For instance, the administrative record includes the following descriptions of the use of blending to control and manipulate nicotine:

- William Farone, the former director of applied research at Philip Morris, stated that "[t]he industry employs two principal means of controlling the nicotine levels."[698] One of these is "*modification and control of the tobacco blend*, i.e., the ratio of Burley (air-cured), Bright (flue-cured), Oriental, stems, expanded tobacco products, and reprocessed tobacco products such as tobacco sheet made from stems and waste leaf."[699] According to Farone:

> *Product developers and blend and leaf specialists were responsible for manipulating and controlling the design and production of cigarettes in order to satisfy the consumer's need for nicotine in lower yield products.*
>
> *Blend changes were an especially important tool used to ensure desired nicotine levels.* Tar is a function of tobacco weight. However, an all-burley cigarette will produce a higher nicotine level than an all-bright cigarette of the same weight. The industry knew that by using a higher percentage of higher nicotine tobacco in their low tar cigarettes they could achieve an increase of their nicotine levels.[700]

Jones B, Houck W, Martin P (Philip Morris Inc.), *Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication* (Oct. 1975), in 141 Cong. Rec. H8132 (daily ed. Aug. 1, 1995). *See* AR (Vol. 711 Ref. 6).

Wood DJ, Wilkes EB (BATCO), *Project Wheat - Part 2: U.K. Male Smokers: Their Reactions to Cigarettes of Different Nicotine Delivery as Influenced by Inner Need* (Jan. 30, 1976), at 2. *See* AR (Vol. 20 Ref. 204-2).

[698] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 5. *See* AR (Vol. 638 Ref. 2).

[699] *Id.* at 5 (emphasis added).

[700] *Id.* at 10 (emphasis added).

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- Ian Uydess, the former Philip Morris scientist, stated that:

> Nicotine levels were routinely targeted and adjusted by Philip Morris in its various products at least in part, through blend changes . . . .
>
> . . . .
>
> When Philip Morris designed a new or modified blend, they used their stored tobacco inventories much like a scientist would use a chemical stockroom to select the ingredients needed to synthesize a new material. . . .
>
> . . .*Philip Morris routinely applied this knowledge of selective tobacco blending to achieve desired nicotine . . . levels in the products that it designed and marketed.*[701]

- Alexander Spears, the vice chairman and chief operating officer of Lorillard Tobacco Co., wrote that "*the lowest 'tar' segment is composed of cigarettes utilizing a tobacco blend which is significantly higher in nicotine.*"[702] According to Spears, the nicotine concentration in the lowest tar cigarettes in 1981 was 22% greater than the concentration in regular cigarettes (2.2% versus 1.8%).[703] Spears further explains that "[h]igher nicotine levels can be achieved by decreasing Oriental and the stem and tobacco sheet and increasing the Burley and upper stalk positions of both the flue-cured and the Burley tobacco."[704]
- Another Lorillard researcher, Vello Norman, has explained that the shift to tobacco blends with more nicotine-rich burley tobacco was motivated by a desire "to impart

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[701] Declaration of Uydess IL (Feb. 29, 1996), at 8, 10 (emphasis added). *See* AR (Vol. 638 Ref. 1).

[702] Spears AW, Jones ST (Lorillard Tobacco Co.), Chemical and Physical Criteria for Tobacco Leaf of Modern Day Cigarettes, *Recent Advances in Tobacco Science*, Oct. 6-9, 1981;7:19, at 22 (emphasis added). *See* AR (Vol. 26 Ref. 373).

[703] *Id.* at 21.

[704] *Id.* at 24.

more impact to smoke" to offset the effects of "gradually lower cigarette smoke yields":

> As various means were used to gradually lower cigarette smoke yields there has been a tendency to use more Burley in order to impart more impact to smoke. Thus, while total smoke yields of cigarettes have diminished, the relative composition of smoke has, in the case of many cigarettes, shifted slightly towards what is more characteristic of Burley.[705]

"Impact" is a term used by the tobacco industry to describe effects that are associated with nicotine delivery. *See, e.g.,* Jurisdictional Analysis, 60 FR 41776–41777.

- Similarly, a scientist at Brown & Williamson reported that "*[u]ltra low tar cigarettes . . . use blends which contain about 20% more nicotine.*"[706]

Brown & Williamson's development of the high-nicotine Y-1 variety of tobacco, which is discussed above in section II.C.3.c.iii., was an attempt to use breeding and blending to increase nicotine concentrations in low-tar cigarettes. An example in which blending has been used to increase nicotine concentrations in commercial low-tar cigarettes is Philip Morris' Merit cigarettes. FDA has analyzed the relative nicotine concentrations in the regular, low-tar, and ultra-low-tar versions of Merit cigarettes. FDA's analysis revealed that Merit Filter 100's contained 1.46% nicotine, but that Merit Ultra Lights 100's contained 1.67% nicotine, and Merit Ultima 100's (the lowest-tar product) contained 1.99% nicotine. *See* 60 FR 41723–41724. These findings, which

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[705] Norman V (Lorillard Research Center), *Changes in Smoke Chemistry of Modern Day Cigarettes*, Greensboro, NC (1982), at 168. *See* AR (Vol. 99 Ref. 813).

[706] Reynolds ML (Brown & Williamson), *Symposium Summary*, presented at Winston Salem, NC, at 179 (Oct. 6-9, 1981) (emphasis added). *See* AR (Vol. 99 Ref. 823).

show nicotine concentrations increasing as reported tar yields drop, are unchallenged by Philip Morris.

A similar pattern of higher nicotine concentrations in lower tar products exists in other brands. For instance, in 1981, Brown & Williamson launched a new ultra-low-tar brand called Barclay. Tests of Barclay and fourteen other cigarettes in 1982 showed that the tobacco in the Barclay blend had a nicotine concentration of 2.69%—higher than any other brand tested. In fact, Barclay's nicotine concentration was over 90% higher than the regular-strength Lucky Strike cigarette tested.[707] Other brands show the same pattern of higher nicotine concentrations in the lowest-tar cigarettes.

These industry blending practices faciiitate the use of low-tar products for pharmaceutical purposes. The enhanced nicotine concentrations in the lowest tar cigarettes result in higher nicotine deliveries than would otherwise occur, allowing consumers to more readily satisfy their addiction to nicotine and obtain other pharmacological effects of nicotine from low-tar cigarettes.

iii. The Use of Nicotine-Rich Tobacco Blends Is Not Due to Accident or Taste. In the Jurisdictional Analysis, FDA summarized the evidence then available to the Agency regarding the use of nicotine-rich blends in low-tar cigarettes, concluding that "[s]ignificant evidence also demonstrates that tobacco manufacturers have used blending techniques to increase nicotine concentrations in low-tar cigarettes and thereby maintain nicotine delivery while reducing tar delivery." 60 FR 41708. The public comment period

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[707] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment, House Energy and Commerce Committee, U.S. House of Representatives*, 103d Cong., 2d Sess. 173 (Jun. 23, 1994). *See* AR (Vol. 709 Ref. 3).

provided the cigarette manufacturers with an opportunity to provide an alternative explanation of this evidence of nicotine manipulation. As explained below, however, the industry does not effectively rebut the evidence that the manufacturers use nicotine-rich blends to enhance nicotine deliveries. The industry's failure to provide a convincing counter-explanation for its actions is further support for the Agency's finding that the manufacturers design low-tar cigarettes with nicotine-rich blends to maintain adequate nicotine deliveries.

The cigarette manufacturers make two conflicting arguments in response to the evidence that they manipulate tobacco blends to enhance nicotine content in low-tar products. First, they categorically assert that they "do not independently 'control' for or 'manipulate' the nicotine content in any of their blends."[708]

Second, they maintain that, to the extent they do control and manipulate nicotine content, they do so strictly for taste. Thus, they contend that (1) they "blend their tobaccos for flavor"[709] and (2) "nicotine plays an important role in the taste and flavor of cigarette smoke."[710] During his appearance before Congress, for instance, William Campbell, the president of Philip Morris, conceded that the ultra-light Merit Ultima cigarette uses a tobacco blend with a higher concentration of nicotine than the regular Merit cigarette, but insisted that "it's there for taste."[711] Similarly, Thomas Sandefur, then

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[708] Joint Comment of Cigarette Manufacturers (Jan. 2, 1996), Vol. IV, at 66. *See* AR (Vol. 535 Ref. 96).

[709] *Id.*

[710] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 50. *See* AR (Vol. 519 Ref. 103).

[711] *Regulation of Tobacco Products (Part 1): Hearings Before the Subcommittee on Health and the Environment, Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 764 (Apr. 14, 1994) (testimony of W.I. Campbell). *See* AR (Vol. 707 Ref. 1).

CEO of Brown & Williamson, conceded under questioning that Brown & Williamson uses high-nicotine blends in low-tar products, but asserted that "*[w]hat we were trying to do was maintain a certain amount of nicotine which gives us better taste.*"[712]

Based on the evidence in the record, the Agency finds the manufacturers' contention that they do not control and manipulate nicotine levels in blends not to be credible. The high nicotine content in the blends of low-tar cigarettes is not an accident. It necessarily reflects the deliberate design choices of the manufacturers. Moreover, the manufacturers' argument that they do not control and manipulate the nicotine content of blends is in fundamental conflict with their assertions that they manipulate nicotine for taste.

For several reasons, the Agency also does not regard the manufacturers' assertion that they control and manipulate nicotine only for taste to be credible. First, the manufacturers' assertion is contradicted by numerous internal statements of senior researchers and officials in the tobacco industry, made public during the Agency's investigation. As discussed above in section II.C.2., many senior researchers and officials within the industry explicitly acknowledge that nicotine provides desired pharmacological effects to consumers, and refer to cigarettes as a "dispenser for a dose unit of nicotine,"[713] a "nicotine delivery device,"[714] "a vehicle for delivery of nicotine,"[715] "the means of

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[712] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Congress, 2d Sess. 227 (Jun. 23, 1994) (statement of Thomas Sandefur) (emphasis added). *See* AR (Vol. 709 Ref. 3).

[713] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 5. *See* AR (Vol. 12 Ref. 133).

[714] Philip Morris Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table*, at 5. *See* AR (Vol. 531 Ref. 122).

providing nicotine dose in a metered fashion,"[716] and a device that provides the smoker "very flexible control over titrating his desired dose of nicotine."[717] Other senior executives have stated that the cigarette industry is "in the business of selling nicotine, an addictive drug . . ."[718] and that "a good part of the tobacco industry is concerned with the administration of nicotine to consumers."[719] The industry's argument that high-nicotine blends are used in cigarettes only for taste cannot be reconciled with the industry's own internal statements that cigarettes are intended to deliver pharmacological doses of nicotine to consumers. Indeed, one Philip Morris document quoted by the company in its comments calls nicotine a "*tasteless*" constituent of tobacco.[720]

Second, the manufacturers' position on nicotine and taste cannot be reconciled with the industry's record of extensive research into nicotine pharmacology. In contrast, very little of the industry's research has examined the role of nicotine in taste. In their comments the cigarette manufacturers cite only a handful of industry studies on this subject. FDA has reviewed all of these studies and finds that they do not substantiate the industry's claim that nicotine's effects on taste are the reason consumers smoke. *See*

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[715] Teague, CB (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 1. *See* AR (Vol. 531 Ref. 125).

[716] Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference, Session I , slides (Jul. 9-12, 1984), at BW-W2-03242. *See* AR (Vol. 24 Ref. 315).

[717] *Transdermal Nicotine Patches,* at 2. *See* AR (Vol. 531 Ref. 124).

[718] Yeaman A (Brown & Williamson), *Implications of Battelle Hippo I and II and the Griffith Filter* (Jul. 17, 1963), at 4. *See* AR (Vol. 21 Ref. 221).

[719] Green SJ (BATCO), *BAT Group Research* (Sep. 4, 1968), at 2. *See* AR (Vol. 15 Ref. 192).

[720] Philip Morris Inc., Comment (Apr. 19, 1996), at 64-65 (emphasis added), citing, "Merit Team Second Speaker" (Jan. 14, 1976). *See* AR (Vol. 700 Ref. 226).

section II.B.2.c., above. Philip Morris's comments do state that Philip Morris conducted sophisticated investigations into flavor using an EEG-assisted "olfactometer." Yet according to Philip Morris, "*[n]one of that 'olfactometer' work involved nicotine at all*"[721]—an omission that conflicts with the industry's assertion that nicotine has an important role in flavor.

By contrast, the industry has conducted or funded hundreds of studies on nicotine pharmacology, focused primarily on nicotine's effects on brain function. Manufacturers have learned through this research that nicotine has the hallmark characteristics of an addictive drug, *see* section II.C.3., above, and "abuse liability";[722] that nicotine changes patterns of human brain waves in a manner associated with anxiety relief; [723] and that "[n]icotine is an extremely biologically active compound capable of eliciting a range of pharmacological, biochemical and physiological responses."[724]

The research conducted by several companies to find "nicotine analogues" to replace nicotine in cigarettes provides an especially clear illustration that the industry regarded nicotine's primary effects as pharmacological, not flavor-related. The goal of this research was to develop a molecule that would "mimic nicotine's effect in the

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[721] *Id.* at 47 (emphasis added).

[722] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 33 (Apr. 28, 1994) (testimony of Victor DeNoble). *See* AR (Vol. 708 Ref. 2).

[723] Pritchard WS (R.J. Reynolds Tobacco Co.), Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490. *See* AR (Vol. 3 Ref. 23-2).

[724] BATCO, *Method for Nicotine and Cotinine in Blood and Urine* (May 21, 1980), at 2. *See* AR (Vol. 23 Ref. 300-1).

brain"[725] and "possess[] the desired features of brain stimulation and stress-relief"[726] not to find substitute compounds with the same flavor characteristics as nicotine.

Third, the manufacturers' contention that they blend for taste and not for pharmacological effects conflicts with their assertions that they blend and design their products to meet consumer preferences. As discussed above in sections II.A. and II.B., the primary reason consumers smoke is to satisfy their addiction and obtain the other pharmacological effects of nicotine, such as sedation and stimulation. This fact is widely accepted by both the scientific community and researchers and officials within the tobacco industry. Cigarette manufacturers that strive to satisfy smokers' demands must necessarily design and blend cigarettes that produce pharmacological effects, including satisfying the needs of addicted smokers. This issue is further discussed in section II.C.4.f., below.

The Agency does not find that flavor is irrelevant in the blending process. To the contrary, the Agency agrees that one of the objectives in tobacco blending is to provide flavorful cigarette smoke. In the competitive cigarette marketplace, a cigarette that satisfied consumers' pharmacological demands for nicotine but did not taste good would be unlikely to be a commercial success. RJR's experience with Premier may, in fact, confirm this point.

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[725] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 33 (Apr. 28, 1994) (testimony of Victor DeNoble). *See* AR (Vol. 708 Ref. 2).

[726] Minutes of BATCO Research Conference at Hilton Head, SC (Sep. 24-30, 1968), at 3. *See* AR (Vol. 14 Ref. 172-2).

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The Agency finds, however, that a cigarette that tasted good but did not satisfy consumers' pharmacological demands for nicotine would be even more unlikely to be a commercial success. As Ian Uydess, the former Philip Morris scientist, states:

> [A] cigarette having satisfactory ('high enough') nicotine levels but marginal flavor, stood a better chance of being 'accepted' in the market place than a somewhat better tasting product with zero or ultra-low levels of nicotine ('not enough').
>
> . . . *Tobacco companies like Philip Morris learned a long time ago that it was hard to get people to stay with a good tasting product if the nicotine level was too low.*[727]

In other words, to produce a cigarette that smokers will find acceptable, the cigarette manufacturer must use tobacco blends that provide consumers the desired pharmacological effects of nicotine.

For these reasons, FDA concludes that cigarette manufacturers use nicotine-rich blends in low-tar cigarettes to ensure that these cigarettes deliver pharmacologically active doses of nicotine.

b. The Manufacturers Use Filtration and Ventilation Technologies That Selectively Remove More Tar than Nicotine and That Allow Smokers To Inhale More Nicotine than the Measured Levels

The evidence before the Agency also supports a finding that cigarette manufacturers use cigarette filters and ventilation to manipulate nicotine deliveries. Especially in low-tar products, the available evidence indicates that cigarette manufacturers and their filter suppliers have engineered filtration and ventilation systems to bring about greater reductions in tar than in nicotine, thereby increasing the nicotine/tar ratio. According to William Farone of Philip Morris, "modification of the construction of

[727] Declaration of Uydess IL (Feb. 29, 1996), at 11, 13 (emphasis added). *See* AR (Vol. 638 Ref. 1).

the cigarette such as filter type, the type of filter material used, the number and placement of ventilation holes, [and] the density, composition and porosity of the cigarette paper" is the second principal means of controlling nicotine used by the industry.[728]

The effect of filtration and ventilation on nicotine deliveries is recognized in the technical tobacco literature. According to an article by a researcher at Lorillard Tobacco Co.:

> [V]entilated filters caused a significant drop in the amount of nicotine retained on the filter.
> . . . *[S]moke from ventilated cigarettes is relatively enriched in nicotine.*[729]

Similarly, scientists at Eastman Kodak Co., a manufacturer of cigarette filters, have observed that "*[a]s ventilation is increased, the nicotine content . . . increases markedly.*"[730]

Indeed, some filter manufacturers have openly promoted the ability of their filters to increase nicotine/tar ratios. For instance, Filtrona Ltd.'s Filtrona Ratio filter was promoted as "a new option available to cigarette designers which allows management of the yield ratios of important smoke components relative to tar, [including] . . . nicotine."[731]

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[728] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 5. *See* AR (Vol. 638 Ref. 2).

[729] Norman V, Ihrig AM, Shoffner RA (Lorillard Tobacco Co.), The effect of tip dilution on the filtration efficiency of upstream and downstream segments of cigarette filters, *Beitrage zur Tabakforschung International*, Jul. 1984;12(4):178-185, at 184 (emphasis added). *See* AR (Vol. 103 Ref. 923).

[730] Kiefer JB (Eastman Kodak Co.), Ventilated filters and their effect on smoke composition, *Recent Advances in Tobacco Science* (1979), at 78. *See* AR (Vol. 28 Ref. 465).

[731] Papers, filters, and tipping, *Tobacco Reporter*, Apr. 1985;112(4):32. *See* AR (Vol. 351 Ref. 5624).

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When applied to commercial brands, this filter increased nicotine deliveries by over 25%, while leaving tar deliveries virtually unchanged.[732]

In their comments on the Jurisdictional Analysis, the cigarette manufacturers acknowledge that filtration and ventilation in low-tar cigarettes produce enhanced nicotine/tar ratios, but they argue that this is strictly an unavoidable physical phenomenon—not a design feature. The administrative record does not support their position.

Contrary to the cigarette manufacturers' contention, the filter manufacturers describe the role of filters and ventilation as not simply removing tar and nicotine according to immutable proportions determined by the laws of physics. Filters are highly engineered products that are "*designed exclusively to yield the maximum satisfaction from a carefully chosen tobacco blend.*"[733] The object of filters and ventilation is to "control the yield of the many constituents that the smoker receives" and to "*act[] more as a smoke modifier* than as an absolute filter which removes all particles of a known size."[734]

As described above in section II.C.3.e., the administrative record indicates that filter manufacturers have developed numerous strategies for independently changing tar and nicotine deliveries. When the cigarette manufacturer selects a filter and ventilation design, therefore, the cigarette manufacturer's choices necessarily affect the relative

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[732] *Id.*

[733] Philips JA (Filtrona International Ltd.), Filters for cigarettes: an integral part of the cigarette, *Tobacco Reporter* (Oct. 1981), at 34 (emphasis added). *See* AR (Vol. 351 Ref. 5624).

[734] *Id.* at 34 (emphasis added).

nicotine and tar deliveries. A decision to place the ventilation holes close to the tobacco rod will increase relative nicotine deliveries,[735] as will a decision to increase the porosity of the cigarette paper.[736] The use of increasingly porous perforated cigarette paper will "*selectively increase nicotine.*"[737] A decision to rely on relatively more ventilation and relatively less filtration is another "tool[]" that "increas[es] nicotine delivery without changing tar delivery."[738] Likewise, when manufacturers decide to increase the pH of the filter through use of an additive, this increases cigarette nicotine delivery "independently" of tar delivery.[739] Thus, contrary to the position of the cigarette manufacturers, there are many technical choices that manufacturers make in filtration and ventilation design that determine the extent to which the cigarette filter and ventilation will increase nicotine deliveries relative to tar deliveries.

The statement of William Farone corroborates the evidence showing that deliberate design decisions have caused the selective filtration and ventilation observed in

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[735] Kiefer JE (Eastman Kodak Co.), Ventilated filters and their effect on smoke composition, *Recent Advances in Tobacco Science* (1979), at 79. *See* AR (Vol. 28 Ref. 465).

[736] McMurtrie A, Litringer EF, Wu DT (Brown & Williamson), *Cigarette Paper Effects on Tar/Nicotine and CO/Tar Ratios*, 35th Tobacco Chemists' Research Conference, Winston-Salem, North Carolina (Oct. 6-9, 1981). *See* AR (Vol. 639 Ref. 2).

[737] Owens WF Jr. (Ecusta Paper and Film Group), *Effect of Cigarette Paper on Smoke Yield Composition*, 32d Tobacco Chemists' Research Conference, Montreal, Canada (1978) (emphasis added). *See* AR (Vol. 639 Ref. 10).

[738] Selke WA, Making the cigarette do just what you want it to do, *Journal Tobacco International* 1983:12. *See* AR (Vol. 102 Ref. 896).

[739] Lee BM (Eastman Kodak Co.), *Modification of Nicotine to Tar Ratio in Cigarette Smoke*, 42d Tobacco Chemists' Research Conference, Lexington, Kentucky (Oct. 2-5, 1988), at 33. *See* AR (Vol. 639 Ref. 2).

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low-tar cigarettes. According to Farone, "[t]he cigarette industry . . . *altered the cigarette filter in order to increase nicotine delivery.*"[740] Specifically, he states:

> *Filter design and ventilation allowed the design and manufacture of cigarettes that removed a higher percentage of tar than nicotine.* Selective filtration was accomplished by altering the technical specifications for a filter, e.g. by selecting different filter tow combinations, varying the denier per filament, and deciding whether or not to use additives in the filter. . . . *[A]ppropriate filters were identified to attain a predetermined nicotine/tar ratio.*[741]

The example of the regular-length Benson & Hedges filtered cigarettes that Congressman Henry A. Waxman described on the floor of the U.S. House of Representatives in July 1995 also contradicts the position of the cigarette industry.[742] The cigarette industry maintains that high nicotine/tar ratios are unavoidable in ultra-low-tar cigarettes because the high levels of filtration and ventilation in these cigarettes inevitably remove more tar than nicotine. The Benson & Hedges example, however, shows that (1) ultra-low-tar and nicotine levels can be achieved without increasing the ratio of nicotine to tar and (2) the high nicotine/tar ratios typically observed in cigarettes with ultra-low tar levels are therefore the result of deliberate design choices of manufacturers.

The Benson & Hedges cigarette was marketed as an ultra-low-tar cigarette from 1978 to 1985, with tar levels consistently below or near 1 milligram.[743] In three of those

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[740] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 11 (emphasis added). *See* AR (Vol. 638 Ref. 2).

[741] *Id.* (emphasis added).

[742] Remarks of Waxman HA, 141 Cong. Rec. H8009-8010 (daily ed. Jul. 31, 1995). *See* AR (Vol. 27 Ref. 376a).

[743] *Id.*

years (1978, 1984, and 1985), the nicotine levels were also proportionately low, producing a normal nicotine/tar ratio.[744] Thus, in these years, the filtration and ventilation technologies used by the manufacturer to reduce tar deliveries did not selectively increase nicotine deliveries. In contrast, from 1979 to 1983, the nicotine levels were elevated relative to the tar levels, producing a high nicotine/tar ratio.[745] These changes in the nicotine/tar ratio were not due to chance.[746] These facts thus establish that the manufacturer, in this case Philip Morris, had the technical ability to achieve ultra-low-tar levels without causing nicotine levels to be relatively enhanced.

The evidence also indicates that cigarette manufacturers also use "elasticity" technologies, principally ventilation techniques that can be readily blocked, to allow smokers to increase their nicotine intakes above the levels measured on smoking machines. One example is Brown & Williamson's Barclay cigarette. This cigarette was first introduced as an ultra-low-tar cigarette in 1981. As noted above in section II.C.4.a.ii., tests in 1982 showed that the tobacco in the Barclay blend had a higher nicotine concentration than any other cigarette brand tested. Barclay also had more total nicotine in the tobacco rod than any other cigarette tested. For instance, Barclay had *over 60% more total nicotine* in the cigarette rod (12.80 mg per cigarette) than regular-strength Lucky Strike (7.92 mg per cigarette). Yet despite its high nicotine levels, Barclay had the second lowest nicotine yields of any cigarette tested, as measured by the FTC smoking machine method. Thus, even though, as noted, Barclay had over 60% more nicotine in

[744] *Id.*

[745] *Id.*

[746] *Id.*

the cigarette rod than the regular-strength Lucky Strike, its nicotine yield on the FTC smoking machine (0.15 mg per cigarette) was *90% lower* than the yield of the Lucky Strike (1.46 mg per cigarette).

Barclay was able to combine the highest total nicotine content with the second-lowest measured nicotine yield by relying on a "channel-ventilated" filter system. An investigation commenced by FTC in 1981 found that air flow through these channels is compromised during actual smoking and that, as a result, Barclay actually delivered considerably more nicotine and tar to the smoker than is obtained using the FTC's testing method. In 1983, the FTC successfully sued to enjoin Brown & Williamson from using nicotine, tar, and carbon monoxide results obtained from the FTC's smoking machines in Barclay advertising. *See* 60 FR 41718.

While Barclay is a striking example of a filter that delivers more nicotine to its smokers than to a smoking machine, the use of ventilation systems that can be blocked by smokers is common. As FDA reported in the Jurisdictional Analysis, the evidence in the record indicates that 32% to 69% of smokers of low-tar cigarettes block ventilation holes. *See* 60 FR 41717.

In sum, the evidence in the record supports a finding that the increase in nicotine deliveries relative to tar deliveries produced by selective filtration and ventilation result from the deliberate design choices of the manufacturers. The manufacturers do not persuasively refute this finding. Accordingly, the Agency finds that the manufacturers use filtration and ventilation technologies that are designed to selectively remove more tar than nicotine.

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c. The Manufacturers Use Chemical Additives to Increase the Delivery of "Free" Nicotine

The evidence in the record also supports a finding that the cigarette manufacturers control and manipulate nicotine deliveries through chemical manipulation. One way they do this is through the use of ammonia technologies that increase the delivery of "free" nicotine to smokers by raising the alkalinity or pH of tobacco smoke. "Free" nicotine is also sometimes referred to as "volatile," "extractable," or "non-ionized" nicotine. The use of ammonia compounds to increase pH is an outgrowth of the industry's product development research to improve the efficient use of smoke nicotine through pH modification. *See* section II.C.3., above.

The use of ammonia compounds is common in the cigarette industry. Ammonia compounds have been regularly identified in the list of cigarette ingredients submitted by the industry to the Department of Health and Human Services.[747] Indeed, the comments of the cigarette manufacturers concede that several ammonia-related compounds are used in the manufacture of cigarettes.[748]

An article in the *Wall Street Journal* describes the extent of the industry's reliance on ammonia technology.[749] According to the article, which is based on two major Brown & Williamson internal reports, Brown & Williamson adds ammonia compounds to "almost all" of its nonmenthol brands; Brown & Williamson views ammonia technology as "the

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[747] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. IV, at 84. *See* AR (Vol. 535 Ref. 96).

[748] *Id.*

[749] Freedman AM, Impact booster tobacco firm shows how ammonia spurs delivery of nicotine, *Wall Street Journal* (Oct. 18, 1995). *See* AR (Vol. 639 Ref. 2).

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soul of Marlboro" and "the key factor" that "makes Marlboro a Marlboro"; and Brown & Williamson found that ammonia technology was also used by RJR, Lorillard, and American Tobacco Co.[750] In congressional testimony, Thomas Sandefur, the CEO of Brown & Williamson, confirmed the widespread use of ammonia within the cigarette industry.[751]

It is well established that the addition of ammonia compounds to tobacco increases pH. This increase transforms nicotine that is "bound" in nicotine salts to "free" nicotine.[752] This effect is described in Brown & Williamson's 1991 "Handbook for Leaf Blenders and Product Developers," which states that "*[a]mmonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and liberates free nicotine.*"[753]

Changing the chemical form of nicotine from a bound nicotine salt to free nicotine has several significant consequences, according to the evidence in the administrative record. First, it increases the quantity of nicotine that is transferred from the cigarette to

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[750] *Id.*

[751] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 224-225 (Jun. 23, 1994) (statement of Thomas Sandefur). *See* AR (Vol. 709 Ref. 3).

[752] *See, e.g.*, Armitage AK, Turner DM, Absorption of nicotine in cigarette and cigar smoke through the oral mucosa, *Nature*, Jun. 27, 1970;226:1231-1232. *See* AR (Vol. 45 Ref. 25).

Surgeon General's Report, 1988, at 29. *See* AR (Vol. 129 Ref. 1592).

[753] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 21 (Jun. 21, 1994) (statement of David Kessler) (emphasis added). *See* AR (Vol. 709 Ref. 3).

Brown & Williamson has acknowledged in its comment that the Handbook is a Brown & Williamson document. Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 37. *See* AR (Vol. 529 Ref. 104).

the smoke. According to William Farone, the former director of applied research at Philip Morris:

> *The use of ammonia chemistry was important to the industry in maintaining adequate nicotine delivery to satisfy smokers. The industry was able to deliver more of the available nicotine in the blend to the smoker by using ammonia compounds.* . . . In the complex world of tobacco smoke chemistry, by increasing the pH of the aerosol in the mainstream smoke, more of the aerosol would be in the vapor phase and less in the liquid (or condensed) phase. *By increasing the ratio of vapor phase to liquid phase, one increases the total nicotine delivery since the condensed phase is less likely to survive the filter and the trip to the lungs.*[754]

Similarly, documents from the American Tobacco Company state:

> There has been an interest in increasing the amount of nicotine that is transferred from the tobacco to the mainstream smoke while leaving the "tar" level unchanged. Since most of the nicotine in tobacco is a non-volatile salt, *it was thought that a greater transfer would take place if the tobacco was made basic causing the nicotine to volatilize when the cigarette is smoked.*[755]

The second effect of increasing the free nicotine is to increase the amount of nicotine absorption that takes place in the mouth. It is well-established that free nicotine is significantly more absorbable than bound nicotine.[756] As early as 1968, researchers at BATCO, Brown & Williamson's parent, reported that there is a direct correlation between smoke pH and nicotine absorption in the mouth, stating that "[n]icotine retention appears

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[754] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 13 (emphasis added). *See* AR (Vol. 638 Ref. 2).

[755] Bodenhamer NL (American Tobacco), Leaf Services Monthly Report for June (Jun. 30, 1980) (emphasis added). *See* AR (Vol. 27 Ref. 385).

[756] *See, e.g.*, Armitage AK, Turner DM, Absorption of nicotine in cigarette and cigar smoke through the oral mucosa, *Nature*, Jun. 27, 1970;226:1231-1232. *See* AR (Vol. 45 Ref. 25).

Surgeon General's Report, 1988, at 29. *See* AR (Vol. 129 Ref. 1592).

to be dependent principally on smoke pH and nicotine content."[757] Similarly, RJR researchers have reported that:

> [B]y raising pH . . . from 6.0 to 6.5 [in a low-tar cigarette] you raise the level of nicotine that is transferred to the taste buds and body fluids in the mouth to the same level as with the higher tar cigarette. *And hence, even though the tar level has been dropped from 25 mg to 10 mg, by raising the pH from 6.0 to 6.5, you increase the nicotine transfer in the mouth. . . .*[758]

This effect of increased nicotine absorption in the mouth appears to be related to what some cigarette manufacturers describe as smoke "impact." For example, Brown & Williamson's Handbook for Leaf Blenders states that by adding ammonia:

> the ratio of extractable nicotine to bound nicotine in the smoke may be altered in favor of extractable nicotine. As we know, extractable nicotine contributes to impact in cigarette smoke and this is how ammonia can act as an impact booster.[759]

RJR describes this effect as "mouth satisfaction," which it distinguishes from "the ultimate satisfaction" which "comes from the nicotine which is extracted . . . in the lungs."[760]

The third effect of increasing free nicotine appears to be to increase the rate of transfer of nicotine to the brain. This effect is discussed in a BATCO research paper

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[757] BATCO, *The Retention of Nicotine and Phenols in the Human Mouth* (1968), at BW-W2-11691. *See* AR (Vol. 445 Ref. 7593).

[758] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 7 (emphasis added). *See* AR (Vol. 700 Ref. 593).

[759] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 21 (Jun. 21, 1994) (statement of David Kessler). *See* AR (Vol. 709 Ref. 3).

[760] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 7, 9. *See* AR (Vol. 700 Ref. 593).

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entitled "Further Work on Extractable Nicotine."[761] According to this report, when smoke is inhaled into the lungs, there is virtually complete retention of the nicotine, regardless of whether the nicotine is in its free or bound form. However, the report hypothesizes that the speed of absorption is different when free or extractable nicotine is increased and that "*with a higher 'extractable' nicotine, nicotine reaches the brain more quickly.*"[762] RJR researchers have also recognized that pH adjustments affect the speed of nicotine absorption, recommending that in designing cigarettes for new smokers "[t]he *rate* of absorption of nicotine should be kept low *by holding pH down*, probably below 6."[763]

FDA notes that the use of chemical manipulation to boost free nicotine levels may raise the amount of nicotine delivered to the smoker without a corresponding increase in nicotine yield, as measured by the FTC smoking machine. Thus, the actual nicotine delivery to the smoker from some brands may be higher than the FTC yield because of the addition of ammonia or similar compounds to increase free nicotine.

Based on this evidence, the Agency finds that cigarette manufacturers manipulate and control nicotine deliveries through the use of ammonia compounds. These compounds transform bound nicotine to free nicotine. According to the industry's own documents, this transformation facilitates consumer use of cigarettes for pharmacological

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[761] BATCO, *Further Work on 'Extractable' Nicotine* (1966), at BW-W2-11615 (emphasis added). *See* AR (Vol. 62 Ref. 308).

[762] *Id.* at 7 (emphasis added).

[763] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market* (Feb. 2, 1973), at 4 (emphasis added). *See* AR (Vol. 531 Ref. 125).

purposes by: (1) increasing the amount of nicotine that is transferred from the tobacco to the smoke; (2) increasing the absorption of nicotine in the mouth; and (3) possibly increasing the speed of nicotine transfer to the brain.

d. Nicotine Deliveries Have Increased in Recent Years by Design, Especially in Low-Tar Cigarettes

The use of the methods described above, especially the use of nicotine-rich tobacco blends and selective filtration and ventilation, have increased nicotine deliveries to consumers. In the Jurisdictional Analysis, FDA found that nicotine deliveries as measured by the FTC smoking machine have been increasing since 1982, with the greatest increases occurring in the ultra-low-tar category. *See* 60 FR 41727–41730. These increases have been occurring without parallel increases in tar deliveries, thus indicating an industry-wide trend of designing cigarettes with enhanced nicotine deliveries.

The nicotine/tar ratios in low-tar cigarettes reflect these changes. The Agency's statistical analysis shows that, according to 1994 Federal Trade Commission data, the lowest-tar products had a markedly higher ratio of nicotine to tar than that found in higher-tar products. None of the 153 products with 14 or more milligrams of tar (the high-tar segment of the market) had a nicotine/tar ratio greater than 1 to 12. By contrast, 88 of the 93 products with 6 or fewer milligrams of tar (the ultra-low-tar segment) had a nicotine/tar ratio greater than 1 to 12. *See* 60 FR 41724. The industry did not challenge these figures in their comments.

The increase in nicotine/tar ratios has occurred primarily in the last two decades. In comparison with the 1994 results, only 2 of the 142 marketed cigarettes included in the FTC's report for 1972 had a nicotine/tar ratio greater than 1 to 12. Thus, the evidence

from the reported nicotine and tar deliveries supports the conclusion that as the market for lower tar cigarettes grew over the last 25 years, manufacturers deliberately altered what had been the traditional ratio of nicotine to tar, increasing nicotine levels in relation to tar levels.[764]

This increase in the nicotine/tar ratios is persuasive evidence that the manufacturers design cigarettes to increase their relative nicotine deliveries. Without manufacturer intervention, nicotine levels tend to follow tar levels, because methods that reduce tar deliveries tend to reduce nicotine deliveries as well. As one industry executive testified before Congress, "[n]icotine levels follow the tar level. . . The correlation . . . is essentially perfect correlation between tar and nicotine."[765] The increase in nicotine deliveries relative to tar deliveries indicates that the manufacturers have taken affirmative steps to enhance nicotine deliveries.

The manufacturers dispute this finding. Although they first asserted that nicotine deliveries fall proportionately with tar deliveries, they now assert that the increase in nicotine/tar ratios is due to the unavoidable effects of filtration and ventilation—not any intentional actions of the manufacturers. The record does not support the industry's assertion, however. First, as discussed in section II.C.4.a.ii., above, the cigarette

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[764] Federal Trade Commission, *Report of the "Tar" and Nicotine Content of 142 Varieties of Cigarettes* (Jul. 1972). *See* AR (Vol. 314 Ref. 4856). On a percentage basis, only 1.4% of the 1972 products had a nicotine/tar ratio greater than 1 to 12. In 1994, that figure grew to 26.3% overall, and rose to 95% for the 93 products in the lowest tar category. *Id.*; Federal Trade Commission, *Tar, Nicotine, and Carbon Monoxide of the Smoke of 933 Varieties of Domestic Cigarettes* (1994). *See* AR (Vol. 29 Ref. 485).

[765] *Regulation of Tobacco Products (Part 1): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 143, 378 (Mar. 25, 1994) (statement of Alexander Spears). *See* AR (Vol. 707 Ref: 1).

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manufacturers deliberately use tobacco blends with the highest nicotine concentrations in the lowest tar cigarettes.

Second, the record contradicts the industry's contention that they do not control the extent to which filtration and ventilation selectively reduce tar more than nicotine. Indeed, the record indicates that the manufacturers affirmatively use filtration and ventilation to enhance nicotine/tar ratios. *See* section II.C.4.b., above.

Moreover, as the Agency reported in the Jurisdictional Analysis, increases in nicotine deliveries relative to tar deliveries have occurred in all categories of cigarettes. Although the increases in nicotine delivery are largest among the ultra-low-tar cigarettes, relative nicotine deliveries have also been increasing in low-tar and high-tar cigarettes. *See* 60 FR 41727–41731. The manufacturers' theory regarding the unavoidable effects of filtration and ventilation in ultra-low-tar cigarettes cannot explain these other increases in relative nicotine deliveries.

The evidence in the record provides specific examples where manufacturers appear to have designed cigarettes to achieve enhanced nicotine deliveries. As discussed in section II.C.3.b., above, for example, RJR researchers in the mid-1970's recommended "*maintaining the nicotine as high as possible*" in low-tar cigarettes.[766] Researchers specifically recommended that RJR develop a new brand that would deliver 5 mg tar and 0.5 to 0.8 mg nicotine, stating that "*on inhalation into the lungs, 0.5 to 0.8 mg of nicotine*

[766] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 10 (emphasis added). *See* AR (Vol. 700 Ref. 593).

would provide sufficient nicotine to the blood to produce the stimulation and relaxation effects desired by the smoker."[767]

In the late 1970's and 1980's, RJR began to market ultra-low-tar cigarettes that met these specifications. For instance, RJR first introduced an ultra-light version of its Winston brand in 1981. That year, the Winston Ultra Lights 100's had a tar delivery of 5 mg and a nicotine delivery of 0.5 mg—exactly the deliveries recommended by its researchers as providing the sufficient nicotine to provide the pharmacological effects sought by consumers.[768] As recently as 1994, both the king-size Winston Ultra Lights (hard pack) and the Winston Ultra Lights 100's (hard pack) continued to have these recommended deliveries of 5 mg tar and 0.5 mg. nicotine, as did king-size Camel Ultra Lights and several other RJR ultra-low-tar brands.[769]

Another example of deliberate design to achieve relatively enhanced nicotine deliveries appears to be the Merit Ultra Lights by Philip Morris. Philip Morris researchers conducted extensive research in the 1970's to determine "what combinations of tar and nicotine make for optimal acceptibility in a low delivery cigarette."[770] This research concluded that a higher nicotine/tar ratio (at least 0.09), compared to the natural ratio of

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[767] *Id.* at 11-12 (emphasis added).

[768] Federal Trade Commission, *"Tar," Nicotine and Carbon Monoxide of the Smoke of 200 Varieties of Cigarettes* (1981). *See* AR (Vol. 535 Ref. 96, vol. III.D).

[769] Federal Trade Commission, *Tar, Nicotine, and Carbon Monoxide of the Smoke of 933 Varieties of Domestic Cigarettes* (1994). *See* AR (Vol. 29 Ref. 485).

[770] Dunn WL, Johnston M, Ryan F (Philip Morris Inc.), *Plans for 1972* (Sep. 8, 1971), in 141 Cong. Rec. H8128 (daily ed. Aug. 1, 1995). *See* AR (Vol. 711 Ref. 6).

0.07, was optimal.[771] Similarly, shortly thereafter, Philip Morris introduced the king-size Merit Ultra Lights with an elevated nicotine/tar ratio of approximately 0.10.[772] The king-size Merit Ultra Lights (hard pack) continued to have an elevated nicotine/tar ratio of 0.10 as recently in 1994.[773] According to William Farone, the former director of applied research at Philip Morris, the Merit Ultra Lights is an example of "a blend change incorporating the greater use of higher nicotine tobacco . . . [to] produce *a low tar cigarette with the desired pharmacologically active level of nicotine.*"[774]

These brands do not appear to be isolated examples. The evidence in the record indicates that the design of cigarettes to achieve specific nicotine deliveries is a common practice within the cigarette industry. According to Farone, cigarettes are designed to "attain a *predetermined nicotine/tar ratio.*"[775] Likewise, Ian Uydess, the former Philip Morris scientist, states that "*[n]icotine levels were routinely targeted and adjusted by Philip Morris.*"[776]

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[771] Jones B, Houck W, Martin P (Philip Morris Inc.), *Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication* (Oct. 1975), in 141 Cong. Rec. H8132 (daily ed. Aug. 1, 1995) (emphasis added). *See* AR (Vol. 711 Ref. 6).

[772] Federal Trade Commission, *"Tar," Nicotine, and Carbon Monoxide of the Smoke of 200 Varieties of Cigarettes* (1981). *See* AR (Vol. 535 Ref. 96, vol. III.D).

[773] Federal Trade Commission, *Tar, Nicotine, and Carbon Monoxide of the Smoke of 933 Varieties of Domestic Cigarettes* (1994). *See* AR (Vol. 29 Ref. 485).

[774] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 10 (emphasis added). *See* AR (Vol. 638 Ref. 2).

[775] *Id.* at 11 (emphasis added).

[776] Declaration of Uydess IL (Feb. 29, 1996), at 8 (emphasis added). *See* AR (Vol. 638 Ref. 1).

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e. The Manufacturers Precisely Control Nicotine Deliveries

A principal feature of all marketed cigarettes is the precise control over nicotine delivery achieved by the manufacturers. Annual variations in the nicotine content of raw tobacco leaves originating in the same geographical area can be as high as 100%.[777] Nevertheless, the nicotine deliveries in commercial cigarettes are consistent to a tenth of 1%. *See* 60 FR 41694. This is a high degree of control even for a conventional pharmaceutical company. It does not occur by chance, and the industry does not pretend that it does. The precise control ensures that smokers receive a consistent nicotine dosage within a brand from cigarette to cigarette, pack to pack, and year to year.

The evidence in the record supports a finding that the manufacturers' precise control over nicotine levels reflects the central role of nicotine in cigarette manufacturing. According to the statement of William Farone of Philip Morris, the cigarette industry even developed "complex computer models to help determine nicotine and tar deliveries."[778] These models "allowed blend ingredients, filter and paper components, and numerous other variables to be considered simultaneously" and "enabled product developers to identify which components were required to produce specific nicotine and tar deliveries."[779]

The administrative record demonstrates that the industry pays careful attention to nicotine throughout the manufacturing process. In particular, as described below, nicotine

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[777] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. IV, at 32. *See* AR (Vol. 535 Ref. 96).

[778] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 13. *See* AR (Vol. 638 Ref. 2).

[779] *Id.* at 13-14.

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plays an essential role in tobacco growing, leaf purchasing, leaf blending, and the manufacture of reconstituted tobacco. This control provides smokers seeking the pharmacological effects of nictine with a remarkably consistent dose of nicotine from cigarette to cigarette.

i. Tobacco Growing. Cigarette manufacturers' ability to control nicotine delivery begins with tobacco growing. Although cigarette manufacturers do not directly control what tobacco farmers grow, they have successfully influenced the characteristics of tobacco crops, including their nicotine content.

As discussed in the Jurisdictional Analysis, cigarette manufacturers were influential in establishing the Minimum Standards Program (MSP) administered by the USDA. This program began in the 1960's in response to the emergence of so-called "discount" varieties of tobacco that had low nicotine contents. The MSP eliminated the discount varieties and helped control the variation in the nicotine content of the tobacco crop by setting minimum and maximum permissible levels of nicotine. *See* 60 FR 41697–41698.

Moreover, tobacco leaf experts have reported that the nicotine level in certain varieties of tobacco rose in response to the needs of cigarette manufacturers. For instance, an expert with a U.S. leaf company observed in 1983 that "[o]nce the manufacturer has expressed a preference for a certain style of leaf, cultural practices can be implemented on the farm to try to fulfill his requirements."[780] According to this expert,

[780] Glass JM, Production and leaf chemistry of burley tobacco in Latin America, in *Recent Advances in Tobacco Science*, 37th Tobacco Chemists' Research Conference (1983), at 81. *See* AR (Vol. 528 Ref. 97, appendix 19).

"a noticeable change has occurred in leaf chemistry" of burley tobacco imported into the United States—"*especially the increase in nicotine levels.*"[781]

ii. Leaf Purchasing. The industry's direct control over nicotine delivery starts with its leaf purchasing decisions. As described in the Jurisdictional Analysis, *see* 60 FR 41703–41706, and as the industry comments themselves confirm, important leaf characteristics in purchasing include "stalk position," "impact," and "smoke quality." These characteristics correlate closely with the nicotine content in the tobacco leaves.

The industry acknowledges that, as a general rule, the relative position of a tobacco leaf on the stalk of the plant will determine the nicotine content in that leaf.[782] The nicotine level usually goes up from the bottom to the top of the stalk. According to Brown & Williamson's comment, "*[h]igher stalk tobacco leaves do have more nicotine than lower stalk leaves on the same plant.*"[783]

The Agency has found that stalk position plays a key role in the leaf purchasing practices of cigarette manufacturers. The industry does not dispute the significance of stalk position. For example, Brown & Williamson does not dispute the Agency's finding that stalk position is the "first thing" Brown & Williamson looks for during leaf purchasing. *See* 60 FR 41705. Similarly, RJR concedes that stalk position is one of the three primary "quality determinants" used by RJR in leaf purchasing.[784] Because of the

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[781] *Id.* at 77 (emphasis added).

[782] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 44. *See* AR (Vol. 519 Ref. 103). Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 10. *See* AR (Vol. 529 Ref. 104).

[783] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 10 (emphasis added). *See* AR (Vol. 529 Ref. 104).

[784] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 44. *See* AR (Vol. 519 Ref. 103).

relationship between stalk position and nicotine content, when manufacturers select tobacco leaves based on stalk position, they are in effect controlling the nicotine content of the leaves they purchase.

It is also undisputed that "impact" is associated with the nicotine level in a tobacco leaf and that "impact" plays a role in leaf purchasing. RJR, for instance, admits that "impact is . . . an element of any smoking of tobacco, including smoking of samples purchased during the auction season;" and that "nicotine is reported to be a factor" in "impact."[785]

Cigarette manufacturers deny that nicotine plays a role in leaf selection. In their words, "nicotine content is not a principal criterion in the purchase of leaf."[786] The Agency does not find this assertion to be credible. Finished cigarettes have highly consistent nicotine deliveries. This control could not be achieved without taking into account nicotine content in the purchase of tobacco leaves. If nicotine content was not a critical purchasing factor, manufacturers would have no assurance that they were purchasing leaves that could be blended together to provide consistent nicotine deliveries in the finished cigarettes.

iii. Leaf Blending. Leaf blending is one of the primary means the industry uses to control nicotine levels in cigarettes. This is acknowledged by the industry, which states in its joint comment that "[t]obacco is blended for consistency and uniformity. . . ."[787] At

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[785] *Id.* at 43-44.

[786] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. IV, at 58. *See* AR (Vol. 535 Ref. 96).

[787] *Id.* at 66.

a minimum, therefore, the industry has conceded one of the Agency's points in its Jurisdictional Analysis: blending to ensure "consistency and uniformity" enables the industry to overcome naturally occurring variations in nicotine associated with genetics and soil and climatic conditions. *See* 60 FR 41706.

The joint industry comment provides a graphic representation of the naturally occurring variations in nicotine levels in raw tobacco. The industry's submission shows the rising but substantially fluctuating nicotine levels in flue-cured tobacco from the early 1950's through the early 1990's.[788] Through blending, tobacco manufacturers are able to overcome these variations and produce a remarkably consistent product with uniform nicotine levels.

The central role of blending in ensuring consistent nicotine yields is acknowledged in the industry comments. As Brown & Williamson observes, "the manufacturing challenge is to maintain constancy of product composition not only from day to day, but month to month and year to year despite variation in the raw material."[789]

iv. Reconstituted Tobacco. The tobacco industry also pays careful attention to nicotine during the manufacture of reconstituted tobacco, which makes up about 15% to 25% of the tobacco in cigarettes.[790] The process of manufacturing reconstituted tobacco is described in detail in the Jurisdictional Analysis. *See* 60 FR 41719–41721. The careful management of nicotine in this process allows the manufacturers to control precisely the level of nicotine in reconstituted tobacco.

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[788] *Id.* at Vol. IV, Fig. 1.

[789] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 17. *See* AR (Vol. 529 Ref. 104).

[790] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. IV, at 72. *See* AR (Vol. 535 Ref. 96).

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The statement of William Farone, the former Philip Morris director of applied research, describes how "the industry has used reconstituted tobacco products to assist in controlling the nicotine delivery in cigarettes."[791] According to Farone:

> By controlling the ingredients that go into making reconstituted tobacco, the industry controls the chemical and physical properties of the finished sheet, *including its nicotine content*. . . . The reconstituted tobacco blend destined for a low tar cigarette can be made with a higher concentration of [high-nicotine] burley tobacco scraps than the blend of reconstituted tobacco designated for a full flavor brand.[792]

Farone also describes how cigarette manufacturers monitor nicotine levels in reconstituted tobacco, stating that "[q]uality control checks involving the use of a gas or liquid chromatography to ascertain the exact nicotine amounts are routinely employed during the process."[793] In its comments, Philip Morris confirms that it regularly measures nicotine levels in reconstituted tobacco. According to Philip Morris' comments:

> Representative periodic sampling is done with respect to all tobacco materials that go into the cigarette manufacturing process—natural leaf tobacco, expanded tobacco, as well as blended and reconstituted leaf. *Such periodic sampling includes measurements of . . . alkaloids or nicotine.*[794]

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[791] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 12. *See* AR (Vol. 638 Ref. 2).

[792] *Id.*

[793] *Id.*

[794] Philip Morris Inc., Comment (Apr. 19, 1996), at 56 (emphasis added). *See* AR (Vol. 700 Ref. 226).

The Agency also received a declaration relating to reconstituted tobacco from Jerome Rivers, a former supervisor in Philip Morris' Blended Leaf Plant, Declaration of Rivers J (Mar. 7, 1996). *See* AR (Vol. 640 Ref. 3), as well as two affidavits from current Philip Morris employees denying some of Rivers' assertions (Philip Morris Inc., Comment (Apr. 19, 1996), Appendix 3. *See* AR (Vol. 700 Ref. 226)), and supplemental comments relating to Rivers' declaration submitted by Philip Morris after the close of the comment period. Philip Morris Inc., Supplemental Comments (May 30, 1996). *See* AR (Vol. 700 Ref. 1331). After considering Rivers' declaration, the two affidavits, and Philip Morris' original and supplemental comments, the Agency has determined that it will not rely on the Rivers declaration or the two affidavits.

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There is also evidence that reconstituted tobacco is used by cigarette manufacturers as a vehicle for the addition of ammonia compounds. An article in the *Wall Street Journal* reports that Philip Morris, Brown & Williamson, and R.J. Reynolds add ammonia to their reconstituted tobacco.[795] According to the article, internal Brown & Williamson documents describe the "nicotine pick-up potential" of ammonia in reconstituted tobacco. The tobacco company documents described in the article state that ammonia added to reconstituted tobacco can scavenge nicotine from the tobacco in the rest of the cigarette, significantly increasing the level of "free nicotine" in the cigarette. One of the documents, a Brown & Williamson competitive analysis of Marlboro, states that ammonia-treated reconstituted tobacco is "the soul of Marlboro."[796]

As a result of the industry's focus on nicotine in the areas described above, as well as in other areas described in the Jurisdictional Analysis, cigarette manufacturers provide smokers seeking the pharmacological effects of nicotine with a remarkably consistent dose of nicotine from cigarette to cigarette.

f. Satisfying Consumer Preferences Requires Controlling and Manipulating Nicotine Deliveries to Satisfy Addiction and Provide Other Pharmacological Effects

The cigarette industry maintains that it does not control and manipulate nicotine deliveries because its sole objective is to design cigarettes that meet consumer preferences. Brown & Williamson, for example, asserts that:

> [I]ts intent is to design, manufacture and market its cigarettes to meet the preferences of adult smokers over competing brands, not to create and maintain addiction. . . . Consumer demand determines

[795] Freedman AM, Tobacco firm shows how ammonia spurs delivery of nicotine, *Wall Street Journal* (Oct. 18, 1995). *See* AR (Vol. 639 Ref. 2).

[796] *Id.*

the content of the tobacco blends used in marketed B&W cigarettes.[797]

Similarly, RJR asserts that it "designs, manufactures, and markets a broad range of cigarette products in response to the . . . demands of adult smokers" and "not . . . to provide smokers with pharmacologically active 'doses' of nicotine."[798]

The Agency agrees that cigarette manufacturers, like other manufacturers of consumer products, design their products to meet consumer demand. The Agency disagrees, however, that this establishes that cigarette manufacturers do not control and manipulate nicotine levels for pharmacological purposes. The unstated premise of the manufacturers' argument is that the consumer demands they seek to satisfy do *not* include a desire for the pharmacological effects of nicotine. This is simply not credible. To the contrary, the Agency finds that what the cigarette manufacturers describe as satisfying consumer preferences is, in reality, providing consumers with cigarettes that sustain consumers' addiction and offer other desired pharmacological effects of nicotine.

It is beyond reasonable dispute that consumers of cigarettes smoke for the pharmacological effects of nicotine, including satisfaction of their addiction. As discussed in sections II.A. and II.B., above, this fact is widely accepted in the scientific community. As discussed in section II.C.2. and 3., above, this fact is also accepted by the cigarette manufacturers' own scientists. The implication of this fact for cigarette design is clear: to compete in the marketplace, cigarette manufacturers must produce cigarettes that sustain

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[797] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 3, 12 (emphasis added). *See* AR (Vol. 529 Ref. 104).

[798] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 3-4. *See* AR (Vol. 519 Ref. 103).

smokers' addiction and provide the other pharmacological effects of nicotine sought by smokers. Any cigarette manufacturer that failed to provide these pharmacological effects would soon find itself out of business, because addicted smokers and other smokers seeking the pharmacological effects of nicotine would switch to other brands.

Brown & Williamson provides an example of how meeting consumer preferences compels cigarette manufacturers to control and manipulate nicotine. As noted above, Brown & Williamson's comments assert that Brown & Williamson designs its cigarettes to meet "consumer demands." As discussed above in section II.C.2.c., however, the documents in the record from Brown & Williamson and its parent, BATCO, also acknowledge that "*a considerable proportion of smokers depend on the pharmacological action of nicotine for their motivation to continue smoking*"[799] and that "*nicotine plays a predominant role for many smokers.*"[800] Indeed, as recently as 1992, company researchers stated that what "*the smoker clearly wants*" is "*[t]he rapid, peaking intake of nicotine.*"[801] Both Brown & Williamson's assertion that it designs cigarettes to meet "consumer demands" and its acknowledgment that smokers seek "the pharmacological action of nicotine" leads to an obvious conclusion: Brown & Williamson's efforts to meet consumer preferences necessarily require the company to design cigarettes that provide consumers with the pharmacological effects of nicotine.

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[799] Kilburn KD, Underwood JG (BATCO), *Preparation and Properties of Nicotine Analogues* (Nov. 9, 1972), at 2 (emphasis added). *See* AR (Vol. 31 Ref. 524-1).

[800] Green SJ (BATCO), *BAT Group Research* (Sep. 4, 1968), at 2 (emphasis added). *See* AR (Vol. 15 Ref. 192).

[801] *Transdermal Nicotine*, Research and Development/Quality, at 3 (emphasis added). *See* AR (Vol. 531 Ref. 125).

II.C.4.

Documents in the administrative record confirm that in designing cigarettes to meet "consumer demands," the cigarette manufacturers carefully take into account consumers' pharmacological need for nicotine. One example is Project Wheat. As discussed above in section II.C.3.c.ii., BATCO conducted Project Wheat in the mid-1970's to determine smokers' "Inner Need" for nicotine.[802] BATCO undertook this research for the express purpose of improving its ability to meet consumer demands. As the BATCO researchers stated, Project Wheat was "*seen as a part of a general approach to the problem of designing cigarettes of increased consumer acceptance*" because "*[i]n considering which product features are important in terms of consumer acceptance, the nicotine delivery is one of the more obvious candidates.*" [803]

Project Wheat found that no cigarettes then on the market provided the "low tar and medium nicotine deliveries" sought by smokers who had an average "Inner Need" for nicotine, but "an above average concern for health."[804] According to a "model of the market" developed in Project Wheat, over 40% of smokers wanted cigarettes with a higher ratio of nicotine to tar than was then available.[805] Shortly thereafter, ultra-low-tar cigarettes made with nicotine-rich tobacco blends were introduced into the market, including a Brown & Williamson cigarette called Barclay. *See* section II.C.4.a.ii., above.

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[802] Wood DJ, Wilkes EB (BATCO), *Project Wheat - Part 1: Cluster Profiles of U.K. Male Smokers and Their General Smoking Habits* (Jul. 10, 1975), at 1. *See* AR (Vol. 20 Ref. 204-1).

[803] *Id.* at 1, 3 (emphasis added).

[804] Wood DJ (BATCO), *Project Wheat - Part 2: U.K. Male Smokers: Their Reactions to Cigarettes of Different Nicotine Delivery as Influenced by Inner Need* (Jan. 30, 1976), at 2. *See* AR (Vol. 20 Ref. 204-2).

[805] BATCO Group R&D Conference on Smoking Behaviour at Southampton, England (Oct. 11-12, 1976), at BW-W2-02308. *See* AR (Vol. 178 Ref. 2074).

II.C.4.

The process of "consumer preference testing," which is described in the comments of the cigarette manufacturers, is one of the ways the manufacturers refine nicotine deliveries. In its comments, Brown & Williamson explains that it asks consumers to rate prototype cigarettes to determine if its tobacco blends produce "satisfaction," "strength," and other desirable attributes to consumers. According to Brown & Williamson, "satisfaction," as used in consumer preference testing, "reflects the consumer's total reaction to the total smoking experience delivered by the cigarettes."[806] If consumer testing shows that a Brown & Williamson cigarette produces insufficient satisfaction, Brown & Williamson says its product developers will "adjust product recipes and designs to improve or maintain product preference."[807]

In reality, however, Brown & Williamson knows that nicotine's pharmacological effects play the primary role in consumer "satisfaction." For instance, in 1983, BATCO researchers reported their "basic assumption" that "*nicotine, . . . is almost certainly the key smoke component for satisfaction.*"[808] Likewise, in a 1984 conference, the BATCO researchers reported that "'*satisfaction' must be related to nicotine.* Many people believe it [is] a 'whole body response' and *involves the action of nicotine in the brain.*"[809] Thus, Brown & Williamson understands that reports of inadequate satisfaction in consumer preference testing can signal a need to enhance nicotine deliveries.

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[806] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 8. *See* AR (Vol. 529 Ref. 104).

[807] *Id.* at 9.

[808] Minutes of BATCO Research Conference at Rio de Janeiro (Aug. 22-26, 1983), at 10 (emphasis added). *See* AR (Vol. 22 Ref. 287-5).

[809] BATCO, *Conference Outline* (Jun. 6-8, 1984), at BW-W2-01977 (citation omitted) (emphasis added). *See* AR (Vol. 22 Ref. 287-6).

II.C.4.

The statements of William Farone, the former Philip Morris director of applied research, and Ian Uydess, the former Philip Morris scientist, make precisely this point. They confirm that product developers for the cigarette manufacturers do in fact adjust nicotine levels during consumer testing. According to Farone:

> *This concept of nicotine delivery being essential to consumer satisfaction was common knowledge within Philip Morris and the rest of the industry. When consumer testing indicated that a product was lacking in "impact" or some similar descriptor that could be associated with nicotine, experienced market researchers and product developers would compensate by increasing nicotine levels . . . .*[810]

Similarly, Ian Uydess states:

> In the case of nicotine, specific levels of nicotine would be targeted in the test products (test 'articles') in a range that extended from 'ultra-low' (or even zero) nicotine deliveries, to deliveries equal to, or slightly above that found in some of their own (or a competitor's) 'full-flavor' or 'full-bodied' products. This was done to examine how the smoker would react to various nicotine levels as a predictor of how well these products might do in the market with specific regard to: "not enough nicotine", "an acceptable level of nicotine", or "too much nicotine."[811]

Thus, the Agency concludes that the manufacturers' explanation for their actions does not withstand scrutiny. Overwhelming evidence establishes that smokers seek the pharmacological effects of nicotine from cigarettes. *See* section II.A. and II.B., above. Overwhelming evidence also establishes that the manufacturers know that. *See* section II.C.2., above. Manufacturers that design their products to meet consumer demands that

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[810] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 8 (emphasis added). *See* AR (Vol. 638 Ref. 2).

[811] Declaration of Uydess IL (Feb. 29, 1996), at 11. *See* AR (Vol. 638 Ref. 1).

they know are pharmacological in nature are necessarily engaged in designing products to provide pharmacological effects.

In sum, the evidence discussed in this section discloses that the manufacturers use several methods to control and manipulate nicotine deliveries in commercial cigarettes. These design features include: (1) the use of various tobacco blends with varying nicotine levels; (2) filter ventilation and related technologies that selectively remove more tar than nicotine and allow smokers to obtain more nicotine than the measured FTC yields; and (3) the use of ammonia technologies that increase the delivery of "free" nicotine. In addition, the evidence shows that the manufacturers control nicotine levels in virtually all aspects of cigarette manufacture, thereby ensuring that smokers receive a consistent nicotine delivery in each cigarette. Combined with the evidence regarding product research and development in section II.C.3., this evidence shows that the manufacturers "design" cigarettes to provide a consistent, pharmacologically active dose of nicotine to smokers, thereby establishing that cigarettes are "intended" to affect the structure and function of the body.

5. Conclusion

The Agency's role in determining intended use through the statements, research, and actions of the manufacturer is to be a fact finder. In this case, after careful consideration of the evidence and the comments, the Agency finds that the evidence of cigarette manufacturers' statements, research, and actions demonstrates that cigarettes are intended to cause significant pharmacological effects in smokers. The Agency makes this finding for three principal reasons.

II.C.5.

First, as described in section II.C.2., above, the evidence shows that the cigarette manufacturers are aware of and have exhaustively studied the pharmacological effects and uses of nicotine. In the case of Philip Morris, RJR, and Brown & Williamson, the manufacturers conducted extensive in-house research on the pharmacological effects and uses of nicotine. Their researchers and officials repeatedly expressed the view that nicotine causes pharmacological effects, that consumers smoke cigarettes to obtain these effects, and that cigarettes are delivery devices for nicotine. The evidence further shows that the cigarette manufacturers as a group funded extensive research into nicotine pharmacology through the Council for Tobacco Research. This evidence establishes that the manufacturers "have in mind" that cigarettes will be used for the particular purpose of delivering the pharmacological effects of nicotine to smokers.

Second, the evidence in sections II.C.3. and II.C.4. shows that the cigarette manufacturers "design" cigarettes to have pharmacological effects. This evidence reveals that the manufacturers have conducted extensive product research and development to identify pharmacologically active doses of nicotine and to optimize the delivery of nicotine to smokers and that company researchers repeatedly recommended the development of cigarettes that maintain adequate nicotine deliveries.

This evidence also shows that the cigarette manufacturers carefully control and manipulate the nicotine delivery of their commercially marketed cigarettes to provide smokers with a pharmacologically active dose of nicotine. Among other practices, the manufacturers use high-nicotine blends that increase nicotine deliveries in their lowest-tar products; rely on filtration and ventilation technologies that selectively remove more tar than nicotine; add ammonia compounds that increase the delivery of "free" nicotine; and

carefully control the nicotine level in all cigarettes. Through the use of these practices, the cigarette manufacturers are able to deliver sufficient nicotine to satisfy consumers. An inevitable consequence of these practices is to keep consumers smoking by sustaining their addiction.

Third, the manufacturers have been unable to provide a convincing explanation that refutes either the evidence showing that they have in mind the pharmacological effects and uses of cigarettes or the evidence showing that they have designed cigarettes to provide these effects. This failure is significant because the manufacturers alone have access to the company documents and other information that would provide a complete explanation of their knowledge and design practices. The absence of a credible counter-explanation by the persons best situated to explain the evidence before the Agency adds additional support for the Agency's findings.

Under the legal standards described in section II.C.1., above, the evidence that the manufacturers (1) "have in mind" that cigarettes will be used for pharmacological purposes and (2) "design" cigarettes to deliver a pharmacologically active dose of nicotine each provides an independent basis for establishing intended use. Taken together, the two categories of evidence are consistent with each other and mutually reinforcing. Taken as a whole, therefore, the evidence from the statements, research, and actions of the manufacturers amply supports the finding that the effects of cigarettes on the structure and function of the body are "intended" by the cigarette manufacturers.

II.C.6.

6. Response to Comments

a. Comments on Statements and Research on Nicotine's Drug Effects

i. Comments on Specific Philip Morris Statements and Research Projects. In July 1995, a large number of Philip Morris internal documents reflecting over a decade of its research on smoking motivation were published in the *Congressional Record*. A smaller number of documents from Philip Morris became available as a result of a lawsuit brought against Philip Morris by a smoker.[812] In its Jurisdictional Analysis, FDA reproduced statements from those documents as evidence that company officials believed that consumers use cigarettes to obtain the pharmacological effects of nicotine.

A comment submitted by Philip Morris argues that the documents do not provide such evidence because FDA allegedly mischaracterized or took out of context some of the quotes from the documents. Philip Morris argues that: (1) other statements in the documents show that Philip Morris researchers were actually uncertain why people smoke; (2) in addition to studies on the pharmacological motivations for smoking, Philip Morris conducted studies on other motives for smoking, demonstrating that Philip Morris did not believe that pharmacological motives for smoking were primary; (3) FDA omitted passages from the documents that would have cast them in a different light; and (4) some of the statements cited by FDA were actually only hypotheses of Philip Morris researchers, or the hypotheses of outside researchers, which were not ultimately supported by the results of their studies.

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[812] *Cipollone v. Liggett Group Inc.*, No. 83-2864 (D.N.J. dismissed Nov. 3, 1992).

II.C.6.

FDA has reviewed all of the publicly available documents written by Philip Morris officials. The Agency has concluded that, both individually and as a whole, they demonstrate that Philip Morris conducted extensive, sophisticated research on the pharmacological effects of nicotine in cigarettes and the pharmacological motives for smoking, and that officials responsible for research and development at all levels of the company expressed consistent beliefs throughout the period covered by the documents that the pharmacological effects of nicotine were the primary reason people smoke. The documents also demonstrate that these beliefs, and the data supporting them, were held by and communicated to company executives, including the board of directors. Below, FDA addresses each of Philip Morris' arguments, with examples from individual documents claimed by Philip Morris to have been mischaracterized. In every case, the documents speak for themselves.

1. Philip Morris argues that it conducted studies on other motives for smoking, demonstrating that Philip Morris did not believe that pharmacological motives for smoking were primary. Philip Morris cites a single document from 1970 for this premise.

FDA has reviewed the studies on smoking motivation referred to in the publicly available Philip Morris documents. The relative importance Philip Morris placed on pharmacological motives for smoking compared to other motives is clear from these studies. The vast majority of the company's studies were conducted to assess the pharmacological effects of, and motives for, smoking. A small minority of the studies were intended to assess other reasons for smoking. Indeed, the research documents show that Philip Morris' focus on the pharmacological effects of nicotine increased over time.

II.C.6.

By the early 1980's, when the large collection of documents made public by Congress end, Philip Morris' research on smoking motivation was overwhelmingly dominated by research on the pharmacological effects of nicotine. A 1980 report, for instance, describes fifteen major studies—eleven of which examined various aspects of nicotine's pharmacological effects on smokers and on dose-regulating behavior by smokers.[813] The nicotine-related studies included:

(1) Studies on the effects of cigarettes and nicotine on electrical and chemical activity in the human brain. The objectives of this program are described as follows:

> It is our belief that the reinforcing properties of cigarette smoking are directly relatable to the effects that smoking has on electrical and chemical events within the central nervous system. Therefore, the goals of the electrophysiology program are to: (I) Determine how cigarette smoking affects the electrical activity of the brain, and (II) Identify, as far as possible, the neural elements which mediate cigarette smoking's reinforcing actions.[814]

(2) Studies on rats demonstrating that nicotine is "reinforcing" (causes animals to "self-administ[er]" nicotine, i.e., seek repeated doses), tests positive in drug discrimination tests which can predict whether a substance has mood-altering effects in humans, and acts centrally in the brain. The objectives of this program include "(I) To develop a better understanding of the behavioral pharmacological actions of nicotine, particularly the action which reinforces smoking behavior."[815]

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[813] Dunn WL (Philip Morris Inc.), *Plans and Objectives–1981* (Nov. 26, 1980), in 141 Cong. Rec. H7681–7683 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[814] *Id.* at H7681.

[815] *Id.* at H7682.

(3) Studies on the level of nicotine in saliva over time, and on the correlation of salivary nicotine levels to blood nicotine levels, to answer the question, "Does a low systemic level of nicotine trigger the smoking response?"[816]

Philip Morris provides no additional or later documents that would suggest that these studies are not representative. Thus, the extensive and sustained investigation into nicotine pharmacology reflected in Philip Morris' documents demonstrates that its researchers believed that the pharmacological effects of nicotine were the primary reason for smoking. Moreover, as detailed in section II.C.2.a.iii., above, a 1992 Philip Morris document shows that the views expressed by Philip Morris officials in the 1970's and 1980's are still held by Philip Morris employees.[817]

Moreover, even if Philip Morris had significantly researched other motives for smoking, this could not render Philip Morris' research into the pharmacological motives for smoking irrelevant. Neither FDA nor the courts have suggested that a product with pharmacological uses must not have any other uses if it is to be regulated as a drug or device. When it has been established that a manufacturer intends that its product be used for a pharmacological purpose, FDA's jurisdiction is not defeated by a showing that the

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[816] *Id.* at H7682.

See also Dunn WL (Philip Morris Inc.), *Plans and Objectives–1979* (Dec. 6, 1978) ("All of the effort of the Behavioral Research Laboratory is aimed at achieving this objective: To understand the psychological reward the smoker gets from smoking, to understand the psychophysiology underlying this reward, and to relate this reward to the constituents in smoke"), in 141 Cong. Rec. H7668–7670 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

Dunn WL (Philip Morris Inc.), *Plans and Objectives–1980* (Jan. 7, 1980), in 141 Cong. Rec. H7670–7672 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[817] Philip Morris Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table*. *See* AR (Vol. 531 Ref. 122).

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manufacturer also intends the product to be used for other, nonpharmacological purposes. *See, e.g., United States v. Guardian Chemical Corp.*, 410 F.2d 157, 162-163 (2d Cir. 1969) (solvent intended both to dissolve kidney stones and to clean medical instruments was properly regulated as a "drug"). Thus, if there is evidence that nicotine-containing tobacco products are intended to produce significant drug effects in consumers, the fact that manufacturers may also intend them to provide "flavor" or other nonpharmacological effects would not defeat a finding that such products are "drugs" within the meaning of the Act.

2. Philip Morris also contends that in reproducing certain quotes from Philip Morris documents, FDA omitted portions of the documents that would have shown that the author did not believe that people smoke to obtain the pharmacological effects of nicotine. Philip Morris cites four examples. FDA has reviewed each of the documents in question and has concluded that each of the statements quoted in the Jurisdictional Analysis has been fairly presented and has not been taken out of context.

First, FDA reproduced in the Jurisdictional Analysis a number of quotes from memoranda, presentations, and letters by William Dunn, a senior scientist at Philip Morris, who was responsible for a large number of research projects on smoking motivation. The quotes demonstrated that Dunn believed people smoke to obtain the pharmacological effects of nicotine. *See* 60 FR 41591, 41596–41599, 41682, 41756, 41761. Philip Morris claims that several quotes were taken out of context, and that the full context demonstrates that Dunn did not believe the pharmacological effects of nicotine are the primary reason people smoke, and in fact did not know why people smoke. Philip Morris

also contends that the quotes attributed to Dunn were in fact the views of other scientists that Dunn was simply describing.

The collected writings of William Dunn could not be clearer. As is fully demonstrated in the Jurisdictional Analysis, he made repeated statements throughout his career reflecting a consistent belief that people smoke primarily to obtain the psychopharmacological effects of nicotine. As recently as 1994, when Dunn was visited by FDA investigators, he told them that people smoke for the nicotine.[818] At a conference in 1972, Dunn explained his "conviction" that consumers smoke for the pharmacological effects of nicotine. This quote also refutes Philip Morris' claim that Dunn was merely describing the views of other scientists:

> Let me explain *my conviction.*
>
> *The cigarette should be conceived not as a product but as a package. The product is nicotine.* The cigarette is but one of many package layers . . . . *The smoker must strip off all these package layers to get to that which he seeks* . . . . Think of the cigarette pack as a storage container for a day's supply of nicotine . . . . Think of the cigarette as a dispenser for a dose unit of nicotine . . . . Think of a puff of smoke as the vehicle of nicotine:
>
> 1) A convenient 35 cc mouthful contains approximately the right amount of nicotine
> 2) The smoker has wide latitude in further calibration: puff volume, puff interval, depth and duration of inhalation . . .
> 3) Highly absorbable: 97% nicotine retention
> 4) Rapid transfer: nicotine delivered to blood stream in 1 to 3 minutes . . . .
>
> Smoke is beyond question the most optimized vehicle of nicotine.[819]

[818] *See* notes summarizing May 10, 1994 meeting between FDA and Dunn WL. *See* AR (Vol. 21 Ref. 231).

[819] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 5-6 (emphasis added). *See* AR (Vol. 12 Ref. 133).

Dunn further explained how he and other Philip Morris officials could both express uncertainty about "why people smoke" and believe that they smoke for the pharmacological effects of nicotine: "If we accept the premise that nicotine is what the smoker seeks, we've still not answered the question 'Why do people smoke'? We've merely reformulated it to read 'Why does the smoker take nicotine into his system?'"[820]

Thus, it was Dunn's "conviction" that people smoke to obtain a systemic dose of nicotine. What remained to be determined was precisely why the pharmacological effects of nicotine were reinforcing to smokers and what biochemical mechanisms were triggered by nicotine in the central nervous system. In fact, the records of Philip Morris research between the 1960's and the 1980's demonstrate that Philip Morris spent those decades conducting exhaustive research to determine the physiological and psychoactive effects of nicotine inhalation that cause smokers to repeatedly seek nicotine, and to ascertain the "dose-regulating" mechanisms through which smokers obtain an adequate amount of nicotine to achieve those effects.[821] *See* Jurisdictional Analysis, 60 FR 41599.

Accordingly, FDA concludes that it has appropriately represented the words of William Dunn.

The second document is a 1969 speech to the board of directors of Philip Morris by Helmut Wakeham, vice president for research and development. The speech begins with the statement that scientists cannot yet give a definitive explanation of why people smoke "backed up by fact." The speech nevertheless attempts to answer the question by

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[820] *Id.* at 6-7.

[821] *See* documents printed in 141 Cong. Rec. H7646–7683 (daily ed. Jul. 25, 1995), and 141 Cong. Rec. H8127–8135 (daily ed. Aug. 1, 1995). *See* AR (Vol. 14 Ref. 175a and Vol. 711 Ref. 6).

marshaling three types of available evidence: what smokers say about why they smoke, what differences in personality characterize smokers and nonsmokers, and what the "immediate effects of smoke inhalation upon . . . human body function" are.[822] In the latter category, the speech provides a long list of nicotine's effects on human body function, including "arousal center in brain stem excited."[823] Following this discussion of the evidence, the speech concludes with the quote cited by FDA in the Jurisdictional Analysis: "We are of the conviction, in view of the foregoing, that the ultimate explanation for the perpetuated cigaret habit resides in the pharmacological effect of smoke upon the body of the smoker, the effect being most rewarding to the individual under stress."[824]

This document speaks for itself. It is beyond question that the quoted statement reflects the "conviction" of the author of the speech that people continue to smoke to obtain the pharmacological effects of nicotine, and that this conviction existed as a result of the available data.

The third document cited by Philip Morris provides equally weak support for the claim that Philip Morris researchers were uncertain whether people smoke to obtain nicotine. From an internal Philip Morris document entitled "Why People Start to Smoke," FDA printed a quote from the end of the document describing the results of a "special

[822] Wakeham H (Philip Morris Inc.), *Smoker Psychology Research* (Nov. 26, 1969), at 9. *See* AR (Vol. 11 Ref. 142).

[823] *Id.* at 10.

[824] *Id.* at 11.

study done for Philip Morris" on "the motivation that leads to a *continuation* of smoking":[825]

> [T]he circumstances in which smoking occurs may be generalized as follows:
>
> 1. As a narcotic, tranquilizer, or sedative. Smokers regularly cigarettes at times of stress.
> 2. At the beginning or ending of a basic activity. . . .
> 3. Automatic smoking behavior.[826]

Philip Morris points to a statement, from the portion of the document on why people *start* smoking, that "[t]here are surprisingly few hard facts on the question of the *initiation* of smoking,"[827] claiming that this somehow shows that the author is unsure of why people *continue* to smoke. As the document itself demonstrates, the author describes no uncertainty on the question of why people continue to smoke.

The fourth document cited by Philip Morris is the first of several Philip Morris reports on research conducted by the company to test its hypothesis that smoking is used in times of stress as an "anxiety reducer."[828] The proposed study involved administering shocks to college students and determining whether stress caused the students to smoke more. According to Philip Morris, the research proposal expresses uncertainty about whether smoking mitigates stress, and therefore cannot support FDA's conclusion that Philip Morris officials believed that nicotine's pharmacological effects motivate smoking behavior.

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[825] Udow A (Philip Morris Inc.), *Why People Start to Smoke* (Jun. 2, 1976), in 141 Cong. Rec. H7663-H7664 (daily ed. Jul. 25, 1995) (emphasis added). *See* AR (Vol. 14 Ref. 175a).

[826] *Id.* at H7664.

[827] *Id.* at H7663 (emphasis added).

[828] Ryan FJ (Philip Morris Inc.), *Proposed Research Project: Smoking and Anxiety* (Dec. 23, 1969), in 141 Cong. Rec. H7648 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

II.C.6.

FDA disagrees that this document can be used to demonstrate that Philip Morris is uncertain about the relationship of smoking and stress. Because the document in question merely proposes the research to test the hypothesis that smoking reduces anxiety, it does not attempt to answer the question posed. What Philip Morris fails to point out is that this research, once begun, showed a "very high" correlation between personality factors, "particularly the Anxiety factor," and puff rate and that the researchers were "very much encouraged by the trend of these findings."[829] In fact, this study design appears to have been abandoned in favor of other designs only because "fear of shock is scaring away some of our more valuable subjects."[830] Subsequent research reports show that Philip Morris researchers continued to obtain results showing a correlation between anxiety and both puffing and nicotine intake,[831] and subsequent statements by Philip Morris researchers continue to show that they believed that one of the primary motives for smoking is to relieve stress.[832]

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[829] Dunn WL (Philip Morris Inc.), *Consumer Psychology* (Sep.16-Oct. 15,1971) (discussing projects entitled, "Shock I, II, III, IV"), in 141 Cong. Rec. H7648-7649 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[830] Dunn WL (Philip Morris Inc.), *Quarterly Report-Projects 1600 and 2302* (Oct. 5, 1972) in 141 Cong. Rec. H7649 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[831] Dunn WL (Philip Morris Inc.), *1600 Objectives for 1973* (Nov. 14, 1972) (subjects show differential heart rate when threatened with shock on days when they are allowed to smoke compared to days when they are not), in 141 Cong. Rec. H8130 (daily ed. Aug. 1, 1995) *See* AR (Vol. 711 Ref. 6).

Philip Morris Research Center, *Behavioral Research Annual Report* (Jul. 18, 1975), in 141 Cong. Rec. H7652, H7654 (daily ed. Jul. 25, 1995). *See* AR (Vol. 21 Ref. 240a-2).

[832] Udow A (Philip Morris Inc.), *Why People Start to Smoke* (Jun. 2, 1976) ("the circumstances in which smoking occurs may be generalized as follows: 1. As a narcotic, tranquilizer, or sedative. Smokers regularly use cigarettes at times of stress. . . ."), in 141 Cong. Rec. H7664 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

II.C.6.

Not only do the documents discussed immediately above contradict Philip Morris' assertion that its employees do not know why people smoke, but the available Philip Morris documents contain overwhelming support for the finding that Philip Morris officials believe that the major reason people smoke is to obtain the pharmacological effects of nicotine. Expressions of this belief are repeated frequently and consistently over the period of years reflected in these documents. *See, e.g.*, Jurisdictional Analysis, 60 FR 41595–41599, 41608, 41613–41615, 41650–41652.

3. Philip Morris contends that in reproducing William Dunn's statement of his "conviction" that cigarettes are the "most optimized vehicle" for delivering nicotine, *see* comment 2, above, FDA omitted a subsequent paragraph in which the scientist attempted to defuse concern about his "drug-like conceptualization of the cigarette":

> Lest anyone be made unduly apprehensive about this drug-like conceptualization of the cigarette, let me hasten to point out that there are many other vehicles of sought-after agents which dispense in dose units: wine is the vehicle and dispenser of alcohol, tea and coffee are the vehicles and dispensers of caffeine, matches dispense dose units of heat, and money is the storage container, vehicle and dose-dispenser of many things.[833]

Philip Morris claims that this paragraph demonstrates that the earlier part of the quote cannot be used as evidence that Philip Morris intends cigarettes as nicotine delivery systems.

FDA disagrees. The paragraph quoted by Philip Morris illustrates that tobacco company officials were aware of the potential consequences of admitting that cigarettes are "drug-like." Moreover, the paragraph does not in any way undercut the fundamental

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[833] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 6. *See* AR (Vol. 12 Ref. 133).

point made by Dunn: that cigarettes are *nicotine* delivery systems. The fact that other items can also be conceptualized as delivery systems for various things cannot alter what it was that Dunn believed was the essential ingredient delivered by cigarettes: *doses of nicotine*. He did not conceptualize cigarettes as delivery systems for flavor, or taste, or something to occupy one's hands. Rather, he conceptualized cigarettes as delivery systems for "a dose unit of nicotine," which is "delivered to [the] blood stream in 1 to 3 minutes."[834]

4. Philip Morris also contends that in reproducing certain quotes from Philip Morris documents, FDA omitted portions of the documents that were inconsistent with the quoted portion.

First, Philip Morris contends that FDA omitted a significant passage from a quote on a proposed Philip Morris study on smoking and hyperactivity. The full quote with the omitted passages follows:

> Some children are so active (or "hyperkinetic") that they are unable to sit quietly in school and concentrate on what is being taught. In recent years it has been found that amphetamines, which are strong stimulants, have the anomalous effect of quieting these children down and enabling them to concentrate in the face of distractions which otherwise would have disrupted their attention. Many children are therefore regularly administered amphetamines throughout grade school years. The wisdom of such prescription is open to question and some published reports have suggested that caffeine, in the form of coffee or tea for breakfast would produce the same end result. We wonder whether such children may not eventually become cigarette smokers in their teenage years as they discover the advantage of self-stimulation via nicotine. We have already collaborated with a local school system in identifying some such children presently in the third grade; we are reviewing the available literature on the topic; and we may propose a prospective study of this relationship. It would be good to show that smoking is an advantage to at least one

[834] *Id.* at 5-6.

> subgroup of the population. Needless to say, we will not propose giving cigarettes to children.[835]

The full quote demonstrates that Philip Morris researchers regarded nicotine as a stimulant and proposed to study whether hyperactive youths use cigarettes, not for flavor or taste, but to self-medicate an attentional disorder. It is completely consistent with FDA's finding that Philip Morris officials believe that nicotine in cigarettes has pharmacological effects and that consumers use cigarettes to obtain those effects.

Philip Morris claims that the researchers were equating nicotine and caffeine. It is clear from this and later references to this study that Philip Morris was interested in whether nicotine is used to self-medicate hyperactivity by smokers who as children were "known to have their hyperactive or impulsive behaviors reduced by drugs (e.g., Ritalin)."[836] If the researchers equated nicotine and caffeine, they regarded both substances as stimulant drugs that could be used to treat hyperactivity through their pharmacological effects. It is unlikely that they did equate them, however, since the same researchers had 2 years earlier demonstrated that nicotine produces a much more pronounced stimulant effect than caffeine.[837]

Philip Morris also claims that this document proposed a study on hyperkinetic adults, rather than children. Nothing in the available documents supports this claim. The documents mention only a study of hyperkinetic "children," whom Philip Morris

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[835] Dunn WL (Philip Morris Inc.), *Smoker Psychology/May 1-31, 1974* (Jun. 10, 1974), in 141 Cong. Rec. H7651 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[836] Dunn WL (Philip Morris Inc.), *Smoker Psychology/April 1-30, 1977* (May 13, 1977), in 141 Cong. Rec. H7657 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[837] Memorandum from Schori TR to Dunn WL, *Smoking and Caffeine: A Comparison of Physiological Arousal Effects* (May 17, 1992), at 1-2. *See* AR (Vol. 15 Ref. 189-7).

researchers propose to identify and follow to establish whether they become smokers in their "teenage years."

Second, Philip Morris contends that the context of a statement made by Helmut Wakeham that "nicotine is believed essential to cigarette acceptability" refers to its role in taste and flavor.[838] The full text of this document contradicts Philip Morris' argument. As explained in the Jurisdictional Analysis, 60 FR 41595, earlier in Wakeham's presentation, he described the pharmacological effects of nicotine on smokers:

> (a) Low nicotine doses stimulate, but high doses depress functions.
> (b) Continued usage develops tolerance. . . .
> In contrast to those effects, it is also recognised that smoking produces pleasurable reactions or tranquility, and that this is due at least in part to nicotine, and not entirely to the physical manipulations involved in smoking.[839]

Three pages later, under the heading "Controlled Nicotine in Filler and Smoker," Wakeham says:

> Even though nicotine is believed essential to cigarette acceptability, a reduction in level may be desirable for medical reasons.
>
> Problems:
>
> 1. How much nicotine reduction will be acceptable to the smoker?
> 2. What taste difference will be tolerated?[840]

The document, on its face, demonstrates two things: (1) Wakeham believed that nicotine produced pharmacological effects in smokers; and (2) the problem of determining

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[838] Wakeham H (Philip Morris Inc.), *Tobacco and Health–R&D Approach* (Nov. 15, 1961), at 43. *See* AR (Vol. 125 Ref. 1314).

[839] *Id.* at 40.

[840] *Id.* at 43.

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the level of nicotine reduction that would be "acceptable to the smoker" is separate from the problem of determining what taste difference would be tolerated. Had Wakeham believed that nicotine is essential only for taste, only the second question would have been relevent. Instead, he recognized that a reduction in nicotine would not be acceptable to smokers for the additional reasons he had already spelled out: that nicotine produces mood-altering reactions that smokers seek. The plain language of the document thus fails to substantiate Philip Morris' claim that Wakeham believed that nicotine is essential only for taste. As in many other tobacco company documents, nicotine's role in taste, if it is mentioned at all, is seen as secondary to its pharmacological role. *See* Jurisdictional Analysis, 60 FR 41772–41778.

5. Philip Morris argues that some of the statements cited by FDA were only Philip Morris researchers' "premises" and "working hypotheses" or even the hypotheses of outside researchers. According to Philip Morris, these statements are not "facts" or conclusions based on data and are therefore irrelevant to intended use.

FDA disagrees that these consistent statements of Philip Morris researchers that people smoke to obtain the pharmacological effects of nicotine are irrelevant to Philip Morris' intent in manufacturing and marketing cigarettes. In establishing the intended use of Philip Morris' tobacco products, the premises, hypotheses, and beliefs of the scientists whose job within the company is to understand the motives for smoking, and who regularly communicate those views to company executives, are highly relevant. Philip Morris and other tobacco companies contend that cigarettes are labeled for "pleasure," not pharmacological effects, and that nicotine is present in cigarettes only for flavor. On this basis, the company argues that cigarettes are not intended as drugs or devices. Nowhere,

however, in the publicly available Philip Morris documents, or in the documents produced by Philip Morris in this proceeding, do their scientists put forward a premise or hypothesis that people smoke primarily for nicotine's flavor and/or any other nonpharmacological motive—much less communicate such a view to company executives. The evidence in the administrative record demonstrates, instead, that during the entire period covered by those documents, Philip Morris scientists were communicating to their superiors their scientific opinion that nicotine's pharmacological effects are the primary motivator of smoking behavior.

6. Philip Morris also argues that its researchers' "hypotheses" were not ultimately supported by the results of their research.

FDA disagrees that the documents show that the major premises of Philip Morris scientists concerning the role of nicotine in tobacco use were disproven. These premises center on the scientists' often stated belief that cigarette smoking is reinforced by the pharmacological effects of nicotine on the brain. In fact, this premise continued to be repeated and even strengthened over the period of research reflected in the documents. For example, the major premise of a 1974 research report is that "the smoking habit is maintained by the reinforcing effects of the pharmacologically active components of smoke. A corollary to this premise is that the smoker will regulate his smoke intake so as to achieve his habitual quota of the pharmacological action."[841]

Philip Morris attempts to use this research report in support of its claim that Philip Morris scientists failed to find support for their beliefs that people smoke to obtain the

[841] Philip Morris Research Center, *Behavioral Research Annual Report, Part II* (Nov. 1, 1974) (approved by Osdene TS), in 141 Cong. Rec. H7658, H7660 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

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pharmacological effects of nicotine. According to Philip Morris, this report refuted the compensation theory.[842] Philip Morris' claim that its researchers refuted their major premises fails on two grounds. First, the document shows that Philip Morris researchers considered the compensation theory to be at most a "corollary" of their major premise that smoking is maintained by the reinforcing effects of nicotine. Philip Morris makes no attempt to show that the major premise was disproven. Nor could it. Philip Morris conducted one of the earliest definitive studies on nicotine's reinforcing effects in the early 1980's, well before similar research had been published by outside scientists. As William Dunn told T.S. Osdene, Philip Morris' director of research, the company's research made "it quite clear that nicotine can function as a positive reinforcer for rats."[843] As described in section II.A.3.c.i., above, the ability of a substance to function as a "positive reinforcer" in animals is one of the most telling pieces of evidence that the substance will be addictive in humans.

Second, both the 1974 and subsequent research reports (through and including the last available report in 1980) show that Philip Morris continued to believe in, and test, the compensation theory, using ever more sophisticated and precise methods. Philip Morris relies on a statement from the 1974 report in which the researchers note that previous attempts to show compensation by analyzing the number and amount of cigarettes smoked had shown positive trends but not convincing evidence that the smoker regulates intake of

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[842] "Compensation," as described in section II.A.7.i., above, describes the behavior of smokers who are given cigarettes with more or less nicotine than their usual brands. Data, including tobacco industry data, show that smokers "compensate" by altering their smoking behavior (e.g., by smoking more cigarettes or smoking each cigarette more intensely) to obtain their customary nicotine intake.

[843] Dunn WL (Philip Morris Inc.), *Plans and Objectives–1981* (Nov. 26, 1980), in 141 Cong. Rec. H7681-7682 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

nicotine. Philip Morris omits subsequent statements demonstrating that the researchers have not "refuted" the compensation theory, but have merely decided to take a new approach to establishing compensation. Following the statement quoted by Philip Morris, the researchers state that they "question whether the indices of intake which have been investigated to date are, in fact, the appropriate indices to be measuring."[844] Instead, they believe that new evidence suggests that compensation may be accomplished through the inhalation patterns of smokers:

> [O]bservations [concerning differences in how smoke is inhaled from smoker to smoker] have made us aware of a heretofore unnoticed mechanism that has the potential of affording the smoker a wide latitude of control over the amount of smoke he brings into contact with the absorption sites.[845]

The researchers go on to describe a new series of experiments designed "to systematically observe the inhalation patterns of smokers" and thereby determine whether compensation for nicotine is occurring.[846] The researchers also developed, three years later, a new theoretical model to explain their inability up to that point to demonstrate compensation. Under this theory, some smoking is triggered by "deficits or surfeits of nicotine (or some unknown smoke components)" and some by external stimuli:

> The adoption of this point of view by members of the staff will lead us to recognize that apparent failures of [the] nicotine compensation model may not in fact be failures at all and that *nicotine compensation is a real phenomenon which is masked by the fact that smokers smoke many cigarettes out of habit rather than need.*[847]

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[844] Philip Morris Research Center, *Behavioral Research Annual Report, Part II* (Nov. 1, 1994), in 141 Cong. Rec. H7658, 7660 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

[845] *Id.*

[846] *Id.*

[847] Dunn WL (Philip Morris Inc.), *Behavioral Research Accomplishments–1977* (Dec. 19, 1977), in 141 Cong. Rec. H7666-7667 (daily ed. Jul. 25, 1995) (emphasis added). *See* AR (Vol. 14 Ref. 175a).

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The Philip Morris research reports demonstrate that Philip Morris continued to attempt to measure inhalation patterns throughout the period covered by the reports, and that the researchers continued to believe, and sometimes showed, that smokers compensate for nicotine.[848]

Finally, Philip Morris cites a small number of minor studies in the Philip Morris research documents in which the researchers did not find discernible effects due to smoking; it claims that these show that Philip Morris failed to find support for the belief that nicotine's pharmacological effects motivate smoking. The apparent failure of a small fraction of its studies to demonstrate particular pharmacological effects from nicotine cannot obscure what is evident from a fair reading of the publicly available research reports: the company's research on nicotine demonstrated that nicotine had many significant pharmacological effects on smokers. The record also shows that, through the period covered by the reports, Philip Morris' emphasis on the pharmacological motivations for smoking increased and its research on the pharmacological effects of nicotine grew in size and sophistication. By the end of that period, Philip Morris had successfully established that nicotine is a positive reinforcer in rats, that it produces psychoactive effects like other drugs of abuse, that it produces tolerance, and that it acts

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[848] *See, e.g.*, Letter from Dunn WL to Schachter S (Sep. 8, 1975) (Philip Morris expects inhalation patterns "to be dose-regulating mechanisms of remarkable precision and sensitivity"), in 141 Cong. Rec. H7662 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

Dunn WL (Philip Morris Inc.), *Behavioral Research Accomplishments–1977* (Dec. 19, 1977) ("We have . . . [s]hown that we can distinguish between [nicotine] regulator and nonregulator smokers and that after being deprived, the regulators do indeed try to make up for lost intake"), in 141 Cong. Rec. H7666 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

Dunn WL (Philip Morris Inc.), *Plans and Objectives–1981* (Nov. 26, 1980), in 141 Cong. Rec. H7681, H7683 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

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centrally in the brain. These are the standard animal tests performed by pharmaceutical companies and public health organizations to establish that a substance is addictive. At this time, Philip Morris was also engaged in a broad-based study of the effects of smoking and nicotine on *human* brain wave patterns to "identify as far as possible the neural elements which mediate cigarette smoking's reinforcing actions."[849] The record thus contradicts Philip Morris' claim that its research failed to bear out the premise that people smoke to obtain nicotine.

7. Philip Morris argues that FDA has mischaracterized statements of Philip Morris officials in several company documents related to the addictive effects of nicotine and cigarettes. FDA has reviewed the statements and concluded that it has not mischaracterized the statements that it relied on.

First, in the Jurisdictional Analysis, 60 FR 41607–41608, FDA cited a Philip Morris study on a smoking cessation campaign in Greenfield, Iowa, in 1969 as evidence that Philip Morris researchers recognized that smoking cessation produces a withdrawal syndrome. Philip Morris claims that its study did not conclude that nicotine is "addictive" and that the study showed only that former smokers experienced "transient . . . common behavioral mannerisms such as eating more, tapping their fingers, twiddling their thumbs, biting their lips, chewing on matches, or feeling ill-tempered."[850] Philip Morris also argues that this study was published more than 20 years ago and therefore is not "new" evidence.

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[849] *Id.* at H7681.

[850] Philip Morris Inc., Comment (Jan. 2, 1996), at 17. *See* AR (Vol. 519 Ref. 105).

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FDA believes that the Philip Morris study on the Iowa "cold turkey" campaign provides solid evidence that Philip Morris knows that abstinence from smoking produces a significant, long-term withdrawal syndrome. As discussed in section II.A.3., above, withdrawal is recognized as one of the characteristic features of drug dependence. Contrary to the comment's claim that the study revealed only mild and "transient" symptoms, the study author, a Philip Morris researcher, summarizes the symptoms of those who quit smoking this way:

> Even after *eight months* quitters were apt to report having neurotic symptoms, such as feeling depressed, being restless and tense, being ill-tempered, having loss of energy, being apt to doze off, etc. They were further troubled by constipation and weight gains which averaged about 5 lbs. per quitter.[851]

The researcher later reports on the worsening of health symptoms among the quitters, observing that their "list of complaints is long and impressive."[852] The author encapsulates the quitters' experience as follows:

> This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an exuberant couple leaping in the air and kicking their heels with joy because they've kicked the habit. A more appropriate commercial would show *a restless, nervous, constipated husband bickering viciously with his bitchy wife who is nagging him about his slothful behavior and growing waistline.*[853]

Accordingly, this study provides evidence that Philip Morris knows that smokers suffer significant, long-term withdrawal symptoms, a characteristic feature of addictive

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[851] Ryan FJ (Philip Morris Inc.), *Bird-1: A Study of the Quit-Smoking Campaign in Greenfield, Iowa, in Conjunction with Movie, Cold Turkey* (Mar. 1971), at 1. (emphasis added). *See* AR (Vol. 390 Ref. 6394).

[852] *Id.* at 31.

[853] *Id.* at 33 (emphasis added).

substances. There is no support for Philip Morris' contention that the withdrawal symptoms reported in this study are not comparable to withdrawal symptoms from other drugs that produce physical dependence. The withdrawal symptoms reported by Philip Morris include many of the same changes in mood, behavior, and physical functioning identified as evidence of a withdrawal syndrome for all drugs that produce physical dependence. They are the same symptoms that have been recognized by the Surgeon General and other public health organizations as evidence that nicotine produces a withdrawal syndrome and physical dependence.[854]

Finally, Philip Morris' claim that this study was published 20 years ago is misleading. The material quoted in the Jurisdictional Analysis and here comes principally from an internal Philip Morris study report that was not published.[855] Another version of the study was published, in which the quoted material was omitted.[856]

Philip Morris also argues that FDA "deliberately mischaracterize[d]" another Philip Morris document in which Philip Morris acknowledges both nicotine dependence and a withdrawal syndrome from cigarette deprivation. FDA notes that Philip Morris challenges only the use of the statement to show that Philip Morris acknowledges withdrawal; Philip Morris makes no claim that this statement does not acknowledge nicotine dependence.

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[854] Surgeon General's Report, 1988, at 198-221. *See* AR (Vol. 129 Ref. 1592).

American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 244. *See* AR (Vol. 5 Ref. 46-1).

[855] Ryan FJ (Philip Morris Inc.), *Bird-1: A Study of the Quit-Smoking Campaign in Greenfield, Iowa, in Conjunction with Movie, Cold Turkey* (Mar. 1971). *See* AR (Vol. 21 Ref. 207).

[856] Ryan FJ (Philip Morris Inc.), Cold turkey in Greenfield, Iowa: a follow-up study, in *Smoking Behavior: Motives and Incentives*, ed. Dunn WL (Washington DC: VH Winston & Sons, 1973). *See* AR (Vol. 8 Ref. 105).

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The document is a report from W. L. Dunn to T. S. Osdene, vice president for research and development, entitled, "Plans and Objectives–1980." In describing the company's "Experimental Psychology Program," the report states that the first objective of the program is to "gain better understanding of the role of nicotine in smoking." The report describes one of its approaches to this objective as follows:

> Identification of two smoking population subgroups, one of which has greater nicotine needs than the other. We have described these people in the past as compensators and noncompensators, and attempted to define them by their consumption changes when nicotine deliveries were moderately shifted. However, we've had no great success in the identification to date. Now we may have two extra tools to use: Commercial PM cigarettes of ultra low tar and nicotine, and salivary nicotine concentrations. Others, principally at Columbia University, have suggested that shifts to ultra low nicotine cigarettes produce the same type of psychological stress behaviors as quitting. *We therefore propose a shift study in which smokers are shifted to an ultra low brand, and the key dependent variable becomes the presence or absence of the withdrawal syndrome. Those who show evidence of nicotine dependence and those who do not can then be used to test our hypotheses on the relationship of salivary concentration to smoking behavior.*[857]

Philip Morris claims that this statement contains no acknowledgment of a cigarette withdrawal syndrome, because the Philip Morris researchers: (1) found no support for their hypothesis that people compensate for changes in nicotine yield; (2) were merely testing hypotheses proposed by outside researchers; and (3) were referring to psychological stress behaviors, not physiological symptoms when they spoke of withdrawal.

The full text of this statement fails to support Philip Morris' strained construction. The obvious purpose of the statement is to explain that the researchers intended to try a

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[857] Dunn WL (Philip Morris Inc.), *Plans and Objectives–1980* (Jan. 7, 1980), in 141 Cong. Rec. H7670, H7672 (daily ed. Jul. 25, 1995) (emphasis added). *See* AR (Vol. 14 Ref. 175a).

new approach to identifying "compensators" and "noncompensators," relying on evidence of withdrawal/dependence. The researchers are clear that withdrawal is an established syndrome they will use to identify compensators and noncompensators, not the reverse. The only outside hypothesis mentioned in the statement is the notion that switching to ultra-low nicotine cigarettes can be used to induce the same stress behaviors as quitting. The more fundamental notion that quitting produces a withdrawal syndrome is not an outsider's hypothesis but a clearly accepted premise of the entire approach. Nothing in the statement suggests that the researchers intend to test an "hypothesis" that quitting produces withdrawal; they intend to use this accepted fact to search for compensators and noncompensators. Finally, there is no evidence in the document to support Philip Morris' assertion that the Philip Morris researchers were referring to psychological stress behaviors, not physiological symptoms.

Philip Morris also contends that FDA inappropriately characterized a Philip Morris memo, which FDA briefly cited in a footnote to the Jurisdictional Analysis, as indicating that people smoke to avoid "withdrawal." According to Philip Morris, the memo merely placed cigarettes in the same category as alcohol, tea, coffee, chewing gum, overeating, and sex.

Philip Morris' characterization focuses on the introduction of the memo, while ignoring its central purpose. The actual purpose of the memo is to propose to study the question of why people continue to smoke despite "compelling pressures upon the smoker to discontinue the behavior" and to "document the penalties imposed by discontinuation of

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cigarette smoking."[858] The memo offers the following rationale for documenting the "penalties" of discontinuation:

> The literature on the subject cites body weight gains up to twenty pounds. Constipation has been cited as another sequelae (Ejrup, 1965), as well as blisters in the mouth. Chessick (1964) has warned against the "neurovegetative disequilibrium" that can result and Masoni (1963) contends that some may not be able to stabilize emotionally. There is anecdotal and lay observation of lowered efficiency and heightened irritability upon withdrawal. We know, too, that in periods of non-voluntary deprivation, as in concentration camps of World War II, the incentive value of the cigarette exceeds that of essential foodstuff.[859]

The actual text of the memo thus demonstrates clearly that Philip Morris has knowledge of significant withdrawal symptoms associated with smoking deprivation. The memo displays no skepticism about the existence of the cited withdrawal symptoms.

8. Philip Morris argues that reports of animal research conducted in its laboratories by Philip Morris researchers Victor DeNoble and Paul Mele do not conclude that nicotine is addictive.

The reports in question showed that Philip Morris had established that nicotine functions as a "positive reinforcer" in rats (causes them to seek repeated doses), and has other psychoactive effects characteristic of addictive substances. *See* Jurisdictional Analysis, 60 FR 41754–41758. These reports also showed that Philip Morris conducted research to find nicotine analogues (substitutes) that would have equal or greater reinforcing and psychoactive effects as nicotine. *Id.* These central nervous system effects were characterized by Philip Morris as "desirable properties" of nicotine that could be

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[858] Dunn WL (Philip Morris Inc.), *Stating the Risk Study Problem* (Jul. 29, 1969), at 3. *See* AR (Vol. 15 Ref. 189-6).

[859] *Id.*

"enhanced" as a result of nicotine analogue research.[860] Finally, these research reports showed that Philip Morris conducted research to find an "optimum" combination of nicotine and acetaldehyde (another component of smoke) that had "maximal reinforcing effects."[861]

FDA disagrees that it inappropriately relied on these studies. FDA did not cite these documents for the proposition that Philip Morris acknowledged that nicotine is addictive. FDA cited them, appropriately, as evidence that Philip Morris: (1) had conducted research demonstrating that nicotine is a positive reinforcer, one of the characteristic features of addictive substances; and (2) understood that the pharmacological effects of nicotine were essential to the market for tobacco products and intended to offer products that affect the central nervous system. *See* Jurisdictional Analysis, 60 FR 41750–41762.

9. Philip Morris states that, during his tenure at Philip Morris, Victor DeNoble repeatedly advised his colleagues that the fact that a substance has positive reinforcement effects does not mean that the substance is "addictive."

FDA agrees that animal self-administration does not alone demonstrate conclusively that a substance will be addictive in humans. As DeNoble stated in his testimony before Congress, however, "[t]he self-administration study is a classical hallmark to indicate that a solution or drug substance has . . . the potential to be a drug of

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[860] Charles JL (Philip Morris Inc.), *Nicotine Receptor Program–University of Rochester* (Mar. 18, 1980). *See* AR (Vol. 32 Ref. 532).

[861] DeNoble VJ (Philip Morris Inc.), *Project Number 1610 (Behavior Pharmacology) Objectives and Plans 1982-1983* (Jul. 20, 1982), at 2. *See* AR (Vol. 345 Ref. 5443).

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abuse in humans."[862] As described earlier, a drug's abuse liability refers to its potential to cause drug dependence/addiction.

As described in section II.A.3.c., above, a complete screen for abuse liability also includes studies that demonstrate that the drug's reinforcing effects are caused by its actions in the central nervous system, that the drug has psychoactive effects, that the drug produces withdrawal and/or tolerance. Philip Morris research also demonstrated that nicotine has each of these properties.[863] These results distinguish nicotine from such nonaddictive substances as saccharin, which are not psychoactive.

As described in section II.C.2.a.ii., above, corporate executives were informed that Philip Morris' own research predicted that nicotine would be a drug of abuse in humans. A reasonable manufacturer with this information should have foreseen that nicotine was likely to be addictive in humans.

10. Tobacco industry comments challenge the reliability of a report submitted by William A. Farone, director of applied research at Philip Morris from 1976 to 1984, entitled "The Manipulation and Control of Nicotine and Tar in the Design and

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[862] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce. U.S. House of Representatives.* 103d Cong. 2d Sess. 18 (Apr. 28, 1994) (testimony of Victor J. DeNoble). *See* AR (Vol. 708 Ref. 2).

[863] *See, e.g.*, Dunn WL (Philip Morris Inc.), *Plans and Objectives–1980* (Jan. 7, 1980), in 141 Cong. Rec. H7668, H7669 (daily ed. Jul. 25, 1995). *See* AR (Vol. 14 Ref. 175a).

DeNoble VJ (Philip Morris, Inc.) *Nicotine Program–Behavioral Research Laboratory* (Apr. 24, 1980), at 2. *See* AR (Vol. 345 Ref. 5446).

Ryan FJ (Philip Morris Inc.), *Bird-1: A Study of the Quit-Smoking Campaign in Greenfield, Iowa, in Conjunction with Movie, Cold Turkey* (Mar. 1971). *See* AR (Vol. 21 Ref. 207).

DeNoble VJ, Mele PC (Philip Morris Inc.), *Development of behavioral tolerance following chronic nicotine administration* (unpublished manuscript). *See* AR (Vol. 346 Ref. 5464).

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Manufacture of Cigarettes: A Scientific Perspective." In this report, Farone describes the beliefs of Philip Morris, and, in some cases the tobacco industry, concerning: the essential role of nicotine in tobacco use; research conducted by the industry on nicotine's pharmacological effects; and techniques used by the industry to reduce tar while maintaining an adequate level of nicotine. Farone bases his report on personal knowledge, as well as company documents and published literature. The tobacco industry argues generally that the information in Farone's report should not be relied upon because: (1) many of his statements about Philip Morris or the industry are not supported by documentary evidence; and (2) Farone left Philip Morris in 1984 and therefore does not have personal knowledge of the current operations of the company.

Other comments argue that Farone's report provides additional factual support for the conclusion that Philip Morris scientists and executives understand and intend that the primary role of nicotine in Philip Morris' products is to provide nicotine's pharmacological effects to consumers. These comments also argue that Victor DeNoble, former research scientist for Philip Morris, has publicly confirmed the accuracy of many of the statements made by Farone. Finally, these comments argue that the reliability of the information provided by Farone, is enhanced by its consistency with the sworn testimony of the former vice president for research and development for Brown & Williamson.

FDA disagrees with the tobacco industry comments that Farone's report is not reliable evidence relevant to establishing the intended use of cigarettes. Farone was a high-ranking manager within Philip Morris, whose responsibilities gave him first-hand knowledge of the information presented in the report. As director of applied research, Farone supervised five research divisions with a total of 150 employees, mostly

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professionals. He reported directly to the vice president for research and development and regularly met with other senior management officials, including the CEO and president of Philip Morris, to discuss Philip Morris activities related to basic and applied research, product and process development, manufacturing, and results of test marketing of new products.[864] He was thus in a position to have personal knowledge of the views and activities of Philip Morris concerning the topics discussed in his report. Thus, the fact that he does not cite documentary evidence to support each statement in the report is irrelevant to the weight to which the report is entitled.[865]

The fact that Farone left Philip Morris in 1984 also provides no basis to consider his report irrelevant. As discussed above in section II.C.2.e., the extensive collection of tobacco company statements relied on by the agency reflects a consistent pattern of tobacco industry views spanning three decades. These statements provide evidence of the long-standing knowledge and beliefs of tobacco company officials that cigarettes are primarily used by consumers for the pharmacological effects of nicotine. Farone's statements about the knowledge, beliefs, and actions of the tobacco industry are entirely consistent with the body of industry statements relied on by the agency, adding to their credibility. Moreover, Farone's statements are consistent with the recent Philip Morris

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[864] Declaration of Uydess IL (Feb. 29, 1996), at 23-24. *See* AR (Vol. 638 Ref. 1).

[865] FDA notes that Philip Morris has submitted two affidavits from current employees which purport to provide, based on the personal knowledge of the affiants, information about the measurement of nicotine levels in reconstituted tobacco. Neither of these affidavits cites any documentary support. Thus, Philip Morris appears to believe that FDA is entitled to rely on information based on personal knowledge. Philip Morris Inc., Comment (Apr. 19, 1996), at appendix 3. *See* AR (Vol. 700 Ref. 226).

document concerning Project Table,[866] demonstrating that the company's views have not changed since Farone left the company.

11. Tobacco industry comments also challenge specific statements made in Farone's report. FDA addresses those comments that challenge statements cited by the Agency.

The tobacco industry contests Farone's statement that it is widely believed within the tobacco industry that nicotine is the primary reason people smoke. The industry argues that the documents cited by Farone do not support this statement, and that industry evidence shows that consumers do not smoke cigarettes "nearly exclusively" or "solely" for the pharmacological effects of nicotine.[867]

FDA disagrees with these comments. As described above and in sections II.C.6.a.ii. and iii., below, there is ample support, including the documents cited by Farone, for the conclusion that tobacco industry officials believe that people use tobacco primarily to obtain the pharmacological effects of nicotine. Moreover, as discussed above, Farone's position and responsibilities within Philip Morris were such that the statements based on his personal knowledge may be considered reliable evidence. Finally, Farone's statement is corroborated by the existence of dozens of similar statements by Philip Morris officials in other documents cited in section II.C.2.a.i., above, and in the Jurisdictional Analysis. *See* 60 FR 41584–41620.

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[866] Philip Morris, Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table*. *See* AR (Vol. 531 Ref. 122).

[867] Philip Morris Inc., Comment (Apr. 19, 1996), at 57. *See* AR (Vol. 700 Ref. 226).

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The tobacco industry comments present no contradictory statements or other evidence to demonstrate that tobacco industry officials do not believe that nicotine is the primary reason people smoke. Instead, the industry argues that there is evidence that, in fact, consumers do not smoke cigarettes "solely" or "nearly exclusively" for the pharmacological effects of nicotine. These comments misconstrue the nature of the evidence required to establish intended use. The statements of Farone and others are properly used by FDA to show that Philip Morris *knows* that consumers use cigarettes for the pharmacological effects of nicotine. This knowledge is relevant to establishing the company's intent to affect the structure and function of the body. See 21 CFR 201.128 and 801.4. In establishing intended use through a manufacturer's actual knowledge, it is not necessary for the Agency to show knowledge that consumers use tobacco nearly exclusively for its pharmacological effects. *Cf. Action on Smoking and Health v. Harris,* 655 F.2d 236, 240 (D.C. Cir. 1980) (FDA must establish nearly exclusive consumer use for pharmacological effects only where there is no other evidence of manufacturer's intent).

Moreover, as described in section II.B., above, the scientific evidence demonstrates that the pharmacological effects of nicotine are the primary motivation for tobacco use, and that other aspects of tobacco use, such as flavor, are secondary. Indeed, the data show that tobacco users enjoy the flavor of tobacco products because they have come to associate its flavor with obtaining the pharmacological effects of nicotine. Thus, contrary to Philip Morris' comment, even though not necessary to establish "intended use," the evidence shows that consumers do use tobacco products nearly exclusively for the pharmacological effects of nicotine.

ii. Comments on Specific RJR Statements and Research Projects. Like Philip Morris, RJR argues that FDA misused statements and research reports by RJR officials that the Agency relied upon as evidence that RJR officials believe that consumers use cigarettes to obtain the pharmacological effects of nicotine. FDA has reviewed the statements and research reports in context and concluded that, with one minor exception, the Agency correctly relied upon them.

1. RJR argues that the 1972 memorandum by Claude Teague, assistant director for research at RJR,[868] cited by FDA does not provide evidence of the intended use of cigarettes because Teague was only presenting a "hypothesis" to stimulate discussion, and because the document does not reflect institutional intent. RJR focuses heavily on the fact that one of the quoted paragraphs and a few other phrases in the document begin with "if" or otherwise suggest uncertainty.

At the time the Jurisdictional Analysis was published, two paragraphs from the memorandum that had been published in the *New York Times*. The complete nine-page memorandum was subsequently submitted to the Agency in a comment and is discussed above in section II.C.2.b.i. The full document demonstrates that RJR's assistant vice president for research asserted as fact, not hypothesis, that nicotine's pharmacological effects are the primary reason people smoke and that cigarettes are nicotine delivery systems. Before the paragraph that begins "If nicotine is the *sine qua non* of tobacco products," Teague says:

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[868] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 1-2. *See* AR (Vol. 531 Ref. 125).

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> Nicotine is known to be a habit-forming alkaloid, hence the confirmed user of tobacco products is primarily seeking the physiological "satisfaction" derived from nicotine—and perhaps other compounds . . . . Thus a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver the nicotine in a generally acceptable and attractive form. Our industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine. . . .[869]

The actual text of the document thus flatly contradicts RJR's claim that Teague was making "suppositions" about nicotine that were "very tentative."[870] He was, instead, stating as established fact that people smoke for the pharmacological effects of nicotine. The later statement, "If nicotine is the *sine qua non* of tobacco," is thus not an "hypothesis" but a rhetorical device to encapsulate the author's previously expressed position.

2. In the Jurisdictional Analysis, FDA relied upon the statements of RJR researchers in published papers that many of the most important effects of smoking cited by smokers as the reasons they smoke are the pharmacological effects of nicotine. RJR argues that none of the papers asserts that the pharmacological effects of nicotine are the most important reason for smoking, and that the papers also refer to the role of nonpharmacological effects in smoking behavior. RJR also contends that these papers do not show that consumers use tobacco nearly exclusively for its pharmacological effects.

FDA disagrees. A fair reading of these studies indicates that the authors view nicotine as playing a far more significant role in smoking motivation than other, nonpharmacological motives.

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[869] *Id.* at 1.

[870] R.J. Reynolds Tobacco Co., Comment (Jan 2, 1996), at 30. *See* AR (Vol. 519 Ref. 103).

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For example, a paper published in 1991 refers to the fact that some smokers report that they smoke to increase their mental alertness, while others smoke to calm their moods; the paper attempts to prove that both sets of motives can be attributed to the effects of nicotine on different hemispheres of the brain.[871] The study demonstrated that smoking produced EEG effects in different hemispheres of the brain, depending on the depth of inhalation, leading the researchers to conclude that "light inhaling . . . smokers may smoke primarily for purposes of mental activation and performance enhancement" while "an important motive for deep inhaling smokers might be anxiety reduction."[872] Nonpharmacological motives for smoking are not mentioned at all. In studies where they are mentioned, RJR researchers never claim that nonpharmacological motives are more important to the smoker than nicotine.

RJR's contention that its published studies do not demonstrate "nearly exclusive consumer use" of cigarettes for pharmacological effects does not diminish their relevance to establishing intended use. These studies were designed by RJR to examine the effects of smoking on the human brain and on behavior, not to quantify consumer use. These studies are properly used by FDA to show that RJR knows that consumers use cigarettes for the pharmacological effects of nicotine. A manufacturer's actual knowledge is relevant to establishing the intended use of these products to affect the structure and function of the body. See 21 CFR 201.128 and 801.4. Moreover, when the evidence of tobacco manufacturer's statements, research, and actions demonstrates that their products are

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[871] Pritchard WS (R.J. Reynolds Tobacco Co.), Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490. *See* AR (Vol. 3 Ref. 23-2).

[872] *Id.* at 488.

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actually intended to affect the structure or function of the body, it is not necessary for the Agency to show that consumers use tobacco nearly exclusively for its pharmacological effects. Some courts have suggested such a showing could be required, but only where there is no other evidence of the intended use and FDA is relying exclusively on actual consumer use. *Action on Smoking and Health v. Harris,* 655 F.2d 236, 240 (D.C. Cir. 1980). The "nearly exclusive" consumer use standard is inapplicable in the context of direct evidence of manufacturers intent. *See* sections II.B.1., above, and II.E.1., below.

3. In the Jurisdictional Analysis, 60 FR 41601, FDA stated that attorneys for RJR had, in a court filing, described the following pharmacological "benefits" of smoking: "satisfaction; stress reduction; relaxation; stimulation; aided concentration; increased memory retention; alleviation of boredom and fatigue; avoidance of loss of vigilance in repetitive and sustained tasks."[873] RJR argues that FDA's use of this litigation response was misleading because: (1) the listed benefits were only those reported by smokers or the literature, and were not subscribed to by RJR; (2) FDA omitted from the quote benefits that were not pharmacological; and (3) the listed benefits were not characterized by RJR as "pharmacological" or "significant," and are likely due to other aspects of smoking, including the sensory aspects. RJR also states that even if some of the benefits quoted by FDA "are in some sense pharmacological," the litigation response is not evidence of intended use.

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[873] Reply to Interrogatories, *Gilboy v. American Tobacco Co. et al.*, No. 314002 (La. Dist. Ct.). *See* AR (Vol. 15 Ref. 194-1). FDA notes that Lorillard has not contested FDA's reliance on a similar court filing by Lorillard in *Covert v. Lorillard et al.*, No. 88-1018-B (M.D.La). *See* AR (Vol. 15 Ref. 194-2).

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FDA disagrees that its use of the company's statements in litigation was misleading or that the statements fail to provide evidence of intended use. The statement filed in court by RJR was used as evidence that RJR, *speaking as a corporation*, knows that consumers use tobacco for its pharmacological effects. The knowledge of a manufacturer that its product is used for pharmacological effects provides objective evidence of intent to affect the structure and function of the body. The fact that RJR was repeating benefits reported by consumers does not in any way undercut FDA's reliance on the quote: RJR's awareness of how consumers use its product is highly relevant. The fact that the original quote included two nonpharmacological "benefits" of smoking similarly fails to diminish the relevance of the quote. When it has been established that a manufacturer intends that its product be used for a pharmacological purpose, FDA's jurisdiction is not defeated by a showing that the manufacturer also intends the product to be used for other, nonpharmacological purposes. *Guardian Chemical Corp.*, 410 F.2d at 162-163.

Finally, while RJR did not explicitly characterize the benefits as pharmacological in this particular filing, RJR scientists have published reports demonstrating that the company knows that these "benefits" of tobacco are due to the pharmacological effects of nicotine. In one paper, for example, RJR scientists reported on a study whose purpose was to isolate the psychopharmacological effects of nicotine from the effects of other aspects of the cigarette:

> Anxiety relief and improved mental alertness are two of the benefits of smoking commonly reported by smokers as their reason for smoking . . . . [The study results] indicate that *the beneficial effects*

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of smoking on cognitive performance . . . are a function of nicotine absorbed from cigarette smoke upon inhalation.[874]

Thus, RJR scientists characterize the very effects that the corporation listed in the pleading as nicotine's pharmacological effects.

4. RJR challenges FDA's use in the Jurisdictional Analysis of the statement of its former CEO, F. Ross Johnson, in response to a question from a reporter about whether tobacco is addictive: "Of course it's addictive. That's why you smoke the stuff."[875] RJR argues that this statement is not evidence of intent because, as Johnson "explained" in a subsequent letter to the reporter, he used the term "addictive" not in the "technical" sense, but as an expression of the "common experience that some people find it hard to quit smoking, and so continue to smoke."[876] RJR also argues that Johnson's statement should not be attributed to RJR because, at the time he made it, he was no longer employed by RJR, and "there is no indication that Johnson's comment reflected anything he learned or observed" at RJR.[877]

The arguments put forward by RJR for discounting the statement of its former CEO are not persuasive. It is doubtful that the former CEO of a tobacco company would

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[874] Robinson JH, Pritchard WS, Davis RA (R.J. Reynolds Tobacco Co.), Psychopharmacological effects of smoking a cigarette with typical "tar" and carbon monoxide yields but minimal nicotine, *Psychopharmacology* 1992;108:466-472, at 471 (emphasis added.). *See* AR (Vol. 11 Ref. 129-3).

See also Pritchard WS (R.J. Reynolds Tobacco Co.), Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490 (presenting evidence that both mental alertness and anxiety reduction are a function of nicotine's effects on different parts of the brain). *See* AR (Vol. 3 Ref. 23-1).

[875] Shapiro E, Big spender finds new place to spend, *Wall Street Journal* (Oct. 6, 1994). *See* AR (Vol. 21 Ref. 230).

[876] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 21. *See* AR (Vol. 519 Ref. 103).

[877] *Id.*

state that tobacco is "addictive" without foreseeing that he would be understood to mean the term in its "technical" sense. The further suggestion that the statement did not reflect Johnson's knowledge while at RJR is similarly unconvincing.

5. RJR argues that FDA incorrectly stated that a particular research article[878] found that tobacco users report "craving." FDA has reviewed the article in question and agrees with the comment that it does not clearly find that smokers report craving.

iii. Comments on Specific Brown & Williamson Statements and Research Projects. In the Jurisdictional Analysis, FDA cited over 75 Brown & Williamson and BATCO documents to demonstrate the cigarette manufacturer's knowledge that cigarettes produce significant pharmacological effects, including causing and sustaining addiction, and are used by smokers for these effects. FDA also cited a substantial number of documents from Brown & Williamson's affiliate, Imperial Tobacco, and from American Tobacco, a company with which Brown & Williamson recently merged. Although Brown & Williamson makes a general assertion that the Agency has mischaracterized these documents, the company makes no attempt to refute FDA's specific characterizations of the vast majority of the Brown & Williamson documents cited by FDA. The Agency believes that these documents speak for themselves and fully support its conclusion that Brown & Williamson intends cigarettes to affect the structure and function of the body.

With respect to the few Brown & Williamson documents regarding nicotine pharmacology that the company does specifically address, FDA has reviewed the company's comments and concludes that the company's statements and research were

[878] Robinson JH, Pritchard W, The role of nicotine in tobacco use, *Psychopharmacology* 1992;108:395-405. *See* AR (Vol. 14 Ref. 175).

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properly characterized in the Jurisdictional Analysis. These comments and FDA's responses are presented below.

1. FDA relied on a large number of statements from researchers and high-ranking officials of Brown & Williamson and BATCO acknowledging that nicotine is addictive. Brown & Williamson makes a general argument that none of the statements by BATCO employees about addiction is attributable to Brown & Williamson, because their employees were merely reciting language from government and other external sources. The company provides only one example to support this contention. FDA quoted from a speech by Charles Ellis, the science advisor to BATCO's Board of Directors, in which he told an audience of tobacco industry officials: "smoking is a habit of addiction . . . ."[879] According to the comment, Ellis' "terminology mirrored virtually identical phrases used by the Royal College of Physicians three months earlier . . . [and] does not support any conclusion about his own views."[880] Brown & Williamson also makes a baffling argument that the Surgeon General two years later determined that smoking was a "habit" rather than an "addiction" and that the Surgeon General's determination "clearly trumps the earlier imprecise language quoted by FDA."

FDA has reviewed the full text of Ellis' speech and finds no support for Brown & Williamson's contention that Ellis was merely reciting the views of the Royal College; in the quoted passage, Ellis is clearly stating his own views. FDA is similarly unable to conclude that the 1964 determination of the U.S. Surgeon General transformed Ellis' assertion two years

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[879] Ellis C (BATCO), The smoking and health problem, in *Smoking and Health–Policy on Research*, Research Conference, Southampton, England (1962), at 4. *See* AR (Vol. 21 Ref. 220).

[880] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 27. *See* AR (Vol. 529 Ref. 104).

earlier that "smoking is a habit of addiction" into the statement that it is simply a habit. Because Brown & Williamson provides no evidence that other statements of its officials concerning the addictive properties of nicotine were not their own views, and the documents themselves do not support such a conclusion, FDA finds no basis to disregard those statements.

2. Brown & Williamson also challenges FDA's reliance on a report entitled, "A Tentative Hypothesis on Nicotine Addiction," arguing that it was not written by tobacco company researchers, reports no data, and is "nothing more than speculation."[881]

The report in question was sent to BATCO by the Battelle scientists who were doing contract work for BATCO on nicotine pharmacology, among other things, and contains their hypothesis of the mechanism by which smokers become addicted to nicotine. While the document hypothesizes as to the *mechanism* of addiction, it treats the existence of nicotine addiction as a fact, not hypothesis. For example, after hypothesizing that when smokers are deprived of nicotine, their endocrine systems become unbalanced, the report says: "[a] body left in this unbalanced status craves for renewed drug intake in order to restore the physiological equilibrium. This unconscious desire explains the addiction of the individual to nicotine."[882]

A copy of the report was sent by Charles Ellis to Addison Yeaman, the general counsel of Brown & Williamson. Accordingly, this document provides evidence that

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[881] *Id.* at 29.

[882] Haselbach C, Libert O, *A Tentative Hypothesis on Nicotine Addiction* (May 30, 1963), at 2. *See* AR (Vol. 20 Ref. 197-1).

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company executives had knowledge that nicotine is addictive.[883] Indeed, shortly thereafter, Yeaman wrote a memo in which he accepted the view that nicotine is addictive, and concluded, "[w]e are, then, in the business of selling nicotine, an addictive drug."[884]

3. A comment from Brown & Williamson argues that FDA has distorted its nicotine research by not recognizing that the research failed to confirm the hypotheses of its researchers. In support of this argument, Brown & Williamson offers only one example. According to the comment, the results of "Project HIPPO" failed to support its hypotheses.

The example put forward by Brown & Williamson does not establish that FDA distorted Brown & Williamson nicotine research. First, Brown & Williamson fails in its attempt to show misuse of the research project. Second, FDA relied on dozens of Brown & Williamson documents reflecting over thirty years of research, the vast majority of which Brown & Williamson does not challenge.

Project HIPPO consisted of a series of studies commissioned in the early 1960's by BATCO to investigate the role of nicotine in why people smoke, and specifically to compare the effects of nicotine with those of tranquilizers, which were perceived as marketplace competition for tobacco:

> The aim of the whole research "HIPPO" was to understand some of the activities of nicotine—those activities that could explain why

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[883] Letter from Ellis C to Yeaman A (Brown & Williamson) (Jun. 28, 1963). *See* AR (Vol. 14 Ref. 165-2).

[884] Yeaman A (Brown &Williamson), *Implications of Battelle Hippo I and II and the Griffith Filter* (Jul. 17, 1963), at 4. *See* AR (Vol. 21 Ref. 221). Brown & Williamson protests FDA's use of this document, claiming that it was stolen from Brown & Williamson and is privileged. FDA does not believe that this document can be considered confidential, having been published in newspapers and other media throughout the United States and made available to the public without limitation by the University of California.

> cigarette smokers are so fond of their habit. It was also our purpose to compare these effects of the new drugs called "tranquillizers" which might supersede tobacco habits in the near future.[885]

Contrary to the position taken by Brown & Williamson, Project HIPPO's authors reported that they were successful in demonstrating that nicotine was superior to tranquilizers in certain ways:

> Our investigation definitely shows that *both kinds of drugs* act quite differently, and that nicotine may be considered . . . as more "beneficial"—or less noxious—than the new tranquillizers, from some very important points of view.
>
> The so-called "*beneficial" effects of nicotine* are of two kinds:
> 1. Enhancing effect on the pituitary-adrenal response to stress;
> 2. Regulation of body weight." [886]

Although the researchers did not show that nicotine acted through certain hypothesized biochemical mechanisms, the documents demonstrate that this was not the central purpose of the research. Thus, Project HIPPO successfully demonstrated to BATCO that nicotine has two significant pharmacological effects on tobacco users: it acts like tranquilizers in helping them respond to stress, and it regulates body weight.

4. A comment from a public health organization pointed out a number of additional statements in BATCO and Brown & Williamson internal documents acknowledging the importance of nicotine's pharmacological effects to use of tobacco products.[887] For example, the comment provided a copy of a handwritten note by S. J. Green, the long-time director of research and a board member at BATCO, in which Green

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[885] Haselbach CH, Libert O, *Final Report on Project HIPPO II* (Mar. 1963), at 1. *See* AR (Vol. 64 Ref. 321).

[886] *Id.* at 2 (emphasis added).

[887] American Society of Addiction Medicine, Comment (Dec. 29, 1995), at 3. *See* AR (Vol. 528 Ref. 97).

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says that "[t]he strong addiction to cigarette[s] removes freedom of choice from many individuals."[888] The comment also provided a copy of a 1978 BATCO document that forecast developments in technology that could be used to produce current cigarette products. The author defined "a finished smoking material" as having the following purposes: "[t]o generate smoke, taste, and pharmacological effect."[889]

FDA agrees that many of the statements to which the comment draws attention provide additional support for the determination that Brown & Williamson knows that tobacco produces pharmacological effects on consumers, including addiction, and that consumers smoke cigarettes to sustain addiction and for other pharmacological effects.

iv. Other Comments.

1. Tobacco industry comments argue that the evidence compiled by FDA of a massive industry research enterprise on nicotine pharmacology is irrelevant to the intended use of the industry's products. The comments contend that the industry conducted this research to understand and improve its products, to compare the pharmacology of new cigarettes with that of other cigarettes, to be prepared for government restrictions on tobacco products, and to respond to consumer preferences. The comments also argue that the kind of research conducted by the industry was also being done by outside researchers and reported in the public domain. Thus, according to the comments, such research need not be related to the interests of manufacturers. For these reasons,

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[888] Notes of Green SJ (1978). *See* AR (Vol. 528 Ref. 97, appendix 18).

[889] Kilburn KD (BATCO), *A Technological Forecast of the Future of Tobacco Processing* (Oct. 16, 1978), at 60. *See* AR (Vol. 258 Ref. 3524).

according to the comments, the industry's research is not evidence of intent to affect the structure and function of the body.

FDA disagrees that the industry's extensive and sophisticated research into nicotine's pharmacological effects is irrelevant to the intended use of the products. This research establishes that the industry has actual knowledge that nicotine has powerful pharmacological effects and that consumers use tobacco to obtain those effects. "Objective intent" to affect the structure or function of the body may be established by a manufacturer's "knowledge of facts that would give him notice that a device introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it." 21 CFR 201.128 and 801.4.

The argument that other researchers conducted and published nicotine research similar to that conducted by the tobacco industry fails to provide an adequate basis to disregard the industry's research as evidence of intent. Although there may undoubtedly be other motives for this kind of research, the industry's own documents establishes that their motive is directly related to providing an adequate dose of nicotine the pharmacologically active ingredient in tobacco.

In its comments, Brown & Williamson even acknowledges that some of BATCO's most significant nicotine research was conducted, not because of outside pressure, but because Charles Ellis, senior scientific advisor to BATCO, believed that an alternative cigarette that provided only a nicotine aerosol could satisfy smokers and because he wanted to identify the "beneficial properties of nicotine."[890] Indeed, as described in the

[890] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 23. *See* AR (Vol. 529 Ref. 104).

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Jurisdictional Analysis, Ellis believed that the research was critical "to elucidate the effects of nicotine as a beneficent alkaloid drug"[891] and because "we are in a nicotine rather than a tobacco industry."[892] *See also* Jurisdictional Analysis, 60 FR 41621–41640. Industry documents further show that the research was not merely exploratory, but was intended to be used in product development.[893]

None of the additional motives claimed by the industry for its nicotine research are inconsistent with FDA's finding that the research was conducted because the industry believes people use tobacco to obtain the pharmacological effects of nicotine, and wanted to gather information about nicotine how to ensure that tobacco products provide an adequate dose of nicotine. Each of the motives listed by the industry logically coexist with the industry's belief that consumers use tobacco for its pharmacological effects. Indeed, most of the proffered explanations themselves strongly suggest that the industry believes that the pharmacological effects of nicotine are central to the success of its products. For example, the most obvious explanation for a company's decision to compare the nicotine pharmacokinetics of a new cigarette with that of existing cigarettes is that the company believes that the pharmacological effects of nicotine are important to the success of the new product.

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[891] Ellis C (BATCO), The smoking and health problem in *Smoking and Health–Policy on Research*, Research Conference, Southampton, England (1962), at 16. *See* AR (Vol. 21 Ref. 232).

[892] Johnson RR (BATCO), *Comments on Nicotine* (Jun. 30, 1963), at 10-11. *See* AR (Vol. 21 Ref. 242).

[893] Dunn WL (Philip Morris Inc.), *Plans and Objectives–1979* (Dec. 6, 1978), in 141 Cong. Rec. H7668-7669 (daily ed. Jul. 25, 1995) (nicotine pharmacology research would be used to "strengthen Philip Morris R&D capability in developing new and improved smoking products"). *See* AR (Vol. 14 Ref. 175a).

Similarly, the claim that the research on nicotine pharmacology was conducted to be prepared for government restrictions is consistent with the industry's belief that it must understand and preserve the pharmacological effects of nicotine to ensure the continued success of tobacco. This explanation for the industry's nicotine research was presented by the companies as the rationale for their nicotine analogue research. Internal documents show that the companies wanted to develop substitutes for nicotine that would mimic nicotine's pharmacological effects on the central nervous systems of smokers should restrictions prevent their continued use of nicotine.[894]

The industry's claim that it conducted research on maintaining and increasing nicotine deliveries from low-tar cigarettes because government officials "published concerns that smokers switching to lower 'tar' delivery cigarettes might change their smoking patterns if nicotine levels were too low"[895] similarly suggests that the industry believes that smokers smoke to obtain an adequate dose of nicotine. As discussed in section II.C.3.f., above, the small number of recommendations that low-tar, high-nicotine cigarettes be investigated were premised on the view that smokers use cigarettes to satisfy their dependence on nicotine and will compensate when given low nicotine cigarettes by smoking more intensely or more cigarettes to obtain an adequate dose of nicotine. It is not credible that the cigarette industry would develop cigarettes whose avowed purpose is to avoid smoker compensation, unless they share the view that smokers use cigarettes to obtain an adequate dose of nicotine.

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[894] *See, e.g.*, Kilburn KD, Underwood JG (BATCO), *Preparation and Properties of Nicotine Analogues* (Nov. 9, 1972), at 1-2. *See* AR (Vol. 31 Ref. 524-1).

[895] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 30. *See* AR (Vol. 529 Ref. 104).

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Finally, the claim that the research was conducted to respond to consumer preferences strongly suggests that the tobacco companies understand that consumers prefer products that deliver the pharmacological effects of nicotine. Where, as here, the tobacco industry is marketing a product to which most of its consumers are addicted, satisfying consumer preferences requires the company to understand the consumer's need for nicotine in order to supply a sufficient dose of nicotine. If, on the other hand, consumer preferences were limited to taste and flavor, research on nicotine pharmacology would be irrelevant to satisfying those preferences.

Even if the record supported the industry's claim that its research was *initiated* for some purpose other than its belief that people use tobacco for nicotine's pharmacological effects (which it does not), this would not alter the fact that the research *results* demonstrated to the industry that consumers use tobacco primarily for nicotine's pharmacological effects.

2. Tobacco company comments argue that the tobacco industry's nicotine research does not establish that adults smoke solely or "nearly exclusively" to obtain nicotine. One company, while acknowledging that its parent "explored the effects of nicotine and the role it played in smoking," contends that its research "generally has concluded that the presence and effects of nicotine do not alone account for smoking enjoyment."[896]

First, the industry's contention that its research shows that nicotine does not "alone" account for tobacco use is not in any way inconsistent with FDA's conclusion that

[896] *Id.* at 22-23.

the industry's research demonstrates that nicotine plays a central role in tobacco use. Indeed, throughout its comments, the tobacco industry implicitly acknowledges that its research demonstrates that nicotine does play a critical role in tobacco use.

Second, this research is persuasive evidence that the manufacturers intend cigarettes and smokeless tobacco products to affect the structure or function of the body of tobacco users. As described elsewhere in this notice, FDA's regulations provide that whether a product is "intended to affect the structure or any function of the body" may be established by, among other things, evidence that the vendor has knowledge that its product is being used for a pharmacological purpose, even though the product is not promoted for that purpose. 21 CFR 201.128 and 801.4. These regulations do not require the manufacturer to have knowledge that consumers use the product solely or nearly exclusively for a pharmacological purpose.

The industry's own research establishes that it has actual knowledge that consumers use tobacco products primarily for their pharmacological effects. This is persuasive and sufficient evidence that the manufacturers intend to affect the structure or function of the body. Furthermore, the tobacco industry's nicotine research, together with the other evidence in the record on consumer use, demonstrates that consumers use tobacco overwhelmingly for nicotine's pharmacological effects.

3. In the Jurisdictional Analysis, FDA reviewed the industry research and statements demonstrating that tobacco companies are aware of the high percentage of smokers who have made unsuccessful attempts to quit. This evidence demonstrates that a large proportion of tobacco users display one of the characteristic features of addiction: continued use despite attempts to quit. *See* Jurisdictional Analysis, 60 FR 41667–41673.

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One tobacco company argued that it had never determined that smokers cannot quit and that its research was not directed at control of smokers' ability to quit. Another tobacco company cited evidence that it knows many smokers would like to quit smoking, but that this is irrelevant to whether they are actually unable to quit. This company contends that the fact that many people do quit shows that tobacco is not addictive.

Both companies' comments rely on a false assumption about the relationship of the ability to quit and addiction. As described above in section II.A.3., "addiction" is not a condition that can be demonstrated only if no user is ever able to quit. Substantial percentages of users of such addictive substances as heroin and cocaine are eventually able to quit without formal treatment.[897] In fact, more than half of people seeking treatment for alcohol or drug abuse who also smoke cigarettes report that quitting smoking would be harder than giving up their other drug of abuse.[898]

The characteristic feature of all addictive substances is that it is very difficult (not impossible) to quit and that addicted users often fail despite serious attempts to do so. *See* section II.A.3., above. Tobacco company data bear this out. For example, a BATCO researcher presented data at a major BATCO conference showing that, although 40% of Canadian smokers have tried to quit, fewer than 4% were able to quit permanently within

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[897] Kleber HD, Conney D, Don't you believe that nicotine isn't addictive, *New York Times,* Apr. 4, 1994. *See* AR (Vol. 196 Ref. 2497).

[898] Kozlowski LT, Wilkinson A, Skinner W, *et al.*, Comparing tobacco cigarette dependence with other drug dependencies, *Journal of the American Medical Association* 1989;261(6):898-901. *See* AR (Vol. 41 Ref. 92).

the past year.[899] Similarly, a Philip Morris researcher reported that of smokers who made an attempt to quit in Greenfield, Iowa, only 28% were still abstaining after 7 months.[900]

The argument that tobacco companies do not have knowledge of the low success rates experienced by tobacco users who attempt to quit defies credibility. Not only is this a matter of common knowledge, but the Council for Tobacco Research (of which every major tobacco company is or has been a member) sponsored a book on tobacco research in which the authors review, among many topics, a wealth of data on the difficulty of quitting.[901] Indeed, the very company that argued that its knowledge was limited to the fact that some smokers want to quit has argued in court that consumers should be held to the knowledge that it is very difficult to quit.[902]

4. One comment provided additional tobacco industry-funded research on nicotine pharmacology that had not been included in the Jurisdictional Analysis. FDA has confirmed that the following studies submitted with the comment are additional tobacco industry-funded studies on nicotine pharmacology and the relationship of nicotine to tobacco use:

(1) Knapp PH, Bliss CM, Wells H, "Addictive aspects in heavy cigarette smoking," *American Journal of Psychiatry* 1963;119:966-972 (supported by the Tobacco Industry Research Committee);

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[899] Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference, Session III (Jul. 9–12, 1984), at BW-W2-02790 . *See* AR (Vol. 25 Ref. 337-1).

[900] Ryan FJ (Philip Morris Inc.), Cold Turkey in Greenfield Iowa: a follow-up study in *Smoking Behavior: Motives and Incentives*, ed. Dunn WL (Washington DC: VH Winston & Sons, 1973), at 233 (table 1). *See* AR (Vol. 8 Ref. 105).

[901] Larson PS, Silvette H, *Tobacco–Experimental and Clinical Studies: A Comprehensive Account of the World Literature* (1968), Supplement I at 300–302. *See* AR (Vol. 50 Ref. 151).

[902] Appellees brief in reply to appellants' opposition to petition for transfer, *Rogers v. R.J. Reynolds et al.*, No. 49A02-8904 CV 164 (Sup. Ct. Ind. 1990), at 7-8. *See* AR (Vol. 21 Ref. 229).

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(2) Ague C, "Nicotine content of cigarettes and the smoking habit: their relevance to subjective ratings of preferences in smokers," *Psychopharmacologia* 1972;24:326-330 (supported by the Tobacco Research Council);

(3) Beckett AH, Triggs EJ, "Enzyme induction in man caused by smoking," *Nature* 1967;216:587 (supported by the Tobacco Research Council); and

(4) Bowman ER, Turnbull LB, McKennis H, "Metabolism of Nicotine in the Human and Excretion of Pyridine Compounds by Smokers," *Journal of Pharmacology and Experimental Therapeutics* 1959; 127:92-95 (supported by the Tobacco Industry Research Committee and the American Tobacco Company).[903]

The study by Knapp, Bliss, and Wells, which was funded by the Tobacco Industry Research Committee, the predecessor to the Council for Tobacco Research, concluded that nicotine produces addiction in some tobacco users.

b. Comments on Product Research and Development To Optimize and Manipulate Nicotine Delivery

i. Comments on Specific Philip Morris Product Research and Development Projects.

1. A comment from Philip Morris argues that FDA has mischaracterized its nicotine analogue research. The comment concedes that Philip Morris conducted research in which the company developed a "behavioral, peripheral and central nervous system profile of nicotine" and compared nicotine analogues to this profile.[904] The comment asserts, however, that the company's research on nicotine analogues is not evidence of intended use because outside researchers were also investigating nicotine analogues, Philip

[903] American Society of Addiction Medicine, Comment (Dec. 29, 1995), at appendix 9. *See* AR (Vol. 528 Ref. 97).

[904] Philip Morris Inc., Comment (Jan. 2, 1996), at 25. *See* AR (Vol. 519 Ref. 105).

Morris provided analogues to outside researchers, and the research did not result in development of a commercial product.[905]

Philip Morris appears to be arguing that if outside researchers were also interested in nicotine analogues for unspecified reasons, then Philip Morris' own intent in conducting this research is irrelevant. FDA disagrees. Philip Morris' purpose in conducting nicotine analogue research provides evidence of the company's knowledge that nicotine's psychoactive and reinforcing effects are central to the market for tobacco. The purposes of outside researchers do not diminish or alter Philip Morris' motives in any way.

Philip Morris' internal documents and the statements of former Philip Morris employees reveal that the purpose of its nicotine analogue research was to find chemicals that mimic nicotine's effects on the central nervous system, but not its adverse effects on the cardiovascular system, that could be substituted for nicotine in cigarettes to produce a safer cigarette.[906] Specifically, Philip Morris sought to identify, through sophisticated laboratory studies in rats, whether nicotine produces discriminative stimulus effects (which predict whether a substance has mood-altering effects in humans) and reinforcing effects

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[905] Additional comments alleging that FDA misrepresented the results of Philip Morris' studies on nicotine's reinforcing properties and invalidly equated reinforcement with addiction are addressed in section II.C.6.a.i., above.

[906] *See, e.g., Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. (Apr. 28, 1994), at 5, 35 (testimony of Victor DeNoble) *See* AR (Vol. 708 Ref. 2).

See also, Charles JL (Philip Morris Inc.), *Nicotine Receptor Program–University of Rochester* (Mar. 18, 1980) ("The original charge of the nicotine program was (1) to ascertain if the central and peripheral effects could be 'separated' and (2) to design a nicotine analogue which would have CNS activity equivalent to nicotine with little or no peripheral effect"). *See* AR (Vol. 32 Ref. 532).

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(which predict whether a substance will induce repeated compulsive use in humans), and then find analogues that could produce the same effects, for use in future cigarettes.[907]

Philip Morris' nicotine analogue research thus demonstrates that Philip Morris knows that nicotine's psychoactive and reinforcing effects are critical to the success of existing tobacco products.

2. In the Jurisdictional Analysis, FDA presented evidence that Philip Morris conducted research on acetaldehyde, another component of cigarette smoke that was hypothesized to contribute to tobacco's reinforcing effects. According to Philip Morris research reports, the objective of this research was to find the "maximally reinforcing" combination of nicotine and acetaldehyde.[908] Philip Morris argues that its research to find the maximally reinforcing combination of acetaldehyde and nicotine is not relevant to the intended use of cigarettes because the mean level of acetaldehyde in cigarettes is declining and is commonly found in proportions far from those found to be maximally reinforcing. Philip Morris also argues that its research does not establish that acetaldehyde is addictive.

Regardless of whether Philip Morris has increased the acetaldehyde levels in its cigarettes, its research on acetaldehyde is further evidence of the company's understanding of the reinforcing properties of cigarettes and the steps it has taken to exploit those properties. In fact, there is some evidence that acetaldehyde levels in Philip Morris products have increased since 1982, the year that Philip Morris conducted its

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[907] DeNoble VJ, Carron L (Philip Morris Inc.), *Progress in Behavior Pharmacology Laboratory* (Mar. 27, 1981), at 1–32. *See* AR (Vol. 32 Ref. 541). There is no evidence that Philip Morris tested these analogues to ensure that they produced the same "taste" as nicotine.

[908] DeNoble VJ (Philip Morris Inc.), *Project Number 1610 (Behavior Pharmacology) Objectives and Plans 1982–1983* (Jul. 20, 1982), at 2. *See* AR (Vol. 345 Ref. 5443).

reinforcement research. According to a report in the *Wall Street Journal*, a competing tobacco company that analyzed Marlboro King Size cigarettes found that acetaldehyde levels in that brand had increased 40% between 1982 and 1991.[909]

Although a determination that acetaldehyde is a positive reinforcer is not equivalent to a finding that it is addictive, it is one of the most critical pieces of evidence that a substance is addictive. For a complete description of the role of reinforcement in addiction, see section II.A.3.c., above. Philip Morris' research into acetaldehyde's use as a multiplier of the reinforcing effects of nicotine provides evidence of Philip Morris' intent to deliver a reinforcing drug.

3. Philip Morris disputes William Farone's statement that designing cigarettes with reduced tar but an acceptable level of nicotine was a key objective of the tobacco industry. Philip Morris makes a series of arguments that purport to explain why the tar and nicotine levels in marketed cigarettes have not been reduced proportionately. The company argues that the "physics" of the filter technologies used to reduce tar and nicotine do not reduce these two constituents to the same degree, resulting in a slight increase in the nicotine-to-tar ratio, and that the Merit Ultra Lights brand of cigarettes is not an example of manipulation of nicotine-to-tar ratios.[910]

Neither of these arguments challenges Farone's statement that the tobacco industry conducted extensive product development *research* on how to reduce tar while maintaining a level of nicotine that provides the consumer with the same "pharmacological

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[909] Freedman AM, Fine tuning Marlboro, *Wall Street Journal*, (Oct. 18, 1995). *See* AR (Vol. 533 Ref. 102).

[910] Philip Morris Inc., Comment (Apr. 19, 1996), at 61-62. *See* AR (Vol. 700 Ref. 226).

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satisfaction" as full strength cigarettes.[911] Philip Morris' arguments with respect to the methods used to control nicotine-to-tar ratios are addressed in sections II.C.4., above, and section II.C.6.c.ii., below.

Tobacco industry comments also state that Farone fails to acknowledge that, beginning in the 1970's, outside scientists recommended that research be conducted on the development of a high nicotine/low tar cigarette. This argument has already been addressed above in section II.C.3.f. In this context, FDA notes that Farone is reporting on the tobacco industry's *internal* reasons for conducting the research, and these reasons are relevant to establishing the companies' intent to affect the structure or function of the body.

4. Philip Morris challenges the reliability of statements made in a declaration submitted to FDA by Ian L. Uydess, a research scientist who worked for Philip Morris from 1977 to 1981, and from 1982 to 1989. Uydess' declaration is based on his own participation in research and development projects at Philip Morris; his personal observations of activities in other parts of the company; his attendance at meetings and discussions held among the scientists, engineers and management at Philip Morris; and his close association with other scientists and senior management at Philip Morris.[912] Philip Morris argues that the information provided by Uydess is unreliable because: (1) he left Philip Morris seven years ago; (2) he did not work on the development of commercial cigarettes; and (3) his declaration reports, in part, on information relayed to him informally

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[911] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 7. *See* AR (Vol. 638 Ref. 2).

[912] Declaration of Uydess IL (Feb. 29, 1996), at 5. *See* AR (Vol. 638 Ref. 1).

by colleagues. In contrast, other comments argue that the reliability of Uydess' statement is shown by its consistency with the statement of other former tobacco company officials.

FDA disagrees that Uydess' declaration is unreliable or irrelevant to establishing the knowledge and actions of Philip Morris. His position and tenure at the company gave him personal knowledge of the views of Philip Morris officials on the role of nicotine in cigarettes, and of the company's research and actions in developing new products. Moreover, like Farone, Uydess' statements about the knowledge, views, and actions of Philip Morris are consistent with a large body of Philip Morris documents and statements, covering over three decades. Uydess' statements are also consistent with the recent Philip Morris document concerning Project Table, demonstrating that the company's views have not changed since Uydess left the company. The information he provided is thus corroborated by evidence already gathered by FDA.

5. Philip Morris also challenges particular statements made by Uydess in his declaration. FDA addresses those comments that challenge statements relied on by the Agency.

Philip Morris argues that Uydess' statement that Philip Morris conducted exhaustive research on nicotine chemistry in tobacco leaf and tobacco smoke is true but irrelevant because: (1) any manufacturer in the business of selling an agricultural product develops expertise in the product; (2) tobacco chemistry is widely studied outside Philip Morris; and (3) the company's research was not used to increase artificially the nicotine yield of its commercial cigarettes.

FDA disagrees that extensive research by a tobacco manufacturer into the amount of nicotine in tobacco leaf and tobacco smoke—using highly sophisticated equipment

developed, in part, by the company—is irrelevant to the manufacturer's intent in selling cigarettes. Philip Morris' arguments suggest that Uydess' statement relates to the company's research on tobacco chemistry in general, rather than to any specific component in tobacco. Uydess says, however, that Philip Morris' exhaustive research related specifically to nicotine and that Philip Morris "wanted to know everything there was to know about nicotine."[913] The intensity of Philip Morris' focus on nicotine provides evidence that the company knows that nicotine is central to the success of its products.

Philip Morris' public position is that if nicotine is important, it is important, like flavorants, only for its sensory appeal. The company, however, offers no evidence or argument that its exhaustive research on nicotine pharmacology is matched by its research on any other flavor or sensory aspects of nicotine. Moreover, as described in section II.C.2.a., above, Philip Morris' public position is contradicted by the views of its scientists, who have repeatedly stated that the primary reason for smoking is nicotine's pharmacological effects. FDA concludes that the extent of Philip Morris' research on nicotine is relevant to establishing its intent to affect the structure or function of the body.

ii. Comments on Specific RJR Product Research and Development Projects.

1. RJR contends that Premier and Eclipse are not "alternative cigarettes" but conventional cigarettes, and that they were created to address public criticisms of cigarettes. RJR also disputes FDA's findings that Premier contained very little tobacco and that the nicotine in blood studies conducted on Premier show that RJR intended Premier to deliver nicotine to the smoker's blood and brain.

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[913] *Id.* at 14.

RJR's arguments concerning Premier and Eclipse are not persuasive. RJR now claims that Premier was a conventional cigarettes because it was a "roll of tobacco wrapped in paper"; "contained sugars, humectants, flavorings, tobacco paper, and a filter"; was "taxed as a cigarette"; and was "marketed for smoking taste and pleasure."[914] In fact, Premier resembled a conventional cigarette in outward appearance only. It contained a carbon tip that served as the heat source. A nicotine source had been combined with glycerol and adsorbed within alpha-alumina spheres contained within an aluminum cylinder positioned directly behind the carbon heat source. RJR informed FDA that at least 70% of the nicotine delivered by Premier was provided from spray-dried tobacco. The remaining nicotine was provided from the cut tobacco leaf surrounding this cylinder and the tobacco extract-treated paper filter positioned in front of the cellulose acetate filter.[915] Although there was a small amount of tobacco in Premier, it was not burned; the only component of Premier that was burned was the carbon heat source and some paper, to "simulate[] the ash of other cigarettes."[916]

The critical aspect of Premier is the fact that the major constituents of its smoke differed from those in the smoke of conventional cigarettes in almost every way except nicotine content.[917] In other words, virtually the only constituent of tobacco smoke that RJR designed Premier to preserve was nicotine.

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[914] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), 35. *See* AR (Vol. 519 Ref. 103).

[915] Letter with enclosures from Hutt PB, outside counsel for RJR, to Budich KM, FDA (Jan. 26, 1988). *See* AR (Vol. 34 Ref. 556).

[916] R.J. Reynolds Tobacco Co., *Chemical and Biological Studies on New Cigarette Prototypes That Heat Instead of Burn Tobacco* (Winston-Salem NC, 1988), at 4. *See* AR (Vol. 107 Ref. 980).

[917] *Id.* at 134-136.

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FDA does not contest that Premier was developed to address criticisms of cigarettes; undoubtedly, Premier was an attempt to make a safer cigarette. However, making a safer cigarette would not require the company to maintain a near-normal nicotine delivery, or to ensure that the nicotine was actually delivered to the smoker's blood in the same quantity as from conventional cigarettes, unless the company believed that ensuring near-normal nicotine blood levels was an essential feature of a profitable cigarette. RJR's argument that its pharmacokinetic comparisons of the nicotine levels delivered by Premier and a conventional cigarette were intended simply as comparisons of the two products, apparently without any further purpose, is unpersuasive. According to RJR's publication summarizing the studies conducted on Premier, RJR did not conduct similar pharmacokinetic studies on the delivery of any other smoke constituent to the smoker's blood.[918] This fact demonstrates that RJR believes that nicotine is the defining ingredient of cigarettes and that delivery of an adequate level of nicotine to the smoker's blood is central to the success of its products.

The RJR nicotine blood level study is also directly at odds with the company's public position that nicotine's role is limited to providing taste or flavor. The amount of nicotine delivered into a smoker's bloodstream is irrelevant to nicotine's ability to function as a flavoring agent. Nicotine absorption into the bloodstream is relevant only if the company believes that nicotine delivers pharmacological effects to the smoker and that these effects are important to the use of the product. RJR's reliance on a Surgeon General recommendation that cigarettes with low tar-to-nicotine ratios be evaluated for their

[918] *Id.* at 457-557.

pharmacological properties and effects on compensation[919] merely underscores RJR's understanding that the nicotine in cigarettes delivers pharmacological effects and that consumers use cigarettes for these effects.

RJR's last argument, that its study was necessary because an FDA representative later asked whether nicotine was delivered by Premier in amounts comparable to conventional cigarettes, is similarly unavailing. As RJR acknowledges in its comment, the study had already been conducted at the time FDA asked the question. Moreover, FDA asked this question because FDA saw the delivery of nicotine to the blood of smokers as relevant to whether Premier should be regulated as a drug or device.

2. RJR also argues that FDA has misused an RJR book on tobacco flavors in the Jurisdictional Analysis. FDA noted that the book, which contains over one thousand flavorants for tobacco, does not list nicotine as a flavorant.[920] RJR contends that the book describes only flavors that could be added to tobacco, and nicotine is not listed because RJR does not add nicotine.

FDA does not find RJR's argument persuasive. Even if the book were limited to flavors that "could be added" to tobacco (a limitation that is not stated in the book itself), the claim that RJR does not use it as an additive would not logically exclude it from the category of substances that "could" be added. The book does not purport to list only those substances that are actually added by RJR to its tobacco products.

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[919] Department of Health and Human Services, *The Health Consequences of Smoking: The Changing Cigarette, A Report of the Surgeon General, 1981*, at 58. *See* AR (Vol. 123 Ref. 1586).

[920] Leffingwell JC, Yound HJ (R.J. Reynolds Tobacco Co.), *Tobacco Flavoring for Smoking Products* (Winston-Salem NC: R.J. Reynolds Tobacco Co., 1972). *See* AR (Vol. 34 Ref. 591).

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Moreover, RJR's claim that it does not add nicotine raises an inconsistency. If it is the company's position that nicotine is benignly used (and controlled) in tobacco solely for its effects on flavor, and is an extremely important flavorant in tobacco, why have a policy—as RJR claims[921]—of not adding it when appropriate? The book does list many other naturally occurring components of tobacco and tobacco smoke as flavorants, apparently contemplating their addition to tobacco. That RJR policy in itself therefore seems at odds with the claim that nicotine is used for flavor.

3. RJR also maintains that FDA's reliance on an RJR patent was misplaced. In the Jurisdictional Analysis, FDA cited an RJR patent for a process that increases the nicotine content of a cigarette but masks the resulting harsh taste of the cigarette.[922] FDA used the patent to show that the tobacco industry wanted to increase nicotine in some cigarettes *despite* its harsh flavor. RJR dismisses the significance of this patent, arguing that FDA has ignored "basic principles of flavor" and that people like harsh flavors. RJR also argues that the patent is irrelevant because the process it described for increasing nicotine and masking the resulting flavor was not used in commercial cigarettes.

RJR's argument is contradicted by its own patent and by the statements of a flavor specialist employed by the company. Both acknowledge that nicotine's harsh flavor can be unpleasant to the smoker and must be masked by the addition of sugars or other chemicals. The patent itself demonstrates that the company, as the assignee of the patent, knows that increasing nicotine past a certain point in low-tar cigarettes produces a harshness that leads to

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[921] R.J. Reynolds Tobacco Co., Comment (Jan. 2, 1996), at 50. *See* AR (Vol. 519 Ref. 103).

[922] U.S. Patent No. 4,830,028. Lawson JW, Bullings BR, Perfetti TA, R.J. Reynolds Tobacco Company, *Salts Provided from Nicotine and Organic Acid as Cigarette Additives* (May 16, 1989), at C1. *See* AR (Vol. 34 Ref. 593).

rejection by consumers. Rather than simply keep nicotine below that point, as a company would do if nicotine were present solely for flavor, the patent describes a process for increasing nicotine and simultaneously masking its harshness. The claim that the processes in the patent were not used does not in any way undercut FDA's conclusion that the patent demonstrates RJR's knowledge that nicotine's effects on taste are sometimes negatively related to product acceptance, and RJR's desire to increase nicotine content even beyond the point where nicotine has a demonstrably negative effect on taste.

Moreover, an RJR flavor specialist has written that although nicotine is necessary for "satisfaction," its flavor in some tobacco blends is "a 'harshness' which can be choking and unpleasant," requiring that steps be taken to mask nicotine's flavor.[923]

Thus, it is clear that RJR officials recognize that nicotine's flavor is sometimes a liability that must be masked to permit nicotine to fulfill its pharmacological functions.

4. RJR comments that a document that refers to "physiological satisfaction," which FDA cited as an RJR Marketing Report, is in fact an Imperial Tobacco Co. document.[924]

FDA agrees that this document is an Imperial Tobacco Co. document rather than an RJR document. The document is one of dozens of tobacco industry documents in which the term "satisfaction" is used to describe a pharmacological effect. It is therefore relevant to establishing the industry's understanding and use of that term.

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[923] Leffingwell JC (R.J. Reynolds Tobacco Co.), Nitrogen components of leaf and their relationship to smoking quality and aroma, presented at the 30th Tobacco Chemists' Research Conference, at 9. *See* AR (Vol. 28 Ref. 450).

[924] Imperial Tobacco Ltd., *Matinee Marketing Strategy* (1971) ("A cigarette that delivers physiological satisfaction, yet is low in tar and nicotine, must surely be a major objective"), quoted in Memorandum to File from Joyal C (Dec. 27, 1992), at 11. *See* AR (Vol. 27 Ref. 384).

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iii. Comments on Specific Brown & Williamson Product Research and Development Projects.

1. A comment from Brown & Williamson argues that FDA has distorted its nicotine research by not recognizing that the research was not commercialized. According to the comment, Project ARIEL was never commercialized.

ARIEL was an alternative cigarette, developed by Charles Ellis, and referred to by BATCO researchers as a "device[] for the controlled administration of nicotine."[925] ARIEL eliminated almost every ingredient of conventional cigarettes other than nicotine. Its purpose was to provide "the same benefits, pleasure and satisfaction without the disadvantages" of a conventional cigarette.[926] The relevance of this product to intent is that it demonstrates that BATCO regarded nicotine as the essential ingredient in, and the source of the pleasure and satisfaction from, cigarettes. ARIEL's development demonstrates Brown & Williamson's knowledge of and belief in nicotine's central role in cigarettes, regardless of its ultimate failure to be accepted by consumers, or Brown & Williamson's decision not to market it.

2. As described above, a BATCO study entitled "Project Wheat" was conducted to determine the level of nicotine preferred by smokers and correlate it with the extent to which the smoker relies on cigarettes to meet "inner needs."[927] A smoker's inner need level was defined by the extent to which the smoker used nicotine to relieve stress,

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[925] Minutes of BATCO Research Conference at Hilton Head Island, SC (Sep. 24–30, 1968), at 3. *See* AR (Vol. 31 Ref. 525).

[926] U.S. Patent No. 3,258,015. Ellis CD, Dean C, Schachner H, *et al.*, Battelle Memorial Institute, *Smoking Device* (Jun. 28, 1966). *See* AR (Vol. 34 Ref. 569).

[927] Wood DJ, Wilkes EB (BATCO), *Project Wheat - Part 1: Cluster Profiles of U.K. Male Smokers and their General Smoking Habits* (Jul. 10, 1975), at 1. *See* AR (Vol. 20 Ref. 204-1).

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aid concentration, avoid weight gain, or reduce craving. BATCO hypothesized that "the inner need dimension was probably defining a requirement for nicotine."[928] FDA pointed out that inner need therefore correlated with the extent to which a smoker used cigarettes for pharmacological effects. Project Wheat was intended to allow BATCO to market cigarettes with different nicotine levels designed to satisfy identified groups of consumers. Brown & Williamson argues that FDA had no basis for concluding that a smoker's inner need was defined by the extent to which the smoker used cigarettes for the drug effects of nicotine, that Project Wheat failed to find any significant correlation between inner need levels and preferred nicotine delivery, that the term "inner need" came from an outside researcher, not BATCO, and that FDA falsely suggested that Project Wheat identified an allegedly "addictive" dose of nicotine.

Brown & Williamson's attempts to discredit FDA's characterization of Project Wheat are not persuasive. FDA relied on the study as evidence that Brown & Williamson had conducted research on the dose of nicotine required by consumers with the purpose of designing cigarettes to satisfy their nicotine requirements. Brown & Williamson acknowledges that Project Wheat was designed to determine whether smokers who smoked to satisfy an "Inner Need" had preferred nicotine delivery levels, and that this information was to be used to design cigarettes to meet their needs.[929] These facts alone demonstrate that it was the tobacco company's intention to produce cigarettes with satisfying doses of nicotine. (Nowhere did FDA state that the study was intended to establish "addictive" doses of nicotine.)

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[928] *Id.* at 5.

[929] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 43–44. *See* AR (Vol. 529 Ref. 104).

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Moreover, both Project Wheat and other Brown & Williamson research demonstrate that the company knew that "Inner Need" level corresponded to the smoker's use of cigarettes for pharmacological effects. Project Wheat researchers concluded that future studies to design cigarettes with acceptable nicotine levels should classify smokers along a single dimension of inner need that might correspond to "pharmacological addiction":

> [I]t would be preferable to position respondents along the single dimension of Inner Need. . . . the suggestion is very much in line with that made by Russell . . . who . . . concluded that *it might prove more useful to classify smokers according to their position on a single dimension of pharmacological addiction* rather than in terms of their profiles on the six types of smoking.[930]

Brown & Williamson's assertion that stress relief, aided concentration, and weight control are not among the principal pharmacological effects of nicotine is not credible. In fact, as early as 1962, Project HIPPO concluded that nicotine's most significant pharmacological benefits were its ability to relieve stress and to control weight gain.[931]

Contrary to Brown & Williamson's argument, Project Wheat found a correlation between inner need level and preferred nicotine delivery.[932] Thus, the Project Wheat researchers concluded that inner need correlated with preferred nicotine delivery and agreed with Russell that inner need is related to pharmacological addiction.

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[930] Wood DJ (BATCO), *Project Wheat - Part 2: U.K. Male Smokers: Their Reactions to Cigarettes of Different Nicotine Delivery as Influenced by Inner Need* (Jan. 30, 1976), at 49 (citation omitted) (emphasis added). *See* AR (Vol. 20 Ref. 204-2).

[931] Haselbach CH, Libert O, *Final Report on Project HIPPO II* (Mar. 1963), at 2. *See* AR (Vol. 14 Ref. 163-1).

[932] Wood DJ (BATCO), *Project Wheat - Part 2: U.K. Male Smokers: Their Reactions to Cigarettes of Different Nicotine Delivery as Influenced by Inner Need* (Jan. 30, 1976), at 47-48 ("High Need clusters tend to prefer relatively high nicotine cigarettes, and . . . their optimum nicotine delivery is certainly higher than is that of the Low Need clusters.") *See* AR (Vol. 20 Ref. 204-2).

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3. A comment from Brown & Williamson claims that the company has never marketed a product that used "elasticity" to enable smokers to compensate for lowered nicotine yields. The company concedes that internal documents show that "BATCO explored the possibility of using its knowledge of compensation in the development of low 'tar' products" but claims that these were only theoretical discussions.[933]

FDA relied, in part, on the industry's product development research on increasing nicotine as evidence that the industry understands that tobacco satisfaction is a function of the pharmacological effects of nicotine and of the industry's attempts, successful or not, to ensure that tobacco users receive sufficient nicotine to achieve those effects. FDA did not rely on this research as evidence that the researched products were marketed.

In fact, however, there is good reason to believe that Brown & Williamson, as well as other tobacco companies, have incorporated "elasticity" into their marketed products. For example, Brown & Williamson's Barclay cigarettes were promoted as ultra-low cigarettes, with advertised deliveries of 1 mg tar and .02 mg nicotine, as measured by the FTC method. *Federal Trade Commission v. Brown & Williamson*, 778 F.2d 35, 37 (D.C. Cir. 1985). Philip Morris and RJR complained to the FTC that Barclay's channel-ventilated filter system allowed the cigarette to produce low tar and nicotine yields when measured by the FTC (smoking machine) method, but to actually deliver far more tar and nicotine to the smoker. According to the complaint, the FTC smoking machine is able to "smoke" the cigarette without obstructing Barclay's unique ventilation system, but "when the cigarette is smoked between human lips its air ventilation system is inevitably

[933] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 42. *See* AR (Vol. 529 Ref. 104).

obstructed and the cigarette delivers disproportionately more tar and nicotine than other comparably rated cigarettes." *Id.* at 37.

The FTC brought an enforcement proceeding to enjoin Brown & Williamson from using the FTC tar and nicotine figures in Barclay advertisements. *Federal Trade Commission v. Brown & Williamson*, 580 F. Supp. 981 (D.D.C. 1983), *aff'd in part, rev'd in part*, 778 F.2d 35 (D.C. Cir. 1985). The district court found, and the Court of Appeals agreed, that use of the FTC tar and nicotine figures for Barclay was false and misleading, because—primarily as a result of its channel-ventilated filter system—Barclay delivers significantly more tar and nicotine to the smoker than indicated by the FTC yields. 580 F. Supp. at 989; 778 F.2d at 41-42. Thus, Barclay represents a clear example of the use of filter technology to provide elasticity, i.e., to enable the smoker to extract more nicotine from the smoke than the advertised yield.

Brown & Williamson argues that Barclay is not an example of a product designed to provide elasticity, and that there is no evidence to support FDA's claim that the channel-ventilated filter boosts nicotine delivery. FDA disagrees. The district court opinion in *Federal Trade Commission v. Brown & Williamson* demonstrates that Barclay cigarettes deliver substantially more nicotine than their advertised yields and that this increase in nicotine delivery over the machine-tested yield is due to compromising the channel-ventilated filter during human smoking. The district court cited a study submitted by Brown & Williamson, which found that "smokers who smoked Barclay received approximately 1-1/2 to 2 times as much nicotine into their systems as smokers of the other cigarettes [with comparable FTC ratings] tested." 580 F. Supp. at 988. The court also

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found that the increase in nicotine and tar deliveries was due to compromising the ventilation system under actual smoking conditions. 580 F. Supp. at 989.

The conclusion that Barclay was designed to provide elasticity is also supported by evidence that Barclay was reported to contain significantly more nicotine than comparable cigarettes. As described above in section II.C.4., an independent study conducted in 1982 showed that Barclay had both the highest nicotine concentration and the most total nicotine in the rod of all the cigarette brands tested, including regular strength (high tar/high nicotine) cigarettes.[934] Compared to the other cigarettes with comparable FTC nicotine ratings (≤0.2 mg nicotine, as published in 1981 FTC Report) that were tested, Barclay contained a tobacco blend with a 50% to 95% higher nicotine concentration, and 20% to 85% more total nicotine. Thus, while Barclay had among the lowest FTC yields, it delivered a significantly higher level of nicotine during human smoking because (1) it contained more nicotine than any comparable cigarette, and (2) the nature of the filter permitted smokers to defeat the ventilation system and obtain substantially more nicotine than the advertised yield (1-1/2 to 2 times the nicotine of comparable cigarettes, according to Brown & Williamson's own study).

iv. Other Comments.

1. Comments from the tobacco industry argue that the tobacco company studies cited by FDA do not support the finding that smokers compensate. One comment argues that Brown & Williamson and BATCO researchers did not acknowledge that

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[934] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 173 (Jun. 23, 1994) (data from Neal Benowitz). *See* AR (Vol. 709 Ref. 3).

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smokers compensate to obtain a dose of nicotine that satisfies a physiological need. This comment does concede, however, that it is "hardly news" that "the phenomenon of compensation was internally 'recognized' or 'acknowledged' by tobacco manufacturers."[935] This comment also argues that reductions in tar and nicotine yields have resulted in reductions of the amount of nicotine obtained by smokers. On the other hand, a comment from a public health organization provided additional examples of industry statements and research on compensation.[936]

FDA has reviewed the studies relied on in this section of the Jurisdictional Analysis and concludes that they provide a wealth of evidence that the tobacco industry understands that smokers compensate to obtain a desired dose of nicotine. The contention that these studies fail to demonstrate compensation cannot be supported. For example, BATCO researchers stated in 1984 that "it is accepted that nicotine is both the driving force and the signal (as impact) for compensation in human smoking behavior."[937]

A large number of additional industry studies cited by FDA found that compensation occurred to one degree or another. *See* Jurisdictional Analysis, 60 FR 41659–41666. Throughout these studies and conference reports, tobacco company officials consistently recognize that compensation behaviors occur to adjust nicotine dose. The public health organization comment provided several additional examples of tobacco industry acknowledgment that compensation occurs because smokers are attempting to

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[935] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 40. *See* AR (Vol. 529 Ref. 104).

[936] American Society of Addiction Medicine, Comment (Dec. 29, 1995), Table 6. *See* AR (Vol. 528 Ref. 97).

[937] Minutes of BATCO Group R&D Smoking Behaviour-Marketing Conference, Session III (Jul. 9-12, 1984), at 56. *See* AR (Vol. 25 Ref. 325-1).

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maintain their customary nicotine dose. For example, a 1981 monograph on nicotine published by the Tobacco Advisory Council (an industry organization of which BATCO was a member) reviewed the evidence on compensation and concluded that while regulation of nicotine intake is not consistently seen in every study:

> Human subjects appear to modify their smoking behaviour to maintain the total dosage of nicotine when they smoke cigarettes of varying nicotine content. . . . Studies of nicotine antagonists indicate that smokers seek an effective brain level of nicotine when modifying their smoking behaviour.[938]

Accordingly, the industry's research amply supports FDA's conclusion that the tobacco industry knows that smokers use cigarettes to "compensate"—to obtain desired doses of nicotine.

2. One comment from a tobacco manufacturer argues that "much" of the nicotine-related research did not result in alterations to marketed products, and a comment from another cigarette manufacturer argues that its product development research did not result in the addition of "extraneous nicotine."

The claim that some of the industry's research did not result in changes to commercial-marketed products does not alter the relevance of the industry's research to establishing manufacturers' awareness of the pharmacological effects of nicotine. As noted above, the knowledge produced by the research is evidence of intended use. Moreover, there is a great deal of evidence that the knowledge was acted upon. Even the industry comments do not claim that none of the research was acted upon. For example, the brands of cigarettes advertised as lowest in tar and nicotine have the highest

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[938] Cohen AJ, Roe JC (Tobacco Advisory Council), *Monograph on the 'Pharmacology and Toxicology of Nicotine'* (1981), at 38 (citation omitted). *See* AR (Vol. 34 Ref. 583).

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concentrations of nicotine on the market, reflecting industry to ensure that nicotine levels in low-yield products do not fall below minimum levels that consumers will accept. *See* section II.C.4.a., above.

Finally, the argument that none of the product development research resulted in the addition of "extraneous nicotine" to commercial cigarettes is irrelevant to establishing intended use. Whether or not this statement is true, the research, in and of itself, establishes the knowledge of tobacco manufacturers that nicotine delivery is essential to the success of their products. In addition, the evidence shows that nicotine has actually been manipulated in commercial cigarettes, demonstrating that tobacco manufacturers have not merely researched but have taken affirmative steps to ensure the delivery of an adequate dose of nicotine. *See* Jurisdictional Analysis, 60 FR 41693–41733. It is the fact that the industry has manipulated nicotine delivery, rather than the manner in which it is accomplished, that is relevant to establishing the intended use of these products.

c. Comments on Nicotine Manipulation and Control

i. Comments on the Use of High-Nicotine Blends in Low-Yield Cigarettes.

1. The cigarette manufacturers contend that the use of high-nicotine blends in low-tar cigarettes does not affect the nicotine delivery of these cigarettes. According to the manufacturers, the increase in nicotine from the use of high-yield blends is more than offset by other design features, such as a reduction in the total mass of tobacco in the cigarette and increased filtration and ventilation.

The Agency disagrees. It is beyond reasonable dispute that the use of high-nicotine blends does affect nicotine deliveries. Indeed, the joint comment of the manufacturers acknowledge this point. The comment concedes that "nicotine content of

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the leaf" is one of the "*factors that determine the nicotine yield in the cigarette smoke.*"[939] Of the four factors that the comment lists as determining nicotine yield, two of the factors —"the blend itself" and "the percentage of processed tobaccos"[940]—relate directly to the concentration of nicotine in the cigarette rod. Similarly, Alexander Spears, the vice chairman and chief operating officer of Lorillard, has acknowledged that among other factors, "*the nicotine yield of a cigarette is determined by the nicotine content of the tobacco.*"[941]

Although it may be true that other design features of low-tar cigarettes reduce nicotine deliveries, the use of high-nicotine blends is designed to *offset* those reductions. Thus, high-nicotine blends result in higher nicotine deliveries than would be provided by a low-tar cigarette that did not use such blends.

Moreover, the nicotine yields measured on an FTC smoking machine do not accurately predict the amount of nicotine that will be inhaled and absorbed by smokers because smokers of low-yield products frequently compensate for the low nicotine deliveries by inhaling more deeply or puffing more frequently. *See* Jurisdictional Analysis, 60 FR 41573–41574. The use of higher nicotine blends in low-yield cigarettes increases the total amount of nicotine that is available to be extracted by smokers.

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[939] Joint Comment of Cigarette Manufacturers, Comment, (Jan. 2, 1996), Vol. IV, at 69 (emphasis added). *See* AR (Vol. 535 Ref. 96).

[940] *Id.* at 70.

[941] Spears AW (Lorillard Tobacco Co.), *Factors Affecting Smoke Delivery of Nicotine and Carbon Monoxide*, presented at the 1975 Symposium-Nicotine and Carbon Dioxide (Nov. 17-18, 1975), in *Symposium Proceedings-1*, 12-18, at 13 (emphasis added). *See* AR (Vol. 27 Ref. 395a).

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2. Brown & Williamson's comments concede that it used Y-1, a high-nicotine tobacco, in marketed cigarettes. The comments assert, however, that Y-1 "was never used by B&W for the purpose of altering the ratio of nicotine to tar in the smoke of any commercialized brands."[942] What is beyond dispute, however, is the original purpose of the creation of Y-1. As described in section II.C.3.c.iii., Brown & Williamson developed Y-1 as a "blending tool" so that it could maintain nicotine levels while tar levels dropped. Y-1 is thus a central example of product research and development to enhance nicotine deliveries.

ii. Comments on Nicotine Deliveries and Nicotine-to-Tar Ratios.

1. The cigarette industry asserts in its comments that the reduction in the nicotine delivery of cigarettes over the last 40 years demonstrates that the industry has not sought to control or manipulate nicotine. According to the industry, nicotine deliveries have dropped by 60% over the last 40 years. The industry maintains that the fact that cigarette manufacturers have reduced nicotine deliveries shows that the manufacturers do not control or manipulate nicotine deliveries to provide a pharmacologically active dose of nicotine.

The Agency agrees that nicotine deliveries as measured by smoking machines have declined over the last 40 years. This comparison is misleading, however. The recent trends show that nicotine deliveries have stopped declining and are, in fact, *increasing* — especially in low-tar cigarettes. From 1982 to 1991, the nicotine deliveries in the lowest-tar category of cigarettes increased approximately 15%. *See* Jurisdictional Analysis, 60

[942] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 32. *See* AR (Vol. 529 Ref. 104).

FR 41731. Although the industry maintains that "[n]icotine levels follow the tar level" in "essentially perfect correlation"[943] and that this correlation shows that the industry does not manipulate nicotine,[944] nicotine deliveries did not follow tar deliveries during this period. Rather, while nicotine deliveries were increasing from 1982 to 1991, tar deliveries declined or remained essentially flat.[945]

The recent trend of increasing nicotine deliveries in low-tar cigarettes supports the Agency's finding that the cigarette manufacturers have controlled and manipulated nicotine to maintain a pharmacologically active dose. The trend is evidence that as tar deliveries dropped to low and ultra-low levels in the late 1970's and the 1980's, the manufacturers took steps to maintain a pharmacologically active nicotine dose by enhancing nicotine deliveries.

The overall trend in nicotine deliveries is also fully consistent with—and indeed corroborates—the Agency's position. Forty years ago, cigarettes delivered over 2.5 mg of nicotine per cigarette.[946] According to tobacco industry documents, however, nicotine deliveries as low as 0.5 to 0.8 mg per cigarette "provide sufficient nicotine to the blood to produce the stimulation and relaxation effects desired by the smoker."[947] Thus, nicotine

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[943] *Regulation of Tobacco Products (Part 1), Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 378 (Mar. 25, 1994) (statement of Alexander Spears). *See* AR (Vol. 707 Ref. 1).

[944] *Id.*

[945] From 1982 to 1991, nicotine deliveries increased in ultra-low-tar, low-tar, and high-tar cigarettes. Tar deliveries, however, decreased in the high-tar and low-tar categories and increased only marginally (approximately 3%) in the ultra-low-tar category. *See* Jurisdictional Analysis, 60 FR 41728-41731.

[946] Joint Comment of the Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. III, "Sales Weighted Average 'Tar' and Smoke Nicotine"Graph. *See* AR (Vol. 535 Ref. 96).

[947] Senkus M (R. J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 12 (emphasis added). *See* AR (Vol. 700 Ref. 593).

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deliveries could be reduced significantly from 1956 levels without interfering with the ability of cigarettes to satisfy smokers' addiction and to provide other desired pharmacological effects of nicotine.

Once nicotine deliveries neared the minimum thresholds identified by the cigarette manufacturers, however, the manufacturers reversed course and began to enhance nicotine deliveries. As the tobacco industry documents in the record indicate, the industry feared that at these low levels, cigarettes might not deliver sufficient nicotine to smokers. *See* section II.C.3., above. Consequently, the cigarette manufacturers began to take measures to raise nicotine deliveries, such as using nicotine-rich tobacco blends in ultra-low tar cigarettes. *See* section II.C.4., above. The trend of increasing nicotine deliveries since 1982 reflects these actions.

Moreover, the Agency disagrees with the manufacturers that efforts to enhance nicotine deliveries will necessarily be reflected in the nicotine deliveries measured by smoking machines. To the contrary, the evidence in the record indicates that some of the methods used by the cigarette manufacturers to enhance nicotine deliveries are *not* reflected in the measured nicotine deliveries. The use of "elasticity" technologies, such as ventilation systems that can be blocked by smokers, is one example. As described in section II.C.4.b, these technologies are designed to allow smokers to inhale more nicotine than would be measured by a smoking machine. Similarly, the use of ammonia technologies to liberate "free" nicotine, which is described in section II.C.4.c., has effects

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BATCO and Philip Morris researchers reached similar conclusions. According to one BATCO research study, a smoker's "nicotine requirement" is "about 0.8 mg per cigarette." Notes on the BATCO Group R&D Conference at Duck Key, FL (Jan. 12-18, 1974), at 2. *See* AR (Vol. 25 Ref. 327). Likewise, Philip Morris researchers recognized that "[t]he physiological response to nicotine can readily be elicited by cigarettes delivering in the range of 1 mg of nicotine." Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 4. *See* AR (Vol. 12 Ref. 133).

on nicotine absorption that are not reflected in the nicotine levels measured by a smoking machine.

2. The cigarette industry criticizes various aspects of FDA's methodology in calculating nicotine deliveries. The industry's comments assert that these alleged methodological problems make FDA's findings of increased nicotine deliveries unreliable.

The Agency disagrees with these comments. The industry itself acknowledges in its comments that nicotine deliveries have increased among the lowest-tar cigarettes.[948] This acknowledgment renders most of the industry's specific methodological objections irrelevant because it confirms the Agency's finding that nicotine deliveries have increased in the ultra-low-delivery category.

Moreover, the specific methodological comments of the cigarette industry are not well founded, as discussed below.

First, the cigarette industry is mistaken when it argues that FDA chose to use 1982 as its reference year to distort the trends in nicotine deliveries. FDA did not calculate these deliveries. Rather, these figures were calculated by the Federal Trade Commission (FTC), which annually reports tar and nicotine data for cigarettes. The FTC began its analysis in 1982 because this was the first year in which computer-readable data was available in the FTC files.

Second, the cigarette industry is mistaken when it suggests that the FTC did not follow the approach recommended by the Surgeon General for calculating sales-weighted tar and nicotine deliveries. In fact, the FTC followed this approach.

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[948] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. III, at 206. *See* AR (Vol. 535 Ref. 96).

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Third, FDA disagrees that brand shifting accounts for the increase in nicotine deliveries observed in the data. Brand shifting is unlikely to significantly affect reported average deliveries because brand shifts can occur in both directions (and so tend to cancel each other out) and because no single variety of cigarettes has a sufficient proportion of the sales to affect category averages.

Moreover, the data are inconsistent with the industry's brand-shifting theory. The data show that tar deliveries have either declined slightly (high- and low-tar categories) or increased slightly (ultra-low-tar category), while nicotine deliveries have increased significantly in these categories. If brand shifting was in fact causing the rise in nicotine deliveries in the three categories, tar deliveries should have risen similarly, which they did not. Most significantly, brand shifting cannot explain the increase in nicotine deliveries that was observed when all brands (from all three categories) were averaged together.

Fourth, FDA disagrees that normal analytical variation explains the observed increases in nicotine deliveries. The statistical chance that analytical variation could explain the results is vanishingly small. To begin with, the laboratory equipment used to measure nicotine and tar yields produces generally consistent results. The equipment has 20 ports, four of which are dedicated to measuring the tar and nicotine content of "monitor cigarettes" to guard against any "drifting" of the equipment.

Moreover, the trends reported by FDA from the FTC data reflect the results of literally tens of thousands of individual measurements of cigarettes. The reported tar and nicotine yield for any specific cigarette variety in a given year is the average of the test results of 100 individual cigarettes. The average tar and nicotine yields for all cigarette varieties in a given yield category, such as low-yield cigarettes, is the average of the

reported tar and nicotine yields for each cigarette variety in the category. Any analytical variation in the testing of individual cigarettes will have at most a very small effect on the averages reported from so large a sample size.

Fifth, the questions raised by the industry regarding the origin of the sales-weighted data are groundless. The data for 1984, 1985, and 1986 came from the FTC. Although the FTC may not have issued a report on tar and nicotine deliveries for each of those years, the FTC informed the Agency that it did nonetheless collect tar and nicotine data for these years. The 1991 and 1992 data do use information from slightly fewer brands than the brands listed in the FTC's published reports for those years; however, the explanation is that the FTC did not have tar, nicotine, and sales data for every single brand listed in the published reports. Only those brands for which data were missing were eliminated by the FTC in calculating the sales-weighted averages. The sales data used by the FTC to calculate the sales-weighted averages came from the tobacco manufacturers.

Finally, contrary to the industry's assertion, FDA did put the data and analysis it relied upon in the administrative record.[949]

Thus, contrary to the comments of the industry, FDA finds that a reasonable methodology was used to calculate nicotine deliveries.

3. Philip Morris asserts that it has few cigarettes with an enhanced nicotine/tar ratio of 0.10, compared to the naturally occurring ratio of 0.07. The company argues that this is evidence that it does not design its cigarettes to enhance nicotine deliveries. Philip Morris further asserts that two Philip Morris brands with nicotine/tar ratios of

[949] *See* Letter from Schultz WB (FDA), to Merrill R (Covington & Burling) (Dec. 27, 1995). *See* AR (Vol. 711 Ref. 7).

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approximately 0.10 analyzed by Rep. Henry A. Waxman and cited by FDA (Merit Ultima and regular Benson & Hedges filtered cigarettes) do not reflect intentional nicotine manipulation.

The Agency disagrees that cigarettes with an elevated nicotine/tar ratio of 0.10 are uncommon. In 1995, for instance, over 90 varieties of cigarettes had a nicotine/tar ratio of 0.10 or higher.[950] Particularly among ultra-low-tar cigarettes, there are many examples of cigarettes with relatively enhanced nicotine deliveries and nicotine/tar ratios. Over 40% of cigarettes with tar deliveries of 5 mg or less have an enhanced nicotine/tar ratio of 0.10 or greater.[951] One example is the Merit Ultima, which is manufactured by Philip Morris and has a nicotine/tar ratio of 0.10.[952] Other examples are RJR's Winston Ultra Lights 100's and king-size Camel Ultra Lights, which have tar deliveries of 0.5 mg and nicotine deliveries of 0.5 mg, resulting in a nicotine/tar ratio of 0.10.[953] The deliveries of nicotine and tar in the Winston Ultra Lights 100's and the king-size Camel Ultra Lights are exactly the deliveries that RJR researchers recommended to produce "a low tar value" while "maintaining the nicotine as high as possible."[954] The existence of low-tar cigarettes with relatively elevated nicotine deliveries is compelling evidence that cigarette manufacturers design these cigarettes to provide enhanced nicotine deliveries.

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[950] Federal Trade Commission, *Report of "Tar," Nicotine, and Carbon Monoxide of the Smoke of 1107 Varieties of Domestic Cigarettes* (1995). *See* AR (Vol. 535 Ref. 96, vol. IV.B).

[951] *Id.*

[952] *Id.*

[953] *Id.*

[954] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 10. *See* AR (Vol. 700 Ref. 593).

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Moreover, even if no ultra-low-tar cigarettes had a nicotine/tar ratio of precisely 0.10, this would prove very little. As discussed in section II.C.3.a., Philip Morris' product development efforts concluded that "the optimum nicotine to tar . . . ratio for a [low-delivery] cigarette is *somewhat higher* than that occurring in smoke from the natural state of tobacco."[955] This research did not conclude that the "somewhat higher" ratio had to be a ratio of 0.10 (which is more than 40% higher than the "natural ratio" of 0.07) or greater. Consistent with Philip Morris' product development recommendations, most of the lowest-yield cigarettes do in fact have "somewhat higher" nicotine/tar ratios of 0.08 or greater. *See* Jurisdictional Analysis, 60 FR 41724.

The Agency rejects Philip Morris' claim that the enhanced nicotine/tar ratio of 0.10 in Merit Ultima can be explained by "the physics of low-yield filtration and ventilation."[956] FDA's own analysis has shown that the Merit Ultima uses a blend richer in nicotine than the blends used in either the Merit Filter 100's or the Merit Ultra Lights. See Jurisdictional Analysis, 60 FR 41723–41724. This deliberately chosen nicotine-rich blend contributes to the elevated nicotine/tar ratio in the Merit Ultima—apart from any effects of filtration or ventilation. *See* section II.C.4.a.ii. Moreover, to the extent that filtration and ventilation contribute to the elevated nicotine/tar ratio, this effect is the result of deliberate design decisions. *See* section II.C.4.b.

The Agency is also not persuaded that the enhanced nicotine/tar ratios in the regular Benson & Hedges filtered cigarettes can be dismissed as "minuscule variations" in

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[955] Jones B, Houck W, Martin P (Philip Morris Inc.), *Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, A Replication* (Oct. 1975), in 141 Cong. Rec. H8132 (daily ed. Aug. 1, 1995) (emphasis added). *See* AR (Vol. 711 Ref. 6).

[956] Philip Morris Inc., Comment (Jan. 2, 1996), at 43. *See* AR (Vol. 519 Ref. 105).

tar and nicotine deliveries. A statistical analysis of the cigarettes prepared for and released by Rep. Waxman concluded that the possibility that the cigarette's enhanced nicotine/tar ratio could be explained by random fluctuations in tar and nicotine levels was virtually zero.[957]

iii. Comments on Chemical Manipulation.

1. Comments from the tobacco industry acknowledge that cigarette manufacturers add ammonia compounds to tobacco. However, the comments argue that the addition of ammonia does not have pharmacological significance because virtually all nicotine in cigarette smoke is absorbed into the bloodstream regardless of the pH of the smoke; because substantial amounts of ammonia would be required to raise smoke pH from 6.0 to 7.5 or 8.0; and because ammonia compounds do not increase the efficiency of the transfer of nicotine from the tobacco to the smoke.

The Agency disagrees with these comments. They conflict with the evidence from the cigarette industry documents in the record, as well as with basic scientific principles.

The evidence in the record demonstrates that the cigarette manufacturers add ammonia compounds to cigarettes to produce several pharmacological effects. As described in the industry documents, the pharmacologically significant effects of adding ammonia compounds to tobacco are (1) to increase the transfer of nicotine from the cigarette to the smoke; (2) to increase the rate of nicotine absorption in the mouth; and (3) possibly to increase the speed of nicotine absorption in the lungs. *See* section II.C.4.c.

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[957] Statement of Waxman HA, 141 Cong. Rec. H8009 (daily ed. Jul. 31, 1995). *See* AR (Vol. 27 Ref. 376a).

Each of these three effects of adding ammonia compounds is significant even if the industry were correct that the lungs absorb virtually all of the nicotine that is inhaled.[958] The first effect—increasing the transfer of nicotine from the cigarette to the smoke—is significant because it increases the quantity of nicotine *delivered* to the lungs. Most of the nicotine in a cigarette never enters the mouth of a smoker. Rather, it is trapped in the filter; lost to the atmosphere; or destroyed or decomposed by the heat of the cigarette.[959] According to the statement of Dr. Farone, the former Philip Morris Director of Applied Research, however, the effect of adding ammonia compounds is "to deliver more of the available nicotine in the blend to the smoker."[960] Documents from the American Tobacco Company make a similar point, asserting that the use of alkaline compounds will "increas[e] the amount of nicotine that is transferred from the tobacco to the mainstream smoke."[961]

The second effect is likewise significant regardless of the efficiency of nicotine absorption in the lungs. This effect is to increase the amount of nicotine that the smoker

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[958] In fact, it is not clear that the lungs absorb virtually all the nicotine that is inhaled. According to one researcher, "[d]epending on inhalation patterns, retention times, and related factors, smokers may retain anywhere from 30% or less up to 90% or more of the total nicotine generated and delivered via the inhaled smoke." Huber GL, Physical, chemical, and biological properties of tobacco, cigarette smoke, and other tobacco products, *Seminars in Respiratory Medicine* 1989;10:297-332, at 304. *See* AR (Vol. 333 Ref. 5045).

[959] Armitage AK, Dollery CT, George CF, *et al.*, Absorption and metabolism of nicotine from cigarettes, *British Medical Journal*, 1975:313-316, at 315 ("[N]o more than 25% of the total nicotine content of the cigarette is likely to appear in the mainstream smoke. Most of the nicotine is lost into the surrounding air and sidestream smoke or is retained in the butt"). *See* AR (Vol. 131 Ref. 1462).

[960] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 13. *See* AR (Vol. 638 Ref. 2).

[961] Bodenhamer NL (American Tobacco), Leaf Services Monthly Report for June (Jun. 30, 1980). *See* AR (Vol. 27 Ref. 385).

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absorbs through the *mouth*—not the lungs. Adding ammonia compounds raises the pH of the tobacco smoke. *See* section II.C.4.c. According to RJR researchers, by raising pH in a low-tar cigarette from just 6.0 to 6.5, "*you increase the nicotine transfer in the mouth.*"[962]

The third effect is a possible increase in the speed of nicotine absorption in the lungs. The increase in pH caused by the addition of ammonia compounds increases the proportion of "free" or "extractable" nicotine in the smoke. *See* section II.C.4.c. According to documents from BATCO, Brown & Williamson's parent company hypothesized that "with a higher 'extractable' nicotine, nicotine reaches the brain more quickly."[963] The BATCO researchers further postulate that "in human smoking a difference in the time of nicotine absorption of tenths of a second may be important."[964]

In light of this evidence from former cigarette industry employees and the industry's own documents, the industry's assertion that adding ammonia compounds has no pharmacological significance is not credible.

The tobacco industry comment also asserts that significant quantities of ammonia compounds are needed to raise the pH of smoke from 6.0 to 7.5 or 8.0. However, no scientific support is provided for this assertion. Moreover, even if the assertion were correct, it would be largely irrelevant. Significantly smaller increases in smoke pH are likely to have the pharmacological effects described above. As noted above, for instance,

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[962] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 7 (emphasis added). *See* AR (Vol. 700 Ref. 593).

[963] BATCO, *Further Work on 'Extractable' Nicotine*, Southampton, England (1966), at 7. *See* AR (Vol. 62 Ref. 308).

[964] *Id.* at 9.

documents from RJR conclude that simply increasing the pH of smoke from 6.0 to 6.5 is sufficient to increase the absorption of nicotine in the mouth.[965]

The Agency further disagrees with the tobacco industry comment that the pH of cigarette tobacco has no bearing on the efficiency of nicotine transfer from the tobacco to the smoke. It is a basic scientific principle that compounds in free or unbound forms are vaporized more readily than compounds bound together in salts.[966] Studies of cocaine, for instance, show that when cocaine is bound as a salt (as in cocaine hydrochloride), much of the cocaine is degraded during pyrolysis; in contrast, when the cocaine is converted to "free" form, the transfer of the cocaine to the smoke is much greater.[967] The tobacco industry comment provides no evidence to refute these basic scientific principles or to rebut the evidence in the record showing that the conversion of nicotine from its bound form to its free form increases the transfer of nicotine to smoke.[968]

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[965] Senkus M (R. J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 7 (emphasis added). *See* AR (Vol. 700 Ref. 593).

[966] Morrison RT, Boyd RN, *Organic Chemistry*, 2d ed., 1966, in Barnett G, Chiang CN eds., *Pharmacokinetics and Pharmacodynamics of Psychoactive Drugs*, A Research Monograph, Biomedical Publications, 2d edition, 1985, at 26. *See* AR (Vol. 711 Ref. 19).

[967] Cook CE, Jeffcoat AR, Perez-Reyes M, Pharmacokinetic studies of cocaine and phencyclidine in man, in Barnett G, Chiang CN eds., *Pharmacokinetics and Pharmacodynamics of Psychoactive Drugs, A Research Monograph*, Biomedical Publications, 2d edition, 1985, at 64-65. *See* AR (Vol. 711 Ref. 16).

[968] After the close of the comment period, FDA received a series of RJR documents from the 1970's regarding the effect of pH adjustments on nicotine delivery. These documents had been made public in a lawsuit involving RJR. Although not necessary to FDA's analysis, these documents provide further confirmation that cigarette manufacturers raise the pH of cigarette smoke to increase the amount of "free nicotine" that is delivered to the smoker, and that this increase in "free nicotine" has a pharmacological effect. One of these documents describes RJR's finding that the pH level of Marlboro and Kool cigarettes had risen significantly, with corresponding increases in "free" nicotine deliveries, and in sales. Teague CE (RJR), *Implications and Activities Arising from Correlation of Smoke pH with Nicotine Impact, Other Smoke Qualities, and Cigarette Sales*, at 1-3. *See* AR (Vol. 711 Ref. 47). The document states:

> In essence, a cigarette is a system for delivery of nicotine to the smoker in attractive, useful form. At "normal" smoke pH, at or below about 6.0, essentially all of the smoke nicotine is chemically combined with acidic

> substances hence is non-volatile and relatively slowly absorbed by the smoker. *As the smoke pH increases above about 6.0, an increasing proportion of the total smoke nicotine occurs in "free" form, which is volatile, rapidly absorbed by the smoker, and believed to be instantly perceived as nicotine "kick."*

Id. at 2 (emphasis added). The document continues:

> As a result of its higher smoke pH, *the current Marlboro, despite a two-thirds reduction in smoke "tar" and nicotine over the years, calculates to have essentially the same amount of "free" nicotine in its smoke as did the WINSTON.* Over the same period, with some reduction in smoke pH and about two-thirds reductions in smoke "tar" and nicotine, the calculated amount of "free" nicotine in WINSTON smoke has decreased by about two-thirds. *Thus, currently the calculated amount of "free" nicotine in Marlboro smoke is almost three times the amount in WINSTON smoke.*

Id. (emphasis added; underscoring in original). This document goes on to describe methods of increasing smoke pH:

> Methods which may be used to increase smoke pH and/or nicotine "kick" include: (1) increasing the amount of (strong) burley in the blend, (2) reduction of casing sugar used on the burley and/or blend, (3) use of alkaline additives, usually ammonia compounds, to the blend, (4) addition of nicotine to the blend, (5) removal of acids from the blend, (6) special filter systems to remove acids from or add alkaline materials to the smoke, and (7) use of high air dilution filter systems. Methods 1-3, in combination, represent the Philip Morris approach, and are under active investigation.

Id. at 4.

A document entitled "Outline for Smoke pH Presentation" presents further data on the increase in pH in Marlboro cigarettes and Kool cigarettes. Finding that, as compared to RJR's Winston brand, Marlboro cigarettes had several characteristics, including alkaline stem additives and ammonia-puffed leaf, "all combining to raise smoke pH," the presentation states:

> We must conclude that the difference between Marlboro and Winston must be deliberate. . . . What we are seeing and measuring fits what we know about Philip Morris and Brown and Williamson product philosophies. They appear to design products primarily to deliver optimum nicotine impact and satisfaction--aiming also at a relatively bland smoke, letting flavor fall where it will.

Another document in the series is a memorandum to RJR's Director of Marketing and Planning recommending the development of a new "youth-appeal" brand with more tar and nicotine. Colby FG, *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market* (Dec. 4, 1973). *See* AR (Vol. 711 Ref. 47). According to the memorandum, "any desired additional nicotine 'kick' could be easily obtained through pH regulation."

When these documents were made public, RJR officials responded that the documents are not important and that subsequent studies on Marlboro showed that pH levels between 1973 and 1988 declined, while sales remained steady or increased. Weinstein H, Documents tie nicotine levels, cigarette sales, *Los Angeles Times,* A1 (May 23, 1996). *See* AR (Vol. 711 Ref. 18).

2. Comments from the tobacco industry argue that ammonia compounds are added to tobacco to enhance the flavor characteristics of cigarette smoke and bind the tobacco together, but not for their effect on nicotine. The Agency disagrees with this comment. The record contains numerous internal documents that indicate that the effect of adding ammonia compounds is to change the delivery or absorption of nicotine. For instance, the Brown & Williamson's 1991 leaf blending manual states that "*[a]mmonia, when added to a tobacco blend, reacts with the indigenous nicotine salts and liberates free nicotine.*"[969] Similarly, William Farone, the former director of applied research at Philip Morris, states that "*[t]he use of ammonia chemistry was important to the industry in maintaining adequate nicotine delivery to satisfy smokers.*"[970] The industry's assertion that the use of ammonia is simply for taste and binding cannot be reconciled with this evidence. Even if ammonia does have a flavor component, this fact does not negate the evidence in the record regarding ammonia's effect on nicotine.

The tobacco industry cites the addition of ammonia compounds to foods as evidence of ammonia's role in flavor. The use of ammonia compounds in foods, however, is not dispositive evidence of the use of ammonia compounds in tobacco, because the ammonia compounds in cigarettes are burned and inhaled rather than ingested. Moreover, one of the recognized uses for ammonia compounds in foods is "pH control," 21 CFR

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[969] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess., 21 (Jun. 21, 1994) (statement of David Kessler) (emphasis added). *See* AR (Vol. 709 Ref. 3).

[970] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 13 (emphasis added). *See* AR (Vol. 638 Ref. 2).

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184.1133–184.1143, which is the same use of ammonia compounds described in the internal tobacco company documents.

3. Comments from the tobacco industry argue that FDA has taken a contradictory position in the Jurisdictional Analysis by finding both that cigarette manufacturers add ammonia compounds to increase the pH of tobacco and that cigarette manufacturers add acids to reduce the harshness of smoke.

FDA's positions are not inconsistent. The Jurisdictional Analysis found, based on the evidence then available, that when manufacturers use tobaccos that produce naturally high pH levels in smoke or that have naturally high nicotine contents, the manufacturers sometimes face the problem that the cigarette smoke contains too much nicotine and is too harsh. In these situations, the record indicates that manufacturers have developed ways to reduce harshness, including lowering pH. *See* Jurisdictional Analysis, 60 FR 41711–41713. In other situations, manufacturers face the opposite problem of cigarette smoke that may not deliver enough nicotine. In these latter situations, the record indicates that manufacturers will enhance nicotine deliveries, including adding ammonia compounds to raise the pH of the tobacco and the smoke, which increases the delivery of free nicotine to the smoker. *See* section II.C.4.c.

4. Brown & Williamson makes two comments regarding chemical manipulation. First, Brown & Williamson asserts that its internal documents show its knowledge that pH level does not affect nicotine delivery. Second, Brown & Williamson asserts that its internal documents show that the addition of ammonia compounds is simply a booster of smoke "impact."

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The Agency disagrees with Brown & Williamson's characterization of its documents. Contrary to Brown & Williamson's comment, the administrative record shows that researchers working for Brown & Williamson and Brown & Williamson's parent, BATCO, have consistently understood that pH levels affect nicotine delivery. As early as 1968, BATCO researchers wrote that "*[n]icotine retention appears to be dependent principally on smoke pH and nicotine content.*"[971] *See* sections II.C.3.c.i., II.C.3.c.iv., II.C.4.c.

In fact, one of the documents cited by Brown & Williamson contradicts its assertion. In a passage not quoted by Brown & Williamson, the document refers to the "*pH dependent effect of nicotine*," further underscoring the company's understanding of the relationship between pH and nicotine.[972]

The Agency does agree with Brown & Williamson that the 1991 blenders handbook links the addition of ammonia compounds to the "impact" of smoke. However, the document makes it clear that "impact" is simply a surrogate term for nicotine delivery, stating that the ammonia compounds increase "the ratio of extractable nicotine to bound nicotine in the smoke"; that "extractable nicotine contributes to the impact in cigarette smoke"; and that "this is how ammonia can act as an impact booster." [973]

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[971] BATCO, *The Retention of Nicotine and Phenols in the Mouth* (1968), at BW-W2-11691 (emphasis added). *See* AR (Vol. 445 Ref. 7593).

[972] Ayres CI (BATCO), Notes from the GR&DC Nicotine Conference, in Proceedings of the Smoking Behaviour-Marketing Conference, Session III (Jul. 9-12, 1984), at BW-W2-02642 (emphasis added). *See* AR (Vol. 14 Ref. 172).

[973] *Regulation of Tobacco Products (Part 3): Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 21 (Jun. 21, 1994) (statement of David Kessler). *See* AR (Vol. 709 Ref. 3).

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iv. Comments on Flavorings and Casings.

1. The cigarette manufacturers dispute that flavorings and casings are sometimes used to mask the unpleasant sensory characteristics of nicotine in cigarettes. The tobacco industry claims that flavorings and casings are used solely to affect the flavor and aroma of the cigarette.

The Agency agrees that flavorings and casings influence flavor. Nevertheless, the record shows that these ingredients have another use—that of masking the flavor of harsh high-nicotine tobaccos. In the Jurisdictional Analysis, the Agency cited several pieces of evidence showing that flavorings and casings are used to mask nicotine. *See* 60 FR 41711–41714. For instance, a "flavorist" for RJR wrote that "in air-cured tobaccos (cigar, burley, Maryland), the pH of smoke is generally alkaline and the flavor effect of nicotine is a 'harshness' which can be choking and unpleasant."[974] In these tobaccos, according to the flavorist, "the effect of nicotine is greatly modified, and the harshness is dramatically reduced. . . . by addition of sugars . . . to 'mellow' the smoke."[975] None of this evidence is rebutted by the cigarette manufacturers.

In addition, the statement of William Farone, the former director of applied research at Philip Morris, confirms that flavorings are used to mask the harshness of nicotine. According to Farone's statement:

> *The tobacco industry found that in the manipulation of the nicotine/tar ratio, the methods used to increase the nicotine to tar ratio sometimes resulted in a cigarette that was too harsh.* With a standard nicotine/tar ratio in a traditional cigarette no flavor smoothing compounds are generally needed to produce a

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[974] Leffingwell JC, Nitrogen components of leaf and their relationship to smoking quality and aroma, *Recent Advances in Tobacco Science*, vol. 2, at 9. *See* AR (Vol. 28 Ref. 450).

[975] *Id.*

- palatable cigarette. The higher tar levels in traditional cigarettes mask the harshness of nicotine and the associated compounds produced in higher nicotine to tar ratios. A low tar cigarette with a higher nicotine/tar ratio than a traditional cigarette could be very harsh due to the lack of sufficient specific tar components to mask the nicotine and related basic compounds. *To overcome the harshness due to the increased burley in the blend, the industry used flavor "smoothers."*[976]

Thus, the evidence in the record supports the finding in the Jurisdictional Analysis that the cigarette industry sometimes uses flavorings to mask the harshness of nicotine in cigarettes with nicotine-rich tobacco blends.

2. The cigarette manufacturers cite the use of menthol in cigarettes as evidence that they do not use flavorings to mask the effects of nicotine. According to the industry, menthol is not used to mask the effects of high-nicotine tobaccos because menthol cigarettes generally have nicotine yields that are lower than or equal to regular cigarettes.

The Agency rejects this argument. The evidence before the Agency indicates that flavorings like cocoa, sugars, and licorice, which produce acids in smoke, are used to mask the bitterness or harshness of nicotine. *See* Jurisdictional Analysis 60 FR 41711–41714. The evidence does not indicate that menthol is used to mask harshness of tobacco. Consequently, the data presented by the industry on menthol is irrelevant to whether other flavorants are used to mask nicotine.

v. Comments on the Consistency of Nicotine Deliveries.

1. The cigarette manufacturers argue that the ability to produce cigarettes with uniform and consistent levels of nicotine is not evidence of any "intended use." They

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[976] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 14-15 (emphasis added). *See* AR (Vol. 638 Ref. 2).

assert that blending to achieve consistency is a common practice among manufacturers that make consumer goods from agricultural products.

However, the remarkable degree of consistency in nicotine deliveries achieved by the manufacturers is especially relevant to the issue of the manipulation and control of nicotine. As discussed in section II.C.4.e.iii., above, the manufacturers' precise control over nicotine deliveries refutes the manufacturers' assertion that "the companies do not independently 'control' for or 'manipulate' the nicotine content in any of their blends."[977] Moreover, the manufacturers' precise control over nicotine deliveries is consistent with—and corroborates—the Agency's finding that manufacturers intend that cigarettes will be used for pharmacological purposes. As discussed in the Jurisdictional Analysis, an FDA laboratory study showed that nicotine delivery varies so little from lot to lot of cigarettes that it equals or exceeds the degree of control exercised by pharmaceutical companies over the active ingredients in prescription drugs.[978] The manufacturers' precise control over nicotine deliveries enable the industry to ensure that consumers can use cigarettes to satisfy addiction or to obtain other pharmacological effects.

vi. Comments on Breeding.

The comments of the cigarette industry claim that the cigarette manufacturers do not manipulate nicotine through plant breeding or agronomic practices. While the comments make several valid points on tangential issues, they do not affect the basic conclusions made in the Jurisdictional Analysis.

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[977] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. V, at 66. *See* AR (Vol. 535 Ref. 96).

[978] FDA, Center for Drug Evaluation and Research, Division of Drug Analysis, Memorandum on Analysis of Packages of Cigarettes (Apr. 4, 1994). *See* AR (Vol. 29 Ref. 487).

1. Regarding FDA's contention that American-grown tobaccos have had increasingly high levels of nicotine since the mid 1950's, the comments fault FDA for singling out the years 1955 and 1980 for comparison.

The Agency reported in the Jurisdictional Analysis the change in nicotine content between 1955 and 1980 because those were the years analyzed in the paper by DeJong cited by the Agency.[979] The Agency agrees that the more recent data from the North Carolina Official Variety Trials, as submitted by the comments, show that nicotine content of leaves from that area has leveled off since 1980, and that the last 17 years appear to show a decrease in nicotine levels.[980] The Agency does not agree, however, that it should have compared nicotine levels in the 1950's to nicotine levels in 1989, as suggested by the cigarette manufacturers. Unusually low nicotine levels were recorded in 1989 when compared with the five years preceding and succeeding it.

Other articles and information support the Agency's contention that the nicotine content of domestic tobacco increased from the 1950's to 1980. For example, one study cited by a comment concluded that nicotine levels "changed dramatically" from the mid-1950's to the early 1980's and ascribed the increase to changes in production practices.[981]

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[979] DeJong DW, The role of American tobacco leaf chemistry in low-yield cigarettes: an agricultural viewpoint. *Tabak Journal International*, May 1985;376-383. *See* AR (Vol. 27 Ref. 401).

[980] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. IV, at 18. *See* AR (Vol. 535 Ref. 96).

[981] Bowman DT, Wernsman EA, Corbin TC, *et al.*, Contribution of genetic and production technology to long-term yield and quality gains in flue-cured tobacco, *Tobacco Science* 1984;28:30-35, at 34-35. *See* AR (Vol. 535 Ref. 96, vol. IV.A).

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In addition, Earl Wernsman of North Carolina State University told the Agency that nicotine levels have increased over the past 30 years.[982]

The Agency, however, does not agree with the industry's claim, that "FDA's reliance on the DeJong data, together with the Agency's total failure to acknowledge contrary data from equally or more authoritative sources, reflects a general strategy of selective and biased citation from the scientific literature."[983] In fact, both sets of data reflect rising nicotine levels in tobacco from the mid 1950's through 1980.

2. The cigarette industry comments assert that the manufacturers have rejected high-nicotine tobacco crops produced during drought years. According to the industry, this rejection of high-nicotine crops shows that the manufacturers do not seek to manipulate nicotine through breeding high-nicotine tobaccos.

The Agency does not agree that any reliable inference can be drawn from the rejection of tobacco crops in drought years. This evidence establishes only that nicotine content can on occasion rise too high for the manufacturers' use. The Agency has never maintained that nicotine levels could not reach excessive levels. To the contrary, as discussed in the Jurisdictional Analysis, the Agency recognizes that too much nicotine in a cigarette can make the cigarette too harsh, requiring the use of flavors and casings to mask the harshness. *See* 60 FR 41712–41713.

3. The cigarette industry comments raise a number of issues regarding FDA's discussion of the Minimum Standards Programs (MSP's). The comment claims that

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[982] Memorandum of Mar. 22, 1994, teleconference, from Murray M, to Wernsman E (Mar. 23, 1994). *See* AR (Vol. 256 Ref. 3459).

[983] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. IV, at 9. *See* AR (Vol. 535 Ref. 96).

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"FDA has mischaracterized the nature, purpose and effect of the . . . MSP's by claiming that the MSP's were designed to ensure that nicotine levels did not fall below a specified level," and that by "minimizing the role of the USDA, tobacco breeders, and State Extension-Research Services, FDA mischaracterizes the tobacco industry's participation in these programs as 'controlling.'"[984] The comment argued that the cigarette manufacturers do not control the MSP's, that the MSP's are not designed to maintain nicotine above a specified level, and that the MSP's prevent the introduction of high-nicotine varieties into cultivation.

The Agency does not find compelling any of the arguments raised by the comment that were intended to dispute the two most significant findings of the Agency regarding MSP's: that they are used to ensure that nicotine levels do not fall below a specified level, and that the cigarette manufacturers are active participants in the program.

The comment points out that there are a variety of purposes of the MSP's, and argues that therefore it is incorrect for FDA to claim that their purpose is "to ensure that nicotine levels in marketed tobacco do not fall below specified levels."[985] FDA agrees that the MSP's have purposes in addition to controlling nicotine levels. However, the fact remains that the MSP's help ensure that nicotine levels in marketed tobacco do not fall below the level in acceptable tobacco varieties. DeJong made this point clear when he wrote that "the first minimum standards programme was initiated in 1964. . . . Discount or *low-nicotine cultivars had previously been declared outside the price support* system."[986]

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[984] *Id.* at 18-19 (emphasis added).

[985] *Id.* at 21-22.

[986] DeJong DW, The role of American tobacco leaf chemistry in low-yield cigarettes: an agricultural viewpoint, *Tabak Journal International*, May 1985:382 (emphasis added). *See* AR (Vol. 27 Ref. 401).

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FDA's point, which is not disputed by the comment, is that the discount and MSP programs discourage the planting of varieties that accumulate unusually low levels of nicotine.

FDA believes that it appropriately characterized the industry's role in the MSP's. The agency noted that the MSP's are administered by the USDA. *See* Jurisdictional Analysis, 60 FR 41697. In stating that the manufacturers exert control over the MSP's, the Agency did not imply that they exert sole control over all aspects of the programs. The manufacturers do, however, each have a vote on the MSP committees that set up the rules and administer the programs. They also represent by far the largest economic bloc on those committees.

4. The cigarette industry asserts that the cigarette manufacturers do not control the agronomic practices used by tobacco farmers for the purpose of increasing the nicotine content of tobacco. The comment maintains that all of the agronomic practices cited by the Agency as raising nicotine levels provide significant advantages to the farmer completely independent of any nicotine-enhancing properties. The comment also notes that some agronomic practices, such as irrigation, decrease nicotine content, and that recommendations regarding other practices, such as decreasing the use of nitrogen from the very high levels that were used for a few years, also result in decreased nicotine levels.

The Agency generally agrees with the comment on these points. The Agency never stated, and did not mean to imply, that cigarette manufacturers exert direct control over tobacco farmers or breeders. The Agency also agrees that farmers do not use nicotine-elevating agricultural practices exclusively for the purpose of elevating nicotine levels. The Agency is aware that farmers choose the agricultural practices they use for a

variety of purposes. Nevertheless, DeJong noted that "[h]eavy application of nitrogen fertilization, early topping and tight chemical sucker control all acted in concert to push alkaloid levels upward."[987]

In any case, the Agency's fundamental point regarding tobacco breeding and farming is that tobacco leaves sold in the U.S. contain adequate levels of nicotine to enable the manufacturers to maintain nicotine delivery in their products at the levels they choose. When, in the early and mid-1950's, farmers grew a preponderance of low-nicotine tobaccos, programs were set up to ensure that farmers would no longer grow such tobaccos. Since that time, manufacturers have had no difficulty purchasing tobaccos that provide the levels of nicotine that they need for their products. And in at least one well-documented case, Brown & Williamson doubled the nicotine content of one variety of flue-covered tobacco as a "blending tool" for use in low-tar cigarettes. This "Y-1" tobacco was designed to enable the company to maintain nicotine levels while lowering the tar content of cigarettes. *See* section II.C.3.c.iii., above.

vii. Comments on Leaf Purchasing.

1. The cigarette manufacturers assert that over time there has been no increase in the nicotine content of the tobacco they purchase. The manufacturers argue this is evidence that they do not use nicotine content as a principal factor in leaf selection.

The Agency disagrees with the manufacturers' factual assertion regarding trends in nicotine content. The evidence in the record indicates that the nicotine content has increased in the tobacco purchased by cigarette manufacturers. As pointed out in the

[987] *Id.*

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Jurisdictional Analysis, the nicotine content in American tobaccos of all types has increased since the 1950's. 60 FR 41696–41697. Moreover, a 1978 article submitted by the Tobacco Institute and entitled "Genetic Manipulation for Tailoring the Tobacco Plant To Meet the Requirements of the Grower, Manufacturer, and Consumer" states that "*[i]n the United States the demand for lower stalk flue-cured tobacco has decreased.*"[988] This confirms the existence of a trend first described by USDA officials in congressional testimony in the late 1950's. *See* section II.C.4.a.i., above. At that time USDA indicated that the tobacco industry had "moved up the stalk" in blending tobaccos by using the higher nicotine leaves in the upper part of the tobacco plant.[989]

2. The cigarette manufacturers also assert that they have rejected high-nicotine tobaccos. Again, they claim that this is evidence that they do not use nicotine content as a principal factor in leaf selection.

The Agency disagrees with the manufacturers' argument. As noted above in section II.C.6.c.vi., the Agency recognizes that too much nicotine in a cigarette can make the cigarette too harsh.

3. In its comments, Brown & Williamson disputes that it regularly adjusts the stalk position of its leaf purchases during the buying season based upon the results of nicotine analyses. The company's response, however, conflicts with the information

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[988] Chaplin JF, Genetic manipulation for tailoring the tobacco plant to meet the requirements of the grower, manufacturer, and consumer, *Bulletin D'Information Coresta* 1978;17-32, at 21 (emphasis added). *See* AR (Vol. 535 Ref. 96).

[989] *Hearings on False and Misleading Advertising (filter-tip cigarettes), Subcommittee on Government Operations, U.S. House of Representatives*, 85th Cong. 1st Sess. 189 (Jul. 1957). See AR (Vol. 172 Ref. 2035).

provided to FDA by company employees during FDA's May 1994 visit to Brown & Williamson. *See* Jurisdictional Analysis, 60 FR 41705. Moreover, Brown & Williamson provides no affidavits or other documentary evidence to support its comment.

viii. Comments on Reconstituted Tobacco.

1. The cigarette manufacturers assert that they do not use reconstituted tobacco to manipulate or control nicotine levels. As evidence of this point, they argue that nicotine levels in reconstituted tobacco are lower than those in most tobacco blends.

The Agency disagrees with the argument. Evidence in the record shows that reconstituted tobacco is used by cigarette manufacturers as a site for the addition of ammonia compounds. According to an article in the *Wall Street Journal*, an internal Brown & Williamson handbook describes the "nicotine pick-up potential" of ammonia in reconstituted tobacco.[990] The article also states that ammonia added to reconstituted tobacco can scavenge nicotine from the tobacco in the rest of the cigarette, significantly increasing the level of "free nicotine" in the cigarette.

2. The cigarette manufacturers assert that they do not closely monitor and control the level of nicotine in reconstituted tobacco.

The Agency disagrees with this assertion. The record shows that finished cigarettes contain precisely controlled and consistent nicotine levels. *See* Jurisdictional Analysis, 60 FR 41732. Because reconstituted tobacco is a significant ingredient in finished cigarettes, the precise control over nicotine in the finished cigarettes could not be

[990] Freedman AM, Tobacco firm shows how ammonia spurs delivery of nicotine, *Wall Street Journal* (Oct. 18, 1995), A1. *See* AR (Vol. 639 Ref. 2).

achieved unless the manufacturer also precisely controlled the nicotine level in reconstituted tobacco. Without such precise control, the wide variations in the nicotine levels of the tobacco stems and other raw ingredients of reconstituted tobacco would produce significant variations in the nicotine content of reconstituted tobacco and the finished cigarettes.

ix. Other Comments.

1. The Agency found in the Jurisdictional Analysis, based on the evidence then available, that cigarette manufacturers sometimes increase the degree to which the "tipping paper," which is wrapped around the filter, is extended over the tobacco rod. *See* 60 FR 41721. One study cited by the Agency reported that this increased "overwrap" reduced the nicotine deliveries reported by the FTC testing method (because the test protocol requires stopping the test when the cigarette is smoked to within 3 millimeters of the tipping paper), while allowing smokers to increase their nicotine intake above the reported levels (by smoking the tobacco under the overwrap).[991]

The manufacturers raise a number of questions about the data on which FDA relied and seek to depict FDA's discussion of the overwrap width as speculative. In most cases, however, the information that would answer the questions raised by the manufacturers is within their control, but is nevertheless not provided.

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[991] Grunberg NE, Morse DE, Maycock VA, *et al.*, Changes in overwrap and butt length of American filter cigarettes, *NY State Journal of Medicine* Jul. 1985;310-312. *See* AR (Vol. 29 Ref. 478).

For example, the manufacturers argue that smokers do not smoke the overwrap because it is unpalatable, but they do not provide evidence to support this assertion despite the fact that the extensive consumer testing conducted by the manufacturers undoubtedly provides the information necessary to resolve whether the overwrap is smoked and whether it is palatable. The manufacturers also argue that the increase in overwrap width found in many cigarettes would not increase the amount of nicotine available to smokers if the burn rate of the cigarette were simultaneously increased. The burn rate of cigarettes is information known to the cigarette manufacturers but not to FDA. Yet the manufacturers fail to provide information on burn rate that would permit resolution of the issue they raise.

Moreover, although the manufacturers deny that the overwrap has been widened to increase availability of nicotine, they offer no alternative explanation for the increase found in the study relied on by FDA. In light of the ease with which the manufacturers could have provided the information necessary to show that the overwrap is not used to provide elasticity, and their failure to provide it, FDA concludes that the evidence supports the finding made in the Jurisdictional Analysis. Nevertheless, only additional information can help determine whether an increase in the tipping paper reduces the accuracy of the FTC measurement.

2. The cigarette manufacturers assert that the fact that they may hold patents permitting them to carefully manipulate and control nicotine does not prove that they actually do so. They also argue that patents are submitted by individual employees and that, as such, they are not evidence of the company's intentions.

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FDA cited the multitude of patents held by tobacco manufacturers on methods of manipulating nicotine delivery as additional evidence that the manufacturers have engaged in extensive research to develop methods to optimize nicotine delivery. The fact that the manufacturers have invested considerable resources in developing means of manipulating and controlling nicotine deliveries, including developing and acquiring patents, demonstrates that the manufacturers seek to be able to manipulate and control nicotine deliveries and have in fact "designed" and "planned" methods of doing so. This evidence is relevant to establishing the manufacturers' intentions. In light of the large number of patents held by the industry with the common goal of manipulating nicotine delivery, the argument that all of these patents were obtained by individual employees working without the direction of the manufacturers is not credible.

3. In the Jurisdictional Analysis, the Agency found that the failure of the cigarette manufacturers to remove nicotine from cigarettes was evidence that the manufacturers intend their products to provide the pharmacological effects of nicotine, *See* 60 FR 41779–41787. In their comments, however, the cigarette manufacturers assert that they do not have the capacity to manufacture an acceptable denicotinized cigarette and, even if they did, this would not establish that the manufacturers intend to affect the structure or function of the body.

In the Agency's view, the failure of denicotinized cigarettes in the marketplace is further evidence of the essential role of nicotine in cigarettes. The fact that efforts to introduce denicotinized cigarettes have failed demonstrates that consumers smoke cigarettes primarily to obtain the pharmacological effects of nicotine. Moreover, evidence that a manufacturer has, but does not use, technology that could remove a

pharmacologically active ingredient from its product is relevant evidence that the manufacturer intends that the product will have pharmacological effects upon consumers.

The manufacturers' assertion that denicotinized cigarettes have failed because of inadequacies in the denicotinizing technologies is not supported by the evidence in the record. To the contrary, the record contains abundant evidence that the reason a denicotinized cigarette will not succeed is because it fails to provide the pharmacological effects sought by consumers. For instance, an RJR document asserts that "*a zero nicotine cigarette . . . really has no potential to provide smoking satisfaction.* It produces no taste in the mouth, but even more seriously *it fails to provide the ultimate satisfaction in the lungs.*"[992]

4. The cigarette manufacturers argue that the evidence in the administrative record does not establish that they add "extraneous" nicotine to cigarettes. According to the manufacturers, the failure of the Agency to demonstrate that they add extraneous nicotine means that the Agency has not demonstrated that the manufacturers manipulate and control nicotine.

The Agency disagrees. The administrative record contains abundant evidence that tobacco manufacturers can manipulate and control nicotine deliveries without adding extraneous nicotine. The record before the Agency demonstrates that the manufacturers have developed and used many techniques to manipulate and control nicotine, and few of them involve the addition of extraneous nicotine. These techniques are discussed in detail in section II.C.4., above and include using nicotine-rich blends in low-yield cigarettes,

[992] Senkus M (R.J. Reynolds Tobacco Co.), *Some Effects of Smoking* (1976/1977), at 9 (emphasis added). *See* AR (Vol. 700 Ref. 593).

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using filtration and ventilation techniques that selectively remove more tar than nicotine, and chemical manipulation to increase free nicotine deliveries. All of these techniques manipulate and control nicotine deliveries; all of them facilitate consumer use of cigarettes for pharmacological purposes; and none of the techniques require the addition of extraneous nicotine.

D. THE STATEMENTS, RESEARCH, AND ACTIONS OF THE SMOKELESS TOBACCO MANUFACTURERS SHOW THAT THE MANUFACTURERS INTEND THEIR PRODUCTS TO AFFECT THE STRUCTURE AND FUNCTION OF THE BODY

In sections II.A. and II.B., above, the Agency concluded that smokeless tobacco is "intended" to affect the structure and function of the body on the basis of the foreseeable pharmacological effects and uses of smokeless tobacco and its widespread actual use by consumers for pharmacological purposes. In this section, the Agency considers a third category of evidence of intended use: the statements, research, and actions of the smokeless tobacco manufacturers.

The administrative record includes considerable evidence of the smokeless tobacco manufacturers' statements, research, and manufacturing practices. Much of this evidence has only recently become available as the result of the Agency's investigation, congressional hearings, and other investigations and sources. As discussed in section II.C.1., above, this evidence of the statements, research, and actions of the manufacturers is part of the relevant objective evidence that the Agency may rely upon in determining a product's "intended uses." The Agency's role in making these determinations is that of a fact finder. The Agency's fact-finding task has been made more difficult by the manufacturers' general refusal to cooperate with the Agency's investigation. In particular, the manufacturers failed to provide FDA with information and documents requested by the Agency in July 1994 regarding the role of nicotine in smokeless tobacco.[993] This lack of cooperation has made the Agency's investigation more difficult. The limited number of company documents provided by the

[993] *See*, e.g., Letter from Chesemore RG (FDA) to Gierer V (U.S. Tobacco Company) Jul. 19, 1994. *See* AR (Vol. 54 Ref. 619).

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manufacturers with their comments sheds little light on the role of nicotine in smokeless tobacco and does not significantly change the evidence in the record.

The Agency made extensive findings based on the evidence then before it regarding the statements, research, and actions of the smokeless tobacco manufacturers in the Jurisdictional Analysis. The Agency received comments on these findings from the tobacco industry, public health organizations and other groups and members of the public. After careful consideration of the evidence in the record and the public comments, the Agency finds that the evidence provides an independent basis for concluding that smokeless tobacco is in fact intended to affect the structure and function of the bodies of smokeless tobacco users.

As described in this section, the evidence from internal company documents and other sources shows that smokeless tobacco manufacturers: (1) know that nicotine has pharmacological effects and uses, including causing and sustaining addiction; and (2) manipulate and control the delivery of nicotine from smokeless tobacco in a manner that promotes tolerance and addiction in consumers. Indeed, in the case of the nation's largest smokeless tobacco manufacturer, the statements of senior officials and the company's marketing strategies reveal that the company relies on an explicit "graduation process," under which users of smokeless tobacco are encouraged to progress from "starter" products that deliver low levels of nicotine to products that deliver higher and more addictive levels of nicotine. The cumulative evidence shows that the manufacturers design smokeless tobacco with an intent to affect the structure and function of the body.[994]

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[994] The discussion of the statements, research, and actions of the manufacturers in this section cites many documents. It is the totality of the evidence from these documents that the Agency relies upon. No single document cited by the Agency is essential to the Agency's conclusion that the manufacturers intend their

1. The Smokeless Tobacco Manufacturers Understand That Nicotine Has Addictive and Other Pharmacological Effects and That Consumers Use Smokeless Tobacco To Obtain these Effects

Extensive evidence in the administrative record, including statements and research of smokeless tobacco manufacturers, demonstrates that the manufacturers know that nicotine causes significant pharmacological effects, including addiction. These statements and research also demonstrate that the manufacturers understand that consumers use smokeless tobacco to obtain the pharmacological effects of nicotine.

For example, Brown & Williamson Tobacco Corporation, which is also a smokeless tobacco manufacturer,[995] understands that nicotine is addictive; that nicotine has other significant pharmacological effects; and that consumers use tobacco products to obtain nicotine. *See* section II.C.2.c., above. Researchers for Brown & Williamson's parent corporation, BATCO, have long regarded "buccal administration of nicotine" through products such as chewing tobacco and wet snuff as alternatives to the delivery of nicotine through cigarettes.[996] According to these researchers, these types of tobacco usage—smoking, chewing, and snuffing—allow nicotine to go directly into the blood and to the brain; they stated that "[t]he common factor in all the types of tobacco usage . . . is nicotine,

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products to affect the structure and function of the body. In particular, none of the documents in the Agency's docket of confidential documents is essential to the Agency's determination. *See* AR (Vols. 505-518).

[995] Valero G, Moist poised to overtake leaf; smokeless tobacco, *U.S. Distribution Journal*, Dec. 15, 1995; 222(12):12. *See* AR (Vol. 711 Ref. 22).

[996] Minutes of B.A.T. Group Research Conference at St. Adele, Quebec (Nov. 9-13, 1970), at 3. *See* AR (Vol. 44 Ref. 15-2).

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either absorbed through the lungs *or the lining of the nose or mouth*. Taken in these ways *nicotine will quickly enter a direct route, in the blood, to the brain.*"[997]

Indeed, as recently as 1992, Brown & Williamson stated that "[t]he fact that people use snuff and chewing tobacco indicates that administration routes other than the inhalation route can deliver tobacco satisfaction."[998] BATCO scientists use "satisfaction" as a euphemism for the pharmacological effects of nicotine, stating "[i]ntuitively it is felt that *'satisfaction' must be related to nicotine*. Many people believe it [is] a 'whole body response' and *involves the action of nicotine in the brain.*"[999] *See* section II.E.2., below.

Similarly, a senior vice president for marketing for United States Tobacco Company (UST), the nation's largest smokeless tobacco manufacturer,[1000] wrote in a memo on new product development that "*virtually all tobacco usage is based upon nicotine, 'the kick,' satisfaction.*"[1001] The executive further stated:

> Nicotine gives the consumer satisfaction. Some would describe it as a pleasant feeling. Others would describe it as a kick. . . . Others would describe it as a relaxing feeling.[1002]

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[997] BATCO Group R&D Conference on Smoking Behaviour at Southampton, England (Oct. 11-12, 1976), at BW-W2-02145 (emphasis added). *See* AR (Vol. 14 Ref. 180-2).

[998] Transdermal Nicotine Patches, at 3. *See* AR (Vol. 531 Ref. 124).

[999] BATCO Nicotine Conference at Southampton, England (Jun. 6-8, 1984) at BW-W2-01977 (emphasis added). *See* AR (Vol. 22 Ref. 287-7).

[1000] UST has 82% of the market for moist snuff products sold in the United States in 1994. It also has nearly 40% of the market for all smokeless tobacco sold in the United States. *See* Valero G, Moist poised to overtake leaf; smokeless tobacco, *U.S. Distribution Journal*, Dec. 15, 1995; 222(12):12. *See* AR (Vol. 711 Ref. 22).

[1001] Deposition of Erik Lindqvist, transcript of jury trial proceedings at 1662 in *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986) (emphasis added). *See* AR (Vol. 22 Ref. 292).

[1002] *Id.*

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Another UST document compares the nicotine delivery of one of its products, Skoal Bandits, with the nicotine delivery of cigarettes. This document states:

> The nicotine contents are more or less equivalent to that of a good quality cigarette of average strength. The nicotine is absorbed, giv[ing] satisfaction to the smoker.[1003]

Like the major cigarette manufacturers, UST has funded its own studies on nicotine pharmacology, including studies on the absorption of nicotine from snuff and chewing tobacco, the effects of smokeless tobacco on performance and psychophysiological response, and detection of nicotine in blood.[1004] Other UST studies were designed to compare routes of nicotine administration in snuff and cigarette smoking[1005] and to describe the pharmacokinetics of nicotine and its major metabolites in experienced and inexperienced snuff

[1003] Potential Questions and Answers, submitted in *Marsee v. U.S. Tobacco,* Civil Action No. 84-2777R (W.D. Ok. 1986), at 1. *See* AR (Vol. 30 Ref. 509).

[1004] Kyerematen, GA, Dvorchik, BH, Vesell, ES, Influence of different forms of tobacco intake on nicotine elimination in man, *Pharmacology* 1983;26:205-209. *See* AR (Vol. 119 Ref. 1102).

Landers DM, Crews DJ, Boutcher SH, *et al.*, The effects of smokeless tobacco on performance and psychophysiological response, *Medicine and Science in Sports & Exercise* 1992;24(8):895-903, as cited in *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 144 (Nov. 29, 1994). *See* AR (Vol. 710 Ref. 4).

Allen JK, Stern JR, Harris J, *Analysis of Nicotine in Blood by HPLC with Electrochemical Detection, (Abstract),* submitted for presentation at the 10th International Symposium on Column Liquid Chromatography, San Francisco, CA (May 18-23, 1986), as cited in *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 144 (Nov. 29, 1994). *See* AR (Vol. 710 Ref. 4).

Baldini FD, Skinner JS, Landers DM, *et al.*, Effects of varying doses of smokeless tobacco at rest and during brief, high-intensity exercise, *Military Medicine* 1992;157:51-55, as cited in *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 144 (Nov. 29, 1994). *See* AR (Vol. 710 Ref. 4).

[1005] U.S. Tobacco Company, Results of Comparison of Routes of Nicotine Administration. Plaintiff's exhibit 3.28 from *Marsee v. U.S. Tobacco,* Civil Action No. 84-2777R (W.D. Ok. 1986). *See* AR (Vol. 24 Ref. 318).

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takers.[1006] The study comparing routes of nicotine administration, for instance, found that smokeless tobacco can actually deliver more nicotine than cigarettes to new tobacco users, stating that "for naive tobacco users, bioavailability of nicotine is greater after snuff dipping than after cigarette smoking. . . ."[1007]

UST is also a founding member of the Council for Tobacco Research (CTR).[1008] As discussed in section II.C.2.d., above, CTR has funded many studies on behalf of its members evaluating the pharmacological effects of nicotine on the body. At least one of these studies stated that nicotine in tobacco can cause "drug addiction."[1009] As a member of the Council for Tobacco Research, UST thus had direct knowledge of the pharmacological effects and the consumer uses of nicotine.

[1006] U.S. Tobacco Company, Pharmacokinetics of Nicotine and Its Major Metabolites in Naive and Habituated Snuff Takers. Plaintiff's exhibit 3.27 from *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986). *See* AR (Vol. 24 Ref. 317).

[1007] U.S. Tobacco Company, Results of Comparison of Routes of Nicotine Administration. Plaintiff's exhibit 3.28 from *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986). *See* AR (Vol. 24 Ref. 318).

[1008] UST has been intimately connected with CTR since its inception. The minutes of the initial meeting in March 1954 of the Tobacco Industry Research Council, the predecessor of the Council for Tobacco Research, indicate that UST's president was the first vice chairman of the Council. TIRC, Report on Meeting (Mar.15, 1954). *See* AR (Vol. 301 Ref. 4393). Subsequently, UST's president served as a director of CTR from 1976 to 1984. Organization and Function of CTR (summaries of CTR meetings, 1976-1984). *See* AR (Vol. 342 Ref. 5382). Prior to 1988, UST manufactured cigarettes and was a class A member of CTR. Since 1988, UST has been a class B member of CTR. *Health Effects of Smokeless Tobacco: Hearing Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 137 (Nov. 29, 1994). *See* AR (Vol. 710 Ref. 4).

[1009] *See, e.g.*, Svennson TH, Grenhoff J, Engberg G, Effect of nicotine on dynamic function of brain catecholamine neurons, in *The Biology of Nicotine Dependence*, eds. Bock G, Marsh J, *CIBA Foundation Symposium*, 1990;152:169-180. *See* AR (Vol. 61 Ref. 273).

Tung CS, Ugedo L, Grenhoff J, *et al.*, Peripheral induction burst firing in locus coerulus neurons by nicotine mediated via excitatory amino acids, *Synapse* 1989;4(4):313-318. *See* AR (Vol. 61 Ref. 278).

Rosecrans JA, Nicotine as a discriminative stimulus: a neurobehavioral approach to studying central cholinergic mechanisms, *J Subst Abuse* 1989;1(3):287-300. *See* AR (Vol. 59 Ref. 239).

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Nicotine's pharmacological effects are also understood by Procordia A.B., the parent of Pinkerton Tobacco Company, the nation's third largest smokeless tobacco manufacturer.[1010] Through corporate subsidiaries, Procordia has extensively investigated the pharmacological effects of nicotine, including funding numerous studies on nicotine's effects on the brain.[1011]

[1010] Valero G, Moist poised to overtake leaf; smokeless tobacco, *U.S. Distribution Journal*, Dec. 15, 1995; 222(12):12. *See* AR (Vol. 711 Ref. 22).

[1011] Procordia owns two foreign smokeless tobacco manufacturers, Svenska Tobaks AB and Swedish Tobacco Co. Through Svenska Tobaks and Swedish Tobacco, Procordia funded the following studies on nicotine pharmacology:

Adem A, Jossan SS, d'Argy R, *et al.*, Distribution of nicotinic receptors in human thalamus as visualized by 3H-nicotine and 3H-acetylcholine receptor autoradiography, *J Neural Transm* 1988;73(1):77-83. *See* AR (Vol. 45 Ref. 10).

Adem A, Nordberg A, Jossan SS, *et al.*, Quantitative autoradiography of nicotinic receptors in large cryosections of human brain hemispheres, *Neurosci Lett* 1989;101(3):247-252. *See* AR (Vol. 45 Ref. 9).

Andersson K, Eneroth P, Agnati L, Nicotine-induced increases of noradrenaline turnover in discrete noradrenaline nerve terminal systems of the hypothalamus and the median eminence of the rat and their relationship to changes in the secretion of adenohypophyseal hormones, *Acta Physiol Scand* 1981;113:227-231. *See* AR (Vol. 273 Ref. 3784).

Andersson K, Fuxe K, Agnati LF, *et al.*, Effects of acute central and peripheral administration of nicotine on ascending dopamine pathways in the male rat brain. Evidence for nicotine induced increases of dopamine turnover in various telencephalic dopamine nerve terminal systems, *Med Biol* 1981;59(3):170-176. *See* AR (Vol. 45 Ref. 11).

Andersson K, Fuxe K, Eneroth P, *et al.*, Interactions of nicotine and pentobarbitone in the regulation of telencephalic and hypothalamic catecholamine levels and turnover and of adenohypophyseal hormone secretion in the normal male rat, *Naunyn Schmiedebergs Arch Pharmacol* 1982;321:287-292. *See* AR (Vol. 423 Ref. 7141).

Andersson K, Hockey GRJ, Effects of cigarette smoking on incidental memory, *Psychopharmacology* 1977;52:223-226. *See* AR (Vol. 125 Ref. 1300).

Biber A, Scherer G, Hoepfner I, *et al.*, Determination of nicotine and cotinine in human serum and urine: an interlaboratory study, *Toxicol Lett* 1987;35(1):45-52. *See* AR (Vol. 140 Ref. 1649).

Copeland JR, Adem A, Jacob P, *et al.*, A comparison of the binding of nicotine and nornicotine stereoisomers to nicotinic binding sites in rat brain cortex, *Naunyn Schmiedebergs Arch Pharmacol* 1991;343(2):123-127. *See* AR (Vol. 152 Ref. 1887).

Falkeborn Y, Larsson C, Nordberg A, Chronic nicotine exposure in rat: a behavioral and biochemical study of tolerance, *Drug Alcohol Depend* 1981;8:51-60. *See* AR (Vol. 141 Ref. 1679).

Fuxe K, Andersson K , Eneroth P, *et al.*, Neurochemical mechanisms underlying the neuroendocrine actions of nicotine: focus on the plasticity of central cholinergic nicotinic receptors, *Prog Brain Res* 1989;79:197-207. *See* AR (Vol. 47 Ref. 95).

Fuxe K, Everitt BJ, Hokfelt T, On the action of nicotine and cotinine on central 5-hydroxytryptamine neurons, *Pharmacol Biochem Behav* 1979;10(5):671-677. *See* AR (Vol. 152 Ref. 1869).

Fuxe K, von Euler G, Finnman UB, *et al.*, Reduction of [3 H]nicotine binding in hypothalamic and cortical membranes by dopamine D1 receptors, *Acta Physiol Scand* 1989;136(2):295-296. *See* AR (Vol. 127 Ref. 1351).

Fuxe K, Agnati LF, Jansson A, *et al.*, Regulation of endocrine function by the nicotinic cholinergic receptor, *CIBA Foundation Symposium* 1990;152:113-130. *See* AR (Vol. 131 Ref. 1450).

Grenhoff J, Aston Jones G, Svensson TH, Nicotinic effects on the firing pattern of midbrain dopamine neurons, *Acta Physiol Scand* 1986;128(3)351-358. *See* AR (Vol. 143 Ref. 1771).

Larsson C, Nordberg A, Comparative analysis of nicotine-like receptor-ligand interactions in rodent brain homogenate, *J Neurochem* 1985;45:24-31. *See* AR (Vol. 141 Ref. 1684).

Larsson C, Lundberg PA, Halen A, *et al.*, In vitro binding of 3H-acetylcholine to nicotinic receptors in rodent and human brain, *J Neural Transm* 1987;69:3-18. *See* AR (Vol. 137 Ref. 1586).

Larsson C, Nilsson L, Halen A, *et al.*, Subchronic treatment of rats with nicotine: effects on tolerance and on [3 H]acetylcholine and [3 H]nicotine binding in the brain, *Drug Alcohol Depend* 1986;17:37-45. *See* AR (Vol. 141 Ref. 1677).

Nisell M, Nomikos GG, Svensson TH, Systemic nicotine-induced dopamine release in the rat nucleus accumbens is regulated by nicotinic receptors in the ventral tegmental area, *Synapse* 1994;16:36-44. *See* AR (Vol. 276 Ref. 3870).

Nordberg A, Romanelli L, Sundwall A, *et al.*, Effect of acute and subchronic nicotine treatment on cortical acetylcholine release and on nicotinic receptors in rats and guinea-pigs, *British Journal of Pharmacology* 1989;98(1):71-78. *See* AR (Vol. 131 Ref. 1454).

Nordberg A, Wahlstrom G, Arnelo U, *et al.*, Effect of long-term nicotine treatment on [3-H]nicotine binding sites in the rats brain, *Drug Alcohol Depend* 1985;16:9-17. *See* AR (Vol. 141 Ref. 1678).

Nordberg A, Bergh C, Effect of nicotine on passive avoidance behaviour and motoric activity in mice, *Acta Pharmacol Toxicol Copenh* 1985;56(4):337-341. *See* AR (Vol. 274 Ref. 3820).

Nordberg A, Sundwall A, Pharmacodynamic effects of nicotine and acetylcholine biosynthesis, in mouse brain, *Acta Pharmacol Toxicol Copenh* 1983;52(5):341-347. *See* AR (Vol. 133 Ref. 1503).

Nordberg A, Larsson C, Studies of muscarinic and nicotinic binding sites in brain, *Acta Physiol Scand Suppl* 1980;479:19-23. *See* AR (Vol. 137 Ref. 1590).

Pilotti A, Enzell CR, McKennis H Jr, *et al.*, Studies on the identification of tobacco alkaloids, their mammalian metabolites and related compounds by gas chromatography- -Mass Spectrometry, *Beitrage zur Tabakforschung* 1976;8(6):339-349. *See* AR (Vol. 96 Ref. 704).

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Furthermore, numerous studies of the pharmacological effects and chemistry of nicotine and the sites and mechanisms of nicotine receptors in the brain have been funded by the Smokeless Tobacco Research Council.[1012] The Smokeless Tobacco Research Council

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Schievelbein H, Absorption of Nicotine Under Various Conditions (an introductory review), presented at the Nicotine Workshop (Nov. 1974), *Beitrage zur Tabakforschung* 1976;8(5):196-202. *See* AR (Vol. 60 Ref. 254).

Schmiterlow CG, Hansson E, Andersson G, *et al.*, Distribution of Nicotine in the Central Nervous System, *Annals of the New York Academy of Sciences* 1967;142:2-14. *See* AR (Vol. 152 Ref. 1859).

Schmiterlow CG, Hansson E, Tissue distribution of C 14-nicotine, in Von Euler US (ed.), *Tobacco Alkaloids and Related Compounds* 1965:75-86, ed. Von Euler US. *See* AR (Vol. 60 Ref. 256).

Siegel RA, Andersson K, Fuxe K, *et al.*, Rapid and discrete changes in hypothalamic catecholamine nerve terminal systems induced by audiogenic stress, and their modulation by nicotine-relationship to neuroendocrine function, *Eur J Pharmacol* 1983;91:49-56. *See* AR (Vol. 60 Ref. 262).

Svensson TH, Engberg G, Effect of nicotine on single cell activity in the noradrenergic nucleus locus coerulus, *Acta Physiol Scand Suppl* 1980;479:31-34. *See* AR (Vol. 422 Ref. 7124).

Szuts T, Olsson S, Lindquist NG, *et al.*, Long-term fate of [14C]nicotine in the mouse: retention in the bronchi, melanin-containing tissues and urinary bladder wall, *Toxicology* 1978;10(3):207-220. *See* AR (Vol. 131 Ref. 1458).

[1012] Anand R, and Lindstrom J, Chromosomal localization of seven neuronal nicotinic acetylcholine receptor subunit genes in humans, in *Report of the Council for Tobacco Research - USA, Inc. 1992*, at 101. *See* AR (Vol. 465 Ref. 7874).

Bencherif M, Lukas RJ, Cytochalasin modulation of nicotinic cholinergic receptor expression and muscarinic receptor function in human TE671/RD cells: a possible functional role of the cytoskeleton, *Journal of Neurochemistry* 1993;61(3):852-864. *See* AR (Vol. 141 Ref. 1683).

Britto LRG, Keyser KT, Lindstrom JM, *et al.*, Immunohistochemical localization of nicotinic acetylcholine receptor subunits in the mesenchephalon and diencephalon of the chick (Gallus Gallus), *The Journal of Comparative Neurology* 1992;317:325-340. *See* AR (Vol. 131 Ref .1453).

Cholerton S, McCracken NW, Idle JR, Sources of inter-individual variability in nicotine pharmacokinetics, in *Nicotine and Related Alkaloids: Absorption, Distribution, Metabolism, and Excretion*, eds. Gorrod JW, and Wahren J (1993), at 219-253. *See* AR (Vol. 47 Ref. 70).

Gerzanich V, Anand R, Lindstrom J, Homomers of α8 and α7 subunits of nicotinic receptors exhibit similar channel but contrasting binding site properties, *Molecular Pharmacology* 1994;45(2):212-220. *See* AR (Vol. 276 Ref. 3861).

Hsu YN, Amin J, Weiss D, *et al.*, Chronic nicotine exposure decreases the activation of α4β2 but not α3β2 neuronal nicotinic receptors expressed in *xenopus* oocytes, in *International Symposium on Nicotine: The*

Effects of Nicotine on Biological Systems II, eds. Clarke PBS *et al.* (Montreal: Jul. 21-24, 1994). *See* AR (Vol. 135 Ref. 1529).

Keyser KT, Britto LRG, Schoepfer R, *et al.*, Three subtypes of α-bungarotoxin - sensitive nicotinic acetylcholine receptors are expressed in chick retina, *Journal of Neuroscience*, Feb. 1993;13(2):442-454. *See* AR (Vol. 126 Ref. 1343).

Marks R, Lindstrom J, Schroder H, Cellular and subcellular visualization of the β2 - subunit of the nicotinic acetylcholine receptor in the mouse cerebral cortex, in *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II*, eds. Clarke, PBS, *et al.*, at session 1, 4 (Montreal: Jul. 21-24, 1994). *See* AR (Vol. 104 Ref. 952).

McFarland BJ, Seidler FJ, Slotkin TA, Inhibition of DNA synthesis in neonatal rat brain regions caused by acute nicotine administration, *Developmental Brain Research* 1991;58:223-229. *See* AR (Vol. 414 Ref. 6940).

McLane DE, Wu X, Schoepfer R, *et al.*, Identification of sequence segments forming the α-bungarotoxin binding sites on two nicotinic acetylcholine receptor α subunits from the avian brain, in *Report of the Council for Tobacco Research - USA, Inc. 1991*. *See* AR (Vol. 19 Ref. 195-22).

McLane DE, Wu X, Lindstrom JM, *et al.*, Epitope mapping of polyclonal and monoclonal antibodies against two α-bungarotoxin-binding α subunits from neuronal nicotinic receptors, in *Report of the Council for Tobacco Research - USA, Inc. 1992*. *See* AR (Vol. 19 Ref. 195-23).

Navarro HA, Seidler FJ, Schwartz RD, *et al.*, Prenatal exposure to nicotine impairs nervous system development at a dose which does not affect viability or growth, *Brain Research Bulletin* 1989;23:187-192. *See* AR (Vol. 137 Ref. 1585).

Nelson S, Shelton GD, Lei S, *et al.*, Epitope mapping of monoclonal antibodies to *torpedo* acetylcholine receptor γ subunits, which specifically recognize the ε subunit of mammalian muscle acetylcholine receptor, in *Report of the Council for Tobacco Research - USA, Inc. 1992*. *See* AR (Vol. 19 Ref. 195-23).

Seeman JI, Secor HV, Armstrong DW, *et al.*, Enantiomeric resolution and chiral recognition of racemic nicotine and nicotine analogues by β-cyclodextrin complexation. Structure-enantiomeric resolution relationships in host-guest interactions, *Analytical Chemistry* 1988;60:2120-2127. *See* AR (Vol. 275 Ref. 3836).

Slotkin TA, Cho H, Whitmore WL, Effects of prenatal nicotine exposure on neuronal development: selective actions on central and peripheral catecholaminergic pathways, *Brain Research Bulletin* 1987;18(5):601-611. *See* AR (Vol. 137 Ref. 1573).

Slotkin TA, Navarro HA, McCook EC, *et al.*, Fetal nicotine exposure produces postnatal up-regulation of adenylate cyclase activity in peripheral tissues, *Life Sciences* 1990;47:1561-1567. *See* AR (Vol. 276 Ref. 3865).

Slotkin TA, Lappi SE, Tayyeb MI, *et al.*, Chronic prenatal nicotine exposure sensitizes rat brain to acute postnatal nicotine challenge as assessed with ornithine decarboxylase, *Life Sciences* 1991;49(9):665-670. *See* AR (Vol. 137 Ref. 1580).

Slotkin TA, Developmental effects of nicotine, in *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II*, eds. Clarke PBS, *et al.*, at session 4, S15 (Montreal: Jul. 21-24, 1994). *See* AR (Vol. 60 Ref. 264).

was formed by the major smokeless tobacco manufacturers to fund scientific studies on behalf of the manufacturers. One such study recognized that nicotine is "*the major pharmacologically active component of tobacco.*"[1013]

2. The Smokeless Tobacco Manufacturers Manipulate Nicotine Deliveries from Smokeless Tobacco in a Manner That Promotes Tolerance and Addiction in Users

The evidence in the record also demonstrates that smokeless tobacco manufacturers manipulate the nicotine delivery of their products to produce graduated deliveries of nicotine that promote tolerance and addiction. Specifically, the evidence shows that the nicotine deliveries of smokeless tobacco are manipulated so that products intended for new users deliver low amounts of nicotine, while products intended for experienced users deliver far higher amounts of nicotine. This manipulation of nicotine delivery is accomplished primarily

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Slotkin TA, Lappi SE, Seidler FJ., Impact of fetal nicotine exposure on development of rat brain regions: critical sensitive periods or effects of withdrawal?, *Brain Research Bulletin* 1993;31:319-328. *See* AR (Vol. 137 Ref. 1571).

Wahlsten JL, Lindstrom JM, Conti-Tronconi BM, Amino acid residues within the sequence region α55-74 of torpedo nicotinic acetylcholine receptor interacting with antibodies to the main immunogenic region and with snake α-neurotoxins, in *Report of the Council for Tobacco Research - USA, Inc. 1993*, at 166-167. *See* AR (Vol. 465 Ref. 7873).

Wahlsten JL, Lindstrom JM, Ostlie N, *et al.*, Myasthenia gravis: effect on antibody binding of conservative substitutions of amino acid residues forming the main immunogenic region of the nicotinic acetylcholine receptor, in *Report of the Council for Tobacco Research - USA, Inc. 1993*, at 166. *See* AR (Vol. 465 Ref. 7873).

Yu CI, Morgan DG, Wecker L, Northern blot analysis demonstrates the presence of three different transcripts of neuronal nicotinic acetylcholine receptor α4 gene in rat brain, in *International Symposium on Nicotine: The Effects of Nicotine on Biological Systems II*, eds. Clarke PBS, *et al.*, at session 2, P10 (Montreal: Jul. 21-24, 1994). *See* AR (Vol. 104 Ref. 952).

[1013] Cholerton S, McCracken NW, Idle JR, Sources of inter-individual variability in nicotine pharmacokinetics, in *Nicotine and Related Alkaloids: Absorption, Distribution, Metabolism, and Excretion*, eds. Gorrod JW, Wahren J (1993):219-253, at 219 (emphasis added). *See* AR (Vol. 47 Ref. 70).

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through the use of chemicals that alter the pH (acidity or alkalinity) of the tobacco. The effect is to promote tolerance and addiction in users.

The evidence of nicotine manipulation in smokeless tobacco in a manner that promotes tolerance in addiction in users is extensive. First, evidence shows that products intended for new users deliver less nicotine than products intended for experienced users. These graduated nicotine deliveries lead to increased tolerance and addiction because they allow new users to avoid adverse reactions to nicotine by beginning with low-nicotine products, while allowing experienced users to obtain sufficient nicotine to sustain their addiction by progressing to high-nicotine products.

Second, governmental data on smokeless tobacco use confirms that the graduated nicotine deliveries promote tolerance and addiction. These data show that since the advent of smokeless tobacco products with graduated nicotine deliveries, the number of children and adolescents who use and are addicted to smokeless tobacco has risen substantially.

Third, evidence from internal company documents and marketing campaigns of the nation's largest smokeless tobacco manufacturer, UST, shows the conscious manipulation of nicotine deliveries. UST deliberately relies on an explicit "graduation process" that introduces new users to low-nicotine delivery products while providing experienced users with higher-nicotine delivery products.

In combination with the evidence that the manufacturers understand the pharmacological effects and uses of nicotine, this evidence of nicotine manipulation to promote pharmacological effects in users demonstrates that the effects of nicotine in

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smokeless tobacco on the structure and function of the body are "intended" by the manufacturers.

a. Evidence of Graduated Nicotine Deliveries

Absorption of a drug through the buccal mucosa in the mouth into the bloodstream can be increased or decreased by adjusting the pH of the drug. Pharmaceutical companies regularly alter pH by adding alkaline or acidic additives to drugs to increase or decrease their absorption into the bloodstream. Raising the pH converts many drugs from an ionized form into a non-ionized or "free" form that more readily crosses biological membranes.[1014]

Nicotine absorption is affected in this manner by pH levels. Increasing the pH of nicotine converts ionized nicotine into non-ionized nicotine, rendering it significantly more absorbable in the mouth.[1015] For this reason, the manufacturer of nicotine gum adds sodium carbonate to increase pH and enhance the absorption of nicotine.[1016] Tobacco industry-supported researchers have acknowledged that nicotine absorption in the mouth increases as a function of pH and that "the pharmacological response is clearly dependent on the amount of nicotine in the mouth as free base."[1017] Indeed, the senior vice president for marketing at

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[1014] Benet LZ, Steiner LB, Pharmacokinetics: The dynamics of drug absorption, distribution, and elimination in *Goodman and Gilman's The Pharmacological Basis of Therapeutics* (1990), 3-32, at 4-5. *See* AR (Vol. 711 Ref. 14).

[1015] Surgeon General's Report, 1988, at 29. *See* AR (Vol. 129 Ref. 1592).

[1016] Henningfield JE, Radzius A, Cooper TM, *et al.*, Drinking coffee and carbonated beverages blocks absorption of nicotine from nicotine polacrilex gum, *Journal of the American Medical Association*, 1990;264:1560-1564. *See* AR (Vol. 29 Ref. 491-2).

[1017] Armitage AK, Turner DM, Absorption of nicotine in cigarette and cigar smoke through the oral mucosa, *Nature*, 1970;226:1231-1232, at 1232. *See* AR (Vol. 143 Ref. 1810).

Cholerton S, McCracken NW, Idle JR, Sources of inter-individual variability in nicotine pharmacokinetics, in *Nicotine and Related Alkaloids: Absorption, Distribution, Metabolism, and Excretion*, eds. Gorrod JW, Wahren J (1993), at 220-221 ("Absorption of nicotine from chewing tobacco and nicotine gum is facilitated by buffering of the preparations to an alkaline pH (approx. 8.5)"). *See* AR (Vol. 47 Ref. 70).

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UST conceded that it was his understanding that "if the pH of the snuff product is raised, . . . the rate of absorption of the nicotine would be increased in the user's mouth."[1018]

The data collected and analyzed by FDA[1019] and others[1020] demonstrate that moist snuff products marketed as "starter" products have relatively low pH levels, while products for established users have significantly higher pH levels, resulting in a pattern of graduated delivery of free nicotine. UST's principal line of starter products is its "Skoal Bandits" line. The pH levels for Skoal Bandits are low, ranging from 5.2 to 5.6 for Skoal Bandits Classic to 6.8 to 7.1 for Skoal Bandits Mint; the free nicotine provided by Skoal Bandits is also low, ranging from 0.2% to 0.4% for Skoal Bandits Classic to only 6.4% to 9.9% for Skoal Bandits Mint. *See* Jurisdictional Analysis, 60 FR 41737. Likewise, another UST starter product, "Happy Days," has a pH of 6.0 and provides only 0.9% free nicotine. In contrast, UST's principal product for established users, Copenhagen, has a pH of 7.7 to 8.1. Because pH is measured on a logarithmic scale, the alkalinity of Copenhagen is approximately two

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[1018] The exchange from the *Marsee* trial transcript on this point was:

> Q: And correspondingly, if the pH of the snuff product is raised, then, the rate of absorption of the nicotine from the snuff product would be increased in the user's mouth?
> A: Although I am not an expert on this, that is to the best of my understanding correct.

Deposition of Erik Lindqvist, *Marsee v. U.S. Tobacco,* Civil Action No. 84-2777R (W.R. Ok. 1986). Transcript of jury trial proceedings, at 1668. *See* AR (Vol. 29 Ref. 489-2).The relationship between ionized nicotine and nicotine in its free form is thus similar to the relationship between cocaine and "free-base" or "crack" cocaine. Increasing the pH of cocaine, through the addition of alkaline additives such as sodium bicarbonate and ammonia, converts cocaine salt into free-base or crack cocaine, thereby significantly increasing the rate at which the cocaine is absorbed into the bloodstream. Siegel RK, Part III cocaine free base use, *Journal of Psychoactive Drugs* 1982;14:311-318, 352-359. *See* AR (Vol. 711 Ref. 23).

[1019] The table on the next page presents the results of the studies performed by the two FDA laboratories in St. Louis, Missouri, and Cincinnati, Ohio.

[1020] Djordjevic MV, Hoffmann D, Glynn T, *et al.*, US commercial brands of moist snuff, 1994, Assessment of nicotine, moisture, and pH, *Tobacco Control,* 1995;4:62-66. *See* AR (Vol. 528 Ref. 97, appendix 9).

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TOTAL NICOTINE

MANUFACTURER/ PRODUCT NAME	pH		%Free Nicotine*		Content(mg/gm)**	
	St.Louis	Cinc.	St.Louis	Cinc.	St. Louis	Cinc.
U.S. Tobacco Co.						
Skoal Key	-	8.22	-	61.3	-	12.4
Copenhagen Snuff	8.14	7.71	56.5	32.7	13.2	13.8
Skoal L.C. Class	8.04	7.92	51.1	44.5	12.7	13.8
Skoal L.C. Wint.	7.50	7.57	23.1	26.0	12.7	13.9
Skoal L.C. Mint	7.35	7.52	17.6	24.0	13.2	13.7
Skoal L.C. Spear.	7.20	7.50	14.0	23.3	12.5	13.8
Skoal Or.F.C. Wint.	-	7.41	-	19.7	-	13.6
Skoal L.C. Strai.	7.47	7.41	22.0	19.5	12.1	13.8
Skoal L.C. Cherry	7.15	7.38	12.3	18.5	12.5	13.6
Skoal Band. Mint	6.83	7.06	6.4	9.9	6.7	8.8
Skoal Band. Wint.	6.56	6.72	3.3	4.8	7.8	8.2
Happy Days L.C. Mint	6.00	-	0.9	-	13.9	
Skoal Band. Strai.	-	5.48	-	0.3	-	10.8
Skoal Band. Class.	5.61	5.23	0.39	0.2	10.4	9.9
Helme Tobacco Co.* **						
Redwood Full Flavor	-	7.52	-	24.0	-	12.6
Silver Cr. L.C.	-	7.22	-	13.7	-	6.0
Cooper Wint. L.C.	-	6.99	-	8.5	-	5.7
Gold River L.C.	-	5.77	-	0.6	-	6.4
Conwood Co.						
Kodiak Wint.	8.20	8.22	59.9	61.0	11.4	11.7
Kodiak Choice Wint.	-	7.98	-	47.7	-	11.4
Kodiak Straight	7.39	7.82	19.0	38.4	10.6	10.4
Hawken Wint.	5.56	5.58	0.35	0.4	4.4	0.4
Pinkerton Tobacco Co.						
Redman F.C. Ex. Wint.	-	7.58	-	-	-	12.3
Renegade Wint.	6.81	7.17	5.8	-	13.2	11.8

L.C. = long cut

* Calculated using the Henderson-Hasselbach Equation for acid base equilibrium. This calculation strictly is dependent on the pH determination. Any error in the pH determination will affect the percent free nicotine calculation.

** Measured on wet basis

*** Now Swisher International, Inc.

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orders of magnitude higher than the alkalinity of Skoal Bandits Classic and Happy Days (as measured in hydrogen ion concentrations). The level of free nicotine provided by Copenhagen is 33% to 57%, also far higher than the levels provided by Skoal Bandits or Happy Days.[1021]

The same pattern of graduated nicotine deliveries is found in the smokeless tobacco products of other manufacturers. Conwood's principal line of moist snuff starter products, "Hawken," has a pH of 5.6 and provides 0.4% free nicotine, whereas Conwood's product marketed for established users, "Kodiak-Wintergreen," has a pH of 8.2 and provides about 60% free nicotine.[1022] Similarly, the principal starter product of Swisher International, Inc. (formerly Helme Tobacco Co.), "Gold River L.C.," has a pH of 5.8 and provides 0.6% free nicotine, whereas its product marketed for established users, "Redwood Full Flavor," has a pH of 7.5 and provides 24% free nicotine.[1023]

These graduated nicotine deliveries directly promote tolerance and addiction. New users of smokeless tobacco have not developed a tolerance to nicotine. As a result, as a UST study documented, too much nicotine causes adverse reactions such as nausea and vomiting in new users,[1024] discouraging future experimentation with smokeless tobacco. Once tolerance to nicotine is developed, however, increasing doses of nicotine are required to

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[1021] *See* Table of "Total Nicotine" above.

[1022] *Id.*

[1023] *Id.*

[1024] U.S. Tobacco Company, Pharmacokinetics of Nicotine and Its Major Metabolites in Naive and Habituated Snuff Takers, Plaintiff's exhibit 3.27 from *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986), at 9. *See* AR (Vol. 24 Ref. 317).

produce the desired pharmacological effects.[1025] Thus, if nicotine levels were kept uniformly low to accommodate new users, the experienced user would not obtain the higher level of nicotine delivery needed to satisfy the user's addiction and to provide other desired pharmacological effects.

Graduating nicotine deliveries avoid these consequences and lead to increased tolerance and addiction. The low levels of nicotine delivery in starter brands, such as Skoal Bandits, allow the new user to develop a tolerance to nicotine[1026] without nausea and other adverse reactions. Once this tolerance is developed, the high levels of nicotine delivery in brands such as Copenhagen provide the experienced user with the desired increase in nicotine dose. Nicotine addiction is the final result.

There are several techniques the smokeless manufacturers use to achieve control over pH levels in smokeless tobacco. According to one report, pH adjustment is "done through fermentation, by adding alkaline buffering agents such as sodium carbonate and ammonium carbonate, or by altering the moisture content."[1027] The Swedish Tobacco Company, which like Pinkerton Tobacco Company is owned by Procordia AB, has admitted that "*[i]n order to release the nicotine from the tobacco, the snuff is made slightly alkaline—sodium carbonate is added. . .*"[1028] The Smokeless Tobacco Council has also reported that two alkaline

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[1025] Surgeon General's Report, 1988, at 44-45. *See* AR (Vol. 129 Ref. 1592).

[1026] Connolly GN, Orleans CT, Blum A, Snuffing tobacco out of sport, *American Journal of Public Health* Mar. 1992;82(3):352. *See* AR (Vol. 94 Ref. 629).

[1027] Connolly GN, Marketing of Nicotine Addiction By One Oral Snuff Manufacturer, *Tobacco Control* 1995;4:73-79, at 74. *See* AR (Vol. 528 Ref. 97, appendix 9).

[1028] Swedish Tobacco Company, Smokeless Tobacco from Gothenburg, 1994, appendix B, quoted in statement of Gregory N. Connolly in *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 53 (Nov. 29, 1994) (emphasis added). *See* AR (Vol. 710 Ref. 4).

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buffering agents, sodium carbonate and ammonium carbonate, are used in smokeless tobacco sold in the U.S.[1029]

Despite this evidence, the smokeless tobacco industry argues that the pattern of pH values in smokeless tobacco is not the result of intentional nicotine manipulation. The Agency disagrees. The pH values in the upper ranges seen in marketed smokeless tobacco for established users do not occur naturally in the tobacco used for the production of smokeless tobacco. Jack Henningfield, chief, clinical pharmacology branch of the Addiction Research Center at the National Institute on Drug Abuse, testified before Congress:

> Naturally occurring tobacco . . . does not occur, at least in these kinds of tobaccos, at the high pH levels that we observed. Normal fermentation processes typically result in acidification, as anyone has found when they saw their wine turn into vinegar. But here we see very high [alkaline] pH levels in some of the products.[1030]

Moreover, other product features reflect a consistent attempt to market products that deliver smaller amounts of nicotine to new users and products that deliver larger amounts to established users. For example, UST's Skoal Bandits and Pinkerton's starter product, Renegades, are packaged in teabag-like pouches, which both contain a much smaller amount of snuff (about 0.5g) than the usual standard size "pinch" of snuff (about 1.5g). The pouch system also delays the release of nicotine from the snuff.[1031] Thus, FDA data show that,

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[1029] Letter to Waxman HA and Bliley, Jr. TJ (U. S. House of Representatives) from Pape SM (Patton, Boggs & Blow) (May 3, 1994), with enclosure *Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products as of April 4, 1994*. *See* AR (Vol. 192 Ref. 2173).

[1030] *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 98 (Nov. 29, 1994) (statement of Jack Henningfield). *See* AR (Vol. 710 Ref. 4).

[1031] Memorandum from Ciolino L, *Moist Snuff Nicotine Release Studies* (Sep. 28, 1994), at 1. *See* AR (Vol. 30 Ref. 500-2).

under typical use conditions, a standard size "pinch" of Copenhagen releases *12 times as much nicotine* in the first 2 minutes as a pouch of Bandits.[1032]

The evidence thus demonstrates that smokeless tobacco manufacturers intentionally manipulate the pH levels of smokeless tobacco, thereby controlling and adjusting the level of nicotine delivered to consumers. Products intended for new users have uniformly lower levels of pH and nicotine delivery than products intended for experienced users. The effect is to promote nicotine tolerance and addiction in users of smokeless tobacco.

b. Evidence that Teenage Users Graduate from Smokeless Tobacco with Low Nicotine Deliveries to Products with High Nicotine Deliveries

Data on teenage use of smokeless tobacco shows that the manufacturers' graduated nicotine deliveries have increased addiction to smokeless tobacco among young people. These data show that: (1) children and adolescents begin smokeless tobacco use with low nicotine delivery starter products and then switch to products with higher nicotine deliveries; and (2) the number of children and adolescents addicted to smokeless tobacco has risen substantially since the introduction of smokeless tobacco products with graduated nicotine deliveries.

Before the introduction of starter brands with low levels of nicotine in the early 1970's, virtually no teenagers and young adults used smokeless tobacco. According to the Centers for Disease Control and Prevention (CDC), "[i]n 1970, the use of smokeless tobacco

[1032] *Id.* at 2. *See* AR (Vol. 30 Ref. 500-2).

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was a behavior primarily restricted to older men."[1033] In that year, only 2.2% of young males used smokeless tobacco, compared with 12.7% of males age 65 or older.[1034]

In the 1970's, however, smokeless tobacco manufacturers began to market low-nicotine "starter" products.[1035] These products have proven extremely successful in attracting young new users. Use by adolescent males aged 18 to 19 has increased approximately 1,500% between 1971 and 1991.[1036] Overall, use of smokeless tobacco almost tripled between 1970 and 1991.[1037] As discussed in section II.B.2., above, it has been estimated that approximately 75% of the regular young users of smokeless tobacco are addicted to nicotine.

Although the majority of the industry's advertising dollars are spent on promoting low- and medium-nicotine brands,[1038] these brands serve mainly as a stepping stone to the high-nicotine delivery products. Most of the increased sales of smokeless tobacco are sales of high-nicotine delivery brands, like Copenhagen.[1039]

[1033] *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 34 (Nov. 29, 1994) (statement of Michael P. Eriksen). *See* AR (Vol. 710 Ref. 4).

[1034] *Id.*

[1035] Connolly GN, *In the search for a perfect starter product: manipulation of nicotine in oral snuff brands* (1994) (unpublished), at 3-4. *See* AR (Vol. 30 Ref. 511).

[1036] Centers for Disease Control and Prevention, Office of Smoking and Health, unpublished data from 1970 and 1991 National Household Interview Surveys (rate of snuff use among 18-19 year-old males was 0.5% in 1970 and 7.6% in 1991).. *See* AR (Vol. 31 Ref. 521-1).

[1037] *Id.*

[1038] Connolly GN, *In the search for a perfect starter product: manipulation of nicotine in oral snuff brands* (1994) (unpublished), at 5. *See* AR (Vol. 30 Ref. 511).

[1039] *Id.* at 6.

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A study by CDC confirms the role of low-nicotine delivery brands as starter products. The study analyzes data from CDC's 1993 Teenage Attitudes and Practices Survey (TAPS) and from a follow-up study to the 1989 TAPS.[1040] The authors found that the percentage of beginning teenage snuff users who bought Skoal Bandits (low nicotine delivery) and Skoal (medium nicotine delivery) was higher than the percentage of experienced teenage snuff users who bought these products.[1041] Similarly, the proportion of teenage snuff users who chose Copenhagen (high nicotine delivery) was about three times higher among those who used snuff for 4 years or more than among those who used snuff for 1 year or less.[1042] Use of Copenhagen was also higher among those who used smokeless tobacco more frequently and with increased intensity.[1043] The study also included an analysis that found that of those who used Skoal Bandits or Skoal at the beginning of the study, nearly a third had switched to Copenhagen 4 years later.[1044] However, among those who used Copenhagen at the beginning of the study, 83% were still using it 4 years later. Thus, teenage moist snuff users were significantly more likely to graduate to a higher nicotine delivery product than to switch down to a lower nicotine delivery product.[1045]

The CDC report concluded that these findings "support the hypothesis that snuff users in earlier stages of tobacco use and nicotine addiction, use brands with low levels of

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[1040] Tomar S, Giovino G, Eriksen M, Smokeless tobacco brand preference and switching among U.S. adolescents and young adults, *Tobacco Control* 1995;4:67-72. *See* AR (Vol. 528 Ref. 97, appendix 9).

[1041] *Id.* at 69.

[1042] *Id.* at 71.

[1043] *Id.*

[1044] *Id.*

[1045] *Id.*

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free nicotine, and then 'graduate' to brands with high levels."[1046] The report further stated that "[t]his pattern of brand preference probably reflects a progression of nicotine addiction and the need to increase nicotine intake to maintain the same physiological and psychological effects (chronic tolerance)."[1047]

More frequent smokeless tobacco use, and use of products with higher amounts of free nicotine, result in greater difficulty in quitting, which is one of the characteristic features of addiction. *See* section II.A.3.b., above. CDC has found that 74% of young people who use smokeless tobacco daily report that "it's really hard to quit," compared with only 11% of those who use smokeless tobacco infrequently.[1048] When CDC evaluated the data by brand, it found that, of young people who used smokeless tobacco only infrequently, 22% of infrequent Copenhagen users reported that it was very difficult to quit, compared with only 7% of infrequent Skoal or Skoal Bandits users.[1049]

Thus, empirical evidence indicates that the manufacturers' manipulation of nicotine deliveries has led to increased tolerance and addiction to nicotine among young smokeless tobacco users. Combined with the evidence of the manufacturers' understanding of the pharmacological effects of nicotine, and the laboratory evidence of graduated nicotine deliveries, this evidence shows that (1) the manufacturers manipulate nicotine in a manner that encourages new users to become tolerant and addicted to nicotine; and (2) there has

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[1046] *Id.* at 72.

[1047] *Id.* at 71.

[1048] *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 40 (Nov. 29, 1994) (statement of Michael P. Eriksen). *See* AR (Vol. 710 Ref. 4).

[1049] *Id.*

been a significant increase in smokeless tobacco use and nicotine tolerance and addiction among young smokeless tobacco users since the manufacturers began manipulating nicotine deliveries. This evidence provides a sufficient basis for the Agency's conclusion that the manufacturers intend to affect the structure and function of the body.

c. Documentary Evidence of UST's Deliberate "Graduation Process"

Although further evidence is unnecessary to establish that smokeless tobacco is intended to affect the structure and function of the body, evidence from the major moist snuff producer, UST, provides striking confirmation of an intentional plan to cause tolerance and addiction in users of smokeless tobacco. This evidence shows that UST intentionally manufactures products that deliver low, medium, and high amounts of nicotine; markets the lower nicotine delivery products to new users; and encourages established users to select higher nicotine delivery products. UST documents explicitly describe the company's strategy as a "graduation process," which the company exploits through marketing and advertising techniques.

UST's development of products offering graduated nicotine deliveries began in the late 1960's or early 1970's. The company initiated the "Lotus Project." A 1972 memorandum describing the project states that the "aim" was "[t]o make it easier for a new user to use tobacco in the mouth"; that the "target group" was "[n]ew users . . . age group 15-35"; and that the "product" should provide "[n]icotine satisfaction" that was "[m]ild" and "[i]nstant but not shocking."[1050] In another document discussing the Lotus Project, the president of UST's foreign subsidiary, United Scandia International, wrote to the president of UST to describe the graduated nicotine deliveries that should be offered:

[1050] *The Lotus Project*, from *Marsee v. U.S. Tobacco*, trial exhibit 159. *See* AR (Vol. 30 Ref. 505-3).

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There should be three products of three different tastes and strengths of nicotine.
a. High nicotine, strong tobacco flavor . . .
b. Medium strength of nicotine . . .
c. Low nicotine, sweet product.[1051]

Shortly after these Lotus Project documents were written, UST began aggressively to market low-nicotine starter products to new users. An advertisement for "Happy Days," one of the first low-nicotine products, targeted the product "for You Guys Just Starting Out."[1052] In addition, UST's low-nicotine delivery products were marketed as starter products through free sampling on college campuses and at sports events.[1053]

A brochure for Skoal Bandits contained instructions on how to use the products, a marketing approach tailored to the new user.[1054] In contrast, advertisements for UST's high-nicotine delivery product, Copenhagen, do not contain instructions or suggestions that they be tried by new users. Rather, Copenhagen's advertisements emphasize "satisfaction," an implied drug claim. *See* section II.E.2., below. They also seem to encourage graduation, using the slogan "Sooner or Later, It's Copenhagen."[1055]

[1051] Intracompany correspondence from Watson WW, president, United Scandia Internationals, to Bantle LA, president, U.S. Tobacco Company (Jun. 2, 1972) at 2, from *Marsee v. U.S. Tobacco*, trial exhibit 158 (emphasis added). See AR (Vol. 30 Ref. 505-2).

[1052] Connolly GN, *In search for a perfect starter product: manipulation of nicotine in oral snuff brands* (1994) (unpublished). *See* AR (Vol. 30 Ref. 511).

[1053] U.S. Tobacco Company, *College Representative Manual, Introduction* (Jul. 31, 1985). *See* AR (Vol. 30 Ref. 512).

Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives, 103d Cong., 2d Sess. 108 (Nov. 29, 1994). *See* AR (Vol. 710 Ref. 4).

[1054] Connolly GN. *In search for a perfect starter product: manipulation of nicotine in oral snuff brands* (1994) (unpublished), at 5. *See* AR (Vol. 30 Ref. 511).

[1055] *Id.*

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In its comment, UST denies that it ever used a graduation strategy. However, documents presented to a congressional subcommittee in 1994, and other evidence, indicate that by the 1980's senior UST officials were explicitly describing their marketing approach as a "graduation process." For example:

- An executive vice-president of UST stated in a 1986 interview published in a UST newsletter:

> for each market there is a set of criteria which have been established, and must be met. Skoal Bandits is the introductory product, and then *we look towards establishing a normal graduation process.*[1056]

- Similarly, Ken Carlsen, a division manager in UST's sales department from 1979 to 1986, stated in an interview in the *Wall Street Journal:*

> *They talked about graduation all the time*—in sales meetings, memos and manuals for the college program. *It was a mantra.*[1057]

There are numerous other statements in the record from UST officials that refer expressly to UST's "graduation process."[1058] Indeed, two UST documents illustrate the company's

[1056] Interview of Jack Africk, executive vice president of U.S. Tobacco Company and president of the international division, *Up to Snuff*, 1986, at 2 (emphasis added). *See* AR (Vol. 196 Ref. 2496).

[1057] Freedman AM, Juiced up: how a tobacco giant doctors snuff brands to boost their "kick," *Wall Street Journal*, Oct. 26, 1994 (emphasis added). *See* AR (Vol. 20 Ref. 201).

[1058] *See* UST statements on nicotine manipulation, use of starter brands and graduation strategy, as cited in statement of Gregory N. Connolly in *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 58-64 (Nov. 29, 1994). *See* AR (Vol. 710 Ref. 4). These statements include the following:

> "For people who haven't tasted (snuff) you'd of course begin them on a product that had a little tobacco taste, but wouldn't turn them off. . . . The *graduation* is to a more tobacco-y product . . . to a stronger product(s)." Source: Barry Nova , former president, U.S. Tobacco Company, *Wall Street Journal*, Oct. 26, 1994 (emphasis added).
>
> "*Product Graduation Process*. . . . The Smokeless Consumer Marketing Representative must be aware of the importance of developing new users on a continuing basis and the importance of developing basis and the *graduation*

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strategy graphically. The first, a chart depicting a "graduation process," displays a hierarchy of UST products.[1059] Arrows labeled "graduation process" represent the progression envisioned in this process, from the starter products, Skoal Bandits, at the bottom, past Skoal Long Cuts, which delivers an intermediate level of nicotine, to Copenhagen at the top of the chart.

The second document, another chart, depicts the graduation process as a bullseye.[1060] "Prospective new users" is printed just outside the outermost ring of the chart, "Bandits" is printed in the outer ring, "Long Cut" and "Skoal" are printed in successive inner rings, and "Cope" is printed in the bullseye. The rings of the chart thus progress from the lowest nicotine delivery products on the outside to the highest nicotine delivery products in the center of the bullseye. Marketing strategies for each circle are listed outside the bullseye and further demonstrate the company's intention to sell low-nicotine delivery products to new

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sampling brands and competitive brands." Source: U.S. Tobacco Company Document no. 2215172, *Marsee* Court Transcript at 114, vol. 4, read into the record by Mr. Braly (emphasis added).

"Sampling Skoal Bandits often and intensively in and around the retail account . . . . create[s] new customers and feed[s] the *graduation* process." Source: U.S. Tobacco Company Document no. 2101576, *Marsee* Court Transcript at 115, vol. 4, read into the record by Mr. Braly (emphasis added).

Skoal Bandits "will continue to fuel the new user base to assure *graduation* to our priority moist brands." Source: U.S. Tobacco Company Document no. 2077832, *Marsee* Court Transcript at 112, vol. 4, read into the record by Mr. Braly (emphasis added).

"This brand (Happy Days) has been clearly positioned as a *starter product.*" Source: U.S. Tobacco Document no. 2143461, *Marsee* Court Transcript at 114, vol. 4, read into the record by Mr. Braly (emphasis added).

[1059] *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 62 (Nov. 29, 1994). *See* AR (Vol. 710 Ref. 4).

[1060] *Id.* at 101.

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users and high-nicotine delivery products to established users. For example, "mass" free sampling is planned for Bandits, "quality 1 on 1" sampling for Skoal Long Cut, and *no* sampling for Copenhagen. Similarly, while "mass" advertising is planned for Bandits, only "focused" advertising to "[r]einforce image among current users" is planned for Copenhagen. And while public relations efforts for Bandits and Long Cut are to be "[e]ducational," public relations efforts for Skoal and Copenhagen are to "[e]mphasize tradition and heritage."[1061]

The UST documents show further that the company's manipulation of nicotine was deliberate. A senior vice president for marketing at UST, for example, has conceded that one UST product under development in the early 1980's was intended to deliver less nicotine by design by lowering pH.[1062]

These UST documents provide persuasive confirmation that UST produces smokeless tobacco brands with a range of nicotine deliveries in order to allow users to progress from low-nicotine delivery products to high-nicotine delivery products. Low-nicotine delivery products, which avoid overdosing new users who have not yet developed a tolerance to nicotine, are deliberately marketed to "you guys just starting out." Once these new users develop a tolerance to nicotine, UST provides them with high-nicotine delivery products that

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[1061] U.S. Tobacco Company, Expanding User Base (undated). This document was disclosed during discovery in *Marsee v. U.S. Tobacco*. See AR (Vol. 30 Ref. 518)

[1062] The exchange from the *Marsee* trial transcript on this point was:

> Q: So this Red Seal menthol product was *intended to deliver less nicotine by design by lowering the pH*; is that correct?
> A: That is correct.

Deposition of Erik Lindqvist, transcript of jury trial proceedings at 1668 *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986) (emphasis added). *See* AR (Vol. 22 Ref. 292).

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satisfy their addiction to nicotine. This is strong evidence that smokeless tobacco is intended to affect the structure and function of the body.

3. Conclusion

After careful consideration of the evidence in the administrative record and the comments on the Jurisdictional Analysis, the Agency finds that smokeless tobacco manufacturers intend that their products cause significant pharmacological effects in smokeless tobacco users. The Agency bases this finding primarily on two grounds.

First, the evidence shows that smokeless tobacco manufacturers understand that nicotine, one of the principal ingredients in smokeless tobacco, has pharmacological effects and uses, including causing and sustaining addiction.

Second, the evidence shows that the major smokeless tobacco manufacturers carefully manipulate the delivery of this pharmacologically active and addictive drug in a manner that promotes tolerance and addiction. Specifically, they manufacture low-nicotine delivery products for new users, who have not yet developed a tolerance to nicotine, and high-nicotine delivery products for experienced users, who need higher nicotine doses to sustain their addiction. In the case of UST, the company's internal documents explicitly acknowledge this "graduation process." The effect of this nicotine manipulation has been to increase addiction to smokeless tobacco among young people.

Based on the cumulative evidence, the Agency finds that smokeless tobacco manufacturers intend to market smokeless tobacco that produces tolerance and addiction in smokeless tobacco users. The Agency therefore concludes that smokeless tobacco is intended to affect the structure and function of the body within the meaning of the Federal Food, Drug, and Cosmetic Act.

4. Response to Comments

a. Comments on pH Manipulation

Comments submitted by the smokeless tobacco industry challenge the Agency's assertion that manufacturers produce graduated nicotine deliveries in their products primarily by manipulating the pH of the tobacco. The comments claim that the Agency presented no evidence of pH manipulation, that pH is not a determinant of nicotine absorption, that other factors determine nicotine absorption, and that FDA's data shows that smokeless tobacco has a low capacity to alter salivary pH, negating the possibility that the tobacco pH is relevant to absorption. None of these comments, however, present a persuasive rebuttal to the Agency's analysis.

1. The smokeless tobacco industry comments contend that the data presented by the Agency demonstrate that pH levels vary widely within products and little across product lines, making implausible the claim that companies manipulate and control pH as a way of controlling nicotine delivery from smokeless tobacco. Specifically, regarding the FDA laboratory data, one comment questions FDA's assertion that smokeless tobacco manufacturers control the delivery of nicotine, as measured by free nicotine calculations based on smokeless tobacco pH, when those values can vary up to 300% for the same product.

The Agency disagrees with this comment. Review of the data presented by four laboratories (two FDA laboratories, the laboratory of the National Institute for Drug Abuse (NIDA), and the laboratory of the American Health Foundation) shows that despite some variation within product brands, there is a remarkably consistent pattern of pH manipulation across product lines. For example, all of the laboratories found that for UST products,

Copenhagen has the highest average pH, the Long Cut brands have intermediate pH's, and most flavors of Skoal Bandits have the lowest average pH's. The FDA laboratories and the American Health Foundation laboratory found that Conwood's starter product (Hawken) had pH levels less than 6, while its product for experienced users (Kodiak Wintergreen) had pH levels greater than 8. FDA also examined various products of Swisher International and found the same pattern of pH and nicotine dose graduation.

FDA agrees that there is some variation within products, in part due to storage conditions and storage duration. The fact that there is variation within products may also reflect the natural variation one would expect in an organic product that is marketed in a biologically active state. For example, processes occur during the shelf life of the product that could alter pH over time.[1063] Nonetheless, the evidence demonstrates that there is a consistent pattern in which products marketed as "starter products" are substantially lower in pH than are products marketed to experienced users.

There is no basis in the administrative record to conclude that these patterns of pH graduation could occur naturally or would be induced by the manufacturer for any reason other than to alter nicotine delivery. The high pH levels observed in the moist snuff products with high nicotine deliveries does not occur naturally.[1064]

2. Smokeless tobacco industry comments state that FDA relies upon laboratory (in vitro) pH data, which the comments claim are not relevant to consumer (in vivo)

[1063] Djordjevic MV, Hoffman D, Glynn T, *et al.*, US commercial brands of moist snuff, 1994, assessment of nicotine, moisture, and pH, *Tobacco Control* 1995;4:62-66, at 63-64. *See* AR (Vol. 528 Ref. 97, appendix 9).

[1064] *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 98 (Nov. 29, 1994) (testimony of Jack Henningfield). *See* AR (Vol. 710 Ref. 4).

absorption of nicotine from smokeless tobacco. Specifically, these comments state that the Agency failed to present any data demonstrating a connection between smokeless tobacco pH, measured in vitro, and the actual rate and extent of nicotine absorbed in smokeless tobacco users.

FDA disagrees that in vitro data on smokeless tobacco pH are irrelevant to nicotine absorption in humans. Basic scientific principles, experience with nicotine gum and patches, and FDA laboratory data, demonstrate that the effect of increasing pH is to increase the amount of free nicotine available for absorption.

As described in section II.D.2.a., above, it is well established that the absorption of drugs into the bloodstream can be increased by adjusting pH levels, and that increasing the pH of nicotine converts nicotine salts into free nicotine, rendering it significantly more absorbable. Researchers funded by the tobacco industry have confirmed this point, stating that nicotine absorption in the mouth increases as a function of pH and that "the pharmacological response is clearly dependent on the amount of nicotine in the mouth as free base."[1065]

The nicotine polacrilex gum (Nicorette), which is approved for treatment of nicotine addiction by providing relief from withdrawal symptoms, provides further evidence of the relationship between pH and nicotine absorption. The gum is formulated to provide a pH of approximately 8, and the nicotine in the gum is well-absorbed at this pH. Versions of the nicotine gum that had lower pH levels, however, provided insufficient nicotine absorption.[1066]

[1065] Armitage AK, Turner DM, Absorption of nicotine in cigarette and cigar smoke through the oral mucosa, *Nature* 1970;226:1231-1232. *See* AR (Vol. 143 Ref. 1810).

[1066] Henningfield JE, Radzius A, Cooper TM, *et al.*, Drinking coffee and carbonated beverages blocks absorption of nicotine from nicotine polacrilex gum, *Journal of the American Medical Association* 1990; 264:1560-1564. *See* AR (Vol. 29 Ref. 491-2).

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One of the principal effects of pH adjustment is to alter the rate of drug delivery to the target receptors in the body. The rate of drug delivery is well known to affect a wide range of pharmacological effects for numerous drug products. For example, a slow rate of absorption is the critical reason that nicotine patches do not produce mood-altering effects.[1067] These effects occur only when nicotine is absorbed quickly into the body.

FDA conducted tests to assess the speed of nicotine transfer across the membranes using smokeless tobacco with different pH levels. The results showed that, consistent with scientific theory, pH levels affected nicotine transfer: nicotine from the high-pH product was transferred across membranes more quickly than was nicotine from the low-pH product. In fact, in the first 2 minutes, the amount of nicotine released from a typical size pinch of Copenhagen, a product with a high pH, was 12 times higher than the amount of nicotine released from a Skoal Bandit pouch, a product with a low pH.[1068]

For these reasons, FDA finds that there is an adequate scientific basis to conclude that in vitro pH values predict changes in nicotine delivery.

3. One smokeless tobacco industry comment presents a study performed by Andersson,[1069] which it claims refutes FDA's reliance on in vitro pH data. The comment states that the Andersson study demonstrated higher levels of nicotine in users of lower pH chewing tobacco than in users of higher pH moist snuff. According to the comment,

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[1067] Benowitz NL, Pharmacodynamics of nicotine: implications for rational treatment of nicotine addiction, *British Journal of Addiction* 1991;86:495-499, at 496. *See* AR (Vol. 71 Ref. 52).

[1068] *See* Ciolino L, *Moist Snuff Nicotine Release Studies* (Sep. 28, 1994), at 2. *See* AR (Vol. 30 Ref. 500-2).

[1069] Andersson G, Bjornberg G, Curvall M, Oral mucosal changes and nicotine disposition in users of Swedish smokeless tobacco products: a comparative study, *J Oral Pathol Med* 1994:161-167. *See* AR (Vol. 526 Ref. 95, vol. VII).

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Andersson's data demonstrate that the smokeless tobacco product with the highest pH (8.5 to 8.6) had the poorest buccal absorption of nicotine. The comment argues that these data support the contention that smokeless tobacco pH is irrelevant to nicotine absorption in the smokeless tobacco user.

FDA disagrees with this comment. In fact, the Andersson study found that the degree of nicotine extraction was "significantly higher" among users of loose moist snuff than among users of moist snuff in pouches.[1070] This finding is consistent with FDA's analysis, because the loose moist snuff had a higher pH than the moist snuff in pouches.[1071]

Moreover, the comment mischaracterizes the Andersson findings in other ways as well. First, the study did not compare absorption characteristics on a gram-for-gram basis across products differing in pH. For example, the smokeless tobacco product with the highest absorption, a type of chewing tobacco, had over twice as much nicotine in it as any of the moist snuff products used in this study and subjects in the study used varying amounts of smokeless tobacco. Thus, nicotine absorption in the study could have been affected by the uncontrolled variation in the amount of nicotine consumed, confounding the effects of pH on nicotine absorption.

Second, the study measured nicotine blood levels at only one time point, which is inadequate to determine nicotine absorption (rate or extent). Third, the authors did not claim that the study demonstrated anything about the effects of pH on absorption.

[1070] *Id.* at 164.

[1071] *Id.*

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Thus, the Andersson study provides no support for the argument that in vitro data are inadequate to describe the amount of nicotine available for absorption.

4. The comments from the smokeless tobacco industry state that a variety of biological and behavioral factors are stronger determinants of nicotine absorption than the pH of the product. The comments cite such factors as the length of time the smokeless tobacco is left in the mouth, the extent to which the smokeless tobacco is "worked" by the user, the rate and volume of expectorate, and the frequency and amount of swallowing, as well as salivary pH.

FDA agrees that other factors can influence nicotine absorption besides pH levels. Moreover, some of these additional factors are within the control of the manufacturer, including the use of pouches for some products; additives, such as humectants; the cut of the tobacco; and the use of various binding agents. Nonetheless, the role of these other factors appears to be less significant. The UST report entitled "Pharmacokinetics of Nicotine and its Major Metabolites in Naive and Habituated Snuff Takers," for instance, concluded, that after using identical portions of snuff there "appears to be no differences" in plasma nicotine levels between inexperienced and experienced smokeless tobacco users.[1072] One would expect many of the factors cited by the comment, including rate and volume of expectorating, and frequency and amount of swallowing, to differ between inexperienced and experienced users, but these differences apparently did *not* affect amount of nicotine absorption in the two groups.

[1072] U.S. Tobacco, *Pharmacokinetics of Nicotine and its Major Metabolites in Naive and Habituated Snuff Takers*, UST document from *Marsee*, plaintiff's exhibit 3.27 at 13. *See* AR (Vol. 344 Ref. 5436).

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Similarly, the final results from a preliminary study cited by the smokeless tobacco industry concluded that "buccal nicotine absorption was *not* affected by saliva discharge rate."[1073] These results are similar to those of a companion study by Nemeth-Coslett *et al.*, which studied the effect of the chewing rate on nicotine absorption from nicotine gum.[1074] In another study by these researchers, pH was varied, producing a strong effect on nicotine absorption from nicotine gum. In this companion study, there was minimal absorption under acidic conditions and significant absorption under alkaline conditions.[1075] Taken together, these studies show that the effects of pH on nicotine absorption are more significant than the effects of oral manipulation.

Moreover, behavioral factors should have a minor impact when comparing the effect of a series of smokeless tobacco on a given user, because the habits of the user should be relatively constant. Therefore, for any individual smokeless tobacco user, a product line with graduated pH levels will produce graduated nicotine deliveries.

In conclusion, although the Agency agrees that biological and behavioral factors can influence absorption of nicotine, the Agency finds that product pH has an established and significant role in controlling the absorption of nicotine.

5. A smokeless tobacco industry comment emphasizes the role of saliva and states that the pH levels of smokeless tobacco do not influence nicotine absorption. The

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[1073] Cohen C, Radzius A, Simmons E, *et al.*, *Time course of buccal nicotine absorption* (NIDA unpublished report, 1994) (emphasis added). *See* AR (Vol. 711 Ref. 15).

[1074] Nemeth-Coslett R, Benowitz NL, Robinson N, *et al.*, Nicotine gum: chew rate, subjective effects and plasma nicotine, *Pharmacology, Biochemistry, & Behavior* 1988;29:747-751. *See* AR (Vol. 711 Ref. 10).

[1075] Henningfield JE, Radzius A, Cooper TM, *et al.*, Drinking coffee and carbonated beverages blocks absorption of nicotine from nicotine polacrilex gum, *Journal of the American Medical Association* 1990; 264:1560-1564. *See* AR (Vol. 29 Ref. 491-2).

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comment argues that FDA data show that the buffering capacity of saliva is greater than that of smokeless tobacco. Thus, according to the comment, when the smokeless tobacco and saliva mix in the mouth, the resultant pH of the mixture is determined by the saliva and not the tobacco.

FDA disagrees with this comment. FDA assessed the buffering capacity of saliva in a report entitled "Relative Buffering Capacity of Saliva and Moist Snuff."[1076] This study tested 1-ml, 2.5-ml, 5-ml, and 10-ml volumes of saliva.[1077] For each brand of smokeless tobacco tested, the product pH was measured and a 1.5g quantity of tobacco, representing a typical pinch, was selected. The effect of saliva volume on the resultant pH of saliva/moist snuff mixtures was then evaluated. Contrary to the comments of the smokeless tobacco manufacturers, the results of this study indicate that the saliva pH was altered by addition of the smokeless tobacco at all saliva volumes tested, demonstrating that product pH will influence the amount of free nicotine available for absorption.

FDA's Artificial Saliva Study, which is cited by the comment, does not conflict with these results. As clearly stated in the FDA memorandum summarizing the study, the Artificial Saliva Study was designed to measure and compare the rate of nicotine release from smokeless tobacco. The study did not measure smokeless tobacco effects on the pH of the artificial saliva.[1078]

[1076] Memorandum from Ciolino L, *Relative Buffering Capacity of Saliva and Moist Snuff.* (Sep. 28, 1994). *See* AR (Vol. 29 Ref. 499).

[1077] *Id.* at 2.

[1078] Memorandum from Ciolino L, *Moist Snuff Nicotine Release Studies* (Sep. 28, 1994), at table IV.B. *See* AR (Vol. 30 Ref. 500-2).

Moreover, there are several reasons why the Artificial Saliva Study cannot be used to answer the question of whether saliva pH or product pH dominates in the absorption process for nicotine from smokeless tobacco. First, the experiments in the Artificial Saliva Study were conducted for all of the products using only 0.5g of smokeless tobacco. This amount (0.5g) was used because this is the net tobacco weight in the Skoal Bandits pouch and because the purpose of this study was to make a controlled comparison among products. As stated in the FDA memo, however, 1.5g of tobacco more closely represents a typical "pinch" for Copenhagen, as well as for Skoal Long Cut Wintergreen and Skoal Original Fine Cut Wintergreen.[1079] Thus, the amount of product used in the experiments is three times lower than in typical use conditions for the latter three products, and certainly no conclusion can be drawn from this study as to whether salivary pH or product pH would dominate under typical use conditions.

Second, the experiments in the Artificial Saliva Study were conducted using 10 ml of saliva. Although there is about 10 ml of saliva in the human mouth, the volume of saliva that contacts the plug of moist snuff when it is initially placed in the mouth and used as directed is much less than 10 ml. When used as directed by the manufacturers, moist snuff is intended to stay in one place in the mouth, limiting mixing with saliva. Its use does not require the active oral manipulation and accompanying salivary saturation of chewing tobacco products. A pinch or a pouch of moist snuff is a self-contained dosing unit that is wedged between the gum and cheek in such a manner that it would be relatively protected from rapid saturation by saliva.

[1079] *Id.* at 1.

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Indeed, the industry's own instructions to users are to lodge the product between the cheek and gum to minimize such mixing or float. In direct marketing and advertising campaigns, new users are specifically instructed on how to use moist snuff products to minimize mixing with saliva. For example, in a UST advertisement entitled "Walt Garrison answers your questions about smokeless tobacco," the advertising copy states: "Just take a small pinch between your thumb and forefinger, put it between your cheek and gum, and leave it there. The tobacco will slowly release its great flavor to give you real tobacco satisfaction."[1080] In another UST advertisement, the instructions are consistent: "How do I use Skoal Bandits? Simply take a pouch and place it between your upper lip and gum. Leave it there, but DON'T CHEW IT. The pouch works like a teabag, holding the tobacco in, but letting the flavour out."[1081] These instructions to consumers minimize salivary mixing and oral dissolution of the products. The less saliva contacts the product, the more the product pH controls absorption.

Third, the product pH's of the particular tins of smokeless tobacco used in the Artificial Saliva Study were not determined. Without knowing the product pH levels, the relative effects of saliva and product on the net solution pH after addition of the product cannot be evaluated. When discussing FDA's Artificial Saliva Study, the comment misrepresented pH levels that were measured as part of the Reproducibility Study portion of this work as the product pH levels. The measurements in the Reproducibility Study were made on different lots of smokeless tobacco than were used in the Artificial Saliva Study.

[1080] Ernster VL, Advertising and promotion of smokeless tobacco products, *Monographs/National Cancer Institute* 1989:87-94, at 90. *See* AR (Vol. 65 Ref. 853).

[1081] Advertisement: "Introducing Skoal Bandits, The new way to enjoy tobacco." *See* AR (Vol. 241 Ref. 3260).

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The smokeless tobacco manufacturers themselves argue that there is lot-to-lot variability for product pH. Accordingly, the products' pH from the Reproducibility Study were not necessarily the same as the pH of the products tested in the Artificial Saliva Study.

In conclusion, the comment mischaracterized the Agency's laboratory data and drew erroneous conclusions from the data presented. In fact, FDA's analyses shows that the pH of smokeless tobacco affects the pH levels of the saliva in contact with the smokeless tobacco, thereby controlling the level of nicotine absorption.

6. One smokeless tobacco industry comment states that solids, such as tobacco, cannot have a pH value.

Solid materials must mix with a liquid before the product's pH is measured. When using the terms "tobacco pH" or "product pH," the Agency and other laboratories that have conducted studies on smokeless tobacco pH are referring to the measured pH when the smokeless tobacco product is allowed to contact an aqueous environment such as water or saliva, as the product does when it is placed in the tobacco user's mouth. The studies on smokeless tobacco pH are designed to determine whether various brands of smokeless tobacco are designed, formulated, processed, or otherwise manipulated to control the pH of the product after contact with the aqueous environment in the user's mouth.

7. Smokeless tobacco industry comments cite two reports written by Jeffrey R. Idle criticizing smokeless tobacco pH studies and reports and FDA laboratory data. The comments also claim that Idle's analysis was sent to the Centers for Disease Control and Prevention (CDC) by the UST and was shared with "interested parties." The comments assume that CDC shared this analysis with FDA and question why the analysis is not in the

administrative record. Idle's analysis was not placed in the administrative record when the Jurisdictional Analysis was issued because the Agency was not aware of the document.

The Agency has reviewed the memorandum of Jeffrey Idle to UST entitled "FDA Proposed Rule: FDA Memoranda," dated December 13, 1995, and relevant portions of Idle's memorandum to UST dated February 9, 1995.[1082] For several reasons, some of which are described below, FDA concludes that Idle and the commenters either misunderstood or mischaracterized FDA's results and analyses. Moreover, Idle's review selects certain data favorable to his position, while ignoring data contrary to his position.

a. Idle's analysis asserts that FDA's reliance on the laboratory data showing graduated nicotine deliveries is not valid because the analytic methods used by the laboratories were not standardized.

FDA acknowledges that the four laboratories involved conducted independent analyses, using slightly different methods, to compare the nicotine deliveries of various brands of smokeless tobacco. Nonetheless, all four laboratories found a remarkably similar trend of graduated nicotine delivery across product lines. Contrary to Idle's comment, the fact that different laboratories, using different methods, reach the same conclusion increases—rather than diminishes—the reliability of the conclusion.

b. Idle's analysis asserts that the fact that a range of pH levels and free nicotine deliveries were observed for individual brands in the laboratory data shows that the manufacturers do not control pH or free nicotine. According to Idle's analysis, if pH levels

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[1082] Memorandum from Idle JR to U.S. Tobacco Company (Dec. 13, 1995). See AR (Vol. 529 Ref. 98, appendix 6).

Statement of Jeffrey R. Idle (Feb. 9, 1995). See AR (Vol. 526 Ref. 95, vol. VI).

and free nicotine delivery were controlled, the pH levels and free nicotine deliveries would never vary within a brand.

FDA disagrees with this comment. There are many explanations for the range of pH and free nicotine values observed within individual brands, including product fermentation during storage, natural variation in nicotine content and pH levels in tobacco leaves, and normal variation in laboratory analysis. Despite these variations, the data reveal a clear pattern of graduated pH levels and free nicotine delivery. It would have been surprising if no variations were measured by the laboratories.

c. Idle's analysis states that the majority of nicotine in all tobacco products is trapped inside the leaf particles and that acidic (low pH) conditions, not alkali (high pH) conditions, are necessary to leach nicotine out of smokeless tobacco. These assertions, however, are contradicted by the evidence in the administrative record. As discussed above, studies by FDA and other researchers, including researchers funded by the smokeless tobacco manufacturers, provide direct evidence that the release and absorption of nicotine increases as pH levels increase.

d. Idle's analysis states that the Skoal Long Cuts and Copenhagen are indistinguishable in terms of their nicotine content, rates of nicotine release, and pH levels. This assertion, however, is contradicted by the data measured in FDA laboratories. While the total nicotine content in Skoal Long Cuts and Copenhagen are similar, the products' pH and delivery of free nicotine differ substantially. For instance, FDA's data shows that Skoal Long Cut Cherry has a pH of 7.15 to 7.38 and a free nicotine delivery of 12.3% to 18.5%. These levels are substantially lower than Copenhagen, which has a pH of 7.71 to 8.14 and a free nicotine delivery of 32.7% to 56.5%. *See* section II.D.2.a., above.

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8. One comment states that there is no evidence in the administrative record that smokeless tobacco manufacturers add compounds for the purpose of affecting nicotine absorption into the bloodstream.

The Agency disagrees with this comment. As discussed in section II.D.2.a., above, there is substantial evidence in the record that the manufacturers add buffering agents to raise the pH levels in smokeless tobacco, which has the effect of increasing nicotine absorption.

9. In the Jurisdictional Analysis, FDA reported that smokeless tobacco delivers nicotine at its most rapid rate within 5 minutes after placing the product in the mouth.[1083] Blood levels then continue to rise while the smokeless tobacco product is kept in the mouth.[1084] One smokeless tobacco industry comment contends that this FDA finding is false and misleading. According to the comment, the Agency relied on in vitro data that do not purport to simulate bioavailability in users. In addition, the comment states that the Agency did not cite any evidentiary support for its statement that the bolus dose results in peak pharmacological concentrations in users, maintained by slow continued release of nicotine from the product.

The Agency disagrees that its statement concerning the bolus dose of nicotine delivered by smokeless tobacco is false or misleading. The administrative record contains in vitro data demonstrating that when smokeless tobacco was placed in simulated saliva, a significant amount of nicotine was released from the products within the first 5 seconds.[1085]

[1083] Benowitz N, Porchet H, Sheiner L, et al., Nicotine absorption and cardiovascular effects with smokeless tobacco use: comparison with cigarettes and nicotine gum, *Clinical Pharmacology and Therapeutics* 1988;44:23-28, at 25. *See* AR (Vol. 12 Ref. 134).

[1084] *Id.* at 24, fig. 1.

[1085] Memorandum from Ciolino L, *Moist Snuff Nicotine Release Studies* (Sep. 28, 1994), at table IV.A. *See* AR (Vol. 30 Ref. 500-2).

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This study provides strong evidence that a significant amount of nicotine is available for absorption within the first 5 seconds of use.

Additionally, the administrative record includes an in vivo pharmacokinetic study consistent with these in vitro results. This study concluded that rate of nicotine absorption peaks about 5 minutes after placing oral snuff and chewing tobacco in the mouth.[1086]

Thus, the Agency provided both *in vivo* and *in vitro* data independently demonstrating that peak pharmacologic concentrations of nicotine are delivered within 5 minutes of placing smokeless tobacco in the mouth. The comment provided no evidence to rebut this conclusion.

b. Comments on the Graduation Process

1. Two smokeless tobacco industry comments contend that persuasive evidence of a graduation process would have come from a survey of smokeless tobacco users showing that switching is unidirectional (i.e., that when a user switches, he always switches from a pouch to a loose tobacco product and from a lower to a higher pH product), but that FDA failed to present such evidence. The comments claim that consumer demographic data demonstrate that there is "significant brand loyalty" and that many smokeless tobacco users stay with the brand they first choose. Furthermore, the comments claim that any switching that does occur does not indicate any patterns, and that social and other factors cause smokeless tobacco users to choose their own brands.

[1086] Benowitz N, Porchet H, Sheiner L, *et al.*, Nicotine absorption and cardiovascular effects with smokeless tobacco use: comparison with cigarettes and nicotine gum, *Clinical Pharmacology and Therapeutics* 1988;44:23-28, at 26. *See* AR (Vol. 12 Ref. 134).

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Contrary to the comments, the evidence in the record does in fact demonstrate a clear pattern of switching from brands of smokeless tobacco that deliver low levels of nicotine to brands that deliver higher levels of nicotine. As discussed in section II.D.2., above, an analysis of data from CDC's 1993 Teenage Attitudes and Practices Survey (TAPS) and a follow-up study from the 1989 TAPS shows that most brand switching involves switching from products with low nicotine delivery to products with higher nicotine delivery.

The comments do not provide data or any other documentation to the Agency to support the claim that there is no pattern to brand switching. Without any such evidence to support its claim, the smokeless tobacco industry has not provided an adequate basis to rebut the Agency's findings.

2. UST denies that it uses a graduation strategy in the manufacture and marketing of its products. Specifically, the UST comment states:

> As best as U.S. Tobacco can now determine, the term "graduation process" as used in the early 1980s (1) did not relate to increasing levels of nicotine and pH; (2) did not drive the company's marketing strategies; and (3) is contradicted by consumer behavior in the marketplace.[1087]

The Agency does not find UST's position to be credible. Contrary to UST's assertions, its products do deliver graduated levels of nicotine, *see* section II.D.2.a., above; UST's marketing strategies do target low-nicotine products for new users and high-nicotine products for experienced users, *see* section II.D.2.c., above; and consumers do shift from low-nicotine products to high-nicotine products. *See* section II.D.2.b., above. Moreover, senior UST officials, including the president of UST, and other UST documents do use the

[1087] U.S. Tobacco Company, Comment (Jan. 2, 1996), at 32. *See* AR (Vol. 529 Ref. 98).

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phrase "graduation process" to describe UST's marketing approach. *See* section II.D.2.c., above.

3. UST alleges that FDA's reliance on various UST documents and statements made by UST executives is ill-founded. UST claims that, among other things, the Agency took statements out of context; the statements were not representative of UST's position; and the Agency improperly relied on statements, documents, and offers of proof from the plaintiff's attorneys in a product liability suit.

The Agency believes that all of the documents and statements speak for themselves and fully support the position taken in the Jurisdictional Analysis. A summary of those comments and the Agency's response follows:

a. In the Jurisdictional Analysis, the Agency referred to several statements made by a UST senior vice-president for marketing which demonstrate that UST understands the relationship between the pH of its products and nicotine delivery. UST states that the Agency mischaracterized the comments and failed to mention that the marketing executive disclaimed his expertise with respect to pH and nicotine in a prior exchange within the cited deposition.

While the Agency did not mention the prior exchange in the Jurisdictional Analysis, this omission does not affect the meaning of the relevant passages. As the record shows, this senior vice-president for marketing acknowledged his understanding that as the pH of the smokeless tobacco product is lowered, the rate of nicotine absorption by the user is also lowered:

> Q. Mr. Lindqvist, is it your understanding that as the pH of the product is lowered, that the rate of absorption of nicotine by the user is also lowered?

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A. That would be my understanding, yes.[1088]

The record also shows that this senior vice president participated in discussions with other senior level executives within the company about product development and specifically made suggestions for pH levels for those products that reflect his knowledge of the relationship of pH to the nicotine strength of the product. For instance, in discussing the specifications for a "premium project," he recommended that UST set "*pH at the level of Copenhagen or higher.*"[1089] These statements demonstrate knowledge of the relationship of pH and nicotine delivery.

b. In the Jurisdictional Analysis and in section II.D.2.c., above, the Agency cites several UST documents that referred to the "Lotus Project." These documents disclosed the company's intent to produce products with varying amounts of nicotine and to develop a low nicotine product especially for new users. UST states that some of the comments referred to were just "one individual's preliminary thoughts"[1090] about a low-nicotine product. Further, UST states that the Lotus Project documents refer to a Swedish marketing campaign by a foreign smokeless tobacco manufacturer, not a project planned for the United States or any other market by U.S. Tobacco.

The UST documents in question speak for themselves. The "one individual's preliminary thoughts" were those of the president of UST's smokeless tobacco foreign

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[1088] Deposition of Erik Lindqvist, *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986) Transcript of jury trial proceedings at 1668. *See* AR (Vol. 29 Ref. 489-2).

[1089] U.S. Tobacco Company memo from Erik Lindqvist (Sep. 22, 1981) (emphasis added). This document was discussed in the trial transcript in *Marsee v. U.S. Tobacco* at 1668-1669. *See* AR (Vol. 29 Ref. 489-2).

[1090] Joint Comments of the Smokeless Tobacco Manufacturers (Jan. 2, 1996), at 24. *See* AR (Vol. 526 Ref. 95).

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subsidiary and were made to the president of UST in a memorandum written on UST letterhead and labeled "Intra-Company Correspondence."[1091] Contrary to UST's comment, the president of UST expressly stated that the Swedish smokeless tobacco company and UST were "cooperat[ing] on this project" and that "he wanted a Lotus product for the U.S. market."[1092] Suggestions for product development made by corporate executives carry significant weight and cannot be dismissed as one individual's preliminary thoughts. *See Ezold v. Wolf*, 983 F.2d 509, 546 (3d. Cir. 1992). Furthermore, UST acknowledges that "[s]uch a portion pack product, intended to appeal to cigarette smokers, was ultimately marketed in the U.S. under the brand name Skoal Bandits."[1093]

c. In the Jurisdictional Analysis and in section II.D.1. above, the Agency cited as a UST document that posed "Potential Questions and Answers" about UST's introduction of Skoal Bandits in a foreign market.[1094] One question the company assumes consumers will ask is, "How much nicotine does it contain? Is it absorbed?"[1095] The company replies that the product contains about as much nicotine as an average cigarette and that "[t]he nicotine is absorbed, giv[ing] satisfaction to the smoker."[1096] The Agency stated that the document

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[1091] Intra-company correspondence from Watson WW (president, Scandia Internationals) to Bantle LA (president, U.S. Tobacco Company) (Jun. 2, 1972), from *Marsee v. U.S. Tobacco*, trial exhibit 158. *See* AR (Vol. 30 Ref. 505-2).

[1092] Minutes from meeting in Greenwich at Bantle LA's office (Jul. 18, 1972), at 1, from *Marsee v. U.S. Tobacco*, trial exhibit 159. *See* AR (Vol. 30 Ref. 505-3).

[1093] Joint Comments of the Smokeless Tobacco Manufacturers (Jan. 2, 1996), at 24. *See* AR (Vol. 526 Ref. 95).

[1094] Potential Questions and Answers, submitted in *Marsee v. U.S. Tobacco*, at 1. *See* AR (Vol. 30 Ref. 509).

[1095] *Id.*

[1096] *Id.*

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demonstrates the manufacturer's intent to provide nicotine for absorption and thereby provide "satisfaction" to the smokeless tobacco user. UST argues that there is no suggestion by FDA that any of the statements contained in the document were ever communicated to the public, within or outside of the United States, and therefore that this document is irrelevant to establishing intended use.

FDA disagrees. This document is relevant to establishing the intent of the manufacturer, whether or not the information within the document was ultimately communicated to the public. The evidence relevant to establishing intended use is discussed in greater detail in sections II.C.1. and II.C.2.e., above, and II.E., below. As described therein, the manufacturer's intent may be demonstrated by company documents, regardless of whether the documents are disclosed to the public. In this case, the questions and answers on nicotine content and absorption demonstrate UST's knowledge of nicotine's effects on users of smokeless tobacco and the company's awareness of users' desire for satisfying doses of nicotine.

d. UST states that FDA relies on documents from a product liability lawsuit (*Marsee v. UST*), as well as sections of the trial transcript, and contends that these are distortions and mischaracterizations from plaintiff's attorneys. The comments also state that FDA relied on unsubstantiated statements made by the plaintiff's attorney in that case as part of an offer of proof.

In several instances, the Agency cited portions of a trial transcript that recorded the questioning of a senior UST official. The statements relied on by FDA were made by the UST official for a deposition or as part of the trial proceedings under penalty of perjury. The

Agency does not have any reason to believe that the testimony was fraudulent, nor has the comment suggested that it was.

The Agency agrees that some of the quotes cited in the Jurisdictional Analysis and in this document were entered into the trial record of *Marsee* as an offer of proof. None of these quotes, however, are essential to FDA's analysis. Moreover, the Agency does not have any reason to believe that the attorneys mischaracterized the statements made in the documents, nor has the comment offered any such reason. The comment has thus provided no persuasive basis on which to reject this evidence.

e. UST argues that the Agency misinterprets the use of the terms "strength" and "nicotine satisfaction," as used in UST internal company documents. The company states that there is no evidence to support FDA's contention that "strength" refers to the delivery of nicotine. The comment further states that "satisfaction" is highly subjective and means something different to different people and that "nicotine satisfaction," as used in the smokeless tobacco company documents, refers to "taste."

The evidence shows that "strength," as used in various UST company documents, refers to nicotine delivery. Express statements made by UST officials refer to "strength" of nicotine and differentiate both "strength" and "satisfaction" from "taste" of the product.[1097] As described in section II.D.2.c., above, for instance, one UST document specifically urged UST to develop products with "three different . . . strengths of nicotine."[1098] Another UST

[1097] *The Lotus Project*, attached to minutes from a meeting in Greenwich at Bantle LA's office (Jul. 18, 1972), from *Marsee v. U.S. Tobacco*, trial exhibit 159. *See* AR (Vol. 30 Ref. 505-3).

[1098] Intra-company correspondence from Watson WW (president, Scandia Internationals) to Bantle LA (president, U.S. Tobacco Company) (Jun. 2, 1972), at 2, from *Marsee v. U.S. Tobacco*, trial exhibit 158. *See* AR (Vol. 30 Ref. 505-2).

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document states: "Our sales and marketing groups have asked for a W.B. type chew with *less strength* saying the present product contains *too much nicotine* for the type chewer to whom they would like to direct the sale of such a product."[1099]

Another UST document explicitly links nicotine with satisfaction, stating that "virtually all tobacco usage is based upon nicotine, 'the kick', *satisfaction.*"[1100]

Based on these statements and other statements in the record, the evidence in the record supports the Agency characterization of strength and satisfaction.

4. UST argues that there is nothing in the record to support FDA's assertion that its advertisements encourage established users to graduate to higher nicotine delivery products.

The Agency disagrees with this comment. UST's advertisements specifically promote graduation to higher-nicotine products. Low-nicotine products are marketed for new users, sometimes referred to as "You Guys Just Starting Out." In contrast, advertisements for high-nicotine products use slogans like "Sooner or Later It's Copenhagen" that promote graduation to the higher nicotine product. *See* section II.D.2.c., above.

Moreover, as discussed in section II.D.2.c, above, a UST chart depicts the graduation process as a bullseye and shows how UST's marketing strategies encourage graduation.

[1099] *Health Effects of Smokeless Tobacco: Hearings Before the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong. 2d Sess. 61 (Nov. 29, 1994) (emphasis added). *See* AR (Vol. 710 Ref. 4).

[1100] Deposition of Erik Lindqvist, *Marsee v. U.S. Tobacco*, transcript of jury trial proceedings, at 1662 (emphasis added). *See* AR (Vol. 29 Ref. 489-2).

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c. Other Comments

1. One comment argues that FDA intends to assert jurisdiction over the entire moist snuff industry by relying exclusively on information about one company, UST, without any information in the record about other companies.

FDA disagrees with this comment. In section II.A., above, FDA has concluded that the pharmacological effects and uses of smokeless tobacco would be foreseeable to any reasonable manufacturer of smokeless tobacco. On the basis of these foreseeable consequences, FDA has found that smokeless tobacco manufacturers intend to affect the structure and function of the body. This basis for establishing jurisdiction applies equally to all the smokeless tobacco manufacturers.

In section II.B., above, FDA has established that the intended use of smokeless tobacco is to affect the structure and function of the body based on the actual consumer use of smokeless tobacco. This finding applies equally to all the smokeless tobacco manufacturers.

In this section, FDA has found that the smokeless tobacco manufacturers intend to affect the structure and function of the body based on the statements, research, and actions of the manufacturers. Contrary to the comment, the record contains substantial evidence of the statements, research, and actions of smokeless tobacco manufacturers other than UST.

First, the evidence shows that the major smokeless tobacco manufacturers have knowledge of the pharmacological effects of nicotine, one of the major constituents of smokeless tobacco. Some of the smokeless tobacco manufacturers, like UST and Brown & Williamson, have conducted their own extensive research into nicotine pharmacology. All the major smokeless tobacco companies have acquired knowledge of nicotine pharmacology

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through their participation in the research of the Smokeless Tobacco Research Council. *See* section II.D.1., above.

Second, the evidence also shows that smokeless tobacco manufacturers manipulate the delivery of nicotine to consumers. In addition to testing the nicotine deliveries of UST products, FDA also tested the nicotine deliveries of smokeless tobacco manufactured by Conwood Co. and Swisher International. This testing showed that like UST, these companies also graduate their nicotine deliveries in a manner that promotes tolerance and addiction. Another company, Pinkerton Tobacco Co., also controls nicotine deliveries through the use of pouches for its starter products. *See* section II.D.2.a., above.

This evidence of (1) knowledge of nicotine's pharmacological effects and uses and (2) manipulation of nicotine deliveries in a manner that encourages tolerance and addiction thus applies to the major smokeless tobacco manufacturers. The evidence is sufficient to establish that these manufacturers intend their products to affect the structure and function of the body.[1101]

2. One comment states that FDA fails to distinguish between different smokeless tobacco products, namely moist snuff and chewing tobacco. The comment states that FDA is required to establish independently that each product is intended to affect the structure and function of the body. The comment also claims that FDA does not have any information about categories of smokeless tobacco other than moist snuff.

FDA believes that there is no basis in the record for treating chewing tobacco differently than moist snuff. Studies demonstrate that both snuff and chewing tobacco

[1101] FDA's authority to assert jurisdiction over a class of similar products, such as smokeless tobacco, rather than assert jurisdiction company by company is further discussed in section II.F., below.

products rapidly deliver equal or even greater amounts of nicotine to the bloodstream than the amounts delivered by cigarettes.[1102] These studies also show that both snuff and chewing tobacco produce similar peak blood levels of nicotine. Moreover, as described in sections II.A. and II.B., above, the evidence shows that all smokeless tobacco—including both moist snuff and chewing tobacco—is addictive and is used by consumers for pharmacological effects. Because the pharmacological effects of moist snuff and chewing tobacco are essentially the same, the two products should be treated the same.

In addition, moist snuff and chewing tobacco are generally manufactured by the same companies. The manufacturers do not argue that a "Chinese wall" exists at these companies that separates their moist snuff operations from their chewing tobacco operations. Therefore, having established that these manufacturers intend that their moist snuff products affect the structure and function of the body, FDA may properly presume that these manufacturers have the same intent when manufacturing another product (in this case, chewing tobacco) that causes the same pharmacological effects.

[1102] Department of Health and Human Services, Office on Smoking and Health, *Report of the Advisory Committee to the Surgeon General, The Health Consequences of Using Smokeless Tobacco* (Washington DC: DHHS, 1986), at 143-167. *See* AR (Vol. 128 Ref. 1591).

Benowitz N, Porchet H, Sheiner L, et al. Nicotine absorption and cardiovascular effects with smokeless tobacco use: comparison with cigarettes and nicotine gum, *Clinical Pharmacology and Therapeutics* 1988;44:23-28. *See* AR (Vol. 12 Ref. 134).

There is also evidence that tobacco manufacturers deliberately use high-nicotine tobaccos in chewing tobacco. A document submitted to the record by the tobacco industry states that chewing tobaccos utilize dark, air-cured tobacco types that are "cultivated in a manner conducive to heavy body and high nicotine content." Tobacco, in *Encyclopedia of Chemical Technology*, eds., Kirk RE, Othmer DF (New York: The Interscience Encyclopedia Inc.), 14:244. See AR (Vol. 535 Ref. 96, vol. IV.B).

E. THE "INTENDED USE" OF A PRODUCT IS NOT DETERMINED ONLY ON THE BASIS OF PROMOTIONAL CLAIMS

Sections II.A.-D., above, described the evidence before the Agency establishing that cigarettes and smokeless tobacco are intended to affect the structure or function of the body, and briefly discussed FDA's legal authority to consider evidence of foreseeable pharmacological effects and uses, actual consumer use, and the statements, research, and actions of manufacturers. In this section, FDA responds to comments on the legal basis for considering these groups of evidence.

Several comments agreed with the analysis of the intended use of cigarettes and smokeless tobacco set forth in the Jurisdictional Analysis. The tobacco industry, however, submitted several comments in opposition to the Agency's analysis of the intended use of cigarettes and smokeless tobacco, including the joint comments submitted by the cigarette manufacturers and the joint comment submitted by the smokeless tobacco manufacturers. The Agency received additional comments that made arguments similar to those of the tobacco industry.

The principal contention of the tobacco industry is that whether a product is "intended" to affect the structure or any function of the body may be determined "only" on the basis of the claims made by the manufacturer to the consumer in connection with the sale and distribution of the product. According to the tobacco industry, because they do not overtly promote the pharmacological use of cigarettes and smokeless tobacco, their products are not "intended" to affect the structure or function of the body under the Act and FDA is therefore powerless to regulate them.

The tobacco industry's argument cannot be correct. Their contention is contrary to the plain language of the Act, FDA's regulations, judicial precedent, and the Agency's long-standing interpretation of the Act. If adopted, this interpretation would allow any drug manufacturer or importer to avoid FDA jurisdiction simply by not making certain types of claims—even for products with powerful pharmacological effects.

As discussed more fully below, the Agency finds that the arguments made by the tobacco industry are unpersuasive and that the determination of whether a product is "intended" to affect the structure or function of the body may be based not only on the promotional claims of the manufacturer, but also on other objective evidence of intended use. This other objective evidence of intent may include evidence of the foreseeable pharmacological effects and uses of the product, evidence of how consumers actually use the product, and evidence of the manufacturers' statements, research, and actions that reveal the product's intended uses.

Moreover, the Agency disagrees with the premise of the manufacturers' argument—namely, that consideration of promotional claims shows that cigarettes and smokeless tobacco are not drugs or devices under the Act. As discussed in section II.E.2., below, the Agency agrees with the comments that argue that the manufacturers' advertisements do in fact support the Agency's conclusion that cigarettes and smokeless tobacco have intended pharmacological uses.

1. The "Intended Use" of a Product May Be Established on the Basis of All Relevant Objective Evidence of Intent

As noted in section II.A.1., above, in determining whether an article is "intended" to affect the structure or function of the body, "the FDA is not bound by the

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manufacturer's subjective claims of intent," but rather can find actual intent "on the basis of objective evidence." *National Nutritional Foods Ass'n (NNFA) v. Mathews*, 557 F.2d 325, 334 (2d Cir. 1977). That is, the Agency determines a product's intended use objectively by evaluating all of the relevant evidence in the record from the perspective of a reasonable fact finder. *See* 21 CFR 201.128, 801.4. In determining intended use, the Agency may "examine a wide range of evidence." *United States v. Two Plastic Drums . . . Black Currant Oil*, 761 F. Supp. 70, 72 (C.D. Ill. 1991), *aff'd*, 984 F.2d 814 (7th Cir. 1993).

Although promotional claims are relevant objective evidence of intent, the statute, the Agency's regulations, and judicial and administrative precedent do not restrict FDA to consideration of only the manufacturer's promotional claims.[1103] The Act has not been—and should not be—interpreted in a manner that would permit manufacturers of products that contain known drug ingredients and have known pharmacological uses to circumvent FDA regulation by deliberately avoiding overt drug claims. When a product contains a known drug ingredient like nicotine, the Agency may properly look beyond the manufacturer's promotional claims to other objective evidence of the intended uses of the product. This ability to look beyond and behind promotional claims that deliberately deny,

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[1103] The Agency agrees that the claims made by the manufacturer in advertising and promotional materials can be relevant evidence of the manufacturer's intent. Indeed, in many cases, no further evidence of intended use is needed. In the case of a typical approved drug, the manufacturer will forthrightly promote the pharmacological uses to which the drug should be put, the drug will in fact produce the promoted pharmacological effects, and consumers will use the drug for its promoted purposes. Promotional claims may be implied as well as express. For example, the Act provides that, in determining whether labeling or advertising is misleading, the Agency must consider the representations "suggested" as well as "made" in the labeling or advertising. Section 201(n), 21 U.S.C. 321(n). Similarly, courts have found an intent to affect the structure or function of the body based on commercial names that "suggest" drug uses. *See, e.g., United States v. Storage Spaces Designated Nos. "8" and "49,"* 777 F.2d 1363, 1366 (9th Cir. 1985), *cert. denied*, 479 U.S. 1086 (1987).

or are silent about, the actual intended uses of a product is critical to FDA's capacity to protect the public health under the Act.

a. The Plain Meaning of the Statute Authorizes FDA To Consider All Evidence of Intent

"When interpreting a statute, [the courts] look first and foremost to its text." *United States v. Alvarez-Sanchez*, 114 S. Ct. 1599, 1603 (1994). The pertinent provision from the statutory definition of "drug," section 201(g)(1)(C) of the Act, 21 U.S.C. 321 (g)(1)(C), states: "The term 'drug' means . . . articles (other than food) *intended* to affect the structure or any function of the body of man or other animals" (emphasis added). The corresponding device definition, section 201(h)(3), states:

> The term "device" . . . means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar related article, including any component, part, or accessory, which is . . . *intended* to affect the structure or any function of the body of man or other animals.

21 U.S.C. 321(h)(3) (emphasis added).

These definitions do not dictate that the "intended" effects or uses of an article be established in any particular manner or by any specific type of evidence. Similarly, they do not preclude the use of any type of evidence to make the pertinent showing. The statutory language is plain on its face and permits FDA to consider any relevant evidence in determining what uses are "intended."

The broad statutory language cannot be reconciled with the narrow view that "only" claims made to the consumer in connection with the sale of a product are relevant in determining the "intended" uses of a product. If Congress had meant to so limit the evidence that could be used to determine intended uses, it would have used a phrase such

as "promoted to," "labeled to," "advertised to," or "represented to" in lieu of "intended to" in the definitional sections. Indeed, Congress explicitly refers to representations, labeling, and advertising in other sections of the Act. *See* section 201(n) of the Act, 21 U.S.C. 321(n) (whether a drug or device is misbranded depends, among other factors, on the manufacturer's "representations" made in "labeling or advertising"); section 502(a), 21 U.S.C. 352(a) (a drug or device is misbranded if, among other bases, its "labeling" is false or misleading); section 502(n), 21 U.S.C. 352(n) (a drug is misbranded, among other bases, unless its "advertisements and other descriptive printed matter" contain certain true statements). That Congress did not expressly restrict the Agency to promotional claims means that evidence of intended use need not be limited to promotional claims. As the Supreme Court recently observed, "it is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993).[1104]

The tobacco industry's position also conflicts with the canon of statutory construction that words used by Congress, unless otherwise defined, will be interpreted as taking their ordinary meaning. *See, e.g., Smith v. United States*, 113 S. Ct. 2050, 2054 (1993); *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 860 (1984). Contrary to the manufacturers' view, the ordinary and widely accepted meanings of "intend" are significantly broader than those of "promote."

[1104] Similarly, the legislative history of the Act cited by the tobacco industry fails to support the tobacco industry's position. Nowhere in that history are any authoritative statements that intended use may be established only by promotional claims. *See* S. Rep. No. 361, 74th Cong., 1st Sess. 4 (1935) *reprinted in* 3 Legislative History 660; S. Rep. No. 493, 73d Cong., 2d Sess. (1934) *reprinted in* 2 Legislative History 720; H. Rep. No. 853, 94th Cong., 2d Sess. (1976) *reprinted in* An Analytical Legislative History of the Medical Device Amendments of 1976, appendix III. Section II.E.3.a. provides additional discussion of the legislative history.

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As discussed in section II.C.1., above, one ordinary meaning of "intend" is to have in mind or design for a particular purpose. Consistent with this meaning, the Agency interprets "intended uses" to include those uses that are "in the mind" of or planned by the manufacturer or for which the manufacturer designs the product. The evidence that is relevant to establish the uses that the manufacturer "has in mind" or for which the manufacturer has designed the product is plainly substantially broader than evidence of only promotional claims. It may include, for instance, evidence of the internal statements, research, and actions of the manufacturer's senior scientists and officials.

As discussed in section II.A.1., above, "intend" in its ordinary legal usage also encompasses readily foreseeable consequences. As the Supreme Court recognized nearly a century ago, "[t]he law presumes that every man intends the legitimate consequences of his own acts." *Agnew v. United States*, 165 U.S. 36, 53 (1897). Consistent with this meaning, "intended uses" include the foreseeable pharmacological effects and uses of the product. The evidence that is relevant to establish these effects and uses is substantially broader than evidence of promotional claims. It may include, for instance, evidence of a product's widely known pharmacological effects and uses.[1105]

[1105] Additional demonstration that the intended use of a product may be determined based on evidence other than the express claims of the manufacturer is provided by the Dietary Supplement Health and Education Act (DSHEA), Pub. L. No. 103-417, 108 Stat. 4325. Before the passage of the DSHEA, dietary ingredients and dietary supplements that did not have taste, aroma, or nutritive value (and thus were not foods, *see Nutrilab, Inc. v. Schweiker*, 713 F.2d 335, 337 (7th Cir. 1983)) could be classified as "drugs" if, among other things, the manufacturer made claims that the product would affect the structure or any function of the body. In the DSHEA, Congress created an exception to section 201(g)(1)(C). Under this exception, a dietary supplement or dietary ingredient "for which a truthful and not misleading statement is made . . . is not a drug under clause (C) *solely* because the label or the labeling contains such a statement." 21 U.S.C. 321(g)(1)(C) (emphasis added). The fact that Congress expressly provided that an intent to affect the structure and function of the body cannot be established "solely" on the basis of promotional claims plainly implies that other evidence beyond promotional claims can be relevant evidence of intent.

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The tobacco industry's view that the "intended use" of a product may be determined "only" by examining promotional claims thus cannot be squared with the plain language of the statute. Congress did not provide that FDA may regulate only products "promoted" to affect the structure or function of the body. Rather, Congress provided that FDA may regulate products "intended" to affect the structure or function of the body. A wide range of evidence can be probative of a manufacturer's intent.

b. FDA's Regulations Authorize FDA To Consider All Evidence of Intent

Consistent with the plain language of the statute, FDA's regulations defining "intended use" for drugs and devices, 21 CFR 201.128 (drugs) and 21 CFR 801.4 (devices), clearly contemplate that FDA may consider a range of evidence that extends well beyond the claims made by manufacturers in connection with the sale and distribution of their products. Even if the statute were not plain on its face, the Agency has broad discretion to interpret the Act in a reasonable manner consistent with its public health purposes. *United States v. An Article of Drug . . . Bacto-Unidisk*, 394 U.S. 784, 798 (1969).

These regulations, which have been in effect for four decades, define the "intended uses" of drugs and devices that must be included in the product's labeling. Although they do not specifically define the statutory terms "drug" or "device," the Agency routinely uses the regulations to interpret the statutory intent requirement. *See* section II.A.1.,

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Indeed, in *United States v. Ten Cartons, More or Less, of an Article . . . Ener-B Vitamin B-12*, 72 F.3d 285, 287 (2d Cir. 1995), the Second Circuit Court of Appeals stated that this language clearly implies that a dietary supplement can be a drug under this section for reasons other than the claims made for it, such as its method of intake. Thus, the court found that Ener-B, which was a vitamin B-12 supplement designed to be applied to the inside of the nose and absorbed into the bloodstream through the nasal mucous membranes, was a drug. *Id.*

above. Indeed, the comments of the tobacco industry assert that these regulations have "authoritatively . . . defined" intended use under the Act.[1106]

> The regulation that describes the intended use of drugs provides:
>
> *The words "intended use" or words of similar import . . . refer to the objective intent of the persons legally responsible for the labeling of drugs.* The intent is determined by *such persons' expressions* or may be shown by *the circumstances surrounding the distribution of the article.* This objective intent may, for example, be shown by labeling claims, advertising matter, or *oral or written statements* by such persons or their representatives. It may be shown by *the circumstances that the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised.* The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he received the drug, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses. But *if a manufacturer knows, or has knowledge of facts that would give him notice, that a drug introduced into interstate commerce by him is to be used for conditions, purposes, or uses other than the ones for which he offers it,* he is required to provide adequate labeling for such a drug which accords with such other uses to which the article is to be put.

21 CFR 201.128 (emphasis added). Section 801.4, which defines "intended use" for devices, is essentially the same except for the use of the word "device" in lieu of "drug" and the reference to regulations governing devices.

The italicized language shows that the "intended uses" of a product may be determined not only by "labeling claims" and "advertising matter," but also by other "expressions" and "oral or written statements" made by persons legally responsible for the

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[1106] Joint Comment of the Cigarette Manufacturers, Comment (Jan. 2, 1996), vol. II, at 6; *see* AR (Vol. 535 Ref. 96); *accord* Joint Comment of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996) at 102 ("[t]he regulation describing FDA's understanding of 'intended use' is consistent with the congressional purpose behind the drug definition"). *See* AR (Vol. 526 Ref. 95).

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labeling of drugs (without limitation on the persons to whom the statements are made); "the circumstances surrounding the distribution of the article"; "the circumstances that the article is with the knowledge of such persons . . . offered and used for a purpose for which it is neither labeled nor advertised"; and evidence that "a manufacturer knows or has knowledge of facts that would give him notice" that a drug "is to be used" for purposes other than those for which the manufacturer offered the product.

Thus, the plain language of the regulations provides that the intended use of a product can be determined on the basis of evidence other than the promotional claims made by the manufacturer. If the Agency had meant to restrict its consideration to promotional claims exclusively, as the tobacco industry suggests, it would have written a narrow regulation expressly so providing—not the broadly written regulation it actually wrote and administers.

In effect, the tobacco industry unreasonably urges the Agency to ignore the express language of the regulation and refuse to consider any evidence of intended use other than promotional claims. The Agency disagrees with this interpretation. FDA interprets the regulation to allow the Agency to consider any relevant evidence of intent, including, as discussed in sections II.A., II.B., II.C., and II.D., above, the foreseeable and actual effects and uses of the product and the internal statements, research, and actions of the manufacturer. The Agency has for years consistently interpreted the regulation in this manner. The Agency's interpretation of its own regulations is reasonable and is entitled to "controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Thomas Jefferson Univ. v. Shalala*, 114 S. Ct. 2381, 2386 (1994).

c. Judicial Decisions Authorize FDA To Consider All Evidence of Intent

The tobacco industry contends that the courts have repeatedly held that the "intended use" of a product must be based on promotional claims and that the Act does not permit FDA to exercise jurisdiction over a product as a drug or a device unless the manufacturer or vendor makes overt claims for the product in connection with its sale.

Clearly, courts have found that the vendor's claims are a relevant source of evidence establishing the intended use of a product, and FDA fully agrees with these holdings. The Agency does not, however, agree with the tobacco industry's view that the cited precedents can reasonably be read to *limit* the Agency to consider only such overt claims when determining the intended use of a product. In most of the cases cited by the tobacco industry, the relevance of other types of evidence was not at issue because the manufacturers' promotional claims were found to be sufficient to establish the intended use of the products. Thus, FDA did not need to rely on other evidence to prove the intended use of the article, and the courts were not called upon to decide the relevance of other evidence. *See, e.g., Bradley v. United States*, 264 F. 79 (5th Cir. 1920); *United States v. Nutrition Service, Inc.*, 227 F. Supp. 375, 381, 383, 386 (W.D. Pa. 1964), *aff'd*, 347 F.2d 233 (3d Cir. 1965); *United States v. An Article . . . "Sudden Change,"* 409 F.2d 734, 737 (2d Cir. 1969); *Estee Lauder, Inc. v. FDA*, 727 F. Supp. 1, 2-3 (D.D.C. 1989).

Generically, the cases relied upon by the tobacco industry represent instances in which manufacturers made drug claims for products without known drug ingredients and without known pharmacological uses—not cases where manufacturers attempted to market a product with a known drug ingredient or use without complying with the Act. *Bradley*, for instance, involved pharmaceutical claims that were made for mineral water.

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In this situation, claims do have an essentially dispositive role. Pharmaceutical claims will bring the product within FDA's jurisdiction, whereas relabeling the product to eliminate these claims may, in some circumstances, remove the product from FDA's jurisdiction.

The situation is fundamentally different, however, where the product contains a known drug ingredient like nicotine and has known pharmacological uses such as addiction maintenance, sedation, and stimulation. In these cases, "[s]elf serving labels cannot be used to mask true intent." *Storage Spaces Designated Nos. "8" and "49,"* 777 F.2d. at 1366 n.5. As the Second Circuit has observed, "a fact finder should be free to pierce . . . a manufacturer's . . . misleading 'nutritional' labels to find actual therapeutic intent on the basis of objective evidence." *NNFA v. FDA*, 504 F.2d 761, 789 (2d Cir. 1974), *cert denied*, 420 U.S. 946 (1975); *accord NNFA v. Mathews*, 557 F.2d at 334 ("FDA is not bound by the manufacturer's subjective claims of intent but can find actual therapeutic intent on the basis of objective evidence.").

Contrary to the tobacco industry's assertions, numerous courts have unequivocally stated that FDA could consider evidence from "any relevant source" to establish the "intended" use of a product. The courts have enunciated a principle that defines broadly the scope of the evidence that is to be used to establish intended use. That is, the intended use is based on "labeling, promotional material, advertising *and any other relevant source*." *United States v. An Article ... . "Sudden Change,"* 409 F.2d at 739 (emphasis added); *accord NNFA v. Mathews*, 557 F.2d at 334; *Action on Smoking and Health v. Harris (ASH)*, 655 F.2d 236, 239 (D.C. Cir. 1980); *Storage Spaces Designated Nos. "8" and "49,"* 777 F.2d at 1366; *Hanson v. United States*, 417 F. Supp. 30, 35 (D. Minn.), *aff'd*, 540 F.2d 947 (8th Cir. 1976); *see also United States v. 250 Jars of U.S. Fancy Pure*

Honey, 218 F. Supp. 208, 211 (E.D. Mich. 1963) (in determining intended use, a "court is not limited to the labels on such article or to the labeling which accompanies it, but may look at all relevant sources"), *aff'd*, 344 F.2d 288 (6th Cir. 1965).[1107]

The scope of "any relevant source" is extremely broad. As one court recently held, to determine intent under this standard, the Agency may "examine a wide range of evidence, including the vendor's stated intent, actual use of the product, consumer use of the product, and product marketing." *Two Plastic Drums*, 761 F. Supp. at 72. Without any implication that these are the exclusive types of evidence, courts have construed the Act to find the types of evidence discussed below, in addition to express claims, to be "other relevant sources" of a product's intended use.

i. Pharmacological or Physical Effects.

In *United States v. Undetermined Quantities . . . "Pets Smellfree,"* 22 F.3d 235 (10th Cir. 1994), the court relied heavily on expert testimony about the physiological effects of a pharmacologically active ingredient, chlortetracycline (CTC), to establish that an animal food additive, "*Smellfree*," was in fact a drug. Specifically, the court cited "affidavits demonstrating that the use of CTC will reduce the normal levels of bacteria in the animal's intestine and that this can affect the way the animal's body functions" to "establish[] that Smell Free is intended to affect a bodily function of animals." *Id.* at 240.

[1107] Courts have adopted a parallel approach in determining intent under similar provisions of the Act. For example, in the context of determining whether a product is "intended for export" for purposes of section 801(e)(1), 21 U.S.C. 801(e)(1), "a court must examine the manufacturer's subjective intent as well as any other evidence relating to that issue." *United States v. Various Articles of Drug, Bulk Antibiotics, etc.*, Civ. No. M-95-912, slip op. at 9 (D. Md. Jun. 6, 1996).

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ii. Consumer Use.

In *ASH*, a case involving a previous FDA decision not to regulate cigarettes as drugs, the court explicitly recognized that consumer use could establish the "intended use" of a product, stating that "[w]hether evidence of consumer intent is a 'relevant source' . . . depends upon whether such evidence is strong enough to justify an inference as to the vendor's intent." 655 F.2d at 239-240; *see also NNFA v. Weinberger*, 512 F.2d 688, 703 (2d Cir. 1975) (evidence before the Agency that vitamins "were used almost exclusively for therapeutic purposes" could be a proper basis to measure intent on an objective basis); *NNFA v. Mathews*, 557 F.2d 325 (2d Cir. 1977);[1108] *United States v. 789 Cases . . . Latex Surgeons' Gloves*, 799 F. Supp. 1275, 1294-1295 (D.P.R. 1992) (intended use determined by all the facts, including "actual use"); *Two Plastic Drums*, 761 F. Supp. at 72 ("a court should examine a wide range of evidence, including . . . actual use of the product . . . ."); *United States v. Kasz Enterprises, Inc.*, 855 F. Supp. at 539 ("Objective intent can be demonstrated by, among other things . . . evidence that the vendor is aware that his product is being offered *or used* by others for a purpose for which it is neither labeled nor advertised") (emphasis added).

Several other courts have concluded that relevant "consumer use" can be defined in terms of the uses that doctors and other medical practitioners make of medical devices. *See United States v. An Article of Device . . . Toftness Radiation Detector*, 731 F.2d

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[1108] The manufacturers attempt to diminish the force of the *NNFA* cases by characterizing the courts' acceptance of evidence of actual consumer use as "dictum." This argument trivializes the reality that two different panels (consisting of six different jurists) over the course of three years reviewed and—without expressing any reservations regarding its legal soundness—accepted the proposition that consumer use was relevant to determine the intended use of a product. The courts' only reservation related to the lack of record *evidentiary* support regarding the extent of consumer use. *NNFA v. Weinberger*, 512 F.2d at 703; *NNFA v. Mathews*, 557 F.2d at 335.

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1253, 1257 (7th Cir. 1984) (chiropractic instrument was a device under the Act, relying in part on testimony of manufacturers' witnesses showing how they used the article to treat patients); *United States v. 22 . . . "The Ster-o-lizer MD-200,"* 714 F.Supp. at 1165 (actual use of a sterilizer by surgeons was evidence of intended use); *United States v. An Article of Device . . . Labeled in Part: "Cameron Spitler Amblo-Syntonizer,"* 261 F. Supp. 243, 245 (D. Neb. 1966) (physician use of a product for treatment of eye ailments caused the product to be a device even in the absence of express claims by the physician or by the manufacturer in the labeling).

iii. Other Evidence.

Contrary to the contention that the phrase "intended to affect" must be read narrowly to refer only to promotional representations used in connection with the sale of the product, courts have considered a wide variety of other relevant evidence. In *American Health Products Co. v. Hayes*, for example, in addition to considering product effect and other evidence, the court found that a "starch blocking" product (known as "Starchblocker") was a drug, based in part on evidence of how the product was formulated. 574 F. Supp. 1498, 1508 (S.D. N.Y. 1983) (citing evidence that the products were "manufacture[d] . . . by a process which concentrates the antinutrient to the exclusion of components which contribute food value"). In *Toftness Radiation Detector*, in addition to considering medical use and other evidence, the court cited as evidence of intended use the financial arrangements (such as tuition and leases) through which chiropractors were trained in use of the product. 731 F.2d at 1257 n.2. In *NNFA v. Mathews*, the court noted that both the toxicity of the product, 557 F.2d at 335, and FDA experience, *id.* at 335 n.8, may be considered in determining the intended use of a product.

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With regard to the latter evidence, the court stated that FDA's "general awareness of the 'numerous and widespread' therapeutic usages" can be relied upon if part of the record. *Id.* at 335 n.8; *see also Latex Surgeons' Gloves*, 799 F. Supp. at 1295 (circumstances surrounding storage and handling of products, as well as identity of customers, are relevant to intended use).

The tobacco industry contends that the court in *United States v. Articles of Drug for Veterinary Use*, 50 F.3d 497 (8th Cir. 1995), held that documentary materials must be promotional in nature before they can be considered as evidence of intended use. The comments, however, seriously mischaracterize the facts and holding of that case. The case involved products made from colostrum (a component of breast milk) that FDA argued were subject to regulation as drugs by virtue of the pharmacological claims made by the manufacturer, not because of the product's ingredients or actual pharmacological effects. This is simply another case in which promotional claims alone were sufficient to bring under FDA's drug jurisdiction a product without established pharmacological effects or uses. This case has no relevance in determining what kind of evidence can be used to establish the intended use of a product containing a known drug ingredient with widely known pharmacological effects and uses.

Similarly, the tobacco industry mischaracterizes *United States v. . . . "Instant Alberty Food,"* 83 F. Supp. 882 (D.D.C. 1949), and *United States v. Pro-Ag, Inc.*, 796 F. Supp. 1219 (D. Minn. 1991), *aff'd*, 968 F. 2d 681 (8th Cir. 1992). These cases involved "nutritional" products that lacked any established pharmacological effects and were promoted for treating disease or affecting the structure or function of the body. Because the *sole* basis for establishing intended use was promotional claims made to consumers, the courts held that the

promotional material must ordinarily have been distributed and relied on by consumers purchasing the products. These cases are not relevant where the government is relying on evidence establishing the intended uses of products with known pharmacological effects and uses, including evidence of the actual knowledge of manufacturers who are marketing the products for those effects and uses.[1109]

Thus, as a review of the judicial precedent reveals, promotional claims are a sufficient basis for an intended use finding, but not a necessary or exclusive basis. Not only has no court ever held that a promotional claim must always be present, but numerous courts have held that a product's intended use may be determined based on evidence from "any relevant source."

d. The Agency's Administrative Precedent Supports the Agency's Consideration of More Than Promotional Claims

In administrative actions, the Agency has determined intended use on the basis of evidence other than promotional claims by the manufacturer. This administrative precedent is entitled to deference. *See Wichita and Affiliated Tribes v. Hodel*, 788 F.2d 765, 778 (D.C. Cir. 1986) ("a high level of deference [is] afforded an agency on review when the issue turns on the interpretation of the agency's own prior proclamations").

[1109] Indeed, the court in *Alberty Food* recognized that, even if the manufacturer had long since stopped distributing the literature, the government could still establish intent if it could show that the manufacturer *actually intended* the products to be used for the treatment of disease:

> it is only to the extent that the abandonment of such dissemination creates an inference that the shipper did not intend, when it shipped the drugs in interstate commerce, that they be used for the treatment of the diseases named on the booklets, that the abandonment can be said to be an effective defense. *The government might introduce evidence to show that, notwithstanding such abandonment, it was still the intention of the shipper that the drugs be used for the treatment of the diseases* mentioned in the booklets.

83 F. Supp. at 887 (emphasis added).

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Several of these precedents were described in the Jurisdictional Analysis. *See* 60 FR 41527–41531. Beginning in the 1980's, for instance, FDA took enforcement actions against "caine" products that were used as imitation cocaine. These imitation cocaine products contained bulk anesthetic powders, such as lidocaine or ephedrine, and were often sold as "incense." To determine the products' intended drug use, the Agency relied upon laboratory analyses of the products, the outlets in which the products were sold (e.g., "head shops"), and "street" information that the products provide a "cheap high."[1110] *See* Jurisdictional Analysis, 60 FR 41528. Similarly, in the early 1980's, FDA started to regulate as unapproved drugs U.S. imports of *Catha edulis*, or "khat," even though the Agency did not have any information about or claims by vendors.[1111] Khat is a shrub whose leaves act as a stimulant narcotic that affects the central nervous system when chewed or used as tea. The Agency relied on evidence of khat's actual effects and widely known uses to determine that it was intended for use as a drug.

The Agency has also taken the position that including a known drug ingredient in a product and listing this ingredient on the label of the product can be sufficient to make the product a drug. Thus, the Agency has formally taken the position that any skin cream that contains a pharmacologically active level of hormones and lists the presence of hormones

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[1110] *See* memorandum from chief, prescription drug compliance branch (Aug. 4, 1982), reprinted in *Rx Drug Study Bulletin #258*; OH. FDC 64350, Case No.C-3-84-686 (S.D. Ohio 1984); FDA Administrative File for Mid-America Drug Co., regulatory letter 84-DT-12 and response; FDA Administrative File for Sam's Imports, Dearborn, MI, regulatory letter 85-DT-3 and response; FDA Administrative File for NALPAC, Ltd., Oakpark, MI, regulatory letter 85-DT-5 and response; FDA Administrative File for Tower Enterprises, Ida, MI, regulatory letter 85-DT-2 and response. In 1994, the government prosecuted Edwin and Thomas Dews in Michigan for selling a product called "Milky Trails," labeled as a room deodorizer but in fact containing lidocaine. Case No. 94 CR 20040-BC (E.D. Mich.). *See* AR (Vol. 4 Ref. 30-2).

[1111] FDA Import Alert 66-23 (Mar. 26, 1982, revised Apr. 2, 1986, and Feb. 9, 1993). *See* AR (Vol. 4 Ref. 30-1).

on the label is a drug. *See* 58 FR 47611, 47612 (Sep. 9, 1993); Drug Study Bulletin No. 67 (Mar. 28, 1994); *see also* 54 FR 40618, 40619 (Oct. 2, 1989). Similarly, FDA considers dentifrice products containing fluoride to be drugs, irrespective of whether any claims are made, because fluoride is widely accepted as an anticavity agent by the dental products industry and consumers and because fluoride affects the structure of the tooth. *See* 59 FR 6084, 6088 (Feb. 9, 1994); *see also* 50 FR 39854 (Sep. 30, 1985).

As these examples and the additional examples described in the Jurisdictional Analysis indicate, the Agency regularly looks beyond a manufacturer's express promotional claims to the likely pharmacological use and effect of a product in determining whether a product is intended to affect the structure or function of the body.

e. Policy Considerations Also Weigh Strongly in Favor of the Agency's Interpretation

Finally, policy considerations also conflict with the tobacco industry's position and weigh strongly in favor of the Agency's interpretation. The purpose of the Federal Food, Drug, and Cosmetic Act is to "safeguard the public health" and protect "consumer welfare." H. Rep. No. 2139, 75th Cong., 3d Sess. 1-2 (1938), *reprinted in* 6 Legislative History 360. The Supreme Court has recognized that "the Food, Drug and Cosmetic Act is to be given a liberal construction consistent with the Act's overriding purpose to protect the public health." *United States v. An Article of Drug . . . Bacto-Unidisk*, 394 U.S. 784, 798 (1969). As the Court stated:

> The purposes of [the Act] thus touch . . . the lives and health of people which, in the circumstances of modern industrialism, are largely beyond self-protection. Regard for these purposes should infuse construction of [the Act] if it is to be treated as a working instrument of government and not merely as a collection of English words.

United States v. Dotterweich, 320 U.S. 277, 280 (1943).

The tobacco industry's theory would frustrate these public health purposes. If promotional claims alone determined the "intended use" of a product, a manufacturer could market a potent tranquilizer solely for its "pleasurable" effect or an amphetamine for its "energizing" effect and avoid the Act's reach. The same manufacturer could coat the tranquilizer or amphetamine with sugar, advertise it for its "taste and flavor," and again escape FDA regulation. It is not hard to imagine a manufacturer of a generic version of Prozac, an antidepressant drug currently approved by FDA and available only by prescription, who would seek to avoid FDA regulation by advertising its product as intended solely for the "pleasure" of its consumers. If these products could so easily escape FDA regulation, the public health would be endangered.

These examples are not purely hypothetical. As discussed above, manufacturers of imitation cocaine or "caine" products, which contain anesthetic drugs such as lidocaine, have attempted to avoid FDA regulation by selling their products as "incense." Although FDA has successfully asserted jurisdiction over these products in the past, the Agency could be precluded from doing so under the manufacturers' legal theory.

New evidence received during the comment period provides another example of the possible results if the Agency accepted the manufacturers' legal theory. In 1992, the British American Tobacco Company (BATCO), the parent company of Brown & Williamson Tobacco Corporation, considered purchasing a manufacturer of nicotine patches, Stowic Resources Ltd., because "[t]here is currently a void in the market for a product that provides tobacco satisfaction in a form that is acceptable and available to

many segments of the market."[1112] The purchase was ultimately rejected after BATCO and Brown & Williamson researchers found that nicotine patches did not provide the consumer with "[t]he rapid, peaking intake of nicotine which the smoker clearly wants."[1113] Under the manufacturers' theory, however, it would nonetheless be legally permissible for BATCO and Brown & Williamson to sell high-potency nicotine patches or any other product whose sole purpose was to deliver pharmacologically active doses of nicotine without FDA regulation so long as the manufacturers claimed to market the products exclusively for "tobacco satisfaction."

For sound policy reasons, the Agency must be able to look beyond a manufacturer's promotional claims when determining whether to regulate a product that contains a known drug or that has known pharmacological uses. Where manufacturers avoid promoting the pharmaceutical uses of products that contain drug ingredients or where manufacturers deliberately make ambiguous claims or otherwise seek to obscure the true nature of their products, FDA must be free to consider other objective evidence to establish the true intended use of the product. As discussed in sections II.A.1., II.B.1., and II.C.1., above, this other objective evidence may include the product's foreseeable pharmacological effects and uses, actual consumer use, and the statements, research, and actions of manufacturers.

[1112] Brown & Williamson, *Transdermal Nicotine Patches* (1992), at 3. *See* AR (Vol. 531 Ref. 124).

[1113] Kausch, Research and Development/Quality, *Transdermal Nicotine* (1992). *See* AR (Vol. 531 Ref. 124).

2. Consideration of Tobacco Manufacturers' Promotional Claims Supports the Agency's Position

The Agency also disagrees with the premise of the tobacco industry's position—namely, that consideration of their promotional claims will demonstrate that cigarettes and smokeless tobacco products are not intended to affect the structure or function of the body. In fact, consideration of the claims made in tobacco advertising lends support to the Agency's determination that cigarettes and smokeless tobacco are "intended" to affect the structure and function of the body.

Several comments on the Jurisdictional Analysis urge FDA to consider the promotional claims of the tobacco manufacturers in determining whether the manufacturers intend to affect the structure or function of the body. The comments of the American Society of Addiction Medicine, for example, assert that consideration of promotional claims provides further support for the finding that tobacco manufacturers intend to affect the structure and function of the body. Conversely, the tobacco industry comments maintain that consideration of these claims will show that the manufacturers do not intend to affect the structure or function of the body.

The Agency agrees that promotional claims can be relevant evidence of intended use. *See* section II.E.1., above. As the tobacco industry comments recognize, these claims can be of two types, implied or express.[1114] Express claims for a product overtly promote the product's effects on the structure or function of the body. Implied claims

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[1114] Joint Comments of the Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. II, at 91. *See* AR (Vol. 535 Ref. 96) ("the determining factor is claims—implied *or* expressed—made in marketing the product") (emphasis added). *See also* section 201(n) of the Act (21 U.S.C. 321(n)) (in determining whether labeling or advertising is misleading the Agency must consider both the representations "made" and the representations "suggested" by the manufacturer).

suggest, but do not explicitly recommend, pharmacological use. The courts have recognized that implied drug claims can make a product a drug even in the presence of express disclaimers warning against drug use. For instance, in a case involving an imitation cocaine product sold as incense and advertised as not for drug use, the Ninth Circuit held:

> The fact that the items were called "incense" and advertised as "Not for drug use" cannot be controlling on the issue of whether they are drugs. Where, as here, the items are otherwise promoted and advertised in ways that *suggest* they are cocaine substitutes, [the vendor's] intent in distributing the products is clear. Self-serving labels cannot be allowed to mask the vendor's true intent as indicated by the overall circumstances.

United States v. Storage Spaces Designated Nos. "8" and "49," 777 F.2d 1363, 1366 n.5 (9th Cir. 1985) (emphasis added), *cert. denied,* 479 U.S. 1086 (1987).

As suggested in the comments, the Agency has examined the promotional claims of the tobacco manufacturers. Although recent tobacco product advertisements do not make express drug claims, the implied pharmacological claims in some tobacco advertisements provide additional support for the Agency's finding of intended pharmacological use. In particular, as described below, advertisements that promise that tobacco products will provide "satisfaction" suggest to the consumer that use of tobacco products will provide desired pharmacological benefits, including satisfying addiction.

The use of "satisfaction" claims in tobacco product advertising is common. Since the 1970's, most major tobacco manufacturers have used advertising campaigns that promote "satisfaction." For instance, the R.J. Reynolds Tobacco Company (RJR) has used a promise of "satisfaction" to advertise many cigarette brands, including Camel

Lights, Salem, Real, More, and Now.[1115] A 1990 advertisement for Now brand cigarettes, for example, asks "Can a cigarette have just 2 mgs of tar and still be satisfying to smoke? . . . NOW can."[1116] Likewise, "satisfaction" claims have been used by Brown & Williamson, Lorillard, and Liggett & Myers.[1117] In one typical, recent advertisement, Lorillard promoted its True brand with the slogan "The Lowest with True *Satisfaction* . . . True *Delivers*."[1118] Some of these advertisements distinguish "satisfaction" from taste. For example, a Brown & Williamson advertisement for Barclay states:

> If your ultra light is ultra boring, why do you still smoke it? Because you probably think that's the sacrifice you have to make. Well, not any longer. We've just made ultra lights you don't have to make any sacrifices for. At least not on taste. *And not on satisfaction.*[1119]

Smokeless tobacco manufacturers also rely on "satisfaction" claims in advertising. The nation's largest smokeless tobacco manufacturer, United States Tobacco Company (UST), has used satisfaction promises to advertise several brands, including Copenhagen,

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[1115] *See* Tobacco Advertisements, in American Society of Addiction Medicine, Comment (Dec. 29, 1995), appendix 6, at 89-90, 92, 94-96, 98. *See* AR (Vol. 528 Ref. 97).

[1116] *Id.* at 98.

[1117] *Id.* at 82-86, 88, 91, 97, 99.

[1118] *Id.* at 99 (emphasis added).

[1119] *Id.* at 97 (emphasis added).

In addition to differentiating between taste and satisfaction in the quoted passage, this advertisement also uses the term "satisfying" in a subsequent passage to describe the flavor of Barclay, stating that "[w]e gave Barclay a new blend of tobaccos for a smoother, more satisfying flavor." *Id.* This dual usage of satisfaction occurs in other advertisements. For instance, in an advertisement for Camel Lights, RJR uses satisfaction both as an independent attribute of its product (promising "All the flavor *and satisfaction* that's been missing in your low tar cigarette") and as an adjective to describe the product's taste (promising "a rich, rewarding, truly satisfying taste"). *Id.*, at 95 (emphasis added).

Skoal, and Happy Days.[1120] In fact, the slogan "It Satisfies" is the signature of UST's Copenhagen brand and appears on the lid of each package.[1121]

The tobacco industry argues that "satisfaction" is not an implied drug claim. In its view, "satisfaction" is not a euphemism for the consumer's pharmacological response to nicotine. Rather, as one cigarette manufacturer commented, "'[s]atisfaction' . . . . reflects the consumer's total reaction to the total smoking experience delivered by the cigarettes."[1122]

The Agency agrees that the term "satisfaction" reflects the consumer's reaction to the experience of smoking a cigarette or using smokeless tobacco. Indeed, it is precisely for this reason that the Agency finds that the use of the term to promote cigarette and smokeless tobacco is an implied drug claim.

The meaning of a promise of "satisfaction" depends upon the needs or expectations of the consumer. A "satisfying" meal means something quite different from a "satisfying" movie, which in turn means something different from a "satisfying" driving experience. A product that is satisfying to consumers is one that fulfills the needs or expectations of the consumer. Thus, a "satisfying" meal must meet the consumer's desires for taste and nutrition, while a "satisfying" driving experience must meet the consumer's desires for power, maneuverability, and comfort.

[1120] *Id.* at 93, 100-101.

[1121] *Id.* at 100.

[1122] Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 8. *See* AR (Vol. 529 Ref. 104).

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In the case of cigarettes and smokeless tobacco, a "satisfying" product must meet the consumer's motivations for using the product. As discussed in sections II.A. and II.B., above, these motivations are primarily pharmacological. Most users of tobacco products are addicted to nicotine. They use cigarettes and smokeless tobacco to satisfy their addiction and to obtain other pharmacological effects, such as anxiety reduction or stimulation. To these users, a manufacturer's promise of "satisfaction" implies that the product will fulfill their craving for the pharmacological effects of nicotine—satisfying their addiction and providing the sought-after mood-altering effects of nicotine.

The tobacco industry's internal documents themselves show that consumer "satisfaction" is intimately connected to nicotine's pharmacological effects and that the tobacco manufacturers know this. The internal company documents that have recently become publicly available show that for the past three decades, tobacco industry officials have consistently expressed the view that nicotine's pharmacological effects are essential to consumer satisfaction.

Officials at Brown & Williamson and its parent company, the British American Tobacco Company (BATCO), for instance, have consistently linked nicotine delivery to consumer satisfaction. Thus, BATCO scientists have stated:

- "Nicotine has well documented pharmacological action. . . . *It is believed to be responsible for the 'satisfaction' of smoking*, using this term in the physiological rather than the psychological sense."[1123]

- *"The basic assumption is that nicotine . . . is almost certainly the key smoke component for satisfaction . . . .*"[1124]

[1123] Wood DJ, BATCO Group Research and Development, *Aspects of the R&DE Function*, notes for a talk given at Chelwood, Sep. 1969 (Jul. 20, 1970), at 7 (emphasis added). *See* AR (Vol. 22 Ref. 287).

[1124] BATCO Group R&D Research Conference, Rio de Janeiro, Brazil (Aug. 22-26, 1983), at 10 (emphasis added). *See* AR (Vol. 179 Ref. 2087).

- *"[N]icotine . . . probably provides the basis of smoking satisfaction."*[1125]

- *[I]n its simplest sense puffing behavior is the means of providing nicotine dose in a metered fashion."*[1126]

- *"Intuitively it is felt that 'satisfaction' must be related to nicotine.* Many people believe it [is] a 'whole body response' and involves the action of nicotine in the brain."[1127]

Other industry officials have expressed the same view. For example:

- Senior RJR scientists have written that "*the confirmed user of tobacco products is primarily seeking the physiological 'satisfaction' derived from nicotine*"[1128] and that "*the ultimate satisfaction comes from the nicotine which is extracted . . . in the lungs.*"[1129]

[1125] BATCO, Proceedings of the Smoking Behaviour Marketing Conference, Session I slides (Jul. 9-12, 1984) (emphasis added). *See* AR (Vol. 21 Ref. 238).

[1126] *Id.*

[1127] BATCO, *Nicotine Conference Outline* (Jun. 6-8, 1984) at BW-W2-01977 (emphasis added). *See* AR (Vol. 22 Ref. 290).

The record contains numerous other similar BATCO and Brown & Williamson statements. For example, as part of their evaluation of whether BATCO should purchase a manufacturer of nicotine patches, Brown & Williamson researchers in 1992 stated that "[t]he fact that people use snuff and chewing tobacco indicates that *administration routes [of nicotine] other than inhalation can deliver tobacco satisfaction.*" *Transdermal Nicotine Patches*, at 3 (emphasis added). *See* AR (Vol. 531 Ref. 124).

Similarly, as part of Project Wheat, BATCO researchers reported that "there is evidence of a conflict between concern for health and *the desire for a satisfying cigarette*, from which it follows that *low tar brands would be much more widely accepted if their nicotine deliveries could be brought within the range required by groups of consumer[s].*" Wood DJ (BATCO), *Project Wheat -- Part 2: U.K. Male Smokers: Their Reactions to Cigarettes of Different Nicotine Deliveries as Influenced by Inner Need* (Jan. 30, 1976), at 48 (emphasis added). *See* AR (Vol. 20 Ref. 204-2).

[1128] Teague CE, R.J. Reynolds, *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 1 (emphasis added). *See* AR (Vol. 531 Ref. 125).

Teague also wrote that "*what we are really selling [is] nicotine satisfaction.*" *Id.* at 5 (emphasis added).

[1129] Senkus M (R.J. Reynolds Tobacco Co.), *Some effects of smoking (1976/1977)*, at 9 (emphasis added). *See* AR (Vol. 700 Ref. 593).

Senkus also wrote that "*a zero nicotine cigarette . . . really has no potential to provide smoking satisfaction.* It produces no taste in the mouth, but even more seriously *it fails to provide the ultimate satisfaction in the lungs.*" *Id.* at 9 (emphasis added).

- William Farone, the former Philip Morris director of applied research, has written that "[t]he objective of industry scientists and product developers, simply stated, was *to provide the consumer with the . . . pharmacological satisfaction derived from nicotine. . . .*"[1130]

- The senior vice president for marketing at UST has written that "*[v]irtually all tobacco usage is based upon nicotine, 'the kick', satisfaction.*"[1131]

Indeed, tobacco manufacturers have even conducted opinion surveys that show that tobacco users understand that their "satisfaction" is based on nicotine. For instance, an affiliate of Brown & Williamson reported that "[m]ost respondents, with a bias toward men, realised that *nicotine* was the attribute in cigarettes causing addiction. It was also usually seen as *the component providing satisfaction.*"[1132]

These statements show that, when consumers use cigarettes and smokeless tobacco, their degree of "satisfaction" is closely related to the pharmacological effects of nicotine delivered by the product. The statements also show that tobacco manufacturers have long been aware of the central role of nicotine in consumer satisfaction. In effect, the

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[1130] Farone WA, *The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective* (Mar. 8, 1996), at 7 (emphasis added). *See* AR (Vol. 638 Ref. 2).

[1131] Testimony of Erik Lindqvist, *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. Jun. 5, 1986) transcript of jury trial proceedings, at 1662 (emphasis added). *See* AR (Vol. 22 Ref. 292). In another document describing Skoal Bandits, UST states:

> The nicotine contents are more or less equivalent to that of a good quality cigarette. The nicotine is absorbed, *giv[ing] satisfaction to the smoker.*

Potential Questions and Answers, submitted in *Marsee v. U.S. Tobacco*, Civil Action No. 84-2777R (W.D. Ok. 1986) (emphasis added). *See* AR (Vol. 30 Ref. 509).

[1132] *Attitudes Towards Smoking and Health*, attached to letter from Johnston AH (market research manager, Carreras Rothmans Ltd.) to Bentley HE (Imperial Tobacco Ltd.) (Jul. 26, 1979), at 12 (emphasis added). *See* AR (Vol. 21 Ref. 218).

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statements establish that the manufacturers use "satisfaction" as a code-word for the pharmacological effects of nicotine.

The Agency has reviewed the manufacturers' promotional claims and finds that they are consistent with—and in fact provide further support for—the Agency's conclusion that cigarettes and smokeless tobacco are "intended" to affect the structure and function of the body. When manufacturers of an addictive and psychoactive product use words like "satisfaction" in their advertisements, the word takes on special connotations to the consumer. The advertisements make an implicit pharmacological appeal and hence become further evidence that the products are intended to affect the structure and function of the body.

3. Response to Additional Comments on Legal Theory

The discussion in sections II.A.-E.2., above, has responded to many of the major comments regarding the Agency's legal analysis of intended use. In this section, the Agency responds to additional comments of the manufacturers and others on this issue.

a. General Comments

1. The tobacco industry contends that the legislative history of the Federal Food, Drug, and Cosmetic Act conflicts with the Agency's interpretation of the Act and shows that Congress determined that only promotional claims can be considered in determining whether a product is "intended to affect the structure or any function of the body."

The Agency has carefully reviewed the legislative history of the Act and concludes that it fails to support the tobacco industry's position. Indeed, what little legislative

history there is confirms the Agency's interpretation that evidence of intent should not be restricted to promotional claims.

Congress most directly addressed the issue during consideration of the 1976 Medical Device Amendments. In the House Report, the Committee on Energy and Commerce specifically considered whether a manufacturer could avoid having its product regulated as a medical device intended for human use by labeling and promoting the device as intended for animal use only. Contrary to the tobacco industry's position, the House Report concluded that FDA would not be bound by the manufacturer's promotional claims:

> This is not to say, however, that a manufacturer of a device that is banned by the Secretary [for human use] can escape the ban by labeling the device for veterinary use. *The Secretary may consider the ultimate destination of a product in determining whether or not it is for human use, just as he may consider actual use of a product in determining whether or not it is a device.*

Medical Device Amendments of 1976, H.R. Rep. No. 94-853, 94th Cong., 2d Sess. 14 (emphasis added), *reprinted in* An Analytical Legislative History of the Medical Device Amendments of 1976, appendix III. Congress' reasoning confirms the plain meaning of the statutory definitions of "drug" and "device." It shows that Congress plainly intended FDA to be able to look behind a manufacturer's promotional claims and to determine intent based on the actions of the manufacturer and the actual uses of the product.

The tobacco industry relies primarily on a passage from the 1935 Senate Report, which states that "the manufacturer of the article, through his representations in connection with its sale, can determine the use to which the article is to be put." S. Rep. No. 361, 74th Cong., 1st Sess. 4 (1935), *reprinted in* 3 Legislative History 60, 663.

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However, the first sentence of the paragraph from which the tobacco industry quotes states that "[t]he use to which the product is to be put will determine the category into which it will fall." *Id.* This quotation is consistent with the Agency's interpretation that consumer use can establish "intended use" independent of the manufacturer's claims.

Furthermore, the passage quoted by the tobacco industry is taken out of context, however. Congress was not addressing the issue of how to determine whether a product is intended to affect the structure or function of the body under the Act's drug definition, section 201(g)(1)(C). Rather, the issue being discussed was the circumstances under which the Agency must regulate a product both as a food and as a drug intended for use in the diagnosis or treatment of disease under section 201(g)(1)(B) of the Act. (By definition, a "food" cannot be regulated as a drug under section 201(g)(1)(C) of the Act.) In this context, the Senate Committee stated that a manufacturer could "escape" regulation of a product as a food by "representing the article fairly and unequivocally as a drug product." *Id.*

The Senate Committee did not say that promoting the article exclusively as a food could remove the article from the drug definition of section 201(g)(1)(B), however. To the contrary, the Committee stated that "[i]f it is to be *used* only as a food it will come within the definition of food and none other." *Id.* (emphasis added). Thus, this legislative history shows that a manufacturer's representations cannot force the Agency to regulate a product containing a drug as a food; rather, regulation as a food is compelled only if the sole *use* of the product is as a food. Accordingly, the legislative history on which the comments rely supports only the limited argument that a manufacturer's representations can ensure that a product *is* regulated as a drug. The passage does not support—and

indeed contradicts—the position that a manufacturer's representations can prevent regulation of a product as a drug.

The cigarette industry also cites the following language from the same Senate Committee report to support the view that a manufacturer's claims are the only relevant consideration in determining the intended use of a product:

> While soaps sold only for ordinary toilet or household use are specifically exempted from the definition of cosmetic and will not be subject to the definition of drug, soaps for which claims concerning disease are made or which are sold as pharmacopoeial articles will come within the definition of drug and will thus be subject to regulation.

Id. at 3-4, *reprinted in* 3 Legislative History 662-663. This language, however, merely states the unarguable and long-settled principle that a drug claim can bring any article (regardless of the article's composition or effects) within the Agency's jurisdiction. *See, e.g., United States v. An Article . . . "Sudden Change,"* 409 F.2d 734, 739 (2d Cir. 1969). This is not the issue before the Agency in this case.

The passages of the legislative history quoted by the tobacco industry, "when read fairly and in light of their true context, . . . cannot be said to demonstrate a [true] Congressional desire." *Jewell Ridge Coal Corp. v. United Mine Workers*, 325 U.S. 161, 168-169 (1945). The most that can reasonably be said in support of the tobacco industry's view is that the legislative history is sparse and ambiguous—a circumstance that calls for deference to the Agency's interpretation of the plain language of the statute. As the Supreme Court recently held, "[w]hen we find . . . that the legislative history is ambiguous and unenlightening on the matters with respect to which the regulations deal,

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we customarily defer to the expertise of the agency." *Rust v. Sullivan*, 500 U.S. 173, 186 (1991).

2. The cigarette manufacturers contend that reading a foreseeability standard into "intended use" is unworkable because it would convert "every foreseeable off-label use" of a drug or a device into an "intended use" attributable to the manufacturer. In support of this contention, the cigarette industry points to what has become known as FDA's "practice of medicine" policy, under which the Agency recognizes that physicians may, if their medical judgment so dictates, prescribe (but not promote) an approved drug for an unapproved use without violating the Act. *See* 37 FR 16503 (Aug. 15, 1972).

The Agency disagrees with this comment. Fundamental differences distinguish off-label uses of approved drugs from cigarettes and smokeless tobacco. First, before a drug can have an off-label use, the drug must first have been regulated by FDA for an approved use. Unlike off-label uses of approved drugs, cigarettes and smokeless tobacco have not previously been regulated by FDA for approved uses.

Second, FDA's practice-of-medicine policy is based on FDA's long-standing policy of not interfering with the practice of medicine. Most off-label uses of prescription drugs are prescribed by a physician. FDA has made a policy judgment that, because of the involvement of a doctor, FDA will not generally interfere with these off-label uses. The policy considerations that underlie the practice-of-medicine policy are entirely missing in the case of cigarettes and smokeless tobacco.

In any event, under the practice-of-medicine policy, "[w]here the unapproved use of an approved new drug *becomes widespread or endangers the public health*, 'FDA will investigate and' *take whatever action is warranted to* protect *the public*." *See* 37 FR

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16504 (Aug. 15, 1972) (emphasis added). Thus, this policy recognizes that the Agency may assert jurisdiction over unapproved uses of drugs when they become "widespread" or endanger the public health—even in the absence of promotional claims by the manufacturer. This closely parallels the Agency's interpretation that it may assert jurisdiction over products when it becomes foreseeable that they will have drug effects upon, and be used for drug purposes by, a significant proportion of consumers.

3. The smokeless tobacco industry asserts that FDA's reliance on consumer use to confer drug or device status on an article is, in effect, an attempt to define drugs and devices in the same way that the Act defines foods. Under the Act, the term "food" means "articles used for food or drink for man or other animals." Section 201(f), 21 U.S.C. 321(f). The smokeless tobacco industry argues that if "drug" or "device" status can be inferred whenever a product is used in a certain way, then the statutory intent requirement becomes mere surplusage.

The Agency disagrees. To determine that a product is a drug or device, FDA is required to show that the "intended use" by a manufacturer for a product is as a drug or device. This statutory intent requirement can be satisfied based on "use" alone only where the use is sufficiently widespread. Evidence of "use" can also provide a relevant source of information in combination with other types of evidence. *See ASH*, 655 F.2d at 239-240.

4. The tobacco industry characterizes evidence from the statements, research, and actions of manufacturers as "classic examples of subjective intent, i.e., motives that are not publicly expressed," and states that the regulations allow the Agency to prove the "intended use" of a product based only on evidence of "objective intent." Thus, the tobacco industry argues that the Agency must disregard the extensive evidence in the

administrative record indicating that the manufacturers actually intend that cigarettes and smokeless tobacco have, and will be used for, pharmacological effects.

FDA concludes that evidence of the statements, research, and actions of tobacco manufacturers is relevant to determine the "intended use" of a product. The tobacco industry's position that evidence bearing on their actual intentions is not relevant conflicts with the plain language of the Act. The tobacco industry's position also conflicts with the regulations defining "intended uses."[1133]

Moreover, acceptance of the tobacco industry's argument that FDA must disregard evidence of the manufacturers' statements, research, and actions would frustrate the public health purposes of the Act. FDA does not test products before they are marketed, nor does the Agency have the right to examine the manufacturer's testing data before a new product is marketed unless the manufacturer submits an application for approval of the drug or device prior to marketing. Consequently, neither FDA nor the consumer is ordinarily in a position to know whether a new product that the manufacturer claims is *not* a drug or device in fact has pharmacological effects on consumers. In contrast, the manufacturer, through its research and product development activities, knows the effects of the product on consumers and knows how the manufacturer's formulation and design choices are likely to influence the uses to which the product will be put. To interpret "intended use" to exclude evidence of what the manufacturer has

[1133] The phrase "subjective intent" is ambiguous. To the extent that "subjective intent" is understood to refer to the actual intent of the manufacturer, the Agency may consider objective evidence of this "subjective" or actual intent in determining the manufacturers' intent. Alternatively, to the extent that "subjective intent" is understood to refer to the intent the manufacturer claims to have, *see, e.g., NNFA v. Mathews*, 557 F.2d at 334; *see also Latex Surgeons' Gloves*, 799 F. Supp. at 1295, "the FDA is not bound by the manufacturer's subjective claims of intent but can find actual therapeutic intent on the basis of objective evidence." *Mathews*, 557 F.2d at 334.

designed its product to do, and anticipates its product will be used for, would thus permit, and even encourage, unscrupulous manufacturers to conceal their knowledge of the products' significant pharmacological effects so as to avoid application of the Act. This would directly undercut the public health purposes of the Act.

Accordingly, FDA concludes that objective evidence of tobacco manufacturers' actual intent from their statements, research, and actions is relevant to establishing the intended use of cigarettes and smokeless tobacco.[1134]

b. Comments on Administrative Precedents

The tobacco industry and an individual commented on the administrative precedents. The comments make two main arguments. First, the comments argue that FDA did not rely solely on known pharmacological effects or consumer use to establish the intended use of the products discussed in the examples. Second, the comments argue that the examples cited did not represent authoritative interpretations of the law. The comments address each of the examples in some detail.

FDA's response is set forth below. In brief, the cited examples are valid precedents in which FDA found intended drug or device use based on factors other than express claims (i.e., known effects or consumer use). Moreover, contrary to the tobacco

[1134] Even if the Agency accepted the tobacco industry's argument that manufacturers' statements, research, and actions cannot be considered to prove the manufacturers' intent, it does not follow that such evidence is not *also* relevant for other purposes. For example, much of this evidence corroborates the scientific evidence showing that tobacco products have significant pharmacological effects and are used by consumers to obtain these effects. The Agency may properly use the evidence of the statements, research, and actions to establish these facts. Furthermore, the Agency may properly use the evidence from the statements, research, and actions of the manufacturers to rebut assertions by the manufacturers that they do not intend to make products that have and are used for pharmacological effects.

industry's assertions, the examples support the position that nicotine in tobacco products is a drug.

1. The tobacco industry asserts that FDA's administrative precedents are not analogous to tobacco products because the precedents in fact relied on implied promotional claims in establishing intended use. For instance, the comments assert that the mere listing of the word "hormone" on a skin cream was viewed by FDA as an implied drug claim and argue that "the Agency asserted that any statement in the labeling of these products that hormones are present is an implied drug claim . . . Thus, the determining factor is *claims*—implied or express—made *in marketing* the product."[1135]

These comments on the basis for FDA's finding of intended use are incorrect. First, in most of the administrative precedents, no implied claims were involved. For instance, there were no express or implied claims involved in the Agency's assertion of jurisdiction over "khat." Similarly, in most of the imitation cocaine precedents, the manufacturers were deliberately trying to avoid FDA jurisdiction by advertising their products for nondrug uses.[1136] The novelty condom precedents discussed in the Jurisdictional Analysis, in which the condoms were labeled as novelty and not functional condoms, also did not involve any promotional claims. *See* 60 FR 41530 (Aug. 11, 1995).

[1135] Joint Comment of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. II, at 91 (emphasis in original). *See* AR (Vol. 535 Ref. 96).

[1136] The Agency recognizes that in one imitation cocaine case, *United States v. Storage Spaces Designated Nos. "8": and "49,"* 777 F.2d 1363 (9th Cir. 1985), the reviewing court did find some evidence of promotional claims. Even in that case, however, "the items were called 'incense' and advertised as 'Not for drug use,'" and the court stated that "[s]elf-serving labels cannot be allowed to mask the vendor's true intent as indicated by the overall circumstances." *Id.* at 1366 n.5. In most of FDA's actions against imitation cocaine, the manufacturers' promotional materials were generally designed to disguise the actual intended use.

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It is true that the listing of hormones on the label of skin creams can be considered an implied drug claim. However, this implied claim argument does not distinguish cigarettes and smokeless tobacco from the administrative precedents. If the mere listing of the drug ingredient "hormone" on a skin cream constitutes an implied drug claim, then similar implied drug claims are regularly made for tobacco products. Many cigarette advertisements list nicotine deliveries.[1137] Nicotine is a widely recognized drug with significant pharmacological effects. It is the active ingredient in several products regulated as drugs by FDA. Therefore, if the listing of hormones in skin creams can be considered an implied drug claim, the listing of nicotine in cigarette advertisements can also be considered an implied drug claim.

Moreover, in the case of hormone-containing skin creams, FDA independently relied upon the foreseeable drug effects of the creams as a basis for establishing intent. FDA took the position that the inclusion of pharmacologically active levels of hormones in the skin creams was a sufficient basis for regulating the products as drugs. *See* 58 FR 47611, 47613 (Sep. 9, 1993).

2. The tobacco industry also alleges that, in some of the examples, intended drug use had previously been established because the product contained an active drug ingredient. For instance, the tobacco industry argues that the imitation cocaine cases involved bulk prescription drug ingredients (e.g., lidocaine and ephedrine) that were diverted for use in the imitation cocaine products. The comments' point seems to be that once intended drug use is established for one use of a drug, FDA can establish the same

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[1137] American Society of Addiction Medicine, Comment (Dec. 29, 1995), appendix 6. *See* AR (Vol. 528 Ref. 97).

drug intent with respect to manufacturers of other products containing the drug as an ingredient.

The Agency agrees that the presence of a known drug ingredient can be substantial evidence of an intent to affect the structure and function of the body. However, the Agency disagrees that this point distinguishes any of the administrative precedents from tobacco products. To the contrary, cigarettes and smokeless tobacco contain a known drug, nicotine, that has addictive and other significant pharmacological effects. It is the active drug ingredient in several products regulated as drugs by FDA, including nicotine patches, nicotine gum, and nicotine nasal sprays. The comments' position leads to the conclusion that products containing nicotine, including cigarettes and smokeless tobacco, are also drugs.

3. The tobacco industry argues that the administrative precedents are not authoritative interpretations of the law. Instead, the comments assert, the examples consist of unchallenged assertions, preliminary pronouncements in certain rulemaking proceedings, and judicial default and consent decrees, rather than specific actions and litigated cases. One comment minimizes some of the examples by stating that preliminary views and opinions are not binding on FDA itself. Another comment asserts that the "Agency position" in the case of one example, vaginal products, was really that of an independent advisory committee, and, in any case, the Agency itself later rejected the position. Still another comment contends that the Agency cited a relatively small number of examples, implicitly suggesting that this limited the precedential value of the collection of examples.

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The Agency disagrees with the premise that only examples supported by binding regulation or judicial precedent would be valid evidence of Agency interpretation. FDA cited the examples to illustrate that the Agency has over the years consistently taken the position that express drug or device claims are not required for a finding of intended pharmacological use or effect. These examples constitute highly relevant evidence of the Agency's past interpretations of its governing statute.

Further, FDA's statements in *Federal Register* preambles and proposed regulations—although not binding—are official statements of Agency position. *See* 21 CFR 10.85(d)(1) and (e) (texts of proposed and final regulations, and related preambles, are valid FDA interpretations). Although the Agency did not concur fully with its advisory committee in the vaginal products example, the position expressed in the example was that of the Agency. *See* 59 FR 5226, 5227 (Feb. 3, 1994). These and other official Agency interpretive statements deserve strong consideration. Notifications to manufacturers also represent official Agency positions. *See* 21 CFR 10.85(d)(1); *see also Kickapoo Oil Co. v. Murphy Oil Corp.*, 779 F.2d 61, 66 (Temp. Em. Ct. App. 1985) ("Notice of Probable Violation" constitutes agency interpretation).

The examples document the Agency's consistent historical position that intended use is not limited to express claims. *See Udall v. Tallman*, 380 U.S. 1, 17-18 (1965) (consistent past agency practice can be evidence of agency interpretation). The examples cover a number of years and represent a variety of circumstances. They cover both individual products and categories of products. They include drugs and devices. The intended users ranged from physicians and researchers to ordinary consumers to those seeking a cocaine substitute. They include intended use based on both product effect and

consumer use. The Agency's application of the intended use concept is not a new regulatory construct. Rather, as these examples illustrate, the Agency has applied the concept in a variety of contexts, both formal and informal. Whether any of these examples represent "binding" interpretation is irrelevant given the limited purpose for which they are cited. As the court in *Kickapoo Oil* found, enforcement actions, notices of potential violations, statements in various briefs, and similar documents all constitute persuasive evidence of an agency's past interpretation of its governing statute.

4. One comment attempts to distinguish tobacco products from khat by arguing that FDA relied on product effect and consumer use to regulate khat only because there were no express claims, whereas tobacco products have express claims (e.g., for smoking taste and pleasure). The Agency disagrees. Even if the khat had been labeled as a decorative plant or a culinary herb, for example, such express claims would not have been binding and FDA would have taken the same action. (In fact, as the comment acknowledges, FDA suspected that the khat might have been falsely declared as a permitted Egyptian vegetable.)

The same comment also argues that FDA was merely aiding a sister agency, the Drug Enforcement Agency (DEA), in controlling a product that DEA considered to be a drug of abuse. The comment notes that it is not necessary to establish intended use for a DEA-controlled substance. In fact, for a decade after FDA first issued the khat Import Alert, DEA did not have jurisdiction over the product. Even after the active ingredient was listed as a controlled substance, FDA retained separate jurisdiction to detain the product. Obviously, any FDA detention action—before or after khat was scheduled as a controlled substance—had to be accomplished under FDA's authority.

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The comment further argues that the example is not relevant because the evidentiary standard for import detention is low (i,e., that the product only has to "appear" to be violative under section 801(a) of the Act, 21 U.S.C. 381). A differing evidentiary standard does not render the evidence relied upon by the Agency in determining khat's intended use irrelevant to establishing intended use. In determining whether an imported product "appears" to be a drug or device, the Agency uses the same kinds of evidence as it does in determining whether a domestic product "is" a drug or device. While the Agency's evidentiary burden under section 801(a) may be lower than it is when the Agency finally determines that a product is a drug or device under the Act, the types of evidence that are relevant do not differ.

Still another comment asserts that, because khat is intended to be used as a tea, it is a food and not a drug. The Agency agrees that the Federal Food, Drug, and Cosmetic Act excludes a food from the definition of "drug" under section 201(g)(1)(C). However, khat is not a food because it is not used primarily for taste, aroma, or nutritive value. *Nutrilab, Inc.*, 713 F.2d at 337. Instead, its foreseeable use was to obtain stimulant narcotic effects. Moreover, the Agency notes that khat is not used exclusively as tea, but is also chewed and smoked like tobacco.

F. RESPONSE TO ADDITIONAL COMMENTS

In this section, the Agency responds to additional comments regarding the evidence that cigarettes and smokeless tobacco are "intended to affect the structure or any function of the body" and the Agency's use of that evidence.

1. Some comments assert that FDA may not rely on evidence relating to particular manufacturers to find intended use for all manufacturers of a particular product, but must instead determine intended use on a product-by-product basis by producing evidence specific to each individual manufacturer and even to each individual brand of tobacco products. The Agency disagrees with these comments. In appropriate circumstances, FDA can determine that a type of product is subject to its jurisdiction without focusing on the individual manufacturer or brand.

As discussed in other parts of section II., the evidence of intended use applies to all cigarettes and smokeless tobacco products on the market. This evidence establishes that cigarettes and smokeless tobacco are highly addictive, cause other psychoactive effects (such as relaxation and stimulation), and affect weight regulation and that these effects are widely accepted in the scientific community. Based on this evidence, it is foreseeable to any reasonable manufacturer that cigarettes and smokeless tobacco will have and be used for these addictive, psychoactive, and other pharmacological effects. The evidence also shows that *actual* consumer use of these products for their pharmacological effects is predominant and, in fact, nearly exclusive. Given the foreseeable pharmacological effects and uses of cigarettes and smokeless tobacco and the actual consumer use of cigarettes and smokeless tobacco for pharmacological effects, the Agency concludes that all of these products are "intended to affect the structure or any function of the body."

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In addition, the Agency has collected evidence of the tobacco industry's statements, actions, and research demonstrating the industry's widespread awareness of the addictive and other pharmacological effects of cigarettes and smokeless tobacco, the industry's widespread knowledge that consumers use its products for these effects, and the industry's widespread manipulation of nicotine levels in its products to ensure that adequate amounts of nicotine are delivered to consumers. This evidence is further objective evidence that these products are "intended to affect the structure or any function of the body."

In the case of cigarettes, the evidence shows that the major manufacturers engaged in extensive research into nicotine pharmacology either as individual companies or through the industry-funded Council for Tobacco Research. Moreover, the evidence shows that the major cigarette manufacturers manipulate the nicotine level in cigarettes through techniques such as blending, the use of ammonia technologies, and the design of cigarette filters and ventilation. In the case of smokeless tobacco, the evidence shows that the major manufacturers of smokeless tobacco have also sponsored research into nicotine pharmacology either as individual companies or through the industry-funded Smokeless Tobacco Research Council. In addition, the evidence shows widespread nicotine manipulation by major smokeless tobacco manufacturers through pH adjustments or the use of teabag-like pouches that reduce nicotine delivery in their starter products.

Although the Agency often chooses to take enforcement actions against particular manufacturers of a specific product rather than to assert regulatory authority over all manufacturers of the product as a group, the Agency may choose a different regulatory approach when circumstances warrant. The Agency has concluded that such a different

approach is appropriate here. In concluding that these products are drug delivery devices within the meaning of the Act, the Agency is relying not on product labeling or express representations in promotional materials,[1138] but on other relevant objective evidence of intended use—dispositive evidence concerning the foreseeable pharmacological effects and uses of these products, actual consumer use of these products, and evidence of industry-wide actions, practices, and knowledge. Further, the public health concerns that the Final Rule seeks to address—the appeal and availability of tobacco products to young people—can be addressed effectively and efficiently only through the regulation of all cigarettes and smokeless tobacco as a group.

There is ample precedent to support FDA regulation of essentially identical products as a group, rather than setting criteria or restrictions on a product-by-product or manufacturer-by-manufacturer basis. For example, in administering the Act's device provisions, the Agency traditionally classifies at one time all products that are sufficiently similar that they can be considered the same type of device for purposes of applying the Act's regulatory controls. *See* 21 CFR 860.3(i) (definition of "generic type of device"). In making these device classification decisions, the Agency relies on the cumulative evidence from several manufacturers. Further, reclassification of one product of a particular type results in the reclassification of the entire group. *See* Proposed Rule: Medical Devices Classification Procedures, 42 FR 46028 (Sep. 13, 1977); *see also* Final Rule: Medical Devices Classification Procedures, 43 FR 32988 (Jul. 28, 1978). Thus, FDA applies the same regulatory requirements to all devices within an identified device

[1138] As discussed in section II.E.2., above, however, the implied claims in tobacco manufacturers' promotional materials provide further support for the Agency's conclusion.

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type. This approach is necessary to provide similar regulatory treatment for essentially identical products of different manufacturers and distributors. *See* 42 FR 46031; 43 FR 32989. Proceeding otherwise would require FDA to classify individually each manufacturer's device and to undertake the classification process whenever a new manufacturer marketed a product within an existing category of devices. Because cigarettes and smokeless tobacco affect the structure and function of the body and are devices under the Act, it is consistent with the Agency's approach to device classification to determine the intended use of all cigarettes and smokeless tobacco.

Similarly, the Agency limits the use of certain potentially dangerous ingredients in drug products by establishing uniform standards rather than manufacturer-specific restrictions. *See, e.g.*, 21 CFR 310.506 (1974 action restricting use of vinyl chloride); 21 CFR 310.507 (1977 action restricting use of trichloroethane in aerosol products); 21 CFR 310.508 (1975 action restricting use of halogenated salicylanilides); 21 CFR 310.513 (1976 action restricting use of chloroform in drug products).

Regulating the products of some cigarette and smokeless tobacco manufacturers while allowing others to be marketed without the restrictions that FDA has determined are necessary would frustrate important public health goals. For example, the goal of reducing tobacco use among young people would be severely compromised if one tobacco company could continue advertising in the manner limited by the regulations. Similarly, it would be anomalous to prohibit some manufacturers, but not others, from filling vending machines with cigarettes in facilities accessible to persons under the age of 18. Furthermore, if FDA proceeded against some but not all manufacturers, the result would be inequitable because some companies would be subject to FDA regulation while their

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competitors remain unregulated. The Supreme Court has recognized that proceeding against similar products one at a time can result in "great inequities . . . . [because] competitors selling drugs in the same category would go scot-free until the tedious and laborious procedures of litigation reached them." *Weinberger v. Hynson, Westcott and Dunning, Inc.*, 412 U.S. 609, 626 (1973).

One comment cites a statement in *Action on Smoking and Health v. Harris (ASH)*, 655 F.2d 236, 242 n.10 (D.C. Cir. 1980), that "[t]he very structure of the Act . . . calls for case-by-case analysis," and argues that the statement supports its argument that the Agency must make jurisdictional determinations on a product-by-product or brand-by-brand basis. This statement in *ASH*, however, was made in the context of a discussion of the Agency's freedom to revise its interpretation of its jurisdiction without constraint by long-standing interpretations. In *ASH*, the court found that FDA's decision to deny a citizen's petition requesting that the Agency exercise jurisdiction over cigarettes was not arbitrary, capricious, or contrary to law. *Id.* at 241, 243. The court made clear, however, that the Agency decision reviewed in the *ASH* case would not prevent FDA from revising its interpretation if new evidence became known. *Id.* at 242 n.10. New evidence would present a new "case" to the Agency that would appropriately be analyzed on its own merits.[1139] The statement in *ASH* therefore does not stand for the proposition that the Agency must make jurisdictional determinations on a manufacturer- or brand-specific basis.

[1139] *See* section IV., below, for a detailed discussion of why new evidence justifies the Agency's change in position on the application for the Act to tobacco products.

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Moreover, although it is true that the Agency often conducts product-by-product analyses of its jurisdiction under the Act, it is by no means clear that a "product" is equivalent to a "brand", or a "manufacturer" in this instance, given that different brands of cigarettes, snuff, and chewing tobacco are, respectively, virtually identical in content, size, shape, and packaging and are marketed in a closely similar manner.

Here, the Agency has elected to assert regulatory authority over cigarettes and smokeless tobacco by issuing regulations, rather than by undertaking enforcement actions against particular brands or manufacturers, and litigating, on a case-by-case basis, the status of each product. This approach is authorized by the Act. *See* section 701(a) of the Act, 21 U.S.C. 371(a) (providing "[a]uthority to promulgate regulations for the efficient enforcement of [the] Act"); *see also Hynson*, 412 U.S. at 624-625 (noting that, although regulatory agencies "usually proceed[] on a case-by-case basis, giving each [party] subject to regulation separate hearings. . . . [t]here is not always a constitutional reason why that must be done"). The Agency concludes that the approach it has adopted here has provided the manufacturers with ample opportunity to raise the numerous issues and concerns they share, as reflected in the voluminous consolidated comments submitted by both the cigarette and smokeless tobacco industries, as well as to raise evidentiary and other issues specific to individual manufacturers. The Agency further concludes that this approach is the one that most effectively serves the public health concerns the final rule seeks to address.

In support of the argument that the Agency is required to have evidence specific to each manufacturer, the comments cite cases that involved instances in which the evidence of intended use consisted *only* of labeling and promotional materials containing express

claims. These cases support the principle that a connection must exist between a manufacturer's product and the representations in labeling and promotional materials for such evidence to support a finding that the product is "intended" to be a drug or a device, for example, evidence that consumers rely on these representations. *See, e.g., United States v. Articles of Drug for Veterinary Use*, 50 F.3d 497, 500-501 (8th Cir. 1995); *United States v. Pro-Ag, Inc.*, 796 F. Supp. 1219, 1226-1229 (D. Minn. 1991); *Estee Lauder, Inc. v. FDA*, 727 F. Supp. 1, 2-3 (D.D.C. 1989). *Estee Lauder*, for instance, involved traditional skin cream ingredients that by themselves were "cosmetics" but not "drugs" within the meaning of the Act. 727 F. Supp. at 3. The *only* evidence that made the products "drugs" was the manufacturer's anti-aging claims in the labeling. *Id.* In such a case, there would not be a basis to attribute Estee Lauder's drug claims to another manufacturer's skin cream whose labeling contained no drug claims. Evidence regarding drug claims in the labeling of a specific product is generally appropriately limited to the manufacturer that created or adopted the labeling and the product that accompanies the labeling.

These cases do not, however, support the argument that the Agency is required to have manufacturer-specific evidence when evidence other than labeling and promotional materials is used to determine intended use.[1140] As a result, the cases are not controlling here because the evidence of the intended use of tobacco products is not based on express

[1140] One comment also cites *Hanson v. United States*, 417 F. Supp. 30 (D. Minn. 1976), *aff'd per curium*, 540 F.2d 947 (8th Cir. 1976). In *Hanson*, the court explained that "the 'intended use' of a product . . . is determined from its label, accompanying labeling, promotional claims, advertising, *and any other relevant source*." *Id.* at 35 (emphasis added). The comment omitted the italicized language. Not only does the case not support the proposition for which it is cited, but the question of whether "intended use" determinations must be made on a product-by-product basis was not before the court.

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claims in labeling and promotional materials but on evidence that applies to all manufacturers of cigarettes and smokeless tobacco.

In the case of tobacco products, the evidence of intended use is far broader than labeling for specific products. The evidence regarding the foreseeable pharmacological effects and uses of cigarettes and smokeless tobacco and the actual consumer use of cigarettes and smokeless tobacco for pharmacological effects described in sections II.A. and II.B., above, applies equally to all of the manufacturers and is sufficient to establish that each individual product is "intended to affect the structure or any function of the body," regardless of the identity of the manufacturer. The evidence concerning the statements, actions, research, and knowledge of the manufacturers also supports such a determination. As discussed in sections II.C. and II.D., above, this evidence shows that tobacco manufacturers conducted similar research into nicotine pharmacology; engaged in similar product research and development; use similar methods to manipulate and control nicotine deliveries in commercial products; and jointly belong to associations that have conducted further research into nicotine pharmacology. The evidence thus shows both a widespread understanding within the industry of the pharmacological effects and uses of cigarettes and smokeless tobacco and widespread design of these products to provide pharmacologically active doses of nicotine.

For all of these reasons, it is reasonable and consistent with the public health protection goals of the Act generally and of the tobacco regulations specifically to attribute evidence from all relevant sources—the foreseeability of the pharmacological effects of nicotine for which consumers use cigarettes and smokeless tobacco, the actual consumer use of these products for these effects, the industry's widespread knowledge of

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nicotine's pharmacological effects and uses, and the industry's widespread manipulation and control of nicotine—to *all* manufacturers of cigarettes and smokeless tobacco.[1141]

2. Tobacco industry comments argue that some of the statements, research, and actions attributed to particular manufacturers are not relevant to intended use because they are not contemporaneous with the sale of currently marketed products. The Agency disagrees with these comments. One industry comment cites cases involving products

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[1141] The Agency has also determined that processed loose cigarette tobacco, which is used by smokers who roll their own cigarettes, is subject to FDA jurisdiction. One comment contends that the use of "roll-your-own" cigarette tobacco is "fundamentally different from other tobacco products." Consolidated comment of the "Roll-Your-Own" cigarette tobacco manufacturers (Brown & Williamson Tobacco Corp., Robert Burton Associates, Consolidated Cigar Corporation, Douwe Egberts Van Nelle Inc., House of Windsor, Inc., Lane Limited, and Republic Tobacco, L.P.) (Jan. 2, 1996), at 11. *See* AR (Vol. 702 Ref. 1578). The Agency disagrees. Processed loose cigarette tobacco is a cigarette that has not yet been assembled. Roll-your-own cigarettes contain tobacco and are smoked. Like the tobacco used in manufactured cigarettes, loose tobacco contains pharmacologically active doses of nicotine. And, like the tobacco incorporated into commercially manufactured cigarettes, loose tobacco is not simply raw leaves as they are picked from plants in the field. Rather, this tobacco has been cured and treated with many chemicals, and had its moisture content controlled. Consumers obtain separately the components of a cigarette (e.g., processed loose tobacco and special cigarette papers) and then use those components to assemble their own cigarettes. While these homemade products are more crudely manufactured than those produced by cigarette companies, they have the same effect—the smoke from these products is inhaled, and the products deliver nicotine, a drug, for inhalation by the lungs and absorption into the brain. Loose tobacco thus has foreseeable and actual pharmacological effects and uses parallel to manufactured cigarettes, and therefore is "intended to affect the structure or any function of the body" within the meaning of the Act. Further, one of the manufacturers of "roll your own" cigarette tobacco, Brown & Williamson, is also a manufacturer of cigarettes (as well as a manufacturer of smokeless tobacco). Evidence concerning Brown & Williamson's statements, research, and actions, particularly its knowledge that consumers use tobacco products for pharmacological purposes, is discussed in section II.C., above. Because a "roll your own" cigarette is fundamentally the same product as a commercially manufactured cigarette, the evidence discussed in section II.C., above, is also relevant to the manufacturers' intent in producing and selling "roll your own" cigarette tobacco, and is further evidence that processed loose tobacco is subject to FDA jurisdiction.

In addition to the factual and legal arguments supporting the Agency's assertion of jurisdiction over processed loose cigarette tobacco, public health concerns also support including processed loose cigarette tobacco in this proceeding. A "roll-your-own" cigarette poses the same risks as a commercially manufactured cigarette. The Agency's regulations include restrictions on the access of persons younger than 18 years of age to these products. As discussed in section III.E. of the Final Rule, the public health goals of the Agency's regulations would be thwarted if the regulations were limited to manufactured cigarettes and smokeless tobacco. To exclude processed loose tobacco would provide a simple and obvious way to avoid the restrictions in the regulation. If such an exception existed, cigarettes could be packaged and sold in such a way as to be considered "roll-your-own" products, and young persons would have access to addictive tobacco products, thereby undermining the purpose of the Final Rule.

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whose labeling expressly promoted the products as having therapeutic value in treating certain diseases or as affecting the structure or function of the body. *See United States v. Pro-Ag, Inc.*, 796 F. Supp. 1219 (D. Minn. 1991), *aff'd*, 968 F.2d 681 (8th Cir. 1992); *United States v. Neptone*, No. C-83-0864 EFL, CCH ¶ 38,240 (N.D. Cal. Oct. 25, 1983); *United States v. Various Quantities . . . "Instant Alberty Food,"* 83 F. Supp. 882 (D.D.C. 1949). In these cases, however, promotional claims made to consumers were the *sole* basis for establishing intended use. As a result, the courts found that labeling and other promotional material must ordinarily accompany the product and be relied on by consumers purchasing the products. These cases are not controlling, however, where the product has widely recognized pharmacological effects and uses and the government is relying on evidence from other sources—such as evidence of the known and foreseeable pharmacological effects and uses and actual consumer use of the product, and the statements, research, and actions of the manufacturers that demonstrate their intention to facilitate the product's pharmacological effects.

Unlike labeling, which is usually evidence of a manufacturer's current express claims for a product,[1142] the internal documents remain relevant because they evidence an actual intent to affect the structure or function of the body that has not been refuted by more current actions. Indeed, the court in *Alberty Food*, a case cited by the comments, recognized that the mere fact that a manufacturer or shipper stops producing and

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[1142] In certain circumstances, such as where consumers continue to rely on previous claims or where discontinued labeling shows a "continuity of purpose" to sell a product as a drug, old labeling can establish intended use. *See, e.g., United States v. Nutrition Service, Inc.*, 227 F. Supp. 375, 386-387 (W.D. Pa. 1964); *United States v. 789 Cases . . . Latex Surgeons' Gloves*, 799 F. Supp. 1275, 1285 (D.P.R. 1992), *aff'd*, 347 F.2d 233 (3d Cir. 1965).

distributing literature that renders a drug misbranded is not an unconditional defense to a charge that the manufacturer or shipper intended to misbrand drugs subject to an enforcement action:

> [i]t is only to the extent that the abandonment of such dissemination creates an inference that the shipper did not intend, when it shipped the drugs in interstate commerce, that they be used for the treatment of the diseases named on the booklets, that the abandonment can be said to be an effective defense. *The government might introduce evidence to show that, notwithstanding such abandonment, it was still the intention of the shipper that the drugs be used for the treatment of the diseases . . .*

83 F. Supp. at 887 (emphasis added).

The court's analysis is pertinent here. The record establishes that the manufacturers have not "abandoned" the design, manufacturing, and marketing practices discussed in the internal documents. To the contrary, the products continue to be marketed and sold in virtually the same manner and form as they were when those documents were produced. *See* section II.C.2.e., above. Thus, the record here supports the Agency's conclusion that the internal documents remain a relevant source of evidence of intended use.

G. CONSIDERED CUMULATIVELY, THE EVIDENCE OVERWHELMINGLY DEMONSTRATES THAT CIGARETTES AND SMOKELESS TOBACCO ARE INTENDED TO AFFECT THE STRUCTURE AND FUNCTION OF THE BODY

As discussed in sections II.A.-F., the evidence in the record provides several independent bases for the Agency's determination that cigarettes and smokeless tobacco are intended to affect the structure and function of the body. Independently, the evidence in each of these distinct categories of evidence is a sufficient basis for the Agency's conclusion that the manufacturers of cigarettes and smokeless tobacco "intend" their products to affect the structure and function of the body.

In reaching a final determination of the intended use of cigarettes and smokeless tobacco, it is also appropriate for the Agency to consider the objective evidence of intended use as a whole. Considered together, the evidence in each of the different categories of evidence before the Agency—the evidence of the foreseeable pharmacological effects and uses of cigarettes and smokeless tobacco; the evidence of the actual consumer use of cigarettes and smokeless tobacco for pharmacological purposes; and the evidence of the manufacturers' intent as revealed through the manufacturers' statements, research, and actions are highly consistent and support the same conclusion: cigarettes and smokeless tobacco are intended to affect the structure and function of the body. When viewed from the perspective of what a reasonable manufacturer would foresee, how consumers actually use the products, or what is revealed in internal company documents, the evidence in the record demonstrates that cigarettes and smokeless tobacco have intended pharmacological effects and uses. This convergence of independent categories of evidence is highly probative. Taken as a whole, therefore, the evidence in

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the record convincingly establishes that cigarettes and smokeless tobacco are "intended" to affect the structure and function of the body within the meaning of the Act.

III. CIGARETTES AND SMOKELESS TOBACCO ARE COMBINATION PRODUCTS CONSISTING OF "DRUG" AND "DEVICE" COMPONENTS

As discussed in sections I. and II., above, the Agency has determined that (1) cigarettes and smokeless tobacco "affect the structure or any function of the body," and (2) these effects on the structure and function of the body are "intended" by the manufacturers. These two determinations establish that cigarettes and smokeless tobacco are subject to FDA jurisdiction under the Federal Food, Drug, and Cosmetic Act (the Act). This section explains the basis for the Agency's conclusion that cigarettes and smokeless tobacco are "combination products" consisting of a "drug," nicotine, and "device" components that deliver nicotine to the body.

Under the Act, a product that is intended to affect the structure or function of the body can be a "drug" under section 201(g)(1)(C) or a "device" under section 201(h)(3). The principal difference between a "drug" and a "device" is that a device is "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article" that "does not achieve its primary intended purposes through chemical action within or on the body . . . and . . . is not dependent upon being metabolized for the achievement of its primary intended purposes." Section 201(h)(3). Since the enactment of the Safe Medical Devices Act of 1990, certain products that are intended to affect the structure or function of the body can also be regulated as a "combination product," consisting of a drug and a device. Section 503(g)(1), 21 U.S.C. 353(g)(1). A combination product is a product composed of two regulated components, such as a drug and a device, that "are physically, chemically, or otherwise combined or mixed and produced as a single entity." 21 CFR 3.2(e)(1). Examples of combination

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products include drug delivery systems such as nebulizers, transdermal patches, and prefilled syringes,[1143] as well as prefilled intravenous infusion pumps.

In the Jurisdictional Analysis, the Agency set forth its current view that cigarettes and smokeless tobacco products are combination products under the Act. The Agency explained that "FDA considers device-like products, such as instruments, implements, machines, contrivances, implants, or other similar or related articles . . . , whose primary purpose is delivery of a drug, and that are distributed with a drug product, to be drug delivery systems." 60 FR 41521. The Agency concluded, based on the evidence then available to it, that:

> Cigarettes and smokeless tobacco function in a similar manner in that they contain a drug, nicotine; are used to deliver that drug to the site at which the drug will be absorbed into the body, the mouth or lungs; and after the drug has been delivered, the delivery system, the cigarette butt or smokeless tobacco material, depleted of nicotine, remains and must be disposed of. Only the nicotine delivered by these products achieves its primary intended purpose by chemical action in or on the body.

60 FR 41521–41522. With respect to cigarettes, the Agency further explained that:

> The primary purpose of parts of the cigarette . . . is to effectuate the delivery of a carefully controlled amount of nicotine to a site in the human body where it can be absorbed. The drug, nicotine, is generally contained within the treated rolled tobacco. The delivery system, the nicotine-containing cigarette, must be lit to have its intended effect on the structure or function of the body, and, once lit and used, is discarded. When lit, the cigarette produces nicotine-containing smoke, which is inhaled by the consumer and when absorbed into the lungs, yields on average approximately 1.0 mg of nicotine.

60 FR 41522. With respect to smokeless tobacco, the Agency further explained that:

> Smokeless tobacco products function like infusion devices or transdermal patches that deliver continuous amounts of nicotine to the cheek tissue for

[1143] Intercenter Agreement between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health (Oct. 31, 1991), at 6. See AR (Vol. 30 Ref. 289).

> absorption into the bloodstream. The device element of smokeless products is the tobacco, which contains the nicotine but is not intended to be consumed. Instead, in normal use, most of the tobacco in the product is not absorbed by the user and is removed from the mouth after absorption of the nicotine through the cheek tissue.
>
> The primary purpose of the tobacco is to provide a palpable vehicle that allows nicotine to be extracted from the tobacco by the user's saliva so that it may be absorbed into the body.

60 FR 41522–41523.

After carefully considering the evidence in the administrative record and the comments received, the Agency reaffirms these findings and concludes that cigarettes and smokeless tobacco are combination products that contain a "drug" and a "device."

A. NICOTINE IN CIGARETTES AND SMOKELESS TOBACCO IS A DRUG

For the reasons set forth in sections I. and II., above, the Agency concludes that the nicotine in cigarettes and smokeless tobacco is a "drug" under section 201(g)(1)(C). The nicotine in these products "affect[s] the structure or any function of the body" by sustaining addiction, by producing other important pharmacological effects on the central nervous system, including tranquilizing and stimulant effects, and by controlling weight. *See* section I., above. These effects of the nicotine in cigarettes and smokeless tobacco are "intended" by the manufacturers. *See* section II., above. Therefore, the nicotine in cigarettes and smokeless tobacco meets the statutory definition of a "drug" under section 201(g)(1)(C).

B. CIGARETTES AND SMOKELESS TOBACCO CONTAIN DELIVERY DEVICES AND ARE COMBINATION PRODUCTS UNDER THE ACT

Cigarettes and smokeless tobacco are not simply packaged nicotine. As discussed below, the rest of the cigarette or smokeless tobacco product includes a delivery device that delivers a controlled amount of nicotine to the body. This combination of the drug nicotine and a delivery device makes these products "combination products."

Under the Act, a device is:

> an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is . . . intended to affect the structure or any function of the body of man . . . and which does not achieve its primary intended purposes through chemical action within or on the body of man . . . and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Section 201(h)(3). This definition was intended to bring within the reach of the statute articles that are intended to affect the structure or function of the body, but are physically distinguishable from drugs, which in general are substances in liquid, powder, or other drug dosage form that are ingested, injected, rubbed, or otherwise absorbed into the body. The definition establishes a four-part test for a device. First, the article must be "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article." Second, the article must be "intended to affect the structure or any function of the body." Third, the article must not "achieve its primary intended purposes through chemical action within or on the body of man." And fourth, the article must not be "dependent upon being metabolized for the achievement of its primary intended purposes." Both cigarettes and smokeless tobacco contain a delivery device that meets these four criteria.

III.B.1.

1. Cigarettes Are Combination Products

By weight, the drug nicotine is only a small part of a cigarette.[1144] First, the cigarette also has components that together constitute an "instrument, implement, . . . contrivance or similar or related article" under the Act. As a cigarette manufacturer has acknowledged, cigarettes are "a highly engineered product."[1145] They have components that have been carefully designed to deliver controlled, pharmacologically active doses of nicotine to the smoker, including the tobacco blend, the filter, and the ventilation system. *See* section II.C.4., above. Collectively, the drug delivery components of cigarettes are an instrument, implement, contrivance, or similar article that is designed to release a nicotine-containing aerosol, i.e., the tobacco smoke, that, upon combustion outside the body, is inhaled by the smoker and serves as the vehicle for nicotine delivery.

Second, consistent with section 201(h)(3) of the Act, the device components of cigarettes are "intended to affect the structure or any function of the body." Cigarettes are "intended" to deliver nicotine to the body. *See* Section II, above. The nicotine delivered by the device components of cigarettes "affect[s] the structure or any function of the body." *See* Section I, above. The device components of cigarettes are thus designed to achieve the specific purpose of affecting the structure and function of the body by delivering a controlled amount of nicotine to the body.

[1144] *Regulation of Tobacco Products (Part 3): Hearings before the Subcommittee on Health and the Environment, House Energy and Commerce Committee, U.S. House of Representatives*, 103d Cong., 2d Sess. 173 (Jun. 23, 1994). *See* AR (Vol. 709 Ref. 3).

[1145] Response of R.J. Reynolds Tobacco Company, Appendix D, FDA Docket No. 94P-0069 (Nov. 2, 1994), at 78. *See* AR (Vol. 447 Ref. 7640).

III.B.1.

Third, as required by the statutory definition, the device components do not achieve their delivery purpose through "chemical action within or on the body." Although the *nicotine* delivered by cigarettes achieves its primary intended purpose through a series of chemical actions inside the body, the device components do not rely on chemical actions within or on the body to achieve their drug delivery purpose. Rather, the device components of cigarettes achieve their primary purpose by delivering nicotine to the body in an aerosol form. This nicotine-containing aerosol is produced by combustion outside the body—not by chemical actions within or on the body.

Fourth, as required by the statutory definition, the device components in cigarettes are not "dependent upon being metabolized" to achieve their primary intended purpose. Metabolism is "the conversion of one chemical species to another."[1146] To be metabolized, most substances must first be ingested or absorbed into the body, where metabolism occurs after the substance reaches the gastrointestinal tract (the liver) or the systemic circulation.[1147] In the case of cigarettes, the nicotine delivered by a cigarette is inhaled and delivered to the bloodstream where it can achieve its intended purpose, before any metabolism takes place. Thus, the device components achieve their primary intended purpose without being metabolized.

Cigarettes are similar to other articles that are routinely regarded as combination products containing both a drug and a drug delivery instrument, apparatus, machine, contrivance, or similar or related article under the Act. In 1991, the Agency's Center for

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[1146] Rowland M, Thomas TN, *Clinical Pharmacokinetics: Concepts and Applications* (Baltimore: Williams & Wilkins, 1995, 3d ed.), at 15. *See* AR (Vol. 711 Ref. 49).

[1147] *See Id.* at 14.

III.B.1.

Drug Evaluation and Research and the Agency's Center for Devices and Radiological Health reached an intercenter agreement delineating the types of products that would be considered to have drug and device components. Under this agreement, an article "with [the] primary purpose of delivering or aiding in the delivery of a drug and distributed containing a drug (i.e., 'pre-filled delivery system')" is regarded as a combination product with drug and device components.[1148] The intercenter agreement specifically lists nebulizers, transdermal patches, and pre-filled syringes as examples of "pre-filled delivery systems."[1149] Prefilled intravenous infusion pumps, which are used to deliver drugs to patients intravenously, are another example. Cigarettes are comparable to these articles. Nebulizers and metered dose inhalers are products filled with a drug used by persons with asthma to relieve constricted airways. Like nebulizers and metered dose inhalers, cigarettes contain an instrument, implement, contrivance, or similar or related article for converting a drug into an aerosolized form for inhalation. Cigarettes are also similar to prefilled intravenous infusion pumps, in that drug delivery components of both deliver the drug to the body for absorption, after which the device components are discarded or destroyed.

The internal tobacco company documents themselves recognize that cigarettes should be regarded as nicotine delivery devices. For example, as early as 1972, a senior Philip Morris researcher characterized the cigarette as "*a dispenser for a dose unit of nicotine*" and stated that "[s]moke is beyond question the most optimized vehicle of

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[1148] *Intercenter Agreement between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health* (Oct. 31, 1991), at 6. *See* AR (Vol. 30 Ref. 289).

[1149] *Id.*

nicotine and the cigarette the most optimized dispenser of smoke."[1150] Twenty years later, a Philip Morris official continued to describe cigarettes as "*nicotine delivery devices*," placing "conventional cigarettes" in the same category as nicotine "chewing gums, patches, aerosol sprays and inhalers."[1151]

Researchers at other cigarette manufacturers have expressed similar views. In 1962, a senior BATCO scientist described the advantages of nicotine delivery through cigarettes, stating that "the techniques of administration by smoking ha[ve] considerable psychological advantages and a built-in control against excessive absorption."[1152] Decades later, BATCO researchers continued to characterize cigarettes in device-like terms, describing cigarettes as "the means of providing nicotine doses in a metered fashion"[1153] and as a delivery mechanism that allows "the smoker to have very flexible control over titrating his desired dose of nicotine."[1154] Similarly, in the words of one senior RJR scientist, "a tobacco product is, in essence, *a vehicle for delivery of nicotine*, designed to deliver the nicotine in a generally acceptable and attractive form."[1155]

[1150] Dunn WL (Philip Morris Inc.), *Motives and Incentives in Cigarette Smoking* (1972), at 5-6 (emphasis added). *See* AR (Vol. 12 Ref. 133).

[1151] Philip Morris Inc., Draft Report Regarding a Proposal for a "Safer" Cigarette, Code-named *Table*, at 2 (emphasis added). *See* AR (Vol. 531 Ref. 122).

[1152] Ellis C (BATCO), The smoking and health problem, in *Smoking and Health–Policy on Research*, Research Conference, Southampton, England (1962), at 4. *See* AR (Vol. 21 Ref. 220).

[1153] Proceedings of the BATCO Group R&D Smoking Behaviour-Marketing Conference, Session I, slides (Jul. 9-12, 1984), at BW-W2-03242 (emphasis added). *See* AR (Vol. 24 Ref. 315).

[1154] *Transdermal Nicotine Patches*, at 3. *See* (AR Vol. 531 Ref. 124).

[1155] Teague CE (R.J. Reynolds Tobacco Co.), *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein* (Apr. 14, 1972), at 2 (emphasis added). *See* AR (Vol. 531 Ref. 125).

III.B.2.

The history of the manufacturers' product research and development further demonstrates that cigarettes are designed to deliver nicotine to the smoker. As described in section II.C.3., above, the manufacturers have engaged in extensive product research and development for over three decades to optimize the delivery of nicotine from cigarettes. This product research and development has even included the development of novel tobacco products, such as Premier by RJR, that are designed to deliver nicotine to the smoker "by heating, rather than burning, tobacco."[1156] *See* section II.C.3., above.

For these reasons, the Agency has determined that cigarettes are most appropriately considered a prefilled delivery system under the intercenter agreement. They are a combination product under the Act consisting of the drug nicotine and a device for delivering nicotine to the smoker.[1157]

2. Smokeless Tobacco Is a Combination Product

The Agency has also determined that smokeless tobacco is a combination product. First, as required by the statutory definition, smokeless tobacco is an "instrument, . . . implement, contrivance, . . . or similar or related article" for delivering nicotine to the consumer. The principal device component in these products is the processed tobacco, the purpose of which is to deliver the nicotine to the cheek and gum tissue for absorption

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[1156] *Chemical and Biological Studies on New Cigarette Prototypes that Heat Instead of Burn Tobacco* (Winston-Salem NC: R.J. Reynolds Tobacco Co., 1988), at 3. *See* AR (Vol. 107 Ref. 980).

[1157] As discussed in Section II.F., above, the Agency has also determined that processed loose cigarette tobacco, which is used by smokers who roll their own cigarettes, is subject to FDA jurisdiction. Processed loose tobacco has a drug and a device component. As noted in Section II.F., consumers obtain separately the components of a cigarette (e.g., processed loose tobacco and special cigarette papers) and then use those components to assemble their own cigarettes. While these homemade products are more crudely manufactured than those produced by cigarette companies, they perform the same device function of delivering a nicotine-containing aerosol to the body for inhalation by the lungs.

into the body. The processed tobacco provides the nicotine to the consumer's body in a form that is palatable and absorbable, thereby allowing the nicotine to diffuse from the tobacco to the buccal mucosa. Some products also have a device component consisting of a porous pouch that holds the processed tobacco in position in the mouth, controlling the absorption of nicotine into the buccal mucosa.

Smokeless tobacco is placed in the mouth, where it forms a matrix from which nicotine is solubilized and then diffused across the buccal mucous membranes into the bloodstream. Thus, the tobacco matrix is the vehicle for rapidly and efficiently delivering nicotine to the smokeless tobacco user through buccal absorption. Smokeless tobacco is thus similar to other combination products that contain instruments, apparatuses, contrivances, or similar or related articles intended to deliver drugs. For example, smokeless tobacco resembles transdermal nicotine patches. Transdermal nicotine patches are considered combination products under an intercenter agreement.[1158] Similar to transdermal nicotine patches, smokeless tobacco contains an instrument, implement, or similar or related article that brings the nicotine into close contact with body tissue, where it can diffuse through the body's membranes into the bloodstream. Smokeless tobacco is also comparable to prefilled intravenous infusion pumps, in that the drug delivery components of both products deliver a drug to the body and are discarded after drug delivery is complete. This feature distinguishes the delivery device components of smokeless tobacco from drugs. A drug is typically ingested or absorbed in the body; in the case of smokeless tobacco, most of the tobacco in the product is not ingested or absorbed

[1158] *Intercenter Agreement between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health* (Oct. 31, 1991), at 6. *See* AR (Vol. 30 Ref. 289).

by the user and is removed from the mouth. Several aspects of the smokeless tobacco may be engineered by the manufacturer to control the rate and extent of absorption of nicotine, the drug to be delivered. For example, the cut of the tobacco may be altered to affect the rate of diffusion of the nicotine through the buccal mucosa.

Second, consistent with section 201(h)(3) of the Act, the device components of smokeless tobacco are "intended to affect the structure or any function of the body." Smokeless tobacco are "intended" to deliver nicotine to the body. *See* Section II., above. The nicotine delivered by the device components of smokeless tobacco "affect[s] the structure or any function of the body." *See* Section I., above. The device components of smokeless tobacco are thus designed to achieve the specific purpose of affecting the structure and function of the body by delivering a controlled amount of nicotine to the body.

Third, as required by the statutory definition, the device components of smokeless tobacco do not "achieve [their] primary intended purposes through chemical action within or on the body." The *nicotine* in smokeless tobacco achieves its primary purposes through chemical actions in the body. The device components, however, achieve their drug delivery function simply by bringing nicotine into contact with the buccal mucosa. To achieve the drug delivery purpose, the tobacco blend (and pouch, if any) must be placed in the mouth and the nicotine must diffuse away from the tobacco. These are

physical processes, not chemical ones,[1159] that are analogous to the physical processes through which transdermal nicotine patches deliver nicotine to the body.

Fourth, as required by the statutory definition, the device components in smokeless tobacco are not "dependent upon being metabolized." After buccal absorption of nicotine is complete, the remaining tobacco material (and pouch, if any) is expectorated whole. The critical absorption of nicotine does not require the metabolism of any part of the tobacco matrix.

For these reasons, the Agency has determined that smokeless tobacco is a combination product under the Act consisting of the drug nicotine and device components for delivering nicotine to the user.

C. RESPONSE TO COMMENTS

1. Several tobacco industry comments assert that drug delivery systems containing drugs are simply drugs, not combination products. These comments maintain that the Agency's position removes any distinction between the terms "drug" and "device" and could result in drugs in tablet or capsule forms being viewed as a combination product consisting of a drug and a drug delivery device.

Since passage of the Safe Medical Devices Act of 1990, however, the Agency could consider some capsules or tablets as combination products under section 503(g). For example, capsules utilizing osmotic pumps to deliver a drug could be regarded as a

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[1159] *See Webster's Collegiate Dictionary* (Springfield, MA: G&C Merriam, 1977 ed.), at 318; *Remington's Pharmaceutical Sciences* (Easton, PA: Mack Publishing, 1980, 16th ed.), at 1388. *See* AR (Vol. 711 Ref. 50).

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combination of a "drug" and a "device." The capsules, emptied of the drug, are not absorbed into the body, but are excreted. The delivery mechanism of these capsules is similar to that of a prefilled syringe. Yet there are basic differences between drug delivery systems like cigarettes and smokeless tobacco, on the one hand, and most drugs in tablet or capsule form, on the other. As discussed in section III.B., above, cigarettes and smokeless tobacco have major physical components that deliver nicotine to the consumer but are not absorbed or metabolized within the body. This is not the case with most tablets and capsules, which are absorbed completely along with the drug they deliver and act "through chemical action within or on the body." These basic differences mean that the Agency's decision to consider cigarettes and smokeless tobacco as combination products is reasonable and will not require the Agency to change its treatment of most products that have been adequately regulated as drugs, and begin to regulate them as combination products. The Supreme Court has recognized that the Agency has the discretion to apply the Act's statutory terms to products that reasonably meet those definitions. The fact that a strained extension of the Agency's analysis could lead to an illogical result will not preclude its use when the use itself is reasonable. *United States v. Sullivan*, 332 U.S. 689, 694 (1948).

2. Tobacco industry comments also argue that cigarettes and smokeless tobacco cannot have device components, because if the Agency is right that nicotine is a drug, the primary intended purpose of a cigarette or a smokeless tobacco product taken as a whole is dependent upon the chemical action of nicotine within the body. According to the comments, if the primary mode of action of a cigarette or a smokeless tobacco product

taken as a whole involves the chemical action of nicotine, the cigarette or smokeless tobacco product cannot meet the statutory definition of a device.

FDA disagrees with these comments. These comments confuse the definition of a device with the definition of a combination product. While it is true that under the statute, a device or device component cannot achieve its primary purpose by chemical action within or on the body, a combination product consisting of a drug and a device very well may. Indeed, Congress enacted section 503(g) of the Act specifically to recognize and address products, for example, that have a device component whose primary intended purpose is to deliver a drug by means other than chemical action or metabolizing action within or on the body, *and* a drug component that achieves its primary intended purpose through chemical action and/or by being metabolized. The statute recognizes that a single product can contain components with interdependent, yet distinct, purposes. Under the interpretation urged by the comments, there could never be a combination product composed of a drug and a device where the primary mode of action of the product is by chemical action. That interpretation is entirely at odds with the statutory language and purpose of section 503(g), as well as with FDA's long-standing practice of regulating as combination products many products containing a drug and a device.

IV. FDA'S ASSERTION OF JURISDICTION OVER CIGARETTES AND SMOKELESS TOBACCO AT THIS TIME IS JUSTIFIED

The Food and Drug Administration (FDA) has always exercised jurisdiction under the Federal Food, Drug, and Cosmetic Act (the Act) over tobacco products when there was evidence that these products were "intended" to treat or prevent disease or to affect the structure or function of the body. As discussed in section II.E., above, the Agency may consider relevant evidence from any source in determining whether a product is intended as a drug or device. On previous occasions when the Agency has been asked to consider whether tobacco products were within its jurisdiction, however, there was insufficient evidence to conclude that tobacco products were intended to affect the structure or function of the body, except where the manufacturer expressly promoted a tobacco product for use in treating disease or affecting the structure or function of the body.

Since the last occasion on which FDA considered whether to assert jurisdiction over tobacco products without claims, the state of the evidence has changed dramatically. A wealth of new evidence has become available demonstrating that: (1) the ability of nicotine in cigarettes and smokeless tobacco to produce addiction and other significant pharmacological effects is widely known and therefore foreseeable to a reasonable tobacco manufacturer; (2) consumers use cigarettes and smokeless tobacco predominantly to obtain the pharmacological effects of nicotine; and (3) previously undisclosed statements, research, and actions of tobacco manufacturers demonstrate that they intend their products to be used as nicotine delivery devices. As described in section II., above, FDA has determined that this evidence establishes that cigarettes and smokeless tobacco are

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"intended to affect the structure or any function of the body" within the meaning of the Act's "drug" and "device" definitions. FDA has therefore revised its position and concluded that all currently marketed cigarettes and smokeless tobacco are in fact "intended to affect the structure or any function of the body" and therefore are within its jurisdiction.

Information developed since 1980 also demonstrates that for most people tobacco use and nicotine addiction begin in childhood and adolescence. The data now suggest that if children and adolescents can be prevented from initiating tobacco use, they are unlikely to begin tobacco use later in life, thereby preventing the onset of tobacco-related disease and premature death. Before the importance of youth-centered interventions was identified, most of the regulatory approaches available under the Federal Food, Drug, and Cosmetic Act to address tobacco-related disease and death, such as removal of the products from the market, were not believed to be feasible. The new information that nicotine addiction is a pediatric disease provides an additional basis to conclude that restricting the sale, distribution, and use of cigarettes and smokeless tobacco to people under the age of eighteen is an effective tool to reduce the adverse health consequences of tobacco use. Thus, asserting jurisdiction over cigarettes and smokeless tobacco now presents an opportunity to use the Agency's resources efficiently for substantial public health gains.

Several comments maintain that the Agency is not permitted to change its earlier interpretation of the Act. However, it is a well-established principle of administrative law that an Agency may revise its interpretation or application of a statute if it supplies a reasoned explanation for its changed interpretation or position. *See Action on Smoking*

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and Health v. Harris (ASH), 655 F.2d 236, 242, n.10 (D.C. Cir. 1980) (recognizing that FDA is permitted to modify its earlier position on tobacco products and that the new position would be accorded deference by the courts); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 862 (1984); *Rust v. Sullivan*, 500 U.S. 173, 186-187 (1991); *Smiley v. Citibank, N.A.*, 116 5. Ct. 1730 (1996). Indeed, an agency is expected to reevaluate the wisdom of its interpretations and make changes in those interpretations when warranted by current knowledge and circumstances. *Rust*, 500 U.S. at 186-187. In *Rust*, the Court explained as follows:

> This Court has rejected the argument that an agency's interpretation is not entitled to deference because it represents a sharp break with prior interpretations of the statute in question. In *Chevron*, we held that a revised interpretation deserves deference because an initial agency interpretation is not instantly carved in stone and the agency, to engage in informed rule making, must consider varying interpretations and the wisdom of its policy on a continuing basis. An agency is not required to establish rules of conduct to last forever, but rather must be given ample latitude to adapt its rules and policies to the demands of changing circumstances.

Id. (citations and internal quotation marks omitted); *see also American Trucking Ass'ns v. Atchison, Topeka, and Santa Fe Ry. Co.*, 387 U.S. 397 (1967) (an agency, "faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice"). The new evidence presented in the Jurisdictional Analysis and in section II., above, provides a reasoned basis for FDA's change in position on the applicability of the Act to cigarettes

and smokeless tobacco without claims. In this section, FDA describes its earlier decisions on whether to regulate particular tobacco products and reviews the new evidence that now supports the Agency's assertion of jurisdiction over cigarettes and smokeless tobacco.

A. FDA HAS ALWAYS EXERCISED AUTHORITY TO REGULATE TOBACCO PRODUCTS WHEN THE EVIDENCE ESTABLISHED THAT THEY FELL WITHIN THE DRUG OR DEVICE DEFINITIONS

FDA's assertion of jurisdiction over tobacco products is not new. For more than 80 years FDA has taken the position that it has jurisdiction over tobacco products that fall within the Act's definitions of regulated products. As early as 1914, the Agency claimed jurisdiction to regulate tobacco products labeled *or used* for "medicinal purposes."[1160] In the succeeding decades, FDA brought and won enforcement actions against cigarettes that were intended to treat or prevent disease or to affect the structure and function of the body. *See, e.g., United States v. 354 Bulk Cartons . . . Trim Reducing-Aid Cigarettes*, 178 F. Supp. 847, 851 (D.N.J. 1959) (cigarettes claimed to reduce weight were intended to affect the structure or function of the body); *United States v. 46 Cartons, More or Less, Containing Cigarettes*, 113 F. Supp. 336, 338-339 (D.N.J. 1953) (cigarettes claimed to

[1160] The predecessor to FDA issued the following statement about its jurisdiction over tobacco: "Tobacco and its preparations, when labeled in such a manner as to indicate their use for the cure, mitigation, or prevention of disease, are drugs within the meaning of the act, and, as such, are subject to the provisions thereof. . . . On the other hand, tobacco and its preparations which are not so labeled *and are used for smoking or chewing or as snuff and not for medicinal purposes* are not subject to the provisions of the act." *U.S. Department of Agriculture Service and Regulatory Announcements*, No. 13 (1914), cited in Joint Comment of the Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. I, at 5 (emphasis added). *See* administrative record (AR) (Vol. 535 Ref. 96). Thus, to escape regulation under this interpretation of the Agency's authority, a tobacco product must not be labeled as a drug *and* must not be used as a drug. At the time this statement was issued, a drug was defined only as an article intended for the cure, mitigation, or prevention of disease, hence the limitation to use for "medicinal purposes." The definition was expanded in 1938 to include "articles intended to affect the structure or any function of the body."

prevent respiratory diseases were intended to treat or prevent disease). For many years, the existing evidence about the intended use of tobacco products was insufficient to conclude that tobacco manufacturers intended tobacco products as drugs or devices except when disease or structure-function claims were expressly made for the products. It is nevertheless indisputable that the Agency has consistently claimed jurisdiction over tobacco products when it has determined that they are intended to affect the structure or function of the body or to treat or prevent disease. What has changed is the nature of the evidence before the Agency on the question of whether cigarettes and smokeless tobacco are "intended to affect the structure or any function of the body."

B. A CHANGE IN THE EVIDENCE BEFORE THE AGENCY NOW ESTABLISHES "INTENT" TO AFFECT THE STRUCTURE AND FUNCTION OF THE BODY

1. Previous Agency Position and the Evidence on Which It Was Based

The Agency last considered whether to regulate tobacco products without disease or structure-function claims in connection with citizen petitions submitted in the late 1970's by Action on Smoking and Health (ASH) and others. The petitions sought to have FDA regulate all cigarettes as drugs or devices.

At the time that FDA responded to ASH's citizen petitions, the only evidence before the Agency was that presented by the petitioners: studies showing that nicotine produces some pharmacological effects in animals and humans and some very early evidence concerning the addictive properties of nicotine. The proposition that nicotine in cigarettes was addictive was not yet widely accepted in the scientific community, and the petition provided insufficient evidence to demonstrate addiction. Indeed, at the time the

petitions were submitted, no major public health organizations had concluded that nicotine is addictive. Because it was not yet recognized that nicotine is addictive, no data were available quantifying the proportion of smokers who were addicted and thus using cigarettes to satisfy their addiction.

The petitioners also presented no evidence that the tobacco companies knew of the pharmacological properties of nicotine, or that consumers used cigarettes for their pharmacological effects, or that the companies manipulated the levels of nicotine in cigarettes to satisfy smokers' need for nicotine. The petitions thus rested on evidence that nicotine has some pharmacological effects and the largely unsubstantiated assertion that many consumers used cigarettes for a drug purpose.

FDA concluded that although intended use could be established by evidence other than promotional claims, the evidence in the petitions was insufficient to find that the manufacturers of cigarettes "intended" these products to prevent, mitigate, or treat disease or to affect the structure or function of the body. For example, in response to the petition urging FDA to regulate filtered cigarettes as devices because they were intended to mitigate disease, the Agency said:

> *ASH* asserts that objective evidence other than manufacturers' claims can be material to a determination of intended use under the statutory definition, and that *National Nutritional Foods Ass'n* v. *Food and Drug Administration*, 504 F.2d 761 (2d Cir. 1974), *cert. denied*, 420 U.S. 946 (1975), is authority for this interpretation (Petition No. 2, p. 21). We agree. However, the court there held that the vendor's intent is the crucial element in the statutory definition and that objective evidence sufficient to pierce the manufacturer's subjective claims must be presented (504 F.2d at 789).
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> . . . [*National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir. 1975) and *National Nutritional Foods Ass'n* v. *Mathews*, 557 F.2d 325 (2d Cir. 1977)] support FDA's position that it is the intent of the manufacturers or vendors that objective evidence must establish and that

> evidence of consumer use can be one element of objective evidence to be weighed in determining if the intended purpose of a product subjects it to regulation under the Act. ASH has not established that consumers use attached cigarette filters for the prevention, mitigation, or treatment of disease to the extent necessary to allow FDA to impute the requisite intended uses to manufacturers or vendors.[1161]

ASH appealed the Agency's decision not to regulate cigarettes as drugs. In *ASH*, the Court of Appeals deferred to FDA's determination and concluded that the evidence on "intended use" was not sufficient to overrule the Agency's interpretation. *ASH v. Harris*, 655 F.2d 236 (D.C. Cir. 1980). The *ASH* court recognized both that FDA was permitted to modify its interpretation and that the Agency's new position would be accorded deference by the courts. *Id.* at 237, 242, n.10. The court expressly left open the possibility that at some point in the future FDA might appropriately determine that cigarettes did fall within the Agency's jurisdiction: "Nothing in this opinion should suggest that the Administration is irrevocably bound by any long-standing interpretation and representations thereof to the legislative branch. An administrative agency is clearly free to revise its interpretations." *Id.* at 242, n.10.

The *ASH* decision, moreover, by no means supports the proposition that the industry comments urge, namely, that evidence of intended use must be limited to manufacturers' drug claims. The *ASH* court held that a finding that tobacco products were intended to affect the structure or function of the body could be based on substantial consumer use evidence alone or in combination with other evidence of vendor intent. *Id.* at 239-240. Nor was it the Agency's position at the time of the *ASH* case that the

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[1161] Letter from Goyan JE to Banzhaf, III JF and Georgiades PN (Nov. 25, 1980), at 8-9. *See* AR (Vol. 28 Ref. 238).

intended use of cigarettes could be established only through a manufacturer's overt drug claims. As noted above, FDA's 1980 response to ASH on its petition urging FDA to regulate filtered cigarettes as devices expressly stated that objective evidence other than claims is relevant to establishing intended use. In addition, the brief filed by the Agency before the Court of Appeals repeatedly stated the Agency's formal legal position that the intended use of cigarettes could be established through manufacturer's representations *or* other objective evidence of intent.[1162] As stated in that brief, the petition denial was based on "*two* findings":

> (1) that there was no evidence in the record that manufacturers or vendors of cigarettes *represent* that cigarettes are intended to affect the structure or any function of the body; and (2) that there was no evidence in the record of any other sort that manufacturers or vendors of cigarettes *intend* that cigarettes affect the structure or any function of the body (Denial Letter at 4).[1163]

Thus, even at the time of the Agency's last decision on its jurisdiction over cigarettes, the Agency recognized that intended use could be established on the basis of objective evidence of intent other than manufacturers' claims. FDA concluded at that time that such other evidence had not been presented to the Agency.

2. New Evidence Supporting the Agency's Change in Position

In the years since FDA's decision on the ASH petitions, dramatic new evidence has become available on the issue of the intended use of cigarettes and smokeless tobacco. FDA has therefore reevaluated the issue of its jurisdiction over tobacco products and finds

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[1162] Brief for Appellees at 9 n.7, 27-28, 30, *Action on Smoking and Health v. Harris*, No. 79-1397, *reported at* 655 F.2d 236 (D.C. Cir. 1980). *See* AR (Vol. 504 Ref. 8918).

[1163] *Id.* at 30 (emphasis in original).

that the evidence now supports a determination that cigarettes and smokeless tobacco are intended to affect the structure and function of the body, regardless of whether drug claims are made for the products. FDA bases this determination on three important categories of evidence that have emerged since FDA last declined to exercise jurisdiction over tobacco products without claims: (1) the development of a scientific consensus, on the basis of overwhelming scientific evidence, that nicotine in cigarettes and smokeless tobacco is highly addictive and produces significant effects on the structure and function of the body, making it foreseeable to a reasonable tobacco manufacturer that its products will have pharmacological effects and be used for those effects by a substantial proportion of consumers; (2) scientific data establishing that the vast majority of consumers who use cigarettes and smokeless tobacco are addicted to them and use these products nearly exclusively to obtain the pharmacological effects of nicotine; and (3) newly disclosed evidence showing that tobacco companies have in mind that their products will be used by consumers for pharmacological purposes and have designed their products to affect the structure and function of the body. As described in section II., above, FDA believes that each category of evidence provides an independent basis on which to conclude that cigarettes and smokeless tobacco are intended to affect the structure and function of the body.

In the Jurisdictional Analysis and in section II., above, FDA describes at length the body of evidence now before it. The vast majority of that evidence—including evidence that predates FDA's denial of the *ASH* petitions but was not made public by the tobacco industry—was not available to FDA in 1980. Since 1980, the quality, quantity, and scope of the evidence regarding the intended use of cigarettes and smokeless tobacco have

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increased and sharpened dramatically. As described below, the evidence on the addictive nature of nicotine and on manufacturers' research on, manipulation of, and control over nicotine levels has grown exponentially.

a. Since 1980, a Scientific Consensus Has Emerged That Nicotine Is Addictive and Has Other Significant Pharmacological Effects and Uses

As described in section II.A., above, evidence that the pharmacological effects and uses of cigarettes and smokeless tobacco are foreseeable in a significant proportion of consumers is a sufficient basis on which to find that cigarettes and smokeless tobacco are intended to affect the structure and function of the body. Since 1980, the last time that FDA considered whether cigarettes were intended to affect the structure or function of the body, evidence of nicotine's addictiveness and other significant pharmacological effects and uses has become widely known and thus foreseeable by the manufacturers.

Before 1980, no major public health organization had determined that nicotine was an addictive drug. Between 1980 and 1994, however, every leading scientific deliberative panel and organization with expertise in addiction concluded that nicotine is addictive or dependence-producing. These organizations include the American Psychiatric Association, in its *Diagnostic and Statistical Manual of Mental Disorders,* Third Edition (DSM-III); the World Health Organization; the American Medical Association; the American Psychological Association; the American Society of Addiction Medicine; the Royal Society of Canada; and the Medical Research Council in the United Kingdom. In 1986, the U.S. Surgeon General issued a report concluding for the first time that smokeless tobacco is addictive. And in 1988, the Surgeon General issued a landmark report concluding that nicotine in cigarettes is addictive.

These organizations relied on data from animal and human studies demonstrating nicotine's ability to produce addiction. Definitive studies had not been conducted before 1980. During the 1980's and 1990's, however, there was an explosion of new studies on nicotine designed to determine whether nicotine is addictive. Thus, new studies, not available when the ASH petitions were decided, now conclusively demonstrate that nicotine has the characteristics of an addictive drug.[1164] The new data support the following findings, among others:

- Nicotine is self-administered by animals, demonstrating that it is a "positive reinforcer" (i.e., it causes repeated, compulsive use of the drug), one of the hallmark characteristics of addictive drugs;[1165]

[1164] *See* section II.A.3., above, for a complete description of these studies and their significance in assessing nicotine's addictiveness.

[1165] Goldberg SR, Spealman RD, Goldberg DM, Persistent behavior at high rates maintained by intravenous self-administration of nicotine, *Science* 1981;214:573-575. *See* AR (Vol. 5 Ref. 35-2).

Goldberg SR, Spealman RD, Maintenance and suppression of behavior by intravenous nicotine injections in squirrel monkeys, *Federation Proceedings* 1982;41(2):216-220. *See* AR (Vol. 39 Ref. 52).

Spealman RD, Goldberg SR, Maintenance of scheduled-controlled behavior by intravenous injections of nicotine in squirrel monkeys, *Journal of Pharmacology and Experimental Therapeutics* 1982;223(2):402-408. *See* AR (Vol. 42 Ref. 146).

Risner ME, Goldberg SR, A comparison of nicotine and cocaine self-administration in the dog: fixed-ratio and progressive-ratio schedules of intravenous drug infusion, *Journal of Pharmacology and Experimental Therapeutics* 1983;224(2):319-326. *See* AR (Vol. 42 Ref. 119).

Cox BM, Goldstein A, Nelson WT, Nicotine self-administration in rats, *British Journal of Pharmacology* 1984;83:49-55. *See* AR (Vol. 8 Ref. 93-1).

Slifer BL, Balster RL, Intravenous self-administration of nicotine: with and without schedule-induction, *Pharmacology, Biochemistry and Behavior* 1985;22:61-69. *See* AR (Vol. 8 Ref. 93-3).

Corrigall WA, Coen KM, Nicotine maintains robust self-administration in rats on a limited-access schedule, *Psychopharmacology* 1989;99:473-478. *See* AR (Vol. 347 Ref. 5495).

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- Consistent with the animal self-administration data, nicotine serves as a positive reinforcer in humans;[1166]
- Nicotine is psychoactive, serving as a discriminative stimulus in animals[1167] and producing subjective effects in humans;[1168]

[1166] Henningfield JE, Miyasoto K, Jasinski DR, Cigarette smokers self-administer intravenous nicotine, *Pharmacology, Biochemistry and Behavior* 1983;19:887-890. *See* AR (Vol. 39 Ref. 71).

Surgeon General's Report, 1988, at 192. *See* AR (Vol. 129 Ref. 1592).

[1167] Stolerman IP, Discriminative stimulus effects of nicotine in rats trained under different schedules of reinforcement, *Psychopharmacology* 1989;97:131-138. *See* AR (Vol. 8 Ref. 90-6).

Craft RM, Howard JL, Cue properties of oral and transdermal nicotine in the rat, *Psychopharmacology* 1988;96:281-284. *See* AR (Vol. 74 Ref. 115).

Stolerman IP, Garcha HS, Pratt JA, *et al.*, Role of training dose in discrimination of nicotine and related compounds by rats, *Psychopharmocology* 1984;84:413-419. *See* AR (Vol. 8 Ref. 90-5).

Garcha HS, Goldberg SR, Reavill C, *et al.*, Behavioural effects of the optical isomers of nicotine and nornicotine, and cotinine, in rats, *British Journal of Pharmacology* 1986;88:298. *See* AR (Vol. 38 Ref. 44).

Takada K, Swedberg MDB, Goldberg SR, *et al.*, Discriminative stimulus effects of intravenous l-nicotine and nicotine analogs or metabolites in squirrel monkeys, *Psychopharmacology* 1989;99:208-212. *See* AR (Vol. 43 Ref. 153).

[1168] Henningfield JE, Miyasato K, Jasinski DR, Abuse liability and pharmacodynamic characteristics of intravenous and inhaled nicotine, *Journal of Pharmacology and Experimental Therapeutics* 1985;234:1-12. *See* AR (Vol. 39 Ref. 69).

Pomerleau CS, Pomerleau OF, Euphoriant effects of nicotine in smokers, *Psychopharmacology* 1992;108:460-465. *See* AR (Vol. 87 Ref. 426).

Perkins KA, Grobe JE, Epstein LH, *et al.*, Effects of nicotine on subjective arousal may be dependent on baseline subjective state, *Journal of Substance Abuse* 1992;4:131-141. *See* AR (Vol. 348 Ref. 5516).

Perkins KA, Grobe JE, Epstein LH, *et al.*, Chronic and acute tolerance to subjective effects of nicotine, *Pharmacology, Biochemistry and Behavior* 1993;45:375-381. *See* AR (Vol. 271 Ref. 3728).

Sutherland G, Russell MA, Stapleton J, *et al.*, Nasal nicotine spray: a rapid nicotine delivery system, *Psychopharmacology* 1992;108:512-518. *See* AR (Vol. 91 Ref. 526).

- Nicotine reliably produces a withdrawal syndrome;[1169]
- Nicotine, like other addictive drugs (e.g., cocaine, amphetamine, and morphine), produces its addictive effects by actions increasing dopamine concentrations within the mesolimbic system of the brain.[1170]

In addition to the core studies demonstrating nicotine's addictiveness, other widely publicized information relevant to the finding that nicotine in cigarettes and smokeless tobacco has significant pharmacological effects has become available since 1980. This new information includes, for example:

- Studies showing that nicotine produces EEG effects on the brain that are reproducible and are known to be associated with changes in mood and alertness;[1171]

[1169] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington DC: American Psychiatric Association, 1994), at 244-245. *See* AR (Vol. 37 Ref. 8).

West RJ, Jarvis MJ, Russell MAH, *et al.*, Effect of nicotine replacement on the cigarette withdrawal syndrome, *British Journal of Addiction* 1984;79(2):215-219. *See* AR (Vol. 8 Ref. 102-1).

Hughes JR, Hatsukami D, Signs and symptoms of tobacco withdrawal, *Archives of General Psychiatry* 1986;43:289-294. *See* AR (Vol. 8 Ref. 102-2).

Hughes JR, Higgins ST, Hatsukami D, Effects of abstinence from tobacco: a critical review, *Research Advances in Alcohol and Drug Problems* 1990;10:317-398, at 381-382. *See* AR (Vol. 535 Ref. 96, III.G).

[1170] Clarke PBS, Mesolimbic dopamine activation—the key to nicotine reinforcement? *CIBA Foundation Symposium* 1990;152:153-168. *See* AR (Vol. 3 Ref. 19-2).

Di Chiara G, Imperato A, Drugs abused by humans preferentially increase synaptic dopamine concentrations in the mesolimbic system of freely moving rats, *Proceedings of the National Academy of Sciences of the United States of America* 1988;85:5274-5278. *See* AR (Vol. 75 Ref. 128).

Corrigall WA, Franklin KBJ, Coen KM, *et al.*, The mesolimbic dopaminergic system is implicated in the reinforcing effects of nicotine, *Psychopharmacology* 1992;107:285-289. *See* AR (Vol. 8 Ref. 93-4).

[1171] Norton R, Brown K, Howard R, Smoking, nicotine dose and the lateralisation of electrocortical activity, *Psychopharmacology* 1992;108:473-479. *See* AR (Vol. 3 Ref. 22).

Pritchard WS, Gilbert DG, Duke DW, Flexible effects of quantified cigarette-smoke delivery on EEG dimensional complexity, *Psychopharmacology* 1993;113:95-102. *See* AR (Vol. 3 Ref. 23-1).

- Data that have led expert bodies to conclude that marketed cigarettes and smokeless tobacco deliver pharmacologically active (addicting) doses of nicotine;[1172]
- Studies showing that nicotine exposure causes an increase in the number of nicotinic receptors in the central nervous system, a phenomenon associated with development of tolerance to the effects of nicotine;[1173] and
- Studies done in the 1980's and 1990's showing that nicotine replacement therapies are effective in assisting smoking cessation, which provide additional evidence that nicotine is the ingredient in cigarettes that causes addiction.[1174]

Pritchard WS, Electroencephalographic effects of cigarette smoking, *Psychopharmacology* 1991;104:485-490. *See* AR (Vol. 3 Ref. 23-2).

Golding JF, Effects of cigarette smoking on resting EEG, visual evoked potentials and photic driving, *Pharmacology, Biochemistry and Behavior* 1988;29:23-32. *See* AR (Vol. 3 Ref. 23-3).

[1172] Department of Health and Human Services, Public Health Service, *The Health Consequences of Using Smokeless Tobacco: A Report of the Advisory Committee to the Surgeon General, 1986*, NIH Publication No. 86-2874 (Bethesda MD: DHHS, PHS, 1986). *See* AR (Vol. 128 Ref. 1591).

Surgeon General's Report, 1988, at 13-17. *See* AR (Vol. 129 Ref. 1592).

Transcript to the FDA Drug Abuse Advisory Committee, Meeting 27, "Issues Concerning Nicotine-Containing Cigarettes and Other Tobacco Products," Aug. 2, 1994, at 336-342. *See* AR (Vol. 255 Ref. 3445).

[1173] Marks MJ, Burch JB, Collins AC, Effects of chronic nicotine infusion on tolerance development and nicotine receptors, *Journal of Pharmacology and Experimental Therapeutics* 1983;226:817-825. *See* AR (Vol. 41 Ref. 103).

Surgeon General's Report, 1988, at 53-54. *See* AR (Vol. 129 Ref. 1592).

Department of Health and Human Services, Centers for Disease Control and Prevention, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* (Atlanta: USDHHS, 1994), at 32-33. *See* AR (Vol. 133 Ref. 1596).

Benwell MEM, Balfour DJK, Anderson JM, Evidence that tobacco smoking increases the density of (-)-[^{3}H]nicotine binding sites in human brain, *Journal of Neurochemistry* 1988;50:1243-1247. *See* AR (Vol. 136 Ref. 1570).

[1174] *See*, e.g., Fiore MC, Smith SS, Jorenby DE, *et al.*, The effectiveness of the nicotine patch for smoking cessation: a meta analysis, *Journal of the American Medical Association* 1994;271:1940-1947. *See* AR (Vol. 6 Ref. 64-1).

IV.B.2.

On the basis of the voluminous new data on nicotine that have become available since 1980 and the virtually universal consensus that has emerged from these data that nicotine is highly addictive and produces other significant pharmacological effects, FDA has concluded that nicotine's addictive and other pharmacological effects and uses are so widely recognized that they must be considered foreseeable to a reasonable tobacco manufacturer. The conclusion that nicotine's effects are so widely known and foreseeable would have been impossible when FDA last considered whether to regulate cigarettes because neither the definitive data nor the scientific consensus existed.

b. Since 1980, Evidence Has Become Available That Consumers Use Tobacco Predominantly for Its Pharmacological Effects

As described in section II.B., above, evidence that consumers use a product predominantly or nearly exclusively for its pharmacological effects permits the Agency to conclude that the product is intended to affect the structure or function of the body. The Agency recognizes that for many years there was general awareness of the difficulty smokers experienced in trying to stop smoking. Since 1980, however, scientific evidence has shown that the vast majority of smokers and users of smokeless tobacco use cigarettes and smokeless tobacco to satisfy addiction or for other pharmacological effects. The evidence that has emerged since the last time that FDA considered whether to regulate cigarettes includes, for example:

- Evidence that 77% to 92% of smokers and as many as 75% of young regular smokeless tobacco users are addicted;[1175]

See appendix 1 to Jurisdictional Analysis, at 62-83. *See* AR (Vol. 1 Appendix 1).

[1175] Hughes JR, Gust SW, Pechacek TF, Prevalence of tobacco dependence and withdrawal, *American Journal of Psychiatry* 1987;144(2):205-208. *See* AR (Vol. 66 Ref. 4).

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- Evidence that a higher percentage of people who use cigarettes become addicted than people who use other addictive drugs, including cocaine and heroin;[1176]
- Evidence that, of young people aged 10 to 22 years, 72.8% of daily smokers and 53.8% of daily users of smokeless tobacco use tobacco to "relax" themselves;[1177] and
- Data demonstrating that many smokers believe that smoking helps them control their weight and that continued smoking is related to concerns about weight gain.[1178]

This new evidence, together with some existing evidence that smokers use cigarettes to control their moods, is sufficient to demonstrate that cigarette smokers and smokeless tobacco users consume tobacco predominantly to satisfy addiction, alter moods, and control weight. FDA would have been unable to reach this conclusion in 1980. At that time there was no evidence on the proportion of smokers and smokeless tobacco users who were addicted to tobacco (indeed, there was no agreement that nicotine was

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Woody GE, Cottler LB, Cacciola J, Severity of dependence: data from the DSM-IV field trials, *Addiction* 1993;88:1573-1579. *See* AR (Vol. 13 Ref. 150).

Cottler L, Comparing DSM-III-R and ICD-10 substance use disorders, *Addiction*, 1993;88:689-696. *See* AR (Vol. 13 Ref. 149).

Hale KL, Hughes JR, Oliveto AH, *et al.*, Nicotine dependence in a population-based sample, in *Problems of Drug Dependence, 1992*, NIDA Research Monograph 132 (Washington DC: Government Printing Office, 1993). *See* AR (Vol. 39 Ref. 60).

Department of Health and Human Services, Office on Smoking and Health, *Spit Tobacco and Youth* (Washington DC: Government Printing Office, 1992), at 8. *See* AR (Vol. 7 Ref. 76).

[1176] Anthony JC, Warner LA, Kessler RC, Comparative epidemiology of dependence on tobacco, alcohol, controlled substances and inhalants: basic findings from the National Comorbidity Survey, *Experimental and Clinical Psychopharmacology* 1994;2:244-268. *See* AR (Vol. 535 Ref. 96, vol. III.A).

[1177] Centers for Disease Control and Prevention, Reasons for tobacco use and symptoms of nicotine withdrawal among adolescent and young adult tobacco users—United States, 1993, *Morbidity and Mortality Weekly Report* 1994;43(41):745-750, at 747. *See* AR (Vol. 43 Ref. 162).

[1178] Surgeon General's Report, 1988, at 438-441. *See* AR (Vol. 129 Ref. 1592).

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addictive), and evidence on the use of tobacco for other pharmacological effects was insufficient to conclude that cigarettes and smokeless tobacco are consumed predominantly for their pharmacological effects.

c. Since 1980, Evidence Has Become Available Demonstrating That Tobacco Manufacturers Actually Intend Their Products To Affect the Structure and Function of the Body

As described in section II.C., above, FDA may also find that cigarettes and smokeless tobacco are "intended to affect the structure or any function of the body" on the basis of objective evidence that the manufacturers of these products actually intend them to affect the structure or function of the body. Such objective evidence includes company-funded research and internal statements showing that the manufacturers know or have knowledge of facts that would give them notice that consumers are using cigarettes and smokeless tobacco to obtain nicotine's pharmacological effects. Relevant objective evidence of intent also includes evidence that manufacturers have taken actions to ensure that consumers obtain pharmacologically active doses of nicotine from marketed tobacco products.

As discussed in section II., above, FDA, congressional, and other investigations into tobacco products over the last two years have uncovered a wealth of documents from a wide range of tobacco companies, the vast majority of which had not been made public by the tobacco industry. Although in some cases these documents date back to the early 1960's, they have not been available to the public or to FDA until recently. As described in greater detail in section II., above, the newly discovered documents reveal the following facts, among others, none of which were known when FDA last considered its jurisdiction over cigarettes:

- Statements from tobacco company researchers and executives show that the tobacco industry knows that nicotine is a drug, that consumers use tobacco primarily for the pharmacological effects of nicotine, and that nicotine is addictive;
- The tobacco industry has conducted extensive and sophisticated research to understand precisely how nicotine affects the structure and function of the body;
- The tobacco industry has conducted product development research on how to manipulate nicotine delivery from cigarettes to ensure that cigarettes deliver pharmacologically active doses of nicotine;
- The tobacco industry has manipulated the delivery of nicotine from marketed cigarettes to maintain and enhance the delivery of nicotine from low-yield cigarettes through the use of higher nicotine tobaccos, chemicals added to tobacco, and selective filtration and ventilation;
- The smokeless tobacco industry has manipulated the delivery of nicotine from smokeless tobacco to create product lines with graduating nicotine deliveries, and at least one company has used a "graduation strategy" designed to encourage new users to begin with the lowest nicotine products and then graduate to the higher nicotine products.

These facts, among others, demonstrate that the tobacco industry knows that consumers use their products to obtain nicotine's pharmacological effects and that they have taken specific actions to facilitate that use. FDA has concluded on the basis of this new evidence that tobacco manufacturers actually intend cigarettes and smokeless tobacco to affect the structure or function of the body.

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Almost none of the evidence of tobacco industry knowledge and actions was available to the Agency when it last declined to exercise jurisdiction over cigarettes without claims. One comment argues that FDA's earlier decision not to regulate tobacco products without claims is directly attributable to the tobacco industry's withholding of material documents. Indeed, Joseph Califano, who was Secretary of the Department of Health, Education, and Welfare at the time that FDA last declined to regulate cigarettes, has testified under oath before Congress that he would have "moved to regulate" had he known what FDA now knows about the internal tobacco company documents.[1179] He further testified that he had consulted with both President Jimmy Carter and then Surgeon General Julius Richmond and both agreed that, had this evidence been available, they too would have moved to regulate.[1180] FDA agrees with several comments that argue that not allowing FDA to change its position on the basis of this new evidence would reward the tobacco industry for its long-successful efforts to conceal its knowledge and actions related to nicotine.

FDA's decision to change its previous position that cigarettes and smokeless tobacco are not intended to affect the structure or function of the body is thus based on an overwhelming body of new evidence that has become available since FDA last considered this issue. The new evidence persuades the Agency to conclude that its previous position is no longer consistent with the relevant facts and should be changed. FDA's lengthy description of the new evidence in the Jurisdictional Analysis and in this document

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[1179] *Regulation of Tobacco Products (Part 2): Hearings Before the Subcommittee on Health and the Environment, Committee on Energy and Commerce, U.S. House of Representatives*, 103d Cong., 2d Sess. 166 (May 17, 1994). *See* AR (Vol. 708 Ref. 2).

[1180] *Id.*

provides a reasoned explanation for its change in position. The Agency's new position is therefore entitled to deference. *American Trucking*, 387 U.S. at 416.

C. NEW EVIDENCE THAT NICOTINE ADDICTION IS A PEDIATRIC DISEASE PERMITS EFFECTIVE REGULATORY INTERVENTION

In addition to the new evidence establishing that cigarettes and smokeless tobacco are "intended to affect the structure or any function of the body," new information developed since 1980 on young people's use of tobacco products shows that FDA's regulatory resources can be used effectively to reduce tobacco-related disease and death. Recent data establish that most of the people who suffer the adverse health consequences of using cigarettes and smokeless tobacco begin tobacco use in childhood and adolescence. Moreover, new data suggest that anyone who does not begin tobacco use in childhood or adolescence is unlikely ever to begin. This information provides a unique public health opportunity to substantially reduce the more than 400,000 deaths from tobacco use each year in the United States. If children and adolescents can be successfully prevented from initiating tobacco use and becoming addicted to cigarettes and smokeless tobacco, they are unlikely to begin tobacco use later in life, thereby preventing the onset of tobacco-related disease and premature death.

Major recent reports have emphasized the effectiveness of legislative and regulatory interventions that focus on restricting children's access to tobacco products and on reducing the appeal of tobacco products to youth.[1181] Before the importance of youth-centered interventions was identified, the regulatory approaches available under the Act to

[1181] Department of Health and Human Services, Office on Smoking and Health, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* (Washington, DC: Government Printing Office, 1994) (hereinafter cited as Surgeon General's Report, 1994). *See* AR (Vol. 133 Ref. 1596).

address tobacco-related disease and death, such as removal of the products from the market, were not believed to be feasible. It is now apparent, however, that FDA's authority to restrict the sale, distribution, and use of cigarettes and smokeless tobacco to people under the age of eighteen is an effective tool to reduce the adverse health consequences of tobacco use. Thus, asserting jurisdiction over cigarettes and smokeless tobacco now presents an opportunity to use the Agency's resources effectively for substantial public health gains.

1. New Information Shows that Cigarette and Smokeless Tobacco Use Begins Almost Exclusively in Childhood and Adolescence

Although it has long been known that some people begin tobacco use before adulthood, definitive analyses of data published in the 1990's have revealed that the vast majority of tobacco users begin their use while children or adolescents. Moreover, new evidence shows that children and adolescents are beginning to smoke at younger ages than ever before. The new analyses show that the average age when people first try smoking a cigarette is 14.5 years of age,[1182] 82% of adults who have ever smoked had their first cigarette before age 18, and more than half of them had already become regular smokers by that age.[1183] Recent analyses also show that the mean average age when people become daily smokers is 17.7 years of age.[1184] These data have critical implications for public health interventions. As stated by the Surgeon General in 1994, "[n]early all first

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[1182] *Id.* at 67.

[1183] *Id.* at 65.

[1184] *Id.* at 67.

use of tobacco occurs before high school graduation; this finding suggests that if adolescents can be kept tobacco-free, most will never start using tobacco."[1185]

Not only does tobacco use begin predominantly among children and adolescents, but recent evidence shows that more and more children and adolescents are using tobacco. Approximately three million American youths currently smoke and an additional one million adolescent males use smokeless tobacco.[1186] Despite a decline in smoking rates in most segments of the American adult population, the rates among children and adolescents have recently begun to rise.[1187] Tobacco use has been increasing among eighth and tenth graders in each of the last four years. In December 1995, 19% of eighth graders and 29% of tenth graders reported having smoked in the last 30 days, an increase of one-third since 1991.[1188] Tobacco use has also been increasing among high school seniors in each of the last three years. In December 1995, 33.5% of high school seniors reported having smoked in the last 30 days, an increase of one-fifth since 1992.[1189]

[1185] *Id.* at 5.

[1186] *Id.*

[1187] Centers for Disease Control and Prevention, Cigarette smoking among adults–United States, 1991, *Mortality and Morbidity Weekly Report*, 1993;42(12):230-233. *See* AR (Vol. 2 Ref. 17-1).

Johnston LD, O'Malley PM, Bachman JG, *National Survey Results on Drug Use from the Monitoring the Future Study 1975-1993, Vol. I: Secondary School Students*, NIH Pub. No. 94-3809 (Rockville, MD: National Institute on Drug Abuse, 1994), at 9, 19. *See* AR (Vol. 2 Ref. 17-1).

University of Michigan, News and Information Service, Smoking rates climb among American teenagers, who find smoking increasingly acceptable and seriously underestimate the risks (Jul. 20, 1995), at table 1. *See* AR (Vol. 3 Ref. 10-2).

[1188] Price J, Teen smoking, marijuana use increase sharply, study shows, *Washington Times* (Dec. 16, 1995), at A2. *See* AR (Vol. 711 Ref. 5).

[1189] *Id.*

There has been a similar increase in smokeless tobacco use by young people. Over the past 25 years, the market for smokeless tobacco has shifted dramatically from adults to young people. *See* Jurisdictional Analysis, 60 FR 41748. For example, use of moist snuff among males aged 18-19 increased from 0.5% in 1970 to 7.5% in 1991.[1190] Current use of smokeless tobacco by children and adolescents is high and begins early. School-based surveys in 1991 estimated that 19.2% of ninth- to twelfth-grade boys use smokeless tobacco.[1191] Among high school seniors who had ever tried smokeless tobacco, 73% did so by the ninth grade.[1192]

This increase in tobacco use by young people has severe public health consequences. Although they believe that they will not become addicted to tobacco, recent data establish that children and adolescents become addicted to nicotine in the same manner as adults. Among smokers aged 12-17, 70% already regret their decision to smoke and 66% say they want to quit.[1193] Those who are able to quit experience withdrawal symptoms and relapse rates similar to those reported in adults.[1194] As stated in a study of youthful smoking sponsored by the Canadian affiliate of Brown & Williamson:

[1190] Centers for Disease Control and Prevention, Office of Smoking and Health, unpublished data. Informal communication between Office of Smoking and Health and Ann Witt, FDA.

[1191] Kann L, Warren W, Collins JL, Results from the national school-based 1991 youth risk behavior survey and progress toward achieving related youth objectives for the nation, *Public Health Reports*, 1993;108(Supp.1):47-54. *See* AR (Vol. 4 Ref. 24).

[1192] Surgeon General's Report, 1994, at 101. *See* AR (Vol. 133 Ref. 1596).

[1193] The George H. Gallup International Institute, *Teenage Attitudes and Behavior Concerning Tobacco-Report of the Findings* (Sep. 1992), at 54. *See* AR (Vol. 36 Ref. 381).

[1194] Centers for Disease Control and Prevention, Reasons for tobacco use and symptoms of nicotine withdrawal among adolescent and young adult tobacco users-United States, 1993, *Morbidity and Mortality Weekly*, 1994;43(41):745-750. *See* AR (Vol. 2 Ref. 14-1). *See* AR (Vol. 2 Ref. 14-1).

> The desire to quit seems to come earlier now than before, even prior to the end of high school. In fact, it often seems to take hold as soon as the recent starter admits to himself that he is hooked on smoking. However, the desire to quit, and actually carrying it out, are two quite different things, as the would-be quitter soon learns.[1195]

A child or adolescent whose cigarette use continues into adulthood increases his or her risk of dying from cancer, cardiovascular disease, or lung disease.[1196] Indeed, approximately one out of every three young people who become regular smokers will die prematurely as a result.[1197] Moreover, the younger one begins to smoke, the more likely one is to become a heavy smoker and suffer from smoking-related diseases.[1198]

Smokeless tobacco use can cause oral cancer and the risk increases with increased exposure to smokeless tobacco use.[1199] One study of 117 high school students who were

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Surgeon General's Report, 1994, at 78. *See* AR (Vol. 133 Ref. 1596).

[1195] Kwechansky Marketing Research for Imperial Tobacco, Ltd., Project Plus/Minus (May 7, 1982), in Study Highlights. *See* AR (Vol. 21 Ref. 214).

[1196] McGinnis JM, Foege WH, Actual causes of death in the United States, *Journal of the American Medical Association*, 1993;270(18):2207-2212. *See* AR (Vol. 277 Ref. 3906).

[1197] Memorandum from Eriksen MP (CDC) to Lorraine C (FDA) (Aug. 7, 1995); CDC Fact Sheet based on Pierce JP, Fiore, MC, Novotny, TE, *et al.*, Trends in cigarette smoking in the United States: projections to the year 2000, *Journal of the American Medical Association* 1989;261:61-65 and Peto R, Lopez AD, Boreham J, et al., *Mortality from Smoking in Developed Countries, 1950–2000: Indirect Estimates from National Vital Statistics* (Oxford: Oxford University Press, 1994); Centers for Disease Control and Prevention, Office on Smoking and Health, unpublished data from the 1986 National Mortality Followback Survey. *See* AR (Vol. 711 Ref. 20).

[1198] Taioli E, Wyder EL, Effect of the age at which smoking begins on frequency of smoking in adulthood, *New England Journal of Medicine*, 1991;325(13):968-969. *See* AR (Vol. 101 Ref. 876).

Escobedo LG, Marcus SE, Holtzman D, Sports participation, age of smoking initiation, and the risk of smoking among U.S. high school students, *Journal of the American Medical Association*, 1993;269(11):1391-1395. *See* AR (Vol. 75 Ref. 149).

[1199] Department of Health and Human Services, *The Health Consequences of Using Smokeless Tobacco: A Report of the Advisory Committee to the Surgeon General* (1986) (Washington DC: DHHS), at 44. *See* AR (Vol. 128 Ref. 1591).

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smokeless tobacco users revealed that nearly 50% had oral leukoplakia, a precancerous lesion that cannot be scraped off.[1200] Five percent of oral leukoplakias become malignant in 5 years.[1201] Tobacco use, which overwhelmingly begins in childhood, is ultimately responsible for over 400,000 deaths each year in the United States.[1202]

2. New Information Shows that Effective Restrictions on Access and Advertising to Children and Adolescents Can Decrease Tobacco Use by Children

Despite laws in every State making it illegal for minors to purchase tobacco, America's children have easy access to tobacco products and are subjected to pervasive advertising images that portray tobacco use in terms that are highly attractive to them. As described in the Proposed Rule, 60 FR 41321–41338 (Aug. 11, 1995) and in sections IV and VI.D.6 of the final rule, recent studies have shown that regulatory programs that are effective in restricting access to tobacco products by those under 18, and that restrict advertising of these products can substantially reduce illegal tobacco use by children and adolescents.

State laws prohibiting the purchase of tobacco by minors are rarely enforced[1203] and a significant percentage of underage smokers are able to obtain cigarettes through

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[1200] Greer RO, Poulson TC, Oral tissue alterations associated with the use of smokeless tobacco by teenagers, *Oral Surgery, Oral Medicine, Oral Pathology*, 1983;56(3):275-284. *See* AR (Vol. 5 Ref. 95).

Surgeon General's Report, 1994, at 39. *See* AR (Vol. 133 Ref. 1596).

[1201] Surgeon General's Report, 1994, at 39. *See* AR (Vol. 133 Ref. 1596).

[1202] Centers for Disease Control and Prevention, Cigarette smoking–attributable mortality and years of potential life lost--United States, 1990, *Morbidity and Mortality Weekly Report*, 1993;42(33):645-649. *See* AR (Vol. 4 Ref 43).

[1203] Department of Health and Human Services, Office of the Inspector General, *Youth Access to Tobacco* (Washington DC: DHHS, Publication No. OEI-02-91-00880, Dec. 1992), at 5-8. *See* AR (Vol. 14 Ref. 19-1).

vending machines and over-the-counter sales.[1204] Studies show that most children and adolescents who use tobacco products purchase their own cigarettes and smokeless tobacco. The 1994 Surgeon General's Report, *Preventing Tobacco Use Among Young People*, examined 13 studies of over-the-counter sales and determined that approximately 67 percent of minors are able to purchase tobacco illegally. Moreover, successful cigarette purchases by children and adolescents from vending machines averaged 88%.[1205] In addition to over-the-counter and vending machine purchases, many children and adolescents receive cigarettes and smokeless tobacco through free samples distributed by tobacco manufacturers at shopping malls, zoos, baseball games, rock concerts, and through the mail.[1206] Even elementary school children receive free samples.[1207] Distributing free samples of "starter" brands to young people has been a cornerstone of the successful campaign to boost moist snuff sales by the largest smokeless tobacco

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Kusserow RP, Department of Health and Human Services, Office of the Inspector General, *Youth Access to Tobacco* (Washington DC: DHHS, Publication No. OEI-02-90-02310, May 1990), at 3-5. *See* AR (Vol. 4 Ref. 19-2).

[1204] Battelle for Centers for Disease Control and Prevention, Office of Smoking and Health, *Design of Inspection Surveys for Vendor Compliance with Restrictions on Tobacco Sales to Minors* (Apr. 1994), at 14, 18. *See* AR (Vol. 49 Ref. 529).

[1205] Surgeon General's Report, 1994, at 249. See AR (Vol. 133 Ref. 1596).

[1206] Davis RM, Jason LA, The distribution of free cigarette samples to minors, *American Journal of Preventive Medicine*, 1988;4(1):21-26. *See* AR (Vol. 7 Ref. 70-1).

Department of Health and Human Services, *Reducing the Health Consequences of Smoking: 25 Years of Progress, A Report of the Surgeon General* (Washington DC: DHHS, 1989), at 597. *See* AR (Vol. 130 Ref. 1593).

[1207] Davis RM, Jason LA, The distribution of free cigarette samples to minors, *American Journal of Preventive Medicine*, 1988;4(1):21-26. *See* AR (Vol. 7 Ref. 70-1).

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manufacturer.[1208] *See also* section II.D., above. The distribution of free samples to minors occurs despite the industry's voluntary code against distributing tobacco products to minors.

Recent studies have shown that effective youth access restrictions can reduce tobacco use by young people. In one community, for example, a comprehensive and intense community intervention involving retailer licensing, regular compliance checks, and penalties for merchant violations significantly reduced illegal sales from 70% to less than 5% two years later. Further, rates of experimentation and regular smoking dropped by more than 50% among seventh- and eighth-graders.[1209] Both the Surgeon General of the United States and the Institute of Medicine have recently concluded that effective, enforced restrictions on minor's access to tobacco products are important tools to reduce use of tobacco by children and adolescents.[1210]

Pervasive advertising of tobacco products using imagery that is attractive to young people also influences children and adolescents to use tobacco products. Many studies have shown that young people are aware of, respond favorably to, and are influenced by cigarette advertising.[1211] Even very young children are aware of cigarette advertisements.

[1208] National Cancer Institute, *Strategies to Control Tobacco Use in the United States: A Blueprint for Public Health Action in 1990's* (Washington DC: NIH Publication No. 92-3316, Oct. 1991), at 236. *See* AR (Vol. 7 Ref. 72).

[1209] Jason LA, Ji PY, Aries MD, Active enforcement of cigarette control laws in the prevention of cigarette sales to minors, *Journal of the American Medical Association*, 1991;266(22):3159-3161. *See* AR (Vol. 6, Ref. 8).

[1210] Surgeon General's Report, 1994, at 254, 275. *See* AR (Vol. 133 Ref. 1596).

Institute of Medicine, *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths* (Washington DC: National Academy Press, 1994), at 199. *See* AR (Vol. 6 Ref. 11).

[1211] Institute of Medicine, *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths* (Washington DC: National Academy Press, 1994), at 123-124. *See* AR (Vol. 12 Ref. 149-1).

One study found that 30% of 3-year-olds and 91% of 6-year-olds could identify Joe Camel as a symbol for smoking.[1212] Another study found that Joe Camel was more familiar to young children than Ronald McDonald, despite the fact that Ronald McDonald appears in television commercials, while cigarette commercials do not appear on the airwaves.[1213]

Moreover, recent studies show that campaigns that use imagery that is appealing to children and adolescents are successful in attracting young people to those brands. Before the Joe Camel cartoon character was introduced in 1986, Camel cigarettes had less than 3% of the youth market. By 1989, Camel's share of the youth market had risen to 8.1% and, by 1992, 13-16% of smokers under 18 were smoking Camel. During this same period, however, there was no significant increase in adult purchases of Camel cigarettes.[1214] These and other studies discussed in the Proposed Rule, 60 FR 41329–

Surgeon General's Report, 1994, at 188-192.

Tye JB, Warner K, Glantz SA, Tobacco advertising and consumption: evidence of a causal relationship, *Journal of Public Health Policy*, 1987;8:492-508. *See* AR (Vol. 48 Ref. 520).

Pierce JP, Evans N, Farkas AJ, Tobacco Use in California, *An Evaluation of the Tobacco Control Program, 1989-1993, A Report to the California Department of Health Services* (San Diego: University of California, 1994), at 85. *See* AR (Vol. 7 Ref. 93).

[1212] Fischer PM, MP Schwartz, Richards JW, Brand logo recognition by children aged 3 to 6 years, Mickey Mouse and Old Joe the Camel, *Journal of the American Medical Association*, 1991;266(22):3145-3148. *See* AR (Vol. 2 Ref. 24-2).

[1213] Mizerski R, *The Relationship Between Cartoon Trade Character Recognition and Product Category Attitude in Young Children, presented at Marketing & Public Policy Conference* (May 13-14, 1994). *See* AR (Vol. 13 Ref. 169).

[1214] Surgeon General's Report, 1994, at 70. *See* AR (Vol. 133 Ref. 1596).

U.S. Public Health Service and U.S. Department of Education, Teenage Attitudes and Practices Survey (1989), cited in Centers for Disease Control and Prevention, Changes in the cigarette brand preferences of adolescent smokers–United States, 1989-1993, *Morbidity and Mortality Weekly Report*, 1994;43(32):577-581. *See* AR (Vol. 13 Ref. 172).

The George H. Gallup International Institute, *Teenage Attitudes and Behavior Concerning Tobacco–Report of the Findings* (Sep. 1992), at 64. *See* AR (Vol. 36 Ref. 381).

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41333, and in section VI.D. of the Final Rule provide compelling evidence that promotional campaigns can be extremely effective in attracting young people to tobacco products. Both the Surgeon General of the United States and the Institute of Medicine have concluded that unrestricted advertising of cigarettes and smokeless tobacco promotes consumption of tobacco by young people.[1215] Recent studies also show that government restrictions on tobacco promotion can reduce both tobacco consumption in the population as a whole, and initiation of tobacco use by young people.[1216]

3. New Information Indicates that Regulatory Interventions Can Reduce Tobacco-Related Illness If They Focus on Preventing Children from Becoming Addicted

Tobacco products have historically been legal and widely available in this country. It was only after millions of people became legally addicted to the nicotine in cigarettes and smokeless tobacco that health experts became fully aware of the extraordinary health risks involved in the consumption of these products. Consequently, tobacco use has

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Centers for Disease Control and Prevention, Changes in the cigarette brand preference of adolescent smokers, U.S. 1989-1993, *Morbidity and Mortality Weekly Report*, 1994;43(32):577-581. *See* AR (Vol. 2 Ref. 25-1).

[1215] Surgeon General's Report, 1994, at 10, 159-195. *See* AR (Vol. 133 Ref. 1596).

Institute of Medicine, *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths* (Washington DC: National Academy Press, 1994), at 131. *See* AR (Vol. 7 Ref. 96).

[1216] Toxic Substances Board, Wellington, New Zealand, *Health or Tobacco–an End to Tobacco Advertising and Promotion* (May 1989). *See* AR (Vol. 14 Ref. 178).

Smee C, *Effect of Tobacco Advertising on Tobacco Consumption-A Discussion Document Reviewing the Evidence* , 1-50 (London: Department of Health, Economics, and Operational Research Division, 1992) (draft). *See* AR (Vol. 14 Ref. 181).

Laugeson M, Meads C, Tobacco advertising restrictions, price, income and tobacco consumption in OECD countries, 1960-1986, *British Journal of Addiction* 1991;86:1343-1354. *See* AR (Vol. 15 Ref. 185).

become not only one of the most serious public health problems facing the United States — today but one of the most difficult to solve.

Because of the grave health consequences of the use of tobacco products, it has been argued that FDA should exercise its jurisdiction to remove them from the market. As described in the Proposed Rule, 60 FR 41348–41349, and in section I.B of the final rule, however, a ban is not a feasible approach to a product to which 35 to 45 million Americans are addicted. Abrupt removal of these products from the market could cause widespread adverse reactions and, in any event, is unlikely to keep cigarettes and smokeless tobacco out of the hands of addicted users. Black markets are likely to develop to supply addicted users with these products, and these black market products could be even more dangerous than those currently on the market. Thus, removal of cigarettes and smokeless tobacco from the market would not be an effective use of FDA's regulatory resources. Before it was understood that nicotine addiction is a pediatric disease, moreover, there was an insufficient basis to conclude that other regulatory approaches available to FDA would constitute effective uses of the Agency's resources.

To effectively address the death and disease caused by tobacco products, addiction to cigarettes and smokeless tobacco must be eliminated or substantially reduced. The new evidence that nicotine addiction begins almost exclusively in childhood and adolescence demonstrates that this can be achieved by preventing children and adolescents from starting to use tobacco. Because the new evidence suggests that anyone who does not begin tobacco use in childhood or adolescence is unlikely ever to begin,[1217] effective

[1217] Surgeon General's Report, 1994, at 5, 58, 65-67. *See* AR (Vol. 133 Ref. 1596).

regulatory strategies to prevent children from initiating tobacco use and becoming addicted to nicotine, including restrictions on access and advertising, are likely to result in a significant reduction in tobacco-related illness and death. The information that has developed since 1980 that nicotine addiction is a pediatric disease thus provides a rationale for regulating tobacco in a manner that is likely to produce significant public health gains.

D. RESPONSE TO COMMENTS

Most of the comments that the Agency received generally recognized that an agency may change its position under appropriate circumstances. The comments differed widely, however, on whether such circumstances are present in this proceeding.

1. Some tobacco industry comments assert that relevant circumstances are unchanged since 1980—the date of the *ASH* decision and the last time the Agency evaluated this issue—and that therefore the Agency cannot offer a reasoned explanation for its change in position. Other comments differ sharply and contend that the available data have grown substantially. One comment stated that FDA has "obtained and considered substantial, new relevant data never previously considered, analyzed, or known by the FDA, never previously presented to or considered by Congress, and apparently, intentionally withheld by the tobacco industry from the FDA, Congress, and the American public."[1218] The Agency agrees that the evidence available to FDA today is far greater than the data available in 1980.

Of the comments contending that there has been no change in the legally relevant facts since 1980, one comment asserts that, because it has been widely reported for

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[1218] Coalition on Smoking or Health, Comment (Jan. 2, 1996), at 6. *See* AR (Vol. 533 Ref. 102).

centuries that nicotine has "drug effects," there cannot be any new information on nicotine's drug effects that would warrant a change in the Agency's jurisdiction. This contention is unpersuasive. Although the Agency recognizes that nicotine has long been known to have some "drug effects," as set forth in this section and in section II. above, both the scientific understanding of nicotine's effects and the nature of the effects that are known to occur have changed dramatically since the last time that FDA considered its jurisdiction over tobacco products. The fact that nicotine is now universally recognized as highly addictive, but was generally unrecognized as such before 1980, adequately demonstrates the change in evidence on the nature of nicotine's drug effects. In addition, there has been a dramatic change in the evidence of consumers' use of tobacco products primarily for their pharmacological effects and on the tobacco industry's knowledge of nicotine's pharmacological effects and deliberate manipulation of nicotine levels. The new evidence on these issues fully warrants a change in position.

Tobacco industry comments further assert that tobacco industry research or studies comparable to such research were available in published scientific literature before 1980. The Agency notes that none of the evidence of tobacco industry research on nicotine was presented to the Agency in support of the ASH petitions. The fact that a few pieces of this evidence existed in 1980 but were never collected in one place or brought to the Agency's attention, moreover, is clearly not equivalent to the overwhelming accumulation of newer evidence before the Agency today, especially when coupled with the recent virtual consensus reached by the scientific community regarding the addictive nature of nicotine.

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Similarly, some comments assert that, because ASH alleged in 1977 that nicotine was addictive and that many consumers used cigarettes to satisfy addiction, there has been no change to justify a new policy. ASH's allegations, however, did not constitute evidence. FDA must make its decisions on the basis of well-founded scientific facts. Today there is a well-founded consensus that nicotine is addictive in a huge proportion of its consumers. Neither the consensus nor the data to support it existed when FDA responded to the ASH petitions.

2. Comments both in favor of and opposed to the Agency's changed position discuss the current applicability of *Federal Trade Commission v. Liggett & Myers Tobacco Co.*, 108 F. Supp. 573 (S.D.N.Y. 1952), *aff'd mem.*, 203 F.2d 955 (2d Cir. 1953). One comment explained that the *Liggett & Myers* decision underscores the dramatic change in the quality and quantity of the evidence over the decades. The Agency agrees with that comment. The *Liggett & Myers* court, whose decision predated the 1964 Surgeon General's Report, found that the "soothing" properties of cigarettes were insufficient to establish that cigarettes were intended to affect the structure or function of the body. *Id.* at 576-577 ("[M]any things soothe the troubled mind of modern man and I do not feel that this is the type of effect which the statute contemplates."). No evidence was presented to the court to show that any "soothing" effects of cigarettes were due to nicotine or were even pharmacological in nature. FDA's current initiative is not based on unspecified "soothing" properties of cigarettes, but on the significant pharmacological effects of the drug nicotine, including its addictive effects, consumer use of tobacco for these effects, and on the tobacco industry's knowledge of nicotine's effects and its deliberate manipulation of nicotine delivery.

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3. One public interest group comment asserts that there need not be any change in the underlying evidence for FDA to revise its application of the Act; disagreement with the prior policy alone is sufficient. The Agency agrees that the case law supports this proposition. *See, e.g., Rust*, 500 U.S. at 187; *Chevron*, 467 U.S. at 865. The Agency's change in position is fully justified, however, by the overwhelming new evidence that has become available to FDA since 1980. The Agency also notes that a change in the case law can justify a change in position and that new case law on "intended use" since 1980 provide further support for the Agency's determination that cigarettes and smokeless tobacco are intended to affect the structure and function of the body.

4. One comment argues that public attention on the health consequences of tobacco has changed its focus over the decades from tar content to nicotine addiction. That is, until the mid-1980's, public perception of the dangers of cigarette smoking was on tar and the components of tar rather than on the addictiveness of nicotine. The Agency finds that this historical point further supports the Agency's changed position regarding its jurisdiction over tobacco products without claims.

5. One comment states that new disclosures since the issuance of the Jurisdictional Analysis provide further support for FDA's assertion of jurisdiction. The Agency agrees that the evidence demonstrating that manufacturers of tobacco products intend to affect the structure and function of the body has continued to accumulate.

In sum, after review of all of the comments, the Agency finds that a change in FDA's position on jurisdiction over cigarettes and smokeless tobacco is warranted by the new evidence.

V.A.

V. CONGRESS HAS NOT PRECLUDED OR PREEMPTED FDA FROM REGULATING CIGARETTES AND SMOKELESS TOBACCO

The comments of the tobacco industry and others assert that Congress has precluded or preempted the Agency from regulating cigarettes and smokeless tobacco. As described in this section, the Agency disagrees. Contrary to the position of the tobacco industry, Congress has neither expressly nor impliedly preempted or precluded FDA from regulating tobacco products. The language of the Federal Food, Drug, and Cosmetic Act (the Act) does not preclude FDA jurisdiction. Indeed, the history of FDA's regulation of tobacco shows that Congress understood that FDA could regulate tobacco products when an intent to affect the structure or function of the body is established. Moreover, FDA's assertion of jurisdiction is fully consistent with the narrowly crafted preemption provisions in the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act and with the existence of other statutes that address tobacco products.

A. THE PLAIN LANGUAGE OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT DOES NOT PRECLUDE FDA JURISDICTION OVER TOBACCO PRODUCTS

"[T]he first place where we must look to see if Congress has spoken to the issue with which we are concerned and whether congressional intent in that regard is clear is the face of the statute." *Kofa v. INS*, 60 F.3d 1084, 1088 (4th Cir. 1995); *see also Time Warner Cable v. Doyle*, 66 F.3d 867, 875 (7th Cir. 1995), *cert. denied,* 116 S. Ct. 974 (1996). In the instant case, the express language of the Act does not exclude tobacco products from FDA's jurisdiction. The key language that defines drugs and devices as products "intended to affect the structure or any function of the body" nowhere excludes

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tobacco products. Because Congress has not excluded tobacco products from the drug and device definitions under the Act, it cannot be said to be clear that Congress intended to preclude FDA from regulating cigarettes and smokeless tobacco. *See Central Bank of Denver v. First Interstate Bank of Denver*, 114 S. Ct. 1439, 1448 (1994) (Congress knows how to enact legislation expressly).

Congress is able to exclude and has excluded specific products, including tobacco products, from a statute's reach when it wishes to do so. For example, Congress has expressly excluded other products from FDA's jurisdiction under the Act. *See, e.g.*, 21 U.S.C. 321(i) (excluding "soap" from definition of "cosmetic"); 21 U.S.C. 392 (excluding meat products to the extent that they are covered by the Meat Products Inspection Act); 21 U.S.C. 321(s) (excluding pesticides from the definition of food additive under certain circumstances). Moreover, Congress has expressly excluded tobacco products from the reach of other regulatory statutes. *See* 15 U.S.C. 2052(a)(1)(B) (excluding "tobacco and tobacco products" from the definition of "consumer products" in the Consumer Product Safety Act); 15 U.S.C. 1261(f)(2) (excluding "tobacco and tobacco products" from the definition of "hazardous substance" in the Federal Hazardous Substances Act); 15 U.S.C. 2602(2)(B)(iii) (excluding "tobacco or any tobacco product" from the definition of "chemical substance" in the Toxic Substances Control Act); 21 U.S.C. 802(6) (excluding "tobacco" from the definition of "controlled substance" in the Controlled Substances Act); 15 U.S.C. 1459(a)(1) (excluding "tobacco or tobacco product" from the definition of "consumer commodity" in the Fair Packaging and Labeling Act). Indeed, tobacco is excluded from the definition of "dietary supplement" under the Act, but no similar exclusion appears in the definition of "drug" or "device." *See* 21 U.S.C. 321(g), (h), (ff).

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Accordingly, the absence of an express exclusion from the Act for tobacco demonstrates that Congress has chosen not to exclude from FDA's jurisdiction tobacco products that fall within the Act's definitions of "drug" or "device." Because Congress chose not to exclude tobacco products from the reach of the Act, the Agency need not read an exemption into the Act administratively.

B. THE LEGISLATIVE HISTORY OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT DEMONSTRATES THAT FDA'S JURISDICTION OVER TOBACCO PRODUCTS IS NOT PREEMPTED OR PRECLUDED

Several comments from the tobacco industry and others assert that FDA lacks jurisdiction over cigarettes and smokeless tobacco without therapeutic claims because FDA communicated its prior position to Congress and Congress "acquiesced" in that interpretation by failing to enact legislation expressly authorizing FDA to regulate tobacco without therapeutic claims. These comments cite to unenacted legislation that, if passed, would have explicitly granted jurisdiction over tobacco products to FDA, and they contend that Congress' failure to enact these bills demonstrates that Congress concluded that FDA should not have jurisdiction over cigarettes. These comments variously rely on *Flood v. Kuhn,* 407 U.S. 258 (1972), *Zemel v. Rusk,* 381 U.S. 1, 11 (1965), *United States v. Rutherford,* 442 U.S. 544 (1979), *NLRB v. Bell Aerospace Co.,* 416 U.S. 267, 274-275 (1974), *United States v. Leslie Salt Co.,* 350 U.S. 383, 396-397 (1956), and *Ruhe v. Bergland,* 683 F.2d 102, 104 (4th Cir. 1982).

FDA disagrees with these comments on three independent grounds. Congress' failure to enact legislation explicitly granting FDA authority over tobacco products does not preclude FDA's assertion of jurisdiction over tobacco products because: (1) Congress

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has long known that FDA asserts jurisdiction over tobacco products that are intended to affect the structure or function of the body and has taken no action to alter this interpretation of FDA's jurisdiction; (2) even if Congress has acquiesced in an interpretation that FDA lacks jurisdiction, the Supreme Court has made clear that congressional acquiescence in an Agency's interpretation cannot be used to prevent the Agency from changing that interpretation; and (3) the Supreme Court has rejected the argument that Congress' failure to adopt legislation or amendments to a statute can be used to interpret a law adopted by a prior Congress.

First, the Agency does not agree that Congress has ratified or otherwise acquiesced in an interpretation of the Act that precludes FDA regulation of cigarettes and smokeless tobacco that are intended to affect the structure or function of the body. As discussed in section IV., above, FDA has long exercised legal authority to regulate tobacco products when the evidence established that the products had intended uses that fell within the Act's definition of a "drug." *See, e.g., U.S. Department of Agriculture Service and Regulatory Announcements, No. 13 (1914);*[1219] *United States v. 354 Bulk Cartons . . . Trim Reducing-Aid Cigarettes*, 178 F. Supp. 847, 851 (D.N.J. 1959) (cigarettes claimed to reduce weight were drugs because they were intended to affect the structure or function of the body); *United States v. 46 Cartons, More or Less, Containing Cigarettes*, 113 F. Supp. 336, 338-339 (D.N.J. 1953) (cigarettes claimed to prevent respiratory diseases were drugs because they were intended to treat or prevent disease). Indeed, as the comments point out, FDA has repeatedly told Congress that a tobacco

[1219] The USDA citation appears in the Joint Comment of the Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. I. at 5. *See* AR (Vol. 535 Ref. 96).

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product that falls within the definition of a drug or device because it was promoted to treat disease or to affect the structure or function of the body would be within the Agency's jurisdiction. *See, e.g., Hearings Before the Consumer Subcomm. of the Senate Comm. on Commerce on S. 1454*, 92d Cong., 2d Sess. 239 (1972) (FDA Commissioner Charles C. Edwards testified that "cigarettes and other tobacco products would be drugs subject to the Federal Food, Drug, and Cosmetic Act if medical claims are made for the product . . . [or] if recommended for use in controlling appetite . . .").

Second, even if the Agency had consistently interpreted the Act to preclude FDA regulation of tobacco products even when they were intended to affect the structure or function of the body, the legislative history cited by the tobacco industry would not preclude FDA from changing its interpretation. Acquiescence in an agency interpretation can be used only to confirm that an agency is acting within its authority, not to prevent an agency from changing its interpretation. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 45 (1983) ("While an agency's interpretation of a statute may be confirmed or ratified by subsequent congressional failure to change that interpretation . . . even an unequivocal congressional ratification . . . of [a prior regulatory standard] would not connote approval or disapproval of an agency's later decision to rescind the regulation") (internal citations omitted); *Massachusetts v. Secretary of Health and Human Services*, 899 F.2d 53, 61 (1st Cir. 1990) ("the ratification of one agency policy by Congress does not preclude a change in that policy"), *vacated on other grounds*, 500 U.S. 949 (1991).

Finally, it is well established that "subsequent legislative history" cannot be relied upon to interpret previous legislation. The principal evidence cited by the comments that

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Congress intended to preclude FDA jurisdiction over tobacco is unenacted legislation that, if passed, would have explicitly granted jurisdiction over tobacco products to FDA. The comments contend that Congress' failure to enact these bills demonstrates that Congress intended to exclude tobacco products from FDA's jurisdiction over drugs and devices.

FDA disagrees. Congress can implement policy in only one way: passage of a bill by the House and the Senate that is either signed by the President or approved by an overridden veto. *INS v. Chadha*, 462 U.S. 919, 954-955 (1983); *Central Bank*, 114 S. Ct. at 1453. Congress has not enacted any legislation, signed by the President or approved by an overridden veto, that excludes cigarettes and smokeless tobacco from the drug and device definitions. The comments' argument is inconsistent with *Chadha* because it would allow Congress to change the law (by inaction) without any role for the President.[1220]

The gravamen of the comments' argument is that Congress' failure to modify the "drug" and "device" definitions after their original passage can be used to discern congressional intent as to the scope of those definitions. This argument has been rejected by the courts. Courts have repeatedly rejected claims that the failure of Congress to adopt legislation or amendments to a statute can be used to interpret a law adopted by a prior Congress. As the Supreme Court has explained:

> We have stated . . . that failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute. Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the

[1220] In addition, under Supreme Court authority, Congress's explicit grant of jurisdiction to an agency does not necessarily indicate that the agency previously lacked jurisdiction. *United States v. New York Tel. Co.*, 434 U.S. 159, 177 n.25 (1977).

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> inference that the existing legislation already incorporated the offered change.

Central Bank, 114 S. Ct. at 1453 (citations and internal quotation marks omitted); *see also Brecht v. Abrahamson*, 113 S. Ct. 1710, 1719 (1993) ("[a]s a general matter, we are reluctant to draw inferences from Congress' failure to act") (citations and internal quotation marks omitted); *United States v. Wise*, 370 U.S. 405, 411 (1962).

Moreover, as discussed in some comments, bills have been proposed, but not enacted, that would explicitly *exclude* tobacco products from the reach of the Act. *See, e.g.*, S. 1295, 104th Cong., 1st Sess. (1995); H.R. 2265, 104th Cong., 1st Sess. (1995); H.R. 2283, 104th Cong., 1st Sess. (1995). Under the comments' theory, as discussed above, the fact that such legislation was proposed but not enacted would mean that Congress intends FDA to have jurisdiction over tobacco products. Therefore, because bills have been proposed but not enacted on both sides of the issue, Congress would have implicitly both granted jurisdiction to FDA and excluded jurisdiction from FDA. That result would, of course, be absurd.

Other legislative history relied on by the comments also fails to establish that FDA lacks jurisdiction over tobacco products that are intended to affect the structure or function of the body. In asserting that FDA does not have jurisdiction over tobacco products, some comments rely heavily on statements and actions in Congresses that followed the enactment of the 1938 Federal Food, Drug, and Cosmetic Act (e.g., statements by members that FDA lacks jurisdiction over tobacco products). Several comments also cite to remarks regarding FDA's lack of jurisdiction made by individual

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members of Congress who were antismoking advocates. The comments assert that these statements are akin to admissions.

These statements are unpersuasive as evidence of Congress' intent in enacting the "drug" and "device" definitions in sections 201(g)(1)(C) and 201(h)(3) of the Act, 21 U.S.C. 321 (g)(1)(c) and 321(h)(3). The courts have made clear that informal statements by subsequent Congresses cannot negate the broad reach of the language from the 1938 Act granting FDA authority to regulate articles "intended to affect the structure or any function of the body." *See Waterman Steamship Corp. v. United States*, 381 U.S. 252, 269 (1965) ("the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one") (citations and internal quotation marks omitted); *Pennsylvania Med. Soc'y v. Snider*, 29 F.3d 886, 898 (3d Cir. 1994) ("Post-enactment legislative history is not a reliable source for guidance. Even when a subsequent House Committee has actually commented upon an earlier statute, the interpretation carries little weight with the courts") (citations and internal quotation marks omitted); *Central Bank*, 114 S. Ct. at 1452 ("the interpretation given by one Congress (or a committee or Member thereof) to an earlier statute is of little assistance in discerning the meaning of that statute") (citations and internal quotation marks omitted); *Heintz v. Jenkins*, 115 S. Ct. 1489, 1492 (1995) (where Congressman made statement after the statute became law, the statement "is not a statement upon which other legislators might have relied in voting for or against the Act, but it simply represents the views of one informed person on an issue about which others may (or may not) have thought differently").

Furthermore, as other comments argue, neither the Agency nor the congressional committees and members involved were aware, at the time when the statements and

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actions were made, of the new evidence, summarized in section II., above, showing that: (1) nicotine is highly addictive; (2) the vast majority of consumers use tobacco products to satisfy their addiction and for other pharmacological effects; and (3) the tobacco industry has long known that consumers use tobacco products for the pharmacological effects of nicotine and have facilitated these effects through manipulation of nicotine delivery. These comments contend that reliance on congressional statements or actions made before this evidence was known would reward the tobacco industry for concealing evidence about the nature of its products. Other comments assert that the legislative history cited by the tobacco industry is not dispositive in this instance because only now has FDA amassed sufficient evidence to demonstrate that nicotine in tobacco products is intended to act as a drug.

FDA agrees. Evidence that has come to light in the last few years demonstrates that cigarettes and smokeless tobacco are intended to affect the structure and function of the body. Earlier Congresses did not have access to this evidence of intended use. Thus, statements and actions by members of previous Congresses have no bearing on whether the current evidence shows that cigarettes and smokeless tobacco are within FDA's jurisdiction because they are "intended to affect the structure or any function of the body."

C. OTHER STATUTES DO NOT PRECLUDE OR PREEMPT FDA'S JURISDICTION OVER TOBACCO PRODUCTS

Several comments assert that the Federal Cigarette Labeling and Advertising Act (the Cigarette Act), 15 U.S.C. 1331-1341, and the Comprehensive Smokeless Tobacco Health Education Act (the Smokeless Act), 15 U.S.C. 4401-4408, which concern health warnings on packaging of cigarettes and packaging and advertising of smokeless tobacco

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respectively, explicitly preempt FDA action concerning the labeling or advertising of tobacco products. Other comments assert that the existence of several statutes relating to tobacco products—including the Cigarette Act and the Smokeless Act, as well as section 1926 of the Public Health Service Act—demonstrates Congress' intent to establish a "comprehensive" tobacco regulation program that somehow implicitly precludes or preempts FDA's regulation of cigarettes under the Act.

The Agency disagrees. None of the statutes cited either expressly or impliedly preempts FDA regulation of tobacco products generally, nor do the statutes cited conflict with the final rule. These comments have misread the Cigarette Act and the Smokeless Act. Both of these statutes contain specific provisions addressing the extent to which FDA and other Federal agencies are preempted from regulating cigarettes and smokeless tobacco. These provisions are narrowly written and do not preempt FDA from asserting jurisdiction when an intent to affect the structure or function of the body can be established. The Cigarette Act, for instance, contains two preemption provisions relating to cigarettes. The first provision is narrowly tailored in scope, applying only to "statement[s] relating to smoking and health . . . on any cigarette package." 15 U.S.C. 1334(a). That provision is not triggered by the content of the final rule because the Agency is not requiring any statements regarding smoking and health on the cigarette package.

The Cigarette Act's second preemption provision, which applies to the advertising and promotion of cigarettes, is expressly directed at State law: "No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in

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conformity with the provisions of this Act." 15 U.S.C. 1334(b). If Congress had intended to preempt other Federal initiatives by this provision, it would have done so by, for example, adding the words "or Federal" between "State" and "law" in section 1334(b). In fact, Congress did just the opposite. The legislative history of the Cigarette Act establishes that Congress considered and rejected preemption of Federal regulation in the advertising preemption provision. Conf. Rep. 897, 91st Cong., 2d Sess. 2 (1970), *reprinted in* 1970 U.S.C.C.A.N. 2652, 2677. ("The House bill contained a blanket preemption (applicable to all Federal departments and agencies as well as State and local governments) with respect to requiring statements relating to smoking and health in advertisements of cigarettes . . . .The Senate preemption applied only to States and their political divisions. . . . With minor technical amendments the conference version is the same as the Senate amendment.").

Because Congress specifically addressed the question of Federal preemption in the Cigarette Act, the Agency must follow Congress' determination. General preemption jurisprudence (although applicable to preemption of State law, and not controlling in situations involving preemption of Federal law) also counsels against reading the express preemption provision in the Cigarette Act to extend beyond its terms. *See Cippollone v. Liggett Group, Inc.,* 505 U.S. 504, 517 (1992) ("the pre-emptive scope of the 1965 Act and the 1969 Act is governed entirely by the express language in § 5 of each Act"); *see also Medtronic, Inc. v. Lohr,* 64 U.S.L.W. 4625 (U.S. Jun. 26, 1996)(rejecting broad interpretation of preemption provision).[1221] Accordingly, the Agency declines to read a

[1221] *See* Preamble to the Final Rule, Section X., for a more detailed discussion of preemption principles.

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blanket preemption of FDA jurisdiction over cigarettes into the Cigarette Act when Congress expressly drafted a narrow preemption provision.

The preemptive reach of the Smokeless Act is also circumscribed to particular areas. *See* 15 U.S.C. 4406(a). The preemption provision in that act applies only to "statement[s] relating to use of smokeless tobacco and health" on packages and advertisements other than outdoor billboard advertisements. *Id.* This narrow provision cannot be read to preempt FDA jurisdiction, which authorizes regulation in a variety of areas unrelated to the specific statements covered by the preemption provision. As described in the preamble to the final rule, FDA is exercising its jurisdiction without imposing requirements that conflict with this provision.

Nor does the existence of other statutes that regulate tobacco impliedly preempt FDA's regulation of tobacco under its authority to regulate drugs and devices. "It is, of course, a cardinal principle of statutory construction that repeals by implication are not favored." *United States v. United Continental Tuna Corp.*, 425 U.S. 164, 168 (1976). Moreover, the doctrine of implied preemption has been applied only in the context of congressional preemption of *State* laws. *See, e.g., Time Warner Cable,* 66 F.3d at 874; *see also Duvall v. Bristol-Myers-Squibb Co.*, 65 F.3d 392, 396 (4th Cir. 1995) ("the doctrine of preemption is based on the Supremacy Clause of the United States Constitution," which is used to invalidate State laws that conflict with Federal legislation), *petition for cert. filed*, 64 U.S.L.W. 3439 (US Dec. 22, 1995) (No. 95-1010). Because the matter here does not involve Federal preemption of State law, the doctrine has no applicability.

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In the absence of an express preemption provision, one Federal statute precludes giving effect to another Federal statute only where there is an irreconcilable conflict between the two laws. *Connecticut Nat'l Bank v. Germain,* 503 U.S. 249, 253 (1992) ("so long as there is no 'positive repugnancy' between two laws, a court must give effect to both") (citation omitted); *Morton v. Mancari,* 417 U.S. 535, 551 (1974) ("The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective"). As described in detail in the preamble to the final rule, FDA regulation of tobacco products under the authority of the Act does not conflict with other statutes in the current regulatory scheme for tobacco products, and is clearly capable of coexisting with those statutes.

The fact that FDA's jurisdiction over tobacco products may overlap with the jurisdiction of other Federal agencies is not sufficient to invalidate that jurisdiction. FDA has overlapping jurisdiction with other agencies for several products. For example, while FDA regulates pesticides with respect to their content in food, *see* 21 U.S.C. 342 (adulteration), 21 U.S.C. 343 (misbranding), 21 U.S.C. 1401 (pesticide residue monitoring), the Environmental Protection Agency (EPA) regulates the registration, use, and labeling of pesticides with respect to their effect on the environment under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and the U.S. Department of Agriculture is charged with monitoring pesticide research and development to improve methods of pest control, 7 U.S.C. 5881. In addition, both FDA and the U.S. Department of Agriculture regulate meat and poultry products, including animal drug

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residues found within those products. Finally, FDA and the Federal Trade Commission share responsibilities for the regulation of the advertising of drugs and devices.

Other Federal agencies have overlapping and complementary jurisdiction that arises from their differing missions and expertise. *See, e.g., Rueth v. U.S. EPA*, 13 F.3d 227, 228 (7th Cir. 1993) (EPA and Army Corps of Engineers have concurrent jurisdiction under the Clean Water Act); *Public Utility Dist. No. 1 v. Bonneville Power Admin.*, 947 F.2d 386, 395 (9th Cir. 1991) (the Federal Energy Regulatory Commission has concurrent jurisdiction with other Federal agencies, as well as States, over hydroelectric projects), *cert. denied*, 503 U.S. 1004 (1992); *United Packinghouse, Food and Allied Workers Int'l Union, AFL-CIO v. NLRB*, 416 F.2d 1126, 1133-1134 n.11 (D.C. Cir.) (National Labor Relations Board and the Equal Employment Opportunity Commission have concurrent jurisdiction over racial discrimination claims), *cert. denied*, 396 U.S. 903 (1969). Accordingly, the mere fact that other agencies regulate tobacco for certain purposes does not mean that FDA lacks jurisdiction.

D. RESPONSE TO COMMENTS

Most of the comments received on this issue have been addressed in the preceding discussion. The remaining comments are addressed below.

1. Many of the comments regarding congressional intent rely primarily on attenuated inferences. For example, several comments assert that, because Congress exempted tobacco from the reach of other statutes, such an exemption should be found by implication in the Act. Similarly, another comment asserts that, because tobacco, drugs, and devices are each exempted under the Toxic Substances Control Act, Congress clearly believed that tobacco products were not drugs or devices. FDA disagrees. If the

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reasoning reflected in these comments were adopted, Congress would be legislating by inference. Moreover, as discussed previously in this section, earlier Congresses did not have access to the new evidence on the intended use of tobacco products. This change in the evidence makes it especially inappropriate to construe such specific and limited past congressional actions so expansively.

2. One comment argues that under *Flood v. Kuhn*, 407 U.S. 258 (1972), FDA is precluded from asserting jurisdiction over cigarettes and smokeless tobacco because the tobacco industry has relied on previous Agency statements that it lacked jurisdiction over tobacco products without claims.

FDA disagrees that the decision in *Flood* precludes FDA's assertion of jurisdiction over tobacco products that are intended to affect the structure or function of the body. *Flood* is inapplicable to tobacco products on at least two grounds. First, the *Flood* court, noting that baseball is "an exception and an anomoly," held that the antitrust laws could not be applied to baseball to invalidate baseball's "reserve system" for players without new legislation, based in part on baseball's "unique place in our American heritage." 407 U.S. at 266, 282. Cigarettes and smokeless tobacco occupy a very different place in American life. Tobacco products, unlike baseball, are responsible for the deaths of over 400,000 Americans each year. The Supreme Court has refused to extend the principle upheld in *Flood* beyond baseball even to other professional sports. *See, e.g., Haywood v. National Basketball Association*, 401 U.S. 1204 (1971); *Radovich v. National Football League*, 352 U.S. 445 (1957); *United States v. International Boxing Club*, 348 U.S. 236 (1955). It is inconceivable that the principle extends to bar the application of public health statutes to products previously unregulated by those statutes.

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Second, the court in *Flood* was concerned about the retroactive application of its decision to an industry that had relied on its exemption from the antitrust laws. There is no evidence that the tobacco industry has relied to its detriment on any belief that tobacco products without claims are not subject to FDA jurisdiction. In *Flood,* there was ample evidence of such reliance; the baseball industry had set up an elaborate contracting system, in place since 1887, that would plainly violate the antitrust laws, in reliance on Supreme Court holdings that baseball was exempt from those laws. The plaintiff in the case sought to have that system invalidated retroactively. The tobacco industry has pointed to no evidence of reliance in the form of actions it has taken that plainly violate the Federal Food, Drug, and Cosmetic Act and that the Agency is seeking to remedy retroactively. The industry is simply interested in maintaining its ability to sell its products free of FDA regulation. Moreover, even had the industry relied on the absence of comprehensive FDA regulation, such reliance would have been inappropriate given the tobacco industry's failure to disclose information relevant to the intended use of cigarettes and smokeless tobacco.

In fact, internal tobacco company documents show that the tobacco industry has not acted in reliance on the belief that tobacco products without claims are always outside FDA's jurisdiction. These documents disclose that members of the industry were aware that evidence other than claims could be used to declare jurisdiction over tobacco products and took steps to avoid the disclosure of such evidence. For example, a Brown & Williamson memorandum submitted to the record in this proceeding reveals that a company lawyer recommended to the president and chief executive officer of Brown & Williamson that the company not become involved in the sale of nicotine patches, stating:

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"If we did anything which suggested we were simply in the nicotine delivery business, we would run a serious risk of facing FDA jurisdiction."[1222] There was no suggestion in any of the submitted documents that any claims would be placed on cigarettes as a result of the company's sale of nicotine patches. Nevertheless, the company recognized that FDA jurisdiction might follow solely based on evidence suggesting company knowledge that cigarettes are related to other nicotine delivery systems. The company ultimately chose not to become involved in the sale of nicotine patches. For these reasons, *Flood v. Kuhn* is inapplicable.

[1222] McGraw M, *Nicotine Delivery Systems* (Apr. 24, 1992), at 1. *See* AR (Vol. 531 Ref. 124).

VI. FDA EMPLOYED PROCEDURES THAT PROVIDED AN OPPORTUNITY FOR FULL PUBLIC PARTICIPATION AND EXCEEDED ALL LEGAL REQUIREMENTS

The Agency went to great lengths to involve the public in the process by which the Agency made its final jurisdictional determination. On February 25, 1994, FDA Commissioner David Kessler wrote to Scott Ballin, chairman of the Coalition on Smoking OR Health, regarding the possibility of FDA regulation of cigarettes in response to certain petitions that had been filed with the Agency. The Commissioner explained:

> [T]he agency has examined the current data and information on the effects of nicotine in cigarettes. . . . Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction on the part of some of their customers. . . . This evidence . . . suggests that cigarette vendors intend the obvious -- that many people buy cigarettes to satisfy their nicotine addiction. Should the agency make this finding based on an appropriate record or be able to prove these facts in court, it would have a legal basis on which to regulate these products . . . .[1223]

The letter was made publicly available and covered by the press.[1224]

[1223] Letter from Kessler DA (FDA) to Ballin SD (Coalition on Smoking OR Health) (Feb. 25, 1994). *See* AR (Vol. 35 Ref. 365).

[1224] Neergaard L (Associated Press) FDA considers calling nicotine a drug, banning cigarettes (Feb. 26, 1994). *See* AR (Vol. 711 Ref. 30).

Associated Press, FDA considers classification of nicotine as drug, *Chicago Tribune* (Feb. 26, 1994). *See* AR (Vol. 711 Ref. 31).

Chen E, Government agency claims power to ban nearly all cigarettes; FDA fears nicotine used for addiction, *The Houston Chronicle* (Feb. 26, 1994). *See* AR (Vol. 711 Ref. 32).

Chen E, In shift, FDA says it could classify nicotine as a drug, *Los Angeles Times* (Feb. 26, 1994). *See* AR (Vol. 711 Ref. 33).

Hilts PJ, U.S. Agency suggests regulating cigarettes as an addictive drug, *New York Times* (Feb. 25, 1994). *See* AR (Vol. 711 Ref. 34).

Tribune News Services, *The Salt Lake Tribune* (Feb. 26, 1994). *See* AR (Vol. 711 Ref. 35).

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In the months that followed, Commissioner Kessler testified twice before Congress regarding the accumulating evidence relating to the intended use of cigarettes.[1225] That testimony was extensive and detailed.

In July and August of that year, FDA Associate Commissioner for Regulatory Affairs Ronald G. Chesemore wrote to all of the major cigarette and smokeless tobacco companies requesting all documents relating to "all research on nicotine . . . , including their pharmacological effects, and all documents relevant to nicotine" in their products.[1226] On August 1, 1994, FDA held a Drug Abuse Advisory Committee meeting that was fully open to the public on the subject of the abuse potential of nicotine.

On August 11, 1995, FDA provided the public with an extensive *Federal Register* document analyzing the Agency's authority to assert jurisdiction over cigarettes and smokeless tobacco based on the evidence before the Agency at that time. *See* Jurisdictional Analysis, 60 FR 41453–41787. This document, which accompanied the Agency's announcement of its proposal to regulate the sale and distribution of cigarettes and smokeless tobacco, *see* 60 FR 41314–41375, provided the public with a full view of

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FDA claims authority to regulate nicotine; agency cites manipulation of cigarette 'drug,' *St. Louis Post Dispatch* (Feb. 26, 1994). *See* AR (Vol. 711 Ref. 36).

Schwartz J, In policy shift, FDA is ready to consider regulating tobacco, *The Washington Post* (Feb. 26, 1994). *See* AR (Vol. 711 Ref. 37).

[1225] Statement by David Kessler, M.D., Commissioner of Food and Drugs, on Nicotine-Containing Cigarettes, before the Subcommittee on Health and the Environment, Committee on Energy and Commerce, U.S. House of Representatives (Mar. 25, 1994). *See* AR (Vol. 1 Appendix 7).

Statement by David Kessler, M.D., Commissioner of Food and Drugs, on the Control and Manipulation of Nicotine in Cigarettes, before the Subcommittee on Health and the Environment, Committee on Energy and Commerce, U.S. House of Representatives (Jun. 21, 1994). *See* AR (Vol. 1 Appendix 8).

[1226] *See*, e.g., Letter from Chesemore RG (FDA) to Bible GC (Philip Morris Inc.) (Jul. 11, 1994) See AR (Vol. 1 Appendix 3)

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the Agency's legal analysis. In addition, the Jurisdictional Analysis was supported by over 600 footnotes, each of which identified for the public the evidence on which the Agency relied to support its findings. The Agency also placed on the record 313 pages of appendices related to the Jurisdictional Analysis.

On August 16, 1995, the Agency put on public display some 20,000 pages of materials that it cited in the Jurisdictional Analysis and the proposed rule. With the exception of three documents, discussed below, the Agency made available to the public all of the materials on which it relied to support the Jurisdictional Analysis and the Proposed Rule. On September 29, 1995, the Agency supplemented the administrative record by putting on public display approximately 13,000 documents comprising some 190,000 pages of factual and analytical materials the Agency considered in the course of issuing the Jurisdictional Analysis and the Proposed Rule. Although it was under no legal obligation to do so, the Agency made these additional materials available because of the importance of the jurisdictional issue and the Proposed Rule.

The administrative record also includes the comments received from the public, as discussed in more detail below. The Agency received over 700,000 comments, some directed to the Jurisdictional Analysis, some directed to the Proposed Rule, and many with overlapping discussions. Though many comments consisted of form letters, the Agency received over 95,000 distinct or unique sets of comments. The cigarette manufacturers jointly submitted 2,000 pages of comments and 45,000 pages of exhibits. The smokeless tobacco manufacturers jointly submitted 474 pages of comments and 3,372 pages of exhibits. The initial comment period remained open for 144 days.

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The Agency also made one other significant addition to the public record relating to its jurisdictional determination. On March 20, 1996, the Agency published a notice in the *Federal Register* providing an additional 30 day comment period limited to specific documents the Agency added to the docket in support of its Jurisdictional Analysis. *See* 61 FR 11419. These materials consisted of declarations and a report from three former tobacco industry employees.

In addition, as discussed further below, the Agency has added to the final record of the jurisdictional determination a comparatively small number of documents that expand upon or confirm information made available in the Jurisdictional Analysis or the Proposed Rule, or that address alleged deficiencies in the Agency's initial record.

Despite the Agency's efforts to involve the public in this jurisdictional determination, FDA received several comments regarding the procedures the Agency followed in publishing the Jurisdictional Analysis. Some of these comments complained that the Agency designated certain documents in the administrative record supporting the Jurisdictional Analysis as "confidential," and that the shielding of these documents denied the public a meaningful opportunity to comment on the Agency's analysis. One of these comments also contended that FDA refused to disclose nonconfidential information on which the Agency relied in the Jurisdictional Analysis. Some comments claimed that FDA failed to set forth a balanced view of the issues raised in the Jurisdictional Analysis. Instead, they argued, FDA concealed certain issues in order to deny the public the opportunity to comment on the Agency's analysis. At least one interested person also maintained that the comment period was so short as to be arbitrary and capricious.

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Finally, one comment objected to the Agency's use of certain affidavits and reports from former tobacco industry scientists without first providing the public an opportunity to cross-examine these individuals. However, other than this one comment on a narrow category of evidence in the administrative record, the Agency received no comments concerning, and no objection to, the Agency's decision to use a notice-and-comment type format to reach a final jurisdictional determination.[1227]

As the discussion that follows demonstrates, the procedures the Agency employed in reaching its final jurisdictional determination exceeded the requirements of the APA, the case law construing the APA, and the Agency's own procedural requirements either for a jurisdictional determination or for a conventional informal rulemaking.

A. ADEQUACY OF THE RECORD

Several tobacco industry comments complained about the adequacy of the record in support of the Jurisdictional Analysis. They contended that the Agency violated the APA, 5 U.S.C. 553(b) and (c), and the Due Process Clause of the Fifth Amendment to the Constitution, [1228] by failing to disclose all of the information the Agency "considered or

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[1227] Because of the unique importance of the jurisdictional issue, the Agency published the Jurisdictional Analysis in the *Federal Register* and invited comments on it. The Agency, however, was not required by the Administrative Procedure Act (APA) to invite public comment on the issue of the Agency's jurisdiction. Likewise, the Act neither requires that the Agency commence a rulemaking proceeding, nor conduct a formal evidentiary hearing, before it makes a jurisdictional determination. Nevertheless, because of the great importance of this issue, FDA employed a notice-and- comment-type procedure to give the public an opportunity to participate in the Agency's analysis of its jurisdiction. None of the comments the Agency received identified a statutory requirement that would have compelled the Agency to follow any additional or different procedures. Thus, while the Agency endeavored in its publication of the Jurisdictional Analysis to provide notice, a supportive record, and a comment period sufficient to meet the procedural requirements of the APA for informal rulemaking, the Agency was not bound by the APA's informal rulemaking procedures with respect to the Jurisdictional Analysis.

[1228] Because the APA in this context provides the public at least as much protection as the Due Process Clause of the Constitution, the Agency will address these procedural objections solely under the APA. *See Forester v. Consumer Product Safety Commission*, 559 F.2d 774, 787 (D.C. Cir. 1977); *Ass'n of National Advertisers, Inc., v. Federal Trade Commission*, 627 F.2d 1151, 1166 (D.C. Cir. 1979), *cert. denied*, 447 U.S. 921 (1981).

relied upon in the proceeding."[1229] In particular, these comments complained that the public was deprived of the opportunity to comment meaningfully on the Jurisdictional Analysis because, according to these comments, the Agency had relied on confidential documents and on substantial amounts of undisclosed data. One comment went so far as to claim that "a substantial portion" of the material FDA relied upon, both in the Jurisdictional Analysis and in the Proposed Rule, was not made available for public scrutiny.

The record in support of the Jurisdictional Analysis provided the public not only with a "reasonable opportunity" for comment, but with an extraordinary opportunity to examine the Agency's position. The claim that the Agency withheld "a substantial portion" of the materials on which it relied is simply unfounded.

1. The Administrative Record the Agency Assembled for This Proceeding Surpassed the Requirements of the APA

Even in an informal rulemaking proceeding—which the Jurisdictional Analysis was simply modeled on—the APA requires only that the "notice of proposed rule making" include a statement of the time, place, and nature of the proceeding, "reference to the legal authority under which the rule is proposed," and "either the terms or substance of the proposed rule or a description of the subjects and issues involved." *See* 5 U.S.C. 553(b). The APA, thus, does not expressly require disclosure of the information on which the Agency relies in proposing a rule.

[1229] Joint Comments of the Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. XII, at 1. *See* AR (Vol. 535 Ref. 96)

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Nevertheless, courts have implied under the APA a requirement that an agency give notice of the information on which it actually relies to support a proposed rule, and make that information available to the extent it is not readily accessible to the public. *See generally* K. Davis, *Administrative Law Treatise*, § 7.3 at 305-309 (3d ed. 1994) (discussing one of the seminal cases on disclosure of data relied on to support a rulemaking proceeding, *Portland Cement Ass'n v. Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974)). No court, however, has required the degree of public disclosure at the notice stage of a rulemaking proceeding that FDA undertook here.

Indeed, the primary cases cited by the comments, namely, *Portland Cement Ass'n, United States v. Nova Scotia Food Products Corp.*, 568 F.2d 240 (2d Cir. 1977), and *United States Lines, Inc. v. Federal Maritime Commission,* 584 F.2d 519 (D.C. Cir. 1978), address agency conduct that bears little resemblance to FDA's efforts in this proceeding. While FDA has provided a remarkable degree of factual support and procedural openness, these cases involve instances in which agencies provided the public with no information whatsoever or otherwise excluded a study that was critical to the agency's decision. In *Portland Cement Ass'n,* the Environmental Protection Agency failed altogether to provide the public an opportunity to comment on the test results and procedures on which the agency relied as the "critical" basis for the emission control level adopted by the agency. That is, the agency set very specific technical control limits, but failed to make public until after the close of the comment period the details of crucial tests relied upon to determine the limits. 486 F.2d at 392.

In *Nova Scotia Food Products,* "all the scientific research was collected by the agency, and *none of it was disclosed* to interested parties as the material upon which the

proposed rule would be fashioned." 568 F.2d at 251 (emphasis added). And in *United States Lines,* where a common carrier challenged an order of the Federal Maritime Commission amending a contract between two competitors, the court found that the Commission had made "critical findings" on the basis of data which was neither identified in its decision nor included in the administrative record. Rather, the Commission based its decision on "reliable data reposing in the Commission's files." 584 F.2d at 533. The reviewing court simply had no idea of the factors or data on which the Commission had relied. *Id.*

Thus, at most, the case law requires agencies to disclose studies and data actually relied upon by the agency. Even then, the cases that have struck down agency rulemaking are generally confined to instances in which the agency provided woefully inadequate information to the public or failed to disclose a critical piece of information. *See, e.g., Kennecott Corp. v. Environmental Protection Agency*, 684 F.2d 1007, 1018-1019 (D.C. Cir. 1982) (agency acted arbitrarily and capriciously when it failed to include in the public docket during the comment period any documents supporting a particular proposed regulation); *compare Personal Watercraft Industry Ass'n v. Department of Commerce*, 48 F.3d 540, 544-545 (D.C. Cir. 1995) (while agency must disclose information critical to its decision to regulate a particular activity, absent prejudice an agency may rely on studies developed after close of comment period that are not critical to the underlying proposal).

Finally, FDA's own procedural regulations require that the Agency include with a notice of proposed rulemaking, among other things, "references to all *information on which the Commissioner relies for the proposal.*" 21 CFR 10.40(b)(vii) (emphasis added); *see* 21 CFR 10.3 (defining the term "administrative record" to mean the materials on

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which the Agency "relies to support the action"). Thus, even under the Agency's own procedural regulations, FDA is required—when it initiates informal rulemaking—to supply the public only with the materials the Agency is relying upon to support the proposed action.

Here, the materials the Agency relied upon at the opening of this proceeding are the materials the Agency cited in the two August 11, 1995, *Federal Register* documents. Not only did the Agency provide these materials to the public, but it also provided the roughly 190,000 pages of factual and analytical materials the Agency considered but did not rely on and, hence, did not reference in either the Jurisdictional Analysis or the Proposed Rule. Moreover, the Agency provided over 1000 endnotes and footnotes directing readers to each document, including every study, government report, journal article, industry document, and Agency record on which FDA relied to support the Jurisdictional Analysis and the Proposed Rule.

Out of all of this material, the only nonpublic materials on which the Agency relied in its Jurisdictional Analysis were two confidential documents[1230] and two lines of text the Agency redacted from a document placed on the public Administrative Record.[1231] None

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[1230] The two confidential documents the Agency directly referenced, which are discussed in detail in the text, are the *1991 Handbook on Leaf Blending and Product Development* (Confidential Document 75) and the unredacted summary of notes of FDA trip visits (Confidential Document 74). The summary was compiled from notes and handouts that are also designated as confidential (Confidential Documents 69, 70, 71, 72 and 73). The Agency views the summary as a stand-alone document to the extent it distills a large volume of disparate handwritten notes and handouts. Also, the Agency cited only to the summary itself. Nevertheless, even if the summary were counted as five documents rather than one, the Agency at most relied for support on six confidential documents.

[1231] On page 255 of the Jurisdictional Analysis (60 FR 41716), the Agency redacted several lines of text along with a footnote that identified the sources for the redacted text. The footnote consisted of references to two sources, both of which appeared on the agency's public docket: Kiefer JE, Tennessee Eastman Company, *Cigarette Filters for Altering the Nicotine Content of Smoke* (Report No. 71 5003 7), Aug. 18, 1971 at 1-2, *See* AR (Vol. 28 Ref. 463-1); and Curran Jr. JG, Miller EG, Factors influencing the elution of high boiling components of cigarette smoke from filters, *Beitr. Tabakforsch* 1969;5:67, *See* AR (Vol.

of these documents is pivotal in that none provides the sole or principal basis for the Agency's conclusion that cigarettes and smokeless tobacco are intended to affect the structure and function of the body under the Act. Further, as discussed below, the decision to keep these materials confidential did not undermine the quality of the public participation in the Agency's jurisdictional determination. In sum, the procedures the Agency followed in assembling a public record in support of this jurisdictional determination are not analogous to the facts described in cases like *Portland Cement Ass'n, Nova Scotia Food Products,* and *United States Lines.*

2. The Agency's Use of Confidential Documents

a. Confidential Documents on Which the Agency Did *Not* Rely

The Agency placed in a confidential docket 75 documents from the approximately 210,000 pages of materials the Agency made available at the opening of the jurisdictional determination and the companion rulemaking proceeding. The Agency identified each of these 75 documents for the public in an index filed on September 29, 1995, on the public docket. *See* 60 FR 66981, 66982 (Dec. 27, 1995). Of these 75 documents, 73 were not even relied upon by the Agency to support either the Proposed Rule or the Jurisdictional Analysis.

Sixty-one of these 73 confidential documents consisted either of commercial information and trade secrets which the industry urged FDA to keep confidential (Confidential Documents 1-12, 16-21, 62-73), or unpublished manuscripts for which the Agency lacked the authors' permission, as of September 29, 1995, to publicly release

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28 Ref. 463-2). The Kiefer document appeared on the public docket with certain trade secret and confidential information redacted from the document. The Curran document was made available to the public in full.

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(Confidential Documents 22-52). The remaining twelve documents were either proprietary reports and other copyrighted information—such as financial reports generated by Dun and Bradstreet—which the Agency lacked permission to reprint (Confidential Documents 13-15, 53-58), or confidential documents that support a pending new drug application (Confidential Documents 59-61).

Again, the Agency did not rely on any of these 73 documents as support for the Jurisdictional Analysis. Therefore, the Agency was not even required to include these documents in the administrative record. *See* 21 CFR 10.40(b)(vii). It likewise follows that because the Agency did not rely upon these documents, the decision to protect them cannot be said to have unfairly interfered with the public's ability to question the Agency's Jurisdictional Analysis. *See Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission*, 773 F.2d 327, 344 (D.C. Cir. 1985) (agency's failure to disclose two studies was "manifestly harmless" because the agency did not rely on the studies to support any finding or conclusion); *Conference of State Bank Supervisors v. Office of Thrift Supervision*, 792 F. Supp. 837, 843 (D.D.C. 1992) (there is no violation of the APA's notice requirements where the agency has declined to disclose materials on which it did not rely in proposing the rule); *B. F. Goodrich Co. v. Dept. of Transportation*, 541 F.2d 1178, 1184 (6th Cir.) (only the basic data "upon which the agency relied in formulating the regulation" must be published for public comment), *cert. denied*, 430 U.S. 930 (1976); K. Davis, *Administrative Law Treatise*, § 7.3 at 307 (3d ed. 1994) ("If an agency does not attempt to support its final rule by reference to an undisclosed study, it seems apparent that the agency was not required to make the study available to potential commentators"). The fact that the Agency went well beyond existing requirements to

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make publicly available thousands of additional documents for public review—in recognition of the uniqueness and public importance of this proceeding—should not be used now as a basis for suggesting that the Agency was under a legal obligation to disclose publicly all information that it had at hand.

Finally, at the close of this jurisdictional determination and the companion rulemaking proceeding, the Agency will supplement the public docket with copies of those confidential items for which the Agency previously lacked permission to publish, but for which permission has now been granted. Most of the unpublished manuscripts in the confidential docket—none of which were relied upon by the Agency to support last year's Jurisdictional Analysis—will be available through this addition to the public record.

b. Confidential Information on Which the Agency Relied

In support of the Jurisdictional Analysis, FDA relied on only 2 of the 75 documents designated as confidential: a summary of notes taken by FDA investigators during site visits to manufacturing plants run by Brown & Williamson, Philip Morris, and R. J. Reynolds (Confidential Document 74); and a 1991 Brown & Williamson handbook on leaf blending and product development (Confidential Document 75).[1232] The Agency described the two confidential documents cited in the Jurisdictional Analysis in an index made available to the public on September 29, 1995. In addition, the Agency relied on

[1232] The Agency did not attribute ownership of the handbook in the Jurisdictional Analysis, or in the September 29, 1995, index to the administrative record. However, in a set of comments filed by Brown & Williamson, the company itself acknowledged publicly its ownership of the handbook. Brown & Williamson Tobacco Corp., Comment (Jan. 2, 1996), at 37-38. *See* AR (Vol. 529 Ref. 104).

two lines of text that it redacted from a document regarding cigarette filters that the Agency placed on the public docket.[1233]

The Agency placed in the confidential docket the summary of notes at the request of Brown & Williamson, Philip Morris, and R. J. Reynolds, each of whom urged the Agency to keep confidential their commercial information and trade secrets. *See* 60 FR 66981 (Dec. 27, 1995). Brown & Williamson likewise vigorously urged the Agency not to put its leaf blending handbook on the public docket.[1234] These same companies have now commented that it was improper for the Agency to rely on this information because the information "cannot be subjected to comment by interested parties."[1235]

The Agency disagrees that its decision to place in the confidential docket these two documents (out of 20,000 pages of documents the Agency cited in support of its position), or rely on two lines of redacted text from a document the Agency made available to the public, in any way undermined the public's ability to comment on the Agency's Jurisdictional Analysis. Nor does the Agency agree that its reliance in this proceeding on confidential commercial information or confidential industry trade secrets violated the APA.

[1233] *See* Kiefer JE, Tennessee Eastman Company, *Cigarette Filters for Altering the Nicotine Content of Smoke* (Report No. 71 5003 7), Aug. 18, 1971, at 1-2. *See* AR (Vol. 28 Ref. 463-1). Although the Agency also redacted from the document the confidential measurements of the effects of filter additives on nicotine content in cigarettes smoke, the Agency did not directly rely on these measurements in the text of the Jurisdictional Analysis.

[1234] Letter from Krulwich AS (counsel to Brown & Williamson) to Porter MJ (FDA) (Jan. 11, 1996). *See* AR (Vol. 711 Ref. 38).

[1235] Joint Comments of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. XII, at 14. *See* AR (Vol. 535 Ref. 96).

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First, none of the authorities cited in the comments supports the proposition that agencies, even in a rulemaking context, are precluded from considering or relying upon privileged documents. To the contrary, several courts have indicated that reliance on protected documents in an informal rulemaking proceeding is permissible. *See Home Box Office, Inc. v. Federal Communications Commission*, 567 F.2d 9, 58 n.130 (D.C. Cir.) (stating, in *dicta*, that "it is conceivable that trade secrets . . . if proffered as the basis for rulemaking, should be kept secret. *Cf.* 5 U.S.C. 552."), *cert. denied*, 434 U.S. 829 (1977); *United States v. Nova Scotia Food Products Corp.*, 568 F.2d 240, 251 (2d Cir. 1977) ("We can think of no sound reasons for secrecy or reluctance to expose to public view (*with an exception for trade secrets or national security*) the ingredients of the deliberative process" (emphasis added)).

Second, the Agency put the confidential materials on which it relied in sufficient context so that the public could comment on, and challenge, the Agency's use of the material. With respect to the handbook, the Agency quoted from the document in several instances in the Jurisdictional Analysis. *See* 60 FR 41453, 41710–41711; 60 FR 41453, 41510–41511. The Jurisdictional Analysis also incorporated testimony before the House Subcommittee on Health and the Environment of the Committee on Energy and Commerce on June 21, 1994, in which the Commissioner discussed the content of the handbook and quoted from relevant portions. *See* 60 FR 41453, 41710–41711 and nn. 443-447. In both settings, the Agency made the language from the handbook on which the Agency relied available, and carefully explained how these portions of the handbook were relevant to the overall proceeding. Thus, while the Agency kept the bulk of the document confidential, it provided as much actual content and context as possible to allow

for meaningful public comment on the quoted passages. In the end, the only comments the Agency received regarding the decision to keep the handbook confidential were from tobacco industry trade associations with whom Brown & Williamson jointly submitted comments. No other commenter objected to the Agency's reliance on the handbook or the way the Agency safeguarded information the industry regarded as confidential.

As for the summary of notes (Confidential Document 74), the Agency assembled this document from handwritten notes recorded by FDA employees during site visits in March, April, and May 1994 to Brown & Williamson, Philip Morris, and R. J. Reynolds, as well as handouts distributed by R. J. Reynolds and Philip Morris during those visits. During these visits, company representatives requested that FDA employees not disclose certain confidential commercial and trade secret information. The Agency, in an effort to accommodate this request, withheld from the public docket trade secret or confidential commercial information provided to the Agency.

As with the handbook, the Agency is not persuaded that the public has been prejudiced by the decision to withhold this comparatively small amount of information. Again, the Agency presented the notes in context to allow the public to see precisely what points they were being used to support. *See* 60 FR 411453, 41704–41719. The Agency also put on the public docket the original handwritten notes from these visits (less the redactions needed to protect information the companies regarded as confidential), so that the public could see as much of what transpired as possible and understand the full context of the protected information. As with the handbook, nonindustry commenters did not object to this procedure.

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Finally, with respect to the Tennessee Eastman document, the Agency placed the document on the public docket, but redacted the two lines of text that identified the name of a manufacturer who used polyethylene glycol in cigarette filters, resulting in a higher nicotine delivery than from other cigarettes. The text that identified the name of the manufacturer (both as it appeared in the Jurisdictional Analysis and in the Tennessee Eastman document), was redacted from public view to protect that firm's confidential commercial information and its trade secrets. The balance of the text of the Tennessee Eastman document, as well as the balance of the text of the Jurisdictional Analysis, gave the public ample opportunity to comment on the Agency's findings regarding "the use of filter additives to enhance nicotine delivery." 60 FR 41453, 41715.

In sum, the Agency carefully developed a mechanism to accommodate the industry's need to protect its confidential commercial information and its trade secrets, while at the same time providing ample notice to the public of the information on which it relied in this proceeding. Based on the quality and quantity of comments received, and based on the lack of objection from other commenters, the Agency is not persuaded that its decision to rely on confidential information prejudiced the public's ability to participate in the Agency's jurisdictional determination. Rather, the lack of comment from the public at large confirms that the Agency struck a reasonable balance between the need for public process, the need to protect trade secrets and confidential commercial information, and, of course, the need to protect the public health.

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3. The Claim that FDA Relied on "Unknown" Undisclosed Data

A tobacco industry comment claimed that the Agency withheld certain data and calculations used to construct a series of charts showing that nicotine and tar levels in smoke have risen steadily from 1982 to 1991. *See* 60 FR 41728–41731.

As the comment acknowledges, the Agency relied on summaries of industry-supplied data gathered by the FTC to construct these charts. *See* 60 FR 41727–41731. The comment claims, however, that the Agency relied on "unknown" data to construct the tar and nicotine yields for the years 1982 and 1984-86.[1236] According to the comment, the FTC did not generate data for these years. The industry comment also questions where the Agency obtained the sales figures used to calculate weighted averages, how the Agency calculated these averages, and why the Agency's figures did not always track those of the FTC.

The industry raised precisely the same issues in a December 8, 1995, letter to the Agency. In a December 27, 1995, response, FDA identified the specific documents in the administrative record that address each concern.[1237]

The only issue not fully resolved by that exchange of correspondence is the industry's claim that FDA's figures for 1990 and 1991 reflect fewer brands than FTC reported on for those years. As the Agency stated in its December 27 letter, it is not apparent from the face of the charts what, exactly, the industry association is referring to.

[1236] Joint Comments of the Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. XII, at 3. *See* AR (Vol. 535 Ref. 96).

[1237] *See* Letter from Schultz WB (FDA) to Merrill R (Covington and Burling) (Dec. 27, 1995). *See* AR (Vol. 711 Ref. 7).

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Although the association acknowledges this exchange of correspondence in its January 2, 1996, comments, it failed to provide any greater specificity in its comments than it did in the December 8 letter.

FDA based its charts on sales-weighted averages calculated by the FTC based on industry-supplied data. In most years, the FTC publishes this data in two reports: one on sales volume and one on tar, nicotine, and carbon monoxide content. Some manufacturers, however, fail from time to time to report to the FTC for each brand on all three of the values of interest to FDA, namely, tar, nicotine, and sales volume. The FTC, therefore, excluded from the sales-weighted averages it supplied to FDA any brand for which the manufacturer failed to supply data on any of the three values of interest to FDA. That is why, in 1990 and 1991, the points FDA plotted on its graphs reflect fewer brands than the total number of brands that the FTC reported on in those years. *See* section II.C.6.c.ii., above.

The decision to exclude in 1990 and 1991 brands for which FTC lacked complete data was reasonable. The slight variation between FDA's figures and FTC's figures for 1990 and 1991 are not the result of FDA having relied on "unknown" or "undisclosed" data. Rather, FDA has made publicly available all of the information necessary to allow for meaningful comment on these charts.

4. The Claim That FDA Failed To Include in the Record NDA Data on Which It Relied

One comment claimed that the Agency relied on studies in seven new drug applications (NDA's) for the proposition that a high proportion of smokers are addicted to nicotine, but failed to make adequate disclosure of these NDA's. In particular, this

comment stated that the Agency failed to include any information in the public docket for NDA 18-612 (Nicorette gum, 2 mg) and NDA 20-385 (Nicotine nasal spray), and included only summaries for five other NDA's the Agency cited. As discussed below, FDA did in fact include in the public docket sufficient information regarding the NDA's on which it relied. As for the particular NDA studies the Agency referenced, the relevant data in support of these studies was recounted in sufficient detail in Appendix 1 to the Jurisdictional Analysis to provide the public a meaningful opportunity to comment.

a. The Agency's Reference to Five NDA's

With respect to NDA 18-612 (Nicorette gum, 2 mg), the Agency did not rely on the NDA for this product in either the Proposed Rule or the Jurisdictional Analysis. *See* 60 FR 41549, n.62 (citing only to NDA 20-076 Habitrol, NDA 20-150 Nicotrol, NDA 19-983 ProStep, NDA 20-165 Nicoderm, NDA 20-066 Nicorette, 4 mg); *see also* 60 FR 41550, n.64 (citing only to the same five NDA's listed in footnote 62 of the Jurisdictional Analysis). Therefore, the Agency is under no obligation to include in the public record the NDA itself or a summary of the application.

With respect to NDA 20-385 (Nicotine nasal spray), the Agency similarly did not rely on the NDA for this product in either the Jurisdictional Analysis or the proposed rule. *See* 60 FR 41549, n.62 and 60 FR 41550, n.64. While the Agency did discuss an aqueous nicotine nasal spray in the Jurisdictional Analysis, the Agency did not rely on the NDA itself to support its point. Rather, the Agency relied on the discussion of the nasal spray at an August 1994 FDA Drug Abuse Advisory Committee meeting. The relevant portions of the transcript, cited in footnote 116 in the Jurisdictional Analysis, and the background materials provided to the advisory committee, cited in footnote 117, were included in the

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public record.[1238] *See* 60 FR 41565, n.116 and n.117. The only other reference to the nasal spray in the Jurisdictional Analysis is at 60 FR 41569, where again the Agency relied on a statement offered at the August 1994 advisory committee meeting, not on the NDA itself. 60 FR 41569 and n.126. Therefore, all the materials relating to the nasal spray on which the Agency relied in the to the Jurisdictional Analysis are in the public docket.

As for the five NDA's the Agency cited in footnotes 62 and 64 of the Jurisdictional Analysis, the Agency put into the administrative record an extensive summary, prepared at the time of approval, for each of these NDA's.[1239] Given the volume of materials that make up each of these NDA's, and the limited purpose for which the Agency was relying on them, *see* 60 FR 41549–41550, it was appropriate for the Agency to include only the summaries. *See National Ass'n of Pharmaceutical Mfrs. v. Department of Health and Human Services*, 586 F. Supp. 740, 755-756 (S.D.N.Y. 1984). A complete NDA can run into the tens of thousands of pages, particularly when one includes the records which must be kept for each patient enrolled in each clinical trial. Putting this volume of materials on the record in this instance would serve no useful purpose. Instead, the Agency included on the record the summaries it prepared in anticipation of approving each of these smoking cessation products as safe and effective. The summaries themselves are peer reviewed within the Agency to ensure that they thoroughly and accurately discuss each of

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[1238] Kramer ED, Transcript of testimony before the Drug Abuse Advisory Committee (Aug. 1, 1994). *See* AR (Vol. 9 Ref. 116).

FDA Drug Abuse Advisory Committee Background Information, Joint Abuse Liability Review of Nicotine Nasal Spray (Aug. 1, 1994). *See* AR (Vol. 9 Ref. 117).

[1239] NDA 20-076 Habitrol (CIBA); NDA 20-150 Nicotrol (Kabi); NDA 19-983 ProStep (Elan); NDA 20-165 Nicoderm (Alza); NDA 20-066 Nicorette (Merrell Dow). *See* AR (Vol. 6 Refs. 62-63).

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the studies on which the approval is based. They generally provide more detail about a sponsor's underlying clinical data and methodology than one would expect to find in published peer-reviewed medical literature.

As discussed in greater detail, below, notice is sufficient under the APA when it provides the public a "reasonable opportunity" to participate in the proceeding. *Forester v. Consumer Product Safety Commission,* 559 F.2d 774, 787 (D.C. Cir. 1977). This is not an instance in which the Agency failed to explain the technical basis for its position, failed to disclose its reasoning, or otherwise failed to identify and make available the data on which it relied to reach a particular conclusion. *See Connecticut Light and Power Co. v. Nuclear Regulatory Commission,* 673 F.2d 525, 530-532 (D.C. Cir. 1982). Rather, the summaries the Agency placed on the public docket provided detailed access to the pivotal data on which the Agency relied in approving these NDA's. Even more, the summaries identified the very data on which FDA relied in this proceeding to support the position that nicotine replacement therapy helps reduce withdrawal symptoms in smokers trying to quit, and that participants enrolled in clinical studies of nicotine replacement therapy demonstrated addiction to nicotine. 60 FR 41453, 41459–41460. This is also the data on which the Agency relied to support the position that the efficacy of nicotine replacement therapy shows that most smokers are indeed addicted to nicotine. *Id.* at 41459. Thus, these summaries provided the public with ample access to the information needed to comment meaningfully on the Agency's position.

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b. The Agency's Reference to Nineteen Smoking Cessation Studies

FDA prepared Appendix 1 to the Jurisdictional Analysis to provide the public with background materials supporting the Agency's scientific judgments with respect to nicotine pharmacology. In that Appendix, the Agency discussed a number of smoking cessation studies, including 19 studies submitted in support of the NDA's for Habitrol, Nicotrol, ProStep, Nicoderm, Nicorette (4mg), Nicorette (2 mg), and nicotine nasal spray.[1240]

The Agency referenced these studies as yet another way to demonstrate that nicotine obtained from tobacco products produces dependency. The efficacy of nicotine replacement therapy in reducing withdrawal symptoms strongly suggests this conclusion.

To further demonstrate the point, the Agency supplied the public with efficacy data for each of the 19 studies. The incorporation in Appendix 1 of the relevant data from these studies in itself allowed for a reasonable opportunity to comment on the Agency's use of the studies. Again, the fact that the Agency has approved these products as smoking cessation aids, because of their effectiveness in relieving withdrawal from nicotine, supports the Agency's point that nicotine from certain tobacco products causes dependency.

In addition to providing in the Appendix itself the data on which FDA relied, the Agency relied on studies that have been widely reported on in the medical and scientific literature. For example, each of the studies the Agency cited from the NDA's for Nicorette (2mg) and nicotine nasal spray have been reported on in "refereed" or peer-

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[1240] *See* appendix 1 to Jurisdictional Analysis, at 62-85. *See* AR (Vol. 1 Appendix 1).

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reviewed journal articles.[1241] *See National Ass'n of Pharmaceutical Mfrs.*, 586 F. Supp. at 756 n.45 ("The public availability of information not included in the administrative record is a factor to be considered in determining whether the record is inadequate for failing to include it") (citations omitted). Thus, to the extent Appendix 1 or the administrative record itself did not provide the public with enough information to comment on the Agency's analysis, the public had easy access to journal articles authored by the individuals who designed and conducted each of the studies.

Finally, with respect to all but the five studies referenced from the NDA's for Nicorette (2mg) and nicotine nasal spray, the public had access to the "backup" for the data on which the Agency relied through the NDA summaries the Agency included on the public docket. For the Agency to put on the record further documentation to support this "backup" would have been excessive, given the limited purpose for which the Agency relied on these studies.

[1241] *See* Christen AG, McDonald JL, Olson BL, Drook CA, Stookey GK, "Efficacy of a nicotine chewing gum in facilitating smoking cessation," *Journal of the American Dental Ass'n* 1984; 108: 594-597. *See* AR (Vol. 711 Ref. 25).

Jarvis MJ, Martin RAW, Russel MAH, Feyerabend C, "Randomised controlled trial of nicotine chewing-gum, *British Medical Journal* 1982; 285:537-540. *See* AR (Vol. 711 Ref. 26).

Schneider NG, Olmstead R, Mody F, Doan K, Franzon M, Jarvik ME, Steinberg C, Efficacy of nicotine nasal spray in smoking cessation: a placebo-controlled, double-blind trial, *Addiction* 1995; 90:1671-1682. *See* AR (Vol. 711 Ref. 27).

Sutherland G, Stapleton JA, Russel MAH, Jarvis MJ, Hajek P, Belcher M, Feyerabend C, Randomised controlled trial of nasal nicotine spray in smoking cessation, *Lancet* 1992; 340:324-29; *See* AR (Vol. 348 Ref. 5511).

Hjalmarson A, Franzon M, Westin A, Wiklund O, Effect of nicotine nasal spray on smoking cessation, *Archives of Internal Medicine* 1994; 154:2567-2572. *See* AR (Vol. 711 Ref. 28).

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The Agency, then, referenced 19 studies to prove a single point. The public docket included detailed summaries, prepared for purposes of approving a drug product as safe and effective, of 14 of the 19 studies. For the tobacco industry to claim that it lacked adequate data with which to challenge the Agency's conclusion, which could have been supported by far fewer than 19 studies, is unreasonable.

In sum, the complaint that FDA did not put on the public docket the "actual studies" used to support these NDA's is misplaced. When FDA relied on a specific NDA, it put a detailed summary of the NDA in the public docket; and when FDA relied on particular NDA studies, it provided the public with the data from those studies in the appendix itself. The Agency also took care to rely on studies which have been widely reported on in the medical and scientific literature. The comment from the tobacco industry that the Agency in this instance withheld crucial information is tantamount to arguing that for each journal article on which the Agency relies, it must also include in the record all the raw data discussed or analyzed in the article. This is a level of disclosure that exceeds reason, not to mention the basic tenets of notice under the APA. The Agency, therefore, is not persuaded that the industry, or any other interested person, was deprived of a meaningful opportunity to comment on the Agency's reference to certain smoking cessation studies or certain NDA's.

5. The Agency's Reliance in the Final Jurisdictional Determination on New Materials

In an ordinary informal rulemaking proceeding, the final administrative record must contain the proposed rule, including all information that the Commissioner identifies or files with the proposal, all comments received on the proposal, including all information

submitted as part of the comments, and the notice promulgating the final regulation, including all information that the Commissioner identifies or files with the final regulation. 21 CFR 10.40(g). An agency may rely on information and data that was not included at the proposal stage that expands on or confirms information in the proposal or addresses alleged deficiencies in the pre-existing data, provided that no prejudice is shown.[1242] Otherwise, "[r]ulemaking proceedings would never end if an Agency's response to comments must always be made the subject of additional comments." *Community Nutrition Inst.*, 749 F.2d at 58. Accordingly, the Agency has cited in the final jurisdictional determination a small amount of information that is needed to respond fully to comments or that otherwise supplements the information contained in or filed with the proposal. These documents include published scientific articles, reference texts, a Centers for Disease Control and Prevention memorandum and supporting data, letters to tobacco industry counsel, an abstract that the tobacco industry asked to include in the record, a small number of publicly released tobacco company documents, Congressional hearing transcripts, and newspaper articles. The Agency has placed this cited information in the administrative record for the jurisdictional determination.

[1242] *See, e.g., Personal Watercraft v. Dep't of Commerce*, 48 F.3d 540, 544 (D.C. Cir. 1995) ("Agencies may develop additional information in response to public comments and rely on that information without starting anew unless prejudice is shown."); *Solite Corp. v. EPA*, 952 F.2d 473, 484 (D.C. Cir. 1991) ("[C]onsistent with the APA, an agency may use 'supplementary' data, unavailable during the notice and comment period, that expands on and confirms information contained in the proposed rulemaking and addresses alleged deficiencies in the pre-existing data, so long as no prejudice is shown."); *Community Nutrition Inst. v. Block*, 749 F.2d 50, 57-58 (D.C. Cir. 1984) (agency may rely on information that "expanded on and confirmed" information in the proposal and addressed alleged deficiencies in the record); *see also* K. Davis, *Administrative Law Treatise*, § 7.3 (3d ed. 1994).

B. ADEQUACY OF THE NOTICE

Two industry comments argued that the public's participation in the jurisdictional determination, as well as in the rulemaking process, has been frustrated because the Agency presented a "one-sided" view of the Jurisdictional Analysis and the Proposed Rule. Although neither comment disagreed with the Agency's use of notice and comment-type procedures to reach a jurisdictional determination, both comments claimed that FDA failed to satisfy the APA's notice requirement for informal rulemaking because the Agency neither disclosed nor discussed the supposedly "large body" of information "that is inconsistent with, or otherwise not supportive of, the Proposed Rule."[1243] Further, the Agency did not, in their view, provide a "reasoned explanation" for departing from past precedent on the issue of whether FDA should regulate all cigarettes and smokeless tobacco.[1244]

These comments provided no legal authority to support the proposition that, assuming the Agency is bound here by APA precedent governing informal rulemaking, the Agency was required at the notice stage to anticipate all challenges to its reasoning, and should have attempted in its notice to answer those challenges. Rather, at the notice stage of a rulemaking proceeding, the Agency's obligation is to include sufficient detail to allow for meaningful and informed comment. *See American Medical Ass'n v. Reno*, 57 F.3d

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[1243] Joint Comments of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. XII, at 15. *See* AR (Vol. 535 Ref. 96). *See also* Joint Comment of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 33-38. *See* AR (Vol. 526 Ref. 95).

[1244] Joint Comment of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 38-39. *See* AR (Vol. 526 Ref. 95).

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1129, 1132 (D.C. Cir. 1995); *Home Box Office, Inc. v. Federal Communications Commission*, 567 F.2d 9, 35-36 (D.C. Cir.), *cert. denied*, 434 U. S. 829 (1977).

More specifically, in an informal rulemaking proceeding, the APA requires public notice of an Agency's intention to issue a regulation. 5 U.S.C. 553(b). The notice must include "reference to the legal authority under which the rule is proposed," and "either the terms or substance of the Proposed Rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(2) and (b)(3). FDA's own regulations require that a notice of proposed rulemaking include "a preamble that summarizes the proposal and the facts and policy underlying it, . . . all information on which the Commissioner relies for the proposal, . . . and cites the authority under which the regulation is proposed." 21 CFR 10.40(b)(vii).

Under case law construing section 553 of the APA, notice of informal rulemaking must be "sufficiently descriptive of the 'subjects and issues involved' so that interested parties may offer informed criticism and comments." *Ethyl Corp. v. Environmental Protection Agency*, 541 F.2d 1, 48 (D.C. Cir.) (*en banc*), *cert. denied* 426 U.S. 941 (1976). Notice is sufficient under the APA "if it affords interested parties a reasonable opportunity to participate in the rulemaking process." *Forester*, 559 F.2d at 787; *accord State of South Carolina ex rel. Tindal v. Block*, 717 F.2d 874, 885 (4th Cir. 1983), *cert. denied*, 465 U. S. 1080 (1984). And, insofar as the proposal to regulate relies on a technical study or specific data essential to an understanding of the rule, the notice should disclose this information to the extent needed to allow for "meaningful comment." *Connecticut Light and Power Co. v. Nuclear Regulatory Commission*, 673 F.2d 525, 530-531 (D.C. Cir.), *cert. denied*, 459 U. S. 835 (1982).

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In this instance, the Agency's Jurisdictional Analysis met both the APA's notice requirements (as interpreted by prevailing case law), as well as FDA's own procedural requirements. The Agency by any standard "fulfilled its obligation to make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible." *Air Transport Ass'n of America v. Civil Aeronautics Board*, 732 F.2d 219, 225 (D.C. Cir. 1984) (quoting *Home Box Office, Inc.*, 567 F.2d at 36).

1. The Agency Provided Adequate Notice of the Key Legal and Factual Issues

Although the APA's notice requirements could have been met by a far briefer presentation, the Agency chose to supply the public with a discussion of its Jurisdictional Analysis that explored in full the wide range of factual and legal issues presented. In doing so, the Agency discussed a number of the issues that the industry commenters claimed were missing from the Jurisdictional Analysis.

The comments contended that the Agency failed to discuss past instances in which it declined to exercise jurisdiction over cigarettes and smokeless tobacco products, including FDA's response to a 1977 citizen petition. One comment in particular insisted that such a discussion would have alerted the public to the idea that Congress enacted preemptive legislation in reliance on FDA's past pronouncements, legislation which the comments argue bars FDA from regulating these products.

The Agency acknowledged in its Jurisdictional Analysis that it has in the past refrained from exercising jurisdiction generally over all cigarettes and smokeless tobacco products (provided claims were not made for the product). 60 FR 41482 n.5. Among other things, the Agency referred readers to the published decision in *Action on Smoking*

and Health (ASH) v. Harris, 655 F.2d 236 (D.C. Cir. 1980). That decision reviewed the Agency's rejection of the 1977 citizen petition, which one comment claimed the Agency "conscientiously avoid[ed]" in the Jurisdictional Analysis in order to "mislead[]" the public.[1245] Not only does the *ASH* opinion discuss the petition and the Agency's position at that time with respect to exercising jurisdictional generally over cigarettes, it also recounts for the reader the Agency's historical position on the issue. 655 F.2d at 237-241. Moreover, the Agency placed in the administrative record copies of documents in which FDA declined to exercise jurisdiction, including FDA's response to ASH's 1977 citizen petition.[1246]

In addition, the Agency attached as part of an appendix to its Jurisdictional Analysis, copies of the Commissioner's testimony before the House Subcommittee on Health and the Environment of the Committee on Energy and Commerce on March 25, 1994.[1247] At the outset, Commissioner Kessler stated:

> Although FDA has long recognized that the nicotine in tobacco products produces drug-like effects, we never stepped in to regulate most tobacco products as drugs. One of the obstacles has been a legal one. A product is subject to regulation as a drug based primarily on its intended use. . . . With certain exceptions, we have not had sufficient

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[1245] Joint Comment of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 35. *See* AR (Vol. 526 Ref. 95).

[1246] *See* Letter from Kennedy D (FDA) to Banzhaf J (ASH) (Dec. 5, 1977). *See* AR (Vol. 503 Ref. 8882) (denial of 1977 petition).

Letter from Goyan JE (FDA) to Banzhaf J (ASH) (Nov. 25, 1980). *See* AR (Vol. 503 Ref. 8881).

Public Health Cigarette Amendments of 1971, *Hearings before the Consumer Subcommittee of the Committee on Commerce, U.S. Senate*, 92d Cong., 2d Sess. at 239-246. *See* AR (Vol. 503 Ref. 8894).

[1247] *See* appendix 7 to the Jurisdictional Analysis. *See* AR (Vol. 1, Appendix 7).

> evidence of such intent with regard to nicotine in tobacco products. . . .
>
> Mr. Chairman, we now have cause to reconsider this historical view . . . This question arises today because of an accumulation of information in recent months and years. In my testimony today, I will describe some of the information.

Appendix 7 at 1-2 (footnote omitted). This testimony, like the reference to the *ASH* decision, adequately put the public on notice of FDA's past position.[1248]

Nor does FDA agree with the comment's argument that Congress, in reliance on past FDA pronouncements, enacted legislation precluding FDA from regulating tobacco products under the Act. As discussed in detail in sections IV. and V., above, the Agency has never categorically disclaimed jurisdiction over tobacco products and Congress has never expressly forbidden FDA from asserting jurisdiction over these products. The Agency had no affirmative obligation to posit in the Jurisdictional Analysis arguments it believes are legally infirm. *Cf. Florida Power and Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

Two tobacco industry comments also claimed that the Agency unfairly underplayed the complexity of issues such as "intended use," product categorization,

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[1248] The Agency's decision not to include a prolonged discussion of past Agency decisions is also based on the fact that the Agency is operating under a different set of facts. *See* section IV., above. The Agency did not commit a procedural error by failing to chronicle exhaustively decisions it made in a factually distinguishable context.

One of the comments also faults the Agency for failing to give notice of the "several" citizen petitions filed since 1977 that request that the Agency regulate cigarettes. In fact, the Agency incorporated by reference into the docket for this jurisdictional determination all significant dockets opened since the conclusion of the *ASH* litigation that relate to the Agency's jurisdiction over cigarettes and other nicotine delivery systems. The index the Agency provided to the public on September 29, 1995, in conjunction with the public display of the administrative record (as of that date), included a description of 9 dockets the Agency incorporated by reference into the record supporting the Jurisdictional Analysis. *See* AR (Vol. 504 Ref. 8934).

regulatory authority over combination products, and the applicability of the medical device provisions of the Act to cigarettes and smokeless tobacco. Instead, one of these comments asserted that all the Agency had done was publish "a tendentious anti-tobacco, pro-FDA-regulation manifesto" and, as such, the Agency's notice was "fraudulent."[1249] The Agency disagrees with this characterization, whether it was directed at the Proposed Rule or at the Jurisdictional Analysis. More to the point, the Agency disagrees with the argument that the Agency somehow deprived the public of fair notice of its Jurisdictional Analysis.

Again, to satisfy the APA's notice requirement for informal rulemaking, the Agency must specify with particularity the legal authority on which its proposal is based. K. Davis, *Administrative Law Treatise* (3d ed. 1994), at 299. Notice must be "informative" and must "fairly apprise" interested persons. *Id.* at 299-300. The Agency notes, however, that it need not unravel for the public each and every theoretical step in the analysis. *See Chemical Waste Management, Inc. v. Environmental Protection Agency*, 869 F.2d 1526, 1535 (D.C. Cir. 1989) (even where Agency statement in notice of rulemaking assumes rather than invites comments on an issue, notice is sufficient if it provides interested parties "with a clear indication of the agency's intended course of action. . . . "); *Center for Auto Safety v. Peck*, 751 F.2d 1336, 1361 (D.C. Cir. 1985) ("It is simply not the case, however, that all of the essential postulates for an agency rule must be contained in the record").

[1249] Joint Comment of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 33. *See* AR (Vol. 526 Ref. 95).

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Nevertheless, the Agency provided the public a detailed explanation of why it regards cigarettes and smokeless tobacco as drug/device combinations products, and why it believes the device provisions of the Act may, and should, be used to regulate these products. The Agency set forth its rationale for regulating these products as devices in both the Jurisdictional Analysis itself, *see* 60 FR 41521–41525, and in the Proposed Rule, *see* 60 FR 41348–41350. Further, the Agency identified for the public in the Proposed Rule the precise statutory provisions under which it proposed to regulate these products. 60 FR 41346–41352, 41372.

The Agency also put the public on notice, by referencing the Intercenter Agreement, *see* 60 FR 41521, that preloaded drug delivery systems are often regulated using the drug authorities under the Act. The Agency adequately explained—for notice purposes—why in this instance it proposed a different approach. 60 FR 41348–41350.

With respect to the application of the concept of "intended use," the lengthy discussion in Part II of the Jurisdictional Analysis provided the public with full disclosure of the Agency's rationale for regulating cigarettes and smokeless tobacco based on the "intended use" of these products. The core facts and precedents on which the Agency relied were displayed in a manner the Agency believes invited maximum public scrutiny. The Agency even provided the public with 11 different examples (9 from the 1980's and 1990's) of the application of the intended use concept to the determination of whether a product, absent express claims, may be regulated as a drug or a device. 60 FR 41527–41531. This level of explanation more than satisfied the requirements of the APA as interpreted by the relevant case law.

Finally, the quantity and quality of comments the Agency received on the Jurisdictional Analysis and the proposed rule suggest that, in fact, the public was adequately notified of the relevant issues. The Agency received more comments on these two documents than it has ever received on any other subject, with over 700,000 comments (including form letters) and over 95,000 distinct or unique sets of comments. More important, the Agency received hundreds of pages of comments on the very issues the Agency is said to have hidden from the public. Indeed, the two industry commenters who complained most vigorously about the supposed deficiencies in the Jurisdictional Analysis and the Proposed Rule themselves literally filed volumes of comments on the issues they claim the Agency concealed.[1250] Even the comments of interested nonindustry persons evidenced fair notice of the Agency's historical position and fair notice of the Agency's reasoning for applying the device provisions of the act to cigarettes and smokeless tobacco.[1251]

In *Chemical Waste Management*, 869 F.2d at 1535, the plaintiff complained that the Environmental Protection Agency's notice of proposed rulemaking treated a certain controversial issue "as an accomplished fact." Like two of the comments here, the plaintiff in *Chemical Waste Management* argued that the APA required the agency to

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[1250] *See, e.g.*, Joint Comments of the Smokeless Tobacco Manufacturers, Comment (Jan. 2, 1996), at 43-73 (discussing the Agency's historical position on Agency jurisdiction over tobacco products), 99-258 (discussing the Agency's application of the concept of intended use to tobacco products), and 259-307 (analyzing the Agency's position that cigarettes and smokeless tobacco are combination products that may be regulated as restricted devices). *See* AR (Vol. 526 Ref. 95). *Accord* Joint Comments of Cigarette Manufacturers at, among other places, Vol. I (discussing FDA's historical position on jurisdiction), Vol. II (discussing the concept of intended use), and Vol. V (discussing the regulation of cigarettes as medical devices). *See* AR (Vol. 535 Ref. 96).

[1251] *See, e.g.*, Public Citizen Litigation Group, Comment (Jan. 2, 1996), at 29-43. *See* AR (Vol. 700 Ref. 591); American Heart Association, Comment (Dec. 26, 1995). *See* AR (Vol. 700 Ref. 592).

highlight the fact that its position was subject to debate and to solicit comments on the issue. The United States Court of Appeals for the District of Columbia rejected this argument because EPA had provided notice of its intended course *and* because the agency in fact received numerous comments on the issue. *Id.*; *see also Shell Oil Co. v. EPA*, 950 F.2d 741, 757 (D.C. Cir. 1991) (recognition of a certain issue by commenters may be used to infer that adequate notice of the issue was given); *Haralson v. Federal Home Loan Bank Board*, 678 F. Supp. 925, 926 (D.D.C. 1987) (same).

As in cases such as *Chemical Waste Management*, the comments FDA received demonstrate that there is no serious claim to be made that the Agency has concealed issues from the public. Interested persons representing both sides in this controversial proceeding commented on the very issues the Agency supposedly underplayed in its notice of proposed rulemaking.

At bottom, the comments that challenge the adequacy of the Agency's proposal confuse the merits of the issue with procedure. The supposed deficiencies in FDA's legal reasoning, and the supposed failure to discuss contrary authorities, raise substantive issues to be resolved during the comment and response-to-comment phase of the proceeding. The possibility that some of the Agency's legal conclusions may be subject to debate does not render the notice inadequate. *See Chemical Waste Management*, 869 F.2d at 1535; *Natural Resources Defense Council, Inc. v. Hodel*, 618 F. Supp. 848, 864-865 (E.D. Cal. 1985).

2. The Agency Provided a "Reasoned Explanation" for Its Current Position

Several tobacco industry comments also claimed that the Agency violated the APA's notice provisions by failing to include a "reasoned explanation" for departing from past precedent on the issue of whether to regulate all cigarettes and smokeless tobacco. In their view, the Jurisdictional Analysis and Proposed Rule are procedurally infirm because the Agency did not adequately explain its basis for past decisions not to regulate these products, and did not distinguish those decisions from its present position. One of these comments likewise asserted that the Agency was required to include in the administrative record each and every document "that formed the basis for, or was an expression or reflection of, FDA's consistent position over more than 80 years that it does *not* have jurisdiction to regulate cigarettes." The absence of this material, according to the comment, demonstrates that the Agency failed to consider "obviously relevant" contrary information in asserting jurisdiction and in proposing to regulate these products.[1252]

The authorities cited in the comments require that, by the *close* of an administrative proceeding, the Agency must provide a "reasoned explanation" to the extent the Agency has departed from a prior formal position. *See, e.g., International Union, United Auto Workers v. NLRB*, 459 F.2d 1329 (D.C. Cir. 1972) (challenge to final decision of labor board); *Greyhound Corp. v. ICC*, 551 F.2d 414 (D.C. Cir. 1977) (challenge to final order of the ICC); *Baltimore and Annapolis Railroad Co. v. Washington Metro. Area*, 642 F.2d 1365 (D.C. Cir. 1980) (challenge to final order of

[1252] Joint Comments of Cigarette Manufacturers, Comment (Jan. 2, 1996), Vol. XII, at 16. *See* AR (Vol. 535 Ref. 96).

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transit commission); *RKO Gen., Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982) (challenge to final order of Federal Communications Commission denying renewal of television license); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Insurance*, 463 U.S. 29, 43 (1983) (challenge to final rule rescinding passive restraint seatbelt requirement contained in a Department of Transportation standard). None of these cases, which involve challenges to final Agency orders and final rules, holds that at the notice stage of a proceeding, when an Agency is proposing to depart from a prior position, the Agency must provide a comprehensive "reasoned explanation."

The Agency nevertheless agrees that the rulemaking proceeding, taken as a whole, should clearly and rationally justify changes in existing policies. Thus, FDA included in its Jurisdictional Analysis ample reference to its prior policy and a more than ample discussion of the Agency's rationale for changing its policy. Indeed, the very intent of the Jurisdictional Analysis, the 622 footnotes supporting the analysis, its appendices, and the more than 13,000 documents put on the administrative record was to provide the public with a full view of the new evidence that supports the need for the Agency to take a different approach to the regulation of these products.

As FDA made clear at the outset of its Jurisdictional Analysis, its decision to propose to regulate these products, when in the past it did so only when claims were made, is based on the fact that "[t]he quality, quantity, and scope of the evidence available to FDA today is greater than any other time when FDA has considered regulation of cigarettes and smokeless products." 60 FR 41464, n.1. Footnote 5 of the Jurisdictional Analysis, in particular, made clear that: (1) The Agency in the past had declined to exercise jurisdiction generally over these products; and (2) the reason for taking a different

position today is that the evidence before the Agency regarding the intended use of these products "has changed dramatically." 60 FR 41482, n.5. In addition, the Agency repeatedly stated that its analysis was based on "evidence now available to the Agency," 60 FR 41464, "current evidence," 60 FR 41466, evidence accumulated since 1980, 60 FR 41482, n.5, and evidence that has emerged since 1980 or was not widely known until recently, 60 FR 41483–41484, 41539.

Neither the APA nor the case law cited in the comments requires an agency to provide a thorough "reasoned explanation" for departing from precedent at the notice stage of a proceeding. Rather, the APA at most requires that the Agency give notice of its proposal to take a different position or view, and give enough information to allow the public a reasonable opportunity to comment. Not until the close of the proceeding, after public comment has been received, must the Agency ensure that it has provided a full "reasoned explanation." The Agency believes in this instance that its discussion at the notice stage met the standard that courts ordinarily do not impose until the close of an administrative proceeding. Nonetheless, the Agency has provided further, detailed discussion of the legal and factual bases for taking its current position in this document. *See* section IV., above.

Finally, the Agency does not agree that it was required to include in the record, at the notice stage, each and every prior Agency "decision, statement, and finding." Rather, the Agency appropriately included in the record of proposed rulemaking enough documentation to give the public notice of the Agency's prior position, and notice of the Agency's prior reasoning for declining to exercise jurisdiction generally over these products (absent express claims). For example, the Agency incorporated by reference into

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the administrative record for this jurisdictional determination all significant dockets opened since the conclusion of the 1977 *ASH* litigation that relate to the Agency's jurisdiction over these products. In addition, the Agency included in the record its response and supplemental response to the original *ASH* citizen petition. Those documents outline in detail the "contrary" view the Agency has allegedly concealed, including full discussions of the Agency's enforcement history with respect to tobacco products and the Agency's significant past pronouncements on the subject. In any case, the tobacco industry itself, through its comments, has introduced many of the Agency's earlier statements into the administrative record for this proceeding. Thus, unlike the facts presented in cases such as *Public Citizen v. Heckler*, 653 F. Supp. 1229 (D.D.C. 1986) and *Walter O. Boswell Memorial Hospital v. Heckler*, 749 F.2d 788 (D.C. Cir. 1984), as referenced in the comment, the administrative record for this proceeding already contains the "adverse" information claimed to be lacking, by virtue of the Agency's inclusion of documents in the record and the comments received by the Agency.

C. ADEQUACY OF THE COMMENT PERIOD

FDA received at least one comment urging that the comment period for both the Jurisdictional Analysis and the Proposed Rule was unreasonably short in light of the complexity of the Proposed Rule, the number of materials the Agency put on public display, and the possible impact of the rule on the tobacco industry. This comment argued that the Agency acted arbitrarily and capriciously in deciding to "limit" the comment period to 144 days from the publication of the August 11, 1995, Proposed Rule and Jurisdictional Analysis and 95 days from the public release of the documents FDA considered but did not rely upon.

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Far from having "limited" the comment period, FDA provided more than twice as much time for comment as the Agency's regulations require. *See* 60 FR 53560 (Oct. 16, 1995) (extending comment period for Proposed Rule); 60 FR 53620 (Oct. 16, 1995) (extending comment period on Jurisdictional Analysis).

The APA requires only that an agency "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments. . ." 5 U.S.C. 553(c). This is all the APA requires; there is no statutory requirement concerning how many days an Agency must allow, nor is there a requirement that an Agency must extend the period at the request of an interested person. *See Phillips Petroleum Co. v. Environmental Protection Agency,* 803 F.2d 545, 559 (10th Cir. 1986).

FDA's own regulations generally afford the public 60 days to comment on a Proposed Rule, unless the Commissioner shortens or lengthens the period for good cause. 21 CFR 10.40(b)(2). Executive Order 12889 implementing the North American Free Trade Agreement prescribes a minimum comment period of 75 days on certain proposed rules, except when good cause is shown for a shorter comment period. *See* 58 FR 69681 (Dec. 27, 1993).

Here, the Agency provided the public with 144 days from the publication of the Jurisdictional Analysis, 139 days from the release of the documents the Agency cited in support of the Jurisdictional Analysis (on August 16, 1995), and 95 days from the release of the materials the Agency considered but did not directly rely upon (on September 29, 1995). Thus, even when counting from the date the Agency released additional documents on which it did not rely, the Agency provided much more time for comment than its regulations, or the Executive Order, require.

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Further, on March 20, 1996, the *Federal Register* published notice of an additional 30 day comment period limited to specific documents the Agency added to the docket in support of the Agency's analysis of its jurisdiction. *See* 61 FR 11419 (Mar. 20, 1996). Although the Agency expressly limited the scope of the matters on which interested persons could comment, the March 20, 1996, action did provide the public with yet another 30 days on which to comment on issues related to such core subjects as the manipulation of the nicotine content of cigarettes and smokeless tobacco.

The Agency is not persuaded that any interested person has been unfairly prejudiced. First, FDA considers requests to extend the comment period on a case-by-case basis. Here, on the one hand, the commenter (the Tobacco Institute together with five major tobacco companies) presented in its request for additional time no compelling reasons to extend the period (such as a new, material study). On the other hand, FDA is faced with a matter raising serious public health concerns. For those reasons, the Agency denied the request to extend the period for as much time as the commenter had requested. *See* 60 FR 53560.

Second, each of the five tobacco companies that submitted this joint comment also filed suit against FDA immediately after FDA's Jurisdictional Analysis and notice of proposed rulemaking went on public display. The timing appears to indicate that these firms had been preparing to respond to an FDA proposal to regulate cigarettes and smokeless tobacco for some time. In any case, the cigarette manufacturers were able, jointly, to submit 2,000 pages of comments and 45,000 pages of exhibits and the smokeless tobacco manufacturers were able to jointly submit 474 pages of comments and 3,372 pages of exhibits within the time allotted for commenting on the Jurisdictional

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Analysis and Proposed Rule. Their submissions far outweigh any others. The Agency, therefore, is not persuaded that these commenters suffered prejudice as a result of FDA's allowing twice as much time as the Agency's regulations require. *See Conference of State Bank Supervisors v. Office of Thrift Supervision*, 792 F. Supp. 837, 843 (D.D.C. 1992) (in light of the comments received, court declined to find that 30 day comment period was insufficient to allow opportunity for meaningful public participation); *Phillips Petroleum Co.*, 803 F.2d at 559 (citing cases in which courts have upheld notice periods of 45 days or less).

In sum, the Agency believes it provided ample additional time for comments—nearly 90 days more than is provided for in the Agency's own procedural regulation. Given that it received over 700,000 comments, including 95,000 distinct sets of comments, the Agency is not persuaded that the length of the comment period unfairly hampered the quality of the public debate on this matter.

D. THE NEED FOR "ADDITIONAL PROCEDURES"

Finally, one comment claimed that the Agency's use of William A. Farone's statement[1253] "and other similar documents" raises "serious issues of procedural fairness."[1254] The comment asserted that "FDA appears to treat" Farone as if he has current first-hand knowledge of internal company deliberations, and that FDA is using Farone's statement as "testimonial evidence." Based on this characterization of the

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[1253] William A. Farone was the director of applied research in the research and development department of Philip Morris U.S.A. *See* Farone WA, The Manipulation and Control of Nicotine and Tar in the Design and Manufacture of Cigarettes: A Scientific Perspective (Mar. 8, 1996), at 17. *See* AR (Vol. 638 Ref. 2).

[1254] Joint Comments of the Cigarette Manufacturers, Supplemental Comment on the Statement of William A. Farone (Apr. 19, 1996), at 15. *See* AR (Vol. 700 Ref. 223).

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Farone report, the commenter argued that it should be allowed the opportunity to confront and cross-examine Farone on the record, examine any notes taken by FDA in interviews with Farone, and obtain an extension of the comment period in order to take Farone's deposition in a pending civil proceeding (to which FDA is not a party).[1255]

The Agency added the Farone statement and two affidavits from former tobacco industry employees as possible additional support (but by no means crucial) for the Agency's determination that it has jurisdiction over cigarettes and smokeless tobacco (because these products are intended for use as drug delivery devices). The comment failed to cite any legal authority to advance the proposition that, in making such a jurisdictional determination, the Agency must allow for cross-examination of witnesses and discovery of investigatory notes.

A brief review of the procedures the Agency employed in reaching its final jurisdictional determination is in order. At the same time that the Agency published notice of its proposal to regulate nicotine-containing cigarettes and smokeless tobacco, *see* 60 FR 41314, the Agency also published the results of its lengthy investigation into, and comprehensive analysis of, the Agency's jurisdiction over these products. *See* 60 FR 41453. Because of the unique importance of the jurisdictional issue, the Agency made its analysis available to the public, put the administrative record in support of its analysis on public display, and invited comments from the public on its analysis. When the Agency later supplemented the record in support of its Jurisdictional Analysis with the Farone

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[1255] In a letter to Grossi PT, Jr., counsel for Philip Morris Inc., from Schultz WB, FDA deputy commissioner for policy, dated Apr. 12, 1996, the Agency responded to these very arguments. In addition to the Agency's discussion in that letter, the Agency offers the response in the text of this document. *See* AR (Vol. 711 Ref. 44).

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report and two affidavits from former tobacco industry employees, the Agency invited public comment on these documents. *See* 61 FR 11419. Interested persons thus were provided the opportunity to present written statements consisting of facts, data, expert affidavits, studies, argument, and other relevant information with which to challenge, if they chose, the Agency's Jurisdictional Analysis and documents such as the Farone report that support it. Finally, in this document, the Agency is responding to all pertinent comments to the Agency's Jurisdictional Analysis.

FDA has primary jurisdiction to determine its jurisdiction. *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 627 (1973). At best, FDA must ensure that it meets "the rudiments of fair play" in determining its jurisdiction. *Id.* However, neither the Act nor the APA directs the Agency to commence a rulemaking proceeding, or conduct a formal evidentiary hearing, before making a jurisdictional determination. Nevertheless, FDA chose to employ the process outlined above—a notice and comment-type procedure—as a means by which to give the public an opportunity to participate the Agency's analysis of its jurisdiction and, thereby, met the conditions of "fair play."

There is nothing about the Farone report or the affidavits from former industry employees that would now require that the Agency employ even more procedures. In an ordinary informal rulemaking proceeding, such as that by which the Agency is promulgating its regulations governing cigarettes and smokeless tobacco, *see* 21 U.S.C. 371(a), an interested person generally has no right to cross-examine witnesses. *Compare* 21 U.S.C. 371(e) (enumerating those instances in which rulemaking under the Act may be subject to additional procedures, including the opportunity for a formal evidentiary hearing under sections 556 and 557 of the APA); *see Vermont Yankee Nuclear Power Corp. v.*

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Natural Resources Defense Council, Inc., 435 U.S. 519, 524 (1978). Exceptions to this rule can be made where Congress has expressly provided for additional procedures, *see* 5 U.S.C. 553(c), or where the rulemaking proceeding is in fact a "quasi-judicial determination" in which "a very small number of persons are 'exceptionally affected, in each case upon individual grounds . . . .'" *Vermont Yankee Nuclear Power Corp.*, 435 U.S. at 542 (quoting *United States v. Florida East Coast Ry. Co.*, 410 U.S. 224, 242-245 (1973), and holding that the APA established "the maximum procedural requirements" that courts can impose upon agencies in conducting rulemaking procedures and that the circumstances in which courts may require additional procedures, "if they exist, are extremely rare"); *Lead Indus. Ass'n, Inc. v. EPA*, 647 F.2d 1130, 1169-1170 (D.C. Cir.) (interested persons face an extremely heavy burden when they demand that an Agency provide procedures not required by statute, such as cross-examination), *cert. denied*, 449 U.S. 1042 (1980).

The comment FDA received did not seriously attempt to show that the Agency is in fact engaged in the type of individualized determination described in *Vermont Yankee*, nor did it reference any statutory provisions that would require additional procedures in this instance. Instead, the comment rested its argument on the "testimonial" and "first-hand" nature of the Farone report. The mere labeling of evidence in this way does not change the nature of a proceeding. Indeed, the tobacco industry with their comments submitted statements of individuals as exhibits. Nor is the company-specific nature of the evidence determinative.

The issue, instead, depends upon the purpose for which the Agency intends to use the evidence. *See United Air Lines, Inc.*, 766 F.2d at 1119; *Ass'n of National*

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Advertisers, Inc. v. FTC, 627 F.2d 1151, 1164-1165 (D.C. Cir. 1979), *cert. denied*, 447 U.S. 921 (1980). Where, as FDA has done here, the Agency is relying on evidence to reach essentially legislative judgments, for prospective application, and for the purpose of regulating an entire industry, there is overwhelming authority that an evidentiary hearing with cross-examination of witnesses is not required. *See, e.g., Vermont Yankee Nuclear Power Corp.*, 435 U.S. at 524; *Lead Indus. Ass'n*, Inc., 647 F.2d at 1169-1170; *United Air Lines, Inc. v. Civil Aeronautics Board*, 766 F.2d 1107, 1116-1121 (7th Cir. 1985); *Cleveland Elec. Illuminating Co. v. EPA*, 572 F.2d 1150, 1160 (6th Cir.), *cert. denied*, 439 U.S. 910 (1978); *Miami Nation of Indians of Indiana, Inc. v. Babbitt*, 887 F. Supp. 1158, 1173 (N.D. Ind. 1995).

The Agency is relying on documents such as the Farone report to support its jurisdiction over two broad categories of products (cigarettes and smokeless tobacco), and over all persons who manufacture, distribute, and sell these products. The Agency's inquiry into the operations of the leading tobacco firms was intended not to restrict or punish particular firms based on individualized grounds, but rather was intended to support regulatory controls that extend to the entire industry. Thus, the Agency's Final Rule governing youth access to cigarettes and smokeless tobacco products is properly characterized as rulemaking proceeding "in its purest form." *Vermont Yankee*, 435 U.S. at 542 n.16; *accord Lead Indus. Ass'n*, 647 F.2d at 1171 n.119. The fact, then, that Farone at one time worked for a leading tobacco firm does not change the purpose of this jurisdictional determination or in any way trigger the need for additional procedures. *See Commodity Exchange, Inc. v. Commodity Futures Trading Comm.*, 543 F. Supp. 1340, 1351 (S.D.N.Y. 1982) (summarizing case law holding that "informal rulemaking could

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include an examination of past practice in order to prescribe future rules," and that "even when only one entity is the immediate subject of an Agency's action, this alone does not change its rulemaking nature . . ."), *aff'd*, 703 F.2d 682 (2d Cir. 1983).

The comment also complained that FDA's decision not to make available its interview notes with witnesses who have come forward with public statements (*i.e.*, Farone, Rivers, and Uydess) raised issues of "procedural fairness."[1256] This concern, however, is offset by the confidential nature of such material and by the limited extent to which the Agency relied on the public statements of Uydess and Farone. The public is entitled to notice of, and the opportunity to comment on, all materials upon which the Agency has relied. For that reason, the Agency published notice of the three witnesses' statements, placed the statements on the public docket, and afforded the public an opportunity to comment on them. The former employers of these witnesses, in particular, had the opportunity to challenge the witnesses' statements by affidavit or rebuttal documentation. The Agency has decided to cite to the publicly-released Uydess affidavit and the Farone report in this jurisdictional determination only to the extent it has on hand information from other sources that corroborates or confirms the information that Uydess and Farone have given.[1257] Therefore, the Agency has proceeded fairly in its use of these witnesses' statements.

The comment's suggestion that there should be public access to the notes and transcripts of the confidential interviews with these witnesses raises a fundamental issue

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[1256] Joint Comment of Cigarette Manufacturers, Comment (Apr. 19, 1996), at 16. *See* AR (Vol. 700 Ref. 223).

[1257] The Agency has decided not to rely on the Rivers affidavit in this document.

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with implications that go beyond this jurisdictional determination. The Agency has broad authority to conduct investigations for the purposes of the Food, Drug, and Cosmetic Act. 21 U.S.C. 372 and 374. In conducting these investigations, it may be necessary for the Agency to pledge confidentiality to individuals who provide certain information and who fear retaliation if their identities are disclosed. Such disclosure may occur, directly, by naming them, or indirectly, by disclosing information only they could have provided. It is essential to the overall mission of the Agency that it sustain a reputation for maintaining the confidentiality of information given to it in confidence. Otherwise, the Agency risks losing invaluable sources of information which the Agency must have to carry out its statutory responsibilities. Moreover, disclosure of underlying investigatory materials may, in some instances, reveal the Agency's investigatory techniques, procedures, and methods, that it is entitled to shield from the public. *See* 5 U.S.C. 552(b)(7). In other instances, underlying investigatory materials may include trade secrets or other confidential commercial information, which the Agency is obligated to keep confidential. *See* 5 U.S.C. 552(b)(4). *See* generally 60 FR 66981, 66982 (Dec. 27, 1995) (the Agency's Statement of Procedures for Handling Confidential Information in Rulemaking); *see also* 5 U.S.C. 552(b)(6) and (b)(7). Thus, an express, unequivocal waiver of confidentiality on the part of a declarant would not necessarily obviate the Agency's obligation to protect such investigatory materials.

Information conveyed to the Agency during its interviews of these three witnesses, as reflected in the notes and transcripts of the interviews, includes the identification of other possible sources of information and other possible leads for the Agency to pursue, as well as trade secrets and other confidential commercial information. This information was

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conveyed to the Agency with the understanding that it would be kept confidential. The Agency is duty-bound to honor its pledge of confidentiality, without which its investigation in this matter would have been severely hampered, and maintain its reputation as a reliable protector of confidential sources and information. The public interest is enhanced, and not harmed, by the Agency's commitment to honor this pledge, particularly where, as here, the Agency has afforded the public notice and an opportunity to comment on the only information given by these witnesses that the Agency is citing in its jurisdictional determination. *Cf. Lame v. Department of Justice*, 654 F.2d 917, 925 (3d Cir. 1981) ("[O]nce there has been an expressed or implied assurance of confidentiality, a subsequent release or publication by the government of a portion of the information does not negate the exemption for any of the information originally given.").

In light of the notice and opportunity for public comment afforded by the Agency with respect to the public statements of these three witnesses, the limited extent of the Agency's use of the Uydess affidavit and the Farone report, and the confidentiality concerns outlined above, the Agency properly declined to make its underlying interview notes and transcripts publicly available in the course of this proceeding.

Finally, the Agency does not agree that it was in any way required to delay this important public health proceeding in order for Farone's deposition to be taken. The Agency is not a participant in the civil litigation in which Farone may be called to testify and has no ability to influence the procedures to be followed in that proceeding, let alone the schedule. In any case, the Agency has no statutory obligation to delay a jurisdictional determination in order to allow for the submission of cross-examination testimony from a wholly separate proceeding.

E. CONCLUSION

Because of the importance of the issues involved, the Agency took the unusual step of inviting public participation in the process of developing the final jurisdictional determination set forth in this Annex. The result is the most extensive administrative record in the history of the Agency. FDA employed procedures that exceeded all legal requirements and gave the public the opportunity for full participation.

Dated: August 9, 1996

D J Kessler MD

David A. Kessler, M.D.
Commissioner of Food and Drugs

[FR Doc. 96–21900 Filed 8–23–96; 2:00 pm]
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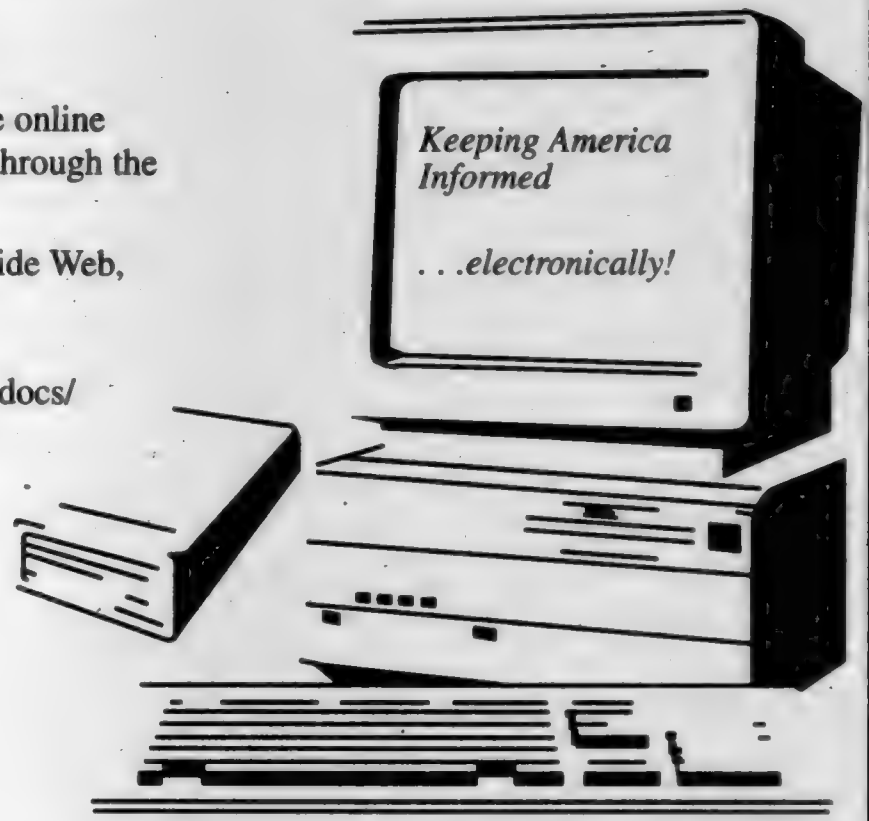

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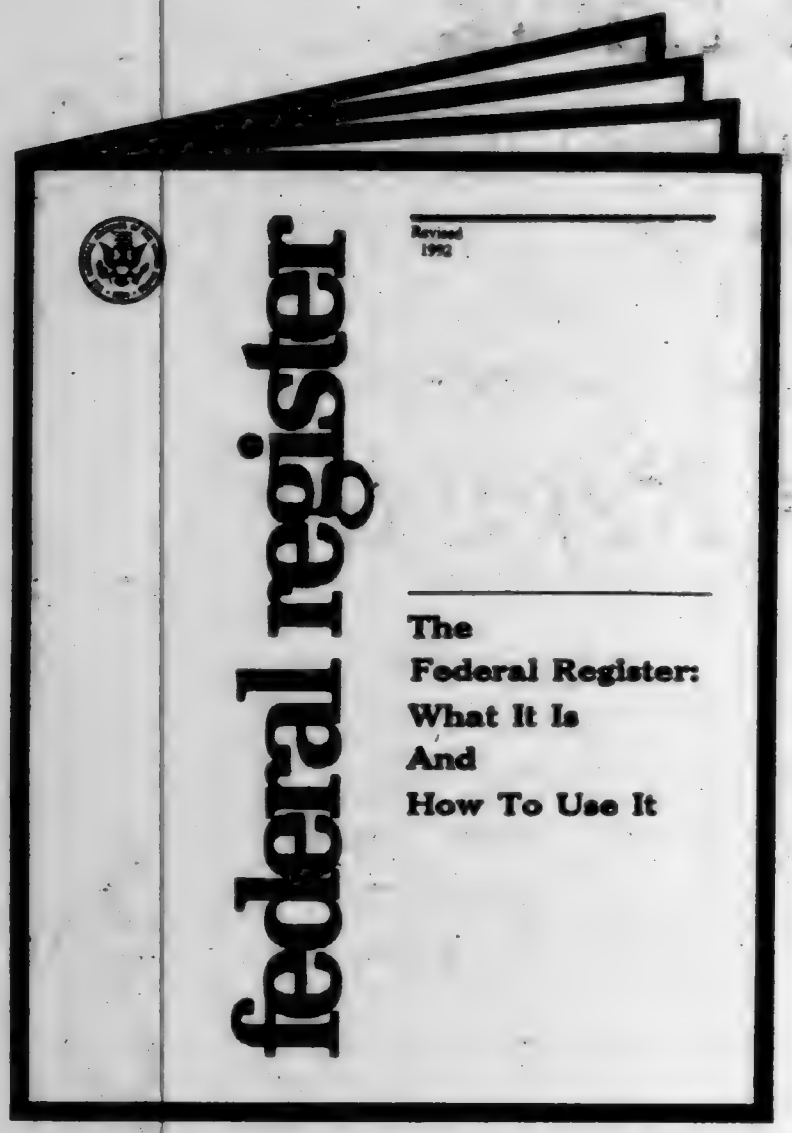

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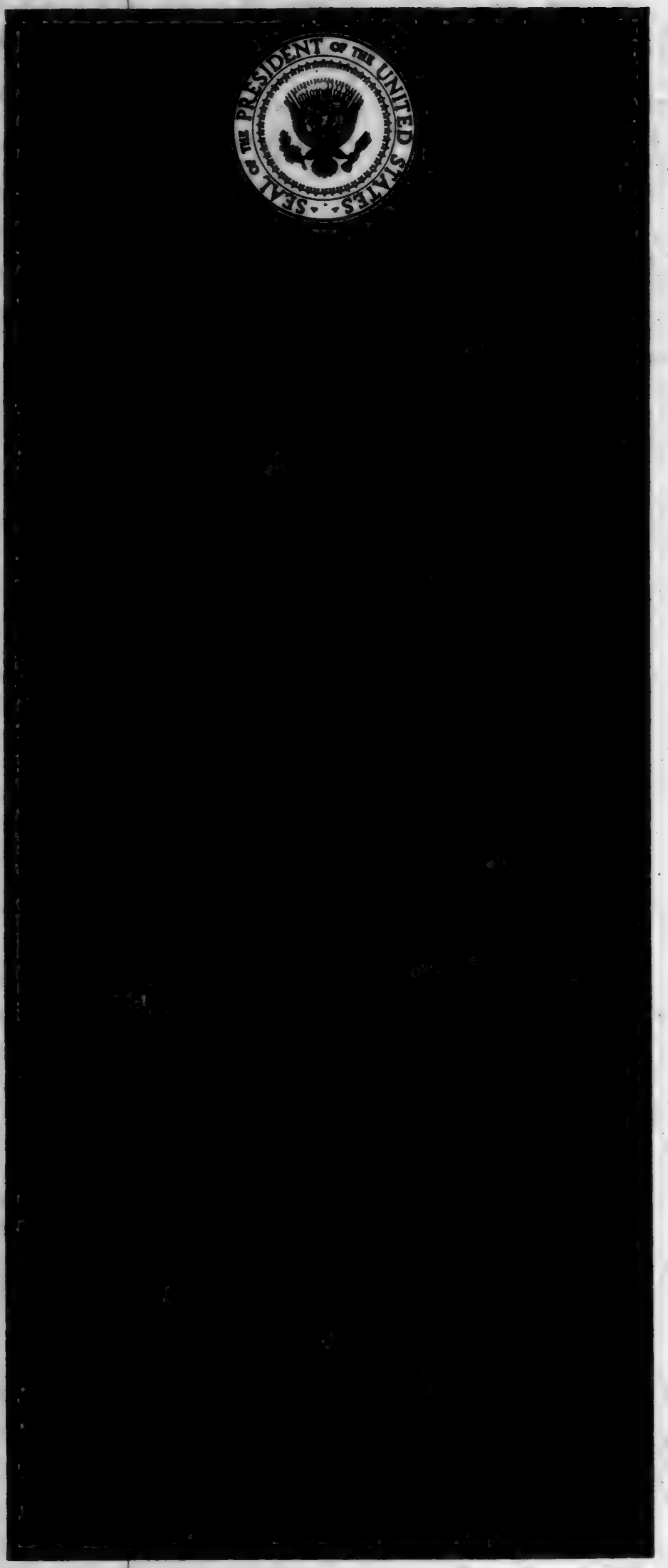

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Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 61, No. 169
Thursday, August 29, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3411

National Research Initiative Competitive Grants Program; Administrative Provisions; Nomenclature Changes

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Technical Amendment.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is amending its administrative provisions to correct the cross-references to reflect the redesignation of a part within the Code of Federal Regulations.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Phillip A. Carter, Policy Advisor, STOP 2245, Washington, D.C. 20250–2245. Telephone: (202) 720–9181. E-mail: oep@reeusda.gov.

SUPPLEMENTARY INFORMATION: .

On December 8, 1995, in 60 FR 63368–63370, CSREES published an amendment to redesignate 7 CFR part 3200 as part 3411. The amendatory language did not direct the Office of the Federal Register to change the cross-references.

Under the authority Sec. 2(i) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(i)), the cross-references in 7 CFR part 3411 are amended as indicated in the table below:

7 CFR cite	Remove	Add
3411.2(j)	3200.15	3411.15
3411.2(k)	3200.15	3411.15
3411.4(c)(2)(iii)	3200.15	3411.15
3411.4(c)(3)(iii)	3200.15	3411.15
3411.4(c)(8)	3200.4(b)	3411.4(b)
3411.4(c)(9)(i)	3200.4(b)	3411.4(b)
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3411.4(c)(9)(iii)	3200.4(b)	3411.4(b)
3411.4(c)(10)	3200.4(b)	3411.4(b)
3411.5(a)	3200.2(j), 3200.2(k), 3200.15, respectively.	3411.2(j), 3411.2(k), 3411.15, respectively
3411.5(b)	3200.7(c)	3411.7(c)
3411.7(c)	3200.5(b)	3411.5(b)
3411.10	3200.5, 3200.14, respectively.	3411.5, 3411.14, respectively
3411.15	3200.14, 3200.5(a), respectively.	3411.14, 3411.5(a), respectively

Done at Washington, D.C., this 22nd day of August, 1996.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 96–22033 Filed 8–28–96; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 772

[FHWA Docket No. 96–26]

RIN 2125–AD97

Procedures for Abatement of Highway Traffic Noise and Construction Noise

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This document revises the FHWA regulation that allows Federal participation for Type II noise abatement projects. Type II projects are proposed Federal or Federal-aid highway projects for noise abatement on an existing highway This revision will make the regulation consistent with the National Highway System Designation Act of 1995 (NHS). This action will restrict Federal participation for Type II projects to those that were approved before the date of enactment of the NHS legislation or are proposed along lands that were developed or were under substantial construction before approval

of the acquisition of the rights-of-way for, or construction of, an existing highway.

DATES: This interim final rule is effective September 30, 1996. Written comments must be received on or before November 27, 1996.

ADDRESSES: Submit signed, written comments to FHWA Docket No. 96–26, Federal Highway Administration, Office of the Chief Counsel, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Armstrong, Office of Environment and Planning, (202) 366–2073 or Mr. Robert Black, Office of the Chief Counsel, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Type II projects are not mandatory requirements of 23 CFR Part 772, but are proposed solely at the option of a State highway agency. By the end of 1992, 17 States had constructed at least one Type II project.

The FHWA believes that highway traffic noise should be reduced through a program of shared responsibility and, thus, has encouraged State and local governments to practice noise compatible land use planning and control in the vicinity of highways. However, lands immediately adjacent to highways frequently have been developed without proper regard for traffic noise impacts. Later, State highway agencies have constructed Type II noise barriers to abate these impacts. Since 1976, the FHWA noise regulations have required local officials to take measures to exercise land use control over undeveloped lands adjacent to highways to prevent development of incompatible activities before FHWA funds could normally be used to abate noise impacts upon land uses which came into existence after May 14, 1976.

In the recently passed NHS legislation (Pub. L. 104–59, 109 Stat. 605), Congress limited Federal participation in Type II projects to those which were already approved or future projects where development occurred prior to the construction of an existing highway. Thus, the FHWA is amending Part 772 to be consistent with the NHS legislation.

Federal participation in noise abatement measures will only be approved for projects that were approved before November 28, 1995, the date of enactment of the NHS, or for projects that are proposed along lands that were developed or were under substantial construction before approval of the acquisition of the rights-of-way for, or construction of, an existing highway. Land development or substantial construction must have predated the existence of any highway. The granting of a building permit, filing of a plat plan, or a similar action must have occurred prior to right-of-way acquisition or construction approval for the original highway.

In addition, the amendment provides that Federal participation in Type II abatement will be prohibited for lands or activities where Type I abatement has been previously determined not to be reasonable and feasible. This makes explicit that which is implicit in the noise regulations. If a noise abatement project does not qualify as reasonable and feasible when proposed as a Type I project, it won't later qualify as reasonable and feasible when proposed as a Type II project.

Rulemaking Analyses and Notices

The FHWA has determined that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this interim final rule incorporates into the regulations the language of the NHS statute. In addition, the FHWA has determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of information that would substantially change the regulation, since the revised rule incorporates a legislative change.

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the Department of Transportation Regulatory Policies and Procedures. The amendment clarifies some of the requirements for Federal participation in noise abatement projects for the 17 States that have constructed at least one Type II noise barrier. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The amendment deals only with the eligibility of certain State highway noise abatement projects for Federal participation. As such, it affects only State highway agencies and not small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. It does not impose any new obligation or requirement on a State. It does not affect the amount of Federal transportation funds that go to a State. A State is not required to have a Type II Noise Program. A State may still expend its own funds on a noise abatement project.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that this action would not have any effect on the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes

the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 772

Highways and roads, Noise control.

Issued on: August 21, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, Part 772 as set forth below.

PART 772—PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

1. The authority citation for Part 772 is revised to read as follows:

Authority: 23 U.S.C. 109(h), 109(i); 42 U.S.C. 4331, 4332; sec. 339(b), Pub. L. 104–59, 109 Stat. 568, 605; 49 CFR 1.48(b).

2. In § 772.13, paragraph (b) is revised to read as follows:

§ 772.13 Federal participation.

* * * * *

(b) For Type II projects, noise abatement measures will only be approved for projects that were approved before November 28, 1995, or are proposed along lands where land development or substantial construction predated the existence of any highway. The granting of a building permit, filing of a plat plan, or a similar action must have occurred prior to right-of-way acquisition or construction approval for the original highway. Noise abatement measures will not be approved at locations where such measures were previously determined not to be reasonable and feasible for a Type I project.

* * * * *

[FR Doc. 96–22059 Filed 8–28–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 586

[Docket No. FR–3820–I–05]

RIN 2506–AB72

Office of the Assistant Secretary for Community Planning and Development; Base Closure Community Redevelopment and Homeless Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development (HUD).

ACTION: Interim rule.

SUMMARY: This interim rule removes 24 CFR 586.50, to extend until the effective date of a final rule the period that the interim rule for the Base Closure Community Redevelopment and Homeless Assistance Program will be in effect.

DATES: Effective Date: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Perry Vietti, Office of Community Viability, Office of the Assistant Secretary for Community Planning and Development, Room 7220, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–2186, ext. 4396, or, TTY number for hearing and speech-impaired, (202) 708–0738 (these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: Section 586.50 was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The rule provides that the effective period of the interim rule may be extended by notice published in the **Federal Register**. Because the expiration date for the Base Closure Community Redevelopment and Homeless Assistance Program interim rule is currently September 17, 1996, and a final rule is not expected to be effective before that date, such a notice has been published extending the effective period of the interim rule until the final rule is published and made effective. This rule makes the conforming change to § 586.50.

II. Other Matters

Impact on the Environment

For the interim rule published for this part, HUD made a Finding of No Significant Impact with respect to the environment in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The changes made by this rule do not substantively affect the Finding of No Significant Impact prepared for the interim rule, and it remains applicable. That Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule only eliminates a sunset provision and keeps the interim rule in effect until the publication of a final rule.

Federalism Impact

The General Counsel of HUD, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have any impact under the Order. This rule only eliminates a sunset provision and keeps the interim rule in effect until the publication of a final rule.

Impact on the Family

The General Counsel of HUD, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule would not have an impact on family formation, maintenance, and general well-being. This rule only eliminates a sunset provision and keeps the interim rule in effect until the publication of a final rule.

List of Subjects in 24 CFR Part 586

Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, part 586 of title 24 of the Code of Federal Regulations is amended to read as follows:

PART 586—BASE CLOSURE COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

1. The authority citation for part 586 continues to read as follows:

Authority: 10 U.S.C. 2687 note; 42 U.S.C. 3535(d).

§ 586.50 [Removed]

2. Section 586.50 is removed.

Dated: August 21, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–22023 Filed 8–28–96; 8:45 am]

BILLING CODE 4210–29–P

24 CFR Part 586

[Docket No. FR–3820–N–04]

Office of the Assistant Secretary for Community Planning and Development; Base Closure Community Redevelopment and Homeless Assistance; Notice of Extension

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of extension of the Base Closure Community Redevelopment and Homeless Assistance Program.

SUMMARY: This notice extends until the effective date of a final rule the period that the interim rule for the Base Closure Community Redevelopment and Homeless Assistance Program will be in effect.

DATES: *Effective Date:* This Notice is effective August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Perry Vietti, Office of Community Viability, Office of the Assistant Secretary for Community Planning and Development, Room 7220, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–2186, ext. 4396, or, TTY number for hearing and speech-impaired, (202) 708–0738 (these telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: Section 586.50 of 24 CFR was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. The rule provides that the effective period of the interim rule may be extended by notice published in the **Federal Register**. Because the expiration date for the Base Closure Community Redevelopment and Homeless Assistance Program interim rule is currently September 17, 1996, and a final rule is not expected to be effective before that date, this notice extends the effective period of the interim rule until the final rule is published and made effective. A conforming change is also being made, in a separate publication, to remove § 586.50.

Accordingly, the time period during which the interim rule for the Base Closure Community Redevelopment and Homeless Assistance Program at 24 CFR part 586 will be in effect is extended until the final rule for 24 CFR part 586 is published and made effective.

Dated: August 21, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–22022 Filed 8–28–96; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70 and 71

Safety Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of MSHA acceptance of new personal noise dosimeters.

SUMMARY: After testing and evaluation, the Mine Safety and Health Administration (MSHA) announces the acceptance of the Quest Technologies Models Q–100, Q–200, Q–300, and Q–400 Personal Noise Dosimeters for use in coal mines.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Robert G. Peluso, Pittsburgh Technical Support Center, Mine Safety and Health Administration, 4800 Forbes Avenue, Pittsburgh, PA 15213, (412) 621–4500.

SUPPLEMENTARY INFORMATION: On September 12, 1978, the Mine Safety and Health Administration (MSHA) published a final rule that became effective on October 1, 1978 and amended the mandatory health standards governing noise dosimeters (43 FR 40760). Those amendments to 30 CFR parts 70 and 71 permitted the use of personal noise dosimeters to make required noise exposure measurements in coal mines and set forth the procedures to be followed in taking such noise measurements. When noise exposure measurements and surveys required by parts 70 and 71 are taken by personal noise dosimeters, the dosimeters must be acceptable to MSHA.

The test and criteria used by MSHA to determine acceptability of personal noise dosimeters are published in "MSHA Test Procedures and Acceptability Criteria for Noise Dosimeters," MSHA Informational Report IR–1072.

MSHA has recently completed testing and evaluation of the Quest Technologies Models Q–100, Q–200, Q–300 and Q–400 Personal Noise Dosimeters. MSHA has determined that the dosimeters met all of the criteria listed in MSHA's Informational Report IR–1072 and hereby gives notice that these dosimeters are acceptable for use under 30 CFR 70.505 and 71.801.

Accordingly, operators may use the Quest Technologies Models to take the noise exposure measurements and surveys at underground coal mines as required by 30 CFR 70.503, 508 and 509 and at surface coal mines as required by 30 CFR 71.802, 803 and 804.

Dated: August 14, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96–21800 Filed 8–28–96; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 856

Aircraft Arresting Systems

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is removing the rule on Aircraft Arresting Systems because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to ensure that only rules which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms Patsy Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 856

Aircraft, Airports, Aviation safety.

PART 856—[REMOVED]

Accordingly under the authority 10 U.S.C. 8013, 32 CFR Chapter VII is amended by removing Part 856.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–22068 Filed 8–28–96; 8:45 am]

BILLING CODE 3910–01–W

32 CFR Part 862

U.S. Air Force Responsibilities for Aircraft Leased for Airshows

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is removing the rule on U.S. Air Force Responsibilities for Aircraft Leased for Airshows. The rule is removed since the source document has been rescinded.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms Patsy Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 862

Aircraft, Aviation safety, Government contracts, Government property.

PART 862—[REMOVED]

Accordingly under the authority 10 U.S.C. 8013, 32 CFR Chapter VII is amended by removing Part 862.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–22070 Filed 8–28–96; 8:45 am]

BILLING CODE 3910–01–M

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32 CFR Part 909

USAF Training for Contractor Employees

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is removing the rule on USAF Training for Contractor Employees. The rule is removed since the source document has been rescinded.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms Patsy Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 909

Education, Government contracts.

PART 909—[REMOVED]

Accordingly under the authority 10 U.S.C. 8013, 32 CFR Chapter VII is amended by removing Part 909.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–22071 Filed 8–28–96; 8:45 am]

BILLING CODE 3910–01–W

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32 CFR Part 950

Authority to Administer Oaths

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is removing the rule on Authority to Administer Oaths. The rule is removed since the source document has been rescinded.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms Patsy Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 950

Investigations, Military law.

PART 950—[REMOVED]

Accordingly under the authority 10 U.S.C. 8013, 32 CFR Chapter VII is amended by removing Part 950.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–22069 Filed 8–28–96; 8:45 am]

BILLING CODE 3910–01–W

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 26 and 161

[CGD 92–052]

RIN 2115–AE36

Vessel Traffic Service New York Area

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is expanding the boundaries of Vessel Traffic Service New York (VTSNY) Area. This expansion provides the Vessel Traffic Center (VTC) with a more complete vessel traffic image for the entrances to New York Harbor via Ambrose Channel, Raritan Bay, and Long Island Sound. The expansion also furnishes additional information on weather conditions and potential hazards to navigation. As a result, the VTSNY area expansion will assist in safer and more efficient vessel transits in the congested New York Harbor channels and reduce the potential for groundings, rammings, and collisions.

EFFECTIVE DATE: This rule is effective on December 1, 1996.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Irene Hoffman, Project Manager, Office of Vessel Traffic Management. The telephone number is 202–267–6277.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 27, 1990, the Coast Guard published a final rule entitled "Regulations for Required Participation in Vessel Traffic Service, New York" which established mandatory vessel participation in VTSNY (55 FR 34908). The rule became effective on February 15, 1991.

The original VTSNY Area was bounded by the Verrazano-Narrows Bridge to the south, the Brooklyn Bridge and Holland Tunnel to the east and north, Kill Van Kull to the Arthur Kill Railroad Bridge, and Newark Bay to the Lehigh Valley Draw Bridge.

On May 25, 1993, the Coast Guard published an NPRM to expand the VTSNY area in three phases (58 FR 30098). Phase I would expand VTSNY's required participation area from the existing boundary at the Verrazano-Narrows Bridge south to the entrance buoys at Ambrose, Swash, and Sandy Hook Channels in Lower New York Bay, and west into Raritan Bay terminating at a line from Great Kills Light on Staten Island to Point Comfort in New Jersey.

Phase II would expand the VTSNY area to encompass the Arthur Kill, south from the boundary at the Arthur Kill Railroad Bridge to the line in Raritan Bay, described above in the Phase I description. The Raritan River above the Raritan River Railroad Bridge is not included within the VTSNY area.

Phase III would expand the VTSNY boundary at the Brooklyn Bridge up the East River to the Throgs Neck Bridge. The Coast Guard received two letters commenting on the proposal which were addressed in the Interim Final Rule (58 FR 460081, Sept. 1, 1993) implementing Phase I of the VTSNY area expansion.

Background and Purpose

The Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*), as amended by Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990, provides authority for the Secretary of the Department of Transportation to construct, operate, maintain, improve or expand vessel traffic services. The Secretary has delegated this authority to the Commandant, U.S. Coast Guard.

Existing regulations require compliance with reporting and participation procedures for certain vessels entering and operating within the VTSNY area. VTSNY has a

surveillance system and radiotelephone network for collecting and disseminating information within this prescribed area.

The expansion of VTSNY furnishes additional information on weather conditions, traffic congestion, and potential hazards to navigation. This information is then relayed to vessels operating in the expanded area, permitting them to respond to conditions as necessary.

Discussion of Changes

In the NPRM, the Coast Guard proposed to expand VTSNY's area incrementally. There were to be two interim final rules for Phases I and II and a final rule encompassing Phase III. However, due to construction and software development delays and funding problems, Phases II and III will be implemented together in this final rule. The interim final rule implementing Phase I expansion area will also be adopted as final in this rule.

There will be a "VTS User Familiarization" period between August 29, 1996, through November 30, 1996. This familiarization period will allow both the VTS operators and VTS Users to gradually become familiar with the new service area before participation becomes mandatory. During the "VTS User Familiarization" period, the VTC will be prepared to provide VTS services and vessels will be encouraged to participate voluntarily in using the VTS services in the expanded area.

The combined Phase II and III expanded areas extend into the Raritan Bay and north through the Aurthur Kill, connecting with the existing VTSNY boundary at the Aurthur Kill Railroad Bridge; and from the existing VTSNY boundary at the Brooklyn Bridge up the East River to the Throgs Neck Bridge.

The tables contained in 33 CFR parts 26 and 161 which describe the radio frequency monitoring areas assigned to the VTSNY Area are being modified to coincide with the effective date of the area expansion.

The Coast Guard and VTS Users of the VTSNY area recently evaluated the usage levels of the radiotelephone frequencies assigned to VTSNY. This evaluation concluded that VHF–FM Channel 14 was overloaded and Channel 11 was under-used. To correct this disparity and distribute the voice communications equally among the available radio frequencies, the reporting and monitoring frequencies for VTS New York have been changed. Vessel Movement Reporting System (VMRS) participants will now make their initial Sail Plan Report on Channel 11. The Final Report and all other reports will be made on Channel 14. VMRS participants and other VTS Users will monitor Channel 14 while transiting the VTS area. Vessels will not be required to monitor Channels 11 and 14 simultaneously. Instead of having two distinct frequency monitoring areas, the required monitoring areas for VHF–FM Channel 11 and Channel 14 will now extend throughout the VTS area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary. Most vessels that are affected by this rule are already required to participate in VTSNY. The expansion of the VTS area only requires vessels to communicate with the VTC earlier than presently required. In some cases, vessels are already voluntarily participating in the expanded areas. This final rule does not impose a measurable impact on these vessels.

Small Entities

The cost to small entities will not be significant because the expansion of VTSNY area only requires certain vessels to communicate with the VTC earlier than presently required. This requirement will have little impact on vessels that are affected by this rule. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. Section 2.B.2.1 of that instruction excludes administrative action and procedural regulations and policies which clearly do not have any environmental impact. "A Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**. This rule, which is primarily administrative, requires the Master, Pilot or person directing the movement of a vessel to participate in an expanded VTSNY area. No significant effect on the environment is expected. The Coast Guard also recognizes that this rulemaking may have a positive effect on the environment by minimizing the risk of environmental harm.

List of Subjects

33 CFR Part 26

Communications Equipment, Navigation (water), Marine safety, Radio, Telephone, Vessels.

33 CFR Part 161

Harbors, Reporting and recordkeeping requirements, Navigation (water), Vessels, Waterways.

Accordingly, the interim final rule amending 33 CFR Part 161 which was published at 58 FR 46081 on September 1, 1993, is adopted as final without change and 33 CFR parts 26 and 161 are amended as follows:

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

1. The authority citation for part 26 continues to read as follows:

Authority: 33 U.S.C. 1201–1208; 49 CFR 1.46. Sections 26.04 and 26.09 also issued under sec. 4118, Pub. L. 101–380, 104 Stat. 523 (33 U.S.C. 1203 note).

2. In § 26.03, Table 26.03(f) is revised to read as follows:

TABLE 26.03(f).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Vessel traffic services[1] call sign	Designated frequency[2] (channel designation)	Monitoring area
New York[3]		
New York Traffic[4]	156.550 MHz (Ch. 11) and 156.700 MHz (Ch. 14)	The navigable waters of the Lower New York Harbor bounded on the east by a line drawn from Norton Point to Breezy Point; on the south by a line connecting the entrance buoys at the Ambrose Channel, Swash Channel and Sandy Hook Channel to Sandy Hook Point; and on the southeast including the waters of the Sandy Hook Bay south to a line drawn at latitude 40°25′ N.; then west into waters of the Raritan Bay to the Raritan River Rail Road Bridge; and then north including the waters of the Arthur Kill and Newark Bay to the Lehigh Valley Draw Bridge at latitude 40°41.95′ N.; and then east including the waters of the Kill Van Kull and Upper New York Bay north to a line drawn east-west from the Holland Tunnel Ventilator Shaft at latitude 40°43.7′ N.; longitude 74°01.6′ W. in the Hudson River; and continuing east including the waters of the East River to the Throgs Neck Bridge, excluding the Harlem River.
	156.600 MHz (Ch. 12)	Each vessel at anchor within the above areas.
Houston[3]		The navigable waters north 29° N., west of 94°20′ W., south of 29°49′ N., and east of 95°20′ W.;
Houston Traffic	156.550 MHz (Ch. 11)	The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37′ N., 95°01.27′ W.).
	156.600 MHz (Ch. 12)	The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37′ N., 95°01.27′ W.).
Berwick Bay		
Berwick Traffic	156.550 MHz (Ch. 11)	The navigable waters south of 29°45′ N., west of 91°10′ W., north of 29°37′ N., and east of 91°18′ W.
St. Marys River		
Soo Control	156.600 MHz (Ch. 12)	The navigable waters of the St. Marys River between 45c°57′ N. (De Tour Reef Light) and 46°38.7′ N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16′ N. and 46°01.57′ N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay).
San Francisco[3]		
San Francisco Offshore Vessel Movement Reporting Service.	156.600 MHz (Ch. 12)	The waters within a 38 nautical mile radius of Mount Tamalpais (37°55.8′ N., 122°34.6′ W.) excluding the San Francisco Offshore Precautionary Area.
San Francisco Traffic	156.700 MHz (Ch. 14)	The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City.
Puget Sound[5]		
Seattle Traffic[6]	156.700 MHz (Ch. 14)	The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
	156.250 MHz (Ch. 5A)	The navigable waters of the Strait of Juan de Fuca east of 124°40′ W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52′ W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon waters of the Strait of Georgia east of 122°52′ W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island north of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Tofino Traffic[7]	156.725 MHz (Ch. 74)	The waters west of 124°40′ W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48° N., and east of 127° W.
Vancouver Traffic	156.550 MHz (Ch. 11)	The navigable waters of the Strait of Georgia west of 122°52′ W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait.
Prince William Sound[8]		
Valdez Traffic	156.650 MHz (Ch. 13)	The navigable waters south of 61°05′ N., east of 147°20′ W., north of 60° N., and west of 146°30′ W.; and, all navigable waters in Port Valdez.
Louisville[8]		
Louisville Traffic	156.650 MHz (Ch. 13)	The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above.

Notes:

[1]VTS regulations are denoted in 33 CFR Part 161. All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

[2]In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.

[3]Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.

[4]VMRS participants shall make their initial report (Sail Plan) to New York Traffic on Channel 11 (156.550 MHz). All other reports, including the Final Report, shall be made on Channel 14 (156.700 MHz). VMRS and other VTS Users shall monitor Channel 14 (156.700 MHz) while transiting the VTS area. New York Traffic may direct a vessel to monitor and report on either primary frequency depending on traffic density, weather conditions, or other safety factors. This does not require a vessel to monitor both primary frequencies.

[5]A Cooperative Vessel Traffic Service was established by the United States and Canada within adjoining waters. The appropriate vessel traffic center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.

[6]Seattle Traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.

[7]A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.

[8]The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by 26.05 of this chapter is not limited to the monitoring area.

PART 161—VESSEL TRAFFIC MANAGEMENT

3. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 33 U.S.C. 1232, 49 CFR 1.46.

4. In § 161.12, Table 161.12(b) is revised to read as follows:

TABLE 161.12(b).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Vessel traffic services call sign	Designated[1] frequency (channel designation)	Monitoring area
New York[2]		
New York Traffic[3]	156.550 MHz (Ch. 11) and 156.700 MHz (Ch. 14)	The navigable waters of the Lower New York Harbor bounded on the east by a line drawn from Norton Point to Breezy Point; on the south by a line connecting the entrance buoys at the Ambrose Channel, Swash Channel and Sandy Hook Channel to Sandy Hook Point; and on the southeast including the waters of the Sandy Hook Bay south to a line drawn at latitude 40°25′N.; then west into waters of the Raritan Bay to the Raritan River Rail Road Bridge; and then north including the waters of the Arthur Kill and Newark Bay to the Lehigh Valley Draw Bridge at latitude 40°41.95′N.; and then east including the waters of the Kill Van Kull and Upper New York Bay north to a line drawn east-west from the Holland Tunnel Ventilator Shaft at latitude 40°43.7′N.; longitude 74°01.6′W. in the Hudson River; and continuing east including the waters of the East River to the Throgs Neck Bridge, excluding the Harlem River.
	156.600 MHz (Ch. 12)	Each vessel at anchor within the above areas.
Houston[2]		The navigable waters north of 29°N., west of 94°20′W., south of 29°49′N., and east of 95°20′W.
Houston Traffic	156.550 MHz (Ch. 11)	The navigable waters north of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37′N., 95°01.27′W.).
	156.600 MHz (Ch. 12)	The navigable waters south of a line extending due west from the southern most end of Exxon Dock #1 (29°43.37′N., 95°01.27′W.).
Berwick Bay		
Berwick Traffic	156.550 MHz (Ch. 11)	The navigable waters south of 29°45′N., west of 91°10′W., north of 29°37′N., and east of 91°18′W.
St. Marys River		
Soo Control	156.600 MHz (Ch. 12)	The navigable waters of the St. Marys River between 45°57′N. (De Tour Reef Light) and 46°38.7′N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16′N. and 46°01.57′N. (LaPointe to Sims Point in Potagannissing Bay and Worsley Bay).
San Francisco[2]		
San Francisco Offshore Vessel Movement.	156.600 MHz (Ch. 12)	The waters within a 38 nautical mile radius of Mount Tamalpais (37°55.8′N., 122°34.6′W.) excluding the San Francisco Offshore Precautionary Area.
Reporting Service San Francisco Traffic.	156.700 MHz (Ch. 14)	The waters of the San Francisco Offshore Precautionary Area eastward to San Francisco Bay including its tributaries extending to the ports of Stockton, Sacramento and Redwood City.
Puget Sound[4]		
Seattle Traffic[5]	156.700 MHz (Ch. 14)	The navigable waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Marrowstone Point and Lagoon Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.

TABLE 161.12(b).—VESSEL TRAFFIC SERVICES (VTS) CALL SIGNS, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Vessel traffic services call sign	Designated[1] frequency (channel designation)	Monitoring area
	156.250 MHz (Ch. 5A)	The navigable waters of the Strait of Juan de Fuca east of 124°40′W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52′W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52′W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Marrowstone Point and Lagoon Point and all waters east of Whidbey Island north of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Tofino Traffic[6]	156.725 MHz (Ch. 74)	The waters west of 124°40′W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48°N., and east of 127°W.
Vancouver Traffic	156.550 MHz (Ch. 11)	The navigable waters of the Strait of Georgia west of 122°52′W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait.
Prince William Sound[7] Valdez Traffic	156.650 MHz (Ch. 13)	The navigable waters south of 61°05′N., east of 147°20′W., north of 60°N., and west of 146°30′W.; and, all navigable waters in Port Valdez.
Louisville[7] Louisville Traffic	156.650 MHz (Ch. 13)	The navigable waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above.

Notes:

[1] In the event of a communication failure either by the vessel traffic center or the vessel or radio congestion on a designated VTS frequency, communications may be established on an alternate VTS frequency. The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is monitored in each VTS area; and it may be used as an alternate frequency, however, only to the extent that doing so provides a level of safety beyond that provided by other means.

[2] Designated frequency monitoring is required within U.S. navigable waters. In areas which are outside the U.S. navigable waters, designated frequency monitoring is voluntary. However, prospective VTS Users are encouraged to monitor the designated frequency.

[3] VMRS participants shall make their initial report (Sail Plan) to New York Traffic on Channel 11 (156.550 MHz). All other reports, including the Final Report, shall be made on Channel 14 (156.700 MHz). VMRS and other VTS Users shall monitor Channel 14 (156.700 MHz) while transiting the VTS area. New York Traffic may direct a vessel to monitor and report on either primary frequency depending on traffic density, weather conditions, or other safety factors. This does not require a vessel to monitor both primary frequencies.

[4] A Cooperative Vessel Traffic Service was established by the Untied States and Canada within adjoining waters. The appropriate vessel traffic Center administers the rules issued by both nations; however, it will enforce only its own set of rules within its jurisdiction.

[5] Seattle traffic may direct a vessel to monitor the other primary VTS frequency 156.250 MHz or 156.700 MHz (Channel 5A or 14) depending on traffic density, weather conditions, or other safety factors, rather than strictly adhering to the designated frequency required for each monitoring area as defined above. This does not require a vessel to monitor both primary frequencies.

[6] A portion of Tofino Sector's monitoring area extends beyond the defined CVTS area. Designated frequency monitoring is voluntary in these portions outside of VTS jurisdiction, however, prospective VTS Users are encouraged to monitor the designated frequency.

[7] The bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13), is used in these VTSs because the level of radiotelephone transmissions does not warrant a designated VTS frequency. The listening watch required by 26.05 of this chapter is not limited to the monitoring area.

5. Section 161.25 is revised to read as follows:

§ 161.25 Vessel Traffic Service New York Area.

The area consists of the navigable waters of the Lower New York Harbor bounded on the east by a line drawn from Norton Point to Breezy Point; on the south by a line connecting the entrance buoys at the Ambrose Channel, Swash Channel, and Sandy Hook Channel to Sandy Hook Point; and on the southeast including the waters of Sandy Hook Bay south to a line drawn at latitude 40°25′N.; then west into waters of the Raritan Bay to the Raritan River Rail Road Bridge; and then north including the waters of the Arthur Kill and Newark Bay to the Lehigh Valley Draw Bridge at latitude 40°41.9′N.; and then east including the waters of the Kill Van Kull and Upper New York Bay north to a line drawn east-west from the Holland Tunnel Ventilator Shaft at latitude 40°43.7′N., longitude 74°01.6′W. in the Hudson River; and then continuing east including the waters of the East River to the Throgs Neck Bridge, excluding the Harlem River.

Note: Although mandatory participation in VTSNY is limited to the area within the navigable waters of the United States, VTSNY will provide services beyond those waters. Prospective users are encouraged to report beyond the area of required participation in order to facilitate advance vessel traffic management in the VTS area and to receive VTSNY advisories and/or assistance.

Dated: August 20, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–21733 Filed 8–28–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI69–01–7295a; FRL 5552–1]

Approval and Promulgation of State Implementation Plan; Wisconsin; GenCorp Inc. Site-Specific SIP Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves a revision to the Wisconsin State Implementation Plan (SIP) for ozone that was submitted on November 17, 1995. This revision is an alternative control method for controlling volatile organic compound (VOC) emissions from storage tanks at the GenCorp Inc.-Green Bay facility. The EPA has approved Wisconsin's general rule for the storage of VOCs. The approved rule states that any deviation from the specifically required control methods found in the State's rule must be proven to be equivalent in controlling the VOC emissions before being approved into the SIP. Because GenCorp Inc. has chosen a different control method than those listed specifically in Wisconsin's rule, a site-specific SIP revision is required to evaluate the control method being used at the Green Bay facility. In the proposed rules section of this **Federal Register**, the EPA is proposing approval of, and soliciting comments on, this requested SIP revision. If adverse comments are received on this action, the EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes federally enforceable the State's rule that has been incorporated by reference.

DATES: The "direct final" is effective on October 28, 1996, unless EPA receives adverse or critical comments by September 30, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background Information

Wisconsin rule NR 419 is currently approved into the Wisconsin SIP. Part 419.05 applies to the storage of volatile organic compounds (VOCs). Rule 419.05 requires the use of specific control methods or equally effective alternative control methods approved by both the Wisconsin Department of Natural Resources (WDNR) and Environmental Protection Agency (EPA). As part of a proposed project at the GenCorp Inc.-Green Bay facility, a tank used to store acrylonitrile, a VOC, will be constructed and be subject to the requirements of 419.05. Since the GenCorp facility will not be using the controls specified in Rule 419.05, WDNR has submitted a site-specific SIP revision to obtain federal approval of the alternative control methods that the GenCorp facility will be employing. The WDNR has made the determination that the controls that the GenCorp facility will be using are more effective than the controls required by Rule 419.05.

II. Evaluation of State Submittal

The GenCorp facility proposes to construct a styrene-butadiene-acrylonitrile latex manufacturing project. As part of this project a vessel used to store acrylonitrile will be necessary. A vessel of this type is subject to the requirements of Wisconsin Rule NR 419.05.

Acrylonitrile will be unloaded from a railcar, approximately one 26,000 gallon railcar will be unloaded per month. The railcars will be connected to the unloading rack piping through reinforced hoses. One or two hoses will convey liquid while another will return any vapor displaced from the storage tank (vapor balance system). Unloading is accomplished with a self-priming centrifugal pump. The liquid is transferred through 3" welded carbon steel piping to the storage tank.

Acrylonitrile will be stored in a 50,000 gallon horizontal (carbon steel) pressure vessel. The tank will be located in a watertight containment basin constructed adjacent to the styrene storage tank area. The storage tank will be operated at an average pressure of 5 psi, with an over-pressure safety relief set at 100 psi. In addition to the safety relief, the tank is equipped with a rupture disk and telltale gage. The tank will be padded with nitrogen gas to maintain working pressure above one atmosphere to enable pumping raw material to the polymerization vessels. The acrylonitrile tank will be a new, butt-welded tank, with a separate containment system surrounding the tank.

The emissions from storage tanks can be divided into two categories: standing storage losses and working losses. Standing storage loss is the expulsion of vapor from a tank through vapor expansion and contraction, which are the result of changes in temperature and barometric pressure. Working losses are emissions that occur during filling operations.

The controls specifically required by Rule 419.05, floating roofs, vapor condensation systems, and vapor holding tanks, are used to control both types of emissions.

Floating roofs are used to reduce emissions that occur when the storage tanks are being refilled. Vapor condensation systems will collect and condense any VOC emissions exiting through vents when the pressure in a tank increases due to temperature changes or filling of the tank. Vapor holding tanks are also used to collect emissions that would exit through vents due to pressure changes. These last two control devices are usually not used in combination with floating roofs because the floating roofs will minimize working loss emissions significantly and would not require additional control.

The WDNR has approved GenCorp-Inc.'s proposed alternative storage tank controls as being more effective than the controls required by Rule 419.05. The use of a low-pressure tank will eliminate the standing storage losses and the use of a vapor recovery system will virtually eliminate any working losses as well. It is estimated that GenCorp-Inc.'s proposed controls will achieve an additional 1,113 pounds of VOC per year in reductions above the controls specifically mentioned in Rule 419.05.

III. Final Action

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 28, 1996 unless, by September 30, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The

EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 28, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The EPA approves the condition from Wisconsin's construction permit #95–CHB–407 That requires the use of a pressure vessel storage tank with a vapor balance system for storage of acrylonitrile which will be used in the process of manufacturing styrene-butadiene-acrylonitrile latex making this condition federal enforceable.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 5, 1996.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(94) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(94) A revision to the ozone State Implementation Plan (SIP) was submitted by the Wisconsin Department of Natural Resources on November 17, 1995. This revision consists of a site-specific revision for the GenCorp Inc.-Green Bay facility. This revision is required under Wisconsin's federally approved rule, NR 419.05. The storage requirements contained in NR 419.05 specifically require floating roofs, vapor condensation systems, and vapor holding tanks, or an equally effective alternative control method approved by the Wisconsin Department of Natural Resources and U.S. EPA. The GenCorp Inc.-Green Bay facility has chosen to utilize a pressure vessel storage tank with a vapor balance system, as specified in Permit 95–CHB–407 which was issued on August 29, 1995. This pressure vessel will be used for the storage of acrylonitrile that will be used to manufacture styrene-butadiene-acrylonitrile latex.

(i) *Incorporation by reference.* The following sections of the Wisconsin air pollution construction permit 95–CHB–407 are incorporated by reference.

(A) The permit condition requiring a pressure vessel storage tank with a vapor balance system for the styrene-butadiene-acrylonitrile latex manufacturing process, as created and published Wisconsin Permit 95–CHB–407, August 29, 1995 and effective August 29, 1995.

[FR Doc. 96–21908 Filed 8–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5569–1]

Clean Air Act Interim Approval of Operating Permits Program; South Coast Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating direct final interim approval of the title V operating permits program submitted by the California Air Resources Board, on behalf of the South Coast Air Quality Management District (South Coast or District), for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. Today's action also promulgates direct final approval of South Coast's mechanism for receiving delegation of section 112 standards as promulgated.

EFFECTIVE DATE: This direct final rule is effective on October 28, 1996 unless adverse or critical comments are received by September 30, 1996. If the effective date is changed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing this direct final rule are available for public inspection (docket number CA–SC–96–1–OPS) during normal business hours at the following location: Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415/744–1252), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (Act)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 (part 70), require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing interim approval of the operating permit program submitted by South Coast should adverse or critical comments be filed.

If EPA receives adverse or critical comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 28, 1996.

B. Federal Oversight and Sanctions

This interim approval, which may not be renewed, extends until October 29, 1998. During this interim approval period, South Coast is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If South Coast fails to submit a complete corrective program for full approval by April 29, 1998, EPA will start an 18-month clock for mandatory sanctions. If South Coast then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that South Coast has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that South Coast has come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves South Coast's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date South Coast has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that South Coast has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if South Coast has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval, EPA must promulgate, administer and enforce a federal permits program for South Coast upon interim approval expiration.

II. Direct Final Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of South Coast's title V operating permits program that must be corrected to meet the minimum requirements of part 70. The full program submittal; the Technical Support Document (TSD), which contains a detailed analysis of the submittal; and other relevant materials are available for inspection as part of the public docket (CA–SC–96–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. Support Materials

South Coast's title V program was submitted by the California Air Resources Board (CARB) on December 27, 1993. The South Coast submittal included the following implementing and supporting regulations: Regulation XXX—Title V Permits; Rule 204—Permit Conditions; Rule 206—Posting of Permit to Operate; Rule 210—Applications; Rule 301—Permit Fees; Rule 518—Hearing Board Procedures for Title V Facilities; and Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II. The EPA found the program to be incomplete on March 4, 1994 because it lacked permit application forms. On March 6, 1995, the District submitted its forms and EPA deemed the program complete on March 30, 1995. On February 10, 1995, the District adopted a rule to implement title IV. EPA deemed the South Coast acid rain program acceptable on March 29, 1995 (see 60 FR 16127) and on April 11, 1995, it was submitted to EPA as part of the District's title V program. On August 11, 1995, the District amended the regulatory portion of its submittal. On September 26, 1995, EPA received from CARB, on behalf of the District, the revised Regulation XXX, revised Rule 518—Variance Procedures for Title V Facilities, and a new rule, Rule 518.1—Permit Appeal Procedures for Title V Facilities. Additional materials were received on April 24, 1996, including draft revised application forms, a demonstration of adequacy of the District's group processing provisions, and several additional rules, including the following, which are relied upon to implement the title V program: Rule 219—Equipment not Requiring a Written Permit Pursuant to Regulation II, adopted August 12, 1994 (supersedes previously submitted version); Rule 301—Permit Fees, adopted October 13, 1995 (supersedes previously submitted version); and Rule 441—Research Operations, adopted May 5, 1976. In conjunction with its evaluation of the South Coast's title V operating permits program, EPA reviewed all of the rules, including Regulations XX and XIII, submitted by the District. While EPA is not specifically approving rules not directly relied upon to implement part 70 as part of the District's operating permits program, changes to these rules will be reviewed by EPA to ensure implementation of the part 70 program is not compromised. See the TSD for a complete listing of rules submitted by the District. Rule 518.2, Federal Alternative Operating Conditions, adopted January 12, 1996, was also submitted and is discussed below under II.A.2.g.

On May 6, 1996 application completeness criteria were received and on June 5, 1996 revised application forms were received. The District submitted a demonstration that shows South Coast will permit 60% of its title V sources and 80% of emissions attributable to title V sources within three years of program approval (see section II.A.2.d. below) along with a sample of facility permit application on May 23, 1996. Finally, on July 29, 1996, the District submitted revised application forms and completeness criteria.

Enabling legislation for the State of California and the Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in South Coast's submittal. The South Coast submission now contains a Governor's letter requesting source category-limited interim approval, District implementing and supporting regulations, and all other program documentation required by section 70.4. An implementation agreement is currently being developed between South Coast and EPA.

2. Regulations and Program Implementation

South Coast's title V implementing regulation, District Regulation XXX, was first adopted on October 8, 1993. EPA reviewed Regulation XXX both before and after rule adoption and identified numerous regulatory deficiencies. These deficiencies were communicated to South Coast in letters dated October 7, 1993, December 7, 1994, April 6, 1995, April 13, 1995, and May 1, 1995. In response, South Coast revised Regulation XXX and Rule 518. The amended rules were adopted on August 11, 1995 and submitted to EPA by CARB, on behalf of the District, on September 26, 1995. EPA is therefore evaluating and acting on the August 11, 1995 version of Regulation XXX and Rule 518.

South Coast's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are a few deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Variances. South Coast's Hearing Board has the authority to issue variances from requirements imposed by State and local law. *See* California Health and Safety Code sections 42350 *et seq.* In the legal opinion submitted for California operating permit programs, California's Attorney General states that "[t]he variance process is *not* part of the Title V permitting process and does not affect federal enforcement for violations of the requirements set forth in a Title V permit." (Emphasis in original.)

EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70, and consequently, is not taking action on those provisions of State and local law. EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act.

A part 70 permit may incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR § 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised to incorporate those terms of a variance that are consistent with applicable requirements.

b. Group Processing Provisions. Part 70 provides for the group processing of minor permit modifications, providing the cumulative emissions increases from the pending changes do not exceed 10% of allowable emissions for the unit, 20% of the major source threshold, or 5 tons per year (tpy), which ever is lower. Section 70.7(e)(3)(i)(B) allows the District to establish and EPA to approve alternative levels, if such alternative levels would reasonably alleviate severe administrative burdens and the individual processing of changes below the levels would yield trivial environmental benefits.

South Coast allows cumulative emissions increases of up to 5 tons per year under its group processing

provisions. This will in some cases exceed the levels set out in part 70. For example, 20% of the major source threshold for NO_x and VOC in the South Coast is 2 tons per year. Appendix C of the South Coast's April 24, 1996 submittal contains a demonstration that supports the use of a 5 ton per year cut-off for group processing. The District notes that its requirement that sources obtain a permit revision prior to making a change eliminates any environmental risk associated with delays allowed by group processing. It also points out that the ability to group several changes into one permit action alleviates the administrative burden of multiple rounds of processing and provides for a shorter period of time when a facility permit is in flux. EPA believes the District has met the requirements of 70.7(e)(3)(i)(B) and is therefore approving the alternative group processing level in the South Coast regulation.

c. Provisions for Processing Certain Modifications Subject to Major NSR Via the Minor Permit Revision Track. The South Coast Air Quality Management District is the only extreme ozone nonattainment area in the country. Because of its nonattainment status, any increase of emissions of NO_x or VOC from a discrete operation, unit or other pollutant emitting activity is a modification subject to major NSR. Such modifications are generally required by part 70 to undergo public review. Potentially several hundred to several thousand major NSR modifications can occur each year in the South Coast under applicable definitions of major source (10 tons per year) and major modification (any emissions increase). For perspective, a major modification in serious or severe ozone nonattainment areas is triggered by 25 tons of emissions accumulated over a five year period, and in most areas in the country, a major modification does not occur unless there is an emissions increase of 40 tons per year (tpy).

The District has included in its rule provisions allowing modifications that result in cumulative (over the 5 year term of the permit) emissions increases of up to 40 pounds per day (about 7.3 tpy) of NO_x and 30 pounds per day (about 5.5 tpy) of VOC to be processed via its minor permit revision procedures. South Coast does not allow applicants to implement minor permit revisions prior to final action by the District on the revision. Therefore, what distinguishes this treatment from the significant permit revision procedure that would otherwise be required is that there would be no public comment period during the permit issuance process. The public does have the opportunity, however, to review the revision after it is issued and to petition EPA to object to the permit. (*See* 70.8 and 3003(l).)

EPA believes that this aspect of the South Coast program is approvable. Requiring full public participation procedures for modifications that result in emissions increases below the levels specified in the District's operating permits rule would be unworkable in the South Coast. The sheer number of notices that would be required if all major modifications were handled in this way would dilute attention that should be focused on the more significant of the changes that qualify as "major." Although it makes sense that the scope of changes subject to prior public review should be broadest in areas with the greatest nonattainment problems, EPA believes that such a notice requirement ceases to yield a benefit, and may in fact be damaging to the purpose of a public review requirement, if applied to the smallest changes that would qualify as "major" in an extreme area. EPA further believes that the threshold levels for prior public review found in the South Coast program are reasonable, and will strike an appropriate balance between the need for broad public review on the one hand, and on the other, the administrative burden on the District and the quantitative limits on the public's ability to provide review that is meaningful. EPA notes that it has previously considered these "triggers" for public notice in the context of the District's new source review program, and believes them to be adequate.

EPA wishes to emphasize that this finding is unique to the South Coast. As the only extreme area in the nation, the South Coast District is subject to statutory constraints referred to above that affect NSR and title V. These constraints, which flow directly from the provisions of the CAA, result in both a volume and proportion of changes classified as "major" that distinguish the South Coast from all other title V programs.

See section II.B.1.(3) below for a discussion of aspects of the South Coast permit modification procedures that are proposed for interim approval.

d. Applicability and Duty to Apply: Two Phases of Permitting. While the "title V facility" definition in South Coast's title V program fully meets the applicability requirements of part 70, the District has allowed sources with actual emissions below certain thresholds to defer the obligation to apply for title V permits until no later than three and a half years after the program effective date (3000(b)(28), 3001(b), and 3003(a)(3)). Ordinarily, part 70 requires sources to apply within one year of the program effective date. This deferral is effectively a request for source category-limited interim approval for sources with actual emissions below the given thresholds.

EPA's policy on source category-limited interim approval is set forth in a document entitled, "Interim Title V Program Approvals," signed on August 2, 1993 by John Seitz. In order to meet the interim approval criteria described in that memorandum, South Coast demonstrated that it would permit, during the first phase of the program, more than 60% of the District's title V sources and more than 80% of the pollutants emitted by title V sources. This requirement is addressed in a letter from Pang Mueller, Senior Manager of Stationary Source Compliance, dated May 16, 1996. South Coast estimated that there are more than 1600 title V facilities located in the District and that the workload to permit all of those sources in the initial three year period would be "excessively burdensome." The EPA believes that South Coast has demonstrated compelling reasons for a source category-limited interim approval. The Seitz memo also requires that source category-limited interim approval be granted only if all sources will be permitted within five years of the date required for EPA final action. Because the South Coast program guarantees that all title V sources will be permitted within five years following program approval, and because South Coast has satisfied the criteria set forth in the August 2, 1993 memorandum, EPA finds the District's program to be eligible for source category-limited interim approval.

e. Enhanced New Source Review. South Coast's title V permit program provides for enhanced preconstruction review, an optional process that allows sources to satisfy both new source review and title V permit modification requirements at the same time. Any modification processed pursuant to South Coast's enhanced preconstruction review procedures may be incorporated into the title V permit as an administrative permit amendment. These enhanced procedures obviate the need to undergo two application, public notice, and permit issuance/revision processes for the same change. (*See* 3000(b)(1)(D).)

f. Regional Clean Air Incentives Market (RECLAIM). RECLAIM is the South Coast's emissions-limiting economic incentives program. It targets facilities with four or more tons of NO_x

or SO_x emissions per year from permitted equipment for participation in a pollutant-specific market with the goal of reducing emissions at a significantly lower cost. The program subsumes fourteen SCAQMD Air Quality Management Plan (AQMP) control measures and is projected to reduce emissions by an equivalent amount. Sources are not, however, relieved from the duty to comply with new source review requirements and must comply with best available control technology requirements established pursuant to the District's new source review process.

For the most part, RECLAIM facilities that are subject to Regulation XXX are treated the same as non-RECLAIM facilities. Certain aspects of the permit modification provisions do, however, set out different treatment for RECLAIM and non-RECLAIM facilities, and the regulation sets out different means for establishing applicability. EPA has evaluated the procedures for modifying part 70 operating permits that are issued to RECLAIM facilities along with the means for determining the applicability of Regulation XXX to RECLAIM facilities and has found them to be adequate for approval. For additional background and analysis, see Attachment J of the TSD.

g. Alternative Operating Conditions. EPA has no authority to approve provisions of state or local law, such as the variance provisions discussed above, that are inconsistent with the Act. Districts, however, have always had the ability to make the terms of a variance federally enforceable by submitting a source-specific SIP revision to EPA that demonstrates, pursuant to section 110(l) of the Clean Air Act, that the proposed change will not interfere with any applicable requirement concerning attainment of the ambient air quality standards and reasonable further progress.

As noted above, it is possible for a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, where such relief is granted through procedures allowed by part 70 and is consistent with applicable requirements, including section 110(l) of the Act. South Coast has adopted and submitted Rule 518.2—Federal Alternative Operating Conditions which, if approved, will enable the District to incorporate alternative operating conditions for certain requirements into part 70 permits. Alternative operating conditions are not available for federally promulgated rules, regulations, or permit conditions, including standards promulgated pursuant to section 111 or 112 of the Clean Air Act, title IV or title VI requirements, or requirements to obtain an operating permit or an authority to construct.

Rule 518.2 is based on two fundamental concepts. First, in order to preserve the opportunity for public and EPA review, the SIP will be revised to incorporate Rule 518.2, which combines district variance procedures with the significant permit revision procedures of part 70. Second, to ensure that a federally enforceable alternative operating condition does not interfere with Clean Air Act progress or attainment requirements, the rule establishes an emissions bank. This bank provides the District with the ability to offset excess emissions resulting from the granting of an alternative operating condition.

EPA believes Rule 518.2 meets the requirements of sections 110(l) and 193 of the Clean Air Act for approval in the SIP and is not inconsistent with the requirement under part 70 that operating permits must assure compliance with applicable requirements. EPA therefore will propose approval of this revision to the South Coast portion of the California State Implementation Plan in the near future.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index (CPI), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum" (40 CFR 70.9(b)(2)(i)).

South Coast has opted to make a presumptive minimum fee demonstration. By dividing the fees charged to facilities it believes will be subject to its title V program by those facilities' emissions, the District calculates its effective fee rate is $323 per ton of emissions. This amount is appreciably higher than the current presumptive minimum of $30.93.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation. South Coast has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining federal "applicable requirements" and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. EPA has determined that this legal authority is sufficient to allow South Coast to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Authority for Title IV Implementation. On February 11, 1995, South Coast incorporated by reference part 72, the federal acid rain permitting regulations. The incorporation by reference was codified in Regulation XXXI. EPA determined Regulation XXXI to be acceptable on March 29, 1995 (*See* 60 FR 16127).

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is promulgating direct final interim approval of the operating permits program submitted by the California Air Resources Board, on behalf of the South Coast Air Quality Management District, on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996, and July 29, 1996. Areas in which South Coast's program is deficient and requires corrective action prior to full approval are as follows:

(1) California State law currently exempts agricultural production sources from permit requirements. CARB has requested source category-limited interim approval for all California districts. In order for South Coast's program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

(2) Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the

applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications.

Under part 70, a state must request and EPA may approve as part of that state's program the activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review. South Coast submitted an extensive list of insignificant activities in the form of Rule 219—Equipment Not Requiring a Written Permit Pursuant to Regulation II. The District did not provide criteria that were used to determine that the listed activities are appropriately treated as insignificant. The regulation does not ensure that activities to which non-general applicable requirements apply are excluded from the list of insignificant activities, nor does the program demonstrate that emissions from the listed activities are truly insignificant.

While many of the listed activities do appear to be reasonable candidates for such treatment, some do not. For instance, paragraph (d)(2) of Rule 219 exempts most refrigeration units regardless of size. Such units, if they have a charge rate of 50 pounds or more of a Class I or II ozone-depleting compound, may be subject to unit-specific applicable requirements and could not, therefore, be considered insignificant. EPA believes that, for the insignificant activities provisions to be fully approvable, the list must not create confusion regarding the regulated community's obligation to provide all information needed to determine the applicability of, or to impose, any applicable requirement, nor may the list interfere with the permitting authority's obligation to issue permits that assure compliance with all applicable requirements.

For interim approval, EPA is relying on certain provisions in Regulation XXX that affect the scope and usage of insignificant activities. Specifically, paragraph (b) of Rule 3003 requires that applicants shall submit "* * * all information necessary to evaluate the subject facility and the application, including all information specified in 40 CFR 70.5(c), to determine the applicability of and to impose any regulatory requirement * * *." The application forms require the listing of all equipment that is exempt from permitting. In addition, Rule 3001(b), (c) and (d), and Rule 3000(b)(15) ensure that the source's potential to emit, which does not exclude unpermitted activities, will generally determine title V applicability.

For full approval, South Coast must provide supporting criteria and revise its list of insignificant activities, as appropriate. The District must remove any activities from its list of insignificant activities that are subject to a unit-specific applicable requirement and adjust or add size cut-offs to ensure that the listed activities are truly insignificant. (*See* sections 70.4(b)(2) and 70.5(c).)

(3) The South Coast rule (3005(b)(1)) allows the following types of changes, which are required under part 70 to be processed as significant permit modifications, to be processed under minor modification procedures:

(1) NSPS and NESHAP (parts 60 and 61) modifications that result in emissions increases up to "de minimis" emissions thresholds (the de minimis levels are: HAP, VOC and PM10—5.5 tpy; NO_x—7.3 tpy; SO_x—11 tpy; and CO—40 tpy). (Any emissions increase resulting from an NSPS or NESHAP modification should be processed under the significant modification procedures);

(2) Establishment of or changes to case-by-case emissions limitations, providing the changes do not result in emissions increases above the *de minimis* thresholds. (Part 70 requires that such actions must be processed as significant modifications, regardless of any resulting changes in emissions); and

(3) Changes to permit conditions that the facility has assumed to avoid an applicable requirement, providing the changes do not result in emissions increases above the *de minimis* thresholds. (Part 70 requires that all such changes must be processed as significant modifications, regardless of any resulting changes in emissions.)

The District must modify its program so that these changes will be subject to the procedural requirements of the significant modification track. (*See* 70.7(e)(2)(i)*(3)*,*(4)*, and *(4)(A)*.)

(4) Because the initial implementation of the South Coast program will not include all title V sources (see section II.A.2.d. above), the District is receiving a source category limited interim approval. The District's regulation, however, does include language that expands the applicability of the program after three years and ensures that all title V sources will be permitted within five years. Although this phase-in is considered to be an interim approval issue, no change to the regulation is required to resolve it.

(5) The South Coast's group processing provisions are set out in paragraph (c) of Rule 3005. Subparagraph (c)(1)(B) provides that when emissions increases resulting from pending revisions exceed 5 tons per year for a given pollutant, the pending revisions must be processed. Rule 3005(c)(2), however, references 3000(b)(6) (South Coast's higher de minimis significant permit revision levels) when instructing the applicant of its responsibilities. This reference conflicts with 3005(c)(1)(B) and must be amended. In order to properly implement its program, South Coast must adhere to the levels specified in 3005(c)(1)(B).

(6) The language in rule 3004(a)(3)(C) must be amended to conform with the part 70 language. It currently requires that the permit include "periodic monitoring or recordkeeping * * * representative of the source's compliance for the term of the permit" rather than "with the terms of the permit." (*See* 70.6(a)(3)(i)(B).)

(7) Rule 3004(a)(9) must be revised to specify that any trading of emissions increases and decreases allowed without changes to the permit must meet the requirements of the part 70 program. (*See* 70.6(a)(10)(iii).)

(8) The South Coast program must be amended to provide that a source that is granted a general permit shall be subject to enforcement action for operating without a permit if the source is later determined not to qualify for the conditions and terms of the general permit, regardless of any application shield provisions. (*See* 70.6(d)(1).)

(9) 3002(g)(1) allows an emergency to constitute an affirmative defense if "properly signed, contemporaneous operating logs or other credible evidence are kept at the facility." The rule must be amended to require that the logs or other evidence demonstrate that the conditions set out in the rule were met by the facility. (*See* 70.6(g)(3).)

(10) The definition of "renewal" in 3000(b)(22) must be modified to clarify that permits will be renewed at least every 5 years, regardless of whether renewal is necessary to incorporate new regulatory requirements.

(11) Paragraph (g)(1) of Rule 3005 provides for Section 502(b)(10) changes (changes that violate an express permit term or condition). The South Coast rule appropriately limits the types of changes that can qualify for this treatment, except 3005(g)(1)(C)(i) excludes compliance plan requirements instead of compliance certification

requirements. The rule must be revised to state that changes that would violate compliance certification requirements are not allowed.

(12) Paragraph (g) of Rule 3005 must be amended to specify that the District and the source must attach a copy of any notice of 502(b)(10) changes to the permit. (*See* 70.4(b)(12).)

(13) Provisions must be added to Rule 3005(i) that specify the following: (1) Any change allowed under this section must meet all applicable requirements and shall not violate existing permit terms; (2) the source must provide contemporaneous notice to the District and EPA; and (3) the source must keep a record of the change. (*See* 70.4(b)(14).)

(14) Rule 3002(g) provides that, in addition to meeting the Regulation XXX requirements implementing 70.6(g), a source must comply with District Rule 430—Breakdown Provisions in order to avail itself of the affirmative defense set out in 70.6(g). Paragraph (5) of 70.6(g) states that the provisions of 70.6(g) are in addition to any emergency or upset provisions contained in any applicable requirement. Because Rule 430 is not SIP approved, however, it is not an applicable requirement. In order to resolve this issue, South Coast is required to either submit an approvable version of Rule 430 to EPA for inclusion in the SIP or to delete the reference to Rule 430. Note that the cross reference to Rule 430 included in 3002(g) does not alter the provisions of 70.6(g) and that Rule 430 is wholly external to the part 70 program.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, South Coast is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of South Coast's part 70 program that EPA is acting on in this notice applies to all part 70 sources (as defined in the approved program) within South Coast's jurisdiction. The approved program does not apply to any part 70 sources over which an Indian tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), South Coast must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is approving the use of South Coast's preconstruction review program as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by South Coast of rules specifically designed to implement section 112(g). However, since the sole purpose of this approval is to confirm that the District has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of South Coast's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, South Coast will have the authority necessary to accept delegation of these standards without further regulatory action by the District. The details of this mechanism and the means for finalizing delegation of standards will be set forth in an implementation agreement between South Coast and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of South Coast's submittal and other information relied upon for this direct final action is contained in docket number CA–SC–96–1–OPS maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this direct final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with

statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 9, 1996.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (dd) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

(dd) *South Coast Air Quality Management District:* submitted on December 27, 1993 and amended on March 6, 1995, April 11, 1995, September 26, 1995, April 24, 1996, May 6, 1996, May 23, 1996, June 5, 1996 and July 29, 1996; approval effective on October 28, 1996 unless adverse or critical comments are received by September 30, 1996.

* * * * *

[FR Doc. 96–21950 Filed 8–28–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5560–6]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Leetown Pesticide Site in Leetown, Jefferson County, West Virginia, from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces the deletion of the Leetown Pesticide site (Site) located in Jefferson County, West Virginia, from the National Priorities List (NPL). The NPL constitutes Appendix B to 40 CFR Part 300. Part 300 comprises the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Respo[illegible]e, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the West Virginia Division of Environmental Protection have determined that all appropriate CERCLA actions have been implemented and that the Site poses no significant threat to public health or the environment. Therefore, further remedial measures pursuant to CERCLA are not needed.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Melissa Whittington (3HW23), Remedial Project Manager, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566–3235.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: the Leetown Pesticide Site, Leetown, Jefferson County, West Virginia.

A Notice of Intent to Delete this Site was published on June 14, 1996 in the **Federal Register** (56 FR 11597). The closing date for comments on the Notice of Intent to Delete was July 15, 1996. EPA did not receive any comments on the proposed deletion.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 20, 1996.

W. Michael McCabe,

Regional Administrator, U.S. EPA Region 3.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Leetown Pesticide site, Leetown, West Virginia.

[FR Doc. 96–21824 Filed 8–28–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, and 90

[WT Docket No. 96–6; FCC 96–283]

Flexible Service Offerings in the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this First Report and Order in WT Docket No. 96–6, the Commission amends its rules to allow providers of narrowband and broadband Personal Communications Services (PCS), cellular, CMRS Specialized Mobile Radio (SMR), and CMRS paging, CMRS 220 MHz service, and for-profit interconnected business radio services to offer fixed wireless services on their

assigned spectrum on a co-primary basis with mobile services. The rule amendments are necessary to respond to the strong support to flexible services show in the initial Notice of Proposed Rule Making.

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: David Krech, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: The First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 96–6, adopted on June 27, 1996, and released on August 1, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 575, 2000 M Street N.W., Washington, D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Summary of Action

I. Introduction & Executive Summary

1. In the Notice of Proposed Rule Making in WT Docket No. 96–6 ("NPRM") (Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rule Making, WT Docket No. 96–6, 11 FCC Rcd 2445 (1996)), 61 FR 6189 (February 16, 1996), we sought comment on proposals for expanding permitted offerings of fixed wireless service by Commercial Mobile Radio Service ("CMRS") providers. In addition, we sought comment with regard to the regulatory treatment for such services under Section 332 of the Communications Act of 1934, as amended. 47 U.S.C. § 332. We received 52 comments and 22 reply comments in response to the Notice. That record shows strong support for allowing the provision of fixed wireless services by licensees operating in the CMRS bands. In this First Report and Order, we conclude that, while licensees previously could provide some fixed services over CMRS spectrum, the public interest would be served by giving licensees maximum flexibility in the uses of CMRS spectrum. Allowing service providers to offer all types of fixed, mobile, and hybrid services will allow CMRS providers to better respond to market demand and increase competition in the provision of telecommunications services.

2. We therefore amend our rules to allow providers of narrowband and broadband Personal Communications Services (PCS), cellular, CMRS Specialized Mobile Radio (SMR), CMRS paging, CMRS 220 MHz service, and for-profit interconnected business radio services to offer fixed wireless services on their assigned spectrum on a co-primary basis with mobile services. Specifically,

- We conclude that fixed services, excluding broadcast services, are permissible service offerings on spectrum allocated for broadband and narrowband CMRS.
- We modify our CMRS service rules to allow spectrum allocated to these services to be used on a co-primary basis for fixed services, mobile services, or any combination of the two, and we eliminate the classification of fixed services as limited to auxiliary or ancillary uses in these bands.
- We maintain the technical rules currently in place for CMRS and require licensees who wish to offer co-primary fixed services on CMRS spectrum to comply with those rules.
- We refer universal service issues that may arise from our decisions in this Report and Order to the Commission's pending universal service proceeding, CC Docket No. 96–45. (Federal-State Joint Board on Universal Service, Notice of Proposed Rule Making and Order Establishing Joint Board, CC Docket No. 96–45, FCC 96–93 (released March 8, 1996) [61 FR 10499 (March 14, 1996)].)

II. First Report and Order

A. Flexible Use of CMRS Spectrum

3. *Discussion.* The record supports our observation in the Notice that sufficient uncertainty exists in our current rules to warrant clarification with regard to the provision of fixed services over spectrum allocated for CMRS. Rather than continuing to define allowable fixed services in terms of whether they are "ancillary," "auxiliary," or "incidental" to mobile services, we conclude that our rules should more broadly allow fixed services to be provided on a co-primary basis with mobile services.

4. As a threshold matter, we note that the record in this proceeding strongly supports our proposal to encourage the provision of fixed services by licensees operating in the CMRS bands. Commenters have provided several examples of potential applications of fixed wireless technology. For example, fixed wireless systems can be imbedded into PBXs and local area networks to permit continued service even when wireline service is interrupted due to weather or other emergencies. Call routing may become more efficient by allowing CMRS providers to offer fixed wireless services. Omnipoint suggests that fixed wireless links could be used to provide "local loop" to apartment buildings, office buildings, and older homes where rewiring costs are high. Nortel envisions a variety of "fixed wireless access" services coming into homes and residences that would provide an alternative to end-to-end wiring by the carrier from the switch to the end user.

5. We agree with the many commenters that support the Commission's proposal to allow CMRS providers to offer fixed wireless services. We believe that the public interest is better served by not attempting to limit potential use of CMRS spectrum to specific applications. We agree with SBC Communications that imposing such a limitation could lead to difficult definitional questions about what constitutes "wireless local loop" or other defined services. For example, Nortel's concept of fixed wireless access includes not just low-power wireless "drops" from the street to the home, but also fixed wireless architectures that would link end users to the public switched network through cellular switches, and remote base stations (in rural areas). If we were to restrict fixed service to certain configurations, Nortel and other carriers might be reluctant to pursue some potentially efficient options out of concern that they would be considered to fall outside the definition of our prescribed service definition. Rather than limit the flexibility of carriers in this manner, we prefer to encourage innovation and experimentation through a broader, more flexible standard.

6. In the NPRM, we sought comment on whether allowing CMRS providers to provide fixed services without restriction could result in limiting capacity for mobile services. In that regard, we observed that current technology supports use of spectrum to provide mobile service only below the 3 GHz band, while fixed uses are feasible on higher bands. Based on the record, we conclude that this need not be a concern. First, with the advent of PCS and other new CMRS services, we have significantly increased the amount of spectrum available for mobile services over what was available previously. Second, carriers are using advanced technology. Third, nothing in the record suggests that giving licensees who provide CMRS services the flexibility to offer fixed service would make them less responsive to market demand for mobile service.

7. For these reasons, we conclude that licensees should have maximum

flexibility to provide fixed or mobile services or combinations of the two over spectrum allocated for CMRS services, including PCS, cellular, and SMR services. We believe that limitations on fixed uses are unnecessary because the market is the best predictor of the most desirable division of this spectrum. We are concerned that regulatory restrictions on use of the spectrum could impede carriers from anticipating what services customers most need, and could result in inefficient spectrum use and reduced technological innovation. Allowing service providers to offer all types of fixed, mobile, and hybrid services in response to market demand will allow for more flexible responses to consumer demand, a greater diversity of services and combinations of services, and increased competition. This is consistent with the goals of the Telecommunication Act of 1996 Act, Public Law No. 104–104, 110 Stat. 56 (1996) (1996 Act) which seeks to increase competition between the various providers of telecommunications services, including competitive alternatives to traditional local exchange service. All consumers will also benefit from technological advances in fixed services and fixed/mobile combinations that potentially could be stifled by restrictive service definitions.

8. In the NPRM we proposed to increase flexibility to provide fixed wireless service for broadband CMRS services—broadband PCS, cellular, SMR. We sought comment on whether narrowband CMRS services—paging, narrowband PCS, commercial 220 MHz service and for profit interconnected Business Radio Service—should also be permitted greater flexibility to offer fixed wireless services. We agree with commenters that we should extend the flexibility to offer fixed services to the narrowband services set out in the NPRM as well as broadband CMRS. In the CMRS Third Report and Order, 59 FR 59945 (November 21, 1994), we found that narrowband and broadband CMRS are potentially competitive with one another and should be subject to comparable regulation. We conclude that subjecting narrowband licensees to more stringent regulatory constraints than broadband CMRS providers would be inconsistent with principles of regulatory parity and serves no public interest goal. By contrast, allowing narrowband CMRS providers to provide fixed services on the same basis as broadband CMRS providers provides incentives for increased innovation, diversity of services, and increased competition. Although there may be technical constraints on the ability to provide fixed service on narrowband channels, we conclude that narrowband licensees should nevertheless be entitled to the regulatory flexibility so that they may take advantage of technological advances that may occur without being required to seek additional changes to the rules. This result is also in keeping with the goals of the 1996 Act to make available the most competitive environment possible for telecommunications services.

9. For the foregoing reasons, we conclude that service providers using spectrum allocated for CMRS should have the flexibility to provide fixed services on a co-primary basis with mobile services. Thus, service providers could choose to provide exclusively fixed services, exclusively mobile services, or any combination of the two. (Cellular carriers are subject to the requirements set out in Sections 22.901 and 22.933 of our rules, to provide cellular mobile service upon request to all cellular subscribers in good standing, except in instances where a cellular provider chooses to provide solely fixed service over its spectrum. See 47 CFR §§ 22.901, 22.933.) Accordingly, we modify the language in Section 22.901 of the Commission's rules (cellular service), Section 24.3 of the Commission's rules (PCS), and Section 90.419 of the Commission's rules (SMR) to establish a uniform description of fixed wireless services that may be offered on this spectrum. We adopt the same modifications to our rules governing narrowband CMRS, including paging, narrowband PCS, 220 MHz service, and for profit interconnected Business Radio Services.

10. In adopting these modifications, we retain the prohibition on licensees in these services offering broadcast services. This prohibition applies regardless of whether licensees are offering fixed or mobile services or a combination of the two. In addition, we note that under applicable international allocation agreements, broadcast use of the spectrum at issue in this proceeding is restricted. Therefore, we conclude it would be inappropriate to amend our rules in this regard.

B. Technical and Operational Rules

11. *Discussion.* The comments that we received regarding the technical rules indicate that we should maintain the technical rules that are currently in place and require CMRS providers who wish to offer co-primary fixed services to comply with those rules. We agree with SBC that fixed services should be engineered so that they conform to our existing interference rules and do not interfere with the operations of co-channel or adjacent channel carriers providing mobile service. Thus, so long as out-of-band and co-channel/frequency-block criteria are met, base stations used to support fixed services may operate at the same maximum power levels as base and mobile stations on the same frequencies. We also decline to adopt the specific rule changes proposed by PacTel relating to in-home base stations. The issue raised by PacTel is outside the scope of this proceeding. We will also defer consideration of the cellular rule changes requested by RCC and SR Telecom. We intend to consider technical concerns regarding CMRS, including those discussed above, in future proceedings that will more broadly address conforming our technical rules for CMRS providers.

C. Table of Frequency Allocations

12. *Discussion.* We will amend the Table of Frequency Allocations as proposed in the Notice to permit licensees to make use of the affected allocations for both fixed and mobile services on a co-primary basis. Specifically, we allocate the 27.41–27.54, 30.56–32, 33–34, 35–36, 42–43.69, 150.8–152.855, 154–156.2475, 157.45–161.575, 220–222, 454–455, 456–462.5375, 462.7375–467.5375, 467.7375–512, 806–821, 824–849, 851–866, 869–894, 896–901, 929–930, 931–932 and 935–940 MHz bands to the fixed service on a co-primary basis. (The 220–222 MHz band is shared Government/non-Government spectrum. During our consultations with NTIA regarding this band, the Commission and NTIA agreed to allocate the 220–222 MHz band to the fixed service on a co-primary basis for both Government and non-Government operations. Accordingly, the fixed service is also added to the Government column in the 220–222 MHz band on a co-primary basis.) In addition, we delete footnotes US330 and US331, which prohibited narrowband and broadband PCS licensees from providing fixed services, except for ancillary fixed services used in support of mobile PCS.

13. Further, we are updating the international table of the Table of Frequency Allocations to reflect the Final Acts of the 1992 World Administrative Radio Conference. Additionally, we are removing international footnote 613 from the 157.45–158.115 MHz band and footnote NG153 from the 849–851 and 894–896 MHz bands, which are bands to which these footnotes do not apply. With regard to the rule part cross references, we are updating the title of Part 22 to

Public Mobile (from Domestic Public Land Mobile) in the 35.19–35.69, 43.19–43.69, 152–152.255, 152.495–152.855, 157.755–162.0125, 454–455, 459–460, 470–512, 824–849, 869–894, 928–929, 931–932 and 944–960 MHz bands; displaying the rule parts in the 173.2–173.4 and 1850–1990 MHz bands in capital letters to indicate that the allocations in these bands are on a primary basis; updating the PCS rule part to Part 24 (from Part 99) in the 901–902, 930–931 and 940–941 MHz bands; adding Part 22 to the 851–866 MHz band, Parts 22 and 101 to the 932–935 and 941–942 MHz bands, and Part 101 in the 942–944 MHz band; replacing Part 94 with Part 101 in the 928–929, 944–960 and 1850–1990 MHz bands; and deleting Satellite Communications (25) from the 450–451 MHz band, Domestic Public Land Mobile (22) from the 929–930 MHz band and Private Land Mobile (90) from the 931–932 MHz band. Finally, we are revising the Government column in the 30–30.56 MHz band by displaying the fixed service as a primary—not secondary—allocation; correcting typographical errors in the 42–43.19 MHz band for columns 4 through 6; and adding footnotes US116, US215, US268 and G2 to the Government column in the 928–932 MHz band.

D. Universal Service Obligations

14. *Discussion.* We believe that it would be premature to address in this Report and Order whether universal service requirements should be extended to CMRS providers offering fixed wireless service. It is also apparent both from our experience with universal service issues and the comments in response to the NPRM that the public interest would be better served by allowing the Joint Board to address the universal service issues raised in this proceeding. Thus, we defer discussion of the proposals discussed by commenters in response to the NPRM for consideration by the Joint Board in CC Docket No. 96–45.

III. Procedural Matters

A. Regulatory Flexibility Act

15. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in WT Docket No. 96–6. Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rule Making, WT Docket No. 96–6, 11 FCC Rcd 2445 (1996). The Commission sought written comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis for the First Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996. Public Law No. 104–121, 110 Stat. 847 (1996) (CWAA. Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) codified at 5 U.S.C. § 601 *et seq.* The Secretary shall send a copy of this First Report and Order and Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981).

1. Need for and Purpose of the Action

16. The First Report and Order has implemented Sections 332 and 3(n), respectively, of the Communications Act of 1934, as amended. The rules adopted herein will carry out Congress' intent to establish a consistent regulatory framework for all commercial mobile radio services (CMRS). In addition, the rules adopted herein will assist in the development of competition among wireless and wireline services for the benefit of the consumer.

2. Issues Raised in Response to the IRFA

17. No comments were submitted in response to the IRFA. In general comments on the Notice of Proposed Rule Making, however, some commenters raised issues that might affect small business entities. One commenter, PCS One, a small business entity, argued that the proposed flexibility to offer fixed services should not be extended to cellular at this time in order to give Personal Communications Services (PCS) licensees, many of whom are small business entities, an opportunity to enter the marketplace and establish themselves against incumbent cellular providers. Some other parties agreed that if the Commission should make a distinction between broadband CMRS providers, it should allow PCS providers the greatest flexibility. The Commission chooses to provide all CMRS providers with the increased flexibility. Granting all CMRS providers increased flexibility to provide fixed wireless services is consistent with principles of regulatory parity, will allow all CMRS providers to determine the services that they will provide to the public, and will increase competition between the CMRS services.

3. Description, and Number of Small Entities Involved

18. This rule making proceeding applies to providers of cellular, narrowband and broadband personal communications services (PCS), CMRS specialized mobile radio services (SMR), CMRS paging, commercial 220 MHz services, and for-profit interconnected business radio services. Since this rule making proceeding applies to multiple services, we will analyze the effects of these rules on a service-by-service basis.

a. Estimates for Cellular Licensees

19. Since the Commission did not define a small business with respect to cellular services, we will utilize the Small Business Administration's (SBA) definition applicable to radiotelephone companies—i.e. an entity employing less than 1,500 persons. 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees. U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy). We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicates that only 12 out of a total of 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees. U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995). However, we do not know how many of the 1,178 firms were cellular telephone companies. Given this fact, we assume, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we are unable to determine the number of cellular licensees because a single cellular licensee may own several licenses.

b. Estimates for PCS Services

20. The Commission, with respect to narrowband and broadband PCS, defines small businesses to mean firms who have gross revenues of not more than $40 million in each of the preceding three calendar years. This definition of "small entity" in the context of the PCS services has been approved by the SBA.

21. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. The Commission does not have sufficient information to determine whether any small businesses within the SBA-approved definition bid successfully for licenses A or B Block auctions. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the C Block PCS auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this proceeding includes the 89 winning bidders that qualified as small entities in the Block C broadband PCS auction.

22. At present, there have been no auctions held for the D, E, and F Blocks of broadband PCS spectrum. The Commission anticipates a total of 1,479 licenses will be awarded in the D, E, and F Block PCS auctions, which are scheduled to begin on August 26, 1996. Participation in the F block is limited to entrepreneurs with under $125 million in average gross revenues over the past three years. However, there is no basis upon which to estimate the number of licenses that will be awarded to small entities. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusion in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

23. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. Based on this information, we conclude that the number of narrowband PCS licensees affected by the rule adopted in this proceeding includes all of the 41 licensees. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licensees will be awarded in the auctions. Those auction have not yet been scheduled, however. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of our evaluations and conclusion in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

c. Estimates for SMR Services

24. The Commission, with respect to 800 MHz and 900 MHz SMR services, has adopted a two-tiered approach to the definition of small business: (a) "very small businesses" are firms who have gross revenues of not more than $3 million in each of the preceding three calendar years; and (b) "small businesses" are firms who have annual gross revenues of not more than $15 million in the each of the preceding three years. This definition of "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.

25. The Commission recently held auction for the 900 MHz SMR services. There were 60 winning bidders who qualified as small entities. Based on this information, we conclude that the number of 900 MHz SMR licensees affected by the proceeding includes these 60 small entities.

26. No auctions have been held for the 800 MHz SMR services. While the Commission anticipates a total of 525 licenses awarded for the upper 200 channels in the 800 MHz auctions, it has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz SMR auction. Despite the current incumbents in the 800 MHz SMR service, due to the impending auction, we are unable to determine the ultimate number of small businesses who will receive licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

d. Commercial Paging and Commercial 220 MHz Radio Services

27. Since the Commission has not yet defined a small business with respect to paging services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e. an entity employing less than 1,500 persons. With respect to commercial 220 MHz services, the Commission has proposed a two-tiered definition of small business for purposes of auctions: (1) for EA licensees (EA licenses refer to the 60 channels in the 172 geographic economic areas as defined by the Bureau of Economic Analysis, Department of Commerce), a firm with average annual gross revenues of not more than $6 million for the preceding three years and (2) for regional and nationwide licensees, a firm with average annual gross revenues of not more than $15 million for the preceding 3 years. Since this definition has not yet been approved by the SBA, we will utilize the SBA's definition applicable to radiotelephone companies. We note that while there are incumbents in this service, they are not commercial providers and will not be affected by this proceeding. Since there have been no auctions for either service as of yet and the parameters of the industry have not been fully defined, any estimate of the number of small businesses who will seek to bid in the future auctions is not yet determined. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of prospective licensees can be made, we assume, for purposes of our evaluations and conclusion in this Final Regulatory Flexibility Analysis, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

e. Interconnected Business Services

28. Since the Commission did not define a small business with respect to for-profit interconnected business services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e. an entity employing less than 1,500 persons. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of for-profit interconnected business service providers which are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the

Census' 1992 study indicates that only 12 out of a total of 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees. However, we do not know how many of the 1,178 firms were for-profit interconnected business service companies. Given this fact, we assume, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all of the current inter-connected business service licensees are small entities, as that term is defined by the SBA. Although there are in excess of 13,000 for-profit interconnected business service licenses, we are unable to determine the number of for-profit interconnected business service licensees because a single licensee may own several licenses.

4. Reporting, Recordkeeping, and Other Compliance Requirements

29. The rules adopted in the First Report and Order do not impose any additional reporting, recordkeeping, or other compliance requirements.

5. Steps Taken To Minimize Burdens on Small Entities

30. In the First Report and Order the Commission amends its rules to allow providers of narrowband and broadband PCS, cellular, CMRS SMR, CMRS paging, CMRS 220 MHZ service, and interconnected business radio services to offer fixed wireless services on their assigned spectrum on a co-primary basis with mobile service. These rule changes will allow CMRS providers greater flexibility to provide new and innovative services to meet consumer demands. Allowing service providers to offer all types of fixed, mobile, and hybrid services in response to market demand will allow for more flexible responses to consumer demand, a greater diversity of services and combinations of services, and increased competition both between CMRS providers and wireline providers, as well as between CMRS providers. This is consistent with the goals of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996). (1996 Act), which amended the Communications Act of 1934, which seeks to increase competition between the various providers of telecommunications services, including competitive alternatives to traditional local exchange service. All consumers will also benefit from technological advances in fixed services and fixed/mobile combinations that potentially could be stifled by restrictive service definitions.

6. Significant Alternatives Considered and Rejected

31. In the NPRM we sought comment on alternative approaches to allowing PCS and other CMRS providers more flexibility to offer fixed services, including: (1) Adopting a rule that would expressly allow CMRS providers to offer "fixed wireless local loop," (2) permitting CMRS providers to offer wireless local loop and other defined fixed services, or (3) allowing CMRS providers to offer any form of fixed service without restriction. An overwhelming majority of the commenters support amending our rules to allow all CMRS providers to offer all types of fixed wireless services without restriction. One commenter, GO Communications, a small business entity, argued that CMRS providers should be required to offer at least some mobile service over their frequencies. Based on the record in this proceeding, the Commission believes that the public interest is better served by not attempting to limit potential use of CMRS spectrum to specific applications. Imposing such a limitation could lead to difficult definitional questions about what constitutes "wireless local loop" or other defined services. Further, if we were to restrict fixed service to certain configurations, carriers might be reluctant to pursue some potentially efficient options out of concern that they would be considered to fall outside the definition of our prescribed service definition. Rather than limit the flexibility of carriers in this manner, we prefer to encourage innovation and experimentation through a broader, more flexible standard. This will benefit small business by allowing them greater flexibility in determining which services they will provide to the public.

32. In the NPRM, the Commission also proposed to apply whatever increased flexibility we granted to broadband CMRS services—broadband PCS, cellular, and SMR—and sought comment on whether narrowband CMRS services—narrowband PCS, paging, commercial 220 MHz services, and interconnected business radio services—should also have such increased flexibility. Commenters also generally support extending flexibility to all CMRS bands, including both broadband and narrowband services. PCS One, a small business entity, opposes the Commission's proposal to allow cellular licensees to provide fixed wireless services, arguing that the Commission must permit PCS, for at least a reasonable interval, greater flexibility than cellular in the use of its spectrum. We find that we should extend the flexibility to offer fixed services to all the broadband services, including cellular, as well as the narrowband services set out in the Notice. We conclude that subjecting narrowband licensees to more stringent regulatory constraints than broadband CMRS providers would be inconsistent with principles of regulatory parity and serves no public interest goal. We conclude that narrowband licensees should be entitled to the regulatory flexibility so that they may take advantage of technological advances that may occur without being required to seek additional changes to the rules. This result is also in keeping with the goals of the 1996 Act to make available the most competitive environment possible for telecommunications services. It will also benefit all small business, including all PCS licensees, by providing them greater flexibility to determine which service they will provide to the public.

7. Report to Congress

33. The Commission shall send a copy of this Final Regulatory Flexibility Analysis with this First Report and Order in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Initial Paperwork Reduction Act of 1995 Analysis

34. The First Report and Order and Further Notice of Proposed Rule Making do not contain either a proposed or modified information collection.

C. Ordering Clauses

35. Accordingly, *It is ordered* that pursuant to Sections 4(i), 4(j), 7(a), 303(b), 303(f), 303(g), 303(r), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 157(a), 303(b), 303(f), 303(g), 303(r), 332(a), and 332(c) the rules and policies set forth in the First Report and Order and Further Notice of Proposed Rule Making are adopted, and Parts 2, 22, 24, and 90 of the Commission's Rules *are amended* as specified below.

36. The rule changes made herein will become effective October 28, 1996.

D. Contacts for Information

37. For further information concerning this proceeding, contact David Krech at (202) 418–0620 (Commercial Wireless Division, Wireless Telecommunications Bureau).

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 22

Communications common carriers, Radio.

47 CFR Part 24

Communications common carriers, Radio.

47 CFR Part 90

Business and industry, Common carriers, Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rules Changes

Parts 2, 22, 24 and 90 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303 and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Revise entries for 26175–28000 kHz, 29.7–37.5 MHz, 38.25–47 MHz, 150.05–174 MHz, 220–222 MHz, 450–960 MHz and 1710–2110 MHz in columns (1) through (7).

b. Revise International footnotes 672, 675, 676, 678, 697 and 703.

c. Remove International footnotes 551, 612, 614, 682 and 708.

d. Remove United States footnotes US330 and US331.

§ 2.106 Table of Frequency Allocations

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation kHz	Region 2—allocation kHz	Region 3—allocation kHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation kHz	Allocation kHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*	*	*	*	*	*
26175–26480 FIXED MOBILE except aeronautical mobile	26175–26480 FIXED MOBILE except aeronautical mobile	26175–26480 FIXED MOBILE except aeronautical mobile	26175–26480	26175–26480 LAND MOBILE	AUXILIARY BROADCASTING (74)	
26480–26950 FIXED MOBILE except aeronautical mobile	26480–26950 FIXED MOBILE except aeronautical mobile	26480–26950 FIXED MOBILE except aeronautical mobile	26480–26950 FIXED MOBILE except aeronautical mobile US10	26480–26950 US10		
26950–26960 FIXED MOBILE except aeronautical mobile 546	26950–26960 FIXED MOBILE except aeronautical mobile 546	26950–26960 FIXED MOBILE except aeronautical mobile 546	26950–26960 546	26950–26960 FIXED 546	INTERNATIONAL FIXED PUBLIC (23)	
26960–27230 FIXED MOBILE except aeronautical mobile 546	26960–27230 FIXED MOBILE except aeronautical mobile 546	26960–27230 FIXED MOBILE except aeronautical mobile 546	26960–26230 546	26960–27230 MOBILE except aeronautical mobile 546	PERSONAL (95)	27120 ± 160 kHz: Industrial, scientific, and medical frequency.
27230–27410 FIXED MOBILE except aeronautical mobile 546	27230–27410 FIXED MOBILE except aeronautical mobile 546	27230–27410 FIXED MOBILE except aeronautical mobile 546	27230–27410 546	27230–27410 FIXED MOBILE except aeronautical mobile 546	PERSONAL (95) PRIVATE LAND MOBILE (90)	
27410–27500 FIXED MOBILE except aeronautical mobile	27410–27500 FIXED MOBILE except aeronautical mobile	27410–27500 FIXED MOBILE except aeronautical mobile	27410–27500	27410–27500 FIXED LAND MOBILE	PRIVATE LAND MOBILE (90)	

International table			United States table		FCC use designators	
Region 1—allocation kHz	Region 2—allocation kHz	Region 3—allocation kHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation kHz	Allocation kHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
27500–27540 METEOROLOGICAL AIDS FIXED MOBILE	27500–27540 METEOROLOGICAL AIDS FIXED MOBILE	27500–27540 METEOROLOGICAL AIDS FIXED MOBILE	27500–27540	27500–27540 FIXED LAND MOBILE	PRIVATE LAND MOBILE (90)	
27540–28000 METEOROLOGICAL AIDS FIXED MOBILE	27540–28000 METEOROLOGICAL AIDS FIXED MOBILE	27540–28000 METEOROLOGICAL AIDS FIXED MOBILE	27540–28000 FIXED MOBILE	27540–28000		

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
29.7–29.8 FIXED MOBILE	29.7–29.8 FIXED MOBILE	29.7–29.8 FIXED MOBILE	29.7–29.8	29.7–29.8 LAND MOBILE	PRIVATE LAND MOBILE (90)	
29.8–29.89 FIXED MOBILE	29.8–29.89 FIXED MOBILE	29.8–29.89 FIXED MOBILE	29.8–29.89	29.8–29.89 FIXED	AVIATION (87) INTERNATIONAL FIXED PUBLIC (23)	
29.89–29.91 FIXED MOBILE	29.89–29.91 FIXED MOBILE	29.89–29.91 FIXED MOBILE	29.89–29.91 FIXED MOBILE	29.89–29.91		
29.91–30 FIXED MOBILE	29.91–30 FIXED MOBILE	29.91–30 FIXED MOBILE	29.91–30	29.91–30 FIXED	AVIATION (87) INTERNATIONAL FIXED PUBLIC (23)	
30–30.005 FIXED MOBILE 30.005–30.01 SPACE OPERATIONS (satellite identification) FIXED MOBILE SPACE RESEARCH	30–30.005 FIXED MOBILE 30.005–30.01 SPACE OPERATIONS (satellite identification) FIXED MOBILE SPACE RESEARCH	30–30.005 FIXED MOBILE 30.005–30.01 SPACE OPERATIONS (satellite identification) FIXED MOBILE SPACE RESEARCH	30–30.005 FIXED MOBILE 30.005–30.01 FIXED MOBILE	30–30.005 30.005–30.01		
30.01–30.56 FIXED MOBILE	30.01–30.56 FIXED MOBILE	30.01–30.56 FIXED MOBILE	30.01–30.56 FIXED MOBILE	30.01–30.56		
30.56–32 FIXED MOBILE	30.56–32 FIXED MOBILE	30.56–32 FIXED MOBILE	30.56–32	30.56–32 FIXED LAND MOBILE	PRIVATE LAND MOBILE (90)	
				NG124		

International table			United States table		FCC use designators	
			Government	Non-Government	Rule part(s)	Special-use frequencies
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
32–33 FIXED MOBILE	32–33 FIXED MOBILE	32–33 FIXED MOBILE	32–33 FIXED MOBILE	32–33		
33–34 FIXED MOBILE	33–34 FIXED MOBILE	33–34 FIXED MOBILE	33–34	33–34 FIXED LAND MOBILE NG124	PRIVATE LAND MOBILE (90)	
34–35 FIXED MOBILE 35–35.19 FIXED MOBILE	34–35 FIXED MOBILE 35–35.19 FIXED MOBILE	34–35 FIXED MOBILE 35–35.19 FIXED MOBILE	34–35 FIXED MOBILE 35.19	34–35 35–35.19 FIXED LAND MOBILE NG124	PRIVATE LAND MOBILE (90)	
35.19–35.69 FIXED MOBILE	35.19–35.69 FIXED MOBILE	35.19–35.69 FIXED MOBILE	35.19–35.69	35.19–35.69 FIXED LAND MOBILE NG124	PUBLIC MOBILE (22) PRIVATE LAND MOBILE (90)	
35.69–36 FIXED MOBILE	35.69–36 FIXED MOBILE	35.69–36 FIXED MOBILE	35.69–36	35.69–36 FIXED LAND MOBILE NG124	PRIVATE LAND MOBILE (90)	
36–37 FIXED MOBILE	36–37 FIXED MOBILE	36–37 FIXED MOBILE	36–37 FIXED MOBILE US220	36–37 US220		
37–37.5 FIXED MOBILE	37–37.5 FIXED MOBILE	37–37.5 FIXED MOBILE	37–37.5	37–37.5 LAND MOBILE NG124	PRIVATE LAND MOBILE (90)	
•	•	•	•	•	•	•
38.25–39 FIXED MOBILE	38.25–39 FIXED MOBILE	38.25–39 FIXED MOBILE	38.25–39 FIXED MOBILE	38.25–39		
39–39.986 FIXED MOBILE	39–39.986 FIXED MOBILE	39–39.986 FIXED MOBILE	39–39.986	39–39.986 LAND MOBILE NG124	PRIVATE LAND MOBILE (90)	
39.986–40 FIXED MOBILE Space Research	39.986–40 FIXED MOBILE Space Research	39.986–40 FIXED MOBILE Space Research	39.986–40	39.986–40 LAND MOBILE NG124	PRIVATE LAND MOBILE (90)	
40–40.02 FIXED MOBILE Space Research	40–40.02 FIXED MOBILE Space Research	40–40.02 FIXED MOBILE Space Research	40–40.02 FIXED MOBILE	40–40.02		
40.02–40.98 FIXED MOBILE 548	40.02–40.98 FIXED MOBILE 548	40.02–40.98 FIXED MOBILE 548	40.02–40.98 FIXED MOBILE 548 US210	40.02–40.98 548 US210	40.68 ± .02 MHz: Industrial, scientific and medical frequencies.	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
40.98–41.015 FIXED MOBILE Space Research 549	40.98–41.015 FIXED MOBILE Space Research	40.98–41.015 FIXED MOBILE Space Research 550	40.98–41.015 FIXED MOBILE	40.98–41.015		
41.015–42 FIXED MOBILE 549	41.015–42 FIXED MOBILE	41.015–42 FIXED MOBILE 550	41.015–42 FIXED MOBILE US220	41.015–42 US220		
42–43.19 FIXED MOBILE 549	42–43.19 FIXED MOBILE	42–43.19 FIXED MOBILE 550	42–43.19	42–43.19 FIXED LAND MOBILE NG124 NG141	PRIVATE LAND MOBILE (90)	
43.19–43.69 FIXED MOBILE 549	43.19–43.69 FIXED MOBILE	43.19–43.69 FIXED MOBILE 550	43.19–43.69	43.19–43.69 FIXED LAND MOBILE	PUBLIC MOBILE (22) PRIVATE LAND MOBILE (90)	
43.69–44 FIXED MOBILE 549	43.69–44 FIXED MOBILE	43.69–44 FIXED MOBILE 550	43.69–44	43.69–44 LAND MOBILE NG141	PRIVATE LAND MOBILE (90)	
44–46.6 FIXED MOBILE	44–46.6 FIXED MOBILE	44–46.6 FIXED MOBILE 552	44–46.6	LAND MOBILE NG124 NG141	PRIVATE LAND MOBILE (90)	
46.6–47 FIXED MOBILE	46.6–47 FIXED MOBILE	46.6–47 FIXED MOBILE 552	46.6–47 FIXED MOBILE	46.6–47		
*	*	*	*	*	*	*
150.05–150.8 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 610	150.05–150.8 FIXED MOBILE	150.05–150.8 FIXED MOBILE 611	150.05–150.8 FIXED MOBILE US216 G30	150.05–150.8 US216		
150.8–152 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 610	150.8–152 FIXED MOBILE	150.8–152 FIXED MOBILE 611	150.8–152	150.8–152 FIXED LAND MOBILE NG51 NG112 NG124	PRIVATE LAND MOBILE (90)	
152–152.255 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 610	152–152.255 FIXED MOBILE	152–152.255 FIXED MOBILE 611	152–152.255 US216	152–152.255 FIXED LAND MOBILE US216	PUBLIC MOBILE (22)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
152.255–152.495 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 610	152.255–152.495 FIXED MOBILE	152.255–152.495 FIXED MOBILE 611	152.255–152.495	152.255–152.495 FIXED LAND MOBILE NG124	PRIVATE LAND MOBILE (90)	
152.495–152.855 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 610	152.495–152.855 FIXED MOBILE	152.495–152.855 FIXED MOBILE 611	152.495–152.855	152.495–152.855 FIXED LAND MOBILE NG4	PUBLIC MOBILE (22)	
152.855–153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 610	152.855–153 FIXED MOBILE	152.855–153 FIXED MOBILE 611	152.855–153	152.855–153 LAND MOBILE NG4 NG124	PRIVATE LAND MOBILE (90) AUXILIARY BROADCASTING (74)	
153–154 FIXED MOBILE except aeronautical mobile (R) Meteorological Aids	153–154 FIXED MOBILE	153–154 FIXED MOBILE	153–154	153–154 LAND MOBILE NG4 NG124	PRIVATE LAND MOBILE (90) AUXILIARY BROADCASTING (74)	
154–156.2475 FIXED MOBILE except aeronautical mobile (R) 613	154–156.2475 FIXED MOBILE 613	154–156.2475 FIXED MOBILE 613	154–156.2475 613	154–156.2475 FIXED LAND MOBILE 613 NG112 NG117 NG124 NG148	PRIVATE LAND MOBILE (90) MARITIME (80)	
156.2475–156.7625 FIXED MOBILE except aeronautical mobile (R) 613 613A	156.2475–156.7625 FIXED MOBILE 613 613A	156.2475–156.7625 FIXED MOBILE 613 613A	156.2475–156.7625 613 613A US77 US106 US266	156.2475–156.7625 MARITIME MOBILE 613 613A US77 US106 US266 NG117		
156.7625–156.8375 MARITIME MOBILE (distress and calling) 501 613	156.7625–156.8375 MARITIME MOBILE (distress and calling) 501 613	156.7625–156.8375 MARITIME MOBILE (distress and calling) 501 613	156.7625–156.8375 613 US107 US266	156.7625–156.8375 MARITIME MOBILE 613 US107 US266 NG117		

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
156.8375–157.0375 FIXED MOBILE except aeronautical mobile 613	156.8375–157.0375 FIXED MOBILE 613	156.8375–157.0375 FIXED MOBILE 613	156.8375–157.0375 613 US77 US266	156.8375–157.0375 MARITIME MOBILE 613 US77 US 266 NG117		
157.0375–157.1875 FIXED MOBILE except aeronautical mobile 613	157.0375–157.1875 FIXED MOBILE 613	157.0375–157.1875 FIXED MOBILE 613	157.0375–157.1875 MARITIME MOBILE 613 US214 US266 G109	157.0375–157.1875 613 US214 US266	Private Land Mobile (90)	
157.1875–157.45 FIXED MOBILE except aeronautical mobile 613	157.1875–157.45 FIXED MOBILE 613	157.1875–157.45 FIXED MOBILE 613	157.1875–157.45 613 US223 US266	157.1875–157.45 LAND MOBILE MARITIME MOBILE 613 US223 US266 NG111 NG154	PRIVATE LAND MOBILE (90) MARITIME (80)	
157.45–157.755 FIXED MOBILE except aeronautical mobile	157.45–157.755 FIXED MOBILE	157.45–157.755 FIXED MOBILE	157.45–157.755 US266	157.45–157.755 FIXED LAND MOBILE US266 NG111 NG 124	PRIVATE LAND MOBILE (90)	
157.755–158.115 FIXED MOBILE except aeronautical mobile	157.755–158.115 FIXED MOBILE	157.755–158.115 FIXED MOBILE	157.755–158.115	157.755–158.115 FIXED LAND MOBILE	PUBLIC MOBILE (22)	
158.115–161.575 FIXED MOBILE except aeronautical mobile 613 613B	158.115–161.575 FIXED MOBILE 613	158.115–161.575 FIXED MOBILE 613	158.115–161.575 613	158.115–161.575 FIXED LAND MOBILE 613 NG6 NG28 NG70 NG112 NG124 NG148	PUBLIC MOBILE (22) PRIVATE LAND MOBILE (90) MARITIME (80)	
161.575–161.625 FIXED MOBILE except aeronautical mobile 613	161.575–161.625 FIXED MOBILE 613	161.575–161.625 FIXED MOBILE 613	161.575–161.625 613 US77	161.575–161.625 MARITIME MOBILE 613 US77 NG6 NG17	MARITIME (80) PUBLIC MOBILE (22)	
161.625–161.775 FIXED MOBILE except aeronautical mobile 613	161.625–161.775 FIXED MOBILE 613	161.625–161.775 FIXED MOBILE 613	161.625–161.775 613	161.625–161.775 LAND MOBILE 613 NG6	AUXILIARY BROADCASTING (74) PUBLIC MOBILE (22)	

International table			United States table		FCC use designators	
			Government	Non-Government	Rule part(s)	Special-use frequencies
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
161.775–162.0125 FIXED MOBILE except aeronautical mobile 613 615	161.775–162.0125 FIXED MOBILE 613	161.775–162.0125 FIXED MOBILE 613	161.775–162.0125 613 US266	161.775–162.0125 LAND MOBILE MARITIME MOBILE 613 US266 NG6 NG154	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22) MARITIME (80)	
162.0125–173.2 FIXED MOBILE except aeronautical mobile 613 615	162.0125–173.2 FIXED MOBILE 613	162.0125–173.2 FIXED MOBILE 613 616 617 618	162.0125–173.2 FIXED MOBILE 613 US8 US11 US13 US216 US223 US300 US312 G5	162.0125–173.2 613 US8 US11 US13 US216 US223 US300 US312	Auxiliary Broadcasting (74) Private Land Mobile (90)	
173.2–173.4 FIXED MOBILE except aeronautical mobile 615	173.2–173.4 FIXED MOBILE	173.2–173.4 FIXED MOBILE 617 618	173.2–173.4	173.2–173.4 FIXED Land Mobile NG124	PRIVATE LAND MOBILE (90)	
173.4–174 FIXED MOBILE except aeronautical mobile 615	173.4–174 FIXED MOBILE	173.4–174 FIXED MOBILE 617 618	173.4–174 FIXED MOBILE G5	173.4–174		
*	*	*	*	*	*	*
220–222 BROADCASTING 621 623 628 629	220–222 AMATEUR FIXED MOBILE Radiolocation 627	220–222 FIXED MOBILE BROADCASTING 626	220–222 FIXED LAND MOBILE Radiolocation 627 G2	220–222 FIXED LAND MOBILE 627	PRIVATE LAND MOBILE (90)	
*	*	*	*	*	*	*
450–451 FIXED MOBILE 653 668	450–451 FIXED MOBILE 668	450–451 FIXED MOBILE 653 668	450–451 668 US87	450–451 LAND MOBILE 668 US87	AUXILIARY BROADCASTING (74)	
451–454 FIXED MOBILE 653	451–454 FIXED MOBILE	451–454 FIXED MOBILE 653	451–454	451–454 LAND MOBILE NG112 NG124	PRIVATE LAND MOBILE (90)	
454–455 FIXED MOBILE 653	454–455 FIXED MOBILE	454–455 FIXED MOBILE 653	454–455	454–455 FIXED LAND MOBILE NG12 NG112 NG148	PUBLIC MOBILE (22) MARITIME (80)	
455–456 FIXED MOBILE 653	455–456 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	455–456 FIXED MOBILE 653	455–456	455–456 LAND MOBILE	AUXILIARY BROADCASTING (74)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
456–459 FIXED MOBILE 653 669	456–459 FIXED MOBILE 669 670	456–459 FIXED MOBILE 653 669 670	456–459 669 670	456–459 FIXED LAND MOBILE 669 670 NG112 NG124	PRIVATE LAND MOBILE (90)	
459–460 FIXED MOBILE 653	459–460 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	459–460 FIXED MOBILE 653	459–460	459–460 FIXED LAND MOBILE NG12 NG112 NG148	PUBLIC MOBILE (22) MARITIME (80)	
460–462.5375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 671 672	460–462.5375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 671	460–462.5375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 671 672	460–462.5375 Meteorological-Satellite (space-to-Earth) 671 US201 US209	460–462.5375 FIXED LAND MOBILE 671 US201 US209 NG124	PRIVATE LAND MOBILE (90)	
462.5375–462.7375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 671 672	462.5375–462.7375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 671	462.5375–462.7375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 671 672	462.5375–462.7375 Meteorological-Satellite (space-to-Earth) 671 US201	462.5375–462.7375 LAND MOBILE 671 US201	PERSONAL (95)	
462.5375–462.5375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 669 671 672	462.5375–462.5375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 669 671	462.5375–462.5375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 669 671 672	462.5375–462.5375 Meteorological-Satellite (space-to-Earth) 669 671 US201 US209 US216	462.7375–467.5375 FIXED LAND MOBILE 669 671 US201 US209 US216 NG124	PRIVATE LAND MOBILE (90)	
467.5375–467.7375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 669 671 672	467.5375–467.7375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 669 671	467.5375–467.7375 FIXED MOBILE Meteorological-Satellite (space-to-Earth) 669 671 672	467.5375–467.7375 Meteorological-Satellite (space-to-Earth) 669 671 US201	467.5375–567.7375 LAND MOBILE 669 671 US201	PERSONAL (95)	
467.7375–470 FIXED MOBILE Meteorological-Satellite (space to Earth) 671 672	467.7375–470 FIXED MOBILE Meteorological-Satellite (space to Earth) 670 671	467.7375–470 FIXED MOBILE Meteorological-Satellite (space to Earth) 670 671 672	467.7375–470 MOBILE Meteorological-Satellite (space to Earth) 670 671 US201 US216	467.735–470 FIXED LAND MOBILE 670 671 US201 US216 NG124	PRIVATE LAND MOBILE (90)	
470–512 BROADCASTING	470–512 BROADCASTING Fixed Mobile	470–512 FIXED MOBILE BROADCASTING	470–512	470–512 BROADCASTING FIXED LAND MOBILE	RADIO BROADCAST (TV)(73) PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
676 677A	674 675	673 677		NG66 NG114 NG127 NG128 NG149	Auxiliary Broadcasting (74)	
512–585 BROADCASTING 676 677A 683 684	512–585 BROADCASTING 678	512–585 FIXED MOBILE BROADCASTING 677 679	512–585	512–585 BROADCASTING NG128 NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
585–608 BROADCASTING 677A 683 684 685 686 686A 687	585–608 BROADCASTING 678	585–608 FIXED MOBILE BROADCASTING RADIO-NAVIGATION 688	585–608	585–608 BROADCASTING NG128 NG149	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
608–610 BROADCASTING 677A 684 687 689	608–610 RADIOASTRONOMY Mobile-Satellite except aeronautical mobile-satellite (Earth-to-space) 688 689 690	608–610 FIXED MOBILE BROADCASTING RADIO-NAVIGATION	608–610 RADIO ASTRONOMY US74 US246	US74 US246		
610–614 BROADCASTING 677A 684 687 689	610–614 RADIO ASTRONOMY Mobile-Satellite except aeronautical mobile-satellite (Earth-to-space)	610–614 FIXED MOBILE BROADCASTING 677 688 689 690 691	610–614 RADIO ASTRONOMY US74 US246	610–614 RADIO ASTRONOMY US74 US246		
614–790 BROADCASTING 677A 684 693 694	614–790 BROADCASTING Fixed Mobile 675 692 692A 693	614–790 FIXED MOBILE BROADCASTING 677 691 693	614–790 BROADCASTING	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74) NG30 NG128 NG149		
790–806 FIXED BROADCASTING 694 695 695A 696 697	790–806 BROADCASTING Fixed Mobile 675 692 692A	790–806 Fixed Mobile BROADCASTING 677	790–806	790–806 NG30 NG43 NG128 NG149	790–806 BROADCASTING	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)
806–821 FIXED BROADCASTING 694 695 695A 696 697 700B	806–821 FIXED MOBILE BROADCASTING 692A 700	806–821 FIXED MOBILE BROADCASTING 677 701	806–821	806–821 FIXED LAND MOBILE NG30 NG31 NG43 NG63	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
821–824 FIXED BROADCASTING	821–824 FIXED MOBILE BROADCASTING	821–824 FIXED MOBILE BROADCASTING	821–824	821–824 LAND MOBILE	PRIVATE LAND MOBILE (90)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
694 695 695A 696 697 700B	692A 700	677 701		NG30 NG43 NG63		
824–849 FIXED BROADCASTING 694 695 695A 696 697 700B 702	824–849 FIXED MOBILE BROADCASTING 692A 700	824–849 FIXED MOBILE BROADCASTING 677 701	824–849	824–849 FIXED LAND MOBILE NG30 NG43 NG63 NG151	PUBLIC MOBILE (22)	
849–851 FIXED BROADCASTING 694 695A 697 702	849–851 FIXED MOBILE BROADCASTING 692A 700 700A	849–851 FIXED MOBILE BROADCASTING 677 701	849–851	849–851 AERONAUTICAL MOBILE NG30 NG63	PUBLIC MOBILE (22)	
851–862 FIXED BROADCASTING 694 695A 697 700B 702	851–862 FIXED MOBILE BROADCASTING 692A 700	851–862 FIXED MOBILE BROADCASTING 677 701	851–862	851–862 FIXED LAND MOBILE NG30 NG31 NG63	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
862–866 FIXED MOBILE except aeronautical mobile BROADCASTING 703 700B 704	862–866 FIXED MOBILE BROADCASTING 692A 700	862–866 FIXED MOBILE BROADCASTING 677 701	862–866	862–866 FIXED LAND MOBILE NG30 NG31 NG63	PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
866–869 FIXED MOBILE except aeronautical mobile BROADCASTING 703 700B 704	866–869 FIXED MOBILE BROADCASTING 692A 700	866–869 FIXED MOBILE BROADCASTING 677 701	866–869	866–869 LAND MOBILE NG30 NG63	PRIVATE LAND MOBILE (90)	
869–890 FIXED MOBILE except aeronautical mobile BROADCASTING 703 700B 704	869–890 FIXED MOBILE BROADCASTING 692A 700	869–890 FIXED MOBILE BROADCASTING 677 701	869–890	869–890 FIXED LAND MOBILE NG30 NG63 NG151	PUBLIC MOBILE (22)	
890–894 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	890–894 FIXED MOBILE except aeronautical mobile Radiolocation 700A 704A 705	890–894 FIXED MOBILE BROADCASTING Radiolocation 706	890–894 US116 US268 G2	890–894 FIXED LAND MOBILE US116 US268 NG151	PUBLIC MOBILE (22)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
894–896 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	894–896 FIXED MOBILE except aeronautical mobile Radiolocation 700A 704A 705	894–896 FIXED MOBILE BROADCASTING Radiolocation 706	894–896 US116 US268 G2	894–896 AERONAUTICAL MOBILE US116 US268	PUBLIC MOBILE (22)	
896–901 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	896–901 FIXED MOBILE except aeronautical mobile Radiolocation 705	896–901 FIXED MOBILE BROADCASTING Radiolocation 706	896–901 US116 US268 G2	896–901 FIXED LAND MOBILE US116 US268	PRIVATE LAND MOBILE (90)	
901–902 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	901–902 FIXED MOBILE except aeronautical mobile Radiolocation 705	901–902 FIXED MOBILE BROADCASTING Radiolocation 706	901–902 US116 US268 G2	901–902 FIXED MOBILE US116 US268	PERSONAL COMMUNICATIONS (24)	
902–928 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	902–928 FIXED Amateur Mobile except aeronautical mobile Radiolocation 705 707 707A	902–928 FIXED MOBILE BROADCASTING Radiolocation 706	902–928 RADIOLOCATION 707 US215 US218 US267 US275 G11 G59	902–928 707 US215 US218 US267 US275	Amateur (97) Private Land Mobile (90)	915 ± 13 MHz: Industrial scientific and medical frequency.
928–929 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	928–929 FIXED MOBILE except aeronautical mobile Radiolocation 705	928–929 FIXED MOBILE BROADCASTING Radiolocation 706	928–929 US116 US 215 US268 G2	928–929 FIXED US116 US215 US268	FIXED MICROWAVE (101) PRIVATE LAND MOBILE (90) PUBLIC MOBILE (22)	
929–930 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	929–930 FIXED MOBILE except aeronautical mobile Radiolocation 705	929–930 FIXED MOBILE BROADCASTING Radiolocation 706	929–930 US116 US215 US268 G2	929–930 FIXED LAND MOBILE US116 US215 US268	929–930 PRIVATE LAND MOBILE (90)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
930–931 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	930–931 FIXED MOBILE except aeronautical mobile Radiolocation 705	930–931 FIXED MOBILE BROADCASTING Radiolocation 706	930–931 US116 US215 US268 G2	930–931 FIXED MOBILE US116 US215 US268	PERSONAL COMMUNICATIONS (24)	
931–932 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	931–932 FIXED MOBILE except aeronautical mobile Radiolocation 705	931–932 FIXED MOBILE BROADCASTING Radiolocation 706	931–932 US116 US215 US268 G2	931–932 FIXED LAND MOBILE US116 US215 US268	PUBLIC MOBILE (22)	
932–935 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	932–935 FIXED MOBILE except aeronautical mobile Radiolocation 705	932–935 FIXED MOBILE BROADCASTING Radiolocation 706	932–935 FIXED US215 US268 G2	932–935 FIXED US215 US268	FIXED MICROWAVE (101) PUBLIC MOBILE (22)	
935–940 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	935–940 FIXED MOBILE except aeronautical mobile Radiolocation 705	935–940 FIXED MOBILE BROADCASTING 706	935–940 US116 US215 US268 G2	935–940 FIXED LAND MOBILE US116 US215 US268	PRIVATE LAND MOBILE (90)	
940–941 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	940–941 FIXED MOBILE except aeronautical mobile Radiolocation 705	940–941 FIXED MOBILE BROADCASTING Radiolocation 706	940–941 US116 US268 G2	940–941 FIXED MOBILE US116 US268	PERSONAL COMMUNICATIONS (24)	
941–942 FIXED MOBILE except aeronautical mobile BROADCASTING 703 Radiolocation 704	941–942 FIXED MOBILE except aeronautical mobile Radiolocation 705	941–942 FIXED MOBILE BROADCASTING Radiolocation 706	941–942 FIXED US268 G2	941–942 FIXED US268	FIXED MICROWAVE (101) PUBLIC MOBILE (22)	

International table			United States table		FCC use designators	
			Government	Non-Government	Rule part(s)	Special-use frequencies
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
942–944 FIXED MOBILE except aeronautical mobile BROADCASTING 703 704	942–944 FIXED MOBILE	942–944 FIXED MOBILE BROADCASTING 701	942–944 FIXED US301 US302	942–944 FIXED US301 US302	FIXED MICROWAVE (101)	
944–960 FIXED MOBILE except aeronautical mobile BROADCASTING 703 704	944–960 FIXED MOBILE	944–960 FIXED MOBILE BROADCASTING 701	944–960	944–960 FIXED NG120	AUXILIARY BROADCASTING (74) FIXED MICROWAVE (101) INTERNATIONAL PUBLIC FIXED (23) PUBLIC MOBILE (22)	
*	*	*	*	*	*	*
1710–1850 FIXED MOBILE 740A 722 744 746	1710–1850 FIXED MOBILE 740A 722 744 745	1710–1850 FIXED MOBILE 740A 722 744 745	1710–1850 FIXED MOBILE 722 US256 G42	1710–1850 722 US256		
1850–1930 FIXED MOBILE 740A 746A	1850–1930 FIXED MOBILE 740A 746A	1850–1930 FIXED MOBILE 740A 746A	1850–1930	1850–1930 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COMMUNICATIONS (24) RADIO FREQUENCY DEVICES (15)	
1930–1970 FIXED MOBILE 746A	1930–1970 FIXED MOBILE Mobile-Satellite (Earth-to-Space) 746A	1930–1970 FIXED MOBILE 746A	1930–1970	1930–1970 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COMMUNICATIONS (24)	
1970–1980 FIXED MOBILE 746A	1970–1980 FIXED MOBILE Mobile-Satellite (Earth-to-space) 746A 746B 746C	1970–1980 FIXED MOBILE 746A	1970–1980	1970–1980 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COMMUNICATIONS (24)	
1980–1990 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B	1980–1990 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B 746C	1980–1990 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 746A 746B	1980–1990	1980–1990 FIXED MOBILE	FIXED MICROWAVE (101) PERSONAL COMMUNICATIONS (24)	
1990–2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	1990–2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	1990–2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	1990–2010	1990–2010 FIXED MOBILE	AUXILIARY BROADCASTING (74) CABLE TELEVISION (78)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
746A 746B	746A 746B 746C	746A 746B	US90 US111 US219 US222	US90 US111 US219 US222 NG23 NG118		
2010–2025 FIXED MOBILE	2010–2025 FIXED MOBILE	2010–2025 FIXED MOBILE	2010–2025	2010–2025 FIXED MOBILE	AUXILIARY BROADCASTING (74) CABLE TELEVISION (78)	
746A	746A	746A	US111 US222	US111 US222 NG23 NG118		
2025–2110 FIXED MOBILE 747A SPACE RESEARCH (Earth-to-space) (space-to-space) SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space)	2025–2110 FIXED MOBILE 747A SPACE RESEARCH (Earth-to-space) (space-to-space) SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space)	2025–2110 FIXED MOBILE 747A SPACE RESEARCH (Earth-to-space) (space-to-space) SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space)	2025–2110	2025–2110 FIXED MOBILE	AUXILIARY BROADCASTING (74) CABLE TELEVISION (78)	
750A	750A	750A	US90 US111 US219 US222	US90 US111 US219 US222 NG23 NG118		
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International Footnotes

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672 *Different category of service:* in Afghanistan, Bulgaria, China, Cuba, Japan, Mongolia, Czechoslovakia and the U.S.S.R., the allocation of the band 460–470 MHz to the meteorological-satellite service (space-to-Earth) is on a primary basis (see No. 425) and is subject to agreement obtained under the procedure set forth in Article 14.

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675 *Additional allocation:* in Chile, Columbia, Cuba, Ecuador, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis (see No. 425), subject to agreement obtained under the procedure set forth in Article 14.

676 *Additional allocation:* in Burundi, Cameroon, the Congo, Ethiopia, Israel, Kenya, Lebanon, Libya, Malawi, Senegal, Sudan, Syria, and Yemen, the band 470–582 MHz is also allocated to the fixed service on a secondary basis.

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678 *Additional allocation:* in Costa Rica, Cuba, El Salvador, Ecuador, the United States, Guatemala, Guyana, Honduras, Jamaica, Mexico and Venezuela, the band 512–608 MHz is also allocated to the fixed and mobile services on a primary basis, subject to agreement obtained under the procedures set forth in Article 14.

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697 *Additional allocation:* in the Federal Republic of Germany, Burkina Faso, Cameroon, Côte d'Ivoire, Denmark, Egypt, Finland, Israel, Kenya, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790–830 MHz, and in these same countries and in Spain, France, Malta, the Gabonese Republic and Syria, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with this band.

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703 In Region 1, in the band 862–960 MHz, stations of the broadcasting service shall be operated only in the African Broadcasting Area (see Nos. 400 to 403) excluding Algeria, Egypt, Spain, Libya and Morocco, subject to agreement obtained under the procedure set forth in Article 14.

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PART 22—PUBLIC MOBILE SERVICES

3. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

4. Section 22.901 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 22.901 Cellular service requirements and limitations.

Cellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area (see § 22.911) where facilities have been constructed and mobile service to subscribers has commenced. A cellular system licensee may refuse or terminate service, however, subject to any applicable state or local requirements for timely notification to any subscriber who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

* * * * *

(d) *Alternative technologies and co-primary services.* Licensees of cellular systems may use alternative cellular technologies and/or provide fixed services on a co-primary basis with their mobile offerings, including personal communications services (as defined in Part 24 of this chapter) on the spectrum within their assigned channel block. Cellular carriers that provide mobile services must make such service available to subscribers whose mobile equipment conforms to the cellular system compatibility specification (see § 22.933).

(1) Licensees must perform or obtain an engineering analysis to ensure that interference to the service of other cellular systems will not result from the implementation of co-primary fixed services or alternative cellular technologies.

(2) Alternative technology and co-primary fixed services are exempt from the channeling requirements of § 22.905, the modulation requirements of § 22.915, the wave polarization requirements of § 22.367, the compatibility specification in § 22.933 and the emission limitations of §§ 22.357 and 22.917, except for emission limitations that apply to emissions outside the assigned channel block.

PART 24—PERSONAL COMMUNICATIONS SERVICES

5. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

6. Section 24.3 is revised to read as follows:

§ 24.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided on a co-primary basis with mobile operations. Broadcasting as defined in the Communications Act is prohibited.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

7. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303; and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

8. Section 90.419 is revised to read as follows:

§ 90.419 Points of communication.

Normally, operations licensed under this part are intended to provide intrastation mobile communications. For example, a base station is intended to communicate with its associated mobile stations and mobile stations are intended to communicate between associated mobile stations and associated base stations of the licensee. Accordingly, operations between base stations at fixed locations are permitted only in the following situations:

(a) Base stations licensed under the Public Safety and Special Emergency Radio Services that operate on frequencies below 450 MHz, may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services.

(b) Base stations licensed on any frequency in the Industrial and Land Transportation Radio Services and on base station frequencies above 450 MHz in the Public Safety and Special Emergency Services may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services only when:

(1) The messages to be transmitted are of immediate importance to mobile stations; or

(2) Wireline communications facilities between such points are inoperative, economically impracticable, or unavailable from communications common carrier sources. Temporary unavailability due to a busy wireline circuit is not considered to be within the provisions of this paragraph.

(c) Operational fixed stations may communicate with units of associated mobile stations only on a secondary basis.

(d) Operational fixed stations licensed in the Industrial and Land Transportation Radio Services may communicate on a secondary basis with associated base stations licensed in these services when:

(1) The messages to be transmitted are of immediate importance to mobile stations; or

(2) Wireline communications facilities between such points are inoperative, economically impracticable, or unavailable from communications common carrier sources. Temporary unavailability due to a busy wireline circuit is not considered to be within the provisions of this paragraph.

(e) Travelers' Information Stations are authorized to transmit certain information to members of the traveling public (see § 90.242).

(f) CMRS Licensees in the SMR categories of Part 90, Subpart S, CMRS providers authorized in the 220 MHz service of Part 90, Subpart T, CMRS paging operations as defined by Part 90, Subpart P and for-profit interconnected business radio services with eligibility defined by Section 90.75 are permitted to utilize their assigned spectrum for fixed services on a co-primary basis with their mobile operations.

[FR Doc. 96–21794 Filed 8–28–96; 8:45 am]
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47 CFR Part 76

[MM Docket No. 92–266; FCC 96–316]

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: In this *Memorandum Opinion and Order* ("*Order*"), the Commission revisits the decision in the *Third Report and Order* to require cable operators to use the same method of initial rate regulation, either benchmark or cost-of-service, for both the BST and the CPSTs. This requirement applies for one year from the date that the operator first becomes subject to regulation on any tier. The *Third Report and Order* sought to remove incentives to engage in retiering strategies during the initial rate setting process that would result in operators receiving more than compensatory rates. The Commission indicated that it would review the requirement after 18 months. Upon

review of the record the Commission elects to modify the requirement set forth in the *Third Report and Order* so that consistent rate methodologies must be used for the entire period in which an operator is subject to rate regulation on both the BST and CPST(s). This *Order* is adopted concurrently with a *Notice of Proposed Rulemaking* which is summarized elsewhere in this issue of the **Federal Register**. The intended effect of this *Order* is that consistent rate methodologies be used for the entire period in which an operator is subject to rate regulation on both the BST and CPST(s).

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 92–266 FCC 96–316 adopted July 25, 1996, and released August 15, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Memorandum Opinion and Order

1. In the *Third Report and Order* in MM Docket No. 92–266, 58 FR 63087 ("*Third Report and Order*") the Commission determined that operators must use the same rate-setting method for all tiers. This requirement applies for one year from the date an operator first becomes subject to rate regulation on either the BST or a CPST. The Commission established this requirement because, in some circumstances, using the benchmark approach for one tier and the cost-of-service approach for another tier could result in a double recovery of costs by the cable operator.

2. The regulatory review process for BST rates is separate from the review process for CPST rates. Regulation of rates for BSTs is the responsibility of certified local franchising authorities ("LFAs"), pursuant to standards and procedures established by the Commission. An operator may appeal an LFA's rate decision to the Commission. CPST rates are regulated directly by the Commission upon receipt by the Commission of a valid complaint from an LFA.

3. In the *Third Report and Order*, the Commission held, that without the tier consistency requirement:

> an operator could retier its services and place its most expensive programming on the tier regulated by a cost-of-service determination. The operator would then be allowed to charge a per channel rate for the low cost tier based on the benchmark (which is an averaged rate) that actually exceeds its cost for that tier (and, thus, the rate it would be able to charge under a cost-of-service showing). At the same time, the operator may be able to charge a higher-than-benchmark rate for the other tier through a cost-of-service showing, based on its higher costs for that tier. The end result would be rates that exceed the reasonableness standard set forth in the 1992 Cable Act.

4. The Commission upholds the requirement of the *Third Report and Order* that the same methodology for determining rates on all regulated tiers shall be used in the initial rate setting process. The Commission sees no reason to conclude that the concerns referred to in the preceding paragraph have dissipated. In addition, because these concerns do not dissipate one year after an operator initially becomes subject to regulation, on its own motion, the Commission removes the provision that limits the required use of consistent methodologies to the one year period beginning on the date an operator initially becomes subject to rate regulation, and thereby extend the requirement so that consistent methodologies must be used whenever an operator has more than one tier subject to rate regulation. This requirement will remain effective until such time as the Commission finds that the use of the same rate regulatory method on all rate regulated tiers is not necessary to prevent operators from charging rates above that which the rate regulations contemplate. This provision effectuates the Commission's statutory mandate to protect consumers from unreasonable rates.

5. Use of the same rate regulatory method for all rate regulated tiers does not hamper an operator's ability to charge fully compensatory rates. The Commission provides a cost of service option as an alternative to the benchmark formula for operators that believe the benchmark would not enable them to recover costs reasonably incurred in the provision of regulated cable service. As of the effective date of this *Order*, operators must use consistent rate regulatory methods on all rate regulated tiers whenever the operator is required to justify its rates on any rate regulated tier.

Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket 92–266, 58 FR 29736 ("*Report and Order*"). The Commission sought written public comments on the proposals in the *Report and Order* including comments on the IRFA, and addressed these responses in the *Third Report and Order*. No IRFA was attached to the *Third Report and Order* because the *Third Report and Order* only adopted final regulations and did not propose regulations. This FRFA thus addresses the impact of regulations on small entities only as adopted or modified in this action and not as adopted or modified in earlier stages of this rulemaking proceeding. The Commission's Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847. Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 U.S.C. § 610 *et seq.* (1996).

7. *Need and Purpose for Action:* This action is being taken in accordance with the Commission's decision, as set forth in the *Third Report and Order*, to revisit the issues discussed herein, and to carry out the Commission's statutory mandate to insure that cable rates are reasonable.

8. *Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:* There were no comments received in response to the Initial Regulatory Flexibility Analysis. A single commenter petitioned the Commission for reconsideration of the requirements contained in the *Third Report and Order*, but this petition was ultimately withdrawn. The petitioner was not a small entity, and no reply comments to the petition were received.

9. *Certification of No Significant Economic Impact on a Substantial number of Small Entities:* We do not believe that the final rule adopted in the *Order* will have a significant impact on small entities as defined by the Small Business Administration (SBA), by statute, or by our rules. The Communications Act at 47 U.S.C. 543 (m)(2) defines a small cable operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is

not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." Under the Communications Act, at 47 U.S.C. 543(m)(1), a small cable operator is not subject to the rate regulation requirements of Sections 543 (a), (b) and (c) on cable programming service tiers ("CPSTs") in any franchise area in which it serves 50,000 or fewer subscribers. The rule adopted in this *Order* requires that the same rate regulatory methodology be used across the basic service tier ("BST") and CPSTs. Thus, the rule adopted in this *Order* only applies to operators that are rate regulated on both the BST and CPST, and would therefore not apply to a small cable operator in any franchise area in which it serves 50,000 or fewer subscribers.

10. Section 623(i) of the Communications Act, 47 U.S.C. § 543(i), requires that the Commission design rate regulations in such a way as to reduce the administrative burdens and the cost of compliance for cable systems with 1,000 or fewer subscribers. The Commission introduced a form of rate regulation known as the small system cost-of-service methodology. This approach is more streamlined than the standard cost-of-service methodology available to cable operators that are not small cable systems owned by small cable companies. In addition, the small system rules include substantive differences from the standard cost-of-service rules to take account of the proportionately higher costs of providing service faced by small systems. This rate adjustment methodology is an alternative to the standard rate adjustment methodologies which are the subject of this *Order*. In designing this alternative methodology, the Commission extended the small system relief required by Section 623(i) of the Communications Act to cable systems with 15,000 or fewer subscribers owned by cable companies serving 400,000 or fewer subscribers over all of their cable systems. Because of the utilization of this alternative rate adjustment methodology by small cable operators, we do not believe that this *Order*, which does not concern this alternative methodology, will have any significant economic impact on a substantial number of small cable companies as defined by the Commission's rules.

11. The SBA, at 13 CFR Part 121.201 (as of July 25, 1996), defines a small cable business concern as a cable business, including its affiliates, that has $11 million or less in annual receipts. The Commission, in defining a small system as a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers, stated that $100 million in annual regulated revenues equates to approximately 400,000 subscribers. We therefore believe that many cable operators that are within this SBA definition will also be within the Commission's definition of small cable operator, and will not experience significant economic impact for the reasons described in the preceding paragraph. If, however, a cable operator has $11 million or less in annual receipts, but does not fall within the class of small cable companies entities to small system rate relief under the Commissions rules, we believe that such a company would fall under the Communications Act at 47 U.S.C. 543(m)(1), which states that a small cable operator is not subject to the rate regulation requirements of Sections 543 (a), (b) and (c) on CPSTs in any franchise area in which it serves 50,000 or fewer subscribers. If $100 million in annual regulated revenues equates to approximately 400,000 subscribers, then 50,000 subscribers, expressed in terms of dollars, should meet or exceed the $11 million in annual receipts from the SBA definition of a small cable business concern. Using this same approach, we likewise believe that the SBA definition of a cable business concern will fall within the one percent of United States subscribers from the Communications Act definition of a small cable operator, because the Commission has determined that there are approximately 61,700,000 subscribers in the United States. We believe that small cable business concerns as defined by the SBA will fall within the Communication Act's definition of a small cable operator and the Act's provision of CPST rate deregulation for small cable operators that serve 50,000 or fewer subscribers. As explained above, the rule adopted in this *Order* is inapplicable to operators that are not subject to CPST rate regulation.

12. The SBA, at 5 U.S.C. Section 601 (Vol. 5), states that small governmental jurisdictions are "[g]overnments of cities, counties, towns, townships, villages, school districts or special districts with populations of less than 50,000." Under the Commissions current rules, if a local governmental has elected to rate regulate the BST, a cable operator must submit rate justifications to the local government on FCC Forms. We do not believe that a substantial number of small governmental jurisdictions will face a significant economic impact due to this *Order* for the following reasons. First, we do not know of any cable operators that are currently using inconsistent rate setting methods on their rate regulated tiers, and that would therefore have to switch to consistent methods as a result of this *Order*. If such an operator did exist, the operator would not be required to use consistent rate regulatory methods until the next time the operator was required to justify rates on a rate regulated tier. Thus, the requirement would not generate an increased number of rate reviews by a local franchising authority. Even in this instance, an operator may elect to change its CPST ratemaking methodology in order to conform to the rule as opposed to its BST ratemaking methodology. Such a change would not affect small governmental jurisdictions because the CPST rate is regulated by the Commission, and not by small governmental jurisdictions.

13. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Procedural Provisions

14. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally*, 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

15. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 6, 1996, and reply comments on or before November 8, 1996. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

Ordering Clauses

16. Accordingly, *it is ordered* that, pursuant to the authority granted in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 154(j), 303(r) and 543, the requirements set forth in the *Third Report and Order are amended* to provide that the use of the same rate regulatory methodology will be required for all rate regulated tiers for the entire period in which an operator is subject to rate regulation on more than one tier.

17. *It is further ordered* that the requirements established in this decision shall become effective September 30, 1996.

18. *It is further ordered* that, the Secretary shall send a copy of this *Memorandum Opinion and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects in 47 CFR Part 76

Cable television.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

Section 76.922(a) is revised to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

(a) *Basic and cable programming service tier rates.* Basic service tier and cable programming service rates shall be subject to regulation by the Commission and by state and local authorities, as is appropriate, in order to assure that they are in compliance with the requirements of 47 U.S.C. 543. Rates that are demonstrated, in accordance with this part, not to exceed the "Initial Permitted Per Channel Charge" or the "Subsequent Permitted Per Channel Charge" as described in this section, or the equipment charges as specified in § 76.923, will be accepted as in compliance. The maximum monthly charge per subscriber for a tier of regulated programming services offered by a cable system shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for regulated programming services shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 76.923. The same rate-making methodology (either the benchmark methodology found in paragraph (b) of this section, or a cost-of-service showing) shall be used to set initial rates on all rate regulated tiers, and shall continue to provide the basis for subsequent permitted charges.

* * * * *

[FR Doc. 96–21582 Filed 8–28–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–87; Notice 2]

RIN 2127–AF78

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle standard on lighting, to adopt new photometric requirements for motorcycle headlamps. The requirements will improve the objectivity of the aiming of their upper beam. The new photometric requirements are those of Society of Automotive Engineers (SAE) Standard J584 OCT93, added as a new Figure 32 to Standard No. 108. They will exist simultaneously with the current photometric requirements of SAE J584 April 1964 until September 1, 2000, when they become mandatory for new vehicle equipment. When being tested for photometric compliance with Figure 32, the upper beam of motorcycle headlamps will be aimed photoelectrically, instead of visually, as at present.

The amendments will enhance motor vehicle safety by improving visibility for the motorcycle operator, and detectability of his or her machine.

DATES: The final rule is effective October 15, 1996. Conformance with its requirements is optional until September 1, 2000, when it becomes mandatory.

Petitions for reconsideration must be filed not later than October 15, 1996.

ADDRESSES: Petitions for reconsideration must refer to Docket No. 95–87; Notice 2 and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Safety Performance Standards, NHTSA (Telephone: 202–366–5276; FAX: 202–366–4329).

SUPPLEMENTARY INFORMATION:

Background

Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* specifies requirements for motorcycle headlamps. Principally, these are the specifications of SAE Standard J584 April 1964, which have been incorporated by reference into Standard No. 108.

Petition for Rulemaking

The Motorcycle Industry Council (MIC) petitioned for rulemaking to amend Standard No. 108 to allow SAE Standard J584 OCT93 as an alternative to SAE J584 April 1964. According to MIC, motorcycle headlamps designed to conform to SAE J584 April 1964 have difficulty in providing sufficient lower beam illumination directly in front of the motorcycle, a need met by SAE J584 OCT93. Further, adoption of the 1993 requirements would allow manufacturers to install the same headlamp design on motorcycles sold in the United States as are currently being installed on motorcycles sold in 50 other countries.

The Notice of Proposed Rulemaking (NPRM)

In response to MIC's petition, NHTSA published a notice of proposed rulemaking (NPRM) on February 21, 1996 (61 FR 6616). NHTSA noted in the NPRM that, although it had granted MIC's petition, SAE J584 OCT93 is inappropriate for incorporation in full into Standard No. 108 because J584 OCT93 contains three sets of photometric specifications for five different classes of motorcycles. Standard No 108, on the other hand (J584 April 1964), contains two sets of photometric specifications, applicable to motorcycles and to motor driven cycles, i.e., motorcycles with 5 horsepower or less.

The specifications of SAE J584 OCT93 that did appear appropriate to NHTSA for inclusion in Standard No. 108 were the photometric requirements of Table 2, essentially refinements of those contained in the 1964 SAE standard applicable to motorcycles and to motor driven cycles. The primary differences are that both the maxima and minima candela are increased in J584 OCT93. Further, specifications are added for seven new test points on the lower beam (five for motor driven cycles), and seven on the upper beam (one for motor driven cycles). This increase in performance over that provided by the 1964 specifications promises better visibility for the operator and detectability by other motorists. This could reduce crashes for motorcyclists. Because of this potential to enhance safety, NHTSA tentatively concluded that the photometric requirements of Table 2 J584 OCT93 should become mandatory. In NHTSA's view, the permanent co-existence of two SAE standards, which prescribe different minima for the same test points, would undermine efforts to enforce the new, higher set of requirements.

However, because SAE J584 OCT93 prescribes higher test point minima than Standard No. 108's J584 April 1964, current motorcycle headlamps cannot be certified to meet the new SAE specifications. Consequently, NHTSA stated that it would be willing to allow a period of time in which the two specifications would co-exist as options until industry could retool for compliance with the newer ones. The agency was uncertain as to the time needed for headlamp redesign. For this reason, it proposed that the new requirements (contained in proposed Figure 31) become mandatory not earlier than two years and not later than four years after publication of the final rule, with optional compliance permitted beginning 30 days after publication. NHTSA requested comments on the appropriate lead time to make the proposed changes to motorcycle headlamp photometry.

On its own initiative, the agency reviewed the new and old SAE requirements to determine if there were other areas in which motorcycle headlamp performance could be enhanced. It found one such area: The April 1964 version of SAE J584 allows the upper headlamp beam to be aimed visually during the photometric test, while all subsequent versions have specified that it be aimed photoelectrically. Because a Federal motor vehicle safety standard by definition must be "objective", NHTSA tentatively concluded that a requirement for photoelectric aim of the upper beam would improve the objectivity of Standard No. 108, and assist manufacturers in their determinations of compliance for certification purposes. Therefore, it proposed that this method of aiming be used in testing headlamps to the photometrics of Figure 31.

In summary, the agency stated that the two amendments would be effectuated as follows. The amendments would be added to Standard No. 108 thirty days after publication of the final rule. At that time, a manufacturer would have the choice of continuing to conform to the 1964 photometrics and visual determination of upper beam compliance, or to conform to the photometrics of Figure 31 and photoelectric determination of upper beam compliance. As of a date two to four years after publication of the final rule, the manufacturer would be required to conform to Figure 31 and photoelectric determination.

Finally, the agency proposed to place all requirements pertaining to the performance of motorcycle headlamps in S7, *Headlighting requirements*, which currently incorporates all such requirements for motor vehicles other than motorcycles. New paragraph S7.9 would accomplish this purpose. Paragraphs S5.1.1.23, S5.1.1.24, and S5.6 (headlamp modulation systems) would become paragraphs S7.9.3, S7.9.5, and S7.9.4, respectively.

Comments on the NPRM

Comments were received from MIC, Stanley Electric Co. Ltd. (Stanley), Koito Manufacturing Co. Ltd. (Koito), American Suzuki Motor Corporation (Suzuki), and American Honda Motor Co. (Honda). Four principal issues were raised.

Leadtime. All commenters supported a leadtime of 4 years for mandatory compliance with the requirements proposed by the NPRM, some saying that it was "appropriate" and others that it was the "minimum" required. A typical comment was that of Suzuki, which said that in some cases, a leadtime of less than 4 years could require costly headlamp redesign for motorcycles shortly before they are replaced with new models. On the other hand, allowance of a 4-year lead time would be adequate to modify existing product lines and incorporate the new requirements in a cost effective manner.

NHTSA has heeded these comments. Given the support for the maximum leadtime proposed, and the likelihood that manufacturers will phase-in compliance with the new requirements before that time, as they replace existing models, mandatory compliance with the final rule will be required as of September 1, 2000.

Photometric Requirements. Koito and Suzuki opposed some of the values proposed. Specifically, they requested that the maximum intensity for upper beam headlamps at test point 4D–V be increased from 7,500 cd to 12,000 cd, and that the 75,000 cd maximum at any point be removed, or replaced with a maximum of 112,500 cd. It supported its position with the rationale that mainstream motorcycles in the United States are equipped with two-lamp headlamp systems and that each lamp is photometered separately. Then the values at the test points are added. Also, Figure 17A of Standard No. 108 allows a value of 12,000 cd at 4D–V, and a two-lamp system often exceeds a 7,500 cd value.

These comments appear based upon a misunderstanding of Standard No. 108. When a motorcycle is equipped with a two-lamp headlamp system, there is no summing of test point values in determining compliance. Each headlamp for use on a motorcycle must comply with specified photometrics for a single lamp, and not as a system of two headlamps. Thus, the maximum values apply to a single headlamp, and not the system of two headlamps as the commenters appear to believe.

Therefore, there is no reason to increase the values in the final rule from those originally proposed. Conversely, should a motorcycle be equipped with a single headlamp incorporating dual light sources to achieve either the upper or lower beam, the headlamp must be tested for photometric compliance with both light sources energized simultaneously, and the lamp must be designed to comply in this manner.

Aftermarket Replacement Headlamps. MIC is concerned that lamp manufacturers will be required to discontinue production of lamps for the replacement aftermarket that do not conform to the new standard. In its view, this could support a phase-in period longer than 4 years in order to provide proper replacement lighting for older, in-use motorcycles.

NHTSA understands MIC's concern. The agency has reviewed paragraph S5.8 *Replacement Equipment* of Standard No. 108. As a general rule, lighting equipment intended to replace original equipment must "be designed to conform to this standard," meaning Standard No. 108 as in effect on the date the replacement equipment is manufactured. Subparagraphs of S5.8 provide exceptions to the general rule, and allow turn signal lamps, taillamps, and stop lamps to meet the SAE

standard that applied to the original equipment they are intended to replace, as an alternative to meeting the SAE requirements specified for new vehicles in Tables I and III of Standard No. 108. It is to be noted that motorcycle headlamps and all other required lamps and reflectors are not among the exceptions. With respect to headlamps, NHTSA notes that the replacement equipment provisions were adopted when the only headlamps available were a limited number of sealed beam types that were intended to be universal replacements.

Because Standard No. 108 allows certain items of replacement lighting equipment to meet either current specifications or those in effect when the original lighting equipment was manufactured, NHTSA has tentatively concluded that this alternative should be extended to all items of lighting equipment, including headlamps. While the idea of enhancing safety through upgrades in replacement equipment is intuitively attractive, in some instances upgraded equipment may be incompatible with the electrical systems of older vehicles. In addition, many lamp designs are vehicle-specific, and it is costly to lamp manufacturers to have to design lamps of identical dimensions to two different performance requirements. An owner should not be denied the chance to buy replacement equipment that is suitable for his or her vehicle. At a minimum, this is replacement equipment equivalent to the performance of the original equipment covered by the vehicle manufacturer's certification of compliance. The owner should also be offered the opportunity to purchase upgraded replacement equipment if it is available for use on his or her vehicle.

Accordingly, NHTSA intends to propose in the near future an amendment to S5.8 sufficient to allow all replacement lighting equipment to be designed to comply with either the requirements that applied to original equipment, or to requirements for such equipment that are in effect at the time the replacement equipment is manufactured. However, because an amendment of this nature was not proposed in the NPRM to this final rule, NHTSA cannot proceed to a direct amendment in this document.

Request To Delete the Out-of-Focus Test Requirement

Suzuki asked for removal of the out-of-focus test, saying that it represents an outdated and unnecessary requirement made obsolete by the SAE and technological advances. It submits in support of its request the fact that the out-of-focus test no longer appears in the current versions of SAE J584 and J575. Koito requested that motorcycle headlamps equipped with bulbs either specified in SAE J1577 "Replaceable Motorcycle Headlamp Bulbs" or listed in part 564's Docket No. 93–11 be excluded from the out-of-focus test specified in SAE J584 April 1964. The reason for this request is that these bulbs have specified filament tolerance dimensions. Further, it argued that this test is not required in most other countries and contradicts international harmonization.

The issue of excluding certain types of bulbs from the out-of-focus test was not raised in the NPRM, but NHTSA wishes to discuss it here.

In brief, Standard No. 108 requires that headlamps designed to comply with motorcycle photometrics meet the out-of-focus test specified in Paragraph K of SAE Standard J575d "Tests for Motor Vehicle Lighting Devices and Components", August 1967. Paragraph K requires that photometric tests be conducted for each of four out-of-focus filament positions, except that the complete distribution may be omitted. Headlamps designed for use on motor vehicles other than motorcycles are also required to comply with the photometric performance requirements when equipped with any complying bulb. This means compliance at l00 percent of the allowable filament tolerances in any possible combination. Such a test is needed to ensure that photometric requirements are achievable with any mass produced headlamp bulb. Additionally, NHTSA notes that, while not referenced in Standard No. 108, the current version of SAE J1383 JUN90 "Performance Requirements for Motor Vehicle Headlamps" has an out-of-focus test.

The first issue presented concerns SAE J1577. NHTSA notes that this standard about motorcycle light sources has not been proposed for incorporation or incorporated into Standard No. 108. In fact, there are no specifications at all in Standard No. 108 for motorcycle headlamp light sources. The standard simply specifies the photometrics that must be met by motorcycle headlamps.

The second issue that Koito raises in essence concerns the use of a bulb in a motorcycle headlamp that was designed for vehicles other than motorcycles. The filament tolerance range of such bulbs is specified in part 564, to be sure, but only for non-motorcycle applications.

In the absence of any specifications for motorcycle headlamp light sources, NHTSA believes that the out-of-focus test must be retained, even for those non-motorcycle headlamp light sources which may be acceptable for use in vehicles other than motorcycles.

These performance requirements associated with photometric performance and filament location (through compliance with the out-of-focus test) have been in effect since January 1, 1969, the date on which Standard No. 108 became effective for motorcycles. The fact that many other countries may not have similar procedures reflects the difference between NHTSA's self-certification scheme and the type approval system of those countries. Under the laws of these countries, it may be a violation to manufacture, sell, or install a bulb if it has not been approved by the government. Because lamp performance cannot be assured without either an out-of-focus test, or direct regulation of the bulb, the out-of-focus test cannot be deleted without a corresponding change adding discrete types of motorcycle headlamp bulbs.

In summary, today in the United States, photometric compliance is achieved with marketplace replaceable light sources whose filament locations are not subject to Federal rules. This offers significant design freedom in the marketplace which would be lost if the dimensions of each existing and new bulb had to be regulated. NHTSA has no present intention of engaging in rulemaking that would regulate the dimensions of motorcycle headlamp light sources.

Clarification. Paragraph S6.1 states that, unless otherwise stated in Standard No. 108 and with the exceptions noted in S6.1, the SAE Standards and Recommended Practices referenced in Standard No. 108 are those in the 1970 SAE Handbook. One of the exceptions is that "[f]or headlamps, unless otherwise specified in this standard, the version of SAE Standard J575 is DEC88". NHTSA wishes to clarify that this does not include motorcycle headlamps, and that the version of J575 that applies to motorcycle headlamps is that of the 1970 Handbook (SAE J575d, August 1967). The final rule, therefore, contains an appropriate amendment of S6.1.

Effective Dates

In order to allow compliance with an optional requirement at the earliest possible time, it is hereby found, for good cause shown, that an effective date earlier than 180 days after issuance of the final rule is in the public interest. Accordingly, the final rule is effective 45 days after its publication in the **Federal Register**.

Because the commenters indicated that a 4-year leadtime is the earliest

practicable date upon which they can meet a mandatory standard, good cause is shown for an effective date later than one year after issuance of the final rule, and compliance with the photometric requirements of the final rule becomes mandatory on September 1, 2000.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. Headlamps are changed as part of styling; as long as adequate leadtime is allowed, no costs should be incurred. However, for comments on this assumption, NHTSA asked for comments on the costs and other impacts associated with a two to four-year leadtime for mandatory compliance with a final rule, and said that if the comments received indicate that the impacts are more than minimal, NHTSA would prepare a full regulatory evaluation before issuing a final rule. MIC stated that if the costs of compliance were amortized over a minimum implementation period of four years, the impact would be sufficiently reduced so as to support the agency not preparing a full regulatory evaluation. The agency is providing a compliance period of four years in the final rule.

National Environmental Policy Act. NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that the final rule will have a significant effect upon the environment. The composition of motorcycle headlamps will not change from those presently in production.

Regulatory Flexibility Act. The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. For the reasons stated above and below, I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motorcycles and their headlamps, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. The agency does not anticipate that the cost of headlamps will increase as a result of this rulemaking action.

Executive Order 12612 (Federalism). This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice. The final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 is amended by

(a) Removing and reserving paragraphs S5.1.1.23, S5.1.1.24, S5.6, S5.6.1 and S5.6.2;

(b) Revising the penultimate sentence of paragraph S6.1 to read as follows;

(c) Adding new paragraphs S7.9, S7.9.1 through S7.9.4, S7.9.4.1, S7.9.4.2, and S7.9.5 to read as follows;

(d) Adding in numerical order Figure 32; and

(e) Amending Table III by revising the text immediately following the Table heading and by revising the entry for headlamps, to read as follows:

§ 571.108 Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S5.1.1.23 [Reserved]

S5.1.1.24 [Reserved]

* * * * *

S5.6 [Reserved]

S5.6.1–S5.6.2 [Reserved]

* * * * *

S6 *Subreferenced SAE Standards and Recommended Practices*

S6.1 * * * For headlamps other than motorcycle headlamps, unless otherwise specified in this standard, the version of SAE Standard J575 is DEC88, and the version of SAE Standard J602 is OCT80. * * *

* * * * *

S7 *Headlighting requirements.*

* * * * *

S7.9 *Motorcycles.* Each motorcycle shall be equipped with a headlighting system designed to conform to the following requirements.

S7.9.1 A motorcycle manufactured before September 1, 2000, may be equipped with—

(a) A headlighting system designed to conform to SAE Standard J584 *Motorcycle Headlamps* April 1964, or to SAE Standard J584 April 1964 with the photometric specifications of Figure 32 and the upper beam aimability specifications of paragraph S7.9.3; or

(b) One half of any headlighting system specified in S7.1 through S7.6 which provides both a full upper beam and full lower beam. Where more than one lamp must be used, the lamps shall be mounted vertically, with the lower beam as high as practicable.

S7.9.2 A motorcycle manufactured on or after September 1, 2000, shall be equipped with—

(a) A headlighting system designed to conform to SAE Standard J584 *Motorcycle Headlamps* April 1964 with the photometric specifications of Figure 32 and the upper beam aimability specifications of paragraph S7.9.3; or

(b) A headlighting system that conforms to S7.9.1(b).

S7.9.3 The upper beam of a multiple beam headlamp designed to conform to the photometric requirements of Figure 32 shall be aimed photoelectrically during the photometric test in the manner prescribed in SAE Standard J584 OCT93 *Motorcycle Headlamps.*

S7.9.4 *Motorcycle headlamp modulation system.*

S7.9.4.1 A headlamp on a motorcycle may be wired to modulate either the upper beam or the lower beam from its maximum intensity to a lesser intensity, provided that:

(a) The rate of modulation shall be 240 ± 40 cycles per minute.

(b) The headlamp shall be operated at maximum power for 50 to 70 percent of each cycle.

(c) The lowest intensity at any test point shall be not less than 17 percent of the maximum intensity measured at the same point.

(d) The modulator switch shall be wired in the power lead of the beam filament being modulated and not in the ground side of the circuit.

(e) Means shall be provided so that both the lower beam and upper beam

remain operable in the event of a modulator failure.

(f) The system shall include a sensor mounted with the axis of its sensing element perpendicular to a horizontal plane. Headlamp modulation shall cease whenever the level of light emitted by a tungsten filament light operating at 3000° Kelvin is either less than 270 lux (25 foot-candles) of direct light for upward pointing sensors or less than 60 lux (5.6 foot-candles) of reflected light for downward pointing sensors. The light is measured by a silicon cell type light meter that is located at the sensor and pointing in the same direction as the sensor. A Kodak Gray Card (Kodak R–27) is placed at ground level to simulate the road surface in testing downward pointing sensors.

(g) When tested in accordance with the test profile shown in Figure 9, the voltage drop across the modulator when the lamp is on at all test conditions for 12 volt systems and 6 volt systems shall not be greater than .45 volt. The modulator shall meet all the provisions of the standard after completion of the test profile shown in Figure 9.

(h) Means shall be provided so that both the lower and upper beam function at design voltage when the headlamp control switch is in either the lower or upper beam position when the modulator is off.

S7.9.4.2(a) Each motorcycle headlamp modulator not intended as original equipment, or its container, shall be labeled with the maximum wattage; and the minimum wattage appropriate for its use. Additionally, each such modulator shall comply with S7.9.4.1 (a) through (g) when connected to a headlamp of the maximum rated power and a headlamp of the minimum rated power, and shall provide means so that the modulated beam functions at design voltage when the modulator is off.

(b) Instructions, with a diagram, shall be provided for mounting the light sensor including location on the motorcycle, distance above the road surface, and orientation with respect to the light.

S7.9.5 Each replaceable bulb headlamp that is designed to meet the photometric requirements of paragraph S7.9.1(a) or paragraph S7.9.2(a) and that is equipped with a light source other than a replaceable light source meeting the requirements of paragraph S7.7, shall have the word "motorcycle" permanently marked on the lens in characters not less than 0.114 in. (3 mm) in height.

* * * * *

FIGURE 32—MOTORCYCLE AND MOTOR-DRIVEN CYCLE HEADLAMP PHOTOMETRIC REQUIREMENTS

Test Points (deg.)		Motorcycle (candela)	Motor-Driven Cycle (candela)	Motor-Driven Cycle with Single Lamp System (candela)
Up or Down	Left or Right			
Lower Beam				
1.5U	1R to R	1400-MAX	1400-MAX	
1.5U	1R to 3R			1400-MAX.
1U	1.5L to L	700-MAX	700-MAX	700-MAX.
0.5U	1.5L to L	1000-MAX	1000-MAX	1000-MAX.
0.5U	1R to 3R	2700-MAX	2700-MAX	2700-MAX.
1.5D	9L and 9R	700-MIN		
2D	0.0R	7000-MIN	5000-MIN	4000-MIN.
2D	3L and 3R	4000-MIN	3000-MIN	3000-MIN.
2D	6L and 6R	1500-MIN	1500-MIN	1500-MIN.
2D	12L and 12R	700-MIN		
3D	6L and 6R	800-MIN	800-MIN	
4D	0.0R	2000-MIN	2000-MIN	1000-MIN.
4D	4R	12500-MAX	12500-MAX	12500-MAX.
Upper Beam				
2U	0.0R	1000-MIN		
1U	3L and 3R	2000-MIN	2000-MIN.	
0.0U	0.0R	12500-MIN	10000-MIN.	
0.5D	0.0R	20000-MIN	20000-MIN.	
0.5D	3L and 3R	10000-MIN	5000-MIN.	
0.5D	6L and 6R	3300-MIN	2000-MIN.	
0.5D	9L and 9R	1500-MIN		
0.5D	12L and 12R	800-MIN		
1D	0.0R	17500-MIN	15000-MIN.	
2D	0.0R	5000-MIN	5000-MIN.	
3D	0.0R	2500-MIN	2500-MIN.	
3D	6L and 6R		800-MIN.	
3D	9L and 9R	1500-MIN		
3D	12L and 12R	300-MIN		
4D	0.0R	1500-MIN		
4D	0.0R	7500-MAX	7500-MAX.	
ANYWHERE	ANYWHERE	75000-MAX	75000-MAX.	

* * * * *

TABLE III—Required Motor Vehicle Lighting Equipment

[All Passenger Cars and Motorcycles, and Multipurpose Passenger Vehicles, Trucks, Buses and Trailers of Less Than 80 (2032) Inches (M) Overall Width]

Item	Passenger cars, multipurpose passenger vehicles, trucks, and buses	Trailers	Motorcycles	Applicable SAE standard or recommended practice (See S5 for subreferenced SAE materials)
Headlamps	See S7	None	See S7.9	J566 January 1960.

* * * * *

Issued on: August 23, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–22058 Filed 8–28–96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AD77

Addition of Ten National Wildlife Refuges to the List of Open Areas for Hunting and/or Sport Fishing in Arkansas, Illinois, Indiana, Louisiana, Missouri, Mississippi, and Nebraska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) adds the following National Wildlife Refuges (NWRs), to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities: Bald Knob NWR, AR; Cossatot NWR, AR; Emiquon NWR, IL; Potoka NWR, IN; Big Branch Marsh NWR, LA; Grand Cote NWR, LA; Mandalay NWR, LA; Big Muddy NWR, MO; Tallahatchie NWR, MS and Boyer Chute NWR, NE. The Service determines that such use is compatible with the purposes for which these refuges were established. The Service further determines that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges.

EFFECTIVE DATE: This rule is effective August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, (703) 358–2397.

SUPPLEMENTARY INFORMATION: The Service generally closes national wildlife refuges to hunting and sport fishing until opening them by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management, and otherwise must be in the public interest. This rulemaking opens Bald Knob NWR, AR, Big Branch Marsh NWR, LA, Big Muddy NWR, MO, Cossatot NWR, AR, Emiquon NWR, IL and Potoka River NWR, IN to hunting migratory game birds, upland game, big game and sport fishing. This rulemaking also opens Boyer Chute NWR, NE, Grand Cote NWR, LA, Mandalay NWR, LA and Tallahatchie NWR, MS to sport fishing.

Text in this final rule is different than that used in the proposed rules because it reflects conformity to plain English writing standards. In the June 21, 1996, issue of the **Federal Register** (61 FR 31888–31910) the Service published ten (10) proposed rulemakings containing a description of the refuges and their proposed hunting and/or fishing programs and invited public comment. Each of these refuges was assigned a separate rule identification number (RIN) number in the proposed rulemaking as follows:

Bald Knob NWR, AR, RIN 1018–AD80;

Cossatot NWR, AR, RIN 1018–AD78;

Emiquon NWR, IL, RIN 1018–AD85;

Potoka NWR, IN, RIN 1018–AD86;

Big Branch Marsh NWR, LA, RIN 1018–AD79;

Grand Cote NWR, LA, RIN 1018–AD77;

Mandalay NWR, LA, RIN 1018–AD82;

Big Muddy NWR, MO, RIN 1018–AD88;

Tallahatchie NWR, MS, RIN 1018–AD81 and

Boyer Chute NWR, NE, RIN 1018–AD89.

The Service combined the proposed rules into this single final rule (RIN 1018–AD77). A description of the refuges and their proposed hunting and/or fishing programs was provided in the proposed rules.

The National Rifle Association (NRA) supports opening designated refuges including Cossatot NWR to migratory game bird, upland game, and/or big game hunting. They note that while hunting at Cossatot is to be permitted in accordance with the State of Arkansas' regulations and licensing requirements, the Service is imposing several exceptions. In cases where the Service is departing from state rules and regulations, it would be helpful to the public for the Service to provide a brief explanation as to why it is it posing those exceptions. They would appreciate having the rationale for the listed exceptions included as part of the final rule.

In the case of Cossatot NWR, and several other refuges, the Service requires a refuge specific permit to hunt. This requirement normally exceeds state fish and game regulations, but is employed as a management tool, it: (1) Controls the total number of hunters permitted to be hunting at any one time on the refuge; (2) provides a method for the hunter to receive a copy and understand the refuge specific regulations, which usually contain a hunting area map; and (3) provides special notice of any change to the regulations during the season and (4) assists in lost hunter identity and law enforcement issues.

Several individuals provided comments opposing additional hunting on national wildlife refuges. It is the policy of the Fish and Wildlife Service to provide wildlife-dependent recreational opportunities on a national wildlife refuge when compatible with the purposes for which that specific refuge was established.

This rule is final upon publication. The Service has determined that any

further delay in the implementation of these refuge hunting and sport fishing regulations would not be in the public interest in that it would hinder the effective planning and administration of the hunting and fishing programs. The Service received public comment on these proposals during the Environmental Assessment planning phase as well as the 30-day comment period for these ten rules. Delay of an additional 30 days would jeopardize holding the hunts this year, or shorten their duration and thereby lessen the management effectiveness of this regulation. Therefore, the Service finds good cause to make this rule effective upon publication (5 U.S.C. 553 (d)(3)).

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

The Service develops hunting and sport fishing plans for each existing refuge prior to opening it to hunting or fishing. In many cases, the Service develops refuge-specific regulations to ensure the compatibility of the programs with the purposes for which the refuge was established. The Service ensured initial compliance with the NWRSAA and the RRA for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This process ensures the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The Service ensures continued compliance by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

The Service determines that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Order 12962 (Recreational Fisheries), and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges. Sufficient funds are available within the refuge budgets to operate the hunting and/or sport fishing programs as proposed.

Paperwork Reduction Act

The Service examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Economic Effect

Service review revealed that this rulemaking will increase hunter and fishermen visitation to the surrounding area of these refuges before, during or after recreational uses, compared to closing the refuge to these recreational uses. When the Service acquired these lands, all public use ceased under law until opened to the public in accordance with this rulemaking.

These refuges generally are distant from large metropolitan areas. Businesses in the area of the refuges consist primarily of small family-owned stores, restaurants, gas stations and other small commercial enterprises. In addition, there are several small commercial and recreational fishing and hunting camps and marinas in the general areas. This final rule has a positive effect on such entities, however, the amount of revenue generated is not large.

Many area residents enjoy a rural lifestyle that includes frequent recreational use of the abundant natural resources of the areas. A high percentage of the households enjoy hunting, fishing, and boating in area wetlands, rivers and lakes. Refuge lands generally were not available for public use prior to government acquisition; however, friends and relatives of the landowners fished and hunted there and some lands operated under commercial hunting and fishing leases. Many nearby residents also participate in other forms of nonconsumptive outdoor recreation such as biking, hiking, camping, birdwatching, canoeing, and other outdoor sports.

The Service calculates economic impacts of refuge fishing and hunting programs on local communities from average expenditures in the "1991 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation". In 1996, the Service projects that 42 million U.S. residents 16 years old and older hunted and/or fished. More specifically, 37 million fished and 14.5 million hunted. Those who both fished and hunted account for the 9.5 million overage. Nationwide expenditures by sportsmen totaled $42 billion. Trip-related expenditures for food, lodging, and transportation were $16 billion or 37 percent of all fishing and hunting expenditures; equipment expenditures amounted to $19 billion, or 46 percent of the total; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $6.9 billion, or 16 percent of all expenditures. Overall, anglers spent an average of $41 per day. For each day of hunting, big game hunters averaged spending $40, small game hunters $20, and migratory bird hunters $33.

Applying these national averages to projected visitation at these ten refuges results in the following: 26,500 fishermen are expected to spend $1,081,700 annually in pursuit of their sport, while an estimated 4,300 hunters will spend $159,900 annually hunting on the refuges. While many of these hunters and fishermen already made expenditures prior to the refuge opening, additional expenditures directly are due to these new recreational opportunities provided by the land now open to the general public. The proposed rules for these ten refuges listed each economic contribution separately, and the final rule combines these contributions.

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) reveals that although the rulemaking would increase visitation and expenditures in the surrounding area of the refuge, it would not have a significant effect on a substantial number of small entities in the area, such as businesses, organizations and governmental jurisdictions.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the Service prepared environmental assessments for nine refuge openings. At Cossatot NWR, the Service did not prepare an environmental assessment but invoked a categorical exclusion as provided by 516

DM6 Appendix 1 with respect to this opening. Based upon the remaining Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the remaining nine openings. The Service conducted a Section 7 evaluation pursuant to the Endangered Species Act on all refuges and determined that these actions will not affect any Federally listed or proposed for listing threatened or endangered species or their critical habitats. These documents are on file at the offices of the Service and available for review by contacting the primary author.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Primary Author

Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing,* is amended by alphabetically adding the listings "Bald Knob National Wildlife Refuge" and "Cossatot National Wildlife Refuge" to the State of Arkansas; "Emiquon National Wildlife Refuge" to the State of Illinois; "Patoka River National Wildlife Refuge and Management Area" to the State of Indiana; "Big Branch Marsh National Wildlife Refuge", "Grand Cote National Wildlife Refuge", and "Mandalay National Wildlife Refuge" to the State of Louisiana; "Big Muddy National Wildlife Refuge" to the State of Missouri; "Tallahatchie National Wildlife Refuge" to the State of Mississippi; and "Boyer Chute National Wildlife Refuge" to the State of Nebraska.

3. Section 32.23 *Arkansas* is amended by adding the alphabetical listing of Bald Knob National Wildlife Refuge and Cossatot National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Bald Knob National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

C. Big Game Hunting. Hunters may hunt big game on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

D. Sport Fishing. Fishermen may fish and frog on designated areas of the refuge subject to the following conditions:

1. Fishermen may fish and frog only during published refuge open seasons and in accordance with refuge regulations.

2. Fishermen must adhere to all applicable state fishing and frogging regulations.

* * * * *

Cossatot National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, geese, coots, woodcock, snipe, and mourning doves on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

B. Upland Game Hunting. Hunters may hunt quail, rabbit, squirrel, raccoon, opossum and beaver on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

C. Big Game Hunting. Hunters may hunt white-tail deer and turkey on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

D. Sport Fishing. Fishermen may fish, take frogs, turtles and crawfish on designated areas of the refuge subject to the following conditions:

1. Fishermen must take turtles and crawfish in accordance with applicable state regulations.

2. Trotlines must be reset when exposed by receding water levels. Trotline ends must consist of a length of cotton line that extends from the point of attachment into the water.

* * * * *

4. Section 32.32 *Illinois* is amended by adding the alphabetical listing of Emiquon National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Emiquon National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to posted conditions.

B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge subject to posted conditions.

C. Big Game Hunting. Hunters may hunt big game on designated areas of the refuge subject to posted conditions.

D. Sport Fishing. Fishermen may sport fish in designated waters of the refuge subject to the following conditions:

1. Fishermen may sport fish in all refuge waters during daylight hours from January 15, through October 15.

2. Private boats may not be left in refuge waters overnight.

3. Fishermen must restrict motorboats to slow speed/minimum wake.

* * * * *

5. Section 32.33 *Indiana* is amended by adding the alphabetical listing of Patoka River National Wildlife Refuge and Management Area to read as follows:

§ 32.33 Indiana.

* * * * *

Patoka River National Wildlife Refuge and Management Area

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to posted regulations.

B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge subject to posted regulations.

C. Big Game Hunting. Hunters may hunt big game on designated areas of the refuge subject to posted regulations.

D. Sport Fishing. Fishermen may fish in designated waters of the refuge subject to posted regulations.

* * * * *

6. Section 32.37 *Louisiana* is amended by adding the alphabetical listing of Big Branch Marsh National Wildlife Refuge, Grand Cote National Wildlife Refuge and Mandalay National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Big Branch Marsh National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, coots, and snow geese on designated areas of the refuge subject to the following conditions:

1. Hunters must possess a refuge permit.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following conditions:

1. Hunters must possess a refuge permit.

D. Sport Fishing. Fishermen may fish in designated waters of the refuge subject to the following conditions:

1. Fishermen may fish during daylight hours only.

2. Fishermen must only use rods and reel or pole and lines while fishing.

3. Fishermen must not use trotlines, slat traps or nets while fishing.

4. Fishermen must not use boats with motors larger than 25 horsepower.

5. Fishermen must not use air-thrust boats, motorized pirogues, go-devils, or mud boats in refuge waters.

* * * * *

Grand Cote National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishermen may fish and take crawfish in designated waters of the refuge subject to the following conditions.

1. Fishermen must have refuge permits to take crawfish.

2. Boats may not be left on the refuge overnight.

3. Fishermen may use yo-yos during daylight hours only.

4. Fishermen may not take frogs.

* * * * *

Mandalay National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved].

B. Upland Game Hunting. [Reserved].

C. Big Game Hunting. [Reserved].

D. Sport Fishing. Fishermen may sport fish subject to the following conditions:

1. Fishermen must possess a "free" refuge permit.

2. All persons entering, using or occupying the refuge must abide by all terms and conditions set forth in the appropriate refuge permit and brochure.

* * * * *

7. Section 32.43 *Mississippi* is amended by adding the alphabetical listing of Tallahatchie National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Tallahatchie National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishermen may fish in designated waters of the refuge subject to the following conditions:

1. Fishermen may not commercial fish.

2. Daylight use only.

3. The public may not camp.

4. Fishermen may use vehicles only on designated roads.

5. Fishermen must not litter on the refuge.

6. Fishermen must not build fires on the refuge.

7. Fishermen must not use all terrain vehicles on the refuge.

8. All State regulations governing seasons, licenses, and creel limits apply.

9. Fishermen must not use nets, seines, trot lines, or any similar device for taking fish.

* * * * *

8. Section 32.44 *Missouri* is amended by adding the alphabetical listing of Big Muddy National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Big Muddy National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to posted regulations.

B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge subject to posted regulations.

C. Big Game Hunting. Hunters may hunt big game on designated areas of the refuge subject to posted regulations.

D. Sport Fishing. Fishermen may fish on designated areas of the refuge subject to posted regulations.

* * * * *

9. Section 32.46 *Nebraska* is amended by adding the alphabetical listing of Boyer Chute National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

Boyer Chute National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Designated areas of the refuge are open in accordance with State fishing regulations and the special conditions that follow:

1. Fishermen may hook and line fish during daylight hours with closely attended poles.

2. Fishermen may use only non-motorized vessels in the Chute, but must not leave vessels on the refuge overnight,

3. Fishermen must not use floating, limb, or trot lines on the refuge.

4. Fishermen must not use bow, crossbow, snagging devices, or spears while fishing.

5. Fishermen must not dig bait, net, frog, or collect mussels (clams).

* * * * *

Dated: August 13, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22041 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 080296B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Closure; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to a Closure Notification.

SUMMARY: This document contains a correction to a closure notification (I.D. 080296B), which was published Thursday, August 8, 1996 (61 FR 41363).

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), August 6, 1996, until 2400 hours, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1996, NMFS published notification in the **Federal Register** announcing closure of the directed fishery for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI), which was intended to become effective on August 4, 1996, but, because it was not filed with the Office of the Federal Register in a timely manner, became effective on August 6, 1996. The action was necessary to prevent exceeding the total allowable catch of Atka mackerel in this area.

Need for Correction

The closure notification for the Atka mackerel directed fishery for Central Aleutian District inadvertently included the Bering Sea subarea of the BSAI in the announcement. The Bering Sea subarea and the Eastern Aleutian District of the BSAI were closed to directed fishing for Atka mackerel on August 2, 1996 (61 FR 41363, August 8, 1996), in a separate notification.

Correction of Publication

Accordingly, the publication on August 8, 1996, of the closure (I.D. 080296B), which was the subject of FR Doc. 96–20257, is corrected as follows:

On page 41363, in the second column, the first sentence of the Summary should read as follows:

NMFS is closing the directed fishery for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI).

On page 41363, in the second column, the EFFECTIVE DATE line of the preamble should read as follows:

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), August 6, 1996, until 2400 hours, A.l.t., December 31, 1996.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–22056 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 169
Thursday, August 29, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB50

Common Crop Insurance Regulations; Texas Citrus Tree Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of Texas citrus trees. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and to combine the current Texas Citrus Tree Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business October 28, 1996 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through October 28, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.–4:45 p.m., EDT Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 2000.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Texas Citrus Tree Crop Insurance Provisions." The information to be collected includes: a crop insurance application and acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of Texas citrus trees that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues for the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, P.O. Box 2145, Ag Box 0572, U.S. Department of Agriculture, Washington, D.C. 20013–2415, telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section

205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the trees are damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and Farm Service Agency (FSA) offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.106, Texas Citrus Tree Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace the current provisions for insuring Texas citrus trees found at 7 CFR 401.134 (Texas Citrus Tree Endorsement). Upon publication of the Texas Citrus Tree Crop Provisions as a final rule, the current provisions for insuring Texas citrus trees will be removed from § 401.134 and that section will be reserved.

This rule makes minor editorial and format changes to improve the Texas Citrus Tree Crop Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring Texas citrus trees as follows:

1. Section 1—Added definitions for "bud union," "days," "deductible," "FSA," "good farming practices," "interplanted," "irrigated practice," "scaffold limbs," "type," and "written agreement" for clarification purposes. Amend the definitions for "crop year," "dehorning," "freeze," "non-contiguous land," and "set out" for clarification.

2. Section 2—Added provisions to allow optional unit division by section, section equivalent, or FSA Farm Serial Number, or by non-contiguous land so that the unit structure is the same for both the Texas Citrus Tree Provisions and the Texas Citrus Fruit Provisions. The previous provisions only allowed basic units to be divided into more than one unit if the insured trees were located on non-contiguous land. The guidelines for optional unit division are consistent with many perennial crop provisions.

3. Section 3—Clarify that an insured may select a different coverage level for each type designated in the Special Provisions that the producer elects to insure. Also, clarify that if the insured insures trees planted at different population densities, the per acre amount of insurance for each population density must bear the same relationship (be the same percentage) to the maximum amount of insurance available for each population. In addition, add provisions for reporting the type and age, if applicable, of any interplanted perennial crop, its planting pattern, and any other information that the insurance provider requests in order to establish the yield upon which the production guarantee is based. If the insured fails to notify the insurance provider of any circumstance that may reduce the yield potential, the insurance provider will reduce the amount of insurance at any time the insurance provider becomes aware of the circumstance. This allows the insurance provider to limit liability based on the condition of the citrus trees at the time insurance attaches.

4. Section 4—Change the contract change date from February 28 to August 31 to correspond to the change made to the date that insurance attaches.

5. Section 5—Change the cancellation and termination dates from May 31 to November 20. This change eliminates the concerns that producers could wait until a loss is likely before purchasing insurance in the event of a pending hurricane prior to the sales closing date. Previously, insurance attached on June 1 unless the application was accepted after June 1. Insurance will now attach on November 21, except for producers who were insured in 1997 and do not cancel their insurance for the 1998 crop year.

6. Section 6—Added provisions to increase the amount of premium for the 1998 crop year for producers who were insured for the 1997 crop year and who do not cancel their insurance for the 1998 crop year. Due to the change in dates that insurance attaches and ends and to avoid a gap in coverage, these producers will have an 18 month policy in effect for the 1998 crop year, therefore, a higher premium is required. For producers who were not insured for

the 1997 crop year but obtain insurance coverage prior to the sales closing date for the 1998 crop year, the premium will be determined in accordance with section 5 of the Basic Provisions (§ 457.8).

7. Section 7—Include the insurable citrus tree type designations in the Special Provisions rather than in the Texas Citrus Tree Crop Provisions. This will avoid the need to amend the Texas Citrus Tree Crop Provisions if it is later determined that additional types need to be added.

8. Section 8—Add a provision making interplanted citrus trees insurable if planted with another perennial crop, unless after an inspection, the insurance provider determines the citrus trees do not meet the requirements for insurability contained in the crop policy and FCIC approved procedures. This change will make insurance available to more producers.

9. Section 9—Change the beginning of the insurance period from June 1 to November 21 and the end of the insurance period from May 31 to November 20. For producers who were insured for the 1997 crop year and do not cancel their coverage for the 1998 crop year, however, the insurance period for the 1998 crop year only will begin on June 1, 1997, and will end on November 20, 1998. This provision was changed because the June date corresponds with the beginning of the hurricane season and allowed producers to wait until a loss was likely before obtaining insurance. Provisions were also added to clarify the procedure for insuring acreage when an insurable share is acquired or relinquished after November 21, but on or before the acreage reporting date. Under the current Texas Citrus Tree Endorsement for acreage relinquished on or before the acreage reporting date but after coverage had attached, the premium would still be due from the insured even if the insured no longer had an insurable interest. In the same situation under these new provisions, insurance will not be considered to have attached so the premium will not be due unless a transfer of right to an indemnity was completed. The transferee must be eligible for crop insurance.

10. Section 10—Added a clause clarifying that failure of the irrigation water supply must be caused by an insured peril occurring during the insurance period.

11. Section 12—Removed those provisions that limit coverage to 50, 65, and 75 percent to allow for the computation of losses at additional coverage level computations if a decision is made to provide additional coverage levels.

12. Section 13—Added provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows written agreements in relation to this policy consistent with FCIC's usual policy.

List of Subjects in 7 CFR Part 457

Crop insurance, Texas citrus tree.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1998 and succeeding crop years, as follows:

PART 457—[Amended]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1) and 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.106 to read as follows:

§ 457.106 Texas Citrus Tree Crop Insurance Provisions

The Texas Citrus Tree Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Texas Citrus Tree Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions, and these crop provisions will control the Basic Provisions.

1. Definitions

Bud union—The location on the tree trunk where a bud from one tree variety is grafted onto root stock of another variety.

Crop year—For the 1998 crop year only, a period of time that begins on June 1, 1997, and ends on November 20, 1998, provided the acreage was insured for the 1997 crop year and you do not cancel your coverage for the 1998 crop year. In all other instances, a period of time that begins on November 21 of the calendar year prior to the year the insured crop normally blooms, and ends on November 20 of the following calendar year. The crop year is designated by the year in which the insurance period ends.

Days—Calendar days.

Deductible—The amount determined by subtracting your coverage level percentage from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

Dehorning—Cutting one or more scaffold limbs to a length that is not greater than ¼ the height of the tree before such cutting.

Destroyed—Trees that are damaged to the extent that removal is necessary.

Excess wind—A natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

Freeze—The formation of ice in the cells of the trees caused by low air temperatures.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Good farming practices—The cultural practices generally in use in the county for the trees to have normal growth and vigor and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance of the insured crop.

Irrigated practice—A method by which the normal growth and vigor of the insured trees is maintained by artificially applying adequate quantities of water during the growing season using appropriate systems at the proper times.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway or an irrigation canal will be considered as contiguous.

Scaffold limbs—Major limbs attached directly to the trunk.

Set out—Transplanting the tree into the grove.

Type—Classes of trees with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

Written agreement—A written document that alters designated terms of a policy in accordance with section 13.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each type designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid

for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(2) *Optional Units on Acreage Located on Non-Contiguous Land:* Instead of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In lieu of the requirement of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), that prohibits you from selecting more than one coverage level for each insured crop, you may select a different coverage level for each type designated in the Special Provisions that you elect to insure.

(b) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(1) If you insure trees planted at different population densities, the per acre amount of insurance for each population density must bear the same relationship (be the same percentage) to the maximum amount of insurance available for each population density as specified in the Actuarial Table. The amount of insurance for each population density must be multiplied by any applicable factor contained in section 3(b)(2).

(2) The amount of insurance per acre will be the product obtained by multiplying the amount of insurance that is shown in the Actuarial Table for the level of coverage you select and applicable population density by:

(i) Thirty-three percent (0.33) for the year of set out or the year following dehorning. (Insurance will be limited to this amount until trees that are set out are one year of age or older on the first day of the crop year);

(ii) Sixty percent (0.60) for the first growing season after being set out or the second year following dehorning;

(iii) Eighty percent (0.80) for the second growing season after being set out or the third year following dehorning; or

(iv) Ninety percent (0.90) for the third growing season after being set out or the fourth year following dehorning.

(3) If there is more than one population density in the unit, or if more than one factor contained in section 3(b)(2) is applicable, the amount of insurance per acre for each population density or factor, as appropriate, will be multiplied by the applicable number of insured acres. These results will then be added together to determine the amount of insurance for the unit.

(4) The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern. For example, if the amount of insurance you selected is $2000 and the remaining stand is 85 percent of the original stand, the amount of insurance on which any indemnity will be based is $1700 ($2000 multiplied by 0.85).

(5) If any insurable acreage of trees is set out after the first day of the crop year, and you elect to insure such acreage during that crop year, you must report to us within 72 hours after set out is completed for the unit the following: the acreage; practice; type; number of trees; date set out is completed; and your share.

(6) Production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), are not applicable.

(7) You must report, by the sales closing date contained in the Special Provisions, by type:

(i) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the amount of insurance is based, and the number of affected acres;

(ii) The number and type of trees on insurable and uninsurable acreage;

(iii) The date of original set out and the planting pattern;

(iv) The date of replacement or dehorning, if more than ten percent (10%) of the trees on any unit have been replaced or dehorned in the previous 5 years; and

(v) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(A) The age of the interplanted crop, and type if applicable;

(B) The planting pattern; and

(C) Any other information that we request in order to establish your amount of insurance.

We will reduce the amount of insurance as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; and change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yield potential, we will reduce your amount of insurance as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Annual Premium

In addition to the provisions of section 5 (Annual Premium) of the Basic Provisions (§ 457.8), if you were insured for the 1997 crop year and do not cancel your insurance coverage for the 1998 crop year, the premium amount otherwise payable for the 1998 crop year will be increased by forty-six (46%) percent as a result of the additional six months of coverage for that crop year.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all of each citrus tree type designated in the Special Provisions in the county for which a premium rate is provided by the actuarial table that you elect to insure:

(1) In which you have an ownership share;

(2) That are types adapted to the area;

(3) That are set out for the purpose of harvesting as fresh fruit or for juice;

(4) That are irrigated; and

(5) That have the potential to produce at least 70 percent of the county average yield for the type and age, unless a written agreement is approved by us to insure the trees with less potential.

(b) In addition to section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any citrus trees:

(1) During the crop year the application for insurance is filed, unless we inspect the acreage and consider it acceptable; and

(2) That have been grafted onto existing root stock or nursery stock within the one year period prior to the date insurance attaches.

(c) We may exclude from insurance or limit the amount of insurance on any acreage which was not insured by us the previous year.

8. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, citrus trees interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(a) The insurance period is as follows:

(1) For the 1998 crop year only, if you were insured for the 1997 crop year and you do not cancel your coverage for the 1998 crop year, the insurance period will begin on June 1, 1997 and end on November 20, 1998; or

(2) In all instances not covered by paragraph (a)(1) of this section, the insurance period will begin the later of the date we accept your application or November 21 of the calendar year prior to the year the insured crop normally blooms, and will end on November 20 of the crop year.

(b) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such

acreage on the calendar date for the beginning of the insurance period.

(c) If you relinquish your insurable share on any insurable acreage of citrus trees on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due, and no indemnity paid for such acreage for that crop year unless:

(1) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(2) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(3) The transferee is eligible for crop insurance.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Excess moisture;

(b) Excess wind;

(c) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(d) Freeze;

(e) Hail;

(f) Tornado; or

(g) Failure of the irrigation water supply, if caused by one of the causes of loss contained in (a) through (f) of this section that occurs during the insurance period.

11. Duties In The Event of Damage or Loss

In addition to the provisions of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning, dehorning, or removal of any damaged trees.

12. Settlement of Claim

(a) In the event of damage covered by this policy, we will settle your claim on a unit basis by:

(1) Determining the actual percent of damage for any tree and for the unit in accordance with subsections 12 (b), (c), and (d) of these provisions;

(2) Subtracting your deductible from the percentage of damage for the unit;

(3) Subtracting any percentage of damage paid previously in the same crop year from the result of (2);

(4) Dividing the result of (3) by your coverage level percentage;

(5) Multiplying the result of (4) by the amount of insurance per acre;

(6) Multiplying the result of (5) by the number of insured acres; and

(7) Multiplying the result of (6) by your share.

(b) The percent of damage for any tree will be determined as follows:

(1) For damage occurring during the year of set out (trees that have not been set out for at least one year at the time insurance attaches):

(i) One-hundred percent (100%) whenever there is no live wood above the bud union.

(ii) Ninety percent (90%) whenever there is less than twelve (12) inches of live wood above the bud union; or

(iii) Zero percent (0%) (the tree will be considered undamaged) if more than twelve (12) inches of wood above the bud union is alive; or

(2) For damage occurring in any year following the year of set out, the percentage of damage will be determined by dividing the number of scaffold limbs damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred. Whenever this percentage is over eighty percent (80%), the tree will be considered as one-hundred percent (100%) damaged.

(c) The percent of damage for the unit will be determined by computing the average of the determinations made for the individual trees.

(d) The percent of damage on the unit will be reduced by the percentage of damage due to uninsured causes.

13. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for written agreement must contain all terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on August 22, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–22032 Filed 8–28–96; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes. This proposal would require replacement of the thrust management computer (TMC) with a new TMC. This proposal is prompted by reports that, due to a defective relay within the TMC, an uncommanded advancement of the throttle levers occurred. The actions specified by the proposed AD are intended to prevent an uncommanded runaway of the autothrottle during flight or ground operations, which could distract the crew from normal operation of the airplane or lead to an unintended speed or altitude change.

DATES: Comments must be received by October 7, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2790; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–125–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received two reports of uncommanded advancement of the throttle levers on Boeing Model 757 series airplanes. In one of these incidents, during flight, the flightcrew had to overpower the autothrottle to control the airspeed of the airplane. In the other incident, a similiar event occurred while the airplane was on the ground. In both of these incidents, the throttle levers continued to advance even though the flightcrew activated the autothrottle disconnect switch and switched the ARM switch of the mode control panel (MCP) to the 'off' position. Results of testing on the thrust management computer (TMC) revealed that the cause of the uncommanded advancement of the autothrottle lever was attributed to a defective relay within the TMC. This condition, if not corrected, could result in a runaway of the autothrottle during flight or ground operations, and, consequently, distract the crew from normal operation of the airplane or lead to an unintended speed or altitude change.

The TMC of Model 767 series airplanes is similar in design to that installed on Model 757 series airplanes. Therefore, the FAA has determined that both of these models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–22A0052, dated May 30, 1996 (for Model 757 series airplanes), and Boeing Alert Service Bulletin 767–22A0097, dated May 30, 1996 (for Model 767 series airplanes). These service bulletins describe procedures for replacement of the TMC with a new TMC in the E1–3 shelf in the main equipment center. Accomplishment of the replacement will correct the previous problem with the relay and prevent a runaway condition of the autothrottle.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of the TMC with a new TMC in the E1–3 shelf in the main equipment center. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 1,339 Boeing Model 757 and 767 series airplanes (716 Model 757 series airplanes and 623 Model 767 series airplanes) of the affected design in the worldwide fleet. The FAA estimates that 558 Model 757 and 767 series airplanes (356 Model 757 series airplanes and 202 Model 767 series airplanes) of U.S. registry would be affected by this proposed AD. The proposed replacement would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of the required parts would be nominal. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $100,440, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 96–NM–125–AD.

Applicability: Model 757 series airplanes, having line positions 001 through 716, inclusive; and Model 767 series airplanes having line positions 001 through 556 inclusive, 558 through 587 inclusive, and 589 through 615 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance

of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent runaway of the autothrottle during flight or ground operations, which could distract the crew from normal operation of the airplane or lead to an unintended speed or altitude change, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the thrust management computer with a new thrust management computer in the E1–3 shelf in the main equipment center, in accordance with the Boeing Alert Service Bulletin 757–22A0052, dated May 30, 1996 (for Model 757 series airplanes), or Boeing Alert Service Bulletin 767–22A0097, dated May 30, 1996 (for Model 767 series airplanes), as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22013 Filed 8–28–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, and –40 Series Airplanes, and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –30 and –40 series airplanes, and KC–10 (military) series airplanes. This proposal would require repetitive high frequency eddy current (HFEC) inspections to detect cracks in the number 4 banjo fitting on the rear spar of the vertical stabilizer, and repair and modification of the vertical stabilizer, if necessary. It also would require the installation of a modification as terminating action for the repetitive inspections. This proposal is prompted by reports of failed attach bolts and cracking found in the area of the number 4 banjo fitting, which were caused by higher than normal operating stresses. The actions specified by the proposed AD are intended to prevent reduction in the structural integrity of this fitting due to failed bolts and cracking. This condition, if not corrected, could ultimately lead to reduced controllability of the airplane during flight and ground operations.

DATES: Comments must be received by October 7, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–135–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of failure of the bolts that connect the lower web of the pylon of the number 2 tail engine to the number 4 banjo fitting on the rear spar of the vertical stabilizer on McDonnell Douglas Model DC–10 series airplanes. Such failures occurred on airplanes that had been operated for 10,300 to 16,000 total flight hours, and had made 4,400 to 7,000 landings. In addition, an operator found a crack in the aft flange of the number 4 banjo fitting; this airplane had been operated for 48,500 total flight hours and had made 10,418 landings. These discrepancies have been attributed to higher than normal stresses on the airplane in this area of the number 4 banjo fitting, resulting from excessive maneuvers, excessive turbulence, and hard landings. Such discrepancies, if not corrected, could result in a reduction in the structural integrity of the number 4 banjo fitting and, ultimately, could lead to reduced controllability of the airplane during flight and ground operations.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC10–54–096, Revision 03, dated February 6, 1996, which describes procedures for conducting repetitive high frequency eddy current (HFEC) inspections of the upper and lower surface of the aft flange of the number 4 banjo fitting on the rear spar of the vertical stabilizer; procedures for repairs; if necessary; and procedures for modification of the vertical stabilizer in the vicinity of such fitting. The repairs and modification entail trimming of parts; replacing angles, shields, and spacers; and modifying the fireseal. These actions will reduce the loads being transmitted from the pylon of the number 2 tail engine to the rear spar of the vertical stabilizer; such reduction of loads will minimize the possibility of bolt failure and cracking of the flange of the number 4 banjo fitting. Accomplishment of the repairs and modification eliminates the need for repetitive HFEC inspections of this area.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive HFEC inspections of the upper and lower surfaces of the aft flange of the number 4 banjo fitting on the rear spar of the vertical stabilizer. If cracks are detected, repairs and modification of the vertical stabilizer in the vicinity of the number 4 banjo fitting would be required; accomplishment of these actions would terminate the requirement for repetitive HFEC inspections. This AD also would require that the modification be installed eventually on all airplanes as terminating action for the repetitive HFEC inspections. These actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 376 Model DC–10–10, –30 and –40 series airplanes and KC–10 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 230 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish each proposed inspection; the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection requirement on U.S. operators of airplanes is estimated to be $27,600, or $120 per airplane, per inspection.

It would take approximately 34 hours to accomplish the proposed modification that would terminate the requirement for repetitive HFEC inspections. Required parts to accomplish such modification would cost approximately $3,875 per airplane for "Group 1" airplanes, as listed in the service bulletin; and approximately $3,427 per airplane for "Group 2" airplanes, as listed in the service bulletin. Based on these figures, the cost impact of the proposed modification requirement on U.S. operators is estimated to be $5,915 per Group 1 airplane and $5,467 per Group 2 airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 96–NM–135–AD.

Applicability: Model DC–10–10, –30, and –40 series airplanes, and KC–10 (military) series airplanes; as listed in McDonnell Douglas Service Bulletin DC10–54–096, Revision 03, dated February 6, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduction in the structural integrity of the number 4 banjo fitting on the rear spar of the vertical stabilizer, which could ultimately result in a reduction in the ability to control the airplane during flight and ground operations, accomplish the following:

(a) Prior to the accumulation of 5,000 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks in the upper and lower surface of the aft flange of the number 4 banjo fitting on the rear spar of the vertical stabilizer, in accordance with McDonnell Douglas Service Bulletin DC10–54–096, Revision 03, dated February 6, 1996.

(1) If no crack is found, repeat the HFEC inspection thereafter at intervals not to exceed 1,500 landings.

(2) If any crack is found, prior to further flight, repair the crack and install the modification in accordance with the service bulletin.

(b) Within 5 years after the effective date of this AD, modify the vertical stabilizer in the area of the number 4 banjo fitting on the rear spar, in accordance with McDonnell Douglas Service Bulletin DC10–54–096, Revision 03, dated February 6, 1996. Accomplishment of this modification constitutes terminating action for the repetitive HFEC inspections required by paragraph (a)(1) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22011 Filed 8–28–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 53

[Notice No. 836]

RIN 1512–AB49

Firearms and Ammunition Excise Taxes, Parts and Accessories

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend regulations in 27 CFR Part 53, relating to the manufacturers excise tax on firearms and ammunition. Pursuant to 26 U.S.C. 4181, a tax is imposed on the sale by the manufacturer, importer or producer of pistols, revolvers, firearms (other than pistols and revolvers) shells, and cartridges. The tax is 10 percent of the sale price for pistols and revolvers, 11 percent of the sale price for firearms (other than pistols and revolvers) and 11 percent of the sale price for shells and cartridges. Current regulations provide that no tax is imposed by section 4181 of the Internal Revenue Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm. This notice proposes regulations to clarify which parts and accessories must be included in the sale price when calculating the tax on firearms.

DATES: Written comments must be received on or before November 27, 1996.

ADDRESSES: ATF, P.O. Box 50221, Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Regulations Branch, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for collecting the firearms and ammunition excise tax imposed by section 4181. The Pittman-Robertson Wildlife Restoration Act, 16 U.S.C. § 669 et seq., requires that an amount equal to all of the revenue collected under section 4181 be covered into the Federal aid to wildlife restoration fund. The fund is apportioned to the States for hunter safety programs, maintenance of public target ranges, and wildlife and wetlands conservation. It is important that the correct amount of Federal excise tax imposed by section 4181 be collected in order to fund these programs.

The current regulation provides that no tax is imposed by section 4181 of the Internal Revenue Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm. This regulation was at issue in *Auto-Ordnance Corp.* versus *United States*, 822 F.2d 1566 (Fed. Cir. 1987). In this case a manufacturer of firearms sued to recover excise taxes paid on sights and compensator units sold with rifles it manufactured. The manufacturer claimed that these parts were nontaxable accessories which should not be included in the taxable sale price of the rifles. The Internal Revenue Service (IRS), the agency responsible for administering the tax on firearms at that time, contended that the sights and compensator units were component parts of the rifles which must be included in the taxable sale price.

The court noted that the position of the IRS that all component parts of a "commercially complete" firearm must be included in the sale price was a concept that was not found in the regulations. Since the regulations did not specify which parts are component parts of a firearm nor define the term "accessories," the court found that it was appropriate to look beyond the language of the regulation. The court discussed several dictionary definitions of the term "accessories" as well as tariff and customs classification cases. The court then held that the sights and compensator units were nontaxable accessories, since they were readily removable and of secondary or subordinate importance to the function of the firearm.

After taking over the administration of the firearms and ammunition excise tax from the IRS in 1991, ATF has issued numerous rulings on parts and accessories. ATF has found it increasingly difficult to apply the regulation on parts and accessories as interpreted by the court in *Auto-Ordnance*. For example, the "secondary or subordinate importance" test is difficult to apply to parts which are essential for the safe operation of the firearm. Arguably, such parts are essential to the function of the firearm and should be included in the taxable sale price. However, if such parts are not needed to fire the firearm, it is possible that a Federal court, applying the rationale of *Auto-Ordnance*, would hold that such parts are nontaxable accessories.

ATF proposes to amend the regulations relating to parts and accessories to provide definitions for "component parts" which must be included in the taxable sale price and "nontaxable parts" and "nontaxable accessories" which are excluded from the taxable sale price. The purpose of these definitions is to reinstate the long-standing "commercial completeness" test of the IRS in a manner which will withstand judicial scrutiny. The effect of the proposals will be to replace the readily removable/essential to the function test of the *Auto-Ordnance* case with a more objective, predictable standard to use in determining whether items sold with a firearm are includible in the tax basis.

It is possible that the proposed regulations will result in increased tax liability for some taxpayers. However, the more precise definitions should help taxpayers accurately calculate the taxable sale price of their firearms and avoid underpayments, penalties, and interest.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking, because the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities, or impose or otherwise cause, an increase in the reporting, recordkeeping or other compliance burdens on a

substantial number of small entities. Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The factual basis for such certification is that this notice of proposed rulemaking does not impose any new reporting or recordkeeping requirements. This notice merely clarifies existing regulations. A copy of this notice of proposed rulemaking is being sent to the Small Business Administration for comment pursuant to 26 U.S.C. 7805(f).

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980. Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because there are no new reporting or recordkeeping requirements.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, 27 CFR Part 53, entitled "Manufacturers Excise Taxes—Firearms and Ammunition" is proposed to be amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502.

Par 2. Section 53.61(b) is revised to read as follows:

§ 53.61 Imposition and rates of tax.

* * * * *

(b) *Parts or accessories.*

(1) *In general.* No tax is imposed by section 4181 of the Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm for use as spare parts or accessories. The tax does attach, however to sales of completed firearms, pistols, revolvers, shells, and cartridges, and to sales of such articles which, although in a knockdown condition, are complete as to all component parts. All component parts for firearms are includible in the tax basis.

(2) *Component Parts.* Component parts are items which would ordinarily be attached to a firearm during use and, in the ordinary course of trade, are packaged with the firearm at the time of sale by the manufacturer or importer.

(3) *Nontaxable Parts.* Parts sold with firearms which duplicate component parts are not includible in the tax basis.

(4) *Nontaxable Accessories.* Items which are not designed to be attached to a firearm during use or which are not, in the ordinary course of trade, provided with the firearm at the time of sale by the manufacturer or importer are not includible in the tax basis.

(5) *Separate sales.* Tax is imposed on component parts whether or not charges for such parts are billed separately. If taxable articles are sold by the manufacturer, producer, or importer thereof, without component parts, the separate sale of the component parts to the same vendee will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the basic article, even though the component parts are shipped separately, at the same time, or on a different date.

(6) *Examples.* (i) *In general.* The following examples are provided as guidelines and are not meant to be all inclusive.

(ii) *Component parts:* Include items such as a frame or receiver, breech mechanism, trigger mechanism, a barrel, a buttstock, a forestock, a handguard, grips, buttplate, fore end cap, trigger guard, a sight or set of sights (iron or optical), a sight mount or set of sight mounts, a choke, a flash hider, a muzzle brake, a magazine, a set of sling swivels, an attachable ramrod for muzzle loading firearms when provided by the manufacturer or importer for use with the firearm in the ordinary course of commercial trade. Parts in a partially completed state which can be readily adapted for use. Any part or parts provided with the firearm which would affect the tax status of the firearm, such as an attachable shoulder stock.

(iii) *Nontaxable parts:* Items such as extra barrels, extra sights, optical sights and mounts (in addition to iron sights), spare magazines, spare cylinder, extra choke tubes, spare pins.

(iv) *Nontaxable accessories:* Items such as cleaning equipment, slings, slip on recoil pad (in addition to standard buttplate), tools, gun cases for storage or transportation, separate items such as knives, belt buckles, medallions. Optional items purchased by the customer at the time of retail sale which do not change the tax classification of the firearm, such as telescopic sights and mounts, recoil pad, slings, sling swivels, chokes, flash hiders/muzzle brakes of a type not provided by the manufacturer or importer of the firearm in the ordinary course of commercial trade.

* * * * *

Signed: May 29, 1996.

John W. Magaw,

Director.

Approved: June 12, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–22044 Filed 8–28–96; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI69–01–7295b; FRL–5552–2]

Approval and Promulgation of Implementation Plan; Wisconsin; Site-Specific SIP Revision for the GenCorp Inc.-Green Bay Facility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Wisconsin State Implementation Plan (SIP) for ozone that was submitted on November 17, 1995. This revision is an alternative control method for controlling volatile organic compound (VOC) emissions from storage tanks at the GenCorp Inc.-Green Bay facility. The EPA has approved Wisconsin's general rule for the storage of VOCs. The approved rule states that any deviation from the specifically required control methods found in the State's rule must be proven to be equivalent in controlling the VOC emissions before being approved into the SIP. Because GenCorp Inc. has chosen a different control method than those listed specifically in Wisconsin's rule, a site-specific SIP revision is required to evaluate the control method being used at the Green Bay facility.

In the final rules of this **Federal Register**, the EPA is approving this action as a direct final without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by September 30, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. EPA , Region 5, Chicago, Illinois 60604, (312) 353–6960.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 5, 1996.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 96–21909 Filed 8–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5559–2]

Clean Air Act Interim Approval of Operating Permits Program; South Coast Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the South Coast Air Quality Management District (South Coast or District) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. Today's action also proposes approval of South Coast's mechanism for receiving delegation of section 112 standards as promulgated.

In the final rules section of this **Federal Register**, EPA is promulgating interim approval of South Coast's title V program as a direct final rule without prior proposal because EPA views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rulemaking. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by September 30, 1996.

ADDRESSES: Written comments on this action should be addressed to: Ginger Vagenas, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal, EPA's Technical Support Document, and other supporting information used in developing the proposed approval are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415/744–1252), Operating Permits Section (A–5–2), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 14, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–21951 Filed 8–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 131

[FRL–5601–8]

Water Quality Standards for Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comments.

SUMMARY: EPA is proposing water quality standards that would be applicable to waters of the United States in the Commonwealth of Pennsylvania. The proposed standards address aspects of Pennsylvania's water quality standards that EPA disapproved in 1994. EPA is taking this action at this time pursuant to a court order. The proposed standards would establish an antidegradation policy, making available additional water quality protection than currently provided by Pennsylvania's "Special Protection Waters Program."

DATES: EPA will hold a public hearing on its proposed actions on October 16, 1996 from 1 PM to 4 PM. EPA will consider written comments on the proposed actions received by October 16, 1996.

ADDRESSES: Comments should be addressed to Evelyn S. MacKnight,

Chief, PA/DE Branch, Office of Watersheds, 3WP11, Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107. The public hearing will be held at the Hilton Hotel, at One North Second Street, Harrisburg, PA 17101. This action's administrative record is available for review and copying at Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA 19107. For access to the docket materials, call Denise Hakowski at 215–566–5726 for an appointment. A reasonable fee will be charged for copies.

FOR FURTHER INFORMATION CONTACT: Evelyn S. MacKnight, Chief, PA/DE Branch, 3WP11, Office of Watersheds, Water Protection Division, EPA, Region 3, 841 Chestnut Building, Philadelphia, PA. telephone: 215–566–5717.

SUPPLEMENTARY INFORMATION:

A. Potentially Affected Entities

Today's proposal would establish a Federal antidegradation policy applicable to waters of the United States in the Commonwealth of Pennsylvania. Entities potentially affected by this action are those dischargers (e.g., industries or municipalities) that may request authorization for a new or increased discharge of pollutants to waters of the United States in Pennsylvania. This list is not intended to be exhaustive, but rather a guide for readers regarding entities potentially affected by this action. Other types of entities not listed could also potentially be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Under section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA), States are required to develop water quality standards for waters of the United States within the State. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of their triennial review of their water quality standards to EPA. EPA reviews the submittal and makes a determination whether to approve or disapprove any new or revised standards.

Minimum elements which must be included in each State's water quality standards regulations include: use designations for all waterbodies in the State, water quality criteria sufficient to protect those designated uses, and an antidegradation policy consistent with EPA's water quality standards regulations (40 CFR 131.6). States may also include in their standards policies generally affecting the standards' application and implementation (40 CFR 131.13). These policies are subject to EPA review and approval (40 CFR 131.6(f), 40 CFR 131.13).

Today's proposed rule involves antidegradation. 40 CFR 131.12 requires States to adopt antidegradation policies that provide three levels of protection of water quality. Under 40 CFR 131.12(a)(1), referred to as Tier 1, existing instream water uses and the level of water quality necessary to protect the existing uses are to be maintained and protected. Existing uses are those uses that existed on or since November 28, 1975. Tier 1 represents the "floor" of water quality protection afforded to all waters of the United States. Under 40 CFR 131.12(a)(2), referred to as Tier 2 or High Quality Waters, where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

Finally, under 40 CFR 131.12(a)(3), known as Tier 3 or Outstanding National Resource Waters (ONRWs), where a state determines that high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Section 303(c)(4) (33 U.S.C. 1313(c)(4)) of the CWA authorizes EPA to promulgate water quality standards for a State when EPA disapproves the State's water quality standards, or in any case where the Administrator determines that a new or revised water quality standard is needed in a State to meet the CWA's requirements.

In June 1994, EPA Region 3 disapproved portions of Pennsylvania's standards pursuant to Section 303(c) of the CWA and 40 CFR 131.21, including portions of the antidegradation policy, known in Pennsylvania as the Special Protection Waters Program, relating to protection of existing uses, criteria used to define High Quality Waters and protection afforded to Exceptional Value Waters as equivalent to ONRWs.

The Pennsylvania Department of Environmental Protection ("Pennsylvania" or "the Department") responded to EPA's disapproval on September 2, 1994. In that letter, the Department made a commitment to consider enhancements to Pennsylvania's High Quality Waters program through a public review and discussion process. At that time, the Department stated it did not intend to reconsider the protection of existing uses or the protection of ONRWs because it felt that existing authorities met the intent of EPA's regulation. Since that time, the Department has initiated a regulatory negotiation process which is considering changes to all three tiers of Pennsylvania's antidegradation policy. By letter dated October 5, 1994, EPA determined that Pennsylvania had not issued new or revised water quality standards that addressed its disapproval of the antidegradation policy elements.

Following a public meeting on January 11, 1995, and a public hearing on April 20, 1995, Pennsylvania offered to EPA a plan to reassess its antidegradation policy, or Special Protection Waters Program. Pennsylvania initiated a regulatory negotiation, or "reg-neg", to involve stakeholders in the process. The reg-neg group began meeting in June 1995 and issued an interim report on April 1, 1996, recommending to Pennsylvania officials how some provisions of the Commonwealth's regulation should be changed. EPA has participated in the reg-neg process in an advisory capacity and informed the reg-neg group of this rulemaking action.

Based on these negotiations, the Department announced in the Pennsylvania Bulletin, May 4, 1996, the availability of proposed changes to the antidegradation provisions of the Commonwealth's water quality standards. The Department also held a public hearing on June 18, 1996, to seek comment on those regulations. EPA is continuing to work with Pennsylvania in reviewing any proposed or final changes to Pennsylvania regulations. The reg-neg group met on August 1, 1996 to discuss its final recommendations. The group decided that the member organizations of the reg-neg group would submit separate reports to the Department to offer

recommendations in the Commonwealth's regulation.

On April 18, 1996, concerned with the time that had elapsed since EPA's disapproval, the United States District Court for the Eastern District of Pennsylvania ordered EPA to prepare and publish proposed regulations setting forth revised or new water quality standards for the Commonwealth's antidegradation provisions disapproved in June 1994. *Raymond Proffitt Foundation* v. *Browner*, Civil Docket No. 95–0861 (E. D. Pa). The court stated that EPA was not to delay its rulemaking anymore to accommodate the Commonwealth's schedule. Consistent with the Court's order, this **Federal Register** notice proposes standards related to Pennsylvania's antidegradation policy.

EPA's long-standing practice in the water quality standards program has been to suspend adoption of Federal rules if a State adopts appropriate rules and EPA approves them during the Federal promulgation process. In addition, if a State adopts rules that are approved by EPA following a final Federal promulgated rule, EPA's practice is to withdraw the Federal rule. Thus, notwithstanding today's proposal, EPA strongly encourages the Commonwealth to pursue its on-going effort to adopt appropriate standards which will make Federally promulgated standards unnecessary.

C. Proposed Standards

1. Ensuring That Existing Uses Will Be Maintained and Protected as Required Under 40 CFR 131.12(a)(1)

In June 1994, EPA, Region 3, disapproved Pennsylvania's water quality standards at 25 PA Code §§ 93.1, 93.4 and 93.9 because those provisions taken together do not ensure full consistency with the broad protection required by Tier 1 of the Federal antidegradation requirements, which requires that existing uses shall be maintained and protected. See 40 CFR 131.12(a)(1).

Pennsylvania's definition of existing uses in 25 PA Code 93.1 is consistent with Federal regulations and was approved by EPA in June 1994. However, Pennsylvania's regulations in 25 PA Code § 93.4(d)(1) make the application of that existing use definition inconsistent with Federal requirements. Pennsylvania regulation at 25 PA Code § 93.4 explicitly protects existing uses only through Pennsylvania's designated use process. Specifically, Pennsylvania's regulation at 25 PA Code § 93.4(d)(1) provides that when an evaluation of technical data establishes that a waterbody attains the criteria for an existing use that is more protective of the waterbody than the current designated use, that waterbody will be protected at its existing use until the conclusion of a rulemaking action. After the rulemaking action the waterbody will be protected only at its designated use.

In some cases the designated use will not adequately protect the existing use. For instance, Pennsylvania regulation requires that the waterbody attain the criteria for the more protective designated use as a condition of upgrading to that more protective use. In cases where the existing use is not protected by the current (lower) designated use, and the waterbody does not attain criteria necessary for the higher designated use, the existing uses may not be adequately protected. Even where the Department has identified that an existing use merits additional protection and where the technical evaluation of water quality allows for an upgraded designated use, there is no requirement that the Commonwealth permanently protect the existing use. The overall effect of Pennsylvania's regulation is that if the Commonwealth, in its rulemaking proceeding, does not revise its designated use to protect the existing use, that existing use would not thereafter be afforded adequate protection.

Pennsylvania's September 2, 1994 response to EPA's disapproval expressed the view that its approach to the protection of existing uses is substantially equivalent to the Federal regulation, and is actually preferable to the EPA approach because of its technical justification requirements and public participation requirements. Although EPA believes that Pennsylvania's regulatory procedure to compare use designations with existing uses is an appropriate step in updating use designations, Federal regulations do not allow existing use protection to be removed as could occur through Pennsylvania's use designation rulemaking.

EPA's guidance interprets the Tier 1 antidegradation policy to require that "[n]o activity is allowable under the antidegradation policy which would partially or completely eliminate any existing use whether or not that use is designated in a State's water quality standards." See EPA's "Questions & Answers on: Antidegradation" August 1985, page 3. The purpose of Tier 1 of the antidegradation policy is to maintain and protect the existing uses and the water quality necessary to sustain the existing uses. Tier 1 protection applies to all waters, including those waters that have exceptionally good water quality and also to those that presently do not meet water quality standards.

In order to ensure that the standards governing Tier 1 antidegradation protection in Pennsylvania are consistent with the CWA, EPA is proposing to adopt language that ensures existing uses shall be maintained and protected in accordance with 40 CFR 131.12(a)(1). This regulation, if finalized, will be the applicable antidegradation Tier 1 policy in Pennsylvania notwithstanding differences with Pennsylvania Regulations at 25 PA Code 93.4(d)(1). The practical effect of the language will be to protect all existing uses, including providing protection for existing uses that may be more specific, or require more protection, than Pennsylvania's designated uses.

Pennsylvania has recently proposed changes to its antidegradation policy that would protect existing uses without formal rulemaking through Pennsylvania's use designation process. See 25 *Pennsylvania Bulletin* 2131–32 (May 4, 1996). If Pennsylvania promulgates this proposal as a final rule, it may make a Federal promulgation unnecessary.

2. Ensuring the Pennsylvania's High Quality Designation Adequately Protects All Waters That Qualify for Protection Under the Federal Tier 2 Set Forth in 40 CFR § 131.12(a)(2)

In order to afford equivalent protection to that afforded by Tier 2 of the Federal policy set forth in 40 CFR § 131.12(a)(2), Pennsylvania has developed a Special Protection Waters Program which utilizes the designational approach, i.e., designates specific waters as High Quality. The High Quality Waters Policy is set forth in 25 PA Code §§ 93.3, 93.7, 93.9 & 95.1, and the Department's Special Protection Waters Handbook (November 1992). High Quality Waters are defined in Pennsylvania's water quality standards as "[a] stream or watershed which has excellent quality waters and environmental or other features that require special water quality protection". 25 Pa Code § 93.3. Once designated as High Quality, those waters are afforded a level of protection consistent with EPA's Tier 2.

In June 1994, EPA disapproved a portion of Pennsylvania's High Quality Waters Policy because the policy requires that a stream must possess "excellent quality waters and environmental or other features * * *" to receive Special Protection. That definition may exclude waters that

would be protected under the Federal Tier 2 policy. The Federal policy provides Tier 2 protections to all waters with water quality exceeding levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. In contrast, Pennsylvania's High Quality Waters Policy also requires such waters to include "environmental or other features that require special water quality protection."

Pennsylvania's 1994 305(b) report indicates that Pennsylvania's more restrictive policy can be under protective. Of the 24,947 stream miles assessed (out of 53,962 total miles), 20,307 fully support Pennsylvania's designated stream uses; in contrast, Pennsylvania's current program only protects approximately 13,000 stream miles as High Quality and 1300 as Exceptional Value. In addition, various Department Special Protection water quality reports cite water quality data showing that specific waters had excellent water quality but still did not receive High Quality protection because of a lack of other environmental, recreational or special amenities.

The proposed Federal rule makes available Federal Tier 2 protection for Pennsylvania waters on the basis of water quality alone. EPA is proposing to accomplish that by promulgating the language in 40 CFR 131.12(a)(2). This promulgation would have the effect of making Tier 2 protection available to all waters whose quality "exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water."

Antother option for accomplishing this would be simply to promulgate the definition of High Quality Water from 25 Pa Code § 93.3 but without the phrase "and environmental or other features which require special criteria." EPA seeks comments on each of these options.

Under either option, the current State process for reviewing proposals to lower water quality would be unchanged; the only effect of the Federal promulgation would be to require that waters whose quality exceeds water quality standards not be prevented from being protected at the High Quality designation because they lack "environmental or other features".

In Pennsylvania's September 2, 1994 response to EPA's disapproval, the Department indicated that it would consider enhancements to its High Quality Waters program. However, due to the potential effects of such a change, Pennsylvania wanted to provide an opportunity for public review and discussion of alternatives prior to proposing regulatory changes. As discussed above, the Department convened a group of interested stakeholders representing conservationists, the regulated community and government (including EPA) in a regulatory negotiation process. The group discussed a variety of options for drafting a new High Quality Waters regulation, including revising the High Quality Waters definition to delete the requirements for "and environmental or other features." See 25 *Pennsylvania Bulletin* 2131–32 (May 4, 1996). If Pennsylvania were to finalize this proposal prior to the completion of the Federal rulemaking, it may make the Federal promulgation unnecessary.

3. Ensuring That Pennsylvania's Highest Quality Waters May Be Provided a Level of Protection Fully Equivalent to Tier 3 of the Federal Policy

Pennsylvania considers its Exceptional Value Waters designation as part of the Special Protection Waters Program to be equivalent to Tier 3. The Exceptional Value Policy is set forth in 25 PA Code §§ 93.3, 93.7, 93.9 & 95.1, and the Department's Special Protection Handbook, which contains implementation procedures for Exceptional Value protection. The Code and the Handbook must be read together to understand the effect of the Exceptional Value policy.

As described in the Handbook, Pennsylvania requires Exceptional Value Waters to be protected at their existing quality to the extent that no adverse measurable change in existing water quality would occur as a result of a point source permit. A change is considered measurable "if the long-term average in-stream concentration of the parameter of concern can be expected, after complete mix of stream and wastewater, to differ from the mean value established from historical data describing background conditions in the receiving stream" or at selected Pennsylvania reference sites.

This level of protection accorded to Exceptional Value Waters is not sufficient to assure that water quality shall be maintained and protected as required by the Federal Tier 3 requirement at 40 CFR 131.12(a)(3). For example, it may only protect against lowering of water quality when point sources are involved. 40 CFR 131.12 requires that water quality be maintained and protected; the pollutant source is not a determining factor. In addition, prohibited changes in water quality are based on measurable instream concentrations. For many pollutants, especially highly bioaccumulative ones, using measurable instream concentration to detect change would not be appropriate because detection levels can be substantially higher than the instream concentrations and, in some cases, the criteria. In such circumstances, significant lowering of water quality, including exceedances of criteria, could occur without "measurable" instream concentrations changing as defined by Pennsylvania's rule. In such instances, control of discharge concentrations, rather than measurable instream concentrations, is appropriate.

Moreover, Pennsylvania's rule defines measurable change as based on a long-term average instream concentrations compared to mean historical data. In practice this can lead to significantly increased discharges and pollutant loads. Also, the concentration difference is determined "after complete mix of stream and wastewater". Depending on mixing characteristics, this "mixing zone" can be substantial and could constitute a large portion of the designated segment where significant lowering of water quality can occur. Any new or increased mixing zone will lower water quality in at least a portion of the waterbody. Finally, discharge permits for sewage treatment facilities handling less than 1000 gallons per day (gpd) and for storm water are exempt from the Exceptional Value requirements.

EPA disapproved the Commonwealth's Exceptional Value designation on June 6, 1994 because it does not fully satisfy Federal requirements for Tier 3 in 40 CFR 131.12(a)(3). While the Exceptional Value category is an excellent vehicle to provide protection to important waters in the Commonwealth, for the reasons above Pennsylvania's implementation of it is not entirely consistent with the requirements of 40 CFR 131.12(a)(3). EPA's recommendation that no new or expanded discharges should be permitted to Tier 3 waters, except for those discharges anticipated to be short-term or temporary in nature, reflects the fact that, based on the reasons above, in many circumstances "no new or increased discharge" is the only method to assure that water quality is fully maintained and protected in ONRWs.

In response to EPA's disapproval, Pennsylvania stated in its September 2, 1994 letter that it believed that EPA lacked the legal authority to compel the Commonwealth to adopt a "no discharge" approach. EPA's October 5, 1994, response to Pennsylvania explained that the practice of prohibiting discharges to ONRWs, while not specified in EPA's regulation, is the

recommended and most effective approach for ensuring that existing water quality is maintained.

EPA believes that, in practice, Pennsylvania's policy of "no adverse measurable change" could allow potentially significant discharges and loading increases from point and nonpoint sources. At the same time, Pennsylvania has been successful in designating approximately 1300 stream miles in the Commonwealth as Exceptional Value, often with significant controversy. EPA recognizes that this success might not have occurred if new discharges were strictly prohibited.

In light of this situation, EPA is proposing language that will create a new level of antidegradation protection in Pennsylvania, a level of protection above that afforded by the Exceptional Value designation. This proposal will provide Pennsylvania the opportunity to designate appropriate Pennsylvania waters as ONRWs, to which no new or expanded discharges would be allowed. This ONRW provision is not intended to replace or supplant the Exceptional Value category and designations already in place in Pennsylvania, but rather to supplement them. It would give the citizens of the Commonwealth the opportunity to request the highest level of protection be afforded to particular waters where appropriate. EPA would not designate waters as ONRWs; that would be the Commonwealth's prerogative.

EPA is proposing to accomplish this by promulgating language derived from 40 CFR 131.12(a)(3). The proposed language would state that where waters are identified by the Commonwealth as ONRWs, their water quality shall be maintained and protected. Consistent with the recommended interpretation in its National guidance, EPA Water Quality Standards Handbook at 4–8 (2nd ed. 1994), EPA would interpret that provision to prohibit, in waters identified by the Commonwealth as ONRWs, new or increased dischargers, aside from limited activities which have only temporary or short-term effects on water quality.

EPA notes that there may be other formulations that meet the requirements of 40 CFR 131.12(a)(3) and which provide a level of protection substantially equivalent to today's proposed rule. Pennsylvania's reg-neg group discussed this issue but did not reach an agreement to recommend that Pennsylvania create a new Tier 3 ONRW category of protection. If Pennsylvania adopts either EPA's recommended interpretation or such an alternative formulation, and it is approved by EPA as meeting the requirements of 40 CFR 131.12(a)(3), EPA would expect to propose to withdraw this portion of its rule.

EPA is seeking comment on its proposal to create a new category of protection for Pennsylvania waters, which would give the Commonwealth a mechanism to provide protection from new or increased discharges.

D. Relationship of This Rulemaking to the Great Lakes Water Quality Guidance

On March 23, 1995, pursuant to section 118(c)(2) of the CWA, EPA published Final Water Quality Guidance for the Great Lakes System (60 FR 15366), which applies to the Great Lakes System, including a small portion of Pennsylvania waters. The Guidance includes water quality criteria, implementation procedures and antidegradation policies, which are intended to provide the basis for consistent, enforceable protection for the Great Lakes System. In particular, the antidegradation requirements are more specific than those set out in 40 CFR 131.12. Pennsylvania and the other Great Lakes States and Tribes must adopt provisions into their water quality programs which are consistent with the Guidance, or EPA will promulgate the provisions for them.

Today's rulemaking, which is being undertaken pursuant to section 303 of the Act, is independent of, and does not supersede, the Guidance. Regardless of the outcome of today's rulemaking, Pennsylvania must still adopt an antidegradation policy for its waters in the Great Lakes Basin consistent with the Guidance, or EPA will promulgate such provisions for them. At that time, EPA will withdraw any portion of today's rule which is inconsistent with such Great Lakes provisions and which applies to Pennsylvania waters within the Great Lakes basin.

E. Endangered Species Act

Pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1656 *et seq.*), Federal agencies must assure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or adversely affect designated critical habitat of such species. Today's proposal would extend antidegradation protection for waters that presently may be unprotected or under-protected by Commonwealth-adopted standards potentially improving the protection afforded to threatened and endangered species. This action is consistent with comments made by the U.S. Fish and Wildlife Service (FWS) regarding EPA's disapproval in June 1994.

EPA initiated section 7 informal consultation under the Endangered Species Act with the FWS regarding this rulemaking, and requested concurrence from the FWS that this action is unlikely to adversely affect threatened or endangered species. On July 31, 1996, the FWS sent a letter to EPA indicating that they could not concur with a finding of no adverse affect to threatened or endangered species. EPA may need to initiate formal consultation with the FWS if further discussions do not result in concurrence. The FWS has proposed five options that would allow it to make a "not likely to adversely affect" determination. Those options can be found in the FWS July 31, 1996 letter, and are included as part of the administrative record available at **ADDRESSES** above. EPA is also seeking comments on the five options that the FWS has proposed.

F. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether today's proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would meet none of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866.

G. Executive Order 12875, Enhancing the Intergovernmental Partnership

In compliance with Executive Order 12875 EPA has involved State and local

governments in the development of this rule. Prior to this rulemaking action, EPA participated with the Pennsylvania Department of Environmental Protection and a group of stakeholders, which included governmental agencies, conservation groups, public interest groups and the regulated community, in a fourteen month regulatory negotiation (reg-neg) process. The reg-neg group was charged to recommend program modifications to Pennsylvania's regulations on antidegradation. The reg-neg process touched on many issues relevant to today's proposal, including a comprehensive discussion on the nature and intent of the Federal regulation. In preparing for today's proposal, EPA has also consulted with the Department extensively and informed them and the reg-neg group of our rulemaking process. EPA has scheduled a public hearing on the proposed action for October 16, 1996.

H. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that, whenever an agency is required under 5 U.S.C. 553 to publish a general notice of rulemaking for any proposed rule, an agency must prepare an initial regulatory flexibility analysis unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 & 605. The purpose of the RFA is to establish procedures that ensure that Federal agencies solicit and consider alternatives to rules that would minimize their potential impact on small entities.

EPA has determined that any costs imposed by this rule would not impose a significant impact on a substantial number of small entities. Therefore, for the reasons discussed in more detail below, no regulatory flexibility analysis has been prepared. Despite these conclusions, however, EPA has considered the potential effects of this rule on small entities to the extent that it can, and has included that analysis in the administrative record of this rulemaking. EPA specifically invites public comment on its determination.

First, the proposed changes with respect to Tier 3, ONRWs, in Pennsylvania will have no predictable economic impact on current dischargers who may be small entities. Promulgation of the proposed provision will merely result in an opportunity for the Commonwealth to provide a higher level of protection than presently available under the State regulation. By itself, this rule does not impose any burdens on dischargers. Any economic impact on small entities in Pennsylvania would arise only as the result of future decisions by the Commonwealth which are not attributable to EPA's rulemaking action here. Furthermore, any economic impact is dependent on two unknown variables. The first is whether the Commonwealth, in fact, will choose to reclassify any Commonwealth waters as ONRWs. The second is whether, in the event of reclassification, any current, small entity discharger that wished to increase its discharges would need to install additional wastewater treatment in order to comply with ONRW limits. Because this rule does not impose any predictable impacts, EPA believes that no RFA analysis is required.

Second, with respect to Tier 2, High Quality Waters, this rule similarly does not impose any predictable impacts with the one exception described below. It is true that EPA's proposal would likely require the Commonwealth of Pennsylvania to increase the number of waters that are classified as High Quality Waters. However, any economic consequences that would flow from this are largely uncertain because they are wholly dependent on discretionary State decisions and the activities of individual dischargers.

Thus, in the event that some waters received Tier 2 protections as a result of today's rule, a discharger wishing to increase its discharge with a resulting degradation of a High Quality Water, could request Pennsylvania to authorize the discharge (and a resulting lowering of the water quality for the affected waters). If Pennsylvania granted the request, there would be no economic cost to the discharger other than the cost of its request to Pennsylvania. In the event Pennsylvania denied the request, the discharger would bear the cost of whatever additional controls are required to meet the standards for High Quality Water. Thus, depending on further action by the Commonwealth of Pennsylvania, there could be some or no economic consequences flowing from adoption of EPA's proposal. Given these facts, EPA cannot predict with any certainty the economic consequences of EPA's action, and consequently, concludes for purposes of this rulemaking, that no RFA analysis is required.

As noted, this proposal could increase the number of dischargers (and presumably small entity dischargers) having to supply the necessary documentation to support a request for a discharge that would lower water quality for new Tier 2 High Quality Waters in Pennsylvania. EPA did examine the costs of making such submittals and concluded that, relying on conservative assumptions, this cost would not impose a significant economic impact on a substantial number of small entities.

Third, with respect to Tier 1, the proposal will not have a significant impact on a substantial number of small entities. Because of a number of factors, it is difficult to predict what, if any, effect the Tier 1 proposal would have on small entities. There is uncertainty whether any waterbodies will have existing uses not protected by current use designation. EPA expects this to be a rare occurrence. Since 1993, EPA has reviewed dozens of Pennsylvania stream use redesignations and has identified only three streams where the fishery designation would not fully protect the existing use; even in those cases, Pennsylvania adequately protected those fisheries as existing uses by changing the designation. Based on this information, EPA concludes that the Tier 1 proposal would not have a significant impact on a substantial number of small entities.

Accordingly, pursuant to section 605(b) of the RFA, the Administrator is certifying that today's proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities. EPA solicits public comment on EPA's analysis and conclusions conducted pursuant to the Regulatory Flexibility Act.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective

or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to antidegradation designations within the Commonwealth of Pennsylvania. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Paperwork Reduction Act

This proposed action requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards.

Dated: August 22, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.32 is added to read as follows:

§ 131.32 Pennsylvania.

(a) *Antidegradation policy.* This antidegradation policy shall be applicable to all waters of the United States within the Commonwealth of Pennsylvania, including wetlands.

(1) Existing in-stream uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Commonwealth finds, after full satisfaction of the inter-governmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Commonwealth shall assure water quality adequate to protect existing uses fully. Further, the Commonwealth shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint sources.

(3) Where high quality waters are identified as constituting an outstanding National resource, such as waters of National and State parks and wildlife refuges and water of exceptional recreational and ecological significance, that water quality shall be maintained and protected.

(b) (Reserved)

[FR Doc. 96–21945 Filed 8–28–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–330–1020–00–24 1A]

RIN 1004–AB89

Grazing Administration, Exclusive of Alaska; Development and Completion of Standards and Guidelines; Implementation of Fallback Standards and Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Department of the Interior (Department) proposes to amend the livestock grazing regulations of the Bureau of Land Management (BLM) to allow the Secretary of the Interior (Secretary) discretion to postpone implementation of the fallback standards and guidelines beyond February 12, 1997, but not to exceed the six month period ending August 12, 1997. The amendment would allow the Secretary to provide additional time for the BLM to collaborate with resource advisory councils (RACs) and the public to develop State or regional standards and guidelines. Without this proposed change to the regulations, fallback standards and guidelines would go into effect on February 12, 1997, despite the fact that work on State or regional standards and guidelines might be nearly complete.

DATES: Comments on the proposed rule must be received by September 30, 1996 to be assured of consideration. Comments received or postmarked after this date may not be considered in the preparation of the final rule.

ADDRESSES: Comments should be sent to: Director (420), Bureau of Land Management, Room 401 LS, 1849 C Street, NW, Washington, DC 20240, or the Internet address: WoComment@WO0033wp.wo.blm.gov. [For Internet, include "Attn: AB89", and your name and return address.] You may also hand deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW, Washington, DC. Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Salt, (202) 208–4896.

SUPPLEMENTARY INFORMATION:

I. Introduction

The current regulations at 43 CFR § 4180.2 require the BLM State Director to develop State or regional standards and guidelines. These standards and guidelines are being developed at the State or regional level, in consultation with affected RACs to reflect local resource conditions and management practices. The standards and guidelines will reflect properly functioning conditions, or those conditions which must be met to ensure sustainability and healthy productive ecosystems and outline best management practices to achieve standards. They will provide the basis for evaluation of rangeland health and subsequent corrective actions. The regulations further provide that in the event State or regional standards and guidelines are not completed and in effect by February 12, 1997, fallback standards and guidelines described in the regulations will go into effect.

The proposed amendment to 43 CFR 4180.2(f) would give the Secretary discretion to postpone the implementation of the fall back standards and guidelines for up to six months. The regulation currently provides that the fallback standards and guidelines automatically go into effect on February 12, 1997, if State or regional standards and guidelines are not completed and in effect by that date. The Department promulgated this provision after receiving comments proposing various timeframes, ranging up to 24 months, for the completion of standards and guidelines. The Department concluded in the final environmental impact statement that 18 months was "an ambitious but realistic" timeframe. The Department of the Interior and Department of Agriculture, *Rangeland Reform '94*, Final Environmental Impact Statement 56 (1994). Similarly, the Department stated in the Preamble to the Final Rule that existing information and NEPA tiering procedures would enable BLM State Directors to complete the standards and guidelines within 18 months. The Department is proposing this change now because it has become apparent that development of State or regional standards and guidelines might, in some instances, require longer than the 18-month period provided in the regulation.

This discretion to grant up to a six-month extension would ensure that BLM State Directors, working with RACs and the public, will have adequate time to develop appropriate State or regional standard and guidelines. In developing this proposed amendment, the Department considered the benefits of efficient rangeland administration, effective public participation and possible impacts resulting from a minor delay. The Department believes that six months is an appropriate maximum period of extension. The Department seeks comment on whether this is a sufficient period of time or if additional time should be made available. Postponing implementation of the fallback standards and guidelines will enhance the efficient administration and promote the long-term health of public rangelands for two primary reasons. First, where locally developed standards and guidelines are nearly complete, implementation of the more general fallback standards and guidelines on a short term interim basis would be likely to create confusion and increase administrative costs. Second, postponing implementation of the fallback measures will allow the Department of achieve its commitment to improving public land management through a collaborative process that utilizes RACs recommendations, local public input and consideration of State or regional public rangelands issues. The Department expects that the amendment will not have a significant impact on the environment since postponement of the fallback standards and guidelines would be for a limited period up to six months. Furthermore, the Department does not anticipate that every BLM State Director would need a postponement.

In determining whether to grant a postponement, the Secretary would evaluate whether the requested postponement would promote administrative efficiencies and long-term rangeland health. The Secretary might consider such factors as the scheduled timing for completion of the State or regional standards and guidelines, whether the delay would promote the efficient administration, use and protection of the public rangelands, or other factors the Secretary deems relevant.

The proposed rule would permit the Secretary the flexibility to postpone implementation of the fallback standards and guidelines when the State or regional standards and guidelines are nearly complete. Implementing different sets of standards and guidelines in rapid succession would produce confusion, uncertainty and increased administrative costs. Furthermore, the Secretary would retain discretion to deny a postponement and implement the fallback standards and guidelines when the State or regional standards and guidelines are far from completion or when a postponement would not promote long-term rangeland health.

II. Procedural Matters

National Environmental Policy Act

The BLM is analyzing the impacts of this proposed rule in accordance with section 102(2)(C) of the National Environmental Policy Act of 9169 (NEPA) [42 U.S.C. 4332(C)]. The BLM anticipates the proposed rule will not have a significant impact on the quality of the human environment, and therefore, preparation of an Environmental Impact Statement would not be necessary. The final rule will be accompanied by the appropriate NEPA documentation.

Executive Order 12630

The BLM has analyzed the takings implications and concluded that this proposed rule does not present a risk of a taking of constitutionally protected private property rights.

Executive Order 12866

The BLM has determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order.

Regulatory Flexibility Analysis

The proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*].

Federal Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author

The principal author of this proposed rule is Tim Salt, Western Rangelands Team, BLM.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1740, subpart 4180, part 4100, group 4100, subchapter D, of subtitle B of chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

2. Section 4180.2(f) introductory text is revised to read as follows:

§ 4180.2 Standards and guidelines for grazing administration.

* * * * *

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section. However, the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February 12, 1997, fallback standards and guidelines implementation date, not to exceed the six-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long-term rangeland health and administrative efficiencies.

* * * * *

Dated: August 15, 1996.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–21994 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–157; FCC 96–316]

Cable Pricing Flexibility

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule,

SUMMARY: In this *Notice of Proposed Rulemaking* ("*NPRM*"), the Commission proposes to modify its current ratemaking rules in order to allow operators greater flexibility in pricing their regulated tiers of cable service while continuing to protect subscribers from unreasonable rates. Specifically, the Commission proposes to permit a cable operator that has established rates for its regulated service tiers to decrease the rate for its basic service tier ("BST"), and then take a corresponding increase in the rate for its cable programming services tiers ("CPSTs"), as long as the combined rate for the two tiers does not generate revenues for the operator that exceed what would otherwise be permitted under our rules. The Commission tentatively concludes that this proposal would remove an unnecessary restriction on an operator's pricing strategy, while maintaining effective constraints on the overall rates paid by subscribers, thus resulting in pricing which more nearly simulates that of a competitive market. The Commission seeks comment on this proposal which was adopted concurrently with a *Report and Order* requiring operators to use the same methodology when calculating rates for their BST and their CPST. That *Memorandum Opinion and Order* is summarized elsewhere in this issue of the **Federal Register**.

DATES: Comments are due on or before October 6, 1996, and reply comments are due on or before November 8, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, CS Docket No. 99–157 FCC 96–316 adopted July 25, 1996, and released August 15, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C., 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Notice of Proposed Rulemaking

1. An operator wishing to use the proposed pricing methodology first would establish rates for its regulated service tiers using the same methodology for both tiers. The resulting rate for the BST would be the cap for that tier. The operator then would determine the amount by which it was willing to decrease the BST rate and calculate the total revenue loss derived from the reduction. The operator would then divide this amount by the total number of CPST subscribers in order to calculate the rate increase for the CPST. The BST rate decrease would be reflected on the cable bill of every subscriber because subscription to the BST is required in order to have access to any other tier of service. Because subscription to CPSTs is optional, the pool of CPST subscribers is usually smaller than the BST subscriber pool. The total loss in BST revenue, therefore, when spread over the smaller CPST subscriber base, would generate a CPST rate increase that exceeded the amount of the BST rate decrease. As a result, BST–CPST subscribers (i.e., all CPST subscribers) would see a net increase in rates. This increase should be minimal if the operator has a high penetration rate on the CPST. Industry data available to us indicate that, for the most highly penetrated CPST on a system, the average penetration rate approaches or exceeds 90% and the median penetration rate exceeds 95%. The Commission seeks comment on these estimates and, more generally, on the likely impact on CPST rates if the proposal is implemented.

2. The Commission believes that individual consumers would be either substantially better off, or subject to only minor rate increases, were the Commission to adopt the proposal. BST-only subscribers would be better off because their rates would decrease with no diminution in service. Although CPST subscribers could experience a minor rate increase, all CPST subscribers are also BST subscribers for whom the increase in CPST rates would be substantially offset by the decrease in BST rates. However, because the Commission seeks to ensure that increases to CPST subscribers be minimized, the Commission seeks comment on whether to limit the amount of increase a CPST subscriber must pay or to otherwise limit the amount by which the BST and CPST rates may be adjusted. As noted, any increase to CPST subscribers would be minimal because of the high penetration rate of CPSTs.

3. In addition to lowering rates for current BST-only subscribers, this proposal should make the BST more affordable for some consumers who currently do not subscribe to cable at all. The Commission believes that its proposal presents other benefits as well. This proposal would provide cable operators with a rate structure flexibility enjoyed by providers of video services that are, or soon will be, attempting to compete with traditional cable operators in the video marketplace, including providers of direct broadcast satellite ("DBS") service, multichannel multipoint distribution service, and

open video systems. These video competitors offer, or will offer, consumers an alternative to conventional cable service. Because these competitors are not subject to the type of rate regulation imposed upon cable operators by the Communications Act, they have greater flexibility to restructure their pricing as well as the services they offer consumers. The Commission tentatively concludes that the proposed rate adjustment mechanism may enhance a cable operator's ability to compete with these alternative providers. For example, while currently a cable operator can attempt to become more competitive by simply dropping the rate of its BST, this proposal gives the operator an additional incentive to do so in that BST revenues that otherwise would be lost due to the rate decrease can be recovered on the CPST, even though no subscriber would see a significant rate increase.

4. The Commission further concludes that a less expensive BST service might assist system operators in increasing customer access and penetration, in preparation for the developing marketplace in which access to nonvideo services, such as telephony or enhanced services, is becoming increasingly important.

5. To ensure that these goals can be accomplished while continuing to protect consumers, the Commission believes that the proposed mechanism must be subject to several conditions. As stated, an operator electing this approach first would set rates for its regulated tiers in accordance with our existing rules. After lowering its BST rate and increasing its CPST rate in the manner described, the operator would have a continuing obligation to keep track of what its maximum permitted rate would be for each tier had it not made the adjustment. An operator would continue to maintain records of these "underlying rates" so that an LFA, or the Commission, could verify that the operator had made the adjustment properly. In particular, the LFA must be able to ensure that the operator prices its BST rate at no more than what our rules otherwise permit. The Commission invites comment on this aspect of its proposal.

6. Further, the Commission proposes that systems offering more than one CPST would be able to allocate the amount deducted from the BST rate among the CPSTs in any manner, so long as the combined rate increases for the CPSTs is revenue neutral to the cable operator. As noted above, to ensure that any CPST rate increase is minimized, the Commission seeks comment on whether to limit the amount of such increase.

7. With respect to timing issues, the Commission believes that an operator should be permitted to use the proposed adjustment mechanism only when it has the opportunity to adjust rates under our existing rules. Thus, if an operator has chosen to adjust rates on annual basis, it would be able to implement the adjustment mechanism proposed herein only at the time of, and as part of, an annual rate adjustment. This restriction would ensure that our proposal does not increase the number of times subscribers experience rate adjustments. The Commission does not intend to require that the operator make a standard rate adjustment at the time it uses the proposed mechanism (unless it is otherwise required to do so), only that it have the choice to make such an adjustment

8. For LFAs, this proposal should generate no additional burdens. An LFA will engage in the same rate review process as before. The Commission seeks comment on how to simplify further the rate review process.

9. The proposal would add another step to the Commission's review of a CPST complaint. This is because an operator that elects the proposed option may have a CPST rate that exceeds what normally would be permitted by our rules. To determine whether the CPST rate is nonetheless reasonable, the Commission will have to consider not just the CPST rate, but also the combined BST–CPST rate. Our consideration of the combined BST–CPST rate under this proposal will be for the sole purpose of determining whether the CPST rate is reasonable. BST rate review will remain the province of LFAs. The Commission invites comment as to the interaction of this extra step in the Commission's review of CPST rates and the Commission's statutory mandate to ensure that CPST rates are not unreasonable.

10. The Commission also seeks comment regarding how this proposed adjustment should work in cases where the cable operator is subject only to CPST rate regulation, such as where the LFA has not exercised authority to regulate the BST. Upon submission of a complaint invoking its jurisdiction, the Commission is obligated to determine whether the new CPST rate is not unreasonable. One option in this circumstance would be to analyze the operator's rates as if its BST were regulated and to permit the operator to increase its CPST rate by the amount necessary to recover revenue lost due to a rate decrease on the unregulated BST. The Commission seeks comment on the extent of these circumstances and the merits of this suggestion, and invite commenters to recommend means by which a rate review should be conducted. In addition, the Commission solicits comment on an operator's ability to rescind a recently implemented rate adjustment, and whether this would cause subscriber confusion, particularly if reversing the adjustment reflects rates the operator intended to charge absent this alternative.

11. As indicated above, when the Commission initially proposed approaches to rate regulation under the 1992 Cable Act, it considered a pricing mechanism somewhat similar to that which the Commission proposes here, the object of which was to encourage or require a low-cost "bare bones" BST. In the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92–266, 58 FR 29736, (*"Rate Order"*), the Commission rejected this idea and adopted the "tier neutrality" requirement. The Commission determined that the public interest would best be served by basing rates for all rate-regulated channels of cable services on common principles, rather than forcing BST rates down through a rate-setting approach applicable only to that tier. The Commission was concerned that suppressing BST rates in this manner would result in operators simply moving channels off the BST to other tiers that would generate more revenues. The Commission concluded that it was preferable to adopt a framework that resulted in a slightly higher-cost BST that had more programming. In addition, the Commission determined that applying a single methodology to all regulated tiers reduced administrative burdens and confusion for operators, LFAs, and the Commission.

The current proposal differs from the proposal the Commission rejected in the *Rate Order* in two fundamental respects. First, the current proposal is not a forced reduction in the price of the BST. Rather, it simply permits operators to reduce the price of the BST as part of an overall marketing strategy. Second, it does not require any reduction in the number of channels on the BST. The current proposal preserves the benefits of the tier neutrality approach since the operator can make the adjustment proposed above only after establishing rates for its tiers in accordance with the tier neutrality principle. The current proposal also preserves the ability of the operator to move channels in order to accommodate market changes. The Commission believes this adjustment is

consistent with our approach to modify and improve the existing rules continually as the market changes and more information becomes available, while protecting consumers from more than a minimal rate increase.

Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking

13. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis ("IRFA") of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM* but they must be have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *NPRM* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

14. *Reason for Action and Objectives of the Proposed Rule.* The Commission has determined that our cable rules do not permit cable operators to lower rates for the BST and to then recover lost revenues on the CPST. The proposal contained in this *NPRM* will allow operators to offer a better price to BST subscribers while continuing to protect all subscribers from unreasonable rates. The proposal contained in this *NPRM*, if adopted, would be an optional step for a cable operator in ratemaking, offering rate regulated operators more flexibility in cable pricing. This proposal will provide a cable operator with the ability to price services in a manner which duplicates market driven rates while continuing to offer consumers protections in the absence of effective competition.

15. *Legal Basis.* The authority for the action as proposed for this rulemaking is contained in Section 623 of the Communications Act of 1934, as amended, 47 U.S.C. § 543, and Section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303.

Description and Number of Small Entities Affected

16. *Small Cable Entities:* The Communications Act contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." (47 U.S.C. § 543(m)(2)). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, the Commission found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate (47 CFR § 76.1403(b)). Based on available data, the Commission finds that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. The Commission is likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area.

17. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide (47 CFR § 76.901(e)). Based on our most recent information, the Commission estimates that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this *NPRM*. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems. The Commission is unable to estimate the number of small cable systems nationwide, and the Commission seeks comment on the number of small cable systems.

18. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

19. *Municipalities:* The term "small governmental jurisdiction" is defined as "governments of . . . districts, with a population of less than fifty thousand."(5 U.S.C. § 601(5)). Based on most recent census data, there are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. The Commission notes that any official actions with respect to cable operators' BST will typically be undertaken by LFAs, which primarily consist of counties, cities and towns. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and States, which typically are not LFAs. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Rejected

20. *Small Cable Entities:* The Communications Act contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." (47 U.S.C. § 543(m)(2)). Under the Communications Act, at 47 U.S.C. 543(m) (1), a small cable operator is not subject to the rate regulation requirements of Sections 543 (a), (b) and (c) on CPSTs in any franchise area in which it serves 50,000 or fewer subscribers. The proposed rule adopted in this *NPRM* would give a rate regulated operator the option to lower rates on its BST and to raise rates on its CPST in order to recover lost revenues from the BST reduction. The CPST rate increase would be reviewed by the Commission. Because this proposed rule would not affect operators that are not rate regulated on CPSTs, there would be no impact on small cable operators that, according to the Communications Act, are not subject to rate regulation on CPSTs.

21. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide, and a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems (47 C.F.R. § 76.901(e)). SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually.

22. To the extent that any of these operators are rate regulated on CPSTs, the Commission emphasizes that the proposal would provide an optional rate adjustment methodology for rate regulated operators in order to provide for greater flexibility in cable pricing, and would not impose a mandatory requirement on cable operators. If the Commission did not modify its rules, a regulated cable operator would not be able to recover, on its CPST, lost revenues for rate decreases to the BST. The Commission believes that allowing for such an adjustment could give operators more flexibility to respond to competition in the marketplace.

23. *Municipalities:* The term "small governmental jurisdiction" is defined as "governments of . . . districts, with a population of less than fifty thousand." (5 U.S.C. § 601(5)). The Commission does not believe that the proposal contained in this *NPRM* will have a significant economic impact on a substantial number of these small governmental jurisdictions. A small governmental jurisdiction that regulates the BST would continue its current practice of reviewing an operator's maximum permitted per channel rate on the BST. Any rate increase by an operator opting to use the proposal contained in this *NPRM* would occur on the CPST and would therefore be reviewed by the Commission.

24. *Reporting, Recordkeeping and other Compliance Requirements.* Our current methodology for calculating maximum permissible rates will need to be amended to account for the additional optional rate calculation step proposed in this *NPRM*. The proposed rule is optional, and would not be a requirement for any cable operator that does not want to utilize the proposed option. An operator wishing to use the proposed pricing methodology first would establish rates for its regulated service tiers using the same methodology for both tiers. The resulting rate for the BST would be the cap for that tier. The operator then would determine the amount by which it was willing to decrease the BST rate and calculate the total revenue loss derived from the reduction. The operator would then divide this amount by the total number of CPST subscribers in order to calculate the rate increase for the CPST. After lowering its BST rate and increasing its CPST rate in the manner described, the operator would have a continuing obligation to keep track of what its maximum permitted rate would be for each tier had it not made the adjustment. An operator would continue to maintain records of these "underlying rates" so that an LFA, or the Commission, could verify that the operator had made the adjustment properly. In the *NPRM*, the Commission seeks comment on the specific method of implementation of the proposal. The rule as proposed would not require any additional special skills beyond any which are already needed in the cable rate regulatory context.

25. *Significant Alternatives to Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives.* In the *NPRM*, the Commission examines the current rule that prohibits a rate-regulated cable operator from justifying an increase in its CPST rate on the basis of a corresponding decrease in the BST rate. The Commission tentatively concludes that eliminating this aspect of our current rules would give cable operators greater pricing flexibility to respond to their growing competition while continuing to protect consumers. If, in the alternative, the Commission did not modify its rules, a regulated cable operator would not be able to recover, on its CPST, lost revenues for rate decreases to the BST. The Commission believes that allowing for such an adjustment could give operators more flexibility to respond to competition in the marketplace. This is consistent with the issues raised in the body of the *NPRM*. As explained above, the Commission does not believe the proposal creates any significant burden for small entities. The proposed rule change would be purely optional for cable operators, and local franchising authorities would not be subject to additional rate regulatory burdens as a result of adoption of the proposal.

Federal Rules which Overlap, Duplicate or Conflict with these Rules—None

26. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally*, 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

27. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 6, 1996, and reply comments on or before November 8, 1996. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

Ordering Clauses

28. *It is ordered* that, pursuant to Sections 4(i), 4(j), 623(a), 623(b), and 623(c), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 543(a), 543(b), and 543(c), NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this *NPRM* of Proposed Rulemaking, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

29. *It is further ordered* that, the Secretary shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

Paperwork Reduction Act

This *NPRM* may contain either proposed or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*. Comments should address: (a) whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–21581 Filed 8–28–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF ENERGY

48 CFR Parts 904, 909, 923, 926, 952 and 970

RIN 1991–AB31

Acquisition Regulation: Agency Proposal To Eliminate Non-Statutory Certification Requirements

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is publishing a Notice of Proposed Rulemaking to amend the Department of Energy Acquisition Regulation (DEAR) to eliminate all non-statutorily imposed contractor and offeror certification requirements.

DATES: Written comments on the proposed rulemaking must be received on or before October 28, 1996.

ADDRESSES: Comments (3 copies) should be addressed to John R. Bashista, Office of Policy (HR–51), Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: John R. Bashista (202) 586–8192 (telephone); (202) 586–0545 (facsimile); john.bashista@hq.doe.gov (electronic mail).

SUPPLEMENTARY INFORMATION:

I. Background
II. Agency Proposal to Eliminate Non-Statutory Certification Requirements
III. Public Comments.
IV. Procedural Requirements.
A. Review Under Executive Order 12866.
B. Review Under the National Environmental Policy Act.
C. Review Under the Paperwork Reduction Act.
D. Review Under the Regulatory Flexibility Act.
E. Review Under Executive Order 12612.
F. Review Under Executive Order 12988.
G. Public Hearing Determination.

I. Background

Section 4301(b)(1)(B) of the Federal Acquisition Reform Act of 1996 (FARA), Pub. L. 104–106, requires agencies that have procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute to issue for public comment a proposal to amend their regulations to remove the certification requirements. Such certification requirements may be omitted from the agency proposal if (i) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (ii) the head of the executive agency approves in writing the retention of such certification requirement.

This proposed rule constitutes DOE's proposal for the elimination of all non-statutorily imposed contractor and offeror certification requirements from the DEAR pursuant to section 4301(b)(1)(B) of FARA. DOE has not identified any regulatory certification requirement contained in the DEAR which it has determined should be proposed for retention. Consequently, the Department is not pursuing approval from the Secretary of Energy to retain any certification requirement not specifically imposed by statute. The Department invites public comment on its proposal to eliminate all regulatory certification requirements from the DEAR and on its determination that there are no certification requirements which should be proposed for retention.

II. Agency Proposal To Eliminate Non-Statutory Certification Requirements

The following is the Department's proposal pertaining to each contractor and offeror certification requirement contained in the DEAR.

1. 952.204–2—Security Requirements

Section 952.204–2 will be amended to remove the non-statutory certification requirement pertaining to retention by a contractor of classified matter after contract completion or termination. A contractor seeking to retain classified material would still be required to identify such material, and the reasons for its retention, to the contracting officer.

2. 952.204–73—Foreign Ownership, Control, or Influence (FOCI) Over Contractor

Section 952.204–73 will be amended to remove the certification requirement for offerors to certify that FOCI data submitted to the Department is accurate, complete and current and that the disclosure is made in good faith; and to remove the requirement for offerors to certify that FOCI information previously submitted to DOE for a facility security clearance is accurate, complete and current. The disclosure requirement at DEAR 904.7003, however, will remain. In addition, technical and conforming amendments to the DEAR are proposed to 904.7003, 904.7005 and 904.7103. Prior to issuance of a final rule pertaining to the proposed amendment of subsection 952.204–73 herein, DOE will issue for public comment a separate proposed rule which will amend the policies currently set forth in the DEAR to be consistent with this rule. The separate rulemaking will implement the requirements of Executive Order 12829, "National Industrial Security Program," and recent amendments to the Federal Acquisition Regulation (61 FR 31617) reflecting the Governmentwide applicability of the National Industrial Security Program Operating Manual.

3. 952.209–70—Organizational Conflicts of Interest—Disclosure or Representation

Section 4304 of FARA repealed section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789), and section 19 of the Federal Non-nuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918) which formed the basis for DOE's organizational conflicts of interest (OCI) policies and procedures set forth in Subpart 909.5 of the DEAR. With the repeal of the statutory basis for DOE's OCI program, the Department is now subject to the regulatory OCI program set forth in Subpart 9.5 of the Federal Acquisition Regulation (FAR). Based on an internal review comparing the current DOE program to the FAR program, the Department has determined that there are several important elements of the current DOE program which should be retained.

DOE published a separate proposed rule in the **Federal Register** on August 6, 1996 to codify and make mandatory DOE's new program in the DEAR. This separate rule will provide for the elimination of the certification currently contained in section 952.209–70.

4. 952.226–73—Energy Policy Act Target Group Certification

Section 952.226–73 will be amended to remove the certification language requiring offerors to certify as to their status as one of the designated target groups under section 3021 of the Energy Policy Act of 1992. This provision will be amended to require a representation from offerors regarding their status instead of a certification. In addition, technical and conforming amendments to the DEAR are proposed to subsection 926.7007 pursuant to the amendment of subsection 952.226–73.

5. 952.227–13—Patent Rights—Acquisition by the Government

Section 952.227–13, paragraph (e)(3) of the DEAR will be amended to remove the certification requirements for contractors in the interim and final reports pertaining to the disclosure of all inventions developed under the subject contract. Contractors will still be required to submit interim and final reports and to disclose all inventions developed under the subject contract.

6. 952.227–80—Technical Data Certification

Section 952.227–80 will be deleted from the DEAR including the certification requirement for offerors to certify that they have not delivered or are not obligated to deliver to the Government under any other contract or subcontract the same or substantially the same technical data as included in their offer to the Department. The Department will use the provision at FAR 52.227–15 entitled, "Representation of Limited Rights Data and Restricted Computer Software", instead of DEAR 952.227–80. A technical and conforming amendment of the prescription contained at DEAR 952.227–83 is also made pursuant to the proposed removal of DEAR 952.227–80.

7. 952.227–81—Royalty Payments Certification

Section 952.227–81 will be deleted from the DEAR including the certification requirement for offerors to disclose whether their contract price includes an amount representing the payment of royalty by the offeror to others in connection with contract performance and, if so, identifying pertinent information about the royalty. The Department will use DEAR 952.227–9, Refund of royalties (FEB 1995) instead of 952.227–81.

8. 970.5204–57—Certification Regarding Workplace Substance Abuse Programs at DOE Facilities

Section 970.5204–57 will be amended to remove the requirement for offerors to certify that they will provide to the contracting officer within 30 days after either notification of selection for award or award of a contract, their written workplace substance abuse program consistent with the requirements of 10 CFR 707. Instead, offerors will be required to agree to provide a drug-free workplace in accordance with 41 U.S.C. 701(a)(1) as a condition of responsibility prior to contract award. This amendment will implement section 4301(a)(3) of FARA which eliminates the statutory certification requirement in section 5152 of the Drug-Free Workplace Act of 1988. In addition, technical and conforming amendments to the DEAR are also proposed for sections 909.104, 923.570–2, 923.570–3, 970.2305–4 and 970.2305–5 pursuant to the amendment of section 970.5204–57.

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this rule. All comments received will be available for public inspection during normal work hours. All written comments received by the date indicated in the **DATES** section of this notice will be carefully assessed and fully considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination in accordance with 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or record keeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300. No new information collection is proposed by this rule.

D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule would eliminate any compliance costs on small businesses associated with the administrative aspects of providing the express certifications proposed for elimination from the Department of Energy Acquisition Regulation. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigations; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 48 CFR Parts 904, 909, 923, 926, 952 and 970

Government procurement.

Issued in Washington, D.C. on August 26, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citations for parts 904, 909, 923 and 926 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 904—ADMINISTRATIVE MATTERS

2. Section 904.7003 is amended by revising paragraph (d) to read as follows:

904.7003 Disclosure of foreign ownership, control, or influence.

* * * * *

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or consent to a subcontract subject to this subpart unless:

(1) The contractor provides the information required by the solicitation provision at 48 CFR 952.204–73, and

(2) The contracting officer has made a positive determination in accordance with 48 CFR 904.7004.

3. Section 904.7005 is amended by revising paragraph (a) to read as follows:

904.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 952.204–73, Foreign Ownership, Control or Influence over Contractor, in all solicitations for contracts subject to 48 CFR 904.7001.

* * * * *

4. Section 904.7103 is amended by revising paragraph (a) to read as follows:

904.7103 Solicitation provision and contract clause.

(a) Any solicitation, including those under simplified acquisition procedures, for a contract under the national security program which will require access to proscribed information shall include the provision at 48 CFR 952.204–73 with its Alternate I.

* * * * *

PART 909—CONTRACTOR QUALIFICATIONS

5. Section 909.104–1 is amended by revising paragraph (h) to read as follows:

909.104–1 General Standards. (DOE coverage—paragraph (h))

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, the prospective contractor must agree, in accordance with 48 CFR 970.5204–57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined responsible and, thus, eligible to receive the contract award.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

6. Section 923.570–2 is amended by revising paragraph (a) to read as follows:

923.570–2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5204–57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 48 CFR 923.570–1, Applicability.

* * * * *

7. Section 923.570–3 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows, and by removing paragraph (b)(4):

923.570–3 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(b) * * *

(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204–57; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace.

PART 926—OTHER SOCIOECONOMIC PROGRAMS

8. Section 926.7007 is amended by revising paragraph (d) to read as follows:

926.7007 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert the provision at 48 CFR 952.226–73, Energy Policy Act Target Group Representation, in solicitations for Energy Policy Act procurements.

* * * * *

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. The authority citations for part 952 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c); 42 U.S.C. 13524.

10. Section 952.204–2 is amended by revising paragraphs (a) and (b) of the clause to read as follows:

952.204–2 Security requirements.

* * * * *

Security (XXX 19XX)

(a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

* * * * *

11. Section 952.204–73 is amended by removing the certification language following the list of questions at the end of paragraph (c) and preceding paragraph (d), and revising paragraph (e) to read as follows:

952.204–73 Foreign ownership, control, or influence over contractor (Representation)

* * * * *

Foreign Ownership, control or influence over contractor (XXX 19XX)

* * * * *

(c) * * *

(d) * * * * *

(e) The offeror shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to provide responses to the questions in paragraph (c) of this provision directly to the DOE contracting officer.

* * * * *

12. Section 952.226–73 is amended by revising the introductory text to paragraph (a) of the provision to read as follows:

952.226–73 Energy Policy Act target group representation.

* * * * *

Energy Policy Act target group representation (XXX 19XX)

(a) The offeror is:

* * * * *

13. Section 952.227–13 is amended by revising paragraph (e)(3) of the clause to read as follows:

952.227–13 Patent rights-acquisition by the Government.

* * * * *

Patent rights-acquisition by the Government (XXX 19XX)

* * * * *

(e) Invention identification, disclosures, and reports.

* * * * *

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

* * * * *

952.227–80 and 952.227–81 [Removed]

14. Sections 952.227–80 and 952.227–81 are removed.

15. Section 952.227–83 is amended by revising the prescription to read as follows:

952.227–83 Rights in technical data solicitation representation.

Pursuant to 48 CFR 927.7004–1 and 927.7004–2, include this provision and the legend at FAR 52.215–12 in solicitations which may result in contracts for research, development, or demonstration work or contracts for supplies in which delivery of required technical data is contemplated.

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

16. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

17. Subsection 970.2305–4 is amended by revising paragraph (a) to read as follows:

970.2305–4 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5204–57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

* * * * *

18. Subsection 970.2305–5 is amended by revising paragraph (b)(2) to read as follows:

970.2305–5 Suspension of payments, termination of contract, and debarment and suspension actions.

* * * * *

(b) * * *

(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204–57;

* * * * *

19. Subsection 970.5204–57 is amended by revising the section and provision heading, removing paragraph (d) of the provision, and revising paragraphs (b) and (c) of the provision to read as follows:

970.5204–57 Agreement regarding workplace substance abuse programs at DOE facilities.

* * * * *

AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (XXX 19 XX)

* * * * *

(b) By submission of its offer, the offeror agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

[FR Doc. 96–22047 Filed 8–28–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 082096D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council (Council) has submitted the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before October 18, 1996.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a regulatory impact review, an initial regulatory flexibility analysis, a social impact assessment, and a final environmental impact statement, should be sent to the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, telephone 787–766–5926, FAX 787–766–6239.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan (plan) be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving a plan, immediately publish notification that it is available for public review and comment.

The FMP would: (1) Require that a Caribbean conch resource be landed in its shell; (2) prohibit the possession or sale of queen conch less than 9 inches (22.9 cm) in total length and less than 3/8 inch (9.5 mm) in lip width at its widest point; (3) establish a recreational daily bag limit of 3 queen conch per person, or 12 queen conch per boat if more than 4 persons are aboard; (4) establish a daily harvest limit of 150 queen conch per licensed commercial fisherman; (5) prohibit taking of queen conch from July 1 through September 30; and (6) prohibit the taking of queen conch by diving while using a device that provides a continuous air supply from the surface. The FMP and its implementing rule should rebuild the overfished queen conch resources by protecting the spawning stock and reducing fishing effort. Proposed regulations to implement the FMP are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–22042 Filed 8–26–96; 4:12 pm]

BILLING CODE 3510–22–F

50 CFR Part 648

[I.D. 082296B]

Fisheries of the Northeastern United States; Amendment 5 to the Atlantic Sea Scallop Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) for Secretarial review and is requesting comments from the public. Amendment 5 would temporarily close a 9 mi^2 (23.31 km^2) site to support a scallop aquaculture research project. The intended effect of the closure would be to prevent conflicts between fishing gear and project equipment for the limited duration of the research project.

DATES: Comments must be received on or before October 21, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on Scallop FMP." Copies of proposed Amendment 5, its Regulatory Impact Review, Initial Regulatory Flexibility Analysis, and the Environmental Assessment are available from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or amendment it prepares to NMFS, on behalf of the Secretary of Commerce for review. The Magnuson Act also requires that NMFS, upon receiving the plan or amendment for review, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review and publish a notice that the plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

Amendment 5, if approved, would: (1) Close a 9 mi^2 mi (23.31 km^2) site to mobile fishing gear and partially close the site to non-mobile gear for an 18-month period, and (2) temporarily exempt certain vessels from fishing regulations.

Day 1 of Amendment 5 is August 22, 1996. Proposed regulations to implement this amendment are scheduled to be published in the **Federal Register** within 15 days of this date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–22055 Filed 8–26–96; 4:12 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 169
Thursday, August 29, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–059–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for the field testing of an unlicensed veterinary biological product. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that field testing this unlicensed veterinary biological product will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number and publication date of this notice, as well as the first two words of the product name, when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237; telephone (301) 734–8400; fax (301) 734–8910; or E-mail: jgreenberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed veterinary biological product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment for field testing the unlicensed veterinary biological product referenced in this notice, APHIS conducted a risk analysis to assess the potential effect of this product on the safety of animals, public health, and the environment. Based on that risk analysis, APHIS has prepared an environmental assessment. APHIS has concluded that field testing this unlicensed veterinary biological product will not significantly affect the quality of the human environment. Based on this finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement.

An environmental assessment and a finding of no significant impact have been prepared for field testing the following unlicensed veterinary biological product:

Requester	Product	Field test locations
Oxford Veterinary Laboratories, Inc	Feline Rhinotracheitis Vaccine, Modified Live Virus	California, Colorado, Illinois, Iowa, Kansas, Nebraska.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize the shipment of the above product and the initiation of the field tests on September 12, 1996.

Done in Washington, DC, this 22nd day of August 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22108 Filed 8–28–96; 8:45 am]
BILLING CODE 3410–34–P

[Docket No. 96–064–2]

Procedures for Importing Animals Through the Harry S. Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; Correction.

SUMMARY: The Animal and Plant Health Inspection Service is correcting the telephone number of the person listed under for further information contact in a notice that was published in the **Federal Register** on August 23, 1996 (61 FR 43521). The notice announced the date and location of the lottery for authorization of the use of the Harry S Truman Animal Import Center in calendar year 1997, and also the period during which applications must be received to be included in the lottery.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Montgomery, Staff Specialist, Import-Export Animals Staff, National Center for Import-Export, VS, APHIS, Suite 3B30, 4700 River Road Unit 39,

Riverdale, MD 20737–1231, (301) 734–8364.

Done in Washington, DC, this 23rd day of August 1996.

Richard R. Kelly,

Acting Chief, Regulatory Analysis and Development, Animal and Plant Health Inspection Service.

[FR Doc. 96–22035 Filed 8–28–96; 8:45 am]

BILLING CODE 3410–34–P

Natural Resources Conservation Service

Finding of No Significant Impact for Limestone-Graveyard Creeks Watershed Bent and Prowers Counties, CO

Introduction

The Limestone-Graveyard Creeks Watershed is a federally assisted action authorized for planning under Pubic Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies as well as with interested organization and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 655 Parfet Street, Suite E200C, Lakewood, CO 80215–5517.

Recommended Action

The recommended plan is composed of management and enduring conservation practices to reduce deep percolation, runoff and irrigation induced erosion which will improve water quality of both surface and groundwater, the Arkansas river, as well as protect the resource base.

It is expected that 108 long-term land treatment contracts will be written during the project's life. Approximately 26,700 acres will be treated through project action.

The primary purposes are: (1) (Watershed protection)—protect the soil resource base from excessive irrigation induced erosion and sedimentation and reduce negative water quality impacts to surface and groundwater, including the Arkansas River from selenium, sediment, salts, and nitrate loading, (2) (Agricultural water management)—improve application unformity.

Effects of Recommended Action

Overall improved surface and groundwater quality, improved human health and safety, significant sediment and erosion reduction, improved water quality in the Arkansas River, improved wetlands and fisheries from improved water quality, improved wildlife habitat, reduced irrigation labor costs, reduced irrigation system operation and maintenance, and improved irrigation systems and management results in increased available water supply on and offsite.

The proposed action will reduce selenium, sediments, salts, nitrates, and other pollutants, in ground water and the Arkansas River, thereby improving the water quality. It will also protect the watershed resource base by reducing irrigation induced erosion.

Significant negative effects to wetlands are not expected. However, if mitigation is necessary, it will be accomplished on a value for value basis.

A slight improvement of the upland wildlife habitat is expected due to an increase in forage and water quality.

The proposed project will encourage and promote the agricultural enterprises in the watershed through education and accelerated technical and financial assistance. This will help maintain agriculture as a significant component in the area economy.

A list of the cultural resource sites within the watershed has been obtained from the State Historic Preservation Officer (SHPO). Their relationship to planned conservation measures was evaluated. The survey concludes that no significant adverse impacts will occur to known cultural resources in the watershed should the plan be implemented. If however, during construction of enduring measures a new site is identified, construction will stop and the (SHPO) will be notified.

There is no wilderness areas in the watershed.

There are no threatened or endangered species known to exist in the watershed. However, prairie dog towns which could provide habitat for the black-footed ferret, will not be disturbed during project action.

As stated above, the primary objective of the project is to reduce the selenium entering the Arkansas River and groundwater. Land treatment measures will reduce selenium levels to within State and EPA standards.

Wildlife habitat may be temporarily disturbed in areas where enduring measures are implemented. They will however, return to at least their previous value within a short period of time.

The fishery in the Arkansas River will be impacted to a lesser degree by selenium after the project is complete.

No significant adverse environmental impacts will result from the installation of conservation measures. Some short-term habitat disturbances may occur during construction of small erosion control structures, but they will heal quickly.

Alternatives

The planned action is the most practical means of reducing the selenium, salts, and sediment entering the Arkansas River and groundwater, thus protecting the resource base in the watershed. Since no significant adverse environmental impacts will result from installation of the measures and no other alternatives could meet the tests of completeness, effectiveness, efficiency, and acceptability, this alternative becomes the only viable candidate plan. The no action alternative was used for comparison purposes.

Consultation—Public Participation

The Bent and Prowers Soil Conservation Districts requested in March, 1989, that the watershed be considered for a PL566 watershed project. A field review was made on March 23, 1989. The review team found that significant irrigation water management, water quality, and watershed protection treatment was needed. The Soil Conservation District and the NRCS Field Office decided that detailed information collection would be the first priority. Data on water quantity, quality, and practice needs were gathered. Ninety percent of the landowners expressed an interest in this project. Significant resource problems were found and the sponsors made an application for PL566 planning assistance June 16, 1989.

The State Soil Conservation Board formally accepted the application on September 6, 1989. The Soil Conservation Services' West National Technical Center (WNTC) made a field reconnaissance October 25, 1989. They met with the irrigation company personnel, field offices, and conservation district officials. It was decided further data was needed to quantify the off-site effects from project action. In January 1993, the NRCS Field Office, area staff and state staff developed a schedule to complete a preauthorization plan and plan of work.

On June 24, 1993, a public scoping meeting was held to discuss the problems, needs, and possible effects from a project. Federal, State, and local agencies, and the general public were invited. This group helped give direction to the NRCS planners. A public response analysis was completed

on the responses. A summary of those responses is shown on Table C.

An environmental evaluation meeting was also held on June 24, 1993, to identify environmental concerns and issues and discuss how best to address those concerns.

Numerous newspaper articles, newsletters, and radio public service announcements have been aired to provide public information. Public meetings with the news media in attendance were held to gain input and inform the public.

A public meeting in the morning and a sponsors meeting in the afternoon were held December 2, 1993, to determine the desirability of pursuing a planning authorization and review the preliminary plan. The sponsors felt that cost shared management practices were essential to get adequate water quality improvement. Potential alternatives and the responsibilities of each sponsor and NRCS were stressed in discussions. The SCDs have the right of eminent domain under authority established by state law. If needed, they are willing to fulfill their agreements to see that a plan is formulated and implemented.

The public and sponsors encouraged NRCS to go forth with the request for planning. Potential practices and alternatives were reviewed to identify what may be needed. A revised application was developed and approved by the sponsers to slightly change the watershed size and sponsors in January 1994.

The sponsors reviewed the preauthorization report in March 1994 and concurred with the report. However, the sponsors requested cost share on management practices. NRCS, agreed to pursue cost sharing for management practices. The preauthorization report was transmitted to the WNTC in Portland for technical review in April 1994. A review by the WNTC was completed on June 30, 1994. Comments were incorporated, and on July 28, 1994, the SCD boards reviewed WNTC comments on the Preauthorization Plan, and agreed to continue their support of the plan even though cost sharing for management practices were not approved.

The SCD boards have met regularly and provided positive leadership to the furthering of conservation and improvement of the watershed. Ongoing water quality, quantity and management practices are being installed by a combination of landowner, district and state funds. The two district boards cooperated in getting a 319 demonstration project, approved in February 1994, to show the value of surge irrigation and irrigation water management on six fields in the watershed area.

On September 26, 1994 the watershed was approved for planning. A meeting was held in December 1994 with field and area staffs, the State Water Resources Planning staff, and sponsors to review the Plan of Work and develop assignments to complete the watershed plan. A scoping meeting and environmental assessment meeting was held at this time.

The Watershed Plan was developed and reviewed with the sponsors at their board meetings in May, 1995. They requested that NRCS have a public meeting to present the plan to all interested publics. On June 1, 1995, a public meeting was held in Lamar, Colorado. It was the consensus of those present to move forward into inter-agency review.

Specific consultation was conducted with the State Historic Preservation Officer concerning cultural resources in the watershed.

Public meetings were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date has shown no unresolved conflicts related to the project plan.

Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impact on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Limestone-Graveyard Creeks Watershed Plan is not required.

Dated: August 19, 1996.

Stuart N. Simpson,

Assistant State Conservationist.

[FR Doc. 96–22066 Filed 8–28–96; 8:45 am]

BILLING CODE 3410–01–M

Limestone-Graveyard Creeks; Environmental Impact Statement

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the NRCS Regulations (7 CFR Part 650); the NRCS, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Limestone-Graveyard Creeks Watershed, Bent and Prowers Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Duane L. Johnson, State Conservationist, 655 Parfet Street, E200C, Lakewood, CO 80215–5517. (303) 236–2886, Ext. 202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these finds, Duane L. Johnson, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is a plan for watershed protection. The planned works of improvement include accelerated technical assistance for implementing land treatment with practices such as conservation tillage, irrigation water management and enduring practices to reduce deep percolation to improve water quality.

The Notice of Finding of No Significant Impact (FONSI), has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Stuart N. Simpson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic under No. 10.904, Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which required intergovernmental consultation with State and local officials)

Dated: August 19, 1996.

Stuart N. Simpson,

Assistant State Conservationist.

[FR Doc. 96–22067 Filed 8–28–96; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 2:00 p.m.

and adjourn at 5:00 p.m. on Wednesday, September 11, 1996, at the Embassy Suites (The Board), 8425 Firestone Boulevard, Downey, California. The purpose of the meeting is to discuss release and dissemination of a report and the Commission hearing in Los Angeles and to plan future Advisory Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Fernando Hernandez, 310–696–0104, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–22038 Filed 8–28–96; 8:45 am]

BILLING CODE 6335–01–F

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 8:30 p.m. on Monday, September 23, 1996, at the Doubletree Hotel, 616 West 7th Street, Tulsa, Oklahoma 74127. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 22, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–22037 Filed 8–28–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Economic Census Covering the Construction Industry Sector.

Form Number(s): CC–1508, 1608, 1718, 1728, 1738, 1748, 1758, 1768, 1778, 1788, and 1798.

Agency Approval Number: NA

Type of Request: New collection.

Burden: 286,000 hours.

Number of Respondents: 130,000.

Avg Hours Per Response: 2.2 hours.

Needs and Uses: The economic census is the major source of data about the structure and functioning of a large segment of the United States' economy and features unique industry and geographic detail. It provides essential information for many users, including the government, industry, business and the general public. The Census of Construction (CCI) collects information form contractors of all types of construction—more than 2.3 million establishments classified in the North American Industry Classification System (NAICS). The construction industry sector of the economic census comprises establishments primarily engaged in the construction of buildings and other structures, additions, alterations, reconstruction, installation, and maintenance and repairs.

The economic census will produce basis statistics by industry for number of establishments, value of construction work done, payroll, employment, selected costs, depreciable assets, and capital expenditures. It also will yield a variety of subject statistics, including estimates of type of construction work done, kind of business activity and other industry-specific measures.

Among the important statistics produced by the CCI are estimates of the value of construction work done during the covered year. The Federal Government uses the information from the economic censuses as an important part of the framework for the national accounts, input-output measures, key economic indexes, and other estimates that serve as the factual basis for economic policy making, planning and administration. State governments rely on the economic censuses for comprehensive economic data on geographical areas in order to make decisions concerning policy making, planning and administration. Finally, industry, business and the general public use data from the economic censuses for economic forecasts, market research, benchmarks for their own sample-based surveys, and business and financial decision making.

Affected Public: Businesses or other for-profit institutions.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 26, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22116 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–16–M

Foreign-Trade Zones Board

[Docket 64–96]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzone Status, Fujitsu Ten Corporation of America Plant (Automotive Audio Products and Electronic Components), Rushville, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the automotive audio products and electronic components manufacturing plant of Fujitsu Ten Corporation of America (FTCA), located in Rushville, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 19, 1996.

The FTCA plant (95,000 sq.ft. On 32 acres) is located at 616 Conrad Harcourt Way in Rushville (Rush County), Indiana, some 40 miles east of Indianapolis. The plant (354 employees) is used to produce (1) automotive audio products, including electronic tuning

AM/FM radios, AM/FM radio/cassette units, cassette deck units, power amplifiers, and front end AM/FM receiver modules; and (2) automotive electronic components, including relay integration modules (i.e., warning indicators, light dimmers) and security systems with remote keyless entry, for the U.S. market and export. As part of this application, FTZ authority is also being requested for other automotive electronic components which may be manufactured in the future, including air bag controllers, speed control systems, fuel injection systems, seat controls, anti-lock brake units, automatic windshield wipers, heated seat modules, indicator sensors, and vehicle navigation systems. The production process involves assembly, testing, and warehousing. Components purchased from abroad (about 76% of total unit material value) include: self-adhesive plastic plates/foil/film, labels, copper and steel fasteners, steel springs, other articles of copper, flywheels and pulleys, electric motors, electronic parts (transformers, inductors, capacitors, resistors, diodes, transistors, LED's, insulators), liquid crystal displays, integrated circuits, PC boards, electrical switches, other electrical and audio parts (duty rate range: free—12.5%, 40¢/unit, 7¢/kg). The application indicates that 26 percent of all components (by value) will be purchased from U.S. suppliers within three years after approval of subzone status.

FTZ procedures would exempt FTCA from Customs duty payments on the foreign components used in the export production (11% of total shipments). On its domestic sales, the company would be able to choose the duty rates that apply to finished automotive audio products and automotive electronic components (duty free—8.5%) for the foreign inputs noted above. The motor vehicle duty rate (2.5%) could apply to the finished audio and electronic products that are shipped to U.S. motor vehicle assembly plants with subzone status for inclusion into finished motor vehicles under FTZ procedures. Under the FTZ Act, certain merchandise in FTZ status is exempt from ad valorem inventory-type taxes. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 28, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 12, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, Penwood One, Suite 106, 11405 N. Pennsylvania Street, Carmel, IN 46032

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230–0002

Dated: August 19, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–22124 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 65–96]

Foreign-Trade Zone 38—Spartanburg County, South Carolina Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, requesting authority to expand its zone in Spartanburg County, South Carolina, within the Greenville/Spartanburg, South Carolina Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 21, 1996.

FTZ 38 was approved on May 4, 1978 (Board Order 131, 43 FR 20526, 5/12/78) and expanded on November 9, 1994 (Board Order 715, 59 FR 59992, 11/21/94). The zone project currently consists of three sites in Spartanburg County: *Site 1* (20 acres)—U.S. Highway 29 Industrial Park, Wellford; *Site 2* (111 acres)—International Transport Center, Greer; and *Site 3* (111 acres)—Highway 290 Commerce Park, Duncan.

The applicant is now requesting authority to further expand the general-purpose zone to include a site (Proposed *Site 4*) which would encompass the Wingo Corporate Park (473 acres), a private industrial park located some 5 miles northwest of Spartanburg, South Carolina, on New Cut, Blackstock, and Mt Zion Roads in Spartanburg County. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 28, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 12, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 150–A West Phillips Road, Greer, SC 29650

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 23, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–22125 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 836]

Grant of Authority; Establishment of a Foreign-Trade Zone Olympia, Washington, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Port of Olympia (the Grantee) has made application to the Board (FTZ Docket 5–95, 60 FR 10352, 2/24/95), requesting the establishment of a foreign-trade zone at sites in the four-county area of Thurston, Lewis, Mason and Kitsap Counties, Washington

in and adjacent to the Port of Olympia Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register**, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 216, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 16th day of August 1996.

Michael Kantor,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–22126 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Florida International University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 95–093R. *Applicant:* Florida International University, Miami, FL 33199. Instrument: Stopped-Flow System. Manufacturer: Applied Photophysics, United Kingdom. Intended Use: See notice at 61 FR 28175, June 4, 1996.

Docket Number: 96–026. *Applicant:* Bates College, Lewiston, ME 04240. Instrument: Rapid Kinetics Accessory, Model SFA–20. Manufacturer: Applied Photophysics, Ltd., United Kingdom. Intended Use: See notice at 61 FR 28175, June 4, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for existing instruments for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–22117 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–DS–P

Lehigh University, et al.; Notice of Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–036. *Applicant:* Lehigh University, Bethlehem, PA 18015. Instrument: Automatic Sample Manipulator. Manufacturer: Scienta Instruments, AB, Sweden. Intended Use: See notice at 61 FR 28176, June 4, 1996. Advice received from: National Institutes of Health, April 22, 1996.

Docket Number: 96–037. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Microprobe Laser Ablation System. Manufacturer: VG Fisons, United Kingdom.

Docket Number: 96–043. *Applicant:* The University of Chicago, Chicago, IL 60637. Instrument: Autosampler, Model A200S. Manufacturer: Finnigan Corp., Germany. Intended Use: See notice at 61 FR 28175. Advice received from: National Institutes of Health, June 10, 1996.

Docket Number: 96–052. *Applicant:* North Carolina State University, Raleigh, NC 27695–7212. Instrument: ISOCMS Accessory for Microanalyzer. Manufacturer: CAMECA Instruments, France. Intended Use: See notice at 61 FR 30220, June 14, 1996. Advice received from: National Institutes of Health, June 11, 1996.

Docket Number: 96–061. *Applicant:* University of Hawaii, Manoa, Honolulu, HI 96822. Instrument: Individual Acid Bath Carbonate Device. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 33902, July 1, 1996. Advice received from: National Institutes of Health, July 23, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–22118 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–DS–P

University of Massachusetts; Notice Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96-065. *Applicant:* University of Massachusetts, Amherst, MA 01003. Instrument: Electron Microscope, Model JEM 3010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 61 FR 33903, July 1, 1996. Order date: July 24, 1995.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–22119 Filed 8–28–96; 8:45 am]

BILLING CODE 3510-DS-P

[C–122–404]

Live Swine From Canada; Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Revocation In Part of Countervailing Duty Order.

SUMMARY: On May 29, 1996, the Department of Commerce (the Department) published a notice of initiation and preliminary results of changed circumstances countervailing duty administrative review with intent to revoke the order, in part. We are now revoking this order, in part, with respect to slaughter sows and boars and weanlings from Canada, because this portion of the order is no longer of interest to domestic parties.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Brian Albright, Office of CVD/AD Enforcement, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1985, the Department published in the **Federal Register** (50 FR 32880) the countervailing duty order on live swine from Canada. On December 11, 1995, petitioners requested the partial revocation of the order on live swine from Canada with respect to slaughter sows and boars and weanlings due to lack of interest, effective April 1, 1991. We determined that petitioner's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. As a result, on May 29, 1996, the Department initiated and simultaneously issued the preliminary results of a changed circumstances review, preliminarily determining to revoke the order, in part, with respect to slaughter sows and boars and weanlings (61 FR 26879). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of the Order

Due to the changed circumstances review, the merchandise now covered by this order is live swine, except U.S. Department of Agriculture certified purebred breeding swine, slaughter sows and boars, and weanlings (weanlings are swine weighing up to 27 kilograms or 59.5 pounds) from Canada. Such merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute, are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act").

Final Results of the Review; Partial Revocation of Countervailing Duty Order

The affirmative statement of no interest by petitioners in this case constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, the Department is partially revoking the order, effective April 1, 1991, on live swine from Canada, with respect to slaughter sows and boars and weanlings (as defined in the scope section of this notice) in accordance with the provisions of 19 CFR 355.25(d)(1).

The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of slaughter sows and boars and weanlings (as defined in the scope section of this notice) from Canada entered, or withdrawn from warehouse, for consumption on or after April 1, 1991, in accordance with 19 CFR 355.25(d)(5). We will also instruct the Customs Service to refund with interest any estimated countervailing duties collected with respect to unliquidated entries of these slaughter sows and boars and weanlings made on or after April 1, 1991, in accordance with section 778 of the Act.

This changed circumstances administrative review, and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675 (a)(1)) and 19 C.F.R. section 355.22(h), and 355.25(d) of the Department regulations.

Dated: August 22, 1996.

Robert S. LaRussa,

Act[illegible] Assistant Secretary for Import Ad[illegible]nistration.

[FR Doc. 96–22128 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–559–001]

Certain Refrigeration Compressors From the Republic of Singapore; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, Tecumseh Products Company (Tecumseh), the Department of Commerce (the Department) is conducting an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. This review covers the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), AMS was the sole exporter of the subject merchandise to the United States during the period of review (POR) April 1, 1994, through March 31, 1995. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the POR.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3793.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on or after January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) in accordance with the Uruguay Round Agreements Act (URAA).

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, the Department published in the **Federal Register** (60 FR 55540) a notice of "Opportunity to Request an Administrative Review" of the agreement suspending the countervailing duty investigation on certain refrigeration compressor from

the Republic of Singapore. On November 30, 1995, the petitioner, Tecumseh, requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167, November 7, 1983). We initiated the review, covering the period April 1, 1994, through March 31, 1995, on December 15, 1995 (60 FR 64413). The Department is now conducting this review in accordance with section 751 of the Tariff Act and 19 CFR 355.22. The Department sent out a questionnaire on March 4, 1995, and received a joint questionnaire response from the GOS, MARIS, and AMS, on April 25, 1996. Subsequently, the Department sent out a supplemental questionnaire on May 17, 1996 and received a joint supplemental questionnaire response on May 31, 1996.

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under Harmonized Tariff Schedule (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review period is April 1, 1994 through March 31, 1995, and includes 3 programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively. These two companies, along with the GOS, are the signatories to the suspension agreement.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant determined by the Department in this proceeding to exist with respect to the subject merchandise. The offset entails the collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. See Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation, 48 FR 51167, 51170 (November 7, 1983).

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part VI

The Production for Export Programme under Part VI of the Economic Expansion Incentives Act allows a 90-percent tax exemption on a company's export profit if the GOS designates a company as an export enterprise. In the investigation, the Department preliminarily found this program to be countervailable because "this tax exemption is provided only to certified export enterprises." See Preliminary Affirmative Countervailing Duty Determination: Certain Refrigeration Compressors from the Republic of Singapore, 48 FR 39109, 39110 (August 29, 1983). MARIS is designated as an export enterprise and used this tax exemption during the period of review. AMS was not designated an export enterprise under Part VI of the Economic Expansion Incentives Act for the period of review.

According to the Export Enterprise Certificate awarded to MARIS in a letter dated May 12, 1981, MARIS is to receive this benefit on the production of compressors, electrical parts and accessories for refrigerators, and plastic refrigerators. To calculate the benefit, we divided the tax savings claimed by MARIS under this program by the f.o.b. value of total exports of products receiving the benefit, for the period of review.

MARIS' response to the Department's countervailing duty questionnaire for this review indicated that MARIS deducted export charges levied pursuant to the suspension agreement in arriving at an adjusted profit figure, which was then used to calculate exempt export profit for the review period. In the 90–91 administrative review, the Department determined that the amount of the export charge deduction must be added "back to MARIS' export profit in calculating MARIS' tax savings in order to offset the deduction of the export charges in the review period." See Preliminary Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore, 57 FR 31175 (July 14, 1992), affirmed in Final Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore, 57 FR 46539 (October 9, 1992). Therefore, as the Department did in the 92–93 administrative review, in calculating the benefit from this program, we have added back this deduction. On this basis, we preliminarily determine the benefit from this program during the review period to be 1.23 percent of the f.o.b. value of the merchandise.

(2) Finance & Treasury Center (FTC)

The Finance & Treasury Center Program allows for the taxation at a concessionary rate of ten percent on certain income earned by companies providing treasury, investment, or financial services in Singapore for their subsidiaries/affiliates outside Singapore. The FTC program under Section 43E of the Singapore Income Tax Act has been in effect since April 1, 1989 (since Singapore tax "year of assessment 1991"). According to the response, applications to the FTC program had been received and approved by March 31, 1995 for 14 companies, including AMS. Every company which has applied to the program has been accepted. MARIS did not participate in the program for the period of review.

The Department examined this program in the 92–93 review and found it to be *de facto* specific, and therefore countervailable. (See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review ("Final Results"), 61 FR 10315–8 (March 13, 1996)). The Department also stated in its preliminary results for the 92–93 review that, "(b)ecause it is probable that participation in the FTC program by MNCs in Singapore could change over time, in future reviews we may re-examine the circumstances which have led the Department to find the program *de facto* specific, should any new information about the program's specificity arise." (See Certain Refrigeration Compressors from the Republic of Singapore: Preliminary Results of Countervailing Duty Administrative Review ("Preliminary Results"), 59 FR 59749 (November 18, 1994

During the 92–93 review, the Department found that 10 enterprises, representing five industries, were participating in the program (See Preliminary Results at 59750 (November 18, 1994)). For this review, the number of firms/enterprises participating in the FTC program for this review has increased to 14, and the number of industries participating has increased to eight. In performing our analysis of this program, the Department found that the overall increase in the number of firms/enterprises (*i.e.*, 10 to 14) and industries (*i.e.*, 5 to 8) participating in the FTC program was neglible. Section 771 (5A)(D)(iii)(I) of the Tariff Act provides that, where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of four factors exist. The first factor is whether the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Given the large number of multi-national companies operating in Singapore, the Department continues to find the FTC program *de facto* specific, and therefore countervailable, because only a small group of firms/enterprises representing

only eight industries actually used the FTC program.

To calculate the benefit, we divided the tax savings attributable to the subject merchandise under this program by the value of all AMS product sales for the period of review. On this basis, we preliminarily determine the benefit from this program during the review period to be 0.01 percent of the f.o.b. value of the merchandise.

(3) Financing through the Monetary Authority of Singapore

Under the terms of the suspension agreement, MARIS and AMS agreed not to apply for or receive any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of the subject merchandise to the United States. We determined during the review that neither MARIS nor AMS received any financing through the Monetary Authority of Singapore on the subject merchandise exported to the United States during the review period. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

Preliminary Results of Review

The suspension agreement states that the GOS will offset completely with an export charge the net bounty or grant calculated by the Department. As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charges in effect for the period April 1, 1994 through March 31, 1995. We also preliminarily determine the net bounty or grant to be 1.24 percent of the f.o.b. value of the merchandise for the April 1, 1994 through March 31, 1995 review period.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the period April 1, 1994 through March 31, 1995, a negative adjustment may be made to the provisional export charge rate in effect. The adjustments will equal the difference between the provisional rate in effect during the review period and the rate determined in this review, plus interest. The provisional rate, established in the notice of the final results of the 90–91 administrative reviews of the suspension agreement (See Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review, 57 FR 46540 (October 9, 1992)) was 5.52 percent. The GOS may refund or credit, in accordance with section B.4.c of the agreement, the difference between that amount and 1.24 percent, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department. The Department will notify the GOS of these adjustments after publication of the final results of this review.

If the final results of this review remain the same as these preliminary results, the Department intends to notify the GOS that the provisional export charge rate on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 1.24% percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States from Singapore of this merchandise during the review period.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 22, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22127 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 081696A]

Small Takes of Marine Mammals Incidental to Specified Activities; McDonnell Douglas Aerospace Delta II Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Air Force for continuation of an authorization to take small numbers of harbor seals by harassment incidental to launches of McDonnell Douglas Aerospace (MDA) Delta II (Delta II) vehicles at Space Launch Complex 2W (SLC–2W), Vandenberg Air Force Base, CA (Vandenberg). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the Air Force to incidentally take, by harassment, small numbers of harbor seals, California sea lions and northern elephant seals in the vicinity of Vandenberg for a period of 1 year.

DATES: Comments and information must be received no later than September 30, 1996.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application, a list of the references used in this document, and/or previous **Federal Register** notices on this activity may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 310–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. The MMPA defines "harassment" as;

> * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 17, 1996, NMFS received an application from the U.S. Air Force requesting continuation of an authorization for the harassment of small numbers of harbor seals and potentially for other pinniped species incidental to launches of Delta II vehicles at SLC–2W, Vandenberg. These launches would place Department of Defense, National Aeronautics and Space Administration (NASA), and commercial medium-weight payloads into polar or near-polar orbits. MDA/NASA intends to launch up to 10 Delta IIs during the period of this proposed 1-year authorization.

Because SLC–2W is located north of most other launch complexes at Vandenberg, and because there are oil production platforms located off the coast to the south of SLC–2W, missions flown from SLC–2W cannot fly directly on their final southward course. The normal trajectory for a SLC–2W launch is 259.50° west for the first 90 seconds, then a 41–second dog-leg maneuver to bring the vehicle on its southward course of 196°. This trajectory takes the launch vehicle away from the coast and nearly 30 mi west of San Miguel Island (SMI), the westernmost Channel Island (Air Force, 1995b)[1].

Description of Habitat and Marine Mammals Affected by Delta IIs

The Southern California Bight (SCB), including the Channel Islands area, support a diverse assemblage of pinnipeds (seals and sea lions) and cetaceans (whales, dolphins, and porpoises). California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*) and northern fur seals (*Callorhinus ursinus*) breed on the Islands, with the largest rookeries on SMI and San Nicolas Island.

A small breeding population of California sea lions occurs on Vandenberg and both sea lions and northern elephant seals are regular visitors to the shoreline near SLC–2W. A small population of harbor seals are normal residents of Purisima Point adjacent to SLC–2W and southern sea otters (*Enhydra lutra*) were censused there during the spring of 1995[2].

Because it is the only species that hauls out along the Vandenberg coast, the only marine mammal anticipated to be incidentally harassed by Delta II launches is the harbor seal. A description of the SCB population of harbor seals and other pinniped species was provided on August 18, 1995, in conjunction with publication of the previous notice of application for this activity (60 FR 43120) and is therefore not repeated here. Only new information on harbor seals is provided below. Interested reviewers are encouraged to refer to the document cited above for the appropriate discussion. That document is also available from NMFS (see **ADDRESSES**).

Harbor seals are considered abundant throughout most of their range and have increased substantially in the last 20 years. Hanan and Beeson (1994) reported 21,462 seals counted on the mainland coast and islands of California during May and June, 1994. Using that count and Huber et al.'s (1993) correction factor (1.61 times the count) for animals not hauled out gives a best population estimate of 34,554 harbor seals in California (Barlow *et al.* 1995).

Vandenberg supports a substantial population of harbor seals. A total of 19 distinct haulout sites are present on Vandenberg (between Point Sal and Jalama Beach), although not all sites are used regularly (Roest 1995). For most of the year, the average number of harbor seals on the Vandenberg coast is about 330 individuals. This number nearly doubles during the molting season (June) to roughly 610. The largest population occurs on South Vandenberg, although a smaller permanent population is present at two sites near Purisima Point on North Vandenberg. Based on aerial surveys completed between 1983 and 1993 in May or June by the California Department of Fish and Game, harbor seal populations on Vandenberg varied from a low of 139 in 1983 to a high of 864 in 1990 (Roest 1995). Some variability in numbers may be due to actual changes in population densities while others may be due to refinement in techniques for completing the aerial surveys. In general, it appears that the current population of harbor seals at all 19 haulout sites on Vandenberg peaks at roughly 600 to 800 seals (Air Force 1996).

Maximum numbers of harbor seals at Purisima Point in May/June average about 40 while the Spur Road site seems to have an average maximum of from 60 to 80 individuals. More than other sites, Spur Road appears to have peak numbers in the fall (Air Force 1996, Roest 1995). However, both sites are submerged at high tide, making them unavailable to harbor seals during those times.

Potential Effects of Delta II Launches on Marine Mammals

As a result of the noise associated with the launch itself, there is a potential to cause a startle response to those harbor seals and other pinnipeds that may haul out on the coastline of North Vandenberg, principally Purisima Point and Spur Road. Launch noise would be expected to occur over the coastal habitats in the vicinity of SLC–2W while low-level sonic booms could be heard over the water in the area west of the Channel Islands.

The effect on pinnipeds would be disturbance by sound, which is anticipated to result in a negligible short-term impact to the small number of harbor seals and other pinnipeds that may be hauled out along the coast near SLC–2W at the time of Delta II launches. NMFS is unaware of any evidence that any marine mammals, other than those onshore at the time of launch, would be subject to harassment by launch noises, although the potential does exist that marine mammal species may hear either the launch noise or the sonic boom. In addition, because of the mostly

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

[2] Sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and not NMFS. Discussions between the applicant and the USFWS have taken place. Please contact those agencies for additional information.

horizontal propagation of launch noise, little noise is expected to penetrate the water interface.

At North Vandenberg, launch noises are expected to impact mostly harbor seals, as other pinniped species (California sea lions and northern elephant seals) are known to haul out at these sites only infrequently and in smaller numbers. Based upon measurements made in 1995 (Aerospace Corporation 1996), the maximum overall sound pressure levels from launch noise associated with the Delta II under typical conditions is predicted to be about 115 dBA (129 dB unweighted)(re 20μPa @ 1 m) at the nearest potential harbor seal haulout (3,000 ft (914.4 m) from launch site) and 110 dBA (125 dB) at Purisima Point (5,000 ft (1,524 m) from launch site) and last for approximately 1 minute.

Because of high-tide and pre-dawn conditions at the time of the two previous launches of Delta IIs at Vandenberg, few to no seals were expected to be ashore at these launch times. However, based upon monitoring 3 days prior to, and after, these launches, there appeared to be no differences in the number of harbor seals using these sites for hauling out before and after launchings of Delta IIs (Air Force 1996).

As a result of the launch of a Taurus rocket (slightly smaller in size to the Delta II) in March 1994 at SLC–2W, Stewart et al. (1994) observed that 20 of 23 harbor seals on Purisima Point fled into the water. The A-weighted sound exposure level at Purisima Point for that launch was 109.1 dB (127.5 dB unweighted). Therefore, it can be predicted that most, if not all, pinnipeds onshore near SLC–2W will leave the shore as a result of launchings of Delta IIs. Harbor seals and other pinnipeds, hauled out at Point Arguello and Rocky Point (approximately 15 mi (24.1 km) south of SLC–2W), may alert to the launch noise but are not expected to flee to the water, because of the distance and the resultant attenuation of launch noise at that distance.

Launch noises are not expected to impact marine mammals offshore, although pinnipeds in the nearshore waters around SLC–2W may alert to the noise, and some may possibly submerge. In order to be detectable by a marine mammal, airborne noise needs to be greater than ambient within the same frequency as the animal's hearing range. For harbor seals, recent research (Terhune 1988, Turnbull and Terhune 1989, Terhune 1991, Turnbull 1994) indicates that harbor seals have relatively poor hearing capacity in the frequencies of sound that dominate the noise produced by a rocket launch. At the lowest frequency measured (100 Hz), the threshold was between 65 dB and 75 dB. Terhune (1991) indicated that the critical ratio at the lowest frequency measured (250 Hz) was 24 dB. Thus, noise would need to be roughly 24 dB or more above background to be perceived by a harbor seal. With launch noises expected to quickly attenuate offshore, and with ambient noise level expected to range between 56 and 96 dBA (Air Force, 1995a), there is presently reasonable expectation that no marine mammals, other than pinnipeds onshore at the time of launch, would be subject to harassment by launch noises, although the potential does exist that other marine mammal species may hear the launch noise. However, simply hearing the noise does not mean that the animals have been harassed.

Northern Channel Islands

Sonic booms resulting from launches of the Delta II vary with the vehicle trajectory and the specific ground location. Sonic booms are not expected to intersect with the ocean surface until the vehicle changes its launch trajectory. This location will be well offshore.

Depending upon the intensity and location of a sonic boom, pinnipeds on SMI could exhibit an alert response or stampede into the water. However, while it is highly probable that a sonic boom from the Delta II would occur over SMI, maximum overpressures of these sonic booms are estimated to be 1.0 lb/ft^2 (psf) over SMI (Air Force 1995c). A sonic boom with an overpressure of 1.0 psf or less is not considered significant (equivalent to hearing two hands clapped together at a distance of 1 ft). Also, the maximum overall sound pressure level is not expected to exceed 78 dBA (112 dB) (Air Force 1995c). A sonic boom of this magnitude is unlikely to be distinguishable from background noises caused by wind and surf (Air Force 1995a). Monitoring of the effects of noise generated from Titan IV launches on SMI pinnipeds in 1991, Stewart et al. (1992) demonstrated that noise levels from a sonic boom of 133 dB (111.7 dBA) caused an alert response by small numbers of California sea lions, but no response from other pinniped species present (including harbor seals). In 1993, an explosion of a Titan IV created a sonic boom-like pressure wave and caused approximately 45 percent of the California sea lions (approximately 23,400, including 14,000–15,000 1-month old pups, were hauled out on SMI during the launch) and 2 percent of the northern fur seals to enter the surf zone. Although approximately 15 percent of the sea lion pups were temporarily abandoned when their mothers fled into the surf, no injuries or mortalities were observed. Most animals were returning to shore within 2 hours of the disturbance (Stewart et al. 1993).

Since the noise level from Delta II launches is expected to be well below both these levels and the threshold criteria of 101 dBA identified by Stewart et al. (1993), no incidental harassment takings are anticipated to occur on the northern Channel Islands.

Cetaceans and pinnipeds in the water should also be unaffected by the sonic booms, although, depending upon location and ambient noise levels, some species may be able to hear the sonic boom. While the maximum magnitude of sonic booms from launches of the Delta II is unknown, because of its similarity in size and weight to the Lockheed launch vehicles (LLV) (see 60 FR 38308, July 26, 1995), the sonic boom signature from the largest of those vehicles (LLV–3—3.5 psf/125.6 dB), can be used to predict the impact by the Delta II. Pressure levels of this magnitude would be less than those measured for other launch vehicles, such as the Titan IV and the Space Shuttle, for which small take authorizations for harassment have been issued previously (see 56 FR 41628, August 22, 1991 and 51 FR 11737, April 7, 1986).

Although rough seas may provide some surfaces, at the proper angle, for sound to penetrate the water surface (Richardson et al. 1991, 1995), sound entering a water surface at an angle greater than 130° from the vertical has been shown to be largely deflected at the surface, with very little sound entering the water (Chappell 1980, Richardson et al. 1991). Chappell (1980) believes that a sonic boom would need to have a peak overpressure in the range of 138 to 169 dB to cause a temporary hearing threshold shift (TTS) in marine mammals, lasting at most a few minutes. Therefore, with only a remote likelihood that a marine mammal will be almost directly under the line of flight of the Delta II, and with the Delta II having overpressures below the threshold for potentially causing TTS in marine mammals, NMFS believes that sonic booms are not likely to result in the harassment of, or injury to, cetacean or pinniped populations in offshore waters of the SCB.

Mitigation

Unless constrained by other factors including, but not limited to, human safety, national security or launch

trajectories, efforts to ensure minimum negligible impacts of Delta II launches on harbor seals and other pinnipeds are proposed for inclusion in the Incidental Harassment Authorization. These proposals include:

1. Avoidance whenever possible of launches during the harbor seal pupping season of February through May; and

2. Preference for night launches during the period of the year when harbor seals are hauled out in any numbers along the coast of North Vandenberg.

Monitoring

NMFS proposes that the holder of the Incidental Harassment Authorization would monitor the impact of Delta II launches on the harbor seal haulouts in the vicinity of Spur Road and Purisima Point. The applicant proposes to conduct at least 3 sets of seal abundance and behavioral observations with the first no more than 7 days prior to the launch and the final set as soon as practicable after the launch. Video monitoring of daylight launches would also be required. A report on this monitoring program would be required to be submitted prior to next year's authorization request, unless the monitoring indicated that serious injuries or mortalities had occurred that might relate to the launching. In this case, the authorization would require immediate notification of this fact to the Southwest Regional Director, NMFS.

Conclusions

The short-term impact of the launching of Delta II rockets is expected to result at worst, in a temporary reduction in utilization of the haulout as seals or sea lions leave the beach for the safety of the water. Launchings are not expected to result in any reduction in the number of pinnipeds, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and the northern Channel Islands are unlikely.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for launches of the Delta II rocket at SLC–2W, provided the above-mentioned monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed launches of the Delta II at SLC–2W would result in the harassment taking of only small numbers of harbor seals and possibly other pinniped species, will have a negligible impact on pinniped stocks in the SCB and will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: August 23, 1996.

Ronnie S. Holt,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–22057 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082096E]

North Pacific Fishery Management Council; Committee Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

ADDRESSES: Sitka Centennial Building, 330 Harbor Drive, Sitka, AK 99835.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

DATES: The meetings will be held during the week of September 16, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: Committee meetings scheduled include the Ecosystems Committee and the Enforcement Committee. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. All meetings are open to the public with the exception of Council executive sessions to discuss personnel, international issues, and litigation. An executive session is tentatively scheduled for noon on September 19, 1996. The Advisory Panel (AP) and the Scientific and Statistical Committee (SSC) will begin on September 16, 1996, at 8:00 a.m. The SSC will conclude their meeting on September 18, 1996, and the AP will conclude their meeting by September 19, 1996. The Council will begin their meeting on September 18, 1996, at 8:00 a.m. and conclude on September 22, 1996. The Enforcement Committee and the Ecosystems Committee are both scheduled for 7:00 p.m. on September 18, 1996. The agenda for the meetings will include the following subjects:

1. Reports from the National Marine Fisheries Service and Alaska Department of Fish and Game on the current status of the fisheries off Alaska, reports on enforcement, the Bering Sea ecosystem, and the results from the socio-economic studies report on the sablefish and halibut individual fisheries quota program.

2. Report and recommendations from an industry committee on crab caps and closures in the Bering Sea/Aleutian Islands (BSAI) and final action on Tanner crab prohibited species caps (PSC).

3. Final action on measures to improve retention and utilization in the groundfish fisheries off Alaska.

4. Status report on modified pay-as-you-go observer program and initial review of a regulatory amendment to require additional observer coverage on shore plants and motherships during the pollock "A" season.

5. Under groundfish management, the following subjects will be discussed and appropriate action taken:

(a) Review of BSAI and Gulf of Alaska (GOA) Stock Assessment and Fishery Evaluation reports for the 1997 groundfish fisheries and approval for public review.

(b) Approve preliminary harvest and bycatch specifications for 1997 groundfish fisheries in the BSAI and GOA, including discard mortality rates for halibut and Vessel Incentive Program rate standards.

(c) Initial review of an amendment to remove dusky rockfish from the GOA pelagic shelf rockfish complex.

(d) Final action on revised directed fishing standards for turbot, Pacific cod and pollock in the arrowtooth fisheries and northern rockfish in the shortraker/rougheye fisheries and proposed electronic reporting requirements.

(e) Initial review of amendments to ban night trawling for Pacific cod in the BSAI, to prohibit a directed fishery on forage fish, and to reduce percentage allowances for accounting for slime and ice on fish.

(f) Review of a proposed rule for seamount restrictions.

6. Under staff tasking the Council will review proposals received for amendments to the BSAI and GOA Groundfish Fishery Management Plans and for amendments to the Sablefish and Halibut IFQ Program and give direction to staff for further analysis. The IFQ proposals will be forwarded to the Industry IFQ Implementation Team

for review and comment prior to tasking staff with analyses.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 21, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–22003 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082096F]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Bottomfish Task Force.

DATES: The meeting will be held on September 24, 1996, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The task force will hold it's third meeting to discuss and formulate limited entry alternatives for the Mau Zone bottomfish fishery in the Northwestern Hawaiian Islands and consider other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to meeting date.

Dated: August 21, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–22004 Filed 8–28–96; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 960412111–6220–03; I.D. 080596I]

RIN 0648–ZA20

West Coast Salmon Fisheries; Northwest Emergency Assistance Plan (NEAP)—License Buy Out Program (LBOP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed program; request for comments.

SUMMARY: This notice requests public comment on new bidding options for the 1996 Washington State Salmon Vessel License Buy Out Program (LBOP) to be administered by the Washington Department of Fish and Wildlife (WDFW) through a cooperative agreement with NMFS. The objectives of the program are to provide financial assistance to commercial salmon fishermen adversely impacted by the salmon fishery disaster, and to aid the long-term viability of the fishery resource. This notice also responds to comments submitted on the notice of proposed 1996 LBOP, which was published in the **Federal Register** on April 23, 1996 (61 FR 17879). In that notice, NMFS announced certain administrative changes to the NEAP and requested comments on proposed NEAP revisions for the Habitat Restoration Program and the Data Collection Jobs Program, as well as the LBOP. On August 1, 1996, NMFS published a **Federal Register** notice (61 FR 40197) implementing the final program for the Habitat Restoration Jobs Program and Data Collection Jobs Program, and also announced that final decisions on the administration of the 1996 LBOP will be deferred until the public is provided with notice and an opportunity to comment on new bidding options developed as a result of comments received on the initial notice.

DATES: Written comments must be received on or before September 27, 1996.

ADDRESSES: Comments should be sent to Stephen P. Freese, Northwest Emergency Assistance Plan, Trade and Industry Services Division, Northwest Regional Office, National Marine Fisheries Service, BIN C15700, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Stephen Freese, (206) 526-6113.

SUPPLEMENTARY INFORMATION: On August 2, 1995, the Secretary of Commerce (Secretary) declared that a fishery resource disaster continued in 1995 for the salmon fisheries of the Pacific States of California (north of San Francisco), Oregon, and Washington, excluding Puget Sound. Under the authority of the Interjurisdictional Fisheries Act (IFA) of 1986 (16 U.S.C. 4107(d)), as amended, an additional $12.7 million in Federal financial assistance was made available for affected salmon fishermen.

In the April 23, 1996, **Federal Register** notice (61 FR 17879), NMFS announced its decision to continue the basic structure of the Habitat Restoration Jobs Program and the Data Collection Jobs Program, as first established on October 11, 1994 (59 FR 51419), with subsequent amendments published on January 31, 1995 (60 FR 3908), and June 22, 1995 (60 FR 32507). NMFS decided to modify certain limitations, terms, and conditions of the NEAP programs to enable more fishermen to benefit from the assistance available from the jobs programs and to further reduce fishing capacity under the LBOP. The public was asked in the notice to comment on these new terms, limitations, and conditions prior to final implementation.

With respect to the 1996 LBOP, four options were presented for public comment, as follows:

Option 1—Eligible fishermen submit new bids or maintain the bids that they submitted to the 1995 LBOP. Starting with the lowest offers, licenses are accepted and retired by WDFW until available funding is exhausted.

Option 2—Starting with the lowest unsuccessful 1995 LBOP offer, WDFW would purchase licenses until available funding is exhausted.

Option 3—Unsuccessful bidders in the 1995 LBOP are offered set fixed prices for each license: Salmon troll and delivery—$24,894, Salmon gill net—$38,000, and Salmon charter—$21,300. Remaining funds would be applied to new applications starting with the lowest offer.

Option 4—Applicants submit bids and uninsured loss estimates. Starting with the lowest ratio of bid to uninsured loss, WDFW would purchase licenses until available funding is exhausted.

In response to the April 23, 1996, notice of proposed program, NMFS received 27 comment letters from 10 fishing associations, 14 fishermen, 1 tribe, and 2 government entities. Most of

these comments concerned the LBOP. The comments specifically relating to the NEAP Habitat Restoration Program and the Data Collection Jobs Program were considered and addressed in the **Federal Register** notice published on August 1, 1996. However, as a result of significant intervening factors between the time of publication and proposed implementation, NMFS and the State of Washington decided to defer the final decision on the 1996 LBOP. These intervening factors included consultations with Washington State officials, and comments on the initial notice indicating a lack of public consensus on any proposed bidding option. The Governor of Washington, citing this lack of consensus, also supported a delay of the program for consideration of new options. These new bidding options were developed in response to these intervening factors and are presented in this notice for public comment before a final decision is made. The comments and NMFS response to the initial notice (61 FR 17879) are presented below for purposes of addressing issues that were raised by commenters concerning the 1995 program and maintaining participation by the public in the development of the new options.

Comments and Responses

Because many comments referred to the 1995 LBOP, it is helpful to know the outcome of this program. Under the 1995 LBOP, 459 of the 1378 possible licenses were submitted and 296 licenses were ultimately purchased. The maximum amount paid for a gill net license under this program was $38,000; for a troll license, $24,984; and for a charterboat license, $21,300. The average compensation for the 83 gill net licenses purchased was $21,998; for the 190 troll licenses purchased, $9,136; and for the 23 charterboat licenses purchased, $13,896. There are potentially 163 repeat participants and 919 new participants for the 1996 LBOP.

Comment 1: Several commenters wanted to give preference to fishermen who participated in the 1995 LBOP, because the commenters felt that these unsuccessful bidders took the first risk and demonstrated the sincerest intentions of giving up their licenses. The commenters also felt that fishermen who chose not to participate in the 1995 LBOP clearly understood that they would have no chance to receive any benefit from the program. Therefore, the commenters argued that these nonparticipants would be no worse off under Option 2. In contrast, other members of the public commented that preference should not be given to unsuccessful bidders in the 1995 program because NMFS and WDFW never conditioned participation in any subsequent buy out program on participation in the initial program, and such an exclusion would unduly penalize a license holder who did not, for whatever reason, submit an offer under the 1995 program.

Response 1: Participation in the 1995 LBOP was voluntary and participating fishermen were given an opportunity to withdraw their offers and retain their licenses. Therefore, participation in the 1995 LBOP does not necessarily reflect "risk" or any greater "sincerity" to give up a license, particularly as many fishermen offered their licenses at the maximum price possible. NMFS agrees that neither the 1995 LBOP notice nor any other document ever stated that persons who did not participate in the 1995 LBOP would be excluded from future programs.

Comment 2: Many commenters addressed how the different bidding options would affect fishermen who suffered various levels of uninsured loss. Some stated that Option 1 favored those with low uninsured losses, while others believed that Option 4 favored the highly productive fishing operations that have the largest uninsured losses. Finally, compared with the other options, some said that Option 2 tended to give preference to those fishermen who had neither low nor high uninsured losses.

Response 2: The purpose of these options was not to target any specific sector of the industry, but to present methods by which the agency and WDFW proposed to achieve the NEAP objectives of providing financial assistance to commercial fishermen adversely impacted by the salmon fishery disaster, and to aid the long-term viability of the fishery resource. NMFS and the State of Washington, after review of the comments, will choose the option that most effectively achieves the NEAP objectives.

Comment 3: Several commenters stated that the 1995 LBOP forced fishermen to accept a fraction of their uninsured loss.

Response 3: NMFS stresses again that the LBOP is a voluntary program, not an entitlement program. Fishermen are asked to put a monetary value on their own licenses. Fishermen who do not feel the program provides enough compensation are not compelled to participate.

Comment 4: Several commenters commented that Option 2 was the most cost-effective option.

Response 4: Of the options presented, Option 2 does appear to have the least administrative costs, since it relies on existing bids. However, the administrative costs associated with the new options, in relation to the benefits, do not differ significantly. While NMFS and the State of Washington must obviously consider the impact of administrative costs on the program, NMFS will choose the option that best meets the program's objectives.

Comment 5: Several commenters said that the proposed program was not like the NMFS Fishing Capacity Reduction Demonstration Program for Northeast groundfish vessels (FCRDP), while another commenter complained that the procedure proposed in Option 4 negates the competitive process and unnecessarily complicates the program.

Response 5: The reference in the proposed program notice to the FCRDP was to suggest that Option 4 adjusts bids via a vessel performance procedure in a way that is similar to the FCRDP bidding process. NMFS does not believe that the procedure complicates the program, because it relies on the same information that would have to be submitted for the other options. Furthermore, NMFS received no negative comments from the FCRDP participants that indicated any miscomprehension of the bidding system.

Comment 6: Several fishermen commented that the new bidders would have an advantage because information has been published on the 1995 individual bids and associated losses.

Response 6: The names of the unsuccessful troll fishermen have been released but not with their associated losses and bids. Such a release of the names is permissible under State law. Any information released on past bids and uninsured losses is historical information and would not give any new or previous bidder an advantage under a new competition. Previous bidders may change their bid strategies because of changes in their business environment, in response to revised bidding rules, or because of competition from new bidders.

Comment 7: One fisherman argued that Option 2 should be adopted, because the additional funds were meant to continue the same programs, which should, in effect, "pick up where they left off." Another commented that the notice of proposed program referred to a continued disaster. Therefore, they argued, it would be prejudicial to former, unsuccessful, applicants to deny them the opportunity to "continue" to accept or reject their original bids. On the other hand, another fisherman commented that the WDFW and NOAA documents show that the 1996 LBOP is

a separate and distinct program from the 1995 LBOP.

Response 7: The Secretary established the NEAP as an overarching financial assistance plan to assist the Pacific Northwest in coping with the fisheries disasters that occurred before and up until 1995. Under the plan, NMFS created the individual NEAP grant programs, such as the Habitat Restoration Jobs Program, the Data Collection Jobs Program, and the LBOP. These programs each have unique award terms, limitations, and conditions. The new funding provided for the programs described in the proposed notice does not obligate NMFS to continue the programs with the same program parameters; NMFS has the discretion to create new programs with the same or different terms, limitations, and conditions. Based on the comments and consultations with State of Washington officials, NMFS has determined that a new LBOP with new parameters should be considered.

Comment 8: Several commenters stated that fishermen should be allowed to sell more than one license.

Response 8: The initial proposed options and the options being proposed below do not restrict the number of licenses that may be sold by one applicant. However, NMFS is specifically requesting comment on this issue as part of the new options presented below in this notice.

Comment 9: One respondent requested that fleet reduction targets be determined and that reentry into the fishery be precluded until each fleet meets its reduction target.

Response 9: Funds were allocated between the industry sectors (see Response 15) consistent with recommendations from the NMFS Proposed Recovery Plan for Snake River Salmon, which calls for reduction of the Oregon and Washington troll fleet by 50 percent and elimination of all gill net fishing on the mainstem of the Columbia River. In addition, the new Option 2 proposed below includes restrictions on reentry into the fleet.

Comment 10: One commenter stated that a fisherman who sells a permit under the 1996 LBOP should be ineligible to purchase another permit.

Response 10: The new Option 2, which is described below, addresses this comment by prohibiting a person who sells a license in the 1996 program from purchasing a commercial license for 10 years, beginning January 1, 1997.

Comment 11: Many commenters voiced concerns about timing and communication with the industry. Some thought additional meetings between Federal and State officials and the industry would be useful, while others supported a delay in the program to aid communication with the industry and to improve the design of the program.

Response 11: NMFS and the State of Washington are postponing final decisions on the 1996 LBOP in order to receive comments on the new options presented below. This delay should provide a greater opportunity for public participation through the established Federal and Washington State public comment processes.

Comment 12: Several commenters complained that not all affected parties had an equal opportunity to meet with State and Federal officials.

Response 12: The Administrative Procedure Act does not prohibit contact with the public during the informal rulemaking process as long as the content of the meetings, and any supplementary information provided at the meetings, are made part of the public record. NMFS recognizes the benefit of public participation in the decision making process, and therefore, representatives of NOAA, NMFS, and the Governor of Washington met with various sectors of the affected public during the option development stage and comment period. NMFS is willing to meet with anyone who is interested in discussing the program, time and resources permitting.

Comment 13: One commenter alleged that WDFW officials provided misinformation about the limits to bidders, causing some to "sell out" at too low a price and others not to bid. The commenter also suggested that the application package should state explicitly the importance of choosing a bid amount since high bids may make the application less competitive.

Response 13: NMFS has forwarded these comments to WDFW.

Comment 14: Some commenters opposed any potential application to the 1996 LBOP of the $25,000/$50,000 maximum income limitation used in the Habitat Restoration Jobs Program and Data Collection Jobs Program.

Response 14: The $25,000/$50,000 maximum income limitation was not proposed and is not being considered for this program.

Comment 15: One commenter suggested that because gill net vessels have fewer options compared to most troll and charter vessels, compensation for gill net licenses should be treated differently than for other commercial permits.

Response 15: The 1996 LBOP allocates $2.3 million for the purchase of salmon troll and delivery licenses, $2.3 million for the purchase of Columbia River gill net licenses, and $0.4 million for salmon charter licenses. These allocations reflect an appreciation for the different circumstances facing the major industry sectors. However, further specialization of the program to accommodate each industry sector would be too administratively burdensome and would undermine the goal of equitable and efficient distribution of the disaster funds.

Comment 16: One fisherman who moved his operation to Alaska because of the Boldt Decision requested that the income from Alaska be used to determine uninsured loss. He further requested inclusion of income from years before 1988.

Response 16: The Secretary's disaster declaration limits assistance to the salmon fisheries of California, Oregon, and Washington, excluding Puget Sound, and NMFS has defined the disaster period as extending only to the years 1991 through 1995.

Comment 17: One tribal organization made three related comments. First, buy out programs for non-tribal fishermen should be continued. Second, each tribe should receive its own allocation of NEAP funds. Third, NEAP should include programs that help tribes develop new non-salmon fisheries.

Response 17: As currently structured, the proposed 1996 LBOP allows participation by both tribal and non-tribal fishermen. Available funding is insufficient to provide individual allocations and programs for each particular user group.

Proposed Revisions to the 1996 LBOP

Based on above comments and discussions with Washington State officials concerning the four initial options proposed, NMFS and the State of Washington agreed to work together in developing new options. These options share similar characteristics with Options 1 and 4 presented in the proposed notice of April 23, 1996, but with certain important differences. One difference is that the calculation of uninsured loss is no longer necessary under the amended IFA. However, NMFS will retain the concept and require fishermen to calculate their "salmon disaster impact" (SDI), which is a value analogous to the calculation of uninsured loss under the initial buy out program. A fisherman's SDI is equal to 2.5 times the difference between the highest gross salmon fishery income derived from fishing during any calendar year 1986 through 1991 (base year), less the sum of the least amount of salmon fishery income derived from commercial salmon fishing during any calendar year from 1991 through 1995 (comparison year). Fishermen can use

the same information they supplied to the 1995 LBOP to determine their SDI. The use of SDI in place of an uninsured loss determination puts similar restrictions on new participants as were placed on the original participants. Therefore, no large penalty or reward accrues to those who participated in the initial program.

The options in this notice also differ from those published on April 23, 1996, in that bids would also be constrained by an absolute maximum offer limit. Under Option 1, fishermen may offer their licenses for any amount up to $40,000 or their SDI, whichever is less. Similarly, under Option 2, fishermen may offer their licenses for any amount up to $50,000 or their SDI, whichever is less. The higher maximum offer limit under Option 2 ($50,000) reflects the additional requirement that successful participants cannot purchase or operate another commercial salmon license for 10 years beginning January 1, 1997, unless the license was owned or operated by that person in 1995. If the individual owned a license in 1995, this is indicative of the fact that the person owned multiple licenses and did not purchase a new license in 1996 in order to speculate on any future government buy out program. Therefore, any license owned in 1995 and retained after participation in the 1996 LBOP is excluded from the ten-year prohibition.

These maximum offer limits are designed to increase the number of potential successful bidders and ensure awards consistent with amounts paid under the initial program. These limits are reasonable given the limited funds available, the amounts paid for licenses under the initial program, and the number of fishermen affected by the disaster and still eligible for the program. Comments are specifically requested on these maximum offer amounts.

Eligibility Criteria

To be eligible under either option, the person making the offer must fulfill the following requirements:

1. The person making the offer must have possessed or was eligible to possess one of the following Washington State salmon fishery licenses in 1994 and possessed the same license in 1995:
   a. Salmon troll license;
   b. Salmon delivery license;
   c. Salmon gill net—Grays Harbor-Columbia River;
   d. Salmon gill net—Willapa Bay-Columbia River; or
   e. Salmon charter.
2. A participant must demonstrate an SDI greater than $0.
3. Applicants must not have earned more than $2,000,000 in net revenues annually from commercial fishing for the period between 1991 and 1994.

Options

Option 1—License holders may offer their licenses for any amount up to $40,000 or their SDI, whichever is less. Licenses will be purchased starting with the lowest bid. In the event of a tie, preference will be given to the fisherman with the highest SDI.

Option 2—License holders may offer their licenses for any amount up to $50,000 or their SDI, whichever is less. Bids will be ranked according to the offer ratio. The offer ratio is the division of the offer amount by the SDI. Licenses will be ranked and purchased starting with those bids that have the lowest offer ratios. In the event of a tie, where offer ratios are identical, the lowest offer will be given preference. Successful participants cannot purchase or operate another commercial salmon license for 10 years beginning January 1, 1997, unless the license was owned or operated by that person in 1995.

Option 1 Example

Step 1: Determine SDI

Step 1A: Base Year Selection:

Select the highest year of gross income during the base period 1986 though 1991. For Fisherman A, this is $38,000. For Fisherman B, this is $8,000.

Step 1B: Comparison Year Selection:

Select the lowest year of gross income during the comparison year of 1991 through 1995. For Fisherman A, this is $3,000. For Fisherman B, this is $0.

Step 1C: Subtraction

Subtract the selected comparison year gross income from the selected base year income. For Fisherman A, this is $38,000 minus $3,000, or $35,000. For Fisherman B, this is $8,000 minus $0, or $8,000.

Step 1D: Multiplication

Multiply the difference between the comparison year and base year gross income by 2.5. For Fisherman A, this is $35,000 multiplied by 2.5, or $87,500. For Fisherman B, this is $8,000 multiplied by 2.5, or $20,000.

Step 1E: SDI Determination

SDI is the result of steps 1A through 1D. Fisherman A's SDI is $87,500 (($38,000–$3,000) X 2.5 = $87,500). Fisherman B's SDI is $20,000 (($8,000–$0) x 2.5 = $20,000).

Step 2: Determine Maximum Offer Amount

The maximum offer amount under Option 1 is $40,000 or the fisherman's SDI, whichever is less. Fisherman A's SDI is $87,500, which is greater than $40,000. Therefore, Fisherman A's maximum bid is $40,000 because $40,000 is the maximum any fisherman can receive under this option. Fisherman B's maximum bid is $20,000 because his SDI is less than $40,000.

Step 3: Determine Bid

Fishermen can choose to submit an offer that ranges from $1 up to their maximum offer limit. Fisherman A's range is from $1 to $40,000. Fisherman B's range is from $1 to $20,000.

Ranking of Bids under Option 1

If both Fisherman A and Fisherman B submit their respective maximum offers, Fisherman B's offer would be accepted first because it is less than Fisherman A's offer. If Fisherman A elected to submit an offer of $19,000 and Fisherman B elected to submit a maximum offer of $20,000, then Fisherman A's offer would be accepted first because it is less than Fisherman B's offer. In the event of a tie between fishermen, preference will be given to the fishermen with the highest SDI. Therefore, if both Fisherman A and Fisherman B submit offers of $19,000, then Fisherman A would be given preference because Fisherman A's SDI is higher than Fisherman B's.

Option 2 Example

Step 1: Determine SDI (Same as Steps 1 through 1E in Option 1 Example)

Step 2: Determine Maximum Offer Amount

The maximum offer amount under this option is $50,000 or the fisherman's SDI, whichever is less. Fisherman A's SDI is $87,500, which is greater than $50,000. Therefore, Fisherman A's maximum bid is $50,000 because $50,000 is the maximum any fisherman can receive under this option. Fisherman B's maximum bid is $20,000 because his SDI is less than $50,000.

Step 3: Determine Offer

Fishermen can choose to submit an offer that ranges from $1 up to their maximum offer limit. Fisherman A's range is from $1 to $50,000. Fisherman B's range is from $1 to $20,000.

Step 4: Determine Offer Ratio

Divide the amount offered by the fisherman's SDI. If Fisherman A chose to offer the maximum of $50,000, then Fisherman A's ratio would be $50,000

divided by $87,500, which is equal to 0.57. If Fisherman B chose to offer his SDI ($20,000), then Fisherman B's offer ratio would be $20,000/20,000 = 1.0.

Ranking of Bids under Option 2

If both Fisherman A and Fisherman B elected to submit their respective maximum offers, Fisherman A's offer would be the first accepted because the 0.57 offer ratio is less than 1.0. If Fisherman B elected to submit an offer of $11,000, then Fisherman B's offer ratio would be 0.55 ($11,000/$20,000). Because Fisherman B's offer ratio is lower than Fisherman A's offer ratio, Fisherman B's offer would be accepted first. In the event of a tie with identical offer ratios, preference will be given to the fishermen with the lowest offer amount.

Additional Terms, Limitations, and Conditions

A license holder may offer more than one license, but income used in the calculation of an offer that is accepted may not be used in the calculation of any other offer. Licenses will be purchased in order of ranking until funds are exhausted. The State of Washington, in consultation with NMFS, will reserve the right to reject any and all offers if it is determined by NMFS that such action is in the best interests of the program or if revisions to the program are warranted in the future.

Proprietary information submitted by applicants will only be disclosed to State and Federal officials who are responsible for the License Buy Out Program, or otherwise when required by court order or other applicable law. This information is subject to the Freedom of Information Act.

Catalogue of Federal Domestic Assistance

The Program is listed in the "Catalogue of Federal Domestic Assistance" under No. 11.452, Unallied Industry Projects.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this notice would not have a significant economic impact on a substantial number of small entities because only a small portion of West Coast salmon fishermen will be directly affected. NMFS estimates that only approximately 3.6 percent of the industry will receive financial assistance through the LBOP. Therefore, the impacts of the notice are not significant within the meaning of the Regulatory Flexibility Act. They are not likely to lead to a reduction in the annual gross revenues by more than 5 percent or an increase in total costs of production by more than 5 percent, nor would this action result in any greater compliance costs.

This program involves a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget (OMB), under OMB control number 0648-0288. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Authority: Public Law 99-659 (16 U.S.C. 4107 *et seq.*); Public Law 102-396.

Dated: August 22, 1996.

C. Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–21999 Filed 8–28–96; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: CHAMPUS Claim Form—Patient's Request for Medical Payment; DD Form 2642, OMB Number 0720–0006.

Type of Request: Reinstatement, with change.

Number of Respondents: 1,500,000.

Responses Per Respondent: 1.

Annual Responses: 1,500,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 375,000 hours.

Needs and Uses: Respondents to this information collection are beneficiaries claiming reimbursement for medical expenses under the Civilian Health and Medical Program for the Uniformed Services (TRICARE/CHAMPUS). DD Form 2642, CHAMPUS Claim—Patient's Request for Medical Payment, is used by TRICARE/CHAMPUS beneficiaries to file for reimbursement of costs paid to providers and suppliers for authorized health care services or supplies. The information collected will be used to determine beneficiary eligibility, other health insurance liability, and certification that the beneficiary received the care.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DOD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated August 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–21997 Filed 8–28–96; 8:45 am]
BILLING CODE 5000–04–M

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Service (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Walter Reed Army Medical Center (WRAMC), and National Naval Medical Center (NNMC), have been designated as the components of a Multi-Regional Specialized Treatment Services (STS) Facility for Cardiac Surgery for TRICARE Regions 1 and 2. This designation covers the following Diagnosis Related Groups:

104—Cardiac valve procedure with cardiac cath
105—Cardiac valve procedure without cardiac cath
106—Coronary bypass with cardiac cath
107—Coronary bypass without cardiac cath
108—Other cardiothoracic procedures

110—Major cardiovascular procedures with cardiac cath

111—Major cardiovascular procedures without cardiac cath

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by WRAMC or NNMC in accordance with the provisions of the Joint Federal Travel Regulation. All DoD beneficiaries who reside in the Multi-Regional STS Catchment Area for TRICARE Region 1 which includes participation by TRICARE Region 2 must be evaluated by WRAMC or NNMC before receiving CHAMPUS cost sharing for procedures that fall under the above Diagnosis Related Groups. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to WRAMC or NNMC. If the procedure cannot be performed at WRAMC or NNMC, the facility will provide a medical necessity review in order to support issuance of a Nonavailability Statement.

The Region 1 Multi-Regional STS Catchment Area covering TRICARE Regions 1 and 2 is defined by zip code in the Defense Medical Information System STS Facilities Catchment Area Directory, dated December 1, 1995. The Catchment Area includes zip codes within TRICARE Regions 1 and 2 in the District of Columbia and the states of Delaware, Maryland, New Jersey, New York, North Carolina, Pennsylvania and Virginia that fall within a 200 mile radius of the midpoint of a line between WRAMC and NNMC.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Colonel Dennis Moritz, WRAMC, at (202) 782–6433, Captain Edward Zech, NNMC, at (301) 295–2552, or Colonel Michael Dunn, OSD (Health Affairs), at (703) 695–6800.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58995–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually.

Dated: August 23, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–21998 Filed 8–28–96; 8:45 am]

BILLING CODE 5000–04–M

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at 10:00 a.m. on September 30, 1996 in the Court Conference Room, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442–0001. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442–0001, telephone (202) 761–1448.

Dated: August 26, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–22132 Filed 8–28–96; 8:45 am]

BILLING CODE 5000–04–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Long-Term Dredged Material Management at St. Joseph Harbor, MI

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The U.S. Army Corps of Engineers, Detroit District, is evaluating the environmental impacts of long-term dredged material management alternatives for St. Joseph Harbor, Michigan. The Federal navigation project includes 7,700 feet of channel with authorized depths from 18 to 21 feet. Sandy material dredged from the outer harbor is used for beach nourishment—a beneficial use that restores eroding beaches in the harbor vicinity. Beach nourishment continues to be an effective, beneficial long-term dredged material management tool for the outer harbor. The inner harbor dredged material, which is silty, traditionally has been placed at various upland sites; however, these sites are either full or no longer available. Thus, a 20-year long-term dredged material management plan is being developed for the inner harbor. Alternatives under consideration include open-water placement, new upland placement sites, and beneficial use. The no Federal action alternative will also be considered.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Les E. Weigum, Chief, Environmental Analysis Branch; Engineering & Planning Division; U.S. Army Engineer District, Detroit; P.O. Box 1027; Detroit, Michigan 48231–1027. Telephone 313–226–6752.

SUPPLEMENTARY INFORMATION: St. Joseph Harbor lies along the southeast shore of Lake Michigan, about 60 miles east-northeast from Chicago, Illinois. The harbor is formed by the lower reaches of the St. Joseph River, which flows between the cities of St. Joseph, Michigan, on the south, and Benton Harbor, Michigan, on the north. The cities of St. Joseph and Benton Harbor have several deep-draft facilities at the harbor. The harbor has several commercial wharves handling coal, building materials, petroleum products, and miscellaneous commodities. St. Joseph Harbor is also used by a variety of recreational craft, including several charter fishing boats.

The Federal navigation project at St. Joseph, including operation and maintenance activities, is authorized by the River and Harbor Act of March 3, 1875, and subsequent acts. The project includes a channel, with an authorized depth of 21 feet, extending 6,900 feet up the St. Joseph River from Lake Michigan to the mouth of the Paw Paw River, and varying in width from 265 feet at the channel entrance to 110 feet at the Paw Paw River. The channel extends an additional 800 feet up the Benton Harbor Canal to Riverview Drive, with an authorized depth of 18 feet and a width of 80 feet. Two 18-foot deep turning basins lie on either side of the channel near the mouth of the Paw Paw River.

Dredged material management for St. Joseph Harbor historically has consisted of two strategies: The outer harbor material, which is primarily sand, is used to nourish adjacent eroding beaches; whereas the inner harbor material, which contains silt, has been placed at various upland sites for final storage or beneficial use. Maintenance dredging of the outer harbor, which includes the entrance canal from Lake Michigan through the breakwaters and

revetments to approximately the Coast Guard station (about 2,800 feet), is projected to require management of 350,000 cubic yards of dredged material over the next 20 years. This material would continue to be beneficially used for nourishment of eroding beaches in the harbor vicinity.

The inner harbor material, which is silty, is dewatered at an interim site (Whirlpool site) and later trucked to various upland sites for final storage or beneficial use. Previously used upland sites are either full or no longer available. Maintenance dredging of the inner harbor is projected to require management of 300,000 cubic yards of dredged material over the next 20 years. Therefore, the U.S. Army Corps of Engineers, Detroit District, is evaluating the environmental impacts of new long-term dredged material management alternatives for dredged material from the inner harbor. The environmental evaluation will be coordinated with the development of a 20-year Dredged Material Management Plan for the harbor.

Two specific dredged material management alternatives have been identified: Placement at an upland site at the Southwest Michigan Regional Airport in Benton Harbor, Michigan, and placement at a previously used (1970s and early 1980s) open-water site. Beneficial use applications will also be explored. The no Federal action alternative will be considered and will serve as a baseline from which to measure the impacts of the action alternatives. The final 20-year management plan may consist of a combination of alternatives and beneficial use applications.

The upland site lies between the airport and the Paw Paw River, extending about 3,000 feet along an embankment at the western runway end. The site extends from the top of the bank, about 550 feet toward the river, with a change in elevation of over 30 feet. The site includes trees, shrubs, and open grassy areas. Below the site is a marshy area that borders the Paw Paw River. Dredged material placement would avoid the marsh areas, if possible. Dredged material placement at the airport site may include beneficial use by providing fill to build-up the area beyond the end of the runway, which would accommodate the development of a runway safety area.

The open-water site is an area, approximately ½-mile by ½-mile, located on the bottom of Lake Michigan, about 1¼ miles due west from the north pier light. The site has sufficient water depth (approximately 50 feet) to prevent significant disturbance of the dredged material by wind and storm induced wave action in the lake. Dredged material would be transported directly from the dredging operation to the open water site by floating plant (such as a barge or a bottom dumping dredge), hydraulic pipeline, or other similar methods. The suitability of the dredged material for open-water placement will be determined in accordance with the Great Lakes Dredged Material Testing and Evaluation Manual (U.S. Environmental Protection Agency and U.S. Army Corps of Engineers 1994), which presents testing and evaluation guidance for proposed discharges of dredged material into the waters of the United States within the Great Lakes Basin.

Significant issues to be analyzed include potential impacts on wetlands, water quality, fish and wildlife habitat, and cultural resources. Social impacts, including impacts upon recreation, aesthetics, and the local economy, will also be considered.

The proposed dredged material management plan alternatives will be reviewed for compliance with the Fish and Wildlife Act of 1956; the Fish and Wildlife Coordination Act of 1958; the National Historic Preservation Act of 1966; the National Environmental Policy Act (NEPA) of 1969; the Clean Air Act of 1970; the Coastal Zone Management Act of 1972; the Endangered Species Act of 1973; the Water Resources Development Act of 1976; the Clean Water Act of 1977; Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 1971; Executive Order 11988, Flood Plain Management, May 1977; Executive Order 11990, Wetland Protection, May 1977; and Corps of Engineers, Dept. of the Army, 33 CFR Part 230, Environmental Quality: Policy and Procedure for Implementing NEPA.

The proposed dredged material management plan will be coordinated with the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the Michigan Department of Environmental Quality, the Michigan Department of Natural Resources, Michigan State Historic Preservation Office, and local and regional Indian tribes.

All Federal, State, and local agencies, Indian tribes, and other private organizations and parties are invited to participate in the proposed project review. Questions, concerns, and comments may be directed to the address given above. It is anticipated that the Draft Environmental Impact Statement would be made available in February 1998 for a 45-day public review period. During the public review period, the Corps of Engineers and the local project sponsor would hold a public meeting in the St. Joseph Harbor vicinity.

Dated: August 16, 1996.

Thomas C. Haid,

Lieutenant Colonel, U.S. Army, District Engineer.

[FR Doc. 96–22079 Filed 8–28–96; 8:45 am]

BILLING CODE 3710–GA–M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Partially Closed Meeting

AGENCY: Advisory Council on Education Statistics, ED.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: September 11–13, 1996.

TIMES: September 11—Full Council, 1:00 p.m.–5:30 p.m. (open); September 12—Management Committee, 8:30 a.m.–5:00 p.m. (closed from 1:00 p.m.–5:00 p.m.); Statistics Committee, 8:30 a.m.–5:00 p.m., (open); Strategy/Policy Committee, 8:30 a.m.–5:00 p.m., (open); September 13—Full Council, 8:30 a.m.–9:30 a.m. (closed) and 9:30 a.m.–1:00 p.m. (open).

LOCATION: 80 F Street, NW., Room 100, Washington, DC 20208–7575. The Committee meetings will take place in the following locations: Management-Room 326a; Strategy/Policy-Room 326b; Statistics-Room 322..

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, National Center for Education Statistics, 555 New Jersey Ave, NW., Room 400j, Washington, DC 20208–5530. Telephone: (202) 219–1828.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high

quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Education Progress (NAEP).

The proposed agenda includes the following:

- Discussion of NCES's next steps in implementing the redesign of the National Assessment of Educational Progress (NAEP).
- An update and discussion on the Third International Mathematics and Science Study (TIMSS).
- Individual meetings of the three ACES committees which will focus on specific topics. The agenda for the Management Committee includes a report on the preliminary findings from NCES's customer survey and related customer service activities. In addition there will be discussions of a design feasibility grant competition to solicit ideas on a redesigned NAEP. If these portions of the meeting were held in open session, the possible disclosure of the Department's position might affect decisions by third parties outside the Government. These discussions would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. These portions of the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemption (9)(B) of Section 522b(c) of Title 5 U.S.C.

The agenda for the Statistics Committee includes issues surrounding background variables in NAEP, and the potential for linking data from the TIMSS and NAEP. The agenda for the Strategy/Policy Committee includes review of a draft strategic plan for NAEP and the use of criteria for decisionmaking on the NCES budget.

A summary of the activities of the closed sessions and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 551b(c) will be available within 14 days of the meeting. Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW., Room 400J, Washington, DC 20208–7575.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 96–21993 Filed 8–28–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–14–23–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

August 23, 1996.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 20, 1996 certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, First Revised Volume No. 1, with proposed effective dates of April 1, 1996 and August 1, 1996, respectively.

ESNG states the purpose of the instant filing is to supplement ESNG's August 5, 1996 storage tracker filing in Docket No. TM96–14–23–000 (August 5, 1996 filing) in order to reflect demand and capacity rates charged by Transcontinental Gas Pipe Line Corporation (Transco) under its LSS Rate Schedule, the costs of which are included in ESNG's Rate Schedule LSS. More specifically, its filing (a) makes a correction on 2nd Sub 1st Rev Sub 78th Rev Sheet No. 6 due to a typing error under its CFSS Rate Schedule Demand Charge, and (b) tracks changes from Transco in its supplemental filing in its Docket No. TM96–15–29–000, et. al. dated August 8, 1996. ESNG further states its tracking filing is being filed pursuant to Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions. Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 27, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22018 Filed 8–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2375; Project No. 8277 Maine]

International Paper Company; Otis Hydroelectric Company; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

August 23, 1996.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the Maine State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, *as amended*, (16 U.S.C. Section 470f), to prepare a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 2375 and Project No. 8277.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the licenses until the licenses expire or are terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to Section 106 for the above projects would be fulfilled through one programmatic agreement which the Commission proposes to draft in consultation with certain parties listed below. The executive programmatic agreement would be incorporated into any orders issuing licenses.

[1] 18 CFR Section 385.2010.

International Paper Company and Otis Hydroelectric Company, as prospective licensees for Project No. 2375 and Project No. 8277, respectively, are invited to participate in consultations to develop the programmatic agreement and to sign as concurring parties to the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for Project No. 2375 and Project No. 8277 as follows:

Mr. Dave Beaudoin, International Paper, Riley Road, Jay, ME 04239

Dr. Robert Bush, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 809, 1100 Pennsylvania Ave., NW., Washington, D.C. 20004

Mr. R. Alec Giffen, Land & Water Associates, 9 Union Street, Hallowell, ME 04347

Mr. Steve Groves, International Paper, Riley Road, Jay, ME 04239

Mr. Bob Hunziker, International Paper, Two Manhattanville Road, Purchase, NY 10577

Mr. Gary Liimatainen, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967

Mr. Earle G. Shettleworth, State Historic Preservation Officer, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04333

Dr. Art Spiess, Archaeologist, Maine Historic Preservation Commission, 55 Capitol Street, State House Station 65, Augusta, ME 04333

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of Commission (888 First Street, N.W., Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22017 Filed 8–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–116–000]

OkTex Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

August 23, 1996.

Take notice that on August 19, 1996, OkTex Pipeline Company ("OkTex") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, an original and five copies of the following tariff sheets:

Eighth Revised Sheet No. 5

OkTex states that the Eighth Revised Sheet No. 5 reduces the OkTex Annual Charge Adjustment Clause ("ACA") from $0.0023 to $0.0020 per MMBtu.

OkTex requests that the above-referenced tariff sheets become effective on October 1, 1996. Copies of the filing were served upon the Company's jurisdictional customers and upon interested state commissions.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22019 Filed 8–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–159–003]

Shell Gas Pipeline Company; Notice of Initial Tariff Filing

August 23, 1996.

Take notice that on August 21, 1996, Shell Gas Pipeline Company (Shell), 200 North Diary Ashford, Houston, Texas 77079, filed in Docket No. CP96–159–003 its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of August 25, 1996.

Shell states that the initial tariff filing reflects the required modifications to the general terms and conditions in compliance with the Commission's July 31, 1996, order granting Shell its certificate in Docket No. CP96–159–002, 76 FERC ¶ 61,126. In order to comply with the Commission's directives, Shell also states that it has proposed tariff language to revise and clarify Section 19 of the General Terms and Conditions regarding the release of firm capacity under Rate Schedule FT–2. Shell further states that copies of this filing were served upon all customers and all parties to this proceeding.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions and protests should be filed on or before September 3, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22016 Filed 8–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–436–000]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

August 23, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on August 29, 1996. The conference will begin at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in a conference room to be designated. The purpose of the conference is to explore the possibility of settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Russell Mamone at (202) 208–0744 or Donald Heydt at (202) 208–0740.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22020 Filed 8–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2684–000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 22, 1996.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER96–2684–000]

Take notice that on August 12, 1996, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with MidAmerican Energy Co. and TransCanada Power Corp. under its CS–1 Coordination Sales Tariff.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER96–2685–000]

Take notice that on August 12, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Duke/Louis Dreyfus L.L.C. under Rate TS.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER96–2686–000]

Take notice that on August 12, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Electric Clearinghouse, Inc. under Rate TS.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER96–2687–000]

Take notice that on August 13, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing revised transmission agreements pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER96–2688–000]

Take notice that on August 9, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Service Agreement between LG&E and Vitol Gas & Electric LLC under Rate Schedule GSS—Generation Sales Service.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Power Company

[Docket No. ER96–2689–000]

Take notice that on August 12, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Duke/Louis Dreyfus, L.L.C. (Duke/Louis Dreyfus). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Duke/Louis Dreyfus non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER96–2690–000]

Take notice that on August 12, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement for Non-Firm Point-to-Point Transmission Service between Enron Power Marketing, Inc. and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to Enron Power Marketing, Inc. as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER96–2691–000]

Take notice that on August 12, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Pacific Northwest Generating Cooperative and Idaho Power Company, and a Certificate of Concurrence.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96–2692–000]

Take notice that on August 13, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Wagner Castings Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1996.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power Company

[Docket No. ER96–2693–000]

Take notice that on August 12, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Heartland Energy Services, Inc. (Heartland). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Heartland non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Central Power and Light Company; West Texas Utilities Company

[Docket No. ER96–2694–000]

Take notice that on August 13, 1996, Central Power and Light Company and West Texas Utilities Company, (jointly the Companies), tendered for filing a service agreement under which they will provide transmission service to DuPont Power Marketing Inc. (DuPont) and Brazos Power Marketing Cooperative, Inc. (Brazos) under their point-to-point transmission service tariff.

The Companies state that copies of the filing have been served on DuPont and Brazos.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Colorado

[Docket No. ER96–2695–000]

Take notice that on August 13, 1996, Public Service Company of Colorado (Public Service), tendered for filing an Amendment to the Interconnection and Transmission Service Contract between Public Service and Western Power Administration (Western). Specifically Public Service is filing Revision 11 to Exhibit D of this Contract designated as Public Service Rate Schedule FERC No. 47. This revision removes Holy Cross Electric Association as a Delivery Point from Exhibit D. Public Service requests that this filing be made effective as of June 1, 1996.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER96–2696–000]

Take notice that on August 13, 1996, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Morgan Stanley Capital Group, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the filing date.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER96–2697–000]

Take notice that on August 13, 1996, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the Companies), tendered for filing a service agreement under which they will provide transmission service to DuPont Power Marketing, Inc. (DuPont) under their point-to-point transmission service tariff.

The Companies state that a copy of the filing has been served on DuPont.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER96–2698–000]

Take notice that on August 9, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 2 to add Enron Power Marketing, Inc. as a non-firm point-to-point customer under the Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreement is July 10, 1996. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. TransAlta Enterprises Corporation

[Docket No. ER96–2699–000]

Take notice that on August 13, 1996, TransAlta Enterprises Corporation, tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that TransAlta Enterprises Corporation had completed all the steps for pool membership. TransAlta Enterprises Corporation requests that the Commission amend the WSPP Agreement to include it as a member.

TransAlta Enterprises Corporation requests an effective date of August 12, 1996 for the proposed amendment. Accordingly, TransAlta Enterprises Corporation requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER96–2700–000]

Take notice that on August 13, 1996, Entergy Services, Inc. (Entergy Services) filed a Letter Agreement dated July 15, 1996 with Sam Rayburn Municipal Power Agency (SRMPA) relating to Contribution in Aid of Construction (CIAC). Entergy Services requests an effective date of August 13, 1996.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Citizens Utilities Company

[Docket No. ER96–2703–000]

Take notice that on August 13, 1996, Citizens Utilities Company (Citizens), tendered for filing revised rates under its open access transmission tariff for its Vermont Electric Division—FERC Tariff Nos. 2 and 3.

Citizens states that a copy of its filing was served on the parties in Docket No. ER95–1586–000/EL96–17–000.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER96–2704–000]

Take notice that on August 13, 1996, Entergy Services, Inc. (Entergy Services) acting as agent for Entergy Gulf States, Inc. tendered for filing Amendment No. 9 to Power Supply Agreement Among Entergy Gulf States, Inc., Sam Rayburn Electric Cooperative, Inc., and Sam Rayburn Municipal Power Agency. Entergy Services requests an effective date of August 13, 1996.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER96–2705–000]

Take notice that on August 13, 1996, Entergy Services, Inc. (Entergy Services), tendered for filing a Transmission and Distribution Operating Agreement between Arkansas Electric Cooperative Corporation and Entergy Arkansas, Inc. Entergy Services requests an effective date of August 13, 1996.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER96–2706–000]

Take notice that on August 13, 1996, Entergy Services, Inc. (Entergy Services), tendered for filing Service Schedule TE which provides for Term Energy Exchange between Tennessee Valley Authority (TVA) and Entergy Services, as agent for Entergy Mississippi, Inc., Entergy Arkansas, Inc., Entergy New Orleans, Inc. Entergy Services requests an effective date of August 13, 1996.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Citizens Utilities Company

[Docket No. ER96–2707–000]

Take notice that on August 13, 1996, Citizens Utilities Company (Citizens), tendered for filing proposed revisions to its transmission tariff for its Vermont Electric Division under its Block Loading Facilities Transmission Agreement (BLFTA)—FERC No. 28. These revisions would modify the definitions of CC and PL in the rate formula and would increase the incremental loss provision in the tariff.

Citizens states that a copy of its filing was served on the parties in Docket Nos. ER95–1586–000/EL96–17–000, which include each of the BLFTA participants and the Vermont Public Service Board.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Public Service Corporation

[Docket No. ER96–2708–000]

Take notice that on August 13, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Transmission Service Agreements between WPSC and TransCanada Power Corp.; and WPS Energy Services. The Agreements provide for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC asks that the agreements become effective on the date of execution by WPSC.

Comment date: September 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22014 Filed 8–28–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–715–000, et al.]

East Tennessee Natural Gas Company, et al.; Natural Gas Certificate Filings

August 22, 1996.

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP96–715–000]

Take notice that on August 14, 1996, East Tennessee Natural Gas Company (East Tennessee), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP96–715–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install a delivery point in Putnam County, Tennessee to provide firm transportation service to the City of Cookeville, under East Tennessee's blanket certificate issued in Docket No. CP82–412–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee indicates that it will install a tie-in assembly, approximately thirty feet of 4-inch interconnecting pipe and dual 4-inch orifice meter tubes. East Tennessee also says that it will tie in to the existing communications and electronic gas measurement (EGM) available at the adjacent Livingston Meter Station which is owned and operated by East Tennessee.

East Tennessee relates that the total cost of the new facilities is estimated to be approximately $117,514. East Tennessee states that it will own, operate and maintain the measurement facilities; will continue to own and operate the tie-in assembly and interconnecting pipe, and will maintain the communications and EGM.

East Tennessee reports that the total quantities to be delivered to Cookeville will not exceed the total quantities authorized. East Tennessee asserts that the installation of the proposed delivery point is not prohibited by East Tennessee's tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to East Tennessee's other customers.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP96–722–000]

Take notice that on August 16, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP96–722–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct, operate and own a new delivery point authorized in blanket certificate issued in Docket No. CP82–553–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct, operate and own a new delivery point on its existing 4-inch Tampa East Lateral in Hillsborough County, Florida to be delivered by FGT to Gulf Coast Metals Co., Inc. (Gulf Coast). FGT reports that Gulf Coast has agreed to reimburse FGT for the costs and expenses incurred by FGT relating to the proposed construction in lieu of customer ownership. The estimated total cost of the proposed construction is $114,500 which includes federal income tax gross-up.

FGT states that the proposed delivery point would include a 2-inch tap connecting pipe, electronic flow measurement equipment, a meter and regulator station, and any other related appurtenant facilities necessary for FGT to deliver gas up to a maximum of 300 MMBtu per day at 60 psig. FGT further states that it would construct, own and operate approximately 900 feet of 2-inch, starting at the proposed tap and ending at the inlet side of the proposed meter and regulator station.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP96–729–000]

Take notice that on August 19, 1996, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP96–729–000 a request pursuant to Sections 157.205 and 157.214 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.214) for authorization to increase the storage capacity at the Keelor Storage Field, located in McKean County, Pennsylvania, under the blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National requests authorization to increase the maximum storage pressure of the Keelor storage from 500 psig to 625 psig, and to increase the storage capacity from 2.8 Bcf (with 1.3 Bcf working gas) to 3.3 Bcf (with 1.8 Bcf of working gas). National proposes to operate the storage pipelines connecting the Keelor Storage Field at 800 psig. National states the average depth of the storage formation is 1815 feet. National asserts that the new capacity resulting

from this proposal will support storage service to be offered to its shippers. National asserts that the increase in pressure and capacity at the Keelor Storage Field will not require additional facilities, within the meaning of the Commission's Regulations. However, National states that minor auxiliary work, including the installation of two valves and a small amount of station piping, will be performed at Station T–329 pursuant to Section 2.55(a) of the Commission's Regulations to accommodate the proposed increase in operating pressure.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company

[Docket No. CP96–730–000]

Take notice that on August 20, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–730–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery point, to be located in Sarpy County, Nebraska, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to provide service to Metropolitan Utilities District (MUD). MUD has requested the proposed delivery point to serve residential and commercial customers in Sarpy County, Nebraska. Northern states that the proposed volumes to MUD are 6,060 MMBtu on a peak day and 1,751,715 MMBtu on an annual basis. The estimated cost of constructing the delivery point is $200,000. MUD will reimburse Northern for the total cost of the delivery point.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22015 Filed 8–28–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5601–9]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval of the Oklahoma Pollutant Discharge Elimination System.

SUMMARY: The State of Oklahoma has submitted a request for approval of the Oklahoma Pollutant Discharge Elimination System (OPDES) Program pursuant to Section 402 of the Clean Water Act. If EPA approves the OPDES program, the Oklahoma Department of Environmental Quality (ODEQ) will administer that program *in lieu* of the National Pollutant Discharge Elimination System (NPDES) program now administered by EPA in Oklahoma. Today, EPA proposes to approve the State's request and provides notice of a public hearing and comment period on that proposal. EPA will either approve or disapprove the State's request after considering all comments it receives.

DATES: EPA Region 6 will hold a public hearing on September 30, 1996 beginning at 7:00 p.m. for submission of verbal or written comments on EPA's program approval proposal. A public discussion for questions and answers will be held prior to the hearing from 3:00 p.m. until 5:00 p.m. To ensure issues brought up during the meeting from 3:00 to 5:00 are considered in EPA's decision, they should be made in writing to EPA, or on record during the public hearing later that evening. EPA Region 6 will continue to accept written comments through October 21, 1996 at its office in Dallas, Texas. Copies of such written comments should also be provided to ODEQ.

ADDRESSES: The September 30, 1996, public hearing will be held at the Tom Sneed Career Development Center Auditorium, Rose State College, I–40 and Hudiburg Drive at Exit 156B, Midwest City, Oklahoma. Specific directions will be posted at the ODEQ headquarters building located at 1000 N.E. 10th, Oklahoma City, Oklahoma.

Written comments must be submitted to: Ms. Ellen Caldwell (6WQ–O), Water Quality Protection Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

A copy of each comment should be submitted to: Norma Aldridge, Department of Environmental Quality,

Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212.

Copies of documents Oklahoma has submitted in support of its program approval request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at:

EPA Region 6, 12th Floor Library, 1446 Ross Avenue, Dallas, Texas 75202, (214) 665–7513

ODEQ Headquarters, Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117–1212.

The documents are also available to the public at the following libraries:

1. Tulsa City/County Library, 400 Civic Center, Tulsa, Oklahoma 74103
2. Woodward Public Library, 1500 N. Main, Woodward, Oklahoma 73801
3. McAlester Public Library, 401 N. 2nd Street, McAlester, Oklahoma 74501
4. Lawton Public Library, 110 S.W. 4th Street, Lawton, Oklahoma 73501.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell at the EPA address listed above or by calling (214) 665–7513 or Norma Aldridge at the ODEQ address listed above or by calling (405) 271–5205 ext 134.

Part or all of the State's submission (which comprises approximately 2391 pages) may be copied at the ODEQ office in Oklahoma City, or EPA office in Dallas, at a minimal cost per page. A paper copy of the entire submission may be obtained from the ODEQ office in Oklahoma City for a $358.65 fee (The cost of the principal documents, i.e., the Attorney General's Statement, Memorandum of Agreement, Program Description, and the Enforcement Management System all *without* their associated appendices is $163.35). An electronic copy of the documents stored on computer disk will be provided at no cost to interested parties which supply a disk to ODEQ for that purpose. The disk must be a new, 3.5″ high density/ double sided microdisk. The documents will be copied to the disk in WordPerfect 6.0.

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (Act) created the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that EPA may authorize a State to administer an equivalent state program upon a showing the State has authority and a program sufficient to meet the Act's requirements.

The basic requirements for state program approval are listed in 40 CFR Part 123. EPA Region 6 considers the documents submitted by the State of Oklahoma complete at the time of this notice and believes they comply with the regulations found at 40 CFR 123. It thus proposes to approve the OPDES program as described by the Oklahoma Department of Environmental Quality. EPA will consider final approval after all public comments have been considered.

On June 10, 1996, the Governor of Oklahoma requested NPDES partial program approval and submitted a program description (including funding, personnel requirements and organization, and enforcement procedures), an Attorney General's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region 6 and the Executive Director of ODEQ. As a result of discussions between EPA and ODEQ staff, changes and additions have been made to some of those documents to include regulatory and statutory corrections in the program. The additional information was received by EPA on August 14, 1996, and a letter of completeness was sent to the Executive Director of ODEQ on August 22, 1996.

EPA's Regional Administrator is required to approve the submitted program within 90 days of submission of the complete information unless it does not meet the requirements of section 402(b) of the Act and EPA regulations. To obtain such approval, the State must show, among other things, that it has authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period, EPA's Regional Administrator will decide to approve or disapprove the OPDES program for implementation *in lieu* of the federal NPDES program.

EPA's final decision to approve or disapprove the OPDES program will be based on the requirements of section 402 of the CWA and 40 CFR Part 123. If she approves the Oklahoma partial program, the Regional Administrator will so notify the State. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of NPDES permits in Oklahoma [except for those discharges which are not under the jurisdiction of ODEQ, see *Scope and Summary of the OPDES Permitting Program* below]. The State's OPDES program will implement federal law and operate *in lieu* of the EPA-administered NPDES program for those discharges for which ODEQ has authority. EPA will, however, retain the right to object to OPDES permits proposed by ODEQ, and if the objections are not resolved, issue the permit itself. If EPA's Regional Administrator disapproves the OPDES program, she will notify ODEQ of the reasons for disapproval and of any revisions or modification to the program which are necessary to obtain approval.

PUBLIC HEARING PROCEDURES: The following procedures will be used at the September 30, 1996 public hearing:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limits during the opening statement of the hearings.

2. Any person may submit written statements or documents for the record.

3. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

4. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

5. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this Notice to allow any person time to submit additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the Hearing Panel and other interested persons. Statements should summarize any extensive written materials. All comments received by EPA Region 6 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Oklahoma request for NPDES program approval.

Scope and Summary of the Oklahoma Pollution Discharge Elimination System (OPDES) Permitting Program

A. Scope

1. Partial Program: Oklahoma's OPDES program is a partial program which conforms to the requirements of section 402(n) of the Clean Water Act. The program application submitted by ODEQ applies to all discharges covered

by the authority of that agency. This includes most discharges of pollutants subject to the federal NPDES program (e.g. municipal wastewater discharges, pretreatment, and most industrial point source discharges, and point source discharges from federal facilities), including the disposal of sewage sludge (in accordance with Section 405 of the Act and 40 C.F.R. Part 503). ODEQ does not have regulatory authority over the following classes of facilities or discharges in the State of Oklahoma:

(a) Agricultural industries including concentrated animal feeding operations and silviculture. The Oklahoma Department of Agriculture is the state authority for point and nonpoint source discharges associated with agricultural production, services, silviculture, feed yards, livestock markets and animal wastes. The Department of Agriculture has not yet applied to EPA for authorization of their program, therefore, EPA will retain NPDES authority over these facilities and their discharges.

(b) Oil and Gas exploration and production related industries and pipeline operations outside the boundries of facilities regulated by ODEQ. The Oklahoma Corporation Commission is the state authority regulating the oil and gas exploration and production related industries and their associated discharges. The Corporation Commission has not yet applied to EPA for authorization of their state program, therefore, EPA will retain NPDES authority over these industries and their discharges to surface waters of the state.

(c) Discharges in Indian Country. The State of Oklahoma does not seek jurisdiction over Indian Country. EPA will retain NPDES authority to regulate discharges in Indian Country (as defined in 18 W.S.C. 1151). Although State regulation 252:605–1–3(c) seems to assert that the OPDES program has the authority to regulate discharges on "Indian Lands," it is contrary to the intent of the State as described in the EPA/ODEQ MOA and the Oklahoma Attorney General's Statement. The State of Oklahoma has undertaken steps to revise the regulation clarifying ODEQ does not seek to issue authorized OPDES permits to discharges in Indian Country. EPA and ODEQ will work together with tribal authorities to resolve questions of permitting authority for individual discharges. Although EPA would be the issuing authority for permits in Indian Country, it is likely that Region 6 would work with ODEQ and the appropriate tribes in the development of these permits to insure that both tribal and state waters are protected in a way consistent with the requirements of the CWA.

(d) Discharges of radioactive materials regulated by the federal government (i.e. those radioactive materials covered by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)). The State's definition of "pollutant" does not exclude by reference radioactive materials regulated by other federal authorities. EPA does not have the authority to authorize the OPDES program to regulate radioactive wastes governed by the Atomic Energy Act. The regulatory authority for radioactive materials will remain under the jurisdiction of the U.S. Department of Energy and the Nuclear Regulatory Commission. Some industrial discharges which contain very low level radioactive wastes (e.g. manufacturers of watches may discharge trace amounts of radium, and hospital wastes sometimes contain iodine isotopes) which are not included in the Atomic Energy Act and are thus regulated by EPA; upon authorization of the OPDES program, the authority to regulate those discharges will become the responsibility of ODEQ.

(e) Oklahoma Ordinance Works Authority (OOWA). EPA will retain enforcement authority for OOWA (NPDES permit No. OK0034568), located in Pryor, Oklahoma, and all industries served by this facility. ODEQ is legally responsible for implementing the pretreatment program at OOWA.

2. Phased Program Authority: The State of Oklahoma, to ensure that the Oklahoma general permitting program is consistent with the requirements of 40 CFR 123.25(c), is revising its statutes and regulations to provide the Executive Director of the Oklahoma Department of Environmental Quality with the full authority to issue general permits under the OPDES system. Until the state completes this transfer of authority, EPA will retain full permitting and enforcement authority for those discharges which are covered, or proposed to be covered by EPA issued general permits. This will prevent the state from becoming overburdened with the permitting of these facilities via individual permits. Once the state has completed its regulatory and statutory changes to ensure their general permitting authority complies with 40 CFR 123.25(c), EPA will turn over all authority for these discharges to ODEQ. EPA will also transfer its general permits to ODEQ for administration. This phased authority will be transferred to the state no later than three years after authorization of the program.

a. EPA will be temporarily retaining NPDES authority for:

i. All existing discharges of storm water associated with industrial or construction activity (40 CFR 122.26(b)(14)), including allowable non-storm water, authorized to discharge under an NPDES storm water general permit as of the date of program assumption. The storm water general permits affected are: Baseline construction storm water general permit (57 FR 41209), NPDES permit numbers OKR10*###; Baseline non-construction storm water general permit (57 FR 41297), NPDES permit numbers OKR00*###; and Multi-sector storm water general permit (60 FR 51108), NPDES permit numbers OKR05*###. (For an individual facility's permit number, the * is a letter and the #'s are numbers—e.g. OKR00Z999).

ii. New discharges of storm water associated with industrial or construction activity, including allowable non-storm water, eligible for coverage under one of the NPDES storm water general permits listed above, *excluding* new discharges subject to a new source performance standard. ODEQ will have authority for new discharges subject to a new source performance standard and these discharges will require an OPDES permit. Since the excluded facilities will be applying for a State-issued permit, the new source review requirements of the National Environmental Policy Act (NEPA) will not apply. [NOTE: Phased authority does not apply to discharges from municipal separate storm sewers systems (MS4s, e.g., Oklahoma City and Tulsa); individual storm water permits or outfalls in waste water permits; and storm water discharges designated by the State in accordance with 40 CFR 123.26(g)(1)(I). The state will have authority over these discharges immediately upon authorization.]

iii. All existing and new discharges resulting from implementing corrective action plans, as required by 40 CFR 280, for cleanup of groundwater contaminated by releases from Petroleum Underground Storage Tank Systems (UST). A Petroleum UST System is defined in 40 CFR 280 as an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

iv. Discharges from Petroleum Bulk Storage Tanks (PST). To EPA's and ODEQ's knowledge, all discharges

authorized by EPA's PST general permit are regulated by the Oklahoma Corporation Commission. Neither EPA nor ODEQ are aware of any discharge points covered under EPA's PST general permit which are also located at facilities regulated by ODEQ. However, if it is determined that a permittee regulated by ODEQ has coverage under this EPA general permit, those discharges would be issued individual permits by ODEQ when the facility permit was modified, issued or reissued. So as not to leave the discharges from the PST without NPDES authorization, EPA and ODEQ would transfer authority over these discharges in the manner described in A.2. b. (below) at the time ODEQ public noticed the permitting action.

A list of existing permittees under the general permits and thus remaining under EPA permitting authority is included as part of the public record and available for review. Facilities eligible for but not currently covered by one of these general permits may continue to apply to EPA for coverage. [*Note*: Oklahoma will continue to provide state-only permits for those dischargers which are to be phased over to ODEQ, and which need state authorization to discharge.]

b. Case-by-case transfers of NPDES authority for individual storm water, UST, and certain PST dischargers. From time to time, it may be desirable from an environmental or administrative standpoint to transfer authority, for an individual facility with EPA NPDES general permit coverage, prior to the time the State has received authority to issue general permits. Case-by-case transfers of NPDES authority for individual storm water, UST, and certain PST dischargers will be made using the following procedures:

i. ODEQ may request early transfer of NPDES authority over an individual facility or a class of storm water dischargers at any time. All requests will be in writing and will include a brief rationale.

ii. For those categories of industrial waste water and storm water which EPA has retained temporary authority, and may not be eligible for coverage under an EPA general permit, the permittee may petition ODEQ to request early transfer of NPDES authority so the facility discharges may be covered by an individual OPDES permit. The applicant must send a written request for transfer of authority to ODEQ. If the applicant's request is approved, ODEQ will request transfer of authority as specified above.

iii. If ODEQ and EPA agree to early transfer of NPDES authority for a facility, the State will include outfalls for the affected discharges in a draft OPDES permit and the public notice of the draft permit will concurrently notice the transfer of authority for the facility's discharges to ODEQ.

c. Final transfer of complete authority over EPA general permits. Ultimately, transfer of complete NPDES authority for storm water, UST, and certain PST discharges will be made using the following procedures:

i. Within three years from the date of program assumption, the State will make the necessary changes to State statutes in order to qualify for general permitting authority.

ii. Within 90 days of the effective date of the new statutes, the State will submit a supplemental Attorney General's statement, along with a copy of the relevant statutes, certifying that the Executive Director has the authority to issue general permits.

iii. If EPA concurs with the Attorney General's statement, the Agency will publish notice of the transfer of authority for all remaining storm water, UST, and specific PST discharges to ODEQ and send a copy to the appropriate mailing list.

iv. Once the Executive Director of ODEQ assumes authority in accordance with a promulgated final rule to issue general permits, the State will become the permitting authority (subject to EPA oversight) for *all* discharges of storm water associated with industrial and construction activity, UST remediation discharges, and PST discharges which fall under ODEQ's authority. The EPA storm water general permits and any effective general permits for UST remediation discharges will then be transferred to ODEQ for administration. Within 30 days of the transfer of authority, EPA will provide ODEQ with a list of all facilities authorized to discharge under these general permits.

3. Transfer of NPDES Authority and Pending Actions: Upon approval of the Oklahoma program, authority for all NPDES Permit and Enforcement activities (within the scope of ODEQ's authority) will be transferred to the State with the following exceptions: a) Permits for facilities whose permits are proposed but not final. The permit authority will be transferred to the state as the permits are finalized. b) Permits for which there is an unresolved evidentiary hearing request. Once a hearing has been denied or is held and the issue resolved, the permit will be transferred to the state. c) Enforcement authority for those facilities which have any outstanding compliance issues. EPA will retain jurisdiction of these facilities until resolution of these issues is accomplished in cooperation with the State. Files retained by EPA for the reasons given above will be transferred to the state as the actions are finalized. Facilities will be notified of this retained jurisdiction and again when the file is transferred to the State.

B. Summary of the Application Documents

The OPDES program is fully described in documents the State has submitted in accordance with 40 CFR 123.21, i.e., a Memorandum of Agreement (MOA) for execution by ODEQ and EPA; a Program Description, including an Enforcement Management System, outlining the procedures, personnel and protocols that will be relied on to run the state's permitting and enforcement programs; a Statement signed by the Attorney General that describes the legal authority which the state has adopted to administer a program equivalent to the federal NPDES program; and several agreements under which ODEQ will coordinate with the State Historic Preservation Officer and the U.S. Fish and Wildlife Service for the protection of antiquities and endangered species. The content of those documents is summarized below.

1. The EPA/ODEQ MOA: The requirements for MOAs are found in 40 CFR 123.24. A Memorandum of Agreement is a document signed by each agency, committing them to specific responsibilities relevant to the administration and enforcement of the state's regulatory program. A MOA specifies these responsibilities and provides structure for the State's program management and EPA's program oversight.

The MOA submitted by the State of Oklahoma has been signed by Mark Coleman, Executive Director of the Department of Environmental Quality. The Regional Administrator of U.S. EPA Region 6 will sign the document after the program has been determined approvable and all comments received during the comment period (including comments received at the public hearing) have been considered. The MOA submitted by ODEQ includes the following items:

Section I—Introduction: This section contains the statement of scope of the NPDES program (pretreatment, storm water, sewage sludge disposal programs) and contains general statements describing the purpose of the MOA.

Section II—General Responsibilities: Describes, in general terms, the relative responsibilities regarding administration of the State program and EPA regarding oversight of the state program.

Section III—Program Responsibilities: Lists the responsibilities of ODEQ and EPA in maintaining an effective program. Also outlines the procedures for phased authority over general permit discharges, and gives timing for the transition.

Section IV—Permit Review and Issuance: Describes all agreements on the review and issuance of OPDES permits. It covers ODEQ's responsibilities to issue permits, the transfer of EPA files to the State, and the State's application review and permit development process. Included are such things as procedures for permit modification or reissuance, and EPA's review of OPDES drafted individual and general permits. This section includes the State's commitment for responding to public concerns and providing public participation in connection with public hearings, evidentiary hearings, and administrative and judicial enforcement actions.

Section V—Enforcement: Describes summary agreements between EPA and ODEQ that provide EPA with oversight of the OPDES enforcement program. These include those commitments on ODEQ's compliance monitoring, reviews, pretreatment audits, and inspections. ODEQ agrees to take penalty actions in accordance with the spirit of the EPA Penalty Policy.

Section VI—Reporting and Transmittal of Information: This section describes how reports and requests for information will be handled; and how information is transferred between the two agencies.

Section VII—Program Review: Explains how EPA must review the OPDES program.

Section VIII—Computation of Time: This section explains how time is computed with relation to the effective date of the MOA and non-business days.

Section IX—Modification to this MOA: Describes how the MOA can be modified by EPA and ODEQ.

Section X—Public Access to Information: Provides that all information (except that which is legally determined to be confidential) must be available to the public by both ODEQ and EPA.

Section XI—Independent EPA Powers: Explains that the MOA does not limit EPA's authority to take action under the Clean Water Act.

Section XII—Incorporation By Reference: Allows DEQ to adopt federal standards by reference.

Section XIII—MOA Effective: The MOA becomes effective when the EPA Regional Administrator signs the document.

2. Program Description: A program description submitted by a state seeking program approval must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the state program; a description of the organization, staffing and position descriptions for the lead state agency; and itemized costs and funding sources for the program. It must describe all applicable state procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the State's compliance and enforcement tracking program. The program description submitted by ODEQ includes the following items:

Chapter 1—Scope and Authority of the DEQ Program: This chapter describes the authority (statutes and rules) for the state program and the scope. In particular, it provides a description of the authority over sewage sludge, pretreatment and storm water programs.

Chapter 2—Organization, Structure and Responsibilities: This chapter gives an overview of the Water Quality Division, other Divisions within DEQ; and OPDES staff job descriptions.

Chapter 3—Cost Estimates and Funding of the Oklahoma Delegations Program: This chapter gives a budget summary on programs's projected finances and funding sources for the program.

Chapter 4—Permitting Procedures: Describes how ODEQ staff will develop effluent limitations, the permitting process, and the process for determining Total Maximum Daily Load of a surface water.

Chapter 5—Public Participation: This chapter describes the procedures governing public involvement in ODEQ decision making. This includes rulemaking, public forums and meetings, the permitting process, development and updating the Continuing Planning Process, and other public participation opportunities.

Chapter 6—Source Inventory: Describes the source inventory for sludge, unpermitted discharges, general permits and pretreatment programs that will be entered into the Permits Compliance System (PCS—the computer tracking system for NPDES permits).

Chapter 7—Compliance Monitoring: Gives a brief overview of compliance review activities for inspections, Discharge Monitoring Reports and other required reports to be submitted by the permittee.

Chapter 8—PCS and Program Reporting: Describes the Permits Compliance System and the types of data tracked by it. This chapter also describes how this data is updated.

Chapter 9—Flow of Information and Records: Details the documents to be processed, the timelines for these processes, types of information received by ODEQ, permit file contents, and describes how information is disseminated.

Chapter 10—Enforcement and Compliance: This chapter gives the legal authority for ODEQ enforcement actions, outlines ODEQ policies related to compliance and enforcement and provides a description of state enforcement actions.

Chapter 11—Pretreatment: This chapter gives the authority for ODEQ pretreatment program; and the components of the program such as, the establishment of limits for indirect users, fundamentally different factors, categorical determination requests, reporting requirements, inspections and enforcement.

Chapter 12—Storm Water: describes the storm water program, its implementation in Oklahoma, and the general permits which regulate many of the storm water dischargers. The authority to regulate dischargers covered by general permits will be phased over to the state within three years.

Chapter 13—Sewage Sludge: Gives a brief description of sewage sludge program, its history, and statutory framework. It describes sludge permits and reports required.

Chapter 14—Toxics Control: Describes the permit conditions relating to the control of toxicity. This includes biomonitoring requirements and numerical limits for toxics in permits.

Chapter 15—Program Description EPA Oversight: Explains the mechanism EPA will use to oversee the OPDES program and the authority for EPA oversight.

3. Enforcement Management System (EMS): States seeking authorization of their permitting and enforcement program under NPDES have the option of adopting EPA's enforcement policies, procedures, and guidance; or provide in their program package a complete description of their enforcement authority and compliance evaluation program (40 CFR 123.26 and 123.27). Oklahoma developed its own enforcement management system. An EMS outlines the ways the State systematically and efficiently identifies instances of noncompliance and

provides timely and appropriate enforcement actions to achieve the final objective of full compliance by the permittee with the Clean Water Act. An EPA memo dated October 2, 1989, titled "Final Version of the Revised Enforcement Management System," describes seven basic principles that are common to an effective EMS:

—Maintain a source inventory that is complete and accurate;
—Handle and assess the flow of information available in a systematic and timely basis;
—Accomplish a pre-enforcement screening by reviewing the flow of information as soon as possible after it is received;
—Perform a more formal enforcement evaluation where appropriate, using systematic evaluation screening criteria;
—Institute a formal enforcement action and follow-up whenever necessary;
—Initiate field investigations based on a systematic plan; and,
—Use internal management controls to provide adequate enforcement information to all levels of organization.

The ODEQ's Enforcement Management System (EMS) is a written outline or guide which discusses the procedures that will be followed to ensure that both federal and state regulatory requirements and goals are accomplished in a timely and appropriate manner.

The inspection and enforcement functions of the Oklahoma Department of Environmental Quality (ODEQ) reside in the Water Quality Division's Field Inspection and Compliance Section and the Water Quality Program Management Section headquartered in Oklahoma City. The Field Inspection and Compliance Section is responsible for inspecting all permitted and unpermitted facilities which have or are believed to have a surface water discharge and is primarily responsible for the investigation and resolution of all citizen complaints involving waters of the State. The State Environmental Laboratory and the local ODEQ representatives from the Environmental Complaints and Local Services Division (located within the counties of Oklahoma) assist in preliminary inspection and investigation of complaints.

Penalties. The ODEQ has adopted EPA's civil penalty policy to ensure the consistent assessment and collection of administrative penalties in their state. The amount of penalty sought by ODEQ for permit or CWA violations will be consistent with Clean Water Act Penalty Policy.

Enforcement. In contrast to the compliance orders EPA issues under CWA § 309(a)(3), ODEQ's Compliance Orders (COs) are subject to appeal.

Staffing. ODEQ has committed to establish full program staffing by FY 99. This will require the state to hire additional personnel over a 3 year period; 10 the 1st year, 8 the 2nd year and 2 the 3rd year.

4. Attorney General's Statement: An Attorney General's Statement is required and described in regulations found at 40 CFR 123.23. The State Attorney General must certify that the State has lawfully adopted statutes and regulations which provide the State agency with the legal authority to administer a permitting program in compliance with 40 CFR Part 123. The Attorney General's Statement from Oklahoma describes and cites state legal authority which provide adequate legal authority to administer the program; and certifies that the State does indeed have the legal authority to administer the OPDES program in accordance with the regulations in 40 CFR 123.

Comments on the Described Program

The program submitted by the State of Oklahoma has been determined by EPA to be complete in accordance with the regulations found at 40 CFR 123. EPA and ODEQ want to encourage public participation in this authorization process so that the citizens of Oklahoma will understand the program in their state. Therefore, EPA requests that the public review the program that ODEQ has submitted and provide any comments they feel are appropriate. EPA and the State want the public to be able to effectively coordinate with ODEQ on OPDES permitting and enforcement actions. EPA will consider all comments on the OPDES program and/or its authorization in its decision.

Other Federal Statutes

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires that all federal agencies must consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) on all federal undertakings which may affect historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations outlining the requirements of a Section 106 consultation on a federal undertaking are found at 36 CFR Part 800. Approval of the State NPDES permitting program under section 402 of the Clean Water Act is a federal undertaking subject to this requirement, but the State's subsequent issuance of OPDES permits may not be. EPA has thus consulted in accordance with Section 106 of the NHPA to assure equivalent protection of eligible properties will be provided in connection with State permit actions. In that consultation, EPA, the SHPO and ODEQ outlined procedures by which, following approval of the state's program, ODEQ and the SHPO would confer on permit actions likely to affect historic properties. These processes are reflected in a memorandum of understanding signed by EPA and the SHPO on EPA's oversight role and objection procedures on permits when the two state agencies can not agree on the protection of historic properties. The EPA/ODEQ MOA includes conditions for EPA and ODEQ to follow to ensure that the requirements of the consultation with the SHPO are met. These consultation documents are available with the program package for public review and comment.

B. Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult on federal actions which may affect federally listed species to insure they are unlikely to jeopardize the continued existence of those species or adversely modify their critical habitat. Regulations controlling consultation under ESA Section 7 are codified at 50 CFR Part 402. The approval of the State permitting program under section 402 of the Clean Water Act is a federal action subject to this requirement, but the State's subsequent OPDES permit actions are not. EPA has completed informal consultation with the U.S. Fish and Wildlife Service (FWS or the Service). In the course of consultation, EPA, the Service, and ODEQ have outlined procedures by which ODEQ and FWS, will confer on permits which are likely to affect federally listed species. These processes are reflected in a Memorandum of Understanding between the State and FWS. In addition, a consultation agreement has been reached between EPA and FWS on EPA's oversight role and objection procedures when ODEQ and FWS cannot agree on the protection of species in an individual State permit action. These conditions are reflected in the EPA/ODEQ MOA. These documents are available with the program package for public review and comment.

C. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as

amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

D. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this proposal will not have a significant impact on a substantial number of small entities. The approval of the Oklahoma NPDES permit program would merely transfer responsibilities for administration of the NPDES permit program from Federal to State government.

I hereby propose to authorize the OPDES program in accordance with 40 CFR part 123.

Dated: August 22, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–21944 Filed 8–28–96; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

August 23, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before October 28, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0219.

Title: Section 90.49(b) Communications standby facilities "Special eligibility showing".

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated Time Per Response: .75 hours.

Total Annual Burden: 150 hours.

Total Annual Cost: 0.

Needs and Uses: The reporting requirement contained in Section 90.49(b) is necessary to ensure that a communications common carrier requesting private radio service frequencies to be used as a standby facility for carrying safety-related communications when normal common carrier circuits are inoperative due to circumstances beyond the control of the carrier are necessary for the protection of life and property. This information is collected only once, upon initial application for a license.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–22046 Filed 8–28–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1996–17]

Filing Dates for the Missouri Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Missouri has scheduled a special general election on November 5, 1996, in the Eighth Congressional District to fill the U.S. House seat vacated by the late Congressman Bill Emerson.

Committees required to file reports in connection with the Special General Election on November 5 should file a 12-day Pre-General Election Report on October 24, 1996; a 30-day Post-General Election Report on December 5, 1996; and a Year-end Report on January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463; Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special General Election and all other political committees which support candidates in this election shall file a 12-day Pre-General Report on October 21, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through October 16; and a Post-General Report on December 5, with coverage dates from October 17 through November 25, 1996.

CALENDAR OF REPORTING DATES FOR MISSOURI SPECIAL ELECTIONS FOR COMMITTEES INVOLVED IN THE SPECIAL GENERAL (11/05/96)

Report	Close of books*	Reg./cert. mailing date**	Filing date
Pre-General	10/16/96	10/21/96	10/24/96
Post-General	11/25/96	12/05/96	12/05/96

*The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
**Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: August 23, 1996.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 96–22005 Filed 8–28–96; 8:45 am]

BILLING CODE 6715–01–M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications Standards

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of adoption of Federal standard.

SUMMARY: The purpose of this notice is to announce the adoption of Federal Telecommunications Standards (FED-STD)). FED-STD 1037C Telecommunications: Glossary of Telecommunications Terms is approved and will be published.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Building 225, Room A–126, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program.

2. On November 16, 1994, a notice was published in the **Federal Register** (59 FR 59255) that a proposed FED-STD 1037C entitled Telecommunications: Glossary of Telecommunications Terms was being proposed for Federal use and that comments were requested.

3. GSA and the Department of Commerce (DOC) reviewed the written comments submitted by interested parties and other material available relevant to this standard. GSA and DOC also reviewed the justification package as approved by the Federal Telecommunications Standards Committee (FTSC) and the National Communications System (NCS). On the basis of this review, GSA determined to adopt the proposed standards as Federal Telecommunications Standards (FED-STD) 1037C, Telecommunications: Glossary of Telecommunications Terms.

The justification package from FTCS and NCS, and GSA's analysis of comments received in response to the notice, are part of the public record and available for inspection.

4. This Federal Telecommunications Standard is mandatory.

5. Requests for copies of the Federal Telecommunications Standard 1037C, Telecommunications: Glossary of Telecommunication Terms should be directed to the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

Dated: August 7, 1996.

G. Martin Wagner,

Associate Administrator, Office of Policy, Planning and Evaluation.

Federal Standard 1037C

Telecommunications: Glossary of Telecommunication Terms

1. Scope: a. This glossary provides standard definitions for the fields subsumed by the umbrella discipline of telecommunications. Fields defined herein include: antenna types and measurements, codes/coding schemes, computer and data communications (computer graphics vocabulary, file transfer techniques, hardware, software), fiber optics communication, facsimile types and techniques, frequency topics (frequency modulation, interference, spectrum sharing), Internet, ISDN, LANs (MANs, WANs), modems, modulation schemes, multiplexing techniques, networking (network management, architecture/topology), NII, NS/EP, power issues, PCS/UPT/cellular mobile, radio communications, routing schemes, satellite communications security issues, switching techniques, synchronization/timing techniques, telegraphy, telephony, TV (UHF, VHF, cable TV, HDTV), traffic issues, transmission/propagation concerns (signal loss/attenuation, transmission lines), video technology, and wave propagation/measurement terminology.

b. The terms and accompanying definitions contained in this standard are drawn from authoritative non-Government sources such as the International Telecommunication Union, the International Organization for Standardization, the Telecommunications Industry Association, and the American National Standards Institute, as well as from numerous authoritative U.S. Government publications, the FTSC Subcommittee to Revise FED-STD 1037B has rewritten many definitions as deemed necessary either to reflect technology advances or to make those definitions that were phrased in specialized terminology more understandable to a broader audience.

1.1 Applicability: This standard incorporates and supersedes FED–STD–1037B, June 1991. Accordingly, all Federal departments and agencies shall use it as the authoritative source of definitions for terms used in the preparation of all telecommunications documentation. The use of this standard by all Federal departments and agencies is mandatory.

1.2 Purpose: The purpose of this standard is to improve the Federal acquisition process by providing Federal departments and agencies a comprehensive, authoritative source of definitions of terms used in telecommunications and directly related disciplines by national, international, and U.S. Government telecommunications specialists.

2. Requirements and Applicable Documents: a. The terms and definitions that constitute this standard, and that are to be applied to the uses cited in paragraph 3 below, are contained on page A–1 through Z–1 of this document. There are no other documents applicable to implementation of this standard. A list of acronyms and abbreviations is presented as Appendix A. The list of abbreviations and acronyms uses bold font to identify those term names that are defined in this glossary. An abbreviated index of

selected principal families of related term names is presented in Appendix B.

b. Within this document, symbols for units of measurement (and the font type for these symbols) are in accord with ANSI/IEEE Std. 260.1–1993, American National Standard Letter Symbols for Units of Measurement (S1 Units, Customary Inch-Pound Units, and Certain Other Units).

3. Use: a. All Federal departments and agencies shall use the terms and definitions contained herein. Only after determining that a term or definition is not included in this document may other sources be used.

b. Nearly all terms are listed alphabetically; a few exceptions to this rule include (1) the family of network topologies, which are grouped under the definition of "network topology," and (2) the family of dispersion terms, which are grouped under the definition of "dispersion." In all cases, ample cross references guide the reader to the location of the definition. Term names containing numerals are alphabetized as though the numbers were spelled out; thus, "144-line weighting" will appear in the "O" portion of the alphabet between the terms "on-board communication station" and "one-way communication," since it is pronounced as if it were spelled "one-forty-four line. . . ." For user convenience, exceptions to the rule are taken for entries comprising numerically consecutive terms, e.g., "digital signal 0," . . . "digital signal 4," which are grouped numerically following the "digital signal" entry.

c. An abbreviation for the term name often appears in parentheses following the term name. When both the abbreviation and the spelled-out version of a term name are commonly used to name an entity defined in this glossary, the definition resides with the more commonly used version of the term name. If the more commonly used designation is the fully spelled-out term name, then the definition resides under that name. If, however, the more common term name is the abbreviation, then the definition rests with the abbreviated spelling of that term name. For example, the definition of "decibel" resides under "dB."

d. When more than one definition is supplied for a given term name, the definitions are numbered, and the general definition is given first. Succeeding definitions are often specific to a specialized discipline, and are usually so identified.

e. Notes on definitions are not a mandatory part of this document; these notes are expository or tutorial in nature. When a note follows a source citation (such as "[JP1]"), that note is not part of the source document cited. Notes and cross references apply only to the immediately preceding definition, unless stated otherwise.

f. Three types of cross references are used: "Contrast with," "Synonyn" and "See"

(1) "Contrast with" is used for terms that are nearly antonyms, or when understanding one concept is aided by examining the definition of its counterpart.

(2) When term names are synonymous, the definition is placed under only one of the term names, i.e., the preferred term name, which is generally the most common name. Synonyms are listed for cross-reference purposes only. The other term name entries contain only a "Synonym" listing; i.e., the definition for synonymous term names is not repeated. Terms labeled "Colloquial synonym" are in occasional informal use, but may be semantically inexact or may border on slang.

(3) "See" is used where an undefined term name is entered as a cross reference only to direct the reader to a related term name (or term names) that is (are) defined in the glossary.

g. Term names that are semantically incorrect, that have been replaced by recent advances in technology, or that have definitions that are no longer applicable, are designated as "deprecated". In such case the reader is referred to current term names, where applicable.

h. The telecommunications terms included in this glossary either are not sufficiently defined in a standard desk dictionary or are restated for clarity and convenience. Likewise, combinations of such words are included in this glossary only where the usual desk-dictionary definitions, when used in combination, are either insufficient or vague.

i. Definitions that carry the source citation "[47CFR]" (which refers to Title 47 U.S. Code of Federal Regulations), or "[NTIA]" (which refers to the NTIA Manual), or the source citation "[RR]" (which refers to the ITU Radio Regulations) may have a format or syntax that differs from the definitions in the remainder of FED-STD 1037C because the FTSC Subcommittee to Revise FED-STD 1037B was not authorized to make any changes whatever to the definitions in these three documents. One minor formatting change was made to definitions from NSTISSI No. 4009, National Information Systems Security (INFOSEC) Glossary, cited [NIS]: Often the introductory; indefinite article or definite article was added at the beginning of the cited definition, and that article was added in square brackets "[ ]" to indicate that its addition was the only change made in the quoted definition.

j. Figures have been added to many definitions throughout the glossary to illustrate complex concepts or systems that are defined herein. With the exception of the figure called "electromagnetic spectrum," these figures are not a mandatory part of this document.

k. This standard contains two appendixes, neither of which is mandatory.

Appendix A consists of a list of abbreviations used in this glossary. In that list, the bold font graces the term names that are defined in this glossary. Appendix B consists of an abbreviated index of families of defined terms whose technologies are related. This index is provided as a tool to identify all related terms within a specific discipline so that the reader's understanding of a definition may be amplified by reading related definitions within a specific discipline. The index also provides the reader with information on the breadth and scope of disciplines addressed in the glossary.

4. Effective Date: The use of this approved standard by U.S. Government departments and agencies is mandatory, effective 180 days following the date of this standard.

5. Changes: When a Federal department or agency considers that this standard does not provide for its essential needs, a request for exception should be submitted to the National Institute of Standards and Technology (NIST) in accordance with Federal Information Processing Standards Procedures.

Federal departments and agencies are encouraged to submit updates to this standard; those updates will be considered for the next revision of this standard. Submit suggested changes to the National Communications System, whose address is given below. Office of the Manager, National Communications System, Office of Technology and Standards, 701 South Court House Road, Arlington, VA 22204–2198.

[FR Doc. 96–22062 Filed 8–28–96; 8:45 am]
BILLING CODE 6820–25–M

Federal Telecommunications Standards

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of adoption of Federal standard.

SUMMARY: The purpose of this notice is to announce the adoption of Federal Telecommunications Standards (FED–

STD). FED–STD 1052 Telecommunications: High Frequency Radio Modems is approved and will be published.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Building 225, Room A–126, Gaitherburg, MD 20899.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program.

2. On November 28, 1994, a notice was published in the Federal Register (59 FR 60849) that a proposed FED–STD 1052 entitled Telecommunications: High Frequency Radio Modems: was being proposed for Federal use and that comments were requested.

3. GSA and the Department of Commerce (DOC) reviewed the written comments submitted by interested parties and other material available relevant to this standard. GSA and DOC also reviewed the justification package as approved by the Federal Telecommunications Standards Committee (FTSC) and the National Communications System (NCS). On the basis of this review, GSA determined to adopt the proposed standards as Federal Telecommunications Standards (FED–STD) 1052, Telecommunications: High Frequency Radio Modems.

The justification package from FTCS and NCS, and GSA's analysis of comments received in response to the notice, are part of the public record and available for inspection.

4. A copy of the standard is provided as an attachment to this notice. Requests for copies of Federal Telecommunications Standards 1052 should be directed to the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

Dated: August 7, 1996.

G. Martin Wagner,

Associate Administrator, Office of Policy, Planning and Evaluation.

Federal Standard 1052

Telecommunications: HF Radio Modems

1. Scope: The terms and accompanying definitions contained in this standard are drawn from authoritative non-Government sources such as the International Telecommunication Union, the International Organization for Standardization, the Telecommunications Industry Association, and the American National Standards Institute, as well as from numerous authoritative U.S. Government publications. The Federal Telecommunications Standards Committee (FTSC) HF Radio Standards Development Working Group (SDWG) developed a family of High Frequency Radio specifications that defines the necessary technical parameters for HF radio connections. Federal Standard 1052 is one of the family of standards to be used in conjunction with the interoperability criteria for HF radio automatic operation.

1.1. Applicability: All Federal departments and agencies shall use Federal Standard 1052 as the authoritative source of definitions for terms used in the preparation of all telecommunications documentation. The use of this standard by all Federal departments and agencies is mandatory.

1.2. Purpose: The purpose of this standard is to improve the Federal Acquisition process by providing Federal departments and agencies with a comprehensive, authoritative source for details of basic automatic networking operations in HF radio.

2. Requirements and Applicable Documents: The HF radio terms and definitions constitute this standard, and are to be applied to the design and procurement of HF radio equipment requiring operations in stressed environments. There are a family of Federal Telecommunications Standards that may be applicable to implementation of this standard and these are listed in the standard.

3. Use: All Federal departments and agencies shall use this standard in the design and procurement of HF radio modem equipment. Only after determining that a requirement is not included in this document may other sources be used.

4. Effective Date: The use of this approved standard by U.S. Government departments and agencies is mandatory, effective 180 days following the publication date of this standard.

5. Changes: Federal departments and agencies are encouraged to submit updates and corrections to this standard, which will be considered for the next revision of this standard. Suggested changes should be sent to: National Communications System, Office of Technology and Standards, 701 South Court House Road, Arlington, VA 22204–2198.

[FR Doc. 96–22063 Filed 8–28–96; 8:45 am]

BILLING CODE 6820–25–M

Federal Telecommunications Standards

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of correction of Federal standard.

SUMMARY: The purpose of this notice is to announce a clarification in the Federal Telecommunications Standards (FED–STD); FED–STD 1045A Telecommunications: High Frequency Radio Automatic Link Establishment.

FOR FURTHER INFORMATION CONTACT: Shirley Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Building 225, Room A–126, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program.

2. The National Communications System requested a clarification sentence be added to paragraph 5.3.4 of the FED–STD 1045A. GSA reviewed and approved the incorporation of the following clarification:

"ALE stations shall employee the individual calling protocol (using a three-way handshake), specific between stations after a link has been established".

All existing copies of the standard should be amended with this clarification sentence.

3. Requests for copies of Federal Telecommunications Standard 1045A should be directed to the GSA Federal Supply Bureau (FSSB), Specifications Section, Suite 8100, 490 East L'Enfant Plaza, SW., Washington, DC 20407; telephone (202) 755–0325.

Dated: August 7, 1996.

G. Martin Wagner,

Associate Administrator, Office of Policy, Planning and Evaluation.

[FR Doc. 96–22064 Filed 8–28–96; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–24]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Biomechanical Stress Control in Drywall Installation—New-Drywall installers represented approximately 1.42% of the construction work force in 1992. Based on analysis of the Supplementary Data System (BLS) of 21 states, the compensable injury/incidence rate (27.5 cases per 100 workers for this group) was nearly three times the injury rate of 9.5 for all other construction occupations combined, in 1987. Data from the 1992 and 1993 Annual Survey of Occupational Injuries and Illnesses (BLS) indicated that there were an estimated 4,680 traumatic injuries among drywall installers involving days away from work in the construction industry in 1992, and 4,122 in 1993. In 1993, bodily reaction and exertion (31.6%), falls (28.6%), and contact with objects (24.6%) were the leading events of injury and illness involving days away from work. As a result, sprains and strains (40.6%) constituted the most frequent nature of injuries and illnesses category in 1994.

To gain an understanding of these injuries, NIOSH has initiated this project to examine different approaches in both field and laboratory settings to identify and control the high-risk activities associated with the traumatic injuries and overexertion hazards of drywall installation work. One of the field study components for this project is to identify high-risk tasks and activities for drywall installers, using a drywall installation survey which was developed at NIOSH. The findings of this survey will provide further understanding and focus laboratory research efforts on the most hazardous tasks/activities of drywall-installation work. Study populations will include drywall installers or construction workers with drywall installation experience. Each questionnaire will take approximately 20 minutes to complete. The total cost to respondents is estimated at $500.

Respondents	No. of Respondents	No. of Responses/Respondent	Avg. Burden/Response (in hrs.)	Total Burden (in hrs.)
Drywall Installers	75	1	.20	25
Total				25

Dated: August 28, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–22036 Filed 8–28–96; 8:45 am]

BILLING CODE 4163–18–P

Workers' Family Protection Task Force: Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Workers' Family Protection Task Force.

Times and Dates: 9 a.m.–4 p.m., September 18, 1996. 9 a.m.–4 p.m., September 19, 1996.

Place: Department of Labor Building, 200 Constitution Avenue, NW., Room C–5521, Seminar Room 4, Washington, DC 20210.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The purpose of the meeting is to discuss the draft working report of the Workers' Family Protection Task Force (WFPTF). The Task Force is comprised of representatives from industry, labor, government, and academia. The draft working report identifies research needs based on review of the "Report to Congress on Workers' Home Contamination Study Conducted Under the Workers' Family Protection Act (29 U.S.C. 671a)."

The Task Force is required to determine if additional data is needed; determine the feasibility of developing additional data; and develop an investigative strategy to obtain the data.

Matters To Be Discussed: Agenda items will include a review of the WFPTF charter; an overview and discussion of each section of the draft report; a description of the Work Groups; and plans for development and distribution of the final report.

Agenda items are subject to change as priorities dictate.

Contact Persons for Additional Information: Technical information may be obtained from Elizabeth Whelan, Ph.D., Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, M/S R15, Cincinnati, Ohio 45226, telephone 513/841–4437. Copies of the "Report to Congress on Workers' Home Contamination Study Conducted Under the Workers' Family Protection Act (29 U.S.C. 671a)" and the draft working report can be obtained from Pam Graydon, Administrative Assistant, NIOSH, CDC, 4676 Columbia Parkway, M/S PO3/C30, Cincinnati, Ohio 45226, telephone 513/533–8312. Copies of the draft working report will also be available at the meeting.

Dated: August 22, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–22039 Filed 8–28–96; 8:45 am]

BILLING CODE 4163–19–M

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Adoption and Foster Care Analysis and Reporting System (AFCARS), title IV–B and title IV–E.

OMB No.: 0980–0267.

Description: Section 479 of title IV–E of the Social Security Act directs States to establish and implement an adoption and foster care reporting system. The purpose of the data collected is to inform State/Federal policy decisions, program management, respond to Congressional and Department inquiries. Specifically, the data is used

to short/long-term budget projections, trend analysis, and target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placements for adoption.

Respondents: State governments.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Reporting system	51	2	3,251	331,602

Estimated Total Annual Burden Hours: 331,602.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: August 26, 1996.

Bob Sargis,

Acting Reports Clearance Officer, Office of Information Management Services.

[FR Doc. 96–22050 Filed 8–28–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0185]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Cosmetic Product Voluntary Reporting Program.

DATES: Submit written comments on the collection of information by October 28, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Cosmetic Product Voluntary Reporting Program (21 CFR 720.4, 720.6, 720.8(b)) (OMB Control Number 0910—0030—Reinstatement)

Under the Federal Food, Drug, and Cosmetic Act (the act) cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics FDA requests, under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file an ingredient statement for each of their products with the agency (§ 720.4). Ingredient statements for new submissions (§ 720.1) are reported on Form FDA 2512, "Cosmetic Product Ingredient Statement" and Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, "Discontinuance of Commercial Distribution of Cosmetic Product Formulation" (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's database also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise deleterious to humans and the public health generally. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is

utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

FDA estimates the burden of the Cosmetic Product Voluntary Reporting Program as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Burden Hours
720.1 & 720.4 (new submissions)	FDA 2512/2512a	550	4.2	2,310	0.50	1,155
720.4 & 720.6 (amendments)	FDA 2512/2512a	550	1.4	770	0.33	254
720.6 (notice of discontinuance)	FDA 2514	550	4.5	2,500	0.1	250
720.8 (request for confidentiality)		2	1.0	2	1.5	3
Total						1,662

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: August 21, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22121 Filed 8–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0251]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the submission of reclassification petitions for medical devices.

DATES: Submit written comments on the collection of information by October 28, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reclassification Petitions for Medical Devices—21 CFR Part 860 (OMB Control Number 0910–0138)

Type of OMB Approval Requested: Reinstatement Without Change of a Previously Approved Collection for Which Approval has Expired

FDA has the responsibility under sections 513(e), 513(f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) and 21 CFR part 860, subpart C, to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a medical device from

any one of three classes (I, II, III) to another class. The reclassification procedures regulation (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed classification will provide a reasonable assurance of safety and effectiveness of the device for its intended use. The reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device. The reclassification petitions requesting downclassification from class III to class II or class I, if approved, provide an alternative route to the market in lieu of premarket approval for class III devices.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
860.123	11	1	11	500	5,500

There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current trends, FDA anticipates that 11 petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Dated: August 21, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22122 Filed 8–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0113]

Determination of Regulatory Review Period for Purposes of Patent Extension; VEXOL™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VEXOL™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VEXOL™ (rimexolone). VEXOL™ is indicated for the treatment of postoperative inflammation following ocular surgery and in the treatment of anterior uveitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VEXOL™ (U.S. Patent No. 4,686,214) from Alcon Laboratories, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 13, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VEXOL™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VEXOL™ is 1,779 days. Of this time, 1,566 days occurred during the testing phase of the regulatory review period, while 213 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: February 17, 1990. FDA has verified the applicant's claim that the date that the investigation new drug application (IND) became effective was on February 17, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: June 1, 1994. The applicant claims May 31, 1994, as the date the new drug application (NDA) for VEXOL™ (NDA 20–474) was initially submitted. However, FDA records indicate that NDA 20–474 was submitted on June 1, 1994.

3. *The date the application was approved*: December 30, 1994. FDA has verified the applicant's claim that NDA 20–474 was approved on December 30, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 995 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 28, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–22123 Filed 8–28–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Project Grants for Renovation or Construction of Non-Acute Health Care Facilities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of single source awards.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the award of two grants under the program authority of Section 1610(b) of the Public Health Service Act. Awards in the amount of $3,929,600 each were issued to the School of Dental Medicine at the University of Pennsylvania to link basic research in oral health care with clinical care for infectious diseases, especially for those patients with HIV, and to the Allegheny University of the Health Sciences for leadership training and diversity, with a particular focus upon women's health issues.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Mrs. Charlotte G. Pascoe, Director, Division of Facilities Compliance and Recovery, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–47, Rockville, MD 20857. The telephone number is (301) 443–4303 and the FAX number is (301) 443–0619.

Other Grant Information

Certification Regarding Environmental Tobacco Smoke

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

OMB Catalog of Federal Domestic Assistance

The number for the Project Grants for Renovation or Construction of Non-Acute Health Care Facilities is 93.887.

Dated: August 26, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–22120 Filed 8–28–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse (NIDA) on September 17–18, 1996, at the Parklawn Building, Conference Rooms G, H, and I, 5600 Fishers Lane, Rockville, MD 20857.

On September 17, from 9 a.m. to 4 p.m., in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, this portion of the meeting will be closed to the public for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

On September 18, from 9 a.m. to 5 p.m., this portion of the meeting will be open to the public for announcements and reports of administrative, legislative, and program developments in the drug abuse field. Attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenberg, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Eleanor C. Friedenberg in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: August 23, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–22112 Filed 8–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of a Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on September 16–17, 1996. The meeting of the full Council will be open to the public on September 16 from 2:00 p.m. to recess, Conference Room 10, Sixth Floor, Building 31, National Institutes of Health, Bethesda, Maryland, for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the Council will be closed to the

public on September 17, 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and information concerning individuals associated with the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal applications and reports, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone (301) 496–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: August 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–22113 Filed 8–28–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4086–N–36]

Government National Mortgage Association; Notice of Proposed Information Collection for Public Comments

AGENCY: Government National Mortgage Association ("Ginnie Mae"), Department of Housing and Urban Development ("HUD").

ACTION: Notice.

SUMMARY: In compliance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), Ginnie Mae is providing notice in the **Federal Register** of proposed information collections in order to solicit public comment. These proposed information collections include customer satisfaction surveys and focus groups and are intended to evaluate existing Ginnie Mae services and programs.

DATES: Comments due: October 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Sonya K. Saurez, Government National Mortgage Association, Office of Policy, Program, and Risk Management, Department of Housing and Urban Development, 451—7th Street, SW, Room 6222, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya K. Suarez, on (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Customer Satisfaction Surveys and Focus Groups.

OMB Control Number: New instrument, not applicable.

Description of the need for the information and proposed use: Ginnie Mae intends to seek clearance for an undefined number of focus groups and customer satisfaction surveys to be conducted over the next three years. These proposed collections are designed to obtain customer feedback on existing Ginnie Mae services and programs as required by Executive Order 12862, Setting Customer Service Standards.

This Executive Order mandates that federal agencies like HUD be customer-driven in order to meet the principles of the National Performance Review. Ginnie Mae, as a government-owned corporation within HUD, must comply with the terms and spirit of the Executive Order. Ginnie Mae uses the full faith and credit of the United States to guaranty the timely payment of principal and interest on publicly sold mortgage pass-through certificates ("mortgage-backed securities" or "MBS"). The Ginnie Mae MBS are backed by a pool or pools of individual mortgage created by mortgage lenders.

There are several Ginnie Mae MBS programs and new programs in process of development. Examples of programs include the Ginnie Mae I single family, Ginnie Mae II, Ginnie Mae REMIC and Ginnie Mae Platinum programs. The kind and quality of MBS programs and services are expected to vary significantly by program type, lender orientation, market conditions and investors preferences. Ginnie Mae's diverse private sector customer base in the mortgage and capital markets gives rise to a need for a comprehensive customer satisfaction data collection approach. To this end, Ginnie Mae proposes to establish a mechanism through which it will be able to explore issues of mutual concern (*e.g.*, kind and quality of desired services) with its major outside participants and beneficiaries.

Ginnie Mae is seeking the flexibility to devise surveys and focus groups by mortgage servicer type e.g., single-family, multifamily, manufactured homes, home improvement loans or hospital/nursing homes. Ginnie Mae may also need to develop different data collection schemes for lenders as compared to investors (i.e., Wall Street dealers or securities holders). Ginnie Mae expects to conduct between 4–7 surveys annually (all programs combined). It is expected that Ginnie Mae may conduct as many as 4–8 focus groups with lenders and/or investors.

The areas of concern to Ginnie Mae and its participants and beneficiaries are expected to change over time. It is important, therefore, that Ginnie Mae have the ability to evaluate customer concerns quickly. Accordingly, Ginnie Mae plans to request that OMB grant an approval for a three-year period of focus groups and surveys. Participation in the focus groups and surveys will be voluntary. Ginnie Mae will consult with OMB regarding each specific information collection during the approval period.

Agency form numbers: Not applicable.

Members of affected public: Business or other for-profit and the Federal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Respondents (Ginnie Mae mortgage backed securities issuers or investors)	Est. number of respondents	Est. time of per response	Est. total time of response
Single Family MBS Issuers	520	15 minutes	7800 minutes/130 hours.
Multifamily MBS Issuers	125	15 minutes	1875 minutes/31.25 hours.
Manufactured Housing MBS Issuers	25	15 minutes	375 minutes/6.25 hours.
Multiclass (REMICS) Sponsors	25	15 minutes	375 minutes/6.25 hours.
MBS Investors	1000	10 minutes	10000 minutes/166.67 hours.
Total	1695		20425 minutes/340.42 hours.

Status: New collection of information.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 21, 1996.

George S. Anderson,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 96–22025 Filed 8–28–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4066–N–36]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: October 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of proposal: Insurance Information.

OMB control number: 2577–0045.

Description of the need for the information and proposed use: The Annual Contributions Contract between HUD and a Public Housing Agency (PHA) or Indian Housing Authority (IHA) requires the PHA or IHA to insure their property for an amount sufficient to protect against financial loss. Completion of HUD–5460 is needed only when a new project is constructed. It is used to establish an insurable value at the time the project is built. The amount of insurance can then be increased each year as inflation and increased costs of construction create an upward trend on insurable values.

Agency form number, if applicable: HUD–5460.

Members of affected public: PHA/IHAs. Based upon historical information, it is estimated that approximately 60 new projects will be constructed each year. Public burden for collection of the information necessary to complete HUD–5460 is estimated to average one hour per response, including time for reviewing instructions, searching existing data sources, gathering data needed, and reviewing the collection of information. Annual burden hours per PHA/IHA should not exceed one hour, and total hours for all combined would be approximately sixty. Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 20, 1996.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Insurance Information

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0045 (exp. 1/31/85)

Project Name	Project Number
Project Location	No. of Dwelling Units
Name & Title of Person submitting this information	Date

1. Fire and Extended Coverage

A. Describe items listed below by thickness & material used in construction.

1. Exterior Walls: ☐ Load bearing ☐ Non-bearing — Thickness: Material:
2. Interior Partitions: Thickness: Material:
3. Walls Between Units: Thickness: Material:

a. Are firewalls built from the ground? ☐ Yes ☐ No
b. Are they built to the underside of roof sheathing? ☐ Yes ☐ No
c. Number of inches above the roof:

d. Describe openings, if any:

4. Top Ceiling: Thickness: Material:
5. Flooring System:
   a. First Floor : Thickness Material
   b. Second Floor : Thickness Material
   c. Third Floor : Thickness Material
   d. Fourth Floor : Thickness Material
6. Roof: ☐ Pitched ☐ Flat
   a. Framing: Thickness Material
   b. Sheathing: Thickness Material
   c. Covering: Thickness Material

B. Information for Rating Purposes

1. Give greatest distance of any project building from a fire hydrant:
2. Describe city fire department
   ☐ Volunteer ☐ Part paid & part volunteer ☐ Full Time

C. Classify all buildings according to both the arrangement of stories and the number of dwelling units. Enter in column 1 the number of buildings of each of these types. Mark those without basements "X", mark those with group heating plants in basement "H", mark those with a sprinkler system installed "S". In column 2 enter for each type of building listed in column 1 the number of units under each story level. In column 3 enter the number of units between fire walls for each type of building, such as (2-4-2).

Number of Buildings (1)	No. of Units in Building Under Story Level Specified (2)				Number of Units Between Fire Walls (3)
	1 Story	2 Story	3 Story	4 Story	

DRAFT

D. Computation of Insurable Value 1/ (See instructions on back)

1. Architect's Fees (include 30% of fees)	$
2. Structures and Equipment	$
3. Total of 1 and 2	$
Deduct the following:	
4. Entire cost of footing excavations and foundations (cost below level of ground, or if basement, estimated cost below lowest basement floor)	$
5. Underground Work in Buildings	
a. 25% of cost of plumbing rough-in	$
b. 10% of cost of electrical rough-in	$
6. Underground Work outside of Buildings 10% cost of heating if central plant is involved	$
Total Deductions	$
1/ Insurable Value	$

2. Boiler Insurance

A. Type of Heating (check " one)	B. Type of Boiler (check " one)	C. No. of Boilers	D. Pressure	E. Sq. Ft. of heating Surface per Boiler
☐ Central Heating Plant ☐ Group Heating Plants ☐ Space Heaters	☐ Hot Water ☐ Steam			

F. Type of Fuel (check " one)	G. Approximate value of heating plant (building and equipment). If system is composed of group heating plants, give approximate value of largest plant. If plant is located in basement of building, include value of dwelling area above plant which would be subject to damage by an explosion.
☐ Coal ☐ Gas ☐ Oil ☐ LPG	$

1/ The insurable value for the first term can be accurately computed upon completion of a project. For subsequent renewals the Field Office will provide assistance in determining the current insurable value. Instructions for computation of Insurable Value are on the back of this form. .

Previous editions are obsolete

form HUD-5480 (08/15/96)
ref. Handbook 7401.5

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0045), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Do not send this form to the above address.

The Annual Contributions Contract (ACC) between HUD and a Public Housing Agency (PHA) or Indian Housing Authority (IHA) requires the PHA or IHA to insure their property for an amount sufficient to protect against financial loss. PHAs/IHAs complete the Form HUD-5460 only when a new project is constructed. It is used to establish an insurable value at the time the project is built. The amount of insurance can then be increased each year as inflation and increased costs of construction create an upward trend on insurable values. Responses to the collection of information are voluntary. The information requested does not lend itself to confidentiality.

Instructions for Computation of Insurable Value (Block 1-D)

1. Architect's Fee (include 30% of fees). From latest Contract Award Budget, form HUD-52484, Account Classification 1430.1, column (f).

2. Structures and Equipment. Total the following items:
   (a) From form HUD-52396, (attached to Contract Award Budget):
   Dwelling Structures, Account 1460;
   Dwelling Equipment, Account 1465;
   Nondwelling Structures, Account 1470;
   Nondwelling Equipment, Account 1475.
   (b) From Contract Award Budget, Column 5:
   Dwelling Equipment - Non-expendable, Account 1465.1;
   Nondwelling Equipment, Accounts 1475.1, 1475.2 and 1475.3.
   (c) From Change Order Record Card:
   Changes charged to Dwelling and Nondwelling Units.

3. Total of 1 and 2

Deductions

4. From form HUD-51000, Schedule of Amounts for Contract Payments: Add applicable items of footings and foundations.

5. a. 25% of plumbing rough-in only. Do not include any cost of fixtures, etc.
   b. 10% of cost of electrical rough-in. Do not include any cost of fixtures, etc.

10% of cost of heating if central plant is provided.

DRAFT

Previous editions are obsolete

form HUD-5460 (06/15/96)
ref. Handbook 7401.5

[FR Doc. 96-22026 Filed 8-28-96; 8:45 am]
BILLING CODE 4210-32-C

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–4086–N–17]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: October 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of the Assistant Secretary for Community Planning and Development, Department of Housing & Urban Development, 451–7th Street, SW, Room 7230, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department of Housing and Urban Development (HUD) will submit to OMB additional, but optional, reporting requirements for participating jurisdictions in the HOME Program.

The HOME Investment Partnerships Act (Title II of the Cranston-Gonzales National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625) and created the HOME Program to expand the supply of affordable housing. Interim regulations were first published for the program on December 16, 1991 and subsequent interim rules have been published and codified at 24 CFR part 92. On July 12, 1995, the Department invited wide ranging comments on the interim rule in order to prepare a final rule for the program. This paper work submission will support the changes to be made in the final rule and reflects the increased flexibility that participating jurisdictions may elect to exercise within the statutory framework of the program.

HOME funds may be used to develop or assist modest housing occupied by low-income families. Eligible applicants are States, units of general local government or consortia which are eligible to receive HOME allocations by formula. The additional information collection is essential if the Department is to determine the eligibility of the activity and the property to be assisted in keeping with the statutory requirements of the Act.

This Notice also lists the following information:

Title of Proposal: HOME Investment Partnerships Program

OMB Control Number, if applicable: N/A

Description of the need for the information and proposed use: Documentation would be required by HUD under *§ 92.206 Eligible project costs* if a participating jurisdiction elects to refinance existing debt in connection with the rehabilitation of a multifamily project. A participating jurisdiction must establish refinancing guidelines and include them in its consolidated plan as described in 24 CFR part 91.

Public comment suggested that HUD provide the option of refinancing multifamily projects but develop requirements which assure that this option is used in a fiscally responsible manner. While the Department declined to set limitations on the amount of subsidy used for refinancing or the nature or ownership of the projects, the final rule requires that participating jurisdictions develop and make public the guidelines under which they would permit multifamily property refinancing.

Documentation would be required by HUD under *§ 92.254 Qualification as affordable housing: homeownership* if a participating jurisdiction elects to determine 95 percent of the median area purchase price for single family housing in the jurisdiction instead of using the Single Family Mortgage limits under Section 203(b). The Department has adopted the Section 203(b) limits as a surrogate for the 95 percent statutory limitation.

A few participating jurisdictions, which are part of larger metropolitan areas, expressed concern that the Section 203(b) limits were not reflective of 95 percent of the median area purchase price for their communities. These communities generally had expensive housing markets. The final rule would permit any participating jurisdictions with these concerns to determine 95 percent of median area purchase price based on recent sales in their locality and provide that information to the Department for review.

Under the same section, documentation will be required by HUD if a participating jurisdiction elects to do a market analysis for a neighborhood in which it wishes to demonstrate a presumption of affordability in lieu of imposing an enforcement mechanism on new homebuyer units.

In public comment, several participating jurisdictions indicated the negative effect of imposing resale restrictions on units in which HOME funds are used solely as construction financing. One jurisdiction claimed that the inner city neighborhoods in which they worked provided modest housing which could be affordable to eligible applicants through conventional financing after rehabilitation occurs. HOME funds are used to spur private investment by financing the rehabilitation which could be done quickly and efficiently.

Based on market data prepared by the participating jurisdiction, a presumption of affordability could be supported. In this way, participating jurisdiction could eliminate imposition of resale requirements, making the units a more attractive sales option for prospective eligible homeowners. A participating jurisdiction could elect this procedure at its discretion in lieu of imposing and monitoring long-term lien provisions, requiring the sale of the unit to another low-income family.

Agency form numbers, if applicable: N/A.

Members of affected public: States, units of general local government.

Estimation of the total annual numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Section affected	Number of respondents	Frequency of response	Hours of response	Annual total
§ 92.206	200	1	4	800
§ 92.254	20	1	5	100
§ 92.254	275	1	5	1375

Total annual estimated burden hours for those optional requirements are 2,275.

Status of the proposed information collection: Public comment requested by HUD.

Contact person and telephone number (this is not a toll-free number) for copies of the proposed forms and other available documents: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 25, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–22027 Filed 8–28–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4086–N–33]

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5124, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Steven Tursky, (202) 708–2288 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Affirmative Fair Housing Marketing Plan.

OMB Control Number: 2529–0013.

Description of the need for the information and proposed use: HUD uses this information to assess the adequacy of the applicant's proposed actions to carry out the Affirmative Fair Housing Marketing requirements of 24 CFR 200.600 and review compliance with these requirements under 24 CFR Part 108, the AFHM Compliance Regulations.

Agency form numbers, if applicable: HUD 935.2.

Members of affected public: Applicants for mortgage insurance under the Department's insured single family and multifamily programs.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis, 2,500 respondents, 1 response per respondent, 2,500 total responses, 1,875 total burden hours.

Status of the proposed information collection: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 19, 1996.

Laurence D. Pearl,

Acting Deputy Assistant Secretary for Policies and Initiatives.

[FR Doc. 96–22028 Filed 8–28–96; 8:45 am]

BILLING CODE 4210–28–M

[Docket No. FR–4086–N–34]

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing & Urban Development, 451—7th Street, SW, Room 5124, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Nathaniel K. Smith, (202) 708–2740 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Civil Rights Tenant Characteristics/Occupancy Report, Insured Unsubsidized Housing Programs.

OMB Control Number: 2529–0007.

Description of the need for the information and proposed use: Management Agents of HUD insured unsubsidized housing programs furnish resident information concerning race/ethnicity and gender of tenant household heads; to assist the Department in carrying out its responsibility for assuring that Federal statutes that prohibit discrimination and provide for fair housing are met.

Agency form numbers, if applicable: HUD 949.

Members of affected public: Owners or management agents of HUD insured unsubsidized housing programs.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis, 4,000 respondents, 2.3 responses per respondent, 9,200 total responses, 4,938 total burden hours.

Status of the proposed information collection: Revision of a currently approved collection, with minor changes.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 19, 1996.

Laurence D. Pearl,

Acting Deputy Assistant Secretary for Policies and Initiatives.

[FR Doc. 96–22029 Filed 8–28–96; 8:45 am]

BILLING CODE 4210–28–M

[Docket No. FR–4086–N–35]

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing & Urban Development, 451–7th Street, SW, Room 5124, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear, (202) 708–2215, x303, (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Fair Housing Initiatives Programs Application Kit and Reporting Requirements.

OMB Control Number: 2529–0033.

Description of the need for the information and proposed use: The Fair Housing Initiatives Program will provide funds to public and private agencies involved in carrying out programs that prevent or eliminate discriminatory housing practices prohibited by the Fair Housing Act—Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19. The funded organizations will develop, implement, and carry out programs designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws.

Agency form numbers, if applicable: NA.

Members of affected public: State and local governments or their agencies, public and private non-profit organizations, or other public and private entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 400 respondents, one response annually per respondent applying for funding, 53 average hours per response, 21,200 burden hours; 70 out of 400 respondents selected for funding, 4 responses annually per respondent for reporting program and financial status, 8 average hours per response, 2,240 burden hours; and 70 respondents, one response annually for monitoring compliance with agency requirements, 8 average hours per response, 560 burden hours, 24,000 total burden hours.

Status of the proposed information collection: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 14, 1996.

Susan M. Forward,

Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96–22030 Filed 8–28–96; 8:45 am]

BILLING CODE 4210–28–M

[Docket No. FR–4066–N–37]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 28, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD-assisted Indian Housing Development Cost Budget and Project Characteristics.

OMB Control Number: 2577–0130.

Description of the need for the information and proposed use: HUD needs financial and project characteristics information for HUD-assisted development as required by the Final Rule, Part 950, Indian Housing Programs, which was published April 10, 1995. HUD has created a new form to ease the reporting burden for those Indian Housing Authorities (IHAs) who are processing development under the "Standard Method". IHAs will submit only a minimum amount of financial information using this form. Section 950.260(a) of the Final Rule requires IHAs to submit project characteristics information. HUD uses this information to monitor each of the stages of the development process: planning, construction start, and date of full availability to identify significant changes in the characteristics of the project.

Agency form numbers, if applicable: HUD–53045–A, HUD–53045–B, HUD–53046.

Members of affected public: State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: For the three forms, on a once per project basis, 219 respondents, one response per project, 219 total responses, 11 hours, 1,023 total burden hours.

Status of the proposed information collection: Revision.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 21, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Development Project Characteristics
Native American Low-Income Housing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0130 (exp. 7/31/98)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0130), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Do not send this form to the above address.

1. Legal Name of Housing Authority

2. Project Number

3. Stage ☐ Planning ☐ Construction Start ☐ DOFA/Other (specify)

4. Development Method ☐ Conventional ☐ Acquisition ☐ Turnkey ☐ Modified Turnkey ☐ Force Account
☐ Other (specify)

5. Layout ☐ Scattered ☐ Clustered

6. Reformulated ☐ Yes ☐ No

7. Total Net sq. ft. (project)

8. Average Room Size

9. Construction Type ☐ Masonry ☐ Mixed Masonry ☐ Frame (modular) ☐ Mixed (specify)

10. Construction Method ☐ Stick ☐ Manufactured/Modular ☐ Acquired ☐ Panelized

11. Program Type ☐ Mutual Help ☐ Rental

12. Foundation Type ☐ Slab On Grade ☐ Full Basement ☐ Partial Basement ☐ Crawl Space ☐ Post and Pad
☐ Concrete Masonry ☐ Poured Concrete ☐ Driven / Bored Pilings

13. Structure Type ☐ Single Family Detached ☐ Row or Townhouse Style ☐ Semi-Detached ☐ Zero Lot Line (duplex)
☐ Walk up / Multifamily Apartment ☐ Elevator Structure ☐ Mixed Type (acquired [nec])

14. Construction Contract Amount
$

15. Native American Contractor ☐ Yes ☐ No

16. Minority Contractor ☐ Yes ☐ No

17. Schedule of Buildings and Units

		Non-Elderly						Elderly			
	No. of Bldgs.	1 Br.	2 Br.	3 Br.	4 Br.	5 Br.	6 Br.	0 Br.	1 Br.	2 Br.	3 Br.
Totals											

DRAFT

18. Number of Non-Dwelling Buildings

Comments

Submitted by

Date

form HUD-53046 (07/17/96)
ref. Indian Housing Development Guidebook

Instructions for Preparing Development Project Characteristics, form HUD-53046.

A. **General.** Submit this form to the Area or Division Office of Native American Programs (ONAP) at each of the following stages of the development process:

Planning

Construction Start

Date of Full Availability (DOFA)

The form may also be submitted anytime during the development process to notify ONAP of significant changes in the characteristics of the project.

1. Enter full legal name of the Housing Authority.
2. Enter the complete project number. Example: AZ99B001099
3. Identify at which stage this form is being submitted.
4. Identify the development method used for this project.
5. Identify the site layout for this project.
6. Indicate whether this project was created through reformulation.
7. Enter the total net square footage of the project dwellings.
8. Enter the average number of rooms for all units in the project.
9. Identify the construction type used for this project.
10. Identify the construction method used for this project.
11. Identify the program type for this project.
12. Identify the foundation type used for this project.
13. Identify the structure type used for this project.
14. Identify the original contract amount for the project.
15. Specify whether the general contractor is an Indian-owned business.
16. Specify whether the general contractor is a minority business enterprise.
17. Indicate the number of buildings and units (by bedrooms) for non-elderly occupancy and the number designed for elderly occupancy for this project.
18. Indicate the number of non-dwelling units for this project. Describe in the Comments section the usage of any non-dwelling units.

Add any comments necessary.

DRAFT

Development Cost Budget - Assisted Method

Native American Low-Income Housing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0130 (exp. 7/31/98)

1. Legal Name of Housing Authority	3. Budget Submission Number	4. Project Number
2. Project Location	5. Development Method	6. Program Type

	Elderly	Nonelderly	Total
7. No. of Units:			

8. Purpose

- ☐ Planning Budget
- ☐ Construction Stage Budget
- ☐ Contract Award (CA)/Contract of Sale
- ☐ Between CA and Final
- ☐ Final Budget
- ☐ Semi-Annual Development Cost Statement
- ☐ Statement of Actual Development Cost (with ADCC)

Subpart I. Budget

Line No. (1)	Account Classification (2)		Last Budget (3)	Actual Development Cost Incurred to (/ /) (4)	Actual/Estimated Additional to Complete (5)	Total Development Cost: Per Unit (6)	Total Development Cost: Amount Sum of (4)+(5) (7)
Developer's Price							
1	1440	Site					
2	1450	Site Improvement					
3	1460	Dwelling Construction					
4	1465	Dwelling Equipment					
5	1470	Nondwelling Construction					
6	1430.1	Architectural and Engineering Services					
7	Other						
8	1482	**Total Developer's Price** (sum of lines 1 - 7)					
Housing Authority Costs: Administration							
9	1410.1	Nontechnical Salaries					
10	1410.2	Technical Salaries					
11	1410.3	Work - MH Contribution					
12	1410.4	Legal Expenses					
13	1410.9	Employee Benefit Contribution					
14	1410.10	Travel					
15	1410.11	Audit					
16	1410.17	Insurance					
17	1410.19	Sundry					
18	1410	**Total Administration** (sum of lines 9 - 17)					
19	1415	**Liquidated Damages**					
20	1418	**Counseling Costs**					
21	1420	**Total Interest**					
22	1425	**Initial Operating Deficit**					
Planning							
23	1430.1	Architectural and Engineering Fees					
24	1430.2	Consultant Fees					
25	1430.6	Permit Fees					
26	1430.7	Inspection Costs					
27	1430.9	Housing Surveys					
28	1430.19	Sundry Planning Costs					
29	**Total Planning** (sum of lines 23 - 28)						
Site Acquisition							
30	1440.1	Property Purchases (or Leases)					
31	1440.4	Surveys and Maps					
32	1440.5	Appraisals					
33	1440.6	Title Information					
34	1440.7	Site - MH Contribution					
35	1440.8	Legal Costs - Site					
36	1440.10	Option Negotiations					
37	1440.12	Current Tax Settlement					
38	1440.19	Sundry Site Costs					
39	**Total Site Acquisition** (sum of lines 30 - 38)						

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Legal Name of Housing Authority			Project Number				
Subpart I. Budget (con't.)							
Line No.	Account Classification		Last Budget	Actual Development Cost Incurred to (/ /)	Actual/ Estimated Additional to Complete	Total Development Cost Per Unit	Total Development Cost Amount Sum of (4)+(5)
(1)	(2)		(3)	(4)	(5)	(6)	(7)
Site Improvement							
40	1450.0	Site Improvements					
41	1450.1	Work-MH Contribution					
42	1450.2	Materials and Equipment - MH Contribution					
43	1450.3	Other MH Contributions					
44	1450.9	IHS Off-site Water and Sewer					
45	**Total Site Improvement** (sum of lines 40 - 44)						
Dwelling Structures							
46	1460.0	Dwelling Structures					
47	1460.1	Work-MH Contribution					
48	1460.2	Materials and Equipment - MH Contribution					
49	1460.3	Other MH Contributions					
50	**Total Dwelling Structures** (sum of lines 46 - 49)						
Dwelling Equipment							
51	1465.1	Dwelling Equipment Nonexpendable					
52	1465.2	Dwelling Equipment Expendable					
53	1465.3	Dwelling Equipment-MH Contribution					
54	**Total Dwelling Equipment** (sum of lines 51 - 53)						
Nondwelling Structures							
55	1470.0	Nondwelling Structures					
56	1470.1	Work-MH Contribution					
57	1470.2	Materials and Equipment - MH Contribution					
58	1470.3	Other MH Contributions					
59	**Total Nondwelling Structures** (sum of lines 55 - 58)						
Nondwelling Equipment							
60	1475.1	Office Furniture and Equipment					
61	1475.2	Maintenance Equipment					
62	1475.3	Community Space Equipment					
63	1475.4	Computer Equipment					
64	1475.7	Automotive Equipment					
65	1475.9	Expendable Equipment					
66	1475.10	Nondwelling Equipment-MH Contribution					
67	**Total Nondwelling Equipment** (sum of lines 60 - 66)						
68	1480	**Contract Work in Progress**					
69	1485	**Demolition Costs**					
70	1495	**Relocation Costs**					
71							
72							
73	**Subtotal** (sum of lines 8, 18 - 22, 28, 39, 45, 50, 54, 59, 67 - 72)						
74	1406	**Management Cost Allocation**					
75	1499	**MOD Costs Funded by Development**					
76	**Contingency** (1% or 5% or less of line 73)						
77	1499.2	**Total Development Cost** (sum of lines 73 - 76)					
78	**Donations**						
79	**Development Cost including Donations** (lines 77 + 78)						

DRAFT

The HA approving official hereby certifies and ensures that it will comply with the regulations and requirements with respect to the acceptance and use of Federal funds for this Federally-assisted program.

Signature of HA Approving Official — Date

Signature of HUD Reviewing Official — Date

Legal Name of Housing Authority	Project Number

Subpart II. TDC Cap Calculation		Subpart III. Mutual Help Contribution Calculation	
1. Line 79 Development Cost		1. Cash	
2. Minus: Line 74 1406 Management Cost Allocation		2. 1410 MHC Subaccount (Line 11)	
3. Line 44 1450.9 IHS Off-site Water and Sewer		3. 1440 MHC Subaccount (Line 34)	
4. Line 75 1499 MOD Costs Funded by Development		4. 1450 MHC Subaccounts (sum of lines 41 - 43)	
5. Line 78 Donations		5. 1460 MHC Subaccounts (sum of lines 47 - 49)	
6. Plus: Form HUD-52825 or HUD-52837 1498 Development Costs Funded by MOD		6. 1465 MHC Subaccount (Line 53)	
		7. 1470 MHC Subaccounts (sum of lines 56 - 58)	
7. Total Development Cost Cap		8. 1475 MHC Subaccount (line 66)	
		9. Total Mutual Help Contribution (sum of all lines should equal $1,500 times the number of units)	

Remarks:

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Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0130), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number. Do not send this form to the above address.

Instructions for Preparing Development Cost Budgets

A. General.

1. Form HUD-53045-A must be used by HA's who are receiving HUD assistance in the development process, either voluntarily or as the result of a corrective action order. HA's who are processing development under the "Standard" or "Non-Assisted" method may instead submit form HUD-53045-B.

a. For the first budget (Planning Budget), complete only columns 5, 6, and 7 of Subpart I. Complete all applicable lines of Subparts II and III.

b. Round off all amounts to the nearest dollar.

c. Where descriptions or supplementary data are required, use the Remarks section or an attached sheet, identifying the applicable item.

2. Prepare an original and two copies for all Development Cost Budgets and submit to the appropriate Area or Division ONAP.

3. Budgets should cover all of the housing to be built under a single project number, whether on one or several sites.

4. For descriptions of the cost accounts to be used, see the Public and Indian Housing Low-Rent Technical Accounting Guide, 7510.1. The Area or Division ONAPs will assist HAs upon request in the distribution of costs to individual accounts.

B. Heading

1. Legal Name of Housing Authority: Enter the full legal name of the Housing Authority.

2. Project Location: Identify the location of the project.

Example: Window Rock, AZ

3. Budget Sequence Number:

a. If submitting a budget, identify the budget sequence number. If it is the first budget for that project enter number 1. The next budget submission for that project should be identified as budget sequence number 2 and so forth.

b. If submitting a cost statement, leave blank.

4. Project Number: Enter the complete project number.

Example: AZ99B001099

5. Development Method: Identify the predominant development method used: Conventional, Turnkey, Modified Turnkey, Acquisition, Force Account, or Self Help

6. Program Type: Identify the program type: LR - Low Rent, NMH - New Mutual Help

7. Number of Units: Specify the number of units which are being developed as Elderly units and the number being developed as Nonelderly. The sum of the two numbers should equal the total number of units being constructed for that project.

8. Purpose: Place an X next to the description which most closely matches the purpose of the submission.

C. Subpart I. Budget

1. Column Entries.

a. Last Budget: Enter the amounts from the most recent HUD reviewed budget. This column should only be left blank if the Housing Authority is submitting the project's first budget (Budget Sequence Number 1).

b. Actual Development Cost Incurred to:

1) If submitting an Actual Development Cost Statement or a budget, identify the date through which the actual development costs have been incurred.

2) If submitting semi-annual cost statements, enter the date on which the reporting period ended (i.e., 6/30/96 or 12/31/96).

c. Actual/Estimated Additional to Complete: Use this column to reflect the additional estimated or actual costs for completing the development work.

d. Total Development Cost/Per Unit: Complete column 7 first then calculate the per unit cost by dividing the amount in column 7 by the total number of units identified in the heading.

e. Total Development Cost/Amount: This column is the sum of columns 4 and 5.

2. Line Entries

a. Turnkey and Conventional Projects.

1) Turnkey. The account classifications for Developer's Price, lines 1 through 8, are to be completed only for projects being developed under the Turnkey method. Where the developer is not providing the site, no entry will be made in line 1, Account 1440; instead, just as for conventional projects, lines 30 through 39 will be completed. For a developer-provided site, entries will be made for site acquisition costs to the HA, e.g., appraisals (line 32) where required (see item g below). The Total Developer's Price will be the price agreed upon at the Feasibility Conference by the developer and the HA (and HUD-assisted method only). The amounts entered for site, architectural and engineering services should be the amounts to be included with the Preliminary Contract of Sale for the eventuality of separate purchase by the HA. The amount entered for Other should be the sum of (1) the Developer's Fee and Overhead, (2) Interim Financing, and (3) Closing Costs. In the case of turnkey projects, planning costs reviewed by the Area or Division ONAP will allow for entries in lines 23 and 24 as well as in line 6 , in addition to the required services for which entry will be made in line 26.

2) Conventional. For conventional projects, lines 1 through 8 will remain blank. The Schematic Design Documents and Architect's Estimate of Project Construction Cost will provide a basis for reasonable estimates for costs of Site Improvements - Account 1450, Dwelling Structures - Account 1460, and Nondwelling Structures - Account 1470. The Area or Division ONAP may be requested to assist in preparing appropriate estimates for Dwelling and Nondwelling Equipment - Accounts 1465 and 1475. The estimate shall be accompanied by supporting data showing items and the cost of each.

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b. 1410 Administration (lines 9 through 18). HAs with experience in the development and management of low-income housing should estimate administration costs on the basis of such experience, as applicable, for the current development method. For turnkey projects, there will be less administration activity normally than for conventional projects. The amounts for the various subaccounts shall be the costs of the items of expense which are directly traceable to and essential in the planning, construction and completion of the project, and the prorata amounts of the HA's total administration costs in respect to the items which are not wholly traceable to the project. Administration (1410) and Planning (1430) Costs ordinarily terminate with the End of the Initial Operating Period (EIOP). After this date only costs of personnel employed in development work specifically applicable to the particular project (e.g., employee or architect engaged in warranty inspections) may be charged to these accounts.

1) 1410.3 Work - MH Contribution (line 11). This account shall be charged with that portion, if any, of the MH contribution attributed to work furnished to the HA (for which the contractor is not responsible) for administrative purposes by or on behalf of the Homebuyer Families.

2) 1410.1 and 1410.2 Nontechnical and Technical Salaries (lines 9 and 10). The following supporting data shall accompany the estimates for Nontechnical and Technical Salaries: List, by job title, each HA employee whose salary, or portions thereof, will be chargeable to these accounts. For each, show the annual rate of the gross salary, the estimated length of time the employee will spend in connection with the development of the project, and the total of the gross salary which is properly chargeable to either of these accounts. If only a portion of the employee's time will be chargeable to this project, show the percentage that will be so chargeable and show, in a footnote, the percentage distribution to other projects and the accounts to which distributed.

3) 1410.11 Audit (line 15). This expense has been separated from account 1410.19 Sundry and should reflect the prorata amount of audit expense chargable to the project.

4) 1410.17 Insurance (line 16). This expense has been separated from account 1410.19 Sundry and should reflect the prorata amount of insurance expense chargable to the project.

5) 1410.19 Sundry (line 17). The estimate for the Sundry Account shall include supporting data as follows: List and show the cost of each item of administrative and general expense for which a specific account is not provided in the 1410 group of accounts. This includes expenses for publications, membership dues, and telephone, which are no longer separate 1410 subaccounts. If only a portion of the cost of any item will be chargeable to this project, show the percentage and amount that will be so chargeable and show, in a footnote, the percentage distribution to other projects.

c. 1418 Counseling Costs (line 20). This account shall be charged with the cost of counseling to be provided to participating families.

d. 1420 Total Interest (line 21). Actual or estimated interest expense for loan projects (reserved prior to FY 1987) is reflected on this line. Grant projects (reserved FY 1987 or after) do not have interest expense.

e. 1425 Initial Operating Deficit (line 22). In the absence of dependable previous experience data on which to base a preliminary estimate of the initial operating deficit, an allowance not to exceed $50 per dwelling unit may be used.

f. 1430 Planning (lines 23 through 29). For turnkey projects generally, architectural-engineering services will be included in the Developer's price except for periodic inspection of construction by an independent architect employed by the HA (Account 1430.7).

1) 1430.1 Architectural and Engineering Fees (line 23). Architectural and engineering fees shall not exceed those set forth in the Schedule of Fees of the architect's contract.

2) 1430.2 Consultant Fees (line 24). The architect's contract provides that consultants retained by the architect must be paid under the terms of the architect's contract. Fees to be paid to other consultants should be included under this account and shall be accompanied by supporting data.

3) 1430.6 Permit Fees (line 25). If building or other similar fees have to be paid by the HA, include the estimated amount under this account.

4) 1430.7 Inspection Costs (line 26). This estimate shall be accompanied by supporting data consisting of an itemized breakdown of the costs chargeable to this account. Include in the breakdown, by job title, a list of employees of the architect or of the HA who will perform inspection work for the project, and show for each the same information as required in item b.2 above.

5) 1430.9 Housing Surveys (line 27). The cost of all housing surveys and comprehensive planning shall be charged to this account. Include in this account the cost of printing reports in connection with the survey.

6) 1430.19 Sundry Planning Costs (line 28). In the absence of actual experience, the HA should request advice from the Area or Division ONAP for this estimate.

g. 1440 Site Acquisition (lines 30 through 39).

1) 1440.1 Property Purchases (or Leases) (line 30). Costs in excess of $1,500 per site must be supported by an appraisal.

2) 1440.5 Appraisal Fees (line 32). This account shall be charged with (1) the costs incurred by the HA, if any, for appraisals of land or improvements for sites to be provided by the HA and (2) with costs incurred for obtaining appraisals of a developer-owned site for a turnkey project. No appraisal fee shall be included if the appraisals were conducted by the Bureau of Indian Affairs.

3) 1440.6 Title Information (line 33). No charge shall be made to this account where a BIA Title Status Report is utilized in accordance with the Interdepartmental Agreement.

h. 1450 - 1475, 1485 Construction and Equipment (lines 40 - 47, and 69)

1) Not in Contract (NIC). On supporting documentation, list the work and equipment (including vendor name(s)) not included under a formal construction contract (e.g., utilities extension/connection costs).

2) Force Account. On supporting documentation, list approved force account labor and material cost items for each applicable account.

i. 1480 Contract Work in Progress (line 68). Prior to the final budget, this account shall be charged with the amount(s) of the contruction contract as reflected on form HUD-52396, Analysis of Proposed Main Construction Contract. Show on the Final Budget all construction contract amounts (including all approved changes) which were initially reflected at Account 1480 at contract award. Each final construction contract amount should be distributed to the appropriate subsidiary account (Accounts 1450 through 1475) after the final billing under each contract. All such costs will therefore

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be entered in column (4) as an actual cost incurred. The Final Budget shall be accompanied by supporting data listing (a) the name of the contractor and type of work performed under each construction contract executed; (b) each original contract amount established and shown on form HUD-52396 at Contract Award stage; (c) a listing and identification of account classification for each change order approved for each construction contract; and (d) each final contract amount, including all change orders.

j. **1406 Management Cost Allocation (line 74).** This account shall be charged with not more than 10 percent of the approved development grant amount for any operating subsidy purpose. This amount is in addition to HA Administration costs allocated to the development grant. See Notice (in clearance at this time) for additional information.

k. **1499 MOD Costs Funded by Development (line 75).** This account shall be charged with any amount approved to fund allowable modernization activities of any active modernization project. See Notice (in clearance at this time) for additional information.

l. **Contingency (line 76).** Typically, not more than 5 percent for conventional projects, nor more than 1 percent for turnkey, of line 73 Subtotals.

m. **Donations (line 78).** For donations, see account 2850 in the PIH Low-Rent Technical Accounting Guide, 7510.1. A donation represents a cash donation and the reasonable value of property donated to the project. A Mutual Help contribution is not a donation. Any cost met from cash donations and the value of any donations in kind will be included under the appropriate cost account.

D. Subpart II. TDC Cap Calculation

Bring forward the totals from lines 44, 74, 75, and 78 from Subpart I, column 7. Identify any 1498 Development Costs Funded by MOD accounts for the identified project from approved form HUD-52825, CIAP Budget/Progress Report, or form HUD-52837, Annual Statement/Performance and Evaluation Report. See Notice (in clearance at this time) for additional information.

E. Subpart III. Mutual Help Contribution Calculation

Identify the amount of cash provided as Mutual Help Contribution. Bring forward the totals from lines 11, 34, 53, and 66 from Subpart I, column 7. Calculate the sums of lines 41-43, 47-49, and 56-58 from Subpart I, column 7, and bring forward the totals.

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Development Cost Budget - Standard Method

Native American Low-Income Housing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0130 (exp. 7/31/98)

1. Legal Name of Housing Authority		4. Project Number	
2. Project Location	5. Development Method	6. Program Type	
		Elderly	Nonelderly	Total
	7. No. of Units:			

8. Purpose
- ☐ Planning Budget
- ☐ Construction Stage Budget
- ☐ Contract Award (CA)/Contract of Sale
- ☐ Between CA and Final
- ☐ Final Budget
- ☐ Semi-Annual Development Cost Statement
- ☐ Statement of Actual Development Cost (with ADCC)

9. Budget Sequence Number _____ 10. Costs Incurred through ____/____/____

Subpart I. Budget

Line No. (1)	Account Classification (2)		Latest Approved Budget (round to the nearest $) (3)	Total Development Cost (round to the nearest $) (4)
1	1482	Total Developer's Price		
2	1410	Total Administration		
3	1415	Liquidated Damages		
4	1418	Counseling Costs		
5	1420	Total Interest		
6	1425	Initial Operating Deficit		
7	1430	Total Planning		
8	1440	Total Site Acquisition		
9	1450	Total Site Improvement		
10	1460	Total Dwelling Structures		
11	1465	Total Dwelling Equipment		
12	1470	Total Nondwelling Structures		
13	1475	Total Nondwelling Equipment		
14	1480	Contract Work in Progress		
15	1485	Demolition Costs		
16	1495	Relocation Costs		
17	Subtotal (sum of lines 1 thru 16)			
18	1406	Management Cost Allocation		
19	1499	MOD Costs Funded by Development		
20	Contingency (1% or 5% or less of line 17)			
21	1400.2	Total Development Cost (sum of lines 17 thru 20)		
22	Donations			
23	Development Cost Including Donations (lines 21 plus 22)			

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Subpart II. TDC Cap Calculation

1. Line 23	Development Cost Including Donations		
2. Minus: Line 18	1406	Management Cost Allocation	
3.	1450.9	IHS Off-site Water and Sewer	
4. Line 19	1499	MOD Costs Funded by Development	
5. Line 22	Donations		
6. Plus:	Form HUD-52825 or HUD-52837		
	1498	Development Costs Funded by MOD	
7. Total Development Cost Cap			

Subpart III. Mutual Help Contribution Calculation

1. Cash	
2. 1410.3	
3. 1440.7	
4. Sum of Accounts 1450.1, 1450.2, and 1450.3	
5. Sum of Accounts 1460.1, 1460.2, and 1460.3	
6. Account 1465.3	
7. Sum of Accounts 1470.1, 1470.2, and 1470.3	
8. Account 1475.10	
9. Total Mutual Help Contribution (sum of all lines should equal $1,500 times the number of units)	

The HA approving official hereby certifies and ensures that it will comply with the regulations and requirements with respect to the acceptance and use of Federal funds for this Federally-assisted program.

Signature of HA Approving Official _____ Date _____

Signature of HUD Reviewing Official _____ Date _____

form HUD-53045-B (07/17/96)
ref. Indian Housing Development Guidebook

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0130), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Do not send this form to the above address.

Instructions for Preparing Development Cost Budget

A. General

1. Form HUD-53045-B may be used by HA's who are processing development under the "Standard" or "Non-Assisted" method. HA's who are receiving HUD assistance in the development process, either voluntarily or as the result of a corrective action order, must continue to submit form HUD-53045-A.

2. Prepare an original and two copies for all Development Cost Budgets and submit to the appropriate Area or Division ONAP.

3. Detailed information for the accounts included on this form can be found in the instructions for form HUD-53045-A or the Public and Indian Housing Low-Rent Technical Accounting Guide, 7510.1.

4. To ensure the accurate entry of budget information into LOCCS by ONAP Offices, all Subparts of the form must be completed.

B. Heading

1. **Legal Name of Housing Authority:** Enter the full legal name of the Housing Authority.

2. **Project Location:** Identify the location of the project.

Example: Window Rock, AZ

3. Reserved.

4. **Project Number:** Enter the complete project number.

Example: AZ99B001099

5. **Development Method:** Identify the predominant development method used: Conventional, Turnkey, Modified Turnkey, Acquisition, Force Account, or Self Help

6. **Program Type:** Identify the program type:

LR - Low Rent NMH - New Mutual Help

7. **Number of Units:** Specify the number of units which are being developed as Elderly units and the number being developed as Nonelderly. The sum of the two numbers should equal the total number of units being constructed for that project.

8. **Purpose:** Place an X next to the description(s) which most closely matches the purpose of the submission.

9. **Budget Sequence Number:**

a. If submitting a budget, identify the budget sequence number. If it is the first budget for that project enter number 1. The next budget submission for that project should be identified as budget sequence number 2 and so forth.

b. If submitting a cost statement, leave blank.

10. **Costs Incurred Through:**

a. If submitting an Actual Development Cost Statement, identify the date through which the actual development costs were incurred.

b. If submitting semi-annual cost statements, enter the date on which the reporting period ended (i.e., 6/30/96 or 12/31/96).

c. If submitting a budget, leave blank.

C. Subpart I. Budget

1. **Latest Approved Budget, Column 3:**

Enter the amounts from the most recent HUD reviewed budget. This column should only be left blank if the housing authority is submitting the project's first budget (Budget Sequence Number 1).

2. **Total Development Cost, Column 4:**

a. When submitting a budget, enter the requested budget amounts in this column.

b. When submitting a cost statement, enter the actual development costs incurred up to and including the date identified in box 10.

3. **Line 1, 1482 Total Developer's Price,** should include all costs incurred for the developer's price under a turnkey development method.

4. **Line 2, 1410 Total Administration,** should reflect the total of all 1410 subaccounts.

5. **Line 3, 1415 Liquidated Damages,** should reflect the balance from account 1415.

6. **Line 4, 1418 Counseling Costs,** should reflect the balance from account 1418.

7. **Line 5, 1420 Total Interest,** should reflect the total of all 1420 subaccounts.

8. **Line 6, 1425 Initial Operating Deficit,** should reflect the debit or credit balance from account 1425.

9. **Line 7, 1430 Total Planning,** should reflect the total of all 1430 subaccounts.

10. **Line 8, 1440 Total Site Acquisition,** should reflect the total of all 1440 subaccounts.

11. **Line 9, 1450 Total Site Improvement,** should reflect the total of all 1450 subaccounts.

12. **Line 10, 1460 Total Dwelling Structures,** should reflect the total of all 1460 subaccounts.

13. **Line 11, 1465 Total Dwelling Equipment,** should reflect the total of all 1465 subaccounts.

14. **Line 12, 1470 Total Nondwelling Structures,** should reflect the total of all 1470 subaccounts.

15. **Line 13, 1475 Total Nondwelling Equipment,** should reflect the total of all 1475 subaccounts.

16. **Line 14, 1480 Contract Work In Progress,** should reflect the balance from account 1480.

17. **Line 15, 1485 Demolition Costs,** should reflect the balance from account 1485.

18. **Line 16, 1495 Relocation Costs,** should reflect the balance from account 1495.

19. **Line 17, Subtotal,** is the sum of lines 1 thru 16.

20. **Line 18, 1406 Management Cost Allocation,** should be charged with the amount of development funds, not to exceed 10% of the approved development grant, allocated by the housing authority to be used for operating expenses of projects included under Section 9 of the U.S. Housing Act, as amended.

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21. **Line 19, 1499 MOD Costs Funded by Development,** should reflect any funds originally reserved for this project which are to be used for modernization activities. See Notice (notice in clearance at this time) for further information.

22. **Line 20, Contingency,** should include any funds set aside for contingency purposes.

23. **Line 21, 1400.2 Total Development Cost,** is the sum of lines 17 thru 20.

24. **Line 22, Donations,** should include any donations to the project. A Mutual Help contribution is not a donation.

25. **Line 23, Total Development Cost,** is the total of lines 21 thru 22.

D. Subpart II. TDC Cap Calculation

1. Use figures from column 4 if submitting the project's first budget or a budget revision. Use figures from column 3 for all other submissions.

2. **Line 1,** transfer the total from Subpart I, Line 23.

3. **Line 2,** transfer the total from Subpart I, Line 18.

4. **Line 3,** should reflect the total of account 1450.9, IHS Off-Site Water and Sewer as budgeted.

5. **Line 4,** transfer the total from Subpart I, Line 19.

6. **Line 5,** transfer the total from Subpart I, Line 22.

7. **Line 6,** should reflect the total of any funds included in account 1498, Development Costs Funded by MOD, for this project as identified on approved form HUD-52825, CIAP Budget/Progress Report, or form HUD-52837, Annual Statement/Performance and Evaluation Report. See Notice (notice in clearance at this time) for further information.

8. **Line 7,** the sum of lines 1 and 6, minus lines 2 thru 5.

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E. Subpart III. Mutual Help Contribution Calculation

1. Use figures from column 4 if submitting the project's first budget or a budget revision. Use figures from column 3 for all other submissions.

2. **Line 1,** should reflect any MH Contributions of cash.

3. **Line 2,** should reflect the total of account 1410.3, Administration, Work-MH Contribution.

4. **Line 3,** should reflect the total of account 1440.7, Site Acquisition, Site-MH Contribution.

5. **Line 4,** should reflect the total of accounts 1450.1, 1450.2, and 1450.3, respectively; Site Improvement, Work, Materials and Equipment, and Other-MH Contributions.

6. **Line 5,** should reflect the total of accounts 1460.1, 1460.2, and 1460.3, respectively; Dwelling Structures, Work, Materials and Equipment, and Other-MH Contributions.

7. **Line 6,** should reflect the total of account 1465.3, Dwelling Equipment-MH Contribution.

8. **Line 7,** should reflect the total of accounts 1470.1, 1470.2, and 1470.3, respectively; Nondwelling Structures, Work, Materials and Equipment, and Other-MH Contributions.

9. **Line 8,** should reflect the total of account 1475.10, Nondwelling Equipment-MH Contribution.

10. **Line 9,** the sum of line 1 thru 8.

[FR Doc. 96–22031 Filed 8–28–96; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Emergency Approval Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for emergency approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below or the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, D.C. 20503, telephone 202/395–3561.

Title: Federal Subsistence Hunt Application and Permit and Designated Hunter Permit Application and Permit.

OMB Approval Number: 1018–0075.

Form Number: 7–FS 1 (Federal Subsistence Hunt Application) and 7–FS 2 (Federal Subsistence Application for the Designated Hunter).

Abstract: The Alaska National Interest Lands Conservation Act (ANILCA) and Fish and Wildlife Service regulations, found in 50 CFR 100, require that persons engaged in taking fish and wildlife must comply with reporting provisions of the Federal Subsistence Board.

The harvest activity must be reported. In many cases, a special permit is required for the rural resident to be able to participate in special hunts. The harvest information is needed in order to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. Once harvest success information is evaluated, the Federal Subsistence Board utilizes this information, along with other information, to set future seasons and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set in order to meet the needs of subsistence hunters without adversely impacting the health of existing wildlife populations. The Federal Subsistence Hunt Application and Permit also provides a mechanism to allow Federal subsistence users the opportunity to participate in special hunts that are not available to the general public but are mandated by Title VIII of ANILCA. Both reports provide for the collection of the necessary information; however, the Designated Hunter Report is unique in that it allows the reporting of the harvest of multiple animals by a single hunter who is acting for others. The Designated Hunter Application and Permit also serves as a special permit allowing qualified subsistence users to harvest fish or wildlife for others.

The collection of information is needed prior the expiration of time periods established under 5 CFR 1320, and is essential to the missions of the Fish and Wildlife Service and the Federal Subsistence Board. Without this information public harm would occur as a result of the Service's inability to set subsistence seasons and harvest limits to meet users' needs without adversely impacting the health and the animal population. The Service has initiated steps to begin the standard OMB clearance process.

Frequency: On occasion.

Description of Respondents: Individuals or households.

Estimated Completion Time: .25 hours or 15 minutes each.

Annual Responses: 4,500 (Federal Subsistence Hunt Application and Permit); 7,000 (Designated Hunter Permit Application and Report).

Total Annual Burden Hours: 2,875 hours.

Service Clearance Officer: U.S. Fish and Wildlife Service, (MS 224 ARLSQ); 1849 C Street, NW., Washington, D.C. 20240, telephone, 703/358–1943.

Dated: August 22, 1996.

Phyllis H. Cook,

Information, Collection Clearance Officer.

[FR Doc. 96–22080 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WO–300–1310–00]

Green River Basin Advisory Committee, Colorado and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Green River Basin Advisory Committee.

SUMMARY: This notice announces the dates, time, and schedule and initial agenda for a meeting of the Green River Basin Advisory Committee (GRBAC).

DATES: September 18, 1996, the business portion from 8:00 a.m. until 4:00 p.m., at which time oral comments will be heard, and September 19, 1996, from 8:00 a.m. until 3:00 p.m.

ADDRESSES: Wyoming National Guard Armory, 923 3rd St., Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, GRBAC Coordinator, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone (307) 775–6020.

SUPPLEMENTARY INFORMATION: The topics for the meeting will include:

(1) Subgroup reports.

(2) Presentations on existing road density and transportation planning.

(3) Briefing on cumulative impacts.

(4) Update of Southwest Wyoming Resource Evaluation study.

(5) Public comment.

This meeting is open to the public. Persons interested in making oral comments or submitting written statements for the GRBAC's consideration should notify the GRBAC Coordinator at the above address by September 13. Persons wishing to orally address the GRBAC must register by 4:00 p.m. The GRBAC will hear oral comments beginning at 4:00 p.m. on September 18 and will continue until all speakers have been heard. The GRBAC may establish a time limit for oral statements.

Dated: August 22, 1996.

Mat Millenbach,

Acting Director, Bureau of Land Management.

[FR Doc. 96–21995 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–84–M

[CA–060–06–1430–00, CACA 36825]

Notice of Realty Action; Classification of Public Lands for Recreation and Public Purposes, San Diego County, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action; Recreation and Public Purpose Act Classification, San Diego County, California.

SUMMARY: The following described land has been examined and found suitable for classification for conveyance to the City of San Diego under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq*).

San Bernardino Meridian

T.17S., R.4W.,

Section 1, a portion of lot 37, containing 5.445 acres of withdrawn public land, more or less, which is north and adjacent to existing Tract 38.

SUPPLEMENTARY INFORMATION: The City of San Diego has applied to acquire approximately 5.445 acres of withdrawn public land for uses associated with the Point Loma Wastewater Treatment Plant. The land will be immediately conveyed and developed in accordance with the plan of development. The

lands are not needed for Federal purposes, and conveyance would be consistent with the 1994 South Coast Resource Management Plan. The conveyance of the land would be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior.

2. A right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

3. A reservation of all minerals to the United States, and the right to prospect, mine remove the minerals.

Publication of this Notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, but not the Recreation and Public Purpose Act.

Detailed information concerning this action, including a metes & bounds description of the land is available for review at the California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. For a period of 45 days after publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days after publication of this notice in the **Federal Register**.

Dated: August 21, 1996.

Alan Stein,

Acting District Manager.

[FR Doc. 96–22084 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–40–M

National Park Service

Proposed Collection of Information—Opportunity for Public Comment

The National Park Service Visitor Services Project, based at the Cooperative Park Studies Unit of the University of Idaho, is proposing to conduct visitor studies at the following parks during 1997:

Park	Est. No. of responses	Burden hrs.
Virgin Islands National Park	600	96
Washington Monument	500	80
Martin Luther King, Jr. National Historic Site	400	64
Mojave National Preserve	600	96
Chattahoochee River National Recreation Area	600	96
Voyageurs National Park	800	128
Bryce Canyon National Park	500	80
Lincoln Boyhood National Memorial	400	64
Lowell National Historical Park	500	80
Grand Teton National Park	600	96
Biscayne National Park	500	80
Annual Totals	6000	960

Abstract: NPS goal is to learn visitor demographics and visitors' opinions about services and facilities in these parks. Results will be used by managers to improve services, protect resources, and better serve the visitors.

Bureau Form Number: None.

Burden hours: The burden hour estimates are based on 12 minutes to complete each questionnaire and the 80% return rate goal.

Frequency: 7 days at each park.

Description of Respondents: Visitor groups are contacted as they enter the park and are given a mail-back questionnaire if they agree to participate in the survey.

Estimated Completion Time: 12 minutes.

Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to evaluate services and facilities that they used in the parks. The burden is minimized by only contacting visitors during a 7 day period at each park.

The National Park Service is soliciting comments on the need for gathering the information in the proposed visitor studies listed above. The NPS is also asking for comments on the practical utility of the information being gathered, the accuracy of the burden hour estimate, the clarity of the information to be collected, and ways to minimize the burden to visitors to these parks. To obtain information or to make comments, contact: Dr. Gary E. Machlis, Visiting Chief Social Scientist, National Park Service, Main Interior Building, Room 3412, 1849 C Street, N.W., Washington, D.C. 20240, phone: 202–208–5391 or 208–885–7129; or Margaret Littlejohn, Visitor Services Project Coordinator, Cooperative Park Studies Unit, College of Forestry, Wildlife and Range Sciences, University of Idaho, Moscow, Idaho 83844–1133, phone: 208–885–7863.

Comments Due: No later than October 31, 1996.

Terry N. Tesar,

Bureau Clearance Officer.

[FR Doc. 96–22114 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–7–M

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Savoonga, AK in the Control of the Alaska State Office, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of the Alaska State Office, Bureau of Land Management, Anchorage, AK.

A detailed assessment of the human remains was made by the Bureau of Land Management professional staff and University of Alaska Museum professional staff in consultation with representatives of the Native Village of Savoonga.

Between 1931–1958, human remains representing 79 individuals were recovered from the Kukulik mounds by Otto Geist, Froelich Rainey, Wendell Oswalt, Ivar Skarland, and Albert Morton. No known individuals were identified. In 1934, a total of 2,190 associated funerary objects were recovered from the same burial sites, including; stone, bone, wood, iron, and ivory tools; walrus tooth and tusks; seal skull fragment; clay pottery sherds; bone armor plate fragments; walrus hide rope; baleen pieces; wooden bowls; bone spoons and meat forks; wooden effigy figures; and can, bottle, and window glass fragments.

Between 1931–1933, human remains representing four individuals were recovered from the Savoonga Village area or the Kukulik site by Otto Geist. No known individuals were identified. No associated funerary objects were present.

The Kukulik sites have been identified as burial sites of the 1879 epidemic and famine based on oral history, manner of internment, types of associated funerary objects, and historical documents. Oral history presented by Savoonga representatives indicates traditional knowledge of these burial sites and the direct descendency of the present-day Native residents of Savoonga to the survivors of the 1879

epidemic and famine at Savoonga Village.

In 1934 and 1948, human remains representing seven individuals were recovered from Punguuk Island by Otto Geist and Wendell Oswalt. No known individuals were identified. The one associated funerary object is a sample of unknown material.

In 1974, human remains representing two individuals were recovered by Zorro Bradley from the Kiyalighaq site. No known individuals were identified. No associated funerary objects were present.

The Punguuk Island and Kiyalighaq sites in the vicinity of Savoonga, AK listed above have been identified as occupied from approximately during the Okvik, Old Bering Sea, and Punuk periods based on site organization, habitation structures, and manner of internments. This ethnohistorical data indicate these occupations represent a continuity of cultural occupation of the Savoonga vicinity of St. Lawrence Island from approximately 300 AD to the historically documented epidemic and famine of 1879 AD. Oral tradition presented by representatives of the Native Village of Savoonga supports this evidence.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 92 individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 2,191 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Native Village of Savoonga.

This notice has been sent to officials of the Native Village of Savoonga. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, 1B13, Anchorage, AK 99513–7599; telephone: (907) 271–5510, before September 30, 1996. Repatriation of the human remains and associated funerary objects to the Native Village of Savoonga may begin after that date if no additional claimants come forward.

Dated: August 26, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology & Ethnography Program.

[FR Doc. 96–22115 Filed 8–28–96; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–384]

Certain Monolithic Microwave Integrated Circuit Downconverters and Products Containing the Same, Including Low Noise Block Downconverters; Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review the presiding administrative law judge's (ALJ's) initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 7, 1996, Anadigics Inc. filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 USC 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain monolithic microwave integrated circuit downconverters and products containing the same, including low noise block downconverters, that allegedly infringe certain U.S. Registered Mask Works. The investigation was instituted March 14, 1995. Four firms were named as respondents: Raytheon Company; New Japan Radio Co., Ltd.; Nichimen Corp.; and Nichimen America Inc. See 61 FR 10595 (Mar. 14, 1996).

On July 9, 1996, the complainant and the respondents filed a joint motion for termination of the investigation on the basis of a settlement agreement (Motion No. 384–5). The Commission investigative attorney filed a response supporting the motion, on July 15, 1996.

On July 19, 1996, the ALJ issued the ID (Order No. 10) granting the motion. No other Federal agency commented on the ID, and no party filed a petition for review. The Commission decided that a self-initiated review of the ID under 19 CFR 210.44 was not warranted. In light of that decision, the ID became the Commission's determination effective August 20, 1996. See 19 CFR 210.42(h)(3). This action was taken under the authority of 19 USC 1337(c) and 19 CFR 210.21(b).

All public documents that were filed in the investigation—including nonconfidential copies of the ID, the joint motion for termination, the settlement agreement, and the Commission investigative attorney's response to the joint motion—are or will be made available for public inspection, upon request, during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone 202–205–1802.

Issued: August 23, 1996.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22133 Filed 8–28–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–345]

Shifts in U.S. Merchandise Trade in 1996

AGENCY: United States International Trade Commission.

EFFECTIVE DATE: August 21, 1996.

ACTION: Re-authorization of and retitling of investigation.

SUMMARY: The Commission has prepared and published annual reports on U.S. trade shifts in selected industries/commodity areas under investigation No. 332–345 since 1993. The Commission plans to publish the next report in September 1997, which will cover shifts in U.S. trade in 1996 compared with trade in 1995.

FOR FURTHER INFORMATION CONTACT: Questions about the trade shifts report may be directed to the project leader, Carl Seastrum, Office of Industries (202–205–3493) or the assistant project leader, John Cutchin, Office of Industries (202–205–3396). For information on the legal aspects, please contact Mr. William Gearhart, Office of General Counsel (202–205–3091). The media should contact Ms. Margaret

O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

The initial notice of institution of this investigation was published in the **Federal Register** of September 8, 1993 (58 FR 47287). The Commission expanded the scope of this investigation to cover service trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The merchandise trade report has been published in the current series under investigation No. 332–345 annually since September 1993. The report, originally entitled "U.S. Trade Shifts in Selected Commodity Areas, 1992 Annual Report," has undergone a change to more clearly and concisely identify the contents of the report.

As in past years, each report will summarize and provide analyses of the major trade developments that occurred in the preceding year, and is expected to be published in September of each year. The reports will also provide summary trade information and basic statistical profiles of nearly 300 industry/commodity groups.

Issued: August 26, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22134 Filed 8–28–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department of Justice Policy, 28 C.F.R. 50.7, notice is hereby given that on August 15, 1996, a proposed Consent Decree was lodged with the United States District Court for the District of Kansas in *United States* v. *Farmland Industries, Inc.*, Civil Action No. 96–2360–KHV. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency ("EPA") in a Complaint filed on the same day. The United States filed its complaint pursuant to Section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. 7413(b), requesting the assessment of civil penalties against Defendant Farmland Industries, Inc. ("Farmland") for violations of Section 111 of the Act, 42 U.S.C. 7411, and of the provisions of the New Source Performance Standards ("NSPS") codified at 40 C.F.R. Part 60, Subparts QQQ and GGG. The United States alleges that the violations occurred in connection with certain equipment at Farmland's Coffeyville, Kansas refinery which is subject to the "Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems," codified at 40 C.F.R. Part 60, Subpart QQQ, and the "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries," codified at 40 C.F.R. Part 60, Subpart GGG.

Under the proposed Consent Decree, Farmland will pay a civil penalty of $780,000 to the United States. Farmland will also purchase equipment and devices that will be installed and operated at Farmland's Coffeyville, Kansas facility as Supplemental Environmental Projects ("SEPs"). These SEPs shall cost a minimum of $2,150,000 for Farmland to purchase and install. In return for the payments by Farmland, the proposed Consent Decree provides that the settlement resolves the claims alleged by the United States in its complaint, as well as certain other specified claims for violations of 40 C.F.R. Subpart QQQ of the NSPS regulations that occurred at Farmland's Coffeyville, Kansas facility.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Farmland Industries, Inc.*, D.J. Ref. No. 90–5–2–1–1948. The proposed Consent Decree may be examined at the Region VII Office of EPA, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–22085 Filed 8–28–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—"Environmental Research Institute of Michigan"

Notice is hereby given that, on August 5, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Environmental Research Institute of Michigan, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Case Western Reserve University, Cleveland, OH; Chrysler Corporation, Auburn Hills, MI; Delaware Machinery and Tool Company, Inc., Muncie, IN; Doehler Jarvis, Toledo, OH; EDCO Engineering, Toledo, OH; Environmental Research Institute of Michigan, Ann Arbor, MI; Ford Motor Company, Dearborn, MI; General Motors Corporation, Warren, MI; Ohio State University, Columbus, OH; Prince Machine, Holland, MI; and its general areas of planned activities is to improve the efficiency of Aluminum Die Casting operations.

Specifically, studies will be conducted to determine the causes of porosity in transmission cases and modifications defined for the production process. A second task on the project will focus on die steel composition and heat treatment procedures in order to improve the useful life of die steels in aluminum die casting applications. The activities of this project are coordinated under the direction of the Partnership for a New Generation of Vehicles (PNGV).

Membership in the program remains open, and Environmental Research Institute of Michigan intends to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–22088 Filed 8–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Information Infrastructure for Digital Video and Multimedia Applications Joint Venture

Notice is hereby given that, on August 1, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Mobile Information Infrastructure for Digital Video and Multimedia Applications Joint Venture ("MII Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the new member is: Lucent Technologies Inc., Murray Hill, NJ. In addition, AT&T Corp. has withdrawn from the joint venture.

No other changes have been made in either the membership or planned activity of the joint venture. Membership in this joint venture remains open. MII Joint Venture intends to file additional written notifications disclosing all membership changes.

On September 28, 1995, the MII Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 15, 1996 (61 Fed. Reg. 6039).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–22087 Filed 8–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Model HDTV Station Project, Inc.

Notice is hereby given that, on June 28, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Model HDTV Station Project, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: The Association for Maximum Service Television, Inc., Washington, DC; and the Electronic Industry Association, Arlington, VA.

The general area of planned activity is to conduct cooperative research in the design, installation and operation of the first High Definition Digital Television ("HDTV") station in the United States (the "Model Station"). Design and operation of the Model Station shall include evaluation and performance of a wide range of digital studio, distribution, transmission, and reception equipment and services. The Model Station may also conduct propagation, interference and coverage experiments and is intended for use as a training facility for the broadcast community and a demonstration for the public.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–22089 Filed 8–28–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on August 1, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. By resolution at its June 11, 1996, Board of Directors meeting, the following companies were recently accepted as active members of NCMS: Cimetrix Inc., Albuquerque, NM; Circo Craft Company Inc., Pointe-Claire, Quebec, CANADA and RoboDisk Corporation, Burbank, CA. In addition, the following companies were recently accepted as affiliate members of NCMS: GMI Engineering & Management Institute, Flint, MI and Metal Finishing Suppliers' Association, Inc., Westmont, IL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on May 9, 1996. The notice was published in the **Federal Register** on June 5, 1996 (61 FR 28596).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–22086 Filed 8–28–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; local application form for local law enforcement block grant program.

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia Dobbs-Mendaris, (202) 305–

2088, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: Local Law Enforcement Block Grants Program, Local Application Form.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State and local Governments. Other: None. Public Law 104–134 enacted the Local Law Enforcement Block Grants Program. This program awards grant money to local units of governments and States and territories to reduce crime and improve public safety. The Local Application Form will be completed by each eligible Local applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 3,200 respondents, at approximately 10 responses each: At 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22048 Filed 8–28–96; 8:45 am]

BILLING CODE 4410–18–M

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; State application form for Local Law Enforcement Block Grant Program.

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia Dobbs-Mendaris, (202) 305–2088, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: Local Law Enforcement Block Grants Program, State Application Form.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State and Local Governments. Other: None. Public Law 104–134 enacted the Local Law Enforcement Block Grants Program. This program awards grant money to local units of governments and States and territories to reduce crime and improve public safety. The State Application Form will be completed by each eligible State applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 56 respondents, at approximately 10 responses each: At 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 28 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22049 Filed 8–28–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Occupational Exposure to Metalworking Fluids

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of intent to form a Standards Advisory Committee; Request for committee membership nominations.

SUMMARY: OSHA announces its intent to establish a Standards Advisory Committee ("the Committee") to make recommendations regarding a proposed rule for occupational exposure to metalworking fluids under Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970. The Committee will consist of a maximum of 15 members and will include a cross-section of individuals representing the following affected interests: industry; labor; federal and state safety and health organizations; professional organizations; and national standards-setting groups. OSHA invites interested parties to submit nominations for membership on the Committee.

DATES: Nominations for membership must be postmarked by September 30, 1996.

ADDRESSES: Nominations for membership on the Committee should be sent to: OSHA, U.S. Department of

Labor, Directorate of Health Standards Programs, Metalworking Fluids Project Officer, Rm. N–3718, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ann Cyr, Acting Director, OSHA, Office of Information and Consumer Affairs, Rm N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

The International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) petitioned OSHA to take emergency regulatory action to protect workers from the risks of occupational cancers and respiratory illnesses due to exposure to metalworking fluids (Exhibit #1). Subsequently, OSHA sent an interim response to the UAW stating that the decision to proceed with rulemaking would depend on the results of the OSHA Priority Planning Process, a participatory activity designed to set an agenda for the Agency to pursue high-priority occupational health and safety hazards.

Following the final Priority Planning Process report, which identified metalworking fluids as an issue worthy of Agency action, the Assistant Secretary asked the National Advisory Committee on Occupational Safety and Health (NACOSH) for a recommendation about how to proceed with a rulemaking for metalworking fluids. In May 1996, NACOSH unanimously recommended that OSHA form a Standards Advisory Committee to address the problems caused by occupational exposure to metalworking fluids. The Assistant Secretary accepted the recommendation of NACOSH.

II. Committee Formation

Section 7 (b) of the Occupational Safety and Health Act of 1970 describes the requirements for creating a Standards Advisory Committee. The Committee is appointed by the Secretary to assist him in standard-setting under section 6 of the Act. The Standards Advisory Committee will consist of not more than 15 members. The Agency recognizes the complex issues surrounding metalworking fluids and encourages the nomination of academics and other experienced professionals to the Committee. The Agency is particularly concerned with the impact a rule on metalworking fluids could have on small employers; therefore OSHA specifically requests nominations for Committee membership from the small business community.

III. Public Participation

Applicants should be qualified by experience, knowledge, and affiliation, and meet the following criteria:

Labor—must be recommended by a labor organization representing employees who are exposed to metalworking fluids;

Industry—must be recommended by an industry or association representing companies whose employees are exposed to metalworking fluids;

State or Federal Safety and Health Organization—must be a Federal or State employee with responsibilities in occupational health and safety and have experience in the safe use of metalworking fluids;

Professional Organizations/National Standards-Setting Groups—must be recommended by a professional organization/national standards-setting group that regulates or represents occupational safety and health interests in the safe use of metalworking fluids.

Interested persons may apply for or nominate other persons for membership on this committee. Such nominations should be submitted to OSHA, Directorate of Health Standards Programs, Metalworking Fluids Project Officer, Rm. N3718, 200 Constitution Ave., N.W. Washington, D.C. 20210.

Each application or nomination must include: (1) The name of the applicant or nominee and a description of the interest such person seeks to represent; (2) The social security number, address, phone number, title, position, experience, qualifications and resume of the nominee; (3) Evidence that the applicant or nominee is qualified to represent parties having the same interest the person proposes to represent; and (4) A written commitment that the applicant or nominee shall be able to attend regular meetings of the Committee and participate in good faith.

IV. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to Sections 6 (b) (1) and 7 (b) of the Occupational Safety and Health Act of 1970 and the Federal Advisory Committee Act, 5.U.S.C. App. 2.

Signed at Washington, D.C., this 22nd day of August, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–21926 Filed 8–28–96; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation–(1194)

Date and Time: September 16, 1996, 8:30 a.m.–5:00 p.m.

Place: Rooms 340, 375, and 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Anthony Centodocati, SBIR Program Manager, SBIR Office, (703) 306–1391, Gary Strong, Program Officer, Computer and Information Science and Engineering, (703) 306–1228, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Knowledge Representation and Processing, Robotics and Intelligent Perception and User-System Interfaces, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22097 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: September 16, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contract Person: George Patrick Johnson, SBIR Program Manager, SBIR Office (703) 306–1391, Ben Snavely, Program Officer, Astronomy, Mathematical and Physical Sciences, (703) 306–1828, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Astronomy as part of the selection process for awards.

Reason for Closing: The proposals being reviewed information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22098 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194)

Date and Time: September 16, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Joseph Hennessey, SBIR Program Manager, SBIR Office, (703) 306–1391, Farley Fisher, Program Officer, Chemical Transport Systems, (703) 306–1371, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Chemical and Transport Systems, Heterogeneous Catalysis as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22099 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) submitted to the Phase I Small Business Innovation Research Program in the areas of Next Generation Vehicles, Power Systems, Chemical Transport Systems, Thermal Transport and Thermal Processing, Solid-State and Microstructures, Social, Behavioral, and Economic Research, Combustion and Thermal Plasmas, and Astronomy. In order to review the large volume of proposals, panel meetings will be held on September 16, 18, 19, and 20, 1996 in rooms 340, 360, and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 a.m. to 5:00 p.m. each day.

Contact Person: Yousef Hashimi, SBIR Program Manager, SBIR Office, (703) 306–1391, Sara Nerlove, SBIR Program Manager, SBIR Office, (703) 306–1391, George Patrick Johnson, SBIR Program Manager, SBIR Office, Joseph Hennessey, SBIR Program Manager, SBIR Office, (703) 306–1391, Chanan Singh, Program Manager, ECS/ENG, (703) 306–1339, Deborah Kaminski, Program Manager, CTS/ENG, (703) 306–1371, Marvin White, Program Manager, ECS/ENG, (703) 306–1339, Jonathan Leland, Program Manager, SBE/SBER, (703) 306–1757, Milton J. Linevsky, Program Manager, CTS/ENG, (703) 306–1371, Ben Snavely, Program Manager, Astronomy/MPS, (703) 306–1828, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22100 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) submitted to the Phase I Small Business Innovation Research Program in the areas of Electrical and Communications Systems: Quantum Electronics, Plasmas, and Electronics Magnetics, Civil Mechanical Systems Structures, Electronics Magnetics, Neural Engineering, Lightwave Technology, and Chemical Characterization. In order to review the large volume of proposals, panel meetings will be held on September 23 and 24, 1996 in rooms 320, 340, 360, 370, and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 a.m. to 5:00 p.m. each day.

Contact Person: Yousef Hashimi, SBIR Program Manager, SBIR Office, (703) 306–1391, George Patrick Johnson, SBIR Program Manager, SBIR Office, (703) 306–1391, John Scalzi, Program Manager, CMS/ENG, (703) 306–1361, Virginia Ayres, Program Manager, ECS/ENG, (703) 306–1339, Paul Werbos, Program Manager, ECS/ENG, (703) 306–1339, Al Harvey, Program Manager, ECS/ENG, (703) 306–1339, Francis J. Wodarczyk, Program Manager, MPS/CHE, (703) 306–1856, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22107 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date: September 18, 19, & 20, 1996.

Time: 8:00 a.m. to 6:00 p.m. each day.

Place: Rooms 320, 330, 365, 370, & 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA, (703) 306–1553.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate earth sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22105 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 16–18, 1996; 8:00 a.m. to 5:00 p.m.

Place: Los Alamos National Laboratory, Los Alamos, NM.

Type of Meeting: Closed.

Contact Person: Dr. Adriaan M. de Graaf, Executive Officer, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1812; FAX (703) 306–0515.

Purpose of Meeting: To provide advice and recommendations concerning the continued support for the National High Magnetic Field Laboratory (NHMFL) being established by Florida State University, the University of Florida, and Los Alamos National Laboratory.

Agenda: To review and evaluate the progress report and proposal for continued funding from the NHMFL.

Reason for Closing: The progress report being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22102 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: September 18–19, 1996; 8:30 a.m. until 5:00 p.m.

Place: Offices of Strategic Analysis, Inc., 4001 North Fairfax Drive, Suite 175, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Subramaniya I. Hariharan, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1877.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Virtual Integrated Prototyping (VIP) Initiative for Thin Films Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22106 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: Tuesday, September 17 thru Wednesday, September 18, 1996.

Place: Room 970, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John W. Lightbody, Jr., Program Director for Nuclear Physics, Division of Physics, Rm 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1806.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support, especially in experiments involving international collaborations.

Agenda: To review and evaluate Nuclear Physics collaborations as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22104 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time: September 16, 1996; Noon to 6:00 p.m. September 17, 1996; 8:00 a.m. to Noon.

Place: Room 830, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Senior Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education (Cross Program Initiative) Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22103 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463; as amended), the National Science Foundation announces the following meeting.

Name: Theoretical Physics Panel Meeting.

Date and Time: September 16–17, 1996 from 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Rm. 1060.

Type of Meeting: Closed.

Contact Person: Boris Kayser, Program Director for Theoretical Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1890.

Purpose of Meeting: To advise the National Science Foundation on the best way to support the future health and vitality of theoretical physics.

Agenda: Discussion of the future directions of theoretical physics, the optimum balance between different components of the theoretical physics grant portfolio, and the appropriate levels of support of students, postdoctoral fellows, computation, and other aspects of individual projects.

Reason for Closing: The project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22101 Filed 8–28–96; 8:45 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Gross Earnings Reports; OMB 3220–0132.

In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually from railroad employer's the gross earnings for their employees on a one-percent basis, i.e., 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits "30." The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Health Care Financing Administration. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalent to obtain gross earnings information from railroad employers. One response is requested of each railroad employer. Completion is mandatory.

The RRB proposes minor, non-burden impacting editorial revisions to Form BA–11.

Estimate of Annual Respondent Burden: Gross earnings reports are required annually from all employers reporting railroad service and compensation. There are approximately 633 railroad employers who currently report gross earnings to the RRB. Most large railroad employers include their railroad subsidiaries in their gross earnings reports. This results in the RRB collection *less* than 633 earnings reports. Also, there are a large number of railroad employers having work forces so small that they do not have employees with social security numbers ending in "30." Currently, there are 399 such employers in this category who file "negative" BA–11 responses to the RRB. Overall, on an annual basis, the RRB receives 28 reports consisting of computer prepared tapes or listings and 104 by means of manually prepared Form BA–11. The RRB estimates an average preparation time of 5 hours for each gross earnings report submitted by computer tape or listing and 30 minutes for each manually prepared BA–11.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–22090 Filed 8–28–96; 8:45 am]

BILLING CODE 7905–01–M

Privacy Act of 1974; Proposed Changes to Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed new system of records.

SUMMARY: The purpose of this document is to give notice of a proposed new Privacy Act system of records.

DATES: The proposed new system of records shall become effective as proposed without further notice in 40 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination.

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board has had for some time a computerized system for capturing telephone call detail information. It had been used only to verify the correctness of telephone service billing. This system may also be used to detect and deter possible improper use of agency telephones by agency employees and contractors which will require query by personal identifier. The Office of Management and Budget (OMB) has issued guidelines on the Telephone Call Detail Program. They were published at 52 FR 12990 (April 20, 1987) and encouraged agencies to establish Privacy Act systems of records to cover information pertaining to the monitoring of telephone usage to determine the use and/or abuse of Government telephone systems. The RRB is publishing this notice of its intent to establish a new

system of records in order to comply with the OMB guidance.

On August 19, 1996 the Railroad Retirement Board filed a new system report for this system with the Speaker of the House of Representatives, the President of the Senate, and the Office of Management and Budget. This was done to comply with section 3 of the Privacy Act of 1974 and OMB Circular No. A–130, Appendix I.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB—40.

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally agency employees and contractor personnel) who make or receive telephone calls from agency owned telephones at the agency's 844 North Rush Street headquarters building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, telephone number, location of telephone, date and time phone call made or received, duration of call, telephone number called from agency telephone, city and state of telephone number called, cost of call made on agency phone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1348(b)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be released to agency employees on a need to know basis.

b. Relevant records may be released to a telecommunications company providing support to permit servicing the account.

c. Relevant records relating to an individual may be disclosed to a Congressional office in response to an inquiry from the Congressional office made at the request of that individual.

d. Relevant information may be disclosed to the Office of the President for responding to an individual pursuant to an inquiry from that individual or from a third party on his/her behalf.

3. Relevant records may be disclosed to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

f. Records may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding.

g. Records may be disclosed in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding.

h. In the event that material in this system indicates a violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order, issued pursuant thereto.

i. Relevant records may be disclosed to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer hard disk, cartridge, and tape.

RETRIEVABILITY:

Name, telephone extension, number dialed.

SAFEGUARDS:

Only designated personnel in the Bureau of Supply and Service have access to the computerized records. Access to the PC database containing call detail information is password protected. An additional password is required for access to the personal computer on which the database is housed.

RETENTION AND DISPOSAL:

Computerized records are retained for approximately 180 days and then are written over by more current call detail information. Paper reports, when issued, are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Supply and Service, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the Systems Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

See Notification section above.

CONTESTING RECORD PROCEDURES:

See Notification section above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; computer software that captures telephone call information and permits query and reports generation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 96–22111 Filed 8–28–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22167; 812–9866]

BT Investment Portfolios and Bankers Trust Company; Notice of Application

August 22, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: BT Investment Portfolios (the "Portfolio Trust") and Bankers Trust Company ("BT").

RELEVANT ACT SECTIONS: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit a series of the Portfolio Trust, Liquid Assets Portfolio (the "Portfolio"), and BT, the Portfolio's investment adviser, to jointly enter into repurchase agreements and time

deposits with non-affiliated financial institutions.

FILING DATES: The application was filed on November 22, 1995 and amended on July 17, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Kirkpatrick & Lockhart LLP, 1251 Avenue of the Americas, 45th Floor, New York, NY 10020.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUMMARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Portfolio Trust is a registered investment company that currently has eleven series, one of which is the Portfolio. BT serves as the Portfolio's custodian, transfer agent, administrator, and investment adviser. The Portfolio is a money market fund and serves as the master fund for Institutional Liquid Assets Fund (the "Fund"), a feeder fund holding itself out as a money market fund. The Fund is a series of BT Institutional Funds (the "Trust"). BT serves as the Fund's custodian, transfer agent, administrator, and as one of its shareholder servicing agents. The Trust seeks to achieve the investment objective of the Fund by investing all of the Fund's assets not earmarked for expenses or shareholder distributions in the Portfolio. The Portfolio, in turn, invests its assets in securities in accordance with its investment objective and investment policies and limitations. Through the master/feeder structure, the Fund acquires an indirect interest in the securities held by the Portfolio. BT and the Portfolio will jointly enter into repurchase agreements and purchase time deposits from non-affiliated financial institutions pursuant to the procedures described below.

2. Applicants request that the relief requested herein extend to any other series of the Portfolio Trust now existing or established in the future, and any other registered open-end-investment company or series thereof (i) which holds itself out as a money market fund (whether in a stand-alone or master-feeder structure); and (ii) for which BT or any person directly or indirectly controlling, controlled by, or under common control with BT, serves as investment adviser, or administrator for any BT feeder money market fund that invests its assets into a master money market fund advised by BT. Applicants understand that the requested relief does not apply to joint repurchase agreement or time deposit arrangement among two or more money market funds.[1]

3. A portion of the shares of the Fund will be purchased by customers of BT and those of its affiliates through automatic investment orders placed by BT, acting as agent for its customers and those of its affiliates, where such customers have signed an application or an agreement or have otherwise given directions expressly authorizing BT, as their agent, to automatically invest cash balances in excess of any required minimum balance in shares of the Fund. These standing "sweep" orders will be effected automatically by computer each business day on or before the time the Fund's net asset value is calculated ("Pricing Time"), currently 4:00 p.m. Eastern Time for the Fund. The computer program governing BT's customer accounts also provides for automatic redemption of Fund shares held in the account as of the Pricing Time if the cash balance in the account is less than zero or the minimum balance specified for the customer. The daily computer processing required to tabulate the day's transaction activity in BT's customer accounts is completed later in the day and recorded prior to the opening of business on the following business day ("Completion Time"). Based on BT's orders for Fund share, the Fund will, in turn, invest all cash expected to be received through the "Sweep" program in the Portfolio.

4. BT, acting as agent for its customers and those of its affiliates, prior to Pricing Time on each business day, will place an order for Fund shares in the amount of excess cash expected to be available to be swept in the customer accounts on that business day. The amount expected to be available to be swept in the customer accounts is the amount of excess cash in the customer accounts at or before Pricing Time on each business day, plus the amount of cash that BT estimates will be wired into the customer accounts prior to the close of the FedWire on that business day.[2] To the extent one or more customer accounts have not yet received money anticipated to be wired and necessary to pay for the customer accounts' orders in full, BT, on behalf of the applicable customer, will advance such amount to fill such orders. Because of its past experience and close relationship with its customers, BT anticipates that it will be able to forecast on a daily basis the amounts that will be wired into the customer accounts between 4 p.m. and the close of the FedWire so that it can also forecast the total amount that will be swept directly into the Fund, and indirectly into the Portfolio.

5. The actual amount of money swept into the Fund, and then invested in the Portfolio by the Fund, may vary above or below the forecast. The forecast variance at the customer account level results from many factors, such as counterparty difficulties, delivery failures, and unanticipated purchases and sales of securities. BT, on behalf of applicable customers, will forward an amount to the Fund to cover such forecast variance.

6. BT and the Portfolio propose to enter into repurchase agreements and/or purchase time deposits in an amount to cover situations in which the actual amount of money swept into the Fund, and then invested in the Portfolio by the Fund, varies above or below the forecasted amount of sweep money. For example, assume that, based on BT's past experience, the actual amount of money available in the customer

[1] *Cf. The Benchmark Funds and Northern Trust Company*, Investment Company Act Release Nos. 21806 (Mar. 5, 1996) (notice) and 21867 (Apr. 2, 1996) (order).

[2] The FedWire is open until 6:00 p.m. each business day. From time to time, at the direction of the Federal Reserve Board, its hours are extended until as late as 7:30 p.m. As a condition of eligibility to participate in the sweep program, each customer has agreed to notify BT by 2:00 p.m. on each business day of any large amounts of funds it expects its account to receive or send out that business day through the FedWire. These notifications will assist BT in estimating the amount that will be wired into the accounts between 4 p.m. and the close of the FedWire, the period during which the system is settling.

accounts participating in the "sweep" program has a variance of ±$25 million. To ensure that the Fund is fully invested, BT, on behalf of the applicable customers, would forward $25 million to the Fund, which would invest such assets in the Portfolio. BT, as the Portfolio's investment adviser, would cause the Portfolio to invest on that day a total of $50 million (the $25 million forwarded from BT plus $25 million in investable assets received from other investors) in "sweep" repurchase agreements and/or "sweep" time deposits to account for the most extreme tails of the "sweep" program's variance of ±$25 million.

7. To the extent that the Portfolio's "sweep" repurchase transactions or "sweep" time deposits were sufficient to make the Portfolio fully invested, the Portfolio's records will reflect the specific amount it had in fact invested in such investments (including in the case of "sweep" repurchase transactions, its ownership of eligible securities purchased in the transaction). If the Portfolio's "sweep" repurchase transactions or "sweep" time deposits were not sufficient to make the Portfolio fully invested, the Portfolio's records will continue to reflect its investment in the entire amount of "sweep" repurchase agreements and "sweep" time deposits and an uninvested cash position. (This is an unlikely occurrence, as BT expects to approximate the likely aggregate amount of "sweep" funds such that the "sweep" investment transaction(s) will be greater than the likely forecast variance.) If any amount of "sweep" repurchase transactions or "sweep" time deposits exceeds amounts available to the Portfolio for investment, BT will be deemed to have purchased such excess securities or investments for its own account.

8. In connection with the "sweep" program, the Portfolio intends to purchase time deposits issued by U.S. or foreign banks, or foreign branches and subsidiaries of U.S. and foreign banks. With respect to "sweep" repurchase transactions, the Portfolio Trust will use a master repurchase agreement ("Master Agreement"). The Master Agreement will require the other party to the transaction ("Seller") on a given day to sell to the Portfolio, and, on the same day, transfer to the Portfolio's designated custodian or sub-custodian the particular eligible securities which are subject to the repurchase transaction against crediting to an account of the Seller (in immediately available funds) the purchase price therefor. At the time of the Seller's transfer of securities to the Portfolio, the Seller will be required to take the action necessary to perfect a security interest in favor of the Portfolio in all of the transferred securities. Prior to the reconciliation of the "sweep" activity, the Portfolio will have a perfected security interest in all of the transferred securities. The Portfolio will comply with the SEC's position concerning repurchase agreements set forth in Investment Company Act Release No. 13005 (February 2, 1983) and with other existing and future positions taken by the SEC or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule. Each "sweep" repurchase transaction will be "collateralized fully" as that term is defined in Rule 2a–7 under the 1940 Act.

9. With respect to both "sweep" repurchase transactions and "sweep" time deposits, BT, as the Portfolio's adviser, will receive prompt confirmation of the total amount invested on behalf of the Portfolio and other relevant terms of the transaction on the business day of the transaction. The confirmation most likely will not agree with the final allocation of the repurchase transactions or time deposits between BT and the Portfolio on the business day immediately following the transaction. To create a written record of the dollar amounts actually allocated to the Portfolio and the specific securities actually purchased and time deposits actually invested in by the Portfolio, BT will issue to the Seller an adjusted trade ticket on the business day immediately following the transaction, after the final allocation between BT and the Portfolio is known. Some Sellers may choose to subsequently send corrected confirmations to the Portfolio showing the final allocation of the "sweep" repurchase transaction or the "sweep" time deposit between BT and the Portfolio. Also, prior to the opening of business on the business day immediately following the transaction, BT, as agent for its customers, will provide the Fund's transfer agent and shareholder servicing agent(s) with records relating to the automatic investment transactions.

10. In the event that any "sweep" repurchase agreement involves two or more issues of securities differing as to quality, maturity or rate, each security will be apportioned between the Portfolio and BT pro-rata to the extent possible. To the extent that sweep time deposits have been purchased from more than one institution, each "sweep" time deposit will be apportioned between the Portfolio and BT pro-rata to the extent possible. Where such pro-rata apportionment is not possible, securities and time deposits will be apportioned in a manner that BT, as the Portfolio's adviser, believes will leave each party in a comparable position.

Applicants' Legal Analysis

1. Section 17(d) of the Act makes it unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which the registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations the SEC may prescribe. Rule 17d–1(a) provides that an affiliated person of a registered investment company, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement.

2. The Portfolio Trust and BT, as its adviser, wish to adopt the proposed investment procedures in the interests of the Fund and all of its shareholders in response to the demands placed on portfolio management by automatic purchase and redemption transactions by Fund shareholders. The effect of the proposed procedures will be to permit BT, as agent for its customers, to purchase shares of the Fund even though the exact number of shares acquired by BT as agent is not determined until prior to the opening of business the following day. The proposed procedures also will permit BT and the Portfolio Trust, on behalf of the Portfolio, to jointly enter into repurchase agreements and time deposits prior to Pricing Time, based upon amounts estimated to be received by the Fund on that day through the operation of the "sweep" program, with determination of the exact allocation of the principal amount of each repurchase agreement and time deposit for the Fund occurring prior to the opening of business the following day. These special arrangements for the investment of "sweep" assets by the Portfolio allow such assets to be invested on the same day that dividends become payable on shares of the Fund purchased with such assets.

3. To the extent that assets of BT are used with those of the Portfolio to enter into "sweep" repurchase transactions or purchase "sweep" time deposits, BT may be deemed to be participating in, as principal, a transaction in connection with a joint enterprise in which the Portfolio is a participant in violation of section 17(d) and rule 17d–1. Applicants believe that the relief

requested on behalf of the Portfolio is appropriate and in the public interest because it will permit the investment of cash immediately when it is available and will thereby reduce any dilution in daily dividends declared by the Fund.

4. With respect to "sweep" repurchase transactions, the Portfolio's rights *vis-a-vis* Sellers under "sweep" repurchase agreement transactions will be protected under the "sweep" repurchase agreement, which is a standard industry agreement. Pending reconciliation of the day's transaction activity, BT, as the Portfolio's custodian, will segregate and hold for the exclusive benefit of the Portfolio all securities transferred to BT in connection with "sweep" repurchase transactions entered into for the Portfolio. The Portfolio also will have a perfected security interest in all such securities. With respect to "sweep" time deposits, pending reconciliation of the day's transaction activity, BT, as the Portfolio's custodian, will hold for the exclusive benefit of the Portfolio the entire time deposit investment.

5. Applicants believe that the interest of BT in negotiating the maximum interest rate available on any "sweep" repurchase agreement or "sweep" time deposit for the Portfolio will be the same as that of the Portfolio. To the extent that BT, as the Portfolio's investment adviser, is deemed to have any participation in the proposed investment procedure within the meaning of section 17(d) and rule 17d–1, the Portfolio's participation is consistent with the provisions, policies, and purposes of the Act and not on a basis different from or less advantageous than that of BT. Thus, applicants believe that the requested relief meets the standards of rule 17d–1.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22006 Filed 8–28–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22163; File No. 811–8534]

Pruco Life Individual Variable Annuity Account

August 22, 1996.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Pruco Life Individual Variable Annuity Account ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order declaring that it has ceased to be an investment company, as defined by the 1940 Act.

FILING DATES: The application was filed on August 2, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Pruco Life Insurance Company, 213 Washington Street, Newark, NJ 08102–2922.

FOR FURTHER INFORMATION CONTACT: Veena K. Jain, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Applicant is a unit investment trust established by Pruco Life Insurance Company ("Pruco Life") as a separate account under the laws of the State of Arizona on May 9, 1994.

2. Applicant filed a notification of registration under Section 8(a) of the 1940 Act, and a registration statement on Form N–4 pursuant to Section 8(b) of the 1940 Act and the Securities Act of 1933 on May 31, 1994, in connection with the offering by Pruco Life of certain flexible payment individual variable annuity contracts ("Contracts"). Such Form N–4 registration statement did not become effective, and no public offering commenced.

3. For business reasons, Pruco Life determined not to go forward with the offering of the Contracts, and there have been no sales made by Applicant of securities of which it is the issuer.

4. At the time of the application, Applicant had no security holders, assets or liabilities, and Applicant is not a party to any litigation or administrative proceeding.

5. There have been no distributions to security holders of Applicant in connection with the winding-up of Applicant's affairs pursuant to any dissolution, liquidation or merger.

6. Within the last 18 months, Applicant has not transferred its assets to a separate trust, the beneficiaries of which were or are the security holders of Applicant.

7. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22007 Filed 8–28–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37586; File No. SR–CSE–96–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange Relating to Transaction Fees

August 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on August 14, 1996, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to amend its trading fee rules to codify its long-standing practice concerning the collection and payment of an annual transaction fee required under Section 31 of the Act to be paid to the

Commission. This fee currently equals 1/300th of one percent of the aggregate dollar amount of total annual securities sales on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's trading fee rules to codify its long-standing practice concerning the collection and payment of the annual transaction fee required under Section 31 of the Act. The Exchange generates daily data concerning the number of trades, share volume, trade value and SEC fee generated by each member. This information is compiled monthly and furnished to Exchange members with a monthly invoice. In addition, Exchange members are required to complete and certify a monthly Report of Sales form indicating the aggregate sales price and aggregate volume of securities transacted on the Exchange, and the SEC transaction fees due. This form is remitted with the payment of the required fee. New members are provided with copies of the Report of Sales form.

2. Statutory Basis

Because the proposed rule change will help fund the Commission oversight and regulatory activities, the Exchange believes that the proposed rule change is consistent with Section 6 [1] of the Act in general and with Section 6(b)(5) [2] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

[1] 15 U.S.C. 78f.

[2] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(a) of the Act and subparagraph (e) of Rule 19b–4 thereunder.[3] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–96–04 and should be submitted by September 19, 1996.

[3] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 19b–4(e).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22053 Filed 8–28–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37592; File No. SR–PSE–96–26]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Notice of Filing of Proposed Rule Change Relating to its Minor Rule Plan

August 21, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, notice is hereby given that on August 7, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its disciplinary rules to provide Exchange staff with the authority to make findings of rule violations and to impose fines pursuant to the Exchange's Minor Rule Plan ("MRP"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

PACIFIC STOCK EXCHANGE INCORPORATED

RULES OF BOARD OF GOVERNORS

* * * * *

Rule 10.13(c)

(c) The Executive Committee, the Ethics and Business Conduct Committee, the Options Floor Trading Committee, [and] the Equity Floor Trading Committee *and Exchange regulatory staff designated by the Exchange,* shall have *the authority* [jurisdiction] to impose a fine pursuant to this Rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to amend its MRP,[1] which provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member organization, for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PSE Rule 10.13, subsections (h)–(j), sets forth the specific Exchange rules deemed to be minor in nature.

PSE Rule 10.13(c) currently provides that the Executive Committee, the Ethics and Business Conduct Committee, the Options Floor Trading Committee and the Equity Floor Trading Committee[2] have jurisdiction to impose a fine pursuant to Rule 10.13. The Exchange is proposing to amend Rule 10.13(c) to specify that Exchange regulatory staff designated by the Exchange shall also have the authority to impose a fine pursuant to Rule 10.13.

Under the proposal, Regulatory staff would be authorized to make determinations of whether minor rule violations have occurred and to impose a fine under the Recommended Fine Schedule[3] for any MRP violations. Nevertheless, the Exchange may follow the current procedure of having a committee consisting of Exchange members adjudicate a MRP disciplinary case if the individual situation warrants such action.[4]

The purpose of the proposal is to make the Exchange's disciplinary process more efficient. The majority of MRP cases currently decided by committees involve facts that are easily verifiable and rules that are objective or technical in nature. In such situations, currently, Exchange committees typically reaffirm staff determinations by approving staff recommendations.

Under the proposal, Exchange members and member organizations found in violation of a rule or rules under the MRP will continue to have a right of appeal under Rule 10.11,[5] which provides for a hearing before three members or for a review "on the papers." A further appeal of decisions pursuant to such hearings or reviews on the papers is available pursuant to Rule 10.11(e). The Exchange does not intend to modify its current procedure for adjudicating non-MRP disciplinary cases pursuant to Rule 10.3 involving the issuance of formal complaints. Finally, the Exchange will continue to notify its membership, by regulatory bulletin distributed on a quarterly basis, of all fines imposed pursuant to the MRP.

(2) Statutory Basis

The proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade. The proposal is also consistent with Section 6(b)(7) in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–26 and should be submitted by September 19, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22054 Filed 8–28–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). The PSE's MRP was approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (order approving File No. SR–PSE–85–24). In 1993, the Exchange amended its MRP and adopted detailed procedures relating to the adjudication of minor rule violations. *See* Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491. Thereafter, the Exchange has modified its MRP several times. *See* Securities Exchange Act Release Nos. 34322 (July 6, 1994), 59 FR 35958; 35144 (December 23, 1994), 59 FR 67743 (December 30, 1994); and 36622 (December 21, 1995), 60 FR 67384 (December 29, 1995).

[2] These four committees are comprised exclusively of Exchange members, with one exception: the Executive Committee includes three members plus the Chairman of the Exchange (who is not a member).

[3] For a discussion of the Recommended Fine Schedule, *see* Rule 10.13(f) and Securities Exchange Act Release No. 34322 (July 6, 1994).

[4] The Exchange anticipates that Committee review of MRP cases for determinations of whether violations have occurred, and the imposition of a fine (if any), will be limited to situations where the committee members' knowledge of trading practices and unwritten procedures would be helpful.

[5] "Appeal of Floor Citations and Minor Rule Plan Sanctions."

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection listed below requires extension of the current OMB approval:

(Call the SSA Reports Clearance Officer on (410) 965–4125 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

Supplemental Security Income Notice of Interim Assistance Reimbursement (two forms)—0960–0546. Form SSA–8125 and SSA–L8125 will collect interim assistance reimbursement (IAR) information from States which provide such assistance. Form SSA–8125 will be used in most situations where IAR is applicable. Form SSA–L8125 will be used in situations where an individual entitled to underpayments has received IAR from a state and his/her benefit will be controlled by SSA through the installment process. The respondents are states who provide IAR to SSI claimants.

Number of Respondents: 140,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 23,333 hours.

Written comments and recommendations regarding this information collection should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: August 22, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–22051 Filed 8–28–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2434]

United States International Telecommunications Advisory Committee; Radiocommunication Sector Study Group 8—Mobile Services; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 8—Mobile Services will meet on 16 September 1996 at 9:30 AM to 11:30 AM, in Room 2533A at the Department of State, 2201 C Street, N.W., Washington, DC 20520.

Study Group 8 studies and develops recommendations concerning technical and operating characteristics of mobile, radiodetermination, amateur and related satellite services.

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chairman, John T. Gilsenan.

Note: If you wish to attend please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, your name, social security number, and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: August 20, 1996.

Warren G. Richards,

Chairman, U.S. ITAC for ITU-Radiocommunications Sector.

[FR Doc. 96–22092 Filed 8–28–96; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2431]

Shipping Coordinating Committee, Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 09:30 AM on Monday, September 9, 1996, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the twenty-eighth session of International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) to be held at IMO from September 17 to 21, 1996.

The primary matters to be discussed include:

1. Guidance on implementation of the 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) Convention, including transitional provisions, target dates for implementation of new requirements; and training record book format.

2. New work emanating from the 1995 STCW Conference, including consideration of training requirements for maritime pilots, Vessel Traffic System (VTS) personnel, and personnel on passenger ships;

3. Maritime safety training for personnel on Mobile Offshore Units (MOU/MODUs); and Bulk carrier safety, including a review of the IMO resolution on the principles of safe manning;

4. New code for Safe Navigation and Watchkeeping;

5. Training of personnel responsible for cargo handling on ships carrying dangerous or hazardous substances in solid form in bulk or in packaged form; and

6. Guidance associated with the new International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW–F) Convention, as adopted by the 1995 conference (not yet ratified or in force).

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MSO–1), Room 1210, 2100 Second Street SW., Washington, DC or by calling (202) 267–0229.

Dated: August 16, 1996.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–2200 Filed 8–28–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Revision to Noise Compatibility, Program and Request for Review, Blue Grass Airport, Lexington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the noise compatibility program that was submitted by the Lexington-Fayette Urban County Airport Board under the

provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. The existing noise compatibility program was approved May 10, 1990. The proposed revision to the noise compatibility program will be approved or disapproved on or before February 18, 1997.

EFFECTIVE DATE: The effective date of the FAA's review of the revision to the noise compatibility program is August 22, 1996. The public comment period ends October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; 901–544–3495. Comments on the proposed revision to the noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the noise compatibility program for Blue Grass Airport which will be approved or disapproved on or before February 18, 1997. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposed for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the proposed revision to the noise compatibility program for Blue Grass Airport, effective August 22, 1996. It was requested that the FAA review this material and that the noise mitigation measure proposed by the airport be approved as a revision to the noise compatibility program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review, limited by law to a maximum of 180 days will be completed on or before February 18, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise compatibility program, and the proposed revisions to the noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 621, Washington, D.C. 20591

Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131

Administrative Office, Lexington-Fayette Urban County Airport Board, Blue Grass Airport, 4000 Versailles Road, Lexington, Kentucky 40510

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis, Tennessee, August 22, 1996.

Wayne R. Miles,

Assistant Manager, Memphis Airports District Office.

[FR Doc. 96–22130 Filed 8–28–96; 8:45 am]

BILLING CODE 4910–13–M

Intent To Prepare an Environmental Impact Statement and Conduct a Scoping Meeting for General Mitchell International Airport, Milwaukee, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advertise to the public that an Environmental Impact Statement (EIS) is planned to be prepared and considered for the proposed extension of Runway 7L/25R by 700 feet; the implementation of approved FAR Part 150 Noise Abatement Measures NA–4 and NA–5; modifying departure procedures for aircraft departing Runway 19R in lieu of disapproved FAR Part 150 Noise Abatement Measure NA–7; for updating the airport's Noise Exposure Maps (NEM's); and for evaluating other cumulative or connected actions at the General Mitchell International Airport (MKE), Milwaukee Wisconsin. The FAA plans to hold scoping meetings to obtain input from Federal, State, and local agencies and the general public regarding the EIS. If it is determined during the course of the study that the environmental impacts are not significant, FAA will terminate the EIS process, complete the study as an Environmental Assessment (EA) and issue a Finding of No Significant Impact (FONSI).

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota, 55450. Phone: (612) 725–4221.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA, in cooperation with the Wisconsin Department of Transportation and Milwaukee County, Wisconsin, will prepare an EIS for a proposed project to lengthen general aviation Runway 7L/25R by 700 feet at the General Mitchell International Airport (MKE) for a total length of 4,800 feet for use by general aviation type aircraft. The existing runway (4,100 feet) accommodates most general aviation aircraft currently using the airport, but the Airport Master Plan Update (MPU) and Airport Layout Plan (ALP), approved October 20, 1994, indicates that the runway extension would allow Runway 7L/25R to accommodate additional aircraft such as light commuter turboprops and light business jets. This will help concentrate general aviation operations in the northern portion of the airport, and allow Runways 1L/19R and 7R/25L additional capacity to better accommodate the existing and forecast air carrier and commuter aircraft operations on these runways during VFR conditions. The proposed project would entail construction activity on airport property (i.e., site preparation, drainage, paving, marking, lighting, and other associated work required for the runway extension). The extended runway is planned as a visual approach runway (Visual) with Medium Intensity Runway Lighting (MIRL) and 20:1 approach slopes on both the 7L and 25R runway ends.

The EIS will include evaluation of two approved FAR Part 150 Noise Abatement Measures, NA–4 and NA–5, as specified in MKE's Noise Compatibility Program Record of Approval dated March 22, 1995, and an evaluation of a modified departure procedure for aircraft departing Runway 19R in lieu of disapproved FAR Part 150 Noise Abatement Measure NA–7. Specifically, Noise Abatement Measure

NA–4 will "require south and eastbound turbojet and turbofan aircraft departing from Runway 25L to turn left as soon as safe and practicable". A generally compatible corridor extends south off the west end of Runway 7R/25L between the interstate and the railroad tracks. By directing south and eastbound departures from Runway 25L to make a quick left turn, aircraft should overfly this compatible corridor, thereby avoiding the residential neighborhoods further west. Noise Abatement Measure NA–5 "requires turbojet and turbofan aircraft departing from Runway 7R to hold runway heading through 4 nautical miles from the Distance Measuring Equipment (DME) co-located with the Runway 25L localizer". This procedure is estimated to reduce slightly the population in Cudahy impacted by noise above DNL 65 dBA. Concentration of departures along the runway centerline would reduce single event noise over much of Cudahy without significantly increasing the DNL noise contours along the extended runway centerline. The objective of the modified departure procedure for aircraft departing Runway 19R is to preclude early departure turns to the southeast from Runway 19R, thereby avoiding the heavily populated areas southeast of the airport. The EIS will also prepare updated Noise Exposure Maps (NEM's) for MKE in accordance with the provisions of Federal Aviation Regulations (FAR) Part 150, and also evaluate other cumulative or connected actions.

The EIS will evaluate a No-Action alternative, the proposed actions, and other reasonable alternatives that may be identified during the agency and public scoping meetings. The EIS will determine any noise impacts associated with the operation of the proposed runway, and the implementation of the noise abatement measures. In addition to noise impacts, the EIS will determine any impacts on air and water quality, wetlands, ecological resources, floodplains, historic resources, hazardous wastes and coastal zone management.

PUBLIC SCOPING: To ensure that the full range of issues related to the proposed projects are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. In order to facilitate public contribution at the scoping meeting, a pre-scoping package is being sent to all known interested parties. Copies may be obtained from the FAA informational contact listed above.

Two scoping meetings are scheduled for Thursday, October 10, 1996. The first meeting will start at 12:30 p.m. for the convenience of Federal, State and local agencies. It will start with a brief presentation describing the Scoping and EIS process, and the proposed project and schedule. Following the meeting, a driving tour of the affected portions of the airport property will be offered to interested individuals. The agency meeting will be held in the East and Center Mitchell Rooms at the Best Western Midway Hotel, located at 5105 South Howell Avenue, Milwaukee, Wisconsin. The second meeting, for the convenience of the general public, will be held on the same date, at the same location, from 4:30 p.m. to 7:30 p.m. This will be an informal meeting where participants will be able to view project related presentation boards and speak directly with FAA, WisDOT and Airport staff.

Written comments and suggestions on the scope may be mailed to the informational contact listed above no later than October 24, 1996.

Issued in Minneapolis, Minnesota, August 21, 1996.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 96–22129 Filed 8–28–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Rockland County, NY

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT), New York State Thruway Authority/Canal Corporation (NYSTA).

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed construction of landside facilities in Rockland County to support a Rockland County to Manhattan ferry service.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th floor, Clinton Avenue and North Pearl Street, Albany, New York, 12207, Telephone (518) 472–4126, or Phillip J. Clark, Director, Design Division, New York State Department of Transportation, W. Averell Harriman State Office Building Campus, 1220 Washington Avenue, Building 5, Albany, New York, 12232, Telephone (518) 457–6452, or Keith E. Giles, Director/Chief Engineer, New York State Canal Corporation, P.O. Box 189, Albany, New York, 12201–0189, Telephone (518) 436–3055.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with NYSDOT and NYSTA will prepare an Environmental Impact Statement (EIS) and a 4(f) statement related to the use of park lands, if necessary, on a proposal to construct landside facilities to support a high speed ferry service between Rockland County and Manhattan. The purpose of this project is to help alleviate traffic congestion on the Tappan Zee Bridge by providing an alternate form of transportation for commuters. The project may involve the construction of some type of parking facility to accommodate approximately 500 cars; docking facilities; a terminal building; and pedestrian and vehicular access.

Alternatives under consideration include:

1. Rockland Lake State Park to Manhattan
2. Village of Nyack to Manhattan
3. Rockland Lake State Park/Village of Nyack Combination to Manhattan
4. No Ferry, No Build

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. It is anticipated that public information meetings will be held in the affected communities. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. A formal NEPA scoping meeting will be held at Nyack High School on September 30, 1996 at 7:30 PM.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues defined, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSTA, NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 21, 1996.

Robert Arnold,

District Engineer, Federal Highway Administration.

[FR Doc. 96–22093 Filed 8–28–96; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Customs Service

Quota Categories From Hong Kong Being Monitored for Transshipment Concerns

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public that for the period commencing on September 1, 1996, and through September 30, 1996, certain textile quota categories from Hong Kong will be placed on a "watch list" and monitored by Customs because of transshipment concerns. If the monitoring indicates the probability of transhipment during that 30-day monitoring period, Customs will impose additional entry requirements on importers to address the problem.

FOR FURTHER INFORMATION CONTACT: Richard Crichton, Office of Strategic Trade (202) 927–0162.

SUPPLEMENTARY INFORMATION:

Background

Merchandise that is the product of a country to which restraint levels (quotas) or textile visa requirements apply may be entered, or attempted to be entered, with a false declaration of country of origin. The false claim that the merchandise is the product of a country other than the actual country of origin may result in the entered merchandise not being subjected to any quota level/visa requirement or being subject to a more lenient quota level/visa requirement. The entry of textiles and textile products into the commerce of the United States under such circumstances violates the bilateral and multilateral textile agreements to which the United States is a party, and causes significant injury to domestic producers of textiles and textile products, thereby compromising orderly international trade in textiles and textile products.

Customs has reason to believe that merchandise in categories 331 (cotton gloves), 338/339 (cotton knit shirts), 348 (women's cotton pants), and 350 (cotton nightwear), may be falsely claimed as country of origin Hong Kong. Effective September 1, 1996, and through September 30, 1996, entries of goods falling under these quota categories will be monitored by Customs to determine if transshipment may be occurring. If the 30-day monitoring period points to the probability of transshipment, Customs will take the following actions: (1) Require the importer to file a single entry bond for all merchandise imported into the United States under the listed categories that are claimed to be of Hong Kong origin; (2) require original signatures by factories/subcontractors on textile declarations filed by the importer; and (3) require the importer to certify that the textile declarations are accurate.

Dated: August 26, 1996.

George Heavey,

Acting Assistant Commissioner, Office of Strategic Trade.

[FR Doc. 96–22110 Filed 8–28–96; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Corot" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art in New York, New York from on or about October 21, 1996, to on or about January 19, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 23, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–22096 Filed 8–28–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Eugene Cuvelier, Photographer in the Circle of Corot" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art from on or about October 7, 1996, through January 13, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 23, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–22094 Filed 8–28–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Georges de La Tour and His World" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art from on or about October 6, 1996 to January 5, 1997, and the Kimbell Art Museum, Ft Worth, Texas from February 2, 1997 to May 10, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 23, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–22095 Filed 8–28–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mrs. Jacqueline H. Caldwell, Assistant General Counsel, at 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

[1] A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

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federal register

Thursday
August 29, 1996

Part II

Federal Communications Commission

47 CFR Parts 1, 20, 51, and 90
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Implementation of Sections 3(n) and 332 of the Communications Act; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, 51 and 90

[CC Docket No. 96–98, CC Docket No. 95–185, GN Docket No. 93–252; FCC 96–325]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Implementation of Sections 3(n) and 332 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order released August 8, 1996 promulgates national rules and regulations implementing the statutory requirements of the Telecommunications Act of 1996 (the 1996 Act) intended to encourage the development of competition in local exchange and exchange access markets. The Report and Order adopts certain national rules that are consistent with the terms and goals of the 1996 Act and adopts minimum requirements which states may augment with their own requirements that are consistent with the 1996 Act and the Commission's rules thereunder. The Report and Order also incorporates and resolves issues regarding interconnection between CMRS providers and LECs, which initially were raised in a separate docket. The Report and Order enables the states and the Commission to begin implementing the local competition provisions of the 1996 Act.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580, or David Sieradzki, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520. For additional information concerning the information collections contained in this Report and Order contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted August 1, 1996, and released August 8, 1996. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/fcc96325.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98 (61 FR 18311 (April 25, 1996)) to seek comment on rules to implement sections 251, 252 and 253 of the 1996 Act.

General

Section 251 of the 1996 Act imposes specific obligations on telecommunications carriers designed to promote competition in local exchange markets across the country. Section 251(a) imposes general obligations on all telecommunications carriers. Section 251(b) imposes on all LECs certain requirements, including the obligation to provide resale, access to rights-of-way, and to establish reciprocal compensation arrangements for transport and termination of traffic. Section 251(c) requires incumbent LECs to make available to new entrants interconnection and access to unbundled network elements, and to offer LEC retail services for resale to telecommunications carriers at wholesale rates. Access to unbundled elements and resale opportunities are methods by which telecommunications carriers can enter the local exchange market.

Interconnection

Section 251(c)(2) of the 1996 Act requires incumbent LECs to provide interconnection to any requesting telecommunications carrier at any technically feasible point. The interconnection must be at least equal in quality to that provided by the incumbent LEC to itself or its affiliates, and must be provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. The Commission identifies a minimum set of "technically feasible" points of interconnection: (1) the line-side of a local switch; (2) the trunk-side of a local switch; (3) the trunk interconnection points for a tandem-switch; (4) central office cross-connect points; and (5) out-of-band signaling transfer points. In addition, the points of access to unbundled elements are also technically feasible points of interconnection. The Commission states that telecommunications carriers may request interconnection under section 251(c)(2) to provide telephone exchange service or exchange access service, or both. If the request is for such purposes, the incumbent LEC must provide interconnection in accordance with section 251(c)(2) and the Commission's rules thereunder to any telecommunications carrier, including interexchange carriers and commercial mobile radio service (CMRS) providers.

Access to Unbundled Elements

Section 251(c)(3) requires incumbent LECs to provide requesting telecommunications carriers nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The Commission identifies a minimum set of network elements that incumbent LECs must provide under this section. States may require incumbent LECs to provide additional network elements on an unbundled basis. The Commission identified the seven following network elements: network interface devices, local loops, local and tandem switches (including all software features provided by such switches), interoffice transmission facilities, signalling and call-related database facilities, operations support systems and information and operator and directory assistance facilities. Incumbent LECs must provide requesting carriers nondiscriminatory access to operations support systems and information. The Order requires incumbent LECs to provide access to network elements in a manner that allows requesting carriers to combine such elements as they choose. Incumbent LECs may not impose restrictions upon the use of network elements.

Methods of Obtaining Interconnection and Access to Unbundled Elements

Section 251(c)(6) requires incumbent LECs to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises, except that the incumbent LEC may provide virtual collocation if it demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. Incumbent LECs are required to provide any technically feasible method of interconnection or access requested by a telecommunications carrier, including

physical collocation, virtual collocation, and interconnection at meet points. The Commission adopts, with certain modifications, the physical and virtual collocation requirements it adopted earlier in the *Expanded Interconnection* proceeding. The Commission also establishes rules interpreting the requirements of section 251(c)(6).

Pricing Methodologies

The 1996 Act requires the states to set prices for interconnection and unbundled elements that are cost-based, nondiscriminatory, and may include a reasonable profit. To help the states accomplish this, the Commission has concluded that the state commissions should set arbitrated rates for interconnection and access to unbundled elements pursuant a forward-looking economic cost pricing methodology. The Commission has concluded that the prices that new entrants pay for interconnection and unbundled elements should be based on the local telephone companies Total Element Long-Run Incremental Cost (TELRIC) of providing a particular network element, plus a reasonable share of forward-looking joint and common costs. States will determine, among other things, the appropriate risk-adjusted cost of capital and depreciation rates. If states are unable to conduct a cost study and apply an economic costing methodology within the statutory time frame for arbitrating interconnection disputes, the Commission has established default ceilings and ranges for the states to apply, on an interim basis, to interconnection arrangements. The Commission establishes a default range of 0.2–0.4 cents per minute for switching, plus access charges as discussed below. For tandem switching, the Commission establishes a default ceiling of 0.15 cents per minute. The Order also will establish default ceilings for the other unbundled network elements. These default provisions might provide an administratively simpler approach for state establishment of prices, for a limited interim period, and states, in the exercise of their discretion, select the specific price within that range, or subject to that ceiling.

Access Charges for Unbundled Switching

Nothing in the Commission's Order alters the collection of access charges paid by an interexchange carrier under Part 69 of the Commission's rules, when the incumbent LEC provides exchange access service to an interexchange carrier, either directly or through service resale. Because access charges are not included in the cost-based prices for unbundled network elements, and because certain portions of access charges currently support the provision of universal service, until the access charge reform and universal service proceedings have been completed, the Commission is continuing to provide for access charge recovery with respect to use of an incumbent LEC's unbundled switching element, for a defined period of time. This will minimize the possibility that the incumbent LEC will be able to "double recover," through access charges, the facility costs that new entrants have already paid to purchase unbundled elements, while preserving the status quo with respect to subsidy payments. Under this Order, incumbent LECs will recover from interconnecting carriers the carrier common line charge and a charge equal to 75% of the transport interconnection charge for all interstate minutes traversing the incumbent LECs local switches for which the interconnecting carriers pay unbundled network element charges. This aspect of the Order expires at the earliest of: 1) June 30, 1997; 2) issuance of final decisions by the Commission in the universal service and access reform proceedings; or 3) if the incumbent LEC is a Bell Operating Company (BOC), the date on which that BOC is authorized under section 271 of the Act to provide in-region interLATA service, for any given state.

Resale

The 1996 Act requires all incumbent LECs to offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Resale will be an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled elements or by building their own networks. The 1996 Act's pricing standard for wholesale rates requires state commissions to identify what marketing, billing, collection, and other costs will be avoided or that are avoidable by incumbent LECs when they provide services wholesale, and calculate the portion of the retail rates for those services that is attributable to the avoided and avoidable costs. To define clearly a wholesale service, the Commission has identified certain avoided costs. The application of this definition is left to the states. If a state elects not to implement the methodology, it may elect, on an interim basis, a discount rate from within a default range of discount rates established by the Commission. The Commission establishes a default discount range of 17–25% off retail prices, leaving the states to set the specific rate within that range, in the exercise of their discretion.

Transport and Termination

The 1996 Act requires that charges for transport and termination of traffic be cost-based. The Commission concludes that state commissions, during arbitrations, should set symmetrical prices based on the local telephone company's forward-looking costs. The state commissions would also use the TELRIC methodology when establishing rates for transport and termination. The Commission establishes a default range of 0.2–0.4 cents per minute for end office termination for states which have not conducted a TELRIC cost study. The Commission finds significant evidence in the record in support of the lower end of the ranges. In addition, the Commission finds that additional reciprocal charges could apply to termination through a tandem switch. The default ceiling for tandem switching is 0.15 cents per minute, plus applicable charges for transport from the tandem switch to the end office. Each state opting for the default approach for a limited period of time, may select a rate within that range.

Commercial Mobile Radio Service

In the Order, the Commission concludes that CMRS providers are telecommunications carriers, and therefore are entitled to reciprocal compensation arrangements under section 251(b)(5). The Commission also concludes that under section 251(b)(5) a LEC may not charge a CMRS provider, including a paging company, or any other carrier for terminating LEC-originated traffic. The Commission also states that CMRS providers (specifically cellular, broadband PCS, and covered specialized mobile radio (SMR) providers) offer telephone exchange services, and such providers therefore may request interconnection under section 251(c)(2). The Commission determines that CMRS providers should not be classified as LECs at this time. In this decision, the Commission applied sections 251 and 252 to LEC-CMRS interconnection. The Commission acknowledges that section 332 is also a basis for jurisdiction over LEC-CMRS interconnection, but declined to define the precise extent of that jurisdiction at this time.

Access to Rights of Way

The Commission also amends its rules to implement the pole attachment provisions of the 1996 Act. Specifically, the Commission establishes procedures for nondiscriminatory access by cable television systems and telecommunications carriers to poles, ducts, conduits, and rights-of-way owned by utilities or LECs. The Order includes several specific rules as well as a number of more general guidelines designed to facilitate the negotiation and mutual performance of fair, pro-competitive access agreements without the need for regulatory intervention. Additionally, an expedited dispute resolution is provided when good faith negotiations fail, as are requirements concerning modifications to poles, ducts, conduits, and rights-of-way and the allocation of the costs of such modifications.

Exemptions, Suspensions, and Modifications of Section 251 Requirements for Rural and Small Telephone Companies

Section 251(f)(1) of the 1996 Act provides for exemption of the requirements in section 251(c) for rural telephone companies (as defined by the 1996 Act) under certain circumstances. Section 251(f)(2) permits LECs with fewer than 2 percent of the nation's subscriber lines to petition for suspension or modification of the requirements in sections 251(b) or (c).

States are primarily responsible for interpreting the provisions of section 251(f) through rulemaking and adjudicative proceedings, and are responsible for determining whether a LEC in a particular instance is entitled to exemption, suspension, or modification of section 251 requirements.

The Commission establishes a very limited set of rules interpreting the requirements of section 251(f):

—LECs bear the burden of proving to the state commission that a suspension or modification of the requirements of section 251(b) or (c) is justified.

—Rural LECs bear the burden of proving that continued exemption of the requirements of section 251(c) is justified, once a bona fide request has been made by a carrier under to section 251.

—Only LECs that, at the holding company level, have fewer than 2 percent of the nation's subscriber lines are entitled to petition for suspension or modification of requirements under section 251(f)(2).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, the Report and Order contains a Final Regulatory Flexibility Analysis which is set forth in Appendix C to the Report and Order. A brief description of the analysis follows.

Pursuant to Section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Report and Order with regard to small entities and small incumbent LECs. This analysis includes: (1) a succinct statement of the need for, and objectives of, the Commission's decisions in the Report and Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Report and Order as a result of the comments; (3) a description of and an estimate of the number of small entities and small incumbent LECs to which the Report and Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Report and Order, including an estimate of the classes of small entities and small incumbent LECs which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities and small incumbent LECs consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Report and Order and why each one of the other significant alternatives to each of the Commission's decisions which affect the impact on small entities and small incumbent LECs was rejected.

The rules adopted in this Report and Order are necessary to implement the provisions of the Telecommunications Act of 1996.

Paperwork Reduction Act

Public reporting burden for the collection of information is estimated as follows:

OMB Approval Number: 3060–0710.

Title: Policy and rules concernng the implementation of the local competition provisions in the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: New collection.

Information collection	No. of respondents (approx.)	Annual hour burden per response (hours)	Total annual burden (hours)
Submission of information necessary to reach agreement	51	500	25,500
Submission of agreements to the state commission	.....	.....	835
New and modified	51	5	
Class A carrier	16	5	
Other preexisting	500	1	
Burden of proof regarding interconnection and access to unbundled network elements	100	250	25,000
Collocation	100	250	25,000
Notification that state commission has failed to act	30	1	30
Rural and small carriers	500	10	5,000
Pole attachment modifications: private electric utilities and telephone utilities	1,400	375	525,000
Maintenance practices modifications: cable operators, utilities and others	12,250	.5	6,125
Pole attachment access requests	2,500	1	2,500
Pole attachment denials of access	250	3	750
Dispute resolution process for denials of access: using in-house assistance	250	25	6,250
Dispute resolution process for denials of access: using outside legal counsel	250	4	1,000
Preparation of forward-looking economic cost studies to determine rates for interconnection and unbundled network elements during arbitration proceedings	100	1,216	121,600
Preparation of a cost study on avoidable costs to determine resale discounts	200	480	96,000
Preparation of forward-looking economic cost studies to determine reciprocal rates for transport and termination of telecommunications traffic	100	1,216	121,600

Information collection	No. of respondents (approx.)	Annual hour burden per response (hours)	Total annual burden (hours)
Measurement of traffic for purposes of determining whether transport and termination traffic flows are symmetrical	550	700	385,000
Filing required for arbitration	200	2	400
Determination of rates for interconnection, unbundled network elements, and transport and termination of telecommunications traffic—state commission review of forward-looking economic cost studies	50	2,160	108,000
Determination of resale discount percentage—state commission review of avoided cost studies	50	640	32,000
Petition for incumbent LEC status	30	1	30
Use of proxies by state commissions—articulating written reasons for choice	50	120	6,000
Preparation of forward-looking economic cost studies to establish rates for transport and termination for paging and radiotelephone service, narrowband personal communications services, and paging operation in the private land mobile radio services	50	720	36,000

Total Annual Burden: 1,529,620 hours.

Respondents: Business or other for-profit.

Estimated costs per respondent: $0.

Needs and Uses: The Report and Order implements parts of section 251 of the Telecommunications Act requiring that: incumbent local exchange carriers (LECs) offer interconnection, unbundled network elements, transport and termination, and wholesale rates for retail services to new entrants; incumbent LECs price such services at rates that are cost-based and just and reasonable; and incumbent LECs provide access to rights-of-way, as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Synopsis of First Report and Order

I. Introduction, Overview, and Executive Summary

A. The Telecommunications Act of 1996—A New Direction

1. The Telecommunications Act of 1996, (Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56, *to be codified* at 47 U.S.C. §§ 151 *et seq.* Hereinafter, all citations to the 1996 Act will be to the 1996 Act as codified in the United States Code), fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition.

2. The 1996 Act also recasts the relationship between the FCC and state commissions responsible for regulating telecommunications services. Until now, we and our state counterparts generally have regulated the jurisdictional segments of this industry assigned to each of us by the Communications Act of 1934. The 1996 Act forges a new partnership between state and federal regulators. This arrangement is far better suited to the coming world of competition in which historical regulatory distinctions are supplanted by competitive forces. As this Order demonstrates, we have benefitted enormously from the expertise and experience that the state commissioners and their staffs have contributed to these discussions. We look forward to the continuation of that cooperative working relationship in the coming months as each of us carries out the role assigned by the 1996 Act.

3. Three principal goals established by the telephony provisions of the 1996 Act are: (1) opening the local exchange and exchange access markets to competitive entry; (2) promoting increased competition in telecommunications markets that are already open to competition, including the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition. In this rulemaking and related proceedings, we are taking the steps that will achieve the pro-competitive, deregulatory goals of the 1996 Act. The Act directs us and our state colleagues to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well. We are directed to remove these impediments to competition in all telecommunications markets, while also preserving and advancing universal service in a manner fully consistent with competition.

4. These three goals are integrally related. Indeed, the relationship between fostering competition in local telecommunications markets and promoting greater competition in the long distance market is fundamental to the 1996 Act. Competition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition. Under section 251, incumbent local exchange carriers (LECs), including the Bell Operating Companies (BOCs), are mandated to take several steps to open their networks to competition, including providing interconnection, offering access to unbundled elements of their networks, and making their retail services available at wholesale rates so that they can be resold. Under section 271, once the BOCs have taken the necessary steps, they are allowed to offer long distance service in areas where they provide local telephone service, if we find that entry meets the specific statutory requirements and is consistent with the public interest. Thus, under the 1996 Act, the opening of one of the last monopoly bottleneck strongholds in telecommunications—the local exchange and exchange access markets—to competition is intended to pave the way for enhanced competition in *all* telecommunications markets, by allowing all providers to enter all

markets. The opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices and increased innovation to American consumers. The world envisioned by the 1996 Act is one in which all providers will have new competitive opportunities as well as new competitive challenges.

5. The Act also recognizes, however, that universal service cannot be maintained without reform of the current subsidy system. The current universal service system is a patchwork quilt of implicit and explicit subsidies. These subsidies are intended to promote telephone subscribership, yet they do so at the expense of deterring or distorting competition. Some policies that traditionally have been justified on universal service considerations place competitors at a disadvantage. Other universal service policies place the incumbent LECs at a competitive disadvantage. For example, LECs are required to charge interexchange carriers a Carrier Common Line charge for every minute of interstate traffic that any of their customers send or receive. This exposes LECs to competition from competitive access providers, which are not subject to this cost burden. Hence, section 254 of the Act requires the Commission, working with the states and consumer advocates through a Federal/State Joint Board, to revamp the methods by which universal service payments are collected and disbursed. *Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96–93, 61 FR 10499 (March 14, 1996) (*Universal Service NPRM*). The present universal service system is incompatible with the statutory mandate to introduce efficient competition into local markets, because the current system distorts competition in those markets. For example, without universal service reform, facilities-based entrants would be forced to compete against monopoly providers that enjoy not only the technical, economic, and marketing advantages of incumbency, but also subsidies that are provided only to the incumbents.

B. The Competition Trilogy: Section 251, Universal Service Reform and Access Charge Reform

6. The rules that we adopt to implement the local competition provisions of the 1996 Act represent only one part of a trilogy. In this Report and Order, we adopt initial rules designed to accomplish the first of the goals outlined above—opening the local exchange and exchange access markets to competition. The steps we take today are the initial measures that will enable the states and the Commission to begin to implement sections 251 and 252. Given the dynamic nature of telecommunications technology and markets, it will be necessary over time to review proactively and adjust these rules to ensure both that the statute's mandate of competition is effectuated and enforced, and that regulatory burdens are lifted as soon as competition eliminates the need for them. Efforts to review and revise these rules will be guided by the experience of states in their initial implementation efforts.

7. The second part of the trilogy is universal service reform. In early November, the Federal/State Universal Service Joint Board, including three members of this Commission, will make its recommendations to the Commission. These recommendations will serve as the cornerstone of universal service reform. The Commission will act on the Joint Board's recommendations and adopt universal service rules not later than May 8, 1997, and, we hope, even earlier. Our universal service reform order, consistent with section 254, will rework the subsidy system to guarantee affordable service to all Americans in an era in which competition will be the driving force in telecommunications. By reforming the collection and distribution of universal service funds, the states and the Commission will also ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition. Universal service reform is vitally connected to the local competition rules we adopt today.

8. The third part of the trilogy is access charge reform. It is widely recognized that, because a competitive market drives prices to cost, a system of charges which includes non-cost based components is inherently unstable and unsustainable. It also well-recognized that access charge reform is intensely interrelated with the local competition rules of section 251 and the reform of universal service. We will complete access reform before or concurrently with a final order on universal service.

9. Only when all parts of the trilogy are complete will the task of adjusting the regulatory framework to fully competitive markets be finished. Only when our counterparts at the state level complete implementing and supplementing these rules will the complete blueprint for competition be in place. Completion of the trilogy, coupled with the reduction in burdensome and inefficient regulation we have undertaken pursuant to other provisions of the 1996 Act, will unleash marketplace forces that will fuel economic growth. Until then, incumbents and new entrants must undergo a transition process toward fully competitive markets. We will, however, act quickly to complete the three essential rulemakings. We intend to issue a notice of proposed rulemaking in 1996 and to complete the access charge reform proceeding concurrently with the statutory deadline established for the section 254 rulemaking. This timetable will ensure that actions taken by the Joint Board in November and this Commission by not later than May 1997 in the universal service reform proceeding will be coordinated with the access reform docket.

C. Economic Barriers

10. As we pointed out in our Notice of Proposed Rulemaking in this docket, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, Notice of Proposed Rulemaking, FCC 96–182 (April 19, 1996), 61 FR 18311 (April 25, 1996) (NPRM), the removal of statutory and regulatory barriers to entry into the local exchange and exchange access markets, while a necessary precondition to competition, is not sufficient to ensure that competition will supplant monopolies. An incumbent LEC's existing infrastructure enables it to serve new customers at a much lower incremental cost than a facilities-based entrant that must install its own switches, trunking and loops to serve its customers. Furthermore, absent interconnection between the incumbent LEC and the entrant, the customer of the entrant would be unable to complete calls to subscribers served by the incumbent LEC's network. Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.

11. Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be

removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants. We believe they should be shared in a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency in the form of cost-based prices. Congress also recognized that the transition to competition presents special considerations in markets served by smaller telephone companies, especially in rural areas. We are mindful of these considerations, and know that they will be taken into account by state commissions as well.

12. The Act contemplates three paths of entry into the local market—the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities. This strategy was employed successfully by MCI and Sprint in the interexchange market during the 1970's and 1980's. Others may use a combination of entry strategies simultaneously—whether in the same geographic market or in different ones. Some competitors may use unbundled network elements in combination with their own facilities to serve densely populated sections of an incumbent LEC's service territory, while using resold services to reach customers in less densely populated areas. Still other new entrants may pursue a single entry strategy that does not vary by geographic region or over time. Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results. Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.

13. We note that an entrant, such as a cable company, that constructs its own network will not necessarily need the services or facilities of an incumbent LEC to enable its own subscribers to communicate with each other. A firm adopting this entry strategy, however, still will need an agreement with the incumbent LEC to enable the entrant's customers to place calls to and receive calls from the incumbent LEC's subscribers. Sections 251 (b)(5) and (c)(2) require incumbent LECs to enter into such agreements on just, reasonable, and nondiscriminatory terms and to transport and terminate traffic originating on another carrier's network under reciprocal compensation arrangements. In this item, we adopt rules for states to apply in implementing these mandates of section 251 in their arbitration of interconnection disputes, as well as their review of such arbitrated arrangements, or a BOC's statement of generally available terms. We believe that our rules will assist the states in carrying out their responsibilities under the 1996 Act, thereby furthering the Act's goals of fostering prompt, efficient, competitive entry.

14. We also note that many new entrants will not have fully constructed their local networks when they begin to offer service. Joint Managers' Statement, S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 113 (1996) ("Joint Explanatory Statement") at 121. Although they may provide some of their own facilities, these new entrants will be unable to reach all of their customers without depending on the incumbent's facilities. Hence, in addition to an arrangement for terminating traffic on the incumbent LEC's network, entrants will likely need agreements that enable them to obtain wholesale prices for services they wish to sell at retail and to use at least some portions of the incumbents' facilities, such as local loops and end office switching facilities.

15. Congress recognized that, because of the incumbent LEC's incentives and superior bargaining power, its negotiations with new entrants over the terms of such agreements would be quite different from typical commercial negotiations. As distinct from bilateral commercial negotiation, the new entrant comes to the table with little or nothing the incumbent LEC needs or wants. The statute addresses this problem by creating an arbitration proceeding in which the new entrant may assert certain rights, including that the incumbent's prices for unbundled network elements must be "just, reasonable and nondiscriminatory." We adopt rules herein to implement these requirements of section 251(c)(3).

D. Operational Barriers

16. The statute also directs us to remove the existing operational barriers to entering the local market. Vigorous competition would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of incumbent LECs. Our recently-issued number portability Report and Order addressed one of the most significant operational barriers to competition by permitting customers to retain their phone numbers when they change local carriers. *Telephone Number Portability*, CC Docket No. 95–116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96–286 (July 2, 1996) (61 FR 38605 (July 25, 1996)) (*Number Portability Order*). Consistent with the 1996 Act, 47 U.S.C. § 251(b)(2), we required LECs to implement interim and long-term measures to ensure that customers can change their local service providers without having to change their phone number. Number portability promotes competition by making it less expensive and less disruptive for a customer to switch providers, thus freeing the customer to choose the local provider that offers the best value.

17. Closely related to number portability is dialing parity, which we address in a companion order. Dialing parity enables a customer of a new entrant to dial others with the convenience an incumbent provides, regardless of which carrier the customer has chosen as the local service provider. The history of competition in the interexchange market illustrates the critical importance of dialing parity to the successful introduction of competition in telecommunications markets. Equal access enabled customers of non-AT&T providers to enjoy the same convenience of dialing "1" plus the called party's number that AT&T customers had. Prior to equal access, subscribers to interexchange carriers (IXCs) other than AT&T often were required to dial more than 20 digits to place an interstate long-distance call. Industry data show that, after equal access was deployed throughout the country, the number of customers using MCI and other long-distance carriers increased significantly. Federal Communications Commission, Statistics of Communications Common Carriers 1994–95, at 344, Table 8.8; Federal Communications Commission, Report on Long Distance Market Share, Second Quarter 1995, at 14, table 6 (Oct. 1995). Thus, we believe that equal access had a substantial pro-competitive

impact. Dialing parity should have the same effect.

18. This Order addresses other operational barriers to competition, such as access to rights of way, collocation, and the expeditious provisioning of resale and unbundled elements to new entrants. The elimination of these obstacles is essential if there is to be a fair opportunity to compete in the local exchange and exchange access markets. As an example, customers can voluntarily switch from one interexchange carrier to another extremely rapidly, through automated systems. This has been a boon to competition in the interexchange market. We expect that moving customers from one local carrier to another rapidly will be essential to fair local competition.

19. As competition in the local exchange market emerges, operational issues may be among the most difficult for the parties to resolve. Thus, we recognize that, along with the state commissions and the courts, we will be called upon to enforce provisions of arbitrated agreements and our rules relating to these operational barriers to entry. Because of the critical importance of eliminating these barriers to the accomplishment of the Act's pro-competitive objectives, we intend to enforce our rules in a manner that is swift, sure, and effective. To this end we will review, with the states, our enforcement techniques during the fourth quarter of 1996.

20. We recognize that during the transition from monopoly to competition it is vital that we and the states vigilantly and vigorously enforce the rules that we adopt today and that will be adopted in the future to open local markets to competition. If we fail to meet that responsibility, the actions that we take today to accomplish the 1996 Act's pro-competitive, deregulatory objectives may prove to be ineffective.

E. Transition

21. We consider it vitally important to establish a "pro-competitive, deregulatory national policy framework" for local telephony competition, but we are acutely mindful of existing common carrier arrangements, relationships, and expectations, particularly those that affect incumbent LECs. In light of the timing issues described above, we think it wise to provide some appropriate transitions.

22. In this regard, this Order sets minimum, uniform, national rules, but also relies heavily on states to apply these rules and to exercise their own discretion in implementing a pro-competitive regime in their local telephone markets. On those issues where the need to create a factual record distinct to a state or to balance unique local considerations is material, we ask the states to develop their own rules that are consistent with general guidance contained herein. The states will do so in rulemakings and in arbitrating interconnection arrangements. On other issues, particularly those related to pricing, we facilitate the ability of states to adopt immediate, temporary decisions by permitting the states to set proxy prices within a defined range or subject to a ceiling. We believe that some states will find these alternatives useful in light of the strict deadlines of the law. For example, section 252(b)(4)(C) requires a state commission to complete the arbitration of issues that have been referred to it, pursuant to section 252(b)(1), within nine months after the incumbent local exchange carrier received the request for negotiation. Selection of the actual prices within the range or subject to the ceiling will be for the state commission to determine. Some states may use proxies temporarily because they lack the resources necessary to review cost studies in rulemakings or arbitrations. Other states may lack adequate resources to complete such tasks before the expiration of the arbitration deadline. However, we encourage all states to complete the necessary work within the statutory deadline. Our expectation is that the bulk of interconnection arrangements will be concluded through arbitration or agreement, by the beginning of 1997. Not until then will we be able to determine more precisely the impact of this Order on promoting competition. Between now and then, we are eager to continue our work with the states. In this period, as set forth earlier, we should be able to take major steps toward implementing a new universal service system and far-reaching reform of interstate access. These reforms will reflect intensive dialogue between us and the states.

23. Similarly, as states implement the rules that we adopt in this order as well as their own decisions, they may find it useful to consult with us, either formally or informally, regarding particular aspects of these rules. We encourage and invite such inquiries because we believe that such consultations are likely to provide greater certainty to the states as they apply our rules to specific arbitration issues and possibly to reduce the burden of expensive judicial proceedings on states. A variety of formal and informal procedures exist under our rules for such consultations, and we may find it helpful to fashion others as we gain additional experience under the 1996 Act.

F. Executive Summary

1. Scope of Authority of the FCC and State Commissions

24. The Commission concludes that sections 251 and 252 address both interstate and intrastate aspects of interconnection, resale services, and access to unbundled elements. The 1996 Act moves beyond the distinction between interstate and intrastate matters that was established in the 1934 Act, and instead expands the applicability of national rules to historically intrastate issues, and state rules to historically interstate issues. In the Report and Order, the Commission concludes that the states and the FCC can craft a partnership that is built on mutual commitment to local telephone competition throughout the country, and that under this partnership, the FCC establishes uniform national rules for some issues, the states, and in some instances the FCC, administer these rules, and the states adopt additional rules that are critical to promoting local telephone competition. The rules that the FCC establishes in this Report and Order are minimum requirements upon which the states may build. The Commission also intends to review and amend the rules it adopts in this Report and Order to take into account competitive developments, states' experiences, and technological changes.

2. Duty to Negotiate in Good Faith

25. In the Report and Order, the Commission establishes some national rules regarding the duty to negotiate in good faith, but concludes that it would be futile to try to determine in advance every possible action that might be inconsistent with the duty to negotiate in good faith. The Commission also concludes that, in many instances, whether a party has negotiated in good faith will need to be decided on a case-by-case basis, in light of the particular circumstances. The Commission notes that the arbitration process set forth in section 252 provides one remedy for failing to negotiate in good faith. The Commission also concludes that agreements that were negotiated before the 1996 Act was enacted, including agreements between neighboring LECs, must be filed for review by the state commission pursuant to section 252(a).

If the state commission approves such agreements, the terms of those agreements must be made available to requesting telecommunications carriers in accordance with section 252(i).

3. Interconnection

26. Section 251(c)(2) requires incumbent LECs to provide interconnection to any requesting telecommunications carrier at any technically feasible point. The interconnection must be at least equal in quality to that provided by the incumbent LEC to itself or its affiliates, and must be provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The Commission concludes that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. The Commission identifies a minimum set of five "technically feasible" points at which incumbent LECs must provide interconnection: (1) the line side of a local switch (for example, at the main distribution frame); (2) the trunk side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; and (5) out-of-band signalling facilities, such as signalling transfer points, necessary to exchange traffic and access call-related databases. In addition, the points of access to unbundled elements (discussed below) are also technically feasible points of interconnection. The Commission finds that telecommunications carriers may request interconnection under section 251(c)(2) to provide telephone exchange or exchange access service, or both. If the request is for such purpose, the incumbent LEC must provide interconnection in accordance with section 251(c)(2) and the Commission's rules thereunder to any telecommunications carrier, including interexchange carriers and commercial mobile radio service (CMRS) providers.

4. Access to Unbundled Elements

27. Section 251(c)(3) requires incumbent LECs to provide requesting telecommunications carriers nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. In the Report and Order, the Commission identifies a minimum set of network elements that incumbent LECs must provide under this section. States may require incumbent LECs to provide additional network elements on an unbundled basis. The minimum set of network elements the Commission identifies are: local loops, local and tandem switches (including all vertical switching features provided by such switches), interoffice transmission facilities, network interface devices, signalling and call-related database facilities, operations support systems and information, and operator and directory assistance facilities. The Commission concludes that incumbent LECs must provide nondiscriminatory access to operations support systems and information by January 1, 1997. The Commission concludes that access to such operations support systems is critical to affording new entrants a meaningful opportunity to compete with incumbent LECs. The Commission also concludes that incumbent LECs are required to provide access to network elements in a manner that allows requesting carriers to combine such elements as they choose, and that incumbent LECs may not impose restrictions upon the uses to which requesting carriers put such network elements.

5. Methods of Obtaining Interconnection and Access to Unbundled Elements

28. Section 251(c)(6) requires incumbent LECs to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises, except that the incumbent LEC may provide virtual collocation if it demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. The Commission concludes that incumbent LECs are required to provide for any technically feasible method of interconnection or access requested by a telecommunications carrier, including physical collocation, virtual collocation, and interconnection at meet points. The Commission adopts, with certain modifications, some of the physical and virtual collocation requirements it adopted earlier in the *Expanded Interconnection* proceeding. The Commission also establishes rules interpreting the requirements of section 251(c)(6).

6. Pricing Methodologies

29. The 1996 Act requires the states to set prices for interconnection and unbundled elements that are cost-based, nondiscriminatory, and may include a reasonable profit. To help the states accomplish this, the Commission concludes that the state commissions should set arbitrated rates for interconnection and access to unbundled elements pursuant a forward-looking economic cost pricing methodology. The Commission concludes that the prices that new entrants pay for interconnection and unbundled elements should be based on the local telephone companies Total Element Long-Run Incremental Cost (TELRIC) of providing a particular network element, plus a reasonable share of forward-looking joint and common costs. States will determine, among other things, the appropriate risk-adjusted cost of capital and depreciation rates. For states that are unable to conduct a cost study and apply an economic costing methodology within the statutory time frame for arbitrating interconnection disputes, the Commission establishes default ceilings and ranges for the states to apply, on an interim basis, to interconnection arrangements. The Commission establishes a default range of 0.2–0.4 cents per minute for switching, plus access charges as discussed below. For tandem switching, the Commission establishes a default ceiling of 0.15 cents per minute. The Order also establishes default ceilings for the other unbundled network elements.

7. Access Charges for Unbundled Switching

30. Nothing in this Report and Order alters the collection of access charges paid by an interexchange carrier under Part 69 of the Commission's rules, when the incumbent LEC provides exchange access service to an interexchange carrier, either directly or through service resale. Because access charges are not included in the cost-based prices for unbundled network elements, and because certain portions of access charges currently support the provision of universal service, until the access charge reform and universal service proceedings have been completed, the Commission continues to provide for access charge recovery with respect to use of an incumbent LEC's unbundled switching element, for a defined period of time. This will minimize the possibility that the incumbent LEC will be able to "double recover," through access charges, the facility costs that new entrants have already paid to purchase unbundled elements, while preserving the status quo with respect to subsidy payments. Incumbent LECs will recover from interconnecting carriers the carrier common line charge and a charge equal to 75% of the transport interconnection charge for all interstate minutes traversing the incumbent LECs local switches for which the interconnecting carriers pay unbundled network element charges. This aspect of the Order expires at the earliest of: (1)

June 30, 1997; (2) issuance of final decisions by the Commission in the universal service and access reform proceedings; or (3) if the incumbent LEC is a Bell Operating Company (BOC), the date on which that BOC is authorized under section 271 of the Act to provide in-region interLATA service, for any given state.

8. Resale

31. The 1996 Act requires all incumbent LECs to offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Resale will be an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled elements or by building their own networks. State commissions must identify marketing, billing, collection, and other costs that will be avoided or that are avoidable by incumbent LECs when they provide services wholesale, and calculate the portion of the retail rates for those services that is attributable to the avoided and avoidable costs. The Commission identifies certain avoided costs, and the application of this definition is left to the states. If a state elects not to implement the methodology, it may elect, on an interim basis, a discount rate from within a default range of discount rates established by the Commission. The Commission establishes a default discount range of 17–25% off retail prices, leaving the states to set the specific rate within that range, in the exercise of their discretion.

9. Requesting Telecommunications Carriers

32. The Commission concludes that, to the extent that a carrier is engaged in providing for a fee local, interexchange, or international basic services directly to the public or to such classes of users as to be effectively available directly to the public, the carrier is a "telecommunications carrier," and is thus subject to the requirements of section 251(a) and the benefits of section 251(c). The Commission concludes that CMRS providers are telecommunications carriers, and that private mobile radio service (PMRS) providers generally are not telecommunications carriers, except to the extent that a PMRS provider uses excess capacity to provide local, interexchange, or international services for a fee directly to the public. The Commission also concludes that, if a company provides both telecommunications services and information services, it must be classified as a telecommunications carrier.

10. Commercial Mobile Radio Service

33. The Commission concludes that LECs are obligated, pursuant to section 251(b)(5) and the corresponding pricing standards of section 252(d)(2) to enter into reciprocal compensation arrangements with CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks. The Commission concludes that many CMRS providers (specifically cellular, broadband PCS and covered specialized mobile radio (SMR) providers) offer telephone exchange service and exchange access, and that incumbent LECs therefore must make interconnection available to these CMRS providers in conformity with sections 251(c) and 252. The Commission concludes that CMRS providers should not be classified as LECs at this time. The Commission also concludes that it may apply section 251 and 252 to LEC–CMRS interconnection. By opting to proceed under sections 251 and 252, the Commission is not finding that section 332 jurisdiction over interconnection has been repealed by implication, and the Commission acknowledges that section 332, in tandem with section 201, is a basis for jurisdiction over LEC–CMRS interconnection.

11. Transport and Termination

34. The 1996 Act requires that charges for transport and termination of traffic be cost-based. The Commission concludes that state commissions, during arbitrations, should set symmetrical prices based on the local telephone company's forward-looking costs. The state commissions would also use the TELRIC methodology when establishing rates for transport and termination. The Commission establishes a default range of 0.2–0.4 cents per minute for end office termination for states which have not conducted a TELRIC cost study. The Commission finds significant evidence in the record in support of the lower end of the ranges. In addition, the Commission finds that additional reciprocal charges could apply to termination through a tandem switch. The default ceiling for tandem switching is 0.15 cents per minute, plus applicable charges for transport from the tandem switch to the end office. Each state opting for the default approach for a limited period of time, may select a rate within that range.

12. Access to Rights of Way

35. The Commission amends its rules to implement the pole attachment provisions of the 1996 Act. Specifically, the Commission establishes procedures for nondiscriminatory access by cable television systems and telecommunications carriers to poles, ducts, conduits, and rights-of-way owned by utilities or LECs. The Order includes several specific rules as well as a number of more general guidelines designed to facilitate the negotiation and mutual performance of fair, pro-competitive access agreements without the need for regulatory intervention. Additionally, an expedited dispute resolution is provided when good faith negotiations fail, as are requirements concerning modifications to poles, ducts, conduits, and rights-of-way and the allocation of the costs of such modifications.

13. Obligations Imposed on non-incumbent LECs

36. The Commission concludes that states generally may not impose on non-incumbent LECs the obligations set forth in section 251(c) entitled, "Additional Obligations on Incumbent Local Exchange Carriers." Section 251(h)(2) sets forth a process by which the Commission may decide to treat LECs as incumbent LECs, and state commissions or other interested parties may ask the Commission to issue a rule, in accordance with section 251(h)(2), providing for the treatment of a LEC as an incumbent LEC. In addition to this Report and Order, the Commission addresses in separate proceedings some of the obligations, such as dialing parity and number portability, that section 251(b) imposes on all LECs.

14. Exemptions, Suspensions, and Modifications of Section 251 Requirements

37. Section 251(f)(1) provides for exemption from the requirements in section 251(c) for rural telephone companies (as defined by the 1996 Act) under certain circumstances. Section 251(f)(2) permits LECs with fewer than 2 percent of the nation's subscriber lines to petition for suspension or modification of the requirements in sections 251(b) or (c). In the Report and Order, the Commission establishes a very limited set of rules interpreting the requirements of section 251(f). For example, the Commission finds that LECs bear the burden of proving to the state commission that a suspension or modification of the requirements of section 251(b) or (c) is justified. Rural LECs bear the burden of proving that

continued exemption of the requirements of section 251(c) is justified, once a bona fide request has been made by a carrier under section 251. The Commission also concludes that only LECs that, at the holding company level, have fewer than 2 percent of the nation's subscriber lines are entitled to petition for suspension or modification of requirements under section 251(f)(2). For the most part, however, the states will interpret the provisions of section 251(f) through rulemaking and adjudicative proceedings, and will be responsible for determining whether a LEC in a particular instance is entitled to exemption, suspension, or modification of section 251 requirements.

15. Commission Responsibilities Under Section 252

38. Section 252(e)(5) requires the Commission to assume the state's responsibilities under section 252 if the state "fails to act to carry out its responsibility" under that section. In the Report and Order, the Commission adopts a minimum set of rules that will provide notice of the standards and procedures that the Commission will use if it has to assume the responsibility of a state commission under section 252(e)(5). The Commission concludes that, if it arbitrates agreements, it will use a "final offer" arbitration method, under which each party to the arbitration proposes its best and final offer, and the arbitrator chooses among the proposals. The arbitrator could choose a proposal in its entirety, or could choose different parties' proposals on an issue-by-issue basis. In addition, the parties could continue to negotiate an agreement after they submit their proposals and before the arbitrator makes a decision.

39. Section 252(i) of the 1996 Act requires that incumbent LECs make available to any requesting telecommunications carrier any individual interconnection, service, or network element on the same terms and conditions as contained in any agreement approved under Section 252 to which they are a party. The Commission concludes that section 252(i) entitles all carriers with interconnection agreements to "most favored nation" status regardless of whether such a clause is in their agreement. Carriers may obtain any individual interconnection, service, or network element under the same terms and conditions as contained in any publicly filed interconnection agreement without having to agree to the entire agreement. Additionally, carriers seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, but instead may obtain access to agreement provisions on an expedited basis.

II. Scope of the Commission's Rules

40. In implementing section 251, we conclude that some national rules are necessary to promote Congress's goals for a national policy framework and serve the public interest, and that states should have the major responsibility for prescribing the specific terms and conditions that will lead to competition in local exchange markets. Our approach in this Report and Order has been a pragmatic one, consistent with the Act, with respect to this allocation of responsibilities. We believe that the steps necessary to implement section 251 are not appropriately characterized as a choice between specific national rules on the one hand and substantial state discretion on the other. We adopt national rules where they facilitate administration of sections 251 and 252, expedite negotiations and arbitrations by narrowing the potential range of dispute where appropriate to do so, offer uniform interpretations of the law that might not otherwise emerge until after years of litigation, remedy significant imbalances in bargaining power, and establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish. This is consistent with our obligation to "complete all actions necessary to establish regulations to implement the requirements" of section 251. Some of these rules will be relatively self-executing. In many instances, however, the rules we establish call on the states to exercise significant discretion and to make critical decisions through arbitrations and development of state-specific rules. Over time, we will continue to review the allocation of responsibilities, and we will reallocate them if it appears that we have inappropriately or inefficiently designated the decisionmaking roles.

41. The decisions in this Report and Order, and in this Section in particular, benefit from valuable insights provided by states based on their experiences in establishing rules and taking other actions intended to foster local competition. Through formal comments, *ex parte* meetings, and open forums, state commissioners and their staffs provided extensive, detailed information to us regarding difficult or complex issues that they have encountered, and the various approaches they have adopted to address those issues. Information from the states highlighted both differences among communities within states, as well as similarities among states. Recent state rules and orders that take into account the local competition provisions of the 1996 Act have been particularly helpful to our deliberations about the types of national rules that will best further the statute's goal of encouraging local telephone competition. *See, e.g,* Petition of AT&T for the Commission to Establish Resale Rules, Rates, Terms and Condition and the Initial Unbundling of Services, Docket No. 6352–U (Georgia Commission May 29, 1996); AT&T Communications of Illinois, Inc. *et al.*, Petition for a Total Local Exchange Wholesale Service Tariff from Illinois Bell Telephone Company, Nos. 95–0458 and 95–0531 (consol.) (Illinois Commission June 26, 1996); Hawaii Administrative Rules, Ch. 6–80, "Competition in Telecommunications Services," (Hawaii Commission May 17, 1996); Public Utilities Commission of Ohio Case No. 95–845–TP–COI (Local Competition) (Ohio Commission June 12, 1996) and Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996, Case No. 96–463–TP–UNC (Ohio Commission May 30, 1996); Proposed Rules regarding Implementation of §§ 40–15–101 *et seq.* Requirements relating to Interconnection and Unbundling, Docket No. 95R–556T (Colorado Commission April 25, 1996) (one of a series of Orders adopted by the Colorado Commission in response to the local competition provisions of the 1996 Act); Washington Utilities and Transportation Commission, Fifteenth Supplemental Order, Decision and Order Rejecting Tariff Revisions, Requiring Refiling, Docket No. UT–950200 (Washington Commission April 1996). These state decisions also offered useful insights in determining the extent to which the Commission should set forth uniform national rules, and the extent to which we should ensure that states can impose varying requirements. Our contact with state commissioners and their staffs, as well as recent state actions, make clear that states and the FCC share a common commitment to creating opportunities for efficient new entry into the local telephone market. Our experience in working with state commissions since passage of the 1996 Act confirms that we will achieve that goal most effectively and quickly by working cooperatively with one another now and in the future as the country's emerging competition policy presents new difficulties and opportunities.

42. We also received helpful advice and assistance from other government agencies, including the National Telecommunications and Information Administration (NTIA), the Department of Justice, and the Department of Defense about how national rules could further the public interest. In addition, comments from industry members and consumer advocacy groups helped us understand better the varying and competing concerns of consumers and different representatives of the telecommunications industry. We benefitted as well by discovering that there are certain matters on which there is substantial agreement about the role the Commission should play in establishing and enforcing provisions of section 251.

A. Advantages and Disadvantages of National Rules

1. Background

43. Section 251(d)(1) instructs the Commission, within six months after the enactment of the 1996 Act (that is, by August 8, 1996), to "establish regulations to implement the requirements of [section 251]." The Commission's implementing rules should be designed "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." Joint Explanatory Statement at 1. In addition, section 253 requires the Commission to preempt the enforcement of any state or local statute, regulation, or legal requirement that "prohibit[s] or [has] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

44. In the NPRM, we stated our belief that we should implement Congress's goal of a pro-competitive, de-regulatory, national policy framework by adopting national rules that are designed to secure the full benefits of competition for consumers, with due regard to work already done by the states. We sought comment on the extent to which we should adopt explicit national rules, and the extent to which permitting variations among states would further Congress's pro-competitive goals. We anticipated that we would rely on actions some states have already taken to address interconnection and other issues related to opening local markets to competition. In the NPRM, we set forth some of the benefits that would likely result from implementing explicit national rules, and some of the benefits that would likely result from allowing variations among states.

2. Discussion

45. Comments and *ex parte* discussions with state commission representatives have convinced us that we share with states a common goal of promoting competition in local exchange markets. We conclude that states and the FCC can craft a working relationship that is built on mutual commitment to local service competition throughout the country, in which the FCC establishes uniform, national rules for some issues, the states and the FCC administer these rules, and the states adopt other critically important rules to promote competition. In implementing the national rules we adopt in this Report and Order, states will help to illuminate and develop innovative solutions regarding many complex issues for which we have not attempted to prescribe national rules at this time, and states will adopt specific rules that take into account local concerns. In this Report and Order, and in subsequent actions we intend to take, we have and will continue to seek guidance from various states that have taken the lead in establishing pro-competitive requirements. We also expect to rely heavily on state input and experience in other FCC proceedings, such as access reform and petitions concerning BOC entry into in-region interLATA markets. Virtually every decision in this Report and Order borrows from decisions reached at the state level, and we expect this close association with and reliance on the states to continue in the future. We therefore encourage states to continue to pursue their own pro-competitive policies. Indeed, we hope and expect that this Report and Order will foster an interactive process by which a number of policies consistent with the 1996 Act are generated by states.

46. We find that certain national rules are consistent with the terms and the goals of the statute. Section 251 sets forth a number of rights with respect to interconnection, resale services, and unbundled network elements. We conclude that the Commission should define at least certain minimum obligations that section 251 requires, respectively, of all telecommunications carriers, LECs, or incumbent LECs. For example, as discussed in more detail below, we conclude that it is reasonable to identify a minimum number of network elements that incumbent LECs must unbundle and make available to requesting carriers pursuant to the standards set forth in sections 251 (c) and (d), while also permitting states to go beyond that minimum list and impose additional requirements that are consistent with the 1996 Act and the FCC's implementing rules. We find no basis for permitting an incumbent LEC in some states not to make available these minimum technically feasible network elements that are provided by incumbent LECs in other states. We point out, however, that a uniform rule does not necessarily mean uniform results. For example, a national pricing methodology takes into account local factors and inputs, and thus may lead to different prices in different states, and different regions within states. In addition, parties that voluntarily negotiate agreements need not comply with the requirements we establish under sections 251 (b) and (c), including any pricing rules we adopt. We intend to review on an ongoing basis the rules we adopt herein in light of competitive developments, states' experiences, and technological changes.

47. We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services. Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market. Therefore, although the 1996 Act requires incumbent LECs, for example, to provide interconnection and access to unbundled elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, incumbent LECs have strong incentives to resist such obligations. The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power in part because many new entrants seek to enter national or regional markets. National (as opposed to state) rules more directly address these competitive circumstances.

48. We emphasize that, under the statute, parties may voluntarily negotiate agreements "without regard to" the rules that we establish under sections 251 (b) and (c). However, fair negotiations will be expedited by the promulgation of national rules. Similarly, state arbitration of interconnection agreements now and in

the future will be expedited and simplified by a clear statement of terms that must be included in every arbitrated agreement, absent mutual consent to different terms. Such efficiency and predictability should facilitate entry decisions, and in turn enhance opportunities for local exchange competition. In addition, for new entrants seeking to provide service on a national or regional basis, minimum national requirements may reduce the need for designing costly multiple network configurations and marketing strategies, and allow more efficient competition. More efficient competition will, in turn, benefit consumers. Further, national rules will reduce the need for competitors to revisit the same issue in 51 different jurisdictions, thereby reducing administrative burdens and litigation for new entrants and incumbents.

49. We also believe that some explicit national standards will be helpful in enabling the Commission and the states to carry out other responsibilities under the 1996 Act. For example, national standards will enable the Commission to address issues swiftly if the Commission is obligated to assume section 252 responsibilities because a state commission has failed to act. In addition, BOCs that seek to offer long distance service in their service areas must satisfy, *inter alia*, a "competitive checklist" set forth in section 271(c)(2)(B). Many of the competitive checklist provisions require compliance with specific provisions of section 251. For example, the checklist requires BOCs to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Some national rules also will help the states, the DOJ, and the FCC carry out their responsibilities under section 271, and assist BOCs in determining what steps must be taken to meet the requirements of section 271(c)(2)(B), the competitive checklist. In addition, national rules that establish the minimum requirements of section 251 will provide states with a consistent standard against which to conduct the fact-intensive process of verifying checklist compliance, the DOJ will have standards against which to evaluate the applications, and we will have standards to apply in adjudicating section 271 petitions in an extremely compressed time frame. Moreover, we believe that establishing minimum requirements that arbitrated agreements must satisfy will assist states in arbitrating and reviewing agreements under section 252, particularly in light of the relatively short time frames for such state action. While some states reject the idea that national rules will help the state commissions to satisfy their obligations under section 252 to mediate, arbitrate, and review agreements, other states have welcomed national rules, at least with respect to certain matters.

50. A broad range of parties urge the Commission to adopt minimum requirements that would permit states to impose additional, pro-competitive requirements that are consistent with the 1996 Act to address local or state-specific circumstances. We agree generally that many of the rules we adopt should establish non-exhaustive requirements, and that states may impose additional pro-competitive requirements that are consistent with the purposes and terms of the 1996 Act, including our regulations established pursuant to section 251. In contrast, we conclude that the 1996 Act limits the obligations states may impose on non-incumbent carriers. *See infra*, Section XI.C. We also anticipate that the rules we adopt regarding interconnection, services, and access to unbundled elements will evolve to accommodate developments in technology and competitive circumstances, and that we will continue to draw on state experience in applying our rules and in addressing new or additional issues. We recognize that it is vital that we reexamine our rules over time in order to reflect developments in the dynamic telecommunications industry. We cannot anticipate all of the changes that will occur as a result of technological advancements, competitive developments, and practical experience, particularly at the state level. Therefore, ongoing review of our rules is inevitable. Moreover, we conclude that arbitrated agreements must permit parties to incorporate changes to our national rules, or to applicable state rules as such changes may be effective, without abrogating the entire contract. This will ensure that parties, regardless of when they enter into arbitrated agreements, will be able to take advantage of all applicable Commission and state rules as they evolve.

51. Some parties contend that even minimum requirements may impede the ability of state commissions to take varying approaches to address particular circumstances or conditions. We agree with the contention that, although there are different market conditions from one area to another, such distinct areas do not necessarily replicate state boundaries. For example, virtually all states include both more densely-populated areas and sparsely populated rural areas, and all include both business and residential areas. Although each state is unique in many respects, demographic and other differences among states do not suggest that national rules are inappropriate. Moreover, even though it may not be appropriate to impose identical requirements on carriers with different network technologies, our rules are intended to accommodate such differences. *See infra*, Section IV.E. (concluding that successful interconnection or access to an unbundled element at a particular point in the network creates a rebuttable presumption that such interconnection or access is technically feasible at networks that employ *substantially similar facilities*). We agree with parties, such as the Ohio Consumers' Counsel, that physical networks are not designed on a state-by-state basis. Ohio Consumers' Counsel comments at 4. Some parties have argued that explicit national standards will delay the emergence of local telephone competition, but none has offered persuasive evidence to substantiate that claim, and new entrants overwhelmingly favor strong national rules. We conclude, for the reasons set forth above, that some national rules will enhance opportunities for local competition, and we have chosen to adopt national rules where necessary to establish the minimum requirements for a nationwide pro-competitive policy framework.

52. We disagree with those parties that claim we are trying to impose a uniformity that Congress did not intend. Variations among interconnection agreements will exist, because parties may negotiate their own terms, states may impose additional requirements that differ from state to state, and some terms are beyond the scope of this Report and Order. We conclude, however, that establishing certain rights that are available, through arbitration, to all requesting carriers, will help advise parties of their minimum rights and obligations, and will help speed the negotiation process. In effect, the Commission's rules will provide a national baseline for terms and conditions for all arbitrated agreements. Our rules also may tend to serve as a useful guide for negotiations by setting forth minimum requirements that will apply to parties if they are unable to reach agreement. This is consistent with the broad delegation of authority that Congress gave the Commission to implement the requirements set forth in section 251.

53. We also believe that national rules will assist smaller carriers that seek to

provide competitive local service. As noted above, national rules will greatly reduce the need for small carriers to expend their limited resources securing their right to interconnection, services, and network elements to which they are entitled under the 1996 Act. This is particularly true with respect to discrete geographic markets that include areas in more than one state. We agree with the Small Business Administration that national rules will reduce delay and lower transaction costs, which impose particular hardships for small entities that are likely to have less of a financial cushion than larger entities. In addition, even a small provider may wish to enter more than one market, and national rules will create economies of scale for entry into multiple markets. We reject the position advocated by some parties that we should not adopt national rules because such rules will be particularly burdensome for small or rural incumbent LECs. We note, however, that section 251(f) provides relief from some of our rules.

54. We recognize the concern of many state commissions that the Commission not undermine or reverse existing state efforts to foster local competition. We believe that Congress did not intend for us needlessly to disrupt the pro-competitive actions some states already have taken that are both consistent with the 1996 Act and our rules implementing section 251. We believe our rules will in many cases be consistent with pro-competitive actions already taken by states, and in fact, many of the rules we adopt are based directly on existing state commission actions. We also intend to continue to reflect states' experiences as we revise our rules. We also recognize, however, that in at least some instances existing state requirements will not be consistent with the statute and our implementing rules. It will be necessary in those instances for the subject states to amend their rules and alter their decisions to conform to our rules. In our judgment, national rules are highly desirable to achieve Congress's goal of a pro-competitive national policy framework for the telecommunications industry.

B. Suggested Approaches for FCC Rules

1. Discussion

55. We intend to adopt minimum requirements in this proceeding; states may impose additional pro-competitive requirements that are consistent with the Act and our rules. We decline to adopt a "preferred outcomes" approach, because such an approach would fail to establish explicit national standards for arbitration, and would fail to provide sufficient guidance to the parties' options in negotiations. To the extent that parties advocate "preferred outcomes" from which the parties could deviate in arbitrated agreements, we reject such a proposal, because we conclude that it would not provide the benefits conferred by establishing "default" requirements. To the extent that commenters advocate a regulatory approach that would require parties to justify a negotiated result different from the preferred outcomes, we believe that such an approach would impose greater constraints on voluntarily negotiated agreements than the 1996 Act permits. Under the 1996 Act, parties may freely negotiate any terms without justifying deviation from "preferred outcomes." The only restriction on such negotiated agreements is that they must be deemed by the state commission to be nondiscriminatory and consistent with the public interest, under the standards set forth in section 252(e)(2)(A). In response to the Illinois Commission's suggestion that we adopt a process by which states may seek waivers of our rules, we note that Commission rules already provide for waiver of our rules under certain circumstances. We decline to adopt a special waiver process in this proceeding.

56. We intend our rules to give guidance to the parties regarding their rights and obligations under section 251. The specificity of our rules varies with respect to different issues; in some cases, we identify broad principles and leave to the states the determination of what specific requirements are necessary to satisfy those principles. In other cases, we find that local telephone competition will be better served by establishing specific requirements. In each of the sections below, we discuss the basis for adopting particular national principles or rules.

57. We also believe that we should periodically review and amend our rules to take into account experiences of carriers and states, technological changes, and market developments. The actions we take here are fully responsive to Congress's mandate that we complete all actions necessary to establish regulations to implement the requirements of section 251 by August 8, 1996. We nevertheless retain authority to refine or augment our rules, or to follow a different course, after developing some practical experience with the rules adopted herein. It is beyond doubt that the Commission has ongoing rulemaking authority. For example, section 4(i) provides that the Commission "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with the Act, as may be necessary in the execution of its functions." Section 4(j) provides that the Commission "may conduct its proceedings in such manner as will best conduce to the proper dispatch and to the ends of justice." We agree with Sprint, the Illinois Commission, and other parties that we should address in this rulemaking the most important issues, and continue to refine our rules on an ongoing basis to address additional or unanticipated issues, and especially to learn from the decisions and experiences of the states. We also reject the argument of Margaretville Telephone Company that the 1996 Act constitutes an unconstitutional taking because it seeks to deprive incumbent LECs of their "reasonable, investment-backed expectation to hold competitive advantages over new market entrants."

C. Legal Authority of the Commission to Establish Rules Applicable to Intrastate Aspects of Interconnection, Services, and Unbundled Network Elements

1. Background

58. In the NPRM, we tentatively concluded that Congress intended sections 251 and 252 to apply, and that our rules should apply, to both interstate and intrastate aspects of interconnection, services, and access to network elements. We stated in the NPRM that it would seem to make little sense, in terms of economics or technology, to distinguish between interstate and intrastate components for purposes of sections 251 and 252. We also believed that such a distinction would appear to be inconsistent with Congress's desire to establish a national policy framework for interconnection and other issues critical to achieving local competition. We sought comment on these tentative conclusions.

59. We further tentatively concluded in the NPRM that section 2(b) of the 1934 Act does not require a contrary conclusion. Section 2(b) states that, except as provided in certain enumerated sections not including sections 251 and 252, "nothing in [the 1934] Act shall be construed to apply or to give to the Commission jurisdiction with respect to * * * charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier * * *." We noted in the NPRM that sections 251 and 252 do not alter the jurisdictional division of authority with respect to matters falling outside the scope of these provisions. For example, rates charged to end users for local exchange service have

traditionally been subject to state authority, and will continue to be.

2. Discussion

60. We conclude that, in enacting sections 251, 252, and 253, Congress created a regulatory system that differs significantly from the dual regulatory system it established in the 1934 Act. According to Senator Pressler, "Progress is being stymied by a morass of regulatory barriers which balkanize the telecommunications industry into protective enclaves. We need to design a *national policy framework*—a new regulatory paradigm for telecommunications—which accommodates and accelerates technological change and innovation." 141 Cong. Rec. S7881–2, S7886 (June 7, 1995) (emphasis added). According to Representative Fields, "[Congress] is decompartmentalizing segments of the telecommunications industry, opening the floodgates of competition through deregulation, and most importantly, giving consumers choice * * *", 142 Cong. Rec. H1149 (Feb. 1, 1996). That Act generally gave jurisdiction over interstate matters to the FCC and over intrastate matters to the states. The 1996 Act alters this framework, and expands the applicability of both national rules to historically intrastate issues, and state rules to historically interstate issues. For example, section 253(a) suggests that states may establish regulations regarding interstate as well as intrastate matters. Indeed, many provisions of the 1996 Act are designed to open telecommunications markets to all potential service providers, without distinction between interstate and intrastate services.

61. For the reasons set forth below, we hold that section 251 authorizes the FCC to establish regulations regarding both interstate and intrastate aspects of interconnection, services, and access to unbundled elements. We also hold that the regulations the Commission establishes pursuant to section 251 are binding upon states and carriers and section 2(b) does not limit the Commission's authority to establish regulations governing intrastate matters pursuant to section 251. Similarly, we find that the states' authority pursuant to section 252 also extends to both interstate and intrastate matters. Although we recognize that these sections do not contain an explicit grant of intrastate authority to the Commission or of interstate authority to the states, we nonetheless find that this interpretation is the only reasonable way to reconcile the various provisions of sections 251 and 252, and the statute as a whole. As we indicated in the NPRM, it would make little sense in terms of economics or technology to distinguish between interstate and intrastate components for purposes of sections 251 and 252. We believe that this interpretation is the most reasonable one in light of our expectation that marketing and product offerings by telecommunications carriers will diminish or eliminate the significance of interstate-intrastate distinctions.

62. We view sections 251 and 252 as creating parallel jurisdiction for the FCC and the states. These sections require the FCC to establish implementing rules to govern interconnection, resale of services, access to unbundled network elements, and other matters, and direct the states to follow the Act and those rules in arbitrating and approving arbitrated agreements under sections 251 and 252. Among other things, the fact that the Commission is required to assume the state commission's responsibilities if the state commission fails to carry out its section 252 responsibilities gives rise to the inevitable inference that both the states and the FCC are to address the same matters through their parallel jurisdiction over both interstate and intrastate matters under sections 251 and 252.

63. The only other possible interpretations would be that: (1) sections 251 and 252 address only interstate aspects of interconnection, services, and access to unbundled elements; (2) the provisions address only the intrastate aspects of those issues; or (3) the FCC's role is to establish rules for interstate aspects, and the states' role is to arbitrate and approve agreements on intrastate aspects. As explained below, none of these interpretations withstands examination. Accordingly, we conclude that sections 251 and 252 address both interstate and intrastate aspects of interconnection services and access to unbundled elements.

64. Some parties have argued that our authority under section 251 is limited by section 2(b). Ordinarily, in light of section 2(b), we would interpret a provision of the Communications Act as addressing only the interstate jurisdiction unless the provision (as well as section 2(b) itself) provided otherwise. That interpretation is contradicted in this case, however, by strong evidence in the statute that the local competition provisions of the 1996 Act are directed to both intrastate and interstate matters. For example, section 251(c)(2), the interconnection requirement, requires LECs to provide interconnection "for the transmission and routing of *telephone exchange service* and exchange access." Because telephone exchange service is a local, intrastate service, section 251(c)(2) plainly addresses intrastate service, but it also addresses interstate exchange access. In addition, we note that in section 253, the statute explicitly authorizes the Commission to preempt intrastate and interstate barriers to entry.

65. More generally, if these sections are read to address only interstate services, the grant of substantial responsibilities to the states under section 252 is incongruous. A statute designed to develop a *national* policy framework to promote local competition cannot reasonably be read to reduce significantly the FCC's traditional jurisdiction over interstate matters by delegating enforcement responsibilities to the states, unless Congress intended also to implement its national policies by enhancing our authority to encompass rulemaking authority over intrastate interconnection matters. The legislative history is replete with statements indicating that Congress meant to address intrastate local exchange competition. For instance, Senator Lott stated that "[i]n addressing *local and long distance issues,* creating an open access and sound interconnection policy was the key objective * * *" 141 Cong. Rec. S7906 (June 7, 1995) (emphasis added). Representative Markey noted that "we take down the barriers of *local and long distance* and cable company, satellite, computer software entry into any business they want to get in." 142 Cong. Rec. H1151 (Feb. 1, 1996) (emphasis added).

66. Some parties argue that section 251 addresses solely intrastate matters. We do not find this argument persuasive. Under this narrow view, section 251(c)(6) requiring incumbent LECs to offer physical collocation would apply only to equipment used for intrastate services, while new entrants would be limited to the use of virtual collocation for equipment used in the provision of interstate services, pursuant to the decision in *Bell Atlantic. Bell Atlantic Telephone Companies* v. *FCC,* 24 F.3d 1441 (D.C. Cir. 1994) (*Bell Atlantic*) (holding that the Commission did not have authority to require physical collocation for the provision of interstate services). Such an interpretation would force new entrants to use different methods of collocation based on the jurisdictional nature of the traffic involved, and would thereby greatly increase new entrants' costs. Moreover, such an interpretation would fail to give effect to Congress's intent in

enacting section 251(c)(6) to reverse the result reached in *Bell Atlantic*. The language in the House bill which closely matches the language that appears in section 251(c)(6), noted that a provision requiring physical collocation was necessary "because a recent court decision indicates that the Commission lacks authority under the Communications Act to order physical collocation." H.R. Rep. No. 204, pt. I, 104th Cong., 1st Sess., at 73 (1995).

67. Another factor that makes clear that sections 251 and 252 did not address exclusively intrastate matters is the provision in section 251(g), "Continued Enforcement of Exchange Access and Interconnection Requirements." That section provides that BOCs must follow the Commission's "equal access and nondiscriminatory interconnection restrictions (including receipt of compensation)" until they are explicitly superseded by Commission regulations after the date of enactment of the 1996 Act. This provision refers to existing Commission rules governing interstate matters, and therefore it contradicts the argument that section 251 addresses intrastate matters exclusively.

68. Nor does the savings clause of section 251(i) require us to conclude that sections 251 and 252 address only intrastate issues. Section 251(i) provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201." This subsection merely affirms that the Commission's preexisting authority under section 201 continues to apply for purely interstate activities. It does not act as a limitation on the agency's authority under section 251.

69. As to the third possible interpretation, the FCC's role is to establish rules for only the interstate aspects of interconnection, and the states' role is to arbitrate and approve only the intrastate aspects of interconnection agreements. No commenters support this position, and we find that it would be inconsistent with the 1996 Act to read into sections 251 and 252 such a distinction. The statute explicitly contemplates that the states are to comply with the Commission's rules, and the Commission is required to assume the state commission's responsibilities if the state commission fails to act to carry out its section 252 responsibilities. Thus, we believe the only logical conclusion is that the Commission and the states have parallel jurisdiction. We conclude, therefore, that these sections can only logically be read to address both interstate and intrastate aspects of interconnection, services, and access to unbundled network elements, and thus to grant the Commission authority to establish regulations under 251, binding on both carriers and states, for both interstate and intrastate aspects.

70. Section 2(b) of the Act does not require a different conclusion. Section 2(b) provides that, except as provided in certain enumerated sections not including sections 251 and 252, "nothing in [the 1934] Act shall be construed to apply or to give to the Commission jurisdiction with respect to * * * charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier * * *". As stated above, however, we have found that sections 251 and 252 do apply to "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service." In enacting sections 251 and 252 after section 2(b), and squarely addressing therein the issue of interstate and intrastate jurisdiction, we find that Congress intended for sections 251 and 252 to take precedence over any contrary implications based on section 2(b). We note also, that in enacting the 1996 Act, there are other instances where Congress indisputably gave the Commission intrastate jurisdiction without amending section 2(b). For instance, section 251(e)(1) provides that "[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." Section 253 directs the FCC to preempt state regulations that prohibit the ability to provide intrastate services. Section 276(b) directs the Commission to "establish a per call compensation plan to ensure that payphone service providers are fairly compensated for each and every completed intrastate and interstate call." Section 276(d) provides that "[t]o the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements." None of these provisions is specifically excepted from section 2(b), yet *all* of them explicitly give the FCC jurisdiction over intrastate matters. Thus, we believe that the lack of an explicit exception in section 2(b) should not be read to require an interpretation that the Commission's jurisdiction under sections 251 and 252 is limited to interstate services. A contrary holding would nullify several explicit grants of authority to the FCC, noted above, and would render parts of the statute meaningless.

71. Some parties find significance in the fact that earlier drafts of the legislation would have amended section 2(b) to make an exception for Part II of Title II, including section 251, but the enacted version did not include that exception. These parties argue that this change in drafting demonstrates an intention by Congress that the limitations of section 2(b) remain fully in force with regard to sections 251 and 252. We find this argument unpersuasive.

72. Parties that attach significance to the omission of the proposed amendment of section 2(b) rely on a rule of statutory construction providing that, when a provision in a prior draft is altered in the final legislation, Congress intended a change from the prior version. This rule of statutory construction has been rejected, however, when changes from one draft to another are not explained. In this instance, the only statement from Congress regarding the meaning of the omission of the section 2(b) amendment appears in the Joint Explanatory Statement of the Conference Report. According to the Joint Explanatory Statement, all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein "except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes." Because the Joint Explanatory Statement did not address the removal of the section 2(b) amendment from the final bill, the logical inference is that Congress regarded the change as an inconsequential modification rather than a significant alteration. Moreover, it seems implausible that, by selecting the final version, Congress intended a radical alteration of the Commission's authority under section 251, given the total lack of legislative history to that effect. We conclude that elimination of the proposed amendment of section 2(b) was a nonsubstantive change because, as AT&T contends, such amendment was unnecessary in light of the grants of authority under sections 251 and 252, and would have had no practical effect.

73. Some parties have argued that, to the extent that sections 251 and 252 address intrastate matters, the Commission's rulemaking authority under those sections is limited to those instances where Commission action regarding intrastate matters is specifically mandated, such as number administration. We disagree. There is no language limiting the Commission's

authority to establish rules under section 251. To the contrary, section 251(d)(1) affirmatively requires Commission rules, stating that "the Commission *shall* complete *all* actions necessary to implement the requirements of *this section.*" Pursuant to sections 4(i), 201(b), and 303(r) of the Act, the Commission generally has rulemaking authority to implement all provisions of the Communications Act. Courts have held that the Commission, pursuant to its general rulemaking authority, has "expansive" rather than limited powers. Further, where Congress has expressly delegated to the Commission rulemaking responsibility with respect to a particular matter, such delegation constitutes "something more than the normal grant of authority permitting an agency to make ordinary rules and regulations * * *". Indeed, to read these provisions otherwise would negate the requirement that states ensure that arbitrated agreements are consistent with the Commission's rules. Thus, the explicit rulemaking requirements pointed out by some of the parties is best read as giving the Commission more jurisdiction than usual, not less. We believe that the delegation of authority set forth in section 251(d)(1) is "expansive" and not limited. We therefore reject assertions that the Commission has authority to establish regulations regarding intrastate matters only with respect to certain provisions of section 251, such as number administration.

74. Moreover, the Court in *Louisiana PSC* does not suggest a different result. The reasoning in *Louisiana PSC* applies to the dual regulatory system of the 1934 Act. As set forth above, however, in sections 251–253, Congress amended the dual regulatory system that the Court addressed in *Louisiana PSC.* As a result, preemption in this case is governed by the usual rule, also recognized in *Louisiana PSC,* that an agency, acting within the scope of its delegated authority, may preempt inconsistent state regulation. As discussed above, Congress here has expressed an intent that our rules apply to intrastate interconnection, services, and access to network elements. Therefore, *Louisiana PSC* does not foreclose our adoption of regulations under section 251 to govern intrastate matters.

75. Parties have raised other arguments suggesting that the Commission lacks authority over intrastate matters. We are not persuaded by the argument that sections 256(c) and 261, as well as section 601(c) of the 1996 Act, evince an intent by Congress to preserve states' exclusive authority over intrastate matters. In fact, section 261 supports the finding that the Commission may establish regulations regarding intrastate aspects of interconnection, services and access to unbundled elements that the states may not supersede. Section 261(b) *generally* permits states to enforce regulations prescribed prior to the date of enactment of the 1996 Act, and to prescribe regulations after such date, if such regulations are not inconsistent with the provisions of Part II of Title II. Section 261(c) *specifically* provides that nothing in Part II of Title II "precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part *or the Commission's regulations to implement this part.*" We conclude that state access and interconnection obligations referenced in section 251(d)(3) fall within the scope of section 261(c). Section 261(c), as the more specific provision, controls over section 261(b) for matters that fall within its scope. We note, too, that section 261(c) encompasses all state requirements. It is not limited to requirements that were prescribed prior to the enactment of the 1996 Act. By providing that state requirements for *intrastate* services must be consistent with the Commission's regulations, section 261(c) buttresses our conclusion that the Commission may establish regulations regarding intrastate aspects of interconnection, services, and access to unbundled elements.

76. Section 601 of the 1996 Act and section 256 also are consistent with our conclusion. Section 601(c) of the 1996 Act provides that the Act and its amendments "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments." We conclude that section 251(d)(1), which requires the Commission to "establish regulations to implement the requirements of this section," and section 261(c), were expressly intended to modify federal and state law and jurisdictional authority.

77. Section 256, entitled "Coordination for Interconnectivity," has no direct bearing on the issue of the Commission's authority under section 251, because it provides only that "[n]othing *in this section* shall be construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996." That provision is relevant, however, as a contrast to section 251, which does not contain a similar statement that the scope of the Commission's authority is unchanged by section 251. *Russello* v. *United States,* 464 U.S. 16, 23 (1983); *Cramer* v. *Internal Revenue Service,* 64 F.3d 1406, 1412 (9th Cir. 1995) (where Congress includes a provision in one section of statute but omits it in another section of the same Act, it should not be implied where it is excluded).

78. We further conclude that the Commission's regulations under section 251 are binding on the states, even with respect to intrastate issues. Section 252 provides that the agreements state commissions arbitrate must comply with the Commission's regulations established pursuant to section 251. In addition, section 253 requires the Commission to preempt state or local regulations or requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." As discussed above, section 261(c) provides further support for the conclusion that states are bound by the regulations the Commission establishes under section 251.

79. We disagree with claims that section 251(d)(3) "grandfathers" existing state regulations that are consistent with the 1996 Act, and that such state regulations need not comply with the Commission's implementing regulations. Section 251(d)(3) only specifies that the Commission may not preclude enforcement of state access and interconnection requirements that are consistent with section 251, and that do not substantially prevent implementation of the requirements of section 251 or the purposes of Part II of Title II. In this Report and Order, we set forth only such rules that we believe are necessary to implement fully section 251 and the purposes of Part II of Title II. Thus, state regulations that are inconsistent with our rules may "substantially prevent implementation of the requirements of this section and the purposes of [Part II of Title II]."

80. We are not persuaded by arguments that, because other provisions of the 1996 Act specifically require states to comply with the Commission's regulations, the absence of such requirement in section 251(d)(3) indicates that Congress did not intend such compliance. Section 251(d)(3) permits states to prescribe and to enforce access and interconnection requirements only to the extent that such requirements "are consistent with the requirements" of section 251 and do not "substantially prevent

implementation" of the requirements of section 251 and the purposes of Part II of Title II. The Commission is required to establish regulations to "implement the requirements of the section." Therefore, in order to be consistent with the requirements of section 251 and not "substantially prevent" implementation of section 251 or Part II of Title II, state requirements must be consistent with the FCC's implementing regulations.

D. Commission's Legal Authority and the Adoption of National Pricing Rules

1. Background

81. In the NPRM, we sought comment on our tentative conclusion that sections 251 (c)(2), (c)(3), and (c)(6) establish the Commission's legal authority under section 251(d) to adopt pricing rules to ensure that the rates, terms, and conditions for interconnection, access to unbundled network elements, and collocation are just, reasonable, and nondiscriminatory. We also sought comment on our tentative conclusion that sections 251(b)(5) and 251(c)(4) establish our authority to define "wholesale rates" for purposes of resale, and "reciprocal compensation arrangements" for purposes of transport and termination of telecommunications services. In addition, we asked parties to comment on our tentative conclusion that the Commission's statutory duty to implement the pricing requirements of section 251, as elaborated in section 252, requires that we establish pricing rules interpreting and further explaining the provisions of section 252(d). The states would then apply these rules in establishing rates pursuant to arbitrations and in reviewing BOC statements of generally available terms and conditions.

82. We further sought comment on our tentative conclusion that national pricing rules would likely reduce or eliminate inconsistent state regulatory requirements, increase the predictability of rates, and facilitate negotiation, arbitration, and review of agreements between incumbent LECs and competitive providers. We also sought comment on the potential consequences of the Commission not establishing specific pricing rules.

2. Discussion

83. In adopting sections 251 and 252, we conclude that Congress envisioned complementary and significant roles for the Commission and the states with respect to the rates for section 251 services, interconnection, and access to unbundled elements. We interpret the Commission's role under section 251 as ensuring that rates are just, reasonable, and nondiscriminatory: in doing so, we believe it to be within our discretion to adopt national pricing rules in order to ensure that rates will be just, reasonable, and nondiscriminatory. The Commission is also responsible for ensuring that interconnection, collocation, access to unbundled elements, resale services, and transport and termination of telecommunications are reasonably available to new entrants. The states' role under section 252(c) is to establish specific rates when the parties cannot agree, consistent with the regulations prescribed by the Commission under sections 251(d)(1) and 252(d).

84. While we recognize that sections 201 and 202 create a very different regulatory regime from that envisioned by sections 251 and 252, we observe that Congress used terms in section 251, such as the requirement that rates, terms, and conditions be "just, reasonable, and nondiscriminatory," that are very similar to language in sections 201 and 202. This lends additional support for the proposition that Congress intended to give us authority to adopt rules regarding the justness and reasonableness of rates pursuant to section 251, comparable in some respects to the authority Congress gave us pursuant to sections 201 and 202.

85. We believe that national pricing rules are a critical component of the interconnection regime set out in sections 251 and 252. Congress intended these sections to promote opportunities for local competition, and directed us to establish regulations to ensure that rates under this regime would be economically efficient. This, in turn, should reduce potential entrants' capital costs, and should facilitate entry by all types of service providers, including small entities. Further, we believe that national rules will help states review and arbitrate contested agreements in a timely fashion. From August to November and beyond, states will be carrying the tremendous burden of setting specific rates for interconnection and network elements, for resale, and for transport and termination when parties bring these issues before them for arbitration. As discussed in more detail below, we are setting forth default proxies for states to use if they are unable to set these rates using the necessary cost studies within the statutory time frame. After that, both we and the states will need to review the level of competition, revise our rules as necessary, and reconcile arbitrated interconnection arrangements to those revisions on a going-forward basis.

86. We believe that national rules should reduce the parties' uncertainty about the outcome that may be reached by different states in their respective regulatory proceedings, which will reduce regulatory burdens for all parties including small incumbent LECs and small entities. A national regime should also help to ensure consistent federal court decisions on review of specific state orders under sections 251 and 252. In addition, under the national pricing rules that we adopt for interconnection and unbundled network elements, states will retain the flexibility to consider local technological, environmental, regulatory, and economic conditions. Failure to adopt national pricing rules, on the other hand, could lead to widely disparate state policies that could delay the consummation of interconnection arrangements and otherwise hinder the development of local competition. Lack of national rules could also provide opportunities for incumbent LECs to inhibit or delay the interconnection efforts of new competitors, and create great uncertainty for the industry, capital markets, regulators, and courts as to what pricing policies would be pursued by each of the individual states, frustrating the potential entrants' ability to raise capital. In sum, we believe that the pricing of interconnection, unbundled elements, resale, and transport and termination of telecommunications is important to ensure that opportunities to compete are available to new entrants.

87. As we observed in the NPRM, section 251 explicitly sets forth certain requirements regarding rates for interconnection, access to unbundled elements, and related offerings. Sections 251 (c)(2) and (c)(3) require that incumbent LECs' "*rates*, terms, and conditions" for interconnection and unbundled network elements be "just, reasonable, and nondiscriminatory in accordance with * * * the requirements of sections 251 and 252." Section 251(c)(4) requires that incumbent LECs offer "for resale at wholesale *rates* any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers," without unreasonable conditions or limitations. Section 251(c)(6) provides that all LECs must provide physical collocation of equipment, "on *rates*, terms, and conditions that are just, reasonable, and nondiscriminatory." Section 251(b)(5) requires that all LECs "establish reciprocal *compensation* arrangements for the transport and termination of telecommunications." Section 251(d)(1) further expressly directs the

Commission, without limitation, to "complete all actions necessary to implement the requirements of [section 251]."

88. Section 252 generally sets forth the procedures that state commissions, incumbent LECs, and new entrants must follow to implement the requirements of section 251 and establish specific interconnection arrangements. Section 252(c)(1) provides that "in resolving by arbitration * * * any open issues and imposing conditions upon the parties to the agreement, a State commission shall * * * ensure that such resolution and conditions meet the requirements of section 251, *including the regulations prescribed by the Commission pursuant to section 251.*"

89. We conclude that, under section 251(d)(1), Congress granted us broad authority to complete all actions necessary to implement the requirements of section 251, including actions necessary to ensure that rates for interconnection, access to unbundled elements, and collocation are "just, reasonable, and nondiscriminatory." We also determine that the statute grants us the authority to define reasonable "wholesale rates" for purposes of services to be resold, and "reciprocal compensation" for purposes of transport and termination of telecommunications. The argument advanced by the New York Commission, NARUC, and others that the Commission's implementing authority under section 251(d)(1) is limited to those provisions in section 251 that mandate specific Commission rules, such as prescribing regulations for number portability, unbundling, and resale, reads into section 251(d)(1) limiting language that the section does not contain. Congress did not confine the Commission's rulemaking authority to only those matters identified in sections 251(b)(2), 251(c)(4)(B), and 251(d)(2), and there is no basis for inferring such an implicit limitation. A narrow reading of section 251(d)(1), as proposed by the New York Commission, NARUC, and others, would require the Commission to neglect its statutory duty to implement the provisions of section 251 and to promote rapid competitive entry into local telephone markets.

90. We also reject the arguments raised by several state commissions that the language in section 252(c) indicates Congress' intent for the Commission to have little or no authority with respect to pricing of interconnection, access to unbundled elements, and collocation. We do not believe that the statutory directive that state commissions establish rates according to section 252(d) restricts our authority under section 251(d)(1). States must comply with both the statutory standards under section 252(d) *and* the regulations prescribed by the Commission pursuant to section 251 when arbitrating rate disputes or when reviewing BOC statements of generally available terms. Section 252(c) enumerates three requirements that states must follow in arbitrating issues. These requirements are not set forth in the alternative; rather, states must comply with all three.

91. We further reject the argument that section 251(d)(3) restricts the Commission's authority to establish national pricing regulations. Section 251(d)(3) provides that the Commission shall not preclude the enforcement of any regulation, order, or policy of a state commission that, *inter alia,* is consistent with the requirements of section 251 and does not substantially prevent implementation of the requirements of section 251. This subsection, as discussed in section II.C., *supra,* is intended to allow states to adopt regulations that are not inconsistent with the Commission's rules; it does not address state policies that are inconsistent with the pricing rules established by the Commission.

92. We also address the impact of our rules on small incumbent LECs. For example, Rural Tel. Coalition argues that rigid rules, based on the properties of large urban LECs, cannot blindly be applied to small and rural LECs. As discussed above, however, we believe that states will retain sufficient flexibility under our rules to consider local technological, environmental, regulatory, and economic conditions. We also note that section 251(f) may provide relief to certain small carriers.

E. Authority To Take Enforcement Action

1. Background

93. The Commission's implementation of section 251 must be given full effect in arbitrated agreements and incorporated into all such agreements. There is judicial review of such arbitrated agreements, and one issue surely will be the adherence of these agreements to our rules. The Commission will have the opportunity to participate, upon request by a party or a state or by submitting an *amicus* filing, in the arbitration or the judicial review thereof. To clarify our potential role, we consider the extent of the Commission's authority to review and enforce agreements entered into pursuant to section 252. Section 252(e)(6) provides that, in "any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section."

94. In the NPRM, we sought comment on the relationship between sections 251 and 252 and the Commission's existing authority under section 208(a), which allows any person to file a complaint with the Commission regarding "anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof * * *" We asked whether section 208 gives the Commission authority over complaints alleging violations of requirements set forth in sections 251 or 252. We also sought comment on the relationship between sections 251 and 252 and any other applicable Commission enforcement authority. We further sought comment on how we might increase the effectiveness of the Commission's enforcement mechanisms. Specifically, we asked for comment on how private rights of action might be used under the Act, and the Commission's role in speeding dispute resolution in forums used by private parties.

2. Discussion

95. Consistent with our decision in *Telephone Number Portability* and the views of most commenters, we conclude that parties have several options for seeking relief if they believe that a carrier has violated the standards under section 251 or 252. Pursuant to section 252(e)(6), a party aggrieved by a state commission arbitration determination under section 252 has the right to bring an action in federal district court. Commenters also suggest that the statute's provision for federal district court review of state public utility commission decisions is inconsistent with the 11th Amendment. That issue is not properly before the Commission since it is the federal courts that will have to determine the scope of their jurisdiction and in any case "regulatory agencies are not free to declare an act of Congress unconstitutional." *See Meredith Corp.* versus *FCC,* 809 F.2d 863, 873 (D.C. Cir. 1987). Federal district courts may choose to stay or dismiss proceedings brought pursuant to section 252(e)(6), and refer issues of compliance with the substantive requirements of sections 251 and 252 to the Commission under the primary jurisdiction doctrine. We find, however, that federal court review is not the exclusive remedy regarding state determinations under section 252. The

1996 Act is clear when it intends for a remedy to be exclusive. For example, section 252(e)(6) provides that, if a state commission fails to act, as described in section 252(e)(5), "the proceeding by the Commission under [section 252(e)(5)] and any judicial review of the Commission's actions *shall be the exclusive remedies* for a State commission's failure to act." In contrast, the succeeding sentence in section 252(e)(6) provides that any party aggrieved by a state commission determination under section 252 "*may* bring an action in an appropriate Federal district court * * *"

96. The Commission also stands ready to provide guidance to states and other parties regarding the statute and our rules. In addition to the informal consultations that we hope to continue with state commissions, they or other parties may at any time seek a declaratory ruling where necessary to remove uncertainty or eliminate a controversy. *See* 47 CFR § 1.2 (the Commission, in accordance with section 5(d) of the Administrative Procedures Act, 5 U.S.C. § 554(e), may issue a declaratory ruling terminating a controversy or removing uncertainty). Because section 251 is critical to the development of competitive local markets, we intend to act expeditiously on such requests for declaratory rulings.

97. We further conclude that section 252(e)(6) does not divest the Commission of jurisdiction, in whole or in part, over complaints that a common carrier violated section 251 or 252 of the Act. Section 601(c)(1) of the 1996 Act provides that the 1996 Act "shall not be construed to modify, impair or supersede" existing federal law—which includes the section 208 complaint process—"unless expressly so provided." Sections 251 and 252 do not divest the Commission of its section 208 complaint authority.

98. An aggrieved party could file a section 208 complaint with the Commission, alleging that the incumbent LEC or requesting carrier has failed to comply with the requirements of sections 251 and 252, including Commission rules thereunder, even if the carrier is in compliance with an agreement approved by the state commission. Alternatively, a party could file a section 208 complaint alleging that a common carrier is violating the terms of a negotiated or arbitrated agreement. We plan to initiate a proceeding to adopt expedited procedures for resolving complaints filed pursuant to section 208.

99. We note that, in acting on a section 208 complaint, we would not be directly reviewing the state commission's decision, but rather, our review would be strictly limited to determining whether the common carrier's actions or omissions were in contravention of the Communications Act. While we would have authority to review such complaints, we note that we might decline, at least in some instances, to impose financial penalties upon a common carrier that is acting pursuant to state requirements or authorization, even if we sustain the allegations in the complaint. Thus, consistent with our past decisions in analogous contexts (*See Number Portability Order, supra; Freemon* versus *AT&T*, 59 FR 43125 (August 22, 1994) (provision permitting persons aggrieved by violation of prohibition against unauthorized publication of certain communications to "bring a civil action in United States district court or any other court of competent jurisdiction" did not bar a complaint under section 208 of the Communications Act); *see also Policies Governing the Provision of Shared Telecommunications Service*, 54 FR 478 (January 6, 1989) (the section 208 complaint process is available to resolve any specific problems that might arise regarding shared telecommunications service regulation by a state that impinges upon a federal interest)), we conclude that a person aggrieved by a state determination under sections 251 and 252 of the Act may elect to either bring an action for federal district court review or a section 208 complaint to the Commission against a common carrier. Such a person could, as a further alternative, pursuant to section 207, file a complaint against a common carrier with the Commission or in federal district court for the recovery of damages. We are unlikely, in adjudicating a complaint, to examine the consistency of a state decision with sections 251 and 252 if a judicial determination has already been made on the issues before us.

100. Finally, we clarify, as one commenter requested, that nothing in sections 251 and 252 of our implementing regulations is intended to limit the ability of persons to seek relief under the antitrust laws, other statutes, or common law. In addition, in appropriate circumstances, the Commission could institute an inquiry on its own motion, 47 U.S.C. § 403, initiate a forfeiture proceeding, 47 U.S.C. § 503(b), initiate a cease-and-desist proceeding, 47 U.S.C. § 312(b), or in extreme cases, consider initiating a revocation proceeding for violators with radio licenses, 47 U.S.C. § 312(a), or referring violations to the Department of Justice for possible criminal prosecution under 47 U.S.C. § 501, 502 & 503(a).

F. Regulations of BOC Statements of Generally Available Terms

101. We noted in the NPRM that section 251 and our implementing regulations govern the states' review of BOC statements of generally available terms and conditions, as well as arrangements reached through compulsory arbitration pursuant to section 252(b). We tentatively concluded that we should adopt a single set of standards with which both arbitrated agreements and BOC statements of generally available terms must comply.

102. Only a few commenters addressed this issue, and most concurred with the tentative conclusion that we should apply the same requirements to both arbitrated agreements and BOC statements of generally available terms. The Illinois Commission, for example, asserts that, "[s]ince the generally available terms could be viewed as a baseline against which to craft arbitrated arrangements, it is reasonable to hold both arbitrated agreements and the BOC statements of generally available terms to the same standards." CompTel asserts that, particularly if states require incumbent LECs to tariff the terms and conditions in agreements that are subject to arbitration, there will be few if any distinctions between arbitrated agreements and generally available terms and conditions.

103. We hereby find that our tentative conclusion that we should apply a single set of standards to both arbitrated agreements and BOC statements of generally available terms is consistent with both the text and purpose of the 1996 Act. BOC statements of generally available terms are relevant where a BOC seeks to provide in-region interLATA service, and the BOC has not negotiated or arbitrated an agreement. Therefore, such statements are to some extent a substitute for an agreement for interconnection, services, or access to unbundled elements. We also find no basis in the statute for establishing different requirements for arbitrated agreements and BOC statements of generally available terms. Moreover, a single set of requirements will substantially ease the burdens of state commissions and the FCC in reviewing agreements and statements of generally available terms pursuant to sections 252 and 271.

G. States' Role in Fostering Local Competition Under Sections 251 and 252

104. As already referenced, states will play a critical role in promoting local competition, including by taking a key role in the negotiation and arbitration process. We believe the negotiation/arbitration process pursuant to section 252 is likely to proceed as follows. Initially, the requesting carrier and incumbent LEC will seek to negotiate mutually agreeable rates, terms, and conditions governing the competing carrier's interconnection to the incumbent's network, access to the incumbent's unbundled network elements, or the provision of services at wholesale rates for resale by the requesting carrier. Either party may ask the relevant state commission to mediate specific issues to facilitate an agreement during the negotiation process.

105. Because the new entrant's objective is to obtain the services and access to facilities from the incumbent that the entrant needs to compete in the incumbent's market, the negotiation process contemplated by the 1996 Act bears little resemblance to a typical commercial negotiation. Indeed, the entrant has nothing that the incumbent needs to compete with the entrant, and has little to offer the incumbent in a negotiation. Consequently, the 1996 Act provides that, if the parties fail to reach agreement on all issues, either party may seek arbitration before a state commission. The state commission will arbitrate individual issues specified by the parties, or conceivably may be asked to arbitrate the entire agreement. In the event that a state commission must act as arbitrator, it will need to ensure that the arbitrated agreement is consistent with the Commission's rules. In reviewing arbitrated and negotiated agreements, the state commission may ensure that such agreements are consistent with applicable state requirements.

106. Under the statutory scheme in sections 251 and 252, state commissions may be asked by parties to define specific terms and conditions governing access to unbundled elements, interconnection, and resale of services beyond the rules the Commission establishes in this Report and Order. Moreover, the state commissions are responsible for setting specific rates in arbitrated proceedings. For example, state commissions in an arbitration would likely designate the terms and conditions by which the competing carrier receives access to the incumbent's loops. The state commission might arbitrate a description or definition of the loop, the term for which the carrier commits to the purchase of rights to exclusive use of a specific network element, and the provisions under which the competing carrier will order loops from the incumbent and the incumbent will provision an order. The state commission may establish procedures that govern should the incumbent refurbish or replace the element during the agreement period, and the procedures that apply should an end user customer decide to switch from the competing carrier back to the incumbent or a different provider. In addition, the state commission will establish the rates an incumbent charges for loops, perhaps with volume and term discounts specified, as well as rates that carriers may charge to end users.

107. State commissions will have similar responsibilities with respect to other unbundled network elements such as the switch, interoffice transport, signalling and databases. State commissions may identify network elements to be unbundled, in addition to those elements identified by the Commission, and may identify additional points at which incumbent LECs must provide interconnection, where technically feasible. State commissions are responsible for determining when virtual collocation may be provided instead of physical collocation, pursuant to section 251(c)(6). States also will determine, in accordance with section 251(f)(1), whether and to what extent a rural incumbent LEC is entitled to continued exemption from the requirements of section 251(c) after a telecommunications carrier has made a bona fide request under section 251. Under section 251(f)(2), states will determine whether to grant petitions that may be filed by certain LECs for suspension or modification of the requirements in sections 251 (b) or (c).

108. The foregoing is a representative sampling of the role that states will have in steering the course of local competition. State commissions will make critical decisions concerning a host of issues involving rates, terms, and conditions of interconnection and unbundling arrangements, and exemption, suspension, or modification of the requirements in section 251. The actions taken by a state will significantly affect the development of local competition in that state. Moreover, actions in one state are likely to influence other states, and to have a substantial impact on steps the FCC takes in developing a pro-competitive national policy framework.

III. Duty to Negotiate in Good Faith

A. Background

109. Section 251(c)(1) of the statute imposes on incumbent LECs the "duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described" in sections 251(b) and (c), and further provides that "(t)he requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements." In the NPRM, we asked parties to comment on the extent to which the Commission should establish national rules defining the requirements of the good faith negotiation obligation.

B. Advantages and Disadvantages of National Rules

1. Discussion

110. We conclude that establishing some national standards regarding the duty to negotiate in good faith could help to reduce areas of dispute and expedite fair and successful negotiations, and thereby realize Congress' goal of enabling swift market entry by new competitors. In order to address the balance of the incentives between the bargaining parties, however, we believe that we should set forth some minimum requirements of good faith negotiation that will guide parties and state commissions. As discussed above, the requirements in section 251 obligate incumbent LECs to provide interconnection to competitors that seek to reduce the incumbent's subscribership and weaken the incumbent's dominant position in the market. Generally, the new entrant has little to offer the incumbent. Thus, an incumbent LEC is likely to have scant, if any, economic incentive to reach agreement. In addition, incumbent LECs argue that requesting carriers may have incentives to make unreasonable demands or otherwise fail to act in good faith. The fact that an incumbent LEC has superior bargaining power does not itself demonstrate a lack of good faith, or ensure that a new entrant will act in good faith.

111. We agree with commenters that it would be futile to try to determine in advance every possible action that might be inconsistent with the duty to negotiate in good faith. As discussed more fully below, determining whether or not a party's conduct is consistent with its statutory duty will depend largely on the specific facts of individual negotiations. Therefore, we believe that it is appropriate to identify factors or practices that may be evidence of failure to negotiate in good faith, but

that will need to be considered in light of all relevant circumstances.

112. Consistent with our discussion in Section II, above, we believe that the Commission has authority to review complaints alleging violations of good faith negotiation pursuant to section 208. We previously have held that parties may raise allegations regarding good faith negotiation pursuant to section 208. *Cellular Interconnection Proceeding*, 4 FCC Rcd 2369 (1989). The Commission also held in that case that "the conduct of good faith negotiations is not jurisdictionally severable." *Id.* at 2371. Penalties may be imposed under sections 501, 502 and 503 for failure to negotiate in good faith. In addition, we believe that state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith. We also reserve the right to amend these rules in the future as we obtain more information regarding negotiations under section 252.

C. Specific Practices That May Constitute a Failure to Negotiate in Good Faith

1. Discussion

113. The Uniform Commercial Code defines "good faith" as "honesty in fact in the conduct of the transaction concerned." U.C.C. § 1–201(19) (1981); *see also* Black's Law Dictionary at 353 (Abridged ed. 1983) ("Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage * * *"). When looking at good faith, the question "is a narrow one focused on the subjective intent with which the person in question has acted." U.C.C. § 1–201 (84). Even where there is no specific duty to negotiate in good faith, certain principles or standards of conduct have been held to apply. Steven J. Burton and Eric G. Anderson, *Contractual Good Faith*, § 8.2.2 at 332 (1995). For example, parties may not use duress or misrepresentation in negotiations. Thus, the duty to negotiate in good faith, at a minimum, prevents parties from intentionally misleading or coercing parties into reaching an agreement they would not otherwise have made. We conclude that intentionally obstructing negotiations also would constitute a failure to negotiate in good faith, because it reflects a party's unwillingness to reach agreement.

114. Because section 252 permits parties to seek mediation "at any point in the negotiation," and also allows parties to seek arbitration as early as 135 days after an incumbent LEC receives a request for negotiation under section 252, we conclude that Congress specifically contemplated that one or more of the parties may fail to negotiate in good faith, and created at least one remedy in the arbitration process. Section 252(b)(4)(C) requires state commissions to "conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." 47 U.S.C. § 252(b)(4)(C). The possibility of arbitration itself will facilitate good faith negotiation. For example, parties seeking to avoid a legitimate accusation of breach of the duty of good faith in negotiation will work to provide their negotiating adversary all relevant information—given that section 252(b)(4)(B) authorizes the state commission to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues." That provision also states that, if either party "fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived." The likelihood that an arbitrator will review the positions taken by the parties during negotiations also should discourage parties from refusing unreasonably to provide relevant information to each other or to delay negotiations.

115. We believe that determining whether a party has acted in good faith often will need to be decided on a case-by-case basis by state commissions or, in some instances the FCC, in light of all the facts and circumstances underlying the negotiations. This is consistent with earlier Commission decisions. *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket 95–157, First Report and Order, FCC 96–196, at para. 20, 61 FR 24470 (May 15, 1996). In light of these considerations, we set forth some minimum standards that will offer parties guidance in determining whether they are acting in good faith, but leave specific determinations of whether a party has acted in good faith to be decided by a state commission, court, or the FCC on a case-by-case basis.

116. We find that there may be pro-competitive reasons for parties to enter into nondisclosure agreements. A broad range of commenters, including IXCs, state commissions, and incumbent LECs, support this view. We conclude that there can be nondisclosure agreements that would not constitute a violation of the good faith negotiation duty, but we caution that overly broad, restrictive, or coercive nondisclosure requirements may well have anticompetitive effects. We therefore will not prejudge whether a party has demonstrated a failure to negotiate in good faith by requesting another party to sign a nondisclosure agreement, or by failing to sign a nondisclosure agreement; such demands by incumbents, however, are of concern and any complaint alleging such tactics should be evaluated carefully. Agreements may not, however, preclude a party from providing information requested by the FCC, a state commission, or in support of a request for arbitration under section 252(b)(2)(B).

117. We reject the general contention that a request by a party that another party limit its legal remedies as part of a negotiated agreement will in all cases constitute a violation of the duty to negotiate in good faith. A party may voluntarily agree to limit its legal rights or remedies in order to obtain a valuable concession from another party. In some circumstances, however, a party may violate this statutory provision by demanding that another waive its legal rights. For example, we agree with ALTS' contention that an incumbent LEC may not demand that the requesting carrier attest that the agreement complies with all provisions of the 1996 Act, federal regulations, and state law, because such a demand would be at odds with the provisions of sections 251 and 252 that are intended to foster opportunities for competition on a level playing field. In addition, we find that it is a *per se* failure to negotiate in good faith for a party to refuse to include in an agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules. Refusing to permit a party to include such a provision would be tantamount to forcing a party to waive its legal rights in the future.

118. We decline to find that other practices identified by parties constitute *per se* violations of the duty to negotiate in good faith. Time Warner contends that we should find that a party is not negotiating in good faith under section 252 if it seeks to tie resolution of issues in that negotiation to the resolution of other, unrelated disputes between the parties in another proceeding. On its face, the hypothetical practice raises concerns. Time Warner, however, did

not present specific examples of how linking two independent negotiation proceedings would undermine good faith negotiations. We believe that requesting carriers have certain rights under sections 251 and 252, and those rights may not be derogated by an incumbent LEC demanding *quid pro quo* concessions in another proceeding. Parties, however, could mutually agree to link section 252 negotiations to negotiations on a separate matter. In fact, to the extent that concurrent resolution of issues could offer more potential solutions or may equalize the bargaining power between the parties, such action may be pro-competitive. For example, an incumbent LEC that offers video programming may be negotiating for the right to use video programming owned by a cable company while the cable company is negotiating terms for interconnecting with the incumbent LEC. Addressing some or all of the issues in the two negotiations collectively could expand the options for reaching agreement, and would equalize the parties' bargaining power, because each has something that the other party desires.

119. We agree with parties contending that actions that are intended to delay negotiations or resolution of disputes are inconsistent with the statutory duty to negotiate in good faith. The Commission will not condone any actions that are deliberately intended to delay competitive entry, in contravention of the statute's goals. We agree with SCBA that small entities seeking to enter the market may be particularly disadvantaged by delay. However, whether a party has failed to negotiate in good faith by employing unreasonable delaying tactics must be determined on a specific, case-by-case basis. For example, a party may not refuse to negotiate with a requesting telecommunications carrier, and a party may not condition negotiation on a carrier first obtaining state certification. A determination based upon the intent of a party, however, is not susceptible to a standardized rule. If a party refuses throughout the negotiation process to designate a representative with authority to make binding representations on behalf of the party, and thereby significantly delays resolution of issues, such action would constitute failure to negotiate in good faith. The Commission has reached a consistent conclusion in other instances. *See, e.g., Application of Gross Telecasting, Inc.*, 57 FR 18857 (May 1, 1992); *Public Notice*, FCC Asks for Comments Regarding the Establishment of an Advisory Committee to Negotiate Proposed Regulations, 57 FR 18857 (May 1, 1992). In particular, we believe that designating a representative authorized to make binding representations on behalf of a party will assist small entities and small incumbent LECs by centralizing communications and thereby facilitating the negotiation process. On the other hand, it is unreasonable to expect an agent to have authority to bind the principal on every issue—i.e., a person may reasonably be an agent of limited authority.

120. We agree with incumbent LECs and new entrants that contend that the parties should be required to provide information necessary to reach agreement. *See National Labor Relations Board* v. *Truitt Mfg Co.*, 351 U.S. 149, 153 (1956) (the trier of fact can reasonably conclude that a party lacks good faith if it raises assertions about inability to pay without making the slightest effort to substantiate that claim); *see also Microwave Facilities Operating in 1850–1990 MHz (2GHz) Band*, 61 FR 29679, 29689 (June 12, 1996). Parties should provide information that will speed the provisioning process, and incumbent LECs must prove to the state commission, or in some instances the Commission or a court, that delay is not a motive in their conduct. Review of such requests, however, must be made on a case-by-case basis to determine whether the information requested is reasonable and necessary to resolving the issues at stake. It would be reasonable, for example, for a requesting carrier to seek and obtain cost data relevant to the negotiation, or information about the incumbent's network that is necessary to make a determination about which network elements to request to serve a particular customer. It would not appear to be reasonable, however, for a carrier to demand proprietary information about the incumbent's network that is not necessary for such interconnection. This is consistent with previous FCC determinations. *See, e.g., Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 4 FCC Rcd 468 (1989) (good faith negotiations necessitate that, at a minimum, one party must approach the other with a specific request). We conclude that an incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the negotiation process, because we conclude that such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent LEC are reasonable. We find that this is consistent with Congress' intention for parties to use the voluntary negotiation process, if possible, to reach agreements. On the other hand, the refusal of a new entrant to provide data about its own costs does not appear on its face to be unreasonable, because the negotiations are not about unbundling or leasing the new entrants' networks.

121. We also find that incumbent LECs may not require requesting carriers to satisfy a "bona fide request" process as part of their duty to negotiate in good faith. Some of the information that incumbent LECs propose to include in a bona fide request requirement may be legitimately demanded from the requesting carrier; some of the proposed requirements, on the other hand, exceed the scope of what is necessary for the parties to reach agreement, and imposing such requirements may discourage new entry. For example, parties advocate that a "bona fide request" requirement should require requesting carriers to commit to purchase services or facilities for a specified period of time. We believe that forcing carriers to make such a commitment before critical terms, such as price, have been resolved is likely to impede new entry. Moreover, we note that section 251(c) does not impose any bona fide request requirement. In contrast, section 251(f)(1) provides that a rural telephone company is exempt from the requirements of 251(c) until, among other things, it receives a "bona fide request" for interconnection, services, or network elements. This suggests that, if Congress had intended to impose a "bona fide request" requirement on requesting carriers as part of their duty to negotiate in good faith, Congress would have made that requirement explicit.

D. Applicability of Section 252 to Preexisting Agreements

1. Background

122. Section 252(a)(1) provides that, "[u]pon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. * * * The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section."

123. In the NPRM, we sought comment on whether sections 252(a)(1) and 252(e) require parties that have negotiated agreements for interconnection, services or network elements prior to the passage of the 1996 Act to submit such agreements to state commissions for approval. We also asked whether one party to such an existing agreement could compel renegotiation and arbitration in accordance with the procedures set forth in section 252.

2. Discussion

124. We conclude that the 1996 Act requires all interconnection agreements, "including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996," to be submitted to the state commission for approval pursuant to section 252(e). The 1996 Act does not exempt certain categories of agreements from this requirement. When Congress sought to exclude preexisting contracts from provisions of the new law, it did so expressly. For example, section 276(b)(3) provides that "nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996." Nothing in the legislative history leads us to a contrary conclusion. Congress intended, in enacting sections 251 and 252, to create opportunities for local telephone competition. We believe that this pro-competitive goal is best effected by subjecting all agreements to state commission review.

125. The first sentence in section 252(a)(1) refers to requests for interconnection "pursuant to section 251." The final sentence in section 252(a)(1) requires submission to the state commission of all negotiated agreements, including those negotiated *before* the enactment of the 1996 Act. Some parties have asserted that there is a tension between those two sentences. We conclude that the final sentence of section 252(a)(1), which requires that *any* interconnection agreement must be submitted to the state commission, can and should be read to be independent of the prior sentences in section 252(a)(1). The interpretation suggested by some commenters that preexisting contracts need only be filed if they are amended subsequent to the 1996 Act, or incorporated by reference into agreements negotiated pursuant to the 1996 Act, would force us to impose conditions that were not intended by Congress.

126. As a matter of policy, moreover, we believe that requiring filing of all interconnection agreements best promotes Congress' stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements, including those that were negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest. In particular, preexisting agreements may include provisions that violate or are inconsistent with the pro-competitive goals of the 1996 Act, and states may elect to reject such agreements under section 252(e)(2)(A). Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i). In addition, we believe that having the opportunity to review existing agreements may provide state commissions and potential competitors with a starting point for determining what is "technically feasible" for interconnection.

127. Conversely, excluding certain agreements from public disclosure could have anticompetitive consequences. For example, such contracts could include agreements not to compete. In addition, if we exempt agreements between neighboring non-competing LECs, those parties might have a disincentive to compete with each other in the future, in order to preserve the terms of their preexisting agreements. Such a result runs counter to the goal of the 1996 Act to encourage local service competition. Moreover, preserving such "non-competing" agreements could effectively insulate those parties from competition by new entrants. For example, if a new entrant seeking to provide competitive local service in a rural community is unable to obtain from a neighboring BOC interconnection or transport and termination on terms that are as favorable as those the BOC offers to the incumbent LEC in the rural area, the new entrant cannot effectively compete. This analysis does not address the separate question of whether an incumbent LEC in a rural area must offer interconnection, resale services, or unbundled network elements. As discussed *infra*, Section XII, Congress provided rural carriers with an exemption from section 251(c) requirements until the state commission removes such exemption. 47 U.S.C. § 251(f)(1). This is because the new entrant will have to charge its subscribers higher rates than the incumbent LEC charges to place calls to subscribers of the neighboring BOC.

128. We find that section 259 does not compel us to reach a different conclusion regarding the application of section 252 to agreements between neighboring LECs. Section 259 requires the Commission to prescribe, within one year after the date of enactment of the 1996 Act, regulations that require incumbent LECs "to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier to provide telecommunications services, or to provide access to information services * * *" 47 U.S.C. § 259(a). A "qualifying carrier" is a telecommunications carrier that "lacks economies of scale or scope," and that offers telephone exchange service, exchange access, and any other service included in universal service to all consumers in the service area without preference. 47 U.S.C. § 259(d). Section 259 is limited to agreements for infrastructure sharing between incumbent LECs and telecommunications carriers that lack "economies of scale or scope," as determined in accordance with regulations prescribed by the Commission. We conclude that the purpose and scope of section 259 differ significantly from the purpose and scope of section 251. The Commission plans to initiate a proceeding to establish regulations pursuant to section 259. Section 259 is a limited and discrete provision designed to bring the benefits of advanced infrastructure to additional subscribers, in the context of the pro-competitive goals and provisions of the 1996 Act. Moreover, section 259(b)(7) requires LECs to file with the Commission or the state "any tariffs, contracts or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure and functions under this

section." We believe that this language further supports our conclusion that Congress intended agreements between neighboring LECs to be filed and available for public inspection. Commenters also have failed to persuade us that universal service is jeopardized by our finding that agreements between neighboring LECs are subject to section 252 filing and review provisions. Concerns regarding universal service should be addressed by the Federal-State Joint Board, empaneled pursuant to section 254 of the 1996 Act. The Joint Board has initiated a comprehensive review of universal service issues and is considering, among other matters, access to telecommunications and information services in rural and high cost areas. In addition, as discussed in Section XII, *infra*, the 1996 Act provides for exemptions, suspension, or modification of some of the requirements in section 251 for rural or smaller carriers.

129. Some parties have suggested that we provide parties an opportunity to renegotiate preexisting contracts. Parties, of course, may mutually agree to renegotiate agreements, but we decline to mandate that parties renegotiate existing contracts. In addition, as discussed below, commercial mobile radio service (CMRS) providers that are party to preexisting agreements with incumbent LECs that provide for non-mutual compensation have the option of renegotiating such agreements with no termination liabilities or contract penalties. We believe that generally requiring renegotiation of preexisting contracts is unnecessary, however, because state commissions will review preexisting agreements, and may reject any negotiated agreement that "discriminates against a telecommunications carrier not a party to the agreement," or that "is not consistent with the public interest, convenience, and necessity." We recognize that preexisting agreements were negotiated under very different circumstances, and may not provide a reasonable basis for interconnection agreements under the 1996 Act. For example, non-competing neighboring LECs may have negotiated terms that simply are not viable in a competitive market. It would not foster efficient long-term competition to force parties to make available to all requesting carriers interconnection on terms not sustainable in a competitive environment. In such circumstances, a state commission would have authority to reject a preexisting agreement as inconsistent with the public interest. If a state commission approves a preexisting agreement, that agreement will be available to other parties in accordance with section 252(i). Contrary to NYNEX's assertion, once a state approves an agreement under section 252(e), that agreement is "approved under" section 252.

130. We decline to require immediate filing of preexisting agreements. States should establish procedures and reasonable time frames for requiring filing of preexisting agreements in a timely manner. We leave these procedures largely in the hands of the states in order to ensure that we do not impair some states' ability to carry out their other duties under the 1996 Act, especially if a large number of such agreements must be filed and approved by the state commission. We believe, nevertheless, that we should set an outer time period to file with the appropriate state commission agreements that Class A carriers have with other Class A carriers that predate the 1996 Act. Class A companies are defined as companies "having annual revenues from regulated telecommunications operations of $100,000,000 or more." 47 CFR § 32.11(a)(1). We conclude that setting such a time limit will ensure that third parties are not prevented indefinitely from reviewing and taking advantage of the terms of preexisting agreements. We are concerned, however, about the burden that a national filing deadline might impose on small telephone companies that have preexisting agreements with Class A carriers or with other small carriers. We therefore limit the filing deadline requirement to preexisting agreements between Class A carriers. We encourage all carriers to file preexisting contracts with the appropriate state commission no later than June 30, 1997, but impose this as a *requirement* only with respect to agreements between Class A carriers. We find that requiring preexisting agreements between Class A carriers to be filed no later than June 30, 1997 is unlikely to burden state commissions unduly, and will give parties a reasonable opportunity to renegotiate agreements if they so choose, while at the same time, establishing this outer time limit ensures that third parties will have access to the terms of such agreements, under section 252(i), within a reasonable period. We expect to have completed proceedings on universal service and access charges by this filing deadline. States may impose a shorter time period for filing preexisting agreements.

IV. Interconnection

131. This section of the Report and Order, and the three sections that follow it, address the interconnection and unbundling obligations that the Act imposes on incumbent LECs. Beyond the resale of incumbent LEC services, it is these obligations that pave the way for the introduction of facilities-based competition with incumbent LECs. The interconnection obligation of section 251(c)(2), discussed in this section, allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic. The unbundling obligation of section 251(c)(3) further permits new entrants, where economically efficient, to substitute incumbent LEC facilities for some or all of the facilities the new entrant would have had to obtain in order to compete. Finally, both the interconnection and unbundling sections of the Act, in combination with the collocation obligation imposed on incumbents by section 251(c)(6), allow competing carriers to choose technically feasible methods of achieving interconnection or access to unbundled elements.

132. Section 251(c)(2) imposes upon incumbent LECs "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network * * * for the transmission and routing of telephone exchange service and exchange access." Such interconnection must be: (1) provided by the incumbent LEC at "any technically feasible point within [its] network;" (2) "at least equal in quality to that provided by the local exchange carrier to itself or * * * [to] any other party to which the carrier provides interconnection;" and (3) provided on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

A. Relationship Between Interconnection and Transport and Termination

1. Background

133. In the NPRM, we sought comment on the relationship between the obligation of incumbent LECs to provide "interconnection" under section 251(c)(2) and the obligation of all LECs to establish reciprocal compensation arrangements for the "transport and termination" of

telecommunications pursuant to section 251(b)(5). We stated that the term "interconnection" might refer only to the physical linking of two networks or to both the linking of facilities and the transport and termination of traffic. We noted in the NPRM that section 252(d) sets forth different pricing standards for interconnection and transport and termination.

2. Discussion

134. We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic. Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish "reciprocal compensation arrangements for the transport and termination of telecommunications," under section 251(b)(5). In addition, in setting the pricing standard for section 251(c)(2) interconnection, section 252(d)(1) states it applies when state commissions make determinations "of the just and reasonable rate for interconnection of *facilities and equipment* for purposes of subsection (c)(2) of section 251." Because section 251(d)(1) states that it only applies to the interconnection of "facilities and equipment," if we were to interpret section 251(c)(2) to refer to transport and termination of traffic as well as the physical linking of equipment and facilities, it would still be necessary to find a pricing standard for the transport and termination of traffic apart from section 252(d)(1). We also reject CompTel's argument that reading section 251(c)(2) to refer only to the physical linking of networks implies that incumbent LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5). We note that because interconnection refers to the physical linking of two networks, and not the transport and termination of traffic, access charges are not affected by our rules implementing section 251(c)(2).

B. National Interconnection Rules

1. Background

135. In the NPRM, we tentatively concluded that national interconnection rules would facilitate swift entry by competitors in multiple states by eliminating the need to comply with a multiplicity of state variations in technical and procedural requirements. NPRM at para. 40, 61 FR 18311 (April 25, 1996). We sought comment on this tentative conclusion.

2. Discussion

136. As discussed more fully above, we conclude that national rules regarding interconnection pursuant to section 251(c)(2) are necessary to further Congress's goal of creating conditions that will facilitate the development of competition in the telephone exchange market. Uniform rules will permit all carriers, including small entities and small incumbent LECs, to plan regional or national networks using the same interconnection points in similar networks nationwide. Uniform rules will also guarantee consistent, minimum nondiscrimination safeguards and "equal in quality" standards in every state. Such rules will also avoid relitigating, in multiple states, the issue of whether interconnection at a particular point is technically feasible.

137. We believe, however, that inflexible or overly detailed national rules implementing section 251(c)(2) may inhibit the ability of the states or the parties to reach arrangements that reflect technological and market advances and regional differences. We also believe that, on several issues, the record is not adequate at this time to justify the establishment of national rules. Therefore, as required by section 251(d)(3) and as discussed in section II.C. above, our rules will permit states to go beyond the national rules discussed below, and impose additional procompetitive interconnection requirements, as long as such requirements are otherwise consistent with the 1996 Act and the Commission's regulations. We believe that we can benefit from state experience in our ongoing review of these issues.

C. Interconnection for the Transmission and Routing of Telephone Exchange Service and Exchange Access

1. Background

138. Section 251(c)(2) imposes a duty upon incumbent LECs to provide "interconnection with the [LEC's] network * * * for the transmission and routing of telephone exchange service and exchange access." In the NPRM, we sought comment on whether a carrier could request interconnection pursuant to subsection (c)(2) for purposes of transmitting and routing telephone exchange service, exchange access, or both, or whether this provision requires that such a request be solely for purposes of providing *both* telephone exchange service and exchange access.

2. Discussion

139. We conclude that the phrase "telephone exchange service and exchange access" imposes at least three obligations on incumbent LECs: an incumbent must provide interconnection for purposes of transmitting and routing telephone exchange traffic or exchange access traffic or both. We believe that this interpretation is consistent with both the language of the statute and Congress's intent to foster entry by competitive providers into the local exchange market. As the U.S. Court of Appeals for the Fifth Circuit stated in *Peacock* v. *Lubbock Compress Company*, "the word 'and' is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings." The court held that "[i]n the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, Courts are often compelled to construe 'or' as meaning 'and,' and again 'and' as meaning 'or'." *Peacock* v. *Lubbock Compress Company*, 252 F.2d 892, 893 (5th Cir. 1958) (*citing United States* v. *Fisk*, 70 U.S. 445, 448). Moreover, the term "local exchange carrier" is defined in the Act as "any person that is engaged in the provision of telephone exchange service *or* exchange access." Thus, we believe that Congress intended to facilitate entry by carriers offering either service. In imposing an interconnection requirement under section 251(c)(2) to facilitate such entry, however, we believe that Congress did not want to deter entry by entities that seek to offer either service, or both, and, as a result, section 251(c)(2) requires incumbent LECs to interconnect with carriers providing "telephone exchange service *and* exchange access." Congress made clear that incumbent LECs must provide interconnection to carriers that seek to offer telephone exchange service *and* to carriers that seek to offer exchange access. This interpretation is consistent with section 251(c)(2), which imposes an obligation on incumbent LECs, but not requesting carriers. Thus, for example, an analogous requirement might be that incumbent LECs must provide interconnection for the transmission and routing of "electrical and optical signals." Such a hypothetical requirement could not rationally be read to obligate *requesting carriers* to provide both electrical and optical signals.

140. We also conclude that requiring new entrants to make available both local exchange service and exchange access as a prerequisite to obtaining interconnection to the incumbent LEC's network under subsection (c)(2) would unduly restrict potential competitors. For example, CAPs often enter the

telecommunications market as exchange access providers prior to offering telephone exchange services. Further, applying separate regulatory regimes (*i.e.*, section 251 related-rules for providers of telephone exchange and exchange access services and section 201 related-rules for providers of only exchange access services) with divergent requirements to parties using essentially the same equipment to transmit and route traffic, is undesirable in light of the new procompetitive paradigm created by section 251. We see no convincing justification for treating providers of exchange access services that offer telephone exchange services differently from access providers who do not offer telephone exchange services. We therefore conclude that parties offering only exchange access are permitted to seek interconnection pursuant to section 251(c)(2).

D. Interexchange Service is Not Telephone Exchange Service or Exchange Access

1. Background

141. Sections 251(c)(2) and 251(c)(3) impose duties upon incumbent LECs to provide interconnection and nondiscriminatory access to unbundled network elements to "any requesting telecommunications carrier." In the NPRM, we tentatively concluded that carriers providing interexchange services are "telecommunications carriers" and thus may seek interconnection and unbundled elements under subsections (c)(2) and (c)(3). We also tentatively concluded, however, that with respect to section 251(c)(2), the statute imposes limits on the purposes for which any telecommunications carrier, including IXCs, may request interconnection pursuant to that section. Section 251(c)(2) imposes an obligation upon incumbent LECs to provide requesting carriers with interconnection if the purpose of the interconnection is for the "transmission and routing of telephone exchange service and exchange access." We tentatively concluded in the NPRM that interexchange service does not appear to constitute either "telephone exchange service" or "exchange access." "Exchange access" is defined in section 3(16) as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." We stated that an IXC that requests interconnection to originate or terminate an interexchange toll call is not "offering" access services, but rather is "receiving" access services.

2. Discussion

142. We conclude that IXCs are telecommunications carriers under the 1996 Act, because they provide telecommunications services (*i.e.*, "offer telecommunications for a fee directly to the public") by originating or terminating interexchange traffic. IXCs are permitted under the statute to obtain interconnection pursuant to section 251(c)(2) for the "transmission and routing of telephone exchange service and exchange access." Moreover, traditional IXCs are a significant potential new local competitor and we conclude that denying them the right to obtain section 251(c)(2) interconnection lacks any legal or policy justification. Thus, all carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (*i.e.*, non-interexchange calls).

143. We conclude, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its *interexchange* traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2). Section 251(c)(2) states that incumbent LECs have a duty to interconnect with telecommunications providers "for the transmission and routing of telephone exchange service and exchange access." A telecommunications carrier seeking interconnection only for interexchange services is not within the scope of this statutory language because it is not seeking interconnection for the purpose of providing telephone exchange service. Nor does a carrier seeking interconnection of interstate traffic only—for the purpose of providing interstate services only—fall within the scope of the phrase "exchange access." Such a would-be interconnector is not "offering" access to telephone exchange services. As we stated in the NPRM, an IXC that seeks to interconnect solely for the purpose of originating or terminating its own interexchange traffic is not offering access, but rather is only obtaining access for its own traffic. Thus, we disagree with CompTel's position that IXCs are offering exchange access when they offer and provide exchange access as a part of long distance service. We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service, if it does not offer exchange access services to others. As we stated above, however, providers of competitive access services are eligible to receive interconnection pursuant to section 251(c)(2). Thus, traditional IXCs that offer access services in competition with an incumbent LEC (i.e., IXCs that offer access services to other carriers as well as to themselves) are also eligible to obtain interconnection pursuant to section 251(c)(2). For example, when an IXC interconnects at a local switch, bypassing the incumbent LECs' transport network, that IXC may offer access to the local switch in competition with the incumbent. In such a situation, the interconnection point may be considered a section 251(c)(2) interconnection point.

E. Definition of "Technically Feasible"

1. Background

144. In addition to specifying the purposes for which carriers may request interconnection, section 251(c)(2) obligates incumbent LECs to provide interconnection within their networks at any "technically feasible point." Similarly, section 251(c)(3) obligates incumbent LECs to provide access to unbundled elements at any "technically feasible point." Thus our interpretation of the term "technically feasible" applies to both sections.

145. In the NPRM, we sought comment on a "dynamic" definition of "technically feasible" that would provide flexibility for negotiating parties and the states in determining interconnection and unbundling points as network technology evolves. We requested comment on the extent to which network reliability concerns should be included in a technical feasibility analysis, and tentatively concluded that, if such concerns were involved, the incumbent LEC had the burden to support such a claim with detailed information. We also sought comment on the role of other considerations, such as economic burden, in determining technical feasibility under sections 251(c)(2) and 251(c)(3).

146. We also tentatively concluded that interconnection or access at a particular point in one LEC network evidences the technical feasibility of providing the same or similar interconnection or access in another, similarly structured LEC network. Finally, we tentatively concluded that incumbent LECs have the burden of

proving the technical infeasibility of providing interconnection or access at a particular point.

2. Discussion

147. We conclude that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations. We further conclude that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements. Specific, significant, and demonstrable network reliability concerns associated with providing interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible. We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Finally, we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.

148. We find that the 1996 Act bars consideration of costs in determining "technically feasible" points of interconnection or access. In the 1996 Act, Congress distinguished "technical" considerations from economic concerns. Section 251(f), for example, exempts certain rural LECs from "unduly economically burdensome" obligations imposed by section 251(c) even where satisfaction of such obligations is "technically feasible." Similarly, section 254(h)(2)(A) treats "technically feasible" and "economically reasonable" as separate requirements. Finally, we note that the House committee that considered H.R. 1555 (which was combined with Senate Bill S.652 to form the 1996 Act) dropped the term "economically reasonable" from its unbundling provision. The House committee explicitly addressed this substantive change, reporting that "this requirement could result in certain unbundled * * * elements * * * not being made available." H. Rep. 104–204, 71 (1995). Thus, the deliberate and explained substantive omission of explicit economic requirements in sections 251(c)(2) and 251(c)(3) cannot be undone through an interpretation that such considerations are implicit in the term "technically feasible." Of course, a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.

149. USTA and SBC cite the Commission's *900 Service* order (*Policies and Rules Concerning Interstate 900 Telecommunications Services*, Report and Order, 56 FR 56160 (November 1, 1991)) as support for the contention that costs must be considered in a technical feasibility analysis. In that order, the Commission concluded that "[i]n defining 'technically feasible,' we balance both technical and economic considerations with a view toward providing [900] blocking capability to consumers without imposing undue economic burdens on LECs." Our *900 Service* order, however, has little bearing on our interpretation of the term "technically feasible" in the 1996 Act. As stated above, the 1996 Act distinguishes technical considerations from the "undue economic burdens" considered in the *900 Service* order. Indeed, Congress used virtually the same language—"unduly economically burdensome"—in drawing the distinction. If, as SBC contends, we are to presume that Congress was aware of the Commission's analysis of the technical feasibility of 900 call blocking, the 1996 Act appears squarely to reject that view of technical feasibility. Moreover, unlike the costs of providing 900 call blocking, which we imposed largely on LECs in the *900 Service* order, as noted above, to the extent incumbent LECs incur costs to provide interconnection or access under sections 251(c)(2) or 251(c)(3), incumbent LECs may recover such costs from requesting carriers.

150. In addition to economic considerations, section 251(c)(6) distinguishes considerations of "space limitations" from those of "technical reasons," and thus, in general, we believe existing space or site restrictions should not be included within a technical feasibility analysis. Of course, under section 251(c)(6) "space" restrictions are expressly considered along with "technical" considerations in determining whether an incumbent LEC must provide for physical collocation. Where physical collocation is not practical because of "space limitations," however, incumbent LECs must provide for virtual collocation. Section 251 is silent as to whether an incumbent LEC's duty to provide for virtual collocation or other methods of interconnection or access to unbundled elements is dependent on space constraints. We conclude, as a practical matter, that space limitations at a particular network site, without any possibility of expansion, may render interconnection or access at that point infeasible, technically or otherwise. Where such expansion is possible, however, we conclude that, in light of the distinction drawn in section 251(c)(6), site restrictions do not represent a "technical" obstacle. Again, however, the requesting party would bear the cost of any necessary expansion. Nor do we believe the term "technical," when interpreted in accordance with its ordinary meaning as referring to engineering and operational concerns in the context of sections 251(c)(2) and 251(c)(3), includes consideration of accounting or billing restrictions.

151. Several parties also attempt to draw a distinction between what is "feasible" under the terms of the statute, and what is "possible." The words "feasible" and "possible," however, are used synonymously. Feasible is defined as "capable of being accomplished or brought about; possible." The statute itself provides a more meaningful distinction. Unlike the "technically *feasible*" terminology included in sections 251(c)(2) and 251(c)(3), section 251(c)(6) uses the term "*practical* for technical reasons" in determining the scope of an incumbent LEC's obligation to provide for physical collocation. "Practical" is defined as "manifested in practice or action * * * not theoretical or ideal" or "adapted or designed for actual use; useful," and connotes similarity to ordinary usage. Thus, it is reasonable to interpret Congress' use of the term "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely "practical" or similar to what is ordinarily done. That is, use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated. For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the facilities and equipment" of the new entrant.

Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements.

152. We also conclude, however, that legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its own network. Thus, with regard to network reliability and security, to justify a refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access. The reports of the Commission's Network Reliability Council discuss network reliability considerations, and establish templates that list activities that need to occur when service providers connect their networks pursuant to defined interconnection specifications or when they are attempting to define a new network interface specification.

153. We further conclude that successful interconnection or access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point, or at substantially similar points in networks employing substantially similar facilities. In comparing networks for this purpose, the substantial similarity of network facilities may be evidenced, for example, by their adherence to the same interface or protocol standards. We also conclude that previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality. Although most parties agree with this conclusion, some LECs contend that such comparisons are all but impossible because of alleged variability in network technologies, even where the ultimate services offered by separate networks are the same. We believe that, if the facilities are substantially similar, the LECs' contention is adequately addressed.

154. Finally, because sections 251(c)(2) and 251(c)(3) impose duties upon incumbent LECs, we conclude that incumbent LECs must prove to the appropriate state commission that interconnection or access at a point is not technically feasible. Incumbent LECs possess the information necessary to assess the technical feasibility of interconnecting to particular LEC facilities. Further, incumbent LECs have a duty to make available to requesting carriers general information indicating the location and technical characteristics of incumbent LEC network facilities. Without access to such information, competing carriers would be unable to make rational network deployment decisions and could be forced to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects.

155. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, the Rural Telephone Coalition argues that the Commission should set interconnection points in a flexible manner to recognize the differences between carriers and regions. We do not adopt the Rural Telephone Coalition's position because we believe that, in general, the Act does not permit incumbent LECs to deny interconnection or access to unbundled elements for any reason other than a showing that it is not technically feasible. We believe that this interpretation will advance the procompetitive goals of the statute. We also note, however, that section 251(f) of the 1996 Act provides relief to certain small LECs from our regulations implementing section 251.

F. Technically Feasible Points of Interconnection

1. Background

156. In the NPRM, we requested comment on which points within an incumbent LEC's network constitute "technically feasible" points for purposes of section 251(c)(2). Having defined the phrase "technically feasible" above, we now determine a minimum set of technically feasible points of interconnection.

2. Discussion

157. We conclude that we should identify a minimum list of technically feasible points of interconnection that are critical to facilitating entry by competing local service providers. Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.

158. We conclude that, at a minimum, incumbent LECs must provide interconnection at the line-side of a local switch (at, for example, the main distribution frame), the trunk-side of a local switch; the trunk interconnection points for a tandem switch; and central office cross-connect points in general. This requirement includes interconnection at those out-of-band signaling transfer points necessary to exchange traffic and access call related databases. All of these points of interconnection are used today by competing carriers, noncompeting carriers, or LECs themselves for the exchange of traffic, and thus we conclude that interconnection at such points is technically feasible.

159. A varied group of commenters, including Bell Atlantic and AT&T, agree that interconnection at the line-side of the switch is technically feasible. Interconnection at this point is currently provided to some commercial mobile radio service (CMRS) carriers and may be necessary for other competitors that have their own distribution plant, but seek to interconnect to the incumbent's switch. We also agree with numerous commenters that claim that interconnection at the trunk-side of a switch is technically feasible and should be available upon request. Interconnection at this point is currently used by competing carriers to exchange traffic with incumbent LECs. Interconnection to tandem switching facilities is also currently used by IXCs and competing access providers, and is thus technically feasible. Finally, central office cross-connect points, which are designed to facilitate interconnection, are natural points of technically feasible interconnection to, for example, interoffice transmission facilities. There may be rare circumstances where there are true technical barriers to interconnection at the line- or trunk-side of the switch or at central office cross-connect points, however, the parties have not presented us with any such circumstances. Thus,

incumbent LECs must prove to the state commissions that such points are not technically feasible interconnection points.

160. We also note that the points of access to unbundled elements discussed below may also serve as points of interconnection (*i.e.*, points in the network that may serve as places where potential competitors may wish to exchange traffic with the incumbent LEC other than for purposes of gaining access to unbundled elements), and thus we incorporate those points by reference here. Finally, as noted above, we have identified a minimum list of technically feasible interconnection points: (1) The line-side of a local switch; (2) the trunk-side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points; and (6) the points of access to unbundled elements. In addition, we anticipate and encourage parties and the states, through negotiation and arbitration, to identify additional points of technically feasible interconnection. We believe that the experience of the parties and the states will benefit our ongoing review of interconnection.

G. Just, Reasonable, and Nondiscriminatory Rates, Terms, and Conditions of Interconnection

1. Background

161. Section 251(c)(2)(D) requires that incumbent LECs provide interconnection "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." In the NPRM, we sought comment on whether we should adopt national requirements governing the terms and conditions of providing interconnection. We also sought comment on how we should determine whether the terms and conditions for interconnection arrangements are just, reasonable, and nondiscriminatory, and how we should enforce such rules. In particular, we sought comment on whether we should adopt national guidelines governing installation, service, maintenance, and repair of the incumbent LEC's portion of interconnection facilities.

2. Discussion

162. We conclude that minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection will be in the public interest and will provide guidance to the parties and the states in the arbitration process and thereafter. We believe that national standards will tend to offset the imbalance in bargaining power between incumbent LECs and competitors and encourage fair agreements in the marketplace between parties by setting minimum requirements that new entrants are guaranteed in arbitrations. Negotiations between an incumbent and a new entrant differ from commercial negotiations in a competitive market because new entrants are dependent solely on the incumbent for interconnection.

163. Section 202(a) of the Act states that "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, * * * facilities, or services for or in connection with like communication service * * * by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person." By comparison, section 251(c)(2) creates a duty for incumbent LECs "to provide * * * any requesting telecommunications carrier, interconnection with a LEC's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." The nondiscrimination requirement in section 251(c)(2) is not qualified by the "unjust or unreasonable" language of section 202(a). We therefore conclude that Congress did not intend that the term "nondiscriminatory" in the 1996 Act be synonymous with "unjust and unreasonable discrimination" used in the 1934 Act, but rather, intended a more stringent standard.

164. Given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself. Permitting such circumstances is inconsistent with the procompetitive purpose of the Act. Therefore, we reject for purposes of section 251, our historical interpretation of "nondiscriminatory," which we interpreted to mean a comparison between what the incumbent LEC provided other parties in a regulated monopoly environment. We believe that the term "nondiscriminatory," as used throughout section 251, applies to the terms and conditions an incumbent LEC imposes on third parties as well as on itself. In any event, by providing interconnection to a competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC violates the duty to be "just" and "reasonable" under section 251(c)(2)(D). Also, incumbent LECs may not discriminate against parties based upon the identity of the carrier (*i.e.*, whether the carrier is a CMRS provider, a CAP, or a competitive LEC). As long as a carrier meets the statutory requirements, as discussed in this section, it has a right to obtain interconnection with the incumbent LEC pursuant to section 251(c)(2).

165. We identify below specific terms and conditions for interconnection in discussing physical or virtual collocation (*i.e.*, two methods of interconnection). We conclude here, however, that where a carrier requesting interconnection pursuant to section 251(c)(2) does not carry a sufficient amount of traffic to justify separate one-way trunks, an incumbent LEC must accommodate two-way trunking upon request where technically feasible. Refusing to provide two-way trunking would raise costs for new entrants and create a barrier to entry. Thus, we conclude that if two-way trunking is technically feasible, it would not be just, reasonable, and nondiscriminatory for the incumbent LEC to refuse to provide it.

166. Finally, as discussed below, we reject Bell Atlantic's suggestion that we impose reciprocal terms and conditions on incumbent LECs and requesting carriers pursuant to section 251(c)(2). Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. The obligations of LECs that are not incumbent LECs are generally governed by sections 251 (a) and (b), not section 251(c). Also, the statute itself imposes different obligations on incumbent LECs and other LECs (*i.e.*, section 251(b) imposes obligations on all LECs while section 251(c) obligations are imposed only on incumbent LECs). We do note, however, that 251(c)(1) imposes upon a requesting telecommunications carrier a duty to negotiate the terms and conditions of interconnection agreements in good faith. We also conclude that MCI's POI proposal, permitting interconnecting carriers, both competitors and incumbent LECs, to designate points of interconnection on each other's networks, is at this time best addressed in negotiations and arbitrations between parties. We believe that the record on this issue is not sufficiently persuasive to justify Commission action at this time. As market conditions evolve, we will continue to review and revise our rules as necessary.

H. Interconnection that is Equal in Quality

1. Background

167. Section 251(c)(2)(C) requires that the interconnection provided by an

incumbent LEC be "at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." In the NPRM, we sought comment on how to determine whether interconnection is "equal in quality."

2. Discussion

168. We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. We agree with MFS that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks. Contrary to the view of some commenters, we further conclude that the equal in quality obligation imposed by section 251(c)(2) is not limited to the quality perceived by end users. The statutory language contains no such limitation, and creating such a limitation may allow incumbent LECs to discriminate against competitors in a manner imperceptible to end users, but which still provides incumbent LECs with advantages in the marketplace (*e.g.*, the imposition of disparate conditions between carriers on the pricing and ordering of services).

169. We also note that section 251(c)(2) requires interconnection that is "at least" equal in quality to that enjoyed by the incumbent LEC itself. This is a minimum requirement. Moreover, to the extent a carrier requests interconnection of superior or lesser quality than an incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection arrangement if technically feasible. Requiring incumbent LECs to provide upon request higher quality interconnection than they provide themselves, subsidiaries, or affiliates will permit new entrants to compete with incumbent LECs by offering novel services that require superior interconnection quality. We also conclude that, as long as new entrants compensate incumbent LECs for the economic cost of the higher quality interconnection, competition will be promoted.

V. Access to Unbundled Network Elements

A. Commission Authority to Identify Unbundled Network Elements

1. Background

170. Section 251(c)(3) imposes a duty on incumbent LECs to "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252." This section also requires incumbent LECs to provide these elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

171. Section 251(d)(1) provides that "the Commission shall complete all actions necessary to establish regulations to implement the requirements of" section 251 by August 8, 1996. Section 251(d)(2) further provides that, "[i]n determining what network elements should be made available for purpqses of subsection (c)(3), the Commission shall consider, at a minimum, whether (A) Access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

172. In the NPRM, we sought comment on our tentative conclusion that the 1996 Act requires the Commission to identify network elements that incumbent LECs are required to make available to requesting carriers on an unbundled basis under section 251(c)(3).

2. Discussion

173. We affirm our tentative conclusion in the NPRM that the 1996 Act requires the Commission to identify network elements that incumbent LECs must offer requesting carriers on an unbundled basis under section 251(c)(3). Section 251(d)(1) directs the Commission to establish rules implementing the requirements of section 251(c)(3). Further, section 251(d)(2) contemplates that, pursuant to this direction, the Commission will identify unbundled network elements. We conclude that neither the language in section 251(d), nor any other part of the 1996 Act, is reasonably susceptible to the interpretation advanced by BellSouth that our obligation to identify unbundled network elements arises only when we act under section 252(e)(5).

B. National Requirements for Unbundled Network Elements

1. Background

174. In the NPRM, we noted Congress' view that, when new entrants begin providing services in local telephone markets, it is unlikely they will own network facilities that completely duplicate those of incumbent LECs because of the significant investment and time required to build such facilities. The statutory requirement imposed on incumbent LECs to provide access to unbundled network elements will permit new entrants to offer competing local services by purchasing from incumbents, at cost-based prices, access to elements which they do not already possess, unbundled from those elements that they do not need.

175. It is possible that there will be sufficient demand in some local telephone markets to support the construction of competing local exchange facilities that duplicate most or even all of the elements of an incumbent LEC's network. In these markets new entrants will be able to use unbundled elements from the incumbent LEC to provide services until such time as they complete the construction of their own networks, and thus, no longer need to rely on the facilities of an incumbent to provide local exchange and exchange access services. It is also possible, however, that other local markets, now and even into the future, may not efficiently support duplication of all, or even some, of an incumbent LEC's facilities. Access to unbundled elements in these markets will promote efficient competition for local exchange services because, under the scheme set out in the 1996 Act, such access will allow new entrants to enter local markets by obtaining use of the incumbent LECs' facilities at prices that reflect the incumbents' economies of scale and scope.

176. In the NPRM, we tentatively concluded that the Commission should identify a minimum number of elements that incumbent LECs must make available to requesting carriers on an unbundled basis. We further tentatively concluded that section 252(e)(3) preserves a state's authority, during arbitration, to impose additional unbundling requirements beyond those we specify, as long as such requirements are consistent with the 1996 Act and our

regulations. Section 252(e) discusses a state commission's obligations regarding the approval or rejection of agreements between incumbent LECs and requesting telecommunications carriers for interconnection, services or network elements. Subparagraph (3) of this section specifically provides that a state commission is not prohibited "from establishing or enforcing other requirements of State law in its review of an agreement," as long as such requirements do not violate the terms of the statute. 47 U.S.C. § 252(e)(3). We further note that under section 252(f)(2) states may impose additional unbundling requirements during review of BOC statements of generally available terms and conditions. Section 252(f)(2) states that "(e)xcept as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement * * *" 47 U.S.C. § 252(f)(2). Finally, we tentatively concluded that we have authority to identify additional or different unbundling requirements in the future, as we learn about changes in technology, the innovation of new services, and the necessities of competition.

2. Discussion

177. We adopt our tentative conclusion and identify a minimum list of unbundled network elements that incumbent LECs must make available to new entrants upon request. We believe the procompetitive goals of section 251(c)(3) will best be achieved through the adoption of such a list. As discussed above, we believe that negotiations and arbitrations will best promote efficient, rapid, and widespread new entry if we establish certain minimum national unbundling requirements. As the Department of Justice argues, there is "no basis in economic theory or in experience to expect incumbent monopolists to quickly negotiate arrangements to facilitate disciplining entry by would-be competitors, absent clear legal requirements to do so." Ad Hoc Telecommunications Users Committee notes that "[h]istorically, the [incumbent LECs] have had strong incentives to resist, and have actively resisted, efforts to open their networks to users, competitors, or new technology-driven applications of network technology."

178. National requirements for unbundled elements will allow new entrants, including small entities, seeking to enter local markets on a national or regional scale to take advantage of economies of scale in network design. If fifty states were to establish different unbundling requirements, new entrants, including small entities, could be denied the benefits of scale economies in obtaining access to unbundled elements. National requirements will also: reduce the number of issues states must consider in arbitrations, thereby facilitating the states' ability to conduct such proceedings; reduce the likelihood of litigation regarding the requirements of section 251(c)(3) and the costs associated with such litigation; and provide financial markets with greater certainty in assessing new entrants' business plans, thus enhancing the ability of new entrants, including small entities, to raise capital. In addition, to the extent the Commission assumes a state's arbitration authority under section 252(e)(5), national requirements for unbundled elements will help the Commission to conclude such proceedings expeditiously.

179. We reject the alternative option of developing an exhaustive list of required unbundled elements, to which states could not add additional elements, on the grounds that such a list would not necessarily accommodate changes in technology, and it would not provide states the flexibility they need to deal with local conditions.

180. We also reject the proposal advanced by several parties that we should adopt non-binding national guidelines for unbundled elements that states would not be required to enforce. The parties asserting that differences between incumbent LEC networks militate against the adoption of national standards provide few, if any, specific examples of what those differences are. In addition, they fail to articulate persuasively why those differences are significant enough to weigh against the adoption of national requirements. Accordingly, and as previously discussed, we conclude that any differences that may exist among states are not sufficiently great to overcome the procompetitive benefits that would result from establishing a minimum set of binding national rules. Moreover, we believe the authority granted the states in section 252(e)(3), as well as our existing rules which set forth a process by which incumbent LECs can request a waiver of the requirements we adopt here, will provide the necessary flexibility in our rules to permit states and parties to accommodate any truly unique state conditions that might exist. We further observed in the NPRM that under the voluntary negotiation paradigm set out in section 252, parties to such negotiations can agree to provide unbundled network elements that differ from those identified by the Commission. *See* NPRM at para. 78 (*citing* 47 U.S.C. § 252(a)). Accordingly, we adopt our tentative conclusion that states may impose additional unbundling requirements pursuant to section 252(e)(3), as long as such requirements are consistent with the 1996 Act and our regulations. This conclusion is consistent with the statement in section 252(e)(3) that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement."

181. We find the arguments presented by parties opposing national rules for unbundled elements unpersuasive especially in light of the 1996 Act's strong procompetitive goals. For example, in light of the incumbent LECs' disincentives to negotiate with potential competitors, we believe national rules will promote competition by making the bargaining strength of potential competitors, including small entities, more equal. We are not persuaded that national rules will discourage incumbent LECs from developing new technologies and services; to the contrary, based on our experience in other telecommunications markets, we believe that competition will stimulate innovation by incumbent LECs. We also believe that any failure of incumbent LECs to develop new technologies or services would have a less significant adverse effect on competition in local exchange markets than a failure to adopt national rules. Nor is it likely that new entrants will seek unnecessary elements merely to raise incumbents' costs because such new entrants must pay the costs associated with unbundling. In addition, the pricing standard of section 252(d)(1)(B), which allows incumbent LECs to receive not only their costs but also a reasonable profit on the provision of unbundled elements, should further alleviate concerns regarding sham requests.

182. We adopt our tentative conclusion that, in addition to identifying unbundled network elements that incumbent LECs must make available now, we have authority to identify additional, or perhaps different, unbundling requirements that would apply to incumbent LECs in the future. The rapid pace and ever changing nature of technological advancement in the telecommunications industry makes it essential that we retain the ability to revise our rules as circumstances change. Otherwise, our rules might impede technological change and frustrate the 1996 Act's overriding goal of bringing the benefits

of competition to consumers of local phone services. For the same reasons that we believe we should adopt national unbundling requirements, as discussed above, we reject the proposal that future unbundling requirements should be determined solely by the parties to voluntary negotiations.

183. Finally, we have considered the economic impact of our rules in this section on small incumbent LECs. For example, we have considered the argument advanced by the Rural Telephone Coalition that national unbundling requirements would be unworkable because of technological, demographic and geographic variations between states. We do not adopt the Rural Telephone Coalition's position, however, because we believe that the minimum list we adopt can be applied to a broad range of networks across geographic regions and any differences between incumbent LEC networks in different states are not sufficiently great to overcome the procompetitive benefits of a minimum list of required unbundled network elements. We have also considered the argument advanced by GVNW that unbundling requirements imposed on small incumbent LECs should differ from those imposed on large, urban incumbent LECs because of differences in networks and operational procedures. We reject GVNW's proposal for two reasons. First, some small incumbent LECs may not experience any problems complying with our unbundling rules. Second, we note that section 251(f) of the 1996 Act provides relief to certain small LECs from our regulations implementing section 251.

184. Although we have concluded in this proceeding that we can best achieve the procompetitive aims of the 1996 Act by adopting minimum national unbundling requirements for arbitrated agreements, the 1996 Act envisions that the states will administer those requirements through approval of negotiated agreements and arbitrations. Through arbitrations and review of negotiated agreements the states will add to their significant expertise on issues relating to the provision of access to unbundled network elements. We encourage state commissions to take an active role in evaluating the success or difficulties in implementing any of our requirements. The Commission intends to draw on the expertise developed by the states when we review and revise our rules as necessary.

C. Network Elements

1. Background

185. Section 3(29) of the Communications Act defines the term "network element" to mean both "a facility or equipment used in the provision of a telecommunications service" and "features, functions, and capabilities that are provided by means of such facility or equipment." Such features, functions, and capabilities include "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." The Joint Explanatory Statement explains that "[t]he term 'network element' was included to describe the facilities, such as local loops, equipment, such as switching, and the features, functions, and capabilities that a local exchange carrier must provide for certain purposes under other sections of the conference agreement."

186. In the NPRM, we noted that we could identify "network elements" in two ways. First, we could identify a single "network element," and then further subdivide it into additional "elements." Alternatively, we could provide that, once we identify a particular "network element," it cannot be further subdivided. In the NPRM, we asked for comment on these two approaches.

187. We observed in the NPRM that the statutory definition of a "network element" draws a distinction between a "facility or equipment used in the provision of a telecommunications service," and the "service" itself. We asked for comment on the meaning of this distinction in general, with respect to requirements for unbundling, and in connection with specific unbundled elements. We noted that the definition of a network element, *i.e.*, a facility, function, or capability, is not dependent on the particular types of services that are provided by means of the element (*e.g.*, interstate access, intrastate local exchange), and asked whether a carrier purchasing access to an element is obligated, pursuant to the definition, to provide all services typically carried or provided by that element.

2. Discussion

188. We adopt the concept of unbundled elements as physical facilities of the network, together with the features, functions, and capabilities associated with those facilities. Carriers requesting use of unbundled elements within the incumbent LEC's network seek in effect to purchase the right to obtain exclusive access to an entire facility, or use of some feature, function or capability of that element. For some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period, such as on a monthly basis. Carriers seeking other elements, especially shared facilities such as common transport, are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis. This concept of network elements, as discussed *infra* at section V.G., does not alter the incumbent LEC's physical control or ability or duty to repair and maintain network elements.

189. We conclude that we should identify a particular facility or capability, for example, as a single network element, but allow ourselves and the states (where appropriate) the discretion to further identify, within that single facility or capability, additional required network elements. Thus, for example, in this proceeding, we identify the local loop as a single network element. We also ask the states to evaluate, on a case-by-case basis, whether to require access to subloop elements, which can be facilities or capabilities within the local loop. We agree with those commenters that argue that identifying a particular facility or capability as single network element, but allowing such elements to be further subdivided into additional elements, will allow our rules (as well as the states) to accommodate changes in technology, and thus better serve the interests of new entrants and incumbent LECs, and the procompetitive purposes of the 1996 Act. We are not persuaded by PacTel's argument that it is unnecessary for our rules to permit the identification of additional elements, beyond those specifically referenced in parts of the 1996 Act, because our rules must conform to the definition of a network element, and they must accommodate changes in technology. Nor are we persuaded by BellSouth that identification of network elements should be left solely to the parties. We reject this approach for the same reasons that led us to adopt national unbundling requirements. Finally, we agree with NYNEX and others that we should not identify elements in rigid terms, but rather by function.

190. We agree with MCI and MFS that the definition of the term network element includes physical facilities, such as a loop, switch, or other node, as well as logical features, functions, and capabilities that are provided by, for example, software located in a physical facility such as a switch. We further agree with MCI that the embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. Accordingly, incumbent LECs

must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services.

191. The only limitation that the statute imposes on the definition of a network element is that it must be "used in the provision of a telecommunications service." Incumbent LECs provide telecommunications services not only through network facilities that serve as the basis for a particular service, or that accomplish physical delivery, but also through information (such as billing information) that enables incumbents to offer services on a commercial basis to consumers. Our interpretation of the term "provision" finds support in the definition of the term "network element." That definition provides that the type of information that may constitute a feature or function includes information "used in the transmission, routing or other provision of a telecommunications service." Since "transmission" and "routing" refer to physical delivery, the phrase "or other provision of a telecommunications service" goes beyond mere physical delivery.

192. We conclude that the definition of the term "network element" broadly includes all "facilit[ies] or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." This definition thus includes, but is not limited to, transport trunks, call-related databases, software used in such databases, and all other unbundled elements that we identify in this proceeding. The definition also includes information that incumbent LECs use to provide telecommunications functions commercially, such as information required for pre-ordering, ordering, provisioning, billing, and maintenance and repair services. (The term "provisioning" includes installation.) This interpretation of the definition of the term "network element" will serve to guide both the Commission and the states in evaluating further unbundling requirements beyond those we identify in this proceeding.

193. We disagree with those incumbent LECs which argue that features that are sold directly to end users as retail services, such as vertical features, cannot be considered elements within incumbent LEC networks. If we were to conclude that any functionality sold directly to end users as a service, such as call forwarding or caller ID, cannot be defined as a network element, then incumbent LECs could provide local service to end users by selling them unbundled loops and switch elements, and thereby entirely evade the unbundling requirement in section 251(c)(3). We are confident that Congress did not intend such a result. We further reject Ameritech's argument that we should not permit carriers to use unbundled elements to provide services that are priced above cost at retail. We agree with those parties that argue that competition will not develop if we find that supracompetitive pricing is protected by the 1996 Act.

194. Moreover, we agree with those commenters that argue that network elements are defined by facilities or their functionalities or capabilities, and thus, cannot be defined as specific services. A single network element could be used to provide many different services. For example, a local loop can be used to provision inter- and intrastate exchange access services, as well as local exchange services. We conclude, consistent with the findings of the Ohio and Oregon Commissions, that the plain language of section 251(c)(3) does not obligate carriers purchasing access to network elements to provide all services that an unbundled element is capable of providing or that are typically offered over that element. Section 251(c)(3) does not impose any service-related restrictions or requirements on requesting carriers in connection with the use of unbundled elements.

D. Access to Network Elements

1. Background

195. In the NPRM, we observed that section 251(c)(3) requires incumbent LECs to provide "access" to network elements "on an unbundled basis." We interpreted these terms to mean that incumbent LECs must provide carriers with the functionality of a particular element, separate from the functionality of other elements, and must charge a separate fee for each element. We sought comment on this interpretation and any alternative interpretations.

2. Discussion

196. We conclude that we should adopt our proposed interpretation that the terms "access" to network elements "on an unbundled basis" mean that incumbent LECs must provide the facility or functionality of a particular element to requesting carriers, separate from the facility or functionality of other elements, for a separate fee. We further conclude that a telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. The specified period may vary depending on the terms of the agreement between the incumbent LEC and the requesting carrier. The ability of other carriers to obtain access to a network element for some period of time does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element. We clarify that title to unbundled network elements will not shift to requesting carriers. We reject PacTel's interpretation of the terms quoted above because it is inconsistent with our definition of the term network element (i.e., an element includes all features and functions embedded in it). Moreover, to the extent that PacTel's argument suggests that the 1996 Act does not require unbundled elements to be provisioned in a way that would make them useful, we find that its statutory interpretation is inconsistent with the statute's goal of providing new entrants with realistic means of competing against incumbents.

197. We further conclude that "access" to an unbundled element refers to the means by which requesting carriers obtain an element's functionality in order to provide a telecommunications service. Just as section 251(c)(2) requires "interconnection * * * at any technically feasible point," section 251(c)(3) requires "access * * * at any technically feasible point." We conclude, based on the terms of sections 251 (c)(2), 251(c)(3), and 251(c)(6), that an incumbent LEC's duty to provide "access" constitutes a duty to provide a connection to a network element independent of any duty imposed by subsection (c)(2). Thus, such "access" must be provided under the rates, terms, and conditions that apply to unbundled elements.

198. Specifically, section 251(c)(6) provides that incumbent LECs must provide "physical collocation of equipment necessary for interconnection or access to unbundled network elements." The use of the term "or" in this phrase means that interconnection is different from "access" to unbundled elements. The text of sections 251(c)(2) and (c)(3) leads to the same conclusion. Section 251(c)(2) requires that interconnection be provided for "the transmission and

routing of telephone exchange service and exchange access." Section 251(c)(3), in contrast, requires the provision of access to unbundled elements to allow requesting carriers to provide "a telecommunications service." The term "telecommunications service" by definition includes a broader range of services than the terms "telephone exchange service and exchange access." Subsection (c)(3), therefore, allows unbundled elements to be used for a broader range of services than subsection (c)(2) allows for interconnection. If we were to conclude that "access" to unbundled elements under subsection (c)(3) could only be achieved by means of interconnection under subsection (c)(2), we would be limiting, in effect, the uses to which unbundled elements may be put, contrary to the plain language of section 251(c)(3) and standard canons of statutory construction.

E. Standards Necessary To Identify Unbundled Network Elements

1. Background

199. In the NPRM, we raised a number of issues concerning the meaning of technical feasibility in connection with unbundled elements. We also sought comment on the extent to which the Commission should consider the standards set forth in section 251(d)(2) in identifying required unbundled elements, and on how we ought to interpret these standards. Subsection (d)(2) provides that "(i)n determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum" the following two standards, "whether (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." We further asked about the relationship between the latter standard and the requirement in section 251(c)(3) that carriers be able to use unbundled elements to provide a telecommunications service.

2. Discussion

200. Sections 251(c)(3) and 251(d)(2) set forth standards the Commission must consider in identifying unbundled network elements that incumbent LECs must make available in connection with arbitrations before state commissions and BOC statements of generally available terms and conditions. These standards guide the unbundling requirements we issue today as well as any different or additional unbundling requirements we may issue in the future. Similarly, the States must follow our interpretation of these standards to the extent they impose additional unbundling requirements during arbitrations or subsequent rulemaking proceedings.

201. Section 251(c)(3) requires incumbent LECs to provide requesting carriers with "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point." We find that this clause imposes on an incumbent LEC the duty to provide all network elements for which it is technically feasible to provide access on an unbundled basis. Because section 251(d)(1) requires us to "establish regulations to implement the requirements of" section 251(c)(3), we conclude that we have authority to establish regulations that are coextensive with the duty section 251(c)(3) imposes on incumbent LECs.

202. Section 251(d)(2), however, sets forth standards that do not depend on technical feasibility. More specifically, section 251(d)(2) provides that, in identifying unbundled elements, the Commission shall "consider, at a minimum," whether access to proprietary elements is necessary (the "proprietary standard"), and whether requesting carriers' ability to provide services would be impaired if the desired elements were not provided by an incumbent LEC (the "impairment standard.") Thus, section 251(d)(2) gives us the authority to decline to require incumbent LECs to provide access to unbundled network elements at technically feasible points if, for example, we were to conclude that access to a particular proprietary element is not necessary. To give effect to both sections 251(c)(3) and 251(d)(2), we conclude that the proprietary and impairment standards in section 251(d)(2) grant us the authority to refrain from requiring incumbent LECs to provide all network elements for which it is technically feasible to provide access on an unbundled basis. The authority we derive from section 251(d)(2) is limited, however, by our interpretation of these standards, and this section, as set forth below.

203. We agree with BellSouth, SBC, and others that the plain import of the "at minimum" language in section 251(d)(2) requires us, in identifying unbundled network elements, to "consider" the standards enumerated there, as well as other standards we believe are consistent with the objectives of the 1996 Act. We conclude that the word "consider" means we must weigh the standards enumerated in section 251(d)(2) in evaluating whether to require the unbundling of a particular element.

204. We further conclude that, in evaluating whether to impose additional unbundling requirements during the arbitration process, States must apply our definition of technical feasibility, discussed above in section IV.D. A determination of technical feasibility would then create a presumption in favor of requiring an incumbent LEC to provide the element. If providing access to an unbundled element is technically feasible, a State must then consider the standards set forth in section 251(d)(2), as we interpret them below. Similarly, the Commission will apply this analysis where we must arbitrate specific unbundling issues, under section 252(e)(5), and in future rulemaking proceedings that may consider additional or possibly different unbundling requirements.

205. Section 251(d)(2)(A) requires the Commission and the States to consider whether access to proprietary elements is "necessary." "Necessary" means, in this context, that an element is a prerequisite for competition. We believe that, in some instances, it will be "necessary" for new entrants to obtain access to proprietary elements (e.g., elements with proprietary protocols or elements containing proprietary information), because without such elements, their ability to compete would be significantly impaired or thwarted. As noted *supra*, a number of commenters argue that section 251(d)(2)(A) requires us to protect proprietary information, such as CPNI information, contained in network elements. We intend to treat issues regarding CPNI in our rulemaking proceeding on CPNI information. *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96–115, Notice of Proposed Rulemaking, FCC 96–221, 61 FR 26483 (May 28, 1996). Thus, as an initial matter, we decline to adopt a general rule, as suggested by some incumbents, that would prohibit access to such elements, or make access available only upon a carrier demonstrating a heavy burden of need. We acknowledge that prohibiting incumbents from refusing access to proprietary elements could reduce their incentives to offer innovative services. We are not persuaded, however, that this is a sufficient reason to prohibit generally the unbundling of proprietary elements, because the threat to competition from any such prohibition would far exceed any costs to

consumers resulting from reduced innovation by the incumbent LEC. In this proceeding, for example, we are requiring incumbent LECs to provide the local switching element which includes vertical features that some carriers contend are proprietary. *See infra*, Section V.J. Moreover, the procompetitive effects of our conclusion generally will stimulate innovation in the market, offsetting any hypothetical reduction in innovation by the incumbent LECs.

206. We further conclude that, to the extent new entrants seek additional elements beyond those we identify herein, section 251(d)(2)(A) allows the Commission and the states to require the unbundling of such elements unless the incumbent can prove to a state commission that: (1) The element is proprietary, or contains proprietary information that will be revealed if the element is provided on an unbundled basis; and (2) a new entrant could offer the same proposed telecommunications service through the use of other, nonproprietary unbundled elements within the incumbent's network. We believe this interpretation of section 251(d)(2)(A) will best advance the procompetitive purposes of the 1996 Act. It allows new entrants to obtain proprietary elements from incumbent LECs where they are necessary to offer a telecommunications service, and, at the same time, it gives incumbents the opportunity to argue, before the states or the Commission, against unbundling proprietary elements where a new entrant could offer the same service using other unbundled elements in the incumbent's network. We decline to adopt the interpretation of section 251(d)(2)(A) advanced by some incumbents that incumbent LECs need not provide proprietary elements if requesting carriers can obtain the requested proprietary element from a source other than the incumbent. Requiring new entrants to duplicate unnecessarily even a part of the incumbent's network could generate delay and higher costs for new entrants, and thereby impede entry by competing local providers and delay competition, contrary to the goals of the 1996 Act.

207. We further conclude that, to the extent new entrants do not need access to all the proprietary information contained within an element in order to provide a telecommunications service, the Commission and the states may take action to protect the proprietary information. For example, to provide a telecommunications service, a new entrant might need access to information about a particular customer that is in an incumbent LEC database. The database to which the new entrant requires access, however, may contain proprietary information about all of the incumbent LECs' customers. In this circumstance, the new entrant should not have access to proprietary information about the incumbent LEC's other customers where it is not necessary to provide service to the new entrant's particular customer. Accordingly, we believe the Commission and the states have the authority to protect the confidentiality of proprietary information in an unbundled network element, such as a database, where that information is not necessary to enable a new entrant to offer a telecommunications service to its particular customer.

208. Section 251(d)(2)(B) requires us to consider whether the failure to provide access to an element would "impair" the ability of a new entrant to provide a service it seeks to offer. The term "impair" means "to make or cause to become worse; diminish in value." We believe, generally, that an entrant's ability to offer a telecommunications service is "diminished in value" if the quality of the service the entrant can offer, absent access to the requested element, declines and/or the cost of providing the service rises. We believe we must consider this standard by evaluating whether a carrier could offer a service using other unbundled elements within an incumbent LEC's network. Accordingly, we interpret the "impairment" standard as requiring the Commission and the states, when evaluating unbundling requirements beyond those identified in our minimum list, to consider whether the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network.

209. We decline to adopt the interpretation of the "impairment" standard advanced by most BOCs and GTE. Under their interpretation, incumbent LECs must provide unbundled elements only when the failure to do so would prevent a carrier from offering a service. We also reject the related interpretations that carriers are not impaired in their ability to provide a service if they can obtain elements from another source, or if they can provide the proposed service by purchasing the service at wholesale rates from a LEC. In general, and as discussed above, section 251(c)(3) imposes on incumbent LECs the obligation to offer on an unbundled basis all network elements for which it is technically feasible to provide access. We believe the plain language of section 251(d)(2), and the standards articulated there, give us the discretion to limit the general obligation imposed by subsection 251(c)(3), but they do not require us to do so. The standards set forth in section 251(d)(2) are minimum considerations that the Commission shall take into account in evaluating unbundling requirements. Accordingly, we conclude that the statute does not require us to interpret the "impairment" standard in a way that would significantly diminish the obligation imposed by section 251(c)(3).

210. The interpretation advanced by most of the BOCs and GTE, described above, means that, if a requesting carrier could obtain an element from a source other than the incumbent, then the incumbent need not provide the element. We agree with the reasoning advanced by some of the commenters that this interpretation would nullify section 251(c)(3) because, in theory, any new entrant could provide all of the elements in the incumbents' networks. Congress made it possible for competitors to enter local markets through the purchase of unbundled elements because it recognized that duplication of an incumbent's network could delay entry, and could be inefficient and unnecessary. The interpretation proffered by the BOCs and GTE would inhibit new entry and thus restrict the potential for meaningful competition, which would undermine the procompetitive goals of the 1996 Act. As a practical matter, if it is more efficient and less costly for new entrants to obtain network elements from a source other than an incumbent LEC, new entrants will likely pursue the more efficient and less costly approach. Additionally, as discussed above at section IV.C, we believe that allowing incumbent LECs to deny access to unbundled elements on the grounds that an element is equivalent to a service available at resale would lead to impractical results, because incumbents could completely avoid section 251(c)(3)'s unbundling obligations by offering unbundled elements to end users as retail services.

211. Finally, we decline at this time to adopt any of the additional criteria proposed by commenters. We conclude that none of the additional factors suggested by commenters enhances our ability to identify unbundled network elements consistent with the procompetitive goals of the 1996 Act. These additional considerations would limit unbundling requirements or make it administratively more difficult for

new entrants to obtain additional unbundled elements beyond those identified in our minimum list of required elements. For example, we believe that the proposal that new entrants must provide detailed estimates regarding projected market demand is not necessary for incumbent LECs to efficiently plan for network growth.

F. Provision of a Telecommunications Service Using Unbundled Network Elements

1. Background

212. Section 251(c)(3) provides that an incumbent LEC must provide access to "unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide" a telecommunications service. In the NPRM, we sought comment on the meaning of this requirement.

2. Discussion

213. Under section 251(c)(3), incumbent LECs must provide access to "unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide" a telecommunications service. We agree with the Illinois Commission, the Texas Public Utility Counsel, and others that this language bars incumbent LECs from imposing limitations, restrictions, or requirements on requests for, or the sale or use of, unbundled elements that would impair the ability of requesting carriers to offer telecommunications services in the manner they intend. For example, incumbent LECs may not restrict the types of telecommunications services requesting carriers may offer through unbundled elements, nor may they restrict requesting carriers from combining elements with any technically compatible equipment the requesting carriers own. We also conclude that section 251(c)(3) requires incumbent LECs to provide requesting carriers with all of the functionalities of a particular element, so that requesting carriers can provide any telecommunications services that can be offered by means of the element. We believe this interpretation provides new entrants with the requisite ability to use unbundled elements flexibly to respond to market forces, and thus is consistent with the procompetitive goals of the 1996 Act.

214. We agree with AT&T and Comptel that the quoted text in section 251(c)(3) bars incumbent LECs from separating elements that are ordered in combination, unless a requesting carrier specifically asks that such elements be separated. We also conclude that the quoted text requires incumbent LECs, if necessary, to perform the functions necessary to combine requested elements in any technically feasible manner either with other elements from the incumbent's network, or with elements possessed by new entrants, subject to the technical feasibility restrictions discussed below. We adopt these conclusions for two reasons. First, in practice it would be impossible for new entrants that lack facilities and information about the incumbent's network to combine unbundled elements from the incumbents' network without the assistance of the incumbent. If we adopted NYNEX's proposal, we believe requesting carriers would be seriously and unfairly inhibited in their ability to use unbundled elements to enter local markets. We therefore reject NYNEX's contention that the statute requires requesting carriers, rather than incumbents, to combine elements. We do not believe it is possible that Congress, having created the opportunity to enter local telephone markets through the use of unbundled elements, intended to undermine that opportunity by imposing technical obligations on requesting carriers that they might not be able to readily meet.

215. Second, given the practical difficulties of requiring requesting carriers to combine elements that are part of the incumbent LEC's network, we conclude that section 251(c)(3) should be read to require incumbent LECs to combine elements requested by carriers. More specifically, section 251(c)(3) provides that incumbent LECs must provide unbundled elements "in a manner that allows requesting carriers to combine them" to provide a telecommunications service. We believe this phrase means that incumbents must provide unbundled elements in a way that *enables* requesting carriers to combine them to provide a service. The phrase "allows requesting carriers to combine them," does not impose the obligation of physically combining elements exclusively on requesting carriers. Rather, it permits a requesting carrier to combine the elements if the carrier is reasonably able to do so. If the carrier is unable to combine the elements, the incumbent must do so. In this context, we conclude that the term "combine" means connecting two or more unbundled network elements in a manner that would allow a requesting carrier to offer the telecommunications service it seeks to offer.

216. Our conclusion that incumbent LECs must combine unbundled elements when so requested is consistent with the method we have adopted to identify unbundled network elements. Under our method, incumbents must provide, as a single, combined element, facilities that could comprise more than one element. This means, for example, that, if the states require incumbent LECs to provision subloop elements, incumbent LECs must still provision a local loop as a single, combined element when so requested, because we identify local loops as a single element in this proceeding.

217. We decline to adopt the view proffered by some parties that incumbents must combine network elements in any technically feasible manner requested. This proposal necessarily means that carriers could request incumbent LECs to combine elements that are not ordinarily combined in the incumbent's network. We are concerned that, in some instances, this could potentially affect the reliability and security of the incumbent's network, and the ability of other carriers to obtain interconnection, or request and use unbundled elements. Accordingly, incumbent LECs are required to perform the functions necessary to combine those elements that are ordinarily combined within their network, in the manner in which they are typically combined. Incumbent LECs are also required to perform the functions necessary to combine elements, even if they are not ordinarily combined in that manner, or they are not ordinarily combined in the incumbent's network, provided that such combination is technically feasible, and such combination would not undermine the ability of other carriers to access unbundled elements or interconnect with the incumbent LEC's network. As discussed in Section IV, effects on network reliability and security are factors to be considered in determining technical feasibility. Incumbent LECs must prove to state commissions that a request to combine particular elements in a particular manner is not technically feasible, or that the request would undermine the ability of other carriers to access unbundled elements and interconnect because they have the information to support such a claim.

218. We agree with Sprint and the Florida Commission, respectively, that in some cases incumbent LECs may be required to provision a particular element in different ways, depending on the service a requesting carrier seeks to offer; and, in other instances, where a new entrant needs a particular variant of an element to offer a service, that element should be treated as distinct from other variants of the element. This means, for example, that we will treat

local loops with a particular type of conditioning as distinct elements that are different from loops with other types of conditioning. As discussed below, we agree with CompTel that incumbent LECs must provide the operational and support systems necessary for requesting carriers to purchase and combine network elements. Incumbent LECs use these systems to provide services to their own end users, and new entrants similarly must have access to them to provide telecommunications services using unbundled elements. Finally, we agree with BellSouth that requesting carriers must specify to incumbent LECs the network elements they seek before they can obtain such elements on an unbundled basis. We do not believe, however, that it will always be possible for new entrants to do this either before negotiations (or arbitrations) begin, or before they end, because new entrants will likely lack knowledge about the facilities and capabilities of a particular incumbent LEC's network. We further believe that incumbent LECs must work with new entrants to identify the elements the new entrants will need to offer a particular service in the manner the new entrants intend.

G. Nondiscriminatory Access to Unbundled Network Elements and Just, Reasonable and Nondiscriminatory Terms and Conditions for the Provision of Unbundled Network Elements

1. Background

219. Section 251(c)(3) requires incumbent LECs to provide requesting carriers "nondiscriminatory access to network elements on an unbundled basis * * * on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." In the NPRM, we sought comment on whether we should adopt minimum national requirements governing the terms and conditions for the provision of unbundled network elements. We further asked what rules could ensure that the terms and conditions for access to unbundled network elements are just, reasonable and nondiscriminatory, and how we should enforce such rules. In particular, we sought comment on whether we should adopt uniform national rules governing provisioning, service, maintenance, technical standards and nondiscrimination safeguards in connection with the provision of unbundled network elements. We also asked whether we should consider any of the terms and conditions applicable to the provision of access to unbundled elements in evaluating BOC applications to provide in-region interLATA services under section 271(b).

2. Discussion

220. We agree with those commenters, including the Florida, Illinois and Washington Commissions, that to achieve the procompetitive goals of the 1996 Act, it is necessary to establish rules that define the obligations of incumbent LECs to provide nondiscriminatory access to unbundled network elements, and to provide such elements on terms and conditions that are just, reasonable and nondiscriminatory. As discussed above at sections II.A, II.B and V.B, we believe that incumbent LECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them and, thus, have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete. We are also cognizant of the fact that incumbent LECs have the incentive and the ability to engage in many kinds of discrimination. For example, incumbent LECs could potentially delay providing access to unbundled network elements, or they could provide them to new entrants at a degraded level of quality.

221. Consistent with arguments advanced by the Florida and Washington Commissions, incumbent LECs, and potential competitors, and as more fully discussed in the specific sections below, we adopt general, national rules defining "nondiscriminatory access" to unbundled network elements, and "just, reasonable, and nondiscriminatory" terms and conditions for the provision of such elements. We have chosen this approach, rather than allowing states exclusively to consider these issues, because we believe that some national rules regarding nondiscriminatory access will reduce the costs of entry and speed the development of competition.

222. We conclude, for example, that national rules defining the 1996 Act's requirements regarding nondiscriminatory access to, and provision of, unbundled elements will reduce costs associated with potential litigation over these issues, and will enable states to conduct arbitrations more quickly by reducing the number of issues they must consider. Such rules will also facilitate the ability of the Commission to conduct arbitrations, should we assume a state's responsibilities under section 252(e)(5). We conclude further that such rules will create some uniformity across states in connection with the terms under which new entrants may obtain access to network elements, thus facilitating the ability of potential competitors, including small entities, to enter local markets on a regional or national scale. Accordingly, for all of these reasons, we reject the arguments of PacTel and USTA that we should not adopt national rules relating to incumbent LEC obligations to provide access to, and provision, unbundled elements in a nondiscriminatory manner.

223. The record compiled in this proceeding supports the adoption of uniform general rules that rely on states to develop more specific requirements in arbitrations and other state proceedings. More significantly, however, we agree with the California and Florida Commissions that the states are best situated to issue specific rules because of their existing knowledge regarding incumbent LEC networks, capabilities, and performance standards in their separate jurisdictions and because of the role they will play in conducting mediations, arbitrations, and approving agreements. We expect that the states will implement the general nondiscrimination rules set forth herein by adopting, *inter alia*, specific rules determining the timing in which incumbent LECs must provision certain elements, and any other specific conditions they deem necessary to provide new entrants, including small competitors, with a meaningful opportunity to compete in local exchange markets. The states will continue to gain expertise in connection with issues relating to just, reasonable, and nondiscriminatory access and provision of unbundled network elements. We expect to turn to the states, and rely on the expertise they develop in this area, when we review and revise our rules as necessary.

224. We agree with those commenters that argue that incumbent LECs should be required to fulfill some type of reporting requirement to ensure that they provision unbundled elements in a nondiscriminatory manner. We believe the record is insufficient at this time to adopt such requirements, and we may reexamine this issue in the future. We encourage the states, however, to adopt reporting requirements. We decline to address whether the Commission should consider any of the terms and conditions adopted here in evaluating BOC applications to provide in-region long distance services. We will consider this issue, as it arises, when we evaluate individual BOC applications.

a. Nondiscriminatory Access to Unbundled Network Elements

225. We conclude that the obligation to provide "nondiscriminatory access to

network elements on an unbundled basis" refers to both the physical or logical connection to the element and the element itself. In considering how to implement this obligation in a manner that would achieve the 1996 Act's goal of promoting local exchange competition, we recognize that new entrants, including small entities, would be denied a meaningful opportunity to compete if the quality of the access to unbundled elements provided by incumbent LECs, as well as the quality of the elements themselves, were lower than what the incumbent LECs provide to themselves. Thus, we conclude it would be insufficient to define the obligation of incumbent LECs to provide "nondiscriminatory access" to mean that the quality of the access and unbundled elements incumbent LECs provide to all requesting carriers is the same. As discussed above with respect to interconnection, an incumbent LEC could potentially act in a nondiscriminatory manner in providing access or elements to all requesting carriers, while providing preferential access or elements to itself. Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself. We note that providing access or elements of lesser quality than that enjoyed by the incumbent LEC would also constitute an "unjust" or "unreasonable" term or condition.

226. We believe that Congress set forth a "nondiscriminatory access" requirement in section 251(c)(3), rather then an absolute equal-in-quality requirement, such as that set forth in section 251(c)(2)(C), because, in rare circumstances, it may be technically infeasible for incumbent LECs to provide requesting carriers with unbundled elements, and access to such elements, that are equal-in-quality to what the incumbent LECs provide themselves. According to some commenters, this problem arises in connection with one variant of one of the unbundled network elements we identify in this order. These commenters argue that a carrier purchasing access to a 1AESS local switch may not be able to receive, for example, the full measure of customized routing features that such a switch may afford the incumbent. In the rare circumstances where it is technically infeasible for an incumbent LEC to provision access or elements that are equal-in-quality, we believe disparate access would not be inconsistent with the nondiscrimination requirement. Accordingly, we require incumbent LECs to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves, and allow for an exception to this requirement only where it is technically infeasible to meet. The exception described here does not excuse incumbent LECs from the obligation to modify elements within their networks to allow requesting carriers to obtain access to such elements where this is technically feasible. *See supra*, Section IV.D. We expect incumbent LECs to fulfill this requirement in nearly all instances where they provision unbundled elements because we believe the technical infeasibility problem will arise rarely. We further conclude, however, that the incumbent LEC must prove to a state commission that it is technically infeasible to provide access to unbundled elements, or the unbundled elements themselves, at the same level of quality that the incumbent LEC provides to itself.

227. Our conclusion that an incumbent LEC must provide unbundled elements, as well as access to them, that is "at least" equal in quality to that which the incumbent provides itself, does not excuse incumbent LECs from providing, when requested and where technically feasible, access or unbundled elements of higher quality. An incumbent LEC, in accommodating a carrier's request for a particular unbundled element, may ultimately provision an element that is higher in quality than what the incumbent provides to itself. *See infra*, Section V.J.1. As we discuss below, we do not believe that this obligation is unduly burdensome to incumbent LECs because the 1996 Act requires a requesting carrier to pay the costs of unbundling, and thus incumbent LECs will be fully compensated for any efforts they make to increase the quality of access or elements within their own network. (*See infra*, Section V.J. We require, for example, that incumbent LECs provide local loops conditioned to enable the provision of digital services (where technically feasible) even if the incumbent does not itself provide such digital services.) Moreover, to the extent this obligation allows new entrants, including small entities, to offer services that are different from those offered by the incumbent, we believe it is consistent with Congress's goal to promote local exchange competition. We note that, to the extent an incumbent LEC provides an element with a superior level of quality to a particular carrier, the incumbent LEC must provide all other requesting carriers with the same opportunity to obtain that element with the equivalent higher level of quality. We further note that where a requesting carrier specifically requests access or unbundled elements that are lower in quality to what the incumbent LECs provide themselves, incumbent LECs may offer such inferior quality if it is technically feasible. Finally, we conclude that the incumbent LEC must prove to a state commission that it is technically infeasible to provide access to unbundled elements, or the unbundled elements themselves, at a level of quality that is superior to or lower than what the incumbent LEC provides to itself.

b. Just, Reasonable and Nondiscriminatory Terms and Conditions for the Provision of Unbundled Network Elements

228. The duty to provide unbundled network elements on "terms, and conditions that are just, reasonable, and nondiscriminatory" means, at a minimum, that whatever those terms and conditions are, they must be offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself. We also conclude that, because section 251(c)(3) includes the terms "just" and "reasonable," this duty encompasses more than the obligation to treat carriers equally. Interpreting these terms in light of the 1996 Act's goal of promoting local exchange competition, and the benefits inherent in such competition, we conclude that these terms require incumbent LECs to provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete. Such terms and conditions should serve to promote fair and efficient competition. This means, for example, that incumbent LECs may not provision unbundled elements that are inferior in quality to what the incumbent provides itself because this would likely deny an efficient competitor a meaningful opportunity to compete. We reach this conclusion because providing new entrants, including small entities, with a

meaningful opportunity to compete is a necessary precondition to obtaining the benefits that the opening of local exchange markets to competition is designed to achieve.

229. As is more fully discussed below, to enable new entrants, including small entities, to share the economies of scale, scope, and density within the incumbent LECs' networks, we conclude that incumbent LECs must provide carriers purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LECs operations support systems. (The term "provisioning" includes installation.) Moreover, the incumbent must provide access to these functions under the same terms and conditions that they provide these services to themselves or their customers. We discuss specific terms and conditions applicable to the unbundled elements identified in this order below, in Section V.J.

H. The Relationship Between Sections 251(c)(3) and 251(c)(4)

1. Background

230. Section 251(c)(4) provides that incumbent LECs must offer "for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers that are not telecommunications carriers." In the NPRM, we asked for comment on the relationship between this provision and section 251(c)(3). Specifically, we asked whether carriers can order and combine network elements to offer the same services that incumbent LECs offer for resale under section 251(c)(4). We observed that different pricing standards under section 252(d) apply to unbundled elements under section 251(c)(3) and resold services under section 251(c)(4), and that section 251(c)(3) contemplates the purchase of unseparated facilities (*i.e.*, facilities that can be used for either inter- or intrastate services) while subsection (c)(4) does not necessarily contemplate this. We asked for comment on the implications or significance of these differences.

2. Discussion

231. The language of section 251(c)(3) is cast exclusively in terms of obligations imposed on incumbent LECs, and it does not discuss, reference, or suggest a limitation or requirement in connection with the right of new entrants to obtain access to unbundled elements. We conclude, therefore, that Congress did not intend section 251(c)(3) to be read to contain any requirement that carriers must own or control some of their own local exchange facilities before they can purchase and use unbundled elements to provide a telecommunications service. We note that the Illinois Commission has reached the same conclusion.

232. We reject the arguments advanced by Bell Atlantic and NYNEX that the language of section 251(c)(3) requires carriers seeking access to unbundled elements to own some local exchange facilities, and that this serves to distinguish section 251(c)(3) from section 251(c)(4). The "at any technically feasible point" language in section 251(c)(3) refers to points in an incumbent LEC's network where new entrants may obtain access to elements. It does not, however, require that new entrants interconnect local exchange facilities which they own or control at that technically feasible access point. If we were to conclude otherwise, then new entrants would be prohibited from requesting two network elements that are connected to each other because the new entrant would be required to connect a single network element to a facility of its own. The 1996 Act, however, does not impose any limitations on carriers' ability to obtain access to unbundled network elements. Moreover, we conclude that Congress did not intend to limit access to unbundled elements in this manner because such a limit would seriously inhibit the ability of potential competitors to enter local markets through the use of unbundled elements, and thus would retard the development of local exchange competition. We also reject NYNEX's argument that the phrase "such telecommunications service" excludes services provided by the incumbent. This interpretation is inconsistent with the 1996 Act's definition of a telecommunications service, which includes all telecommunications services provided by an incumbent.

233. We also reject the argument that language in the Joint Explanatory Statement requires us to conclude that carriers must own facilities to obtain access to unbundled elements. Congress may have recognized that carriers that own some of their own facilities will more likely benefit by entering local markets through unbundled elements rather than resale, but this consideration does not imply that carriers must own their own facilities to obtain access to unbundled elements.

234. We are not persuaded that, in order to give meaning and effect to section 251(c)(4), we must require new entrants to own some local exchange facilities in order to obtain access to unbundled elements. We disagree with the premise that no carrier would consider entering local markets under the terms of section 251(c)(4) if it could use recombined network elements solely to offer the same or similar services that incumbents offer for resale. We believe that sections 251(c)(3) and 251(c)(4) present different opportunities, risks, and costs in connection with entry into local telephone markets, and that these differences will influence the entry strategies of potential competitors. We therefore find that it is unnecessary to impose a limitation on the ability of carriers to enter local markets under the terms of section 251(c)(3) in order to ensure that section 251(c)(4) retains functional validity as a means to enter local phone markets.

235. The principal distinction between sections 251(c)(3) and 251(c)(4), in terms of the opportunities each section presents to new entrants, is that carriers using solely unbundled elements, compared with carriers purchasing services for resale, will have greater opportunities to offer services that are different from those offered by incumbents. More specifically, carriers reselling incumbent LEC services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that incumbents do not offer. The only means by which a reseller can distinguish the services it offers from those of an incumbent is through price, billing services, marketing efforts, and to some extent, customer service. The ability of a reseller to differentiate its products based on price is limited, however, by the margin between the retail and wholesale price of the product.

236. In contrast, a carrier offering services solely by recombining unbundled elements can offer services that differ from those offered by an incumbent. For example, some incumbent LECs have capabilities within their networks, such as the ability to offer Centrex, which they do not use to offer services to consumers. Carriers purchasing access to unbundled elements can offer such services. Additionally, carriers using unbundled elements can bundle services that incumbent LECs sell as distinct tariff offerings, as well as services that incumbent LECs have the capability to offer, but do not, and can market them as a bundle with a single price. The ability to package and market services in ways that differ from the incumbent's existing service offerings increases the requesting carrier's ability to compete against the incumbent and is likely to

benefit consumers. Additionally, carriers solely using unbundled network elements can offer exchange access services. These services, however, are not available for resale under section 251(c)(4) of the 1996 Act.

237. If a carrier taking unbundled elements may have greater competitive opportunities than carriers offering services available for resale, they also face greater risks. A carrier purchasing unbundled elements must pay for the cost of that facility, pursuant to the terms and conditions agreed to in negotiations or ordered by states in arbitrations. It thus faces the risk that end-user customers will not demand a sufficient number of services using that facility for the carrier to recoup its cost. (Many network elements can be used to provide a number of different services.) A carrier that resells an incumbent LEC's services does not face the same risk. This distinction in the risk borne by carriers entering local markets through resale as opposed to unbundled elements is likely to influence the entry strategies of various potential competitors. Some new entrants will be unable or unwilling to bear the financial risks of entry by means of unbundled elements and will choose to enter local markets under the terms of section 251(c)(4) irrespective of the fact that they can obtain access to unbundled elements without owning any of their own facilities. Moreover, some markets may never support new entry through the use of unbundled elements because new entrants seeking to offer services in such markets will be unable to stimulate sufficient demand to recoup their investment in unbundled elements. Accordingly, in these markets carriers will enter through the resale of incumbent LEC services, irrespective of the fact that they could enter exclusively through the use of unbundled elements.

238. We are not persuaded by the argument set forth by Ameritech, NYNEX, and MFS that allowing carriers to use solely recombined network elements would eviscerate the joint marketing restriction in section 271(e)(1). It is true that the terms of section 271(e) do not restrict joint marketing through the use of unbundled elements pursuant to section 251(c)(3). As discussed above, differences in opportunities and risk will cause some new entrants to consider entering local telephone markets through resale of incumbent LEC services, even if they could enter solely through the use of unbundled elements. Thus, we conclude that section 271(e)(1) will impose a meaningful limitation on joint marketing.

239. We note, moreover, that the 1996 Act does not prohibit all forms of joint marketing. For example, it does not prohibit carriers who own local exchange facilities from jointly marketing local and interexchange service. Nor does it prohibit joint marketing by carriers who provide local exchange service through a combination of local facilities which they own or possess, and unbundled elements. Because the 1996 Act does not prohibit all forms of joint marketing, we see no principled basis for reading into section 271(e)(1) a further limitation on the ability of carriers to jointly market local and long distance services without concluding that this section prohibits all forms of joint marketing. In other words, we see no basis upon which we could conclude that section 271(e)(1) restricts joint marketing of long distance services, and local services provided solely through the use of unbundled network elements, without also concluding that the section restricts the ability of carriers to jointly market long distance services and local services that are provided through a combination of a carriers' own facilities and unbundled network elements. Moreover, we do not believe that we have the discretion to read into the 1996 Act a restriction on competition which is not required by the plain language of any of its sections.

240. We also reject the argument advanced by BellSouth and Ameritech that allowing carriers to use solely unbundled elements to provide services available through resale would allow carriers to evade a possible prohibition, which is reserved to the discretion of the states, on the sale of certain services to certain categories of consumers. Under section 251(c)(4)(B) states are permitted to restrict resellers from offering certain services to certain consumers, in the same manner that states restrict incumbent LECs. For example, states that prohibit incumbent LECs from selling to business consumers residential services priced below cost have the ability to restrict resellers from selling such services to business consumers.

241. We do not believe, however, that carriers using solely unbundled elements to provide local exchange services will be able to evade any potential restrictions states may impose under section 251(c)(4)(B). In this section Congress granted the states the discretion to impose certain limited restrictions on the sale of services available for resale. It did not, however, grant states, in section 251(c)(3), the same discretion to impose similar restrictions on the use of unbundled elements. Accordingly, we are not persuaded that allowing carriers to use solely unbundled elements to provide services that incumbent LECs offer for resale would allow competing carriers to evade a possible marketing restriction that Congress intended to reserve to the discretion of the states.

242. We agree with those commenters who argue that it would be administratively impossible to impose a requirement that carriers must own some of their own local exchange facilities in order to obtain access to unbundled elements, and they must use these facilities, in combination with unbundled elements, for the purpose of providing local services. We conclude that it would not be possible to identify the elements carriers must own without creating incentives to build inefficient network architectures that respond not to marketplace factors, but to regulation. We further conclude that such a requirement could delay possible innovation. These effects would diminish competition for local telephone services, and thus any local exchange facilities requirement would be inconsistent with the 1996 Act's goals of promoting competition. Moreover, if we imposed a facilities ownership requirement that attempted to avoid these competitive pitfalls, it would likely be so easy to meet it would ultimately be meaningless.

243. We reject the argument that requiring carriers to own some local exchange facilities would promote competition for local exchange services, or that we should impose such a requirement for other policy reasons. To the contrary, we conclude that allowing carriers to use unbundled elements as they wish, subject only to the maintenance of the key elements of the access charge regime, described below at section VII, will lead to more efficient competition in local phone markets. If we were to limit access to unbundled network elements to those markets where carriers already own, or could efficiently build, some local exchange facilities, we would limit the ability of carriers to enter local markets under the pricing standard for unbundled elements to those markets that could efficiently support duplication of some or all of the incumbent LECs' networks. We believe that such a result could diminish competition, and that allowing new entrants to take full advantage of incumbent LECs' scale and scope economies will promote more rapid and efficient entry and will result in more robust competition.

244. Finally, we conclude that a new entrant may offer services to one group of consumers using unbundled network elements, and it may offer services to a

separate group of consumers by reselling an incumbent LEC's services. With the exception noted in Section VII, *infra*, we do not address the issue of whether the 1996 Act permits a new entrant to offer services to the same set of consumers through a combination of unbundled elements and services available for resale.

I. Provision of Interexchange Services Through The Use of Unbundled Network Elements

1. Background

245. In the NPRM, we tentatively concluded that interexchange carriers are telecommunications carriers, and thus such carriers are entitled to access to unbundled elements under the terms of section 251(c)(3). We also tentatively concluded that carriers may request unbundled elements for purposes of originating and terminating toll services, in addition to any other services they seek to provide, because section 251(c)(3) provides that carriers may request unbundled elements to provide a "telecommunications service," and interexchange services are a telecommunications service.

246. In the NPRM, we sought comment on whether the 1996 Act permits carriers to use unbundled elements to provide exchange access services only, or whether carriers seeking to provide exchange access services using unbundled elements must provide local exchange service as well. We premised the latter view on the definition of the term "network element," as a facility and not a service, and on the pricing standard under section 252(d)(1) that requires network elements to be priced based on economic costs (rather than jurisdictionally separated costs.) We also sought comment on whether allowing carriers to purchase unbundled elements to provide exchange access services exclusively would be inconsistent with the terms of sections 251(i) and 251(g) and, further, whether this would result in a fundamental jurisdictional shift of the administration of interstate access charges to state jurisdictions.

247. Finally, in the NPRM, we tentatively concluded that, if carriers purchase unbundled elements to provide exchange access services to themselves, irrespective of whether they provide such services alone or in connection with local exchange services, incumbent LECs cannot assess Part 69 access charges in addition to charges for the cost of the unbundled elements. We based this tentative conclusion on the view that the imposition of access charges in addition to cost-based charges for unbundled elements would depart from the statutory mandate of cost-based pricing of elements.

2. Discussion

248. We confirm our tentative conclusion in the NPRM that section 251(c)(3) permits interexchange carriers and all other requesting telecommunications carriers, to purchase unbundled elements for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers. Although we conclude below that we have discretion under the 1934 Act, as amended by the 1996 Act, to adopt a limited, transitional plan to address public policy concerns raised by the bypass of access charges via unbundled elements, we believe that our interpretation of section 251(c)(3) in the NPRM is compelled by the plain language of the 1996 Act. As we observed in the NPRM, section 251(c)(3) provides that requesting telecommunications carriers may seek access to unbundled elements to provide a "telecommunications service," and exchange access and interexchange services are telecommunications services. Moreover, section 251(c)(3) does not impose restrictions on the ability of requesting carriers "to combine such elements in order to provide such telecommunications service[s]." Thus, we find that there is no statutory basis upon which we could reach a different conclusion for the long term.

249. We also confirm our conclusion in the NPRM that, for the reasons discussed below in section V.J, carriers purchase rights to exclusive use of unbundled loop elements, and thus, as the Department of Justice and Sprint observe, such carriers, as a practical matter, will have to provide whatever services are requested by the customers to whom those loops are dedicated. This means, for example, that, if there is a single loop dedicated to the premises of a particular customer and that customer requests both local and long distance service, then any interexchange carrier purchasing access to that customer's loop will have to offer both local and long distance services. That is, interexchange carriers purchasing unbundled loops will most often not be able to provide solely interexchange services over those loops.

250. We reject the argument advanced by a number of incumbent LECs that section 251(i) demonstrates that requesting carriers using unbundled elements must continue to pay access charges. Section 251(i) provides that nothing in section 251 "shall be construed to limit or otherwise affect the Commission's authority under section 201." We conclude, however, that our authority to set rates for these services is not limited or affected by the ability of carriers to obtain unbundled elements for the purpose of providing interexchange services. Our authority to regulate interstate access charges remains unchanged by the 1996 Act. What has potentially changed is the volume of access services, in contrast to the number of unbundled elements, interexchange carriers are likely to demand and incumbent LECs are likely to provide. When interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access "services." They are purchasing a different product, and that product is the right to exclusive access or use of an entire element. Along this same line of reasoning, we reject the argument that our conclusion would place the administration of interstate access charges under the authority of the states. When states set prices for unbundled elements, they will be setting prices for a different product than "interstate exchange access services." Our exchange access rules remain in effect and will still apply where incumbent LECs retain local customers and continue to offer exchange access services to interexchange carriers who do not purchase unbundled elements, and also where new entrants resell local service. The application of our exchange access rules in the circumstances described will continue beyond the transition period described at *infra*, Section VII.

251. We also reject the incumbent LECs' arguments that language contained in bills that were not enacted, or legislative history connected to such bills, demonstrates that carriers cannot purchase access to unbundled elements to provide exchange access services to themselves, for the purpose of providing long distance services to consumers. The incumbent LECs are arguing in effect, that we should read into the current statute a limitation on the ability of carriers to use unbundled network elements, despite the fact that no such limitation survived the Conference Committee's amendments to the 1996 Act. We conclude, however, that the language of section 251(c)(3), which provides that telecommunications carriers may purchase unbundled elements in order to provide a telecommunications service is not ambiguous. Accordingly, we must

interpret it pursuant to its plain meaning and not by referencing earlier versions of the statute that were ultimately not adopted by Congress.

252. Moreover, we do not believe that the Joint Explanatory Statement, which describes the House and Senate versions of the statute, and the 1996 Act as enacted, compels a different conclusion. The Joint Explanatory Statement states that the statute incorporates provisions from the Senate Bill and the House Amendment in connection with the interconnection model adopted in section 251. It notes that the provision in the Senate Bill relating to interconnection did not apply to interconnection arrangements between local and long distance carriers for the purpose of providing long distance services. The text of section 251 of the Senate Bill is consistent with this comment because it states that a local exchange carrier must offer interconnection to other carriers to allow such carriers to provide telephone exchange or exchange access services. The Joint Explanatory Statement, however, does not describe any restriction in the House Amendment regarding the ability of carriers to use unbundled elements to provide long distance service. Indeed, the House Amendment specifically states that carriers may obtain access to unbundled elements to offer "a telecommunications service," which is not limited to telephone exchange and exchange access services. We observe that the Conference Committee incorporated language from the House Amendment and not the Senate Bill in describing in section 251(c)(3) the services carriers may offer using unbundled elements. Accordingly, we do not believe that the Joint Explanatory Statement's description of the provision in the Senate Bill controls our interpretation of section 251(c)(3) as enacted.

253. We also reject the argument that allowing carriers to use unbundled elements to provide originating and terminating toll services is inconsistent with the purposes of the 1996 Act. Congress intended the 1996 Act to promote competition for not only telephone exchange services and exchange access services, but also for toll services. Section 251(b)(3), for example, imposes a duty on LECs to provide dialing parity for telephone toll service.

254. We disagree with the incumbent LECs which argue that section 251(g) requires requesting carriers using unbundled elements to continue to pay federal and state access charges indefinitely. Section 251(g) provides that the federal and state equal access rules applicable before enactment, including the "receipt of compensation," will continue to apply after enactment, "until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment." We believe this provision does not apply to the exchange access "services" requesting carriers may provide themselves or others after purchasing unbundled elements. Rather, the primary purpose of section 251(g) is to preserve the right of interexchange carriers to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities or by means of unbundled elements purchased from an incumbent.

255. We affirm our tentative conclusion in the NPRM that, telecommunications carriers purchasing unbundled network elements to provide interexchange services or exchange access services are not required to pay federal or state exchange access charges except as described in section VII, *infra*, for a temporary period. As we explained in the NPRM, if we were to require indefinitely carriers purchasing unbundled elements to also pay access charges, then incumbent LECs would receive compensation in excess of their underlying network costs. This result would be inconsistent with the pricing standard for unbundled elements set forth in section 252(d)(1). In addition, we believe this conclusion is consistent with Congress's overriding goal of promoting efficient competition for local telephony services, because it will allow, in the long term, new entrants using unbundled elements to compete on the basis of the economic costs underlying the incumbent LECs' networks. The facilities used to provide exchange access services are the same as those used to provide local exchange services. We note, however, as discussed below, (*see infra*, Section VII, discussing an interim mechanism addressing near-term access charge bypass) that certain additional charges are necessary for a specific, limited duration to smooth the transition to a competitive marketplace. We also note that where new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXCs originating or terminating toll calls on those elements. In these circumstances, incumbent LECs may not assess exchange access charges to such IXCs because the new entrants, rather than the incumbents, will be providing exchange access services, and to allow otherwise would permit incumbent LECs to receive compensation in excess of network costs in violation of the pricing standard in section 252(d). *See* 47 U.S.C. § 252. We further note, however, that in these same circumstances the new entrant purchasing access to an unbundled switch element must pay to the incumbent LEC the charges included in the transitional mechanism, described *infra*, at Section VII, for a temporary period.

256. We further conclude that when a carrier purchases a local loop for the purpose of providing interexchange services or exchange access services, incumbent LECs may not recover the subscriber line charge (SLC) now paid by end users. (As discussed at *infra*, Section VIII, a different result will occur when interconnecting carriers purchase LEC retail services at wholesale rates under section 251(c)(4).) The SLC recovers the portion of loop costs allocated to the interstate jurisdiction, but as discussed in Section II.C, *supra*, we conclude that the 1996 Act creates a new jurisdictional regime outside of the current separations process. The unbundled loop charges paid by new entrants under section 251(c)(3) will therefore recover the unseparated cost of the loop, including the interstate component now recovered through the SLC. If end users or carriers purchasing access to local loops were required to pay the SLC in this situation, LECs would enjoy double recovery, and the effective price of unbundled loops would exceed the cost-based levels required under section 251(d)(1).

257. Finally, we have considered the economic impact on small incumbent LECs of our conclusion that carriers purchasing access to unbundled network elements to provide interexchange or exchange access services are not required to pay federal or state access charges, except as described in Section VII, *infra*, for a temporary period. For example, the Rural Telephone Coalition argues that rural ratepayers could be subject to higher local service rates if interexchange carriers are allowed to bypass access charges through the purchase of unbundled elements before proceedings regarding access reform and universal service are completed. We reject the Rural Telephone Coalition's argument, however, because our rules, as discussed in Section VII, *infra*, provide for a limited, transitional plan to address public policy concerns raised by the bypass of access charges through unbundled network elements.

J. Specific Unbundling Requirements

258. Having interpreted the standards set forth in the 1996 Act for the unbundling of network elements, we now apply those standards to incumbent LECs' networks. Based on the information developed in this proceeding, we require incumbent LECs to provide unbundled access to local loops, network interface devices, end office and tandem switching, and various interoffice facilities, as described below. These network elements represent a minimum set of elements that must be unbundled by incumbent LECs. State commissions, as previously noted, are free to prescribe additional elements, and parties may agree on different or additional network elements in the voluntary negotiation process.

1. Local Loops

(a) Background

259. In the NPRM, we tentatively concluded that incumbent LECs should be required to unbundle local loops. We sought comment on appropriate requirements for loop unbundling that would promote entry and build upon existing state initiatives, and whether we should adopt specific provisioning requirements for loop unbundling. We also sought comment on our tentative conclusion that incumbent LECs should make available as individual network elements various subloop elements such as the feeder, distribution, and concentration equipment.

(b) Discussion

260. We conclude that incumbent LECs must provide local loops on an unbundled basis to requesting carriers. We note that the Joint Explanatory Statement lists local loops as an example of an unbundled network element. As discussed below, the record demonstrates that it is technically feasible for incumbent LECs to provide access to unbundled local loops, and that such access is critical to encouraging market entry. Further, the competitive checklist contained in section 271 requires BOCs to offer unbundled loops separate from switching as a precondition to entry into the in-region, interLATA services market.

261. Requiring incumbent LECs to make available unbundled local loops will facilitate market entry and improve consumer welfare. Without access to unbundled local loops, new entrants would need to invest immediately in duplicative facilities in order to compete for customers. Such investment and building would likely delay market entry and postpone the benefits of local telephone competition for consumers. Moreover, without access to unbundled loops, new entrants would be required to make a large initial sunk investment in loop facilities before they had a customer base large enough to justify such an expenditure. As of year end 1995, Class A carriers reported $268 billion of total plant in service, of which $229 billion was classified as network plant. Local loop plant comprises approximately $109 billion of total plant in service, which represents 41 percent of total plant in service and 48 percent of network plant. See 1995 ARMIS Report 43–04. This would increase the risk of entry and raise the new entrant's cost of capital. By contrast, the ability of a new entrant to purchase unbundled loops from the incumbent LEC allows the new entrant to build facilities gradually, and to deploy loops for its customers where it is efficient to do so. Moreover, in some areas, the most efficient means of providing competing service may be through the use of unbundled loops. In such cases, preventing access to unbundled loops would either discourage a potential competitor from entering the market in that area, thereby denying those consumers the benefits of competition, or cause the competitor to construct unnecessarily duplicative facilities, thereby misallocating societal resources.

262. Section 251(c)(3) requires incumbent LECs to provide access to unbundled elements "at any technically feasible point." The vast majority of commenters, including incumbent LECs, agree with our tentative conclusion that it is technically feasible to provide access to unbundled local loops, and a number of commenters identify the main distribution frame in a LEC central office as an appropriate access point. Moreover, access to unbundled loops is currently provided by several LECs pursuant to state unbundling requirements. Thus, we conclude that it is technically feasible for incumbent LECs to provide access to unbundled local loops at, for example, a central office distribution frame.

263. We further conclude that the local loop element should be defined as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. This definition includes, for example, two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals. ISDN (Integrated Services Digital Network) at the Basic Rate Interface level permits the transmission of digital signals over the loop at the rate of 144 kbps, which provides two standard 64 kbps voice or data channels and a 16 kbps data channel. ISDN at the Primary Rate Interface permits 23 standard 64 kbps channels plus one 16 kbps data channel. ADSL (Asynchronous Digital Subscriber Line) is a transmission path that facilitates 6 Mbps digital signal downstream and 640 kbps digital signal upstream, while simultaneously carrying an analog voice signal. Two-wire HDSL (High-bit-rate Digital Subscriber Line) permits the transmission of a 768 kbps digital signal over a copper loop, while four-wire HDSL allows the transmission of 1.544 Mbps over two two-wire pairs. We note that a number of parties proposed definitions of the local loop that encompassed some or all of these loop types. In addition, we agree with ITIC that the ability to offer various digital loop functions in competition with incumbent LECs may be particularly beneficial to small entities by allowing them to serve niche markets.

264. Incumbent LECs are required to provide access to these transmission facilities only to the extent technically feasible. That is, if it is not technically feasible to condition a loop facility to support a particular functionality, the incumbent LEC need not provide unbundled access to that loop so conditioned. For example, a local loop that exceeds the maximum length allowable for the provision of a high-bit rate digital service could not feasibly be conditioned for such service. Such loop conditioning may involve removing load coils or bridged taps that interfere with the transmission of digital signals. Such a situation may necessitate a request for subloop elements. Nevertheless, section 251(c)(3) does not limit the types of telecommunications services that competitors may provide over unbundled elements to those offered by the incumbent LEC.

265. Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. Thus, we reject BellSouth's position that requesting carriers "take the LEC networks as they find them"

with respect to unbundled network elements. As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3). The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning.

266. We further conclude that incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop sought by the competitor. IDLC technology allows a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops. If we did not require incumbent LECs to unbundle IDLC-delivered loops, end users served by such technologies would not have the same choice of competing providers as end users served by other loop types. Further, such an exception would encourage incumbent LECs to "hide" loops from competitors through the use of IDLC technology.

267. We find that it is technically feasible to unbundle IDLC-delivered loops. One way to unbundle an individual loop from an IDLC is to use a demultiplexer to separate the unbundled loop(s) prior to connecting the remaining loops to the switch. Commenters identify a number of other methods for separating out individual loops from IDLC facilities, including methods that do not require demultiplexing. Again, the costs associated with these mechanisms will be recovered from requesting carriers.

268. We decline to define a loop element in functional terms, rather than in terms of the facility itself. Some parties advocate defining a loop element as merely a functional piece of a shared facility, similar to capacity purchased on a shared transport trunk. According to these parties, this definition would enable an IXC to purchase a loop element solely for purposes of providing interexchange service. While such a definition, based on the types of traffic provided over a facility, may allow for the separation of costs for a facility dedicated to one end user, we conclude that such treatment is inappropriate. Giving competing providers exclusive control over network facilities dedicated to particular end users provides such carriers the maximum flexibility to offer new services to such end users. In contrast, a definition of a loop element that allows simultaneous access to the loop facility would preclude the provision of certain services in favor of others. For example, carriers wishing to provide solely voice-grade service over a loop would preclude another carrier's provision of a digital service, such as ISDN or ADSL, over that same loop. Digital services such as ISDN and ADSL occupy the same frequency spectrum on a loop as ordinary voice-grade services. We note that these two types of services could be provided by different carriers over, for example, separate two-wire loop elements to the same end user.

269. Incumbent LECs must provide cross-connect facilities, for example, between an unbundled loop and a requesting carrier's collocated equipment, in order to provide access to that loop. As we conclude in section IV.D, above, an incumbent LEC must take the steps necessary to allow a competitor to combine its own facilities with the incumbent LEC's unbundled network elements. We highlight this requirement for unbundled loops because of allegations by competitive providers that incumbent LECs have imposed unreasonable rates, terms, and conditions for such cross-connect facilities in the past. Incumbent LECs may recover the cost of providing such facilities in accordance with our rules on the costs of interconnection and unbundling. Charges for all such facilities must meet the cost-based standard provided in section 252(d)(1), and the terms and conditions of providing these facilities must be reasonable and nondiscriminatory under section 251(c)(3).

270. At this time, we decline to adopt additional terms and conditions, such as the five-minute loop cutover requirement proposed by MFS, for loop provisioning. We agree with commenters who contend that the provisioning of unbundled local loops must be subject to close scrutiny to ensure that incumbent LECs do not delay loop cutover or otherwise complicate the acquisition of loops by a competitor. We conclude, however, that the rules we adopt in the Access to Unbundled Network Elements section that require nondiscriminatory terms and conditions for provisioning, billing, testing, and repair of unbundled elements, and the availability of electronic ordering systems, adequately address these concerns. We will continue to review and revise our rules in this area as necessary.

271. Section 251(d)(2)(A) requires the Commission to consider whether "access to such network elements as are proprietary in nature is necessary." Most parties did not identify any proprietary concerns associated with providing unbundled access to local loops. Ericsson notes that some "active" loop equipment, such as channel banks and remote terminal equipment, is often proprietary in nature, and that manufacturers would require time to modify such equipment to create end-to-end network compatibility on a national basis. Ericsson does not contend, however, that any proprietary information would be revealed if loops using such equipment were unbundled, or that use of such equipment should prevent loop unbundling in general. Thus, we conclude that loop elements are, in general, not proprietary in nature under our interpretation of section 251(d)(2)(A). Even if loop elements were proprietary in nature, however, Ericsson does not meet the second consideration in our section 251(d)(2)(A) standard, which requires a showing that a new entrant can offer the proposed telecommunications service through the use of other, nonproprietary elements in the incumbent LEC's network. Ericsson merely contends that manufacturers may need time to establish compatibility between its proprietary equipment and equipment of other manufacturers. Therefore, we find that Ericsson's concerns do not justify withholding unbundled loops from requesting carriers pursuant to section 251(d)(2)(A).

272. Section 251(d)(2)(B) directs the Commission to consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." We have interpreted the term "impair" to mean either increased cost or decreased service quality that would result from using network elements of the incumbent LEC other than the one sought. Commenters do not identify alternative facilities that would fulfill requesting carriers' need for transmission between the central office and the customer premises at the same cost and same quality of service. Accordingly, we conclude that competitors' ability to provide telephone exchange, exchange access, or other telecommunications services would be significantly impaired if they did not have the opportunity to purchase unbundled loops from incumbent LECs.

273. As a general matter, we believe that subloop unbundling could give competitors flexibility in deploying some portions of loop facilities, while relying on the incumbent LEC's facilities where convenient. For example, a competitor may seek to minimize its reliance on the LEC's

facilities by combining its own feeder plant with the incumbent LEC's distribution plant. In addition, some high bandwidth services, such as ADSL, cannot be provided over long loop lengths. ITIC, Compaq, and Intel assert that subloop unbundling would lead to innovative new data services. In these situations, carriers would need access at points along the loop closer to the customer premises. The record presents evidence primarily of logistical, rather than technical, impediments to subloop unbundling. Several LECs and USTA, for example, assert that incumbent LECs would need to create databases for identifying, provisioning, and billing for subloop elements. Further, incumbent LECs argue that there is insufficient space at certain possible subloop interconnection points. We note that these concerns do not represent "technical" considerations under our interpretation of the term "technically feasible."

274. Nonetheless, we decline at this time to identify the feeder, feeder/distribution interface (FDI), and distribution components of the loop as individual network elements. We find that proponents of subloop unbundling do not address certain technical issues raised by incumbent LECs concerning subloop unbundling. Incumbent LECs contend that access by a competitor's personnel to loop equipment necessary to provide subloop elements, such as the FDI, raise network reliability concerns for customers served through that FDI. SBC, for example, asserts that access to its loop concentration points by competitors would increase the risk of error by a competitor's technicians that may disrupt service to customers of one or both carriers. U S West contends that the potential for poor technical implementation of subloop interconnection and the lack of overall responsibility for loop performance is very likely to degrade overall service quality. Proponents of subloop unbundling do not adequately respond to these arguments by incumbent LECs. As discussed above, we have determined that we must take into account specific, demonstrable claims regarding network reliability in determining whether to identify any particular component as an element that must be unbundled. Therefore, we believe that, at this stage, based on the current record evidence, the technical feasibility of subloop unbundling is best addressed at the state level on a case-by-case basis at this time. We encourage states to pursue subloop unbundling in response to requests for subloop elements by competing providers. Information developed by the parties in the context of a specific request for subloop unbundling will provide a useful framework for addressing the loop maintenance and network reliability matters that we have identified. Based on actions taken by the states or other future developments, and on the importance of subloop unbundling in light of technological advancements, we intend to revisit the specific issue of subloop unbundling sometime in 1997.

275. We require incumbent LECs to offer unbundled access to the network interface device (NID), as a network element, as described below. The NID is a cross-connect device used to connect loop facilities to inside wiring. When a competitor deploys its own loops, the competitor must be able to connect its loops to customers' inside wiring in order to provide competing service, especially in multi-tenant buildings. In many cases, inside wiring is connected to the incumbent LEC's loop plant at the NID. In order to provide service, a competitor must have access to this facility. Therefore, we conclude that a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LEC's NID.

276. Pursuant to section 251(c)(3), we find that this arrangement clearly is technically feasible. Ameritech notes that it currently maintains such connections with competitors that have deployed their own loop facilities. This is persuasive evidence that unbundled access at the NID, in this manner, does not raise network reliability concerns. Under section 251(d)(2)(A), the record contains no evidence of proprietary concerns with unbundled access to the NID. In addition, under our interpretation of the "impair" test of section 251(d)(2)(B), commenters do not contend that new entrants could obtain the same functionality at the same cost and service quality through other network elements of the incumbent LEC. Moreover, the record indicates that certain network architectures used by new entrants, such as fiber rings, can most efficiently connect end users to the new entrant's switching office without use of the incumbent LEC's facilities. Thus, we conclude that the unavailability of access to incumbent LECs' NIDs would impair the ability of carriers deploying their own loops to provide service. Further, we believe that unbundled access to the NID will facilitate entry strategies premised on the deployment of loops. As discussed in section VII, above, the new entrant bears the costs connecting its NID to the incumbent LEC's NID.

277. We do not require an incumbent LEC to permit a new entrant to connect its loops directly to the incumbent LEC's NID. MCI contends that directly connecting its loops to incumbent LEC's NIDs is "[t]he only practical solution" for gaining access to inside wiring. According to MCI, there is no extra wiring to connect the incumbent LEC's NID to the new entrant's NID. Ameritech demonstrates, however, that it currently provides access to inside wiring through the type of arrangement that MCI asserts is not practical—that is, by connecting a new entrant's loops to inside wiring via the new entrant's NID and Ameritech's NID. MCI does not demonstrate that its ability to provide competing service is unreasonably limited by the arrangements explained by Ameritech.

278. The record contains conflicting evidence on the technical feasibility of requiring incumbent LECs to permit competitors to connect their loops directly to incumbent LECs' NIDs. Ameritech asserts that such a direct connection would leave Ameritech's unused loops without overvoltage protection. MCI argues that overvoltage protection is provided through the incumbent LEC's "protector module" that is separate from the NID. Ameritech responds that its NIDs are integrated units providing both overvoltage protection and a demarcation point, and that these two functions of the NID are "inseverable." AT&T contends direct access to incumbent LECs NIDs is technically feasible. According to AT&T, if a competitor connects its loops directly to the incumbent LEC's NID, the incumbent LEC's loops remain connected to the grounding equipment that protects against overvoltage. According to AT&T, when the competitor does not use spare terminals on the NID, the competitor would be required to ground the incumbent LEC's unused loops to protect against overvoltage.

279. We find that the record in this proceeding does not permit a determination on the technical feasibility of the direct connection of a competitor's loops to the incumbent LEC's NID. Our requirement of a NID-to-NID connection addresses the most critical need of competitors that deploy their own loops—obtaining access to the inside wiring of the building. We recognize, however, that competitors may benefit by directly connecting their loops to the incumbent LEC's NID, for example, by avoiding the cost of deploying NIDs. States should determine whether direct connection to the NID can be achieved in a technically feasible manner in the context of

specific requests by competitors for direct access to incumbent LECs' NIDs.

2. Switching

(a) Background

280. In the NPRM, we tentatively concluded that incumbent LECs should be required to make available local switching capability as an unbundled network element. We sought comment on how a local switching element should be defined, and we identified two possible models: the switch "platform" approach, which would entitle and require a requesting carrier to purchase all of the features and functions of the switch on a per-line basis and the port approach used by the New York Commission, which offers local switching capability through the purchase of a port at a retail rate. We also sought comment on other definitions of a local switching element. In addition, we requested that commenters address whether vertical switching functions, such as those enabling the provision of custom local area signaling service (CLASS) features and call waiting, should be considered individual network elements separate from the basic switching functionality.

(b) Discussion

(i) Local Switching

281. We conclude that incumbent LECs must provide local switching as an unbundled network element. The record supports a finding that it is technically feasible for incumbent LECs to provide access to an unbundled local switching element, and that denying access to a local switching element would substantially impair the ability of many competing carriers to provide switched telecommunications services. We also note that section 271 requires BOCs to offer or provide "[l]ocal switching unbundled from transport, local loop transmission, or other services" as a precondition to providing in-region interLATA services. As discussed below, we identify a local switching element that includes the basic function of connecting lines and trunks as well as vertical switching features, such as custom calling and CLASS features. We agree with the Illinois Commission that defining the switching element in this way will permit competitors to compete more effectively by designing new packages and pricing plans.

282. In the United States, there are over 23,000 central office switches, the vast majority of which are operated by incumbent LECs. It is unlikely that consumers would receive the benefits of competition quickly if new entrants were required to replicate even a small percentage of incumbent LECs' existing switches prior to entering the market. The Illinois Commission staff presented evidence in a recent proceeding indicating that it takes between nine months and two years for a carrier to purchase and install a switch. We find this to be persuasive evidence of the entry barrier that would be created if new entrants were unable to obtain unbundled local switching from the incumbent LEC. The ability to purchase unbundled switching will also promote competition in an area until the new entrant has built up a sufficient customer base to justify investing in its own switch. We expect that the availability of unbundled local switching is likely to increase the number of carriers that will successfully enter the market, and thus should accelerate the development of local competition.

283. We define the local switching element to encompass line-side and trunk-side facilities plus the features, functions, and capabilities of the switch. The NPRM used the terms "switch platform" and "port," as they had been developed by the Illinois and New York Commissions, respectively, to describe two possible approaches to establishing an unbundled local switching element. Parties commenting on the unbundled switching element attributed a variety of functionalities to each of these terms. To avoid confusion, we will not use these terms in discussing the unbundled local switching element. Instead, we will address commenters' proposals according to the functionality that they recommend be included in the definition of an unbundled local switching element. The line-side facilities include the connection between a loop termination at, for example, a main distribution frame (MDF), and a switch line card. Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card. The "features, functions, and capabilities" of the local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks. It also includes the same basic capabilities that are available to the incumbent LEC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. Purchasing the local switching element does not entitle a requesting carrier to connect its own AIN call processing database to the incumbent LEC's switch, either directly or via the incumbent LEC's signal transfer point or database. Section V.I.4, which discusses the unbundling of incumbent LECs' signaling systems and databases. We also note that E911 and operator services are further unbundled from local switching. In addition, the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions. Thus, when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single element on a per-line basis. A requesting carrier will deploy individual vertical features on its customers' lines by designating, via an electronic ordering interface, which features the incumbent LEC is to activate for particular customer lines.

284. We disagree with commenters who argue that vertical switching features should be classified exclusively as retail services, available to competing providers only through the resale provision of section 251(c)(4). The 1996 Act defines network element as "a facility or equipment used in the provision of a telecommunications service" and "the features, functions, and capabilities that are provided by means of such facility or equipment." Vertical switching features, such as call waiting, are provided through operation of hardware and software comprising the "facility" that is the switch, and thus are "features" and "functions" of the switch. In some cases vertical features may be provided using hardware and software external to the actual switch. In those instances, the functionality of such external hardware and software is a separate element under section 251(c)(3), and is available to competing providers. We note that the Illinois Commission recently defined an unbundled local switching element to include vertical switching features. Although we find that vertical switching features should be available to competitors through the resale provision of section 251(c)(4), we reject the view that Congress intended for section 251(c)(4) implicitly to remove vertical switching features from the definition of "network element." Therefore, we find that vertical switching features are part of the unbundled local switching element.

285. At this time we decline to require further unbundling of the local switch into a basic switching element and independent vertical feature elements. Such unbundling does not appear to be necessary to promote local competition. Indeed, most potential local competitors do not recommend that vertical switching features be available as

separate network elements. MCI, AT&T and LDDS believe that such features should be available to new entrants as part of the local switch element. We also note that additional unbundling of the local switching would not result in a practical difference in the way the local switching element is provisioned. As discussed below, when a competing provider orders the unbundled basic switching element for a particular customer line, it will designate which vertical features should be activated by the incumbent LEC for that line. In addition, the record indicates that the incremental costs associated with vertical switching features on a per-line basis may be quite small, and may not justify the administrative difficulty for the incumbent LEC or the arbitrator to determine a price for each vertical element. Thus, states can investigate, in arbitration or other proceedings, whether vertical switching features should be made available as separate network elements. We will continue to review and revise our rules in this area as necessary.

286. We conclude that providing access to an unbundled local switching element at a LEC central office is technically feasible. We are not persuaded by the argument that shared use of an unbundled switching element would jeopardize network security and reliability by permitting competitors independently to activate and deactivate various switching features. A competing provider will purchase and obtain the local switching element the same way it obtains an unbundled local loop, that is, by ordering, via electronic interfaces, the local switching element and particular vertical switching features. The incumbent LEC will receive the order and activate (or deactivate) the particular features on the customer line designated by the competing provider. Consequently, the incumbent LEC is not required to relinquish control over operations of the switch.

287. We also reject the argument that a definition of local switching that incorporates shared use of a local switch would involve physical partitioning of the switch. The requirements we establish for local switch unbundling do not entail physical division of the switch, and consequently do not impose the inefficiency or technical difficulties identified by some commenters.

288. Nor are we persuaded by the arguments of some incumbent LECs that an unbundled switching element based on shared use of the local switch is technically infeasible because incumbent LECs lack significant excess capacity at any given time. Initially, many requests for local switching elements from competitors will likely result from the loss of customers by the incumbent LEC. Thus, at least initially, an increase in the use of the local switch element by the requesting carrier is not likely to lead to an enormous, immediate increase in switch use overall. If incumbent LECs and competing providers believe that they would benefit by quantifying their anticipated demand for switch resources, they are free to do so in the negotiation and arbitration processes. Such planning may be necessary when a competitor anticipates that usage of the local switching element by its customers will place demands on the incumbent LEC's switch that exceed the usage levels anticipated by the incumbent LEC.

289. We conclude that customized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services, and directory assistance. In addition, we note that the Illinois Commission recently directed Ameritech and Centel to permit a carrier purchasing wholesale local exchange service to designate a provider of operator services and directory assistance other than that of the incumbent LEC. Such access is accomplished through the routing of such calls from the incumbent LEC's switch to the competing provider of the operator service or directory assistance. Bell Atlantic notes that customized routing is generally technically feasible for local calling, although it notes that the technology and capacity constraints vary from switch to switch. SBC contends that customized routing is technically infeasible for older switches, such as the 1AESS switch. AT&T acknowledges that, although the ability to establish customized routing in 1AESS switches may be affected by the "call load" in each office, only 9.8% of the switches used by the seven RBOCs, GTE and SNET are 1AESS switches. We recognize that the ability of an incumbent LEC to provide customized routing to a requesting carrier will depend on the capability of the particular switch in question. Thus, our requirement that incumbent LECs provide customized routing as part of the "functionality" of the local switching element applies, by definition, only to those switches that are capable of performing customized routing. An incumbent LEC must prove to the state commission that customized routing in a particular switch is not technically feasible.

290. Section 251(d)(2)(A) requires the Commission, in determining which network elements should be made available to competing providers, to consider "whether access to such network elements as are proprietary in nature is necessary." To withhold a proposed network element from a competing provider, an incumbent LEC must demonstrate that the element is proprietary and that gaining access to that element is not necessary because the competing provider can use other, nonproprietary elements in the incumbent LEC's network to provide service. U S West asserts that switch unbundling could raise concerns involving, among other things, "licensing of intellectual property." It cites a request by one interconnector to be the exclusive provider of particular features in U S West's generic switching software. Bell Atlantic states that it is not at liberty to sub-license the software that operates vertical switching features. We note, however, that these incumbent LECs do not object to providing vertical switching functionalities to requesting carriers under the resale provision of section 251(c)(4). In addition, the vast majority of parties that discuss unbundled local switching do not raise proprietary concerns with the unbundling of either basic local switching or vertical switching features. Even if we accept the claim of U S West and Bell Atlantic that vertical features are proprietary in nature, these carriers do not meet the second consideration in our section 251(d)(2)(A) standard, which requires an incumbent LEC to show that a new entrant could offer the proposed telecommunications service through the use of other, nonproprietary elements in the incumbent LEC's network. Accordingly, we find that access to unbundled local switching is clearly "necessary" under our interpretation of section 251(d)(2)(A).

291. Section 251(d)(2)(B) directs the Commission to consider whether the failure to provide access to an unbundled element "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." We have interpreted the term "impair" to mean either increased cost or decreased service quality that would result from using network elements of the incumbent LEC other than the one sought. SBC and MFS contend that

access to unbundled local switching may not be essential for new entrants because competitors are likely to deploy their own switches. These parties present no evidence that competitors could provide service using another element in the LEC's network at the same cost and at the same level of quality. In addition, most commenters that address this issue generally argue that local switching is essential for the provision of competing local service, and we agree. We thus conclude that a requesting carrier's ability to offer local exchange services would be impaired, if not thwarted, without access to an unbundled local switching element.

292. Section 251(c)(3) requires that incumbent LECs provide access to unbundled network elements on terms and conditions that are "just, reasonable, and nondiscriminatory." We agree with CompTel and LDDS that new entrants will be disadvantaged if customer switchover is not rapid and transparent. We also note that the Michigan Commission has recognized the significance of customer switchover intervals and has directed Ameritech and GTE to file proposals on how they will "ensure the equal availability of expeditious processing of local, interLATA, and intraLATA carrier changes." Therefore, we require incumbent LECs to switch over customers for local service in the same interval as LECs currently switch end users between interexchange carriers. This requirement applies to switchovers that only require the incumbent LEC to make changes to software. Switchovers that require the incumbent LEC to make physical modifications to its network, such as connecting a competitor's loop to its switch, are not subject to this requirement, and instead are governed by our terms and conditions for all unbundled elements. Today, incumbent LECs routinely change customers' presubscribed interexchange carriers quickly and transparently, thereby contributing to the competitiveness of the interexchange market. We expect that a similar requirement for local exchange switchovers that require only a software change will similarly contribute to local exchange competition.

293. We reject the proposal by some incumbent LECs to define unbundled local switching as the facilities that provide a point of access to the switch, but that would not actually include switching functionality. Under this definition, the purchaser of the local switching element would not actually obtain local switching, only the right to purchase local switching functionality and other switching features at wholesale rates. We believe that the unbundled local switching element must include the functionality of connecting lines and trunks. The definition proposed by these incumbent LECs would contravene the requirement in section 251(c)(3) that incumbent LECs provide network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." If a competing provider combined its own loops and transport with the local switching element ("point of access"), it would be unable to provide telecommunications service without separately purchasing, at wholesale rates, switching functionality from the incumbent LEC.

294. We also disagree with the proposal to define local switching as a point of access plus basic switching functionality, but that would exclude vertical switching features. As a legal matter, this definition is inconsistent with the 1996 Act's definition of "network element," which includes all the "features, functionalities, and capabilities provided by means of such facility or equipment." In addition, this definition would not fulfill the pro-competitive objectives of the 1996 Act as effectively as the per-line definition we adopt. A competitor that obtains basic and vertical switching features at cost-based rates will have maximum flexibility to distinguish its offerings from those of the incumbent LEC by developing a variety of service packages and pricing plans. Moreover, an upfront purchase of all local switching features may speed entry by simplifying practical issues such as the pricing of individual switching features.

295. We also address the impact on small incumbent LECs. For example, the Illinois Independent Telephone Association and the Rural Telephone Coalition favor rules that recognize the differences between larger and smaller LECs. We have considered the economic impact of our rules in this section on small incumbent LECs. In this section, for example, we expressly provide for the fact that certain LECs may possess switches that are incapable of performing customized routing for competitors that purchase unbundled local switching. As noted by Rural Telephone Coalition and the Illinois Independent Telephone Coalition, this approach is necessary to accommodate the different technical capabilities of large and small carriers. We also note that section 251(f) of the 1996 Act provides relief for certain small LECs from our regulations under section 251.

(ii) Tandem Switching

296. We also affirm our tentative conclusion in the NPRM that it is technically feasible for incumbent LECs to provide access to their tandem switches unbundled from interoffice transmission facilities. We note that some states already have required incumbent LECs to unbundle tandem switching. Parties do not contend, pursuant to section 251(d)(2)(A), that tandem switches are proprietary in nature. With regard to section 251(d)(2)(B), we find that competitors' ability to provide telecommunications service would be impaired without unbundled access to tandem switching. Therefore, we find that the availability of unbundled tandem switching will ensure that competitors can deploy their own interoffice facilities and connect them to incumbent LECs' tandem switches where it is efficient to do so.

297. We define the tandem switch element as including the facilities connecting the trunk distribution frames to the switch, and all the functions of the switch itself, including those facilities that establish a temporary transmission path between two other switches. The definition of the tandem switching element also includes the functions that are centralized in tandems rather than in separate end office switches, such as call recording, the routing of calls to operator services, and signaling conversion functions.

(iii) Packet Switching

298. At this time, we decline to find, as requested by AT&T and MCI, that incumbent LECs' packet switches should be identified as network elements. Because so few parties commented on the packet switches in connection with section 251(c)(3), the record is insufficient for us to decide whether packet switches should be defined as a separate network element. We will continue to review and revise our rules, but at present, we do not adopt a national rule for the unbundling of packet switches.

3. Interoffice Transmission Facilities

(a) Background

299. In the NPRM, we proposed to require incumbent LECs to make available unbundled transport facilities in a manner that corresponds to the rate structure for interstate transport charges. We specifically proposed to require unbundled access to links between the end office and the serving wire center (SWC), the SWC and the IXC point of presence (POP), the end office and the tandem switch, and the tandem switch and the SWC. We also tentatively

concluded that incumbent LECs should be required to unbundle channel termination facilities for special access from the interoffice facilities. In addition, we requested comment on whether and how other interoffice facilities used by incumbent LECs should be unbundled.

(b) Discussion

300. We conclude that incumbent LECs must provide interoffice transmission facilities on an unbundled basis to requesting carriers. The record supports our conclusion that such access is technically feasible and would promote competition in the local exchange market. We note that the 1996 Act requires BOCs to unbundle transport facilities prior to entering the in-region, interLATA market.

301. We require incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch. Further, incumbent LECs must provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers. This includes, at a minimum, interoffice facilities between end offices and serving wire centers (SWCs), SWCs and IXC POPs, tandem switches and SWCs, end offices or tandems of the incumbent LEC, and the wire centers of incumbent LECs and requesting carriers. The incumbent LEC must also provide, to the extent discussed below, all technically feasible transmission capabilities, such as DS1, DS3, and Optical Carrier levels (e.g. OC–3/12/48/96) that the competing provider could use to provide telecommunications services. We conclude that an incumbent LEC may not limit the facilities to which such interoffice facilities are connected, provided such interconnection is technically feasible, or the use of such facilities. In general, this means that incumbent LECs must provide interoffice facilities between wire centers owned by incumbent LECs or requesting carriers, or between switches owned by incumbent LECs or requesting carriers. For example, an interoffice facility could be used by a competitor to connect to the incumbent LEC's switch or to the competitor's collocated equipment. We agree with the Texas Commission that a competitor should have the ability to use interoffice transmission facilities to connect loops directly to its switch. We anticipate that these requirements will reduce entry barriers into the local exchange market by enabling new entrants to establish efficient local networks by combining their own interoffice facilities with those of the incumbent LEC.

302. The ability of new entrants to purchase the interoffice facilities we have identified will increase the speed with which competitors enter the market. By unbundling various dedicated and shared interoffice facilities, a new entrant can purchase all interoffice facilities on an unbundled basis as part of a competing local network, or it can combine its own interoffice facilities with those of the incumbent LEC. The opportunity to purchase unbundled interoffice facilities will decrease the cost of entry compared to the much higher cost that would be incurred by an entrant that had to construct all of its own facilities. An efficient new entrant might not be able to compete if it were required to build interoffice facilities where it would be more efficient to use the incumbent LEC's facilities. We recognize that there are alternative suppliers of interoffice facilities in certain areas. We are convinced, however, that entry will be facilitated if competitors have greater, not fewer, options for procuring interoffice facilities as part of their local networks, and that Congress intended for competitors to have these options available from competitors. Thus, the rules we establish for the unbundled interoffice facilities should maximize a competitor's flexibility to use new technologies in combination with existing LEC facilities.

303. We find that it is technically feasible for incumbent LECs to unbundle the foregoing interoffice facilities as individual network elements. The interconnection and unbundling arrangements among the larger LECs, IXCs, and CAPs that resulted from our Expanded Interconnection rules confirm the technical feasibility of unbundling interoffice facilities used by incumbent LECs to provide special access and switched transport. As AT&T and Telecommunications Resellers Association point out, IXCs currently interconnect with incumbent LECs' transport facilities pursuant to standard specifications. We also note that commenters do not identify technical feasibility problems with unbundling interoffice facilities.

304. We also find that it is technically feasible for incumbent LECs to unbundle certain interoffice facilities not addressed in our Expanded Interconnection proceeding. First, we conclude that an incumbent LEC must provide unbundled access to interoffice facilities between its end offices, and between any of its switching offices and a new entrant's switching office, where such interoffice facilities exist. This allows a new entrant to purchase unbundled facilities between two end offices of the incumbent LEC, or between the new entrant's switching office and the incumbent LEC's switching office. Although our Expanded Interconnection rules did not specifically require incumbent LECs to unbundle these facilities, commenters do not identify any potential technical problem with such unbundling. Moreover, some LECs already offer unbundled dedicated interoffice facilities, for example, between their end offices and SWCs for exchange access.

305. In addition, as a condition of offering unbundled interoffice facilities, we require incumbent LECs to provide requesting carriers with access to digital cross-connect system (DCS) functionality. A DCS aggregates and disaggregates high-speed traffic carried between IXCs' POPs and incumbent LECs' switching offices, thereby facilitating the use of cost-efficient, high-speed interoffice facilities. AT&T notes that the BOCs, GTE, and other large LECs currently make DCS capabilities available for the termination of interexchange traffic. We find that the use of DCS functionality could facilitate competitors' deployment of high-speed interoffice facilities between their own networks and LECs' switching offices. Therefore, we require incumbent LECs to offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services.

306. We disagree with PacTel's assertion that it is not technically feasible for incumbent LECs to provide DCS functionality to competitors that purchase unbundled interoffice facilities. First, contrary to PacTel's assertion, we do not require incumbent LECs to develop new arrangements for the offering of DCS capabilities to competitors. We only require that DCS capabilities be made available to competitors to the extent incumbent LECs offer such capabilities to IXCs. Second, PacTel suggests the provision of DCS capabilities requires physical partitioning of the DCS equipment in order to prevent carriers from gaining control of each other's traffic. We do not require such partitioning for the provision of DCS capabilities. As noted above, we only require incumbent LECs to permit competitors to use DCS functionality in the same manner that incumbent LECs now permit IXCs to use such functionality.

307. Section 251(d)(2)(A) requires the Commission to consider whether "access to such network elements as are

proprietary in nature is necessary." Commenters do not identify any proprietary concerns relating to the provision of interoffice facilities that LECs are required to unbundle. We also note that many of these facilities are also currently offered on an unbundled basis to competing carriers. Therefore, the record provides no basis for withholding these facilities from competitors based on proprietary considerations.

308. Section 251(d)(2)(B) requires the Commission to consider whether the failure to provide access to an unbundled element "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." We have interpreted the term "impair" to mean either increased cost or decreased service quality that would result from using network elements other than the one sought. Certain commenters contend that unbundled access to these facilities would improve their ability to provide competitive local exchange and exchange access service. MCI, for example, argues that its inability to obtain unbundled access to trunks between an incumbent LEC's end offices raises its cost of providing local service. Accordingly, we conclude that the section 251(d)(2)(B) requires incumbent LECs to provide access to shared interoffice facilities and dedicated interoffice facilities between the above-identified points in incumbent LECs' networks, including facilities between incumbent LECs' end offices, new entrant's switching offices and LEC switching offices, and DCSs. We believe that access to these interoffice facilities will improve competitors' ability to design efficient network architecture, and in particular, to combine their own switching functionality with the incumbent LEC's unbundled loops.

309. We reject Cincinnati Bell's argument that existing tariffs for transport and special access services filed pursuant to our Expanded Interconnection rules fulfill our obligation to implement the requirements of section 251(c). First, the Expanded Interconnection rules require the unbundling of interstate transport services only by Class A carriers whereas section 251(c) requires network unbundling by all incumbent LECs, except for carriers that are exempt under section 251(f) from our interconnection rules. Consequently, some non-Class A carriers that were not subject to our Expanded Interconnection requirements will be required to comply with the requirements of this Order. Second, we find that the Class A carriers' existing tariffs for unbundled transport elements do not satisfy the unbundling requirement of section 251(c), as suggested by Cincinnati Bell, because such tariffs are only for interstate access services, not for unbundled interoffice facilities. As such, existing federal tariffs for transport and special access exclude intrastate transport, and therefore are not equivalent to unbundled interoffice facilities, which we have determined to be nonjurisdicational in nature.

310. We also disagree with MECA, GTE, and Ameritech that we should consider "pricing distortions" in adopting rules for unbundled interoffice facilities. Section, below, addresses the pricing of unbundled network elements identified pursuant to section 251(c)(3) as it relates to our current access charge rules. Nor are we are persuaded by MECA's argument that incumbent LECs not subject to the MFJ should not be required to unbundle transport facilities because, according to MECA, such facilities are unnecessary for local competition. As discussed above, the ability of a new entrant to obtain unbundled access to incumbent LECs' interoffice facilities, including those facilities that carry interLATA traffic, is essential to that competitor's ability to provide competing telephone service.

311. We do not impose specific terms and conditions for the provision of unbundled interoffice facilities. We believe that the rules we establish in this Order for all unbundled network elements adequately address ALTS's concern regarding the provisioning, billing, and maintenance of unbundled transport facilities. We also decline at this time to address the unbundling of incumbent LECs' "dark fiber." Parties that address this issue do not provide us with information on whether dark fiber qualifies as a network element under sections 251(c)(3) and 251(d)(2). Therefore, we lack a sufficient record on which to decide this issue. We will continue to review and revise our rules in this area as necessary.

312. Rural Telephone Coalition contends that incumbent LECs should not be required to construct new facilities to accommodate new entrants. We have considered the economic impact of our rules in this section on small incumbent LECs. In this section, for example, we expressly limit the provision of unbundled interoffice facilities to existing incumbent LEC facilities. We also note that section 251(f) of the 1996 Act provides relief for certain small LECs from our regulations under section 251.

4. Databases and Signaling Systems

a. Background

(1) NPRM

313. In the NPRM, we tentatively concluded that incumbent LECs should be required to unbundle access to their signaling systems and databases as network elements. We asked commenters to identify points at which carriers interconnect with SS7 networks today, as well as the technical feasibility of establishing other points of access and interconnection. We also asked commenters to identify those signaling and database functions currently provided by incumbent LECs on an unbundled basis, and other functions not currently offered by incumbent LECs, that the parties believe should be offered on an unbundled basis.

314. In the NPRM, we noted the possibility that competitors that provide local exchange service using resold incumbent LEC services or unbundled elements might want to connect an alternative call processing database to the incumbent LEC's SS7 network in order to offer services and features not available through the incumbent LEC's own SS7 network databases.

315. We also sought comment on unbundling access to the Advanced Intelligent Network (AIN), and referenced our separate Intelligent Networks proceeding which deals with related issues. We sought comment on whether to unbundle access to AIN facilities and functionalities.

(2) SS7 Signaling Network Technology

316. Signaling systems facilitate the routing of telephone calls between switches. Most LECs employ signaling networks that are physically separate from their voice networks, and these "out-of-band" signaling networks simultaneously carry signaling messages for multiple calls. In general, most LECs' signaling networks adhere to a Bellcore standard Signaling System 7 (SS7) protocol.

317. SS7 networks use signaling links to transmit routing messages between switches, and between switches and call-related databases. A typical SS7 network includes a signaling link, which transmits signaling information in packets, from a local switch to a signaling transfer point (STP), which is a high-capacity packet switch. The STP switches packets onto other links according to the address information contained in the packet. These additional links extend to other switches, databases, and STPs in the LEC's network. A switch routing a call to another switch will initiate a series of signaling messages via signaling links

through an STP to establish a call path on the voice network between the switches.

318. As mentioned above, the SS7 network also employs signaling links (via STPs) between switches and call-related databases, such as the Line Information Database (LIDB), Toll Free Calling (*i.e.*, 800, 888 number) database, and AIN databases. These links enable a switch to send queries via the SS7 network to call-related databases, which return customer information or instructions for call routing to the switch.

319. From the perspective of a switch in a LEC network, the databases discussed above merely supply information or instructions. Updating or populating the information in such databases, however, takes place through a separate process involving different equipment. Carriers input information directly into a service management system (SMS), which in turn downloads such information into the individual databases.

320. The Advanced Intelligent Network (AIN) is a network architecture that uses distributed intelligence in centralized databases to control call processing and manage network information, rather than performing those functions at every switch. An AIN-capable switch halts call progress when a resident software "trigger" is activated, and uses the SS7 network to access intelligent databases, known as Service Control Points (SCPs), that contain service software and subscriber information, for instruction on how to route, monitor, or terminate the call. AIN is being used in the deployment of number portability, wireless roaming, and such advanced services as same number service (i.e., 500 number service) and voice recognition dialing. AIN services are designed and tested in an off-line computer known as a Service Creation Environment (SCE). Once a service is successfully tested, the software is transferred to an SMS that administers and supports SCP databases in the network. The SMS then regularly downloads software and information to an SCP where interaction with the voice network takes place via the signaling links and STPs discussed above.

b. Discussion

321. In the interconnection section above, we conclude that the exchange of signaling information between LECs necessary to exchange traffic and access call related databases was included within the interconnection obligation of section 251(c)(2). We emphasize below, such exchange of signaling information does not include the exchange of AIN signaling information between networks for the purpose of providing AIN messages to the incumbent LEC's switch from a competitor's SCP database. Thus, notwithstanding any obligations under section 251(c)(3), incumbent LECs are required to accept and provide signaling in accordance with the exchange of traffic between interconnecting networks. We conclude that this exchange of signaling information may occur through an STP-to-STP interconnection.

(1) Signaling Links and STP

322. We conclude that incumbent LECs, upon request, must provide nondiscriminatory access to their signaling links and STPs on an unbundled basis. We believe it is technically feasible for incumbent LECs to provide such access, and that such access is critical to entry in the local exchange market. Further, the 1996 Act requires BOCs to provide "nondiscriminatory access to databases and associated signaling necessary for call routing and completion" as a precondition for entry into in-region interLATA services. Thus, it appears that Congress contemplated the unbundling of signaling systems as network elements.

323. We conclude that access to unbundled signaling links and STPs is technically feasible. The majority of commenters, including incumbent LECs, agree that it is technically feasible to provide unbundled access to signaling links and STPs. Parties note that incumbent LECs and signaling aggregators already provide such access. In addition, several state commissions already require incumbent LECs to provide unbundled elements of SS7 networks. Because of the screening role played by the STP and associated network reliability concerns that were raised in the record, however, we do not require that incumbent LECs permit requesting carriers to link their own STPs directly to the incumbent's switch or call-related databases. We take a deliberately conservative approach here because of significant evidence in the record and we note that mere conclusory objections to technical feasibility would not alone be sufficient evidence.

324. Under section 251(d)(2)(A), the Commission must consider whether access to proprietary network elements is necessary. Commenters did not identify proprietary concerns with signaling protocols for the SS7 network. Moreover, in general, SS7 signaling networks adhere to Bellcore standards, rather then LEC-specific protocols and provide seamless interconnectivity between networks. Thus, we conclude that the unbundling of signaling links and STPs does not present proprietary concerns with respect to the incumbent LEC.

325. Under section 251(d)(2)(B), the Commission must consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." Access to signaling systems continues to be a critical element to providing competing local exchange and exchange access service. The vast majority of calls made over incumbent LEC networks are set-up and controlled by separate signaling networks. Incumbent LECs argue that access to signaling systems and associated databases is already available from other providers and therefore, they should not have to unbundle them for access by competitors. As discussed above, section 251(d)(2)(B) only relieves an incumbent LEC of its unbundling obligation if other unbundled elements in its network could provide the same service without diminution of quality. Because alternative signaling methods, such as in-band signaling, would provide a lower quality of service, we conclude that a competitor's ability to provide service would be significantly impaired if it did not have access to incumbent LECs' unbundled signaling links and STPs.

326. The purchase of unbundled elements of the SS7 network gives the competitive provider the right to use those elements for signaling between its switches (including unbundled switching elements), between its switches and the incumbent LEC's switches, and between its switches and those third party networks with which the incumbent LEC's SS7 network is interconnected. When a competitive provider purchases unbundled switching from the incumbent LEC, the incumbent LEC must provide nondiscriminatory access to its SS7 network from that switch in the same manner in which it obtains such access itself. Carriers that provide their own switching facilities should be able to access the incumbent LEC's SS7 network for each of their switches via a signaling link between their switch and an incumbent LEC's STP. Competitive carriers should be able to make this connection in the same manner as an incumbent LEC connects one of its own switches to the STP. This could be accomplished by the incumbent providing an unbundled signaling link from its STP to the competitor's switch or by a competitor bringing a signaling

link from its switch to the incumbent LEC's STP.

(2) Call-Related Databases

327. We conclude that incumbent LECs, upon request, must provide nondiscriminatory access on an unbundled basis to their call-related databases for the purpose of switch query and database response through the SS7 network. Query and response access to a call-related database is intended to require the incumbent LEC only to provide access to its call-related databases as is necessary to permit a competing provider's switch (including the use of unbundled switching) to access the call-related database functions supported by that database. The incumbent LEC may mediate or restrict access to that necessary for the competing provider to provide such services as are supported by the database. Thus, for example, we find that it is technically feasible for incumbent LECs to provide access to the Line Information Database (LIDB), the Toll Free Calling Database and Number Portability downstream databases. The vast majority of parties, including incumbent LECs, agree that it is technically feasible to provide access to the LIDB and the Toll Free Calling databases at an STP linked to the database. Several state commissions also report that they have ordered incumbent LECs' to provide such access to the LIDB and the Toll Free Calling databases. We require incumbent LECs to provide this access to their call-related databases by means of physical access at the STP linked to the unbundled database. We find that such access is critical to entry in the local exchange market.

328. We conclude that it is not technically feasible to unbundle the SCP from its associated STP. We note that the overwhelming majority of commenters contend that it is not technically feasible to access call-related databases in a manner other than by connection at the STP directly linked to the call-related database. Parties argue that the STP is designed to provide mediation and screening functions for the SS7 network that are not performed at the switch or database. We, therefore, emphasize that access to call-related databases must be provided through interconnection at the STP and that we do not require direct access to call-related databases.

329. Several commenters also identified access to call-related databases used in the incumbent's AIN to be critical to fair competition in the local market, and some state commissions have ordered incumbent LECs to provide access to AIN databases. We conclude that such access is technically feasible via an STP for those call-related databases used in the incumbent LEC's AIN. First, of course, when a new entrant purchases an incumbent's local switching element it is technically feasible for the new entrant to use the incumbent's SCP element in the same manner, and via the same signaling links, as the incumbent itself. Thus, we find no technical impediments in the record with regard to such access when a requesting carrier is also purchasing a local switching element associated with the AIN call-related database.

330. Further, we conclude that when a new entrant deploys its own switch, and links it to the incumbent LEC's signaling system, it is technically feasible for the incumbent to provide access to the incumbent's SCP to provide AIN-supported services to customers served by the new entrant's switch. Some SS7 network services resellers currently provide such access. Other potential local competitors present additional evidence supporting the technical feasibility of such access. Unlike the situation where a competitor's SCP would control the incumbent's switch (which is discussed below in section V.I.4.c.(4)), in this scenario, the incumbent's SCP will respond to and control the competitor's switch, and potential competitors that have commented in the record do not express network reliability concerns with regard to such control. Further, like the software resident in a switch, the incumbent LEC's applications resident in an SCP are merely part of the overall software and hardware making up the SCP facility. Thus, carriers purchasing access under either scenario above may use the incumbent's service applications in addition to their own.

311. Although we conclude that access to incumbent AIN SCPs is technically feasible, we agree with BellSouth that such access may present the need for mediation mechanisms to, among other things, protect data in incumbent AIN SCPs and ensure against excessive traffic volumes. In addition, there may be mediation issues a competing carrier will need to address before requesting such access. Mediation may be necessary for requesting carriers to ensure that inadvertent feature interactions, network management control and customer privacy concerns do not arise from such access. Accordingly, if parties are unable to agree to appropriate mediation mechanisms through negotiations, we conclude that during arbitration of such issues the states (or the Commission acting pursuant to section 252(e)(5)) must consider whether such mediation mechanisms will be available and will adequately protect against intentional or unintentional misuse of the incumbent's AIN facilities. We encourage incumbent LECs and competitive carriers to participate in industry fora and industry testing to resolve outstanding mediation concerns. Incumbent LECs may establish reasonable certification and testing programs for carriers proposing to access AIN call related databases in a manner similar to those used for SS7 certification.

332. We recognize that providing unbundled access to AIN call-related databases at cost, and in particular providing access to the incumbent LEC's software applications that reside in the AIN databases, may reduce the incumbent's incentive to develop new and advanced services using AIN. In the near term, however, requiring entrants to bear the cost of deploying a fully redundant network architecture, including AIN databases and their application software, would constitute a significant barrier to market entry for competitive carriers. As local service markets develop, however, competition may reduce the incumbent LEC's control over bottleneck facilities and increase the importance of innovation. In those circumstances it is important that incumbent LECs have the incentive to develop unique and innovative services supported by AIN. Therefore at a later date, we will revisit the proper balance between providing unbundled access and maintaining the incentives of incumbent LECs to innovate.

333. Parties generally do not identify proprietary concerns when access to call-related databases is provided via STPs. In general, signaling protocols used to access call-related databases adhere to open Bellcore standards. Parties also do not raise proprietary concerns with specific call-related databases themselves. Today, many separate carriers access incumbent LEC Toll Free Calling and LIDB databases for the proper routing and billing of calls. Thus, we conclude that, in general, unbundled access to call-related databases does not present proprietary concerns with respect to section 251(d)(2)(A). Incumbent LECs may, however, present such proprietary concerns in the arbitration process with regard to specific databases, and states (or the Commission acting pursuant to section 252(e)(5)) may take action to limit unnecessary access to proprietary information.

334. We also conclude that denying access to call-related databases would

impair the ability of a competing provider to offer services such as Alternative Billing Services and AIN-based services. AIN-based services represent the cutting edge of telephone exchange services, and competitors would be at a significant disadvantage if they were forced to develop their own AIN capability immediately. In addition, the record indicates that deployment of call-related databases in the near term would represent a substantial cost to new entrants. As mentioned above, incumbent LECs argue that access to certain call-related databases is already competitively available and therefore they should not have to unbundle access to them. As discussed above, however, section 251(d)(2)(B) would only relieve an incumbent LEC of its unbundling obligation if other unbundled elements in its network could provide the same service without diminution of quality. Because of the absence of such elements, we conclude that a competitor's ability to provide service would be significantly impaired if it did not have unbundled access to incumbent LECs' call-related databases, including the LIDB, Toll Free Calling, AIN, and number portibility downstream databases for the purpose of switch query and database response through the SS7 network.

335. We also conclude that access to call-related databases as discussed above, and access to the service management system discussed below, must be provided to, and obtained by, requesting carriers in a manner that complies with section 222 of the Act. Section 222, which was effective upon adoption, sets out requirements for privacy of customer information. Section 222(a) provides that all telecommunications carriers have a duty to protect the confidentiality of proprietary information of other carriers, including resellers, equipment manufacturers, and customers. Section 222(b) requires that telecommunications carriers that use proprietary information obtained from another telecommunications carrier in providing any telecommunications service "shall use that information only for such purpose, and shall not use such information for its own marketing purposes." Sections 222 (c) and (d) provide protection for, and limitations on the use of, and access to, customer proprietary network information (CPNI). We note that we have initiated a proceeding to clarify the obligations of carriers with regard to sections 222 (c) and (d).

(3) Service Management Systems

336. Finally, we conclude that incumbent LECs should provide access, on an unbundled basis, to the service management systems (SMS), which allow competitors to create, modify, or update information in call-related databases. We believe it is technically feasible for incumbent LECs to provide access to the SMS in the same manner and method that they provide for their own access. We find that such access is necessary for competitors to effectively use call-related databases, which we have already found to be critical to entry in the local exchange market.

337. Commenters argue that they need equal access to incumbent LECs' SMSs to write or populate their own information in call-related databases. As discussed above, information bound for many call-related databases is entered first at an off-line SMS, which then downloads the information to the call-related database for real time use on the network. We find that competing provider access to the SMS is technically feasible if it is provided in the same or equivalent manner that the incumbent LEC currently uses to provide such access to itself. For example, if the incumbent LEC inputs information into the SMS using magnetic tapes, the competitive carrier must be able to create and submit magnetic tapes for the incumbent to input into the SMS in the same way the incumbent inputs its own magnetic tapes. If the incumbent accesses the SMS through an electronic interface, the competitive carrier should be able to access the SMS through an equivalent electronic interface. We further conclude that, whatever method is used, the incumbent LEC must provide the competing carrier with the information necessary to correctly enter or format for entry the information relevant for input into the particular incumbent LEC SMS.

338. Specifically with respect to AIN, we find that the record in the *Intelligent Networks* proceeding supports access to the SMS. A competing carrier seeking access to the SMS that is part of the incumbent LEC's AIN would do so through the incumbent LEC's service creation environment (SCE), an interface used to design, create, and test AIN supported services. Software successfully tested in the SCE is transferred to the SMS, where it is then downloaded into an SCP database for active deployment on the network. We are persuaded that the risk of harm to the public switched network from such access to the SMS is minimized by the technical safeguards inherent in the SCE and SMS. As described in comments filed in the *Intelligent Networks* docket, competitors accessing the SCE and SMS would not communicate directly with the LEC's database or switch. We therefore conclude that such access is technically feasible, and that incumbent LECs should provide requesting carriers with the same access to design, create, test, and deploy AIN-based services at the SMS that the incumbent LEC provides for itself. While many incumbent LECs express concerns with the technical feasibility of access to AIN, we conclude that those concerns deal primarily with the interconnection of third party AIN SCP databases to the incumbent LEC's AIN and not access to the SCE and SMS.

339. We recognize that, although technically feasible, providing nondiscriminatory access to the SMS and SCE for the creation and deployment of AIN services may require some modifications, including appropriate mediation, to accommodate such access by requesting carriers. We note that BellSouth is currently prepared to tariff and offer such access to third parties, and other incumbent LECs, including Bell Atlantic and Ameritech, indicate that they have made significant progress towards implementing such access. Therefore, if parties are unable to agree to appropriate mediation mechanisms through negotiations, we conclude that during arbitration of such issues the states (or the Commission acting pursuant to section 252(e)(5)) must consider whether such mediation mechanisms will be available and will adequately protect against intentional or unintentional misuses of the incumbent's AIN facilities. We again encourage incumbent LECs and competitive carriers to participate in industry fora and industry testing to resolve outstanding mediation concerns.

340. Parties did identify some proprietary concerns regarding access to the SCE and SMS used in the incumbent LEC's AIN. Some incumbent LECs contend that the interface used at the SCE is proprietary in nature. GVNW argues that specific AIN-based services designed by carriers should be proprietary in nature. Competitors correctly argue that AIN can be used, not only for telecommunication services traditionally supported by the switch, but as a means to deploy advanced services not otherwise possible. We find that competing providers without access to AIN would be at a significant disadvantage to incumbent LECs, because they could not necessarily offer the same services to the customer. This access will help competing providers without imposing costs on incumbent

LECs because the entrants will pay the cost. We therefore conclude, under section 251(d)(2)(A), that access to AIN, including those elements that may be proprietary, is necessary for successful entry into the local service market.

341. Most parties generally did not identify proprietary concerns with access to those SMSs used other than for AIN. Some parties, however, argue that there are proprietary interfaces used to enter information into various databases. Competing carriers counter that competitive providers would not need to have direct access to the proprietary methods of data entry used by incumbent LECs, and as a result we conclude that the unbundled access to SMSs used for other than AIN does not present proprietary concerns with respect to section 251(d)(2)(A).

342. We also conclude that unbundled access to all SMSs is necessary for a competing provider to effectively use unbundled call-related databases. We find that the inability of competing carriers to use the SMS in the same manner that an incumbent LEC uses to input data itself would impair the ability of a competing carrier to effectively offer services to its customers using unbundled call-related databases. Commenters in the record point out that access to call-related databases alone would not allow the competing carrier to provide such services to its customers without access to an SMS. We also conclude that AIN-based services are important to a new entrant's ability to compete effectively for customers with the incumbent LEC, and in developing new business by introducing new AIN based services. Thus we conclude that a competitor's ability to provide service would be significantly impaired if it did not have unbundled access to an incumbent LEC's SMS, including access to the SMS(s) used to input data to the LIDB, Toll Free Calling, Number Portability and AIN call-related databases.

343. We reject the contention by several incumbent LECs that signaling and database access was meant by the 1996 Act to apply only to such access as is necessary for call routing and completion. Although the competitive checklist for BOC entry into in-region interLATA services under section 271 requires "nondiscriminatory access to databases and associated signaling necessary for call routing and completion" the definition of a network element is more comprehensive in scope. A network element as defined by the 1996 Act includes "databases" and in particular "databases sufficient for billing and collection or used in the transmission, routing, or *other* provision of a telecommunications service." We find that the inclusion of "other provision of a telecommunications service" meant Congress intended the unbundling of databases to be read broadly and could include databases beyond those directly used in the transmission or routing of a telecommunications service.

(4) Third Party Call-Related Databases

344. We find that there is not enough evidence in the record to make a determination as to the technical feasibility of interconnection of third party call-related databases to the incumbent LEC's signaling system. Some parties argue that such interconnection, including the interconnection of third party AIN SCP databases, would allow them to provide more efficient or advanced call processing and services to customers, thereby increasing their ability to compete with the incumbent LEC. AT&T and MCI specifically argue that it would be technically feasible for them to interconnect their AIN SCP database to an incumbent LEC's AIN for the purpose of providing call processing instructions to the incumbent LEC's switch. Incumbent LECs contend that such interconnection would leave their switch vulnerable to a multitude of potential harms because sufficient mediation for such interconnection does not currently exist at the STP or SCP and has not yet been developed. AT&T counters that there is no need for additional mediation and that sufficient certification and testing of AIN based services before deployment in such a fashion is technically feasible.

345. At this time, in view of this record and the record compiled in the *Intelligent Networks* docket, we cannot make a determination of the technical feasibility of such interconnection. We do, however, believe that state commissions could find such an arrangement to be technically feasible and we do not intend to preempt such an order through these rules. The Illinois Commission recently ordered access to incumbent LECs' AIN that does allow for this type of interconnection. We intend to address this issue early in 1997, either in the IN docket or in a subsequent phase of this proceeding, taking into account, *inter alia*, any relevant decisions of state commissions.

346. We also address the impact on small incumbent LECs. For example, GVNW asserts that any national rule requiring this form of interconnection would require many small incumbent LECs to make uneconomic upgrades of their switches in order to accommodate it. We have considered the economic impact of our rules in this section on small incumbent LECs. Accordingly, we have not adopted any national standards concerning AIN at this time. We also note that section 251(f) provides relief for certain small LECs from our regulations implementing section 251.

5. Operation Support Systems

a. Background

347. We sought comment, in the NPRM, on whether national requirements for electronic ordering interfaces would reduce the time and resources required for new entrants to enter and compete in regional markets. We also sought comment on the unbundling of databases generally in our discussion on unbundling database and signaling systems.

b. Discussion

348. We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of "network element" is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are essential to promote viable competitive entry."

349. Nondiscriminatory access to operations support systems functions can be viewed in at least three ways. First, operations support systems themselves can be characterized as "databases" or "facilit[ies] * * * used in the provision of a telecommunications service," and the functions performed by such systems can be characterized as "features, functions, and capabilities that are provided by means of such facilit[ies]." Second, the information contained in, and processed by operations support systems can be classified as

"information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." Third, nondiscriminatory access to the functions of operations support systems, which would include access to the information they contain, could be viewed as a "term or condition" of unbundling other network elements under section 251(c)(3), or resale under section 251(c)(4). Thus, we conclude that, under any of these interpretations, operations support systems functions are subject to the nondiscriminatory access duty imposed by section 251(c)(3), and the duty imposed by section 251(c)(4) to provide resale services under just, reasonable, and nondiscriminatory terms and conditions.

350. Much of the information maintained by these systems is critical to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services. Without access to review, *inter alia*, available telephone numbers, service interval information, and maintenance histories, competing carriers would operate at a significant disadvantage with respect to the incumbent. Other information, such as the facilities and services assigned to a particular customer, is necessary to a competing carrier's ability to provision and offer competing services to incumbent LEC customers. Finally, if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition.

351. As noted in the comments above, several state commissions have ordered real-time access or have ongoing proceedings working to develop and implement it within their jurisdictions. The New York Commission, building on its pioneering experience with the Rochester Telephone "Open Market Plan," has facilitated a working group on electronic interfaces comprised of both incumbent LECs and potential competitors. The New York Commission focused on these issues in response to the frustrations and concerns of resellers in the Rochester market. In particular, AT&T alleged that it was "severely disadvantaged due to the fact that [Rochester Telephone] has failed to provide procedures for resellers to access [their] databases for on-line queries needed to perform basic service functions [such] as scheduling customer appointments." The New York Commission has concluded that wherever possible NYNEX will provide new entrants with real-time electronic access to its systems. As another example, the Georgia Commission recently ordered BellSouth to provide electronic interfaces such that resellers have the same access to operations support systems and informational databases as BellSouth does, including interfaces for pre-ordering, ordering and provisioning, service trouble reporting, and customer daily usage. In testimony before the Georgia Commission, a BellSouth witness acknowledged that "[n]o one is happy, believe me, with a system that is not fully electronic." As noted above, Georgia ordered BellSouth to establish these interfaces within two months of its order (by July 15, 1996), but recently extended the deadline an additional month (to August 15th). Both the Illinois and Indiana Commissions ordered incumbent LECs immediately to provide to competitors access to operational interfaces at parity with those provided to their own retail customers, or submit plans with specific timetables for achieving such access. Several other states have passed laws or adopted rules ordering incumbent LECs to provide interfaces for access equal to that the incumbent provides itself. We recognize the lead taken by these states and others, and we generally rely upon their conclusions in this Order.

352. We conclude that providing nondiscriminatory access to operations support systems functions is technically feasible. Incumbent LECs today provide IXCs with different types of electronic ordering or trouble interfaces that demonstrate the feasibility of such access, and perhaps also provide a basis for adapting such interfaces for use between local service providers. Further, as discussed above, several incumbent LECs, including NYNEX and Bell Atlantic, are already testing and operating interfaces that support limited functions, and are developing the interfaces to support access to the remaining functions identified by most potential competitors. Some incumbent LECs acknowledge that nondiscriminatory access to operations support systems functions is technically feasible. Finally, several industry groups are actively establishing standards for inter-telecommunications company transactions.

353. Section 251(d)(2)(A) requires the Commission to consider whether "access to such network elements as are proprietary in nature is necessary." Incumbent LECs argue that there are proprietary interfaces used to access these databases and information. Parties seeking to compete with incumbent LECs counter that access to such databases and information is vitally important to the ability to broadly compete with the incumbent. As discussed above, competitors also argue that such access is necessary to order, provision, and maintain unbundled network elements and resold services, and to market competing services effectively to an incumbent LEC's customers. We find that it is absolutely necessary for competitive carriers to have access to operations support systems functions in order to successfully enter the local service market.

354. Section 251(d)(2)(B) requires the Commission to consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." As mentioned above, parties identified access to operations support systems functions as critical to the provision of local service. We find that such operations support systems functions are essential to the ability of competitors to provide services in a fully competitive local service market. Therefore, we conclude that competitors' ability to provide service successfully would be significantly impaired if they did not have access to incumbent LECs' operations support systems functions.

355. We thus conclude that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself. We adopt the definition of these terms as set forth in the *AT&T-Bell Atlantic Joint Ex Parte* as the minimum necessary for our requirements. We note, however, that individual incumbent LEC's operations support systems may not clearly mirror these definitions. Nevertheless, incumbent LECs must provide nondiscriminatory access to the full range of functions within pre-ordering, ordering, provisioning, maintenance and repair and billing enjoyed by the incumbent LEC. Such nondiscriminatory access necessarily includes access to the functionality of

any internal gateway systems the incumbent employs in performing the above functions for its own customers. For example, to the extent that customer service representatives of the incumbent have access to available telephone numbers or service interval information during customer contacts, the incumbent must provide the same access to competing providers. Obviously, an incumbent that provisions network resources electronically does not discharge its obligation under section 251(c)(3) by offering competing providers access that involves human intervention, such as facsimile-based ordering.

356. We recognize that, although technically feasible, providing nondiscriminatory access to operations support systems functions may require some modifications to existing systems necessary to accommodate such access by competing providers. Although, as discussed above, many incumbent LECs are actively developing these systems, even the largest and most advanced incumbent LECs have not completed interfaces that provide such access to all of their support systems functions. State commissions such as Georgia, Illinois, and Indiana, however, have ordered that such access be made available to requesting carriers in the near term. As a practical matter, the interfaces developed by incumbents to accommodate nondiscriminatory access will likely provide such access for services and elements beyond a particular state's boundaries, and thus we believe that requirements for such access by a small number of states representing a cross-section of the country will quickly lead to incumbents providing access in all regions.

357. In all cases, however, we conclude that in order to comply fully with section 251(c)(3) an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resold services under section 251(c)(4). Incumbent LECs that currently do not comply with this requirement of section 251(c)(3) must do so as expeditiously as possible, but in any event no later than January 1, 1997. We believe that the record demonstrates that incumbent LECs and several national standards-setting organizations have made significant progress in developing such access. This progress is also reflected in a number of states requiring competitor access to these transactional functions in the near term. Thus, we believe that it is reasonable to expect that by January 1, 1997, new entrants will be able to compete for end user customers by obtaining nondiscriminatory access to operations support systems functions.

358. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, RTC urges us to recognize the differences between carriers in regards to computerized network administration and operational interfaces. Our requirement of nondiscriminatory access to operations support systems recognizes that different incumbent LECs possess different existing systems. We also note, however, that section 251(f) of the 1996 Act provides relief for certain small LECs from our regulations implementing section 251.

359. Ideally, each incumbent LEC would provide access to support systems through a nationally standardized gateway. Such national standards would eliminate the need for new entrants to develop multiple interface systems, one for each incumbent. We believe that the progress made by standards-setting organizations to date evidences a strong national movement toward such a uniform standard. For example, both AT&T and Bell Atlantic agree that, given appropriate guidance from the Commission, the industry can achieve consensus on national standards such that within 12 months 95% of all inter-telecommunications company transactions may be processed via nationally standardized electronic gateways.

360. In order to ensure continued progress in establishing national standards, we propose to monitor closely the progress of industry organizations as they implement the rules adopted in this proceeding. Depending upon the progress made, we will make a determination in the near future as to whether our obligations under the 1996 Act require us to issue a separate notice of proposed rulemaking or take other action to guide industry efforts at arriving at appropriate national standards for access to operations support systems.

6. Other Network Elements

a. Background

361. In the NPRM, we requested comment on other network elements the Commission should require incumbent LECs to unbundle. We tentatively concluded that "subscriber numbers" and "operator call completion services" should be unbundled. We also, under our discussion of section 251(b)(3), sought comment on nondiscriminatory access to telephone numbers, operator services, and directory assistance.

b. Discussion

(1) Operator Services and Directory Assistance

362. We conclude that incumbent LECs are under the same duty to permit competing carriers nondiscriminatory access to operator services and directory assistance as all LECs are under section 251(b)(3). We further conclude that, if a carrier requests an incumbent LEC to unbundle the facilities and functionalities providing operator services and directory assistance as separate network elements, the incumbent LEC must provide the competing provider with nondiscriminatory access to such facilities and functionalities at any technically feasible point. We believe that these facilities and functionalities are important to facilitate competition in the local exchange market. Further, the 1996 Act imposes upon BOCs, as a condition of entry into in-region interLATA services the duty to provide nondiscriminatory access to directory assistance services and operator call completion services. We therefore conclude that unbundling facilities and functionalities providing operator services and directory assistance is consistent with the intent of Congress.

363. As discussed in our section on nondiscriminatory access under section 251(b)(3), the provision of nondiscriminatory access to operator services and directory assistance must conform to the requirements of section 222, which restricts carrier's use of CPNI. In particular, access to directory assistance and underlying directory information does not require incumbent LECs to provide access to unlisted or unpublished telephone numbers, or other information that the incumbent LEC's customer has requested the LEC not to make available. In conforming to section 222, we anticipate that incumbent LECs will provide such access in a manner that will protect against the inadvertent release of unlisted customer names and numbers.

364. We note that several competitors advocate unbundling the facilities and functionalities providing operator services and directory assistance from particular resold services or the unbundled local switching element, so that a competing provider can provide these services to its customers supported by its own systems rather than those of the incumbent LEC. Some incumbent LECs argue that such unbundling, however, is not technically feasible because of their inability to

route individual end user calls to multiple systems. We find that unbundling both the facilities and functionalities providing operator services and directory assistance as separate network elements will be beneficial to competition and will aid the ability of competing providers to differentiate their service from the incumbent LECs. We also note that the Illinois Commission has recently ordered such access. We therefore find that incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible. As discussed above in our section on unbundled switching, we require incumbent LECs, to the extent technically feasible, to provide customized routing, which would include such routing to a competitor's operator services or directory assistance platform.

365. We also note that some competitors seek access to operator services and directory assistance in order to serve their own customers. Some of these parties argue that nondiscriminatory access to such network elements requires incumbent LECs to provide rebranded operator call completion services and directory assistance to the competing carrier's customers. Incumbent LECs argue that the provision of these services on an unbranded or rebranded basis is not technically feasible because of their inability at the operator services or directory assistance platforms to identify the carrier serving the end user. As we concluded in our discussion on section 251(b)(3), we find that incumbent LECs must permit nondiscriminatory access to both operator services and directory assistance in the same manner required of all LECs. We make no finding on the technical feasibility of providing branded or unbranded service to competitors based on the record before us. We note, however, that the Illinois Commission has ordered incumbent LECs to provide rebranded operator call completion services and directory assistance to requesting competitive carriers.

366. As discussed above, incumbent LECs must provide access to databases as unbundled network elements. We find that the databases used in the provision of both operator call completion services and directory assistance must be unbundled by incumbent LECs upon a request for access by a competing provider. In particular, the directory assistance database must be unbundled for access by requesting carriers. Such access must include both entry of the requesting carrier's customer information into the database, and the ability to read such a database, so as to enable requesting carriers to provide operator services and directory assistance concerning incumbent LEC customer information. We clarify, however, that the entry of a competitor's customer information into an incumbent LEC's directory assistance database can be mediated by the incumbent LEC to prevent unauthorized use of the database. We find that the arrangement ordered by the California Commission concerning the shared use of such a database by Pacific Bell and GTE is one possible method of providing such access.

367. Section 251(d)(2)(A) requires the Commission to consider whether "access to such network elements as are proprietary in nature is necessary." Parties generally did not identify proprietary concerns with unbundling access to operator call completion services or directory assistance. Incumbent LECs generally did not claim a proprietary interest in their directory assistance databases. Many parties contend that proprietary interests leading to restrictions on use or sharing of such database information would injure their ability to compete effectively for local service. For the reasons described below, we find that access to the systems supporting both operator call completion services and directory assistance is necessary for new entrants to provide competing local exchange service.

368. Section 251(d)(2)(B) requires the Commission to consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." Parties identified access to operator call completion services and directory assistance as critical to the provision of local service. Therefore we conclude that competitors' ability to provide service would be significantly impaired if they did not have access to incumbent LEC's operator call completion services and directory assistance.

(2) Subscriber Numbers

369. Some commenters argue that the Commission should require incumbent LECs to unbundle access to subscriber numbers. We conclude that no Commission action under section 251(b)(3) is required at this time to ensure nondiscriminatory access to subscriber numbers. Issues regarding access to subscriber numbers will be addressed by our implementation of section 251(e).

VI. Methods of Obtaining Interconnection and Access to Unbundled Elements

370. In this section, we address the means of achieving interconnection and access to unbundled network elements that incumbent LECs are required to make available to requesting carriers.

A. Overview

1. Background

371. Section 251(c)(2) requires incumbent LECs to provide interconnection with the LEC's network "for the facilities and equipment of any requesting telecommunications carrier." Section 251(c)(6) imposes upon incumbent LECs "the duty to provide * * * for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the [LEC], except that the carrier may provide for virtual collocation if the [LEC] demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations." In the NPRM, we noted that section 251(c)(6) does not expressly limit the Commission's authority under section 251(c)(2) to establish rules requiring incumbent LECs to make available a variety of methods of interconnection, except in situations where the incumbent can demonstrate to the State commission that physical collocation is not practical for technical reasons or space limitations. We tentatively concluded that the Commission has the authority to require any reasonable method of interconnection, including physical collocation, virtual collocation, and meet point interconnection arrangements. Under the Commission's *Expanded Interconnection* rules, LECs are not required to offer a collocating carrier a choice between physical and virtual collocation. *Special Access Order*, 57 FR 54323 (November 18, 1992); *Switched Transport Order*, 58 FR 48756 (September 17, 1993); *see also Physical Collocation Designation Order*, 8 FCC Rcd 4589 (under our *Expanded Interconnection* rules, LECs must provide virtual collocation where: virtual collocation is available on an intrastate basis; a LEC has negotiated an interstate virtual collocation arrangement; LECs are exempted from providing physical collocation because of space constraints; or a state commission has granted a waiver). Also, *see* Section VI.B.1.b. regarding the

definitions of physical and virtual collocation.

2. Discussion

372. We conclude that, under sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled elements.

373. Physical and virtual collocation are the only methods of interconnection or access specifically addressed in section 251. Under section 251(c)(6), incumbent LECs are under a duty to provide physical collocation of equipment necessary for interconnection unless the LEC can demonstrate that physical collocation is not practical for technical reasons or because of space limitations. In that event, the incumbent LEC is still obligated to provide virtual collocation of interconnection equipment. Under section 251, the only limitation on an incumbent LEC's duty to provide interconnection or access to unbundled elements at any technically feasible point is addressed in section 251(c)(6) regarding physical collocation. Unless a LEC can establish that the specific technical or space limitations in subsection (c)(6) are met with respect to physical collocation, we conclude that incumbent LECs must provide for any technically feasible method of interconnection or access requested by a competing carrier, including physical collocation. If, for example, we interpreted section 251(c)(6) to limit the means of interconnection available to requesting carriers to physical and virtual collocation, the requirement in section 251(c)(2) that interconnection be made available "at any technically feasible point" would be narrowed dramatically to mean that interconnection was required only at points where it was technically feasible to collocate equipment. We are not pursuaded that Congress intended to limit interconnection points to locations only where collocation is possible.

374. Section 251(c)(6) provides the Commission with explicit authority to mandate physical collocation as a method of providing interconnection or access to unbundled elements. Such authority was previously found lacking by the U.S. Court of Appeals for the D.C. Circuit in *Bell Atlantic* v. *FCC, (Bell Atlantic Telephone Companies* v. *FCC,* 24 F.3d 1441 (D.C. Cir. 1994) (Bell Atlantic v. FCC)), which was decided prior to enactment of the 1996 Act. While section 251(c)(6) limits an incumbent LEC's duty to provide physical collocation in certain circumstances, we find that it does not limit our authority to require, under sections 251 (c)(2) and (c)(3), the provision of virtual collocation. We note that under our *Expanded Interconnection* rules, that were amended subsequent to the Bell Atlantic decision, competitive entrants using physical collocation were required by many incumbent LECs to convert to virtual collocation. If the Commission concluded that subsection (c)(6) places a limitation on our authority to require virtual collocation, competitive providers would be required to undertake costly and burdensome actions to convert back to physical collocation even if they were satisfied with existing virtual collocation arrangements. We conclude that Congress did not intend to impose such a burden on requesting carriers that wish to continue to use virtual collocation for purposes of section 251(c). Further, the record indicates that this requirement would be costly and would delay competition. In short, we conclude that, in enacting section 251(c)(6), Congress intended to expand the interconnection choices available to requesting carriers, not to restrict them.

375. We also conclude that requiring incumbent LECs to provide virtual collocation and other technically feasible methods of interconnection or access to unbundled elements is consistent with Congress' desire to facilitate entry into the local telephone market by competitive carriers. In certain circumstances, competitive carriers may find, for example, that virtual collocation is less costly or more efficient than physical collocation. We believe that this may be particularly true for small carriers which lack the financial resources to physically collocate equipment in a large number of incumbent LEC premises. Moreover, since requesting carriers will bear the costs of other methods of interconnection or access, this approach will not impose an undue burden on the incumbent LECs.

376. Consistent with this view, other methods of technically feasible interconnection or access to incumbent LEC networks, such as meet point arrangements, in addition to virtual and physical collocation, must be available to new entrants upon request. *See* Teleport comments at 26–30; *see also* Washington Utilities and Transportation Commission, *Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling;* Granting Complaints, in Part, (Washington Commission Oct. 31, 1995), Docket No. UT–941464, at 45; *Application of Electric Lightwave, Inc., MFS Intelnet of Oregon, Inc., and MCI Metro Access Transmission Services, Inc.,* Public Utility Commission of Oregon Order, Order No. 96–021, (Oregon Commission Jan. 12, 1996), at 68–69; *Rules for Telecommunications Interconnection and Unbundling,* Arizona Corporation Commission Order, Decision No. 59483, (Arizona Commission Jan. 11, 1996), Proposed Rule R14–2–1303 (Attachment E hereto). Meet point arrangements (or mid-span meets), for example, are commonly used between neighboring LECs for the mutual exchange of traffic, and thus, in general, we believe such arrangements are technically feasible. The Michigan Commission recently required Ameritech to provide meet point interconnection. Michigan Public Service Commission, Case No. U–10860 (Michigan June 5, 1996) at 18 n.4. Further, although the creation of meet point arrangements may require some build out of facilities by the incumbent LEC, we believe that such arrangements are within the scope of the obligations imposed by sections 251(c)(2) and 251(c)(3). In a meet point arrangement, the "point" of interconnection for purposes of sections 251(c)(2) and 251(c)(3) remains on "the local exchange carrier's network" (*e.g.,* main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection. In a meet point arrangement each party pays its portion of the costs to build out the facilities to the meet point. We believe that, although the Commission has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(c)(2) but not for unbundled access under section 251(c)(3). New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement. In an access arrangement pursuant to section 251(c)(3), however, the interconnection point will be a part of the new entrant's network and will be used to carry traffic from one element in the new entrant's network to another. We conclude that in a section 251(c)(3)

access situation, the new entrant should pay all of the economic costs of a meet point arrangement. Regarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.

377. Finally, in accordance with our interpretation of the term "technically feasible," we conclude that, if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures. Moreover, because the obligation of incumbent LECs to provide interconnection or access to unbundled elements by any technically feasible means arises from sections 251(c)(2) and 251(c)(3), we conclude that incumbent LECs bear the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any individual point.

B. Collocation

1. Collocation Standards

a. Adoption of National Standards

(1) Background

378. In the NPRM we tentatively concluded that we should adopt national rules for virtual and physical collocation. This tentative conclusion was based on the belief that national standards would help to speed the development of competition. We also sought comment on specific national standards that we might adopt, and on whether any specific state approaches would serve as an appropriate model.

(2) Discussion

379. We conclude that we should adopt explicit national rules to implement the collocation requirements of the 1996 Act. We find that specific rules defining minimum requirements for nondiscriminatory collocation arrangements will remove barriers to entry by potential competitors and speed the development of competition. Our experience in the *Expanded Interconnection* proceeding indicates that incumbent LECs have an economic incentive to interpret regulatory ambiguities to delay entry by new competitors. Our review of the LECs' initial physical and virtual collocation tariffs raised significant concerns regarding the implementation of our *Expanded Interconnection* requirements and resulted in the designation of numerous issues for investigation. The Commission has not yet reached decisions on most of these issues, though it has found that certain rates for virtual collocation were unlawful. We and the states should therefore adopt, to the extent possible, specific and detailed collocation rules. We find, however, that states should have flexibility to apply additional collocation requirements that are otherwise consistent with the 1996 Act and our implementing regulations.

b. Adoption of *Expanded Interconnection* Terms and Conditions for Physical and Virtual Collocation Under Section 251

(1) Background

380. In our *Expanded Interconnection* proceeding, we required LECs to offer expanded interconnection to all interested parties, which allowed competitors and end users to terminate their own special access and switched transport access transmission facilities at LEC central offices. *Expanded Interconnection with Local Telephone Company Facilities, First Report and Order*, 57 FR 54323 (November 18, 1992) (*Special Access Order*), *vacated in part and remanded, Bell Atlantic, 24 F.3d 1441 (1994); First R consideration*, 57 FR 62481 (December 31, 1992); *vacated in part and remanded, Bell Atlantic*, 24 F.3d 1441; *Second Reconsideration*, 58 FR 48752 (September 17, 1993); *Second Report and Order*, 58 FR 48756 (September 17, 1993) (*Switched Transport Order*), *vacated in part and remanded, Bell Atlantic Telephone Cos.*, v. *FCC*, 24 F.3d 1441; *Remand Order*, 9 FCC Rcd 5154 (1994) (*Virtual Collocation Order*), *remanded for consideration of 1996 Act, Pacific Bell, et al.* v. *FCC*, 81 F.3d 1147 (1996) (collectively referred to as *Expanded Interconnection*). Interstate access is a service traditionally provided by local telephone companies and enables IXCs and other customers to originate and terminate interstate telephone traffic. Special access is a form of interstate access that uses dedicated transmission lines between two points, without switching the traffic on those lines. Switched transport is another form of interstate access comprising the transmission of traffic between interexchange carriers' (or other customers') points of presence and local telephone companies' end offices, where the traffic is switched and routed to end users. We required Tier 1 LECs to offer physical collocation, with the interconnecting party paying the LEC for central office floor space. (Tier 1 LECs are local exchange carriers having $100 million or more in "total company annual regulated revenues." *Commission Requirements for Cost Support Material to be Filed with 1990 Annual Access Tariffs*, 5 FCC Rcd 1364, 1364 (Com. Car. Bur. 1990)). We required that LECs provide space to interested parties on a first-come first-served basis, and that they provide virtual collocation when space for physical collocation is exhausted. Under virtual collocation, interconnectors are allowed to designate central office transmission equipment dedicated to their use, as well as to monitor and control their circuits terminating in the LEC central office. Interconnectors, however, do not pay for the incumbent's floor space under virtual collocation arrangements and have no right to enter the LEC central office. Under our virtual collocation requirements, LECs must install, maintain, and repair interconnector-designated equipment under the same intervals and with the same or better failure rates for the performance of similar functions for comparable LEC equipment.

381. In the *Expanded Interconnection* proceeding, we required the LECs to file tariffs to implement our virtual and physical collocation requirements. Our initial review of the LECs' tariffs raised significant concerns regarding the LECs' provision of physical and virtual collocation. Consequently, the Bureau partially suspended the rates proposed by many of the LECs and allowed these rates to take effect subject to investigation and an accounting order.

382. In 1994, the U.S. Court of Appeals for the District of Columbia Circuit found that the FCC lacked the authority under section 201 of the 1934 Communications Act to require physical collocation and remanded all other issues to the Commission. *Bell Atlantic* v. *FCC*, 24 F.3d 1441. On remand, we adopted rules for both special access and switched transport that required LECs to provide either virtual or physical collocation, at the LECs' option. Those rules currently are in place, although the court of appeals remanded the *Remand Order* to us to consider the impact of the 1996 Act on those rules. *Pacific Bell et al.* v. *FCC*, 81 F.3d 1147 (D.C. Cir. 1996). As discussed below, we find that the 1996 Act does not supplant or otherwise alter our *Expanded Interconnection* rules for interstate interconnection services provided pursuant to section 201 of the Communications Act. In the 1996 Act, Congress specifically directed

incumbent LECs to provide physical collocation for interconnection and access to unbundled network elements, absent technical or space constraints, pursuant to section 251(c)(6) of the Communications Act.

383. We sought comment in the NPRM on whether, for purposes of implementing physical and virtual collocation under section 251, we should readopt the standards set out in our *Expanded Interconnection* proceeding and, if so, how to adapt those standards to reflect the new statutory requirements and other policy considerations of the 1996 Act.

(2) Discussion

384. We conclude that we should adopt the existing *Expanded Interconnection* requirements, with some modifications, as the rules applicable for collocation under section 251. Those rules were established on the basis of an extensive record in the *Expanded Interconnection* proceeding, and are largely consistent with the requirements of section 251(c)(6). Adoption of those requirements for purposes of collocation under section 251, moreover, has substantial support in the record of this proceeding. Thus, the standards established for physical and virtual collocation in our *Expanded Interconnection* proceeding will generally apply to collocation under section 251. The most significant requirements of *Expanded Interconnection* are specifically set out in rules we adopt here. We address pricing and rate structure issues separately, in section VII below.

385. We find, however, that certain modifications to our *Expanded Interconnection* requirements are necessary to account for specific provisions of section 251(c)(6) and service arrangements that differ from those contemplated in our *Expanded Interconnection* orders. For example, the *Expanded Interconnection* requirements apply to Tier 1 LECs that are not NECA pool members, and section 251 applies to "incumbent LECs," though there is an exemption for certain rural carriers. *Expanded Interconnection* also allows end-users to interconnect their equipment, while section 251 requires that interconnection and access to unbundled network elements be provided to "any requesting telecommunications carrier." Accordingly, we set forth below several modifications to the terms and conditions for collocation as they are described in our *Expanded Interconnection* orders for application in implementing section 251. We believe that, in light of the expedited statutory time frame for this rulemaking and limited record addressing the specific terms and conditions for collocation under section 251 in this proceeding, it would be impractical and imprudent to develop a large number of new substantive collocation requirements in this order. We may consider the need for additional or different requirements in a subsequent proceeding, if we determine that such action is warranted.

386. The most significant difference between the *Expanded Interconnection* rules and the collocation rules we adopt to implement the 1996 Act concerns the collocation tariffing requirement. As discussed below, the 1996 Act does not require that collocation be federally tariffed. We thus do not adopt, under section 251, the *Expanded Interconnection* tariffing requirements originally adopted under section 201 for physical and virtual collocation. The existing tariffing requirements of *Expanded Interconnection* for interstate special access and switched transport will continue to apply for use by customers that wish to subscribe to those interstate services.

387. We reject SBC's contention that we may not adopt any terms and conditions in this proceeding that differ from those in the *Expanded Interconnection* proceeding. SBC argues that Congress intended, in section 251(c)(6), to use the term "physical collocation" as a term of art, and thereby to adopt wholesale the terms and conditions for physical collocation that the Commission adopted in the *Expanded Interconnection* proceeding. A variety of terms and conditions for physical collocation are possible and section 251(c)(6) makes no reference to the Commission's decisions on these issues in the *Expanded Interconnection* proceeding. If Congress had intended to readopt those rules wholesale without permitting the Commission any flexibility in the matter, we believe that Congress would have been more explicit rather than merely using the phrase "physical collocation." Thus, we believe that we can and should modify our preexisting standards, as set forth below, for purposes of implementing the provisions of section 251(c)(6). In the following sections (c.–i.) we address comments filed by interested parties concerning application of our existing *Expanded Interconnection* requirements for purposes of collocation under section 251. (In a number of instances, we decline to adopt proposals for modifications to our *Expanded Interconnection* requirements.)

388. Finally, our experience reviewing the tariffs that incumbent LECs filed to implement our requirements for physical and virtual collocation suggests that rates, terms, and conditions under which incumbent LECs propose to provide these arrangements pursuant to section 251(c)(6) bear close scrutiny. We strongly urge state commissions to be vigilant in their review of such arrangements. Some areas our investigations have found problematic in the past include channel assignment, letters of agency, charges for repeaters, and placement of point-of-termination bays. We will review this issue and revise our requirements as necessary.

c. The Meaning of the Term "Premises"

(1) Background

389. In the *Expanded Interconnection* proceeding, we required collocation at end offices, serving wire centers, and tandem switches, as well as at remote distribution nodes and any other points that the LEC treats as a "rating point." A rating point is a point used in calculating the length of interoffice special access links. Section 251(c)(6) requires physical collocation "at the premises of the local exchange carrier." In the NPRM, we tentatively concluded that the term "premises" includes, in addition to LEC central offices and tandem offices, all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities. We sought comment on whether structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures, should be deemed to be LEC "premises."

(2) Discussion

390. The 1996 Act does not address the definition of premises, nor is the term discussed in the legislative history. Therefore, we look to the purposes of the 1996 Act and general uses of the term "premises" in other contexts in order to define this term for purposes of section 251(c)(6). The term "premises" is defined in varying ways, according to the context in which it is used. In light of the 1996 Act's procompetitive purposes, we find that a broad definition of the term "premises" is appropriate in order to permit new entrants to collocate at a broad range of points under the incumbent LEC's control. A broad definition will allow collocation at points other than those specified for collocation under the existing *Expanded Interconnection* requirements. We find that this result is

appropriate because the purposes of physical and virtual collocation under section 251 are broader than those established in the *Expanded Interconnection* proceeding. We therefore interpret the term "premises" broadly to include LEC central offices, serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities. We also treat as incumbent LEC premises any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures.

391. As discussed below, we conclude that section 251(c)(6) requires collocation only where technically feasible. In light of this conclusion, we find that adoption of a definition of "premises" that depends on whether interconnection or access to unbundled network elements at a particular point is "technically feasible," as suggested by Ameritech and Pacific Telesis, would be superfluous. We also conclude that it is not appropriate to adopt a definition of "premises," as suggested by several parties, that is dependent on whether it is "practical" to collocate equipment at a particular point. We note however, that neither physical nor virtual collocation is required at points where not technically feasible. We therefore decline to adopt specific requirements regarding collocation at particular points in the LEC network, as suggested by GVNW and others. Because collocation is only required where technically feasible, the approach we here adopt will enable competitors to take advantage of opportunities to collocate equipment without imposing undue burdens on incumbent LECs, whether large or small.

392. We also address the impact on small incumbent LECs. For example, the Rural Tel. Coalition asks that interconnection and collocation points be established in a flexible manner. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, we do not adopt rigid requirements for locations where collocation must be provided. Incumbent LECs are not required to physically collocate equipment in locations where not practical for technical reasons or because of space limitations, and virtual collocation is required only where technically feasible. We also note, however, that section 251(f) of the 1996 Act provides relief to certain small LECs from our regulations implementing section 251.

d. Collocation Equipment

(1) Background

393. In the *Expanded Interconnection* proceeding, we allowed collocation for central office equipment needed to terminate basic transmission facilities between LEC central offices and third-party premises. Acceptable equipment included optical terminating equipment and multiplexers. We did not require the LECs to permit collocation of enhanced services equipment or customer premises equipment because such equipment was not necessary to foster competition in the provision of basic transmission services. We also did not require LECs to allow the collocation of switches. Section 251(c)(6) requires incumbent LECs to allow collocation of "equipment necessary for interconnection or access to unbundled elements. * * *" We sought comment in the NPRM on what types of equipment competitors should be permitted to collocate on LEC premises.

(2) Discussion

394. We believe that section 251(c)(6) generally requires that incumbent LECs permit the collocation of equipment used for interconnection or access to unbundled network elements. Although the term "necessary," read most strictly, could be interpreted to mean "indispensable," we conclude that for the purposes of section 251(c)(6) "necessary" does not mean "indispensable" but rather "used" or "useful." This interpretation is most likely to promote fair competition consistent with the purposes of the Act. (We note that this view is consistent with the findings of the Colorado Commission.) Colorado Public Utilities Commission, *Proposed Rules Regarding Implementation of §§ 40–15–101 et seq., Requirements Relating to Interconnection and Unbundling,* Docket No. 95R–556T, (Colorado Commission, March 29, 1996) at 19–20. Thus, we read section 251(c)(6) to refer to equipment used for the purpose of interconnection or access to unbundled network elements. *Cf. National Railroad Passenger Corporation* v. *Boston and Maine Corp.*, 503 U.S. 407, 417 (1992) (upholding the ICC's interpretation of the word "required" as "useful or appropriate," rather than "indispensable"); *McCulloch* v. *Maryland*, 4 Wheat. 316, 413 (1819) (Chief Justice Marshall read the word "necessary" to mean "convenient, or useful," rejecting a stricter reading of the term). Even if the collocator could use other equipment to perform a similar function, the specified equipment may still be "necessary" for interconnection or access to unbundled network elements under section 251(c)(6). We can easily imagine circumstances, for instance, in which alternative equipment would perform the same function, but with less efficiency or at greater cost. A strict reading of the term "necessary" in these circumstances could allow LECs to avoid collocating the equipment of the interconnectors' choosing, thus undermining the procompetitive purposes of the 1996 Act.

395. Consistent with this interpretation, we conclude that transmission equipment, such as optical terminating equipment and multiplexers, may be collocated on LEC premises. We also conclude that LECs should continue to permit collocation of any type of equipment currently being collocated to terminate basic transmission facilities under the *Expanded Interconnection* requirements. In addition, whenever a telecommunications carrier seeks to collocate equipment for purposes within the scope of section 251(c)(6), the incumbent LEC shall prove to the State commission that such equipment is not "necessary," as we have defined that term, for interconnection or access to unbundled network elements. State commissions may designate specific additional types of equipment that may be collocated pursuant to section 251(c)(6).

396. We do not find, however, that section 251(c)(6) requires collocation of equipment used to provide enhanced services, contrary to the arguments of the Association of Telemessaging Services International. We also decline to require incumbent LECs to allow collocation of any equipment without restriction. Section 251(c)(6) requires collocation only of equipment "necessary for interconnection or access to unbundled elements." Section 251(c)(2) requires incumbent LECs to provide "interconnection" for the "transmission and routing of telephone exchange service and exchange access," and section 251(c)(3) requires incumbent LECs to provide access to unbundled network elements "for the provision of a telecommunications service." Section 251(c)(6) therefore requires incumbent LECs to provide physical or virtual collocation only for equipment "necessary" or used for those purposes. We find that section 251(c)(6) does not require collocation of equipment necessary to provide enhanced services. We declined to require collocation of enhanced services equipment in our *Computer III* and *ONA* proceedings. *See Third Computer*

Inquiry, Report and Order, 51 FR 24350 (July 3, 1986); *Computer III Remand*, 57 FR 4373 (February 5, 1992). Enhanced services are defined as services that "employ computer processing applications which act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 CFR § 64.702. This definition appears not to include the provision of "telecommunications services." *See* 47 U.S.C. § 153(43), (46). At this time, we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements. We recognize, however, that modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is in dispute, that state commissions will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements. We also reserve the right to reexamine this issue at a later date if it appears that such action would further achievement of the 1996 Act's procompetitive goals. Finally, because we lack an adequate record on the issue, we decline to adopt AT&T's proposal that we require that incumbent LECs allow collocated equipment to be used for "hubbing." AT&T advocates requiring LECs to allow new entrants to "connect additional equipment of their own to their collocated equipment in the collocated space."

397. In response to WinStar's suggestion that we require collocation of microwave transmission facilities, we note that collocation of microwave transmission equipment was required where reasonably feasible by the *Special Access Order*. We also require the collocation of microwave equipment under section 251, although we modify the *Expanded Interconnection* standard we adopt under section 251 for when such collocation is required slightly to conform to the standard for the provision of physical collocation in section 251(c)(6). We therefore require that incumbent LECs allow competitors to use physical collocation for microwave transmission facilities except where this is not practical for technical reasons or because of space limitations, in which case virtual collocation is required where technically feasible.

e. Allocation of Space

(1) Background

398. In the *Expanded Interconnection* proceeding, we required LECs to allocate space for physical collocation on a first-come, first-served basis. We also required LECs to take into account interconnector demand for collocation space when reconfiguring space or building new central offices, and we found that imposing reasonable restrictions on warehousing of space by collocating carriers was appropriate. The NPRM sought comment on whether national guidelines would deter anticompetitive behavior through the manipulation or unreasonable allocation of space by either incumbent LECs or new entrants.

(2) Discussion

399. We believe that incumbent LECs have the incentive and capability to impede competitive entry by minimizing the amount of space that is available for collocation by competitors. Accordingly, we adopt our *Expanded Interconnection* space allocation rules for purposes of section 251, except as indicated herein. LECs will thus be required to make space available to requesting carriers on a first-come, first-served basis. We also conclude that collocators seeking to expand their collocated space should be allowed to use contiguous space where available. We further conclude that LECs should not be required to lease or construct additional space to provide physical collocation to interconnectors when existing space has been exhausted. We find such a requirement unnecessary because section 251(c)(6) allows incumbent LECs to provide virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. Consistent with the requirements and findings of the *Expanded Interconnection* proceeding, we conclude that incumbent LECs should be required to take collocator demand into account when renovating existing facilities and constructing or leasing new facilities, just as they consider demand for other services when undertaking such projects. We find that this requirement is necessary in order to ensure that sufficient collocation space will be available in the future. We decline, however, to adopt a general rule requiring LECs to file reports on the status and planned increase and use of space. State commissions will determine whether sufficient space is available for physical collocation, and we conclude that they have authority under the 1996 Act to require incumbent LECs to file such reports. We expect individual state commissions to determine whether the filing of such reports is warranted.

400. We also agree with Pacific Telesis that restrictions on warehousing of space by interconnectors are appropriate. Because collocation space on incumbent LEC premises may be limited, inefficient use of space by one competitive entrant could deprive another entrant of the opportunity to collocate facilities or expand existing space. In the *Expanded Interconnection* proceeding, we allowed "reasonable restrictions on warehousing of space," and will adopt this provision for purposes of section 251. As discussed below, we also adopt measures to ensure that incumbent LECs themselves do not unreasonably "warehouse" space, although we do permit them to reserve a limited amount of space for specific future uses. Incumbent LECs, however, are not permitted to set maximum space limitations without demonstrating that space constraints make such restrictions necessary, as such maximum limits could constrain a collocator's ability to provide service efficiently.

401. We also address the impact on small incumbent LECs. For example, GVNW argues that we should require collocation in rural areas only where there is space available. We have considered the impact of our rules in this section on small incumbent LECs and do not require physical collocation at any point where there is insufficient space available. We decline, however, to adopt rules regarding space availability that apply differently to small, rural carriers because the rules we here adopt are sufficiently flexible. We also note, however, that section 251(f) of the 1996 Act provides relief to certain small LECs from our regulations implementing section 251.

f. Leasing Transport Facilities

(1) Background

402. Our *Expanded Interconnection* rules require LECs to provide collocation for the purpose of allowing collocators to terminate their own transmission facilities for special access or switched transport service. We did not require that collocation be made available for other purposes, for example, when the interconnecting party wished only to connect incumbent LEC transmission facilities to collocated equipment. We sought comment in the NPRM on whether we should modify

the standards of the *Expanded Interconnection* proceeding in light of the new statutory requirements and disputes that have arisen in the investigations regarding the incumbent LECs' physical and virtual collocation tariffs.

(2) Discussion

403. Although in *Expanded Interconnection* the Commission required that interested parties interconnect collocated equipment with their own transmission facilities, we conclude that it would be inconsistent with the provisions of the 1996 Act to adopt that requirement under section 251. Rather, we conclude that a competitive entrant should not be required to bring transmission facilities to LEC premises in which it seeks to collocate facilities. Entrants should instead be permitted to collocate and connect equipment to unbundled network transmission elements obtained from the incumbent LEC. The purpose of the *Expanded Interconnection* requirement was to foster competition in the market for interstate switched and special access transmission facilities. The purposes of section 251 are broader. Section 251(c)(3) requires that competitive entrants be given access to unbundled elements and that they be permitted to combine such elements. Prohibiting competitors from connecting unbundled network elements to their collocated equipment would appear contrary to the provisions of section 251(c)(3).

404. Finally, we find that Bell Atlantic's opposition to this requirement is without merit. Bell Atlantic argues that collocators should be required to provide their own transmission facilities because otherwise new entrants could compete without providing any of their own facilities. Section 251(c)(3) specifically states that unbundled elements are to be provided in a manner that allows requesting carriers to combine elements in order to provide telecommunications service. As stated above, requiring collocators to supply their own transmission facilities would amount to a prohibition on connecting unbundled transmission facilities to other unbundled elements connected to equipment in the collocation space. Although such interconnection arrangements were not required by our *Expanded Interconnection* requirements, we conclude that they are required by section 251 when collocated equipment is used to achieve interconnection or access to unbundled network elements.

g. Co-Carrier Cross-Connect

(1) Background

405. In the most common collocation configuration under existing requirements, the designated physical collocation space of several competitive entrants is located close together within the LEC premises. Since carriers connect to the collocation space via high-capacity lines, different competitive entrants seeking to interconnect with each other may find connecting between their respective collocation spaces on the LEC premises the most efficient means of interconnecting with each other. We sought comment in the NPRM on whether we should adopt any requirements in addition to those adopted in the *Expanded Interconnection* proceeding in order to fulfill the mandate of the 1996 Act.

(2) Discussion

406. We believe that it serves the public interest and is consistent with the policy goals of section 251 to require that incumbents permit two or more collocators to interconnect their networks at the incumbent's premises. Parties opposed to this proposal have offered no legitimate objection to such interconnection. Allowing incumbent LECs to prohibit collocating carriers from interconnecting their collocated equipment would require them to interconnect collocated facilities by routing transmission facilities outside of the LECs' premises. We find that such a policy would needlessly burden collocating carriers. To the extent equipment is collocated for the purposes expressly permitted under section 251(c)(6), the statute does not bar us from requiring that incumbent LECs allow connection of such equipment to other collocating carriers located nearby. We find that requiring LECs to allow such interconnection of collocated equipment will foster competition by promoting efficient operation. It is also unlikely to have a significant effect on space availability. We find authority for such a requirement in section 251(c)(6), which requires that collocation be provided on "terms and conditions that are just, reasonable, and nondiscriminatory" and in section 4(i), which permits the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." We therefore will require that incumbent LECs allow collocating telecommunications carriers to connect collocated equipment to such equipment of other carriers within the same LEC premises so long as the collocated equipment is used for interconnection with the incumbent LEC or access to the LEC's unbundled network elements.

407. We clarify that we here require incumbent LECs to provide the connection between the equipment in the collocated spaces of two or more collocating telecommunications carriers unless they permit the collocating parties to provide this connection for themselves. We do not require incumbent LECs to allow placement of connecting transmission facilities owned by competitors within the incumbent LEC premises anywhere outside of the actual physical collocation space.

h. Security Arrangements

(1) Background

408. Under our *Expanded Interconnection* requirements, incumbent LECs typically require that physically collocated equipment be placed inside a collocation cage within the incumbent LEC facility. Such cages are intended to separate physically the competitors' facilities from those of the incumbent and to prevent access by unauthorized personnel to any parties' equipment. Such cages frequently add considerably to the cost of establishing physical collocation at a particular LEC premises and could constitute a barrier to entry in certain circumstances.

(2) Discussion

409. Based on the comments in this proceeding and our previous experience with physical collocation in the *Expanded Interconnection* docket, we will continue to permit LECs to require reasonable security arrangements to separate an entrant's collocation space from the incumbent LEC's facilities. The physical security arrangements around the collocation space protect both the LEC's and competitor's equipment from interference by unauthorized parties. We reject the suggestion of ALTS and MCI that security measures be provided only at the request of the entrant since LECs have legitimate security concerns about having competitors' personnel on their premises as well. We conclude that the physical separation provided by the collocation cage adequately addresses these concerns. At the same time, we recognize that the construction costs of physical security arrangements could serve as a significant barrier to entry, particularly for smaller competitors. We also conclude that LECs have both an incentive and the capability to impose higher construction costs than the new

entrant might need to incur. We therefore conclude that collocating parties should have the right to subcontract the construction of the physical collocation arrangements with contractors approved by the incumbent LEC. Incumbent LECs shall not unreasonably withhold such approval of contractors. Approval by incumbent LECs of such contractors should be based on the same criteria as such LECs use for approving contractors for their own purposes. We decline, however, to require that competitive entrants' personnel be subject to minimum training and proficiency requirements as suggested by GVNW. We find that such concerns are better resolved through negotiation and arbitration.

i. Allowing Virtual Collocation in Lieu of Physical

(1) Background

410. Section 251(c)(6) requires that incumbent LECs provide physical collocation unless the carrier "demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations * * *." In the NPRM, we sought comment on whether the Commission should establish guidelines for states to apply when determining whether physical collocation is not practical for "technical reasons or because of space limitations."

(2) Discussion

411. Section 251(c)(6) clearly contemplates the provision of virtual collocation when physical collocation is not practical for technical reasons or because of space limitations. Section 251(c)(6) requires the incumbent LEC to demonstrate to the state commission's satisfaction that there are space limitations on the LEC premises or that technical considerations make collocation impractical. Because the space limitations and technical practicality issues will vary considerably depending on the location at which competitor equipment is to be collocated, we find that these issues are best handled on a case-by-case basis, as they were under our *Expanded Interconnection* requirements. In light of our experience in the *Expanded Interconnection* proceeding, we require that incumbent LECs provide the state commission with detailed floor plans or diagrams of any premises where the incumbent alleges that there are space constraints. Submission of floor plans will enable state commissions to evaluate whether a refusal to allow physical collocation on the grounds of space constraints is justified. We also find that the approach detailed by AT&T in its July 12 *Ex Parte* submission to be useful and believe that state commissions may find it a valuable guide. AT&T describes a detailed proposed showing that would be required of an incumbent LEC that claims physical collocation is not practical because of space exhaustion. The proposed showing would require the specific identification of the space on incumbent LEC premises that is used for various purposes, as well as specific plans for rearrangement/expansion and identification of steps taken to avoid exhaustion.

412. Although section 251(c)(6) provides that incumbent LECs are not required to provide physical collocation where impractical for technical reasons or because of space limitations, our experience in the *Expanded Interconnection* proceeding has not demonstrated that technical reasons, apart from those related to space availability, are a significant impediment to physical collocation. We therefore decline to adopt any rules for determining when physical collocation should be deemed impractical for technical reasons.

413. Incumbent LECs are allowed to retain a limited amount of floor space for defined future uses. Allowing competitive entrants to claim space that incumbent LECs had specifically planned to use could prevent incumbent LECs from serving their customers effectively. Incumbent LECs may not, however, reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to hold collocation space for their own future use.

414. We decline to adopt AT&T's suggestion that incumbent LECs should be required to lease additional space or provide trunking at no cost where they have insufficient space for physical collocation. In light of the availability of substitute virtual collocation arrangements, we find that requiring the type of "substitute" for physical collocation as advocated by AT&T is unnecessary. We similarly reject Time Warner's suggestion that incumbent LECs supply a "substitute" for physical collocation at cost, except to the extent we require virtual collocation. On the other hand, we will require incumbent LECs with limited space availability to take into account the demands of interconnectors when planning renovations and leasing or constructing new premises, as we have in the *Expanded Interconnection* proceeding.

415. Incumbent LECs are not required to provide collocation at locations where it is not technically feasible to provide virtual collocation. Although space constraints are a concern normally associated with physical collocation, given our broad reading of the term "premises," we find that space constraints could preclude virtual collocation at certain LEC premises as well. State commissions will decide whether virtual collocation is technically feasible at a given point. We do, however, require that incumbent LECs relinquish any space held for future use before denying virtual collocation due to a lack of space unless the incumbent can prove to a state commission that virtual collocation at that point is not technically feasible. Moreover, when virtual collocation is not feasible, we require that incumbent LECs provide other forms of interconnection and access to unbundled network elements to the extent technically feasible.

416. Finally, we decline to require that incumbent LECs provide virtual collocation that is equal in all functional aspects to physical collocation. Our *Expanded Interconnection* rules required a variety of standards for the virtual collocation and have been largely successful. In addition, Congress was aware of the differences between virtual and physical collocation when it adopted section 251(c)(6), and this section does not specify any requirements for virtual collocation. As discussed above, we adopt the *Expanded Interconnection* requirements for virtual collocation under section 251. We find, however, that a standard simply requiring equality in all functional aspects could be difficult to administrate and could lead to substantial disputes. We also decline to adopt the suggestion that we require LECs to offer virtual collocation under the "$1 sale and repurchase option." This configuration is described as involving "the acquisition by the interconnectors of the equipment to be dedicated for interconnectors' use on the LEC premises and the sale of that equipment to the LECs for a nominal $1 sum while maintaining a repurchase option." We do not find evidence that such a specific requirement is necessary at this time. We reserve the right to revisit these issues in the future, however, if we perceive that smaller entities would be disadvantaged by our existing standards.

2. Legal Issues

a. Relationship Between Expanded Interconnection Tariffs and Section 251

(1) Background

417. The enactment of sections 251 and 252 raises the question of whether,

and to what extent, the interconnection, access to unbundled network element, and collocation requirements set forth in those sections, and the delegation of specific rate-setting authority to the states under section 252(d)(1), as a matter of law supplant our section 201 *Expanded Interconnection* requirements. We tentatively concluded in the NPRM that our existing *Expanded Interconnection* policies for interstate special access and switched transport should continue to apply.

(2) Discussion

418. Our *Expanded Interconnection* rules require the largest incumbent LECs to file tariffs with the Commission to offer collocation to parties that wish to terminate interstate special access and switched transport transmission facilities. Section 252 of the 1996 Act, on the other hand, provides for interconnection arrangements rather than tariffs, for review and approval of such agreements by state commissions rather than the FCC, and for public filing of such agreements. Section 252 procedures, however, apply only to "request[s] for interconnection, services, or network elements *pursuant to section 251*." Such procedures do not, by their terms, apply to requests for service under section 201. Moreover, section 251(i) expressly provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201," which provided the statutory basis for our *Expanded Interconnection* rules. Thus, we find that the 1996 Act, as a matter of law, does not displace our *Expanded Interconnection* requirements, and, in fact, grants discretion to the FCC to preserve our existing rules and tariffing requirements to the extent they are consistent with the Communications Act.

419. We further conclude that it would make little sense to find that sections 251 and 252 supersede our *Expanded Interconnection* rules, because the two sets of requirements are not coextensive. For example, our *Expanded Interconnection* rules encompass collocation for interstate purposes for all parties, including non-carrier end users, that seek to terminate transmission facilities at LEC central offices. In comparison, section 251 requires collocation only for "any requesting telecommunications carrier." Certain competing carriers—and non-carrier customers not covered by section 251—may prefer to take interstate expanded interconnection service under general interstate tariff schedules. We find that it would be unnecessarily disruptive to eliminate that possibility at this time. We also conclude that permitting requesting carriers to seek interconnection pursuant to our *Expanded Interconnection* rules as well as section 251 is consistent with the goals of the 1996 Act to permit competitive entry through a variety of entry strategies. Thus, a requesting carrier would have the choice of negotiating an interconnection agreement pursuant to sections 251 and 252 or of taking tariffed interstate service under our *Expanded Interconnection* rules.

420. Finally, we expect that, over time, sections 251 and 252 and our implementing rules may replace our *Expanded Interconnection* rules as the primary regulations governing interconnection for carriers. We note that section 251 is broader than our *Expanded Interconnection* requirements in certain respects. For example, section 251 requires incumbent LECs to offer collocation for purposes of accessing unbundled network elements, whereas our *Expanded Interconnection* rules require collocation only for the provision of interstate special access and switched transport. In addition, section 251(c)(6) requires incumbents to offer physical collocation subject to certain exceptions, whereas our existing *Expanded Interconnection* rules only require carriers to offer virtual collocation, although they may choose to offer physical collocation under Title II regulation in lieu of virtual collocation. In the future, we may review the need for a separate set of *Expanded Interconnection* requirements and revise our requirements if necessary. We believe that this approach is consistent with Congress' determination that the need for federal regulations will likely decrease as the provisions of the 1996 Act take effect and competition develops in the local exchange and exchange access markets.

b. Takings Issues

(1) Background

421. In *Bell Atlantic* v. *FCC*, the U.S. Court of Appeals for the DC Circuit found that the Commission lacked authority under the Communications Act to impose physical collocation on the LECs. The court found that this requirement implicated the Fifth Amendment takings clause. *See Bell Atlantic* v. *FCC*, 24 F.3d 1441 (DC Cir. 1994). On remand, the Commission required LECs to provide virtual collocation. In *Pacific Bell* v. *FCC*, 81 F.3d 1147 (DC Cir. 1996), several LECs challenged the Commission's virtual collocation rules on essentially identical grounds, claiming that the virtual collocation rules also constituted an unauthorized taking. The court did not reach the merits of these claims. Instead, addressing the scope of section 251 immediately following enactment and before the FCC had yet exercised its interpretive authority with respect to the provision, the court stated that regulations enacted to implement the 1996 Act would render moot questions regarding the future effect of the virtual collocation order under review. The court did not vacate the order, but remanded to the Commission the issues presented in that case.

(2) Discussion

422. We conclude that the ruling in *Bell Atlantic* does not preclude the rules we are adopting in this proceeding. The court in *Bell Atlantic* did not hold that an agency may never "take" property; the court acknowledged that, as a constitutional matter, takings are unlawful only if they are not accompanied by "just compensation." Instead, the court simply said that the Communications Act of 1934 should not be construed to permit the FCC to take LEC property without *express* authorization. Because the court concluded that mandatory physical collocation would likely constitute a taking, and that section 201 of the Act did not expressly authorize physical collocation, the court held that the Commission was without authority under section 201 to impose physical collocation requirements on LECs. The Commission maintains the position, however, that mandatory physical collocation should not properly be seen to create a takings issue. *See Remand Order*, 9 FCC Rcd at 5169.

423. The question of statutory authority to impose (physical or virtual) collocation obligations on incumbent LECs largely evaporates in the context of the 1996 Act. New section 251(c)(6) *expressly* requires incumbent LECs to provide physical collocation, absent space or technical limitations. Where such limitations exist, the statute *expressly* requires virtual collocation. Thus, under the court's analysis in *Bell Atlantic*, there is no warrant for a narrowing construction of section 251 that would deny us the authority to require either form of collocation. Moreover, for the reasons stated in the *Virtual Collocation Order*, we continue to believe that virtual collocation, as we have defined it, is not a taking, and that our authority to order such collocation (under either section 251 or section 201) is not subject to the strict construction canon announced in *Bell Atlantic*.

424. Given that we now have express statutory authority to order physical and

virtual collocation pursuant to section 251, any remaining takings-related issue necessarily is limited to the question of just compensation. As discussed in Section VII.B.2.a.(3).(c), below, we find that the ratemaking methodology we are adopting to implement the collocation obligations under section 251(c) is consistent with congressional intent and fully satisfies the just compensation standard. There is, therefore, no merit to the LECs' Fifth Amendment-based claims.

VII. Pricing of Interconnection and Unbundled Elements

A. Overview

425. The prices of interconnection and unbundled elements, along with prices of resale and transport and termination, are critical terms and conditions of any interconnection agreement. If carriers can agree on such prices voluntarily without government intervention, these agreements will be submitted directly to the states for approval under section 252. To the extent that the carriers, in voluntary negotiations, cannot determine the prices, state commissions will have to set those prices. The price levels set by state commissions will determine whether the 1996 Act is implemented in a manner that is *pro-competitor* and favors one party (whether favoring incumbents or entrants) or, as we believe Congress intended, *pro-competition*. As discussed more fully in Section II.D. above, it is therefore critical to implementing Congress' pro-competitive, de-regulatory national policy framework to establish among the states a common, pro-competition understanding of the pricing standards for interconnection and unbundled elements, resale, and transport and termination. While such a common interpretation might eventually emerge through judicial review of state arbitration decisions, we believe that such a process could delay competition for years and require carriers to incur substantial legal costs. We therefore conclude that, to expedite the development of fair and efficient competition, we must set forth rules now establishing this common, pro-competition understanding of the 1996 Act's pricing standards. Accordingly, the rules we adopt today set forth the methodological principles for states to use in setting prices. This section addresses interconnection and unbundled elements, and subsequent sections address resale and transport and termination, respectively.

426. While every state should, to the maximum extent feasible, immediately apply the pricing methodology for interconnection and unbundled elements that we set forth below, we recognize that not every state will have the resources to implement this pricing methodology immediately in the arbitrations that will need to be decided this fall. Therefore, so that competition is not impaired in the interim, we establish default proxies that a state commission shall use to resolve arbitrations in the period before it applies the pricing methodology. In most cases, these default proxies for unbundled elements and interconnection are ceilings, and states may select lower prices. In one instance, the default proxy we establish is a price range. Once a state sets prices according to an economic cost study conducted pursuant to the cost-based pricing methodology we outline, the defaults cease to apply. In setting a rate pursuant to the cost-based pricing methodology, and especially when setting a rate above a default proxy ceiling or outside the default proxy range, the state must give full and fair effect to the economic costing methodology we set forth in this Order and must create a factual record, including the cost study, sufficient for purposes of review after notice and opportunity for the affected parties to participate.

427. In the following sections, we first set forth generally, based on the current record, a cost-based pricing methodology based on forward-looking economic costs, which we conclude is the approach for setting prices that best furthers the goals of the 1996 Act. In dynamic competitive markets, firms take action based not on embedded costs, but on the relationship between market-determined prices and forward-looking economic costs. If market prices exceed forward-looking economic costs, new competitors will enter the market. If their forward-looking economic costs exceed market prices, new competitors will not enter the market and existing competitors may decide to leave. Prices for unbundled elements under section 251 must be based on cost under the law, and that should be read as requiring that prices be based on forward-looking economic costs. New entrants should make their decisions whether to purchase unbundled elements or to build their own facilities based on the relative economic costs of these options. By contrast, because the cost of building an element is based on forward-looking economic costs, new entrants' investment decisions would be distorted if the price of unbundled elements were based on embedded costs. In arbitrations of interconnection arrangements, or in rulemakings the results of which will be applied in arbitrations, states must set prices for interconnection and unbundled network elements based on the forward-looking, long-run, incremental cost methodology we describe below. Using this methodology, states may not set prices lower than the forward-looking incremental costs directly attributable to provision of a given element. They may set prices to permit recovery of a reasonable share of forward-looking joint and common costs of network elements. In the aftermath of the arbitrations and relying on the state experience, we will continue to review this costing methodology, and issue additional guidance as necessary.

428. We reject various arguments raised by parties regarding the recovery of costs other than forward-looking economic costs in section 251 (c)(2) and (c)(3) prices, including the possible recovery of: (1) embedded or accounting costs in excess of economic costs; (2) incumbent LECs' opportunity costs; (3) universal service subsidies; and (4) access charges. As discussed in Section VII.B.2.a. below, certain portions of access charges may continue to be collected for an interim period in addition to section 251(c)(3) prices.

429. With respect to prices developed under the forward-looking, cost-based pricing methodology, we conclude that incumbent LECs' rates for interconnection and unbundled elements must recover costs in a manner that reflects the way they are incurred. We adopt certain rules that states must follow in setting rates in arbitrations. These rules are designed to ensure the efficient cost-based rates required by the 1996 Act.

430. In the next section of the Order, we establish default proxies that states may elect to use prior to utilizing an economic study and developing prices using the cost-based pricing methodology. We recognize that certain states may find it difficult to apply an economic costing methodology within the statutory time frame for arbitrating interconnection disputes. We therefore set forth default proxies that will be relatively easy to apply on an interim basis to interconnection arrangements. We discuss with respect to particular unbundled elements the reasonable rate structure for those elements and the particular default proxies we are establishing for use pending our adoption of a generic forward-looking cost model. Finally, we discuss the following additional matters: generic forward-looking costing models that we intend to examine further by the first quarter of 1997 in order to determine

whether any of those models, with modifications, could serve as better default proxies; the future adjustment of rates; the relationship of unbundled element prices to retail prices; and the meaning of the statutory prohibition against discrimination in sections 251 and 252.

431. Those states that have already established methodologies for setting interconnection and unbundled rates must review those methodologies against the rules we are adopting in this Order. To the extent a state's methodology is consistent with the approach we set forth herein, the state may apply that methodology in any section 252 arbitration. However, if a state's methodology is not consistent with the rules we adopt today, the state must modify its approach. We invite any state uncertain about whether its approach complies with this Order to seek a declaratory ruling from the Commission.

B. Cost-Based Pricing Methodology

432. As discussed more fully in Section II.D. above, although the states have the crucial role of setting specific rates in arbitrations, the Commission must establish a set of national pricing principles in order to implement Congress's national policy framework. For the reasons set forth in the preceding section and as more fully explained below, we are adopting a cost-based methodology for states to follow in setting interconnection and unbundled element rates. In setting forth the cost-based pricing methodology for interconnection and access to unbundled elements, there are three basic sets of questions that must be addressed. First, does the 1996 Act require that the same standard apply to the pricing of interconnection provided pursuant to section 251(c)(2), and unbundled elements provided pursuant to section 251(c)(3)? Second, what is the appropriate methodology for establishing the price levels for interconnection and for each unbundled element, how should costs be defined, and is the price based on economic costs, embedded costs, or other costs? Third, what are the appropriate rate structures to be used to set prices designed to recover costs, including a reasonable profit? We address each of these questions in the following sections.

1. Application of the Statutory Pricing Standard

a. Background

433. In the NPRM, we proposed that any pricing principles we adopt should be the same for interconnection and unbundled network elements because sections 251(c)(2) and (c)(3) and 252(d)(1) use the same pricing standard. We invited parties to comment on this issue and to justify any proposed distinction in the priority for interconnection and unbundled network elements. We also stated our belief that the same pricing rules that apply to interconnection and unbundled network elements should also apply to collocation under section 251(c)(6) of the 1996 Act.

b. Discussion

434. Sections 251(c)(2) and (c)(3) impose an identical duty on incumbent LECs to provide interconnection and access to network elements "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." In addition, both interconnection and unbundled network elements are made subject to the same pricing standard in section 252(d)(1). Based on the plain language of sections 251(c)(2), (c)(3), and section 252(d)(1), we conclude that Congress intended to apply the same pricing rules to interconnection and unbundled network elements. The pricing rules we adopt shall, therefore, apply to both.

435. We further conclude that, because section 251(c)(6) requires that incumbent LECs provide physical collocation on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory," which is identical to the standard for interconnection and unbundled elements in sections 251(c)(2) and (c)(3), collocation should be subject to the same pricing rules. We also note that, because collocation is a method of obtaining interconnection and access to unbundled network elements, collocation is properly treated under the same pricing rules. This legal conclusion that there should be a single set of pricing rules for interconnection, unbundled network elements, and collocation provides greater consistency and guidance to the industry, regulators, and the courts. Moreover, it reduces the regulatory burdens on state commissions of developing and applying different pricing rules for collocation, interconnection, and unbundled network elements. We note that our adoption of this single set of pricing rules should minimize regulatory burdens, conflicts, and uncertainties associated with multiple, and possibly inconsistent rules, thus facilitating competition on a reasonable and efficient basis minimizing the economic impact of our rules for all parties, including small entities and small incumbent LECs.

2. Rate Levels

a. Pricing Based on Economic Cost

(1) Background

436. We observed in the NPRM that economists generally agree that prices based on forward-looking long-run incremental costs (LRIC) give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure. We noted, however, that there was a lack of general agreement on the specifics of methodology for deriving prices based on LRIC or total service long-run incremental cost (TSLRIC). We invited parties to comment on whether we should require the states to employ a LRIC-based pricing methodology and to explain with specificity the costing methodology they support. We recognized, however, that prices based on LRIC might not permit recovery of forward-looking costs if there were significant forward-looking joint and common costs among network elements. We sought comment on how, if rates are set above incremental cost, to deal with the problems inherent in allocating common costs and any other overheads. We observed that, by defining the unbundled elements at a sufficiently aggregated level, it may be possible to reduce the costs to be allocated as joint and common by identifying a substantial portion of costs as incremental to a particular element. To the extent that joint and common costs cannot be entirely eliminated, we sought comment on various methodologies for assigning them, including the use of a fixed allocator or on the basis of inverse demand elasticity. We also sought comment on whether, regardless of the method of allocating common costs, we should limit rates to levels that do not exceed stand-alone costs. Finally, we invited parties to comment on whether a LRIC-based methodology would establish a price for interconnection and unbundled network elements that includes a reasonable profit and thus complies with section 252(d)(1).

437. A number of states already employ, or have plans to utilize, some form of LRIC or TSLRIC methodology in their approach to setting prices for unbundled network elements, with several states choosing LRIC or TSLRIC as a price floor. For instance, the Connecticut Commission adopted a TSLRIC methodology to measure the cost of service of SNET, its principal incumbent LEC. Arizona also requires incumbent LECs to conduct TSLRIC cost studies to establish the underlying cost

of unbundled services and facilities. The Ohio Commission has adopted Long Run Service Incremental Cost ("LRSIC"), which is closely related to TSLRIC. The Missouri and Wyoming Commissions are among a number of state commissions that have not yet adopted a pricing methodology, but are considering LRIC or TSLRIC. Oklahoma law provides for submission of LRIC cost studies and studies identifying a contribution to common costs for interconnection of facilities and access to network elements to the Oklahoma Commission during an arbitration. A number of states have yet to choose a pricing methodology. For instance, the New York Commission sets prices on a case-by-case basis. Unbundled element prices also exist in several states pursuant to negotiated interconnection agreements that have either already been approved by state commissions or are under consideration.

438. Section 252(d)(1) requires, *inter alia*, that rates for interconnection and unbundled network elements be based on "cost (determined without reference to a rate-of-return or other rate-based proceeding)." We tentatively concluded in the NPRM that this language precludes states from setting rates by use of traditional cost-of service regulation, with its detailed examination of historical carrier investment and expenses. Instead, we indicated our belief that the statute contemplates the use of other forms of cost-based price regulation, such as the setting of prices based on forward-looking economic cost methodologies (such as LRIC) that do not involve the use of an embedded rate base. We sought comment on whether section 252(d)(1) forecloses consideration of historical or embedded costs or merely prohibits state commissions from conducting a traditional rate-of-return proceeding to establish prices for interconnection and unbundled network elements. Embedded costs are the costs that the incumbent LECs carry on their accounting books that reflect historical purchase prices, regulatory depreciation rates, system configurations, and operating procedures. We invited parties to comment on whether incumbent LECs should be permitted to recover some portion of their historical or embedded costs over TSLRIC.

439. In the NPRM, we noted that certain incumbent LECs had advocated that interconnection and access to unbundled element prices be based on the "efficient component pricing rule" (ECPR). Under this approach, an incumbent LEC that sells an essential input element, such as interconnection, to a competing network would set the price of that input element equal to "the input's direct per-unit incremental costs plus the opportunity cost to the input supplier of the sale of a unit of input." We tentatively concluded in the NPRM that ECPR or equivalent methodologies are inconsistent with the section 252(d)(1) requirement that rates be based on "cost," and we proposed to preclude the states from using this methodology.

440. Section 254 requires the Commission and the Joint Board established thereunder to ensure that "[a]ll providers of telecommunications service * * * make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service. * * *" That section further provides that "[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service." The Conference Committee also explained that these provisions require any such universal service support payment to be, to the extent possible, "explicit, rather than implicit as many support mechanisms are today." In the NPRM, we sought comment on whether "it would be consistent with sections 251(d)(1) and 254 for states to include any universal service costs or subsidies in the rates they set for interconnection, collocation, and unbundled network elements." In particular, we discussed the "play or pay" system adopted by the State of New York in which interconnectors that agree to serve all customers in their self-defined service areas ("players") potentially pay a substantially lower interconnection rate than those that serve only selected customers ("payers") and are, therefore, liable to pay additional contribution charges. We noted that the statutory schedule for the completion of the universal service reform proceeding (15 months from the enactment of the 1996 Act) is different from that for this proceeding (6 months from the date of enactment of the 1996 Act). We asked whether the ability of states to take universal service support into account differs pending completion of the section 254 Joint Board proceeding or state universal service proceedings, pursuant to section 254(f), during any transition period that may be established in the section 254 proceeding or thereafter.

(2) Discussion

441. *Overview.* Having concluded in Section II.D., above, that we have the requisite legal authority and that we should establish national pricing rules, we conclude here that prices for interconnection and unbundled elements pursuant to sections 251(c)(2), 251(c)(3), and 252(d)(1), should be set at forward-looking long-run economic cost. In practice, this will mean that prices are based on the TSLRIC of the network element, which we will call Total Element Long Run Incremental Cost (TELRIC), and will include a reasonable allocation of forward-looking joint and common costs. The 1996 Act encourages competition by removing barriers to entry and providing an opportunity for potential new entrants to purchase unbundled incumbent LEC network elements to compete efficiently to provide local exchange services. We believe that the prices that potential entrants pay for these elements should reflect forward-looking economic costs in order to encourage efficient levels of investment and entry.

442. In this section, we describe this forward-looking, cost-based pricing standard in detail. First, we define the terms we are using, explain how the methodology we are adopting differs from other costing approaches, and describe how it should be implemented. In particular, we explain that the price of a network element should include the forward-looking costs that can be attributed directly to the provision of services using that element, which includes a reasonable return on investment (*i.e.*, "profit"), plus a reasonable share of the forward-looking joint and common costs. Second, we address potential cost measures that must not be included in a TELRIC analysis, such as embedded (or historical) costs, opportunity costs, or universal service subsidies. Finally, we refute arguments that this methodology would violate the incumbent LECs' rights under the Fifth Amendment.

(a) Total Element Long-Run Incremental Cost

443. *Definitions of Terms.* In light of the various possible definitions of a number of the critical economic terms used in this context, we begin by defining terms as we use them in this Order. Specifically, we provide definitions for the following terms: "incremental cost;" "economic cost;" "embedded or accounting cost;" "joint cost;" "common cost;" "long-run incremental cost;" "total service long-run incremental cost;" "total element long-run incremental cost." In addition to defining these terms, we explain the economic rationale behind the concepts.

444. Incremental costs are the additional costs (usually expressed as a cost per unit) that a firm will incur as a result of expanding the output of a good or service by producing an additional quantity of the good or

service. Incremental costs are forward-looking in the sense that these costs are incurred as the output level changes by a given increment. The costs that are considered incremental will vary greatly depending on the size of the increment. For example, the incremental cost of carrying an additional call from a residence that is already connected to the network to its end office is virtually zero. The incremental cost of connecting a new residence to its end office, however, is the cost of the loop. Forward-looking incremental costs, plus a portion of the forward-looking joint and common costs, are sometimes referred to as "economic costs." Embedded or accounting costs are costs that firms incurred in the past for providing a good or service and are recorded as past operating expenses and depreciation. Due to changes in input prices and technologies, incremental costs may differ from embedded costs of that same increment. In competitive markets, the price of a good or service will tend towards its long-run incremental cost.

445. Certain types of costs arise from the production of multiple products or services. We use the term "joint costs" to refer to costs incurred when two or more outputs are produced in fixed proportion by the same production process (*i.e.*, when one product is produced, a second product is generated by the same production process at no additional cost). The term "common costs" refers to costs that are incurred in connection with the production of multiple products or services, and remains unchanged as the relative proportion of those products or services varies (*e.g.*, the salaries of corporate managers). Such costs may be common to all services provided by the firm or common to only a subset of those services or elements. If a cost is common with respect to a subset of services or elements, for example, a firm avoids that cost only by not providing each and every service or element in the subset. For the purpose of our discussion, we refer to joint and common costs as simply common costs unless the distinction is relevant in a particular context.

446. The term "long-run," in the context of "long run incremental cost," refers to a period long enough so that all of a firm's costs become variable or avoidable. The term "total service," in the context of TSLRIC, indicates that the relevant increment is the entire quantity of the service that a firm produces, rather than just a marginal increment over and above a given level of production. Depending on what services are the subject of a study, TSLRIC may be for a single service or a class of similar services. TSLRIC includes the incremental costs of dedicated facilities and operations that are used by only the service in question. TSLRIC also includes the incremental costs of shared facilities and operations that are used by that service as well as other services.

447. While we are adopting a version of the methodology commonly referred to as TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term "total element long-run incremental cost" (TELRIC) to describe our version of this methodology. The incumbent LEC offerings to be priced using this methodology generally will be "network elements," rather than "telecommunications services," as defined by the 1996 Act. More fundamentally, we believe that TELRIC-based pricing of discrete network elements or facilities, such as local loops and switching, is likely to be much more economically rational than TSLRIC-based pricing of conventional services, such as interstate access service and local residential or business exchange service. As discussed in greater detail below, separate telecommunications services are typically provided over shared network facilities, the costs of which may be joint or common with respect to some services. The costs of local loops and their associated line cards in local switches, for example, are common with respect to interstate access service and local exchange service, because once these facilities are installed to provide one service they are able to provide the other at no additional cost. By contrast, the network elements, as we have defined them, largely correspond to distinct network facilities. Therefore, the amount of joint and common costs that must be allocated among separate offerings is likely to be much smaller using a TELRIC methodology rather than a TSLRIC approach that measures the costs of conventional services. Because it is difficult for regulators to determine an economically optimal allocation of any such joint and common costs, we believe that pricing elements, defined as facilities with associated features and functions, is more reliable from the standpoint of economic efficiency than pricing services that use shared network facilities.

448. *Description of TELRIC-Based Pricing Methodology.* Adopting a pricing methodology based on forward-looking economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior. Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to making meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economies of scale and scope, as well as the benefits of competition. Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels. We believe that our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents, which may be expected to reduce the regulatory burdens and economic impact of our decision for many parties, including both small entities seeking to enter the local exchange markets and small incumbent LECs.

449. We note that incumbent LECs have greater access to the cost information necessary to calculate the incremental cost of the unbundled elements of the network. Given this asymmetric access to cost data, we find that incumbent LECs must prove to the state commission the nature and magnitude of any forward-looking cost that it seeks to recover in the prices of interconnection and unbundled network elements.

450. Some parties express concern that the information required to compute prices based on forward-looking costs is inherently so hypothetical as to be of little or no practical value. Based on the record before us, we disagree. A number of states, which ultimately will have to review forward-looking cost studies in carrying out their duties under section 252, either have already implemented forward-looking, incremental costing methodologies to set prices for interconnection and unbundled network elements or support the use of such an approach. While these states have applied somewhat different definitions of, and approaches to setting prices developed on, an incremental cost methodology, the record demonstrates that such approaches are practical and implementable.

451. We conclude that, under a TELRIC methodology, incumbent LECs' prices for interconnection and unbundled network elements shall recover the forward-looking costs directly attributable to the specified element, as well as a reasonable allocation of forward-looking common costs. Per-unit costs shall be derived from total costs using reasonably accurate "fill factors" (estimates of the proportion of a facility that will be "filled" with network usage); that is, the per-unit costs associated with a particular element must be derived by dividing the total cost associated with the element by a reasonable projection of the actual total usage of the element. Directly attributable forward-looking costs include the incremental costs of facilities and operations that are dedicated to the element. Such costs typically include the investment costs and expenses related to primary plant used to provide that element. Directly attributable forward-looking costs also include the incremental costs of shared facilities and operations. Those costs shall be attributed to specific elements to the greatest extent possible. *Telephone Company-Cable Television Cross-Ownership Rules, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, 59 FR 63909 (December 12, 1994). For example, the costs of conduits shared by both transport and local loops, and the costs of central office facilities shared by both local switching and tandem switching, shall be attributed to specific elements in reasonable proportions. More broadly, certain shared costs that have conventionally been treated as common costs (or overheads) shall be attributed directly to the individual elements to the greatest extent possible. The forward-looking costs directly attributable to local loops, for example, shall include not only the cost of the installed copper wire and telephone poles but also the cost of payroll and other back office operations relating to the line technicians, in addition to other attributable costs.

452. Forward-looking cost methodologies, like TELRIC, are intended to consider the costs that a carrier would incur in the future. Thus, a question arises whether costs should be computed based on the least-cost, most efficient network configuration and technology currently available, or whether forward-looking cost should be computed based on incumbent LECs' existing network infrastructures, taking into account changes in depreciation and inflation. The record indicates three general approaches to this issue. Under the first approach, the forward-looking economic cost for interconnection and unbundled elements would be based on the most efficient network architecture, sizing, technology, and operating decisions that are operationally feasible and currently available to the industry. Prices based on the least-cost, most efficient network design and technology replicate conditions in a highly competitive marketplace by not basing prices on existing network design and investments unless they represent the least-cost systems available for purchase. This approach, however, may discourage facilities-based competition by new entrants because new entrants can use the incumbent LEC's existing network based on the cost of a hypothetical least-cost, most efficient network.

453. Under the second approach, the cost of interconnection and unbundled network elements would be based on existing network design and technology that are currently in operation. Because this approach is not based on a hypothetical network in the short run, incumbent LECs could recover costs based on their existing operations, and prices for interconnection and unbundled elements that reflect inefficient or obsolete network design and technology. This is essentially an embedded cost methodology.

454. Under the third approach, prices for interconnection and access to unbundled elements would be developed from a forward-looking economic cost methodology based on the most efficient technology deployed in the incumbent LEC's current wire center locations. This approach mitigates incumbent LECs' concerns that a forward-looking pricing methodology ignores existing network design, while basing prices on efficient, new technology that is compatible with the existing infrastructure. This benchmark of forward-looking cost and existing network design most closely represents the incremental costs that incumbents actually expect to incur in making network elements available to new entrants. Moreover, this approach encourages facilities-based competition to the extent that new entrants, by designing more efficient network configurations, are able to provide the service at a lower cost than the incumbent LEC. We, therefore, conclude that the forward-looking pricing methodology for interconnection and unbundled network elements should be based on costs that assume that wire centers will be placed at the incumbent LEC's current wire center locations, but that the reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements.

455. We agree with USTA, Bell Atlantic, and BellSouth that, as a theoretical matter, the combination of significant sunk investment, declining technology costs, and competitive entry may increase the depreciation costs and cost of capital of incumbent LECs. We do not agree, however, that TSLRIC does not or cannot account for risks that an incumbent LEC incurs because it has sunk investments in facilities. On the contrary, properly designed depreciation schedules should account for expected declines in the value of capital goods. Both AT&T and MCI appear to agree with this proposition. For example, AT&T states, "[i]n order to estimate TSLRIC, one must perform a discounted cash flow analysis of the future costs associated with the decision to invest. * * * One-time costs associated with the acquisition of capital goods are amortized over the economic life of the assets using the user cost of capital * * *, which requires accounting for both expected capital good price changes and economic depreciation." Moreover, we are confident that parties to an arbitration with TELRIC studies can propose specific depreciation rate adjustments that reflect expected asset values over time.

456. As noted, we also agree that, as a matter of theory, an increase in risk due to entry into the market for local exchange service can increase a LEC's cost of capital. We believe that this increased risk can be partially mitigated, however, by offering term discounts, since long-term contracts can minimize the risk of stranded investment. In addition, growth in overall market demand can increase the potential of the incumbent LEC to use some of its displaced facilities for other purposes. Overall, we think that these factors can and should be captured in any LRIC model and therefore we do not agree that this requires a departure from the general principle of forward-looking cost-based pricing for network elements.

457. We are not persuaded by USTA's argument that forward looking methodologies fail to adjust the cost of capital to reflect the risks associated with irreversible investments and that they are "biased downward by a factor of three." First, USTA's argument unrealistically assumes that competitive entry would be instantaneous. The more reasonable assumption of entry occurring over time will reduce the costs associated with sunk investment. Second, we find it unlikely that investment in communications

equipment is entirely irreversible or that such equipment would become valueless once facilities-based competition begins. In a growing market, there most likely would be demand for at least some embedded telecommunications equipment, which would therefore retain its value. Third, contractual arrangements between the new entrant and the incumbent that specifically address USTA's concerns and protect incumbent's investments during transition can be established.

458. Finally we are not persuaded that the use by firms of hurdle rates that exceed the market cost of capital is convincing evidence that sunk investments significantly increase a firm's cost of capital. An alternative explanation for this phenomenon is that the process that firms use to choose among investment projects results in overestimates of their returns. Firms therefore use hurdle rates in excess of the market cost of capital to account for these overestimates.

459. *Summary of TELRIC Methodology.* The following summarizes our conclusions regarding setting prices of interconnection and access to unbundled network elements based on the TELRIC methodology for such elements. The increment that forms the basis for a TELRIC study shall be the entire quantity of the network element provided. As we have previously stated, all costs associated with providing the element shall be included in the incremental cost. Only forward-looking, incremental costs shall be included in a TELRIC study. Costs must be based on the incumbent LEC's existing wire center locations and most efficient technology available.

460. Any function necessary to produce a network element must have an associated cost. The study must explain with specificity why and how specific functions are necessary to provide network elements and how the associated costs were developed. Only those costs that are incurred in the provision of the network elements in the long run shall be directly attributable to those elements. Costs must be attributed on a cost-causative basis. Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them. Thus, for example, the forward-looking costs of capital (debt and equity) needed to support investments required to produce a given element shall be included in the forward-looking direct cost of that element. Directly attributable costs shall include costs such as certain administrative expenses, which have traditionally been viewed as common costs, if these costs vary with the provision of network elements. Retailing costs, such as marketing or consumer billing costs associated with retail services, are not attributable to the production of network elements that are offered to interconnecting carriers and must not be included in the forward-looking direct cost of an element.

461. In a TELRIC methodology, the "long run" used shall be a period long enough that all costs are treated as variable and avoidable. This "long run" approach ensures that rates recover not only the operating costs that vary in the short run, but also fixed investment costs that, while not variable in the short term, are necessary inputs directly attributable to providing the element.

462. States may review a TELRIC economic cost study in the context of a particular arbitration proceeding, or they may conduct such studies in a rulemaking and apply the results in various arbitrations involving incumbent LECs. In the latter case, states must replace any interim rates set in arbitration proceedings with the permanent rate resulting from the separate rulemaking. This permanent rate will take effect at or about the time of the conclusion of the separate rulemaking and will apply from that time forward.

463. *Forward-Looking Common Costs.* Certain common costs are incurred in the provision of network elements. As discussed above, some of these costs are common to only a subset of the elements or services provided by incumbent LECs. Such costs shall be allocated to that subset, and should then be allocated among the individual elements or services in that subset, to the greatest possible extent. For example, shared maintenance facilities and vehicles should be allocated only to the elements that benefit from those facilities and vehicles. Common costs also include costs incurred by the firm's operations as a whole, that are common to all services and elements (*e.g.*, salaries of executives involved in overseeing all activities of the business), although for the purpose of pricing interconnection and access to unbundled elements, which are intermediate products offered to competing carriers, the relevant common costs do not include billing, marketing, and other costs attributable to the provision of retail service. Given these common costs, setting the price of each discrete network element based solely on the forward-looking incremental costs directly attributable to the production of individual elements will not recover the total forward-looking costs of operating the wholesale network. Because forward-looking common costs are consistent with our forward-looking, economic cost paradigm, a reasonable measure of such costs shall be included in the prices for interconnection and access to network elements.

464. The incumbent LECs generally argue that common costs are quite significant, while several other parties maintain that these amounts are minimal. Because the unbundled network elements correspond, to a great extent, to discrete network facilities, and have different operating characteristics, we expect that common costs should be smaller than the common costs associated with the long-run incremental cost of a service. We expect that many facility costs that may be common with respect to the individual services provided by the facilities can be directly attributed to the facilities when offered as unbundled network elements. Moreover, defining the network elements at a relatively high level of aggregation, as we have done, should also reduce the magnitude of the common costs. A properly conducted TELRIC methodology will attribute costs to specific elements to the greatest possible extent, which will reduce the common costs. Nevertheless, there will remain some common costs that must be allocated among network elements and interconnection services. For example, at the sub-element level of study (*e.g.*, identifying the respective costs of 2-wire loops, 4-wire loops, ISDN loops, and so on), common costs may be a significant proportion of all the costs that must be recovered from sub-elements. Given the likely asymmetry of information regarding network costs, we conclude that, in the arbitration process, incumbent LECs shall have the burden to prove the specific nature and magnitude of these forward-looking common costs.

465. We conclude that forward-looking common costs shall be allocated among elements and services in a reasonable manner, consistent with the pro-competitive goals of the 1996 Act. One reasonable allocation method would be to allocate common costs using a fixed allocator, such as a percentage markup over the directly attributable forward-looking costs. We conclude that a second reasonable allocation method would allocate only a relatively small share of common costs to certain critical network elements, such as the local loop and collocation, that are most difficult for entrants to replicate promptly (*i.e.*, bottleneck facilities). Allocation of common costs

on this basis ensures that the prices of network elements that are least likely to be subject to competition are not artificially inflated by a large allocation of common costs. On the other hand, certain other allocation methods would not be reasonable. For example, we conclude that an allocation methodology that relies exclusively on allocating common costs in inverse proportion to the sensitivity of demand for various network elements and services may not be used. We conclude that such an allocation could unreasonably limit the extent of entry into local exchange markets by allocating more costs to, and thus raising the prices of, the most critical bottleneck inputs, the demand for which tends to be relatively inelastic. Such an allocation of these costs would undermine the pro-competitive objectives of the 1996 Act.

466. We believe that our treatment of forward-looking common costs will minimize regulatory burdens and economic impact for all parties involved in arbitration of agreements for interconnection and access to unbundled elements, and will advance the 1996 Act's pro-competitive objectives for local exchange and exchange access markets. In our decisionmaking, we have considered the economic impact of our rules in this section on small incumbent LECs. For example, although opposed to the use of a forward-looking, economic cost methodology, small incumbent LECs favor the recovery of joint and common costs in the event the Commission adopts forward-looking cost methodology. We are adopting such an approach. Moreover, the cost-based pricing methodology that we are adopting is designed to permit incumbent LECs to recover their economic costs of providing interconnection and unbundled elements, which may minimize the economic impact of our decisions on incumbent LECs, including small incumbent LECs. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

467. We further conclude that, for the aggregate of all unbundled network elements, incumbent LECs must be given a reasonable opportunity to recover their forward-looking common costs attributable to operating the wholesale network. In no instance should prices exceed the stand-alone cost for a specific element, and in most cases they should be below stand-alone costs. Stand-alone costs are defined as the forward-looking cost that an efficient entrant would incur in providing a given element or any combination of elements. No price higher than stand-alone cost could be sustained in a market from which entry barriers were completely absent. Where there are few common costs, there is likely to be only a minimal difference between the forward-looking costs that are directly attributable to the particular element, which excludes these costs, and stand-alone cost, which includes all of them. Network elements should not, however, be priced at levels that would enable the incumbent LEC to recover the same common costs multiple times from different elements. Any multiple recovery would be unreasonable and thus in violation of the statutory standard. Further, we note that the sum of the direct costs and the forward-looking common costs of all elements will likely differ from the incumbent LEC's historical, fully distributed costs.

468. *Reasonable Return on Investment and "Profit."* Section 252(d)(1) states that rates for interconnection and access to unbundled elements "may include a reasonable profit." We find that the TELRIC pricing methodology we are adopting provides for such a reasonable profit and thus no additional profit is justified under the statutory language. We note there are two types of profit. First, in plain English, profit is defined as "the excess of returns over expenditure in a transaction or a series of transactions." This is also known as a "normal" profit, which is the total revenue required to cover all of the costs of a firm, including its opportunity costs. Second, there is "economic" profit, which is any return in excess of normal profit. Thus, for example, if the normal return in an industry is 10 percent and a firm earns a return of 14 percent, the economic profit for that firm is 4 percent. Economic is also referred to as "supranormal" profit. We conclude that the definition of "normal" profit is embodied in "reasonable profit" under Section 252(d)(1).

469. The concept of normal profit is embodied in forward-looking costs because the forward-looking cost of capital, *i.e.*, the cost of obtaining debt and equity financing, is one of the forward-looking costs of providing the network elements. This forward-looking cost of capital is equal to a normal profit. We conclude that allowing greater than normal profits would not be "reasonable" under sections 251(c) and 252(d)(1). *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). Thus, contrary to the arguments put forth by several incumbent LECs, we find that adding an additional measure of profit to the risk-adjusted cost of capital in setting the prices for interconnection and access to unbundled elements would violate the requirements of sections 251(c) and 252(d)(1) of the 1996 Act.

470. Possible accounting losses from the sale of interconnection and unbundled network elements using a reasonable forward-looking cost-based methodology do not necessarily indicate that incumbent LECs are being denied a "reasonable profit" under the statute. The use of a forward-looking, economic, cost-based pricing methodology, including a reasonable allocation of legitimate joint and common costs, will permit incumbent LECs the opportunity to earn a reasonable return on their investment in network elements. Finally, contrary to PacTel's argument, and as discussed below in detail, we conclude that our forward-looking cost-based pricing methodology is consistent with the Fifth Amendment and is not confiscatory.

471. Based on the current record, we conclude that the currently authorized rate of return at the federal or state level is a reasonable starting point for TELRIC calculations, and incumbent LECs bear the burden of demonstrating with specificity that the business risks that they face in providing unbundled network elements and interconnection services would justify a different risk-adjusted cost of capital or depreciation rate. These elements generally are bottleneck, monopoly services that do not now face significant competition. We recognize that incumbent LECs are likely to face increased risks given the overall increases in competition in this industry, which generally might warrant an increased cost of capital, but note that, earlier this year, we instituted a preliminary inquiry as to whether the currently authorized federal 11.25 percent rate of return is too high given the current marketplace cost of equity and debt. On the basis of the current record, we decline to engage in a time-consuming examination to determine a new rate of return, which may well require a detailed proceeding. States may adjust the cost of capital if a party demonstrates to a state commission that either a higher or lower level of cost of capital is warranted, without that commission conducting a "rate-of-return or other rate based proceeding." We note that the risk-adjusted cost of capital need not be uniform for all

elements. We intend to re-examine the issue of the appropriate risk-adjusted cost of capital on an ongoing basis, particularly in light of the state commissions' experiences in addressing this issue in specific situations.

472. We disagree with the conclusion that, when there are mostly sunk costs, forward-looking economic costs should not be the basis for pricing interconnection elements. The TELRIC of an element has three components, the operating expenses, the depreciation cost, and the appropriate risk-adjusted cost of capital. We conclude that an appropriate calculation of TELRIC will include a depreciation rate that reflects the true changes in economic value of an asset and a cost of capital that appropriately reflects the risks incurred by an investor. Thus, even in the presence of sunk costs, TELRIC-based prices are an appropriate pricing methodology.

(b) Cost Measures Not Included in Forward-Looking Cost Methodology

473. *Embedded Costs.* We read section 252(d)(1)(A)(i) to prohibit states from conducting traditional rate-of-return or other rate-based proceedings to determine rates for interconnection and access to unbundled network elements. We find that the parenthetical, "(determined without reference to a rate-of-return or other rate-based proceeding)," does not further define the type of costs that may be considered, but rather specifies a type of proceeding that may not be employed to determine the cost of interconnection and unbundled network elements. The legislative history demonstrates that Congress was eager to set in motion expeditiously the development of local competition and intended to avoid imposing the costs and administrative burdens associated with a traditional rate case. Prior to the joint conference, the Senate version of the 1996 Act contained the parenthetical language. In addition, the Senate version of the 1996 Act eliminated rate-of-return regulation, as did the House version. Conferees removed the provisions eliminating rate-of-return regulation, but retained the parenthetical.

474. Section 252(d)(1)(A)(i) does not specify whether historical or embedded costs should be considered or whether only forward-looking costs should be considered in setting arbitrated rates. We are not persuaded by incumbent LEC arguments that prices for interconnection and unbundled network elements must or should include any difference between the embedded costs they have incurred to provide those elements and their current economic costs. Neither a methodology that establishes the prices for interconnection and access to network elements directly on the costs reflected in the regulated books of account, nor a price based on forward looking costs plus an additional amount reflecting embedded costs, would be consistent with the approach we are adopting. The substantial weight of economic commentary in the record suggests that an "embedded cost"-based pricing methodology would be pro-competitor—in this case the incumbent LEC—rather than pro-competition. We therefore decline to adopt embedded costs as the appropriate basis of setting prices for interconnection and access to unbundled elements. Rather, we reiterate that the prices for the interconnection and network elements critical to the development of a competitive local exchange should be based on the pro-competition, forward-looking, economic costs of those elements, which may be higher or lower than historical embedded costs. Such pricing policies will best ensure the efficient investment decisions and competitive entry contemplated by the 1996 Act, which should minimize the regulatory burdens and economic impact of our decisions on small entities.

475. Incumbent LECs contend generally that, in order to ensure they will recover their total investment costs and earn a profit, they must recover embedded costs. These costs, they argue, were incurred under federal and regulatory oversight and therefore should be recoverable. We are not convinced by the incumbent LECs' principal arguments for recognizing embedded cost in setting section 251 pricing rules. Even if the incumbent LECs' contention is correct, increasing the rates for interconnection and unbundled elements offered to competitors would interfere with the development of efficient competition, and is not the proper remedy for any past under-depreciation. Moreover, contrary to assertions by some incumbent LECs, regulation does not and should not guarantee full recovery of their embedded costs. Such a guarantee would exceed the assurances that we or the states have provided in the past. We have considered the economic impact of precluding recovery of small incumbent LECs' embedded costs. We do not believe that basing the prices of interconnection and unbundled elements on an incumbent LEC's embedded costs would advance the pro-competitive goals of the statute. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

476. We acknowledge that some incumbent LECs may have incurred certain embedded costs reasonably before the passage of the 1996 Act, based on different regulatory regimes. Some incumbent LECs may assert that they have made certain historical investments required by regulators that they have been denied a reasonable opportunity to recover in the past and that the incumbent LECs may no longer have a reasonable opportunity to recover in the new environment of the 1996 Act. The record before us, however, does not support the conclusion that significant residual embedded costs will necessarily result from the availability of network elements at economic costs. To the extent that any such residual consists of costs of meeting universal service obligations, the recovery of such costs can and should be considered in our ongoing universal service proceeding. *Universal Service NPRM.* To the extent a significant residual exists within the interstate jurisdiction that does not fall within the ambit of section 254, we intend that to address that issue in our upcoming proceeding on access reform.

477. *Opportunity Cost—Efficient Component Pricing Rule.* A number of incumbent LECs advocate using the "efficient component pricing rule" (ECPR) to set the prices that incumbent LECs charge new entrants for inputs required to produce the same retail services the incumbent produces. Under the ECPR, the price of an input should be equal to the incremental cost of the input plus the opportunity cost that the incumbent carrier incurs when the new entrant provides the services instead of the incumbent. The opportunity cost, which is computed as revenues less all incremental costs, represents both profit and contribution to common costs of the incumbent, given the existing retail prices of the services being sold.

478. We conclude that ECPR is an improper method for setting prices of interconnection and unbundled network elements because the existing retail prices that would be used to compute incremental opportunity costs under ECPR are not cost-based. Moreover, the ECPR does not provide any mechanism for moving prices towards competitive levels; it simply takes prices as given. The record indicates that both incumbents and new entrants agree that

retail prices are not based on costs. Incumbents generally argue that local residential retail prices are below costs while new entrants contend that they exceed competitive levels. In either case, application of ECPR would result in input prices that would be either higher or lower than those which would be generated in a competitive market and would not lead to efficient retail pricing.

479. In markets where retail prices exceed competitive levels, entry would take place if network element prices were set at efficient competitive levels. The ECPR, however, will serve to discourage competition in these very markets because it relies on the prevailing retail price in setting the price which new entrants pay the incumbent for inputs. While ECPR establishes conditions for efficient entry given existing retail prices, as its advocates contend, the ECPR provides no mechanism that will force retail prices to their competitive levels. We do not believe that Congress envisioned a pricing methodology for interconnection and network elements that would insulate incumbent LECs' retail prices from competition. Instead, Congress specifically determined that input prices should be based on costs because this would foster competition in the retail market. Therefore, we reject the use of ECPR for establishing prices for interconnection and unbundled elements.

480. As discussed above, the record in this docket shows that end user prices are not cost-based. In *Open Video Systems*, in contrast, we did not find that there would be a problem with the determination of end user prices. *Implementation of Section 302 of the Telecommunications Act of 1996—Open Video Systems, Second Report and Order*, 61 FR 28698 (June 5, 1996). We concluded that "[u]se of [an ECPR] approach is appropriate in circumstances where the pricing is applicable [sic] to a new market entrant (the open video system operator) that will face competition from an existing incumbent provider (the incumbent cable operator), as opposed to circumstances where the pricing is used to establish a rate for an essential input service that is charged to a competing new entrant by an incumbent provider." In addition, in *Open Video Systems*, we concluded that the ECPR is appropriate because it encourages entry for open video system operators and also enhances the availability of carriage for unaffiliated programmers. The ECPR generally protects the provider's profits and provides opportunities for third parties to use the provider's inputs. The ECPR does not provide a mechanism to drive retail prices to competitive levels, however. In *Open Video Systems*, we wanted to encourage entry by open video system providers and to encourage them to have incentives to open their systems to unaffiliated programmers. Here, our goal is to ensure that competition between providers, including third party providers using interconnection and unbundled elements, will drive prices toward competitive levels and thus use of the ECPR is inappropriate.

481. *Universal Service Subsidies.* We conclude that funding for any universal service mechanisms adopted in the universal service proceeding may not be included in the rates for interconnection, network elements, and access to network elements that are arbitrated by the states under sections 251 and 252. Sections 254(d) and 254(e) of the 1996 Act mandate that universal service support be recovered in an equitable and nondiscriminatory manner from all providers of telecommunications services. We conclude that permitting states to include such costs in rates arbitrated under sections 251 and 252 would violate that requirement by requiring carriers to pay specified portions of such costs solely because they are purchasing services and elements under section 251. Section 252(d)(1) requires that rates for interconnection, network elements, and access to network elements reflect the costs of providing those network elements, not the costs of supporting universal service.

482. Section 254(f) provides that a state may adopt equitable, nondiscriminatory, specific, and predictable mechanisms to advance universal service within that state. If a state collects universal service funding in rates for elements and services pursuant to sections 251 and 252, it will be imposing non-cost based charges in those rates. Including non-cost based charges in the rates for interconnection and unbundled elements is inconsistent with our rules implementing sections 251 and 252 which require that these rates be cost-based. It is also inconsistent with the requirement of section 254(f) that telecommunications carriers contribute to state universal service on a nondiscriminatory basis, because telecommunications carriers requesting interconnection or access to unbundled network elements will be required to make contributions to universal service support through such surcharges. States may not, therefore, include universal service support funding in the rates for elements and services pursuant to sections 251 and 252, nor may they implement mechanisms that have the same effect. For example, states may not fund universal service support by imposing higher rates for interconnection, unbundled elements, or transport and termination on carriers that offer service to different types of customers or different geographic areas. To the extent that New York's "pay or play" system funds universal service in this manner, it violates sections 251, 252, and 254 of the 1996 Act. Nothing in the 1996 Act or in this Order, however, precludes a state from adopting a universal service funding mechanism, whether interim or otherwise, if such funds are collected in accordance with section 254(f) on an "equitable and nondiscriminatory basis" through "specific, predictable, and sufficient mechanisms that do not rely on or burden Federal universal service support mechanisms."

483. Our decision here does not exempt carriers purchasing elements or services under section 251 from contributing to (or possibly receiving) universal service support. Rather, the recovery of universal service support costs from telecommunications carriers, including carriers requesting unbundled network elements, will be governed by section 254 of the 1996 Act. Federal universal service support mechanisms will be determined by our decisions reached in CC Docket 96–45, based on the recommendations of the Federal/State Universal Service Joint Board, and states may adopt additional universal service support mechanisms consistent with section 254(f).

484. We are mindful that the requirements of the 1996 Act may be disruptive to existing state universal service support mechanisms during the period commencing with this order and continuing until we complete our universal service proceeding to implement section 254. As discussed in the subsection immediately below, we permit incumbent LECs to continue to recover certain non-cost-based interstate access charge revenues for a limited period of time, largely because of concerns about possible deleterious impacts on universal service. We also authorize incumbent LECs, for a similar limited period of time, to continue to recover explicit intrastate universal service subsidy revenues based on intrastate access charges. This mechanism minimizes any possibility that implementation of sections 251 and 252 will unduly harm universal service during the interim period prior to completion of our universal service and access reform proceedings. Because we conclude this action should adequately provide for the continuation of a portion

of existing subsidy flows during a transition period until completion of our proceeding implementing section 254, we decline to permit any additional funding of universal service support through rates for interconnection, unbundled elements, and transport and termination during the interim period.

485. *Interim Application of Access Charges to Purchasers of Unbundled Local Switching Element.* In the introduction of this Order, we emphasize that implementation of section 251 of the 1996 Act is integrally related to both universal service reform as required under section 254, and to reform of the interstate access charge system. In order to achieve pro-competitive, deregulatory markets for all telecommunications services, we must create a new system of funding universal service that is specific, explicit, predictable, sufficient, and competitively neutral. We also must move access charges to more cost-based and economically efficient levels. We intend to fulfill both of these goals in the coming months, by completing our pending universal service proceeding to implement section 254 by our statutory deadline of May 1997, and by addressing access charge issues in an upcoming access reform proceeding. The 1996 Act, however, requires us to adopt rules implementing section 251 by August 1996. We are concerned that implementation of the requirements of section 251 now, without taking into account the effects of the new rules on our existing access charge and universal service regimes, may have significant, immediate, adverse effects that were neither intended nor foreseen by Congress.

486. Specifically, as we conclude above, the 1996 Act permits telecommunications carriers that purchase access to unbundled network elements from incumbent LECs to use those elements to provide telecommunications services, including the origination and termination of interstate calls. Without further action on our part, section 251 would allow entrants to use those unbundled network facilities to provide access services to customers they win from incumbent LECs, without having to pay access charges to the incumbent LECs. This result would be consistent with the long term outcome in a competitive market. In the short term, however, while other aspects of our regulatory regime are in the process of being reformed, such a change may have detrimental consequences.

487. The access charge system includes non-cost-based components. and elements that at least in part may represent subsidies, such as the carrier common line charge (CCLC) and the transport interconnection charge (TIC). The CCLC recovers part of the allocated interstate costs for incumbent LECs to provide local loops to end users. In the universal service NPRM, we observed that the CCLC may result in higher-volume toll users paying rates that exceed cost, and some customers paying rates that are below cost. We sought comment on whether that subsidy should be continued, and on whether and how it should be restructured. *Universal Service NPRM.* The nature of most of the revenues recovered through the TIC is unclear and subject to dispute, although a portion of the TIC is associated with certain costs related to particular transport facilities. Although the TIC was not created to subsidize local rates, some parties have argued in the *Transport* proceeding and elsewhere that some portion of the revenues now recovered through the TIC may be misallocated local loop or intrastate costs that operate to support universal service. *First Transport Order.* 57 FR 54717 (November 20, 1992). In the forthcoming access reform proceeding, we intend to consider the appropriate disposition of the TIC, including the development of cost-based transport rates as directed by the United States Court of Appeals for the District of Columbia Circuit in *Competitive Telecommunications Association* v. *FCC*, 87 F.3d 522 (1996) (*CompTel* v. *FCC*).

488. Without a temporary mechanism such as the one we adopt below, the implementation of section 251 would permit competitive local service providers that also provide interstate long-distance service to avoid totally the CCLC and the TIC, which in part represent contributions toward universal service, by serving their local customers solely through the use of unbundled network elements rather than through resale. We believe that allowing such a result before we have reformed our universal service and access charge regimes would be undesirable as a matter of both economics and policy, because carrier decisions about how to interconnect with incumbent LECs would be driven by regulatory distortions in our access charge rules and our universal service scheme, rather than the unfettered operation of a competitive market. Because of our desire to err on the side of caution where universal service may be implicated, we conclude that some action is needed during the interim period before we complete our access reform and universal service proceedings.

489. We conclude that we should establish a temporary transitional mechanism to help complete all of the steps toward the pro-competitive goal of the 1996 Act, including the implementation of a new, competitively-neutral system to fund universal service and a comprehensive review of our system of interstate access charges. Therefore, for a limited period of time, incumbent LECs may recover from interconnecting carriers the CCLC and a charge equal to 75 percent of the TIC for all interstate minutes traversing the incumbent LECs' local switches for which the interconnecting carriers pay unbundled local switching element charges. Incumbent LECs may recover these charges only until the earliest of: (1) June 30, 1997; (2) the effective date of final decisions by the Commission in both the universal service and access reform proceedings; or (3) if the incumbent LEC is a BOC, the date on which that BOC is authorized under section 271 of the 1996 Act to offer in-region interLATA service. The end date for BOCs that are authorized to offer interLATA service shall apply only to the recovery of access charges in those states in which the BOC is authorized to offer such service.

490. We tentatively concluded in the NPRM that purchasers of unbundled network elements should not be required to pay access charges. We reaffirm our conclusion above in our discussion of unbundled network elements that nothing on the face of sections 251(c)(3) and 252(d)(1) compels telecommunications carriers that use unbundled elements to pay these charges, nor limits these carriers' ability to use unbundled elements to originate or terminate interstate calls, and that payment of rates based on TELRIC plus a reasonable allocation of common costs, pursuant to section 251(d)(1), represents full compensation to the incumbent LEC for use of the network elements that telecommunications carriers purchase. Because of the unique situation described in the preceding paragraphs, however, we conclude, contrary to our proposal in the NPRM, that during a time-limited period, interconnecting carriers should not be able to use unbundled elements to avoid access charges in all cases. As detailed below, this temporary mechanism will apply only to carriers that purchase the local switch as an unbundled network element, and use that element to originate or terminate interstate traffic. We are applying these transitional charges to the unbundled local switching element, rather than to any

other network elements, because such an approach is most closely analogous to the manner in which the CCLC and TIC are recovered in the interstate access regime. Currently, the CCLC and TIC apply to interstate switched access minutes that traverse incumbent LECs' local switches. Applying the CCLC and 75 percent of the TIC to the unbundled local switching element is consistent with our goal of minimizing disruptions while we reform our universal service system and consider changes to our access charge mechanisms. Moreover, the CCLC and the TIC are recovered on a per-minute basis, and the local switch is the primary point at which incumbent LECs are capable of recording interstate minutes for traffic associated with end user customers of requesting carriers.

491. We have crafted this short-term continuation of certain access charge revenue flows to minimize the possibility that incumbent LECs will be able to "double recover" through access charges the facility costs that new entrants have already paid to purchase unbundled elements. For that reason, we do not permit incumbent LECs to assess on purchasers of the unbundled local switching element any interstate access charges other than the CCLC and 75 percent of the TIC. The other access charges are all designed to recover the cost of particular facilities involved in the provision of interstate access services, such as local switching, dedicated interoffice transport circuits, and tandem switching. Imposition of these facility-based access charges in addition to the cost-based charges for comparable network elements established under Section 252 could result in double recovery. The mechanism we establish will ensure that incentives created by non-cost-based elements of access charges do not result in harmful consequences prior to completion of access reform and our universal service proceeding. Imposition of additional access charges is therefore not necessary. We note that this mechanism serves to minimize the potentially disruptive effects of our decisions on incumbent LECs, including small incumbent LECs.

492. For the same reason, we permit incumbent LECs to recover only 75 percent of the TIC. Some portion of the TIC recovers revenues associated with specific transport facilities. To the extent that these costs can be identified clearly, they should not be imposed on new entrants through the TIC. Incumbent LECs will be fully compensated for any transport facilities that new entrants purchase from them through the unbundled element rates states establish under 252(d)(1), which, as we have stated, must be based on economic cost rather than access charges. In our interim transport rate restructuring, we explicitly set the initial tandem switching rate at 20 percent of the interstate revenue requirement, with the remainder included in the TIC. *Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking*, 57 FR 54717 (November 20, 1992). In addition, certain costs of upgrading incumbent LEC networks to support SS7 signaling were allocated to transport through then-existing separations procedures. In our interim transport rate restructuring, we did not create any facility-based charges to recover these costs, so the associated revenues presumably were incorporated into the TIC. There may also be other revenues associated with transport facilities that are recovered today through the TIC. While we are uncertain of the precise magnitude of these revenues, in our best judgment, based on the record in the *Transport* proceeding and other information before us, we find that it is likely that these revenues approach, but probably do not exceed 25 percent of the TIC for most incumbent LECs. Thus, we believe that 25 percent is a conservative amount to exclude from the TIC to ensure that incumbent LECs do not double recover revenues associated with transport facilities from new entrants. Moreover, the Court in *CompTel* v. *FCC* remanded our *Transport* decision, in part, because of the inclusion of tandem switching revenues in the TIC rather than in the rate element for tandem switching. We find that excluding 25 percent of the TIC represents a reasonable exercise of our discretion to prevent revenues associated with the tandem switching revenue requirement from being recovered from purchasers or unbundled local switching.

493. We strongly emphasize that these charges will apply to purchasers of the unbundled switching element only for a very limited period, to avoid the possible harms that might arise if we were to ignore the effects on access charges and universal service of implementation of section 251. BOCs shall not be permitted to recover these revenues once they are authorized to offer in-region interLATA service, because at that time the potential loss of access charge revenues faced by a BOC most likely will be able to be offset by new revenues from interLATA services. Moreover, although we do not prejudge the conditions necessary to grant BOC petitions under section 271 to offer in-region interLATA service, we do decide that BOCs should not be able to charge the CCLC and the TIC, which are not based on forward-looking economic costs, to competitors that use unbundled elements under section 251 once they are authorized to provide in-region interLATA service. Only BOCs are subject to special restrictions in the 1996 Act to ensure that their entry into the in-region interLATA market does not have an adverse impact on competition. We conclude that this additional trigger date after which BOCs may not continue to receive access charges from purchasers of unbundled local switching is consistent with this Congressional design.

494. We have selected June 30, 1997 as an ultimate end date for this transitional mechanism to coincide with the effective date for LEC annual access tariffs, and because we believe it is imperative that this transitional requirement be limited in duration. We can conceive of no circumstances under which the requirement that certain entrants pay the CCLC or a portion of the TIC on calls carried over unbundled network elements would be extended further. The fact that access or universal service reform have not been completed by that date would not be a sufficient justification, nor would any actual or asserted harm to the financial status of the incumbent LECs. By June 30, 1997, the industry will have had sufficient time to plan for and adjust to potential revenue shifts that may result from competitive entry. Thus, the economic impact of our decision on competitive local service providers, including those that are small entities, should be minimized.

495. We believe that we have ample legal authority to implement this temporary transitional measure, and we find that this approach is consistent with the letter and spirit of the 1996 Act. We recognize that the CCLC and TIC have not been developed in accordance with the pricing standards of section 252(d)(1), and that to comply with the 1996 Act, the rates that states establish for interconnection and unbundled network elements may not include non-cost-based amounts or subsidies. The 1934 and 1996 Acts do, however, give us legal authority to determine, for policy reasons, that users of LEC facilities should pay certain access charges for a period of time. *New England Tel. and Tel . Co.* v. *FCC*, 826 F.2d 1101 (DC. Cir 1987); *North American Telecommunications Association* v. *FCC*, 772 F.2d (7th Cir. 1085); *Lincoln Tel. and Tel. Co.* v. *FCC*, 659 F.2d (DC. Cir. 1989). Section 4(i) of the 1934 Act authorizes the Commission to "perform any and all acts * * * not

inconsistent with this Act, as may be necessary in the execution of its functions." Given the extraordinary upheaval in the industry's structure set in motion by the 1996 Act, and the specific concerns described above, we believe that a temporary mechanism is necessary in order to ensure that the policy goals underlying the access charge system and the Communications Act itself are not undermined. Further, we believe section 251(g) of the 1996 Act lends support to our decision. As discussed above, section 251(g) does not require that incumbent LECs continue to receive access charge revenues when telecommunications carriers use unbundled incumbent LEC network elements to originate and terminate interstate traffic. That section does, however, provide evidence of Congressional recognition of the potential tension between existing interconnection obligations, such as access charges, and the new methods of interconnection mandated by section 251, and therefore supports our decision to create a limited-duration mechanism to address this tension.

496. The decision of the court in *CompTel* v. *FCC* to remand our decision to adopt the TIC is not inconsistent with this approach. The Court's concern stemmed, in part, from the inclusion of a portion of the interstate tandem switching revenue requirement in the TIC. We have excluded from the charges that purchasers of unbundled local switching must pay a percentage of the TIC that, at a minimum, includes these allocated tandem switching revenues from the transitional charges that incumbent LECs may assess on IXCs. Furthermore, the Court directed the Commission to develop a cost-based transport rate structure, or to explain why it chose not to do so. *Competitive Telecommunications Association* v. *FCC*, 87 F.3d 522 (DC. Cir 1996). We intend to fulfill this obligation in the forthcoming access reform proceeding. The charge equal to 75 percent of the TIC will be applied only as an interim measure for a brief, clearly-identified period, until that restructuring of access charges is completed. The court expressly acknowledged that the 1996 Act would have implications for the access charge system. For the reasons described above, we conclude that these effects necessitate temporary application of a portion of the TIC to entrants that win end user customers from LECs, and that purchase the local switch as an unbundled element to originate and terminate interstate and intrastate toll traffic for such end users. In the access reform proceeding, we intend to determine the appropriate disposition for these revenues. Until we have had the opportunity to do so, however, we permit incumbent LECs to recover a transitional charge equal to 75 percent of the TIC under the limited circumstances described herein.

497. The interim mechanism we establish here differs from the waiver relief we have previously granted to NYNEX and Ameritech to permit them to recover certain interstate access charge revenues through "bulk billing" of revenues to all interstate switched access customers. Those orders responded to waiver requests filed prior to the passage of the 1996 Act. Our responsibility in those proceedings was to determine whether special circumstances existed, and whether the specific relief requested better served the public interest than continued application of our general rules. By constrast, the action we take today addresses industry-wide issues that arise from the new regime put into place by section 251 of the 1996 Act, which allows states to establish unbundled network element rates that recover the full unseparated cost of elements. Our response to the Ameritech and NYNEX waiver petitions does not, simply because those petitions also concerned access charge recovery, constrain our decision in this proceeding.

498. It would be unreasonable to provide such a transitional mechanism on the federal level, but to deny similar authority to the states. Therefore, states may continue existing explicit universal service support mechanisms based on intrastate access charges for an interim period of a similar brief, clearly-defined length. During that period, unless decided otherwise by the state, incumbent LECs may continue to recover such revenues from purchasers of unbundled local switching elements that use those elements to originate or terminate intrastate toll calls for end user customers they win from incumbent LECs. States may terminate these mechanisms at any time. We define mechanisms based on intrastate access charges as those mechanisms that require purchasers of intrastate access services from incumbent LECs to pay non-cost-based charges for those access services on the basis of their intrastate access minutes of use.

499. We do not intend, however, that such a transitional mechanism eviscerate the requirements of sections 252 and 254, which, as we have stated, prohibit funding of universal service subsidies through rates for interconnection and unbundled network elements. Mechanisms such as New York's "pay or play" system, which would impose intrastate access charges on non-access services rather than allowing incumbent LECs to recover non-cost-based revenues from purchasers of access services, may not be included in this interim system. Such a result is justified because state "pay or play" mechanisms do not at present constitute a significant revenue stream to incumbent LECs, and therefore elimination of this mechanism is unlikely, in the short term, to have significant detrimental effects on universal service support.

500. These state mechanisms must end on the earlier of: (1) June 30, 1997; or (2) if the incumbent LEC that receives the transitional access charge revenues is a BOC, the date on which that BOC is authorized under section 271 of the 1996 Act to offer in-region interLATA service. With one exception, the analysis provided above as to the rationale for the end dates for the transitional interstate access charge mechanism applies here as well. Because our access reform proceeding focuses on federal charges, and because the full extent of the section 254 universal service mechanism remains to be determined in that proceeding, intrastate access charge-based universal service support mechanisms should not now be required to terminate upon the completion of those proceedings.

501. As with our decision to permit incumbent LECs to continue to receive certain interstate access charge revenues from some purchasers of unbundled local switching for a limited period of time, we believe our decision to allow states to preserve certain intrastate universal service support mechanisms based on access charges is within our authority under section 251(d)(1) of the 1996 Act, and section 4(i) of the 1934 Act. Moreover, although section 251(g) does not directly refer to intrastate access charge mechanisms, it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms.

(c) Fifth Amendment Issues

502. We conclude that our decision that prices for incumbent LECs' unbundled elements and interconnection offerings be based on forward-looking economic cost does not violate the incumbent LECs' rights under the Fifth Amendment of the Constitution. The Supreme Court has recognized that public utilities owned and operated by private investors, even though their assets are employed in the public interest to provide consumers

with service, may assert their rights under the Takings Clause of the Fifth Amendment. *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299, 307 (1989). In applying the Takings Clause to rate setting for public utilities, the Court has stated that "[t]he guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory."

503. The Supreme Court has held that the determination of whether a rate is confiscatory depends on whether that rate is just and reasonable, and not on what methodology is used. *In re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Federal Power Commission* v. *Memphis Light, Gas & Water Division*, 411 U.S. 458 (1973); *Jersey Central Power & Light* v. *FERC*, 810 F.2d 1168 (D.C. Cir. 1987). In *Federal Power Comm'n* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944), the Court upheld the Federal Power Commission's order that required the company to make a large reduction in wholesale gas rates. The commission based its determination of a reasonable rate of return on a plant valuation determined by using a historical cost methodology that was only half as large as the company's own valuation based on forward-looking reproduction costs. In its decision, the Court set forth the governing legal standard for determining whether a rate is constitutional:

> Under the statutory standard of "just and reasonable" it is the result reached not the method employed that is controlling. It is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.

504. The Court went on to explain that, in determining whether a rate is reasonable, the regulatory body must balance the interests of both the investor and consumer. "From the investor or company point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business * * *. [T]he return on the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks."

505. Under sections 251(c) (2) and (3) of the 1996 Act, incumbent LECs must establish rates for interconnection and unbundled elements that are just and reasonable. In adopting the rules that govern those rates, under *Hope Natural Gas* we must consider whether the end result of incumbent LEC rates is just and reasonable. Incumbent LECs argue that establishing a rate structure that does not permit recovery of historical or embedded costs is confiscatory. We disagree. As stated above, the Court has consistently held since *Hope Natural Gas* that it is the end result, not the method used to achieve that result, that is the issue to be addressed. Indeed, the Court has found that the "fixing of prices, like other applications of the police power, may reduce the value of the property which is being regulated. But the fact that the value is reduced does not mean that the regulation is invalid." Moreover, the Court has upheld as reasonable changes in ratemaking methodology when the change resulted in the exclusion of historical costs prudently incurred. Thus, the mere fact that an incumbent LEC may not be able to set rates that will allow it to recover a particular cost incurred in establishing its regulated network does not, in and of itself, result in confiscation.

506. Moreover, *Hope Natural Gas* requires only that the end result of our overall regulatory framework provides LECs a reasonable opportunity to recover a return on their investment. In other words, incumbent LECs' overall rates must be considered, including the revenues for other services under our jurisdiction.

507. In this proceeding, we are establishing pricing rules that should produce rates for monopoly elements and services that approximate what the incumbent LECs would be able to charge if there were a competitive market for such offerings. We believe that a forward-looking economic cost methodology enables incumbent LECs to recover a fair return on their investment, *i.e.*, just and reasonable rates. The record does not compel a contrary conclusion. No incumbent LEC has provided persuasive evidence that prices based on a forward-looking economic cost methodology would have a significant impact on its "financial integrity." We further note that at least one federal appellate court has held incremental cost-based pricing constitutional. *Metropolitan Transp. Auth.* v. *Interstate Commerce Commission*, 792 F.2d 287, 297 (2d Cir.), *cert. denied*, 479 U.S. 1017 (1986).

508. Incumbent LECs may seek relief from the Commission's pricing methodology if they provide specific information to show that the pricing methodology, as applied to them, will result in confiscatory rates. We also do not completely foreclose the possibility that incumbent LECs will be afforded an opportunity to recover, to some extent, their embedded costs through a mechanism separate from rates for interconnection and unbundled network elements. As stated above, we intend to explore this issue in detail in our upcoming access reform proceeding.

509. GTE argues that the proper standard to review our ratemaking methodology is the just compensation standard generally reserved for takings of property. This is in effect a contention that the 1996 Act's physical collocation and unbundled network facility requirements constitute physical occupation of their property that should be deemed a taking and that must be subject to "just compensation." Assuming for the sake of argument that the physical collocation and unbundled facilities requirements do result in a taking, we nevertheless find that the ratemaking methodology we have adopted satisfies the just compensation standard. Just compensation is normally measured by the fair market value of the property subject to the taking. Just compensation is not, however, intended to permit recovery of monopoly rents. The just and reasonable rate standard of TELRIC plus a reasonable allocation of the joint and common costs of providing network elements that we are adopting attempts to replicate, with respect to bottleneck monopoly elements, the rates that would be charged in a competitive market, *Policy and Rules Concerning Rates for Dominant Carriers, Further Notice of Proposed Rulemaking*, 53 FR 22356 (June 15, 1988), and, we believe, is entirely consistent with the just compensation standard. Indeed, a similar rate methodology based on incremental costs has been found to satisfy the just compensation requirement. For these reasons, we conclude that, even if the 1996 Act's physical collocation and unbundled network facility requirements constitute a taking, a forward-looking economic cost methodology satisfies the Constitution's just compensation standard.

3. Rate Structure Rules

a. General Rate Structure Rules

(1) Background

510. In addition to applying our economic pricing methodology to determine the rate level of a specific element or interconnection, the state must also determine the appropriate rate structure. We discuss in this section general principles for analyzing rate structure questions, such as in what circumstances charges should be flat-rated or usage sensitive and in what circumstances they should be recurring or non-recurring. These rate structure

rules will apply as well if a state sets rates based on default proxies discussed in Section VII.C.2 below, where we also discuss the appropriate rate structure for specific network elements. Network providers incur costs in providing two broad categories of facilities, dedicated and shared. Dedicated facilities are those that are used by a single party—either an end user or an interconnecting network. Shared facilities are those used by multiple parties. In the NPRM, we proposed that costs should be recovered in a manner that reflects the way they are incurred. We also sought comment on whether we should require states to provide for recovery of dedicated facility costs on a flat-rated basis, or at a minimum, require LECs to offer a flat-rate option.

(2) Discussion

511. We conclude, as a general rule, that incumbent LECs' rates for interconnection and unbundled elements must recover costs in a manner that reflects the way they are incurred. This will conform to the 1996 Act's requirement that rates be cost-based, ensure requesting carriers have the right incentives to construct and use public network facilities efficiently, and prevent incumbent LECs from inefficiently raising costs in order to deter entry. We note that this conclusion should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents, which may be expected to reduce the regulatory burdens and economic impact of our decision for many parties, including both small entities seeking to enter the local exchange markets and small incumbent LECs. We also adopt some more specific rules that follow from this general rule.

512. First, we require that the charges for dedicated facilities be flat-rated, including, but not limited to, charges for unbundled loops, dedicated transport, interconnection, and collocation. These charges should be assessed for fixed periods, such as a month. We are requiring flat-rated charges for dedicated facilities. Usage-based charges for dedicated facilities would give purchasers of access to network elements an uneconomic incentive to reduce their traffic volumes. Moreover, purchasers of access to network elements with low volumes of traffic would pay below-cost prices, and therefore have an incentive to add lines that they would not add if they had to pay the full cost. As stated in the NPRM, a flat-rated charge is most efficient for dedicated facilities, because it ensures that a customer will pay the full cost of the facility, and no more. It ensures that an entrant will, for example, purchase the exclusive right to use additional loops only if the entrant believes that the benefits of the additional loops will exceed its costs. It also ensures that the entrant will not face an additional (and non-cost-based) usage charge.

513. Second, if we apply our general rule that costs should be recovered in a manner that reflects the way they are incurred, then recurring costs must be recovered through recurring charges, rather than through a nonrecurring charge. A recurring cost is one incurred periodically over time. A LEC may not recover recurring costs such as income taxes, maintenance expenses, and administrative expenses through a nonrecurring charge because these are costs that are incurred in connection with the asset over time. For example, we determine that maintenance expenses relating to the local loop must be recovered through the recurring loop charge, rather than through a nonrecurring charge imposed upon the entrant.

514. We find that recovering a recurring cost through a nonrecurring charge would be unjust and unreasonable because it is unlikely that incumbent LECs will be able to calculate properly the present value of recurring costs. To calculate properly the present value of recurring costs, an incumbent LEC would have to project accurately the duration, level, and frequency of the recurring costs and estimate properly its overall cost of capital. We find that, in practice, the present value of the recurring costs cannot be calculated with sufficient accuracy to warrant up-front recovery of these costs because incumbent LECs lack sufficient experience with the provision of interconnection and unbundled rate elements. Without sufficient experience, incumbent LECs are unable to project the length of time that an average entrant would interconnect with, or take an unbundled element from, the incumbent LEC, or how expenses associated with interconnection and unbundled rate elements would change over time. In contrast, a recurring charge for a recurring cost would ensure that a customer is only charged for the costs the entrant incurs while that entrant is taking interconnection service or unbundled rate elements from the incumbent LEC. Moreover, when costs associated with the interconnection and particular unbundled rate elements change, the incumbent LEC can make appropriate adjustments to the charges at the time such cost changes occur.

515. Accordingly, we find that imposing nonrecurring charges for recurring costs could pose a barrier to entry because these charges may be excessive, reflecting costs that may (1) not actually occur; (2) be incurred later than predicted; (3) not be incurred for as long as predicted; (4) be incurred at a level that is lower than predicted; (5) be incurred less frequently than predicted; and (6) be discounted to the present using a cost of capital that is too low.

516. Notwithstanding the foregoing, where recurring costs are *de minimis,* we will permit incumbent LECs to recover such costs through nonrecurring charges. We find that recurring costs are *de minimis* where the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs.

517. Third, states may, but need not, require incumbent LECs in an arbitrated agreement to recover nonrecurring costs, costs that are incurred only once, through recurring charges over a reasonable period of time. The recovery of such nonrecurring costs through recurring charges is a common practice for telecommunications services. Construction of an interconnector's physical collocation cage is an example of a nonrecurring cost. We find that states may, where reasonable, require an incumbent LEC to recover construction costs for an interconnector's physical collocation cage as a recurring charge over a reasonable period of time in lieu of a nonrecurring charge. This arrangement would decrease the size of the entrant's initial capital outlay, thereby reducing financial barriers to entry. At the same time, any such reasonable arrangement would ensure that incumbent LECs are fully compensated for their nonrecurring costs.

518. We require, however, that state commissions take steps to ensure that incumbent LECs do not recover nonrecurring costs twice and that nonrecurring charges are imposed equitably among entrants. A state commission may, for example, decide to permit incumbent LECs to charge the initial entrants the full amount of costs incurred for shared facilities for physical collocation service, even if future entrants may benefit. A state commission may, however, require subsequent entrants, who take physical collocation service in the same central office and receive benefits as a result of costs for shared facilities, to pay the incumbent LEC for their proportionate share of those costs, less depreciation (if

an asset is involved). Under this approach, the state commission could require the incumbent LEC to provide the initial entrants *pro rata* refunds, reflecting the full amount of the charges collected from the subsequent entrants. Alternatively, a state commission may decide to permit incumbent LECs to charge initial entrants a proportionate fraction of the costs incurred, based on a reasonable estimate of the total demand by entrants for the particular interconnection service or unbundled rate elements.

519. In addition, state commissions must ensure that nonrecurring charges imposed by incumbent LECs are equitably allocated among entrants where such charges are imposed on one entrant for the use of an asset and another entrant uses the asset after the first entrant abandons the asset. For example, when an entrant pays a nonrecurring charge for construction of a physical collocation cage and the entrant discontinues occupying the cage before the end of the economic life of the cage, a state commission could require that the initial entrant receive a *pro rata* refund from the incumbent LEC for the undepreciated value of the cage in the event that a subsequent entrant takes physical collocation service and uses the asset. Under this approach, the state commission could require that the subsequent entrant pay the incumbent LEC a nonrecurring charge equal to the remaining unamortized value of the cage and the initial entrant will receive a credit from the incumbent LEC equal to the unamortized value of the cage at the time the subsequent entrant takes service and utilizes the cage.

520. BellSouth's concern that rate structure rules could preclude mutually agreeable alternative structures is misplaced. The rate structure rules we adopt here apply only to rates imposed by the states in arbitration among the parties and to state review of BOC statements of generally available terms. Our rules do not restrict parties from agreeing to alternative rate structures. On the contrary, our intent, following the clear pro-negotiation spirit of the 1996 Act, is for parties to use the backdrop of state arbitrations conducted under our rules, to negotiate more efficient, mutually agreeable arrangements, subject, of course, to the antitrust laws and to the 1996 Act's requirements that voluntarily negotiated agreements not unreasonably discriminate against third parties.

b. Additional Rate Structure Rules for Shared Facilities

(1) Background

521. In the NPRM, we stated our belief that the costs of shared facilities should be recovered in a manner that efficiently apportions costs among users that share the facility. The NPRM noted that, for shared facilities, it may be efficient to set prices using any of the following: a usage-sensitive charge; a usage-sensitive charge for peak-time usage and a lower charge for off-peak usage; or a flat charge for the peak capacity that an interconnector wishes to pay for and use as though that portion of the facility were dedicated to the interconnector.

(2) Discussion

522. The costs of shared facilities including, but not limited to, much of local switching, tandem switching, transmission facilities between the end office and the tandem switch, and signaling, should be recovered in a manner that efficiently apportions costs among users. Because the cost of capacity is determined by the volume of traffic that the facilities are able to handle during peak load periods, we believe, as a matter of economic theory, that if usage-sensitive rates are used, then somewhat higher rates should apply to peak period traffic, with lower rates for non-peak usage. The peak load price would be designed to recover at least the cost of the incremental network capacity added to carry peak period traffic. Pricing traffic during peak periods based on the cost of the incremental capacity needed to handle additional traffic would be economically efficient because additional traffic would be placed on the network if and only if the user or interconnecting network is willing to pay the cost of the incremental network capacity required to handle this additional traffic. Such pricing would ensure that a call made during the peak period generates enough revenue to cover the cost of the facilities expansion it requires, and would thus give carriers an incentive to expand and develop the network efficiently. In contrast, off-peak traffic imposes relatively little additional cost because it does not require any incremental capacity to be added to base plant, and consequently, the price for carrying off-peak traffic should be lower.

523. We recognize, however, that there are practical problems associated with a peak-sensitive pricing system. For example, different parts of a given provider's network may experience peak traffic volumes at different times (*e.g.*, business districts may experience their peak period between 10:00 and 11:00 a.m., while suburban areas may have their peak periods between 7:00 and 8:00 p.m.) Moreover, peak periods may change over time. For instance, growth in Internet usage may create new peak periods in the late evening. Further, charging different prices for calls made during different parts of the day may cause some customers to shift their calling to the less expensive time periods, which could shift the peak or create new peaks. Thus, to design an efficient peak-sensitive pricing system requires detailed knowledge of both the structure of costs as well as demand.

524. We conclude that the practical problems associated with peak-sensitive pricing make it inappropriate for us to require states to impose such a rate structure for unbundled local switching or other shared facilities whose costs vary with capacity. Because we believe that such a structure may be the most economically efficient, however, we do not prohibit states from imposing peak-sensitive pricing. We also expect that parties may be able to negotiate agreements with peak/off-peak differences if the benefits of such distinctions are sufficiently high. We conclude that states may use either usage-sensitive rates or flat capacity-based rates for shared facilities, if a state finds that such rates reasonably reflect the costs imposed by the various users. States may consider for guidance rate structures developed in competitive markets for shared facilities. We note that our decisions in this section may benefit small entity entrants in local exchange and exchange access markets by minimizing the extent to which purchasers of interconnection and unbundled access pay rates that diverge from the costs of those facilities and services.

c. Geographic/Class-of-Service Averaging

(1) Background

525. In the NPRM, we asked about the appropriate level of aggregation for rates for interconnection and access to unbundled elements. We noted that geographic averaging is simple to administer and prevents unreasonable or unlawful rate differences but, where averaging covers high and low cost areas, it could distort competitors' decisions whether to lease unbundled elements or build their own facilities. We sought comment on the geographic deaveraging of interconnection and unbundled element rates by zone, LATA, or other area.

526. We also inquired about disaggregation by class of service. We questioned whether business and residential loops, or loops deployed using different technologies should be charged different rates, and how large a differential should be allowed.

(2) Discussion

527. *Geographic Deaveraging.* The 1996 Act mandates that rates for interconnection and unbundled elements be "based on the cost * * * of providing the interconnection of network elements." We agree with most parties that deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements. Thus, we conclude that rates for interconnection and unbundled elements must be geographically deaveraged.

528. The record reflects that at least two states have implemented geographically deaveraged rate zones. These rate zone pricing systems have generally included a minimum of three zones. In the *Expanded Interconnection* proceeding, the Commission also permitted LECs to implement a three zone structure. *Expanded Interconnection Order.* 57 FR 54323 (November 18, 1992); *Expanded Interconnection Second Report and Order and Third Notice of Proposed Rulemaking.* 58 FR 48756 (September 17, 1993). We conclude that three zones are presumptively sufficient to reflect geographic cost differences in setting rates for interconnection and unbundled elements, and that states may, but need not, use these existing density-related rate zones. Where such systems are not in existence, states shall create a minimum of three cost-related rate zones to implement deaveraged rates for interconnection and unbundled elements. A state may establish more than three zones where cost differences in geographic regions are such that it finds that additional zones are needed to adequately reflect the costs of interconnection and access to unbundled elements.

529. *Class-of-Service Deaveraging.* The record leads us to the opposite conclusion for class-of-service deaveraging. Under the 1996 Act, wholesale rates for resold services will be based on retail rates less avoided costs. Rates for interconnection and access to unbundled elements, however, are to be based on costs. We conclude that the pricing standard for interconnection and unbundled elements prohibits deaveraging that is not cost based. Interconnection and unbundled elements are intermediate services provided by incumbent LECs to other telecommunications carriers, and there is no evidence that the cost of providing these intermediate services varies with the class of service the telecommunications carrier is providing to its end-user customers. We conclude that states may not impose class-of-service deaveraging on rates for interconnection and unbundled elements. We disagree with the Ohio Consumers' Counsel's position that the 1996 Act's explicit permission of class-of-service deaveraging of resold services implies that class-of-service deaveraging should be permitted for interconnection and unbundled elements. Finally, we note that these decisions concerning averaging may be expected to lead to increased competition and a more efficient allocation of resources, which should benefit the entire industry, including small entities and small incumbent LECs.

C. Default Proxy Ceilings and Ranges

530. As previously discussed, we strongly encourage state commissions, as a general rule, to set arbitrated rates for interconnection and access to unbundled network elements pursuant to the forward-looking, economic cost pricing methodology we adopt in this Order. Such rates would approximate levels charged in a competitive market, would be economically efficient, and would be based on the forward-looking, economic cost of providing interconnection and unbundled elements. We recognize, however, that, in some cases, it may not be possible for carriers to prepare, or the state commission to review, economic cost studies within the statutory time frame for arbitration and thus here first address situations in which a state has not approved a cost study. States that do not complete their review of a forward-looking economic cost study within the statutory time periods but must render pricing decisions, will be able to establish interim arbitrated rates based on the proxies we provide in this Order. A proxy approach might provide a faster, administratively simpler, and less costly approach to establishing prices on an interim basis than a detailed forward-looking cost study.

531. The default proxies we establish will, in most cases, serve as presumptive ceilings. States may set prices below those ceilings if the record before them supports a lower price. States should provide a reasoned basis for selecting a particular default price. In one case, for local switching, the default proxy is a range within which a state may set prices.

532. States that set prices based upon the default proxies must also require the parties to update the prices in the interconnection agreement on a going-forward basis, either after the state conducts or approves an economic study according to the cost-based pricing methodology or pursuant to any revision of the default proxy. We believe generic economic cost models, in principle, best comport with the preferred economic cost approach described previously, and we intend to examine further such models by the first quarter of 1997 to determine whether any of those models, with any appropriate modifications, could serve as better default proxies. Any updated price would take effect beginning at the time of the completed and approved study or the application of the revised default proxy.

533. Second, if a state has approved or conducted an economic cost study, prior to this Order, that complies with the methodology we adopt in this Order, the state may continue to apply the resulting rate even when not consistent with our default proxies. There must, however, be a factual record, including the cost study, sufficient for purposes of review after notice and opportunity for the affected parties to participate.

534. Finally, while we provide for the use by states of default proxies, we recognize that certain states that are unable to utilize an economic cost study may wish to obtain the benefits of setting rates pursuant to such a study for its residents. The Commission will therefore entertain requests by states to review an economic cost study, to assist the state in conducting or reviewing such a study, or to conduct such a study.

1. Use of Proxies Generally

a. Background

535. In the NPRM, we discussed the possibility of setting certain outside limits for interconnection and unbundled element rates, in particular, by the use of proxies. We invited parties to comment on whether the use of certain proxies to set outer boundaries on the prices for interconnection and unbundled elements would be consistent with the pricing principles of the 1996 Act. Specifically, in the NPRM, we asked parties to comment on the benefits of various types of proxies: (1) generic cost studies, such as the Benchmark Cost Model and the Hatfield models; (2) some measure of nationally-averaged cost data; (3) rates in existing interconnection and unbundling arrangements between incumbent LECs and other providers of local service, such as neighboring incumbent LECs, CMRS providers, or other entrants in the

same service area; (4) a subset of the incumbent LECs' existing interstate access rates, charged for interconnection with IXCs and other access customers, or an intrastate equivalent; (5) use of the interstate prices established in the *ONA* proceeding for unbundled features and functions of the local switch as ceilings for the same unbundled elements under section 251; and (6) any other administratively simple methods for establishing a ceiling for interconnection and unbundled network element rates. As a counterpart to ceilings, we also sought comment on whether it would be necessary or appropriate for us to establish floors for interconnection and unbundled element prices.

b. Discussion

536. We adopt, in the section below, default proxies for particular network elements. We believe that these default proxies generally will result in reasonable price ceilings or price ranges and, for administrative and practical reasons, will be beneficial to the states in conducting initial rate arbitrations, especially in the time period prior to completion of a cost study. The proxies we adopt are designed to approximate prices that will enable competitors to enter the local exchange market swiftly and efficiently and will constrain the incumbent LECs' ability to preclude efficient entry by manipulating the allocation of common costs among services and elements. States that utilize the default proxies we establish to set prices in an arbitration should revise those prices on a going-forward basis when they are able to utilize the preferred economic costing methodology we describe in Section VII.B.2.a. above, or if we subsequently adopt new proxies.

537. We have considered the economic impact of the adoption of default proxy ceilings and ranges on small entities, including new entrants and small incumbent LECs. The adoption of proxies for interim arbitrated rates should minimize regulatory burdens on the parties to arbitration, including small entities seeking to enter the local exchange markets and small incumbent LECs, by permitting states to implement the 1996 Act more quickly and facilitating competition on a reasonable and efficient basis by all firms in the industry. We therefore believe that the adoption of default proxy ranges and ceilings advances the pro-competitive goals of the 1996 Act. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

538. The proxies that we establish represent the price ceiling or price ranges for the particular element on an averaged basis. In Section VII.B.3.c. above, we required that rates be set on a geographically-deaveraged basis. Consequently, states utilizing the proxies shall set rates such that the average rate for the particular element in a study area does not exceed the applicable proxy ceiling or lie outside the proxy range.

539. We reject the use of rates in interconnection agreements that predate the 1996 Act as a proxy-based ceiling for interconnection and unbundled element rates. These existing interconnection agreements were not reached in a competitive market environment. Further, such agreements may reflect the divergent bargaining power of the parties to the agreement, various public policy initiatives to advance rural telephone service, or non-monetary *quid pro quos* often found in voluntarily negotiated business arrangements that may be difficult to quantify. There is little basis for us to conclude that rates in these interconnection agreements reflect the forward-looking, incremental cost of interconnection and unbundled network elements. Prices in agreements reached since the 1996 Act are more likely than prior agreements to provide useful information about forward-looking costs, which together with other information may be useful in establishing proxies.

540. In the NPRM, we also raised the issue of using some measure of nationally-averaged cost data as a proxy. No such study has been submitted into the record in this proceeding.

2. Proxies for Specific Elements

a. Overview

541. Although we encourage states to use an economic cost methodology to set rates for interconnection, unbundled network elements, and collocation, we will permit states unable to analyze an economic costing study within the statutory time constraints to use default proxies in setting and reviewing rates. We set forth below the default proxies for specific network elements. These proxies are interim only. They will apply only until a state sets rates in arbitrations on the basis of an economic cost study, or until we promulgate new proxies based on economic cost models. We also set forth below the rate structure rules that apply to each of network elements. These rate structure requirements are applicable regardless of whether a state uses an economic cost study or the proxy approach to set rate levels.

b. Discussion

(1) Loops

(a) Discussion

542. Most loop costs are associated with a single customer. *MTS and WATS Market Structure, Third Report and Order*, 48 FR 10319 (March 11, 1983). Outside plant between a customer's premises and ports on incumbent LEC switches is typically either physically separate for each individual customer, or has costs that can easily be apportioned among users. We therefore conclude that costs associated with unbundled loops should be recovered on a flat-rated basis. Usage-based rates for an unbundled loop would most likely translate into usage-based rates for new entrants' retail local customers. A retail usage-based rate would distort incentives for efficient use. Customers that had to pay a usage charge would have an incentive not to use the network in situations where the benefit of using the network exceeds the true cost of using the network. Usage-based loop prices would put an entrant at an artificial cost disadvantage when competing for high-volume customers. We note that MFS has filed a separate petition asking the Commission to preempt certain provisions of the Texas statute, which it contends requires incumbent LECs to sell unbundled local loops on a usage-sensitive basis. We will rule specifically on the Texas statute when we consider the *MFS Texas Petition*.

543. In general, we believe that states should use a TELRIC methodology to establish geographically deaveraged, flat-rate charges for access to unbundled loops. As discussed above, however, we recognize that, in some cases, it may not be possible for carriers to prepare, or for state commissions to review, economic cost studies within the statutory time frame for arbitration proceedings. Because reviewing and approving such cost studies takes time and because many states have not yet begun, or have only recently begun, to develop and examine such studies, it is critical for the near-term development of local competition to have proxies that provide an approximation of forward-looking economic costs and can be used by states almost immediately. These proxies would be used by a state commission until it is able either to complete a cost study or to evaluate and adopt the results of a study or studies

submitted in the record. In an NPRM to be issued shortly, we will investigate more fully various long-run incremental cost models in the record with an eye to developing a model that can be used to generate proxies for the forward looking economic costs of network elements. Until such time as we can develop such a model, we have developed the following default proxy ceilings that state commissions that have not completed forward looking economic cost studies may use in the interim as an approximation to the forward looking cost of the local loop.

544. State commissions may use this proxy to derive a maximum (or ceiling) loop rate for each incumbent LEC operating within their state, and may establish actual unbundled loop rates at any level less than or equal to this maximum rate in specific arbitrations or other proceedings. Of course, we are encouraging states to have economic studies completed wherever feasible. Moreover, states will have to replace this proxy ceiling with the results of their own forward looking economic cost study or the results produced by a generic economic cost model that the Commission has approved.

545. We are adopting a proxy ceiling based on two cost models and rates for unbundled loops allowed by six states that had available to them the results of forward-looking economic cost studies at the time they considered either interim or permanent rates for the unbundled loop element. These states are Colorado, Connecticut, Florida, Illinois, Michigan, and Oregon. Each of these states has used a standard that appears to be reasonably close to the forward-looking economic cost methodology that we require to be used, although possibly not consistent in every detail with our TELRIC methodology. Generally, these states appear to have included an allocation of forward-looking common costs in their unbundled loop prices. The individual state studies resulted in the following average rates for unbundled local loops: Colorado, $18; Connecticut, $12.95; Florida, $17.28; Illinois, $10.93; Michigan, $10.03; and Oregon, $12.45, computed as set forth below.

546. The Colorado Commission set an interim rate of $18 per month for unbundled loops terminated at the main distribution frame of the LEC switch. The Connecticut Commission ruled that SNET must provide the following interim unbundled loop prices varying by four zones: metro $10.18; urban $11.33; suburban $15.33; and rural $14.97. In the absence of further information about customer density or average loop length by zone, we used a simple average equal to $12.95. The Florida Commission set an interim rate for 2-wire loops at $17.00 per month for BellSouth, $15.00 for United/Centel, and $20.00 for GTE. Using weights equal to the number of loops served by each company in 1994 as reported in the Monitoring Report, we computed a weighted average price equal to $17.28. Pursuant to its *Customers First* Order, the Illinois Commerce Commission approved tariffs establishing business rates equal to $7.08, $10.92, and $14.45, and residential rates equal to $4.59, $8.67, and $12.14 in three density zones. Based on data from Table 2.5, page 20 of the Common Carrier Statistics, 1995 Preliminary, we found a 36 percent–64 percent business residential split. Using Illinois Commission data for number of households in each density zone (996,750 in zone A; 2,788,759 in zone B; 4,594,567 in zone C), we computed an average loop cost of $10.93. The Michigan Commission approved transitional rates of $8.00 per loop for business and $11 per loop for residence. Based on Common Carrier Statistics, 1995 Preliminary data, we computed a 32 percent–68 percent business-residential split in Michigan, which leads to an average rate of $10.03. The Oregon Commission set the rate for a "basic 2-wire loop set" at $11.95 plus $0.50 for a network access channel connection, for a total price of $12.45.

547. In order to set a proxy ceiling for unbundled loop elements we make use of the two cost models for which nationwide data are available and upon which parties have had the opportunity to comment in this proceeding. These models are the Benchmark Cost Model (*BCM*) and the *Hatfield 2.2*. Based on our current information, we believe that both these models are based on detailed engineering and demographic assumptions that vary among states, and that the outputs of these models represent sufficiently reasonable predictions of relative cost differences among states to be used as set forth below to set a proxy ceiling on unbundled loop prices for each state. We do not believe, however, that these model outputs by themselves necessarily represent accurate estimates of the absolute magnitude of loop costs. As we discuss below, further analysis is necessary in order to evaluate fully the procedures and input assumptions that the models use in order to derive cost estimates. Furthermore, in the case of *BCM*, model outputs include costs in addition to the cost of the local loop. In order to correct for these considerations, we have developed a hybrid cost proxy in the following manner. First, we have applied a scaling factor to the cost estimates of each model. This scaling is based on the actual rates computed for unbundled loop elements in the six states referred to above. Specifically we have multiplied the cost estimate produced by each model in each state by a factor equal to the unweighted average of rates adopted by state commissions in the six states, divided by the unweighted average of the model cost estimates for the same six states. Our hybrid cost proxy is computed as the simple average of the scaled cost estimates for the two models in each of the 48 contiguous states and the District of Columbia. Neither *BCM* nor *Hatfield 2.2* provide cost estimates for Alaska and only the *BCM* provides an estimate for Hawaii. Our default loop cost proxies for Hawaii and Puerto Rico are based on the default loop cost proxies of the states that most closely approximate them in population density per square mile. We are not setting default loop cost proxies in this Order for Alaska or for any of the remaining non-contiguous areas subject to the 1996 Act requirement that incumbent LECs offer unbundled loop elements. We are not establishing default loop cost proxies for these areas because we are unsure that comparisons of the population densities of the continental states and of Alaska and other non-contiguous areas subject to the 1996 Act fully capture differences in loop costs. Regulatory authorities in those areas may seek assistance from this Commission should default loop cost proxies be needed before they have completed their investigations of the forward-looking costs of providing unbundled loop elements. Since our intention is to establish a ceiling for unbundled loop rates, we believe that it is necessary to take account of the variation in the data that we have used for scaling. While the six states that we considered appear to have based their rates on forward-looking economic cost pricing principles, the actual rates that they approved appear to reflect other factors as well. Furthermore, because only a small number of states have conducted such studies, some upward adjustment is warranted as a safety margin to ensure that the ceiling captures the variation in forward-looking economic costing prices on a state-by-state basis. We have therefore chosen to adjust the hybrid cost estimates upward by five percent for each state. A table listing the proxy ceilings on a statewide average basis is contained in Appendix D.

548. A number of parties have opposed the use of either the *Hatfield* model or *BCM*. Some critics, for example, have argued that the models may lead to inaccurate cost estimates since these estimates assume that a network is built "from scratch." Others have criticized specific procedures that have been used in the models to estimate both operating expenses and capital costs. As discussed below in Section VII.C.3., we believe that these criticisms may have merit. In a future rulemaking proceeding, we intend to examine in greater detail various forward looking economic cost models. For the purposes of setting an interim proxy, however, we note that the criticisms have been directed largely toward the absolute level of cost estimates produced by the models, rather than the relative cost estimates across states. Since our hybrid proxy ceiling explicitly scales the model cost estimates based on existing state decisions and uses the model results simply to compute relative prices, we believe that these criticisms do not apply in the present context.

549. We also note that a third model, the *BCM 2*, could have been used in the construction of our interim cost proxy by simply taking the scaled cost estimates from three cost models instead of two. We have chosen not to follow this approach since parties have not had an opportunity to comment on the possible deficiencies of the *BCM 2*. For comparison purposes, however, we have computed the corresponding ceiling cost estimates, and have found that the scaled costs using the three model proxy are very similar to the estimated costs that were derived using the two models.

550. As discussed above, we believe that cost-based rates should be implemented on a geographically deaveraged basis. We allow states to determine the number of density zones within the state, provided that they designate at least three zones, but require that in all cases the weighted average of unbundled loop prices, with weights equal to the number of loops in each zone, should be less than the proxy ceiling set for the statewide average loop cost set forth in Appendix D.

551. As noted above, we have not yet had sufficient time to evaluate fully any of the cost models that have been submitted in the record, and our hybrid proxy is therefore intended to be used only on an interim basis. We believe that the methodology is consistent with forward-looking cost studies, but we also recognize that there may be situations in which forward looking loop costs will differ from computed costs, and accordingly, we have increased the state average loop costs by five percent and established the proxy as a ceiling. We emphasize that use of the hybrid proxy model can be superseded at any time by a full forward looking economic cost study that follows the guidelines set forth in this order. In addition, we are currently in the process of evaluating the more detailed cost models that have been submitted in the record, and will issue a further notice on the use of these models in the near future.

(2) Local Switching

(a) Discussion

552. We conclude that a combination of a flat-rated charge for line ports, which are dedicated to a single new entrant, and either a flat-rate or per-minute usage charge for the switching matrix and for trunk ports, which constitute shared facilities, best reflects the way costs for unbundled local switching are incurred and is therefore reasonable. We find that there is an insufficient basis in the record to conclude that we should require two flat rates for unbundled local switching charges as proposed by Sprint.

553. Based on the record in this proceeding and in the *LEC–CMRS Interconnection* proceeding, we conclude that a range between 0.2 cents ($0.002) per minute of use and 0.4 cents ($0.004) per minute of use for unbundled local switching is a reasonable default proxy. In setting this default price range, we consider the range of evidence in the record, and believe that the most credible studies fall at the lower end of this range. However, so as to minimize disruption for any state that has set a rate only marginally outside this range, we will grandfather any state that has set a rate at 0.5 cents ($0.005) per minute of use or less pending completion of an economic study pursuant to the methodology set forth in this Order.

554. The forward-looking cost studies contained in the record estimate that the average cost of end-office switching ranges from 0.18 cents ($0.0018) per minute of use to 0.35 cents ($0.0035) per minute of use. Maryland and Florida have adopted rates based on forward-looking economic cost studies that fall within the default price range we are adopting. NYNEX's estimate of 0.129 cents ($0.00129) per minute of use, in the Massachusetts proceeding, is an estimate of the marginal cost of end-office switching. As discussed above, we generally expect studies estimating marginal costs to generate estimates that are less than estimates derived from TELRIC-based studies. We, therefore, conclude that 0.2 cents ($0.002) per minute of use is a reasonable lower end of the price range for end-office switching.

555. USTA's estimate of 1.3 cents ($0.013) appears to be an outlier that is significantly higher than the other estimates. We find that USTA's estimate does not represent an appropriate cost model for termination of traffic. USTA's estimate is based on the high end of a set of econometric estimates of LEC-reported cost data rather than an independent cost estimate, and USTA gives no explanation of why we should regard this as the best estimate. In addition, USTA's figure is derived, at least in part, from studies that attempt to measure the incremental cost of end-to-end use of the network for local calls, not the cost of local switching. Pacific Bell's study of the average LRIC of a call terminating under "Feature Group B" apparently includes terminations at tandem switches in addition to end-office terminations.

556. Michigan and Illinois have adopted rates for transport and termination of traffic that are higher than the default price range we adopt for end-office switching. Michigan, which established mutual compensation rates of 1.5 cents ($0.015) per minute of use, did not review a forward-looking cost study. Illinois's 0.5 cents ($0.005) per minute rate for termination through the end office is just outside the range we are establishing. First, as previously stated, we are grandfathering rates of 0.5 cents ($0.005) per minute or lower. Further, we do not believe Illinois's rate overrides the weight of evidence in the record, which supports the range we are establishing.

557. States that do not calculate the rate for the unbundled local switching element pursuant to a forward-looking economic cost study may, in the interim, set the rate so that the sum of the flat-rated charge for line ports and the product of the projected minutes of use per port and the usage-sensitive charges for switching and trunk ports, all divided by the projected minutes of use, does not exceed 0.4 cents ($0.004) per minute of use and is not lower than 0.2 cents ($0.002) per minute of use. A state may impose a rate for unbundled local switching that is outside this range if it finds that a forward-looking economic cost study shows a higher or lower rate is justified. States that use our proxy and impose flat-rated charges for unbundled local switching should set rates so that the price falls within the range of 0.2 cents ($0.002) per minute of use and 0.4 cents ($0.004) per minute of use if converted through use of a geographically disaggregated average

usage factor. A default price range of 0.2 cents ($0.002) per minute of use and 0.4 cents ($0.004) per minute of use should allow carriers the opportunity to recover fully their additional cost of terminating a call including, according to Maryland's study, a reasonable allocation of common costs. We observe that the most credible studies in the record before us fall at the lower end of this range and we encourage states to consider such evidence in their analysis.

558. With respect to the argument that vertical features should be priced pursuant to the resale price standards, we concluded earlier that vertical features are part of the unbundled local switching element, because they are provided through the operation of hardware and software comprising the "facility" that is the switch. Accordingly, the pricing standard in 252(d)(1) applies to vertical features as part of the functionality of the switch. As previously discussed, allowing new entrants to purchase switching and vertical features as part of the local switching network element is an integral part of a separate option Congress has provided for new entrants to compete against incumbent LECs.

559. The 1996 Act establishes different pricing standards for these two options available to new entrants—resale of services pursuant to section 251(c)(4) and unbundled elements pursuant to section 251(c)(3). Where the new entrant purchases vertical features as part of its purchase of an unbundled local switching element, the price of that element, including associated vertical features, should be determined according to section 252(d)(1). The availability of vertical services as part of a wholesale service offering is distinct from their availability as part of the local switching network element. In these circumstances, allowing the new entrant to combine unbundled elements with wholesale services is an option that is not necessary to permit the new entrant to enter the local market.

560. As to Bell Atlantic's takings argument, we concluded above that the pricing of unbundled elements according to the just and reasonable standard in section 251 (c)(2) and (c)(3), and applied in section 252(d)(1), is not an unconstitutional taking. That analysis, which looks at the overall rates established by our regulations, applies with equal force to the pricing of unbundled local switching, inclusive of associated vertical features. A forward-looking economic cost methodology enables incumbent LECs to recover a fair return on their investments and Bell Atlantic has provided no specific evidence to the contrary. We conclude that our pricing methodology for unbundled local switching, inclusive of associated vertical features, provides just compensation to incumbent LECs.

(3) Other Elements

(a) Discussion

561. The primary categories of network elements identified in this Order, other than loops and switching, are transport, signaling, and collocation. Our rule that dedicated facilities shall be priced on a flat-rated basis applies to dedicated transmission links because these facilities are dedicated to the use of a specific customer.

562. For dedicated transmission links, states must use existing rates for interstate dedicated switched transport as a default proxy ceiling. We believe these rates are currently at or close to economic cost levels. Such rates were set based on interstate special access rates, which we found based on the record in the *Transport* proceeding were relatively close to costs. *First Transport Order*. 57 FR 54717 (November 20, 1992); *Transport Rate Structure and Pricing, Third Memorandum Opinion and Order on Reconsideration and Supplemental Notice of Proposed Rulemaking*. 60 FR 2068 (January 6, 1995). These interstate access rates originally were based on incumbent LEC accounting costs, rather than a forward-looking economic cost model. Since 1991, however, incumbent LEC interstate access rates have been subject to price cap regulation, and have therefore been disengaged from embedded costs. Interstate access rates for dedicated transport vary by region, type of circuit, mileage, and other factors. For example, BellSouth's entrance facility charge, for transport from an IXC's point of presence to a BellSouth serving wire center, is $134 monthly per DS1 circuit ($5.58 per derived voice grade circuit) and $2,100 monthly per DS3 circuit ($3.13 per derived voice grade circuit). Dedicated transport for 10 miles of interoffice transmission between a serving wire center and an end office is $325 monthly per DS1 circuit ($13.54 per derived voice grade circuit) and $2,950 monthly per DS3 circuit ($4.39 per derived voice grade circuit). Installation, multiplexing, and other transport-related charges may also apply.

563. Typically, transmission facilities between tandem switches and end offices are shared facilities. Pursuant to our rate structure guidelines, states may establish usage-sensitive or flat-rate charges to recover those costs. For shared transmission facilities between tandem switches and end offices, states may use as a default proxy ceiling the rate derived from the incumbent LEC's interstate direct trunked transport rates in the same manner that we derive presumptive price caps for tandem switched transport under our interstate price cap rules, using the same weighting and loading factors. Specifically, when the transport rate restructure was implemented, the initial levels of tandem-switched transmission rates were presumed reasonable if they were based on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links, calculated using a loading factor of 9000 minutes per month per voice-grade circuit. 47 CFR § 69.111. We conclude above that interstate direct-trunked transport rates provide a reasonable default proxy ceiling for unbundled dedicated transport rates. *First Transport Order*. Interstate access rates for tandem-switched transport vary by region and mileage. The average charge by RBOCs in Density Zone 1 for transport termination and one mile of switched common transport facility between a tandem switching office and end office equals 0.033 cents ($0.000331) per minute. For a five-mile facility, the average charge is 0.048 cents ($0.000479) per minute; for a ten-mile facility, 0.066 cents ($0.000664) per minute. When we restructured the incumbent LECs' interstate transport rates to be more closely aligned with cost, we derived presumptive tandem-switched transmission rate levels from direct-trunked transport rates. This proxy ceiling for shared transmission facilities between tandem switches and end offices, therefore, should be similarly derived.

564. The United States Court of Appeals for the District of Columbia Circuit recently remanded our interim transport rules. The court concluded that the Commission had not provided sufficient justification for its method of establishing the rate level of the interstate switched access rate element for tandem switching. We do not believe, however, that the *CompTel* v. *FCC* decision is inconsistent with the rules we establish here because the decision did not address or criticize the Commission's determination of the rates for dedicated transport or tandem-switched transport links. Because our proxies do not involve the interstate access rate for tandem switching, they are not inconsistent with the court's analysis.

565. Tandem switching also employs shared facilities. States may, therefore,

establish usage-sensitive charges to recover tandem-switching costs. For those states that cannot complete a forward-looking economic cost study within the arbitration period or cannot devote the necessary resources to such a review, we establish a default rate ceiling of 0.15 cents ($0.0015) per minute of use. The additional cost of termination at a tandem in comparison to termination at an end office consists of the cost of tandem switching and the cost of tandem-switched transport transmission. Illinois and Maryland have adopted rates for the transport and termination of traffic from the tandem switch that are, respectively, 0.25 cents ($0.0025) per minute of use and 0.2 cents ($0.002) per minute of use, higher than rates for termination at end office switches. In both instances, our default rate ceiling for tandem switching constitutes at least 60 percent of the implicit tandem switching and transport to the end office switch. We, therefore, find the default rate ceiling we adopt for tandem switching to be consistent with both Illinois's and Maryland's adopted rates for transport and switching of traffic from the tandem office. States that use our proxy and impose flat-rated charges for tandem switching should set rates so that the price does not exceed 0.15 cents ($0.0015) per minute of use if converted through use of a geographically disaggregated usage factor.

566. Rates for signaling and database services should be usage-sensitive, based either on the number of queries or the number of messages, with the exception of the dedicated circuits known as signaling links, which should be charged on a flat-rated basis. Usage charges of this type appear to reflect most accurately the underlying costs of these services. Interstate access rates for most of these elements have been justified using the price caps new services test, which roughly approximates the results of a forward-looking economic cost study. *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Supplements for Open Network Architecture,* CC Docket Nos. 89–79 and 87–313, Report and Order, Order on Reconsideration, and Supplemental Notice of Proposed Rulemaking. 56 FR 33879 (July 24, 1991), *modified on recon.* 57 FR 37720 (August 20, 1992). In addition, the costs of these services were forward-looking, in that the services were completely new and hence, by definition, used the best-available technology. Thus, we establish as a default proxy ceiling for these elements corresponding interstate access charges for these elements. Interstate database services consist of Line Information Database (LIDB) and 800 Database. Deployment of SS7 (out-of-band signaling) has enabled LECs to offer these services. The average charge for RBOCs for LIDB in Density Zone 1 equals 3.34 cents ($0.034) per database query. For elements that have not been subject to the new services test, states may establish proxy ceilings by identifying the direct costs of providing the element and adding a reasonable allocation of joint and common costs. Because we expect that the joint and common costs associated with the forward-looking cost of network elements are substantially less than those associated with traditional service-based costs, allowing a reasonable allocation is sufficient to protect against possible anticompetitive pricing. Absent any proxy, this approach will provide the most reasonable approximation of forward-looking economic cost.

567. We have established rate structure rules for collocation elements in connection with our *Expanded Interconnection* proceeding. *Expanded Interconnection with Local Telephone Company Facilities.* 59 FR 38922 (August 1, 1994). Many collocation elements established under section 251(c)(6) are likely to represent the same facilities, and should have the same cost characteristics, as existing interstate expanded interconnection services, and therefore we require states to use the same rate structure rules for those collocation elements that we established in the *Expanded Interconnection* proceeding. As a proxy ceiling, states may use the rates the LEC has in effect in its federal expanded interconnection tariff for the equivalent services. Expanded interconnection services are subject to the new services test, which, as discussed above, uses a forward-looking methodology. Although LECs have filed expanded interconnection tariffs, we have not yet completed our investigation into those tariffs. Any price for unbundled collocation elements set based on LEC expanded interconnection tariffs would therefore be subject to any modification of those tariffs that results from our pending investigation, and any state-imposed prices based on those tariffs will need to be adjusted accordingly.

568. We find it unnecessary to specify rate structures for other unbundled elements. The states shall make those determinations by applying our general rate structure principles described above. In the absence of an acceptable forward-looking cost study, states may establish default proxy ceilings for other unbundled elements by identifying the direct costs of providing the element and adding a reasonable allocation of joint and common costs.

3. Forward-Looking Cost Model Proxies

a. Background

569. In the NPRM, we sought comment on the use of certain generic cost studies. Commenters discussed several such models. These models include: (1) the *Hatfield 2;* (2) the *Hatfield 2.2;* (3) the *BCM;* (4) the *BCM 2;* and (5) the *CPM.*

b. Discussion

570. We believe that the generic forward-looking costing models, in principle, appear best to comport with the preferred economic cost approach discussed previously. Several such models were placed in the record, including *Hatfield 2, Hatfield 2.2, BCM, BCM 2,* and the *CPM.* The *BCM* is designed to produce "benchmark" costs for the provision of basic telephone service within specific geographic regions defined by the Bureau of the Census as Census Block Groups. The *Hatfield 2* model combines output from the *BCM* with independently-developed investment data to produce annual cost estimates for eleven basic network functions. The *CPM* is similar in structure to the *BCM* and *Hatfield 2* models, although it uses different algorithms.

571. These models appear to offer a method of estimating the cost of network elements on a forward-looking basis that is practical to implement and that allows state commissions the ability to examine the assumptions and parameters that go into the cost estimates. Although these models were submitted too late in this proceeding for the Commission and parties to evaluate them fully, our initial examination leads us to believe that the remaining practical and empirical issues can be resolved in the near future. In light of the advantages of such a generic approach, we will further examine these generic economic cost models by the first quarter of 1997 to determine whether we should use one of them to replace the default proxies we adopt in this proceeding. In that event, states would have the option of setting rates in arbitrations on the basis of an economic cost study or by using a generic forward-looking cost model approved at that time.

572. Finally, we note that Commission staff developed a model of the telecommunications industry that they designed to simulate industry demand and supply characteristics. In

order to encourage an open-ended discussion of the utility of the staff model, the Common Carrier Bureau sought comment on a working draft of the model that was released. Almost all parties commenting on the staff model urged the Commission not to rely upon the staff model as record evidence in this proceeding. We are not relying on the staff model to develop the requirements imposed by this Order.

D. Other Issues

1. Future Adjustments to Interconnection and Unbundled Element Rate Levels

a. Background

573. In the NPRM, we sought comment on whether some cost index or price cap system would be appropriate to ensure that rates reflect expected changes in costs over time.

b. Discussion

574. As noted earlier, we will continue to review our pricing methodology, and will make revisions as appropriate. Accordingly, there is no present need to establish a Commission price cap or cost index system to adjust interconnection and unbundled element rate levels.

2. Imputation

a. Background

575. We sought comment in the NPRM on whether we should require an "imputation rule" in establishing rates for unbundled network elements. An imputation rule would require that the sum of prices charged for a basket of unbundled network elements not exceed the retail price for a service offered using the same basket of elements. We further solicited comment on any other rules that could be adopted regarding pricing of unbundled network elements that would help to promote the pro-competitive goals of the 1996 Act.

b. Discussion

576. Although we recognize, as several commenters observe, that an imputation rule could help detect and prevent price squeezes, we decline to impose an imputation requirement. Adoption of an imputation rule could force states to engage in a major rate rebalancing effort at this time, because it would impose substantial additional burdens on states at a time when they will need to devote significant resources to implementing the 1996 Act.

577. In addition to our practical concerns regarding implementation of an imputation rule, we find that an imputation rule may not be necessary to achieve the pro-competitive goals of the 1996 Act. As some commenters, including several state commissions, suggest, competing providers may be able to provide basic service, at less than the cost of facilities and associated management, just as incumbent LECs do currently, by selling customers higher profit vertical or intrastate toll services, or through receipt of access revenues and subsidies. Further, the Ohio Consumers' Counsel suggest that below-cost rates may not be sufficiently prevalent to justify a national imputation rule. The Joint Consumer Advocates and the Ohio Consumers' Counsel question whether local service is, in fact, underpriced.

578. We give special weight to the comments of several state commissions that currently employ imputation rules. These state commissions endorse imputation as a tool to prevent price squeezes, but urge us only to provide states with the flexibility to adopt imputation rules. We agree with those state commission commenters that argue that nothing in the 1996 Act prohibits individual states from adopting imputation rules. While an imputation rule may be pro-competitive, we will leave the implementation of such rules to individual states for the time being.

3. Discrimination

a. Background

579. In the NPRM, we noted the different usages of the term "discrimination" in the 1996 Act and the 1934 Act. Sections 251 and 252 require that interconnection and unbundled element rates be "nondiscriminatory." Similarly, section 251(c)(4) requires that, in making resale available, carriers not impose "discriminatory conditions or limitations on resale." Finally, section 252(e) provides that states may reject a negotiated agreement or a portion of the agreement if it "discriminates" against a carrier not a party to the agreement and section 252(i) requires incumbent LECs to "make available any interconnection, service, or network element provided under an agreement * * * to which it is a party to any requesting telecommunications carrier upon the same terms and conditions." In contrast, section 202(a) of the 1934 Act provides that "(i)t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges * * * for * * * like communication service."

580. We sought comment on "the meaning of the term 'nondiscriminatory' in the 1996 Act compared with the phrase 'unreasonable discrimination' in the 1934 Act." We asked specifically whether Congress intended to prohibit all price discrimination, including measures such as density zone pricing or volume and term discounts, by choosing the word "nondiscriminatory." We further asked whether sections 251 and 252 could be interpreted to prohibit only unjust or unreasonable discrimination. Finally, we sought comment on whether the 1996 Act prohibited carriers from charging different rates to parties that are not similarly situated.

b. Discussion

581. We conclude that the term "nondiscriminatory" in the 1996 Act is not synonymous with "unjust and unreasonable discrimination" in section 202(a), but rather is a more stringent standard. Finding otherwise would fail to give meaning to Congress's decision to use different language. We agree, however, with those parties that argue that cost-based differences in rates are permissible under sections 251 and 252.

582. Section 252(d)(1), for example, requires carriers to base interconnection and network element charges on costs. Where costs differ, rate differences that accurately reflect those differences are not discriminatory. This is consistent with the economic definition of price discrimination, which is "the practice of selling the same product at two or more prices where the price differences do not reflect cost differences * * * An important feature of the economic definition of price discrimination is that it occurs not only when prices are different in the presence of similar costs but also *when the prices are the same and the costs of supplying customers are different.*" As one economist has recognized, differential pricing is "one of the most prevalent forms of marketing practices" of competitive enterprises. Strict application of the term "nondiscriminatory" as urged by those commenters who argue that prices must be uniform would itself be discriminatory according to the economic definition of price discrimination. If the 1996 Act is read to allow no price distinctions between companies that impose very different interconnection costs on LECs, competition for all competitors, including small companies, could be impaired. Thus, we find that price differences, such as volume and term discounts, when based upon legitimate variations in costs are permissible under the 1996 Act, if justified.

583. On the other hand, price differences based not on cost differences but on such considerations as competitive relationships, the

technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other factors not reflecting costs, the requirements of the Act, or applicable rules, would be discriminatory and not permissible under the new standard. Such examples include the imposition of different rates, terms and conditions based on the fact that the competing provider does or does not compete with the incumbent LEC, or offers service via wireless rather than wireline facilities. We find that it would be unlawfully discriminatory, in violation of sections 251 and 252, if an incumbent LEC were to charge one class of interconnecting carriers, such as CMRS providers, higher rates for interconnection than it charges other carriers, unless the different rates could be justified by differences in the costs incurred by the incumbent LEC.

584. State regulations permitting non-cost based discriminatory treatment are prohibited by the 1996 Act. This conclusion is consistent with both the letter and the spirit of the 1996 Act and our determination that the pricing for interconnection, unbundled elements, and transport and termination of traffic should not vary based on the identity or classification of the interconnector.

VIII. Resale

585. Section 251(c)(4) imposes a duty on incumbent LECs to offer certain services for resale at wholesale rates. Specifically, section 251(c)(4) requires an incumbent LEC:

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

586. The requirement that incumbent LECs offer services at wholesale rates is described in section 252(d)(3), which sets forth the pricing standard that states must use in arbitrating agreements and reviewing rates under BOC statements of generally available terms and conditions:

[A] State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

Section VIII.A. of this Order discusses the scope of section 251(c)(4). Section VIII.B. addresses the determination of "wholesale rates." Section VIII.C. considers the issue of conditions or limitations on resale under this section, Section VIII.D. discusses the resale obligations under section 251(b)(1), and Section VIII.E. considers the application of access charges in the resale environment.

A. Scope of Section 251(c)(4)

1. Background

587. In the NPRM, we sought comment generally on the scope of section 251(c)(4).

2. Discussion

588. Section 251(c)(4)(A) imposes on all incumbent LECs the duty to offer for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." We conclude that an incumbent LEC must establish a wholesale rate for each retail service that: (1) meets the statutory definition of a "telecommunications service;" and (2) is provided at retail to subscribers who are not "telecommunications carriers." We thus find no statutory basis for limiting the resale duty to basic telephone services, as some suggest.

589. We need not prescribe a minimum list of services that are subject to the resale requirement. State commissions, incumbent LECs, and resellers can determine the services that an incumbent LEC must provide at wholesale rates by examining that LEC's retail tariffs. The 1996 Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers. State commissions, however, may have the power to require incumbent LECs to offer specific intrastate services.

590. Exchange access services are not subject to the resale requirements of section 251(c)(4). The vast majority of purchasers of interstate access services are telecommunications carriers, not end users. It is true that incumbent LEC interstate access tariffs do not contain any limitation that prevents end users from buying these services, and that end users do occasionally purchase some access services, including special access, Feature Group A, and certain Feature Group D elements for large private networks. Despite this fact, we conclude that the language and intent of section 251 clearly demonstrates that exchange access services should not be considered services an incumbent LEC "provides at retail to subscribers who are not telecommunications carriers" under section 251(c)(4). We note that virtually all commenters in this proceeding agree, or assume without stating, that exchange access services are not subject to the resale requirements of section 251(c)(4).

591. We find several compelling reasons to conclude that exchange access services should not be subject to resale requirements. First, these services are predominantly offered to, and taken by, IXCs, not end users. Part 69 of our rules defines these charges as "carrier's carrier charges," and the specific part 69 rules that describe each interstate switched access element refer to charges assessed on "interexchange carriers" rather than end users. The mere fact that fundamentally non-retail services are offered pursuant to tariffs that do not restrict their availability, and that a small number of end users do purchase some of these services, does not alter the essential nature of the services. Moreover, because access services are designed for, and sold to, IXCs as an input component to the IXC's own retail services, LECs would not avoid any "retail" costs when offering these services at "wholesale" to those same IXCs. Congress clearly intended section 251(c)(4) to apply to services targeted to end user subscribers, because only those services would involve an appreciable level of avoided costs that could be used to generate a wholesale rate. Furthermore, as explained in the following paragraph, section 251(c)(4) does not entitle subscribers to obtain services at wholesale rates for their own use. Permitting IXCs to purchase access services at wholesale rates for their own use would be inconsistent with this requirement.

592. We conclude that section 251(c)(4) does not require incumbent LECs to make services available for resale at wholesale rates to parties who are not "telecommunications carriers" or who are purchasing service for their own use. The wholesale pricing requirement is intended to facilitate competition on a resale basis. Further, the negotiation process established by Congress for the implementation of section 251 requires incumbent LECs to negotiate agreements, including resale agreements, with "requesting telecommunications carrier or carriers," not with end users or other entities. We further discuss the definition of

"telecommunications carrier" in Section IX. of the Order.

593. With regard to independent public payphone providers, however, we agree with the American Public Communication Council's argument that such carriers are not "telecommunications carriers" under section 3(44). We therefore also agree with the American Public Communications Council's contention that the services independent public payphone providers obtain from incumbent LECs are telecommunications services that incumbent LECs provide "at retail to subscribers who are not telecommunications carriers" and that such services should be available at wholesale rates to telecommunications carriers. Because we conclude that independent public payphone providers are not "telecommunications carriers," however, we conclude that incumbent LECs need not make available service to independent public payphone providers at wholesale rates. This is consistent with our finding that wholesale offerings must be purchased for the purpose of resale by "telecommunications carriers."

594. We conclude that the plain language of the 1996 Act requires that the incumbent LEC make available at wholesale rates retail services that are actually composed of other retail services, *i.e.*, bundled service offerings. Section 251(c)(4) states that the incumbent LEC must offer for resale "any telecommunications service" provided at retail to subscribers who are not telecommunications carriers. The resale provision of the 1996 Act does not contain any language exempting services if those services can be duplicated or approximated by combining other services. On the other hand, section 251(c)(4) does not impose on incumbent LECs the obligation to disaggregate a retail service into more discrete retail services. The 1996 Act merely requires that any retail services offered to customers be made available for resale.

B. Wholesale Pricing

1. Background

595. As discussed above, section 251(c)(4) requires incumbent LECs to offer at "wholesale rates" any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers. Section 252(d)(3) establishes the standard that states must use in determining wholesale rates in arbitrations or in reviewing wholesale rates under BOC statements of generally available terms and conditions. Specifically, section 252(d)(3) provides that wholesale rates shall be set "on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

596. In the NPRM, we generally sought comment on the meaning of the term "wholesale rates" in section 251(c)(4). We asked if we could and should establish principles for the states to apply in order to determine wholesale prices in an expeditious and consistent manner. We also sought comment on whether we should issue rules for states to apply in determining avoided costs. We stated that we could, for example, determine that states are permitted under the 1996 Act to direct incumbent LECs to quantify their costs for any marketing, billing, collection, and similar activities that are associated with offering retail, but not wholesale, services. We also sought comment on whether avoided costs should include a share of common costs and general overhead or "markup" assigned to such costs. LECs would then reduce retail rates by this amount, offset by any portion of expenses that they incur in the provision of wholesale rates. We noted that this approach appeared to be consistent with the 1996 Act, but would create certain administrative difficulties because all of the information regarding costs is under the control of the incumbent LECs. We also asked for comment on several alternative approaches. For example, we asked whether we could establish a uniform set of presumptions regarding avoided costs that states could adopt and that would apply in the absence of a quantification of such costs by incumbent LECs. Additionally, we asked whether we should identify specific accounts or portions of accounts in the Commission's Uniform System of Accounts ("USOA") that the states should include as avoided costs. We also requested comment on whether we should establish rules that allocate avoided costs across services. We asked whether incumbent LECs should be allowed, or required, to vary the percentage wholesale discounts across different services based on the degree the avoided costs relate to those services. Finally, we asked whether we should adopt a uniform percentage discount off of the retail rate of each service.

2. Discussion

597. Resale will be an important entry strategy for many new entrants, especially in the short term when they are building their own facilities. Further, in some areas and for some new entrants, we expect that the resale option will remain an important entry strategy over the longer term. Resale will also be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks. In light of the strategic importance of resale to the development of competition, we conclude that it is especially important to promulgate national rules for use by state commissions in setting wholesale rates. For the same reasons discussed in Section II.D of the Order, we believe that we have legal authority under the 1996 Act to articulate principles that will apply to the arbitration or review of wholesale rates. We also believe that articulating such principles will promote expeditious and efficient entry into the local exchange market. Clear resale rules will create incentives for parties to reach agreement on resale arrangements in voluntary negotiations. Clear rules will also aid states in conducting arbitrations that will be administratively workable and will produce results that satisfy the intent of the 1996 Act. The rules we adopt and the determinations we make in this area are crafted to achieve these purposes. We also note that clear resale rules should minimize regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs.

598. The statutory pricing standard for wholesale rates requires state commissions to (1) identify what marketing, billing, collection, and other costs will be avoided by incumbent LECs when they provide services at wholesale; and (2) calculate the portion of the retail prices for those services that is attributable to the avoided costs. Our rules provide two methods for making these determinations. The first, and preferred, method requires state commissions to identify and calculate avoided costs based on avoided cost studies. The second method allows states to select, on an interim basis, a discount rate from within a default range of discount rates adopted by this Commission. They may then calculate the portion of a retail price that is attributable to avoided costs by multiplying the retail price by the discount rate.

599. We adopt a minimum set of criteria for avoided cost studies used to determine wholesale discount rates. The record before us demonstrates that avoided cost studies can produce widely varying results, depending in large part upon how the proponent of the study interprets the language of section 252(d)(3). The criteria we adopt are designed to ensure that states apply consistent interpretations of the 1996 Act in setting wholesale rates based on avoided cost studies which should facilitate swift entry by national and regional resellers, which may include small entities. At the same time, our criteria are intended to leave the state commissions broad latitude in selecting costing methodologies that comport with their own ratemaking practices for retail services. Thus, for example, our rules for identifying avoided costs by USOA expense account are cast as rebuttable presumptions, and we do not adopt as presumptively correct any avoided cost model.

600. Based on the comments filed in this proceeding and on our analysis of state decisions setting wholesale discounts, we adopt a default range of rates that will permit a state commission to select a reasonable default wholesale rate between 17 and 25 percent below retail rate levels. A default wholesale discount rate shall be used if: (1) an avoided cost study that satisfies the criteria we set forth below does not exist; (2) a state commission has not completed its review of such an avoided cost study; or (3) a rate established by a state commission before release of this Order is based on a study that does not comply with the criteria described in the following section. A state commission must establish wholesale rates based on avoided cost studies within a reasonable time from when the default rate was selected. This approach will enable state commissions to complete arbitration proceedings within the statutory time frames even if it is infeasible to conduct full-scale avoided cost studies that comply with the criteria described below for each incumbent LEC.

a. Criteria for Cost Studies

601. There has been considerable debate on the record in this proceeding and before the state commissions on whether section 252(d)(3) embodies an "avoided" cost standard or an "avoidable" cost standard. We find that "the portion [of the retail rate] * * * attributable to costs that will be avoided" includes all of the costs that the LEC incurs in maintaining a retail, as opposed to a wholesale, business. In other words, the avoided costs are those that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers. Thus, we reject the arguments of incumbent LECs and others who maintain that the LEC must actually experience a reduction in its operating expenses for a cost to be considered "avoided" for purposes of section 252(d)(3). We do not believe that Congress intended to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable. We therefore interpret the 1996 Act as requiring states to make an objective assessment of what costs are reasonably avoidable when a LEC sells its services wholesale. We note that Colorado, Georgia, Illinois, New York, and Ohio commissions have all interpreted the 1996 Act in this manner.

602. We find that, under this "reasonably avoidable" standard discussed above, an avoided cost study must include indirect, or shared, costs as well as direct costs. We agree with MCI, AT&T, and the California, Illinois, Ohio, Colorado, and Georgia commissions that some indirect or shared costs are avoidable and likely to be avoided when a LEC provides retail services to a reseller instead of to the end user. This is because indirect or shared costs, such as general overheads, support all of the LEC's functions, including marketing, sales, billing and collection, and other avoided retail functions. Therefore, a portion of indirect costs must be considered "attributable to costs that will be avoided" pursuant to section 252(d)(3). It is true that expenses recorded in indirect or shared expense accounts will continue to be incurred for wholesale operations. It is also true, however, that the overall level of indirect expenses can reasonably be expected to decrease as a result of a lower level of overall operations resulting from a reduction in retail activity.

603. A portion of contribution, profits, or mark-up may also be considered "attributable to costs that will be avoided" when services are sold wholesale. MCI's model makes this attribution by means of a calculation that applies the same mark-up to wholesale services as to retail services. The Illinois Commission achieved a similar effect by removing a *pro rata* portion of contribution from the retail rate for each service. In AT&T's model, the portion of return on investment (profits) that was attributable to assets used in avoided retail activities was treated as an avoided cost. We find that these approaches are consistent with the 1996 Act.

604. An avoided cost study may not calculate avoided costs based on non-cost factors or policy arguments, nor may it make disallowances for reasons not provided for in section 252(d)(3). The language of section 252(d)(3) makes no provision for selecting a wholesale discount rate on policy grounds. We therefore reject NCTA's argument that discount rates should be ten percent or less in order to avoid discouraging facilities-based competition, as well as AT&T's suggestion that wholesale discount rates should be set at levels that ensure the viability of the reseller's business. We also reject, for example, MCI's assertion that no external relations or research and development costs should be allowed in wholesale rates because the activities represented by those costs are contrary to the interests of the LEC competitors that purchase wholesale services. Our analysis also precludes a state commission from adopting AT&T's suggestion that an increment should be added to the base discount rate to compensate resellers for alleged deficiencies in the provisioning of services.

605. The 1996 Act requires that wholesale rates be based on existing retail rates, and thus clearly precludes use of a "bottom up" TSLRIC study to establish wholesale rates that are not related to the rates for the underlying retail services. We thus reject the suggestions of those parties that ask us to require use of TSLRIC to set wholesale rates. The 1996 Act does not, however, preclude use of TSLRIC cost studies to identify the portion of a retail rate that is attributable to avoided retail costs. TSLRIC studies would be entirely appropriate in states where the retail rates were established using a TSLRIC method. For example, the Illinois Commission calculated its wholesale rate using an avoided cost formula and long run incremental cost studies. Embedded cost studies, such as the studies used by the Georgia Commission, may also be used to identify avoided costs. Ideally, a state would use a study methodology that is consistent with the manner in which it sets retail rates.

606. We neither prohibit nor require use of a single, uniform discount rate for all of an incumbent LEC's services. We recognize that a uniform rate is simple to apply, and avoids the need to allocate avoided costs among services. Therefore, our default wholesale discount is to be applied uniformly. On the other hand, we also agree with parties who observe that avoided costs

may, in fact, vary among services. Accordingly, we allow a state to approve nonuniform wholesale discount rates, as long as those rates are set on the basis of an avoided cost study that includes a demonstration of the percentage of avoided costs that is attributable to each service or group of services.

607. All costs recorded in accounts 6611 (product management), 6612 (sales), 6613 (product advertising) and 6623 (customer services) are presumed to be avoidable. The costs in these accounts are the direct costs of serving customers. All costs recorded in accounts 6621 (call completion services) and 6622 (number services) are also presumed avoidable, because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties. These presumptions regarding accounts 6611–6613 and 6621–6623 may be rebutted if an incumbent LEC proves to the state commission that specific costs in these accounts will be incurred with respect to services sold at wholesale, or that costs in these accounts are not included in the retail prices of the resold services.

608. General support expenses (accounts 6121–6124), corporate operations expenses (accounts 6711, 6712, 6721–6728), and telecommunications uncollectibles (account 5301) are presumed to be avoided in proportion to the avoided direct expenses identified in the previous paragraph. Expenses recorded in these accounts are tied to the overall level of operations in which an incumbent LEC engages. Because the advent of wholesale operations will reduce the overall level of operations—for example, staffing should decrease because customer inquiries and billing and collection activity will decrease—overhead and support expenses are in part avoided. We select the revenue offset account of 5301 rather than accounts 5300 or 6790 because account 5301 most directly represents overheads attributable to the services being resold.

609. Plant-specific and plant non-specific expenses (other than general support expenses) are presumptively not avoidable.

610. In the case of carriers designated as Class B under section 32.11 of our rules that use certain summary accounts in lieu of accounts designated in this subsection of the Order, our avoided cost study criteria shall apply to the relevant summary account in its entirety.

b. Default Range of Wholesale Discount Rates

611. Parties to this proceeding present evidence or arguments supporting wholesale discount rates ranging from 4.76 percent to 55 percent:

	Percent
Sprint/United Telephone study:	
Simple Access service	4.76
Other services	7.19
NCTA	10.0
Comcast	10.0
Massachusetts Attorney General.	25.0
ACTA	25.0
MCI Model	25.6–33.2
Telecommunications Resellers Ass'n.	30.0–50.0
AT&T Model	23.05–55.52

612. States applying wholesale pricing standards similar to the standards in section 252(d)(3) have set the following wholesale discounts:

	Percent
California:	
PacTel:	
Business	17.0
Residential	10.0
GTE:	
Business	12.0
Residential	7.0
Colorado:	
Residential	9.0
Business	16.0
Toll Services	30.0
Central Office-Based Features	50.0
All other services	18.0
Georgia:	
Residential	20.3
Business	17.3
Illinois	20.07
New York:	
NYNEX:	
Business	17.0
Residential	11.0
Rochester Telephone	13.5

613. We find unpersuasive various arguments presented by parties at the lower and higher ends of the range of possible discounts. The Sprint/United Telephone study produces unreasonably low measures of avoided costs because the study considers only avoided direct expenses in five accounts. As explained above, we interpret the statutory language providing for a wholesale price that excludes the "portion [of a retail rate] attributable to any marketing, billing, collection, and other costs that will be avoided" to include indirect as well as direct costs. The proposals of NCTA and Comcast for a maximum discount of 10 percent are premised on the view that any greater discount would unduly discourage facilities-based competition. Section 252(d)(3), however, requires wholesale prices to be set based on avoided costs, not on any policy preference for facilities-based competition. For the same statutory reason, we reject as inconsistent with section 252(d)(3) the policy arguments of the Telecommunications Resellers Association and AT&T that we should establish national wholesale discounts at levels that will ensure that resale of local exchange services is a viable business.

614. We find AT&T's model unsuitable for purposes of establishing in this proceeding a range for default wholesale discount rates. The AT&T model does in many respects satisfy the general criteria we establish above for avoided cost studies. The model, however, incorporates numerous assumptions, cost allocation factors, and studies, and because AT&T submitted its model with its reply comments, and other parties have not analyzed the model in detail. We find that we would need to develop a more complete record on the AT&T model before deciding whether to endorse it. We do not, however, preclude a state commission from considering in a wholesale rate proceeding evidence developed using this model.

615. We find that we can use MCI's model, with some modifications, along with the results of certain state proceedings, to establish a range of rates that would produce an acceptable default wholesale discount rate that reasonably approximates the amount of avoided costs that should be subtracted from the retail rate. A default rate is to be used only in three instances: (1) in a state arbitration proceeding if an avoided cost study that satisfies the criteria we set forth above does not exist; (2) where a state has not completed its review of such an avoided cost study; (3) where a rate established by a state before the release date of this Order is based on a study that does not comply with the criteria described in the previous section. We emphasize that the default rate is to be used as an interim measure only, and should be replaced with an avoided cost study within a reasonable time. The MCI model is a reasonable attempt at estimating avoided cost in accordance with section 252(d)(3) using only publicly-available data. We find, however, that we should modify certain features of the model.

616. First, MCI treats account 6722 (external relations) and account 6727 (research and development) as avoidable costs. MCI argues that purchasers of wholesale services are competing with LECs and, therefore, should not be forced to fund regulatory

activities reflected in account 6722. MCI claims that research and development are not of practical use for the services that resellers will purchase. As explained above, this type of disallowance is not contemplated by the avoided cost standard of section 252(d)(3). We therefore adjust the model to treat these costs in the same manner as other overhead expense accounts.

617. Second, MCI treats a number of accounts as "other avoided costs" on the grounds that the expenses in those accounts are not relevant to the provision of telecommunications services that an incumbent LEC currently provides. Based on this rationale, MCI excludes account 6113 (aircraft expense), account 6341 (large PBX expense), account 6511 (property held for future telecommunications use expense), account 6351 (public telephone terminal equipment expense), account 6512 (provisioning expense), account 6562 (depreciation expense for property held for future telecommunications use), and account 6564 (amortization expense, intangible). Public telephone terminal equipment expense and large PBX expense are not "avoided" precisely because they are unrelated to the retail services being discounted. We would not expect these expenses to be included in retail service rates for resold services; but if these expenses were included in retail rates, they would not be avoided when the services are purchased by resellers. The rest of MCI's "other" accounts contain costs that support all of the telecommunications services offered by the company. MCI has not shown that any of these costs are either reduced or eliminated when services are sold at wholesale. We, therefore, adjust the MCI model so as not to treat these accounts as avoidable costs.

618. Third, MCI treats accounts 6611 (product management), 6612 (sales), 6613 (product advertising), and 6623 (customer services) as costs that are entirely avoided with respect to services purchased at wholesale. We agree that a large portion of the expenses in these accounts is avoided when service is sold at wholesale. We also agree, however, with parties that argue that some expenses in these accounts will continue to be incurred with respect to wholesale products and customers, and that some new expenses may be incurred in addressing the needs of resellers as customers. No party in this proceeding has suggested a specific adjustment to the MCI model that would account for these costs of the wholesale operation. We note that, in their own proceedings, several states have made varying estimates concerning the level of wholesale-related expenses in these accounts. Colorado, for example, estimated that none of the costs in accounts 6611–6613 would relate to wholesale services, and that only five percent of the costs in account 6623 would be incurred in a wholesale operation. The Georgia Commission, on the other hand, decided that 25 percent of sales and product advertising expenses would continue to be incurred in the wholesale operation. Given the lack of evidence, and the wide range of estimates that have been made by these states, we find it reasonable to assume, for purposes of determining a default range of wholesale discount rates, that ten percent of costs in accounts 6611, 6612, 6613, and 6623 are not avoided by selling services at wholesale.

619. Fourth, MCI uses a complex formula to calculate the portions of overhead and general support expense that are attributable to avoided costs. We find that this formula is constructed in a way that tends to inflate the results of the calculation. We have, therefore, substituted a more straightforward approach in which we apply to each indirect expense category the ratio of avoided direct expense to total expenses. We also identify a slightly different list of accounts representing indirect costs than that proposed by MCI.

620. With the modifications described above, and using actual 1995 data, MCI's model produces the following results for the RBOCs and GTE:

	Percent
U S West	18.80
GTE	18.81
BellSouth	19.20
Bell Atlantic	19.99
SBC	20.11
NYNEX	21.31
Pacific	23.87
Ameritech	25.98

621. We also take into account the experience of those state commissions, Illinois and Georgia, that have undertaken or approved detailed avoided cost studies under the pricing standard of section 252(d)(3) of the 1996 Act. Applying the statutory standard to the examination of significant cost studies, those commissions derived average wholesale discounts of 18.74 percent and 20.07 percent. We find that these decisions present evidence of an appropriate wholesale discount that should be given more weight than state commission decisions that have set their discounts under other pricing standards or only on an interim basis.

622. Accordingly, based on the record before us, we establish a range of default discounts of 17–25 percent that is to be used in the absence of an avoided cost study that meets the criteria set forth above. A state commission that has not set wholesale prices based on avoided cost studies that meet the criteria set forth above as of the release date of this Order shall use a default wholesale discount rate between 17 and 25 percent. A state should articulate the basis for selecting a particular discount rate. If this default discount rate is used, the state commission must establish wholesale rates based on avoided cost studies within a reasonable time. The avoided cost study must comply with the criteria for avoided cost studies described above. A state commission may submit an avoided cost study to this Commission for a determination of whether it complies with these criteria. If a party (either a reseller or an incumbent LEC) believes that a state commission has failed to act within a reasonable period of time, that party may file a petition for declaratory ruling with this Commission, asking us to determine whether the state has failed to comply with this rule. We will, in making such determinations, consider the particular circumstances in the state involved. If a state commission has adopted as of the release date of this Order an interim wholesale pricing decision that relies on an avoided cost study that meets the criteria set forth above, the state commission may continue to require an incumbent LEC to offer services for resale under such interim wholesale prices in lieu of the default discount range, so long as the state commission's interim pricing rules are fully enforceable by resellers and followed by a final decision within a reasonable period of time that adopts an avoided cost study that meets the criteria set forth above.

623. We select the 17 to 25 percent range of default discounts based on our evaluation of the record. The adjusted results of the MCI model taken together with the results of those state proceedings discussed above that indicated they applied the statutory standard produces, a range between 18.74 and 25.98 percent. A majority of these wholesale discount rates fall between 18.74 and 21.11 percent. Other state commissions, such as California and New York, that have employed avoided cost studies have produced wholesale discount rates somewhat below the low end of this range. Furthermore, it has been argued that smaller incumbent LECs' avoided costs are likely to be less than those of the larger incumbent LECs, whose data was used by MCI. Therefore, to allow for

these considerations, we select 17 percent as the lower end of the range. We select 25 percent as the top of the range because it approximates the top of the range of results produced by the modified MCI model. This range gives state commissions flexibility in addressing circumstances of incumbent LECs serving their states and permits resale to proceed until such time as the state commission can review a fully-compliant avoided cost study.

624. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, Bay Springs, *et al.*, argues that national wholesale pricing rules will insufficiently consider operational differences between small and large incumbent LECs. We take this into consideration in setting the default discount rate and in requiring state commissions to perform carrier-specific avoided cost studies within a reasonable period of time that will reflect carrier-to-carrier differences. We believe, however, that the procompetitive goals of the 1996 Act require us to establish a default discount rate for state commissions to use in the absence of avoided cost studies that comply with the criteria we set forth above. The presumptions we establish in conducting avoided cost studies regarding the avoidability of certain expenses may be rebutted by evidence that certain costs are not avoided, which should minimize any economic impact of our decisions on small incumbent LECs. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

C. Conditions and Limitations

625. Section 251(c)(4) requires incumbent LECs to make their services available for resale without unreasonable or discriminatory conditions or limitations. This portion of this Order addresses various issues relating to conditions or limitations on resale. It first discusses restrictions, generally, in Section VIII.C.1. Next, it turns to promotional and discounted offerings and the conditions that may attach to such offerings in Section VIII.C.2., and then to refusals to resell residential and below-cost services in Section VIII.C.3. Limitations on the categories of customers to whom a reseller may sell incumbent LEC services are discussed in VIII.C.4. Resale restrictions in the form of withdrawal of service are discussed in VIII.C.5. Finally, Section VIII.C.6. discusses resale restrictions relating to provisioning.

1. Restrictions, Generally, and Burden of Proof

a. Background

626. In the NPRM, we asked whether incumbent LECs should have the burden of proving that restrictions on resale are reasonable and nondiscriminatory. We stated our belief that, given the pro-competitive goals of the 1996 Act and the view that restrictions and conditions were likely to be evidence of an exercise of market power, the range of permissible restrictions should be quite narrow.

b. Discussion

627. We conclude that resale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include conditions and limitations contained in the incumbent LEC's underlying tariff. As we explained in the NPRM, the ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by incumbent LECs to preserve their market position. In a competitive market, an individual seller (an incumbent LEC) would not be able to impose significant restrictions and conditions on buyers because such buyers turn to other sellers. Recognizing that incumbent LECs possess market power, Congress prohibited unreasonable restrictions and conditions on resale. We, as well as state commissions, are unable to predict every potential restriction or limitation an incumbent LEC may seek to impose on a reseller. Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4). This presumption should reduce unnecessary burdens on resellers seeking to enter local exchange markets, which may include small entities, by reducing the time and expense of proving affirmatively that such restrictions are unreasonable. We discuss several specific restrictions below including certain restrictions for which we conclude the presumption of unreasonableness shall not apply. We also discuss certain restrictions that we will presume are reasonable.

2. Promotions and Discounts

a. Background

628. In the NPRM, we asked whether an incumbent LEC's obligation to make their services available for resale at wholesale rates applies to discounted and promotional offerings and, if so, how. We also asked, if the wholesale pricing obligation applies to promotions and discounts, whether the reseller entrant's customer must take service pursuant to the same restrictions that apply to the incumbent LEC's retail customers.

b. Discussion

629. Section 251(c)(4) provides that incumbent LECs must offer for resale at wholesale rates "any telecommunications service" that the carrier provides at retail to noncarrier subscribers. This language makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs. A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act. In discussing promotions here, we are only referring to price discounts from standard offerings that will remain available for resale at wholesale rates, *i.e.*, temporary price discounts. Limited time offerings of service are still subject to resale pursuant to Section VIII.A.

630. There remains, however, the question of whether all short-term promotional prices are "retail rates" for purposes of calculating wholesale rates pursuant to section 252(d)(3). The 1996 Act does not define "retail rate;" nor is there any indication that Congress considered the issue. In view of this ambiguity, we conclude that "retail rate" should be interpreted in light of the pro-competitive policies underlying the 1996 Act. We recognize that promotions that are limited in length may serve procompetitive ends through enhancing marketing and sales-based competition and we do not wish to unnecessarily restrict such offerings. We believe that, if promotions are of limited duration, their procompetitive effects will outweigh any potential anticompetitive effects. We therefore conclude that short-term promotional

prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation.

631. We must also determine when a promotional price ceases to be "short term" and must therefore be treated as a retail rate for an underlying service. Incumbent LEC commenters support 120 days as the maximum period for such promotions. This has been criticized as being too long. We are concerned that excluding promotions that are offered for as long as four months may unreasonably hamper the efforts of new competitors that seek to enter local markets through resale. We believe that promotions of up to 90 days, when subjected to the conditions outlined below, will have significantly lower anticompetitive potential, especially as compared to the potential procompetitive marketing uses of such promotions. We therefore establish a presumption that promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers. Promotional offerings greater than 90 days in duration must be offered for resale at wholesale rates pursuant to section 251(c)(4)(A). To preclude the potential for abuse of promotional discounts, any benefit of the promotion must be realized within the time period of the promotion, *e.g.*, no benefit can be realized more than ninety days after the promotional offering is taken by the customer if the promotional offering was for ninety days. In addition, an incumbent LEC may not use promotional offerings to evade the wholesale obligation, for example by consecutively offering a series of 90-day promotions.

632. We find unconvincing the arguments that the offerings under section 251(c)(4) should not apply to volume-based discounts. The 1996 Act on its face does not exclude such offerings from the wholesale obligation. If a service is sold to end users, it is a retail service, even if it is priced as a volume-based discount off the price of another retail service. The avoidable costs for a service with volume-based discounts, however, may be different than without volume contracts.

633. We are concerned that conditions that attach to promotions and discounts could be used to avoid the resale obligation to the detriment of competition. Allowing certain incumbent LEC end user restrictions to be made automatically binding on reseller end users could further exacerbate the potential anticompetitive effects. We recognize, however, that there may be reasonable restrictions on promotions and discounts. We conclude that the substance and specificity of rules concerning which discount and promotion restrictions may be applied to resellers in marketing their services to end users is a decision best left to state commissions, which are more familiar with the particular business practices of their incumbent LECs and local market conditions. These rules are to be developed, as necessary, for use in the arbitration process under section 252.

634. With respect to volume discount offerings, however, we conclude that it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in aggregate, under the relevant tariff, meets the minimal level of demand. The Commission traditionally has not permitted such restrictions on the resale of volume discount offers. *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 41 FR 30657 (July 26, 1976). We believe restrictions on resale of volume discounts will frequently produce anticompetitive results without sufficient justification. We, therefore, conclude that such restrictions should be considered presumptively unreasonable. We note, however, that in calculating the proper wholesale rate, incumbent LECs may prove that their avoided costs differ when selling in large volumes.

3. Below-Cost and Residential Service

a. Background

635. Responding to our general questions regarding the scope of limitations that may be placed on competitors' resale of incumbent LEC services, parties addressed in their comments whether below-cost and residential services are subject to section 251(c)(4).

b. Discussion

636. Subject to the cross-class restrictions discussed below, we believe that below-cost services are subject to the wholesale rate obligation under section 251(c)(4). First, the 1996 Act applies to "any telecommunications service" and thus, by its terms, does not exclude these types of services. Given the goal of the 1996 Act to encourage competition, we decline to limit the resale obligation with respect to certain services where the 1996 Act does not specifically do so. Second, simply because a service may be priced at below-cost levels does not justify denying customers of such a service the benefits of resale competition. We note that, unlike the pricing standard for unbundled elements, the resale pricing standard is not based on cost plus a reasonable profit. The resale pricing standard gives the end user the benefit of an implicit subsidy in the case of below-cost service, whether the end user is served by the incumbent or by a reseller, just as it continues to take the contribution if the service is priced above cost. So long as resale of the service is generally restricted to those customers eligible to receive such service from the incumbent LEC, as discussed below, demand is unlikely to be significantly increased by resale competition. Thus, differences in incumbent LEC revenue resulting from the resale of below-cost services should be accompanied by proportionate decreases in expenditures that are avoided because the service is being offered at wholesale.

637. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, MECA argues that services incumbent LECs offer at below-cost rates should not be subject to resale under section 251(c)(4). We do not adopt MECA's proposal. As explained above, we conclude that the 1996 Act provides that below-cost services are subject to the section 251(c)(4) resale obligation and that differences in incumbent LEC revenue resulting from the resale of below-cost services should be accompanied by decreases in expenditures that are avoided because the service is being offered at wholesale. Therefore, resale of below-cost services at wholesale rates should not adversely impact small incumbent LECs. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

4. Cross-Class Selling

a. Background

638. In the NPRM, we sought comment on the meaning of section 251(c)(4)(B) which provides that "[a] State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." We suggested that competing telecommunications carriers should not be allowed to purchase a subsidized service that is offered to a specific

category of subscribers and then resell such service to other customers. We tentatively concluded, for example, that it might be reasonable for a state to restrict the resale of a residential exchange service that is limited to low-income consumers, such as the existing Lifeline program. We noted that we have generally not allowed carriers to prevent other carriers from purchasing high-volume, low-price offerings to resell to a broad pool of lower volume customers. Similarly, we inquired into the propriety of practices such as limiting the resale of flat-rated service.

b. Discussion

639. There is general agreement that residential services should not be resold to nonresidential end users, and we conclude that restrictions prohibiting such cross-class reselling of residential services are reasonable. We conclude that section 251(c)(4)(B) permits states to prohibit resellers from selling residential services to customers ineligible to subscribe to such services from the incumbent LEC. For example, this would prevent resellers from reselling wholesale-priced residential service to business customers. We also conclude that section 251(c)(4)(B) allows states to make similar prohibitions on the resale of Lifeline or any other means-tested service offering to end users not eligible to subscribe to such service offerings. State commissions have established rate structures that take into account certain desired balances between residential and business rates and the goal of maximizing access by low-income consumers to telecommunications services. We do not wish to disturb these efforts by prohibiting or overly narrowing state commissions' ability to impose such restrictions on resale.

640. Shared tenant services are made possible through the resale and trunking of flat-rated services to multiple customers. We do not believe that these or other efficient uses of technology should be discouraged through restrictions on the resale of flat-rated offerings to multiple end users, even if incumbent LECs have not always priced such offerings assuming these usage patterns. We therefore conclude that such restrictions are presumptively unreasonable.

641. We also conclude that all other cross-class selling restrictions should be presumed unreasonable. Without clear statutory direction concerning potentially allowable cross-class restrictions, we are not inclined to allow the imposition of restrictions that could fetter the emergence of competition. As with volume discount and flat-rated offerings, we will allow incumbent LECs to rebut this presumption by proving to the state commission that the class restriction is reasonable and nondiscriminatory.

5. Incumbent LEC Withdrawal of Services

a. Background

642. In the NPRM, we sought comment on whether an incumbent LEC can avoid making a service available at wholesale rates by ceasing to offer the retail service on a retail basis, or whether the incumbent should first be required to make a showing that withdrawing the offering is in the public interest or that competitors will continue to have an alternative way of providing service. We also asked if access to unbundled elements addresses the concern that incumbent LECs could withdraw retail services.

b. Discussion

643. We are concerned that the incumbent LECs' ability to withdraw services may have anticompetitive effects where resellers are purchasing such services for resale in competition with the incumbent. We decline to issue general rules on this subject because we conclude that this is a matter best left to state commissions. Many state commissions have rules regarding the withdrawal of retail services and have experience regulating such matters. States can assess, for example, the universal service implications of an incumbent LEC's proposal to withdraw a retail service. Therefore, we conclude that our general presumption that incumbent LEC restrictions on resale are unreasonable does not apply to incumbent LEC withdrawal of service. States must ensure that procedural mechanisms exist for processing complaints regarding incumbent LEC withdrawals of services. We find it important, however, to ensure that grandfathered customers—subscribers to the service being withdrawn who are allowed by an incumbent LEC to continue purchasing services—not be denied the benefits of competition. We conclude that, when an incumbent LEC grandfathers its own customers of a withdrawn service, such grandfathering should also extend to reseller end users. For the duration of any grandfathering period, all grandfathered customers should have the right to purchase such grandfathered services either directly from the incumbent LEC or indirectly through a reseller. The incumbent LEC shall offer wholesale rates for such grandfathered services to resellers for the purpose of serving grandfathered customers.

6. Provisioning

644. We conclude that service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Practices to the contrary violate the 1996 Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale. This requirement includes differences imperceptible to end users because such differences may still provide incumbent LECs with advantages in the marketplace. Additionally, we conclude that incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to that incumbent LEC's subsidiaries, affiliates, or other parties to whom the carrier directly provides the service, such as end users. This equivalent timeliness requirement also applies to incumbent LEC claims of capacity limitations and incumbent LEC requirements relating to such limitations, such as potential down payments. We note that common carrier obligations, established by federal and state law and our rules, continue to apply to incumbent LECs in their relations with resellers. With regard to customer changeover charges, we conclude that states should determine reasonable and nondiscriminatory rates for such charges.

645. Brand identification is likely to play a major role in markets where resellers compete with incumbent LECs for the provision of local and toll service. This brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize consumer confusion. Incumbent LECs are advantaged when reseller end users are advised that the service is being provided by the reseller's primary competitor. We therefore conclude that where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. This presumption may be rebutted by an incumbent LEC proving to the state commission that it lacks the capability to comply with unbranding or rebranding requests. We recognize that an incumbent LEC may incur costs in complying with a request for unbranding or rebranding. Because we

do not have a record on which to determine the level of fees or wholesale pricing offsets that may reasonably be assessed to recover these costs, we leave such determinations to the state commissions.

D. Resale Obligations of LECs Under Section 251(b)(1)

646. Section 251(b)(1) imposes a duty on all LECs to offer certain services for resale. Specifically, section 251(b)(1) requires LECs "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services."

1. Background

647. In the NPRM, we sought comment generally on the relationship of section 251(b)(1) to section 251(c)(4). We sought comment on whether all LECs are prohibited from imposing unreasonable restrictions on resale of their services, but only incumbent LECs that provide retail services to subscribers that are not telecommunications carriers are required to make such services available at wholesale rates to requesting telecommunications carriers. We also sought comment on what types of resale restrictions should be permitted under section 251(b)(1) and stated our belief that few, if any, conditions or limitations should be permitted for the same reasons that resale restrictions are sharply limited under section 251(c)(4). We also asked what standards should be adopted for determining whether resale restrictions should be permitted, and whether presumptions should be established.

2. Discussion

648. There are two differences between the resale obligations in section 251(b)(1) and in section 251(c)(4): the scope of services that must be resold and the pricing of such resale offerings. Section 251(b)(1) requires resale of all telecommunications services offered by the carrier while section 251(c)(4) only applies to telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers. Thus, the scope of services to which section 251(b)(1) applies is larger and necessarily includes all services subject to resale under section 251(c)(4). We need not prescribe a minimum list of services that are subject to the 251(b)(1) resale requirement for the same reasons that we specified for not prescribing such a list in Section VIII.A. of this Order. We note that section 251(b)(1) clearly omits a wholesale pricing requirement. We therefore conclude that the 1996 Act does not impose wholesale pricing requirements on nonincumbent LECs. Nonincumbent LECs definitionally lack the market power possessed by incumbent LECs and were therefore not made subject to the wholesale pricing obligation in the 1996 Act. Their wholesale rates will face competition by incumbent LECs, making a wholesale pricing requirement for nonincumbent LECs unnecessary.

649. Sections 251(b)(1) and 251(c)(4) contain the same statutory standards regarding resale restrictions. Therefore, we conclude that our rules concerning resale restrictions under section 251(b)(1), such as the general presumption that all resale restrictions are unreasonable, should be the same as under section 251(c)(4). We conclude that any restriction of a type that has been found reasonable for incumbent LECs should be deemed reasonable for all other LECs as well.

E. Application of Access Charges

1. Background

650. In the NPRM, we suggested that an entrant that merely resold a bundled retail service purchased at wholesale rates would not receive access revenues. In other words, IXCs must still pay access charges to incumbent LECs for originating and terminating interstate traffic of an end user served by a telecommunications carrier that resells incumbent LEC services under section 251(c)(4).

2. Discussion

651. We conclude that the 1996 Act requires that incumbent LECs continue to receive access charge revenues when local services are resold under section 251(c)(4). IXCs must still pay access charges to incumbent LECs for originating or terminating interstate traffic, even when their end user is served by a telecommunications carrier that resells incumbent LEC retail services. Resale, as defined in section 251(b)(1) and 251(c)(4), involves services, in contrast to section 251(c)(3), which governs sale of network elements. New entrants that purchase retail local exchange services from an incumbent LEC at wholesale rates are entitled to resell only those retail services, and not any other services—such as exchange access—the LEC may offer using the same facilities. IXCs must therefore still purchase access services from incumbent LECs outside of the resale framework of 251(c)(4), through existing interstate access tariffs.

652. Most existing interstate access charges are recovered from IXCs, and therefore can easily be recovered by incumbent LECs whether or not the incumbent LEC retains its billing relationship with the end user subscriber. To allow incumbent LECs to continue recovering the subscriber line charge (SLC), however, the mechanism for assessment of the SLC must be modified. The SLC is currently assessed directly on end users as a monthly charge. When an end user customer receives local exchange service from a reseller, however, the incumbent LEC will have no direct commercial relationship with that end user. Because the end user would not be a customer of the incumbent LEC, the incumbent LEC could not bill SLC directly to the end user as specified under our existing rules.

653. In March 1995, in the *Rochester Waiver Order*, we granted Rochester Telephone waivers to permit Rochester Telephone to recover the SLC from carriers that purchase local exchange service for resale, rather than recovering the SLC directly from end users. In that order, we stated that by offering the local exchange service for resale and by unbundling subscriber lines from other network functions, Rochester Telephone created a situation where it would no longer have a direct relationship with end users, IXCs, or both, and that such a situation was not contemplated when the Commission created the rules governing the recovery of access charges. We also permitted Rochester Telephone to bill to resellers the PIC change charge, which is assessed by incumbent local exchange carriers on end users that wish to change their primary interexchange carrier (PIC).

654. The resale requirements of the 1996 Act create a situation for the entire industry that is analogous to the situation Rochester Telephone faced in 1995. We therefore conclude that similar relief is warranted here with respect to the SLC, so that incumbent LECs can recover the SLC from resellers, as we conclude the 1996 Act mandates. Although the PIC change charge is not a part of access charges, and is assessed only when an end user changes his or her primary interexchange carrier, this charge has similar characteristics to the SLC and therefore should also be subject to the rule we adopt. Incumbent LECs may assess the SLC and the PIC change charge on telecommunications carriers that resell incumbent LEC services under section 251(c)(4).

655. Although incumbent LECs may continue to recover the SLC when other carriers resell their local exchange services, the SLC is not subject to the wholesale pricing standard of section 252(d)(3). As described above, resellers

of local exchange service are not reselling access services; they are purchasing these services from incumbent LECs in the same manner they do today. The SLC is a component of interstate access charges, not of intrastate local service rates. Consistent with the principles of cost-causation and economic efficiency, we have required the portion of interstate allocated loop costs represented by the SLC to be recovered from end users, rather than from carriers as with other access charges. Although the SLC is listed on end user monthly local service bills, this charge does not represent a "telecommunications service [an incumbent LEC] provides at retail to subscribers." Rather, the SLC, like other interstate access charges, relates solely to incumbent LEC interstate access services, which are provided to other carriers rather than retail subscribers and which we have concluded are not subject to the resale requirements of section 251(c)(4). Therefore, the reseller shall pay the SLC to the incumbent LEC for each subscriber taking resold service. The specific SLC that applies depends upon the identity of the end user served by the reselling telecommunications carrier.

IX. Duties Imposed on "Telecommunications Carriers" by Section 251(a)

A. Background

656. Section 251(a) imposes two fundamental duties on all telecommunications carriers: (1) "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers;" and (2) "not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to sections 255 or 256." 47 U.S.C. 251(a). Section 255 addresses access by persons with disabilities and ensures that manufacturers and providers of telecommunications will design equipment and provide service that is accessible to, and usable by, individuals with disabilities. Section 256 provides for coordination for interconnectivity "to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services." 47 U.S.C. §§ 255, 256. In this proceeding we determine which carriers are "telecommunications carriers" as defined in section 3(44) of the Act. The term telecommunications carrier means "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage." 47 U.S.C. 153(44). In the NPRM, we tentatively concluded that, pursuant to the statute's definition of "telecommunications carrier" and "telecommunications service," to the extent a carrier is engaged in providing for a fee local, interexchange, or international services, directly to the public or to such classes of users as to be effectively available directly to the public, that carrier falls within the definition of "telecommunications carrier." We sought comment on which carriers are included under this definition, and on whether a provider may qualify as a telecommunications carrier for some purposes but not others.

657. We also tentatively concluded that we should determine whether the provision of mobile satellite services is Commercial Mobile Radio Services (CMRS) or Private Mobile Radio Service (PMRS) based on the factors set forth in the *CMRS Second Report and Order*. NPRM at para 247. The Commission makes this determination by looking at an array of public interest considerations (*e.g.*, the types of services being offered and the number of licensees being authorized). *See, e.g., Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and To Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, GEN Docket No. 84–1234, Second Report and Order, 52 FR 4017 (February 9, 1987); *Amendment to the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to a Radiodetermination Satellite Service*, GEN Docket No. 84–689, Second Report and Order, 51 FR 18444 (May 20, 1986). We sought comment on the meaning of offering service "directly or indirectly" to the public in the context of section 251(a)(1) and on whether section 251(a) allows non-incumbent LECs discretion to interconnect directly or indirectly with a requesting carrier. We also sought comment on what other actions we should take to ensure that carriers do not install network features, functions, or capabilities that are inconsistent with guidelines and standards established pursuant to sections 255 and 256.

B. Discussion

658. A "telecommunications carrier" is defined as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226)." 47 U.S.C. 153(44). The term "aggregator" is defined as "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. 226(a)(2). A telecommunications carrier shall be treated as a common carrier under the Act "only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage." A "telecommunications service" is defined as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." We conclude that to the extent a carrier is engaged in providing for a fee domestic or international telecommunications, directly to the public or to such classes of users as to be effectively available directly to the public, the carrier falls within the definition of "telecommunications carrier." We find that this definition is consistent with the 1996 Act, and there is nothing in the record in this proceeding that suggests that this definition should not be adopted. Also, enhanced service providers, to the extent that they are providing telecommunications services, are entitled to the rights under section 251(a).

659. We believe, as a general policy matter, that all telecommunications carriers that compete with each other should be treated alike regardless of the technology used unless there is a compelling reason to do otherwise. We agree with those parties that argue that all CMRS providers are telecommunications carriers and are thus obligated to comply with section 251(a). The term "CMRS" is defined as "any mobile service * * * that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." 47 U.S.C. § 332(d)(1). CMRS includes, among others, some private paging, personal communications services, business radio services, and

mobile service that is the functional equivalent of a commercial mobile radio service. 47 CFR § 20.9. These carriers meet the definition of "telecommunications carrier" because they are providers of telecommunications services as defined in the 1996 Act and are thus entitled to the benefits of section 251(c), which include the right to request interconnection and obtain access to unbundled elements at any technically feasible point in an incumbent LEC's network. PMRS is defined as any mobile service that is not a commercial service or the functional equivalent of a commercial mobile service. We conclude that to the extent a PMRS provider uses capacity to provide domestic or international telecommunications for a fee directly to the public, it will fall within the definition of "telecommunications carrier" under the Act and will be subject to the duties listed in section 251(a). The Commission held in the *CMRS Second Report and Order* that any PMRS provider that "employs spectrum for not-for-profit services, such as an internal operation, but also uses its excess capacity to make available a service that is intended to receive compensation, will be deemed to be a 'for profit' service to the extent of such excess capacity activities." *Implementation of Section 3(n) and 332 of the Communications Act*, Second Report and Order, GN Docket No. 93–252, 59 FR 18493 (April 19, 1994) (*CMRS Second Report and Order*).

660. We conclude that cost-sharing for the construction and operation of private telecommunications networks is not within the definition of "telecommunications services" and thus such operators of private networks are not subject to the requirements of section 251(a). We believe that such methods of cost-sharing do not equate to a "fee directly to the public" under the definition of "telecommunications service." Conversely, to the extent an operator of a private telecommunications network is offering "telecommunications" (the term "telecommunications" means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in form or content of the information as sent and received" 47 U.S.C. § 153(43)) for a fee directly to the public, or to such classes of users as to be effectively available directly to the public (*i.e.*, providing a telecommunications service), the operator is a telecommunications carrier and is subject to the duties in section 251(a). Providing to the public telecommunications (*e.g.*, selling excess capacity on private fiber or wireless networks), constitutes provision of a telecommunications service and thus subjects the operator of such a network to the duties of section 251(a) to that extent.

661. We conclude that, if a company provides both telecommunications and information services, it must be classified as a telecommunications carrier for purposes of section 251; and is subject to the obligations under section 251(a), to the extent that it is acting as a telecommunications carrier. We also conclude that telecommunications carriers that have interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3), may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well. Under a contrary conclusion, a competitor would be precluded from offering information services in competition with the incumbent LEC under the same arrangement, thus increasing the transaction cost for the competitor. We find this to be contrary to the pro-competitive spirit of the 1996 Act. By rejecting this outcome we provide competitors the opportunity to compete effectively with the incumbent by offering a full range of services to end users without having to provide some services inefficiently through distinct facilities or agreements. In addition, we conclude that enhanced service providers that do not also provide domestic or international telecommunications, and are thus not telecommunications carriers within the meaning of the Act, may not interconnect under section 251.

662. Consistent with our tentative conclusion in the NPRM, we will determine whether the provision of mobile satellite service (MSS) is CMRS (and therefore common carriage) or PMRS based on the factors set forth in the*CMRS Second Report and Order*. Commenters have not raised objections to the Commission's tentative conclusion on this issue.

663. Regarding the issue of interconnecting "directly or indirectly" with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices. The interconnection obligations under section 251(a) differ from the obligations under section 251(c). Unlike section 251(c), which applies to incumbent LECs, section 251(a) interconnection applies to all telecommunications carriers including those with no market power. Given the lack of market power by telecommunication carriers required to provide interconnection via section 251(a), and the clear language of the statute, we find that indirect connection (*e.g.*, two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a). We decline to adopt, at this time, Metricom's suggestion to forbear under section 10 of the 1996 Act from imposing any interconnection requirements upon non-dominant carriers. We believe that, even for telecommunications carriers with no market power, the duty to interconnect directly or indirectly is central to the 1996 Act and achieves important policy objectives. Nothing in the record convinces us that we should forbear from imposing the provisions of section 251(a) on non-dominant carriers. In fact, section 251 distinguishes between dominant and non-dominant carriers, and imposes a number of additional obligations exclusively on incumbent LECs. Similarly, we also do not agree with the Texas Commission's argument that the obligations of section 251(a) should apply equally to all telecommunications carriers. Section 251 is clear in imposing different obligations on carriers depending upon their classification (*i.e.*, incumbent LEC, LEC, or telecommunications carrier). For example, section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers.

664. Section 251(a)(2) prohibits telecommunications carriers from installing network features, functions, and capabilities that do not comply with standards or guidelines established under sections 255 and 256. Because the Commission and the Architectural and Transportation Barriers Compliance Board have not developed standards or guidelines under section 255, we find that it would be premature at this point to attempt to delineate specific requirements or definitions of terms to implement Section 251(a)(2). The Illinois Commission lists several features which could provide access to individuals with disabilities, such as access to interrupt messages, directory assistance and operator services by users of text telephones (TTYs). Illinois

Commission comments at 82–83. Specific accessibility requirements such as those proposed by the Illinois Commission will need to be developed in proceedings to implement section 255, and therefore, we will not set forth any required "features, functions, or capabilities" in this proceeding. Similarly, the Commission has asked its federal advisory committee, the Network Reliability and Interoperability Council, for recommendations on how the Commission should implement Section 256. We intend to issue a further notice of proposed rulemaking seeking comment on what accessibility and compatibility requirements apply to telecommunications carriers who install network features, functions and capabilities.

X. Commercial Mobile Radio Service Interconnection

665. In the NPRM, we sought comment on whether interconnection arrangements between incumbent LECs and CMRS providers fall within the scope of sections 251 and 252. Application of sections 251 and 252 to LEC–CMRS interconnection arrangements involves two distinct issues. One is whether the terms and conditions of the physical interconnection between incumbent LECs and CMRS providers are governed under section 251(c)(2), and the corresponding pricing standards set forth in section 252(d)(1). The second, and perhaps more critical issue from the CMRS providers' perspective, is whether CMRS providers are entitled to reciprocal compensation for transport and termination under section 251(b)(5), and the corresponding pricing standards set forth in section 252(d)(2).

666. We tentatively concluded in the NPRM that CMRS providers are not obliged to provide to requesting telecommunications carriers either reciprocal compensation for transport and termination of telecommunications under section 251(b)(5), or interconnection under the provisions of section 251(c)(2), but that CMRS providers may be entitled to request interconnection under section 251(c)(2) for the purposes of providing "telephone exchange service and exchange access." We sought comment on this tentative conclusion. We also asked for comment on the separate but related question of whether LEC–CMRS transport and termination arrangements fall within the scope of section 251(b)(5). In addition, we sought comment on the relationship between section 251 and section 332(c). 47 U.S.C. 332(c). This section sets forth the regulatory treatment for mobile services, including the common carrier treatment of CMRS providers (except for such provisions of Title II as the Commission may specify), the right of CMRS providers to request (and the Commission to order) physical interconnection with other common carriers and the preemption of state regulation of the entry of or the rates charged by any CMRS providers. We acknowledged that issues relating to LEC–CMRS interconnection pursuant to section 332(c) were part of an ongoing proceeding initiated before the passage of the 1996 Act, (*Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket No. 95–185, 61 FR 3644 (February 1, 1996) (*LEC–CMRS Interconnection NPRM*)), and retained the prerogative of incorporating by reference the comments filed in that docket to the extent necessary. We hereby do so.

A. CMRS Providers and Obligations of Local Exchange Carriers Under Section 251(b) and Incumbent Local Exchange Carriers Under Section 251(c)

1. Background

667. Section 251(b) imposes duties only on LECs, and section 251(c) imposes duties only on incumbent LECs. Section 3(26) of the Act defines "local exchange carrier" to mean "any person that is engaged in the provision of telephone exchange service or exchange access," but "does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term." In the NPRM, we sought comment on whether, and to what extent, CMRS providers should be classified as "local exchange carriers" and therefore subject to the duties and obligations imposed by section 251(b).

2. Discussion

668. We are not persuaded by those arguing that CMRS providers should be treated as LECs, and decline at this time to treat CMRS providers as LECs. Section 3(26) of the Act, quoted above, makes clear that CMRS providers should not be classified as LECs until the Commission makes a finding that such treatment is warranted. We disagree with COMAV and National Wireless Resellers Association that CMRS providers are *de facto* LECs (and even incumbent LECs if they are affiliated with a LEC) simply because they provide telephone exchange and exchange access services. Congress recognized that some CMRS providers offer telephone exchange and exchange access services, and concluded that their provision of such services, by itself, did not require CMRS providers to be classified as LECs. We further note that, because the determination as to whether CMRS providers should be defined as LECs is within the Commission's sole discretion, states are preempted from requiring CMRS providers to classify themselves as "local exchange carriers" or be subject to rate and entry regulation as a precondition to participation in interconnection negotiations and arbitrations under sections 251 and 252.

669. NARUC argues that CMRS providers should be classified as LECs if they provide fixed service. We are currently seeking comment in our *CMRS Flexibility Proceeding, (Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96–6, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96–283 (released August 1, 1996)), on the regulatory treatment to be afforded CMRS providers when they provide fixed services. Thus, we believe that it would be premature to answer that question here, based only on the record in this proceeding. We also decline to adopt the Illinois Commission's suggestion that we find that a CMRS provider is a LEC if the CMRS provider seeks to compete directly with a wireline LEC. Even if we were to accept the Illinois Commission's underlying assumption, the record in this proceeding contains no evidence that wireless local loops have begun to replace wireline loops for the provision of local exchange service. Thus, until such time that we decide otherwise, CMRS providers will not be classified as LECs, and are not subject to the obligations of section 251(b). We further note that, even if we were to classify some CMRS providers as LECs, other types of CMRS providers, such as paging providers, might not be so classified because they do not offer local exchange service or exchange access.

670. We further note that, because CMRS providers do not fall within the definition of a LEC under section 251(h)(1), they are not subject to the duties and obligations imposed on incumbent LECs under section 251(c). An incumbent LEC is defined in section 251(h)(1), and includes only those LECs that were, on the date of enactment of the 1996 Act, deemed to be members of NECA pursuant to 47 CFR § 69.601(b), or the successor or assign of a NECA member. Similarly, we do not find that

CMRS providers satisfy the criteria set forth in section 251(h)(2), which grants the Commission the discretion to, by rule, provide for the treatment of a LEC as an incumbent LEC if certain conditions are met.

B. Reciprocal Compensation Arrangements Under Section 251(b)(5)

671. Some parties contend that LEC–CMRS transport and termination arrangements do not fall within the scope of 251(b)(5), which requires LECs to establish reciprocal compensation arrangements for transport and termination. Other commenters argue that because CMRS providers fall within the definition of "telecommunications carriers," they fall within the scope of section 251(b)(5).

672. Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications." Under section 3(43), "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." All CMRS providers offer telecommunications. Accordingly, LECs are obligated, pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation set forth in Section XI.B, below.

C. Interconnection Under Section 251(c)(2)

1. Background

673. Section 251(c)(2)(A) provides that an incumbent LEC must provide interconnection with its local exchange network to "any requesting telecommunications carrier * * * for the transmission and routing of telephone exchange service and exchange access." In the NPRM, we tentatively concluded that CMRS providers may be entitled to request interconnection under section 251(c)(2) for the purposes of providing telephone exchange service and exchange access. We sought comment on this tentative conclusion.

2. Discussion

674. As discussed in the preceding section, CMRS providers meet the statutory definition of "telecommunications carriers." We also agree with several commenters that many CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act. Incumbent LECs must accordingly make interconnection available to these CMRS providers in conformity with the terms of sections 251(c) and 252, including offering rates, terms, and conditions that are just, reasonable and nondiscriminatory.

675. The 1996 Act defines "telephone exchange service" as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area * * * and which is covered by the exchange service charge, *or (B) comparable service* provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." 47 U.S.C. 153(47) (emphasis added). This is a broader definition of "telephone exchange service" than had previously existed; Congress changed the definition in the 1996 Act to include services "comparable" to telephone exchange. At a minimum, we find that cellular, broadband PCS, and covered SMR providers fall within the second part of the definition because they provide "comparable service" to telephone exchange service. The services offered by cellular, broadband PCS, and covered SMR providers are comparable because, as a general matter, and as some commenters note, these CMRS carriers provide local, two-way switched voice service as a principal part of their business. Indeed, the Commission has described cellular service as exchange telephone service, (*See Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carriers*, Memorandum Opinion and Order, 59 Rad. Reg. 2d 1275, 1278 (1986)), and cellular carriers as "generally engaged in the provision of local exchange telecommunications in conjunction with local telephone companies * * *." *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, Memorandum Opinion and Order, 59 Rad. Reg. 2d 1275, 1278 (1986) (*Competition Opinion); see also id.* at 1284 (cellular carriers are primarily engaged in the provision of local, intrastate exchange telephone service); *Equal Access and Interconnection Obligations Pertaining to Commercial Radio Services*, CC Docket No. 94–54, Notice of Proposed Rulemaking and Notice of Inquiry, 59 FR 35664 (July 13, 1994). In addition, although CMRS providers are not currently classified as LECs, the fact that most CMRS providers are capable, both technically and pursuant to the terms of their licenses, of providing fixed services, as LECs do, buttresses our conclusion that these CMRS providers offer services that are "comparable" to telephone exchange service and supports the notion that these services may become a true economic substitute for wireline local exchange service in the future. *See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96–6, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96–283 (released August 1, 1996) (amending rules to allow providers of narrowband and broadband PCS, cellular, CMRS SMR, CMRS paging, CMRS 220 MHz service, and for-profit interconnected business radio services to offer fixed wireless services on their assigned spectrum on a co-primary basis with mobile services).

676. We also believe that other definitions in the Act support the conclusion that cellular, broadband PCS, and covered SMR licensees provide telephone exchange service. The fact that the 1996 Act's definition of a LEC excludes CMRS until the Commission finds that such service should be included in the definition," suggests that Congress found that some CMRS providers were providing telephone exchange service or exchange access, but sought to afford the Commission the discretion to decide whether CMRS providers should be treated as LECs under the new Act. Similarly, section 253(f) permits the states to impose certain obligations on "telecommunications carrier[s] that seek[ ] to provide telephone exchange service" in rural areas. The provision further provides that "[t]his subsection shall not apply * * * to a provider of commercial mobile services." It would have been unnecessary for the statute to include this exception if some CMRS were not telephone exchange service. Similarly, section 271(c)(1)(A), which sets forth conditions for determining the presence of a facilities-based competitor for purposes of BOC applications to provide in-region, interLATA services, provides that Part 22 [cellular] services "shall not be considered to be telephone exchange services," for purposes of that section. Again, if Congress did not believe that cellular providers were engaged in the provision of telephone exchange service, it would not have

been necessary to exclude cellular providers from this provision.

677. The arguments that CMRS traffic flows may differ from wireline traffic, that CMRS providers' termination costs may differ from LECs, that CMRS service areas do not coincide with wireline local exchange areas, or that CMRS providers are not LECs, do not alter our conclusion that cellular, broadband PCS, and covered SMR licensees provide telephone exchange service. These considerations are not relevant to the statutory definition of telephone exchange service in section 3(47). Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange access, under the plain language of section 251(c)(2).

D. Jurisdictional Authority for Regulation of LEC–CMRS Interconnection Rates

1. Background

678. In the NPRM, we sought comment on the relationship between section 251 and section 332(c). As noted above, we hereby incorporate by reference the comments filed in CC Docket No. 95–185 to the extent relevant to our analysis. In the NPRM, we noted that we had previously sought comment on the relationship of these two statutory provisions in the LEC–CMRS Interconnection proceeding. In the LEC–CMRS proceeding, we tentatively concluded that the Commission has sufficient authority to promulgate specific federal requirements for interstate and intrastate LEC–CMRS interconnection arrangements, including the adoption of a specific interim bill and keep arrangement. However, we reached that tentative conclusion before the enactment of the 1996 Act.

2. Discussion

679. Several parties in this proceeding argue that sections 251 and 252 provide the exclusive jurisdictional basis for regulation of LEC–CMRS interconnection rates. Other parties assert that sections 332 and 201 provide the exclusive jurisdictional basis for regulation of LEC–CMRS interconnection rates. Some parties have argued that jurisdiction resides concurrently under sections 251 and 252, on the one hand, and under sections 332 and 201 on the other.

680. Sections 251, 252, 332 and 201 are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable, and fair. It is consistent with the broad authority of these provisions to hold that we may apply sections 251 and 252 to LEC–CMRS interconnection. By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. We acknowledge that section 332 in tandem with section 201 is a basis for jurisdiction over LEC–CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time.

681. As a practical matter, sections 251 and 252 create a time-limited negotiation and arbitration process to ensure that interconnection agreements will be reached between incumbent LECs and telecommunications carriers, including CMRS providers. We expect that our establishment of pricing methodologies and default proxies which may be used as interim rates will help expedite the parties' negotiations and drive voluntary CMRS–LEC interconnection agreements. We also believe that sections 251 and 252 will foster regulatory parity in that these provisions establish a uniform regulatory scheme governing interconnection between incumbent LECs and all requesting carriers, including CMRS providers. Thus, we believe that sections 251 and 252 will facilitate consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection.

682. Although we are applying sections 251 and 252 to LEC–CMRS interconnection at this time, we preserve the option to revisit this determination in the future. We note that Section 332 generally precludes states from rate and entry regulation of CMRS providers, and thus, differentiates CMRS providers from other carriers. In passing section 332 in 1993, Congress stated that it intended to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure." H.R. Report No. 103–11, 103d. Cong., 1st Sess. 260 (1993). We also recognize that, based on the combined record in CC Docket No. 95–185 and CC Docket No. 96–68, there have been instances in which state commissions have treated CMRS providers in a discriminatory manner with respect to the terms and conditions of interconnection. Should the Commission determine that the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers in obtaining interconnection on terms and conditions that are just, reasonable and nondiscriminatory, the Commission may revisit its determination not to invoke jurisdiction under section 332 to regulate LEC–CMRS interconnection rates.

683. Our decision to proceed under section 251 as a basis for regulating LEC–CMRS interconnection rates should not be interpreted as undercutting our intent to enforce Section 332(c)(3), for example, where state regulation of interconnection rates might constitute regulation of CMRS entry. In such situations, state action might be precluded by either section 332 or section 253. Such circumstances would require a case-by-case evaluation. We note, however, that we are aware of numerous specific state requirements that may constitute CMRS entry or rate regulation preempted by section 332. For example, many states, such as California, require all telecommunications providers to certify that the public convenience and necessity will be served as a precondition to construction and operation of telecommunications services within the state. CAL. PUBLIC UTILITIES CODE Sections 1001,1005 (West 1995); ALASKA STAT. Section 42.05221 (1995); CONN. GEN. STAT. Section 16–247g (1995); HAW. REV. STAT. Section 269–7.5 (1995); NEB. REV. STAT. Section 86–805 (1995); N.M. STAT. ANN. Section 63–9B–4 (Michie 1996). Some states, such as Alaska and Connecticut, also require CMRS providers to certify as service providers other than CMRS in order to obtain the same treatment afforded other telecommunications providers under state law. *See In the Matter of Motion for a Declaratory Ruling Concerning Preemption of Alaska Call Routing and Interexchange Certification Regulation as Applies to Cellular Carriers,* File No. WTB/POL 95–2, *Motion for a Declaratory Ruling,* Alaska-3 Cellular d/b/a CellularOne, p.5, para. 11 (filed Sept. 22, 1995); *Decision, Investigation Into Wireless Mutual Compensation Plans,* State of Connecticut, Department of Public Utility control, at 15 (Connecticut Commission Sept. 22, 1995). Hawaii and Louisiana, in addition to imposing a certification requirement, require CMRS providers and other telecommunications carriers to file tariffs with the state commission. HAW. REV. STAT. Section 6–80–29 (1996); *see In re Regulations for Competition in the Local Telecommunications Market,* General

Order, Louisiana Public Service Commission, §§ 301, 401 (Louisiana Commission March 15, 1996). We will not permit entry regulation through the exercise of states' sections 251/252 authority or otherwise. In this regard, we note that states may not impose on CMRS carriers rate and entry regulation as a pre-condition to participation in interconnection agreements that may be negotiated and arbitrated pursuant to sections 251 and 252. We further note that the Commission is reviewing filings made pursuant to section 253 alleging that particular states or local governments have requirements that constitute entry barriers, in violation of section 253. We will continue to review any allegations on an ongoing basis, including any claims that states or local governments are regulating entry or imposing requirements on CMRS providers that constitute barriers to market entry.

XI. Obligations Imposed on LECs by Section 251(b)

A. Reciprocal Compensation for Transport and Termination of Telecommunications

1. Statutory Language

684. Section 251(b)(5) provides that all LECs, including incumbent LECs, have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Section 252(d)(2) states that, for the purpose of compliance by an incumbent LEC with section 251(b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions both: (1) provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and (2) "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." That subsection further provides that the foregoing language shall not be construed "to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements)," or to authorize the Commission or any state to "engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or require carriers to maintain records with respect to the additional costs of such calls." The legislative history indicates that "mutual and reciprocal recovery of costs * * * may include a range of compensation schemes, such as in-kind exchange of traffic without cash payment (known as bill-and-keep arrangements)."

2. Definition of Transport and Termination of Telecommunications

a. Background

685. In the NPRM, we sought comment on whether "transport and termination of telecommunications" under section 251(b)(5) is limited to certain types of traffic. We noted that the statutory provision appears to encompass telecommunications traffic that originates on the network of one LEC and terminates on the network of a competing provider in the same local service area as well as traffic passing between LECs and CMRS providers. We sought comment on whether section 251(b)(5) also encompasses telecommunications traffic passing between neighboring LECs that do not compete with one another. We also observed in the NPRM that section 252(d)(2) is entitled "Charges for Transport and Termination of Traffic," and it could be interpreted to permit separate charges for these two components of reciprocal compensation. We sought comment on this issue.

b. Discussion

(1) Distinction Between "Transport and Termination" and Access

686. We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.

687. We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area, as defined in the following paragraph. We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers—typically, the originating LEC, the IXC, and the terminating LEC—collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. In addition, both the caller and the party receiving the call pay a flat-rated interstate access charge—the end-user common line charge—to the respective incumbent LEC to whose network each of these parties is connected. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. This reading of the statute is confirmed by section 252(d)(2)(A)(i), which establishes the pricing standards for section 251(b)(5). Section 251(d)(2)(A)(i) provides for "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.

688. With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating

outside of the applicable local area would be subject to interstate and intrastate access charges. We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different. This approach is consistent with a recently negotiated interconnection agreement between Ameritech and ICG that restricted reciprocal compensation arrangements to the local traffic area as defined by the state commission. Continental Cablevision, in an *ex parte* letter, states that many incumbent LECs offer optional expanded local area calling plans, in which customers may pay an additional flat rate charge for calls within a wider area than that deemed as local, but that terminating intrastate access charges typically apply to calls that originate from competing carriers in the same wider area. Continental Cablevision argues that local transport and termination rates should apply to these calls. We lack sufficient record information to address the issue of expanded local area calling plans; we expect that this issue will be considered, in the first instance, by state commissions. In addition, we expect the states to decide whether section 251(b)(5) reciprocal compensation provisions apply to the exchange of traffic between incumbent LECs that serve adjacent service areas.

689. On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5). Different types of wireless carriers have different FCC-authorized licensed territories, the largest of which is the "Major Trading Area" (MTA). *See* Rand McNally, Inc., *1992 Commercial Atlas & Marketing Guide* 38–39 (1992). Because wireless licensed territories are federally authorized; and vary in size, we conclude that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.

690. We conclude that section 251(b)(5) obligations apply to all LECs in the same state-defined local exchange service areas, including neighboring incumbent LECs that fit within this description. Contrary to the arguments of NYNEX and Pacific Telesis, neither the plain language of the Act nor its legislative history limits this subsection to the transport and termination of telecommunications traffic between new entrants and incumbent LECs. In addition, applying section 251(b)(5) obligations to neighboring incumbent LECs in the same local exchange area is consistent with our decision that all interconnection agreements, including agreements between neighboring LECs, must be submitted to state commissions for approval pursuant to section 252(e).

691. Under section 252, neighboring states may establish different rate levels for transport and termination of traffic. In cases in which territory in multiple states is included in a single local service area, and a local call from one carrier to another crosses state lines, we conclude that the applicable rate for any particular call should be that established by the state in which the call terminates. This provides an administratively convenient rule, and termination of the call typically occurs in the same state where the terminating carrier's end office switch is located and where the cost of terminating the call is incurred.

(2) Distinction Between "Transport" and "Termination"

692. We conclude that transport and termination should be treated as two distinct functions. We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier). Many alternative arrangements exist for the provision of transport between the two networks. These arrangements include: dedicated circuits provided either by the incumbent LEC, the other local service provider, separately by each, or jointly by both; facilities provided by alternative carriers; unbundled network elements provided by incumbent LECs; or similar network functions currently offered by incumbent LECs on a tariffed basis. Charges for transport subject to section 251(b)(5) should reflect the forward-looking cost of the particular provisioning method.

693. We define "termination," for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises. In contrast to transport, for which some alternatives exist, alternatives for termination are not likely to exist in the near term. A carrier or provider typically has no other mechanism for delivering traffic to a called party served by another carrier except by having that called party's carrier terminate the call. In addition, forward-looking costs are calculated differently for the transport of traffic and the termination of traffic, as discussed above in the unbundled elements section. As such, we conclude that we need to treat transport and termination as separate functions—each with its own cost. With respect to GST's contention that separate charges for transport and termination of traffic will allow incumbent LECs to "game" the system through network design decisions, we conclude in the interconnection section above that interconnecting carriers may interconnect at any technically feasible point. We find that this sufficiently limits LECs' ability to disadvantage interconnecting parties through their network design decisions.

(3) CMRS-Related Issues

694. Section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. Although section 252(b)(5) does not explicitly state to whom the LEC's obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers. CMRS providers are telecommunications carriers and, thus, LECs' reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers.

695. We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that

section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

696. As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. "[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is "roaming" in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge. * * * Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier [*i.e.*, access] charges is defined by § 69.5(b) of our rules." *See Regulatory Treatment of Mobile Services Second Report and Order*, 59 FR 18493 (April 19, 1994). Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

697. CMRS customers may travel from location to location during the course of a single call, which could make it difficult to determine the applicable transport and termination rate or access charge. In the *LEC–CMRS Interconnection NPRM*, we observed that a significant amount of LEC–CMRS traffic crosses state lines, because CMRS service areas often cross state lines and CMRS customers are mobile. *LEC–CMRS Interconnection NPRM*, 61 FR 3644 (February 1, 1996). We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location. *Enhanced 911 Emergency Calling Systems Report and Order and Further NPRM*, 61 FR 40374 (August 2, 1996). This could complicate the computation of traffic flows and the applicability of transport and termination rates, given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges. We conclude, however, that it is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected. We conclude that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples. For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer. As an alternative, LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party.

698. As discussed above, pursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange service. CMRS providers, including small entities, and LECs, including small incumbent LECs and small entity competitive LECs, will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and will pay such compensation for certain traffic that they transmit and terminate to other carriers. We believe that these arrangements should benefit all carriers, including small incumbent LECs and small entities, because it will facilitate competitive entry into new markets while ensuring reasonable compensation for the additional costs incurred in terminating traffic that originates on other carriers' networks. We also recognize that, to implement transport and termination pursuant to section 251(b)(5), carriers, including small incumbent LECs and small entities, may be required to measure the exchange of traffic, but we believe that the cost of such measurement to these carriers is likely to be substantially outweighed by the benefits of these arrangements.

3. Pricing Methodology

a. Background

699. In the NPRM, we sought comment on how to interpret section 252(d)(2) of the Act. Specifically, we asked if we should establish a generic pricing methodology or impose a ceiling to guide the states in setting the charge for the transport and termination of traffic. We also asked whether such a generic pricing methodology or ceiling should be established using the same principles we adopt for interconnection and unbundled elements. Additionally, we sought comment on the use of an interim and transitional pricing mechanism that would address concerns about unequal bargaining power in negotiations.

b. Discussion

(1) Statutory Standard

700. We conclude that the pricing standards established by section 252(d)(1) for interconnection and unbundled elements, and by section 252(d)(2) for transport and termination of traffic, are sufficiently similar to permit the use of the same general methodologies for establishing rates under both statutory provisions. Section 252(d)(2) states that reciprocal compensation rates for transport and termination shall be based on "a reasonable approximation of the additional costs of terminating such calls." Moreover, there is some substitutability between the new entrant's use of unbundled network elements for transporting traffic and its use of transport under section 252(d)(2). Depending on the interconnection arrangements, carriers may transport traffic to the competing carriers' end offices or hand traffic off to competing carriers at meet points for termination

on the competing carriers' networks. Transport of traffic for termination on a competing carrier's network is, therefore, largely indistinguishable from transport for termination of calls on a carrier's own network. Thus, we conclude that transport of traffic should be priced based on the same cost-based standard, whether it is transport using unbundled elements or transport of traffic that originated on a competing carrier's network. We, therefore, find that the "additional cost" standard permits the use of the forward-looking, economic cost-based pricing standard that we are establishing for interconnection and unbundled elements.

(2) Pricing Rule

701. States have three options for establishing transport and termination rate levels. A state commission may conduct a thorough review of economic studies prepared using the TELRIC-based methodology outlined above in the section on the pricing of interconnection and unbundled elements. Alternatively, the state may adopt a default price pursuant to the default proxies outlined below. If the state adopts a default price, it must either commence review of a TELRIC-based economic cost study, request that this Commission review such a study, or subsequently modify the default price in accordance with any revised proxies we may adopt. As previously noted, we intend to commence a future rulemaking on developing proxies using a generic cost model, and to complete such proceeding in the first quarter of 1997. As a third alternative, in some circumstances states may order a "bill and keep" arrangement, as discussed below.

(3) Cost-Based Pricing Methodology

702. Consistent with our conclusions about the pricing of interconnection and unbundled network elements, we conclude that states that elect to set rates through a cost study must use the forward-looking economic cost-based methodology, which is described in greater detail above, in establishing rates for reciprocal transport and termination when arbitrating interconnection arrangements. We find that section 252(d)(2)(B)(ii), which indicates that section 252(d)(2) shall not be construed to "authorize the Commission or any State to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls," does not preclude states or this Commission from reviewing forward-looking economic cost studies. First, we believe that Congress intended the term "rate regulation proceeding" in section 252(d)(2)(B)(ii) to mean the same thing as "a rate-of-return or other rate-based proceeding" in section 252(d)(1)(A)(i). In the section on the pricing of interconnection and unbundled elements above, we conclude that the statutory prohibition of the use of such proceedings is intended to foreclose the use of traditional rate case proceedings using rate-of-return regulation. Moreover, forward-looking economic cost studies typically involve "a reasonable approximation of the additional cost," rather than determining such costs "with particularity," such as by measuring labor costs with detailed time and motion studies.

703. We find that, once a call has been delivered to the incumbent LEC end office serving the called party, the "additional cost" to the LEC of terminating a call that originates on a competing carrier's network primarily consists of the traffic-sensitive component of local switching. The network elements involved with the termination of traffic include the end-office switch and local loop. The costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities. The duty to terminate calls that originate on the network of a competitor does not directly affect the number of calls routed to a particular end user and any costs that result from inadequate loop capacity are, therefore, not considered "additional costs." We conclude that such non-traffic sensitive costs should not be considered "additional costs" when a LEC terminates a call that originated on the network of a competing carrier. For the purposes of setting rates under section 252(d)(2), only that portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes an "additional cost" to be recovered through termination charges.

704. Rates for termination established pursuant to a TELRIC-based methodology may recover a reasonable allocation of common costs. A rate equal to incremental costs may not compensate carriers fully for transporting and terminating traffic when common costs are present. We therefore reject the argument by some commenters that "additional costs" may not include a reasonable allocation of forward-looking common costs. We recognize that, as noted by Time Warner, call termination is an essential element in completing calls because competitors are required to use the incumbent LECs' existing networks to terminate calls to incumbent LEC customers. The 1996 Act envisions a seamless interconnection of competing networks, rather than the development of redundant, ubiquitous networks throughout the nation. In order to terminate traffic ubiquitously to other companies' local customers, all LECs are given the right to use termination services from those companies rather than construct facilities to everyone. While, on the originating end, carriers have different options to reach their revenue-paying customers—including their own network facilities, purchasing access to unbundled elements of the incumbent LEC, or resale—they have no realistic alternatives for terminating traffic destined for competing carriers' subscribers other than to use those carriers' networks. Thus, all carriers—incumbent LECs as well as competing carriers—have a greater incentive and opportunity to charge prices in excess of economically efficient levels on the terminating end. To ensure that rates for reciprocal compensation make possible efficient competitive entry, we conclude that termination rates should include an allocation of forward-looking common costs that is no greater proportionally than that allocated to unbundled local loops, which, as discussed above, should be relatively low. Additionally, we conclude that rates for the transport and termination of traffic shall not include an element that allows incumbent LECs to recover any lost contribution to basic, local service rates represented by the interconnecting carriers' service, because such an element would be inconsistent with the statutory requirement that rates for transport and termination be based on additional costs. In the section addressing prices for unbundled elements we conclude that the ECPR, which would allow incumbent LECs to recover such lost contributions, or collection of universal service costs through interconnection rates, leads to significant distortions in markets when existing retail prices are not cost-based.

705. We also address the impact on small incumbent LECs. For example, the Western Alliance argues that it is especially important for small LECs to recover lost contributions and common costs through termination charges. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, we conclude that termination rates for all LECs should include an allocation of forward-looking common costs, but find that the inclusion of an element for the

recovery of lost contribution may lead to significant distortions in local exchange markets. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

(4) Default Proxies

706. As with unbundled network elements, we recognize that it may not be feasible for some state commissions conducting or reviewing economic studies to establish transport and termination rates using our TELRIC-based pricing methodology within the time required for the arbitration process, particularly given some states' resource limitations. Thus, for the time being, we adopt a default price range of 0.2 cents ($0.002) to 0.4 cents ($0.004) per minute of use for calls handed off at the end-office switch. This default price range is based on the same proxies that apply to local switching as an unbundled network element. In establishing end-office termination rates, states may adopt a default termination price that is within our default price range or at either of the end points of the range. States should articulate the basis for selecting a particular price within this range. Thus, in arbitration proceedings, states must set the price for end office termination of traffic by: (1) using a forward-looking, economic cost study that complies with the forward-looking, economic-cost methodology set forth above; or (2) adopting a price less than or equal to 0.4 cents ($0.004) per minute, and greater than or equal to 0.2 cents ($0.002) per minute, pending the completion of such a forward-looking, economic cost study. We observe that the most credible studies in the record before us fall at the lower end of this range, and we encourage states to consider such evidence in their analysis. The adoption of a range of rates to serve as a default price range for interconnection agreements being arbitrated by the states provides carriers with a clearer understanding of the terms and conditions that will govern them if they fail to reach an agreement and helps to reduce the transaction costs of arbitration and litigation. We also find that states that have already adopted end-office termination rates based on an approach other than a full forward-looking cost study, either through arbitration or rulemaking proceedings, may keep such rates in effect, pending their review of a forward-looking cost study, as long as they do not exceed 0.5 cents ($0.005) per minute. As discussed below, a state may also order a "bill and keep" arrangement subject to certain limitations. Additionally, our adoption of a default price range temporarily relieves small and mid-sized carriers from the burden of conducting forward-looking economic cost studies.

707. Similarly, in establishing transport rates under sections 251(b)(5) and 252(d)(2), state commissions should be guided by the price proxies that we are establishing for unbundled transport elements discussed above. States should explain the basis for selecting a particular default price subject to the applicable ceiling. Specifically, when interconnecting carriers hand off traffic at an incumbent LEC's tandem switch (or equivalent facilities of a carrier other than an incumbent LEC), the rates for the tandem switching and transmission from the tandem switch to end offices—a portion of the "transport" component of transport and termination rates—should be subject to the proxies that apply to the analogous unbundled network elements. Thus, for the time being, when states set rates for tandem switching under section 252(d)(2), they may set a default price at or below the default price ceiling that applies to the tandem switching unbundled element as an alternative to reviewing a forward-looking economic cost study using our TELRIC methodology. Similarly, when states set rates for transmission facilities between tandem switches and end offices, they may establish rates equal to the default prices we are adopting for such transmission, as discussed above in the section on unbundled elements.

708. Finally, in establishing the rates for transmission facilities that are dedicated to the transmission of traffic between two networks, state commissions should be guided by the default price level we are adopting for the unbundled element of dedicated transport. For such dedicated transport, we can envision several scenarios involving a local carrier that provides transmission facilities (the "providing carrier") and another local carrier with which it interconnects (the "interconnecting carrier"). The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility. For example, if the providing carrier provides one-way trunks that the interconnecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. The interconnecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the interconnecting carrier. Under an alternative scenario, if the providing carrier provides two-way trunks between its network and the interconnecting carrier's network, then the interconnecting carrier should not have to pay the providing carrier a rate that recovers the full cost of those trunks. These two-way trunks are used by the providing carrier to send terminating traffic to the interconnecting carrier, as well as by the interconnecting carrier to send terminating traffic to the providing carrier. Rather, the interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send terminating traffic to the providing carrier. This proportion may be measured either based on the total flow of traffic over the trunks, or based on the flow of traffic during peak periods. Carriers operating under arrangements which do not comport with the principles we have set forth above, shall be entitled to convert such arrangements so that each carrier is only paying for the transport of traffic it originates, as of the effective date of this order.

(5) Rate Structure

709. Nearly all commenters agree that flat rates, rather than usage-sensitive rates, should apply to the purchase of dedicated facilities. As discussed in the NPRM, economic efficiency may generally be maximized when non-traffic sensitive services, such as the use of dedicated facilities for the transport of traffic, are priced on a flat-rated basis. We, therefore, require all interconnecting parties to be offered the option of purchasing dedicated facilities, for the transport of traffic, on a flat-rated basis. As discussed by Lincoln Telephone, the connection between an incumbent LEC's end or tandem office and an interconnecting LEC's network is likely to be a dedicated facility. We recognize that the facility itself can be provided in a number of different ways—by use of two service providers, by the other carrier, or jointly in a meet-point arrangement. We conclude first that, no matter what the specific arrangements, these costs should be recovered in a cost-causative manner and that usage-based charges should be limited to situations where costs are usage sensitive. In cases going to arbitration and in reviewing BOC statements of terms and conditions, the

carrier actually providing the facility should presumptively be entitled to a rate that is set based on the forward-looking economic cost of providing the portion of the facility that is used for terminating traffic that originates on the network of a competing carrier. We recognize that negotiated agreements may incorporate flat-rated charges when it is efficient to do so and find that the presence of the arbitration default rule is likely to lead parties to negotiate efficient rate structures.

710. We recognize that the costs of transporting and terminating traffic during peak and off-peak hours may not be the same. As suggested by the Massachusetts Attorney General, rates that are the same during peak and off-peak hours may not reflect the cost of using the network and could lead to inefficient use of the network. The differences in the cost of transporting and terminating traffic during peak and off-peak hours, however, are likely to vary depending on the network, and the amount and type of traffic terminated at a particular switch. For example, peak periods may vary within a local service area depending upon whether the switch is located in a business or residential area. As a result, there may be administrative difficulties in establishing peak-load pricing schemes that may outweigh the benefits of such schemes. The negotiating parties, however, are likely to be in a position to more accurately determine how traffic patterns will adjust to peak-load pricing schemes and we encourage parties to address such pricing schemes in the negotiation process. For similar reasons, we neither require nor forbid states from adopting rates that reflect peak and off-peak costs. We hope some states will evaluate the benefits and costs of pricing schemes that consist of different rates for peak and off-peak traffic. We do require, however, that peak-load pricing schemes, adopted through the arbitration process, comply with our default price level if not based on a forward-looking cost study (e.g., the average rate, weighted by the projected relative minutes of use during peak and off-peak periods, should fall within our default price range of 0.2 to 0.4 cents or the level determined by an incremental cost study).

(6) Interim Transport and Termination Rate Levels

711. We are concerned that some new entrants that do not already have interconnection arrangements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination arrangements with the incumbent LEC. In particular, a new entrant that has already constructed facilities may have a relatively weak bargaining position because it may be forced to choose either to accept transport and termination rates not in accord with these rules or to delay its commencement of service until the conclusion of the arbitration and state approval process. To promote the Act's goal of rapid competition in the local exchange, we order incumbent LECs upon request from new entrants to provide transport and termination of traffic, on an interim basis, pending resolution of negotiation and arbitration regarding transport and termination prices, and approval by the state commission. A carrier may take advantage of this interim arrangement only after it has requested negotiation with the incumbent LEC. The interim arrangement shall cease to be in effect when one of the following occurs: (1) an agreement has been negotiated and approved; (2) an agreement has been arbitrated and approved; or (3) the period for requesting arbitration has passed with no such request. We also conclude that interim prices for transport and termination shall be symmetrical. Because the purpose of this interim termination requirement is to permit parties without existing interconnection agreements to enter the market expeditiously, this requirement shall not apply with respect to requesting carriers that have existing interconnection arrangements that provide for termination of local traffic by the incumbent LEC. The ability to interconnect with an incumbent LEC prior to the completion of a forward-looking, economic cost study, based on an interim presumptive price ceiling, allows carriers, including small entrants, to enter into local exchange service expeditiously.

712. In states that have already conducted or reviewed forward-looking economic cost studies and promulgated transport and termination rates based on such studies, an incumbent LEC receiving a request for interim transport and termination shall use these state-determined rates as interim transport and termination rates. In states that have not conducted or reviewed a forward-looking economic cost study, but have set rates for transport and termination of traffic consistent with the default price ranges and ceilings discussed above, an incumbent LEC shall use these state-determined rates as interim rates. In states that have neither set rates consistent with the default price ceilings and ranges nor reviewed or conducted forward-looking economic cost studies, we must establish an interim default price in order to facilitate rapid competition in the local exchange market. In those states, an incumbent LEC shall set interim rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport described above. Using the ceiling as a default interim price, pending a state commission's completion of a forward-looking economic cost analysis, should ensure that both the incumbent LEC and the competing provider recovers no less than their full transport and termination costs. We note, however, that the most credible evidence in the record suggests that the actual forward-looking economic cost of end-office switching is closer to 0.2 cents ($0.002) per minute of use than the ceiling of 0.4 cents ($0.004) per minute of use. States must adopt "true-up" mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the final rate established pursuant to arbitration.

713. We conclude that section 251, in conjunction with our broad rulemaking authority under section 4(i), provides us with authority to create interim pricing rules to facilitate market entry. Because section 251(d)(1) gives the FCC authority "to establish regulations to implement the requirements of this section," we find that section 251(d)(1) gives the Commission authority to establish interim regulations that address the "just and reasonable" rates for the "reciprocal compensation" requirement of section 251(b)(5), subject to the preservation requirements of section 251(d)(3). Courts have upheld our adoption of interim compensation arrangements pursuant to our authority under section 4(i) of the 1934 Communications Act on numerous occasions in the past. *See New England Tel. and Tel. Co. v. FCC*, 826 F.2d 1101 (D.C. Cir. 1987); *North American Telecommunications Association v. FCC*, 772 F.2d 1092 (7th Cir. 1085); *Lincoln Tel. and Tel. Co. v. FCC*, 659 F.2d (D.C. Cir. 1989). In particular, we have authority, under section 4(i), to set interim rates subject to a later "true-up" when final rates are established. "[T]he Commission's establishment of an interim billing and collection arrangement was both a helpful and necessary step for the Commission to take in implementing its 'immediate' interconnection order." *Lincoln Telephone & Telegraph Co. v. FCC*, 659 F.2d 1092, 1107 (D.C. Cir. 1981) (upholding Commission decision requiring an incumbent LEC to interconnect with MCI immediately, in

order not to delay interconnection, at interim rates subject to later adjustment); *see also FTC Communications v. FCC*, 750 F.2d 226 (2d Cir. 1984) (affirming Commission's authority under Section 4(i) to set interim rates for interconnection between the domestic record carrier, Western Union, and international record carriers, subject to an accounting order, pending the conclusion of a rulemaking to set permanent rates replacing expired, contract-based rates). We therefore conclude that the default prices discussed above need not in all instances await the conclusion of the negotiation, arbitration, and state approval process set forth in section 252, but must nevertheless be in accordance with the requirements of section 251(d)(3) preserving state access regulations. We also observe that we proposed a similar interim transport and termination arrangement, albeit with different rate levels, in our NPRM in the *LEC–CMRS Interconnection* proceeding. *LEC–CMRS Interconnection NPRM*, 61 FR 3644 (February 1, 1996).

714. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, Cincinnati Bell asserts that interim mechanisms are not required because large corporations are not disadvantaged by unequal bargaining power in negotiations with small and mid-size incumbent LECs. We do not adopt Cincinnati Bell's position because some new entrants, regardless of their size, that do not already have interconnection arrangements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination arrangements with the incumbent LEC. We believe that the adoption of interim rates, subject to a "true-up," advances the pro-competitive goals of the statute. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

4. Symmetry

a. Background

715. Symmetrical compensation arrangements are those in which the rate paid by an incumbent LEC to another telecommunications carrier for transport and termination of traffic originated by the incumbent LEC is the same as the rate the incumbent LEC charges to transport and terminate traffic originated by the other telecommunications carrier. Incumbent LECs are not likely to purchase interconnection or unbundled elements from competitive LECs, except for termination of traffic, and possibly transport. In the NPRM, we sought comment on whether rate symmetry requirements are consistent with the statutory requirement that rates set by states for transport and termination of traffic be based on "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and "a reasonable approximation of the additional costs of terminating such calls."

716. In addition, we noted in the NPRM that the Illinois, Maryland, and New York commissions have established different rates for termination of traffic on an incumbent LEC's network, depending upon whether the traffic is handed off at the incumbent LEC's end office or tandem switch. We also observed that California and Michigan have established one rate that applies to transport and termination of all competing local exchange carrier traffic on incumbent LEC networks, regardless of whether the traffic is handed off at the incumbent LEC's end office or tandem switch, although this rate does not currently apply to CMRS. We, therefore, address whether rates for transport and termination should be symmetrical and consist of only a single rate regardless of where the call is handed off, or if rates should be priced on an element-by-element basis.

717. In the *LEC–CMRS Interconnection NPRM*, we sought comment on whether incumbent LECs were utilizing their greater bargaining power to negotiate with wireless carriers interconnection agreements that did not reflect principles of mutual compensation. We sought comment on whether we should institute some procedure or mechanism in addition to our section 208 enforcement process to ensure that incumbent LECs comply with our existing rules requiring mutual compensation. *LEC–CMRS Interconnection NPRM*, 61 FR 3644 (February 1, 1996).

b. Discussion

(1) Symmetry in General

718. Regardless of whether the incumbent LEC's transport and termination prices are set using a TELRIC-based economic cost study or a default proxy, we conclude that it is reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination. Both the incumbent LEC and the interconnecting carriers usually will be providing service in the same geographic area, so the forward-looking economic costs should be similar in most cases. We also conclude that using the incumbent LEC's forward-looking costs for transport and termination of traffic as a proxy for the costs incurred by interconnecting carriers satisfies the requirement of section 252(d)(2) that costs be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." Using the incumbent LEC's cost studies as proxies for reciprocal compensation is consistent with section 252(d)(2)(B)(ii), which prohibits "establishing with particularity the additional costs of transporting or terminating calls." If both parties are incumbent LECs (*e.g.*, an independent LEC and an adjacent BOC), we conclude that the larger LEC's forward-looking costs should be used to establish the symmetrical rate for transport and termination. We conclude that larger LECs are generally in a better position to conduct a forward-looking economic cost study than smaller carriers.

719. We conclude that imposing symmetrical rates based on the incumbent LEC's additional forward-looking costs will not substantially reduce carriers' incentives to minimize those costs. A symmetric compensation rule gives the competing carriers correct incentives to minimize its own costs of termination because its termination revenues do not vary directly with changes in its own costs. Moreover, symmetrical rates based on the incumbent LEC's costs should not seriously affect incumbent LECs' incentives to control costs. We expect that incumbent LECs will transport and terminate much more traffic that originates on their own networks than traffic that originates on competing carriers' networks. Even if, under the additional cost standard, incumbent LECs were required to reflect any improvements in operating efficiency, and consequent cost reductions, in reduced termination rates, the cost savings realized by the incumbent LEC are likely to be much greater than its reduction in net termination revenues, because the majority of traffic transported and terminated is likely to be its own. Even if a pass-through of incumbent LEC's cost reductions were instantaneous and complete, the number of minutes of use on which an incumbent LEC's net termination revenues is assessed is much smaller

than its overall number of minutes of switching and transport. Moreover, if a portion of the reduction in costs is specific to exchange traffic, under symmetrical rates, the LEC's revenues from terminating traffic originating from another local carrier are based on the net difference in traffic, which is likely to be much smaller than the total traffic it terminates. Consider a situation approximating traditional LEC–CMRS interconnection, in which traffic flows are substantially unbalanced: let us suppose, of 1,000,000 minutes of use, 750,000 are CMRS-to-LEC and 250,000 LEC-to-CMRS. Thus, under symmetric compensation at 0.3 cents per minute, the LEC receives 0.3 cents times 500,000, or $1,500.00. If it reduced its per-minute cost, for some reason only on terminating CMRS-to-LEC traffic, to 0.2 cents per minute, it would save 0.1 cent times 750,000, or $750.00, in reduced costs, whereas its terminating revenues would fall by only 0.1 cent times 500,000, or $500.00. Thus, it would still have substantial incentive to make the cost reduction in question. In situations closer to traffic balance, the incentive is even more favorable. And, of course, the LEC probably also reduces its cost of switching on many millions of other minutes that do not involve other networks at the same time. For example, in the case where traffic is balanced, net termination charges are zero, a figure that is unaffected by changes in the incumbent LEC's costs, and the incumbent LEC is provided with correct incentives to minimize termination costs.

720. We also find that symmetrical rates may reduce an incumbent LEC's ability to use its bargaining strength to negotiate excessively high termination charges that competitors would pay the incumbent LEC and excessively low termination rates that the incumbent LEC would pay interconnecting carriers. As discussed by commenters in the *LEC–CMRS Interconnection* proceeding, LECs have used their unequal bargaining position to impose asymmetrical rates for CMRS providers and, in some instances, have charged CMRS providers origination as well as termination charges. On the other hand, symmetrical rates largely eliminate such advantages because they require incumbent LECs, as well as competing carriers, to pay the same rate for reciprocal compensation.

721. Symmetrical compensation rates are also administratively easier to derive and manage than asymmetrical rates based on the costs of each of the respective carriers. In addition, we believe that using the incumbent LEC's cost studies to establish the presumptive symmetrical rates will establish reasonable opportunities for local competition, including opportunities for small telecommunications companies entering the local exchange market. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, RTC argues that symmetrical rates do not consider the costs involved in the use of another carrier's network. We find, however, that incumbent LECs' costs, including small incumbent LECs' costs, serve as reasonable proxies for other carriers' costs of transport and termination for the purpose of reciprocal compensation. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act. In addition, symmetry will avoid the need for small businesses to conduct forward-looking economic cost studies in order for the states to arbitrate reciprocal compensation disputes.

722. Given the advantages of symmetrical rates, we direct states to establish presumptive symmetrical rates based on the incumbent LEC's costs for transport and termination of traffic when arbitrating disputes under section 252(d)(2) and in reviewing BOC statements of generally available terms and conditions. If a competing local service provider believes that its cost will be greater than that of the incumbent LEC for transport and termination, then it must submit a forward-looking economic cost study to rebut this presumptive symmetrical rate. In that case, we direct state commissions, when arbitrating interconnection arrangements, to depart from symmetrical rates only if they find that the costs of efficiently configured and operated systems are not symmetrical and justify a different compensation rate. In doing so, however, state commissions must give full and fair effect to the economic costing methodology we set forth in this order, and create a factual record, including the cost study, sufficient for purposes of review after notice and opportunity for the affected parties to participate. In the absence of such a cost study justifying a departure from the presumption of symmetrical compensation, reciprocal compensation for the transport and termination of traffic shall be based on the incumbent local exchange carrier's cost studies.

723. We find that the "additional costs" incurred by a LEC when transporting and terminating a call that originated on a competing carrier's network are likely to vary depending on whether tandem switching is involved. We, therefore, conclude that states may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch. Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate.

724. We disagree with TCI's claim that higher charges for routing calls through tandem switches rather than directly through incumbent LECs' end offices will materially discourage carriers from routing traffic through tandem switches, even when it is efficient to do so. New entrants will only be encouraged to interconnect at end-office switches, rather than tandem switches, when the decrease in incumbent LEC transport charges justifies the extra costs incurred by the new entrant to route traffic directly through the incumbent LEC's end-office switches. Carriers will interconnect in a way that minimizes their costs of interconnection, including the use of cost-based LEC network elements. In addition, the flexibility given to states may allow carriers, including small entities, with different network architectures to establish rates for terminating calls originating on other carriers' networks that are asymmetrical, if they can show that the costs of efficiently configured and operated systems are not symmetrical and justify different compensation rates, instead of being based on competitors' network architectures.

725. We believe, with respect to interconnection between LECs and paging providers, that there should be an exception to our rule that states must establish presumptive symmetrical rates based on the incumbent LEC's costs for transport and termination of traffic. While paging providers, as telecommunications carriers, are entitled to mutual compensation for the

transport and termination of local traffic, and should not be required to pay charges for traffic that originates on other carriers' networks, we believe that incumbent LECs' forward-looking costs may not be reasonable proxies for the costs of paging providers. Paging is typically a significantly different service than wireline or wireless voice service and uses different types and amounts of equipment and facilities. PageNet's own network, for example, is based on a regional hub and spoke network that transmits paging calls from radio transmitters to provide regional or national coverage. This configuration is distinctly different from either LEC wireline networks, with their hierarchy of switches and transmission facilities, or cellular carriers, with their multiple cells and sophisticated systems for handing off calls as a vehicle moves across cell boundaries. In addition, most calls terminated by paging companies are brief (averaging 15 seconds) in duration and contain no voice message, but only an alpha-numeric message of a few characters. Using incumbent LEC's costs for termination of traffic as a proxy for paging providers' costs, when the LECs' costs are likely higher than paging providers' cost, might create uneconomic incentives for paging providers to generate traffic simply in order to receive termination compensation. Thus, using LEC costs for termination of voice calls thus may not be a reasonable proxy for paging costs as the types of switching and transport that paging carriers perform are different from those of LECs and other voice carriers.

726. Given the lack of information in the record concerning paging providers' costs to terminate local traffic, we have decided to initiate a further proceeding to try to determine what an appropriate proxy for paging costs would be and, if necessary, to set a specific paging default proxy. In the interim, however, in the event that LECs and paging companies cannot negotiate agreed-upon rates, we direct states, when arbitrating disputes under section 252(d)(2), to establish rates for the termination of traffic by paging providers based on the forward-looking economic costs of such termination to the paging provider. The paging provider seeking termination fees must prove to the state commission the costs of terminating local calls. Given the lack of information in the record concerning paging providers' costs, we further conclude that the default price for termination of traffic from the end office that we adopt in this proceeding in Section XI.B.3., *supra*, does not apply to termination of traffic by paging providers. This default price is based on estimates in the record of the costs to LECs of termination from the end office or end-office switching. There are no such estimates with respect to paging in the record, and as discussed above, we find that estimates of LEC costs may not reflect paging providers' costs.

(2) Existing Non-Reciprocal Agreements Between Incumbent LECs and CMRS Providers

727. Section 20.11 of our rules, which predates enactment of the 1996 Act, requires that interconnection agreements between incumbent LECs and CMRS providers comply with principles of mutual compensation, and that each carrier pay reasonable compensation for transport and termination of the other carrier's calls. Based on the extensive record in the *LEC–CMRS Interconnection* proceeding, as well as that in this proceeding, we conclude that, in many cases, incumbent LECs appear to have imposed arrangements that provide little or no compensation for calls terminated on wireless networks, and in some cases imposed charges for traffic originated on CMRS providers' networks, both in violation of section 20.11 of our rules. Accordingly, we conclude that CMRS providers that are party to pre-existing agreements with incumbent LECs that provide for non-mutual compensation have the option to renegotiate these agreements with no termination liabilities or other contract penalties. Pending the successful completion of negotiations or arbitration, symmetrical reciprocal compensation provisions shall apply, with the transport and termination rate that the incumbent LEC charges the CMRS provider from the pre-existing agreement applying to both carriers, as of the effective date of the rules we adopt pursuant to this order.

728. In addition, we conclude that this opportunity for CMRS providers currently operating under arrangements with non-mutual transport and termination rates to renegotiate such arrangements advances the mutual compensation regime contemplated under section 251(b)(5) of the 1996 Act. We use the term "reciprocal compensation" and "mutual compensation" synonymously to mean that compensation flows in both directions between interconnecting networks. *LEC–CMRS Interconnection NPRM.* We find that extending the opportunity to establish symmetrical reciprocal compensation for the transport and termination of traffic addresses inequalities in bargaining power that incumbent LECs may use to disadvantage interconnecting wireless carriers. At the same time, our rule will place wireless carriers with non-mutual, existing agreements on the same footing as other new entrants, who will be able to negotiate more equitable interconnection agreements because of the rules we put in place with this Report and Order. We find that we have ample authority under section 4(i) of the 1934 Act as well as section 251 of the 1996 Act, to order this remedy. Courts have held that "the Commission has the power to prescribe a change in contract rates when it finds them to be unlawful * * * and to modify other provisions of private contracts when necessary to serve the public interest." *Western Union Tel. Co.* v. *FCC,* 815 F.2d 1495, 1501 (D.C: Cir. 1987). The Commission has adopted similar "fresh look" requirements in the past. The opportunity that we are affording to CMRS providers in this context is consistent with similar "fresh look" requirements that we have adopted in the past. *See, e.g., Expanded Interconnection with Local Telephone Company Facilities Report and Order and NPRM,* 57 FR 54323 (November 18, 1992), *recon.,* 58 FR 48752 (September 17, 1993) (fresh look to enable customers to take advantage of new competitive opportunities under special access expanded interconnection), vacated on other grounds and remanded for further proceedings sub nom. *Bell Atlantic Tel. Cos.* v. *FCC,* 24 F.3d 1441 (1994); *Competition in the Interstate Interexchange Marketplace Memorandum Opinion and Order on Reconsideration,* 57 FR 20206 (May 12, 1992) ("fresh look" in context of 800 bundling with interexchange offerings); *Amendment of the Commission's Rules Relative to Allocation of the 849–851/894–896 MHz Bands Memorandum Opinion and Order on Reconsideration,* 56 FR 37853 (August 9, 1991) ("fresh look" requirements imposed in context of air-ground radiotelephone service as condition of grant of Title III license).

5. Bill and Keep

a. Background

729. *Local Competition NPRM.* In the NPRM, we defined bill-and-keep arrangements as those in which neither of two interconnecting networks charges the other network for terminating traffic that originated on the other network. Instead, each network recovers from its own end users the cost of both originating traffic delivered to the other network and terminating traffic received from the other network. A bill-and-keep approach for termination of traffic does

not, however, preclude a positive flat-rated charge for transport of traffic between carriers' networks.

730. We sought comment on what guidance we should give state commissions regarding the use of bill-and-keep arrangements in arbitrated interconnection arrangements. We sought comment on whether section 252(d)(2)(B)(i) specifically authorizes states to impose bill-and-keep arrangements in the arbitration process, at least when certain conditions are met. We also sought comment on whether we should interpret the statute as placing any limits on the circumstances in which states may adopt bill-and-keep arrangements. We also asked for comment on the meaning of the statutory description of bill-and-keep arrangements as "arrangements that waive mutual recovery." In addition, we sought comment on whether there are any circumstances in which the statute requires states to establish bill-and-keep arrangements.

731. *LEC–CMRS Interconnection NPRM.* In the *LEC–CMRS Interconnection NPRM*, we proposed bill and keep as an interim arrangement. *LEC–CMRS Interconnection NPRM*, 61 FR 3644 (February 1, 1996). We noted there that proponents have argued that bill-and-keep would be economically efficient if either of two conditions are met: (1) traffic flows between competing LECs are balanced; or (2) the per-unit cost of interconnection is *de minimis*. We, therefore, address whether interim bill-and-keep arrangements for LEC–CMRS traffic should be imposed.

b. Discussion

732. As an additional option for reciprocal compensation arrangements for termination services, we conclude that state commissions may impose bill-and-keep arrangements if neither carrier has rebutted the presumption of symmetrical rates and if the volume of terminating traffic that originates on one network and terminates on another network is approximately equal to the volume of terminating traffic flowing in the opposite direction, and is expected to remain so, as defined below. We disagree with commenters who contend that the Commission and states do not have the authority to mandate bill-and-keep arrangements under any circumstances. Section 252(d)(2)(B)(i) provides that the definition of what may be considered "just and reasonable" terms and conditions for reciprocal compensation "shall not be construed to preclude arrangements that afford mutual recovery (such as bill-and-keep arrangements)." We conclude that section 252(d)(2) would be superfluous if bill-and-keep arrangements were limited to negotiated agreements, because none of the standards in section 252(d) apply to voluntarily-negotiated agreements. Therefore, it is clear that bill-and-keep arrangements may be imposed in the context of the arbitration process for termination of traffic, at least in some circumstances.

733. Section 252(d)(2)(A)(i) provides that to be just and reasonable, reciprocal compensation must "provide for the mutual and reciprocal recovery by each carrier of costs associated with transport and termination." In general, we find that carriers incur costs in terminating traffic that are not *de minimis*, and consequently, bill-and-keep arrangements that lack any provisions for compensation do not provide for recovery of costs. In addition, as long as the cost of terminating traffic is positive, bill-and-keep arrangements are not economically efficient because they distort carriers' incentives, encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic. On the other hand, when states impose symmetrical rates for the termination of traffic, payments from one carrier to the other can be expected to be offset by payments in the opposite direction when traffic from one network to the other is approximately balanced with the traffic flowing in the opposite direction. In such circumstances, bill-and-keep arrangements may minimize administrative burdens and transaction costs. We find that, in certain circumstances, the advantages of bill-and-keep arrangements outweigh the disadvantages, but no party has convincingly explained why, in such circumstances, parties themselves would not agree to bill-and-keep arrangements. We are mindful, however, that negotiations may fail for a variety of reasons. We conclude, therefore, that states may impose bill-and-keep arrangements if traffic is roughly balanced in the two directions and neither carrier has rebutted the presumption of symmetrical rates.

734. We further conclude that states may adopt specific thresholds for determining when traffic is roughly balanced. If state commissions impose bill-and-keep arrangements, those arrangements must either include provisions that impose compensation obligations if traffic becomes significantly out of balance or permit any party to request that the state commission impose such compensation obligations based on a showing that the traffic flows are inconsistent with the threshold adopted by the state. For example, the Michigan Commission adopted a five percent threshold for the difference between the traffic flows in the two directions. States may, however, also apply a general presumption that traffic between carriers is balanced and is likely to remain so. In that case, a party asserting imbalanced traffic arrangements must prove to the state commission that such imbalance exists. Under such a presumption, bill-and-keep arrangements would be justified unless a carrier seeking to rebut this presumption satisfies its burden of proof. We also find that states that have adopted bill-and-keep arrangements prior to the date that this order becomes effective, either in arbitration or rulemaking proceedings, may retain such arrangements, unless a party proves to the state commission that traffic is not roughly balanced. In that case, the state commission is to determine the transport and termination rates based either on the forward-looking economic cost-based methodology or consistent with the default proxies in this order. Finally, we observe that carriers have an incentive to agree to bill-and-keep arrangements if it is economically efficient to do so, and that nothing in the Act prevents parties from agreeing to bill-and-keep arrangements even if a state declines to mandate such arrangements. For example, we note that Time Warner/BellSouth interconnection agreement provides for a bill-and-keep arrangement based on a "roughly balanced traffic" concept.

735. In determining whether traffic is balanced, we find that precise traffic measurement is not necessary. It is sufficient to use approximations based on samples and studies comparable to reports on percentages of interstate use often used for access charge billing. Such an approach is likely to reduce implementation costs and complexities. Alternatively, state commissions may require that traffic flowing in the two directions be measured as accurately as possible during some defined period of time, which may commence no later than six months after an interconnection arrangement goes into effect. All affected carriers are required to cooperate with the state commission in implementing this measurement. A state commission that adopts a traffic flow measurement approach may adopt a "true-up" mechanism to ensure that no carrier is disadvantaged by an interim rate that differs from the rate established once such a measurement is undertaken. Finally, state commissions may require that local traffic and access traffic be carried on separate trunk groups if they deem such measures to be necessary to

ensure accurate measurement and billing.

736. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, RTC argues that bill-and-keep arrangements fail to adequately deal with each carrier's costs. In addition to basing reciprocal compensation on the incumbent LECs costs, we believe that by allowing carriers to rebut a presumption of balanced traffic volumes, the concern that bill-and-keep arrangements fail to adequately deal with each carrier's costs are addressed. We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

737. We disagree with commenters that argue that mandating bill-and-keep arrangements in these circumstances violates the taking clause of Fifth Amendment. We reject BellSouth's argument that mandating bill-and-keep mechanisms would constitute a physical intrusion of LEC property. As NCTA observes, bill-and-keep arrangements are not a "physical occupation" of incumbent LEC property and thus *per se* takings cases are irrelevant. *See Loretto* v. *Telepromter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982); *Lucas* v. *South Carolina Coastal Council*, 112 S.Ct. 2886, 2893 (1992). We also reject arguments that the bill-and-keep arrangements we adopt here would not adequately compensate incumbent LECs for transport and termination. As Congress recognized, bill-and-keep arrangements allow each carrier compensation "in-kind" in the form of access to the other carrier's network. Therefore, the type of bill-and-keep arrangements that we have permitted states to adopt are not unconstitutionally confiscatory.

738. Commenters in the *LEC–CMRS Interconnection NPRM* assert that the estimated per minute cost of LEC termination ranges from 0.2 to 1.3 cents, and most of the estimates are clustered near the lower end of this range. These estimates are based primarily on interconnection at a LEC end office, while most interconnections occur at tandem offices where LECs' costs of call completion are higher than terminations routed directly through the end office switch. Moreover, the record contains no estimates of the cost of CMRS termination. That cost is generally considered to be greater than the cost of LEC termination; but only one oral, *ex parte* estimate of CMRS cost has been offered: 2.25 to 4.0 cents per minute. Further, there is no showing that the transaction costs of measuring traffic flows and making net payments would be so high that a bill-and-keep regime would be more efficient. Moreover, no party has demonstrated that aggregate cost flows between interconnecting LECs and CMRS providers are in balance.

739. In light of the overall transport and termination policy we are adopting, we do not adopt the interim bill and keep arrangement tentatively proposed in the LEC–CMRS Interconnection NPRM. Notwithstanding our conclusions about bill and keep above, under which states may rule on bill and keep for particular pairs of firms based on the circumstances prevailing between them, we conclude that we are correct in not adopting bill and keep as a single, nationwide policy that would govern all LEC–CMRS transport and termination of traffic. Thus, we reject our tentative conclusion in the LEC–CMRS Interconnection NPRM. We expect, however, that when it is economically efficient to do so, parties will adopt bill and keep arrangements in the negotiation process. Also, as described above, a state commission may impose bill-and-keep arrangements with respect to CMRS–LEC traffic when it finds that traffic is roughly balanced and is expected to remain so.

B. Access to Rights of Way

1. Overview

740. Section 251(b)(4) imposes upon each LEC the "duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224." The access provisions of section 224, as amended by the 1996 Act, differ from the requirements of section 251(b)(4) with respect to both the entities required to grant access and the entities that may demand access. Section 224(f)(1) imposes upon all utilities, including LECs, the duty to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." For purposes of section 224, the term "telecommunications carrier" excludes any incumbent LEC as that term is defined in section 251(h).

741. In the NPRM, we sought comment on various aspects of this access requirement, as well as on section 224(f)(2) which creates the following limited exception to the obligations of section 224(f)(1):

> Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

742. Additionally, we sought comment on section 224(h), which provides:

> Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

743. In this Order, we establish rules implementing these provisions. Based on the comments received and the plain language of the statute, and in furtherance of our original mandate to institute an expeditious procedure for determining just and reasonable pole attachment rates with a minimum of administrative costs and consistent with fair and efficient regulation, we adopt herein a program for nondiscriminatory access to poles, ducts, conduits and rights-of-way. This Order includes several specific rules as well as a number of more general guidelines that are designed to give parties flexibility to reach agreements on access to utility-controlled poles, ducts, conduits, and rights-of-way, without the need for regulatory intervention. We provide for expedited dispute resolution when good faith negotiations fail, and we establish requirements concerning modifications to pole attachments and the allocation of the cost of such modifications. We also explain the division of responsibility between federal and state regulation envisioned by the 1996 Act.

2. Section 224(f): Non-Discriminatory Access

a. Background

744. Pursuant to section 224(f)(1), a utility must grant telecommunications carriers and cable operators nondiscriminatory access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility. This directive seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the

installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields. Section 224(f)(1) appears to mandate access every time a telecommunications carrier or cable operator seeks access to the utility facilities or property identified in that section, with a limited exception allowing electric utilities to deny access "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." While Congress recognized the legitimate interests of utilities in protecting and promoting the safety and reliability of their core services, on balance we believe section 224(f) reflects Congress' determination that utilities generally must accommodate requests for access by telecommunications carriers and cable operators.

b. Discussion

(1) Generally

745. We conclude that the reasonableness of particular conditions of access imposed by a utility should be resolved on a case-specific basis. We discuss below the forum for such resolutions. The record makes clear that there are simply too many variables to permit any other approach with respect to access to the millions of utility poles and untold miles of conduit in the nation. The broader access mandated by the Act, in conjunction with the reasonableness variables mentioned here, will likely increase the number of disputes over access. In turn, this may cause small incumbent LECs and small entities to incur the need for additional resources to evaluate, process, and resolve such disputes, as well as to make poles and conduits physically accessible. We will not enumerate a comprehensive regime of specific rules, but instead establish a few rules supplemented by certain guidelines and presumptions that we believe will facilitate the negotiation and mutual performance of fair, pro-competitive access agreements. We will monitor the effect of this approach and propose more specific rules at a later date if reasonably necessary to facilitate access and the development of competition in telecommunications and cable services. We believe that the rules, guidelines and presumptions established herein strike the appropriate balance between the need for uniformity, on the one hand, and the need for flexibility, on the other, which should minimize the regulatory burdens and economic impact for both small entities and small incumbent LECs.

746. We also address the impact on small incumbent LECs. For example, the Rural Telephone Coalition opposes adoption of sweeping national rules because local circumstances will be relevant to disputes over access to poles or rights-of-way. We have considered the economic impact of our rules in this section on small incumbent LECs. For example, we have adopted a flexible regulatory approach to pole attachment disputes that ensures consideration of local conditions and circumstances.

747. Our determination not to prescribe numerous specific rules is supported by acknowledgements in the relevant national industry codes that no single set of rules can take into account all of the issues that can arise in the context of a single installation or attachment. The NESC, one of the national codes that virtually all commenters regard as containing reasonable attachment requirements, contains thousands of rules and dozens of tables and figures, all designed to ensure "the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and associated equipment."

748. For example, with respect to overhead wires, the NESC contains 64 pages of rules dictating minimum "clearances," i.e., the minimum separations between a particular wire, cable, or other piece of equipment and other wires, cables, equipment, structures, and property. A short list of only a few of the variables in that discussion includes: the type of wire or equipment in question; the type of current being transmitted; the nature of the structure supporting the wires; the proximity and nature of other equipment and structures; the temperature of the conducting element; and the use of the land below the wires. These separation requirements dictate the required distances between various wires and other transmission and distribution equipment, as well as distances between such equipment and other objects that are not a part of the transmission and distribution network. Prescribed separations between wires will vary between the point at which wires are attached to a pole and at mid-points between poles, with the latter separations dictated by the predicted amount of sag that the wires will experience. The amount of sag will itself depend upon additional variables. Changing just one variable can radically alter the separation requirements. Other rules dictate: electrical loading requirements that vary depending upon wind and ice conditions and the predicted sag of the lines being installed; structural strength requirements that vary depending upon the amount and type of installations and the nature of the supporting structure; and line insulation requirements. A wholly separate and equally extensive array of rules apply to underground lines.

749. Despite this specificity, the introduction to the NESC states that the code "is not intended as a design specification or an instruction manual." Indeed, utilities typically impose requirements more stringent than those prescribed by NESC and other industry codes. In some cases stricter requirements and restrictions are dictated by federal, state, or local law. Potentially applicable federal regulations include rules promulgated by the Federal Energy Regulatory Commission ("FERC") and by the Occupational Safety and Health Administration ("OSHA"). Various restrictions can apply at the state level as well. Some local requirements governing zoning, aesthetics, or road clearances impose more stringent or more specific requirements than those of the national industry codes or of federal or state law.

750. In addition to operating under federal, state, and local requirements, a utility normally will have its own operating standards that dictate conditions of access. Utilities have developed their own individual standards and incorporated them into pole attachment agreements because industry-wide standards and applicable legal requirements are too general to take into account all of the variables that can arise. A utility's individual standards cover not simply its policy with respect to attachments, but all aspects of its business. Standards vary between companies and across different regions of the country based on the experiences of each utility and on local conditions. As Duquesne notes, the provision of electricity is the result of varied engineering factors that continue to evolve. Because there is no fixed manner in which to provide electricity, there is no way to develop an exhaustive list of specific safety and reliability standards. In addition, increasing competition in the provision of electricity is forcing electric utilities to engineer their systems more precisely, in a way that is tailored to meet the specific needs of the electric company and its customers. As a result, each utility has developed its own internal operating standards to suit its individual needs and experiences.

751. The record contains numerous factors that may vary from region to region, necessitating different operating

procedures particularly with respect to attachments. Extreme temperatures, ice and snow accumulation, wind, and other weather conditions all affect a utility's safety and engineering practices. In some instances, machinery used by local industries requires higher than normal clearances. Particular utility work methods and equipment may require specific separations between attachments and may restrict the height of the poles that a utility will use. The installation and maintenance of underground facilities raise distinct safety and reliability concerns. It is important that such variables be taken into account when drafting pole attachment agreements and considering an individual attachment request. The number of variables makes it impossible to identify and account for them all for purposes of prescribing uniform standards and requirements. Universally accepted codes such as the NESC do not attempt to prescribe specific requirements applicable to each attachment request and neither shall we.

752. We are sensitive to concerns of cable operators and telecommunications carriers regarding utility-imposed restrictions that could be used unreasonably to prevent access. We note in particular that a utility that itself is engaged in video programming or telecommunications services has the ability and the incentive to use its control over distribution facilities to its own competitive advantage. A number of utilities have obtained, or are seeking, the right and ability to provide telecommunications or video programming services. We agree, however, with Duquesne that the best safeguard is not the adoption of a comprehensive set of substantive engineering standards, but the establishment of procedures that will require utilities to justify any conditions they place on access. These procedures are outlined in section E below. In the next two sections, we set forth rules of general applicability and broader guidelines relating to specific issues that are intended to govern access negotiations between the parties.

(2) Specific Rules

753. We establish five rules of general applicability. First, in evaluating a request for access, a utility may continue to rely on such codes as the NESC to prescribe standards with respect to capacity, safety, reliability, and general engineering principles. We have no reason to question the reasonableness of the virtually unanimous judgment of the commenters, many of whom have otherwise diverse and conflicting interests, in this regard. Utilities may incorporate such standards into their pole attachment agreements in accordance with section 224(f)(2). Other industry codes also will be presumed reasonable if shown to be widely-accepted objective guides for the installation and maintenance of electrical and communications facilities.

754. Second, federal requirements, such as those imposed by FERC and OSHA, will continue to apply to utilities to the extent such requirements affect requests for attachments to utility facilities under section 224(f)(1). We see no reason to supplant or modify applicable federal regulations promulgated by FERC, OSHA, or other federal agencies acting in accordance with their lawful authority.

755. Third, we will consider state and local requirements affecting pole attachments. We note that section 224(c)(1) provides:

> Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by the State.

756. In a separate section we discuss the authority of a state to preempt federal regulation of pole attachments. For present purposes, we conclude that state and local requirements affecting attachments are entitled to deference even if the state has not sought to preempt federal regulations under section 224(c). The 1996 Act increased significantly the Commission's role with respect to attachments by creating federal access rights and obligations, which for decades had been the subject of state and local regulation. Such regulations often relate to matters of local concern that are within the knowledge of local authorities and are not addressed by standard codes such as the NESC. We do not believe that regulations of this sort necessarily conflict with the scheme established in this Order. More specifically, we see nothing in the statute or in the record that compels us to preempt such local regulations as a matter of course. Regulated entities and other interested parties are familiar with existing state and local requirements and have adopted operating procedures and practices in reliance on those requirements. We believe it would be unduly disruptive to invalidate summarily all such local requirements. We thus agree with commenters who suggest that such state and local requirements should be presumed reasonable. Thus, even where a state has not asserted preemptive authority in accordance with section 224(c), state and local requirements affecting pole attachments remain applicable, unless a complainant can show a direct conflict with federal policy. Where a local requirement directly conflicts with a rule or guideline we adopt herein, our rules will prevail. We note that a standard prescribed by the NESC is not a specific Commission rule, and therefore a state requirement that is more restrictive than the corresponding NESC standard may still apply.

757. It is important to note that the discretion of state and local authorities to regulate in the area of pole attachments is tempered by section 253, which invalidates all state or local legal requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." This restriction does not prohibit a state from imposing "on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." In addition, section 253 specifically recognizes the authority of state and local governments to manage public rights-of-way and to require fair and reasonable compensation for the use of such rights-of-way.

758. Fourth, where access is mandated, the rates, terms, and conditions of access must be uniformly applied to all telecommunications carriers and cable operators that have or seek access. Except as specifically provided herein, the utility must charge all parties an attachment rate that does not exceed the maximum amount permitted by the formula we have devised for such use, and that we will revise from time to time as necessary. Other terms and conditions also must be applied on a nondiscriminatory basis.

759. Fifth, except as specifically noted below, a utility may not favor itself over other parties with respect to the provision of telecommunications or video programming services. We interpret the statutory requirement of nondiscriminatory access as compelling this result, particularly when read in the context of other provisions of the statute. This element of nondiscrimination is evident in section 224(g), which requires a utility to impute to itself or to its affiliate the pole attachment rate such entity would be charged were it a non-affiliated entity. Further, we believe it unlikely that Congress intended to allow an

incumbent LEC to favor itself over its competitors with respect to attachments to the incumbent LEC's facilities, given that section 224(a)(5) has just the opposite effect in that it operates to preclude the incumbent LEC from obtaining access to the facilities of other LECs. A utility will be able to discriminate in favor of itself with respect to the provision of telecommunications or cable services only as expressly provided herein.

760. Aside from the conditions described above, we will not adopt specific rules to determine when access may be denied because of capacity, safety, reliability, or engineering concerns. In addition, we reject the contention of some utilities that they are the primary arbiters of such concerns, or that their determinations should be presumed reasonable. We recognize that the public welfare depends upon safe and reliable provision of utility services, yet we also note that the 1996 Act reinforces the vital role of telecommunications and cable services. As noted above, section 224(f)(1) in particular reflects Congress' intention that utilities must be prepared to accommodate requests for attachments by telecommunications carriers and cable operators.

(3) Guidelines Governing Certain Issues

761. In addition to the rules articulated above, we will establish guidelines concerning particular issues that have been raised in this proceeding. These guidelines are intended to provide general ground rules upon which we expect the parties to be able to implement pro-competitive attachment polices and procedures through arms-length negotiations, rather than having to rely on multiple adjudications by the Commission in response to complaints or by other forums. We do not discuss herein every issue raised in the comments. Rather, we discuss only major issues that we believe will arise often. Issues not discussed herein may be important in a particular case, but are not susceptible to any general observation or presumption.

762. We note that a utility's obligation to permit access under section 224(f) does not depend upon the execution of a formal written attachment agreement with the party seeking access. We understand that such agreements are the norm and encourage their continued use, subject to the requirements of section 224. Complaint or arbitration procedures will, of course, be available when parties are unable to negotiate agreements.

(a) Capacity Expansions

763. When a utility cannot accommodate a request for access because the facility in question has no available space, it often must modify the facility to increase its capacity. In some cases, a request for access can be accommodated by rearranging existing facilities to make room for a new attachment. Another method of maximizing useable capacity is to permit "overlashing," by which a new cable is wrapped around an existing wire, rather than being strung separately. A utility pole filled to capacity often can be replaced with a taller pole. New underground installations can be accommodated by the installation of new duct, including subducts that divide a standard duct into four separate, smaller ducts. Cable companies and others contend that there is rarely a lack of capacity given the availability of taller poles and additional conduits. These commenters suggest that utilities should rarely be permitted to deny access on the basis of a lack of capacity, particularly since under section 224(h) the party or parties seeking to increase capacity will be responsible for all associated costs. Utilities argue that neither the statute nor its legislative history requires facility owners to expand or alter their facilities to accommodate entities seeking to lease space. These commenters argue that, if Congress intended such a result, the statute would have imposed the requirement explicitly.

764. A utility is able to take the steps necessary to expand capacity if its own needs require such expansion. The principle of nondiscrimination established by section 224(f)(1) requires that it do likewise for telecommunications carriers and cable operators. In addition, we note that section 224(f)(1) mandates access not only to physical utility facilities (i.e., poles, ducts, and conduit), but also to the rights-of-way held by the utility. The lack of capacity on a particular facility does not necessarily mean there is no capacity in the underlying right-of-way that the utility controls. For these reasons, we agree with commenters who argue that a lack of capacity on a particular facility does not automatically entitle a utility to deny a request for access. Since the modification costs will be borne only by the parties directly benefitting from the modification, neither the utility nor its ratepayers will be harmed, despite the assertions of utilities to the contrary.

765. In some cases, however, increasing capacity involves more than rearranging existing attachments or installing a new pole or duct. For example, the record suggests that utility poles of 35 and 40 feet in height are relatively standard, but that taller poles may not always be readily available. The transportation, installation, and maintenance of taller poles can entail different and more costly practices. Many utilities have trucks and other service equipment designed to maintain poles of up to 45 feet, but no higher. Installing a 50 foot pole may require the utility to invest in new and costly service equipment. Expansion of underground conduit space entails a very complicated procedure, given the heightened safety and reliability concerns associated with such facilities. Local regulators may seek to restrict the frequency of underground excavations. We find it inadvisable to attempt to craft a specific rule that prescribes the circumstances in which, on the one hand, a utility must replace or expand an existing facility in response to a request for access and, on the other hand, it is reasonable for the utility to deny the request due to the difficulties involved in honoring the request. We interpret sections 224 (f)(1) and (f)(2) to require utilities to take all reasonable steps to accommodate requests for access in these situations. Before denying access based on a lack of capacity, a utility must explore potential accommodations in good faith with the party seeking access.

766. We will not require telecommunications providers or cable operators seeking access to exhaust any possibility of leasing capacity from other providers, such as through a resale agreement, before requesting a modification to expand capacity. As indicated elsewhere in this Order, resale will play an important role in the development of competition in telecommunications. However, as we also have noted, there are benefits to facilities-based competition as well. We do not wish to discourage unduly the latter form of competition solely because the former might better suit the preferences of incumbent utilities with respect to pole attachments.

(b) Reservation of Space by Utility

767. Utilities routinely reserve space on their facilities to meet future needs. Local economic growth and property development may require an electric utility to install additional lines or transformers that use previously available space on the pole. A utility may install an underground duct in which it can later install additional distribution lines, if necessitated by a subsequent increase in demand or by

damage to the original lines. Reserving space allows the utility to respond quickly and efficiently to changed circumstances. This practice, however, also can result in a utility denying access to a telecommunications carrier or a cable operator even though there is unused capacity on the pole or duct.

768. This issue is of particular concern because section 224(h) imposes the cost of modifying attachments on those parties that benefit from the modification. If, for example, a cable operator seeks to make an attachment on a facility that has no available capacity, the operator would bear the full cost of modifying the facility to create new capacity, such as by replacing an existing pole with a taller pole. Other parties with attachments would not share in the cost, unless they expanded their own use of the facilities at the same time. If the electric utility decides to change a pole for its own benefit, and no other parties derive a benefit from the modification, then the electric company would bear the full cost of the new pole.

769. Some commenters contend that utilities will reserve space on a pole and then claim there is no capacity available, as a way of forcing cable operators and telecommunications carriers to pay for new utility facilities. These commenters contend that we should restrict or eliminate the authority of utilities to reserve space. Utilities respond that it is unfair to force a utility to accommodate full occupation of its facility by third parties and then to saddle the utility with the cost of modifying the facility when the utility's own needs change and require a costly increase in capacity.

770. The near-universal public demand for their core utility services, while imposing certain obligations, arguably entitles utilities to certain prerogatives vis-a-vis other parties, including the right to reserve capacity to meet anticipated future demand for those utility services. Recognition of such a right, however, could conflict with the nondiscrimination requirement of section 224(f)(1) which prohibits a utility from favoring itself or its affiliates with respect to the provision of telecommunications and video services. In addition, allowing space to go unused when a cable operator or telecommunications carrier could make use of it is directly contrary to the goals of Congress.

771. Balancing these concerns leads us to the following conclusions. We will permit an electric utility to reserve space if such reservation is consistent with a bona fide development plan that reasonably and specifically projects a need for that space in the provision of its core utility service. The electric utility must permit use of its reserved space by cable operators and telecommunication carriers until such time as the utility has an actual need for that space. At that time, the utility may recover the reserved space for its own use. The utility shall give the displaced cable operator or telecommunications carrier the opportunity to pay for the cost of any modifications needed to expand capacity and to continue to maintain its attachment. An electric utility may not reserve or recover reserved space to provide telecommunications or video programming service and then force a previous attaching party to incur the cost of modifying the facility to increase capacity, even if the reservation of space were pursuant to a reasonable development plan. The record does not contain sufficient data for us to establish a presumptively reasonable amount of pole or conduit space subject that an electric utility may reserve. If parties cannot agree, disputes will be resolved on a case-by-case approach based on the reasonableness of the utility's forecast of its future needs and any additional information that is relevant under the circumstances.

772. With respect to a utility providing telecommunications or video services, we believe the statute requires a different result. Section 224(f)(1) requires nondiscriminatory treatment of all providers of such services and does not contain an exception for the benefit of such a provider on account of its ownership or control of the facility or right-of-way. Congress seemed to perceive such ownership and control as a threat to the development of competition in these areas, thus leading to the enactment of the provision in question. Allowing the pole or conduit owner to favor itself or its affiliate with respect to the provision of telecommunications or video services would nullify, to a great extent, the nondiscrimination that Congress required. Permitting an incumbent LEC, for example, to reserve space for local exchange service, to the detriment of a would-be entrant into the local exchange business, would favor the future needs of the incumbent LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers. As indicated above, this prohibition does not apply when an electric utility asserts a future need for capacity for electric service, to the detriment of a telecommunications carrier's needs, since the statute does not require nondiscriminatory treatment of all utilities; rather, it requires nondiscriminatory treatment of all telecommunications and video providers.

(c) Definition of "Utility"

773. The access obligations of section 224(f) apply to any "utility," which is defined as:

> any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or other rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

774. Arguably a provider of utility service does not fall within this definition if it has refused to permit any wired communications use of its facilities and rights-of-way since, in that case, its facilities and rights-of-way are not "used, in whole or in part, for wire communications." Under this construction, an electric utility would have no obligation to grant access under section 224(f) until the utility voluntarily has granted access to one communications provider or has used its facilities for wire communications. Only after its facilities were being used for wire communications would the utility have to grant access to all telecommunications carriers and cable operators on a nondiscriminatory basis.

775. We conclude that this construction of the statute is mandated by its plain language and is indeed nondiscriminatory, since denial of access to all discriminates against none. We see no statutory basis, however, for the argument made by some utilities that they should be permitted to devote a portion of their poles, ducts, conduits, and rights-of-way to wire communications without subjecting all such property to the access obligations of section 224(f)(1). Those obligations apply to any "utility," which section 224(a)(1) defines to include an entity that controls "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." The use of the phrase "in whole or in part" demonstrates that Congress did not intend for a utility to be able to restrict access to the exact path used by the utility for wire communications. We further conclude that use of any utility pole, duct, conduit, or right-of-way for wire communications triggers access to all poles, ducts, conduits, and rights-of-way owned or controlled by the utility, including those not currently used for wire communications.

776. We reject the contention that, because an electric utility's internal communications do not pose a competitive threat to third party cable operators or telecommunications carriers, such internal communications are not "wire communications" and do not trigger access obligations. Although internal communications are used solely to promote the efficient distribution of electricity, the definition of "wire communication" is broad and clearly encompasses an electric utility's internal communications.

(d) Application of Section 224(f)(2) to Non-Electric Utilities

777. While all utilities are subject to the access obligations of section 224(f)(1), the provisions of section 224(f)(2), permitting a utility to deny access due to a lack of capacity or for reasons of safety, reliability, and generally applicable engineering purposes, apply only to "a utility providing electric service * * *." Based on this statutory language, some commenters suggest that LECs and other utilities that do not provide electric service must grant requests for access, regardless of any concerns relating to safety, reliability, and general engineering principles. If there is a lack of capacity, a LEC must create more capacity, according to these commenters.

778. While the express language of sections 224 (f)(1) and (f)(2) suggests that only utilities providing electric service can take into consideration concerns relating to safety and reliability, we are reluctant to ignore these concerns simply because the pole owner is not an electric utility. Even parties seeking broad access rights under section 224 recognize that, in some circumstances, a LEC will have legitimate safety or engineering concerns that may need to be accommodated. We believe that Congress could not have intended for a telecommunications carrier to ignore safety concerns when making pole attachment decisions. Rather than reach this dangerous result which would require us to ignore the dictates of sections 1 and 4(o) of the Communications Act, we conclude that any utility may take into account issues of capacity, safety, reliability and engineering when considering attachment requests, provided the assessment of such factors is done in a nondiscriminatory manner.

779. Nevertheless, we believe that section 224(f)(2) reflected Congress' acknowledgment that issues involving capacity, safety, reliability and engineering raise heightened concerns when electricity is involved, because electricity is inherently more dangerous than telecommunications services. Accordingly, although we determine that it is proper for non-electric utilities to raise these matters, they will be scrutinized very carefully, particularly when the parties concerned have a competitive relationship.

(e) Third-Party Property Owners

780. Section 224(f)(1) mandates that the utility grant access to any pole, duct, conduit, or right-of-way that is "owned or controlled by it." Some utilities and LECs argue that certain private easement agreements, when interpreted under the applicable state property laws, deprive the utilities of the ownership or control that triggers their obligation to accommodate a request for access. Moreover, they contend, access to public rights-of-way may be restricted by state law or local ordinances. Opposing commenters contend that the addition of cable television or telecommunications facilities is compatible with electric service and therefore does not violate easements that have been granted for the provision of electric service. These commenters also assert that the statute does not draw specific distinctions between private and public easements. Further, some cable operators contend that utility easements are accessible to cable operators pursuant to section 621(a)(2) of the Communications Act as long as the easements are physically compatible with such use, regardless of the terms of a written easement agreement. Another commenter suggests utilities are best positioned to determine when access requests would affect a private easement, foreclosing the need to determine whether a private owner would consent to the requested attachment. As for local ordinances restricting access to public rights-of-way, one commenter suggests that such restrictions would violate section 253(a) of the Act, which blocks state or local rules that prohibit competition.

781. The scope of a utility's ownership or control of an easement or right-of-way is a matter of state law. We cannot structure general access requirements where the resolution of conflicting claims as to a utility's control or ownership depends upon variables that cannot now be ascertained. We reiterate that the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit such access.

782. Section 621(a)(2) states that a cable franchise shall be construed as authorizing the construction of cable facilities in public rights-of-way and "through easements * * * which have been dedicated for compatible uses * * *." The scope of a cable operator's access to easements under this provision has been the subject of a number of court opinions. To the extent section 621(a)(2) has been construed to permit access to easements, a cable operator must be permitted to attach to utility poles, ducts, and conduits within such easements in accordance with section 224(f).

783. Finally, we disagree with those utilities that contend that they should not be forced to exercise their powers of eminent domain to establish new rights-of-way for the benefit of third parties. We believe a utility should be expected to exercise its eminent domain authority to expand an existing right-of-way over private property in order to accommodate a request for access, just as it would be required to modify its poles or conduits to permit attachments. Congress seems to have contemplated an exercise of eminent domain authority in such cases when it made provisions for an owner of a right-of-way that "intends to modify or alter such * * * right-of-way * * *."

(f) Other Matters

784. Utilities stress the importance of ensuring that only qualified workers be permitted in the proximity of utility facilities. Some utilities seek to limit access to their facilities to the utility's own specially trained employees or contractors, particularly with respect to underground conduits. According to these commenters, parties seeking to make attachments to utility facilities should be required to pay for the use of the utility's workers if the utility concludes that only its workers are fit for the job. While we agree that utilities should be able to require that only properly trained persons work in the proximity of the utilities' lines, we will not require parties seeking to make attachments to use the individual employees or contractors hired or pre-designated by the utility. A utility may require that individuals who will work in the proximity of electric lines have the same qualifications, in terms of training, as the utility's own workers, but the party seeking access will be able to use any individual workers who meet these criteria. Allowing a utility to dictate that only specific employees or contractors be used would impede the access that Congress sought to bestow on telecommunications providers and cable operators and would inevitably lead to disputes over rates to be paid to the workers.

785. Some electric utilities argue that high voltage transmission facilities should not be accessible by telecommunications carriers or cable operators under section 224(f)(1). These commenters contend that transmission facilities, which are used for high voltage transmissions over great distances, are far more delicate and dangerous than local distribution facilities. Permitting attachments to transmission facilities, they argue, poses a greater risk to the safety and reliability of the electric distribution system than is the case with distribution lines. They further state that transmission facilities generally are not located where cable operators and telecommunications carriers need to install facilities. ConEd suggests that transmission towers do not even fall within the scope of the statute.

786. Section 224(f)(1) mandates access to "any pole, duct, conduit, or right-of-way," owned or controlled by the utility. The utilities do not suggest that transmission facilities do not use poles or rights-of-way, for which the statute does mandate the right of access. The utilities' arguments for excepting transmission facilities from access requirements are based on safety and reliability concerns. We believe that the breadth of the language contained in section 224(f)(1) precludes us from making a blanket determination that Congress did not intend to include transmission facilities. As with any facility to which access is sought, however, section 224(f)(2) permits the electric utility to impose conditions on access to transmission facilities, if necessary for reasons of safety and reliability. To the extent safety and reliability concerns are greater at a transmission facility, the statute permits a utility to impose stricter conditions on any grant of access or, in appropriate circumstances, to deny access if legitimate safety or reliability concerns cannot be reasonably accommodated.

787. We note that some commenters favor a broad interpretation of "pole, duct, conduit, or right-of-way" because that approach would minimize the risk that a "pathway" vital to competition could be shut off to new competitors. Others argue for a narrow construction of this statutory phrase, contending that Congress addressed access to other LEC facilities elsewhere in the 1996 Act. We recognize that an overly broad interpretation of this phrase could impact the owners and mangers of small buildings, as well as small incumbent LECs, by requiring additional resources to effectively control and monitor such rights-of-way located on their properties. We do not believe that section 224(f)(1) mandates that a utility make space available on the roof of its corporate offices for the installation of a telecommunications carrier's transmission tower, although access of this nature might be mandated pursuant to a request for interconnection or for access to unbundled elements under section 251(c)(6). The intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to "piggyback" along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility.

788. The statute does not describe the specific type of telecommunications or cable equipment that may be attached when access to utility facilities is mandated. We do not believe that establishing an exhaustive list of such equipment is advisable or even possible. We presume that the size, weight, and other characteristics of attaching equipment have an impact on the utility's assessment of the factors determined by the statute to be pertinent—capacity, safety, reliability, and engineering principles. The question of access should be decided based on those factors.

3. Constitutional Takings

a. Background

789. The access provisions of section 224(f) restrict the right of a utility to exclude third parties from its property and therefore may raise Fifth Amendment issues. While we have no jurisdiction to determine the constitutionality of a federal statute, constitutional concerns are relevant for purposes of construing a statute.

b. Discussion

790. Section 224(f)(1) mandates that a utility grant access to a requesting telecommunications provider or cable system operator, subject to certain conditions that we discuss elsewhere in this Order. That provision is not reasonably susceptible of a reading that gives the pole owner the choice of whether to grant telecommunications carriers or cable television systems access. Even if such mandatory access results in a taking, we cannot agree that it necessarily raises a constitutional issue. The Fifth Amendment permits takings as long the property owner receives just compensation for the property taken.

791. As for the amount of compensation provided under the statute, GTE suggests that mandatory access will result in an unconstitutional taking when considered in conjunction with the methodology for pole attachment rates set forth in section 224(e)(2). We, of course, have no power to declare any provision of the Communications Act unconstitutional. In any event, we cannot agree. Congress has provided for compensation to pole owners, in the event that they cannot resolve a dispute with telecommunications carriers regarding the charges for use of the owners' poles, that would allow them to recover the cost of providing usable space to each entity and two-thirds of the cost of the unusable space apportioned among such users. The Commission soon will initiate a separate rulemaking proceeding that will give greater content to this statutory standard. GTE and others may present their just compensation arguments with respect to the ratemaking standards the Commission adopts in that proceeding. GTE has not shown here, however, how the statutory standard contained in section 224(e) necessarily would deny pole owners just compensation.

4. Modifications

a. Background

792. In the NPRM we sought comment on section 224(h) which provides:

> Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

793. The NPRM requested comments addressing the manner and timing of the notice that must be provided to ensure a reasonable opportunity to add to or modify its attachment. In addition, we sought comment regarding the establishment of rules apportioning the cost of a modification among the various users of the modified facility. Finally, we requested comment on whether any payment of costs should be offset by the potential increase in revenues to the owner. If, for example, an owner modifies a pole to allow additional attachments that generate additional fees for the owner, should such revenues offset the share of modification costs borne by entities with preexisting access to the pole?

b. Discussion

794. We recognize that, when a modification is planned, parties with preexisting attachments to a pole or conduit need time to evaluate how the proposed modification affects their interest and whether activity related to the modification presents an opportunity to adjust the attachment in a desirable manner. At the same time, we also recognize that not all adjustments to utility facilities are alike. Some adjustments may be sufficiently routine or minor as to not create the type of opportunity that triggers the notice requirement. Indeed, it is possible that in some cases lengthy notice requirements could delay unnecessarily the kinds of modifications that would expedite the onset of meaningful competition in the provision of telecommunications services. Although the period of advance notice has varied widely among commenters, we note that 60 days has been advocated by several parties.

795. Several commenters expressed a preference for negotiated notification terms. They have explained that circumstances will vary among owners of facilities. The time needed to commence a modification could vary according to pole conditions, technological improvements and demand growth. Attaching parties in rural markets may need more time to study facilities than facility users in urban markets. To demonstrate their ability to develop appropriate negotiated agreements, some commenters have described notice requirements in existing agreements. Such cases, they contend, illustrate that notification rules are unnecessary.

796. We conclude that, absent a private agreement establishing notification procedures, written notification of a modification must be provided to parties holding attachments on the facility to be modified at least 60 days prior to the commencement of the physical modification itself. Notice should be sufficiently specific to apprise the recipient of the nature and scope of the planned modification. These notice requirements should provide small entities with sufficient time to evaluate the impact of or opportunities made possible by the proposed modifications on their interests and plan accordingly. If the contemplated modification involves an emergency situation for which advanced written notice would prove impractical, the notice requirement does not apply except that notice should be given as soon as reasonably practicable, which in some cases may be after the modification is completed. Further, we believe that the burden of requiring specific written notice of routine maintenance activities would not produce a commensurate benefit. Utilities and parties with attachments should exchange maintenance handbooks or other written descriptions of their standard maintenance practices. Changes to these practices should be made only upon 60 days written notice. Recognizing that the parties themselves are best able to determine the circumstances where notice would be reasonable and sufficient, as well as the types of modifications that should trigger notice obligations, we encourage the owner of a facility and parties with attachments to negotiate acceptable notification terms.

797. Even with the adoption of a specific notice period, however, we still encourage communication among owners and attaching parties. Indeed, in cases where owners and users routinely share information about upgrades and modifications, agreements regarding notice periods and procedures are ancillary matters.

798. With respect to the allocation of modification costs, we conclude that, to the extent the cost of a modification is incurred for the specific benefit of any particular party, the benefiting party will be obligated to assume the cost of the modification, or to bear its proportionate share of cost with all other attaching entities participating in the modification. If a user's modification affects the attachments of others who do not initiate or request the modification, such as the movement of other attachments as part of a primary modification, the modification cost will be covered by the initiating or requesting party. Where multiple parties join in the modification, each party's proportionate share of the total cost shall be based on the ratio of the amount of new space occupied by that party to the total amount of new space occupied by all of the parties joining in the modification. For example, a CAP's access request might require the installation of a new pole that is five feet taller than the old pole, even though the CAP needs only two feet of space. At the same time, a cable operator may claim one foot of the newly-created capacity. If these were the only parties participating in the modification, the CAP would pay two-thirds of the modification costs and the cable operator one-third.

799. As a general approach, requiring that modification costs be paid only by entities for whose benefit the modification is made simplifies the modification process. For these purposes, however, if an entity uses a proposed modification as an opportunity to adjust its preexisting attachment, the "piggybacking" entity should share in the overall cost of the modification to reflect its contribution to the resulting structural change. A utility or other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. This will discourage parties from postponing necessary repairs in an effort to avoid the associated costs.

800. We recognize that limiting cost burdens to entities that initiate a modification, or piggyback on another's modification, may confer incidental benefits on other parties with preexisting attachments on the newly modified facility. Nevertheless, if a modification would not have occurred absent the action of the initiating party, the cost should not be borne by those that did not take advantage of the opportunity by modifying their own facilities. Indeed, the Conference Report accompanying the passage of the 1996 Act imposes cost sharing obligations on an entity "that takes advantage of such opportunity to modify its own attachments." This suggests that an attaching party, incidentally benefiting from a modification, but not initiating or affirmatively participating in one, should not be responsible for the resulting cost. As for pole owners themselves, the imposition of cost burdens for modifications they do not initiate could be particularly cumbersome if excess space created by modifications remained unused for extended periods.

801. Apart from entities that initiate modifications and preexisting attachers that use the opportunity to modify their own attachments, some entities may seek to add new attachments to the modified facility after the modification is completed to avoid any obligation to share in the cost. If this occurs, the entity initiating and paying for the modification might pay the entire cost of expanding a facility's capacity only to see a new competitor take advantage of the additional capacity without sharing in the cost. Moreover, entities with preexisting attachments may, due to cost considerations, forgo the opportunity to adjust their attachment only to see a new entrant attach to a pole without sharing the modification cost. To protect the initiators of modifications from absorbing costs that should be shared by others, we will allow the modifying party or parties to

recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. The proportionate share of the subsequent attacher should be reduced to take account of depreciation to the pole or other facility that has occurred since the modification. These provisions are intended to ensure that new entrants, especially small entities with limited resources, bear only their proportionate costs and are not forced to subsidize their later-entering competitors. To the extent small entities avail themselves of this cost-saving mechanism, however, they will incur certain record keeping obligations.

802. Parties requesting or joining in a modification also will be responsible for resulting costs to maintain the facility on an ongoing basis. We believe determining the method by which to allocate such costs can best be resolved in the context of a proceeding addressing the determination of appropriate rates for pole attachments or other facility uses. We will postpone consideration of these issues until such time.

803. We recognize that in some cases a facility modification will create excess capacity that eventually becomes a source of revenue for the facility owner, even though the owner did not share in the costs of the modification. We do not believe that this requires the owner to use those revenues to compensate the parties that did pay for the modification. Section 224(h) limits responsibility for modification costs to any party that "adds to or modifies its existing attachment after receiving notice" of a proposed modification. The statute does not give that party any interest in the pole or conduit other than access. Creating a right for that party to share in future revenues from the modification would be tantamount to bestowing an interest that the statute withholds. Requiring an owner to offset modification costs by the amount of future revenues emanating from the modification expands the category of responsible parties based on factors that Congress did not identify as relevant. Since Congress did not provide for an offset, we will not impose it ourselves. Indeed, a requirement that utilities pass additional attachment fees back to parties with preexisting attachments may be a disincentive to add new competitors to modified facilities, in direct contravention of the general intent of Congress.

5. Dispute Resolution

a. Background

804. Implementation of the access requirements of sections 224 and 251(b)(4) require the adoption of enforcement procedures. In the NPRM, we sought comment on, among other things, whether to impose upon a utility the burden of justifying its denial of access to its poles, ducts, conduits, and rights-of-way due to lack of capacity, safety, reliability, and engineering issues.

b. Discussion

(1) General Complaint Procedures Under Section 224

805. Section 224(f)(2) provides that an electric utility may deny non-discriminatory access "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." We have determined that other utilities also may consider these concerns when faced with an access request. A denial of access, while proper in some cases, is an exception to the general mandate of section 224(f). We note that utilities contend that they are in the best position to determine when access should be denied, because they possess the information and expertise to make such decisions and because of the varied circumstances impacting these decisions. We think it appropriate that the utility bear the burden of justifying why its denial of access to a cable television or telecommunications carrier fits within that exception. We therefore agree that utilities have the ultimate burden of proof in denial-of-access cases. We believe this will minimize uncertainty and reduce litigation and transaction costs, because new entrants generally, and small entities in particular, are unlikely to have access to the relevant information without cooperation from the utilities.

806. We also agree with Virginia Power that a telecommunications carrier or cable television provider filing a complaint with the Commission must establish a prima facie case. A petitioner's complaint, in addition to showing that it is timely filed, must state the grounds given for the denial of access, the reasons those grounds are unjust or unreasonable, and the remedy sought. The complaint must be supported by the written request for access, the utility's response, and information supporting its position. The Commission will deny the petitioner's claim if a prima facie case is not established. A complaint will not be dismissed if a petitioner is unable to obtain a utility's written response, or if a petitioner is denied any other relevant information by the utility needed to establish a prima facie case. Thus, we expect a utility that receives a legitimate inquiry regarding access to its facilities or property to make its maps, plats, and other relevant data available for inspection and copying by the requesting party, subject to reasonable conditions to protect proprietary information. This provision eliminates the need for costly discovery in pursuing a claim of improper denial of access, allowing attaching parties, including small entities with limited resources, to seek redress of such denials.

807. We agree with the Joint Cable Commenters that "time is of the essence." The Joint Cable Commenters contend that the Commission should implement an expedited review process for denial of access cases. By implementing specific complaint procedures for denial of access cases, we seek to establish swift and specific enforcement procedures that will allow for competition where access can be provided. In order to provide a complete record, written requests for access must be provided to the utility. If access is not granted within 45 days of the request, the utility must confirm the denial in writing by the 45th day. Although these written requirements involve some recordkeeping obligations, which could impose a burden on small incumbent LECs and small entities, we believe that burden is outweighed by the benefits of certainty and expedient resolution of disputes which this procedure encourages. The denial must be specific, and include all relevant evidence or information supporting its denial. It must enumerate how the evidence relates to one of the reasons that access can be denied under section 224(f)(2), *i.e.*, lack of capacity, safety, reliability or engineering standards.

808. For example, a utility may attempt to deny access because of lack of capacity on a 40-foot pole. We would expect a utility to provide the information demonstrating why there is no capacity. In addition, the utility should show why it declined to replace the pole with a 45-foot pole. Upon the receipt of a denial notice from the utility, the requesting party shall have 60 days to file its complaint with the Commission. We anticipate that by following this procedure the Commission will, upon receipt of a complaint, have all relevant information upon which to make its decision. The petition must be served pursuant to section 1.1404(b) of the Commission's rules. Final decisions relating to access will be resolved by the Commission

expeditiously. Because we are using the expedited process described herein, we do not believe stays or other equitable relief will be granted in the absence of a specific showing, beyond the prima facie case, that such relief is warranted.

(2) Procedures Under Section 251

809. A telecommunications carrier seeking access to the facilities or property of a LEC may invoke section 251(b)(4) in lieu of, or in addition to, section 244(f)(1). Because section 251(b)(4) mandates access "on rates terms, and conditions that are consistent with section 224," we believe that the section 224 complaint procedures established above should be available regardless of whether a telecommunications provider invokes section 224(f)(1) or section 251(b)(4), or both.

810. If a telecommunications carrier seeks access to the facilities or property of an incumbent LEC, however, it shall have the option of invoking the procedures established by section 252 in lieu of filing a complaint under section 224. Section 252 governs procedures for the negotiation, arbitration, and approval of certain agreements between incumbent LECs and telecommunications carriers. In pertinent part, section 252(a)(1) provides:

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set sforth in subsections (b) or (c) of section 251.

811. Where parties are unable to reach an agreement under this section, any party may petition the relevant state commission to arbitrate the open issues. In resolving the dispute, the state commission must ensure, among other things, that the ultimate resolution "meet[s] the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251 * * *." The Commission may assume the state's authority under section 252 if the state "fails to carry out its responsibility" under that section.

812. Section 251(c)(1) creates an obligation on the part of an incumbent LEC "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements * * *" to fulfill its section 251(b)(4) obligation. Therefore, a telecommunications carrier may seek access to the facilities or property of an incumbent LEC pursuant to section 251(b)(4) and trigger the negotiation and arbitration procedures of section 252. If a telecommunications carrier intends to invoke the section 252 procedures, it should affirmatively state such intent in its formal request for access to the incumbent LEC. We impose this requirement because the two procedures have separate deadlines by which the parties may or must take certain steps, and therefore the incumbent LEC receiving the request has a need to know which procedure has been invoked. Section 224 shall be the default procedure that will apply if the telecommunications carrier fails to make an affirmative election.

813. We note that section 252 does not impose any obligations on utilities other than incumbent LECs, and does not grant rights to entities that are not telecommunications providers. Therefore, section 252 may be invoked in lieu of section 224 only by a telecommunications carrier and only if it is seeking access to the facilities or property of an incumbent LEC.

814. In addition, incumbent LECs cannot use section 251(b)(4) as a means of gaining access to the facilities or property of a LEC. A LEC's obligation under section 251(b)(4) is to afford access "on rates, terms, and conditions that are consistent with section 224." Section 224 does not prescribe rates, terms, or conditions governing access by an incumbent LEC to the facilities or rights-of-way of a competing LEC. Indeed, section 224 does not provide access rights to incumbent LECs. We cannot infer that section 251(b)(4) restores to an incumbent LEC access rights expressly withheld by section 224. We give deference to the specific denial of access under section 224 over the more general access provisions of section 251(b)(4). Accordingly, no incumbent LEC may seek access to the facilities or rights-of-way of a LEC or any utility under either section 224 or section 251(b)(4).

6. Reverse Preemption

a. Background

815. Even prior to enactment of the 1996 Act, section 224(b)(1) gave the Commission jurisdiction to "regulate the rates, terms, and conditions for pole attachments * * *." Under former section 224(c)(1), that jurisdiction was preempted where a state regulated such matters. Such reverse preemption was conditioned upon the state following a certification procedure and meeting certain compliance requirements set forth in sections 224(c) (2) and (3). The 1996 Act expanded the Commission's jurisdiction to include not just rates, terms, and conditions, but also the authority to regulate non-discriminatory access to poles, ducts, conduits and rights-of-way under section 224(f). At the same time, the 1996 Act expanded the preemptive authority of states to match the expanded scope of the Commission's jurisdiction. Section 224(c)(1) now provides:

> Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by the State.

b. Discussion

816. To resolve this issue, we will begin with access requests that can arise solely under section 224(f)(1). These circumstances include when a cable system or telecommunications carrier seeks access to the facilities or rights-of-way of a non-LEC utility. In such cases, the expansion of the Commission's authority to require utilities to provide nondiscriminatory access under section 224(f) is countered by a corresponding expansion in the scope of a state's authority under section 224(c)(1) to preempt federal requirements. The authority of a state under section 224(c)(1) to preempt federal regulation in these cases is clear.

817. The issue becomes more complicated when a telecommunications carrier seeks access to LEC facilities or property under section 251(b)(4). By its express terms, section 251(b)(4) imposes upon LECs, "[t]he duty to afford access to the poles, ducts, conduits, and rights-of-way of such a carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224." We believe the reference in section 251(b)(4) to section 224 incorporates all aspects of the latter section, including the state preemption authority of section 224(c)(1). This interpretation is consistent not only with the plain meaning of the statute but with the overall application of sections 251 and 252.

818. In the 1996 Act, Congress expanded section 224(c)(1) to reach access issues. Congress' clear grant of authority to the states to preempt federal regulation in these cases undercuts the suggestion that Congress sought to establish federal access regulations of universal applicability. Moreover, we do not find it significant that the access provisions of sections 251 and 271 contain no specific reference to the preemptive authority of states under section 224(c)(1), since both provisions expressly refer to section 224 generally.

819. Thus, when a state has exercised its preemptive authority under section 224(c)(1), a LEC satisfies its duty under section 251(b)(4) to afford access by complying with the state's regulations. If a state has not exercised such preemptive authority, the LEC must comply with the federal rules. Similarly, when a telecommunications carrier seeks access rights from an incumbent LEC by choosing to avail itself of the negotiation and arbitration procedures established in section 252, a state that has exercised its preemption rights will apply its own set of regulations in the arbitration process pursuant to section 252 (c)(1). Finally, we note that state regulation in this area is subject to the provisions of section 253.

820. We note that Congress did not amend section 224(c)(2) to prescribe a certification procedure with respect to access (as distinct from the rates, terms, and conditions of access). Therefore, upon the filing of an access complaint with the Commission, the defending party or the state itself should come forward to apprise us whether the state is regulating such matters. If so, we shall dismiss the complaint without prejudice to it being brought in the appropriate state forum. A party seeking to show that a state regulates access issues should cite to state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum. Especially probative will be a requirement that the relevant state authority resolve an access complaint within a set period of time following the filing of the complaint.

C. Imposing Additional Obligations on LECS

1. Background

821. Section 251(c) imposes obligations on incumbent LECs in addition to the obligations set forth in sections 251 (a) and (b). It establishes obligations of incumbent LECs regarding: (1) good faith negotiation; (2) interconnection; (3) unbundling network elements; (4) resale; (5) providing notice of network changes; and (6) collocation.

822. Section 251(h)(1) defines an incumbent LEC as a LEC within a particular service area that: (1) as of the enactment of the 1996 Act, provided telephone exchange service in such area; and (2) as of the enactment of the 1996 Act, was deemed to be a member of the exchange carrier association pursuant to 47 CFR § 69.601(b) or, on or after the enactment of the 1996 Act, became a successor or assign of such carrier. Section 252(h)(2) provides that, "[t]he Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1); (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section."

823. In the NPRM, we sought comment on whether we should establish at this time standards and procedures by which interested parties could prove that a particular LEC should be treated as an incumbent LEC. We also sought comment on whether carriers that are not deemed to be incumbent LECs under section 251(h) may be required to comply with any or all of the obligations that apply to incumbent LECs, and whether states may impose on non-incumbent LECs the obligations that are imposed on incumbent LECs under section 251(c).

2. Discussion

824. We conclude that allowing states to impose on non-incumbent LECs obligations that the 1996 Act designates as "Additional Obligations on Incumbent Local Exchange Carriers," distinct from obligations on all LECs, would be inconsistent with the statute. We understand that some states may be imposing on non-incumbent LECs obligations set forth in section 251(c). *See, e.g.*, Colorado Commission comments at 11–12; Draft Decision, State of Connecticut Department of Public Utility Control, Docket No. 94–10–04 at 60, 65 (Connecticut Commission July 11, 1996); Illinois Commission comments at 19. We believe that these actions may be inconsistent with the 1996 Act. Some parties assert that certain provisions of the 1996 Act, such as sections 252(e)(3) and 253(b), explicitly permit states to impose additional obligations. Such additional obligations, however, must be consistent with the language and purposes of the 1996 Act.

825. Section 251(h)(2) sets forth a process by which the FCC may decide to treat LECs as incumbent LECs. Thus, when the conditions set forth in section 251(h)(2) are met, the 1996 Act contemplates that new entrants will be subject to the same obligations imposed on incumbents. While we find that states may not unilaterally impose on non-incumbent LECs obligations the 1996 Act expressly imposes only on incumbent LECs, we find that state commissions or other interested parties could ask the FCC to classify a carrier as an incumbent LEC pursuant to section 251(h)(2). At this time, we decline to adopt specific procedures or standards for determining whether a LEC should be treated as an incumbent LEC. Instead, we will permit interested parties to ask the FCC to issue an order declaring a particular LEC or a class or category of LECs to be treated as incumbent LECs. We expect to give particular consideration to filings from state commissions. We further anticipate that we will not impose incumbent LEC obligations on non-incumbent LECs absent a clear and convincing showing that the LEC occupies a position in the telephone exchange market comparable to the position held by an incumbent LEC, has substantially replaced an incumbent LEC, and that such treatment would serve the public interest, convenience, and necessity and the purposes of section 251.

XI. Exemptions, Suspensions, and Modifications of Section 251 Requirements

A. Background

826. Section 251(f)(1) grants rural telephone companies an exemption from section 251(c), until the rural telephone company has received a bona fide request for interconnection, services, or network elements, and the state commission determines that the exemption should be terminated. A rural telephone company is defined as a local exchange carrier operating entity to the extent that such entity "(A) provides common carrier service to any local exchange carrier study area that does not include either— (i) any incorporated place of 10,000 inhabitants or more, or any part thereof * * *; or (ii) any territory, incorporated or unincorporated, included in an urbanized area * * *; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. 153(37). Section 251(f)(2) allows LECs with fewer than two percent of the nation's subscriber lines to petition a state commission for a suspension or modification of any requirements of sections 251 (b) and (c). Section 251(f)

imposes a duty on state commissions to make determinations under this section, and establishes the criteria and procedures for the state commissions to follow. In the NPRM, we tentatively concluded that state commissions have the sole authority to make determinations under section 251(f). In addition, we sought comment on whether we should issue guidelines to assist state commissions when they make determinations regarding exemptions, suspensions, or modifications under section 251(f).

827. Although subsections (f)(1) and (f)(2) both address the circumstances under which an incumbent LEC could be relieved of duties otherwise imposed by section 251, subsection 251(f)(2) also applies to non-incumbent LECs. The standard for determining whether to exempt a carrier under subsection 251(f)(1) is different from the standard for determining whether to grant a suspension or modification under subsection (f)(2). Subsection 251(f)(1)(B) requires state commissions to determine that terminating a rural exemption is consistent with the universal service provisions of the 1996 Act. Subsection 251(f)(2)(A)(i) requires state commissions to grant a suspension or modification if it is necessary to "avoid a significant adverse economic impact on users of telecommunications services generally," and subsection 251(f)(2)(B) requires a suspension or modification to be "consistent with the public interest, convenience, and necessity." Although we address these two subsections together, we highlight instances in which we believe that differences in statutory language require different treatment by state commissions.

828. We discuss below issues raised by the commenters, and establish some rules regarding the requirements of section 251(f) that we believe will assist state commissions as they carry out their duties under section 251(f). For the most part, however, we expect that states will interpret the requirements of section 251(f) through rulemaking and adjudicative proceedings. We may in the future initiate a Notice of Proposed Rulemaking on certain additional issues raised by section 251(f) if it appears that further action by the Commission is warranted.

B. Need for National Rules

1. Discussion

829. We agree with parties, including small incumbent LECs, who argue that determining whether a telephone company is entitled, pursuant to section 251(f), to exemption, suspension, or modification of the requirements of section 251 generally should be left to state commissions. Requests made pursuant to section 251(f) seek to carve out exceptions to application of the section 251 rules that we are establishing in this proceeding. We find that Congress intended the section 251 requirements, and the Commission's implementing rules thereunder, to apply to all carriers throughout the country, except in the circumstances delineated in the statute. We find convincing assertions that it would be an overwhelming task at this time for the Commission to try to anticipate and establish national rules for determining when our generally-applicable rules should *not* be imposed upon carriers. Therefore, we establish in this Order a very limited set of rules that will assist states in their application of the provisions in section 251(f).

830. Many parties have proposed varying interpretations of the provisions in section 251(f), and have asked for Commission determination or a statement of agreement. Because it appears that many parties welcome some guidance from the Commission, we briefly set forth our interpretation of certain provisions of section 251(f). Such statements will assist parties and, in particular, state commissions that must make determinations regarding requests for exemption, suspension, and modification.

C. Application of Section 251(f)

1. Discussion

831. Congress generally intended the requirements in section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies. We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.

832. Given the pro-competitive focus of the 1996 Act, we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide request has been made, and that smaller companies must prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of requirements of sections 251 (b) or (c) should be granted. We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. Moreover, the party seeking exemption, suspension, or modification is in control of the relevant information necessary for the state to make a determination regarding the request. A rural company that falls within section 251(f)(1) is not required to make any showing until it receives a bona fide request for interconnection, services, or network elements. We decline at this time to establish guidelines regarding what constitutes a bona fide request. We also decline in this Report and Order to adopt national rules or guidelines regarding other aspects of section 251(f). For example, we will not rule in this proceeding on the universal service duties of requesting carriers that seek to compete with rural LECs. We may offer guidance on these matters at a later date, if we believe it is necessary and appropriate.

833. We find that Congress intended section 251(f)(2) only to apply to companies that, at the holding company level, have fewer than two percent of subscriber lines nationwide. This is consistent with the fact that the standard is based on the percent of subscriber lines that a carrier has "*in the aggregate nationwide.*" Moreover, any other interpretation would permit almost any company, including Bell Atlantic, Ameritech, and GTE affiliates, to take advantage of the suspension and modification provisions in section 251(f)(2). Such a conclusion would render the two percent limitation virtually meaningless.

834. We note that some parties recommend that, in adopting rules pursuant to section 251, the Commission provide different treatment or impose different obligations on smaller or rural carriers. We conclude that section 251(f) adequately provides for varying treatment for smaller or rural LECs where such variances are justified in particular instances. We conclude

that there is no basis in the record for adopting other special rules, or limiting the application of our rules to smaller or rural LECs.

XIII. Advanced Telecommunications Capabilities

835. Section 706(a) provides that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." In the NPRM, we sought comment on how we can advance Congress's section 706(a) goal within the context of our implementation of sections 251 and 252.

836. A number of parties suggest that rules allowing them to compete effectively and earn a profit in the telecommunications industry would assist the industry in providing telecommunications services to all Americans. MFS suggests that "all LECs should be required, as a condition of eligibility for universal service subsidies, to meet network modernization standards for rural telephone companies." Several state commissions indicate that they have already established programs to assist institutions eligible under section 706 in deploying advanced telecommunications services. The Alliance for Public Technology asserts that section 706 should underlie all of the FCC's proceedings. Ericsson states that the industry should work with government agencies to promote leading edge technology to ensure that it is introduced on a reasonably timely basis. For example, it contends that "Plug and Play Internet use" will greatly help the public and schools access information, and that advanced technology such as asynchronous transfer mode (ATM), wireless data/video, and AIN will enhance interconnection capabilities of public and private networks. The Illinois Commission contends that, depending on the pricing standard the Commission adopts for interconnection and access to unbundled elements, and the Commission's interpretation of the prohibition against discrimination, the Commission should adopt special rules for carriers when they provide interconnection or access to unbundled network elements to serve a school, library, or healthcare provider.

837. We decline to adopt rules regarding section 706 in this proceeding. We intend to address issues related to section 706 in a separate proceeding.

XIV. Provisions of Section 252

A. Section 252(e)(5)

1. Background

838. Section 252(e)(5) directs the Commission to assume responsibility for any proceeding or matter in which the state commission "fails to act to carry out its responsibility" under section 252. In the NPRM, we asked whether the Commission should establish rules and regulations necessary to carry out our obligation under section 252(e)(5). In addition, we sought comment on whether in this proceeding we should establish regulations necessary and appropriate to carry out our obligations under section 252(e)(5). In particular, we sought comment on what constitutes notice of failure to act, what procedures, if any, we should establish for parties to notify the Commission, and what are the circumstances under which a state commission should be deemed to have "fail[ed] to act" under section 252(e)(5).

839. Section 252(e)(4) provides that, if the state commission does not approve or reject (1) a negotiated agreement within 90 days, or (2) an arbitrated agreement within 30 days, from the time the agreement is submitted by the parties, the agreement shall be "deemed approved." We sought comment on the relationship between this provision and our obligation to assume responsibility under section 252(e)(5). We also sought comment on whether the Commission, once it assumes the responsibility of the state commission, is bound by all of the laws and standards that would have applied to the state commission, and whether the Commission is authorized to determine whether an agreement is consistent with applicable state law as the state commission would have been under section 252(e)(3). In addition, we sought comment on whether, once the Commission assumes responsibility under section 252(e)(5), it retains jurisdiction, or whether that matter or proceeding subsequently should be remanded to the state.

840. Finally, we sought comment on whether we should adopt, in this proceeding, some standards or methods for arbitrating disputes in the event we must conduct an arbitration under section 252(e)(5). We noted some of the benefits and drawbacks of both "final offer" arbitration and open-ended arbitration, and asked for comment on both.

2. Discussion

841. After careful review of the record, we are convinced that establishing regulations to carry out our obligations under section 252(e)(5) will provide for an efficient and fair transition from state jurisdiction should we have to assume the responsibility of the state commission under Section 252(e)(5). The rules we establish in this section with respect to arbitration under section 252 apply only to instances where the Commission assumes jurisdiction under section 252(e)(5); we do not purport to advise states on how to conduct arbitration when the Commission has not assumed jurisdiction. The rules we establish will give notice of the procedures and standards the Commission would apply to mediation and arbitration, avoid delay if the Commission had to arbitrate disputes in the near future, and may also offer guidance the states may, at their discretion, wish to consider in implementing their own mediation and arbitration procedures and standards. We decline to adopt national rules governing state arbitration procedures. We believe the states are in a better position to develop mediation and arbitration rules that support the objectives of the 1996 Act. States may develop specific measures that address the concerns of small entities and small incumbent LECs participating in mediation or arbitration.

842. The rules we adopt herein are minimum, interim procedures. Adopting minimum interim procedures now will allow the Commission to learn from the initial experiences and gain a better understanding of what types of situations may arise that require Commission action. We note that the Commission is not required to adopt procedures and standards for mediation and arbitration within the six-month statutory deadline and that, by adopting minimum interim procedures, the Commission can better direct its resources to more pressing matters that fall within the six-month statutory deadline.

843. Regarding what constitutes a state's "failure to act to carry out its responsibility under" section 252, the Commission was presented with numerous options. The Commission will not take an expansive view of what constitutes a state's "failure to act." Instead, the Commission interprets "failure to act" to mean a state's failure to complete its duties in a timely manner. This would limit Commission action to instances where a state commission fails to respond, within a reasonable time, to a request for

mediation or arbitration, or fails to complete arbitration within the time limits of section 252(b)(4)(C). The Commission will place the burden of proof on parties alleging that the state commission has failed to respond to a request for mediation or arbitration within a reasonable time frame. We note the work done by states to date in putting in place procedures and regulations governing arbitration and believe that states will meet their responsibilities and obligations under the 1996 Act. *See, e.g., In the Matter of the Implementation of the Mediation and Arbitration Provisions of the Federal Telecommunications Act of 1996*, Case No. 96–463–TP–UNC, Ohio Commission, (May 30, 1996); *Illinois Commerce Commission On Its Own Motion Adoption of 83 Ill. Adm. Code 761 to Implement the Arbitration Provisions of Section 252 of the Telecommunications Act of 1996*, Docket No. 96–0297, Illinois Commission (June 14, 1996).

844. We agree with the majority of commenters that argue that our authority to assume the state commission's responsibilities is not triggered when an agreement is "deemed approved" under section 252(e)(4) due to state commission inaction. Section 252(e)(4) provides for automatic approval if a state fails to approve or reject a negotiated or arbitrated agreement within 90 days or 30 days, respectively. Rules of statutory construction require us to give meaning to all provisions and to read provisions consistently, where it is possible to do so. We thus conclude that the most reasonable interpretation is that automatic approval under section 252(e)(4) does not constitute a failure to act.

845. We also believe that we should establish interim procedures for interested parties to notify the Commission that a state commission has failed to act under section 252. We believe that parties should be required to file a detailed written petition, backed by affidavit, that will, at the outset, give the Commission a better understanding of the issues involved and the action, or lack of action, taken by the state commission. Allowing less detailed notification increases the likelihood that frivolous requests will be made. With less detailed notification, the Commission's investigations would be broader and more burdensome. A detailed written petition will facilitate a decision about whether the Commission should assume jurisdiction based on section 252(e)(5).

846. The moving party should submit a petition to the Secretary of the Commission stating with specificity the basis for the petition and any information that supports the claim that the state has failed to act, including, but not limited to the applicable provision(s) of the Act and the factual circumstances which support a finding that a state has failed to act. The moving party must ensure that the applicable state commission and the parties to the proceeding or matter for which preemption is sought are served with the petition on the same date the party serves the petition on the Commission. The petition will serve as notice to parties to the state proceeding and the state commission who will have fifteen days from the date the petition is filed with the Commission to comment. Under section 252(e)(5), the Commission must "issue an order preempting the state commission's jurisdiction of that proceeding or matter" no later than 90 days from the date the petition is filed. If the Commission takes notice, as section 252(e)(5) permits, that a state commission has failed to act, it will, on its own motion, issue a public notice and provide fifteen days for interested parties to submit comment on whether the Commission should assume responsibility under section 252(e)(5).

847. If the Commission assumes authority under section 252(e)(5), the Commission must also decide whether it retains authority for that proceeding or matter. We agree with those parties who argue that, once the Commission assumes jurisdiction of a proceeding or matter, it retains authority for that proceeding or matter. For example, if the Commission obtains jurisdiction after a state commission fails to respond to a request for arbitration, the Commission maintains jurisdiction over the arbitration proceeding. Therefore, once the proceeding is before the Commission, any and all further action regarding that proceeding or matter will be before the Commission. We note that there is no provision in the Act for returning jurisdiction to the state commission; moreover, the Commission, with significant knowledge of the issues at hand, would be in the best position efficiently to conclude the matter. Thus, as both a legal and policy matter, we believe that the Commission retains jurisdiction over any matter and proceeding for which it assumes responsibility under Section 252(e)(5).

848. We reject the suggestion by some parties that, once the Commission has mediated or arbitrated an agreement, the agreement must be submitted to the state commission for approval under state law. We note that section 252(e)(5) provides for the Commission to "assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission." This includes acting for the state commission under section 252(e)(1), which calls for state commission approval of "any interconnection agreement adopted by negotiation or arbitration." We, therefore, do not read section 252(e)(1) or any other provision as calling for state commission approval or rejection of agreements mediated or arbitrated by the Commission. In those instances where a state has failed to act, the Commission acts on behalf of the state and no additional state approval is required.

849. Requirements set forth in section 252(c) for arbitrated agreements would apply to arbitration conducted by the Commission. We see no reason, and no party has suggested a policy or legal basis, for not applying such standards when the Commission conducts arbitration. Thus, arbitrated agreements must: (1) meet the requirements of section 251, including regulations prescribed by the Commission pursuant to section 251; (2) establish any rates for interconnection, services, or network elements according to section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. We reject the suggestion made by some parties that, if the Commission steps into the state commission role, it is bound by state laws and standards that would have applied to the state commission. While states are permitted to establish and enforce other requirements, these are not binding standards for arbitrated agreements under section 252(c). Moreover, the resources and time potentially needed to review adequately and interpret the different laws and standards of each state render this suggestion untenable. Finally, we conclude that it would not make sense to apply to the Commission the timing requirements that section 252(b)(4)(c) imposes on state commissions. The Commission, in some instances, might not even assume jurisdiction until nine months (or more) have lapsed since a section 251 request was initiated.

850. Based on the comments of the parties, we conclude that a "final offer" method of arbitration, similar to the approach recommended by Vanguard, would best serve the public interest. Under "final offer" arbitration, each party to the negotiation proposes its best and final offer and the arbitrator determines which of the proposals become binding. The arbitrator would

have the option of choosing one of the two proposals in its entirety, or the arbitrator could decide on an issue-by-issue basis. Each final offer must: (1) meet the requirements of section 251, including the Commission's rules thereunder; (2) establish rates for interconnection, services, or network elements according to section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. If a final offer submitted by one or more parties fails to comply with these requirements. the arbitrator would have discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c), including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements in section 252(c).

851. The parties could continue to negotiate an agreement after they submit their proposals and before the arbitrator makes a decision. Under this approach, the Commission will encourage negotiations, with or without the assistance of the arbitrator, to continue after arbitration offers are exchanged. Parties are not precluded from submitting subsequent final offers following such negotiations. We believe that permitting post-offer negotiations will increase the likelihood that the parties will reach consensus on unresolved issues. In addition, permitting post-offer negotiations will increase flexibility and will allow parties to tailor counter-proposals after arbitration offers are exchanged. To provide an opportunity for final post-offer negotiation, the arbitrator will not issue a decision for at least 15 days after submission of the final offers by the parties. In addition, the offers must be consistent with section 251, including the regulations prescribed by the Commission. We reject SBC's suggestion that an arbitrated agreement is not binding on the parties. Absent mutual agreement to different terms, the decision reached through arbitration is binding. We conclude that it would be inconsistent with the 1996 Act to require incumbent LECs to provide interconnection, services, and unbundled elements, impose a duty to negotiate in good faith and a right to arbitration, and then permit incumbent LECs to not be bound by an arbitrated determination. We also believe that, although competing providers do not have an affirmative duty to enter into agreements under section 252, a requesting carrier might face penalties if, by refusing to enter into an arbitrated agreement, that carrier is deemed to have failed to negotiate in good faith. Such penalties should serve as a disincentive for requesting carriers to force an incumbent LEC to expand resources in arbitration if the requesting carrier does not intend to abide by the arbitrated decision.

852. Adopting a "final offer" method of arbitration and encouraging negotiations to continue allows us to maintain the benefits of final offer arbitration, giving parties an incentive to submit realistic "final offers," while providing additional flexibility for the parties to agree to a resolution that best serves their interests. To the extent that these procedures encourage parties to negotiate voluntarily rather than arbitrate, such negotiated agreements will be subject to review pursuant to section 252(e)(2)(A), which would allow the Commission to reject agreements if they are inconsistent with the public interest. This approach also addresses the argument that under "final offer" arbitration neither offer might best serve the public interest, because it allows the parties to obtain feedback from the arbitrator on public interest matters.

853. We believe that the arbitration proceedings generally should be limited to the requesting carrier and the incumbent local exchange provider. This will allow for a more efficient process and minimize the amount of time needed to resolve disputed issues. We believe that opening the process to all third parties would be unwieldy and would delay the process. We will, however, consider requests by third parties to submit written pleadings. This may, in some instances, allow interested parties to identify important public policy issues not raised by parties to an arbitration.

B. Requirements of Section 252(i)

1. Background

854. Section 251 requires that interconnection, unbundled element, and collocation rates be "nondiscriminatory" and prohibits the imposition of "discriminatory conditions" on the resale of telecommunications services. Section 252(i) of the 1996 Act provides that a "local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." In the NPRM, we expressed the view that section 252(i) appears to be a primary tool of the 1996 Act for preventing discrimination under section 251, and we sought comment on whether we should adopt national standards for resolving disputes under section 252(i) in the event that we must assume the state's responsibilities pursuant to section 252(e)(5). In addition, because we may need to interpret section 252(i) if we assume the state commission's responsibilities, we sought comment on the meaning of section 252(i).

855. We also sought comment in the NPRM on whether section 252(i) requires that only similarly-situated carriers may enforce against incumbent LECs provisions of agreements filed with state commissions, and, if so, how "similarly-situated carrier" should be defined. In particular, we asked whether section 252(i) requires that the same rates for interconnection must be offered to all requesting carriers regardless of the cost of serving that carrier, or whether it would be consistent with the statute to permit different rates if the costs of serving carriers are different. We also asked whether the section can be interpreted to allow incumbent LECs to make available interconnection, services, or network elements only to requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original parties to the agreement. In the NPRM, we tentatively concluded that the language of the statute appears to preclude such differential treatment among carriers.

856. Additionally, we sought comment in the NPRM on whether section 252(i) permits requesting telecommunications carriers to choose among individual provisions of publicly-filed interconnection agreements or whether they must subscribe to an entire agreement. We also sought comment regarding what time period an agreement must remain available for use by other requesting telecommunications carriers.

2. Discussion

857. We conclude that it will assist the carriers in determining their respective obligations, facilitate the development of a single, uniform legal interpretation of the Act's requirements and promote a procompetitive, national policy framework to adopt national standards to implement section 252(i). Issues such as whether section 252(i) allows requesting telecommunications carriers to choose among provisions of prior interconnection agreements or requires them to accept an entire agreement are issues of law that should not vary from state to state and are also central to the statutory scheme and to

the emergence of competition. National standards will help state commissions and parties to expedite the resolution of disputes under section 252(i).

858. We conclude that the text of section 252(i) supports requesting carriers' ability to choose among individual provisions contained in publicly filed interconnection agreements. As we note above, section 252(i) provides that a "local exchange carrier shall make available any interconnection, service, or network element provided under an agreement * * * to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." Thus, Congress drew a distinction between "any interconnection, service, or network element[s] provided under an agreement," which the statute lists individually, and agreements in their totality. Requiring requesting carriers to elect entire agreements, instead of the provisions relating to specific elements, would render as mere surplusage the words "any interconnection, service, or network element."

859. We disagree with BellSouth regarding the significance of the legislative history quoted in the NPRM. The Conference Committee amended section 251(g), S. 652's predecessor to section 252(i), and changed "service, facility, or function" to "interconnection, service, or element." The House of Representatives' bill did not contain a version of section 252(i). Although H.R. 1555's section 244(d) contained similar ideas, its language and structure are sufficiently different from that of section 252(i) that we do not consider section 244(d) to be a prior version of section 252(i). We find that section 252(i)'s language does not differ substantively from the text of the Senate bill's section 251(g). The Senate Commerce Committee stated its provision, section 251(g), was intended to "make interconnection more efficient by making available to other carriers the individual elements of agreements that have been previously negotiated."

860. We also find that practical concerns support our interpretation. As observed by AT&T and others, failure to make provisions available on an unbundled basis could encourage an incumbent LEC to insert into its agreement onerous terms for a service or element that the original carrier does not need, in order to discourage subsequent carriers from making a request under that agreement. In addition, we observe that different new entrants face differing technical constraints and costs. Since few new entrants would be willing to elect an entire agreement that would not reflect their costs and the specific technical characteristics of their networks or would not be consistent with their business plans, requiring requesting carriers to elect an entire agreement would appear to eviscerate the obligation Congress imposed in section 252(i).

861. We also choose this interpretation despite concerns voiced by some incumbent LECs that allowing carriers to choose among provisions will harm the public interest by slowing down the process of reaching interconnection agreements by making incumbent LECs less likely to compromise. In reaching this conclusion, we observe that new entrants, who stand to lose the most if negotiations are delayed, generally do not argue that concern over slow negotiations would outweigh the benefits they would derive from being able to choose among terms of publicly filed agreements. Unbundled access to agreement provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions—including rates—negotiated by large IXCs, and speed the emergence of robust competition.

862. We conclude that incumbent LECs must permit third parties to obtain access under section 252(i) to any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252. We find that this level of disaggregation is mandated by section 252(a)(1), which requires that agreements shall include "charges for interconnection and each service or network element included in the agreement," and section 251(c)(3), which requires incumbent LECs to provide "non-discriminatory access to network elements on an unbundled basis." In practical terms, this means that a carrier may obtain access to individual elements such as unbundled loops at the same rates, terms, and conditions as contained in any approved agreement. We agree with ALTS that such a view comports with the statute, and lessens the concerns of carriers that argue that unbundled availability will delay negotiations.

863. We reject GTE's argument that section 252(i)'s statement, that requesting carriers must receive individual elements "upon the same terms and conditions" as those contained in the agreement, precludes unbundled availability of individual elements. GTE's argument fails to give meaning to Congress's distinction between agreements and elements, and ignores the 1996 Act's prime goals of nondiscriminatory treatment of carriers and promotion of competition. Instead, we conclude that the "same terms and conditions" that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under section 252(i). For instance, where an incumbent LEC and a new entrant have agreed upon a rate contained in a five-year agreement, section 252(i) does not necessarily entitle a third party to receive the same rate for a three-year commitment. Similarly, that one carrier has negotiated a volume discount on loops does not automatically entitle a third party to obtain the same rate for a smaller amount of loops. Given the primary purpose of section 252(i) of preventing discrimination, we require incumbent LECs seeking to require a third party agree to certain terms and conditions to exercise its rights under section 252(i) to prove to the state commission that the terms and conditions were legitimately related to the purchase of the individual element being sought. By contrast, incumbent LECs may not require as a "same" term or condition the new entrant's agreement to terms and conditions relating to other interconnection, services, or elements in the approved agreement. Moreover, incumbent LEC efforts to restrict availability of interconnection, services, or elements under section 252(i) also must comply with the 1996 Act's general nondiscrimination provisions. *See* Section VII.d.3.

864. We further conclude that section 252(i) entitles all parties with interconnection agreements to "most favored nation" status regardless of whether they include "most favored nation" clauses in their agreements. Congress's command under section 252(i) was that parties may utilize any individual interconnection, service, or element in publicly filed interconnection agreements and incorporate it into the terms of their interconnection agreement. This means that any requesting carrier may avail itself of more advantageous terms and conditions subsequently negotiated by any other carrier for the same individual interconnection, service, or element once the subsequent agreement is filed with, and approved by, the state commission. We believe the approach we adopt will maximize competition by ensuring that carriers' obtain access to terms and elements on a nondiscriminatory basis.

865. We find that section 252(i) permits differential treatment based on the LEC's cost of serving a carrier. We

further observe that section 252(d)(1) requires that unbundled element rates be cost-based, and sections 251(c)(2) and (c)(3) require incumbent LECs to provide only technically-feasible forms of interconnection and access to unbundled elements, while section 252(i) mandates that the availability of publicly-filed agreements be limited to carriers willing to accept the same terms and conditions as the carrier who negotiated the original agreement with the incumbent LEC. We conclude that these provisions, read together, require that publicly-filed agreements be made available only to carriers who cause the incumbent LEC to incur no greater costs than the carrier who originally negotiated the agreement, so as to result in an interconnection arrangement that is both cost-based and technically feasible. However, as discussed in Section VII regarding discrimination, where an incumbent LEC proposes to treat one carrier differently than another, the incumbent LEC must prove to the state commission that that differential treatment is justified based on the cost to the LEC of providing that element to the carrier.

866. We conclude, however, that section 252(i) does not permit LECs to limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement. In our view, the class of customers, or the type of service provided by a carrier, does not necessarily bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier or on whether interconnection is technically feasible. Accordingly, we conclude that an interpretation of section 252(i) that attempts to limit availability by class of customer served or type of service provided would be at odds with the language and structure of the statute, which contains no such limitation.

867. We agree with those commenters who suggest that agreements remain available for use by requesting carriers for a reasonable amount of time. Such a rule addresses incumbent LEC concerns over technical incompatibility, while at the same time providing requesting carriers with a reasonable time during which they may benefit from previously negotiated agreements. In addition, this approach makes economic sense, since the pricing and network configuration choices are likely to change over time, as several commenters have observed. Given this reality, it would not make sense to permit a subsequent carrier to impose an agreement or term upon an incumbent LEC if the technical requirements of implementing that agreement or term have changed.

868. We observe that section 252(h) expressly provides that state commissions maintain for public inspection copies of interconnection agreements approved under section 252(e). We therefore decline Jones Intercable's suggestion that we require carriers to file agreements at the FCC, in addition to section 252(h)'s filing requirement. However, when the Commission performs the state's responsibilities under section 252(e)(5), parties must file their agreements with the Commission, as well as with the state commission. We note section 22.903(d) of our rules, which remains in effect, requires the BOCs to file with us their interconnection agreements with their affiliated cellular providers. 47 CFR § 22.903(d).

869. We further conclude that a carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis. We find that this interpretation furthers Congress's stated goals of opening up local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms, and that we should adopt measures that ensure competition occurs as quickly and efficiently as possible. We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement. Since agreements shall necessarily be filed with the states pursuant to section 252(h), we leave to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis. Because of the importance of section 252(i) in preventing discrimination, however, we conclude that carriers seeking remedies for alleged violations of section 252(i) shall be permitted to obtain expedited relief at the Commission, including the resolution of complaints under section 208 of the Communications Act, in addition to their state remedies.

870. We conclude as well that agreements negotiated prior to enactment of the 1996 Act must be available for use by subsequent, requesting carriers. Section 252(i) must be read in conjunction with section 252(a)(1), which clearly states that "agreement" for purposes of section 252, "includ[es] any interconnection agreement negotiated before the date of enactment * * *." We conclude that this language demonstrates that Congress intended 252(i) to apply to agreements negotiated prior to enactment of the 1996 Act and approved by the state commission pursuant to section 252(e), as well as those approved under the section 251/252 negotiation process. Accordingly, we find that agreements negotiated prior to enactment of the 1996 Act must be disclosed publicly, and be made available to requesting telecommunications carriers pursuant to section 252(i).

871. We also find that section 252(i) applies to interconnection agreements between adjacent, incumbent LECs. We note that section 252(i) requires a local exchange carrier to make available to requesting telecommunications carriers "any interconnection service, or network element *provided under an agreement approved under this section* * * *." The plain meaning of this section is that any interconnection agreement approved by a state commission, including one between adjacent LECs, must be made available to requesting carriers pursuant to section 252(i). Requiring availability of such agreements will provide new entrants with a realistic benchmark upon which to base negotiations, and this will further the Congressional purpose of increasing competition. As stated in Section III of this Order, adjacent, incumbent LECs will be given an opportunity to renegotiate such agreements before they become subject to section 252(i)'s requirements. In Section III, we also consider, and reject, the Rural Tel. Coalition's argument that making agreements between adjacent, non-competing LECs available under section 252 will have a detrimental effect on small, rural carriers. *See* Section III, *supra*.

XV. Final Regulatory Flexibility Analysis

872. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on the proposals in the NPRM. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA),

Public Law No. 104–121, 110 Stat. 847 (1996).

A. Need for and Objectives of This Report and Order and the Rules Adopted Herein

873. The Commission, in compliance with section 251(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the 1996 Act), promulgates the rules in this Order to ensure the prompt implementation of sections 251 and 252 of the 1996 Act, which are the local competition provisions. Congress sought to establish through the 1996 Act "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry. Three principal goals of the telephony provisions of the 1996 Act are: (1) opening local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that are already open to competition, particularly long distance services markets; and, (3) reforming our system of universal service so that universal service is preserved and advanced as local exchange and exchange access markets move from monopoly to competition.

874. The rules adopted in this Order implement the first of these goals—opening local exchange and exchange access markets to competition. The objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small incumbent local exchange carriers, particularly rural carriers, as evidenced in section 251(f) of the 1996 Act.

B. Analysis of Significant Issues Raised in Response to the IRFA

875. Summary of the Initial Regulatory Flexibility Analysis (IRFA). In the NPRM, the Commission performed an IRFA. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small business as defined by section 601(3) of the RFA. The Commission stated that its regulatory flexibility analysis was inapplicable to incumbent LECs because such entities are dominant in their field of operation. The Commission noted, however, that it would take appropriate steps to ensure that the special circumstances of smaller incumbent LECs are carefully considered in our rulemaking. The Commission also found that the proposed rules may overlap or conflict with the Commission's Part 69 access charge and Expanded Interconnection rules. Finally, the IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

1. Treatment of Small LECs

876. Discussion. In essence, SBA and Rural Tel. Coalition argue that we exceeded our authority under the RFA by certifying all incumbent LECs as dominant in their field of operation, and concluding on that basis that they are not small businesses under the RFA. SBA and Rural Tel. Coalition contend that the authority to make a size determination rests solely with SBA and that, by excluding a group (small incumbent LECs) from coverage under the RFA, the Commission made an unauthorized size determination. Neither SBA nor Rural Tel. Coalition cites any specific authority for this latter proposition.

877. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980's, and we consistently have certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses. We have made similar determinations in other areas. We recognize SBA's special role and expertise with regard to the RFA, and intend to continue to consult with SBA outside the context of this proceeding to ensure that the Commission is fully implementing the RFA. Although we are not fully persuaded on the basis of this record that our prior practice has been incorrect, in light of the special concerns raised by SBA and Rural Tel. Coalition in this proceeding, we will, nevertheless, include small incumbent LECs in this FRFA to remove any possible issue of RFA compliance. We, therefore, need not address Rural Tel. Coalition's arguments that incumbent LECs are not dominant.

2. Other Issues

878. Discussion. We disagree with SBA's assessment of our IRFA. Although the IRFA referred only generally to the reporting and recordkeeping requirements imposed on incumbent LECs, our **Federal Register** notice set forth in detail the general reporting and recordkeeping requirements as part of our Paperwork Reduction Act statement. The IRFA also sought comment on the many alternatives discussed in the body of the NPRM, including the statutory exemption for certain rural telephone companies. The numerous general public comments concerning the impact of our proposal on small entities in response to the NPRM, including comments filed directly in response to the IRFA, enabled us to prepare this FRFA. Thus, we conclude that the IRFA was sufficiently detailed to enable parties to comment meaningfully on the proposed rules and, thus, for us to prepare this FRFA. We have been working with, and will continue to work with SBA, to ensure that both our IRFAs and FRFAs fully meet the requirements of the RFA.

879. SBA also objects to the NPRM's requirement that responses to the IRFA be filed under a separate and distinct heading, and proposes that we integrate RFA comments into the body of general comments on a rule. Almost since the adoption of the RFA, we have requested that IRFA comments be submitted under a separate and distinct heading. Neither the RFA nor SBA's rules prescribe the manner in which comments may be submitted in response to an IRFA and, in such circumstances, it is well established that an administrative agency can structure its proceedings in any manner that it concludes will enable it to fulfill its statutory duties. Based on our past practice, we find that separation of comments responsive to the IRFA facilitates our preparation of a compulsory summary of such comments and our responses to them, as required by the RFA. Comments on the impact of our proposed rules on small entities have been integrated into our analysis and consideration of the final rules. We, therefore, reject SBA's argument that we improperly required commenters to include their comments on the IRFA in a separate section.

880. We also reject SBA's assertion that none of the alternatives in the NPRM is designed to minimize the impact of the proposed rules on small businesses. For example, we proposed that incumbent LECs be required to offer competitors access to unbundled local loop, switching, and transport facilities. These proposals permit potential competitors to enter the market by relying, in part or entirely, on the incumbent LEC's facilities. Reduced economic entry barriers are designed to provide reasonable opportunities for new entrants, particularly small entities, to enter the market by minimizing the initial investment needed to begin providing service. In addition, we

believe section 251(f) and our rules provide states with significant flexibility to "deal with the needs of individual companies in light of public interest concerns," as requested by the Idaho Commission. With regard to the potential burdens on small entities other than incumbent LECs, we believe our rules permit states to structure arbitration procedures, for example, in ways that minimize filing or other burdens on new entrants that are small entities.

881. We also disagree with SCBA's assertion that the IRFA was deficient because it did not identify small cable operators as entities that would be affected by the proposed rules. The IRFA in the NPRM states: "Insofar as the proposals in this Notice apply to telecommunications carriers other than incumbent LECs (generally interexchange carriers and new LEC entrants), they may have a significant impact on a substantial number of small entities." The phrase "new LEC entrants" clearly encompasses small cable operators that become providers of local exchange service. The NPRM even identifies cable operators as potential new entrants.

882. We agree with SCBA's argument that the Commission should identify certain minimum standards to provide guidance on the requirement that parties negotiate in good faith. As discussed in Section III.B, we conclude that we should establish minimum standards that will offer parties guidance in determining whether they are acting in good faith. We believe that these minimum standards address SCBA's assertion that federal guidelines for good faith negotiations may be particularly important for small entities because unreasonable delays in negotiations could represent an entry barrier for small entities.

883. We also agree with SCBA's recommendation that we should establish guidelines for the application of section 251(f) regarding exemptions, suspensions, and modifications of our rules governing interconnection with rural carriers. As discussed in section XII.B, we find that a rural incumbent LEC should not be able to obtain an exemption, suspension, or modification of its obligations under section 251 unless it offers evidence that the application of those requirements would be likely to cause injury beyond the financial harm typically associated with efficient competitive entry. We are also persuaded by the suggestion of SCBA and others that incumbent LECs should bear the burden of showing that they should be exempt pursuant to section 251(f)(1) from national interconnection requirements. We believe that this finding is consistent with the pro-competitive goals of the 1996 Act and our determination in Section XII that Congress did not intend to withhold from consumers the benefits of local telephone competition that could be provided by small entities, such as small cable operators.

884. We do not adopt SCBA's proposal to establish abbreviated arbitration procedures. Most commenters oppose adoption of federal rules to govern state mediation and arbitration proceedings. As set out in Section XIV.A, we conclude that state commissions are better positioned to develop rules for mediation and arbitration that support the objectives of the 1996 Act. The rules we adopt in Section XIV.A apply only where the Commission assumes a state commission's responsibilities pursuant to section 252(e)(5). States may develop specific measures that address the concerns of small entities participating in mediation or arbitration, as suggested by SCBA. In addition, although we do not specifically incorporate SCBA's request that the Commission designate a "small company contact person at incumbent LECs and state commissions," we find that a refusal throughout the negotiation process to designate a representative with authority to make binding representations on behalf of the party, and thereby significantly delay resolution of issues, would constitute failure to negotiate in good faith. Therefore, we conclude that the potential benefits of SCBA's proposal are achieved by our determination that the failure of an incumbent LEC to designate a person authorized to bind his or her company in negotiations is a violation of the good faith obligation of section 251.

C. Description and Estimates of the Number of Small Entities Affected by this Report and Order

885. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). SBA has defined businesses for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

886. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

1. Telephone Companies (SIC 481)

887. Total Number of Telephone Companies Affected. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order.

888. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies.

The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

889. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

890. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this Order.

891. Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 30 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 30 small entity CAPs that may be affected by the decisions and rules adopted in this Order.

892. Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 29 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 29 small entity operator service providers that may be affected by the decisions and rules adopted in this Order.

893. Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 197 companies reported that they were engaged in the provision of pay telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 197 small entity pay telephone operators that may be affected by the decisions and rules adopted in this Order.

894. Wireless (Radiotelephone) Carriers. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned or operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be

affected by the decisions and rules adopted in this Order.

895. Cellular Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 789 companies reported that they were engaged in the provision of cellular services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in this Order.

896. Mobile Service Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 117 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in this Order.

897. Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 CFR § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

898. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. We cannot estimate, however, the number of these licenses that will be won by small entities under our definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume for purposes of this FRFA, that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities under our rules, which may be affected by the decisions and rules adopted in this Order.

899. SMR Licensees. Pursuant to 47 CFR § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in this Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this Order.

900. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order.

901. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

2. Cable System Operators (SIC 4841)

902. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than

$10 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

903. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 60 FR 544919 (September 15, 1995). Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,468 small entity cable system operators that may be affected by the decisions and rules adopted in this Order.

904. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than one percent (631,960) of subscribers. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this Report and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

905. Structure of the Analysis. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of this Order. As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected. Due to the size of this Order, we set forth our analysis separately for individual sections of the item, using the same headings as were used above in the corresponding sections of the Order.

906. We provide this summary analysis to provide context for our analysis in this FRFA. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

Summary Analysis of Section II—Scope of the Commission's Rules

907. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. As discussed in Section II.E, a common carrier, which may be a small entity or a small incumbent LEC, may be subject to an action for relief in several different fora if a party believes that small entity or incumbent LEC violated the standards under section 251 or 252. Should a small entity or a small incumbent LEC be subjected to such an action for relief, it will require the use of legal skills.

908. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. We believe that our actions establishing minimum national rules will facilitate the development of competition in the local exchange and exchange access markets for the reasons discussed in Sections II.A and II.B above. For example, national rules may: help equalize bargaining power; minimize the need for duplicative marketing strategies and multiple network configurations; lower administrative costs; lessen the need to re-litigate the same issue in multiple jurisdictions; and reduce delay and transaction costs, which can pose particular burdens for small businesses. In addition, our rules are designed to accommodate differences among regions and carriers, and the reduced regulatory burdens and increased certainty produced by national rules may be expected to minimize the economic impact of our decisions for all parties, including any small entities and small incumbent LECs. As set forth in Section II.A above, we reject suggestions to adopt more, or fewer, national rules than we ultimately adopt in this Order. We reject the arguments that we should establish "preferred outcomes" from which parties could deviate upon an adequate showing, or that we establish a process by which state commissions could seek a waiver from the Commission's rules, for the reasons set forth in Section II.B above.

909. We believe that our determination that there are multiple methods for bringing enforcement actions against parties regarding their obligations under sections 251 and 252 will assist all parties, including small entities and small incumbent LECs, by providing a variety of methods and fora for seeking enforcement of such obligations. (Section II.E—Authority to Take Enforcement Action.) Similarly, our conclusion that Bell Operating Company (BOC) statements of generally available terms and conditions are governed by the same national rules that apply to agreements arbitrated under section 252 should ease administrative burdens for all parties in markets served by BOCs, which may include small entities, because they will not need to evaluate and comply with different sets of rules. (Section II.F—BOC Statements of Generally Available Terms.) Finally, we decline to adopt different requirements for agreements arbitrated under section 252 and BOC statements of generally available terms and conditions for the reasons set forth in section II.F above.

Summary Analysis of Section III—Duty To Negotiate in Good Faith

910. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Incumbent LECs, including small incumbent LECs that receive requests for access to network elements and/or services pursuant to sections 251 and 252 of the Act will be required to negotiate in good faith over the terms of interconnection agreements. As set forth in section III.C, above, this Order identifies several practices as violations of the duty to

negotiate in good faith, including: (1) a party's seeking or entering into an agreement prohibiting disclosure of information requested by the FCC or a state commission, or supplied in support of a request for arbitration pursuant to section 252(b)(2)(B); (2) seeking or entering into an agreement precluding amendment of the agreement to account for changes in federal or state rules; (3) an incumbent's denial of a reasonable request for cost data during negotiations; and (4) an entrant's failure to provide to the incumbent LEC information necessary to reach agreement. Complying with the projected requirements of this section may require the use of legal skills. In addition, incumbent LECs and new entrants having interconnection agreements that predate the 1996 Act must file such agreements with the state commission for approval under section 252(e), as discussed above in section III.D.

911. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. As set forth above, we believe our decision to establish national rules and a review process concerning parties' duties to negotiate in good faith are designed to facilitate good faith negotiations, which should minimize regulatory burdens and the economic impact of our decisions for all parties, including small entities and small incumbent LECs. (Section III.B—Advantages and Disadvantages of National Rules.) We also expect economic impacts to be minimized for small entities seeking to enter into agreements with incumbent LECs as a result of the decision that incumbent LECs may not impose a bona fide request requirement on carriers seeking agreements pursuant to sections 251 and 252. (Section III.C—Specific Practices that may Constitute a Violation of Good Faith Negotiation.) For the reasons set forth in Section III.C above, we also find that certain additional practices are not always violations of the duty to negotiate in good faith, including the suggested alternative that all nondisclosure agreements violate the good faith duty.

912. We do not require immediate filing of preexisting interconnection agreements, including those involving small incumbent LECs and small entities. We set an outer time limit of June 30, 1997, by which preexisting agreements between Class A carriers must be filed with the relevant state commission. This decision will ensure that third parties, including small entities, are not prevented indefinitely from reviewing and taking advantage of the terms of preexisting agreements. It also limits burdens that a national filing deadline might impose on small carriers. In addition, the determination that preexisting agreements must be filed with state commissions seems likely to foster opportunities for small entities and small incumbent LECs to gain access to such agreements without requiring investigation or discovery proceedings or other administrative burdens that could increase regulatory burdens. (Section III.C—Applicability of Section 252 to Preexisting Agreements). For the reasons set forth in Section III.C above, we reject the alternative of not requiring certain agreements to be filed with state commissions.

Summary Analysis of Section IV—Interconnection

913. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Incumbent LECs, including small incumbent LECs, are required by section 251(c) to provide interconnection to all requesting telecommunications carriers for the transmission and routing of telephone exchange service and exchange access service. Such interconnection must be: (1) provided at any technically feasible point; (2) at least equal in quality to that provided to the incumbent LEC itself and to any other parties with interconnection agreements; and (3) provided on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory * * *." We conclude that interconnection refers solely to the physical linking of networks for the mutual exchange of traffic, and identify a minimum set of technically feasible points of interconnection. The minimum points at which an incumbent LEC, which may be a small incumbent LEC, must provide interconnection are: (1) the line side of a local switch; (2) the trunk side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; and (5) out-of-band signaling facilities. In addition, the points of access to unbundled elements (discussed below) are also technically feasible points of interconnection. Compliance with these requests may require the use of engineering, technical, operational, accounting, billing, and legal skills.

914. To obtain interconnection pursuant to section 251(c)(2), telecommunications carriers must seek interconnection for the purpose of transmitting and routing telephone exchange traffic, or exchange access traffic, or both. (Section IV.D.—Definition of "Technically Feasible.") This will require new entrants to provide either local exchange service or exchange access service to obtain section 251(c)(2) interconnection. A requesting carrier will be required to bear the additional costs imposed on incumbent LECs as a result of interconnection. (Section IV.E.—Technically Feasible Points of Interconnection.) Carriers seeking interconnection, including small entities, may be required to collect information to refute claims by incumbent LECs that the requested interconnection poses a legitimate threat to network reliability. (Id.)

915. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. The decision to adopt clear national rules in this section of the Order is also intended to help equalize bargaining power between incumbent LECs and requesting carriers, expedite and simplify negotiations, and facilitate comprehensive business and network planning. This could decrease entry barriers and provide reasonable opportunities for all carriers, including small entities and small incumbent LECs, to provide service in markets for local exchange and exchange access services. (Section IV.B.—National Interconnection Rules). National rules should also facilitate the consistent development of standards and resolution of issues, such as technical feasibility, without imposing additional litigation costs on parties, including small entities and small incumbent LECs. We determine that successful interconnection at a particular point in a network creates a rebuttable presumption that interconnection is technically feasible at other comparable points in the network. (Section IV.E—Definition of "Technically Feasible.") We also identify minimum points of interconnection where interconnection is presumptively technically feasible: (1) the line side of a switch; (2) the trunk side of a switch; (3) trunk interconnection points at a tandem switch; (4) central office cross-connect points; and (5) out-of-band signaling facilities. (Section IV.F—Technically Feasible Points of Interconnection.) These decisions may be expected to facilitate negotiations by promoting certainty and reducing transaction costs, which should minimize regulatory burdens and the economic impact of our decisions for all parties, including small entities and small incumbent LECs. We decline, however, to identify additional points where interconnection is technically feasible for the reasons set forth in section IV.F above.

916. The ability to enter local markets by offering only telephone exchange service or only exchange access service may minimize regulatory burdens and the economic impact of our decisions for some entrants, including small entities. We decline, however, to interpret section 251(c)(2) as requiring incumbent LECs to provide interconnection to carriers seeking to offer only interexchange services for the reasons set forth in section IV.C above. In addition, we determine that an incumbent LEC may refuse to interconnect on the grounds that specific, significant, and demonstrable network reliability concerns may make interconnection at a particular point sufficiently infeasible. We further determine that the incumbent LEC must prove such infeasibility to the state commission. (Section IV.E. Definition of "Technically Feasible.")

917. Competitive carriers, many of whom may be small entities, will be permitted to request interconnection at any technically feasible point, and the determination of feasibility must be conducted without consideration of the cost of providing interconnection at a particular point. (Section IV.D.—Definition of "Technically Feasible.") Consequently, our rules permit the party requesting interconnection, which may be a small entity, and not the incumbent LEC to decide the points that are necessary to compete effectively. (Section IV.E.—Definition of "Technically Feasible.") We decline, however, to impose reciprocal terms and conditions for interconnection on carriers requesting interconnection. Our decision that a party requesting interconnection must pay the costs of interconnecting should minimize regulatory burdens and the economic impact of our interconnection decisions for small incumbent LECs. Similarly, regulatory burdens and the economic impact of our decisions may be minimized through the decision that, while a requesting party is permitted to obtain interconnection that is of higher quality than that which the incumbent LEC provides to itself, the requesting party must pay the additional costs of receiving the higher quality interconnection. (Section IV.H.—Interconnection that is Equal in Quality.)

Summary Analysis of Section V—Access to Unbundled Network Elements

918. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Under section 251(c), incumbent LECs are required to provide nondiscriminatory access to unbundled network elements. We identify a minimum set of network elements: (1) local loops; (2) local and tandem switches; (3) interoffice transmission facilities; (4) network interface devices; (5) signaling and call-related database facilities; (6) operations support systems and functions; and (7) operator and directory assistance facilities. (Section V.J.—Specific Unbundling Requirements.) Incumbent LECs are required to provide nondiscriminatory access to operations support systems and information by January 1, 1997. States may require incumbent LECs to provide additional network elements on an unbundled basis. As discussed in Section V.F., above, LECs must perform the functions necessary to combine unbundled elements in a manner that allows requesting carriers to offer a telecommunications service, and the incumbent LEC may not impose restrictions on the subsequent use of network elements. Compliance with these requests may require the use of engineering, technical, operational, accounting, billing, and legal skills.

919. If a requesting carrier, which may be a small entity, seeks access to an incumbent LEC's unbundled elements, the requesting carrier is required to compensate the incumbent LEC for any costs incurred to provide such access. For example, in the case of operation support systems functions, such work may include the development of interfaces for competing carriers to access incumbent LEC functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. Requesting carriers may also have to deploy their own operations support systems interfaces, including electronic interfaces, in order to access the incumbent LEC's operations support systems functions. The development of interfaces may require new entrants, including small entities, to perform engineering work. (Section V.J.5—Operations Support Systems Unbundling.)

920. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. The establishment of minimum national requirements for unbundled elements should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. National requirements for unbundling may allow new entrants, including small entities, to take advantage of economies of scale in network design, which may minimize the economic impact of our decision. As set forth in Section V.B, above, we reject several alternatives in making this determination, including proposals suggesting that the Commission should: (1) not identify any required elements; (2) allow the states exclusively to identify required elements; or (3) adopt an exhaustive list of elements.

921. As set forth above, the 1996 Act defines a network element to include "all facilit(ies) or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service." (Section V.C—Network Elements.) As a result, new entrants, which may include small entities, should have access to the same technologies and economies of scale and scope that are available to incumbent LECs. In reaching our determination, we reject for the reasons set forth in Section V.C above, the following alternatives: (1) that we should not adopt a method for identifying elements beyond those identified in the 1996 Act; and (2) that features sold directly to end users as retail services are not network elements. Finally, we reject the argument that requesting carriers, which may include small entities, are required to provide all services typically furnished by means of an element they purchase. (Id.) Our rejection of this last alternative may reduce burdens for some small entities by permitting them to offer some, but not all, of the services provided by the incumbent LEC.

922. We conclude that the requirement to provide "access" to unbundled network elements is independent of the interconnection duty imposed by section 251(c)(2), and that such "access" must be provisioned under the rates, terms and conditions applicable to unbundled network elements. We believe these conclusions may provide small entities seeking to compete with incumbent LECs with the flexibility to offer other telecommunications services in addition to local exchange and exchange access services. (Section V.D.—Access to Network Elements.) For the reasons set forth above in Section V.D, we reject the argument that incumbent LECs are not required to provide access to an element's functionality, and that "access" to unbundled elements can only be achieved by interconnecting under the terms of section 251(c)(2).

923. As set forth above, we conclude that an incumbent LEC, which may be a small incumbent LEC, may decline to provide a network element beyond

those identified by the Commission where it can demonstrate that the network element is proprietary, and that the competing provider could offer the proposed telecommunications service using other nonproprietary elements within the incumbent's network. (Section V.E—Standards Necessary to Identify Unbundled Network Elements.) This should minimize regulatory burdens and the economic impact of our decisions for incumbent LECs, including small incumbent LECs, by permitting such entities to retain exclusive use of certain proprietary network elements.

924. We conclude that incumbent LECs: (1) cannot impose restrictions, requirements or limitations on requests for, or the sale or use of, unbundled network elements; (2) must provide requesting carriers with all of the functionalities of a particular element so that requesting carriers can provide any telecommunications services that can be offered by means of that element; (3) must permit new entrants to combine network elements which new entrants purchase access to, if so requested; (4) must prove to a state commission that they cannot combine elements that are not ordinarily combined within their network, or that are not ordinarily combined in that manner, because such combination is not technically feasible or it would impair the ability of other carriers to access unbundled elements and interconnect with the incumbent LEC; and (5) must provide the operational and support systems necessary to purchase and combine network elements. As a result of these conclusions, many small entities should face significantly reduced barriers to entry in markets for local exchange services. (Section V.F—Provision of a Telecommunications Service Using Unbundled Elements.) For the reasons set forth in section V.F, we reject the following alternatives: (1) that incumbent LECs, in all instances, must combine elements that are not ordinarily combined in their networks; and (2) that incumbent LECs are not obligated to combine elements for requesting carriers.

925. By establishing minimum national rules concerning nondiscriminatory access to unbundled network elements, requesting carriers, including small entities, may face reduced transaction and regulatory costs in seeking to enter local telecommunications markets. Among these minimum rules are: (1) access and elements which new entrants receive are to be equal in quality between carriers; (2) incumbent LECs must prove technical infeasibility; (3) the rates, terms and conditions established for the provisioning of unbundled elements must be equal between all carriers, and where applicable, between requesting carriers and the incumbent LEC itself, and they must provide efficient competitors with a meaningful opportunity to compete; and (4) incumbent LECs must provide carriers purchasing unbundled elements with access to electronic interfaces if incumbents use such functions themselves in provisioning telecommunications services. (Section V.G—Nondiscriminatory Access to Unbundled Network Elements.)

926. As set forth above, we conclude that section 251(c)(3) does not require new entrants to own or control their own local exchange facilities in order to purchase and use unbundled network elements and, thus, new entrants can provide services solely by recombining unbundled network elements. (Section V.H—The Relationship Between Sections 251(c)(3) and 251(c)(4).)

927. As discussed in Section V.J above, we adopt a minimum list of required unbundled network elements that incumbent LECs, including small incumbent LECs, must make available to requesting carriers. In adopting this list, we sought to minimize the regulatory burdens and economic impact for small incumbent LECs. For example, we declined to adopt a detailed list including many additional elements, as set forth in Section V.B, We also provided for the fact that certain LECs may possess switches that are incapable of performing customized routing for competitors, as discussed in Section V.J.2.(c).(ii).

Summary Analysis of Section VI—Methods of Obtaining Interconnection and Access to Unbundled Network Elements

928. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. We conclude that Section 251(c)(6) requires incumbent LECs, including small incumbent LECs, to provide for any technically feasible method of interconnection or access to unbundled network elements, including physical collocation, virtual collocation, and meet-point interconnection. With certain modifications, we adopt some of the requirements concerning physical and virtual collocation that we adopted in the Expanded Interconnection proceeding. Compliance with these requests may require the use of engineering, technical, operational, accounting, billing, and legal skills.

929. In a meet-point arrangement the new entrant will build out facilities to the agreed-upon point, which will likely entail the use of engineering and installation personnel as well as the acquisition of equipment. We allow incumbent LECs to impose reasonable restrictions on the warehousing of space by collocators. Therefore, small entities collocating equipment may be required to use the provided space for the collocation of equipment necessary for interconnection or access to unbundled network elements or risk losing the right to use that space. (Section VI.B.1.e—Allocation of Space.) To take advantage of its right to collocate equipment on an incumbent LEC's premises, competitive entrants, which may include small entities, will be required to build or lease transmission facilities between their own equipment, located outside of the incumbent LECs' premises, and the collocated space. (Section VI.B.1.f—Leasing Transport Facilities.) We allow incumbent LECs to require reasonable security arrangements to separate an entrant's collocation space from the incumbent LEC's facilities. Small entities collocating equipment may therefore be required to pay for such security arrangements. (Section VI.B.1.h—Security Arrangements.)

930. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. By readopting our Expanded Interconnection terms and conditions, which allow competitors to collocate equipment for interconnection with the incumbent LEC, regulatory burdens have likely been reduced because the terms and conditions for collocation have already been established. (Section VI.B.1.b—Readoption of Expanded Interconnection Terms and Conditions.) This seems likely to benefit all parties, including small entities and small incumbent LECs, since it should reduce the time and expense of negotiation, and reduce the costs of adapting to new terms and conditions for collocation.

931. Due to our conclusion that requesting carriers may choose any method of technically feasible interconnection or access to unbundled elements, new entrants, including small entities, should have the flexibility to obtain interconnection or access in the manner that best suits their needs. (Section VI.A.—Methods of Obtaining Interconnection and Access to Unbundled Elements.) In particular, as discussed in Section VI.A.3, we recognize that carriers, including small entities, may find virtual collocation or meet-point arrangements more efficient than physical collocation in certain circumstances, particularly if they lack the resources to collocate physically in

a large number of incumbent LEC premises.

932. We adopt a broad definition of the term "premises," which should allow carriers, including small entities, to collocate equipment for interconnection and access to unbundled network elements at a range of incumbent LEC locations. (Section VI.B.1.c—The Meaning of the Term "Premises.") For the reasons set forth in Section VI.B above, we interpret the term "premises" broadly to include incumbent LEC central offices, serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house incumbent LEC facilities. However, as set forth above, we reject the suggestion that security measures be provided only at the request of the entrant, which should minimize regulatory burdens and the economic impact of our decisions for small incumbent LECs. (Id.)

933. We interpret the statute broadly to allow collocation of any equipment used for interconnection or access to unbundled network elements. (Section VI.B.1.d—Collocation Equipment.) This standard should offer all competitors, including small entities, flexibility in collocating equipment they need to interconnect their networks to those of incumbent LECs. Incumbent LECs will also be required to make space available to requesting carriers on a first-come, first-served basis, and collocators seeking to expand their collocated space should be allowed to use contiguous space where available. (Section VI.B.1.e—Allocation of Space.) These provisions should minimize regulatory burdens and economic impacts for small entity entrants by reducing opportunities for discriminatory treatment based on the size of the requesting carrier. We decline, however, to require incumbent LECs to file reports on the status, planned increase, and use of space for the reasons set forth in Section VI.B.1. above, which will reduce the regulatory burdens and economic impact of our decisions for small incumbent LECs.

934. We conclude that a competitive entrant should be permitted to lease transmission facilities from the incumbent LEC. (Section VI.B.1.f—Leasing Transport Facilities). This provision will allow small entities to lease transmission facilities from incumbent LECs to transmit traffic between the collocated space and their own networks, which may be comparatively less burdensome for small entities than the alternative of bringing their own facilities to the collocated equipment on the incumbent LEC's premises. We also require incumbent LECs to permit two or more carriers that are collocating at the incumbent LEC's premises to interconnect their networks. (Section VI.B.1.g—Co-Carrier Cross-Connect.) This requirement should make it easier for new entrants to interconnect their networks with those of competitors.

935. We require incumbent LECs to provide the relevant state commissions with detailed floor plans or diagrams of any premises where the incumbent LEC alleges that there are space constraints. (Section VI.B.1.i.—Allowing Virtual Collocation in Lieu of Physical). This requirement may reduce burdens for all parties, including small entities and small incumbent LECs, by aiding state commissions with their evaluation of incumbent LEC refusals to allow physical collocation on the grounds of space constraints. For the reasons set forth in Section VI.B.1 above, however, we decline to require incumbent LECs to lease additional space or provide trunking at no cost where they have insufficient space for physical collocation, which should minimize the regulatory burdens and economic impact of our decisions for incumbent LECs, including small incumbent LECs.

Summary Analysis of Section VII—Pricing of Interconnection and Unbundled Network Elements

936. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Pursuant to sections 251(c) and 252(d) of the 1996 Act, incumbent LECs must provide interconnection and access to unbundled network elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. In Section VII above, we adopt a methodology for setting arbitrated prices for interconnection and unbundled elements on the basis of forward-looking economic cost studies prepared in conformance with a methodology prescribed by the Commission. Until states utilize economic studies to develop cost-based prices, they must use default proxies established by the Commission. Small incumbent LECs may be required, therefore, to prepare economic cost studies. In addition, small entities seeking arbitration for rates for interconnection or unbundled elements may find it useful to prepare economic cost studies or prepare critiques of cost studies prepared by incumbent LECs and others. In both cases, this may entail the use of economic experts, legal advice, and possibly accounting personnel.

937. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. Our conclusion that prices for interconnection and unbundled elements should be set at forward-looking long-run economic cost, including a reasonable share of forward-looking joint and common costs, should permit new entrants, including small entities, to interconnect with, and acquire unbundled elements from, incumbent LECs at prices that replicate, to the extent possible, those in a competitive market. (Section VII.B.2—Pricing of Interconnection and Unbundled Elements, Cost-Based Pricing Methodology, Rate Levels.) Our forward-looking economic cost methodology for determining prices is designed to permit incumbent LECs to recover their economic costs of providing interconnection and unbundled elements, which should minimize the economic impact of our decisions on small incumbent LECs.

938. Our conclusion that embedded costs, opportunity costs and universal service subsidies may not be included in the rates for interconnection and unbundled elements is intended, in part, to avoid distortions in investment decisions, which should lead to more efficient allocation of resources, thereby reducing regulatory burdens and economic impacts for some small entities and small incumbent LECs. (Section VII.B.2—Pricing of Interconnection and Unbundled Elements, Cost-Based Pricing Methodology, Rate Levels.) We reject proposals that would have permitted incumbent LECs to recover their embedded costs in prices for interconnection and unbundled elements as discussed above in Section VII.B.2.a.(3)(b). As discussed in Section VII.B.2.a.(3)(b), we reject the use of the efficient component pricing rule (ECPR) to set prices for interconnection and unbundled elements.

939. Our conclusion that forward-looking common costs should be allocated in a reasonable manner should ensure that the prices of network elements that are least likely to be subject to competition are not artificially inflated by large allocations of common costs. This, in turn, may also produce more efficient allocations of resources, thereby minimizing regulatory burdens and economic effects for many parties, including small entities and small incumbent LECs. (Section VII.B.2—Pricing of Interconnection and Unbundled Elements, Cost-Based Pricing Methodology, Rate Levels.) We permit, but do not require, states to impose peak-sensitive pricing systems for

shared facilities as discussed in Section VII.B.3.b.

940. We conclude that incumbent LECs should not recover access charges from entrants that use unbundled network facilities to provide access services to customers that they win from incumbent LECs. We do, however, permit incumbent LECs to impose on purchasers of unbundled local switching the carrier common line charge and a charge equal to seventy-five percent of the transport interconnection charge for an interim period that shall end no later than June 30, 1997, as discussed in Section VII.B.2.a.(3)(b). As further explained in that section, this mechanism should serve to reduce any short-term disruptive impact of our decisions on incumbent LECs, including small incumbent LECs.

941. We conclude that the Act requires rates for interconnection and unbundled elements to be geographically deaveraged, using a minimum of three geographic zones, in a manner that appropriately reflects the costs of the underlying elements. (Section VII.B.3.c—Geographic/Class-of-Service Averaging.) We also conclude that distinctions between the rates charged to requesting carriers for network elements should not vary based on the classes of service that the requesting carriers provide to their customers. We expect these decisions to lead to increased competition and a more efficient allocation of resources.

942. The default proxies we adopt for rates for interconnection and unbundled elements, which states may use to establish prices, are designed to approximate prices that will enable efficient competitors, including small entities, to enter local exchange markets. (Section VII.C.—Default Proxy Ceilings and Ranges.) We reject the use of rates in interconnection agreements that predate the 1996 Act as proxy-based ceilings for interconnection and unbundled element rates as discussed in Section VII.C.1. We also decline to adopt a generic cost model at this time, as discussed in Section VII.C.3.

943. We determine that the nondiscrimination provisions in the Act prohibit price differences that are not based on cost differences. This should permit small entities to obtain the same terms and conditions of agreements reached by larger carriers that possess greater bargaining power without having to incur the costs of negotiation and/or arbitration. (Section VII.D.3—Discrimination.)

Summary Analysis of Section VIII—Resale

944. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Pursuant to section 251(b)(1), all LECs, which may include small entity competing LECs and small incumbent LECs, may not impose unreasonable or discriminatory conditions on, or limit the resale of, their telecommunications services. Pursuant to section 251(c)(4), incumbent LECs are required to offer for resale at wholesale rates any telecommunications services that they offer to subscribers other than telecommunications carriers. Providing such services for resale may require some small entities and small incumbent LECs to use additional billing, technical, and operational skills.

945. Under section 252(a), resellers, which may include small entities, are required to prepare and present to incumbent LECs requests for services to resell. We do not establish guidelines for the content of these requests. Such requests may involve legal, engineering, and accounting skills. Resellers may also have to engage in arbitration proceedings with incumbent LECs if voluntary negotiations resulting from the initial request fail to yield an agreement. This may involve legal and general negotiation skills. Where a reseller is negotiating or arbitrating with an incumbent LEC, the reseller may choose to offer arguments concerning economic and accounting data presented by state commissions or incumbent LECs. Resellers may also choose to make legal and economic arguments that certain resale restrictions are unreasonable. These tasks may require legal, economic, and accounting skills.

946. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. As set forth in Section VIII.B, above, our decision to adopt clear national rules should reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. Moreover, our decision not to impose eligibility requirements on resellers should minimize regulatory burdens for resellers. We reject proposals that the Commission not require resale of bundled service offerings, promotions and discounts lasting longer than 90 days, residential service, and services offered at rates below cost for reasons set forth in Section VIII.A.

947. As discussed in Section VIII.B, we expect that the opportunity to resell telecommunications services currently offered exclusively by incumbent LECs will lead to increased competition in the provision of telecommunications services. We also determine that non-cost-based factors shall not be considered when arriving at wholesale discounts, and we reject the argument that indirect costs should not be considered avoided costs. We also reject proposals that we either require or forbid a state to include a measure of profit in its avoided cost calculation. As set forth in Section VIII.B, we considered the concerns of small incumbent LECs and small entity resellers when adopting the default range for wholesale discounts. In addition, we allow a state to consider including in wholesale rates the costs that incumbent LECs incur in selling services on a wholesale basis, which may minimize the economic impact for small incumbent LECs.

948. As discussed in Section VIII.C, we remove obstacles faced by small businesses in reselling telecommunications services by establishing a presumption, applicable to incumbent and non-incumbent LECs, that most restrictions on resale are unreasonable. This presumption should reduce unnecessary burdens on resellers, which may include small entities. It may also produce increased opportunities for resale competition, which may be expected to be beneficial for some small entities and small incumbent LECs. We do not permit state commissions to require non-incumbent LECs to offer their services at wholesale rates for the reasons set forth in Section VIII.D. For the reasons discussed in Section VIII.C, above, we decline to forbear from the application of section 251(b)(1) to non-incumbent LECs. We also conclude that incumbent LECs are to continue to receive access charge revenues when local services are resold under section 251(c)(4) for reasons set forth in Section VIII.E, and that such access services are not subject to resale at wholesale rates for reasons set forth in Section VIII.A.

Summary Analysis of Section IX—Duties Imposed on "Telecommunications Carriers" by Section 251(a)

949. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Small entities that provide telecommunications services are subject to the same obligations imposed on all telecommunications carriers under section 251(a)(1) and section 251(a)(2), and any reporting requirements that attend such obligations. Among these duties is the duty to interconnect, directly or indirectly, with requesting

telecommunications carriers. (Section IX—Duties Imposed on "Telecommunications Carriers" By Section 251(a).) This will likely require small entities to comply with the technical, economic, and legal requirements involved with interconnection, including negotiating contracts, utilizing engineering studies, and adding operational capacity. (Id.) Small incumbent LECs may incur similar compliance requirements to the extent they are required to interconnect with entities that qualify as "telecommunications carriers."

950. Small incumbent LECs and small entities providing telecommunications services will also be under a duty not to install network features, functions, and capabilities that do not comply with standards and guidelines under sections 255 and 256. (Section IX—Duties Imposed on "Telecommunications Carriers" By Section 251(a)(2).) In addition, small entities that provide both information services and telecommunications services are classified as telecommunications carriers and are subject to certain requirements under 251(a). (Section IX—Duties Imposed on "Telecommunications Carriers" By Section 251(a)(2).)

951. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. Small entities who provide for a fee local, interexchange and international services are defined as telecommunications carriers and, thus, also receive the benefits of section 251 including interconnection, services, and network elements, which may increase their ability to compete. (Section IX—Duties Imposed on "Telecommunications Carriers" By Section 251(a)(2).) We reject the suggestion that CMRS providers, some of which likely are small entities, should not be included in the definition of a "telecommunications carrier." (Id.) We determine that entities operating private, internal or shared communications networks do not qualify as telecommunications carriers, however, which excludes them from the obligations and benefits under section 251(a). Small entities providing information services but not telecommunications services are also not classified as telecommunications carriers and, thus, will not be bound by the duties of section 251(a). A carrier that provides both information and telecommunications services is deemed subject to the requirements of section 251(a). We also conclude that telecommunications carriers that have interconnected under either section 251(a)(1) or 251(c)(2) may offer information services through the same arrangement or agreement. This will permit new entrants, many of which may be small entities, to offer full ranges of services to end users without having to provide some of those services inefficiently through distinct facilities or agreements.

952. We decide that competitive telecommunications carriers that have the obligation to interconnect with requesting carriers may choose, based upon their own characteristics, whether to allow direct or indirect interconnection. (Section IX—Duties Imposed on "Telecommunications Carriers" By Section 251(a).) This should allow significant flexibility for small entities to choose the most efficient and economical arrangement for their particular strategy. As set forth in Section IX, we reject an argument to forbear, under section 10 of the Communications Act, from imposing any interconnection requirements on non-dominant carriers.

Summary Analysis of Section X—Commercial Mobile Radio Services

953. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. We are applying sections 251 and 252 to LEC-CMRS interconnection at this time. (Section X.D—Jurisdictional Authority for Regulation of LEC-CMRS Interconnection Rates.) We may revisit our determination not to invoke jurisdiction under section 332 to regulate LEC-CMRS interconnection rates if we determine that the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers, many of which may be small entities, in obtaining interconnection on terms and conditions that are just, reasonable, and nondiscriminatory.

954. Pursuant to our findings in Section X.D, a small CMRS entity seeking to enter into a reciprocal compensation agreement with an incumbent LEC, which may be a small incumbent LEC, will have to comply with sections 251 and 252, and state law. The reporting, recordkeeping, and other compliance requirements associated with reciprocal compensation are summarized in the following section concerning obligations under section 251(b).

955. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. The Commission's actions may minimize the economic impact on CMRS providers, many of which are small entities, by declaring that CMRS providers are not required to comply with the obligations of LECs under section 251(b)(5). We decline to adopt the alternative of finding that a CMRS provider is a LEC for the reasons set forth in Section X.A. We also determine that CMRS providers are entitled to request reciprocal compensation under section 251(b)(5), and that certain CMRS providers are also entitled to request interconnection under section 251(c)(2). As discussed in the following section concerning obligations under section 251(b), these decisions may permit small entity CMRS providers the opportunity to considerably expand their businesses.

Summary Analysis of Section XI—Obligations Imposed on LECS by 251(b)

A. Reciprocal Compensation for Transport and Termination of Telecommunications

956. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. All local exchange carriers, including small incumbent LECs and perhaps some small entities offering competing local exchange services, have a duty to establish reciprocal compensation for the transport and termination of local telecommunications traffic, as defined by state commissions. As such, small incumbent LECs and small entities offering competitive local exchange services may be required to measure the exchange of traffic, and to bill and collect payment from other carriers. (Section XI.A—Reciprocal Compensation for Transport and Termination of Telecommunications.) Reciprocal compensation for the transport and termination of traffic may be based on the incumbent LEC's cost studies, which may require small incumbent LECs to use economic skills to perform cost studies. To the extent that a competing provider of local exchange services, which may include a small entity, believes its costs for the transportation and termination of traffic differ from those of the incumbent LEC, it would also be required to provide a forward-looking, economic cost study. (Id.)

957. If a CMRS provider entered into an agreement with an incumbent LEC prior to August 8, 1996 that does not provide for mutual compensation, the CMRS provider may demand to renegotiate the agreement. This may impose the burden of re-negotiation on small incumbent LECs, which may require legal, accounting, and economic skills. In addition, pending the successful completion of negotiation or arbitration, symmetrical reciprocal

compensation shall apply, which may have the effect of raising the amount small incumbent LECs currently pay CMRS providers to terminate LEC-originated traffic. This may have the effect of increasing small incumbent LECs' costs. Finally, a state commission may impose bill-and-keep arrangements between carriers if the state commission determines that the amount of local telecommunications traffic from one network to the other is approximately equal to the amount of local telecommunications traffic flowing in the opposite directions, and is expected to remain thus. This could have the effect of reducing small incumbent LECs' revenues and decreasing the expenses of small entities. It also might place a burden on small entities and small incumbent LECs of establishing that traffic volumes are imbalanced, which might require accounting, economic, and legal skills.

958. We require paging companies seeking to recover fees for terminating local calls to demonstrate to the state the costs of terminating such calls. (Section XI.A.—Reciprocal Compensation for Transport and Termination of Traffic.) Consequently, small entity paging companies and possibly small incumbent LECs may be required to use legal, economic, and possibly accounting skills.

959. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. Our adoption of national default price ceilings and ranges for transportation and termination of local traffic being arbitrated by the states should provide all parties, including small incumbent LECs and many new entrant small entities, with a clear understanding of the terms and conditions that will govern should they fail to reach an agreement. This should minimize regulatory burdens and economic impacts for those companies, in part by reducing the transaction costs of arbitration. (Section XI.A.3.c.(4)—Default Proxies.) Permitting CMRS providers with non-reciprocal agreements to renegotiate their agreements, and imposing symmetrical reciprocal compensation pending completion of negotiation or arbitration, will provide all parties with certainty as to applicable rates as of the date of this order, and minimize litigation and regulatory costs. We believe this decision is consistent with the pro-competitive goals of the 1996 Act.

960. We define transport and termination as separate functions—each with its own cost calculation for the purposes of sections 251 and 252. This definition may permit interconnecting carriers, including small entities, to obtain transport and termination services at lower rates and avoid paying above-cost rates or rates for unneeded services. (Section XI.A.2—Definition of Transport and Termination of Telecommunications.) We also conclude that a LEC may not charge a CMRS provider or other carrier, which may be a small entity, for receiving and terminating LEC-originated traffic. (Section XI.A.4—Symmetry.) We do not permit interexchange carriers to use transport and termination services to avoid the obligation to pay access charges for terminating interexchange traffic with incumbent LECs. (Section XI.A.2—Definition of Transport and Termination of Telecommunications.)

961. Our decision to permit new entrants to base reciprocal compensation arrangements on incumbent LECs' cost studies may reduce barriers to entry by permitting competing LECs to avoid performing their own forward-looking, economic cost studies, which may be expected to reduce the overall burdens and minimize the economic impact of regulation on these small entities. (Section XI.A.4—Symmetry.) The ability of state commissions to impose bill and keep arrangements where the costs of terminating traffic are nearly symmetrical, traffic volume is roughly balanced, and both are expected to remain so, may allow small entities and small incumbent LECs to avoid the cost of measuring traffic exchange. (Section XI.A.5—Bill and Keep.) For the reasons set forth in Section XI.A.5 above, we reject the proposed alternative of permitting states to adopt bill-and-keep arrangements for the transport and termination of traffic where the cost of terminating traffic is not nearly symmetrical.

962. By requiring that rates for transport and termination be cost based, we believe that all parties in telecommunications markets, including small incumbent LECs and small entities, may benefit from increased opportunities to compete effectively in local exchange markets. (Section XI.A.3—Pricing Methodology.) In addition, we conclude that termination rates for LECs, including small incumbent LECs, should include an allocation of forward-looking common costs, but not an element for the recovery of lost contributions. These decisions may be expected to minimize the economic impact of our decisions on small incumbent LECs and small entities.

963. This Order eliminates certain charges paging companies may now be assessed by LECs and enables paging companies to claim new revenues from LECs for terminating paging calls. (Section XI.A—Reciprocal Compensation for Transport and Termination of Telecommunications.) Paging companies, including small entities, may thereby incur lower costs. Such entities also may increase their revenues, depending on the outcome of any proceedings concerning their termination costs. For the reasons set forth in Section XI.A.3 above, we cannot conclude, at this time, that a LEC's forward looking costs may be used as a reasonable proxy for the costs of call termination by paging providers. We further conclude that the default price for termination of traffic from the end office that we adopt in this proceeding in Section XI.A.3 above does not apply to termination of traffic by paging providers. This default price is based on estimates in the record of the costs to LECs of termination from the end office or end-office switching.

B. Access to Rights-of-Way

964. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Small incumbent LECs that meet the definition of a utility (The Act defines "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communication.") and own poles, ducts, conduits and rights-of-way where access was not previously mandated are now required to provide access to requesting telecommunications carriers (other than incumbent LECs and cable television systems) which may require the use of legal, engineering, and accounting resources for evaluation and processing of attachment requests. (Section XI.B.2—Section 224(f): Non-discriminatory Access.) This may also require small incumbent LECs and small entities to employ technical personnel to modify pole attachment arrangements.

965. A complaint of unjustified denial of access must be supported by a written request for access, the utility's response, and information supporting the complainant's position. This will likely impose some recordkeeping requirements on small incumbent LECs and small entities seeking access to rights-of-way. Our requirements may also impose administrative requirements, including legal and engineering expertise, on small governmental jurisdictions (Under the Regulatory Flexibility Act, a "small governmental jurisdiction" is one type

of "small entity," and is defined as the "governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand * * *." 5 U.S.C. 601(5).) that resolve disputes arising under section 224 of the Communications Act. (Section XI.B.5.c.2—Dispute Resolution.) In addition, small governmental jurisdictions that have established rules and regulations for access to poles, ducts and conduits specifically, and interconnection generally, are also likely to have some level of reporting and recordkeeping requirements for competing telecommunications carriers that use the poles, some of which may be small entities. (Section XI.B.6—Reverse Preemption.)

966. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. In placing the burden of proof on the denying utility with respect to the propriety of a denial of access, we recognize that new entrants, which may be small entities, are not likely to have access to such information without cooperation from the utilities. Complaints should not be dismissed where the petitioner was unable to obtain a written response from the denying utility, or where the utility also denied the petitioner any relevant information needed to establish a prima facie case. These provisions should allow an entrant to pursue a claim without the need for expensive discovery, and should not preclude or discourage entities with limited resources from seeking redress where access is denied. (Section XI.B.5—Dispute Resolution.) For the reasons set forth in Section XI.B.5, we reject the recommendation that an applicant be allowed to seek injunctive relief in federal court and select federal jurisdiction for enforcement or appeal of any matter regarding pole attachments. Our conclusion that state and local pole attachment requirements are presumed reasonable may minimize burdens on small governmental jurisdictions by preserving existing rules and procedures, and the local government's expertise with its own rules. (Section XI.B.2—Specific Rules.) In reaching this result, we reject the alternative of invalidating such state regulations in favor of federal rules for the reasons stated in Section XI.B.2. Our determination not to prescribe numerous specific rules in this area recognizes the varying technologies and facilities deployed by incumbent LECs, including small incumbent LECs. For example, we recognize that utilities, including small incumbent LECs, normally have their own operating standards that dictate conditions of access. Thus, we leave in place such conditions of access. For the reasons set forth in Section XI.B, we reject the alternative of prescribing a comprehensive set of substantive engineering standards governing access to rights-of-way.

967. When an attaching entity modifies poles for its use, it will be entitled to recover a share of its expenses from any later-attaching entities. (Section XI.B.4—Modifications.) This should permit attaching entities that modify poles, some of which may be small entities, to bear only their proportionate costs and prevent them from effectively subsidizing their later-entering competitors. The requirement that utilities provide attaching entities with 60 days' notice prior to commencing modifications to any pole, duct or conduit should provide attaching entities, some of which may be small entities, with sufficient time to evaluate the impact of the proposed modification on their interests and to plan and coordinate any modifications to their own attachments. (Id.)

C. Imposing Additional Obligations on LECs

968. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Our decisions in this section of the Order do not subject any small entities to reporting, recordkeeping or other compliance requirements.

969. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. The determination that the 1996 Act does not permit the particular obligations for incumbent LECs set forth in section 251(c) to be imposed on non-incumbent carriers, absent a finding by the Commission under section 251(h)(2), should limit potential burdens on new entrants, including small entities. (Section XI.C—Imposing Obligations on LECs.)

Summary Analysis of Section XII—Exemptions, Suspensions and Modifications of Section 251 Requirements

970. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Section 251(f)(1) grants rural telephone companies, which may be small incumbent LECs, an exemption from the requirements of section 251(c) (which only apply to incumbent LECs) until the rural telephone company has received a bona fide request for interconnection, services, or network elements, and the state determines that the exemption should be terminated. Section 251(f)(2) provides that LECs with fewer than two percent of the nation's subscriber lines may petition a state commission for a suspension or modification of any requirements of sections 251(b) and 251(c). The latter provision, section 251(f)(2), is available to all LECs including competitive LECs, which may be small entities.

971. After a carrier has made a bona fide request under Section 251, a rural telephone company, which may be a small incumbent LEC, seeking to retain its exemption under section 251(f)(1) must prove to the state commission that it should retain its exemption. To remove the exemption, a state commission must find that the bona fide interconnection request is not unduly economically burdensome, is technically feasible, and is consistent with section 254. The parties involved in such a proceeding may need to use legal, accounting, economic and/or engineering services. A small incumbent LEC or a competitive LEC, which may be a small entity, seeking under 251(f)(2) to modify or suspend the national interconnection requirements imposed by section 251(b) or 251(c) bears the burden of proving that interconnection would: (1) create a significant adverse economic impact on telecommunications users; (2) be unduly economically burdensome; or (3) be technically infeasible.

972. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. As set forth in Section XII above, the determination whether a section 251(f) exemption, suspension, or modification should be continued or granted lies primarily with the relevant state commission. By largely leaving this determination to the states, our decisions permit this fact-specific inquiry to be administered in a manner that minimizes regulatory burdens and the economic impact on small entities and small incumbent LECs. However, to further minimize regulatory burdens and minimize the economic impact of our decision, we adopt several rules as set forth in Section XII above, which may facilitate the efficient resolution of such inquiries, provide guidance, and minimize uncertainty. As set forth in Section XII above, we find that the rural LEC or smaller LEC must prove to the state commission that the financial harm shown to justify an exemption, suspension, or modification would be greater than the harm that might

typically be expected as a result of competition. Finally, we conclude that section 251(f) adequately provides for varying treatment for smaller or rural LECs where such variances are justified. As a result, we expect that section 251(f) will significantly minimize regulatory burdens and economic impacts from the rules adopted in this Order.

Summary Analysis of Section XIII—Advanced Telecommunications Capabilities

973. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Our decision to defer consideration of rules in this section of the Order does not subject any small entities or small incumbent LECs to reporting, recordkeeping or other compliance requirements.

974. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. We do not anticipate that our decision to defer consideration of rules in this section of the Order will have any economic impact on small entities or small incumbent LECs.

Summary Analysis of Section XIV—Provisions of Section 252

A. Section 252(e)(5)

975. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Pursuant to section 252(b)(1), a party to negotiation may petition a state commission to arbitrate any open issues. Small entities and small incumbent LECs negotiating interconnection agreements may, therefore, participate in state arbitration in order to obtain an interconnection agreement, which may impose significant legal costs. (Section XIV.A—Section 252(e)(5).) Section 252(e)(5) requires the Commission to assume the state's responsibility under section 252 if the state "fails to act to carry out its responsibility" under the section. We require an aggrieved party, which may be a small entity or a small incumbent LEC, to notify the FCC that a state commission has failed to act under section 252 by filing a detailed written petition, backed by affidavit. As set forth above in Section XIV.A, if the Commission, following a notice and comment period, determines that the state has failed to act, the Commission will assume authority under section 252(e)(5) and mediate or arbitrate the dispute. This process may also entail significant legal expertise.

976. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. In this Order, the Commission adopts a minimum set of rules that will provide notice of the standards and procedures that the Commission will use if it has to assume the responsibility of a state commission under section 252(e)(5). These rules should benefit small entities and small incumbent LECs by limiting uncertainty and minimizing transaction costs associated with the arbitration process. (Section XIV.A—Section 252(e)(5).)

977. The Commission concludes that, if it arbitrates agreements, it will use a "final offer" arbitration method, whereby each party to the arbitration proposes its best and final offer, and the arbitrator chooses between the proposals. The arbitrator may choose either proposal in its entirety, or could choose different parties' proposals on an issue-by-issue basis. This method of arbitration should minimize the economic impact on small entities and small incumbent LECs by reducing the transaction costs associated with arbitration. Our rules should also encourage parties, to negotiate after offers are submitted which should provide additional flexibility for parties including small entities and small incumbent LECs, to agree to a resolution tailored to their interests. (Section XIV.A—Section 252(e)(5).)

978. For the reasons set forth above in Section XIV.A, we reject the alternative of adopting national rules governing state arbitration procedures. We believe the states are in a better position to develop mediation and arbitration rules that support the objectives of the 1996 Act. States may develop specific measures that best address the concerns of small entities and small incumbent LECs participating in mediation or arbitration.

979. As set forth above in Section XIV.A, we reject the suggestion that the Commission return jurisdiction over an arbitration to the state commission. We further reject the argument that, once the Commission has mediated or arbitrated an agreement, the agreement must be submitted to the state commission for approval under state law. We decline to adopt the alternative suggested by some parties that, if the Commission steps into the state commission role, it is bound by state laws and standards that would have applied to the state commission. (Section XIV.A—Section 252(e)(5).).

980. As explained above in Section XIV.A, we also reject the alternative that an arbitrated agreement not be binding on the parties. Finally, we reject the alternative of opening the arbitration process to all third parties, which should minimize the costs involved in such proceedings.

B. Requirements of Section 252(i)

981. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Our decisions in this section of the Order do not subject any small entities to reporting, recordkeeping or other compliance requirements. Incumbent LECs, including small incumbent LECs, are required to file with state commissions all interconnection agreements entered into with other carriers, including adjacent incumbent LECs. Incumbent LECs must also permit third parties to obtain any individual interconnection, service or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252. Moreover, incumbent LECs must prove with specificity that terms and conditions contained in filed agreements are legitimately related to the purchase of the individual element or service being sought. Incumbent LECs must provide "most favored nation" status with regard to subsequent carriers regardless of whether they include "most favored nation" clauses in their agreements. Complying with these requirements may require small incumbent LECs and requesting small entities to use legal and negotiation skills.

982. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. Our decision to adopt national standards to implement section 252(i) should minimize the economic impact of our decision on both small entities and small incumbent LECs by expediting the resolution of disputes, thereby reducing transaction costs associated with interconnection. Our decision that section 252(i) permits requesting carriers to choose among individual provisions contained in publicly-filed interconnection agreements should minimize the economic impact for small new entrants by permitting them to obtain the provisions they desire without having to adopt entire agreements that would not reflect their costs or the specific technical characteristics of their networks. (Section XIV.B—Section 252(i).) Moreover, small entities may be able to obtain the same terms and conditions of agreements reached by larger carriers that possess greater bargaining power without having to incur the costs of negotiation and/or arbitration.

983. We also determine that publicly-filed agreements need only be made available to carriers who cause

incumbent LECs to incur no greater costs than did the original carrier, which should minimize the economic impact on small incumbent LECs. We also minimize the regulatory burden for small entities and small incumbent LECs by finding that a new entrant seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain access to agreements on an expedited basis.

984. As set forth above, we conclude that section 252(i) permits differential treatment of carriers based on differences in the costs of serving those carriers, but does not permit incumbent LECs to limit the availability of interconnection, services, or network elements only to those requesting carriers serving a comparable class of subscribers or providing the same service as the original party to the agreement. (Section XIV—Section 252(i).) These decisions should minimize the impact on small entities by preventing discrimination and enabling them to obtain the same terms and conditions as larger carriers that possess greater bargaining power. For the reasons set forth in Section XIV, we reject the interpretation favored by commenters arguing that new entrants should not be able to choose among provisions of interconnection agreements filed with state commissions.

E. Report to Congress

985. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

XVI. Ordering Clauses

986. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 201–209, 214, 218, 224, 251, 252, and 303(r) of the Communications Act of 1934, as amended, and Section 601 of the Telecommunications Act of 1996, 47 U.S.C. 151–154, 201–209, 214, 218, 224, 251, 252, 303(r), the Report and order is adopted, effective September 30, 1996. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

987. *It is further ordered* that Part 51 of the Commission's rules, 47 CFR § 51 is Added as set forth below.

988. *It is further ordered* that, to the extent issues from CC Docket No. 95–185, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers*, are resolved here, we incorporate the relevant portions of the record in that docket.

989. *It is further ordered* that, to the extent issues from CC Docket No. 91–346, *In the Matter of Intelligent Networks*, are resolved here, we incorporate the relevant portions of the record in that docket.

990. *It is further ordered*, light of the United States Court of Appeals for the District of Columbia Circuit in *Pacific Bell* v. *FCC*, 81 F.3d 1147 (D.C. Cir. 1996) (table) and the Telecommunications Act of 1996, that the rules and policies adopted in *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91–141, 9 FCC Rcd 5154 (1994), shall remain in effect.

List of Subjects

47 CFR Part 1

Access to rights of way, Telecommunications.

47 CFR Part 20

Communications common carriers, Interconnection.

47 CFR Part 51

Collocation, Communications common carriers, Interconnection, Network elements, Pricing standard, Proxies, Reciprocal compensation, Resale, Transport and termination.

47 CFR Part 90

Common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 1, 20, 51 and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 251, 252, 303, and 309(j) unless otherwise noted.

2. Section 1.1401 is revised to read as follows:

§ 1.1401 Purpose.

The rules and regulations contained in subpart J of this part provide complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are just and reasonable.

3. Section 1.1402 is amended by revising paragraph (d) to read as follows:

§ 1.1402 Definitions.

* * * * *

(d) The term *complaint* means a filing by a cable television system operator, a cable television system association, a utility, an association of utilities, a telecommunications carrier, or an association of telecommunications carriers alleging that it has been denied access to a utility pole, duct, conduit, or right-of-way in violation of this subpart and/or that a rate, term, or condition for a pole attachment is not just and reasonable.

* * * * *

4. Section 1.1403 is revised to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay.

(a) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this obligation, a utility may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

(b) Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(c) A utility shall provide a cable television system operator or telecommunications carrier no less than 60 days written notice prior to:

(1) Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the cable television system operator's of telecommunications carrier's pole attachment agreement;

(2) Any increase in pole attachment rates; or

(3) Any modification of facilities other than routine maintenance or modification in response to emergencies.

(d) A cable television system operator or telecommunications carrier may file a "Petition for Temporary Stay" of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by § 1.1404(b). The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.5. Section 1.1404 is amended by revising paragraphs (b) and (c) and by adding new paragraph (k) to read as follows:

§ 1.1404 Complaint.

* * * * *

(b) The complaint shall be accompanied by a certification of service on the named respondent, and each of the Federal, State, and local governmental agencies that regulate any aspect of the services provided by the complainant or respondent.

(c) In a case where it is claimed that a rate, term, or condition is unjust or unreasonable, the complaint shall contain a statement that the State has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments. The complaint shall include a statement that the utility is not owned by any railroad, any person who is cooperatively organized or any person owned by the Federal Government or any State.

* * * * *

(k) In a case where a cable television system operator or telecommunications carrier claims that it has been denied access to a pole, duct, conduit or right-of-way despite a request made pursuant to section 47 U.S.C. § 224(f), the complaint shall be filed within 30 days of such denial. In addition to meeting the other requirements of this section, the complaint shall include the data and information necessary to support the claim, including:

(1) The reasons given for the denial of access to the utility's poles, ducts, conduits and rights-of-way;

(2) The basis for the complainant's claim that the denial of access is improper;

(3) The remedy sought by the complainant;

(4) A copy of the written request to the utility for access to its poles, ducts, conduits or rights-of-way; and

(5) A copy of the utility's response to the written request including all information given by the utility to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a utility's written response, or if the utility denies the complainant any other information needed to establish a *prima facie* case.

6. Section 1.1409 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(b) The complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. § 224(f). If, however, a utility argues that the proposed rate is lower than its incremental costs, the utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the utility shall have the burden of proving that the denial was lawful, once a *prima facie* case is established by the complainant.

* * * * *

(d) The Commission shall deny the complaint if it determines that the complainant has not established a *prima facie* case, or that the rate, term or condition is just and reasonable, or that the denial of access was lawful.

* * * * *

7. Section 1.1416 is amended by revising the section-heading and paragraph (b) to read as follows:

§ 1.1416 Imputation of rates; modification costs.

* * * * *

(b) The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification as provided in subpart J of this part, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

PART 20—COMMERCIAL MOBILE RADIO SERVICES

8. The authority citation for part 20 is revised to read as follows:

Authority: Secs. 4, 251–2, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251–4, 303, and 332 unless otherwise noted.

9. Section 20.11 is amended by adding paragraph (c) to read as follows:

§ 20.11 Interconnection to facilities of local exchange carriers.

* * * * *

(c) Local exchange carriers and commercial mobile radio service providers shall also comply with applicable provisions of part 51 of this chapter.

* * * * *

10. A new part 51 is added to read as follows:

PART 51—INTERCONNECTION

Subpart A—General Information

Sec.
51.1 Basis and purpose.
51.3 Applicability to negotiated agreements.
51.5 Terms and definitions.

Subpart B—Telecommunications Carriers

51.100 General duty.

Subpart C—Obligations of All Local Exchange Carriers

51.201 Resale.
51.203 Number portability.
51.219 Access to rights of way.
51.221 Reciprocal compensation.
51.223 Application of additional requirements.

Subpart D—Additional Obligations of Incumbent Local Exchange Carriers

51.301 Duty to negotiate.
51.303 Preexisting agreements.
51.305 Interconnection.
51.307 Duty to provide access on an unbundled basis to network elements.

51.309 Use of unbundled network elements.
51.311 Nondiscriminatory access to unbundled network elements.
51.313 Just, reasonable and nondiscriminatory terms and conditions for the provision of unbundled network elements.
51.315 Combination of unbundled network elements.
51.317 Standards for identifying network elements to be made available.
51.319 Specific unbundling requirements.
51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.
51.323 Standards for physical collocation and virtual collocation.

Subpart E—Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act

51.401 State authority.
51.403 Carriers eligible for suspension or modification under section 251(f)(2) of the Act.
51.405 Burden of proof.

Subpart F—Pricing of Elements

51.501 Scope.
51.503 General pricing standard.
51.505 Forward-looking economic cost.
51.507 General rate structure standard.
51.509 Rate structure standards for specific elements.
51.511 Forward-looking economic cost per unit.
51.513 Proxies for forward-looking economic cost.
51.515 Application of access charges.

Subpart G—Resale

51.601 Scope of resale rules.
51.603 Resale obligation of all local exchange carriers.
51.605 Additional obligations of incumbent local exchange carriers.
51.607 Wholesale pricing standard.
51.609 Determination of avoided retail costs.
51.611 Interim wholesale rates.
51.613 Restrictions on resale.
51.615 Withdrawal of services.
51.617 Assessment of end user common line charge on resellers.

Subpart H—Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic

51.701 Scope of transport and termination pricing rules.
51.703 Reciprocal compensation obligation of LECs.
51.705 Incumbent LECs' rates for transport and termination.
51.707 Default proxies for incumbent LECs' transport and termination rates.
51.709 Rate structure for transport and termination.
51.711 Symmetrical reciprocal compensation.
51.713 Bill-and-keep arrangements for reciprocal compensation.
51.715 Interim transport and termination pricing.
51.717 Renegotiation of existing non-reciprocal arrangements.

Subpart I—Procedures for Implementation of Section 252 of the Act

51.801 Commission action upon a state commission's failure to act to carry out its responsibility under section 252 of the Act.
51.803 Procedures for Commission notification of a state commission's failure to act.
51.805 The Commission's authority over proceedings and matters.
51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.
51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.

Authority: Sections 1–5, 7, 201–05, 218, 225–27, 251–54, 271, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 225–27, 251–54, 271, unless otherwise noted.

Subpart A—General Information

§ 51.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement sections 251 and 252 of the Communications Act of 1934, as amended, 47 U.S.C. 251 and 252.

§ 51.3 Applicability to negotiated agreements.

To the extent provided in section 252(e)(2)(A) of the Act, a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of this part.

§ 51.5 Terms and definitions.

Terms used in this part have the following meanings:

Act. The Communications Act of 1934, as amended.

Advanced intelligent network. "Advanced Intelligent Network" is a telecommunications network architecture in which call processing, call routing, and network management are provided by means of centralized databases located at points in an incumbent local exchange carrier's network.

Arbitration, final offer. "Final offer arbitration" is a procedure under which each party submits a final offer concerning the issues subject to arbitration, and the arbitrator selects, without modification, one of the final offers by the parties to the arbitration or portions of both such offers. "Entire package final offer arbitration," is a procedure under which the arbitrator must select, without modification, the entire proposal submitted by one of the parties to the arbitration. "Issue-by-issue final offer arbitration," is a procedure under which the arbitrator must select, without modification, on an issue-by-issue basis, one of the proposals submitted by the parties to the arbitration.

Billing. "Billing" involves the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgements and status reports. It also involves the exchange of information between telecommunications carriers to process claims and adjustments.

Commercial Mobile Radio Service (CMRS). "CMRS" has the same meaning as that term is defined in § 20.3 of this chapter.

Commission. "Commission" refers to the Federal Communications Commission.

Directory assistance service. "Directory assistance service" includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

Directory listings. "Directory listings" are any information:

(1) Identifying the listed names of subscribers of a telecommunications carrier and such subscriber's telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and

(2) That the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Downstream database. A "downstream database" is a database owned and operated by an individual carrier for the purpose of providing number portability in conjunction with other functions and services.

Equipment necessary for interconnection or access to unbundled network elements. For purposes of section 251(c)(2) of the Act, the equipment used to interconnect with an incumbent local exchange carrier's network for the transmission and routing of telephone exchange service, exchange access service, or both. For the purposes of section 251(c)(3) of the Act, the equipment used to gain access to an incumbent local exchange carrier's unbundled network elements for the provision of a telecommunications service.

Incumbent Local Exchange Carrier (Incumbent LEC). With respect to an area, the local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2)(i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this chapter; or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2)(i) of this section.

Interconnection. "Interconnection" is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

Local Exchange Carrier (LEC). A "LEC" is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of the such term.

Maintenance and repair. "Maintenance and repair" involves the exchange of information between telecommunications carriers where one initiates a request for maintenance or repair of existing products and services or unbundled network elements or combination thereof from the other with attendant acknowledgements and status reports.

Meet point. A "meet point" is a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

Meet point interconnection arrangement. A "meet point interconnection arrangement" is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.

Network element. A "network element" is a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

Operator services. "Operator services" are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Such services include, but are not limited to, busy line verification, emergency interrupt, and operator-assisted directory assistance services.

Physical collocation. "Physical collocation" is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

(1) Place its own equipment to be used for interconnection or access to unbundled network elements within or upon an incumbent LEC's premises;

(2) Use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service;

(3) Enter those premises, subject to reasonable terms and conditions, to install, maintain, and repair equipment necessary for interconnection or access to unbundled elements; and

(4) Obtain reasonable amounts of space in an incumbent LEC's premises, as provided in this part, for the equipment necessary for interconnection or access to unbundled elements, allocated on a first-come, first-served basis.

Premises. "Premises" refers to an incumbent LEC's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.

Pre-ordering and ordering. "Pre-ordering and ordering" includes the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof.

Provisioning. "Provisioning" involves the exchange of information between telecommunications carriers where one executes a request for a set of products and services or unbundled network elements or combination thereof from the other with attendant acknowledgements and status reports.

Rural telephone company. A "rural telephone company" is a LEC operating entity to the extent that such entity:

(1) Provides common carrier service to any local exchange carrier study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(2) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(3) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(4) Has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

Service control point. A "service control point" is a computer database in the public switched network which contains information and call processing instructions needed to process and complete a telephone call.

Service creation environment. A "service creation environment" is a computer containing generic call processing software that can be programmed to create new advanced intelligent network call processing services.

Signal transfer point. A "signal transfer point" is a packet switch that acts as a routing hub for a signaling network and transfers messages between various points in and among signaling networks.

State commission. A "state commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers. As referenced in this part, this term may include the Commission if it assumes the responsibility of the state commission, pursuant to section 252(e)(5) of the Act. This term shall also include any person or persons to whom the state commission has delegated its authority under section 251 and 252 of the Act.

State proceeding. A "state proceeding" is any administrative proceeding in which a state commission may approve or prescribe rates, terms, and conditions including, but not limited to, compulsory arbitration pursuant to section 252(b) of the Act, review of a Bell operating company statement of generally available terms pursuant to section 252(f) of the Act, and a proceeding to determine whether to approve or reject an agreement adopted by arbitration pursuant to section 252(e) of the Act.

Technically feasible. Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to

unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

Telecommunications carrier. A "telecommunications carrier" is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of the Act). A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. This definition includes CMRS providers, interexchange carriers (IXCs) and, to the extent they are acting as telecommunications carriers, companies that provide both telecommunications and information services. Private Mobile Radio Service providers are telecommunications carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.

Virtual collocation. "Virtual collocation" is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

(1) Designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon an incumbent LEC's premises, and dedicated to such telecommunications carrier's use;

(2) Use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or for access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service; and

(3) Electronically monitor and control its communications channels terminating in such equipment.

Subpart B—Telecommunications Carriers

§ 51.100 General duty.

(a) Each telecommunications carrier has the duty:

(1) To interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) To not install network features, functions, or capabilities that do not comply with the guidelines and standards as provided in the Commission's rules or section 255 or 256 of the Act.

(b) A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

Subpart C—Obligations of All Local Exchange Carriers

§ 51.201 Resale.

The rules governing resale of services by an incumbent LEC are set forth in subpart G of this part.

§ 51.203 Number portability.

The rules governing number portability are set forth in part 52, subpart C of this chapter.

§ 51.219 Access to rights of way.

The rules governing access to rights of way are set forth in part 1, subpart J of this chapter.

§ 51.221 Reciprocal compensation.

The rules governing reciprocal compensation are set forth in subpart H of this part.

§ 51.223 Application of additional requirements.

(a) A state may not impose the obligations set forth in section 251(c) of the Act on a LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of the Act, unless the Commission issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs.

(b) A state commission, or any other interested party, may request that the Commission issue an order declaring that a particular LEC be treated as an incumbent LEC, or that a class or category of LECs be treated as incumbent LECs, pursuant to section 251(h)(2) of the Act.

Subpart D—Additional Obligations of Incumbent Local Exchange Carriers

§ 51.301 Duty to negotiate.

(a) An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251(b) and (c) of the Act.

(b) A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(1) Demanding that another party sign a nondisclosure agreement that precludes such party from providing information requested by the Commission, or a state commission, or in support of a request for arbitration under section 252(b)(2)(B) of the Act;

(2) Demanding that a requesting telecommunications carrier attest that an agreement complies with all provisions of the Act, federal regulations, or state law;

(3) Refusing to include in an arbitrated or negotiated agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules;

(4) Conditioning negotiation on a requesting telecommunications carrier first obtaining state certifications;

(5) Intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) Refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to:

(i) Refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer; and

(ii) Refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

§ 51.303 Preexisting agreements.

(a) All interconnection agreements between an incumbent LEC and a telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the appropriate state commission for approval pursuant to section 252(e) of the Act.

(b) Interconnection agreements negotiated before February 8, 1996, between Class A carriers, as defined by § 32.11(a)(1) of this chapter, shall be filed by the parties with the appropriate state commission no later than June 30, 1997, or such earlier date as the state commission may require.

(c) If a state commission approves a preexisting agreement, it shall be made available to other parties in accordance with section 252(i) of the Act and § 51.809 of this part. A state commission may reject a preexisting agreement on the grounds that it is inconsistent with the public interest, or for other reasons set forth in section 252(e)(2)(A) of the Act.

§ 51.305 Interconnection.

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) At any technically feasible point within the incumbent LEC's network including, at a minimum:

(i) The line-side of a local switch;

(ii) The trunk-side of a local switch;

(iii) The trunk interconnection points for a tandem switch;

(iv) Central office cross-connect points;

(v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and

(vi) The points of access to unbundled network elements as described in § 51.319;

(3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party, except as provided in paragraph (4) of this section. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier;

(4) That, if so requested by a telecommunications carrier and to the extent technically feasible, is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection. Nothing in this section prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier; and

(5) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

(b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

(c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(d) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.

(e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

(f) If technically feasible, an incumbent LEC shall provide two-way trunking upon request.

§ 51.307 Duty to provide access on an unbundled basis to network elements.

(a) An incumbent LEC shall provide, to a requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules.

(b) The duty to provide access to unbundled network elements pursuant to section 251(c)(3) of the Act includes a duty to provide a connection to an unbundled network element independent of any duty to provide interconnection pursuant to this part and section 251(c)(2) of the Act.

(c) An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.

(d) An incumbent LEC shall provide a requesting telecommunications carrier access to the facility or functionality of a requested network element separate from access to the facility or functionality of other network elements, for a separate charge.

§ 51.309 Use of unbundled network elements.

(a) An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

(b) A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

(c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time,

or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element, except as provided in paragraph (c) of this section.

(b) Except as provided in paragraph (c) of this section, to the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

(c) To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall, upon request, be superior in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element or access to such unbundled network element at the requested level of quality that is superior to that which the incumbent LEC provides to itself. Nothing in this section prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier.

(d) Previous successful access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that access is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(e) Previous successful provision of access to an unbundled element at a particular point in a network at a particular level of quality is substantial evidence that access is technically feasible at that point, or at substantially similar points, at that level of quality.

§ 51.313 Just, reasonable and nondiscriminatory terms and conditions for the provision of unbundled network elements.

(a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers.

(b) Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.

(c) An incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems.

§ 51.315 Combination of unbundled network elements.

(a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.

(b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:

(1) Technically feasible; and

(2) Would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

(d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

(e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.

(f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

§ 51.317 Standards for identifying network elements to be made available.

(a) In determining what network elements should be made available for purposes of section 251(c)(3) of the Act beyond those identified in § 51.319, a state commission shall first determine whether it is technically feasible for the incumbent LEC to provide access to a network element on an unbundled basis.

(b) If the state commission determines that it is technically feasible for the incumbent LEC to provide access to the network element on an unbundled basis, the state commission may decline to require unbundling of the network element only if:

(1) The state commission concludes that:

(i) The network element is proprietary, or contains proprietary information that will be revealed if the network element is provided on an unbundled basis; and

(ii) A requesting telecommunications carrier could offer the same proposed telecommunications service through the use of other, nonproprietary unbundled network elements within the incumbent LEC's network; or

(2) The state commission concludes that the failure of the incumbent LEC to provide access to the network element would not decrease the quality of, and would not increase the financial or administrative cost of, the telecommunications service a requesting telecommunications carrier seeks to offer, compared with providing that service over other unbundled network elements in the incumbent LEC's network.

§ 51.319 Specific unbundling requirements.

An incumbent LEC shall provide nondiscriminatory access in accordance

with § 51.311 and section 251(c)(3) of the Act to the following network elements on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service:

(a) *Local Loop.* The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end user customer premises.

(b) *Network Interface Device.*

(1) The network interface device network element is defined as a cross-connect device used to connect loop facilities to inside wiring.

(2) An incumbent LEC shall permit a requesting telecommunications carrier to connect its own local loops to the inside wiring of premises through the incumbent LEC's network interface device. The requesting telecommunications carrier shall establish this connection through an adjoining network interface device deployed by such telecommunications carrier.

(c) *Switching Capability.*

(1) Local Switching Capability.

(i) The local switching capability network element is defined as:

(A) Line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;

(B) Trunk-side facilities, which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card; and

(C) All features, functions, and capabilities of the switch, which include, but are not limited to:

(*1*) The basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and

(*2*) All other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

(ii) An incumbent LEC shall transfer a customer's local service to a competing carrier within a time period no greater than the interval within which the incumbent LEC currently transfers end users between interexchange carriers, if such transfer requires only a change in the incumbent LEC's software;

(2) Tandem Switching Capability. The tandem switching capability network element is defined as:

(i) Trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card;

(ii) The basic switching function of connecting trunks to trunks; and

(iii) The functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features.

(d) *Interoffice Transmission Facilities.*

(1) Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

(2) The incumbent LEC shall:

(i) Provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier;

(ii) Provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;

(iii) Permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including, but not limited to, the requesting telecommunications carrier's collocated facilities; and

(iv) Permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers.

(e) *Signaling Networks and Call-Related Databases.*

(1) Signaling Networks.

(i) Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(ii) When a requesting telecommunications carrier purchases unbundled switching capability from an incumbent LEC, the incumbent LEC shall provide access to its signaling network from that switch in the same manner in which it obtains such access itself.

(iii) An incumbent LEC shall provide a requesting telecommunications carrier with its own switching facilities access to the incumbent LEC's signaling network for each of the requesting telecommunications carrier's switches. This connection shall be made in the same manner as an incumbent LEC connects one of its own switches to a signal transfer point.

(iv) An incumbent LEC is not required to unbundle those signaling links that connect service control points to switching transfer points or to permit a requesting telecommunications carrier to link its own signal transfer points directly to the incumbent LEC's switch or call-related databases;

(2) Call-Related Databases.

(i) Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service.

(ii) For purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including, but not limited to, the Line Information Database, Toll Free Calling database, downstream number portability databases, and Advanced Intelligent Network databases, by means of physical access at the signaling transfer point linked to the unbundled database.

(iii) An incumbent LEC shall allow a requesting telecommunications carrier that has purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(iv) An incumbent LEC shall allow a requesting telecommunications carrier that has deployed its own switch, and has linked that switch to an incumbent LEC's signaling system, to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related, database-supported services to customers served by the requesting telecommunications carrier's switch.

(v) A state commission shall consider whether mechanisms mediating access to an incumbent LEC's Advanced Intelligent Network service control points are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of

the incumbent LEC's Advanced Intelligent Network facilities.

(vi) An incumbent LEC shall provide a requesting telecommunications carrier with access to call-related databases in a manner that complies with section 222 of the Act;

(3) Service Management Systems.

(i) A service management system is defined as a computer database or system not part of the public switched network that, among other things:

(A) Interconnects to the service control point and sends to that service control point the information and call processing instructions needed for a network switch to process and complete a telephone call; and

(B) Provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call.

(ii) An incumbent LEC shall provide a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the particular incumbent LEC service management system.

(iii) An incumbent LEC shall provide a requesting telecommunications carrier the same access to design, create, test, and deploy Advanced Intelligent Network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(iv) A state commission shall consider whether mechanisms mediating access to Advanced Intelligent Network service management systems and service creation environments are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of the incumbent LEC's Advanced Intelligent Network facilities.

(v) An incumbent LEC shall provide a requesting telecommunications carrier access to service management systems in a manner that complies with section 222 of the Act.

(f) *Operations Support Systems Functions.*

(1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.

(2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997.

(g) *Operator Services and Directory Assistance.* An incumbent LEC shall provide access to operator service and directory assistance facilities where technically feasible.

§ 51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.

(a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

(b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to:

(1) Physical collocation and virtual collocation at the premises of an incumbent LEC; and

(2) Meet point interconnection arrangements.

(c) A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on an incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points.

(d) An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.

(e) An incumbent LEC shall not be required to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises if it demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. In such cases, the incumbent LEC shall be required to provide virtual collocation, except at points where the incumbent LEC proves to the state commission that virtual collocation is not technically feasible. If virtual collocation is not technically feasible, the incumbent LEC shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

(f) An incumbent LEC shall submit to the state commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations.

(g) An incumbent LEC that is classified as a Class A company under § 32.11 of this chapter and that is not a National Exchange Carrier Association interstate tariff participant as provided in part 69, subpart G, shall continue to provide expanded interconnection service pursuant to interstate tariff in accordance with §§ 64.1401, 64.1402, 69.121 of this chapter, and the Commission's other requirements.

§ 51.323 Standards for physical collocation and virtual collocation.

(a) An incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers.

(b) An incumbent LEC shall permit the collocation of any type of equipment used for interconnection or access to unbundled network elements. Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

(1) Transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and

(2) Equipment being collocated to terminate basic transmission facilities pursuant to §§ 64.1401 and 64.1402 of this chapter as of August 1, 1996.

(c) Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services.

(d) When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:

(1) Provide an interconnection point or points, physically accessible by both the incumbent LEC and the collocating telecommunications carrier, at which the fiber optic cable carrying an interconnector's circuits can enter the incumbent LEC's premises, provided that the incumbent LEC shall designate interconnection points as close as reasonably possible to its premises;

(2) Provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new

facilities in at least two of those entry points;

(3) Permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission; and

(4) Permit physical collocation of microwave transmission facilities except where such collocation is not practical for technical reasons or because of space limitations, in which case virtual collocation of such facilities is required where technically feasible.

(e) When providing virtual collocation, an incumbent LEC shall, at a minimum, install, maintain, and repair collocated equipment identified in paragraph (b) of this section within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.

(f) An incumbent LEC shall allocate space for the collocation of the equipment identified in paragraph (b) of this section in accordance with the following requirements:

(1) An incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis, provided, however, that the incumbent LEC shall not be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted;

(2) To the extent possible, an incumbent LEC shall make contiguous space available to requesting telecommunications carriers that seek to expand their existing collocation space;

(3) When planning renovations of existing facilities or constructing or leasing new facilities, an incumbent LEC shall take into account projected demand for collocation of equipment;

(4) An incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

(5) An incumbent LEC shall relinquish any space held for future use before denying a request for virtual collocation on the grounds of space limitations, unless the incumbent LEC proves to the state commission that virtual collocation at that point is not technically feasible; and

(6) An incumbent LEC may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that the incumbent LEC shall not set maximum space limitations applicable to such carriers unless the incumbent LEC proves to the state commission that space constraints make such restrictions necessary.

(g) An incumbent LEC shall permit collocating telecommunications carriers to collocate equipment and connect such equipment to unbundled network transmission elements obtained from the incumbent LEC, and shall not require such telecommunications carriers to bring their own transmission facilities to the incumbent LEC's premises in which they seek to collocate equipment.

(h) An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

(1) An incumbent LEC shall provide the connection between the equipment in the collocated spaces of two or more telecommunications carriers, unless the incumbent LEC permits one or more of the collocating parties to provide this connection for themselves; and

(2) An incumbent LEC is not required to permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space.

(i) An incumbent LEC may require reasonable security arrangements to separate a collocating telecommunications carrier's space from the incumbent LEC's facilities.

(j) An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by an incumbent LEC shall be based on the same criteria it uses in approving contractors for its own purposes.

Subpart E—Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act

§ 51.401 State authority.

A state commission shall determine whether a telephone company is entitled, pursuant to section 251(f) of the Act, to exemption from, or suspension or modification of, the requirements of section 251 of the Act. Such determinations shall be made on a case-by-case basis.

§ 51.403 Carriers eligible for suspension or modification under section 251(f)(2) of the Act.

A LEC is not eligible for a suspension or modification of the requirements of section 251(b) or section 251(c) of the Act pursuant to section 251(f)(2) of the Act if such LEC, at the holding company level, has two percent or more of the subscriber lines installed in the aggregate nationwide.

§ 51.405 Burden of proof.

(a) Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled, pursuant to section 251(f)(1) of the Act, to continued exemption from the requirements of section 251(c) of the Act.

(b) A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.

(c) In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

(d) In order to justify a suspension or modification under section 251(f)(2) of the Act, a LEC must offer evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

Subpart F—Pricing of Elements

§ 51.501 Scope.

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation.

(b) As used in this subpart, the term "element" includes network elements,

interconnection, and methods of obtaining interconnection and access to unbundled elements.

§ 51.503 General pricing standard.

(a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in §§ 51.507 and 51.509, and shall be established, at the election of the state commission—

(1) Pursuant to the forward-looking economic cost-based pricing methodology set forth in §§ 51.505 and 51.511; or

(2) Consistent with the proxy ceilings and ranges set forth in § 51.513.

(c) The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

§ 51.505 Forward-looking economic cost.

(a) *In general.* The forward-looking economic cost of an element equals the sum of:

(1) The total element long-run incremental cost of the element, as described in paragraph (b); and

(2) A reasonable allocation of forward-looking common costs, as described in paragraph (c).

(b) *Total element long-run incremental cost.* The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.

(1) *Efficient network configuration.* The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.

(2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.

(3) *Depreciation rates.* The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

(c) *Reasonable allocation of forward-looking common costs.*

(1) *Forward-looking common costs.* Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.

(2) *Reasonable allocation.*

(i) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.

(ii) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(d) *Factors that may not be considered.* The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:

(1) *Embedded costs.* Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts;

(2) *Retail costs.* Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609;

(3) *Opportunity costs.* Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements; and

(4) *Revenues to subsidize other services.* Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

(e) *Cost study requirements.* An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511.

(1) A state commission may set a rate outside the proxy ranges or above the proxy ceilings described in § 51.513 only if that commission has given full and fair effect to the economic cost based pricing methodology described in this section and § 51.511 in a state proceeding that meets the requirements of paragraph (e)(2) of this section.

(2) Any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

§ 51.507 General rate structure standard.

(a) Element rates shall be structured consistently with the manner in which the costs of providing the elements are incurred.

(b) The costs of dedicated facilities shall be recovered through flat-rated charges.

(c) The costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users. Costs of shared facilities may be apportioned either through usage-sensitive charges or capacity-based flat-rated charges, if the state commission finds that such rates reasonably reflect the costs imposed by the various users.

(d) Recurring costs shall be recovered through recurring charges, unless an incumbent LEC proves to a state commission that such recurring costs are de minimis. Recurring costs shall be considered de minimis when the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs.

(e) State commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.

(f) State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.

(1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans described in § 69.123 of this chapter, or other such cost-related

zone plans established pursuant to state law.

(2) In states not using such existing plans, state commissions must create a minimum of three cost-related rate zones.

§ 51.509 Rate structure standards for specific elements.

In addition to the general rules set forth in § 51.507, rates for specific elements shall comply with the following rate structure rules.

(a) *Local loops.* Loop costs shall be recovered through flat-rated charges.

(b) *Local switching.* Local switching costs shall be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-minute usage charges for the switching matrix and for trunk ports.

(c) *Dedicated transmission links.* Dedicated transmission link costs shall be recovered through flat-rated charges.

(d) *Shared transmission facilities between tandem switches and end offices.* The costs of shared transmission facilities between tandem switches and end offices may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.

(e) *Tandem switching.* Tandem switching costs may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.

(f) *Signaling and call-related database services.* Signaling and call-related database service costs shall be usage-sensitive, based on either the number of queries or the number of messages, with the exception of the dedicated circuits known as signaling links, the cost of which shall be recovered through flat-rated charges.

(g) *Collocation.* Collocation costs shall be recovered consistent with the rate structure policies established in the *Expanded Interconnection* proceeding, CC Docket No. 91–141.

§ 51.511 Forward-looking economic cost per unit.

(a) The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in § 51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.

(b)(1) With respect to elements that an incumbent LEC offers on a flat-rate basis, the number of units is defined as the discrete number of elements (*e.g.*, local loops or local switch ports) that the incumbent LEC uses or provides.

(2) With respect to elements that an incumbent LEC offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (*e.g.*, minutes of use or call-related database queries) of the element.

§ 51.513 Proxies for forward-looking economic cost.

(a) A state commission may determine that the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in §§ 51.505 and 51.511. In that event, the state commission may establish a rate for an element that is consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies shall be superseded once the state commission has completed review of a cost study that complies with the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, and has concluded that such study is a reasonable basis for establishing element rates; and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular rate for the element.

(b) The constraints on proxy-based rates described in this section apply on a geographically averaged basis. For purposes of determining whether geographically deaveraged rates for elements comply with the provisions of this section, a geographically averaged proxy-based rate shall be computed based on the weighted average of the actual, geographically deaveraged rates that apply in separate geographic areas in a state.

(c) *Proxies for specific elements.*

(1) *Local loops.* For each state listed below, the proxy-based monthly rate for unbundled local loops, on a statewide weighted average basis, shall be no greater than the figures listed in the table below. (The Commission has not established a default proxy ceiling for loop rates in Alaska.)

TABLE

State	Proxy ceiling
Alabama	$17.25
Arizona	12.85
Arkansas	21.18
California	11.10
Colorado	14.97

TABLE—Continued

State	Proxy ceiling
Connecticut	13.23
Delaware	13.24
District of Columbia	10.81
Florida	13.68
Georgia	16.09
Hawaii	15.27
Idaho	20.16
Illinois	13.12
Indiana	13.29
Iowa	15.94
Kansas	19.85
Kentucky	16.70
Louisiana	16.98
Maine	18.69
Maryland	13.36
Massachusetts	9.83
Michigan	15.27
Minnesota	14.81
Mississippi	21.97
Missouri	18.32
Montana	25.18
Nebraska	18.05
Nevada	18.95
New Hampshire	16.00
New Jersey	12.47
New Mexico	18.66
New York	11.75
North Carolina	16.71
North Dakota	25.36
Ohio	15.73
Oklahoma	17.63
Oregon	15.44
Pennsylvania	12.30
Puerto Rico	12.47
Rhode Island	11.48
South Carolina	17.07
South Dakota	25.33
Tennessee	17.41
Texas	15.49
Utah	15.12
Vermont	20.13
Virginia	14.13
Washington	13.37
West Virginia	19.25
Wisconsin	15.94
Wyoming	25.11

(2) *Local switching.* The blended proxy-based rate for unbundled local switching shall be no greater than 0.4 cents ($0.004) per minute, and no less than 0.2 cents ($0.002) per minute, except that, where a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents ($0.005) per minute, that rate may be retained pending completion of a forward-looking economic cost study. The blended rate for unbundled local switching shall be calculated as the sum of the following:

(i) The applicable flat-rated charges for subelements associated with unbundled local switching, such as line ports, divided by the projected average minutes of use per flat-rated subelement; and

(ii) The applicable usage-sensitive charges for subelements associated with

unbundled local switching, such as switching and trunk ports. A weighted average of such charges shall be used in appropriate circumstances, such as when peak and off-peak charges are used.

(3) *Dedicated transmission links.* The proxy-based rates for dedicated transmission links shall be no greater than the incumbent LEC's tariffed interstate charges for comparable entrance facilities or direct-trunked transport offerings, as described in §§ 69.110 and 69.112 of this chapter.

(4) *Shared transmission facilities between tandem switches and end offices.* The proxy-based rates for shared transmission facilities between tandem switches and end offices shall be no greater than the weighted per-minute equivalent of DS1 and DS3 interoffice dedicated transmission link rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using a loading factor of 9,000 minutes per month per voice-grade circuit, as described in § 69.112 of this chapter.

(5) *Tandem switching.* The proxy-based rate for tandem switching shall be no greater than 0.15 cents ($0.0015) per minute of use.

(6) *Collocation.* To the extent that the incumbent LEC offers a comparable form of collocation in its interstate expanded interconnection tariffs, as described in §§ 64.1401 and 69.121 of this chapter, the proxy-based rates for collocation shall be no greater than the effective rates for equivalent services in the interstate expanded interconnection tariff. To the extent that the incumbent LEC does not offer a comparable form of collocation in its interstate expanded interconnection tariffs, a state commission may, in its discretion, establish a proxy-based rate, provided that the state commission sets forth in writing a reasonable basis for concluding that its rate would approximate the result of a forward-looking economic cost study, as described in § 51.505.

(7) *Signaling, call-related database, and other elements.* To the extent that the incumbent LEC has established rates for offerings comparable to other elements in its interstate access tariffs, and has provided cost support for those rates pursuant to § 61.49(h) of this chapter, the proxy-based rates for those elements shall be no greater than the effective rates for equivalent services in the interstate access tariffs. In other cases, the proxy-based rate shall be no greater than a rate based on direct costs plus a reasonable allocation of overhead loadings, pursuant to § 61.49(h) of this chapter.

§ 51.515 Application of access charges.

(a) Neither the interstate access charges described in part 69 of this chapter nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchasers of elements that offer telephone exchange or exchange access services.

(b) Notwithstanding §§ 51.505, 51.511, and 51.513(d)(2) and paragraph (a) of this section, an incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in § 51.319(c)(1), for interstate minutes of use traversing such unbundled local switching elements, the carrier common line charge described in § 69.105 of this chapter, and a charge equal to 75% of the interconnection charge described in § 69.124 of this chapter, only until the earliest of the following, and not thereafter:

(1) June 30, 1997;

(2) The later of the effective date of a final Commission decision in CC Docket No. 96–45, *Federal-State Joint Board on Universal Service,* or the effective date of a final Commission decision in a proceeding to consider reform of the interstate access charges described in part 69; or

(3) With respect to a Bell operating company only, the date on which that company is authorized to offer in-region interLATA service in a state pursuant to section 271 of the Act. The end date for Bell operating companies that are authorized to offer interLATA service shall apply only to the recovery of access charges in those states in which the Bell operating company is authorized to offer such service.

(c) Notwithstanding §§ 51.505, 51.511, and 51.513(d)(2) and paragraph (a) of this section, an incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in § 51.319(c)(1), for intrastate toll minutes of use traversing such unbundled local switching elements, intrastate access charges comparable to those listed in paragraph (b) and any explicit intrastate universal service mechanism based on access charges, only until the earliest of the following, and not thereafter:

(1) June 30, 1997;

(2) The effective date of a state commission decision that an incumbent LEC may not assess such charges; or

(3) With respect to a Bell operating company only, the date on which that company is authorized to offer in-region interLATA service in the state pursuant to section 271 of the Act. The end date for Bell operating companies that are authorized to offer interLATA service shall apply only to the recovery of access charges in those states in which the Bell operating company is authorized to offer such service.

Subpart G—Resale

§ 51.601 Scope of resale rules.

The provisions of this subpart govern the terms and conditions under which LECs offer telecommunications services to requesting telecommunications carriers for resale.

§ 51.603 Resale obligation of all local exchange carriers.

(a) A LEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.

(b) A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.

§ 51.605 Additional obligations of incumbent local exchange carriers.

(a) An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates that are, at the election of the state commission—

(1) Consistent with the avoided cost methodology described in §§ 51.607 and 51.609; or

(2) Interim wholesale rates, pursuant to § 51.611.

(b) Except as provided in § 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

§ 51.607 Wholesale pricing standard.

(a) The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the incumbent LEC's existing retail rate for the telecommunications service, less avoided retail costs, as described in § 51.609.

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale

rates to requesting telecommunications carriers.

§ 51.609 Determination of avoided retail costs.

(a) Except as provided in § 51.611, the amount of avoided retail costs shall be determined on the basis of a cost study that complies with the requirements of this section.

(b) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier.

(c) For incumbent LECs that are designated as Class A companies under § 32.11 of this chapter, except as provided in paragraph (d) of this section, avoided retail costs shall:

(1) Include, as direct costs, the costs recorded in USOA accounts 6611 (product management), 6612 (sales), 6613 (product advertising), 6621 (call completion services), 6622 (number services), and 6623 (customer services) (§§ 32.6611, 32.6612, 32.6613, 32.6621, 32.6622, and 32.6623 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121–6124 (general support expenses), 6711, 6712, 6721–6728 (corporate operations expenses), and 5301 (telecommunications uncollectibles) (§§ 32.6121–32.6124, 32.6711, 32.6712, 32.6721–32.6728, and 32.5301 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (§§ 32.6110–32.6116, 32.6210–32.6565 of this chapter).

(d) Costs included in accounts 6611–6613 and 6621–6623 described in paragraph (c) of this section (§§ 32.6611–32.6613 and 32.6621–32.6623 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6110–6116 and 6210–6565 described in paragraph (c) of this section (§§ 32.6110–32.6116, 32.6210–32.6565 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

(e) For incumbent LECs that are designated as Class B companies under § 32.11 of this chapter and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of the specific USOA accounts listed in paragraphs (c) and (d) of this section.

§ 51.611 Interim wholesale rates.

(a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in § 51.609, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.

(b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(c) A state commission that establishes interim wholesale rates shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with § 51.609.

§ 51.613 Restrictions on resale.

(a) Notwithstanding § 51.605(b), the following types of restrictions on resale may be imposed:

(1) *Cross-class selling.* A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

(2) *Short term promotions.* An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(i) Such promotions involve rates that will be in effect for no more than 90 days; and

(ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates. r

(b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

(c) *Branding.* Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.

(1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

(2) For purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

§ 51.615 Withdrawal of services.

When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the incumbent LEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past.

§ 51.617 Assessment of end user common line charge on resellers.

(a) Notwithstanding the provision in § 69.104(a) of this chapter that the end user common line charge be assessed upon end users, an incumbent LEC shall assess this charge, and the charge for changing the designated primary interexchange carrier, upon requesting carriers that purchase telephone exchange service for resale. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access charges provided in part 69 of this chapter, other than the end user common line charge, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international

telecommunications services to the interexchange carriers' subscribers.

Subpart H—Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic

§ 51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

(b) *Local telecommunications traffic.* For purposes of this subpart, local telecommunications traffic means:

(1) Telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

(2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

§ 51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

§ 51.705 Incumbent LECs' rates for transport and termination.

(a) An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

(2) Default proxies, as provided in § 51.707; or

(3) A bill-and-keep arrangement, as provided in § 51.713.

(b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

§ 51.707 Default proxies for incumbent LECs' transport and termination rates.

(a) A state commission may determine that the cost information available to it with respect to transport and termination of local telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511. In that event, the state commission may establish rates for transport and termination of local telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of local telecommunications traffic, or for specific components included within transport and termination.

(b) If a state commission establishes rates for transport and termination of local telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:

(1) *Termination.* The incumbent LEC's rates for the termination of local telecommunications traffic shall be no greater than 0.4 cents ($0.004) per minute, and no less than 0.2 cents ($0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents ($0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.

(2) *Transport.* The incumbent LEC's rates for the transport of local telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(d) (3), (4), and (5) that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, a state commission shall establish rates for the transport and termination of local telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

§ 51.711 Symmetrical reciprocal compensation.

(a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

(2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(b) A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, that the forward-looking costs for a network

efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

(c) Pending further proceedings before the Commission, a state commission shall establish the rates that licensees in the Paging and Radiotelephone Service (defined in part 22, subpart E of this chapter), Narrowband Personal Communications Services (defined in part 24, subpart D of this chapter), and Paging Operations in the Private Land Mobile Radio Services (defined in part 90, subpart P of this chapter) may assess upon other carriers for the transport and termination of local telecommunications traffic based on the forward-looking costs that such licensees incur in providing such services, pursuant to §§ 51.505 and 51.511. Such licensees' rates shall not be set based on the default proxies described in § 51.707.

§ 51.713 Bill-and-keep arrangements for reciprocal compensation.

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b).

(c) Nothing in this section precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of local telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of local telecommunications traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of local telecommunications traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

(2) In a state in which the state commission has established transport and termination rates consistent with the default price ranges and ceilings described in § 51.707, an incumbent LEC shall use these state-determined rates as interim rates.

(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in § 51.707, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in §.51.707(b)(2)).

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of local telecommunications traffic subject to the interim arrangement:

(1) A voluntary agreement has been negotiated and approved by a state commission;

(2) An agreement has been arbitrated and approved by a state commission; or

(3) The period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of local telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equalled the rates later established by the state commission pursuant to § 51.705.

§ 51.717 Renegotiation of existing non-reciprocal arrangements.

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) of this section until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

Subpart I—Procedures for Implementation of Section 252 of the Act

§ 51.801 Commission action upon a state commission's failure to act to carry out its responsibility under section 252 of the Act.

(a) If a state commission fails to act to carry out its responsibility under section 252 of the Act in any proceeding or other matter under section 252 of the Act, the Commission shall issue an order preempting the state commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter and shall act for the state commission.

(b) For purposes of this part, a state commission fails to act if the state commission fails to respond, within a reasonable time, to a request for mediation, as provided for in section 252(a)(2) of the Act, or for a request for arbitration, as provided for in section 252(b) of the Act, or fails to complete an arbitration within the time limits established in section 252(b)(4)(C) of the Act.

(c) A state shall not be deemed to have failed to act for purposes of section 252(e)(5) of the Act if an agreement is

deemed approved under section 252(e)(4) of the Act.

§ 51.803 Procedures for Commission notification of a state commission's failure to act.

(a) Any party seeking preemption of a state commission's jurisdiction, based on the state commission's failure to act, shall notify the Commission in accordance with following procedures:

(1) Such party shall file with the Secretary of the Commission a petition, supported by an affidavit, that states with specificity the basis for the petition and any information that supports the claim that the state has failed to act, including, but not limited to, the applicable provisions of the Act and the factual circumstances supporting a finding that the state commission has failed to act;

(2) Such party shall ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition required in paragraph (a)(1) of this section on the same date that the petitioning party serves the petition on the Commission; and

(3) Within fifteen days from the date of service of the petition required in paragraph (a)(1) of this section, the applicable state commission and parties to the proceeding may file with the Commission a response to the petition.

(b) The party seeking preemption must prove that the state has failed to act to carry out its responsibilities under section 252 of the Act.

(c) The Commission, pursuant to section 252(e)(5) of the Act, may take notice upon its own motion that a state commission has failed to act. In such a case, the Commission shall issue a public notice that the Commission has taken notice of a state commission's failure to act. The applicable state commission and the parties to a proceeding or matter in which the Commission has taken notice of the state commission's failure to act may file, within fifteen days of the issuance of the public notice, comments on whether the Commission is required to assume the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter.

(d) The Commission shall issue an order determining whether it is required to preempt the state commission's jurisdiction of a proceeding or matter within 90 days after being notified under paragraph (a) of this section or taking notice under paragraph (c) of this section of a state commission's failure to carry out its responsibilities under section 252 of the Act.

§ 51.805 The Commission's authority over proceedings and matters.

(a) If the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, the Commission shall retain jurisdiction over such proceeding or matter. At a minimum, the Commission shall approve or reject any interconnection agreement adopted by negotiation, mediation or arbitration for which the Commission, pursuant to section 252(e)(5) of the Act, has assumed the state's commission's responsibilities.

(b) Agreements reached pursuant to mediation or arbitration by the Commission pursuant to section 252(e)(5) of the Act are not required to be submitted to the state commission for approval or rejection.

§ 51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.

(a) The rules established in this section shall apply only to instances in which the Commission assumes jurisdiction under section 252(e)(5) of the Act.

(b) When the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, it shall not be bound by state laws and standards that would have applied to the state commission in such proceeding or matter.

(c) In resolving, by arbitration under section 252(b) of the Act, any open issues and in imposing conditions upon the parties to the agreement, the Commission shall:

(1) Ensure that such resolution and conditions meet the requirements of section 251 of the Act, including the rules prescribed by the Commission pursuant to that section;

(2) Establish any rates for interconnection, services, or network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) An arbitrator, acting pursuant to the Commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(1) At the discretion of the arbitrator, final offer arbitration may take the form of either entire package final offer arbitration or issue-by-issue final offer arbitration.

(2) Negotiations among the parties may continue, with or without the assistance of the arbitrator, after final arbitration offers are submitted. Parties may submit subsequent final offers following such negotiations.

(3) To provide an opportunity for final post-offer negotiations, the arbitrator will not issue a decision for at least fifteen days after submission to the arbitrator of the final offers by the parties.

(e) Final offers submitted by the parties to the arbitrator shall be consistent with section 251 of the Act, including the rules prescribed by the Commission pursuant to that section.

(f) Each final offer shall:

(1) Meet the requirements of section 251, including the rules prescribed by the Commission pursuant to that section;

(2) Establish rates for interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement. If a final offer submitted by one or more parties fails to comply with the requirements of this section, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the Commission pursuant to that section.

(g) Participation in the arbitration proceeding will be limited to the requesting telecommunications carrier and the incumbent LEC, except that the Commission will consider requests by third parties to file written pleadings.

(h) Absent mutual consent of the parties to change any terms and conditions adopted by the arbitrator, the decision of the arbitrator shall be binding on the parties.

§ 51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An

incumbent LEC may not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

(c) Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

11. The authority citation for Part 90 is revised to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

12. Section 90.5 is amended by redesignating paragraphs (k) and (l) as paragraphs (l) and (m), and adding new paragraph (k) to read as follows:

§ 90.5 Other applicable rule parts.

* * * * *

(k) Part 51 contains rules relating to interconnection.

* * * * *

This Attachment A will not be published in the Code of Federal Regulations

Attachment A

List of Commenters in CC Docket No. 96–98

360° Communications Company (360 Communications)
Ad Hoc Coalition of Corporate Telecommunications Managers
Ad Hoc Telecommunications Users Committee
AirTouch Communications, Inc. (AirTouch)
Alabama Public Service Commission (Alabama Commission)
Alaska Telephone Association (Alaska Tel. Ass'n)
Alaska Public Utilities Commission (Alaska Commission)
Alliance for Public Technology
Allied Association Partners, LP & Geld Information Systems (Allied Ass'n)
ALLTEL Telephone Services Corporation (ALLTEL)
American Communications Services, Inc. (ACSI)
American Foundation for the Blind
American Mobile Telecommunications Association, Inc. (American Mobile Telecomm. Ass'n)
American Network Exchange, Inc. & U.S. Long Distance, Inc. (American Network Exchange)
American Personal Communications
American Petroleum Institute
American Public Communications Council
American Public Power Association (APPA)
America's Carriers Telecommunication Association (ACTA)
Ameritech
Anchorage Telephone Utility (Anchorage Tel. Utility)
Arch Communications Group, Inc. (Arch)
Arizona Corporation Commission (Arizona Commission)
Association for Study of Afro-American Life and History, Inc. (ASALH)
Association for Local Telecommunications Services (ALTS)
Association of Telemessaging Services International
AT&T Corp. (AT&T)
Attorneys General of Connecticut, Delaware, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Missouri, New York, North Dakota, Pennsylvania, West Virginia and Wisconsin (Attorneys General)
Bay Springs Telephone Co., Crockett Telephone Co., National Telephone Company of Alabama, Peoples Telephone Company, Roanoke Telephone Co. & West Tennessee Telephone Company (Bay Springs, et al.)
Black Data Processing Associates
Black Data Processors Association (Black Data Processors Ass'n)
Bell Atlantic Telephone Companies (Bell Atlantic)
Bell Atlantic NYNEX Mobile, Inc. (Bell Atlantic NYNEX Mobile)
BellSouth Corporation, Bell Enterprises, Inc., BellSouth Telecommunications, Inc. (BellSouth)
Bogue, Kansas
Buckeye Cablevision, Inc. (Buckeye Cablevision)
Cable & Wireless, Inc. (Cable & Wireless)
Cellular Telecommunications Industry Association (CTIA)
Celpage, Inc. (Celpage)
Centennial Cellular Corp.
Chrysler Minority Dealers Association (Chrysler Minority Dealers Ass'n)
Cincinnati Bell Telephone Company (Cincinnati Bell)
Citizens Utilities Company (Citizens Utilities)
Classic Telephone, Inc. (Classic Tel.)
Colorado Independent Telephone Association (Colorado Independent Tel. Ass'n)
Colorado Public Utilities Commission (Colorado Commission)
COMAV, Corp. (COMAV)
Comcast Cellular Communications, Inc. (Comcast Cellular)
Comcast Corporation (Comcast)
Communications and Energy Dispute Resolution Associates (CEDRA)
Competition Policy Institute
Competitive Telecommunications Association (CompTel)
Connecticut Department of Public Utility Control (Connecticut Commission)
Consumer Federation of America & Consumers Union (CFA/CU)
Consumer Project on Technology on Interconnection & Unbundling (Consumer Project)
Continental Cablevision, Inc. (Continental)
Cox Communications, Inc. (Cox)
Defense, Secretary of
DeSoto County, Mississippi Economic Development Council
District of Columbia Public Service Commission (District of Columbia Commission)
Economides, Nicholas (N. Economides)
Ericsson Corporation, The (Ericsson)
Excel Telecommunications, Inc. (Excel)
Florida Public Service Commission (Florida Commission)
Fred Williamson & Associates, Inc. (F. Williamson)
Frontier Corporation (Frontier)
General Communication, Inc. (GCI)
General Services Administration/Department of Defense (GSA/DOD)
Georgia Public Service Commission (Georgia Commission)
Greater Washington Urban League
GST Telecom, Inc. (GST)
GTE Service Corporation (GTE)
Guam Telephone Authority
GVNW Inc./Management (GVNW)
Hart Engineers/Robert A. Hart, IV (Hart Engineers)
Hawaii Public Utilities Commission (Hawaii Commission)
Home Telephone Company, Inc. (Home Tel.)
Hyperion Telecommunications, Inc. (Hyperion)
Idaho Public Utilities Commission (Idaho Commission)
Illinois Commerce Commission (Illinois Commission)
Illinois Independent Telephone Association (Illinois Ind. Tel. Ass'n)
Independent Cable & Telecommunications Association (Ind. Cable & Telecomm. Ass'n)
Independent Data Communications Manufacturers Association (IDCMA)
Indiana Utility Regulatory Commission Staff (Indiana Commission Staff)
Information Technology Industry Council (ITIC)
Intelcom Group (U.S.A.), Inc. (Intelcom)
Intermedia Communications, Inc. (Intermedia)
International Communications Association (Intl. Comm. Ass'n)
Iowa Utilities Board (Iowa Commission)
John Staurulakis, Inc. (J. Staurulakis)
Joint Consumer Advocates
Jones Intercable, Inc. (Jones Intercable)
Justice, U. S. Department of (DoJ)
Kansas Corporation Commission (Kansas Commission)

Kentucky Public Service Commission (Kentucky Commission)
Koch, Richard N. (R. Koch)
LCI International Telecom Corp. (LCI)
LDDS Worldcom (LDDS)
Lincoln Telephone & Telegraph Company (Lincoln Tel.)
Louisiana Public Service Commission (Louisiana Commission)
Lucent Technologies, Inc. (Lucent)
Margaretville Telephone Co., Inc. (Margaretville Tel.)
Maryland Public Service Commission (Maryland Commission)
Massachusetts Assistive Technology Partnership Center World Institute on Disability, Alliance for Technology Access, Trace Research and Development Center, CPB/WGBH National Center For Accessible Media (Mass. Assistive Tech. Partnership, et al.)
Massachusetts, Commonwealth of Department of Public Utilities (Mass. Commission)
Massachusetts, Commonwealth of, Office of Attorney General (Mass. Attorney General)
Matanuska Telephone Association, Inc. (Matanuska Tel.)
MCI
Metricom, Inc. (Metricom)
MFS
Michigan Exchange Carriers Association (MECA)
Michigan, Illinois, and Texas Communities, et al.
Michigan Public Service Commission Staff (Michigan Commission Staff)
Minnesota Independent Coalition (Minnesota Independent Coalition)
Minnesota Public Utilities Commission (Minnesota Commission)
Missouri Public Service Commission (Missouri Commission)
Missouri Public Service Commissioner, Harold Crumpton (Missouri Commissioner)
Mobilemedia Communications, Inc. (Mobilemedia)
Motorola Satellite Communications, Inc. and U.S. Leo Services, Inc. (Motorola)
Municipal Utilities
National Association of the Deaf
National Association of Development Organizations, Gray Panthers, United Seniors Health Cooperative, United Homeowners Association, National Hispanic Council on Aging, National Trust/Trustnet, National Association of Commissions for Women, National Council of Senior Citizens (NADO, et al.)
National Association of Regulatory Utility Commissioners (NARUC)
National Association of State Utility Consumer Advocates (National Ass'n of State Utility Advocates)
National Bar Association (National Bar Ass'n)
National Cable Television Association, Inc. (NCTA)
National Exchange Carrier Association, Inc. (NECA)
National League of Cities & National Association of Telecommunications Officers and Advisors (NLC/NATOA)
National Private Telecommunications Association
National Telecommunications & Information Administration (NTIA)
National Wireless Resellers Association (National Wireless Resellers Ass'n)
Nebraska Rural Development Commission
Network Reliability Council, Secretariat of Second (Network Reliability Council)
New Hampshire Public Utilities Commission, New Mexico State Corporation Commission, Utah Division of Public Utilities, Vermont Public Service Board, and Vermont Department of Public Service (New Hampshire Commission, et al.)
New Jersey Cable Telecommunications Association, South Carolina Cable Television Association & Texas Cable Telecommunications Association (New Jersey Cable Ass'n, et al.)
New Jersey, Staff of Board of Public Utilities (New Jersey Commission Staff)
New York State Consumer Protection Board (New York Consumer Protection Board)
New York State Department of Public Service (New York Commission)
Nextel Communications, Inc. (Nextel)
NEXTLINK Communications, L.L.C. (NEXTLINK)
North Carolina Utility Commission Public Staff (North Carolina Commission Staff)
North Dakota Public Service Commission (North Dakota Commission)
Northern Telecom, Inc. (Nortel)
NYNEX Telephone Companies (NYNEX)
Ohio Public Utilities Commission (Ohio Commission)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Oklahoma Corporation Commission (Oklahoma Commission)
Omnipoint Corporation (Omnipoint)
Optel, Inc. (Optel)
Oregon Public Utility Commission (Oregon Commission)
Pacific Telesis Group (PacTel)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
People of the State of California and the Public Utility Commission of the State of California (California Commission)
Personal Communications Industry Association (PCIA)
ProNet Inc. (ProNet)
Puerto Rico Telephone Company (Puerto Rico Tel.)
Roseville Telephone Company (Roseville Tel.)
Rural Telephone Coalition (Rural Tel. Coalition)
SBC Communications Inc. (SBC)
Scherers Communications Group, Inc. (SCG)
Small Business Administration, U.S. (SBA)
Small Cable Business Association (SCBA)
SDN Users Association
South Carolina Public Service Commission (South Carolina Commission)
Southern New England Telephone Company (SNET)
Southwestern Bell Telephone Company (SWBT)
Sprint Corporation (Sprint)
Sprint Spectrum & American Personal Communications (Sprint/APC)
State of Maine Public Utilities Commission, State of Montana Public Service Commission, State of Nebraska Public Service Commission, State of New Hampshire Public Utilities Commission, State of New Mexico State Corporation Commission, State of Utah Public Service Commission and Division of Public Utilities, State of Vermont Department of Public Service and Public Service Board, and Public Utilities Commission of South Dakota (Maine Commission, et al.)
TCA, Inc. (TCA)
TDS Telecommunications Corporation (TDS)
Telecommunication Industries Analysis Project
Telecommunications Carriers for Competition (TCC)
Tele-Communications, Inc. (TCI)
Telecommunications Industry Association (TIA)
Telecommunications Ratepayers Association for Cost-Based and Equitable Rates (TRACER)
Telecommunications Resellers Association (Telecomm. Resellers Ass'n)
Telefonica Larga Distancia de Puerto Rico, Inc. (TLD)
Teleport Communications Group, Inc. (Teleport)
Texas Office of Public Utility Counsel (Texas Public Utility Counsel)
Texas, Public Utilities Commission (Texas Commission)
Texas Statewide Telephone Cooperative, Inc.
Texas Telephone Association (Texas Tel. Ass'n)
Time Warner Communications Holdings, Inc. (Time Warner)
Unicom, Inc. (Unicom)
United Calling Network, Inc. (United Calling Network)
United Cerebral Palsy Association
United States Telephone Association (USTA)
USTN Services, Inc. (USTN)
U.S. Network Corporation (U.S. Network)
U S West, Inc. (U S West)
Utah Division of Public Utilities
UTC
Utilex, Inc. (Utilex)
Vanguard Cellular Systems, Inc. (Vanguard)
Vartec Telecom, Inc., Transtel, Telephone Express, CGI, & CommuniGroup Inc. of Mississippi (Vartec, et al.)
Virginia State Corporation Commission Staff (Virginia Commission Staff)
Washington Independent Telephone Association (Wash. Ind. Tel. Ass'n)
Washington Utilities and Transportation Commission (Washington Commission)
Western Alliance
WinStar Communications, Inc. (WinStar)
Wisconsin, Public Service Commission (Wisconsin Commission)
Wyoming Public Service Commission (Wyoming Commission)

List of Commenters in CC Docket No. 95–185

360 Degree Communications Co. (360 Degrees)
AirTouch Communications, Inc. (Airtouch)
Alaska 3 Cellular Corporation (Alaska CellularOne)
Alaska Telephone Association (ATA)
Alliance of Wireless Service Providers (Alliance)
Allied Personal Communications Industry Association of California (Allied)
ALLTEL Corporation (ALLTEL)
American Mobil Telecommunications Association (AMTA)

America's Carriers Telecommunications Association (ACTA)
American Personal Communications/Sprint Spectrum (APC/Sprint)
Ameritech
Anchorage Telephone Utility (ATU)
Arch Communications Group, Inc. (Arch)
AT&T Corporation (AT&T)
Bell Atlantic
Bell Atlantic Nynex Mobile (Bell Atlantic-NYNEX)
BellSouth Corporation (BellSouth)
State of California & the Public Utilities Commission (CPUC)
Cellular Communications of Puerto Rico, Inc. (CCPR)
Cellular Mobile Systems of St. Cloud G.P. (CMS)
Cellular Resellers Association (Cellular Resellers)
Cellular Telecommunications Industry Association (CTIA)
Celpage, Inc. (Celpage)
Centennial Cellular Corporation (Centennial)
Century Cellunet, Inc. (Century Cellunet)
Cincinnati Bell
CMT Partners (CMT)
Comcast Corporation (Comcast)
Competitive Telecommunications Association (CompTel)
Concord Telephone Company (Concord)
Connecticut Department of Public Utility (Connecticut)
Cox Enterprises, Inc. (Cox)
Florida Cellular RSA L.P. (Florida Cellular)
Frontier Corporation (Frontier)
GO Communications Corp. (GO)
General Services Administration (GSA)
GTE Services Corporation (GTE)
GVNW Inc., Management (GVNW)
Hart Engineers and 21st Century Telesis, Inc. (Hart Engineers)
Home Telephone Company, Inc. (HomeTel)
ICO Global Communications (ICO)
Illinois Commerce Commission (Illinois)
Illinois Independent Telephone Association (Illinois Ind. Tel. Assoc.)
Illinois Telephone Association (Illinois Telephone Assoc.)
John Staurulakis, Inc. (JSI)
LDDS WorldCom (LDDS WorldCom)
MCI Telecommunications Corp. (MCI)
MFS Communications Company, Inc. (MFS)
Mercury Cellular & Paging (Mercury)
Mountain Solutions
National Association of Regulatory Utility Commissioners (NARUC)
National Exchange Carrier Association (NECA)
National Telephone Cooperative Association (NTCA)
New Par
New York State Department of Public Service (New York)
Nextel Communications, Inc. (Nextel)
North Carolina 4 Cellular L.P. (North Carolina Cellular)
NYNEX Telephone Companies (NYNEX)
Public Utilities Commission of Ohio (Ohio)
Omnipoint Corporation (Omnipoint)
OPASTCO
Pacific Bell, Pacific Bell Mobile Services, Nevada Bell (Pacific Bell)
Paging Network, Inc. (PageNet)
Personal Communications Industry Association (PCIA)
Point Communications Company (Point)
Poka Lambro Telephone Cooperative (Poka Lambro)
Puerto Rico Telephone Company (PRTC)
Rural Cellular Association (RCA)
Rural Cellular Corporation (RCC)
SBC Communications, Inc. (SBC)
Smithville Telephone Company (Smithville)
Southeast Telephone Company (Southeast Telephone)
Sprint Corporation (Sprint)
Sprint Spectrum and American Personal Communications (Sprint/APC)
Telecommunications Resellers Association (TRA)
Teleport Communications Group (Teleport)
Time Warner Communications Holdings, Inc. (Time Warner)
Telecommunications Ratepayers Association for Cost-Based and Equitable Rates (TRACER)
Union Telephone Company (Union)
United States Telephone Association (USTA)
US West, Inc. (US West)
Vanguard Cellular Systems, Inc. (Vanguard)
Western Radio Services Co., Inc. (Western)
Western Wireless Corporation (Western Wireless)
Westlink Company (Westlink)
List of Commenters in CC Docket No. 91–346

List of Commenters in CC Docket No. 91–346

Ad Hoc Telecommunications Users Committee (Ad Hoc)
Allnet Communication Services, Inc. (Allnet)
American Telephone and Telegraph Company (AT&T)
Ameritech Operating Companies (Ameritech)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cincinnati Bell Telephone (Cincinnati Bell)
Ericsson Corporation (Ericsson)
General Services Administration (GSA)
Geonet
GTE Service Corporation (GTE)
Information Technology Association of America (ITAA)
Joint Filers (includes Bell Atlantic, BellSouth, GTE, Lincoln, Pacific Bell, Rochester, SNET, and US WEST)
MCI Telecommunications Corporation (MCI)
National Communications System (NCS)
Nextel Communications, Inc. (Nextel)
North American Telecommunications Association (NATA)
Northern Telecom Inc. (Northern Telecom)
NYNEX Telephone Companies (NYNEX)
Pacific Bell and Nevada Bell (Pacific Bell)
Pacific Telesis Corporation (Pactel)
Services-oriented Open Network Technologies, Inc. (SONetech)
Siemens Stromberg-Carlson (Siemens)
Southern New England Telephone Company (SNET)
Southwestern Bell Corporation (SWBT)
Sprint
Telecommunications Industry Association (TIA)
Teleport Communications Group (Teleport)
Teloquent Communications Corporation (Teloquent)
United and Central Telephone Companies (United and Central)
United States Telephone Association (USTA)
US WEST Communications, Inc. (US WEST)

This Attachment B will not be published in the Code of Federal Regulations.

ATTACHMENT B.—STATE PROXY CEILINGS FOR THE LOCAL LOOP

State	Proxy ceiling
Alabama	$17.25
Arizona	12.85
Arkansas	21.18
California	11.10
Colorado	14.97
Connecticut	13.23
Delaware	13.24
District of Columbia	10.81
Florida	13.68
Georgia	16.09
Hawaii	15.27
Idaho	20.16
Illinois	13.12
Indiana	13.29
Iowa	15.94
Kansas	19.85
Kentucky	16.70
Louisiana	16.98
Maine	18.69
Maryland	13.36
Massachusetts	9.83
Michigan	15.27
Minnesota	14.81
Mississippi	21.97
Missouri	18.32
Montana	25.18
Nebraska	18.05
Nevada	18.95
New Hampshire	16.00
New Jersey	12.47
New Mexico	18.66
New York	11.75
North Carolina	16.71
North Dakota	25.36
Ohio	15.73
Oklahoma	17.63
Oregon	15.44
Pennsylvania	12.30
Puerto Rico	12.47
Rhode Island	11.48
South Carolina	17.07
South Dakota	25.33
Tennessee	17.41
Texas	15.49
Utah	15.12
Vermont	20.13
Virginia	14.13
Washington	13.37
West Virginia	19.25
Wisconsin	15.94
Wyoming	25.11

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federal register

Thursday
August 29, 1996

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed Grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1997 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the Guideline until September 30, 1996.

ADDRESSES: Comments should be sent to the State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Status of FY 1997 Appropriations

At the time of publication, the status of SJI's fiscal year 1997 Congressional appropriation is uncertain. The House of Representatives voted no new appropriations for the Institute in FY 1997, believing that carryover funds and funds anticipated from interagency agreements would suffice to support the Institute's operations in FY 1997. The Senate Appropriations Committee approved a $10 million appropriation for the Institute in FY 1997. A conference on the House and Senate bills is anticipated in September. The grant program proposed in this Guideline and the funding targets noted for specific programs are contingent on the availability of about $10 million to support the Institute and its programs in FY 1997. Publication of the Final Grant Guideline is scheduled for approximately October 11, 1996.

In addition, Congress is currently considering legislation reauthorizing the Institute. If the bill is enacted into law during this session of Congress, the Final Guideline will incorporate any relevant changes that affect the administration or scope of the grant program.

Types of Grants Available and Funding Schedules

The SJI grant program is designed to be responsive to the most important needs of the State courts. To meet the full range of the courts' diverse needs, the Institute offers five different categories of grants. The types of grants available in FY 1997 and the funding cycles for each program are provided below:

Project Grants

These grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Except for "Single Jurisdiction" grants awarded under section II.C.1. (see below), project grants are intended to support innovative projects of national significance. As provided in section V. of the Guideline, project grants may ordinarily not exceed $200,000 a year; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant. As indicated in Section VI.C., the Board may make an "accelerated" grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information about the operation of the project would be provided in an application.

The FY 1997 mailing deadline for project grant concept papers is November 27, 1996. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet in late February, 1997 to invite formal applications based on the most promising concept papers. Applications will be due in May and awards will be approved by the Board in July.

Single Jurisdiction Project Grants

Section II.C. of the Guideline allocates funds for two types of "Single Jurisdiction" grants.

Section II.C.1. reserves up to $300,000 for Projects Addressing a Critical Need of a Single State or Local Jurisdiction. To receive a grant under this program, an applicant must demonstrate that (1) the proposed project is essential to meeting a critical need of the jurisdiction and (2) the need cannet be met solely with State and local resources within the foreseeable future. Applicants are encouraged to submit proposals to replicate approaches or programs that have been evaluated as effective under an SJI grant. "Replication" grants are limited to no more than $30,000 each. Examples of projects that could be replicated are listed in Appendix [IV].

Section II.C.2. reserves up to $400,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance grant may be submitted at any time. Applicants submitting letters between June 18 and September 30, 1996 will be notified of the Board's decision by December 9, 1996; those submitting letters between October 1, 1996 and January 10, 1997 will be notified by March 28, 1997; those submitting letters between January 11, 1997 and March 14, 1997 will be notified by May 27, 1997; and those submitting letters between March 15, 1997 and June 13, 1997 will be notified by August 31, 1997. Subject to the availability of appropriations in FY 1998, applicants submitting letters between June 14 and September 30, 1997 will be notified of the Board's decision by December 19, 1997.

Curriculum Adaptation Grants

A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $175,000 for these grants in FY 1997. See section II.B.2.b.ii.

Letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section II.B.2.b.ii.(c).

Scholarships

The Guideline allocates up to $200,000 of FY 1997 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.iii.

The Guideline establishes four deadlines for scholarship requests: October 1, 1996 for training programs beginning between January 1 and March 31, 1997; January 7, 1997 for programs beginning between April 1 and July 1, 1997; April 1, 1997 for programs beginning between July 1 and

September 30, 1997; and July 1, 1997 for programs beginning between October 1 and December 31, 1997.

Renewal Grants

There are two types of renewal grants available from SJI: Continuation grants (see sections III.G., V.C. and D., and IX.A.) and On-going support grants (see sections III.H., V.C. and D., and IX.B.). Continuation grants are intended to enhance the specific program or service begun during the initial grant period. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of no more than $2 million, approximately 25% of the total amount projected to be available for grants in FY 1997. See section IX. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

Special Interest Categories

The Guideline includes 10 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts this year. The selection of these categories was based on the Board and staff's experience and observations over the past year, the recommendations received from judges, court managers, lawyers, members of the public, and other groups interested in the administration of justice, and the issues identified in recent years' concept papers and applications.

Section II.B. of the Proposed Guideline includes the following Special Interest categories:

Improving Public Confidence in the Courts;

Education and Training for Judges and Other Key Court Personnel (this category includes Curriculum Adaptation grants and Scholarships for Judges and Key Court Personnel);

Dispute Resolution and the Courts;

Application of Technology;

Court Management, Financing, and Planning;

Resolution of Current Evidentiary Issues;

Substance Abuse and the Courts;

Children and Families in Court;

Improving the Court's Response to Domestic Violence and Other Gender-Related Crimes of Violence; and

The Relationship Between State and Federal Courts.

Recommendations to Grant Writers

Over the past 10 years, Institute staff have reviewed approximately 3,000 concept papers and 1,500 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. CONCEPT PAPERS AND APPLICATIONS SHOULD, HOWEVER, BE PRESENTED IN THE FORMATS SPECIFIED IN SECTIONS VI. AND VII. OF THE GUIDELINE, RESPECTIVELY.

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should present the criteria that will be used to evaluate the project's effectiveness, identify program elements which will require further modification, and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be

specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, include the following information:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000=$25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports×75 pages each×.05/page=$375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion. The Institute will provide an illustrative budget and budget form upon request.

10. *What travel regulations apply to the budget estimates?*

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site or the average of airfares from each coast to the meeting site may be used. Applicants should arrange travel so as to be able to take advantage of advance purchase price discounts whenever possible.

13. *What meeting costs may be covered with grant funds?* SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals. However, they cannot be used to reimburse the cost of coffee or other types of refreshment breaks, or for alcoholic beverages.

14. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations To Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,100 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. *After the grant has been awarded, when are the first quarterly reports due?* Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—i.e., no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first Quarterly Progress Report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, Quarterly Progress Reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. The Quarterly Project Report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a Quarterly Progress Report and attachments should be submitted to the Institute.

Additional Quarterly Progress Report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. *Do reporting requirements differ for renewal grants?* Recipients of a continuation or on-going support grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation grant and each yearly grant under an on-going support award should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant or a yearly increment of an on-going support award should be designated as number one, the second as number two, and so on, through the final progress and financial status reports due within 90 days after the end of the grant period.

3. *What information about project activities should be communicated to SJI?* In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting, or payment requests, should be addressed to the Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. *Why is it important to address the special conditions that are attached to the award document?* In some instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

5. *What is a Grant Adjustment?* A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

6. *What schedule should be followed in submitting requests for reimbursements or advance payments?* Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. *Do procedures for submitting requests for reimbursement or advance payment differ for renewal grants?* The basic procedures are the same for any grant. A continuation grant or the yearly grant under an on-going support award should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant or a yearly increment under an on-going support award should be designated as number one, the second as number two, and so on through the final payment request for that grant.

8. *If things change during the grant period, can funds be reallocated from one budget category to another?* The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period.

9. *What is the 90-day close-out period?* Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. *Are funds granted by SJI "Federal" funds?* The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality

of the Federal Government." 42 U.S.C. § 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grants funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. *If SJI is not a Federal Agency, do OMB circulars apply with respect to audits?* Except to the extent that they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128 and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" [see 42 U.S.C. § 10711(c)(1)], the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section XI.J.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128, or A–133, in satisfaction of the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline Section XI.J.) A copy of the above noted circulars may be obtained by calling OMB at (202) 395–7250.

12. *Does SJI have a CFDA number?* Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards. Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1996 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees that are required to satisfy either the Single Audit Act, OMB Circulars A–128, or A–133 and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in Section XI.J. of the Grant Guideline.

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The following Grant Guideline is proposed by the State Justice Institute for FY 1997:

State Justice Institute Grant Guideline

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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements, and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments. The Institute may also award grants to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may be awarded, as well, to Federal, State or local agencies and institutions other than courts for services that cannot be provided adequately through nongovernmental arrangements. In addition, the Institute may provide financial assistance in the form of interagency agreements with other grantors.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation, as amended. However, the Board of Directors of the Institute has designated certain program categories as being of special interest. See section II.B.

The Institute has established one round of competition for FY 1997 funds. The concept paper submission deadline is November 27, 1996.

It is anticipated that between $7 million and $9 million will be available for award. This Guideline applies to all concept papers and applications submitted, as well as grants awarded in FY 1997.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Pub. L. 98–620, Title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1997, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated ten program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act, the Judicial Training and Research for Child Custody Litigation Act, and the International Parental Kidnapping Crime Act.

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards, and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens;

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14–17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction;

20. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court systems or programs in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1997, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services, and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Improving Public Confidence in the Courts.* This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process, and test innovative methods for increasing the public's confidence in the State courts.

The Institute is particularly interested in supporting innovative projects that examine, develop, and test methods that trial or appellate courts may use to:

- Improve service to individual litigants and trial participants, including innovative methods for handling cases involving unrepresented litigants fairly and effectively and for dealing with litigants unwilling to follow administrative and legal procedures;
- Test methods for more clearly and effectively communicating information about judicial decisions, the trial and appellate court process, and court operations to litigants and the public;
- Develop policies, protocols, and procedures designed to prevent harassment, threats, and incidents endangering the lives and property of judges, court employees, jurors, litigants, witnesses, and members of the public in court facilities;
- Eliminate race, ethnic, and gender bias in the courts;
- Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to define the impact of immigration on State courts; design and assess procedures for use in custody, visitation, and other domestic relations cases when key family members or property are outside the United States; and develop protocols to facilitate service of process, the enforcement of orders of judgment, and the disposition of criminal and juvenile cases when a non-U.S. citizen or corporation is involved; and
- Demonstrate and evaluate methods for involving the community in the sentencing process, such as community impact statements, community oversight of compliance with community service and probation conditions, or other innovative court-community links focused on the sentencing process;
- Foster positive attitudes toward jury service and enhance the attractiveness of juror service through, e.g., incentives to participate, modifications of terms of service, and/or juror orientation and education programs.
- Demonstrate and evaluate the impact of methods for improving juror comprehension in criminal and civil cases, such as access to technology in the jury room to permit review of computerized exhibits of evidence presented in the case, use of specially qualified juries in complex cases, delivery of instructions throughout the trial, and testimony by court-appointed neutral experts;
- Examine the impact of the grand jury process on due process requirements, caseflow management, court operations, and the public's perception of the fairness of court proceedings, and develop appropriate recommendations for improving the management of the process; and
- Assess the impact of live television coverage of trials on court proceedings, public understanding, and fairness to litigants.

Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases

Previous SJI-supported projects that address these issues include: a National Town Hall Meeting Videoconference, a National Conference on Eliminating Race and Ethnic Bias in the Courts, and projects to implement the action plans developed at the conferences; a guidebook for developing effective court-based programs for assisting pro se litigants, as well as development of a self-service center and touchscreen computer kiosks, videotapes, and written materials to assist unrepresented

litigants; educational materials for court employees on serving the public; a manual and other materials for managing and coordinating court interpretation services, and materials for training and certifying court interpreters; a colloquium on the adversary system; a demonstration of the use of community volunteers to monitor adult probationers and to monitor guardianships; evaluation of community-based court programs in New York City; studies of effective and efficient methods for providing legal representation to indigent parties in criminal and family cases and the applicability of various dispute resolution procedures to different cultural groups; guidelines for court-annexed day care systems; development of a manual for implementing innovations in jury selection, use, and management; development of a guide for making juries accessible to persons with disabilities; and an assessment of the effect of allowing jurors to discuss the evidence prior to the deliberations on the verdict

b. *Education and Training for Judges and Other Key Court Personnel.* The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional, and national levels. Accordingly, this category is divided into subsections: (i) Development of Innovative Educational Programs; (ii) Curriculum Adaptation Projects; and (iii) Scholarships

i. *Development of Innovative Educational Programs.* This category includes support for the development and testing of educational programs for judges or court personnel that address key substantive and administrative issues of concern to the nation's courts, or assist local courts or State court systems to develop or enhance their capacity to deliver quality continuing education. Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on some form of assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills that participants will acquire; incorporate adult education principles and varying teaching/learning methods; and result in the development of a curriculum as defined in section III.J.

(a) The Institute is particularly interested in the development of education programs that:

- Assist local courts, State court systems, and court systems in a geographic region to develop or enhance a systematic program of continuing education, training, and career development for judges and court personnel as an integral part of court operations;
- Include self-directed learning packages such as those using interactive computer-programs, videos, or other audio and visual media supported by written materials or manuals, or distance-learning approaches to assist those who do not have ready access to classroom-centered programs;
- Test the use of the Internet as a means of delivering educational programs for judges and court personnel, or for facilitating and organizing the exchange of information on trends, problems, and issues affecting the courts;
- Familiarize faculty with the effective use of instructional technology including methods for effectively presenting information through videos and satellite teleconferences;
- Involve collaboration between the judicial, executive, and legislative branches of government such as programs to explore what are ethically proper and improper interactions between judges and legislators;
- Enhance communication and cooperation among courts within a metropolitan area or multi-State region;

(b) The Institute also is interested in supporting the development and testing of curricula on critical issues such as:

- The development of judicial leadership abilities;
- The need for effective approaches to screening and sentencing adult and juvenile sexual offenders;
- The appropriate use and management of specialized calendars or court divisions (e.g., for substance abuse, domestic violence, or commercial cases) as well as the necessary substantive expertise to preside over such cases;
- The appropriate and effective methods for preventing harassment, threats or incidents endangering the lives and property of judges, court personnel, jurors, litigants, witnesses and the public in court facilities, and managing cases involving groups or individuals unwilling to cooperate with legal or administrative procedures;
- The application of the standards set forth in Daubert v. Merrell Dow Pharmaceuticals, Inc. governing the admissibility of scientific and technical evidence, and the application of the recently released National Academy of Sciences report on forensic DNA evidence;
- The problems resulting from Strategic Lawsuits Against Public Participation (SLAPP suits); and
- Other topics addressed by SJI-supported demonstration, evaluation, or research projects.

ii. *Curriculum Adaptation Projects.*

(a) *Description of the Program.* The Board is reserving up to $175,000 to provide support for projects that adapt and implement model curricula previously developed with SJI support.

The goal of the Curriculum Adaptation program is to provide State and local courts with sufficient support to prepare and test a model curriculum, course module, national or regional conference program, or other model education program developed with SJI funds and modified to meet a State's or local jurisdiction's educational needs. Generally, it is anticipated that the adapted curriculum would become part of the grantee's ongoing educational offerings, and that local instructors would receive the training needed to enable them to make future presentations of the curriculum. An illustrative list of the curricula that may be appropriate for the adaptation is contained in Appendix III.

- Only State or local courts may apply for Curriculum Adaptation funding. Grants to support adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.
- (b) *Review Criteria.* Curriculum Adaptation grants will be awarded on the basis of criteria including: the goals and objectives of the proposed project; the need for outside funding to support the program; the likelihood of effective implementation; the appropriateness of the educational approach in achieving the project's educational objectives; the likelihood of effective implementation and integration into the State's or local jurisdiction's ongoing educational programming; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making curriculum adaptation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

(c) *Application Procedures.* In lieu of concept papers and formal applications, applicants for grants may submit a detailed letter and three photocopies. Although there is no prescribed form for

the letter, nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria for evaluating applications is addressed:

• *Project Description.* What are the project's goals and learning objectives? What is the title of the model curriculum to be tried and who developed it? What program components would be implemented, and what benefits would be derived from this test? Why is this education program needed at the present time? Who will be responsible for adapting the model curriculum, and what types of modifications, if any, in length, format, and content are anticipated? Who will the participants be, how will they be recruited, and from where will they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)? How many participants are anticipated?

• *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?

• *Likelihood of Implementation.* What is the proposed timeline for modifying and presenting the program? Who would serve as faculty and how were they selected? Will the presentation of the program be evaluated and, if so, by whom? (Ordinarily, an independent evaluation is not necessary; however, the results of any evaluation should be included in the final report.) What measures will be taken to facilitate subsequent presentations of the adapted program?

• *Expressions of Interest By Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

• *Budget and Matching State Contribution.* Applicants should attach a copy of budget Form E (see Appendix V) and a budget narrative (see Section VII.B.) that describes the basis for the computation of all project-related costs and the source of the match offered.

• Local courts should attach a concurrence signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix VI.)

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning.

The Board of Directors has delegated its authority to approve Curriculum Adaptation grants to its Judicial Education Committee. The committee anticipates acting upon applications within 45 days after receipt. Grant funds will be available only after committee approval and negotiation of the final terms of the grant.

(d) *Grantee Responsibilities.* A recipient of a Curriculum Adaptation grant must:

(1) Comply with the same quarterly reporting requirements as other Institute grantees (see Section X.L., infra);

(2) Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo and a disclaimer paragraph (See section X.Q. of the Guideline); and

(3) Submit two copies of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to replicate the program in the future.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in Sections VI and VII or the requirements for renewal applications set forth in Section IX.

iii. *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $200,000 to support a scholarship program for State court judges and court managers.

(a) *Program Description/Scholarship Amounts.* The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. The annual or midyear meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

A scholarship may cover the cost of tuition and transportation up to a maximum total of $1,500 per scholarship. (Transportation expenses include round-trip coach airfare or train fare. Recipients who drive to the site of the program may receive $.31/mile up to the amount of the advanced purchase round-trip airfare between their home and the program site.) Funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

Scholarship recipients are encouraged to check with their tax advisor to determine whether the scholarship constitutes taxable income under Federal and State law.

(b) *Eligibility Requirements.* Because of the limited amount of funds available, scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

(c) *Application Procedures.* Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix V). An applicant may apply for a scholarship for only one educational program during any one application cycle. Applications must be submitted by:

October 1, 1996, for programs beginning between January 1, and March 31, 1997;

January 7, 1997, for programs beginning between April 1 and June 30, 1997;

April 1, 1997, for programs beginning between July 1 and September 30, 1997; and

July 1, 1997, for programs beginning between October 1, and December 31, 1997.

No exceptions or extensions will be granted. Applicants are encouraged not to wait for the decision on the

scholarship to register for the educational program they wish to attend.

(d) *Concurrence Requirement.* All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (Form S2, see Appendix V). Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor. The Concurrence form (Form S2) may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within two weeks after the appropriate application mailing deadline (i.e. by October 8, 1996, or January 14, April 8, or July 8, 1997). No application will be reviewed if a signed Concurrence form has not been received by the required date.

(e) *Review Procedures/Selection Criteria.* The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 60 days after the relevant application deadline. The Committee will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for education in the particular course subject and how the applicant would apply the information/skills gained;
- The benefits to the applicant's court or the State's court system that would be derived from the applicant's participation in the specific educational program, including a description of current legal, procedural, administrative, or other problems affecting the State's courts, related to topics to be addressed at the educational program (in addition to submission of a signed Form S2);
- The absence of educational programs in the applicant's State addressing the particular topic;
- How the applicant will disseminate the knowledge gained (e.g., by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level);
- The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;
- The likelihood that the applicant would be able to attend the program without a scholarship;
- The unavailability of State or local funds to cover the costs of attending the program;
- The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;
- Geographic balance;
- The balance of scholarships among types of applicants and courts;
- The balance of scholarships among educational programs; and
- The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

(f) *Non-transferability.* Scholarships are not transferable to another individual. They may be used only for the course specified in the application unless the recipient submits a letter requesting to attend a different course. The letter must explain the reasons for the change; the need for the information or skills to be provided by the new course; how the information or skills will be used to benefit the individual, his or her court, and/or the courts of the State; and how the knowledge or skills gained will be disseminated. Requests to use a scholarship for a different course must be approved by the Judicial Education Committee of the Institute's Board of Directors. Ordinarily, decisions on such requests will be made within 30 days after the receipt of the request letter.

(g) *Responsibilities of Scholarship Recipients.* In order to receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Dispute Resolution and the Courts.* This category includes education, research, evaluation, and demonstration projects to evaluate or enhance the effectiveness of court-connected dispute resolution programs. The Institute is interested in projects that facilitate comparison among research studies by using similar measures and definitions; address the nature and operation of ADR programs within the context of the court system as a whole; and compare dispute resolution processes to attorney settlement as well as trial. Specific topics of interest include:

- The appropriate timing for referrals to dispute resolution services and the effects of implementing such referrals at various stages during litigation;
- The effect of different referral methods including any differences in outcome between voluntary and mandatory referrals;
- The special procedures or approaches incorporated into courtconnected dispute resolution programs to take into account the differences in various cultural communities' attitudes toward conflict and authority;
- The assessment of innovative approaches that provide rural courts and other under-served areas with adequate court-connected dispute resolution services; and
- The development and evaluation of innovative court-connected dispute resolution programs for resolving complex and multi-party cases.

Applicants should be aware that the Institute will not provide operational support for on-going ADR programs or start-up costs of non-innovative ADR programs. Courts also should be advised that it is preferable for the applicant to use its funds to support the operational costs of an innovative program and request Institute funds to support related technical assistance, training, and evaluation elements of the program.

In previous funding cycles, grants have been awarded to support evaluation of the use of mediation in civil, domestic relations, juvenile, probate, medical malpractice, appellate, and minor criminal cases. SJI grants also have supported assessments of the impact of private judging on State courts; multi-door courthouse programs; arbitration of civil cases; screening and intake procedures for mediation; the relationship between mediator training and qualifications, and case outcome and party satisfaction; and trial and appellate level civil settlement programs. In addition, SJI has supported the creation of a national ADR resource

center and a national database of court-connected dispute resolution programs; the development of training programs for judges; the testing of Statewide and trial court-based ADR monitoring/evaluation systems and implementation manuals; the promulgation of principles and policies regarding the qualifications, selection, and training of court-connected neutrals; development of standards for court-annexed mediation programs; and an examination of the applicability of various dispute resolution procedures to different cultural groups.

d. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that the staff is appropriately educated about the purpose and use of the new technology. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to:

- Evaluate the use of the Internet for case and document filing;
- Establish standards for judicial electronic data interchange (EDI); and test local, Statewide, and/or interstate demonstrations of the courts' use of EDI.
- Evaluate innovative applications of technology to prevent courthouse incidents that endanger the lives and property of judges, court personnel, and courtroom participants.
- Demonstrate and evaluate innovative information system links between courts and criminal justice, social service, and treatment agencies.

Ordinarily, the Institute will not provide support for the purchase of equipment or software in order to implement a technology that has been thoroughly tested in the courts, such as the establishment of videolinks between courts and jails, the use of optical imaging for recordkeeping, and the creation of an automated management information system. (But see section II.C.1. on projects to meet a critical need of a single jurisdiction.) (See section XI.H.2.b. regarding other limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support: demonstration and evaluation of communications technology including the availability of electronic forms and information on the Internet to assist pro se litigants; access to case data via the Internet; guidelines for electronic transfer of court documents; the development of an electronic document management system; and a court management information display system; the integration of bar-coding technology with an existing automated case management system; demonstration of an on-bench automated system for generating and processing court orders and development of an automated judicial education management system; a document management system for small courts using imaging technology; evaluation of the use of automated teller machines for paying jurors; creation of a court technology laboratory to provide judges and court managers an opportunity to test automated court-related hardware and software; and establishment of a technical information service to respond to specific inquiries concerning court-related technologies.

Grants also provided support for national court technology conferences; the development of model rules on the use of computer-generated demonstrative evidence and electronic documentary evidence; preparation of guidelines on privacy and public access to electronic court information and on court access to the information superhighway; the testing of a computerized citizen intake and referral service; development of an "analytic judicial desktop system" to assist judges in making sentencing decisions; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

e. *Court Planning, Management, and Financing.* The Institute is interested in supporting projects that explore emerging issues that will affect the State courts as they enter the 21st Century, as well as projects that develop and test innovative approaches for managing the courts, securing and managing the resources required to fully meet the responsibilities of the judicial branch, and institutionalizing long-range planning processes. In particular the Institute is interested in:

i. Demonstration, evaluation, education, research, and technical assistance projects to:

- Develop, implement, and assess innovative case management techniques for cases involving juveniles;
- Facilitate communication, information sharing, and coordination between the juvenile and criminal courts;
- Assess the effects of innovative management approaches designed to assure quality services to court users;
- Institutionalize long-range planning approaches in individual States and local jurisdictions, including development of an ongoing internal capacity to conduct environmental scanning, trends analysis, and benchmarking; and
- Develop and test mechanisms for linking assessments of effectiveness such as the Trial Court Performance Standards to fiscal planning and budgeting, including service efforts and accomplishments approaches (SEA), performance audits, and performance budgeting; and the testing of innovative programs and procedures for providing clear and open communications between the judicial and legislative branches of government.

ii. The preparation of essays exploring possible changes in the court process or judicial administration and their implications for judges, court managers, policymakers, and the public. Grants supporting such "think pieces" are limited to no more than $10,000. The resulting essay should be directed to the court community and of publishable quality.

Possible topics include, but are not limited to: the ramifications of "virtual trials" (i.e. proceedings in which several of the trial participants including the parties, counsel, witnesses, the judge, and the jury may not be physically in the courtroom); the implications of the greater use of technology-enhanced courtroom presentations, especially when there is an imbalance of resources among the parties; the appropriateness of modifying methods of selecting, qualifying, and using juries; and the uses of technology to better inform and prepare jurors.

The Institute has funded planning, futures, and innovative management projects including: national and Statewide "future and the courts" conferences and training; development of curricula, guidebooks and a video on visioning, and a long-range planning guide for trial courts; the provision of technical assistance to courts conducting futures and long-range planning activities, including development of a court futures network on Internet; a National Interbranch Conference on Funding the State Courts; a test of the feasibility of implementing

the Trial Court Performance Standards in four States; the development of Appellate Court Performance Standards and Measures; the application of total quality management principles to court operations, as well as the development of a TQM guidebook and training materials for trial courts; revision of the Standards on Judicial Administration; projects identifying the causes of delay in trial and appellate courts; and the preparation of a national agenda for reducing litigation cost and delay.

f. *Resolution of Current Evidentiary Issues.* This category includes educational programs and other projects to assist judges in deciding questions regarding:

- The admissibility of new forms of demonstrative evidence, including computer simulations, and providing appropriate jury instructions regarding such evidence;
- The appropriate use of expert testimony in criminal cases concerning the possible mitigating impact of the prior victimization of the defendant;
- The admissibility and weight of complex scientific or technical evidence and applying the standards set forth in Daubert v. Merrell Dow Pharmaceuticals, Inc. governing the admissibility of scientific and technical evidence;
- The admissibility of genetic evidence generally, and the findings of the recently released National Academy of Sciences report evaluating forensic DNA evidence, in particular;
- The admissibility of testimony based on recovered memory, and the admissibility of expert testimony about memory recovery; and
- The application of rape shield laws and other limits on the introduction of evidence or the cross-examination of witnesses.

In previous funding cycles, the Institute has supported the analysis of issues related to the use of expert testimony in criminal cases involving domestic violence; development of a computer-assisted training program on evidentiary problems for juvenile and family court judges; training on medical/legal and scientific evidence issues; a national conference on mass tort litigation; regional seminars on evidentiary questions; production of a videotape and other materials on scientific evidence; presentation of a workshop on the use of DNA evidence in criminal proceedings; and preparation of a benchbook for judges on the credibility, competence, and courtroom treatment of child witnesses as well as protocols for questioning child victims of crime.

g. *Substance Abuse.* This category includes projects to develop and evaluate innovative techniques that courts may use to handle a large volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously. In particular, the Institute is interested in projects to:

- Prepare and test measures, forms, and other tools for self-evaluation of a court-enforced substance abuse treatment program;
- Develop and test innovative management information systems to facilitate the sharing of information among courts, and the agencies and service providers involved in the operation of a court-enforced substance abuse treatment program;
- Assess the effect of managed health-care plans on the availability and cost of drug treatment services for court-enforced treatment programs, and assist courts in shaping managed care plans to enhance the availability of necessary services at a reasonable cost;
- Develop and test educational programs for judges and court personnel concerning the management of "drug courts" (i.e. specialized calendars for substance abuse cases combined with court-enforced treatment programs), developing collaborative efforts with community service agencies to support the work of drug courts, or the ethical issues that may be involved in operating a drug court; and
- Assess the applicability of the drug court model to substance abuse-related cases involving juveniles and cases requiring other treatment or services in addition to substance abuse treatment (e.g., child abuse, or mental health cases).

The Institute has supported the presentation of the 1995 National Symposium on the Implementation and Operation of Court-Enforced Drug Treatment Programs as well as the 1991 National Conference on Substance Abuse and the Courts, and efforts to implement the State and local plans developed at these Conferences.

It has also supported projects to evaluate: court-enforced treatment programs; special court-ordered programs for women offenders, and other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; involve community groups and families in drug court programs; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook and other educational materials to assist judges in child abuse and neglect cases involving parental substance abuse and in developing appropriate sentences for pregnant substance abusers; test the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

h. *Children and Families in Court.* This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, appropriate, and effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that:

i. Assist courts in addressing the special needs of children in cases involving family violence including the development and testing of innovative protocols, procedures, educational programs, and other measures for improving the capacity of courts to:

- Adjudicate child custody cases in which family violence may be involved;
- Determine and address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;
- Adjudicate and monitor child abuse and neglect litigation and reconcile the need to protect the child with the requirement to make reasonable efforts to maintain or reunite the family.

ii. Enhance the fairness and effectiveness of juvenile delinquency proceedings, including projects that:

- Prepare curricula and materials on how to manage cases involving gang members fairly, safely, and effectively, including the use of appropriate procedures for determining pre-adjudication release, protecting witnesses, and developing effective dispositions;
- Prepare curricula and materials for judges and court staff on accurately identifying those juvenile offenders who are likely to pursue criminal careers and to intervene more effectively when such a youth is identified.
- Develop and test effective approaches for the detention, adjudication, and disposition of juveniles under age 13 who are accused of involvement in a violent offense;

iii. Improve the fairness and effectiveness of proceedings to determine custody, visitation, and support issues, including projects that:

- Develop and test guidelines, curricula, and other materials to assist trial judges in determining the best interest of a child, particularly when an adoption is contested, or when a parent

who has been awarded custody seeks to relocate;

• Develop and test guidelines, curricula, and other materials to assist trial judges in establishing and enforcing custody, visitation, and support orders in cases in which a child's parents were never married to each other.

iv. Improve the effectiveness and operating efficiency of juvenile and family courts, including projects to:

• Improve the capacity of courts, regardless of structure, to expeditiously coordinate and share appropriate information for multiple cases involving members of the same family;

• Develop and test innovative techniques for improving communication, sharing information, and coordination between juvenile and criminal courts and divisions; and

• Improve the handling of the criminal and civil aspects of interstate and international parental child abductions.

In previous funding cycles, the Institute supported a national and State conferences on courts, children, and the family; a review of juvenile courts in light of the upcoming 100th anniversary of the founding of the first juvenile court; a symposium on the resolution of interstate child welfare issues; the preparation of educational materials on the questioning of child witnesses, making reasonable efforts to preserve families, adjudicating allegations of child sexual abuse when custody is in dispute, child victimization, handling child abuse and neglect cases when parental substance abuse is involved, and on children as the silent victims of spousal abuse. Other Institute grants have supported the examination of supervised visitation programs, effective court responses when domestic violence and custody disputes coincide, and foster care review procedures.

In addition, the Institute has supported projects to enhance coordination of cases involving the same family that are being heard in different courts; assistance to States considering establishment of a family court; development of national and State-based training materials for guardians ad litem; examinations of the authority of the juvenile court to enforce treatment orders and the role of juvenile court judges; and development of innovative approaches for coordinating services for children and youth.

i. *Improving the Courts' Response to Domestic Violence and Gender-Related Crimes of Violence.* This category includes education, demonstration, technical assistance, evaluation, and research projects to improve the fair and effective processing, consideration, and disposition of cases concerning domestic violence and gender-related violent crimes, including projects on:

• The effective use and enforcement of intra- and inter-State protective orders and the implications for the courts of the full faith and credit provisions of the Violence Against Women Act;

• The effective use of electronic databases of protection orders;

• The effectiveness of specialized calendars or divisions for considering domestic violence cases and related matters, including their impact on victims, offenders, and court operations;

• The most effective procedures for conducting "fatality reviews," and the impact of such reviews on the courts, criminal justice agencies, and the public;

• Appropriate consideration of cultural issues in adjudicating and developing effective dispositions in cases involving domestic violence;

• Effective methods that courts can use to monitor and respond to stalking;

• Determining when it may be appropriate to refer a case involving family violence for mediation and what procedures and safeguards should be employed;

• Effective programs, procedures, and strategies to coordinate the response to domestic violence and gender-related crimes of violence among courts, criminal justice agencies, and social services programs, and to assure that courts are fully accessible to victims of domestic violence and other gender-related violent crimes; and

• Effective sentencing approaches in cases involving domestic violence and other gender-related crimes, including methods for accurately identifying potentially lethal batterers.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes.

In previous funding cycles, the Institute supported national and State conferences on family violence and the courts as well as projects to implement the action plans developed at these conferences; development of curricula for judges on handling family violence, rape, and sexual assault cases; preparation of descriptions of innovative court practices in family violence cases; evaluation of the effectiveness of court-ordered treatment for family violence offenders and of the use of alternatives to adjudication in child abuse cases; development of ways to improve the effectiveness of civil protection orders for family violence victims; an examination of state-of-the-art court practices for handling family violence cases; recommendations on how to improve access to rural courts for victims of family violence; exploration of the policy issues related to and the development of curricula on the use of mediation in domestic relations cases involving allegations of violence; testing of videotapes and other educational programs for the parties in divorce actions and their children; and preparation of an analysis of the issues related to the use of expert testimony in criminal cases involving domestic violence.

j. *The Relationship Between State and Federal Courts.* This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative projects that:

i. Develop and test curricula and other educational materials to illustrate effective methods being used at the trial court, State, and Circuit levels to coordinate cases and administrative activities, and share facilities; and

ii. Develop and test new approaches to:

• Implement the habeas corpus provisions of the Anti-Terrorism Act of 1996;

• Handle capital habeas corpus cases fairly and efficiently;

• Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;

• Coordinate the adjudication of related State and Federal criminal cases;

• Coordinate related State and Federal cases that may be brought under the Violence Against Women Act;

• Exchange information and coordinate calendars among State and Federal courts; and

• Share jury pools, alternative dispute resolution programs, and court services.

In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships, a national conference on mass tort litigation, and the Chief Justices' Special Committee on Mass Tort Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining methods of State and Federal trial and appellate court cooperation; procedures for facilitating certification of questions of law; the impact on the State courts of diversity cases and cases brought under section 1983; the procedures used in Federal habeas corpus review of State court criminal

cases; the factors that motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a test of assigning specialized law clerks to trial courts hearing capital cases in order to improve the fairness and efficiency of death penalty litigation at the trial level, a clearinghouse of information on State constitutional law decisions, educational programs for State judges on coordination of Federal bankruptcy cases with State litigation, and a seminar examining the implications of the "Federalization" of crime.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. *Projects Addressing a Critical Need of a Single State or Local Jurisdiction.*

a. *Description of the Program.* The Board will set aside up to $300,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas. In particular, the Institute is interested in proposals to replicate programs, procedures, or strategies that have been developed, demonstrated, or evaluated by SJI-supported projects. (A list of examples of such projects is contained in Appendix IV.) Replication grants are limited to no more than $30,000 each. Ordinarily, the Institute will not provide support solely for the purchase of equipment or software.

Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. *Application Procedures.* Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. *Technical Assistance Grants.*

a. *Description of the Program.* The Board will set aside up to $400,000 of Fiscal Year 1997 funds to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $100,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants, travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating, or both. Technical assistance grant funds ordinarily may not be used to support production of a videotape. Normally, the technical assistance must be completed within 12 months after the start-date of the grant.

b. *Eligibility for Technical Assistance Grants.* Only a State or local court may apply for a Technical Assistance grant. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount.

c. *Review Criteria.* Technical Assistance grants will be awarded on the basis of criteria including: whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

d. *Application Procedures.* In lieu of formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the issues listed below. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. *Need for Funding.* What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. *Project Description.* What tasks would the consultant be expected to perform and how would they be accomplished? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

iii. *Likelihood of Implementation.* What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review

of the recommendations and development of the implementation plan?

iv. *Budget and Matching State Contribution.* A completed Form E, "Preliminary Budget" (see Appendix V to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/ Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs (e.g., number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid at a rate in excess of $900 per day. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of technical assistance grants do not have to submit an audit, but must maintain appropriate documentation to support expenditures. (See section X.M.)

v. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix VI) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between June 18, and September 30, 1996 will be notified of the Board's decision by December 9, 1996; those submitting letters between October 1, 1996 and January 10, 1997 will be notified by March 28, 1997. Notification of the Board's decisions concerning letters mailed between January 11 and March 14, 1997, will be made by May 27, 1997. Notice of decisions regarding letters submitted between March 15 and June 13, 1997 will be made by August 31, 1997. Subject to the availability of sufficient appropriations for fiscal year 1998, applicants submitting letters between June 14 and September 30, 1997, will be notified by December 19, 1997.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation must accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by November 1, 1996, and February 13, April 17, and July 11, 1997).

vi. *Grantee Responsibilities.* Technical Assistance grant recipients are subject to the same quarterly reporting requirements as other Institute grantees. At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute two copies of a final report that explains how it intends to act on the consultant's recommendations as well as two copies of the consultant's written report.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

E. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

F. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, or the time of participants attending an education program. Amounts contributed as cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

G. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period.

H. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

I. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique.

J. Curriculum

The materials needed to replicate an education or training program

developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

K. Products

Tangible materials resulting from funded projects including, but not limited to: curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

In addition, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. Project grants (See sections II.B., and C.1., VI., and VII.).
2. Continuation grants (See sections III.H. and IX.A).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Technical Assistance grants (See section II.C.2).
5. Curriculum Adaptation grants (See section II.B.2.b.ii.).
6. Scholarships (See section II.B.2.b.iii).

C. Maximum Size of Awards

1. Except as specified below, applications for new project grants and applications for continuation grants may request funding in amounts up to $200,000, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds for on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the Quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. Applications for technical assistance grants may request funding in amounts up to $30,000.

4. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

5. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 15 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. This requirement and the submission deadlines for concept papers and applications may be waived by the Executive Director for good cause (e.g., the proposed project could provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a

single project or a "package" of projects, or whether the applicant is requesting an accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization, or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.A.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

The program narrative of a concept paper should be no longer than necessary, but *in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi.* The narrative should describe:

a. *Why is this project needed and how will it benefit State courts?* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources, and the benefits that would be realized by the proposed site(s).

If the project is not site-specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services, or other resources do not adequately resolve those — problems, and the benefits that would be realized from the project by State courts generally.

b. *What will be done if a grant is awarded?* Applicants should include a summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows, and include a detailed task schedule as an attachment to the concept paper.

c. *How will the effects and quality of the project be determined?* Applicants should include a summary description of how the project will be evaluated, including the evaluation criteria.

d. *How will others find out about the project and be able to use the results?* Applicants should describe the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

3. The Budget

a. *Preliminary Budget.* A preliminary budget must be attached to the narrative that includes the information specified on Form E included in Appendix VI of this Guideline. Applicants should be aware that prior written Institute approval is required for any consultant rate in excess of $300 per day, and that Institute funds may not be used to pay a consultant in excess of $900 per day.

b. *Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000.* Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C. must attach to Form E (see Appendix VI) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources.

4. Letters of Cooperation or Support

The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project. Letters of support also may be sent under separate cover. However, in order to ensure that there is sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than January 13, 1997.

5. Page Limits

a. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.b., the task schedule if required under section VI.A.2.b., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

b. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

6. Sample Concept Papers

Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

"Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

2. In determining which concept papers will be approved for award or selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b) (as amended) and section IV above); the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation. Because the Institute's experience has been that projects to conduct empirical research or program evaluation ordinarily require a more thorough explanation of the methodology to be used than can be provided within the space limitations of a concept paper, the Board is unlikely to waive the application requirement for such projects.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1997 must be sent by first class or overnight mail or by courier no later than November 27, 1996. A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These required application forms are described below and are included in Appendix VII. They also may be requested via E-mail (SJI@clark.net) or by calling the Institute and requesting a copy (703–684–6100). Applicants may photocopy the forms to make completion easier.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas to be Covered

The applicant should list the Special Interest Category or Categories that are addressed by the proposed project (see section II.B.). If the proposed project does not fall within one of the Institute's Special Interest Categories, the applicant should list the Statutory Program Area or Areas that are addressed by the proposed project. (See section II.A.)

3. Need for the Project

If the project is to be conducted in a specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing materials, programs, procedures, services, or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who will attend them; the materials to be provided and how they will be developed; and the cost to participants.

iii. *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; and how the program or procedures will be implemented and monitored.

iv. *For technical assistance projects,* the applicant should explain the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide on-going or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. Research. An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. Education and Training. The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. Demonstration. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. Technical Assistance. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and

should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

5. Project Management

The applicant should present a detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

6. Products

The application should contain a description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute.

a. Dissemination Plan. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts, including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e., whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). (See section X.V.) Ordinarily, applicants should schedule all product preparation and distribution activities within the project period. Applicants also must submit a diskette containing a one-page abstract summarizing the products resulting from a project in Word, WordPerfect or ASCII. The abstract should include the grant number and the name of a contact person together with that individual's address, telephone number, and e-mail address (if applicable).

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix II.) To facilitate their use, all videotaped products should be distributed in VHS format.

Twenty copies of all project products must be submitted to the Institute. A master copy of each videotape, in addition to 20 copies of each videotape product, must also be provided to the Institute.

b. Types of Products. The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

c. Institute Review. Applicants must provide for submitting a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD–ROM format, applicants must provide for incremental Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

d. Acknowledgment, Disclaimer, and Logo. Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its

organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received at least four weeks before the meeting of the Board of Directors at which the application will be considered (i.e., no later than January 24, 1997, April 3, 1997, or June 27, 1997, respectively).

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to pay for coffee breaks during seminars or meetings, or to purchase alcoholic beverages.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706 (d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant will perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., number of days x the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section XI.H.2.c. Honorarium payments must be justified in the same manner as other consultant payments. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant at a rate in excess of $900 per day.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds many be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.F., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 9, 1997. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted. See section VII.C.11. for receipt deadlines for letters of support.

2. Applicants submitting more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The demonstration of need for the project;

c. The appropriateness of the proposed evaluation design;

d. The applicant's management plan and organizational capabilities;

e. The qualifications of the project's staff;

f. The products and benefits resulting from the project including the extent to which the project will have long-term benefits for State courts across the nation;

g. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

h. The reasonableness of the proposed budget;

i. The demonstration of cooperation and support of other agencies that may be affected by the project; and

j. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.

2. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a proposal based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting

such revisions) have not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding as described below—"continuation grants" and "on-going support grants." The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than $2 million of available FY 1997 grant funds for renewal grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but *no less than 120 days* before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus or audience of the project.

b. Within 30 days of receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form (from applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products will be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

A continuation application for a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the

proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2. and V.D.2. The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the 3-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Letters of Intent

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* The applicant should provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of Court Support.* The applicant should demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* The applicant should discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation Findings.* The applicant should attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period. Ordinarily, the Board will not consider an application for ongoing support until the Institute has received the evaluator's report.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* The applicant should describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

f. *Task Schedule.* The applicant should present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

5. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an ongoing support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix I to this Guideline lists the person to contact in each State regarding the administration of Institute grants to State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants that provide a cash match to the Institute's award. (For a further definition of match, see section III.F.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and the Board of Directors. 42 U.S.C. 10705(d).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal

duties as part of the project, or paying rent for space which is part of the court's normal operations);

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

M. Audit

Recipients, other than those noted below, must provide for an annual fiscal audit which shall include an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. (See section XI.J. of the Guideline for the requirements of such audits.) Recipients of a scholarship, curriculum adaptation, or technical assistance grant are not required to submit an audit, but must maintain appropriate documentation to support all expenditures.

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

Recipients also shall display the following disclaimer on all grant products:

"This [document, film, videotape, etc.] was developed under [grant/cooperative agreement, number SJI–(insert number)] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. These drafts shall be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute. Grantees shall provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents, prior to initiating the next stage of product development.

S. Distribution of Grant Products

In addition to the distribution specified in the grant application, grantees shall send:

1. Twenty copies of each final product developed with grant funds to the Institute, unless the product was developed under either a curriculum adaptation or a technical assistance grant, in which case submission of 2 copies is required.

2. A mastercopy of each videotape produced with grant funds to the Institute.

3. A one-page abstract to the Institute summarizing the products produced during the project for posting on the Internet together with a diskette containing the abstract in Word, WordPerfect, or ASCII. The abstract should include the grant number, a contact name, address, telephone numbers, and e-mail address (if applicable).

4. One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II. Labels for these libraries are available from the Institute upon request.) Recipients of curriculum adaptation and technical assistance grants are not required to submit final products to State libraries.

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

V. Charges for Grant-Related Products/ Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

Applicants should disclose their intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products.

Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25.00, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.F. and XI.F. for requirements regarding project-related income realized during the project period.

W. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

X. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors, and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to

Federal grantees. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–7250.)

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

h. *Office of Management and Budget (OMB) Circular A–133*, Audits of Institutions of Higher Education and Other Non-profit Institutions.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; shall be responsible for assuring proper administration of Institute funds; and shall be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of the Guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated during the award period, except that with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching

contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall order their affairs so as to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income from the Sale of Grant Products

When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense only at a price intended to recover actual reproduction and distribution costs that were not covered by Institute grant funds or grantee matching contributions to the project. When grant funds only partially cover the costs of developing, producing and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions. If the grantee recovers its costs in this manner, then amounts expended by the grantee to develop, produce, and disseminate the material may not be considered match.

If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation and On-Going Support Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should treat each grant as a new project and number their requests accordingly (i.e. on a grant rather than a project basis). For example, the first

request for payment from a continuation grant or each year of an on-going support would be number 1, the second number 2, etc. (See Recommendations to Grantees in the Introduction for further guidance.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports;

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

a. *General Requirements.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Three copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.iii., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

b. *Additional Requirements for Renewal Grants.* Grantees receiving a continuation or on-going support grant should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant or each year of an on-going support award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension or termination of grant payments.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period. Copies of these circulars may be obtained from OMB by calling (202) 395–7250.

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant at a rate in excess of $900 per day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below; the Institute will accept that rate.

a. *Approved Plan Available.*

i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiated agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate

to the type of grantee institution involved as specified in the applicable OMB Circular. Copies of OMB Circulars may be obtained directly from OMB by calling (202) 395–7250.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute adopts the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Implementation

Each recipient of a grant from the Institute, other than a scholarship, curriculum adaptation, or technical assistance grant (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (See section XI.K.3), the following documents must be submitted to the Institute by the grantee other than a recipient of a scholarship under section II.B.2.b.v. These reporting requirements apply at the conclusion of any nonscholarship grant, even when the project will receive renewal funding through a continuation or on-going support grant.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's closeout requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A change in the name of the grantee organization.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify their SJI program manager, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

STATE JUSTICE INSTITUTE BOARD OF DIRECTORS

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David I. Tevelin, Executive Director (ex officio)

David I. Tevelin,

Executive Director.

Appendix I—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Frank Gregory, Administrative Director, Administrative Office of the Courts, 300 Dexter Avenue, Montgomery, Alabama 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547

Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 542–9301

Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, Arkansas 72201, (501) 682–9400

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9115

Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585

Honorable Aaron Ment, Chief Court Administrator, Supreme Court of Connecticut, 231 Capitol Avenue, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–4461

Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 577–2480

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700

Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 922–5081

Mr. Robert L. Doss, Jr., Director, Administrative Office of the Georgia Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, Georgia 30334–5900, (404) 656–5171

Mr. Anthony P. Sanchez, Administrative Director, Superior Court of Guam, Judiciary Building, 120 West O'Brien Drive, Agana, Guam 96910, 011 (671) 475–3544

Mr. Michael F. Broderick, Administrative Director of the Courts, Office of the Administrative Director, 417 S. King Street, Room 206, Honolulu, Hawaii 96813, (808) 539–4900

Ms. Patricia Tobias, Administrative Director of the Courts, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720–0101, (208) 334–2246

Honorable Daniel R. Pascale, Administrative Director of the Courts, 160 N. LaSalle Street, 20th Floor, Chicago, Illinois 60601, (312) 793–8191

Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, 115 W. Washington, Suite 1080, Indianapolis, Indiana 46204–3417, (317) 232–2542

Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241

Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (913) 296–4873

Mr. Paul F. Isaacs, Administrative Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601–9230, (502) 573–2350

Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112, (504) 568–5747

Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112–4820, (207) 822–0792

Mr. George B. Riggin, Jr., State Court Administrator, Administrative Office of the Courts, Courts of Appeal Bldg., 361 Rowe Boulevard, Annapolis, MD 21401, (410) 974–2141

Honorable John J. Irwin, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, Massachusetts 02108, (617) 742–8575

Ms. Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, 309 N. Washington Square, P.O. Box 30048, Lansing, Michigan 48909, (517) 373–0130

Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (617) 296–2474

Mr. Martin Smith, Director, Administrative Office, of the Courts, Supreme Court of Mississippi, P.O. Box 117, Jackson, MS 39205, (601) 354–7408

Mr. Ron Larkin, State Court Administrator, Supreme Court of Missouri, P.O. Box 104480, Jefferson City, Missouri 65110, (314) 751–3585

Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–3730

Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 687–5076

Mr. Donald Goodnow, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2521

Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275

Honorable Jonathan Lippman, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 417–2007

Ms. JoAnne Quintana, Acting State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Santa Fe, New Mexico 87503, (505) 827–4800

Hon. Jack Cozort, Acting Administrative Director, Administrative Office of the Courts, P.O. Box 2448, Raleigh, North Carolina 27602, (919) 733–7107

Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 328–4216

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450

Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 986–5900

Ms. Nancy M. Sobolevitch, Court Administrator, Supreme Court of Pennsylvania, 1515 Market Street, Suite 1414, Philadelphia, PA 19102, (215) 560–6337

Dr. Robert C. Harrall, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263

Mr. George A. Markert, Director, South Carolina Court Administration, P.O. Box 50447, Columbia, South Carolina 29250, (803) 734–1800

Mr. Michael L. Buenger, State Court Administrator, Unified Judicial System, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–3474

Mr. Charles E. Ferrell, Administrative Director of the Courts, Nashville City Center, Suite 600, 511 Union Street,

Nashville, Tennessee 37243–0607, (615) 741–2687

Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration of, the Texas Judicial System, 205 West 14th Street, Suite 600, Austin, Texas 78701, (512) 463–1625

Mr. Daniel Becker, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 578–3800

Mr. Lee Suskin, Acting Court Administrator, Supreme Court of Vermont, 109 State Street, Montpelier, Vermont 05602, (802) 828–3278

Ms. Viola E. Smith, Clerk of the Court/ Administrator, Territorial Court of the Virgin Islands, P.O. Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455

Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, P.O. Box 41174, Olympia, Washington 98504, (360) 357–2121

Mr. Ted J. Philyaw, Administrative Director of the Courts, E–400, State Capitol Bldg., 1900 Kanawha Blvd., East, Charleston, West Virginia 25305, (304) 558–0145

Mr. J. Denis Moran, Director of State Courts, P.O. Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828

Mr. Allen C. Johnson, Court Administrator, Supreme Court of Wyoming, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7480

Appendix II—SJI Libraries; Designated Sites and Contacts

State: Alabama.
Location: Supreme Court Library.
Contact: Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347.

State: Alaska.
Location: Anchorage Law Library.
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583.

State: Arizona.
Location: State Law Library.
Contact: Ms. Arlene Bansal, Collection Development, Research Division, Arizona Dept. of Library Archives and Public Records, State Law Library, 1501 W. Washington, Phoenix, AZ 85007, (602) 542–4035.

State: Arkansas.
Location: Administrative Office of the Courts.
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655.

State: California.
Location: Administrative Office of the Courts.
Contact: Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100.

State: Colorado.
Location: Supreme Court Library.
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720.

State: Connecticut.
Location: State Library.
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301.

State: Delaware.
Location: Administrative Office of the Courts.
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480.

State: District of Columbia.
Location: Executive Office, District of Columbia Courts.
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700.

State: Florida.
Location: Administrative Office of the Courts.
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621.

State: Georgia.
Location: Administrative Office of the Courts.
Contact: Mr. Robert Doss, Jr., Administrative Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington St., S.W., Suite 550, Atlanta, GA 30334–5900, (404) 656–5171.

State: Hawaii.
Location: Supreme Court Library.
Contact: Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, Judiciary Building, P.O. Box 2560, Honolulu, HI 96804, (808) 548–4605.

State: Idaho.
Location: AOC Judicial Education Library/State Law Library in Boise.
Contact: Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316.

State: Illinois.
Location: Supreme Court Library.
Contact:
Ms. Clara Wells, Asst. for Information/Library Services, American Judicature Society, Suite 1600, Chicago, IL 60602, (312) 558–6900.
Ms. Brenda Larison, Supreme Court Library, Supreme Court Building, Springfield, IL 62701–1791, (217) 782–2424.

State: Indiana.
Location: Supreme Court Library.
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557.

State: Iowa.
Location: Administrative Office of the Court.
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, Iowa 50319, (515) 281–8279.

State: Kansas.
Location: Supreme Court Library.
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257.

State: Kentucky.
Location: State Law Library.
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848.

State: Louisiana.
Location: State Law Library.
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705.

State: Maine.
Location: State Law and Legislative Reference Library.
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600.

State: Maryland.
Location: State Law Library.
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library,

Court of Appeal Building, 361 Rowe Boulevard, Annapolis, Maryland 21401, (301) 974–3393.

State: Massachusetts.
Location: Middlesex Law Library.
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148.

State: Michigan.
Location: Michigan Judicial Institute.
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804.

State: Minnesota.
Location: State Law Library (Minnesota Judicial Center).
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084.

State: Mississippi.
Location: Mississippi Judicial College.
Contact: Mr. Rick D. Patt, Staff Attorney, University of Mississippi, P.O. Box 8850, University, MS 38677, (601) 982–6590.

State: Montana.
Location: State Law Library.
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building; 215 North Sanders, Helena, Montana 59620, (406) 444–3660.

State: Nebraska.
Location: Administrative Office of the Courts.
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730.

State: Nevada.
Location: National Judicial College.
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747.

State: New Jersey.
Location: New Jersey State Library.
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230.

State: New Mexico.
Location: Supreme Court Library.
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850.

State: New York.
Location: Supreme Court Library.
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063.

State: North Carolina.
Location: Supreme Court Library.
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425.

State: North Dakota
Location: Supreme Court Library.
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229.

State: Northern Mariana Islands.
Location: Supreme Court of the Northern Mariana Islands.
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275.

State: Ohio.
Location: Supreme Court Library.
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044.

State: Oklahoma.
Location: Administrative Office of the Courts.
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450.

State: Oregon.
Location: Administrative Office of the Courts.
Contact: Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, 1163 State Street, Salem, Oregon 97310, (503) 378–6046.

State: Pennsylvania.
Location: State Library of Pennsylvania.
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440.

State: Puerto Rico.
Location: Office of Court Administration.
Contact: Mr. Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919.

State: Rhode Island.
Location: Roger Williams Law School Library.
Contact: Mr. Kendall Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island, (401) 254–4546.

State: South Carolina.
Location: Coleman Karesh Law Library (University of South Carolina School of Law).
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U. S. C. Law Center, University of South Carolina, Columbia, South Carolina 29208, (803) 777–5944.

State: Tennessee.
Location: Tennessee State Law Library.
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016.

State: Texas.
Location: State Law Library.
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722.

State: U.S. Virgin Islands.
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas).
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804.

State: Utah.
Location: Utah State Judicial Administration Library.
Contact: Ms. Debbie Christiansen, Utah State Judicial Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371.

State: Vermont.
Location: Supreme Court of Vermont.
Contact: Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05609, (802) 828–3278.

State: Virginia.
Location: Administrative Office of the Courts.
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455.

State: Washington.
Location: Washington State Law Library.
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, Washington 98504–0751, (206) 357–2146.

State: West Virginia.
Location: Administrative Office of the Courts.
Contact: Mr. Richard H. Rosswurm, Chief Deputy, West Virginia Supreme Court of Appeals, State Capitol, 1900 Kanawha, Charleston, West Virginia 25305, (304) 348–0145.

State: Wisconsin.
Location: State Law Library.
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424.

State: Wyoming.
Location: Wyoming State Law Library.
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509.

National: American Judicature Society.
Contact: Ms. Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900.

National: National Center for State Courts.
Contact: Ms. Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000.

National: Michigan State University.
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824, (517) 353–8603.

Appendix III—Illustrative List of Model Curricula

The following list includes examples of curricula that have been developed with support from SJI, and that might be—or in some cases have been—successfully adapted for State-based education programs for judges and other court personnel. *Please refer to Section II.B.2.ii for information on submitting a letter application for a Curriculum Adaptation Grant.* A list of all SJI-supported education projects is available from the Institute. Please also check with the JERITT project (517/353–8603) and with your State SJI-designated library (see Appendix II) for information on other curricula that may be appropriate for your State's needs.

Alternative Dispute Resolution

"Judicial Settlement Manual" from "Judicial Settlement: Development of a New Course Module, Film, and Instructional Manual" (National Judicial College: SJI–89–089).

"Improving the Quality of Dispute Resolution" (Ohio State University College of Law: SJI–93–277).

"Comprehensive ADR Curriculum for Judges" (American Bar Association: SJI–95–002).

Court Management

"Managing Trials Effectively: A Program for State Trial Judges" (National Center for State Courts/ National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).

"Caseflow Management Principles and Practices" (Institute for Court Management/National Center for State Courts: SJI–87–056).

"Judicial Education Curriculum: Teaching Guides on Court Security, and Jury Management and Implement" (Institute for Court Management/ National Center for State Courts: SJI–88–053).

"Managerial Budgeting in the Courts"; "Performance Appraisal in the Courts"; "Managing Change in the Courts"; all three from "Broadening Educational Opportunities for Judges and Other Key Court Personnel" (Institute for Court Management/National Center for State Courts: SJI–91–043).

"Strengthening Rural Courts of Limited Jurisdiction" and "Team Training for Judges and Clerks" from "Rural Limited Jurisdiction Court Curriculum Project (Rural Justice Center: SJI–90–014, SJI–91–082).

"Interbranch Relations Workshop" (Ohio Judicial Conference: SJI92–079).

"Integrating Trial Management and Caseflow Management" (Justice Management Institute: SJI–93–214).

"Implementing the Court-Related Needs of Older Persons and Persons with Disabilities" (National Judicial College: SJI 91–054).

"Managing the Complex Case" (National Judicial College: SJI–94–142).

"Employment Responsibilities of State Court Judges" (National Judicial College: SJI–025).

Courts and Communities

"A National Program for Reporting on the Courts and the Law" (American Judicature Society: SJI–88–014).

"Introduction to the Jurisprudence of Victims' Rights" from "Victim Rights and the Judiciary: A Training and Implementation Project" (National Organization for Victim Assistance SJI–89–083).

"Access to Justice: The Impartial Jury and the Justice System" and "When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide" (National Judicial College: SJI–91–054).

"Judicial Response to Stranger and Nonstranger Rape and Sexual Assault" (National Judicial Education Program to Promote Equality for Women and Men: SJI–92–003).

Family Violence

"Adjudication of Farm Credit Issues" (Rural Justice Center: 87–059).

"National Judicial Response to Domestic Violence: Civil and Criminal Curricula" (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

"Domestic Violence: A Curriculum for Rural Courts" from "A Project to Improve Access to Rural Courts for Victims of Domestic Violence" (Rural Justice Center: SJI–88–081).

"Judicial Training Materials on Spousal Support"; "Family Violence: Effective Judicial Intervention"; "Judicial Training Materials on Child Custody and Visitation" from "Enhancing Gender Fairness in the State Courts" (Women Judges' Fund for Justice: SJI–89–062).

"Domestic Violence & Children: Resolving Custody and Visitation Disputes" (Family Violence Prevention Fund: SJI–93–255).

"Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute" (National Judicial Education Program: SJI 95–019).

Strategic and Futures Planning

"Minding the Courts into the Twentieth Century" (Michigan Judicial Institute: SJI–89–029).

"An Approach to Long-Range Strategic Planning in the Courts" (Center for Public Policy Studies: SJI–91–045).

Health and Science

"Medicine, Ethics, and the Law: Preconception to Birth" (Women Judges' Fund for Justice: SJI–89–062, SJI–91–019).

"Judicial Educator's Workshop Curriculum Guide: Implementing Medical Legal Training" from Medical Legal Issues in Juvenile and Family Courts (National Council for Juvenile and Family Court Judges: SJI–91–091).

"Environmental Law Resource Handbook" (University of New Mexico Institute for Public Law: SJI–92–162).

Judicial Education For Appellate Court Judges

"Career Writing Program for Appellate Judges" (American Academy of Judicial Education: SJI–88–086–P92–1).

"Civil and Criminal Procedural Innovations for Appellate Courts" (National Center for State Courts: SJI–94–002).

Judicial Orientation, Mentoring, and Continuing Education

"Manual for Judicial Writing Workshop for Trial Judges" (University of Georgia/Colorado Judicial Department: SJI–87–018/019).

"Legal Institute for Special and Limited Jurisdiction Judges" (National Judicial College: SJI–89–043, SJI–91–040).

"Pre-Bench Training for New Judges" (American Judicature Society: SJI–90–028).

"A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts" (National Center for State Courts: SJI–90–052).

"A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts" (Arizona Supreme Court: SJI–90–078).

"The Leadership Institute in Judicial Education" and "The Advanced Leadership Institute in Judicial Education" (Appalachian State University: SJI–91–021).

"Faculty Development Instructional Program" from "Curriculum Review" (National Judicial College: SJI–91–039).

"Judicial Review of Administrative Agency Decisions" (National Judicial College: SJI–91–080).

"New Employee Orientation Facilitators Guide" from "The Minnesota Comprehensive Curriculum Design and Training Program for Court Personnel" (Minnesota Supreme Court: SJI–92–155).

"Magistrates Correspondence Course" (Alaska Court System: SJI–92–156).

"Bench Trial Skills and Demeanor: An Interactive Manual" (National Judicial College: SJI–94–058).

"Indian Welfare Act"; "Defendants, Victims, and Witnesses with Mental Retardation"; "Ethical Issues in the Election of Judges"; "Privacy Issues in Computerized Record Keeping" (National Judicial College: SJI–94–142).

Juveniles and Families in Court

"Innovative Juvenile and Family Court Training" (Youth Law Center: SJI–87–060, SJI–89–039).

"Fundamental Skills Training Curriculum for Juvenile Probation Officers" (National Council of Juvenile and Family Court Judges: SJI–90–017).

"Child Support Across State Lines: The Uniform Interstate Family Support Act" from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum." (ABA Center on Children and the Law: SJI–94–321).

Substance Abuse

"Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel" (Education Development Center, Inc.: SJI–90–051).

"Good Times, Bad Times: Drugs, Youth, and the Judiciary" (Professional Development and Training Center, Inc.: SJI–91–095).

"Enhancing the Treatment-Based Courts in Florida: Training Component" (Office of the State Courts Administrators: SJI–94–291).

"Judicial Response to Substance Abuse: Children, Adolescents, and Families" (National Council of Juvenile and Family Court Judges: SJI–95–030).

Diversity, Values, and Attitudes

"Troubled Families, Troubled Judges" (Brandeis University: SJI–89–071).

"The Crucial Nature of Attitudes and Values in Judicial Education" (National Council of Juvenile and Family Court Judges: SJI–90–058).

"Cultural Diversity Awareness in Nebraska Courts" from "Native American Alternatives to Incarceration Project" (Nebraska Urban Indian Health Coalition: SJI–93–028).

"A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel" and "The Ethics Fieldbook: Tool For Trainers" (American Judicature Society: SJI–93–068).

"Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel" (Brandeis University, SJI–94–019).

"Race Fairness and Cultural Awareness Faculty Development Workshop" (National Judicial College: 93–063).

"Multi-Cultural Training for Judges and Court Personnel" (St. Petersburg Junior College: 95–006).

"Ethical Standards for Judicial Settlement: Developing a Judicial Education Module" (American Judicature Society: SJI–95–082).

Appendix IV—Illustrative List of Replicable Projects

The following list includes examples of projects undertaken with support from SJI that might be—or in some cases have been—successfully adapted and replicated in other jurisdictions. *Please see Section II.C.1. for information on submitting a concept paper requesting a grant to replicate one of these or another SJI-supported project.* A list of all SJI-supported projects is available from the Institute.

AARP Volunteers: A Resource for Strengthening Guardianship Services
Grantee: American Association of Retired Persons
Contact: Wayne Moore, 601 E Street, N.W., Washington, DC 20049, (202) 434–2165
Grant Nos: SJI–88–033 /SJI–91–013

Alabama Alcohol and Drug Abuse Court Referral Officer Program
Grantee: Alabama Administrative Office of the Courts
Contact: Angelo Trimble, 817 South Court Street, Montgomery, AL 36130–0101, (334) 834–7990
Grant Nos: SJI–88–030/SJI–89–080/SJI–90–005

Substance Abuse Assessment and Intervention to Reduce Driving Under the Influence of Alcohol Recidivism (El Cajon Municipal Court)
Grantee: California Administrative Office of the Courts c/o El Cajon Municipal Court
Contact: Fred Lear, 250 E. Main Street, El Cajon, CA 92020, (619) 441–4336
Grant No: SJI–88–029/SJI–90–008

Decision-Making in Authorizing and Withholding Life-Sustaining Medical Treatment: Guidelines for State Courts
Grantee: National Center for State Courts
Contact: Victor E. Flango, 300 Newport Avenue, Williamsburg, VA 23187–8798, (804) 253–2000

Grant Nos: SJI–88–051/SJI–91–048

Establishing a Consumer Research and Service Development Process Within the Judicial System
Grantee: Supreme Court of Virginia
Contact: Beatrice Monahan, Administrative Offices, Third Floor, 100 North Ninth Street, Richmond, VA 23219, (804) 786–6455
Grant No: SJI–89–068

Housing Court Video Project
Grantee: Association of the Bar of the City of New York
Contact: Marilyn Kneeland, 42 West 44th Street, New York, NY 10036–6690, (212) 382–6620
Grant No: SJI–90–041

Tele-Court: A Michigan Judicial System Public Information Program
Grantee: Michigan Supreme Court
Contact: Judy Bartell, State Court Administrative Office, 611 West Ottawa Street, P.O. Box 30048, Lansing, MI 48909, (517) 373–0130
Grant No: SJI–91–015

Measurement of Trial Court Performance
Grantee: Washington Administrative Office for the Courts
Contact: Yvonne Pettus, 1206 S. Quince Street, Olympia, WA 98504,
Grant No: SJI–91–017; SJI–91–017–P92–1

Measurement of Trial Court Performance

Grantee: New Jersey Administrative Office of the Courts
Contact: Robert D. Lipscher, CN–037, RJH Justice Complex, Trenton, NJ 08625
Grant No: SJI–91–023; SJI–91–023–P93–1

Measurement of Trial Court Performance
Grantee: Ohio Supreme Court
Contact: Stephan W. Stover, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419,
Grant No: SJI–91–024; SJI–91–024–P93–1

Measurement of Trial Court Performance
Grantee: Supreme Court of Virginia
Contact: Beatrice Monahan, 100 North Ninth Street, Third Floor, Richmond, VA 23219, (804) 786–6455,
Grant No: SJI–91–042; SJI–91–042–P93–1

Court Probation Enhancement Through Community Involvement
Grantee: Volunteers in Prevention, Probation and Prisons, Inc.
Contact: Gerald Dash, 163 Madison, Suite 120, Detroit, MI 48226, (313) 964–1110
Grant No: SJI–91–073

Day in Court: A Child's Perspective
Grantee: Massachusetts Trial Court
Contact: Hon. John Fenton, 2 Center Plaza, Boston, MA 02108, (617) 742–8575
Grant No: SJI–91–079

Arizona Pro Per Information System
Grantee: Arizona Supreme Court
Contact: Lynn Wiletsky, Administrative Office of the Court, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9309
Grant No: SJI–91–084

File Transfer Technology Application in Use of Court Information
Grantee: South Carolina Bar
Contact: Yvonne Visser, 950 Taylor Street, P.O. Box 608, Columbia, SC 29202–0608, (803) 799–6653
Grant Nos: SJI–91–088; SJI–91–088P93–1; SJI–91–088–P94–1

Automated Public Information System
Grantee: California Administrative Office of the Courts
Contact: Mark Greenia, 303 Second Street, South Tower, San Francisco, CA 94107, (916) 440–7590
Grant No: SJI–91–093

The Development of a Prototype Computerized Benchbook Using Hypertext Technology
Grantee: Michigan Supreme Court
Contact: Dennis Catlin, Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 334–7805
Grant Nos: SJI–92–034; SJI–92–034–P93–1; SJI–92–034–P93–2; SJI–92–034–P93–3

Probate Caseflow Management Project
Grantee: Ohio Supreme Court/Trumball County Probate Court
Contact: Susan Lightbody, 160 High Street, N.W., Warren, OH 44481, (216) 675–2566,
Grant No: SJI–92–081; SJI–92–081–P94–1; SJI–92–081–P95–1

Managing Documents with Imaging Technology
Grantee: Alaska Judicial Council
Contact: William T. Cotton, 1029 W. Third Avenue, Suite 201, Anchorage, AK 99501–1917, (907) 279–2526
Grant No: SJI–92–083

Automated Teller Machines for Juror Payment
Grantee: District of Columbia Courts
Contact: Philip Braxton, 500 Indiana Avenue, N.W., Washington, DC 20001, (202) 879–1700
Grant No: SJI–92–139

Court Referral Officer Program
Grantee: New Hampshire Supreme Court
Contact: Jim Kelley, Supreme Court Building, Concord, NH 03301, (603) 271–2521
Grant No: SJI–92–142

Using Judges and Court Personnel to Facilitate Access to Courts by Limited English Speakers
Grantee: Washington Office of the Administrator for the Courts
Contact: Joanne Moore, 1206 South Quince Street, P.O. Box 41170, Olympia, WA 98504–1170, (206) 753–3365
Grant No: SJI–92–147

Becoming Receptive to Challenge and Change: Applying TQM Concepts to Systemwide Problems of the Maine Judicial Branch
Grantee: Maine Supreme Judicial Court
Contact: Marcy Kamin-Crane, 95 State Street, Augusta, ME 04330, (207) 822–4285
Grant No: SJI–93–072

Family Court Networking and Imaging Project
Grantee: Colorado Judicial Department
Contact: Marcy McNeill, 1301 Pennsylvania Street, Suite 300, Denver, CO 80203–2416, (719) 630–2846
Grant No: SJI–93–124

Arizona/Sonora Judicial Relations Project
Grantee: Arizona Supreme Court
Contact: Dennis Metrick, 1501 West Washington Street, Phoenix, AZ 85007–3327, (602) 542–4532
Grant Nos: SJI–93–202; SJI–93–202P95–1

Enhancing Citizen Understanding of and Access to the Probate Process at D.C. Superior Court
Grantee: District of Columbia Courts
Contact: Constance G. Evans, 500 Indiana Avenue, N.W., Washington, DC 20001, (202) 879–4800
Grant No: SJI–93–258

The Family Violence Needs Assessment and Planning Project
Grantee: Nevada Network Against Domestic Violence
Contact: Susan Meuschke, 2100 Capurro Way, Suite E, Sparks, NV 89481, (702) 358–1171
Grant No: SJI–94–154

Domestic Relations Organizational Development Implementation Project
Grantee: Maricopa County, (Phoenix), Arizona, Superior Court
Contact: Noreen Sharp, 201 W. Jefferson, 4th floor CCB, Phoenix, AZ 85003, (602) 506–2913
Grant No: SJI–94–325

Appendix V—State Justice Institute Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:
1. Applicant Name:

_____
(Last) (First) (M)
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box

_____
City State Zip Code
5. Telephone No. _____
6. Congressional District: _____

PROGRAM INFORMATION:
7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

ESTIMATED EXPENSES: (Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $ _____
Transportation: $ _____
(Airfare, trainfare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)
Amount Requested: $ _____

ADDITIONAL INFORMATION: Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)

1. How will taking this course benefit you, your court, and the State's courts generally?

2. Is there any education or training currently available through your State on this topic?

3. How will you apply what you have learned? Please include any plans you may

have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager?

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were nonmandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____

Signature

_____

Date

Please return this form and Form S–2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314.

State Justice Institutute

Scholarship Application

Concurrence

I, _____, _____

Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

_____, _____

prepared by _____, _____

Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

_____ _____

Signature

_____ _____

Name

_____ _____

Title

_____ _____

Date

Appendix VI—Curriculum Adaptation Grant & Technical Assistance Grant Budget Form

Category	SJI funds	Cash match	In-kind match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
Total	$_____	$_____	$_____

PROJECT TOTAL

$ _____

_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

*Curriculum Adaptation grant requests, and Technical Assistance grant requests should be accompanied by a budget narrative explaining the basis for each line-item listed in the proposed budget.

Appendix VII—State Justice Institute

Certificate of State Approval

The _____

Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled

_____

prepared by _____

Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates

_____

Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____

Signature

_____

Date

_____

Name

_____

Title

Appendix VIII—State Justice Institute Application

1. APPLICANT

a. Applicant Name _____

_____

b. Organizational Unit _____

c. Street/P.O. Box _____

d. City _____

e. State _____

f. Zip Code _____

g. Name and Telephone Number of Contact Person

_____

2. TYPE OF APPLICANT (*Circle appropriate letter*)

a. State court
b. National State court support organization
c. National state court education/training organization
d. College or university
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Other unit of government
i. Other

_____

3. EMPLOYER IDENTIFICATION NO_____

4. ENTITY TO RECEIVE FUNDS (if different from applicant)

a. Name of Responsible Entity _____

_____

b. Street/P.O. Box _____

d. City _____

e. State _____

f. Zip Code _____

g. Name and Telephone Number of Contact Person

_____

5. TYPE OF PROJECT (*Circle appropriate letter*)

a. Education/Training
b. Research/Evaluation
c. Demonstration
d. Technical Assistance
e. Other

_____

6. APPLICATION TYPE

(*Circle appropriate letter*)
a. New
b. Supplement
c. Continuation
d. Ongoing Support
e. Curriculum Adaptation
f. Technical Assistance

7. TITLE OF PROPOSED PROJECT

8. PROPOSED START DATE

9. PROJECT DURATION (Months)

10. a. AMOUNT REQUESTED FROM SJI
$_____
b. AMOUNT OF MATCH
Cash match $_____
Non-cash match $_____
c. TOTAL MATCH $_____
d. TOTAL PROJECT COST $_____

11. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Sought _____
Disposition (if any) or Current Status _____

12. CONGRESSIONAL DISTRICT OF:
Applicant: Name of Representative; District Number
Project (if different than applicant):
Name of Representative; District Number

13. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and conplete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved and that I am lawfully authorized to make these representations on behalf of the applicant.

Signature of Responsible Official of Applicant

Title

Date

(For application from State and local courts, Form B, Certificate of State Approval, must be attached.)

State Justice Institute Project Budget—(Tabular Format)

Applicant: _____
Project Title: _____
For Project Activity from _____ to _____
Total Amount Requested for Project from SJI $_____

Item	SJI funds	State funds	Federal funds	Applicant funds	Other funds	In-kind support	Total
Personnel.							
Fringe Benefits.							
Consultant/Contractual.							
Travel.							
Equipment.							
Supplies.							
Telephone.							
Postage.							
Printing/Photocopying.							
Audit.							
Other (specify).							
Direct Costs.							
Indirect Costs.							
Total.							

Remarks:

State Justice Institute Project Budget—(Tabular Format)

Applicant: _____
Project Title: _____
For Project Activity from _____ to _____
Total Amount Requested for Project from SJI $_____

(See instruction regarding column headings)

Item							
Personnel.							
Fringe Benefits.							
Consultant/Contractual.							
Travel.							
Equipment.							
Supplies.							
Telephone.							
Postage.							
Printing/Photocopying.							
Audit.							
Other (specify).							
Direct Costs.							
Indirect Costs (%).							
SJI Total.							
STATE FUNDS.							
FEDERAL FUNDS.							
APPLICANT FUNDS.							
OTHER FUNDS.							

Item							
IN-KIND FUNDS. Total.							

State Justice Institute

Assurances

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706 (a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.

3. In accordance with 42 U.S.C. 10706 (a) and 10707 (c):

a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage of defeat of any ballot measure, initiative, or referendum;

b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.

4. In accordance with 42 U.S.C. 10706 (b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706 (d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk of harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originallydeveloped material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project: This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

13. The "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.

14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

Disclosure of Lobbying Activities

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706(a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

_____

Yes No Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

[If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.]

Subject	Year
_____	____
_____	____
_____	____
_____	____
_____	____
_____	____

Statement of Verification

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

Signature _____

Title _____

Name (Typed) _____

Date _____

Instructions—Form A

1. (a)–(g) Legal Name of Applicant court, entity or individual; Name of The Organizational Unit, if any, that will conduct the project; Complete Address of applicant; Name and telephone number of a Contact Person who can provide further information about this application.
2. (a) State or Local Court includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts. Agencies of State and local courts include all governmental offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.
   (b) National State Court Support Organization include national non-profit organizations controlled by, operating in conjunction with, and serving the State courts.
   (c) National State Court Education/Training Organizations include national non-profit organizations for the education and training of judges and support personnel of the judicial branch of State government.
   (d) College or University includes all institutions of higher education.
   (e) Other Non-profit Organization or Agency includes those non-profit organizations and private agencies with expertise in judicial administration not included in subparagraphs (b)–(d).
   (f) Individual means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.
   (g) Corporation or Partnership includes for-profit and not-for-profit entities not falling within one of the other categories.
   (h) Other Unit of Government includes any governmental agency, office, or organization that is not a State or local court.
3. Employer Identification Number as assigned by the Internal Revenue Service.
4. (a)–(f) Entity to Receive Funds is the court or organization that will receive, administer, and account for any moneys awarded. For example, if the applicant is a State or local court, the entity to receive funds would be the State's Supreme Court or its designated agency or council in accordance with 42 U.S.C. 10705(b)(4). If the applicant is a special university program, the responsible entity may be the university's structure. Applicants should complete this block only if the entity that will receive the funds is different from the applicant.
5. (a)–(e) Circle the letter of the Type of activities that best characterizes the project. If project funds will be substantially divided among two or more activities, circle the letters for each of those activities.
6. (a) New refers to the first award of State Justice Institute funds for a particular project, whether or not the applicant has received previous awards for different projects from the Institute.
   (b) Supplement refers to the award of additional funds to permit an existing project to complete the task originally proposed or to augment the scope of the project within the current project period.
   (c) Continuation refers to an extension for an additional funding period.
   (d) Ongoing Support refers to an SJI-funded project for which there is a continuing important national need.
7. The Title of the Proposed Project should reflect the objectives of the activities to be conducted.
8. The Proposed Start Date of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award. An explanation should be provided in the Program Narrative if the proposed start date is more than 90 days after the estimated award date set forth in the Application Review Procedures section of the current Grant Guideline.
9. Project Duration refers to the number of months the applicant estimates

will be needed to complete all project tasks after the proposed start date.

10. (a) Insert the Amount Requested from the State Justice Institute to conduct the project.
(b) The Amount of Match is the amount, if any, to be contributed to the project by the applicant, by a unit of State or local government, by a Federal agency, or by private sources. See 42 U.S.C. 10705 (d).
Cash Match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.
Non-cash Match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project. The applicant should describe in detail, both the value it assigns to in-kind contributions and the basis for determining that value.
Total Match refers to the sum of the cash and in-kind contributions to the project.
(c) Total Project Cost represents the sum of the amount requested from the Institute and all match contributions to the project.
11. If this application or an application requesting support for the same project or an essentially similar project has been Previously Submitted to another funding source (Federal or private), the name of the source, the date of the previous submission, the amount of funding sought, and the disposition (if any) should be entered.
12. Enter the number of the applicant's Congressional District and the name of the applicant's Representative and the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representatives from those districts. If the project activities are not site-specific, for example a series of training workshops that will bring together participants from around the State, the country, or from a particular region, enter Statewide, National, or Regional, as appropriate, in the space provided.

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

Instructions—Forms C and C1

Applicants may submit the proposed project budgets either in the tabular format of Form C or in a spreadsheet format similar to Form C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond 12.

In addition to Form C or C1, Applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (See Guidelines section VII.D). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate together with a copy of the letter or other official document stating that it has been approved should be attached.

If funds from other sources have been requested either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1 columns should be labeled consecutively by tasks, e.g., TASK #1, TASK #2, etc. At the end of each twelve month period or portion thereof beyond month 12 the following four columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

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federal register

Thursday
August 29, 1996

Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 22

Federal Reserve System

12 CFR Part 208

Federal Deposit Insurance Corporation

12 CFR Part 339

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 563 and 572

Farm Credit Administration

12 CFR Part 614

Loans in Areas Having Special Flood Hazards; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 22

[Docket No. 96–20]

RIN 1557–AB47

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H, Docket No. R–0897]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 339

RIN 3064–AB66

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563 and 572

[No. 96–82]

RIN 1550–AA82

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB57

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 760

Loans in Areas Having Special Flood Hazards

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; Farm Credit Administration; National Credit Union Administration.

ACTION: Joint final rule.

SUMMARY: The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA) are amending their regulations, and the Farm Credit Administration (FCA) is issuing new regulations, regarding loans in areas having special flood hazards. This action is required by statute to implement the provisions of the National Flood Insurance Reform Act of 1994. This joint final rule establishes new escrow requirements for flood insurance premiums, adds references to the statutory authority and the requirement for lenders and servicers to "force place" flood insurance under certain circumstances, enhances flood hazard notice requirements, sets forth new authority for lenders to charge fees for determining whether a property is located in a special flood hazard area, and contains various other provisions necessary to implement the National Flood Insurance Reform Act of 1994.

EFFECTIVE DATES: October 1, 1996; except for subpart S of part 614, which will be effective October 4, 1996, and part 760, which will be effective November 1, 1996.

FOR FURTHER INFORMATION CONTACT:

OCC: Carol Workman, Compliance Specialist (202/874–4858), Compliance Management; Margaret Hesse, Senior Attorney, Community and Consumer Law Division (202/874–5750), or Jacqueline Lussier, Senior Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Diane Jackins, Senior Review Examiner, (202/452–3946), Division of Consumer and Community Affairs; Lawranne Stewart, Senior Attorney (202/452–3513), or Rick Heyke, Attorney (202/452–3688), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

FDIC: Mark Mellon, Counsel, Regulation and Legislation Section (202/898–3854), Legal Division, or Ken Baebel, Senior Review Examiner (202/942–3086), Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Larry Clark, Senior Manager, Compliance and Trust Programs (202/906–5628), or Ronald Dice, Program Analyst (202/906–5633), Compliance Policy; Catherine Shepard, Senior Attorney, Regulations and Legislation Division (202/906–7275), Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FCA: Robert G. Magnuson, Policy Analyst, Regulation Development (703/883–4498), Office of Examination; or William L. Larsen, Senior Attorney, Legal Counsel Division (703/883–4020), Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. For the hearing impaired only, TDD (703/883–4444).

NCUA: Kimberly Iverson, Program Officer (703/518–6375), Office of Examination and Insurance; or Jeffrey Mooney, Staff Attorney (703/518–6563), Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Program (NFIP) is administered primarily under two statutes: the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973 Act).[1] The 1968 Act made Federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the NFIP. A special flood hazard area (SFHA) is an area within a flood plain having a one percent or greater chance of flood occurrence in any given year. SFHAs are delineated on maps issued by FEMA for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its SFHAs to eliminate or minimize future flood damage.

The 1973 Act amended the NFIP by requiring the OCC, Board, FDIC, OTS, and NCUA to issue regulations governing the lending institutions they supervise (regulated lending institutions or regulated lenders). These agencies' regulations directed lenders to require flood insurance on improved real estate or mobile homes serving as collateral for a loan (security property) if the security property was located, or was to be located, in a SFHA in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers that their security property is located in a SFHA and of the availability of Federal disaster assistance with respect to the property in the event of a flood.

Title V of the Riegle Community Development and Regulatory Improvement Act of 1994[2] (CDRI Act),

[1] These statutes are codified at 42 U.S.C. 4001–4129. The Federal Emergency Management Agency (FEMA) administers the NFIP; its regulations implementing the NFIP appear at 44 CFR parts 59–77.

[2] Pub. L. 103–325, tit. V, 108 Stat. 2160, 2255–87 (September 23, 1994).

which is called the National Flood Insurance Reform Act of 1994 (Reform Act), comprehensively revised the Federal flood insurance statutes.[3] The Reform Act is intended to increase compliance with flood insurance requirements and participation in the NFIP in order to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the Federal government, taxpayers, and flood victims.[4] The Reform Act requires the OCC, Board, FDIC, OTS, and NCUA to revise their current flood insurance regulations and requires the FCA to promulgate flood insurance regulations for the first time. In order to fulfill these statutory requirements, the six agencies published a joint NPRM in the fall of 1995. *See* 60 FR 53962 (October 18, 1995).[5] The agencies now complete the rulemaking process by issuing this joint final rule.

Four of the agencies—the OCC, Board, FDIC, and OTS—are required by section 303 of the CDRI Act[6] to review their regulations in order to streamline and modify the regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. This joint final rule satisfies the regulation review requirement that section 303 applies to these four agencies. The OCC's portion of the joint final rule is part of its Regulation Review Program. Similarly, this joint final rule is part of the programs initiated by the Board, FDIC, OTS, NCUA, and FCA to reduce unnecessary regulatory burden and to simplify and clarify their regulations.

Section 303 also requires the OCC, Board, FDIC, and OTS to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. This joint final rule also satisfies this portion of section 303. All six of the agencies have reviewed their flood insurance regulations with these purposes in mind. The agencies believe that the joint final rule provides the institutions they regulate with significant flexibility, and minimize the regulatory burden imposed upon regulated lending institutions and loan servicers acting on their behalf, consistent with the requirements of the statute, thus reducing the costs of compliance to those entities and enabling them to operate more efficiently.

[3] A more detailed description of the pertinent provisions of the CDRI Act appears in the preamble to the agencies' joint notice of proposed rulemaking (proposal or NPRM). *See* 60 FR 53962, 53963–65 (October 18, 1995). This preamble refers to the 1968 Act, the 1973 Act, and the Reform Act collectively as the Federal flood insurance statutes.

[4] H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 195 (1994) (Conference Report).

[5] In conducting this rulemaking, all six of the agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain of the CDRI Act provisions. The heads of five of the six agencies (OCC, Board, FDIC, OTS, and NCUA) comprise the membership of the FFIEC.

[6] 12 U.S.C. 4873.

II. Overview of Comments Received

The agencies received 138 comment letters on the joint NPRM. The commenters included 12 national banks, two national bank subsidiaries, six state member banks, 15 state nonmember banks, nine savings associations, four Farm Credit organizations, 20 credit unions, 22 financial services holding companies, three State and local government agencies, eight Federal Reserve Banks, 21 trade associations, three flood determination firms, and one insurance agency. In addition, the agencies received comments from five law firms, four mortgage companies, and two consulting services. FEMA also submitted comments.

Thirty-nine commenters expressed general support for the joint NPRM. The majority of these commenters provided specific suggestions for improvement and clarification of the proposal. Twenty-two commenters responded unfavorably to the proposal, characterizing it as overly burdensome or unnecessary. In addition, as discussed later, many commenters sought clarification on specific issues covering a wide spectrum of the proposal's provisions.

The joint final rule is similar to the agencies' proposal in many respects. The agencies, however, have carefully considered the comment letters and have made a number of changes in response to commenters' suggestions and in order to reduce regulatory burden. The topic-by-topic discussion identifies and discusses the significant comments received, describes the provisions of the joint final rule, and highlights changes made by the agencies. Each agency's portion of the joint final rule is substantively consistent, although the format of the regulatory text varies to accommodate the format used at each agency.

III. Description of the Joint Final Rule

A. Need for Supplemental Guidance

The purpose of the Reform Act is to strengthen and enhance the NFIP, and the primary focus of the agencies' joint final rule implementing the Reform Act is to carry out the purpose of the Reform Act. Depending on the location and activities of a regulated lending institution, adequate flood insurance coverage may be important from a safety and soundness perspective as a component of prudent underwriting and as a means of protecting the lender's ongoing interest in its collateral. Accordingly, the preamble to the proposal noted issues that could raise safety and soundness concerns in some circumstances and invited comment on these issues so that the agencies could consider whether to provide informal guidance, separate from the joint final rule, that addresses safe and sound banking concerns presented by regulated lenders' flood insurance programs. In particular, the agencies requested comment on the need for guidance related to purchased loans and institutions with significant exposure to flood hazards.

Commenters sought guidance from the agencies on a wide range of topics including the applicability of the flood insurance rules with respect to condominiums, cooperatives, agricultural buildings, subordinate liens, manufactured homes, home equity lines of credit, fixtures, residential and commercial construction loans, FEMA's appeal process for contested flood hazard determinations, and the standard flood hazard determination form. Eighteen commenters stated that general guidance on safety and soundness issues would be useful, with most preferring informal guidance. Other commenters, primarily credit unions, requested more detailed guidance on compliance with the joint final rule.

A number of commenters stated that additional guidance is not necessary or appropriate, emphasizing that standard financial institution practices are sufficient to protect an institution's interest in its collateral. These commenters stated that the risk profiles of institutions differ, and that the individual institution is in the best position to identify and control major forms of financial risks. A few commenters indicated that each institution should develop and implement risk management procedures to address issues such as geographic lending concentrations and portfolio concentrations.

The joint final rule addresses certain of these concerns, including, for example, agricultural buildings, manufactured homes, the FEMA appeals process, and the standard flood hazard determination form. However, given the number, level of detail, and diversity of subject matter of the requests for additional information, the agencies have concluded that informal staff guidance addressing the more technical compliance issues would be helpful and

appropriate. Consequently, the agencies intend to issue informal guidance to address these technical issues subsequent to the promulgation of the joint final rule.

B. Topic-by-Topic Discussion

Authority, Purpose, and Scope

The OCC, Board, FDIC, and OTS proposed in the joint NPRM to expand this section to add detailed statements of authority, purpose, and scope. The FCA proposed language similar to that of the other agencies. The NCUA proposed to replace the question and answer format of its flood insurance regulations with standard regulation text so that its flood insurance regulations are consistent with the other agencies. No comments were received on this section and the agencies adopt it as proposed.

Loan Servicers

The agencies proposed to apply their regulations implementing the escrow, forced placement, and flood hazard determination fee provisions of the Reform Act to regulated lending institutions and to loan servicers acting on behalf of regulated lending institutions. As indicated in the preamble to the proposal, the agencies do not interpret the NFIP to impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. The agencies concluded that loan servicers were covered by certain provisions of the Reform Act primarily to ensure that they could perform for the lender the administrative tasks related to the forced placement of flood insurance—including providing the requisite notices to borrowers, arranging for the insurance, and collecting and transmitting insurance premiums—without fear of liability to the borrower for the imposition of unauthorized charges.[7]

The proposal indicated that a regulated lender could fulfill its responsibilities under the NFIP by ensuring that its loan servicing contracts obligated its servicers to perform the duties required by the Federal flood insurance statutes. The agencies also stated that, where there were deficiencies in existing arrangements, lenders should ensure that their loan servicing agreements were revised to provide for the loan servicer to fulfill Federal flood insurance requirements.

The agencies received 21 comments on this issue. Several commenters addressed the relationship between regulated lender and loan servicer with respect to fulfillment of Federal flood insurance requirements and requested detailed additions to the regulatory language to clarify how this relationship is intended to function. One commenter requested that the final rule provide that the lender may rely upon the servicer to fulfill such requirements so long as the lender performs reasonable audits. Another requested that the final rule provide that an originating lender may transfer liability for flood insurance requirements to a servicer, but a third requested clarification that the lender's responsibilities are non-delegable despite its relationship with its servicer. Another commenter requested clarification of the responsibilities of a regulated lender acting as a servicer as opposed to a non-regulated servicer.

In response to these comments, the agencies emphasize that the obligation of a loan servicer to fulfill administrative duties with respect to Federal flood insurance requirements arises from the contractual relationship between the loan servicer and the lender or from other commonly accepted standards for performance of servicing obligations. The lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements. The agencies also wish to emphasize that there is no distinction between a regulated lending institution as servicer and a non-regulated servicer with respect to flood insurance requirements, since either entity acting as servicer will be doing so under the terms of a loan servicing contract. The provisions in the joint final rule with respect to escrow requirements, forced placement, and flood hazard determination fees therefore provide—as in the proposal—that these requirements may be fulfilled either by a regulated lender or a servicer acting on its behalf.

Definitions

The proposal added or revised several definitions, including definitions of the terms *building, designated loan, mobile home,* and *servicer,* and also added several other definitions to streamline the agencies' flood insurance regulations, including definitions of the term *Director, residential improved real estate,* and *special flood hazard area.*

The agencies received 20 comments on these definitions. Ten commenters requested clarification on the definition of *mobile home.* For purposes of the appendix to 44 CFR part 61, which sets forth FEMA's standard flood insurance policy, "mobile home" (the term used in the Federal flood insurance statutes) is defined to have the same meaning as "manufactured home."[8] The text of the proposal is modified to reflect that the two terms have the same meaning. In order to ensure consistency with the term as used in the Reform Act and avoid conflicting interpretations, the agencies believe it is appropriate to defer to FEMA's interpretations with respect to what is a "properly secured" mobile home for flood insurance purposes.

Two commenters requested a definition of the phrase "making, increasing, extending, or renewing a loan." The agencies believe that Congress intended the flood insurance purchase requirements to be applicable at origination, or at any time thereafter during the life of the loan when the institution determines that the security property is located in an area having special flood hazards.[9] The specific issues that arise in connection with this phrase are discussed later in this preamble in "Loan Purchase as Equivalent to Making a Loan," "Loan Acquisitions Involving Table Funding Arrangements," and "Use of Standard Flood Hazard Determination Form."

Two commenters suggested revisions of the definition of *residential improved real estate.* These comments are discussed later in this preamble in "Escrow of Flood Insurance Payments."

Flood Insurance Requirement

The proposal did not amend substantively the existing regulatory provision that implements the statutory requirement that flood insurance must be purchased for the term of a loan when the security property is located in a SFHA in a community that participates in the NFIP. The proposal also did not amend substantively the existing regulatory provision with respect to the minimum amount of insurance required by statute for such

[7] The agencies also noted that section 102(f) of the 1973 Act as added by the Reform Act, 42 U.S.C. 4012a(f), does not authorize them to seek civil money penalties against loan servicers that are not regulated lending institutions. The statute's failure to impose liability on servicers independent of lenders reinforces the conclusion that a servicer's obligation to comply with NFIP requirements arises from its contractual relationship with a lender.

[8] *See* 44 CFR 59.1 (defining manufactured home), 44 CFR 61.13 and Appendix A to 44 CFR part 61 (FEMA's standard flood insurance policy defining mobile home as meaning manufactured home); 58 FR 62420 (Nov. 26, 1993). FEMA recently amended 44 CFR part 65, which sets forth the procedures to be followed for the review by FEMA of a contested flood hazard determination, to substitute the term "manufactured home" for "mobile home." FEMA explained that it made this change because the former term is now the preferred term in the industry. *See* 60 FR 62213 (Dec. 5, 1995).

[9] Conference Report at 197.

property. The Reform Act made no changes to these statutory requirements.

The agencies received 28 comments on this issue. Five commenters requested that the final rule provide that the amount of flood insurance may be limited to the overall value of the property minus the value of the land. When flood insurance is required, the policy must cover the outstanding principal balance of the loan or the maximum amount available under the NFIP, whichever is less. The flood insurance statutes are intended to provide coverage to the improvements. As suggested by the commenters who addressed this point, the joint final rule provides that, in addition to the statutorily prescribed dollar limits, flood insurance coverage under the NFIP is limited to the overall value of the property less than the value of the land.

Five commenters requested that the final rule provide that Federal flood insurance requirements do not apply to loans where a security interest in improved real property is only taken "out of an abundance of caution." Section 102(b)(1) of the 1973 Act, as amended by the Reform Act,[10] provides that a regulated lending institution may not make, increase, extend, or renew any loan secured by improved real property that is located in a special flood hazard area unless the improved real property is covered by the minimum amount of flood insurance required by statute. The requested exception is not available under the 1973 Act.

One commenter inquired whether flood insurance coverage could be purchased for "developed lots," that is, land that secures a loan to improve the property by streets, sewers, and utilities (but no "above-ground" improvements such as buildings) so it may then be sold to homebuilders who may construct residential housing on the developed lots. As previously noted in this section, flood insurance generally is available only with respect to a structure or mobile home and not with respect to the land on which the structure or mobile home sits. Flood insurance therefore would not be available under the NFIP for property used to secure a development loan of the type described in this paragraph.

One commenter asked whether the requirement to maintain flood insurance coverage for the term of the loan continues if a regulated lender sells the loan to a non-regulated lender while retaining servicing rights. The commenter wanted to ascertain whether the servicer in such a situation would have the authority to force place insurance and whether the servicer would be subject to criticism upon examination if the non-regulated lender instructed the servicer not to force place.

As noted in the discussion on "Loan Servicers," the agencies believe that the obligation of a loan servicer to fulfill Federal flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or other commonly accepted standards for performance. The duties of a regulated lender with respect to Federal flood insurance requirements for a particular loan cease upon the sale of the loan unless the seller agrees to retain responsibility for such requirements under a loan servicing agreement with the transferee owner. When a loan servicer force places flood insurance, it does so on behalf of the lender in accordance with the loan servicing agreement. If a lender instructs a loan servicer not to force place flood insurance, the responsibility for that instruction, and for any deficiency in compliance, remains with the lender.

One commenter requested that the final rule state that a regulated lender has no duty to change the amount of insurance coverage on a loan unless the loan is increased, extended or renewed. The agencies note in response that a lender may have to increase the amount of coverage on a loan in instances other than the increase, extension, or renewal of a loan, such as when the amount of insurance available under the 1968 Act has been increased and the lender determines that the borrower does not have adequate coverage.

One commenter stated that the proposal did not address the requirements for "contents coverage" for loans secured by personal property within a structure located in a SFHA. The agencies agree with the commenter that contents coverage is not required unless, as specified in section 102(b) of the 1973 Act,[11] personal property secures the loan in addition to improved real property. The proposal included language requiring flood insurance for any personal property securing a loan that is also secured by real property. The agencies believe that this language adequately addresses this point.

One commenter requested that the final rule state that a lender may refuse to make a loan in a SFHA when Federal flood insurance is not available, such as in communities that do not participate in the NFIP. The agencies' flood insurance regulations in effect before the effective date of this joint final rule state that the requirement to obtain flood insurance for security property applies only to those areas where flood insurance has been made available under the 1968 Act. The proposal stated that the requirement applies only to a *designated loan*, a term defined to mean a loan secured by a building or mobile home located or to be located in a SFHA where flood insurance is available under the 1968 Act. The effect of these two provisions is the same, namely, that a lender may exercise discretion and decline to make a loan in a SFHA where Federal flood insurance is not available. The agencies therefore believe that the requested change is not necessary.

The same commenter requested that the final rule expressly state that a lender may require flood insurance on any loan, even when not required by the final rule. A requirement for flood insurance on security property that is not subject to the Federal flood insurance statutes is a matter of contract between the lender and borrower. Consistent with the agencies' view that the joint final rule should include only those provisions necessary to implement the flood insurance statutes, the agencies have not included this provision in the joint final rule.

Loan Purchase as Equivalent to Making a Loan

The proposal noted that the agencies' regulations in effect until the effective date of this joint final rule differ as to whether a loan purchase constitutes the "making" of a loan that would trigger an obligation to make a flood hazard determination. The OCC and the Board have taken the position that a loan purchase does not trigger such an obligation. The OTS has treated a loan purchase as the equivalent of "making" a loan, and the NCUA has taken the position that if flood insurance is required for a Federal credit union (FCU) to make a loan, then flood insurance is necessary for an FCU to purchase a loan. The FDIC has not previously taken a position.

The proposal highlighted the agencies' desire for regulatory uniformity. Accordingly, the OTS proposed to remove loan purchases from its flood insurance regulations; the FDIC proposed to adopt the position of the OCC and the Board; and the NCUA invited comment on whether it should maintain its position.

The agencies received 44 letters on this issue. The overwhelming majority agreed that a loan purchase should not require a flood hazard determination. Three commenters, including FEMA,

[10] *See* 42 U.S.C. 4012a(b)(1).

[11] 42 U.S.C. 4012a(b)(1).

believed that a loan purchase should be considered the "making" of a loan.

As noted in the preamble to the proposal, the 1973 Act identifies the events that trigger a lender's obligation to review the adequacy of flood insurance coverage on an affected loan (*e.g.*, the making, increasing, extending, or renewing of a loan). The Reform Act does not include a loan purchase in this list of specified tripwires. As a practical matter, a loan purchaser may always require, as a condition of purchase, that the seller determine whether the property securing the loan is located in a SFHA.

The preamble further noted that, with respect to loans sold in the secondary mortgage market, the inclusion of a loan purchase as a tripwire event may be unnecessary because of the expansion of the scope of the NFIP's coverage with regard to Fannie Mae and Freddie Mac (the largest volume purchasers of residential mortgage loans).[12] Finally, the preamble to the proposal noted that including a loan purchase as a regulatory tripwire could result in the imposition of duplicative and potentially inconsistent requirements on the seller and the purchaser of a resential mortgage loan sold in the secondary market.

For these reasons, and to promote consistent treatment for all regulated lending institutions, the OTS and FDIC are hereby adopting the position of the OCC and the Board that a loan purchase is not an event that triggers the obligation to make a flood hazard determination. While the authority of Farm Credit System institutions is limited with regard to loan purchases, the FCA also concurs with the position of the OCC and the Board on this issue.

The NCUA requested comment on its position that a borrower must obtain adequate flood insurance before an FCU can purchase the borrower's loan if flood insurance coverage would have been required for the FCU to have made the loan initially. Two commenters agreed with the NCUA and 14 commenters suggested that the NCUA adopt the other agencies' position. Ten of the commenters that disagreed with the NCUA stated that the agencies should be consistent on this issue. Seven commenters suggested that the NCUA's position treats loan purchasing as a triggering event and requires credit unions to unnecessarily duplicate the original lenders' flood insurance determinations. Two commenters suggested that credit unions should be able to check the flood status of a loan before purchasing it.

The NCUA agrees that a loan purchase does not trigger a flood hazard determination and that requiring a determination when an FCU purchases a loan could be duplicative. However, the NCUA's regulation governing loan purchases provides additional requirements for FCUs.[13] Section 701.23(b)(1)(i) only permits an FCU to purchase its members' loans if the FCU could grant the loan or if the FCU refinances the loan within 60 days. Accordingly, before an FCU purchases a member's loan to hold in its portfolio, the FCU must determine whether the improved real property securing the loan has adequate flood insurance coverage. This may be accomplished by reviewing the loan documentation or by making a new determination. The FCU avoids these additional requirements when the FCU originates real-estate-secured loans on an ongoing basis and purchases loans to package and sell in the secondary mortgage market.[14]

Finally, the NCUA notes that while the agency's flood insurance regulations, 12 CFR part 760, apply to all Federally-insured credit unions, § 701.23 applies only to FCUs. A Federally-insured State-chartered credit union should follow the loan purchasing guidelines of its state regulator.

Loan Acquisitions Involving Table Funding Arrangements

The agencies invited comment on whether a regulated lender that provides table funding to close a loan originated by a mortgage broker or mobile home dealer should be deemed to be "making" or "purchasing" the loan for purposes of the flood insurance requirements. In the typical table funding situation, the party providing the funding reviews and approves the credit standing of the borrower and issues a commitment to the broker or dealer to purchase the loan at the time the loan is originated. Frequently, all loan documentation and other statutorily mandated notices are supplied by the party providing the funding, rather than the broker or dealer. The funding party provides the original funding "at the table" when the broker or dealer and the borrower close the loan. Concurrent with the loan closing, the funding party acquires the loan from the broker or dealer. While the transaction is, in substance, a loan made by the funding party, it is structured as the purchase of a loan. The preamble to the proposal indicated that the agencies were inclined to treat table funded loans like loans made, rather than purchased, by the funding party.

The preamble to the proposal outlined guidance provided by the regulations of the Department of Housing and Urban Development (HUD) implementing the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601–2616,[15] and the Financial Accounting Standards Board (FASB)[16] for distinguishing between making and purchasing loans.

The agencies invited comment on: (1) their position that a table funded transaction is more like the making of a loan by the provider of funds than a purchase of a loan in the secondary market; and (2) whether the RESPA or FASB standard is a more appropriate guideline for defining a table funded transaction as either the making or the purchase of a loan.

The agencies received 40 letters on this issue. Twenty commenters agreed with the agencies that a table funded transaction is more like making a loan, eight believed the transaction is more like a loan purchase, and seven expressed some other view. Some commenters addressed only whether the RESPA or FASB standards provided more appropriate guidance. Fourteen commenters supported the RESPA standard while thirteen supported the FASB standard.

The commenters who favored the RESPA standard asserted that RESPA provides a better model for determining the appropriate treatment of table funded transactions because it reflects the realities of the market place and focuses on the structure of the transaction. Some commenters also noted that it would be less confusing and burdensome for lenders, and less likely to result in errors by lenders, to treat the same transaction in a consistent manner for purposes of both RESPA and the Reform Act.

The commenters who supported the FASB standard asserted that it is clearer and more workable. Some stated that the broker or dealer originating the transaction is usually responsible for the

[12] The agencies note that both Fannie Mae and Freddie Mac require their respective sellers and servicers to be in full compliance with the flood insurance statutes. *See* Fannie Mae Announcement No. 95–10 (June 8, 1995), Freddie Mac Bulletin No. 94–18 (December 8, 1994).

[13] 12 CFR 701.23.

[14] 12 CFR 701.23(b)(1)(i).

[15] *See* 24 CFR 3500.2, 3500.5(b)(7).

[16] *See* FASB, Emerging Issues Task Force (EITF) Abstracts, EITF Issue No. 92–10, "Loan Acquisitions Involving Table Funding Arrangements," 1993 (interpreting FASB Statement of Financial Accounting Standards No. 65, "Accounting for Certain Mortgage Banking Activities") (FASB Statement No. 65). This EITF table funding interpretation elaborated on guidance that has been superseded. *See* FASB, Statement of Financial Accounting Standards No. 122, "Accounting for Mortgage Servicing Rights," May 1995 (superseding FASB Statement No. 65).

flood hazard determination. If the transaction is not treated as a loan purchase, the acquiring regulated lender would have to perform a duplicative flood hazard determination—and the duplicative costs would have to be absorbed by the lender or borrower.

The joint final rule reflects the agencies' position that, for flood hazard determination purposes, the substance of the table funded transaction should control and that the typical table funded transaction should be considered a loan made, rather than purchased, by the entity that actually supplies the funds. Regulated lenders who provide table funding to close loans originated by a mortgage broker or mobile home dealer will be considered to be "making" a loan for purposes of the flood insurance requirements. The agencies believe that this treatment most closely reflects the realities of such transactions, which are purchases only in a technical sense. The presence of a mortgage broker or a mobile home dealer in the transaction should not obscure the fact that the entity supplying the funds is actually primarily responsible for the credit decision and will bear any risk inherent in the loan upon completion of the transaction.

The agencies have also concluded that it is appropriate to use the RESPA standard to define when a table funded loan will be treated as the making of a loan. Under the current RESPA regulations, table funding is defined as a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. This RESPA definition is used to determine whether a transaction will be treated as a loan or as a secondary market transaction. The funding entity is responsible for meeting the disclosure requirements of RESPA if the transaction is a loan; the funding entity generally would have no responsibilities under RESPA if the transaction is a secondary market transaction. The purpose for which the RESPA standard was developed is therefore similar to the purpose for which the standard would be used in connection with the flood insurance regulations.

The FASB standard referenced in the proposal, on the other hand, was intended to provide guidance to lenders on the proper accounting treatment for mortgage servicing rights and loan origination costs, and focused on factors such as which entity is the first titled owner of the loan, whether the broker is independent of the lender and sells loans to more than one lender, and whether the broker has been indemnified by the lender for the market and credit risks connected with the loan. Based on these criteria, the FASB guidance permitted transactions to be treated as purchased loans even where the lender had a significant level of involvement in the underwriting process.

In order to ensure that lenders are aware of the treatment of table funded transactions, the joint final rule includes a definition of *table funding* that is identical to the current RESPA definition. The joint final rule also states that a lender that acquires a loan from a mortgage broker or other entity through table funding will be considered to be making a loan for the purposes of the joint final rule.

The agencies also note that treating table funded loans as loans made by the funding entity need not result in duplication of flood hazard determinations and borrower notices, a possibility that concerned several commenters. The funding entity may delegate to the broker or dealer originating the transaction the responsibility for fulfilling the flood insurance requirements or may otherwise divide the responsibilities with the broker or dealer, as is currently done with respect to the RESPA requirements.

Applicability of Federal Flood Insurance Requirements to Subsidiaries

In the preamble to the proposal, each of the agencies briefly discussed the applicability of its flood insurance rules to the subsidiaries of the institutions it regulates. The OCC noted that a national bank's operating subsidiary is subject to the rules applicable to the operations of its parent bank as provided under 12 CFR 5.34. Similarly, the Board noted that a state member bank's operating subsidiary is subject to the rules applicable to the operations of its parent bank, and the OTS said that a savings association's operating subsidiary is subject to the rules applicable to its parent thrift. The FDIC stated that its authority to regulate insured nonmember banks extends to activities that such institutions may conduct through a subsidiary. The FCA indicated that a Farm Credit System service corporation does not have the authority to extend credit. The NCUA indicated that a credit union's subsidiary organization, called a credit union service organization (CUSO), is not a "regulated lending institution" subject to the Reform Act, but as a practical matter, a CUSO must adhere to the flood insurance requirements. The agencies also indicated that the question of whether the Federal flood insurance statutes apply to a mortgage banking subsidiary of a regulated lending institution is mooted to some extent by the Reform Act's amendment requiring Fannie Mae and Freddie Mac to ensure that flood insurance requirements are met for the loans they purchase.

The OTS also noted in the proposal that its current regulations did not apply to service corporations but that the OTS interpreted the Reform Act's new definition of "regulated lending institution," including the phrase "similar institution subject to the supervision of a Federal entity for lending regulation," to include subsidiaries of thrift institutions that are service corporations. The OTS proposed to apply its flood insurance regulations to service corporations that engage in mortgage lending. The OTS believed that this position was consistent with the Reform Act's statutory language and Congressional intent, and would ensure uniform and consistent treatment for regulated financial institutions.

The FDIC invited comment on its proposed interpretation to require subsidiaries of insured nonmember banks that engage in lending secured by real estate to comply with the flood insurance requirements.

The agencies received eight comment letters on this issue. Seven supported the OTS's and FDIC's positions. One, a thrift trade association, opposed extending flood insurance regulations to service corporations because of the unfair burden that would be placed on bank and thrift subsidiaries relative to mortgage bankers. The agencies received one comment letter that supported the NCUA's position.

Based on the commenters' responses and the desire for regulatory consistency, the OTS's portion of the joint final rule applies to service corporations. The OTS believes that the purpose of the Federal flood insurance statutes is best served by treating loans made by service corporations in the same way as loans made elsewhere in the corporate structure by the thrift institution or its operating subsidiaries. The FDIC's portion of the joint final rule makes subsidiaries of insured nonmember banks subject to Federal flood insurance requirements by defining the term "bank" to include a subsidiary of such institutions. The positions of the other agencies, as reflected in their statements in the preamble to the proposal, are unchanged.

Exemptions

The proposal retained the exemption from the basic flood insurance requirement for State-owned property that is self-insured in a manner

satisfactory to the Director of FEMA, and added the Reform Act's new exemption for loans with an original principal balance of $5,000 or less and a repayment term of one year or less. The agencies received 19 comment letters on this issue. Fifteen commenters requested expansion of the statutory exemption for loans in the amount of $5,000 or less with a term of one year or less. Because the exemption has been established by statute (*see* 42 U.S.C. 4012a(c)(2)), it may only be expanded by a legislative amendment. The joint final rule therefore adopts the language as proposed.

Escrow of Flood Insurance Payments

Definition of residential improved real estate. As required by the Reform Act, the proposal stated that a regulated lender must require the escrow of flood insurance premiums for loans secured by *residential improved real estate* if the lender requires the escrow of other funds to cover other charges associated with the loan, such as taxes, premiums for hazard or fire insurance, or any other fees. The proposal also cautioned that, depending on the type of loan, the escrow account for flood insurance premiums may be subject to section 10 of RESPA, 12 U.S.C. 2609,[17] which generally limits the amount that may be maintained in escrow accounts for consumer mortgage loans, and requires notices containing escrow account statements for those accounts.

There are differences between the scope of the Reform Act's coverage and the scope of RESPA's coverage that raise a question about how the two laws should be applied together. The Reform Act's escrow provision applies to loans secured by "residential improved real estate," a term defined in the Reform Act as improved real estate for which the improvement is a residential building.[18] This definition does not distinguish between mortgage loans secured by one to four family residential buildings and commercial loans secured by residential buildings. Under the language of the proposal, therefore, the Reform Act's escrow provision applied to both home mortgage loans and commercial loans—including, for example, mortgages on apartment buildings or construction loans secured by residential buildings—but, only if the lender requires the escrow of other charges for those loans.

RESPA, on the other hand, applies to a "federally related mortgage loan," which is defined as a loan secured by a first or subordinate lien on residential real property designed principally for the occupancy of from one to four families.[19] Further, by regulation HUD has determined that RESPA does not cover construction financing, loans primarily for business, commercial, or agricultural purposes, loans secured by 25 acres or more of real estate, whether residential or commercial, and loans on vacant or undeveloped property not developed within two years.[20] Similarly, the limits on amounts escrowed and the escrow account statement requirements prescribed by RESPA section 10, which is the only RESPA section that the Reform Act makes applicable to flood insurance premiums, apply only to consumer mortgage loans.

In the proposal, the agencies resolved the differences between the scope of coverage of the two statutes by applying RESPA section 10 only to flood insurance escrow accounts for loans that are already subject to RESPA generally, *i.e.*, escrows for consumer mortgage loans. The agencies took the position that (1) the escrow of flood insurance premiums is required whenever the lender escrows other charges associated with the loan, but (2) the detailed requirements of RESPA section 10 do not apply unless the loan itself is subject to RESPA.

The agencies received 20 comments on the scope of the escrow requirement. Five commenters generally agreed with the proposal, while 15 requested additional clarification on specific matters. Five commenters said that the term *residential improved real estate* as defined in the proposal could be interpreted to include loans on multi-family properties, which are mortgage loans secured by five or more family residential units typically processed as commercial loans made for a business purpose. These commenters recommended that the agencies limit the Reform Act's escrow requirement only to those loans that are subject to RESPA. Some commenters requested that the final rule distinguish between mortgage loans secured by one to four family residential units and mortgage loans secured by multi-family units, and asked that the definition be modified so that it applies only to the former type of mortgage loans. They stated that if this change were made, lenders would not have to escrow for flood insurance on mortgage loans secured by five or more family units, thereby easing their administrative burdens. They also pointed out that this would take advantage of a well-understood approach to distinguishing between loans on residential and other property, and thereby minimize confusion and increase compliance.

Industry commenters also pointed out that loans on commercial property are processed quite differently from consumer loans and often are subject to extensive negotiation of terms. Escrows on such loans may reflect required property maintenance expenditures or compensating balances as a pricing term rather than the types of payments covered by escrows on consumer mortgage loans. On the other hand, FEMA, although observing that the Reform Act neither required nor authorized the agencies to require escrows on commercial properties, recommended that the agencies impose a similar escrow requirement on commercial property loans as well.

The escrow provisions of the Reform Act are designed to improve compliance with flood insurance requirements by ensuring that homeowners located in special flood hazard areas obtain and maintain flood insurance for the life of the loan. The Conference Report stated that a major reason for the lack of compliance with the NFIP is that many homeowners stop paying premiums on their flood insurance policies.[21] However, the Reform Act itself simply does not restrict the flood insurance escrow requirement to consumer mortgage loans. The determinative factor in the coverage of the escrow requirement is not the purpose of the loan, but the purpose of the building—whether it is primarily used for residential purposes.

Section 10 of RESPA, the only RESPA provision that the Reform Act makes applicable to flood insurance escrow accounts, limits the amounts that lenders and servicers may legally require borrowers to deposit in escrow accounts.[22] In 1994, HUD amended its RESPA regulations[23] to interpret section 10 of RESPA by establishing a nationwide standard escrow accounting method known as aggregate accounting and giving lenders and servicers specific guidance on the requirements of section 10. The final rule required lenders and servicers to use the aggregate accounting method for escrow accounts involving

[17] The regulations of HUD implementing section 10 appear at 24 CFR 3500.17 (1995); *see also* 60 FR 8812 (Feb. 15, 1995), 60 FR 24734 (May 9, 1995), 61 FR 13232 (Mar. 26, 1996) and 61 FR 29238 (June 7, 1996) (revising § 3500.17).

[18] 42 U.S.C. 4012a(d)(4). The proposal defined the term as real estate upon which a home or other residential building is located or to be located.

[19] 19 12 U.S.C. 2602(1)(A).

[20] *See* 24 CFR 3500.5(b).

[21] Conference Report at 198.

[22] 12 U.S.C. 2609.

[23] HUD, Final Rule on Escrow Accounting Procedures, 59 FR 53890 (Oct. 26, 1994) (adding 24 CFR 3500.17).

consumer mortgage loans, instead of the method known as single-item analysis accounting, and provided a phase-in period for existing escrow accounts to convert to the aggregate accounting method.[24] This change was intended to reduce the cost of home ownership, by ensuring that funds would not be held in escrow accounts in excess of the amounts necessary to protect lenders' interests in preserving loan collateral.[25] It appears that Congress intended to apply the same section 10 limits to the new flood insurance escrow accounts required under the Reform Act. Because of the differences between the scope of coverage of the Reform Act and RESPA, however, the agencies do not believe that the Reform Act is intended to impose the particular requirements of section 10 on loans that are not subject to RESPA generally, for example, commercial loans secured by residential buildings. There is nothing in the legislative history of the Reform Act suggesting that Congress meant to extend the scope of section 10 of RESPA in this way through the enactment of the Reform Act, and absent specific direction from Congress, the agencies did not believe that they had the authority to expand RESPA's section 10 coverage to loans that are not otherwise subject to RESPA.

In addition, RESPA only applies to mobile home loans if they are also secured by real estate, whereas the Reform Act applies to mobile home loans whether or not secured by real estate. RESPA also exempts all loans secured by 25 acres or more of real estate, whether residential, commercial, or agricultural, whereas the Reform Act applies to all such loans if secured by structures primarily used for residential purposes. While RESPA and the Reform Act cover refinancings,[26] the Reform Act also covers increases, extensions, and renewals.

In the joint final rule, the text of the agencies' definition of *residential improved real estate* is the same as was proposed. It primarily covers loans that are otherwise subject to RESPA. But, because the Reform Act defines "residential improved real estate" as "improved real estate for which the improvement is a residential building," multi-family properties containing five or more residential units are covered under the Reform Act's escrow provisions, as are single family dwellings (including mobile homes) and two to four family dwellings. A construction loan, loan secured by 25 acres or more of real estate, or commercial loan is subject to the escrow requirements if the loan is secured by improved real estate primarily used for residential purposes and an escrow account is required in connection with the loan for taxes, insurance premiums, fees, and other charges. Finally, except for escrows on consumer mortgage loans, the escrow accounts established for these loans need not comply with the requirements of section 10 of RESPA. The agencies have also made minor conforming changes to the text of the escrow provision.

Types of escrow accounts covered. Six commenters asked for clarification of what constitutes a "required" escrow. The commenters were divided on whether a "voluntary" escrow account (where the borrower requests the lender to establish an escrow account) should trigger a flood insurance escrow requirement. The Reform Act mandates a flood insurance escrow only when a regulated lending institution requires an escrow account for taxes, insurance, fees, or other charges. Although exclusion of voluntary escrows could lead to the possibility of evasion and difficulties in examining for compliance, the agencies do not believe that the Reform Act mandates escrow of flood insurance premiums in connection with escrow accounts specifically requested by the borrower. However, where a lender is escrowing for hazard insurance premiums or taxes without also escrowing for flood insurance premiums, the lender will have the burden of demonstrating that the escrow arrangement is truly voluntary.

In determining whether an escrow account arrangement is voluntary, the agencies believe it is appropriate to look to the loan policies of the regulated lender and the contractual agreement underlying the loan. If the loan documentation permits the lender to require an escrow account, and the lender's loan policies normally would require an escrow account for a loan with particular characteristics, an escrow account in connection with such a loan generally would not be considered to be voluntary. An escrow arrangement generally would be viewed as voluntary, however, if the policies of the lender do not require the establishment of an escrow account in connection with the particular type of loan, even though the loan documentation may permit a lender to require the establishment of an escrow account.

Additionally not all accounts established in connection with a loan secured by residential improved real estate are considered to be escrow accounts that would trigger the requirement for the escrow of flood insurance premiums. For example, accounts established in connection with commercial loans for such items as interest or maintenance reserves or compensating balances are not considered to be escrow accounts for the purposes of this provision. As a general matter, accounts established in connection with the underlying agreement between the buyer and seller or that relate to the commercial venture itself, rather than to the protection of the property, would not be considered to trigger the escrow requirements for flood insurance premiums.

Several commenters asked if the requirement to escrow flood insurance premiums would be triggered only if other escrows were required on the particular loan in question, rather than if the institution generally required escrows on other loans of similar type. The agencies agree that the final rule should be applied on a loan-by-loan basis within similar types of loans.

Several commenters asked whether voluntary payments for credit life insurance would trigger a flood insurance escrow. The agencies note, as did some of these commenters, that HUD takes the position that voluntary payments for credit life insurance do not constitute escrows for purposes of RESPA,[27] and, accordingly, believe that payments under credit life insurance and similar types of contracts should not trigger the escrow of flood insurance premiums. Escrows for hazard insurance such as fire, storm, wind, or earthquake are the types of insurance that trigger the requirement to escrow flood insurance premiums if such insurance is required on the loan.

Various commenters opposed flood insurance escrows in general or thought that insurance companies or municipalities would be the logical entities to enforce the purchase and maintenance of flood insurance. However, the agencies note that the requirement is mandated by the Reform Act. Other commenters pointed out that their institutions lack the capability for escrows, either in general or with respect to mobile homes. Both the statute and this joint final rule specify that escrow of flood hazard insurance payments is required only when other payments also are escrowed.

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[24] 59 FR at 53890. The rule also established formats and procedures for initial and annual escrow account statements.

[25] Id. at 53890–91.

[26] See Conference Report at 197.

[27] See 60 FR 24733 (May 9, 1995) (revising 24 CFR 3500.17).

Forced Placement

The proposal set forth the requirement imposed by the Reform Act on a regulated lender or a servicer acting on its behalf to purchase or "force place" flood insurance for the borrower if the lender or the servicer determines that adequate coverage is lacking. The agencies received 31 comments on this issue.

Four commenters asked if a loan could be made without flood insurance in place provided the lender gave notice to the borrower at closing that flood insurance must be obtained by the borrower within 45 days from the date of closing and that the lender would force place insurance if the borrower had not complied by the end of that period. Section 102(e)(2) of the 1973 Act, as amended, 42 U.S.C. 4012a(e)(2), provides for forced placement of flood insurance 45 days after the borrower is notified of deficient flood insurance coverage. The agencies do not interpret this provision of the Reform Act as granting a borrower 45 days from loan closing to arrange for flood insurance on the security property.

The agencies believe that the addition of the forced placement authority does not lessen the need for flood insurance to be in place at the time a loan is made. Section 102(e) of the 1973 Act provides that the agencies must require a regulated lending institution not to make, increase, extend, or renew any loan secured by improved real property located in a SFHA unless the security property is covered by the minimum amount of flood insurance required by the statute. The agencies interpret this provision to mean that the flood insurance regulations must require that such insurance be in place at the time a lender makes a loan that is secured by improved real property located in a SFHA.

The agencies believe that the forced placement provision of the Reform Act is designed to complement the other statutory tripwires for ensuring that security property located in a SFHA is adequately covered by flood insurance. As a practical matter, forced placement should not be necessary at the time of making, increasing, extending, or renewing a loan, when the lender is obligated to require that flood insurance be in place. Rather, forced placement authority is designed to be used if, over the term of the loan, the lender or its servicer determines that flood insurance coverage on the security property is deficient under section 102(e) of the 1973 Act.

To further emphasize this point, the agencies are removing the phrase "at the time of origination or" from the final version of the forced placement regulation. The agencies realize that this phrase tracks the statutory language set forth in section 102(e)(1) of the 1973 Act. The agencies believe, however, that the removal of this phrase will not substantively alter the requirements of the rule since this joint final rule still provides, in accordance with the statute, that a lender or servicer acting on its behalf is under a duty during the term of a designated loan to force place insurance if the lender or servicer acting on the lender's behalf determines that the security property is not adequately insured. The removal of this phrase clarifies (1) that flood insurance coverage must be in effect at the time of closing of a designated loan, and (2) the duties of a lender or its servicer with respect to forced placement of flood insurance.

One commenter requested clarification as to the precise amount of flood insurance a lender or servicer acting on its behalf is required to force place. Section 102(b)(1) of the 1973 Act, as amended, 42 U.S.C. 4012a(b)(1), states that security property located in a SFHA must be covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage available under Federal flood insurance statutes, whichever is less. A regulated lender must therefore initiate procedures to force place flood insurance whenever the amount of coverage in place is not equal to the lesser of the outstanding principal balance of the loan or the maximum stipulated by statute for the particular category of property securing the loan. The amount that must be force placed is equal to the difference between the present amount of coverage and the lesser of the outstanding principal balance or the maximum coverage limit.

One commenter suggested that forced placement should be at the lender's discretion while another commented that the final rule should state that lenders have both the legal authority and obligation to force place flood insurance. The agencies wish to make it plain that under section 102(e) of the 1973 Act lenders are both authorized and obligated to force place flood insurance if necessary. The joint final rule therefore provides that a lender, or servicer acting on the lender's behalf, upon discovering that security property is not covered by an adequate amount of flood insurance, must, after providing notice and an opportunity for the borrower to obtain the necessary amount of flood insurance, purchase flood insurance in the appropriate amount on the borrower's behalf.

Portfolio Review

The preamble to the proposal indicated that neither the Reform Act nor the proposed rule required a regulated lending institution or servicer acting on the lender's behalf to conduct a review of all loans in portfolio as of September 23, 1994, that is, a retroactive portfolio review. The Reform Act does not revise the list of events that trigger a determination (the making, increasing, renewing, or extension of a loan, sometimes referred to as the statutory tripwires). The proposal also indicated that a requirement for retroactive portfolio review would impose a costly and unnecessary burden on regulated lending institutions.

Similarly, the agencies did not propose to require a regulated lending institution or servicer acting on its behalf to conduct portfolio reviews on a prospective basis. The preamble noted that the 1968 and 1973 Acts, as amended by the Reform Act, do not prescribe portfolio review as the means that a lender or servicer acting on its behalf must use to determine whether security property is adequately covered by flood insurance. The flood statutes do not require that determinations be made at any particular time, other than in connection with making, increasing, extending, or renewing a loan. Nonetheless, the preamble indicated that a regulated lending institution and servicer acting on its behalf should develop policies and procedures to ensure that, when a determination has been made that property securing a loan is located in a SFHA, they satisfy the requirements of the Reform Act's forced placement provision.

The proposal also noted that it might be appropriate as a matter of safety and soundness for the agencies to ensure that institutions that are significantly exposed to the risks for which flood insurance is designed to compensate determine the adequacy of flood insurance coverage by (1) periodic reviews, or (2) reviews triggered by remapping of areas represented in a regulated lending institution's loan portfolio.

The agencies invited comment on the advisability of issuing guidance in this area and on how the guidance should differentiate among regulated lending institutions based on their levels of exposure to flood risk. In particular, the agencies invited comment on the methods that regulated lending institutions already use or are considering for determining the adequacy of flood insurance coverage;

the cost (or other burden) associated with portfolio reviews; and on whether the additional loans for which flood insurance would be required as a result of portfolio reviews would be significant in relation to a regulated lending institution's or its servicer's portfolio.

The agencies received 76 comment letters on this issue, the most letters received on one topic. Forty-four commenters agreed with the agencies' view that the Reform Act does not require retroactive or prospective portfolio review. The same number agreed with the agencies' view that the final rule should not impose a requirement for retroactive or prospective portfolio reviews. Eleven commenters urged the agencies not to issue additional guidance as a safety and soundness matter for institutions that are significantly exposed to the risks for which flood insurance is designed to compensate. However, fourteen commenters recommended that the agencies issue informal guidance addressing, for example, when an institution is "significantly exposed."

Twenty commenters stated that the decision whether to engage in portfolio review should be left to the lender. Six recommended that the decision should be determined as a result of examinations, and not dictated in advance by regulations or agency guidance. Some of these commenters stated that the agencies should impose a portfolio review burden only on those individual institutions found in examinations to have inadequate systems in place. Others recommended that safety and soundness issues with respect to the adequacy of flood insurance should be handled on a case-by-case basis through the examination process.

An issue that generated significant comment is whether the Reform Act's forced placement provision implicitly imposes on lenders an affirmative obligation to monitor loans for FEMA map changes for the life of the loan. Ten commenters requested the agencies to address this uncertainty in the final rule.

Nine commenters questioned whether the agencies' position on portfolio review is consistent with the forced placement language of the Reform Act. These commenters stated that the forced placement provision appears to require some action on the lender's part in response to remappings, as a lender will not know whether to force place flood insurance unless it is apprised of changes in the flood zone status of the property. These commenters indicated that the preamble's statement that prospective portfolio review is not required implies that a lender is not required to monitor for map changes subsequent to origination. Another commenter also pointed out that in order to comply with the forced placement provision, a lender may be obliged to conduct a retroactive portfolio review to determine whether it is required to force place insurance on any loans in its portfolio.

Fourteen commenters, however, stated that prospective monitoring is not required because the Reform Act did not group map changes with the statutory tripwires listed in the basic purchase provision of the Reform Act. In their view, a lender does not have a duty to track for map changes. Seven commenters recommended that the final rule explicitly state that there is no duty to track for map changes or that ongoing monitoring is not required. Others pointed out that a requirement to make flood determinations upon remapping alone, without an intervening tripwire event, would impose costly and unnecessary burdens on lenders.

One commenter urged that the final rule provide that the lender's flood determination obligation after loan origination is limited only to the tripwire events, unless the lender, for its own portfolio risk management reasons, wishes to adopt a different approach. Fourteen commenters suggested that life of loan monitoring is one less expensive method lenders could use, pointing out that the cost for ongoing tracking of loans for flood map changes would be lower than the cost of performing periodic reviews or entire portfolio reviews triggered by remappings. Five commenters stated that the additional loans for which flood insurance would be required as a result of portfolio reviews would be insignificant in relation to the lender's or its servicer's portfolio.

The agencies reiterate their view that the Reform Act does not require lenders to engage in retroactive or prospective portfolio reviews or any other specific method for carrying out their responsibilities under the Federal flood insurance statutes. The Reform Act clearly requires lenders to check the status of security property for loans when triggered by the statutory tripwires. The Reform Act did not add remappings to the list of statutory tripwires. The Reform Act does not require lenders to monitor for map changes, and the agencies will not impose such a requirement by regulation. The joint final rule does not require that determinations be made at any time other than when a loan is made, increased, extended, or renewed. If, however, at any time during the life of the loan, the lender, or servicer acting on the lender's behalf, determines that required flood insurance is lacking, the Reform Act requires the lender, or servicer acting on the lender's behalf, to initiate forced placement procedures. A lender, or servicer acting on the lender's behalf, continues to be responsible for ensuring that where flood insurance was required at origination, the borrower renews the flood insurance policy and continues to renew it for as long as flood insurance is required for the security property. If a borrower allows a policy to lapse when insurance is required, the lender, or servicer acting on its behalf, is required to commence forced placement procedures.[28]

The preamble to the proposal stated that depending on the location and activities of a lender, adequate flood insurance coverage may be important from a safety and soundness perspective as a component of prudent underwriting and as a means of protecting the lender's ongoing interest in its collateral. The agencies believe that each lender is in the best position to tailor its flood insurance policies and procedures to suit its business. Lenders should evaluate and, when necessary, modify their flood insurance programs to comport with both the requirements of Federal flood insurance statutes and regulations and principles of safe and sound banking. The agencies believe that more experience should be gained before a decision is made that further guidance is necessary for institutions in areas that have significant exposure to flood hazards. The agencies caution, however, that an institution with a lending area that includes communities that are subject to significant flood hazards, but that do not participate in the NFIP, presents special problems that may not be adequately addressed by the procedures generally used to limit flood risks, such as monitoring of remappings and other procedures.

Penalties

The proposal noted that the penalty provisions of the Reform Act are self-executing and do not require the agencies to develop regulations to implement them. Thus, the agencies did not propose regulations on the penalty provisions. The agencies received six comment letters on this issue. Two recommended that the final rule set out the statutory provisions contained in

[28] The insurance provider routinely notifies the lender, or servicer acting on behalf of the lender, along with the borrower when the insurance contract is due for renewal. The insurance provider also routinely notifies the lender or its servicer as well as the borrower if the insurance provider has not received the policy renewal.

section 102(f) and (g) of the 1973 Act, as amended by the Reform Act, 42 U.S.C. 4012a(f) and (g). Two others requested that the final rule provide guidance on how the agencies intend to implement the broad enforcement authority given to them to take remedial action under section 102(g) of the 1973 Act. One asked the agencies to provide guidance on how the phrase "pattern or practice" of noncompliance will be construed, expressing the concern that interpretations should be uniform and not left completely to the discretion of individual examiners. The agencies have determined not to repeat the provisions of the statute in the joint final rule.

One commenter suggested that the final rule refer to the procedural rules that apply to such enforcement actions. The uniform rules of practice and procedure for agency administrative enforcement actions developed by the OCC, Board, FDIC, OTS, and NCUA (Uniform Rules) apply to such actions. Those rules were amended recently to apply the Uniform Rules to the civil money penalty provisions and the remedial actions described in section 102(f) and (g) of the 1973 Act.[29]

Determination Fees

General. The proposed rule included a provision that set forth the authorization conferred by the Reform Act on a lender, or servicer acting on the lender's behalf, to charge a reasonable fee for the costs of making a flood hazard determination under specified circumstances: if the borrower initiates the transaction (making, increasing, extending, or renewing a loan) that triggers a flood hazard determination; if the determination reflects FEMA's revision of flood maps; or if the determination results in the purchase of flood insurance by the lender, or servicer acting on behalf of the lender, under the forced placement provision.

The agencies received 43 comment letters on this issue. Fifteen commenters requested that the final rule clarify that the authority to charge a reasonable fee for the costs of making a flood hazard determination covers a "life-of-loan" charge to the borrower that would pay for monitoring of the flood hazard status of the security property for the term of the loan. The agencies believe that the statutory authority to charge a borrower a reasonable fee for a flood hazard determination does extend to a fee for life-of-loan monitoring by either the lender, or servicer acting on behalf of the lender, or by a third party, such as a flood hazard determination company.

While the Reform Act specifies the circumstances that may give rise to the charging of a determination fee, the Act does not expressly provide what may be included in the determination fee nor does the joint final rule adopt a rigid definition. However, the agencies agree that a determination fee may include, among other things, reasonable fees for the costs of an initial flood hazard determination, as well as reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of a security property during the life of a loan for purposes of making determinations on an ongoing basis. Consequently, the joint final rule has been clarified to provide that a determination fee may include, but is not limited to, a life-of-loan monitoring fee. Because the authority to charge a life-of-loan monitoring fee is based on the authority to charge a determination fee, the monitoring fee may be charged only if one of the specified events in the statute occurs.

A commenter asked whether the authority to charge a reasonable determination fee extended to a situation where there has been a remapping, but the security property was found not to be in a SFHA. Section 102(h) of the 1973 Act, 42 U.S.C. 4012a(h), does not distinguish between positive and negative flood hazard determinations in its authorization to charge a reasonable fee for that service in the event of a remapping. Consequently, the agencies believe that a lender, or servicer acting on the lender's behalf, may charge a fee in either situation.

One commenter inquired whether authority to charge determination fees extended only to determinations by third parties. Section 102(h) of the 1973 Act does not distinguish between determinations done in-house by a lender or servicer acting on its behalf and those performed by another entity. The agencies believe that a lender, or servicer acting on its behalf, may charge a determination fee if either of the entities performs this service itself or if the lender or its servicer arranges to have a third party perform the determination.

One commenter requested that the final rule provide that a lender may include out of pocket costs, internal costs, and profit as part of a reasonable flood hazard determination fee. Another suggested that a reasonable fee should cover the costs of notification, obtaining flood insurance, and adding flood insurance premiums to the loan balance. The agencies decline, however, to list all of the components of a reasonable flood hazard determination fee (which may include a life-of-loan monitoring fee) in the joint final rule because that determination may vary depending upon circumstances and is best determined on a case-by-case basis by the regulated lending institution.

Truth in Lending Act Issues. Seven commenters raised issues concerning the interaction between the rules concerning flood insurance and rules under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, particularly with respect to the treatment of determination fees charged at consummation that include life-of-loan coverage and fees charged subsequent to closing.

Some commenters argued that Regulation Z[30] should not require the portion of a life-of-loan monitoring fee that is not related to the initial determination to be included as part of the finance charge. One commenter stated that, in its experience, the addition of a portion of the life-of-loan monitoring fee to the finance charge did not have a significant impact on the finance charge disclosed, although the costs involved in breaking down charges for the purposes of Regulation Z impose a burden on lenders.

The official staff commentary to Regulation Z (12 CFR part 226 (Supplement I)) explains the proper treatment of life-of-loan fees. The commentary states that fees for services that will be performed periodically during the loan term, including fees for determinations as to whether security property is in a SFHA, may not be excluded from the finance charge, regardless of when the fee is charged. The commentary further indicates that any portion of a fee that does not relate to the initial decision to grant credit must be included in the finance charge.[31] If creditors are uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge. Further consideration of this issue would be beyond the scope of this rulemaking.

Several commenters indicated that determination fees assessed after consummation, such as fees for a new determination following a remapping, should not be included as part of the finance charge disclosures under Regulation Z. These commenters argued

[29] *See* 61 FR 26021 (June 4, 1996) and 61 FR 20330–20356 (May 6, 1996). The FCA expects to make similar amendments to its rules of practice. *See* 12 CFR part 562.

[30] The Board's Regulation Z, 12 CFR part 226, implements the Truth in Lending Act.

[31] *See* 12 CFR part 226, Supplement I—Official Staff Interpretations, 12 CFR § 226.4, comment 4(c)(7)-3 (1996).

that whether or not a new determination will be necessary and a fee imposed during the loan term is unknown at the time disclosure is provided. Regulation Z and the commentary state that, generally, if a disclosure provided at or before consummation becomes inaccurate because of a subsequent event, the inaccuracy does not result in a violation. Accordingly, no additional clarification is needed.

Notice Requirements

Borrower. The proposed rule closely tracked the specific notice requirements of section 1364 of the 1968 Act, as amended by the Reform Act, 42 U.S.C. 4104a. Moreover, like the statute, the proposal contained a provision authorizing regulated lending institutions to use an alternate form of notice in certain situations. The alternate notice provision allows the lender to rely on assurances from a seller or lessor that the seller or lessor has provided the requisite notice to the purchaser or lessee of the property who is the ultimate recipient, or borrower, of the lender's funds. The need for this alternate form of notice would arise, for example, in a situation where the lender is providing financing through a developer for the purchase of condominium units by multiple borrowers. The lender may not deal directly with the individual condominium unit purchaser and, in such a case, need not provide notice to each purchaser but may instead rely on the developer/seller's assurances that the developer/seller has given the necessary notice. The same may be true for a cooperative conversion, in which case the sponsor of the conversion may be providing the required notice to the purchasers of the cooperative shares. A purchaser of shares in a cooperative may be considered to be a "lessee" rather than a purchaser with respect to the underlying real property. For the reasons explained later, the agencies are adopting the notice requirements provision essentially as it was proposed with minor revisions to clarify the text.

Twenty-two commenters expressed broad support for the continued use of the term "borrower" in the notice requirement rather than the phrase "purchaser or lessee" used in the statute. The joint final rule retains the term "borrower," except that the alternate notice provision has been revised to clarify that the recipient of the notice to the borrower in cases where the alternate method applies will be the purchaser or lessee of the property.

Twenty commenters, citing increasingly compressed time frames for loan approval and closing in certain circumstances, requested specific guidance on what is meant by the "reasonable time" standard for notice delivery established by section 1364 of the 1968 Act, and followed by the agencies in the proposed rule. Other commenters noted that the "Use of Prescribed Form of Notice" provision of the proposed rule appeared to establish a conflicting standard of reasonable time—ten days—for notice purposes. These commenters asked which standard controlled. The agencies believe that the statutory standard of providing written notification of special flood hazards within a reasonable period before completion of the transaction offers regulated lending institutions sufficient flexibility to meet the statutory goal of providing adequate notice to borrowers and servicers, while accommodating the need in appropriate circumstances for an abbreviated notice period.

What constitutes "reasonable" notice will necessarily vary according to the circumstances of particular transactions. Regulated lending institutions should bear in mind, however, that a borrower should receive notice timely enough to ensure that (1) The borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and (2) where applicable, the borrower can purchase flood insurance before completion of the loan transaction. In light of these considerations, the joint final rule does not establish a fixed time period during which a lender provides notice to the borrower. To avoid any confusion regarding application of the "reasonableness" standard to notice delivery, the proposed rule authorizing use of the sample form of notice provided in appendix A of the rule has been revised to provide that delivery of notice based on the sample form of notice must take place within a reasonable time before the completion of the transaction. The agencies generally continue to regard ten days as a "reasonable" time interval.

Two commenters also raised questions regarding the alternate method of notice provision in the proposed rule. One commenter questioned whether the seller or lessor of the property—as opposed to the lender—is supposed to make the determination regarding the flood status of a security property pursuant to this provision. Another commenter questioned whether the seller or lessor must use the sample form of notice set forth in appendix A to the final rule.

In response, the agencies note that this section of the joint final rule does not shift the burden of determining flood status from the lender to the seller or lessor. Rather, it implements the provision of section 1364(a)(1) of the 1968 Act that permits borrower notice delivered by a seller or lessor to substitute for lender notice so long as the lender receives satisfactory assurances that the notice has been delivered to the borrower. The prescribed contents of the notice do not change when the seller or lessor provides notice to the borrower. Before relying on the alternate form of notice, a lender must have a written assurance that the notice provided by the seller or lessor contained all the elements required by section 1364 of the 1968 Act. The alternate notice provision in the joint final rule is not intended to set a lower notification standard. The seller or lessor notice is subject to the same content requirement as notice by the lender, but a seller or lessor need not use the sample form of notice provided in appendix A to the final rule in order for a lender to rely on the notice.

The agencies received three comments concerning the effect of the proposed notice provisions on lenders that finance the purchase of mobile homes. These commenters noted that, in some mobile home lending transactions, the lender may not know where the mobile home is to be located until just prior to the time of loan closing. In other so-called "home only" transactions, the purchaser of the mobile home buys and finances the home separately from the land on which it ultimately will be located. These commenters asserted that they would be unable to comply with the notice requirements until they learn where the mobile home will be located and can thus determine whether the mobile home will be located in a SFHA.

Consistent with the previous discussion in this section of the reasonable notice standard, the agencies believe that the notice requirements of the 1968 Act, as amended, can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as practicable after determination that the mobile home is or will be located in a SFHA and before completion of the loan transaction. Particularly in those circumstances where time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notification of flood hazards to borrowers at the earliest practicable time.

Moreover, the agencies will not apply the borrower notice requirements to those "home only" mobile home transactions that close before the permanent location for the mobile home

is known. Clearly, a lender cannot determine whether flood insurance is required before the location of the mobile home has been fixed. When the lender learns the location of the mobile home, the lender must determine whether the mobile home is in a SFHA, notify the borrower and require the purchase of any required flood insurance. The agencies recommend that lenders consider notifying borrowers in "home only" mobile home transactions, at the time the loan closes, that they will be required to have and pay for flood insurance if the mobile home they purchase is eventually located in a SFHA in a participating community. The joint final rule does not require this type of notice because the statute does not require it. The agencies' recommendation reflects their view that it would be prudent practice for lenders to avoid imposing unanticipated obligations and costs on borrowers if and when flood insurance becomes necessary.

Servicer. The Reform Act added loan servicers to the entities that must be notified of special flood hazards, and the proposal requested comment on the appropriate timing of notice to the servicer. Thirty commenters felt that notification to the servicer in advance of the closing would not be possible or would serve no purpose. Commenters also pointed out that transfer to a servicer can take up to four months and that in many cases the servicer's identity will not be known until well after the closing. A number of alternative schedules were suggested, including a requirement that the notice of special flood hazards be transmitted to the servicer along with the other data on hazard insurance and taxes required to service a loan with an escrow, so that the servicer can escrow for flood insurance payments along with other escrowing for hazard insurance and taxes. In recognition that the servicer is often not identified prior to closing, the joint final rule requires notice to the servicer as promptly as practicable after the lender provides notice to the borrower, and provides that notice to the servicer must be given no later than at the time the lender transmits to the servicer other loan data concerning hazard insurance and taxes.

Six commenters recommended that the final rule state that a copy of the notice to the borrower would suffice to fulfill the notice requirement to the servicer. The proposal permitted the lender to use the same notice for both the borrower and servicer. That provision is adopted without change in the joint final rule. The proposed rule also has been revised to explicitly state that delivery of a copy of the borrower's notice to the servicer suffices as notice to the servicer.

Several commenters recommended that a separate notice to a servicer affiliated with the lender not be required. The agencies do not agree with this recommendation. The statute requires the lender to notify the servicer of special flood hazards, and the joint final rule reflects this requirement. Moreover, even in the case of servicing by an affiliate, the lender would ordinarily transmit a file to the servicer, either in writing or electronically, to enable the servicer to collect and disburse payments, and the notice of special flood hazards can be transmitted as part of that process without imposing an undue regulatory burden.

The proposed rule has been revised to indicate that the notice to the servicer may be transmitted in written or electronic form.

FEMA or FEMA's Designee. The joint final rule also implements the statutory requirement that, in connection with making, increasing, extending, renewing, selling, or transferring a loan secured by improved real estate or a mobile home located in a SFHA, regulated lenders notify the Director of FEMA or the Director's designee of the identity of the loan servicer and of any change in the servicer. Notice of the identity of the servicer will enable FEMA to provide notice to the servicer of a loan 45 days before the expiration of a flood insurance contract, as required by section 1364(c) of the 1968 Act, as amended. FEMA has designated the insurance provider as its designee to receive notice of the servicer's identity and of any change therein, and at FEMA's request this designation is stated in the joint final rule.

Six commenters requested a model form of notice to the Director of FEMA or the Director's designee, or guidance on the information to be included in the notice. Some commenters suggested that, in the case of a loan subject to RESPA where a Notice of Transfer of servicing to the borrower is required, sending to the Director or the Director's designee a copy of such Notice of Transfer should suffice. The agencies believe that delivery of a copy of the Notice of Transfer, which includes the name, address, and other information concerning the servicer, may be sufficient if the sender includes enough information on or with the notice to enable the Director or the Director's designee to identify the loan and the security property. Other forms of notice also are sufficient if the notice provides information that enables the Director or the Director's designee to identify the loan, the security property, the servicer, and the servicer's address.

Several commenters inquired about electronic transmission of the notice, and one inquired about the possibility of batch transmission. As in the case of notice to the servicer, the joint final rule permits electronic transmission of the notice to the Director or the Director's designee. The agencies also note that nothing in the joint final rule prohibits a timely batch transmission.

Several commenters questioned the need to notify the Director or the Director's designee if the lender or an affiliate of the lender is the loan servicer. The agencies believe that the statute requires notice by the lender to the Director or designee of the initial servicer, and the joint final rule reflects this requirement. However, since the Director has chosen the insurance provider as his designee, the agencies believe that the regulatory burden of notification is minor because there is ordinarily an exchange of information between the lender and the insurance provider at the time a loan is made. Therefore, the agencies have not adopted this suggestion.

Three commenters objected to notifying FEMA when a loan is sold on a "service released" basis, where the servicing is sold along with the loan. Failure to provide such notice would defeat the purpose of the requirement, however, as FEMA will have no record of the identity of either the owner or servicer of the loan. The joint final rule is therefore unchanged in this regard.

Three commenters expressed confusion over a lender's obligation in the event of a subsequent transfer of servicing by a transferee servicer, on the grounds that the lender would not necessarily be aware of the transfer. The agencies note that under section 1364(b)(1) of the 1968 Act, as amended, the duty to provide notice to FEMA follows the servicing, and the joint final rule reflects this. Accordingly, the obligation to notify the Director or designee of subsequent changes is transferred to the new servicer along with a transfer of servicing.

Two commenters wanted to limit notice to the "making" of a loan and any transfer of servicing, on the grounds that notices in connection with increasing, extending, renewing, selling, or transferring a loan will be redundant. The statute, however, requires notice in all such cases. Moreover, in the case of a loan made before the effective date of the joint final rule, a notice on an increase, extension, renewal, sale, or transfer of the loan will be the first legally required notice to the Director or the Director's designee. Therefore, the

agencies have not adopted this suggestion.

Five commenters argued that it is an unnecessary regulatory burden to notify FEMA when the servicing is transferred or the loan is paid off. The statute requires notice to the Director or the Director's designee when servicing is transferred, but neither the statute nor the joint final rule requires notice when a loan is paid off.

Appendix A—Sample Form of Notice

The agencies received 22 comments on the sample form of notice set forth in appendix A of the proposed regulation. Five commenters asked whether use of the sample form of notice is mandatory. The agencies stress that use of the sample form of notice is not mandatory. A regulated lender may choose to use the sample form as presented in appendix A of the joint final rule to comply with the notice requirements of section 1364 of the 1968 Act. In addition, lenders may personalize, change the format of, and add information to the sample form if they wish to do so. The agencies stress that the sample form merely provides an example of an acceptable form that notice may take. However, to ensure compliance with the notice requirements contained in the joint final rule, a lender-revised notice form must provide the borrower at a minimum with the information in the sample form of notice.

The agencies made several changes to the sample form in response to suggestions from commenters. To streamline the sample form, the agencies combined the introductory paragraphs of the sample notice. The agencies adopted a language change suggested by FEMA regarding the statistical risk of flooding in a SFHA. To increase borrower recognition of their flood insurance responsibilities under the NFIP, the agencies added a reference to the authority and obligation of a regulated lender to force place flood insurance under the 1973 Act. Finally, to clarify that flood insurance is not available for land, the agencies added a sentence that with respect to the amount of flood insurance coverage allowable under the NFIP, the value of the land should be deducted from the overall value of the security property.

Use of Standard Flood Hazard Determination Form

The proposed rule required a regulated lender to use the standard flood hazard determination form (SFHD form) developed by FEMA [32] to determine whether the building or mobile home offered as security property is or will be located in a SFHA in which flood insurance is available under the 1968 Act. The proposed rule allowed the lender to use the form in a printed, computerized or electronic form. The proposed rule required the lender to retain a copy of the completed form, in either hard copy or electronic form, for the period of time the lender owns the loan.

The agencies received 22 comments regarding use of the SFHD form. Four commenters raised issues dealing with the format of the form. For example, two commenters requested clarification about how an electronically maintained form could be used and whether it must be in the same format as the hard-copy form. FEMA addressed the format of an electronically maintained form in the preamble of its final rule adopting the SFHD form.[33] FEMA stated that if an electronic format is used, the format and exact layout of the SFHD form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the SFHD form.

One commenter asked whether FEMA and the agencies could work together to combine the SFHD form, the notice of flood hazards to the borrower and servicer, and notice commencing the forced placement procedure. The agencies have not adopted this suggestion because the three documents have different purposes. The SFHD form must be used in connection with all loans to determine whether the security property is or will be located in an area having special flood hazards. On the other hand, the notice to the borrower and the servicer must be provided to the borrower and servicer only when the security property is located in a SFHA. The Reform Act does not require the agencies to develop a specific form of notice to borrowers for use in connection with the forced placement procedures. For example, a lender, or servicer acting on the lender's behalf, may choose to send the notice directly. Others may decide to use the insurance company that issues the forced placement policy to send the notice. FEMA has developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. For information concerning the contents of the notification letters used under the MPPP, lenders should consult FEMA's MPPP Notice.[34]

Thirteen commenters addressed the topics of the guarantee of information provided by a third party and reliance on a previous determination under section 1365(d) and (e) of the 1968 Act. The agencies' proposed rule did not specifically address these issues, but the preamble discussed them. The preamble explained that the Reform Act permits lenders to rely on third-party flood hazard determinations only if the third party guarantees the accuracy of the information provided to the lender. The Reform Act also permits a lender to rely on a previous determination whether or not the security property is located in a SFHA. A lender is exempt from liability for errors in the previous determination if the previous determination is not more than seven years old and the basis for it was recorded on the SFHD form mandated by the Reform Act. There are, however, two circumstances in which a lender may not rely on a previous determination: (1) if FEMA's map revisions or updates show that the security property is now located in a SFHA, or (2) if the lender contacts FEMA and discovers that map revisions or updates affecting the security property have been made after the date of the previous determination.

Several commenters requested clarification about the statutory provision that a regulated lender may not rely on a previous determination unless the determination was made on FEMA's SFHD form. The agencies believe that this is the correct reading of the statutory provision. Section 1365 of the 1968 Act, as amended by the Reform Act, 42 U.S.C. 4104b, states that a person increasing, extending, renewing, or purchasing a loan secured by improved real estate or a mobile home may rely on a previous determination if the basis for the previous determination was set forth on FEMA's SFHD form.

Two commenters pointed out that pursuant to section 1365 of the 1968 Act, a lender cannot rely on a previous determination set forth on a SFHD form when it makes a loan, only when it increases, extends, renews or purchases a loan. The agencies agree with this interpretation of section 1365 of the 1968 Act but note that subsequent transactions by the same lender with respect to the same property will be

[32] *See* 60 FR 35276 (July 6, 1995) (codified at 44 CFR 65.16 and Appendix A to part 65).

[33] The agencies required regulated lending institutions to use the FEMA-devised SFHD form by means of a joint final rule issued without notice and comment prior to the issuance of the proposal to implement the other Reform Act amendments. The agencies' proposal incorporated that provision. *See* 60 FR 35286 (July 6, 1995).

[34] Notice by FEMA, 60 FR 44881 (August 29, 1995).

treated as renewals and will require no new determination.

The agencies adopt this provision as proposed.

Recordkeeping Requirements

The proposed rule included two recordkeeping requirements: (1) retention of a copy of the completed SFHD form, in either hard copy or electronic form, for the period of time the regulated lender owns the loan; and (2) retention of the record of the receipt of notice to the borrower and the servicer for the period of time the regulated lender owns the loan. In addition, the agencies asked for comment on whether the final rule should require the lender to retain in its files a copy of each notice to FEMA of the identity of the servicer and/or a copy of each mandatory notice to borrowers and servicers. The agencies received 58 comment letters addressing these and other issues pertaining to recordkeeping.

Of the 25 comment letters addressing whether the final regulation should require the lender to retain in its files a copy of the notice to FEMA of the identity of the servicer, 19 commenters believed that such a requirement is unnecessary. Like the proposed rule, the joint final rule does not require that the lender retain in its loan files a copy of the notice to FEMA of the identity of the loan servicer. The joint final rule continues to implement the statutory requirement that lenders must notify FEMA in writing of the identity of the loan servicer and/or of a transfer in servicing rights.

Commenters were mixed in their views whether a regulated lender should be required to maintain a copy in its loan files of the notice to the borrower and the servicer. The joint final rule does not require that a copy of these notices be maintained in the loan files because the Reform Act does not require it.

Like section 1364 of the 1968 Act, as amended, and the proposed rule, the joint final rule requires lenders to retain a record of the receipt of the notices by the borrower and the servicer for the period of time the lender owns the loan. A number of commenters requested clarification about what constitutes a "record of receipt." The joint final rule does not prescribe a particular form for the record of receipt. However, the agencies believe that the record of receipt should contain a statement from the borrower indicating that the borrower has received the notification. Examples of records of receipt may include a borrower's signed acknowledgment on a copy of the notice, a borrower-initialed list of documents and disclosures that the lender provided the borrower, or a scanned electronic image of a receipt or other document signed by the borrower. A lender may keep the record of receipt provided by the borrower and the servicer in the form that best suits the lender's business practices.

Two commenters supported the requirement that lenders must retain a copy of the completed SFHD form, in either hard-copy or electronic form, for the period of time the lender owns the loan. One commenter stated that a copy of the completed form should be retained in the appropriate loan file; the other commenter stated that it need not necessarily be kept in the loan file. The agencies have adopted the SFHD form retention requirement of the proposed rule unchanged. The joint final rule does not specify the location where the copy must be kept. A lender may, but is not required to, retain the copy in the relevant loan file.

Seven commenters stressed that lenders should be able to retain both the record of the receipt of the notices by the borrower and the servicer and the SFHD form in electronic form. As discussed earlier, lenders may retain these records electronically. Lenders are expected, however, to be able to retrieve these electronic records within a reasonable time pursuant to a document request from their Federal supervisory agency.

Agricultural Lending Considerations

Six commenters responded to the discussion in the preamble to the proposal on agricultural lending considerations. The comments generally related to the characteristics that make agricultural lending different from other types of commercial and residential mortgage lending for purposes of flood insurance. Unlike residential lending, where most of the value of the loan collateral is in the residence, in agricultural lending the value of the collateral is concentrated not only in the land, but also in multiple farm buildings. The commenters asserted that it will be difficult to value agricultural buildings for flood insurance purposes. Some agricultural buildings have valuable utility to farm operations but are of relatively nominal market value. Other buildings may have a higher market value but comprise a relatively low percentage of the total loan collateral. Commenters also opined that many agricultural structures would suffer little damage in a flood. To the extent that NFIP flood insurance pricing does not recognize differences in the market value and susceptibility to flood damage of various agricultural structures, commenters asserted that borrowers of regulated agricultural lenders will be forced to pay the same rates for flood insurance as are applicable to other types of commercial structures. Thus, these commenters maintained that participation in the NFIP may be disproportionately expensive for regulated agricultural lenders and their borrowers.

To address these issues, one commenter requested reconsideration of the appropriateness of the proposed regulation for agricultural lending. Another commenter suggested that the agencies create a separate definition for agricultural buildings that would make it possible to treat agricultural structures on a collateral property as a group for flood insurance purposes.

While recognizing that agricultural lenders and their borrowers may be in a different position from others affected by the requirements of the NFIP, the agencies have concluded that Congress did not intend to differentiate agricultural from other types of lenders in the Federal flood insurance legislation. Agricultural lending by commercial banks, thrifts, and credit unions has been covered by the flood insurance statutes since the passage of the 1973 Act. The Reform Act extended the scope of the NFIP to the institutions of the Farm Credit System, which lend substantially in the agricultural sector. The Reform Act clearly identifies the regulated lending institutions covered by the NFIP and offers no leeway for a regulatory exclusion of agricultural lenders. Similarly, issues related to pricing of flood insurance, while obviously significant to regulated lenders and their borrowers, are not within the regulatory purview of the agencies.[35]

As noted in the preamble to the proposal, the FCA encourages Farm Credit System institutions, as well as other agricultural lenders, to work with FEMA to resolve questions regarding the operation and cost structure of the NFIP as it applies to insurance of agricultural structures. In its comment letter on the proposed rule FEMA indicated that it is studying wet floodproofing techniques to determine whether wet floodproofing criteria can be included in the NFIP floodplain management regulations.[36]

[35] As regards the treatment of a group of agricultural buildings for flood insurance purposes, the preamble to the proposal noted that FEMA permits borrowers to insure their nonresidential buildings using one policy with a schedule separately listing the buildings. However, each building must be covered by flood insurance.

[36] In this connection, one commenter questioned why the proposal did not address the effect of

Concurrently, FEMA has indicated that it plans to determine the appropriate flood insurance rates for agricultural structures under the NFIP. Any proposed changes in the NFIP floodplain management regulations will occur through a rulemaking process that provides for public notice and comment. The agencies urge agricultural lenders and their borrowers to participate in pertinent FEMA proceedings so that they may have an opportunity to raise these issues with FEMA. In the agencies' view, these issues are subject to FEMA's administrative and regulatory jurisdiction as administrator of the NFIP.

FEMA Flood Hazard Determination Appeals

The proposed rule did not address the process for appealing flood hazard determinations to FEMA; however, the agencies received eleven letters with comments about various aspects of the process. Many of the commenters' concerns are addressed in FEMA's final rule entitled "Review of Determinations for Required Purchase of Flood Insurance" and in the preamble to that final rule.[37] For example, two commenters commented on whether the borrower and the lender must jointly submit an appeal, or whether an appeal submitted by one or the other would be accepted. In its final rule, FEMA clarified that a request must be submitted jointly by the lender and the borrower.

Two commenters recommended that the agencies' final regulation include instructions on how to file a flood determination appeal with FEMA. The agencies believe it is inappropriate to provide this information in the joint final rule because the flood determination appeal process is governed by FEMA and delineated in FEMA's regulations. The agencies understand that FEMA is currently developing a "sample letter" with filing instructions for use by lenders and borrowers in submitting an appeal to FEMA.

Three commenters asked which party, the lender or the borrower, should pay FEMA's fee for deciding the appeal. While this is a matter for the lender and the borrower to determine, the agencies believe that the party who requests the appeal of a flood determination generally will bear the cost of the appeal. An appeal is typically initiated at the request of a borrower who believes the property securing the loan is, in fact, not located in an SFHA, despite a flood determination to the contrary. The appeal fee is not charged by the lender as an incident to or condition of the credit. The official staff commentary to Regulation Z provides that charges imposed by someone other than the creditor are generally finance charges only if the creditor requires the borrower to use the third party's services, or the creditor retains the charge.

Finally, four commenters inquired about the flood insurance requirement when a flood determination appeal is in process. FEMA responded to similar questions in the preamble to its final rule. Generally, under section 102(e)(3) of the 1973 Act, 42 U.S.C. 4012a(e)(3), the mandatory flood insurance requirement is temporarily delayed until FEMA responds to an appeal. If FEMA fails to respond before the later of 45 days or the closing of the loan, the mandatory flood insurance purchase requirement is delayed until FEMA provides a response.

Miscellaneous Issues

Standards with respect to purchased loans. Five commenters requested guidance on minimum standards for loan participations and purchased loans. Six other commenters indicated that no guidance on purchased loans is necessary because institutions can manage their own risks internally. Some of those commenters also noted that additional guidance would be tantamount to increased regulatory burden.

If institutions purchasing loans use underwriting standards that address flood insurance, such as requirements for representations from the seller that flood insurance has been purchased for security property located in a special flood hazard area, the agencies agree that no further guidance is necessary. Where an institution's portfolio includes more than an insignificant number of purchased loans and its underwriting standards do not address flood insurance coverage, however, the agencies would expect the institution to have other procedures in place to ensure that it does not expose itself to significant risks through such purchases.

Moreover, the agencies believe that the effects of the Reform Act-mandated standards for flood insurance for loans purchased by Fannie Mae and Freddie Mac should be gauged over a period of time before determining whether further guidance is necessary for institutions in areas that have significant exposure to flood hazards. Institutions with significant lending in non-participating communities should have procedures to ensure that loans on properties in flood hazard areas where flood insurance is not available do not constitute an unacceptably large portion of the institution's loan portfolio.

Subordinate Liens. The agencies received 14 comments concerning flood insurance requirements for second mortgages or home equity loans. Because a second mortgage or a home equity loan is secured by a building or mobile home, these loans are covered by the flood insurance requirements, unless one of the statutory exemptions specifically applies.

Effective Date of Flood Insurance Policies. Some commenters asked about the applicability in various lending situations of the 30-day delay in effectiveness of flood insurance policies as prescribed in section 1306 of the 1968 Act, as amended by the Reform Act, 42 U.S.C. 4013. FEMA addressed this issue in its Policy Issuance 8–95, dated December 5, 1995. FEMA determined that the 30-day waiting period generally is not applicable to the purchase of flood insurance in connection with making, increasing, extending, or renewing a loan.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act as amended, 5 U.S.C. 605(b), the OCC, Board, FDIC, OTS, and NCUA (banking agencies) hereby certify that this joint final rule will not have a significant economic impact on a substantial number of small entities. Moreover, this joint final rule is required by the Reform Act. Accordingly, a regulatory flexibility analysis is not required.

In response to comments received during the public comment period (a substantial number representing smaller entities), the banking agencies have attempted to minimize regulatory burden by: (1) adding and revising definitions to make technically complex flood insurance rules more readily understood; (2) determining that the purchase of a loan is not the equivalent of the making of a loan for flood insurance purposes; and (3) minimizing the recordkeeping and notice requirements to include only those matters required by the statute.

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section 580 of the Reform Act, 42 U.S.C. 4022(a)(2), with respect to agricultural structures. Section 580 relates to flood mitigation and floodplain management efforts under the NFIP and is not directly relevant to these regulations, which implement the Reform Act provisions pertaining to regulated lenders. Section 580 does appear pertinent, however, to wet floodproofing and other questions relating to coverage of certain repeated loss agricultural structures under the NFIP, which may be the subject of FEMA rulemaking.

[37] *See* 60 FR 62213 (December 5, 1995) (to be codified at 44 CFR 65.17).

As a general matter, the joint final rule does not impose standards that are in excess of industry standards with respect to flood insurance, as those standards are reflected in the underwriting standards for Fannie Mae and Freddie Mac. Further, for those lenders already covered by existing flood insurance requirements, the joint final rule does not represent a significant increase over the burden imposed under the current rules. For such lenders, the joint final rule would increase burden above that imposed under the current rules in the following cases: (1) where residential property securing a loan is located in a special flood hazard area and the lender requires escrows for other tax and insurance payments, premiums for required flood insurance must be escrowed as well; (2) the content of the notices currently provided to borrowers is modified to provide additional information to the borrower; and (3) notice to FEMA of the servicer of the loan secured by property located in a special flood hazard area is required to permit FEMA to contact the servicer if the flood insurance lapses.[38] The banking agencies believe that these increases in burden will result only in minor additional expenses for depository institutions.

V. Paperwork Reduction Act of 1995

The OCC, Board, FDIC, OTS, and NCUA (banking agencies) invite comment on:

(1) Whether the collection of information contained in this joint final rule is necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The banking agencies asked similar questions in the proposal. Several commenters indicated that the banking agencies had underestimated the paperwork burden associated with the flood rules. For purposes of allocating the paperwork burden for the flood rules, FEMA is charged with the hours for *completing* the SFHD form (FEMA form 81–93; OMB Control No. 3067–0264), while the banking agencies are charged with the *recordkeeping* burden associated with the SFHD form and the notifications and additional recordkeeping required when a property is located in a SFHA. The separation of burden responsibility and reporting easily could cause the paperwork burden of these rules to appear to be understated. When viewed in conjunction with FEMA's burden, however, the banking agencies believe that the recordkeeping and notification burden estimates associated with these rules are reasonable.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OCC: The collection of information requirements contained in the OCC's portion of this joint final rule have been approved by the Office of Management and Budget under OMB Control No. 1557–0202 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information requirements should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0202), Washington, DC 20503, with a copy to the Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

The collection of information requirements relating to the OCC's portion of this joint final rule are found in 12 CFR 22.6, 22.7, 22.9, and 22.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (national banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a SFHA). The likely respondents/recordkeepers are national banks.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.

Estimated number of respondents and/or recordkeepers: 3,000.

Estimated total annual reporting and recordkeeping burden: 78,000 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan.

Board: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(i); *see also* 5 CFR 1320 Appendix A Item 1), the Board reviewed its portion of this joint final rule under the authority delegated to the Board by the Office of Management and Budget and assigned OMB control number 7100–0280. Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0280), Washington, DC 20503.

The collection of information requirements relating to the Board's portion of this joint final rule are included in 12 CFR 208.23. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (state chartered member banks) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a SFHA). The respondents/recordkeepers are for-profit financial institutions, including small businesses.

It is estimated that there will be 1,042 respondent/recordkeepers and a total of 26,800 hours of annual hour paperwork burden. The estimated annual hour paperwork burden per respondent/recordkeeper is 25.7 hours, 1 hour for recordkeeping and a total of 24.7 hours for: (1) Notifying the borrower and the servicer; (2) notifying the Director of FEMA of initial servicers; and (3) if necessary, notifying the Director of FEMA when a loan servicer has changed. Banks likely will add the required records to their existing usual and customary loan documentation. Thus there is estimated to be no significant annual cost burden over the annual hour burden. Additionally, the Board estimates that there is no associated capital or start up cost as banks are expected to use their current word processing programs to produce the notices.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan. Because the records would be maintained at state member banks and the notices are not provided to the Board, no issue of confidentiality under the Freedom of Information Act arises.

FDIC: The collections of information contained in the FDIC's portion of this joint final rule have been approved by the Office of Management and Budget under OMB Control No. 3064–0120 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget,

[38] The provision concerning forced placement of flood insurance is self-implementing and is included in the joint final rule only to ensure that regulated lenders are aware of the authority and requirements of that provision. Including the provision in the joint final rule does not impose any additional burden on regulated lenders.

Paperwork Reduction Project (3064–0120), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collections of information requirements relating to the FDIC's portion of this joint final rule are found in 12 CFR 339.6, 339.7, 339.9, and 339.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (state chartered nonmember banks) and borrowers (anyone who applies for a loan secured by improved real estate or a mobile home which may be located in a SFHA).

The likely respondents/recordkeepers are insured nonmember banks and their subsidiaries.

Estimated number of respondents/recordkeepers: 6,250.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.

Estimated total annual reporting and recordkeeping burden: 162,500 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan.

OTS: The collection of information requirements contained in the OTS's portion of this joint final rule have been approved by the Office of Management and Budget under OMB Control No. 1550–0088 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0088), Washington, DC 20503, with a copy to the OTS, 1700 G Street, NW., Washington, DC 20552.

The collection of information requirements relating to the OTS's portion of this joint final rule are found in 12 CFR 572.6, 572.7, 572.9, and 572.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (savings associations) and borrowers (anyone who applies for a loan secured by improved real property or a mobile home which may be located in a SFHA). The likely recordkeepers are OTS-regulated savings associations.

Estimated number of respondents and/or recordkeepers: 1,500.

Estimated average annual burden hours per recordkeeper: 26 hours.

Estimated total annual reporting and recordkeeping burden: 39,000 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time respondent/recordkeeper owns the loan.

NCUA: The collection of information requirements contained in the NCUA's portion of this joint final rule were approved by the Office of Management and Budget under OMB Control No. 3133–0143. Written comments on the collection of information should be sent to the Office of Management and Budget, OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503. Attn: Alexander Hunt.

The collection of information requirements relating to the NCUA's portion of this joint final rule are found in 12 CFR 760.6, 760.7, 760.9 and 760.10. This information is required to evidence compliance with the requirements of the NFIP with respect to lenders (Federally-insured credit unions) and borrowers (members that apply for a loan secured by improved real estate or a mobile home which may be located in a SFHA). The likely recordkeepers are Federally-insured credit unions.

Estimated number of respondents and/or recordkeepers: 700.

Estimated average annual burden hours per respondent/recordkeeper: 26 hours.

Estimated total annual reporting and recordkeeping burden: 16,325 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time the respondent/recordkeeper owns the loan.

VI. Executive Order 12866

OCC and OTS: The OCC and the OTS each has determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

VII. Executive Order 12612

Executive Order 12612 requires the NCUA to consider the effects of its actions on State interests. The NCUA's portion of this joint final rule will apply to all Federally-insured credit unions and reduce regulatory requirements. The NCUA Board has determined that the NCUA's portion of the joint final rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995) (Unfunded Mandates Act) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this joint final rule revises current OCC and OTS flood insurance regulations as prescribed by the Reform Act. The Reform Act specifically requires six agencies, including the OCC and OTS, to implement certain of the Reform Act's amendments through regulations. Therefore, to the extent that the joint final rule imposes new Federal requirements, the requirements are statutorily mandated by the Reform Act. Nevertheless, the OCC and OTS each has determined that its portion of the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and OTS have not prepared budgetary impact statements or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 572

Flood insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, part 22 of chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

22.1 Authority, purpose, and scope.
22.2 Definitions.
22.3 Requirement to purchase flood insurance where available.
22.4 Exemptions.
22.5 Escrow requirement.
22.6 Required use of standard flood hazard determination form.
22.7 Forced placement of flood insurance.
22.8 Determination fees.
22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
22.10 Notice of servicer's identity.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 93a; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 22.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 93a and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 22.6 and 22.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 22.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Bank* means a national bank or a bank located in the District of Columbia and subject to the supervision of the Comptroller of the Currency.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 22.3 Requirement to purchase flood insurance where available.

(a) *In general.* A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loans.* A bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

§ 22.4 Exemptions.

The flood insurance requirement prescribed by § 22.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 22.5 Escrow requirement.

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the bank shall also require the escrow of all premiums and fees for any flood insurance required under § 22.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the bank, or a servicer acting on behalf of the bank, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 22.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44

CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

§ 22.7 Forced placement of flood insurance.

If a bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 22.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 22.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 22.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973 as amended (42 U.S.C. 4001–4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the bank or its servicer on behalf of the borrower under § 22.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(c) *Timing of notice.* The bank shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(f) *Use of prescribed form of notice.* A bank will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 22.10 Notice of servicer's identity.

(a) *Notice requirement.* When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The bank shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 22—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 14, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 781–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.8, paragraph (e) is removed and reserved, and appendix A—Sample Notices following paragraph (k)(6)(iii) is removed.

3. A new § 208.23 is added at the end of subpart A to read as follows:

§ 208.23 Loans in areas having special flood hazards.

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(2) *Scope.* This section, except for paragraphs (f) and (h) of this section, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Paragraphs (f) and (h) of this section apply to loans secured by buildings or mobile homes, regardless of location.

(b) *Definitions.* (1) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(2) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(3) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(4) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(5) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(6) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this section, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(7) *NFIP* means the National Flood Insurance Program authorized under the Act.

(8) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(9) *Servicer* means the person responsible for:

(i) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(ii) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(10) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(11) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(c) *Requirement to purchase flood insurance where available*—(1) *In general.* A state member bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(2) *Table funded loans.* A state member bank that acquires a loan from

a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this section.

(d) *Exemptions.* The flood insurance requirement prescribed by paragraph (c) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(e) *Escrow requirement.* If a state member bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the state member bank shall also require the escrow of all premiums and fees for any flood insurance required under paragraph (c) of this section. The state member bank, or a servicer acting on its behalf, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the state member bank, or a servicer acting on its behalf, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(f) *Required use of standard flood hazard determination form*—(1) *Use of form.* A state member bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(2) *Retention of form.* A state member bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

(g) *Forced placement of flood insurance.* If a state member bank, or a servicer acting on behalf of the bank, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under paragraph (c) of this section, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under paragraph (c) of this section, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the state member bank or its servicer shall purchase insurance on the borrower's behalf. The state member bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(h) *Determination fees*—(1) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any state member bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(2) *Borrower fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the borrower if the determination:

(i) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(ii) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(iii) Reflects the Director of FEMA's publication of a notice or compendium that:

(A) Affects the area in which the building or mobile home securing the loan is located; or

(B) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(iv) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under paragraph (g) of this section.

(3) *Purchaser or transferee fee.* The determination fee authorized by paragraph (h)(1) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

(i) *Notice of special flood hazards and availability of Federal disaster relief assistance*—(1) *Notice requirement.* When a state member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(2) *Contents of notice* The written notice must include the following information:

(i) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(ii) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(iii) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(iv) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(3) *Timing of notice.* The state member bank shall provide the notice required by paragraph (i)(1) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(4) *Record of receipt.* The state member bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(5) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (i)(1) of this section, a state member bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller

or lessor has provided such notice to the purchaser or lessee. The state member bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(6) *Use of prescribed form of notice.* A state member bank will be considered to be in compliance with the requirement for notice to the borrower of this paragraph (i) by providing written notice to the borrower containing the language presented in appendix A to this section within a reasonable time before the completion of the transaction. The notice presented in appendix A to this section satisfies the borrower notice requirements of the Act.

(j) *Notice of servicer's identity*—(1) *Notice requirement.* When a state member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the state member bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(2) *Transfer of servicing rights.* The state member bank shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (j)(1) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (j)(1) of this section, the duty to provide notice under this paragraph (j)(2) shall transfer to the transferee servicer.

Appendix A to § 208.23—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover the *lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Governors of the Federal Reserve System, August 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC revises part 339 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

339.1 Authority, purpose, and scope.
339.2 Definitions.
339.3 Requirement to purchase flood insurance where available.
339.4 Exemptions.
339.5 Escrow requirement.
339.6 Required use of standard flood hazard determination form.
339.7 Forced placement of flood insurance.
339.8 Determination fees.
339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
339.10 Notice of servicer's identity.

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 339.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 339.6 and 339.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 339.6 and 339.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 339.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Bank* means an insured state nonmember bank and an insured state branch of a foreign bank or any subsidiary of an insured state nonmember bank.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a

special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 339.3 Requirement to purchase flood insurance where available.

(a) *In general.* A bank shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loans.* A bank that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

§ 339.4 Exemptions.

The flood insurance requirement prescribed by § 339.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 339.5 Escrow requirement.

If a bank requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the bank shall also require the escrow of all premiums and fees for any flood insurance required under § 339.3. The bank, or a servicer acting on behalf of the bank, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the bank, or a servicer acting on behalf of the bank, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 339.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A bank shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A bank shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the bank owns the loan.

§ 339.7 Forced placement of flood insurance.

If a bank, or a servicer acting on behalf of the bank, determines, at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 339.3, then the bank or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 339.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the bank or its servicer shall purchase insurance on the borrower's behalf. The bank or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 339.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any bank, or a servicer acting on behalf of the bank, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 339.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 339.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The bank shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The bank shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the bank owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a bank may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The bank shall retain a record of the written assurance from the seller or lessor for the period of time the bank owns the loan.

(f) *Use of prescribed form of notice.* A bank will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 339.10 Notice of servicer's identity.

(a) *Notice requirement.* When a bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the bank shall notify the Director of FEMA (or the Director of FEMA's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the bank's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The bank shall notify the Director of FEMA (or the Director of FEMA's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 339—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

By order of the Board of Directors.

Dated at Washington, D.C., this 13th day of August, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set forth in the joint preamble, chapter V of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§ 563.48 [Removed]

2. Section 563.48 is removed.

3. A new part 572 is added to read as follows:

PART 572—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

572.1 Authority, purpose, and scope.
572.2 Definitions.
572.3 Requirement to purchase flood insurance where available.
572.4 Exemptions.
572.5 Escrow requirement.
572.6 Required use of standard flood hazard determination form.
572.7 Forced placement of flood insurance.
572.8 Determination fees.
572.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
572.10 Notice of servicer's identity.

Appendix A to Part 572—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 572.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1462, 1462a, 1463, 1464 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 572.6 and 572.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 572.6 and 572.8 of this part apply to loans secured by buildings or mobile homes, regardless of location.

§ 572.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Savings association* means, for purposes of this part, a savings association as that term is defined in 12 U.S.C. 1813(b)(1) and any subsidiaries or service corporations thereof.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 572.3 Requirement to purchase flood insurance where available.

(a) *In general.* A savings association shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loans.* A savings association that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

§ 572.4 Exemptions.

The flood insurance requirement prescribed by § 572.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 572.5 Escrow requirement.

If a savings association requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the savings association shall also require the escrow of all premiums and fees for any flood insurance required under § 572.3. The savings association, or a servicer acting on behalf of the savings association, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the savings association, or a servicer acting on behalf of the savings association, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 572.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A savings association shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A savings association shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the savings association owns the loan.

§ 572.7 Forced placement of flood insurance.

If a savings association, or a servicer acting on behalf of the savings association, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 572.3, then the savings association or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 572.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the savings association or its servicer shall purchase insurance on the borrower's behalf. The savings association or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 572.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any savings association, or a servicer acting on behalf of the savings association, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender or its servicer on behalf of the borrower under § 572.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 572.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a savings association makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the savings association shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The savings association shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the savings association provides notice to the borrower and in any event no later than the savings association provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The savings association shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the savings association owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a savings association may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The savings association shall retain a record of the written assurance from the seller or lessor for the period of time the savings association owns the loan.

(f) *Use of prescribed form of notice.* A savings association will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act.

§ 572.10 Notice of servicer's identity.

(a) *Notice requirement.* When a savings association makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the savings association shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the savings association's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The savings association shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to

the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Part 572—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 16, 1996.

By the Office of Thrift Supervision.

John F. Downey,

Executive Director, Supervision.

Farm Credit Administration

12 CFR CHAPTER VI

Authority and Issuance

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. Part 614 is amended by revising subpart S to read as follows:

Subpart S—Flood Insurance Requirements

Sec.

614.4920 Purpose and scope.
614.4925 Definitions.
614.4930 Requirement to purchase flood insurance where available.
614.4935 Escrow requirement.
614.4940 Required use of standard flood hazard determination form.
614.4945 Forced placement of flood insurance.
614.4950 Determination fees.
614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.
614.4960 Notice of servicer's identity.
Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Subpart S—Flood Insurance Requirements

§ 614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the requirements of the National Flood Insurance Act of 1968 (1968 Act), as amended, and the Flood Disaster Protection Act of 1973 (1973 Act), as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans of Farm Credit System (System) institutions that are secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

§ 614.4925 Definitions.

(a) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(b) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(c) *Designated loan* means a loan secured by a building or a mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act.

(d) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(e) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this subpart, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(f) *NFIP* means the National Flood Insurance Program authorized under the 1968 Act.

(g) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(h) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(i) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(j) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 614.4930 Requirement to purchase flood insurance where available.

(a) *In general.* A System institution shall not make, increase, extend or renew any designated loan unless the building or mobile home and any personal property securing the loan are covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loans.* A System institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for purposes of this part.

(c) *Exemptions.* The flood insurance requirement of paragraph (a) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 614.4935 Escrow requirement.

If a System institution requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended or renewed on or after October 4, 1996, the institution shall also require the escrow of all premiums and fees for any flood insurance required under § 614.4930. The institution, or a servicer acting on behalf of the institution, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the institution, or a servicer acting on behalf of the institution, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 614.4940 Required use of standard flood hazard determination form.

(a) *Use of form.* System institutions shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* System institutions shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the institution owns the loan.

§ 614.4945 Forced placement of flood insurance.

If a System institution, or a servicer acting on behalf of the institution, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan are not covered by flood insurance or are covered by flood insurance in an amount less than the amount required under § 614.4930(a), then the institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930(a), for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the institution or its servicer shall purchase insurance on the borrower's behalf. The institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 614.4950 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the 1973 Act, any System institution, or a servicer acting on behalf of the institution, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage under § 614.4945.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the institution shall mail or deliver a written notice containing the information specified in paragraph (b) of this section to the borrower and to the servicer of the loan. Notice is required whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the 1973 Act (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and also may be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or the mobile home caused by flooding in a Federally declared disaster.

(c) *Timing of notice.* The institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the institution provides notice to the borrower and in any event no later than the time the institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* Each institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, an institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The institution shall retain a record of the written assurance from the seller or lessor for the period of time the institution owns the loan.

(f) *Use of prescribed form of notice.* An institution will be considered to be in compliance with the requirements of this section for notice to the borrower by providing written notice to the borrower containing the language presented in appendix A to this subpart within a reasonable time before the completion of the transaction. The notice presented in appendix A to this subpart satisfies the borrower notice requirements of the 1968 Act.

§ 614.4960 Notice of servicer's identity.

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the institution shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The institution shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix A to Subpart S of Part 614—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.
- At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal balance of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 8, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, part 760 of chapter VII of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

760.1 Authority, purpose, and scope.
760.2 Definitions.
760.3 Requirement to purchase flood insurance where available.
760.4 Exemptions.
760.5 Escrow requirement.
760.6 Required use of standard flood hazard determination form.
760.7 Forced placement of flood insurance.
760.8 Determination fees.
760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
760.10 Notice of servicer's identity.

Appendix to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 760.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 760.6 and 760.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 760.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Credit union* means a Federal or State-chartered credit union that is insured by the National Credit Union Share Insurance Fund.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* means a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§ 760.3 Requirement to purchase flood insurance where available.

(a) *In general.* A credit union shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loan.* A credit union that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

§ 760.4 Exemptions.

The flood insurance requirement prescribed by § 760.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§ 760.5 Escrow requirement.

If a credit union requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed on or after November 1, 1996, the credit union shall also require the escrow of all premiums and fees for any flood insurance required under § 760.3. The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 760.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Director (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

§ 760.7 Forced placement of flood insurance.

If a credit union, or a servicer acting on behalf of the credit union, determines, at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered

by flood insurance in an amount less than the amount required under § 760.3, then the credit union or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 760.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 760.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any credit union, or a servicer acting on behalf of the credit union, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the credit union or its servicer on behalf of the borrower under § 760.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the credit union shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The credit union shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction and to the servicer as promptly as practicable after the credit union provides notice to the borrower and in any event no later than the time the credit union provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The credit union shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a credit union may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The credit union shall retain a record of the written assurance from the seller or lessor for the period of time the credit union owns the loan.

(f) *Use of prescribed form of notice.* A credit union will be considered to be in compliance with the requirement for notice to the borrower of this section providing written notice to the borrower containing the language presented in the appendix to this part within a reasonable time before the completion of the transaction. The notice presented in the appendix to this part satisfies the borrower notice requirements of the Act.

§ 760.10 Notice of servicer's identity.

(a) *Notice requirement.* When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the credit union shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the credit union's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The credit union shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

Appendix to Part 760—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located

participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of:*

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

Dated: August 19, 1996.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 96–21860 Filed 8–28–96; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P, 6705–01–P, 7535–01–P

federal register

Thursday
August 29, 1996

Part V

Department of Education

Inviting Applications for New Awards for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards for Fiscal Year 1997

AGENCY: Department of Education.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1997 competitions under three programs authorized by the Individuals with Disabilities Education Act. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Research in Education of Individuals With Disabilities Program [CFDA No. 84.023]

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Eligible Applicants: State and local educational agencies; institutions of higher education; and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 324.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 324.10 the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet any one of these absolute priorities:

Note: If an applicant wishes to apply under more than one of these absolute priorities, the applicant must submit a separate application under each affected priority.

Absolute Priority 1—Student-Initiated Research Projects (84.023B)

This priority provides support for short-term (up to 12 months) postsecondary student-initiated research projects focusing on special education and related services for children and youth with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in 34 CFR 324.1.

Projects must—

(1) Develop research skills in postsecondary students; and

(2) Include a principal investigator who serves as a mentor to the student-researcher while the project is carried out by the student.

A project must budget for a trip to Washington, DC for the annual two-day Research Project Directors' meeting.

Project Period: Up to 12 months.

Maximum Award: In no case does the Secretary make an award greater than $20,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 25 double-spaced, 8½ × 11" pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, résumé(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

Absolute Priority 2—Field-Initiated Research Projects (84.023C)

This priority provides support for a wide range of field-initiated research projects that support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

Invitational Priorities

Within Absolute Priority 2 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(1) Short-term (i.e. up to 12 months) research projects that are budgeted at $100,000 or less, and that are one or more of the following: pilot studies, projects that employ new methodologies, descriptive studies, projects to advance assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, projects that analyze extant data bases.

The Secretary encourages studies that use these approaches to maximize the achievement of students with disabilities in core academic subjects and foster the full participation of students with disabilities in educational reform efforts related to the Goals 2000: Educate America Act.

(2) Projects that implement and examine a model or models for using research knowledge to improve educational practice and results for children with disabilities, and that include methodologies with the capacity to judge the effectiveness of the model or models as implemented in practice settings.

(3) Projects that study the delivery of coordinated services from providers such as health, social service, and mental health agencies.

(4) Projects that study non-categorical approaches to establishing eligibility for special education.

(5) Projects that study and develop instructionally relevant assessment practices that can also be used to establish student eligibility for special education.

Project Period: The majority of projects will be funded for up to 36 months. Only in exceptional circumstances—such as research questions that require repeated measurement, longitudinal design—will projects be funded for more than 36 months or up to a maximum of 60 months.

Maximum Award: In no case does the Secretary make an award greater than $180,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that

proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package. Multi-year projects will be level funded unless there are changes in costs attributable to significant changes in activity level.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 50 double-spaced, 8½x11" pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, resúmé(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

Absolute Priority 3—Examining Alternatives for Results Assessment for Children with Disabilities (84.023F)

The Secretary establishes an absolute priority for research projects that meet the requirements of paragraphs (a), (b), and (c) as follows:

(a) Pursue systematic programs of applied research focusing on one or more issues related to assessment or results based accountability for students with disabilities, or both. These issues include, but are not limited to the following:

(1) *Testing accommodations and adaptations.* When adaptations and accommodations are made to permit students with disabilities to participate in results assessments, how are the technical characteristics of the assessments affected? How can the results be interpreted? To what degree can these scores be aggregated with nonadapted assessments? What are the best methods for selecting appropriate accommodations and adaptations? How can testing accommodations be related to instructional accommodations?

(2) *Alternative assessments.* If alternative assessments (such as performance assessments or portfolio assessments) are provided for students with disabilities, how can these assessments be compared with conventional assessments? What technical criteria can appropriately be applied to these assessments if used with students with disabilities?

(3) *Development of assessments.* How can general educational assessments be developed to be more inclusive for students with disabilities? How can problematic items and item formats be identified? How can students with disabilities be adequately represented in test development and validation samples? What are the effects if tests developed for general populations are administered to students with disabilities?

(4) *Including students with disabilities in general assessments.* How should decisions be made and documented to include students with disabilities in general educational assessments or alternative assessments? What factors influence these decisions?

(5) *System development.* How can assessment and accountability systems be developed with the range and flexibility to accommodate diverse student populations? How can accountability and individualization both be maintained?

(6) *Basic concepts and principles.* How can basic concepts and principles in assessment be revised to reflect new approaches to assessment and new roles and challenges in assessing children with disabilities?

(b) Produce and disseminate information that can be applied in educational programs, as well as in subsequent research.

(c) Coordinate their activities, as appropriate, with the Center to Support the Achievement of World Class Outcomes for Students with Disabilities and with other related projects funded under the Goals 2000: Educate America Act.

The budget for a project must provide for two trips annually to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another meeting: to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information, and to discuss findings and methods of dissemination.

Project Period: Up to 36 months.

Maximum Award: In no case does the Secretary make an award greater than $185,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package. Multi-year projects will be level funded unless there are changes in costs attributable to significant changes in activity level.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 50 double-spaced, 8½ x 11" pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, S.W., room 3525, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8106. FAX: (202) 205–8105. Internet: Claudette—Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

FOR TECHNICAL INFORMATION CONTACT: For Student-Initiated Research Projects

(84.023B): Susan Sanchez, U.S. Department of Education, 600 Independence Avenue, S.W., room 3524, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8998. FAX: (202) 205–8105. Internet: Susan__Sanchez@ed.gov

For Field-Initiated Research Projects (84.023C): Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, S.W., room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8110. FAX: (202) 205–8105. Internet: Tom__Hanley@ed.gov

For Examining Alternatives for Results Assessment for Children with Disabilities (84.023F): David Malouf, U.S. Department of Education, 600 Independence Avenue, S.W., room 3521, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8111. FAX: (202) 205–8105. Internet: Dave__Malouf@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1441–1443.

RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM APPLICATION NOTICE FOR FISCAL YEAR 1997

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated No. of awards
84.023B Student-initiated research projects	9/8/96	2/7/97	N/A	$10,000–20,000	$15,000	13
84.023C Field-initiated research projects	9/8/96	11/25/96	N/A	70,000–180,000	125,000	20
84.023F Examining alternatives for results assessment for children with disabilities.	9/8/96	12/6/96	N/A	175,000–185,000	180,000	5

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training And Parent Training and Information Centers [CFDA No. 84.029]

Purpose of Program: (a) The purpose of Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities. (b) The purpose of Parent Training and Information Centers is to enable parents to work more fully and effectively with professionals in meeting the needs of infants, toddlers, children, and youth with disabilities.

Eligible Applicants: Under Absolute Priority 1 (Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, Children, and Youth with Low-Incidence Disabilities), Absolute Priority 2 (Preparation of Leadership Personnel), and Absolute Priority 3 (Minority Institutions): Institutions of higher education and appropriate nonprofit agencies.

Under Absolute Priority 4 (Parent Training and Information Centers): parent organizations, as defined in 34 CFR 316.5(c).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for these programs in 34 CFR parts 316 and 318.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities: Under 34 CFR 75.105(b)(2) and (c)(3), 34 CFR 316, and 34 CFR 318, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only those applications that meet any one of these absolute priorities:

(Note: If an applicant wishes to apply under more than one of these absolute priorities, the applicant must submit a separate application under each appropriate priority.)

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, Children, and Youth with Low-Incidence Disabilities (84.029A)

Background: The national demand for educational, related services, and early intervention personnel to serve infants, toddlers, children and youth with low-incidence disabilities exceeds available supply. However, because of the small number of these personnel needed in each State, institutions of higher education and individual States are reluctant to support the needed professional development programs. Of the programs that are available, not all are producing graduates with the prerequisite skills needed to meet the needs of the low-incidence disability population. Federal support is required to ensure an adequate supply of personnel to serve children with low-incidence disabilities and to improve the quality of appropriate training programs so that graduates possess necessary prerequisite skills.

Priority: The Secretary establishes an absolute priority to support projects that increase the number and quality of personnel to serve children with low-incidence disabilities. This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level.

The term "low-incidence disability" means a visual or hearing impairment, or simultaneous visual and hearing impairments (including deaf-blindness), significant mental retardation, or an impairment such as severe and multiple disabilities, severe orthopedic disabilities, autism, and traumatic brain injury, for which a small number of highly skilled and knowledgeable personnel are needed.

Applicants may propose to prepare one or more of the following types of personnel:

(1) Special educators including early childhood, speech and language, adapted physical education, and assistive technology personnel;

(2) Related services personnel who provide developmental, corrective, and other supportive services that assist children with low-incidence disabilities to benefit from special education. Both comprehensive programs and specialty components within a broader discipline that prepares personnel for work with the low-incidence population may be supported; or,

(3) Early intervention personnel who serve children birth through age 2 with disabilities and their families. Early intervention personnel include persons prepared to provide training for, or be consultants to, service providers and case managers.

The Secretary particularly encourages projects that address the needs of more than one State, provide multi-disciplinary training, and include collaboration among several institutions and between training institutions and public schools. In addition, projects that foster successful coordination between

special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings are encouraged.

Projects must:

(a) Show how their proposed activities address the demands for trained personnel to serve children with low-incidence disabilities in the State or States whose needs the project is expected to meet. The extent of the need for trained personnel in a particular State must be supported by the State's Comprehensive System of Personnel Development (CSPD), or the CSPD supplemented by other additional relevant sources which the applicant demonstrates to be reliable and accurate.

(b) Prepare personnel to address the specialized needs of children with low-incidence disabilities from different cultural and language backgrounds;

(c) Incorporate best practices in the design of the program and the curricula;

(d) Incorporate curricula that focus on improving results for children with low-incidence disabilities;

(e) Promote high expectations for students with low-incidence disabilities and foster access to the general curriculum in the regular classroom, wherever appropriate; and

(f) Develop linkages with Education Department technical assistance providers to communicate information on program models used and program effectiveness.

Under this absolute priority, the Secretary plans to award approximately:

- 55 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 30 percent of the available funds for projects that support careers in related services; and
- 15 percent of the available funds for projects that support careers in early intervention.

Project Period: Up to 36 months.

Maximum Award: In no case does the Secretary make an award greater than $400,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package. Multi-year projects will be level funded unless there are changes in costs attributable to significant changes in activity level.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 40 double-spaced, 8 1/2 × 11″ pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

Absolute Priority 2—Preparation of Leadership Personnel (84.029D).

This priority supports projects that are designed to provide preservice professional preparation of leadership personnel in special education, related services, and early intervention. Leadership training is considered to be preparation in—

(a) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(b) Research; and

(c) Personnel preparation at the doctoral and post-doctoral levels (34 CFR 318.11(a)(4)).

Invitational Priorities

Within Absolute Priority 1 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(a) Projects designed to foster successful coordination between special education and regular education teachers, administrators, related services personnel, infant intervention specialists, and parents.

(b) Projects that coordinate their professional development programs for regular and special education personnel.

(c) Projects that include recruitment of leadership personnel from groups that are underrepresented in educational leadership positions.

Project Period: Up to 48 months.

Maximum Award: In no case does the Secretary make an award greater than $225,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package. Multi-year projects will be level funded unless there are changes in costs attributable to significant changes in activity level.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 40 double-spaced, 8½ × 11″ pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, résumé(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

Absolute Priority 3—Minority Institutions (84.029E).

This priority supports awards to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Awards may provide training of personnel in all areas noted in 34 CFR

318.10(a) (1) and (2), and must be designed to increase the capabilities of the institution in appropriate training areas (34 CFR 318.11(a)(16)).

Project Period: Up to 48 months.

Maximum Award: In no case does the Secretary make an award greater than $200,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package. Multi-year projects will be level funded unless there are changes in costs attributable to significant changes in activity level.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 40 double-spaced, 81/2 × 11" pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, résumé(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

Absolute Priority 4—Parent Training and Information Centers (84.029M)

The purpose of this priority is to support Parent Training and Information Centers that assist parents to—

(1) Better understand the nature and needs of the disabling conditions of their children with disabilities;

(2) Provide follow-up support for the educational programs of their children with disabilities;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decision making processes, including the development of the individualized education program, for a child with a disability;

(5) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(6) Understand the provisions for educating children with disabilities under the Individuals with Disabilities Education Act.

In order to assure that awards for parent centers serve parents of minority children with disabilities representative to the proportion of the minority population in the areas being served, applicants for awards shall identify with specificity the special efforts that will be undertaken to involve those parents, including efforts to work with community-based and cultural organizations and the specification of supplementary aids, services, and supports that will be made available. Applicants shall also specify budgetary items earmarked to accomplish these efforts.

Competitive Priorities

Within Absolute Priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities:

(a) Providing parent training and information in one or more Empowerment Zones or Enterprise Communities. The Secretary awards 5 points to an application that meets the competitive priority relating to Empowerment Zones or Enterprise Communities published in the **Federal Register** on November 7, 1994 (59 FR 55534). These points are in addition to any points the application earns under the selection criteria for the program.

A list of areas that have been selected as Empowerment Zones or Enterprise Communities is included in an appendix to a notice published in the **Federal Register** on December 6, 1995 (60 FR 62699).

(b) To assist the Secretary in ensuring that awards are distributed geographically on a State or regional basis throughout all the States, the Secretary awards 15 points to an application that provides parent training and information in a State, or geographic area, that would be unserved by an existing Parent Training and Information Center in FY 1997. These points are in addition to any points the application earns under the selection criteria for the program and under competitive preference (a). (20 U.S.C. 1431(e))

Project Period: Up to 60 months.

Maximum Award: In no case does the Secretary make an award greater than $400,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package. Multi-year projects will be level funded unless there are changes in costs attributable to significant changes in activity level.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 40 double-spaced, 8½ × 11" pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, résumé(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

SUPPLEMENTARY INFORMATION: The selection criteria that are used to evaluate applications under this priority award significant points based on the extent to which a proposed project addresses the needs of parents of minority infants, toddlers, children, and youth with disabilities.

Also, a list of States or geographic areas that are currently unfunded or

underserved is available from the contact person listed below.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Ernestine Jefferson, U.S. Department of Education, 600 Independence Avenue S.W., room 3072, Switzer Building, Washington, D.C. 20202–2651. Telephone: 205–8761. FAX: (202) 205–9070. Internet: Ernestine__Jefferson@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 260–7381.

FOR TECHNICAL INFORMATION CONTACT: For Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, Children, and Youth with Low-Incidence Disabilities (84.029A): Verna Hart, U.S. Department of Education, 600 Independence Avenue, S.W., room 3519, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5392. FAX: (202) 205–9070. Internet: Verna__Hart@ed.gov.For Preparation of Leadership Personnel (84.029D): Bob Gilmore, U.S. Department of Education, 600 Independence Avenue S.W., room 3076, Switzer Building, Washington, D.C. 20202–2651. Telephone: (202) 205–9080. FAX: (202) 205–9070. Internet: Bob__Gilmore@ed.gov.

For Minority Institutions (84.029E): Victoria Mims, U.S. Department of Education, 600 Independence Avenue S.W., room 3513, Switzer Building, Washington, D.C. 20202–2651. Telephone: (202) 205–8687. FAX: (202) 205–9070. Internet: Victoria__Mims@ed.gov.

For Parent Training and Information Centers (84.029M): Merri Pearson, U.S. Department of Education, 600 Independence Avenue S.W., room 3518, Switzer Building, Washington, D.C. 20202–2651. Telephone: (202) 205–9093. FAX: (202) 205–9070. Internet: Merri__Pearson@ed.gov.Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 260–7381.

Program Authority: 20 U.S.C. 1431.

TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS FOR PERSONNEL TRAINING AND PARENT TRAINING AND INFORMATION CENTERS—APPLICATION NOTICE FOR FISCAL YEAR 1997

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated number of awards
84.029A—Preparation of special education, related services, and early intervention personnel to serve infants, toddlers, children, and youth with low-incidence disabilities.	9/8/96	1/10/97	3/10/97	$200,000–400,000	$300,000	30
84.029D—Preparation of leadership personnel	9/8/96	12/2/96	2/3/97	175,000–225,000	200,000	14
84.029E—Minority Institutions	9/8/96	12/6/96	2/6/97	190,000–200,000	195,000	18
84.029M—Parent training and information centers.	9/8/96	11/25/96	1/27/97	100,000–400,000	185,000	14

PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE [CFDA No. 84.237]

Purpose of Program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other appropriate public and nonprofit private institutions or agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 328.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority: Under 34 CFR 75.105(c)(3), and 34 CFR 328, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only those applications that meet this absolute priority:

Absolute Priority—Developing Effective Secondary School-Based Practices for Youth with Serious Emotional Disturbance (84.237H)

Background: Recent nationwide research on secondary school experiences and post-school outcomes for students with disabilities finds that youth with serious emotional disturbance (SED) are at particularly high risk for school failure and for poor post-school outcomes. While the majority of secondary age students with SED attend regular high schools, most of these students receive special education and related services outside the regular classroom for a substantial part, or all, of their school day. SED students attending regular secondary schools tend, as a group: to display erratic school attendance patterns; to achieve low levels of academic success despite generally normal-and-above ability levels; to be minimally involved in the social milieu of their schools; and to drop out of school at alarming rates. Fifty percent drop out of school, most by the tenth grade.

Poor adjustment and behavioral concerns are common during and beyond high school among these students. Data from the National Longitudinal Transition Study show that only one in ten students with serious emotional disturbance have behavior management plans. They tend to be under- or un-employed, are rarely involved in post-secondary education, and are at high risk for engaging in activities and behaviors outside the bounds of the law. While fairly substantial recent and current efforts are focusing on improving results for younger students with SED, little attention is being directed toward their secondary-age counterparts. This priority is intended to address this critical need.

Priority: The Secretary establishes an absolute priority for projects to develop, implement, test the efficacy of, and disseminate practices for improving academic, vocational, personal, social, and behavioral results for students with SED in regular high schools, including consideration of the most appropriate and least restrictive placements.

Under this priority, projects must—

(1) Develop practices with sound conceptual bases that are designed to improve critical academic, vocational, personal, social, and behavioral outcomes for SED students;

(2) Apply rigorous research standards in testing the efficacy of practices developed;

(3) Develop products that include clear, comprehensive descriptions of tested practices, test site contexts, and target student characteristics, and disseminate these products to appropriate research institutes, clearinghouses, and technical assistance providers.

A project must budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer and with other relevant OSEP funded projects.

Project Period: Up to 48 months

Maximum Award: In no case does the Secretary make an award greater than $168,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount. However, because of budgetary considerations contingent upon congressional action, the Secretary may change the maximum amount through a note accompanying the application package. Multi-year projects will be level funded unless there are changes in costs attributable to significant changes in activity level.

Page Limits: Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant must limit the Part III—Application Narrative, to no more than 50 double-spaced, 8½ × 11" pages (on one side only) with one-inch margins. This page limitation applies to any charts and graphs included in the application narrative. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, S.W., room 3525, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 20508105. Internet: Claudette__Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

FOR TECHNICAL INFORMATION CONTACT: Helen Thornton, U.S. Department of Education, 600 Independence Avenue, S.W., room 3520, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5910. FAX: (202) 205–8105. Internet: Helen__Thornton@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: 20 U.S.C. 1426.

PROGRAM FOR CHILDREN AND YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE—APPLICATION NOTICE FOR FISCAL YEAR 1987

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Estimated No. of awards
84.237H—Developing effective secondary school-based practices for youth with serious emotional disturbance.	9/08/96	12/13/96	2/13/97	$166,000–168,000	$167,000	2

FOR ELECTRONIC ACCESS TO INFORMATION: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases) or World Wide Web site (at http://www.ed.gov/). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**. Application packages will be available in alternative formats upon request.

Dated: August 22, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–21872 Filed 8–28–96; 8:45 am]

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federal register

Thursday
August 29, 1996

Part VI

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: September 30, 1996.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk. Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Friday, June 21, 1996, 61 FR 32036–32256.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 61 FR 32032, also on June 21, 1996. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. The Hotel and Motel Fire Safety Act of 1990 National Master List is now accessible electronically. The National Master List Web Site is located at: http://www.usfa/fema.gov/hotel/index.htm

Visitors to this web site will be able to search, view, download and print all or part of the National Master List by State, city, or hotel chain. The site also provides visitors with other information related to the Hotel and Motel Fire Safety Act. Instructions on gaining access to this information are available as the visitor enters the site.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices. Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies, please refer to stock number 069–001–00049–1.

Dated: August 23, 1996.

Michael B. Hirsch,

Acting General Counsel.

The update to the national master list for the months of June and July 1996 follow:

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 8/20/96 UPDATE

Index and property name	PO Box/Rt. No. Street Address	City	State/ZIP	Phone
Additions:				
California:				
CA1472—Wyndham Garden Hotel, Marin County.	1010 Northgate Dr	San Rafael	CA 94903	(415) 479–8800
Iowa:				
IA0166—Shoney's Inn and Suites	2215 Blair's Ferry Rd	Cedar Rapids	IA 52402	(319) 378–3948
IA0167—Radisson Hotel	208 West 4th Street North	Newton	IA 50208	(515) 792–3333
Illinois:				
IL0551—Wyndham Garden Hotel-Oakbrook Terrace.	17W. 350 22d St	Oakbrook Terrace	IL 60181	(708) 833–3600
IL0550—Fairfield Inn Peru	4385 Venture Dr	Peru	IL 61354	(815) 223–7458
New York:				
NY0634—Holiday Inn Fishkill	2511 Route 9	Fishkill	NY 12524	(914) 896–6281
NY0633—Clubquarters Downtown Hotel.	52 Williams Street	New York	NY 10005	(212) 575–0006
NY0635—Ramada Limited-Woodbury.	8030 Jericho Turnpike	Woodbury	NY 11797	(516) 921–8500
Pennsylvania:				
PA0440—Penn State Scanticon Conference Center Hotel.	215 Innovation Blvd	State College	PA 16803	(814) 863–5000
Texas:				
TX0703—Wyndham Anatole	2201 Stemmons Frwy	Dallas	TX 75207	(214) 748–1200
TX0702—Best Western Park Suites Hotel.	640 Park Blvd, East	Plano	TX 75074	(214) 578–2243

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 8/20/96 UPDATE—Continued

Index and property name	PO Box/Rt. No. Street Address	City	State/ZIP	Phone
Washington:				
WA0296—Timberland Inn & Suites.	1271 Mt. Saint Helen's Way	Castle Rock	WA 98611	(360) 274–6002
WA0294—Holiday Inn Seattle Issaquah.	1801 12th Ave NW	Issaquah	WA 98027	(206) 392–6421
WA0295—Shilo Inn-Ocean Shores.	PO Box 1950, 707 Ocean Shores Blvd NW.	Ocean Shores	WA 98569	(360) 289–4600
WA0293—Best Western Tower Inn.	1515 George Washington Way	Richland	WA 99352	(509) 946–4121
West Virginia:				
WV0222—Blackbear Woods Resort Inn.	Box 55, Rt. 1	Davis	WV 26260	(304) 866–4391
WV0223—Land of Canaan Vacation Resort.	Box 29, HC 70	Davis	WV 26260–9711	(304) 866–4788
WV0221—Paddle Creek Motel	U.S. Rt. 52	Fort Gay	WV 25514	(304) 648–7393
WV0220—Ramada Limited	419 Hurricane Creek Rd	Hurricane	WV 25526	(304) 562–3346
Corrections/Changes:				
California:				
CA0362—Regal Biltmore Hotel	506 S. Grand Ave	Los Angeles	CA 90071	(213) 612–1575
CA1287—Wyndham Hotel, LAX Airport.	6225 W. Century Blvd	Los Angeles	CA 90045	(310) 670–9000
CA0713—Clarion Hotel Bay View	660 K St	San Diego	CA 92101	(619) 696–0234
CA0307—Wyndham Emerald Plaza.	400 W. Broadway	San Diego	CA 92101	(619) 239–4500
Mississippi:				
MS0105—Sleep Inn	1301 Hamilton Ave	Meridian	MS 39301	(601) 485–4646
Pennsylvania:				
PA0200—Radisson Hotel Philadelphia Airport.	500 Stevens Dr	Philadelphia	PA 19113	(610) 521–5900
West Virginia:				
WV0040—Super 8 Motel	Rt. 33, 12 Market Pl	Weston	WV 26452	(304) 843–1991
Deletions:				
Mississippi:				
MS0060—Holiday Inn North	I–55 N	Jackson	MS 39206	(601) 366–9411
Washington:				
WA0225—Omni Hotel	130 Market St	Chas	SC 29401	

[FR Doc. 96–21966 Filed 8–28–96; 8:45 am]

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federal register

Thursday
August 29, 1996

Part VII

Securities and Exchange Commission

17 CFR Parts 210 and 240
Implementation of Section 10A of the Securities Exchange Act of 1934; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release No. 34–37594; IC–22162; File No. S7–20–96]

RIN 3235–AG70

Implementation of Section 10A of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") today is soliciting comments on proposed rule amendments to implement the reporting requirements in section 10A of the Securities Exchange Act of 1934 (the "Exchange Act"). Section 10A requires, among other things, that the auditor of a registrant's financial statements report to the registrant's board of directors certain uncorrected illegal acts of the registrant, and that the registrant notify the Commission that it has received such a report. If the registrant fails to provide that notice, the auditor is required by section 10A to furnish directly to the Commission the report given to the Board. The proposed amendments to the Commission's Exchange Act Rules are intended to implement those reporting requirements. The proposed amendment to Regulation S–X would conform the definition of "audit" in that regulation with the wording in section 10A.

DATES: Comments on the proposed amendments should be received on or before October 28, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–20–96; this file number should be included on the subject line if E-mail is used. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comments may be posted on the Commission's internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Robert E. Burns or W. Scott Bayless, at (202) 942–4400, Office of the Chief Accountant, Mail Stop 11–3, and for investment company issues, Kathleen Clarke, at (202) 942–0724, Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend its Exchange Act Rules, 17 CFR 240, by adding Rule 10A–1, and Regulation S–X, 17 CFR 210, by revising Rule 1–02.

I. Background

Title III to the Private Securities Litigation Reform Act of 1995, Public Law 104–67, enacted on December 22, 1995, added section 10A to the Exchange Act. This section codifies certain professional auditing standards and imposes expanded obligations on auditors [1] to report in a timely manner certain uncorrected illegal acts [2] to a registrant's board of directors. It further requires the registrant, or if the registrant fails to do so then the auditor, to provide information regarding the illegal act to the Commission.

Section 10A(a) requires that audits of registrants' financial statements include, "in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—"

1. Procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

2. Procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein; and

3. An evaluation of whether there is substantial doubt about the registrant's ability to continue as a going concern during the ensuing fiscal year.[3]

Certain procedures in each of these three areas already are required by generally accepted auditing standards ("GAAS") [4] in the United States and are further codified in the *Statements on Auditing Standards* ("SAS") [5] adopted by the Auditing Standards Board ("ASB"), the senior technical body for auditing matters of the American Institute of Certified Public Accountants ("AICPA").[6] The Commission staff historically has worked closely with the ASB. The staff, among other things, attends ASB meetings, reviews and provides the ASB with comments on draft Statements on Auditing Standards, and has periodic meetings with ASB representatives to discuss items on the ASB agenda and other matters of mutual concern. The Commission staff plans to continue these practices.

In addition to the requirement in section 10A(a) that auditors perform procedures designed to enhance the detection of fraudulent financial reporting, section 10A(b) contains provisions that would require an auditor to report directly to the Commission

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[1] For the purpose of this release, the term "auditor" refers to any independent public or certified public accountant who is performing or has performed an audit of a registrant's financial statements and whose audit report has or will be filed with the Commission in accordance with the federal securities laws or the Commission's regulations. *See, e.g.*, sections 12(b)(1) (J) and (K), 13(a)(2), and 17(e) of the Exchange Act, 15 U.S.C. 78l(b)(*1*) (J) and (K), 78m(a)(2), and 78q(e), and the Commission's Regulation S–X, 17 CFR § 210. The term "independent accountant" is used in the regulatory text in order to be consistent with existing provisions in Regulation S–X.

[2] Section 10A(f) defines the term "illegal act" broadly to mean "an act or omission that violates any law, or any rule or regulation having the force of law." This definition is consistent generally with *Statement on Auditing Standards No. 54*, "Illegal Acts by Clients," ¶2 (January 1, 1989), AU § 317.02, which states, "the term illegal acts . . . refers to violations of laws or governmental regulations."

[3] Section 10A(a) (1), (2), and (3).

[4] In February 1941, the Commission amended Rule 2–02 of Regulation S–X, 17 CFR § 210.2–02, to require that the independent accountant state in his or her report "whether the audit was made in accordance with generally accepted auditing standards. . . ." Accounting Series Release No. 21 (February 5, 1941). In this release, the Commission defined "generally accepted auditing standards" to mean the application of "generally recognized normal auditing procedures" with professional competence by properly trained persons. The Commission defined "generally recognized normal auditing procedures" to be those normally employed by skilled accountants and those prescribed by authoritative bodies dealing with the subject of auditing, such as accounting societies and governmental bodies having jurisdiction in the area. *Id.* Following this addition to the Commission's rules, the relevant professional committee at the time, the Committee on Auditing Procedure, began a study to determine which auditing standards should be included within "GAAS." In 1948, the membership of the predecessor organization to the American Institute of Certified Public Accountants ("AICPA") approved ten standards as constituting GAAS. *See*, AICPA, Codification of Statements on Auditing Standards, AU § 150.02. These ten standards are supplemented by *Statements on Auditing Standards*, which currently are issued by the Auditing Standards Board of the AICPA.

[5] Currently effective *Statements on Auditing Standards* are published by the American Institute of Certified Public Accountants in the *Codification of Statements on Auditing Standards*. Provisions in the Codification are designated as "AU § ." For standards addressing those procedures mandated by section 10A, *see* SAS 54, "Illegal Acts by Clients" (January 1, 1989), AU § 317; SAS 45, "Related Parties" (September 30, 1983), AU § 334; and SAS 59, 64, and 77 *reprinted in* "The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern" (January 1, 1989), AU § 341. *See also* SAS 53, "The Auditor's Responsibility to Detect and Report Errors and Irregularities" (January 1, 1989), AU § 316. The ASB is in the process of re-examining SAS 53, SAS 54, and other auditing standards related to the detection and reporting of financial fraud. References in this release are to auditing standards in effect at the date of this release.

[6] The ASB's 15 members serve on a part-time basis and are appointed for one year terms that may be extended for up to three years.

certain detected illegal acts if the registrant fails to do so.

Under section 10A(b), if, while conducting the audit of the registrant's financial statements, the auditor becomes aware of information indicating that an illegal act (whether or not material to the financial statements) has occurred or may have occurred, then the auditor would be required, in accordance with GAAS, "as may be modified or supplemented from time to time by the Commission," to determine whether it is "likely" that an illegal act has occurred and, if so, its possible effect on the financial statements (including any contingent monetary effects, such as fines, penalties, and damages).[7] The auditor would be required to inform the registrant's management of the illegal act "as soon as practicable." In addition, the auditor must assure him/herself that the registrant's board of directors is adequately informed, by management or otherwise, of any detected illegal act.[8]

Although GAAS contains procedures for similar notification of illegal acts to managements and boards of directors,[9] section 10A(b) contains the additional requirement that these notifications occur "as soon as practicable." [10]

After the auditor determines that the audit committee or the board of directors has been adequately informed of an illegal act and the auditor reaches three specified conclusions, the auditor is required by section 10A(b)(2) to report those conclusions directly to the board of directors "as soon as practicable." The three conclusions set forth in section 10A(b)(2) that trigger the auditor's obligation to report to the board are that:

1. The illegal act has a material effect [11] on the registrant's financial statements,

2. Senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to the illegal act, and

3. The failure to take remedial action is reasonably expected to warrant either a departure from the auditor's standard audit report,[12] when made, or the auditor's resignation from the audit engagement.[13]

If the board of directors receives a report that the auditor has reached these conclusions, then the board has one business day to notify the Commission that it received such a report. If the auditor does not receive a copy of the board's notice to the Commission within that one business day period, then by the end of the next business day the auditor is required to furnish directly to the Commission a copy of the report given to the board (or the documentation of any oral report [14]).[15] The auditor's resignation from the audit engagement does not negate the auditor's obligation to furnish his or her report to the Commission in these circumstances.[16]

Section 10A(c) states that there is no private right of action against auditors based on any findings, conclusions, or statements expressed in their reports to the Commission. It should be noted, however, that this section does not address private rights of action based on, among other things, the auditor's failure to make the required report, the auditor's failure to comply with GAAS or Commission requirements during the conduct of its audit or other work, or for the preparation of any other reports or statements filed with the Commission.

Section 10A(d) subjects auditors to civil money penalties if the Commission finds in a cease and desist proceeding [17] that the auditor willfully failed to comply with the direct reporting provisions in section 10A. Similar penalties may be imposed on any person who was a cause of such a violation.[18]

Section 10A(e) states that, except for the civil money provisions in section 10A(d), nothing in section 10A shall be held to limit or otherwise affect the authority of the Commission under the Exchange Act.

II. Discussion of Proposed Rules

A. Proposed Rule 10A–1.

Proposed Rule 10A–1 is based on the premise that the notice and reports under section 10A are to assist the Commission in performing its enforcement responsibilities and, therefore, will be non-public. Disclosure to the public of registrants' illegal acts will continue to be made in modified audit reports [19] or, when the auditor has resigned, been dismissed, or elected not to stand for re-election, on Form 8–K [20]

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[7] Section 10A(b)(1)(A). *See*, SAS 54, ¶¶ 10–15. AU § 317.10–.15. Paragraph 11 of SAS 54 sets forth additional audit procedures that might be necessary once the auditor becomes aware of a possible illegal act.

[8] Section 10A(b)(1)(B). See, SAS 54, ¶ 17, AU § 317.17.

[9] *See*, SAS 54, ¶¶ 10 and 17, AU § 317.10 and .17.

[10] The addition of this time period reflects the original legislative efforts in this area to provide an earlier warning to the SEC of registrants' potential illegal acts than may occur under the current Form 8–K procedures, *see* note 20 *infra*, and in audit reports. *See* H.R. Rep. No. 102–890, 102d Cong., 2d Sess. 3 (1992), which contained the predecessor legislation to Section 10A and stated:

This legislation amends the Securities Exchange Act of 1934 (Exchange Act) to improve fraud detection and disclosure with respect to public companies by codifying auditing standards in certain specified areas and by providing a mechanism for earlier warning to the Securities and Exchange Commission of certain illegal acts by registrants.

[11] The auditor should consider both the quantitative and qualitative materiality of the act, including contingent liabilities that might be created by the illegal act. *See, e.g.*, SAS 54, ¶ 13, AU § 317.13.

[12] *See*, SAS 58, "Reports on Audited Financial Statements," ¶ 10, AU § 508.10, for a general discussion of the circumstances that may require the auditor to depart from the standard report and the types of opinions, other than the standard report, that may be expressed by the auditor in various circumstances.

[13] Section 10A(b)(2)(A), (B), and (C). *See generally*, SAS 54, ¶¶ 18–22, AU § 317.18–.22.

[14] For documentation requirements under GAAS, *see, e.g.*, SAS 54, ¶ 17, AU § 317.17, and SAS 61, "Communication with Audit Committees," ¶ 3 (January 1, 1989), AU § 380.03.

[15] Section 10A(b)(3).

[16] Section 10A(b)(4).

[17] Under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. 101–429, (the "Remedies Act") auditors are subject to the Commission's cease and desist proceedings under section 21C of the Exchange Act but not to civil money penalties under section 21B. Under the Remedies Act, auditors are not subject to temporary cease and desist orders as set forth in section 21C(c) of the Exchange Act. Although failure to file a required report may justify disciplinary proceedings under Rule 102(e) of the Commission's Rules of Practice, 17 CFR § 201.102(e), auditors are not subject to civil money penalties in such proceedings.

[18] Under section 10A(d), the determination to impose a civil money penalty on auditors and those causing a violation of the auditor's reporting requirements and the amount of such a penalty are governed by section 21B of the Exchange Act.

[19] For the effect of illegal acts on the audit report, see, SAS 53, ¶¶ 26 and 27, AU § 316.26 and .27, and SAS 54, ¶¶ 18–21, AU § 317.18–.21. *See generally*, SAS 58, 64, and 79 *reprinted in Reports on Audited Financial Statements* (January 1, 1989), which describes the standard report and the various opinions that may be reflected in the auditor's report. SAS 58, ¶¶ 7–10, AU § 508.07–.10.

[20] Item 4 of Form 8–K, 17 CFR § 249.308, Item 304 of Regulation S–K, 17 CFR § 229.304, and Item 304 of Regulation S–B, 17 CFR § 228.304. In summary, these provisions state that a registrant must file a Form 8–K, providing the information required by item 4 of that form, within five business days of the date that the registrant's auditor (or an independent accountant upon whom the auditor expressed reliance in its audit report regarding a significant subsidiary) resigns, declines to stand for re-election, or is dismissed, and within five business days of the date a new auditor is engaged. The registrant is to ask the former auditor to provide the registrant with a letter indicating whether the former auditor agrees with the disclosures in the Form 8–K that reports the termination of the audit engagement and, if not, the respects in which the auditor disagrees. This letter is to be filed with the Commission as an exhibit by amendment to the registrant's Form 8–K within 10 business days of the date that the Form 8–K was filed.

The registrant's Form 8–K must state, among other things: whether the former auditor resigned, was dismissed, or declined to stand for re-election and the date thereof; whether the auditor modified his or her report on the registrant's financial statements for either of the last two fiscal years and, if so, the nature of the modification; whether the decision to change auditors was recommended or approved by the audit committee or board of directors; whether, in connection with the audits of

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under the Exchange Act and on N–SAR [21] under the Investment Company Act of 1940 (the "Investment Company Act"), among others.

In testifying on prior bills that contained the same reporting requirements, the Commission stated, "[W]e anticipate that reports filed under section 10A would be confidential and exempt from disclosure under the Freedom of Information Act." [22] The Commission further noted,

> Premature disclosure of the issuer and auditor reports could, among other things, interfere with the Commission's investigation, deprive the issuer or other persons of the right to a fair trial or impartial adjudication, constitute an unwarranted invasion of privacy, or disclose a confidential source. In addition, issuer and auditor reports under Section 10A might contain confidential commercial or financial information exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4).[23]

The Commission's testimony further states that the direct reporting provisions in the bill might provide an earlier warning of certain illegal acts that could allow the Commission to begin enforcement investigations at an earlier date.[24]

Accordingly, the proposed rule provides that the reports of both the board and the auditor would be non-public and exempt from disclosure under the Freedom of Information Act to the same extent as the Commission's investigative records.[25]

Despite the confidential nature of the reports under section 10A, these reporting requirements should improve the quality of public disclosures in Forms 8–K and N–SAR and in audit reports on registrants' financial statements, because it is unlikely that registrants and auditors will make public disclosures that are incompatible with the confidential reports made to the Commission. Also, the direct reporting requirements in section 10A should give auditors additional leverage to prompt management to correct illegal acts and to make appropriate adjustments in their financial statements.

Proposed Rule 10A–1 designates the Commission's Office of the Chief Accountant ("OCA") as the appropriate office to receive the notice provided by any registrant under section 10A(b)(3) and any reports provided by auditors under section 10A(b)(3) or 10A(b)(4). OCA expeditiously will forward copies of the notice or report to all appropriate offices and divisions within the Commission. The notice or report may be provided to other agencies, as appropriate.

Delivery of the notice or report to OCA may occur under proposed Rule 10A–1 in any manner, provided the notice or report is received by OCA within the statutory time period. Currently, the most timely manner of delivery may be through submission of a facsimile,[26] telegraph, or personal delivery. In the future, procedures may be developed for registrants and auditors to deliver confidential information directly to OCA via electronic mail. Proposed Rule 10A–1 would permit use of such means of delivery.[27]

Proposed Rule 10A–1 sets forth the required contents for a registrant's notice to the Commission. This notice would be in writing and identify the registrant and the auditor, state the date the auditor made its report to the board, and provide a summary of the report. The required summary would describe the act and the potential impact of that act on the registrant's financial statements. This information is consistent with the requirement under GAAS that the auditor's communication with the registrant's audit committee "should describe the act, the circumstances of its occurrence, and the effect on the financial statements." [28] The proposed rule specifically would permit a registrant to provide additional information regarding its view of, and response to, the section 10A report it has received from the auditor.

Regarding reports filed by auditors, proposed Rule 10A–1 would specify that if the report does not identify clearly both the registrant and the auditor, then the auditor must attach that information to the report submitted to OCA.

Proposed Rule 10A–1 makes it clear that providing the notice or report in accordance with section 10A and the proposed rule does not, in any way, affect the obligations of the registrant and the auditor to file and make all applicable disclosures required by the Commission's rules, including, without limitation, Forms 8–K and N–SAR, and of the auditor to comply with GAAS reporting requirements.[29] Similarly, the proposed rule states that the confidential nature of the notice and the report to the Commission does not diminish a registrant's or auditor's obligations to make full disclosures required by the Commission's rules, forms, reports, or disclosure items, or by applicable professional standards.

B. Proposed Rule 1–02(d).

The proposed amendment would conform the definition of "Audit (or examination)" in Rule 1–02(d) of Regulation S–X with section 10A, by noting that audits of the financial statements of Commission registrants should be performed in accordance with generally accepted auditing standards as

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the financial statements for the two most recent fiscal years, and any subsequent interim period, there were any disagreements between the auditor and the registrant on any matter of accounting principles or practices, auditing scope or procedure, or financial statement disclosure. The Form 8–K also must provide disclosure of any instance within the applicable time period where the former auditor advised the registrant that (1) the internal controls necessary for the registrant to develop reliable financial statements did not exist, (2) information had come to the auditor's attention that led him or her no longer to be able to rely on management's representations, or that made the auditor unwilling to be associated with the registrant's financial statements, (3) there was a need to expand significantly the scope of the audit and, due to the auditor's resignation or for any other reason, the scope was not expanded, or (4) information had come to the auditor's attention affecting the reliability of past audit reports or financial statements and the issue had not been resolved to the auditor's satisfaction prior to the auditor's resignation, dismissal, or declination to stand for re-election.

[21] Sub-item 77K of Form N–SAR, 17 CFR § 274.101, requires investment companies filing Form N–SAR to provide the information required by item 4 of Form 8–K. Sub-item 77K of Form N–SAR notes that notwithstanding the requirements in Form 8–K to file more frequently, registrants need only file such information semi-annually in accordance with the requirements of Form N–SAR.

[22] Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, *Concerning H.R. 574, The Financial Fraud Detection and Disclosure Act*, Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, 103d Cong., 1st Sess., 32 (February 18, 1993).

[23] *Id.*, at 32 n. 36.

[24] *Id.*, *T1 at 31.*

[25] *See* 5 U.S.C. 552(b)(7), which exempts from disclosure certain "records or information compiled for law enforcement purposes."

[26] The phone number for OCA's facsimile machine currently is (202) 942–9656. Such phone numbers, however, are subject to change without notice and registrants and auditors should verify the accuracy of the number before use.

[27] A similar provision applies to auditors of broker-dealers. *See* Rule 17a–5(h)(2) under the Exchange Act, 17 CFR § 240.17a–5(h)(2), which states that if, during the course of audit or interim work, the auditor determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or certain other practices and procedures, then the auditor shall call those inadequacies to the attention of the chief financial officer of the broker-dealer, who has the obligation to notify the Commission and the designated examining authority within 24 hours thereafter. If the auditor does not receive a copy of that notice within that 24 hour period, or if the auditor disagrees with the statements in the notice, then the auditor must inform the Commission and the designated examining authority of the material inadequacy within the next 24 hours.

[28] SAS 54, ¶ 17, AU § 317.17.

[29] In addition, one of the membership requirements of the SEC Practice Section of the AICPA is that members notify registrants in writing of the cessation of an auditor-client relationship. The member also is required to send a copy of that notification to the Commission's Office of the Chief Accountant.

may be modified or supplemented by the Commission.

III. Investment Companies

Section 10A and proposed Rule 10A–1 apply to all audits required pursuant to the Exchange Act, including those prepared on behalf of investment companies that have reporting obligations under the Exchange Act.[30] The Commission requests comment whether the proposed reporting requirements under Rule 10A–1 need to be modified to reflect the operations of investment companies.

IV. General Request for Comments

The Commission seeks comments from all interested persons wishing to address any aspect of the proposed rules.

The Commission also is requesting comments on whether the proposed amendments, if adopted, would have an adverse impact on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act of 1933 and the Exchange Act. Comments in this regard will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[31]

V. Cost/Benefit Analysis

Comments are requested related to any costs or benefits associated with the proposed rules. The costs of complying with proposed Rule 10A–1, which is intended to carry out the purposes of new section 10A the Exchange Act, are expected to be de minimis. Such costs for a registrant may include converting the information in the auditor's report to the board into a notice that conforms to the rule and delivering that notice, via facsimile or otherwise, to the Commission's Office of the Chief Accountant. Costs for the auditor may include assuring that the report to the board identifies the registrant, as required by the proposed rule, and the cost of delivering that report, via facsimile or otherwise, to the Commission's Office of the Chief Accountant.

Benefits would include an earlier warning to the Commission of possible illegal acts by registrants and potential improvements in public disclosures in Forms 8–K and N–SAR regarding changes in registrants' auditors and in audit reports that are modified due to registrants' illegal acts.

VI. Summary of Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 concerning proposed Rule 10A–1. The analysis notes that the proposed rule is intended to implement the reporting requirements of section 10A of the Exchange Act.

As discussed more fully in the analysis, the proposed rule would affect small entities, as defined by the Commission's rules, but would affect small entities in the same manner as other registrants. The analysis notes that alternatives that provide for different means of compliance for small entities or which exempt small entities from the proposed rules would not be consistent with the statutory requirements. Moreover, the cost of complying with the proposed rule should be de minimis, even for small registrants.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rules are adopted. A copy of the analysis may be obtained by contacting Robert E. Burns, Chief Counsel, Office of the Chief Accountant, U.S. Securities and Exchange Commission, Mail Stop 11–3, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Paperwork Reduction Act

Proposed Rule 10A–1 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*] and the Commission has submitted the proposed rules to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The title for the collection of information is "Amendments to Implement Exchange Act Section 10A."

The Supporting Statement to the Paperwork Reduction Act submission notes that the proposed rule is intended to implement the reporting requirements found in recently enacted section 10A of the Exchange Act, and that the proposed rule would have a negligible effect on the annual reporting and cost burden of Commission registrants. As discussed above, the notice provided by the registrant would contain the minimum amount of information necessary to identify the registrant and the auditor, indicate the date the auditor provided the report to the board of directors as specified in section 10A, and summarize the report given to the board. The summary would be based on information required to be given to the board of directors under GAAS. The auditor's report, furnished only in the event that the registrant does not fulfill its reporting responsibilities, would consist only of the report given to the board of directors and, if necessary, additional information to identify clearly the registrant and the auditor.

Potential respondents are entities with reporting obligations under the Exchange Act and their auditors, although it is anticipated that the reporting requirements under section 10A rarely will be triggered. On those rare occasions when the reporting requirement is triggered, it is estimated that the total recordkeeping and reporting burden, beyond that directly required by the statute, would not exceed one hour per respondent.

As notices must be filed by a registrant within one day of receiving a report from its auditor, and the auditor must file its report (if necessary) the next day, there are essentially no recordkeeping or retention requirements.

Filing the notices and reports, when necessary, is required by section 10A of the Exchange Act and therefore is mandatory. As explained above, however, the notices and reports will be kept confidential while the Commission has an enforcement interest in the information contained in those notices and reports.

Pursuant to 44 U.S.C. § 3506(c)(2)(B), the Commission requests comments concerning: whether the proposed collection of information is necessary for the proper performance of the function of the Commission, including whether the information shall have practical utility; on the accuracy of the Commission's estimate of the burden of the proposed collection of information; on the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission,

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[30] *See* sections 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78m(a) and 78o(d), and section 30(a) of the Investment Company Act, 15 U.S.C. 80a–29(a). Form N–SAR requires investment companies to file information with the Commission about their operations, including audited financial information. Rule 30a–1 under the Investment Company Act, 17 CFR § 270.30a–1, provides that investment companies filing annual reports on Form N–SAR are deemed to have satisfied the reporting requirements of sections 13(a) and 15(d) under the Exchange Act and section 30(a) under the Investment Company Act.

[31] 15 U.S.C. 78w(a).

Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 with reference to File No. S7–20–96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to the Office of Management and Budget is best assured of having its full effect if the Office of Management and Budget receives it within 30 days of publication.

List of Subjects

17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rulemaking Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By revising § 210.1–02(d) to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (17 CFR part 210).

* * * * *

(d) *Audit (or examination).* The term *audit* (or *examination*), when used in regard to financial statements, means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission, for the purpose of expressing an opinion thereon.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78j–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

4. By adding § 240.10A–1 to read as follows:

§ 240.10A–1 Notice to Commission of issuers' illegal acts.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j–1(b)(3), the issuer shall provide such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the required time period.

(2) The notice specified in paragraph (a)(1) of this section shall be in writing and:

(i) Shall identify the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings by the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's residence or principal office);

(ii) Shall state the date that the issuer received from the independent accountant the report specified in section 10A(b)(2) of the Act, 15 U.S.C. 78j–1(b)(2);

(iii) Shall provide a summary of the independent accountant's report, including a description of the act that the independent accountant has identified as a likely illegal act and the potential impact of that act on all affected financial statements of the issuer or those related to the most current three year period, whichever is shorter; and

(iv) May provide additional information regarding the issuer's views of and response to the independent accountant's report.

(3) Provision of the notice in paragraphs (a)(1) and (a)(2) of this section does not relieve the issuer from its obligations to comply fully with any other reporting requirements, including, without limitation:

(i) The filing requirements of Form 8–K, § 249.308 of this chapter, and Form N–SAR, § 274.101 of this chapter, regarding a change in the issuer's certifying accountant and

(ii) The disclosure requirements of item 304 of Regulation S–B or item 304 of Regulation S–K, §§ 228.304 and 229.304 of this chapter.

(b)(1) Any independent accountant furnishing to the Commission a copy of a report (or the documentation of any oral report) in accordance with section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), shall provide that report (or documentation) to the Commission's Office of the Chief Accountant within the time period prescribed by the appropriate section of the Act. The report (or documentation) may be provided to the Commission's Office of the Chief Accountant by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the time period set forth in section 10A(b)(3) or 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), whichever is applicable in the circumstances.

(2) If the report (or documentation) provided to the Office of the Chief Accountant in accordance with paragraph (b)(1) of this section does not clearly identify both the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings with the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's residence or principal office), then the independent accountant shall place that information in a prominent attachment to the report (or documentation) and shall provide that attachment to the Office of the Chief Accountant at the same time and in the same manner as the report (or documentation) is provided to that Office.

(3) Provision of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section does not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under items 304(a)(2)(D) and 304(a)(3) of Regulation S–K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and under items 304(a)(2)(D) and 304(a)(3) of Regulation S–B, §§ 228.304(a)(2)(D) and 228.304(a)(3) of this chapter, respectively, and does not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal or professional

responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

(c) Notices and reports furnished to the Office of the Chief Accountant in accordance with paragraphs (a) and (b) of this section shall be non-public and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same periods of time that the Commission's investigative records are non-public and exempt from disclosure under, among other applicable provisions, 5 U.S.C. 552(b)(7) and § 200.80(b)(7) of this chapter. The preceding sentence shall not relieve, limit, delay, or affect in any way, any issuer's or independent accountant's obligations to provide all public disclosures required by law, by any Commission disclosure item, rule, report, or form, or by any applicable accounting, auditing, or professional standard.

By the Commission.

Dated: August 22, 1996.

Margaret H. McFarland,

Deputy Secretary.

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August 29, 1996

Part VIII

Department of Commerce

Economic Development Administration

13 CFR Part 316

Simplification and Streamlining of Regulations; General Requirements for Financial Assistance—Excess Capacity; Correction; Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 316

[Docket No. 950525142–6220–04]

RIN 0610–AA47

Simplification and Streamlining of Regulations; General Requirements for Financial Assistance—Excess Capacity; Correction

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to EDA's regulations at 13 CFR Chapter III; EDA's final rule which adopted the interim-final rule (60 FR 49702), September 26, 1995, as modified by the changes noted in the final rule (61 FR 7979), published and effective on March 1, 1996, as corrected, and the correction (61 FR 15371), April 8, 1996. This correction is to the regulation on general requirements for financial assistance—excess capacity.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Awilda R. Marquez, (202) 482–4687; fax number: (202) 482–5671.

SUPPLEMENTARY INFORMATION:

Background

EDA recently amended its entire body of regulations to make them easier to read and to understand, by removing numerous unnecessary, redundant, and outdated parts, sections and portions thereof, and by clarifying and simplifying those remaining. The final rule includes program requirements, evaluation criteria, and the selection process in implementing programs under the Public Works and Economic Development Act of 1965, as amended (PWEDA or the Act), the Trade Act of 1974, as amended (the Trade Act), and other applicable statutes.

Need for Correction

As published, the final rule contains an error which may prove to be misleading and is in need of clarification. Currently, § 316.3 on excess capacity as codified in the *Code of Federal Regulations* (13 CFR, revised as of March 1, 1996) at Chapter III does not contain two crucial definitions—"market area" and "primary beneficiary". These two definitions were inadvertently deleted when the final version of EDA's rule was codified in the CFR. Since these terms must be defined in order to determine when a report or study (or exemption) is needed, to meet the excess capacity requirement under the Public Works and Economic Development Act of 1965, as amended, (42 U.S.C. 3121 *et. seq.*), these definitions must be reinserted in the definitions paragraph of this section of the rule.

List of Subjects in 13 CFR Part 316

Community development, grant programs-community development, Freedom of Information, Uniform Relocation Act.

Accordingly, 13 CFR Part 316 is corrected by making the following correcting amendment:

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. The authority citation for Part 316 continues to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C.3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (42 U.S.C. 2341–2355); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 316.3 is amended by revising paragraph (b) to read as follows:

§ 316.3 Excess Capacity.

* * * * *

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Demand means the actual quantity of a product or service that users are willing to purchase for use in the market area served by the intended commercial or industrial beneficiary.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs and technologies.

Existing competitive enterprise means an established operation which either produces the same product or delivers the same service to all or a substantial part of the market area.

Market Area means the geographic area within which products and/or services compete for purchase by customers.

Primary Beneficiary means one or more firms within the same industry which may reasonably be expected to use 50 percent or more of the capacity of an EDA-financed facility(ies) in order to expand the supply of goods or services sold in competition with other producers or suppliers of such goods or services.

* * * * *

Dated: August 21, 1996.

Wilbur F. Hawkins,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–21955 Filed 8–28–96; 8:45 am]

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Part IX

Legal Services Corporation

45 CFR Part 1609, et al.

Grantees: Regulations Implementing New Statutory Restrictions; Interim Final Rules and Proposed Rule

LEGAL SERVICES CORPORATION

45 CFR Parts 1610 and 1636

Use of Non-LSC Funds; Client Identity and Statement of Facts

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is intended to implement a restriction contained in the Legal Services Corporation's ("LSC" or "Corporation") FY 1996 appropriations act. The rule requires LSC recipients to identify by name each plaintiff they represent in any litigation. In the case of pre-litigation negotiation, the regulation requires recipients representing plaintiffs to notify potential defendants of the names of the plaintiffs represented by the recipient. The rule also requires that a plaintiff sign a written statement of facts on which a complaint is based before the recipient engages in litigation or before it undertakes pre-litigation negotiations on the plaintiff's behalf. Although this interim rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

This rule also amends part 1610 to reference 5 interim rules included in this publication of the **Federal Register** in the definition of "Activity prohibited by or inconsistent with Section 504."

DATES: This interim rule and the revision to part 1610 are effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 504(a)(8), a restriction in the Corporation's FY 1996 appropriations act which requires LSC recipients to identify the plaintiffs they represent and have the plaintiffs sign written statements of the facts underlying the claims. The Committee held hearings on staff proposals on July 8 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the rule for review and consideration by the Committee. After receipt of public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

A section-by-section discussion of this interim rule is provided below.

Section 1636.1 Purpose

The purpose of the rule is to ensure that during pre-litigation settlement negotiations and when filing a complaint in a court of law or otherwise participating in litigation against a defendant, Corporation recipients identify their clients to the adverse party. The rule also seeks to ensure that recipients undertake such activities based on facts which support the complaint.

Section 1636.2 Requirements

This section sets forth the requirement that recipients identity the plaintiffs in all court complaints filed and prior to engaging in any pre-litigation settlement negotiations. The disclosure of a client's identity is not required when a court of competent jurisdiction has entered an order protecting the client from such disclosure to prevent probable, serious harm to significant client interests. In addition, this section requires that prior to the recipient entering in any pre-litigation settlement negotiations or prior to filing the complaint in court, each recipient obtain from the client being represented a signed statement of the facts supporting the complaint. The section does not apply to defendants represented by a recipient for counterclaims filed against a plaintiff. The requirements also do not apply to a recipient's delivery of advice and brief services to attempts to resolve matters for a client through negotiations in which there is no contemplation of litigation.

The statement of facts is to be written in English and in the client's language if the client does not understand English. If the client's language is only an oral and not a written language, such as the Navajo language, the statement in English should be certified to have been translated orally to the client prior to the client's signing.

In a few emergency situations, it may be necessary for the recipient to negotiate with a prospective defendant or to file an action before the plaintiff's statement of facts can be prepared or signed. This section allows the recipient to proceed without a signed statement in such emergencies, if delay in proceeding is reasonably likely to cause harm to a significant interest of the client. Emergency situations might include threats to take the client's child out of State, to assault the client, or to evict the client without following the required legal procedures. Where a recipient proceeds on an emergency basis, a statement must be prepared and signed as soon as possible.

Section 1636.3 Access to Written Statements

This part provides a right of access to the statements of facts for certain specified governmental officials and their agents but not for adverse parties and others. The required statement of facts must be available in order for the auditors and monitors to review in order to confirm that the statement of facts has been obtained. The Corporation does not anticipate that copies of the statement will normally be retained in any LSC files. Access to the statement of facts by parties to the lawsuit is governed solely by the discovery rules of the court. This part does not create any new right of access to information for parties to a lawsuit or for others and the Corporation anticipates that, pursuant to current law, courts will, in most cases, determine that the statement is not discoverable by an adverse party in litigation.

A copy of each statement drafted according to this section should be maintained separate from the client's case file.

Section 1636.4 Applicability

This section specifies that the requirements of this part apply not only to cases handled by recipient staff but also to cases for which private attorneys are compensated by the recipient. Attorneys who are handling cases pro bono, however, are not required by the rule to maintain such documentation because *pro bono* attorneys are

uncompensated and do not fall within the prohibition. In addition, it is the Corporation's judgment that the requirement of a plaintiff's statement of facts would be a substantial impediment to the recruitment of *pro bono* lawyers. Besides, the fact that *pro bono* lawyers are volunteering their time provides some protection against their bringing frivolous law suits.

Section 1636.5 Recipient Policies, Procedures and Recordkeeping

This section requires recipients to establish policies and procedures to ensure compliance with this part and to maintain records sufficient to document compliance with this part.

Amendment to 45 CFR Part 1610 to Reference This Part and Parts 1637, 1638, 1639, and 1642

This interim rule also amends 45 CFR Part 1610 as published as an interim rule at 61 FR 41960 on August 13, 1996, to include references to this part and parts 1637, 1638, 1639 and 1642 in the definition of "Activity prohibited by or inconsistent with Section 504."

List of Subjects

45 CFR Part 1610

Grant programs—law, Legal services.

45 CFR Part 1636

Client identity, Grant programs, Legal services.

For reasons set forth in the preamble, 45 CFR Chapter XVI is amended as follows:

PART 1610—[AMENDED]

1. 45 CFR Part 1610, as published in the **Federal Register** as an interim rule at 61 FR 41960 is amended by adding Section 1610.2(b)(4), (9), (11), (12) and (14) as follows:

§ 1610.2 Definitions

* * * * *

(b) * * *

(4) Section 504(a)(8) and Part 1636 of this Chapter (Statement of facts and client identification);

* * * * *

(9) Section 504(a)(13) and Part 1642 of this Chapter (Attorneys' fees);

* * * * *

(11) Section 504(a)(15) and Part 1637 of this Chapter (Prisoner litigation);

(12) Section 504 (a)(16), as modified by Section 504(e), and Part 1639 of this Chapter (Welfare reform);

* * * * *

(14) Section 504(a)(18) and Part 1638 of this Chapter (In-person solicitation).

2. Part 1636 is added to read as follows:

PART 1636—CLIENT IDENTITY AND STATEMENT OF FACTS

Sec.

1636.1 Purpose.
1636.2 Requirements.
1636.3 Access to written statements.
1636.4 Applicability.
1636.5 Recipient policies, procedures and recordkeeping.

Authority: Pub. L. 104–134, 110 Stat. 1321.

§ 1636.1 Purpose.

The purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant or engages in pre-complaint settlement negotiations, the recipient identifies the plaintiff it represents and assures that the plaintiff has a colorable claim.

§ 1636.2 Requirements.

(a) When a recipient files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, or before a recipient engages in pre-complaint settlement negotiations on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:

(1) identify each plaintiff by name in any complaint it files and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of probable, serious harm to the plaintiff if the disclosure is not prevented; and

(2) prepare a dated written statement signed by each plaintiff, enumerating the particular facts supporting the complaint, insofar as they are known to the plaintiff when the statement is signed.

(b) The statement of facts must be written in English and, if necessary, in a language other than English that the plaintiff understands.

(c) In the event of an emergency, where the recipient reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of fact, provided that the statement is signed as soon as possible thereafter.

§ 1636.3 Access to written statements.

(a) Written statements of fact prepared in accordance with this part are to be kept on file by the recipient and made available to the Corporation or to any Federal department or agency auditing or monitoring the activities of the recipient of the Corporation or to any auditor or monitor receiving Federal funds to audit or monitor on behalf of a Federal department or agency or on behalf of the Corporation.

(b) This part does not give any other party any right of access to the plaintiff's written statement of facts, either in the lawsuit or through any other procedure. Access by other parties to the statement of facts is governed solely by the discovery rules of the court in which the action is brought.

§ 1636.4 Applicability.

This part applies to cases for which private attorneys are compensated by the recipient as well as to those cases initiated by the recipient's staff.

§ 1636.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21666 Filed 8–28–96; 8:45 am]

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45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule completely revises the Legal Services Corporation's ("Corporation" or "LSC") regulation on lobbying, rulemaking and other restricted activities. It is intended to implement provisions in the Corporation's FY 1996 appropriations act which prohibit recipients from engaging in any agency rulemaking, in legislative or lobbying activity or in advocacy training. The interim rule also implements statutory exceptions to the prohibitions on rulemaking and lobbying, which permit recipients to comment in public rulemaking, respond to requests from legislative and administrative bodies, and engage in State and local fund raising activities when using non-LSC funds. Finally, the interim rule continues the pre-existing prohibitions on participation in public

demonstrations and organizing activities. Although this interim rule is effective upon publication, the Corporation solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested LSC staff to prepare an interim rule to implement §§ 504 (a)(2), (3), (4), (5), (6) and (12) and 504 (b) and (e) of the Corporation's FY 1996 appropriations act, 110 Stat. 1321(1996), prohibiting recipients from engaging in rulemaking, lobbying and advocacy training activities. The Committee held hearings on staff proposals on July 10 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**.

The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the rule for review and consideration by the Committee. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

A section-by-section discussion of this interim rule is provided below.

Section 1612.1 Purpose

The purpose of this rule is to ensure that LSC recipients and their employees do not engage in certain activities banned by the Corporation's FY 1996 appropriations act, 110 Stat. 1321, including rulemaking, lobbying, grassroots lobbying, and advocacy training. The rule also continues existing provisions of the LSC Act that prohibit participation in public demonstrations, strikes, boycotts and organizing activities. Finally, the rule also provides guidance on when recipients may participate in public rulemaking, respond to requests from legislative and administrative bodies, and seek funds from State and local legislative bodies and administrative agencies using non-LSC funds.

Section 1612.2 Definitions

The rule significantly revises the definitions that were used in prior rules in order to reflect the new statutory restrictions and thus ensure that recipients do not engage in prohibited activity and to provide greater clarity about the scope of the restrictions. In addition, definitions have been revised or eliminated because they are no longer necessary or the prior definition defied the common sense usage of terms (such as the term "legislation," which was defined to include administrative rulemaking).

"Grassroots lobbying" is defined to prohibit all communications and participation in activities which are designed to influence the public to contact public officials to support or oppose pending or proposed legislation. The new definition does not use the term "publicity or propaganda" which was used in prior regulations, because the FY 1996 appropriations act, 110 Stat. 1321, does not use these terms. However, the new definition of grassroots lobbying incorporates the definition of "publicity or propaganda" that was previously used. The definition also provides that "grassroots lobbying" does not include communications which are limited solely to reporting the content or status of pending or proposed legislation or regulations, or the effect which such legislation or regulations may have on eligible clients or on their legal representation.

"Legislation" means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. It does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws (such as action taken by a local council sitting as a Board of Zoning Appeals). The Corporation also retained the long-standing interpretation that "legislative bodies" do not include Indian Tribal Councils.

"Public policy" was defined to include an overall plan embracing the general goals and procedures of any governmental body as well as pending or proposed statutes, rules, and regulations. This term is found in this rule's section on training and is also found in the definition of "legislation." As used in § 1612.8 in regard to training, the modification of the definition from the prior regulation ensures that, consistent with current law, information on existing laws and regulations may be disseminated during training programs.

The definition of "political activity" is eliminated from this regulation, because the provision in which it was used in the prior rule has been deleted. The provision was deleted because it deals with electoral and partisan political activities, not lobbying activities, and is already in another LSC regulation, 45 CFR part 1608.

"Rulemaking" is defined to include the customary procedures that are used by an agency to develop and adopt proposals for the issuance, amendment or revocation of regulations, or other statements of general applicability and future effect, such as notice and comment rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies as well as negotiated rulemaking. Also "rulemaking" includes adjudicatory proceedings that are formal adversarial proceedings intended to formulate or modify an agency policy of general applicability and future effect.

To clarify that recipients can participate in administrative proceedings adjudicating the rights of individuals, "rulemaking" does not include administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as social security hearings, welfare fair hearings or granting or withholding of licenses.

In addition,"rulemaking" does not include litigation or any other judicial proceedings challenging agency rules, regulations, guidelines, policies or practices. The Committee Reports accompanying H.R. 2076, the predecessor legislation to 110 Stat. 1321, the debate on the Senate consideration of the Domenici Amendment [141 *Cong. Rec. 14586 et seq.* (Sept. 24, 1995)] and the provisions of the McCollum-Stenholm bill, H.R. 1806, from which the restrictions on lobbying and rulemaking were taken, distinguish "lobbying" and "rulemaking" from litigation and did not contemplate prohibiting litigation

under §§ 504(a) (2)–(6) of 110 Stat. 1321. Finally, the prohibition on rulemaking was not intended to prohibit recipients from communicating with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

The term "public rulemaking," which is used in § 504(e) of 110 Stat. 1231, is defined as any rulemaking proceeding that is open to the public. The term would include proceedings that are the subject of (1) notices of proposed rulemaking published in the **Federal Register** or similar State or local journals, (2) announcements of public hearings on proposed rules or notices of proposed rulemaking, including those that are routinely sent to interested members of the public or (3) other similar notifications to members of the public.

The term "similar procedure," which is used in the prohibition on legislative lobbying in § 504(a)(4) of 110 Stat. 1321, is defined to mean a legislative process for the consideration of matters which by law must be determined by a vote of the electorate.

Section 1612.3 Prohibited Legislative and Administrative Activities

This section sets out the broad prohibitions on lobbying and rulemaking of §§ 504(a) (2)–(6) of 110 Stat. 1321. These prohibitions are far more extensive than those included in prior appropriations' provisions or in the LSC Act, which permitted rulemaking activity and direct contact with legislators on behalf of clients or when engaged in self-help lobbying. The prohibitions of 110 Stat. 1321 prohibit any lobbying or rulemaking activity.

Paragraph (b) sets out the prohibitions on rulemaking and efforts to influence executive orders. Under the prohibition, recipients cannot participate in agency rulemaking proceedings such as is done through notice and comment rulemaking, and adjudications intended to formulate or modify agency policy.

Paragraph (c) tracks § 504(a)(6) of 110 Stat. 1321, and provides that recipients may not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device associated with an activity prohibited in paragraphs (a) and (b) in this section.

Section 1612.4 Grassroots Lobbying

This section sets out the absolute prohibition on grassroots lobbying by a recipient and its employees. There is no exception to the prohibition on grassroots lobbying. For example, none of the activities permitted under § 1612.6 may include grassroots lobbying.

Section 1612.5 Permissible Activities Using Any Funds

Because the prohibitions on lobbying and rulemaking are extensive and differ from past restrictions, the interim regulation seeks to clarify the activities that are not included within the prohibition. Previous LSC regulations on lobbying and rulemaking also listed activities that were not prohibited. Paragraph (a) provides that recipients may represent eligible clients in administrative agency proceedings that are intended to adjudicate the rights of an individual client, such as welfare and food stamp fair hearings, Social Security or SSI hearings, public housing hearings, veterans benefits hearings, unemployment insurance hearings and similar administrative adjudicatory hearings or negotiations directly involving that client's legal rights or responsibilities, including pre-litigation negotiation and negotiation in the course of litigation.

Paragraph (b) provides that an employee of a recipient may initiate or participate in any litigation challenging agency rules, regulations, guidelines or policies, unless, of course, such litigation is otherwise prohibited by law or other Corporation regulations, such as part 1639 on welfare reform or part 1617 on class actions. The legislative history of the lobbying restrictions does not suggest that they were intended to include litigation challenging agency regulations or legislation.

Paragraph (c) includes a list of some of the other activities that are not prescribed by the prohibitions on lobbying or rulemaking. The listing includes many permissible activities that have been included in prior regulations and others about which the Corporation has received inquiries. First, recipients and employees of recipients can communicate with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies.

Second, recipients and their employees can inform clients, other recipients or attorneys representing eligible clients about new or proposed statutes, executive orders, or administrative regulations. Thus recipients can advise clients about the effect of agency rules and policies, analyze and explain proposed changes and their effect, and advise their clients about their right to participate on their own behalf in agency rulemaking proceedings.

Third, recipients and their employees may communicate directly or indirectly with the Corporation for any purpose, including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies. Because the restriction applies to contacts with government agencies, recipients can contact LSC about any matter and comment on LSC rules, regulations or policies, since the Corporation is not a department, agency or instrumentality of the Federal Government. 42 U.S.C. 2996d(e)(1).

Fourth, recipients and their employees can participate in meetings or serve on committees of bar associations provided that no recipient resources are used to support prohibited legislative or rulemaking activities and the recipient is not identified with activities of bar associations that include such prohibited activities. This is a change from the current provisions on participation in bar association activities, which permit a recipient's employees to use recipient funds to participate in bar activities involving otherwise prohibited advocacy, provided the employee does not engage in grassroots lobbying. This change was made because the statutory prohibitions on lobbying and rulemaking in 110 Stat. 1321 are far more extensive and restrictive than in past legislation. This rule allows recipient attorneys to participate in bar association activities, including holding an official position in a bar association, because they participate as members of the legal profession rather than as staff attorneys. Nevertheless, the Corporation recognizes that there will be some situations where bar association activities will require the staff of a recipient to decline participation or to participate on the employee's own time.

Fifth, recipients and their employees may advise a client of the client's right to communicate directly with an elected official. For example, recipient staff may advise specific clients whom they are representing of the identity of their elected representatives are, about how legislation is enacted, and about the procedures for testifying. However, providing advice does not authorize recipient staff to prepare testimony for their clients or to conduct formal training sessions for clients on how to participate in lobbying or rulemaking.

Sixth, recipients and their employees may participate in activity related to the judiciary, such as the promulgation of court rules, rules of professional responsibility or disciplinary rules or participating on committees appointed

by the courts to advise the courts about judicial matters. However, a recipient cannot become involved in any attempt to influence a legislative body confirming judicial nominations.

Section 1612.6 Permissible Activities Using Non-LSC Funds

This section sets out activities authorized by §§ 504 (b) and (e) of the Corporation's FY 1996 appropriation's act with non-LSC funds. Paragraphs (a) through (e) set out the parameters of § 504(e) and set out the records required to be maintained by recipients responding to requests from appropriate officials. Paragraph (a) provides that employees of recipients may use non-LSC funds from sources other than the Corporation to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient. Under no circumstances may recipients engage in any grassroots lobbying when responding to a request for information or testimony.

Paragraph (b) provides that responses to requests may be distributed only to parties that make the request or to other persons or entities to the extent that such distribution is required to comply fully with the request. For example, agencies may require that those requested to appear before an agency proceeding comply with agency or legislative rules regarding how written testimony is to be given to a legislative committee.

Paragraph (c) includes the statutory restriction that no employee of the recipient shall solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

In order to ensure compliance with § 504(e), paragraph (d) requires that recipients maintain copies of all written requests received by the recipient and any written responses provided and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

Paragraph (e) provides that recipients may provide oral or written comment to an agency and its staff in a public rulemaking proceeding when using non-LSC funds. This provision is included in § 504(e). Recipients may prepare written comments in response to a Notice of Proposed Rulemaking in the **Federal Register**, in response to a similar notice in a state or local publication, or in response to any notice to the general public regarding a rulemaking proceeding that is public under State or local law. Commenting in public rulemaking, however, does not permit a recipient to engage in grassroots efforts to encourage comment by other recipients or other persons.

Paragraph (f) sets out the provision of § 504(b), 110 Stat. 1321, on contacts with State and local government agencies to seek funds for program activities when using non-LSC funds. Recipients may contact, communicate with, or respond to a request from a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient. It should be noted that writing grant proposals in response to a request for proposals is not covered by this section and is not prohibited by this part. Both LSC and non-LSC funds may be used for this activity.

Section 1612.7 Public Demonstrations and Activities

This section prohibits participation in public demonstrations and related activities. Paragraph (a) prohibits any recipient employee from participating in public demonstrations, picketing, boycotts, or strikes (except as permitted by law in connection with the employee's own employment situation) or encouraging, directing, or coercing others to engage in such activities during working hours, or while providing legal assistance or representation that is funded with LSC or private funds. This section is similar to previous regulations, but the text was rewritten to set out the prohibition more clearly.

Paragraph (b) sets out prohibitions on employee activities at any time, whether during working hours or not. These prohibitions apply to any recipient employee and apply regardless of what source of funds is used for the employee's compensation. Thus, employees of a recipient may not engage in or encourage others to engage in (1) any rioting or civil disturbance; (2) any activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or (3) any other illegal activity that is inconsistent with an employee's responsibilities under the LSC Act, appropriation law, Corporation regulation, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

Minor changes in the regulatory provisions were made from the previous rule. First, the prohibition on identification of the Corporation or any recipient with any political activity was removed from part 1612 because an identical prohibition is included in 45 CFR § 1608.4(b). In addition, the regulatory language used in § 1612.7(b)(2) now explicitly provides that it is a court, and not LSC, that should determine whether there has been a violation of an outstanding injunction. Finally, the regulation clarifies in § 1612.7(b)(3) that the prohibition against the participation by employees in other illegal activity refers to activity that violates the LSC Act or other appropriate law or the rules of professional responsibility in the jurisdiction where the recipient is located or the employee practices law. By clarifying what activity is proscribed, § 1612.7(b)(3) gives realistic guidance to recipients about what illegal activity would result in a violation of the LSC Act and what employee activity recipients would have to police.

Consistent with the longstanding regulatory provisions, paragraph (c) provides that the restrictions on public demonstrations, strikes and boycotts do not prohibit an attorney working for or paid by a recipient from (1) informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or (2) taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

Section 1612.8 Training

This section implements the prohibitions on public policy advocacy training in § 504(a)(12) of 110 Stat. 1321. Paragraph (a) sets out the prohibition on advocacy training.

Paragraph (b) tracks other provisions of § 504(a)(12) and provides that attorneys or paralegals may be trained to prepare them to (1) provide adequate legal assistance to eligible clients and (2) inform any eligible client of the client's rights under any statute, order or regulation already enacted, or about the meaning or significance of particular bills. In previous regulations on training, there was an explicit statement that it was permissible to train attorneys and paralegals to understand what activities are permitted or prohibited under relevant laws and regulations. This language was removed as unnecessary, since recipient staff must be trained on what they can and cannot do under LSC regulations and applicable law.

Paragraph (c) includes a final restriction to address a problem that may arise in training events sponsored or conducted by recipients or their employees. It provides that recipients or

their employees may not conduct or participate in training programs that are designed to train participants in activities prohibited by the Act, other applicable Federal law, or Corporation regulations, guidelines or instructions.

Section 1612.9 Organizing

This section implements § 1007(b)(7), 42 U.S.C. 2996f(b)(7), of the LSC Act which prohibits organizing activities. It is essentially the same as in the prior rule but has been restructured for easier reading. Paragraph (a) provides that no funds made available by the Corporation or by private entities may be used to initiate the formation or to act as an organizer of any association, federation, labor union, coalition, network, alliance, or any similar entity. Paragraph (b) includes the two existing exceptions that were included in prior regulations. It first provides that the prohibition on organizing does not apply to informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed. Thus, recipients can establish or participate in task forces and other meetings of advocates to share information and develop more effective approaches to representation in particular subject areas. Paragraph (b) also provides that the prohibition does not apply to organizations composed exclusively of eligible clients formed for the purpose of advising a legal services programs about the delivery of legal services. Finally, paragraph (c) provides that the organizing prohibition does not prevent recipients and their employees from providing legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

Section 1612.10 Recordkeeping and Accounting for Activities Funded With Non-LSC Funds

This section implements § 504(a)(6) of 110 Stat. 1321. Thus, under paragraph (a) no LSC funds may be used to pay for administrative overhead or related costs associated with any activity permitted to be undertaken with non-LSC funds by § 1612.6.

Paragraph (b) continues existing practice that requires recipients to maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

Paragraph (c) provides that recipients shall submit semi-annual reports describing their non-LSC funded legislative and rulemaking activities conducted pursuant to these regulations under § 1612.6, together with such supporting documentation as specified by the Corporation. The only change from existing policy is that the period for reporting such activities has been changed from quarterly to semi-annually in order to reduce the administrative burdens on recipients.

Section 1612.11 Recipient Policies and Procedures

A new section was added to require that recipients adopt written policies and procedures to guide the recipient's staff in compliance with the requirements of this part.

Additional Changes

The prior rule, which is superseded by this interim regulation, included § 1612.12, which set out enforcement procedures for Part 1612. Section 1612.12 was deleted because the Corporation will be developing a comprehensive enforcement regulation that will address enforcement of all regulations and restrictions. Section 1612.13, permitting the use of private funds for certain lobbying activities, was also deleted, because, under 110 Stat. 1321, all funds of a recipient are restricted and the statutory exceptions to the prohibitions in § 1612.6 make no distinction between private funds and non-LSC public funds.

List of Subjects in 45 CFR Part 1612

Civil disorders, Grant program—Law, Legal services, Lobbying.

For the reasons set forth in the preamble, LSC revises 45 CFR Part 1612 to read as follows:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.

1612.1 Purpose.
1612.2 Definitions.
1612.3 Prohibited legislative and administrative activities.
1612.4 Grassroots lobbying.
1612.5 Permissible activities using any funds.
1612.6 Permissible activities using non-LSC funds.
1612.7 Public demonstrations and activities.
1612.8 Training.
1612.9 Organizing.
1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.
1612.11 Recipient policies and procedures.

Authority: Sections 504(a) (2), (3), (4), (5), (6), and (12), 504 (b) and (e), Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996e(b)(5); 2996f(a) (5) and (6); 2996f(b) (4), (6) and (7), and 2996g(e).

§ 1612.1 Purpose.

The purpose of this rule is to ensure that LSC recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities. The rule also provides guidance on when recipients may participate in State or local fund raising or in public rulemaking, and when they may respond to requests of legislative and administrative officials using non-LSC funds.

§ 1612.2 Definitions.

(a)(1) Grassroots lobbying means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion to the public to contact public officials in support of or in opposition to pending or proposed legislation, regulations, executive decisions, or any decision by the electorate on a measure submitted to it for a vote. It also includes the provision of financial contributions by recipients to or participation by recipients in any demonstration, march, rally, fund raising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation, regulations, decisions by administrative bodies, or any decision by the electorate on a measure submitted to it for a vote.

(2) Grassroots lobbying does not include communications which are limited solely to reporting the content or status of pending or proposed legislation or regulations or the effect which such legislation or regulations may have on eligible clients or on their legal representation.

(b) Legislation means any action or proposal for action by Congress or by a State or local legislative body which is intended to prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, and approval or disapproval of actions of the executive. It does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws; nor does it include legislation adopted by an Indian Tribal Council.

(c) Public policy means an overall plan embracing the general goals and procedures of any governmental body

and pending or proposed statutes, rules, and regulations.

(d)(1) Rulemaking means any agency process for formulating, amending, or repealing rules, regulations or guidelines of general applicability and future effect issued by the agency pursuant to Federal, State or local rulemaking procedures, including:

(i) The customary procedures that are used by an agency to formulate and adopt proposals for the issuance, amendment or revocation of regulations or other statements of general applicability and future effect, such as "notice and comment" rulemaking procedures under the Federal Administrative Procedure Act or similar procedures used by State or local government agencies and negotiated rulemaking; and

(ii) adjudicatory proceedings that are formal adversarial proceedings to formulate or modify an agency policy of general applicability and future effect.

(2) Rulemaking does not include:

(i) administrative proceedings that produce determinations that are of particular, rather than general, applicability and affect only the private rights, benefits or interests of individuals, such as social security hearings, welfare fair hearings or granting or withholding of licenses;

(ii) communication with agency personnel for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, guidelines, policies or practices.

(e) Public rulemaking means any rulemaking proceeding or portion of such proceeding or procedure that is open to the public through notices of proposed rulemaking published in the **Federal Register** or similar State or local journals, announcements of public hearings on proposed rules or notices of proposed rulemaking including those that are routinely sent to interested members of the public, or other similar notifications to members of the public;

(f) The term similar procedure refers to a legislative process by which matters must be determined by a vote of the electorate.

§ 1612.3 Prohibited legislative and administrative activities.

(a) Except as provided in §§ 1612.5 and 1612.6, recipients shall not attempt to influence—

(1) The passage or defeat of any legislation or constitutional amendment;

(2) Any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity;

(3) Any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or,

(4) The conduct of oversight proceedings concerning the recipient or the Corporation.

(b) Except as provided in §§ 1612.5 and 1612.6, recipients shall not participate in or attempt to influence any rulemaking, or attempt to influence the issuance, amendment or revocation of any executive order.

(c) Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in paragraphs (a) and (b) in this section.

§ 1612.4 Grassroots lobbying.

A recipient shall not engage in any grassroots lobbying activity.

§ 1612.5 Permissible activities using any funds.

(a) A recipient may provide administrative representation for an eligible client in a proceeding that adjudicates the particular rights or interests of such eligible client or in negotiations directly involving that client's legal rights or responsibilities including pre-litigation negotiation and negotiation in the course of litigation.

(b) A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or Corporation regulations.

(c) Nothing in this Part is intended to prohibit a recipient from—

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing clients, other recipients, or attorneys representing eligible clients, about new or proposed statutes, executive orders, or administrative regulations;

(3) Communicating directly or indirectly with the Corporation for any purpose including commenting upon existing or proposed Corporation rules, regulations, guidelines, instructions and policies;

(4) Participating in meetings or serving on committees of bar associations, provided that no recipient resources are used to support prohibited legislative or rulemaking activities and the recipient is not identified with activities of bar associations that include such prohibited activities;

(5) Advising a client of the client's right to communicate directly with an elected official; or

(6) Participating in activity related to the judiciary, including the promulgation of court rules, rules of professional responsibility and disciplinary rules.

§ 1612.6 Permissible activities using non-LSC funds.

(a) If the conditions of paragraphs (b) and (c) of this section are met, recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to—

(1) Testify orally or in writing;

(2) Provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation;

(3) Testify before or make information available to commissions, committees or advisory bodies; or

(4) Participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561 *et seq.*, or comparable State or local laws.

(b) Communications made in response to requests under paragraph (a) may be distributed only to the party or parties that make the request or to other persons or entities only to the extent that such distribution is required to comply with the request.

(c) No employee of the recipient shall solicit or arrange a request from any official to testify or otherwise provide information in connection with legislation or rulemaking.

(d) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request.

(e) Recipients may provide oral or written comment to an agency and its staff in a public rulemaking proceeding using non-LSC funds.

(f) Recipients may use non-LSC funds to contact or communicate with, or respond to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient.

§ 1612.7 Public demonstrations and activities.

(a) During working hours, while providing legal assistance or

representation to the recipient's clients or while using resources provided by the Corporation or by private entities, no employee of a recipient shall—

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities.

(b) No employee of a recipient shall at any time engage in or encourage others to engage in any:

(1) Rioting or civil disturbance;

(2) Activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or

(3) Other illegal activity that is inconsistent with an employee's responsibilities under applicable law, Corporation regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law.

(c) Nothing in this section shall prohibit an attorney from—

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of a client as may be required by professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.8 Training.

(a) A recipient may not support or conduct training programs that—

(1) Advocate particular public policies; or

(2) Encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; or

(3) Disseminate information about such policies or activities.

(b) Nothing in this section shall be construed to prohibit training of any attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them—

(1) To provide adequate legal assistance to eligible clients; or

(2) To provide advice to any eligible client as to the legal rights of the client.

(c) No funds of a recipient shall be used to train participants to engage in activities prohibited by the Act, other applicable Federal law, or Corporation regulations, guidelines or instructions.

§ 1612.9 Organizing.

(a) No funds made available by the Corporation or by private entities may be used to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity.

(b) This section shall not be construed to apply to:

(1) Informational meetings attended by persons engaged in the delivery of legal services at which information about new developments in law and pending cases or matters are discussed; or

(2) Organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services.

(c) Recipients and their employees may provide legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and bylaws.

§ 1612.10 Recordkeeping and accounting for activities funded with non-LSC funds.

(a) No funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in § 1612.6.

(b) Recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.

(c) Recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to § 1612.6 of these regulations, together with such supporting documentation as specified by the Corporation.

§ 1612.11 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations and Regulations.

[FR Doc. 96–21670 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

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45 CFR Part 1620

Priorities in Use of Resources

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule completely revises the current Legal Services Corporation's ("Corporation" or "LSC") regulation concerning priorities. The revisions are intended to implement a restriction contained in the Corporation's FY 1996 appropriations act, which prohibits LSC recipients from expending resources on activities that are outside their specific priorities. Although this rule is effective upon publication, the Corporation solicits public comment in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 504(a)(9), a restriction in the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which prohibits LSC recipients from expending resources on activities that are outside their specific priorities. The Committee held hearings on staff proposals on July 8 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the interim rule for review and consideration by the Committee. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

Generally, this rule is revised to prohibit any recipient from expending time or resources on cases or matters that are not within its written priorities. The current regulation, which has not

been revised since 1985, dealt generally with the process for establishing priorities for the use of resources. This new rule explains the obligation of the recipients to set specific written priorities and to assure that their staff will, except for limited emergency situations, engage in work within the priorities.

A section-by-section discussion of this interim rule is provided below.

Section 1620.1 Purpose

This rule is intended to clarify a recipient board's obligation to set written priorities that will delineate the parameters of the work in which the recipient's staff may engage. It is also intended to permit recipients to take emergency cases outside of its priorities within the limits set out in this rule.

Section 1620.2 Definitions

The definitions of "cases" and "matters" are appropriately the same as those contained in the timekeeping regulation in 45 C.F.R. Part 1635 because the two rules complement each other. Adopting priorities and using its resources only for those cases and matters that come within its priorities require a recipient to be accountable for and to use its resources wisely and effectively. The timekeeping rule, which requires recipients to keep track of time spent on cases and matters, is also intended to ensure recipient accountability for the use of funds. See 61 FR 14262 (April 1, 1996).

Section 1620.3 Establishing Priorities

Paragraph (a) requires recipients to adopt procedures for establishing priorities and to adopt priorities for the use of all of its resources. It also requires recipients to undertake only those cases and matters that are within its priorities.

Paragraph (b) is based on the current rule and specifies that a recipient's procedures include an appraisal of the needs of the client comunity in the services area by consultation with the client community, the recipient's governing body members and employees, the private bar, and other interested persons in order to assess the needs of the eligible clients in the recipient's service area. This rule continues the use of the term "appraisal." However, since adoption of this interim rule by the Board, it has been suggested that "evaluation" may be a better word to use because "to evaluate" is to determine value by careful appraisal or study and it is an evaluation made pursuant to a study of the relevant factors that should determine a recipient's priorities. Because the Board would need to act on a change of words in this instance, the rule remains as adopted by the Board. However, comments are requested as to whether "evaluation" would be a better term.

Paragraph (c) is largely taken from the current rule and sets out the factors a recipient should consider when setting priorities. New factors include consideration of the suggested priorities that were promulgated by the Corporation on May 29, 1996, 61 FR 26934, as well as consideration of whether there is a need to vary priorities for unique parts of the service area. A recipient may serve a diverse community each part of which has distinctive characteristics. The uniqueness may arise because of geographic differences, such as rural or urban areas or because of the characteristics of the clients, such as a concentration of the elderly or immigrants. Program-wide priorities may not be suitable for all recipients, and it may be necessary to set different priorities for a particular segment of the service area.

The Corporation expects recipients to have interim priorities which comply with the requirements of this rule in place 30 days from the interim rule's effective date (publication date). In order to meet this deadline, recipients will not be expected to conduct a new appraisal of needs as set forth in part 1620.3(b).

Section 1620.4 Establishing a Procedure for Emergencies

This section requires a recipient's governing body to develop procedures that the staff must follow when determining whether a particular circumstance is an emergency that falls outside of the recipient's priorities. Since the recipient is prohibited from expending its resources and time on any activities outside its priorities other than emergencies, each recipient must clearly define those emergencies to give its staff clear guidance regarding their identification and acceptance.

Emergency situations would include circumstances where action must be taken in a short period of time. They would also encompass unusual and infrequent circumstances where no action needs to be initiated quickly but would cause inordinate harm to the client or client's family members if not addressed. Emergency situations also may include unusual circumstances such as a natural disaster or an unanticipated change in the law, where issues which severely affect a large segment of the client community were not anticipated at the time priorities were set. Because engaging in a comprehensive priority-setting process can be time consuming and expensive, recipients need to have the flexibility to deal with significant changes in the law on an emergency basis. The recipient's board should, however, at the earliest opportunity, determine whether it is appropriate to revise priorities to reflect those changes.

Paragraph (b) requires a recipient's executive director to decide when an emergency occurs and to authorize taking the case. Paragraph (b) also suggests factors that a recipient may consider in determining what constitutes an emergency. The suggested factors address only some of the possibilities that may be considered for situations where immediate action is needed. Local conditions may require consideration of other factors as well.

Section 1620.5 Annual Review

This section states the obligation of the recipient's governing body to review its priorities annually, or more frequently when a significant number of cases falling under a category or type of case have been accepted under the recipient's emergency procedures. The type of situation where this is most likely to happen is when there is a change in law that adversely affects a large number of eligible clients. For the program to continue to accept such emergency cases, the governing body should affirmatively include a priority that would encompass those cases. This section also sets out factors that should be considered by the governing body in determining whether to change the recipient's priorities.

Section 1620.6 Signed Written Agreement

This section implements § 504(a)(9) of the Corporation's appropriation's act. It clarifies that no recipient staff who work on cases or matters may engage in work outside the recipient's adopted priorities. Each such staff person must sign a written agreement not to undertake non-priority cases or matters except for those that are emergencies. Clerical staff need not sign such an agreement. A staff member who is part of the intake system, however, who helps determine whether the recipient will take or refer a case, must sign the agreement.

Section 1620.7 Reporting

Paragraph (a) reflects the requirement in § 504(9)(B) of the Corporation's FY 1996 appropriations act that a recipient must report on a quarterly basis to its governing body about the emergency work performed outside of the recipient's priorities.

Paragraph (b) reflects the requirement in § 504(9)(B) that a recipient report annually to the Corporation, on a form the Corporation provides, the non-priority emergency work in which it has engaged.

Paragraph (c) contains language from the current rule instructing the recipient to report annually to the Corporation on its priorities.

List of Subjects in 45 CFR Part 1620

Legal services.

For reasons set forth in the preamble, 45 CFR Part 1620 is revised to read as follows:

PART 1620—PRIORITIES IN USE OF RESOURCES

Sec.
1620.1 Purpose.
1620.2 Definitions.
1620.3 Establishing priorities.
1620.4 Establishing a procedure for emergencies.
1620.5 Annual review.
1620.6 Signed written agreement.
1620.7 Reporting.

Authority: Pub. L. 104–134, 110 Stat. 1321, 42 U.S.C. 2996f(a)(2).

§ 1620.1 Purpose.

This part is designed to provide guidance to recipients for setting priorities and to ensure that a recipient's governing body adopts written priorities for the types of cases and matters, including emergencies, to which the staff will limit its commitment of time and resources.

§ 1620.2 Definitions.

(a) A case is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual Private Attorney Involvement (PAI) cases.

(b) A matter is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

§ 1620.3 Establishing priorities.

(a) The governing body of a recipient must adopt procedures for establishing priorities for the use of all of its Corporation and non-Corporation resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which are to be undertaken by the recipient.

(b) The procedures adopted must include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal must also include and be based on information from the recipient's employees, governing body members, the private bar, and other interested persons. The appraisal should address the need for outreach, training of the recipient's employees, and support services.

(c) The following factors should be among those considered by the recipient in establishing priorities:

(1) Suggested priorities promulgated by the Legal Services Corporation;

(2) The appraisal described in paragraph (b) of this section;

(3) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(4) The resources of the recipient;

(5) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(6) The availability of other sources of training, support, and outreach services;

(7) The relative importance of particular legal problems of the individual clients of the recipient;

(8) The susceptibility of particular problems to solution through legal processes;

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served;

(10) Whether legal efforts will result in efficient and economic delivery of legal services; and

(11) Whether there is a need to establish different priorities in different parts of the recipient's service area.

§ 1620.4 Establishing a procedure for emergencies.

(a) The governing body of a recipient must adopt procedures for undertaking emergency cases or matters that are not within the recipient's established priorities. An emergency may include a case or matter requiring immediate legal action, circumstances involving the necessities of life, a significant risk to the health or safety of the client or immediate family members, or issues that arise because of new and unforeseen circumstances, such as natural disasters or unanticipated changes in the law.

(b) Pursuant to procedures adopted by the governing body, the recipient's Executive Director or designee shall determine whether a particular case or matter not within the recipient's established priorities constitutes an emergency that may be undertaken by the recipient. The following factors may be among those considered by the Executive Director or designee:

(1) The time period in which action must be taken to protect the client's interest;

(2) The severity of the consequences to the client if no action is taken;

(3) The likelihood of success if urgent legal action is taken;

(4) The capacity of another source of free or low-cost legal assistance to undertake the particular case;

(5) The effect the problem presented by the emergency case or matter will have on the client community; and

(6) The consequences of diverting resources from existing priority cases or matters.

§ 1620.5 Annual review.

(a) Priorities shall be set periodically and shall be reviewed by the governing body of the recipient annually or more frequently if the recipient has accepted a significant number of emergency cases.

(b) The following factors should be among those considered in determining whether the recipient's priorities should be changed:

(1) The extent to which the objectives of the recipient's priorities have been accomplished;

(2) Changes in the resources of the recipient;

(3) Changes in the size, distribution, or needs of the eligible client population; and

(4) The volume of emergency cases or matters in a particular legal area since priorities were last reviewed.

§ 1620.6 Signed written agreement.

All staff who handle cases or matters, or are authorized to make decisions

about case acceptance, must sign a simple agreement developed by the recipient which indicates that the signatory:

(a) Has read and is familiar with the priorities of the recipient;

(b) Has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and

(c) Will not undertake any case or matter for the recipient that is not a priority or an emergency.

§ 1620.7 Reporting.

(a) The recipient shall report to the recipient's governing body on a quarterly basis information on all emergency cases or matters undertaken that were not within the recipient's priorities, and shall include a rationale for undertaking each such case or matter.

(b) The recipient shall report annually to the Corporation, on a form provided by the Corporation, information on all emergency cases or matters undertaken that were not within the recipient's priorities.

(c) The recipient shall submit to the Corporation and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations and Regulations.

[FR Doc. 96–21667 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

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45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule completely revises the Legal Services Corporation's ("LSC" or "Corporation") regulation on the provision of legal assistance to aliens. The revisions are intended to implement a new restriction contained in the Corporation's FY 1996 appropriations act prohibiting LSC-funded recipients from providing legal assistance to ineligible aliens, regardless of the source of funds used to finance the legal assistance. Although this rule is effective upon publication, the Corporation solicits public comment on the interim rule in anticipation of adoption of a final rule at a later date.

DATES: The interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, at (202) 336–8910.

SUPPLEMENTARY INFORMATION: Section 504(a)(11) of the Legal Services Corporation's ("LSC" or "Corporation") appropriations act for Fiscal Year 1996, Pub. L. 104–134, 110 Stat. 1321 (1996), prohibits the Corporation from providing funds to any person or entity ("recipient") that provides legal assistance to ineligible aliens. The current rule, which expressly allows recipients to use their non-LSC funds to provide legal assistance to ineligible aliens, is inconsistent with § 504(a)(11), which effectively restricts a recipient's non-LSC funds to the same degree it restricts LSC funds.

On May 19, 1996, the Operations and Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement the new restriction. The Committee held public hearings on staff proposals on July 9 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation solicits public comment on the interim rule for review and consideration by the Corporation. After receipt of written public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued that will supersede this interim rule.

This rule completely revises the prior rule. In general, the revisions implement section 504(a)(11) of the Corporation's FY 1996 appropriations act, which prohibits LSC-funded recipients from providing legal assistance to ineligible aliens.

A section-by-section discussion of this interim rule is provided below.

Section 1626.1 Purpose

This section is revised to ensure that recipients refrain from providing legal assistance to ineligible aliens. In addition, language has been deleted from the prior rule that limited the requirements of the rule to LSC funds. It continues to be a purpose of this rule to assist recipients in determining the eligibility of persons seeking legal assistance. This rule deletes reference to the confidentiality of client records. Confidentiality issues will be dealt with separately when the Corporation issues regulations generally dealing with access to client records.

Section 1626.2 Definitions

The definitions of "eligible alien" and "ineligible alien" have been changed but the changes do not alter the substantive meaning of the terms. They are intended to simplify the definitions and to delete references to outdated statutory authority.

Section 1626.3 Prohibition

This section sets out the rule's general prohibition against the provision of legal assistance to ineligible aliens. All references that limit the prohibition to LSC funds have been deleted. In addition, since the prior rule's language was confusing, the prohibition has been restated more directly and simply. Aside from expanding the prohibition to non-LSC funds, there is no substantive change of meaning intended. Accordingly, the definition of "prohibited legal assistance 'for' an ineligible alien" has been deleted, because it simply means legal assistance to an ineligible alien and that is now clear in the prohibition.

The definition of "prohibited legal assistance 'on behalf of' an ineligible alien" has not been deleted or revised. This definition clarifies that recipients may not become involved in the provision of legal services that would benefit an ineligible alien by naming as the client an eligible alien whose distinct legal rights or interest are not affected by the representation.

Finally, the title of the section has been shortened.

Section 1626.4 Alien Status and Eligibility

This section sets out the categories of aliens eligible for legal services. The paragraphs have been redesignated, and a new paragraph (e) has been added to cross-reference other sections of the rule which designate other categories or types of aliens eligible for legal assistance.

Section 1626.5 Verification of Citizenship and Eligible Alien Status

No revisions have been made to this section. However, if necessary, the Corporation will update this section to reflect the current documents used by the INS to verify categories of aliens. The Corporation requests comments on whether the types of documents listed in this section need revision or updating and whether there are other documents that should be included in the rule.

Section 1626.6 Change in Circumstances

The prior § 1626.6 has been deleted because it allowed the use of non-LSC funds for pending cases involving representation of ineligible aliens. Recipients may no longer use non-LSC funds for ineligible aliens, and the underlying statutory prohibition provides no basis for a waiver of the prohibition. The new § 1626.6 is a revised version of the prior § 1626.7. This new section reflects the new statutory restriction that recipients may not provide legal assistance to ineligible aliens with non-LSC funds. It provides that, if a recipient learns that an eligible alien client becomes ineligible through a change in circumstances, the recipient must discontinue representation of the client consistent with the attorney's professional responsibilities.

Section 1626.7 Special Eligibility Questions

This section was § 1626.10 in the prior rule. Only technical changes have been made to this section.

Section 1626.8 H–2 Agricultural Workers

This section was numbered § 1626.11 in the prior rule. Only technical changes have been made to this section.

Section 1626.9 Replenishment Agricultural Workers

This section was numbered § 1626.12 in the prior rule. It is redesignated as § 1626.9.

Section 1626.10 Recipient Policies, Procedures and Recordkeeping

This new section requires that recipient governing bodies establish written policies and procedures that will guide recipient staff to ensure compliance with this rule. It also requires the recipient to maintain records sufficient to document compliance with this part.

List of Subjects in 45 CFR Part 1626

Aliens, Grant programs—law, Legal services, Migrant labor, Reporting and record keeping requirements.

For reasons set forth in the preamble, 45 CFR part 1626 is revised to read as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.

1626.1 Purpose.
1626.2 Definitions.
1626.3 Prohibition.
1626.4 Alien status and eligibility.
1626.5 Verification of citizenship and eligible alien status.
1626.6 Change in circumstances.
1626.7 Special eligibility questions.
1626.8 H–2 agricultural workers.
1626.9 Replenishment agricultural workers.
1626.10 Recipient policies, procedures and recordkeeping.

Authority: Pub. L. 104–134, 110 Stat. 1321.

§ 1626.1 Purpose.

This part prohibits recipients from providing legal assistance for or on behalf of ineligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance and to provide guidelines for referral of ineligible persons.

§ 1626.2 Definitions.

(a) Eligible alien means a person who is not a U.S. citizen but who meets the requirements of § 1626.4.

(b) Ineligible alien means a person who is not a U.S. citizen and who does not meet the requirements of § 1626.4.

(c) Rejected refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

(d) To provide legal assistance on behalf of an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

§ 1626.3 Prohibition.

Recipients may not provide legal services for or on behalf of an ineligible alien beyond normal intake and referral services.

§ 1626.4 Alien status and eligibility.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157 relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), or who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(d) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); or

(e) An alien who meets the requirements of § 1626.7, 1626.8 or 1626.9.

§ 1626.5 Verification of citizenship and eligible alien status.

(a) A citizen seeking representation shall attest in writing in a form approved by the Corporation to the fact of his or her United States citizenship. Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen.

(1) If verification is required, a recipient shall accept the original or a certified copy of any of the following documents as evidence of citizenship:

(i) United States passport;

(ii) Birth certificate;

(iii) Naturalization certificate;

(iv) United States Citizenship Identification Card (INS Form I–197); and

(v) Baptismal certificate showing place of birth within the United States

and date of baptism within two months after birth.

(2) If a person is unable to produce any of the documents in paragraph (a)(1) of this section, he or she may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

(b) An alien seeking representation shall submit appropriate documents to verify eligibility. A recipient shall accept originals of any of the following documents as proof of eligibility:

(1) An alien in the category specified in § 1626.4(a) shall present an Alien Registration Receipt Card (INS Forms 1–151, or 1–551), a Temporary Evidence of Lawful Admission for Permanent Residence form (INS Form 1–181B), or a valid passport and immigration visa.

(2) An alien in the category specified in § 1626.4(b) shall present the following documents:

(i) The fee receipt issued to the alien by the Immigration and Naturalization Service (INS) at the time that the Application for Status as Permanent Resident (INS Form 1–485) was filed; a copy of the Application for Status as Permanent Resident accompanied by a notarized statement signed by the alien that such form was filed with INS; a copy of the Application for Immigrant Visa & Alien Registration (Department of State Form FS–510) accompanied by a notarized statement signed by the alien that such form was filed with a consulate office; or a copy of the Application for Suspension of Deportation (INS Form 1–256A) accompanied by a notarized statement signed by the alien that such form was filed with INS; and

(ii) A copy of the alien's marriage certificate accompanied by proof of the spouse's U.S. citizenship; a copy of the United States birth certificate, baptismal certificate, adoption decree or other documents demonstrating that the alien is the parent of a United States citizen under the age of 21; a copy of the alien's birth certificate, baptismal certificate, adoption decree, or other documents demonstrating that the alien is a child under the age of 21, accompanied by proof that the alien's parent is a United States citizen; or in lieu of the above, a copy of the Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (INS Form 1–130) containing information that demonstrates that the alien is related to such a United States citizen spouse, parent, or child, accompanied by a notarized statement that such form was filed with INS.

(3) An alien in the category specified in § 1626.4(c) shall present an Arrival-Departure Record (INS Form 1–94) marked "section 207" or "Refugee" (if claiming refugee status), "section 208" or "Asylum" (if claiming asylum status), or "section 203(a)(7)" or "conditional entry" (if claiming conditional entrant status).

(4) An alien in the category specified in § 1626.4(d) shall present an Arrival-Departure Record (INS Form 1–94) marked "section 243(h)," or a court order or letter signed by an immigration judge stating that the Attorney General is withholding deportation of the alien.

(5) A recipient may also accept any other authoritative document issued by INS that provides evidence of alien status for the categories of aliens listed in paragraph (b) of this section.

(c) A Temporary Resident Card (INS Form 1–688) shall be considered evidence of eligible alien status in the case of a Special Agricultural Worker. *See* § 1626.7(b). This form shall not be considered evidence of eligible alien status in the case of an alien who has obtained an adjustment in status under the General Amnesty provisions of Immigration Reform and Control Act (IRCA), 8 U.S.C. 1255a, unless the alien can qualify independently under another exception to the general restriction as stated in § 1624.4(a), (b), (c) or (d).

(d) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents described in this section. Persons applying for legal assistance are responsible for producing the appropriate documents to verify eligibility.

(e) In an emergency, legal services may be provided prior to compliance with all the requirements of § 1626.5(a) through (d) if:

(1) It is not feasible for a citizen or an alien to come to the recipient's office or otherwise physically transmit documentation to the recipient before commencement of representation, such required information as can be obtained orally shall be recorded by the recipient and written documentation shall be submitted as soon as possible;

(2) An alien is physically present, but cannot produce required documentation, he or she shall make a written statement identifying the category listed in § 1626.4 under which he or she claims eligibility and the documents that will be produced to verify that status; this documentation shall be submitted as soon as possible;

(3) The recipient adheres strictly to the same criteria for emergency assistance used in their general determination of priorities and uses the procedures of § 1626.5(e) only in cases meeting these criteria; and

(4) The recipient informs clients accepted under these procedures that only limited emergency legal assistance may be provided them without satisfactory documentation and that failure or inability to produce satisfactory documentation will compel the recipient to discontinue representation consistent with the recipient's professional responsibilities as soon as the emergency no longer exists.

(f) No written verification is required when the only service provided for an eligible alien or citizen is brief advice and consultation by telephone. The term "brief advice" is limited to advice provided by telephone and does not include a continuous representation of a client.

§ 1626.6 Change in circumstances.

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, a recipient must discontinue representation of the client consistent with the applicable rules of professional responsibility.

§ 1626.7 Special eligibility questions.

(a) The alien restriction in § 1626.3 is not applicable to the following:

(1) Citizens of the following Pacific Island entities:

(i) Commonwealth of the Northern Marinas;

(ii) Republic of Palau;

(iii) Federated States of Micronesia;

(iv) Republic of the Marshall Islands;

(2) All Canadian-born American Indians at least 50% Indian by blood;

(3) Members of the Texas Band of Kickapoo.

(b) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of IRCA is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of Pub. L. 99–603, 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, as long as such application has not been rejected and the applicant is eligible for services under § 1626.4(b).

§ 1626.8 H–2 Agricultural workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii), commonly called H–2 workers, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and thus, if otherwise eligible, may be provided legal assistance regarding the matters specified in section 305 of the Immigration Reform and Control Act of 1986, Pub. L. 99–603, Stat. 3434, 8 U.S.C. 1101 note.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

(1) Wages;

(2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

§ 1626.9 Replenishment agricultural workers.

Aliens who acquire the status of aliens lawfully admitted for temporary residence as replenishment agricultural workers under section 210A(c) of the Immigration and Nationality Act, such status not having changed, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and thus may receive legal assistance, if otherwise eligible.

§ 1626.10 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21668 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

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45 CFR Part 1627

Subgrants and Dues

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the fees and dues provisions of the Legal Services Corporation's ("Corporation" or "LSC") regulation concerning subgrants, fees and dues. The revisions are intended to implement a restriction contained in the Corporation's FY 1996 appropriations act which prohibits the use of LSC funds to pay membership dues to any private or nonprofit organization. Although this rule is effective upon publication, the Corporation also solicits public comment in anticipation of adoption of a final rule at a later time. The provisions of the rule regarding subgrants have not been revised.

DATES: This interim rule is effective August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 505, a restriction in the Corporation's FY1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which prohibits use of LSC funds to pay dues to any private or nonprofit organization. The Committee held public hearings on July 9 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the interim rule for review and consideration by the Committee. After receipt of public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued that will supersede this interim rule.

This interim rule revises only provisions relating to "fees and dues": §§ 1627.2, 1627.4, 1627.7, and 1627.8. In § 1627.2, the definition of "fees and dues" has been replaced by a definition of "dues." Section 1627.4 has been completely revised. Section 1627.7 has been deleted, because it duplicates 45 CFR § 1612.9. Section 1627.8 of the prior rule has been renumbered as § 1627.7, and a new § 1627.8 is added regarding policies, procedures and recordkeeping. Also, the title of this rule has been revised to "Subgrants and dues."

Generally, the revisions prohibit any use of LSC funds to pay membership dues to any private or nonprofit organization. The prior provisions allowed recipients to pay such dues, subject to certain limitations as to type of organization and amount of dues. Payment of dues with non-LSC funds continues to be permitted.

Finally, §§ 1627.1, 1627.3, 1627.5 and 1627.6 are not revised or reprinted here, because they deal exclusively with subgrants.

A section-by-section discussion of this interim rule is provided below.

Section 1627.2 Definitions

The definition of "Fees and dues" in § 1627.2(c) is revised and retitled "Dues." Only "dues" is defined. "Fees" is not separately defined, because the statutory provision in § 505 of the Corporation's appropriations act refers only to "dues" and there is no statutory restriction on "fees." Moreover, even though the prior rule defined "fees and dues" together, the definition only related to "dues." Consequently, although the definition in the revised rule is basically the same as in the prior rule, it omits the term "fees."

Dues are defined as payments for membership or to acquire voting or participatory rights in an organization. This definition does not include payments for training sessions, goods, research materials and other such services. LSC funds may be expended for such services, provided the expenditures are made in accordance with applicable regulations, including 45 CFR part 1630.

Section 1627.4 Dues

This section is entirely revised to prohibit any use of LSC funds for payment of dues to private or nonprofit organizations. This prohibition includes payment of dues for employees and volunteer attorneys to voluntary bar associations that are private or nonprofit organizations.

The prohibition does not extend to the payment of dues to governmental bodies. Thus, payment of dues to a State Supreme Court or to a bar association acting as an administrative arm of the court or in some other governmental capacity in collecting dues that are a requirement for an attorney to practice in that State is deemed to be payment

of dues to a governmental body, and is not prohibited by this part.

Finally, this section expressly states that these new limitations on payment of dues apply only to the use of LSC funds.

Several provisions in the prior rule have been deleted because they are inconsistent with the new statutory prohibition. Thus, all references to the circumstances under which recipients could use LSC funds to pay for dues, and all references to procedures required of recipients before they could expend funds for certain payments of dues, are no longer applicable, because the new legislation prohibits the use of any LSC funds to pay dues. Thus, the provisions are no longer relevant.

Section 1627.7 Tax Sheltered Annuities, Retirement Accounts and Pensions

Section 1627.8 of the prior rule is now renumbered as § 1627.7.

Section 1627.8 Recipient Policies, Procedures and Recordkeeping

This new section requires recipients to establish policies and procedures and to maintain records to document compliance with the requirements of this part.

List of subjects in 45 CFR part 1627

Grant programs—law, Legal services.

For reasons set forth in the preamble, 45 CFR part 1627 is amended as follows:

PART 1627—SUBGRANTS AND DUES

1. The heading of part 1627 is revised to read as set forth above.

2. The authority citation for part 1627 is revised to read as follows:

Authority: Pub. L. 104–134, 110 Stat. 1321 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e).

3. Section 1627.2(c) is revised to read as follows:

§ 1627.2 Definitions.

* * * * *

(c) *Dues* as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

4. Section 1627.4 is revised to read as follows:

§ 1627.4 Dues.

(a) Corporation funds may not be used to pay dues to any private or nonprofit organization, whether on behalf of a recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of dues mandated as a requirement of practice by a governmental organization or to the payment of dues from non-LSC funds.

5. Section 1627.7 is revised to read as follows:

§ 1627.7 Tax sheltered annuities, retirement accounts and pensions.

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax sheltered annuity, retirement account, or pension fund.

6. Section 1627.8 is revised to read as follows:

§ 1627.8 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21665 Filed 8–28–96; 8:45 am]

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45 CFR Part 1637

Representation of Prisoners

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements a restriction in the Legal Services Corporation's ("LSC" or "Corporation") FY 1996 appropriations act which prohibits recipients from participating in any litigation on behalf of prisoners. Although this interim rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 504(a)(15), a restriction in the Corporation's FY 1996 appropriations act, Public Law 104–134, 110 Stat. 1321 (1996), which prohibits participation of LSC recipients in any litigation on behalf of a person incarcerated in a Federal, State or local prison. The Committee held hearings on staff proposals on July 9 and 19 and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the interim rule for review and consideration by the Committee. After receipt of public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

Generally, this rule prohibits any recipient involvement in litigation on behalf of persons who are incarcerated in a Federal, State or local prison.

A section-by-section discussion of this interim rule is provided below.

Section 1637.1 Purpose

This rule is intended to ensure that LSC recipients do not litigate on behalf of any person who is incarcerated in a Federal, State or local prison.

Section 1637.2 Definitions

The statutory restriction prohibits LSC recipients from participating in any litigation on behalf of a person who is incarcerated in a Federal, State or local prison. To provide guidance regarding the reach of this restriction, the definition section defines the terms "incarcerated" and "Federal, State or local prison."

"Incarcerated" is defined as the involuntary physical restraint in a facility dedicated to such restraint of a person who has been arrested for or convicted of a crime. The term "Federal, State or local prison" refers to any facility maintained by a governmental authority for purposes of housing persons who are incarcerated.

The definition includes pre-trial detainees even though they are persons who have not been convicted of a crime.

Conversely, it does not apply to parolees and probationers, even though they are persons who have been convicted of a crime and who are still under the jurisdiction of the corrections department, because they are no longer physically held in custody in a prison. The definitions would include persons who are held involuntarily in a mental health facility if they were committed as a result of their arrest for a crime. On the other hand, a person held in a mental health facility because of a civil commitment would not be incarcerated and could be represented. The term would also not include juvenile offenders who have not been charged as adults because charges against juveniles are generally considered to be civil in nature.

Intermittent imprisonment poses close questions, which would be resolved on a case-by-case basis, determined by whether the person is predominantly incarcerated or free. For example, persons on furlough or on daytime work release should be considered to be incarcerated; however, persons serving a term of successive weekends in prison would be considered not to be incarcerated.

"Federal, State or local prison" is defined as a facility that is maintained under governmental authority for purposes of housing persons who are incarcerated. It includes private facilities under contract with State corrections departments to house convicted criminals. It also includes local jails.

Section 1637.3 Prohibition

This section states the prohibition on participation in litigation or administrative proceedings challenging the conditions of incarceration on behalf of a person who is incarcerated in a Federal, State or local prison.

Section 1637.4 Change in Circumstances

This section addresses the situation where there is a change of circumstances after litigation is undertaken on behalf of an eligible client and the individual becomes incarcerated. Such a change poses a practical problem on which the regulation seeks to provide guidance. When a program learns that its client has become incarcerated in a prison, it must use its best efforts to discontinue representation of the individual. Incarceration, however, may be of short duration and, in some circumstances, by the time the recipient has succeeded in withdrawing from the matter consistent with its ethical duty to the client, the incarceration may have ended and with it the basis for the prohibition. To address such a situation, the rule provides an exception to the general prohibition. The exception would allow the recipient's attorney to continue representation when the anticipated duration of the incarceration is likely to be brief and the litigation will outlast the period of the incarceration. As a guideline, the recipient should consider incarceration which is expected to last less than 3 months to be brief.

When incarceration has occurred after litigation has begun and its duration is uncertain, there may be circumstances where a court will not permit withdrawal in spite of the recipient's best efforts to do so, generally because withdrawal would prejudice the client and is found to be inconsistent with the recipient's professional responsibilities. Whether continued representation in such circumstances would be deemed to violate the regulation will be determined on a case-by-case basis. Recipients should, however, document their efforts to withdraw and renew the effort if it appears that the incarceration will be of longer duration than originally anticipated.

During the period in which the recipient is seeking alternate counsel or other proper ways to conclude its involvement in such litigation, it may file such motions as are necessary to preserve its client's rights in the matter under litigation. The recipient may not file any additional, related claims on behalf of that client, however, unless failure to do so would jeopardize an existing claim or right of the client.

Section 1637.5 Recipient Policies, Procedures and Recordkeeping

This section requires recipients to establish written policies and procedures to ensure compliance with this part. Recipients are also required to maintain documentation adequate to demonstrate compliance with this part.

List of Subjects in 45 CFR Part 1637

Grant programs-law; Legal Services; Prisoner litigation.

For reasons set forth in the preamble, 45 CFR Chapter XVI is amended by adding part 1637 as follows:

PART 1637—RESTRICTION ON LITIGATION ON BEHALF OF PRISONERS

Sec.
1637.1 Purpose.
1637.2 Definitions.
1637.3 Prohibition.
1637.4 Change in circumstances.
1637.5 Recipient policies, procedures and recordkeeping.

Authority: Pub. L. 104–134, 110 Stat. 1321, 42 U.S.C. 2996g(e).

§ 1637.1 Purpose.

This part is intended to ensure that recipients do not participate in any litigation on behalf of persons incarcerated in Federal, State or local prisons.

§ 1637.2 Definitions.

(a) *Incarcerated* means the involuntary physical restraint, in a facility dedicated to such restraint, of a person who has been arrested for or convicted of a crime.

(b) *Federal, State or local prison* means any facility maintained under governmental authority for purposes of housing persons who are incarcerated.

§ 1637.3 Prohibition.

A recipient may not participate in any civil litigation on behalf of a person who is incarcerated in a Federal, State or local prison, whether as a plaintiff or as a defendant, nor may a recipient participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration.

§ 1637.4 Change in circumstances.

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration.

§ 1637.5 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21663 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

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45 CFR Part 1638

Restriction on Solicitation

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is intended to implement a restriction contained in the Legal Services Corporation's ("LSC" or "Corporation") FY 1996

appropriations act which prohibits an LSC recipient from representing an individual who had not sought legal advice from the recipient but whom the recipient advised to seek legal representation or take legal action. Although this rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors' ("Board") requested the LSC staff to prepare an interim rule to implement § 504(a)(18), a restriction in the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which prohibits an LSC recipient from representing an individual who had not sought legal advice from the recipient but whom the recipient advised to seek legal representation or take legal action. The Committee held hearings on staff proposals on July 8 and 19 and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment for review and consideration by the Committee. After receipt of public comment, the Committee intends to hold public hearings to discuss the written comments and to hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

A section-by-section discussion of this interim rule is provided below.

Section 1638.1 Purpose

The purpose of this new rule is to ensure that recipients do not obtain clients through in-person unsolicited advice to seek legal representation or to take legal action.

Section 1638.2 Definitions

This section defines "in-person" to include a face-to-face conversation and other personal contacts such as a personal letter or telephone call. While the ordinary meaning of "in-person" is limited to "face-to-face" contacts, for the purposes of this part, a personal letter or phone call from a recipient or a recipient's employee to an individual advising that individual to obtain counsel or take legal action would constitute "in person" advice.

"Unsolicited advice" is defined as advice to obtain counsel or take legal action given by a recipient or employee of a recipient to an individual with whom the recipient does not have an attorney-client relationship or who did not seek legal advice or assistance from the recipient. It does not include advice to obtain counsel or take legal action that an individual receives from others such as social workers, judges or neighbors.

Section 1638.3 Prohibition

This section prohibits LSC recipients and their employees from representing any individuals to whom they have given in-person unsolicited advice. It also prohibits recipients and their employees who have given such advice from referring the person receiving the advice to another LSC recipient. A recipient may, however, refer a person who has received unsolicited advice from one of the recipient's employees to a private attorney who takes the case *pro bono*, but the recipient may not count the case toward its private attorney involvement requirement as set out in 45 CFR Part 1614.

Section 1638.4 Permissible Activities

While recipients are prohibited from soliciting clients, there is a continuing need for community legal education about laws that affect clients and about the service provided by the program. This section explicitly notes, therefore, that it is permissible to participate in community legal education activities such as outreach activities, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications and giving presentations to groups that request it. These activities may include descriptions of legal rights and responsibilities, and descriptions of the recipient's services as well as ways to access the services. An individual who seeks assistance from the recipient after these activities may be represented provided that the request did not result from in-person unsolicited advice.

Section 1638.5 Recipient Policies

This section requires that recipients establish written policies to implement the requirements of this part.

List of Subjects in 45 CFR Part 1638

Grant programs-law; Legal services; Solicitation.

For reasons set forth in the preamble, 45 CFR Chapter XVI is amended by adding part 1637 as follows:

45 CFR PART 1638—RESTRICTION ON SOLICITATION

Sec.
1638.1 Purpose.
1638.2 Definitions.
1638.3 Prohibition.
1638.4 Permissible activities.
1638.5 Recipient policies

Authority: Sec. 504(a)(18), Pub. L. 104–134, 110 Stat. 1321.

§ 1638.1 Purpose.

This part is designed to ensure that recipients and their employees do not solicit clients.

§ 1638.2 Definitions.

(a) *In-person* means a face-to-face encounter or a personal encounter via other means of communication such as a personal letter or telephone call.

(b) *Unsolicited advice* means advice to obtain counsel or take legal action given by a recipient or its employee to an individual who did not seek the advice or with whom the recipient does not have an attorney-client relationship.

§ 1638.3 Prohibition.

(a) Recipients and their employees are prohibited from representing a client as a result of in-person unsolicited advice.

(b) Recipients and their employees are also prohibited from referring to other recipients individuals to whom they have given in-person unsolicited advice.

§ 1638.4 Permissible activities.

(a) This part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as outreach, public service

announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request it.

(b) A recipient may represent an otherwise eligible individual seeking legal assistance from the recipient as a result of information provided as described in § 1638.4(a), provided that the request has not resulted from in-person unsolicited advice.

§ 1638.5 Recipient policies.

Each recipient shall adopt written policies to implement the requirements of this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21664 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

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45 CFR Part 1639

Welfare Reform

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is intended to implement a provision in the Legal Services Corporation's ("Corporation" or "LSC") FY 1996 appropriations act which restricts recipients from initiating legal representation or challenging or participating in any way in an effort to reform a Federal or State welfare system. Although this rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 504(a)(16) of the Corporation's FY 1996 appropriations act, Pub. L. 104–134, 110 Stat. 1321 (1996), which restricts recipients of LSC funds from initiating legal representation or participating in any other way involving efforts to reform a Federal or State welfare system. The Committee held hearings on July 10 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. §§ 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the rule for review and consideration by the Committee. After receipt of public comments, the Committee intends to hold public hearings to discuss written comments and hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

A section-by-section discussion of this interim rule is provided below.

Section 1639.1 Purpose

The purpose of this new rule is to ensure that LSC recipients do not initiate litigation or challenge or participate in any effort to reform a Federal or State welfare system. In addition, the rule clarifies when recipients can engage in legal representation of a client seeking specific relief from a welfare agency and incorporates § 504(e) of 110 Stat. 1321, which permits recipients to use non-LSC funds to comment on public rulemaking or respond to requests from legislative or administrative officials.

Section 1639.2 Definitions

Federal or State welfare system is defined to include the Federal and State AFDC programs under Title IV–A of the Social Security Act, 42 U.S.C. § 601 *et seq.* These programs are the current Federal-State welfare cash assistance programs for needy families with dependent children. It would also include new programs or provisions enacted by Congress to replace or modify these programs, such as the block grant proposals for cash assistance in Title I of H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, adopted by Congress on August 1, 1996. Also included in the definition would be any components or requirements from other public benefit or human service programs that are a part of the AFDC program, such as requirements of establishment of paternity and cooperation with child support enforcement. In addition, it would also include State changes in AFDC or JOBS programs, State efforts to implement any Federal block grant cash assistance program for needy families with children, and State efforts to eliminate AFDC and replace it with a new program (for example, the Wisconsin Works program). Federal or State welfare system would also include any State AFDC programs or their replacements conducted under waivers granted either by the Department of Health and Human Services pursuant to § 1115 of the Federal Social Security Act or by enacted legislation.

Finally, the definition would include State General Assistance, General Relief, Direct Relief, Home Relief or similar state means-tested programs for basic subsistence which operate with State funding or under State mandate, and new programs enacted by States to replace or modify these programs. For example, if a State eliminated or replaced its General Assistance program, the new program would be included within the definition. In a State with county-run State General Assistance programs, State legislation or regulatory changes in those programs would be included within the definition of *Federal or State welfare system.*

Federal or State welfare system does not include other Federal programs such as: the Job Training Partnership Act and pending legislation that would revise and consolidate job training, vocational education, and other training programs such as the Workforce Development Act; the Food Stamp Program, adult nutrition programs, child nutrition programs, Women and Infants Care (WIC) program, and the school lunch program; Social Security and Supplemental Security Income; Medicaid; Medicare; Unemployment Insurance; Veterans Benefits; Child Support Enforcement; and child welfare programs including adoption assistance, foster care and termination of parental rights.

Reform of a Federal or State welfare system means an effort or action initiated or undertaken to effect legislative or regulatory proposals for changes in key components of the Federal or a State welfare system. For example, Federal legislative proposals to block grant the AFDC program and State legislative or regulatory proposals which implement any new Federal

block grant would be a *reform* of the Federal or State welfare system. State legislative or regulatory efforts to develop AFDC demonstration programs under Federal waiver authority and State efforts to eliminate or modify a State General Assistance program would also be *reform*.

The regulation focuses on "key" components of a Federal or State welfare system because the statute references the "welfare system," as distinguished from any particular provision of a welfare law or regulation. A change to a "key component" would cause a fundamental restructuring of the AFDC or General Assistance program such as the Federal proposals to block grant the AFDC program or waiver proposals to eliminate the AFDC programs and replace them with a new program that offers eligible families a subsidized job or a position in a work program. A "key component" would also include changes that would not fundamentally restructure the welfare system but would make significant changes in how the system operates, such as proposals or enactments in recent welfare reform waivers which: (1) impose time limits on the receipt of AFDC or General Assistance; (2) require work in exchange for receipt of assistance; (3) deny benefit increases for additional children (family cap); or (4) require teen parents to reside at home or to regularly attend school. Recipients may not initiate litigation challenging regulations or legislation incorporating these policies.

A "key component" would not include technical or isolated changes in Federal or State welfare laws or regulations that are not made as part of an effort to change the basic structure of a welfare system or how a welfare system functions. For example, a change in an agency's child care reimbursement policy or a change in what assets are used to determine eligibility would not be a "key component" of a Federal or State welfare reform effort. A key component would also not include minor changes in policy that are not necessary to a State effort to reform the welfare system. Several examples from recent State activity illustrate changes that are not key components of a welfare reform effort.

Thus, for example, a change in the definition of which costs associated with a required search for employment qualifies for reimbursement would not be considered a key component. Similarly, a policy changing the allowed value of an automobile which an applicant may own and remain eligible for AFDC, or the use to which the automobile must be put to qualify, would not be considered a key component.

The term *existing law* is defined to mean Federal, State or local statutory law or ordinances.

The definitions of *Federal or State welfare system, reform and existing law* all are consistent with the legislative history which led to the enactment of this new restriction. This legislative history included: debate around an amendment by Senator Gramm during consideration of the FY 1995 Commerce, Justice and State, the Judiciary and Related Agencies appropriations bill in July of 1994 (140 *Cong. Rec.*, S. 9402 (July 31, 1994)); debate around an amendment by Senator Gramm during consideration of the Senate Welfare Reform bill on September 15, 1995 (141 *Cong. Rec.*, S., 13640 (Sept. 15, 1995)); brief references made to the welfare reform prohibition during the debate on the Domenici Amendment in late September of 1995 [141 *Cong. Rec.*, S. 14671 (Sept. 29, 1995)] and during the debate on the Cohen-Bumpers Amendment on March 14, 1996 [142 *Cong. Rec.*, S., 2055 (March 14, 1996)]. The committee reports that accompanied the House appropriations legislation and the two conference committee reports accompanying H.R. 2076 and H.R. 3019 also made brief reference to "welfare reform" advocacy and are part of the legislative history. The cases that are mentioned in these debates as objectionable are cases challenging specific new policies which eliminated State general assistance programs or made changes in key components of State AFDC programs that were enacted as part of an overall State welfare reform effort. For example, Members of Congress specifically referenced new state laws which imposed time limits on the receipt of benefits and "family cap" laws which denied benefits to a family for additional children. In addition, a major concern throughout these debates was the fear that legal services programs would challenge Federal block grant legislation replacing the AFDC program or State legislation or regulations created pursuant to the block grant authority. However, at no time during the debates did any Member of Congress mention cases challenging child support, Food Stamps, Medicaid, foster care, child welfare, SSI, Veterans benefits, Job Training or other programs, including other means-tested benefit programs.

Language identical to that in 110 Stat. 1321 first appeared in Section 21 of H.R. 1806, the legislation co-sponsored by Representatives McCollum and Stenholm to reform the legal services program. Neither of these representatives provided any description of this new provision when the legislation was introduced. The only discussion by either co-sponsor about the meaning of the provision was a statement made by Rep. Bill McCollum during the House Reauthorization hearing in May 1995, in which he stated that legal services:

> Should be prohibited and restricted from being engaged in trying to change or reform the welfare systems that are undergoing changes in the States or at the Federal level, that is not their role, that they be able to represent individuals and do the bread-and-butter work, landlord-tenant problems, perhaps the welfare laws, making claims for people, and so forth, but not trying to reform the system.

[*See*, Transcript, Reauthorization of Legal Services Corporation, Tuesday, May 16, 1995, House of Representatives, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, Washington, D.C., p. 31)

Section 1639.3 Prohibition

This section prohibits any involvement by a recipient in initiating legal representation or challenging or participating in efforts to reform a Federal or State welfare system. The prohibition includes, but is not limited to, litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system; participating in rulemaking involving proposals that are being considered as part of a reform of a Federal or State welfare system; and lobbying or other advocacy before legislative or administrative bodies involving pending or proposed legislation that is part of a reform of a Federal or State welfare system. The prohibition also precludes litigation or other advocacy with regard to the granting or denying of State requests for Federal waivers or Federal requirements for AFDC including: (1) Participation at the State level before administrative agencies, the legislature or the Executive when waivers are under consideration; (2) commenting upon or engaging in other advocacy on waivers that are being considered by the Department of Health and Human Services; and (3) engaging in advocacy before Congress if Congress undertakes to adopt a State waiver request.

Section 1639.4 Permissible Representation of Eligible Clients

This section incorporates the statutory language which permits a recipient to represent "an individual eligible client who is seeking specific relief from a welfare agency, if such relief does not involve an effort to amend or otherwise

challenge existing law in effect on the date of the initiation of the representation." Pursuant to this provision, an action to enforce existing law would not be proscribed. Thus, when representing an eligible client seeking individual relief, a recipient may challenge a regulation or policy on the basis that it violates a higher State or Federal law. In addition, such representation might also challenge the agency's interpretation of the law or challenge the application of an agency's regulation or policy, or the law on which it is based, to the individual seeking relief.

Section 1639.5 Exception for Public Rulemaking and Responding to Requests With Non-LSC Funds

The 1996 appropriations act includes a provision, § 504(e) of 110 Stat. 1321, which provides that nothing in § 504—

> Shall be construed to prohibit a recipient from using funds derived from a source other than the Legal Services Corporation to comment on public rulemaking or to respond to a written request for information or testimony from a Federal, State or local agency, legislative body or committee, or a member of such an agency, body or committee, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made.

This exception applies to the prohibition on welfare reform lobbying and rulemaking in § 504(a)(16). Therefore, recipients may use non-LSC funds to make oral or written comments in a public rulemaking proceeding involving an effort to reform a Federal or State welfare system or to respond to a written request from a government agency or official thereof, elected official, legislative body, committee or member thereof, made to the employee or to a recipient, to testify or provide information regarding an effort to reform a State or Federal welfare system, provided that the response by the recipient is made only to the party making the request and the recipient does not arrange for the request to be made.

Section 1639.6 Recipient Policies and Procedures

In order to ensure that the recipient's staff are fully aware of the restriction on welfare reform activity and to ensure that staff receive appropriate guidance, this section requires that recipients adopt written policies and procedures to guide its staff in complying with this part.

List of Subjects in 45 CFR Part 1639

Grant programs-law; Legal services; Welfare reform.

For reasons set forth in the preamble, Chapter XVI is amended by adding part 1639 as follows:

PART 1639—WELFARE REFORM

Sec.

1639.1 Purpose.
1639.2 Definitions.
1639.3 Prohibition.
1639.4 Permissible representation of eligible clients.
1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.
1639.6 Recipient policies and procedures.

Authority: Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996g(e).

§ 1639.1 Purpose.

The purpose of this rule is to ensure that LSC recipients do not initiate litigation, challenge or participate in efforts to reform a Federal or State welfare system. The rule also clarifies when recipients may engage in representation on behalf of an individual client seeking specific relief from a welfare agency and under what circumstances recipients may use funds from sources other than the Corporation to comment on public rulemaking or respond to requests from legislative or administrative officials involving a reform of a Federal or State welfare system.

§ 1639.2 Definitions.

(a)(1) *Federal or State welfare system* as used in this Part means:

(i) The Federal and State AFDC program under Title IV-A of the Social Security Act and new programs or provisions enacted by Congress or the States to replace or modify these programs, including State AFDC programs conducted under Federal waiver authority.

(ii) General Assistance or similar state means-tested programs conducted by States or by counties with State funding or under State mandates, and new programs or provisions enacted by States to replace or modify these programs.

(2) *Federal or State welfare system* does not include other public benefit programs unless changes to such programs are part of a reform of the AFDC or General Assistance programs.

(b) *Reform* of Federal or State Welfare Systems as used in this Part means a legislative or administrative effort to change key components of the Federal or State welfare system, including laws and regulations that implement the changes.

(c) *Existing law* as used in this part means Federal, State or local statutory laws or ordinances.

§ 1639.3 Prohibition.

Except as provided in §§ 1639.4 and 1639.5, recipients may not initiate legal representation, challenge or participate in any other way in efforts to reform a Federal or State welfare system. Prohibited activities include participation in:

(a) Litigation challenging laws or regulations enacted as part of a reform of a Federal or State welfare system;

(b) Rulemaking involving proposals that are being considered to implement a reform of a Federal or State welfare system;

(c) Lobbying or other advocacy before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of a reform of a Federal or State welfare system; or

(d) Litigation or other advocacy undertaken with regard to the granting or denying of State requests for Federal waivers of Federal requirements for AFDC.

§ 1639.4 Permissible representation of eligible clients.

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation.

§ 1639.5 Exceptions for public rulemaking and responding to requests with non-LSC funds.

Consistent with the provisions of § 1612.6 (a)–(e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system.

§ 1639.6 Recipient policies and procedures.

Each recipient shall adopt written polices and procedures to guide its staff in complying with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21661 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

45 CFR Part 1640

Application of Federal Law to LSC Recipients

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements a provision in the Legal Services Corporation's ("Corporation" or "LSC") FY 1996 appropriations act which subjects LSC recipients to Federal law relating to the proper use of Federal funds. This rule identifies applicable Federal law and sets out the mechanism by which recipients must agree to be subject to such law and the consequences of a violation of the law. Although this rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") requested the LSC staff to prepare an interim rule to implement § 504(a)(19) of Public Law 104–134, 110 Stat. 1321(1996), the Corporation's FY 1996 appropriations act, which requires LSC-funded recipients to agree by contract that, with regard to their use of LSC funds, they will be subject to Federal law related to the proper use of Federal funds. The Committee held hearings on staff proposals on July 9 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation which is already effective and which carries strong penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comment on the rule for review and consideration by the Committee. The Committee intends to hold public hearings to discuss written comments and hear oral comments. It is anticipated that a final rule will be issued which will supersede this interim rule.

Briefly, this rule requires LSC recipients to agree to be subject to "Federal laws relating to the proper use of Federal funds" in their use of LSC funds. This rule puts recipients and their employees on notice that LSC funds are Federal funds for the purposes of the applicable Federal laws cited in this rule and that a violation of such laws would subject the recipient or individual employee to potentially serious sanctions.

A section by section analysis of this interim rule is provided below.

Section 1640.1 Purpose

The purpose of this rule is to ensure that recipients' LSC funds are considered Federal funds for the purposes of Federal law relating to the proper use of Federal funds. This rule also identifies applicable Federal laws and delineates the consequences to the recipient of violations of such law.

Section 1640.2 Definitions

The statutory restriction provides that recipients must contractually agree to be subject to "all provisions of Federal law relating to the proper use of Federal funds" with regard to their use of LSC funds. The regulation interprets this to mean that, with respect to their LSC funds, all programs should be subject to Federal laws which address issues of waste, fraud and abuse of Federal funds. The legislative history limits the applicable laws to those dealing with waste, fraud and abuse and specifically names the laws which apply. The House Report for H.R. 2076, an earlier unsuccessful effort to enact a provision similar to the provision that was ultimately enacted, states:

> [S]ection 504(2) requires all programs receiving Federal funds to comply with Federal statutes and regulations governing waste, fraud, and abuse of Federal funds.

H. Rep. No. ____, 104th Cong., 1st Sess. 116 (July 1995). *See also* the McCollum/Stenholm bill (HR 1806), a recent effort to amend the LSC Act, which expressly cites most of the laws included in this part. Other laws have been added after consultation with the Corporation's Office of the Inspector General, one of whose statutory mandates is to prevent the misuse of LSC funds.

The relevant laws are listed in the definition of "Federal law relating to the proper use of Federal funds" in paragraph (a)(1) of this section. Generally, such laws deal with the bribery of public officials or witnesses; the embezzlement or theft of federal funds; attempts to defraud the government; the obstruction of federal audits; and making false statements and claims to the Federal government. One exception makes it clear that *qui tam actions* authorized by section 3730(b) of Title 31 may not be brought against the Corporation, any recipient, subrecipient, grantee, or contractor of the Corporation, or any employee thereof.

Paragraph (a)(2) clarifies that for the purposes of the laws cited in paragraph (a)(1), the Corporation shall be considered a Federal agency and its funds shall be considered to be Federal funds provided by grant or contract.

Paragraph (b) of this section defines the meaning of a "violation of the agreement." A violation of a recipient's agreement to be subject to Federal law related to the proper use of Federal funds could occur in either of two ways. First, there would be a violation if the *recipient* were convicted of or judgment were entered against it for a violation of any of the relevant Federal laws by the Federal court having jurisdiction of the matter, and all appeals were final or the time to file for an appeal had expired.

Second, there would be a violation if an *employee or* board member of the recipient were convicted of a violation of the enumerated laws and the Corporation found that responsibility for the offense should be imputed to the recipient because the recipient had knowingly or through gross negligence allowed the illegal activities to occur.

Section 1640.3 Contractual Agreement

This section implements the statutory requirement that, as a condition of receiving a grant or contract with the Corporation, recipients must enter into a contractual agreement that, in regard to LSC funds, they will be subject to Federal law relating to the proper use of Federal funds in regard to LSC funds. The Federal laws in question normally apply to Federal agencies and Federal funds. Because the Corporation is not a Federal agency, it was necessary for Congress to provide in § 504(a)(19) of its FY 1996 appropriations act that, for purposes of the application of these laws to recipients, the Corporation shall be considered to be a Federal agency and all funds provided by the Corporation shall be Federal funds provided by grant or contract. This

language authorizes the application to the Corporation's recipients of Federal law on the proper use of Federal funds.

This provision also requires that the agreement include a statement that the recipient's employees and board members have been informed of the applicable Federal laws and the potential consequences to them both personally and to the recipient if the law is violated. Thus, recipients should familiarize their staff and board with the Federal laws listed in this part and the significance of the agreement made by the recipient. The agreement and § 504(a)(19) mean that, in regard to its LSC funds, the recipient, its board members, and its employees could be subject to Federal criminal prosecution and civil false claims liability for a violation of the Federal statutes listed in this part.

Recipients should also be mindful of the fact that the Corporation's Office of the Inspector General has statutory responsibility to investigate the activities covered by the Federal laws listed in this part. Although the agreement would apply only to LSC funds, recipients are also reminded that the Corporation's Inspector General investigates reports of possible theft or misappropriation of a recipient's non-LSC funds as well as its LSC funds and would report any such thefts or misappropriations that it found to the appropriate Federal or State authorities.

Section 1640.4 Violation of Agreement

Paragraph (a) provides that a violation of the agreement as defined in this part would render a recipient's grant or contract terminated by the Corporation. Section 504(a)(19) clearly evidences Congressional intent that a recipient's funding be terminated if there is a violation of the applicable Federal law. Because a violation pursuant to § 1640.2(b)(1) requires a recipient to have been found by a court of law to have violated the applicable Federal law, the Corporation would not be obligated to provide a termination hearing. For a § 1640.2(b)(2) violation, on the other hand, prior to any termination, the Corporation would be obligated to provide notice and an opportunity to be heard for the sole purpose of determining whether a recipient knowingly or through gross negligence allowed the illegal activities to occur. Once a final decision has been made to imput responsibility for the violation to the recipient, the law requires that the grant or contract be terminated by the Corporation.

In any case, the Corporation has the authority and responsibility to take the steps necessary to safeguard its funds.

Section 1640.5 Reporting Requirement

This section requires a recipient to give telephonic or other actual notice to the Corporation within two (2) working days when the recipient or any of its employees or board members have been charged with a violation of any of the Federal laws listed in § 1640.2(a). It also clarifies that "charged with a violation" means that an individual or governmental entity having authority to initiate such proceedings has initiated action against the recipient or its employees or board members and the proceeding is pending. A recipient must also give the Corporation notice within two (2) days if it has reason to believe that any of its employees or board members have misused LSC funds under this part. Finally, this section requires a recipient to follow up the telephonic or other actual notice with a written notice within ten (10) calendar days.

List of Subjects in 45 CFR Part 1640.

Fraud; Grant programs-law; Legal services.

For reasons set forth in the preamble, 45 CFR Chapter XVI is amended by adding part 1640 as follows:

PART 1640—APPLICATION OF FEDERAL LAW TO LSC RECIPIENTS

Sec.

1640.1 Purpose.
1640.2 Definitions.
1640.3 Contractual agreement.
1640.4 Violation of agreement.
1640.5 Reporting requirement.

Authority: Pub. L. 104–134, 110 Stat. 1321.

§ 1640.1 Purpose.

The purpose of this rule is to ensure that recipients use their LSC funds in accordance with Federal law related to the proper use of Federal funds. This rule also identifies the Federal laws which apply and provides notice of the consequences to a recipient of a violation of such Federal laws by recipients, its employees or board members.

§ 1640.2 Definitions.

(a) (1) Federal law relating to the proper use of Federal funds means:

(i) 18 U.S.C. 201 (Bribery of Public Officials and Witnesses);

(ii) 18 U.S.C. 286 (Conspiracy to Defraud the Government With Respect to Claims);

(iii) 18 U.S.C. 287 (False, Fictitious or Fraudulent Claims);

(iv) 18 U.S.C. 371 (Conspiracy to Commit Offense or Defraud the United States);

(v) 18 U.S.C. 641 (Public Money, Property or Records);

(vi) 18 U.S.C. 1001 (Statements or Entries Generally);

(vii) 18 U.S.C. 1002 (Possession of False Papers to Defraud the United States);

(viii) 18 U.S.C. 1516 (Obstruction of Federal Audit);

(ix) 31 U.S.C. 3729 (False Claims);

(x) 31 U.S.C. 3730 (Civil Actions for False Claims), except that actions that are authorized by § 3730(b) of such title to be brought by persons may not be brought against the Corporation, any recipient, subrecipient, grantee, or contractor of the Corporation, or any employee thereof;

(xi) 31 U.S.C. 3731 (False Claims Procedure);

(xii) 31 U.S.C. 3732 (False Claims Jurisdiction); and

(xiii) 31 U.S.C. 3733 (Civil Investigative Demands).

(2) For the purposes of the laws listed in paragraph (a)(1), LSC shall be considered a Federal agency and a recipient's LSC funds shall be considered to be Federal funds provided by grant or contract.

(b) A violation of the agreement means:

(1) That the recipient has been convicted of, or judgment has been entered against the recipient for, a violation of any of the laws listed in § 1640.2(a)(1), with respect to its LSC grant or contract, by the court having jurisdiction of the matter and any appeals of the conviction or judgment have been exhausted or the time for the appeal has expired; or

(2) An employee or board member of the recipient has been convicted of, or judgment has been entered against the employee or board member for, a violation of any of the laws listed in § 1640.2(a)(1) with respect to a recipient's grant or contract with LSC by the court having jurisdiction of the matter, and any appeals of the conviction or judgment have been exhausted or the time for appeal has expired, and the Corporation finds that the recipient has knowingly or through gross negligence allowed the employee or board member to engage in such activities.

§ 1640.3 Contractual agreement.

As a condition of receiving LSC funds, a recipient must enter into a written contractual agreement with the Corporation that, with respect to its LSC funds, it will be subject to the Federal laws listed in § 1640.2(a)(1). The agreement shall include a statement that all of the recipient's employees and board members have been informed of such Federal law and of the consequences of a violation of such law,

both to the recipient and to themselves as individuals.

§ 1640.4 Violation of agreement.

(a) A violation of the agreement under § 1640.2(b)(1) shall result in the recipient's LSC grant or contract being terminated by the Corporation without need for a termination hearing. During the pendency of any appeal of a conviction or judgment, the Corporation may take such steps as it determines necessary to safeguard its funds.

(b) A violation of the agreement under § 1640.2(b)(2) shall result in the recipient's LSC grant or contract being terminated by the Corporation. Prior to such termination, the Corporation shall provide notice and an opportunity to be heard for the sole purpose of determining whether the recipient knowingly or through gross negligence allowed the employee or board member to engage in the activities which led to the conviction or judgment. During the pendency of any appeal of a conviction or judgment or during the pendency of a termination hearing, the Corporation may take such steps as it determines necessary to safeguard its funds.

§ 1640.5 Reporting requirement.

(a) The recipient shall give telephonic or other actual notice to the Corporation within two (2) working days of the date that:

(1) The recipient or any of the recipient's employees has been charged with a violation of any of the Federal laws listed in § 1640.2(a) with respect to its LSC funds; or

(2) It has reason to believe that any of its employees or board members have misused the recipient's LSC funds in violation of any of the Federal laws listed in § 1640.2(a).

(b) The notice required in paragraph (a) of this section shall be followed by written notice within ten (10) calendar days.

(c) A recipient or an employee or board member of the recipient has been "charged with a violation" when a governmental entity having authority to initiate such a proceeding has instituted action against the recipient or the recipient's employee and the proceeding is pending.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21662 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

45 CFR Part 1642

Attorneys' Fees

AGENCY: Legal Services Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is intended to implement a provision in the Legal Services Corporation's ("Corporation" or "LSC") FY 1996 appropriations act that prohibits LSC recipients from seeking attorneys' fees in cases filed after the date of enactment of the appropriation. Although this interim rule is effective upon publication, the Corporation also solicits public comment on the interim rule in anticipation of adoption of a final rule at a later time.

DATES: This interim rule is effective on August 29, 1996. Comments must be submitted on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of General Counsel, Legal Services Corporation, 750 First St, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: On May 19, 1996, the Operations and Regulations Committee ("Committee") of the Legal Services Corporation ("LSC" or "the Corporation") Board of Directors ("Board") requested the LSC staff to prepare interim rules to implement § 504(a)(13) of the Corporation's FY 1996 appropriations act, Public Law 104–134, 110 Stat. 1321 (1996), prohibiting LSC recipients and their employees from claiming, or collecting and retaining attorneys' fees. The Committee held hearings on July 10 and 19, and the Board adopted this interim rule on July 20 for publication in the **Federal Register**. The Committee recommended and the Board agreed to publish this rule as an interim rule. An interim rule is necessary in order to provide prompt and critically necessary guidance to LSC recipients on legislation that is already in effect and which carries severe penalties for noncompliance. Because of the great need for guidance on how to comply with substantially revised legislative requirements, prior notice and public comment are impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this rule is effective upon publication.

However, the Corporation also solicits public comments on the rule for review and consideration by the Committee. After receipt of written public comment, the Committee intends to hold public hearings to consider the written comments and to hear oral comments. The Committee anticipates that a final rule will be issued which will supersede this interim rule.

This rule is based, in part, on provisions in 45 CFR Part 1609, the Corporation's regulation dealing with attorneys' fees in relation to fee-generating cases. The Corporation has determined that, although related, the issues of fee-generating cases and attorneys' fees are sufficiently separate to warrant separate rules. Accordingly, the provisions on attorneys' fees and acceptance of reimbursement for costs and expenses in this part supersedes the comparable provisions in Part 1609. A revised version of part 1609 is also published in this publication of the **Federal Register** as a proposed rule.

A section-by-section discussion of this interim rule is provided below.

Section 1642.1 Purpose

The purpose of this rule is to ensure that LSC recipients and their employees do not seek or retain attorneys' fees awarded pursuant to Federal or State law, including common law, permitting or requiring such fees.

Section 1642.2 Definitions

This section defines "attorneys' fees" as an award that is intended to compensate an attorney of the prevailing party as permitted or required by Federal or State law. An "award" is defined as an order of a court or administrative agency that an unsuccessful party pay the attorneys' fees of the prevailing party. The definition makes clear that the term includes attorneys' fees that are awarded as part of a court or agency approved settlement agreement. The Corporation has received a number of comments arguing that the restriction was not intended to apply to attorneys' fees in Social Security cases, because such fees are paid pursuant to an agreement by the client to pay the fees out of the client's back benefits. The court or administrative agency merely approves the agreement, but does not "award" the fees. The definition of "award" reflects this interpretation.

Programs which seek fees out of favorable awards to clients should be aware that the Corporation's interpretation of the statute reflected in this interim rule may change following receipt of public comment and any such change could affect a recipient's practices.

Section 1642.3 Prohibition

This section states the restriction on attorneys' fees contained in § 504(a)(13) of the Corporation's FY 1996 appropriations act, which prohibits LSC recipients from claiming, or collecting and retaining attorneys' fees in any cases. This rule uses the term "cases" and does not refer to "matters," as does the underlying statute, because attorneys' fees may only be derived from cases. Paragraph (a) prohibits recipients or their employees from claiming, or collecting and retaining attorneys' fees in any case, unless allowed under paragraph (c). Paragraph (b) provides that private attorneys who are paid by LSC recipients to handle cases for eligible clients as part of a recipient's PAI program, under a contract or judicare program, may not seek fees in those cases unless allowed under paragraph (c). The prohibition applies to those private attorneys who receive funds from a recipient, because they are persons receiving financial assistance under the appropriations bill and are thus subject to the prohibition on attorneys' fees. This would not include pro bono attorneys who receive no compensation from a recipient to handle cases, because they are not receiving financial assistance to provide the services.

Paragraph (c) clarifies that the prohibitions in paragraphs (a) and (b) do not apply to four situations. First, the statute expressly allows programs to seek and retain attorneys' fees for cases filed prior to April 26, 1996, but this exception does not extend to any additional claims for the client filed after April 26, 1996, in any pending case.

Second, the prohibitions in paragraphs (a) and (b) do not apply to activity allowed pursuant to 42 U.S.C. 2996e(d)(6) of the LSC Act, which permits recipient attorneys to accept compensation for legal services that they provide as officers of the court, i.e., court appointments.

Third, paragraph (c) clarifies that sanctions imposed by courts on parties in litigation for behavior that violates court rules may be accepted by recipients because they are considered to be sanctions rather than attorneys' fees. Such sanctions often include compensation for the time spent by the opposing lawyer in litigating against the sanctioned behavior.

Finally, the restrictions do not apply to the reimbursement of costs and expenses made by an opposing party.

Section 1642.4 Accounting for and use of Attorneys' Fees

This section is a revised version of § 1609.6, which is superseded by this interim rule. It includes an accounting requirement for attorneys' fees that are permitted under § 1642.3(c) of this part that are received by a recipient. Recipients are required to allocate such fees that are received from cases or matters supported in whole or in part with LSC funds to the LSC fund in the same proportion that the case or matter was funded with LSC funds. Thus, if a particular case was funded 60% by LSC funds and 40% from non-LSC funds, a recipient would be required to allocate 60% of the fees received to the LSC account. There is no requirement that the program allocate the remaining 40% to any particular account. This is a change from current law that required allocation to the same fund to which expenses had been charged. The change is based on a policy that, if a non-LSC funder does not require that its fund be reimbursed from attorneys' fees awarded in litigation supported with its funds, LSC should not dictate how those funds are to be allocated.

Section 1642.5 Acceptance of Reimbursement From a Client

This section allows recipients to accept reimbursement from clients for out-of-pocket costs and expenses incurred in connection with cases where the client recovers damages or statutory benefits, provided that the client has agreed in writing to reimburse the recipient for such costs and expenses out of any recovery. This section also authorizes recipients to require clients who do not qualify for *in forma pauperis* to pay court costs.

Section 1642.6 Recipient Policies, Procedures and Recordkeeping

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Recipients are also required to maintain sufficient documentation to demonstrate compliance with this part.

List of Subjects in 45 CFR Part 1642

Attorneys' fees; Grant programs—law; Legal services.

For reasons set forth in the preamble, 45 CFR Chapter XVI is amended by adding part 1642 as follows:

PART 1642—ATTORNEYS' FEES

Sec.
1642.1 Purpose.
1642.2 Definitions.
1642.3 Prohibition.
1642.4 Accounting for and use of attorneys' fees.
1642.5 Acceptance of reimbursement from a client.
1642.6 Recipient policies, procedures and recordkeeping.

Authority: Sec. 504(a)(13), Pub. L. 104–134, 110 Stat 1321; 42 U.S.C. 2996e(d)(6).

§ 1642.1 Purpose.

This part is designed to insure that recipients or employees of recipients do not claim, or collect and retain attorneys' fees available under any Federal or State law permitting or requiring the awarding of attorneys' fees.

§ 1642.2 Definitions.

(a) *Attorneys' fees* means an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees.

(b) An *award* is an order by a court or an administrative agency that the unsuccessful party pay the attorneys' fees of the prevailing party or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by an adversarial party.

§ 1642.3 Prohibition.

(a) Except as permitted by paragraph (c) of this section, no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient.

(b) Except as permitted by paragraph (c) of this section, no recipient and no private attorney who receives compensation from a recipient to provide legal assistance to eligible clients under the recipient's private attorney involvement (PAI) program, judicare program, contract or other arrangement, may claim, or collect and retain attorneys' fees for such legal assistance.

(c) The prohibitions contained in paragraphs (a) and (b) of this section shall not apply to:

(1) Cases filed prior to April 26, 1996, except that the prohibition shall apply to any additional claim for the client made in a case pending on April 26, 1996;

(2) Cases to which a court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the recipient or employee receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the

court in which the appointment is made;

(3) Sanctions imposed by a court for violations of court rules, including Rule 11 or discovery rules of the Federal Rules of Civil Procedure, or similar State court rules; or

(4) Reimbursement of costs and expenses from an opposing party.

§ 1642.4 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient pursuant to § 1642.3(c) for work supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the work.

(b) Attorneys' fees shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

§ 1642.5 Acceptance of reimbursement from a client.

(a) When a case results in a recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

§ 1642.6 Recipient policies, procedures and recordkeeping.

The recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21660 Filed 8–28–96; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1609

Fee-Generating Cases

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would completely revise the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to fee-generating cases. A major revision is the removal of the current regulation's provisions on attorneys' fees. Attorneys' fees are addressed in part 1642 of the Corporation's regulations, which is also being published as an interim rule in this publication of the **Federal Register**. This proposed rule also makes substantive and clarifying revisions to several sections. In addition, some sections have been merged and unnecessary provisions have been eliminated.

DATES: Comments should be received on or before October 28, 1996.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8910.

SUPPLEMENTARY INFORMATION: This rule has been under review by the Operations and Regulations Committee ("Committee") of the LSC Board of Directors ("Board") since September 1994. The Committee held public hearings on September 17 and October 28, 1994, and February 17, 1995, on proposed revisions. When it became apparent that Congress was considering substantially revised legislation related to this rule, the Committee suspended consideration until the new legislation became law. Public Law 104–134, 110 Stat. 1321 (1996), the Corporation's FY 1996 appropriations act became law on April 26, 1996. The new legislation did not contain any restrictions on taking of fee-generating cases, but it did prohibit recipients from claiming, or collecting and retaining, any attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. See § 504(a)(13) of Pub. L. 104–134. On May 19, 1996, the Committee directed LSC staff to prepare an interim rule to implement a new legislative restriction on the taking of attorneys' fees by LSC recipients, an issue implicated in the current version of this rule.

LSC staff recommended and the Committee decided to promulgate a separate rule, 45 CFR Part 1642, to address the attorneys' fees issue which is also published as an interim rule in this volume of the **Federal Register**. The Committee met on July 10 and 19, 1996, to consider a draft of a revised Part 1609 prepared by LSC staff and, after making some changes, made a recommendation to the Board and the Board voted to publish this proposed rule in the **Federal Register** for public notice and comment.

This proposed rule would revise the current rule entirely. It deletes the attorneys' fees provisions in order to address, in a separate part, provisions responsive to the Corporation's FY 1996 appropriations. The other changes made to the rule were under consideration by the Committee last year. Recipients should note that, upon publication of an interim rule on attorneys' fees, the attorneys' fees provisions in the current part 1609 will no longer have the force and effect of law, regardless of whether any revisions to this proposed rule are adopted and published as final by the LSC Board.

A section-by-section analysis of this proposed rule is provided below.

Section 1609.1 Purpose

This section is revised to state more clearly the purposes of this regulation, which are: (1) To ensure that recipients do not use scarce resources for cases where private attorneys are available to provide effective representation, and (2) to assist eligible clients to obtain appropriate and effective legal assistance.

Section 1609.2 Definition

This section defines "fee-generating case." A technical numerical change is made to clarify that the definition includes fees from three sources: an award (1) to a client, (2) from public funds, or (3) from the opposing party. The definition is also revised to explain what is not a "fee-generating case." The revision makes it clear that court appointments are not to be considered fee-generating cases, even where fees are paid, since such cases are a professional obligation of all attorneys. The definition also does not include situations where recipients undertake representation under a contract with a government agency or other entity. Acceptance of a payment under a contract arrangement in such a situation does not constitute a fee-generating case, because a contract payment does not constitute fees that come from an award to a client or attorneys' fees that come from public funds or the losing party in a case.

Section 1609.3 General Requirements

This section defines the limits within which recipients may undertake fee-generating cases. This new section reorganizes and replaces §§ 1609.3 and 1609.4 of the current rule in order to make them easier to understand. It is also retitled. The provision requiring recipients to establish procedures for the referral of fee-generating cases is deleted, and a new section on policies and procedures is added to the rule.

Paragraph (a) provides that, except as provided in paragraph (b) of this section, a recipient may undertake a fee-generating case only after the case has been rejected by the local lawyer referral service or by two private attorneys, or when neither the referral service nor two attorneys will take the case without a consultation fee. The current rule states that "neither the referral service nor any attorney will consider the case without payment of a consultation fee." [emphasis added] The current rule sets up an impossible burden for a recipient to meet, and the Committee has decided that the proposed new standard is reasonable and consistent with the purposes of this rule.

Paragraph (b) clarifies those circumstances under which a recipient may undertake a fee-generating case without first attempting to refer the case to the private bar. The first situation is delineated in § 1609.3(b)(1) and is based on § 1609.4(d) of the current regulation. This provision is revised to include any cases which, like Social Security cases, meet the terms of the underlying statutory provision. A 1977 amendment to § 1007(b)(1) of the Legal Services Corporation Act, 42 U.S.C. 2996, prohibits the Corporation from issuing guidelines on fee-generating cases that would preclude recipients from taking "cases in which a client seeks only statutory benefits and appropriate private representation is not available." 42 U.S.C. 2996f(b)(1). The legislative history of this amendment clearly indicates that Congress intended the provision to apply to the Social Security Act ("SSA") and Supplemental Security Income ("SSI") cases that are covered by both the current and the proposed rules, and to "such other cases as the Corporation deems appropriate because the only recovery sought by the eligible client is the amount of subsistence benefits to which he or she is statutorily entitled." S. Rep. No. 172, 95th Cong., 1st Sess. 15 (1977). The Committee has decided to add language to the rule that would include not only Social Security cases but also any other similar statutory benefits cases. The Committee is aware that, since the 1977

amendments to the LSC Act, the rules governing fees in veterans' benefits appeals, for example, have been changed and seeks comments on whether those cases or other similar cases should be treated in the same manner as Social Security cases.

Another circumstance under which a recipient may undertake a fee-generating case without first attempting to refer the case to the private bar is set out in § 1609.3(b)(2). This provision is based, in part, on a provision that appeared in the original LSC regulation adopted in 1976 that allowed a recipient to determine that the case was of the type that private attorneys did not accept or did not accept without a fee. LSC removed that provision as part of its 1984 revision, in part because of concern that it gave too much discretion to project directors. This proposal suggests a middle ground between the two positions. It restores to the discretion of the recipient the decision about what kinds of cases would qualify, but requires that the recipient consult with appropriate representatives of the private bar in making that determination. The recipient has the authority to determine the appropriate representatives, which could include representatives of the organized bar, the local referral service or private attorneys who handle plaintiffs' tort cases, depending on the make-up of the local bar and the kind of cases being considered. The provision does not specify whether the governing body or the director of the recipient is authorized to do the consultation and make the determination, leaving that judgment to the local decision-making process.

Numerous revisions are proposed to be made in the language and organization of § 1609.3(b)(3), which is based on the remaining provisions of § 1609.4 of the current regulation. The current regulation uses the term "free referral" instead of "referral to the private bar." The Committee decided that the term "free referral" was too vague and has substituted "referral of the case to the private bar" which is more descriptive. This provision makes it clear that the director of the recipient (or the director's designee) has the express authority, subject to policies adopted by the recipient, to make the determinations listed.

Section 1609.3(b)(3)(i) is a new proposal. It recognizes that, in certain cases, past experience in trying to refer out similar cases has shown that referral efforts would be futile. The Corporation does not wish scarce resources to be expended for efforts that the recipient knows will prove useless. This provision, which is intended to address the specific circumstances in a particular case, differs from § 1609.3(b)(2), which deals with categories of case types.

Section 1609.3(b)(3)(ii) is essentially the same as the comparable provision in the current regulation. It allows a recipient to take a case if emergency circumstances require immediate action before referral procedures can be undertaken.

Section 1609.3(b)(3)(iii) is a revised version of the current 1609.4(b). It is included under the category of cases where the recipient's director or designee needs to make a case-by-case determination of the appropriate treatment of the case. The Committee also added the language on statutory fees to make it clear that if adequate statutory fees were available to attract private counsel, the recipient should try to refer the case out to the private bar, regardless of whether recovery of damages is a principal object of the client's case. This is not clear under the current regulation. Thus, for such cases, the Committee wished to clarify that if substantial fees might be available and the cases did not fall under any of the other categories authorizing representation, then the program was obligated to attempt referral in accordance with § 1609.3(a).

The language in the current rule relating to ancillary relief and counterclaims is proposed to be deleted because it is confusing and unnecessarily complicated, and the Committee wanted the commentary to include examples of the kinds of circumstances under which the recipient's director could determine that the recovery of damages was not the principal object of the case. For example, if the principal relief sought is equitable or a declaratory judgement, inclusion of a prayer for damages would not turn the matter into a fee-generating case. Similarly, if the recipient is representing the defendant in a case, the inclusion of a counterclaim for damages to protect the defendant's rights would not make the matter a fee-generating case.

Finally, because this proposed rule has deleted provisions on attorneys' fees, paragraph (c) directs recipients to refer to the Corporation's new rule on attorneys' fees, 45 CFR Part 1642.

Section 1609.4 Recipient Policies, Procedures and Recordkeeping

This new section requires that recipients establish written policies, procedures and recordkeeping requirements that will guide recipient staff to ensure compliance with this rule.

Miscellaneous Changes

Sections 1609.5 through 1609.7 of the current regulation are proposed to be deleted and are superseded by a new interim regulation, 45 CFR Part 1642, also published in this publication of the **Federal Register**. Accordingly, §§ 1609.5 through 1609.7 no longer have the force of law.

List of Subjects in 45 CFR Part 1609

For reasons set forth in the preamble, 45 CFR Part 1609 is proposed to be revised to read as follows:

PART 1609—FEE-GENERATING CASES

Sec.
1609.1 Purpose.
1609.2 Definition.
1609.3 General requirements.
1609.4 Recipient policies, procedures and recordkeeping.

Authority: 42 U.S.C. 2996f(b)(1) and 2996e(c)(6).

§ 1609.1 Purpose.

This part is designed (1) to ensure that recipients do not use scarce legal services resources when private attorneys are available to provide effective representation and (2) to assist eligible clients to obtain appropriate and effective legal assistance.

§ 1609.2 Definition.

(a) As used in this part, "fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award (1) to a client, (2) from public funds or (3) from the opposing party.

(b) "Fee-generating case" does not include a case where (1) a court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or (2) a recipient undertakes representation under a contract with a government agency or other entity.

§ 1609.3 General Requirements.

(a) Except as provided in paragraph (b) of this section, a recipient may provide legal assistance in a fee-generating case only if:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor two private attorneys will consider the case without payment of a consultation fee.

(b) A recipient may provide legal assistance in a fee-generating case without first attempting to refer the case pursuant to paragraph (a) of this section only when:

(1) An eligible client is seeking only statutory benefits, including but not limited to, subsistence benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 *et seq.*, as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*, as amended, Supplemental Security Income for Aged, Blind, and Disabled;

(2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or

(3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

(i) Documented attempts to refer similar cases in the past generally have been futile;

(ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time; or

(iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available.

(c) Recipients should refer to 45 CFR Part 1642 for restrictions on claiming, or collecting and retaining attorneys' fees.

§ 1609.4 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: August 20, 1996.

Suzanne B. Glasow,

Senior Counsel for Operations & Regulations.

[FR Doc. 96–21669 Filed 8–28–96; 8:45 am]

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federal register

Thursday
August 29, 1996

Part X

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1, et al.

Federal Acquisition Regulation; Payment by Electronic Funds Transfer and Small Entity Compliance Guide; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, 32, and 52

[FAC 90–42, FAR Case 91–118]

RIN 9000–AG49

Federal Acquisition Regulation; Payment by Electronic Funds Transfer

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule to amend the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments, and to facilitate implementation of Public Law 104–134 which mandates payment by EFT in certain situations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on the Internet at http://www.gsa.gov/far.

DATES: *Effective Date:* August 29, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 28, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90–42, FAR case 91–118 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–42, FAR case 91–118.

SUPPLEMENTARY INFORMATION:

A. Background

Public Law 104–134, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, contained a separate chapter 10 entitled Debt Collection Improvements. Subsection (x)(1) of Section 31001, the Debt Collection Improvement Act of 1996, amended Section 3332 of title 31, United States Code, by adding the following new statutory requirement: "(e)(1) Notwithstanding subsections (a) through (d) of this section, sections 5120(a) and (d) of title 38, and any other provision of law, all Federal payments to a recipient who becomes eligible for that type of payment after 90 days after the date of the enactment of the Debt Collection Improvement Act of 1996 shall be made by electronic funds transfer."

The statute further defines Federal payments to include vendor payments and expense reimbursements, as well as providing exemption for payments to certain recipients. The effective date of this provision is July 26, 1996.

Public Law 104–134 also contained provisions for payments by EFT which become applicable after January 1, 1999.

Under this statute, the Department of the Treasury is responsible for issuing regulations necessary for carrying out the statute. On July 26, 1996, the Financial Management Service issued an interim rule (61 FR 39254) which added Part 208 to Title 31, Code of Federal Regulations, to provide a regulation for payments through EFT. This interim rule reflects the provisions of the Treasury interim rule with respect to vendor payments.

The Councils are committed to advancing the use of EFT as the standard method of payment under Federal contracts, and believe that the use of EFT will ultimately reduce the administrative burden currently associated with contract invoice or financing payments made by check for both the Government and contractors. The rule, therefore, provides a contract clause which requires contractor submission of the information needed for payment by EFT as a condition of payment. With certain limited exceptions, this is the clause that will normally be used. However, some Government offices involved in certifying invoices and disbursing contract payments are not currently capable of using EFT as the standard method of payment. The rule provides a contract clause for contractor optional submission of EFT information where that is appropriate and consistent with the statute. The determination whether a particular payment must be made by EFT is that of the payment official.

The rule recognizes that contracts using non-United States currency and contracts issued outside the United States and Puerto Rico are currently not capable of being paid by EFT through the domestic banking system of the United States. In addition, certain classified contracts and certain contracts related to military operations and emergency situations will not be appropriate for payment by EFT. In accordance with the Treasury interim rule, these contracts have been excepted from the requirement for payment by EFT.

The Treasury Department has stated that a credit card transaction is an electronic payment. The rule, therefore, directs that contracts to be paid through use of a Governmentwide commercial purchase card will not include either EFT clause.

The statute provides that until January 1, 1999, recipients of payments who certify they do not have an account with a financial institution or an authorized payment agent shall be paid by other than EFT. To implement this statutory right, the clause at 52.232–33 (the mandatory EFT information clause) provides for non-EFT payment upon receipt of a contractor certification. Note that the certification is an explicit statutory requirement of 31 U.S.C. 3332(e)(2).

In addition to the provisions taking effect on July 26, 1996 (31 U.S.C. 3332(e)), Public Law 104–134 contained provisions which take effect after January 1, 1999 (31 U.S.C. 3332(f), *et al.*).

The most significant is a requirement that all payments after that date be made by EFT. While the statute provides for waivers of the applicable subsection by the Secretary of the Treasury after January 1, 1999, detailed regulations regarding these waivers have not been established. Therefore, both contract clauses provide that, after January 1, 1999, contractors shall provide EFT information for the contracts containing the clauses established in this rule.

A significant difference between EFT contract payments and EFT beneficiary or payroll payments is the additional information which must be provided by the Government to contractor recipients for contract payments. In order for a business receiving a contract payment to maintain its accounting books and records, it must obtain information such as invoice numbers, discounts taken, interest paid, and other payment adjustments with the payment. With paper checks, this information has normally been provided as an "advice of

payment", or other paper notice forwarded with the check. However, if this information is provided electronically, using appropriate formats, contractors can use more advanced accounting systems which do not require manual entry and processing of payment information. The contract clauses in this interim rule authorize the Government, at its option, to forward this information electronically, with the EFT payment, as provided for in the domestic banking system. However, the Government is aware that many banks and financial institutions do not yet provide their customers with this information electronically. In response to the proposed rule published in the **Federal Register** on October 3, 1995 (60 FR 51766), a significant issue raised was the desire to receive this remittance information electronically. The particular methods used for forwarding this information are specific to individual agencies and payment offices. Companies desiring payment information in specific formats should express their preferences to the agencies concerned, and their banks or financial institutions.

The rule adds a new FAR Subpart 32.11, Electronic Funds Transfer, which provides policy and procedures for Government payment by EFT. The rule replaces the contract clause at 52.232–28, Electronic Funds Transfer Payment Methods, with two new clauses at 52.232–33, Mandatory Information for Electronic Funds Transfer Payment, and 52.232–34, Optional Information for Electronic Funds Transfer Payment. Under the clause at 52.232–33, the contractor is required to provide the EFT information, prior to the submission of the first request for payment, as a condition of payment under the contract. The clause at 52.232–34 is used if EFT may become a viable method of payment during the period of contract performance, and the clause becomes effective if the Government and contractor agree to commence EFT.

Three sources submitted public comments in response to the proposed rule published on October 3, 1995. All comments were considered in developing this interim rule.

B. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Analysis may be obtained from the FAR Secretariat at the General Services Administration, 18th & F Streets, NW., Room 4035, Washington, DC 20405. The Analysis is summarized as follows:

This interim rule amends the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfer (EFT) for payments to contractors under Government contracts. When fully implemented, it is expected that the use of EFT for contract payments will reduce the administrative burden that is currently associated with contract invoice or financing payments made by check. The objective of the rule is to facilitate implementation of Section 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Section 31001(x)(1) amends 31 U.S.C. 3332 to require that, effective July 26, 1996, payment to newly eligible vendors must be made by EFT. The rule will apply to all small businesses who enter into Government contracts that (1) Will not be paid through use of the Governmentwide commercial purchase card; (2) are issued by a contracting officer within the United States or Puerto Rico; (3) are denominated and paid in U.S. dollars, and (4) do not involve certain classified information or military or emergency operations. To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule.

The Councils considered several alternatives which include permitting a transition period before requiring contractors to receive payment by EFT, and excluding, or making voluntary, EFT payments for certain types of contracts. The Councils selected the alternative that, within the constraints and objectives of the Debt Collection Improvement Act and the Treasury regulations, allows small entities to take advantage of the benefits of the EFT method of payment but also provides flexibility with regard to the needs of small entities. In accordance with 31 U.S.C. 3332, the rule provides for exemption of EFT requirements until January 1, 1999, for contractors who certify that they do not have an account with a financial institution or an authorized payment agent. As indicated above, the rule also exempts certain classes of contracts. The mandatory information clause contained in the rule requires contractors to submit identification and account number information, prior to the submission of the first request for payment, as a condition of payment under the contract. This clause permits a Contractor who does not wish to receive payment by EFT methods to submit a request to the payment office. The decision to grant the request, however, is solely that of the Government. The rule also contains an optional information clause which, if included in a contract, would permit a contractor to request EFT payment after award of the contract. However, in accordance with the EFT statute, under the optional clause, the contractor is required to furnish EFT information for any payment to be made after January 1, 1999. The **Federal Register** notice containing the Treasury interim rule states that, after this date, the Secretary is authorized to waive the EFT requirement for individuals or classes of individuals for whom compliance imposes a hardship, for certain categories of checks, and in other circumstances deemed necessary.

Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite FAR Case 91–118 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, a request for approval of an information collection concerning Electronic Funds Transfer (9000–0144) has been submitted to the Office of Management and Budget (OMB) and approved through August 31, 1999.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule is necessary for effective implementation of Section 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), which requires that beginning 90 days (July 26, 1996) after enactment of the Act (April 26, 1996), payments to newly eligible vendors must be made by electronic funds transfer. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

E. Determination of Applicability of Section 31001(x)(1) of Public Law 104–134 to Contracts Not Greater Than the Simplified Acquisition Threshold and Procurements of Commercial Items

In accordance with 41 U.S.C. 429 and 41 U.S.C. 430, the Federal Acquisition

Regulatory Council has determined that it would not be in the best interest of the Federal Government to exempt contracts in amounts not greater than the simplified acquisition threshold, or contracts for the procurement of commercial items, from the applicability of Section 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Section 31001(x)(1) amends 31 U.S.C. 3332 to require that, beginning July 26, 1996, payments to newly eligible vendors must be made by electronic funds transfer. Electronic funds transfer payment methods, when fully implemented, are expected to significantly reduce the administrative burden that is currently associated with contract payments made by check and, therefore, should apply to all Federal contracts.

List of Subjects in 48 CFR Parts 12, 13, 32, and 52

Government procurement.

Dated: August 23, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 12, 13, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 12, 13, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.302 [Amended]

2. Section 12.302 is amended in paragraph (b)(3) by adding "(except as provided in subpart 32.11)" after "Payment".

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

3. Section 13.501 is amended by adding paragraph (i) to read as follows:

13.501 General.

* * * * *

(i) In accordance with 31 U.S.C. 3332, payment under contracts may be required to be made by electronic funds transfer (EFT). See 32.1103 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the offeror of the EFT clause that will be in any resulting purchase order. Contracting officers shall not accept EFT payment data. All such data shall be provided by the contractor directly to the payment office.

PART 32—CONTRACT FINANCING

4. Section 32.000 is amended in paragraph (g) by removing the word "and"; in paragraph (h) by removing the period and inserting "; and" in its place; and adding paragraph (i) to read as follows:

32.000 Scope of part.

* * * * *

(i) Electronic funds transfer payments.

5. Section 32.002 is amended by adding paragraph (a)(7) to read as follows:

32.002 Applicability of subparts.

(a) * * *

(7) Subpart 32.11, Electronic Funds Transfer.

* * * * *

6. Section 32.902 is amended by revising the definition "Payment date" and adding, in alphabetical order, the definition "Specified payment date" to read as follows:

32.902 Definitions.

* * * * *

Payment date means the date on which a check for payment is dated or, for an electronic funds transfer, the specified payment date.

* * * * *

Specified payment date, as it applies to electronic funds transfer (EFT), means the date which the Government has placed in the EFT payment transaction instruction given to the Federal Reserve System as the date on which the funds are to be transferred to the contractor's account by the financial agent. If no date has been specified in the instruction, the specified payment date is 3 business days after the payment office releases the EFT payment transaction instruction.

7. Section 32.903 is amended by adding the following three sentences at the end of the section:

32.903 Policy.

* * * For payments made by electronic funds transfer, the specified payment date, included in the Government's order to pay the contractor, is the date of payment for prompt payment purposes, whether or not the Federal Reserve System actually makes the payment by that date, and whether or not the contractor's financial agent credits the contractor's account on that date. However, a specified payment date must be a valid date under the rules of the Federal Reserve System. For example, if the Federal Reserve System requires 2 days' notice before a specified payment date to process a transaction, release of a payment transaction instruction to the Federal Reserve Bank 1 day before the specified payment date could not constitute a valid date under the rules of the Federal Reserve System.

32.908 [Amended]

8. Section 32.908 is amended by removing paragraph (d).

9. Subpart 32.11, consisting of sections 32.1100 through 32.1103, is added to read as follows:

SUBPART 32.11—ELECTRONIC FUNDS TRANSFER

Sec.

32.1100 Scope of subpart.
32.1101 Policy.
32.1102 Assignment of claims.
32.1103 Contract clauses.

32.1100 Scope of subpart.

This subpart provides policy and procedures for Government payment by electronic funds transfer (EFT).

32.1101 Policy.

(a) 31 U.S.C. 3332(e) requires payment by EFT in certain situations. The payment office, not the contracting officer, determines if payment is to be made by EFT. The payment office may determine not to require submission of EFT information in accordance with paragraph (j) of the contract clauses at 52.232–33 and 52.232–34.

(b) The Government will protect against improper disclosure of a contractor's EFT information. The clauses at 52.232–33 and 52.232–34 require the contractor to submit such information directly to the payment office.

(c) Contractors that do not have an account at a domestic United States financial institution or an authorized payment agent are exempted by 31 U.S.C. 3332 until January 1, 1999, from the requirement to be paid by EFT. The clause at 52.232–33 provides for the contractor to submit a certification to that effect directly to the payment office in lieu of the EFT information otherwise required by the clause.

(d) Payment by EFT is the preferred method of contract payment in normal contracting situations. However, in accordance with 31 CFR 208.3(c), certain classes of contracts have been authorized specific limited exceptions as listed in paragraphs (d) (1) through (4) of this section. In these situations, the method of payment shall be specified by the payment office, either through agency regulations or by specific agreement.

(1) Contracts awarded by contracting officers outside the United States and Puerto Rico shall provide for payment by other than EFT. However, payment

by EFT is acceptable for this type of contract if the contractor agrees and the payment office concurs.

(2) Contracts denominated or paid in other than United States dollars shall provide for payment by other than EFT.

(3) Classified contracts (see 4.401) shall provide for payment by other than EFT where payment by EFT could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations.

(4) Contracts executed by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or contracts executed by any contracting officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, shall provide for payment by other than EFT where (i) EFT payment is not known to be possible, or (ii) EFT payment would not support the objectives of the operation. Contracting officers predesignated to perform contracting duties in the event of these operations shall include coordinated plans for payment arrangements as part of the pre-contingency contract operations planning.

32.1102 Assignment of claims.

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with subpart 32.8. EFT information which shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the "Suspension of Payment" paragraphs of the EFT clauses at 52.232–33 and 52.232–34.

32.1103 Contract clauses.

(a) Unless instructed otherwise by the cognizant payment office or agency guidance, the contracting officer shall insert the clause at 52.232–33, Mandatory Information for Electronic Funds Transfer Payment, in all solicitations and resulting contracts which (1) will not be paid through use of the Governmentwide commercial purchase card (see 13.103(e)); and (2) are not otherwise excepted in accordance with 32.1101(d). The clause may be inserted in other contracts if the contractor requests payment by EFT and the payment office concurs.

(b) Unless instructed otherwise by agency guidance, the contracting officer shall insert the clause at 52.232–34, Optional Information for Electronic Funds Transfer Payment, in all solicitations and resulting contracts which (1) Do not contain the clause at 52.232–33; (2) Will not be paid through use of the Governmentwide commercial purchase card (see 13.103(e)); and (3) Are not otherwise excepted in accordance with 32.1101(d).

(c) For contracts containing the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, if the clause at 52.232–33, Mandatory Information for Electronic Funds Transfer Payment, will not be included in the contract in accordance with paragraph (a) of this section, the contracting officer shall attach an addendum to the contract that deletes the clause at 52.232–33 and—

(1) If required by paragraph (b) of this section, incorporates the clause at 52.232–34, Optional Information for Electronic Funds Transfer Payment, in the contract; or

(2) If the clause at 52.232–34 is not required, specifies that the Government will make payment under the contract by check.

(d) If more than one disbursing office will make payment under a contract, the contracting officer shall include the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.212–4 is amended by revising the date of the clause; and in paragraph (i) by revising the third and fifth sentences to read as follows:

52.212–4 Contract Terms and Conditions-Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (AUG 1996)

* * * * *

(i) * * * Unless otherwise provided by an addendum to this contract, the Government shall make payment in accordance with the clause at FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment, which is incorporated herein by reference. * * * For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

* * * * *

52.232–28 [Reserved]

11. Section 52.232–28 is removed and reserved.

12. Section 52.232–33 and 52.232–34 are added to read as follows:

52.232–33 Mandatory Information for Electronic Funds Transfer Payment.

As prescribed in 32.1103(a) and (c), insert the following clause:

MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1996)

(a) *Method of payment.* Payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic funds transfer (EFT) at the option of the Government. If payment is made by EFT, the Government may, at its option, also forward the associated payment information by electronic transfer. As used in this clause, the term "EFT" refers to the funds transfer and may also include the information transfer.

(b) *Mandatory submission of Contractor's EFT information.* (1) The Contractor is required, as a condition to any payment under this contract, to provide the Government with the information required to make payment by EFT as described in paragraph (d) of this clause, unless the payment office determines that submission of the information is not required. However, until January 1, 1999, in the event the Contractor certifies in writing to the payment office that the Contractor does not have an account with a financial institution or an authorized payment agent, payment shall be made by other than EFT. For any payments to be made after January 1, 1999, the Contractor shall provide EFT information as described in paragraph (d) of this clause.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the payment office.

(c) *Contractor's EFT information.* Prior to submission of the first request for payment (whether for invoice or contract financing payment) under this contract, the Contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to the Government payment office named in this contract. If more than one payment office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the changed information to the designated payment office(s).

(d) *Required EFT information.* The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause).

(1) The contract number to which this notice applies.

(2) The Contractor's name and remittance address, as stated in the contract, and account number at the Contractor's financial agent.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of

the Contractor official authorized to provide this information.

(4) For ACH payments only:

(i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(ii) Contractor's account number and the type of account (checking, saving, or lockbox).

(5) For Federal Reserve Wire Transfer System payments only:

(i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's financial agent.

(ii) If the Contractor's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(e) *Suspension of payment.* (1) Notwithstanding the provisions of any other clause of this contract, the Government is not required to make any payment under this contract until after receipt, by the designated payment office, of the correct EFT payment information from the Contractor or a certificate submitted in accordance with paragraph (b) of this clause. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of this contract.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) *Contractor EFT arrangements.* The Contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing of transfers.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor-provided EFT information in the correct manner, the Government remains responsible for (i) making a correct payment, (ii) paying any prompt payment penalty due, and (iii) recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Contractor-provided EFT information was incorrect at the time of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) *EFT and prompt payment.* (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of this contract if, in the EFT payment transaction instruction given to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within 7 days after the Government is notified of the defective EFT information.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee EFT information required by paragraph (d) of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Payment office discretion.* If the Contractor does not wish to receive payment by EFT methods for one or more payments, the Contractor may submit a request to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the Government.

(k) *Change of EFT information by financial agent.* The Contractor agrees that the Contractor's financial agent may notify the Government of a change to the routing transit number, Contractor account number, or account type. The Government shall use the changed data in accordance with paragraph (e)(2) of this clause. The Contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by the Contractor. The Contractor agrees that the agent's notice of changed EFT data is deemed to be a request by the Contractor in accordance with paragraph (e)(2) that no further payments be made until the changed EFT information is implemented by the payment office.

(End of clause)

52.232–34 Optional Information for Electronic Funds Transfer Payment.

As prescribed in 32.1103 (b) and (c), insert the following clause:

OPTIONAL INFORMATION FOR ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1996)

(a) *Method of payment.* (1) Except as provided in paragraph (a)(2) of this clause, after the Contractor provides the information described in paragraph (d) of this clause, in accordance with paragraph (b) of this clause, payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic funds transfer (EFT) at the option of the Government. If payment is made by EFT, the Government may, at its option, also forward the associated payment information by electronic transfer. As used in this clause, the term "EFT" refers to the funds transfer and may also include the information transfer.

(2) Notwithstanding the provision of this clause making the furnishing of EFT information optional, the Contractor shall furnish the EFT information described in paragraph (d) for any payment to be made after January 1, 1999.

(b) *Contractor consent.* (1) If the Contractor is willing to be paid by EFT, the Contractor shall provide the EFT information described in paragraph (d) of this clause. The Contractor agrees that, after providing EFT information in accordance with this clause, the Contractor cannot withdraw the Government's right to make payment by EFT for this contract.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the payment office.

(c) *Contractor's EFT information.* Prior to submission of the first request for payment (whether for invoice or contract financing payment) under this contract, for which the Contractor desires EFT payment, the Contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to the Government payment office named in this contract. If more than one payment office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the changed information to the designated payment office(s).

(d) *Required EFT information.* The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the domestic banking laws of the United States or the Federal Reserve Wire Transfer System at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause).

(1) The contract number to which this notice applies.

(2) The Contractor's name and remittance address, as stated in the contract, and account number at the Contractor's financial agent.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of

the Contractor official authorized to provide this information.

(4) For ACH payment only:

(i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(ii) Contractor's account number and the type of account (checking, saving, or lockbox).

(5) For Federal Reserve Wire Transfer System payments only:

(i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's financial agent.

(ii) If the Contractor's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(e) *Suspension of payment.* (1) Notwithstanding the provisions of any other clause of this contract, if, after receipt of the Contractor's EFT information in accordance with paragraph (b) of this clause, the EFT information is found to be incorrect, or, for payment after January 1, 1999, if EFT information has not been furnished, then until receipt by the designated payment office of the correct EFT information from the Contractor, (i) the Government is not required to make any further payment under this contract; and (ii) any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of this contract.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) *Contractor EFT arrangements.* The Contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing of transfers.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor-provided EFT information in the correct manner, the Government remains responsible for (i) making a correct payment, (ii) paying any prompt payment penalty due, and (iii) recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Contractor-provided EFT information was incorrect at the time of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) *EFT and prompt payment.* (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of this contract if, in the EFT payment transaction instruction given to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within 7 days after the Government is notified of the defective EFT information.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee EFT information required by paragraph (d) of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Payment office discretion.* If, after submitting the EFT information, the Contractor does not wish to receive payment by EFT methods for one or more payments, the Contractor may submit a request to the designated payment office to refrain from using the EFT payment method. The decision to grant the request is solely that of the Government.

(k) *Change of EFT information by financial agent.* The Contractor agrees that the Contractor's financial agent may notify the Government of a change to the routing transit number, Contractor account number, or account type. The Government shall use the changed data in accordance with paragraph (e)(2) of this clause. The Contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by the Contractor. The Contractor agrees that the agent's notice of changed EFT data is deemed to be a request by the Contractor in accordance with paragraph (e)(2) that no further payments be made until the changed EFT information is implemented by the payment office.

(End of clause)

Federal Acquisition Circular (FAC) 90–42 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–42 is effective August 29, 1996.

Dated: August 21, 1996.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: August 22, 1996.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

Dated: August 21, 1996.

Tom Luedtke,

Deputy Associate Administrator for Procurement, NASA.

[FR Doc. 96–22034 Filed 8–28–96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 90–42 which amends the FAR. Further information regarding this rule may be obtained by referring to FAC 90–42 which precedes this notice. This document may be obtained from the Internet at http://www.gsa.gov/far.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501–4755.

Payment by Electronic Funds Transfer (FAC 90–42, FAR Case 91–118)

This interim rule amends the FAR to add a new Subpart 32.11, Electronic Funds Transfer, which provides policy and procedures for Government payment by electronic funds transfer. The rule replaces the contract clause at 52.232–28, Electronic Funds Transfer Payment Methods, with two new clauses at 52.232–33, Mandatory Information for Electronic Funds Transfer Payment, and 52.232–34, Optional Information for Electronic Funds Transfer Payment. The rule also makes related amendments to Parts 12 and 13 and the clause at 52.212–4, Contract Terms and Conditions—Commercial Items. The rule facilitates implementation of Section 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Section 31001(x)(1) amends 31 U.S.C. 3332 to mandate payment by electronic funds transfer in certain situations.

Dated: August 23, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–22135 Filed 8–28–96; 8:45 am]

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federal register

Thursday
August 29, 1996

Part XI

Environmental Protection Agency

40 CFR Part 745

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62128B; FRL-5389-9]

RIN 2070-AC84

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a Federal regulation under section 402 of the Toxic Substance Control Act (TSCA) to ensure that individuals conducting lead-based paint activities in target housing and child-occupied facilities are properly trained and certified, that training programs providing instruction in such activities are accredited and that these activities are conducted according to reliable, effective and safe work practice standards. The Agency is also finalizing a Federal regulation under section 404 of TSCA that will allow States and Indian Tribes to seek authorization to administer and enforce the regulations developed under section 402. The goal of this regulation is to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards, and to protect the general public from exposure to lead hazards.

DATES: This document is effective August 29, 1996. Specific applicability dates related to this final rule are as follows:

States and Indian Tribes seeking EPA authorization to administer and enforce their own lead-based paint activities programs may apply to the Agency starting October 28, 1996. Following EPA authorization, the requirements of the State or Tribal program will become effective as specified in such program.

For States and Indian Tribes that do not apply to EPA for and receive authorization, EPA will administer and enforce the regulations for lead-based paint activities contained in subpart L. The requirements of Subpart L will begin to apply in non-authorized States and Indian Country no later than August 31, 1998, as specified below.

In States and Indian Country where EPA will administer and enforce subpart L, training programs that seek to provide lead-based paint activities training courses or refresher courses pursuant to § 745.225 may first apply to EPA for accreditation on or after August 31, 1998. Such training programs cannot provide, offer, or claim to provide training or refresher training for lead-based paint activities as defined in this subpart, without acquiring accreditation from EPA pursuant to § 745.225 on or after March 1, 1999.

In EPA-administered States and Indian Country, no individual or firm can perform, offer, or claim to perform lead-based paint activities as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after August 30, 1999. Such individuals or firms may first apply to EPA for certification pursuant to section 745.226 after March 1, 1999. In EPA-administered States and Indian Country, after August 30, 1999 all lead-based paint activities, as defined in this subpart, must be performed pursuant to the work practice standards contained in § 745.227.

ADDRESSEES: Copies of this rule, the public comments received on this rule, EPA's response to those comments and other relevant documents that support the rule are available for public inspection at EPA's headquarters office on weekdays, except legal holidays, between the hours of noon and 4 p.m. at the following location: Environmental Protection Agency, TSCA Public Docket Office (7407), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404. TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

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I. Introduction

A. Legal Authority

The training, certification and accreditation requirements and work practice standards contained in this rule are being promulgated pursuant to section 402 of TSCA, 15 U.S.C. 2682, as amended on October 28, 1992. The Model State Program and regulations on the authorization of State and Tribal lead programs are being promulgated pursuant to section 404 of TSCA, 15 U.S.C. 2684.

B. Summary

Today's final rule is intended to ensure that individuals conducting lead-based paint inspections, risk assessments and abatements in target housing and child-occupied facilities are properly trained and certified, and that training programs providing instruction in such activities are accredited. Target housing is defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, or any 0-bedroom dwelling. A child-occupied facility is defined as a building, or portion of a building, constructed prior to 1978, visited by the same child, 6 years of age or under, on at least 2 different days within any week,

provided that each days visit lasts at least 3 hours, the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

In addition, the regulations contain a Model State Program (MSP), which States and Indian Tribes are encouraged to reference and use as guidance to develop their own Federally authorized lead-based paint activities programs. The MSP identifies five key elements—training, accreditation, certification, work practice standards and enforcement—which EPA believes are needed to promote and develop a qualified and trained workforce able to conduct lead-based paint activities safely, effectively and reliably. The regulations also contain procedures for States and Indian Tribes to follow when applying to EPA for authorization to administer and enforce a State or Tribal lead-based paint activities programs.

The MSP will allow States and Indian tribes to manage and administer these training, accreditation and certification programs at the State or Tribal level. The Agency believes that programs such as this, which require among other things the certification of individuals, are best administered at the State or Tribal level allowing for individual State or Tribal-specific flexibility.

The purpose of these training, accreditation, and certification requirements and the work practice standards in today's final rule is to ensure that lead-based paint abatement professionals, including workers, supervisors, inspectors, risk assessors, and project designers, are well-trained in conducting lead-based paint activities in target housing and child occupied facilities. The rule will also ensure, through the certification of professionals, that inspections for the identification of lead-based paint, risk assessments for the evaluation of lead-based paint hazards, and abatements for the permanent elimination of lead-based paint hazards are conducted safely, effectively and reliably. In addition, training providers will be accredited to ensure that high quality training for these professionals is available. The Agency believes this certification and accreditation program will allow homeowners and others to hire a well-qualified work force that is adequately trained in the proper procedures for conducting lead-based paint activities.

The work practice standards in today's final rule are not intended to regulate all activities that involve or disturb lead-based paint, but only those that are described as an inspection, risk assessment or abatement by an individual who offers these services. This rule would not regulate a renovation contractor that incidentally disturbs lead-based paint or an individual who samples paint on a kitchen cabinet to determine if the paint contains lead. Today's final rule would cover a contractor who offers to abate a home of lead-based paint hazards, or an inspector who offers to conduct a lead-based paint inspection in a residential dwelling.

Regulated Entities. Potentially regulated entities are those training providers that would be accredited and those professionals who would be trained and certified to conduct lead-based paint abatements.

Category	Examples of Regulated Entities
Lead abatement professionals	Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities
Training providers	Firms providing training services in lead-based paint activities

This table is not intended to be exhaustive, but rather provides a guide of the entities that are likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should carefully examine the provisions in part 745 of the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

C. Background

On October 28, 1992, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) became law. As a result, the Toxic Substances Control Act (TSCA) was amended to include a new title, Title IV, 15 U.S.C. 2681–2692. TSCA Title IV directs EPA to promulgate several regulations, including the lead-based paint activities training, certification, and accreditation requirements, work practice standards and the MSP included in today's final rule.

The requirements in today's final rule were first proposed on September 2, 1994 (59 FR 45872) (FRL–4633–9). Several changes have been made to the proposed rule because of comments received by the Agency. Nonetheless, the primary objective of the proposed rule and today's final rule remains the same and is consistent with the goals stated in Title X and the mandates prescribed in TSCA Title IV.

The primary objective of today's final rule is to address the nation's need for a qualified and properly trained workforce to assist in the prevention, detection and elimination of hazards associated with lead-based paint. By promoting the establishment of this workforce through today's final rule, the Agency will help to ensure that individuals and firms conducting lead-based paint activities in target housing and child-occupied facilities will do so in a way that safeguards the environment and protects the health of building occupants, especially children aged 6 years and under.

In addition to today's final rule under sections 402 and 404 of TSCA, EPA is developing other rules as mandated by other sections of TSCA Title IV. The relationship of today's final rule to these other rules is discussed in more detail in Unit IV. of this preamble.

II. Consultation with Stakeholders

Following the September 2, 1994 publication of the lead-based paint activities proposal, the Agency met at different times with representatives from various State environmental and public health agencies. At least three meetings were held with State and Tribal representatives under the auspices of the Forum on State and Tribal Toxics Action or FOSTTA. FOSTTA is an organization that serves as a forum for State and Tribal officials to jointly participate in addressing national toxics issues, including lead, and to improve communication and coordination among the States, Indian Tribes and EPA. Under FOSTTA, a lead project has been established to work with the States and Tribes on lead-related issues. Between 10 and 12 States participate on the lead project with EPA.

In addition to FOSTTA, the Agency met on December 5 and 6, 1994, with 93 representatives from 49 State health and environmental agencies and 12 representatives from 10 Indian Tribes. Minutes from the FOSTTA meetings, and the December 1994 meeting are in the docket for today's final rule (Ref. 1).

In addition to encouraging States and Indian Tribes to submit written comments on the September 2 proposal,

the Agency also held meetings with the States and Indian Tribes to discuss their current and future roles as co-regulators in the area of lead-based paint activities. These meetings, in combination with the written comments submitted by the States, helped shape today's final rule.

III. Response to Comments on the Scope of the Rule

The comment period for the proposed rule extended from September 2, 1994 to December 15, 1994. The Agency received a total of 323 comments and has reviewed them all. These comments, along with a detailed summary (Ref. 2) and the Response to Public Comment Document (Ref. 3), a written response to the issues raised by commenters, can be found in the public docket for today's final rule.

Based on the public comments, the Agency has made several changes to the proposed rule. Two of these changes affect the scope of the final rule by modifying the definitions of the buildings and structures covered. Additionally, the Agency has amended the definition of abatement. These changes, and others, are summarized below. For a more detailed discussion of issues raised by commenters and changes made to the final rule, readers should refer to the Response to Public Comment Document.

A. Building Types

One principal change in the final rule is the Agency's decision to delay promulgation of training and certification requirements and work practice standards for individuals and firms conducting lead-based paint activities in public buildings (except child-occupied facilities), commercial buildings, superstructures and bridges. This decision was primarily based on the need to clarify the "deleading" definition contained in the September 2, 1994 proposal, and the Agency's desire to avoid conflict and overlap with the training requirements contained in the Occupational Safety and Health Administration's (OSHA) interim final lead standard (29 CFR 1926.62).

Under the September 2, 1994 proposal, individuals and firms conducting deleading activities in public and commercial buildings, superstructures and bridges would have been subject to EPA training and certification requirements and work practice standards and, possibly, the OSHA training requirements contained in OSHA's interim final lead standard. Under the proposed rule, EPA's intention was to include OSHA's training requirements in EPA's training and certification program. However, commenters noted uncertainty as to whether EPA's proposed definition of "deleading" would have included precisely the same activities which would trigger the training requirements under OSHA's interim final lead standard.

Consequently, commenters believed that EPA's training and certification program would have imposed OSHA training when, in fact, OSHA may not require it. Other commenters also believed that OSHA's training requirements were adequate and that EPA's training and certification program was unnecessary for individuals and firms conducting "deleading" activities in public and commercial buildings, superstructures and bridges.

In its review of the comments received on the deleading definition, the Agency has determined that the definition of the term needs to be clarified. At this time, the Agency is continuing to review the public comments it received on its proposed definition, and is examining available data for the purposes of developing options to establish training and certification requirements and work practice standards for individuals and firms that conduct deleading activities in public and commercial buildings, superstructures and bridges. The Agency is also considering options that will eliminate the potential for overlap between any training requirements EPA may propose in the future and OSHA training requirements for such individuals and firms.

Another related change involves the Agency's decision to include requirements for lead-based paint activities conducted in public buildings (except child-occupied facilities) in the future action covering commercial buildings, superstructures and bridges. Accordingly, today's final rule does not cover public buildings constructed prior to 1978 (except child-occupied facilities).

The Agency is taking this action in response to numerous comments that urged the Agency to focus its efforts on lead-based paint activities conducted in housing and other facilities frequented by children. In the September 2, 1994 proposed rule, individuals and firms conducting lead-based paint activities in public buildings would have been required to adhere to the same regulations as in target housing, regardless of whether children frequented the buildings. In the September 2, 1994 proposal, the Agency specifically requested comment on whether all public buildings should be subject to the same regulations and grouped together in this way with target housing.

A significant majority of commenters expressed concern that application of these requirements to all public buildings, as defined in the September 2, 1994 proposal, would have resulted in the expenditure of substantial resources without a comparable reduction in lead-based paint exposures among children aged 6 years and under. Under the September 2, 1994 proposal, the Agency broadly defined public buildings as "any building constructed prior to 1978, except target housing, which is generally open to the public or occupied or visited by children, including but not limited to stores, museums, airport terminals, convention centers, office buildings, restaurants, hospitals, and government buildings, as well as facilities such as schools and day-care centers."

In response to those comments that the Agency focus its requirements on individuals and firms conducting lead-based paint activities in buildings frequented by children, today's final rule establishes a sub-category of public buildings named "child-occupied facilities."

Today's final rule defines a child-occupied facility as "a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms."

Under today's final rule, individuals, firms and training providers that either offer training in the performance of lead-based paint activities in child-occupied facilities, or that perform or offer to perform such activities in child-occupied facilities are subject to the same requirements as individuals, firms and training providers involved in target housing.

The Agency's decision to define and establish child-occupied facilities as a sub-category of public buildings with requirements equivalent to those for target housing is based on one of the key objectives of today's final rule, which is to prevent and reduce lead exposures among young children.

The Agency believes that children face potentially equivalent (if not greater) risks from lead-based paint hazards in schools and day-care centers as they do at home. Indeed, some

children spend more time in a particular classroom or day-care room in a given day or week than they might spend in a single room in their homes. If that classroom contained a lead-based paint hazard, the children in it could be at risk.

The Agency believes section 402(b) provides it with the flexibility necessary to regulate lead-based paint activities in child-occupied facilities in the same manner it regulates those activities in target housing. Although section 402(b)(2) uses terms such as "identification" and "deleading" instead of "inspection," "risk assessment" and "abatement," EPA believes that, given the similarity of the population to be protected and the nature of the risk they face, the section 402(b)(2) terms can be understood to include the same types of lead-based paint activities as specified in section 402(b)(1). "Identification" of lead-based paint under section 402(b)(2) is analogous to "inspection" under section 402(b)(1). "Deleading" under section 402(b)(2) is equivalent to "abatement" under section 402(b)(1). While there is no direct analog in 402(b)(2) to "risk assessment," EPA believes such activity is fairly (and necessarily, from a logical perspective) included within the phrase "activities conducted by a person who conducts or plans to conduct an elimination of lead-based paint or lead-based paint hazards." (See definitions of "deleading" in section 402(b)(2)).

Commenters also supported the Agency's decision to focus on those buildings or portions of buildings where children spend a significant amount of time, or that children regularly or frequently use, rather than all public buildings. Commenters cited preschools and kindergarten classrooms as examples of the types of buildings that needed to be included, like target housing, in the regulatory program contained in today's final rule. By citing such facilities as examples, commenters appeared to indicate that the Agency should focus on facilities that a 6-year old child regularly attends, rather than facilities that children may visit intermittently or infrequently, such as museums, hospitals, grocery stores or airports.

In selecting the 3-hour, 2-day a week time requirement for its definition of a child-occupied facility, the Agency considered national survey data compiled by the U.S. Department of Education (Ref. 4) and the U.S. Bureau of the Census (Ref. 5). Data from the Department of Education and the Bureau of the Census indicate that children attending preschool between age 3 and age 6 or under will meet for a minimum of 3 hours a day, 2 days a week.

Based on this data, the Agency chose to define "child-occupied" facilities as facilities where a child would spend a minimum of at least 3 hours a day, 2 days a week. Relying on the available data, the Agency believes its definition will cover the vast majority of preschools, kindergartens and day-care centers. Moreover, the decision to exclude child-occupied facilities constructed after 1978 is consistent with the statutory definition of both target housing and public buildings, which exclude both housing and public buildings constructed after 1978.

The Agency also sought to include only facilities where there is regular or recurring visitation, over time, by a child, by including a combined annual visitation minimum of 60 hours. The rationale for this choice was that a likely minimum recurring visitation schedule for a child would be a 10-week day-care session, 2 days per week, 3 hours per day that would be equal to 60 hours.

Today's final rule requires that individuals and firms conducting lead-based paint activities in child-occupied facilities meet the same training and certification requirements as individuals and firms working in target housing. The Agency designed the training and certification requirements for individuals and firms working in target housing primarily to ensure that abatement professionals are instructed on how to conduct lead-based paint activities to identify, reduce or eliminate lead-based paint hazards that may present risks to children. Consequently, the Agency believes these requirements are also appropriate for individuals working in child-occupied facilities.

Commenters did not support the development of a set of work practice standards for child-occupied facilities that would differ from the work practice standards in target housing. Nor does the Agency have any reason to conclude that a different set of work practice standards should be developed for child-occupied facilities. Consequently, the work practice standards for child-occupied facilities do not differ from those work practice standards established by this final rule for target housing.

The proposed rule specifically exempted from regulation individuals who perform lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while the activities are being conducted. The majority of public commenters supported this exemption and it will remain in the final rule. However, some commenters expressed concern that homeowners should not perform abatements in their own home where there is a child with an elevated blood lead level. The Agency agrees with this comment and has changed the final rule accordingly.

B. Definition of Lead-Based Paint Abatement in Target Housing and Child-Occupied Facilities

The Agency received roughly 60 comments on its proposed definition of lead-based paint abatement. In developing the proposed rule, the Agency relied on the definition of abatement contained in section 401 of TSCA. Section 401(1) of TSCA defines abatement as:

> . . .any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under this title. Such term includes:
>
> (A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and
>
> (B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

In its September 2, 1994 proposal, the Agency defined "abatement" as follows:

> *Abatement* means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under Title IV of TSCA. Such term includes:
>
> (1) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and
>
> (2) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.
>
> Abatement shall be presumed in the following circumstances:
>
> (A) projects for which there is a written contract stating that an individual or firm will be conducting activities in or to a dwelling unit that will permanently eliminate lead-based paint hazards;
>
> (B) projects involving the permanent elimination of lead-based paint or lead contaminated soil and conducted by firms or individuals certified in accordance with this § 745.226 or this regulation; or
>
> (C) projects involving the permanent elimination of lead-based paint or lead contaminated soil and conducted by firms or individuals who, through their company name, promotional literature, or otherwise advertise or hold themselves out to be lead abatement professionals.
>
> (3) Abatement does not include renovation and remodeling, or landscaping activities

whose primary intent is not to permanently eliminate lead-based paint hazards, but is instead to repair, restore or remodel a given structure or dwelling, even though these activities may incidently result in a reduction in lead-based paint hazards.

In response to the proposal, commenters expressed concern that the phrase ". . .any set of measures. . ." implied that the Agency assumed that abatement will always occur throughout an entire residential dwelling, rather than to some subset of components. The Agency agrees with the commenters and has clarified its belief that abatements may be performed on components of buildings, as well as the whole building, by adding the following phrase: "any measure or set of measures designed to permanently eliminate lead-based paint" to its definition of abatement in today's final rule.

In the proposed rule, by way of clarification, the Agency provided three circumstances (see (2)(A)(B) and (C) above) in which abatement shall be presumed. Commenters noted that, as proposed, these illustrative circumstances may have resulted in the imposition of today's requirements upon individuals and firms conducting renovation and remodeling or other similar nonabatement activities.

For example, a renovation and remodeling contractor may also be certified as an abatement supervisor or worker, and may choose to advertise his/her lead-based paint abatement services as one specialty his/her business can provide. This should not mean that all renovation or remodeling projects this contractor works on should be considered abatement for the purposes of this rule. In response to these comments, § 745.223(3)(ii) and (3)(iii) of the abatement definition in today's final rule identifies activities that are not considered abatements. These include renovation and remodeling activities covered by § 745.223(4) of the abatement defintion which are not specifically designed to permanently eliminate lead-based paint hazards, but instead, are designed to repair or remodel a residential dwelling, and interim control activities.

Another issue raised by commenters was that the Agency's abatement definition focused on the intent of the building owner and the individual or firm conducting an abatement. The commenters suggested that the Agency's intent-based approach creates a loophole for building owners and contractors who will escape regulation by calling abatement something else, such as renovation and remodeling. A third concern was that the definition required abatement activities to result in the permanent elimination of a lead-based paint hazard, as opposed to a temporary reduction of a hazard.

Although these comments are not without merit, EPA has decided to maintain its proposed abatement definition, with some minor adjustments. EPA believes that the clear intent of Congress was to focus the scope of this initial regulation on abatement activities, and to define abatements as those projects where there is a conscious effort on the part of the building owner and contractor ("measures designed to") to permanently eliminate lead-based paint hazards.

In writing its definition of abatement, Congress did not say any set of measures "which permanently eliminate" lead-based paint hazards. Nor did it say any set of measures "which have the effect of permanently eliminating" lead-based paint hazards. Instead, Congress defined abatements as any set of measures "designed to permanently eliminate" lead-based paint hazards. Webster's defines the term "design" as "to intend for a definite purpose." By including the phrase "designed to" in its definition of abatement, EPA believes that Congress was specifically directing EPA to regulate as abatements only those activities which are undertaken with the definite purpose or intent of permanently eliminating lead-based paint hazards.

The reason for this focus can be found in the legislative history that accompanies Title X. Prior to the passage of Title X, and even today, abatements were being conducted to reduce or eliminate lead exposure to children when in fact they were, because of improper training or technique, increasing exposures. This situation, in part, prompted Congress to direct the Agency to develop today's final rule regulating abatement activities.

Other commenters suggested that the Agency's definition of abatement should specifically include renovation and remodeling, interim controls, operations and maintenance, and any other activity that may disturb lead-based paint and create a potential hazard.

The definition of abatement in section 401(1) of TSCA includes a list of specific activities (e.g., removal of lead-based paint, replacement of lead-painted surfaces or fixtures) which are included within the definition's scope. This list is cited by some commenters as indicating that abatement should include activities, such as renovation, that are not necessarily intended to eliminate lead-based paint hazards. However, in providing this list, Congress did not intend that it be read or applied in isolation from the preceding intent-based definitional language. The list provided in section 401(1)(A) and (B) merely identifies some of the "measures" that may be taken by a contractor to "permanently eliminate lead-based paint hazards." EPA believes that, for any of the measures specified in section 401(1)(A) and (B) to be considered abatement, they must also be conducted with the intent or "definite purpose" of permanently eliminating lead-based paint hazards.

Clearly, Congress recognized that these other activities, such as renovation or remodeling, may disturb lead-based paint and may result in lead-based paint hazards. In response to this concern, Congress directed the Agency, under section 402(c), to conduct a study to determine the extent to which renovation and remodeling activities may create lead-based paint hazards. Based on the results of this study, section 402(c)(3) of TSCA directs EPA to revise today's regulations to address the lead-based paint hazards associated with renovation and remodeling. Thus, rather than requiring regulations now for all non-abatement activities, section 402 of TSCA directs EPA to defer such regulation pending further study to determine which, if any, renovation and remodeling-type activities create a lead-based paint hazard.

IV. Relationship of Sections 402 and 404 to Section 403 of TSCA

Under section 403 of TSCA, EPA is developing a rule that will identify conditions of lead-based paint, and lead levels and conditions in residential dust and soil that would result in a hazard to building occupants, especially children age 6 and under. In combination with the work practice standards contained in § 745.227 of today's final rule, the Agency expects that the levels and conditions identified in the TSCA section 403 rule will provide clear direction on how to identify, prioritize and respond to hazards from lead in and around target housing.

Promulgation of the TSCA section 403 rule, however, has been delayed until the Agency completes various information gathering and assessment activities. On January 3, 1996, the United States District Court for the Northern District of New York issued a decree, consented to by EPA and the Atlantic States Legal Foundation (ASLF), that requires EPA to propose the TSCA section 403 rule by November 30, 1996 and to issue a final rule by September 30, 1997 (Ref. 8).

In the interim, the Agency has published guidance to assist the public in identifying lead-based paint hazards, sources of lead exposure, and the need for control actions in environments where children may be present.

EPA originally issued this guidance in a July 14, 1994 memorandum from Lynn R. Goldman, Assistant Administrator for Prevention, Pesticides and Toxic Substances, to the Agency's Regional Division Directors, entitled "Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil" (the "section 403 Guidance"). Subsequently, copies of the section 403 Guidance have been available from the Agency upon request. To further disseminate the section 403 Guidance, the Agency published the full text of that document in the **Federal Register** on September 11, 1995 (60 FR 47248) (FRL–4969–6).

In the September 2, 1994 preamble, the Agency provided a lengthy discussion of the relationship between the section 402/404 regulations and the forthcoming section 403 regulation. The Agency explained why it believed it was appropriate to offer the section 402/404 rule for public comment, in the absence of a section 403 regulation (See 59 FR 45875).

In response, the Agency received several public comments. None of the comments stated that the Agency should not promulgate a final regulation for lead-based paint activities in target housing without a final section 403 rule. Seven comments were received from parties with an interest in public and commercial buildings, superstructures and bridges, urging the Agency to delay promulgating a TSCA section 402/404 rule covering those types of structures until the section 403 rule has been promulgated. As discussed previously, today's final rule does not address these building types, and thus these comments are not applicable.

Lastly, one commenter stressed the importance of publishing the TSCA section 403 rule as quickly as possible, but did not suggest that delaying action on the TSCA section 402/404 rule was necessary.

The Agency understands that without a final section 403 rule identifying lead-based paint hazards, full implementation of today's final rule will be difficult. The Agency has addressed this problem in the ASLF consent decree, by committing to promulgate a final rule under section 403 by September 30, 1997, well before subpart L of this rule will become effective in EPA administered States and Indian Country.

V. Response to Comments on the Accreditation of Training Programs in Target Housing and Child-Occupied Facilities

Section 745.225 includes various requirements and the application procedures that training programs must follow to become accredited by EPA to provide instruction in the lead-based paint activities and work practice standards described in this rule. These procedures and requirements apply to training programs that will offer both basic and refresher training courses.

Training programs may offer courses for one or more of the following five work disciplines: (1) Inspector, (2) risk assessor, (3) supervisor, (4) abatement worker, and (5) project designer. Minimum curricula requirements for each of these courses can be found at § 745.225(d).

The Agency has already developed and released model course curricula materials for the inspector, risk assessor, supervisor and abatement worker disciplines. The Agency is currently modifying and updating these materials, and developing a new model course for project designers, to reflect the course curricula contained in § 745.225(d). EPA will make these materials available prior to August 31, 1998.

The Agency received a variety of comments on the work disciplines, training courses and accreditation procedures in the proposed rule. Among the key issues raised were: the number of work disciplines; the length of the courses; their traditional classroom approach; the course curricula; the course test and hands-on assessment; instructor qualifications; and the procedures for applying for accreditation.

In response to these comments, the Agency has adjusted the proposed rule in several ways. EPA believes these the adjustments will result in a more flexible accreditation system for both training program providers and for individuals seeking training and certification through that system.

A. Framework for Training

Generally, most commenters agreed in principle with the tasks and responsibilities identified by the Agency under its five work disciplines: inspector, risk assessor, supervisor, worker, and project designer. On the other hand, commenters were divided on whether five separate work disciplines and training courses were needed to accomplish the tasks and objectives associated with inspection, risk assessment and abatement. In general, commenters were concerned with the potential for redundancy and overlap among the proposed five training courses.

Although the final rule retains five distinct work disciplines, as originally proposed, the Agency has made several changes to make the courses more modular in their design, eliminate potential redundancies in the course curricula, and reduce course length. Because of these changes, the Agency believes that the market will be better able to manage and more efficiently provide training to individuals responsible for performing lead-based paint inspection, risk assessment and abatement activities.

The Agency has consulted with OSHA to eliminate any redundancies between the course curricula contained in § 745.225(d)(3) and (5) for the abatement supervisor and worker, and the training program OSHA has established under its interim final lead standard (29 CFR 1926.62). Based on discussions with OSHA and a review of public comments, the Agency has decided that the best way to eliminate any redundancies or confusion regarding OSHA training versus EPA training is to remove OSHA's training program elements from the course curricula contained in § 745.225(d)(3) and (5).

As a result, training programs have the option of offering courses in: (1) OSHA training; (2) EPA training; or (3) both OSHA and EPA training. Only those programs that wish to offer EPA training would need to apply for accreditation under this rule.

A key difference between OSHA and EPA training is that OSHA training is primarily designed to reduce the occupational exposure to lead for construction workers. The OSHA standard establishes maximum limits of exposure to lead for all workers covered, including an action level of 30 $\mu g/m^3$ calculated as an 8–hour time-weighted average (TWA). At or above this action level, workers are subject to OSHA's training requirements, which primarily involve instruction in respirator use, engineering and work practice controls for the containment of lead, and OSHA's medical surveillance program.

In contrast, the primary purpose of EPA training for abatement workers, supervisors and project designers is to protect building occupants, particularly children ages 6 years and younger, from potential lead-based paint hazards and exposures both during and after an abatement.

The deletion of OSHA's training program elements has helped reduce the length of the abatement worker course from a proposed 32–hour course

(including 10 hours of hands-on instruction) to 16 hours (including 8 hours of hands-on instruction). The Agency has also reduced the emphasis on providing instruction in basic construction techniques and focused instead on the practical application of abatement methods and practices. The Agency believes providing adequate instruction on both construction and abatement techniques, even in a 32–hour course, would have been very difficult, if not impossible.

Furthermore, the final rule has retained 8 of the 10 hours of hands-on instruction, as proposed. Commenters were extremely supportive of the hands-on requirements of the rule, and the Agency believes that hands-on training helps trainees to retain the knowledge they acquire. Incorporating, as it does, 8 hours of hands-on training, the Agency believes that the 16–hour requirement in the final rule will enable workers to conduct safe, reliable and effective abatements.

Another change designed to reduce course length and eliminate overlap in the rule is the decision to establish one 32–hour course requirement that both supervisors and project designers will take, and to establish an additional 8–hour course supplement that project designers are required to take.

Under the proposed rule, supervisors and project designers would have been required to take one 40–hour course, and project designers would have been required to take an additional 16–hour course supplement. Most of the comments on the proposal suggested that the Agency could combine some of the course topics from the two classes.

As in the proposed rule, the Agency's premise for developing one course for both supervisors and project designers is the similarity in the job responsibilities of these two work disciplines. Areas where the supervisor and project designer share similar learning needs are listed in the course curriculum at § 745.225(d)(3). Some of the course topics (e.g., risk assessment/inspection report interpretation) reflect the Agency's decision to insert topics from the proposed project designer course into that of the final joint supervisor/project designer course.

For example, the ability to interpret inspection and risk assessment reports is a skill that both supervisors and project designers must have, since they are both responsible for either the oversight of abatement activities or are responsible for designing abatement plans based on the results of inspections and risk assessments.

The course supplement for project designers is intended to provide specific instruction in designing lead-based paint abatement activities in target housing and child-occupied facilities. Clearly, this 8–hour course cannot train an individual in all aspects of project design. However, the course will compliment the education and skills that project designers must have (e.g., a degree in engineering or 4 years experience in building construction and design) by providing lead-specific design instruction.

The Agency also received several comments regarding the training for inspectors and risk assessors. Many commenters requested clarification about whether an individual must take both the inspector and risk assessor course as a part of the process to become certified as a risk assessor. The simple answer is yes; however, the inspector and risk assessor courses do not necessarily have to be taken back-to-back. Training providers have the option of offering the inspector course separate from the risk assessor course, although the provider may choose to offer the two courses as one unit. More detail regarding the certification process for inspectors and risk assessors is provided in Unit VI. of this preamble.

An additional change to the rule is the allowance for alternative training methods, including supplemental at-home study programs. The Agency specifically requested comment on the use of at-home study materials and other alternative training methods in its September 2, 1994 proposal. Most of the comments received on this issue supported the use of alternative training methods in lieu of classroom instruction, with certain restrictions.

Commenters opposed to the use of alternative training methods generally expressed reservations regarding the quality of such methods and the need for the teacher/student interaction afforded in the classroom.

Based on a review of these comments, the final rule permits the use of alternative training techniques (e.g., video training, computer-based training) as a supplement to the hands-on skills assessment or as a substitute for the lecture portion of the training course requirements outlined in § 745.225(d). The Agency agrees with commenters who note that alternative training programs, such as at-home study, can result in the effective transfer of information, if certain restrictions are implemented to ensure the quality of these programs.

To ensure the quality of such alternative programs, the final rule requires training providers who opt to use alternative techniques to submit all materials as specified under § 745.225(b)(1) as a part of their application for accreditation. These materials include copies of the course agenda, and student and instructor manuals.

The accreditation of alternative training programs will be based on EPA's review of the training materials submitted under § 745.225(b)(1), including the course agenda and manuals. In its review, the Agency will consider on a case-by-case basis the provisions made by a training program to ensure the quality of its course materials. Based on that review, the Agency may accredit programs offering alternative training and instructional methods.

In addition, § 745.225(c)(6) of the final rule also requires all training programs, including those using alternative training methods, to meet the minimum hourly requirements for hands-on activities in their training courses. Under § 745.225(c)(7), all training programs are also required to administer a course test and conduct a hands-on skills assessment or a proficiency test as discussed below.

One specific example of alternative training/testing techniques that the rule mentions is the use of a proficiency test in lieu of a hands-on assessment and course test. A course that offers a proficiency test would consist primarily of an evaluation of the effectiveness and reliability of a student's ability to conduct a particular lead-based paint activity. The proficiency test must also cover all of the topics and skills addressed in a particular course. For instance, a proficiency-based course in inspection could involve a mix of lecture material with students conducting a mock inspection in a residential dwelling with known lead-based paint concentrations. The student would be evaluated on the accuracy of the results of their inspection.

One other issue raised by commenters was the lack of detail on specific activities for the "hands-on" component of a course. The Agency has not however, modified the final rule to specify activities that training programs must use for the hands-on component of their courses. The Agency still believes that qualified training programs should be able, without additional regulation, to develop specific hands-on activities based on their knowledge of lead-based paint activities and the industry. Furthermore, the Agency notes that, as the technologies for conducting lead-based paint activities develop, the focus of the elements of hands-on training will change. The course topics required to have a hands-on component are

marked with an asterisk in § 745.225(d) of the regulatory text.

B. Training Program Accreditation Requirements

1. *General comments.* The Agency received a significant number of comments on the qualifications proposed for instructors. Additionally, commenters requested clarification on whether the Agency requires training providers to offer courses for individuals who do not speak English, or who have low reading comprehension. Other commenters asked the Agency to clarify or change specific aspects of the proposed accreditation process.

For example, several commenters requested clarification on the number of instructors that a training program must employ to become accredited. Some commenters thought that under the September 2, 1994 proposal, a training program would be required to employ a minimum of three individuals to obtain accreditation: a training manager, a principal instructor and a work practice instructor. Other commenters interpreted the proposed rule to mean that at a minimum only one individual—the training manager—was required to staff a training program.

On this same topic, some commenters criticized the proposal for setting up an "exclusive" training system. They believed that the proposed experience, education and other qualifications for the training manager, and principal and work practice instructors were excessive. These commenters stated that the proposed qualifications were unnecessary, and that they would prevent competent and talented instructors from offering training in lead-based paint activities. Under the final rule, one person may be employed as both the training manager and the principal instructor, if the individual possesses the qualifications listed at § 745.225(c)(1) and (2).

Furthermore, the Agency observes that the final rule no longer includes work experience or educational prerequisites for work practice instructors, but instead allows training programs to employ guest work practice instructors, who may provide either lecture or hands-on instruction in a course.

Some commenters urged the Agency to stipulate specific qualifications for guest instructors, or to limit the amount of time a guest instructor may be employed by a training program. The final rule does not, however, set such limits. The Agency believes that it would be too difficult to regulate the qualifications of the many kinds of inter-disciplinary guest instructors that a training program might want to employ, given that their backgrounds and credentials will vary significantly. For example, physicians, certified abatement supervisors, lawyers, housing officials and other professionals could possibly be employed as guest instructors. Given the diversity in education, training and experience among these professionals, the Agency does not believe that establishing specific qualifications is either possible or useful and the final rule leaves that determination to the training manager.

In terms of setting a limit on the amount of time that a guest instructor may be used, the Agency has placed the responsibility for ensuring the quality of a training course on the training manager. The Agency believes that the decision for determining how much time a guest instructor should be used is a decision best made by the training manager, in consultation with the principal instructor.

Additionally, the Agency notes that the training manager ultimately is responsible for ensuring the quality of instruction, and that it is in the best interest of a training manager to account for the capabilities and experience of the principal instructors.

Lastly, the Agency notes that today's final rule does not require training providers to offer courses for individuals who do not speak English or who have a low reading comprehension. The Agency believes that training providers should be given the flexibility to offer special courses for such individuals, depending on demand. However, the Agency does recommend that training providers make special provisions to accommodate the needs of individuals who cannot speak English, or who have a low reading comprehension.

2. *Prerequisites—training manager.* In addition to these changes, today's final rule more clearly describes the prerequisites for the training manager.

For example, under the proposed rule the qualifications required for a training manager were flexible and intended to accommodate a broad range of work experience and educational backgrounds. Specifically, the proposal would have required that training managers, at a minimum, possess either some training or education in teaching adults. In addition, the proposal would have required that training managers possess experience or education in one of three additional areas, specifically: (1) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, or public health, or (2) 4 years of experience managing an occupational health and safety program, or (3) an additional 2 years of experience teaching adults.

The final rule has been revised, however, to require training managers to meet any one of the four prerequisites now listed at § 745.225(c)(1). As discussed later in this section of the preamble, the prerequisites contained in the final rule are different from those proposed and include the addition of a fourth alternative prerequisite under § 745.225(c)(1)(iv).

Additionally, the final rule no longer contains the requirement that all training managers possess either training or education in teaching adults. The Agency's decision to eliminate the training or educational requirement in adult education was based on its review of several comments. These comments suggested that, although training or experience in adult education may be valuable, it should not be required of all training managers, given that the primary function of the training manager is to administer and manage a training program—not necessarily to instruct adults. The Agency agrees with these comments, but notes that the final rule maintains the 2 years of experience in adult education as one of the four prerequisites that can now be used to qualify an individual as a training manager.

The decision to retain the 2 years of experience in adult education as one of the four available prerequisites for qualifying training managers is based on several factors. The most important factor is the Agency's desire to accommodate the broad range of work experience and educational backgrounds that training managers and instructors may bring to their work. This approach, which most commenters widely supported, has been retained and further extended under § 745.225(c)(1) of the final rule.

For instance, in addition to recognizing bachelor or graduate level degrees in building construction, engineering, industrial hygiene, safety or public health, the final rule also would permit individuals who possess a degree in business administration or education to assume the responsibilities of a training program manager.

Although these experiences may differ from one another, the Agency believes that an individual can effectively utilize them to ensure the development of a quality training program. Furthermore, the Agency's role in the accreditation process also will contribute to the development and establishment of quality lead-based paint activities training programs.

3. *Prerequisites—principal instructors.* The final rule also provides a great deal of flexibility in recognizing the work experience and educational backgrounds of principal instructors. For example, instead of specifically listing the type of training, experience or education in teaching adults that a principal instructor must possess—as had been proposed—the final rule now requires only that a principal instructor possess demonstrated experience in teaching adults. This change is based on numerous comments that objected to the specificity in the proposed rule, particularly the requirement that principal instructors do one of the following: (1) Complete a 40-hour train-the-trainer course, or (2) obtain a degree in adult education, or (3) possess at least 2 years of experience in teaching workers/adults.

Most of the comments on this requirement stated that a 40–hour train-the-trainer course was too long and/or that the educational degree or 2–year work experience requirement was excessive. Other commenters requested clarification on what constituted 2 years of work experience, and noted that a 40–hour train-the-trainer course was not available for the purposes of qualifying principal instructors.

Based on its review of this proposed requirement and in response to these comments, the Agency revised the final rule to require that principal instructors possess demonstrated experience, education or training in teaching workers/adults, as well as a minimum of 16 hours in lead-specific training. Commenters on the proposal also stated that requiring principal instructors to have 2 years experience in the construction industry would limit the number of qualified instructors. In response, the Agency now requires that principal instructors possess demonstrated experience, education or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health or industrial hygiene.

Although the term "demonstrated" is very broad, the Agency believes that the final rule should accommodate the wide range of experiences that principal instructors may have acquired in teaching adults. This requirement will allow an instructor to demonstrate, through a variety of materials—official academic transcripts, resumes, letters of reference, certificates from training courses—that they possess the skills or experience necessary to provide effective instruction. This approach is preferable to attempting to develop an exhaustive list of work experiences or academic degrees, that will invariably omit an unthought-of, but relevant, job title.

C. Accreditation Application Process

The Agency received a variety of comments on the process of applying for accreditation. Some commenters indicated that the Agency should have required more documentation as a part of the application process, while other commenters felt that fewer documents and less information were needed to complete an application package.

The information and materials to be submitted by training programs as a part of the application process are specified at § 745.225(b)(1) in today's final rule. With some minor exceptions, as described below, EPA has retained most of the information and documentation requested from the proposed rule.

For example, the Agency will no longer require that training programs submit examples of course completion certificates, since it is unlikely that receipt of such copies will help prevent fraud or misrepresentation of such certificates.

As a matter of clarification, a few commenters thought that the proposed rule would have required that training programs submit to EPA the documentation listed at § 745.225(c)(4), as proof of the qualifications of its instructors. Under the final rule, the Agency has now clarified that it does not require these documents as part of the application process for accreditation. Rather, they are to be retained at the training site and must be made available to the Agency in the event of an inspection, audit or an enforcement action.

Comments also were received asking the Agency to specify the facilities and type of equipment needed to deliver quality training, and clarification on whether training programs should submit separate descriptions of facilities and equipment when conducting off-site training.

In its review of these requests, the Agency believes that some commenters felt EPA should assist the training community in establishing a floor for the type of equipment investments that a training facility should make. EPA disagrees that it should play a direct role as a part of the regulatory process in these matters. The Agency also believes it is not necessary to specify the facilities, type of equipment and other related details that training programs should employ as a part of their routine operations.

Rather, the Agency believes that training providers should review the course curriculum requirements contained in § 745.225(d) of the final rule, and, if possible, obtain copies of or information on the model course curricula developed by the Agency. This type of information should assist in determining the type of equipment and other materials that will be needed to provide instruction in lead-based paint activities.

Other commenters asked the Agency to specify the content of a course test blueprint and the activities that should be included as a part of the hands-on assessment. The test blueprint should outline the training objectives of the course. Presumably, these objectives will be the basis for developing course test questions, and providers should indicate that. The Agency does not believe it needs to further clarify, for qualified training providers, what activities constitute hands-on training. Training providers should be able to develop suitable hands-on exercises to meet the accreditation requirements given the direction provided in the rule.

Several comments were received on the Agency's requirement that, in order to provide refresher training courses in one or more disciplines, a training program must either simultaneously apply for accreditation to teach the corresponding full length course(s) or already be accredited to teach the corresponding course. Among the comments received on this requirement, a small majority favored it.

Despite this support, the Agency has eliminated this requirement for several reasons. One is that the Agency recognizes that under the grandfathering provisions contained in § 745.226(d) there is likely to be a high level of demand for refresher training, once § 745.225 becomes effective. Therefore, the Agency believes that maximizing the opportunities for providers to offer refresher training courses will be necessary to assist the training community in meeting the demand for these courses. Under § 745.225(e), training programs will be required to link the instruction and testing provided in a refresher training course with the course topics contained in § 745.225(d), as appropriate. This will help ensure consistency between EPA's full-length and refresher training curricula. Furthermore, the policy of permitting training programs to offer refresher-only training—without a precondition of offering full-length courses—is consistent with other Agency directives and policies issued under the Asbestos Hazard Emergency Response Act of 1986.

D. Re-accreditation of Training Programs and Quality of Instruction

Section 745.225(f) contains requirements to ensure the continued availability of quality training by requiring training providers to apply for re-accreditation every 4 years. The reaccreditation process is very similar to the initial application process.

Commenters were generally supportive of the requirements for re-accrediting training providers, although a few commenters suggested that training providers should be re-accredited more frequently than every 3 years. They reasoned that re-accreditation is necessary more than once every 3 years because of rapid technological changes in the lead-based paint activities field and the need to ensure that training courses provide instruction in the most current technology.

The Agency disagrees with this comment. Under the accreditation program established by today's final rule, EPA will maintain a list of accredited training programs. When a technological advance or other significant information develops that EPA believes would benefit the lead-based paint activities training community, EPA will provide this information to the accredited training providers. The Agency believes that keeping training providers informed of recent advances in technology allows training providers to be re-accredited every 4 years.

Some commenters expressed concern that the rule would not ensure that a training program would continue to offer the same quality of instruction in the years after initial accreditation. Further, these commenters were concerned that the proposed re-accreditation requirements did not fully address this issue. In response, the Agency has changed the final rule to require that training providers include a description of changes to training facilities or equipment since their last application was approved. This description should only include changes that would adversely affect the ability of students to learn. An example of such a change would be the loss of facilities to be used for hands-on instruction.

In order to further improve the quality of instruction, the Agency is exploring the possibility of providing pass/fail data from the third-party certification exam to training providers for their students. This information can be used by the provider to adjust their curriculum or instruction over time to maintain an acceptable (as determined by the provider) pass rate.

VI. Response to Comments on the Training and Certification of Individuals

Today's final rule recognizes five work disciplines: inspector, risk assessor, supervisor, abatement worker, and project designer. Training requirements and certification procedures for individuals working within these disciplines are established under § 745.226 of this rule. These include specific training, education and/or experience requirements and, for the inspector, risk assessor and supervisor disciplines, passage of a certification examination.

In response to comments, the Agency has simplified the titles for some of the work disciplines: the "inspector technician" is now called the "inspector"; the "inspector/risk assessor" is simply the "risk assessor"; and the "project designer/planner" is now the "project designer."

Under today's final rule, certified individuals may only perform lead-based paint activities in the following work disciplines:

Certified inspectors may perform inspection and abatement clearance activities as described in § 745.227(b) and (e)(8) and (e)(9);

Certified risk assessors may perform inspection, abatement clearance, lead-hazard screen or risk assessment activities, as described in § 745.227(b), (c), (d), and (e)(8) and (e)(9); and

Certified supervisors, abatement workers and project designers may perform abatement activities as described in § 745.227(e).

The final rule also does not limit or define the circumstances under which a project designer must be used. In the proposal, the Agency would have required the use of a project designer on all abatement projects of 10 residential dwellings or more. The Agency is concerned that such a requirement would be too inflexible and would not account for the varying complexity of abatement projects. The Agency did not find compelling support among commenters for this provision, and it has been eliminated. The Agency will provide training and certification for individuals who seek to offer abatement project design services, but it is the building owner who must decide if a project designer is needed on a particular project.

Another change to the final rule is the extension of the recertification interval from the 3 years proposed to 5 years, for individuals who have passed a proficiency test as part of their training. (See the discussion of proficiency training in Unit V. of this preamble). The rationale for this change is that such an individual will have demonstrated a high level of proficiency in the field in which they are certified, and thus it is presumed that they would require less frequent re-training.

Comments on the training and certification requirements for individuals working in the lead-based paint activities field focused on two key areas: the applicability of specific education and experience prerequisites as a part of the certification process; and the use of an examination in the certification process.

A. Training, Education and/or Experience Requirements

In general, commenters agreed with the proposed rule's five designated work disciplines and the lead-based paint activities associated with each, with some minor exceptions. A key issue raised by commenters, however, was the Agency's establishment of specific education and/or experience requirements.

Although the Agency neither proposed nor requested comment specifically on the possibility of exempting any industry or group of professionals from either part or all of its proposed training and certification requirements, several requests were received for such exemptions. Commenters submitted requests for some type of exemption for the following professions, among others: certified industrial hygienists, professional engineers, licensed architects, toxicologists, code enforcement officials, safety professionals, nurses, social workers and environmental professionals, and "experienced" State and local health officials.

Among the comments in support of exemptions, proposals ranged from blanket exemptions to, more commonly, various forms of partial exemptions. At least one commenter provided an alternative training course deemed more suitable to its members than the course proposed by EPA. This commenter also requested that the Agency recognize various levels of competency among the members of its organization, and suggested a tiered approach for exempting individuals from particular training requirements to address those levels of competency.

Although most of the commenters were seeking an exemption from the training and certification requirements for the risk assessor discipline, other similar requests were sought for the

supervisor, project designer and inspector disciplines.

Commenters representing various trade organizations based their reasons for seeking a training exemption on the level of education and/or experience their professional members already possess. In some instances, commenters also referenced an existing certification process that their members must undergo and implied that this certification process equaled or exceeded the certification process proposed by the Agency for lead-based paint professionals.

In general, the Agency agrees that the basic work experience and/or educational requirements of many nationally recognized certification programs either meet or exceed the experience and/or educational prerequisites contained in today's final rule under § 745.226(b) and (c). Several of these certification programs are covered by § 745.226(b)(1)(iii)(B)(3) of the rule, including programs sponsored by the American Board of Industrial Hygiene, the National Society of Professional Engineers and the Board of Certified Safety Professionals. Additionally, members of other organizations who possess the minimum work experience and/or educational requirements contained in § 745.226(b) or (c) also may qualify to become certified under today's final rule.

However, the Agency disagrees that work experience and/or educational prerequisites alone ought to be sufficient for the purposes of certifying individuals to conduct lead-based paint activities. Further, the Agency does not believe that the certification programs identified by commenters adequately address and specifically provide training in the identification, evaluation and abatement of lead-based paint and its associated hazards. Notably, none of the commenters provided the Agency with evidence of a currently available training course and/or module that expressly addresses lead-based paint activities as part of their professional certification process. Furthermore, commenters did not present evidence that their certification programs included hands-on instruction in the conduct of lead-based paint activities, which is a critical element of the training courses in today's final rule.

Therefore, although the certification requirements contained in § 745.226(b) and (c) recognize a broad range of work experiences and educational backgrounds as the first step in qualifying to become an inspector, risk assessor, supervisor, project designer or abatement worker, the final rule does not provide for any training exemptions. A primary reason is that the lead-based paint activities field is a new field, and that a majority of the individuals entering it—despite their expertise in similar fields—may not possess either direct experience, or an education that has focused on the identification and elimination of lead-based paint hazards. Consequently, the Agency believes that, in most cases, individuals entering the lead-based paint activities field will need specialized training. The Agency is willing to work with professional organizations and other groups that want to develop training courses for their members that meet EPA's accreditation requirements.

However, the Agency is aware that there are individuals and groups who have been working in the lead-based paint activities field prior to the promulgation of today's final rule. These individuals need to reference § 745.226(d) of the final rule which contains the Agency's criteria for recognizing the work experience, education and training, or on-the-job training that individuals may have received prior to the effective date of § 745.225.

If an individual determines that he or she meets the requirements contained in § 745.226(d), the individual may apply for certification under the reduced set of requirements and within the limitations contained in that section. Under these requirements, qualified individuals are required to successfully complete a refresher training course specific to the certification they are seeking, and if required under § 745.226(b), to pass a certification examination.

In addition to the broad issue of exemptions, comments also were received on various educational and experience requirements specific to the inspector, risk assessor and supervisor disciplines. Under the proposed rule, the Agency had opted not to impose educational and experience requirements for either the abatement worker or project designer. This was due primarily to language in Title X, section 1004(3)(B)'s definition of "certified contractor" as it pertains to these two disciplines.

However, based on overwhelming support among commenters, today's final rule adds educational and experience requirements for the project designers, though not for workers. These requirements are contained in § 745.226(c)(1)(ii)(B), and include either: (1) A bachelor's degree in engineering, architecture, or a related profession and 1 year of experience in building construction and design or a related field; or (2) 4 years of experience in building construction and design or a related field.

The basis for this requirement is EPA's belief, as reflected by a majority of commenters, that a project designer should have significant work experience, or a professional degree and some experience, in building design, or a related field, such as architecture or civil engineering.

Although the support was not nearly as broad or consistent, commenters also asked for modifications to the education and experience requirements for the inspector and risk assessor disciplines. Specifically, some commenters suggested that the Agency require that an inspector possess at least a high school diploma or equivalent to obtain certification. The Agency declined to include this requirement as a part of the certification process for inspectors, in part, based on its desire to provide individuals with an entry level position into the lead-based paint activities field. In response to comments that a high school degree or equivalent is needed to ensure a minimum level of competency among inspectors, the Agency believes that its training requirements and the certification examination will ensure an acceptable level of competency.

In the case of education and/or experience requirements for risk assessors, the proposed rule has been modified at § 745.226(b)(1)(iii)(B) to clarify the various mixes of education and experience that are acceptable for certification as a risk assessor. As discussed in the proposed rule, the educational and experience requirements for risk assessors are extremely important, given the pivotal role of a risk assessor in evaluating and presenting options to reduce lead-based paint hazards. The certified risk assessor must be qualified to make a competent, and rational assessment of the location and severity of any lead-based paint hazards. Based on that role, the Agency has developed work experience and/or educational prerequisites, which in combination with the training contained in § 745.225(d)(1) and (2) and the work practice standards contained in § 745.227(b), (c), (d) and (e), will enable the risk assessor to identify risks associated with lead-based paint hazards and to develop options to eliminate those hazards.

These credentials are very similar to those contained in the proposed rule with the exception that certified industrial hygienists, professional engineers, registered architects and other professionals listed under § 745.226(b)(1)(iii)(B)(3) are not required to possess 1 year of experience before becoming trained as risk assessors. The

decision to eliminate the 1 year of experience was based on the Agency's review of comments and the fact that many professional certification programs already incorporate various work experience prerequisites, which in some cases are comparable to the prerequisites listed in the proposed rule.

For example, to register as a professional engineer, an individual is required to possess a 4–year degree, and 4 years of progressive experience on engineering projects. The program for certified safety professionals also includes a 4–year degree and the 4–year work experience requirement.

Furthermore, the Agency notes that the academic training of these professionals also may cover subjects relating to building design, construction, environmental remediation and other areas relevant to lead-based activities.

The Agency also notes that it does not necessarily view the alternative work experience and/or educational prerequisites listed under § 745.226(b)(1)(iii)(B) for risk assessors; § 745.226(b)(1)(iii)(C) for supervisors; and § 745.226(c)(1)(ii)(B) for project designers as necessarily equivalent. Rather, as was the case in establishing experience and/or educational prerequisites for training program managers and principal instructors, the Agency's intention is to recognize a broad range of relevant qualifications that individuals entering the lead-based paint activities field are likely to possess.

For example, the experience and education of a certified industrial hygienist who has worked in the chemical industry may be very different from that of a professional engineer who has worked in building construction. However, the Agency believes that both these individuals can be trained as risk assessors.

B. Passage of the Certification Examination

In addition to training requirements and educational and experience requirements, individuals seeking to become certified as inspectors, risk assessors and supervisors are required to pass a certification examination, in addition to a course examination. The purpose of the certification examination is twofold.

One reason for the examination is to ensure that each individual certified under today's regulations will possess a minimum, acceptable level of knowledge and understanding of the tasks and responsibilities associated with the relevant work discipline. Other major functions of the certification examination are to provide a universal tool to measure an individual's knowledge, and to encourage States or Tribes to enter reciprocal certification arrangements with other States or Tribes.

Comments on the utility of a certification examination were generally supportive. Commenters understood the function of the examination and agreed to it in principle. Nonetheless, commenters, particularly State commenters, stressed that EPA incorporate security and quality control measures to ensure the integrity of the examination. Additionally, States indicated that they did not necessarily want to adopt EPA's certification examination, but might want to develop their own examination or use the EPA examination and add a State specific component.

In response, outside the regulatory framework of this rule, the Agency has been working closely with the States to develop a certification examination. In general, the goal of the certification examination process is to give each State the flexibility it desires to fashion its certification program, while at the same time ensure a consistent national level of competence in the lead-based paint activities workforce. As currently designed, the exam will include provisions to maintain the security of the item bank of questions.

VII. Framework for Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities

A. Introduction

Section 745.227 establishes standards for conducting three lead-based paint activities: inspection, risk assessment and abatement. In addition, § 745.227 provides requirements for conducting three related tasks that may be performed as either single tasks or as a part of an inspection, risk assessment or abatement. These three tasks are: a lead hazard screen, laboratory analysis, and composite dust sampling. Section 745.227 also establishes certain recordkeeping requirements. This section of the rule also establishes the dates by which compliance with these standards and procedures is required.

The standards and procedures for conducting the lead-based paint activities contained in § 745.227 are being issued under authority of TSCA section 402(a), which directs EPA to issue such standards, taking into account reliability, effectiveness and safety.

B. Scope and Applicability

Under today's final rule, the standards for lead-based paint activities contained in § 745.227 apply only in target housing and child-occupied facilities. Standards for lead-based paint activities conducted in steel structures and public and commercial buildings, which had been proposed on September 2, 1994, will be addressed after further Agency review. A discussion of the Agency's decision to address steel structures and public and commercial buildings outside this rulemaking is presented in Unit II.A. of this preamble.

Another important feature of the standards contained in § 745.227 is that they do not mandate circumstances under which any particular lead-based paint activity must be performed. Instead the decision to, for example conduct an inspection, is left to the building owner.

Additionally, the Agency is preparing a rule under TSCA section 403 that will identify conditions of lead-based paint and lead levels and conditions in residential soil and dust that would result in a hazard to building occupants. Although the TSCA section 403 rule has not yet been proposed, Agency guidance on this subject was issued July 14, 1994, and is discussed in detail in Unit IV. of this preamble. The section 403 Guidance also includes recommendations on actions that can be taken in response to conditions of lead-based paint and lead levels and conditions in residential soil and dust.

Until the final section 403 rule is promulgated, the Agency recommends that individuals and firms refer to the section 403 Guidance for assistance in identifying the presence of a lead-based paint hazard and deciding whether to conduct lead-based paint activities.

The primary purpose of the standards in today's final rule is to provide certified individuals and firms with a set of minimum requirements to be followed when conducting inspection, risk assessment or abatement activities. These requirements are primarily procedural in nature: for inspection, risk assessment and abatement activities, the standards specify the steps that EPA believes must be taken to conduct those activities safely, effectively and reliably. For abatement activities, the standards also place restrictions on certain techniques used to eliminate lead-based paint.

C. Use of Guidance and Recordkeeping Requirements

Today's final rule does not prescribe detailed work practices that should be followed for each unique situation in

which lead-based paint activities may be conducted. For that level of detail, individuals should consult Federal and State guidance that provides specific instruction on how to conduct inspection, risk assessment and abatement activities. These guidance documents include: the U.S. Department of Housing and Urban Development's Guidelines for the Control of Lead-Based Paint Hazards in Housing (HUD Guidelines) (Ref. 6), the section 403 Guidance, EPA's *Residential Sampling for Lead: Protocols for Dust and Soil Sampling* (Ref. 7), and any additional guidance issued by States or Indian Tribes that have been authorized by EPA under § 745.324 of this rule. While not regulatory requirements, these documents are recommended by the Agency because they provide reliable and effective information on this subject. Additionally, training courses that have been accredited by EPA or an EPA-authorized State or Tribe will provide detailed instruction on inspection, risk assessment and abatement standards and methodologies.

To complement the existing guidance documents, the Agency is currently preparing a technical guidance document as a companion to this rule. The Agency will distribute this guidance document to accredited training providers, the lead-based paint activities contracting community, and State and local governments, prior to the date that compliance with § 745.225 of this rule is required.

In its decision to recommend guidance as an adjunct to the requirements at § 745.227, the Agency carefully considered several factors, including enforcement issues and comments received from the public on this approach.

With regard to enforcement, many of the work practice standards contained in § 745.227 of today's final rule, such as sampling methodologies and visual inspection techniques, refer to guidance. As a result, the Agency recognizes that there are questions about the extent to which it will be able to take an enforcement action against individuals who choose not to use the various guidance recommended by EPA. Nonetheless, the Agency has many reasons for deciding to reference and develop guidance as a supplement to this rule, rather than to promulgate rigid work practice standards.

The September 2, 1994 proposal specifically requested comments on the use of guidance as a supplement to the rule's basic regulatory requirements. In general, the majority of commenters support the use of guidance as a supplement to the regulatory requirements contained in § 745.227. In some cases, commenters directly expressed their support, whereas in other cases, commenters expressed neither support nor opposition. Overall, the Agency believes that commenters accepted its proposed approach of referring to guidance.

The Agency believes there are several reasons to recommend guidance rather than to establish detailed national work practice standards for the purposes of providing instruction on how to conduct specific lead-based paint activities.

First, as discussed in the September 1994 proposed rule, the Agency drew from a large body of existing information and research, and the input from a broad range of individuals and groups, to develop its proposed regulatory standards for lead-based paint activities. Based on that information and input, the standards proposed in September included strict reporting requirements and documentation of the quality control measures and methodologies employed when conducting inspection, risk assessment and abatement activities. These reporting and documentation requirements remain a critical component of the standards established by today's final rule. In combination with the rule's basic work practice standards, training, certification and accreditation requirements, the reporting/documentation activities will help to ensure the effectiveness of the standards and facilitate the use of guidance.

A second reason for relying on non-regulatory guidance instead of rule-based standards is the number of differences that can be found in the structure, design and occupant use patterns of the residential dwellings and child-occupied facilities covered by this rule. For example, under the standards for conducting a risk assessment at § 745.227(d)(4), a risk assessor is required to collect dust samples in rooms where children aged 6 years and under are most likely to come into contact with dust. The rule does not prescribe precisely which rooms or how many samples to collect, because the risk assessor needs to consider site-specific variables to determine which rooms should be sampled and the number of samples that should be taken from each room. These variables include: the size and number of rooms in the building; interior design elements in a building and differences in designated play areas for a child; the location of windows and doors; the condition of door frames, window troughs and stools; and occupant use patterns.

As a specific example, in a small residential dwelling, a child may not have a separate playroom, but may play in selected areas of one room or more, such as a corner in a living room or dining room, or may have a bedroom that doubles as a playroom. On the other hand, in a large residential dwelling, a child may have a separate playroom and bedroom, and certain areas in a living room or family room for play activity. Furthermore, a child's pattern of use in a residential dwelling can vary considerably, and that pattern may only be possible to determine through an interview with a guardian.

Based on these and other variables that may be encountered when conducting a risk assessment, inspection or abatement, the Agency believes that to try to anticipate and attempt to list all circumstances that may be encountered would make the regulation overly prescriptive and rigid. However, by establishing minimum requirements and basic procedures for conducting inspection, risk assessment and abatement activities, the Agency is setting a safe, reliable and effective baseline of steps for certified individuals and firms to follow to make sound decisions based on site-specific conditions.

A third reason for the Agency's decision to avoid being overly prescriptive is the state of technology within the lead-based paint activities field. Although there has been progress in the development of new technologies to support specific lead-based paint identification techniques and abatement methods, the Agency recognizes that the field is advancing and that the technologies and methods that will help define it are still evolving.

Consequently, the standards contained in today's final rule do not specify that certain technologies or methods be utilized for sampling and analysis. Additionally, the rule does not prescribe any specific methods or technologies for conducting an abatement, although it does restrict certain work practices known to pose risks to building occupants, workers and the environment.

As had been proposed, today's final rule relies on the use of documented methodologies that incorporate adequate quality control measures. These methodologies and measures are available in existing Federal and State guidance documents, and will be taught at accredited training programs.

Although not overly detailed or prescriptive, EPA believes that the work practice standards contained in today's

final rule under § 745.227 provide a baseline, which in combination with the training, certification and accreditation requirements contained in §§ 745.225 and 745.226, will ensure that lead-based paint activities are conducted reliably, safely and effectively.

VIII. Response to Comments on Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities

A. Conflict of Interest

In its September 2, 1994 proposal, EPA requested comment on whether to preclude individuals or firms conducting abatement activities from performing inspection and risk assessment activities, and from performing clearance procedures following an abatement. Although many public commenters supported a requirement that inspection, risk assessment and clearance procedures be conducted by individuals and firms independent of the individuals and firms conducting abatements, today's final rule does not include such a requirement.

The Agency agrees with other commenters—those who did not support a conflict-of-interest requirement—that the potential convenience and cost savings of hiring one firm, as opposed to two or three firms, should not be denied to property owners. The Agency also notes that there may be instances in which, due to a regional scarcity of lead-based paint professionals, it may be cost prohibitive or logistically difficult for a building owner to hire two different companies.

Nonetheless, the Agency believes that parties involved in lead-based paint activities should avoid situations of potential conflict of interest. Through various public education and outreach programs, sponsored by both public and private organizations including EPA, the Agency believes that over time, the public's awareness and understanding of the options available for identifying and managing lead-based paint hazards will improve. With this knowledge, property owners and building occupants will be able to determine the value of hiring more than one firm to assist in evaluating, controlling or eliminating lead-based paint hazards.

Furthermore, to assist building owners and other individuals or firms that may contract for the services of a lead-based paint contractor, EPA recommends that inspectors, risk assessors and other lead-based paint activities contractors disclose any potential conflicting financial interest in the reports that they prepare pursuant to § 745.227(h).

B. Inspection

The objective of an inspection is to determine, and then report on, the existence of lead-based paint through a surface-by-surface investigation of a residential dwelling or child-occupied facility. As such, an inspection involves identifying the presence of lead in paint. An inspection does not include taking dust or soil samples. An inspection must be conducted by either a certified inspector or a certified risk assessor, and must include the provision of a report explaining the results of the investigation.

The inspection standards contained in § 745.227(b) reflect the Agency's decision not to provide detailed regulatory requirements on how to perform specific lead-based paint identification tasks, such as taking a paint chip sample or using an X-ray fluorescence (XRF) device: In the final rule, the Agency also has removed specific requirements to use the HUD Guidelines when collecting paint chip samples or when using an XRF device to test for the presence of lead-based paint.

Instead, the Agency requires that a lead-based paint inspection be conducted using documented methodologies and adequate quality control measures. These documented methodologies are defined as methods or protocols used to sample for the presence of lead in paint, dust, and soil. Documented methodologies that are appropriate for the purposes of this section may be found in: (1) The HUD Guidelines; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil (60 FR 47248); the EPA's *Residential Sampling for Lead: Protocols for Dust and Soil Sampling* and other EPA sampling guidance; and (2) Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized under § 745.324. Additionally these methodologies will be included in EPA's technical guidance on lead-based paint activities.

Although commenters generally supported this approach, at least three responses suggested that the Agency provide detailed regulations for lead-based paint testing. However, one of these commenters indicated that guidance may be an acceptable approach for establishing testing protocols. These commenters were concerned about the enforcement issues associated with the rule's dependence on documented methodologies, which to date have only been issued by HUD, EPA and various State agencies, primarily as guidance.

However, other commenters did not object to the Agency's use of documented methodologies, provided that records are kept as part of the inspection, and that such methodologies are acknowledged as documented methodologies by EPA through future guidance or regulations. As discussed, the Agency is currently preparing a technical guidance document for conducting lead-based paint activities. Additionally, it is possible that the Agency may amend the regulation with more detailed standards in the future, if there is a need to do so.

One reason commenters suggested that the Agency not require certain inspection techniques is that such requirements often have the effect of discouraging the development of emerging or new technologies. For example, the Agency currently does not recommend that chemical test kits be used for lead-based paint testing (Ref. 8). However, EPA recognizes that at some point in the future, test kit technology is likely to be improved so that the kits can provide reliable test results. At that time, the Agency will be able to recommend chemical test kits for testing for the presence of lead in paint.

Two other key issues raised by commenters were: (1) Potential limitations of the proposed procedures for conducting an inspection, assuming that an inspection involves the investigation for lead-based paint throughout an entire residential dwelling or child-occupied facility, rather than a "partial inspection" of just one or more rooms in a residential dwelling or child-occupied facility; and (2) the standard contained in § 745.227(b)(2), which requires the testing of all components of a residential dwelling or child-occupied facility with a "distinct painting history," yet allows inspectors not to test those components determined by the inspector or risk assessor as having been replaced after 1978.

1. *Partial inspections.* The Agency recognizes that there may be a demand for lead-based paint identification services that do not involve a surface-by-surface investigation for the presence of lead-based paint throughout an entire residential dwelling or child-occupied facility. For example, a homeowner may only be interested in determining if lead is present in the paint in a child's bedroom, not necessarily the entire residential dwelling. In this instance, it is unlikely that the homeowner will want to pay for an inspection, as defined under today's regulations.

Although not required, the Agency recommends that a certified inspector or risk assessor be used in cases, such as these, where an individual or firm believes it is only necessary to conduct a "partial inspection" of a property.

More specifically, in response to commenters on this issue, the Agency believes that the definition of an inspection, which under § 745.227(b) requires that testing for lead-based paint take place throughout an entire residential dwelling or child-occupied facility, is appropriate for several reasons.

One reason is that the statutory definition of an inspection in section 401(7) of TSCA calls for a "surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation." As discussed in the September 2, 1994 proposal, the Agency believes that an inspection is intended to provide a comprehensive inventory of all lead-based paint in a residential dwelling or child-occupied facility. As such, the Agency acknowledges, that the value of a lead-based paint inspection may appeal only to those individuals interested in getting a complete report on painted components in a residential dwelling or child-occupied facility. Although it is difficult to predict, the Agency believes that such a report may be of value to property owners or managers of large multi-family dwellings and child-occupied facilities and home buyers.

Furthermore, the Agency notes that its inspection requirements are consistent with general trends in the housing market, particularly in federally-owned housing or housing receiving federal assistance. That is, inspections are being conducted to ensure that building owners are informed of the presence of lead-based paint throughout a residential dwelling or child-occupied facility, not just one or two rooms.

Lastly, the Agency believes that by establishing requirements only for "whole house" inspections it will help ensure that the information needed to determine whether lead-based paint is present in a residential dwelling or child-occupied facility is accurately presented. Again, the Agency recognizes that an inspection, as defined under today's final rule, may not provide a value to all persons. Nonetheless, the Agency believes that by requiring that an inspection be conducted throughout a residential dwelling or child-occupied facility it will ensure that a person contracting for the inspection will obtain accurate and reliable information regarding the presence of lead-based paint throughout a residential dwelling and child-occupied facility.

2. *Distinct painting history.* On the issue of inspecting and sampling all components sharing a distinct painting history, except those components replaced after 1978, there are several points that commenters raised. First, some commenters suggested that the proposed requirement to take one sample per component in every room and one sample per exterior component with a distinct painting history was overly burdensome in that it required taking an excessive number of samples. The assumption of these commenters was that an inspection requires that each and every painted component throughout a residential dwelling had to be individually tested. The Agency would like to clarify that an inspection does not necessarily require that a large number of paint samples be taken.

To clarify this point, the Agency directs commenters to carefully review the definitions of "component" and "distinct painting history" as contained in § 745.223 of today's final rule. According to these definitions, in a room with four walls painted at the same time with the same paint, only one paint sample would need to be taken to characterize the lead content of the paint on the walls. This is because, although each wall can be considered a separate "component," the walls share the same distinct painting history. On the other hand, if there were window frames in the room that had been painted with a different paint than the walls (for example a semi-gloss instead of a flat), two samples would need to be taken, one from the walls and one from the windows. As this example demonstrates, the Agency does not believe that an inspection will involve excessive sampling.

In contrast, other commenters disagreed with these requirements for an inspection, suggesting that they would result in insufficient numbers of samples. Based on the definition of "distinct painting history," these commenters interpreted the proposal to mean that if all rooms in a residential dwelling had been painted recently with the same paint and in the same color (for example, a white latex paint), it would be possible for an inspector to take only one paint sample from the home.

In response, the Agency notes that in this case it would be clear to an inspector that trim, doors, and windows are usually painted with a different paint type. Determining the distinct paint history of such components involves not just an examination of the visible top coat, but the unique layers of paint beneath the surface. A visible examination of these paint layers is easily accomplished by making a discrete incision into the painted surface.

C. Risk Assessment Activities

TSCA section 401(16) provides that the objective of a risk assessment is to determine, and then report, the existence, nature, severity, and location of lead-based paint hazards in residential dwellings through an on-site investigation. The definition also identifies specific activities that will be employed when conducting a risk assessment, including: (1) The gathering of information regarding the age and history of the housing and occupancy by children aged 6 years and under, (2) visual inspection, (3) limited wipe sampling or other environmental sampling techniques, (4) other activity as may be appropriate, and (5) the provision of a report explaining the results of the investigation. This definition of risk assessment serves as the basis for the standards and procedures associated with a risk assessment contained in § 745.227(d).

The risk assessment procedures in today's final rule, as in the proposal, require the risk assessor to make a recommendation of lead hazard control strategies to address all lead-based paint hazards identified as a result of the risk assessment. This activity was not enumerated in the statutory definition, but was added pursuant to TSCA section 401(16), which stated that a risk assessment may include "other activities" as may be appropriate.

The Agency's reason for adding this requirement was to ensure that the individual or firm hiring or contracting for the services of a risk assessor was provided with some reliable guidance on how to respond to the results of a risk assessment.

1. *Lead hazard screen.* Pursuant to TSCA section 401(16), a risk assessment may include "other activities" as may be appropriate. Based on this language, today's final rule also includes the "lead hazard screen," as a risk assessment activity. The requirements for the screen are contained in § 745.227(c). The reason for including a lead hazard screen in the proposal and today's final rule is to, where appropriate, avoid the costs of conducting a comprehensive risk assessment, particularly in well-maintained housing and child-occupied facilities constructed after 1960, or in housing and child-occupied facilities considered unlikely to have significant lead paint, dust or soil hazards.

The Agency received two comments on the addition of a lead hazard screen

as a risk assessment activity; one commenter noted that the Agency needed to list more explicitly standards for conducting a lead hazard screen.

The commenters also agreed that the lead hazard screen should focus on determining the absence of a lead-based paint hazard, rather than the presence of such a hazard and the risks it may pose to building occupants. In response, today's final rule includes specific procedures and standards for conducting a lead hazard screen in § 745.227(c). Furthermore, because the lead hazard screen employs highly sensitive evaluation criteria and limited sampling, the Agency believes that these standards will provide the risk assessor with a basis for determining the absence of lead-based paint hazards.

If any one of the dust samples collected during a lead hazard screen contains a lead level greater than one-half of the applicable clearance level for the tested component, or if any sampled paint is found to be lead-based paint, that is an indication, but not a requirement, that the residential dwelling should undergo a full risk assessment. As discussed subsequently in this preamble, clearance levels for specific components can be found in the HUD Guidelines and in EPA's section 403 Guidance, as well as in several State guidance documents.

Clearance levels are used as the basis for determining whether a lead-based paint abatement has been successfully completed and that a residential dwelling or child-occupied facility may be re-occupied (if building occupants were relocated during an abatement). Currently, under the section 403 Guidance, clearance levels for dust also serve as the levels for determining the presence of lead-contaminated dust, which may pose a lead-based paint hazard. A standard for the lead hazard screen of one-half of the applicable clearance levels is extremely stringent. As such, the Agency believes that a dust sample containing less than that level is a reliable indicator that there are no lead-based paint hazards. The work practice standards and evaluation criteria for a lead hazard screen contained in § 745.227(c) are modeled after the HUD Guidelines recommendations for conducting a lead hazard screen.

As discussed previously in the preamble, the Agency recommends that the lead hazard screen be used primarily in well-maintained homes constructed after 1960. According to HUD, it is estimated that approximately 37 million privately owned homes and 428,000 public housing units, or roughly 90 percent of the nation's housing stock built prior to 1960, contain lead-based paint. Generally, if maintenance has been deferred on these homes, there is a high probability for the presence of some deteriorated lead-based paint and/or lead-contaminated dust.

Consequently, the value and any cost savings that may be achieved by conducting a lead hazard screen in poorly maintained, pre-1960 homes, rather than a full risk assessment, may not be realized. For instance, in a pre-1960 home with several components that have deteriorated paint, in practice, just as many deteriorated paint surfaces will be tested for a lead hazard screen as for a risk assessment. However, when conducting the lead hazard screen, a risk assessor is not required to attempt to determine whether those surfaces pose a lead-based paint hazard.

In fact, homeowners and building owners may decide that a lead hazard screen would merely add time and cost to the evaluation process in properties that would more likely benefit from a risk assessment. These benefits include a comprehensive report, not only on the existence of lead-based paint hazards, but also on the nature, severity, and location of those hazards. Furthermore, the risk assessment also would provide options on how to reduce or eliminate the lead-based paint hazards.

Other standards and activities required as a part of the lead hazard screen in § 745.227(c) include: (1) The collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, (2) a visual inspection, (3) the sampling of components with deteriorated paint with a distinct painting history in poor condition, (4) the collection of a minimum of two composite dust samples (one for floors and one for windows), and (5) the preparation of a report on the results of the screen. Specifically, § 745.227(c) requires that in a residential dwelling two composite samples be taken—one from the floors and one from the windows in rooms where one or more children, age 6 and under, are most likely to come into contact with dust. Additionally, in multi-family dwellings and child-occupied facilities, composite dust samples are to be taken from any common areas where one or more children age 6 years and under are likely to come into contact with dust.

2. *Risk assessment.* In addition to the requirements of a lead hazard screen, the standards for a risk assessment contained in § 745.227(d)(3) also involve the collection and review of background information regarding the physical characteristics of a building, and the occupant use patterns that may pose a lead-based paint hazard to children aged 6 years and under. More than two dust samples and soil samples also may be required under § 745.227(d)(4), (5), (6) and (7), respectively. Lastly, the risk assessment report must include options for reducing and/or eliminating lead-based paint hazards.

The requirements contained in § 745.227(d) of today's final rule differ from those proposed in September 1994 in that they reflect the Agency's decision to reduce the detail and specificity of the rule. However, based on the documentation and recordkeeping requirements for a risk assessment, and the rule's training, certification and accreditation requirements, the Agency believes that the standards contained in today's final rule will promote reliable, safe and effective risk assessments.

For example, the proposed rule specified several items of information to be collected as background information during a risk assessment, including the age of the building and any additions being evaluated, copies of any previous inspection reports, and a schematic site plan of the building. In its review of the comments on the proposed rule, the Agency noted that many of these requirements would be met during the preparation of a risk assessment report. For instance, among the items to be presented in a risk assessment report, as contained in § 745.227(d)(10) are: the date of construction of the building, data collected as a result of any previous inspection or other analyses available to the risk assessor, and the specific locations of any identified lead-based paint hazards or potential hazards.

In eliminating specific instructions regarding the background information to be collected, the Agency believes that the standards for conducting a risk assessment have been simplified without diminishing the reliability, safety, and effectiveness of those standards. This is because today's final rule has eliminated the duplicative reporting requirements included in the September 2, 1994 proposal by requiring that the information only be contained in the risk assessment report.

In addition to these changes, the Agency has slightly modified § 745.227(d)(10)(xviii), which requires a risk assessor to provide options for eliminating and/or reducing lead-based paint hazards in the risk assessment report. Under the proposed rule, the risk assessor would have been required to provide not only options, but to

recommend one option over another and to include a rationale or justification for his or her selected option. The final rule no longer requires the risk assessor to recommend one option over another, provided the recommended options are all presented in the risk assessment report.

These changes were largely based on comments urging the Agency to allow the individual or firm contracting for the risk assessment to select from the options presented in the report. Although the Agency does not necessarily believe that the proposed requirements would have forced a building owner to select the option recommended by a risk assessor, the Agency is willing to provide building owners with more flexibility in reviewing risk assessment reports and selecting among remediation options.

In response to comments on the latitude a risk assessor is given in determining dust sampling locations and the extent of paint deterioration, the Agency believes, as discussed in Unit VI.A. of this preamble, that because the risk assessor will be a trained specialist equipped with the requisite professional judgement needed to evaluate lead-based paint hazards, added specificity is unnecessary in the rule. The Agency also stresses that due to major differences in the structure, design and condition, and occupant use patterns of various buildings, it is best not to identify specific room locations, e.g., kitchen, playroom, bedroom, for the purposes of sampling dust. Instead, the regulations in § 745.227(d)(4), (d)(5), and (d)(6) require that dust samples be collected in rooms and areas where young children are most likely to come into contact with dust.

Similarly, the final rule clarifies that only deteriorated paint with a distinct paint history found to be in poor condition shall be sampled for the presence of lead. "Paint in poor condition" is defined in today's final rule as more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or interior or exterior components with small surface areas (window sills, baseboards, soffits, trim) on which more than 10 percent of the total surface area of the component is deteriorated. This determination is to be made by the risk assessor based on a documented methodology such as the HUD Guidelines.

As discussed earlier in Unit VII.C. of this preamble, such locations include the playrooms and bedrooms of children, kitchens, and living rooms, as well as common areas associated with a residential dwelling or child-occupied facility.

The Agency also reiterates that detailed instruction on where and how to sample dust is included in the HUD Guidelines, existing EPA guidance and various State regulations and guidance documents, and that these instructions will be taught in accredited training programs and included in future Agency guidance.

Lastly, the Agency has clarified the standards for collecting soil samples contained in § 745.227(d)(7) such that samples need only to be taken from exterior play areas and dripline/foundation areas where bare soil is present. This requirement is in keeping with the statutory definition of lead-contaminated soil, which basically is the same definition used in today's final rule. As defined in § 745.223, lead-contaminated soil means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels determined to be hazardous as identified by the EPA Administrator pursuant to TSCA section 403. Guidance on how to collect bare soil samples is provided in EPA's *Residential Sampling for Lead: Protocols for Dust and Soil Sampling* document and the HUD Guidelines.

D. Composite Sampling

Under today's final rule, composite dust and soil sampling is expressly permitted for the purposes of conducting a lead hazard screen, risk assessment, or clearance following an abatement.

This change from the September 2, 1994 proposal is based on comments the Agency received in support of composite sampling for dust and soil, as well as limited evidence supporting the use of composite dust and soil sampling to determine the presence of lead in dust and soil. The Agency also believes that composite sampling is useful because it provides a means for "averaging" the potential for exposure to lead-based paint hazards in a residential dwelling or child-occupied facility. Furthermore, the Agency is permitting use of the technique due to laboratory cost savings generated by sampling analysis.

However, it is important that the individual who is receiving the results of a composite understand their limitations and can correctly interpret the results of a composite sample. A brief discussion of this subject can be found in this section, and a thorough discussion of this issue is contained in the HUD guidelines, and will be presented in the risk assessor and supervisor course.

Specific instruction on the taking of composite dust and soil samples is provided in the HUD Guidelines. The technique essentially involves combining several subsamples from the same types of components into one sample for analysis. A composite dust sample is different from a single-surface sample because it combines at least two dust samples from more than one sampling area into one sample.

Pursuant to § 745.227(g) of today's final rule, composite dust samples must consist of at least two subsamples. At this time the Agency recommends that a composite sample consist of no more than four subsamples, unless the laboratory contracted to analyze the composite sample agrees to accept a sample consisting of more than four subsamples. This recommendation is based on current limitations in the laboratory analysis of composite samples consisting of more than four subsamples (i.e., using available technology, composite samples that combine more than four subsamples are difficult to properly analyze). However, because some EPA-recognized laboratories are acquiring the ability to analyze composite samples consisting of more than four subsamples, the final rule does not explicitly restrict a composite sample from containing more than four subsamples.

Pursuant to § 745.227(g) of today's final rule, composite dust samples shall not consist of subsamples from more than one type of component. For example, subsamples from four uncarpeted floors from four rooms may be combined into one composite sample. However, in these same four rooms, the rule prohibits two subsamples from windows in two of the rooms from being composited with two subsamples from floors in the other two rooms.

This restriction is due to the varying levels of lead that may be present on different components, and the potential hazard that a component may present. For example, dust samples from floors generally tend to indicate a lower level of contamination, while the frequency of contamination is generally higher in windows. Consequently, the interpretation of the results from a composite sample consisting of subsamples from different components would not adequately characterize the location of the hazard.

One of the primary benefits derived from composite sampling is lower sampling costs due to fewer laboratory analyses. Lead levels generally vary

significantly from one component to another, and a single surface sample from one component alone (i.e. from one area of a floor in a room to another of the same floor) may not represent the potential for exposure. Composite sampling provides a means to determine potential exposures to lead-based paint hazards by obtaining a wide cross-section of possible exposure pathways.

However, composite sampling may yield laboratory results that are not as informative as single-surface sampling. For example, dust samples from the floors of three rooms might be composited where only one of the floors contains lead-contaminated dust higher than the clearance level contained in the section 403 Guidance for uncarpeted floors of 100 µg/ft2. This might cause the composited sample to fail clearance. On the other hand, if three single-surface floor dust samples were taken for clearance testing, the laboratory analyses would have precisely indicated which one of the three rooms exceeded the clearance level, and the inspector or risk assessor would know exactly which room needed to be recleaned and retested.

Because of these limitations, it is imperative that a risk assessor, inspector, or supervisor understands and correctly interprets composite samples.

E. Abatement

As discussed in Unit III.B. of this preamble, the issue that received the most comment associated with abatement was the proposed definition of abatement. The Agency's response to those comments is discussed in that unit of the preamble.

In addition to these comments, other comments on a number of the work practice standards, procedures and restrictions proposed for various abatement activities were received. These comments principally addressed the following issues: (1) "Prohibited" or restricted abatement work practices; (2) encapsulation; (3) the development of a pre-abatement plan; (4) clearance requirements following both interior and exterior abatements; (5) soil abatement; and (6) management of waste from lead abatement activities.

The Agency's response to these comments and changes that have been made to the corresponding standards for abatement are discussed below.

1. *"Prohibited practices."* In the preamble of the proposed rule, the Agency indicated that it was considering banning certain abatement work practices in target housing, due to the potential risk of lead contamination posed to workers and/or the environment. The practices singled out by the Agency included:

i. Open-flame burning of painted surfaces.

ii. Dry scraping or sanding of painted surfaces.

iii. The use of heat guns on painted surfaces for abatement without proper protection.

Additionally, the Agency specifically requested comments and/or data related to exposure to lead-contaminated dust and fumes from these and other abatement work practices.

In response, an overwhelming majority of commenters on this issue urged the Agency to expressly ban the use of open-flame burning or torching on painted surfaces in target housing and child-occupied facilities, and to specifically restrict—not necessarily to ban—the other practices listed above, to reduce the risks they pose. Furthermore, commenters also requested that the Agency set restrictions on the use of machine sanding or grinding, abrasive blasting or sandblasting, and hydroblasting and high-pressure washing techniques in target housing and child-occupied facilities. Commenters also provided a number of references to studies to document their recommendations to the Agency.

The restrictions proposed by commenters generally were consistent with the HUD Guidelines, and have been the subject of several studies which support the restrictions in today's final rule. A review of these studies has been prepared by EPA titled *A Review of Studies Addressing Lead Abatement Effectiveness* (Ref. 9).

An important point related to restricting the abatement practices contained in § 745.227(e)(6) is that the public comments supporting such restrictions were expressly directed at target housing and other buildings, such as child-occupied facilities, where young children routinely and frequently spend time. In response, the Agency stresses that the restrictions on abatement practices contained in today's final rule apply only to target housing and child-occupied facilities.

In contrast, other commenters were opposed to prohibiting or restricting similar "deleading" activities, in public and commercial buildings, superstructures and bridges.

In public and commercial buildings, superstructures and bridges, most commenters were generally satisfied with existing OSHA regulations for the purposes of protecting the health and safety of workers. Concerns were, however, voiced over the lack of cost-effective work practice alternatives to open-flame burning, machine sanding or grinding, and abrasive blasting for removing lead-based paint from public and commercial buildings, superstructures and bridges. In response to these comments, the Agency will further review options for addressing lead-based paint activities conducted in public and commercial buildings, and superstructures and bridges.

On the other hand, commenters who favored restricting certain work practices in target housing and child-occupied facilities indicated that although OSHA regulations may protect workers, they are not designed to protect building occupants, especially children aged 6 years and under, from lead-based paint hazards that may be generated during an abatement. As discussed previously, these commenters also indicated that by restricting certain work practices, rather than banning them altogether, lead-contaminated dust and fumes could be effectively controlled. Furthermore, these commenters suggested that in some instances safer work practice alternatives are available.

Based on these comments and a review of studies referenced above, today's final rule in § 745.227(e)(6) imposes certain restrictions on selected work practices when conducted during an abatement in target housing and child-occupied facilities. Today's final rule also bans the use of open flame burning and torching when conducting abatements in target housing and child-occupied facilities.

These restrictions include the operation of a heat gun at a temperature above 1100 degrees Fahrenheit, due to the release of lead dust and fumes and the potential hazards posed to building occupants, particularly children aged 6 years and under. This restriction is supported by two studies that found significant problems with lead-based paint when volatilized by heat guns and propane torches operating above this temperature. These problems included large increases in the blood lead levels of children in homes where heat guns and torches were used at temperatures in excess of 1100 degrees Fahrenheit during abatement (Refs. 11 and 12).

The rule also restricts the use of machine sanding or grinding, abrasive blasting and sandblasting as abatement work practices, unless they are conducted using a High-Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from air at 99.97 percent or greater efficiency. Although studies indicate that the effectiveness of HEPA attachments has been limited in containing dust releases in the past, commenters indicate that recent

technology has improved performance. Consequently, if HEPA attachments meet or exceed the performance standard above, the Agency believes they can serve as a tool for ensuring that abatement activities involving the use of machine sanding or grinding, abrasive blasting and sandblasting are conducted safely, reliably and effectively.

Dry scraping and sanding are permitted under today's final rule only around electrical outlets, or when treating defective paint spots totaling no more than 2 square feet in any one interior room, or totaling no more than 20 square feet on exterior surfaces. These restrictions are based on high levels of dust generated by dry scraping and sanding, and the availability of techniques, such as wet spraying or the use of a heat gun below 1100 degrees Fahrenheit, to control dust generation. Additionally the restrictions placed on dry scraping provide allowances for convenience and safety when abating relatively small defective paint spots and areas around electrical outlets.

In regard to the establishment of restrictions for hydroblasting and high-pressure washing, the Agency does not have enough data to demonstrate that these practices may pose a lead-based paint hazard in target housing or child-occupied facilities. Nor is there sufficient data to support specific restrictions on how to effectively control or limit these practices to reduce any hazards they might pose. Consequently, the rule does not establish restrictions for hydroblasting and high-pressure washing. However, the Agency recommends that controls be used to contain any debris or wastewater that may be generated when hydroblasting and high-pressure washing are employed as abatement techniques.

2. *Encapsulation.* As discussed in the September 2, 1994 proposed rule, the definition of abatement includes the phrase "permanent containment or encapsulation." This phrase is part of the statutory definition of abatement under Title IV section 401, and it has been retained as part of the abatement definition in § 745.223 of today's final rule.

In the preamble of the proposed rule, however, the Agency also pointed out that all encapsulant will degrade over time, so therefore, no encapsulant is truly permanent. Consequently, the Agency requested comment on whether to include a periodic monitoring requirement when an encapsulant is used to abate lead-based paint.

The majority of commenters generally supported some kind of monitoring requirement, but were divided as to whether EPA should regulate such a requirement given that encapsulation technologies are still evolving. Although some commenters encouraged the Agency to include specific monitoring requirements (e.g., once every 6 months, 1 year, 3 years, etc.), others suggested that the Agency develop standards for encapsulant products and/or require that manufacturers provide guarantees regarding the durability and longevity of an encapsulant product. Other commenters requested that the Agency specify who is responsible for monitoring an encapsulant—either the building owner or a third party.

In response to these and other related issues raised by commenters, today's final rule does not specify a particular monitoring requirement, nor does it establish any other specific standards for the use of encapsulants. This decision is based primarily on the development of existing encapsulant technologies and ongoing voluntary efforts within the encapsulant industry to develop performance-based standards for encapsulants.

Three American Society of Testing and Materials (ASTM) standards, E 1795 ("Standard Specification for Non-Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings"), E 1797 ("Standard Specification for Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings"), and E 1796 ("Standard Guide for Selection and Use of Liquid Coating Encapsulation Products for Leaded Paint in Buildings") were approved in March 1996. The three standards were developed by a voluntary consensus-building process that included representatives from EPA, other Federal agencies, and a wide range of interests across the lead abatement industry. The standards cover what is considered by ASTM to be the minimum set of material performance requirements for these products, as well as guidance on how to select, apply, evaluate, and maintain the products under normal use conditions. The standards acknowledge that users (e.g., risk assessors, abatement supervisors) should evaluate their individual situation to assess whether additional requirements are needed to adequately protect the surface.

EPA endorses these standards and recommends their use, but has chosen not to require them as part of the work practice standards in this rule. EPA is confident that most States and local jurisdictions will evaluate these standards for their appropriateness for the conditions under which they will be expected to perform and specify additional performance requirements as needed. The standards will also be discussed in training course materials for risk assessors and abatement workers and supervisors.

3. *Pre-abatement plan.* In the proposed rule, the standards for conducting an abatement would have required the development of a "pre-abatement plan" for all abatement projects. Under the proposed rule the pre-abatement plan would have included the following: (1) Information regarding measures taken to protect workers; (2) measures taken to comply with existing Federal, State and local environmental regulations; and (3) an occupant protection plan. In its review of the comments on the pre-abatement plan, and of the occupant protection plan itself, the Agency has decided that the primary purpose of the occupant protection plan is to help ensure that *building occupants* are protected from potential lead-based paint exposures during an abatement.

This determination is based on comments that suggested the Agency minimize any overlap with existing Federal regulations. For example, if an abatement project resulted in the generation of a hazardous waste, commenters noted that the contractor and/or building owner may already be subject to certain reporting requirements under the Resource Conservation and Recovery Act (RCRA). These commenters argued that it would be duplicative and burdensome to resubmit its RCRA reports to EPA under a TSCA law. A similar rationale applies to the proposed provision of information regarding measures taken to protect workers. This proposed requirement would be duplicative of OSHA provisions to protect workers.

The Agency agrees with commenters on this point, and has removed parts 1 and 2 of the pre-abatement plan from today's rulemaking. Consequently, the only remaining part of the pre-abatement plan is the "occupant protection plan," which in today's final rule replaces the proposed pre-abatement plan.

4. *Clearance procedures.* Comments received on the clearance procedures contained in the proposed rule indicated a need to clarify the dust sampling requirements associated with clearance. Commenters were confused regarding the number of dust samples that needed to be collected and the locations within a residential dwelling or child-occupied facility that needed to be sampled as a part of the clearance procedures contained in the September 2, 1994 proposal.

Several commenters also suggested that the proposed rule required too many samples, which they believed

would add to the costs of an abatement without necessarily providing better information regarding the efficacy of an abatement. They urged the Agency to reduce the number of samples to be taken for the purposes of clearance following an abatement; some commenters suggested that composite sampling be employed to reduce the required number of clearance samples. And virtually all commenters agreed that the proposed 24-hour waiting period was too long to wait to conduct clearance sampling following an abatement.

In response to these comments, the clearance procedures contained in today's final rule have been presented more clearly and concisely. For example, commenters indicated that in the proposed rule it was not clear whether additional dust clearance samples were required following an abatement project that used containment, as opposed to an abatement that did not use containment. In today's final rule, § 745.227(e)(8)(v)(A) clearly indicates the number of dust samples that are to be taken following an abatement that employs containment. These include one sample from the floor, and one from the window (if available) in the rooms within the containment area. Additionally, the rule requires that one sample will be taken from the floor outside the containment area.

On the other hand, § 745.227(e)(8)(v)(B) clarifies that, if containment was not employed as a part of the abatement, two dust samples will be taken from rooms in the residential dwelling or child-occupied facility where the abatement was conducted.

The final rule also limits the number of rooms that are required to be sampled as part of clearance to four. Clearance inspectors are free to sample more than four rooms, but todays rule establishes a minimum of four rooms that must be sampled. The rooms shall be selected according to documented methodologies. The current HUD guidelines, one such documented methodology, recommend that the rooms be selected based on where most of the dust-generating work was done.

The rationale for this change is that given similar abatement techniques, and more importantly, similar post-abatement cleanup, if the four selected rooms pass clearance, then the other rooms will also likely pass.

Based on comments, the final rule, under § 745.227(e)(8)(iii), now requires a minimum 1-hour waiting period following the completion of post-abatement clean-up activities prior to the collection of dust samples for the purposes of clearance. The 1-hour waiting period is consistent with the HUD Guidelines and other State regulations and guidance on the appropriate amount of time needed prior to conducting clearance following an abatement. Supporting rationale in the HUD Guidelines have shown that 1-hour is sufficient time for airborne lead particles to fall on to horizontal surfaces and be collected (Ref. 12).

In regard to a reduction in the number of samples that will be taken as a part of clearance following an abatement, the final rule permits the use of composite sampling. Composite sampling should assist in reducing the number of samples that need to be taken as a part of clearance. As discussed in this Unit of the preamble in paragraph D, the Agency believes that composite sampling can be a reliable, safe and effective alternative to single surface sampling.

Sampling requirements also have been reduced when clearance is conducted following an exterior abatement. Again, several comments were received on clearance requirements following an exterior abatement suggesting that the proposed rule required too many samples. For example, the proposed rule would have required soil samples to be taken prior to an exterior abatement project, so that any lead levels found in the pre-abatement samples could be compared with post-abatement soil samples to determine if there was any contamination resulting from the exterior abatement.

The Agency agrees with commenters on this point, and has removed the requirement to take pre-abatement soil samples and the requirement to take soil samples following an exterior abatement. Rather, the final rule requires a visual inspection to determine the presence of any paint chips along the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed and properly disposed. The Agency is allowing the individual or firm conducting the exterior abatement to determine the need to conduct any soil sampling, based on liability concerns the individual or firm may have based on potential claims that the actions of the abatement workers/supervisors caused soil contamination.

In general, the Agency believes that today's final rule more clearly articulates the number of samples that must be taken as a part of clearance testing following either an interior or exterior abatement. Through composite sampling, the rule also permits a reduction in the number of analyses to be done. In addition, § 745.227(f) of today's final rule requires that all samples must be sent to EPA-recognized laboratories, which will help ensure the reliability of sampling results.

Notably, under § 745.223 the final rule provides a definition for clearance levels and includes references to the section 403 Guidance, the HUD Guidelines and other guidance for specific numeric values. As discussed in the September 2, 1994 proposed rule, it is possible that numeric values for clearance will be a part of the final section 403 rulemaking, depending on the comments received on this matter under the section 403 proposal. Until numeric values are established for clearance through the regulatory process, certified individuals and firms, training providers and other persons should reference the guidance documents listed in the definition of clearance levels (contained in § 745.223) for numeric limits for clearance.

5. *Soil abatement.* Commenters requested clarification on various procedures proposed for soil abatement. Included among the items raised by commenters were: clarification as to whether the proposed soil abatement procedures applied only to target housing and child-occupied facilities, or to public and commercial buildings, superstructures and bridges, as well; requests that the Agency stipulate a lead level in soil to be used to determine when soil abatement must occur; and clarification as to whether both bare and covered soil should be abated.

In response, it should be clear under today's final rule that the procedures put forward for soil abatement under § 745.227(e)(7) apply only to target housing and child-occupied facilities. Regulations for the management of lead-contaminated soil at industrial sites currently are provided under RCRA and Superfund.

On the need for a specific lead level to determine when soil abatement is needed, the Agency refers commenters to its section 403 Guidance document. In the section 403 Guidance, Agency recommendations are provided for response activities to lead-contaminated soil based on a range of lead levels. These response actions also take into account whether the contaminated area under consideration is used by children.

For example, in the section 403 Guidance, interim control activities are recommended as a means to reduce possible lead exposures if lead levels in bare soil range between 400 and 5,000 parts per million (ppm) and if the area of concern is expected to be used by children. Such areas could include

residential backyards, and day-care and school yards. Appropriate interim control activities could include planting ground cover or shrubbery to reduce exposure to bare soil, moving play equipment away from contaminated bare soil, or restricting access through posting, fencing or other actions.

As discussed in the section 403 Guidance, however, the decision on whether interim controls or an abatement action is appropriate depends on several variables. For example, although the section 403 Guidance does not recommend soil abatement until lead levels in soil exceed 5,000 ppm, it is possible that a risk assessor may recommend abatement at a lower level. For instance, in a situation in which the blood lead levels of children that use an area under consideration for abatement are high and the risk assessor has determined that the soil may be the primary source of exposure, the risk assessor would consider presenting options that include soil abatement.

As discussed throughout this preamble, the Agency does not believe it is able, at this time, to effectively identify, list and regulate all the variables that may influence decisions on how to respond to lead-based paint hazards. Furthermore, today's final rule does not provide a specific lead level in soil for use as an abatement trigger. Rather, the Agency refers decision makers in this arena to the section 403 Guidance, which also shall be taught in accredited training courses.

In terms of conducting soil abatement, comments were received that requested clarification of the definition of permanent covering. In the proposed rule, the permanent covering of contaminated soil was listed as a soil abatement option. In today's final rule, soil abatements must be conducted in one of two ways: If soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated; or if soil is not removed, the lead-contaminated soil shall be permanently covered. In response to commenters, the final rule also defines permanently covered soil as soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

Commenters also requested clarification as to whether any amount of newly added soil could represent a permanent covering. In response, the Agency has concluded that at this time, there is insufficient information to determine the amount or type of soil covering that would protect human health from the risk of exposure to lead contaminated soil. However, but the Agency believes that some depth of soil of a given type may provide adequate protection. The Agency is seeking information on this subject and will address this in the section 403 regulation as part of the discussion on lead-contaminated soil.

6. *Management of waste from lead abatement activity.* Lead-based paint abatement generates different types of solid waste, including paint chips, architectural components, and contaminated clothing, which may be subject to hazardous waste treatment, storage, and disposal regulations under RCRA Subtitle C (40 CFR part 261). RCRA establishes a comprehensive Federal program for the management of solid and hazardous wastes.

The training requirements in today's final rule for workers, supervisors and project planners include training in the proper management of wastes generated during abatement activity. These requirements will encourage compliance with RCRA during the conduct of such activities.

Management of architectural component debris waste was a particular concern of some commenters on the proposed rule. Comments indicated that RCRA Subtitle C waste sampling and testing requirements are impractical for debris, and that the costs associated with managing debris as hazardous waste are impeding progress in reducing lead-based paint hazards. The Agency wishes to minimize potential regulatory impediments to conducting and financing lead-based paint abatements. Thus, EPA intends to issue a separate rulemaking specifically addressing the disposal of architectural debris waste from lead-based paint abatements. Until the Agency promulgates such a rule, the requirements of RCRA continue to apply to lead abatement waste.

One important RCRA issue is the identification of the party deemed the generator of a waste, particularly in the context of contractual relationships such as those for lead-based paint activities. RCRA defines a generator in 40 CFR 260.10 as "any person, by site, whose act or process produces hazardous waste identified or listed in [40 CFR part 261] or whose act first causes a hazardous waste to become subject to regulation." In the proposal (59 FR 45890), EPA stated that contractors for lead-based paint activities (as opposed to building owners) are the generators of abatement waste and are therefore the parties responsible for RCRA compliance. EPA received a number of comments requesting a clarification and reconsideration of this issue.

EPA wishes to clarify that the property owner and the abatement contractor are co-generators of waste from lead-based paint activities, as both parties contribute to its generation. Under co-generator status, one party might manage the disposal of the waste (for example, the building owner might request that a contractor handle this task), but both parties remain legally responsible for proper disposal of the waste and for RCRA compliance. The Agency discussed cogenerator status in more detail in an FR notice issued on October 30, 1980 (45 FR 72026).

IX. State Programs

A. Introduction

This unit contains two parts: (1) A discussion of procedures for States and eligible Indian Tribes, including eligible Alaskan Native Villages, to obtain authorization from EPA to administer and enforce (a) a lead-based paint activities program and/or (b) a pre-renovation notification program; and (2) a description of a model program that will serve as a blueprint for these State and Tribal programs.

Section 404(a) of TSCA provides that any State that seeks to administer and enforce the standards, regulations, or other requirements established under sections 402 (lead-based paint activities) or 406 (pre-renovation notification) may submit an application to the Administrator for approval of such a program. As discussed, today's final rule contains the regulations established pursuant to section 402(a). The Agency has not, at this time, promulgated final regulations under section 406. States may begin to apply for program authorization of a pre-renovation once the final section 406 regulation is promulgated.

Section 404(b) states that the Administrator may approve such an application only after finding that the State Program is at least as protective of human health and the environment as the Federal program established according to the mandates of TSCA section 402 or 406 and that it provides adequate enforcement. The procedures for submitting an application are found in § 745.324 of this regulation and are discussed in more detail below. The Agency is developing an Application Guidance Document that it will distribute, to give additional guidance on how to develop and submit an application for program authorization.

Section 404(d) directs the Agency to promulgate a model State program, which any State that seeks approval to

administer and enforce may adopt. In response to this mandate, the Agency has promulgated, at §§ 745.325, 745.326, and 745.327 minimum requirements and enforcement provisions that a State or Tribal program must have to receive authorization from the Agency to administer a lead-based paint activities program (§ 745.325) and/or a pre-renovation notification program (§ 745.326). These requirements are discussed in more detail in Unit IX.E. of this preamble.

No political subdivisions (e.g., cities, towns, counties, etc.) other than States, as defined by TSCA section 3, and Indian Tribes (see discussion in Unit IX.F. of this preamble), are eligible for authorization under this program.

B. Submission of an Application

Before developing an application for authorization, a State or Indian Tribe must publicly distribute a notice of intent to seek such authorization and provide an opportunity for a public hearing. The State or Indian Tribe is free to conduct this hearing and provide an opportunity for comment in any manner it chooses. Upon completion of the final application that reflects this public participation, the State or Indian Tribe shall submit the application to the appropriate EPA Regional Office.

As described at § 745.324(a), an application for program authorization must include the following elements: a transmittal letter from the Governor or Tribal Chairperson (or equivalent official); a summary of the State or Tribal program; a description and analysis of the program; an Attorney General's or Tribal equivalent's statement attesting to the adequacy of the State's or Indian Tribe's program authority; and copies of all applicable State or Tribal statutes, regulations, standards and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint program.

1. *Program description.* A program application must contain information, specified in § 745.324(b), that describes the program. The program description is the portion of the application that the State or Indian Tribe will use to characterize the elements of their program. The Agency will use this information to make an approval or disapproval decision on a State or Indian Tribe's application. The program description contains five distinct sections. In the first (§ 745.324(b)(1)), the State or Indian Tribe must list the name of the State or Tribal agency that will administer and enforce the program, and if there will be more than one agency administering or enforcing the program, describe the relationship between or among these agencies.

Second, the State or Indian Tribe must, in the application, demonstrate that the program meets the requirements of § 745.325 or 745.326 or both. These elements represent the minimum authorities that a State or Tribal program must have to be considered for program authorization. These elements are discussed in greater detail in Unit IX.E.1. and IX.E.2. of this preamble.

Third, the application must provide an analysis of the entire State or Tribal program that describes any dissimilarity from the Federal program in subpart L "Requirements for Lead-Based Paint Activities," or regulations developed pursuant to TSCA section 406. The analysis should address each element of a State or Tribal program: for a lead-based paint activities training and certification program, those elements found at § 745.325(a) (i.e., accreditation of training programs, certification of individuals, and work practice standards for the conduct of lead-based paint activities); and for a pre-renovation notification program, those elements found at § 745.326(a) (i.e., distribution of lead hazard information and a lead hazard information pamphlet).

The analysis must then explain why, considering these differences, the State or Tribal program is at least as protective as the respective Federal program. The Agency is inclined to give deference to a State or Indian Tribes determination that its program is sufficiently protective and appropriate for their State or Indian Tribe. The Agency will use this analysis, along with its own comparison, to evaluate the protectiveness of the State or Tribal program. This issue is discussed in more detail in Unit IX.E. of this preamble discussion.

Fourth, the State's or Indian Tribe's application must demonstrate that the program meets the requirements of § 745.327. These elements represent the enforcement elements that a program must have to receive authorization. This section of the application is discussed in more detail in Unit IX.E.3. of this preamble.

In addition to the above, the program description for an Indian Tribe must also include a map, legal description, or other information that will identify the geographical extent of the territory over which the Indian Tribe exercises its jurisdiction. The Indian Tribe shall also include a demonstration that it is: (1) Recognized by the Secretary of the Interior; (2) has an existing government exercising substantial governmental duties and powers; (3) has adequate civil regulatory jurisdiction over the subject matter and entities regulated; and (4) is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

If the Administrator has previously determined that an Indian Tribe has met these prerequisites for another EPA program authorization, then the Indian Tribe need provide only that additional information unique to its lead-based paint program. The rationale for requiring the tribe to provide this information is discussed in detail in Unit IX.F. of this preamble.

2. *Attorney General's statement.* The State or Indian Tribe must provide an assurance that the State or Indian Tribe has the legal authority necessary to administer and enforce the program. The State or Tribal Attorney General (or equivalent Tribal official) must sign this statement. (See discussion in Unit IX.F. of this preamble for specific Tribal program requirements).

3. *Public availability of application.* Section 404(b) of TSCA requires the Agency to provide notice and an opportunity for public hearing on a State or Tribal application for authorization. Accordingly, the Agency will publish in the **Federal Register**, a notice announcing the receipt of a State's or Tribe's application, a summary of the State or Tribal program, the location of copies of the application available for public review, and the dates and times that the application will be available for public review. Individuals may at that time submit a request to the Agency for a public hearing on the State or Tribal application. It should be noted that this opportunity for public hearing is separate and distinct from the public comment, discussed in part B. of this unit of the preamble, that the State or Indian Tribe must seek before preparing an application for program approval (§ 745.324(a)(2)).

C. State Certification

Pursuant to section 404(a), at the time of submitting an application for program authorization, a State may also certify to the Administrator that the State program meets the requirements of TSCA section 404(b)(1) and 404(b)(2).

If this certification is contained in a State application, the program is deemed authorized, until the Administrator disapproves the program's application or withdraws the program's authorization. This certification must be contained in a letter from the Governor or the Attorney General, to the Administrator, and must reference the program analysis

contained in the program description portion of the application as the basis for concluding that the State program is at least as protective as the Federal program and provides for adequate enforcement.

This provision is not available to Indian Tribes because Indian Tribes must first demonstrate to the Agency that they meet the criteria at § 745.324(b)(4) for Treatment as a State ("TAS"). Although Indian Tribes may be able to demonstrate that they have been approved for "Treatment as a State" for any other environmental program (satisfying two of the four TAS criteria), the Agency must make a separate determination that an Indian Tribe has adequate jurisdictional authority and administrative and programmatic capability regarding its lead program before it can determine that the Tribe should be treated as a State. These criteria are discussed in greater detail in Unit IX.F. of this preamble.

As stated at § 745.324(d)(3), if the application does not contain such certification, the State's program will be considered authorized only after the Administrator approves the State application.

EPA encourages both States and Indian Tribes to submit their authorization applications as soon as possible after October 28, 1996. Because the Agency anticipates needing the full 180 days to properly review and act on an application, States and Indian Tribes are strongly encouraged to submit a completed application before March 2, 1998.

D. EPA Approval

Within 180 days following receipt of a complete State or Tribal application, the Administrator will approve or disapprove the application. The Administrator will approve a program only if, after notice and opportunity for public hearing, the Administrator finds that:

(1) The program is at least as protective of human health and the environment as the Federal program contained in subpart L or in regulations developed pursuant to TSCA section 406; and

(2) The program provides adequate enforcement of the appropriate State or Tribal regulations.

The Agency will notify the State or Indian Tribe in writing of the Administrator's decision. As described in § 745.324(c), upon authorization of a State or Tribal program, it will be unlawful under TSCA section 15 and section 409, for any person to violate, fail or refuse to comply with any requirements of such a program.

The Agency believes that section 404 and the decision criteria above give it reasonably broad latitude in approving or disapproving State and Tribal programs. EPA interprets the section 404(b) standard ". . . at least as protective as . . ." to mean that a program need not be identical to, or administered in a manner identical to, the Federal program for that program to be authorized. Indeed, the Agency expects to receive applications for State and Tribal programs that will differ in some respects from the Federal program established in this rulemaking. This is unavoidable (and even desirable) given the differences that undoubtedly exist between lead-based peint problems and approaches to dealing with them at the State and Tribal level. The Agency will make every attempt to accommodate these differences while following the statutory requirement of ensuring that every State or Tribal program is at least as protective as the Federal program.

1. *Establishment of the Federal program.* If a State or Indian Tribe does not have a program authorized under this rule and in effect by the August 31, 1998, the Administrator will, by such date, establish the Federal program under subpart L, or regulations developed pursuant to TSCA section 406, as appropriate in that State or Indian Country.

2. *Withdrawal of authorization.* As required by section 404(c) of TSCA, if a State or Indian Tribe is not administering and enforcing its authorized program according to the standards, regulations, and other requirements of TSCA Title IV, including section 404(b)(1) and (b)(2), the Agency will so notify the State or Indian Tribe. If corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to TSCA Title IV in that State or Tribal land. Procedures for withdrawal of authorization can be found in § 745.324(i).

E. Model State Program—Guidance to States and Indian Tribes; EPA Approval Criteria

TSCA section 404(d) directs the Agency to promulgate a MSP that may be adopted by any State or Indian Tribe that seeks to administer and enforce a lead-based paint activities program. As interpreted by EPA, this model is intended to serve two purposes. First, the model is intended to give States and Tribes guidance as to the contents of a program that they could develop to receive program authorization from EPA. Second, the model is also intended to provide overall guidance to States that have not, until this point, developed legislation or regulations for a training and certification or a pre-renovation notification program.

In the proposed rule, the Agency offered the entire Federal program as a model. The Agency stated that, because section 404(a) requires that an authorized State or Tribal program be at least as protective as the Federal program, a State or Tribal program seeking authorization should resemble, in significant respects, the Federal program. Therefore, the entire Federal program for lead-based paint activities was offered as a model for States and Indian Tribes to use in developing their own programs.

Many commenters, however, stated that the proposal did not articulate in sufficient detail the specific elements a program must have to be authorized by EPA. Some commenters also believed that, as written, the proposal implied that a State or Tribal program must be identical to the Federal program. The Agency did not intend to give this impression, and in developing a separate model program has attempted to clarify what is expected of a State or Tribal program applying for authorization.

Other commenters stated that the Agency should develop a model program that would dictate all requirements that must be in a State or Tribal program. These commenters expressed the belief that, because the Agency is required to evaluate the protectiveness of a State or Tribal program compared to the Federal program, the Agency should specify all elements of a State or Tribal program or require that a State or Tribe adopt the entire Federal program. Commenters believed this approach would alleviate any uncertainty regarding the interpretation of the statutory phrase ". . . at least as protective as . . ." The Agency has rejected this approach because it would not allow the flexibility that EPA believes is necessary for the effective administration of this program at the State or Tribal level.

In response to comments the Agency has modified the final rule in two significant ways. First, the Agency has developed a set of minimum programmatic elements (§§ 745.325 and 745.326 and discussed in sections 1 and 2 of this Unit of the Preamble) that a State or Tribal program must have to receive authorization from the Agency. This section was developed in response to commenters who requested specific direction from the Agency on the

elements that must be contained in a State or Tribal program seeking authorization. The requirements at §§ 745.325 and 745.326 represent the elements EPA believes a State or Tribal program must have to successfully administer a lead-based paint training and certification or a pre-renovation notification program. These elements are discussed in more detail later in this Unit of the preamble.

Second, as required by Title X, a State or Tribal program must also be found, by the Agency, to be at least as protective as the Federal program. In today's final rule a State or Indian Tribe is required to develop and submit an analysis of their entire program that describes the program in comparison to the Federal program. This analysis should highlight the differences between the two programs and should provide an explanation why the State or Indian Tribe believes that these differences do not make their program any less protective than the Federal program. The analysis can focus on each of the program elements (e.g., procedures for the accreditation of training providers) and explain why the program element, as a whole, is at least as protective (or not) as the equivalent element in the Federal program.

Alternatively, the analysis can focus on the State or Tribal program as a whole, explaining why the entire State or Tribal program is at least as protective as the Federal program. This approach allows a State or Tribe to design a program that may fall short of the Federal program in one element, but would exceed it for another element.

Either approach allows a State or Indian Tribe to diverge as necessary and appropriate from the specific elements of the Federal program. The critical factor is that, on balance, a State or Tribal program element will be as protective as the corresponding Federal element. For example, a State training program may require fewer initial training hours for a particular discipline than the Federal program, but it would surpass the Federal program in requiring annual refresher training for certification. The State could argue that, on balance, this system is as protective as the Federal program. In this example, the specific State requirements diverge from the Federal program, but the State has concluded that it achieves the same result—properly trained lead-based paint professionals.

In reviewing State or Tribal applications, the Agency will employ this method of analysis as it examines the entire State or Tribal program and compares it with the entire Federal program. The State's or Tribe's own analysis will facilitate EPA review of a State or Tribal program, but more importantly it will allow each State and Indian Tribe to fully describe and explain to EPA their program and the success they believe it will have in meeting the goals of Title X.

The Agency anticipates that each State or Indian Tribe will develop a program that will best serve the needs of both consumers and lead-based paint professionals in that State or Indian Tribe. The Federal program should serve as a model for States or Indian Tribes as they develop or refine their own programs.

1. *Program elements: lead-based paint activities requirements.* At § 745.325, the Agency has promulgated specific program elements representing the minimum programmatic requirements that a State or Tribal program must contain to receive authorization from the Agency to administer and enforce this program.

Section 745.325(a) requires that a State or Indian Tribe seeking authorization must have the regulatory authority to require the training and certification of individuals engaged in lead-based paint activities. The State or Tribal regulations must also establish work practice standards for the conduct of these activities.

As discussed previously in Unit IV. of this preamble, the Agency has not, at this time, promulgated a regulation pursuant to section 403 of TSCA. When final, that rule will identify hazardous conditions of lead-based paint and levels of lead and conditions in soil and dust that would result in a hazard to building occupants. Accordingly, the Agency has not established specific lead-based paint hazard values or standards (or post-abatement clearance levels) that a State or Indian Tribe must have in order to receive program authorization. However, a State or Indian Tribe is required to develop and implement its own post-abatement clearance requirements.

The Agency believes the lack of section 403 standards will not adversely affect its ability to evaluate the protectiveness of State or Tribal programs. Hazard levels are only one component of an overall lead-based paint activities program, and the presence of a State or Tribal hazard level for lead in dust or soil will not, by itself, guarantee the effective detection and remediation of lead-based paint hazards. Other factors such as quality of training and competency of the workforce are of equal or greater importance to the overall success of a State or Tribal program.

Thus, the Agency believes that it can adequately evaluate the protectiveness of State or Tribal programs without Federal standards identifying hazardous levels of lead in paint, soil and dust.

The remainder of § 745.325 describes requirements that a State or Tribal certification and accreditation program must also contain. Incorporation of these elements into a State or Tribal program will be a significant factor in the Agency's evaluation of the protectiveness of a State or Tribal program.

The Agency has included, in the next two sections of this preamble, a discussion of the goals and objectives that the Agency considered when developing its requirements for the Federal program. The Agency believes that each State and Indian Tribe should also consider these goals and objectives as it develops or refines its own program in response to this regulation. While not regulatory requirements, they should provide States and Indian Tribes an insight into the factors that the Agency will consider when it evaluates their programs.

a. *Accreditation of training programs.* Pursuant to § 745.325(b), the State or Tribal program must contain either regulations or procedures for the accreditation of training programs, or procedures or regulations, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.

If the State or Tribe chooses to develop an accreditation program, the regulations or procedures must contain the following: (1) Training curriculum requirements, (2) training hour requirements, (3) hands-on training requirements, (4) trainee competency and proficiency requirements, and (5) requirements for training program quality control. The State or Tribal regulations must also establish procedures for the re-accreditation of training programs, and procedures for the oversight and control of training program activities.

A State or Tribal program for training program accreditation should achieve three objectives: (1) Establish common elements in which certified contractors must be trained, (2) provide training that enhances the knowledge and expertise of contractors, and (3) allow the State or Indian Tribe to suspend, revoke or modify the accreditation of training providers who offer substandard training or who violate the requirements of the State or Tribal accreditation program.

Alternatively, the State or Tribe can, for the purposes of certification, accept training offered by an accredited

training provider in a State or Tribe authorized by EPA. This approach may appeal to a smaller State or Tribe that would like to have a certification program that would oversee the conduct of lead-based paint activities, but, because of low demand, are unwilling to establish an accreditation program for training providers. Under this approach, the State's or Tribe's certification program would accept training offered at an accredited training provider in any State or Tribe authorized by EPA.

b. *Certification of individuals.* Section 745.325(c) describes the requirements for the certification of individuals that a State or Tribal program must have to be considered at least as protective as the Federal program. The State or Tribal program must require that certified contractors are properly trained and are conducting lead-based paint activities in a way that meets the work practice standards established by the State or Indian Tribe. The State or Tribal regulations or procedures must also establish procedures for the re-certification and the possible suspension, revocation or modification of certificates. In general, the State's or Indian Tribe's certification program should be designed so that a State or Indian Tribe can oversee the conduct of contractors engaged in lead-based paint activities to ensure that they are conducting their activities according to all applicable regulations.

The State or Tribal program must also establish requirements for the administration of a third-party certification exam. The exam should serve as a confirmation of the individual's retention and understanding of the information taught in an accredited training course. (The exam may also provide insight into the relative quality of accredited training providers.) Such an exam should be administered to applicants after completion of an accredited training program. The exam should be tailored to a particular work discipline and must not be offered by an accredited training provider. The Agency is currently developing an item bank of test questions that EPA will make available to States and Indian Tribes to use, if they choose, as their third-party exam.

c. *Work practice standards for lead-based paint activities.* The State or Tribal agency must establish work practice standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. In § 745.325(d), the Agency has established minimum requirements for three lead-based paint activities: inspection, risk assessment, and abatement. In a future rulemaking, the Agency will address the need for work practice standards for the remaining lead-based paint activities, e.g., deleading, identification of lead-based paint and demolition in public buildings, commercial buildings, bridges and superstructures.

All of the work practice standards or regulations that a State or Indian Tribe develops for the conduct of lead-based paint activities must require that these activities, if conducted, be conducted by certified individuals. The work practice standards and regulations that a State or Indian Tribe adopts for the conduct of inspections must ensure that an inspection accurately identifies and reports the presence or absence of lead-based paint within the interior or on the exterior of a residential dwelling. A State's or Indian Tribe's work practice standards or regulations for the conduct of risk assessments must ensure that a risk assessment accurately identifies and reports on the existence, nature, severity and location of lead-based paint hazards, as defined by the State or Indian Tribe, within a residential dwelling or on the dwelling's property.

A State's or Indian Tribe's work practice standards or regulations for the conduct of abatement must ensure that abatements are conducted in a way that permanently eliminates lead-based paint hazards, and does not increase the hazards of lead-based paint to building occupants. The State or Tribal work practice standards or regulations must also include requirements for post-abatement clearance sampling. Additionally, the State or Indian Tribe must adopt or develop a lead-in-dust post-abatement clearance standard.

As described at § 745.325(a)(6), a State or Indian Tribe must develop the appropriate infrastructure to administer and enforce such a program successfully. A State or Indian Tribe must establish a State or Tribal agency or agencies (or designate an existing agency or agencies) to implement, administer, and enforce the program. Given the scope of the program, it is likely that more than one State or Tribal agency will be involved in the implementation and enforcement of this program. States and Indian Tribes are required to identify one agency or organization within a State or Indian Tribe (the primary agency) that will serve to coordinate the activities of these agencies. States and Indian Tribes are also encouraged to, whenever possible, utilize existing certification and accreditation programs and procedures.

2. *Program elements—pre-renovation notification.* At § 745.326, the Agency has promulgated specific program elements that specify minimum procedures and elements that a State or Tribal program must contain to receive authorization from the Agency to administer and enforce this program. Section 406(a) directs the Agency to develop and publish a lead hazard information pamphlet. Section 406(b) directs the Agency to develop a regulation to ensure that individuals engaged in performing renovation activities for compensation in target housing provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation activity. These Federal regulations will be promulgated as final at 40 CFR part 745.

Section 745.326 requires that a State or Indian Tribe seeking authorization must, at a minimum, promulgate regulations that will achieve the objectives of the statutory mandate. The State or Tribal program must contain regulations or procedures that require the following: (1) Procedures and requirements for distribution of a lead hazard information pamphlet before the renovations (for compensation in target housing) commence; (2) an approved lead hazard information pamphlet meeting the requirements of TSCA section 406 as approved by EPA; and (3) provisions for the adequate enforcement of compliance with the above program.

Section 745.326(b) describes the requirements for distribution of the lead information that a State or Indian Tribe must have to be considered at least as protective as the Federal program. EPA believes State or Tribal programs should contain clear standards for identifying home improvement activities that trigger the pamphlet distribution requirements. It should also contain acceptable procedures for distributing the lead hazard information to the owners and the occupants of such housing before the actual renovation activity begins.

At § 745.326(c), the Agency has established minimum requirements for the distribution of lead hazard information. The State or Indian Tribe may either: (1) Distribute the lead hazard information pamphlet developed by EPA (under section 406(a) of TSCA) titled, "Protect Your Family From Lead in Your Home," or (2) distribute an alternative pamphlet or package of lead hazard information that has been submitted by the State or Tribe and approved by EPA for use in that State or Tribe. Any pamphlet or package of information submitted for approval must contain the content and design elements as Congressionally mandated by TSCA section 406(a).

In addition to the content requirements laid out in section 406(a), EPA believes that some additional discussion of Federal priority information may help States who seek to develop alternate pamphlets. In order to educate the public about lead-based paint hazards in the home, the pamphlet should provide citizens with clear and understandable information regarding the health risks associated with exposure to lead hazards, especially the risks to children less than 6 years of age, pregnant women, and women of childbearing age. In light of the exposure prevention goals of the overall Federal lead hazard reduction program, EPA believes that State pamphlets should also include a thorough discussion regarding measures that can be taken to reduce or avoid exposure to lead hazards from paint, dust, and soil in residential areas.

Since renovations may disturb lead and create hazards, it is essential that renovators and occupants of these homes be encouraged to take special precautions to reduce or avoid exposure during renovations. By providing a reference section including Federal, State, and local sources of assistance, citizens will be able to find certified contractors and information about inspections, risk assessments, interim controls, and abatement procedures available in their areas.

Nevertheless, the Agency recognizes the need for flexibility in the amount of detail to be included in a State's or Indian Tribe's information pamphlet, due to specific needs of each State or Indian Tribe. In covering all of the elements, States or Indian Tribes may determine the breadth of coverage of each element as they deem necessary. For example, the Agency recognizes that it may be infeasible to list all Federal, State, and local agencies in a reference section. Rather, States and Indian Tribes should focus on providing the main sources of access to that information. In general, more emphasis should be placed on the risks and exposure prevention recommendations. Furthermore, the Agency recommends that: (1) The information be written at no higher than a ninth-grade reading level; and (2) appropriate layout and type size be used to maximize readability and ensure that the information can be utilized by as wide an audience as possible.

3. *Program elements—enforcement provisions.* As previously discussed, the Agency is required to determine if a State or Tribal program will provide for the adequate enforcement of its regulations. Many commenters expressed concern that the proposed rule did not provide clear guidance as to how the Agency would interpret this phrase. Further, the Agency realizes that it has not provided a benchmark or model for States and Indian Tribes to follow as they develop the compliance and enforcement portions of their lead-based paint programs. As discussed previously, the proposed and final Federal regulations developed pursuant to sections 402(a) and 406 will serve as an example that States and Indian Tribes can use as they develop their own programs. These regulations also help in defining the scope of the terms ". . . at least as protective as. . . ."

Because there is not a comparable Federal enforcement program to emulate, and in response to the concerns of the commenters seeking more guidance on this issue, the Agency has developed, at § 745.327(b), (c) and (d), requirements that a State or Tribal lead-based paint compliance and enforcement program must meet in order to receive authorization. The Agency believes that a State or Indian Tribe that develops an enforcement program based on these requirements would provide adequate enforcement as that term is used in TSCA section 404(b)(2).

These requirements were developed based on the Agency's experience evaluating and approving other State and Tribal compliance and enforcement programs, as well as the Agency's experience in enforcing its own regulations. Further, the Agency's own compliance and enforcement program for these lead-based paint regulations will contain the elements described at § 745.327.

Section 745.327(b) describes the required standards, regulations and authorities that a State or Tribal program must have. Section 745.327(c) describes specific performance elements that a State or Tribal program must have. Section 745.327(d) describes the required summary of progress and performance that a State or Indian Tribe must agree to submit.

Because these elements are required of a State or Indian Tribe and will require some time to fully implement and develop, the Agency is providing for a phase-in of a State or Tribal lead-based compliance and enforcement program.

This phase-in is achieved by allowing States or Indian Tribes to seek either interim or final approval of the enforcement and compliance portion of their lead-based paint program. Either type of approval is sufficient for a State or Tribal program to receive authorization, provided the other portions of its program are judged at least as protective as the Federal program. A State or Indian Tribe that receives interim approval for its lead-based paint compliance and enforcement program must seek and receive final approval within 3 years of the date of receiving EPA's interim approval. One hundred and eighty days prior to that date, a State or Indian Tribe must apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval will be given to any State or Indian Tribe which has in place all of the elements of § 745.327(b), (c), and (d). If final approval is not received within 3 years, the Agency will initiate the process to withdraw the State's or Indian Tribe's authorization.

Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program can be granted by EPA once only, and will expire no later than 3 years from the date of EPA's interim approval. In order to be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must include the following elements in its application for program authorization. The State or Indian Tribe must certify it has the legal authority and ability to immediately implement the elements at § 745.327(b). This certification shall include a statement that the State or Indian Tribe, during the interim approval period, will carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Indian Tribe addresses any significant risks posed by noncompliance with lead-based paint requirements.

The State or Indian Tribe must also present a plan with time frames identified for implementing in the field all of the elements described at § 745.327(c) within 3 years from the date of interim approval. A statement of resources must be included in the State or Tribal plan, which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

Finally, the State or Indian Tribe must agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at § 745.327(d) and discussed below. This report must be submitted by the primary agency for each State or Indian Tribe that has an authorized program to EPA beginning 12 months after the date of program authorization. Each authorized program

shall submit the report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. The report shall be submitted at least once every 12 months for the first 3 years after program approval. As long as these reports indicate that the authorized program is successful, the reporting interval will automatically be extended to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting in order to assist the State or Indian Tribe in resolving the problems. These programs will return to biannual reporting after demonstration of successful program implementation.

Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either as part of a State's or Indian Tribe's initial application (described at § 745.324(a)) or, for States or Indian Tribes which previously received interim approval as discussed above (described at § 745.327(a)(1)), through a separate application.

In order for the compliance and enforcement program to be considered adequate for final approval as a result of the State's or Indian Tribe's initial application, the State or Indian Tribe must certify it has the legal authority and ability to immediately implement both the elements at § 745.327(b) and 745.327(c).

The State or Indian Tribe must also submit a statement of resources which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program. Finally, the State or Indian Tribe must agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at § 745.327(d).

States or Indian Tribes with interim approval must submit to the Agency 180 days before their interim approval expires, a separate application addressing only the compliance and enforcement program portion of their program. The State or Indian Tribe must in this application certify that it has the legal authority and ability to immediately implement the elements at § 745.327(b) and (c).

The application must include a statement of resources which identifies the resources a State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program. The State or Indian Tribe must also agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at § 745.327(d). To the extent not previously submitted through the initial application described at § 745.324(a), States or Indian Tribes must submit copies of all applicable State or Tribal statutes, regulations, standards and other material that provide the State or Indian Tribe with authority to administer and enforce the lead-based paint compliance and enforcement program, and copies of the polices, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established at § 745.327.

The remainder of this preamble section describes in more detail the elements at § 745.327(b), (c) and(d). Section 745.327(b) "Adequate Standards, Regulations, and Authority" requires that a State or Tribal program must have the elements discussed below.

1. *Lead-based paint activities and requirements.* Lead-based paint programs must demonstrate establishment of lead-based paint requirements for those acts described under TSCA sections 402(a) and/or 406 and regulations developed pursuant to those regulations.

2. *Authority to enter.* Officials must be able to enter, through consent, warrant, or other authority, premises or facilities where violations may occur for purposes of conducting inspections.

3. *Flexible remedies.* Lead-based paint programs must provide for a diverse and flexible array of enforcement remedies, which must be reflected in an enforcement response policy. The lead-based paint program should be able to select from among the available alternatives, an enforcement remedy that is particularly suited to the gravity of the violation, taking into account potential or actual risk, including:

(1) Warning letters, or notices of noncompliance, or notices of violation, or the equivalent;

(2) Administrative or civil actions (e.g., accreditation or certification suspension, revocation or modification, and/or administrative or civil penalty assessment); and

(3) Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.

The Agency understands that Indian Tribes may have certain restrictions on their ability to levy criminal sanctions. This limitation will not necessarily have a negative impact on an Indian Tribe's ability to receive program authorization. The Indian Tribe should, however, explain in its application the nature and extent of any limitation on its ability to levy criminal sanctions.

Federal law bars Indian Tribes from trying criminally or punishing non-Indians in the absence of express authority in a treaty or statute to the contrary. *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191(1978). In addition, the Indian Civil Rights Act prohibits any Indian court or Tribunal from imposing for any one offense a criminal penalty greater than $5,000 on Indians within its jurisdiction (25 U.S.C. section 1302(7)).

The Agency realizes that requiring Indian Tribes to demonstrate the same criminal authority as States would affectively prohibit any Indian Tribe from obtaining program authorization. The Agency, in part F of this unit of the preamble, provides that Indian Tribes are not required to exercise comprehensive criminal enforcement jurisdiction as a condition for lead-based paint activities program authorization. Under this rule, Indian Tribes are required to provide for the timely and appropriate referral of criminal enforcement matters to the EPA Regional Administrator when Tribal enforcement authority does not exist or is not sufficient (e.g., those concerning non-Indians or violations meriting penalties over $5,000). This section also requires that such procedures be established in a formal Memorandum of Agreement with the Regional Administrator. This approach is the same that the Agency has taken in the context of Tribal programs under the Safe Drinking Water Act and the Clean Water Act.

It should be noted that, as in authorized States, EPA has the authority to take enforcement action if an authorized Indian Tribe did not (or could not) take such action or did not enforce adequately (e.g., did not or could not impose a sufficient penalty). EPA emphasizes that this referral mechanism is available only in those cases where the limitations on Tribal enforcement arises under Federal law.

The Memorandum of Agreement will be executed by the Indian Tribe's counterpart to the State Director (e.g., the Director of Tribal Environmental Office, Program or Agency). The Memorandum of Agreement must include a provision for the timely and appropriate referral to the Regional Administrator for those criminal enforcement matters where that Indian Tribe does not have the authority (e.g., those addressing criminal violations by non-Indian or violations meriting penalties over $5,000). The Agreement must also identify any enforcement agreements that may exist between the Indian Tribe and any State.

Section 745.327(c) "Performance Elements" for a lead-based paint compliance and enforcement program requires that a State or Tribal program include the following elements:

a. *Training.* Lead-based paint compliance and enforcement programs must, at a minimum, implement a process for training inspection personnel and ensuring that they have well-trained enforcement inspectors. Inspectors must successfully demonstrate knowledge of the requirements of the particular discipline (e.g., abatement supervisor, and/or abatement worker, and/or lead-based paint inspector, and/or risk assessor, and/or project planner) for which they have compliance monitoring or enforcement responsibilities. For example, for State compliance/enforcement inspectors, completion of the applicable accredited training course would successfully demonstrate knowledge of these requirements. Instruction should take the form of both hands-on or on-the-job training and the use of prepared training materials.

b. *Compliance assistance.* Lead-based paint compliance and enforcement programs must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with the State or Indian Tribes lead-based paint program(s).

c. *Sampling techniques.* Lead-based paint compliance and enforcement programs must have in place the technological capability to ensure compliance with the lead-based paint program requirements.

d. *Tracking tips and complaints.* The lead-based paint compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation. EPA expects that the ability to process and react to tips and complaints would, as appropriate, include:

(1) A method for funneling complaints to a central organizational unit for review;

(2) A logging system to record the receipt of the complaint and to track the stages of the follow-up investigation;

(3) A mechanism for referring the complaint to the appropriate investigative personnel;

(4) A system for allowing a determination of the status of the case and ensuring correction of any violations; and

(5) A procedure for notifying citizens of the ultimate disposition of their complaints.

e. *Targeting inspections.* Lead-based paint compliance and enforcement programs must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements.

f. *Follow-up to inspection reports.* Lead-based paint compliance and enforcement programs must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities associated with a lead-based paint program. The State or Indian Tribe must be in a position to ensure correction of violations, and, as appropriate, effectively develop and issue enforcement remedies/responses in follow-up to the identification of violations.

g. *Compliance monitoring and enforcement.* A lead-based paint compliance and enforcement program must demonstrate that it is in a position to implement a compliance and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive lead hazard reduction inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.

Section 745.327(d) "Summary on Progress and Performance" requires the State or Indian Tribe to submit a report which summarizes the results of implementing the State's or Indian Tribe's lead-based paint compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe (which would include the number of individuals and firms certified in lead-based activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities and any other lead-based paint administrative and compliance/enforcement activities.

The report should describe any significant changes in the enforcement of the State or Tribal lead hazard reduction program implemented during the last reporting period. The report should also summarize the results of the State's or Indian Tribe's implementation activities and what the State or Indian Tribe discovered, in general, with regard to lead-based paint compliance and enforcement in the State or Indian Tribe as a result of these activities during the period covered by the report. The report should also describe how any measures of success were achieved, and directly assess the impact of compliance/enforcement activities on reducing threats to public health.

4. *Reciprocity.* EPA strongly encourages each State or Indian Tribe to establish reciprocal arrangements with other States and/or Indian Tribes with authorized programs. Such arrangements might address cooperation in certification determinations, the review and accreditation of training programs, candidate testing and examination administration, curriculum development, policy formulation, compliance monitoring, or the exchange of information and data. The benefits to be derived from these arrangements include a potential cost-saving from the reduction of duplicative activity and attainment of a more professional workforce as States and Tribes can refine and improve the effectiveness of their programs based upon the experience and methods of other States and Tribes.

Several elements of the EPA accreditation and certification programs in § 745.225 through 745.226 are intended to facilitate reciprocity. One of the most critical elements is the certification examination. The examination will serve to ensure that each individual certified under this program has a minimum level of knowledge in his or her particular discipline. At the same time, the certification examination development procedures (previously outlined in this preamble), will allow a State or Indian Tribe the flexibility to either adopt a "standardized" examination, or develop its own examination according to "standardized" guidelines. A second element is the inclusion of a refresher training course in the Federal program. Successful completion of a State or Tribal accredited refresher course may serve as an ideal requirement for individuals seeking a reciprocal certification in another State or Tribe.

F. Treatment of Tribes as a State

Today, EPA is also providing Federally recognized Indian Tribes the opportunity to apply for and receive lead-based paint program authorization similar to that available to States. Providing Indian Tribes with this opportunity is consistent with EPA's Policy for the Administration of Environmental Programs on Indian Reservations. This policy, formally adopted in 1984 and reaffirmed on March 14, 1994 by the Administrator, ". . . views Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and

the health and welfare of the reservation populace."

A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to Tribal administration of Federal environmental programs. Today's final rule represents another step in the Agency's continuing commitment toward achieving this goal. However, EPA recognizes, that some eligible Indian Tribes may choose not to apply for program authorization. Despite the choice made, the Agency remains committed to providing technical assistance and training when possible to Tribal entities as they work to resolve their lead-based paint management concerns.

EPA believes that adequate authority exists under TSCA to allow Indian Tribes to seek lead-based paint program authorization. EPA's interpretation of TSCA is governed by the principles of *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. Id. 844. Interpreting TSCA to allow Indian Tribes to apply for program authorization satisfies the *Chevron* test.

TSCA does not explicitly define a role for Indian Tribes under Sections 402 or 404 and reflects an undeniable ambiguity in Congressional intent. Indian Tribes are not subject to State law except in very limited circumstances. See, *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Indian Tribes are sovereign governments. See *Worcester* v. *Georgia*, 31 U.S. (10 Pet.) 515 (1832); and *United States* v. *Mazurie*, 419 U.S. 544, 557–58 (1975). There is no indication in the legislative history that Congress intended to abrogate any sovereign Tribal authority by denying Indian Tribes the opportunity to apply for authorization to run lead-based paint programs on Tribal lands or subjecting Indian Tribes to State law for TSCA purposes. Moreover, it is a well-established principle of statutory construction that Federal statutes which are ambiguous as to whether they abridge Tribal powers of self-government must generally be construed in favor of retaining Tribal rights. F. Cohen, *Handbook of Federal Indian Law*, 224 (1982); See, e.g., *Ramah Navajo School Board* v. *Bureau of Revenue*, 458 U.S. 832, 846 (1982).

Failure to authorize Tribal lead-based paint programs would deny Indian Tribes the option currently available to States to administer their programs in lieu of the Federal program. With this rule, however, regulated lead-based paint activities in Indian country could be under the jurisdiction of the closest sovereign with program and enforcement authority, the Indian Tribe, rather than the Federal government. Extending the ability to receive program authorization to Indian Tribes is consistent with the general principles of Federal Indian law and the Agency's Indian Policy, which states that environmental programs (e.g., TSCA Section 402/404) in Indian country will be implemented to the maximum extent possible by Tribal governments. Thus, EPA believes that allowing Indian Tribes to apply for program authorization reflects the sovereign authority of Indian Tribes under Federal law.

In the case of other environmental statutes (e.g., the Clean Water Act), EPA has worked to revise them to define explicitly the role for Indian Tribes under these programs. Yet, EPA also has stepped in on at least two occasions to allow Indian Tribes to seek program approval despite the lack of an explicit Congressional mandate. Most recently, EPA recognized Indian Tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the Tribal role under EPCRA (55 FR 30632; July 26, 1990). EPA reasoned that since EPCRA has no Federal role to back-up State planning activities, failure to recognize Indian Tribes as the authority under EPCRA would leave gaps in emergency planning on Indian lands. (54 FR 13000; March 29, 1989).

EPA filled a similar statutory gap much earlier as well, even before development of its formal Indian Policy. In 1974, EPA promulgated regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian Lands under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act in the same manner that States could redesignate for other lands. See *Nance* v. *EPA* (upholding regulations). EPA promulgated this regulation despite the fact that the Clean Air Act at that time made no reference whatsoever to Indian Tribes or their status under the Act.

One court already has recognized the reasonableness of EPA's actions in filling such regulatory gaps on Indian lands. In *Nance*, the U.S. Court of Appeals for the Ninth Circuit affirmed EPA's PSD redesignation regulations described in the previous paragraph. The Court found that EPA could reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian lands from the redesignation process. 745 F.2d 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities on Indian Lands. Id. 714.

Today's final rule is analogous to the rule upheld in *Nance*. EPA is proposing to fill a gap in jurisdiction on Indian lands. As with the redesignation program, approving Tribal lead-based paint activities programs ensures that the Federal government is not the entity exercising authority that Congress intended to be exercised at a more local level. Furthermore, the case law supporting EPA's interpretation is even stronger today than at the time of the *Nance* decision. First, the Supreme Court has reaffirmed EPA's authority to develop reasonable controlling interpretations of environmental statutes. *Chevron, supra.* Second, the Supreme Court has emphasized since *Nance* that Indian Tribes may regulate activities on Indian Lands, including those of non-Indians, where the conduct directly threatens the health and safety of the Indian Tribe or its members. *Montana* v. *United States*, 450 U.S. 544, 565 (1981).

In the case of lead-based paint, EPA believes that improperly conducted activities could directly threaten human health (including that of Tribal members) and the environment (including Indian lands). Indian Tribes are likely to be able to assert regulatory authority over activities conducted on Indian lands to protect these interests. Thus, as in *Nance*, EPA believes that allowing Indian Tribes to apply for program authorization reflects the sovereign authority of Indian Tribes under Federal law.

To have its lead-based paint program authorized by EPA under today's final rule, an Indian Tribe would have to have adequate authority over the regulated activities. The jurisdiction of Indian Tribes clearly extends "over both their members and their territory." *United States* v. *Mazurie*, 419 U.S. 544, 557 (1975). However, Indian reservations may include lands owned in fee by nonmembers. "Fee lands" are privately owned by non-members and title to the lands can be transferred without restriction. The extent of Tribal authority to regulate activities by non-Tribal members on fee lands depends on whether those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Indian Tribe. *Montana* v. *U.S.*, 450 U.S. 544. 565–66 (1981).

The Supreme Court in several post—*Montana* cases has explored several criteria to assure that the impacts upon Indian Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*. To date, however, the Court has not agreed in a case on point on any one reformulation of the test. In response to this uncertainty, the Agency will apply, as an operating rule, a formulation of the *Montana* standard that will expect a showing that the potential impacts of regulated activities of non-members on the Indian Tribe are serious and substantial. See 56 FR 64876, 64878; December, 12, 1991.

EPA will, thus, require that an Indian Tribe seeking lead-based paint program authorization over activities of non-members on fee lands demonstrate jurisdiction, i.e., make a showing that the potential impacts on Indian Tribes from lead-based paint activities of non-members on fee lands are serious and substantial. The choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of that standard *per se*. See 56 FR 64878. Whether an Indian Tribe has jurisdiction over activities by non-members on fee lands, will be determined case-by-case, based on factual findings. The determination as to whether the required effect is present in a particular case depends on the circumstances and will likely vary from Indian Tribe to Indian Tribe. The Agency believes, however, that the activities regulated under the various environmental statutes, including TSCA, generally have the potential for direct impacts on human health and welfare that are serious and substantial. See 56 FR 64878.

The process that the Agency will use for Indian Tribes to demonstrate their authority over non-members on fee lands includes a submission of a statement pursuant to § 745.324(c) explaining the legal basis for the Indian Tribes' regulatory authority. However, EPA will also rely on its generalized findings regarding the relationship of lead-based paint activities and related hazards to Tribal health and welfare. Thus, the Tribal submission will need to make a showing of facts that there are or may be activities regulated under TSCA Title IV by non-members on fee lands within the territory for which the Indian Tribe is seeking authorization, and that the Indian Tribe or Tribal members could be subject to exposure to lead-based paint hazards from such activities through, e.g., dust, soil, air, and/or direct contact. The Indian Tribe must explicitly assert and demonstrate jurisdiction, i.e., it should make a showing that lead-based paint activities conducted by non-members on fee lands could have direct impacts on the health and welfare of the Indian Tribe and its members that are serious and substantial. Appropriate governmental entities (e.g., an adjacent Indian Tribe or State) will have an opportunity to comment on the Indian Tribe's jurisdictional assertions during the public comment period prior to EPA's action on the Indian Tribe's application.

The Agency recognizes that jurisdictional disputes between Indian Tribes and States can be complex and difficult and that it will, in some circumstances, be forced to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of human health and the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

Under the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Clean Air Act (CAA), Congress has specified certain criteria by which EPA is to determine whether an Indian Tribe may be treated in the same manner as a State. These criteria generally require that the Indian Tribe (1) Be recognized by the Secretary of the Interior; (2) have an existing government exercising substantial governmental duties and powers; (3) have adequate civil regulatory jurisdiction over the subject matter and entities to be regulated; and (4) be reasonably expected to be capable of administering the Federal environmental program for which it is seeking approval.

As discussed below, EPA is requiring Indian Tribes seeking program authorization and grants under TSCA section 404 to demonstrate in the Program Description that they meet the four criteria listed above. The process EPA is proposing for Indian Tribes to make this showing, however, generally is not an onerous one. The Agency has simplified its process for determining Tribal eligibility to administer environmental programs under several other environmental statutes. See 59 FR 64339 (December 14, 1994) ("Treatment as a State (TAS) Simplification Rule"). The proposed process for determining eligibility for TSCA Section 404 programs parallels the simplification rule. Generally, the fact that an Indian Tribe has met the recognition or governmental function requirement under another environmental statute allowing for Tribal assumption of environmental programs (e.g., the Clean Water Act, Safe Drinking Water Act, Clean Air Act) will establish that it meets those particular requirements for purposes of TSCA Section 404 authorization. To facilitate review of Tribal applications, EPA requests that the Indian Tribe demonstrate that it has been approved for "TAS" (under the old "TAS" process) or been deemed eligible to receive authorization (under the simplified process) for any other program.

If an Indian Tribe has not received "TAS" approval or been deemed eligible to receive authorization, the Indian Tribe must demonstrate, pursuant to § 745.324(b)(5)(ii), that it meets the recognition and governmental function criteria described above. A discussion on how to make these showings can be found at 59 FR 64339 (December 14, 1994).

EPA believes, on the other hand, that the Agency must make a separate determination that an Indian Tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each Tribal lead-based paint program.

In particular, if the Indian Tribe is asserting jurisdiction over lead-based paint activities conducted by non-members on fee lands, it must explicitly show, in its submission, that the activities of non-members on fee lands regarding lead-based paint could have serious and substantial effects on the health and welfare of the Indian Tribe. Copies of all documents, such as treaties, constitutions, bylaws, charters, executive orders, codes, ordinances, and/or resolutions which support the Indian Tribe's assertions of jurisdiction must also be included. EPA will review this documentation and any comments given during the public comment period, and then will make a determination whether there has been an adequate demonstration of Tribal jurisdiction over Tribal, and if asserted, non-member activities on fee lands within the boundaries of the reservations.

Finally, capability is a determination that will be made on a case-by-case basis. Ordinarily, the information provided in the application for program approval submitted by an Indian Tribe or State, will be sufficient. Nevertheless, EPA may request, in individual cases, that the Indian Tribe provide a narrative statement or other documents showing that the Indian Tribe is capable of

administering the program for which it is seeking approval. See 59 FR 64341.

Consistent with the simplification rule, no prequalification process will be required for Indian Tribes to obtain program approval for the lead-based paint program. EPA will evaluate whether Indian Tribes have met the four eligibility criteria listed above during the program approval process.

Today's final rule also authorizes grants to eligible tribes as well as States under TSCA section 404(g). Under the statutory scheme, section 404(g) grants are specifically designed to aid in developing and implementing authorized TSCA lead-based paint activities programs. Given the Agency's interpretation that TSCA section 404 is properly read to allow EPA to authorize qualifying Tribes to administer a lead-based paint program in lieu of the Federal program, it follows that these Tribes should also be eligible to receive grant funding under TSCA section 404(g) to "develop and carry out authorized programs . . . ." The Agency's interpretation is consistent with well established statutory construction that ambiguous statutes should be construed in favor of Tribes. See, e.g., *Ramah Navajo School Board* v. *Bureau of Revenue*, 458 U.S. 832, 846 (1982); see also, *F. Cohen, Handbook of Federal Indian Law*, 224–225 (1982).

X. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because this regulation may raise novel legal or policy issues arising out of the initial implementation of the new legal mandates. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Any comments or changes made during that review have been documented in the public record.

In addition, as specified by the Executive Order, the Agency has prepared a regulatory impact analysis (RIA) of the economic impacts associated with this regulation. The complete RIA document, titled *TSCA Title IV Sections 402(a) and 404: Target Housing and Child-Occupied Facilities Final Rule Regulatory Impact Analysis,* has been included in the public record for this regulation and is available for inspection in the TSCA public docket office. The central issue in the analysis is to identify, quantify and value the private and social benefits and costs of requiring that all lead-based paint abatement activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet certain minimum work practice standards. In attempting to conduct such an analysis, EPA encountered several difficulties related to the availability of data associated with the activity-specific costs and the benefits attributable to having trained and accredited personnel conduct the activities in accordance with specific standards. Using available information, the resulting analysis was issued with the proposed rule and any comments received were considered in the development of the final rule, as well as in the development of the corresponding final RIA. The following is a brief summary of the final RIA:

1. *Costs of regulatory action.* Cost estimates for performing lead-based paint activities pursuant to today's final rule are based on the number of inspections, lead hazard screens, risk assessments, and abatement activities and the unit costs associated with performing such activities. The first-year costs are estimated to be $31 million. Since the benefits and costs of this regulation occur at different times during the 50-year analysis period, EPA estimated their present value by discounting them. The selection of a discount rate has a direct bearing on the analysis, because cost and benefit estimates are sensitive to variations in the discount rate. As such, learned opinions vary on which discount rate should be used in certain circumstances. In this analysis, EPA uses a 3% discount rate for the core analysis and a 7% discount rate in the sensitivity analysis. Using a 3% discount rate, the present value of the costs over the 50-year time period total $1.114 billion. At a 7% discount rate, total costs fall to $530 million.

Total costs of compliance with work practice standards are estimated at $637 million and account for 57% of the discounted costs. The work practice standard costs are the main source of costs, due primarily to the cost of following these standards when conducting risk assessments and abatements in target housing and child-occupied facilities.

Certain assumptions that are a result of data limitations affect the estimates of the incremental costs of the rule. The analysis assumes current practices and training rates make up the baseline to be compared to the changes that will result from the rule provisions. This analysis accounts for the fact that lead-based paint activities are presently occurring, but does not account for the potential increase in such activities over time as a result of EPA regulations implementing other portions of Title X, resulting in greater costs. However, under these circumstances the attendant benefits would also be greater. Also, current training rate estimates assume that on average, lead-based paint activities do not provide full-time employment. If lead-based paint activities do constitute full-time employment, then fewer people will require training.

2. *Benefits of regulatory action.* The objective of the benefit analysis is to identify the benefits attributable to the regulation, which in this case are the incremental benefits associated with sections 402(a) and 404 or the value of any incremental risk reduction brought about by performing these activities using trained labor that complies with the work practice standards, which are also contained in the rule. These benefits consist of the value to consumers of being able to purchase lead-based paint activities services of more reliable quality. As a result of the reduced uncertainty about the quality of such services, more inspections, lead hazard screens, risk assessments, and abatements will be performed. In addition, the average quality of the services that are performed will rise as the low-quality lead-based paint activities are curtailed or eliminated by the accreditation, training, certification and work-practice standard requirements. The quantification and valuation of these benefits—the ability to purchase a service of more reliable quality and the improvement in quality—would require information about the distribution of quality of lead-based paint activities that building owners may purchase if this rule were promulgated, and in its absence. Due to data limitations, it was not possible to estimate the benefits of the rule. Total benefits of abatement, however, were estimated. The number of quantifiable and monetizable benefit categories in the analysis of abatement benefits is limited because dose-response functions necessary to assess the potential impacts of lead-based paint hazard reductions on human health and the environment are not available, and knowledge of national blood-lead levels pre- and post-implementation of sections 402(a) and 404 is also unavailable.

The second-year total measurable benefits of abatement are estimated at $625 million. Total measurable benefits of abatement, discounted over a 50-year period at 3% percent are estimated at $16.1 billion, and discounted at 7% over the same time period are estimated at $1.55 billion. These benefits accrue from reductions of negative impacts on

children's intelligence, with an estimated present value of total measured benefits of abatement equal to $16.1 billion ($13.1 billion in target housing and $3 billion in child-occupied facilities).

In addition to the measured benefits of abatement in the base analysis, which focuses on protection of children age 6 years or younger, other qualitative benefit categories exist. These categories include:

(1) Neonatal mortality;

(2) Adult resident health effects such as hypertension, coronary heart disease and stroke;

(3) Infant/child neurological effects;

(4) Occupational health effects such as hypertension, coronary heart disease, and stroke; and

(5) Environmental risk reductions.

With the exception of (1) and (2), it is not possible to value these benefits due to data limitations. The contributions of these two benefit categories are estimated and included in the sensitivity analysis below. Were the values of these additional benefit categories included in the primary analysis, the measured benefits of the rule could be as much as $54 billion when discounted at 3% over 50 years.

3. *Benefit-cost comparison.* The purpose of this Regulatory Impact Analysis (RIA) was to analyze the benefits, costs, and economic impacts of the final rule implementing sections 402(a)/404. As discussed in the RIA, there are benefits to society associated with the reduction of lead-based paint hazards in general and there are also benefits associated with the establishment of certification programs for ensuring that only trained individuals perform the lead-based paint activities. Although there is insufficient data to allow for a quantification of those benefits, EPA believes that the analysis it conducted with regard to the benefits from reducing lead-based paint hazards indicates that sections 402(a)/404 provide a vehicle that will aid in the realization of those benefits and that the costs of this rule are reasonable in light of the potential magnitude of those benefits, quantified or not.

It is important to point out that while the total costs of the rule are comprehensively quantified, benefits of abatement are only partially quantified. If benefits to adult residents of target housing, lead-based paint abatement workers, individuals who live, work, or travel near abatement activities, and the environment were included, the benefits of the rule would be increased substantially. Estimates for possible benefits to two groups of potential beneficiaries (workers and adult residents of target housing) are provided in the sensitivity analysis discussion below.

4. *Sensitivity analysis.* Six sets of sensitivity analyses examine the effects on key categories of the benefits of abatements and cost categories. Two sets affected the costs: alternative work practice standard costs (resulting from alternative estimates of likely soil abatement practices) and alternative training costs (resulting from alternative assumptions of likely workload). In addition, varying assumptions of changes in blood-lead levels attributable to the rule provide estimated potential benefits for neonatal mortality, adult residents of abated units and workers. Finally, an alternative discount rate of 7%, which affects both the estimated costs and benefits of the rule, is applied.

Use of an alternate discount rate and inclusion of adult resident benefits had the greatest impact on benefits and costs. Simply discounting the stream of costs by 7% decreases the present value of the 50-year incremental cost estimate by 52%. Correspondingly, the use of the 7% discount rate decreases the present value of the 50-year benefit stream by 90%. Incorporation of adult resident benefits increases total benefits by $17.9 billion per 0.1 μg/dL change in blood lead when discounted at 3% over 50 years, without impacting the costs.

5. *Response to comments on the RIA.* The Agency received comments on the RIA from 16 parties. The comments are in five major categories: types of structures covered by the rule, estimation of benefits, estimation of costs, analytic assumptions, and factors left out of the analysis. In several cases, the rule and/or the analysis were revised to respond to these comments. In other cases, the Agency determined that the rule and analysis were appropriate. The comments and responses are summarized here.

Comments on the types of structures covered address the impacts of the rule on public and commercial buildings and steel structures. The Agency plans to develop separate regulations affecting public and commercial buildings and steel structures, and comments will be addressed at that time.

Several commenters stated that EPA had overestimated the benefits of the rule. While it is not possible to isolate the incremental benefits resulting from the rule, estimating the total value of certain categories of benefits due to properly performed abatements provides a useful benchmark against which to compare the incremental costs of the rule. This is especially true since poorly performed activities can result in further exposures and thus negative benefits. The RIA benefit estimates rely on IQ-related benefits to children age 6 years and younger; neonatal and adult hypertension benefits which are also assumed to result from the proposed rule are presented in the sensitivity analysis. The benefit estimates include the benefits derived from the reductions in lead-contaminated dust that occur with a lead-based paint abatement.

On the cost side of the analysis, some commenters argued that the costs were overestimated, while others that costs were underestimated. In response to comments that costs were overestimated, the Agency notes that the estimates were conservative. In response to the comments, the costs were underestimated; the Agency notes that the estimated costs are incremental not total. The per unit costs are estimated by comparing current industry practices to those required under the rule, identifying the additional actions the rule would impose, and calculating the costs of these actions. The current analysis accounts for the fact that some households will choose to skip the inspection step and start the process with a lead hazard screen or risk assessment. Changes were also made in the regulations governing soil abatements and the analysis of these costs. The Agency has reviewed the analysis and determined that costs are not underestimated.

A few of the comments challenged various analytic assumptions or approaches. Some argued that EPA's Integrated Exposure Uptake Biokinetic (IEUBK) Model should not be used in estimating the benefits. The Agency believes the use of this model to be appropriate; the Agency currently uses it for risk assessments at sites covered under the Superfund program and the Resource Conservation and Recovery Act. Other comments challenged the discount rate used in the analysis and the handling of productivity growth. The analysis is performed in real, as opposed to nominal, terms and thus it is not necessary to adjust for inflation. The 3% discount rate is consistent with other environmental regulations; the effects of using a higher rate are presented in the sensitivity analysis.

Several comments asserted that the analysis had not accounted for important factors. This is not the case. The final RIA includes the effect of OSHA rules, which was one factor noted by commenters. The impact of the rule on the demand for lead-based paint activities is modeled using data from Massachusetts, where similar regulations have been in effect for a few years. Attempts to uncover other

sources of data have been unsuccessful. In addition, the analysis now uses a single definition of lead-based paint hazards (paint with lead content of 1 mg/cm² and in deteriorated condition or good condition on friction surfaces).

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency considered whether today's regulatory action will have a significant economic impact on a substantial number of small entities. Based on the Agency's analysis, EPA determined that this action is likely to have a modest adverse economic impact on a substantial number of small entities. EPA conducted a regulatory flexibility analysis for the rule, the results of which are summarized in today's preamble and discussed in detail in supporting documents in the rulemaking record. In light of that analysis and public comments received, the Agency took numerous steps to minimize any adverse impact associated with the final rule, with particular emphasis on reducing any potential adverse impact on small entities. For example, in the final rule, the Agency reduced the recordkeeping requirements associated with the work practice standards, and reduced the length of the abatement worker course.

Previous sections of the preamble to this final rule include discussions summarizing the need for and objective of this rule, responses to the significant comments received on the proposed rule, and a summary of the analysis of small entity impacts. In addition, a Response to Public Comment Document presents EPA's detailed response to all the significant comments received on the proposal (including the initial regulatory flexibility analysis prepared for the proposed rule); and a Regulatory Impact Analysis (RIA) includes a complete description of the small entities potentially impacted, the projected requirements that small entities might be subject to, a summary of the changes made to the proposed rule which minimize the burden in the final rule, and an analysis of the projected impacts on small entities. These documents are available in the public docket supporting this rulemaking.

The following is a brief summary of EPA's analysis of the potential economic impacts on small entities. Basically, section 402(a) does not require or mandate the abatement of lead-based paint, nor require that any particular enterprise participate in the abatement of lead-based paint. However, section 402(a) does require that if an abatement is voluntarily conducted, certain training requirements and work practices must be followed. The costs of required training, certification, and work practice standards may create competitive differences that could result in unfair burdening of small firms. This analysis estimates both the absolute and the relative burden on small and large businesses.

The section 402(a) compliance costs consist of two components that may impact small businesses: (1) Accreditation and training costs for workers and supervisors, as well as certification costs for firms, and (2) incremental costs of work practice standards for abatement procedures. These two components coincide with the two decision points faced by firms interested in performing lead-based paint abatement work (including soil abatement). In order to participate in this industry, a firm must be certified and its employees must be trained and certified. Firms incur these expenses in anticipation of work, based on its assessment of the future demand for such services, its competition, and the price it will be able to charge. If the market demand does not meet these expectations, the firm may not recoup these costs, thus decreasing its profits.

The costs resulting from work practice standards are of a different nature. Firms that perform lead-based paint activities often perform similar work in settings that do not involve lead and are not affected by this rule. Occurring at the second decision point, work practice standards costs will be incurred by a firm only if it chooses to undertake a given lead-based paint job. In each situation, the firm can assess the impact of the work practice standards on its sales and profit levels. If the impact is adverse (i.e., results in profit levels below those available for other work), the firm has the option to decline the work. Most firms that perform lead-based paint activities are also active in the non-lead-based paint markets. In this voluntary setting, the work practice standards will not have an adverse impact on the profits of businesses because these firms can focus, instead, on the non-lead-based paint business. Therefore, no estimates of work practice standards burden were made. Likewise, owners of property will incur the work practice standards costs only if they determine that an abatement is to their benefit.

To determine the impact of the training and certification requirements on large and small businesses, the ratios of compliance costs to annual sales were calculated. By using first-year training costs, the largest impacts were estimated (a worst-case scenario). Impacts on firms in subsequent years would be significantly smaller because the demand for training in later years would decrease from the first year "start up" levels. Incremental certification and training costs per establishment were calculated by multiplying the average number of workers per establishment by the per person certification and training costs. Training costs vary by discipline and certification fees of $60 per individual and $350 per firm were estimated. While it is likely that firms will be able to pass some or all of the training and certification costs on to their customers in the form of higher prices, this analysis investigates the worst case in which the firm must absorb all the costs.

Assuming that none of the training and certification costs are shifted forward in the form of higher prices, the ratios of compliance costs to annual sales for small establishments range between 0.6 and 3.2%. For large firms, the ratios tend to be slightly lower, ranging from 0.6 and 1%. In the case of both large and small establishments, the largest cost ratio occurs for Standard Industrial Code 8743, testing laboratories.

As discussed above, firms are likely to pass these costs on to their customers in the form of higher prices because the regulations apply to all firms involved in lead-based paint activities. Therefore, the ratios tend to overestimate the impacts. Since training and licensing costs are a small percent of annual sales, and these percentages are only slightly higher for small businesses than for large ones, the impact of this regulation on small businesses will be small, as is the differential between impacts on large and small businesses.

While this shifting of costs will alleviate the burden on abatement firms, the incremental costs of the regulations may affect building owners. Consistent with the arguments presented above, under this rule abatement is a voluntary action. As such, property owners are unlikely to undertake an abatement unless they are able to pass the cost on to tenants or otherwise recoup the costs in terms of higher property values. Where abatements are mandated under a State law or local ordinance, however, the costs of this rule may have an adverse impact on landlords. While abandonment could possibly be the result, existing information indicates that this is unlikely. Therefore, analyses of potential impacts on property owners or tenants were not performed.

The comparison of impacts on small and large training providers was not performed for two reasons. First, except for the Regional Lead Training Centers

(RLTCs), most training providers are small, so there would be no differential effect based on size of the firm. In addition, it is likely that training providers will pass the additional costs on to their trainees. This impact is analyzed above under the assumption that firms undertaking lead-based paint activities will bear these costs. Since the changes will be required by Federal regulations, they will apply to all training providers. Second, there will be heightened concern about lead-based paint hazards and thus a greater willingness to pay for trained personnel who will presumably provide higher quality services. In fact, these regulations are likely to create a market for training services and thus may be beneficial to small businesses.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1715.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., SW.; Washington, DC 20460; by calling (202) 260–2740; or by e-mail from "farmer.sandy@epamail.epa.gov." The information requirements are not effective until OMB approves them.

Under today's final rule, four entities may be affected by new information collection and reporting requirements. These entities are: (1) States and Indian Tribes; (2) training program providers; (3) individuals engaged in lead-based paint activities; and (4) firms engaged in lead-based paint activities.

Importantly, States and Indian Tribes have the option of choosing to seek authorization to administer lead-based paint activities programs under TSCA section 404; thus the information collection and recordkeeping requirements are voluntary activities for these entities. In those States and Indian Tribes that do not seek program authorization, however, it is assumed that EPA will administer a lead-based paint activities program.

Likewise, individuals and firms that engage in lead-based paint activities, as well as training providers delivering training in such activities also have the option of providing these services. Thus, for those individuals and firms that choose to provide instruction or to contract their services for the purposes of conducting lead-based paint activities, the information collection and recordkeeping requirements also are voluntary.

Nonetheless, it must be noted that the information collection and recordkeeping requirements contained in the rule become mandatory once an entity chooses to administer a program; provide instruction; or contract its services in the lead-based paint activities field. The Agency notes that the rule's information collection and recordkeeping requirements have been designed so as to assist the Agency in meeting the core objectives of section 402(a) and section 404 of TSCA Title IV. These objectives are to ensure the integrity of an accreditation program for training providers; enable individuals and firms to become certified; and substantiate that programs administered by States and Indian Tribes are as protective as EPA's federal program. The Agency believes that the information collection and recordkeeping requirements generated by the rule are balanced in that they will permit the Agency to achieve the statutory objectives of TSCA Title IV without imposing an undue burden on those entities that choose to become involved in the lead-based paint activities field. The projected burden for these entities is summarized below.

For the purposes of this discussion, the term "burden" refers to the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The average burden per training provider for the first effective year of the rule is estimated to be 28.3 hours with a cost per training provider of $681.40, and lesser burden in subsequent years. The estimated burden for the first effective year of the rule for the total number of training providers is 5,667 hours at a cost of $136,279.

The estimated, average burden per firm or contractor (individuals may be employed as firms or contractors) engaging in lead-based paint activities is 115.7 hours with a cost of $2,473, with lesser burden in subsequent years. For the total number of firms performing lead-based paint activities the burden is estimated to be 326,724 hours at a cost of $6,985,059.

The estimated, average burden per individual seeking certification to engage in lead-based paint activities depends on the length of the required training, plus 1 additional hour. For the total of individuals, the first effective year burden is 407,448 hours at a cost of $16,092,230 with lesser burden in subsequent years.

The first effective year burden per State or Indian Tribe depends on whether the entity must put legislation into place before implementing a regulatory program. For States or Indian Tribes that assume legislative and regulatory development the burden is 1,715 hours; for those States or Indian Tribes that need only to acquire program authorization the burden is 138 hours. The total burden for States and Indian Tribes in the first effective year is 48,713 hours at a cost of $959,534, with lesser burden in subsequent years. For EPA the estimated burden in the first effective year of the rule is 5,940 hours at a cost of $197,285.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), EPA has determined that this regulatory action does not contain any "Federal mandates," as described in the Act, for the States, local, or Tribal governments or the private sector because the rule implements mandates specifically and explicitly set forth by the Congress in TSCA section 402(a) and section 404 without the exercise of any political discretion by EPA.

In any event, EPA has determined that this action does not result in the expenditure of $100 million or more by

any State, local or tribal governments, or by anyone in the private sector. The costs associated with this action are described as required by Executive Order 12866 in section A of this Unit in the preamble.

As specified by Executive Order 12875 (58 FR 58093, October 28, 1993), titled *Enhancing the Intergovernmental Partnership*, the Agency has sought input from State, local and tribal government representatives throughout the development of this rule. EPA anticipates that these governments will play a critical role in the implementation of a national lead-based paint activities training and certification program. Consequently, the Agency felt that their input and participation were needed to ensure the success of the program.

Specifically, before it began the development of today's final rule, EPA informally met with a broad range of interested parties, including State, local and tribal governments to solicit information on the subject of lead-based paint activities training, accreditation, certification and standards. Communication and input from the States also was actively sought as the Agency developed a proposed rule, and after the proposed rule was published for public comment on September 2, 1994.

During the public comment period, at least three meetings were held with State representatives under the auspices of the "Forum on State and Tribal Toxics Action" or "FOSTTA." FOSTTA is an organization that serves as a forum for State and Tribal officials to jointly participate in addressing national toxics issues, including lead. Under FOSTTA, a "lead project" has been formed to work with the States and tribes on lead-related issues. In addition to meetings with FOSTTA representatives, the Agency met on December 5 and 6, 1994, with 93 State representatives from 49 State health and environmental agencies. Twelve representatives from 10 tribes also participated in the December meeting. Furthermore, the Agency received written comments from 83 State and local agencies representing 49 States.

The input received from State, Tribal and local agencies has been very useful in the final development of today's final rule. The Agency believes that this input has helped produce an efficient rule that will support the development of a workforce qualified to reduce and eliminate lead-based paint and its associated hazards. By working with the States, Tribes and local agencies, EPA also has initiated preliminary discussions intended to facilitate cooperation and program reciprocity.

E. Executive Order 12898—Environmental Justice Considerations

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. This examination shows that existing lead-based paint hazards are a risk to all segments of the population living in pre-1978 housing. However, literature indicates that some segments of our society are at relatively greater risk than others.

Although the baseline risks from lead-based paint fall disproportionately on poorer sub-populations, it may be more likely that abatements will take place in residential dwellings occupied by mid- to upper-level income households. Abatements will be voluntary, and wealthier households are more likely to have the financial resources to abate an existing problem in their home, or to avoid lead-based paint hazards by not moving into a residential dwelling with lead-based paint. Even though a national strategy of eliminating lead-based paint hazards targets a problem affecting a greater share of poor households and minorities, the impact of income on the ability to undertake voluntary abatements may result in a more inequitable distribution of the risks in the future.

In response to this situation, several Federal agencies have established grant programs that will provide financial support to reduce the prevalence of lead poisoning among disadvantaged children. The EPA also has several information initiatives designed to educate the public, with a particular emphasis on this socio-economic group, of the dangers of lead.

XI. Submission to Congress and the General Accounting Office

This action is not a "major rule" as defined by 5 U.S.C. 804(2) of the Administrative Procedure Act. Pursuant to 5 U.S.C. 801 (a)(1)(A), EPA submitted this action to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to its publication in today's **Federal Register**.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–62128B). A public version of the record, without any information claimed as confidential business information, is available in the TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at EPA headquarters, in Rm. G102, 401 M St., SW., Washington, DC. 20460.

The rulemaking record contains information considered by EPA in developing this final rule. The record includes: (1) All **Federal Register** notices, (2) relevant support documents, (3) reports, (4) memoranda and letters, and (5) hearing transcripts responses to comments, and other documents related to this rulemaking.

Unit XIII. of this preamble contains the list of documents which the Agency relied upon while developing today's regulation and can be found in the docket. Other documents, not listed there, such as those submitted with written comments from interested parties, are contained in the TSCA Docket office as well. A draft of today's final rule submitted by the Administrator to the OMB for an interagency review process prior to publication of the rule is also contained in the public docket.

XIII. References

(1) Minutes from the December 5 and 6, 1994 National Lead Conference; and minutes from Forum on State and Tribal Toxics Action (FOSTTA) meetings from 1994 and 1995.

(2) Lead; Requirements for Lead-Based Paint Activities; Proposed Rule; Summary of Public Comments; prepared by the Office of Pollution Prevention and Toxics, (January 31, 1995).

(3) Lead; Requirements for Lead-Based Paint Activities; Proposed Rule; Response to Public Comment Document; prepared by the Office of Pollution Prevention and Toxics, (August 1, 1996).

(4) Mathematica Policy Research, Inc. 1990. *Profile of Child care Settings*; and U.S. Department of Education, National Center for Education Statistics. 1993. Fast Response Survey, Kindergarten Teacher Survey on Student Readiness.

(5) U. S. Census Bureau, School Enrollment Supplement. 1994. *Current Population Survey.* (October 1994).

(6) U.S. Department of Housing and Urban Development (HUD), Office of Lead-Based Paint Abatement and Poisoning Prevention. 1995. *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.* (June 1995).

(7) USEPA. 1995. *Residential Sampling for Lead: Protocols for Dust and Soil Sampling.* (EPA 747–R–95–001, March 1995).

(8) USEPA. 1995. *A Field Test of Lead-Based Paint Testing Technologies: Summary Report*. (EPA 747–R–95–002a, May 1995).

(9) USEPA. 1995. *A Review of Studies Addressing Lead Abatement Effectiveness*. (EPA 747–R–95–006, June 1995).

(10) Amitai, Y. Brown, M.J., Graef, J.W., and Cosgrove, E. 1991. "Residential Deleading: Effects on the Blood Lead Levels of Lead-Poisoned Children." *Pediatrics*. 88(5):893–897.

(11) Farfel, M.R. and Chisolm, J.J. Jr. 1990. "Health and Environmental Outcomes of Traditional and Modified Practices for Abatement of Residential Lead-Based Paint." *American Journal of Public Health*. 80(10):1240–1245.

(12) HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. 1995. HUD Guidelines Appendix 11–1 "One-Hour Waiting Period Rationale for Clearance Sampling." (June 1995).

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and reporting requirements.

Dated: August 21, 1996.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 745 is amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2681–2692.

2. By adding new subparts L and Q and reserving subparts G–K and M–P to read as follows:

Subparts G–K [Reserved]

Subpart L—Lead-Based Paint Activities

Sec.

745.220 Scope and applicability.
745.223 Definitions.
745.225 Accreditation of training programs: target housing and child-occupied facilities.
745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.
745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.
745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures [Reserved].
745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].
745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].
745.233 Lead-based paint activities requirements.
745.235 Enforcement.
745.237 Inspections.
745.239 Effective dates.

Subparts M–P [Reserved]

Subpart Q—State and Indian Tribal Programs

Sec.

745.320 Scope and purpose.
745.323 Definitions.
745.324 Authorization of State and Indian Tribal programs.
745.325 Lead-based paint activities: State and Indian Tribal program requirements.
745.326 Pre-renovation notification: State and Indian Tribal program requirements.
745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.
745.328 Authorization of Indian Tribal programs.
745.330 Grants.
745.339 Effective dates.

Subparts G–K [Reserved]

Subpart L—Lead-Based Paint Activities

§ 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in § 745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. This subpart applies only in those States or Indian Country that do not have an authorized State or Tribal program pursuant to § 745.324 of subpart Q.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

§ 745.223 Definitions.

The definitions in subpart A apply to this subpart. In addition, the following definitions apply.

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with § 745.226, unless such projects are covered by paragraph (4) of this definition;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in

response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

Accredited training program means a training program that has been accredited by EPA pursuant to § 745.225 to provide training for individuals engaged in lead-based paint activities.

Adequate quality control means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

Certified firm means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to § 745.226(f).

Certified inspector means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Certified abatement worker means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to perform abatements.

Certified project designer means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to prepare abatement project designs, occupant protection plans, and abatement reports.

Certified risk assessor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Certified supervisor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

Clearance levels are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

Common area means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

Component or building component means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

Containment means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

Course agenda means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

Course test means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

Course test blue print means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

Discipline means one of the specific types or categories of lead-based paint activities identified in this subpart for which individuals may receive training from accredited programs and become certified by EPA. For example, "abatement worker" is a discipline.

Distinct painting history means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

Documented methodologies are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

Elevated blood lead level (EBL) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 µg/dl in two consecutive tests taken 3 to 4 months apart.

Encapsulant means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

Encapsulation means the application of an encapsulant.

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

Guest instructor means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

Hands-on skills assessment means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in § 745.225(d), as well as any other skill taught in a training course.

Hazardous waste means any waste as defined in 40 CFR 261.3.

Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Interim certification means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from EPA pursuant to § 745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

Lead-based paint activities means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator pursuant to TSCA section 403.

Lead-contaminated dust means surface dust in residential dwellings, or child-occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by the Administrator pursuant to TSCA section 403.

Lead-contaminated soil means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels identified by the Administrator pursuant to TSCA section 403.

Lead-hazard screen is a limited risk assessment activity that involves limited paint and dust sampling as described in § 745.227(c).

Living area means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

Multi-family dwelling means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Paint in poor condition means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

Permanently covered soil means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal government.

Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

Recognized laboratory means an environmental laboratory recognized by EPA pursuant to TSCA section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk assessment means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

Training curriculum means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training manager means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

Visual inspection for clearance testing means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

Visual inspection for risk assessment means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

(a) *Scope.* (1) A training program may seek accreditation to offer lead-based paint activities courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998.

(3) A training program shall not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999.

(b) *Application process.* The following are procedures a training program shall follow to receive EPA

accreditation to offer lead-based paint activities courses:

(1) A training program seeking accreditation shall submit a written application to EPA containing the following information:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation.

(iii) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (c) of this section. If a training program uses EPA-recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part, the training program manager shall include a statement certifying that, as well.

(iv) If a training program does not use EPA-recommended model training materials or training materials approved by an authorized State or Indian Tribe, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course.

(B) A copy of the course agenda for each course.

(v) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(2) If a training program meets the requirements in paragraph (c) of this section, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the training program under paragraph (i) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(c) *Requirements for the accreditation of training programs.* For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, the program shall meet the following requirements:

(1) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(4) The following documents shall be recognized by EPA as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (c)(1) and (c)(2) of this section. This documentation need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the recordkeeping requirements contained in paragraph (i) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (d)(1) of this section.

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (d)(2) of this section.

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (d)(3) of this section.

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (d)(4) of this section.

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (d)(5) of this section.

(7) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on

skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or profiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (d) of this section.

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual.

(ii) The name of the particular course that the individual completed.

(iii) Dates of course completion/test passage.

(iv) Expiration date of interim certification, which shall be 6 months from the date of course completion.

(v) The name, address, and telephone number of the training program.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(ii) Procedures for the training manager's annual review of principal instructor competency.

(10) The training program shall offer courses which teach the work practice standards for conducting lead-based paint activities contained in § 745.227, and other standards developed by EPA pursuant to Title IV of TSCA. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(12) The training manager shall allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of this section.

(d) *Minimum training curriculum requirements.* To become accredited to offer lead-based paint courses instruction in the specific disciplines listed below, training programs must ensure that their courses of study include, at a minimum, the following course topics. Requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course.

(1) *Inspector.* (i) Role and responsibilities of an inspector.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.*

(v) Paint, dust, and soil sampling methodologies.*

(vi) Clearance standards and testing, including random sampling.*

(vii) Preparation of the final inspection report.*

(viii) Recordkeeping.

(2) *Risk assessor.* (i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.*

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.*

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards.*

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

(3) *Supervisor.* (i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.*

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.*

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.*

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.*

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(4) *Project designer.* (i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Clearance standards and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) *Abatement worker.* (i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.*

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.*

(vi) Interior dust abatement methods/ cleanup or lead-based paint hazard reduction.*

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.*

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any of the following disciplines: inspector, risk assessor, supervisor, project

designer, and abatement worker. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (d) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(ii) Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(iii) Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

(2) Each refresher course, except for the project designer course, shall last a minimum of 8 training hours. The project designer refresher course shall last a minimum of 4 training hours.

(3) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test.

(4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (b) of this section. If so, EPA shall use the approval procedure described in paragraph (b) of this section. In addition, the minimum requirements contained in paragraphs (c) (except for the requirements in paragraph (c)(6)), and (e)(1), (e)(2) and (e)(3) of this section shall also apply.

(5) A training program seeking accreditation to offer refresher training courses only shall submit a written application to EPA containing the following information:

(i) The refresher training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation.

(iii) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (c) of this section, except for the requirements in paragraph (c)(6) of this section. If a training program uses EPA-developed model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under § 745.324 to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.

(iv) If the refresher training course materials are not based on EPA-developed model training materials or training materials approved by an authorized State or Indian Tribe, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course.

(B) A copy of the course agenda for each course.

(v) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(vi) The requirements in paragraphs (c)(1) through (c)(5), and (c)(7) through (c)(12) of this section apply to refresher training providers.

(vii) If a refresher training program meets the requirements listed in this paragraph, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the refresher training program under paragraph (i) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(f) *Re-accreditation of training programs.* (1) Unless re-accredited, a training program's accreditation (including refresher training accreditation) shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(2) A training program seeking re-accreditation shall submit an application to EPA no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, EPA cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(3) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for re-accreditation.

(iii) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students ability to learn.

(iv) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (c) and (e) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (i) of this section shall be followed.

(4) Upon request, the training program shall allow EPA to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (f)(3) of this section.

(g) *Suspension, revocation, and modification of accredited training programs.* (1) EPA may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation (including refresher training accreditation) if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to EPA and/or the student population.

(ii) Failed to submit required information or notifications in a timely manner.

(iii) Failed to maintain required records.

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.

(v) Failed to comply with the training standards and requirements in this section.

(vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(vii) Made false or misleading statements to EPA in its application for accreditation or re-accreditation which EPA relied upon in approving the application.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a

failure to comply with relevant statutes or regulations.

(h) *Procedures for suspension, revocation or modification of training program accreditation.* (1) Prior to taking action to suspend, revoke, or modify the accreditation of a training program, EPA shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke or modify accreditation.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the accredited training program, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer appointed pursuant to paragraph (h)(2) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in paragraph (g)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued pursuant to paragraph (g)(1) of this section, it shall be issued at the same time the emergency suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation or modification hearing.

(iii) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training program in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.

(7) EPA shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.

(i) *Training program recordkeeping requirements.* (1) Accredited training programs shall maintain, and make available to EPA, upon request, the following records:

(i) All documents specified in paragraph (c)(4) of this section that demonstrate the qualifications listed in paragraphs (c)(1) and (c)(2) of this section of the training manager and principal instructors.

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials.

(iii) The course test blueprint.

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment.

(B) How the skills are graded.

(C) What facilities are used.

(D) The pass/fail rate.

(v) The quality control plan as described in paragraph (c)(9) of this section.

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.

(vii) Any other material not listed above in paragraphs (i)(1)(i) through (i)(1)(vi) of this section that was submitted to EPA as part of the program's application for accreditation.

(2) The training program shall retain these records at the address specified on the training program accreditation application (or as modified in accordance with paragraph (i)(3) of this section for a minimum of 3 years and 6 months.

(3) The training program shall notify EPA in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

(a) *Certification of individuals.* (1) Individuals seeking certification by EPA to engage in lead-based paint activities must either:

(i) Submit to EPA an application demonstrating that they meet the requirements established in paragraphs (b) or (c) of this section for the particular discipline for which certification is sought; or

(ii) Submit to EPA an application with a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by EPA pursuant to subpart Q of this part.

(2) Individuals may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(3) Following the submission of an application demonstrating that all the requirements of this section have been meet, EPA shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(4) Upon receiving EPA certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in § 745.227.

(5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in § 745.227 after August 30, 1999, if that individual has not been certified by EPA pursuant to this section to do so.

(b) *Inspector, risk assessor or supervisor.* (1) To become certified by EPA as an inspector, risk assessor, or

supervisor, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Pass the certification exam in the appropriate discipline offered by EPA; and,

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. (*1*) No additional experience and/or education requirements.

(*2*) [Reserved]

(B) Risk assessors. (*1*) Successful completion of an accredited training course for inspectors; and

(*2*) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(*3*) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(*4*) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

(C) Supervisor: (*1*) One year of experience as a certified lead-based paint abatement worker; or

(*2*) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in (b)(2)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(4) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(5) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (b)(1) of this section, an individual shall be issued a certificate by EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(6) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(7) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from EPA.

(c) *Abatement worker and project designer.* (1) To become certified by EPA as an abatement worker or project designer, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. (*1*) No additional experience and/or education requirements.

(*2*) [Reserved]

(B) Project designers. (*1*) Successful completion of an accredited training course for supervisors.

(*2*) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(*3*) Four years of experience in building construction and design or a related field.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) The course completion certificate shall serve as an interim certification until certification from EPA is received, but shall be valid for no more than 6 months from the date of completion.

(4) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (c)(1) of this section, an individual shall be issued a certificate from EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(d) *Certification based on prior training.* (1) Any individual who received training in a lead-based paint activity between October 1, 1990, and March 1, 1999 shall be eligible for certification by EPA under the alternative procedures contained in this paragraph. Individuals who have received lead-based paint activities training at an EPA-authorized State or Tribal accredited training program shall also be eligible for certification by EPA under the following alternative procedures:

(i) Applicants for certification as an inspector, risk assessor, or supervisor shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets or exceeds the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(D) Pass a certification exam administered by EPA for the appropriate discipline.

(ii) Applicants for certification as an abatement worker or project designer shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets the education and/or experience requirements in paragraphs (c)(1) of this section; and

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(2) Individuals shall have until August 30, 1999 to apply to EPA for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (a), and paragraph (b) or (c) of this section, according to the discipline for which certification is sought.

(e) *Re-certification.* (1) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by EPA in that discipline by EPA either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) every 5 years if the individual completed a training course with a proficiency test.

(2) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate.

(f) *Certification of firms.* (1) All firms which perform or offer to perform any of the lead-based paint activities described in § 745.227 after August 30, 1999 shall be certified by EPA.

(2) A firm seeking certification shall submit to EPA a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in § 745.227 for conducting lead-based paint activities.

(3) From the date of receiving the firm's letter requesting certification, EPA shall have 90 days to approve or disapprove the firm's request for certification. Within that time, EPA shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(4) The firm shall maintain all records pursuant to the requirements in § 745.227.

(5) Firms may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(g) *Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.* (1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means.

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements.

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.

(iv) Performed work requiring certification at a job site without having proof of certification.

(v) Permitted the duplication or use of the individual's own certificate by another.

(vi) Performed work for which certification is required, but for which appropriate certification has not been received.

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at § 745.227.

(viii) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(h) *Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.* (1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified.

(ii) Failed to comply with the work practice standards established in § 745.227.

(iii) Misrepresented facts in its letter of application for certification to EPA.

(iv) Failed to maintain required records.

(v) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(i) *Procedures for suspension, revocction, or modification of the certification of individuals or firms.*

(1) If EPA decides to suspend, revoke, or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke, or modify certification.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the certified individual or firm, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertion of the legal and factual basis and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing;

(ii) Consider all relevant evidence, explanation, comment, and argument submitted; and

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final EPA action subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in paragraph (h)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued, it shall be issued at the same time the immediate suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's accreditation before an opportunity for a hearing to suspend, revoke, or modify the individual's or firm's certification.

(iii) Notify the affected entity of the commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the

procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

(a) *Effective date, applicability, and terms.* (1) Beginning on March 1, 1999, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(2) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(3) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474–R–95–001); Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and quidelines.

(4) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminiated Soil or other equivalent guidelines.

(b) *Inspection.* (1) An inspection shall be conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) Paint shall be sampled in the following manner: (i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection.

(ii) Address of building.

(iii) Date of construction.

(iv) Apartment numbers (if applicable).

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing.

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable.

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.

(ix) Specific locations of each painted component tested for the presence of lead-based paint.

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(c) *Lead hazard screen.* (1) A lead hazard screen shall be conducted only by a person certified by EPA as a risk assessor.

(2) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present, and

(B) Locate at least two dust sampling locations.

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust.

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (c)(1)(iii) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(3) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.

(ii) All collected dust samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) Paint shall be sampled in the following manner: (i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (d) of this section, including

paragraphs (d)(11)(i) through (d)(11)(xiv), and excluding paragraphs (d)(11)(xv) through (d)(11)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (c)(2)(i) of this section shall be included in the risk assessment report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(d) *Risk assessment.* (1) A risk assessment shall be conducted only by a person certified by EPA as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(3) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(4) Each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using documented methodologies, to be a potential lead-based paint hazard and having a distinct painting history, shall also be tested for the presence of lead.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the window and floor shall be collected in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (d)(4) of this section shall be taken. In addition, window and floor dust samples (either composite or single-surface samples) shall be collected in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(7) For child-occupied facilities, window and floor dust samples (either composite or single-surface samples) shall be collected in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age 6 and under, are likely to come into contact with dust.

(8) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) Dripline/foundation areas where bare soil is present.

(9) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(10) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(11) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment number (if applicable).

(v) Name, address, and telephone number of each owner of each building.

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment.

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable.

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure for paint analysis employed.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to paragraph (d)(3) of this section.

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(e) *Abatement.* (1) An abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the procedures in this paragraph.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other Federal, State and local requirements.

(4) Notification of the commencement of lead-based paint abatement activities in a residential dwelling or child-occupied facility or as a result of a Federal, State, or local order shall be given to EPA prior to the commencement of abatement activities. The procedure for this notification will be developed by EPA prior to August 31, 1998.

(5) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(6) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(7) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated; or

(ii) If soil is not removed, the lead-contaminated soil shall be permanently covered, as defined in § 745.223.

(8) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (e)(8)(i) of this section, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one window (if available) and one dust sample shall be taken from the floor of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(B) After conducting an abatement with no containment, two dust samples shall be taken from no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one window (if available) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State and local requirements.

(vi) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each dust sample with applicable clearance levels for lead in dust on floors and windows. If the residual lead levels in a dust sample exceed the clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(9) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (e)(8) of this section.

(10) An abatement report shall be prepared by a certified supervisor or project designer. The abatement report shall include the following information:

(i) Start and completion dates of abatement.

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project.

(iii) The occupant protection plan prepared pursuant to paragraph (e)(5) of this section.

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses.

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(f) *Collection and laboratory analysis of samples.* Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(1) Collected by persons certified by EPA as an inspector or risk assessor; and

(2) Analyzed by a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(g) *Composite dust sampling.* Composite dust sampling may only be conducted in the situations specified in paragraphs (c) through (e) of this section. If such sampling is conducted, the following conditions shall apply:

(1) Composite dust samples shall consist of at least two subsamples;

(2) Every component that is being tested shall be included in the sampling; and

(3) Composite dust samples shall not consist of subsamples from more than one type of component.

(h) *Recordkeeping.* All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for

no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

§ 745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures [Reserved].

§ 745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].

§ 745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures [Reserved].

§ 745.233 Lead-based paint activities requirements.

Lead-based paint activities, as defined in this part, shall only be conducted according to the procedures and work practice standards contained in § 745.227 of this subpart. No individual or firm may offer to perform or perform any lead-based paint activity as defined in this part, unless certified to perform that activity according to the procedures in § 745.226.

§ 745.235 Enforcement.

(a) Failure or refusal to comply with any requirement of §§ 745.225, 745.226, 745.227, or 745.233 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §§ 745.225, 745.226, or 745.227 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(c) Failure or refusal to permit entry or inspection as required by § 745.237 and section 11 of TSCA (15 U.S.C. 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(d) In addition to the above, any individual or firm that performs any of the following acts shall be deemed to have committed a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689). These include the following:

(i) Obtaining certification through fraudulent representation;

(ii) Failing to obtain certification from EPA and performing work requiring certification at a job site; or

(iii) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

(e) Violators are subject to civil and criminal sanctions pursuant to section 16 of TSCA (15 U.S.C. 2615) for each violation.

§ 745.237 Inspections.

EPA may conduct reasonable inspections pursuant to the provisions of section 11 of TSCA (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.239 Effective dates.

This subpart L shall apply in any State or Indian Country that does not have an authorized program under subpart Q, effective August 31, 1998. In such States or Indian Country:

(a) Training programs shall not provide, offer or claim to provide training or refresher training for certification without accreditation from EPA pursuant to § 745.225 on or after March 1, 1999.

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after August 30, 1999.

(c) All lead-based paint activities shall be performed pursuant to the work practice standards contained in § 745.227 on or after August 30, 1999.

Subparts M-P [Reserved]

Subpart Q—State and Indian Tribal Programs

§ 745.320 Scope and purpose.

(a) This subpart establishes the requirements that State or Tribal programs must meet for authorization by the Administrator to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 and/or section 406 and establishes the procedures EPA will follow in approving, revising, and withdrawing approval of State or Tribal programs.

(b) For State or Tribal lead-based paint training and certification programs, a State or Indian Tribe may seek authorization to administer and enforce §§ 745.225, 745.226, and 745.227. The provisions of §§ 745.220, 745.223, 745.233, 745.235, 745.237, and 745.239 shall be applicable for the purposes of such program authorization.

(c) For State or Tribal pre-renovation notification programs, a State or Indian Tribe may seek authorization to administer and enforce regulations developed pursuant to TSCA section 406.

(d) A State or Indian Tribe applying for program authorization may seek either interim approval or final approval of the compliance and enforcement portion of the State or Tribal lead-based paint program pursuant to the procedures at § 745.327(a).

(e) State or Tribal submissions for program authorization shall comply with the procedures set out in this subpart.

(f) Any State or Tribal program approved by the Administrator under this subpart shall at all times comply with the requirements of this subpart.

(g) In many cases States will lack authority to regulate activities in Indian Country. This lack of authority does not impair a State's ability to obtain full program authorization in accordance with this subpart. EPA will administer the program in Indian Country if neither the State nor Indian Tribe has been granted program authorization by EPA.

§ 745.323 Definitions.

The definitions in subpart A apply to this subpart. In addition, the definitions in § 745.223 and the following definitions apply:

Indian Country means (1) all land within the limits of any American Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or outside the limits of a State; and (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

Indian Tribe means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

§ 745.324 Authorization of State or Tribal programs.

(a) *Application content and procedures.* (1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce any provisions of subpart L of this part under section 402(a) of TSCA or the provisions of regulations developed under section 406 of TSCA shall submit an application to the Administrator in accordance with the procedures of this paragraph (a).

(2) Before developing an application for authorization, a State or Indian Tribe shall disseminate a public notice of intent to seek such authorization and provide an opportunity for a public hearing.

(3) A State or Tribal application shall include:

(i) A transmittal letter from the State Governor or Tribal Chairperson (or equivalent official) requesting program approval.

(ii) A summary of the State or Tribal program. This summary will be used to

provide notice to residents of the State or Tribe.

(iii) A description of the State or Tribal program in accordance with paragraph (b) of this section.

(iv) An Attorney General's or Tribal Counsel's (or equivalent) statement in accordance with paragraph (c) of this section.

(v) Copies of all applicable State or Tribal statutes, regulations, standards, and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint program.

(4) After submitting an application, the Agency will publish a **Federal Register** notice that contains an announcement of the receipt of the State or Tribal application, the summary of the program as provided by the State or Tribe, and a request for public comments to be mailed to the appropriate EPA Regional Office. This comment period shall last for no less than 45 days. EPA will consider these comments during its review of the State or Tribal application.

(5) Within 80 days of submission of a State or Tribal application, EPA will, if requested, conduct a public hearing in each State or Indian Country seeking program authorization and will consider all comments submitted at that hearing during the review of the State or Tribal application.

(b) *Program description.* A State or Indian Tribe seeking to administer and enforce a program under this subpart must submit a description of the program. The description of the State or Tribal program must include:

(1)(i) The name of the State or Tribal agency that is or will be responsible for administering and enforcing the program, the name of the official in that agency designated as the point of contact with EPA, and addresses and phone numbers where this official can be contacted.

(ii) Where more than one agency is or will be responsible for administering and enforcing the program, the State or Indian Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA.

(iii) In the event that more than one agency is or will be responsible for administering and enforcing the program, the application must also include a description of the functions to be performed by each agency. The desciption shall explain and how the program will be coordinated by the primary agency to ensure consistency and effective administration of the lead-based paint training accreditation and certification program within the State or Indian Tribe.

(2) To demonstrate that the State or Tribal program is at least as protective as the Federal program, fulfilling the criteria in paragraph (e)(2)(i) of this section, the State or Tribal application must include:

(i) A description of the program that demonstrates that the program contains all of the elements specified in § 745.325, § 745.326, or both; and

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart L of this part, regulations developed pursuant to TSCA section 406, or both. This analysis shall demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart L of this part, regulations developed pursuant to TSCA section 406, or both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

(3) To demonstrate that the State or Tribal program provides adequate enforcement, fulfilling the criteria in paragraph (e)(2)(ii) of this section, the State or Tribal application must include a description of the State or Tribal lead-based paint compliance and enforcement program that demonstrates that the program contains all of the elements specified at § 745.327. This description shall include copies of all policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the elements specified at § 745.327.

(4)(i) The program description for an Indian Tribe shall also include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Indian Tribe exercises jurisdiction.

(ii) The program description for an Indian Tribe shall also include a demonstration that the Indian Tribe:

(A) Is recognized by the Secretary of the Interior.

(B) has an existing government exercising substantial governmental duties and powers.

(C) has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification in paragraph (c)(2) of this section) over the subject matter and entities regulated.

(D) is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

(iii) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (b)(4)(ii)(A) and (B) of this section for another EPA program, the Indian Tribe need provide only that information unique to the lead-based paint program required by paragraphs (b)(4)(ii)(C) and (D) of this section.

(c) *Attorney General's statement.* (1) A State or Indian Tribe must submit a written statement signed by the Attorney General or Tribal Counsel (or equivalent) certifying that the laws and regulations of the State or Indian Tribe provide adequate legal authority to administer and enforce the State or Tribal program. This statement shall include citations to the specific statutes and regulations providing that legal authority.

(2) The Tribal legal certification (the equivalent to the Attorney General's statement) may also be submitted and signed by an independent attorney retained by the Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe's program. The certification shall include an assertion that the attorney has the authority to represent the Indian Tribe with respect to the Indian Tribe's authorization application.

(3) If a State application seeks approval of its program to operate in Indian Country, the required legal certification shall include an analysis of the applicant's authority to implement its provisions in Indian Country. The applicant shall include a map delineating the area over which it seeks to operate the program.

(d) *Program certification.* (1) At the time of submitting an application, a State may also certify to the Administrator that the State program meets the requirements contained in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) If this certification is contained in a State's application, the program shall be deemed to be authorized by EPA until such time as the Administrator disapproves the program application or withdraws the program authorization. A program shall not be deemed authorized pursuant to this subpart to the extent that jurisdiction is asserted over Indian Country, including non-member fee lands within an Indian reservation.

(3) If the application does not contain such certification, the State program will be authorized only after the Administrator authorizes the program in accordance with paragraph (e) of this section.

(4) This certification shall take the form of a letter from the Governor or the Attorney General to the Administrator. The certification shall reference the program analysis in paragraph (b)(3) of

this section as the basis for concluding that the State program is at least as protective as the Federal program, and provides adequate enforcement.

(e) *EPA approval.* (1) EPA will fully review and consider all portions of a State or Tribal application.

(2) Within 180 days of receipt of a complete State or Tribal application, the Administrator shall either authorize the program or disapprove the application. The Administrator shall authorize the program, after notice and the opportunity for public comment and a public hearing, only if the Administrator finds that:

(i)(A) In the case of an application to authorize the State or Indian Tribe to administer and enforce the provisions of subpart L of this part, the State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart L of this part; and/or

(B) In the case of an application to authorize the State or Indian Tribe to administer and enforce the regulations developed pursuant to TSCA section 406, the State or Tribal program is at least as protective of human health and the environment as the Federal regulations developed pursuant to TSCA section 406.

(ii) The State or Tribal program provides adequate enforcement.

(3) EPA shall notify in writing the State or Indian Tribe of the Administrator's decision to authorize the State or Tribal program or disapprove the State's or Indian Tribe's application.

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart L and regulations developed pursuant to TSCA section 406, EPA may, as appropriate, authorize one program and disapprove the other.

(f) *EPA administration and enforcement.* (1) If a State or Indian Tribe does not have an authorized program to administer and enforce subpart L of this part in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of subpart L of this part as the Federal program for that State or Indian Country.

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce regulations developed pursuant to TSCA section 406 in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of regulations developed pursuant to TSCA section 406 as the Federal program for that State or Indian Country.

(3) Upon authorization of a State or Tribal program, pursuant to paragraph (d) or (e) of this section, it shall be an unlawful act under sections 15 and 409 of TSCA for any person to fail or refuse to comply with any requirements of such program.

(g) *Oversight.* EPA shall periodically evaluate the adequacy of a State's or Indian Tribe's implementation and enforcement of its authorized programs.

(h) *Reports.* Beginning 12 months after the date of program authorization, the primary agency for each State or Indian Tribe that has an authorized program shall submit a written report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. This report shall be submitted at least once every 12 months for the first 3 years after program authorization. If these reports demonstrate successful program implementation, the Agency will automatically extend the reporting interval to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting until the reports demonstrate successful program implementation, at which time the Agency will extend the reporting interval to every 2 years.

The report shall include the following information:

(1) Any significant changes in the content or administration of the State or Tribal program implemented since the previous reporting period; and

(2) All information regarding the lead-based paint enforcement and compliance activities listed at § 745.327(d) "Summary on Progress and Performance."

(i) *Withdrawal of authorization.* (1) If EPA concludes that a State or Indian Tribe is not administering and enforcing an authorized program in compliance with the standards, regulations, and other requirements of sections 401 through 412 of TSCA and this subpart, the Administrator shall notify the primary agency for the State or Indian Tribe in writing and indicate EPA's intent to withdraw authorization of the program.

(2) The Notice of Intent to Withdraw shall:

(i) Identify the program aspects that EPA believes are inadequate and provide a factual basis for such findings.

(ii) Include copies of relevant documents.

(iii) Provide an opportunity for the State or Indian Tribe to respond either in writing or at a meeting with appropriate EPA officials.

(3) EPA may request that an informal conference be held between representatives of the State or Indian Tribe and EPA officials.

(4) Prior to issuance of a withdrawal, a State or Indian Tribe may request that EPA hold a public hearing. At this hearing, EPA, the State or Indian Tribe, and the public may present facts bearing on whether the State's or Indian Tribe's authorization should be withdrawn.

(5) If EPA finds that deficiencies warranting withdrawal did not exist or were corrected by the State or Indian Tribe, EPA may rescind its Notice of Intent to Withdraw authorization.

(6) Where EPA finds that deficiencies in the State or Tribal program exist that warrant withdrawal, an agreement to correct the deficiencies shall be jointly prepared by the State or Indian Tribe and EPA. The agreement shall describe the deficiencies found in the program, specify the steps the State or Indian Tribe has taken or will take to remedy the deficiencies, and establish a schedule, no longer than 180 days, for each remedial action to be initiated.

(7) If the State or Indian Tribe does not respond within 60 days of issuance of the Notice of Intent to Withdraw or an agreement is not reached within 180 days after EPA determines that a State or Indian Tribe is not in compliance with the Federal program, the Agency shall issue an order withdrawing the State's or Indian Tribe's authorization.

(8) By the date of such order, the Administrator shall establish and enforce the provisions of subpart L of this part or regulations developed pursuant to TSCA section 406, or both, as the Federal program for that State or Indian Country.

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain at least the following program elements for lead-based paint activities:

(1) Procedures and requirements for the accreditation of lead-based paint activities training programs.

(2) Procedures and requirements for the certification of individuals engaged in lead-based paint activities.

(3) Work practice standards for the conduct of lead-based paint activities.

(4) Requirements that all lead-based paint activities be conducted by appropriately certified contractors.

(5) Development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) *Accreditation of training programs.* The State or Indian Tribe must have either:

(1) Procedures and requirements for the accreditation of training programs that establish:

(i) Requirements for the accreditation of training programs, including but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures for the suspension, revocation, or modification of training program accreditations; or

(2) Procedures or regulations, for the purposes of certification, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.

(c) *Certification of individuals.* The State or Indian Tribe must have requirements for the certification of individuals that:

(1) Ensure that certified individuals:

(i) Are trained by an accredited training program; and

(ii) Possess appropriate education or experience qualifications for certification.

(2) Establish procedures for re-certification.

(3) Require the conduct of lead-based paint activities in accordance with work practice standards established by the State or Indian Tribe.

(4) Establish procedures for the suspension, revocation, or modification of certifications.

(5) Establish requirements and procedures for the administration of a third-party certification exam.

(d) *Work practice standards for the conduct of lead-based paint activities.* The State or Indian Tribe must have requirements or standards that ensure that lead-based paint activities are conducted reliably, effectively, and safely. At a minimum the State's or Indian Tribe's work practice standards for conducting inspections, risk assessments, and abatements must contain the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) The work practice standards for the inspection for the presence of lead-based paint must require that:

(i) Inspections are conducted only by individuals certified by the appropriate State or Tribal authority to conduct inspections.

(ii) Inspections are conducted in a way that identifies the presence of lead-based paint on painted surfaces within the interior or on the exterior of a residential dwelling or child-occupied facility.

(iii) Inspections are conducted in a way that uses documented methodologies that incorporate adequate quality control procedures.

(iv) A report is developed that clearly documents the results of the inspection.

(v) Records are retained by the certified inspector or the firm.

(2) The work practice standards for risk assessment must require that:

(i) Risk assessments are conducted only by individuals certified by the appropriate State or Tribal authority to conduct risk assessments.

(ii) Risk assessments are conducted in a way that identifies and reports the presence of lead-based paint hazards.

(iii) Risk assessments consist of, at least:

(A) An assessment, including a visual inspection, of the physical characteristics of the residential dwelling or child-occupied facility; and

(B) Environmental sampling for lead in paint, dust, and soil.

(iv) The risk assessor develops a report that clearly presents the results of the assessment and recommendations for the control or elimination of all identified hazards.

(v) The certified risk assessor or the firm retains the appropriate records.

(3) The work practice standards for abatement must require that:

(i) Abatements are conducted only by individuals certified by the appropriate State or Tribal authority to conduct or supervise abatements.

(ii) Abatements permanently eliminate lead-based paint hazards and are conducted in a way that does not increase the hazards of lead-based paint to the occupants of the dwelling or child-occupied facility.

(iii) Abatements include post-abatement lead in dust clearance sampling and conformance with clearance levels established or adopted by the State or Indian Tribe.

(iv) The abatement contractor develops a report that describes areas of the residential dwelling or child-occupied facility abated and the techniques employed.

(v) The certified abatement contractor or the firm retains appropriate records.

§ 745.326 Pre-renovation notification: State and Tribal program requirements.

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements for renovation disclosure:

(1) Procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing before renovations for compensation; and

(2) An approved lead hazard information pamphlet meeting the requirements of section 406 of TSCA, as determined by EPA. EPA will provide States or Tribes with guidance on what is necessary for a State or Tribal pamphlet approval application.

(b) *Program to distribute lead information.* To be considered at least as protective as the Federal requirements for pre-renovation distribution of information, the State or Indian Tribe must have procedures and requirements that establish:

(1) Clear standards for identifying home improvement activities that trigger the pamphlet distribution requirements; and

(2) Procedures for distributing the lead hazard information to owners and occupants of the housing prior to renovation activities.

(c) *Distribution of acceptable lead hazard information.* To be considered at least as protective as the Federal requirements for the distribution of a lead hazard information pamphlet, the State or Indian Tribe must either:

(1) Distribute the lead hazard information pamphlet developed by EPA under section 406(a) of TSCA, titled *Protect Your Family from Lead in Your Home*; or

(2) Distribute an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for use in that State or Tribe. Such information must meet the content requirements prescribed by section 406(a) of TSCA, and be in a format that is readable to the diverse audience of housing owners and occupants in that State or Tribe.

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

(a) *Approval of compliance and enforcement programs.* A State or Indian Tribe seeking authorization of a lead-based paint program can apply for and receive either interim or final approval of the compliance and enforcement program portion of its lead-based paint program. Indian Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.

(1) *Interim approval.* Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program may be granted by EPA only once, and subject to a specific expiration date.

(i) To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application described at § 745.324(a):

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraph (b) of this section. This demonstration shall include a statement that the State or Indian Tribe, during the interim approval period, shall carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Indian Tribe addresses any significant risks posed by noncompliance with lead-based paint activity requirements.

(B) Present a plan with time frames identified for implementing in the field each element in paragraph (c) of this section. All elements of paragraph (c) of this section must be fully implemented no later than 3 years from the date of EPA's interim approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. A statement of resources must be included in the State or Tribal plan which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) Any interim approval granted by EPA for the compliance and enforcement program portion of a State or Tribal lead-based paint program will expire no later than 3 years from the date of EPA's interim approval. One hundred and eighty days prior to this expiration date, a State or Indian Tribe shall apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval shall be given to any State or Indian Tribe which has in place all of the elements of paragraphs (b), (c), and (d) of this section. If a State or Indian Tribe does not receive final approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program by the date 3 years after the date of EPA's interim approval, the Administrator shall, by such date, initiate the process to withdraw the State or Indian Tribe's authorization pursuant to § 745.324(i).

(2) *Final approval.* Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either through the application process described at § 745.324(a), or, for States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(i) For the compliance and enforcement program to be considered adequate for final approval through the application described at § 745.324(a), a State or Indian Tribe must, in its application:

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement of resources which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) For States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, in order for the State or Tribal compliance and enforcement program to be considered adequate for final approval through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application:

(A) Demonstrate that it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(D) To the extent not previously submitted through the application described at § 745.324(a), submit copies of all applicable State or Tribal statutes, regulations, standards, and other material that provide the State or Indian Tribe with authority to administer and enforce the lead-based paint compliance and enforcement program, and copies of the policies, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established in paragraphs (b) and (c) of this section.

(b) *Standards, regulations, and authority.* The standards, regulations, and authority described in paragraphs (b)(1) through (b)(4) of this section are part of the required elements for the compliance and enforcement portion of a State or Tribal lead-based paint program.

(1) *Lead-based paint activities and requirements.* State or Tribal lead-based paint compliance and enforcement programs will be considered adequate if the State or Indian Tribe demonstrates, in its application at § 745.324(a), that it has established a lead-based paint program containing the following requirements:

(i) Accreditation of training programs as described at § 745.325(b).

(ii) Certification of individuals engaged in lead-based paint activities as described at § 745.325(c).

(iii) Standards for the conduct of lead-based paint activities as described at § 745.325(d); and, as appropriate,

(iv) Requirements that regulate the conduct of pre-renovation notification activities as described at § 745.326.

(2) *Authority to enter.* State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint activities violations may occur for purposes of conducting inspections.

(i) State or Tribal officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities conduct business.

(ii) For the purposes of enforcing a pre-renovation notification program, State or Tribal officials must be able to enter a renovator's place of business.

(iii) State or Tribal officials must have authority to take samples and review records as part of the lead-based paint activities inspection process.

(3) *Flexible remedies.* A State or Tribal lead-based paint compliance and enforcement program must provide for a diverse and flexible array of enforcement remedies. At a minimum, the remedies that must be reflected in an enforcement response policy must include the following:

(i) Warning letters, Notices of Noncompliance, Notices of Violation, or the equivalent;

(ii) Administrative or civil actions, including penalty authority (e.g., accreditation or certification suspension, revocation, or modification); and

(iii) Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.

(4) *Adequate resources.* An application must include a statement that identifies the resources that will be devoted by the State or Indian Tribe to the administration of the State or Tribal lead-based paint compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.

(c) *Performance elements.* The performance elements described in paragraphs (c)(1) through (c)(7) of this section are part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(1) *Training.* A State or Tribal lead-based paint compliance and enforcement program must implement a process for training enforcement and inspection personnel and ensure that enforcement personnel and inspectors are well trained. Enforcement personnel must understand case development procedures and the maintenance of proper case files. Inspectors must successfully demonstrate knowledge of the requirements of the particular discipline (e.g., abatement supervisor, and/or abatement worker, and/or lead-based paint inspector, and/or risk assessor, and/or project designer) for which they have compliance monitoring and enforcement responsibilities. Inspectors must also be trained in violation discovery, methods of obtaining consent, evidence gathering, preservation of evidence and chain-of-custody, and sampling procedures. A State or Tribal lead-based paint compliance and enforcement program must also implement a process for the continuing education of enforcement and inspection personnel.

(2) *Compliance assistance.* A State or Tribal lead-based paint compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with State or Tribal requirements governing the conduct of lead-based paint activities. The type and nature of this assistance can be defined by the State or Indian Tribe to achieve this goal.

(3) *Sampling techniques.* A State or Tribal lead-based paint compliance and enforcement program must have the technological capability to ensure compliance with the lead-based paint program requirements. A State or Tribal application for approval of a lead-based paint program must show that the State or Indian Tribe is technologically capable of conducting a lead-based paint compliance and enforcement program. The State or Tribal program must have access to the facilities and equipment necessary to perform sampling and laboratory analysis as needed. This laboratory facility must be a recognized laboratory as defined at § 745.223, or the State or Tribal program must implement a quality assurance program that ensures appropriate quality of laboratory personnel and protects the integrity of analytical data.

(4) *Tracking tips and complaints.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation.

(5) *Targeting inspections.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements. Such targeting must include a method for obtaining and using notifications of commencement of abatement activities.

(6) *Follow up to inspection reports.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities associated with a lead-based paint program. The State or Tribal program must be in a position to ensure correction of violations and, as appropriate, effectively develop and issue enforcement remedies/responses to follow up on the identification of violations.

(7) *Compliance monitoring and enforcement.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate, in its application for approval, that it is in a position to implement a compliance monitoring and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive lead-based paint compliance inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.

(d) *Summary on Progress and Performance.* The Summary on Progress and Performance described below is part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program. A State or Tribal lead-based paint compliance and enforcement program must submit to the appropriate EPA Regional Administrator a report which summarizes the results of implementing the State or Tribal lead-based paint compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe (which would include the number of individuals and firms certified in lead-based paint activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities. The report shall be submitted according to the requirements at § 745.324(h).

(e) *Memorandum of Agreement.* An Indian Tribe that obtains program approval must establish a Memorandum of Agreement with the Regional Administrator. The Memorandum of Agreement shall be executed by the Indian Tribe's counterpart to the State Director (e.g., the Director of Tribal Environmental Office, Program or Agency). The Memorandum of Agreement must include provisions for the timely and appropriate referral to the Regional Administrator for those criminal enforcement matters where that Indian Tribe does not have the authority (e.g., those addressing criminal violations by non-Indians or violations meriting penalties over $5,000). The Agreement must also identify any enforcement agreements that may exist between the Indian Tribe and any State.

§ 745.330 Grants.

The Administrator, or a designated equivalent, may make grants to States and Indian Tribes, that meet the requirements of § 745.324(e)(2)(i) and (e)(2)(ii), under section 404(g) of TSCA to develop and carry out programs authorized pursuant to this subpart. Grants made under this section are subject to the requirements of 40 CFR part 31.

§ 745.339 Effective dates.

States and Indian Tribes may seek authorization to administer and enforce subpart L pursuant to this subpart effective October 28, 1996.

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August 29, 1996

Part XII

Environmental Protection Agency

40 CFR Part 125

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL–5601–2]

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is promulgating a final amendment to the regulations which implement section 301(h) of the Clean Water Act (CWA" or "Act"). Section 301(h) provides for waivers of secondary treatment requirements for discharges into marine waters by publicly owned treatment works (POTWs) that demonstrate their compliance with the 301(h) criteria. This final amendment promulgates without change a previously proposed rule to amend the 301(h) regulations to remove a certain restriction on the eligibility of 301(h) POTWs to request a longer-than-monthly averaging period to calculate compliance with the Act's requirement to remove a minimum of 30 percent of the biochemical oxygen demanding material (BOD) in the influent. EPA determined that this restriction should be eliminated to provide additional flexibility to POTWs in demonstrating compliance with the requirements for a waiver. As a result of this amendment, all 45 applicants for a 301(h) waiver will be able to request a longer than monthly averaging period for calculating compliance with the BOD removal requirement.

EFFECTIVE DATE: These regulations take effect on September 30, 1996. In accordance with 40 CFR 23.2, the Administrator's promulgation occurs at 1:00 p.m. EDT on September 12, 1996.

ADDRESSES: Copies of comments submitted and the docket for this rulemaking are available for review at EPA's Water Docket; Room 2616 Mall, 401 M Street, SW, Washington, DC 20460. For access to the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m., Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Office of Wetlands, Oceans and Watersheds, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; (202) 260–8448.

SUPPLEMENTARY INFORMATION:

I. Regulated entities

The entities potentially affected by today's action are those publicly owned treatment works that discharge into marine waters and that have applied under section 301(h) of the Clean Water Act, 33 U.S.C. § 1311(h), for a waiver of secondary treatment requirements. Regulated categories and entities include:

Category	Examples of regulated entities
Local governments	Publicly owned treatment works SIC Code 4952.

(Although EPA is using the term "regulated" entities, the effect of today's action is generally to relax the regulatory restrictions on these entities.) This table, however, is only a guide and is not intended to be exhaustive. You should consult today's final regulations themselves to determine their full impact and applicability. If you have further questions about whether today's action affects your regulatory obligations, contact the person or persons listed above (see **FOR FURTHER INFORMATION CONTACT** section).

II. Today's Final Action

On February 4, 1987, Congress passed the Water Quality Act of 1987 (WQA) (Pub. L. 100–4), which amended CWA section 301(h) in several important respects. Among other things, the WQA added a new section 301(h)(9), which requires that:

> At the time the 301(h) modification becomes effective, the applicant will be discharging effluent which has received at least primary or equivalent treatment.

Section 301(h)(9) of the CWA defines primary or equivalent treatment as:

> Treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material (BOD) and of the suspended solids (SS) in the treatment works influent, and disinfection, where appropriate.

EPA published final regulations implementing the WQA amendments to section 301(h) on August 9, 1994 (59 FR 40642). Among other things, the regulations added 40 CFR 125.60(c), which provided flexibility to POTWs, in certain specified circumstances, to use a longer-than-monthly (not to exceed yearly) averaging period to calculate compliance with the 30-percent removal requirements for BOD. However, under the second sentence of § 125.60(c)(1) (the "eligibility provision"), facilities that had demonstrated an ability to achieve 30 percent removal of BOD on a monthly average basis over the calendar year prior to August 9, 1994, (the date the rule was published) were excluded from eligibility to apply for this longer-than-monthly averaging period. In December, 1994, four Alaskan municipalities filed a petition for review of the final regulations in the U.S. Court of Appeals for the Ninth Circuit. (*Anchorage Water & Wastewater Utility, et al,* v. *U.S. EPA,* No. 94–70913 (9th Cir.)) The petitioners claim that the eligibility provision should be eliminated from the regulations.

After reexamining the need for the eligibility provision, EPA published a proposed rule to delete it. [61 FR 7404, February 27, 1996.] The Agency received only six comments on this proposal, from five POTWs, including the four petitioners in the lawsuit, and one State wastewater control association. All commenters firmly supported the proposed rule's deletion of the eligibility provision. Accordingly, EPA is today promulgating a final rule that, as proposed, deletes the eligibility provision.

Several of the commenters also offered some technical information to explain why they feel they cannot or will not be able in the future to meet the BOD removal requirement on a monthly basis. These latter remarks are not comments on the eligibility provision, and are thus outside the scope of this particular rulemaking action. We have forwarded this information to the appropriate EPA Regional offices for their information.

As a result of today's final rule, a POTW's historical data cannot cause the POTW to be automatically ineligible for longer-than-monthly averaging. However, the Agency emphasizes that removing the eligibility provision does not automatically provide any POTW with a longer averaging period for determining compliance with the 30-percent removal requirement for BOD. Instead, it simply allows all POTWs to *request* a longer averaging period in its permit application. Under the amended regulations, POTWs who apply will continue to be required to demonstrate to the satisfaction of the Regional Administrator that a longer period is warranted in order to be granted relief from the requirement to meet BOD removal on a monthly basis. The Regional Administrator will still consider the historical data and could base a decision to grant or deny the longer averaging period in whole or in part on these data. EPA also notes that even if it grants a longer averaging

period, the required frequency of monitoring for BOD will remain the same as if the period for calculating compliance for BOD removal were the monthly average basis.

The remaining provisions of the 301(h) regulations remain in full force and effect, and are not the subject of this final rule.

III. Supporting Documentation

Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Today's action simply removes provisions of an existing rule from the CFR that limit the ability of affected POTWs to request flexibility in calculating compliance with removal requirements for BOD. Therefore, this action has no regulatory impact and is not a "significant" regulatory action within the meaning of E.O. 12866, and no regulatory impact analysis is required.

This action also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities. Finally, deletion of these provisions from the CFR does not affect requirements under the Paperwork Reduction Act.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 125

Environmental protection, Marine point source discharges, Reporting and recordkeeping, Waste treatment and disposal, Water pollution control.

Dated: August 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 125 of title 40, chapter I of the Code of Federal Regulations is amended as set forth below:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., unless otherwise noted.

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

2. Section 125.60 is amended by removing paragraph (c)(1); by redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2); and by revising the introductory text of newly redesignated paragraph (c)(1) to read as follows:

§ 125.60 Primary or equivalent treatment requirements.

* * * * *

(c)(1) An applicant may request that the demonstration of compliance with the requirement under paragraph (b) of this section to provide 30 percent removal of BOD be allowed on an averaging basis different from monthly (e.g., quarterly), subject to the demonstrations provided in paragraphs (c)(1)(i), (ii) and (iii) of this section. The Administrator may approve such requests if the applicant demonstrates to the Administrator's satisfaction that:

* * * * *

[FR Doc. 96–21952 Filed 8–28–96; 8:45 am]

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Thursdsay
August 29, 1996

Part XIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AD69

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks which States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 1996–97 migratory bird hunting seasons. Early seasons are those which generally open prior to October 1. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: This rule takes effect on August 29, 1996.

ADDRESSES: States and Territories should send their season selections to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. The Public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1996

On March 22, 1996, the Service published in the **Federal Register** (61 FR 11992) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 13, 1996, the Service published in the **Federal Register** (61 FR 30114) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 13 supplement also provided detailed information on the 1996–97 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 14, 1996, the Service published in the **Federal Register** (61 FR 30490) a third document describing the Service's proposed 1996–97 regulatory alternatives for duck hunting and its intent to consider establishing a special youth waterfowl hunting day.

On June 27, 1996, the Service held a public hearing in Washington, DC, as announced in the March 22 and June 14 **Federal Registers** to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 22, 1996, the Service published in the **Federal Register** (61 FR 37994) a fourth document specifically dealing with proposed early-season frameworks for the 1996–97 season. This document also extended the public comment period to August 1, 1996, for early-season proposals. This rulemaking establishes final frameworks for early-season migratory bird hunting regulations for the 1996–97 season.

Review of Flyway Council Recommendations, Public Comments and the Service's Responses

As of August 9, 1996, the Service had received 199 written comments; 25 of these specifically addressed early-season issues. The Service also received recommendations from all four Flyway Councils. Early-season comments are summarized and discussed in the order used in the March 22 **Federal Register**. Only the numbered items pertaining to early seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1995–96 early-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1995–96.

General

Public Hearing Comments: Mr. Dale Bartlett, representing the Humane Society of the United States (HSUS), expressed concern that the Service continues to establish liberal hunting regulations on species without adequate data. HSUS claims the Service acted too quickly to liberalize duck hunting regulations since the populations of many species remain below goals set by the North American Waterfowl Management Plan (NAWMP). HSUS is frustrated with the failure of the Service to close seasons on species in decline such as woodcock, coastal populations of band-tailed pigeon, white-winged doves in Arizona, and mourning doves in the Western Management Unit. HSUS believes that bag limits and season lengths on several species of webless migratory birds are ridiculously high and flies in the face of the principles of wise and ethical use of the resource. They also recommend that the Service require all seasons to open at noon during mid-week to reduce large kills. They further urged the Service to disallow one-half hour before sunrise shooting.

Mr. Don Kraege, representing the Pacific Flyway Council, expressed appreciation for the Service's efforts to enhance cooperative waterfowl management.

Mr. Joe Kramer, representing the Central Flyway Council, reviewed recommendations passed by the Council regarding establishment of this year's migratory bird hunting regulations. He supported the proposed expansion of the Rocky Mountain Greater Sandhill Crane hunt area in Wyoming. Reviewing status information on blue- and green-winged teal populations, he indicated this year's combined spring-breeding population of about 8.9 million was a record high level and the projected fall flight will probably be the largest ever recorded. He indicated that the Central and Mississippi Flyway Councils would complete a more comprehensive harvest approach for these special seasons by March 1997. He supported the Central Flyway Council's recommendation to expand this year's teal bag limit from 4 to 5 and increase the teal season length from 9 to 16 days. Mr. Kramer supported efforts by the Service to review baiting regulations, but he pointed out continuing desires by many Central Flyway States to review the timing of the early- and late-season meetings.

Mr. Charles D. Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, commended the Service for its efforts in developing the Harvest Information Program, which will provide improved harvest estimates for a number of species.

Ms. Anne Muller, representing the Committee to Abolish Sport Hunting, and its affiliate, the Coalition to Prevent the Destruction of Canada Geese, requested public hearings be held during evening hours to increase public attendance.

Mr. Peter Muller, also representing the Committee to Abolish Sport Hunting, requested that the Service maintain and enforce strict waterfowl baiting regulations.

Written Comments: The Humane Society recommended all seasons open

at noon, mid-week, to reduce the large kills associated with the traditional Saturday openings. They also recommend that hunting during the one-half hour before sunrise be eliminated and wounded but unretrieved birds count towards the daily bag limit.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

F. Zones and Splits

Written Comments: The Maine Department of Inland Fisheries and Wildlife commended the Service for allowing a duck zone boundary modification but expressed displeasure with the Service's failure to authorize an experimental third zone in Maine. They contended there was no biological justification to deny this request. They further suggested the guidelines should not be "a hard-and-fast rule" and should be modified to account for the geographic scale of any particular State. Two individuals from Maine also provided comments supporting Maine's request for a third zone.

The Indiana Department of Natural Resources and three individuals supported Indiana's proposal to change zone boundaries during the 1996 open season.

The Kansas Department of Wildlife and Parks submitted an alternate duck hunting zone proposal for 1996 to 2000. This proposal replaced one submitted previously which did not meet the Service's criteria.

The Wyoming Game and Fish Department (Wyoming), commenting on the policy governing the use of zone and split seasons for duck seasons, requested an exception from the policy that precludes the use of non-contiguous zone boundaries. Wyoming contended the Service should be more flexible to accommodate the State's complex physiographies. Wyoming recommended the Service revaluate its policy prior to the next zones/splits open season in 2001.

Service Response: In 1990, the Service established guidelines for the use of zones and split seasons for duck hunting (**Federal Register**, 55 FR 38901) following extensive review and endorsement of the Flyway Councils and Technical Sections. The primary purpose of the guidelines was to provide a framework for controlling the proliferation of changes in zone and split options, which compromise our ability to measure impacts of various regulatory changes on harvest. The guidelines were not developed preferentially according to the geographic size of any State, but rather, were administered equally to all States. The Service believes that the guidelines must be applied fairly and consistently to all States in order to prevent further proliferations in zone/split configurations. However, the Service will review these concerns prior to the next scheduled open season in 2001.

In the July 22, 1996, **Federal Register**, the Service indicated the boundary changes proposed by Indiana did not meet the Service's guidelines for zones and split seasons for the 1996–2000 period, and requested the State revise its proposal accordingly. Subsequently, Indiana indicated they would retain the current boundaries.

Kansas' alternate proposal was within the established guidelines and is approved for the 1996–2001 period.

The Service also accepts the amended zone/split proposal for the Central Flyway portion of Wyoming. Although Wyoming modified its proposal to meet the language of the guidelines, the Service believes it may also circumvent the intent of the guidelines with respect to the use of non-contiguous zone boundaries. Current zone/split guidelines prohibit the use of non-contiguous zone boundaries. The Service will conduct a cooperative review of the guidelines with the Councils prior to the next open season, and if at that time any modification in the guidelines does not allow the Wyoming configuration, then "grandfather" status will not be granted.

G. Special Seasons/Species Management

iii. September Teal Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a 5-day experimental September teal season be offered to the production States of Iowa, Michigan, Minnesota, and Wisconsin for a 3-year period. The Committee recommended a daily bag limit of 4 teal with sunrise to sunset shooting hours.

The Central Flyway Council recommended a harvest strategy of linking regulatory packages developed for the September teal season with those developed for the regular duck season under the Adaptive Harvest Management process. For 1996, the Council recommended either a "restrictive" package of 5 days with a daily bag limit of 3 teal, a "moderate" package of 9 days with a daily bag limit of 4 teal, or a "liberal" package of 16 days with a daily bag limit of 5 teal.

Written Comments: The Central Flyway Council and the Texas Parks and Wildlife Department recommended a 16-day September teal season with a 5-bird daily bag limit for 1996. The Council supported the preparation of a cooperatively developed teal management plan, but did not wish to delay implementation of more liberal regulations until plan completion.

An individual from Texas requested a 16-day September teal season with a 5-teal daily bag limit, or alternatively a 16-day season with a 4-teal daily bag limit.

Public-Hearing Comments: Mr. Joe Kramer representing the Central Flyway Council indicated that the Central and Mississippi Flyway Councils would complete a more comprehensive harvest approach for special teal seasons by March 1997.

Service Response: The Service previously determined in the Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88) that proposals for expansion of existing special regulations require a comprehensive evaluation plan. The plan should contain study objectives, experimental design, decision criteria, and identification of data needs. The Service believes the proper approach for permitting experimental expansions would be to design a comprehensive study that would evaluate the cumulative impacts of all teal-season hunting opportunities, in both production and non-production States, on teal and other ducks. The proposals recommended by the Flyways are disjunct, with one containing an evaluation plan (Mississippi Flyway) and the other (Central Flyway) absent one. As such, these proposals represent a fragmented approach to expanding and evaluating teal-season hunting opportunities, which is inconsistent with the desire of the Service. Future consideration by the Service of any proposal to expand teal-season hunting opportunities will take into account the evaluation plan, the manpower and funding requirements necessary to implement the plan, and the priority of this issue relative to other Service programs.

iv. September Duck Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended Iowa be allowed to hold up to 5 days of its regular duck hunting

season in September, starting no earlier than the Saturday nearest September 14. The remainder of the Iowa regular duck season could begin no earlier than October 10.

Service Response: The Service previously determined in SEIS 88 that the extension of framework dates into September for Iowa's September duck season was a type of special season. The original evaluation of this season suggested little impact on duck species other than teal. However, the Service notes the original evaluation did not include information from the periods requested in the proposal, so inferences about effects of the proposed changes on duck populations are not clear. More importantly, the Service believes that mixed-species special seasons (as defined in the context of SEIS 88) are not a preferred management approach, and does not wish to entertain refinements to this season or foster expansions of this type of season into other States.

3. Sea Ducks

Public Hearing Comments: Mr. Dale Bartlett, representing the Humane Society, proposed sea duck seasons be closed or severely restricted until adequate data on population status and species biology are available.

Written Comments: The Humane Society recommended this season either be closed or severely restricted until more complete information on biology and population status is available. They repeated their concern regarding seasons and limits on sea ducks which they deem too liberal, considering the adequacy of data on population status and biology.

Service Response: The Service continues to be concerned about the status of sea ducks and the potential impact that increased hunting activity could have on these species. While there is no special season on sea ducks in the Pacific Flyway, Alaska has a sea duck limit that is additional to the limit on other ducks. In recognition of the need for additional information on these species, the Service prepared a report in June of 1993 on sea duck and merganser hunting seasons, status, and harvests in Alaska and the Pacific Flyway coastal States. The Service prepared this document for use by the Service and the Pacific Flyway Council in evaluating the effects of these seasons on these ducks. A report describing the status of sea ducks in the Atlantic Flyway was completed in April of 1994. There are ongoing cooperative efforts to summarize additional information on sea ducks. However, the Service still emphasizes the importance of completing the sea duck management plan. Furthermore, the Service considers improvements in survey capabilities for these species to be extremely important for future management actions. In 1993, the Service reduced bag limits on scoters from 7 to 4 within an overall 7-bird sea duck limit. The Service will continue to monitor these species and notes that further harvest restrictions may be necessary.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended the frameworks for September Canada goose seasons in the Atlantic Flyway be modified as follows:

September 1–15: Montezuma region of New York, Lake Champlain region of New York and Vermont, Maryland (Caroline, Cecil, Dorchester, and Talbot Counties), South Carolina, and Delaware.

September 1–20: North Carolina (Currituck, Camden, Pasquotank, Perquimans, Chowan, Bertie, Washington, Tyrrell, Dare, and Hyde Counties).

September 1–30: New Jersey and remaining portion of North Carolina.

September 1–25: Remaining portion of Flyway, except Georgia and Florida.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the Service continue to closely monitor the impacts of early Canada goose seasons, including both special seasons and September openings of regular seasons, to insure that cumulative impacts do not adversely affect migrant Canada geese and to insure that special seasons adhere to the criteria established by the Service.

The Upper-Region Regulations Committee of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council made several September Canada goose seasons recommendations. All of the recommendations were within the established criteria for special Canada goose seasons published in the August 29, 1995, **Federal Register** (60 FR 45020).

Public Hearing Comments: Mr. Dale Bartlett, representing the Humane Society expressed concern about the general direction of the Service towards resident Canada goose management.

Mr. Joe Kramer, representing the Central Flyway Council, supported the additional flexibility allowed to address resident goose problems through special hunting seasons.

Mr. Charles D. Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, stated that he appreciated the Service's recognition of the problems caused by rapidly-expanding populations of giant Canada geese and the need to work toward solving them.

Ms. Anne Muller, representing the Committee to Abolish Sport Hunting, and its affiliate, the Coalition to Prevent the Destruction of Canada Geese, said State and Federal wildlife agencies are exploiting wild Canada geese to supply hunters with more targets by increasing resident goose populations on wildlife management areas in every State. Further, she objected to the roundup and shipment of geese by game agencies personnel to slaughter houses to feed the poor, and believed this action violates the rights of the general citizenry. Finally, she requested the Service directly involve communities to help resolve nuisance Canada geese conflicts.

Mr. Peter Muller, representing the Committee to Abolish Sport Hunting, expressed concern that the special Canada goose seasons currently held in New York and New Jersey were responsible for the decline of migrant geese nesting in northern Quebec. He questioned whether the criteria allowing 10 and 20 percent harvest of migrant geese during the special early and late seasons, respectively, were too liberal. Further, he argued that statistics regarding this goose population were highly dubious since very little banding had occurred on the breeding ground to accurately determine the racial composition of the harvest. He indicated little is known regarding the interactions between resident and migrant geese and recommended suspension of these seasons until more information regarding population affiliation is available. To assess the beneficial effects of these liberal hunting seasons on resident Canada geese, he asked the Service to develop an Environmental Impact Statement (EIS).

Dr. Ann Stirling Frisch expressed opposition to a proposed new hunt area for special early Canada goose seasons in Wisconsin. Dr. Frisch suggested such seasons are ineffective in controlling local Canada goose populations, that habitat management was a preferable alternative to hunting seasons, and that other lethal means of control were undesirable. She further stated that National Environmental Policy Act (NEPA) requirements were not met in establishing such seasons.

Written Comments: The Massachusetts Division of Fisheries and Wildlife supported extending the

frameworks for September Canada goose seasons in the Atlantic Flyway to September 25.

The Pennsylvania Game Commission objected to the Service's decision to limit the special Canada goose season in Crawford County to September 1–15 rather than expanding it to September 25 as requested by the Atlantic Flyway Council. They indicated data is available to support the extension. Subsequently, in a follow-up response, Pennsylvania provided additional data from observations of neck-banded Canada geese to assess the potential migrant harvest in Crawford County during September 1–25 period.

The New York Department of Environmental Conservation appreciated the Service's extension of the framework closing date to September 25 in most areas of the Atlantic Flyway but expressed concern that the extension was only temporary and would be discontinued when regular seasons are reinstated. They question the Service's desire to reinstate the existing criteria if the harvest of migrants during this period meets the established criteria and provides additional harvest pressure on resident geese.

The New Jersey Division of Fish, Game and Wildlife commented that numbers of resident Canada geese have exceeded the cultural carrying capacity with humans, in some areas, and urged the Service to grant a September 30 framework extension to the special September Canada goose season. They further requested that this season be operational rather than experimental. They indicated that several years of intensive neck-collar observations have been conducted to justify this extension, and that the extension would result in an estimated harvest of less than 3 percent migrant geese.

Four individuals and one petition containing 108 signatures opposed a new September Canada goose season in Wisconsin.

Service Response: The Service recognizes the problems caused by increasing populations of resident Canada geese and the continuing concern for the status of certain migratory flocks. As the Service has stated previously, it is committed to targeting these special seasons at locally breeding and/or injurious Canada goose populations that nest primarily within the conterminous United States. However, the Service does not wish to increase the composition of migrants in the harvest beyond that which is currently identified in the criteria for these seasons.

Overall, the Service concurs with the Atlantic Flyway's recommendation to modify the frameworks for special early Canada goose seasons in the Atlantic Flyway and is granting the Atlantic Flyway a temporary exemption to the special early Canada goose season criteria. Specifically, the Service is allowing States in the Atlantic Flyway to extend the framework closing date from September 15 to September 25, except in certain areas where migrant geese are known to arrive early. Seasons extending beyond September 25 are classified as experimental. In addition, the Service is approving the extension of the framework closing date to September 25 for Crawford County, Pennsylvania, on an experimental basis, based on the observational neck collar data submitted by Pennsylvania. The Service is granting this temporary exemption for the Atlantic Flyway because of the suspension of the regular season on Atlantic Population Canada geese and the Flyway's need for greater flexibility in dealing with increasing numbers of resident Canada geese. The exemption is proposed to remain in effect until the regular season on migrant Canada geese is reinstated. The Service encourages all States selecting framework dates after September 15 to continue with data-gathering and monitoring efforts in order to further evaluate any proportional changes in the harvest of migrant geese.

Wisconsin has held a special September Canada goose season for several years. This year, the Wisconsin Department of Natural Resources requested that the open area for the season be expanded. The Service concurs with that request, and the larger area is included in the frameworks herein.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a September 21 framework opening date for the regular goose season in the Upper Peninsula of Michigan and statewide in Wisconsin.

The Pacific Flyway Council reiterated its 1995 recommendation that Alaska, Oregon, and Washington take actions to reduce the harvest of dusky Canada geese.

Service Response: Regarding the Pacific Flyway Council's recommendation, the Service recognizes this need and proposes establishing uniform criteria to measure the harvest of dusky Canada geese in Washington's and Oregon's Quota Zones. The Service solicits input from the Council and other parties in the development of these criteria for the 1996–97 season.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended Wyoming's sandhill crane hunt area expand to include Park and Big Horn Counties.

The Pacific Flyway Council recommended season modifications in Montana and Wyoming. In Montana, the Council recommended a new hunt zone in the Ovando-Helmville area. In Wyoming, the Council recommended expanding the season from 3 to 8 days, increasing the number of permits, and establishing a new hunt zone in Park and Big Horn Counties.

Service Response: The Service concurs with the Councils' recommendations.

12. Rails

Written Comments: The Humane Society believes that bag limits for sora and Virginia rails are extremely high.

Service Response: Available information indicates that harvest pressure on rails is relatively light and there is no evidence to suggest the frameworks provided are not appropriate.

14. Woodcock

The Service is increasingly concerned about the gradual long-term declines in woodcock populations in the Eastern and Central management regions. Although habitat changes appear to be the primary cause of the declines, the Service believes that hunting regulations should be commensurate with the woodcock population status and rates of declines. The Service seeks active participation by the Atlantic and Mississippi Flyway Councils in the development of short and long-term woodcock harvest management strategies, which identify the circumstances under which additional harvest restrictions should be implemented and what those restrictions should be.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended the establishment of separate basic limits for geese. For dark geese, the Council recommended a basic daily bag limit of 4, with 8 in possession. For light geese, the Council recommended a daily bag limit of 3, with 6 in possession. The proposed limits would be subject to area restrictions for Canada geese and limits for brant and emperor geese would remain separate.

Public Hearing Comments: Mr. Dale Bartlett, representing the Humane Society strongly recommended that opening dates in Alaska be delayed at least 2 weeks to allow birds to leave their natal marshes.

Written Comments: The Humane Society of the United States recommends that the opening date for all seasons in Alaska be delayed by 2 weeks so that young birds are able to leave natal marshes before being subjected to hunting pressure.

Service Response: The Service agrees with the Council's recommendation regarding the establishment of separate basic limits for geese.

It is important to note that in Alaska, hunting pressure on migratory birds is comparatively light. Many northern species migrate from the State before seasons open there in September and there is no evidence to indicate regulated hunting has adversely impacted local populations.

19. Hawaii

Written Comments: The Hawaii Division of Forestry and Wildlife (Hawaii) requested an extension in the mourning dove framework closing date from January 15 to January 21 and an increase in the season length from 70 days to 85 days. Hawaii requests this to accommodate their traditional opening date of the first Saturday in November and their closing date of either the third Saturday in January or Martin Luther King Day, whichever occurs later.

Service Response: In recent years, outside dates for Hawaii have been between September 1 and January 15, consistent with frameworks established in other management units. However, due to natural calendar cycle, Hawaii's traditional season dates fall outside of established framework dates on the average of once every 7 years. The Service recognizes Hawaii's uniqueness relative to the conterminous United States and agrees some flexibility should be employed. The Service further notes Hawaii's season length and daily bag limit have traditionally been far more conservative than those allowed by Federal frameworks. Thus, to accommodate Hawaii's request, the Service agrees to shift the outside dates to October 1 and January 31. The Service notes that in the South Zone of Texas, framework dates are shifted to September 20 and January 25. Regarding Hawaii's request for an increase in the season length, the Service reminds Hawaii that the season may be split into three segments.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and wants to obtain the comments and suggestions from all interested areas of the public, as well as other governmental agencies. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. However, special circumstances involved in the establishment of these regulations limit the amount of time the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes allowing comment periods past the dates specified is contrary to public interest.

Comment Procedure

It is the policy of the Department of the Interior to afford the public an opportunity to participate in the rulemaking process, whenever practical. Accordingly, interested persons may participate by submitting written comments to the Chief, MBMO, at the address listed under the caption **ADDRESSES**. The public may inspect comments during normal business hours at the Service's office address listed under the caption **ADDRESSES**. The Service will consider all relevant comments received and will try to acknowledge received comments, but may not provide an individual response to each commenter.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may cause modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the March 22, 1996, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. This rule was reviewed under E.O. 12866.

The Department examined these proposed regulations under the Paperwork Reduction Act of 1995. The various information collection requirements are utilized in the formulation of migratory game bird hunting regulations. OMB has approved these information collection requirements and assigned clearance numbers 1018–0015 and 1018–0023.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed

were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1995–96 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform - Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1996–97 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a-j.

Dated: August 19, 1996

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks

Final Regulations Frameworks for 1996–97 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of Interior approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds between September 1, 1996, and March 10, 1997.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions are contained in a later portion of this document.

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: One-half hour before sunrise to sunset, except in Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 21, 1996), with daily bag and possession limits being the same as those in effect last year. The remainder of the regular duck season may not begin before October 15.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and must be included in the regular duck season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York; the Lake Champlain Region of New York and Vermont; the Counties of Caroline, Cecil, Dorchester, and Talbot in Maryland; Delaware; and Crawford County in Pennsylvania. Seasons not to

exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 30 days during September 1–30 may be selected by New Jersey, North Carolina (except in the Northeast Hunt Unit), and South Carolina. Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected in Crawford County, Pennsylvania. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1-15 may be selected by Illinois, Indiana, Iowa, Michigan (except in the Upper Peninsula, where the season may not extend beyond September 10, and in Huron, Saginaw and Tuscola Counties, where no special season may be held), Minnesota, Missouri, Ohio, Tennessee, and Wisconsin. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 2, with season and possession limits of 6 will apply to the special season.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits not to exceed 3 Canada geese with 6 in possession.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits not to exceed 3 Canada geese with 6 in possession.

Idaho may select a 15-day season in the special East Canada Goose Zone as described in State regulations during the period September 1–15. All participants must have a valid State permit and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2 and the possession limit is 4.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County with a bag limit of 4 and a possession limit of 8. All participants must have a valid State permit and the total number of permits is not to exceed 200 for the season in Nez Perce County.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons in Wisconsin and the Upper Peninsula of Michigan may open as early as September 21. Season lengths and bag and possession limits will be the same as those in effect last year but are subject to change during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. Seasons in Montana and the Park-Big Horn Unit in Wyoming are experimental.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 19) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails - In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails - In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate

of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1 and January 31. States in the Central and Mississippi Flyways may select hunting seasons between September 1 and January 31.

Hunting Seasons and Daily Bag Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington - Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California - Not more than 60 days which may be split between two periods, September 1-15 and November 1-January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the

alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks - Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Light Geese - A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese - A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following restrictions:

1. In Units 9(e) and 18, the limits for Canada geese are 1 daily and 2 in possession.
2. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. Middleton Island is closed to the taking of Canada geese.
3. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

Brant - A daily bag limit of 2.

Common snipe - A daily bag limit of 8.

Sandhill cranes - A daily bag limit of 3.

Tundra swans - Open seasons for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued in GMU 22, authorizing each permittee to take 1 tundra swan per season.
2. No more than 500 permits may be issued during the operational season in GMU 18. No more than 1 tundra swan may be taken per permit.
3. The seasons must be concurrent with other migratory bird seasons.
4. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks - Not to exceed 5.

Common moorhens - Not to exceed 6.

Common snipe - Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 5.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and

hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide and excluding the Great Divide Portion.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama

South Zone - Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone - Remainder of the State.

California

White-winged Dove Open Areas - Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone - The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone - Remainder of State.

Georgia

Northern Zone - That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of the Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence west along the southern border of Candler County to the Ohoopee River; thence north along the western border of Candler County to Bulloch County; thence north along the western border of Bulloch County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line:

South Zone - Remainder of the State.

Louisiana

North Zone - That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone - The remainder of the State.

Mississippi

South Zone - The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone - The remainder of the State.

Nevada

White-winged Dove Open Areas - Clark and Nye Counties.

Texas

North Zone - That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I-10 at Fort Hancock; east along I-10 to I-20; northeast along I-20 to I-30 at Fort Worth; northeast along I-30 to the Texas-Arkansas State line.

South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I-10 to Orange, Texas.

Special White-winged Dove Area in the South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions - Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone - That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone - Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone - The remainder of the State.

New Mexico

North Zone - North of a line following U.S. 60 from the Arizona State line east to I-25 at Socorro and then south along I-25 from Socorro to the Texas State line.

South Zone - Remainder of the State.

Washington

Western Washington - The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone - That portion of the State north of NJ 70.

South Zone - The remainder of the State.

Special September Goose Seasons

Atlantic Flyway

Connecticut

North Zone - That portion of the State north of I-95.

Maryland

Eastern Unit - Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince Georges Counties east of I-95.

Western Unit - Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince Georges Counties east of I-95.

Massachusetts

Western Zone - That portion of the State west of a line extending south from the Vermont border on I-91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone - That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I-95 to U.S. 1, south on U.S. 1 to I-93, south on I-93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I-195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water

mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone - That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Early-season Hunt Unit - Cheshire, Hillsborough, Rockingham, and Strafford Counties.

New York

Lake Champlain Zone - The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone - That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I-95, and their tidal waters.

Western Zone - That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, and south along I-81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone - Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone - That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I-81, south along I-81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I-87, north along I-87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone - The remaining portion of New York.

North Carolina

Northeast Hunt Unit - Counties of Bertie, Camden, Chovan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit - Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S-8-31 and west of the Santee Dam.

Mississippi Flyway

Illinois

North Zone: That portion of the State outside of the Northeast Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I-280 to I-80, then east along I-80 to the Indiana border.

Northeast Zone - Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Minnesota

Twin Cities Metropolitan Canada Goose Zone -

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities or Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the state.

Northwest Goose Zone (included for reference only, not a special September Goose Season Zone) - That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Four Goose Zone - That portion of the state encompassed by a line extending north from the Iowa border along U.S. Interstate Highway 35 to the south boundary of the Twin Cities Metropolitan Canada Goose Zone, then west and north along the boundary of the Twin Cities Metropolitan Canada Goose Zone to U.S. Interstate 94, then west and north on U.S. Interstate 94 to the North Dakota border.

Two Goose Zone - That portion of the state to the north of a line extending east from the North Dakota border along U.S. Interstate 94 to the boundary of the Twin Cities Metropolitan Canada Goose Zone, then north and east along the Twin Cities Metropolitan Canada Goose Zone boundary to the Wisconsin border, except the Northwest Goose Zone and that portion of the State encompassed by a line extending north from the Iowa border along U.S. Interstate 35 to the south boundary of the Twin Cities Metropolitan Canada Goose Zone, then east on the Twin Cites Metropolitan Canada Goose Zone boundary to the Wisconsin border.

Tennessee

Middle Tennessee Zone - Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

Cumberland Plateau Zone - Bledsoe, Bradley, Clay, Cumberland, Dekalb, Fentress, Grundy, Hamilton, Jackson, Marion, McMinn, Meigs, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Van Buren, Warren, and White Counties.

East Tennessee Zone - Anderson, Blount, Campbell, Carter, Claiborne, Cocke, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Monroe, Sevier, Sullivan, Unicoi, Union, and Washington Counties.

Wisconsin

Early-Season Subzone A - That portion of the State encompassed by a line beginning at the Lake Michigan shore in Sheboygan, then west along State Highway 23 to State 67, southerly along State 67 to County Highway E in Sheboygan County, southerly along County E to State 28, south and west along State 28 to U.S. Highway 41, southerly along U.S. 41 to State 33, westerly along State 33 to County Highway U in Washington County, southerly along County U to County N, southeasterly along County N to State 60, westerly along State 60 to County Highway P in Dodge County, southerly along County P to County O, westerly along County O to State 109, south and west along State 109 to State 26, southerly along State 26 to U.S. 12, southerly along U.S. 12 to State 89, southerly along State 89 to U.S. 14, southerly along U.S. 14 to the Illinois border, east along the Illinois border to the Michigan border in Lake Michigan, north along the Michigan border in Lake Michigan to a point directly east of State 23 in Sheboygan, then west along that line to the point of beginning on the Lake Michigan shore in Sheboygan.

Early-Season Subzone B - That portion of the State between Early-Season Subzone A and a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Central Flyway

South Dakota

Unit A - Deuel, Hamlin, Codington, and Day Counties.

Unit B - Brookings, Clark, Kingsbury, and Lake Counties and those portions of Moody County west of I-29 and Miner County east of SD Highway 25.

Pacific Flyway

Idaho

East Zone - Bonneville, Caribou, Fremont and Teton Counties.

Oregon

Northwest Zone - Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone - Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone - Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union and Wasco Counties.

Washington

Southwest Zone - Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone - Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Farson-Edon Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area - Those portions of Teton County described in State regulations.

Ducks

Mississippi Flyway

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I-80 to the Illinois border.

South Zone: The remainder of Iowa.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area - The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area - That portion of the State west of a line beginning at the Oklahoma border, north on I-35 to Wichita, north on I-135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area - Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area - The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone - Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area - That portion of the State west of I-35.

Texas

Regular-Season Open Area - That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I-35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area - The Central Flyway portion of the State except that area south of I-90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area - Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit - Portions of Fremont County.

Park and Bighorn County Unit - Portions of Park and Bighorn Counties.

Pacific Flyway

Arizona

Special-Season Area - Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area - See State regulations.

Utah

Special-Season Area - Rich County.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Eden-Farson Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone - State Game Management Units 11-13 and 17-26.

Gulf Coast Zone - State Game Management Units 5-7, 9, 14-16, and 10 - Unimak Island only.

Southeast Zone - State Game Management Units 1-4.

Pribilof and Aleutian Islands Zone - State Game Management Unit 10 - except Unimak Island.

Kodiak Zone - State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area - The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area - All of the municipality of Culebra.

Desecheo Island Closure Area - All of Desecheo Island.

Mona Island Closure Area - All of Mona Island.

El Verde Closure Area - Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas - All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

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August 29, 1996

Part XIV

The President

Proclamation 6914—To Modify the Allocation of Tariff-Rate Quotas for Certain Cheeses

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Presidential Documents

Title 3—

The President

Proclamation 6914 of August 26, 1996

To Modify the Allocation of Tariff-Rate Quotas for Certain Cheeses

By the President of the United States of America

A Proclamation

1. On January 1, 1995, Austria, Finland, and Sweden acceded to the European Communities (EC), and the EC customs union of 12 member countries ("EC-12") was enlarged to a customs union of 15 member countries ("EC-15"). At that time, the EC-12, Austria, Finland, and Sweden withdrew their tariff schedules under the World Trade Organization and applied the common external tariff of the EC-12 to imports into the EC-15. The United States and the EC then entered into negotiations under Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade 1994 to compensate the United States for the resulting increase in some tariffs on U.S. exports to Austria, Finland, and Sweden.

2. On July 22, 1996, the United States and the EC signed an agreement concluding the negotiations on compensation. To recognize the membership of Austria, Finland, and Sweden in the EC-15, the tariff-rate quota (TRQ) allocations for cheeses from these countries will become part of the total TRQ allocations for cheeses from the EC-15, but will be reserved for use by these countries through 1997.

3. Section 404(d)(3) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation as the President determines appropriate. Pursuant to section 404(d)(3) of the URAA, I have determined that it is appropriate to modify the TRQ allocations for cheeses by providing that the TRQ allocations for cheeses from Austria, Finland, and Sweden will become part of the total TRQ allocations for cheeses from the EC-15, but will be reserved for use by these countries through 1997.

4. Section 604 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. The modification of the TRQ allocations for cheeses is such an action.

5. In paragraph (3) of Proclamation 6763 of December 23, 1994, I delegated my authority under section 404(d)(3) of the Trade Act to the United States Trade Representative (USTR). I have determined that it is appropriate to authorize the USTR to exercise my authority under section 604 of the Trade Act to embody in the HTS the substance of any action taken by the USTR under section 404(d)(3) of the URAA.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 301 of title 3, United States Code, section 404(d)(3) of the URAA, and section 604 of the Trade Act do proclaim that:

(1) Additional U.S. notes to chapter 4 of the HTS are modified as specified in the Annex to this proclamation.

(2) The USTR is authorized to exercise my authority under section 604 of the Trade Act to embody in the HTS the substance of any actions taken by USTR under section 404(d)(3) of the URAA.

(3) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) This proclamation is effective on the date of signature of this proclamation, and the modifications to the HTS made by the Annex to this proclamation shall be effective on the dates that are specified in that Annex.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

Billing code 3190-01-P

Annex

Modifications to the Harmonized Tariff Schedule
of the United States (HTS)

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this proclamation:

1. The additional U.S. notes to chapter 4 are modified by deleting additional U.S. note 2 and by inserting the following new additional U.S. note 2 in lieu thereof:

"2. (a) For the purposes of this schedule, the expression "EC 12" refers to articles the product of one of the following: Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain or the United Kingdom.

(b) For the purposes of this schedule, the expression "EC 15" refers to articles the product of one of the following: Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden or the United Kingdom."

2. Additional U.S. note 16 to chapter 4 is modified by:
(a). deleting from the list in such note the following countries and quantities:

"Austria	832,000
Finland	1,300,000
Sweden	1,059,000"

(b). deleting from the list in such note the expression "EC 12" and the quantity "21,056,000" set out opposite such expression and inserting in lieu thereof the expression "EC 15" and the quantity "24,247,000".

(c). deleting the second paragraph in such note and inserting the following new paragraphs in lieu thereof:

"Of the quantitative limitations provided in this note for the EC 15, Austria shall have access to a quantity of not less than 832,000 kilograms, Finland shall have access to a quantity of not less than 1,300,000 kilograms, Portugal shall have access to a quantity of not less than 353,000 kilograms and Sweden shall have access to a quantity of not less than 1,059,000 kilograms.

Of the quantitative limitations provided in this note for Israel, no more than 160,000 kilograms shall contain more than 3 percent by weight of butterfat."

3. Additional U.S. note 20 to chapter 4 is modified by:
(a). deleting from the list in such note the following countries and quantities:

"Austria	133,333
Sweden	41,000"

(b). deleting from the list in such note the expression "EC 12" and the quantity "5,448,000" set out opposite such expression and inserting in lieu thereof the expression "EC 15" and the quantity "5,622,333".

(c). adding the following new second paragraph immediately after the list of countries and quantities in such note:

"Of the quantitative limitations provided in this note for the EC 15, Austria shall have access to a quantity of not less than 133,333 kilograms and Sweden shall have access to a quantity of not less than 41,000 kilograms."

4. Additional U.S. note 22 to chapter 4 is modified by:
(a). deleting from the list in such note the following countries and quantities:

"Austria	946,667
Finland	1,000,000"

(b). deleting from the list in such note the expression "EC 12" and the quantity "3,725,000" set out opposite such expression and inserting in lieu thereof the expression "EC 15" and the quantity "5,671,667".

Annex (continued)

Section A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this proclamation: (con.)

4. Additional U.S. note 22 to chapter 4 is modified by: (con.)
(c). adding the following new second paragraph immediately after the list of countries and quantities in such note:

"Of the quantitative limitations provided in this note for the EC 15, Austria shall have access to a quantity of not less than 946,667 kilograms and Finland shall have access to a quantity of not less than 1,000,000 kilograms."

5. Additional U.S. note 23 to chapter 4 is modified by:
(a). deleting from the list in such note the following country and quantity:

"Sweden 250,000"

(b). deleting from the list in such note the expression "EC 12" and the quantity "4,000,000" set out opposite such expression and inserting in lieu thereof the expression "EC 15" and the quantity "4,250,000".

(c). adding the following new second paragraph immediately after the list of countries and quantities in such note:

"Of the quantitative limitations provided in this note for the EC 15, Sweden shall have access to a quantity of not less than 250,000 kilograms."

6. Additional U.S. note 25 to chapter 4 is modified by:
(a). deleting from the list in such note the following countries and quantities:

"Austria	6,353,333
Finland	8,200,000
Sweden	300,000"

(b). deleting from the list in such note the expression "EC 12" and the quantity "6,233,333" set out opposite such expression and inserting in lieu thereof the expression "EC 15" and the quantity "21,086,666".

(c). adding the following new second paragraph immediately after the list of countries and quantities in such note:

"Of the quantitative limitations provided in this note for the EC 15, Austria shall have access to a quantity of not less than 6,353,333 kilograms, Finland shall have access to a quantity of not less than 8,200,000 kilograms and Sweden shall have access to a quantity of not less than 300,000 kilograms."

Section B. Modifications of the quantitative limitations provided in certain additional U.S. notes in the HTS.

On January 1 of each of the years in the following table, the additional U.S. note listed in the table is modified by deleting the quantitative limitation from such note for the country or expression listed in the table below for that note and inserting in lieu thereof for such country or expression the appropriate quantitative limitation listed in this table for the note:

	1997	1998	1999	2000
Additional U.S. note 16 to chapter 4:				
Australia	2,175,000	2,466,667	2,758,333	3,050,000
Costa Rica	1,550,000	1,550,000	1,550,000	1,550,000
EC 15	24,638,000	25,029,000	25,420,000	25,810,000
Switzerland	1,470,000	1,553,333	1,636,667	1,720,000
Any country	300,000	300,000	300,000	300,000
2nd paragraph in such note: the access for Austria shall not be less than	923,000			

Annex (continued)

Section B. Modifications of the quantitative limitations provided in certain additional U.S. notes in the HTS. (con.)

	1997	1998	1999	2000
Additional U.S. note 20 to chapter 4:				
EC 15	5,789,000	5,955,667	6,122,333	6,289,000
2nd paragraph in such note: the access for Austria shall not be less than	200,000			
Additional U.S. note 22 to chapter 4:				
EC 15	5,735,000	5,798,333	5,861,667	5,925,000
2nd paragraph in such note: the access for Austria shall not be less than	960,000			
Additional U.S. note 25 to chapter 4:				
EC 15	21,240,000	21,393,334	21,546,666	21,700,000
Switzerland	3,530,000	3,563,333	3,596,667	3,630,000
2nd paragraph in such note: the access for Austria shall not be less than	6,390,000			

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1998:

1. The additional U.S. notes to chapter 4 are modified by deleting additional U.S. note 2 and by inserting the following new additional U.S. note 2 in lieu thereof:

"2. For the purposes of this schedule, the expression "EC 15" refers to articles the product of one of the following: Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden or the United Kingdom."

2. Additional U.S. note 16 to chapter 4 is modified by deleting the second paragraph in such note and inserting the following new paragraph in lieu thereof:

"Of the quantitative limitations provided in this note for the EC 15, Portugal shall have access to a quantity of not less than 353,000 kilograms."

3. Additional U.S. note 17 to chapter 4 is modified by deleting from the list in such note the expression "EC 12" and inserting in lieu thereof the expression "EC 15".

4. Subdivision (a) of additional U.S. note 18 to chapter 4 is modified by deleting from the list in such subdivision the expression "EC 12" and inserting in lieu thereof the expression "EC 15".

5. Additional U.S. note 19 to chapter 4 is modified by deleting from the list in such note the expression "EC 12" and inserting in lieu thereof the expression "EC 15".

6. Additional U.S. note 20 to chapter 4 is modified by deleting the second paragraph (as added by item 3(c) of section A to this annex) from such note.

Annex (continued)

Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1998: (con.)

7. Additional U.S. note 21 to chapter 4 is modified by deleting from the list in such note the expression "EC 12" and inserting in lieu thereof the expression "EC 15".

8. Additional U.S. note 22 to chapter 4 is modified by deleting the second paragraph (as added by item 4(c) of section A to this annex) from such note.

9. Additional U.S. note 23 to chapter 4 is modified by deleting the second paragraph (as added by item 5(c) of section A to this annex) from such note.

10. Additional U.S. note 25 to chapter 4 is modified by deleting the second paragraph (as added by item 6(c) of section A to this annex) from such note.

Section D. Modifications of the quantitative limitations provided in certain additional U.S. notes in the HTS.

On January 1 of each of the years in the following table, the additional U.S. note listed in the table is modified by deleting the quantitative limitation from such note for the country or expression listed in the table below for that note and inserting in lieu thereof for such country or expression the appropriate quantitative limitation listed in this table for the note:

	1998	1999	2000
Additional U.S. note 17 to chapter 4:			
Chile	53,333	66,667	80,000
EC 15	2,679,000	2,729,000	2,779,000
Subdivision (a) of additional U.S. note 18 to chapter 4:			
Australia	2,033,333	2,241,667	2,450,000
Chile	146,667	183,333	220,000
EC 15	929,667	1,096,333	1,263,000
New Zealand	6,500,000	7,350,000	8,200,000
Additional U.S. note 19 to chapter 4:			
EC 11	320,667	337,333	354,000
Additional U.S. note 21 to chapter 4:			
EC 15	3,848,667	3,965,333	4,082,000
Romania	333,333	416,667	500,000

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Part XV

The President

Presidential Determinations Nos. 96–44 Through 96–49 of August 27, 1996—Reconfirmation of Findings With Respect to the Trade Agreements With Albania, Kyrgyzstan, Ukraine, Armenia, Moldova, and Georgia

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Thursday, August 29, 1996

Presidential Documents

Title 3—

The President

Presidential Determination No. 96–44 of August 27, 1996

Reconfirmation of Findings With Respect to the Trade Agreement With Albania

Memorandum for the United States Trade Representative

Since November 2, 1992, the United States of America and Albania have had in effect a bilateral Agreement on Trade Relations, in relation to which, pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I reconfirm that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement and that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are, and continuously have been, satisfactorily reciprocated by Albania.

You are authorized and directed to publish this memorandum in the **Federal Register**.

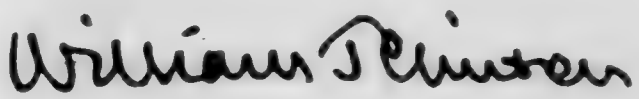

THE WHITE HOUSE,
Washington, August 27, 1996.

[FR Doc. 96–22323
Filed 8–28–96; 9:32 am]
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Presidential Documents

Presidential Determination No. 96–45 of August 27, 1996

Reconfirmation of Findings With Respect to the Trade Agreement With Kyrgyzstan

Memorandum for the United States Trade Representative

Since August 21, 1992, the United States of America and Kyrgyzstan have had in effect a bilateral Agreement on Trade Relations, in relation to which, pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I reconfirm that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement and that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are, and continuously have been, satisfactorily reciprocated by Kyrgyzstan.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 27, 1996.

[FR Doc. 96–22324
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Presidential Documents

Presidential Determination No. 96–46 of August 27, 1996

Reconfirmation of Findings With Respect to the Trade Agreement With Ukraine

Memorandum for the United States Trade Representative

Since June 23, 1992, the United States of America and Ukraine have had in effect a bilateral Agreement on Trade Relations, in relation to which, pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I reconfirm that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement and that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are, and continuously have been, satisfactorily reciprocated by Ukraine.

You are authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, August 27, 1996.

[FR Doc. 96–22325
Filed 8–28–96; 9:33 am]
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Presidential Documents

Presidential Determination No. 96–47 of August 27, 1996

Reconfirmation of Findings With Respect to the Trade Agreement With Armenia

Memorandum for the United States Trade Representative

Since April 7, 1992, the United States of America and Armenia have had in effect a bilateral Agreement on Trade Relations, in relation to which, pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I reconfirm that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement and that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are, and continuously have been, satisfactorily reciprocated by Armenia.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 27, 1996.

[FR Doc. 96–22326
Filed 8–28–96; 9:34 am]
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Presidential Documents

Presidential Determination No. 96–48 of August 27, 1996

Reconfirmation of Findings With Respect to the Trade Agreement With Moldova

Memorandum for the United States Trade Representative

Since July 2, 1992, the United States of American and Moldova have had in effect a bilateral Agreement on Trade Relations, in relation to which, pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I reconfirm that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement and that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are, and continuously have been, satisfactorily reciprocated by Moldova.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 27, 1996.

[FR Doc. 96–22327
Filed 8–28–96; 9:35 am]
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Presidential Documents

Presidential Determination No. 96–49 of August 27, 1996

Findings With Respect to the Trade Agreement With Georgia

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)), I have determined that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by Georgia. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and Georgia.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 27, 1996.

[FR Doc. 96–22328
Filed 8–28–96; 9:36 am]
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Executive Order 13016 of August 28, 1996

Amendment to Executive Order No. 12580

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*) (the "Act"), and section 301 of title 3, United States Code, I hereby order that Executive Order No. 12580 of January 23, 1987, be amended by adding to section 4 the following new subsections:

Section 1. A new subsection (c)(3) is added to read as follows:

"(3) Subject to subsections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness."

Sec. 2. A new subsection (d)(3) is added to section 4 to read as follows:

"(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1)) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this sub-

section shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness."

William J. Clinton

THE WHITE HOUSE,
August 28, 1996.

[FR Doc. 96-22462
Filed 8-29-96; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0868]

Investment Adviser Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule amending its interpretive rule regarding investment adviser activities of bank holding companies to allow a bank holding company (and its bank and nonbank subsidiaries) to purchase, in a fiduciary capacity, securities of an investment company advised by the bank holding company if the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered. This amendment would reflect changes that have occurred since the rule was adopted; and would conform the Board's interpretive rule to rules applied to banks by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, and the standard in section 23B of the Federal Reserve Act for this type of activity.

EFFECTIVE DATE: September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas M. Corsi, Senior Attorney (202/452–3275); or David S. Simon, Attorney (202/452–3611), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

In 1972, the Board permitted bank holding companies to serve as investment advisers to mutual funds and other registered investment companies, and adopted an interpretive rule setting forth limitations on this activity. Among the restrictions in the rule is a requirement that a bank holding company not purchase in its sole discretion in a fiduciary capacity any securities of an investment company advised by the bank holding company. The Board adopted this restriction because of concern that a bank holding company might use its position as a fiduciary to support an investment company that the bank holding company advises, increase the asset size of the investment company, or increase advisory fees.

The Board has sought public comment on a proposal to relax this restriction to permit a bank holding company to purchase in its sole discretion in a fiduciary capacity securities of an investment company advised by the bank holding company if the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.[1] This change would reflect current practice in this area.[2]

Since the Board adopted its investment advisory interpretive rule, Congress enacted section 23B of the Federal Reserve Act, which permits a bank or its subsidiary to purchase securities, as a fiduciary, from an affiliate if such purchases are permitted by the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction governing the fiduciary relationship.[3] Both the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) recently permitted the banks that they regulate to purchase, in a fiduciary capacity, securities of an investment company advised by an affiliate of the bank if the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by local law.[4] In addition, many states have amended their laws to permit a fiduciary to purchase, on behalf of customer accounts, shares of an investment company advised by the fiduciary or its affiliate.[5] In an analogous area, the Board has permitted fiduciary purchases of securities that are underwritten by a section 20 affiliate if the purchase is specifically authorized under the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.[6]

The proposed amendment would have required that a bank holding company disclose to its fiduciary customers in writing that the bank holding company or its subsidiary serves as investment adviser to the investment company whose shares are purchased in a fiduciary capacity. The Board specifically requested public comment on whether the proposed disclosure requirement is necessary. The Board also requested public comment on whether the proposed disclosure requirement would be adequate if given only at the time the fiduciary relationship is created, or whether written disclosure should be given immediately prior to each initial investment in an investment company advised by the bank holding company.

Summary of Public Comments

The Board received 21 comments on its proposal.[7] Overall, the comments supported the Board's proposal. Regarding disclosures, twelve commenters stated that the Board should not require any special disclosure when a bank holding company purchases as fiduciary shares of an investment company advised by the fiduciary or its affiliates. Several commenters argued that special

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[1] 59 FR 67,654 (December 30, 1994).

[2] The Board's proposal was in response to requests by several bank holding companies. These bank holding companies indicated that a mutual fund advised by the holding company is often the most cost-effective method of providing investment advice to customers and is increasingly attractive to customers because a mutual fund provides customers with a readily marketable and easily valued investment product. *See* Letter dated August 12, 1994, from the American Bankers Association to Chairman Greenspan.

[3] 12 U.S.C. 371c–1(b)(1).

[4] *See* OCC Trust Interpretation No. 234 (September 21, 1989); 12 CFR 9.12; and 12 CFR 337.4(e).

[5] *See, e.g.*, Mich. Comp. Laws § 487.485 (1992) (amended in 1992); Md. Code Ann., Est. & Trusts § 15–106 (1993) (amended in 1991); Ind. Code Ann. § 28–1–12–3 (Burns 1993).

[6] *Citicorp, J.P. Morgan & Company Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) (*Citicorp Order*), *aff'd sub nom. Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 486 U.S. 1059 (1988).

[7] These commenters included 17 banking organizations, two trade associations, one law firm, and one bank consulting firm.

disclosures are unnecessary in cases in which the purchase is permitted by court order or by the instrument creating the fiduciary relationship because the court or person creating the fiduciary relationship would be aware of the potential conflicts of interest. Commenters also stated that, in the case in which the purchase of shares is permitted by state law, the timing and content of disclosures should be governed exclusively by the laws of the state. These commenters generally maintained that the proposed disclosure would unnecessarily interfere with state law, could confuse fiduciary customers, and could be expensive and cumbersome.[8]

Discussion

After further review, the Board has determined that it is unnecessary to impose a general disclosure requirement when a bank holding company purchases as fiduciary shares of an investment company it advises. The Board believes that existing disclosure requirements are generally sufficient to ensure that fiduciary customers are aware of potential conflicts of interest that may arise from this activity.

As noted by commenters, the instrument or court order creating the fiduciary relationship, or state law, often contains or requires the disclosure of any potential conflict of interest. In addition, the common law has addressed conflicts of interest, disclosures, and other remedies in this area. Thus, any disclosure requirement adopted by the Board may be duplicative or conflict with other disclosure requirements.

In addition, other federal statutes require certain fiduciaries, including nonbanking subsidiaries of bank holding companies, to disclose potential conflicts of interest that may affect the fiduciary's recommendations. For example, under the Investment Advisers Act of 1940 (Advisers Act), an investment adviser has a fiduciary duty to disclose to a client any compensation it receives that may affect its recommendations.[9] Thus, according to the Securities and Exchange Commission (SEC), an investment adviser that receives fees from an investment company in which the adviser places trust funds as fiduciary must disclose to the trust customer the receipt of those fees and the potential conflict of interest presented.[10]

Although banks, trust companies, and bank holding companies themselves are exempt from the definition of investment adviser under the Advisers Act, the Act covers the advisory activities of affiliates of banks and bank holding companies.[11] According to the SEC, a nonbank subsidiary of a bank holding company—other than a trust company—has an obligation under the Advisers Act to disclose to its fiduciary customers that it may acquire for them shares of investment companies from which the nonbank subsidiary or its affiliate receives advisory fees.[12]

Neither the OCC nor the FDIC generally require a bank to specifically disclose to its fiduciary customers that the bank serves as investment adviser to an investment company whose shares the bank purchases in a fiduciary capacity.[13] The OCC recently indicated that a national bank that invests fiduciary assets in mutual funds that pay fees to the bank for services may, if the bank also receives fees for acting as a fiduciary, do so only to the extent authorized under state law, the trust instrument, or court order. The OCC further indicated that a trustee's overall fees must be consistent with any state law requirements that fees be reasonable, necessary, or appropriate, and the fee arrangement must be disclosed pursuant to any relevant state law disclosure requirements.[14]

While the Board is not adopting a disclosure requirement, the Board believes, as a general matter, that the disclosure of potential conflicts of interest is consistent with sound fiduciary principles. Accordingly, the Board encourages bank holding companies not already required to disclose potential conflicts of interest (by the instrument or court order creating the trust or by state or federal law) to make such disclosures. Bank holding companies engaging in this activity should recognize that their activities may be subject to disclosure requirements under state and federal laws, and should engage in the activities in a manner consistent with common law principles of trust law.

Other Comments

Four commenters stated that the Board should seek public comment on amending other restrictions contained in paragraph (g) of the interpretive rule. In particular, these commenters suggested that the Board reconsider the appropriateness of paragraphs (g) (1), (3) and (4) of the interpretive rule, which prohibit a bank holding company and its bank and nonbank subsidiaries from (i) purchasing for their own account securities of any investment company for which the bank holding company acts as investment adviser, (ii) extending credit to any such investment company, or (iii) accepting securities of such investment company as collateral for a loan which is for the purpose of purchasing securities of the investment company. Two of these commenters stated that national and state-member banks can engage in these activities subject only to the limitations contained in sections 23A and 23B of the Federal Reserve Act. Another commenter stated that these prohibitions prevent bank holding companies from competing effectively with other organizations because bank holding companies cannot provide the initial seed or start-up capital for advised investment companies or provide liquidity to such funds. One commenter also stated that the restrictions of paragraph (g) should apply to investment companies advised by subsidiary banks of bank holding companies.[15] The Board has decided to seek comment on amending other provisions of paragraph (g) in a separate proceeding.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this final rule would not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

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[8] One commenter argued that the proposed disclosure was appropriate and should be required immediately prior to each initial investment in an investment company advised by the bank holding company, as well as at the time the fiduciary relationship is created.

[9] 15 U.S.C. § 80b–6. *See* Hornor Townsend & Kent, Inc., SEC No-Act. LEXIS 495 (April 4, 1995), *citing SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194–95 (1963).

[10] *See* Neuberger & Berman, SEC No-Act. LEXIS 1496 (May 29, 1984).

[11] *See, e.g.*, First Commerce Investors, Inc., SEC No-Act. LEXIS 221 (January 31, 1991) (* * * the Advisers Act does not specifically except a subsidiary of a bank or a bank holding company from the definition of investment adviser, unless that subsidiary is itself a bank or bank holding company.); 15 U.S.C. § 80b–1(11).

[12] Bank holding companies acting as fiduciaries to employee retirement plans also may be required to make disclosures under the Employee Retirement Income Security Act (ERISA) and Department of Labor Regulations. *See* 29 U.S.C. §§ 1106 and 1108; Prohibited Transaction Exception 77–4, 42 FR 18,732 (April 8, 1977).

[13] *See* 12 CFR 9.12 and 337.4(e). In addition, section 23B does not require a bank or its subsidiary to disclose to its fiduciary customers that it may purchase securities from an affiliate. Moreover, the *Citicorp Order* does not require specific disclosure of fiduciary purchases of securities underwritten by a section 20 affiliate.

[14] *See* OCC Interpretive Letter No. 704, November 2, 1995.

[15] The restrictions contained in paragraph (g) only apply to investment companies advised by a bank holding company or its nonbank subsidiaries. *See Norwest Corporation*, 76 Federal Reserve Bulletin 79, 80 n.3 (1990).

This amendment will remove a restriction currently contained in the Board's regulations that the Board believes is no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.125 is amended by revising paragraph (g) to read as follows:

§ 225.125 Investment adviser activities.

* * * * *

(g) In view of the potential conflicts of interests that may exist, a bank holding company and its bank and nonbank subsidiaries should not:

(1) Purchase for their own account securities of any investment company for which the bank holding company acts as investment adviser;

(2) Purchase in their sole discretion, any such securities in a fiduciary capacity (including as managing agent) unless the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered;

(3) Extend credit to any such investment company; or

(4) Accept the securities of any such investment company as collateral for a loan which is for the purpose of purchasing securities of the investment company.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 26, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–22168 Filed 8–29–96; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 705, 747 and 790

Changes in Office Description and References

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: Last year, the NCUA Board established the Office of Chief Financial Officer, transferring to it the functions of the Office of the Controller and some of the responsibilities of the Office of Examination and Insurance. The description of and references to the Office of the Controller are deleted, and a description of and references to the Office of Chief Financial Officer are added. The description of the Office of Examination and Insurance is updated to reflect redistribution of duties. Two references in other parts of the Regulations are also updated. These changes update the Regulations to reflect the current structure and responsibilities of various agency offices and make technical corrections to references within the regulations.

EFFECTIVE DATE: August 30, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Special Counsel to the General Counsel, at the above address or 703–518–6540.

SUPPLEMENTARY INFORMATION: Part 790 of the NCUA Regulations sets forth NCUA organization, including descriptions of duties of all agency components. On July 25, 1995, the NCUA Board established the Office of Chief Financial Officer, transferring to it the functions of the Office of the Controller and some of responsibilities of the Office of Examination of Insurance. This document deletes the description of the Office of the Controller, and replaces it with a new description of the Office of Chief Financial Officer. It also makes changes to the description of the Office of Examination and Insurance to reflect current duties. Two additional technical changes are made. First, in Section 705.3, the reference to § 701.32(d)(1) is changed to § 701.34(a)(1) to reflect a recent change to Part 701. Second, the reference to 12 CFR part 4 in § 747.25(b) is corrected to read 12 CFR § 792.5(b). Section 747.25 was recently amended with the incorrect reference.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The types of changes made by this rule have no economic impact on credit unions. These are merely housekeeping changes. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Since these are housekeeping changes only, there is no effect on state interests.

List of Subjects in 12 CFR Parts 705, 747 and 790

Credit unions.

By the National Credit Union Administration on August 8, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR Ch. VII is amended as set forth below.

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

1. The authority citation for part 705 continues to read as follows:

Authority: Pub. L. 97–35, 42 U.S.C. 9822; Pub. L. 99–609, note to 42 U.S.C. 9822; Pub. L. 101–144, 12 U.S.C. 1766(k).

2. Section 705.3 is amended by revising the reference "§ 701.32(d)(1)" to "§ 701.34(a)(1)" in paragraph (b).

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

3. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787.

4. Section 747.25 is amended by revising the reference "12 CFR part 4" to "12 CFR 792.5(b)" in the fifth sentence of paragraph (b).

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

5. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

6. Section 790.2 is amended by revising paragraph (b)(5); revising the first sentence of paragraph (b)(6)(i); replacing the last three sentences of paragraph (b)(6)(ii) with four new sentences; and replacing "Controller" with "Chief Financial Officer" in paragraph (b)(7) to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(5) Office of Chief Financial Officer. NCUA's chief financial officer is in charge of budgetary, accounting and financial matters for the NCUA, including responsibility for submitting annual budget and staffing requests for approval by the Board and, as required, by the Office of Management and Budget; for managing NCUA's budgetary resources; for managing the operations of the National Credit Union Share Insurance Fund (NCUSIF) to include accounting, financial reporting and the collection and payment of capitalization deposits, insurance premiums and insurance dividends; for collecting annual operating fees from federal credit unions, for maintaining NCUA's accounting system and accounting records; for processing payroll, travel, and accounts payable disbursements; and for preparing internal and external financial reports.

(6) Office of Examination and Insurance. (i) The Director of the Office of Examination and Insurance: Formulates standards and procedures for examination and supervision of the community of federally insured credit unions, and reports to the Board on the performance of the examination program; manages the risk to the NCUSIF, to include overseeing the NCUSIF Investment Committee, monitoring the adequacy of NCUSIF reserves, analyzing the reasons for NCUSIF losses, formulating policies and procedures regarding the supervision of financially troubled credit unions, and evaluating certain requests for special assistance pursuant to Section 208 of the Federal Credit Union Act and for certain proposed administrative actions regarding federally-insured credit unions; serves as the Board expert on accounting principles and standards and on auditing standards; represents NCUA at meetings with the American Institute of Certified Public Accountants (AICPA), Federal Financial Institutions Examination Council (FFIEC) and General Accounting Office (GAO); and collects data and provides statistical reports. * * *

(ii) * * * The CLF is managed by the President of the CLF, under the general supervision of the NCUA Board which serves as the CLF Board of Directors. The Chairman of the NCUA Board serves as the Chairman of the CLF Board of Directors. The Secretary of the NCUA Board serves as the Secretary of the CLF Board. The Director of the Division of Risk Management, Office of Examination and Insurance, serves as the President of the CLF.

* * * * *

[FR Doc. 96–22169 Filed 8–29–96; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–13–AD; Amendment 39–9729; AD 96–18–05]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Ltd. Model 206L, 206L–1, and 206L–3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 206L, 206L–1, and 206L–3 helicopters, that currently requires a visual inspection of the tailboom skin in the areas around the nutplates and in the areas of the tailboom drive shaft cover retention clips for cracks and corrosion using a 10-power or higher magnifying glass. This amendment requires the same actions as the existing AD, but corrects a part number that was incorrectly stated in that AD. This amendment is prompted by a recent accident and several reports of fatigue cracks in the tailboom skin in the areas around the nutplates for the tail rotor fairing and in the areas of the tail rotor drive shaft cover retention clips. The actions specified by this AD are intended to prevent failure of the tailboom and subsequent loss of control of the helicopter.

DATES: Effective September 16, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1996.

Comments for inclusion in the Rules Docket must be received on or before October 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–13AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, A Division of Textron Canada Ltd., 12,800 rue de L'Avenir, Mirabel, Quebec, Canada, JON 1LO. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Nguyen, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5177, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: On July 3, 1996, the FAA issued priority letter AD 96–14–10, to require, before further flight, and thereafter at intervals not to exceed 50 hours time-in-service (TIS), a visual inspection of the tailboom skin in the areas around the nutplates and in the areas of the tailboom drive shaft cover retention clips for cracks and corrosion using a 10-power or higher magnifying glass. This inspection interval was to be repeated until the tailboom was replaced by part number (P/N) 206–033–004–143 or –173. That action was prompted by a recent accident and several reports of fatigue cracks in the tailboom skin in the areas around the nutplates for the tail rotor fairing and in the areas of the tail rotor drive shaft cover retention clips. That

condition, if not corrected, could result in failure of the tailboom and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that one of the replacement tailboom's P/N should have been stated as P/N 206–033–004–177 instead of P/N 206–033–004–173.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L, 206L–1, and 206L–3 helicopters of the same type design, this AD supersedes priority letter AD 96–14–10 to require, before further flight, and thereafter at intervals not to exceed 50 hours TIS, a visual inspection of the tailboom skin in the areas around the nutplates and in the areas of the tailboom drive shaft cover retention clips for cracks and corrosion using a 10-power or higher magnifying glass. This inspection interval will be repeated until the tailboom is replaced by P/N–206–033–004–143 or –177. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–SW–13–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9729, to read as follows:

AD 96–18–05 Bell Helicopter Textron, a Division of Textron Canada Ltd.: Amendment 39–9729. Docket No. 96–SW–13–AD. Supersedes priority letter AD 96–14–10.

Applicability: Model 206L, 206L–1, and 206L–3 helicopters, with tailboom, part number (P/N) 206–033–004–3, –11, –45, or –103 installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tailboom and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter at intervals not to exceed 50 hours time-in-service (TIS), using a 10-power or higher magnifying glass, inspect the tailboom for cracks or corrosion. Perform this inspection in accordance with the inspection procedures stated in the Accomplishment Instructions, Part II or Part III, as applicable, of Bell Helicopter Textron Inc. Alert Service Bulletin 206L–87–47, Revision C, dated October 23, 1989. If a crack or corrosion is detected that is beyond the limits prescribed by the applicable maintenance manual, remove the tailboom and replace it with an airworthy tailboom.

(b) Replacement of the tailboom with tailboom, P/N 206–033–004–143 or –177, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits will not be issued.

(e) The inspections and replacement shall be done in accordance with Bell Helicopter

Textron Inc. Alert Service Bulletin 206L–87–47, Revision C, dated October 23, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, A Division of Textron Canada Ltd., 12,800 rue de L'Avenir, Mirabel, Quebec, Canada, JON 1LO. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 16, 1996.

Issued in Fort Worth, Texas, on August 22, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22141 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–138–AD; Amendment 39–9728; AD 96–18–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, that currently require modification of the packing and slide containers of the escape slide, and repetitive inspections of the velcro girt retaining straps of the escape slides at the forward door. The existing AD's were prompted by reports of slide girt material interfering with the girt bar stowage brackets during door opening. This new amendment requires the installation of a new modification, which constitutes terminating action for the repetitive inspection requirements. The actions specified by this amendment are intended to prevent failure or interference of opening of the forward doors, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective October 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180; and Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Boffo; Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding both AD 88–07–07 [amendment 39–5884 (53 FR 9864, March 28, 1988)] and AD 91–24–04 [amendment 39–8090 (56 FR 57588, November 13, 1991)] was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on January 19, 1996 (61 FR 1291). Both of the existing AD's are applicable to various Boeing Model 737 series airplanes.

The NPRM proposed to continue to require modification of the escape slide packing and slide containers, which was required previously by AD 88–07–07. The NPRM also proposed to continue to require repetitive inspections of the velcro girt retaining straps at the forward door of the escape slides, which was required previously by AD 91–24–04. Additionally, the NPRM proposed to require modification of the escape slide girts, which would constitute terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposal.

Request To Allow Removal of Placard

One commenter requests that the proposal be revised to allow operators to remove the velcro straps attach points and placard on the slide compartment cover that were installed as part of the modification required by AD 88–07–07. The commenter adds that some operators have already removed these items when they installed a modification that was approved as an alternative method of compliance with the repetitive inspections required by AD 91–24–04.

The FAA concurs. Once the terminating modification required by paragraph (c) of this final rule is installed, the velcro straps (and their attach points) are no longer necessary, and the placard may be confusing if it remains on the slide compartment. The FAA has revised paragraph (c) of the final rule to indicate that these items should be removed.

Request To Continue Approval of Previous Alternative Methods of Compliance

Several commenters request that the proposal be revised to specify that alternative methods of compliance (AMOC) approved previously by the FAA for AD 91–24–04, continue to be considered approved for this new AD. Specifically, three commenters point out that the FAA had previously approved, as an AMOC, the accomplishment of the modification described in Air Cruisers Service Bulletin S.B. 103–25–23 as terminating action for the repetitive inspections required by AD 91–24–04. These commenters request that the proposed rule likewise cite this service bulletin as an alternative terminating action.

The FAA does not concur. The modification described in Air Cruisers Service Bulletin S.B. 103–25–23 entails adding placards to the escape slide girt (that depict the proper stowed configuration of the girt) and removing the velcro straps that were required to be installed by AD 88–07–07. That modification, however, is reliant upon flight attendant procedures to correctly route the escape slide girt. Several recent ramp inspections of in-service airplanes have revealed that the girt material is still being misrouted, even with the placard installed. In light of this, the FAA has determined that the modification in that Air Cruisers service bulletin does not fully address the safety concern and is not as effective as the modification that is required by this new AD.

The modification specified in this final rule (which is described in Air Cruisers Service Bulletin S.B. 103–25–19) involves removing the existing girt; bonding on the girt attachments; installing a detachable girt; rigging a painter/mooring line; and bonding a placard to the slide assembly and reidentifying it. This modification will improve the operation of the escape slide of the forward entry and service doors, and will eliminate the need to rely on human factors associated with

ensuring that girt material is stowed properly.

Request To Allow Use of Revised Service Documents

One commenter requests that the proposal be revised to allow operators to install the terminating modification, proposed in paragraph (c), in accordance with various revisions of Air Cruisers Service Bulletin S.B. 103–25–19. The commenter points out that the service bulletin has been revised several times since the original version was released in May 1992.

The FAA concurs. The FAA has reviewed and approved all revisions of Air Cruisers Service Bulletin S.B. 103–25–19 through Revision 7, dated April 18, 1996. The various revisions are essentially identical, except for certain minor editorial changes. The FAA has revised paragraph (c) of the final rule to indicate that accomplishing the modification in accordance with any of these revisions is acceptable for compliance with that paragraph.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,572 Model 737–300, –400, and –500 series airplanes, equipped with Air Cruisers forward door escape slide of the affected design in the worldwide fleet. The FAA estimates that 663 airplanes of U.S. registry will be affected by this proposed AD.

The actions that are currently required by AD 88–07–07 take approximately 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $76 per airplane. Based on these figures, the cost impact on U.S. operators (175 airplanes) of the actions currently required is estimated to be $107,800, or $616 per airplane.

The actions that are currently required by AD 91–24–04 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators (439 airplanes) of the actions currently required is estimated to be $26,340, or $60 per airplane, per inspection cycle.

The terminating modification that is required by this new AD will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $1,800 per airplane. Based on these figures, the cost impact on U.S. operators of the new modification requirements of this AD is estimated to be $1,432,080, or $2,160 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–5884 (53 FR 9864, March 28, 1988) and 39–8090 (56 FR 57588, November 13, 1991), and by adding a new airworthiness directive (AD), amendment 39–9728, to read as follows:

96–18–04 Boeing: Amendment 39–9728. Docket 95–NM–138–AD. Supersedes AD 88–07–07, amendment 39–5884; and supersedes AD 91–24–04, amendment 39–8090.

Applicability: Model 737–300, –400, and –500 series airplanes, line numbers up to and including 2211; equipped with Air Cruisers forward door escape slides as listed in Air Cruisers Company Service Bulletin S.B. 103–25–19, Revison 7, dated April 18, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure or interference of opening of the forward doors, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 30 days after December 17, 1991 (the effective date of 91–24–04, amendment 39–8090), establish operating procedures, approved by the FAA Principal Maintenance Inspector (PMI), for the forward doors to include the requirements specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD; and thereafter, comply with those procedures until the modification required by paragraph (c) of this AD is accomplished. The procedures required by paragraphs (a)(1) and (a)(2) of this AD must be accomplished by qualified and trained mechanics. The procedures required by paragraph (a)(3) may be accomplished by qualified and trained members of the flightcrew or cabin crew. The training program to implement the procedures required by this paragraph must be approved by the FAA PMI. Methods for documentation of compliance with the following procedures must be approved by the FAA PMI.

(1) Prior to the next flight after December 17, 1991, and thereafter at intervals not to exceed 200 flight hours, inspect the condition of the girt retaining straps at the forward doors.

(2) Prior to further flight after December 17, 1991, replace worn or aged velcro whose grip

strength will no longer hold the girt retaining straps in position.

(3) Prior to the next flight after December 17, 1991, and thereafter prior to each flight, inspect the routing of the girt retaining straps at the forward doors, and reroute straps that are found not to be routed in accordance with the placarded instructions installed in accordance with AD 88–07–07, amendment 39–5885, on the inboard face of the slide compartment.

(b) For Model 737–300 series airplanes: Within 6 months after May 9, 1988 (the effective date of AD 88–07–07, amendment 39–5885), modify the escape slide packing and slide containers in accordance with Boeing Alert Service Bulletin 737–25A1221, dated December 17, 1987, or Revision 1, dated June 2, 1988. This modification must be accomplished prior to or in conjunction with accomplishment of the requirements of paragraph (c) of this AD.

(c) Within 36 months after the effective date of this AD, modify the escape slide girts in accordance with Air Cruisers Company Service Bulletin S.B. 103–25–19, Revision 7, dated April 18, 1996. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD. Once this modification is installed, the placard and velcro straps (and their attach points) required by the modification specified in paragraph (b) of this AD may be removed.

Note 2: Accomplishment of this modification prior to the effective date of this AD in accordance with previous revisions of Air Cruisers Company Service Bulletin S.B. 103–25–19 is considered acceptable for compliance with the requirements of this paragraph.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as indicated in NOTE 2 of this AD, the terminating modification shall be done in accordance with Air Cruisers Company Service Bulletin S.B. 103–25–19, Revision 7, dated April 18, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719–0180. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 4, 1996.

Issued in Renton, Washington, on August 21, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22010 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–243–AD; Amendment 39–9727; AD 96–18–03]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires installation of an automatic flight idle stop on the control quadrant in the flight compartment. This amendment is prompted by several reports of one or both power levers being moved aft of the flight idle stop on approach. The actions specified by this AD are intended to prevent such movement of the power lever(s) during flight, which could result in the loss of power to one or both engines, as well as severe engine damage.

DATES: Effective October 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on March 21, 1996 (61 FR 11591). That action proposed to require installation of an automatic flight idle stop on the control quadrant in the flight compartment.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposal in its entirety.

Request To Extend Compliance Time

Two commenters request that the compliance time for the installation be extended beyond the proposed 12 months. One commenter suggests that the compliance time be extended to 18 months so that the installation may be performed during a regularly scheduled maintenance interval. This would preclude additional costs incurred from special scheduling and additional downtime. The other commenter requests that the compliance time be extended to 20 months because the current number of available parts and the vendors turnaround time for delivery of parts will not be able to support the modification of the entire U.S. fleet of 230 airplanes within 12 months.

The FAA does not concur with the commenters request. In developing a compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but:

1. the recommendations for compliance time specified by the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, and by the manufacturer;

2. the availability of required parts; and

3. the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators.

Based on information received from the manufacturer relative to parts availability and vendor turnaround time, the FAA considers that the 12-month compliance time is adequate if operators make reasonable efforts to meet this schedule. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for

adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Reference Latest Revision to Service Information

One commenter requests that the proposal be revised to cite the latest revisions to the SAAB service bulletins as the appropriate source of service information.

The FAA concurs with the commenters request. Since issuance of the notice, SAAB has issued the following revisions to the referenced service documents:

1. Service Bulletin 340–76–031, Revision 4, dated February 25, 1996.
2. Service Bulletin 340–76–032, Revision 3, dated March 25, 1996.
3. Service Bulletin 340–32–100, Revision 2, dated March 25, 1996.

These revised service bulletins are essentially identical to previous versions, but contain various minor editorial corrections and updated cost figures. They do not affect modifications that were accomplished in accordance with earlier versions of these service bulletins.

The FAA has revised the final rule to cite the latest versions of the service bulletins and has added information to specify that previous accomplishment of the installation in accordance with any earlier version of the service bulletin is acceptable for compliance with the applicable parts of the rule.

Request To Allow Continued Flight with Flight Idle Stop Inoperative

One commenter requests that the proposal be revised to provide relief from the Master Minimum Equipment List (MMEL) provisions to allow the airplane to continue to be operated if the flight idle (FI) stop is inoperative. In support of this request, the commenter points out that the Model SF340 automatic FI stop is unique in that, once the override mechanism is activated, the system cannot be reset without maintenance intervention. The commenter requests that the proposed AD allow affected operators to operate the airplane for at least a single additional revenue flight to a maintenance base where the FI system can be reset (or repaired, if necessary). Such relief would preclude what the commenter considers "an unreasonable exposure to loss of service" following such overrides.

The FAA concurs. In the event of a malfunction of the FI stop system, use of the FI stop override function is available to the flight crew. However, due to the redundant system design of the FI stop, the necessity for use of the override is expected to be very rare. In any case where the automatic system has malfunctioned and/or use of the override has been necessary, as the commenter correctly notes, maintenance action is required to return the FI stop system to an operational condition. If adequate maintenance support is not available upon landing, the FAA has determined that the airplane may be operated safely for one revenue flight to a location where appropriate maintenance can be performed, provided that the FI stop system has been properly deactivated and placarded for flight crew awareness in accordance with the provisions of the FAA-approved MMEL. A new paragraph has been added to the final rule to specify this.

Request To Allow Continued Flight if Anti-Skid System is Inoperative

This same commenter requests that the proposal be revised to provide MMEL relief to allow dispatch of an airplane equipped with an automatic FI stop system when the anti-skid system is inoperative. The commenter states that, while the quadruple redundancy of the "release" signal to the FI stop solenoid will minimize system faults that cause the solenoid to not release, this redundancy will result in the inability to defer the anti-skid system.

The FAA does not consider that additional revision of the proposed rule is necessary. The FI stop system uses wheel-spin-up signals from the anti-skid system to drive the FI stop to the open position. Other signals, such as weight-on-wheels signals, are also used to drive the FI stop to the open position, thus providing a redundant system design of the FI stop. However, the Abnormal Procedures specified in the FAA-approved Airplane Flight Manual (AFM) that relate to in-flight failure of the anti-skid system may include instructions for the flight crew to activate override of the FI stop upon landing. This use of the FI stop override then requires maintenance action to reset and, as discussed in the previous issue, the FAA has determined that a single flight for return of the aircraft to a location for maintenance will meet acceptable safety levels. Since the most restrictive requirements take precedence in the determination of dispatch relief, other equipment, such as the anti-skid system, may also be required to be repaired to support the requirements for the FI stop system.

Request To Provide Flight Crew With Indication of Status of FI System

One commenter supports the intent of the proposal, but requests that it be revised to include a requirement to provide the flight crew with adequate indication of the system status and failure annunciation, as well as a means to verify that the system is operational while in flight. The commenter considers that a status indicator is required to inform the flight crew of the mode of the lockout system. As a minimum, this indicator should inform the crew of two conditions:

1. the system has experienced a failure of some type, and
2. ground idle will not be available when it should be.

This commenter also considers that a means is necessary to allow the crew to test (fault check) and verify the system status and operability. Accurate knowledge of the system's status can be critical to the safety of the operation.

The FAA concurs partially with the commenter's statements about the need for adequate status indication and crew verification. The automatic FI stop system has been designed to provide status indication to the flight crew. The position of the FI stop in either the "open" position (no blocking of power levers into beta) or "closed" position is provided by means of indications on the top of the Flight Status Panel (FSP) as follows:

- *FI stop (blue):* FI stop is open and landing gear is down and locked. This is the normal indication when the airplane is electrically powered on the ground. The blue light normally will turn off when the landing gear is retracted after takeoff, and it does not illuminate for the duration of the flight. If the landing gear is not retracted following takeoff, the light will stay on, and the FI stop will remain open, until all wheels have spun down to less than 9 knots, which may take up to 90 seconds.
- *FI stop open (amber):* This light indicates an abnormal situation, showing that the FI stop is open, although landing gear is not down and locked. The amber light will appear if the FI stop fails to close after takeoff when the landing gear is retracted, indicating that there is no protection against movement of the power levers into beta during flight. This light also will appear if the manual override knob is pulled, causing the FI stop to open. This status indication is intended to alert the flight crew when FI stop protection is not available; therefore, increased crew awareness is necessary to prevent inadvertent placement of the

power levers into beta mode during flight.

These status indications do not, however, predict an upcoming failure of the FI stop to open correctly upon landing. Due to the redundant system design of the FI stop, and based on the failure analysis probabilities, malfunction of the FI stop system that would result in the system remaining closed after touchdown is predicted to be very infrequent. In the event of a malfunction or if adverse runway conditions result in the FI stop remaining closed upon touchdown, the override mechanism is always available to the flight crew. Operators may refer to SAAB 340 Operations Bulletin No. 52, which describes procedures to be followed in such an event.

As for the commenter's request for a means to allow the flight crew to test (fault check) and verify the system status and operability, the FAA points out that the FI stop lights on the FSP, as described above, provide an accurate indication of the system operation; in light of this, the FAA does not consider it necessary to add a flight crew test in addition to this status information. Additionally, lamp checks may be performed by the flight crew to ensure that the FI stop indication lights themselves are operational.

Request To Include Provisions To Minimize Compound System Failures

The same commenter requests that the proposal be revised to include provisions to minimize or exclude compound systems failures, and to ensure that the flight crew is able to override the automatic system if it becomes necessary to do so. If these features are not available, the commenter requests that the FI stop system be changed to incorporate them. To support its request, the commenter states that provisions must be made to eliminate failure modes that would result in certain systems being simultaneously disabled. The primary concern is the controllability of the airplane on the ground. Inability to select ground idle after landing may seriously degrade the airplane's stopping performance. If a failure that prevents access to ground idle also disables other ground operation related systems (such as nose wheel steering), the stopping capability and/or the controllability of the airplane could be seriously compromised. In order to further improve the reliability and independence of the FI stop installation, this commenter urges incorporation of three specific design considerations:

1. the ability to tap the spin-up signal in its rawest usable form, prior to it being processed by any digital/control component, to avoid its loss if that component should fail;

2. a redundant, parallel spin-up signal provided in case of a failure or lack of signal from one sensor;

3. a revision to the system operation that will address the possibility of reduced wheel spin-up (i.e., hydroplaning).

Related to the possibility of such failures, this commenter also states that provisions must be made to enable the flight crew to deliberately and rapidly override the FI stop system. This is necessary to prevent a system failure from creating a potentially hazardous situation when the crew is attempting to stop the airplane. The commenter states that, if power cannot be reduced below flight idle during the landing roll-out, the stopping capability of the airplane will be significantly degraded, potentially resulting in a runway overrun.

The FAA concurs with this commenter's statements, but finds that no revision to the rule is necessary because the design features suggested by the commenter already have been incorporated into the FI stop system. The quadruple redundancy of the "release" signal to the FI stop solenoid has been designed in order to minimize system faults that would cause the solenoid to not release. If the left or right landing gear is extended, and if any one of the left or right inboard or outboard wheel speed signals is greater than 25 knots, or if the left or right weight-on-wheels signal is true, then the FI stop system is opened, permitting unrestricted movement of the power levers.

Additionally, in the unlikely event that this combination of data fails to drive the FI stop to the "open" position, a manual override knob is also available to the flight crew. When this override knob is pulled, the FI stop will be mechanically forced to the "open" position. This combination of the redundant signal inputs and the override knob was intentionally designed into the FI stop system to enable selection of beta modes when necessary for slowing action.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry will be affected by this proposed AD. Accomplishment of the required installations will take between 122 and 142 work hours per airplane, depending upon the configuration of the airplane. The average labor rate is $60 per work hour. Required parts will cost approximately $9,300 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $3,722,880 and $3,991,680 (or between $16,620 and $17,820 per airplane).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–03 Saab Aircraft AB: Amendment 39–9727. Docket 95–NM–243–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers –004 through –159 inclusive; and Model SAAB 340B series airplanes, serial numbers –160 through –379 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the movement of both power levers aft of the flight idle stop during flight, which could result in loss of power to both engines, as well as severe engine damage, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Note 2: The actions specified in paragraphs (a)(1) and (a)(2) of this AD may be accomplished prior to, or in conjunction with, the accomplishment of the requirement of paragraph (a)(3) of this AD.

(1) Modify the electrical system of the flight idle stop in accordance with Saab Service Bulletin 340–76–031, Revision 04, dated February 25, 1996.

Note 3: Accomplishment of this modification prior to the effective date of this AD in accordance with previous revisions of Saab Service Bulletin 340–76–031 is considered acceptable for compliance with this paragraph.

(2) Install a control unit with a wheel spin-up signal in accordance with Saab Service Bulletin 340–32–100, Revision 02, dated March 25, 1996.

Note 4: Accomplishment of this installation prior to the effective date of this AD in accordance with previous revisions of Saab Service Bulletin 340–32–100 is considered acceptable for compliance with this paragraph.

(3) Install an automatic flight idle stop on the control quadrant in the flight compartment in accordance with Saab Service Bulletin 340–76–032, Revision 03, dated March 25, 1996.

Note 5: Accomplishment of this installation prior to the effective date of this AD in accordance with previous revisions of Saab Service Bulletin 340–76–032 is considered acceptable for compliance with this paragraph.

Note 6: Paragraph 2.A. of the Accomplishment Instructions of Saab Service Bulletin 340–76–032 specifies procedures for removal of a mechanical beta stop mechanism from the airplane. Since installation of a mechanical beta stop mechanism was not previously required for all airplanes by AD, that mechanism may not have been installed on certain airplanes affected by this AD. In such cases, procedures for removal of the mechanical beta stop would not apply.

(b) In cases where the automatic flight idle (FI) stop has malfunctioned and/or use of the FI stop override has been necessary, the airplane may be operated for one revenue flight to a location where required maintenance/repair can be performed, provided that the FI stop system has been properly deactivated and placarded for flight crew awareness in accordance with the provisions of the FAA-approved Master Minimum Equipment List (MMEL).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification and installations shall be done in accordance with Saab Service Bulletin 340–76–031, Revision 04, dated February 25, 1996; Saab Service Bulletin 340–32–100, Revision 02, dated March 25, 1996; and Saab Service Bulletin 340–76–032, Revision 03, dated March 25, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 4, 1996.

Issued in Renton, Washington, on August 21, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22009 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act") requires that all packaging and advertising for smokeless tobacco products display one of three health warnings in rotating sequence. On January 16, 1993, the Commission published a Notice of Proposed Rulemaking seeking public comment on a method for rotating the health warnings on promotional materials based on the date of dissemination of the materials. On February 14, 1995, the Commission published another Notice of Proposed Rulemaking seeking public comment on a proposal to permit rotation of warnings on utilitarian items based on either the date of order or the date of dissemination of the items, provided the production of such items is carried out in a manner consistent with customary business practices.

Having considered all of the issues raised during the two public comment periods, the Commission is now amending the regulations governing utilitarian items and the regulations governing promotional materials to permit rotation based on either the date of order or the date of dissemination, provided the production of such items or materials is carried out in a manner consistent with customary business practices. This document contains the statement of basis and purpose and the text of the final regulations.

EFFECTIVE DATE: The effective date of these regulations will be September 30, 1996.

ADDRESSES: Requests for copies of the regulations and the statement of basis and purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave. NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, Division of Advertising Practices, Federal Trade

Commission, 6th & Pennsylvania Ave. NW, Washington, DC 20580. (202) 326–2484.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

Congress enacted the Comprehensive Smokeless Tobacco Health Education Act of 1986 for the express purpose of educating the public about the health consequences of using smokeless tobacco products. (Public Law No. 99–252, 100 Stat. 30 (1986), 15 U.S.C. 4401 *et seq.*). To achieve this end, the Act required the random display of three warnings on the packaging and the rotation of these warnings in the advertising of smokeless tobacco products.

Specifically, the Smokeless Tobacco Act mandated that one of the following three health warnings appear in the labeling and advertising (with the exception of outdoor billboard advertising) of smokeless tobacco products:

Warning: This product may cause mouth cancer.
Warning: This product may cause gum disease and tooth loss.
Warning: This product is not a safe alternative to cigarettes.

The Commission's original regulations applying the Act to promotional materials provided that "[a] satisfactory plan for point-of-sale and non-point-of-sale promotional materials * * * could provide for rotation according to the time that the material is scheduled to be disseminated or the order date for the material." 51 Fed. Reg. 40005, 40023 (1986). Point-of-sale materials include shelf-talkers (a card or brochure attached to the shelf where the product is located in a retail outlet), rack header cards (cards identifying a particular smokeless brand on semi-circular racks displaying cans of snuff), and tear pads. Non-point-of-sale materials include direct mail circulars, coupons, leaflets and pamphlets.

The Commission's original regulations exempted utilitarian items from the regulations governing the rotation and display of the health warnings. The exemption for utilitarian items was challenged in court, and the court ultimately ordered the Commission to delete the exemption.[1] Accordingly, in 1991, the Commission issued final regulations setting out requirements for the rotation and display of health warnings on utilitarian items. During its consideration of the 1991 rulemaking proceeding, the Commission became concerned that companies could order a year's supply of utilitarian items at one time, and thereby display only one warning over an entire year. The Commission also was concerned that this apparent loophole could likewise apply to promotional materials. Thus, the Commission amended its regulations governing rotation of both promotional objects and utilitarian objects, and called for "rotation according to the date the materials or objects are disseminated." The Commission noted, however, that this could impose a hardship on a company that was unable to foresee its distribution schedule when placing the order. To alleviate this hardship, the rule also permitted rotational plans whereby each warning would be displayed on an equal number of objects comprising any given order. Under this option, for promotions lasting one year or longer, the company could distribute promotional materials or utilitarian items bearing the same warning for four months, and then switch to another warning. If the promotion was scheduled to last less than one year, the materials or items bearing the various warnings could be distributed randomly.

With regard to promotional materials, the Commission published this rule for additional public comment on January 16, 1993. The initial comment period was to expire on February 16, 1993, but the Commission extended the deadline until March 23, 1993. During this time, the Commission received five comments. Four of the comments were from manufacturers of smokeless tobacco products, and one was from a trade association representing the manufacturers.

On February 14, 1995, the Commission published a Notice of Proposed Rulemaking seeking comment on whether the requirements for rotating the health warnings on utilitarian items should be amended. The proposed rule permitted the rotation of warnings on utilitarian items according to either the date the item is ordered or the date of dissemination, provided that the production of the materials is carried out consistent with customary business practices. The Commission received four comments, all of which supported the proposed rule. All four comments were from manufacturers of smokeless tobacco products.

II. The Regulations

The Commission's original regulations were written, for the most part, as creating safe harbors rather than imposing mandatory requirements for compliance with the Smokeless Tobacco Act. The regulations issued in 1991 with respect to utilitarian items and promotional materials and those proposed again in 1993 regarding promotional materials removed the safe harbor provisions, and specified that the appropriate warning would be determined by the date the materials were scheduled for dissemination, with a limited option for random display. The comments the Commission received indicated that requiring rotation based on date of dissemination, even with the limited option for random display, was likely to impose additional, possibly significant, costs on smokeless tobacco manufacturers and their suppliers. Both the date of dissemination requirement and the more flexible date of order safe harbor appear likely to meet the chief benefit intended by the regulations: Providing a system for the rotation of health warnings as required by the Smokeless Tobacco Act. Consequently, the Commission is returning to the previous more flexible approach and specifying safe harbors for complying with the Smokeless Tobacco Act's warning requirements by amending the regulation governing utilitarian items, and retaining the present rotation schedule for promotional materials except for the amendment that such materials be produced in accordance with customary business practices. With these amendments, the regulations governing the rotation of warnings for utilitarian items will mirror those for promotional materials.

Given the practical constraints associated with the production and dissemination of utilitarian items and those for promotional materials, the Commission believes that the industry should be given some flexibility in conforming the rotation requirements to these types of advertising, while at the same time ensuring that the warnings rotate as required by the Smokeless Tobacco Act. If, however, there is a pattern of abuse or confusion suggesting that the safe harbors do not provide for adequate rotation of the warnings, the Commission will reconsider whether it is necessary to promulgate regulations providing less flexibility and more specificity. In particular, the Commission may reconsider whether to impose the mandatory date of dissemination requirement for the rotation of both utilitarian items and promotional materials.

A. Comments Regarding the Rotation of Utilitarian Items

The comments indicate that producing utilitarian items that comply with a rotation standard based upon

[1] *Public Citizen* v. *FTC*, 869 F.2d 1541 (D.C. Cir. 1989), aff'g, 588 F. Supp. 667 (D.D.C. 1988).

date of dissemination is expensive and imposes burdens on the smokeless tobacco manufacturers. According to one comment, the date of dissemination requirement is burdensome due to the difficulty of predicting the demand for any item in advance. This comment notes that such prediction is difficult both because methods of forecasting demand are imprecise and because premium promotions offering utilitarian items often change during the course of the promotion due to competitive conditions.[2] Several comments state that the date of dissemination requirement requires companies to order an excess supply of utilitarian items to ensure that the supply is not exhausted before the promotion ends.[3] These comments likewise state that the need to order an excess supply of items adds both warehousing and inventory costs (both in terms of manpower and facilities).[4] And, as inventory costs increase, so do freight costs, according to these comments. Another comment states that its inability to accurately forecast demand as well as the lead time needed to order items adds planning and administrative costs, including added costs of coordinating with suppliers, warehousing inventory, tracking inventory, and distributing items.[5]

B. Comments Regarding the Rotation of Promotional Materials

The comments from the smokeless tobacco manufacturers are similar to those for utilitarian items. The comments state that the companies exercise very little control over the actual rate or date of dissemination of promotional materials.[6] In addition, to comply with the proposed date of dissemination requirement, manufacturers would need to produce most of their materials in significantly larger quantities to ensure an adequate supply of materials with each of the warnings. This would increase their production expenses, as well as the cost of shipping, warehousing, and distributing the materials.[7] Several companies might also need to hire additional employees to handle the increased workload.[8] Further, much of the additional burden would fall on the businesses that produce and supply the materials to the tobacco companies. While these businesses would likely pass on their increased costs to their customers, some of these suppliers might lack the resources to meet the increased production requirements, thus forcing them to lose a significant portion of their business.

According to some of the comments, the proposed regulations would also raise environmental issues by increasing the amount of waste generated in producing materials.[9] To comply with the proposed requirements, manufacturers of smokeless tobacco would need to order greater quantities of materials displaying each different warning label. Rather than being able to exhaust the existing supply of materials before re-ordering, companies would need to switch to materials printed with a different warning on the specified date, and throw out or otherwise destroy all of the remaining materials with the outdated warning. According to the comments, this would only add to the nation's growing environmental concerns.[10]

C. Commission Conclusions

Based on its review of these comments, the Commission believes it is appropriate to adopt a rotation method that allows rotation to be based on either the date of order or the date of dissemination, as long as "the production of such materials is carried out in a manner consistent with customary business practices." Such a method will fulfill the purpose of the Smokeless Tobacco Act and prevent manufacturers from circumventing the rotation requirement without imposing a substantial hardship on the manufacturers and their suppliers. Almost all of the members of the industry have demonstrated their ability to comply with a rotation requirement based on the date of order by submitting rotational plans that follow this schedule. Moreover, the addition of the requirement that production be based upon business considerations will ensure that permitting rotation based on date of order will not frustrate the Act's requirement that the warnings rotate. The inclusion of this "caveat" is intended to inhibit bulk-ordering by companies to avoid any one particular warning.[11]

Some comments suggest that the Commission could lessen the burden on the smokeless tobacco manufacturers by allowing for the random simultaneous display of the various warnings on promotional materials. The Smokeless Tobacco Act and the Commission's regulations specifically permit random simultaneous display for packaging. However, the Smokeless Tobacco Act expressly provided for different methods of assuring the rotation of the three warnings for packaging and advertising. On packaging, the Act specifies that the warnings be displayed randomly in as equal a number of times as possible. In advertising, however, the Act mandates the rotation of the three warnings in alternating sequence every four months. While random simultaneous display may meet the Act's directives applicable to packaging, it generally would not appear to satisfy the prescribed rotation in alternating sequence in advertising. The Commission, therefore, concludes that the regulations should not provide for random simultaneous display of either utilitarian items or promotional materials.[12]

Thus, the Commission's final regulations provide that the rotation of the health warnings on utilitarian items and promotional materials may be based upon either the date of order or the date of dissemination of the materials, provided that the items or materials are produced in accordance with customary business practices.

III. Regulatory Flexibility Act

When the Commission first promulgated the smokeless tobacco regulations, the agency certified that the Regulatory Flexibility Act's requirement for regulatory analysis was not applicable because the regulation did

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[2] Comment of Pinkerton at 5 (April 17, 1995).

[3] Comments of Conwood at 3 (April 17, 1995); Pinkerton at 6 (April 17, 1995).

[4] Comment of Pinkerton at 6 (April 17, 1995).

[5] Comment of United States Tobacco Co. at 9 (April 11, 1995).

[6] Comments of Conwood at 2–3 (April 17, 1993); Smokeless Tobacco Council at 3 (March 18, 1993); Pinkerton at 5 (March 17, 1993).

[7] Comments of Helme at 2 (March 5, 1993); United States Tobacco Co. at 10–11 (March 18, 1993); Pinkerton at 3–4 (March 17, 1993).

[8] Comments of Smokeless Tobacco Council at 6 (March 18, 1993); United States Tobacco Co. at 18–20 (March 18, 1993); Conwood at 5 (March 16, 1993); Pinkerton at 4 (March 17, 1993); Helme at 2 (March 5, 1993).

[9] Comment of Conwood at 6 (March 16, 1993).

[10] *Id.*

[11] Such bulk-ordering was raised as a concern during the Commission's 1991 rulemaking regarding the rotation of warnings on smokeless tobacco utilitarian items. 56 FR 11653, 11659 (1991).

[12] In 1965, the Commission reached a similar conclusion with respect to the rotation of warnings on *cigarette packaging*. The Comprehensive Smoking Education Act ("Cigarette Act") specified that the four statutory health warnings had to rotate quarterly. 15 U.S.C. 1331(c). Pursuant to the Cigarette Act, the cigarette companies submitted a rotational warning plan that called for the random simultaneous display of the warnings on cigarette packages. The Commission rejected this proposal, notifying the companies and the relevant committees of Congress of its action. Subsequently, the Congress amended the rotational warning requirements of the Cigarette Act to allow simultaneous rotation on packaging only for those cigarette companies that sold less than one-fourth of one percent of all cigarettes sold in the United States. The Nurse Education Amendments of 1985, Pub. L. 99–92, 99 Stat. 393, 402–403 (1985). The same Congress later enacted the Smokeless Tobacco Act, with its different rotational warning schemes for smokeless tobacco packages and for smokeless tobacco advertisements.

not appear to have a significant economic impact on a substantial number of small entities. 51 FR 40005, 40014 (1986). In its subsequent Notice, the Commission noted that the proposed amendments did not change the regulations sufficient to alter its previous "no impact" determination; nonetheless, to ensure that no substantial impact was being overlooked, the Commission requested public comment on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small entities. 54 FR 31541 (1989).

Two of the comments received during the comment period for promotional materials discussed the effect that regulations requiring rotation based upon date of dissemination would have on small businesses. The Smokeless Tobacco Council noted that smaller smokeless tobacco manufacturers may be unable to absorb any additional production costs, and may eliminate their promotional programs. The Smokeless Tobacco Council and Conwood Tobacco Company noted that small suppliers may be unable to make the necessary adjustments. No other comments on burden were received during the 1993 comment period for promotional materials and no comments on burden were received during the 1995 comment period for utilitarian items. By permitting rotation based upon date of order or date of dissemination, the final regulations will avoid any of these potential burdens on small entities. Thus, the Commission certifies that the amendments will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b) (1982).

IV. Effective Date

During the comment period concerning the proposed regulations for promotional items, the Commission received two comments requesting that if the Commission adopts a requirement that promotional items rotate according to the date of dissemination, the Commission include a grandfather clause delaying the effective date of the rule for at least two years from publication of the final rule, to enable companies to use up their existing inventory of materials, and to allow suppliers time to make the necessary adjustments.[13] The Commission, however, does not believe that any grandfather period is necessary given the flexibility permitted by the amended regulations. In addition, the Commission notes that the major smokeless tobacco manufacturers have all previously filed plans calling for rotation based on date of order, one of the permitted methods of rotation under the amended regulations. However, the Commission will provide thirty (30) days for companies to come into compliance with these amendments. Thus, the effective date for the regulations governing the date that serves as the basis for rotating warnings on promotional materials is thirty (30) days from the date of publication of the final rule.

[13] Comments of Smokeless Tobacco Council at 7 (March 18, 1993); United States Tobacco Co. at 23 (March 18, 1993).

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, Part 307 of 16 CFR Chapter I is amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for Part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.12(b) is revised to read as follows:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * * *

(b) Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every four (4) months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each four-month period or require each brand to display a different warning during a given four-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each four-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point-of-sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items, or for utilitarian objects, could provide for rotation according to the date the materials or objects are ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–22221 Filed 8–29–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 85G–0335]

Direct Food Substances Affirmed as Generally Recognized as Safe; Enzyme-Modified Lecithin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that the use of enzyme-modified lecithin as a direct human food ingredient is generally recognized as safe (GRAS). This action is in response to a petition filed by Kyowa Hakko Kogyo Co., Ltd.

DATES: Effective August 30, 1996. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of two publications listed in new § 184.1063, effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35),

Kyowa Hakko Kogyo Co., Ltd., Tokyo, Japan, submitted a petition (GRASP 5G0301) proposing that enzyme-modified lecithin be affirmed as GRAS as a direct human food ingredient.

FDA published a notice of filing of this petition in the **Federal Register** of August 27, 1985 (50 FR 34758), and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. FDA received two comments in response to that notice. One of the comments stated that the specifications proposed by the petitioner for enzyme-modified lecithin did not agree with the specifications for lecithin in the Food Chemicals Codex, 3d ed. (1981) and argued that because of the differences in the specifications, enzyme-modified lecithin should be the subject of a food additive petition rather than a GRAS affirmation petition. FDA finds that the specifications of enzyme-modified lecithin need not agree with those of lecithin, because the two substances are chemically different. The agency further concludes that the differences between the specifications should not affect the classification of this petition. The second comment endorsed the petitioned use of enzyme-modified lecithin. Subsequently, the same commenter requested that FDA regulate enzyme-modified lecithin under the existing GRAS affirmation regulation for lecithin (§ 184.1400) (21 CFR 184.1400)). The agency concludes that because the chemical composition of enzyme-modified lecithin is different than that of lecithin, enzyme-modified lecithin should be regulated separately.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). In its petition, Kyowa Hakko Kogyo Co., Ltd., relies on scientific procedures, primarily published scientific papers and books, corroborated by unpublished information, to demonstrate that enzyme-modified lecithin is GRAS.

III. Identity, Production, and Technical Effect

Lecithin is a complex mixture primarily composed of phospholipids, triglycerides, fatty acids, and carbohydrates (Refs. 1 and 2). The removal of most of the triglycerides and fatty acids of lecithin produces an "oil-free" or "deoiled" lecithin with a 90 percent or more phospholipid content. The enzyme phospholipase A_2, identified with the Enzyme Commission (EC) number EC 3.1.1.4, converts the principal phospholipids of lecithin to their corresponding lysophospholipids. This reaction produces enzyme-modified lecithin (Refs. 3 through 6).

Enzyme-modified lecithin is prepared from various types of crude or deoiled lecithin, using either purified phospholipase A_2 or pancreatin, an enzyme preparation from porcine pancreas that contains phospholipase A_2. Added calcium chloride supplies calcium ions required for the activation of phospholipase A_2. The process is carried out at pH 6 to 10 and within the temperature range of 30 to 70°C. At completion, phospholipase A_2 is inactivated by raising the temperature to 90 to 100°C.

The resulting enzyme-modified lecithin contains lysophospholipids and fatty acids produced by the enzymic reaction, as well as other components of lecithin (e.g., phospholipids, carbohydrates). Inactivated phospholipase A_2 and calcium chloride are also present in enzyme-modified lecithin. The exact composition of enzyme-modified lecithin varies depending on the type and the composition of lecithin used and on the degree of modification of lecithin achieved during the production of enzyme-modified lecithin (Ref. 7).

The petitioner intends to use enzyme-modified lecithin as an emulsifier in various foods, including bakery products, pasta products, margarine, mayonnaise, and salad dressings. The petition contains a published report and several patents demonstrating the effectiveness of enzyme-modified lecithin as an emulsifier in foods (Refs. 4, 5, 6, 8, and 9).

IV. Safety Evaluation

In evaluating the safety of enzyme-modified lecithin, the agency considered the following issues: (1) The safety of lecithin and phospholipase A_2, (2) the safety of enzyme-modified lecithin, (3) exposure to levels of the ingredient in food, and (4) specifications.

A. The Safety of Lecithin and Phospholipase A_2

FDA has affirmed lecithin as GRAS (§ 184.1400). Therefore, the agency has no safety concerns about the use of lecithin for the manufacture of enzyme-modified lecithin.

Phospholipase A_2 is one of the digestive enzymes present in the pancreatic juice of mammals, including humans (Refs. 10 through 12). Phospholipase A_2 is irreversibly inactivated by heat at the end of the manufacture of enzyme-modified lecithin. Active and inactive enzymes are constituents of many foods normally consumed by humans. Therefore, FDA concludes that inactive phospholipase A_2 in enzyme-modified lecithin will be digested like any other protein present in food. The agency also notes that calcium chloride, which is used to activate phospholipase A_2 during the production of enzyme-modified lecithin, has been affirmed as GRAS (21 CFR 184.1193).

B. The Safety of Enzyme-Modified Lecithin

The end products of the modification of lecithin by phospholipase A_2 are lysophospholipids and fatty acids. Fatty acids are normal constituents of lecithin. They also occur naturally in many foods and form in the human body during normal cellular metabolism (Refs. 11 and 12). FDA has approved the use of salts of fatty acids as binders, emulsifiers and anticaking agents in food (21 CFR 172.863). Therefore, the agency has no safety concerns about the presence of fatty acids in enzyme-modified lecithin.

Numerous published reports establish that the lysophospholipids produced during the manufacture of enzyme-modified lecithin also occur naturally in a variety of foods, especially in cereal grains and eggs (Refs. 13 through 19). Furthermore, these lysophospholipids form in the human body from the action of pancreatic phospholipase A_2 on dietary lecithin (Refs. 11 and 12).

FDA reviewed several published studies suggesting that under certain pathologic conditions the intestinal fluid containing lysophospholipids may regurgitate into the stomach and damage the stomach mucosal tissue (Refs. 12 and 20 through 23). The agency evaluated these studies in light of the possible adverse effects of enzyme-modified lecithin ingested in food. FDA concludes that the results of the studies suggesting that regurgitated lysophospholipids may damage the

stomach mucosal tissue are not relevant to the food ingredient uses of enzyme-modified lecithin, because the lysophospholipids present in enzyme-modified lecithin will be emulsified within a large excess of undigested food, which would provide a physical barrier to direct interaction of the lysophospholipids with the mucosal lining.

Moreover, in 1979, the Select Committee on GRAS Substances reviewed the available information on the metabolism of lecithin, including its breakdown to lysophospholipids in the human body, and concluded that there was no evidence of a hazard to the public from the use of lecithin in food at existing levels or levels that might reasonably be expected in the future (Ref. 24).

FDA also reviewed one published animal feeding study included in the petition (Ref. 6). During this study two groups of rats were fed for 3 and 13 weeks, respectively, diets containing various doses of enzyme-modified lecithin. The results of this study did not reveal any significant adverse effects in rats attributable to enzyme-modified lecithin.

Furthermore, the petitioner provided one unpublished corroborative feeding study. During this study enzyme-modified lecithin was administered to rats at a dose of 2,000 milligrams per kilogram body weight per day (mg/kg bw/d) for 30 days, followed by 6 days per week for 60 days, for a total of 90 days. The results of this study did not reveal any adverse effects on the gastric mucosa of the rats or any other significant adverse effects attributable to enzyme-modified lecithin.

C. Estimated Exposure Levels

Based on the petitioner's intended use of enzyme-modified lecithin in a manner similar to lecithin, and using information on consumption of various food categories containing lecithin (Ref. 25), the agency calculated the estimated daily intake (EDI) of enzyme-modified lecithin as 326 mg/person/d.

Moreover, the data obtained in the published 13-week rat feeding study (Ref. 6) showed no adverse effects at a level of 20 grams enzyme-modified lecithin/kg bw/d. Application of a 1,000-fold safety factor to this value produces, for a 60 kg person, an acceptable daily intake of 1,200 mg enzyme-modified lecithin/person/d, which exceeds the EDI reported above (326 mg/person/d).

D. Specifications

FDA reviewed the specifications for enzyme-modified lecithin suggested in the petition. The agency notes that the petitioner originally suggested a lead limit of not more than 10 parts per million. However, after discussions with FDA about the agency's desire to limit human exposure to lead to the lowest level possible in food (see 59 FR 5363, February 4, 1994), the petitioner amended the petition to suggest a lead limit of not more than 1.0 part per million. FDA agrees that this lower limit should be adopted. Also, the agency notes that in a notice published in the **Federal Register** of March 14, 1994 (59 FR 11789), the National Academy of Sciences/Institute of Medicine Committee on Food Chemicals Codex (the Committee) announced its new policy that inclusion of arsenic limits in Food Chemicals Codex monographs should no longer be routine, but should be considered on an "as-needed" basis. To implement this new policy, the Committee proposed to delete the arsenic specification for various Food Chemicals Codex substances, including lecithin. The proposal became final when the fourth edition of the Food Chemicals Codex was published in 1996. FDA agrees that a specification for arsenic in enzyme-modified lecithin is not necessary. Therefore, no such specification is being adopted in this final rule. FDA concludes that the other specifications suggested in the petition should be adopted.

V. Conclusion

FDA has evaluated the published information in the petition, along with other corroborative information, and finds that the use of enzyme-modified lecithin as an emulsifier in foods is GRAS.

Furthermore, these data show no potential risk from any foreseeable use of enzyme-modified lecithin. Therefore, in accordance with 21 CFR 184.1(b)(1), the agency is affirming that the use of enzyme-modified lecithin in foods is GRAS with no limits other than current good manufacturing practice.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental impact analysis report submitted under previous 21 CFR part 25, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Analysis of Impacts

FDA has examined the economic implications of this final rule affirming the GRAS status of the use of enzyme-modified lecithin in foods under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety issues; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the significant economic impact of the rule on small entities. This final rule recognizes the applicability of a statutory exemption. The impact of the rule is to remove uncertainty about the regulatory status of enzyme-modified lecithin for use in foods. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Scholfield, C. R., "Composition of Soybean Lecithin," *Journal of American Oil Chemists' Society*, 58:889–892, 1981.

2. Rydhag, L., "The Importance of the Phase Behaviour of Phospholipids for Emulsion Stability," *Fette Seifen Anstrichmittel*, 81:168–173, 1979.

3. Van Nieuwenhuyzen, W., "The Industrial Uses of Special Lecithins: A Review," *Journal of American Oil Chemists' Society*, 58:886–888, 1981.

4. Lincklaen, H. W., and J. H. M. Rek, "Pourable Emulsion," U.S. Patent 3,796,815, March 12, 1974.

5. Van Dam, A. F., "Emulsions," U.S. Patent 4,034,124, July 5, 1977.

6. Dutilh, C. E., and W. Groger, "Improvement of Product Attributes of Mayonnaise by Enzymic Hydrolysis of Egg Yolk with Phospholipase A_2," *Journal of Science of Food and Agriculture*, 32:451–458, 1981.

7. Pardun, H., "Advances in the Extraction and Processing of Phytolecithins," *Fette Seifen Anstrichmittel*, 84:1–29, 1982.

8. Pardun, H., "Phosphatide Emulsifiers," U.S. Patent 3,661,795, May 9, 1972.

9. Van Dam, A. F., "Oil-in-Water Emulsion and Process for the Preparation Thereof," U.S. Patent 4,119,564, October 10, 1978.

10. De Haas, G. H., N. M. Postema, W. Nieuwenhuizen, and L. L. M. Van Deenen, "Purification and Properties of Phospholipase A from Porcine Pancreas," *Biochimica et Biophysica Acta*, 159:103–117, 1968.

11. Rossiter, R. J., "Metabolism of Phosphatides," in "Metabolic Pathways," edited by D. M. Greenberg, vol. II, pp. 69–115, Academic Press, New York, 1968.

12. Johnson, A. G., and S. J. McDermott, "Lysolecithin: A Factor in the Pathogenesis of Gastric Ulceration?" *Gut*, 15:710–713, 1974.

13. Acker, L., and G. Becker, "On the Subject of the Grain Starch Lipids," *Gordian*, 72:275–278, 1972.

14. Hargin, K. D., and W. R. Morrison, "The Distribution of Acyl Lipids in the Germ, Aleurone, Starch and Non-starch Endosperm of Four Wheat Varieties," *Journal of Science of Food and Agriculture*, 31:877–888, 1980.

15. Morrison, W. R., D. L. Mann, W. Soon, and A. M. Coventry, "Selective Extraction and Quantitative Analysis of Non-starch and Starch Lipids from Wheat Flour," *Journal of Science of Food and Agriculture*, 26:507–521, 1975.

16. Clayton, T. A., and W. R. Morrison, "Changes in Flour Lipids During the Storage of Wheat Flour," *Journal of Science of Food and Agriculture*, 23:721–736, 1972.

17. Mano, Y., and Y. Fujino, "Combined Lipid in Rice Starch," *Denpun Kagaku*, 22:1–5, 1975.

18. Tan, S. L., and W. R. Morrison, "The Distribution of Lipids in the Germ, Endosperm, Pericarp and Tip Cap of Amylomaize, LG–11 Hybrid Maize and Waxy Maize," *Journal of American Oil Chemists' Society*, 56:531–535, 1979.

19. Weihrauch, J. L., and Y. Son, "The Phospholipid Content of Foods," *Journal of American Oil Chemists' Society*, 60:1971–1978, 1983.

20. Davenport, H. W., "Effect of Lysolecithin, Digitonin, and Phospholipase A upon the Dog's Gastric Mucosal Barrier," *Gastroenterology*, 59:505–509, 1970.

21. Bolin, T., L. Franzén, R. Sjödahl, and C. Tagesson, "Passage of Molecules Through the Wall of the Gastrointestinal Tract," *Scandinavian Journal of Gastroenterology*, 21:441–448, 1986.

22. Salo, J. A., H. Myllärniemi, and E. Kivilaakso, "Morphology of Lysolecithin-Induced Damage on Esophageal Mucosa," *Journal of Surgical Research*, 42:290–297, 1987.

23. Ritchie, W. P., "Other Causes of GI Mucosal Injury: Upper Intestinal Content," *Clinical and Investigative Medicine*, 10:264–269, 1987.

24. Select Committee on GRAS Substances, "Evaluation of the Health Aspects of Lecithin as a Food Ingredient," Report No. 106, Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, Maryland, 1979.

25. Memorandum from the Food Additive Chemistry Evaluation Branch to the GRAS Review Branch, June 3, 1985.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 184.1063 is added to subpart B to read as follows:

§ 184.1063 Enzyme-modified lecithin.

(a) Enzyme-modified lecithin is prepared by treating lecithin with either phospholipase A_2 (EC 3.1.1.4) or pancreatin.

(b) The ingredient meets the specifications in paragraphs (b)(1) through (b)(8) of this section. Unless otherwise noted, compliance with the specifications listed below is determined according to the methods set forth for lecithin in the Food Chemicals Codex, 4th ed. (1996), pp. 220–221, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(1) Acetone-insoluble matter (phosphatides), not less than 50.0 percent.

(2) Acid value, not more than 40.

(3) Lead, not more than 1.0 part per million, as determined by atomic absorption spectroscopy.

(4) Heavy metals (as Pb), not more than 20 parts per million.

(5) Hexane-insoluble matter, not more than 0.3 percent.

(6) Peroxide value, not more than 20.

(7) Water, not more than 4.0 percent.

(8) Lysolecithin, 50 to 80 mole percent of total phosphatides as determined by "Determination of Lysolecithin Content of Enzyme-Modified Lecithin: Method I," dated 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an emulsifier as defined in § 170.3(o)(8) of this chapter.

(2) The ingredient is used at levels not to exceed current good manufacturing practice.

Dated: July 31, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22246 Filed 8–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 623

[AR 700–131]

Loan of Army Materiel and Property Returns; Correction

AGENCY: Department of the Army, DoD.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published on September 18, 1980 (45 FR 62038) the regulations related to the process of Army property returns.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Showalter, U.S. Army Publications and Printing Command, ATTN: ASQZ–PDS, 2461 Eisenhower Ave., Alexandria, VA 22331, or telephone: (703) 428–0567.

SUPPLEMENTARY INFORMATION: The final regulation being corrected is § 623.5. In this section paragraphs (c)(5) (A) through (D) are incorrectly designated.

Need for Correction

As published, the final regulation contains errors which may be misleading and are in need of clarification.

List of Subjects in 32 CFR Part 623

Accordingly, 32 CFR part 623 is corrected by making the following correcting amendments:

PART 623—LOAN OF ARMY MATERIEL

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 2571; 31 U.S.C. 686; 10 U.S.C. 2667.

§ 623.5 [Corrected]

2. In § 623.5, paragraphs (c)(5)(A) through (c)(5)(D) are redesignated as paragraphs (c)(5)(i) through (c)(5)(iv).

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–22170 Filed 8–29–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–95–169]

RIN 2115–AE46

Special Local Regulation: Provincetown Harbor Swim for Life, Provincetown, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for a swimming event known as the Provincetown Harbor Swim for Life. The event will be held on September 7, 1996, and annually thereafter on a date and times published in a **Federal Register** document. This regulation is needed to protect the participants from transiting vessel traffic during the swimming event.

EFFECTIVE DATE: This regulation is effective on September 7, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James B. Donovan, Office of Search and Rescue, First Coast Guard District, (617) 223–8268.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking (NPRM) was published on March 20, 1996, (61 FR 11352) proposing the establishment of a permanent special local regulation for the annual swimming benefit Provincetown Harbor Swim for Life. The NPRM proposed to restrict vessels from approaching within 200 feet of any participating swimmer to ensure the safety of participants during the event. No comments were received and no hearing was requested. This rule varies from the NPRM in one regard; it provides the date and time of the 1996 event and provides for the dates and times of future events to be published in a **Federal Register** document.

Background and Purpose

The annual Provincetown Harbor Swim for Life benefit is a local, traditional event which has been held for several years in Provincetown Harbor, Provincetown, MA. In the past, the Coast Guard has promulgated individual regulations for each year's event. Given the recurring nature of the event, the Coast Guard is establishing a permanent regulation. This rule establishes a regulated area in Provincetown Harbor, Cape Cod Bay, and provides specific guidance to control vessel movement during the event. This rule restricts vessels from approaching within 200 feet of participating benefit swimmers.

The event will consist of approximately 150 swimmers traveling 1.4 miles from Long Point Lighthouse to a point 200 yards east of the Coast Guard pier. There will be approximately 25–30 support boats on scene to augment a Coast Guard patrol to alert boating traffic of the presence of the swimmers. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or Coast Guard designated vessel for vessels requiring transit within 200 feet of participating swimmers.

Good cause exists for providing for this rule to become effective in less than 30 days after **Federal Register** publication. Due to the need to provide the opportunity for notice and comment in the NPRM, there is insufficient time to publish this rule 30 days before the event is scheduled to begin. The Coast Guard believes delaying the event in order to provide a 30 day delayed effective date would be contrary to the public interest given this event's local popularity.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the event, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B,

(as revised by 61 FR 13563, March 27, 1996) this rule is a special local regulation issued in conjunction with a regatta or marine parade and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section, 100.113, is added to read as follows:

§ 100.113 Provincetown Harbor Swim for Life, Provincetown, MA.

(a) *Regulated Area.* All waters of Provincetown Harbor within 200 feet of participating benefit swimmers.

(b) *Special Local Regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is effective on September 7, 1996, from 10 a.m. to 4 p.m. and annually thereafter on a date and times published in a **Federal Register** document. If the event is canceled due to weather, this regulation is effective the following day at the same times.

Dated: August 22, 1996.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 96–22210 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–96–072]

RIN 2121–AA97

Safety Zone: New York Super Boat Race, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the lower Hudson River, for the New York Super Boat Race. The temporary safety zone will be in effect on Sunday, September 8, 1996, from 12 p.m. until 4 p.m. unless extended or terminated sooner by the Captain of the Port, New York. The safety zone will close the entire Lower Hudson River between Battery Park and Pier 76 in Manhattan.

EFFECTIVE DATE: This rule is effective from 12 p.m. until 4 p.m. on Sunday, September 8, 1996, unless extended or terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant John W. Green, Waterways Oversight Branch Chief, Coast Guard Activities New York at (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 5, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 40587). Interested persons were requested to submit comments on or before August 20, 1996. The Coast Guard received four comments on this proposal. A public hearing was not requested and one was not held. The Coast Guard is promulgating the final rule as proposed. Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the NPRM comment period deemed necessary to give the public adequate notice, there was insufficient time to publish this temporary final rule 30 days prior to the event. The delay that would be encountered to allow for a 30 day delayed effective date would cause the cancellation of this event. Cancellation of this event is contrary to the public interest since this event is intended for public entertainment.

Background and Purpose

Super Boat Racing Inc. submitted an Application for Approval of Marine Event for a Super Boat Race in the waters of the Lower Hudson River. This event will include up to 45 powerboats, 40 to 50 feet in length, racing on an 8 mile oval course at speeds in excess of 100 mph. No more than 100 spectator craft are expected for the event. This regulation establishes a temporary safety zone in the waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan to a point in Weehawken, New Jersey at 40°45′52″ N latitude, 74°01′01″ W longitude, and north of a line connecting the following points:

Latitude	*Longitude*
40°42′16.0″ N	74°01′09.0″ W, then south to
40°41′55.0″ N	74°01′16.0″ W, then west to
40°41′47.0″ N	74°01′36.0″ W, then northwest to
40°41′55.0″ N	74°01′59.0″ W, then to shore at
40°42′20.5″ N	74°02′06.0″ W (NAD 1983)

The safety zone will be effective on Sunday, September 8, 1996, from 12 p.m. until 4 p.m., unless extended or terminated sooner by the Captain of the Port New York. This section prohibits all vessels and persons from entering the safety zone unless authorized by the Coast Guard Captain of the Port. The safety zone is needed to protect mariners from the hazards associated with high speed boat races.

Discussion of Comments and Changes

Of the four comments received, two were from companies operating sightseeing cruises, one was from a company operating an excursion boat, and one was from a ferry company. Three requested limited access through the safety zone in order to meet commitments previously reserved by paying customers and one requested the race route be moved in order for its ferryboat to meet a published schedule. All responses were considered and limited access was granted to meet the majority of the responders needs. Movement of the race course was not possible nor warranted and the ferryboat company was provided limited access in order to meet its operating schedule.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and

Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone will close all waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan to a point located directly opposite on the New Jersey shoreline and north of a line drawn between Battery Park in Manhattan and the southern most point of Ellis Island in the Upper New York Bay on Sunday, September 8, 1996, from 12 p.m. until 4 p.m. This portion of the Hudson River experiences moderate commercial and recreational marine traffic. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: limited access has been arranged with time-sensitive commercial traffic; the volume of commercial vessel traffic transiting the Lower Hudson River on a Sunday is less than half of the normal daily traffic volume; pleasure craft desiring to view the event will be directed to designated spectator viewing areas outside the safety zone; pleasure craft can take an alternate route through the East River and the Harlem River; the duration of the event is limited to four hours; and the extensive advisories which will be made to the affected maritime community by Local Notice to Mariners, Safety Voice Broadcast, and facsimile notification.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (21 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–072, is added to read as follows:

§ 165.T01–072 Safety Zone; New York Super Boat Race, Hudson River, New York and New Jersey.

(a) *Location.* All waters of the Lower Hudson River between Pier 76 in Manhattan and a point on the New Jersey shore in Weehawken, New Jersey at 40°45′52″ N latitude, 74°01′01″ W longitude, and north of a line connecting the following points:

Latitude	*Longitude*
40°42′16.0″ N	74°01′09.0″ W, then south to
40°41′55.0″ N	74°01′16.0″ W, then west to
40°41′47.0″ N	74°01′36.0″ W, then northwest to
40°41′55.0″ N	74°01′59.0″ W, then to shore at
40°42′20.5″ N	74°02′06.0″ W (NAD 1983)

(b) *Effective period.* This section is in effect on Sunday, September 8, 1996, from 12 p.m. until 4 p.m., unless extended or terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 23, 1996.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 96–22211 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–96–100]

RIN 2115–AA97

Safety Zone: MTV Music Awards Fireworks Display, East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the MTV Music Awards fireworks display located in the East River, New York. The safety zone will be in effect from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996. The safety zone will close all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

EFFECTIVE DATE: This rule is effective from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. W. Green, Waterways Oversight Branch Chief, Coast Guard Activities New York at (202) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date on which complete information regarding this event was received, there was

insufficient time to draft and publish a NPRM. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of the event is contrary to public interest since the event is intended to provide public entertainment.

Background and Purpose

MTV submitted an Application for Approval of Marine Event to hold a fireworks program in the waters of the East River. This regulation establishes a safety zone in the waters of the East River from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York. This safety zone precludes all vessels from transiting south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn. It is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone closes a portion of the East River to all vessel traffic from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York. This section of the East River experiences moderate commercial and recreational marine traffic. Although this regulation prevents traffic from transiting this area, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; pleasure craft and some commercial vessels can take an alternate route via the Hudson and Harlem Rivers; and the extensive, advance advisories that will be made. Accordingly, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46

2. A temporary § 165.T01–100, is added to read as follows:

§ 165.T01–100 Safety Zone; MTV Music Awards Fireworks Display, East River, New York.

(a) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 9, Manhattan to Pier 3, Brooklyn.

(b) *Effective period.* This section is effective from 10:30 p.m. until 11:45 p.m. on Wednesday, September 4, 1996, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 C.F.R. 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 23, 1996.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 96–22209 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI50–01–7257a; FRL–5542–1]

Promulgation of Reid Vapor Pressure Standard; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) temporarily is approving a State Implementation Plan (SIP) establishing a summertime gasoline Reid vapor pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties in Michigan (Detroit-Ann Arbor consolidated metropolitan

statistical area (CMSA)). The marketing of less volatile gasoline reduces excessive evaporation of fuel during the summer months. Evaporated gasoline combines with other pollutants on hot summer days to form ground-level ozone, commonly referred to as smog. Ozone pollution is of particular concern because of its harmful effects on lung tissue and breathing passages.

In a parallel action EPA is proposing to make permanent this temporary approval of Michigan's SIP revision to establish a RVP limit of 7.8 psi for gasoline sold in the Detroit-Ann Arbor CMSA. The proposed SIP revision is published in the proposed rule section of this **Federal Register**. The EPA is requesting comments on this rulemaking action, as well as the proposed rulemaking action. Any public comments received by EPA will be addressed in the subsequent final rulemaking on the proposed revision to the Michigan SIP.

An interim final approval action is being taken because EPA finds good cause under section 553 of the Administrative Procedures Act (APA) to promulgate this interim rule without prior notice and comment and to make this action effective July 1, 1996, because of the public health and timing concerns discussed below.

EFFECTIVE DATE: This interim final rule is effective July 1, 1996 through September 15, 1996.

ADDRESSES: Copies of the documents relevant to this action are available at the above address for public inspection during normal business hours.

Comments may be mailed to: Carlton T. Nash, United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson at (312) 353–4779.

SUPPLEMENTARY INFORMATION:

I. Background

In April 1995, the Detroit-Ann Arbor CMSA which was nonattainment for ozone was redesignated to attainment. At the time the area was redesignated to attainment, EPA approved, as a revision to the Michigan SIP, a 7.8 psi RVP fuels program as a contingency measure. However, during the summer of 1995 there were several monitored violations of the ozone standard in the Detroit area. Therefore, the State is required to implement an ozone contingency measure.

One of the contingency measures that State has chosen to implement is a fuels program. The fuels program requires the sale of 7.8 psi (low-RVP) gasoline during the summer months.

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits volatile organic compounds (VOCs). The lower a fuel's RVP, the lower the rate of evaporation of the fuel. The RVP of gasoline can be lowered by reducing the amount of its volatile components, such as butane. Lowering RVP in the summer months can offset the effect of summer temperature upon the evaporation of gasoline, which in turn lowers emissions of VOCs. Because VOCs are a component in the formation of ground level ozone on sunny, hot summer days, reduction of RVP will assist the State of Michigan to reduce ozone by reducing VOC emissions from vehicles.

The EPA first proposed to regulate gasoline RVP in 1987 (52 FR 31274). The EPA's gasoline RVP proposal resulted in a two-phased final regulation which was in large part incorporated into the 1990 Amendments to the Clean Air Act (Act) in section 211(h). Phase I of the regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. Phase II of the regulation became effective in 1992 (55 FR 23658). The rule divides the continental United States into two control regions, Class B and Class C. Generally speaking, the Class B states are the warmer southern and western states, and Class C states are the cooler northern states. The Phase II regulation limits the volatility of gasoline sold during the high ozone season to 9.0 psi for Class C areas and 7.8 psi for Class B ozone nonattainment areas. Michigan is a Class C State, and therefore, required under the Federal rule to meet the 9.0 psi standard.

II. State Submittal

Prior to making its SIP revision submittal, the State has presented at several public hearings its intention to implement a low-RVP fuels program. Initially the State presented the State's legislation to implement a low-RVP gasoline program, House Bill 4898, shortly after the legislation was passed in the State legislature, in 1993.

Next, as part of the redesignation process for Southeast Michigan, the State held a public hearing on the redesignation plan, as well as those measures the State was including in its contingency plan. One of the contingency measures presented to the public was the low-RVP gasoline program.

Lastly, the State presented the proposed low-RVP fuels program at a public hearing as part of the State's contingency measure selection process. The program presented to the public at these hearings not only included the State's legislation establishing a 7.8 psi RVP program, but also the option to market RFG in the area at the discretion of individual gasoline marketers. Two hearings presenting this proposal were held in October 1995.

On January 6, 1996, Michigan Governor John Engler sent a letter to EPA advising EPA the State had selected a low-RVP fuels program as one of the contingency measures to be implemented in the Detroit area. Shortly thereafter, on May 16, 1996, the State submitted just the low-RVP portion of their fuels program to EPA for approval. The SIP revision submitted by the State was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). On May 24, 1996, the State's SIP submittal was found complete.

III. Analysis of State Submittal

State governments are preempted under section 211(c)(4)(A) of the Clean Air Act from mandating a gasoline volatility standard not identical to any Federal standard promulgated under § 211(c)(1) that is applicable to the same characteristic. However, under 211(c)(4)(C) a State can require, through a SIP revision, a more stringent RVP standard for a particular area if the Administrator finds that the more stringent standard is necessary to achieve the National Ambient Air Quality Standard for ozone. In addition to demonstrating necessity as part of the 211(c)(4)(C) waiver process, under section 110 the State must also submit an adequate description of the low-RVP program and associated enforcement procedures. If EPA finds that a State has shown necessity and has provided an adequate description of the program, EPA may approve the SIP revision requiring the lower State RVP standard for the selected areas.

A. Demonstration of Necessity

Section 211(c)(4)(C) provides that the Administrator may find that a State fuel control is necessary if there are no other measures that would bring about timely attainment or such measures are unreasonable or impracticable. The necessity showing must demonstrate that the State is actually in nonattainment or in danger of nonattainment and must include an evaluation of all available ozone control measures.

Once it was determined that a contingency measure would have to be implemented, and was necessary

because of the violation of the ozone air quality standard, the State organized a workgroup to aid in the selection process. The Contingency Measure workgroup included participants from industry, state and local government, environmentalists, and any other interested persons. The analysis and final recommendations of the workgroup are summarized in a report.[1] The workgroup's recommendations were adopted by Michigan's Governor. The contingency measures selected by the State include a fuels program that limits RVP to 7.8 psi in the summertime, as well as expansion of the State's existing Stage I vapor recovery program.

As part of the analysis, the workgroup considered several different emission control technologies including vehicle inspection and maintenance (basic through enhanced), Stage I vapor recovery, Stage II vapor recovery, enhanced degreasing controls, oxides of nitrogen (NO_X) controls on stationary sources, and RFG. The reasonableness and practicality of each of these proposed control measures were evaluated using a number of factors, including the cost effectiveness of each measure. After considering and weighting all the factors, the workgroup selected stricter gasoline RVP control.

Having considered other measures that the State could implement before a low-RVP program, EPA finds that all other measures the State could implement are unreasonable or impracticable in this context, or would be insufficient to bring about timely attainment. The State is currently expanding its existing Stage I vapor recovery program as part of its contingency plan. While an I/M program would be a reasonable control measure, it could not be implemented as quickly as a low-RVP program and therefore would not reduce emissions in the time-frame necessary to reduce the likelihood of ozone standard violations and provide for attainment in as timely a manner as possible. Reformulated gasoline is not a practicable measure because the Detroit-Ann Arbor CMSA is designated as an attainment area, and hence is precluded from opting into the federal RFG program. While there are some additional reasonable and practicable control measures available, such as more stringent degreasing rules, Stage II vapor recovery, and NO_X controls on stationary sources, none of these measures considered individually or collectively would reduce emissions enough to bring about timely attainment.

Because there are no more reasonable and practicable emission control programs available in Southeast Michigan that would bring about timely attainment, EPA finds that a 7.8 psi summertime gasoline RVP meets the necessity requirement of 211(c)(4)(C) of the Act.

B. Description of Program Including the Enforcement Procedures

Historically, EPA has found that an adequate program description includes: (1) The counties included in the program, (2) the parties regulated as part of the program, (3) the general RVP limit, (4) the control period of the program, and (5) a list of any exceptions to the general limit for different types of gasoline, such as gasohol and RFG.

An adequate description of the State's enforcement procedures should include: (1) The recordkeeping requirement for all regulated parties marketing gasoline, (2) the name of the State agency that will be enforcing the program, (3) the testing frequency and number of stations that will be tested, (4) how sampling will be done, (5) procedures that will be used to determine fuel volatility during enforcement testing, and (6) the State's authority to levy penalties and fines for noncompliance with the program.

The Michigan submittal specifies that the gasoline distributed in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties at the retail level must meet a RVP standard of 7.8 psi or less per gallon between June 1 and September 15.[2] Currently, the State's rules include a 1.0 psi exemption for ethanol blended fuels. In addition, the State's rule being developed to include RFG as part of the program will include a 0.3 psi for RFG. The rule to be submitted will also exempt gasoline dispensed at marinas, test tracks, and applications for agricultural purposes from the 7.8 psi limit. Because the State has satisfied all the program description elements, EPA finds the State's description of the program is sufficient.

To ensure enforcement of the program requirements, all parties involved with the marketing of gasoline in the area are required to maintain records for each gasoline shipment.[3] The Michigan Department of Agriculture (MDA) will conduct enforcement of the program.[4] As part of the SIP submittal, the State has committed to inspect a minimum of 40 percent of the dispensing facilities in the six county area during the control period. Sampling will be performed in accordance with the procedures described by EPA in its gasoline volatility regulations in 40 CFR part 80, Appendix D.[5] Gasoline volatility and ethanol content tests will be performed following procedures described by EPA in 40 CFR part 80, Appendices E and F, respectively. Gasoline deemed to be out of compliance will be subject either to a stop use order or seizure.[6] Additionally, MDA has the authority to levy administrative fines, in addition to applicable civil and criminal penalties.[7] The EPA finds the State's submittal sufficiently deters non-compliance and ensures effective enforcement of the program.

IV. Procedural Requirements

Section 553(b) of the APA provides that the general requirement to provide for notice and comment in the rulemaking process does not apply if an agency, for good cause, finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest. Additionally, section 553(d) of the APA provides that for good cause an agency may expedite the effective date of a rule allowing it to take effect sooner than 30 days from the date of publication. As discussed below, EPA has concluded that there is good cause to issue this interim final rule without notice and comment and to make the rule effective July 1, 1996.

A. Notice and Comment

Section 553(b) of the APA provides that agencies must provide the public notice and an opportunity to comment on agency rulemaking, unless one of the specified exceptions applies. Further, section 553(b)(B) of the APA states that notice and comment are not required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Because of unusual circumstances associated with this rulemaking and for the reasons explained below, EPA finds good cause to issue this interim final rule without prior notice and comment.

[1] The report is titled "Evaluation of Air Quality Contingency Measures for Implementation in Southeast Michigan" and is included in the materials submitted by the State for this proposed SIP revision.

[2] MCLA 290.643 section 3(4), MCLA 290.650d section 10d.

[3] MCLA 290.647 section 7(3)–7(4), MCLA 290.649b section 9b(4).

[4] MCLA 290.641, et seq.

[5] MCLA 290.647 section 7(4), MCLA 290.643 section 3.

[6] MCLA 290.643 section 3.

[7] MCLA 290.647 section 7(5), MCLA 290.613 section 13, MCLA 290.615 section 15.

1. Time Critical Nature of Action

Ground-level ozone is a threat to public health. Ozone pollution is of particular concern because of its harmful effects on lung tissue and breathing passages. To address this threat, EPA places significant requirements on States to implement programs to control ozone to levels that protect the public health.

Because of the seriousness of the public health issue, the State of Michigan wants to implement a program that will provide substantial emission reduction benefits as soon as this summer. Any program that could be put in place immediately would help the State avoid violations of the ozone standard this summer. Conversely, control programs which take several months to implement would not help protect public health this summer.

A low-RVP fuels program addresses the need for immediate reductions because the air quality benefits of a low-RVP program are produced as soon as the fuel is delivered to retail gasoline stations. Currently, the State and the regulated industry are prepared to implement a low-RVP fuels program this summer, beginning July 1, 1996. There are no other measures the State could implement now to provide the needed emissions reductions in this time-frame.

Providing notice and comment for this action would run counter to the public interest because delaying this rulemaking through applying the normal notice and comment process would mean that the low-RVP program could not be put into place before the end of this summer. Without implementing a low-RVP program immediately the State risks further violations of the ozone standard and an adverse impact on public health this summer.

2. Prior Extensive Public Process and Public Consensus

Considerable public discussion and comment has already transpired concerning the State's adoption of a low-RVP fuels program and the outcome of this process is widespread consensus that a low-RVP fuels programs in the best approach. In particular, the directly affected regulated entities have participated extensively in the decision making process and have notice of the low-RVP fuels program to be implemented in Southeast Michigan.

Prior to making its submittal, the State discussed its plans to implement a fuels program beginning in the summer of 1996, featuring 7.8 psi gasoline, with the regulated parties and the general public. Not only did the State discuss its intentions, it also solicited comments on the State's plans. Initially, as part of the redesignation process for Southeast Michigan, the State held a public hearing on the redesignation plan, as well as those measures the State was including its contingency plan. One of the contingency measures presented to the public was a low-RVP fuels program.

Shortly after the State completed its public hearing process on the redesignation and associated contingency measures, the State submitted the redesignation request to EPA for approval. In the **Federal Register** notice proposing approval of the redesignation, a low-RVP program was listed as one of the possible contingency measures the State would implement if necessary. While EPA received a variety of comments on the proposal, none of the comments concerned the State's choice of low-RVP as part of the contingency plan, indicating there was no opposition to the possibility of implementation of this program. The EPA finalized approval of the Michigan contingency plan including a low-RVP program as a revision to the Michigan SIP on March 7, 1995.

Because of ozone violations during the summer of 1995 Michigan is required to select a contingency measure to be implemented from its contingency plan. To aid in the selection process, the State formed a workgroup. The Contingency Measure workgroup included participants from industry, state and local government, environmentalists, and any other interested persons. The committee eventually narrowed their recommendation to include a low-RVP fuels program. The Workgroup recommendation indicates the consensus support for this measure by the most directly affected and interested parties.

The final step in the contingency measure selection process was to present the committee's recommendations at a public hearing. Two hearings were held in October 1995. During the hearings none of the oil companies objected to the selection of a low-RVP fuels program as a contingency measure.

During the public participation process, the Detroit media covered the debate concerning which contingency measure would be selected. A number of articles and editorials were published in both the Detroit Free Press and the Detroit News concerning the selection process and the low-RVP fuels program. On January 6, 1996, Michigan Governor John Engler sent a letter to EPA identifying a low-RVP fuels program as one of its contingency measures to be implemented in the Detroit area. Shortly after the Governor's decision, both the Michigan Department of Agriculture and the Governor's offices issued press releases concerning the low-RVP fuels program. Both of these press releases included the planned start-up date of the program, July 1996. Following these press releases several more articles on the program were published in the print media. In addition, the AAA magazine Michigan Living, printed an article about the low-RVP fuels program including the planned start-up date of July 1996.

In addition to the general press coverage the program was receiving, the State held a series of meetings with the oil companies serving the Detroit area as well as the American Petroleum Institute (API), an industry association. During these meetings the State, represented oil companies, and API discussed the details concerning implementation of a low-RVP fuels program by July 1996.

Providing prior notice and comment is of limited benefit to the public here because of the extensive public comment process that has already taken place and the widespread support for the program. This public process has provided an opportunity for all interested parties to participate in the decision to implement low-RVP gasoline as a contingency measure and has generated consensus this is the optimal approach. In addition, delaying the SIP revision approval to allow for notice and comment would run counter to the public interest because of the potential for confusion regarding the applicable requirements. At this point in time the regulated industry, the general public, and the State have planned to begin the program on July 1, 1996. Providing notice and comment would preclude the program from beginning on July 1, 1996, which would likely cause disruption to the regulated industries and confuse the public.

3. Time Limited Nature of Action

This interim final rule is a temporary SIP revision, which will expire automatically and be followed by a notice-and-comment rulemaking to decide whether to make this a permanent SIP revision. The EPA is requiring that gasoline sold in the Detroit—Ann Arbor ozone nonattainment area from July 1, 1996 to September 15, 1996, comply with a 7.8 psi standard. This action does not establish a permanent change to the

gasoline RVP requirements in Southeast Michigan.

Prior notice and comment is of limited benefit to the public because of the limited time period of this action, and the need for prompt implementation of the program discussed above. In a parallel action, EPA is proposing to make this temporary RVP limit permanent by revising Michigan's SIP to establish a RVP limit of 7.8 psi for gasoline sold in the Detroit—Ann Arbor CMSA. The proposed SIP revision is published in the proposed rule section of this **Federal Register**. The EPA is hereby providing opportunity to comment on this rulemaking action, as well as on the proposed rulemaking action on the permanent revision. Any public comments received by EPA will be addressed in the subsequent final rulemaking on the proposed revision to the Michigan SIP. Thus, any negative results caused by the lack of notice and comment would exist only for a short and clearly delineated period.

For all the reasons stated above EPA believes that there is good cause for issuing this rule without prior notice and comment, as such prior notice and opportunity to comment under these circumstances is impracticable, unnecessary, and contrary to the public interest.

B. Effective Period

The APA also provides that a rule may not become effective until 30 days after it is published; this requirement is generally met through publication in the **Federal Register**. However, in certain situations the APA provides that agencies may expedite, or shorten, the time to make the rule effective. Section 553(d) of the APA provides an exception to the effective date requirement where an agency finds there is good cause to expedite the effective date. Because of circumstances specific to this situation and for the reasons explained below, EPA finds good cause to make this rule effective as of July 1, 1996.

1. Time Critical Nature of Action

As discussed more fully above, to protect public health during the upcoming ozone season, the State would need to implement a measure that would immediately reduce VOC emissions. The low-RVP program proposed by the State and required here on a temporary basis, would provide such immediate reductions if EPA's approval is effective by July 1, 1996.

Delaying the effective date until 30 days after publication runs counter to the public interest because of the need to address the risk of ozone air pollution occurring this summer. If this rulemaking action were subject to such a delay, the low-RVP program could not be put into place before the end of this summer. Without implementing a low-RVP program immediately the State risks further violations of the ozone standard and an adverse impact on public health this summer.

2. Prior Public Notice

Delaying the effective date until 30 days after publication is irrelevant to the lead time needed for compliance because the public has had substantial public notice of the upcoming low-RVP requirements. In particular, the directly affected regulated entities and the public have participated extensively in the decision process to implement this program starting July 1, 1996, and have notice of that start date. Hence, delay beyond that date is not necessary for compliance purposes and will introduce confusion as to when the requirements will apply.

For all the reasons stated above EPA believes that there is good cause for making this rule effective as of July, 1, 1996, as a later effective date is impracticable, unnecessary, and contrary to the public interest.

IV. Action

The EPA is approving a revision to Michigan's SIP to establish a summertime gasoline RVP limit of 7.8 psi for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties and is finding that such a requirement is necessary for the area to attain the ozone National Ambient Air Quality Standard for ozone, at least for the period the approval is effective. This approval is effective from July 1, 1996, to September 15, 1996.

V. Administrative Requirements

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (1976).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by October 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 808(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act (SBREFA) EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended. Pursuant to 5 U.S.C. 808(2) as added by SBREFA, this rule may take effect prior to the date of its submission to Congress because EPA for good cause has found that providing for notice and public procedure on this rule is impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 21, 1996.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(107) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(107) On May 16, 1996, the State of Michigan submitted a revision to the Michigan State Implementation Plan (SIP). This revision is for the purpose of establishing a gasoline Reid vapor pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties in Michigan. This revision will only be effective from July 1, 1996, to September 15, 1996.

(i) Incorporation by reference.

(a) House Bill No. 4898; signed and effective November 13, 1993.

(b) Michigan Complied Laws, Motor Fuels Quality Act, Chapter 290, Sections 642, 643, 645, and 646, 647, and 649 all effective November 13, 1993.

(c) Michigan Complied Laws, Weights and Measures Act of 1964, Chapter 290, Sections 613, 615; all effective August 28, 1964.

(ii) Additional materials.

(a) Letter from Michigan Governor John Engler to Regional Administrator Valdas Adamkus, dated January 5, 1996.

(b) Letter from Michigan Director of Environmental Quality Russell Harding to Regional Administrator Valdas Adamkus, dated May 14, 1996.

(c) State report titled "Evaluation of Air Quality Contingency Measures for Implementation in Southeast Michigan," submitted to the EPA on May 14, 1996.

[FR Doc. 96–21982 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 86

[AMS–FRL–5602–3]

RIN 2060–AC65

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Regulations Requiring On-Board Diagnostic (OBD) Systems—Acceptance of Revised California OBD II Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final rulemaking revises requirements associated with on-board diagnostic (OBD) systems. The federal OBD rulemaking, published February 19, 1993, allowed for compliance with California OBD II requirements to satisfy federal OBD requirements through the 1998 model year. The California Air Resources Board has recently revised their OBD II requirements. This rulemaking promulgates appropriate revisions to federal OBD regulations such that compliance with the recently revised OBD II requirements will satisfy federal OBD. This rulemaking does not require that manufacturers comply with OBD II anti-tampering provisions. OBD systems in general provide substantial ozone benefits.

EFFECTIVE DATE: This final rule is effective October 29, 1996.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–90–35, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Todd Sherwood, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone (313) 668–4405, or Internet e-mail at "sherwood.todd@epamail.epa.gov."

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture new motor vehicles and engines. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle and engine manufacturers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.094–17 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this final rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find OBD related information and documents through the following path once they have accessed the OMS Home Page: "Automobiles," "I/M & OBD," "On-Board Diagnostics Files."

Electronic copies of the preamble and the regulatory text of this final

rulemaking are also available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTN BBS). Users are able to access and download TTN BBS files on their first call. After logging onto TTN BBS, to navigate through the BBS to the files of interest, the user must enter the appropriate command at each of a series of menus. The steps required to access information on this rulemaking are listed below. The service is free, except for the cost of the phone call.

TTN BBS: 919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit). Voice help: 919–541–5384 Internet address: TELNET ttnbbs.rtpnc.epa.gov Off-line: Mondays from 8–12 Noon ET.

1. Technology Transfer Network Top Menu: GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
2. TTN TECHNICAL INFORMATION AREAS: OMS—Mobile Sources Information
3. OMS BBS === MAIN MENU FILE TRANSFERS: Rulemaking & Reporting
4. RULEMAKING PACKAGES: Inspection & Maintenance
5. Inspection & Maintenance Rulemaking Areas: File Area #2...On-Board Diagnostics

At this stage, the system will list all available OBD Review files. To download a file, select a transfer protocol which will match the terminal software on your computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e., ZIP'd) files, go to the TTN topmenu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit TTN BBS with the <G>oodbye command.

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I. Introduction and Background

On February 19, 1993, the EPA promulgated a final rulemaking (58 FR 9468, February 19, 1993) requiring manufacturers of light-duty vehicles (LDV) and light-duty trucks (LDT) to install on-board emission control diagnostics (OBD) systems on such vehicles beginning in model year 1994. The regulations promulgated in that final rulemaking require that manufacturers install OBD systems which monitor emission control components for any malfunction or deterioration causing exceedances of certain emission thresholds, and alert the vehicle operator to the need for repair. That rulemaking also requires that, when a malfunction occurs, diagnostic information must be stored in the vehicle's computer to assist the mechanic in diagnosis and repair.

Additionally, that rulemaking makes an allowance for manufacturers to satisfy the federal OBD requirements through the 1998 model year by installing systems satisfying the California OBD II requirements pertaining to those model years. This allowance means that manufacturers could concentrate on designing one system for OBD compliance and installing that system nationwide during allowable model years. As EPA regulations cannot be revised except through EPA rulemaking, the OBD II requirements allowed under this provision were, and have continued to be, those existing on the date of publication of the federal OBD final rulemaking. This means that subsequent changes made to the OBD II requirements by the California Air Resources Board (ARB) may be inconsistent and potentially unacceptable for federal OBD compliance.

On March 23, 1995, EPA published a direct final rule revising specific federal OBD provisions, including a provision that would allow manufacturers to comply with federal OBD requirements by optionally complying with more recent OBD II regulations. EPA believed that the March 23 direct final rule would not be controversial. In that direct final rule, EPA stated that, "If notice is received that any person or persons wish to submit adverse comments regarding some, but not all of the actions taken in this rulemaking, then EPA shall withdraw this final action and publish a proposal only with regard to the actions for which notice has been received." EPA stated that it would make such a withdrawal if adverse comment was received by April 24, 1995.

EPA received adverse comment from the Motor and Equipment Manufacturers Association (MEMA). This adverse comment was placed in the public docket for viewing. The comments submitted by MEMA were adverse with regard to the revision of 40 CFR 86.094–17(j) that would allow manufacturers the option of complying with the recently revised California OBD II requirements (California Air Resources Board Mail-Out #95–03). (MEMA had initially objected to other specific provisions of the direct final rule, but MEMA withdrew these objections in a letter signed May 18, 1995.) Therefore, EPA subsequently removed the provision of the March 23 direct final rule that pertained to optional compliance with the revised OBD II requirements of ARB Mail-Out #95–03 (60 FR 37945, July 25, 1995). As a result, the language of the prior final rule published on February 19, 1993 (58 FR 9468) allowing compliance with California OBD II requirements was reinstated in § 86.094–17(j). EPA then reproposed the provision allowing manufacturers to meet the federal OBD requirements by complying with revised California OBD II requirements. The proposal did not, however, require that manufacturers meet the anti-tampering provisions in California's OBD II regulations. (60 FR 55521, November 1, 1995).

II. Requirements of this Final Rulemaking

This final rulemaking allows manufacturers to comply with federal OBD requirements by optionally complying with the revised and recently adopted California OBD II regulations. The allowance for optional compliance with California OBD II has already been established in the federal OBD program and was incorporated into the federal OBD final rulemaking in February 1993. However, since that time, the ARB has made several revisions to the OBD II regulations.

Because the Agency cannot simply accept the revised OBD II without undergoing the federal regulatory process, any optional compliance with California OBD II under the preexisting federal regulations had to be done according to the OBD II regulations as they existed in February 1993 (ARB Mail Out #92–56, November, 1992). However, the ARB has determined that several manufacturers would have difficulty complying with the OBD II regulations as they existed in February 1993. The most notable requirements that currently pose difficulties are those for engine misfire detection under all positive torque engine speeds and conditions and full OBD II implementation on alternative fueled vehicles. Additionally, most manufacturers have indicated difficulty meeting other aspects of the OBD II regulations due to, for example, the complexity of the computer software requirements, and unpredictable driver actions such as resting a foot on the gas

pedal while stopped at a traffic light. It is these additional difficulties that have prompted ARB to provide a "deficiency" allowance in their revised OBD II regulations whereby manufacturers can certify as OBD II compliant despite some reasonably acceptable and unplanned deficiency in the OBD system.

As a result of the ARB revisions to OBD II, and to remain consistent with the original intent of providing for optional compliance with OBD II for federal OBD purposes, and because EPA has determined that OBD systems complying with the revised OBD II requirements fully satisfy the intent of the 1990 Clean Air Act Amendments and federal OBD regulations, this final rulemaking will provide the same option but will require that manufacturers choosing this option comply with the more recent OBD II regulations contained in ARB Mail Out #95–34.

In the proposed rulemaking, EPA proposed allowing manufacturers to comply with federal OBD requirements by optionally complying with more recent OBD II regulations, specifically those contained in ARB Mail Out #95–03, made publicly available January 19, 1995. In this final rulemaking, the applicable OBD II regulations are contained in Mail Out #95–34, September 26, 1995. Mail Out #95–34 is identical in content to Mail Out #95–03, the only differences being slight editorial changes and reference to an updated version of a Society of Automotive Engineers (SAE) recommended practice (i.e., SAE J1939) that is not applicable to light-duty vehicles or light-duty trucks and therefore is not applicable under the provisions of this final rulemaking.

As a result of this final rule, any federal vehicles complying with federal OBD by optionally complying with California OBD II are allowed the same deficiencies as allowed under the OBD II provisions. This is consistent with revisions deemed necessary by EPA and subsequently made to federal OBD requirements through a direct final rulemaking published in March of 1995 (60 FR 15242, March 23, 1995). Note, however, that a manufacturer requesting certification of a deficient OBD II system must receive EPA acceptance of any deficiency independently of an acceptance made by ARB. The Agency will use the same criteria specified by the ARB in the OBD II regulation, (footnote: Those criteria being the extent to which the requirements are satisfied overall on the vehicle applications in question, the extent to which the resultant diagnostic system design will be more effective than earlier OBD systems, and a demonstrated good-faith effort to meet the requirements in full by evaluating and considering the best available monitoring technology) except that EPA will not provide deficiency allowances for lack of catalyst monitors or oxygen sensor monitors because the Clean Air Act specifically requires these monitors no later than the 1996 model year. The Agency will make every effort to determine the acceptability of OBD II deficiency requests in concert with ARB staff to avoid the potential for conflicting determinations. However, the extent to which the agencies can make concurrent and coordinated findings will rely heavily on the manufacturer, who will be expected to provide any necessary information to both agencies in parallel rather than pursuing deficiency determinations on a separate basis.

III. Public Participation

On November 1, 1995, EPA published a notice of proposed rulemaking (NPRM) which set forth proposed requirements for complying with federal OBD regulations by optionally demonstrating compliance with the revised California OBD II regulations. On December 13, 1995, a public hearing was held. The period for submission of comments on the NPRM was scheduled to close on January 16, 1996.

The comments received in response to the NPRM have not been extensive, and concentrate primarily on the issue of anti-tampering provisions. More specifically, the comments speak to the appropriateness of the anti-tampering provisions contained in the California OBD II regulations but intentionally excluded from any federal OBD compliance requirements. Comments were also received on the allowance of optional OBD II compliance for federal OBD purposes indefinitely, rather than through only the 1998 model year.

Comments were received from original equipment manufacturers, automotive aftermarket manufacturers and service providers, and one automotive consultant. The comments along with EPA's analyses and responses are discussed in the following section. A formal written "Response to Comments" document has not been prepared in association with this rulemaking as all pertinent issues are sufficiently discussed in this preamble.

IV. Discussion of Issues

A. General Comments on the Proposal

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year.

Summary of Comments: The American Automobile Manufacturers Association (AAMA) fully supports the proposed regulatory action, stating that it will help by limiting the burden on manufacturers associated with the extremely technologically-challenging development of enhanced on-board diagnostic systems. The Association of International Automobile Manufacturers (AIAM) also stated its support, as did American Suzuki Motor Corporation and Michael Jay Grossman, an automotive certification consultant. Each of these commenters also stated that EPA should allow compliance against ARB Mail Out #95–34 rather than Mail Out #95–03, as was proposed.

Analysis of Comments: EPA agrees that Mail Out #95–34 should be used rather than the proposed Mail Out #95–03. Mail Out #95–34 is identical in content to Mail Out #95–03, the only differences being slight editorial changes (the removal of strikeout and underlined text differentiating old from new text) and reference to an updated version of a SAE recommended practice (i.e., SAE J1939) that is not applicable to light-duty vehicles or light-duty trucks and therefore is not applicable under the provisions of this final rulemaking.

EPA Decision: The final regulatory language will refer to ARB Mail Out #95–34.

B. California OBD II Anti-Tampering Provisions

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year, except that compliance with the tampering protection provisions of the California OBD II requirements was not required to satisfy federal OBD.

Summary of Comments: Representatives of certain organizations within the automotive aftermarket made the following comments: (1) EPA should defer any decision in this proceeding until EPA has rendered a decision on California's request for a waiver of preemption under section 209 for its OBD II regulations; (2) EPA's incorporation of California OBD rules is an unlawful delegation of its powers; (3) EPA may not certify vehicles containing the anti-tampering devices required under the California OBD II regulations, because such devices violate sections 202(m) (4) and (5) and 207 of the Act; (4) the anti-tampering provisions of the

California OBD II regulations violate the Semiconductor Chip Protection Act; (5) the exclusion of the anti-tampering provisions from this rulemaking is inadequate, because as long as the anti-tampering regulations are required in California, manufacturers will use such devices in all their vehicles; (6) the anti-tampering provisions are unnecessary and eliminate competition in the repair of vehicles; (7) the anti-tampering provisions of the California OBD II regulations impose significant economic impact on the automotive aftermarket.

AAMA commented that it believes that both EPA and ARB have the general legal authority to require anti-tampering measures. Therefore, AAMA can see no viable cause for not proceeding with the NPRM as proposed.

Analysis of Comments: (1) Regarding deferment of this rulemaking until the OBD waiver proceeding is completed, EPA has been processing the OBD waiver final decision at the same time it has been processing this final rule. EPA intends to complete the OBD waiver decision either prior to, at the same time of, or shortly after, the completion of this rule. However, EPA does not believe that the decisions necessary for completion of this rulemaking need to be delayed until after the waiver decision in completed. As discussed below, the issues raised by the aftermarket in this proceeding and the OBD II waiver proceeding are more appropriately dealt with in that proceeding, and are not necessary for completion of this rulemaking. Should the issues raised by the aftermarket be resolved in favor of the automotive aftermarket, that resolution will carry over into EPA's broader motor vehicle program, including the certification of any vehicle that complies with the requirements promulgated in this rulemaking.

(2) Regarding the contention that EPA has unlawfully delegated its powers, EPA disagrees with this allegation. As the comments acknowledge, EPA has gone through a complete notice and comment rulemaking and found that the regulations that it incorporates today are consistent with the Act and that it is reasonable and appropriate for EPA to allow manufacturers to meet EPA's requirements by showing compliance with California's OBD II regulations, excluding its anti-tampering provisions. This is not delegation of power, but the acknowledgment that other entities besides EPA may devise reasonable methods for meeting particular requirements of the Act. These entities are not making decisions in place of EPA. EPA's decision to incorporate OBD II requirements is independent of California's initial decision to require OBD II in California. Commenters' line of reasoning would seem to require that EPA purposely ignore any sets of procedures drafted by another organization, (e.g., a state or a voluntary industry organization like SAE), no matter how reasonable, simply because EPA did not think of the procedures first. The restrictions on delegation of powers in no way require that result.

(3 and 4) The comments allege that California's anti-tampering provisions violate certain provisions of the Clean Air Act and other federal law. The comments, however, never explain why such allegations are relevant to this rulemaking. The regulations EPA promulgates today explicitly exclude California's anti-tampering provisions from the federal requirements. EPA is taking no action in this rulemaking that has any effect on manufacturers legal requirement or ability to voluntarily equip vehicles with tampering protection measures. To the extent manufacturers were permitted to do so prior to this rulemaking, they can do so after the rulemaking. To the extent the Clean Air Act prevents them from equipping vehicles with tampering protection measures, nothing in this rulemaking allows manufacturers to circumvent the Clean Air Act's provisions. The issue of whether the California OBD II anti-tampering provisions violate the Clean Air Act is simply irrelevant to this rulemaking, because this rulemaking does not require manufacturers to meet the anti-tampering provisions. As discussed above, EPA will be reviewing the comments the aftermarket has provided on these issues in the California OBD II waiver proceeding. The comments are relevant in that proceeding, at least to a certain extent, because in that proceeding, EPA is specifically reviewing the consistency of California's OBD II provisions, including the anti-tampering provisions, with section 202(a) of the Act.

(5) Regarding whether exclusion of the anti-tampering provisions is sufficient for the needs of the commenters, the appropriate issue is again whether the comments are relevant to this proceeding. The commenters admit in their comments, as well as in a letter to the Administrator dated April 30, 1996, that manufacturers will install the anti-tampering devices on their vehicles, and in fact are currently doing so, even in the absence of these regulations. Thus, the presence or absence of these regulations is irrelevant to whether manufacturers voluntarily equip vehicles with tampering protection measures. As noted above, EPA will deal with the issues raised by commenters in venues where such issues are relevant.

(6 and 7) The practicality, cost, and reasonableness of the anti-tampering provisions are likewise irrelevant to this proceeding because the anti-tampering provisions are not required by this proceeding.

EPA Decision: The regulatory language need not be changed from that proposed, with the exception of reference to ARB Mail Out #95–34 rather than #95–03. Should the anti-tampering provisions of the California OBD II regulations be deemed unlawful via the waiver process or other means, they will be removed from the OBD II regulations by the Air Resources Board and certification approval of vehicles containing anti-tampering measures consistent with those provisions will cease by both EPA and ARB.

C. Acceptance of California OBD II Beyond the 1998 Model Year

Summary of Proposal: The proposal allowed demonstration of compliance with revised California OBD II requirements (Mail Out #95–03) as satisfying federal OBD requirements through the 1998 model year.

Summary of Comments: Michael Jay Grossman suggested that EPA allow small volume manufacturers (<10,000 U.S. sales per year) the optional compliance against the California OBD II regulations beyond the 1998 model year, rather than eliminating this option beginning in the 1999 model year. Mr. Grossman reasons that such an allowance will present no loss of federal OBD program benefits due to the extremely small number of small volume manufacturer vehicles in the overall vehicle population.

Analysis of Comments: Mr. Grossman's suggestion was made by several commenters during development of the February 1993, federal OBD final rulemaking, although the comments then were not necessarily limited to small volume manufacturers. The same arguments against such a policy apply now as applied then. This alternative was neither proposed by the Agency, nor is it an attractive alternative from the Agency's perspective. The federal regulations contain enforcement approaches consistent with past EPA policies which rely on performance evaluations, rather than specific design requirements, to encourage innovative control strategies and improvements in technology. Also, having effectively two separate regulations mandating the same type of program is unnecessarily inefficient to enforce.

Further, the current option for California OBD II demonstration puts EPA in the position of making mandatory regulatory revisions in the event ARB revises the OBD II regulations. EPA regulations cannot incorporate a moving target and, therefore, every regulatory revision by ARB requires a corresponding revision to federal regulations should the ARB revision be deemed appropriate for federal purposes. This is evidenced by the reality of today's rulemaking, which is being done only because of ARB's recent revisions to OBD II. Upon the effective date of today's rulemaking, the federally acceptable OBD II requirements will be those in Mail Out #95–34, and will not be those contained in any potential future California mail outs pertaining to OBD II.

Barring passage of the National Low Emission Vehicle regulations and subsequent agreement among all stakeholders to voluntarily sign onto its requirements, EPA can see no reason to go forth with this suggestion. EPA sees merit in undertaking efforts to harmonize federal OBD requirements with the California OBD II requirements, but will explore other potential options as opposed to that suggested by Mr. Grossman.

EPA Decision: EPA will take no action in this final rulemaking to accommodate this commenter's suggestion. Therefore, no changes to the proposed regulatory language will be made. As a result, through the 1998 model year, EPA will enforce OBD requirements against either the California OBD II requirements as they exist in Mail out #95–34 or the federal OBD requirements, depending on the set of requirements to which the vehicle has been certified. Beginning with the 1999 model year, full compliance with the federal OBD requirements will be required for all vehicles covered by this rulemaking. This will assure designs fully meeting the goals of the federal OBD program, not only for preproduction certification but also during in-use operation.

As stated, EPA is exploring options to harmonize federal OBD requirements with the California OBD II requirements. EPA believes that effort will result in harmonized OBD system requirements along with enforcement approaches and regulatory philosophies consistent with each agency's respective goals. EPA also believes that effort will alleviate the concerns expressed by Mr. Grossman.

V. Cost Effectiveness

This final rulemaking alters an existing provision by allowing optional compliance with the most recent "Revised" California OBD II requirements, as opposed to the November 1992, "Original" OBD II requirements, for the purposes of federal OBD compliance. With three exceptions, the revised OBD II requirements provide regulatory relief relative to the original OBD II requirements. Those exceptions are: (1) More stringent catalyst monitoring requirements for 1998 model year low emission vehicles (LEV), requirements that would not apply to federal Tier I vehicles; and, (2) more stringent evaporative emission monitoring requirements for 2000 model year vehicles, requirements that begin beyond the 1998 model year cutoff of the OBD II compliance option; and, (3) more stringent anti-tampering provisions, requirements intentionally excluded from federal OBD compliance demonstration. Therefore, because this final rulemaking alters an existing provision, and that alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific final action.

The automotive aftermarket industry has stated that the provision of this final rulemaking will result in substantial costs to that industry. As they argue it, these costs will be incurred because the anti-tampering measures required under the California OBD II regulations will present more difficulty for the automotive aftermarket in carrying out their business of reverse engineering original equipment manufacturer (OEM) parts and designing replacement or specialty parts. However, the anti-tampering measures are intentionally excluded from federal OBD compliance requirements, even when choosing the optional OBD II compliance demonstration. Therefore, OEMs are, in effect, voluntarily incorporating anti-tampering measures into their federal vehicles, and would arguably do so absent the requirement under the California OBD II regulation. Consequently, EPA cannot understand how the provisions of this final rulemaking are responsible for any potential increased costs on the automotive aftermarket, outside those costs mandated under the Clean Air Act Amendments of 1990 which require all 1994 and later model year vehicles to incorporate OBD systems into their designs.

The costs and emission reductions associated with the federal OBD program were developed for the February 19, 1993, final rulemaking. The change being made today does not affect the costs and emission reductions published as part of that rulemaking.

VI. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Reporting and Recordkeeping Requirements

This final rulemaking does not change the information collection requirements submitted to and approved by OMB in association with the OBD final rulemaking (58 FR 9468, February 19, 1993; and, 59 FR 38372, July 28, 1994).

C. Impact on Small Entities

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses. This final rulemaking will provide regulatory relief to both large and small volume automobile manufacturers by maintaining consistency with California OBD II requirements. It will not have a substantial impact on such entities. This final rulemaking will not have a significant impact on businesses that manufacture, rebuild, distribute, or sell automotive parts, nor those involved in automotive service and repair, as the revisions affect only requirements on automobile manufacturers.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, or $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 22, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A—[Amended]

2. Section 86.094–17 is amended by revising paragraph (j) to read as follows:

§ 86.094–17 Emission control diagnostic system for 1994 and later light-duty vehicles and light-duty trucks.

* * * * *

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code § 1968.1), as modified pursuant to California Mail Out #95–34 (September 26, 1995), shall satisfy the requirements of this section through the 1998 model year except that compliance with Title 13 California Code § 1968.1(d), pertaining to tampering protection, is not required to satisfy the requirements of this section.

* * * * *

[FR Doc. 96–21946 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GEN Docket No. 90–314; FCC 96–340]

Omnipoint Communications New York MTA Frequency Block A; Establishment of New Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: By this action, the Commission denies a petition for declaratory ruling filed by The Wireless Communications Council (WCC). The Commission finds that WCC has not demonstrated the existence of a controversy or uncertainty sufficient to warrant exercise of the Commission's discretion to issue a declaratory ruling. The intended effect of this action is to clarify when it is appropriate for the Commission to issue a declaratory ruling regarding whether a party awarded a pioneer's preference has made substantial use of its pioneering technology.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Rodney Small or Charles Iseman, Office of Engineering and Technology, at (202) 418–2452 or (202) 418–2444, respectively.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in GEN Docket 90–314, FCC 96–340, adopted August 9, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of MO&O

1. In the Third Report and Order (Third R&O) in GEN Docket No. 90–314 (the broadband Personal Communications Services (PCS) proceeding), 59 FR 9419 (February 28, 1994), the Commission awarded pioneer's preferences to American Personal Communications (APC), Cox Enterprises, Inc. (Cox), and Omnipoint Communications, Inc. (Omnipoint). The Commission directed the Wireless Telecommunications Bureau (Bureau) to condition the broadband PCS licenses received by APC, Cox, and Omnipoint upon each licensee building a system that substantially uses the design and technologies upon which its preference award is based. Specifically, the Commission stated that this condition would apply in the service area for which the preference is being granted and for the initial required five-year build-out period specified in the rules for broadband PCS.

2. Omnipoint was awarded a pioneer's preference for having designed and manufactured a 2 GHz spread spectrum handset and associated base station equipment, and for proposing a viable service with the flexibility to be implemented in a variety of environments with capabilities useful to subscribers. This preference granted Omnipoint the right, if otherwise qualified, to use a 30 megahertz channel block (Block A, 1850–1865 MHz and 1930–1945 MHz) in the Major Trading Area that includes northern New Jersey (New York MTA). On December 13, 1994, the Bureau granted a pioneer's preference license to Omnipoint, on condition that "Omnipoint * * * shall construct a * * * system * * * that substantially uses the design and technology upon which the pioneer's preference award * * * was based," and on condition that Omnipoint retain control of the license for three years or until it has met the five-year build-out requirement, whichever is the first to occur.

3. On January 16, 1996, WCC submitted a petition for declaratory ruling, urging the Commission to clarify the "substantial use" condition, as

specified in the pioneer's preference license awarded to Omnipoint.[1] WCC asserts that public evidence indicates that Omnipoint will initially use Global System for Mobile Communications (GSM) equipment for its New York PCS network, rather than the IS–661 technology for which the Commission awarded Omnipoint a preference. Specifically, WCC attaches the statement of its consulting engineer, Charles Jackson, who asserts that he has reviewed the publicly available information and believes that Omnipoint is currently constructing a GSM system with only minor use of IS–661 technology. WCC requests the Commission to clarify the extent to which Omnipoint must use its own technology to retain its preference award and asks several questions, including whether the substantial use condition requires Omnipoint to use its IS–661 interface from the inception of its broadband PCS operations pursuant to its license.

4. On January 31, 1996, Omnipoint submitted a response, in which it argues that WCC's petition should be dismissed or denied on five grounds. Omnipoint first states that "WCC has failed to articulate who it is, whom it represents, or how it or its membership, if any, is affected by Omnipoint's activities in the New York MTA." Omnipoint notes that the Commission's rules permit requests for clarification of a decision only when the petitioner demonstrates the existence of a genuine decisional controversy or uncertainty, and argues that WCC has failed to make such a demonstration. Second, Omnipoint contends that WCC's petition is in substance not a petition for clarification but an untimely filed petition for reconsideration of the Third R&O. Third, Omnipoint addresses WCC's substantive allegations. Omnipoint avers that in the deployment of its New York MTA PCS system, it is, in fact, substantially using the IS–661 technology for which it received a preference. It adds that other companies are "licensing and commercializing" this technology. Omnipoint stresses that it is deploying and using its IS–661 technology in conjunction with GSM, and that such use of multiple technologies is similar to the practices of most cellular and other broadband PCS licensees. Omnipoint concludes that WCC is unfairly asking the Commission to prohibit only Omnipoint from using multiple technologies in deploying a broadband PCS system. Fourth, Omnipoint submits that WCC's petition is not ripe for consideration because there is no Commission requirement that pioneers demonstrate compliance with the substantial use condition prior to the expiration of the five-year build-out requirement. Hence, Omnipoint argues that it should be afforded five years to comply fully with the condition in the New York MTA. Finally, Omnipoint states that the substantial use condition is not vague and does not need to be clarified by an order that could inadvertently delay the rapid deployment of pioneers' systems.

5. On February 7, 1996, WCC submitted a reply to Omnipoint's response in which it contends that Omnipoint offers no information to suggest that WCC's petition is unwarranted. WCC states that it is not arguing that Omnipoint must use only IS–661 technology in the New York MTA, but is asking merely that the Commission define the substantial use condition associated with Omnipoint's pioneer's preference license. WCC also states that Omnipoint does not attempt to clarify the extent to which Omnipoint will use its IS–661 technology in the New York MTA, either initially or over a five-year period.

6. The Commission has discretionary authority to issue a declaratory ruling to "terminat[e] a controversy or remov[e] uncertainty." The doctrine of standing was developed by the courts as an analytic tool to determine whether the exercise of jurisdiction by a court over a given case would exceed the limitation of "the scope of the federal judicial power to the resolution of 'cases' or 'controversies.'" This jurisdictional limitation is set forth in Article III of the U.S. Constitution. Although this limit on jurisdiction is not directly applicable to administrative agencies such as the Commission and there are no statutory or regulatory standing requirements applicable to the Commission in the declaratory ruling context, the Commission believes that the presence or absence of standing is a useful factor to consider in determining whether a "controversy" or "uncertainty" exists in a form sufficiently crystallized to warrant our consideration in the context of a declaratory ruling.

7. To establish standing in the context of federal appellate proceedings, a petitioner must satisfy a three-pronged test. That is, the petitioner must allege (1) A "distinct and palpable" personal injury-in-fact that is (2) "fairly traceable" to the respondent's conduct and (3) redressable by the relief requested. By analogy, in considering similar factors in the declaratory ruling context, the Commission's review of the pleadings indicates that WCC has not identified itself, its membership, or its interest in the Omnipoint application. Though WCC has alleged a general concern that the "substantial use" condition should be clarified to "ensure that Omnipoint is in full compliance with the condition[ ] * * *, and that it is deserving of the substantial financial benefits attached to its license," it has not alleged how it personally would be injured if Omnipoint were not to comply with the "substantial use" condition. Its general allegations of potential harm to Omnipoint's competitors and to the U.S. Treasury are not distinct and palpable injuries personal to WCC.

8. In addition, although ripeness concerns addressed by federal courts in the context of Article III do not apply to agency declaratory rulings, concepts of ripeness can also provide a useful analogy in determining whether the Commission should exercise its discretion to issue declaratory rulings. The Commission concludes that this is not an appropriate case to issue such a ruling because the question of the extent to which technology must be deployed in order to satisfy the "substantial use" condition is not ripe for our consideration at this time and no unusual and compelling circumstances are present. A finding of "substantial use" entails a judgment of the degree and/or nature of deployment and use, which can be affected by the nature and extent of other technologies with which the pioneer's preference technology is entwined, the effect of market forces, the effect of ensuing technological advancements, and other factors. Such judgments are best made on a case-by-case basis. No precise formula for "substantial use" can productively be set forth at this time, and any effort to do so would only serve to delay unnecessarily the deployment and use of pioneer's preference technology. In the instant case, Omnipoint's broadband PCS system in the New York MTA is still under construction, and Omnipoint has until the five-year build-out date specified in its license authorization, December 13, 1999, to meet its build-out requirements. Therefore, the issue of substantial use is not yet ripe for Commission review.

9. Therefore, for these reasons, the Commission declines to exercise its discretion to issue a declaratory ruling here. Accordingly, *it is ordered* that the petition for declaratory ruling filed on

[1] The WCC petition is styled as a "Petition for Clarification." Because the petition essentially asks the Commission to issue a declaratory ruling defining in greater detail the meaning and scope of the "substantial use" condition placed on pioneer's preference licenses, the Commission is treating it as a petition for declaratory ruling pursuant to 47 C.F.R. § 1.2.

January 16, 1996 by The Wireless Communications Council *is denied.*

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22195 Filed 8–29–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192 and 193

[Docket PS–125; [Amdt Nos. 190–7; 191–11; 192–77; 193–12]]

RIN 2137–AC28

Regulatory Reinvention Initiative: Pipeline Safety Program Procedures; Reporting Requirements; Gas Pipeline Standards; and Liquefied Natural Gas Facilities Standards; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to final regulations Docket PS–125, which were published Monday, June 3, 1996 (61 FR 27789). The regulations made various changes to administrative practices in the pipeline safety program and made minor modifications to requirements for gas detection, protective enclosures, and pipeline testing temperatures.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523 or online at herrickl@rspa.dot.gov regarding the subject matter of this correction, or the Dockets Unit, (202) 366–5046, regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule that is the subject of these corrections was published with several errors and omissions. The document did not contain the amendment numbers. A hidden formatting inconsistency from imported text resulted in the misprinting of some of the typographical symbols used to denote degrees. As a result some of the degree symbols were printed as the letter "N" instead of the symbol "°". And, the instructions for amending § 193.2907 "Protective enclosure construction" did not specify that (c) was to be removed.

Correction of Publication

Accordingly, the publication on June 3, 1996 of the final rule Docket PS–125, is corrected as follows:

1. On page 27789, in the Heading, the docket number reference "[Docket PS–125; Notice 2", is corrected to read: "[Docket PS–125; Amdt. 190–7; 191–11; 192–77; 193–12]".

2. On page 27791, in the first column, line 24, the temperature "100NF" is amended to read "100°F".

3. On page 27791, in the first column, last paragraph, the temperatures "23NC" and "73NF" in all three instances are amended to read "23°C" and "73°F".

4. On page 27791, in the second column second line, the temperature "100NF" is amended to read "100°F".

5. On page 27791, in the second column second paragraph, the temperature "100NF" is amended to read "100°F".

6. On page 27793, in the first column, last paragraph, the temperature "100NF" is amended to read "100°F".

7. On page 27793, in the second column paragraph 3, the instructions are amended by inserting the phrase "and by removing paragraph (c)" following the section designation (b). and by removing the five asterisks following the word "opening".

Issued in Washington, D.C. on August 22, 1996.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–22171 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–60–U

Proposed Rules

Federal Register
Vol. 61, No. 170
Friday, August 30, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1645

Allocation of Earnings

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board is publishing in Part 1645 of 5 CFR proposed regulations concerning allocation of earnings of the three funds in which assets of the Thrift Savings Fund may be invested. These are the Government Securities Investment Fund (G Fund), the Common Stock Index Investment Fund (C Fund), and the Fixed Income Index Investment Fund (F Fund). These regulations are required by the Federal Employees' Retirement System Act of 1986 (FERSA). They describe the way in which earnings are allocated to participants of the Thrift Savings Plan.

DATES: Comments must be submitted on or before September 30, 1996.

ADDRESSES: Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005. Telephone: (202) 942–1661. Telefacsimile: (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (Board) administers the Thrift Savings Plan (TSP) pursuant to the authority vested in it by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514 (1986), which has been codified, as amended, largely at 5 U.S.C. 8401–8479 (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Part 1645 describes the process for determining and allocating earnings for each of the three investment funds—the G Fund, the C Fund, and the F Fund—to individual accounts of participants in the TSP. Interim rules describing the process of allocating earnings for each of the investment funds to participant accounts were originally published in the **Federal Register** on May 2, 1988, (53 FR 15620) as an amendment to title 5 of the Code of Federal Regulations, adding Part 1645, Allocation of Earnings. Comments were requested by June 1, 1988. No comments were received.

The final rule reflects the Board's policy of allocating earnings to participant accounts as of month-end. The rule consolidates the different elements of a participant's account, formerly found in § 1645.5, into a definition of "month-end account balance." There has been no change in the formula for calculating the amount of earnings that are allocated to the accounts found at § 1645.6. The Board also adopted, in § 1645.5(c), a single earnings allocation factor for each source of contributions within a fund (*i.e.*, agency automatic (1%) contributions, agency matching contributions, and employee contributions), rather than apply a different allocation factor for each source within a fund. The remainder of the changes involve clarifications of several definitions.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations will affect only internal Board procedures for allocating earnings.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, section 201, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, or tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, tit. II, 110 Stat. 847, 857–875 (5 U.S.C. 801(a)(1)(A)), the Board submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to the publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

List of Subjects in 5 CFR Part 1645

Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

Accordingly, 5 CFR part 1645 is proposed to be amended as follows:

PART 1645—ALLOCATION OF EARNINGS

1. The authority citation for Part 1645 continues to read as follows:

Authority: 5 U.S.C. 8439(a)(3) and 5 U.S.C. 8474.

2. Section 1645.1 is amended by revising the definitions of "Allocation date", "Employer contributions", "Forfeitures", "Source", and "Valuation period"; by removing the definitions of "Employer basic contributions" and "Employer matching contributions" and adding alphabetically definitions of "Agency automatic (1%) contributions" and "Agency matching contributions", respectively; and by adding in alphabetical order the definition of "Month-end account balance", to read as follows:

§ 1645.1 Definitions.

* * * * *

Allocation date means the last day of each calendar month.

* * * * *

Agency automatic (1%) contributions means contributions made pursuant to 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3).

Agency matching contributions means contributions made pursuant to 5 U.S.C. 8432(c)(2).

* * * * *

Employer contributions means agency automatic (1%) contributions and agency matching contributions.

* * * * *

Forfeitures means amounts forfeited pursuant to 5 U.S.C. 8432(g)(2) and other nonstatutory forfeited amounts, net of restored forfeited amounts.

* * * * *

Month-end account balance means the value, as of the allocation date, of the funds for each source of contributions in each investment fund, including all earnings, and any forfeiture, restored forfeited amount, adjustment, earnings correction, loan, withdrawal, or interfund transfer transactions posted as of the allocation date.

* * * * *

Source means the origin of any one of the three types of contributions that are made to the Fund on behalf of participants—employee contributions, agency automatic (1%) contributions, or agency matching contributions.

* * * * *

Valuation period means the calendar month during which earnings accrue.

3. Section 1645.2 is revised to read as follows:

§ 1645.2 Posting of receipts.

Agency and employee contributions and loan repayments will be posted by source and by investment fund to the appropriate individual account on the day they are processed by the recordkeeper.

§ 1645.3 [Amended]

4. Section 1645.3 is amended by revising references to "Investment Fund" to read "investment fund" wherever they appear.

5. Section 1645.4 is revised to read as follows:

§ 1645.4 Administrative expenses attributable to each investment fund.

A portion of administrative expenses accrued during each valuation period will be charged to each investment fund. The investment funds' respective portions will be determined as follows:

(a) Investment managers' fees and other accrued administrative expenses attributable only to the C or F Fund will be charged to the C or F Fund, respectively;

(b) All other accrued administrative expenses will be reduced by forfeitures and earnings on forfeitures accrued during the valuation period;

(c) The amount of accrued administrative expenses not covered by forfeitures under paragraph (b) of this section will be charged on a *pro rata* basis to the investment funds, based on the respective investment fund balances on the last day of the prior valuation period.

6. Section 1645.5 is revised to read as follows:

§ 1645.5 Basis for allocation of earnings.

(a) *Individual account basis.* Except for the amounts described in paragraph (b) of this section, the individual account basis on the earnings allocation date for each source of contributions in each investment fund equals:

(1) The month-end account balance as of the previous allocation date; plus

(2) One-half of contributions posted to the individual account during the current valuation period (except for contributions referred to in paragraph (b) of this section); plus

(3) One-half of all loan repayments posted to the individual account during the current valuation period.

(b) *Inclusion of retroactive contributions.* The individual account basis for agency automatic (1%) contributions will also include all amounts attributable to retroactive contributions that are made to the individual account pursuant to 5 U.S.C. 8432(c)(3) and that are processed by the recordkeeper during the current valuation period.

(c) *Computation of fund basis.* For each valuation period, the total fund basis for each investment fund will be the sum of all individual account bases for all sources of contributions in that investment fund, calculated as described in paragraphs (a) and (b) of this section.

7. In § 1645.6, paragraph (a) is revised and paragraph (b) is republished to read as follows:

§ 1645.6 Earnings allocation for individual accounts.

(a) *Computation of earnings for each individual account.* Earnings for each source of contributions for each investment fund will be allocated to each individual account separately. The total net earnings for each investment fund (as computed under § 1645.3) will be divided by the total fund basis for that investment fund (as computed under § 1645.5(c)). The resulting number (the "allocation factor") will be multiplied by the individual account basis for the respective source of contributions in that investment fund (as computed under § 1645.5(a)), to determine the individual account earnings for the valuation period attributable to that source of contributions in that investment fund. The earnings of the individual account for each source of contributions in each investment fund, when added together, will constitute the earnings for that individual account during the valuation period.

(b) *Residual net earnings.* Amounts allocated to individual accounts may not exceed the total amount of earnings available to be allocated. To avoid allocating excessive amounts, computation of earnings for individual accounts described in paragraph (a) of this section will not include fractions of a cent. Residual net earnings attributable to unallocated fractions of a cent will be allocated with the earnings for the following valuation period.

8. Section 1645.7 is revised to read as follows:

§ 1645.7 Posting of earnings to individual accounts.

For each source of contributions for each investment fund, the amount of earnings computed for each individual account in a valuation period, as described in § 1645.6, will be posted to the individual account as of the allocation date.

[FR Doc. 96–22153 Filed 8–29–96; 8:45 am]
BILLING CODE 6760–01–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AE93

Handling Payments From the Farm Service Agency (FSA) to Delinquent FSA Farm Credit Program Borrowers

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise regulations which establish the requirements for the use of administrative offset to collect delinquent debts due under programs formerly administered by the Farmers Home Administration. The proposed action will eliminate the existing provisions contained in the regulation and the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service and Farm Service

Agency (the Agencies) will instead adhere to the requirements in the existing United States Department of Agriculture administrative offset regulations. This revision will eliminate the requirement that a borrower's account must be accelerated prior to offset of payments to delinquent borrowers.

DATES: Comments on the proposed rule, or comments on alternatives to this proposal, must be received on or before September 16, 1996. The comment period was reduced to allow for publication of a final rule prior to the distribution of income supplementation and enhancement program payments by the Farm Service Agency in September 1996. Comments on the information collection requirements of this rule must be received on or before October 29, 1996 to be assured of consideration.

ADDRESSES: Send comments on the proposed rule to: Director, Farm Credit Programs Loan Servicing and Property Management Division (LSPMD), Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), room 5449–S, P.O. Box 2415, Stop 0523, Washington, D.C. 20013–2415. Comments on the information collection requirements of this proposed rule must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble and to the Department address listed after the OMB address.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Credit Programs Loan Servicing Division, P.O. Box 2415, Stop 0523, Washington, D.C. 20013–2415, telephone (202) 720–9053.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed under Executive Order 12866 has been determined to be a significant regulatory action, and has been reviewed by the Office of Management and Budget.

Executive Order 12372

The programs to which this Executive Order may apply are listed in the Catalog of Federal Domestic Assistance under the following:

10.104 Emergency Loans
10.405 Farm Labor Housing Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Loans
10.421 Indian Tribes and tribal Corporation Loans
10.422 Business and Industry Loans
10.423 Community Facility Loans
10.427 Rural rental Housing Assistance Grants
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit Organizations
10.435 Agricultural Loan Mediation Program

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, subpart V, 48 FR 29115, June 24, 1983).

Programs listed under the numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to and have met the provisions of Executive Order 12372. (7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Environmental Impact Statement

It is the determination of the issuing agencies that this action is not a major Federal action significantly affecting the environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule: and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

The issuing Agencies are not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking to effect these administrative changes.

Paperwork Reduction Act

The amendments to 7 CFR part 1951 set forth in this proposed rule involve a change in existing information collection requirements which were previously approved by OMB under the provisions of 44 U.S.C. 35 and assigned OMB Control Number 0575–0119. The regulations containing the information collection approved under 0575–0119 are jointly owned by the Agencies issuing this rule as aresult of the recent reorganization of USDA. A review of 0575–0119 has resulted in a division of the information collection requirements currently approved and a request for approval of the revised collection has been submitted to OMB.

OMB Control Number: 0560—New.

Title: Offsets of Federal Payments to FmHA Borrowers.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: 7 CFR part 1951, subpart C, requires that a borrower's account be accelerated and the borrower's appeal rights exhausted before offsetting any payments to be received by the borrower. The Department of Agriculture Reorganization Act combined the farm credit functions of FmHA and the former Agricultural Stabilization and Conservation Service (ASCS), into the Farm Service Agency (FSA). This results in FSA making payments generated from participation in the former ASCS programs to the same farmer or rancher that is delinquent on his debts to the Agency. Acceleration of a borrower's account is one of the last steps FSA takes before liquidating the account. This process may take years while the borrower continues to receive payments from FSA.

This rule proposes to remove the existing administrative offset regulation which was used by the Agencies when they were a part of the former Farmers Home Administration (FmHA). The Department of Agriculture has an existing administrative offset regulation at 7 CFR part 3, subpart B and the administrative offset regulation of the former FmHA in 7 CFR part 1951, subpart C is redundant. The Department of Agriculture regulation complies with the requirements of 31 U.S.C. 3716, as amended by the Debt Collection Improvement Act of 1996, ch. 10 of Pub. L. 104–134 (April 26, 1996).

One intended effect of using the existing Department of Agriculture administrative offset procedure is that the Department procedure does not contain the restrictive provision of the former FmHA offset regulation which

requires the debt to have been accelerated prior to using administrative offset. There is no statutory basis for delaying offset until after a loan has been accelerated and the Department administrative offset procedure will permit offset to be utilized for debts which are past due. The information collection requirements for this type of internal agency offset will decrease, due to the development of a shortened notification letter, streamlining of the offset appeal process, and the reduction of the number of notices and number of meetings offered. However, the easing of offset procedures will greatly increase the number of FSA borrowers that receive notices and accounts that are offset. For example, as of March 30, 1996, 1,588 FSA borrowers were accelerated, whereas 27,180 borrowers were past due.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 2.35 hours per response.

Respondents: FSA Farm Credit Programs borrowers that are over 30 days past due.

Estimated Number of Respondents: 13,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 30,500 hours.

Estimated Annual-Cost to the Public: $377,000.

Comments regarding the following issues should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Phillip D. Elder, Senior Loan Officer, Loan Servicing Division, Farm Service Agency, USDA, P.O. Box 2415, Ag Box Code 0523, Washington, D.C. 20013–2415; telephone (202) 720–9053: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of the information collection may be obtained from Phillip Elder at the above address. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector. Under section 202 of the UMRA, agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion of Proposed Rule

The proposed changes involve the credit programs formerly administered by FmHA. Under the authority of the Department of Agriculture Reorganization Act of 1994, Pub. L. 10–354 (October 10, 1994), FmHA was abolished on October 20, 1994, and its functions were transferred to the Agencies.

This rule proposes to remove the existing administrative offset regulation which was used by the Agencies when they were a part of the former FmHA. The Department of Agriculture has an existing administrative offset regulation at 7 CFR part 3, subpart B and the administrative offset regulation of the former FmHA in 7 CFR part 1951, subpart C is redundant. The Department of Agriculture regulation complies with the requirements of 31 U.S.C. 3716, as amended by the Debt Collection Improvement Act of 1996, chapter 10 of Pub. L. 104–134 (April 26, 1996) and satisfies the administrative offset needs of the Agencies.

Section 1951.103(b) of Title 7 of the Code of Federal Regulations, which is part of the existing administrative offset procedure which the Agencies are proposing to remove, requires a borrower's account to have been accelerated prior to the use of administrative offset to collect part of the past due debt. One of the intended effects of this proposed rule is to eliminate the acceleration prerequisite to the use of administrative offset. The Department of Agriculture administrative offset regulation does not impose such a prerequisite. There is no statutory requirement that a past due account must have been accelerated prior to offsetting a borrower's federal payments.

Specifically, the acceleration prerequisite to administrative offset means that a FSA farm credit program borrower's account has to be accelerated and the borrower's appeal rights exhausted before FSA can offer any contract payments received by the borrower from programs of the former Agricultural Stabilization and Conservation Service (ASCS) (contract payments). Acceleration is one of the last steps FSA takes before liquidating a farm credit program borrower's account. This process may take years while the borrower continues to receive contract payments. After the reorganization of ASCS and FmHA into FSA, an acceleration prerequisite results in the incongruous situation of FSA having to make substantial contract payments to a farmer or rancher that is seriously delinquent on his or her farm program debts to FSA.

FSA proposes to remove the acceleration barrier to administrative offset in order to enhance collection of delinquent debts thereby reducing losses. While FSA could have revised the existing administrative offset procedure in 7 CFR part 1951, subpart C, this would mean continuing a regulation which is redundant with the existing Department of Agriculture administrative offset regulation. Removing unnecessary regulations is a goal of the National Performance Review, so the Agencies have determined that the adoption of the Department of Agriculture administrative offset regulation will serve the dual purpose of eliminating redundancy and removing the acceleration prerequisite to administrative offset.

While section 534 of the Housing Act of 1949 requires that regulations issued pursuant to title V of the Housing Act of 1949 generally must be published for a 60-day comment period, this regulation is being proposed to implement 31 U.S.C. 3716, not the Housing Act of 1949. Therefore, the notice and comment provisions of section 534 are inappropriate to this regulation.

List of Subjects in 7 CFR Part 1951

Accounting, Accounting Servicing, Credit, Loan Programs—Agriculture, Loan Programs—Housing and community development, Low and moderate income housing loans—Servicing.

Accordingly, 7 CFR part 1951 is proposed to be amended as follows:

PART 1951—GENERAL

1. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

2. The title of part 1951, subpart C is revised to read as follows:

Subpart C—Offsets of Federal Payments to Agency Borrowers

3. Section 1951.102 is revised to read as follows:

§ 1951.102 Administrative offset.

Action to effect administrative offset to recover delinquent claims may be taken in accordance with the procedures in 7 CFR part 3, subpart B.

4. Sections 1951.103 through 1951.105 are removed and reserved.

Signed in Washington, DC, on August 23, 1996.

Jill Long Thompson,

Under Secretary for Rural Development.

Eugene Moos,

Under Secretary for Farm and Foreign Agriculture Services.

[FR Doc. 96–22160 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive inspections to detect wear of the inboard flap trunnions, and modification or replacement, if necessary. This proposal would also require the eventual modification of the trunnions, which would terminate the repetitive inspections. This proposal is prompted by reports of wear damage found on the inboard flap drive trunnions that was caused by chafing of the Teflon rollers of the chain that actuates the sliding panel of the fairing. The actions specified by the proposed AD are intended to prevent such chafing and resultant wear damage, which could result in the failure of the trunnion primary load path; this would adversely affect the fatigue life of the secondary load path and could lead to loss of the flap.

DATES: Comments must be received by October 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–29–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that several operators have found wear marks on the inboard drive flap trunnions (both left-hand and right-hand) during removal and inspection of the inboard flaps. Investigation has revealed that such wear is caused by chafing of the Teflon rollers of the drive chain that actuates the sliding panel on the track No. 1 fairing. This chafing and resultant wear damage, if not corrected, could result in the failure of the trunnion primary load path. This failure would adversely affect the fatigue life of the secondary load path and, consequently, could lead to the loss of the flap.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–27–1066, dated March 7, 1994; and Revision 1, dated February 21, 1995. These service bulletins describe a program for conducting repetitive inspections to detect wear damage of the inboard flap trunnions. The interval for conducting each inspection depends

upon the amount of wear detected during the last inspection. These inspections are intended to detect wear marks in the outside diameter (primary load path) of the trunnion before they reach a critical depth that would lead to failure. If wear damage exceeds a certain amount, the service bulletin recommends that the trunnions be modified in accordance with the procedures specified in Airbus Service Bulletin A320–27–1050. Additionally, if wear damage is great (more than 5.0 mm in depth), the service bulletin recommends that Airbus be contacted for further actions. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 94–165–055(B), dated July 30, 1994, in order to assure the continued airworthiness of these airplanes in France.

Additionally, Airbus has issued Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994, which describes procedures for modifying the inboard flap drive trunnions. The modification is identified as Modification 22881, and entails installing protective half shells on the trunnion assembly to prevent chafing and wear damage. Once this modification is accomplished, the repetitive inspections of the trunnions to detect wear marks are no longer necessary. The DGAC has approved the technical content of this service bulletin and has classified it as "recommended."

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to detect wear of each inboard flap trunnion. It would also require that the trunnion be either modified or replaced, depending upon the amount of wear detected.

This proposed AD also would require that Modification 22881 be installed eventually on trunnions of all affected airplanes as terminating action for the repetitive inspections.

The inspection, modification, and replacement actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between Proposed Rule and Service Information

The inboard flap attachment trunnion is a primary structural element that is designed with both a primary and a secondary load path. The wear marks that have been found have been located on the outside diameter of the trunnion, which is the primary load path. Modification 22881, described in Airbus Service Bulletin A320–27–1050, entails installing protective half-shells on this outside diameter to prevent further wear damage.

Unlike the Airbus service bulletin and the French CN, this proposed AD would require the installation of Modification 22881as terminating action for the repetitive inspections. The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Cost Impact

The FAA estimates that 91 airplanes of U.S. registry would be affected by this proposed AD.

Accomplishment of the proposed inspections would take approximately 3 work hours per airplane, at an average labor rate of $60 per work hour. (This includes the time necessary to gain access, inspect, and close up.) Based on these figures, the cost impact of the proposed inspection requirement on U.S. operators is estimated to be $16,380, or $180 per airplane, per inspection.

Accomplishment of the proposed modification would require approximately 93 work hours, at an average labor rate of $60 per work hour. (This includes the time necessary to gain access, modify, test, and close up.) Required parts would cost approximately $1,923 per airplane. Based on these figures, the cost impact of the proposed modification requirement on U.S. operators is estimated to be $682,773, or $7,502 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 96–NM–29–AD.

Applicability: Model A320–111, –211, –212, –231, and –232 series airplanes; as listed in Airbus Service Bulletin A320–27–1066, Revision 1, dated February 21, 1995; and on which Airbus Modification 22881 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and resultant wear damage to the inboard flap trunnion, which could result in the failure of the trunnion primary load path, could adversely affect the fatigue life of the secondary load path, and could lead to loss of the flap, accomplish the following:

(a) Prior to the accumulation of 500 flight hours after the effective date of this AD, conduct a detailed visual inspection to detect wear marks on each inboard flap trunnion (right-hand and left-hand), in accordance with Airbus Service Bulletin A320–27–1066, dated March 7, 1994, or Revision 1, dated February 21, 1995. Measure and record the depth of all wear marks found on each trunnion, in accordance with the service bulletin.

(1) If no wear marks are found or if the depth of the deepest wear mark is less than or equal to 2.0 mm: Repeat the inspection at intervals not to exceed 5,000 flight hours.

(2) If the depth of the deepest wear mark is greater 2.0 mm but less than or equal to 3.0 mm: Repeat the inspection within the next 1,000 flight hours. Prior to the accumulation of 5,000 flight hours after the initial inspection, modify the trunnion (Modification 22881) in accordance with Airbus Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994. This modification constitutes terminating action for the repetitive inspections of that trunnion required by this AD.

(3) If the depth of the deepest wear mark is greater 3.0 mm, but is less than or equal to 4.0 mm: Prior to the accumulation of 500 flight hours after the initial inspection, modify the trunnion (Modification 22881) in accordance with Airbus Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994. This modification constitutes terminating action for the repetitive inspections of that trunnion that are required by this AD.

(4) If the deepest wear mark exceeds 4.0 mm: Prior to further flight, replace the trunnion in accordance with the Airbus Model A320 Maintenance Manual. This replacement constitutes terminating action for the repetitive inspections of that trunnion that are required by this AD.

(b) Prior to the accumulation of 10,000 total flight hours, modify each inboard flap trunnion, right-hand and left-hand, (Modification 22881) in accordance with Airbus Service Bulletin A320–27–1050, Revision 3, dated October 21, 1994. Accomplishment of this modification on each trunnion constitutes terminating action for the inspections required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22142 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–CE–03–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob, Luft- und Raumfahrt, Model G 109 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to the Burkhart Grob, Luft-und Raumfahrt (Grob) Model G 109 sailplanes. The proposed action would require installing a damper and new bell crank lever on the rudder, in addition to adjusting the weight and balance of the sailplane, to correct the tendency of flutter at specific excitation frequencies. For those Grob G 109 airplanes that have previously accomplished this installation, a proposed modification to the damper and bell crank lever, and adjusting the weight and balance would be required. The proposed action is prompted by the discovery of rudder vibration problems during testing of two Model G 109 sailplanes. The actions specified by the proposed AD are intended to prevent the oscillation of the rudder, which could result in structural damage and eventual loss of control of the sailplane.

DATES: Comments must be received on or before November 1, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Burkhard Grob Luft-und Raumfahrt, D–86874 Mattsies, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6934, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob Model G 109 sailplanes. The LBA reports that the rudder has a tendency to vibrate, which if not detected and corrected, will cause structural damage and eventual loss of control of the sailplane.

Burkhart Grob issued Service Bulletin (SB) TM 817–38, dated July 8, 1993, and Installation Instructions 817–38, dated October 25, 1994, which specify installation of a rudder damper and a new bell crank lever in the rudder control system. Subsequently, Burkhart Grob issued SB 817–38/2, dated March 31, 1995, to correct minor tolerance difficulties with the damper installation. This revised SB references two sets of installation instructions. Grob Installation Instructions No. 817–38/1, dated March 31, 1995, applies to Grob G 109 sailplanes that have been modified in accordance with the previous version of the SB and Installation Instructions. Grob Installation Instructions No. 817–38/2, dated March 31, 1995, applies to those Grob G 109 sailplanes that have not been so modified.

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G 109 sailplanes of the same type design, the proposed AD would require installing a rudder damper and a new rudder bell crank lever in the controls and adjusting the weight and balance; or modifying the rudder damper and bell crank lever, in addition to adjusting the weight and balance of the sailplane. Accomplishment of the proposed action would be in accordance with Grob SB 817–38/2, dated March 31, 1995, and either Grob Installation Instructions No. 817–38/1 or Grob Installation Instructions No. 817–38/2, both dated March 31, 1995, whichever is applicable.

The compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplanes varies throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the affected sailplanes have a rudder damper and a new rudder bell crank lever installed within a reasonable amount of time, the FAA is proposing a compliance time of 6 calendar months.

The FAA estimates that 23 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 hours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,000 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $34,040. Grob has informed the FAA that no parts have been distributed to equip any sailplane in the United States. The FAA has no way of determining how many owners/operators may have incorporated the proposed actions on their sailplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Burkhart Grob, Luft- und Raumfahrt: Docket No. 95–CE–03–AD.

Applicability: Model G 109 sailplanes (serial numbers 6001 through 6159), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent vibration of the rudder, which could result in structural damage and eventual loss of control of the sailplane, accomplish the following:

(a) For sailplanes that have been modified in accordance with Grob Service Bulletin (SB) TM 817–38, dated July 8, 1993, and

Grob Installation Instructions No. 817–38, dated October 25, 1994, modify the damper unit and the rudder bell crank lever in accordance with Grob SB 817–38/2, dated March 31, 1995, and Grob Installation Instructions No. 817–38/1, dated March 31, 1995.

(b) For sailplanes that have not been modified in accordance with Grob SB TM 817–38, dated July 8, 1993, and Grob Installation Instructions No. 817–38, dated October 25, 1994, install a new damper unit and rudder bell crank lever in accordance with Grob SB 817–38/2, dated March 31, 1995 and Grob Installation Instructions No. 817–38/2 dated March 31, 1995.

(c) For all affected sailplanes, re-calculate the weight and balance data in accordance with the Actions section in Grob SB 817–38/2, dated March 31, 1995.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Burkhard Grob Luft -und Raumfahrt, D–86874 Mattsies, Germany; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 23, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22248 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–102 and –103 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–102 and –103 series airplanes. This proposal would require repetitive external inspections to detect cracks in the skin exterior of the fuselage at floor level, and repair, if necessary. This proposal also would require repetitive internal inspections to detect cracks of the subject area, which terminates the repetitive external inspections. This proposal is prompted by a report that one of the tasks in the Maintenance Program Airworthiness Limitations List inadvertently excluded certain airplanes from the instructions for the inspections. The actions specified by the proposed AD are intended to prevent undetected cracking of the frames and skin panels of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by October 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–163–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–102 and –103 series airplanes. Transport Canada advises that, in a previous issue of the Maintenance Program Airworthiness Limitations List (ALL), certain modified airplanes were inadvertently excluded from instructions for performing one of the required maintenance tasks.

The ALL contains mandatory damage tolerance inspections of the fuselage [required by section 25.571 ("Damage tolerance and fatigue evaluation of structure") of the Federal Aviation Regulations (14 CFR 25.571), amendment 25–45] that are part of the type certificate of these airplanes. The instructions for these inspections are in the form of inspection "maintenance task cards" and are contained in the Dash 8 Maintenance Program Manual PSM 1–8–7.

Maintenance Task Card 5310/30C contains instructions for performing internal visual inspections to detect cracks of the left- and right-hand fuselage frames at the floor level. It also contains an effectivity listing, which specifies those airplanes on which the inspection is necessary. The effectivity of this task card lists airplanes on which de Havilland Modification 8/0427 has not been installed, but inadvertently

excludes from the list the airplanes on which that modification has been installed. Both the modified and unmodified airplanes must receive these inspections, however.

Since the ALL is incorporated into the Dash 8 Maintenance Program Manual, and since the ALL's effectivity for this necessary inspection is incorrect, the fuselage frames of the modified airplanes may not have been inspected. Without these necessary inspections, cracking could occur and go undetected. Additionally, cracking of the fuselage frames is often associated with secondary cracking of the fuselage skin. Such cracking of the frames and skin panels of the fuselage at the floor level, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

De Havilland has issued Service Bulletin 8–53–48, dated August 26, 1994, which describes procedures for repetitive external detailed visual inspections to detect cracks in the left- and right-hand skin exterior of the fuselage at the floor level on Model DHC–8 series airplanes on which de Havilland Modification 8/0427 has been installed. The service bulletin also describes procedures for repetitive internal visual inspections to detect cracks of the fuselage frames. Accomplishment of the internal inspection eliminates the need for the repetitive external inspections. In addition, the service bulletin describes procedures for reporting all cracks to Bombardier Regional Aircraft Division.

Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–94–17, dated September 9, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusion

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive external detailed visual inspections to detect cracks in the left-and right-hand skin exterior of the fuselage at the floor level. The proposed AD also would require repetitive internal visual inspections to detect cracks of the fuselage frames; initiation of these inspections would constitute terminating action for the repetitive external inspection requirements. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This proposed AD would be applicable only to airplanes on which de Havilland Modification 8/0427 has been installed, and on which Maintenance Program Manual PSM 1–8–7, Task 5310/30C (Section 3–53, page 12, dated August 10, 1993) has not been accomplished.

Differences Between the Proposal and the Related Service Information

Operators should note that, although the service bulletin specifies that operators are to contact Bombardier Regional Aircraft Division for "disposition of all cracks," this proposed AD would require that operators accomplish the repair of any cracking in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation or the FAA.

Cost Impact

The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD.

The proposed external inspections would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,800, or $60 per airplane, per inspection.

The proposed internal inspections would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $14,400, or $180 per airplane, per inspection.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

de Havilland, Inc.: Docket 95–NM–163 AD.

Applicability: Model DHC–8–102 and 103 series airplanes having serial numbers 101 through 180, inclusive; on which de Havilland Modification 8/0427 has been installed, and on which Maintenance Program Manual PSM 1–8–7, Task 5310/30C (Section 3–53, page 12, dated August 10, 1993) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected cracking of the frames and skin panels of the fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,343 total flight cycles, or within 200 landings after the effective date of this AD, whichever occurs later, perform an external detailed visual inspection to detect cracks in the left- and right-hand skin exterior of the fuselage at floor level, in accordance with paragraph III, External Inspection, of the Accomplishment Instructions of de Havilland Service Bulletin S.B. 8–53–48, dated August 26, 1994.

(1) If no crack is detected, repeat the external detailed visual inspection thereafter at intervals not to exceed 750 landings.

(2) If any crack is detected, prior to further flight, perform an internal visual inspection to detect cracks of the fuselage frames in accordance with the service bulletin. Accomplishment of this internal visual inspection constitutes terminating action for the repetitive external detailed visual inspections required by of paragraph (a)(1) of this AD.

(i) If no crack is detected during the internal inspection, prior to further flight, repair the cracked area(s) found during the external inspection, in accordance with the de Havilland DHC–8 Structural Repair Manual; or in accordance with a method approved by Transport Canada; or in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(ii) If any crack is detected during the internal inspection, prior to further flight, repair all cracks found during both the external and internal inspections, in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation; or in accordance with a method approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(b) Prior to the accumulation of 31,000 flight cycles, or within 12 months after the effective date of this AD, whichever occurs later, perform an internal visual inspection to detect cracking of the fuselage frames, in accordance with de Havilland Service Bulletin S.B. 8–53–48, dated August 26, 1994. Accomplishment of the internal visual inspection constitutes terminating action for the repetitive external detailed visual inspections required by paragraph (a)(1) of this AD.

(1) If no cracking is detected during the internal inspection, repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(2) If any cracking is detected during the internal inspection, prior to further flight, repair it in accordance with the de Havilland DHC–8 Structural Repair Manual, or in accordance with a method approved by Transport Canada Aviation; or in accordance with a method approved by the Manager, New York ACO, FAA, Engine and Propeller Directorate. Repeat the internal inspection thereafter at intervals specified in accordance with the Dash 8 Maintenance Program Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New ACO, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22143 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–SW–14–AD]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters, that currently requires installation of an improved throttle governor; an adjustment to the low RPM warning unit threshold to increase the revolutions-per minute (RPM) at which the warning horn and caution light activate; and revisions to the R22 Rotorcraft Flight Manual that prohibit flight with the improved throttle governor selected off, except in certain situations. This action would require the same compliance actions required by the existing AD, as well as require an insertion of procedures for the improved throttle governor into the Normal and Emergency sections of the R22 Rotorcraft Flight Manual and correct the applicability section of the existing AD. This proposal is prompted by the need to insert normal and emergency procedures for the improved throttle governor in the flight manual, as well as clarify the helicopter serial numbers to which the AD applies. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712 4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–SW 14–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 15, 1996, the FAA issued AD 96–11–08, Amendment 39–9633 (61 FR 26429, May 28, 1996), to require installation of an improved throttle governor; an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate; and, revisions to the R22 Rotorcraft Flight Manual that prohibit flight with the improved throttle governor selected off, except in certain situations. That action was prompted by an FAA Technical Panel review of Model R22 accident history data which revealed that M/R blade stall at abnormally low M/R RPM resulted in accidents. The requirements of that AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the affected serial-numbered helicopters in the applicability section of that AD should be changed from "serial number (S/N) 0002 to 2537," to include all Model R22 helicopters. The FAA has also determined that R22 Rotorcraft Flight Manuals issued prior to July 6, 1995 did not address normal and emergency procedures for the improved throttle governor. Finally, since the issuance of the existing AD, the FAA has determined that the cost estimate for installation of the improved throttle governor kits did not include the replacement cost of the magnetos.

Since an unsafe condition has been identified that is likely to exist or develop on other Model R22 helicopters of the same type design, the proposed AD would supersede AD 96–11–08 to require installation of the improved throttle governor; an adjustment to the low RPM warning unit threshold; insertions of language into the R22 Rotorcraft Flight Manual in the Normal and Emergency sections to address procedures for the improved throttle governor, as well as an insertion in the Limitations section that prohibits flight with the improved throttle governor selected off, except in certain situations; and, would expand the applicability section to additional Model R22 helicopters and revise the estimated cost impact of the existing AD.

The FAA estimates that 1,014 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours to install the improved throttle governor, or 7 hours to upgrade the throttle/collective governor, 4 hours to upgrade the magnetos, if required, and approximately 0.2 work hour to accomplish the adjustment of the light/warning horn RPM, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,150 per helicopter to install the improved throttle governor, or approximately $500 for upgrading the throttle/collective governor per helicopter. Installation of upgraded magnetos, if required, will cost approximately $927 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,029,088. This cost estimate assumes that no helicopters are currently equipped with a governor and all will need the improved throttle governor installed. Additionally, the cost estimate assumes that 300 Model R22 helicopters will require installation of the upgraded magnetos.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9633 (61 FR 26430, May 28, 1996) and by adding a new airworthiness directive (AD), to read as follows:

Robinson Helicopter Company: Docket No. 96–SW–14–AD. Supersedes AD 96–11–08, Amendment 39–9633.

Applicability: Model R22 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To minimize the possibility of pilot mismanagement of the main rotor (M/R) revolutions-per-minute (RPM), which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–1 or –5 low-RPM warning unit so that the warning horn and caution light activate when the M/R RPM is

between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R22 maintenance manual.

(b) For Model R22 helicopters that do not have a governor currently installed, install a Robinson Helicopter Company KI–67–2 Governor Field Installation Kit in accordance with the kit instructions. Upon completion of the governor installation required by this paragraph, revise the FAA-approved Robinson Helicopter Company R22 Rotorcraft Flight Manual (RFM) in accordance with paragraph (d) of this AD.

(c) For Model R22 helicopters that have a throttle/collective governor currently installed, upgrade the governor with a Robinson Helicopter Company KI–67–3 Governor Upgrade Kit in accordance with the kit instructions. Upon completion of the upgrade required by this paragraph, revise the FAA-approved Robinson Helicopter Company R22 Rotorcraft Flight Manual (RFM) in accordance with paragraphs (d) of this AD.

(d) Revise the FAA-approved Robinson Helicopter Company R22 RFM as follows:

(1) Insert the FAA-approved Robinson Helicopter Company R22 RFM revision, dated July 6, 1995, or later FAA-approved revision addressing the governor normal and emergency procedures, into the Normal and Emergency sections of the RFM.

(2) Include the following statement in the Limitations section: "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training." This may be accomplished by inserting a copy of this AD or the FAA-approved Robinson Helicopter Company R22 RFM revision dated July 23, 1996, into the RFM.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 19, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22186 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–SW–15–AD]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters, that currently requires an adjustment to the low RPM warning unit threshold to increase the revolutions per-minute (RPM) at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the throttle governor (governor) selected off, except in certain situations. This action would require the same compliance actions required by the existing AD, and would correct the applicability section of the existing AD. This proposal is prompted by the need to expand the helicopter serial number applicability to include all Robinson Model R44 helicopters. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712 4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–SW–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–15–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 15, 1996, the FAA issued AD 96–11–09, Amendment 39–9634 (61 FR 26427, May 28, 1996), to require an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, except in certain situations. That action was prompted by an FAA Technical Panel Review of Robinson accident history data which revealed that M/R blade stall at abnormally low M/R RPM resulted in accidents. The requirements of that AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the affected serial-numbered helicopters in the applicability section of that AD should be changed from "serial number (S/N) 0001 to 01183 and 0189," to include all Robinson Model R44 helicopters.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R44

helicopters of the same type design, the proposed AD would supersede AD 96–11–09 to require an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, except in certain situations, for all Robinson Model R44 helicopters.

The FAA estimates that 20 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.2 work hour per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9634 (61 FR 26427, May 28, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Robinson Helicopter Company: Docket No. 96–SW–15–AD. Supersedes AD 96–11–09, Amendment 39–9634.

Applicability: Model R44 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously. To minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–6 low RPM warning unit so that the warning horn and caution light activate when the M/R RPM is between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R44 maintenance manual.

(b) Revise the FAA-approved Robinson Helicopter Company R44 Rotorcraft Flight Manual (RFM) to include the following statement in the Limitations Section:

"Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

This may be accomplished by inserting a copy of this AD or the FAA-approved Robinson Helicopter Company R44 RFM revision dated July 25, 1996, into the RFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 19, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22137 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AWP–10]

Proposed Establishment of Class E Airspace; Groveland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace area at Groveland, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 09/27 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Pine Mountain Lake Airport, Groveland, CA.

DATES: Comments must be received on or before September 20, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–10, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AWP–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace area at Groveland, CA. The development of a GPS SIAP at Pine Mountain Lake Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 09/27 SIAP at Pine Mountain Lake Airport, Groveland, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Groveland, CA [New]

Pine Mountain Lake Airport, CA
(lat. 37°51'41"N, long. 120°10'42"W)

That airspace extending upward from 700 feet above the surface within a 5.7-mile radius of the Pine Mountain Lake Airport and within 2 miles southwest and 3 miles northeast of the 135° bearing from the Pine-Mountain Lake Airport extending from the 5.7-mile radius to 11 miles southeast of the airport.

* * * * *

Issued in Los Angeles, California, on August 15, 1996.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–22131 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 96–ASO–5]

Proposed Amendment to Time of Designation for Restricted Areas; GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the time of designation for Restricted Areas 3008A (R–3008A), R–3008B, R–3008C, and R–3008D, Grand Bay Weapons Range, GA, by expanding the timeframe during which these areas may be activated without prior issuance of a Notice to Airmen (NOTAM). The U.S. Air Force proposed this amendment to accommodate an increase in the using agency's night flying requirements.

DATES: Comments must be received on or before October 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 96–ASO–5, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–5." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land-use aspects to: Mr. Robert C. Makowski, 347th CES/CEVA, 3485 Georgia Street, Moody Air Force Base (AFB), GA 31699–1707. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the Federal Aviation Administration, Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 73 of Title 14 of the Code of Federal Regulations (14 CFR part 73) to amend the time of designation for R–3008A, R–3008B, R–3008C, and R–3008D from the current "0700–1900 local time, Monday-Friday; other times by NOTAM 6 hours in advance," to "0700–2200 local time, Monday-Friday; other times by NOTAM 6 hours in advance." This proposal would expand, by 3 hours daily, the core hours during which these areas could be activated without prior issuance of a NOTAM. As proposed, a NOTAM would not be required for activation of these restricted areas between 1900 and 2200 local time. The using agency currently has the option of activating these areas at any time providing a NOTAM is issued for any use outside the core hours. A NOTAM would still be required for any usage outside the proposed amended times. The 347th Wing at Moody AFB, GA, has reorganized as a composite wing made up of F–16, A–10, and C–130 aircraft. As a result, the unit's night flying missions, which utilize R–3008, routinely extend past 1900 local time, but are normally terminated by 2200 local time. This requires the daily issuance of NOTAM's for activation of these areas between 1900 and 2200. Amendment of the time of designation, as proposed, would provide better notification to the flying public of expected routine times of use of these restricted areas, and lesson NOTAM system workload.

Section 73.30 of part 73 of the Federal Aviation Regulations was published in FAA Order 7400.8C dated June 29, 1995.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis by the proponent and the FAA prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority. 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.30 [Amended]

2. Section 73.30 is amended as follows:

R–3008A, R–3008B, R–3008C, and R–3008D, Grand Bay Weapons Range, GA [Amended]

By removing the words "Time of designation. 0700–1900 local time, Monday–Friday; other times by NOTAM 6 hours in advance." and inserting the words:

"Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM 6 hours in advance."

Issued in Washington, DC, on August 22, 1996.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–22252 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 91, 93, 121, and 135

Public Meeting on Special Flight Rules in the Vicinity of Grand Canyon National Park; Notice of Proposed Rulemaking and Draft Environmental Assessment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is issuing this notice to advise the public of two public meetings on the notice of proposed rulemaking (NPRM), Special Flight Rules in the Vicinity of Grand Canyon National Park, published in the **Federal Register** on July 31, 1996, and the corresponding draft environmental assessment (EA), the availability of which was announced on August 19, 1996. The purpose of these meetings is to provide an additional opportunity for the public to comment on the proposal and the draft assessment.

DATES: The meetings will be held on September 16 and 17, and September 19 and 20. See Supplementary Information for details.

ADDRESSES: The meetings will be held in Scottsdale, AZ and Las Vegas, NV. See Supplementary Information for details. Persons unable to attend the

meetings may mail their comments on the NPRM in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 28537, 800 Independence Ave., NW, Washington, DC 20591. Written comments to the docket will receive the same consideration as statements made at the public meetings.

Comments on the draft EA should also be sent to the Rules Docket in triplicate, but to Docket No. 28653.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meetings on the Grand Canyon NPRM or draft EA and questions regarding the logistics of the meetings should be directed to Linda Williams, Federal Aviation Administration, Office of Rulemaking (ARM–109), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685; fax (202) 267–5075.

Questions concerning the NPRM should be directed to Neil Saunders, Airspace and Rules Program, Airspace Management, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591. Telephone: (202) 267–9241.

Questions on the draft EA should be directed to William J. Marx, Division Manager, ATA–300, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone (202) 267–9367.

SUPPLEMENTARY INFORMATION: Meeting dates, locations, and times are as follows:

September 16 and 17—Scottsdale, AZ
Arizona and Barcelona Rooms, 4th Floor, Embassy Suites, 5001 North Scottsdale Rd., Scottsdale, AZ 85250, telephone: 1–800–528–1456 or (602) 949–1414
Registration: 8:30 a.m.–6:30 p.m.
Meeting: 9:00 a.m.–4:00 p.m.; 7:00 p.m.–9:00 p.m.

September 19 and 20—Las Vegas, NV
Cashman Field, Meeting Rooms 107 and 108, 850 Las Vegas Blvd. North (use parking lot B), Las Vegas, NV 89101
Registration: 8:30 a.m.–6:30 p.m.
Meeting 9:00 a.m.–4:00 p.m.; 7:00 p.m.–9:00 p.m.

Please note: The first day of the meetings (September 16 and 19 will address the NPRM; the second day of the meetings (September 17 and 20) will address the draft EA.

Background

The FAA will conduct two public meetings on the recently published Grand Canyon National Park proposed rule and draft environmental assessment. Comments from the public at these meetings should be directed specifically to the proposed rule on the first day of each meeting and to the environmental assessment on the second day of each meeting.

The notice of proposed rulemaking was published in the **Federal Register** on July 31, 1996 [61 FR 40120]. The NPRM proposed to add new flight-free areas and corridors and proposed a number of options, including flight curfews and a moratorium or cap on flights allowed in the park. The NPRM also states that the FAA may adopt any combination of the options in a final rule.

The notice of availability for the draft environmental assessment was issued on August 19, 1996, and published in the **Federal Register** on August 21, 1996.

The closing date for comments on the proposal is September 30, 1996; the closing date for comments on the draft EA is October 4, 1996. In order to give the public an additional opportunity to comment on the proposed rule and the draft EA, the FAA is planning these public meetings. Because this additional opportunity to comment on the proposed rule and draft EA is provided, the FAA does not intend to extend the closing date for comments on the NPRM or draft EA.

Persons interested in obtaining a copy of the Grand Canyon proposed rule should contact Linda Williams at the address or telephone number provided in **FOR FURTHER INFORMATION CONTACT.** For a copy of the draft EA contact William Marx at the address or telephone number provided.

Participation at the Public Meetings on the NPRM or Draft EA

Requests from persons who wish to present oral statements at the public meetings on the Grand Canyon National Park proposal or draft assessment should be received by the FAA no later than September 10. Such requests should be submitted to Linda Williams as listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Requests received after September 10 will be scheduled if time is available during the meetings; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meetings. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The following procedures are established to facilitate the public meetings on the NPRM and draft EA:

1. There will be no admission fee or other charge to attend or to participate in the public meetings. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meetings may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meetings, as well as an assistive listening device, if requested 10 calendar days before the meetings.

6. Representatives of the FAA will conduct the public meetings. A panel of FAA and National Park Service (NPS) personnel involved in this issue will be present.

7. The meetings will be recorded by a court reporter. A transcript of the meetings and any material accepted by the panel during the meetings will be included in the public docket (Docket No. 28537 for the NPRM and 28653 for the draft EA). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meetings.

8. The FAA will review and consider all material presented by participants at the public meetings. Position papers or material presenting views or information related to the proposed NPRM or the draft EA may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meetings provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meetings panel are intended to facilitate discussion of the issues or to clarify issues. Because the meetings concerning the Grand Canyon NPRM and draft EA are being held during the comment period, final decisions

concerning issues that the public may raise cannot be made at the meetings. FAA and NPS officials may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at these public meetings will be considered by the FAA and NPS when deliberations begin concerning whether to adopt any or all of the proposed rules.

10. The meetings are designed to solicit public views and more complete information on the proposed rule. Therefore, the meetings will be conducted in an informal and non-adversarial manner.

Issued in Washington, DC on August 27, 1996.

Chris A. Christie,

Director of Rulemaking.

[FR Doc. 96–22208 Filed 8–27–96; 12:13 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–051]

RIN 1218–AB51

Safety Standards for Fire Protection for Shipyard Employment

AGENCY: Occupational Safety and Health Administration (OSHA), U.s. Department of Labor.

ACTION: Notice of public meeting; appointment of members to Advisory Committee; and notice of organizational meeting of Advisory Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a meeting of all parties interested in the Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee will be held to provide information, to promote an understanding of the negotiated rulemaking process, and to present the Committee members. Nominees for membership, who have been drawn from shipyard operators, labor, professional associations, and government agencies, have been selected to serve on the Committee. The nominees, along with their affiliations are listed in this notice. The members of the Committee will represent the interests of all groups interested in, or significantly affected by, the outcome of the rulemaking.

Immediately following the informational meeting, an organizational meeting of the advisory committee will take place. The committee will be charged with its duties and will address certain procedural matters. These meetings will be open to the public.

DATES: The public meetings will be held on October 15, 16, and 17, 1996. The informational meeting will begin at 9:00 a.m. on October 15, 1996, and the organizational meeting of the Committee will begin at 1:00 p.m. on October 15, 1996 and will run until approximately 5:00 p.m. The meetings October 16 and 17, 1996 will begin at 9:00 a.m. and run until approximately 5:00 p.m. each day.

ADDRESSES: The public meetings will be held at the Port of Portland Building, 700 N.E. Multnomah, 13th Floor, Room 13A, Portland, Oregon, 97208. Any written comments in response to this notice should be sent, in quadruplicate, to the following address: Docket Office, Docket S–051, Room N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

FOR FURTHER INFORMATION CONTACT: Ann Cyr, Acting Director; OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

I. Background

Fire protection in shipyard employment has been regulated by OSHA's general industry standards for fire protection, 29 CFR 1910.155 through 1910.165, Subpart L. In enforcement activities, OSHA has also used Section (5)(a)(1) of the Occupational Safety Health Act ("the Act"), the General Duty Clause, which requires each employer to, furnish to each of his employees employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm.

The general industry standards, which address fire brigades, portable fire extinguishers, standpipe and hose systems, automatic sprinkler systems, fixed extinguishing systems, fire standpipe and hose systems, automatic sprinkler systems, fixed extinguishing systems, fire detection systems, and employee alarm systems, cover primarily landside shipyard operations. Fire hazards on board vessels are not covered by the general industry standards. Moreover, the general industry standards are in need of review and revision and do not completely address hazards that are unique to shipyard employment. The Agency believes a standard promulgated under § 6(b) of the Act will more effectively reduce the risks of fire in the shipyard and on board vessels.

OSHA has decided to use the negotiated rulemaking (Neg/Reg) process to develop a proposed standard for fire protection covering all shipyard employment. The most important reason for using Neg/Reg is that the shipyard stakeholders from all sectors strongly support consensual rulemaking efforts like negotiated rulemaking. OSHA believes this process will result in a proposed standard whose provisions will effectively protect employees working throughout the shipyard. (See OSHA's Notice of Intent to Form a Negotiated Rulemaking Committee to Develop a Proposed Rule on Fire Protection in Shipyard Employment, 61 FR 28824, June 6, 1996, for a detailed explanation of why OSHA is using negotiated rulemaking to develop its proposed standard and for general information on the negotiated rulemaking process).

II. Some Key Issues for Negotiation

OSHA expects that key issues to be addressed as part of these negotiations will include:

1. Scope and Application. Should Subpart P apply to all shipyard employment? How will the standard affect out-of-yard/plant firefighters such as those employed by a municipal fire department?

2. Controls and Work Practices. What controls and work practices will provide adequate protection for employees? Should OSHA require hot work permits? Should OSHA require training for all fire fighters? Should OSHA incorporate U.S. Coast Guard regulations in this standard? Is there any difference in controls and work practices on landside vs. onboard vessels and vessel sections? Should OSHA require the employer to secure (deactivate) all fire fighting systems onboard vessels when they arrive in the yard?

3. Fire Brigades. Should OSHA require each shipyard to have an in-yard/plant fire brigade?

4. Written Fire Plans. Should OSHA require written fire plans for landside and onboard vessels? If so, what provisions need to be included in the plans? Should OSHA include a requirement for de-watering (removal of firefighting water from the vessel) of vessels when fighting a fire on board a vessel?

5. Technological Advances. What advances in fire technology have occurred since OSHA's general industry standards were promulgated? Which of

these advances should be incorporated into the shipyard standard?

6. Costs of Fire Protection. What costs would be incurred by shipyards in meeting the various provisions of a new standard? Calculations should include costs of acquiring new equipment, instituting new engineering controls and work practices, and costs of training employees. Are there cost savings or other benefits that could be expected with the promulgation of identical rules for all of shipyard employment? If so, what would be the magnitude of savings?

7. Appendices. Should OSHA include technical information in an appendix or appendices? If so, should it (they) be mandatory?

III. Agenda for the Public Meeting

Following registration and assembly, the Facilitator for the Committee will offer an overview of negotiated rulemaking (Neg/Reg). Interest-based negotiation will be contrasted with the usual development of a proposed rule. The advantages of using Neg/Reg, where practical decision making results in a rule that can be more stringent, but, at the same time, easier and less expensive to implement, will be discussed. Other topics addressed will be working with caucuses and the "Wedge" concept, where the member at the table represents a much broader constituency and is expected to funnel information to the Committee and back to the interests he or she represents. The very important role of workgroups, composed of both members and other interested parties, working out technical problems and performing drafting and analysis tasks will be discussed. It should be noted that workgroups, while reflecting the deliberations of the Committee, do not make policy decisions. During the meeting the Facilitator may provide opportunities for questions and caucus meetings.

The Facilitator will also announce the selection of the Committee. He will discuss: the variety of interests and the potential representatives of those interests; the difficulty in selecting the Committee members and the basis for these selections; and the criteria used in assessing whether to go forward with a Neg/Reg in Fire Protection for Shipyard Employment.

The Facilitator will address the matters that must be resolved by the Committee at its first meeting, including the "Ground Rules." These are the procedural rules that the Committee will adopt at its first meeting. The Agency will distribute proposed Ground Rules that address: the composition of the Committee, the use of alternates, and the essential commitment of the members to attend the meetings and participate meaningfully. The Ground Rules emphasize the importance of the members' communication with their constituencies including keeping them abreast of the negotiations, thereby limiting surprises. The goal of this negotiated rulemaking is a proposed rule and supporting documentation that all members will support. The Ground Rules will address "bargaining" in good faith to reach the goal.

The Facilitator will also identify and discuss the substantive issues to be resolved by this Committee. Here, the Facilitator is relying on the information presented to him by OSHA as well as the considerable input from the various interests during convening efforts. The time needed for the resolution of these issues and the order of their consideration is integrally related to the development of a tentative schedule. OSHA requests that all interested parties bring their calendars to facilitate the development of a tentative schedule of committee meetings, site visits and workgroup meetings.

Interactivde training sessions, under the direction of the Facilitator, will constitute the final portion of this public meeting. Topics for these training sessions will include the following: a discussion on interest based negotiations; a session illustrating how to participate in a Neg/Reg; and an explanation of how the electronic bulletin board system will aid the negotiation process. Other training activities may be added at the time of the meeting.

IV. Committee Membership

Appointees to the Committee include representatives from labor, industry, public interests and government agencies. The appointees also represent groups interested in, or affected by, the outcome of the rulemaking. Following is a list of members and the affiliations they represent:

Labor

Richard M. Duffy: Director, Department of Occupational Health and Safety, International Association of Fire Fighters, AFL–CIO, CLC
Ted Pederson: Seattle Fire Department Union, Metal Trades, International Brotherhood of Electrical Workers
Michael M.X. Buchet: United Brotherhood of Carpenters

Management

E.P. "Rick" Kaiser: South Tidewater Association of Ship Repairers, Inc.
George Broussard: American Waterways Shipyard Conference
J.D. Paulson: National Steel and Shipbuilding Company (NASSCO)

Firefighters

Russ Sill: Portland Fire Bureau
Donald R. Mozick: Atlantic Marine, Inc. and Atlantic Dry Dock, Corp.

Safety Professionals

Guy Colonna: National Fire Protection Association
Glenn Harris: Ship Production Panel-5 of the Society of Naval Architects and Marine Engineers

Government

George F. Hurley, III: Fire Chief, Norfolk Naval Shipyard
Morgan J. Hurley: Fire Protection Engineer, DOT, Coast Guard
Paul Jensen (Ted Pettit—alternate): National Institute for Occupational Safety and Health
Joseph V. Daddura (Frank Strasheim—alternate): Occupational Safety and Health Administration

State Government

Peter Schmidt: State Department of Labor and Industry, Seattle, Washington

V. Agenda for the Organizational Meeting of the Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee

The meeting will be called to order. The Secretary of Labor, or his designee, will charge the Committee with its duties and goals. The Facilitator will assume the Chair and the procedural issues will be addressed by the Committee. These will include the adoption of the Ground Rules which are the procedural rules that the Committee will follow. The substantive matters must be considered in the development of a tentative schedule of committee meetings, site visits and workgroup meetings. The Committee will have to identify and discuss these matters to be resolved and determine the proper sequence of consideration as well as the location of the future meetings. OSHA will have provided proposed Ground Rules, issues, agendas (sequence of consideration), and meeting locations to the nominees of the committee prior to this meeting.

VI. Public Participation

All interested parties are invited to attend this public meeting at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Ms. Theda Kenney at (202) 219–

8061 to obtain appropriate accommodations no later than October 1, 1996. The opening public meeting is expected to last 2 and one half days.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. The Facilitator of the Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the Facilitator.

Part 1912 of Title 29 of the Code of Federal Regulations will apply generally. The reporting requirements of § 1912.33 have been changed pursuant to § 1912.42 to help meet the special needs of this Committee. Specifically, § 1912.33 requires that verbatim transcripts be kept of all advisory committee meetings. Producing a coherent transcript requires a certain degree of formality. The Assistant Secretary therefore has determined pursuant to § 1912.42 that such formality might interfere with the free exchange of information and ideas during the negotiations, and that the OSH Act would be better served by simply requiring detailed minutes of the proceedings without a formal transcript.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

Any written comments should be directed to Docket No. S–051, and sent in quadruplicate to the following address: OSHA Docket Office, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

VII. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 22nd day of August, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–22225 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–26–M

Mine Safety and Health Administration

30 CFR Parts 21, 24, and 75

RIN 1219–AA98

Technical Amendments; Removal of Unnecessary Regulations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; technical amendments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to remove approval regulations on flame safety lamps and single-shot blasting units which have become obsolete because of advances in technology. Removal of these obsolete parts would not reduce protection for miners. This proposal also would make conforming amendments to safety regulations for underground coal mines which require the use of this approved equipment.

DATES: Submit written comments on or before November 29, 1996.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203. Commenters are encouraged to send comments on a computer disk or via e-mail to psilvey@msha.gov along with an original printed copy.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 703–235–1910 (voice), 703–235–5551 (facsimile), psilvey@msha.gov (Internet e-mail).

SUPPLEMENTARY INFORMATION:

I. Purpose

In response to the Administration's regulatory reinvention initiative, MSHA has conducted a page-by-page review of its existing regulations to identify provisions that are obsolete, outdated, redundant, or unnecessary. As part of this review, the Agency has identified two regulations that could be removed immediately without any adverse effect on miner safety and health. These regulations are obsolete. Conforming amendments to other 30 CFR parts would be made, as appropriate. Equipment approved by MSHA under parts being proposed for elimination can continue to be manufactured by the approval-holder and distributed for use in mines, as long as they continue to be manufactured in full compliance with the drawings and specifications upon which the approval was based. No changes in approved devices can be made once the 30 CFR parts being proposed for elimination are deleted.

For the reasons discussed below, the Agency is proposing to remove 30 CFR parts 21 and 24. MSHA specifically solicits comments on the impact of this action both on the mining community and on other government agencies if they reference these parts of 30 CFR.

II. Discussion

A. Part 21—Flame Safety Lamps

Part 21 addresses the requirements for approval of flame safety lamps used to detect oxygen deficiency and methane in mine atmospheres. Part 21 repeats the requirements for approval of flame safety lamps from Bureau of Mines' Schedule 7C, dated August 30, 1935. Advances in technology have produced oxygen and methane detecting devices which are more accurate and reliable than flame safety lamps. As a result, methane and oxygen detectors have replaced flame safety lamps as the required source for detecting these gases in mines. As required by 30 CFR 75.320, methane and oxygen detectors approved by MSHA must be used to make these tests and a permissible flame safety lamp may continue to be used only as a supplemental testing device for oxygen deficiency. These MSHA-approved flame safety lamps can continue to be manufactured by the approval-holder and distributed for use in mines, as long as they continue to be manufactured in full compliance with the drawings and specifications upon which the approval was based and there are no changes in the approved devices. Further, there have been no new applications for approval of flame safety lamps for more than 40 years. For these reasons, MSHA has determined that the approval requirements for flame safety lamps are obsolete and unnecessary and, therefore, is proposing to remove this part.

B. Part 24—Single-Shot Blasting Units

Part 24 addresses the requirements for approval of single-shot blasting units used in mines, especially mines that can contain methane or flammable dust in dangerous concentrations. Part 24 repeats the requirements for approval of single-shot blasting units from Bureau of Mines' Schedule 12D, dated November 27, 1945. Advances in technology have produced multiple-shot blasting units

which are safer, more versatile, and more reliable than single-shot blasting units. Multiple-shot blasting units can be used to fire single shots. As a result, single-shot blasting units are rarely used in underground mines. The approval requirements for single-shot blasting units have been replaced by part 7, subpart D, Multiple-Shot Blasting Units. MSHA-approved single-shot blasting units can continue to be manufactured by the approval-holder and distributed for use in mines, as long as they continue to be manufactured in full compliance with the drawings and specifications upon which the approval was based and there are no changes in the approved devices. Further, no new applications for approval of a single-shot blasting unit have been submitted in 25 years. For these reasons, MSHA has determined that the requirements for approval of single-shot blasting units are obsolete and unnecessary and, therefore, is proposing to remove this part.

List of Subjects

30 CFR Part 21

Mine safety and health.

30 CFR Part 24

Explosives, Mine safety and health.

30 CFR Part 75

Mine safety and health, Underground mining.

Dated: August 23, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of 30 U.S.C. 957 and 961, title 30, chapter I, of the Code of Federal Regulations is amended as set forth below:

PART 21—FLAME SAFETY LAMP APPROVAL [REMOVED]

1. Part 21 is removed.

PART 24—SINGLE-SHOT BLASTING UNITS [REMOVED]

2. Part 24 is removed.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 75.506 is amended by revising paragraph (d) to read as follows:

§ 75.506 Electric face equipment; requirements for permissibility.

* * * * *

(d) The following equipment will be permissible electric face equipment only if it is approved under the appropriate Bureau of Mines schedules or parts of this chapter, as listed here, and it is in permissible condition.

(1) Multiple Shot Blasting Units, part 7 subpart D (Schedule 16E and part 25);

(2) Electric Cap Lamps, part 19 (Schedule 6D);

(3) Electric Mine Lamps Other than Standard Cap Lamps, part 20 (Schedule 10C);

(4) Flame Safety Lamps (Schedule 7C and part 21);

(5) Portable Methane Detectors, part 22 (Schedule 8C);

(6) Telephone and Signaling Devices, part 23 (Schedule 9B);

(7) Single Shot Blasting Units (Schedule 12D and part 24);

(8) Lighting Equipment for Illuminating Underground Workings, part 26 (Schedule 29A); and

(9) Methane-Monitoring Systems, part 27 (Schedule 32A).

[FR Doc. 96–22078 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI50–01–7257b; FRL–5542–2]

Proposal To Approve State Implementation Plan; Michigan; Reid Vapor Pressure Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Enivonmental Protection Agency (EPA) is proposing to approve a revision to the Michigan State Implementation Plan (SIP) for the purpose of establishing a summertime gasoline Reid vapor pressure limit of 7.8 pounds per square inch (psi) for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties. The marketing of less volatile gasoline reduces excessive evaporation of fuel during the summer months. Evaporated gasoline combines with other pollutants on hot summer days to form ground-level ozone, commonly referred to as smog. Ozone pollution is of particular concern because of its harmful effects on lung tissue and breathing passages. The EPA proposes to approve the State RVP requirement as a SIP revision and to find that the requirement is necessary for the State to achieve the National Ambient Air Quality Standard for ozone.

In the final rules section of this **Federal Register** EPA is publishing an interim final rule approving this SIP revision for a limited time only, from July 1, 1996 to September 15, 1996. In that document, EPA explains the basis for the approval and solicits comments on that action. This action proposes to make that temporary approval permanent and solicits comments.

DATES: Comments on this proposed action must be received by September 30, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson at (312) 353–4779.

SUPPLEMENTARY INFORMATION:

I. Background

For additional information, see the accompanying Interim Final rule, which is located in the Rules section of this **Federal Register**.

II. Action

The EPA is proposing to approve a revision to Michigan's SIP to establish a summertime gasoline RVP limit of 7.8 psi for gasoline sold in Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe counties and is finding that such a requirement is necessary for the area to attain the ozone National Ambient Air Quality Standard for ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 21, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–21983 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO–310–3110–02 1A]

Royalty Rate Reduction for Stripper Oil Properties

AGENCY: Bureau of Land Management, Interior.

ACTION: Review of regulations; request for comments.

SUMMARY: The Bureau of Land Management (BLM) is seeking public comments on the effectiveness of the royalty rate reduction available to producers of Federal stripper well properties. A stripper well produces a daily average of less than 15 barrels of oil. BLM is evaluating the effectiveness of this program. Comments will assist BLM in deciding whether to continue, modify or end the royalty rate reduction program.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: You may *hand-deliver* comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or *mail* comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You also may *transmit* comments *electronically* via the Internet to:

WOComment@WO0033wp.wo.blm.gov.

Please include "Attn: AC68" in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact the person identified at **FOR FURTHER INFORMATION CONTACT.** You will be able to review comments at BLM's Regulatory Management Team office, Room 401, 1620 L St., N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Melton, Roswell (NM) District Office, (505) 627–0254.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments should be specific, should be confined to issues pertinent to the regulations under review, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the regulations that the commenter is addressing. BLM may not necessarily consider or include in the Administrative Record comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

In 1992, BLM amended 43 CFR 3103.4–1 to establish conditions under which an operator or an owner of a Federal stripper oil well property could obtain a reduction in the royalty rate (57 FR 35968, August 11, 1992). This action was intended to encourage operators of stripper properties to place marginal or uneconomic shut-in wells back in production and to provide an economic incentive to increase production by reworking such wells, drilling new wells, and/or by implementing enhanced oil recovery projects. In addition, the 1992 final rule contained procedures for operators to follow in (1) determining whether a property qualifies for the royalty reduction and (2) calculating the appropriate royalty rate.

BLM's regulations at 43 CFR 3103.4–1(d)(5) indicate that the Secretary of the Interior will evaluate the effectiveness of the stripper well royalty reduction program and may at any time after September 10, 1997, terminate any or all royalty reductions granted upon six months notice. Based on this review, the Secretary could continue the program, modify it, or terminate it.

At the request of the Secretary, the BLM has established a task force to evaluate the effectiveness of the stripper royalty rate reduction in meeting the goals of encouraging operators of stripper properties to place marginal or uneconomic shut-in wells back in production and providing an economic incentive to increase production by reworking such wells, drilling new wells, and/or by implementing enhanced oil recovery projects. Through this notice, the task force is actively seeking public comments in support of, or against, continuance of this program. These comments, in conjunction with a Department of Energy analysis, will provide the basis for the task force's final recommendation to the Secretary.

Comments are specifically requested on whether or not the royalty reduction program has:

1. Enabled existing stripper oil well properties to continue producing;

2. Caused additional drilling into known reservoirs;

3. Caused drilling into previously undeveloped reservoirs;

4. Triggered implementation of enhanced recovery programs; and

5. Affected the economies of States and local communities where the stripper properties are located.

BLM is also interested in receiving any other information that may have a bearing on whether the royalty reduction program is accomplishing its goals.

Dated: August 26, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–22193 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 101]

RIN 2127–AG17

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend a provision in the agency's occupant crash protection standard which specifies that, during crash tests, all portions of a test dummy must remain in the vehicle throughout the test. NHTSA is considering a range of alternative requirements, all of which would require the test dummy to remain in the vehicle at the conclusion of the test. The agency is taking this action to ensure that the standard's requirements are practicable. This action results from a petition for rulemaking submitted by the American Automobile Manufacturers Association.

DATES: Comments must be received by October 29, 1996.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264. Fax: (202) 366–4329.

For legal issues: Mr. Edward Glancy, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Current Automatic Protection Requirements

Standard No. 208, *Occupant Crash Protection*, specifies, among other things, "automatic protection" requirements for passenger cars and light trucks. Vehicles must meet specified injury criteria, measured using test dummies, during a barrier crash test, at speeds up to 30 mph and at a

range of specified angles. The standard specifies several injury criteria, including ones for the head and chest, and one specifying that all portions of the dummies remain in the vehicle throughout the test. For air-bag-equipped vehicles, the criteria must be met both when the dummies are belted and when they are unbelted.

The automatic protection requirements have applied to passenger cars since the late 1980's, and are currently being phased in for light trucks. In establishing the requirements, NHTSA permitted a variety of methods of providing automatic protection, including automatic belts and air bags. Congress, however, included a provision in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) directing NHTSA to prescribe an amendment to Standard No. 208 to require, by the late 1990's, that all passenger cars and light trucks provide automatic protection by means of air bags. The final rule implementing this provision of ISTEA was published in the **Federal Register** (58 FR 46551) on September 2, 1993.

The vehicle manufacturers are far ahead of the ISTEA implementation schedule. Manufacturers have been providing air bags in a large number of passenger cars for several years, and nearly every 1996 model year passenger car will be equipped with both driver-side and passenger-side air bags as standard equipment. A large number of model year 1996 light trucks are also equipped with air bags.

Petition for Rulemaking

NHTSA has received a petition for rulemaking from the American Automobile Manufacturers Association (AAMA) [1] requesting a change in Standard No. 208's requirement that all portions of the dummies remain in the vehicle at all times throughout the test. More specifically, AAMA requested that the requirement be changed from: "All portions of the test device shall be contained within the outer surfaces of the vehicle passenger compartment," to: "The test device shall be within the vehicle passenger compartment at the completion of the test."

AAMA argued that the existing requirement is "an obsolete and subjective criterion (that) is a relic of the early 1970's notion that air bags alone could provide complete protection from frontal, lateral and rollover collisions." That organization stated that "(a)ir bags have been recognized since at least 1984 as being a supplement to safety belt restraints and they simply cannot prevent ejection or partial ejection in all instances."

AAMA provided the following further explanation for its request:

> AAMA is convinced that a momentary, partial excursion of a test dummy's extremity outside the outline of the door window opening does not demonstrate a significant safety risk. Changes that might be made to try to completely contain "All portions of the test dummy," such as smaller and softer air bags, may inhibit design of the air bag for optimum performance in "real-world" impact conditions. Structural changes necessary to try to keep all portions of the test dummy completely within the occupant compartment may hinder the overall occupant protection performance of the vehicle. Accordingly, the specific requirement as it pertains to current vehicles is unreasonable.
>
> Recent NHTSA rulemaking has mandated compliance with specified injury criteria, as measured with an instrumented test dummy, during a dynamic side impact test described in FMVSS 214. The head of the side impact dummy routinely, although momentarily, traverses outside the confines of the vehicle during a FMVSS 214 dynamic side impact test, and such an excursion is not considered a failure to meet the requirements. This very limited dummy excursion through the window opening does not demonstrate a significant safety risk in frontal or front angular impacts. Applying this agency rationale clearly shows that the FMVSS 208 dummy containment requirement, as specified, is obsolete.
>
> Since the Intermodal Surface Transportation Efficiency Act mandated that vehicle manufacturers provide dual air bags for *all* vehicles by the 1999 model year, knowledge of the interaction between a test dummy and an air bag in all types of vehicles has grown. It is this more recent information that shows that a requirement to maintain complete dummy containment throughout a barrier impact test is both unreasonable and impracticable. For example, during an impact, an unbelted test dummy acts like a linked multi-piece projectile. The positions of its appendages during impact and rebound are difficult to predict and even more difficult to control. A test dummy tends to be unstable when seated in an upright position. If not supported by seat backs and belts, it will tip over easily. This instability also makes it difficult, if not impossible, to predict the position of the test dummy as it rebounds from an air bag system, especially during angular impacts. Momentary partial excursion of hands, arms, shoulders and/or head is very possible during impact or rebound, both during angular impacts and during perpendicular impacts conducted with the windows open.
>
> Many light trucks and vans, particularly those with higher seating reference points relative to the ground, have relatively low beltlines to provide appropriate driver vision characteristics. In these vehicles, it is becoming increasingly apparent that during angular impacts, parts of a dummy may randomly and momentarily, move slightly outside the plane of the open window during rebound from the air bag and knee bolster. These random dummy excursions result directly from the reaction of the dummy to (1) contact with the air bag and (2) the unpredictable motion of the vehicle as it reacts to the angled barrier after the initial impact. Because of the relative positioning of a driver to the steering wheel, which typically houses the air bag, it is the driver dummy that is more likely to exhibit a random, momentary excursion.
>
> Maintaining each appendage of a test dummy completely within the occupant compartment during an angular impact, a side impact or during rollover testing is impracticable. However, AAMA supports the position that the test dummy as a whole should remain within the vehicle during the test, i.e., it should not be ejected from the vehicle. The need for motor vehicle safety would be addressed in the most appropriate manner if the regulation were to optimize the performance of the air bag system, even though a dummy's head, shoulder, hand or arm might momentarily extend through the door glass.
>
> This position is consistent with the desire to maintain vehicle passenger compartment integrity and to prevent ejections. Accordingly, AAMA recommends this requirement be changed to incorporate the current understanding that a safety belt is required to prevent ejection.

NHTSA held a meeting with representatives of AAMA and its member companies to discuss the petition. One issue which was discussed was the possibility of using a vehicle's windows to meet the dummy containment requirement. Section S8.1.5 of Standard No. 208 provides that "(m)ovable vehicle windows and vents are, at the manufacturer's option, placed in the fully closed position." While most vehicle manufacturers select the option for windows to be open during testing, a few select the option for windows to be closed.

AAMA stated that using windows to control dummy containment is not a practicable option. According to the petitioner, current crash pulses in certain vehicles are strong enough to cause permanent structural deformation of the door frame and door, always resulting in broken window glazing. These structural changes provide a path for partial ejection of the test dummy during a crash test. AAMA also indicated that manufacturers are designing their light trucks and vans to have lower beltlines. (The beltline is the widest perimeter of the vehicle when viewed from the top or plan view.) AAMA stated that crash forces during Standard No. 208 testing can cause structural deformation of the low-beltline front doors with attendant loss of the glazing's ability to provide containment because the glazing breaks.

[1] AAMA's member companies are Chrysler, Ford, and General Motors.

Another issue that was discussed at the meeting concerned the ability to determine whether the current dummy containment requirement has been met during a test. General Motors (GM) stated that determining how far the dummy extends beyond the outer surface of the vehicle is difficult when viewing test films. Even under controlled test conditions, dummy extension is difficult to confirm because of camera viewing angles and vehicle structural deformations. GM stated that two different viewers of the same film may perceive the degree of test dummy containment differently, or may even disagree whether the test dummy has extended beyond the outer surface of the vehicle.

Proposal

After analyzing the arguments presented by AAMA in its petition and in the subsequent meeting with agency personnel, NHTSA has decided that the question of whether to issue the amendment requested by the petitioner should be decided in the context of a rulemaking proceeding. The agency will consider options ranging from no change in the standard to adopting the amendment requested by the petitioner. The agency is setting forth proposed regulatory text that falls within the middle range of options:

> All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. If the test is conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

In considering any petition to reduce the stringency of an existing safety requirement, NHTSA is obviously concerned about the possible impacts on safety. In the case of this requested change, however, it is difficult to assess the possible impacts.

On the one hand, it is "directionally incorrect" to permit partial dummy ejection, since there is a greater risk of injury to any portion of a person's body that is outside of a vehicle during a crash. Moreover, the requirement at issue is related to a critical area where the agency is focusing significant resources and attention, i.e., full and partial occupant ejections through windows, the subject of NHTSA's advanced glazing initiative.

On the other hand, AAMA argues that the vehicle manufacturers' experience in attempting to meet the requirement has shown that it is impracticable. That is, AAMA contends that at least for some vehicles and some test conditions, there are no available countermeasures to meet the requirement. Moreover, AAMA contends that some possible countermeasures, such as smaller air bags or structural changes, may negatively affect safety. To the extent that NHTSA amended the standard only to the extent necessary to ensure practicability, such an amendment would not appear to have any effect on safety.

While AAMA has provided sufficient information for NHTSA to decide to publish a notice of proposed rulemaking, the agency desires additional information to fully assess this issue for a possible final rule. The agency recognizes the need to ensure the practicability of its standards, and that experience in implementing a new requirement may demonstrate that a change is necessary. At the same time, before reducing an existing safety requirement, NHTSA must carefully assess the evidence indicating that a change is needed. The agency must also carefully consider the evidence with respect to the necessary scope of any such change.

NHTSA notes that the vehicle manufacturers have been certifying air-bag-equipped passenger cars to the current requirement for a number of years. The agency seeks additional information to assess the extent to which the problem cited by AAMA may apply only to light trucks, only to certain types of light trucks, or more generally to passenger cars and light trucks.

NHTSA also seeks additional information to assess the extent to which the problem cited by AAMA may apply to both the belted and unbelted test conditions, or only to the unbelted test condition. The agency notes that one of the purposes of safety belts is to prevent occupant ejection, and that even partial ejection of a person's head raises particular safety concerns. Therefore, one option that the agency is considering is to adopt the amendment suggested by AAMA, except that partial excursion of the dummy's head would be prohibited throughout the test for the belted condition. This is the option that is reflected in the proposed regulatory text.

In order to obtain the information needed to reach a final decision, NHTSA is setting forth below a number of questions directed toward the vehicle manufacturers. The agency is requesting more specific information and data concerning the manufacturers' efforts to meet the existing requirement and the problems they may have experienced or may be experiencing. The agency recognizes that some of this information may be confidential, e.g., it may relate to future product plans. The agency requests that, to the extent possible, manufacturers providing confidential information also provide a public document that generally discusses the significance of the underlying confidential data without revealing the data itself. For example, if a manufacturer provides confidential test data relating to a specific future product, it may be able to provide a general description of that information and its significance without revealing the specific future product. Such a general, non-confidential discussion would help the public understand the relevant issues. Also, NHTSA could use that non-confidential discussion in explaining whatever decision it reaches concerning this matter. While the questions are directed toward manufacturers, all interested persons, of course, may provide relevant information in response to the questions.

Questions for Manufacturers

1. Please explain how you have met Standard No. 208's dummy containment requirement for air-bag-equipped passenger cars. Have any particular passenger car models posed particular difficulties? How did you address those difficulties? Please address whether, and how, you are currently having difficulty meeting the dummy containment requirement for particular passenger car models.

2. For which light truck models (and passenger car models, if any) are you having difficulty meeting the dummy containment requirement? What design changes, including interior changes, air bag changes, structural additions or modifications, bracing, material changes, and window design changes, have you considered or investigated? To what extent do each of these design changes enable a vehicle to meet the dummy containment requirement? What tests have you conducted?

3. To what extent do the problems you are experiencing specifically relate to: The unbelted condition, the belted condition, the full frontal test condition, the angle test condition, the driver position, and the passenger position?

4. Please provide specific information concerning any safety tradeoffs associated with each of the designs identified in response to Question 2. How do each of the changes affect test dummy responses, including head injury criterion (HIC), chest g's, and femur loading?

5. What are the estimated costs of each of the changes identified in response to Question 2?

6. Please explain why the design strategies used for passenger cars are not

available for light trucks. Are there particular characteristics of light trucks which create a problem? Does this problem exist for all light trucks, or only for light trucks with particular characteristics?

7. To what extent have you considered the use of advanced glazing concepts to meet the dummy containment requirement?

Proposed Effective Date

The proposed amendment would not impose any new requirements but would instead ensure the practicability of Standard No. 208's requirements. According, NHTSA has tentatively concluded that there would be good cause for an effective date 60 days after publication of a final rule.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under those policies and procedures.

As discussed above, the purpose of this proposed revision is to ensure that Standard No. 208's requirements are practicable. While NHTSA needs additional information to complete its analysis for purposes of a final rule, the agency expects to conclude that a final rule would not affect vehicle designs. Consequently, the proposal is not expected to affect either occupant safety or compliance costs for manufacturers. Accordingly, the agency concludes that preparation of a full regulatory evaluation for this proposal is not warranted.

Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

The proposal affects motor vehicle manufacturers. Almost all motor vehicle manufacturers would not qualify as small businesses. Moreover, as discussed above, the proposal is not expected to affect compliance costs for manufacturers.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act and determined that a final rule adopting this proposal would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of Title 49 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 would be amended by revising S6.1.1 and S6.2.1 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S6.1.1 All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. In the case of a test conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

* * * * *

S6.2.1 All portions of the test device shall be within the vehicle passenger compartment at the completion of the test. In the case of a test conducted with safety belts fastened, the head of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

* * * * *

Issued on August 27, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–22250 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC63

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Helianthus Eggertii (Eggert's Sunflower) in Kentucky, Tennessee, and Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is reopened on a proposal to list *Helianthus eggertii* (Eggert's sunflower) as threatened, pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service is reopening the comment period on this proposal to allow members of the public to submit comments on this proposal.

DATES: The comment period on this proposal is extended until September 30, 1996.

ADDRESSES: Written comments and materials concerning the proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina, 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: J. Allen Ratzlaff at the above address (telephone 704/258–3939, ext. 229, fax 704/258–5330).

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1994, the Service proposed to add Eggert's sunflower to the list of endangered and threatened plants (59 FR 174). At that time, Eggert's sunflower was known from 24 populations in 13 counties—in Alabama, one population in Blount County; in Kentucky, one population from the Edmonson/Barren County line, and one additional population from each of those counties, one population from Grayson County, and four populations from Hart County; in Tennessee, one population each in Dickson, Franklin, Lewis, Marion, Maury, and Williamson Counties, four in Lawrence County, and five in Coffee County. Since the closing of the comment period on November 8, 1994, ten additional populations have been discovered—nine within the counties listed above and one new population in Hardin County, Kentucky. The current range and distribution of the species is now—in Alabama, one population in Blount County; in Kentucky, one population from Grayson and Hardin Counties, two populations from Edmonson and Barren Counties, and seven populations from Hart County; in Tennessee, one population each in Dickson, Marion, and Williamson Counties, two in Franklin (and part of a third) and Maury Counties, three in Lewis County, four in Lawrence County, and six in Coffee County. Over half of the known populations are very small (less than 500 square meters) and many are even smaller (less than 300 square meters).

A moratorium on listing actions (Public Law 104–6) took effect April 10, 1995, and prevented the Service from making a final decision on this proposal by the August 1995 administrative deadline. The moratorium was lifted on April 26, 1996, when the appropriation for the Department of the Interior for the remainder of fiscal year 1996 was enacted into law. In a **Federal Register** document published on May 16, 1996 (61 FR 24722), the Service outlined in detail the history of the moratorium and indicated the priorities it would follow in eliminating the listing program backlog resulting from the moratorium. Preparation of the final rule for this proposed species is considered a Tier 2 priority—processing final decisions on proposed listings. For more information on the moratorium and the priority for backlogged listing actions, refer to the May 15, 1996, **Federal Register** notice.

The Service does not believe that the new distributional information has changed the status of the species. However, we are reopening the comment period on the proposed rule to solicit comments on this new information and request any additional information on scientific studies conducted since the comment period last closed on November 8, 1994. The Service hereby announces reopening of the comment period until September 30, 1996.

Author

The primary author of this notice is J. Allen Ratzlaff, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina, 28801 (704/258–3939, ext. 229., fax 704/258–5330).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 22, 1996.

Richard A. Ivarie,

Acting Regional Director, Southeast Region, Fish and Wildlife Service

[FR Doc. 96–22139 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 61, No. 170
Friday, August 30, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

In accordance with the Federal Agriculture Improvement and Reform (FAIR) Act of April 4, 1996 (Public Law 104–127, 110 Stat. 1156–1184), the United States Department of Agriculture has scheduled the initial meeting of:

Name: National Agricultural Research, Extension, Education and Economics Advisory Board.

Date: September 16–17, 1996, September 18, 1996.

Time: 8:30 a.m. to 5:00 p.m., 8:30 a.m. to Noon.

Place: U.S. Department of Agriculture, Room 104A-Williamsburg; Jamie L. Whitten Federal Building, 14th and Independence Ave, SW., Washington, DC 20250.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: The Secretary of Agriculture has filled the Advisory Board's 30 positions from more than 400 nominations solicited from 600 United States organizations identified as having agricultural research, extension, education, and economic interests. Each member represents one of 30 constituent categories, as identified in the legislation. Members were assigned initial terms of one, two, or three years. A list of Advisory Board appointees will be published in the **Federal Register** prior to the September 16–18 meeting. The Secretary of Agriculture; Under Secretary for Research, Education, and Economics; and the Administrators (Agricultural Research Service; Cooperative State Research, Education, and Extension Service; Economic Research Service; and National Agricultural Statistical Service) will serve as Advisory Board ex officio members. The Advisory Board expires September 30, 2002.

Advisory Board duties include reviewing and consulting with the Secretary of Agriculture and land-grant colleges and universities on long-term and short-term national policies and priorities related to agricultural research, extension, education, and economics; evaluating the effectiveness of those policies and priorities; and reviewing and making recommendations to the Under Secretary for Research, Education, and Economics on elements of the mission area's draft strategic plan.

The initial Advisory Board meeting agenda includes: nomination and election of Executive Committee members; reviewing of the Research, Education, and Economics draft Strategic Plan; recommendation of criteria for allocating research, extension, and education grants for the Fund for Rural America; and development of a slate of nominees to the 15-member "Strategic Planning Task Force."

Contact person for Agenda and more information: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Board, Research, Education, and Economics Advisory Board Office, Room 3918, South Building, U.S. Department of Agriculture, Washington, DC 20250–2255, Telephone: 202–720–3684.

Done at Washington, DC this 23d day of August 1996.

Catherine E. Woteki,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 96–22157 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–22–M

Agricultural Research Service

Government Owned Invention Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention disclosed in U.S. Patent Application Serial No. 08/471,349, "Fiber and Fiber Products Produced from Feathers" is owned by the U.S. Government as represented by the Department of Agriculture, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. International patent applications have been filed in selected countries to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: June Blalock, Technology Licensing Coordinator, USDA, ARS, Room 415, Bldg. 005, BARC-West, Beltsville, Maryland 20705; Phone 301–504–5989 or Fax 301–504–5060.

June Blalock,

Technology Licensing Coordinator.

[FR Doc. 96–22158 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–03–M

Notice of Availability for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service intends to grant to Agricultural Innovations of Athens, Georgia, an exclusive license to U.S. Patent Number 5,089,701, "Nondestructive Measurement of Soluble Solids in Fruits Having a Rind or Skin," issued February 18, 1992. Notice of Availability was published in the **Federal Register** on October 23, 1990.

DATES: Comments must be received on or before October 29, 1996.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Agricultural Innovations has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–22159 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 96–057–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, contact Mr. Clayton Givens at (301) 734–7612; e-mail: cgivens@aphis.usda.gov. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
96–094–01	Pioneer Hi-Bred Internatonal, Inc.	5–31–96	Corn plants genetically engineered to express resistence to certain diseases.	Iowa and Pennsylvania.
96–051–04	Biosource Technologies, Inc	6–4–96	Tobacco mósaic virus genetically engineered to contain genes of pharmaceutical interest.	Kentucky.
96–127–02	Washington State University	6–26–96	Wheat stripe fungus genetically engineered to contain a marker gene.	Washington.
96–156–01	Tuskegee University	6–26–96	Sweet potato plants genetically engineered for tolerance to the herbicide glufosinate.	Alabama.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 26th day of August 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22212 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of partially closed meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Overland Park, Kansas, September 19–21, 1996. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The meeting will be chaired by Genni Cross of The Trust for Public Land/California ReLeaf. The purpose of the meeting is to receive status reports on the Council's annual report, continue discussion on emerging issues in Urban and Community Forestry, and vote on the 1997 Challenge Cost-Share grant categories. The Challenge Cost-Share grant categories identified by the Council are advertised annually to

solicit proposals for funding which will advance the knowledge of, and promote interest in, urban and community forestry. Pursuant to 5 U.S.C. 552b(c)(9)(B), the meeting will be closed from approximately 8:30 to 9:30 a.m. on September 21 in order for the Council to vote on the categories for the Challenge Cost-Share grant program in fiscal year 1997. Otherwise, the meeting is open to the public, and time will be provided at the beginning of each major agenda topic for public input. In order to schedule public input, individuals must request time to speak and specific topic(s) to be addressed by September 6, 1996.

Council discussion is limited to Forest Service staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held September 19–21, 1996.

ADDRESSES: The meeting will be held at the Best Western Hallmark Inn, 7000 W. 108th Street, I–435 @ Metcalf, Overland Park, Kansas. A tour of local projects will be held on Sept. 19, 9:00 a.m.–3:00 p.m.

Send written statements and/or proposed agenda items to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 1042 Park West Court, Glenwood Springs, CO 81601.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (970) 928–9264.

Dated: August 19, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–22156 Filed 8–29–96; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 30, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 5, May 13, June 7, 28, July 5, 8 and 12, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 15225, 22026, 29080, 33711, 35710 and 36705) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–43c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Tape, Electronic Data Processing

7045–01–321–0642

Frame, Picture

7105–01–419–5293
7105–01–419–5296
7105–01–419–5305
7105–01–419–5319
7105–01–419–5322
7105–01–419–5332
7105–01–419–5338
7105–01–419–5344
7105–01–419–5353
7105–01–419–5351
7105–01–419–5355
7105–01–424–7865
7105–01–424–6475
7105–01–424–6473
7105–01–424–6476
7105–01–424–6471
7105–01–424–6477
7105–01–424–6478
7105–01–424–6472
7105–01–424–6479
7105–01–424–6474
7105–01–424–6480
7105–01–424–6481
7105–01–424–6490
7105–01–424–6492
7105–01–424–6485
7105–01–424–6482
7105–01–424–6483
7105–01–424–6494
7105–01–424–6497
7105–01–424–6488
7105–01–424–6484
7105–01–424–6486
7105–01–424–6501
7105–01–424–6491
7105–01–424–6487
7105–01–424–6489
7105–01–424–6503
7105–01–424–6495
7105–01–424–6498
7105–01–424–6493
7105–01–424–6504
7105–01–424–6505
7105–01–424–6499

Pen, Rollerball, Executive and Refill

7510–00–425–5709
7510–00–425–5710
7520–01–424–4861

Mop, Chami Twist and Refill

M.R. 900
M.R. 935

Mop, Deck Twist and Refill

M.R. 989
M.R. 969

Dustpan

M.R. 996

Duster, Ostrich Feather and Lambswool

M.R. 991
M.R. 922

Services, Administrative Services, Social Security Administration, 6400 Old Branch Avenue, Camp Springs, Maryland

Administrative Services, General Services Administration, Federal Supply Service (3FS), Northeast Distribution Center, Burlington, New Jersey

Administrative/General Support Services, (GSA/FSS Region 7), General Products Commodity Center, Fort Worth, Texas (Up to 50% of the Government's requirement)

Grounds Maintenance, Tripler Army Medical Center, Oahu, Hawaii
Janitorial/Custodial, Argonne USARC, 10 S 100 S Frontage Road, Darien, Illinois
Switchboard Operation, Department of Veterans Affairs Medical Center, Nashville, Tennessee
Warehouse Operation, Naval Air Warfare Center Training Systems Division, 12350 Research Parkway, Orlando, Florida.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22258 Filed 8–29–96; 8:45 am]

BILLING CODE 6353–01–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 30, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tape, Pressure-Sensitive Adhesive

7510–00–582–4771
7510–00–582–4772
7510–00–802–8311
7510–00–159–4450

NPA: Cincinnati Association for the Blind, Cincinnati, Ohio

Coat, Combat Woodland, Camouflage

8415–01–390–8537
8415–01–390–8538
8415–01–390–8539
8415–01–390–8540
8415–01–390–8541
8415–01–390–8542
8415–01–390–8543
8415–01–390–8544
8415–01–390–8545
8415–01–390–8546
8415–01–390–8547
8415–01–390–8548
8415–01–390–8549
8415–01–390–8551
8415–01–390–8552
8415–01–390–8553
8415–01–390–8555
8415–01–390–8557
8415–01–390–9641
8415–01–390–9646
8415–01–390–9648
8415–01–390–8550

NPA: Southside Training Employment Placement Services, Inc., Farmville, Virginia

Service

Janitorial/Custodial, Biscayne National Park, Dade County, Florida, NPA: Hope Center, Inc., Miami, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22257 Filed 8–29–96; 8:45 am]

BILLING CODE 6353–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, September 20, 1996, 8 a.m.

PLACE: Ramada Inn, Mississippi Room, 2700 U.S. Highway 82 East, Greenville, Mississippi 38704.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Announcements
IV. Staff Director's Report
V. "Equal Educational Opportunity Project Series: Volume I" Report
VI. State Advisory Committee Report—The Impact of the City of Richmond v. *J.A. Croson* Decision Upon Minority and Female Business Programs in Selected Cities in Ohio.
VII. State Advisory Committee Appointments for District of Columbia, Maryland, Michigan, Nevada, New York, Washington, and California (interim)
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: August 26, 1996.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–22395 Filed 8–28–96; 2:07 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 07/17/96–08/19/96

Firm name	Address	Date petition accepted	Product
Lance Garment Corporation	125 Hospital Road, Red Bay, AL 35582.	07/24/96	Cotton shirts for men.
Dwyer Products Corporation	418 North Calumet Avenue, Michigan City, IN 46360.	07/30/96	Custom compact kitchen systems and parts, wet bars and refrigerators.
Southern Oregon Sales, Inc	18 Stewart Avenue, Medford, OR 97501.	08/01/96	Pears.
Sun Valley Products, Inc	11505 38th Street South, Horace, ND 58047.	08/01/96	Sunflower Seeds, wheat kernels and soybeans.
TCK Manufacturing, Inc	3965 Park Avenue, St. Louis, MO 63110.	08/05/96	Liners for ball cap visors, and holiday decorative figures.
Kahlund Enterprises, Inc	3645 Hwy 200 East Missoula, MT 59802.	08/05/96	Wood and metal picture frames and moldings and supplies for picture framing.
Creative Marblecast Manufacturing, Inc.	2020 Creek Drive, Rapid City, SD 57701.	08/09/96	Cultured stone bath fixtures.
Avtech, Incorporated	412 North Red Bud, Broken Arrow, OK 74012.	08/07/96	Plastic toy products and components for pets.
Oak Ridge Designs	3875 East Huntington, Flagstaff, AZ 86004.	08/13/96	Blankets of cotton.
Wintron, Inc	250 Runville Road, Bellefonte, PA 16823.	08/13/96	Electronic yokes, power supply units and coils/flybacks.
Evvco Enterprises, Inc	589 Fifth Avenue, 17th Floor, New York, NY 10017.	08/13/96	Gold rings, necklaces and bracelets.
Bogue Executive Enterprises, Inc	1501 53rd Street West, West Palm Beach, FL 33407.	08/14/96	Gas Turbine aircraft engine parts.
FRS Industries, Inc	64 North 4th Street, Fargo, ND 58107.	08/16/96	Award ribbons, rubber stamps, engraving and printing.
Richtman's Inc	301 NP Avenue, Fargo, ND 58107	08/16/96	Commercial, web and packaging printing.
Durex, Inc	5 Stahuber Avenue, Union, NJ 07083.	08/19/96	Metal stamping and fabricated sheet metal.
Phoenix Gear Corporation	3301 East Madison Phoenix, AR 85034.	08/19/96	Gears.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 23, 1996.

Brenda A. Johnson,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 96–22232 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–588–401]

Calcium Hypochlorite From Japan; Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of this administrative review of the antidumping duty order on calcium hypochlorite from Japan. The review covers the period April 1, 1995 through March 31, 1996.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Stephanie Moore, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limits for the completion of the preliminary results until April 30, 1997 and of the final results until 120 days after publication of the preliminary results of this review, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (*See* Memorandum to the file from Jeffrey P. Bialos to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 U.S.C. 1675 (a)(3)(A)).

Dated: August 20, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–22238 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by respondents and a U.S. producer, the Department of Commerce (the Department) is conducting two administrative reviews of the antidumping finding on elemental sulphur from Canada. The reviews cover the periods December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994.

As a result of the reviews, we have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1973, the Department of the Treasury published in the **Federal Register** (38 FR 34655) the antidumping finding on elemental sulphur from Canada. On November 26, 1993 and December 6, 1994, the Department published in the **Federal Register** notices of opportunity to request an administrative review of this antidumping finding for the periods December 1, 1992 through November 30, 1993 (58 FR 62326), and December 1, 1993 through November 30, 1994 (59 FR 62710), respectively.

With respect to the 1992/1993 administrative review, on December 30, 1993, Pennzoil Sulphur Company (Pennzoil), a domestic producer of elemental sulphur, requested that we conduct an administrative review of Alberta Energy Co., Ltd. (Alberta), Allied-Signal Inc. (Allied), Brimstone Export (Brimstone), Burza Resources (Burza), Fanchem, Husky Oil Ltd. (Husky), Mobil Oil Canada, Ltd. (Mobil), Norcen Energy Resources (Norcen), Petrosul International (Petrosul), Saratoga Processing Co., Ltd. (Saratoga), and Sulbow Minerals (Sulbow). On December 21, 1993, Petrosul requested revocation of the finding with respect to itself. The review was initiated on January 18, 1994 (59 FR 2593).

With respect to the 1993/1994 administrative review, on December 29, 1994, Pennzoil requested that we conduct an administrative review of Alberta, Husky, Mobil, Norcen, and Petrosul. On December 28, 1994, Petrosul requested revocation of the finding with respect to itself, and, on December 30, 1994, Mobil requested an administrative review of its sales. The review was initiated on January 13, 1995 (60 FR 3193).

The Department is conducting these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

The periods of review are December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994. The 1992/1993 review covers eleven companies, and the 1993/1994 review covers five companies.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. Pursuant to section 291(a)(2)(B) of the Uruguay Round Agreements Act (URAA), the provisions of that Act apply only to reviews requested on or after January 1, 1995. Thus, although the 1993/1994 review was initiated after the effective date of the amendments pursuant to the URAA, those provisions do not apply to this review.

Verification

As provided in section 776(b) of the Act, we conducted verification of the sales information provided by Mobil in the 1992/1993 administrative review. We conducted the verification using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Best Information Available

We preliminarily determine, in accordance with section 776(C) of the Act, that the use of best information available (BIA) is appropriate for Mobil in the 1992/1993 and the 1993/1994 administrative reviews, for Petrosul in the 1992/1993 and the 1993/1994 administrative reviews, for Norcen in the 1992/1993 administrative review, and for Allied, Brimstone, Burza, Fanchem, and Sulbow in the 1992/1993 administrative review, and that the use of partial BIA is appropriate for Husky in the 1992/1993 and the 1993/1994 administrative reviews. Section 776(c) of the Act requires the Department to use BIA whenever a company refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation.

In deciding what to use as BIA, section 353.37(b) of the Department's regulations provide that the Department take into account whether a party refuses to provide requested information or impedes a proceeding. Prior Department practice has been to determine, on a case-by-case basis, what constitutes BIA. When it is necessary to base a firm's antidumping margin completely on BIA, the Department uses a two-tiered approach in its choice of BIA. When a company refuses to provide the information in the form required by the Department or otherwise significantly impedes the proceeding (first tier), the Department will normally assign to that company the higher of (1) the highest rate found for any firm in the less-than-fair-value (LTFV) investigation or a prior administrative review, or (2) the highest rate found in the current review for any firm. When a company substantially cooperates with the Department's requests for

information but fails to provide the information requested in a timely manner or in the form required (second tier), the Department will normally assign to that company the higher of (1) the highest rate ever applicable to that company from either the LTFV investigation or a prior administrative review, or (2) the highest calculated rate in the current review for any respondent. *See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of An Antidumping Duty Order (Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom* (58 FR 39729, 39739, July 26, 1993). The Department's use of a two-tiered methodology was upheld in *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993).

A. Mobil

In both administrative reviews, Pennzoil alleged that Mobil made sales in the comparison market at prices below the cost of production (COP). Based on these allegations, the Department found reasonable grounds to believe or suspect that Mobil's sales were below cost, and initiated cost investigations pursuant to section 773(b) of the Act in each review. In response to our requests for cost information, Mobil submitted cost questionnaire responses and supplemental cost questionnaire responses. However, we have determined that these cost responses cannot be used to calculate margins in either administrative review and have preliminarily determined that total BIA should be applied to Mobil. As Mobil has substantially cooperated with the Department in its requests for information, we have determined to apply second-tier BIA as described above to Mobil for the preliminary results of each review. For a further discussion of the Department's determination that second-tier BIA is appropriate for Mobil, *see Decision Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance*, dated June 4, 1996, "Whether to Use Best Information Available for Husky Oil Ltd. and Mobil Oil Canada, Ltd. in the 1992/1993 Administrative Review of Elemental Sulphur from Canada," and *Decision Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Compliance*, dated June 4, 1996, "Whether to Use Best Information Available for Husky Oil Ltd. and Mobil Oil Canada, Ltd. in the 1993/1994 Administrative Review of Elemental Sulphur from Canada," which are on file in the Central Records Unit (room B–099 of the Main Commerce Building) (BIA memoranda). Accordingly, the rate assigned to Mobil for the 1992/1993 administrative review is 42.80 percent, the rate for Husky from that administrative review. The rate assigned to Mobil for the 1993/1994 administrative review is 11.79 percent, the rate for Husky from that administrative review. For purposes of the final results of review for the 1993/1994 period, we will consider final rates in the 1992/1993 administrative review in determining BIA for Mobil.

B. Petrosul

Petrosul, a reseller of elemental sulphur, reported third-country sales in the 1992/1993 administrative review and home-market sales in the 1993/1994 administrative review. In both reviews, Pennzoil alleged that Petrosul made sales in the comparison market at prices below the COP. Based on these allegations, the Department found reasonable grounds to believe or suspect that Petrosul's sales were below cost, and initiated a cost investigation pursuant to section 773(b) of the Act in each review. The statute is concerned specifically with the COP of the merchandise, and Petrosul does not itself produce the elemental sulphur it sells. Department practice in such situations is to compare the production costs of the producer (Petrosul's suppliers/producers), plus the producer's selling, general, and administrative (SG&A) expenses, plus the SG&A expenses of the seller (Petrosul), to the seller's home-market/third-country sales to determine whether sales in the comparison market were made below the COP. *See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway* (56 FR 7661, February 25, 1991) and *Final Results of Antidumping Duty Administrative Reviews: Oil Country Tubular Goods from Canada* (56 FR 38408, August 13, 1991). Therefore, in each administrative review, the Department requested that Petrosul provide certain cost information, *i.e.*, information regarding its own selling, general, and administrative expenses and profit, and a list of its suppliers of elemental sulphur.

In the 1992/1993 administrative review, Petrosul did not respond to our request for its own cost data. In the 1993/1994 administrative review, Petrosul did not respond to our requests for its own cost data or for a list of its suppliers of elemental sulphur. We have thus preliminarily determined that Petrosul has not cooperated with the Department in its requests for information, and have determined to apply first-tier BIA as described above to Petrosul for the preliminary results of each review. Accordingly, the rate assigned to Petrosul for the 1992/1993 administrative review is 42.80 percent, the rate for Husky from that administrative review. The rate assigned to Petrosul for the 1993/1994 administrative review is 28.90 percent, the highest final rate applicable to any company in this case, Timshel's rate from the 1986/1987 review of this finding. *See Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part* (55 FR 13179, April 9, 1990). For purposes of the final results of review for the 1993/1994 period, we will consider final rates in the 1992/1993 administrative review in determining BIA for Petrosul.

C. Norcen

In the course of the 1992/1993 administrative review, Norcen responded that its related company sold sulphur to a U.S. customer, but that the related company did not know whether the sulphur picked up by the U.S. customer at the plant gate in Canada ever entered the United States. Norcen further stated that the related company was never paid for the merchandise. The Department requested that Norcen respond to the questionnaire since the information on the record of the review indicates that these sales may constitute U.S. sales. Norcen responded that it declined to answer the questionnaire. Therefore, we have determined that Norcen has been uncooperative, and have assigned to Norcen the first-tier BIA rate of 42.80 percent, the rate for Husky from that administrative review and the highest rate applicable to any company in this case.

D. Allied, Brimstone, Burza, Fanchem, and Sulbow

In the 1992/1993 administrative review, Allied, Brimstone, Burza, Fanchem, and Sulbow did not respond to the questionnaire. Therefore, we have determined that these companies have been uncooperative, and have assigned to them the first-tier BIA rate of 42.80 percent, the rate for Husky from that administrative review and the highest rate applicable to any company in this case.

E. Husky

We have determined that the use of partial BIA is appropriate for Husky for the 1992/1993 and the 1993/1994 administrative reviews (*see* BIA

memoranda). As discussed in the BIA memoranda, in addition to other deficiencies in its responses, Husky did not comply with the Department's request that it report costs for all facilities accounting for at least 90 percent of its production volume in either review, and, in the 1992/1993 review, did not report cost-of-manufacturing data for its U.S. sales of powdered sulphur, as requested. However, since we are able to calculate a margin for Husky in each review using data which Husky has provided, we have determined that partial BIA is appropriate. Accordingly, we have used Husky data as partial BIA for the missing data. For the facility for which no sulphur costs were reported, we used the highest cost of manufacturing calculated for any facility for which costs were reported and the production volume of the facility for which costs were not reported to calculate the weighted-average cost of manufacturing. We have assigned, as BIA for each of Husky's sales of powdered sulphur in the 1992/1993 review, the highest weighted-average margin in that review, calculated on the basis of Husky's sales of liquid and formed sulphur.

United States Price

For both administrative reviews, the Department has based USP for Husky on purchase price, in accordance with section 772(b) of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated purchase price based on f.o.b. plant or delivered prices to unrelated customers. We made adjustments, where applicable, for discounts, brokerage and handling, foreign inland freight, tank car expenses, and U.S. duties, in accordance with section 772(d)(2) of the Act. In addition, when U.S. sales were compared to home-market sales, we adjusted USP for the Canadian Goods and Services Tax (GST), in accordance with our practice outlined in the following section on *Value Added Tax*. No other adjustments were claimed or allowed.

Value Added Tax

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to USP the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to USP by multiplying the adjusted USP by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to USP, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required thaf the tax be added to USP rather than subtracted from home-market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Foreign Market Value

Based on a comparison of the volume of home-market sales to third-country sales, we determined that Husky's home market was viable during each period of review. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based FMV on f.o.b. plant and delivered prices to unrelated purchasers in the home market.

During the course of each administrative review, Pennzoil alleged that Husky made home-market sales of elemental sulphur at prices below its COP. Based on these allegations, the Department determined that it had reasonable grounds to believe or suspect that Husky had sold the subject merchandise in the home market at prices below the COP. We therefore initiated cost investigations in each administrative review, in accordance with section 773(b) of the Act, and investigated whether Husky sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR 353.51(c), we calculated COP for Husky as the sum of costs of materials, labor, factory overhead, and general expenses, and compared COP to home-market prices net of movement expenses.

In accordance with section 773(b) of the Act, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. To satisfy the requirement of section 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home-market sales during the period of review were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home-market sales during the period of review were priced below the COP of the merchandise, we excluded from the calculation of FMV those home-market sales which were priced below the COP, provided that they were made over an extended period of time. For each model

for which 90 percent or more of the home-market sales during the period of review were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Act, we used the constructed value (CV) of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review* (59 FR 9958, March 2, 1994).

In accordance with section 773(b)(1) of the Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home-market sales were made at prices above COP. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final results of Antidumping Duty Administrative Reviews* (58 FR 64720, December 8, 1993).

Because Husky provided no indication that its below-cost sales of models within the "greater than 90 percent" and the "between 10 and 90 percent" categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales within the "10 to 90 percent" category which were made below cost over an extended period of time. In addition, as a result of our COP test for home-market sales of models within the "greater than 90 percent" category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home-market model at or above COP. Finally, where we found, for certain of Husky's models, home-market sales for which less than 10 percent were made below COP, we used all home-market sales of those models in our comparisons.

In accordance with section 773 of the Act, for those U.S. models for which we were able to find a home-market such or similar match that had sufficient above-cost sales, we calculated FMV based on f.o.b. or delivered prices to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, tank car expenses, credit expenses, royalty expenses, Canadian GST, differences in the physical characteristics of the merchandise, and differences in packing. We also added to FMV U.S. credit expenses and royalty expenses, as appropriate.

In accordance with section 773(e) of the Act, CV includes the costs of materials and fabrication, general expenses, profit, and, where relevant, packing for shipment to the United States. We used Husky's home-market selling expenses pursuant to section 773(e)(1)(B) of the Act. We used Husky's actual general expenses as they were greater than the statutory minimum of ten percent of COM but applied the statutory eight percent for profit. Where appropriate, we made circumstance-of-sale adjustments for differences in credit and royalty expenses. No other adjustments were claimed or allowed.

Non-Shippers

Based on the information on the record, the Department has determined that Alberta and Saratoga had no shipments to the United States during the period December 1, 1992 through November 30, 1993, and that Alberta and Norcen had no shipments to the United States during the period December 1, 1993 through November 30, 1994. As a result, the rates assigned to these companies for these review periods are their rates from the immediately preceding administrative review. Therefore, for Alberta, which had no shipments during the administrative review covering the period December 1, 1991 through November 30, 1992 and which has no individual rate from any segment of the case, the rate for both of these reviews continues to be the "All Others" rate of 5.56 percent, the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established (*see Elemental Sulphur from Canada; Final Results of Antidumping Finding Administrative Review* (61 FR 8239, March 4, 1996) (*Sulphur Final*)). For Norcen, whose rate for the 1991/1992 administrative review was the "All Others" rate of 5.56 percent (*see Sulphur Final*), the rate for the 1993/1994 review is 5.56 percent, its rate from the 1991/1992 review. For purposes of the final results of review for the 1993/1994 period, we will consider Norcen's final rate in the 1992/1993 administrative review in determining the appropriate rate for Norcen. For Saratoga, whose most recent rate was determined in the 1991/1992 administrative review (*see Sulphur Final*), the rate for the 1992/1993 review is 28.90 percent, which is its rate from the 1991/1992 review.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the periods December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994:

Manufacturer/exporter	Time period	Margin [5] (percent)
Alberta Energy Co., Ltd	12/1/92–11/30/93	[1] 5.56
	12/1/93–11/30/94	[1] 5.56
Allied-Signal Inc	12/1/92–11/30/93	[2] 42.80
Brimstone Export	12/1/92–11/30/93	[2] 42.80
Burza Resources	12/1/92–11/30/93	[2] 42.80
Fanchem	12/1/92–11/30/93	[2] 42.80
Husky Oil Ltd	12/1/92–11/30/93	42.80
	12/1/93–11/30/94	11.79
Mobil Oil Canada, Ltd	12/1/92–11/30/93	[3] 42.80
	12/1/93–11/30/94	[3] 11.79
Norcen Energy Resources	12/1/92–11/30/93	[2] 42.80
	12/1/93–11/30/94	[4] 5.56
Petrosul International	12/1/92–11/30/93	[2] 42.80
	12/1/93–11/30/94	[2] 28.90
Saratoga Processing Co., Ltd	12/1/92–11/30/93	[4] 28.90

Manufacturer/exporter	Time period	Margin [5] (percent)
Suibow Minerals	12/1/92–11/30/93	[2] 42.80

[1] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding. As a result, the firm will be subject to the "all others" rate.
[2] Non-cooperative total BIA rate.
[3] Cooperative total BIA rate.
[4] No shipments to the United States during the period of review. Rate is the rate established during the immediately preceding administrative review.
[5] Both the cooperative and the non-cooperative BIA rates may change for the final review results, if Husky's rates change for the final results.

Parties to these reviews may request disclosure within 5 days of the date of publication of this notice. Interested parties may request a hearing within 10 ten days of the date of publication. Any hearing, if requested, will be held not later than 44 days after the date of publication or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of the reviews, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of elemental sulphur, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of the most recent review in which the company was involved; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in either of these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review, or the LTFV investigation, the cash deposit rate will be the "new shipper" rate of 5.56 percent established in the first review conducted by the Department in which a "new shipper" rate was established (*see Sulphur Final*). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 22, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22237 Filed 8–29–96; 8:45 am]
BILLING CODE 3510–DS–P

[C–301–603; C–301–601]

Roses and Other Cut Flowers From Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews and termination of suspended investigations.

SUMMARY: On March 8, 1996, the Department of Commerce ("the Department") published the preliminary results of its administrative reviews of, and its intent to terminate, the agreements suspending the countervailing duty investigations on roses and other cut flowers ("roses") from Colombia and on miniature carnations ("minis") from Colombia. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all the comments received, we determine that the Government of Colombia ("GOC") and producers/exporters of roses and minis have complied with the terms of the suspension agreements during the period January 1, 1994 through December 31, 1994. We also determine that the producers/exporters of subject merchandise have not received countervailable benefits or used any program under review for a period of at least five consecutive years. Additionally, we determine that the GOC and producers/exporters of the subject merchandise (respondents) have provided sufficient evidence for the Department to determine that it is likely that producers/exporters of subject merchandise will not in the future apply for or receive any net subsidy on the subject merchandise from those programs the Department has found countervailable in any proceeding involving Colombia or from other countervailable programs. Therefore, we determine that respondents have met the requirements for termination of the countervailing duty suspended investigation on roses and other cut flowers and on miniature carnations as outlined in the Department's Regulations.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on or after January 1, 1995, the

effective date of amendments made to the Tariff Act in accordance with the Uruguay Round Agreements Act (URAA).

Background

On March 8, 1996, the Department published in the **Federal Register** (61 FR 9426) the preliminary results of its administrative reviews of the agreements suspending the countervailing duty investigations on roses and minis from Colombia. *See Roses and Other Cut Flowers From Colombia; Suspension of Investigation*, 48 FR 2158 (January 18, 1983); *Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, 51 FR 44930 (December 15, 1986); and *Miniature Carnations from Colombia; Suspension of Countervailing Duty Investigation*, 52 FR 1353 (January 13, 1987). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 355.22.

Scope of Review

The products covered by these administrative reviews constitute two "classes or kinds" of merchandise: roses and minis from Colombia. During the period of review ("POR"), such merchandise covered by these suspension agreements was classifiable under *Harmonized Tariff Schedule* ("HTS") item numbers 0603.10.60, 0603.10.70, 0603.10.80, and 0603.90.00 for roses, and 0603.10.30 for minis. The HTS item numbers are provided for convenience and Customs purposes only. The written descriptions remain dispositive.

These reviews of the suspended investigations involve over 600 Colombian flower producers/exporters of roses, over 100 Colombian flower producers/exporters of minis, as well as the GOC. The suspension agreement for minis covers ten programs: (1) BANCOLDEX (funds for the promotion of exports); (2) Plan Vallejo; (3) Instituto de Fomento Industrial (IFI); (4) Fondo Financiero de Proyectos de Desarrollo (FONADE); (5) Financiero de Desarrollo Territorial (FINDETER); (6) Tax Reimbursement Certificate Program ("CERT"); (7) Free Industrial Zones; (8) Export Credit Insurance; (9) Countertrade; and (10) Research and Development. The suspension agreement for roses covers the ten programs listed above, as well as (11) Air Freight Rates. The POR is January 1, 1994 through December 31, 1994.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondents, the GOC and Associacìon Colombiana de Exportadores de Flores ("Asocolflores"); and the petitioner, the Floral Trade Council ("FTC"). Comments submitted consist of petitioner's case brief of April 8, 1996; and respondents' case brief of April 5, 1996 and rebuttal brief of April 12, 1996.

Comment 1: The FTC asserts that, prior to any termination, the Department must request confirmation that no CERT rebates were fraudulently received on flower exports of subject merchandise. The FTC further contends that this confirmation should be submitted in the form of warehoused documents or affidavits of personnel at Direcciòn de Investos y Aduanas Nacionales ("DIAN," the customs authority) associated with the preparation of DIAN's 1992 Annual report, in which it was noted that Panama and the Netherlands Antilles were eliminated from the CERT program due to fraud. Moreover, the FTC states that DIAN officials should also submit a certification describing what measures they put in place to eliminate the possibility of fraudulent receipt of CERT rebates over the five-year period. The FTC concludes that, absent such confirmation, the record shows "only that flower exporters can receive CERT rebates on U.S. exports without detection in the absence of an investigation."

Respondents note that the Department examined the allegation regarding the submission of fictitious invoices for exports to Panama and the Netherlands Antilles in the 1991–92 review period, and found no evidence to support FTC's claims, and thus found that there was no evidence that CERT rebates were received for exports to the United States.

Department's Position: In order to meet the regulatory requirements for termination of a suspended investigation under 355.25(a)(2), the Department must determine that all producers and exporters covered have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years, which in this case is the period 1990 through 1994. Petitioner's allegation concerning the 1991–92 period was examined by the Department during that review, and the Department found no evidence to support an allegation of transshipment or reshipment of the subject merchandise. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations (1991–2 Review)* 60 FR 42539, 42540–1 (August 16, 1995), Comment 3. Hence, the Department determined that "with respect to this issue the GOC and the flower producers/exporters were in compliance with the suspension agreements during the PORs." Because the Department found no indication that the terms of the suspension agreements were violated through the fraudulent receipt of CERT rebates on subject merchandise, there is no requirement on respondents to place any further documents, affidavits, or certifications on the record.

In fact, the GOC has already certified that it has "eliminated all subsidies on (i) miniature carnations and (ii) roses and all other fresh cut flowers exported to the United States, by abolishing for such merchandise for at least three consecutive years, all programs that the Secretary of Commerce has found countervailable," and that it will "not reinstate for such merchandise those programs or substitute other countervailable programs." *See Letter from Counsel to Respondents to the Department of Commerce*, February 2, 1996. Thus, the Department determines that no further certifications are warranted with regard to this issue.

Comment 2: The FTC argues that because CERT rebates are not necessarily tied to third-country exports, the Department should reconsider its position that "rebates tied to exports to third countries do not benefit the production or export of the subject merchandise." In particular, the FTC contends that under the new statute (19 U.S.C. § 1677(5)(A)), a countervailable subsidy is a subsidy which is specific, and export subsidies are specific if they are contingent upon export performance (19 U.S.C. § 1677(5A) (A) & (B)). Petitioners request that, prior to termination, the Department should require the GOC to abolish CERT rebates for all flower exports.

Respondents argue that the statute, the Department's regulations, and past determinations clearly refute petitioner's contention. Furthermore, respondents assert that there is nothing in the URAA which would change the Department's policy.

Department's Position: We agree with respondents. It is the Department's continuing policy that rebates tied to exports to third countries do not benefit the production or export of the subject merchandise destined for the United States. We found no evidence in the

questionnaire responses or at verification that would cause us to reconsider our position, in this POR or in the last five consecutive review periods. (*See Roses and Other Cut Flowers from Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations, 1993 Review*, 61 FR 94229 (Comment 3) (March 8, 1996); *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination not to Terminate Suspended Investigation*, 59 FR 10790 (Comment 7) (March 8, 1994), and *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR 42541 (Comment 4) (August 16, 1995)).

As the Department has previously noted in this case, it is the Department's policy that we will not allocate benefits tied to a product not under investigation over a product under investigation unless we have a clear reason to believe that such a benefit encourages production or export to the United States of the product under investigation. *See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not to Terminate Suspended Investigation*, 59 FR 10790, 10794 (March 8, 1994), citing *Industrial Nitrocellulose From France; Final Results of Countervailing Duty Administrative Review*, 52 FR 833 (January 9, 1987), and *Certain Fresh Cut Flowers from Israel; Final Affirmative Countervailing Duty Determination*, 52 FR 3316 (February 3, 1987). As respondents have noted, the existence of export subsidies to third countries could in fact serve to encourage producers to export to those other countries, and not to the United States.

While the URAA makes it clear that export subsidies are *per se* specific, specificity is not the issue. The issue is whether export subsidies explicitly tied to non-subject merchandise (*i.e.*, exports to third countries) provide a countervailable benefit to subject merchandise. Nothing in the URAA or its legislative history indicates that Congress intended to countervail subsidies tied to exports to third countries. In fact, 19 U.S.C. § 1671(a) provides for the imposition of countervailing duties when a countervailable subsidy is provided to "a class or kind of merchandise imported, or sold (or likely to be sold) for importation, *into the United States* * * *." (emphasis added). The Department is continuing its longstanding practice of not countervailing export subsidies tied to third countries. Moreover, since the CERT rebates do not benefit subject merchandise, it is not necessary that the GOC eliminate them on exports to third countries.

Comment 3: The FTC asserts that the Department cannot terminate the suspended investigations for a period in which the Department could not determine whether signatories to both suspension agreements accounted for 85 percent of imports of the subject merchandise. Specifically, the FTC argues that for the purposes of satisfying termination requirements, the Department requires that the same producer/exporters account for 85 percent of the merchandise for a period of five consecutive years. Because the Department discovered, in the 1991 and 1992 reviews, that the GOC had not maintained an up-to-date list of signatories for both suspension agreements, the FTC suggests that respondents have no way to guarantee that the same exporters have accounted for 85 percent of the merchandise for the periods 1990 through 1994. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations (1991–2 Review)* 60 FR 42539, 42540 (August 16, 1995).

Respondents argue that there is no 85-percent test for termination, but rather the termination standards require that no producer/exporter covered by the suspension agreement receive any net subsidy over the five-year period. Respondents note further that the Department found, in the 1993 review, that no countervailable benefits were provided during the POR to *any* flower producer/exporter. Because the statutory purpose of the 85 percent rule is to ensure that "substantially all" imports do not benefit from countervailable subsidies, according to respondents, the 85 percent requirement is met, given that the Department has verified that 100 percent of exports do not receive any benefit.

Finally, respondents state that there is no Departmental requirement that the same producer/exporters must account for 85 percent of the merchandise for a period of five consecutive years.

Department's Position: Section 704(b) of the statute provides that Commerce may enter into a suspension agreement if the producers/exporters accounting for "substantially all" of the imports of the subject merchandise agree to eliminate (or offset completely) countervailable subsidies. The regulations do not define "substantially all" imports. However, the suspension agreements require that producer/exporters accounting for 85 percent of the imports must be subject to the terms of the suspension agreements. *See* 48 FR 2158, 2161 (January 18, 1983) (roses); 52 FR 1353, 1356 (January 13, 1987) (miniature carnations).

The Department's regulations provide that the Secretary may terminate a suspended investigation if the Secretary concludes that all producer/exporters covered by the suspension agreements have not applied for or received any net subsidy on the subject merchandise for a period of at least five consecutive years. 19 C.F.R. § 355.25(2)(i) (1995). In *Certain Fresh Cut Flowers from Costa Rica*, the case cited by petitioner, the Department determined that the same producer/exporters who have accounted for 85 percent of the merchandise for a period of five consecutive years must not have applied for or received any net subsidy on the merchandise during that period in order for the Department to terminate the suspended investigation. However, the Department's concern in that case stemmed from the fact that, in its administration of that suspension agreement, the Government of Costa Rica eliminated subsidies only to signatories, not all producers/exporters of the subject merchandise.

In contrast, in implementing these agreements, the GOC has acted to ensure that 100 percent of companies producing and exporting the subject merchandise were in compliance with the terms of the roses and minis suspension agreements, whether or not those companies had signed these suspension agreements.

The Department has found that all Colombian producers/exporters were in full compliance in the 1990, 1991, 1992, and 1993 administrative reviews of these suspension agreements. In the current 1994 administrative reviews, the Department reviewed and verified information at each GOC agency for all producers/exporters of the subject merchandise, regardless of their signatory status. The record evidence for the 1994 administrative reviews indicates that all Colombian producers/exporters have been in full compliance with the agreements. At verification, we analyzed the Colombian Customs Authority's export statistics of all flower companies exporting roses and minis to the United States and Puerto Rico. At the Central Bank, we checked computer records of exports with U.S. and Puerto Rican country identification codes showing that no CERT payments were made to any flower producers/exporters

for shipments of the subject merchandise.

At BANCOLDEX, we reviewed and verified all PROEXPO/BANCOLDEX loans issued and outstanding in the POR (*see Government Verification Report* of February 27, 1996) and we have determined that all Colombian flower producers/exporters have complied with the terms of the suspension agreements during the POR. Similarly, we verified that no countervailable benefits were granted to or received by any flower producers/exporters for Plan Vallejo, Air Freight Rates, Free Industrial Zones, and the Export Credit Insurance Program.

Thus, all Colombian flower producers/exporters have been required to comply with the terms of the suspension agreements. Further, the Department has determined that all producers/exporters of the subject merchandise have been in full compliance with the suspension agreements for five consecutive years. The Department has verified that *all* producers/exporters of subject merchandise (not just signatories to the agreements) have not received subsides on the subject merchandise during the current POR or during any POR from 1990 through the 1994 period. Therefore, the Department has determined that the requirements for termination of the suspended investigations have been met.

Comment 4: The FTC claims that under the terms of the suspension agreements, the Department applies outdated benchmark interest rates to determine "compliance" with the suspension agreements. The FTC objects to the Department's practice in setting prospective and outdated benchmark interest rates to determine compliance with the terms of the suspension agreements. The FTC claims that the suspension agreements are not in the public interest because Colombian flower producers/exporters can "technically" comply with the terms of the suspension agreements while at the same time receive loans at preferential interest rates. Because the benchmarks are outdated, the FTC asserts, they are incapable of eliminating the net subsidy on flowers. FTC concludes that to terminate the suspension agreements, the Department must compare the PROEXPO/Bancoldex interest rates to current interest rate benchmarks for the five year period to determine that all producer/exporters covered by the suspension agreements have not applied for or received any net subsidy on the merchandise for a period of at least five consecutive years.

Respondents note that the Department has addressed and rejected these arguments in earlier reviews of these suspension agreements. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations, 1993 Review*, at 9431–32 (Comment 5), March 8, 1996. Furthermore, respondents claim that petitioners have offered no basis that would support a different finding in the 1994 review.

Department's Position: We agree with respondents. Because these suspension agreements are forward-looking, the Department sets benchmark interest rates prospectively for these agreements. (*See Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Review*; 56 FR 14240 (April 8, 1991), *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation*, 59 FR 10790, (March 8, 1994), and *Roses and Other Cut Flowers from Colombia: Miniature Carnations from Colombia: Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations*, 60 FR 42541 (August 16, 1995)).

At verification for the 1994 POR, the Department examined documentation that indicated that BANCOLDEX charged interest rates on its short- and long-term loans above the Department's established benchmark rates in effect during the POR. The Department also found that the companies received BANCOLDEX loans on terms consistent with the suspension agreements. Consequently, we have determined that respondents were in compliance with the terms of the suspension agreements for the BANCOLDEX programs. Therefore, we determine that the GOC did not confer any countervailable benefits through the BANCOLDEX programs during the POR. Respondents complied with the suspension agreements' benchmarks and avoided receiving countervailable benefits during the POR, resulting in a situation analogous to non-use for the BANCOLDEX programs by Colombian flower producers/exporters of the subject merchandise. Therefore, there is no basis for petitioner's claim that the suspension agreements are not in the public interest.

Comment 5: The FTC asserts that the Department should reconsider its use of the subsidized FINAGRO interest rate when establishing short- and long-term benchmarks. The FTC argues instead that the Department use weighted-average interest rates of available non-government-related financing at commercial lending rates maintained by the Central Bank. In addition, the FTC asserts, citing *Rice From Thailand; Preliminary Results of Countervailing Duty Administrative Review*, 57 FR 8437, and 8439 (March 10, 1992), that the Department is not required to look to interest rates available to the agricultural sector, when the rates are not available to flower producers/exporters.

Respondents note that the FTC has argued this issue repeatedly in the course of these proceedings, and the Department has consistently rejected these arguments on an equal number of occasions. Moreover, according to respondents, this is an issue of no relevance to the termination proceeding, as long as the producer/exporters complied with the terms of the suspension agreements.

Department's Position: We agree with respondents. The Department has repeatedly determined that FINAGRO is a major intermediary lender to the agricultural sector, and therefore is an appropriate alternative basis for the Department's benchmarks. *See Roses and Other Cut Flowers from Colombia; Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations, 1993 Review* (Comment 8), 61 FR 9429, 9433, (March 8, 1996); *Roses and Other Cut Flowers from Colombia; Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Reviews of Suspended Investigations (1991–2 Review)* (Comments 6 and 7), 60 FR 42539, 42542 (August 16, 1995); and *Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation* (Comment 8), 59 FR 10790, 10794–95 (March 8, 1994). In this review we examined potential alternative benchmarks and continued to find that FINAGRO was the most appropriate alternative source of financing to the agricultural sector.

Finally, we note that by terminating these suspension agreements, any issue regarding the establishment of prospective benchmarks for these cases is moot.

Comment 6: The FTC asserts that the Department had inadequate evidence concerning whether signatories are likely to apply for or receive any net subsidy on the merchandise. The FTC argues that the Department relied on GOC certifications that were substantially the same as the

commitments made under the suspension agreements. Furthermore, petitioner claims that the GOC still maintains BANCOLDEX benefits and the CERT program. The FTC cites the Statement of Administrative Action ("SAA") accompanying the URAA as stipulating that, "as long as a subsidy program continues to exist, Commerce will not consider company- or industry-specific renunciations of countervailable subsidies, by themselves, as an indication that continuation or recurrence of countervailable subsidies is unlikely."

Respondents argue that the certifications supplied to the Department exceed both the requirements of the Department's regulations and the terms of the suspension agreements. Second, respondents claim that abolition of programs (such as the BANCOLDEX program) is not required for termination for non-use, and that the FTC has failed to point out that the GOC has eliminated countervailable benefits by eliminating preferential rates to flower producers/exporters under the BANCOLDEX program. Third, respondents note that the Department has found that the CERT program has been abolished for flower exports to the United States since "at least" 1988. In conclusion, respondents claim that the FTC's reliance on the SAA is ill-conceived, because the Department has relied on more than simply company-specific renunciations: in fact, for the most part, the subsidy programs at issue no longer exist for flower producers/exporters; the Department has the aforementioned certifications from the GOC; and finally, there is a record of "7–11 years" compliance with the suspension agreements.

Department's Position: We agree with respondents. With regard to CERT, flower producers/exporters are prohibited by Colombian law from receiving CERT rebates on exports to the United States and Puerto Rico. With regard to BANCOLDEX loans for the period 1990–94, flower producers/exporters have been prohibited by the terms of various GOC resolutions from receiving loans at countervailable rates, and have been unable to obtain loans at rates below the Department's benchmarks pursuant to Colombian law and BANCOLDEX instructions to refinancers of BANCOLDEX loans. Furthermore, the GOC has certified that it will not confer any loans constituting countervailable subsidies on flower producers/exporters. Finally, the record of compliance with the terms of these suspension agreements over the period 1990–94, together with the actions described above, indicates that continuation or recurrence of countervailable subsidies is unlikely.

Final Results of Reviews

After considering all of the comments received, we determine that the GOC and the producers/exporters of the subject merchandise have complied with all the terms of the suspension agreements during the period January 1, 1994 through December 31, 1994. We determine that no countervailable benefits have been bestowed on subject merchandise, and furthermore, that producers/exporters of subject merchandise have not used the above programs for at least five years (or, in the case of programs only recently created, for the life of the program). Additionally, we note that the GOC has stated for the record that it will institute or maintain appropriate measures to ensure that export loan programs will be administered to guarantee that loans granted to recipients are comparable to commercial loans that a flower producer/exporter could obtain in the market, such as those alternative sources of financing available to agriculture in Colombia, and will not confer any loan program countervailable subsidies on flower producers/exporters. Furthermore, the GOC has certified that, for the subject merchandise, it shall not reinstate those programs which the Department has found countervailable, and it shall not substitute other countervailable programs. Finally, producers/exporters have certified that they will not apply for or receive any net subsidy on exports to the United States of subject merchandise from those programs that the Department has found countervailable in any proceeding involving Colombia or from other countervailable programs.

Therefore, we determine that the GOC and the producers/exporters covered by these agreements have met the requirements for termination of the suspended countervailing duty investigations on roses and other cut flowers and miniature carnations, as required by 19 CFR 355.25. We, therefore, determine to terminate the suspended investigation on roses and other cut flowers from Colombia and the suspended investigation on miniature carnations from Colombia.

Lastly, as a result of this determination, we will also terminate the reviews in progress for these agreements covering the 1995 period.

These administrative reviews and this notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C) and 1675(c)) and 19 CFR 355.22 and 355.25.

Dated: August 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22235 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of September 1996.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 C.F.R. 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to

interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing duty order	
Canada: Steel Rail (C–122–805).	09/22/89, 54 FR 39032

Opportunity To Object

Not later than the last day of September 1996, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: August 21, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–22236 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review; Notice of Application To Amend Certificate

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–7A016."

Geothermal Energy Association's ("GEA") original Certificate was issued on February 5, 1990 (55 FR 4647, February 9, 1990) and previously amended on November 7, 1990 (55 FR 47784, November 15, 1990); April 17, 1991 (56 FR 16328, April 22, 1991); September 11, 1991 (56 FR 47068, September 17, 1991); October 25, 1993 (58 FR 58325, November 1, 1993); September 26, 1994 (59 FR 50575, October 4, 1994); and March 6, 1996 (61 FR 11189). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Geothermal Energy Association ("GEA"), 2001 Second Street, Suite 5, Davis, California 95616.

Contact: John Armstrong, Counsel, Telephone: (703) 356–3100.

Application No.: 89–7A016.

Date Deemed Submitted: August 23, 1996.

Proposed Amendment: Geothermal Energy Association seeks to amend its Certificate to:

1. Add the following company as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Ormat Technologies, Inc. as the controlling entity of the GEA Certificate Member Ormat International, Inc.

2. Delete the following companies as "Members" of the Certificate: University of Utah Research Institute; and Big Bear Mud & Engineering Company; and

3. Change the listing of the company names for the current members: "Calpine Corporation" d.b.a "Santa Rosa Geothermal Company, L.P." to the new listing "Calpine Corporation"; and "Unocal Geothermal Division and its controlling entity, "Unocal Corporation" to "Union Oil of California", d.b.a. "Unocal and/or Unocal Corporation".

Dated: August 26, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–22161 Filed 8–29–96; 8:45 am]

BILLING CODE 3510–DR–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

DATE AND TIME: Thursday, September 5, 1996, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: August 27, 1996.

Todd A. Stevenson,

Deputy Secretary.

[FR Doc. 96–22423 Filed 8–28–96; 3:25 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Request for comments on an accrediting agency's requested expansion of scope during the review of its application to the Secretary for renewal of recognition.

DATES: Commentors should submit their written comments by September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education is required by law to publish a list of accrediting agencies that he determines to be reliable authorities regarding the quality of education or training offered by institutions or programs they accredit. The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary on specific accrediting agencies that seek to be recognized by the Secretary or to be granted an expansion of scope.

The agency listed in this notice is seeking renewal of recognition and an expansion of scope, which was inadvertently omitted from the **Federal Reigster** notice dated Tuesday, July 9, 1996. The Advisory Committee will consider this petition for renewal and expansion of scope, along with the petitions listed in the July Notice, at its November 18–20, 1996 meeting.

The purpose of this notice is to invite interested third parties to present written comments on the agency that will be reviewed by the Advisory Committee. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than September 13, 1996. All written comments received by the Department in response to this notice will be reviewed by Department staff as part of its evaluation of the agency's compliance with the criteria for recognition.

A subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the AMDA and other agencies being reviewed at the meeting. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

Request for Renewal of Recognition and Expansion of Scope

The agency listed below is seeking renewal of recognition and expansion of scope:

1. The American Dietetic Association (requested scope of recognition: the accreditation of coordinated undergraduate programs in Dietetics and postbaccalaureate Dietetic Internships). The agency is seeking an expansion of scope for (1) Coordinated Programs at the graduate level; (2) Dietetic Technician Programs (associated degree level); and (3) preaccreditation status for all programs.

Public Inspection of Petitions and Third-Party Comments

All third-party comments received in response to this call for comment, as well as the agency's original petition and supporting documentation, and the Department staff analysis of that petition will be available for public inspection and copying at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, S.W., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. It is preferred that an appointment be made in advance of such inspection and copying.

Dated: August 26, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–22220 Filed 8–29–96; 8:45 am]

BILLING CODE 4000–01–M

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on January 22, 1996, an arbitration panel rendered a decision in the matter of *Johnny Wilson* v. *Georgia Department of Human Resources, (Docket No. R–S/92–4)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–2, upon receipt of a complaint filed by Johnny Wilson.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

In October 1990 the Georgia Department of Human Resources, the State licensing agency (SLA), announced a vacancy at a new facility, No. 1–350. This was a vending machine facility at the United States Postal Service Mail Processing Center in Duluth, Georgia. The announcement for this facility indicated that a manager and an assistant manager would be needed at this location.

Mr. Johnny Wilson was the successful applicant for this position and several weeks later another vendor was selected as the assistant manager. The complainant employed his spouse at the facility. The assistant manager at various times also employed his spouse and occasionally members of his family. The relationship between the two vendors became increasingly strained. The SLA initiated action to discharge the spouse of each vendor.

The complainant filed a complaint with the SLA under the State fair hearing procedures. Mr. Wilson's complaint included two additional grievances. The first concerned the equipment required for the start-up of his facility. The equipment to begin operation of complainant's facility had been purchased by Georgia Co-op for the Blind and leased to the SLA under a lease-purchase agreement that required monthly payments. The SLA passed these payments on to Mr. Wilson and the assistant manager at facility No. 1–350. This charge was in addition to the 12 per cent set-aside fee on net proceeds. Secondly, Mr. Wilson grieved the decision of the SLA to place an additional blind vendor at a cafeteria facility at the Mail Processing Center.

A fair hearing was conducted by the SLA on February 21, 1992, regarding the three issues: (1) Dismissal of Mr. Wilson's spouse. (2) The assignment of the equipment lease payment in addition to the set-aside fee to complainant's facility. (3) The SLA's proposal to establish the cafeteria as a separate facility at the Mail Processing Center.

On March 16, 1992, the Administrative Law Judge (ALJ) ruled in Mr. Wilson's favor on the following issues. The ALJ ruled that the SLA had exceeded its authority in terminating

the employment of the vendor's spouse. The ALJ ruled that the monthly lease-purchase payments assigned to facility No. 1–350 were in direct violation of the Act, Federal regulations, and the SLA's own policy manual, all of which require the SLA to provide equipment to blind vendors. The ALJ, therefore, directed that the SLA reimburse Mr. Wilson for all equipment charges improperly assessed. The ALJ also ruled that the SLA's proposal to establish a cafeteria facility at the same location as Mr. Wilson's was within the discretion of the SLA.

On April 1, 1992, Mr. Wilson appealed three portions of the ALJ's decision to the Secretary of the U.S. Department of Education. The issues appealed were: (1) The ruling on the proposed new cafeteria facility. (2) The failure of the ALJ to award interest on the reimbursement payments by the SLA to Mr. Wilson for the lease-purchase of equipment. (3) The failure of the ALJ to award attorney's fees.

These issues were pending before a Federal arbitration panel when the SLA imposed a three-day suspension without pay on complainant as the result of alleged actions taken by Mr. Wilson that impaired the assistant manager's ability to perform his duties at facility No. 1–350. Mr. Wilson appealed the SLA's action in a State fair hearing proceeding before an ALJ. The ALJ denied Mr. Wilson's claim, and, subsequently, the complainant filed a grievance with respect to this matter with the Secretary of the U.S. Department of Education. The Secretary consolidated this grievance along with the earlier complaint.

An arbitration hearing was held on this matter on June 29 and 30, 1994. The issues before the panel were: (1) What remedy, if any, is appropriate for the three-day suspension? (2) Did the State agency improperly award the cafeteria contract to the detriment of Mr. Wilson, and, if so, what is the appropriate remedy? (3) Can the arbitration panel award attorney's fees to Mr. Wilson, and, if so, is such an award justified? Prior to the hearing, the parties resolved the issue concerning interest on the leased equipment payments that Mr. Wilson made to the SLA.

Arbitration Panel Decision

The arbitration panel ruled that the SLA did not or would not violate the Randolph-Sheppard Act or any regulations promulgated under the Act by assigning the license to operate the cafeteria facility to a vendor other than Mr. Wilson. The panel's majority concluded, with one dissent, that the conflict between the agency's duty to protect and maximize the earnings of existing vendors and its duty to maximize the number of vendors operating viable facilities is a matter committed to the SLA's discretion. Among other considerations, even if Mr. Wilson's vending facility revenues were to be reduced as he projected, his facility would remain one of the most highly remunerative in the entire State.

The panel also ruled that the complainant failed to show that the refusal to award attorney's fees in the State fair hearing violated any State or Federal statute or regulations.

Finally, the panel ruled that the appropriate remedy for the concededly improper suspension of the complainant was the sum withheld for his three-day suspension plus interest at the Federal funds rate together with costs, including reasonable attorney's fees, incurred by Mr. Wilson in contesting the matter in the State fair hearing proceedings and in the arbitration proceedings. The panel majority concluded, with one dissent, that an award of attorney's fees was appropriate and not barred by the Eleventh Amendment to the United States Constitution.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: August 27, 1996.

Judith E. Heumann,

Assistant Secretary Special Education and Rehabilitative Services.

[FR Doc. 96–22217 Filed 8–27–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" to be carried out in Canada under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the Government of the United States of America and the Government of Canada, signed June 15, 1955, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the alteration in form or content of irradiated fuel rods from the H.B. Robinson Nuclear Power Station to produce elements for irradiation in a research reactor, using a dry proliferation-resistant fabrication process in accordance with the plan contained in the document AECL/KAERI/US DOS Joint Development Program for the Direct Use of Spent PWR Fuel in CANDU (DUPIC), dated November 1995.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 26, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–22188 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation for Civil Uses of Atomic Power between the United States and the Republic of Argentina, and the Agreement for Cooperation for Civil Uses of Atomic Power between the United States and Brazil.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the conclusion of protocols concerning the suspension of the application of safeguards by the International Atomic Energy Agency (IAEA) under the Safeguards Transfer Agreement between the Republic of Argentina, the United States of America and the IAEA, signed June 13, 1969; and the Safeguards Transfer Agreement between the Federative Republic of Brazil, the United States of America and the IAEA, signed March 10, 1967, and amended July 27, 1972. These agreements will be replaced by a Quadripartite Agreement between Argentina, Brazil, the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials, the IAEA, and by the Safeguards Agreement referred to as the Voluntary Offer Agreement between the United States

and the IAEA that entered into force on December 9, 1980.

The application of safeguards in Argentina and Brazil pursuant to the Safeguards Transfer Agreements will be suspended while the Quadripartite Agreement is in force and safeguards specified therein are being applied by the IAEA. The application of safeguards in the United States pursuant to the Safeguards Transfer Agreement is suspended while the Voluntary Offer Agreement between the IAEA and the United States, and the protocol thereto, is in force and safeguards specified therein are being applied by the IAEA. These protocols shall enter into force on the date on which the IAEA receives from Argentina, Brazil and the United States written notification of the fulfillment of their respective internal procedures.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 26, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–22689 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Final Environmental Impact Statement (EIS) for the Hanford Site Tank Waste Remediation System, Richland, WA

AGENCY: Department of Energy and Washington State Department of Ecology.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) and the Washington State Department of Ecology (Ecology) announce the availability of a Final EIS entitled "Tank Waste Remediation System at the Hanford Site, Richland, Washington" (DOE/EIS–0189). DOE and Ecology co-prepared the EIS. DOE and Ecology revised the information in the Draft EIS in response to public comments and to reflect new environmental information that became available after the Draft EIS was issued in April 1996.

The EIS evaluates the potential environmental impacts of DOE's proposed action as well as reasonable alternatives for management and disposal of mixed, radioactive, and hazardous waste currently or projected to be stored in 177 underground storage tanks and in approximately 60 active and inactive miscellaneous underground storage tanks that were associated with Hanford's tank farm operations. In addition, the EIS evaluates the management and potential disposal of approximately 1,930 cesium and strontium capsules currently on loan or stored at the Hanford Site.

ADDRESSES: Requests for copies of the Final EIS and for further information on the Final EIS should be directed to Ms. Carolyn Haass, DOE TWRS EIS NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 1249, Richland, WA 99352. Requests for copies of the Draft EIS also can be made via the Internet at TWRSEIS@ken01.JACOBS.com or by calling Ecology's Hanford Information Line at 1–800–321–2008. Addresses of locations where the Final EIS will be available for public review are listed in this notice under "DOE Reading Rooms and Information Repositories." The Final EIS is also available for review on the Internet at www.hanford.gov.

General information on the DOE National Environmental Policy Act (NEPA) process may be requested from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom may be contacted by telephone at (202) 586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE and Ecology issued a Draft EIS for public comment and published a Notice of Availability in the **Federal Register** on April 15, 1996 (61 FR 16471). EPA published a Notice of Availability in the **Federal Register** on April 12, 1996 (61 FR 16248). Public hearings on the Draft EIS were held in Pasco, Washington on May 2, 1996; Portland, Oregon on May 9, 1996; Arlington, Virginia on May 7, 1996; Spokane, Washington on May 15, 1996; and Seattle, Washington on May 22, 1996. All written and oral comments on the Draft EIS received during the 45 day-public comment period were assessed and considered by DOE and Ecology both individually and collectively. Comment letters, transcripts of oral comments, and transcripts of public hearings and meetings are available for review at locations listed in this notice under "DOE Reading Rooms and Information Repositories."

DOE requested the National Academy of Science to review and comment on the TWRS Draft EIS. DOE will carefully consider all comments provided by the National Academy of Science and the public in the Record of Decision.

DOE and Ecology revised the information in the Draft EIS in response to public comments and to reflect new environmental information that became available after the Draft EIS was issued. Appendix L contains oral and written comments and DOE and Ecology's responses to the comments. Responses to comments included appropriate revisions of the EIS, answers to questions, explanations of technical issues, references to information in other DOE environmental impact statements, references to information provided in the Draft EIS, explanations of the relationship of this EIS to other related DOE NEPA documents, statements of government policy, or indications that the comment was outside the scope of this EIS.

The Final EIS has been filed with the Environmental Protection Agency (EPA) and has also been distributed to Federal, State, and local officials, Tribal Nations, as well as agencies, organizations, and individuals who may be interested or affected. The Final EIS and supporting technical reports also are available for public review in DOE reading rooms and designated information repository locations identified in this notice. DOE plans to issue a Record of Decision on the EIS no sooner than 30 days after publication of EPA's notice of availability of the Final EIS in the **Federal Register** (i.e., no sooner than September 30, 1996).

Alternatives Considered

The Final EIS evaluates ten tank waste alternatives in detail:

- No Action—perform minimum activities required for safe and secure management of Hanford's tank wastes with the current tank farm configuration;
- Long-Term Management—perform minimum activities required for safe and secure management of Hanford's tank waste including upgrades to tank farms with the current single-shell tank farm configuration and the replacement of the double-shell tanks twice during a 100-year period;
- In Situ Fill and Cap—retrieve and evaporate liquid waste from the double-shell tanks, then fill all tanks with gravel and cover the tank farms with an earthen surface barrier, disposing of all tank waste onsite;
- In Situ Vitrification—retrieve and evaporate liquid waste from the double-shell tanks, then vitrify all of the tank

farms and cover the tank farms with an earthen surface barrier, disposing of all tank waste onsite;

• Ex Situ No Separations—retrieve all tank farm waste practicable (assumed to be 99 percent), then either vitrify or calcine the waste and package the treated waste form for onsite storage and eventual offsite disposal at a geologic repository;

• Ex Situ Intermediate Separations—retrieve all tank farm waste (99 percent) and separate the high-level and low-activity waste streams using sludge washing and ion exchange, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of immobilized low-activity waste and offsite disposal of the immobilized high-level waste at a geologic repository;

• Ex Situ Extensive Separations—retrieve all tank farm waste (99 percent) and separate into high-level and low-activity waste streams using sludge wash, ion exchange, caustic leach and acid dissolution, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of the immobilized low-activity waste and onsite storage and eventual offsite disposal of the immobilized high-level waste at a geologic repository;

• Ex Situ/In Situ Combination 1—retrieve waste from 70 tanks based on the potential long-term risks to human health or the environment, separate the retrieved waste into high-level and low-activity waste streams using sludge washing and ion exchange, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of the immobilized low-activity waste and onsite storage and eventual offsite disposal of the immobilized high-level waste at a geologic repository. Fill all tanks, including those with waste that had not been retrieved, with gravel, and cover the tanks with a barrier, permanently disposing of the waste in-place;

• Ex Situ/In Situ Combination 2—retrieve waste from 25 tanks based on the potential long-term risks to human health or the environment, separate the retrieved waste into high-level and low-activity waste streams using sludge washing and ion exchange, then vitrify the waste streams in separate facilities and package the treated waste form for onsite disposal of the immobilized low-activity waste and onsite storage and eventual offsite disposal of the immobilized high-level waste at a geologic repository. Fill all tanks, including those with waste that had not been retrieved, with gravel, and cover the tanks with a barrier, permanently disposing of the waste in-place; and

• Phased Implementation—for Phase 1, construct commercial demonstration-scale facilities that would include one low-activity waste separations and vitrification demonstration plant and one low-activity and high-level waste vitrification demonstration plant to operate for up to 10 years. These facilities could treat up to 30 percent of the tank waste by volume during the 10-year operating period. For Phase 2, construct larger capacity separations and vitrification plants, retrieve the remaining waste, separate the waste into low-activity and high-level waste streams, vitrify the waste in separate facilities, package the waste, and dispose of the low-activity waste onsite in near-surface vaults and the high-level waste offsite at a geologic repository.

The cesium and strontium capsules are currently classified as waste by-product and are therefore available for beneficial uses. If beneficial uses cannot be found, the capsules would be subject to management and disposal actions as high-level waste. As in the Draft EIS, cesium and strontium capsule alternatives analyzed in the Final EIS are:

• No Action—Continue existing operations and maintenance in the Hanford Site Waste Encapsulation and Storage Facility for 10 years;

• Onsite Disposal—overpack the cesium and strontium in canisters and store onsite indefinitely in a newly constructed dry-well storage facility;

• Overpack and Ship—overpack the cesium and strontium into canisters, which would then be overpacked into Multi-Purpose Canisters, and dispose of offsite at the proposed national high-level waste repository; and

• Vitrify with Tank Waste—remove capsule contents and vitrify with the high-level tank waste, place in Multi-Purpose Canisters, and dispose of offsite at a geologic repository.

Preferred Alternatives

DOE and Ecology's preferred tank waste alternative in the EIS is the Phased Implementation alternative. DOE and Ecology's preferred alternative for the Hanford Site's cesium and strontium capsules is the No Action alternative.

Availability of Copies of the Final EIS

Copies of the Final EIS are being distributed to Federal, State, and local officials and agencies; to organizations and individuals known to be interested in the EIS; and to persons and agencies that commented on the Draft EIS. Additional copies may be obtained by contacting Ms. Carolyn Haass, DOE TWRS EIS NEPA Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 1249, Richland, Washington 99352. Requests for copies also can be made via the Internet at:

TWRSEIS@ken01.JACOBS.com or by calling Ecology's Hanford Information Line at 1–800– 321–2008. Addresses of DOE Public Reading Rooms and Information Repositories where the EIS and reference documents will be available for public review are listed below:

Summary of the EIS

Summary:
- Summary of the alternatives and analysis presented in the EIS

Volume One:
- Main Text of the Tank Waste Remediation System EIS

Volume Two:
- Appendices Supporting Volume One
- Appendix A. Waste Inventory
- Appendix B. Description of Alternatives
- Appendix C. Alternatives Rejected from Analysis

Volume Three:
- Appendix Supporting Volume One
- Appendix D. Anticipated Health and Ecological Risks

Volume Four:
- Appendices Supporting Volume One
- Appendix E. Accident Risks
- Appendix F. Groundwater Modeling

Volume Five:
- Appendices Supporting Volume One
- Appendix G. Air Quality Modeling
- Appendix H. Socioeconomic Impact Modeling
- Appendix I. Affected Environment
- Appendix J. Consultation Letters
- Appendix K. Uncertainties Analysis

Volume Six:
- Appendix Containing Comments and DOE and Ecology Responses and Supporting Changes to the Summary and Volumes One through Six made in Response to Comments
- Appendix L. Comments and Agency Responses

The Summary of the EIS is available for those who do not wish to receive the entire Final EIS. When requesting copies of the Final EIS, please indicate whether you wish to receive only the Summary (50 pages), the Summary and Volume One (620 pages), or the entire EIS, including the appendices (3,100 pages).

DOE Public Reading Rooms and Information Repositories

University of Washington, Suzzallo Library, Government Publications

Room, Seattle, WA 98185. (206) 685–9855, Monday–Thursday 9:00 a.m. to 8:00 p.m., Friday and Saturday 9:00 a.m. to 5:00 p.m.

Gonzaga University, Foley Center, E. 502 Boone, Spokane, WA 99258. (509) 328–4220 ext. 3829, Monday–Thursday 8:00 a.m. to midnight, Friday 8:00 a.m. to 9:00 p.m., Saturday 9:00 a.m. to 9:00 p.m., Sunday 11:00 a.m. to midnight.

U.S. Department of Energy Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130W, Richland, WA 99352, (509) 376–8583, Monday–Friday 10:00 a.m. to 4:00 p.m.

Portland State University, Bradford Price Millar Library, Science and Engineering Floor, S.W. Harrison and Park, Portland, OR 97207, (503) 725–3690, Monday–Friday 8:00 a.m. to 10:00 p.m., Saturday 10:00 a.m. to 10:00 p.m., Sunday 11:00 a.m. to 10:00 p.m.

U.S. Department of Energy, Headquarters, Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–6020, Monday–Friday 9:00 a.m. to 4:00 p.m.

Issued in Washington, D.C., this day August 26, 1996.

Stephen P. Cowan,

Deputy Assistant Secretary for Waste Management.

[FR Doc. 96–22186 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–735–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

August 26, 1996.

Take notice that on August 21, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–735–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery point to accommodate natural gas deliveries to Western Gas Utilities, Inc. (WGU) for delivery to the proposed Darwin town border station (TBS), located in Meeker County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it requests authority to install and operate the proposed delivery point to accommodate natural gas deliveries to WGU under Northern's currently effective throughput service agreements. Northern asserts that WGU has requested the proposed delivery point to accommodate service due to expansion of its distribution system into new areas. The estimated volumes proposed to be delivered to WGU at the Darwin TBS are 350 MMBtu on a peak day and 53,550 MMBtu on an annual basis. Northern states that the estimated cost to install the delivery point is $50,000, and that WGU will reimburse Northern for the cost to install the proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22164 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OA96–219–000]

Vermont Marble Power Division of OMYA, Inc.; Notice of Filing

August 26, 1996.

Take notice that on August 1, 1996, Vermont Marble Power Division of OMYA, Inc. (VMPD), submitted for filing pursuant to Section 35.28(d) of the Commission's Regulations, 18 CFR 35.28(d), a request that the Commission grant it a waiver from the requirements of §§ 35.28(c), 37.4(c) and § 37.5 of the Commission's Regulations, to file open access transmission service tariffs, to prepare and file written procedures to implement the standards of conduct set forth in § 37.4 of the Commission's Regulations, and to maintain information system.

VMPD has served its Request for Waiver on the Vermont Department of Public Service, the Vermont Public Service Board, and certain of the Vermont distribution and transmission utilities with which it conducts business.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 18 CFR 385.214 and the Commission's "Order Clarifying Order Nos. 888 and 889 Compliance Matters," issued in Docket No. RM95–8–000 et al. on July 2, 1996. All such motions or protests considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22167 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1733–000, et al.]

Wisconsin Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

August 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[Docket No. ER96–1733–000]

Take notice that on August 15, 1996, Wisconsin Power and Light Company (WP&L) tendered for filing an amendment in its May 6, 1996, filing in this docket.

WP&L requests an effective date of May 7, 1996, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing have been served upon MG&E and the Public Service Commission of Wisconsin.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PanEnergy Power Services, Inc., Power Exchange Corporation, CNB/Olympic Gas Services, Inc., Logan Generating Company, L.P., Sonat Power Marketing Inc., DuPont Power Marketing Inc., Energy West Power Co., LLC

[Docket Nos. ER95–7–010, ER95–72–006, ER95–964–005, ER95–1007–002, ER95–1050–005, ER95–1441–006, and ER96–392–003, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 13, 1996, PanEnergy Power Services, Inc. filed certain information as required by the Commission's December 16, 1994, order in Docket No. ER95–7–000.

On July 29, Power Exchange Corporation filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–72–000.

On July 31, CNB/Olympic Gas Services, Inc. filed certain information as required by the Commission's July 10, 1995, order in Docket No. ER95–964–000.

On July 31, 1996, Logan Generating Company, L.P. filed certain information as required by the Commission's June 28, 1995, order in Docket No. ER95–1007–000.

On July 30, 1996, Sonat Power Marketing Inc. filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1050–000.

On July 31, 1996, DuPont Power Marketing Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On July 30, 1996, Energy West Power Co. filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–392–000.

3. Williams Energy Services Company, Hartford Power Sales LLC, IEP Power Marketing, LLC, Nordic Electric, LLC, Questar Energy Trading Company, Transalta Enterprises Corporation, PECO Energy Company

[Docket Nos. ER95–305–007, ER95–393–009, ER95–802–005, ER96–127–001, ER96–404–002, ER96–1316–001, and ER96–640–002, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 30, 1996, Williams Energy Services Company filed certain information as required by the Commission's May 10, 1995, order in Docket No. ER95–305–000.

On July 31, 1996, Hartford Power Sales LLC filed certain information as required by the Commission's February 22, 1995, order in Docket No. ER95–393–000.

On August 15, 1996, IEP Power Marketing, LLC filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–802–000.

On August 13, 1996, Nordic Electric, LLC filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96–127–000.

On July 31, 1996, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–404–000.

On August 14, 1996, TransAlta Enterprises Corporation filed certain information as required by the Commission's June 12, 1996, order in Docket No. ER96–1316–000.

On July 30, 1996, Peco Energy Company filed certain information as required by the Commission's March 28, 1996, order in Docket No. ER96–640–000.

4. Gateway Energy Inc. and PowerMark LLC

[Docket Nos. ER95–1049–004, ER96–332–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 5, 1996, Gateway Energy Inc. filed certain information as required the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On August 8, 1996, PowerMark LLC filed certain information as required the Commission's January 19, 1996 order in Docket No. ER96–332–000.

5. Inland Pacific Energy Services Corporation

[Docket No. ER96–2144–000]

Take notice that on August 1, 1996, Inland Pacific Energy Services Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER96–2238–000]

Take notice that on August 15, 1996, Central Vermont Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Thicksten Grimm Burgum, Inc.

[Docket No. ER96–2241–000]

Take notice that on August 14, 1996, Thicksten Grimm Burgum, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas & Electric Company

[Docket No. ER96–2336–000]

Take notice that on August 19, 1996, Southern Indiana Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Great Bay Power Corporation

[Docket No. ER96–2595–000]

Take notice that on July 29, 1996, Great Bay Power Corporation tendered for filing a summary of activity for the quarter ending June 30, 1996.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER96–2665–000]

Take notice that on August 8, 1996, New York State Electric & Gas Corporation tendered for filing the executed signature page to the Agreement with Rochester Gas and Electric Corporation filed with the Commission unexecuted on February 29, 1996.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER96–2709–000]

Take notice that on August 14, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating

Companies), tendered for filing an Amendment to Rate Schedule SP. ESI states that this filing is designed to allow ESI to engage in negotiated sales of electric power with unaffiliated purchasers, including sales not involving ESI's generation or transmission facilities.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2711–000]

Take notice that on August 15, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Transmission Service Agreement between NSP and Dairyland Power Cooperative.

NSP requests that the Commission accept the agreement effective July 25, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–2712–000]

Take notice that on August 15, 1996, PECO Energy Company (PECO), filed a Service Agreement dated August 7, 1996 with Long Island Lighting Company (LILCO) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds LILCO as a customer under the Tariff.

PECO requests an effective date of August 7, 1996, for the Service Agreement.

PECO states that copies of this filing have been applied to LILCO and to the Pennsylvania Public Utility Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER96–2713–000]

Take notice that on August 15, 1996, PECO Energy Company (PECO), filed a Service Agreement dated August 7, 1996 with SCANA Energy Marketing, Inc. (SCANA) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds SCANA as a customer under the Tariff.

PECO requests an effective date of August 7, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to SCANA and to the Pennsylvania Public Utility Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company

[Docket No. ER96–2714–000]

Take notice that on August 15, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing an Interconnection Agreement between PG&E and the Shelter Cove Resort Improvement District No. 1 (District), dated August 6, 1996 (Interconnection Agreement). The Interconnection Agreement supersedes the current power sale contract between District and PG&E (PG&E Rate Schedule FERC No. 90).

District and PG&E (the Parties) entered into the Interconnection Agreement to define their new relationship after the termination of Rate Schedule FERC No. 90. The most important change under the Interconnection Agreement is that District will become an interconnection customer of PG&E, instead of a full-requirements customer. District will purchase wholesale electric service to become, in essence, a full-requirements customer of the Northern California Power Agency (NCPA). This change will reduce PG&E yearly revenues from the District by approximately $110,000.

Copies of this filing have been served upon District and the California Public Utilities Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. UGI Power Supply, Inc.

[Docket No. ER96–2715–000]

Take notice that on August 15, 1996, UGI Power Supply, Inc., a wholly-owned subsidiary of UGI Enterprises, Inc., and an indirect subsidiary of UGI Utilities, Inc., tendered for filing an application for approval of its FERC Electric Rate Schedule No. 1 and for authorizations to make wholesale sales of electric power at rates to be negotiated by the purchaser. UGI Power Supply, Inc. requests that its FERC Electric Rate Schedule No. 1 be made effective 60 days from the date of filing, or October 14, 1996.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER96–2716–000]

Take notice that on August 15, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

Koch Power Services, Inc.

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Power Company

[Docket No. ER96–2717–000]

Take notice that on August 15, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Duquesne Light Company.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Power Company

[Docket No. ER96–2718–000]

Take notice that on August 15, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Dayton Power & Light Company.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER96–2719–000]

Take notice that on August 15, 1996, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Energy Transfer Group, L.L.C. (Energy Transfer).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of October 1996 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Energy Transfer.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas & Electric Corporation

[Docket No. ER96–2720–000]

Take notice that on August 15, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Niagara Mohawk Power Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the

Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Central Hudson Gas & Electric Corporation

[Docket No. ER96–2721–000]

Take notice that on August 15, 1996, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Coral Power L.L.C. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2722–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to TransCanada Power Corporation (TC).

Con Edison states that a copy of this filing has been served by mail upon TC.

Comment date: August 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2723–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to PECO Energy Company—Power Team (PECO).

Con Edison states that a copy of this filing has been served by mail upon PECO.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2724–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Sonat Power Marketing, Inc. (Sonat).

Con Edison states that a copy of this filing has been served by mail upon Sonat.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2725–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Enron Power Marketing, Inc. (Enron).

Con Edison states that a copy of this filing has been served by mail upon Enron.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Louisville Gas and Electric Company

[Docket No. ER96–2726–000]

Take notice that on August 14, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and City of Tallahassee, Florida under Rate TS.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool

[Docket No. ER96–2727–000]

Take notice that on August 14, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by KOCH Power Services, Inc. (KOCH). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit KOCH to join the over 100 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make KOCH a Participant in the Pool. NEPOOL requests an effective date of September 15, 1996 for commencement of participation in the Pool by KOCH.

Comment date: September 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 96–22162 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 4797–042, –043, –044, and –045]

Cogeneration, Inc.; Notice of Availability of Draft Environmental Assessment

August 26, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend articles 404, 405, 406, and 407 of the project license for the Auger Falls Hydroelectric Project (FERC No. 4797). The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Auger Falls Hydroelectric Project is located on the Snake River in Twin Falls County, Idaho.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit only those comments relative to the environmental conclusions reached in the DEA within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 4797–042, –043, –044, and –045 to all comments. For further information, please contact the project manager, Robert J. Fletcher, at (202) 219–1206.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22166 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1980, 1759, 2072, 2073, 2074, and 2131]

Wisconsin Electric Power Company; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

August 26, 1996.

Pursuant to the Energy Policy Act of 1992, and as part of the license applications, the Wisconsin Electric Power Company (hereinafter referred to as WE) intends to prepare an Environmental Assessment (EA) to file with the Federal Energy Regulatory Commission (Commission) for the Upper Menominee River Basin Hydroelectric Projects. Two public scoping meetings will be held, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, WE will (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although WE's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

All interested individuals, organizations, and agencies are invited and encouraged to attend and assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus the discussions, a scoping document was mailed on July 31, 1996, as part of the Initial Consultation Package (ICP). Copies of the Scoping Document and ICP will also be available at the meetings.

WE will conduct site visits on Friday, September 13, 1996, to tour the Way Dam, Hemlock Falls Dam, Lower Paint Dam, Peavy Falls Dam, and Michigamme Falls Dam. The site visits will begin at 8:00 a.m. at the Way Dam. On Saturday, September 14, 1996, from 10:00 a.m. to 3:00 p.m., WE will host a centennial open house of the Kingsford Dam. On Monday, September 16, 1996, WE will conduct site visits of the Twin Falls Dam and the Big Quinnesec Falls Dam. The site visits will begin at 8:00 a.m. at the Twin Falls Dam. Persons interested in touring one or more of the sites should contact WE for an itinerary.

A scoping meeting for Federal, state, and local resource agencies will be held on Monday, September 16, 1996, at 2:00 p.m., at the Premiere Center, located at 300 East F Street, Iron Mountain, Michigan. The evening scoping meetings will be held on Monday, September 16, 1996, at 7:00 p.m. at the Premiere Center and on Tuesday, September 17, 1996, at 7:00 p.m. at the Crystal Falls Township Hall, located at Junction US Highways 2 and 141, Crystal Falls, Michigan. The site visits and scoping meetings are open to all interested parties.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting when the applications and EA are filed with the Commission in October 1999. Instead, the Commission staff will attend the meetings held on September 16 and 17, 1996.

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings on the Upper Menominee River Basin Projects. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be mailed to Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 231 W. Michigan St., P.O. 2046, Milwaukee, Wisconsin, 53201–2046, by November 17, 1996. Correspondence should clearly show the following caption on the first page: Scoping Comments, Upper Menominee River Basin Hydroelectric Projects, FERC Nos. 1980, 1759, 2072, 2073, 2074, and 2131.

For further information, please contact Ms. Annie Salmona at (414) 221–4151 (Wisconsin Electric) or Patti Leppert-Slack at (202) 219–2767 (Federal Energy Regulatory Commission).

Lois D. Cashell,

Secretary.

[FR Doc. 96–22165 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–716–000, et al.]

East Tennessee Natural Gas Company, et al.; Natural Gas Certificate Filings

August 23, 1996.

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP96–716–000]

Take notice that on August 14, 1996, East Tennessee Natural Gas Company (East Tennessee) a Tennessee Corporation, P. O. 2511, Houston, Texas 77252, filed, in the above docket, a request for authorization pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) and under its blanket authority issued on September 1, 1982, in Docket No. CP82–412–000, to establish a new delivery point in order to provide additional firm transportation service to an existing customer, Loudon Utilities Gas Department (Loudon), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, East Tennessee proposes to install a new delivery point located at approximate M.P. 3218D–101+6.6 on its system in Loudon County, Tennessee. To establish the delivery point, East Tennessee states that it will install a four-inch tie-in assembly, approximately 50 feet of four-inch interconnecting pipe, a two-inch turbine

meter, electronic gas measurement (EGM) and communications. East Tennessee states that it will own, operate and maintain the measurement facilities, the tie-in assembly and interconnecting pipe, and will maintain the communications and EGM. Loudon will provide the site for these facilities and will provide over-pressure protection, pressure regulation, heating and odorization, as required by the State of Tennessee.

East Tennessee further states that the total quantities to be delivered to Loudon will not exceed the total quantities authorized. East Tennessee asserts that the installation of the proposed delivery point is not prohibited by its tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of its other customers.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP96–717–000]

Take notice that on August 15, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–717–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade the existing Ohio Gas Delta delivery point, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Panhandle proposes to replace certain inefficient and undersized facilities with more efficient upgraded facilities so as to allow increased deliveries to be made at this delivery point. The estimated cost to upgrade the facilities is $370,000.

Comment date: October 7, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP96–723–000]

Take notice that on August 16, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP96–723–000, an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, for (1) a certificate of public convenience and necessity authorizing the construction and operation of approximately 1,750 feet of new upgraded 26-inch replacement pipeline and appurtenances on Northwest's Ignacio to Sumas mainline, and (2) permission and approval to abandon by removal approximately 1,020 feet and to abandon in place approximately 730 feet of the 26-inch pipeline being replaced; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that the installation of replacement pipeline and abandonment of existing pipeline is necessary to comply with Department of Transportation safety classification requirements. The total costs to construct the proposed pipeline and abandon the existing pipeline segment are estimated at $685,000.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Eastern Shore Natural Gas Company

[Docket No. CP96–724–000]

Take notice that on August 19, 1996, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 1769, Dover, Delaware 19903–1769, filed in Docket No. CP96–724–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add one new delivery point for Delmarva Power and Light Company (Delmarva), an existing customer, under Eastern Shore's blanket certificate issued in Docket No. CP83–40–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Eastern Shore proposes to construct and operate one delivery point and associated facilities near Cox Neck Road (County Road 411) in St. Georges, New Castle County, Delaware (Cox Neck Delivery Point) to serve Delmarva. Eastern Shore states the proposed Cox Neck Delivery Point would require the installation of a meter and appurtenant equipment and approximately 200 feet of 4-inch-diameter service lateral.

Eastern Shore states that deliveries to Delmarva at the Cox Neck Delivery Point will be approximately 175 Mcf on a peak day and approximately 17,500 Mcf per year.

Eastern Shore asserts that the delivery of gas through the new tap would be within the customer's existing entitlement, that there will be no adverse impact on Eastern Shore's other customers' peak and annual deliveries, and that no additional facilities will be required to serve the new delivery point other than a meter and regulating station and service lateral, the costs of which will be paid for by Delmarva.

Eastern Shore further states that its tariff does not prohibit the addition of delivery points for existing customers.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP96–725–000]

Take notice that on August 19, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP96–725–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by removal a delivery tap and measurement facilities located in Montgomery County, Texas, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to abandon the facilities, including the meter, piping and appurtenant facilities, which were installed and placed in service in June 1972 to serve Terra Resources, Inc. (Terra), for the sale and delivery of natural gas for oil field operations. It is stated that no gas has flowed through the meter since 1992 and that the sales agreement between Tennessee and the Daniels Corporation (Daniels), the successor-in-interest to Terra, was terminated in 1992. It is asserted that Daniels was the only customer served by the facilities, and a letter was included in the application showing Daniels' consent to the abandonment.

Comment date: October 7, 1996, in accordance with Standard Paragraph G at the end of this notice.

6. Kern River Gas Transmission

[Docket No. CP96–727–000]

Take notice that on August 19, 1996, Kern River Gas Transmission Company (Kern River), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed an abbreviated application in Docket No. CP96–727–000, pursuant to Section 7(c) of the Natural Gas Act and Section 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing the construction and operation of facilities, all as more

fully set forth in the application on file with the Commission and open to public inspection.

Kern River requests authorization to construct and operate the proposed Blue Diamond Meter Station on Kern River's existing pipeline located near Las Vegas, Nevada. Kern River states that the installation of the new meter station will allow it to make deliveries to Southwest Gas Corporation (Southwest) enabling Southwest to provide firm transportation service to Nevada Power Company (NPC) at NPC's Clark and Sunrise electric generating stations in Clark County, Nevada, and to serve imminent increases in demand in its Las Vegas service area.

The estimated cost of constructing the Blue Diamond Meter Station is $871,500. Kern River will finance this cost as well as an $8 million "Contribution-in-Aid-of-Construction" towards Southwest's required construction tie-in consisting of approximately 24 miles of 24-inch diameter pipeline, by use of internally generated funds. Kern River plans to place the proposed facilities in service by May 1, 1997.

Comment date: September 13, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–22163 Filed 8–29–96; 8:45 am]

BILLING CODE 6717–01–P

Western Area Power Administration

Proposed Allocation of the Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Allocation.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, hereby announces its Post-2000 Resource Pool Proposed Allocation of Power to fulfill the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 C.F.R. § 905. The Post-2000 Resource Pool Proposed Allocation of Power is Western's implementation of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule. Western's call for applications for power was published in the **Federal Register** at 61 FR 2817, January 29, 1996, and revised and clarified in the **Federal Register** at 61 FR 28574, June 5, 1996. Western published the Final Post-2000 Resource Pool Allocation Procedures in the **Federal Register** at 61 FR 41142, August 7, 1996.

Applications for power were accepted at Western's Upper Great Plains Customer Service Region until close of business on July 5, 1996. The Proposed Allocation of Power published herein is the result of those applications. Only comments relevant to the proposed allocations will be accepted during this period. A **Federal Register** notice of the final allocations of power will address the comments received during the comment period.

DATES: The comment period on the Proposed Allocation of Power will begin August 30, 1996 and will end October 7, 1996. To be assured of consideration, all written comments must be sent by certified or return receipt requested U.S. mail and received by the end of the comment period. Western will hold public information forums and public comment forums on the Proposed Allocation of Power on September 18, 19, and 20, 1996, at the following locations and times:

September 18, 1996
Hilton Sioux Hotel, 707 Fourth St., Sioux City, Iowa
Information forum—1 p.m. (not to exceed 2 hours)
Comment forum—immediately following the information forum

September 19, 1996
Kelly Inn, 1–29 and Main Avenue, Fargo, North Dakota
Information forum—1 p.m. (not to exceed 2 hours)
Comment forum—immediately following the information forum

September 20, 1996
Holiday Inn Rushmore Plaza, 505 North 5th Street, Rapid City, South Dakota
Information forum—9 a.m. (not to exceed 2 hours)
Comment forum—immediately following the information forum

All comments regarding the Proposed Allocation of Power should be directed to the following address: Mr. Gerald C. Wegner, Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800.

All documentation developed or retained by Western for the purpose of developing the Proposed Allocation of Power will be available for inspection and copying at the Upper Great Plains Customer Service Region located at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Harris, Power Marketing Manager, Upper Great Plains Customer

Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394.

After all public comments have been thoroughly considered, Western will prepare and publish the Final Allocation of Power in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Western published final procedures on August 7, 1996, at 61 FR 41142, to implement Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 C.F.R. § 905. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. Subpart C of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers. Those final procedures, in conjunction with the Eastern Division, Pick-Sloan Missouri Basin Program Final Post-1985 Marketing Plan (Post-1985 Marketing Plan) (45 FR 71860), will establish the framework for allocating power from the resource pool to be established for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP–ED).

Proposed Allocation of Power

Written comments on the Proposed Allocation of Power must be sent by certified or return receipt requested U.S. mail at the address set forth above by close of business on October 7, 1996. Western will respond to the comments received on the Proposed Allocation of Power and publish its final allocations after the end of the public comment period. New utility customers', nonutility customers', and Native American tribes' contracts may be entered into by Western after publication of that notice.

Western proposes that Native American tribes' share of the resource pool is 80.64 percent in the summer season and 78.33 percent in the winter season. The new utility and nonutility customers' share of the resource pool is 19.36 percent in the summer season and 21.67 percent in the winter season.

The proposed allocations of power for new Native American customers and the data these allocations are based upon are as follows:

New Native American customers	Estimated demand kilowatts	Average current western service		Proposed post 2000 power allocation	
		Summer (percent)	Winter (percent)	Summer kilowatts	Winter kilowatts
Blackfeet Nation	18,600	34	29	5,454	5,184
Cheyenne River Sioux	13,500	33	29	4,094	3,762
Chippewa Cree-Rocky Boy	5,000	55	44	416	643
Crow Creek	4,100	50	47	546	405
Crow	12,500	55	44	1,040	1,609
Devils Lake Sioux	7,700	22	14	3,182	3,301
Flandreau Santee Sioux	2,355	55	56	196	20
Fort Belknap Indian Community	6,200	28	22	2,190	2,162
Fort Peck Tribes	15,300	34	31	4,486	3,958
Lower Brule Sioux	3,100	33	29	940	864
Lower Sioux	3,750	0	.....	2,375	2,133
Northern Cheyenne	9,400	36	37	2,568	1,868
Oglala Sioux-Pine Ridge	29,600	28	24	10,456	9,729
Omaha Tribe of Nebraska	5,100	15	14	2,464	2,186
Ponca Tribe of Nebraska	2,100	8	6	1,162	1,068
Rosebud Sioux	21,300	49	43	3,051	2,954
Santee Sioux Tribe of Nebraska	1,100	10	8	587	538
Sisseton-Wahpeton Sioux	7,500	40	38	1,749	1,415
Standing Rock Sioux	12,900	30	29	4,299	3,595
Three Affiliated Tribes	8,000	30	25	2,666	2,550
Turtle Mountain Chippewa	18,000	35	18	5,098	6,996
Upper Sioux	1,250	42	39	267	223
White Earth Indian Reservation	3,500	6	7	2,006	1,745
Winnebago Tribe of Nebraska	3,100	10	8	1,653	1,515
Yankton Sioux	5,300	25	24	2,031	1,742

The proposed allocations for new Native American customers were calculated based upon the estimated demand figures set forth in the table above. Inconsistent demand estimates were adjusted by Western.

In order to fairly distribute the benefits of Federal hydropower among the tribes, Western calculated the proposed power allocations in the table above in such a manner as to levelize total Federal hydropower benefits to each of the Native American tribes. This results in a total Federal hydropower benefit of 63.323 percent in the summer season and 56.869 percent in the winter season to each of the tribes. To levelize the total Federal hydropower benefits, the average current percentage of Western service that each of the tribes receives through their current power supplier(s) was utilized and is as shown in the table above. For the Blackfeet Nation, Western used the weighted average of the current percentage of Western service for the remaining tribes. The Blackfeet Nation is served by Glacier Electric Cooperative, which is a total requirements customer of Bonneville Power Administration, therefore the Blackfeet Nation does not receive Western service, but does receive the benefit of Federal hydropower.

The proposed allocations to new Native American customers set forth in the table above are based on the P–SMBP–ED marketable resource available at this time. If the P–SMBP–ED marketable resource is adjusted in the future, the proposed allocations will be adjusted accordingly.

The proposed allocations of power for new utility and nonutility customers and the loads these allocations are based upon are as follows:

New utility and nonutility customers	1994 Summer season load kilowatts	1994–95 Winter season load kilowatts	Proposed post 2000 power allocation	
			Summer kilowatts	Winter kilowatts
Village of Emerson, NE	1,454	1,146	361	412
City of Estherville, IA	11,040	7,820	2,743	2,814
City of Randolph, NE	1,861	1,386	462	499
City of Pocahontas, IA	3,980	3,144	989	1,131
City of Madison, NE	10,034	8,759	2,493	3,152
City of South Sioux City, NE [1]	24,977	21,846	5,000	5,000
City of Sergeant Bluff, IA	6,076	3,888	1,510	1,399
City of Wakefield, NE	4,717	3,667	1,172	1,320
City of Fairmont, MN	2,330	2,464	579	887
City of Marathon, IA	520	764	129	275
City of Stanton, ND	656	850	163	306

[1] 5,000 kW is the maximum allocation allowed under the Final Procedures.

The proposed allocations of power for new utility and nonutility customers were calculated using Post-1985 Marketing Plan criteria. Under the Post-1985 Marketing Plan criteria, the proposed summer allocations are 24.84413 percent of total summer load and the proposed winter allocations are 35.98853 percent of total winter load.

The proposed allocations for new utility and nonutility customers set forth in the table above are based on the P-SMBP-ED marketable resource available at this time. If the P-SMBP-ED marketable resource is adjusted in the future, the proposed allocations will be adjusted accordingly.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. § 601 et seq (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule, under control number 1910–1200.

IX. Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Issued at Golden, Colorado, August 21, 1996.

J.M. Shafer,

Administrator.

[FR Doc. 96–22184 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration's Policy for the Purchase of Non-Hydropower Renewable Resources

AGENCY: Western Area Power Administration, DOE.

ACTION: Correction notice of non-hydropower renewable resources policy.

SUMMARY: The following SUMMARY replaces the version that published on August 20, 1996, 61 FR 43051.

The Western Area Power Administration (Western) considered adopting a policy to purchase a portion of its expected purchase power requirements on a project-by-project basis and in a competitive manner, from non-hydropower renewable resource producers. The concept also included a proposal to purchase 50 percent of those purchases from solar resources. In response to comments on the proposed policy, Western decided to adopt a modified policy. Western's policy focuses on technical assistance and facilitation of renewables, as opposed to a mandatory purchase power set-aside for renewables.

Issued in Washington, D. C. on August 26, 1996.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 96–22185 Filed 8–29–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5604–2]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: U.S. Environmental Protection Agency, 401 M Street SW, Mail code 2223A, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For NSPS subpart AA: Standards of Performance for steel plants: Electric Arc Furnaces Constructed after October 21, 1974 and on or before August 17, 1983 and NSPS subpart AAa: Standards of Performance for steel plants: Electric Arc Furnaces and Argon Oxygen Decarburization Vessels constructed after August 7, 1983—Maria Malave at (202) 564–7027 or via e-mail (MALAVE.MARIA@EPAMAIL.EPA.GOV.) or send a fax to (202) 564–0050 her attention.

For NSPS subpart KK, lead acid batteries—Jane M. Engert, tel: (202) 564–5021; FAX: (202) 564–0050; e-mail: engert.jane@epamail.epa.gov;

For NSPS subpart FFF, Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

Industry—Ginger Gotliffe at (202) 564–7072 or via e-mail (gotliffe.ginger@epamail.epa.gov)

For NSPS subpart PPP, Wool fiberglass Insulation Manufacturing Plants—Scott Throwe at (202) 564–7013 of for a fax (202) 564–0050.

For NSPS subpart TTT, Surface Coating of Plastic Parts for Business Machines—Maria Malave at (202) 564–7027 or via e-mail (MALAVE.MARIA@EPAMAIL. EPA.GOV.) or send a fax to (202) 564–0050 her attention.

SUPPLEMENTARY INFORMATION:

NSPS subpart AA/AAa

Affected entities: Entities potentially affected by this action are those owners or operators of electric arc furnaces and dust handling systems in steel plants that produce carbon, alloy, or specialty steels; and commenced construction, modification, or reconstruction after the date of proposal (i.e., October 21, 1974), and on or before August 17, 1983 (for Subpart AAa).

Title: New Source Performance Standards (NSPS) for Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels, Subparts AA and AAa; OMB No. 2060–0038; Agency No. 1060.08.

Abstract: Owners or operators of the affected facilities described make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping and reporting requirements specific to steel plants subject to NSPS subpart AA and AAa include the initial notifications, and recording all measurements required under the monitoring sections. Owners or operators of electric arc furnaces controlled by a direct shell evacuation system are required to install and maintain a continuous monitoring device that continuously records pressure inside the EAF, and records 15 minute integrated averages. Prior notification it is required for the procedure used for determining compliance when emissions are combined with facilities that are not subject. The results of the performance tests including all requirements specified in §§ 60.275, 60.276(c), 60.275a, and 60.276(f) must be reported.

Semiannual reports of unacceptable operation of the affected facilities, and semiannual reports of exceedances of control device opacity are also required. Unacceptable operation is considered to be operation at a furnace with static pressures that exceed the values established at 60.274(f) and 60.274a(g), or operation of the control system fan motor at values ± 15% of the values established under the performance test, or operation at flow rates lower than those established in the performance test. Exceedances of opacity are defined as all 6-minute periods during which the average opacity is greater than the standard. In general, excess emission reports must include the magnitude of excess emissions; conversion factors used; the date and time of commencement and completion of each excess emission time period; identification of excess emissions during startups, shutdowns, and malfunctions; the nature and Cause of the malfunction (if known) and corrective measures taken; and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs or adjustments).

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then Inspect the source to check if the pollution control devices are properly installed and operated and the standards are being met. Performance test reports are needed as these are the Agency's records of a source initial capability to comply with the emission standard, and note the operating conditions under which compliance was achieved.

The Administrator may require owners and operators subject to Section 111 of the Clean Air Act (CAA) are required to comply with recordkeeping and reporting requirements, as specified in Section 114(a) of CAA.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The only type of industry cost associated with the information collection activity in the standards is labor cost. The average annual burden to industry over the past three years for these recordkeeping and reporting requirements were estimated to be 21,430 person-hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual cost to industry over the past three years of the previously approved ICR was estimated to be $652,528. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart KK

Affected entities: Entities potentially affected by this action are lead-acid battery manufacturing plants that produce or have the capacity to produce in one day (24 hours) batteries

containing an amount of lead equal to or greater than 6.5 tons. Specifically, the affected facilities in each plant include grid casting, paste mixing, three-process operations, lead oxide manufacturing, lead reclamation, and other lead-emitting operations in lead acid battery manufacturing plants that commenced construction, modification, or reconstruction after the date of proposal.

Title: New Source Performance Standards (NSPS) for Lead-Acid Battery Manufacturing Plants [40 CFR Part 60, Subpart KK] OMB Control Number: 2060–0081, Expires: 4/30/97.

Abstract: The largest single use of lead in the United States is in the manufacture of lead-acid, or secondary, storage batteries. Lead-acid battery manufacturing plants emit lead particulates in quantities that, in the Administrator's judgment, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as electrostatic precipitators or scrubbers.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 320 person-hours. This is based on an estimated 48 respondents. The average annual burden for reporting only is projected to be 128 person-hours. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart FFF

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart FFF, or each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification, or reconstruction commenced after January 18, 1983.

Title: NSPS Subpart FFF: Standards of Performance for Flexible Vinyl and Urethane Coating and Printing Industry, OMB number 2060–0073, expires April 30, 1997.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

> * * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years. In addition, Section 114(a) states that:

> * * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from flexible vinyl and urethane coating and printing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Flexible Vinyl and Urethane Coating and Printing Industry were proposed on January 18, 1983, and promulgated on June 29, 1984. These standards apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products, and for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards restrict the use of inks to those with a weighted average VOC content of less than 1.0 kilogram VOC per kilogram of ink solids, unless the source can otherwise reduce emissions to the atmosphere by 85 percent.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction (40 CFR 60.7(a)(1)); notification of the anticipated and actual dates of startup (40 CFR 60.7(a)(2) and (a)(3); notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate (40 CFR 60.7(a)(4)); and the notification of

the date of the initial performance test (40 CFR 60.7 (a)(5) and (d)). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility (40 CFR 60.7(b), 60.584(d)). These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping specific to flexible vinyl and urethane coating operations include: temperature measurements when a capture system and an incinerator are used, the calculation of the daily volume of VOC solvent recovered, and the cumulative amount of solvent recovered when a capture system is used in combination with a solvent recovery system (40 CFR 60.584 (a)). Owners or operators of affected facilities using incineration are also required to install, calibrate, and maintain temperature measurement devices downstream of the exhaust gases if thermal incineration is used, and both upstream and downstream of the catalyst bed if catalytic incineration is used (40 CFR 60.584 (b) and (c)).

The owner or operator shall keep a calendar month record of the cumulative amount of solvent contained in inks used in the printing and coating process (40 CFR 60.583 (b) and (c)). When thermal or catalytic incineration is performed, the owner or operator shall keep records of each three-hour period during which the incinerator temperature averaged more than 28 degrees centigrade below the temperature of the most recent performance test (40 CFR 60.584 (b) and (c)). Daily records of this information shall be kept at the source for a period of two years (40 CFR 60.7(d)).

Test reporting requirements apply only to the initial performance test. A written report must be furnished to the Administrator describing the results of the initial performance test (40 CFR 60.8(a), 60.585(a)). In addition, semiannual reports of excess emissions are required, including a semiannual negative declaration if there are no excess emissions (40 CFR 60.585(b)).

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection or information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1994 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This estimate is based on the assumption that there would be one new affected facility over the three years of the existing ICR and that there were approximately 7 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart FFF are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (1 person-hour), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual report (4 person-hours). Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 163.2 person hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over that three year period of the ICR was estimated to be $4,969.

NSPS Subpart PPP

Title: Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants (OMB Control No. 2060–0114; EPA ICR No. 1160). This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that particulate matter emissions from Wool Fiberglass Insulation Manufacturing Plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of Wool Fiberglass Insulation Manufacturing Plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Owners or operators of the affected facilities described make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the

regulated pollutant emission rate; and the notification of the date of the initial performance test. Owner or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

A written report must be furnished to the Administrator describing the results of the initial performance test. Recordkeeping and reports specific to NSPS subpart PP are listed in 40 CFR section 60.684.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

If the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by new, modified, or reconstructed sources subject to the regulations. Under this circumstances, an owner or operator could elect to reduce operating expenses by not complying with the emission limitations. In the absence of the information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, the inability to ensure compliance with the standards.

The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

The Administrator may require owners and operators subject to Section 111 of the Clean Air Act (CAA) are required to comply with recordkeeping and reporting requirements, as specified in Section 114(a) of CAA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,680 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 38.

Estimated Number of Respondents: 38.

Frequency of Response: 2.

Estimated Number of Responses: 76.

Estimated Total Annual Hour Burden: 3,680 hours.

Estimated Total Annualized Cost Burden: $112,056

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1160 and OMB Control No. 2060.0114 in any correspondence.

NSPS Subpart TTT

Affected entities: Entities potentially affected by this action are those owners or operators of spray booths in which plastic parts for business machines receive prime, color, texture, or touch-up coats, and for which construction, modification or reconstruction commenced after the proposal date.

Title: New Source Performance Standards (NSPS) for Surface Coating of Plastic Parts for Business Machines, Subpart TTT; OMB No. 2060–0162; Agency No. 1093.05.

Abstract: Owners or operators of the affected facilities described make the following one-time only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. Owner or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping requirements specific to the surface coating of plastic parts for business machines include the records of each monthly performance test.

A written report must be furnished to the Administrator describing the results of the initial performance test. Thereafter, quarterly reports of noncompliance are required, and semiannual reports shall be made when the source is in compliance with the applicable emission limitations.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

If the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by new, modified, or reconstructed sources subject to the regulations. Under this circumstances, an owner or operator could elect to reduce operating expenses by not complying with the emission limitations. In the absence of the information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, the inability to ensure compliance with the standards.

The information collected from recordkeeping and reporting requirements is also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

The Administrator may require owners and operators subject to Section 111 of the Clean Air Act (CAA) are require to comply with recordkeeping and reporting requirements, as specified in Section 114(a) of CAA.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the propet performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The only type of industry costs associated with the information collection activity in the standards are labor costs. The average annual burden to industry over the past three years for these recordkeeping and reporting requirements were estimated to be 29,444 person-hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual cost to industry over the past three years of the ICR was estimated to be $896,569. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 23, 1996.

Bruce R. Weddle,

Acting Director, Office of Compliance.

[FR Doc. 96–22264 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00198; FRL–5395–4]

Proposed Renewal of an Agency Information Collection; Toxic Chemical Release Reporting; Community Right-to-Know; EPA ICR #1363.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and Request for Comment.

SUMMARY: This notice announces and solicits comments on the proposed renewal of the Information Collection Request (ICR) entitled: Toxic Chemical Release Reporting; Recordkeeping; Supplier Notification; and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPA ICR #1363.05; OMB Approval #2070–0093). The Office of Prevention, Pesticides and Toxic Substances (OPPTS) is seeking public comment on this ICR pursuant to the Paperwork Reduction Act (PRA) and the procedures contained in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection, the expected burden and estimated costs associated with the information collection, and includes the actual data collection instrument. The complete ICR document and any attachments to it are available in paper or electronic copy and may be obtained as described in Unit IV of this notice.

After reviewing any public comments submitted in response to this notice and amending the ICR as necessary, OPPTS will announce in another **Federal Register** notice that it has submitted a final ICR to the Office of Management and Budget (OMB) for review and approval pursuant to 5 CFR 1320.12(c).

DATES: All comments must be submitted to the addresses listed below on or before October 26, 1996.

ADDRESSES: Submit written comments identified by the administrative record number AR–165 and EPA ICR #1363.05 by mail to: TSCA Document Receipts (7407), Room NE–G099, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–7099. In person, bring comments directly to the OPPT docket which is located in Room NE–B607 at the address given above from noon to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the appropriate administrative record and ICR number indicated above. Electronic comments on this document may be filed online at many Federal Depository Libraries.

Information submitted as a comment concerning this document may be claimed Confidential Business Information (CBI) by marking any part or all of that information as CBI. No CBI should be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information hot marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room NE–B607 at the address given above from noon to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Deputy Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1024; fax 202–401–8142, or e-mail: augustyniak.christine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under "Rules and Regulations."

I. Background Information

Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 et seq.) requires certain owners or operators of certain facilities (i.e., manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39) manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories (hereafter "toxic chemicals") in excess of the applicable threshold quantities to report on their environmental releases and transfers of and waste management activities for such chemicals annually.

Under section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 11071 to 11079), facilities must provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities. Facilities required to report under EPCRA section 313 and PPA section 6607 submit a Toxic Chemical Release Inventory Form (EPA Form 9350–1, also known as "Form R") to EPA and the State in which it operates each year, providing information from the preceeding year.

In 1994, EPA established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that meets the appropriate reporting thresholds, but estimates that the total amount of the chemical in the total annual reportable amount does not exceed 500 pounds per year, can take advantage of an alternate manufacture, process, or otherwise use a threshold of 1 million pounds per year for that chemical, provided that certain conditions are met. Facilities able to take advantage of an alternate threshold would be eligible to submit a Toxic Chemical Release Inventory Form A (EPA Form 9350–2). As such, facilities meeting the alternate threshold may use either the Form R or the Form A.

The reporting and recordkeeping requirements associated with the alternate reporting requirement using Form A are contained in a separate ICR and are approved under OMB Control #2070–0143 (EPA ICR #1704.03). OMB is currently reviewing a request to renew that approval, which is scheduled to expire on September 30, 1996. Pursuant to OMB regulations at 5 CFR 1320.12(a), EPA announced the proposed renewal of ICR #1704.03, seeking public comment in the **Federal Register** on May 15, 1996 (61 FR 24488)(FRL–5368–9). After reviewing the two comments received in response to that notice, which were supportive of the continuation of the alternate reporting form requirements and encouraged OMB approval of the requested renewal, EPA subsequently issued another **Federal Register** notice on August 8, 1996 (61 FR 41407)(FRL–5547–8) to announce the Agency's submission of the renewal request for ICR #1704.03 to OMB for review and approval, as well as announcing the final 30 day comment period as required under 5 CFR 1320.12 (c). Any OMB action taken with regard to ICR #1704.03, which must be taken no later than September 30, 1996, applies only to the alternate reporting requirements and Form A.

The reporting and recordkeeping requirements associated with EPCRA section 313 (i.e., Form R, supplier notification and the petition process) are discussed in a separate ICR (EPA ICR #1363.05). The renewal of EPA ICR #1363.05 is the subject of this notice and is being processed separately from those related to the alternate reporting requirement, which are covered by EPA ICR #1704.03. OMB approved the Form R reporting and recordkeeping requirements under OMB Control #2070–0093 (EPA ICR #1363.05). Although the OMB approval for this ICR would have ordinarily expired on November 30, 1992, OMB's approval was extended by Congress in September of 1992 until EPA promulgates changes to the Form R and Instructions. This approval was contained in the 1993 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Pub. L. 102–389, signed October 6, 1992, which states that:

> Notwithstanding the Paperwork Reduction Act of 1980 or any requirements thereunder the Environmental Protection Agency Toxic Chemical Release Inventory TRI Form R and instructions, revised 1991 version issued May 19, 1992, and related requirements (OMB No. 2070–0093), shall be effective for reporting under section 6607 of the Pollution Prevention Act of 1990 (Public Law 101–508) and section 313 of the Superfund Amendments and Reauthorization Act of 1990 (Public Law 99–499) until such time as revisions are promulgated pursuant to law.

The proposed ICR announced in this notice will replace the Congressional approval described above upon final approval of the ICR by OMB under the Paperwork Reduction Act pursuant to 5 CFR 1320.12. In accordance with the process described in 5 CFR 1320.12(a)(1), EPA is seeking comment on the burden estimates and information collection activities described in this ICR. After reviewing any comments received during the 60 day comment period, EPA will submit a final ICR to OMB for review and approval pursuant to 1320.12(c).

In addition, EPA recently proposed to amend the EPCRA Section 313 reporting and recordkeeping requirements by proposing to add several additional industry groups to the universe of respondents subject to reporting (61 FR 33588, June 27, 1996)(FRL–5379–3). As required by 5 CFR 1320.11, EPA announced and sought comment on the proposed Industry Expansion ICR (EPA ICR #1784.01) which provided burden estimates for the information collection contained in the proposed rule. When EPA issues the final rule for Industry Expansion, the information collection requirements contained in that final rule will be reflected in an amended ICR which will be submitted to OMB for review and approval. This submission must occur no later than publication of that final rule in the **Federal Register** and the submission will be announced in the final rule. The public will have 30 days to provide additional comments on the final ICR related to the industry expansion rule. Upon OMB's approval of the industry expansion related ICR (EPA ICR #1784.02), EPA will add the industry expansion burdens to the existing burdens associated with overall TRI reporting and recordkeeping (i.e., those in ICR #1363.05 for Form R and ICR #1704.03 for Form A). Specifically, EPA would amend the existing ICRs by submitting an Information Correction Worksheet to OMB requesting that the burden hours associated with each ICR be adjusted to include the new burden hours imposed by that final rule.

II. Request for Public Comment

For the collection of information addressed in this notice, EPA is soliciting comments on the ICR, including but not limited to the information collection activity, the burden hour and cost estimates presented, and any other information that would help the Agency to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be submitted to EPA according to the procedures described in the ADDRESSES section above.

III. Proposed Information Collection Request

ICR Numbers: EPA ICR No. 1363.05 and OMB No. 2070–0093.

Current Expiration Date: As discussed in Unit I above, this ICR, which covers the reporting and recordkeeping requirements under section 313 of the Emergency Planning and Community Right-to-Know Act, is valid until EPA promulgates changes to the Form R and Instructions.

Title: Toxic Chemical Release Reporting and Recordkeeping; Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act.

Abstract: This Information Collection Request (ICR) is for the information collection contained in the regulations governing toxic chemical release reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 et seq.) and the information collection in section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 11071 to 11079). In accordance with EPCRA section 313 (and PPA section 6607 because of its linkage to EPCRA), EPA's Office of Pollution Prevention and Toxics (OPPT) collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at both EPA and the National Library of Medicine (NLM). NLM provides public access to the TRI database through the Toxicology Data Network (TOXNET). The TRI has been used extensively by EPA and the public and private sectors. Program offices within EPA have used the TRI, with other sources of data, to establish priorities, evaluate potential exposure scenarios, and for enforcement activities. Environmental groups and public interest groups have used the data in several studies and reports, making the public more aware of releases of chemicals in their communities. Industry has used the data extensively to assess and improve their environmental performance.

Comprehensive data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available from sources other than TRI. Permit data often are difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI and the real gains in understanding it can produce, communities and governments know what listed toxic chemicals a subset of industrial facilities in their area release, transfer, or otherwise manage as waste; and industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 52.1 hours per response for Form R, 24 hours for supplier notification (where applicable), and 185 hours for a petition (where applicable). This estimate includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the regulations related to this information collection, are displayed in 40 CFR Part 9. Summary of the ICR activity:

Form R: *Respondents/affected entities.* Facilities that manufacture, process or otherwise use certain toxic chemicals and which are required, under EPCRA section 313, to report annually to EPA their environmental releases of such chemicals.

Estimated No. of Respondents: 27,382

Estimated Total Annual Burden on Respondents: 4,707,860 hours.

Frequency of Collection: Annual.

Supplier Notification: *Respondents/Affected Entities.* Manufacturing facilities that supply mixtures or trade name products containing chemicals listed under EPCRA section 313.

Estimated No. of Respondents: 3,657

Estimated Total Annual Burden on Respondents: 87,768 hours.

Frequency of Collection: Annual.

Petitions: *Respondents/Affected Entities.* Any person or organization submitting a petition under section 313(e) of EPCRA.

Estimated No. of Respondents: 11

Estimated Total Annual Burden on Respondents: 2,035 hours.

Frequency of Collection: On occasion.

In addition, all facilities in a Standard Industrial Classification (SIC) code covered under EPCRA section 313 with 10 or more full-time equivalent employees must determine each year whether they manufacture, process or otherwise use any of the listed chemicals above threshold quantities. It is estimated that 185,266 facilities will need to make this determination each year, with a total estimated burden of 741,064 hours.

Changes in Burden Estimates. The estimated burden has changed in several ways compared with the total burden last approved by OMB in 1992 and covered by the 1992 Congressional approval. First, the ICR estimates were adjusted to account for Agency experience and additional information about the burden associated with EPCRA section 313. Second, there was a reduction in total burden resulting from program changes. Specifically, EPA has either modified the listing or completely removed the listing for several chemicals on the TRI list of chemicals subject to reporting under EPCRA section 313. In addition, the 1994 amendment that established the alternate reporting threshold, is estimated to replace up to 23,288 Form R submissions with submissions of Form A. After accounting for the addition of chemicals that increased burden during this time frame, these program changes reduced the number of Form R submissions by approximately 20 percent compared to the previous ICR, and decreased total burden by 1,115,408 hours. When the burden reduction caused by the program change (-1,115,408 hours) and the burden increase caused by various adjustments in the estimates (+1,766,455 hours) are combined, the result is a net increase of 651,047 hours.

IV. Where to View or Obtain Copies of the Proposed Information Collection Request

A. Public Record

A record has been established for this notice under docket number [OPPTS–00198] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record

maintained at the address in "ADDRESSES" at the beginning of this document.

B. Paper Copies

Paper copies of the complete ICR and any accompanying appendices may be obtained from the OPPT docket at the above address, by contacting the person whose name appears under FOR FURTHER INFORMATION CONTACT, or by contacting the EPCRA Hotline at 1–800–535–0202, in Virginia or Alaska call 703–412–9877 or TDD: Toll Free 1–800–533–7672.

C. Electronic Copies

Electronic copies of the complete ICR and any accompanying appendices are also available from the EPA Public Access gopher (gopher.epa.gov) and the EPA home page (http://www.epa.gov). To access this information on the EPA gopher you should look for the "Rules and Regulations" entry under the Environmental Sub-Set. To access this information on the EPA Home page, you should enter the Directory for "Rules, Regulations, and Legislation;" then enter the "**Federal Register** - Environmental Sub-set;" then "**Federal Register** - Toxic Release Inventory;" and then enter the Year, Month and Day that this notice appeared in the **Federal Register**. In both cases, the information is identified as "Supporting Documentation" under the entry for the **Federal Register** notice.

List of Subjects

Environmental Protection; Air pollution control; Chemicals; Hazardous substances; Hazardous waste; Imports; Intergovernmental relations; Natural resources; Penalties; Reporting and recordkeeping requirements; Superfund; Water pollution control; Water supply.

Dated: August 28, 1996.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–22417 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–5472–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 12, 1996 Through August 16, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–FHW–E40768–TN Rating EC2, Shelby Avenue/Demonbreum Street Corridor, from I–65 North to I–40 West in Downtown Nashville, Funding, U.S. Coast Guard Permit and COE Section 404 Permit, Davidson County, TN.

Summary: EPA's review found that most environmental impacts were adequately discussed, but expressed concern for water quality and floodplain degradation from bridge construction.

ERP No. D–FHW–E40769–TN Rating EC2, TN–385 (Collierville-Arlington Parkway) Improvement Project, Construction from Mt. Pleasant Road to South of Interstate 40, Shelby and Fayette Counties, TN.

Summary: EPA expressed environmental concerns that wetlands and floodplain resources would be impacted by the proposed project and asked for detailed mitigation plans.

ERP No. D–FHW–J40139–CO Rating LO, Parker Road (CO–83)/I–225 Interchange Project (FCU–CX–083–1 (49)), Improvement between Peoria Street to Hampden Avenue, Funding, NPDES Permit and COE Section 404 Permit, City Aurora, Arapahoe County, CO.

Summary: EPA lacks objection to the project as proposed.

ERP No. D–SFW–K39038–NV Rating EO2, Lahontan Valley Wetlands Water Rights Acquisition Program, Implementation, Churchill County, NV.

Summary: EPA expressed environmental objections with the proposed action due to potential water quality impacts associated with agriculture drainwater. EPA requested that this issue be further addressed and mitigated in the final EIS.

ERP No. D–TVA–E07013–TN Rating EC2, Kingston Fossil Plant Alternative Coal Receiving Systems, New Rail Spur Construction near the Cities of Kingston and Harriman, Roane County, TN.

Summary: EPA expressed environmental concerns regarding potential earthen causeway fill, noise single-event documentation, completion of archaeological surveys, and consideration of other reasonable additional alternatives, and requested additional information be provided in the final EIS.

ERP No. D–USN–E11038–00 Rating EC1, USS SEAWOLF Submarine Shock Testing, Implementation, located offshore Mayport, FL or Norfolk, VA.

Summary: EPA expressed environmental concerns regarding the proposal, pending the results of the test monitoring.

ERP No. DA–FHW–E40108–NC Rating EC2, Smith Creek Parkway and Downtown Spur Construction, from NC–133 at Northeast Cape Fear River to US 74/Eastwood Road and US 117/Castle Hayne Road at Smith Creek to 3rd Street, Updated and Additional Information, Funding, Wilmington, New Hanover County, NC.

Summary: EPA noted information inadequacies that are in need of correction and has concerns about the acceptability of mitigation for segments A & B based on present wetlands mitigation planning problems for segment C.

Final EISs

ERP No. F–GSA–E81036–GA, Savannah Federal Building—United States Courthouse, Site Selection and Construction of Annex within the existing Federal Building Courthouse, Savannah, GA.

Summary: The concerns raised at the draft EIS stage were adequately addressed in the final EIS. Therefore, EPA had no objection to the project as proposed.

ERP No. F–ICC–J53004–MT, Tongue River Railroad Additional Rail Line Construction and Operation, Ashland to Decker, Approval, Rosebud and Big Horn Counties, MT.

Summary: The EPA concurs that the Four Mile Creek Alternative would be an environmentally preferable construction alternative to the Tongue River Railroad project's proposed route since it avoids disturbances to the environmentally sensitive section of the Tongue River below the Tongue River Dam, and would eliminate the need to construct a tunnel and five bridges in the Tongue River canyon. EPA notes that site-specific analysis of river and wetland encroachment issues will be necessary during the 404 permit review of the proposed project.

ERP No. F–SFW–J64005–CO, Rocky Mountain Arsenal National Wildlife Refuge Establishment and Operation, Implementation, Adam County, CO.

Summary: EPA expressed environmental concerns regarding potential impact from hazardous waste on human health and the environment.

ERP No. F–USA–J11011–UT, Tooele Army Depot Disposal and Reuse of BRAC Parcel, Implementation, Salt Lake, Tooele and Utah Counties, UT.

Summary: The Army has adequately address previous EPA concerns

therefore, EPA has no objection to the project as proposed.

Dated: August 27, 1996.

B. Katherine Biggs

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–22239 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5472–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed August 19, 1996 Through August 23, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960394, Final EIS, COE, NC, Buckhorn Reservoir Expansion, Construction of a Dam to Impound Water on the Contentnea Creek, COE Section 404 Permit, City of Wilson, Wilson County, NC, Due: September 23, 1996, Contact: William Adams (910) 251–4748. This EIS was inadvertently omitted from the 8–23–96 **Federal Register.** The official 30 day NEPA wait period is calculated from 8–23–96.

EIS No. 960395, Final EIS, AFS, CA, Placerville Nursery Pest Management Plan, Implementation, Camino, El Dorado County, CA, Due: September 30, 1996, Contact: Susan Frankel (415) 705–2651.

EIS No. 960396, Final EIS, COE, DE, Delaware Coast from Cape Henlopen to Fenwick Island Feasibility Study, Rehoboth Beach and Dewey Beach Project, Storm Damage Reduction, Sussex County, DE , Due: September 30, 1996, Contact: Steve Allen (215) 656–6555.

EIS No. 960397, Final EIS, AFS, CO, Vail Ski Area Category III Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit Issuance, White River National Forest, Holy Cross Ranger District, Rocky Mountain Region, Eagle County, CO, Due: September 30, 1996, Contact: Loren M. Kroenke (970) 827–5715.

EIS No. 960398, Final EIS, COE, GA, SC, Savannah Harbor Navigation Project, Operation and Maintenance, Long Term Management Strategy Study, Chatham County, GA and Jasper County, SC, Due: September 30, 1996, Contact: William Bailey (912) 652–5781.

EIS No. 960399, Revised Draft EIS, SFW, CA, Multiple Species Conservation Program (MSCP) Planning Area, Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth, San Diego County, CA, Due: October 14, 1996, Contact: Mr. Gail Kobetich (619) 431–9440.

EIS No. 960400, Final EIS, USN, FL, Naval Training Center Orlando Disposal and Reuse, Implementation, Orange County, FL, Due: September 30, 1996, Contact: Ronnie Lattimore (803) 820–5888.

EIS No. 960401, Final EIS, DOE, WA, Hanford Site Tank Waste Remediation Systems (TWRS), Management and Disposal of Radioactive, Hazardous, and Mixed Wastes, NPDES Permit and Approval of Several Permits, in the City of Richland, Grant County, WA, Due: September 30, 1996, Contact: Carolyn C. Haass (509) 372–2731.

EIS No. 960402, Final EIS, FTA, NJ, Hudson River Waterfront Transportation Corridor Improvements, Funding, Transportation Systems Management, Light Rail Transit, Hudson and Bergen Counties, NJ, Due: September 30, 1996, Contact: Anthony G. Carr (212) 264–8973.

Dated: August 27, 1996.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–22240 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5602–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of proposed administrative settlements concerning the Odessa Drum Site, Ector County, Texas with the following settling parties:

Champion Technologies, Inc
BJ Services Company, U.S.A.
Petrolite Corporation

The settlements require the settling parties to pay the following amounts to the Hazardous Substances Superfund. Champion Technologies ($4,110,289.59), BJ Services Company, U.S.A. ($473,464.71), and Petrolite Corporation ($559,757.90). The settlements are designed to resolve the settling parties' past liability at the site through a covenant not to sue under Section 107 of CERCLA, 42 U.S.C. § 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

DATES: Comments must be submitted on or before September 30, 1996.

ADDRESSES: The proposed settlements and additional background information relating to the settlements are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Copies of the proposed settlements may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Odessa Drum Superfund Site in Ector County, Texas and the following EPA Docket Nos. Champion Technologies (6–16–95), BJ Services Company (6–17–95), and Petrolite Corporation (6–18–95) and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: John Dugdale, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8027.

Dated: August 20, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–22265 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPT–59354; FRL–5394–1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TME's) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38.

EPA has designated these applications as TME–96–5, TME–96–7, and TME–96–8. The test marketing conditions are described below.

DATES: This notice becomes effective August 22, 1996. Written comments will be received until (insert date 15 days after the date of publication in the **Federal Register**).

ADDRESSES: Written comments, identified by the docket number [OPPT–59354] and the specific TME number should be sent to: TSCA nonconfidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified as [OPPT–59354]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION".

FOR FURTHER INFORMATION CONTACT: Shirley D. Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, (202) 260–3780; e-mail: Howard.sd@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–96–5, TME–96–7, and TME–96–8. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in these applications and in this notice must be met.

A notice of receipt of these applications was not published in advance of approval. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemptions if comments are received which cast significant doubt on its finding that these test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–96–5, TME–96–7, and TME–96–8. A bill of lading accompanying each shipment must state that the use of these substances are restricted to that approved in the TMEs. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substances.

TME-96-5, TME-96-7, and TME-96-8

Date of Receipt: TME 96-5, July 19, 1996, and TME's 96-7 and 8, July 29, 1996. The extended comment periods will close (insert date 15 days after date of publication in the **Federal Register**).

Applicant: Reichhold Chemicals Inc.

Chemical: (G) Polyurethane Adhesive.

Use: (G) Industrial Adhesive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 12 months. Commencing on first day of commercial manufacture.

Risk Assessment: Possible concerns for lung effects and oncogenicity were mitigated by an expected lack of inhalation exposure. EPA identified no significant environmental concerns for these test market substances. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for this notice under docket number [OPPT–59354] (including comments and data submitted electronically as described above). A public version of this record, including printed versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA nonconfidential information center (NCIC), Rm. NEB–607, 401 M St., SW., Washington, DC 20460.

The official record of this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, test marketing exemptions.

Dated: August 22, 1996.

Paul J. Campanella,

Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 96–22241 Filed 8–29–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget (OMB) for Review

August 26, 1996.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C.

Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Please note: The Commission has requested emergency review of this collection by September 12, 1996, under the provisions of 5 CFR Section 1320.13.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1966, CC Docket No. 96–98, First Report and Order.

Form No.: N/A.

OMB Control No.: 3060–0710.

Action: Revised Collection.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 12,500 respondents; 122 hours per response (avg.); 1,529,620 hours total annual burden.

Needs and Uses: In the First Report and Order in CC Docket 96–98, the Commission adopted rules and regulations to implement parts of Section 251 and 252 that effect local competition. Specifically, the Order requires incumbent local exchange carriers ("LECs") to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for retail services to new entrants; that incumbent LECs price such services at rates that are cost-based and just and reasonable; and that they provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, D.C. 20554.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–22196 Filed 8–29–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

August 26, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before October 29, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0397.

Title: Special Temporary authority, Section 15.7(a).

Form No.: None.

Type of Review: Extension of existing collection.

Respondents: Business/For Profit Institutions.

Number of Respondents: 2.

Estimated Time Per Response: 6 hours.

Total Annual Burden: 12 hours.

Needs and Uses: The information gathered is used to determine if the Commission should issue a special temporary authorization to operate an incidental, intentional or unintentional radiation device that does not conform to the provisions of Part 15. The proposed operation of the equipment must be in the public interest, be a unique type of station, or must be incapable of being established as a regular service; and the proposed operation cannot feasibly be conducted under the general provisions of Part 15. Information describing the intended operation of the proposed equipment is required to determine if the applicant should be issued a special temporary authorization.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22197 Filed 8–29–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

General Counsel's Opinion No. 9; FICO Funding Sources

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Notice of FDIC General Counsel's Opinion No. 9.

SUMMARY: The FDIC has received inquiries on the availability of funding from FSLIC Resolution Fund (FRF) receiverships for Financing Corporation (FICO) to pay interest on its obligations. Specifically, one inquiry has questioned the availability of potential recoveries in the "goodwill" litigation currently pending against the government by some of the former RTC receiverships. This General Counsel Opinion sets forth the Legal Division's conclusions on the issues involved in determining the availability of funding for FICO interest payments from FSLIC Resolution Fund receiverships.

FOR FURTHER INFORMATION CONTACT: Pamela A. Shea, Assistant General Counsel, (202) 898–3521 or Linda L. Stamp, Counsel, Legal Division, (202)

898–7310, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Text of General Counsel's Opinion

General Counsel's Opinion No. 9—FICO Funding Sources

By: William F. Kroener, III, General Counsel

Background

FICO is a mixed-ownership government corporation created in 1987 to recapitalize the Federal Savings and Loan Insurance Corporation (FSLIC) by issuing bonds to purchase capital stock or capital certificates issued by the FSLIC.[1] FICO was created in 1987 pursuant to the Competitive Equality Banking Act (CEBA), Pub. L. 100–86, as a way to augment the resources of the FSLIC, which had effectively been declared insolvent by the Federal Home Loan Bank Board (FHLBB) earlier that year. FICO is managed by a three-member directorate composed of the Director of the Office of Finance of the Federal Home Loan Banks and the presidents of two Federal Home Loan Banks (FHLBs).[2] FICO was authorized to issue bonds in an amount of up to $10.825 billion with an annual net borrowing limit of $3.75 billion.[3] FICO issued 30-year noncallable bonds in a principal amount of approximately $8.1 billion that mature in 2017 through 2019. FICO's authority to issue bonds ended on December 12, 1991.[4] Under the terms of FICO's contracts with its bondholders, FICO's bonds are not redeemable before maturity.[5] The FHLBs were required to invest in nonvoting capital stock to capitalize FICO.[6] FICO was required to invest in and hold in a segregated account noninterest bearing (zero coupon) securities having a total principal payable at maturity approximately equal to the aggregate amount of principal due at the maturity of the FICO bonds.[7] The FICO bonds bear interest at a fixed rate of 8.60% or higher depending on the series and date of issue.[8]

The FHLBs pay the administrative expenses of FICO according to a statutory formula and the term administrative expenses is defined to exclude interest, issuance costs and custodian fees.[9] FICO has limited sources of funding available to pay its interest and principal obligations because the obligations of the FICO and the interest payable on such obligations are not obligations of, or guaranteed as to principal or interest by the FHLBs, the United States, or the FSLIC Resolution Fund (FRF).[10] The FICO statute, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), establishes the following as sources of funding for the interest, issuance costs and custodian fees on the FICO obligations:

(1) FICO assessments made prior to FIRREA;[11]

(2) FICO assessments on SAIF member Savings associations with the approval of the FDIC;[12]

(3) Liquidating dividends and payments made on claims received by FRF (as established under section 11A of the Federal Deposit Insurance Act) from receiverships, subject to the priority claim of the Resolution Funding Corporation (REFCORP) for the Funding Corporation Principal Fund (Principal Fund);[13]

(4) Exit fees paid on "conversion transactions" in which the resulting or surviving institution is not a SAIF member.[14]

The statute clearly provides that funds from a higher priority source are to be used to the extent available before moving to the next lower priority source.[15]

Priority of Claims to Liquidating Dividends and Payments

Today, the FRF consists of two distinct pools of assets and liabilities:[16] one composed of the assets and most of the liabilities of the FSLIC transferred to the FRF upon the dissolution of the FSLIC on August 9, 1989 (FRF–FSLIC) and the other composed of the assets and liabilities of the RTC transferred to the FRF upon the dissolution of the RTC on December 31, 1995 (FRF–RTC). The assets transferred from the RTC consist chiefly of the subrogated depositors' claims that the RTC acquired as it resolved the institutions within its jurisdiction, that is, thrifts that failed on or after January 1, 1989 through June 30, 1995.

The Legal Division interprets the language in section 21(f)(3) of the Federal Home Loan Bank Act ("FHLB Act") concerning FICO's access to "liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 11A of the Federal Deposit Insurance Act) from receiverships" [emphasis added] to encompass only the FRF–FSLIC. Although a facial reading of section 21(f)(3) of the FHLB Act does not explicitly distinguish between FRF–FSLIC and FRF–RTC, it is the Legal Division's view that the italicized language should be read as defining the FRF as established at the date of FIRREA's passage, which did not include any assets or liabilities of RTC. This reading fits squarely with the general statutory design established by FIRREA to resolve the thrift crisis by assigning responsibilities for failed and failing thrift institutions (pre-FIRREA and post-FIRREA) to each of two entities, RTC and FRF.

RTC was to resolve thrifts that failed after January 1, 1989, using $31.2 billion in off-budget funding provided to the RTC by the REFCORP and $18.8 billion from appropriations.[17] Congress created REFCORP in 1989 to provide funding for the RTC as a part of FIRREA.[18] RTC

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[1] Competitive Equality Banking Act (CEBA), Pub. L. 100–86, Title III, amending § 21 of the Federal Home Loan Bank Act. 12 U.S.C. § 1441.

[2] Federal Home Loan Bank Act § 21(b), 12 U.S.C. § 1441(b).

[3] Federal Home Loan Bank Act § 21(e), 12 U.S.C. § 1441(e).

[4] Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991, § 104.

[5] *See* FICO Information Statement Supplement dated September 19, 1989.

[6] Federal Home Loan Bank Act § 21(d), 12 U.S.C. § 1441(d).

[7] Federal Home Loan Bank Act § 21(g), 12 U.S.C. § 1441(g).

[8] *See* FICO Information Statement Supplement dated September 19, 1989.

[9] Federal Home Loan Bank Act § 21(b)(7), 12 U.S.C. § 1441(b)(7).

[10] Federal Home Loan Bank Act § 21(e)(6), 12 U.S.C. § 1441(e)(6).

[11] Federal Home Loan Bank Act § 21(f)(1), 12 U.S.C. 1441(f)(1). Under the statute, FICO's initial source of funds were pre-FIRREA assessments, but those funds are exhausted.

[12] Federal Home Loan Bank Act § 21(f)(2), 12 U.S.C. § 1441(f)(2).

[13] Federal Home Loan Bank Act § 21(f)(3), 12 U.S.C. § 1441(f)(3) states:

Receivership proceeds To the extent the amounts available pursuant to paragraphs (1) and (2) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees, and if the funds are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund under section 1441b of this title, the Federal Deposit Insurance Corporation shall transfer to the Financing Corporation, from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 1821a of this title) from receiverships, the remaining amount of funds necessary for the Financing Corporation to make interest payments.

[14] Federal Deposit Insurance Act § 5(d)(2)(E), 12 U.S.C. § 1815(d)(2)(E).

[15] Federal Home loan Bank Act § 21(f), 12 U.S.C. § 1441(f).

[16] Separate accounting for each pool is maintained by the FDIC.

[17] Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub.L. 101–73, §§ 501 and 511.

[18] FIRREA amending § 21B of the Federal Home Loan Bank Act. 12 U.S.C. § 1441b. In a manner similar to the FICO, the administrative expenses of REFCORP are paid by the Federal Home Loan Banks (FHLBs) according to a statutory formula. 12 U.S.C. § 1441b(c)(7). The Principal Fund is fully funded with zero coupon Treasury bonds

Continued

acquired no assets of the FSLIC and assumed liability only for certain guarantees of FHLBs' advances issued by the FSLIC, relating to thrifts that had not failed as of the date of passage of FIRREA.[19] RTC never had access to any funds provided by FICO to resolve the institutions within RTC's jurisdiction.[20] However, to the extent all other funding sources are insufficient to cover the amount of interest payments on its obligations, REFCORP is authorized to obtain the additional amount needed from the Secretary of the Treasury, which authorization was NOT granted to FICO.[21]

By comparison, FIRREA provided that all other liabilities of the FSLIC and all of the assets of the FSLIC were transferred to the FRF.[22] The FDIC succeeded the FSLIC as receiver or conservator for any thrift taken over by the government before January 1, 1989.[23] The liabilities to which the FRF succeeded consisted chiefly of the FSLIC's obligations under transactions resolving thrifts that failed prior to January 1, 1989, and the FSLIC's direct liability to depositors in thrifts that failed before that date. A further divergence in the treatment of the two FRF pools is illustrated by the fact that the FRF–FSLIC was given access to any funds borrowed by FICO beginning with the date of the enactment of FIRREA.[24]

If section 21(f)(3) of the FHLB Act were read to encompass liquidating dividends and payments on claims from RTC receiverships, the result would contradict the remaining statutory design. Under that interpretation, RTC assets would be used to pay for that portion of the thrift crisis that was expressly excluded from the RTC's jurisdiction. This view seems inconsistent with a Congressional intent that RTC's assets would not be used to pay for the portion the thrift crisis that Congress expressly excluded from the RTC's jurisdiction. Likewise, it would be inconsistent with Congressional intent to impose liability to pay the interest on the FICO obligations on the RTC assets, since the RTC received no FICO funding.

The Legal Division's view that payment of FICO's interest, issuance costs and custodian fees is limited to liquidating dividends from former FSLIC receiverships is consistent with the language in section 21B(f)(2)(D) of the FHLB Act, which contains the language that Congress used when it intended to have the FRF–RTC assets flow directly to REFCORP. This subsection states as follows:

(D) Proceeds from sale of assets. To the extent the amounts available pursuant to subparagraphs (A), (B), and (C) are insufficient to cover the amount of interest payments, the FSLIC Resolution Fund shall transfer to the Funding Corporation any net proceeds from the sale of assets received from the Resolution Trust Corporation, which shall be used by the Funding Corporation to pay such interest.[25]

This subsection shows that Congress intended to separate the FRF–FSLIC from the FRF–RTC and that Congress identified the FRF–RTC as proceeds from the sale of a separate pool of assets intended to be used for different purposes than the FRF–FSLIC assets. Thus, although the assets and the liabilities of the RTC were transferred to the FRF when the RTC terminated, the RTC dissolution provisions require that after all outstanding liabilities of the RTC have been paid, the FRF is to transfer the net proceeds from the sale of the RTC assets to the REFCORP,[26] which provided $31.2 billion in initial funding to the RTC.[27] In addition, on a periodic basis, the net proceeds of former RTC asset sales are available to service REFCORP periodic interest obligations.[28] These provisions are consistent with the statutory pattern whereby the RTC received its primary funding from REFCORP, to which net proceeds of any excess RTC assets are to return.

This interpretation is supported by FICO' own post-FIRREA disclosure document in conjunction with the sale of its bonds, which does not mention RTC assets as a potential source of funds to pay interest. The disclosure states that "the FDIC will transfer to FICO from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (if any), the amount necessary for FICO to make interest payments, but only to the extent such funds are not required * * * by REFCORP."[29] When defining the FSLIC Resolution Fund, FICO disclosed the following information:

The FSLIC Resolution Fund was established by FIRREA and has assumed all the assets and liabilities of FSLIC as of the date of enactment of FIRREA except for those expressly transferred to or assumed by RTC. These assets and liabilities primarily relate to FSLIC's case resolution activity prior to 1989, while RTC is responsible for the management and resolution of all cases involving the appointment of a conservator or receiver for an Insured Institution after January 1, 1989 and prior to August 9, 1992. To meet its obligations, the FSLIC Resolution Fund may use its assets, returns from receiverships, amounts borrowed by FICO, and insurance assessments on SAIF-Insured Institutions to the extent that they are not required for interest on Obligations of FICO and not required by REFCORP for defeasance of REFCORP's obligations. FIRREA authorizes the future appropriation from the U.S. Treasury of funds needed by the FSLIC Resolution Fund to satisfy its obligations. The FSLIC Resolution Fund will be managed by the FDIC as a separate fund and will terminate when its debts are paid and its assets are sold.[30]

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funded with zero coupon Treasury bonds purchased by REFCORP through capitalization from the FHLBs' mandatory stock purchases. *See* 12 U.S.C. § 1441b(e) and the audited financial statements confirming the existence of the zero coupon Treasury bonds. (Section 21B(e)(7) of the FHLB Act also required that SAIF assessment income be used, if necessary, to fund REFCORP's Principal Fund. *Id.* At 1441b(e)(7). Because REFCORP's Principal Fund is fully funded, assessment income from SAIFmember institutions is no longer required for REFCORP purposes.) The statutes provide separate funding for interest payments on the bonds, notes, debentures and similar obligations issued by REFCORP. 12 U.S.C. § 1441b(f). REFCORP collects the funding for interest from its earnings on assets not invested in Principal Fund; certain proceeds from the RTC to the extent available during its existence; from the FHLBs according to a statutory formula; through the net proceeds from the sale of assets transferred to the FRF by the RTC; and to the extent the other sources are insufficient, the Secretary shall pay the additional interest. In addition, when the FRF satisfies all of the liabilities of RTC, then the net proceeds of RTC asset sales are to be returned to REFCORP.

[19] Federal Home Loan Bank Act § 21A(h), 12 U.S.C. § 1441a(h), as added by § 501 of FIRREA.

[20] *See* generally Federal Deposit Insurance Act, § 11A (b)(3), 12 U.S.C. § 1821a(b)(3)) and Federal Home Loan Bank Act, § 21, 12 U.S.C. § 1441. Under section 1441(f)(3) and 1441b(7)(B), the Principal Fund could have received assets from FRF–FSLIC, if its other sources of funding had been insufficient. This appears to have been an isolated instance of "seed money" provided by what remained of the former FSLIC to the entity (RTC) created to resolve formerly FSLIC-insured institutions going forward. In contrast, there are no instances in the FIRREA statutory framework where funding flows from the RTC to the FRF–FSLIC.

[21] Federal Home Loan Bank Act § 21B(f)(2)(D), 12 U.S.C. § 1441b(f)(2)(D).

[22] Federal Deposit Insurance Act § 11A(a)(2)(A), 12 U.S.C. § 1821a(a)(2)(A).

[23] Federal Deposit Insurance Act § 11A(a)(5)(A), 12 U.S.C. § 1821a(a)(5)(A).

[24] Federal Deposit Insurance Act § 11A(b)(3), 12 U.S.C. § 1821a(b)(3).

[25] Federal Home Loan Bank Act § 21B(f)(2)(D), 12 U.S.C. § 1441b(f)(2)(D).

[26] Federal Home Loan Bank Act § 21A(m)(2), 12 U.S.C. § 1441a(m)(2); and Federal Deposit Insurance Act § 11A(e), 12 U.S.C. § 1821a(e). 12 U.S.C. § 1441a (m)(2) states:

Case resolutions transferred Simultaneous with the termination of the Corporation as provided in paragraph (1), all assets and liabilities of the Corporation shall be transferred to the FSLIC Resolution Fund. Thereafter, if there are no liabilities of the Corporation outstanding, the FSLIC Resolution Fund shall transfer any net proceeds from the sale of assets to the Resolution Funding Corporation.

[27] Federal Home Loan Bank Act § 21B, 12 U.S.C. § 1441b.

[28] Federal Home Loan Bank Act § 21B(f), 12 U.S.C. § 1441b(f).

[29] FICO Information Statement dated September 19, 1989 at page 4.

[30] *Id.* at page 13.

FICO's disclosure document does not mention RTC assets transferred to FRF upon RTC dissolution as a source of funding for FICO.

Additional indications that proceeds from FRF-RTC receiverships were never intended to be a source of funding for FICO are found in subsection section 21A(i) of the FHLB Act as added by the Resolution Trust Corporation Completion Act in 1993 when Congress provided the final appropriation authority to the RTC. This subsection provides in part that "if the aggregate amount of funds transferred to the [RTC] pursuant to this subsection exceeds the amount needed [for RTC and certain SAIF purposes,] such excess amount shall be deposited in the general fund of the Treasury."

In the legislative history from the House Report showing the section-by-section analysis of section 21A(i) of the FHLB Act, Congress showed a clear intent that the money so provided be used for limited purposes. This report states as follows:

> Such funding can only be used to protect insured depositors or for the administrative expenses of the RTC. Shareholders of insured institutions in default may not benefit in any manner from such funding. In addition, any funds transferred to the RTC that are not needed for such purposes or for the Savings Association Insurance Fund ("SAIF") must be deposited in the general fund of the Treasury.[31]

Finally, we note that in preparation for the transition when the RTC would cease to be a separate entity, the RTC and FDIC prepared a memorandum dated October 12, 1995 to the Thrift Depositor Protection Oversight Board (Oversight Board) addressing the future funding needs of the FDIC when it would succeed to the RTC's responsibilities.[32] In this memorandum, the FDIC and the RTC recognized that Congress had limited the uses of the money appropriated to the RTC. When the Oversight Board acceded to the request of the FDIC and RTC by its Resolution dated and effective October 18, 1995, the Oversight Board *inter alia* relied on the representations of the FDIC and RTC that there would be "separate accounting with respect to the former FSLIC and former RTC portions of the FRF, the results for both of which would be contained in the FDIC's public quarterly financial statements, commencing in 1996" and that "the FDIC intends to return to the Treasury on an ongoing basis cash receipts that are over and beyond cash that is needed for operating purposes or cash that might be needed in the future to complete remaining disposition responsibilities." Neither FDIC nor RTC identified any possibility that any of these funds could be subject to a claim by FICO for its interest payments. The Oversight Board acceded to the request of the FDIC and RTC and in its Resolution relied on these representations. The FDIC has acted and continues to act in accordance with these representations.

Therefore for all of the reasons stated above, proceeds from RTC receiverships are not available to pay FICO's obligations. Consequently, recoveries by RTC receiverships in the "goodwill cases" (none of which arise out of former FSLIC receiverships) would not be available to FICO.

FRF Monies Subject to FICO Call

Next the meaning of the language, "liquidating dividends and payments made on claims received by [FRF] * * * from receiverships," needs to be examined. This phrase on its face refers to the money that is distributed to the holders of claims against receiverships when the assets of the receiverships are sold, turned into cash proceeds and dividends are declared or payments are otherwise made to creditors.[33] For the reasons discussed above, FICO will have access only to liquidating dividends paid by former FSLIC receiverships to FRF–FSLIC.

It might be argued that the phrase "payments made on claims received by the [FRF] from receiverships" should also include, e.g., proceeds from the sale of assets acquired by the FRF–FSLIC through corporate purchase under assistance agreements or other amounts recovered by the FRF–FSLIC in connection with assistance transactions, such as upon the disposition of a warrant position in an assisted entity. This argument is flawed because the FRF did not receive the assets or amounts in question *from a receivership* but from the assisted entity, often long after the time that the assisted transaction commenced (at the time of appointment of the receiver) and even after the receivership may have been terminated. Accordingly, it is our view that the phrase is meant to encompass only payments in the nature of liquidating dividends. Further, assets, such as stock warrants, that were owned by the FSLIC in its corporate capacity passed to the FRF, not any individual receivership, by operation of law under Section 11A. The proceeds from these assets will not be available to FICO because they do not derive from "liquidating dividends and payments made on claims received by [FRF] * * * *from* receiverships." (emphasis added).

Current Payment Stream

The Legal Division views the language of section 21(f)(3) of the FHLB Act as only referring at any given time to the current payment stream from receiverships as collected by the FRF-FSLIC[34] and does not require that all proceeds from receiverships be accumulated for the contingent claim of REFCORP and FICO whenever either might need this source of funding. Several reasons support this reading of the provision. First, the contingent nature of FICO's claim to this source of funding as contrasted with FRF's primary need for this source of money to pay the immediate and ongoing liabilities of the FSLIC is inconsistent with a Congressional intent that the payment stream be held or escrowed for the contingent future needs of FICO. The legislative history seems to show that Congress intended that FRF spend the receivership proceeds to pay the liabilities of FSLIC.[35] Second, FRF has lawfully spent money from this source since its inception and its financial results have been regularly reported to Congress and audited by General Accounting Office (GAO) without any questions being raised. The money received by FRF from this source has been spent to pay operating expenses,

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[31] P.L. 103–204, Resolution Trust Corporation Completion Act, H.R. REP. 103–103(I), H.R. Rep. No. 103(I), 103RD Cong., 1ST Sess. 1993, 1993 U.S.C.C.A.N. 3040, 1993 WL 180206 (Leg. Hist.) in the Section-by-Section Analysis.

[32] Memorandum entitled Revised Funding Request and Recommendations to Dietra L. Ford, Executive Director, Thrift Depositor Protection Oversight Board, from Barry S. Kolatch, Vice President for Planning, Research, and Statistics, RTC, and William A. Longbrake, Deputy to the Chairman for Finance and Chief Financial Officer, FDIC, dated October 12, 1995.

[33] By statute since August 9, 1989, FRF has received funding from liquidating dividends and similar payments from receiverships. Section 215 of title II of FIRREA, 12 U.S.C. § 1821a(b)(2). FRF is partially funded through liquidating dividends and such payments, except to the extent that these funds are required by REFCORP or FICO pursuant to sections 1441b or 1441, respectively. Neither REFCORP nor FICO have required this money during FRF's existence.

[34] Federal Home Loan Bank Act § 21(f)(3), 12 U.S.C. § 1441(f)(3).

[35] *See* discussion of FSLIC Resolution Fund:

> To meet its obligations, this Fund may use its assets, returns from receiverships, amounts borrowed by FICO, and insurance assessments on SAIF members through 1991 that are not required for interest on FICO bonds and not required by REFCORP for defeasance of its bonds. Any additional funds needed will be provided by the Treasury. The Fund will terminate when its debts are paid and its assets are sold. 135 Cong. Rec. H5172 (A&P), 101st Congress, First Session, Arnold & Porter Legislative History: P.L. 101–73 Debate; Congressional Record—House Proceedings and Debates of the 101st Congress, First Session, Conference Report on H.R. 1278 Financial Institutions Reform, Recovery, and Enforcement Act, 1989, August 4, 1989; page 830.

assistance agreement liabilities, insured deposit claims, judgments, such amounts as were needed by SAIF for administrative and supervisory expenses from August 9, 1989 through September 30, 1992,[36] and any other liabilities to which FRF succeeded. Third, FRF is intended to dissolve when its assets are sold and liabilities paid.[37] FRF has no statutory requirement to continue to exist for speculative requirements of REFCORP or FICO. This factor seems to indicate that FRF had no duty to hold money for the requirements of REFCORP or FICO. Fourth, FRF is not directly liable for the FICO obligations, and the general assets of FRF are not available to FICO.[38] Section 21(f)(3) of the FHLB Act does not grant FICO a general claim to the assets of FRF.

The time relevant to the analysis in this instance is the date FICO's assessment revenues become insufficient to cover interest payments, issuance costs and custodial fees. Therefore, FICO only has access to the future payment stream from liquidating dividends of former FSLIC receiverships beginning on the date that FICO's assessments become insufficient to cover interest payments, issuance costs, and custodial fees. Accordingly, liquidating dividends paid to the FRF before the "shortfall date" could not generally be reached by FICO.

Conclusion

The determination of available funding sources for FICO cannot be made purely by reviewing the statutory provisions, rather the language must be interpreted in light of the entire statutory structure established to resolve the thrift crisis. The statutory scheme formed two separate entities—RTC and FRF. Later when the RTC terminated, two pools of assets and liabilities managed by the same entity remained—FRF–FSLIC and FRF–FRTC. The results of the arrangement Congress created shows the Congressional intent to separate the RTC and the FRF–FSLIC. Congress could have used only one agency and one fund but chose not to do so. Accordingly, we conclude that only the FRF–FSLIC is available to FICO under section 21(f)(3) of the FHLB Act. In addition, the phrase "liquidating dividends and payments made on claims received by FRF" includes only dividends paid to FRF from former FSLIC receiverships and not proceeds from the sale of assets acquired by FRF–FSLIC through corporate purchase or other amounts recovered by the FLSIC–FRF in connection with assistance transactions. Further, the quoted language only refers to the current payment stream from receiverships as collected by the FRF–FSLIC and there is no requirement to escrow those payments in anticipation of a need for them by FICO.

By Order of the Board of Directors dated at Washington, D.C., this 21st day of August, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–22213 Filed 8–29–96; 8:45 am]

BILLING CODE 6714–01–P

[36] Federal Deposit Insurance Act § 11A(a)(2)(B), 12 U.S.C. § 1821a(a)(2)(B).

[37] Federal Deposit Insurance Act § 11A(f), 12 U.S.C. § 1821a(f).

[38] *See* Federal Home Loan Bank Act, § 21(e)(6). 12 U.S.C. § 1441(e)(6).

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oak Bancorporation*, Oakland, Iowa; to engage *de novo* in purchasing certain loans originated by affiliate banks and thereby make and service loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 26, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–22177 Filed 8–29–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue

concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eberhardt, Inc., Elberton, Georgia; and JAM Family Partnership II, L.P., Elberton, Georgia, which is a second tier bank holding company subsidiary of Eberhardt, Inc.; to retain an additional 2.07 percent and prior approval to acquire an additional 1.37 percent of Pinnacle Financial Corporation, Elberton, Georgia, and thereby indirectly acquire First National Bank of Elberton, Elberton, Georgia, and Tri-County Bank of Royston, Royston, Georgia. Pro forma ownership will equal 25.24 percent.

In addition McConnell & Co., Elberton, Georgia, and JAM Family Partnership I, L.P., Elberton, Georgia, which is a second tier bank holding company subsidiary of McConnell and Co.; to acquire an additional 3.97 percent, for a total of 25.77 percent of the voting shares of Pinnacle Financial Corporation, Elberton, Georgia, and thereby indirectly acquire First National Bank in Elberton, Elberton, Georgia, and Tri-County Bank of Royston, Royston, Georgia.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Taylor Bancshares, Inc., North Mankato, Minnesota; to acquire 16 percent of the voting shares of First National Bank of Fairfax, Fairfax, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Saint Jo Bancshares, Inc., Saint Jo, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Financial Company of Saint Jo, Dover, Delaware, and thereby indirectly acquire The First National Bank of Saint Jo, Saint Jo, Texas.

In connection with this application First Financial Company of Saint Jo, Dover, Delaware, also has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, August 26, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–22178 Filed 8-29-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on Dietary Supplement Labels; Notice of Meeting #5

AGENCY: Office of Disease Prevention and Health Promotion.

ACTION: Commission on Dietary Supplement Labels: Notice of Meeting #5.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice of the fifth meeting of the Commission on Dietary Supplement Labels. The Commission intends to hold its meeting on September 19, 1996 from 8:30 a.m. to approximately 4:30 p.m. E.D.T., and September 20, 1996 from 8:30 a.m. to 3:00 p.m. E.D.T. in Room G at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 22091. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–7102.

SUPPLEMENTARY INFORMATION: Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members have been appointed by the President. The appointments to the Commission by the President and the establishment of the Commission by the Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission is charged with conducting a study and providing recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission is expected to evaluate how best to provide truthful, scientifically valid, and non-misleading information to consumers in order that they may make informed health care choices for themselves and their families. The Commission's study report may include recommendations on legislation, if appropriate and necessary.

The Commission meeting agenda will include receipt and discussion of ad hoc Subcommittee reports, continuation of discussion of key issues related to labeling of dietary supplements, and identification of materials to be included in the Commission's forthcoming report.

The meeting is open to the public. If you will require a sign language interpreter, please call Sandra Saunders (202) 690–7102 by 4:30 p.m. E.D.T. on September 13, 1996.

Dated: August 26, 1996.

Linda D. Meyers,

Acting Deputy Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 96–22192 Filed 8–29–96; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

[INFO–96–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Hospital Discharge Survey—(0920–0212)—Extension The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the production of goals for the Year 2000 Health Objectives and the subsequent monitoring of these goals. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, *Health, United States*. Data for the NHDS are collected annually on approximately 275,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS). Data for approximately half of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Medical Record Abstracts Primary Procedure Hospitals	77	250	0.0833	1604
Alternate Procedure Hospitals	134	250	0.01666	558
In-House Tape or Printout Hospitals	103	12	0.18333	227
Update Form (Abstract Service Hospitals)	164	2	0.0333	11
Quality Control Forms	50	40	0.1666	33
Induction Forms	40	1	2	80
Total				2,513

Dated: August 26, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–22259 Filed 8–29–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Intent to Reallot Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Intent to Reallot Fiscal Year 1996 Funds, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (Act).

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which were set aside in accordance with Section 142(c)(5) of the Act. Of the $806,682 which was set aside for technical assistance and Indian Consortiums, $534,360 was utilized for technical assistance and $136,161 was awarded to an Indian Consortium. Therefore, the balance of $136,161 has been released for reallotment.

Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1996 should notify Joseph Lonergan, Director, Division of Formula, Entitlement and Block Grants, Office of Program Support, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, in writing within thirty (30) days of the date of this promulgation. This notice is hereby given in accordance with Sections 125 and 142 of the Act.

FOR FURTHER INFORMATION CONTACT: Joseph Lonergan on (202) 401–6603.

The proposed reallotment for Part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

[Fiscal Year 1996 Reallotment]

	Protection and Advocacy	Reallotment	Revised allotment
Alabama	$443,606	$2,328	$445,934
Alaska	254,508	1,336	255,844
Arizona	339,119	1,780	340,899
Arkansas	257,788	1,353	259,141
California	2,180,763	11,437	2,192,200
Colorado	274,211	1,439	275,650

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

[Fiscal Year 1996 Reallotment]

	Protection and Advocacy	Reallotment	Revised allotment
Connecticut	259,173	1,360	260,533
Delaware	254,508	1,336	255,844
Dist. of Columbia	254,508	1,336	255,844
Florida	1,056,678	5,546	1,062,224
Georgia	601,121	3,155	604,276
Hawaii	254,508	1,336	255,844
Idaho	254,508	1,336	255,844
Illinois	912,328	4,788	917,116
Indiana	514,368	2,700	517,068
Iowa	265,501	1,393	266,894
Kansas	254,508	1,336	255,844
Kentucky	405,062	2,126	407,188
Louisiana	466,781	2,450	469,231
Maine	254,508	1,336	255,844
Maryland	337,787	1,773	339,560
Massachusetts	445,718	2,339	448,057
Michigan	843,318	4,426	847,744
Minnesota	357,873	1,878	359,751
Mississippi	318,030	1,669	319,699
Missouri	462,189	2,426	464,615
Montana	254,508	1,336	255,844
Nebraska	254,508	1,336	255,844
Nevada	254,508	1,336	255,844
New Hampshire	254,508	1,336	255,844
New Jersey	508,648	2,669	511,317
New Mexico	254,508	1,336	255,844
New York	1,384,019	7,264	1,391,283
North Carolina	635,921	3,337	639,258
North Dakota	254,508	1,336	255,844
Ohio	1,006,478	5,282	1,011,760
Oklahoma	306,490	1,609	308,099
Oregon	263,401	1,382	264,783
Pennsylvania	1,040,683	5,462	1,046,145
Rhode Island	254,508	1,336	255,844
South Carolina	368,740	1,935	370,675
South Dakota	254,508	1,336	255,844
Tennessee	495,627	2,601	498,228
Texas	1,501,473	7,880	1,509,353
Utah	254,508	1,336	255,844
Vermont	254,508	1,336	255,844
Virginia	502,496	2,637	505,133
Washington	384,796	2,019	386,815
West Virginia	276,991	1,454	278,445
Wisconsin	451,493	2,370	453,863
Wyoming	254,508	1,336	255,844
American Samoa	136,161	715	136,876
Guam	136,161	715	136,876
Puerto Rico	813,736	4,271	818,007
Virgin Islands	136,161	715	136,876
Northern Mariana Islands	136,161	715	136,876
Palau**	103,124	.....	103,124
AZ DNA People's Legal Services	136,161	715	136,876
Total	26,047,479*	136,161	26,183,640

* Includes the award of $136,161 to an Indian Consortium (AZ DNA People's Legal Services) in accordance with Section 142(b).

** Palau's allotment is reduced to 75% of its Fiscal Year 1995 allotment, in accordance with the Compact of Free Association with the Republic of Palau.

Dated: August 12, 1996.

Reginald F. Wells,

Deputy Commissioner Administration on Developmental Disabilities.

[FR Doc. 96–22337 Filed 8–29–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96N–0172]

Medical Devices; Development of Design Control Inspectional Strategies; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting intended to explore and develop strategies to be utilized by FDA's investigators when inspecting a medical device facility relative to design controls, after issuing the final quality system regulation. The purpose of the meeting is to obtain information from the medical device industry and other members of the public about their perspective and practical experience in exercising design controls. This meeting is intended to provide an opportunity to work with FDA towards constructing an investigational model for design controls which will become the basis for future establishment inspections.

DATES: The public meeting will be held on September 12, 1996, from 8:30 a.m. to 4:30 p.m. There is no cost to attend, however, due to space limitations, registration is required and must be submitted by September 4, 1996.

ADDRESSES: The public meeting will be held at the Parklawn Bldg., 5600 Fishers Lane, conference room M, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Trautman, Office of Compliance, Center for Devices and Radiological Health (HFZ–341), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4648, ext. 126, FAX number 301–594–4672. Persons interested in attending this meeting should FAX a request for participation no later than the close of business on Wednesday, September 4, 1996. Please include name, firm affiliation if any, job title, address, telephone number, and FAX number to the contact person. Please do not plan to attend this meeting unless you have received a confirmation from the Center of Devices and Radiological Health (CDRH) affirming your participation. This confirmation will be sent via FAX on a first-come-first-served basis.

SUPPLEMENTARY INFORMATION: Under notice and comment rulemaking procedures initiated in 1990 to implement certain provisions of the Safe Medical Devices Act of 1990, FDA plans to issue a final rule revising the current good manufacturing practice (CGMP) requirements for medical devices and incorporating them into a quality system regulation. This action will add preproduction design controls to the CGMP regulation and achieve consistency with quality system requirements worldwide.

FDA is interested in obtaining further information regarding perspectives and practical experience in exercising design controls. Accordingly, FDA's CDRH is conducting a grassroots regulatory partnership meeting on September 12, 1996, with interested parties in the device industry and members of the public. This meeting is being conducted in accordance with President Clinton's reinventing government initiatives. The purpose of the meeting will be to address specific issues and to explore and develop strategies with regard to how design controls will be inspected for compliance with the regulation by FDA's investigators at the field District Offices. FDA headquarters and District personnel will attend and participate in the meeting.

Industry, FDA participants, and members of the public will be arranged into working teams to review and develop strategies. This is an opportunity for the regulated industry and others to work with front-line FDA's regulators towards constructing an investigational model for design controls which will become the basis for all future establishment inspections.

Upon completion of the grassroots regulatory meeting, FDA will formulate its design control inspectional strategy and make this strategy document available to the public through the publication of a notice of availability in the **Federal Register**.

Dated: August 27, 1996.

Joseph A. Levitt,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 96–22284 Filed 8–28–96; 9:56 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4021–N–02]

Office of Administration; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: September 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that if the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed "Application Kit for Economic Development and Supportive Services (EDSS) Program Grants".

This Program provides grants to public housing agencies and Indian housing authorities (collectively HAs) to (1) provide economic development opportunities and supportive services to assist residents of public and Indian housing to become economically self-sufficient and (2) to provide supportive services to assist the elderly and disabled persons to live independently or to prevent premature or unnecessary institutionalization. HUD published a Notice of Funding Availability (NOFA) which announced a total of $ million in grant funds. The grants will be up to three years in duration.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by September 3, 1996:

(1) Title of the information collection proposal:

Application Kit—Economic Development Support Services Program

(2) Summary of the collection of information:

Each respondent seeking to obtain an EDSS grant would be required to submit current information, as listed below as:

1. Fact Sheet—Information about the respondent: name, address, telephone, the local housing authority information, Congressional district number and representatives names, and partner agency information.
2. Program Summary, Budget Outline, Budget Narrative, Timetable and Milestones
3. Descriptions: Partnership Agency Commitments, Resident Involvement/ Employment, Job Placement, Training Program, Need for Supportive Services, Measuring Success
4. Certifications
5. SF–424, SF–424A
6. Form HUD–2880
7. Disclosure of Lobbying Activities
8. Annual Report.

(3) Description of the need for the information and its proposed use:

To appropriately determine which HAs should be awarded the EDSS grants, certain information is necessary as stated in the EDSS Notice of Funding Availability.

(4) Description of the likely respondents, and proposed frequency of response to the collection of information:

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:

Number of respondents: 350.
Total burden hours: 14,212.
(@ 11 hours per response): 11.

Total Estimated Burden Hours: 14,212.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 22, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–22154 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4065–N–03]

Office of the Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: September 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed Notice of Funding Availability (NOFA) for the Economic Development Initiative (EDI) Grants program. HUD seeks OMB approval by September 17, 1996, in order to implement this program by September 30, 1996.

Under the EDI Grants program, HUD will provide approximately $50 million to encourage eligible units of general local government to submit proposals for funding for eligible economic development projects, including projects for site specific economic development projects, economic development revolving loan funds, housing development projects and proposals for community development financial institutions. By law, EDI grant may only be made in conjunction with Section 108 loan guarantee commitments which are made in accordance with 24 CFR 570.702.

Eligible applicants are CDBG entitlement units of general local government, and nonentitlement units of general local government which are eligible to receive Section 108 loan guarantees.

Eligible uses of EDI grants and related Section 108 loan guarantee assistance are those authorized under 24 CFR 570.703. The National Objectives criteria of 24 CFR 570.208 and the economic development project guidelines of 24 CFR 570.209 also apply.

Section 108(q) of P.L. 93–383 authorizes the EDI grant program and provides selection criteria for HUD to use in selecting proposals from applications submitted in response to a Notice of Fund Availability in the **Federal Register**. The information collected is essential in order to rate and rank proposals, in keeping with the statutory provisions, and in order to determine the eligibility of applicants and proposed activities. The selection criteria are: (1) Level of distress; (2) extent of need for EDI grants to support the Section 108 loan and the project; (3) quality of the plan; (4) capacity of the applicant to carry out the plan successfully; (5) leveraging of other public and private resources; (6) the extent to which the plan follows a comprehensive and coordinated approach in addressing the community and economic development needs of the applicant and furthers neighborhood revitalization; (7) innovation and creativity.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) Title of the information collection proposal :

"Notice of Fund Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI) Grants."

(2) Summary of the collection of information:

Each applicant for EDI grant funds is required to submit current information, as listed below:

1. Form S.F. 424—Application for Federal Assistance;
2. Certifications—Concerning the use of federal funds for lobbying required under 24 CFR Part 87;
3. Narrative statement providing a description of the proposed activities to be carried out with EDI grant and Section 108 Loan Guarantee funds; and

4. A statement describing how the proposed activities addresses each of the seven selection criteria.

After the Congressional notification of grant awards is made, recipients are required to collect information which satisfies the record keeping requirements of the Community Development Block Grant program and the Section 108 loan guarantee program.

(3) Description of the need for the information and its proposed use:

The information collected is essential in order to rate and rank proposals, in keeping with the statutory provisions and the selection criteria published in a NOFA, and in order to determine the eligibility of applicants and proposed activities. Based upon the competitive ranking of all applicants, applicants are funded in rank order.

After grant award, information collection is essential to access program grant funds through the Line of Credit and Control system (LOCCS) and to document program compliance.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Eligible applicants are CDBG entitlement units of general local government, and nonentitlement units of general local government which are eligible to receive Section 108 loan guarantees.

The estimated number of respondents who can meet the requirements of this NOFA is 150. The proposed frequency of the collection of information for the application is one-time. The application is a discretionary act. The proposed frequency of the collection of information to access funds through LOCCs and to document program compliance after grant approval will be based on the recipient's program design and management system, but for estimation purposes is expected to be no more than once a week on average.

(5) Estimate of the total reporting and record keeping burden that will result from the collection of information:

Reporting Burden:

a. Number of Respondents to Notice of Funding Availability: 150.

Total Burden Hours—Application: 6,000.

(@ 40 hours per application response)

b. Estimated Number of Grant Recipients: 40.

Total Burden Hours—electronic funds transfer, recordkeeping and reporting: 6,240.

(@ 2 hours per week per recipient)

Total Estimated Burden Hours: 12,240.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 22, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–22155 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4078–N–02]

Office of Public and Indian Housing; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Public and Indian Housing—HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: September 3, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within four (4) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed NOFA announcing the availability of $480 million for the HOPE VI Program. HUD seeks to implement this initiative as soon as possible.

Under the HOPE VI Program, HUD will provide grants for the purpose of enabling the demolition of obsolete public housing developments or portions thereof, the revitalization (where appropriate) of sites (including remaining public housing units) on which such developments are located, replacement housing which will avoid or lessen concentrations of very low-income families, and tenant-based assistance for the purpose of providing the replacement housing and assisting tenants to be displaced by the demolition.

HUD intends that the assistance will contribute to the goal of transforming public housing by changing the physical shape of public housing, establishing positive incentives for residents, enforcing tough expectations, lessening concentrations of poverty, and forging partnerships with other agencies, local government nonprofit organizations, and private businesses in the community.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below:

(1) Title of the information collection proposal:

NOFA—Public Housing Demolition, Site Revitalization and Replacement Housing Grants (HOPE VI).

(2) Summary of the collection of information:

Each respondent requesting HOPE VI funding will be required to submit an application as described in Section V of the NOFA. This will include:

1. Narratives that respond to requests for information regarding the current condition of the obsolete public housing, a description of the proposed demolition and revitalization, proposals for self-sufficiency programs and management policies, the local and National impact of the obsolete public housing, the capability of the PHA to carry out the revitalization plan, relationships with residents, the community, and development partners, and financing of the proposal.

2. Evidence of a public meeting with residents and community members.

3. A demolition/disposition application of approval letter.

4. HOPE VI Budget, Form HUD–52825–A.

5. PHA Board Resolution for Submission of HOPE VI Application, Form HUD–52820–A.

6. Other standard forms as follows: SF–424, Application for Federal Assistance; HUD–50070, Certification for a Drug-Free Workplace; SF–LLL, Disclosure of Lobbying Activities; HUD–2880, Recipient Disclosure/Update Report; HUD–52481, Cooperation Agreement; HUD–50071, Anti-Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreement.

(3) Description of the need for the information and its proposed use: To appropriately determine which applicants should be provided funding, certain information is required. The application evaluation factors include the extent to which the proposal will lessen concentration of low-income residents, need, the quality of proposed self-sufficiency programs and management policies, the extent of participation by the community and development partners, the need for funding, and overall program quality, feasibility, and sustainability.

All 3,400 PHAs are eligible to apply. The estimated number of respondents is 500. The proposed frequency of the response to the collection of information is one-time. PHAs that administer 10,000 or more public housing units may submit one or two separate applications, as long as the total amount requested does not exceed $40 million.

(5) Estimate of the total reporting and record keeping burden that will result from the collection of information:

Reporting burden:

Number of respondents: 500.

(@ 61 hours per response)

Total Estimated Burden Hours: 30,500.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 26, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–22215 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–33–M

[Docket No. FR–4124–N–01]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 23, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–22024 Filed 8–29–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–96–1610–00: G6–0204]

High Desert Management Framework Plan Amendment and Record of Decision for Lake Abert Area of Critical Environmental Concern, Notice of Availability

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act, section 202(f) of the Federal Land Policy and Management Act, and 43 CFR part 1610, the Lakeview District has completed the plan amendment process covering a proposal to designate the Lake Abert and the surrounding vicinity as an Area of Critical Environmental Concern (ACEC). The final decision and special management actions to be implemented have been documented in a combined Approved Plan Amendment/Record of Decision (ROD) document and are available for review.

The Approved Plan Amendment addresses resource management over the next 10–15 years for approximately 123,000 acres of public land and 101,700 acres of reserved mineral estate administered by the BLM located approximately 30 miles north of the town of Lakeview, Oregon. That portion of the planning area officially designated as an ACEC includes approximately 49,900 acres of BLM-administered lands.

DATES: The ACEC designation and management direction specified in the Approved Plan Amendment/ROD is effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Whitman, BLM, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630 (Telephone: 541–947–6110). Copies of the Approved Plan Amendment/ROD may also be obtained by contacting this person at the above address.

SUPPLEMENTARY INFORMATION: The Approved Plan Amendment/ROD focuses on management goals, objectives, and special management direction for BLM-administered lands within about 49,900 acres of public lands designated as an ACEC. Four resource values (wildlife, visual, cultural, and ecological processes) were found to require special management attention within the ACEC area. Major management changes include: restricting off-highway vehicle (OHV) use (to existing roads and trails), salable and locatable mineral extraction, and new rights-of-way (ROW) location within the entire ACEC. Additional seasonal or temporary OHV closures could occur within the ACEC in the future, but would require the publication of separate **Federal Register** notices. OHV use has previously been restricted within approximately 14,500 acres of the ACEC area by earlier **Federal Register** notices (dated December 28, 1981, and January 22, 1988). This OHV designation represents a net change of approximately 35,400 acres formerly classified as open within the Lakeview Resource Area in these **Federal Register** notices, now being classified as limited. This notice fulfills the requirements of Executive Orders 11644 and 11989 and 43 CFR Part 8340.

Livestock grazing would continue to be restricted within that portion of Abert Rim Wilderness Study Area (WSA) falling within the ACEC (approximately 7,500 acres), as well as within most riparian zones and ecologically sensitive areas (approximately 1,500 acres) within the ACEC. Mineral leasing would be closed within the northern portion of the ACEC (approximately 18,000 acres) and restricted within the remainder of the ACEC (approximately 31,900 acres).

With the exception of visual resource management (VRM), management activities within the remainder of the planning area (approximately 73,100 acres) would not change from that specified in the existing land use plan.

VRM classifications for the entire planning area would be more accurately categorized as follows: Class I (approximately 22,925 acres), Class II (approximately 57,690 acres), and Class III (approximately 42,380 acres).

Those individuals, organizations, native American tribes, and agencies with a known interest in the plan have been sent a copy of the Approved Plan Amendment/ROD. Reading copies of the document are available at the Lake, Klamath, and Harney County, Oregon, libraries and at the following BLM locations: Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW, Washington DC 20240, and Public Room, Oregon State Office, 1515 SW 5th, Portland, Oregon 97201. Persons desiring a copy of the document should contact the point of contact listed above.

Dated July 22, 1996.

Mark Lawrence,

Acting District Manager.

[FR Doc. 96–22146 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–33–P

[AK–020–1220–04–P]

Recreation Fee Collection at Fortymile Management Area Bureau of Land Management (BLM) Developed Campgrounds

The Bureau of Land Management (BLM) will begin fee collection at the following campgrounds during the summer of 1996 (on or about 1 September):

Eagle Campground, Mile 162 Taylor Highway (Eagle, AK)
Walker Fork Campground, Mile 82 Taylor Highway
West Fork Campground, Mile 49 Taylor Highway

Fees at all of the sites are $6.00 per night, with golden age passport half-price.

Direct questions and responses to: Jeff Roach, Fortymile Management Area, Bureau of Land Management, P.O. Box 309, Tok, Alaska 99780–0309, Tel: (907) 883–5121.

Dated: August 23, 1996.

Dee R. Ritchie,

Northern District Manager.

[FR Doc. 96–22179 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–84–P

[ID–017–06–5440–00–D012]

Notice of Intent, Resource Management Plan Amendment

ACTION: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR Part 1600, the Lower Snake River District Office, Bureau of Land Management, proposes to amend the Jarbidge Resource Management Plan (RPM) to change several parcels totaling 1851.59 acres, from a retention category to a transfer category. The public lands are described as follows:

Boise Meridian, Idaho

T. 5 S., R. 10 E.,
  Section 29: NW¼NE¼, N½NW¼,
T. 14 S., R. 10 E.,
  Section 12: SE¼SE¼,
  Section 13: E½NE¼,
T. 15 S., R. 10 E.,
  Section 11: W½SW¼,
  Section 13: NE¼NW¼,
  Section 14: NW¼NW¼,
T. 5 S., R. 11 E.,
  Section 17: NW¼SW¼,
  Section 18: SE¼SE¼,
  Section 29: Lot 8,
  Section 32: Lot 2, E½NW¼,
T. 6 S., R. 11 E.,
  Section 6: SE¼SW¼, SW¼SE¼,
T. 16 S., R. 11 E.,
  Section 21: SE¼NE¼,
  Section 22: SW¼NW¼, NE¼NW¼,
T. 8 S., R. 13 E.,
  Section 12: N½SW¼NW¼
T. 9 S., R. 13 E.,
  Section 28: SW¼NW¼,
T. 10 S., R. 13 E.,
  Section 1: Lots 6, 8,
  Section 2: Lots 6, 8,
T. 12 S., R. 13 E.,
  Section 3: NW¼SW¼,
  Section 22: SW¼SW¼,
  Section 26: SE¼SW¼,
  Section 27: SW¼NE¼, NW¼NW¼, SE¼,
  Section 34: NE¼NW¼,
  Section 35: NE¼NW¼,
T. 8 S., R. 14 E.,
  Section 7: NE¼SW¼,
T. 13 S., R. 14 E.,
  Section 25: NW¼SW¼,
  Section 26: SE¼SW¼,

Also, the amendment will consider changing wording in the RMP to clarify that rejection of Carey Act (CA) and Desert Land Act (DLA) applications will result in the lands no longer being available for CA/DLA applications. The present wording addresses this provision only for relinquishment of applications. In addition, wording will be added to allow more flexibility for disposal generally within the resource area, but not allowing disposal within current WSA's, ACEC's, SRMA's and other public lands reserved through withdrawals, classifications, and special designations.

DATES: Comments concerning the plan amendment must be received by October 14, 1996.

ADDRESSES: Written comments concerning this plan amendment should be sent to the BLM Area Manager, Jarbidge Resource Area Office, 2620 Kimberly Road, Twin Falls, Idaho 83301–7975.

FOR FURTHER INFORMATION CONTACT: Mike Austin, Realty Specialist, at the above address, or telephone (208) 736–2350. The hours of availability are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The preliminary issues identified to date for analysis in the proposed amendment are: (1) The potential impacts on resources if the public lands were made available for disposal, and (2) the public interest to be served by transferring certain public lands into private ownership. The general planning criteria from the Jarbidge RMP will be used to focus the amendment process and to guide decision making. These criteria are: (1) Social and economic values; (2) plans, programs, and policies of other Federal, State, and local government agencies, and Indian tribes; (3) existing laws, regulations, and BLM policy; (4) future needs and demands for existing or potential resource commodities and values; (5) public input; (6) public welfare and safety; (7) past and present use of public and adjacent lands; (8) public benefits of providing goods and services in relation to cost; (9) quantity and quality of noncommodity resource values; and (10) environmental impacts. The following resources will be considered in preparation of the amendment: Realty, wildlife, range, cultural, minerals, watershed/soils, threatened/endangered species, and hazardous materials. Staff members representing each resource will make up the planning team. Proposed changes in the RMP transfer designations are not known to be controversial at this time. No public meetings are presently scheduled. Documents relevant to the planning process are available for public review at the address provided above.

Dated: August 19, 1996.

Jerry L. Kidd,

District Manager.

[FR Doc. 96–22083 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Receipt of Application and Availability of a Recirculated Draft Environmental Impact Report/Environmental Impact Statement for Issuance of Permits To Allow Incidental Take of Threatened and Endangered Species Within the Multiple Species Conservation Program Planning Area in San Diego County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the receipt of an application and the availability of a Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement for the proposed issuance of incidental take permits, pursuant to the Endangered Species Act of 1973, as amended, for species federally listed as threatened or endangered. The proposed take would occur due to urban development in southwestern San Diego County, California. The City of San Diego has submitted an application, and the County of San Diego, the Cities of Chula Vista, Coronado, Del Mar, and Santee, and the Otay Water District (applicants) intend to apply to the U.S. Fish and Wildlife Service within the foreseeable future for incidental take permits pursuant to the Endangered Species Act.

The applications include a regional Multiple Species Conservation Program Plan and individual Subarea Plans and Implementing Agreements. The Multiple Species Conservation Program is intended to conserve listed and unlisted species, thereby reducing the uncertainty associated with development and future species' listings.

The U.S. Fish and Wildlife Service anticipates that each of the applicants will request permits for 12 listed animals: the threatened western snowy plover (*Charadrius alexandrinus nivosus*), coastal California gnatcatcher (*Polioptila californica californica*), bald eagle (*Haliaeetus leucocephalus*), and the red-legged frog (*Rana aurora draytoni*); and the endangered Riverside fairy shrimp (*Streptocephalus woottoni*), California brown pelican (*Pelecanus occidentalis californicus*), American peregrine falcon (*Falco peregrinus anatum*), light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sterna antillarum*), southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), and southwestern arroyo toad (*Bufo microscaphus californicus*).

The U.S. Fish and Wildlife Service also anticipates that each applicant will request assurances for future incidental take, should it become necessary, of 5 endangered plants, 12 plants and 1 animal proposed for listing, and 55 other unlisted species (29 plants, 18 birds, 3 reptiles, 3 mammals, and 2 invertebrates). These species would be listed on the permits, with take authorization effective upon listing. Plants would be covered by the permits to the extent that take of plants is prohibited by the Endangered Species Act of 1973, as amended. The exact number of species for which assurances are sought may change between the draft and final Environmental Impact Report/Environmental Impact Statement.

The Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement evaluates the effects on the human environment expected to occur from proposed issuance of the permits. Adoption of the Multiple Species Conservation Program Plan, and adoption of the Concept Plan for the Otay Valley Regional Park within the Multiple Species Conservation Program planning area, would be at the programmatic level. Project level actions, including adoption of Subarea Plans, are evaluated for the County of San Diego, and the Cities of San Diego, Chula Vista, Coronado, Del Mar, and Santee. Another proposed action evaluated in the document is the adoption of the County of San Diego's Biological Mitigation Ordinance. Incidental take resulting from the above actions would be minimized and mitigated by implementation of the regional Multiple Species Conservation Program Plan.

Federal approval of the Multiple Species Conservation Program Plan is required pursuant to the special section 4(d) rule for the coastal California gnatcatcher. Incidental take of the coastal California gnatcatcher is allowed under section 4(d) of the Endangered Species Act of 1973, as amended, if take results from activities conducted in accordance with the California Natural Community Conservation Planning Act, the Natural Community Conservation Planning Process Guidelines, and the Natural Community Conservation Planning Southern California Coastal Sage Scrub Conservation Guidelines provided that all of the issuance criteria for incidental take permits have been met.

The Multiple Species Conservation Program and Draft Joint Environmental Impact Report/Environmental Impact Statement are being recirculated due to project changes that warrant issuance of new documents with new analyses. Earlier drafts of the documents were made available to the public during spring of 1995 (60 FR 25734).

DATES: Written comments on the Multiple Species Conservation Program Plan, Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement, and City of San Diego Implementing Agreement should be received on or before October 15, 1996.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue, Carlsbad, California 92008. Comments also may be sent by facsimile to telephone (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Gilbert, Fish and Wildlife Biologist, at the above address; telephone (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement should immediately contact Ms. Gilbert. Copies of this Draft Joint Environmental Impact Report/ Environmental Impact Statement have been sent to City and County libraries in the greater San Diego area, and to all agencies and individuals who participated in the scoping process or requested copies. In addition, copies of the Multiple Species Conservation Program Plan and City of San Diego Implementing Agreement are available at public libraries and can be obtained by contacting the City of San Diego Clean Water Program, 600 B Street, Suite 500, San Diego, California 92101, telephone (619) 533–4200. All documents can be viewed, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Carlsbad Field Office (see ADDRESSES) and the City of San Diego's Clean Water Program Office.

Background

Under section 9 of the Endangered Species Act of 1973, as amended, and its implementing regulations, wildlife listed as threatened or endangered are protected from "taking." The Endangered Species Act of 1973, as amended, defines take, in part, as killing, harming, or harassing listed wildlife. U.S. Fish and Wildlife Service regulations further define harm to include significant habitat modification that results in death or injury of listed wildlife (50 CFR 17.3). Under limited

circumstances, the U.S. Fish and Wildlife Service may issue permits to take listed wildlife if such taking is incidental to, and not the purpose of, otherwise lawful activities. The taking prohibitions of the Endangered Species Act of 1973, as amended, do not apply to listed plants on private lands unless such take would violate State law. Regulations governing permits are in 50 CFR 17.22 and 17.32. Under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, the U.S. Fish and Wildlife Service may issue incidental take permits for listed animals for which an approved habitat conservation plan has been prepared. Among other criteria, issuance of such permits must not jeopardize the existence of listed species, both plant and animal.

The proposed action would allow incidental take of listed animals over a 50-year period. Take would occur on approximately 314,900 acres of habitat within the 581,600-acre planning area. Approximately 102,400 acres of the planning area is already developed. To mitigate the impacts of the proposed take, the applicants propose establishment of a 171,917-acre preserve within the boundaries of a Multiple Habitat Planning Area. Twenty-four habitats are represented in the Multiple Habitat Planning Area, including 6 rare or protected habitats. In addition, 85 species are expected to be adequately protected under the Multiple Habitat Planning Area.

The Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement considers the environmental consequences of 5 alternatives, including the applicants' habitat conservation plan (the Multiple Species Conservation Program Plan) and the no action alternative. Under the no action or no project alternative, the regional Multiple Species Conservation Program Plan would not be implemented. Jurisdictions would either avoid take of listed species within the planning area or apply for individual permits under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, on a project-by-project basis. Existing land use and environmental regulations would apply to all projects proposed within the planning area. Existing regulatory practices require mitigation for impacts to sensitive species and habitats resulting in lands being set aside for open-space preservation. Analyses indicate that the amount of land potentially conserved within the Multiple Species Conservation Program planning area under the no action alternative would be similar to that conserved under the proposed action (Multiple Habitat Planning Area). However, under the no action alternative, greater habitat fragmentation would likely occur because the lands set aside for open-space preservation would not be assembled in coordination with a regional preserve design.

Other alternatives consider different preserve configurations. The coastal sage scrub scenario would conserve 84,900 acres. The coastal sage scrub alternative would include 21 habitats, providing adequate protection for 2 habitats, neither of which is rare. Twenty-six species would be covered under the coastal sage scrub alternative. The biologically preferred scenario would conserve 167,000 acres. The biologically preferred alternative would include 24 habitats, adequately protecting 9. Of these 9 habitats, 7 are considered rare. Seventy-three species are expected to be adequately protected under the biologically preferred alternative. The public lands scenario would conserve 147,000 acres. The public lands alternative would include 24 habitats and adequately protect 6, all 6 of which are rare. Thirty-five species are expected to be adequately protected under public lands.

Local jurisdictions would implement their respective portions of the Multiple Species Conservation Program Plan. Preserve establishment would be a cooperative effort among Federal, State, and local governments and private landowners. These groups would manage habitat on certain lands they currently own and on additional lands acquired for the preserve. Additional lands within the preserve would be acquired as compensation for impacts to habitat both inside and outside the preserve. Lands would be acquired from willing sellers.

In addition to off-site mitigation, take within the preserve would be avoided or minimized through local land-use regulation, environmental review, and resource protection guidelines. Land-use regulations would emphasize avoidance by limiting encroachment onto sensitive biological resources. Long-term preserve management plans would be prepared to address habitat management and land-use issues. The Multiple Species Conservation Program Plan provides guidelines for vegetative restoration and reintroduction, fencing, signs, fire management, grazing, predator and exotic species control, insects and disease, lighting, and other factors.

Each jurisdiction would sign an individual Implementing Agreement with the U.S. Fish and Wildlife Service and California Department of Fish and Game to identify the specific responsibilities and assurances of each party in implementing the Multiple Species Conservation Program Plan. Although each applicant has not yet completed an Implementing Agreement, all Implementing Agreements will follow a model. Because the Implementing Agreement is a legal contract to ensure that all actions in the Subarea Plans are implemented, the effects of individual Implementing Agreements should be the same as the effects of the corresponding Subarea Plans. If late submission of individual Implementing Agreements reveals effects significantly different from those analyzed in the Recirculated Draft Joint Environmental Impact Report/ Environmental Impact Statement, the comment period would be reopened.

Should take authorizations be approved, each jurisdiction would then exercise its land-use review and approval powers in accordance with its Implementing Agreement and the Multiple Species Conservation Program. The 5 percent limit on interim loss of coastal sage scrub, imposed as part of the Natural Community Conservation Planning Program and special section 4(d) rule for the gnatcatcher, would be replaced by the conditions of each jurisdiction's permit and Implementing Agreement.

Each jurisdiction would be expected to adopt the final configuration of the Multiple Species Conservation Program preserve within its subarea boundary and adopt the recommendations of the Multiple Species Conservation Program through amendment of its General Plan or other applicable plans. Zoning would be retained or properties rezoned, as needed, and zoning regulations amended to reflect the preserve boundaries and to achieve consistency with the Multiple Species Conservation Program Plan. The Multiple Species Conservation Program guidelines for compatible land uses in and adjacent to the preserve are expected to be incorporated into the General Plan, zoning regulations, and approval process for projects, including adoption of appropriate mitigation guidelines. Procedures and regulations for interim controls will be necessary to address activities that would potentially impact sensitive habitats prior to issuance of permits to individual jurisdictions.

This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received will become part of the public record and may be released.

Dated: August 23, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–22040 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

[AG Order No. 2049–96]

Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation

AGENCY: Department of Justice.

ACTION: Notice.

EFFECTIVE DATE: August 23, 1996.

FOR FURTHER INFORMATION OR TO PROVIDE COMMENT CONTACT: Lisalyn R. Jacobs, Counsel, Office of Policy Development, Department of Justice, 10th Street & Constitution Avenue, N.W., Washington, D.C. 20530, telephone (202) 514–9114.

SUPPLEMENTARY INFORMATION: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, which the President signed on August 22, 1996, vests in the Attorney General the authority to designate the kinds of government-funded community programs, services or assistance that are necessary for protection of life or safety and for which all aliens will continue to be eligible. This Order implements that authority.

Background

Section 401 provides a new rule that an alien who is not a "qualified alien," as defined in § 431 of the Act, is not eligible for any "Federal public benefit"—which, in general, means

(a) any grant, contract, loan, professional license or commercial license provided by a federal agency or through appropriated federal funds; or

(b) any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to individuals, house-holds or families by a federal agency or through appropriated federal funds.

Section 411 also makes certain non-qualified aliens ineligible for state and local public benefits unless the state enacts new legislation after August 22, 1996 that affirmatively provides for such eligibility. In addition, § 403 of the Act makes qualified aliens ineligible for specific means-tested federal benefit programs for a five-year period after their entry into the United States as a qualified alien.

In addition to certain statutory exceptions, the Act authorizes the Attorney General to establish limited exceptions to these provisions for the following kinds of benefits:

Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

This authority appears in several places in the Act, including: § 401(b)(1)(D), with respect to federal public benefits; § 403(c)(2)(G), with respect to the five-year limited eligibility for federal means-tested public benefits; and § 411(b)(4), with respect to state and local public benefits. (This authority also appears in § 423(d)(7) in the context of new requirements with regard to individuals who execute an affidavit of support on behalf of a sponsored alien.)

Attorney General Review

As required by the statute, the Department of Justice has conducted preliminary consultations with other federal agencies regarding the scope and interpretation of these provisions and their proper application. Given the great variety of federal, state and local programs conducted or supported at the community level, including those administered by private non-profit organizations, and the limited time available, the Department's consultation process is still ongoing. At my direction, the Department is seeking additional, more specific recommendations from all appropriate federal agencies, from representatives of state and local governments, and from the public.

Given the immediate effective date of provisions of the Act, I have decided to provide a "provisional specification" of programs, services and assistance that will be exempt from the limitations on alien eligibility discussed above, based upon preliminary consultations with appropriate federal agencies and departments. This "provisional specification" is effective immediately and will continue in effect pending adoption of a revised specification, if necessary, after further consultations. Should ongoing consultations indicate that further refinements in this specification are appropriate under the Act, I will revise it accordingly.

Specification

Therefore, by virtue of the authority vested in me as Attorney General by law, including Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, I hereby specify that:

1. I do not construe the Act to preclude aliens from receiving police, fire, ambulance, transportation (including paratransit), sanitation, and other regular, widely available services and, for that reason, I am not making specifications of such programs, services or assistance. It is not the purpose of this Order, however, to define more specifically the scope of the public benefits that Congress intended to deny certain aliens either altogether or absent my specification and nothing herein should be so construed.

2. The government-funded programs, services or assistance specified in this Order are those that: deliver in-kind (non-cash) services at the community level, including through public or private non-profit agencies or organizations; serve purposes of the type described in paragraph 3, below, for the protection of life and safety; and do not condition the assistance according to the individual recipient's income or resources, as discussed in paragraph 4, below.

3. Included within the specified programs, services or assistance determined to be necessary for the protection of life and safety are:

(a) Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse;

(b) Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children;

(c) Programs, services or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;

(d) Soup kitchens, community food banks, senior nutrition programs such as meals on wheels, and other such community nutritional services for persons requiring special assistance;

(e) Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability or substance abuse assistance necessary to protect life or safety;

(f) Activities designed to protect the life and safety of workers, children and youths, or community residents; and

(g) Any other programs, services, or assistance necessary for the protection of life or safety.

4. The community-based programs, services or assistance specified in

paragraphs 2 and 3 of this Order are limited to those that provide in-kind (non-cash) benefits and are open to individuals needing or desiring to participate without regard to income or resources. Programs, services or assistance delivered at the community level, even if they serve purposes of the type described in paragraph 3 above, are not within this specification if they condition (a) the provision of assistance, (b) the amount of assistance provided, or (c) the cost of the assistance provided on the individual recipient's income or resources.

Dated: August 23, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22233 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 15, 1995, Celgene Corporation, 7 Powder Horn Drive, Warren, NJ 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396)	I
Amphetamine (1100)	II

The firm plans to manufacture small quantities of 2,5-dimethoxyamphetamine using biocatalysis to develop, manufacture and sell high value added compounds to pharmaceutical and agrochemical industries and amphetamine for distribution of the bulk active substances to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 29, 1996.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22218 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 25, 1996, Ciba-Geigy Corporation, Pharmaceuticals Division, Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724).

The firm plans to manufacture finished product for distribution to this customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 29, 1996.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22219 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 22, 1996, and published in the Federal Register on May 30, 1996, (61 FR 27099), Lonza Riverside, 900 River Road, Conchohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22148 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Correction

As set forth in the **Federal Register** (FR Doc. 96–14057) Vol. 61, No. 109 at page 28598, dated June 5, 1996, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer for certain controlled substances. The listing of controlled substances for which Penick Corporation applied should not have included the basic classes of controlled substances listed below:

Drug	Schedule
Cocoa Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II
Ethylmorphine (9190)	II

Therefore, Penick Corporation no longer wishes to be registered for the above listed controlled substances and they are hereby deleted from the list of controlled substances for which Penick Corporation made application to manufacture in bulk.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22149 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated June 27, 1996, and published in the **Federal Register** on July 5, 1996, (61 FR 35265), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Triangle Institute to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22150 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 21, 1996, and published in the **Federal Register** on May 30, 1996, (61 FR 27099), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostic Systems, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22152 Filed 8–29–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume III

Alabama
AL960055 (August 30, 1996)

Volume V

Texas
TX960117 (August 30, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA960001 (MARCH 15, 1996)
MA960002 (MARCH 15, 1996)
MA960003 (MARCH 15, 1996)
MA960005 (MARCH 15, 1996)
MA960006 (MARCH 15, 1996)
NA960007 (MARCH 15, 1996)
MA960008 (MARCH 15, 1996)
MA960009 (MARCH 15, 1996)
MA960010 (MARCH 15, 1996)
MA960017 (MARCH 15, 1996)
MA960018 (MARCH 15, 1996)
MA960019 (MARCH 15, 1996)
MA960020 (MARCH 15, 1996)
MA960021 (MARCH 15, 1996)
New York
NY960002 (MARCH 15, 1996)
NY960003 (MARCH 15, 1996)
NY960004 (MARCH 15, 1996)
NY960005 (MARCH 15, 1996)
NY960006 (MARCH 15, 1996)
NY960007 (MARCH 15, 1996)
NY960008 (MARCH 15, 1996)
NY960009 (MARCH 15, 1996)
NY960010 (MARCH 15, 1996)
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NY960017 (MARCH 15, 1996)
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NY960019 (MARCH 15, 1996)
NY960020 (MARCH 15, 1996)
NY960021 (MARCH 15, 1996)
NY960022 (MARCH 15, 1996)
NY960025 (MARCH 15, 1996)
NY960026 (MARCH 15, 1996)
NY960027 (MARCH 15, 1996)
NY960028 (MARCH 15, 1996)
NY960031 (MARCH 15, 1996)
NY960032 (MARCH 15, 1996)
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NY960043 (MARCH 15, 1996)
NY960044 (MARCH 15, 1996)
NY960045 (MARCH 15, 1996)
NY960046 (MARCH 15, 1996)
NY960047 (MARCH 15, 1996)
NY960048 (MARCH 15, 1996)
NY960049 (MARCH 15, 1996)
NY960050 (MARCH 15, 1996)
NY960051 (MARCH 15, 1996)
NY960060 (MARCH 15, 1996)
NY960072 (MARCH 15, 1996)
NY960073 (MARCH 15, 1996)
NY960074 (MARCH 15, 1996)
NY960075 (MARCH 15, 1996)
NY960076 (MARCH 15, 1996)
NY960077 (MARCH 15, 1996)
Vermont
VT960025 (MARCH 15, 1996)

Volume II

Pennsylvania
PA960020 (MARCH 15, 1996)
PA960022 (MARCH 15, 1996)
PA960051 (MARCH 15, 1996)

Volume III

Alabama
AL960051 (MARCH 15, 1996)

Volume IV

None

Volume V

Iowa
IA960005 (MARCH 15, 1996)
Texas
TX960049 (MARCH 15, 1996)
TX960073 (MARCH 15, 1996)
TX960101 (MARCH 15, 1996)

Volume VI

Arizona
AZ960003 (MARCH 15, 1996)
California
CA960004 (MARCH 15, 1996)
Colorado
CO960001 (MARCH 15, 1996)
CO960002 (MARCH 15, 1996)
CO960003 (MARCH 15, 1996)
CO960004 (MARCH 15, 1996)
CO960005 (MARCH 15, 1996)
CO960006 (MARCH 15, 1996)
CO960008 (MARCH 15, 1996)
CO960010 (MARCH 15, 1996)
CO960011 (MARCH 15, 1996)
CO960021 (MARCH 15, 1996)
CO960022 (MARCH 15, 1996)
Hawaii
HI960001 (MARCH 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 23rd day of August 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–21920 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments

concerning the proposed extension of the information collection request for the 1,2-Dibromo-3-Chloropropane 29 CFR 1910.1044. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 29, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 96–10, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202 219–8076.

SUPPLEMENTARY INFORMATION:

I. Background

The 1,2-Dibromo-3-Chloropropane Standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to 1,2-dibromo-3-chloropropane. The standard requires employers to monitor employee exposure to 1,2-dibromo-3-chloropropane (DBCP), to monitor employee health and to provide employees with information about their exposures and the health effects of injuries. In addition employers are required to notify OSHA Area Directors of regulated areas and of emergencies.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the 1,2-Dibromo-3-Chloropropane Standard. Extension is necessary to provide continued protection to employees from the health hazards associated with occupational exposure to DBCP.

Type of Review: Extension.
Agency: Occupational Safety and Health Administration.
Title: 1,2-Dibromo-3-Chloropropane.
OMB Number: 1218–0101.
Agency Number: Docket Number ICR 96–10.
Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.
Total Respondents: Since the Environmental Protection Agency suspended all registration of end use of DBCP, there are no respondents.
Frequency: On Occasion.
Total Responses: 0.
Average Time Per Response: 0.
Estimated Total Burden Hours: 1.
Estimated Capital, Operation/Maintenance Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 22, 1996.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 96–22224 Filed 8–29–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits application under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) has received a request for a waste management permit to be issued under the Antarctic Conservation Act of 1978 to Forum International for a sky diving expedition of up to 40 people to the South Pole, Antarctica.

FOR FURTHER INFORMATION CONTACT: Ms. Nadene Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 10, 1996, the National Science Foundation received a waste permit application from: Forum International Inc., Friendship Expedition '97, Application for Waste Disposal Permit, Prepared for: NSF Office of Polar Programs, Date: June 28, 1996.

A. Background of Forum International, Inc.

Forum International, Inc. (FII) was founded in 1965 as a non-profit educational organization. Forum is dedicated to providing a world-wide forum for education, research and action on a transdisciplinary supra-national and ecosystemic basis with special emphasis on environmental integrity, social responsibility, human health and fitness in their widest sense and the ecosystemic interrelation among these various factors.

B. Profile of Expedition Leaders and Demonstration of Ability

FII's Technical Director and Expedition Leader for the Friendship Expedition is Robert D. "Bob" Christ of West Chester, PA USA. Bob is an ATP rated pilot with over 4,000 hours of logged flight time. He is also a United States Parachute Association-rated Accelerated Freefall Instructor/Examiner with 1,400 logged skydives as well as a FAA-certified Senior Parachute Rigger. Bob is a veteran of two North Pole Skydiving Expeditions.

C. Equipment to be Used

The Friendship Expedition originates in Punta Arenas, Chile and travels aboard an IL–78 (or functionally equivalent where equipment is specified) to the South Pole where our expedition members will exit at an altitude of 18,000 ft. MSL. Awaiting our arrival at the South Pole will be an AN–74 STOL (Short Take-Off and Land) ski-equipped jet transport. Upon dropping the personnel at the South Pole, the IL–78 will proceed to the blue-ice runway at Patriot Hills and await the arrival of the expeditioners from the Pole. Once the expeditioners arrive at Patriot Hills aboard the AN–74, they will board the IL–78 for the return trip to Punta Arenas. Motorized equipment will be limited to the IL–78 and AN–74. Two 30man Arctic tents will be used as housing for the ground crew of the AN–74 as well as the expeditioners at the South Pole. Propane heating for cooking and temperature control will be used within the tents.

D. Trip Profile and Objectives

The trip is broken into two segments associated with the operation of the individual aircraft. The AN–74 will travel from Punta Arenas to King George Island and refuel for the trip to the South Pole. It will then land at Patriot Hills and refuel from internal tank storage then proceed to the South Pole to set up base camp to await the arrival of the expeditioners. Once the expeditioners are prepared for evacuation, the crew of the AN–74 will break camp and fly all to Patriot Hills for equipment change. The AN–74 will then refuel from fuel aboard the IL–78 and proceed to King George Island then on to Punta Arenas for the termination of the expedition.

The IL–78 will leave Punta Arenas with 40 expeditioners in route to the South Pole. After checking the winds at the Pole and making a flight at 500 feet for altimeter calibration, the aircraft will climb to the exit altitude of 18,000 feet for exit. After dropping the expeditioners, the IL–78 will proceed to Patriot Hills to set up camp and await the arrival of the expeditioners. Upon arrival of the expeditioners, the crew of the IL–78 will break camp and proceed back to Punta Arenas with the expeditioners aboard. This profile will be accomplished within three days.

VHF radio communications will be maintained in accordance with procedures established by the Standing Committee on Antarctic Logistics and Operations of the Council of Managers of National Antarctic Programs. Proper notification will be given of visits to the South Pole Station so as to properly coordinate flight operations.

E. Fuel Use and Emissions

Fuel for this expedition will be limited to the local equivalent of AIWAIN–8 Aviation Jet Fuel and Propane LPG. The jet fuel will be aboard and consumed in the IL–78 as well as the AN–74. Jet fuel will be stored internally within the IL–78's cargo hold (the IL–78 is a tanker version of the popular IL–76—the backbone of the Russian air cargo industry). The AN–74 will store fuel internally as well as in the metric version of 55 gallon drums within its cargo hold. Emissions will be limited to that consumed by the drive sections of the propulsion turbines of the aircraft. The propane usage will be limited to heating and cooking stoves within the tents at the respective camp locations at the South Pole and Patriot Hills.

F. Other Waste Generation and Disposal

The only other waste products generated during this operation will be food refuge and human wastes. All solid wastes will be carried aboard the aircraft to receive proper disposal back at Punta Arenas. Human fecal matter will receive the same treatment as other solid waste. All liquid refuse will be buried in snow pits in accordance with the provisions of 45 CFR Part 671. However, no wastes will be disposed of in the vicinity of the South Pole Station and surrounding research sites.

G. Compliance With 45 CFR Part 671

All US citizen expedition members will receive copies of 45 CFR Part 671 and will know its provisions in order to be on The Friendship Expedition. the responsible member and point of contact for this expedition is as follows: Robert D. "Bob" Christ, 115B East Biddle Street, West Chester, PA 19380, Phone: (610)431–3237, e-mail: forum@chesco.com

All citizens of other nationalities will comply with that country's regulatory requirements, but in no instance will they be in violation of the environmental provisions of 45 CFR Part 671.

H. Itinerary for the Expedition

On or about, January 4, 1997 AN–74 leaves Punta Arenas for King George Island then on to Patriot Hills where they will rest for the trip to the Pole. On or about, January 5, 1997 AN–74 leaves Patriot Hills for the South Pole and sets up camp outside of NSF compound. On or about, January 6, 1997 IL–78 leaves Punta Arenas for the South Pole, drops expeditioners and proceeds to Patriot Hills.

On or about, January 1, 1997 AN–74 leaves the South Pole with expeditioners and travels to Patriot Hills. The expeditioners then change equipment for their return trip to Punta Arenas. AN/4 refuels and proceeds to King George Island then on to Punta Arenas for the termination of the expedition.

I. Analysis of Environmental Impact

The exposure of pollutants to the Antarctic Environment will be limited to emissions from the turbines of the jet aircraft and emissions from propane stoves within the camp sites. All specially Protected Areas as well as Sites of Special Scientific Interest will be avoided. The Aircraft flight routes will travel mostly over routes established by the Standing Committee on Antarctic Logistics and Operations of the Council of Managers of National Antarctic Programs. All of the stopover points are base locations where current permanent bases are maintained. The Friendship Expedition's marginal Cumulative Impact Effects from previous operations by other operators are minimal. There will be no incineration of any waste products. All equipment and baggage will be inspected for the presence of exotic organisms before leaving Punta Arenas and same will be eliminated before departure for Antarctica. Since the planned stopover points are essentially ice-bound, the risk of impacting terrestrial fauna and flora are minimal. The environmental impact of this operation will be transitory and minimal.

Safety and Contingency Plans

A. Fuel Spill Contingency Plan

Abroad the AN–74, fuel will be stored in the metric equivalent of 55 gallon drums. These drums are made to Russian military specifications to be air-dropped and are extremely rugged. If fuel is spilled, it will be limited to a maximum of the contents of the drums. Fuel absorbent mats and drip pans will be used during refueling operations. The batteries aboard the aircraft for system operations as well as batteries for portable radios are contained in separate compartments from other pollutants. Spill kits will be carried aboard the aircraft in case of accidental spillage from the aircraft machinery or battery leakage.

B. Emergency Evaluation and Medical Considerations

A total of two equipped doctors will be abroad the aircraft for this operation and will arrived with the expedition members. All airborne operations will be conducted so that if injury does occur, immediate evaluation can be accomplished. Food and warming tents will be established at the camps at Patriot Hills and the South Pole. Short wave radio communications will be maintained at all times between base camp in Punta Arenas and the 2 field camp locations at Patriot Hills and the South Pole. All aircraft are equipped with survival equipment and emergency supplies.

C. Monitoring and Audit Arrangements

Proper accounting of the fuel used as well as any ending inventory will be maintained. All items taken from Punta Arenas will be inventoried at the beginning of the expedition and either consumed or brought back for proper disposal. Documents and accounting records are available at any time for

inspection by representatives of the National Science Foundation or USAP.

Supplemental Factors

A. Participant Qualifications and Minimum Experience Requirements

In order to participate on this expedition, the participants will require a minimum of 500 parachute jumps. Also, they are required to undergo Flight Physiological Training under a program approved by the aviation board of their respective country. There will be approximately 5 high-profile members of the expedition who are not experienced skydivers who will be accompanying an experienced tandem skydiving instructor who will be responsible for their safety and conduct. Further training on Antarctic Operations will be conducted before departure from Punta Arenas. The majority of the participants are veterans of one of our North Pole Skydiving Expeditions and are experienced in cold weather operations.

B. Non-Interference With Other Scientific Projects

The Friendship Expedition will exercise caution not to interfere with projects at the South Pole Station as well as any other encountered along the travel route.

C. Conclusion

The Friendship Expedition represents no more than a minor or transitory impact upon the Antarctic Environment. This expedition is being undertaken and conducted by environmentally-responsible individuals with the goal of protecting and maintaining the Ecology of the Antarctic Continent for the generations to come.

Interested persons are asked to comment within 30 days of this notice.

Ms. Nadene Kennedy,

Permit Office.

[FR Doc. 96–22181 Filed 8–29–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of amendment to a permit issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) Office of Polar Programs, has amended the waste management permit issued to Adventure Network International (ANI) under the Antarctic Conservation Act of 1978. The amendment is a modification to an existing permit which is not a material change to the terms and conditions of the permit.

FOR FURTHER INFORMATION CONTACT: Ms. Nadene Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 19, 1996, the National Science Foundation received a request from ANI to issue a new waste management permit for ANI operations within Dronning Maud Land and the Sor Rondone and surrounding mountains in Antarctica. The operations proposed, air transport of clients and members of some national antarctic programs and support of climbing expeditions, are substantively the same and supplement those described in the ANI permit 96WM2 for the period of December 27, 1995 to December 26, 2000. Considering the exemplary performance of ANI in the administration of the terms and condition of past permits, the current permit, and the minor nature of the request, the permit 96WM2 is amended to include the referenced locations of ANI operations for the pendency of the permit.

Erick Chiang,

Acting Deputy Director, Office of Polar Programs.

[FR Doc. 96–22180 Filed 8–29–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 26, 1996. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* R. Natalie P. Goodall, Sarmiento 44, 9410 Ushuaia, Tierra del Fuego, ARGENTINA.

Permit Application No. 97–002.

Activity for Which Permit is Requested: The applicant is a free-lance research biologist conducting research on marine mammals and birds in Tierra del Fuego, Argentina. This season the applicant will lecture onboard cruise ships visiting the Antarctic Peninsula and proposes to salvage skeletons and bones of cetaceans and marine birds (especially penguins) encountered during shore visits. The salvaged bones will be used to compare with those collected from similar species in Tierra del Fuego region. All salvaged materials will be stored in the applicant's research collection in Ushuaia, Argentina. No bones will be collected from large cetaceans, except earbones for identification purposes only.

Location: Antarctic Peninsula and adjacent islands.

Dates: December 1, 1995–April 30, 1997.

2. Applicant: Bill J. Baker, Department of Chemistry, Florida State University, 150 W. University Boulevard, Melbourne, Florida 32901.

Permit Application No. 97–004

Activity for Which Permit is Requested: Introduction of non-indigenous species into Antarctica.

The applicant proposes to take four slants each of four non-pathogenic microorganisms to McMurdo Station, for use exclusively in the Crary Lab, to perform antimicrobial assays on extracts from marine invertebrates. These microorganisms (*Asperguillus niger,*

Bacillus subtillis, Escherichia coli, and *Saccharomyces cerevisae*) will be handled using sterile techniques and will be disposed of by sterilization at the conclusion of the study.

Location: McMurdo Station, Ross Island, Antarctica.

Dates: October 1, 1996–February 28, 1997

3. *Applicant:* Douglas Quin, Wild Sanctuary, 13012 Henno Road, Glen Ellen, California 95442.

Permit Application No. 97–005.

Activity for Which Permit is Requested: Taking. The applicant is a participant in the Artist and Writer's Program and will make Digital Audio Tape (DAT) sound recordings of mammals and birds being studied by various researchers in the field this season. Although the applicant may need to be in close proximity to the wildlife to gain quality recordings, he plans to take care not to harass or otherwise upset the animals.

Location: Ross Island and McMurdo Sound vicinity.

Dates: November 1, 1996–December 21, 1996.

4. *Applicant:* Donald B. Siniff, Dept. of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, 1987 Upper Buford Circle, St. Paul, Minnesota 55108. Permit Application No. 97–006.

Activity for Which Permit is Requested: Taking. Import into the U.S.

The applicant plans to tag and release approximately 350 Weddell adult seals and approximately 550 Weddell pups as part of a continuing investigation of the McMurdo Sound Weddell seal population, which was begun in the early 1960's and has continued to the present. In addition, blood and tissue samples will be taken from up to 200 individuals and imported to the U.S. for DNA extraction and toxins analysis. These samples are primarily to supplement future research into the paternity and genetic characteristics of the McMurdo populations specifically and Antarctic seals in general. Objectives of this research are 1) to continue the long-term tagging studies by tagging all pups born into the McMurdo Sound population and to replace tags on previously tagged individuals so they will not be lost from the tagged population, and 2) to update estimates of population parameters annually and to continue the analyses and test of hypotheses associated with this data base. Mark-recapture surveys, necessary to obtain all the estimates required for current capture-recapture models, will also be conducted.

A preliminary investigation into the feasibility of conducting lavage techniques using anesthesia will be performed to examine the prey utilization of Weddell Seals. Previous research of stomach samples from harvested seals indicated that Antarctic silver fish is the major prey constituent during the austral summer. Since stomach content is no longer a viable option, and otoliths from fecal samples are often too eroded for accurate age estimation, lavage techniques offer a non-lethal techniques of obtaining this data.

Location: McMurdo Sound vicinity, Antarctica.

Dates: October 1, 1996–September 30, 1997.

5. *Applicant:* Donald B. Siniff, Dept. of Ecology, Evolution and Behavior, 100 Ecology Building, University of Minnesota, 1987 Upper Buford Circle, St. Paul, Minnesota 55108. Permit Application No. 97–007.

Activity for Which Permit is Requested: Take. Import into the U.S. Enter Site of Special Scientific Interest.

The applicant proposes to enter the White Island Site of Special Scientific Interest (SSSI#18) to tag up to 15 adult Weddell seals, and tag and draw blood samples from approximately 5 Weddell pups, as part of a continuing population study. The White Island seal population has been a focus of interest dating to the early 1960's. This group of seals represents an isolated population that is very small and the evidence suggests it has very limited exchange of individuals with the McMurdo Sound population. Since intensive censusing was begun in the late 1980's, no new (tagged) adults have appeared in the population. Thus, the genetics of this population is of interest because it will increase understanding of such concepts as inbreeding depression and genetic drift.

Location: SSSI#18—North-west White Island, McMurdo Sound, Antarctica.

Dates: October 1, 1996–September 30, 1997.

6. *Applicant:* Phillip R. Kyle, Dept. of Earth & Environmental Science, New Mexico Tech, Socorro, New Mexico 87801. Permit Application No. 97–008.

Activity for Which Permit is Requested: Enter Site of Special Scientific Interest No. 11, Tramway Ridge, Mount Erebus.

The applicant proposes to access Tramway Ridge (SSSI#11) to measure the temperature of the soil as a means of monitoring the volcanic activity of Mount Erebus. In addition, as the only area of soil on Mount Erebus, he intends to measure the quantity of CO_2 in the soil and to measure its flux into the atmosphere. This will provide information on the degassing behavior of the magmatic system underlying Mount Erebus.

Location: Tramway Ridge, Mount Erebus, Ross Island (SSSI #11).

Dates: December 1, 1996–December 30.

7. *Applicant:* Wayne Z. Trivelpiece, Department of Biology, Montana State University, Bozeman, Montana 59717. Permit Application No. 97–009.

Activity for Which Permit is Requested: Taking, and Import into the U.S. The permit applicant proposes to capture up to 50 Adelie adults, from the pack-ice in the vicinity of Marguerite Bay, in order to collect diet samples using the water off-load technique. Birds will be released unharmed after handling.

Location: Pack ice in and around Marguerite Bay, Antarctic Peninsula.

Dates: January 1, 1997–March 15, 1997.

8. *Applicant:* David Ainley, H.T. Harvey & Associates, P.O. Box 1180, Alviso, California 95002. Permit Application No. 97–010.

Activity for Which Permit is Requested: Take; Import into the U.S.; Enter Specially Protected Area and Enter Sites of Special Scientific Interest.

The applicant is conducting research to attempt to explain why penguin populations have been decreasing in the Ross Sea, by intensive studies at colonies on Ross Island. This work will be incorporated into the long-term study of populations dynamics mentioned in the Royds management plan. The applicant proposes to enter Cape Crozier (SSSI #4) and Cape Royds (SSSI #1) for purposes of banding up to 2,500 Adelie chicks and 250 adults per year. Approximately, 45 adult Adelies per year will be fitted with radio transmitters to be worn for 2–3 weeks during January and then removed. Another 250 adults per year will be given PIT tags (Passively Interrogated Transponder). The applicant also proposes to capture 35 adult penguins on the beach each year at the three colonies of intensive study and 10 at Beaufort Island (SPA #4) to collect tissues for stable isotope analysis, pump stomachs, band chicks and look for banded emigrants from the Ross Island colonies. While conducting work on Adelie penguins, the team will re-band, as needed, a large number of South Polar Skuas to continue a population study begun in 1961.

The applicant plans to import into the U.S. penguin tissue samples and scavenge up to 165 chick carcasses to stable isotope analysis in the U.S., which will require several months to complete analysis.

Location: Cape Crozier (SSSI #4), Cape Royds (SSSI #1) and Cape Bird, Ross Island, and Beaufort Island (SPA #5), Ross Sea.

Dates: November 1, 1996–January 31, 2002.

8. *Applicant:* Gerald L. Kooyman, Center for Marine Biotechnology, and Biomedicine, Scripps Institution of Oceanography, University of California, San Diego, La Jolla, California 92093–0204. Permit Application No. 97–011.

Activity for Which Permit is Requested; Taking; Import into the U.S.; Enter Site Special Scientific Interest, and Enter Specially Protected Area. Ground counts will be made at two major Emperor colonies (Cape Washington and Coulman Island) and at a third smaller and most southern Emperor colony (Cape Crozier) bordering the Ross Sea. This is a continuation of the longest series of censuses of Emperor penguins in Antarctica. Cape Crozier remains small, less than 600 chicks, and its existence still seems tenuous after its decline to 15 chicks in the 1970's.

The applicant also proposes to capture up to 75 adult Emperor penguins, near the McMurdo ice edge and at Cape Washington. Some of these (about 10) will be maintained in an enclosure on the sea ice for up to 1 month while behavioral and physiological experiments are conducted. The birds will be allowed to dive at will through an ice hole. Approximately 30 adult Emperors will be captured/released/recaptured. Recorders will be attached to those birds for a few dives while they feed below the ice edge. Similar captures and releases with recorders will be accomplished near Cape Washington. Recaptures will occur after the two-week feeding commute. These experiments are designed to explore and comprehend the physiological responses that support the great diving capacities of those birds.

Seventy-five chicks will be collected over the season at Cape Washington. Fifty of these chicks will be weighed at fledging. Up to 5 chicks leaving the colony will be captured and released with satellite transmitters. Blood samples will be collected from an additional 5 chicks each week over the last month of development to measure selected hormone levels. After about one month, they will be released at the ice edge. If possible, the applicant proposes to collect 10 frozen eggs and salvage 2 adult Emperor carcasses for importation into the U.S.

Location: Beaufort Island (SPA #5), Cape Crozier (SSSI #4), Coulman Island, and Cape Washington, McMurdo Sound vicinity.

Dates: October 1, 1996–March 31, 1997.

9. *Applicant;* Wayne Z. Trivelpiece, Department of Biology, Montana State University, Bozeman, Montana 59717. Permit Application No. 97–012.

Activity for Which Permit is Requested: Taking; Import into the U.S.; and, Enter Site of Special Scientific Interest. The applicant is conducting a continuing study of behavioral ecology and population biology of the Adelie, gentoo, and chinstrap penguins and the interactions among these species and their principal avian predators: skuas, gulls, sheathbils, and giant fulmars. Up to 1000 Adelie and gentoo chicks, plus 300 adults of each of all three penguin species, will be banded. Up to 50 adults of each penguin species will be fitted with radio transmitters and time-depth recorders to continue studying penguin foraging habits. The study also involves stomach pumping of 40 adult penguins per species. In addition the principal avian predators of the penguins, mentioned above, will also be studied, requiring up to 200 adults and 30 chicks of each species to be banded, if possible. One (1) milliliter sample of blood will be collected from each of a maximum of 20 breeding adults of each penguin species for DNA analysis as part of a collaborative genetic study. All captured birds will be released unharmed. Carcasses and skeletons of penguins and other birds salvaged at the study site will be imported into the U.S. for educational and scientific study. The applicant also proposes to collect grass (*Deschampsia* sp.) specimens for a colleague at Montana State University who is examining bacteria on grasses throughout the world.

Location: SSSI #8—Western Shore of Admiralty Bay, King George Island, South Shetland Islands, Antarctica.

Dates: October 1, 1995–April 1, 1996.

10. *Applicant:* Diana W. Freckman, Natural Resource Ecology Laboratory, Colorado State University, Fort Collins, Colorado 80523–1499. Permit Application No. 97–013.

Activity for Which Permit is Requested: Import into the U.S. and Enter Sites of Special Scientific Interest. The applicant proposes to enter five (5) Sites of Special Scientific Interest to collect soil samples to examine the dispersal and survival of nematodes in the soils, as well as examining how functional communities develop, and how these communities may be affected by disturbance. Site access will be by helicopter to the landing pad designated for each site and the duration of the visit to the site will be limited to several hours with a group of no more than 4–5 people. Soil sampling protocols have been selected to minimize site disturbance. Manner of taking: Soil and/or rock samples will be placed in sterile plastic bags and returned to McMurdo where the nematodes will be immediately extracted. Remaining soil samples will be shipped to the U.S. for further biological and chemical analyses, and will be handled according to USDA guidelines.

The applicant also plans to introduce to Antarctica the nematode species *Aphelenchus avenae* as a standard in laboratory experiments to compare the anhydriotic strategy of *S. lindsayae* to provide insights into its response to varying environmental conditions. Extreme caution will be used to avoid contamination of the laboratory or outside environments with *A. avenae.* Cultures will be maintained in the lab in an incubator designated exclusively for this species. All work conducted with this nematode will be done under sterile conditions using a laminar flow hood. All cultures and materials used for this work will be autoclaved before disposal.

Location: Cape Royds, Ross Island (SSSI #1); Cape Crozier, Ross Island (SSSI #4); Caughley Beach, Cape Bird, Ross Island (SSSI #10); Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land (SSSI #12); and, Linnaeus Terrace, Asgaard Range, Victoria Land (SSSI #19).

11. *Applicant:* Arthur L. DeVries, Department of Physiology, 524 Burrill Hall, University of Illinois, 407 South Goodwin Avenue, Urbana, Illinois 61801–3704. Permit Application No. 97–014.

Activity for Which Permit is Requested: Introduction of Non-indigenous Species into Antarctica. Fifteen (15) specimens of New Zealand black cod, *Notothenia angustata,* will be cold acclimated in a closed seawater system in the aquarium at McMurdo Station. The cold acclimated specimens will be used in experiments to determine the role of the antifreeze glycopeptides in freezing avoidance, and for isolating DNA. The DNA will be screened for the presence of an "unexpressed" antifreeze glycopeptide gene. Sensitive blood serum freezing habit tests suggest cold acclimated black cod synthesize small amounts of antifreeze glycopeptide after acclimation to + 4__C for 6 weeks.

Some specimens will be injected with purified antifreeze glycopeptides to determine if the presence of the antifreeze glycopeptides in the circulation is sufficient to provide avoidance of freezing or if it needs to be

integrated into the membranes of protected cells by synthetic ice crystals and the fate of the ice is determined.

The integument of the cod will also be used in experiments to determine whether it is a barrier to ice propagation due to its physical properties or whether antifreeze glycopeptides provide a physiocochemical barrier in conjunction with the integument. Brain lipids will also be analyzed to determine the degree of unsaturation of the phospholipid fatty acids.

Upon completion of experiments, the black code will be sacrificed and preserved in 10% formalin.

Location: McMurdo Station, Ross Island, Antarctica.

Dates: October 1, 1996–March 31, 1997.

12. *Applicant:* Ron Naveen, Oceanites, Inc., 2378 Route 97, Cooksville, Maryland. Permit Application No. 97–015.

Activity for Which Permit is Requested: Taking; Enter Sites of Special Scientific Interest. The Antarctic Site Inventory project intends to collect data and information regarding the biological and physical features of Antarcitc Peninsula visitor locations. Survey of the various sites may involve slight disturbance to the animals at the site. Furthermore, the project may be requested to survey existing Sites of Special Scientific Interest (SSSI's) during the three-year period of this project. Access to the SSSI's is solely for survey purposes.

Location: Antarctic Peninsula visitor locations and Sites of Special Scientific Interest.

Dates: September 1, 1996–August 31, 1999.

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 96–22182 Filed 8–29–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–31621, 030–31622; License Nos. 20–27938–03G, 20–27938–02; EA 96–234]

HNU Systems, Inc., Newton Highlands, Massachusetts; Confirmatory Order Modifying License (Effective Immediately)

I

HNU Systems, Inc. (Licensee or HNU), is the holder of Byproduct Materials License Nos. 20–27938–03G and 20–27938–02 (Licenses) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The Licenses authorize the distribution, possession, and use of sealed sources in devices generally licensed, not to exceed 100 millicuries per source and 1,000 millicuries per foil, in accordance with the conditions specified therein. The Licenses were due to expire on March 31, 1996. However, on February 29, 1996, the Licensee filed a renewal application and, in accordance with 10 CFR 30.36(a), the Licenses are under a timely renewal.

II

As a result of a June 1995 inspection, a Confirmatory Action Letter (CAL) was issued on June 15, 1995 and a Notice of Violation (NOV) was issued on July 27, 1995 to HNU for numerous violations characterized in the aggregate as a Severity Level III problem. The violations included the failure to: (1) notify the NRC that the Radiation Safety Officer (RSO) listed on the Licenses had been laid off and had not been replaced; (2) conduct a physical inventory of radioactive materials; (3) conduct leak tests of sealed sources at the required six month intervals; (4) calibrate survey instruments at the required six month intervals; (5) perform monthly surveys; (6) monitor exposures of individuals to radiation and radioactive material; (7) review the radiation protection program content and implementation at least annually; (8) report to the NRC any transfers of generally licensed devices; (9) maintain radiation safety record notebooks; and (10) provide training to Licensee staff.

Subsequently, the NRC conducted a follow-up inspection from December 8, 1995, to April 23, 1996, to review the Licensee's implementation of the corrective actions taken in response to the June 1995 CAL and July 1995 NOV. Based on this inspection, the NRC identified several repetitive violations and determined that the Licensee had not implemented adequately the corrective actions in response to the Notice and CAL.

Therefore, the Commission required further information from HNU in order to determine whether the Commission can have reasonable assurance that in the future, should HNU be permitted by the NRC to continue to perform licensed activities under the Licenses, it will conduct the activities in accordance with NRC requirements, and whether further enforcement action is warranted against HNU. Accordingly, the NRC issued a Demand for Information (DFI) to the Licensee on June 7, 1996, which required the Licensee to submit, among other things to the NRC, within 30 days of the date of the DFI, in writing and under oath or affirmation:

1. a statement as to whether the Licensee will apply sufficient resources to manage an effective radiation safety program; and

2. a statement as to why the Licenses should not be revoked in light of the financial concerns and the repetitive violations.

In a letter, dated June 18, 1996, the Licensee responded to the DFI and indicated that it would: (1) commit the necessary resources to permit the RSO (who works part-time) to work up to 20 hours per week until full compliance with the radiation safety program requirement was achieved, which it stated could be done in 4 months, after which it believes that it can maintain compliance by the RSO working 10–12 hours per week; (2) designate an assistant RSO from a qualified member of the staff; (3) complete, by August 1, 1996, a Radiation Safety Refresher Course, including testing, for employees dealing with instruments containing sealed sources; (4) conduct an annual audit of the radiation safety program, and update quarterly reports of source transfers by October 1, 1996; (5) perform wipes of all sources taken from storage; (6) calibrate a second survey meter by July 15, 1996, to ensure one calibrated survey meter is available at all times; (7) continue its search for a missing 50 mCi Fe–55 source; (8) provide locked files for radiation safety records; (9) have an outside auditor conduct an audit of the organization after the program is brought into full compliance; and (10) meet the specified payment schedule that it negotiated with the NRC Fees Branch for the payment of fees.

In a followup call with the Licensee on July 18, 1996, the Licensee agreed that: (1) the RSO would work at least 20 hours per week, rather than 10–12 hours per week, until this condition was relaxed by the NRC; (2) it would have an outside auditor complete an audit of the organization by December 1, 1996; and (3) it would meet the other commitments made in its June 18, 1996 letter.

On August 7, 1996, the Licensee consented to issuing this Order with the commitments, as described in Section III below. The Licensee further agreed in its August 7, 1996 letter that this Order is to be effective upon issuance and that it has waived its right for a hearing. Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

Therefore, I find that the Licensee's commitments as set forth in its June 18, 1996, and August 7, 1996 letters are acceptable and necessary, and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and on the Licensee's consent, the Order is immediately effective upon issuance.

III

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commissions's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered, effective immediately upon issuance, that License Nos. 20–27938–03g and 20–27938–02, are modified as follows:

1. The Licensee's Radiation Safety Officer will work a minimum of 20 hours per week until this commitment is relaxed by the NRC;

2. An assistant RSO will be designated within 15 days of the date of the Order, and the Licensee will provide written notification to NRC Region I of the individual designated as assistant RSO and the individual's qualifications within 30 days of the date of the Order;

3. A radiation safety refresher course, including testing, will be given by October 1, 1996 to all employees working with instruments containing sealed sources.

4. The required annual audit of the radiation safety program, and all previously submitted quarterly reports of source transfers, will be completed by October 1, 1996, and submitted to NRC Region I by November 1, 1996;

5. Wipes will be performed of all sources taken from storage; in determining compliance with License Condition 12, appropriate actions will be taken if contamination greater than 0.005 Uci is identified, and appropriate wipe tests and source disposition records will be maintained, effective immediately;

6. At least one calibrated survey meter will be available at all times;

7. Radiation Safety Records will be placed in locked files within 15 days of the date of the issuance of this Confirmatory Order;

8. An experienced outside independent auditor will conduct and complete an audit of the Licensee's adherence to the requirements of its NRC Licenses by December 1, 1996. The Licensee shall submit the name and qualifications of the outside auditor to the NRC for approval by October 1, 1996, and the outside auditor shall provide the audit results simultaneously to both HNU and the NRC; and

9. The Licensee will notify Mr. Francis Costello, Chief, Nuclear Materials Safety Branch 3, NRC Region I, if it does not adhere to the specified payment schedule that it negotiated with the NRC Fees Branch for the payment of fees, as noted in the Conditional Order Extending Time, dated June 24, 1996. If the payment schedule is not met, notification will be made within 10 business days from the missed payment due date.

The Regional Administrator, Region I, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

IV

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee, adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

This Order is immediately effective upon issuance. In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the effectiveness of this Order.*

Dated at Rockville, Maryland this 22d day of August, 1996.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Acting Director, Office of Enforcement.

[FR Doc. 96–22183 Filed 8–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–285]

Omaha Public Power District; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40 issued to Omaha Public Power District (the licensee) for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

The proposed amendment would revise Paragraph 2.B(2) of Facility Operating License No. DPR–40 to allow source materials in the form of depleted or natural uranium as reactor fuel and to revise Technical Specification 4.3.2 to include depleted uranium in describing the reactor core.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will allow the use of source material as reactor fuel. The use of source material as reactor fuel would not affect the physical plant or its operation in any way that could increase the probability of an accident. The use of depleted uranium in fuel rods near the exterior of the core reduces neutron leakage to the reactor pressure vessel, thereby decreasing the associated embrittlement effects. Its use will not introduce any new kind, or additional amount of fission product material. The use of source material as reactor fuel will not affect the Safety Limits, Limiting Conditions for Operations, or other safety analyses that support these requirements. Reactor core operating limits will continue to be determined and controlled using NRC approved methodologies as required by Technical Specification 5.9.5.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would not introduce any new modes of operation, setpoint changes, or changes in the operation of plant equipment. The use of source material as reactor fuel will not introduce any new kind, or additional amount of fission product material. Reactor core operating limits will continue to be determined and controlled using NRC approved methodologies as required by Technical Specification 5.9.5.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of source material as reactor fuel will not affect the Safety Limits, Limiting Conditions for Operations, or other safety analyses that support these requirements. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 23, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 26th day of August 1996.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–22342 Filed 8–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–277 and 50–278]

Peco Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania.

The proposed amendment would revise the safety limit minimum critical power ratios (SLMCPRs) to support use of GE–13 fuel at PBAPS, Units 2 and 3.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed TS [technical specification] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle-specific SLMCPRs for incorporation into the TS, and its use to determine cycle-specific thermal limits, have been performed using USNRC [U.S. Nuclear Regulatory Commission]-approved methods as discussed in "General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–11, and U.S. Supplement, NEDE–24011–P–A–11–US, November 17, 1995 and interim (reconfirmation) implementing procedures. This change in SLMCPRs cannot increase the probability or severity of an accident.

The basis of the SLMCPRs calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid boiling transition if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and fuel damage in the event of a postulated accident. The fuel licensing acceptance criteria for the SLMCPR calculation apply to PBAPS, Unit 2, Cycle 12 in the same manner as they have applied previously. The probability of fuel damage is not increased. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

(2) The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The SLMCPR is a TS numerical value, designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated accident. It cannot create the possibility of any new type of accident. The new SLMCPRs are calculated using USNRC-approved methods ("General Electric Standard Application for Reactor Fuel," NEDE–24011–P–A–11, and U.S. Supplement, NEDE–24011–P-A–11–US, November 17, 1995) and interim (reconfirmation) implementing procedures.

(3) The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new SLMCPRs are calculated using USNRC-approved methods ("General Electric Standard Application for Reactor Fuel," NEDE–24011–P-A–11, and U.S. Supplement, NEDE–24011–P-A–11–US, November 17, 1996) and interim (reconfirmation) implementing procedures which are in accordance with the current fuel licensing criteria.

The SLMCPRs remain sufficient to ensure that greater than 99.9% of all fuel rods in the core will avoid boiling transition if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant

name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 25, 1996, as supplemented by letter dated August 23, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 27th day of August 1996.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–22343 Filed 8–29–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26558]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 23, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 16, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Cogenex Corporation, et al. (70–8879)

EUA Cogenex Corporation ("Cogenex") and EUA Cogenex-Canada, Inc. ("Cogenex-Canada") (collectively, "Applicants"), both of P.O. Box 2333, Boston, Massachusetts 02107, and both wholly-owned subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed an application-declaration under sections 9(a), 10, 12(b) and 13 of the Act and rules 45, 54, 90 and 91 thereunder.

Applicants propose: (i) for Cogenex-Canada to form and fund a wholly owned subsidiary ("Newco") which will enter into a general partnership with Monenco Agra, Inc. ("MA"), a nonassociate Canadian business corporation, for the purpose of providing energy conservation services to industrial sector customers in Canada ("Territory"); (ii) for Newco to form and fund a general partnership with MA ("JV ESCO"); (iii) for the Applicants to guarantee third-party obligations of Newco and the JV ESCO in an aggregate amount, together with other investments in Newco, not exceeding $15 million; and (iv) for Cogenex-Canada and its associate companies (other than an associate company which is a public utility company) to furnish goods and services to JV ESCO.

Cogenex-Canada proposes to form JV ESCO as a Canadian general partnership. Cogenex-Canada and MA will each own a 50% general partnership interest in JV ESCO and share equally in the capital contributions, allocation of profits and losses and distributions of JV ESCO. JV ESCO will be governed by a management committee comprised of one representative of each partner. Cogenex-Canada and MA will make capital contributions in an amount initially expected to be approximately $1,000 each, which will be used by JV ESCO for working capital purposes.[1] Cogenex-Canada and MA will subcontract personnel to JV ESCO at cost as needed until such time, if any, as JV ESCO employs its own personnel.

Cogenex-Canada and MA entered into a letter agreement ("Letter Agreement") dated January 11, 1996 in which they agreed to perform initial marketing, sales, auditing, bidding, job procurement and performance activities in preparation of forming JV ESCO and to develop a long-term business plan for JV ESCO. The term of the Letter Agreement is one year ("Interim Period"), unless terminated sooner by: (i) the formation of JV ESCO; (ii) the decision of one or both of Cogenex-Canada and MA; (iii) the bankruptcy or insolvency of either party; or (iv) failure to obtain the necessary corporate and regulatory approvals. Cogenex-Canada and MA will assign all contracts and business opportunities obtained during the Interim Period within the Territory at cost to JV ESCO. The Applicants and MA will also be reimbursed by JV ESCO for their expenses incurred during the Interim Period but not previously reimbursed, except for products and services provided by affiliates of the Applicants and MA, which will be reimbursed at standard market rates.

Cogenex-Canada will purchase stock from, and make capital contributions, loans and open account advances to, Newco ("Investments"). Such issuance and sale of securities, capital contributions, loans and open account advances will be exempt from the requirement of Commission authorization pursuant to rules 45 and 52. In addition, Applicants state that JV ESCO may borrow from third party lenders through loans exempt from the requirement of Commission authorization by rule 52(b). Cogenex-Canada and Cogenex propose to guarantee obligations of Newco and JV ESCO in an aggregate amount that, together with the Investments, will not exceed $15 million.

The Applicants request that any goods or services furnished by Cogenex-Canada or any of its associate companies (other than an associate company that is a public utility company) to the JV ESCO be furnished at prices that will not exceed (i) cost to

[1] Applicants state that capital contributions to JV ESCO will be exempt from the requirement of Commission authorization pursuant to rule 45(b)(4).

the extent that such services are pass-through services from EUA Service Corporation, and (ii) market prices to the extent such goods and services originate from other associate companies, pursuant to an exception from the requirements of section 13(b) and rules 90 and 91 thereunder. The types of goods and services which Cogenex-Canada and its associate companies would provide to the JV ESCO would include marketing, accounting and engineering services and products used in energy conservation projects. JV ESCO will not be providing goods or services to Cogenex-Canada or its associate companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22229 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22170; File No. 812–10118]

Morgan Stanley Universal Funds, Inc. et al.

August 23, 1996.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Morgan Stanley Universal Funds, Inc. ("MS Fund"), Morgan Stanley Asset Management Inc. ("MSAM") and Miller Anderson & Sherrerd, LLP ("MAS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the MS Fund and shares of any other investment company that is designed to fund insurance products and for which MSAM and MAS, or any of their affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, the "Funds") to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies"); and (b) qualified pension and retirement plans outside the separate account context ("Qualified Plans").

FILING DATE: The application was filed on May 1, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 17, 1996, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Morgan, Lewis & Bockius LLP, Attention: Richard W. Grant, Esq. and James B. Kimmel, Esq., 2000 One Logan Square, Philadelphia, Pennsylvania 19103–1993.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. The MS Fund, an open-end, management investment company organized as a Maryland corporation, currently consists of 17 separate investment portfolios. The MS Fund may create additional portfolios in the future.

2. MSAM and MAS serve as the investment advisers to the MS Fund. They are wholly owned subsidiaries of Morgan Stanley Group, Inc. and are registered as investment advisers under the Investment Advisers Act of 1940.

3. The MS Fund intends to offer its shares to variable annuity separate accounts and variable life insurance separate accounts established by insurance companies that may or may not be affiliated with one another and to Qualified Plans.

4. The Participating Insurance Companies will establish their own separate accounts and design their own variable annuity and variable life insurance contracts ("Contracts"). The Funds will offer shares to the separate accounts and fulfill any conditions that the Commission may impose upon granting the order requested in the application.

5. The Funds can increase their respective asset bases by selling shares to Qualified Plans. The Qualified Plans may choose a Fund as the sole investment option, or as one of several investment options, under a Plan. Participants in the Qualified Plans may or may not be given an investment choice, depending upon the Qualified Plan. Shares of a Fund sold to a Qualified Plan will be held by the trustee(s) of the Qualified Plan as mandated by Section 403(a) of the Employee Retirement Income Security Act ("ERISA"). ERISA does not require pass-through voting to be provided to participants in Qualified Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and depositor. The exemptions provided under Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to as "mixed funding." The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as "shared funding." The relief provided under Rule 6e–2(b)(15) is not applicable to a scheduled premium variable life insurance separate account that owns shares of an underlying fund where the underlying fund offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) does not provide exemptive relief for either mixed funding or shared funding.

2. Applicants state that with respect to Rule 6e–2, exemptive relief is also necessary if shares of the Funds are also to be sold to Qualified Plans since the relief under Rule 6e–2 is available only where shares are offered exclusively to

separate accounts of insurance companies.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions provided under Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that with respect to Rule 6e–3(T), exemptive relief is also necessary if shares of the Funds are also to be sold to Qualified Plans since the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts of insurance companies.

5. Applicants state that changes in the tax law have created the opportunity for a Fund to increase its asset base through the sale of its shares to Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the Contracts held in a Fund. Specifically, the Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be offered and sold to Qualified Plans and to variable annuity and variable life separate accounts in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the disqualification to affiliated individuals or companies that participate directly in the management or administration of the underlying investment company.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to Qualified Plans because the Plans are not investment companies are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Also, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

12. Applicants represent that the sale of Fund shares to Qualified Plans does not affect the relief requested in this regard. As noted previously by Applicants, shares of the Funds sold to Qualified Plans would be held by the trustees of such Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is

reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Qualified Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans.

13. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant portfolio or underlying fund.

15. Applicants also state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of a Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a Fund would or should be materially different from what those policies would or should be if that Fund served as a funding medium for only variable annuity or only variable life insurance contracts. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

17. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.187–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury Regulations or the Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of a Fund at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to the trustees of Qualified Plans. Applicants represent that the transfer agent for a Fund will inform each Participating Insurance Company of its share ownership in each separate account, and will inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

20. Applicants contend that the ability of a Fund to sell its shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Qualified Plans and Contracts, the Qualified Plans and the separate accounts have rights only with respect to their shares of a Fund. Such shares may be redeemed only at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. This does not mean that there are inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that an insurance company cannot simply request redemption of shares held in its separate account and have those shares redeemed out of one Fund and the proceeds invested in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. In contrast, trustees of Qualified Plans can make the decision quickly and implement the redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

22. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of

organizing and operating an investment funding medium; the lack of expertise with respect to investment management; and the lack of name recognition by the public of certain insurers as investment professionals. Applicants contend that use of the Fund as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of MSAM and MAS, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants represent that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Qualified Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification.

Applicants' Conditions

Applicants have consented to the following conditions if an order is granted:

1. A majority of the Board of Directors of a Fund ("Board") shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualificaction, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners investing in the separate accounts and in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. If a Qualified Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with that Fund. At the time of its initial purchase of the shares of the Fund, the Qualified Plan will acknowledge this condition in its application to purchase the shares.

4. The Participating Insurance Companies, MSAM and MAS (or any other investment adviser of a Fund), and any Qualified Plan that executes a Fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the "Participating Entities"), will report any potential or existing conflicts to the Board. Participating Entities will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with an information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of the Participating Insurance Companies and Qualified Plans investing in the Fund, and these responsibilities will be carried out with a view only to the interests of Contract owners and Qualified Plan participants.

5. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Participating Entities shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from a Fund and reinvesting such assets in a different investment medium including another portfolio of that Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from a Fund or individual portfolio thereof and reinvesting those assets in a different investment medium, including another portfolio of that Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard voting instructions of the owners of the Contracts, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of a Fund, to withdraw its separate account's investment in that Funds, and no charge or penalty will be imposed as a result of such withdrawal.

6. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Entities under the agreements governing their participation in the Funds. The responsibility to take such remedial action shall be carried out with a view only to the interests of Contract owners and participants in Qualified Plans.

7. For purposes of condition 5, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will a Fund, or any of its advisers, be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by condition 5 to establish a new funding medium for any Contract if an offer to do so had been declined by a vote of a majority of Contract owners materially affected by the irreconcilable material conflict.

8. A Board's determination of the existence of an irreconcilable material conflict and its implications will be

made known promptly and in writing to all Participating Entities.

9. Participating Insurance Company will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners.

Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Each Participating Insurance Company will vote shares of a Fund held in the Participating Insurance Company's separate accounts for which no voting instructions from Contract owners are timely received, as well as shares of that Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts participating in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Funds.

10. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of a Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Fund is not within the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

11. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Further, each Fund will disclose in its prospectus that (a) the Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and for certain qualified pension and retirement plans, (b) material irreconcilable conflicts possibly may arise, and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

12. If and to the extent that Rules 6e–2 and 6e–3(T) under the 1040 Act are amended (or if Rule 6e–3 is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participating Entities, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

13. No less frequently than annually, the Participating Entities shall submit to the relevant Board such reports, materials, or data as that Board may reasonably request so the Board may carry out fully the conditions contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by a Board. The obligations of the Participating Entities to provide these reports, materials, and data to a Board shall be a contractual obligation under the agreements governing their participation in the Fund.

14. All reports received by a Board of potential or existing conflicts, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participating Entities of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

Conclusion

For the reasons and upon the facts stated above, Applicants asserts that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22228 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22172; 812–10304]

Quantitative Group of Funds, et al.; Notice of Application

August 26, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Quantitative Group of Funds ("Quantitative"), The One Group ("One Group," together with Quantitative, the "Trusts"), Quantitative Advisors Inc. ("Quantitative Advisors"), Banc One Investment Advisors Corporation ("Banc One," and together with Quantitative Advisors, the "Advisors"), and Boston International Advisors, Inc. ("BIA").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The order would permit the implementation, without shareholder approval, of new sub-advisory contracts for a period of up to 120 days following the date of the change in control of BIA, the sub-adviser to the Trusts. The order also would permit BIA to receive from the Trusts fees earned under the new sub-advisory contracts following approval by the Trusts' shareholders.

FILING DATE: The application was filed on August 15, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a

hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Quantitative and Quantitative Advisors, 55 Old Bedford Road, Lincoln, Massachusetts 01773; One Group, 3435 Stelzer Road, Columbus, Ohio 43219; Banc One, 774 Park Meadow Road, Columbus, Ohio 43271; and BIA, 75 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts are open-end, management investment companies registered under the Act. Quantitative International Equity Fund and Quantitative Foreign Frontier Fund are series of Quantitative and The One Group International Equity Index Fund is a series of One Group (the series are referred to collectively as the "Funds"). Quantitative Advisors serves as investment adviser to the Quantitative Funds and Banc One serves as investment adviser to the One Group Fund. BIA provides sub-advisory services to each Fund pursuant to certain sub-advisory agreements (the "Existing Sub-Advisory Agreements").

2. Independence Investment Associates, Inc. ("IIA"), pursuant to an agreement dated July 31, 1996 (the "Stock Purchase Agreement") among IIA, BIA, and all of the stockholders of BIA (the "Stockholders"), will acquire, subject to the satisfaction or waiver of certain conditions, control of BIA by purchasing 100% of BIA's outstanding shares of capital stock from the Stockholders (the "Stock Purchase"). Following the consummation of the transactions provided for under the Stock Purchase Agreement (the "Closing"), it is anticipated that BIA will change its name to Independence International Associates, Inc.

3. The Closing is subject to the satisfaction or waiver of several conditions, including certain conditions relating to the acquisition of advisory client consents. The Stock Purchase Agreement provides that transfer of ownership of BIA's shares will take place at the Closing. BIA reasonably believes that the Closing may take place by October 1, 1996, although unforeseen circumstances could cause a delay. The Stock Purchase will result in a change of control of BIA. Accordingly, the change of control will result in the assignment of the Existing Sub-Advisory Agreements and the termination of each such agreement according to its terms.

4. Applicants seek an exemption to permit the implementation, without shareholder approval, of new sub-advisory agreements among the Funds, the Advisors, and BIA. The requested exemption would cover an interim period of not more than 120 days (the "Interim Period") beginning on the Closing date and continuing through the date new sub-advisory agreements are approved or disapproved by the Funds' shareholders (but in no event later than March 1, 1997). During the Interim Period, hat portion of the advisory fees paid the Advisors to BIA for sub-advisory services would be paid into escrow.

5. The sub-advisory agreements among BIA, the Advisors, and each Fund to be entered into upon consummation of the Stock Purchase (collectively, the "New Sub-Advisory Agreements") are identical to the Existing Sub-Advisory Agreements, except for their effective dates, escrow provisions, and as described below. For each Fund, except the One Group Fund, the fee levels for sub-advisory services will remain the same as in the Existing Sub-Advisory Agreement. The New Sub-Advisory Agreement between BIA and Banc One (the "New Banc One Agreement"), however, will provide for higher fees than those which are payable to BIA under its Existing Sub-Advisory Agreement with Banc One. These higher fees were separately negotiated from, and are in no way connected with, the Stock Purchase. The New Banc One Agreement will be submitted for the approval of the One Group Fund's shareholders, and the higher fees, if approved, will be payable only to BIA from and after the date of such approval. No exemption from the provisions of section 15(a) of the Act is being sought with respect to the approval of the higher fees.

6. In accordance with section 15(c) of the Act,[1] the board of trustees (the "Board") of Quantitative met on July 9, 1996 and the Board of One Group met on May 21, 1996 and determined that the New Sub-Advisory Agreements would be in the best interests of the respective Funds and their shareholders. The Boards, including a majority of the disinterested trustees, voted to approve the New Sub-Advisory Agreements.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The arrangement would provide that: (a) the portion of the Advisors' fees payable by the Advisors to BIA during the Interim Period under the New Sub-Advisory Agreements would be paid into an interest-bearing escrow account maintained by the escrow agent [2]; (b) the amounts in the escrow account (including interest earned on such paid fees) would be paid to BIA only upon approval of the respective Fund's shareholders of such Fund's New Sub-Advisory Agreements or, in the absence of such approval, to the Fund; and (c) the escrow agent would release the monies only upon receipt of a certificate from an officer of the respective trust (none of whom is an interested person of BIA) stating that the monies are to be delivered to BIA and that the respective New Sub-Advisory Agreement has received the requisite Fund shareholder vote or, if the moneys are to be delivered to the respective Fund, that the Interim Period has ended, and the respective New Sub-Advisory Agreement has not received the requisite Fund shareholder vote. Before any certificate is sent, the respective Board will be notified.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c), exempting them from section 15(a) of the Act to the extent necessary (i) to permit the implementation during the Interim Period, without prior shareholder approval, of the New Sub-Advisory Agreements and (ii) to permit BIA to receive from the respective Advisor upon approval by the respective Fund's shareholders any and all fees earned under the applicable New Sub-Advisory Agreement implemented during the Interim Period.

2. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

[2] The higher fees that will be applicable under the New Sub-Advisory Agreement for the One Group Fund will not be deposited in an escrow account because they will not begin to accrue until after the One Group Fund's shareholders approve the New Sub-Advisory Contract.

by a majority of the voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. The Stock Purchase will result in an "assignment" within the meaning of section 2(a)(4) of the Existing Sub-Advisory Agreements, terminating each such agreement according to its terms.

3. Rule 15a–4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. In the case of the Quantitative Funds, applicants cannot rely on rule 15a–4 because of the benefits to the Stockholders arising from the Stock Purchase. In the case of the One Group Fund, the applicants cannot rely on rule 15a–4 because of the increase in fees payable to BIA under the New Sub-Advisory Agreement.

4. Applicants state that a proxy solicitation to the shareholders of the Funds is a complicated and time-consuming task. The task will include the preparation, clearance, and mailing of proxy materials, and the solicitation efforts required to obtain the requisite votes. Because of the complexity of the proxy solicitation and the fact that the Funds have not had sufficient advance notice of the Stock Purchase, applicants state that it will not be possible for the Funds to obtain shareholder approval of the New Sub-Advisory Agreements in accordance with section 15(a) of the Act prior to the Closing.

5. Applicants submit that to deprive BIA of sub-advisory fees during the Interim Period for no reason other than the fact that the Closing will result in an assignment of the Existing Sub-Advisory Agreements would be an unduly harsh and unreasonable penalty and would serve no useful purpose. Applicants represent that the best interests of the Funds' shareholders would be served if BIA receives fees for services during the Interim Period as provided herein. These fees are an important part of BIA's total revenue and are important to maintaining its ability to provide services to the Funds.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreements will have the same terms and conditions as the Existing Sub-Advisory Agreements, except in each case for the dates of execution and termination, the inclusion of escrow arrangements, and the inclusion of BIA's new name, and in the case of the New Sub-Advisory Agreement for One Group, the new fee arrangement (which will not be effective until shareholder approval).

2. That portion of each Advisors' fee earned by BIA during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to BIA in accordance with the New Sub-Advisory Agreement, only upon approval of the respective Fund's shareholders, or (b) in the absence of such approval prior to the expiration of the Interim Period, to the respective Fund.

3. The Funds will hold meetings of shareholders to vote on approval of the New Sub-Advisory Agreements on or before the earlier of the 120th day following the termination of the Existing Sub-Advisory Agreements or March 1, 1997.

4. BIA and IIA will bear the costs of preparing and filing this application and the costs relating to the preparation of proxy materials for the solicitation of shareholder approval from the Quantitative Funds' shareholders of the Quantitative Funds' New Sub-Advisory Agreements. BIA and IIA also will bear 50% of the costs relating to the preparation of proxy materials for the solicitation of shareholder approval from the One Group Fund's shareholders of the One Group Fund's New Sub-Advisory Agreement. The other 50% of the costs of solicitation will be borne by Banc One.

5. BIA will take all appropriate actions to ensure that the scope and quality of sub-advisory and other services provided to the Funds by BIA during the Interim Period will be at least equivalent, in the judgment of the respective Board, including a majority of the non-interested Board members, to the scope and quality of services previously provided. In the event of any material change in personnel providing material services pursuant to the New Sub-Advisory Agreements, BIA will apprise and consult with the Board of the affected Fund or Funds to assure that they, including a majority of the non-interested Board members, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22226 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–22169; 812–10210]

Van Kampen American Capital Equity Opportunity Trust, et al.; Notice of Application

August 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen American Capital Equity Opportunity Trust (the "Trust"), Series 25 and subsequent series, and Van Kampen American Capital Distributors, Inc. ("Van Kampen American" or the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a terminating series of the Trust, a unit investment trust, to sell portfolio securities to a new series of the Trust.

FILING DATE: The application was filed on June 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 17, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, IL 60181.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, (202) 942–0581, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust, a unit investment trust registered under the Act, will consist of a series of unit investment trusts (each a "Trust Series" or "Series"). Each Trust Series will be similar but separate and designated by a different series number. Van Kampen American is the Sponsor for each Trust Series.

2. Each Trust Series will contain a portfolio of common stocks of aggressive growth companies. The investment objective of each Trust Series is to seek capital appreciation. Currently, Van Kampen American Capital Equity Opportunity Trust, Series 25 consists of one underlying unit investment trust, the Aggressive Growth Series, Internet Trust 1, which invests in actively traded equity securities issued by aggressive growth companies engaged in either the enabling technology or communication services areas of the Internet.

3. Applicants anticipate that many, if not all, of the portfolio securities in each Trust Series will be actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares and equal in value to at least 25,000 United States dollars) on (a) an exchange (an "Exchange") which is either a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934 or a foreign securities exchange that meets the qualifications set forth in the proposed amendment to rule 12d3–1(d) (6) under the Act, as proposed by the SEC,[1] and that releases daily closing prices, or (b) the Nasdaq-National Market System ("Nasdaq-NMS") (the securities meeting the foregoing tests are referred to herein as "Equity Securities"). For example, all of the portfolio securities in the Internet Trust 1 are listed on a national securities exchange or the Nasdaq-NMS.

4. Each Trust Series will terminate on a date after a specified period, generally one year. The Sponsor intends that, as each Trust Series terminates, a new Trust Series ("New Trust Series") containing a portfolio of common stocks of aggressive growth companies with an investment objective of capital appreciation will be offered for the next period.

5. Each Trust Series has or will have a contemplated date (the "Rollover Date") on which holders of units in that Trust Series (the "Rollover Trust Series") may at their option redeem their units in the Rollover Trust Series and receive in return units of a New Trust Series, which will be created on or about the Rollover Date.

6. Applicants anticipate that there will be some overlap from one year to the next in the aggressive growth stocks selected for each Trust Series and, therefore, between the portfolios of each Rollover Trust Series and the related New Trust Series. In connection with its termination, absent relief, each Rollover Trust Series would sell all of its securities on the applicable Exchange or Nasdaq-NMS as quickly as practicable, but over a period of time so as to minimize any adverse impact on the market price. Likewise, a New Trust Series would acquire its securities in purchase transactions on the applicable Exchange or on Nasdaq-NMS. This procedure would result in brokerage commissions on securities of the same issue that are borne by the holders of units of both the Rollover Trust Series and the New Trust Series. Applicants therefore request an exemptive order to permit any Rollover Trust Series to sell Equity Securities to a New Trust Series and a New Trust Series to purchase such securities.

7. In order to minimize overreaching, the Sponsor will certify to the trustee of the relevant Trust Series, within five days of each sale from a Rollover Trust Series to a New Trust Series, (a) That the transaction is consistent with the policy of both the Rollover Trust and the New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of such transaction, and (c) the closing sales price on the Exchange or on Nasdaq-NMS for the sale date of the securities subject to such sale. The trustee will then countersign the certificate, unless, in the unlikely event that the trustee disagrees with the closing sales price listed on the certificate, the trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the correct price by reference to an independently published list of closing sales prices for the date of the transaction, the Sponsor will ensure that the price of units of the New Trust Series, and distributions to holders of the Rollover Trust Series with regard to redemption of their units or termination of the Rollover Trust Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the trustee's corrected price, the Sponsor and the trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Each Trust Series will have an identical or common Sponsor, Van Kampen American. Since the Sponsor of each Trust may be considered to control each Trust Series, it is likely that each Trust Series would be considered an affiliate of the others.

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Under section 6(c), the SEC may exempt classes of transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the

[1] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where: (1) trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of registered investment companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (4) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

requirements of sections 6(c) and 17(b).[2]

3. Rule 17a–7 under the Act permits registration investment companies that might be deemed affiliates solely by reason of common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor the procedures for these transactions to assure compliance with the rule. A unit investment trust does not have a board of directors and, therefore, may not rely on the rule. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

4. Applicants represent that purchases and sales between Trust Series will be consistent with the policy of each Trust Series, as only securities that otherwise would be bought and sold on the open market pursuant to the policy of each Trust Series will be involved in the proposed transactions. Applicants further believe that the current practice of buying and selling on the open market leads to unnecessary brokerage fees and is therefore contrary to the general purposes of the Act.

5. Applicants state that the condition that the securities must be actively traded on an Exchange or the Nasdaq-NMS protects against overreaching. This condition ensures that there will be current market prices available and thus, an independent basis for determining that the terms of the transaction are fair and reasonable. In addition, applicants note that, as a condition to the requested relief, the Trustee will review the procedures relating to the purchase and sale of Equity Securities. Furthermore, the Sponsor must certify to the Trustee that a transaction is consistent with the policy of both the Rollover Trust Series and New Trust Series, as set forth in their respective registration statements and reports filed under the Act. Lastly, the portfolio companies held in a Trust Series are described in the Trust Series' prospectus for investors to review. In light of these procedures, applicants believe that they satisfy the standards of sections 6(c) and 17(b), and thus, an exemption from section 17(a) is warranted.

[2] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. *See Keystone Custodian Funds*, 21 S.E.C. 295, 298–99 (1945). Section 6(c) frequently is used, along with section 17(b), to grant relief from section 17(a) to permit an ongoing series of future transactions.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each sale of Equity Securities by a Rollover Trust Series to a New Trust Series will be effected at the closing price of the securities sold on the applicable Exchange or the Nasdaq-NMS on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each future Rollover Trust Series and New Trust Series.

3. The Trustee of each Rollover Trust Series and New Trust Series will (a) review the procedures discussed in the application relating to the sale of Equity Securities from a Rollover Trust Series to a New Trust Series and the purchase of those securities for deposit in a New Trust Series, and (b) make such changes to the procedures as the trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to the order will be maintained as provided in rule 17a–7(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22230 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (The Vermont Teddy Bear Co., Inc., Common Stock, $0.05 Par Value) File No. 1–12580

August 26, 1996.

The Vermont Teddy Bear Co., Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

In making the decision to withdraw the Security from listing on the PSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Security on the Nasdaq National Market System and on the PSE. The Company does not see any particular advantage in the dual trading of the Securities and believes that the volume of trading of its securities on the PSE is severely low.

Any interested person may, on or before September 17, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–22231 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37605; File No. SR–NYSE–96–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Restrictions on Exercise of Options on the New York Stock Exchange Composite Stock Index

August 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 8, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to issue an interpretation of Exchange Rule 709 (Other Restrictions on Exchange Option Transactions and Exercises) that clarifies that members and member organizations may only exercise options

on the New York Stock Exchange Composite Stock Index ("NYA Options") while those options are open for trading on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 709 grants the Exchange discretion to impose restrictions on the exercise of an option dealt in on the Exchange if the Exchange deems the restriction to be advisable in the interests of maintaining a fair and orderly market in the option or its underlying security, or in the public interest or for the protection of investors. In furtherance of those goals, the Exchange has determined to act under Exchange Rule 709 to restrict the period during which a member or member organization may exercise NYA Options to hours during which those options are open for trading on the Exchange.

Paragraph (b) of Exchange Rule 717 (Trading Rotations, Halts and Suspensions) grants the Exchange discretion to halt or suspend trading in an option whenever the Exchange deems such action appropriate in the interests of fair and orderly market and for the protection of investors. So, for instance, Rule 717(b) allows the Exchange to halt trading in NYA Options where trading in the Exchange's equities market (which is the market on which all securities underlying NYA options trade) halts pursuant to Exchange Rule 80B (Trading Halts Due to Extraordinary Market Volatility).

Under that scenario, the Exchange would anticipate that, once imposed, the restriction against exercising NYA Options would remain in effect until trading in those options reopens. That reopening, in turn, would likely occur only when the Exchange's equities market reopens for trading.

In accordance with Exchange Rule 709, the Exchange will not impose the restriction against the exercise of NYA Options on the last trading day prior to the option's expiration date.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–23 and should be submitted by September 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22227 Filed 8–29–96; 8:45 am]

BILLING CODE 8010–01–M

Agency Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 2, 1996.

A closed meeting will be held on Thursday, September 5, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 5, 1996, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

Proposed order in administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: August 28, 1996.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96–22453 Filed 8–29–96; 11:17 am]
BILLING CODE 4910–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 23, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1660.
Date filed: August 21, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1996.
Description: Application of USAir, Inc., pursuant to 49 U.S.C. Section 41101 and 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between the coterminal points Philadelphia, Pennsylvania; Boston, Massachusetts; Charlotte, North Carolina; and Pittsburgh, Pennsylvania and the terminal point London (Heathrow), United Kingdom.

Docket Number: OST–96–1661.
Date filed: August 21, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1996.
Description: Application of Jet America Charters, Lc. d/b/a Jet America, pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate charter air transportation.

Docket Number: OST–96–1662.
Date filed: August 21, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1996.
Description: Application of Jet America Charters, Lc. d/b/a Jet America, pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing world wide foreign charter air transportation.

Docket Number: OST–96–1664.
Date filed: August 23, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 20, 1996.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Department of Transportation's Procedural Regulations, applies for a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Las Vegas, Nevada, on the one hand, and Mexico City, Mexico, on the other hand. Delta further requests route integration authority to integrate this authority with all of Delta's existing certificate and exemption authority, to the extent permitted by applicable international agreements.

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 96–22172 Filed 8–29–96; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 96–043]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.
ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss various issues relating to merchant marine personnel, including safety, training, and qualifications. The meetings are open to the public.

DATES: A meeting of the working groups will be held on Thursday, September 26, 1996. A meeting of MERPAC will be held on Friday, September 27, 1996. The meetings are scheduled to run from 8:30 a.m. to 4:00 p.m. each day. Written material and requests to make oral presentations should reach the Coast Guard on or before September 13, 1996.

ADDRESSES: Both meetings will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Written material and requests to make oral presentations should be sent to Commander Greg Jones, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Greg Jones, Executive Director of MERPAC, or Mr. Mark Gould, Assistant to the Executive Director, telephone (202) 267–0229, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of September 27, 1996, Meeting

(1) Subcommittee Reports.
  (a) International Convention on the Standards of Training, Certification and Watchkeeping (STCW).
  (b) Prevention Through People (PTP).
(2) Other Issues to be Discussed.
  (a) Regional Examination Center (REC) Activities.
  (b) Tankerman regulations—REC enforcement.
  (c) National Maritime Center—course approvals and examinations.
  (d) Proposal to reduce the number of forms currently used to issue licenses. This will eliminate outdated license forms.
  (e) Licensing 2000.
  (f) Towing industry pilot training and licensing.
  (g) STCW issues and changes in regulations.
  (h) As time allows, other issues brought up by the public or MERPAC members.

Procedural

Both meetings are open to the public. At the discretion of the Chairman, members of the public may present oral presentations during the September 27, 1996, meeting. Persons wishing to make oral presentations at the September 27, 1996, meeting should notify the Executive Director no later than September 13, 1996. Written material for distribution to the committee should reach the Coast Guard no later than September 13, 1996. If a person submitting material would like a copy distributed to each member of the committee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than September 13, 1996.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 27, 1996.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–22207 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–96–43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 19, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Haynes, (202) 267–3939, or Ms. Marisa Mullen, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 26, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 28576.

Petitioner: Taxi Aero Marilia S.A.

Sections of the FAR Affected: 14 CFR § 145.47(b).

Description of Relief Sought: To permit Taxi Aero Marilia S.A., an FAA-certified repair station (NO. QL 4Y470M), to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, to test its inspection and test equipment.

[FR Doc. 96–22256 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 28671; Notice No. 96–13]

RIN 2120–AF95

Explosives Detection Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Amendment to Criteria for Certification of Explosives Detection Systems.

SUMMARY: The FAA is proposing to amend the current Criteria for Certification of Explosives Detection Systems (hereafter referred to as "Criteria"). This amendment would introduce minimum performance standards for EDS equipment designed to identify detonators. The current Criteria, issued September 10, 1993, include minimum performance standards only for EDS equipment designed to identify main/bulk explosive charges. The proposed amendment would allow the FAA to certify EDS equipment which meets or exceeds either: (1) The minimum performance standards for explosive material categorized as main/bulk explosive charges; or (2) the minimum performance standards for explosive material categorized as detonators. This action is responsive to 49 U.S.C. 44913 [Formerly Section 108 of the Aviation Security Improvement Act of 1990, Public Law 101–604], which requires the Administrator to certify, prior to mandating its deployment, that EDS equipment "can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material which would be likely to be used to cause catastrophic damage to commercial aircraft."

DATES: Comments must be received on or before October 29, 1996.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28671, 800 Independence Avenue, SW., Washington, D.C., 20591. Comments that include or reference national security information or sensitive security information should not be submitted to the public docket. These comments should be sent to the following address in a manner consistent with applicable requirements and procedures for safeguarding sensitive security information: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point, Docket No. 28671, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Armen Sahagian, General Engineer (ACP–400), Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 267–7076.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the notice by submitting such written data, views, or arguments as they may desire. Comments should identify the docket or notice number and be submitted in triplicate to either the Rules Docket or the FAA Security Control Point address specified above. All comments received, as well as a report summarizing each substantive unclassified public contact with FAA personnel on this notice, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this notice. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must include with their comments a preaddressed stamped postcard on which the following statement is made: "Comments to Docket No. ." When the comment is received, the postcard will be dated, time-stamped, and mailed to the commenter.

Availability of Document

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number of this notice.

Persons interested in being placed on a mailing list for future proposals should request from the above office a copy of Advisory Circular No. 11–2A, which describes the application procedure.

Release of National Security and Sensitive Information

The Associate Administrator for Civil Aviation Security has determined that certain portions of the proposed amended Criteria are of national security concern and require safeguarding from unauthorized disclosure pursuant to Executive Order 12356 (National Security Information). Further, pursuant to 14 CFR Part 191 (Withholding Security Information from Disclosure Under the Air Transportation Security Act of 1974), certain unclassified information has been determined to be sensitive security information. Upon request, the complete proposed amended Criteria will be provided to prospective manufacturers of explosives detection equipment, and other interested parties with a bona fide need to have the complete proposed amended Criteria, provided such persons have appropriate authorization for access to U.S. Government national security information and/or sensitive security information.

Availability of Criteria

Persons requesting access to, or a copy of, the complete text (including all classified and sensitive security information) of the proposed amended Criteria may write to the Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point (ACO–400), Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

Individuals requesting the classified portion of the proposed amended Criteria must include information regarding authorizations and security clearances for access to U.S. Government national security information, and sufficient explanatory information supporting the request to demonstrate a bona fide need to know the information contained in the Criteria.

Background

The proposed amended Criteria are responsive to the statutory mandate for testing and certifying EDS. The FAA has had a long-standing research and development (R&D) effort to counter the threat of explosive materials to civil aviation. Along with other technologies, the FAA invested in detonator detection R&D beginning in 1985. However, based upon early research, the FAA focused its R&D resources primarily on the detection of main/bulk explosive charges, because it appeared to be the most technologically feasible approach. The effort resulted in the September 10, 1993, Criteria [58 FR 47804], which established minimum performance standards for main/bulk explosive charges detection equipment. Recent technological advances suggest that equipment capable of detecting the different types of detonators used to initiate or detonate an explosive may also be an effective means of screening checked baggage. FAA now considers it appropriate to propose minimum performance standards for the detection of detonators.

In October 1995 the FAA completed its compilation and analyses of technical design information obtained during visits to 38 detonator manufacturers located in the United States and 20 other countries. These analyses were the most extensive examinations yet on the types, materials, and configurations of detonators. As a result, the FAA developed a comprehensive database on detonators manufactured worldwide, as well as global detonator production and consumption profiles. The types of detonators specified in this proposed amended Criteria were based, in part, upon reports which identified the types of detonators used in terrorist acts, as well as those likely to be used in future attempts to destroy or sabotage civil aviation, other modes of transportation, and physical structures. This analysis was conducted by the FAA with advice and consultation from U.S. and international explosive materials experts, and Agencies of the United States and other governments.

Development of the Proposed Amended Criteria

The primary proposed change to the September 10, 1993, Criteria is the introduction of minimum performance standards for the detection of detonators. These standards are included in the portion of the document not published in the **Federal Register** because they involve national security and sensitive information. The unclassified section of the proposed amended Criteria published in this notice, contains relatively minor editorial changes. The principal purpose of these proposed changes is to state that it is possible to obtain certification of an EDS to automatically detect explosive materials in two distinct ways: either by identifying bulk/main explosive charges, or by identifying detonators.

The changes to the publicly available portion include a definition for the term "explosive material". The definition distinguishes between two principal components of explosive material: bulk/main explosive charges and detonators. To facilitate testing of EDS candidate equipment under either of the two methods of explosive material detection, the proposed amended Criteria references separate management test plans. The FAA previously developed a management test plan for EDS certification of bulk/main explosive charges detection equipment. A Notice of Availability of the draft management test plan was published in the **Federal Register** on June 22, 1993, for public comment [58 FR 33967]. That management test plan, entitled FAA Management Plan for EDS Certification Testing, was based upon the National Academy of Science's General Testing for Protocol for Bulk Explosive Detection Systems. A separate management test plan for EDS certification of detonator detection equipment is currently being developed. The FAA expects to issue a Notice of Availability of a draft management test plan for EDS certification of detonator detection equipment in the near future.

Additionally, the FAA is proposing to delete references to "checked baggage in international operations" and replace them with a more general reference to "checked baggage." While the current rule in 14 CFR 108.20 is limited to the screening of checked baggage for international flights, certification as to the inherent capability of an EDS to detect explosive materials in checked baggage is not a function of the origin or destination of the flight on which the bag is transported. The FAA believes that it is important to separate certification issues from the economic and policy issues related to deployment.

The FAA is not proposing any substantive changes to the minimum performance standards for EDS

certification of bulk/main explosive charges detection equipment. Nor do the proposed minimum performance standards for EDS certification of detonator detection equipment embody any change to other aspects of the September 10, 1993, Criteria (e.g., throughput rate, overall detection rate, false alarm rate). The FAA is soliciting comments only on those portions of the proposed amendment that represent a change from the September 10, 1993, Criteria.

Regulatory Evaluation

The FAA has considered the impact of this proposed amendment to the EDS Criteria as required under Executive Order 12866 and under the Department of Transportation's regulatory policies and procedures. The FAA has determined that this action is not significant under either of these directives. In addition, the FAA has determined that no cost-benefit analysis is needed for the amendment of the Criteria and related matters such as the Management Test Plans. Any final EDS deployment decision will be subject to further review, according to the requirements of Executive Order 12866. In this regard, the Department determined that the rule authorizing deployment of an EDS for screening international flights was a major rule as defined in the Executive Order. Based upon circumstances and information available at the final rule stage in 1989, the FAA determined that the EDS available at that time, the Thermal Neutron Analysis (TNA) device, would be cost-beneficial. The FAA has not required, nor will it require the deployment of TNA or any other EDS until such equipment meets the prescribed requirements of 49 U.S.C. 44913. The FAA's deployment strategy requires deployment of effective EDS equipment in a cost-effective manner.

Information relevant to deployment decisions was developed in the 1989 final rule [54 FR 36946] in terms of the development, installation, and annual operating costs of a TNA device. However, as the EDS certification process proceeds and policies affecting EDS deployment are developed, all relevant issues influencing the ultimate decision on the timing and scope of deployment will be reviewed. The FAA will analyze the information submitted by manufacturers during the certification testing process to determine its effect on the scope and timing of deployment.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." Small entities are independently owned and operated small businesses and small not-for-profit organizations.

Under FAA Order 2100.14A, the criterion for a "substantial number" is a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. This Order indicates size and "significant impact" thresholds for specific entity types related to the aircraft industry. There is no entity categorization in this Order for manufacturers of this type of equipment. The closest applicable Standard Industrial Classification for these manufacturers is No. 3728, which is for "manufacturers of aircraft parts and auxiliary equipment not elsewhere classified." For such small entities, the applicable size threshold is 175 employees. The FAA's threshold for "significant impact" for each of these manufacturers is $13,130 per year.

The small entities that could be potentially affected by the implementation of this proposed action are small business enterprises that are or might seek to become manufacturers of EDS equipment. The number of small business enterprises that are in, or that might seek to enter, this market cannot be determined.

The proposed amended Criteria would impose minimal costs on those small business enterprises. These costs are primarily for obtaining access to or copies of the classified and sensitive security information portions of these proposed amended Criteria. Because the incremental cost imposed by this proposed action is expected to be small and certainly less than the aforementioned threshold level ($13,130 per year), the FAA finds that this proposed action would not have a significant economic impact on a substantial number of small entities.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), there are no requirements for information collection associated with this proposal.

The Proposed Amendment Criteria (Excluding Sensitive Portions)

The following sets forth the entire text of the proposed amended Criteria except those portions of the document that contain either national security information that requires safeguarding pursuant to Executive Order 12356, or sensitive security information that requires safeguarding pursuant to 14 CFR part 191. [Note: Paragraph markings (U) indicate that the content of the paragraph is unclassified consistent with standard procedures for paragraph markings in the original classified document.]

[**Authority:** 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 447505, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.]

Criteria for Certification of Explosives Detection Systems

Introduction

(U) Prior to any requirement for the deployment or purchase of explosives detection equipment under 14 CFR 49 U.S.C. 44913 [formerly Section 108 of the Aviation Security Improvement Act of 1990, Public Law 101–604], requires the FAA to certify that, based upon the results of tests conducted pursuant to protocols developed in consultation with experts from outside the FAA, such equipment can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive materials likely to be used in attacks against commercial aircraft.

(U) These criteria establish the minimum acceptable performance requirements for an Explosives Detection System (EDS) to meet the mandate of 49 U.S.C. 44913 for certification by the FAA, and supersede previous EDS performance requirements established by the FAA.

Explosive Materials Definition

(U) For purposes of these Criteria for Certification of Explosives Detection Systems: "Explosive materials" consist of bulk/main explosive charges and detonators; a "bulk/main explosive charge" is an explosive which may be detonated or initiated by a detonator; and a "detonator" is a device, containing an initiating or primary explosive, used for initiating detonation of the bulk/main explosive charge.

Explosives Detection System (EDS) Definition

(U) An EDS is an automated device, or combination of devices, which has the ability to detect, in passengers checked baggage, the amounts, types, and configurations of explosive materials as specified by the FAA. The term "automated" means that the ability of the system to detect explosive materials, prior to the initial automated system alarm, does not depend on human skill, vigilance, or judgment.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria document, this portion addresses alarm resolution requirements subsequent to the initial automated alarm.]

General Operational Requirements

(U) The EDS must detect and differentiate explosive materials from among all other materials found in checked baggage.

(U) The detection must not be dependent on the shape, position, orientation, or configuration of the explosive materials.

(U) The EDS must not pose a health hazard to system operators or the public (as detailed in 10 CFR 20, 51 [Nuclear Radiation] and 21 CFR 1020 [Ionizing Radiation]).

(U) The EDS must not cause damage or significant residual alteration of the luggage or its contents, other than highly sensitive materials such as photographic film.

Detection Requirements

(U) The detection of explosive materials in checked baggage is affected by the type, quantity, and configuration of the bulk/main explosive charges or detonators, as well as the bag and its contents. Depending on the type of detection equipment used, the EDS must reliably detect a mix of types and quantities of explosive materials selected by the FAA when any of these charges or detonators are present in checked baggage.

(U) The term "checked baggage" applies to all passenger bags destined for the cargo hold, including originating and transfer baggage, regardless of whether or not the bags accompany a passenger on a particular flight.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria, this portion contains two tables. The first table identifies the types and quantities of explosive materials (bulk/main explosive charges) that must be detected, the minimum detection rate for each category of bulk/main explosive charges, and the overall detection and maximum false alarm rates. The first table also specifies the requirement to detect the minimum quantity and larger quantities of each listed bulk/main explosive charge. The second table lists the makes, models, and U.N. classification numbers of detonators that must be detected, and the overall detection and maximum false alarm rates. The throughput requirement that appears in both the main/bulk explosive charges and detonator tables, is quoted in the Overall Performance Requirements section below, because it is the only item that is not sensitive security information.]

Overall Performance Requirements

(U) All the criteria pertaining to detection rate, false alarm rate, and throughput are based exclusively on the fully automated component(s) or elements(s) of the system.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria document, this portion includes information regarding requirements for no human intervention, detection rate, and false alarm rate.]

(U) The cumulative minimum automated system throughput processing rate during the certification tests must be at least 450 bags/hour (not including alarm resolution).

Other Operational Considerations

(U) In addition to the mandatory criteria discussed above, there are a number of other operational considerations that will influence any future FAA decision to require the purchase, deployment, and use of EDS for screening checked baggage. While these considerations are not mandatory for certification of EDS equipment, they should be factored into development and design decisions made by potential manufacturers and vendors of EDS equipment.

(U) The FAA has not yet established precise EDS parameters which would serve to define what is practical or cost-effective (e.g., precise physical characteristics such as unit weight and size, or precise unit cost). Given the variety of airport and air carrier operating environments, the FAA does not wish to foreclose the development of technologies which may work under some, but not all, operating conditions.

(U) The FAA can, however, provide potential manufacturers and vendors, as well as air carriers and airports, with the following guidance. In general, EDS equipment that is less costly, smaller, and lighter is more practical for use in a variety of airports than a system that is more expensive, larger, and heavier—especially if such equipment would require separate structures or substantial modifications of existing terminal structures for installation or operation. Also, systems which are easily operated and maintained, and are proven to be reliable, will be more acceptable than systems that require extensive specialized training for operation, calibration, and maintenance.

(U) In addition, systems with throughput rates that substantially exceed the minimum rate established in the certification criteria are operationally more efficient in many applications, and are less likely to cause delays and congestion when large numbers of passenger bags must be screened in short periods of time. Further, systems that can be more easily integrated into existing passenger and baggage processing systems would presumably be more acceptable to potential users.

(U) Trade-offs are often made among these and other operational considerations during the course of system design. For example, reliability, maintainability, and availability can usually be improved, but often at the expense of an increase in purchase price. While such trade-offs may not affect certification, they will be considered during decisionmaking to require deployment of certified EDS.

System Certification

(U) The FAA will certify EDS equipment based upon the mandatory detection criteria and develop a list of certified equipment that would be eligible for use by air carriers. Additional action must be taken by the FAA to require the deployment of certified EDS to screen checked baggage.

[*Sensitiye Portion of Document Deleted:* In the full text of the classified Criteria document, this portion contains information on the Act's requirement to detect likely-to-be-used explosive materials.]

(U) The FAA will not require air carriers to use certified EDS equipment until such time as the FAA determines that such equipment is available in sufficient quantities to satisfy air carrier and airport operational concerns, and is practical for use under realistic air carrier operating conditions (e.g., cost, size, weight, reliability, maintainability, and availability), and cost-effective.

(U) The FAA will only certify complete systems. It will not certify or allow for use, individual component devices. Prior to final certification, the FAA will require manufacturers and vendors to provide full system documentation. This documentation will include, but is not limited to: recommended system installation and calibration procedures; minimum

essential test equipment and devices; routine field testing procedures and test objects to be used; routine and emergency operating procedures; field preventative maintenance and repair procedures; and, training programs.

Certification Testing

(U) Testing of bulk/main explosive charges detection equipment presented to the FAA for EDS certification, will be performed in accordance with the FAA's Management Plan for EDS Certification Testing, based upon a General Testing Protocol for Bulk Explosives Detection Systems, (National Advisory Board, final report 1993).

(U) Testing of detonator detection equipment presented to the FAA for EDS certification, will be performed in accordance with the FAA's Management Plan for EDS Certification Testing of Detonator Detection Equipment, based upon FAA's General Testing Protocol for Detonator Detection Systems.

(U) The FAA Technical Center in Atlantic City, New Jersey will perform certification tests for producers of candidate explosives detection systems. The EDS Certification Test Director in the Office of Aviation Security Research and Development is the point of contact.

(U) As required by both the FAA Management Plan for EDS Certification Testing, and the FAA Management Plan for EDS Certification Testing of Detonator Detection Equipment, manufacturers seeking FAA certification for their candidate EDS must submit complete descriptive data and their test results to the FAA prior to receiving permission to ship their equipment to the FAA Technical Center. The FAA reserves the right to visit manufacturers' facilities for technical quality assurance purposes, require and/or monitor in-house tests, and review associated data prior to granting permission to ship equipment for certification testing.

(U) There may be extenuating circumstances that make it impractical for the equipment to be accommodated at the FAA Technical Center. Therefore, the FAA will consider requests for an exception that would permit equipment to be tested at a facility other than the FAA Technical Center. The written request must explain in detail why an exception is in the best interest of the U.S. Government and indicate the methods and procedures that will be used to conduct a test equivalent to those conducted at the FAA's facility.

(U) The FAA may recognize, on a reciprocal basis, EDS testing and certification conducted by a foreign government's aviation security organization. Such recognition by the FAA will be considered only if certain conditions are met. These conditions include, but are not limited to, the negotiation of an appropriate security technical exchange agreement which assures compliance with the FAA Criteria for Certification of Explosives Detection Systems using strict quality control procedures that are consistent with FAA testing procedures. The agreement must also provide for full reciprocity for certifications issued by both the foreign government aviation security organization and the FAA.

(U) All direct costs associated with testing and certification (e.g., insurance, shipping, installation, set-up technical operation, maintenance, calibration, disassembly, and FAA laboratory testing costs) must be borne by the manufacturers or vendors. Both the FAA Management Plan for EDS Certification Testing, and the FAA Management Plan for EDS Certification Testing of Detonator Detection Equipment contain specific information on the incremental costs associated with tests performed at the FAA Technical Center facilities, or other locations.

[*Sensitive Portion of Document Deleted:* In the full text of the classified Criteria, this portion contains information pertaining to test objects used in EDS certification testing.]

Component Testing

(U) As part of the FAA Security R&D program, the FAA Technical Center evaluates explosives detection devices (EDD), that do not meet all of the EDS performance standards. An EDD is an automated, uncertified EDS that is capable of meeting the partial detection requirements for bulk/main explosive charges, or detonators in the criteria. for instance, some of the devices that the FAA has evaluated have relatively low throughput rates and higher false alarm rates than the maximum acceptable rate. It will be possible under certain circumstances, for example, for a manufacturer of an automated EDD to have the FAA test and evaluate the device, even though it is not expected to fully meet the EDS certification criteria (e.g., false alarm rate or throughput).

(U) Although only complete systems can be certified, the FAA may attest to the performance, of, but not certify or approve for use, EDDs or individual components. Attesting to the performance of EDDs is intended to assist manufacturers and vendors who are seeking partners with whom they can create a functioning EDS composed of multiple devices.

(U) Testing of EDDs will only be conducted: (1) On a first-come, first-served basis; (2) if adequate resources and facilities are available at the FAA Technical Center to permit such testing (The FAA will also consider requests to test the equipment at a facility other than the FAA Technical Center; these requests will be given the lowest priority and will be performed only if it does not delay other testing being performed by the FAA Technical Center.); (3) at a lower precedence than EDS certification testing; and (4) if the FAA determines from the manufacturer's test data that there is a substantial likelihood that the device will meet the partial detection criteria.

Issued in Washington, D.C. on August 22, 1996.

Cathal L. Flynn,

Associate Administrator for Civil Aviation Security.

[FR Doc. 96–22251 Filed 2–29–96; 8:45 am]

BILLING CODE 4910–13–M

Availability of Solicitation for Aviation Research Grants and Cooperative Agreements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Cancellation of Closing Date.

SUMMARY: The Federal Aviation Administration (FAA) is cancelling the closing date on Grants for Aviation Research Program Solicitation No. 96.1 until further notice. This cancellation increases opportunities to provide maximum safety in the national air space system. Proposals may be submitted for grants and cooperative agreements which address the long and short-term technical needs of the National Airspace System (NAS) pursuant to Section 9205, Aviation Research Grant Program, and Section 9208, Catastrophic Failure Prevention Research Program, of the FAA Research, Engineering, and Development Authorization Act of 1990 (Pub. L. 101–508), and section 107 of the Aviation Security Improvement Act of 1990 (Pub. L. 101–604).

DATES: Proposals may be submitted to the address below until further notice.

ADDRESSES: Inquiries or requests for a solicitation and application material should be directed to: Colleen Peranteau, AAR–201, Office of Research and Technology Applications, William J. Hughes Technical Center, Building 270, Room B115, Atlantic City International Airport, New Jersey 08405, Voice: (609) 485–8410, Fax: (609) 485–6509.

SUPPLEMENTARY INFORMATION:

Background

Title IX, The Aircraft Safety and Capacity Expansion Act of 1990 (Pub. L. 101–508), Section 9205, states its purpose is "to conduct aviation research into areas deemed by the Administrator to be required for the long-term growth of civil aviation." The Catastrophic Failure Prevention Research Grant Program, Section 9208, directs the FAA "to conduct aviation research relating to development of technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft." And the Aviation Security Grant Program (Pub. L. 101–604) provides for grants for "the conduct of research, development, and implementation of technologies and procedures to counteract terrorist act against civil aviation."

A detailed description of specific research areas, additional requirements, and selection criteria are set out in the solicitation: Grants for Aviation Research, Solicitation 96.1.

Dated: August 16, 1996.

Andres G. Zellweger,

Director, Office of Aviation Research.

[FR Doc. 96–22255 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#96–01–C–00–ALS) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Luis Valley Regional Airport—Bergman Field, Submitted by the San Luis Valley Regional Airport Board of Control, Alamosa, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at San Luis Valley Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 30; 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael M. Hackett, Airport Manager, at the following address: San Luis Valley Regional Airport Board of Control, P.O. Box 419, Alamosa, CO 81101.

Air carriers and foreign air carriers may submit copies of written comments previously provided to San Luis Valley Airport Board of Control, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–01–C–00–ALS) to impose and use PFC revenue at San Luis Valley Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 23, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the San Luis Valley Airport Board of Control, Alamosa, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: March 1, 1997

Proposed charge expiration date: May 1, 2024

Total requested for use approval: $288,835.87

Brief description of proposed project: Construction of parallel taxiway, including related signage and marking.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All taxi/commercial operators filing or required to file FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airport Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Luis Valley Regional Airport.

Issued in Renton, Washington on August 23, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–22254 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 96–27]

Notice of Request for Extension of Currently Approved Information Collection; Highway Performance Monitoring System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 USC 3501, 3506(c)(2)(A)), the FHWA solicits comment on its intent to request the Office of Management and Budget (OMB) to extend the information collection for FHWA's Highway Performance Monitoring System.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, Room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. James Getzewich, Highway System Performance Division, Office of Highway Information Management, (202) 366–0175, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Performance Monitoring System. (HPMS).

OMB Number: 2125–0028.

Background: Public comment is requested regarding the burden associated with collection of information. The data for the Highway Performance Monitoring System (HPMS) are collected under authority of 23 U.S.C. 307, which places the responsibility on the Secretary of Transportation for management decisions which affect transportation. 23 CFR 1.5 provides the Federal Highway Administrator with authority to request information to administer the Federal-Aid Highway Program. Estimates of future highway needs of the Nation are mandated by Congress on a biennial basis [23 U.S.C. 307(e)]. Additionally, HPMS data serve as the information source for the "Highway Safety Performance" report prepared by the Federal Highway Administration (FHWA) pursuant to Section 207 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424). The HPMS data collected are essential to FHWA and Congress in evaluating effectiveness of the Federal-aid highway programs, providing mileage components of apportionment formulae, and evaluating highway safety programs. The information is used by FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems.

Interested parties are invited to send comments regarding any aspect of these information collections, including, but not limited to: (1) Ways to enhance the quality, utility, and clarity of the collected information; (2) the accuracy of the estimated burden; and (3) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB extension of this information collection.

Respondents: 50 States, DC, Commonwealth of Puerto Rico, plus four territories (American Samoa, Guam, Northern Marianas, and Virgin Islands).

Estimated Total Annual Burden: The estimated burden hours for this information collection is 119,680 hours.

Frequency: The data is collected by the respondents and submitted to FHWA annually.

Authority: 23 U.S.C. 315; 49 CFR 1.48. 44 U.S.C. 3506(c)(2)(A).

Issued on: August 21, 1996.

Diana Zeidel,

Deputy Associate Administrator for Administration.

[FR Doc. 96–21929 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–22–M

[FHWA Docket No. 96–31]

Notice of Request for Extension of Currently Approved Information Collection; A Guide To Reporting Highway Statistics

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to extend the information collection for FHWA's A Guide to Reporting Highway Statistics.

DATES: Comments must be submitted on or before October 29, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Howard, 400 7th Street, SW, (202) 366–2833, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: A Guide to Reporting Highway Statistics.

OMB No.: 2125–0032.

Background: Public comment is requested regarding the burden associated with this collection of information. The authority to collect this information is contained in the Department of Transportation (DOT) Act of 1966 (P.L. 89–670; 49 U.S.C. 301 (4), which charges the Secretary of Transportation to promote and undertake development, collection, and dissemination of technological, statical, economic, and other information relevant to domestic and international transportation. Title 23, United States Code, Section 307(a) authorizes the DOT to engage in studies to collect data concerning highway development financing, modernization, safety, maintenance, and traffic conditions and to publish the results of such research. Title 23, United States Code, Section 307(e) requires the Secretary of Transportation to report biennially to Congress on the Nation's highway needs. The Commercial Motor Vehicle Safety Act of 1986 established a major Federal interest in the States' driver licensing programs. The driver license data collected under this Guide are critical in evaluating the effects of the regulations mandated by the Act. The Act also established a three-part grant program to aid the States in the development and implementation of licensing procedures for commercial drivers and requires that the "supplemental" grant funds be distributed among the States according to the number of commercial driver tests administered and the number of commercial licenses issued. The various forms included in the Guide are designed to provide for the reporting of statistics that show motor-fuel usage, motor-vehicle registrations and use, drivers, and the taxes and fees paid and collected from these sources and the purposes for which these funds are expended. The Guide provides for the collection of information that describes policies and procedures for assembling statistical data from the existing files of State agencies on motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, highway taxation and finance, and other related subjects, and the reporting of these data to the Federal highway Administration.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Respondents: The overall annual reporting burden is shared by the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Marianas and the Virgin Islands.

Estimated Total Annual Burden: The annual reporting burden is estimated to be 38,738 hours.

Frequency: The respondents are required to report on an annual basis.

Authority: Title 23, U.S. Code, Section 307(e); 23 U.S.C. 315, 49 CFR 1.48.

Issued on: August 21, 1996.

Diana Zeidel,

Deputy Associate Administrator for Administration.

[FR Doc. 96–21930 Filed 8–29–96; 8:45 am]

BILLING CODE 4910–22–M

Surface Transportation Board [1]

[STB Finance Docket No. 33009]

Richard D. Robey—Continuance in Control Exemption—Juniata Valley Railroad Company

Richard D. Robey (Robey), a noncarrier individual, has filed a notice of exemption to continue in control of Juniata Valley Railroad Company (Juniata), upon Juniata's becoming a Class III rail carrier. Consummation was expected to occur on or after August 15, 1996.

Juniata, a noncarrier, has concurrently filed a joint notice of exemption in *SEDA-COG Joint Rail Authority and Juniata Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation*, STB Finance Docket No. 33008, to operate approximately 12.3 [2] miles of rail line acquired by SEDA-COG Joint Rail Authority from Consolidated Rail Corporation known as the Lewistown Cluster in Mifflin County, PA.

Robey controls seven other nonconnecting Class III rail carriers: [3] North Shore Railroad Company; Nittany & Bald Eagle Railroad Company, Shamokin Valley Railroad Company; West Shore Railway Services, Inc., Stourbridge Railroad Company, Inc., Wellsboro and Corning Railroad Company; and Union County Industrial Railroad Company.

Robey states that: (1) Juniata will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect Juniata with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33009, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22205 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] Counsel has confirmed that the Lewiston Cluster consists of a total of approximately 12.3 miles.

[3] Robey has concurrently filed a notice of exemption in *Richard D. Robey—Continuance in Control Exemption—Lycoming Valley Railroad Company*, STB Finance Docket No. 33011.

[Docket Nos. 41242 et al.[1]]

Central Power & Light Company v. Southern Pacific Transportation Company

AGENCY: Surface Transportation Board, Transportation.

ACTION: Request for comments.

SUMMARY: The Board is seeking comments on certain common legal and policy issues raised by these cases which have industry-wide significance for rail carriers and their captive shippers. The immediate issue in these cases is whether a captive shipper can obtain prescription of a rate for the "bottleneck" segment of its rail shipments (the portion of the movement for which no alternative transportation route is possible), based upon a challenge to the reasonableness of a local rate that has generally not been applied to its traffic. The broader issues involved are whether and how a captive shipper can obtain a competitive route for the non-bottleneck portion of its moves and whether a rate reasonableness analysis can be limited to the bottleneck segment, relying on competition to constrain the rates charged on the segment of a move that is subject to competition.

The Board is soliciting comments and briefing on these issues from all interested persons and will hold an oral argument. The oral argument will be limited to the generic issues addressed in the Board's decision and will not address other issues specific to an individual case.

DATES: Comments are due by September 30, 1996.

ADDRESSES: Send an original and 10 copies of submissions, referring to Nos. 41242 *et al.* to: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

One copy of each submission should be sent to counsel for each party of record in each of the cases.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional details, including a fuller description of the issues, appear in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: August 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22275 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[1] This notice embraces: No. 41295, *Pennsylvania Power & Light Co.* v. *Consolidated Rail Corp.*; and No. 41626, *MidAmerican Energy Co.* v. *Union Pac. R.R. and Chicago and North W. Ry.* A fourth case—No. 41604, *Western Resources, Inc.* v. *The Atchison, T.&S.F. Ry.*—involves similar issues, but has been stayed pending judicial resolution of certain contract interpretation matters.

Surface Transportation Board [1]

[STB Finance Docket No. 33013]

Kansas Southwestern Railway Company, L.L.C.—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company

Kansas Southwestern Railway Company, L.L.C. (KSW), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately .46 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company between milepost 0+740 feet at Kiowa, KS, and milepost 0+3168 feet south of Kiowa, KS. KSW will operate the property. Consummation was expected to occur on or after August 13, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33013, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Karl Morell, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22200 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33004]

Reading Blue Mountain & Northern Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

Reading Blue Mountain & Northern Railroad Company (RBMN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41: (1) to acquire and operate a total of approximately 104.22 miles of rail line; and (2) to acquire a total of approximately 2.8 miles of incidental trackage rights owned by Consolidated Rail Corporation (Conrail) and located in the Commonwealth of Pennsylvania. The proposed transaction was to be consummated on the date of final agreement of the parties but not sooner than August 20, 1996, the effective date of the exemption.

The lines involved in the acquisition by purchase are described as follows: the Lehigh Line from MP 119.4 at Lehighton Yard to MP 130.5 at a point near M&H Jct., and from MP 130.6 at a point near M&H Jct. to MP 147.1 at Frazer, a distance of 27.6 miles; [2] the Lehigh Line from MP 143.8 at Frazer to MP 161.2 at Laurel Run, a distance of 17.4 miles; the Lehigh Line from MP 164.2 at Laurel Run to MP 212.2 at Mehoopany (500 feet west of the west portal of Vosburg Tunnel), a distance of 48.0 miles; the Taylor Secondary line from MP 136.7 at Taylor to MP 142.5 at Pittston, a distance of 5.8 miles; the Keyser Valley Industrial Track from MP 136.37 at Taylor to MP 140.7 at Cayuga, a distance of 4.33 miles; the Dunmore Running Track from MP 0.0 at Duryea Jct. to MP 0.7 at Topps Gum, a distance of 0.7 miles; and the Kerr-McGee Lead from MP 0.0 at Avoca to MP 0.3 at the end of the track, a distance of 0.3 miles.

The incidental trackage rights involved are described as follows: the Lehigh Line between MP 130.5 and MP 130.6, a distance of 0.1 miles; between Conrail's interchange with C&S at Packerton Jct., across Conrail's Track No. 2 to a connection with Track No. 1 that RBMN is acquiring, a distance of 0.1 miles; [3] through Taylor Yard to connect the Taylor Secondary Line and the Keyser Valley Line, a distance of approximately 0.8 miles; and from MP 136.7 at Taylor Yard to a point east of Bridge 60 at Scranton, a distance of approximately 1.8 miles.[4]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33004, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22202 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33020]

Reading Blue Mountain & Northern Railroad Company—Acquisition of Trackage Rights Exemption—C&S Railroad Corporation

Reading Blue Mountain & Northern Railroad Company (RBMN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire overhead trackage rights and operate over approximately 18 miles of rail line owned by the C&S Railroad Corporation, between milepost 18± at Mauck Chunck Jct., PA, and milepost 0± at Packerton Jct., PA.[2] Consummation was expected to occur on or after August 20, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33020, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch,

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] Conrail is conveying only Track No. 1 between MP 119.4 and MP 130.5, retaining Track No. 2; and is conveying incidental trackage rights to RBMN over the single track between MP 130.5 and MP 130.6.

[3] RBMN has concurrently filed a notice of exemption in *Reading Blue Mountain & Northern Railroad Company—Acquisition of Trackage Rights Exemption—C&S Railroad Corporation*, Finance Docket No. 33020.

[4] Conrail is in the process of selling the portion of Taylor Yard containing these lines to Delaware and Hudson Railway Company, Inc. (DHC), but will retain permanent trackage rights through Taylor Yard which it will assign, with the consent of DHC, to RBMN.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] RBMN is acquiring overhead trackage rights only and will not be allowed to serve any additional customers.

RBMN also has concurrently filed a notice of exemption in *Reading Blue Mountain & Northern Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation*, Finance Docket No. 33004.

1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P. O. Box 796, West Chester, PA 19381–0796.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22206 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 33011]

Richard D. Robey—Continuance in Control Exemption—Lycoming Valley Railroad Company

Richard D. Robey (Robey), a noncarrier individual, has filed a notice of exemption to continue in control of Lycoming Valley Railroad Company (Lycoming), upon Lycoming's becoming a Class III rail carrier. Consummation was expected to occur on or after August 15, 1996.

Lycoming a noncarrier, has concurrently filed a notice of exemption in *SEDA-COG Joint Rail Authority and Lycoming Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation*, STB Finance Docket No. 33010, to acquire approximately 38.0 [2] miles of rail line owned by Consolidated Rail Corporation known as the Williamsport Cluster in the counties of Clinton and Lycoming, PA.

Robey controls seven other nonconnecting Class III rail carriers: [3] North Shore Railroad Company; Nittany & Bald Eagle Railroad Company, Shamokin Valley Railroad Company; West Shore Railway Services, Inc.; Stourbridge Railroad Company, Inc.; Wellsboro and Corning Railroad Company; and Union County Industrial Railroad Company.

Robey states that: (1) Lycoming will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect Lycoming with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33011, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22201 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB [1] Finance Docket No. 33008]

SEDA–COG Joint Rail Authority and Juniata Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

SEDA–COG Joint Rail Authority (Authority) and Juniata Valley Railroad Company (Juniata), noncarriers, have filed a joint verified notice of exemption under 49 CFR 1150.31 for Authority to acquire through purchase and for Juniata to operate approximately 12.3 [2] miles of rail line owned by Consolidated Rail Corporation known as the Lewistown Cluster in Mifflin County, PA. Juniata will become a Class III rail carrier.[3] Consummation was expected to occur on or after August 15, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33008, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22203 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

[STB [1] Finance Docket No. 33010]

SEDA–COG Joint Rail Authority and Lycoming Valley Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation

SEDA–COG Joint Rail Authority (Authority) and Lycoming Valley Railroad Company (Lycoming), noncarriers, have filed a joint verified notice of exemption under 49 CFR 1150.31 for Authority to acquire through purchase and for Lycoming to operate approximately 38.0 miles of rail line owned by Consolidated Rail Corporation known as the Williamsport Cluster in the counties of Clinton and Lycoming, PA. Lycoming will become a Class III rail carrier.[2] Consummation

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] Counsel has confirmed that the Williamsport Cluster consists of a total of approximately 38.0 miles.

[3] Robey has concurrently filed a notice of exemption in *Richard D. Robey—Continuance in Control Exemption—Juniata Valley Railroad Company*, STB Finance Docket No. 33009.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] Counsel has confirmed that the Lewistown Cluster consists of a total of approximately 12.3 miles.

[3] This proceeding is related to STB Finance Docket No. 33009, wherein Richard D. Robey, a noncarrier individual, has filed a notice of exemption to continue in control of Juniata upon Juniata's becoming a Class III rail carrier.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] This proceeding is related to STB Finance Docket No. 33011, wherein Richard D. Robey, a noncarrier individual, has filed a notice of exemption to continue in control of Lycoming upon Lycoming's becoming a Class III rail carrier.

was expected to occur on or after August 15, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33010, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Richard R. Wilson, Vuono & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: August 22, 1996.

By the Board, Joseph D. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22204 Filed 8–29–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

August 20, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0748.
Form Number: IRS Form 2678.
Type of Review: Extension.
Title: Employer Appointment of Agent.
Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government.
Estimated Number of Respondents: 95,200.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Other (as necessary).
Estimated Total Reporting Burden: 47,600 hours.
OMB Number: 1545–1398.
Form Number: IRS Form 9620 (formerly RNO 91819).
Type of Review: Extension.
Title: Race and National Origin Identification.
Description: The Internal Revenue Service does not have a form for the collection of Race and National Origin Identification from applicants. This scanning form on its own and when combined with other IRS tracking forms (i.e., Form AA) will allow the Service to determine its applicant/employee pool, and thereby, enhance its recruitment plan.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: Semi-annually, Annually.
Estimated Total Reporting Burden: 2,500 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–22174 Filed 8–29–96; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

August 23, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0119.
Form Number: IRS Form 1099–R.
Type of Review: Extension.
Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
Description: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Governments.
Estimated Number of Respondents: 350,000.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 16,535,774 hours.
OMB Number: 1545–0415.
Form Number: IRS Form W–4P.
Type of Review: Extension.
Title: Withholding Certificate for Pension or Annuity Payments.
Description: Used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 12,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—40 minutes.
Learning about the law or the form—20 minutes.
Preparing the form—49 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 21,720,000 hours.
OMB Number: 1545–0795.
Form Number: IRS Form 8233.
Type of Review: Revision.
Title: Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.
Description: Compensation paid to a nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form 8233 is used to request exemption from withholding.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 480,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 minutes
Learning about the law or the form—19 minutes
Preparing and sending the form to the IRS—42 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 705,600 hours.
OMB Number: 1545–0877.
Form Number: IRS Form 1099–A.
Type of Review: Extension.
Title: Acquisition or Abandonment of Secured Property.
Description: Form 1099–A is used by lenders to report foreclosures and abandonments of property that is security for a loan.

Respondents: Business or other for-profit.
Estimated Number of Respondents: 12,916.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 42,051 hours.
OMB Number: 1545–0922.
Form Number: IRS Forms 8329 and 8330.
Type of Review: Extension.
Title: Lender's Information Return for Mortgage Credit Certificates (MCCs) (Form 8329); and Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs) (Form 8330).

Description: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to report on mortgage credit certificates (MCCs) authorized under Internal Revenue Code (IRC) section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 10,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8329	Form 8330
Recordkeeping	3 hr., 35 min.	4 hr., 32 min.
Learning about the law or the form	1 hr., 12 min.	1 hr., 23 min.
Preparing and sending the form to the IRS	1 hr., 18 min.	1 hr., 31 min.

Frequency of Response:
Form 8329—Annually
Form 8330—Quarterly
Estimated Total Reporting/Recordkeeping Burden: 75,800 hours.
OMB Number: 1545–1410.
Form Number: IRS Form 8840.
Type of Review: Extension.
Title: Closer Connection Exception Statement for Aliens.
Description: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is able to satisfy the closer connection exception described in Regulations Section 301.7701(b)-2.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 350,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 minutes
Learning about the law or the form—8 minutes
Preparing the form—1 hour., 14 minutes
Copying, assembling, and sending to the IRS—35 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 759,500 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 96–22175 Filed 8–29–96; 8:45 am]
BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

August 23, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of International Financial Analysis

OMB Number: 1505–0010.
Form Number: FC–2.
Type of Review: Extension.
Title: Monthly Consolidated Foreign Currency Report of Major Market Participants.
Description: Collection of information on Form FC–2 is required by law. Form FC–2 is designed to collect timely information on foreign exchange contracts purchased and sold; foreign exchange futures purchased and sold; net options position, delta equivalent value long or short; non-capital assets and liabilities.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 480 hours.
OMB Number: 1505–0012.
Form Number: FC–1.
Type of Review: Extension.
Title: Weekly Consolidated Foreign Currency Report of Major Market Participants.
Description: Collection of information on Form FC–1 is required by law. Form FC–1 is designed to collect timely information on foreign exchange spot forward, and futures purchased and sold; net options position, delta equivalent value long or (short); net reported dealing position long or (short).
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Weekly.
Estimated Total Reporting Burden: 1,300 hours.
OMB Number: 1505–0014.
Form Number: FC–3.
Type of Review: Extension.
Title: Quarterly Consolidated Foreign Currency Report.
Description: Collection of information on Form FC–3 is required by law. Form FC–3 is designed to collect timely information on foreign exchange

contracts purchased and sold; foreign exchange futures purchased and sold; non-capital assets and liabilities; cross currency interest rates swaps.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 1,600 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–22176 Filed 8–29–96; 8:45 am]

BILLING CODE 4810–25–P

Fiscal Service

Financial Management Service; Proposed Collection of Information: ACH Vendor Miscellaneous Payment Enrollment Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the information collection for the "ACH Vendor Miscellaneous Payment Enrollment Form."

DATES: Written comments should be received on or before October 29, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marilyn Feingold, 401–14th Street, SW., Washington, DC 20227, (202) 874–6725.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: ACH Vendor Miscellaneous Payment Enrollment Form.

OMB Number: 1510–0056.

Form Number: SF 3881.

Abstract: This form is used to collect payment data from vendors doing business with the Federal Government. The Treasury Department, Financial Management Service will use the information to electronically transmit payments to vendors' financial institutions.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50,000.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility: (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: August 23, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–22190 Filed 8–29–96; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Alexander the Great" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of all of the listed exhibit objects at the Florida International Museum, St. Petersburg, Florida, from on or about October 1, 1996, through on or about April 6, 1997, and of a portion of the listed exhibit objects at the Portland Museum of Art, Portland, Oregon, thereafter, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 27, 1996.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 96–22222 Filed 8–29–96; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (69 Stat. 985, 22 U.S.C. 2459), Executive order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Jasper Johns: A Retrospective." (See list)[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Museum of Modern Art, New York, New York, from on or about October 16, 1996, through on or about January 21, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 27, 1996.

Wallace Stuart,

Acting General Counsel.

[FR Doc. 96–22223 Filed 8–29–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg, Assistant General Counsel, at 202/619–6084; the address is Room 700, U.S. Information Agency, 301–4th Street, S.W., Washington, D.C. 20547–0001.

[1] A copy of this list may be obtained by contacting Paul W. Manning, Assistant General Counsel, at 202/619–5997; the address is Room 700, U.S. Information Agency, 301–4th Street, S.W., Washington, D.C. 20547.

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Friday
August 30, 1996

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Scaffolds Used in the Construction Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–205]

RIN 1218–AA40

Safety Standards for Scaffolds Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises the construction industry safety standards which regulate the design, construction, and use of scaffolds. The final rule updates the existing scaffold standards and sets performance-oriented criteria, where possible, to protect employees from scaffold-related hazards such as falls, falling objects, structural instability, electrocution and overloading.

In particular, the final rule has been updated to address types of scaffolds—such as catenary scaffolds, step and trestle ladder scaffolds, and multi-level suspended scaffolds—not covered by OSHA's existing scaffold standards. In addition, the final rule allows employers greater flexibility in the use of fall protection systems to protect employees working on scaffolds and extends fall protection to erectors and dismantlers of scaffolds to the extent feasible. Another area that the final rule strengthens is training for workers using scaffolds; the conditions under which such employees must be retrained are also specified in the final rule. Finally, the language of the rule has been simplified, duplicative and outdated provisions have been eliminated, overlapping requirements have been consolidated, and the performance orientation of the rule has been enhanced to allow employers as much flexibility in compliance as is consistent with employee protection.

DATES: *Effective dates.* This standard will become effective on November 29, 1996, except for § 1926.453(a)(2), which will not become effective until an Office of Management and Budget (OMB) Control number is received and displayed for this "collection of information" in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OSHA will publish a document in the **Federal Register** announcing the effective date of § 1926.453(a)(2).

Incorporation by reference. The incorporations by reference of certain publications listed in this final rule are approved by the Director of the Federal Register as of November 29, 1996.

Compliance date: Employers are required to comply with the provisions of paragraphs (e)(9) and (g)(2) of § 1926.451, which address safe access and fall protection, respectively, for employees erecting and dismantling supported scaffolds starting on September 2, 1997.

Comments. Written comments on the paperwork requirements of this final rule must be submitted on or before October 29, 1996.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Suggestions and information regarding the drafting of non-mandatory Appendix B, "Criteria for Determining the Feasibility of Providing Fall Protection and Safe Access for Workers Erecting or Dismantling Supported Scaffolds" should be submitted to the Docket Officer, Docket S–205, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Anne C. Cyr, Occupational Safety and Health Administration, Office of Information and Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: (202) 219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 et seq.) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA), significantly strengthened employee protection by authorizing the promulgation of construction safety and health standards for employees of the building trades and construction industry working on federal and federally-financed or federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR part 1518 (36 FR 7340, April 17, 1971).

The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorized the Secretary of Labor to adopt established federal standards issued under other statutes, including the CSA, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which had been issued under the CSA, as OSHA standards (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were subsequently redesignated as 29 CFR part 1926 (36 FR 25232, December 30, 1971). Standards addressing scaffolds, §§ 1926.451 and 1926.452, were adopted in subpart L of part 1926 as OSHA standards as part of this process.

Various amendments were made to subpart L during the first two years of the OSH Act. The amendments revised scaffold provisions that addressed planking grades, wood pole scaffold construction, overhead protection, bracket scaffold loading, and plank spans. Also, substantive provisions concerning pump jack scaffolds, height of catch platforms, and guardrails were added (37 FR 25712, December 2, 1972).

Based on concerns regarding the effectiveness of the existing scaffold standards, OSHA began a complete review of subpart L in 1977. The Agency consulted the Advisory Committee on Construction Safety and Health (ACCSH) several times regarding draft revisions to subpart L. The transcripts of these meetings are part of the public record for this rulemaking (Ex. 3–4). OSHA addresses specific recommendations from the ACCSH, as well as those submitted by other rulemaking participants, in the Summary and Explanation section, below.

On November 25, 1986, OSHA issued a notice of proposed rulemaking (NPRM) on scaffolds used in construction (51 FR 42680). The proposal set a period, ending February 23, 1987, during which interested parties could submit written comments or request a hearing. The Agency twice granted requests for more time to submit comments and hearing requests. OSHA first extended the comment and hearing request period to June 1, 1987 (52 FR 5790, February 26, 1987) and then extended that period to August 14, 1987 (52 FR 20616, June 2, 1987). OSHA received 602 comments on the proposal, along with several hearing requests.

On January 26, 1988, OSHA announced that it would convene an informal public hearing on March 22, 1988 to elicit additional information on

specific issues related to scaffolds, fall protection and stairways and ladders (53 FR 2048). The informal public hearing was held on March 22–23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearing, Judge Williams set a period, ending May 9, 1988, for the submission of additional comments and information. OSHA received 31 submissions, including testimony and documentary evidence, in response to the hearing notice. On August 11, 1988, Judge Williams certified the rulemaking record, including the hearing transcript and all written submissions to the docket, thereby closing the record for this proceeding.

In 1988, the American National Standards Institute (ANSI), an organization which sets voluntary consensus standards, approved a revision of ANSI A10.8–1977, *Scaffolding*, updating its safety requirements for the use of scaffolds in construction and demolition operations. Section 6(b)(8) of the OSH Act requires that when an OSHA standard differs substantially from an existing national consensus standard, the Secretary must publish "a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard." In compliance with that requirement, OSHA has reviewed the requirements of this final rule with reference to the corresponding provisions of ANSI A10.8–1988. The Agency discusses the relationship between the provisions of subpart L and corresponding provisions of ANSI A10.8–1988 in the *Summary and Explanation*, below.

On March 29, 1993, OSHA reopened the rulemaking record for subpart L (58 FR 16509) to obtain additional comments and information regarding fall protection and safe means of access for employees erecting and dismantling scaffolds; the use of crossbraces in scaffold systems; and the use of repair bracket scaffolds. The comment period was scheduled to end on May 28, 1993. On May 26, 1993, the Agency extended the comment period (58 FR 30131) to June 29, 1993, in response to a request for additional time to submit comments. OSHA received 46 comments in response to the March 29 notice. Those comments are discussed below in relation to the pertinent provisions of the final rule.

On February 1, 1994, OSHA again reopened the rulemaking record (59 FR 4615) to obtain comments and information regarding scaffold stairways; repair bracket scaffolds; tank builder scaffolds; a NIOSH study of workplace fatalities; and scaffold-related material incorporated from the proposed part 1910, subpart D rulemaking. The comment period, which ended on March 18, 1994, elicited 46 comments. Those comments are also discussed below in relation to the pertinent provisions of the final rule.

A wide range of employers, businesses, labor unions, trade associations, state governments, and other interested parties contributed to the development of this record. OSHA appreciates these efforts to help develop a rulemaking record that provides a sound basis for the promulgation of revised subpart L.

Based on its review of existing subpart L, OSHA believes that certain provisions in the existing standards are outdated, redundant, or ambiguous. In addition, some types of scaffolds used in construction (e.g., catenary scaffolds) are not clearly addressed by the existing standards, and some provisions cover only certain types of scaffolds when they should apply to all. The final rule eliminates those unnecessary, outdated and redundant provisions (e.g., revised subpart L states the requirement for guardrails once, rather than 19 separate times as in the existing standard).

OSHA is coordinating the revision of part 1926, subpart L, with the ongoing rulemakings initiated to revise the General Industry (part 1910, subpart D) and Shipyard (part 1915, subpart N) scaffold standards, so that those standards will be consistent, where appropriate.

II. Hazards Involved

Scaffold-related incidents resulting in injuries and fatalities continue to occur despite the fact that OSHA has had a scaffold standard (existing subpart L) in place since 1971 (Exs. 1, 2, 3, 42, 43, 44 and 45). However, the Agency believes that compliance with the standard being published today will be better than it has been in the past because this standard has been simplified, brought up to date, and strengthened to provide additional protection.

Although specific accident ratios cannot be projected for the estimated 3.6 million construction workers currently covered by subpart L, the Economic Analysis that accompanies this final rule estimates that, of the 510,500 injuries and illnesses that occur in the construction industry annually, 9,750 are related to scaffolds. In addition, of the estimated 924 occupational fatalities occurring annually, at least 79 are associated with work on scaffolds.

OSHA prepared the following statistical estimates (based on 4.5 million construction workers then covered by subpart L) to support the 1986 proposal for subpart L, based on a review of accident data prepared by the Bureau of Labor Statistics (BLS) (Ex. 3–1). The revised scaffold standards contain a number of provisions designed specifically to address the findings of this analysis.

a. Seventy-two percent of the workers injured in scaffold accidents covered by the BLS study attributed the accident either to the planking or support giving way, or to the employee slipping, or being struck by a falling object. Plank slippage was the most commonly cited cause.

b. About 70 percent of the workers learned of the safety requirements for installing work platforms, assembling scaffolds, and inspecting scaffolds through on-the-job training. Approximately 25 percent had no training in these areas.

c. Only 33 percent of scaffolds were equipped with a guardrail.

The following are recent examples, from the OSHA Integrated Management Information System (IMIS) data, of the types of accidents that continue to injure and kill employees working on scaffolds.

- In July, 1991, two employees were working on a pump jack scaffold doing roofing work. The scaffold became overloaded and broke. The employees fell 12 feet to the ground, resulting in one fatality and one serious injury.
- In August, 1992, two workers were erecting an aluminum pump jack scaffold. As they were raising the second aluminum pole, the pole apparently contacted an overhead power line. The pole being raised was 29 feet 10 inches long and the line was 28 feet 10 inches high. The line was approximately 11 feet from the house. One employee died and the other suffered severe burns and was hospitalized. The surviving employee noted that he thought they had enough room to work around the power lines, which were not de-energized or shielded.
- In July, 1993, a foreman climbed up the frame of a 45 foot high tubular welded frame scaffold to check on an employee who was sandblasting inside a stack at a steam plant. The scaffold was not equipped with guardrails and there was no access ladder. After talking to the employee, the foreman either fell from the unguarded platform or fell while climbing down the scaffold end frame, resulting in his death. There were no witnesses to the fall.

Based on its analysis of the available data and its field experience in enforcing construction standards, the Agency has determined that employees using scaffolds are exposed to a

significant risk of harm. Specifically, scaffold related fatalities still account for approximately 9% of all fatalities in the construction workplace. In addition, the above data indicate that the revised final standard would have prevented many of these accidents more effectively than compliance with the existing scaffold standards. Consequently, OSHA finds that the revision of its scaffold standards for construction is necessary to improve employee protection. OSHA has determined that, as revised, the standard clearly states employers' duties and the appropriate compliance measures.

For additional discussion of incidence rates, significance of risk, and the protectiveness of the final rule, see Section IV, Summary of the Final Economic Analysis.

III. Summary and Explanation of the Final Rule

The following discussion explains how the final rule corresponds to or differs from the proposed scaffold standard and the existing standard, and how the comments and testimony presented on each provision influenced the drafting of the final rule. Except where otherwise indicated, proposed provisions which did not elicit comment have been promulgated as proposed, for reasons stated in the preamble to the proposed rule which is hereby incorporated by reference (51 FR 42680).

Subpart L—Scaffolds. The title of subpart L of OSHA's Construction standards has been changed from "Scaffolding" to "Scaffolds", as proposed. The word "scaffold" is used in the title and throughout the final rule in lieu of the longer word "scaffolding." This change does not affect the scope of subpart L. OSHA did not receive any comments concerning the title of the subpart.

Section 1926.450 Scope, application and definitions applicable to this subpart. Paragraph (a) of § 1926.450 states the scope and application of subpart L. The final rule will apply to all scaffolds used in construction, alteration, repair (including painting and decorating), and demolition operations covered under 29 CFR part 1926, except that crane or derrick suspended personnel platforms will continue to be regulated under § 1926.550(g). Language explicitly excluding these platforms has been added to the final rule. The relationship between § 1926.550(g), which covers these platforms, and subpart L is discussed further in relation to § 1926.451(c)(2) and NPRM Issue 3, below. In addition, aerial lifts are covered exclusively in § 1926.453, as noted in paragraph (a) of § 1926.450. Proposed paragraph (a) covered *all* scaffolds.

A commenter (Ex. 2–38) recommended that OSHA explicitly exempt personnel platforms suspended by cranes or derricks from this final rule. The commenter stated "[t]his would avoid confusion, both for the Compliance Officer and the employer." As noted above, the Agency recognizes the need for an exemption and has revised paragraph (a) accordingly.

Another commenter (Ex. 2–18), representing the elevator industry, suggested that OSHA revise the scope of proposed subpart L to exclude "False cars used in elevator construction that are equipped with independent safeties that operate on the guardrails * * *" The commenter supported the suggestion as follows: "An elevator false car operates on fixed guiderails * * * equipped with safeties that ride on the guiderails * * * and are operated automatically by the slackening of the hoisting rope. Past OSHRC (Occupational Safety and Health Review Commission) decisions have recognized that a false car is a unique tool and is not a scaffold." The commenter did not cite any specific OSHRC decisions to support its assertion.

OSHA disagrees with this commenter on this point, because the findings in two enforcement cases involving the Otis Elevator Company (12 OSHRC 1470 and 12 OSHRC 1513 (1985)) clearly indicate that the scaffold standards of subpart L cover false cars. In *Otis Elevator Company,* 12 OSHRC 1513 (1985), the final order stated:

> The evidence in this case showed that the false cars were used as elevated working space from which employees installed permanent elevator rails. The ability to raise and lower the false cars by means of cables from overhead supports does not remove false cars from the applicability of the scaffold standard, and a false car is found to be a scaffold within the meaning of 29 CFR 1926.452(b)(27).

The Agency notes that elevator false cars fit the definition of a "scaffold" in final rule § 1926.450(b) in that they are temporary elevated work platforms used for supporting employees. Accordingly, there are no apparent grounds for disputing that elevator false cars are properly regulated under part 1926, subpart L. Therefore, OSHA will continue to regulate temporary elevated work platforms, such as false cars and go-devils used in elevator shaft construction, as scaffolds.

The Scaffolding, Shoring and Forming Institute (SSFI) (Ex. 2–367) recommended that OSHA include "Window cleaning" within the scope of subpart L, because "[w]indow cleaning is a common activity that, for the overwhelming majority of instances, uses transportable suspended scaffolds." In addition, the Scaffold Industry Association (SIA) (Ex. 2–368) suggested that OSHA add "scheduled and unscheduled maintenance (including but not limited to painting and decorating, tuck pointing, sand blasting, water proofing and window cleaning)" to the scope of subpart L, because maintenance is a type of work "regularly performed on scaffolds addressed in this subpart and, therefore, should be included in the scope."

Another commenter (Ex. 2–462) stated that expanding the scope of subpart L to include maintenance would create confusion and "would greatly reduce the safety standard already in place for Powered platforms for exterior building maintenance" (29 CFR 1910.66).

The Agency is not expanding the scope to include building maintenance because building maintenance (such as window cleaning) is a general industry activity, addressed under the appropriate scaffold and powered platform standards of 29 CFR part 1910.

OSHA received a general comment (Ex. 2–29) which noted that § 1910.66 addressed powered platforms used for exterior building maintenance in general industry and urged OSHA to ensure that the corresponding regulatory language in the construction standard for scaffolds was consistent. As discussed above, the Agency agrees, and is coordinating its General Industry, Shipyard and Construction rulemaking activity so that employers in those industries have consistent regulation, to the extent that workplace conditions permit.

Paragraph (b) of § 1926.450 lists and defines all major terms used in subpart L. Proposed terms and definitions which elicited no comments and which have been promulgated unchanged or with only minor editorial revisions are not addressed below. Those terms include "adjustable suspension scaffold", "boatswains' chair", "body belt", "body harness", " brace", "cleat", "coupler", "crawling board", "double pole scaffold", "exposed power lines", "fabricated decking and planking", "float (ship) scaffold", "form scaffold", "hoist", "interior hung scaffold", "ladder stand", "lean-to scaffold", "lower level", "mobile scaffold", "multi-level suspension scaffold", "multi-point adjustable scaffold", "open sides and edges", "overhand bricklaying", "platform", "pole scaffold", "pump jack scaffolds", "roof bracket scaffold", "runner", "self-

contained adjustable scaffold", "shore scaffold", "single-point adjustable suspension scaffold", "single pole scaffold", "step platform and trestle ladder scaffold", "stone setter multi-point adjustable suspension scaffold", "supported scaffold", "suspension scaffold", "tube and coupler scaffolds", "tubular welded frame scaffold", "two-point suspension scaffold", "unstable objects", "vertical pickup", "walkway", and "window jack scaffold".

As proposed, OSHA is revising its definitions for particular types of scaffolds by specifying whether a particular type of scaffold is a "supported" or a "suspension scaffold." OSHA believes that adding this information will make it easier for employers to identify the appropriate general requirements in final rule § 1926.451.

In addition, the Agency has revised subpart L definitions by deleting language that limits the use of a particular type of scaffold. Such substantive limitations are more appropriately placed in regulatory text. Accordingly, for example, OSHA has revised the definition for "bricklayers' square scaffolds" (a scaffold composed of framed wood squares which support a platform, limited to light and medium duty) by deleting the words "limited to light and medium duty". Similarly, OSHA has revised the definition for "coupler" to be "a device for locking together the component tubes of a tube and coupler scaffold", deleting language addressing the material used for the coupler because such requirements are more properly located in §§ 1926.451 or 1926.452.

The following discussion covers the terms for which definitions are being added or revised in this final rule and those proposed terms which elicited comments.

"Bearer (Putlog)." This definition is the same as the definition proposed except that the word "Putlog," an industry-used term, has been added to the definition. A commenter (Ex. 2–29) suggested putlog should be included in the proposed definition "to show a close or synonymous relationship to the term 'bearer' " and because "it is a widely used and understood term." The Agency agrees with the commenter and has revised the proposed definition accordingly.

"Bricklayers' Square Scaffold" is defined in existing § 1926.452(b) and the proposed definition is substantively unchanged in the final rule. The definition deletes the existing § 1926.452(b) requirements that bricklayers' square scaffolds be constructed of "wood" and that the platform capacity be limited to "light and medium duty." The revised definition recognizes that bricklayers' square scaffolds can be constructed of materials other than "wood" and that their capacity is not limited to "light and medium duty" as long as they can meet the capacity requirements set forth in final rule § 1926.451(a)(1).

A commenter (Ex. 2–23) suggested that OSHA adopt the ANSI A10.8–1977 definition for Bricklayers' Square Scaffold which specifies the use of "wood" and the ability to sustain light to medium loads. As stated above, OSHA believes it would be inappropriate to limit technological advances that would provide for the use of other materials with greater capacities. Therefore, the Agency has not made the suggested revision.

"Carpenters' bracket scaffold." This term means a supported scaffold consisting of a platform supported by brackets attached to building or structural walls. The final rule is identical to the proposal. The SIA (Ex. 2–368) suggested that because different trades (i.e., cement finishers) use this type scaffold, the term be renamed "bracket scaffold" exclusively. OSHA recognizes that this type of scaffold is used by several trade groups. However, OSHA believes that it is widely recognized in the construction industry that "carpenters' bracket scaffolds" are not used only by carpenters. Therefore, the Agency is not making the suggested revision.

"Catenary scaffold." This type of scaffold is not specifically addressed in OSHA's existing rule but is covered in final rule § 1926.452(r). This term refers to a suspension scaffold consisting of a platform supported by two essentially horizontal and parallel ropes which are secured to structural members and may be supported by vertical pickups. The proposed definition has been changed to replace the language "fastened to" with "supported by" and a phrase has been added explaining that horizontal ropes "may be supported by vertical pickups."

One commenter (Ex. 2–23) suggested that OSHA insert the word "wire" between the words "parallel" and "rope."

However, OSHA does not intend to restrict the type of material used for suspension scaffold rope as long as it is "capable of supporting without failure six times the maximum intended load" as set forth in final rule § 1926.451(a)(3).

Two commenters (Exs. 2–23 and 2–368) suggested OSHA replace the words "fastened to" with "supported by" in this definition. OSHA agrees that the suggested words more accurately describe the function of the horizontal ropes with relation to the platform and is revising the proposed definition accordingly.

In addition, the SIA (Ex. 2–368) suggested that OSHA add the phrase "and may be supported by vertical pickups". OSHA agrees with the commenter. Vertical pick-ups can act as supports for sagging horizontal ropes. Also, because final rule § 1926.452(r)(1) refers to vertical pickups, OSHA believes that it is appropriate to include this phrase in the definitions.

"Chimney hoist." This term is being added to recognize a specific type of multi-point adjustable suspension scaffold used to gain access to worksites inside chimneys.

"Competent person." This term is being added to the final rule as a matter of convenience for users. The definition is identical to that found in § 1926.32.

"Continuous run scaffold (run scaffold)" means a two-point or multi-point adjustable suspension scaffold constructed using a series of interconnected braced scaffold members or supporting structures erected to form a continuous scaffold. This term is being added to recognize this type of system. The Agency notes that the key element here is that the scaffold members must be interconnected so that the erected scaffold acts as a single unit. This would preclude planking across two independent scaffolds without joining them so the resulting scaffold acts as one unit. This system allows erecting a lengthy scaffold without requiring a continuous planked platform, as long as the smaller platform is properly guarded.

"Deceleration device." This term means any mechanism, such as a rope grab, rip stitch lanyard, specially-woven lanyard, tearing or deforming lanyard, automatic self-retracting lifelines/lanyard, which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limits the energy imposed on an employee during fall arrest. The proposed definition, which was effectively identical, has been editorially revised for the sake of clarity.

Three commenters (Exs. 2–13, 2–368 and 2–516) suggested that rope grabs and some self-retracting lifelines are not "deceleration devices" but are actually fall arrest devices. OSHA notes, however, that it is difficult to differentiate clearly between system components, as suggested, because fall arrest (stopping) and energy absorption (braking) are closely related. The Agency also observes that the performance criteria for personal fall arrest equipment address the entire system, not just "fall arresters" or

"energy absorbers". Accordingly, OSHA has not made the suggested change.

"Equivalent." This term is used in the final rule to allow alternative means of complying with the standard. The definition provides that the employer must be able to demonstrate that the alternative means of compliance will provide an equal or greater degree of safety than that attained by using the method or item specified in the standard. The final definition is identical to the proposed definition, except that minor editorial changes have been made for the sake of clarity. The final rule definition is consistent with the corresponding definitions in § 1910.66 and in part 1926, subparts M and X.

The SIA (Ex. 2–368) suggested that OSHA not require the employer to "demonstrate whether or not the scaffold is of 'equal or greater degree of safety' because the employer is too many steps removed from the manufacturer" and because requiring the employer to test for equivalency would create a significant danger that failure would occur. However, the proposed language reflects the Agency's longstanding position that employers who choose to deviate from criteria set in OSHA standards must be able to demonstrate that employee protection has not been adversely affected. The employer has the flexibility to establish equivalence by any effective means, including information available from equipment suppliers and taking into account the specific circumstances of the work to be done.

"Eye" or "eye splice" means a loop with or without a thimble at the end of a wire rope. This term is being added to the final rule to clarify the Agency's intent that this type of connection is an acceptable way to connect wire ropes without significantly affecting their strength or capacities. The term is used in final rule § 1926.451(d) (8) and (9).

"Fabricated frame scaffold" means a supported or suspended frame scaffold consisting of platform(s) supported on fabricated end frames with integral posts, horizontal bearers, and intermediate members. This is the term for the type of scaffold presently identified as "tubular welded frame scaffold." OSHA has determined that the current term is too restrictive because the words "tubular" means round and "welded" means that metal components are involved. The provisions of final rule § 1926.452(c), Fabricated frame scaffolds, are not subject to such limitations. They address fabricated frames and related scaffold components whether the component parts are square or round, or made of metal, plastic, wood, or some other material. The final rule definition is identical to that in the proposed rule.

Two commenters (Exs. 2–13 and 2–320) suggested using the existing term "tubular welded frame" and one commenter (Ex. 2–23) suggested using the term "Fabricated tubular frame (Tubular welded frame scaffold)" instead of the proposed term. However, as explained above, OSHA does not intend to restrict this term to "tubular" or "welded" components.

"Failure." This term is used in performance-oriented paragraphs such as §§ 1926.451 (a)(1) and (a)(3), which address scaffold capacity. Because the word might otherwise be interpreted to mean only breakage or a physical separation of scaffold components, the final rule definition clearly indicates that load refusal (the point where the ultimate strength of a component is exceeded) is also considered to be failure. This is the point where structural members lose their ability to carry loads although they have not broken or separated. The term is the same as the term defined in Subpart X of Part 1926, Ladders and Stairways. The definition for "failure" in the final rule is the same as proposed.

One commenter (Ex. 2–40) suggested that the term "ultimate strength" was not clearly defined. Another commenter (Ex. 2–38) suggested deleting the last sentence of the proposed definition (Load refusal is the point where the ultimate strength is exceeded) to avoid confusion between "ultimate strength" and "overloading without breaking." As OSHA stated above, "ultimate strength" may be exceeded without component parts breaking or separating. Therefore, the Agency believes the suggested changes are unnecessary.

"Guardrail system." This term refers to perimeter protection composed of vertical barriers which are erected to prevent employees from falling. The final rule definition is essentially identical to the proposed definition. This term replaces the definition of "guardrail" in the existing rule, which appeared at § 1926.452(b)(10). The old definition was rail secured to uprights and erected along the exposed sides and ends of platforms. OSHA believes that this definition did not adequately reflect the manner in which toprails, midrails and other intermediate members, and toeboards combine to provide effective fall protection. The final rule definition of guardrail clearly indicates that the entire system, including toprail, midrail (or other intermediate protection), and uprights, is covered when guardrails are addressed in final rule § 1926.451(e). The definition of guardrail system used in the proposed rule stated that a guardrail system was "a vertical barrier erected to prevent employees from falling from an open side or edge of a scaffold platform or walkway". The proposed definition also distinguished between "Type I guardrails", which were capable of providing fall protection without the use of personal fall arrest systems, and "Type II guardrails", which would need to be supplemented by personal fall arrest systems (as explained below, OSHA has not maintained this distinction in the final rule).

The SIA (Ex. 2–368) suggested replacing the word "prevent" with the word "protect" in the proposed definition of "guardrail system". According to standard dictionary meanings of both words, "prevent" more accurately describes the function of the guardrail system, which is to keep the employee from going past the perimeter of the scaffold in the first place. Therefore, the Agency is not making the suggested change.

Three commenters (Exs. 2–13, 2–53 and 2–370) recommended that OSHA retain the guardrail rules in the existing scaffold standard and eliminate the concept of "Type I" and "Type II" from the proposed definition of guardrail systems. The commenters suggested that the old rule's definition of guardrail protection would provide more fall protection than the definition used in the proposed rule. For reasons discussed further below, OSHA finds that the final rule's requirements for guardrail systems, which are essentially identical to those in the proposed rule, provide more protection than the requirements in the existing rule. However, OSHA has deleted the discussion of "Type I" and "Type II" guardrails from the final rule for the sake of clarity and has added specific criteria for guardrails to final rule § 1926.451(g).

"Horse scaffold" means a supported scaffold consisting of a platform supported by construction horses. Horse scaffolds made of metal are sometimes known as trestle scaffolds. The proposed definition was similar except that it did not include the term "trestle scaffold." The SIA (Ex. 2–368) suggested revising the definition to specify that horse scaffolds "may be constructed of wood, metal, or a combination of both. The metal horses may be referred to as 'trestle horses'." Under OSHA's performance-oriented approach to subpart L, an employer may use any construction materials (e.g., wood or metal) that enable the scaffold to comply with the capacity requirement set forth in § 1926.451(a)(1). However,

the Agency agrees that it would be useful to indicate that some horse scaffolds constructed of metal are known as trestle scaffolds. OSHA has revised the definition accordingly.

"Ladder jack scaffold." The final rule definition, which is identical to that in the proposed rule, states that this type of scaffold is a supported scaffold consisting of a platform supported by brackets attached to ladders.

A commenter (Ex. 2–23) stated that the capacity of this type of scaffold should be limited to "light duty" and that the words "light duty" should be included in this definition. As discussed above, OSHA believes it is inappropriate for definitions to include substantive requirements. In any event, the Agency has determined that a ladder jack scaffold which complies with the capacity criteria of § 1926.451(a)(1) and the other pertinent subpart L requirements will be considered acceptable. Accordingly, OSHA has not made the suggested change.

"Landing." This new term, which has been added to ensure that the requirements of final rule § 1926.451(e)(4) are clearly understood, refers to a platform at the end of a flight of stairs.

"Large area scaffold" means a pole scaffold, tube and coupler scaffold, systems scaffold, or fabricated frame scaffold erected over substantially the entire work area, for example; A scaffold erected over the entire floor area of a room. The Agency has added this term and definition, along with final rule § 1926.452(d), to provide a reference point in the standard for this widely used type of scaffold.

"Lifeline" means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline) or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage. A vertical lifeline is sometimes known as a dropline. A horizontal lifeline is sometimes known as a trolley line. This definition, which was not part of the proposed rule, has been added for the sake of clarity. The definition in part 1926, subpart M, Fall Protection, is consistent with the definition in final subpart L. The proposed terms "dropline" and "trolley line", along with their definitions, have been deleted as separate definitions and have been incorporated into this final rule definition.

One commenter (Ex. 2–57) stated that a "trolley line" was a "horizontal lifeline" and suggested that OSHA set "strength requirements." While final rule subpart L does not set numerical load requirements for "horizontal lifelines", criteria for such equipment are provided in § 1926.502(d), subpart M, as referenced by a note to final rule § 1926.451(g)(3).

"Masons' adjustable supported scaffold." OSHA proposed this term, which was not defined in existing subpart L, so employers who used "self-contained adjustable scaffolds" in masonry operations would have a clear reference point in revised subpart L. The final rule is identical to the proposed rule definition.

One commenter (Ex. 2–23) suggested replacing the parenthetical reference to self contained adjustable scaffolds with the definition for such scaffolds in ANSI A10.8–1977. However, to limit redundancy and confusion, OSHA does not believe that this term should be defined by the format suggested by the commenter.

"Masons' multi-point adjustable suspension scaffold." This term replaces the term "Masons' adjustable multiple-point suspension scaffold" in the existing standard. The term means a two-point or multi-point adjustable suspension scaffold designed and used for masonry operations. The final rule definition is the same as that proposed.

One commenter (Ex. 2–23) suggested OSHA adopt the definition for this term from ANSI A10.8–1977, which contains the language "continuous platform." However, it is not OSHA's intent to limit this type of scaffold to a single "continuous platform." All types of multi-point suspension scaffolds covered by subpart L may consist of more than one platform. Multi-point scaffolds are not limited by the number of suspension wires, platforms, or the location of attachment of the suspension wires to the platform or platforms (Example: A multi-point scaffold may consist of one platform suspended by four wires or it may consist of two platforms suspended by four wires). Additionally the definition suggested by the commenter did not include the words "masonry operations." OSHA is including the words "masonry operations" in this definition so it applies specifically to such scaffolds used in the masonry trade.

"Maximum intended load" means the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time. This term replaces the existing terms "maximum rated load" and "workload". The term addresses the types of loads which are to be included when determining the maximum load. OSHA has been concerned that the word "rated" in the existing term "maximum rated load" does not clearly express how the safety factor of four (existing rule paragraph 1926.451(a)(7)) or six (existing rule paragraph 1926.451(a)(2)) is to be incorporated into the determination of the maximum load. The final rule definition and final rule § 1926.451(a)(1) clearly indicate that the maximum intended load is determined without regard to safety factors. Once the maximum intended load is determined, the employer *then* applies the pertinent safety factor to determine the requisite strength for the system in question.

The final rule definition is the same as in the proposed rule except the word "employees" has been replaced with the word "persons". The SIA (Ex. 2–368) suggested this change because "[p]ersons other than employees might be on a scaffold thus overloading it." OSHA agrees that the weight of all "persons" needs to be considered when calculating the maximum intended load.

One commenter (Ex. 2–23) suggested that OSHA add the closely related term "scaffold load rating" which includes definitions for the words "heavy-duty loading," "medium-duty loading," "light-duty loading" and "special loading." The Agency provides examples of appropriate measures for "heavy-duty," "medium-duty" and "light-duty" scaffold in non-mandatory Appendix A of final rule subpart L. Accordingly, the Agency believes the appropriate information is available and no further changes are necessary.

Two comments (Exs. 2–13 and 2–320) suggested replacing the proposed term and definition of maximum intended load with the term "Maximum Rated Load." The commenters suggested that the term "Maximum Rated Load" takes into account safety factors established by the designer or manufacturer.

OSHA agrees that the term "Maximum Rated Load" does include built-in safety factors. As stated above, by not including the words "safety factor" in this definition or replacing the proposed term with "Maximum Rated Load," which implies built-in safety factors, OSHA clearly indicates that the minimum safety factor of 4:1 as set forth in final rule § 1926.451(a)(1) applies. The Agency believes it is appropriate to take into account the "expected" burden as well as the burden a scaffold "can" support without failure.

"Needle beam scaffold" means a suspension scaffold supported by needle beams. The final rule definition is the same as the proposed definition. One commenter (Ex. 2–23) suggested

that OSHA limit the use of this type of scaffold to "light-duty". However, as discussed earlier, the Agency does not intend to limit the capacity of a scaffold as long as it meets the pertinent requirements of § 1926.451(a). OSHA has provided examples of measures that would enable a scaffold to comply with these requirements in non-mandatory Appendix A.

"Outrigger." This term means the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide support and stability for the scaffold. The terms, "outrigger beam" and "outrigger scaffold" are new definitions provided to explain the difference between these three similar terms. The final rule differs from the proposal, which defined outrigger as "the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide greater stability for the scaffold." The wording change was made in response to a comment from the SIA (Ex. 2–368), suggesting that OSHA replace the word "greater" with the words "support and increased." OSHA agrees that the suggested wording more accurately expresses the Agency's intent.

"Personal fall arrest system." This term, which replaces the proposed term "body belt/harness system", refers to a system used to arrest the fall of an employee from a working level. It consists of an anchorage, connectors, and a body belt or body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these. The final rules on fall protection (part 1926, subpart M) and powered platforms (§ 1910.66) also define "personal fall arrest system" in this manner. The final rule definition is essentially the same as that proposed for "body belt/harness systems", and the phrase "personal fall arrest systems" appears in the final rule wherever the phase "body belt/harness systems" was used in the proposed rule. A commenter (Ex. 2–13) suggested that the definition be reworded to indicate clearly that lifelines and deceleration devices are not always included as a part of a body belt/harness system. OSHA agrees and has clarified this point in the revised definition.

OSHA has deleted the proposed term "platform unit" and has incorporated the proposed definition language into final rule § 1926.451(b)(1)(i), which addresses the construction of scaffold platforms.

"Power operated hoists." This new term refers to hoists which are powered by other than human energy. The final rule language differs from the proposed language, which used the term "mechanically-powered hoists". OSHA has revised the terms "mechanically powered" and "manually powered" hoists to read "power operated hoists and manually operated hoists", because the Agency has determined that the language should be consistent with ANSI A10.8–1988, paragraph 6.

"Qualified." This term is being added to the final rule as a matter of convenience for users. The definition is identical to that found in § 1926.32.

"Rated load." This new term addresses the maximum load that a hoist is allowed to lift. The discussion of final rule § 1926.451(a)(1), below, addresses the use of this term.

"Repair bracket scaffold." This new term has been added to address the type of scaffold addressed by final rule § 1926.452(x). This term is discussed below in conjunction with the discussion of that paragraph.

"Scaffold." This term refers to a temporary elevated platform (supported or suspended) and its supporting structure, including points of anchorage, used for supporting employees or materials or both. The definition also clearly indicates that crane or derrick suspended personnel platforms are not scaffolds. The Agency has added the phrase "including points of anchorage" to the definition of scaffold in the final rule to indicate clearly that points of anchorage are considered to be part of a scaffold.

"Stair tower (Scaffold stairway/tower)." This new term has been added to describe the means of access addressed by final rule § 1926.451(e)(4). This term is addressed in relation to that provision below.

"Stall load." This new term has been added to identify the maximum load that a hoist can lift without stalling or shutting down. The use of this term is discussed in relation to final rule § 1926.451(a)(2), below.

"Stilts" mean a pair of poles or similar supports with raised footrests, used to permit walking above the ground or working surface. This term and definition has been added to recognize this type of scaffold, which is used by many trades in the construction industry to allow employees to walk elevated above the ground or working surface. Final rule paragraph § 1926.452(y) addresses the safe use of this type of scaffold both as a scaffold itself, and on other types of scaffolds (large area scaffolds).

"System scaffold" means a scaffold consisting of posts with fixed connection points that accept runners, bearers, and diagonals that can be interconnected at predetermined levels. This new term has been added to the final rule to recognize the existence and acceptance of this type of scaffold. The definition is identical to the definition for the same term found in ANSI A10.8–1988.

"Tank builders' scaffold" means a supported scaffold consisting of a platform supported by brackets that are either directly attached to a cylindrical tank or are attached to devices that are attached to such a tank. In the February 1, 1994 notice of record reopening (59 FR 4618), OSHA suggested a definition of "tank builders' scaffold" for consideration. That definition was very similar to the final rule definition except that the reopening notice definition did not specifically refer to cylindrical tanks and did specify that the platform was welded to the steel plates of the tank.

The commenters (Exs. 43–19, 43–23, 43–33, 43–34, 43–35, 43–39, 43–40, 43–42, and 43–43) who responded to the proposed definition for tank builders' scaffold stated:

> A "tank" is not necessarily a cylinder. The scaffold is used on structures that can be cylindrical, rectangular, conical, spherical, spheroidal, or elliptical. Also, "tanks" are constructed of material other than metal; e.g., fiberglass, wood, etc. Some tanks have vertical walls that are so thin that a bracket could not be welded to it; rather, the bracket would have to be bolted. We would further comment that the bracket is often inserted into a device which is welded to the steel plate. So we would suggest not referencing the bracket being attached to the structure, but rather the bracket being attached to a device that is affixed to the structure.

In addition, eleven commenters (Exs. 43–19, 43–21, 43–23, 43–27, 43–33, 43–34, 43–35, 43–39, 43–40, 43–42, and 43–43) stated that the criteria of an April 4, 1975 variance (40 FR 15139), which addressed tank builder scaffolds, would be adequately addressed by general provisions of the final rule and the definition of "tank builders' scaffold".

The 1975 variance order stated:

> The applicants' business, which is part of the tank building industry, involves the erection of relatively large steel plate segments of circumferential rings. Due to the unique nature of the construction involved, special procedures, including special scaffolding, have been developed. For example, as opposed to more conventional scaffolds, tank scaffolds must be highly portable and have a relatively low density of occupancy by [workers]. These scaffolds are raised up the shell of the tank as new rings of steel are added and work is completed at the level below.
>
> Most plate structures are fabricated from standard length plates * * * each approximately 31.416 feet (9.42 m.) long, [with] brackets [normally] welded to them while they are on the ground prior to being

placed into position on the tank wall. Scaffolding and guardrail supports are then attached to these brackets. If the applicants were to comply with [requirements] that [the maximum spacing for supports be no more than 8 feet (2.4 m.) for guardrails or 10 feet (3.0 m.) for planking], they assert it would be necessary to lay out each steel plate into sections with the brackets located approximately 7.854 feet (2.36 m.) apart. Instead, the applicants wish to lay out the plates into three equal sections with brackets located approximately 10' 6" (3.15 m.) apart.

* * * Because the contour of the steel plates of the tank face is curved and the adjacent edge of the scaffold platform is straight, there is an open space between them. As a result, applicants have installed taut wire rope on the scaffold brackets that extends midway between the innermost edge of the scaffold platform and the curved plate structure of the tank face to serve as a safety line in lieu of an inner guardrail assembly.

Since the information submitted to OSHA in relation to the variance addressed scaffolds used on cylindrical steel tanks, the Agency is applying the criteria of the variance only to structures that are approximately cylindrical. The Agency believes that non-cylindrical structures should be addressed on a case-by-case basis under the general provisions of the final rule. OSHA notes that 9 of the 11 commenters (Exs. 43–19, 43–23, 43–33, 43–34, 43–35, 43–39, 43–40, 43–42, and 43–43) mentioned above also stated "[t]ank builders place the scaffold inside of a cylinder, traditionally, to erect the tank." However, the Agency believes that the requirements of the variance, as modified in Appendix A of the final rule, can reasonably be applied to cylindrical tanks that are constructed of materials other than steel. The final rule definition for "tank builders' scaffold" has been worded accordingly.

OSHA has not promulgated specific requirements for tank builders' scaffolds in the final rule because the Agency believes that the requirements for those scaffolds are adequately addressed in the general provisions of the final rule. The Agency notes that it has placed several provisions (some of which have been editorially modified) of the variance in Appendix A for the benefit of employers who use tank builders' scaffolds, and that the introductory text to the Appendix clearly indicates that following the Appendix will be considered to constitute compliance with the requirements of this standard with regard to scaffolds used in the construction of cylindrical tanks. However, employers choosing not to follow the Appendix must still comply with the applicable requirements of § 1926.451, particularly paragraphs (a) and (f).

"Top plate bracket scaffold." This term is being added to the final rule to recognize a type of scaffold which is similar to carpenters' bracket scaffolds and form scaffolds. This type of scaffold consists of a platform supported by brackets that hook over or are attached to the top plate of a wall. Such scaffolds are used in residential construction when employees are setting roof trusses.

OSHA has deleted the following terms, which are defined in the old scaffold standard, from the definition section of the final rule, because those terms are now defined in other subparts or because the final rule no longer uses the terms in question: "heavy duty scaffold," "light duty scaffold," "medium duty scaffold," "midrail," "toeboard," and "working load." In addition, the proposed definitions for "drop lines", and "trolley line" have been deleted from this final rule, since they have been incorporated into the definition of "lifeline".

Under Issue L–12 in the preamble of the proposed rule, OSHA solicited testimony and related information on a suggestion by the ACCSH (Tr. 206, 6–9–87) that definitions for "ramp" and "runway" be added to the standard. The ACCSH indicated that the added definitions would facilitate clear understanding of the requirements in proposed § 1926.451(c)(4) (final rule § 1926.451(e)(4)). As noted under the discussion of the Issue, a member of the ACCSH recommended that the Agency use the definition of ramp developed by the National Safety Council.

The one comment (Ex. 2–593) OSHA received addressing the Issue supported defining the two terms. The commenter did not provide any suggested wording but indicated that the definitions should be "clear and consistent with existing OSHA and ANSI definitions."

In the final rule, OSHA has replaced the proposed term "runway" with the term "walkway", to indicate the Agency's regulatory intent clearly . However, the Agency believes that "ramp" is a commonly understood term and does not require a specific OSHA definition. Accordingly, OSHA has not added a definition for "ramp" to the final rule.

Paragraph 1926.451(a) Capacity

Final rule paragraph (a) sets the minimum strength criteria for all scaffold components and connections. The final rule sets scaffold capacity requirements that are substantively the same as those in existing subpart L, while eliminating ambiguities and apparent inconsistencies. The introductory text of the proposed paragraph, which stated that "the following requirements applied to all types of scaffolds except as indicated:", has been deleted in the final rule because the Agency has determined that it is too similar to the introductory text of paragraph (a)(1) and, therefore, is unnecessary.

Paragraph (a)(1) requires that each scaffold and scaffold component be capable of supporting, without failure, its own weight and at least 4 times the maximum intended load applied or transmitted to it. Paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (g) of § 1926.451 provide exceptions to this general rule, and are discussed below. This provision is based on existing § 1926.451(a)(7), which requires that scaffolds and scaffold components "be capable of supporting without failure at least four times the maximum intended load".

The final rule clearly provides that the 4 to 1 factor for a component applies only to the load which is actually applied or transmitted to that component, and not to the total load placed on the scaffold. Existing § 1926.451(a)(7), taken literally, could be read to require that each separate scaffold component be able to support four times the maximum intended load (MIL) of the entire scaffold. For example, the existing provision could be interpreted to require that a crossbrace on a supported scaffold be capable of supporting the same load as a scaffold leg, that is, be sized to support four times the entire MIL regardless of where the load is placed on the scaffold and regardless of the fact that the function of a brace is to prevent sway and not directly to support the MIL. Such an approach was not OSHA's intent. The Agency intended that each component be adequate to meet the 4 to 1 factor, but only for the portion of the MIL applied or transmitted to that component. The MIL for each component depends on the type and configuration of the scaffold system. Final rule paragraph (a)(1), which is effectively identical to the corresponding language in proposed paragraph (a)(1), clearly expresses the Agency's intent. The proposed provision has been editorially revised and reorganized for the sake of clarity. In particular, the exceptions to proposed paragraph (a)(1), which provide different coverage for suspension scaffolds, have been clearly delineated as separate paragraphs (a)(2) through (a)(6) in the final rule.

Paragraph (a)(2) of the final rule requires that direct connections to roofs and floors and counterweights used to balance adjustable suspension scaffolds be capable of resisting at least 4 times the tipping moment imposed by the scaffold operating at either the rated

load of the hoist *or* at 1.5 (minimum) times the tipping moment imposed by the scaffold operating at the stall load of the hoist, whichever is greater. Proposed paragraph (a)(2) simply required that direct connections to roofs and floors, and counterweights used to support suspension scaffolds, be capable of providing a resisting moment of at least four times the tipping moment. The proposed provision was intended to clarify that the safety factor of four to one also applies to direct connections to floors and roofs and to counterweight systems. These areas are as integral to the scaffold system as the scaffold platform itself. OSHA has revised the proposed provision to account for the need to base the factor of safety for adjustable suspension scaffolds on the rated load of the hoist and the stall load of the hoist.

Several commenters (Exs. 2–8, 2–28, 2–64, 2–367, and 2–516) indicated that the factors of safety for adjustable suspension scaffolds should be based on the rated load of the hoist. Four of those commenters (Exs. 2–28, 2–64, 2–367 and 2–516) and the SIA (Ex. 2–368) recommended that the stall capacity of the hoist be considered in the factors of safety.

One of these commenters (Ex. 2–28) stated that many suspended scaffolds are rigged by inexperienced persons who do not realize that if the scaffold catches on an obstruction, the maximum lifting power (stall load) of the hoist can be developed and transmitted to the counterweights and anchorages. This commenter suggested adding one of the following requirements to proposed § 1926.451(a)(2) as an alternative to four times the tipping moment: (1) or 4,000 pounds, whichever is greater; (2) or 150 % of the maximum pulling power of the hoist, whichever is greater; or 4 times the rated load of the hoist, whichever is greater. The SIA (Ex. 2–368) recommended changing the resisting moment of proposed § 1926.451(a)(2) to "at least 1.5 times the stall capacity of the hoist or four times the maximum intended load, whichever is greater."

Three commenters (Exs. 2–8, 2–28, and 2–516) indicated that Underwriters Laboratories (U.L.) standard 1323 (Standard for Scaffold Hoists) limits the maximum output of a scaffold hoist to 3 times the rated working load of the hoist. One commenter (Ex. 2–64) recommended that OSHA limit the stall load of a hoist to no more than three times the rated load of the hoist. Another commenter (Ex. 2–8) stated that if the safety factor for suspended scaffolds is not based upon the highest rated working load of any component, normally the hoist, failure can occur.

Two commenters (Exs. 2–8 and 2–516) presented examples of the relationship between the stall load of a hoist and the rated load of the same hoist. One commenter (Ex. 2–8) provided the following example:

> A typical hoist with a "rated working load" of 1000 lbs. can exert a pulling force of 3000 lbs. if an obstruction is encountered such as a window ledge or air conditioner while ascending. If one designs for a maximum intended load of only 500 lbs. because of a short light scaffold platform or a work cage and the counterweight or suspension system is designed for 4:1 MIL then the ultimate load that the suspension can support is 4 × 500 lbs. MIL or 2000 lbs. A 3000 lb. hoist pull can cause failure or even wire rope failure if 6 × MIL is used. No one intends to stall a hoist on an obstruction but it does occur. Therefore, a suspended scaffold should be designed for safety factors based upon MIL or rated working load of the hoist whichever is greater.

OSHA agrees that the safety factors for the counterweights, riggings, direct connections to roofs and floors, and suspension ropes of adjustable suspension scaffolds should be related to the rated load of the hoist and the stall load of the hoist, and not be based on the maximum intended load. OSHA agrees with the commenters who stated that failure can result if the factors of safety are based on the maximum intended load. Furthermore, the Agency also agrees with the commenters (Exs. 2–28 and 2–368) who indicated that these factors of safety should be based on 1.5 times the stall load of the hoist.

The Agency notes that the stall load of a hoist is equal to three times the rated load of that hoist. When one applies the 4 to 1 safety factor required (4 × rated load = 4/3 × stall load) the result would be 1.33 times the stall load. However, while using 1.33 times the stall load would provide the required safety factor, OSHA is using 1.5 times the stall load based on the above comments. The Agency believes that such a requirement reduces the possibility of failure due to improperly installed equipment as well as the dynamic loads that can be developed when an obstruction is encountered. Accordingly, the Agency has changed the final rule language so that it requires a factor of safety of four times the maximum rated load of the hoist or 1.5 times the stall load of the hoist, whichever is greater.

Paragraph (a)(3) of the final rule provides that "[e]ach suspension rope, including its connecting hardware, used on non-adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope." This is the same requirement as the proposed rule except that final rule paragraph (a)(3) applies only to non-adjustable suspension scaffolds, while the requirements for adjustable suspension scaffolds have been placed in final rule paragraph (a)(4), below. The proposed rule did not distinguish between these two types of scaffolds. Proposed paragraph (a)(4)(i) has been redesignated to § 1926.451(f)(11) of the final rule, to consolidate all requirements for wire rope used with suspension scaffolds. In addition, proposed paragraphs (a)(4)(ii) and (iii) have been moved to non-mandatory Appendix A, so that examples of measures that would comply with final paragraph (a) are consolidated in one place.

Paragraph (a)(4) of the final rule provides that "[e]ach suspension rope, including connecting hardware, used on adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope with the scaffold operating at either (a) The rated load of the hoist, or (b) 2 (minimum) times the stall load of the hoist, whichever is greater".

This provision addresses adjustable suspended scaffolds and is similar to proposed paragraph (a)(3) except that the proposed paragraph contained the language "maximum intended load applied or transmitted to the rope" instead of "rated load of the hoist (or at least 2 times the stall load of the hoist, whichever is greater)". The proposed rule was based on existing § 1926.451(a)(19).

Three commenters (Exs. 2–8, 2–64, and 2–516) recommended that OSHA use "rated capacity of the hoist" instead of "maximum intended load." This recommendation was based on the belief that the safety factor for adjustable suspended scaffolds should be based on the highest rated work load of any component, normally the hoist. The Agency agrees and has modified the proposed rule accordingly. In addition, the Agency has included language that accounts for the stall load of the hoist in the factor of safety for the same reasons that were discussed in regard to final rule § 1926.451(a)(2), except that the factor to be applied to the stall load has been increased from 1.5 to 2 in order to account for the 6:1 factor of safety applied to suspension ropes. This factor of safety does not include an added margin as does the factor of safety in paragraph (a)(2). One commenter (Ex. 2–516) recommended an 8:1 factor of safety for suspension ropes on adjustable suspension scaffolds. This recommendation was based on several factors that can reduce the effective

strength of a rope: (1) A termination rating of 80% of the wire rope design strength; (2) time-use of the rope; (3) energy applied to the system when the overspeed brake is actuated; and (4) failure of the brake to set or the loss of one end of the platform rigging. The commenter concluded that these factors can reduce the factor of safety from 6:1 to 1.15:1, with failure occurring if anything else goes wrong such as the free end of the platform swinging through its arc.

OSHA notes that this commenter addresses a worst case scenario which would involve violations of other provisions of the final rule. The Agency believes that each of the elements of the scenario will be prevented by compliance with the final rule. For example, final rule § 1926.451(d)(6) requires winding drum hoists to contain not less than four wraps of the suspension rope at the lowest point of scaffold travel, thereby reducing the force applied to the termination at the winding drum. In addition, final rule § 1926.451(d)(12)(v) prohibits the use of U-bolt clips at the point of suspension for any scaffold hoist. Also, final rule § 1926.451(a)(3) requires that suspension rope connections be considered part of the rope and that they be taken into account when determining whether a rope is capable of withstanding without failure at least six times the loads imposed upon it.

Further, final rule § 1926.451(d)(10) requires that a competent person inspect suspension ropes prior to each workshift or after any occurrence which could affect a rope's structural integrity. Paragraph 1926.451(d)(10) also requires that defective or damaged ropes be removed from service. For these reasons, OSHA believes that the final rule adequately addresses the commenter's concerns.

The third commenter (Ex. 2–29) recommended that OSHA include the weight of the scaffold and all its components in calculating maximum intended load. The Agency believes the above described changes made to proposed paragraph (a) resolve the concerns raised by this comment.

Paragraph (a)(5) of the final rule, which was not part of the proposed rule, requires that the stall load of any scaffold hoist not exceed 3 times its rated load. OSHA finds that this requirement is reasonably necessary to prevent accidental overloading of suspension scaffold support systems. OSHA notes that U.L. standard 1323 limits the output force of a scaffold hoist to three times the rated load of the hoist. As far as OSHA has been able to determine, the other laboratories which test and list scaffold hoists adhere to the requirements of U.L. 1323.

A commenter (Ex. 2–64) recommended that OSHA limit the stall load of scaffold hoists to three times the rated load of the hoist. The Agency agrees that it is appropriate to add the suggested provision, for the reasons described above.

Final rule paragraph (a)(6) requires that scaffolds be designed by a qualified person and constructed and loaded in accordance with that design. The provision also indicates that non-mandatory Appendix A provides examples of criteria, including design specifications, that will enable the employer to comply with paragraph (a) of this section. Proposed paragraph (a)(1), which focused on supported scaffolds, also referenced Appendix A for acceptable criteria.

Non-mandatory Appendix A provides examples of design and construction measures that employers can use to comply with final rule § 1926.451(a). This Appendix is based on the requirements set by existing §§ 1926.451(c)(1)–(4) and by Tables L–3 through L–19. OSHA has recognized that employers can design and construct scaffolds which satisfy the performance requirements of the final rule without following the specifications set by the existing rule, and drafted both the proposed and final rule § 1926.451(a) accordingly. The Agency believes that the above-cited specifications could assist an employer in complying with the capacity requirements of the final rule, so OSHA has relocated that language to non-mandatory Appendix A.

In Issue 5 of the preamble to the NPRM, OSHA requested comment on whether or not all scaffold units (such as planks and decks) should have their capabilities or grades marked on them. Some commenters (Exs. 2–41, 2–46, 2–51, 2–54, 2–73, 2–367, 2–495, 2–512, 2–516, and 2–534) indicated they favored the requirements for such markings. Two commenters (Exs. 2–495 and 2–534) stated "very few people would know which grade for any species of wood qualifies that plank as scaffold grade." Those commenters recognized that there was a lack of consensus concerning the maximum safe loads on certain plank spans, stating that "[a]t the same time, we believe it may be premature to require that all planks be so-marked since agreement on methodology of determining load displacement has not been reached by the engineering profession."

Another commenter (Ex. 2–54) indicated that marks would not wear off platform units because "[i]n most instances, planks are placed and not moved [and are] generally not rubbed against each other constantly." Another commenter (Ex. 2–516) stated "[i]f it is so worn that the mark is lost, it probably needs retesting anyway."

One commenter (Ex. 2–51) stated that while grade marks would wear off, it seems unlikely "that every plank on an entire job would simultaneously suffer such a fate. We believe that invariably, there would be some plank where grade stamping was legible if grade stamping ever existed."

Another commenter (Ex. 2–41) stated "[k]nowledge of the capacity of each [piece of] equipment is basic to implementation of this proposal."

In addition, the SSFI (Ex. 2–367) pointed out that fabricated plank stages and platforms are currently marked as to their capacity. They stated that this "practice should be continued for fabricated planks, stages, and platforms, as these are designed for unique applications." The commenter also stated "there is no common practice within the industry to have solid sawn lumber marked as to their load capacity." The SSFI recommended "that the solid sawn lumber or laminated veneer be repeatedly and continuously grade[-]stamped along the side edge of the material at the time the plank is initially purchased."

Another commenter (Ex. 2–51) stated that "[s]ince 1980, Timber Products Inspection has been involved in five cases where plank failure has resulted in injury and litigation. In all five cases the planks that failed were purchased as rough Canadian Spruce #1 and better or #2 and better. None of the planks were grade-stamped and one plank was identified as Lodge pole pine instead of spruce."

Another commenter (Ex. 2–35) recommended that OSHA adopt the language of the ANSI A10.8 draft scaffold standard that requires "solid sawn scaffold plank to bear the grade stamp of a grading agency approved by the American Lumber Standards Committee." The commenter also stated "it is essential to assure use of scaffold members of adequate strength and stiffness."

In addition, a commenter (Ex. 2–534) stated:

> We are strong advocates of requiring that all plank to be used as scaffold plank be required to be stamped or embossed as "SCAFFOLD PLANK". To most people, all planks look alike. Very few people would know which grade for any species of wood qualifies that plank as scaffold grade unless the grade stamp is explicit for flatwise use as "Scaffold Plank".
>
> * * * There is everything to gain, and nothing to lose, by requiring marks that

communicate to answer the bottom line question, "Is this plank OK as a scaffold plank?"

In addressing Issue 5, the ACCSH recommended (Tr. 6/9/87, pp. 64–65) that all planking and decks, etc., be properly marked as scaffold materials. The Advisory Committee indicated that a performance standard, which would allow employers to determine how they wanted to mark these materials, would be appropriate. Among the options envisioned by the ACCSH to distinguish the materials intended solely for scaffold system use were color-coding systems, stamping, and tagging.

On the other hand, some commenters expressed the view that a marking requirement would be impractical (Exs. 2–15, 2–20, 2–22, 2–368, and 2–390). In addition, commenters (Exs. 2–20, 2–53, 2–55, and 2–390) stated that the requisite costs would be burdensome, and others (Exs. 2–13, 2–15, 2–69, and 2–368) stated that, while manufactured or fabricated planks or platforms were often or usually marked, carrying this over to wooden components was inadvisable, citing anticipated problems with the volume of planks to be marked and the marks wearing off. Several commenters (Exs. 2–20, 2–55, 2–70, and 2–390) pointed out the marks would lend a possibly false sense of security or safety, and some (Exs. 2–20, 2–55, 2–69, and 2–390) added that maintaining the marks would be neither feasible nor economical. One commenter (Ex. 2–70) stated "The user of platform units can calculate the maximum load that can be placed on a scaffold and it is up to management personnel to ensure that the scaffolding is not overloaded. I feel that the marking of platform units does not, in itself, insure a safe scaffolding."

After careful evaluation of the above comments, the Agency has decided not to require marking of platform units. OSHA has determined that, while markings can increase confidence in and use of appropriate platform units, they do not add to the inherent safety of the scaffold. Furthermore, the absence of markings does not establish a lack of quality.

In addition, materials quality is only one of several factors which must be considered when erecting a scaffold platform. Other significant elements include unit size, span, and load applied. A platform unit, whether wood or metal, solid sawn or prefabricated, which is marked as appropriate for use as a plank, may be appropriate for use in one set of conditions but not in another (i.e., longer span or higher load). Similarly, a platform unit which does not have the quality characteristics to allow its use in one situation may be acceptable for use in another (i.e., shorter span or lighter load) whether or not it is marked. The important consideration in all situations is that the platform be capable of supporting the load with a design factor of four.

OSHA believes the grading rules of recognized independent inspection agencies, such as the American Lumber Standards Committee (ALSC), provide useful information about wood plank selection and use. Planks that are marked and used in accordance with pertinent grading rules of the ALSC or other recognized independent inspection agency will be deemed to meet the four-to-one requirement. Therefore, given the extent to which the private sector has voluntarily adopted plank grading and marking programs, the Agency has concluded that any benefit resulting from the addition of marking requirements would be minimal.

Wood products such as Canadian spruce, which are alleged to be unacceptably inferior in some applications, could have standards developed for their use by a recognized grading agency. OSHA believes there are combinations of thickness, quality, span, loads, and other factors that can be established for all species of wood used for platforms.

Issue 17 of the preamble to the NPRM asked whether the Agency should specify a minimum slippage capacity of 4,000 pounds and a minimum breakage capacity of 16,000 pounds for couplers used on tube and coupler type scaffolds. The SSFI and SIA (Exs. 2–367 and 2–368) opposed such a requirement, stating that "the entire scaffold structure should be required to withstand the specified design loads." They also noted that this special component requirement was unlike other OSHA requirements. The SIA (Ex. 2–368) also stated:

> It is redundant and unnecessary to specify a quantitative value for clamp strength since the required safety factors already in existence provide the proper strength for the intended load. There may be cases where the clamps should be of higher value or lower value, depending on usage. Consequently, requiring a numerical value may produce the catastrophe which the proposed rule is trying to avoid in the first place. Existing rules require design by competent individuals, which provides the proper safeguards against abuse and eliminates the need for the proposed rule.

Also, a commenter (Ex. 2–15) indicated that a British standard (BS 1129) recognizing 2800 lb. has been in place for 20 years "with satisfactory results." The commenter stated that most American clamps are built to BS1129, and went on to indicate that the same 2800 lb. figure is generally sufficient, except for possible heavy-duty applications in a specific configuration. The commenter further felt that specifying a 4,000 lb. minimum slippage capacity would "outlaw" many clamps.

One commenter (Ex. 2–22) stated that both slippage and minimum breakage capacities "should be equivalent to that required on the other parts of the scaffold."

Another commenter (Ex. 2–128) stated "couplers for tube and clamp [scaffolds] should be rated by the manufacturer in accordance with a recognized testing standard [and] certified by an engineer." In addition, a commenter (Ex. 2–13) expounded on the relationship between the torque applied to tighten a coupler and the slippage capacity, and noted that proper torque values needed to be determined by tests or calculations.

The ACCSH (Tr. 6/9/87, pp. 138–147) recommended that OSHA specify both minimum slippage and breakage capacities and should require employers to obtain manufacturer's specifications and/or certifications that a scaffold meets minimum standards. However, the ACCSH did not endorse the suggested 4000 and 16,000 pound limits and did not propose any other limits.

After a careful review of the above comments, OSHA has determined that the capacity provisions set out in final rule § 1926.451(a) will appropriately address the concerns regarding scaffold strength and that additional specifications would be redundant.

Issue 21 of the preamble to the NPRM requested public comment on appropriate field test procedures or certifications for determining the capacity of scaffolds and scaffold components such as planks and ropes. As noted above, existing § 1926.451(a)(7) and proposed § 1926.451(a)(1) require scaffolds to be capable of supporting, without failure, at least four times the maximum intended load. OSHA has recognized, however, that field testing of scaffolds and scaffold components with loads four times greater than the maximum intended load could cause damage that would render the scaffold and scaffold components unusable.

One commenter (Ex. 2–54) mentioned reliance on testing laboratories to ensure that rope and planks meet industry standards. Another commenter (Ex. 2–64) stated that scaffolds' and support systems' rated capacities should be marked when manufactured and that any field testing beyond that set forth in a manufacturer's instructions would be superfluous and could conflict with those instructions.

The SSFI (Ex. 2–367) and the SIA (Ex. 2–368) both stated that field testing of supported scaffolds would permanently damage equipment or render it useless, and that a visual check of the scaffolding before use should ensure safety "as the manufacturer already warrants the appropriate safety factors." The SIA also stated that current testing methods "are not suitable for checking the ultimate capacity of scaffold components." The SIA further stated that for metal components, visual inspection is the only practical method available. For wooden components, the SIA stated that inherent material variables make obtaining repeatable results from a suitable bending test impossible. On the other hand, the SIA recommended that suspension scaffolds be field tested with the intended load.

Two other commenters (Ex. 2–495 and 2–534) agreed with the SIA that it is impossible to obtain repeatable results from a bending test. However, they stated that a minimum threshold design value for flat-wise bending of planks could be derived from available information for flat-wise bending for any specie of plank. Those commenters also stated that field testing would not necessarily permanently damage or render a plank useless. They stated that strength testing of used planks could be accomplished by combining visual inspections with deflection testing using a safe load and deflection testing machines that are currently available.

One commenter (Ex. 2–516) indicated that a reasonable level of load testing for scaffold machinery might be found "somewhere near 1.25 times [the] rated load" and that "any field tests should be a ratio of rated load, not failure load." The commenter assumed different safety factors for moving equipment, suspended scaffold hoists, and fixed structures. The commenter also questioned whether the safety factor referred to in Issue 21 was for static, dynamic, or shock loads, and noted that 4 to 1 is not an engineering safety factor but a gross factor. In addition, the commenter stated:

> Any device or mechanism designed for a structural safety factor of four-to-one certainly can be tested at some level less than four-to-one without structural failure. * * * It is difficult to comprehend the rationale of prohibiting testing of a structure using 1½ times rated load for fear it will collapse, when the structure must not collapse at *4 times* rated load. There would then be doubt in my mind as to its ability to meet that 4-to-1 criterion.

Also, the commenter (Ex. 2–516) pointed out that any test of wood components should consider the effects of aging material, and he listed a number of variables for which some testing adjustments would be required. These variables included "fatigue, finish," and "material test scales."

Two commenters (Exs. 2–13 and 2–69) indicated there would be no need for field testing since scaffolds should be designed for their intended load with an added safety factor. In particular, one of those commenters (Ex. 2–13) stated "[t]here are no appropriate field tests for such items as planks and ropes. A simple visual inspection is all that is required by a competent person."

The ACCSH (Tr. pp. 163–174, 6–9–87) recommended that the manufacturer's design specifications be recognized as sufficient for manufactured scaffolds. The ACCSH also recommended that specifications or testing procedures be specified for job-made scaffolds.

After carefully considering the above comments, OSHA has decided not to require field testing of scaffolds. Based on the comments received, the Agency has determined that such testing is not needed and that, given the inspection and capacity requirements, it would be difficult or impossible to implement effectively for the range of materials in question.

Issue 23 of the preamble to the NPRM solicited comments on whether or not the Agency should revise paragraph 1.(b) of proposed non-mandatory Appendix A, which provides for selection of wood scaffold planks according to the grading rules established by a recognized independent inspection agency. In particular, OSHA asked if the language should be more specific and, if so, what that language should be.

Four commenters (Exs. 2–13, 2–22, 2–29, and 2–53) responded that the proposed Appendix A language was adequate. One commenter (Ex. 2–13) added "it should be mandatory that the employer visually check all scaffold planks before they are used." Another commenter (Ex. 2–54) stated that scaffold planks "should have identification" to indicate that they are scaffold grade.

However, a commenter (Ex. 2–534) noted that "it may be premature to require that all planks be so marked since agreement on methodology of determining load displacement has not been reached by the engineering profession."

The SSFI (Ex. 2–367) recommended that scaffold planks be marked, and noted that the most plank failures are inspection related. The SIA (Ex. 2–368) recommended that OSHA revise paragraph (b) of proposed Appendix A to read, in part, as follows:

> All solid sawn planking shall be 'SCAFFOLD GRADE' plank and grade stamped as appropriate per the published grading rules of the recognized independent inspection agency and as approved by the Board of Review of the American Lumber Standards Committee. The maximum permissible spans for 2 × 10 inch (nominal 1½" × 9¼" minimum dressed (S4S), 1⅝" × 9½" minimum rough or 2" × 10" minimum rough, solid sawn wood planks shall be as shown in the following table.

Paragraph 1(b) of Appendix A should be expanded and clarified to eliminate the confusion that exists over the use of nominal thickness scaffold grade planks on 10 ft. spans for light trades. This could be achieved by defining a scaffold grade plank in the manner done in Cal-OSHA standards.

Cal-OSHA Section 1637(e) requires what it calls a "structural plank" for scaffold platforms as follows:

> "Except as specified in certain other Orders, all planking shall be 2-inch (nominal) material selected for scaffold grade plank as defined in Section 1504 under the heading Lumber—'Structural Plank'."

The ACCSH, in its June 9, 1987 (Tr. pp. 175–180), meeting, recommended that a competent person be responsible for the selection and use of scaffold materials, where scaffolding materials are not certified by the manufacturer.

After carefully considering the above comments, OSHA has decided to modify paragraph 1.(b) of non-mandatory Appendix A to the final rule to provide for identification of scaffold planks by the grade stamp of the recognized lumber grading association or independent lumber grading inspection agency under whose grading rules the planks were selected. OSHA is also modifying proposed Appendix A to provide that the association or agency under which the wood is graded should be certified by the Board of Review, American Lumber Standard Committee as set forth in the American Softwood Lumber Standard of the U.S. Department of Commerce. This added language clearly indicates what constitutes a "recognized" inspection agency.

As a separate matter, OSHA is modifying Appendix A to the final rule to provide that allowable spans of scaffold planks, other than 2 x 10 inch (nominal) or 2 x 9 inch (rough) solid sawn planks which are addressed in the table in paragraph 1 (b), shall be determined in accordance with the National Design Specification For Wood Construction published by the National Forest Products Association or with ANSI A10.8–1988, paragraph 5. OSHA notes that Appendix A is intended to help the employer comply with the scaffolding rules. The Agency believes that the above modifications will facilitate compliance with those rules.

Paragraph (a)(6) of the final rule, which was not part of the proposed rule, requires that scaffolds be designed by a qualified person and must be constructed and loaded in accordance with that design. OSHA believes that a "qualified" person can design a scaffold which satisfies the criteria of § 1926.451(a). This provision also notes that non-mandatory Appendix A contains examples of criteria that will enable employers to comply with paragraph (a) of this section.

Issue 24 of the preamble of the NPRM noted that existing §§ 1926.451(b)(16), (c)(4), (c)(5), (d)(9) and (g)(3) and proposed § 1926.451(b)(18)(i) and §§ 1926.452(a)(10), (b)(10), (c)(6) and (i)(8) require that an engineer design specified scaffold types and/or components that are not built or loaded in accordance with Tables L–4 through L–13 of existing § 1926.451 or proposed § 1926.451 Appendix A, respectively. OSHA asked for comments regarding the extent to which the services of an engineer or of a qualified person would be needed to design scaffolds in accordance with the provisions of Appendix A or to design scaffolds that, while not in accordance with Appendix A, would comply with § 1926.451(a).

Two commenters (Exs. 2–69 and 2–437) responded that employers should be allowed to assess whether individual employees with several years of hands-on experience are capable of designing and modifying scaffolds or an engineer's services are required. Also, a commenter (Ex. 2–22) expressed the view that there was no need for further licensing and determinations because employers are responsible for ensuring that scaffolds meet regulations for capacity and that alterations of scaffold designs are made by qualified individuals. The AGC commenters (Exs. 2–20, 2–55, and 2–390) stated "there are many individuals in the construction industry with many years of experience who are quite capable of scaffold design and modification. Employers should be permitted the flexibility to determine if such individuals are capable or if they should seek the services of an engineer."

Another commenter (Ex. 2–54) noted that not all engineers are capable of designing scaffolds and that a good many people who work with scaffolds do not know all the scaffold limits or strengths. The commenter acknowledged that complicated scaffold designs require the skills of an engineer familiar with the equipment available. However, the commenter added that a competent worker who has followed an engineer's drawings to erect a scaffold can at times recall and use that experience in another situation requiring a complicated scaffold structure.

In addition, a commenter (Ex. 2–21) stated that no additional specification requiring the use of engineering services was warranted. The commenter explained that "[c]onditions on most construction jobs change daily and can best be handled by qualified foremen or supervisors on the job." Also, a commenter (Ex. 2–31), addressing pumpjack scaffolds specifically, responded that although he was not an engineer himself, he knew at least as much as anyone else about pumpjack scaffolds. He felt that an engineer could be supplanted by someone with recognized expertise but added that he did not believe a specific definition of someone qualified to design a scaffold system could be made.

Both the SSFI (Ex. 2–367) and the SIA (Ex. 2–368) recommended that a "qualified person," as defined in proposed ANSI A10.8, be allowed to design those scaffolds that would not require the services of a registered engineer. They quoted the proposed ANSI definition as follows:

> A term describing one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter, the work, or the project.

The suggested definition is identical to the definition of "qualified" in § 1926.32(l).

Two Saf-t-Green commenters (Exs. 2–14 and 2–15) stated that people other than engineers were capable of designing scaffolds. In particular, one commenter (Ex. 2–15) stated "There are many good, practical scaffold designers who are not engineers. They should not be excluded."

On the other hand, some responses to Issue 24 stated that the services of a registered or professional engineer were needed (Exs. 2–3, 2–9, 2–13, 2–70, 2–128, and 2–516). One such commenter (Ex. 2–13) stated that he backed using registered professional engineers "with the knowledge and training required for [designing] a life support system" and queried where "an equivalent qualified responsible person could be found?" One commenter (Ex. 2–70) offered a brief response, "when in doubt, consult an engineer." Another commenter (Ex. 2–516) responded:

> I would rather take my chances with the engineer [-designed scaffold system]. At least he knows some limits. Any other definition lets anyone determine by *themselves* that they are eminently qualified. All it then takes to be qualified is a big ego, a little knowledge, and a pile of frame scaffold.

A comment from Aluma-Systems, Incorporated (Ex. 2–128) expressed the belief that an engineer's services should be required for all but the simplest of scaffold structures. The commenter indicated that the Province of Ontario requires that a professional engineer design any scaffold which exceeds 15 meters in height (approximately 50 feet), any suspension scaffold where the scaffold consists of more than one platform, or any suspension scaffold where the weight of the platform and its components exceed 363 kg.

In addition, two commenters (Exs. 2–12 and 2–53) responded that the existing regulations were sufficient or adequate. One of the two (Ex. 2–12) stated that there was already sufficient regulation and questioned whether rules could be made to cover all situations.

In its June 9, 1987, meeting, the ACCSH (Tr. pp. 180–183) recommended that OSHA authorize a competent person, rather than a qualified person, to follow Appendix A for scaffold design, but that a registered professional engineer be required to design scaffolds where conditions are not covered by Appendix A. The Agency notes that a competent person, as defined in § 1926.32(f) and in the final rule for subpart L, is able to detect hazards and has the authority to have hazards corrected. On the other hand, "qualified", as defined in § 1926.32(m) and in the final rule for subpart L, refers to a person who has the ability to solve or resolve safety and health problems.

After carefully considering the above comments, OSHA believes that the proposed rule adequately addressed the conditions under which a scaffold must be designed by an engineer. Accordingly, the above-listed proposed requirements (§ 1926.451(b)(18)(i) [now final rule § 1926.451(d)(3)(i)] and §§ 1926.452(a)(10), (b)(10), (c)(6), and (i)(8)) have been promulgated in the final rule. As discussed below, proposed rules § 1926.452(a)(10) and (b)(10) have been revised to distinguish more clearly between those circumstances where the employer would need the services of a registered professional engineer and those situations where the services of a qualified person, who could refer to non-mandatory Appendix A, would be sufficient.

The Agency believes that there are qualified persons who can properly design scaffolds without reference to Appendix A. The Agency also believes that there will be circumstances where the "qualified person" retained to comply with paragraph (a)(6) will need to be a registered professional engineer.

Paragraph 1926.451(b) Scaffold Platform Construction

Paragraph 1926.451(b) of this final rule provides criteria for the construction of scaffolds. Paragraph (b)(1) requires all platforms, except walkways and those platforms used by employees performing scaffold erection and dismantling operations, to be fully decked or planked. In addition, paragraph (b)(1)(i) requires that platform units be placed so that spaces between units do not exceed 1-inch, except where employers establish that more space is needed. For example, this would be necessary to fit around uprights when using side brackets to extend platform width. Paragraph (b)(1)(ii) provides that, where the exception created by paragraph (b)(1)(i) applies, employers shall place platform units as close together as possible, with the space between the platform and uprights not to exceed 9½ inches. OSHA set 9½ inches as the maximum space allowed, because the minimum width for scaffold units that could be expected to sustain a working load is just over 9½ inches. This provision, which is effectively identical to the provision in the proposed rule, codifies the Agency's longstanding interpretation of existing § 1926.451(a)(4), which addresses guardrails on scaffolds, to require that guardrails be erected as close as possible to the platform planking. Because guardrails normally can be conveniently attached only at the scaffold uprights, OSHA has required the platforms to be sized such that there is no gap between the outermost plank edge and the guardrail. However, most prefabricated end frames do not have a lateral spacing between uprights which can accommodate an integral number of commercially-available planks. In order to comply with the existing rule, some employers have modified the last plank (notched, slanted, or cut it to size). This can lead to a significant reduction in plank strength, and possibly cause tipping of the plank (sideways) if eccentrically loaded. Therefore, to deal with this problem, proposed and final rule paragraph (b)(1) have modified the corresponding requirement of the existing standard by requiring the span between uprights to be planked or decked as fully as possible, but allowing up to 9½ inches between the planking or decking and the guardrail supports. As explained above, 9½ inches is the maximum allowable open space.

One commenter (Ex. 2–29) stated that the 1-inch opening allowed by proposed paragraph (b)(1)(i) would be large enough to "allow many tools and small materials to fall through", and recommended a maximum space of ¼ inch between units. OSHA, however, finds that such a small maximum space would pose unreasonable compliance burdens, and is retaining the 1-inch maximum.

The SSFI and the SIA (Exs. 2–367 and 2–368) stated that compliance with proposed paragraph (b)(1) would be impossible when erecting or dismantling scaffolds. In particular, the SIA (Ex. 2–368) stated:

> For example: On a multi-level supported scaffold where construction work is to be performed only at the top level, lower levels would not be planked. Erectors would only use sufficient planks required to construct the scaffold.
>
> Load requirements limit the number of levels that can be planked on many installations. The additional cost in labor and material would be staggering. In addition, the fatigue factor created by installing full planking from one level to the next would create a greater hazard to the erectors.

The Agency agrees with the SIA comments and acknowledges that a requirement to fully plank under these conditions would unreasonably interfere with the erection and dismantling process. The Agency also agrees that a requirement to fully plank every intermediate platform level, where no work other than scaffold erection or dismantling operations will occur, is overly burdensome. Therefore, OSHA has revised proposed paragraph (b)(1), which already excepted walkways from the requirement for full planking or decking, to add an exception to the final rule to the planking requirements for erection or dismantling operations. In a situation where no work, other than erecting or dismantling the scaffold, is being done at intermediate levels, the final rule requires only that the planking established by the employer as necessary to provide safe working conditions for employees erecting or dismantling the scaffold be used. On the other hand, if scaffold erection or dismantling is being performed from an intermediate level platform that is being or will be used as a work area, that platform must be fully planked in accordance with paragraph (b)(1).

Paragraph (b)(2) of the final rule requires that all scaffold platforms and walkways be at least 18 inches (46 cm) wide, with lesser widths allowed for ladder jack scaffolds, top plate bracket scaffolds, pump jack scaffolds, roof bracket scaffolds, and boatswains' chairs, and for scaffolds in areas shown to be too narrow to accommodate an 18-inch wide surface. Proposed paragraph (b)(2) also required a minimum 18-inch width, with exceptions for ladder jack scaffolds (12 inches) and boatswains' chairs (any width). The rationale for setting a 12-inch minimum width for ladder jack scaffolds, as discussed in the preamble of the proposal (51 FR 42684–85), was the difficulty of handling one 18-inch wide plank or two 9-inch planks on a ladder, which the Agency considered more hazardous than working on a 12-inch wide plank. In the final rule, OSHA has also included pump jack scaffolds in the exception to paragraph (b)(2) for which a minimum platform width of 12 inches is permitted, based on a commenter's statement (Ex. 2–31) that OSHA's performance criteria for pump jack scaffolds enable employees to work safely on platforms that are 12 inches or 14 inches wide. The commenter also indicated that requiring pump jack scaffold platforms to be at least 18 inches, instead of 12 inches, wide would create "an economic hardship * * * for this very prevalent size aluminum platform." OSHA agrees that pump jack scaffolds with platforms as narrow as 12 inches can satisfy the performance criteria of the final rule and has revised paragraph (b)(2) accordingly.

In addition, the Agency is recognizing top plate bracket scaffolds and adding them to the list of scaffolds which are permitted to have platforms not less than 12 inches in width. As discussed above in the definition section, these are supported scaffolds, similar to carpenters' bracket scaffolds and form scaffolds, which consist of a platform supported by brackets that hook over or are attached to the top plate of a wall. These scaffolds are used in residential construction for setting trusses, usually for high ceiling situations (e.g., cathedral ceilings, atria). The Agency has determined that use of this type of scaffold, even with a 12-inch wide platform, provides greater protection for employees setting trusses than the use of ladders, makeshift scaffolds or walking the top plate. OSHA concludes that it would be less safe to require wider platforms for top plate scaffolds because setting up this type of scaffold would then require handling and positioning an 18-inch wide platform or two nine-inch wide platforms, and handling and positioning larger, heavier brackets, which is usually done from ladders. OSHA finds that this would be more hazardous than working on one 12-inch wide platform equipped with fall protection.

As proposed, OSHA is deleting the requirement that appeared in the existing scaffold rule at § 1926.451(l)(1), which sets the minimum dimensions of

a boatswains' chair at 12 inches by 24 inches, because, with the advent of slings and molded seats, the Agency believes that setting minimum dimensions is overly restrictive. This performance-oriented approach is reflected by the inclusion of language in paragraph (b)(2)(i) which specifically exempts boatswains' chairs from any width requirements.

The SIA (Ex. 2–368) suggested that platforms as narrow as 12 inches wide be allowed in areas where entryways are restricted. Another commenter (Ex. 2–64) suggested that suspension scaffolds designed for special applications (e.g., to fit through manholes) be permitted to be as narrow as 12 inches. OSHA realizes that there may be instances where the nature of the work being performed makes it impossible to make platforms and walkways at least 18 inches wide. Where the employer can establish that such a situation exists, the Agency will accept platforms and walkways that are less than 18 inches wide, provided both that such platforms and walkways are as wide as is feasible *and* that employees are adequately protected from fall hazards by the use of guardrails and/or personal fall arrest systems, as required by paragraph (g).

Final rule paragraph (b)(3) (proposed as paragraph (b)(4)) sets the requirements for the space between the front edge of a platform and the face of the structure where the scaffold is being used. Paragraph (b)(3) requires that, except as provided in paragraphs (b)(3)(i) and (b)(3)(ii), the front edge of all platforms must be no more than 14 inches from the face of the structure, unless the employer implements guardrail systems or personal fall arrest systems that comply with paragraph (g) of the final rule to protect employees from falling between the platform and the structure. Final rule paragraph (b)(3)(i) requires that the front edges of outrigger scaffolds be no more than three inches from the face of the structure, as is required by § 1926.451(g)(4) of OSHA's existing standard. Final rule paragraph (b)(3)(ii) requires that the front edges of scaffolds used for plastering and lathing operations be no more than 18 inches from the face of the structure.

The 18-inch dimension was developed from data collected by Wang Associates (Ex. 5) which show that a shorter distance between the scaffold platform and the wall is not feasible for the operators of plastering and lathing equipment because of interference with the tools used during such operations. However, these same operations cause the employee to stand back from the edge and the hazard of falling is correspondingly reduced. The SIA (Ex. 2–368) supported the 18-inch provision as being necessary for the types of work covered, while acknowledging that in some cases 14 inches would be adequate.

Final rule paragraph (b)(3) is effectively identical to proposed paragraph (b)(4), except that the proposed provision specified "Type I" guardrails instead of requiring compliance with paragraph (g). OSHA has deleted the designations "Type I" and "Type II" from the final rule for subpart L, as discussed above in relation to the definition of "Guardrail system".

Existing § 1926.451(a)(4) requires guardrails on all open sides and ends of a scaffold platform, but does not specify how far away a scaffold platform may be from a building before the side facing the building is considered to be an "open side." OSHA's existing scaffold rule has often been interpreted to mean that no open space is allowed. However, zero clearance during all phases of construction is not feasible. The 14-inch limit in proposed paragraph (b)(4) recognized that during construction the face of the wall being built often moves out toward the scaffolds. There must be sufficient space at the beginning of work to allow for the installation of insulation, lathing, plaster, masonry units, ledges, facings and other architectural or structural additions. The spacing must be allowed for from the start, because it is not practical to move large scaffolds away from the wall as wall construction progresses outward. When the initial set back distance must be more than 14 inches, the platform can often still be kept within 14 inches of the building by the use of side brackets or extensions on supported scaffolds, and by angulated roping, static lines, or equivalent means on suspension scaffolds.

Two commenters (Exs. 2–41 and 2–465) questioned the use of 14 inches in this provision, suggesting that a maximum of 12 inches be allowed. While OSHA recognizes that the suggested 12-inch spacing could be marginally more protective, the Agency also recognizes that, as discussed above, in many cases an unobstructed working space of at least 14 inches is necessary. OSHA also notes that ANSI A10.8–1988, paragraph 4.5.9, allows up to a 16-inch space for supported scaffolds and a 12-inch space for suspended scaffolds. In support of OSHA's position, the SIA (Ex. 2–368) endorsed the proposed language as the proper solution to the problem, while noting that it would prefer 18 inches. The Agency believes that the 14-inch space appropriately addresses both the safety concerns and the need to allow necessary room for many of the jobs normally performed from scaffolds.

Final rule paragraph (b)(4) requires each end of a platform unit, unless cleated or otherwise restrained by hooks or equivalent means, to extend over the center line of its support at least six inches (15 cm). This provision is virtually identical to proposed paragraph (b)(5), which was based on existing § 1926.451(a)(14). The use of cleats, hooks, and similar securing devices would also be allowed as alternatives to the six inch extension in the proposed and final rules, because of their ability to restrain movement of platform units.

OSHA received one comment (Ex. 2–40) on this provision, which stressed the importance of securing platform units against movement.

Final rule paragraph (b)(5) (proposed paragraph (b)(6)) addresses the maximum distance platform units may extend over their supports. In particular, paragraph (b)(5)(i) provides that each end of a platform unit 10 feet (3 m) or less in length shall not extend over its support more than 12 inches (30 cm) unless the unit is designed, and installed so that the cantilevered portion of the unit is able to support employees or material without tipping or has guardrails which prevent employee access to the cantilevered end. In addition, paragraph (b)(5)(ii) provides that each platform unit greater than 10 feet in length shall not extend over its support more than 18 inches (46 cm), unless the unit is designed and installed so that the cantilevered portion of the unit is able to support employees without tipping, or that the unit has guardrails which block employee access to the cantilevered end.

OSHA proposed to change the maximum overhang allowed by existing § 1926.451(a)(14) from 12 inches to 18 inches because many planks in use are 10 feet long, and are used to span eight foot distances. OSHA also notes that ANSI A10.8–1988, paragraph 4.17, limits planks from extending more than 18 inches over their supports, without regard to the length of the plank.

OSHA's thinking at the time of the proposal was that the existing requirement was unnecessarily restrictive, and that strict adherence to the existing maximum overhang limit would require platform units to be cut if they extended beyond the 12-inch limit.

Although no comments were received on this provision, OSHA has concluded, upon further consideration of this matter, that the maximum overhang allowed, unless the above specified

measures have been taken, should be limited to 12 inches for planks 10 feet or less in length, and 18 inches for planks greater than 10 feet in length. The Agency concludes that allowing an 18-inch overhang as a matter of course would be unsafe, because the weight of an employee on an 18-inch overhang could easily tip a 10-foot plank. However, an 18-inch overhang on a plank that is longer than 10 feet would be permissible because the additional weight of the longer platform would offset the weight of the employee on the overhang. In addition, an employer who seeks to use platform units that overhang the supports more than the prescribed distance would be required to satisfy the performance criteria of paragraph (b)(5) of the final rule.

Under final rule paragraph (b)(6), where platform units are abutted to create a long platform, each abutted end shall rest on a separate support surface. Abutted platform units do not rest one on another, but instead are end-to-end. Consequently, one unit does not support the other, and proper support can only be provided by separate support surfaces. This provision is virtually identical to proposed paragraph (b)(7), except that the final rule has deleted the words "butt plate or equivalent means of support", because those words add nothing to the requirement for "separate support." This provision is based on existing § 1926.451(b)(12), which currently applies only to wood pole scaffolds. OSHA has determined that all scaffolds need proper platform support and, accordingly, has promulgated this provision.

The Agency has also added a note to this provision stating that common support members such as "T" sections or hook-on platforms designed to rest on common supports are not prohibited by this provision. The Agency is doing this to prevent confusion since these commonly used support members might be considered not to meet the requirements of this provision.

Final rule paragraph (b)(7) provides that where platforms are overlapped to create a long platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30 cm) unless the platforms are nailed together or otherwise restrained to prevent movement. This provision is virtually identical to proposed paragraph (b)(8) which was based on existing § 1926.451(a)(12).

Final rule paragraph (b)(8) requires that at all points of a scaffold where the platform changes direction, such as turning a corner, any platform that rests on a bearer at an angle other than a right angle shall be laid first and platforms which rest at right angles over the same bearer shall be laid second, on top of the first platform. This provision is virtually identical to proposed paragraph (b)(9), which was based on existing § 1926.451(b)(13). While this provision in OSHA's existing standard addresses only wood pole scaffolds, OSHA has determined, as with final rule paragraph (b)(6), that the existing requirement is appropriately applied to the construction of all scaffold platforms.

Final rule paragraph (b)(9) provides that wood platforms shall not be covered with opaque finishes, except that platform edges may be covered or marked for purposes of identification. Platforms may be coated periodically with wood preservatives, fire-retardant finishes, and slip-resistant finishes, but the coating may not obscure the top or bottom wood surfaces. This paragraph is intended to ensure that structural defects in platforms are not covered from view by the use of an opaque coating or finish. Hairline cracks can significantly reduce the strength of a wood member, so early detection of structural defects is important. Opaque finishes can cover such cracks and make them difficult to discover. The edges of platform units are excepted from this rule to allow identification marks, grading marks, or other similar type of marks to be placed on the unit edges.

This provision is virtually identical to proposed paragraph (b)(10). The proposal addressed the use of wood preservatives, fire retardant finishes and slip-resistant finishes in a "note", while the final rule has incorporated the pertinent language directly into the regulatory text. In short, those finishes may be used as long as they do not obscure the top or bottom wood surfaces.

Final rule paragraph (b)(10) requires that scaffold components manufactured by different manufacturers not be intermixed unless the component parts fit together without force and the resulting scaffold's structural integrity is maintained by the user. Scaffold components manufactured by different manufacturers shall not be modified in order to intermix them unless the resulting scaffold is determined by a competent person to be structurally sound. OSHA expects that the competent person who evaluates the scaffold will have the appropriate knowledge, skill and experience regarding scaffold systems and components.

This provision is identical to proposed paragraph (b)(11), except that the proposal did not contain the phrase "and the resulting scaffold's structural integrity is maintained by the user". The SIA (Ex. 2–368) suggested the added language, citing the "latest ANSI A10.8 draft." The Agency acknowledges that a scaffold may lack the requisite structural integrity even though the intermixed components "fit together without force." OSHA agrees that the requirement to maintain structural integrity should be clearly stated in this provision and has revised the final rule accordingly.

One commenter (Ex. 2–29) stated "[m]any, if not all, scaffold manufacturers void any liability if their scaffold components are intermixed * * * A standard requirement should not result in a lesser degree of safety; neither should it encourage an employer to take a course of action that could increase his liability." The SSFI (Ex. 2–367) stated "[i]t would be the Institute's recommendation that scaffold components not be intermixed even though they may re[a]dily fit together without force. Many times the capacity or bracing alignment would not be the same as other types of scaffold, thus creating a hazardous situation." OSHA agrees that an unsafe condition could exist when parts are intermixed, unless adequate precautions are taken, and believes that paragraph (b)(10), as modified, in conjunction with § 1926.451(a), provides for adequate precautions to be taken by the employer to ensure against this eventuality.

Paragraph (b)(11) of the final rule provides that scaffold components made of dissimilar metals shall not be used together unless a competent person has determined that galvanic action will not reduce the strength of any component to a level below that required by § 1926.451(a). This provision, while effectively identical to proposed paragraph (b)(12), differs from §§ 1926.451(c) (1), (2) and (3) of OSHA's existing rule, which prohibit the use together of any dissimilar metals on tube and coupler scaffolds. The proposed rule was intended to extend the prohibition to all scaffolds, because the problem of dissimilar metals causing galvanic action can occur on any scaffold, not just tube and coupler scaffolds. However, the proposed rule was not intended to prohibit all uses of dissimilar metals because there are many combinations which do not produce significant galvanic reactions.

One commenter (Ex. 2–41) expressed skepticism as to the ability of a competent person to discern that galvanic action has not reduced the strength of any component. However, OSHA finds that any competent person, as defined by this subpart, would be able to identify the causes and significance of any deterioration in

scaffold components. In particular, OSHA expects the competent person, who is on site and required to inspect the scaffold, to recognize deterioration due to galvanic reactions, and to take prompt corrective action.

Paragraph 1926.451(c) Criteria for Supported Scaffolds

Final rule § 1926.451(c) sets criteria for the use of supported scaffolds. Paragraph (c)(1) of the final rule requires that supported scaffolds with a height to base width ratio of more than four to one (including outrigger supports, if used) be restrained from tipping by guying, tying, bracing, or equivalent means. That provision is based on existing § 1926.451(e)(1), which covers manually-propelled mobile scaffolds. Any type of supported scaffold can topple if its center-of-gravity is too high, and OSHA has therefore expanded the coverage of this paragraph in the final rule. Final rule paragraph (c)(1)(i) provides that guys, ties, and braces shall be installed at locations where horizontal members support both inner and outer legs. In addition, paragraph (c)(1)(ii) requires, as follows:

(1) Guys, ties, and braces shall be installed according to the scaffold manufacturer's recommendations or at the closest horizontal member to the 4:1 height and be repeated vertically at locations of horizontal members every 20 feet (6.1 m) or less thereafter for scaffolds 3 feet (0.91 m) wide or less and every 26 feet (7.9 m) or less thereafter for scaffolds greater than 3 feet (0.91 m) wide;

(2) The top tie, guy or brace of a completed scaffold shall be placed no further than the 4:1 height from the top; and

(3) Such guys, ties and braces be installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (9.1 m) (measured from one end [not both] towards the other).

This provision of the final rule is essentially the same as proposed paragraph (b)(13), except that the maximum vertical spacing has been changed to allow for the scaffolds to be supported at their strongest points. Proposed paragraphs (b)(13)(i) and (b)(13)(ii), which specified the horizontal spacing for ties, guys, and braces, were intended to replace existing §§ 1926.451 (b)(4), (c)(12), and (d)(7). These paragraphs of the existing rule required pole scaffolds, tube and coupler scaffolds, and fabricated frame scaffolds to be tied and braced at intervals no greater than 26 feet vertically (25 feet for wood pole scaffolds) and 30 feet horizontally (25 feet for wood pole scaffolds). These paragraphs have been misinterpreted over the years to mean that scaffolds less than 26 feet high by 30 feet long (25 by 25 for wood pole scaffolds) do not need guys, ties, or braces. Proposed paragraph (b)(13)(ii) was intended to replace the 26- and 25-foot vertical rule and require all scaffolds required by the 4 to 1 rule to have guys, ties, or braces also to have such connections installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (measured from one end only).

The following are examples of how this requirement is to be applied: (a) If a scaffold is five feet wide, 18 feet high and 50 feet long, no vertical or horizontal ties and braces are required because the height is less than four times the width and the four to one rule does not require connections; (b) if the scaffold is five feet wide, 50 feet high, and 25 feet long, ties and braces are required at least at the 20- and 40-foot levels at both ends of the scaffold (four ties and braces in all); (c) if the scaffold is five feet wide, 50 feet tall, and 70 feet long, ties and braces are required at least at the 20- and 40-foot levels. These would be installed starting from either end, at least at the zero, 30, 60, and 70-foot horizontal distances (eight ties and braces in all).

The SSFI (Ex. 2–367) disagreed with the 20-foot limit for bracing intervals in proposed paragraph (b)(13)(i) and suggested a 20-foot limit for scaffolds 3 feet wide or less, and a 26 foot limit for scaffolds more than 3 feet wide. In addition, this commenter suggested that bracing be at bearing locations or as recommended by the manufacturer. OSHA agrees with this commenter's suggested bracing intervals, because the Agency believes that properly erected scaffolds more than 36 inches wide are more stable than those which are narrower, and has modified this provision of the final rule accordingly.

The SIA (Ex. 2–368) stated:

> We are in agreement with the proposed wording used to define the location of guys and ties as a function of the scaffold base width dimension. This proposed wording adequately defines where scaffolds must be guyed or tied to achieve proper scaffold stability. To correctly transmit the stabilizing forces through the scaffold, however, the guys or ties must be placed at locations where horizontal members support both the inner and outer legs. Guying or tying a scaffold leg at mid span could buckle the leg and cause an unexpected scaffold failure. To avoid this danger, it is recommended that the tie be placed at the closest horizontal member *above* the 4:1 base to height ratio and repeated vertically at locations of horizontal members every 20 to 26 feet in height thereafter. The top tie shall be placed no further than a 4:1 base to height ratio from the top.

OSHA agrees that guys, ties, and braces should be placed at points of scaffold structural strength, and has modified this provision of the final rule accordingly. Furthermore, the Agency agrees with the SIA's recommendation that the top tie, guy, or brace be placed no more than the 4:1 height to base ratio from the top of the scaffold, and has modified the provision accordingly. However, OSHA does not agree with the SIA suggestion that guys, ties and braces be installed at the closest horizontal member *above* the 4 to 1 base to height ratio, and has revised the language of this provision to reflect the Agency's finding that these components be installed at the closest horizontal member *to* the 4:1 height, whether above or below, to maximize stability.

In addition, the SIA recommended that OSHA require employers to consider loads due to wind and weather when guying, tying, or bracing is installed, whenever scaffolds are partially or fully enclosed. The Agency notes that these matters are addressed in the general capacity requirements of final rule § 1926.451(a) and in § 1926.451(f)(13), which requires that wind screens not be used unless the scaffold has been secured against the forces imposed.

Another commenter (Ex. 2–38) suggested using the same language as in existing § 1926.451(e)(1), which requires that the height of a manually propelled mobile scaffold not exceed four times the minimum base dimension, "because it is more understandable." Also, a commenter (Ex. 2–40) stated "since the standard does not address the issue of cantilevered work platforms (or their effect on stability), the allowable height to base width ratio of equal to four or less seems high."

Another commenter (Ex. 2–23) recommended a ratio of 3 to 1, but provided no rationale to support its suggestion. OSHA notes that the final rule 4:1 ratio is consistent with the requirement in ANSI A10.8–1988, paragraph 4.31, that free-standing scaffolds with height to base ratios of more than 4:1 be restrained from tipping by guying or other means.

Based on these concerns, in the final rule OSHA has added paragraph (c)(1)(iii), which requires that scaffolds with eccentric loads (such as cantilevered work platforms) be restrained from tipping through the use of ties, guys, braces or outriggers.

Final rule paragraph (c)(2) requires that supported scaffold poles, legs, posts, frames, and uprights bear on base plates and mud sills or other adequate firm foundation. In particular, final rule paragraph (c)(2)(i) requires that such footings be level, sound, rigid, and capable of supporting the scaffold in a

loaded condition without settling or displacement.

In addition, final rule paragraphs (c)(2) (ii) and (iii) provide that unstable objects shall neither be used to support scaffolds or platform units, nor be used as working platforms, respectively. The reason for these requirements is almost self-explanatory: every scaffold must stand on a firm footing if it is to withstand the load that employees, equipment, and materials place on it.

Final rule paragraph (c)(2)(iv) provides that front-end loaders and similar pieces of equipment shall not be used as scaffold supports unless they have been specifically designed by the manufacturer for such use. In addition, final rule paragraph (c)(2)(v) requires that fork-lifts not be used to support scaffold platforms unless the entire platform is attached to the fork and the fork-lift is not moved horizontally while the platform is occupied. Both these requirements relate to the need for solid support for scaffold platforms and reflect the fact that front-end loaders, fork-lifts and other such equipment are not generally designed for this purpose.

Paragraph (c)(2) of the final rule is identical to proposed paragraph (b)(14), except for two provisions, final rule paragraphs (c)(2) (iv) and (v), which have been added based on input generated by responses to Issue 3 of the preamble of the NPRM. Proposed paragraph (b)(14) consolidated existing requirements that scaffold uprights rest upon a stable, firm, level footing.

Issue 3 asked if OSHA should prohibit the use of cranes, derricks, forklifts, front-end loaders, and similar pieces of equipment for the support of scaffold platforms. In addition, OSHA asked what pieces of equipment should be prohibited and what other related provisions would be necessary to ensure employee safety.

Several commenters from the Associated General Contractors of America (AGC) (Exs. 2–20, 2–55, and 2–390) and the ACCSH (Tr. 6/9/87, pp. 40–41) noted that OSHA had undertaken rulemaking regarding the use of cranes and derricks to hoist personnel platforms (NPRM published February 17, 1984, 49 FR 6280). The AGC commenters stated that the proposed regulations for crane suspended work platforms already addressed the concerns raised in Issue 3.

Another commenter (Ex. 2–53) called for the development and issuance of specific crane suspended platform regulations, and one respondent (Ex. 2–29) commented that the current regulations on crane suspended work platforms were acceptable.

On August 2, 1988 (53 FR 29116), OSHA issued a final rule (§ 1926.550(g)) which regulates the use of cranes and derricks to hoist personnel platforms. Therefore, there is no longer a need for subpart L to address that subject.

Regarding the use of front-end loaders, one commenter (Ex. 2–33) responded, in part, that "front-end loaders should not be used to hoist worker-loaded scaffold platforms" and added that the "[u]se of forklifts for this purpose should be limited in accordance with * * * OSHA's General Industry Standards for powered industrial trucks, 29 CFR 1910.178(m)(12)." The same commenter also stated "If large platforms are used in this manner, consideration should be given to requiring bracing of forks to safeguard against tipping or slipping of the truck or its forks."

Another commenter (Ex. 2–70) stated simply "[w]e do not utilize forms of equipment to support platforms." Two other commenters (Exs. 2–367 and 2–368) stated "the practice of using cranes, derricks, fork-lifts, etc., [to support scaffold platforms] is unsafe and should be prohibited."

One commenter (Ex. 2–5), a manufacturer of heavy-duty materials-handling equipment, including forklifts and cranes, stated that "[f]or years, we have made the users of our equipment aware that these are intended solely for the handling of materials and not for personnel." The commenter went on to say their company recommends that "OSHA develop rules prohibiting the use of forklifts, front-end loaders and similar pieces of equipment for the support of scaffold platforms," and provided the following rationale:

> This class of equipment depends on a hydraulic cylinder(s) to lift and hold the load[-]engaging means. When new, the cylinder has little leakage past the sealing means, usually packings, but it does have leakage. After use, the leakage increases. This allows the load[-]engaging means to 'drift' downward, possibly endangering personnel on the scaffold platform. Additionally, the load[-]engaging means of a forklift are usually supported on bearings or sliding members and chains. With use, wear occurs at these points. If excellent maintenance is not performed, and worn parts [are not] promptly replaced, sufficient wear can occur which is not evident when handling heavy loads, since their gravitational mass overcomes the friction and keeps the chain tight; however, when supporting a light load such as a scaffold platform, there is insufficient mass to overcome the friction with the load [-]engaging means left suspended when the mechanism is lowered, with a sudden drop of the load [-]
> engaging means when dislodged. We have knowledge of this happening at least two times at Cape Kennedy when a work platform was raised by a 15,000 pound[-]capacity forklift of our manufacture. Each time serious injury to the man on the platform occurred.

The ACCSH has recommended (Tr. 6/9/87, pp. 32–48) that OSHA prohibit the use of front-end loaders and other similar earth-moving equipment for scaffold support. ACCSH also recommended that OSHA develop rules allowing the use of forklifts as scaffold platforms only while the equipment is stationary and while proper fall protection is provided.

Several commenters (Exs. 2–13, 2–20, 2–22, 2–24, 2–54, 2–55, and 2–390) favored allowing the use of cranes, derricks, front-end loaders, and forklifts to support scaffold platforms, in general terms. Three other commenters (Exs. 2–29, 2–33, and 2–176) favored allowing the use of forklifts, under specified conditions, to support scaffolds.

Three commenters from the AGC (Exs. 2–20, 2–55, and 2–390) stated that, in certain instances, where access to a work area was difficult and the work assignment was of short duration, using scaffold framing might be more hazardous than using equipment for work platform support. They added that appropriate personal protective equipment could be used for employee safety in these situations.

Another commenter (Ex. 2–22) opposed the contemplated prohibition, stating "[t]here are a variety of field situations in which the use of such devices is the only safe way to handle a particular problem. Not only is there no diminution in the safety level afforded to employees in such situations, but the level of safety may actually be improved."

Also, a commenter (Ex. 2–24) termed the "suggestion that cranes, forklifts, and other equipment could not be used as platform supports" as "totally unrealistic." The commenter provided some alternatives and examples (e.g., long ladders) describing them as involving the use of generally dangerous equipment. The commenter also noted that when using this equipment as scaffold support, additional protective measures would be necessary. These measures would include having the operator at the controls at all times, having railings on platforms used above 10 feet in height, and providing safety training.

The Boston Cement Masons and Asphalt Layers Union (BCMALU) (Ex. 2–54) indicated that the use of this equipment to support scaffold platforms might be practical in certain circumstances. This commenter also added that employers "should note the use of this equipment in their Daily Report and explain why they used it."

A carpentry contractor (Ex. 2–176) said that forklift scaffold(s) with properly constructed scaffold platforms should be permitted, provided they are equipped with proper railings, and added that "[i]f the workers working from the scaffold do not ride up and down, there is no danger of their falling off."

One commenter (Ex. 2–29) stated that "[f]orklift[-]mounted work platforms might also be acceptable provided suitable requirements and restrictions are specified." Another commenter (Ex. 2–13), expressing guarded support of the possible prohibition, stated that since this "equipment is readily available at job sites * * * [it] will continue to be used to support workers at elevated working locations." The same commenter further suggested that a minimum requirement for the safe use of such equipment would be to have a competent engineer responsible for the design and safe use of the resulting scaffold.

After a careful review of the above comments, OSHA finds there is insufficient reason to totally ban the use of forklifts, front-end loaders, and other similar equipment as scaffold supports. OSHA notes that the commenters are in general agreement that all equipment not specifically designed to support scaffold platforms must not be used. Accordingly, the Agency has promulgated new paragraphs (c)(2) (iv) and (v) in the final rule to provide guidance for the safe use of specific equipment as scaffold supports. In particular, the added provision requires that, in the case of fork-lifts, the entire scaffold platform be secured to the forklift. *All* supported scaffolds, including those supported by forklifts, front-end loaders and similar pieces of equipment, must comply with the applicable requirements of § 1926.451 for capacity, construction, access, use, and fall protection.

Paragraph (c)(3) of the final rule requires that supported scaffold poles, legs, posts, frames, and uprights be plumb and braced to prevent swaying and displacement. This provision, which is identical to proposed paragraph (b)(15), consolidates existing § 1926.451 (a)(15), (b)(1), (c)(6) and (e)(8), all of which require that uprights be secure, plumb, and braced to prevent swaying and displacement of the scaffold.

Paragraph 1926.451(d) Criteria for Suspension Scaffolds

Final rule paragraph (d) sets criteria for the use of suspension scaffolds. Paragraph (d)(1) of the final rule requires that all suspension scaffold support devices, such as outrigger beams, cornice hooks, parapet clamps, and similar devices, rest on surfaces capable of supporting at least 4 times the loads imposed on them by the scaffold operating at the rated load of the hoist (or at least 1.5 times the loads imposed on them by the scaffold operating at the stall load of the hoist, whichever is greater).

Proposed paragraph (b)(16) required all suspension scaffold support devices such as outrigger beams, cornice hooks, parapet clamps, and similar devices, to rest on surfaces capable of supporting the reaction forces imposed by the scaffold hoist operating at its maximum rated load. Both the proposed and final rule are based on existing § 1926.451(h)(9), which requires that outrigger beams rest on suitable wood bearing blocks. Final rule paragraph (d)(1) differs from the proposed provision regarding the way in which the load to be sustained is expressed. The proposed rule used the term "maximum rated load" instead of the final rule's terms "rated load of the hoist" and "stall load" of the hoist.

Three commenters (Exs. 2–64, 2–367 and 2–516) recommended a 4 to 1 safety factor based on the rated load of the hoist. Another commenter (Ex. 2–41) stated that reaction force should include all forces, not just those from the hoist, and indicated that some safety factor was needed. The Agency agrees that a clarification is warranted here, and has modified the final rule to reflect this input. In addition, the text has been modified to be consistent with final rule §§ 1926.451 (a)(2) and (a)(4). The Agency concludes that this is necessary in order to adequately address the issue of the hoist reaching its stall load when the scaffold strikes an obstruction. OSHA has determined that the hoist stall capacity needs to be greater than the hoist rated capacity so that the rigging system will be able to support the loads imposed by obstructions as well as the load being lifted. This matter is addressed in greater detail above, in relation to final rule § 1926.451(a)(1).

Final rule paragraphs (d)(2), (d)(3) and (d)(4) set requirements for outrigger beams used with suspension scaffolds. Paragraph (d)(2) of the final rule requires that suspension scaffold outrigger beams, when used, be made of structural metal, or equivalent strength material, and be restrained to prevent movement. This is identical to proposed paragraph (b)(17), except as discussed below. The proposal was based on existing §§ 1926.451(h)(4) and (k)(8).

The SIA (Ex. 2–368) stated that if the intent of proposed paragraph (b)(17) was to prohibit the use of wood outrigger beams, the Agency should simply say so. The proposed language clearly indicated that outrigger beams must be made of structural metal. However, upon further consideration of this provision, OSHA believes that other materials should be allowed if their strength and other pertinent characteristics are equivalent to those of structural metal. The Agency has therefore revised the proposed rule accordingly. This revision is in line with the Agency's policy to permit alternative materials or practices which provide equivalent protection to employees. Also, OSHA has added the words "when used" to indicate clearly that the provision does not *require* outrigger beams to be used but only applies when outrigger beams are used.

Final rule paragraph (d)(3) sets requirements for the stabilization of outrigger beams. The introductory language of the paragraph requires that outrigger beams be secured directly to the supporting surface or be stabilized using counterweights, except that masons' multi-point adjustable suspension scaffolds shall not be stabilized by counterweights. The rule does not allow counterweights for stabilizing such masons' suspension scaffolds because, with the large loads often placed on masons' multi-point adjustable suspension scaffolds and the large counterweights that would be necessary to anchor such systems, OSHA is concerned that the supporting roof or floor would become dangerously overloaded.

Final rule paragraph (d)(3) is identical to proposed paragraph (b)(18), except for a few minor editorial changes as described below. The final rule clarifies existing §§ 1926.451 (h)(4) and (j)(5), which require simply that outriggers be securely fastened or anchored. Counterweights are not addressed in the existing standard. OSHA has determined that it is necessary to set criteria for counterweights in the final rule, however, because counterweights are often the only way to anchor an outrigger beam without damaging the supporting surface.

Paragraph (d)(3)(i) provides that direct connections shall be evaluated by a competent person who affirms, based on that evaluation, that supporting surfaces can support the anticipated loads. In addition, the paragraph requires masons' multi-point adjustable suspension scaffold connections to be designed by an engineer experienced in such scaffold design. OSHA anticipates that compliance with these provisions will ensure that roof or floor decks are capable of supporting the loads to be imposed.

Final rule paragraphs (d)(3)(ii) through (d)(3)(v) require that counterweights be made of non-flowable material; be specifically designed for use as scaffold counterweights; be secured to outrigger beams to prevent accidental displacement; and not be removed from an outrigger beam until the scaffold is disassembled, respectively. These requirements are necessary to ensure that counterweights are used only for their intended purpose and are not displaced or removed prematurely.

Final rule paragraphs (d)(3)(vi) through (d)(3)(x) set requirements for securing outrigger beams. In particular, outrigger beams not stabilized by direct connections to the supporting surface shall be secured by tiebacks (paragraph (d)(3)(vi)). Tiebacks must be as strong as the suspension ropes (paragraph (d)(3)(vii)), be secured to a structurally sound anchorage (paragraph (d)(3)(ix)), and be installed perpendicular to the structure unless opposing angle tiebacks are installed (paragraph (d)(3)(x)). In addition, paragraph (d)(3)(viii) requires that outrigger beams be placed perpendicular to their bearing support, with the exception described more fully below.

With regard to proposed paragraph (b)(18)(i) (paragraph (d)(3)(i) in the final rule), a commenter (Ex. 2–40) stated "we believe that improper connections are almost always responsible for the failure of scaffolds. Therefore, criteria for torsion strength evaluation of bolted (direct) connections should be included in the standard." OSHA believes that the corresponding requirement in final rule paragraph (d)(3)(i) for evaluation of direct connections by a competent person will provide adequate assurance that those connections are designed and made appropriately, because the competent person must have the ability to identify any problems with the direct connections and the authority to have any problems corrected.

Proposed paragraph (b)(18)(ii) (paragraph (d)(3)(ii) in the final rule) required that counterweights be made of non-flowable solid material. That, in effect, prohibited the practice of using sandbags or water-filled buckets as counterweights. The reason for the prohibition is that counterweights are easily displaced and may leak. Final rule paragraph (d)(3)(ii) is virtually identical, except that the word "solid" has been deleted, because that term is redundant with the term "non-flowable", and a sentence has been added that explicitly prohibits the use of sand, gravel and other similar material as counterweights.

A commenter (Ex. 2–41) stated that the proposed paragraph would cause confusion, inquiring whether, if five 70 pound weights are considered "solid," 350 one pound weights also would be considered "solid"? The Agency would consider five 70 pound weights as meeting this requirement, because objects of this weight would be unwieldy and less prone to dislocation. However, 350 one pound weights would not meet this requirement because their light weight would make them more prone to being dislocated, thus possibly compromising their effectiveness as a counterweight. OSHA has added the sentence "Sand, gravel, and similar materials that can be easily dislocated shall not be used" to indicate more clearly what materials are not allowed for use as counterweights.

Paragraph (d)(3)(iii) of the final rule requires that counterweights be specifically designed for use as counterweights. This provision, which was not part of the proposed rule, has been added in response to input received regarding Issue 26 in the preamble of the NPRM. That Issue asked if OSHA should require that counterweights be designed for no other purpose than to counterweight the system, thereby prohibiting the use of construction materials, such as concrete masonry units, rolls of felt, etc., as counterweights.

One commenter (Ex. 2–22) opposed requiring that counterweights be designed for no other purpose than to counterweight the system. This commenter stated that such a requirement would be unnecessarily costly. This commenter also stated "So long as the material used meets the objective of the safety requirement, there is no need to cause the expenditure of money on specific materials that do not enhance the safety of the employee * * *"

Several commenters (Exs. 2–13, 2–29, 2–43, 2–53, 2–54, 2–64, 2–367, 2–368 and 2–465) supported a requirement that counterweights be specifically designed for no other purpose than to counterweight the system. These commenters also supported a ban on the use of construction material as counterweights. The SIA (Ex. 2–368) added that such a requirement would be practical, feasible, of negligible cost and would prevent accidents which occur when construction materials used as counterweights are removed for other purposes.

Another commenter (Ex. 2–13) stated:

> Counterweights should be designed for their specific use and permanently marked with their weight otherwise they are worthless. Construction material, of any kind, should be banned for use as counterweights. There is no assurance that proper counterweighting is being accomplished with construction materials. Also, the material could be removed for use by others, thus providing an unstable condition.

Two commenters (Exs. 2–64 and 2–367) stated that there should be a requirement that counterweights be identified or marked. The SSFI (Ex. 2–367) recommended that "each counterweight be identified as to its weight" and should also "have the ability to be fastened directly to the outrigger system." Another commenter (Ex. 2–64) wanted counterweights to be "clearly marked with their actual weight (stamped, painted, etc.), so that workers will use the proper amount of weight."

In addition, a commenter (Ex. 2–8) stated "[c]onstruction materials should not be use[d]. We have seen masons remove block used as counterweight."

Also, the ACCSH (Tr. pp. 188–190, 6–9–87) recommended that counterweights be designed for no other purpose than to counterweight the system. One member stated "Certainly OSHA should require counterweights be designed for no other purpose. It seems to me that the same day I first read this question I received from OSHA a copy of 'Fatal Facts' that involved this very issue."

After carefully considering the above comments and the ACCSH recommendation, OSHA has determined that it is reasonably necessary to require that counterweights be designed for no other purpose than to counterweight the system, and to prohibit the use of construction materials as counterweights. In addition, OSHA has determined that it is appropriate to require the marking of counterweights with their weights because that information is needed for the proper design, selection and installation of counterweights.

Proposed paragraph (b)(18)(iii), which required that counterweights be connected to outrigger beams by mechanical means, is identical to final rule paragraph (d)(3)(iv), except that the phrase "to prevent accidental displacement" has been added to the final rule to clarify the Agency's regulatory intent. The BCMALU (Ex. 2–54) recommended that the Agency clarify the reason for this provision. The Agency agrees and has revised the provision accordingly.

Proposed paragraph (b)(18)(iv) required that counterweights not be removed from a scaffold until the scaffold is disassembled. Final rule paragraph (d)(3)(v) is identical to the proposed paragraph, except that the

final rule specifies that the counterweights may not be removed from the "outrigger beam", rather than from the "scaffold." One commenter (Ex. 2–41) pointed out that counterweights used with suspension scaffold outrigger beams are not placed on the scaffold, as stated in the proposed rule, but are installed on the outrigger beam above. The Agency agrees, and has revised the provision accordingly.

Proposed paragraph (b)(18)(v) required outrigger beams to be secured by tiebacks equivalent in strength to the suspension ropes. This provision was intended to provide a backup system in case the counterweights became displaced. Although tiebacks alone may not keep a scaffold from tipping, they will keep the system from falling to the ground and from causing a progressive failure of nearby scaffolds and scaffold sections. The intent of the proposed paragraph has been carried forward in final rule paragraphs (d)(3)(vi) and (vii), which require the use of tiebacks when direct connections are not used, and require tieback strength equivalent to that of the suspension ropes, respectively.

The SSFI and the SIA (Ex. 2–367 and 2–368) noted that outrigger beams which are bolted to the structure become part of the structure and do not require tiebacks. The Agency agrees that only counterweighted outrigger beams need to be secured with tiebacks and has incorporated appropriate language into paragraphs (d)(3)(vi) and (d)(3)(vii) accordingly.

In addition, final rule paragraph (d)(3)(viii) requires that outrigger beams be placed perpendicular to the face of the structure, except that, where the employer establishes that such placement is prevented by obstructions, the outrigger shall be placed as near to the perpendicular as possible and shall be secured using opposing angle tiebacks. This provision has been added as a partial response to a commenter (Ex. 2–41) who stated that requiring tiebacks to be installed parallel to the centerline of the beam, as required by proposed paragraph (b)(18)(vii), is only safe when the beam is perpendicular to the edge. OSHA agrees with this comment because a non-perpendicular beam/tieback arrangement creates a pendulum effect that could endanger employees. However, the SIA (Ex. 2–368) has pointed out that there may be circumstances where obstructions prevent the outrigger beam from being placed perpendicular to the edge. The SSFI and the SIA (Exs. 2–367 and 2–368) suggested that, in such cases, opposing angle tiebacks be required. OSHA agrees that opposing angle tiebacks are appropriate where obstructions prevent perpendicular placement of outriggers, and has revised the final rule language accordingly.

Proposed paragraphs (b)(18) (vi) and (vii) required that tiebacks be secured to structurally sound anchorages and that they be parallel to the outrigger beam. Those provisions correspond to final rule paragraphs (d)(3) (ix) and (x). OSHA has revised this language, drawing on examples in the preamble of the NPRM, to provide more specific direction regarding what constitutes a structurally sound anchorage.

Three AGC commenters (Exs. 2–20, 2–55 and 2–390) stated that the OSHA interpretation of what is considered an acceptable point of anchorage (51 FR 42686) was too strict and that the Agency should permit the use of any available roof structural anchor points since they are only accommodating a back-up or secondary support system. The Agency disagrees with this position because the secondary support system must be capable of providing adequate support in the event of rigging failure. The revised final rule paragraph specifically identifies structural members of the building or structure as appropriate anchor points, and identifies standpipes, vents, other piping systems, and electrical conduit, as structural elements that do not provide appropriate anchorages.

Proposed paragraph (b)(18)(vii) required that tiebacks be installed parallel to the centerline of the beam. The proposed language has been revised in final rule paragraph (d)(3)(x) to recognize that opposing angle tiebacks are acceptable alternative means of installation. In addition, OSHA has replaced the proposed term "parallel", with the term "perpendicular" for the sake of clarity.

A commenter (Ex. 2–29) stated "since tieback anchorages are not always available exactly where needed, perhaps the wording of these requirements should be revised to allow tiebacks to be at an angle, e.g., not to exceed 10 degrees from the centerline of the outrigger * * *." OSHA acknowledges that anchorages are not always conveniently located and that there may be circumstances where it is necessary to install the tieback at an angle. However, OSHA believes that when this is done, it is also necessary to require an opposing angle tieback to be used so that the pivot radius of the beam is minimized. Consequently, single tiebacks installed at an angle are not allowed by the final rule.

Paragraph (d)(4) of the final rule specifies the construction requirements for outrigger beams used with suspension scaffolds. This provision requires that suspension scaffold outrigger beams be: provided with stop bolts or shackles at both ends; securely fastened together with the flanges turned out when channel iron beams are used in place of I-beams; installed with all bearing supports perpendicular to the beam center line; and set and maintained with the web in a vertical position. In addition, when an outrigger beam is used, the shackle or clevis with which the suspension rope is attached to the outrigger beam shall be placed directly over the hoisting machine, i.e., over the center line of the stirrup. (These requirements are found in paragraphs (d)(4)(i) through (d)(4)(v).)

These requirements are effectively identical to those in proposed paragraph (b)(19). The SIA (Ex. 2–368) recommended that OSHA drop the word "single" from proposed paragraph (b)(19)(v) because this requirement applied to all outrigger beams, not just to "single outrigger beams". The Agency agrees, and has revised this provision of the final rule accordingly.

Final rule paragraph (d)(5) sets requirements for suspension scaffold support devices other than outrigger beams. These devices include cornice hooks, roof irons, parapet clamps, or similar devices. Under this provision, those devices must be: made of steel, wrought iron, or materials of equivalent strength; supported by bearing blocks; secured against movement by tiebacks installed at right angles to the face of the building or structure unless opposing angle tiebacks are installed and secured to a structurally sound point of anchorage on the building or structure (sound points of anchorage include structural members, but do not include standpipes, vents, other piping systems, or electrical conduit); and tiebacks shall be equivalent in strength to the strength of the hoisting rope.

Final rule paragraph (d)(5) is identical to proposed paragraph (b)(20), except that some minor editorial changes have been made for the sake of clarity. In particular, OSHA has revised proposed paragraph (b)(20)(i), which specified "mild steel, wrought iron, or equivalent materials," by deleting the word "mild" and changing "equivalent materials" to "materials of equivalent strength." These revisions are based, in part, on input from a commenter (Ex. 2–41), who indicated that the term "mild steel" is not defined in readily available sources. The other change was made to indicate clearly that the strength of the specified materials was the characteristic by which 'equivalence' would be gauged.

Proposed paragraph (b)(20)(iii) required the use of tiebacks, installed at right angles to the face of the structure wherever possible; secured to a structurally sound portion of the building; and equivalent in strength to the hoisting rope. As stated in the preamble to the NPRM (51 FR 42686), vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if the support device were to fail. OSHA has revised the proposed provision so that final rule paragraph (d)(5)(iii) allows opposing angle tiebacks, as well as tiebacks at right angles, and has incorporated the NPRM preamble list of unacceptable anchorage points to facilitate compliance. In addition, the Agency has relocated the requirement for tieback strength equivalent to that of the hoisting rope to a separate provision (final rule paragraph (d)(5)(iv)).

Two commenters (Exs. 2–64 and 2–368) suggested a requirement that devices covered by proposed paragraph (b)(20) be marked to indicate their capacity. OSHA has not done so because the Agency believes that such markings are not necessary given the capacity requirements set in final rule § 1926.451(a).

Paragraph (d)(6) of the final rule specifies the minimum length of suspension rope to be used with different kinds of hoists. In particular, winding drum hoists are required to have at least four wraps of suspension rope at the lowest point of scaffold travel. All other types of hoists are required to have suspension rope long enough to lower scaffolds to the level below, without having the rope end pass through the hoist, or to have the rope end configured or provided with means so that the end does not pass through the hoist.

This provision, which is identical to proposed paragraph (b)(21), elicited one comment. The BCMALU (Ex. 2–54) recommended that OSHA require that the rope be long enough to allow the scaffold to be lowered to the lowest point on the job-site without the rope passing through the hoist or that the scaffold be initially set up at the highest point at which it will be used on that job-site. OSHA believes that the proposed provision adequately addressed the issue of rope run-through and, accordingly, has not made the suggested revision in the final rule.

Final rule paragraph (d)(7) states "The use of repaired wire rope as suspension rope is prohibited." This provision differs from proposed paragraph (b)(22), which stated "The repairing of wire suspension rope is prohibited." The proposed requirement was based on OSHA's view that there is no way to determine the strength capacity of a repaired wire rope without the danger of over-stressing the repair and thus rendering the rope unsafe for use on scaffolds. The Agency recognizes that the proposed rule did not clearly state OSHA's intent. The act of repairing wire suspension rope is not in itself hazardous. OSHA is, however, concerned that repaired rope not be used to suspend a scaffold. Accordingly, OSHA has revised this provision to prohibit the use of repaired wire rope as suspension rope.

Paragraph (d)(8) of the final rule provides that wire suspension ropes shall not be joined together except through the use of eye splice thimbles connected with shackles or coverplates and bolts. This is virtually identical to proposed paragraph (b)(23). This provision, which was not in OSHA's existing scaffold standard, reflects OSHA's determination that the specified measures are the only acceptable ways to connect wire ropes without significantly affecting rope strength.

The SSFI and the SIA (Exs. 2–367 and 2–368) suggested revision of the proposed text to read "wire suspension ropes shall not be joined together except through the use of eyesplice thimbles connected with shackles or cover plates and bolts." OSHA agrees that the suggested phrase "through the use of eye splice thimbles connected" expresses the Agency's intent more effectively than the proposed phrase "by eyesplicing" and has revised the language of the final rule accordingly. The SIA further indicated that this requirement should apply only to wire suspension ropes used with manual hoists. However, the Agency concludes that final rule paragraph (d)(8) is applicable to the joining of all wire suspension rope, not just that which is used with manual hoists, because compliance with that provision is necessary to ensure that the wire ropes on *all suspended scaffolds* are rigged properly. Therefore, OSHA is not making the suggested change.

Paragraph (d)(9) of the final rule provides that the load end of wire suspension ropes shall be equipped with proper size thimbles and secured by eye splicing or equivalent means. This provision is identical to proposed paragraph (b)(24), which was based on existing § 1926.451(h)(10) and existing § 1926.451(j)(7).

Final rule paragraph (d)(10) requires that ropes be inspected for defects by a competent person prior to each workshift and after every occurrence which could affect a rope's integrity. In addition, paragraph (d)(10) provides that wire rope shall be replaced if the rope has any physical damage which impairs its function and strength; any kinks that might impair the tracking or wrapping of rope around the drum(s) or sheave(s); six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay; abrasion, corrosion, scrubbing, flattening or peening causing loss of more than one-third of the original diameter of the outside wires; evidence of any heat damage resulting from a torch or any damage caused by contact with electrical wires; or evidence that a secondary brake has been activated during an overspeed condition and engages the suspension rope (paragraphs (d)(10) (i) through (vi)).

Proposed paragraph (b)(25) provided simply that "Defective or damaged ropes shall not be used as suspension ropes or drop lines." The proposed language was based on existing § 1926.451(w)(5), which prohibits damaged ropes from being used on float or ship scaffolds. The danger of a broken line is a problem not confined to float or ship scaffolds, so OSHA has extended this provision in the final rule to cover all suspended scaffolds.

The one comment (Ex. 2–38) on the proposed provision pointed out that guidelines indicating when rope would be considered to be defective should be provided. The Agency agrees that employers need to know what OSHA means by "defective or damaged rope". Accordingly, final rule paragraph (d)(10) incorporates the language of ANSI A10.8–1988, paragraph 6.7.10, because OSHA finds that those consensus provisions represent good industry practice.

Paragraph (d)(11) of the final rule requires that swaged attachments or spliced eyes on wire suspension ropes not be used unless they are made by the wire rope manufacturer or a qualified person. This provision is essential to ensure the strength and integrity of such attachments as eyes and is identical to proposed paragraph (b)(26).

Paragraph (d)(12) of the final rule requires that, when wire rope clips are used on suspension scaffolds, there shall be a minimum of 3 wire rope clips installed, with the clips a minimum of 6 rope diameters apart; employers shall follow the manufacturer's recommendations when installing clips, retightening clips after initial loading, and inspecting and retightening clips at the start of each workshift; U-bolt clips (a variety of wire rope clip) shall not be used at the point of suspension for any

scaffold hoist; and when U-bolt clips are used, the U-bolt shall be placed over the dead end of the rope, and the saddle shall be placed over the live end of the rope.

Proposed paragraph (b)(27) simply stated "When wire rope clips are used on suspension scaffolds, they shall be retightened after initial loading and shall be inspected and retightened periodically thereafter". OSHA believed at the time of the proposal that such performance language conveyed the requirements necessary to ensure that clips were installed and retightened properly.

Two commenters (Exs. 2–23 and 2–54) recommended that OSHA specify the minimum number of clips required. In particular, one commenter (Ex. 2–23) recommended a minimum of 3 clips spaced at least 6 rope diameters apart, with the U-bolt over the dead end of the wire rope. This commenter added that the clips must not be staggered.

The SIA (Ex. 2–368) recommended that the clips be tightened to the manufacturer's recommended torque. Another commenter (Ex. 2–64) suggested that only "J" type clamps be used on suspension scaffold lines and that the clips be inspected and retightened at the start of each workshift thereafter.

The Agency agrees that more specific requirements are needed so that employers know how to install and retighten wire rope clips. OSHA believes that the requirements of ANSI A10.8–1988, paragraph 6.7.11.3, appropriately address the concerns raised by commenters, and has incorporated those provisions into paragraph (d)(12) of the final rule. In addition, the Agency agrees that a minimum of 3 clips spaced at least 6 rope diameters apart is necessary for safe rigging when wire rope clips are being used. OSHA notes that several drawings in ANSI A10.8–1988 which depict the proper rigging of suspension scaffolds show three wire rope clips on the suspension ropes.

Final rule paragraph (d)(13) requires that suspension scaffold power-operated hoists and manually operated hoists be of a type tested and listed by a qualified testing laboratory. This is virtually identical to proposed paragraph (b)(28), except that OSHA has revised the proposed terms "mechanically powered" and "manually powered" hoists to read "power operated hoists and manually operated hoists" in the final rule. This revision brings paragraph (d)(13) into line with the language of ANSI A10.8–1988, paragraph 6. This provision consolidates existing provisions §§ 1926.451 (h)(2), (i)(3), (j)(2), and (k)(1).

Paragraph (d)(14) of the final rule requires that gasoline-powered equipment and hoists not be used on suspension scaffolds. This provision is similar to proposed paragraph (b)(29), except that the final rule now prohibits all gasoline-powered equipment or hoists, not just gasoline powered hoists.

The proposed provision was based on existing § 1926.451(k)(2) which allows units to be either electrically or air motor driven. OSHA has determined that gasoline hoists pose unacceptable fire hazards, given the confined area of a suspended scaffold and the difficulties employees would face trying to escape the scaffold if the hoist was incapacitated and on fire.

The BCMALU (Ex. 2–54) strongly recommended that OSHA prohibit the use of all gasoline-powered equipment and hoists on suspension scaffolds because of the high potential for fire. The commenter cited an example of an accident in which two employees were severely burned using a gasoline-powered water blaster. The Agency agrees with this concern and has revised the provision in the final rule accordingly.

Paragraph (d)(15) of the final rule requires that gears and brakes of power operated hoists used on suspension scaffolds be enclosed. This is virtually identical to proposed paragraph (b)(30), except a change in terminology has been made ("mechanically powered" to "power operated"), consistent with the changes made and discussed above under paragraph (d)(13). The proposed rule was based on existing § 1926.451(k)(3).

Final rule paragraph (d)(16) provides that, in addition to the normal operating brake, suspension scaffold power operated hoists and manually operated hoists shall have a braking device or locking pawl which engages automatically when a hoist makes either of the following uncontrolled movements: an instantaneous change in momentum or an accelerated overspeed. This provision is different from proposed paragraph (b)(31), which required a brake or pawl to automatically engage "when the normal speed of descent of the hoist is exceeded." The proposed provision was based on existing § 1926.451(k)(4) but differed from the existing standard in that it applied to manual as well as to powered hoists.

One commenter (Ex. 2–8) stated that OSHA should modify the proposed provision to specifically address an instantaneous change in momentum and an accelerated overspeed. OSHA agrees that the suggested revision is appropriate, noting that ANSI A10.8–1988, paragraph 6.3.4.1 addresses both instantaneous stopping type secondary brakes and deceleration type secondary brakes. The Agency has revised the final rule's language accordingly.

The SSFI and the SIA (Exs. 2–367 and 2–368) recommended that OSHA apply this requirement only to powered hoists. OSHA disagrees with these commenters, noting that, as written, the provision requires a braking device (for powered hoists) *or* a locking pawl (for less sophisticated or manual hoists). The Agency concludes that these precautions are necessary on all suspension scaffold hoists and, accordingly, has not made the suggested revision.

Paragraph (d)(17) of the final rule provides that "Manually operated hoists shall require a positive crank force to descend." This is the same requirement as proposed paragraph (b)(32), except the term "manually operated hoists" replaces the proposed term "manually-powered hoists" for the same reasons as discussed above in relation to final rule paragraphs (d)(13) and (d)(15).

Issue 27 in the preamble to the NPRM sought comments regarding proposed § 1926.451 (b)(32) (paragraph (d)(17) of the final rule) which addresses means of preventing "free-running" of hoists during descent. OSHA's view was that compliance with the proposed paragraph would preclude this dangerous condition.

One commenter (Ex. 2–31), whose remarks related solely to pumpjack scaffolds, stated that "[u]nder ordinary circumstances, free[-]running does not occur during descent of a pumpjack."

The ACCSH recommended requiring a positive crank force to lower a scaffold (Tr. 190–191, 6/9/87). The SSFI (Ex. 2–367) and the SIA (Ex. 2–368) commented that the proposed provision would preclude the use of a "boat winch" type system. The SIA further noted that, to their knowledge, free-running hoists are "rare in the marketplace." They added that the requirement was feasible and practical and would involve negligible additional cost. NIOSH (Ex. 2–40) agreed with the proposed provision. The BCMALU (Ex. 2–54) stated that although a positive crank force might be slower than a free-running hoist, it would be safer which "is the name of the game, safety."

One commenter (Ex. 2–29) stated that a positive crank force should be required for hoists used to lower manually-powered scaffolds. Another commenter (Ex. 2–53) stated that the proposed requirement is needed. In addition, a commenter (Ex. 2–64) stated

that a positive crank force is essential unless the descent speed can be controlled by some other means.

After carefully considering the above comments and the ACCSH's recommendation, OSHA has determined that this requirement is necessary to eliminate the dangerous condition of "free-running" hoists during descent and to ensure employee safety.

Final rule paragraph (d)(18) provides that two-point and multi-point suspension scaffolds shall be tied or otherwise secured to prevent them from swaying, as determined necessary based on an evaluation by a competent person. This paragraph requires, in addition, that window cleaners' anchors not be used for the purpose of preventing swaying. This prohibition is based on the fact that window cleaners' anchors are not designed for the load that could be imposed. This provision was not part of the proposed rule.

Issue 7 in the preamble of the NPRM asked if the existing § 1926.451(i)(9) and proposed § 1926.452(p)(5) requirement that employers secure two-point adjustable suspension scaffolds to prevent swaying should be extended to cover all suspended scaffolds.

Six commenters (Exs. 2–13, 2–22, and 2–43, 2–471, 2–494, and 2–516) expressed some measure of support for the idea of extending this provision to cover all suspended scaffolds.

One commenter (Ex. 2–13) stated as follows:

> All exterior scaffolds should be stabilized at each work location or provide a method of stabilization as described in OSHA 1910.66 [powered platform standard for General Industry] or by Intermittent Stabilization, as contained in OSHA STD 1–3.3. In addition, all new buildings over 35 feet in height should be provided with a permanent engineered methods or means of rigging.
>
> The vast majority of suspended scaffold accidents that do occur are due to deficient rigging.

A later comment from the same individual (Ex. 2–494) stated "[w]ith prior planning, there are ways that all scaffolds can be stabilized * * * Unstabilized scaffolds are a hazard to the occupants, other workers, and pedestrians below."

Another commenter (Ex. 2–471) stated as follows:

> Any shear wall, with the technology available since November 1982, as described in OSHA Instruction STD 1–3.3, can be made *safe* by the installation and the use of Intermittent Stabilization Building Anchors, to prevent a suspended scaffold from being displaced by wind forces.
>
> Merely providing perimeter protection and separate safety lines will *not* prevent the scaffold and its occupants from being blown about, being upset, or violently contacting the structure being serviced, all of which could cause death or injury.

Two commenters (Exs. 2–64 and 2–368) stated that it is neither possible nor practical to tie in all suspended scaffolds. They stated that there are many job situations (e.g., sheer or glass walls, or no wall at all) where stabilization would not work because there are no points where tie-ins can be made. OSHA acknowledges that there are circumstances where suspension scaffolds used in construction have no structure against which to be secured. The present rulemaking takes into account the likelihood that "permanent engineered methods" or "intermittent stabilization building anchors" will not be in place during construction operations. The applicability of § 1910.66 and OSHA STD. 1–3.3 is limited because they apply to post construction scaffold activities (such as window washing and light building maintenance).

The BCMALU (Ex. 2–54) simply expressed support for the existing requirement that two-point suspension scaffolds be secured to prevent swaying.

Three commenters from the AGC (Exs. 2–20, 2–55, and 2–390) said that single-point suspension scaffolds do not have a tendency to sway. They explained that "[s]waying generally occurs on two-point suspensions because of uncoordinated movements by two or three employees working on the platform as well as the fact that larger platforms permit movement by employees. This is not the case in single-point suspensions."

Another commenter (Ex. 2–29) stated that "[s]ingle-point boatswains' platforms should not be included [under this provision] * * * since this would greatly restrict their use."

OSHA agrees with the AGC commenters that single-point scaffolds should not be covered by this provision because, by their nature, they do not have a tendency to sway. Single-point scaffolds generally consist of a seat or a small cage which prevents employee movement and scaffold swaying, and therefore, do not pose the same hazard as multi-point scaffolds.

One commenter (Ex. 2–41) stated "based on much research, it is my opinion that the primary purpose for suspended scaffold restraint on a platform which has no open sides is to prevent the walking-working surface from becoming unstable during normal work activities. The restraint also closes the open side during work activities * * *" In addition, the SIA (Ex. 2–368) noted that "[w]here the work platform is provided with guardrails on all sides and workers are protected by * * * safety lines, the protection should be adequate." Another commenter (Ex. 2–516) noted that "[t]here may be limited situations where suspended scaffolds for construction cannot be tied into the building or structure. However, this is not a reason for not having [fall] protection. Any suspended platform not tied in then definitely needs guardrails on all four sides."

In response to Issue 7, the ACCSH recommended (Tr. 79–87, June 9, 1987) that, where determined necessary by a competent person, all suspended platforms be secured to prevent swaying. The Advisory Committee indicated that the expertise of the competent person would enable the employer to determine the situations where it was appropriate to secure suspended scaffolds against swaying.

After careful consideration of the comments received, OSHA has decided not to require the use of tie-ins to protect single-point suspended scaffolds from swaying. As noted above, this type of scaffold generally consists of a seat or small cage which limits employee movement and swaying. However, the Agency does agrees with the ACCSH that the expertise of a competent person will enable the employer to determine when it is appropriate to secure two-point and multi-point suspended scaffolds and has worded the final rule accordingly.

In addition, Issue 18 in the preamble of the NPRM asked if there should be a height limit above which single and two-point adjustable suspension scaffolds may not be used, and if so, what the height should be, and why.

Four commenters (Exs. 2–20, 2–55, 2–69, and 2–390) responded by asking "what type of equipment could be used above the limit that would be safe, practical, feasible and economical?" One commenter (Ex. 2–69) added that the hoist lifting capacity is the only height limitation for this type of scaffold. Another commenter (Ex. 2–13) agreed with that point and stated that OSHA should not try to limit the working height of suspension scaffolds. Two other commenters (Exs. 2–22 and 2–64) simply agreed that there should not be a height limitation. One of those commenters (Ex. 2–22) added that following "the safety standards" eliminates unsafe conditions.

Some Issue 18 commenters (Exs. 2–41, 2–54, 2–312) felt that the height of a suspended scaffold was not a problem. One commenter (Ex. 2–41) stated that a "height limit in construction should not be a factor in the safe use of equipment." As an example, he observed that "single-point scaffolds

have been used in 950 foot elevator shafts for elevator installation * * *" The BCMALU (Ex. 2–54) indicated that a greater height would make workers more aware of hazards and thus more cautious. The commenter also stated "[i]t seems most employers and employees are more safety conscious in high places and careless at 5 to 10 feet from the ground." In addition, he commented that he did not see how OSHA could restrict use of this equipment because there are situations where these types of scaffolds are the only equipment that can be used. Also, a commenter (Ex. 2–312) stated that "[w]e have outfitted chimney workers for years so they could work on chimneys that stood 800 to 1000 feet in height. Never a single accident reported." The commenter explained that descent devices and the chair board systems use "one friction principle" and for these, more rope means more friction with which to slow descent. In addition, the commenter recommended that subpart L require that all rope [for these suspended scaffolds] be continuous length of line, without splices. The commenter further noted that this requirement would limit the height somewhat.

The SSFI and the SIA (Exs. 2–367 and 2–368) expressed opposition to a height limitation for suspended scaffolds and recommended that "the equipment should be designed by competent persons who will take into consideration all the hazards involved, thereby providing safe equipment for the specific job function." In addition, the SIA (Ex. 2–368) stated that suspended scaffolds are practical and feasible at any height when properly installed and used, and that the height limitation "would be the ability of the hoist(s) to raise and lower the work platform." Another commenter (Ex. 2–465) stated that this equipment should be designed by a competent person "who is thoroughly familiar with the hazards involved." That commenter also stated that suspended scaffolds are the most feasible and safest methods to use for work on smoke stacks, towers, and water tanks.

At its meeting of June 9, 1987, the ACCSH responded to Issue 18 by reiterating the position they previously adopted under Issue 7 regarding two-point suspended scaffolds. (Issue 7 is discussed above in reference to paragraph (d)(18) of the final rule.) While the ACCSH did not favor adopting a height limitation for single- and two-point adjustable suspended scaffolds, they did recommend that these types of scaffolds be secured to prevent swaying where necessary, as determined by a competent person (Tr. 6/9/87, pp. 148–150). One ACCSH member stated "I would move that if swaying is prohibited, as discussed in Question Number 7, that no height limit for suspended scaffolds need be included."

Based on the input received, OSHA has determined that suspended scaffolds which comply with the pertinent requirements of subpart L will be safe regardless of the height at which they are used. Therefore, the Agency has not added a height limitation to the final rule.

Final rule paragraph (d)(19) (proposed § 1926.451(b)(3)) requires that single function emergency escape and rescue devices not be used as working platforms. This paragraph also provides that the prohibition does not apply to systems which are designed to function both as working platforms and as emergency systems.

Proposed paragraph (b)(3) simply prohibited the use of emergency descent devices as working platforms because such devices are not normally designed for repeated in-place use. However, as stated in the preamble to the NPRM (51 FR 42685), the proposed provision was not intended to preclude the use of scaffold systems which have as an additional feature the capacity to function as an emergency descent device.

The proposed provision generated a number of comments (Exs. 2–8, 2–27, 2–29, 2–87 and 2–312) which recommended that OSHA define "emergency descent device." Most of these commenters interpreted the regulatory language as prohibiting all emergency descent devices from being used as work platforms despite the clarification provided in the preamble. Therefore, OSHA has revised the final rule to indicate clearly that only devices whose sole function is to provide emergency escape and rescue are not to be used as working platforms.

Paragraph 1926.451(e) Access

Final rule paragraph (e) sets the requirements for safe access to scaffolds. This paragraph clarifies the requirements of existing § 1926.451(a)(13), which requires only that "an access ladder or equivalent safe access shall be provided." The introductory text states that employers must provide scaffold access which complies with paragraph (e) for each affected employee. It also specifies that the access requirements for employees erecting or dismantling supported scaffolds are prescribed in paragraph (e)(9).

Proposed paragraph (c) began with a note which stated that the proposed paragraph did not apply to employees erecting or dismantling scaffolds. In the preamble to the NPRM (51 FR 42687), OSHA stated that requirements for safe access "often are not feasible until a scaffold has been erected and properly braced." OSHA relied on the same rationale for the proposed exemption of erectors and dismantlers from the fall protection requirements of proposed paragraph (e).

OSHA received no comments on this proposed exemption directly. However, many of the comments on Issue 8, which requested input regarding the need to exempt employees erecting and dismantling scaffolds from the fall protection requirements of proposed paragraph (e) (promulgated as paragraph (g) of this final rule) stated that employees erecting and dismantling scaffolds should not be exempted from protection. In particular, as discussed below in relation to final rule paragraph (g), commenters stated that it was often feasible to provide fall protection for employees erecting or dismantling scaffolds.

Given the evidence that employers can often protect erectors and dismantlers from fall hazards, OSHA concluded that it was also appropriate to consider if there are circumstances where safe access can be provided for those employees. Accordingly, the Agency reopened the subpart L rulemaking record to solicit input regarding the proposed exemption (58 FR 16509, March 29, 1993). In particular, OSHA sought comments about employers' ability to provide safe access for erectors and dismantlers, the hazards that could be created by efforts to provide safe access, and the criteria to be satisfied by employers seeking to qualify for an exception from the proposed requirements for safe access.

Three commenters (Exs. 34–8, 34–22, and 34–29) supported an access requirement for scaffold erectors and dismantlers. One commenter (Ex. 34–8) said that its support depended on adding the words "or equivalent means" to such a requirement. OSHA notes that both proposed § 1926.451(c)(1) and final rule § 1926.451(e) contain the words "or equivalent means." That commenter also stated that in utility boiler installations "ladders and/or stairways are incorporated into scaffolding. Planking and ladders, where feasible, are used to support erection or dismantling. New access can be provided by cutting out sections of the boiler wall, but the cost for it in some areas may be prohibitive." The commenter added that safe access can

be provided on supported scaffolds 100% of the time in non-boiler installations.

Another commenter (Ex. 34–22) stated that where safe access cannot be provided, fall protection can be used. In addition, a commenter (Ex. 34–29) responded that safe access is practically always feasible, and presented ladders, lifts, and crane personnel baskets as examples. OSHA agrees that safe access can be provided for erectors and dismantlers in most instances through the use of various types of equipment, including (but not limited to) ladders, scaffold stairs, manlifts, and fall protection equipment. However, the Agency notes that the use of a ladder or fall protection equipment would require a significant degree of scaffold stability, which may not be present in an incomplete scaffold. Additionally, the safe use of stair towers, manlifts or crane personnel platforms is dependent on site conditions and the availability of the equipment and additionally requires the employer to comply with the regulations covering that equipment.

Scaffold Consultants (Ex. 34–5) described a hypothetical situation involving a scaffold 100 feet long by 50 feet high and planked on all levels. They raised the following points:

1. How many ladders are to be installed? If there is a ladder in the middle of the scaffold, certainly an erector will not walk 50 feet to a ladder and then back another 50 feet to relocate.

2. Ladders cannot be installed on the interior of the scaffold because of the continuous, fully planked decking.

3. If more than one ladder is to be installed, then it would of necessity be on the outside of the scaffold, forcing the erector to go outside the scaffold on each succeeding level, exposing the worker to a fall potential. Traditionally, each ladder section is installed after that level of scaffold has been completed, and the worker no longer has need to return to a lower level. You cannot install a ladder section for the next level up until the scaffold frames, bracing and planking have been erected.

The code already states (1926.451(a)(13)) that an access ladder or equivalent safe access shall be provided.

OSHA notes that providing safe access for erectors and dismantlers does not necessarily mean that all levels of a scaffold must be fully planked. In addition, the Agency cannot specify the number of ladders or other means of access that must be provided in all cases, because of the wide range of situations being addressed by this standard.

Regarding access for employees erecting or dismantling suspended scaffolds, two commenters (Exs. 34–32 and 34–39) stated that access is not required because suspended scaffolds are usually erected at ground level and the rigging is performed at the roof level. Another commenter (Ex. 34–8) stated that OSHA should consider deleting the proposed exemption as it relates to suspended scaffolds. OSHA agrees that if a scaffold is erected at ground level and rigging is performed at the roof level, employees are deemed to have safe access to and from the scaffold. However, erection and rigging not performed in this manner require safe access to be provided, in accordance with final rule paragraph (e).

Five commenters (Exs. 34–31, 34–32, 34–37, 34–39, and 34–43) opposed, in general, an access requirement for erectors and dismantlers. One commenter (Ex. 34–43) stated that the means of access would have to be removed from a scaffold before dismantling can proceed. In addition, four commenters (Exs. 34–9, 34–10, 34–12, and 34–17) stated that, while sectional ladders attached at the ends of the scaffold can be used for access once adequate support is available, portable ladders on the work platform may create a greater hazard. Furthermore, three commenters (Exs. 34–32, 34–37, and 34–39) stated that providing such access is not practicable on supported scaffolds on the grounds that not all scaffolds require an attached access and when one is required "it is installed after the lift is installed," and "it is not available for the erectors."

In particular, the SIA (Ex. 34–37) stated that supported scaffold erectors access the scaffold as the erection/dismantling process progresses in either direction. Although acknowledging that erectors also access the scaffold from structures or ladders when convenient, the SIA added that access systems cannot be installed until the scaffold is structurally sound, which they stated does not occur in most cases until the scaffold is complete. OSHA finds, however, that there are many circumstances where outriggers, braces, ties, guys, and similar equipment can be used as the erection or dismantling processes proceed in order to secure, stabilize, or reinforce the lower levels of the scaffold so that safe access can be provided to these completed levels.

OSHA realizes that there may be instances where safe access cannot be provided to the actual level where employees are erecting or dismantling supported scaffolds. However, the Agency has determined that it is necessary and appropriate to provide these employees with safe access to and egress from the levels that have been completed.

Another commenter (Ex. 34–11) wrote that most jobs would not meet the requirements of proposed § 1926.451(c) without an exemption for erectors and dismantlers. This commenter called for a study to determine what procedures are needed to provide safe access. OSHA finds, however, that the rulemaking record provides the necessary support for promulgation of access requirements for these employees and, accordingly, has not adopted this commenter's suggestion. OSHA intends to monitor the effectiveness and compatibility of final rule paragraphs (e) and (g) carefully for the next several years, to make sure they are providing the necessary protection for construction workers. Based on the results of that monitoring, the Agency will determine if any further action is warranted.

Several commenters responded to OSHA's request for information about any hazards that would be created through efforts to comply with proposed paragraph (c). One commenter (Ex. 34–8) stated "[i]n utility boiler installations hazards may outweigh benefits. Employees may attempt to use a ladder that is not properly secured. Would have to install more access doors and this is not always feasible. In other applications of supported scaffold problems are not anticipated."

Four commenters (Exs. 34–9, 34–10, 34–12 and 34–17) stated:

Use of ladders, etc. to provide access to levels that are in the process of being dismantled would increase the potential to falls. This is [due] to the fact that the scaffold would no longer be stable enough to support the access equipment properly. The levels of scaffold [that] have been completely erected or not yet dismantled should retain the permanent access equipment intended to provide access throughout the length of intended service. The risks involved during the erection and dismantling process can be lessened by strict adherence to all procedures.

As discussed above, OSHA has determined that safe access can be provided to levels that have been completely erected or to levels that remain intact during dismantling operations.

Three commenters (Exs. 34–32, 34–37 and 34–39) stated "[t]hese hazards cannot be eliminated during scaffold erection." In addition, two of the commenters (Exs. 34–32 and 34–39) stated "[t]he erector travels both horizontally and vertically and may not be in the vicinity of an access system when descent is necessary. He may not be able to get safely to the access area if, for instance, planks have been moved. Most scaffolds are not fully

planked and planks are moved as erection progresses."

On the other hand, two commenters (Exs. 34–11 and 34–29) said that providing safe access for erectors and dismantlers would not create hazards.

One commenter (Ex. 34–8) stated that employers should have their scaffolds evaluated by a competent person and that OSHA should consider erection and dismantling processes and procedures, accident statistics, and the type of work to be done on the scaffold before determining in a given situation that safe access is feasible.

Four commenters (Exs. 34–9, 34–10, 34–12 and 34–17) stated "[c]ertainly the potential for greater risk should be the greater consideration. The circumstance that bears the most consideration is 'at what point is the scaffold capable of supporting a ladder or other access device'. At the point that this occurs permanent access ladders will be able to be attached to provide access." Those commenters also stated that an employer seeking exemption should be able to demonstrate that compliance with proposed paragraph (c) would create a greater hazard, be technologically infeasible, or be economically infeasible.

Three commenters (Exs. 34–32, 34–37, and 34–39) stated that providing a means of access to a scaffold under construction should not be required because scaffold erectors are trained to safely climb scaffolds and because worker access to a completed scaffold may be directly from the structure itself. The commenters further stated this would make adding an access system expensive and unnecessary. Those commenters also contended that a requirement to prove infeasibility would be expensive and time consuming, and is not supported by accident data.

In response to comments asserting a lack of accident data to support imposing burdens on employers whose employees erect or dismantle scaffolds, NIOSH (Ex. 34–40) stated "[t]he lack of 'accident statistics' to scaffold erectors is likely to be due to insufficient detail in injury surveillance data, and not necessarily to a lack of injuries." In addition, NIOSH reviewed the accident data (Ex. 21) and concluded that "[t]he fatality rate for scaffold erectors during scaffold erection and dismantling exceeds that for the entire U.S. construction industry." A review of construction accident reports shows that 10–20% of scaffold deaths and injuries occur during erection and dismantling; OSHA finds that many of these will be prevented by the final rule's fall protection requirements for these operations (see the Benefits Chapter of the Economics Analysis for this rule).

The Agency notes that the Occupational Safety and Health Review Commission has held (Hoffman Construction Company, 6 OSHRC 1274, January 4, 1978) that the safe access requirement of the existing standard (29 CFR 1926.451(a)(13) does not become operative until the scaffold is completed or use is imminent, and, therefore, does not apply to scaffold erection and dismantling operations.

OSHA has determined that although scaffold erectors and dismantlers are exposed to significant access-related hazards, requiring employers to provide safe access for erectors and dismantlers in all cases would often create a greater hazard or be infeasible. For example, commenters have described factors (e.g., instability of scaffold and lack of adjacent support) which can preclude the provision of safe access. The Agency agrees that there are some situations where an exemption from final rule paragraph (e) would be appropriate. However, other commenters have indicated that employers who carefully evaluate their scaffold operations can provide safe access or at least minimize employee exposure to hazards during these operations. Therefore, OSHA finds that it is appropriate for employers to be able to obtain relief from the access requirements when such relief has been determined, on a case by case basis, to be necessary. Accordingly, the Agency has added final rule paragraph (e)(9), discussed below, which requires (paragraph (e)(9)(i)) that employers have a competent person assess pertinent workplace conditions and decide what means of access is appropriate to use to protect the safety of erectors and dismantlers on any particular job.

Final rule paragraph (e)(1) provides that access to and between scaffold platforms more than two feet (0.6 m) above or below the point of access shall be by portable ladders, hook-on ladders, attachable ladders, scaffold stairways, stairway-type ladders (such as ladder stand), ramps, walkways, integral prefabricated scaffold access, or equivalent means, or by direct access from another scaffold, structure, personnel hoist, or similar surface. In addition, the final rule requires that crossbraces not be used as a means of access. This provision is identical to proposed paragraph (c)(1), except for some minor changes in terminology made in order to be consistent with existing industry terms, and the inclusion of scaffold stairways as another acceptable means of access. The final rule consolidates and updates existing § 1926.451(e)(5), which requires that ladders or stairways be provided and used on mobile scaffolds; existing § 1926.451(q)(3), which requires that connecting runways with substantial guardrails be used for access to plasterers', decorators', and large area scaffolds; and existing § 1926.451(y)(9), which requires that ladders be used for pumpjack scaffold access.

The SSFI and the SIA (Exs. 2–367 and 2–368) recommended the inclusion of scaffold stair/towers (scaffold stairways) as a recognized acceptable means of access. The Agency acknowledges that scaffold stairways are used regularly for scaffold access and agrees that those stairways should be addressed by subpart L. Accordingly, OSHA has incorporated regulatory text addressing scaffold stairways into final rule paragraph (e)(4), discussed below.

Paragraph (e)(2) of the final rule sets requirements for portable, hook-on and attachable ladders. A note to this paragraph indicates that additional requirements for the proper construction and use of portable ladders are contained in subpart X of this part—Stairways and Ladders—of the construction standards.

In particular, final rule paragraph (e)(2)(i) provides that portable, hook-on, and attachable ladders shall be positioned so as not to tip the scaffold.

In addition, final rule paragraphs (e)(2)(ii)-(vi) provide that hook-on and attachable ladders shall have bottom rungs positioned not more than 24 inches (61 cm) above the scaffold supporting level; have rest platforms at 35 foot (10.7 m) maximum vertical intervals on all supported scaffolds more than 35 feet (10.7 m) high; be specifically designed for use with the manufactured type of scaffold to be used; have a minimum rung length of 11–1/2 inches (29 cm); and have uniformly spaced rungs with a maximum spacing between rungs of 16–3/4 inches, respectively. Proposed paragraph (c)(2) was effectively identical, except that the maximum interval between rest platforms has been increased in the final rule from 20 feet to 35 feet and the maximum rung spacing has been increased from 12 inches to 16–3/4 inches, as discussed below.

Issue 28 in the preamble of the NPRM requested public comment on whether landing platforms should be required at 35-foot maximum intervals as required by existing § 1926.451(e)(5), or at 20-foot maximum intervals as required by proposed § 1926.451(c)(2)(iii). Three commenters (Exs. 2–13, 2–38, and 2–54) responded in support of the proposed rule's 20-foot maximum. One commenter (Ex. 2–13) favored the 20-

foot interval because it would "allow a person to catch one's breath." He added that he could personally appreciate this requirement as he has climbed ladders for years. In addition, a commenter (Ex. 2–38) stated that "[l]adders should be offset with landings every 20 feet to prevent falling more that 20 feet." Another commenter (Ex. 2–54) responded that the interval in the proposed rule "would make it so workers were not always huffing and puffing and place less strain on ladders and how many workers might be on it at the same time."

On the other hand, a commenter (Ex. 2–22) responded that the 35-foot height was "an acceptable level for the safety of employees and * * * a practical field requirement." Another commenter (Ex. 2–53) stated "[l]anding platforms should be required at 35 foot intervals. No need to change regulations." The SSFI and SIA (Exs. 2–367 and 2–368) stated that the proposed change to the 20-foot height was too restrictive and unnecessary. In particular, the SIA (Ex. 2–368) stated that, since most of the scaffolds which require access from the base have work platforms less than 28 feet from their base, "the 20 foot interval requirement would place a rest platform too close to the work platform and would be unnecess[a]ry." This commenter added that there are no accident statistics to justify changing the height requirement from 35 ft. to 20 ft.

The ACCSH (Tr. 191–195, 6–9–87) discussed Issue 28 and recommended that OSHA adopt the proposed 20-foot requirement. One member stated "[b]ecause employees are often carrying tools or equipment, the 20-foot requirement is reasonable." OSHA proposed to require landing platforms at 20-foot maximum intervals in an attempt to be consistent with existing §§ 1910.27 (d)(1)(ii), (d)(2) and (d)(5) of the general industry standards.

After a careful review of the evidence in the record as a whole, OSHA finds that requiring landing platforms at 20-foot intervals is not supported by evidence that such a change is needed for employee safety. In addition, evidence was submitted to show that many scaffolds already have work platforms only a few feet higher than the 20-foot level and further that establishing a new height, i.e., 20 feet, would interfere with widely accepted field practice. Accordingly, the final rule retains the 35-foot maximum intervals for landing platforms, because it adequately protects the safety of employees who are accessing scaffolds.

The SSFI (Ex. 2–367) took "strong objection" to proposed paragraph (c)(2)(vi), which required that there be a maximum spacing between rungs of 12 inches, because portable, hook-on, and attachable ladders have been produced for many years with uniformly spaced rungs that do not meet this requirement. The commenter recommended that OSHA replace this requirement with a requirement that rungs be uniformly spaced within each section.

The proposed paragraph was based on existing § 1910.26(a)(1)(iii), which prescribes maximum rung spacing for portable metal ladders used in general industry. The Agency notes that prior to the proposal there were no existing OSHA construction regulations addressing hook-on or attachable ladders, and the proposal was intended to recognize that these types of ladders are acceptable means of access.

OSHA agrees with the commenter that the rungs should be uniformly spaced to prevent misstepping. In addition, OSHA believes that the 16¾ rung spacing allowed on integral prefabricated scaffold access frames (end frames) (final rule § 1926.451(e)(6)(v)) should be applied to hook-on and attachable ladders as well, since these ladders are commonly used with end frames and this will provide uniform rung spacing for this application. OSHA has revised the language of the final rule paragraph (c)(2)(vi) accordingly.

Paragraph (e)(3) of the final rule sets requirements for stairway-type ladders. In particular, paragraphs (e)(3)(i) through (v) require that stairway-type ladders be positioned so that the bottom step is not more than 24 inches (61 cm) above the scaffold supporting level; be provided with rest platforms at 12 foot (3.7 m) maximum vertical intervals; have a minimum step width of 16 inches (41 cm) (except for mobile scaffold stairway-type ladders, which are permitted to have a minimum step width of 11½ inches); and have slip-resistant treads on all steps and landings. These provisions are identical to the corresponding provisions in proposed paragraph (c)(3), except that an exception has been added in a new final paragraph (e)(3)(iii) to the minimum rung width in proposed paragraph (c)(3)(iii). This change has been made to recognize that a minimum step width of 11½ inches is acceptable for mobile scaffold stairway-type ladders, as discussed below.

Proposed paragraph (c)(3)(iii), which was based on § 1910.29(a)(3)(ii), required a minimum step width of 16 inches. The SIA (Ex. 2–368) stated that it is necessary to distinguish between stairway-type ladders and mobile scaffold stairway-type ladders where the stairway-type ladder is a secondary feature of the platform. The commenter noted that reduced step width is necessary on this type of equipment due to space constraints, and pointed out that the reduced step width is consistent with normal ladder minimum widths. OSHA agrees, noting that this type of equipment has been demonstrated to be safe over decades of use, and has revised the final rule accordingly.

Final rule paragraph (e)(3)(iv) requires slip-resistant treads on all stairs and landings. This rule is based on general industry rule § 1910.29(a)(3)(iv), which requires the steps to be fabricated from slip-resistant treads.

Final rule paragraph (e)(4), which has been added based on the response to the NPRM and the February 1, 1994 notice of reopening (59 FR 4615), sets requirements for scaffold stairway towers used for access to scaffolds and other elevated work surfaces. OSHA has determined that compliance with the provisions described below will enable employees to use scaffold stairways safely.

The SSFI and the SIA (Exs. 2–367 and 2–368) suggested that OSHA recognize scaffold stairway/towers as acceptable means of access. They noted that reference to these types of access units had been omitted from the proposal even though they are in common use and are a safe method of obtaining access to scaffold units. Both commenters recommended that OSHA revise the rule to add requirements for inside and outside handrails; 19-inch minimum length landing platforms; 19-inch minimum width for stair units; and slip-resistant surfaces for treads and landings.

In addition, a commenter (Docket S–041, Ex. 3–414) to the Notice of Proposed Rulemaking for part 1910 subpart D (Walking and Working Surfaces) stated:

> As in the case of guardrails, the stair rails section is based on the use of this product in permanently installed locations in buildings or industrial structures. It does not consider stair rails used in conjunction with scaffold applications.
>
> Scaffold suppliers utilize step units which have been fabricated specifically to be used as access to scaffold platforms. These step units are manufactured with hand rails which are sold as a component of these step units. The OSHA standard should state that these fabricated step units are acceptable for scaffold access. This will eliminate the confusion of the compliance officers in attempting to enforce permanent stair rail standards for scaffold access components.

On February 1, 1994, OSHA reopened the subpart L rulemaking record (59 FR 4615) to solicit comments and suggestions regarding the regulation of scaffold stairways, chimney bracket scaffolds and tank builders' scaffolds. In

particular, the Agency requested input on the provisions suggested by commenters. In addition, although OSHA did not intend subpart X to apply to stair towers, the Agency was interested in determining if, in fact, any of the provisions from part 1926, subpart X or from proposed part 1910, subpart D, would be appropriate requirements for scaffold stair towers.

The Agency was interested in receiving more input on the need for specific regulations for scaffold stairways, chimney bracket scaffolds and tank builders' scaffolds, with special emphasis on fall protection requirements, including requirements for handrails and guardrail systems for the unprotected sides and edges of stairway landings. The provisions of final paragraph (e)(4) are the product of specific questions raised in the February 1 notice and OSHA's review of the responses to those questions.

Two commenters (Exs. 43–24 and 43–32) recommended that the Agency adopt the suggested provisions, although the first of these two commenters suggested that existing products that do not comply be accepted. Several other commenters (Exs. 43–6, 43–11, 43–13, 43–14, 43–22, 43–26, and 43–37) supported the adoption of various modified versions of the suggested provisions. For example, suggested minimum heights above the tread nose for handrails (or stairrails) ranged from 27 inches (68.6 cm) to 36 inches (91 cm).

A number of commenters (e.g., Exs. 43–4, 43–6, 43–9, 43–10) contended that for many years scaffold stairways have been designed and used in the same manner as they currently are, and have always provided a safe and effective means of access. These commenters opposed the promulgation of any provisions that would alter the criteria under which scaffold stairways are currently designed and used. Most of these commenters also reported that they know of no accidents that have occurred due to the use of scaffold stairways.

In addition, many commenters (Exs. 43–13, 43–14, 43–24, 43–26, 43–37, and 43–44) specifically opposed applying either the requirements of subpart X or the general industry standards (§ 1910.25 and § 1910.28) to scaffold stairways. These and other commenters mentioned above indicated that such an application would, in effect, "outlaw" scaffold stairways since they cannot meet the requirements of subpart X due to the fact that scaffold stairways must be designed and constructed to fit within the confines of 5 foot (4.5 m) by 7 foot (6.3 m) or 5 foot (4.5 m) by 10 foot (9.1 m) scaffold bays. As a result, according to these commenters, many employers would simply stop using most scaffold stairways, and would rely instead on other means of access that are not as safe as scaffold stairways. However, one commenter (Ex. 43–8) recommended that scaffold stairways covered by subpart L be consistent with subpart X and the general industry standards. Another commenter (Ex. 42–33) supported standardizing the existing stairway standard's requirements, including hand clearances, end rail projections, type of surface, and guarding of the open sides of landings.

Scaffold stairways can provide a safe and effective means of access, and the Agency has no intention of prohibiting the use of all existing scaffold stairways. However, the Agency does believe that some provisions governing the construction and use of scaffold stairways must be included in final subpart L, and that the provisions should be as consistent as possible with subpart X and the general industry standards, in order to ensure the safety of the employees who use scaffold stairways. Accordingly, OSHA has promulgated the provisions discussed below.

The introductory language of final rule paragraph (e)(4) requires that these units be positioned so that the bottom step is not more than 24 inches (61 cm.) above the scaffold supporting level.

Final rule paragraph (e)(4)(i) requires that a stairrail consisting of a toprail and a midrail be provided on each side of each scaffold stairway. Furthermore, final paragraph (e)(4)(ii) requires that the toprail of each stairrail system shall be capable of serving as a handrail, unless a separate handrail is provided.

Six commenters (Exs. 43–6, 43–11, 43–14, 43–26, 43–37, and 43–44) indicated that inside and outside handrails should incorporate midrails. Several commenters (Exs. 43–8, 43–13, 43–14, 43–24, 43–26, and 43–37) stated that scaffold stairways should incorporate handrails, stairrails and midrails. One commenter (Ex. 43–45) stated that scaffold stairways should have stairrail systems with midrails. Another commenter (Ex. 43–22) stated that inside and outside handrails should be constructed so that they function as both stairrails and handrails.

OSHA agrees that handrails, stairrails, and midrails are necessary for adequate employee protection. However, the Agency also believes that adequate protection can be provided when toprails of stairrail systems are capable of serving as adequate handrails. Paragraph (e)(4)(ii) of the final rule recognizes the capability of toprails to serve as handrails, but also requires that a separate handrail be provided when toprails are not capable of serving as a handrail.

Final rule paragraph (e)(4)(iii) requires that handrails, and toprails that serve as handrails, provide a handhold for employees grasping them to avoid falling. This provision is identical to § 1926.1052(c)(9), except for the explicit inclusion of toprails. Monsanto (Ex. 43–45) stated that handrails should have the shape and dimension necessary to provide a firm handhold, but provided no specific shapes or dimensions that would meet that suggested requirement. OSHA agrees that handrails must be shaped and sized in such a manner that a proper handhold is provided.

Final rule paragraph (e)(4)(iv) requires that stairrail systems and handrails be surfaced in a manner that prevents injury to employees from punctures or lacerations, and to prevent snagging of clothing. This provision is essentially the same as § 1926.1052(c)(8). Monsanto (Ex. 43–45) suggested that stairrail systems "be free of projection and/or puncture/abrasion hazards." OSHA agrees that handrails should not present such hazards, and the final rule's language reflects this concern.

Final rule paragraph (e)(4)(v) requires that the ends of stairrail systems and handrails be constructed in a manner that does not constitute a projection hazard. This provision is essentially identical to § 1926.1052(c)(10).

Final rule paragraph (e)(4)(vi) requires that scaffold stairway handrails, and toprails that are used as handrails, have a minimum clearance of 3 inches (7.6 cm) between the handrail or toprail and other objects. This provision is essentially the same as § 1926.1052(c)(11). As mentioned above, one commenter (Ex. 42–33) stated that hand clearances for scaffold stairways should be the same as those for stairways covered by subpart X. OSHA agrees with this commenter and notes that inadequate hand clearances can render handrails essentially useless.

Final rule paragraph (e)(4)(vii) requires that stairrails be no less than 28 inches (71 cm) or more than 37 inches (94 cm) from the upper surface of the stairrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread. This provision differs from the stairrail height requirements of subpart X, which was never intended to apply to scaffold stairways. Paragraph (e)(4)(vii) of the final rule is based on the following comments.

One commenter (Ex. 43–11) suggested stairrail height ranging from 27 inches (68.6 cm) to 37 inches (94 cm) vertically

above the nose of each step. Another commenter (Ex. 43–20) recommended a range of 22 inches (56 cm) to 41 inches (104 cm). One other commenter (Ex. 43–45) recommended stairrail systems "no less than 36 inches (91 cm) high." However, several other commenters (Exs. 43–6, 43–13, 43–14, 43–26, and 43–37) recommended that stairrails be no less than 28 inches (71 cm) and no more than 37 inches (94 cm) above the nose of each step.

OSHA notes that § 1926.1052(c)(3) requires that stairrail systems installed before March 15, 1991, be no less than 30 inches (76.2 cm) high, and that those installed after March 15, 1991, be no less than 36 inches (91.4 cm) high. The Agency recognizes that this subpart X requirement may not have been appropriate for stairrails on some scaffold stairtowers, because the construction of stairtowers differs significantly from that of stairtowers addressed by subpart X. In particular, stairtowers are fashioned from scaffold components, must fit within the framing of scaffold units, and rise more steeply than other stairways. As a practical matter, the steeper the stairway, the closer the stairrail will be to the stair surface. Therefore, OSHA has concluded that it is appropriate and adequately protective for stairtower stairrails to be at least 28 inches, rather than 30 inches, high. Accordingly, a requirement that employers retrofit scaffold stairtowers with 30-inch high stairrails, or that employers phase in 30-inch high stairrails at some future time, would be unreasonable. OSHA believes that existing equipment and designs can comply with the 28-inch height requirement and should continue to be allowed in use. In addition, OSHA observes that stairtowers with 28-inch high stairrails are safer than ladders and that requirements to retrofit or redesign stairtowers could lead cost-averse employers to use ladders instead of stairtowers.

Final rule paragraph (e)(4)(viii) requires that scaffold stairways be provided with landing platforms that are at least 18 inches wide and at least 18 inches (45.7 cm) long at each level. This provision provides adequate protection for employees without impeding the use of most scaffold stairways now in use.

Several commenters (Exs. 43–6, 43–13, 43–20, 43–22, 43–24, and 43–33) who addressed the issue of landing platforms supported requiring landing platforms at least 19 inches (48.3 cm) wide at every level. Three other commenters (Exs. 43–14, 43–26, and 43–37) recommended that landing platforms at least 18 inches (45.7 cm) wide be required at each level. Four of those commenters (Exs. 43–6, 43–14, 43–26, and 43–37) also suggested adding to such a provision the alternative of providing a platform at least 30 inches long (76.2 cm) in the direction of travel at "every 14 feet (4.5 m) maximum of stair elevation." Those commenters stated that this would "allow the continued use of frame scaffolds spaced 6½ feet (2.1 m) vertically and system scaffolds which are based upon 7 foot (2.25 m) maximum vertical bearer spacing."

In addition, two commenters (Exs. 43–11 and 43–45) recommended a minimum landing width of 24 inches (61 cm). Another commenter (Ex. 43–22) recommended that "landing platforms extend the entire width of the scaffold instead of only one-half the width as they do now."

OSHA believes that employee safety mandates that a landing meeting the requirements and specifications of this provision must be provided on stairtowers. The Agency also believes that landings must be as wide as the stairway itself (at least 18 inches (45.8 cm)) in the direction in which the stairway is measured and at least 18 inches long in the other direction as well.

Final rule paragraph (e)(4)(ix) requires that each scaffold stairway be at least 18 inches (45.8 cm) wide between stairrails. Several commenters (Exs. 43–6, 43–8, 43–11, 43–13, 43–14, 43–20, 43–22, 43–24, 43–26, 43–32, and 43–37) supported a minimum stair width of 19 inches (48.2 cm). However, the record provides no basis for OSHA to require that stairs be wider than their landings. In addition, 18 inches is the minimum width allowed for normal scaffolds.

Final rule paragraph (e)(4)(x) requires that treads and landings have slip-resistant surfaces. This provision is consistent with existing § 1926.1052(a)(7), which requires that slippery conditions on stairways be eliminated before the stairways are used to reach other levels.

Several commenters (Exs. 43–6, 43–8, 43–11, 43–13, 43–14, 43–20, 43–22, 43–24, 43–26, 43–32, 43–37, and 43–44) supported a requirement that treads and landings have slip-resistant surfaces. The Agency agrees with those commenters, and notes that scaffolds are often used in conditions that can create slippery surfaces.

Final rule paragraph (e)(4)(xi) requires that scaffold stairways be installed between 40 degrees and 60 degrees from the horizontal. Existing § 1926.1052(a)(2) requires that stairs be installed at between 30 degrees and 50 degrees from horizontal. OSHA believes that a minimum and a maximum angle must be specified in order to adequately protect employees from fall hazards. However, the Agency believes that compliance with existing § 1926.1052(a)(2) will not be feasible for stairways regulated under subpart L, because scaffold stairways must fit into the confines of scaffold framing.

Six commenters (Exs. 43–6, 43–13, 43–14, 43–24, 43–37, and 43–44) opposed the specification of a minimum and a maximum angle from the horizontal for scaffold stairways. However, five of these commenters (Exs. 43–6, 43–13, 43–14, 43–37, and 43–44) provided suggested values in case OSHA should decide to specify a minimum and a maximum angle anyway. Four (Exs. 43–6, 43–13, 43–14, and 43–37) of those commenters suggested a minimum angle of 40 degrees and a maximum angle of 55 degrees since the stairs must fit into 7-foot (2.25 m) or 10-foot (3.2 m) bays with landing platforms. The fifth commenter (Ex. 43–44) recommended angles of 35 degrees and 55 degrees. Three (Exs. 43–6, 43–14, and 43–37) of those commenters stated that once the angle approaches 80 degrees, the stairway becomes a ship's ladder. Another commenter (Ex. 43–11) agreed with that concept but placed the angle at 60 degrees.

One commenter (Ex. 43–11) recommended that the limits be set at 40 degrees and 80 degrees, while another commenter (Ex. 43–22) recommended a maximum angle of 50 degrees but provided no minimum value. Another commenter (Ex. 43–32) recommended a minimum angle of 30 degrees and a maximum angle of 50 degrees in order to make subpart L consistent with subpart X.

OSHA has determined that scaffold stairways installed in the range of 40 degrees to 60 degrees from the horizontal will provide safe employee access and will still be capable of fitting into the confines of the scaffold frames. Paragraph (e)(4)(xi) of the final rule reflects this determination.

Final rule paragraph (e)(4)(xii) requires that guardrails meeting the requirements of 1926.451(g)(4) be provided on the open sides and ends of each landing.

OSHA asked in the February 1, 1994 reopening notice if guardrails installed on scaffold stairways should comply with both subpart M (fall protection) *and* this subpart L.

One commenter (Ex. 43–8) recommended that such guardrails meet the requirements of subpart M for the sake of consistency. Another commenter (Ex. 43–13) suggested that only the

provisions of subpart L should apply. Two other commenters (Exs. 43–14 and 43–37) opposed any requirement for guardrails on landing platforms, unless work was to be performed from them, on the grounds that "(n)o hazard or accident data supports this requirement."

OSHA believes that employees on landing platforms must be adequately protected from fall hazards while on a landing whether they are working from the landing or not. However, the Agency recognizes that providing guardrails that meet the requirements of subpart M would be inappropriate for use on scaffolds and scaffold stair towers because they are built to other requirements. Instead, OSHA has determined that scaffold guardrails, as required in subpart L, are appropriate because employers build scaffold stairways using scaffold components, which are designed for 36 to 45-inch high guardrails. In addition, the Agency notes that scaffold stairways have been in use for many years and that guardrail systems that comply with subpart L have provided adequate safety for employees using these stairways. Accordingly, final rule paragraph (a)(4)(xii) requires guardrails between 36 and 45 inches in height be used on the open sides and ends of each landing.

Final paragraph (e)(4)(xiii) requires riser heights within each flight of scaffold stairs to be uniform within ¼ inch.

Four commenters (Exs. 43–8, 43–32, 43–44, and 43–45) recommended that OSHA require uniform riser height for all steps within each flight of stairs. Six commenters (Exs. 43–6, 43–11, 43–13, 43–14, 43–24, and 43–37) responded that a uniform riser height within ¼ inch (0.6 cm) is possible to achieve, except for the first step and the last step where variations in decking thickness and the use of screw jacks at ground level make achieving this degree of uniformity difficult. OSHA believes that a uniform riser height within ¼ inch (0.6 cm) for all steps in each flight of stairs is necessary in order to minimize the possibility that employees will slip, trip, and fall while they are on the stairs.

OSHA recognizes that there are situations where the level of the ground or of the structure to which the stair tower is connected will cause the spacing of the top or bottom step of the stairway system to deviate from uniformity with the other steps by more than ¼ inch. The Agency has determined that such deviation will not compromise employee safety, so long as the stair tower otherwise complies with the requirements of paragraph (e)(4).

Final paragraph (e)(4)(xiv) requires that tread depth be uniform, within ¼ inch, for each flight of stairs. This provision is consistent with existing § 1926.1052(a)(3), which requires tread depth uniformity in other types of stairs used in construction.

Monsanto (Ex. 43–45) supported requirements providing for uniformity of riser height and tread depth within each flight of stairs. OSHA believes that tread depth uniformity, within ¼ inch, as required in existing subpart X, is also appropriate for scaffold stairways. Uniform tread depth reduces the possibility that employees will slip and fall due to uneven footing.

Final rule paragraph (e)(5) sets requirements for ramps and walkways used to access scaffolds. Final rule paragraph (e)(5)(i) provides that ramps and walkways six (6) feet (1.8 m) or more above lower levels shall be provided with guardrail systems in accordance with the provisions of part 1926, subpart M—Fall Protection. In addition, final rule paragraph (e)(5)(ii) provides that ramps and walkways shall not exceed a slope of one (1) vertical to three (3) horizontal (20 degrees above the horizontal). Finally, final rule paragraph (e)(5)(iii) also requires that if the slope of a ramp or walkway is steeper than one (1) vertical in eight (8) horizontal, the ramp or walkway must have cleats not more than fourteen (14) inches (35 cm) apart which are securely fastened to the planking to provide secure footing.

The corresponding proposed paragraph simply required that ramps and runways be provided with guardrails in accordance with the provisions of proposed §§ 1926.501 and 1926.502 (Subpart M). As discussed above in relation to the final rule term "ramps", OSHA has replaced the term "runways" with the term "walkways", since the term "walkway", unlike the term "runways", is defined in this final rule.

A commenter (Exs. 2–37 and 2–103) stated "[r]amps and walkways are used extensively * * * as a means of egress to an elevated surface. Ramps are also used for material handling equipment. Since no standard angle of elevation is addressed, an extreme angle of elevation and slippery surfaces would result in fall-type accidents and muscle strains." The commenter also stated that inadequately guarded walkways pose fall hazards. The commenter recommended language that would address the angle of elevation of ramps and would require cleats on ramps with slopes steeper than one (1) vertical in eight (8) horizontal to provide a safe foothold.

OSHA recognizes the need to indicate clearly what would be an appropriate slope for ramps used as access to scaffolds and has incorporated this language into the final rule as paragraphs 1926.451(e)(5)(ii) and (iii).

The Agency notes that final rule § 1926.451(f)(8) requires that employees be prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such material. OSHA considers scaffold access ramps and walkways to be part of the scaffold and will also apply § 1926.451(f)(8) to those ramps and walkways.

Final rule paragraph (e)(6) sets requirements for integral prefabricated scaffold access frames. Final rule paragraph (e)(6)(i) provides that such frames shall be specifically designed and constructed for use as ladder rungs. Also, final rule paragraph (e)(6)(ii) requires that the frames have a rung length of at least 8 inches (20 cm). Final rule paragraph (e)(6)(iii) prescribes that rungs less than 11½ inches in length shall be used for access only and not as work platforms unless fall protection, or a positioning device, is used. In addition, final rule paragraphs (e)(6)(iv) through (vi) require that integral prefabricated scaffold access frames be uniformly spaced within each frame section; provided with rest platforms at 35 foot (10.7 m) maximum vertical intervals on all supported scaffolds more than 35 feet (10.7 m) high; and have a maximum spacing between rungs of 16¾ inches (43 cm), respectively. In addition, final rule paragraph (e)(6)(vi) provides that non-uniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed 16¾ inches (43 cm). These provisions are similar to those in proposed paragraph (c)(5).

Regarding the proposed introductory text, the SSFI (Ex. 2–367) recommended using the words "access frames" instead of the word "rung." OSHA agrees that the suggested language more clearly states the Agency's regulatory intent and has revised this paragraph in the final rule accordingly.

Paragraph (e)(6)(i) of the final rule is identical to proposed paragraph (c)(5)(i) except that the Agency has editorially revised the provision to express OSHA's intent more clearly. OSHA recognizes that the proposed language could have been misinterpreted to require only that the access frames be designed as scaffold rungs, with no requirement for them to be constructed in accordance with that design. OSHA anticipates that these rungs will be designed and constructed through consultation between the manufacturer and the end

user in order to satisfy the pertinent requirements of the final rule.

Final rule paragraph (e)(6)(ii) requires a minimum rung length of eight inches. In addition, final rule paragraph (e)(6)(iii) prohibits the use of rungs less than 11½ inches long as work platforms, unless affected employees are using personal fall arrest systems or positioning devices that comply with § 1926.502 (paragraphs (d) and (e), respectively). These two provisions evolved from proposed (c)(5)(ii), which required a minimum rung length of 11½ inches (29 cm). Morgen Manufacturing Company (Ex. 2–303) commented that scaffolds with integral prefabricated scaffold rungs which are only eight inches long also "provide safe access [to a work platform] equivalent to that of a ladder." Further, the commenter stated that the 8-inch rungs "provide surer footing and a better climb than does or can a ladder."

Another commenter (Ex. 2–23) stated that all ladders should have a minimum rung length of 12 inches in order to avoid confusion.

To evaluate this point, Issue L–6 of the hearing notice asked if OSHA should revise proposed § 1926.451(c)(5)(ii) to allow rung lengths less than 11½ inches where the rungs were used for access only. The SIA (Ex. 10; Tr. 3/22/88, p. 159) supported the 11½-inch width requirement explaining "[i]t's our understanding that the 11½-inch width was required * * * to allow the workman to stand on a rung with both feet * * * [A]n 8-inch rung would not be wide enough." Similarly, the SSFI (Ex. 5a–19) commented that its members would not support reducing "the minimum rung width from 11½ inches to * * * eight inches." They added that practical usage indicates that 11½-inch ladder rungs are appropriate.

Bristol Steel and Iron Works, Inc. (Ex. 13) stated that scaffold rungs that were less than 11½ inches long were acceptable "if they provide safe access equivalent to that of a ladder."

Morgen Scaffold's notice of intention to appear at the hearing (Ex. 5a–10), testimony at the hearing (Tr. 20–32, 3–22–88), and post-hearing comments (Ex. 15), stated that OSHA should either revise the proposed rule as provided in Issue L–6 or grandfather the existing Morgen scaffolds to permit continued use of the 8-inch integral rung system.

Morgen contended (Ex. 5a–10, p. 2) that its scaffold tower's integral rungs provide a safe and stable footing and handhold for workers using the towers for access to connection points for installation and removal of bracing and accessories. Morgen's post-hearing comments (Ex. 15, p. 3) further contended that the Morgen integral-rung system was safer than those requiring the use of a ladder and offered the following rationale:

> Morgen feels that the tower provides a more secure area from which to install and remove the bracing and accessories than would a ladder. When using a ladder with any type of scaffolding, the worker is generally further from the connection point and must shift his weight off the ladder to install bracing.

At the hearings, Morgen acknowledged that at no time are workers able to put both feet on the same eight-inch rung (Tr. 3/22/88, p. 25). However, Morgen also stated that "the size of the Morgen tower allows the worker to hug the tower, which is more secure than merely standing with both feet on one rung" (Ex. 15, p. 3). Morgen also asserted that worker activities, rather than an arbitrary dimension, should be the main consideration (Ex. 15, p. 7). OSHA believes that the 11½-inch dimension is not an "arbitrary dimension", because this rung size is generally recognized as necessary to provide workers with level footing of sufficient size to enable them to stand on both feet, thus avoiding the need to balance on one foot.

Morgen recognized (Tr. 28) that it is appropriate for employees to use personal fall arrest or positioning devices while transporting or installing scaffold components. Morgen recommends that personal fall arrest systems be used to protect employees when tower inserts are being added "because the worker must keep both hands free to guide the inserts into position" (Ex. 15, p. 6). These same systems can be easily used during other scaffold erection and disassembly procedures.

Morgen also stated (Ex. 15, p. 8) as follows:

> Morgen has no objection to the institution of an industry wide requirement for the use of body belts while installing bracing, stiff arms, accessories and planking from integral ladder rungs. Morgen's objection to the language currently proposed is that it singles out Morgen and implies that the Morgen design is not safe. Morgen objects to that characterization and feels that its scaffold is among the safest in the industry. The characteristics which OSHA wants to address, concerning the safe installation of scaffold elements while in the air, are not unique to the Morgen scaffold and do not depend upon a specified rung length.

OSHA agrees that the concerns addressed are not unique to Morgen scaffolds. However, OSHA disagrees with the position that there is no practical difference between an eight-inch rung where an employee can stand only on one foot and must hug the tower to maintain balance and an 11½-inch rung where both feet may be placed on a single rung. OSHA also notes that § 1926.1053(a)(4)(ii) specifies 11½ inches as the appropriate minimum rung length on portable ladders.

After a careful evaluation of all the comments received, OSHA has determined that rungs which are at least 8 inches long but less than 11½ inches long can be used safely for scaffold access, because while climbing or descending the employee will normally have only one foot on a rung at any given time and the 8 inch rungs will accommodate this. However, employees who are assigned to use such rungs as work platforms must be provided additional protection by the use of personal fall arrest systems, or by positioning device systems, which comply with § 1926.502. This additional safeguard will ensure that employees required to work from rungs less than 11½ inches in width will be adequately protected from falling. This provision of the final rule has been revised accordingly.

Final rule paragraph (e)(6)(iv) is identical to proposed paragraph (c)(5)(iii), except that the term "frame" has been revised in the final rule to read "each frame section," so that the provision clearly addresses situations where end frames are joined together, producing non-uniform spacing in the area where the frames are joined. OSHA was concerned that the proposal could have been misinterpreted to require absolutely uniform spacing for the entire height of the scaffold. That was not OSHA's intent, as evidenced by proposed (c)(5)(v) (final rule paragraph (e)(6)(vi)) which prescribed maximum spacing of rungs, but allowed for non-uniform spacing caused by the joining of end frames.

Proposed paragraph (c)(5)(iv) differed from final rule paragraph (e)(6)(v) in that the proposal required rest platforms at 20-foot intervals instead of 35-foot intervals. This revision is based on the response to Issue 28, as discussed above in relation to final rule paragraph (e)(2)(iii).

Proposed paragraph (c)(5)(v) differed from final rule paragraph (e)(6)(vi) in that the proposal required 16½-inch instead of 16¾-inch maximum spacing of rungs. This change reflects input from the SSFI (Ex. 2–367), which informed OSHA that 16¾ inches is the current industry guideline for rung spacing. In proposing 16½ inches OSHA intended to recognize the large number of frames already in existence without requiring a significant program of frame modification. Therefore, based on the

comment indicating that 16¾ inches, not 16½ inches, is the prevalent spacing, and because the additional one-fourth-inch spacing is not believed to be significant, OSHA has modified the final rule to recognize the 16¾ inch spacing limit.

Final rule paragraph (e)(7) provides that all steps and rungs of all ladder and stairway type access shall line up vertically with each other between rest platforms. Proposed paragraph (c)(6) was identical except that the final rule has added the phrase "of all ladder and stairway type access" so that the final rule more clearly expresses the Agency's intent.

Final rule paragraph (e)(8) provides that direct access to or from another surface shall be allowed only when the pertinent surfaces are not more than 14 inches (36 cm) apart horizontally and not more than 24 inches (61 cm) apart vertically. It is identical to proposed paragraph (c)(7) except for the addition of the phrase "to or from another surface" and some other minor editorial changes. The 14-inch dimension was chosen to be consistent with proposed § 1926.451(b)(4) (promulgated as final rule § 1926.451(b)(3)).

The 24-inch dimension is consistent with final rule paragraphs (e)(1), (e)(2)(ii) and (e)(3)(i), as discussed above.

Paragraph (e)(9) of the final rule sets access requirements for employees erecting or dismantling supported scaffolds. The introductory language of paragraph (e)(9) requires employers to comply with final paragraphs (e)(9)(i)–(iv) starting on September 2, 1997. OSHA has delayed implementation of this paragraph (as well as paragraph (g)(2)) so that affected employers have sufficient time to develop and implement the necessary measures. In addition, the delayed implementation allows time for OSHA to complete work on non-mandatory Appendix B, discussed below, which will provide examples of considerations that employers complying with paragraphs (e)(9) and (g)(2) would take into account. Paragraph (e)(9)(i) provides that the means of access for erectors or dismantlers shall be determined by a competent person, based on specific site conditions and the type of scaffold being erected. As discussed in relation to the introductory text of final rule paragraph (e), while the Agency originally proposed to exempt erectors and dismantlers working on supported scaffolds from requirements for safe access, careful review of the record has led OSHA to the conclusion that a competent person is the appropriate individual to decide what the appropriate means of access for scaffold erectors and dismantlers is on any particular job, based on specific site conditions.

As discussed below in relation to final rule § 1926.451(f)(7) (effectively identical to existing rule § 1926.451(a)(3) and proposed rule paragraph (d)(7)), employers are required to have the erection, dismantling or alteration of a scaffold conducted under the supervision and direction of a competent person who is qualified in the pertinent subject matter.

OSHA is developing non-mandatory Appendix B, which will be added at a later date, to provide examples of criteria for the competent person to consider when evaluating the feasibility and safety of the options for providing safe access. This final rule reserves Appendix B to enable OSHA to provide guidance on the feasibility of providing safe access and fall protection during erection and dismantling. Once that language has been added, access provided in accordance with non-mandatory Appendix B will be considered to meet the requirements of this provision.

Paragraph (e)(9)(ii) of the final rule requires that hook-on or attachable ladders be installed as soon as practical after the scaffold erection has progressed to the point permitting their installation and use. OSHA has included this provision because the rulemaking record (Exs. 34–9, 34–10, 34–12, and 34–17) indicates that sectional ladders can be used for access once adequate support is available.

Paragraph (e)(9)(iii) of the final rule recognizes that the end frames of tubular welded frame scaffolds that meet certain requirements can be safely used as a means of access for scaffold erectors and dismantlers. These requirements are based on section 1637(n)(2)(C) of the California code, as suggested by one of the commenters (Ex. 2–23).

Paragraph (e)(9)(iv) of the final rule provides that crossbracing is not an acceptable means of access on tubular welded frame scaffolds, because crossbraces are designed to provide diagonal stability to the scaffold and are not designed to withstand the forces that could be applied by employees climbing up and down on them. This provision is consistent with ANSI A10.8, section 4.18, and with the general prohibition in final rule paragraph (e)(1), discussed above. This requirement is being repeated here to ensure that the users are aware that the prohibition applies to scaffold erectors and dismantlers as well as to scaffold users. The Agency invites interested parties to provide OSHA with suggestions and information regarding appropriate guidance for the competent person.

Paragraph § 1926.451(f) Use

Paragraph (f) of the final rule addresses safe work practices for the use of scaffolds and the activities which take place on scaffolds.

Paragraph (f)(1) of the final rule provides that scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities, whichever is less. This is identical to proposed paragraph (d)(1), except for the clarifying phrase "whichever is less." This provision clarifies and consolidates existing §§ 1926.451(h)(1), (i)(8), (j)(1), (s)(6), (t)(4), (w)(1), (x)(3) and (y)(1)(iii). This final rule also complements § 1926.451(a)(1), which requires that scaffolds be capable of supporting four times the maximum intended load without failure. Compliance with this rule ensures that the scaffold's capacity is not exceeded.

A commenter (Ex. 2–64) suggested deleting the term "maximum intended load." OSHA has not done so because, as discussed above in relation to the definition of this term, the Agency believes it is appropriate to take into account the "expected" burden as well as the burden a scaffold "can" support without failure.

Paragraph (f)(2) of the final rule prohibits the use of shore or lean-to scaffolds. The final rule is identical to proposed paragraph (d)(2), which was based on existing § 1926.451(a)(20). Such scaffolds are not properly designed nor properly constructed, and pose a serious threat to anyone working on them. The two commenters (Exs. 2–23 and 2–308) who addressed this provision simply agreed with the continued prohibition of shore and lean-to scaffolds.

Paragraph (f)(3) of the final rule requires that scaffolds and scaffold components be inspected for visible defects by a competent person prior to each work shift and after any occurrence which could affect a scaffold's structural integrity. Final rule paragraph (f)(3) is identical to proposed paragraph (d)(3), which was based on existing §§ 1926.45(i)(7) and (k)(5). Those existing provisions require inspections of certain types of suspension scaffolds. Given the importance of detecting defects in scaffolds and scaffold components, OSHA concludes that all scaffolds need to be inspected at the times specified in the final rule.

Issue 16 requested comment on the proposed frequency of scaffold

inspections for visible defects "prior to each workshift." Two commenters (Exs. 2–13 and 2–69) stated that only certain types of scaffolds can be fully or partially inspected prior to each workshift. Those commenters agreed that two-point suspension scaffolds can be fully inspected, but they indicated that such an inspection could not be done for "tubular welded frame scaffold covering a multi-story building." One of them (Ex. 2–13) added that proposed § 1926.451(d)(3) should specify the types of scaffolds to be completely inspected prior to each workshift and offered suspension and small supported scaffolds as examples. The other (Ex. 2–69) stated that inspecting a multi-story scaffold system could take the majority of the work shift.

OSHA acknowledges that the amount of time needed to perform visual inspection may depend on the type and size of the scaffold being inspected. However, OSHA believes that it is appropriate for the proposed inspection requirement to cover all types of scaffolds, because any scaffold (or scaffold component) can have or develop defects which would pose hazards for employees if allowed to remain in service without being inspected. In addition, OSHA believes that the time to conduct a careful inspection for "visible defects" will involve a reasonable amount of time when considered in relation to the scale of the work in question.

Another commenter (Ex. 2–64) stated that suspended scaffolds ("and associated equipment") should be inspected according to the manufacturer's recommendations. In addition, this commenter provided a copy of the company's recommended inspection schedule for particular suspension scaffold components. This commenter also stated that "improper maintenance was the most frequent cause of product incidents."

One commenter (Ex. 2–43) stated that the "[i]nspection procedures for swing stages are adequate" but that "[w]eekly or monthly inspections on rolling or stationary scaffolds should be mandated." Another commenter (Ex. 2–31) responded that the daily inspections (prior to each workshift) were "appropriate for the pumpjack scaffolding user."

Eight commenters (Exs. 2–15, 2–22, 2–53, 2–70, 2–367, 2–368, 2–407, and 2–465) supported specifying scaffold inspection frequency, without regard to the type or size scaffold inspected. In particular, a commenter (Ex. 2–22) stated that the inspection frequency should be no more "than once per day or after an occurrence." Another commenter (Ex. 2–53) was of the opinion that scaffolds and scaffold components should be inspected for visible defects prior to each use. The ACCSH recommended that scaffold inspection should take place prior to use, and added that a competent person should handle the inspection (Tr. 6/9/87, 136–138).

The SIA (Ex. 2–368) also supported having a competent person perform the inspection but stated that a full inspection was not "feasible every time a worker gets on a scaffold." The commenter stated that "[i]nspection is a critical factor in accident prevention" and agreed that the daily inspection, prior to each workshift, was appropriate. The SIA also discussed specific occurrences that might alter the condition of a scaffold, explaining that these "would include unexplained shifting, movement, or malfunction of equipment where [the] scaffold is a mechanical device."

In addition, the SSFI (Ex. 2–367) indicated that the recommendation for daily inspection coincided with the proposed ANSI A10.8 requirements for inspection. They added that a scaffold should be inspected when it "has been altered, either by accident or design."

The BCMALU (Ex. 2–54) supported the inspection of scaffolds and their components but did not indicate a preferred interval for such inspections.

After a careful review of these comments, OSHA has determined that inspections conducted by a competent person before each shift and after any occurrence that would affect the scaffold's integrity will adequately protect employees working on scaffolds and ensure that defects are detected in a timely fashion. Given the variety of scaffolds and situations that arise regarding their use, the Agency believes that specifying the inspection frequency would unnecessarily limit employers' flexibility.

One commenter (Ex. 2–308) stated that all inspection results should be in writing and be signed by a "competent person." This commenter pointed out that the duration of a "workshift" needed to be defined if inspection was required before each shift. OSHA believes that such documentation is unnecessarily burdensome, especially in light of § 1926.451(f)(4) of this final rule, which requires immediate repair, replacement, bracing, or removal from service of any scaffold part that does not meet the strength requirements of § 1926.451 (a) or (g). In addition, the Agency recognizes that the length of workshifts varies and has determined that the protection afforded by this provision is needed whatever the length of the workshift. Accordingly, OSHA has not added the suggested revisions.

Several commenters (Exs. 2–37, 2–38, and 2–103) stated that there was a need to define "competent person." OSHA notes that a general definition of this individual that applies to all construction work already exists in § 1926.32. Although the definition of competent person in that section applies to all construction work, OSHA believes that it is reasonable to repeat this definition of "competent person" in the final rule, as a matter of convenience for the user. However, the Agency notes that the criteria for a "competent person" depend on the situation in which the competent person is working. For example, a "competent person" for the purposes of this provision must have had specific training in and be knowledgeable about the structural integrity of scaffolds and the degree of maintenance needed to maintain them. The competent person must also be able to evaluate the effects of occurrences such as a dropped load, or a truck backing into a support leg that could damage a scaffold. In addition, the competent person must be knowledgeable about the requirements of this standard. A competent person must have training or knowledge in these areas in order to identify and correct hazards encountered in scaffold work.

Final rule paragraph (f)(4) requires that any part of a scaffold whose strength has been reduced to less than that required by §§ 1926.451(a) shall be immediately repaired or replaced, braced to meet those provisions, where appropriate, or be removed from service until repaired. This paragraph applies whenever a scaffold component, for any reason, lacks the required strength. In particular, under this provision employers must follow through to address problems identified pursuant to paragraph (f)(3) of this section. Proposed paragraph (d)(4) was effectively identical to final rule paragraph (f)(4), except that the proposal required action only when a competent person determined that the strength of a part had been compromised, and provided only for bracing of a part or its removal from service. This provision of the final rule thus clarifies and consolidates existing §§ 1926.451 (a)(8) and (o)(6). The proposed paragraph also recognized bracing as an acceptable means of compliance because OSHA foresaw circumstances where the removal of a damaged component could be extremely difficult or hazardous due to its location. However, provision for replacement of a damaged component was inadvertently left out of the

proposal. OSHA has included it in the final rule so that the text clearly expresses the Agency's intent.

Final rule paragraph (f)(5) provides that scaffolds shall not be moved horizontally while employees are on them, except that mobile scaffolds may be moved if the provisions of § 1926.452(w) for mobile scaffolds are followed, and then only if they have been designed by a registered professional engineer specifically for such movement. Final rule paragraph (f)(5) is very similar to the proposed paragraph (d)(5) except that "laterally" has been changed to "horizontally" for the sake of clarity. In addition, the proposed exception did not include scaffolds designed by registered professional engineers specifically for such movement. The proposed rule was intended to consolidate and reconcile existing §§ 1926.451(a)(3) (any scaffold movement must be conducted under the supervision of a competent person), (e)(6)–(8) (criteria for moving mobile scaffolds) and (p)(1) (needle beam scaffolds shall not be moved while in use).

Two commenters (Exs. 2–13 and 2–367) suggested that the Agency prohibit, in all instances, the moving of mobile scaffolds when employees are on them, but gave no specific rationale for their comments. The Agency is not acting on these suggestions because it has determined that the provisions of final rule paragraph § 1926.451(f)(7) requiring a competent person to supervise and direct any movement of a scaffold, and the requirements of § 1926.452(w), which specifically address the movement of mobile scaffolds, will provide adequate protection for employees. In addition, the Agency believes that making employees climb up and down the scaffold every time it is moved could actually expose them to greater risk of falling than remaining on a scaffold that is being moved under the direction of a competent person in accordance with the requirements of § 1926.452(w).

The SIA (Ex. 2–368) recommended that OSHA add another exception for some suspension scaffolds which are designed to be moved horizontally while occupied. The commenter cited as an example scaffolds used for the construction of bridges and other similar steel structures where it is impossible to move the scaffold at the ground level. The final rule allows this type of scaffold to be moved horizontally if the scaffold has been designed for such movement by a registered professional engineer.

Paragraph (f)(6) of the final rule addresses the use of scaffolds near exposed and energized power lines. In particular, this paragraph requires employers to maintain clearance between power lines and scaffolds, including any conductive materials on the scaffold. The minimum clearance for all uninsulated lines and for insulated lines of more than 300 volts is 10 feet. The minimum clearance for insulated lines of less than 300 volts is 3 feet. In addition, final rule paragraph (f)(6)(i) provides that scaffolds and materials may be closer to power lines than specified above only where necessary to do the work, and only after the utility company or electrical system operator has been notified of the need to work closer and the utility company or electrical system operator has deenergized the lines, relocated the lines, or installed protective coverings to prevent accidental contact with the lines.

The final rule provisions in paragraph (f)(6) are very similar to those in proposed paragraph (d)(6), except that the final rule addresses materials used on scaffolds; provides an exception for situations where the employer has contacted the utility company to have power lines de-energized, relocated or covered to prevent accidental contact; and sets three feet, rather than two feet, as the minimum clearance between scaffolds and insulated lines of less than 300 volts. OSHA has also editorially revised this provision for the sake of clarity.

The first two changes noted above were made based on input received in response to Issue L–5 of the hearing notice (53 FR 2051). First, the ACCSH (Tr. 6/9/87, p. 204) suggested that OSHA revise proposed § 1926.451(d)(6) to reflect concern that conductive material handled on a scaffold might contact exposed and energized lines even if the scaffold itself did not. To this end, the ACCSH recommended that the introductory language of proposed § 1926.451(d)(6) read as follows:

> Scaffolds shall not be erected, used or moved in such a way that they or any conductive material handled on them can come closer to exposed and energized power lines than as follows: * * *.

The Edison Electric Institute (EEI) testified (Tr. 190, 3–22–88) in favor of the suggested language, stating "[w]e also support your contention that any conductive extension or persons moving on that scaffold, the platform, should also comply [with] 10 feet."

Second, a commenter (Ex. 2–103) suggested that the Agency require employers to notify the power company when scaffolds are to be erected near energized power lines and request that the power company de-energize the line or provide protective covering to prevent accidental contact.

In Hearing Notice Issue L–5, OSHA indicated its expectation that adding the suggested language would provide primary employee protection from electrical shock hazards. The Agency further indicated that proposed paragraph (d)(6) would apply if the affected employer could not obtain assurances from the utility company that the lines had been de-energized or adequately protected from contact.

The SIA testified (Tr. 158, 3–22–88) that the suggested Issue L–5 wording was too vague and recommended that specification-type language, rather than performance-oriented terminology, "may be more practical and enforceable when you are dealing with exposure of this type." The SIA further stated:

> We certainly do have the hazard there, particularly in people erecting the scaffolds and people working on them. There's a great problem when people go out to erect a scaffold around a building, there is high voltage wire close by. The question has always been, well how close can we get to it? Based on California in their table in some instances they say 6 feet. Some people say that is too close and I don't know but I think that is really something you need to address to get input from people who are experts in that area (Tr. 169).

EEI testified (Ex. 11; Tr. 180, 3/22/88) that OSHA should promulgate the proposed ten-foot minimum clearance between a scaffold and energized and exposed power lines; that the installation of protective devices on the power lines be done by "trained utility line technicians"; that the ten foot proximity rule should apply to "any conductive extension or persons" on a scaffold (Tr. 190–191); and that the Hearing Notice Issue L–5 language regarding protective coverings for energized lines was "not a safe standard * * *"

In addition, EEI supported requiring employers to notify utilities before erecting scaffolds in proximity to energized lines, so that the utilities could determine how to protect scaffold workers. EEI also stated (Tr. 181):

> Any final standard must make it clear that the 10 foot or more clearances are to be observed unless the line is deenergized or unless the utility plainly advises the employer that it is safe for the particular condition involved to erect a scaffold in closer proximity to the lines than the 10 feet allowed.
>
> It must also be made clear in the final standard that the utility will have no obligation to be [de]energized or to take steps to protect lines and that, if the utility deems it appropriate to do neither, that the 10-foot clearance distance as a minimum * * * must be observed.

The EEI described the procedures by which employers contact utilities when employees need to work in proximity to energized lines, as follows:

> In Wisconsin as part of a one-call system that originated for digging in the ground to avoid contact with buried facilities. We have incorporated notification for all electric facilities. So contractors in Wisconsin who are approaching a job where they detect the presence of overhead conductors can use the one-call system to notify the utility of their intent to work. And within 72 hours the utility comes out and inspects and tells them what they are proposing is reasonable or not. I am sure there are other states with similar provisions (Tr. 187).

In response to a question about how work could proceed when a scaffold must be erected within ten feet of an energized line and the utility refuses to de-energize the line, EEI testified (Tr. 198) that the architects and planners for the structure should consider the line when planning the project. Otherwise, he added, there "* * * would have to be a delay until some appropriate protection or alternate feed for that facility was established."

Bristol Steel (Exs. 5a–3 and 13) supported focusing attention on the safeguards necessary to address problems associated with power lines, stating that the proposed language to require maintaining a safe distance from power lines or de-energizing the lines to protect employees from the lines was warranted.

The SSFI (Ex. 5a–19) expressed support for the proposed requirement that an appropriate distance be maintained between scaffolds and energized power lines.

The third substantive change made in the final rule to proposed paragraph (d)(6) was the revision of proposed paragraph (d)(6)(iii) to increase the minimum clearance between scaffolds and lines to 3 feet instead of 2 feet. This change was based on the 1990 editions of two national consensus standards, the National Electrical Safety Code (NESC) and the National Electrical Code (NEC).

NESC Rule 234C specifies clearances from the nearest conductive surface to the nearest surface of a building or its projections or its attachments (scaffolds). The required horizontal clearance to buildings is intended to provide adequate working space between the conductors or cables and the building surface to permit workers with small hand tools to conduct maintenance on a building or other structure. Trained workers using specialized maintenance tools would also be provided with adequate clearance.

Specifically, NESC Rule 24C3c(2) states the following:

> Service-drop conductors shall not be readily accessible, and when not in excess of 750 volts, they shall have a clearance of not less than 3 feet in any direction from windows, doors, porches, fire escapes, or similar locations.

Section 24C3c(2) was added in the 1984 edition of the NESC to be consistent with Article 230–24(c) of the NEC. Article 230 of the NEC covers service conductors.

In the NEC, Article 230–24(c) covers clearances of all overhead service-drop conductors, and simply refers to Article 230–9, "Clearances from Building Openings." Article 230–9, based on no wind loading, states the following: "Service conductors installed as open conductors or multiconductor cable without an overall outer jacket shall have a clearance of not less than 3 feet from windows, doors, porches, fire escapes, or similar locations."

With no wind loading, the horizontal clearance from the scaffold to the service conductors must be at least 3 feet. Where wind loading might cause the conductor to be displaced, the original clearance distance must be expanded to assure that at least 3 feet of clearance is maintained between the scaffold and the displaced conductor.

Paragraph (f)(7) of the final rule provides that scaffolds shall only be erected, moved, dismantled, or altered under the supervision and direction of a competent person. That paragraph further provides that the listed activities shall be performed only by experienced and trained employees selected for such work by the competent person. This provision is similar to proposed paragraph (d)(7), which was effectively identical to existing § 1926.451(a)(3).

OSHA received one comment (Ex. 2–23J which recommended the addition of "and direction" between the words "supervision" and "of" because it would otherwise infer that the supervision need not be at the scene directing the work. OSHA believes such direct supervision is necessary, and has revised the final rule to clarify this point. This commenter also suggested that a qualified person rather than a competent person be required by this provision. The commenter defined a qualified person as "a person designated by the employer who by reason of experience or instruction is familiar with the operation to be performed and the hazards involved." OSHA acknowledges that the proposed language does not clearly address the qualifications of a competent person charged with directing scaffold work. Therefore, the Agency has revised the language to indicate clearly that the competent person must be "qualified" (as defined in § 1926.32(m)) in the subject matters for which that person has responsibility.

The Agency has also clarified that the actual work be performed by experienced and trained employees, selected by the competent person. This change is based on an ACCSH recommendation (Tr. 88–92, 6–9–87). In particular, a member of the Advisory Committee stated "it needs to be employees that are properly trained and experienced being the only ones allowed to do this kind of work." OSHA agrees with this recommendation because, unlike other individuals on a finished scaffold, erectors and disassemblers are exposed to the hazards of working on a partially completed structure, and a competent person is needed to select the proper individuals to do this work.

Paragraph (f)(8) of the final rule provides that employees are prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such materials. This provision is identical to proposed paragraph (d)(8), which was intended to clarify existing § 1926.451(a)(17). The existing standard simply required that "slippery conditions on scaffolds shall be eliminated as soon as possible after they occur."

The Agency recognizes that the situation addressed by this provision differs from situations where workers could be required to work on scaffolds during storms or high winds, which is addressed by § 1926.451(f)(12) (discussed below). OSHA notes that snow and ice removal can be done from ground level on one level built-up scaffolds (approximately 6 feet) and on suspended scaffolds, since they are usually accessed at ground level. When dealing with a two or more level built-up scaffold, removal of slippery material would be conducted above the 10-foot trigger height requiring normal fall protection precautions. On the other hand, work on scaffolds during storms or high winds poses a much greater risk of falling for workers, especially on tall scaffolds where wind velocity can be much greater than at ground level. In these situations, materials handling, or even normal activities such as walking, are adversely affected to the point where guardrails alone might not be sufficiently protective. Under these circumstances, the Agency intends the competent person to determine if the work can be done safely, and the employer to ensure that those

employees are provided extra protection through the use of personal fall arrest systems or wind screens. This provision is discussed further below.

Paragraph (f)(9) of the final rule requires that, where swinging loads are being hoisted on, to, or near scaffolds such that the loads could contact the scaffold, tag lines or equivalent measures shall be utilized to stabilize the loads. This provision is effectively identical to proposed paragraph (d)(9). The proposed rule was based on § 1910.28(a)(15), which requires tag lines only when loads are being hoisted onto the scaffold. The provision covers all hoisting operations in proximity to scaffolds, because a swinging load can pose a hazard regardless of its destination. OSHA has made a minor editorial revision to the proposed rule for the sake of clarity.

Final rule paragraph (f)(10) requires that support ropes used with adjustable suspension scaffolds have sufficient diameter for functioning of the brakes and the hoist mechanism. As discussed above in relation to final rule § 1926.451(a), OSHA has relocated this provision, which is effectively identical to proposed paragraph (a)(4)(i), to consolidate the requirements for rope used with suspension scaffolds.

Paragraph (f)(11) of the final rule requires that suspension ropes be shielded when a heat-producing process is performed. When acids or other corrosive substances are used on a scaffold, the ropes shall be shielded, treated to protect against the corrosive substances, or shall be of a material which is not adversely affected by the substance being used. This provision is identical to proposed paragraph (d)(10). The proposal was essentially the same as existing § 1926.451(a)(18), which prohibits the use of any heat producing process on scaffolds supported by fiber or synthetic rope and requires that only treated or protected fiber or synthetic ropes be used near corrosive substances. Unlike the existing rule, the revised standard allows the use of heat producing processes, as long as the ropes are shielded. The provisions for protection of scaffolds and their components from corrosive substances and from heat-producing processes are consistent with ANSI A10.8–1988, Sections 4.27 and 4.28, respectively.

Final rule paragraph (f)(12) prohibits work on or from scaffolds during storms or high winds unless a competent person has determined that it is safe for employees to be on the scaffold and these employees are protected by a personal fall arrest system or wind screens. Wind screens shall not be used unless the scaffold is secured against the forces imposed. The proposed rule (paragraph (d)(11)) was based on general industry regulation § 1910.28(a)(18), which provides that employees shall not work on scaffolds during storms or high winds.

Proposed paragraph (d)(11) prohibited work on scaffolds during storms or when wind speeds exceeded 40-mph, unless body belt or harness systems were used or wind screens were erected. The proposed rule, like the final rule, provided that wind screens could only be used if the scaffold was secured against the forces imposed. Issue 6 of the NPRM requested comments on whether the proposed 40-mph limit was appropriate and on how to measure the wind speed.

Two commenters (Exs. 2–22 and 2–53) supported the proposed 40-mph limit. Two other commenters (Exs. 2–13 and 2–41) stated that 25 mph would be a more appropriate limit. Other commenters (Exs. 2–54 and 2–64) stated that 40 mph is too high a limit, because of the dangers high winds present, but did not suggest an alternative limit. Two commenters (Exs. 2–64 and 2–368) stated that no specific limit should be set because of the variations in wind speed from ground level to higher elevations, and from building side to building side. Several commenters from the AGC (Exs. 2–20, 2–55, 2–70, 2–390, and 2–516) stated that contractors are presently using "good judgement" in determining when work should cease and that there are no statistics to show otherwise.

The SSFI and the SIA (Exs. 2–367 and 2–368) stated that the most recent draft language used in the ANSI A10.8 standard should be used. As adopted, ANSI A10.8–1988, Section 4.22, provides "[w]orkers shall not work on scaffolds during storms or high winds." In particular, the SSFI (Ex. 2–367) stated "[t]here are too many variables for a specific wind speed to be determined by a governmental agency." That commenter also recommended that OSHA use the term "high wind" without specifying a wind speed, and that the Agency let individual workers determine if the work should be performed under those conditions. The SIA (Ex. 2–368) stated "a set limit of mph can be misleading and dangerous in that the wind velocity can be 15 mph or lower, yet the side of the building the men are working on can have gusts in excess of 40 mph. * * * Wind will vary on each side of a building."

The ACCSH (Tr. 65–79, 6/9/87) recommended that the determination of wind hazard should be made by a "competent person." OSHA agrees that designating a competent person to evaluate wind conditions is the appropriate way to ensure that all the relevant information and the unique aspects of work locations are considered. OSHA believes this is a more appropriate way to address the problem than simply specifying a speed limit without regard to other factors. Accordingly, the Agency has revised the final rule to reflect the ACCSH suggestion to use a competent person and the suggestions to use the ANSI language.

Final rule paragraph (f)(13) provides that debris shall not be allowed to accumulate on platforms, where it could pose a slip, trip, or fall hazard to employees on or below the platform. This provision is identical to proposed paragraph (d)(12), which was based on existing § 1910.28(a)(20). This provision is consistent with ANSI A10.8–1988, Section 4.24.

Final rule paragraph (f)(14) provides that makeshift devices, such as but not limited to boxes and barrels, shall not be used on top of scaffold platforms to increase the working level height of employees. The Agency has concluded that these makeshift devices will not meet the pertinent criteria of this final rule, in terms of strength and stability.

Final rule paragraph (f)(15) prohibits the use of ladders on scaffolds to increase the employee's working level except when the employees are on large area scaffolds and the ladder is used in accordance with the applicable provisions of final rule paragraph (f)(15)(i)–(iv), discussed below.

The corresponding paragraph in the proposal provided simply that ladders and makeshift devices not be used to increase scaffold working heights. This provision was intended to ensure that workers were provided with a secure work platform, and to eliminate the hazard of tipping caused by portable ladders exerting a sideways thrust on scaffold systems. The pertinent provisions are consistent with the corresponding language in ANSI A10.8–1988, Section 4.29.

NPRM Issue 29 requested public comment on the need for the proposed prohibition against the use of ladders on scaffolds. Three commenters (Exs. 2–40, 2–53, and 2–69) favored the use of body/safety belts in such situations. Of these three, both NIOSH (Ex. 2–40) and another commenter (Ex. 2–69) noted that there would be no need to prevent the tipping of a scaffold from sideways thrust exerted by a ladder if the scaffold were secured laterally. Those commenters added that employees working above the guardrail system could be guarded from falls by using a body belt. In addition, NIOSH (Ex. 2–40)

provided examples, noting that tiebacks, guys, or braces would be used to secure a scaffold. NIOSH also suggested that OSHA consider requiring "form scaffolds" to be near the top of concrete forms. The commenter indicated that this would "eliminate the need for workers to be above the scaffold fall protection system." However, NIOSH stated that no data exist to support this recommendation concerning form scaffolds. The other commenter (Ex. 2–53) who supported the use of personal fall arrest systems stated "safety belts must be used" when ladders or other devises are used on top of scaffolds to increase the working level heights of employees.

One commenter (Ex. 2–15) favored the proposed prohibition of the use of ladders or makeshift devices to raise the working level of employees, provided that the prohibition pertains only to scaffolds subject to tipping that do not completely cover an enclosed area. In particular, this commenter stated that the proposed prohibition should not apply to scaffolds built from wall to wall with the entire floor area covered and with a completely decked top (in effect, a large area scaffold) from which several trades could use ladders or small scaffolds to do their work. In addition, two commenters (Exs. 2–1 and 2–54) who addressed proposed paragraph (d)(13), rather than Issue 29, indicated that ladders can be used on large area scaffolds when additional precautions are taken.

One commenter (Ex. 2–64) supported applying the proposed prohibition to suspended scaffolds but did not address other scaffolds. Another commenter (Ex. 2–13) stated that no ladder or makeshift device "should be used to increase the height of a scaffold."

In addition, four commenters (Exs. 2–29, 2–43, 2–367 and 2–368) explicitly and unconditionally supported the proposed prohibition. Two commenters (Exs. 2–29 and 2–43) very briefly stated that the use of ladders and makeshift devices on top of scaffolds to raise working levels should be prohibited. The SSFI (Ex. 2–367) supported the proposed prohibition and stated that the use of ladders and makeshift devices on top of scaffolds makes scaffold systems unstable. The SIA (Ex. 2–368) supported the proposed prohibition and stated that accident statistics "reveal a number of injuries and fatalities due to workers improvising ladders and makeshift devices to obtain greater working heights from scaffolds."

After carefully considering the above comments and the recommendation from the ACCSH, OSHA has determined that the proposed prohibition of the use of ladders and makeshift devices on top of scaffolds is necessary to ensure employee safety. However, the Agency has also determined that the use of ladders on large area scaffolds is consistent with efforts to ensure employee safety. As noted above in the discussion of the definition for "Large area scaffold", these scaffolds cover substantially the entire work area, and are basically equivalent to working on a floor or large deck of a structure, where ladders can be used safely. Therefore, the final rule prohibits the use of makeshift devices on all scaffolds and prohibits the use of ladders on scaffolds other than large area scaffolds.

Furthermore, the OSHA has determined that the requirements in proposed § 1926.451(d)(13), which addressed the use of both ladders and makeshift devices in one provision, should be separated into two paragraphs so that the final rule clearly expresses the Agency's regulatory intent. The proposed rule has been revised accordingly.

Final rule paragraph (f)(15)(i) provides that when a ladder is placed against a structure which is not a part of the scaffold, the scaffold must be secured against the sideways thrust exerted by the ladder. This provision was suggested by NIOSH and other commenters on Issue 29. In addition, paragraphs (f)(15) (ii) through (iv) require that the platform units be secured to the scaffold to prevent them from moving; that the ladder legs are all on the same platform unit unless other means have been provided to stabilize the ladder against platform unit deflection; and that the ladder legs be secured to prevent them from slipping and being pushed off the platform unit. These provisions are based on suggestions made by commenters on Issue 29, as discussed above.

The Agency believes that compliance with these provisions will prevent the tipping and instability hazards that led OSHA to propose a prohibition against the use of ladders on all scaffolds, and has revised the final rule accordingly.

Final rule paragraph (f)(16) provides that platform units shall not deflect more than 1/60 of the span when loaded. This provision is identical to proposed paragraph (d)(14), and is intended to limit the amount platform units can deflect under load without becoming overstressed and without their ends being pulled from their supports.

Final rule paragraph (f)(17) requires employers to reduce the possibility of welding current arcing through suspension wire rope while employees are performing welding from suspended scaffolds by insulating the suspended platform and its rigging. OSHA is adding this new provision to protect employees from the electrocution and platform collapse hazards posed by arcing welding current. In particular, the Agency requires that employers rig affected scaffolds with insulated thimbles (paragraph (f)(17)(i)), insulated wire rope (paragraph (f)(17)(ii)), and insulated hoist mechanisms (paragraph (f)(17)(iii)). This paragraph also specifies precautions for grounding the scaffold to the structure on which welding is being performed (paragraphs (f)(17) (iv–vi)). These provisions are consistent with ANSI A10.8–1988, Section 6.2.9.

Issue 2 of the NPRM requested comment on the need to regulate welding equipment used on suspended scaffolds and solicited input regarding regulatory text then being considered by the ANSI A10.8 Committee. That text, divided into six items, was effectively identical to the language OSHA has promulgated in paragraph (f)(17).

Four commenters (Exs. 2–20, 2–55, 2–69, and 2–390) stated that this subject should be covered by the welding standards for construction (part 1926, subpart J), since the hazards involved in these operations related directly to welding. The National Constructors Association (NCA) (Ex. 2–53) went further, saying "[t]here is no need to regulate electric welding equipment on scaffolds. NCA member companies do not have any experience that would indicate additional regulations."

One respondent (Ex. 2–8) stated that OSHA needed to define the term "suitable" as used in describing an insulated thimble (Item (a) of Issue 2, promulgated as paragraph (f)(17)(i)), because "[s]omeone might think that putting electric tape on a metal thimble is "suitable" insulation." OSHA agrees that the term "suitable" could be interpreted in a way that would result in inadequate insulation and has adopted regulatory text requiring an "insulated thimble" that provides appropriate protection for the equipment in use.

Another commenter (Ex. 2–13) stated "[t]he only rule that could possibly help prevent accidents from welding on suspended scaffolds is to ground the scaffold. All the scaffold components are conductors and all could possibly be grounded through the suspension ropes. A secondary path, of lesser resistance, could possibly help."

In addition, a commenter (Ex. 2–22) stated that requiring employers to cover each hoist with protective covers made from insulating material (Item (c) of Issue 2, promulgated as paragraph (f)(17)(iii)) would have a prohibitive

cost without having an impact on safety, noting that a "great number" of hoists are used on scaffolds. The commenter added that the provision requiring a grounding conductor to be connected from the unit to the structure (Item (d) of Issue 2, promulgated as paragraph (f)(17)(iv)) may not be practicable "because in actual field situations the machines are constantly and frequently moved." In addition, the commenter stated that the requirement to turn off the welding machine if the unit grounding lead is disconnected at any time (Item (e) of Issue 2, promulgated as paragraph (f)(17)(v)) may be impractical, because "in actual field situations the machine may be 50 or more feet from the scaffold." Another commenter (Ex. 2–29) suggested that "[r]equirements should be more performance-oriented to allow alternative methods to protect the employees working with electric welding equipment on suspended scaffolds."

Several commenters (Exs. 2–43, 2–54, 2–64, 2–367, and 2–368) expressed concern over the hazards of using electric welding equipment on suspended scaffolds and indicated that they favored promulgation of the measures raised in Issue 2. One commenter (Ex. 2–64) noted that OSHA had used the term "unit" instead of the terms "scaffold" or "platform" in Items (d) and (e) of Issue 2 and stated that one of those other terms should be used instead of "unit", for the sake of clarity. OSHA agrees that the term "scaffold" more clearly expresses the Agency's intent.

In addition, the SSFI (Ex. 2–367) and the SIA (Ex. 2–368) stated "the specific recommendations developed by OSHA regarding electric welding equipment are felt to be practical and feasible as several manufacturers are already using or specifying many of the methods outlined within the suggested rules."

Also, on June 9, 1987 (Tr. 26–30), the ACCSH recommended that OSHA regulate electric welding equipment on suspended scaffolds under subpart L. In particular, a member of the Advisory Committee stated "[t]here's a very distinct possibility that you can arc within the suspended cables, burn the cable and drop the scaffold. That's exactly why it needs to be addressed."

Another commenter (Ex. 2–516) expressed concern regarding the protection provided by insulated thimbles, because "[a]n insulated thimble does not prevent the wire rope from hitting the conducting aluminum skin on the structure and closing the loop. It doesn't stop the huge current from burning out the power cord and melting the insulation on the 'hot' power leads." The commenter also stated that using more than one ground lead can allow current to "get loose", blowing out adjacent electrical systems and damaging platforms and their rigging. In particular, the commenter stated "[p]art of our problem is that the current from welding machines is high enough to cause heat damage in metal. The damage manifests itself as melted metal at the material surface or interface between materials. This damage seriously reduces strength. Strength is needed to keep the platform from falling."

The Agency acknowledges that insulated thimbles, alone, do not prevent arcing, and that grounding must be undertaken with great care to minimize stray currents. OSHA has determined that compliance with the provisions of paragraph (f)(17), taken together, will minimize the hazards of electric arcing during welding operations on suspended scaffolds. The Agency has concluded that it is appropriate to address the hazard of arcing welding current during welding operations on suspended scaffolds in the final rule for scaffolds, rather than in the welding standards, because the precautions in question relate to the scaffold rigging, not to welding procedures, and because placing the pertinent regulatory text in the rule will facilitate compliance.

Paragraph 1926.451(g) Fall Protection.

Paragraph (g) of the final rule sets fall protection requirements for employees working on scaffolds, including criteria for guardrail systems. As discussed above, fall hazards account for a high percentage of the injuries and fatalities experienced by scaffold workers. OSHA has determined that compliance with this paragraph will effectively protect employees from those hazards.

Final rule paragraph (g)(1) sets 10 feet as the threshold height above which fall protection is required and indicates (paragraphs (g)(1)(i)—(vii)) what fall protection measures are required for particular types of scaffolds. In addition, the introductory text references paragraph (g)(2), which addresses the fall protection requirements for employees erecting and dismantling supported scaffolds. Finally, a note has been added at the end of paragraph (g)(1), to indicate clearly that the fall protection requirements for employees installing suspension scaffold support systems on floors, roofs, and other elevated surfaces are set forth in subpart M (Fall protection) of the construction standards.

Proposed paragraph (e)(1), dealing with fall protection, was similar, except that it explicitly excluded erectors and dismantlers from coverage. As with the proposed access provision (proposed paragraph (c)), OSHA believed at that time that fall protection requirements would only be feasible when a scaffold was fully erected and properly braced. The following paragraphs first discuss the issue of height requirements for fall protection on scaffolds and then describe the issues surrounding fall protection for erectors and dismantlers.

The issue of the appropriate height at which to require fall protection for employees working on scaffolds is complex, involving analyses of accident statistics, economic issues, strongly held opinions, and most importantly, concern for employee protection. OSHA has been involved with this issue since its inception in 1971, when the Agency adopted, under Section 6(a) of the Act, a requirement that scaffolds used in construction require fall protection for employees working at heights greater than 6 feet. By 1972, however, it had become apparent that this height requirement was proving onerous and causing disruption for scaffold users in the construction industry, and the Agency accordingly revised the height requirement to 10 feet (37 FR 25712, December 2, 1972). This change recognized the fact that the relevant consensus standard, ANSI A10.8–1969, Section 3.3 had set the threshold height for scaffold fall protection at 10 feet, and that this had become the industry standard of practice. OSHA's action also underscored the need for consistency in height requirements for general industry and construction unless there are compelling reasons for a different height requirement (the general industry standard's height threshold had already been set at 10 feet, in accordance with the ANSI standard). An example of a situation where a different height requirement is appropriate is the fall protection height requirement for scaffolds used in shipyards (29 CFR 1915). This height threshold differs from that in general industry and construction because shipyard work is less transient and less dynamic than construction work. For example, it is not uncommon for a scaffold to be erected in the shipyard environment and to remain in place for several years as employees work on various vessels that are brought to the scaffold "work station" to be repaired. In addition, shipyard facilities are completed, finished structures, unlike construction sites, where activities and crews change daily. Finally, the 5-foot threshold for fall protection on scaffolds has a long history in this industry: it has been

standard industry practice since well before OSHA was established.

The fall protection height requirement in the final rule continues the height requirement that has been in place in OSHA's construction standards since 1972; this height threshold is also the current recommendation of the relevant ANSI standard, A10.8–1988. OSHA's decision on this issue is based on the Agency's professional judgment and its experience in enforcing this fall protection requirement in the existing scaffold standards, a review of the available accident statistics and studies, and an analysis of the record on this issue. The following paragraphs discuss this information in greater detail.

First, OSHA has been enforcing this limit for almost a quarter of a century and has found that employers working in all areas of construction, from commercial building to the specialty trades, recognize and comply with this limit. In addition, construction workers are familiar with and have been trained to use fall protection on scaffolds at heights of 10 feet and above. Thus, this height requirement reflects current industry practice and is widely observed by employers and employees alike.

Second, the accident data on falls among construction workers suggest that several other areas of construction safety—such as scaffold stability, protection from electrocution hazards, and protection from falling objects while working on scaffolds—may have a greater impact on injuries and fatalities than fall protection height. An unpublished BLS study, entitled Work Injury Report on Scaffolds, analyzed work injury reports related to scaffolds submitted from May to November 1978. The study showed that many causes contribute to scaffold-related injuries and fatalities (Ex. 3–1). For example, one-quarter of the accidents related to scaffolds occurred while workers were ascending or descending a scaffold or stepping onto or off a scaffold, and 72 percent of these accidents occurred when the planking or support collapsed or slipped (Ex. 3–1).

A recent OSHA review of the Agency's Integrated Management Information System (IMIS) records of falls in the construction industry in the period from April 1984 to June 1994 provided information regarding 32 fatalities and 60 injuries related to work on scaffolds that occurred during this interval. Of these, only three fatalities and six injuries involved heights in the 6 to 10-foot range.

OSHA received many comments on the height threshold for fall protection for work conducted on scaffolds (Exs. 2–3, 2–9, 2–13, 2–14, 2–15, 2–21, 2–22, 2–29, 2–31, 2–40, 2–41, 2–43, 2–45, 2–54, 2–57, 2–69, 2–70, 2–367, 2–368, 2–407, 2–465, 2–595, 5a-3, 5a-5, 5a-17, and, 5a-19). These commenters argued either for changing the existing rule's height threshold or for retaining it. Those in favor of a different limit argued for fall protection at all heights (Tr. 115–116, 6–8–87, ACCSH transcript), 4 feet (Exs. 2–14, 2–40, 2–45, 2–54, and 2–465), 5 feet (Ex. 2–29), and 6 feet (Exs. 2–15, 2–57). OSHA's Advisory Committee for Construction Safety and Health (ACCSH) urged the Agency to require fall protection on all scaffolds, regardless of elevation (Tr. 115–116, 6–8–87); however, at least one other rulemaking participant (Ex. 2–594) argued that such a requirement would be unrealistic. OSHA solicited other comments and data on this ACCSH recommendation in Issue L–2 of the hearing notice (53 FR 2050), and received several comments that such a requirement would not be appropriate (Exs. 5a-3, 5a-5, 5a-17, 5a-19). This group of commenters urged OSHA to retain the 10-foot requirement.

Those commenters favoring fall protection heights in the 4- to 6-foot range gave many reasons for their views. For example, one commenter (Ex. 2–14) stated that falls from heights of four to five feet could cause serious injuries "especially if the fall occurs on a hard surface with debris scattered about." According to the Research & Trading Corporation (Ex. 2–45):

> [f]our feet is consistent with current [general industry] standards for scaffold guarding [Sec.1910.23(c)]. Four feet according to the NBS study on nets (NBSIR 85–3271) is the height beyond which a worker is most likely to hit his head when an accidental fall occurs, which is to be prevented if possible. Six feet is useful as a universal compromise for OSHA from its current slew of height requirements. However, it should be no more than six (6) feet.

Another commenter (Ex. 2–29) argued for five feet on the grounds that guarding any height above one section of scaffold, which is about five feet, would be protective. Both the ANSI Z359 committee and Saf-T-Green (Exs. 2–57 and 2–15) favored a 6-foot fall protection threshold. Saf-T-Green reasoned that an even lower limit might be preferable but acknowledged that there is "some validity to the claim that one can jump clear of a small, low rolling tower as it tips if there is no guardrail. However, if the tower does not tip, a guardrail would protect against the employee falling over the edge." Another commenter (Ex. 5a-3) argued that consistency with the fall protection requirements of subpart M (Fall Protection) would suggest that a 6-foot threshold was appropriate for scaffolds.

Many commenters urged the Agency to retain the 10-foot fall protection threshold for scaffolds (Exs. 2–3, 2–9, 2–13, 2–21, 2–22, 2–39, 2–43, 2–69, 2–70, 2–367, 2–368, 2–407, 2–595, 5a-3, 5a-5, 5a-17, 5a-19). According to these commenters, it is important to establish the height at which fall protection is and is not required (Ex. 2–595) and the 10-foot threshold has proved both protective and cost-effective. For example, one commenter (Ex. 2–41) stated:

> . . . My investigations led me to believe that work at over ten foot elevated surfaces was at the very least four times as hazardous as work at grade, and the injuries were far more serious. I did not feel that any data I saw warranted a conclusion that the increased injury was due to anything but [a] higher population working at the [higher] level.

PPG Industries (Ex. 2–43) commented:

> PPG has no problem with the 10 foot height as it stands. The problem lies in the design of the equipment and the failure of workers to follow safe practices.

OSHA has carefully analyzed all of the comments and data available in the record and has determined that it is appropriate to maintain the 10-foot fall protection threshold in the final scaffold standard, as proposed. This is also the height requirement recommended by the current national consensus standard, ANSI A10.8–1988. This level differs from the 6-foot threshold for fall protection set in subpart M (Fall Protection) for other walking/working surfaces in construction because scaffolds, unlike these other surfaces, are temporary structures erected to provide a work platform for employees who are constructing or demolishing *other* structures. The same features that make scaffolds appropriate for short-term use in construction, such as ease of erection and dismantling also make them less amenable to the use of fall protection at the time the first level is being erected. For example, there may be no secure place on the first level for the installation of guardrails or personal fall arrest systems. Also there is often no structure adjacent to a scaffold when the first level has been erected that can be used to anchor a personal fall arrest system, because the adjacent structure is in the process of being built or demolished.

This scaffold standard contains many updated and strengthened requirements for safe erection and maintenance of scaffolds. In particular, the final rule

sets clear, performance-oriented requirements for scaffold capacity (§ 1926.451(a)); erection (§§ 1926.451 (b), (c) and (d)); access (§ 1926.451(e); and use (§ 1926.451(f)). The Agency has determined that compliance with the above-noted requirements will prevent many of the fall-related injuries and fatalities that would otherwise result from structural collapse or instability, including those occurring on scaffolds less than 10 feet in height, because properly erected scaffolds will not collapse during use.

In addition, OSHA intends to monitor the extent to which compliance with these revised subpart L requirements for structural integrity effectively protects employees on scaffolds from fall hazards when they are working between six and 10 feet above lower levels. At this time, the data are insufficient to persuade the Agency that the existing 10-foot threshold needs to be changed. OSHA will carefully review and examine its enforcement data over the next several years, together with any investigative reports and other information on incidents that involve fall hazards. The Agency also intends to work closely with NIOSH in performing such data collection and analysis. Should it appear that compliance with this final rule is not providing adequate fall protection for employees working on scaffolds between six and 10 feet above lower levels, the Agency will reevaluate the standards and determine what changes, if any, are warranted.

Paragraphs (g)(1)(i) through (vii) of the final rule specify the types of fall protection to be used on particular types of scaffolds. These provisions are essentially the same as the corresponding proposed provisions, except as discussed below. The proposed and final rule provisions effectively clarify and consolidate the fall protection requirements in existing § 1926.451(a)-(y), § 1926.500(c)(2), and § 1926.1910.29(a)(3)(vii).

Paragraph (g)(1)(i) of the final rule, like proposed paragraph (e)(1)(i), recognizes that personal fall arrest systems, not guardrails, are appropriate for use on boatswains' chairs, catenary scaffolds, float scaffolds, needle beam scaffolds, and ladder jack scaffolds. This provision consolidates the following paragraphs of the existing rule §§ 1926.451(1)(4)—boatswains' chairs; (p)(9)—needle beam scaffolds; (w)(6)—float scaffolds; and § 1926.752(k)—float scaffolds for steel erection. This requirement is being applied to catenary scaffolds and ladder jack scaffolds for the first time.

Paragraph (g)(1)(ii) of the final rule, like proposed paragraph (e)(1)(ii), requires personal fall arrest systems and guardrail systems for all single-point adjustable suspension scaffolds (except boatswains' chairs), and for all two-point adjustable suspension scaffolds. The requirement to have guardrails and personal fall arrest systems on two-point scaffolds, which carries forward language in § 1926.451(i)(8) of the existing rule, is based on the fact that a guardrail system alone does not provide adequate fall protection when a suspension rope fails and causes the scaffold to tip or hang from only one end. Personal fall arrest system protection is also necessary for single-point systems, because the fall hazard related to suspension rope failure is as serious as it is with the two-point scaffold. However, because personal fall arrest systems would be the primary means of fall protection on single-point and two-point systems, the provision allows a lower minimum strength guardrail system to be used. This approach is consistent with that taken in the proposed rule.

Paragraph (g)(1)(iii) of the final rule provides that "Each employee on a crawling board (chicken ladder) shall be protected by a personal fall arrest system, a guardrail system (with minimum 200 pound toprail capacity), or by a three-fourth inch (1.9 cm) diameter grabline or equivalent handhold securely fastened beside each crawling board." This provision, like proposed paragraph (e)(1)(iii), is essentially the same as paragraph 1926.451(v)(2) of the existing rule, except that the existing rule permits grablines (lifelines) or equivalent handholds if they are securely fastened alongside crawling boards.

Paragraph (g)(1)(iv) of the final rule, like proposed paragraph (e)(1)(iv), provides that employees on self-contained scaffolds be protected by both personal fall arrest systems and guardrail systems when the platform is supported by ropes (as when the scaffold is being raised or lowered on some systems) and by guardrail systems when the platform is supported directly by the scaffold frame.

Paragraph (g)(1)(v) of the final rule, similar to proposed paragraph (e)(1)(v), requires guardrails to be used along scaffold walkways and to be located within 9½ inches horizontally of at least one side of the walkway. OSHA originally proposed that the walkways be located within 8 inches horizontally of the side of the walkway. However, for consistency with final rule § 1926.451(b)(1)(ii), the provision has been revised to allow an open space of up to 9½ inches. The provision that guardrails need only to be provided along one side applies only when the platform is used solely as a means of access to get from one point on the scaffold to another. If work activities other than access are performed on or from the walkway, then the platform is not considered to be a walkway (see definition of "walkway"), and other provisions of paragraphs (g)(1), as appropriate, would apply.

Paragraph (g)(1)(vi) of the final rule provides that fall protection (i.e., a personal fall arrest system or guardrail) be provided on all open sides and ends of scaffolds from which employees are performing overhand bricklaying operations and/or related work, except those sides and ends next to the wall being laid. This requirement replaces a note that followed proposed paragraph (e)(1)(v), which stated that the fall protection requirements for employees performing overhand bricklaying from supported scaffolds are provided in § 1926.501, Fall protection (subpart M). OSHA has deleted the note from the final rule because the Agency has determined that, except for some system criteria which are referenced from subpart M, it is appropriate to cover all scaffold fall protection in this final rule for scaffolds in construction (subpart L).

Paragraph (g)(1)(vi) of the final rule is consistent with § 1926.501(b)(9), which addresses fall protection for employees performing overhand bricklaying while on elevated surfaces other than scaffolds,

Final paragraph (g)(1)(vii) requires that employees on scaffolds not addressed elsewhere in paragraph (g)(1) be protected either by guardrails or personal fall arrest systems. This provision is essentially the same as the fall protection requirement of proposed paragraph (e)(1), except that the term "body belt/harness systems or Type 1 guardrail systems" has been replaced by "personal fall arrest systems or guardrail systems" for the reasons discussed above.

Paragraph (g)(1) does not apply where there are no "open sides or ends" on the scaffold (see definition in § 1926.451(b)). For the scaffold to be considered completely enclosed, no perimeter face of the scaffold may be more than 14 inches from a wall. The requirements for fall protection will apply at openings such as hoistways, elevator shafts, stairwells, or similar openings in the scaffold platform, or openings in the walls of the structure surrounding the platform.

Proposed paragraph (e)(2) stated that each employee on a platform (except for a self-contained adjustable scaffold or a scaffold type covered by § 1926.452), less than 45 inches (1.1 m) wide, and 4

feet (1.2 m) or more above lower levels, shall be protected from falling to those lower levels by the use of a personal fall arrest system or guardrail system (with minimum 200 pound toprail capacity). Proposed paragraph (e)(2) also provided a blanket exemption for erecting/dismantling activities and referred to the use of a "Type I guardrail system."

This provision, based on existing § 1926.451(a)(4), has been dropped in the final rule because further analysis of the requirement showed that there was no real definable target for the requirement and that 99% of scaffolds would be excluded by the proposed provision.

Paragraph (g)(2) of the final rule addresses fall protection for employees erecting or dismantling supported scaffolds. Based on the rulemaking record, developed through NPRM Issue 8 discussed below, OSHA has determined that it is appropriate to delay the implementation of paragraph (g)(2) until September 2, 1997. The delay will allow affected employers sufficient time to implement the appropriate procedures for addressing the fall protection needs of employees erecting or dismantling scaffolds. In addition, deferring compliance will allow time for the Agency to complete non-mandatory Appendix B, which will provide examples of considerations that a competent person would take into account when evaluating fall protection options for scaffold erectors and dismantlers. As discussed above in relation to final rule paragraph (e)(9), the Agency has also deferred requirements for safe access for scaffold erectors and dismantlers until September 2, 1997.

Final paragraph (g)(2) requires that employers whose employees erect or dismantle supported scaffolds after September 2, 1997 ensure that a competent person determines the feasibility and safety of providing fall protection for such employees. This paragraph further requires that affected employers provide fall protection for employees erecting or dismantling supported scaffolds where the installation and use of such protection is feasible and does not create a greater hazard.

NPRM Issue 8 solicited comments concerning the proposed exemption of employers whose employees perform scaffold erection and dismantling operations from the fall protection requirements of proposed § 1926.451(e)(1). The Agency noted that, while supported scaffolds often do not have a place to which personal fall arrest systems can be properly attached, suspended scaffolds are often located such that personal fall arrest systems can be used.

On March 29, 1993, based on the response to Issue 8, OSHA reopened the public record for proposed subpart L (58 FR 16509) to obtain more information. The Agency stated that the rulemaking record supported deleting the proposed exemption of suspended scaffolds and indicated that a blanket exemption for supported scaffolds might be inappropriate. In particular, OSHA asked if employers should be required to provide fall protection for employees erecting or dismantling supported scaffolds, except where an employer can demonstrate that providing fall protection was either "impracticable" or "would create a greater hazard." The Agency also sought information about current efforts and the ability to provide fall protection for employees erecting or dismantling scaffolds. In addition, OSHA asked if it was appropriate to require fall protection for those portions of a supported scaffold that have been, or remain, fully assembled, while exempting those areas where erecting or dismantling is underway.

The responses to NPRM Issue 8, and the March 29, 1993, reopening of the record on this Issue fell into two broad groupings. The first group either supported an across-the-board exemption from fall protection requirements for all erectors and dismantlers (Exs. 2–3, 2–9, 2–12, and 2–21); or supported an exemption for erectors and dismantlers of supported scaffolds only (Exs. 2–13, 2–15, 2–30, 2–69, 2–367 and 2–368); or specifically opposed a fall protection requirement for erectors and dismantlers, even with an exception for impracticability or greater hazard, favoring instead trained erectors and dismantlers, a hazard awareness program, controlled access zones, or a standardized procedure for erecting and dismantling scaffolds (Exs. 34–5, 34–9, 34–10, 34–12, 34–17, 34–17, 34–20, 34–31, 34–32, 34–37, and 34–43).

The second group either supported a requirement for fall protection at all times, including during erecting and dismantling (Exs. 2–22, 2–43, 2–45, 2–53, 2–497, 34–4, 34–11, and 34–35) or supported a requirement for fall protection except where the employer demonstrates that it is infeasible, unsafe, or creates a greater hazard during erecting and dismantling operations (Exs. 2–29, 2–54, 2–57, 2–70, 34–2, 34–18, 34–19, 34–22, 34–26, 34–29, 34–34, and 34–46). Each of these arguments is discussed below, along with OSHA's response to the points raised by the commenters.

Commenters that supported the proposed total exemption of erecting and dismantling operations from the fall protection requirements argued (Ex. 2–3) "[t]his is a situation where someone must be exposed in order to do the job * * *"; or felt that fall protection would be detrimental to employee safety (Exs. 2–12 and 2–21). OSHA disagrees with these commenters and notes that the record describes many situations where it is feasible to provide fall protection for erectors and dismantlers.

Commenters that supported a fall protection requirement for erectors and dismantlers of suspended scaffolds, but not supported scaffolds (Exs. 2–13, 2–15, 2–30, 2–69, 2–367, and 2–368) argued that it is feasible and practical to require such protection for suspended scaffolds, but not for supported scaffolds, due to the lack of an appropriate tie-off area, and the possibility of drop lines becoming entangled during climbing and moving procedures which could pull the erector off the supported scaffold. The Agency agrees with these commenters that it is virtually always feasible to provide fall protection for workers erecting or dismantling suspended scaffolds because structures that are capable of supporting a suspended scaffold are also capable of providing a safe anchor point for personal fall protection equipment. On the other hand, OSHA finds that the record does not support an across-the-board exception from the requirements for fall protection for erectors and dismantlers of supported scaffolds.

Another group of commenters opposed a fall protection requirement but emphasized the importance of training in maintaining safety during erecting and dismantling operations. For example, some commenters (Exs. 34–9, 34–10, 34–12, and 34–17) recommended the following:

1. A formal hazard awareness program shall be implemented.
2. Enforce "controlled access zones" allowing only those people trained in the erection and dismantling of scaffolds to be present.
3. Develop and strictly enforce standard procedures for the erection and dismantling of scaffolding. These procedures may include but not be limited to the following:
   a. Fully planking each level before moving on to the next highest level.
   b. Fully securing each level with the proper guardrails prior to moving to the next higher level.
   c. Providing proper access to all completed levels.
   d. Develop methods for placing components on upper levels without placing unnecessary risks on employees.
   e. Only those employees actually involved in the erection or dismantling shall be allowed on the scaffolding.

The Agency recognizes the importance of training and hazard awareness programs to employee safety, but finds that these precautions alone are not adequately protective because site conditions change and mistakes are made. The Agency finds that providing appropriate fall protection, whenever it is feasible or will not create a greater hazard, is the best way to ensure that erectors and dismantlers are appropriately protected from fall hazards.

The second group consisted of commenters that supported fall protection for erectors and dismantlers under some (Exs. 2–29, 2–54, 2–57, 2–70, 34–2, 34–19, 34–22, 34–26, 34–29, and 34–46) or all conditions (Exs. 2–22, 2–43, 2–45, 2–53, and 2–497). For example, some commenters argued that if a fall hazard exists, lifelines or some other fall arresting system should be in place. R&TC (Ex. 2–45) stated:

> The use of lightweight outrigger scaffold sections with guard rails, which can be pushed up the vertical scaffold poles prior to the new upper level height exposure during erection, seems to be promising as a fall protection means * * * Furthermore, many structures can provide overhead anchorage points for workers during scaffold erection and dismantling without such special scaffold platforms. For these situations, regular lifelines can easily be used for vertical and horizontal movement.

R&TC later added (Ex. 2–497) "[w]hen an overhead anchorage is available, a bucket truck, manlift or other elevating platform can be used to install lifelines without a fall hazard."

Commentors to the Reopening Notice (Exs. 34–4, 34–11, 34–18, and 34–35) also supported a fall protection requirement for erectors and dismantlers.

Some, such as Dynamic Scientific Controls (DSC) (Ex. 34–18) provided input on ways to provide fall protection for erectors and dismantlers. In particular, DSC provided a video showing a scaffold being erected by an employee who uses a retractable lanyard attached to the scaffold for fall protection. DSC stated that this method has been improved by crossbracing the first frame, tying-in to the structure, using the pulley bracket more often for attaching lifelines in order to reduce the lifeline angle to less than 45 degrees, and pinning legs before attaching the lifeline to a higher level. DSC added that using horizontal lifelines within each frame and extending the length of the scaffold can provide protection to workers as well. This commenter noted, however, that any fall arrest system attached to a scaffold should be an engineered system modelled for that type of scaffold, or should be designed by a skilled professional engineer.

In addition, the United Brotherhood of Carpenters and Joiners (Ex. 34–11) stated that the ability to provide fall protection can be greatly increased through modified erection, engineered attachment points designed into structures, additional scaffold bracing, guying, and outrigging.

Finally, DBI/SALA (Ex. 34–4) offered the following choices for fall protection: "(1) Provide for or suggest a means for a feasible anchor; (2) If the current state of the art doesn't allow scaffolds to be used as anchors, maybe a redesign incorporating outriggers or whatever is required is appropriate."

The Agency agrees that, if fall protection can be provided, it is the employer's responsibility to take the actions necessary to protect employees. However, OSHA has determined, based on the information in the record, that in some situations, it is not possible to provide fall protection for erectors and dismantlers of supported scaffolds.

Two commenters, Dynamic Scientific Controls (DSC) (Ex. 34–18) and the State of Hawaii (Ex. 34–34) commented that the employer should be required to show that fall protection is infeasible or creates a greater hazard for the scaffold erector in order to avoid providing fall protection. Another commenter (Ex. 2–54) added that employers "should note in their Daily reports why they can't take [the] necessary precaution[s]."

OSHA agrees that employers must have valid reasons for not providing fall protection to scaffold erectors and dismantlers, but does not agree that the employer must put these reasons in writing. Compliance officers can substantiate employer claims of infeasibility or greater hazard through on-site observations and discussion with the competent person and other workers.

Many commenters (Exs. 2–29, 2–54, 2–57, 2–70, 34–2, 34–19, 34–22, 34–26, 34–29, and 34–46) supported a fall protection requirement for scaffold erectors and dismantlers, if feasible, or unless it would create a greater hazard. These commenters also provided insight into the potential problems of providing fall protection for erectors and dismantlers, and into the factors that must be considered when determining if fall protection is feasible in a particular situation or if the use of fall protection would create a greater hazard.

For example, the ANSI Z359 Committee (Ex. 2–57) stated:

> It is recognized that fall protection may, in general, be difficult or impractical to provide in erection and dismantling of supported scaffolds. This may be due to absence of suitable anchorages whether independent or integral to the scaffold. However, there are notable exceptions when independent overhead anchorages exist which may be used for vertical or horizontal lifelines. Further, some supported scaffolds can be rigged to provide integral fall protection without undue encumbrance of the work. There is concern that granting a broad exemption from fall protection requirements for supported scaffold erection/dismantling would reduce the protection even where it is today feasible. Such exemptions could also discourage future development of fall protection means to address this subject.

Miller & Long (Ex. 2–70) commented "If there is an area where employees can tie off they should do so."

The Boeing Company (Ex. 34–19) stated that fall protection for erectors and dismantlers could be provided through the use of boom supported elevated work platforms, scissors lifts, forklift platforms, temporary guardrails, fall arrest/restraint systems or other scaffolds.

The Scaffold Training Institute (STI) (Ex. 34–20) indicated that 100% fall protection for erectors is not achievable from a practical standpoint due to a lack of suitable anchorages. The Institute also stated that lifelines would become entangled in pipes, lines, platforms tubes, braces or other obstructions. STI was particularly concerned that snagged lifelines would restrict the motion of employees and could lead to falls for erectors whose work requires that they have freedom of motion in order to carry and to maneuver into place large, bulky components. The commenter added that the use of lanyards and lifelines can lead to increased fall hazards, and that a pendulum effect is created if an erector falls while attached to a lifeline that is anchored several feet away.

Duke Power (Ex. 34–29) stated "[f]all protection harnesses tend to snag on things, butt straps hinder climbing . . . Fall protection also slows people down."

SINCO (Ex. 34–22) stated that the effect on the mobility of employees varies with conditions and the type of fall protection equipment used, but stated that the effect can be limited by proper pre-planning and project management. In addition, both SINCO and Professor Ralph E. Bennett of Purdue University (Ex. 34–26) suggested that the scaffold must be properly tied or braced, with all components pinned together, and, that intermediate plank levels be provided to limit fall height during erection of the uppermost levels.

In addition, SINCO recommended that OSHA require affected employers to satisfy the following criteria for exemption:

• A qualified person has determined that fall protection creates a greater hazard than falling freely to the ground or the closest possible level;

• Tests prove that a scaffold or structure would definitely fail if used as an anchorage;

• There are no other means of fall protection available;

• Employees have been trained in the recognition and avoidance of hazards by use of the employer's prescribed methods of erection; and

• Compliance with the requirement for fall protection is likely to result in a more serious injury compared to the possibility of a life saved . . ."

SINCO observed that a greater hazard may exist if a falling person could pull a scaffold over. However, the commenter added that this hazard would involve more danger to employees on the ground than to employees on the scaffold. They contended that other employees on the scaffold may provide "counter-balance" that would prevent the scaffold from overturning. In addition, SINCO stated that this hazard can be prevented by reinforcing the scaffold's base through the use of outriggers, counterweights, or tie-downs. The commenter added that this hazard can be greatly reduced by requiring erectors to remain inside the frames to decrease any eccentric loading and through the use of shock absorbers.

Dow Chemical Co. (Ex. 34–46) commented that since each worksite is unique, fall hazards must be addressed through preplanning of the work with the aim of eliminating fall hazards and preventing falls. However, the commenter added, where fall hazards cannot be eliminated, a fall protection system should be used if it "provides a more appropriately safe solution". Dow also stated that a lanyard long enough to allow mobility can create tripping hazards and the potential for one worker to "pull another worker from their task." The commenter added that "people on-site must have the latitude to address [these hazards]."

OSHA notes that the Agency's own compliance experience concerning the potential problems of providing 100% fall protection for erectors and dismantlers is consistent with the positions put forth by the commenters. OSHA has determined that it would be useful to provide examples of the factors to be considered by a competent person when deciding what fall protection is appropriate for employees erecting or dismantling supported scaffolds. Accordingly, the Agency has reserved non-mandatory Appendix B, and will be developing informational text that can be added to subpart L at a later date to serve as a guide to assist employers in evaluating their worksite conditions.

Several commenters (Exs. 34–8, 34–9, 34–10, 34–12, 34–17, 34–22, and 34–26) addressing the topic of fall protection for erectors and dismantlers took no position as to an exception for these workers. However, they indicated that fully planking sections could reduce exposure to fall hazards. One of these commenters (Ex. 34–8) stated that, although full planking and stairway-type ladders would reduce exposure, their use is not always practical. In addition, four of these commenters (Exs. 34–9, 34–10, 34–12, and 34–17) stated that ladders attached at the end of the scaffold would be better because stairway-type ladders greatly reduce employee movement along the length of the scaffold.

Four other commenters (Exs. 34–32, 34–35, 34–37, and 34–39) indicated that such practices would be either infeasible or would create other hazards. The SIA and SSFI (Exs. 34–37 and 34–32) added that planking every level would overload tall scaffolds and that stairways are not needed because erectors do not continually climb up and down. The SIA also said that fully planking every level would require that all equipment be hoisted outside the scaffold, creating additional hazards. Another commenter (Ex. 34–46) stated that a requirement for fully planking sections "would unnecessarily restrict local decisions for safety."

The Agency has determined that, due to the large variety of supported scaffolds and an infinite number of unique site conditions that could affect the feasibility or safety of providing fall protection, neither a blanket exception nor a requirement for 100% fall protection is appropriate for erectors and dismantlers. OSHA agrees with commenters (Exs. 34–8, 34–22, 34–36, and 34–46) that the people on site (competent person) must have the flexibility to address fall hazards for erectors and dismantlers on a site-specific basis. Therefore, OSHA finds that the determination of what fall protection is feasible and can be used safely at a given worksite should be made by a competent person at the worksite. The competent person will need to have the ability and knowledge to decide whether fall protection can be provided for erectors and dismantlers under the specific site conditions, and, if so, what measures are appropriate.

Therefore, the Agency has revised the final rule to reflect this finding, while deferring compliance for one year to allow time for employers to develop and implement the appropriate procedures. In addition, as noted above, the Agency will be adding non-mandatory Appendix B at a later date, to provide examples of situations where it is feasible to provide fall protection during the erection and dismantling of supported scaffolds and the criteria the competent person would consider when deciding the appropriateness of fall protection during erection and dismantling. Interested parties are invited to provide OSHA with suggestions and information regarding the appropriate guidance for the competent person.

Paragraph (g)(3) of the final rule provides that personal fall arrest systems must comply with the pertinent provisions of § 1926.502(d) and, in addition, must be attached by lanyard to a vertical lifeline, horizontal lifeline, or scaffold structural member. However, when overhead obstructions such as overhead protection or additional platform levels are part of a single-point or two-point adjustable suspension scaffold, then vertical lifelines must not be used, because, in the event of a scaffold collapse, the overhead components would injure an employee who was tied off to a vertical lifeline. This provision is essentially the same as proposed paragraph (e)(3), except that the terms "dropline" and "trolley line" have been replaced by the terms "vertical lifeline" and "horizontal lifeline" to be consistent with the terms used in subpart M of this part—Fall Protection.

Paragraph (g)(3)(i) of the final rule requires that vertical lifelines, when used, be fastened to a fixed safe point of anchorage, be independent of the scaffold, and be protected from sharp edges and abrasion. Based on concern that inadequate anchor points may be used, this paragraph also incorporates the language of the note to proposed § 1926.451(e)(3), which stated that safe points of anchorage include structural members of buildings, but do not include standpipes, vents, other piping systems, electrical conduit, outrigger beams, or counterweights. This is the same requirement as was proposed in paragraph (e)(3)(i) of the NPRM and is consistent with the corresponding language in § 1926.451(i)(8) of the existing rule.

Paragraph (g)(3)(ii) of the final rule states that horizontal lifelines, when used, shall be secured to two or more structural members of the scaffold, and shall not be attached only to the suspension ropes. This is the same requirement as was proposed in paragraph (e)(3)(ii). It is designed to provide protection to the employee in the event of a suspension line failure.

Paragraph (g)(3)(iii) of the final rule provides that, when lanyards are connected to horizontal lifelines or structural members on a single-point or two-point adjustable suspension scaffold, the scaffold must be equipped with additional independent support lines and automatic locking devices capable of stopping the fall of the scaffold in the event one or more of the suspension ropes fail. The independent support lines must be equal in number and strength to the suspension ropes. This is the same requirement as proposed paragraph (e)(3)(iii). OSHA believes that in the event of a suspension rope failure, the additional support lines will keep the scaffold from falling.

Paragraph (g)(3)(iv) of the final rule provides that vertical lifelines, independent support lines, and suspension ropes must not be attached to each other, or be attached to or use the same point of anchorage, or be attached to the same point on the scaffold or body belt/harness system. This is essentially the same provision as proposed paragraph (e)(3)(iv), except that the requirements in the final rule also prohibit the attachment of lines and ropes "to the same point on the scaffold or personal fall arrest system." This language reflects the incorporation of the note that accompanied proposed paragraph (e)(3) into paragraph (g)(3)(i) of the final rule, as discussed above.

Issue 19 in the preamble to the proposed rule noted that some single-point adjustable suspension scaffolds which are currently in use have two separate lines (one serves as an independent support line) attached to two separate anchor points; however, both lines are connected to a single point on the body support system. A failure of this single body support mechanism, or body support system, could result in an uncontrolled fall for the employee. OSHA sought comments on the question of whether the final rule should permit the use of such a system. The Agency also asked what criteria would need to be set to ensure that a single mechanism or body support system prevented failures. In addition, OSHA inquired about industry experience with this type of system.

Several commenters (Exs. 2–29, 2–312, 2–367, and 2–368) and the ACCSH (Tr. 6/9/89, pp. 150–151) were in agreement that OSHA should not permit the use of systems of the type described in Issue 19. One commenter (Ex. 2–29) stated simply that "the standard should not allow single-point suspension scaffolds with two separate support lines to be connected to a single point on the body support system."

The SSFI (Ex. 2–367) recommended "that OSHA not permit the use of a lifeline and support line being tied to a single mechanism or body support system. It is our opinion that the lifeline should be an independent anchorage with independent support." Also, the SIA (Ex. 2–368) stated:

> We are opposed to the use of systems in which the lifeline and support line connect to a single mechanism or body support system. The primary suspension line and an independent fall arrest system should each be anchored to separate body support devices, so that in the event one line fails, the other will provide protection. The cost would be equal to the cost of the original suspension, but could be negligible in many instances.

After a careful review of the comments, OSHA has determined that the purpose of having separate lines would be defeated if lines were attached to a single point at either end and that point of attachment failed, and the final rule (paragraph (g)(3)(iv)) reflects this determination.

Final rule paragraph (g)(4) sets criteria for guardrail systems used to provide fall protection for employees working on scaffolds. These provisions are consistent with the corresponding language of recently revised subpart M of this part, Fall protection, except as necessary to address the particular circumstances of construction work performed from scaffolds.

Paragraph (g)(4)(i) of the final rule provides that guardrail systems be installed along all open sides and ends of platforms. This requirement is effectively the same as proposed paragraph (e)(4)(i) and existing § 1926.451(a)(4). OSHA has added language which clarifies when guardrails would need to be in place. In the case of suspended scaffolds, guardrails must be installed before any employee is allowed on a hoisted scaffold. In the case of supported scaffolds, installation must occur before employees are permitted to work from the scaffold. When an employee is on a supported scaffold during the scaffold erection process, fall protection is covered by final rule paragraph (g)(2). This clarification is based on language in the State of California Code, Title 8, paragraph 1637(i)(6) which was submitted to the docket by the California Department of Industrial Relations (Ex. 2–23).

Paragraph (g)(4)(ii) of the final rule provides that the top edge height of toprails or equivalent members on supported scaffolds manufactured or placed into service after January 1, 2000 must be between 38 inches (0.97 m) and 45 inches (1.2 m) above the platform surface. Furthermore, the top edge height of guardrails on supported scaffolds manufactured and placed into service before January 1, 2000 and on all suspended scaffolds where both a guardrail and a personal fall arrest system are required must be between 36 inches (0.9 m) and 45 inches (1.2 m). The final rule also provides that toprail height may exceed 45 inches if the other criteria of paragraph (g)(4) have been satisfied.

In the proposal, paragraph (e)(4)(ii) proposed a toprail height between 38 and 45 inches above the platform surface when the guardrail is the sole means of providing fall protection, and a toprail height between 36 and 45 inches when the guardrail is used in conjunction with a personal fall arrest system. The proposed minimum 36-inch toprail height reflected OSHA's belief that the minimum height requirement for a guardrail used with personal fall arrest systems should be less than that for a guardrail on which employees rely for fall protection.

As discussed in the proposed rule (51 FR 42690), the 38-inch lower limit on guardrail height was proposed in lieu of the 39-inch lower limit on guardrail height allowed by subpart M (Fall protection) to allow for guardrail height differentials caused by scaffold platform unit arrangements. In particular, a frame constructed to hold a toprail 42 inches above a flush-mounted prefabricated deck would be only 40 inches above a scaffold platform made with two-inch solid sawn planks. If the scaffold planks are overlapped to form a long platform, the guardrail height would drop to 38 inches.

In addition, the Agency has determined that employers should have the flexibility, when conditions warrant, to use toprails with heights higher than 45 inches, so long as the other protective criteria of paragraph (g)(4) are satisfied. The language of the proposed rule has been revised to reflect this flexibility. The language of paragraph (g)(4)(ii) of the final rule is consistent with the corresponding language in § 1926.502(b)(1), Fall protection (subpart M).

Issue 12 of the preamble to the proposed rule sought comments on whether OSHA should adopt the language in the 1977 edition of ANSI A10.8–1977, paragraph 3.3, which sets 36 inches above the work platform as the minimum guardrail height and on the effectiveness, feasibility and cost savings of requiring guardrails to be at least 36 inches high. Issue 12 noted that existing § 1926.451(a)(5), which requires that guardrails be "approximately" 42 inches high, has been interpreted over

the years by OSHA to allow a range of 36 inches to 45 inches above the work platform. These interpretations, dating from 1979, are based on OSHA Program Directive #200–67 (Revision 1), issued on October 24, 1978, and later renumbered as OSHA Instruction CPL 2.11A. OSHA notes that the 1988 edition of the pertinent ANSI standard, A10.8–1988, paragraph 4.5.1, accepts toprails that are installed between 36 and 45 inches above lower levels.

OSHA received many comments on the issue of guardrail heights (Exs. 2–9, 2–12, 2–13, 2–20, 2–21, 2–29, 2–41, 2–50, 2–53, 2–54, 2–55, 2–64, 2–69, 2–367, 2–368, 2–390, 2–476, and Tr. 6/9/87, pp 116–121). The comments received ranged from those stating that 36 inches was too low for the bottom of the range, that 36 inches was appropriate, that 45 inches was too high for the top of the allowable range of guardrail heights, and that no change should be made to the range allowed by existing OSHA interpretations (i.e., that allowable heights be between 36 and 45 inches above the work platform). The arguments presented by the commenters are summarized below, along with OSHA's response to these comments and the Agency's reasoning in reaching a final determination on the matter.

Several commenters (Exs. 2–9, 2–20, 2–21, 2–50, 2–53, 2–55, 2–64, 2–69, 2–367, 2–368, 2–390, and 2–476) argued for retention of 36 inches as the minimum guardrail height. The reasons given by these commenters were that "no accident statistics justify changing the current range existing in OSHA standards" (Ex. 2–368), that 36 inches is adequate or reasonable (Exs. 2–21, 2–53 and 2–69), that the height is practical, feasible, and would not incur unmeasurable costs (Ex. 2–64), and that 36 inches is current industry practice (Exs. 2–367 and 2–476). Typical of these comments was the comment of the SIA (Ex. 2–368):

> Guardrails on scaffolds are designed as a perimeter warning for workers confined to small working areas. Workers do not attain body motion speeds and momentum that require the drastic changes proposed.
>
> Doctoral papers and NBS studies used as a basis for the proposals do not deal with the "real" world. Dummies propelled against a guardrail do not represent a true comparison of a human being with sense and reflex ability.
>
> Guardrails for scaffolds, whether they be horizontal systems or crossbrace systems have historically been considered a perimeter indication. Work is performed in localized areas where movement is generally restricted from section to section. Workmen are not subjected to the hazard of "momentum" created by body movement over longer distances as in the case in peripheral railings or balconies and other crowded or congested areas where body weight and force may be accelerated * * *
>
> It is apparent that guardrails of most manufacturers will fall within the proposed 38-inches to 45-inches range. However, there are many in the stream of commerce, and widely used throughout industry, which will not. As an example, the GKN Kwikform scaffold system utilizes a post with guardrail attachment points every 37½". This distance is based on the European standard spacing of one meter [approximately 39 inches]. There is no justification for outlawing the equipment which has been used safely for decades. It is more practical to retain the 36-inches to 45-inches range permitted in the various industry and ANSI standards.

The SSFI (Ex. 2–367) agreed with the SIA, stating as follows:

> The majority of scaffold guardrail posts, manufactured in this country since 1950, has been designed and manufactured to ANSI A10.8 Standard of 36" to 42" guardrail heights. The elimination of the lower 36-inch limit would result in the requirement to scrap all these posts and remanufacture new posts.
>
> The cost to replace guardrail units would be very expensive to the user. In 1983, we estimated that there were at least one million guardrail units being used. Retrofit changes at that time were estimated at $4 per unit or a total of $4,000,000. Replacement costs at $10 per unit would equal $10 million.

In response to this group of commenters, OSHA notes that the absence of accident statistics substantiating the need for higher guardrails reflects on the general inadequacy of occupational injury and illness recording and reporting systems but may well have little or nothing to do with guardrail heights and their relationship with fall hazards. It is OSHA's experience that few accident reports contain the detail that would be necessary to differentiate between the relative protectiveness of guardrail heights of 36 as opposed to 38 or 39 inches. In addition, although guardrails do function as perimeter indicators, they also provide fall protection, and it is this aspect of scaffold guardrails that is of concern in final rule paragraph (g)(4)(ii). Further, although "[d]ummies propelled against a guardrail" (Ex. 2–368) cannot precisely mimic the responses and movement of real workers in the actual work environment, the experiments dismissed by the SIA provide valuable information that cannot be disregarded by OSHA or other safety professionals.

OSHA recognizes the merit of the SIA and SSFI arguments about industry's use of scaffold components (e.g., posts) suitable for 36-inch guardrails (Exs. 2–367 and 2–368), although the Agency also notes that the $4 to $10 per scaffold unit cost for retrofit or replacement, respectively, would not be prohibitive even for the smallest scaffold-using business. Nevertheless, to respond to these concerns, the final rule grandfathers those guardrails manufactured to meet the 36-inch minimum height allowed by OSHA for many years and still accepted by ANSI A10.8–1988. The Agency concludes that allowing the continued use of these guardrails until they are replaced will eliminate any potentially adverse impact of the final rule's determination as regards minimum guardrail heights.

Many commenters (Exs. 2–12, 2–13, 2–29, 2–41, 2–54, 2–407, and Tr. 6/9/87, pp 116–121) share OSHA's concern, as stated in the preamble, that a minimum guardrail height of 36 inches is insufficiently protective. For example, one commenter (Ex. 2–407) stated:

> [T]he guardrail height requirement should be set from 38-inches to 45-inches with a midrail. Our experienced opinion has taught us that 36-inches would be very unsafe. Especially for taller person[s]. * * * As the industry has been set at 42" for so many years we feel that the 38" to 45" all inclusive would be satisfactory to cover the 42" which so many people would now have, thus creating no additional expense.

Two other commenters (Exs. 2–29 and 2–41) also expressed concerns about the adequacy of 36 inch high guardrails for tall employees, as did Lawrence Stafford, a member of both the ANSI A10.8 Committee and the SIA, who commented (Ex. 2–13)

> I and many other members of S.I.A. do not consider 36-inches as safe for all scaffold uses. Due to the narrow width of the platforms on suspended scaffolds, the outboard sides should be protected by a 42-inch high guardrail.

Arguing in the same vein, a representative of OSHA's Advisory Committee on Construction Safety and Health (June 9, 1987 meeting) stated: "I think, if anything, people are getting bigger, not smaller. To leave something down at 36 inches only increases the hazard to the fellow working on a suspended scaffold where he needs a much as he can get * * *" Another representative said that a 36-inch high guardrail "strikes you in the wrong place * * * He goes over the rail or he backs up to it while he's doing some work, it hits him at the wrong point and he's gone." (Tr. 6/9/87, pp. 116–121).

Based on a review of the comments submitted on this issue, the Agency's experience in enforcing this requirement over the years, and OSHA's professional judgment, the final rule allows employers to position scaffold guardrails in the range of 38 to 45-inches on supported scaffolds, as proposed. This range is also consistent

with the guardrail criteria set in the revised standard (subpart M) for Fall protection. However, OSHA recognizes that plank overlap is a legitimate reason to accept a somewhat lower guardrail height on some scaffolds. Thus, although the record indicates that most scaffolds on the market fall within the 38- to 45-inch range (Ex. 2–368), some scaffolds have been manufactured to meet the 36-inch lower guardrail height limit accepted by ANSI. To allow the manufacturers of these scaffolds the necessary time to redesign their systems, the Agency is grandfathering 36-inch guardrail heights on all scaffolds manufactured and installed before January 1, 2000. These scaffolds may continue to be used throughout their normal service life, as long as they continue to meet the other requirements of subpart L.

Final rule paragraph (g)(4)(iii), which is effectively identical to proposed paragraph (e)(4)(iii), states that, when midrails, screens, mesh, intermediate vertical members (such as balusters), solid panels, or equivalent structural members are used, they are to be installed between the top edge of the guardrail system and the scaffold platform. This is essentially the same requirement as existing § 1926.451(a)(5), except that the existing language mentioned only midrails and provided for the use of midrails "when required." In the final rule OSHA has revised the existing language to reflect the variety of options available and to express the Agency's intent clearly.

Final rule paragraphs (g)(4)(iv) through (vi) (proposed as paragraphs (e)(4)(iv)–(vi)) specify the criteria necessary to ensure that the midrails, screens, mesh, and baluster type protection required by paragraph (g)(4)(iii) will be properly placed and effective. Paragraph (g)(4)(iv) requires that midrails, when used, be installed at a height midway between the top edge of the guardrail system and the platform surface. Paragraph (g)(4)(v) requires that screens and mesh, when used, extend from the top edge of the guardrail system to the scaffold platform, and along the entire opening between the supports. Paragraph (g)(4)(vi) requires that intermediate vertical members (such as balusters or additional rails), when used, be not more than 19 inches (48 cm) apart.

The SSFI and SIA (Exs. 2–367 and 2–368) recommended the addition of the word "approximately" to the midrail height required in paragraph (iv). These commenters argued that, without the flexibility provided by this word, the provision was unnecessarily restrictive and did not properly address varying platform heights (such as where adjoining platforms overlap) or the height variations allowed for toprails. OSHA agrees that it is appropriate to allow for such variation, and the final provision reflects this suggestion.

Paragraph (g)(4)(vii) of the final rule provides that toprails or equivalent members be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along their top edge of at least 100 pounds (445 n) for guardrail systems installed on single-point adjustable suspension scaffolds and on two-point adjustable suspension scaffolds, and at least 200 pounds (890 n) for guardrail systems installed on all other scaffolds.

The strength criteria for guardrail systems on single-point adjustable and two-point adjustable suspension scaffolds differ from the criteria set for guardrails used on other types of scaffolds because of the functions guardrails serve on these types of suspension scaffolds. Fall protection on these suspension scaffolds is provided by a combination of personal fall arrest systems (PFAS) and guardrails, rather than by either guardrails or PFAS alone. Guardrails on single-point adjustable and two-point adjustable suspension scaffolds delineate the scaffold edge, restrain movement, provide handholds, and prevent misstepping. A guardrail system can serve these functions without having the strength that would be needed if the guardrails were the primary means of providing fall protection. Therefore, OSHA has set the minimum capacity for guardrail systems used on single-point and two-point scaffolds at 100 pounds rather than at 200 pounds.

This is the same substantive requirement as was proposed in paragraph (e)(4)(vii); however, the language has been modified as discussed above to replace the proposed terms "Type I" and "Type II" guardrails with the pertinent performance criteria. One commenter (Ex. 2–44) recommended that the force requirements be changed to 100 pounds for Type I toprails and 80 pounds for Type II toprails. OSHA has maintained the proposed strength requirements, i.e., 100 pounds, for all toprails because the Agency believes that they are necessary to prevent employees from breaking through toprails if they fall against them.

Final rule paragraph (g)(4)(viii) provides that when the loads specified in paragraph (g)(4)(vii) are applied in a downward direction, the top edge may not drop below the height above the platform surface prescribed in paragraph (g)(4)(ii). Proposed paragraph (e)(4)(viii) was identical to the corresponding requirement in the final rule except that the proposal limited deflection to 38 inches on supported scaffolds (Type I guardrails) and 36 inches on suspended scaffolds (Type II guardrails). The parallel final rule provision does not contain the proposed guardrail designations, for the reasons discussed above, and the provision also reflects minor editorial changes.

Paragraph (g)(4)(ix) of the final rule states that midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members must be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along the midrail or other member of at least 75 pounds (333 n) for guardrail systems with a minimum 100 pound toprail capacity, and at least 150 pounds (666 n) for guardrail systems with a minimum 200 pound toprail capacity. Except for the changes in guardrail system terminology discussed above, this provision is the same as proposed paragraph (e)(4)(ix).

The 150 pound force requirement is not specified in the existing standard. However, the existing requirements (e.g., § 1926.451(b)(15) et al.) require midrails to be made of 1 x 6-inch lumber (or other material providing equivalent protection). The existing standard also requires midrails to be not more than 8 feet long (§ 1926.451(a)(5)), and to be made of a minimum 1,500 fiber stress construction grade lumber (see § 1926.451(a)(9)). On the average, such wooden midrails can support loads up to approximately 160 pounds before breaking. Therefore, OSHA is replacing the specific reference to 1 x 6-inch lumber with the performance criterion of 150 pounds force. Similarly, OSHA has adopted a performance criterion of 50 pounds for toeboards in final rule paragraph § 1926.451(f)(3).

The only commenter (Ex. 2–44) on this issue recommended that the proposed force requirements be changed to 75 pounds for Type I and 40 pounds for Type II midrails. OSHA has not made this change because the Agency believes that the final rule's strength requirements for midrails are necessary to prevent employees from breaking through midrails or other intermediate members of the guardrail system. In addition, OSHA has not maintained the distinction between Type I and Type II midrails made in the proposal.

Final rule paragraph (g)(4)(x) (proposed paragraph (e)(4)(x)) provides that a separate guardrail section is not required on the ends of suspension scaffolds when the scaffold's support system (stirrup) or hoist prevents

passage of employees. One commenter (Ex. 2–8) suggested that OSHA specify a maximum space of 10 inches between the hoist or stirrup and the side guardrail or structure. Another commenter (Ex. 2–28) suggested that the language of this paragraph be changed from "does not allow passage" to "does not allow normal passage without climbing over the stirrup." OSHA has not made the suggested changes because this requirement is clear as written.

Paragraph (g)(4)(xi) (proposed paragraph (e)(4)(xi)) of the final rule requires that guardrail systems be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent the snagging of clothing. This provision is consistent with § 1926.502(b)(6), which sets criteria for guardrails used in construction, other than on scaffolds.

The language of the final rule is effectively identical to that in the proposed rule, except that the proposed rule contained the words "which could cause an employee to fall." OSHA used those words to explain that one reason that guardrail systems should have smooth surfaces is to prevent snagging of clothing. OSHA did not intend by this language to limit protection to those situations where snagging would actually result in a fall. OSHA realizes that other hazards, such as exposure to falling objects, could arise if an employee's clothing snagged on a guardrail surface. In the final rule, OSHA has revised the proposed language accordingly.

The SSFI and SIA (Exs. 2–367 and 2–368) objected to the inclusion of this provision in the final rule. Both commenters stated that the provision would be "impractical in the construction industry because of the different types of equipment used," and would be "unquestionably over-restrictive for the construction industry." The SIA (Ex. 2–368) added "As worded, even the standard guardrail posts could be considered hazardous." OSHA believes that this existing requirement is still needed and is promulgating the proposed provision as editorially revised. The Agency does not intend this provision to be interpreted to mean that guardrail system components have sanded or finished surfaces. Instead, OSHA intends that such surfaces be free of breaks and jagged edges that could cause cuts or lacerations, or snag employee's clothes.

Paragraph (g)(4)(xii) of the final rule, which is effectively identical to proposed paragraph (e)(4)(xii), requires that toprails and midrails not be so long as to constitute a hazard. This is identical to the corresponding provision in subpart M, (Fall protection) § 1926.502(b)(7), and is intended to protect employees from projection hazards.

Paragraph (g)(4)(xiii) of the final rule, which is identical to proposed paragraph (e)(4)(xiii), prohibits the use of steel banding and plastic banding as toprails or midrails. Although such banding can often withstand a 200 pound load, it can tear easily if twisted. In addition, such banding often has sharp edges which can cut a hand if seized. This is identical to the corresponding provision in subpart M (Fall protection), § 1926.502(b)(8).

Paragraph (g)(4)(xiv) of the final rule requires that guardrail systems using manila, plastic or synthetic rope as rails be inspected by a competent person as frequently as necessary to ensure that the guardrails comply with the performance criteria in final rule § 1926.451(g). This provision has been added based on the response to Hearing Notice Issue L–10.

Issue L–10 sought testimony and related information on an ACCSH recommendation (Tr. 212–214, 6/9/87) that the Agency bar the use of manila rope and plastic rope as toprails and midrails of guardrail systems used on scaffolds. This recommendation reflected ACCSH's concern that manila rope and plastic rope can lose strength quickly when exposed to water and sun.

The SIA (Exs. 5a-16 and 10, Tr. 3/22/99, pp. 160–161) disagreed with this view on the grounds that it should not be necessary to restrict the type of material that can be used because other provisions of the standard spell out system strength requirements for guardrails. Another commenter (Exs. 5a-3 and 13) agreed, noting that, particularly for short-term use, "a rope is handy, adequate, and perfectly safe." This commenter stated that these ropes "should not be barred from use on scaffolds providing they are capable of supporting a 100-pound load (Type II) or a 200-pound load (Type I) applied in any direction without excessive deflection."

Zurn Industries (Ex. 2–81) commented that "plastic rope" should be defined, but did not provide such a definition. Zurn also stated "[t]here are synthetic ropes made of plastic materials that do not sag or lose strength when exposed to water or sun." This commenter also suggested applying performance language to all materials used for guardrails since future technology might provide more advanced types of plastic rope.

After carefully considering the above comments and testimony, OSHA believes that it is not necessary to prohibit the use of manila, plastic or synthetic rope as guardrails on scaffolds. The Agency realizes that these types of ropes can deteriorate over time from environmental exposure. However, the Agency also realizes that such ropes can have a useful lifespan before significant deterioration occurs. Consequently, OSHA is promulgating final rule § 1926.451(g)(4)(xiv), which allows the use of plastic, manila or synthetic rope only on condition that such ropes be inspected as often as necessary to ensure their integrity. This provision is consistent with the approach taken in § 1926.502(b)(16), which sets generic performance criteria for guardrails used in construction.

Paragraph (g)(4)(xv) of the final rule permits the use of crossbracing in lieu of either a midrail or a toprail when certain criteria are met. This provision is based on responses to NPRM Issue 13 and the March 29, 1993, reopening of the record. In particular, crossbracing would be accepted in lieu of a toprail when the crossing point is between 38 and 48 inches above the work surface. Also, crossbracing would be accepted in lieu of a midrail when the crossing point is between 20 and 30 inches above the work surface. In addition, the end points of each upright must be no more than 48 inches apart, which will reduce the slope of the crossbracing and result in a surface that is similar to that of a standard guardrail.

The Agency received over 30 comments in response to Issue 13 and the March, 1993 reopening of the record on the issue of the use of crossbracing in lieu of guardrails (Exs. 2–13, 2–14, 2–20, 2–22, 2–26, 2–29, 2–30, 2–37, 2–43, 2–54, 2–55, 2–128, 2–330, 2–367, 2–368, 2–390, 2–476, 34–1, 34–9, 34–10, 34–11, 34–12, 34–15, 34–17, 34–19, 34–22, 34–29, 34–32, 34–34, 34–35, 34–37, 34–39, 34–43, 34–46, and Tr. 6/9/87, pp. 121–126). These comments are discussed below,

Issue 13 of the NPRM sought comments concerning whether OSHA should accept crossbracing on intermediate levels of supported scaffolds as an alternative to the existing and proposed rules requiring guardrail systems on such levels. The Issue raised the question of whether crossbraces are as effective as guardrail-type systems in preventing falls, and asked for comments on two sets of provisions that had been developed by the SIA and other interested industry groups.

Issue 13 presented the first three alternatives as a group (hereafter Items 1(a)–(c)). Item 1(a) would have allowed crossbracing in lieu of a midrail if the crossing point was at or between 20 and

32 inches above the work surface. Item 1(b) provided that crossbracing would be allowed in lieu of both midrail and toprail if the crossing point was at or between 30 and 48 inches above the work surface and the end points of the uprights were 54 inches, or less, apart. Item 1(c) would have prohibited the use of crossbracing in lieu of a toprail or midrail on the top level of a scaffold (Issue 13 repeated this suggested provision as Item 2(c)).

Issue 13 also presented a second set of alternatives for crossbracing (hereafter Items 2(a)–(d)). Item 2(a) provided that crossbracing would be allowed in lieu of a toprail if the crossing point was at or between 39 and 49 inches above the work surface and the endpoints of the uprights were 54 inches, or less, apart. Item 2(b) provided that crossbracing would be allowed in lieu of a midrail if the crossing point was at or between 20 inches and 30 inches above the working surface. Item 2(d) would prohibit the use of crossbracing in lieu of both the toprail and midrail on the same scaffold level at the same time.

Commenters to Issue 13 were split into two groups: those supporting (Exs. 2–14, 2–20, 2–22, 2–26, 2–30, 2–53, 2–55, 2–367, 2–368, 2–390, and 2–476) and those rejecting (Exs. 2–13, 2–29, 2–37, 2–43, 2–54, 2–128, and ACCSH) the use of crossbracing in lieu of guardrails.

The ACCSH (Tr. 6/9/87, pp. 121–129) and six commenters (Exs. 2–13, 2–29, 2–37, 2–43, 2–54 and 2–128) opposed OSHA recognizing crossbracing as a substitute for a standard guardrail. One commenter (Ex.2–13) stated "that there is no substitute for the protection afforded by a constant-height guardrail". The same commenter added that "there is no industry standard to allow a substitution in that the OSHA standards have required guardrail systems since 1971".

On the other hand, those commenters favoring crossbracing argued that crossbracing should be allowed in lieu of the *entire* guardrail system (Exs. 2–14, 2–20, 2–26, 2–30, 2–55, 2–367, 2–368, 2–390, and 2–476), or that crossbracing should be permitted on intermediate levels (Ex. 2–53), or that it should be permitted as a midrail only if the midpoint of the "X" was 20 to 32 inches from the platform (Ex. 2–22).

Specifically, commenters in the group favoring crossbracing argued that requiring guardrails in all situations could result in structural instability (Ex. 2–14), was impractical, increased the likelihood of accidents, could cause problems when attempting to attach guardrails to the scaffold frame, and might raise issues of economic feasibility (Ex. 2–368). Some of these commenters also argued that available statistics did not support retention of the existing rule's prohibition against the use of crossbracing in lieu of guardrails (Exs. 2–20, 2–55, 2–367, 2–368, and 2–390).

For example, one commenter (Ex. 2–14) stated:

> If cross braces and guardrail cannot be placed on the same studs, and only toprails and midrails are used to connect a run of scaffold frames other than the top run, a very hazardous structural situation is created. This is due to the lack of triangulation which crossbraces provide.

The SIA (Ex. 2–368) argued that:

> Each time workers completed one level they would have to remove the guardrail posts and rails, install frames and cross braces, plank the next level, install guardrail posts and rails and repeat the procedure at each level.
>
> The increased work would create a greater possibility of accident than that which it proposes to prevent.

The SIA also commented, argued that:

> It is impractical and economically unfeasible to require manufacturers to call in all their scaffolds for refurbishing. There is no way the owners of scaffolds would comply nor any way the manufacturer could force them to do so. The result would be a far greater hazard due to alteration of the scaffold frames by persons not qualified to perform the delicate welding required on steel scaffold. It is further impossible when you consider the fact that there are hundreds of thousands of separate owners of scaffold frames manufactured by numerous manufacturers, many of which are no longer in business.

The AGC (Exs. 2–20, 2–55, and 2–390) stated that crossbracing can be used as an effective guardrail, because "studies do not reflect actual field conditions and accident statistics do not reflect the need for the existing standard." OSHA notes, however, that inadequate accident statistics and that lack of detailed annotation about the details of accidents that are reported should not be taken as evidence that no relationship exists.

Based on its review of the above-discussed comments, OSHA decided that more information was needed in order to determine if the Agency should allow the use of crossbracing in lieu of guardrail top rails or midrails. Accordingly, on March 29, 1993, OSHA reopened the public record on subpart L (58 FR 16509) for additional input. In particular, the Agency requested comments regarding the extent to which supplemental rail systems could be used with crossbraces to meet the guardrail requirements of subpart L.

The commenters to the Reopening of the record either agreed with or opposed the use of crossbracing in lieu of a guardrail in about the same proportions as the earlier commenters. Their comments, which are closely related to those addressed by the earlier commenters on this issue, are only briefly summarized below:

—Those opposed to the use of crossbracing (Exs. 34–1, 34–11, 34–19, 34–22, 34–29, 34–34, and 34–35) argued that crossbraces would not provide protection equivalent to that provided by standard guardrails, because crossbracing lacks the uniform height and consistent spacing between toprails and midrails that are found in guardrail systems and are necessary for adequate protection (Ex. 34–11); because there are variations in attachment heights, distances between crossmembers, and the strength of the attachment points where crossbracing is used (Ex. 34–34); and because the use of crossbraces may promote shortcuts in scaffold erection since employers might fail to measure the points of the crossbracing or to add toeboards (Ex. 34–19). In addition, one commenter stated that crossbraces should be supplemented by midrails and toprails because employees may fall through the triangular void on either side of the intersection of the braces, and added that crossbraces may give a false sense of security (Ex. 34–35), and another (Ex. 34–22) stated that commercial scaffolds are all capable of being fitted with conventional guardrails, and that crossbraces can, at best, only be used to replace either the toprail or midrail, not both.

—Those supporting the use of crossbracing in lieu of guardrails (midrail or toprail) urged OSHA to adopt certain height requirements for the crossing points of the crossbracing. For example, five commenters (Exs. 34–9, 34–10, 34–12, 34–17, 34–37) stated that crossbracing could be substituted for a midrail as the crossing point of the brace is between 20 and 31 inches above the work surface, while others argued that crossbracing could be used in lieu of a toprail or midrail if the crossing point fell in the range of 30 to 48 inches above the working surface. Another group of participants (Exs. 34–9, 34–10, 34–12, and 34–17) were of the opinion that crossbracing substituting for a midrail should have a crossing point in the 20- to 30-inch range. A large number of commenters (Exs. 34–9, 34–10, 34- 12, 34–17, 34–32, 34–37, and 34–39) stated that end points of the crossbraces must be no more than 54 inches apart.

Another group of commenters (Exs. 34–5, 34–9, 34–10, 34–12, 34–17, 34–22, and 34–29) provided information on supplemental rail systems, such as those produced by Waco, Safway or Nail. These commenters stated that such systems are feasible and would provide protection equivalent to guardrails that comply with proposed subpart L in certain situations.

Donald Nail (Ex. 34–15) commented as follows:

> * * * I have devised a way to enhance scaffold safety. The safety rail which I invented can be conveniently attached to scaffold crossbraces, thus eliminating the excuses of those employers and employees who simply do not want to put them up.
>
> This invention is not currently on the market due to resistance from the scaffold and construction industries. If OSHA regulations were changed to require a guardrail with scaffolding, employer compliance would follow without undue economic hardship. The average cost would be about $5 (plus the rail) per frame as opposed to current systems averaging $30.
>
> The basic concept for my automatic guard rail is that you cannot erect a welded-frame scaffold without crossbraces. The automatic guardrail would be permanently attached to the crossbraces with a slide ring on each end of the rail . . . The guard rail will fold up with the crossbraces when they are taken down for shipping or storage. The crossbraces are easier and quicker to install with the guard rail attached than without, not to mention safer. If the guard rail is permanently attached to the crossbraces the workmen will have installed the guard rails automatically, thereby helping to reduce numerous fatalities and thousands of scaffold injuries each year.

However, commenters opposed to the use of supplemental rail systems (Exs. 34–32, 34–37, and 34–39) argued that the Safway panel can only be installed on walk-through frames that have attachment members on both sides. They added that these systems were designed to be used in cases where crossbracing is not required in every bay.

SIA (Ex. 34–37) commented that the Waco system has not been accepted by industry because: (a) It can only be used on a specific type scaffold frame; (b) It increases the number of pieces three-fold because it also requires two additional rails; (c) It significantly increases the dead load on the scaffold; (d) It has not proved to be economically feasible. The commenter added that Patent Scaffolding Co. has had a similar device consisting of four pieces for 10 years, but that it has not been widely used for the same reasons.

In addition, the SIA contended that the Nails Safety Rails system is not feasible because:

(a) It is a proprietary system which cannot be used universally.

(b) It cannot be used with angle braces which account for 60% of most inventory.

(c) When attached to the crossbrace it becomes permanent (since it is riveted on) and therefore, by its very nature must be used (with the crossbrace) where it would not be required—thus adding considerable more dead load to the scaffold.

(d) It requires another inventory item not usually included in stock.

(e) It requires extra attachments to the scaffold frame.

(f) It creates costly maintenance problems when plaster and cement hinder sliding the rail.

(g) It is not cost effective.

The Agency finds that the supplemental railings discussed above can be used as guardrails in some situations. However, these supplemental systems are not compatible with all scaffolds, and will thus not address the guardrail vs. crossbracing issue. In addition, based on the determination, discussed above, that crossbracing can be used safely in lieu of either a midrail *or* a toprail, but not both, the Agency finds no reason to mandate the use of these supplemental railings. Employers may still use these railing in situations where they are appropriate to protect employees working on scaffolds from fall hazards.

After carefully reviewing the extensive record on this issue, the Agency has determined that it is appropriate to allow crossbracing in lieu of a midrail *or* a toprail (but not both). The crossing point heights and crossbrace endpoint distance spelled out in the final rule are based on a combination of those raised in Issue 13 of the NPRM and those specified in the California code and reflect OSHA's evaluation of the record as a whole.

OSHA disagrees that crossbracing can be used in lieu of both the midrail and the toprail of a standard guardrail system. The principal reasons for this determination are that the voids on each side of the intersection of the crossbraces present a serious fall hazard to employees working on scaffolds, and that the uneven height and spacing of crossbraces also contribute to the fall hazard. For example, if OSHA permitted crossbracing in lieu of both a toprail and a midrail, the voids below the crossing point of the crossbrace could be as high as 48 inches. This would be inconsistent with good safety practice and with subpart M of this part (Fall protection), which requires that openings in walls or other vertical surfaces not exceed 30 inches in height unless a guardrail is installed. In addition, Review Commission decisions (see, for example, 10 OSHRC 1937 and 7 OSHRC 1951) have consistently upheld OSHA's position that crossbracing is not equivalent to a guardrail in the degree of protection provided. Support for the position taken in the final rule also comes from California, where the State Code initially allowed the use of crossbracing in lieu of a guardrail system but was changed in 1976 to limit the use of crossbracing as only a midrail or a toprail, but not both. A review of California's experience shows that permitting the use of crossbracing in lieu of either a midrail or a toprail has not compromised employee safety. Washington State and Arizona both allow such use of crossbracing; OSHA notes that these three states together account for well over 10 percent of all U.S. construction work. In addition, specifics of the California code agree with those in the final rule. For example, California accepts crossbracing as a toprail if the intersection of the "X" occurs at 45 inches (+/−3 inches). Issue 13 suggested a range of 39 to 49 inches for the height of the crossing point, and the final rule accepts a range of 38 to 48 inches to reflect the lower limit of guardrail height permitted by this final subpart L, and the upper limit permitted by the California code.

In addition, the final rule specifies that the end points of each upright be no more than 48 inches apart, not 54 inches as suggested by many commenters and raised in NPRM Issue 13. This spacing (48 inches) is consistent with the California code and will reduce the slope of the crossbracing and result in a flatter surface that is more consistent with that of a standard guardrail, and will provide equivalent protection.

The Agency has concluded that crossbracing where the crossing point is between 20 and 30 inches can serve safely as a midrail since the use of a standard top rail will provide the uniform height that the Agency has determined is necessary, while the use of a toe board will limit the size of any openings (voids) on either side of the crossing point.

Similarly, OSHA believes that where the crossing point occurs in the 38- to 48-inch range the crossbracing must be supplemented by a midrail. Otherwise, an opening as high as 48 inches could occur, allowing an employee to fall. These conditions would also occur if crossbracing were permitted to be used in lieu of a complete standard guardrail. Accordingly, the final rule contains provisions allowing use of crossbraces as a substitute for either the midrail or toprail, but not both, providing that the crossing point and end point distances specified in the final rule are observed.

Paragraph 1926.451(h): Falling object protection.

This paragraph addresses the protection of employees from scaffold-related falling object hazards. Paragraph (h)(1) of the final rule provides that employees working on scaffolds wear hardhats and be protected from falling hand tools, debris, and other small objects through the installation of toeboards, screens, or guardrail systems or through the erection of debris nets, catch platforms, or canopy structures that deflect falling objects. In addition, when the falling objects to which employees on scaffolds may be exposed are too large, heavy or massive to be contained or deflected by any of the above-listed measures, the employer must protect affected employees by placing any such potential falling objects away from the edge of a surface from which they might fall and must secure those materials as necessary to prevent their falling.

This provision is similar to proposed paragraph (f)(1), which was based on existing §§ 1926.451(a)(16) and (h)(13). OSHA has added the phrase "hand tools, debris, and other small" to describe the type and size of objects that OSHA expects would be handled by toeboards, screens, guardrails, canopies, debris nets and catch platforms. In addition, the Agency has added language which requires that employers place materials away from an edge over which they might fall and secure those objects as necessary to prevent their falling, if those materials are so large, heavy or massive that the above-listed measures would not contain or deflect them. The changes that have been made to this requirement since the proposal are based on comments received from the SSFI and the SIA (Exs. 2–367 and 2–368) indicating that "compressors, marble, pipe, large bolts, etc. could be potentially falling objects" and that it is unreasonable to require guarding against such large objects.

OSHA agrees that the protective measures required by the proposed paragraph would not be adequate to withstand large objects. For example, a slab of marble facing would smash through screens or guardrails if it had not been properly stored and retained. In fact, an object of this mass would probably crash through a debris net or even a catch platform or protective canopy. As provided by the final rule, the appropriate way to protect affected employees from such large items is to locate those items away from the edge and to secure them to keep them from falling.

Because objects falling from scaffolds may injure employees working below, final rule paragraph (h)(2) requires employers to protect affected employees from that hazard and sets forth several alternative means by which employers can provide the required protection. The provisions of proposed paragraph (f)(2) were identical, except that debris nets and catch platforms have been added to the final rule, because, based on review of the rulemaking record, OSHA considers such measures to be acceptable alternatives.

Paragraph (h)(2)(i) provides for the use of barricades on lower levels to exclude employees from areas where falling objects might land. Compliance with this new provision will enable employers to eliminate employee exposure to the hazard.

Under paragraph (h)(2)(ii), employers would be required to provide toeboards along the edge of platforms more than ten feet above lower levels for a distance sufficient to protect workers below, except that on float (ship) scaffolds, an edging of ¾ inch × 1½ inch wood, or a material with equivalent strength, may be used in lieu of a toeboard. This provision differs from existing § 1926.451(a)(4), which requires toeboards to be erected along the entire length of all open sides and ends of all scaffolds more than 10 feet high. The final rule, like proposed paragraph (f)(2)(ii), requires toeboards only where needed to protect employees below from falling object hazards.

For example, on a long scaffold where employees are working on the ground near one end of the scaffold, compliance with this provision would require the scaffold to have a toeboard at the end over the employees below, but not at the other end. This would be the case regardless of the height of the scaffold work platform. This change recognizes that toeboards and equivalent members are for the protection of employees below. Accordingly, if no employees are exposed, no protective measures are necessary.

Paragraph (h)(2)(iii) of the final rule provides, as an alternative, for erection of paneling or screening in cases where tools or other materials are piled to a height higher than the top edge of a toeboard. The panel or screen must extend from the toeboard (or platform) to the top of the guardrail and be erected for a distance sufficient to protect employees below. In addition, the panel or screen would need to be capable of withstanding, without failure, a force of at least 150 pounds, applied in any downward or outward direction at any point along the screen (to comply with paragraph (g)(4)(ix)). This provision is effectively identical to proposed paragraph (f)(2)(iii). The proposed rule referenced the proposed § 1926.502 criteria for screens, while the final rule directly incorporates the applicable strength requirement from § 1926.502(b)(5), Fall protection (subpart M). OSHA believes that this revision will facilitate compliance by eliminating the need for employers to look up a cross reference.

Paragraph (h)(2)(iv) of the final rule allows employers to protect employees from falling objects through the installation of a guardrail system which complies with § 1926.451(g)(4) and which has openings small enough to reject passage of potential falling objects. This provision is identical to proposed paragraph (f)(2)(iv).

Paragraph (h)(2)(v) of the final rule provides that employers can protect employees working below scaffolds from falling objects through the installation of debris nets, catch platforms, or canopies that have sufficient strength to withstand the impact forces of potential falling objects.

In contrast to final rule paragraph (h)(2)(v), proposed paragraph (f)(2)(v) provided only for the use of a canopy structure. OSHA has added debris nets and catch platforms to this provision in response to the statement by Bristol Steel (Ex. 5a–3) that debris nets or catch platforms immediately below a scaffold could be more protective than a canopy many feet below. The Agency agrees that properly installed debris nets and catch platforms in place immediately below a scaffold will stop objects from falling closer to the source, and will lessen the possibility that these falling objects will pick up momentum and bounce off the canopy, injuring workers some distance from the area below the scaffold.

Hearing Notice Issue L–13 sought testimony and comments on a suggestion by the ACCSH (Tr. 6/9/87, 214–15) that proposed § 1926.451(f)(2)(v) specify nine feet as the proper height for the placement of a canopy. The ACCSH noted that the proposed requirement did not specify a height for canopy placement. According to the ACCSH, a canopy set at 15 or 20 feet would not protect employees below. However, the Advisory Committee did not provide a supporting rationale for its position.

Both the SIA (Exs. 10 and 5a–16, and Tr. 3/22/88, pp. 162–163) and SSFI (Ex. 5a–19) supported the placement of the canopy at a height of 10 feet. The SIA pointed out that standard scaffold frames are six-feet high and adding a three-foot frame would raise the canopy top, including the plank, to a height of

almost 10 feet. The SIA suggested that OSHA specify a "maximum" distance of 10 feet, noting that the proposed standard would not have allowed for any variation to accommodate these standard frames. The SSFI's comment stated that canopies "should be erected no greater than 10 feet above the work surface" and that because the intent of this requirement was to provide employee protection from small falling objects and/or light debris, "the term 'reasonable' should be included within the definition." In addition, the SSFI asked what anticipated impact forces such canopies would be required to withstand.

The National Chimney & Cooling Tower Association (Ex. 2–593) indicated that no height restriction was appropriate for canopies. The commenter stated that restricting the height would severely hamper equipment access. Bristol Steel (Ex. 5a–3) supported allowing maximum flexibility for designing various types of falling object protection for varying situations. This commenter stated that there should be no limitation on canopy height as long as the canopy functions as intended.

After carefully considering the comments and testimony received in response to this issue, OSHA believes that specifying a maximum height for canopy placement could unnecessarily restrict the use of equipment. In addition, the Agency believes that the use of performance-oriented language, requiring that canopies be strong enough to withstand the impact forces of potential falling objects, will ensure employee safety and at the same time provide the flexibility necessary to respond adequately to advances in technology as well as unusual or changing work-site conditions. The employer is responsible for determining the maximum size of potential falling objects and providing the appropriate protection.

Final rule paragraph (h)(3) sets criteria for the use of canopies. Paragraph (h)(3)(i) of the final rule, which is identical to proposed paragraph (f)(1)(i), requires that canopies be installed between the falling object hazard and the employees. Paragraph (h)(3)(ii) of the final rule, which is identical to proposed paragraph (f)(1)(ii), requires the use of additional independent support lines to support the scaffold in the event of suspension support rope failure, in cases where canopies are used for falling object protection on suspended scaffolds. The reason for this requirement, as stated in the discussion of final rule paragraph (g)(3), is that in the event of a suspension rope failure, the additional lines would keep the scaffold from falling.

Paragraph (h)(3)(iii) of the final rule, which is identical to proposed paragraph (f)(1)(iii), requires that independent support lines and suspension ropes not be attached to the same point of anchorage. This new provision will prevent the loss of the backup safety systems in the event of suspension rope anchorage failure.

Final rule paragraph (h)(4) sets strength criteria for toeboards. Paragraph (h)(4)(i), which is a new requirement, requires that toeboards be capable of withstanding, without failure, a force of at least 50 pounds applied in any downward or horizontal direction at any point along the toeboard. This provision contains a note which indicates that toeboards built in accordance with Appendix A of subpart L will be deemed to comply with the standard. This provision, which is consistent with the corresponding requirement in OSHA's Fall Protection standard, § 1926.502(j)(2) (subpart M), is identical to proposed paragraph (f)(3)(i).

Final rule paragraph (h)(4)(ii) sets forth the construction requirements for toeboards. This provision requires that toeboards be at least three and one-half inches high, fastened securely in place, and have not more than ¼-inch clearance above the walking/working surface. In addition, toeboards must be solid or have openings no greater than one inch in the greatest dimension. This provision, which is consistent with the corresponding requirement of the Fall Protection standard, § 1926.502(j)(3) (subpart M), is identical to proposed paragraph (f)(3)(ii), except as discussed below.

OSHA received one comment on proposed paragraph (f)(3)(ii). That commenter (Ex. 2–29) recommended a maximum space of ¼-inch between the lower edge of the toeboard and the platform instead of the proposed ½-inch on the grounds that "many small tools and fastener materials can pass through a ½-inch opening." OSHA agrees that reducing this opening will enhance employee protection and has changed the language of the final rule accordingly.

Other Issues Related to § 1926.451

Issue L–7 of the hearing notice solicited testimony and related information on the extent to which proposed § 1926.451 ("General requirements") adequately covers smokestack hoist scaffolds. The Agency also requested testimony and information on stack hoist hazards not addressed by the general requirements, and explained that the issue was being raised in light of ongoing efforts to update ANSI standard A10.22, Safety Requirements for Rope Guided and Non-Guided Workmen's Hoists. OSHA noted that the final rule might need to include provisions to address the hazards unique to stack hoist scaffolds. However, because stack hoist scaffolds are included in the definitions of "scaffold" and "suspension scaffold" used in the scaffold rules, OSHA concludes that the final rule does not need to include specific coverage for stack hoist scaffolds. OSHA notes that, since the proposal, the ANSI A10.22–1977 standard for stack hoist scaffolds has been rescinded and has not been replaced.

§ 1926.452 Additional Requirements Applicable to Specific Types of Scaffolds

Section 1926.452 of the final rule contains requirements that supplement the requirements of § 1926.451 with regard to particular types of scaffolds. The identified scaffolds have unique features which require specific attention. This approach is consistent with that taken in existing §§ 1926.451 (b) through (y), which set out additional provisions for specific types of scaffolds.

OSHA received comments (Exs. 2–13 and 2–23) which suggested that specific scaffold design criteria and fall protection requirements be added to proposed § 1926.452 (particularly to proposed paragraphs (i), (l), (m), (q), (r), (s), (t), (u) and (v)). OSHA has determined that compliance with the performance-oriented provisions of final rule §§ 1926.451 and 1926.452, taken together, will provide adequate protection for employees working on scaffolds. Further, the Agency believes that the specification language suggested by the commenters would limit innovation and impose unreasonable burdens on employers.

As discussed in the preamble to the proposed rule (51 FR 42691–6), many existing § 1926.451 requirements are not being carried forward in final rule § 1925.452 because the topics they address (capacity, construction, access, fall protection and falling object protection) are covered by provisions in final rule § 1926.451. The provisions being reordered are presented in Table 1, which shows the requirement in OSHA's existing rule and the corresponding provision in the final rule being published today.

TABLE 1.—PROVISIONS BEING REORDERED IN THE FINAL RULE

Existing paragraph	Final rule paragraph
§ 1926.451(b)(1)	§ 1926.451(c)(3), (d)(1)
§ 1926.451(b)(3)	§ 1926.451(b)(3)
§ 1926.451(b)(4)	§ 1926.451(c)(2)
§ 1926.451(b)(6)	§ 1926.451(a)(1)
§ 1926.451(b)(8)	§ 1926.451(d)(1)
§ 1926.451(b)(11)	§ 1926.451(b)(1)
§ 1926.451(b)(12)	§ 1926.451(b)(4), (6) and § 1926.451(a)(1)
§ 1926.451(b)(13)	§ 1926.451(b)(7)
§ 1926.451(b)(15)	§ 1926.451(g)
Tables L–4 through L–9	§ 1926.451(a)(1) and (g)
§ 1926.451(c)(1)	§ 1926.451(a)(1) and (c)(1)
§ 1926.451(c)(2)	§ 1926.451(a)(1) and (c)(1)
§ 1926.451(c)(3)	§ 1926.451(a)(1) and (c)(1)
§ 1926.451(c)(5)	§ 1926.451(a)(1)
§ 1926.451(c)(6)	§ 1926.451(d)(1)
§ 1926.451(c)(7) [last sentence]	§ 1926.451(a)(1)
§ 1926.451(c)(12)	§ 1926.451(c)(2)
§ 1926.451(c)(13)	§ 1926.451(g)
Tables L–10 through L–12	§ 1926.451(a)(1)
§ 1926.451(d)(1)	§ 1926.451(a)(1)
§ 1926.451(d)(4)	§ 1926.451(b)(15)
§ 1926.451(d)(7)	§ 1926.451(b)(14)
§ 1926.451(d)(8)	§ 1926.451(a)(1) and Appendix A
§ 1926.451(d)(10)	§ 1926.451(g)
§ 1926.451(q)(2)	§ 1926.451(b)(1)
§ 1926.451(q)(3)	§ 1926.451(e)
§ 1926.451(q)(4)	§ 1926.451(g)
§ 1926.451(n)(1)	§ 1926.451(a)(1)
§ 1926.451(n)(2)	§ 1926.451(a)(1)
§ 1926.451(n)(5)	§ 1926.451(a)(1)
§ 1926.451(n)(7)	§ 1926.451(c)(3)
Table 15	§ 1926.451(a)(1)
§ 1926.451(o)(2)	§ 1926.451(a)(1)
§ 1926.451(o)(3)	§ 1926.451(a)(1)
§ 1926.451(o)(6)	§ 1926.451(f)(5)
§ 1926.451(o)(7)	§ 1926.451(g)
Table 16	§ 1926.451(a)(1)
§ 1926.451(m)(1)	§ 1926.451(a)(1)
§ 1926.451(m)(3)	§ 1926.451(a)(1)
§ 1926.451(m)(4)	§ 1926.451(a)(1)
§ 1926.451(m)(5)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5)
§ 1926.451(m)(6)	§ 1926.451(g)
§ 1926.451(x)(1)	§ 1926.451(a)(1)
§ 1926.451(x)(2)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5)
§ 1926.451(x)(3)	§ 1926.451(f)(2)
§ 1926.451(x)(4)	§ 1926.451(a)(1) § 1926.451(b)(1) § 1926.451(b)(4) § 1926.451(b)(5)
§ 1926.451(x)(5)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5) § 1926.451(g)
§ 1926.451(x)(6)	§ 1926.451(a)(1) § 1926.451(b)(4) § 1926.451(b)(5) § 1926.451(g)
Tables L–17, 18 and 19	§ 1926.451(a)(1) § 1926.451(g)
§ 1926.451(g)(1) (in part)	§ 1926.451(a)(1)
§ 1926.451(g)(4)	§ 1926.451(b)(3) § 1926.452(i)(8)
§ 1926.451(g)(5)	§ 1926.451(g)
Table L–13	§ 1926.451(a)(1)
§ 1926.451(y)(1)	§ 1926.451(a)(1) § 1926.451(f)(2)
§ 1926.451(y)(3)	§ 1926.451(b)(1)
§ 1926.451(y)(4) (i) and (ii) (also (iii) in part)	§ 1926.451(a)(1)

TABLE 1.—PROVISIONS BEING REORDERED IN THE FINAL RULE—Continued

Existing paragraph	Final rule paragraph
§ 1926.451(y)(5) (also (y)(6) and (y)(7) in part)	§ 1926.451(c)(3)
§ 1926.451(y)(9)	§ 1926.451(e)
§ 1926.451(y)(10)	§ 1926.451(a)
§ 1926.451(y)(11)	§ 1926.451(g)
§ 1926.451(s)(5)	§ 1926.451(a)(1)
	§ 1926.451(b)(5)
§ 1926.451(s)(6)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(t)(3)	§ 1926.451(g)
§ 1926.451(t)(4)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(k)(1)	§ 1926.451(d)(13)
§ 1926.451(k)(2)	§ 1926.451(d)(14)
§ 1926.451(k)(3)	§ 1926.451(d)(15)
§ 1926.451(k)(4)	§ 1926.451(d)(16)
§ 1926.451(k)(5)	§ 1926.451(f)(3)
§ 1926.451(k)(8)	§ 1926.451(d)(2) through (d)(16)
§ 1926.451(k)(9)	§ 1926.451(g)
§ 1926.451(k)(10)	§ 1926.451
§ 1926.451(l)(4)	§ 1926.451(g)
§ 1926.451(l)(6)	§ 1926.451(d)(5)
§ 1926.451(h)(1)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(h)(2)	§ 1926.451(d)(13)
§ 1926.451(h)(3)	§ 1926.451(a)(2)
§ 1926.451(h)(4)	§ 1926.451(d)(4)
§ 1926.451(h)(5)	§ 1926.451(a)(1)
§ 1926.451(h)(6)	§ 1926.451(a)(1)
	§ 1926.451(d)(3)(i)
§ 1926.451(h)(7)	§ 1926.451(d)(4)(iii)
§ 1926.451(h)(8)	§ 1926.451(d)(4)(i)
§ 1926.451(h)(9)	§ 1926.451(d)(2)
§ 1926.451(h)(10)	§ 1926.451(d)(9)
	§ 1926.451(d)(7)
§ 1926.451(h)(11)	§ 1926.451(d)(4)(iv)
§ 1926.451(h)(12)	§ 1926.451(a)(1)
§ 1926.451(i)(2)	§ 1926.451(g)
§ 1926.451(i)(9)	§ 1926.451(d)(18)
§ 1926.451(j)(1)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(j)(2)	§ 1926.451(d)(13)
§ 1926.451(j)(3)	§ 1926.451(b)(4)
	§ 1926.451(b)(5)
§ 1926.451(j)(4)	§ 1926.451(d)(4)
	§ 1926.451(d)(5)
§ 1926.451(j)(5)	§ 1926.451(d)(4)(iii)
	§ 1926.451(d)(3)
	§ 1926.451(d)(4)(i)
§ 1926.451(j)(6)	§ 1926.451(a)(1)
	§ 1926.451(a)(2)
§ 1926.451(j)(7)	§ 1926.451(d)(9)
	§ 1926.451(d)(7)
§ 1926.451(j)(8)	§ 1926.452(q)(1)
	§ 1926.452(q)(2)
§ 1926.451(j)(9)	§ 1926.451(g)
§ 1926.451(w)(1)	§ 1926.451(a)(1)
	§ 1926.451(f)(2)
§ 1926.451(w)(2)	§ 1926.451(a)(1)
§ 1926.451(w)(4)	§ 1926.451(g)
§ 1926.451(w)(5)	§ 1926.451(a)(2)
	§ 1926.451(f)(4)
§ 1926.451(w)(6)	§ 1926.451(g)
§ 1926.451(r)(2)	§ 1926.451(a)(2)
	§ 1926.452(t)(3)
§ 1926.451(r)(3)	§ 1926.451(a)(1)
§ 1926.451(r)(4)	§ 1926.451(a)(1)
§ 1926.451(r)(5)	§ 1926.451(g)
§ 1926.451(e)(1)	§ 1926.451(c)(2)
§ 1926.451(e)(2)	§ 1926.451(a)(1)
	§ 1926.452(w)(2)
§ 1926.451(e)(4)	§ 1926.451(b)(1)

TABLE 1.—PROVISIONS BEING REORDERED IN THE FINAL RULE—Continued

Existing paragraph	Final rule paragraph
§ 1926.451(e)(5)	§ 1926.451(e)(1) § 1926.451(e)(2) § 1926.451(e)(3)
§ 1926.451(e)(8)	§ 1926.451(c)(3) § 1926.451(d)(1) § 1926.452(w)(2)
§ 1926.451(e)(10)	§ 1926.451(g)

Paragraph (a) Pole Scaffolds

Final rule paragraph (a) sets requirements for the proper use of bearers, braces and runners on pole scaffolds. The corresponding provision in existing § 1926.451(b) is titled "Wood pole scaffolds." The final rule has deleted the word "wood" from the title of the paragraph, since pole scaffolds can be constructed of other materials. In addition, the final rule provides that pole scaffolds over 60 feet in height be designed by a registered professional engineer, and must be constructed and loaded in accordance with that design. The provision also notes that non-mandatory Appendix A contains examples of criteria that will enable an employer to comply with design and loading requirements for pole scaffolds under 60 feet in height. These provisions are virtually identical to those in the proposal, except for minor editorial revisions for the sake of clarity, as discussed below. In addition, as illustrated by Table 2, many existing § 1926.451(b) requirements are being carried forward in paragraph (a) of § 1926.452 of the final rule.

TABLE 2.—PROVISIONS BEING RENUMBERED IN THE FINAL RULE

Existing paragraph	Final rule paragraph
§ 1926.451(b)(14)	§ 1926.452(a)(1)
§ 1926.451(b)(9)	§ 1926.452(a)(2)
§ 1926.451(b)(10)	§ 1926.452(a)(3)
§ 1926.451(b)(10)	§ 1926.452(a)(4)
§ 1926.451(b)(5)	§ 1926.452(a)(5)
§ 1926.451(b)(5)	§ 1926.452(a)(6)
§ 1926.451(b)(6)	§ 1926.451(a)
§ 1926.451(b)(7)	§ 1926.452(a)(7)
§ 1926.451(b)(7), (10)	§ 1926.452(a)(8)
§ 1926.451(b)(2)	§ 1926.452(a)(9)
§ 1926.451(b)(16)	§ 1926.452(a)(10)

OSHA received three comments (Exs. 2–13, 2–367 and 2–368) on proposed § 1926.452(a). The SSFI (Ex. 2–367) recommended that OSHA change the term "Ledger" to "Runners" because "Runners" is the correct terminology. OSHA agrees and has incorporated that change into paragraph (a) of the final rule.

The other commenters (Exs. 2–13 and 2–368) objected to the proposed deletion of the word "wood" from the title of this paragraph, stating that this section refers only to wood pole scaffolds. OSHA believes that all pole scaffolds, whatever their composition, need to be covered by the criteria of proposed paragraph (a) and, accordingly, has not made the suggested change.

Finally, the Agency has editorially revised the text of final rule § 1296.452(a)(10) to clarify that non-mandatory Appendix A contains examples of criteria that will enable an employer to comply with design and loading requirements for pole scaffolds under 60 feet in height, and that pole scaffolds over 60 feet in height must be designed by a registered professional engineer. This revision highlights the fact that the proposed criteria and now the final rule criteria in non-mandatory Appendix A are limited to heights of less than 60 feet.

Paragraph (b) Tube and Coupler Scaffolds

Paragraph (b) sets requirements for the use of bearers, bracing, runners and couplers on tube and coupler scaffolds. In addition, the final rule provides that tube and coupler scaffolds over 125 feet in height be designed by a registered professional engineer, and be constructed and loaded in accordance with such design. The provision also notes that non-mandatory Appendix A contains examples of criteria that will enable an employer to comply with design and loading requirements for tube and coupler scaffolds under 125 feet in height. These provisions are virtually identical to the proposed provisions, except as discussed below.

Final rule paragraph (b)(1), which is identical to the corresponding provision of the proposed rule, is a new requirement for tube and coupler scaffolds. This provision requires that platforms not be moved until the next location has been properly prepared to support the platform being moved. This is the same requirement as existing § 1926.451(b)(14) (final rule § 1926.452(a)(1)) for wood pole (pole) scaffolds. This rule was added to this section because it addressed the problem of platform stability during construction, a problem which exists for tube and coupler scaffolds as well as pole scaffolds.

Paragraph (b)(2) of the final rule requires the installation of transverse bracing at the scaffold ends and, at least, at every third set of posts horizontally and every fourth post vertically. This paragraph provides for diagonal bracing from the outer or inner posts or runners upward to the next outer or inner posts or runners. In addition, building ties must be installed at the bearer levels between the diagonal braces in conformance with § 1926.451(c)(1). This provision is consistent with existing § 1926.451(c)(10).

This requirement differs from the proposed paragraph (b)(2), which required transverse bracing to be installed for each section of six levels between the fourth and sixth level.

The SSFI and the SIA (Exs. 2–367 and 2–368) recommended that transverse bracing be installed at the base and be repeated every third and fourth level vertically, and that building ties be installed "at bearer levels adjacent to the bracing" (Ex. 2–367), or at "the bearer levels between the diagonal brace[s]" (Ex. 2–368). In support of the suggested change, the SIA (Ex. 2–368) stated "[t]his revision would correct the inaccuracy which has existed for years in the current standard and will conform to proper engineering criteria." Another commenter (Ex. 2–15) pointed out that the proposal did not require transverse bracing at the base of the scaffold. In addition, a commenter (Ex. 2–42) recommended that transverse bracing be installed at the scaffold ends and at least at every third set of posts, that such bracing be installed on every level and that it extend diagonally from the inner or outer posts or runners.

OSHA has determined that the proposed bracing specifications would not provide adequate structural stability for tube and coupler scaffolds. In

particular, OSHA has concluded that bracing at the third and fourth levels, as suggested by the SSFI and the SIA and as provided in ANSI A10.8–1988, paragraph 8.11, will provide appropriate stability. On the other hand, the Agency believes that bracing at every level would be unnecessarily burdensome, perhaps even affecting the capacity of the scaffold. Therefore, OSHA is returning to the approach taken by existing § 1926.451(c)(10). The Agency has concluded that compliance with the suggested provisions will increase scaffold stability appropriately and has revised the final rule to reflect this finding. In addition, OSHA has drafted the final provision to indicate clearly that the placement of building ties must comply with final rule § 1926.451(c)(1) (proposed as § 1926.451(b)(13)).

Paragraph (b)(3) of the final rule, which is basically the same as the proposed paragraph, is based on existing § 1926.451(c)(11). This provision sets requirements for the installation of longitudinal bracing across the inner and outer rows of posts for straight run scaffolds. In particular, such bracing must be installed diagonally in both directions and shall extend from the base of the end posts upward to the top of the scaffold at a 45 degree angle. Where scaffold length is greater than height, bracing shall be repeated at least at every fifth post. Where scaffold length is less than height, such bracing shall be installed from the base of the end posts upward to the opposite end posts and then in alternating directions until reaching the top of the scaffold. In addition, bracing shall be installed as close as possible to the intersection of the bearer and post or of the runner and post. The proposed provision was identical, except that it did not specify that only straight run scaffolds were covered or that the bracing had to be installed as close as possible to a post's intersection with bearers or runners.

The SSFI and the SIA (Exs. 2–367 and 2–368) suggested that OSHA limit application of the proposed provision to straight run scaffolds and that the Agency specify the proximity of bracing to the intersection of posts with bearers or runners. The Agency believes that limiting the provision to straight run scaffolds is appropriate, since when a tube and coupler scaffold is installed around circular structures or at corners, the inside leg is braced in the direction perpendicular to the walkway (platform) because the runners come in at less than 180 degrees. In addition, OSHA agrees that it is appropriate to include requirements regarding where to position bracing, and the final provision has been written accordingly. (Bracing requirements for those tube and coupler scaffolds that are not straight run scaffolds are found in final rule § 1926.451(c).)

Paragraph (b)(4) of the final rule requires that bracing be attached to the runners as close to the post as possible, where conditions preclude attachment of bracing to posts. This provision is basically the same as the proposed provision, which was based on existing § 1926.451(c)(11). OSHA has modified this provision based on comments from the SSFI and the SIA (Exs. 2–367 and 2–368) which suggested that "as close to the post as possible" be added to the end of this paragraph. The Agency recognizes that attachment to the post, while the most desirable option, is not always possible. In circumstances where such attachment is not possible, OSHA has determined that attachment to the runner, as close as possible to the post, will still maximize directional stability and provide the strength necessary to properly brace the scaffold.

Paragraphs (b)(5) through (b)(10) of the final rule are identical to corresponding provisions of the proposed rule, except for some minor editorial revision to paragraph (b)(10). As explained in the preamble to the proposed rule (51 FR 42691), these provisions are based on existing §§ 1926.451 (b) and (c).

Paragraph (c) Fabricated Frame Scaffolds

Paragraph (c) of the final rule provides additional requirements for fabricated frame scaffolds (tubular welded frame scaffolds). Two commenters (Exs. 2–13 and 2–320) recommended that OSHA retain the title, "Tubular Welded Frame Scaffolds" used in the existing rule. As discussed above in reference to the definitions in § 1926.450(b), however, OSHA has not followed this suggestion but has retained the existing title in parentheses after the new title. Paragraph (c) of the final rule is virtually identical to the corresponding provision in the proposal except as discussed below.

Paragraph (c)(1) of the final rule is a new requirement for fabricated frame scaffolds. It requires that platforms not be moved until the next location is properly prepared and ready to support the platform being moved. This provision is necessary to ensure that the scaffold is positioned on a level and stable surface, as discussed for final rule § 1926.451(b)(1), above.

Final rule paragraphs (c)(2), (c)(3) and (c)(6), which are identical to the corresponding proposed paragraphs, are effectively identical to existing § 1926.451(d) (3), (5) and (9), respectively.

Final rule paragraph (c)(4), which is identical to the parallel provision of the proposed rule, requires the locking together of end frames, and is essentially the same as existing § 1926.451(d)(6). This requirement only applies where uplift forces are strong enough to displace the end frames or panels, such as when a hoist is being used that could snag the scaffold during a hoist operation.

Final rule paragraph (c)(5) specifies the proper placement of platform support brackets. Improper placement of such cantilever supports can significantly reduce their support capacity and thus endanger employees working on top of the platform. Proposed paragraph (c)(5) set seating requirements for brackets and required that brackets not be bent or twisted from those positions. This provision of the final rule is identical except that it also allows the use of bracket systems to support loads other than employees only where the system has been designed and built to withstand the tipping forces imposed by those other loads.

OSHA received comments from the SSFI and the SIA (Exs. 2–367 and 2–368) suggesting that such brackets be allowed for the support of personnel but not for the storage or support of materials. Based on those comments, Issue L–8 of the hearing notice solicited testimony and supporting information regarding the revision of proposed § 1926.452(c)(5) to require that side brackets on fabricated frame scaffolds "* * * be used to support personnel only and shall not be used for storage or support of materials." OSHA also indicated that, in the Agency's opinion, this area would be adequately covered by proposed § 1926.451(a)(1), which sets capacity requirements, and proposed § 1926.451(d)(1), which prohibits overloading.

The SIA (Exs. 5a–16 and 10) stated that, since users may not know the load capacities of their side brackets without consulting a loading table, they may unintentionally overload the units. The SIA explained that "employees tend not to respect the dangers involved" with side bracket loads, which "induce an eccentric load and overturning propensity on the scaffold system." They further noted that the "aisle" provided by a series of side brackets is typically 20 inches wide, which provides insufficient room for employees to step around stored material. The SIA testimony (Tr. 3/22/88, p. 160) repeated these concerns but added that bracket systems properly

designed to take loads other than workers should not be prohibited by the final rule.

Bristol Steel (Exs. 5a–3 and 13) stated that proposed § 1926.451(a)(1) and (d)(1) would adequately address the SIA and SSFI concerns, and therefore did not support the suggested additional language.

After carefully considering the above-described comments, OSHA has determined that fabricated frame scaffolds which utilize bracket systems must be used only to support personnel, unless the scaffold has been designed for other loads by a qualified engineer and been built to withstand the tipping forces caused by the loads being placed on the bracket supported section of the scaffold. The final rule reflects this determination (paragraph (c)(5)(iii)). OSHA believes that compliance with this requirement will provide employees working on fabricated frame scaffolds with the protection they need while working on this type of scaffold.

Paragraph (d) Plasterers', Decorators' and Large Area Scaffolds

(d) of the final rule requires that plasterers', decorators' and large area scaffolds be constructed in accordance with § 1926.452(a), (b), or (c) of this section. This requirement is identical to that in the proposed rule. Paragraph (d) references the provisions of paragraphs (a), (b), and (c) because plasters', decorators' and large area scaffolds are almost always constructed using pole scaffolds, tube and coupler scaffolds, or fabricated frame scaffolds. The existing rule, § 1926.451(q)(1), required that the scaffolds in question be built only according to the existing rules for pole scaffolds. OSHA believes that compliance with the provisions of §§ 1926.452(a), (b) or (c) will provide appropriate protection for employees covered by paragraph (d).

Paragraph (e) Bricklayers' Square Scaffolds (Squares)

Paragraph (e) provides additional requirements for bricklayers' square scaffolds (squares). This paragraph requires that scaffolds made of wood be reinforced with gussets on both sides of each corner (paragraph (e)(1)); that diagonal braces be installed on all sides of each square (paragraph (e)(2)); that diagonal braces be installed between squares on the rear and front sides of the scaffold, and extend from the bottom of each square to the top of the next square (paragraph (e)(3)); and that scaffolds of this type not exceed three tiers in height, that they be constructed and arranged so that one square rests directly above the other, and that the upper tiers stand on a continuous row of planks laid across the next lower tier and be nailed down or otherwise secured to prevent displacement (paragraph (e)(4)). These requirements are identical to those in the proposed rule.

Final rule paragraphs (e)(1), (2), and (3) contain essentially the same requirements as existing §§ 1926.451(n)(3) and (4), except that the specific requirements for the size of the member are being replaced by the capacity requirements of § 1926.451(a)(1). OSHA notes that non-mandatory Appendix A of this final rule provides examples of component dimensions for bricklayers' square scaffolds that would be deemed to comply with § 1926.451(a)(1). Final rule paragraph (e)(4) contains the same requirement as existing § 1926.451(n)(6).

Paragraph (f) Horse Scaffolds

Paragraph (f) provides additional requirements for horse scaffolds. This paragraph requires that horse scaffolds not be constructed or arranged more than two tiers or 10 feet (3.0 m) in height, whichever is less (paragraph (f)(1)); when arranged in tiers, that each horse be placed directly over the horse in the tier below (paragraph (f)(2)); when arranged in tiers, the legs of each horse shall be nailed down or otherwise secured to prevent displacement (paragraph (f)(3)); and that, when arranged in tiers, each tier shall be crossbraced (paragraph (f)(4)). These requirements, which are identical to the parallel provisions of the proposed rule, correspond to existing § 1926.451(o)(1), (o)(4) and (o)(5), respectively.

Paragraph (g) Form Scaffolds and Carpenters' Bracket Scaffolds

Paragraph (g) of the final rule, which is effectively unchanged since the proposal, provides additional rules for form scaffolds and carpenters' bracket scaffolds. Under the existing standard, carpenters' bracket scaffolds and form scaffolds are addressed separately (existing §§ 1926.451(m) and (x), respectively). However, OSHA has determined that the two types are so similar that it is appropriate to address them in a single paragraph.

Final rule paragraph (g)(1) carries forward the requirements for attachment of a scaffold to a supporting framework or structure set by existing § 1926.451(m)(2), (x)(4)(ii), and (x)(5).

Paragraph (g)(2), in turn, maintains the existing § 1926.451(x)(6)(i) requirement that wooden bracket form scaffolds be an integral part of the form panel. Paragraph (g)(3), like exfsting § 1926.451(x)(5)(i), requires that folding type metal brackets, when extended for use, shall be either bolted or secured with a locking-type pin.

Paragraph (h) Roof Bracket Scaffolds

Paragraph (h) of the final rule provides additional requirements for roof bracket scaffolds. This paragraph requires that scaffold brackets be constructed to fit the pitch of the roof and provide a level support for the platform (paragraph (h)(1)); and that brackets be anchored in place by nails unless it is impractical to use nails (paragraph (h)(2)). Paragraph (h)(2) further provides that brackets shall be held in place with first-grade manila rope of at least three-fourth inch diameter, or a rope with equivalent strength, when nails are not used. These provisions are essentially identical to the corresponding proposed provisions and to existing §§ 1926.451(u)(1) and (u)(2), respectively.

Existing § 1926.451(u)(3) requires the installation of catch platforms below the working area of roofs more than 16 feet from the ground and having a slope greater than 4 inches in 12 inches without a parapet. This provision also requires that the platform extend at least 2 feet from the eaves and that employees be protected from falls by a guardrail system unless employees are using personal fall arrest systems. The existing provision is being replaced by the general fall protection requirements of § 1926.451(g). The final rule, like the proposal, allows guardrails on roof bracket scaffolds to be mounted on a catch platform or be attached to the eaves. Therefore, the Agency has concluded that there is no need to mention catch platforms in this provision. OSHA has determined that it is appropriate to allow employers flexibility in choosing where to attach guardrails. The Agency notes that a catch platform is an elevated work platform that meets the definition of a scaffold and therefore must comply with the pertinent provisions of this final rule.

Paragraph (i) Outrigger Scaffolds

Paragraph § 1926.452(i) of the final rule provides additional requirements for outrigger scaffolds. Except for editorial changes, as noted below, the requirements of the final rule are identical to those of the proposed rule. Paragraphs (i)(1) through (i)(4), which set requirements for the proper positioning and securing of outrigger beams, are consistent with existing § 1926.451(g)(1). Some editorial changes have been made to proposed paragraph (i)(2), as suggested by a commenter (Ex. 2–64), in order to clarify OSHA's

regulatory intent that the supporting beam be used in its strongest orientation. Paragraphs (i)(5) and (i)(6), which require that the inboard ends of outrigger beams be securely anchored and that the entire supporting structure be securely braced, respectively, are effectively identical to existing § 1926.451(g)(2). Proposed paragraph (i)(5) has undergone minor editorial changes since the proposal: the existing provisions have been broken down into their component parts to facilitate compliance.

Final rule paragraph (i)(7), which is identical to the corresponding requirement in the proposed rule, requires that platform units be nailed, bolted or otherwise secured to outriggers, to prevent displacement. The corresponding language in existing § 1926.451(g)(4) required simply that planking be secured to the beams. OSHA believes that the revised language better expresses the Agency's intention that employers use effective means when securing platform units to outrigger beams.

Paragraph (i)(8) requires that scaffolds and scaffold components be designed by a registered professional engineer and constructed and loaded in accordance with such design. This provision has been revised to reflect OSHA's determination that the design of this type of scaffold involves calculations that required the skills of a registered professional engineer, and that the criteria in the proposed rule had such limited applicability as to be of virtually no help to employers in almost all situations. The proposed rule was based on existing § 1926.451(g)(3).

Paragraph (j) Pump Jack Scaffolds

Paragraph 1926.452(j) of the final rule provides additional rules for pump jack scaffolds. Paragraph (j)(1) requires that pump jack brackets, braces, and accessories be fabricated from metal plates and angles. In addition, each pump jack bracket shall have two positive gripping mechanisms to prevent any failure or slippage. This provision is identical to the proposed paragraph and to existing § 1926.451(y)(2).

Paragraph (j)(2) requires that poles be secured to the structure by rigid triangular bracing or equivalent, at the bottom, top, and other points as necessary. In addition, that provision further requires that when the pump jack has to pass bracing that is already installed, an additional brace must be installed approximately four feet (1.2 m) above the brace to be passed. That additional brace must be left in place until the pump jack has been moved and the original brace reinstalled. These requirements, which are identical to the proposed paragraph except for an editorial revision, are essentially the same as existing §§ 1926.451(y)(4) (iii) and (iv).

NPRM Issues 9 and 22 asked for comments about whether OSHA should remove the requirement for bottom braces on pump jack scaffolds. One commenter (Ex. 2–13) stated that from his experience, * * * "no one uses any but the top pole brace." Another commenter (Ex. 2–31) agreed with this assessment, saying, in part, "[i]n terms of common practice, the bottom brace is virtually nonexistent. In terms of practicality, homeowners do not permit holes made in their foundation." This same commenter continued that "[i]n terms of functions, the bottom brace does not relieve the pole from breaking," and added as follows:

> There exists the misconception that a pumpjack pole will shoot out when a load is applied to it. Fact is, the greater the load, the greater the anchorage. Our in plant testing is done with no brace securement. This, along with my 10 years plus of field inspections, substantiates the unreality of a bottom brace. More accidents would be experienced from tripping over bottom braces; and eye accidents from securement to concrete. Overwhelmingly, the bottom brace simply does not belong. When a wooden pumpjack pole is used, § 1926.451(a)(1) can better be achieved with mid-bracing. The location of a pumpjack on a pole is not a true fulcrum point. That is an erroneous assumption that precedes the pole pulling away from the wall at the bottom assumption.

NIOSH recommended (Ex. 2–40) bracing or securing the bottom of pump scaffold columns "in some manner at all times." NIOSH stated that if "the employer chooses to brace in a different manner than suggested by the [existing] regulations, then the method used must be shown to be equivalent to that required by the regulations."

Another commenter (Ex. 2–54) stated the "bottom brace should remain for poles, [because that part of the scaffold] is the one part that is easiest to hit and move." The commenter added that the "bottom brace seems like the one that is needed the most * * *" After reviewing this issue, the ACCSH also recommended that the requirement for a bottom brace be retained (Tr. 6/9/87, pp. 95–96).

Based on its review of the comments, OSHA has determined that employers do need to brace the bottom of the support pole to keep it in place, but that it is not necessary to specify the use of a rigid triangular bottom brace. Other methods, such as anchoring the pole to the ground, would provide equivalent support. Therefore, the final rule requires, as did the proposal, that pumpjack poles be braced at the bottom by triangular bracing or equivalent means.

A commenter (Ex. 2–52) stated that "[a] requirement for braces every ten vertical feet has been eliminated. Insofar as the same applies to wooden poles, we believe this requirement should be maintained in the Regulations." OSHA is aware that existing § 1926.451(y)(4)(i) provides for 10 foot spacing of poles (center to center) when wood scaffold planks are used as platforms for pump jack scaffolds. That paragraph further provides that pole spacing may exceed 10 feet center to center when fabricated platforms are used that fully comply with all other provisions of existing paragraph (y). The Agency proposed to delete existing paragraph (y)(4)(i) because OSHA believed that compliance with the capacity requirements of proposed § 1926.451 (a)(1) would provide adequate assurance that a pump jack scaffold was structurally sound and able to hold the anticipated loads. As indicated above, the Agency believes that it is appropriate to focus on the capacity of the scaffold, not on the exact spacing of the braces, when evaluating the adequacy of a particular pump jack scaffold. Accordingly, OSHA has not made the suggested change.

That commenter also stated "The explanation for additional bracing is confusing. We believe the phrase 'on the side opposite the brace from the pump jack' should read: 'above the brace to be passed'." OSHA agrees that the suggested language, which appears in existing § 1926.451(y)(4)(iv), more clearly expresses the Agency's intent, and this is reflected in the final rule at paragraph (j)(2).

Paragraph (j)(3) provides, when guardrails are used for fall protection, that a workbench may be used as the toprail only if the workbench complies with the requirements of §§ 1926.451(g)(4) (ii), (vii), (viii) and (xiii). This provision is effectively identical both to the proposed provision and to existing § 1926.451(y)(12).

Paragraph (j)(4) provides that work benches shall not be used as scaffold platforms. This provision, which is identical to the corresponding provision of the proposed rule, is effectively identical to existing § 1926.451(y)(13).

Paragraph (j)(5) provides, when poles are made of wood, that the pole lumber shall be straight-grained, free of shakes, large loose or dead knots, and other defects which might impair strength. This provision, which is unchanged from that in the proposed rule, is based on existing § 1926.451(y)(6). OSHA has deleted existing specification language

which addressed the dimensions and type of wood to be used, because OSHA believes that wood poles which comply with the performance requirements of final rule § 1926.451(a)(1) will provide adequate protection for affected employees.

Paragraph (j)(6) provides, when wood poles are constructed of two continuous lengths, that the lengths shall be joined together with the seam parallel to the bracket. This provision, which is unchanged from the corresponding provision of the proposed rule, is based on existing § 1926.451(y)(7). The Agency has deleted the existing specification language, which addressed the dimensions of the wood to be used and the means of joining, because OSHA believes, again, that compliance with § 1926.451(a)(1) will provide adequate protection for affected employees. The Agency notes that the language in question has been included in non-mandatory Appendix A to provide an example of how an employer could comply with § 1926.451(a).

Final rule paragraph (j)(7) requires, when two by fours are spliced to make a pole, that mending plates be installed at all splices to develop the full strength of the member. This provision differs from the proposed requirement because it requires mending plates at splices. Proposed paragraph (j)(7) required that splices be constructed to develop the full strength of the member, but did not require mending plates.

NPRM Issue 9 asked whether proposed paragraph (j)(7) should require mending plates on all spliced wooden poles. One commenter (Ex. 2–13) wanted the Agency to prohibit the splicing of wood poles used for pump jack scaffolds. His explanation was that:

> [t]here is no splice that can equal the strength of the total pole cross section. Wood pole lengths should be limited to commercially available lengths.
>
> From my experience, at work sites across this nation, no one uses any but the top pole brace. All the more reason to eliminate splicing to gain added pole lengths.

The same commenter added "[t]he vast majority of the accidents involving pump jack scaffolds are caused by pole failure at a splice".

Another commenter (Ex. 2–31) said that a mending plate addresses the typical way a wooden pole breaks, i.e., laterally. He added that in-house tests conducted by his firm showed that poles with the plates are three times stronger than those without them, and went on to say that the cost factor for plate use is negligible. The ACCSH also recommended that mending plates be used on all splices (Tr. 6/9/87, pp. 95–96).

Based on its review of the comments and its knowledge of pumpjack scaffolds, OSHA has determined that mending plates provide an appropriate increase in the strength of spliced poles, and final rule paragraph (j)(7) reflects this determination. OSHA also believes that requiring wood poles to be made entirely of one piece of wood (i.e., no splices) would not be realistic because many contractors use this type of scaffold and splices with mending plates are at least as strong as unspliced wood. Although OSHA is aware that splices are potential weak points in a pole, the Agency finds that mending plates provide assurance that the spliced pole has adequate strength.

Several commenters (Exs. 2–23, 2–31 and 2–52) suggested that the final rule include the general requirements applicable to pump jack scaffolds found in this section of OSHA's existing scaffold standard. However, the final rule sets out general requirements for all scaffolds, including pump jack scaffolds, in § 1926.451, and OSHA has therefore not made the suggested change.

Paragraph (k) Ladder Jack Scaffolds

Paragraph 1926.452(k) of the final rule provides additional requirements for ladder jack scaffolds. Paragraph (k)(1) provides that platforms shall not exceed a height of 20 feet (6.1 m). This provision, which is identical to that in the proposed rule, is based on existing § 1926.451(s)(1) and current safe industry practice.

Paragraph (k)(2) requires that all ladders used to support ladder jack scaffolds meet the requirements of subpart X of 29 CFR part 1926—Stairways and Ladders, except that job-made ladders, which are permitted by subpart X, are not permitted to be used to support ladder jack scaffolds. This provision, which is identical to the parallel requirement in the proposed rule, is consistent with existing § 1926.451(s)(2). The existing standard referenced two national consensus standards which, as subsequently updated, have been incorporated into the pertinent provisions of subpart X. In particular, existing § 1926.451(s)(2) implicitly prohibited the use of job-built ladders.

Two commenters (Exs. 2–20 and 2–55) opposed the proposed prohibition on the use of job-made ladders as ladder jack scaffold support, and stated that job-made ladders constructed according to proposed § 1926.1053 (subpart X) could serve as adequate supports for ladder jack scaffolds. However, OSHA concludes, based on the record and the Agency's experience in the construction industry, that job-made ladders that comply with the requirements of § 1926.1053 may not be able to support the heavy point loading imposed by ladder jack scaffold brackets. OSHA has therefore determined that the use of a job-made ladder to support a ladder jack scaffold could lead to scaffold collapse, and the final rule reflects this finding. OSHA's final rule is thus consistent on this point with the position taken by the corresponding ANSI standard, A10.8–1988, paragraph 17.2.2, which provides that only manufactured ladders may be used to support ladder-type scaffolds or platforms.

Paragraph (k)(3) provides that the ladder jack be so designed and constructed that it will bear either on the side rails and ladder rungs or on the ladder rungs alone. This paragraph further requires that the bearing area for a ladder jack that bears only on the rungs shall be at least 10 inches (25.4 cm) on each rung to ensure adequate support. This provision, which is identical to that in the proposed rule, is effectively identical to existing § 1926.451(s)(3).

Paragraph (k)(4) requires that ladders used to support ladder jacks be placed, fastened, or equipped with devices to prevent slipping. This provision, which is identical to that in the proposed rule, is effectively identical to existing § 1926.451(s)(4) and is intended to prevent employee falls caused by displacement of the ladder.

Paragraph (k)(5) provides that scaffold platforms shall not be bridged one to another. This paragraph, which is identical to the proposed requirement, is a new requirement that is intended to ensure the stability of the system and to prevent accidental overloading. The provision would prohibit situations where, for example, four ladders are used to support three platforms. OSHA is prohibiting bridging because this practice often leads to overloading of the two ladders in the middle. This provision does not prohibit passage from one scaffold to another if the scaffolds are close enough for employees to walk (but not to jump or swing) from one scaffold to the other.

Three commenters [Exs. 2–23, 2–367, and 2–368] urged OSHA to include specific language in the final rule addressing acceptable dimensions and loading of ladder jack scaffolds. OSHA has not made the suggested revisions because the Agency believes that the capacity requirements found in final rule § 1926.451(a) adequately address these matters.

Another commenter (Ex. 2–308) recommended that ladder jack scaffolds be prohibited because they "cannot be

secured at the top," safe access is not possible, and an anchorage for attaching a lifeline or lanyard is not available. Although the Agency agrees that the conditions described by this commenter may occur in some construction situations, they are not characteristic of ladder jack scaffolds per se. Employers using ladder jack scaffolds must still comply with the applicable general requirements of § 1926.451, such as those addressing capacity, access and fall protection, i.e., the three situations mentioned by the commenter. In particular, employees working on ladder jack scaffolds must be protected from fall hazards by personal fall arrest systems which comply with the criteria set in subpart M, § 1926.502(d) (Fall protection) (final rule § 1926.451(g)(1)(ii)). Ladder jack scaffolds which do not comply with those requirements must not be used.

Based on the rulemaking record and the Agency's own experience, OSHA has determined that ladder jack scaffolds used in compliance with the requirements of the final rule provide acceptable and safe working surfaces for employees. Accordingly, the final rule does not prohibit the use of ladder jack scaffolds.

Paragraph (l) Window Jack Scaffolds

Paragraph (l) of the final rule provides additional requirements for window jack scaffolds. This paragraph provides that window jack scaffolds shall be securely attached to the window opening (paragraph (l)(1)), shall be used only for the purpose of working at the window opening through which the jack is placed (paragraph (l)(2)) and shall not be used to support planks placed between one window jack and another, or to support other elements of scaffolding. These requirements are necessary to ensure the safety of employees working from these platforms.

These provisions of the final rule are identical to the corresponding proposed provisions. Paragraph (l)(1) is a new requirement, and is intended to ensure that the scaffold is not accidentally displaced. Final rule paragraphs (l)(2) and (l)(3) are identical to existing §§ 1926.451(t)(1) and (t)(2), respectively.

Paragraph (m) Crawling Boards

Paragraph (m) of the final rule provides additional requirements for crawling boards (chicken ladders). The final rule requires that crawling boards extend from the roof peak to the eaves when used in connection with roof construction, repair, or maintenance (paragraph (m)(1)), and that crawling boards be secured to the roof by ridge hooks or by means which satisfy equivalent criteria (e.g., strength and durability) (paragraph (m)(2)). These requirements are designed to ensure that crawling boards used by employees performing roof work are as secure as possible.

The provisions of the final rule, which are effectively identical to those of the proposed paragraph, are based on requirements in existing §§ 1926.451(v)(1) and (3), respectively. The other provisions of existing § 1926.451(v)(1) are being relocated to non-mandatory Appendix A since they have been replaced by the capacity requirements of revised § 1926.451(a)(1). The existing rule's requirement to clinch nails has been deleted because the inaccessibility of many nail points makes clinching impossible. Existing § 1926.451(v)(2) is being replaced by the fall protection requirements of revised § 1926.451(e)(1).

Paragraph (n) Step, Platform, and Trestle Ladder Scaffolds

Paragraph (n) of the final rule provides additional requirements for step, platform, and trestle ladder scaffolds. The provisions of final rule paragraph (n) are virtually identical to the provisions of the proposed paragraph.

Paragraph (n)(1) provides that scaffold platforms not be placed any higher than the second highest rung or step of the ladder supporting the platform. This provision is consistent with paragraphs 17.4 and 17.5 of ANSI A10.8–1988, and is intended to ensure the stability of this type of scaffold.

Paragraph (n)(2) requires that all ladders used in conjunction with step, platform and trestle ladder scaffolds meet the requirements of subpart X of 29 CFR part 1926—Stairways and Ladders, except that job-made ladders must not be used to support such scaffolds. A commenter (Ex. 2–23) suggested that ladders used in conjunction with step, platform and trestle ladder scaffolds be required to comply with subpart X or with the pertinent ANSI standards. The commenter also suggested that OSHA prohibit the use of job-made ladders to support such scaffolds. Final rule paragraph (n)(2), which is identical to the proposed paragraph, addresses both of these concerns.

Paragraph (n)(3) provides that ladders used to support step, platform, and trestle ladder scaffolds shall be placed, fastened, or equipped with devices to prevent slipping. Paragraph (n)(4) requires that scaffolds not be bridged one to another. Bridging, as discussed above under paragraph (k)(5), occurs when four ladders are used to support three platforms. OSHA is prohibiting bridging because this practice often leads to overloading of the two ladders in the middle. Although step, platform and trestle ladder scaffolds were not specifically addressed in OSHA's existing scaffold rule, they are covered by the general requirements in existing rule § 1926.451(a).

Final rule paragraphs (n) (2), (3), and (4) correspond to the ladder jack scaffold provisions in final rule § 1926.451(k) (2), (4) and (5), respectively. The "ladder-type" scaffolds covered by paragraph (n) differ from ladder jack scaffolds in that the platform rests directly on the ladder step or rung, whereas ladder jack scaffold platforms rest on brackets.

Paragraph (o) Single-point Adjustable Scaffolds

Paragraph (o) provides additional requirements for single-point adjustable scaffolds. This paragraph combines existing § 1926.451(k), single-point adjustable suspension scaffolds, and § 1926.451(l), boatswains' chairs, because boatswains' chairs are a form of single-point adjustable suspension scaffold. One commenter (Ex. 2–23) opposed the combining of these paragraphs from the existing rule because they [boatswains' chairs and other single-point adjustable scaffolds] "have different requirements because of the different positions in which the rider rides." OSHA has determined, however, that the characteristics of single-point adjustable suspension scaffolds and boatswains' chairs are sufficiently similar so that the requirements of final rule paragraph (o), along with the general requirements in § 1926.451, appropriately address both types of scaffolds.

Paragraph (o)(1) provides, when two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, that the resulting scaffold meet the requirements for two-point adjustable suspension scaffolds in final rule paragraph (p). This provision, which is identical to the proposed paragraph, is based on existing § 1926.451(k)(6).

Paragraph (o)(2) addresses the circumstances under which the supporting rope between a scaffold and a suspension device is permitted to deviate from a vertical position (i.e., at a 90 degree angle from level grade). This paragraph requires that the supporting rope between the scaffold and the suspension device be kept vertical unless the following four conditions are met: the rigging must have been designed by a qualified person; the scaffold must be accessible to rescuers;

the supporting rope must be protected to ensure that it will not chafe at any point where a change in direction occurs; and the scaffold must not be able to sway into another surface. Whenever swaying of the scaffold could bring the scaffold into contact with another surface, the supporting rope must be vertical, with no exceptions.

Proposed paragraph 1926.452(o)(2) required that supporting ropes be vertical and be kept from swaying, except where the scaffold is on the outside of a dome-like or slanted structure and the appropriate supports have been designed and installed. NPRM Issue 10 noted that existing § 1926.451(k)(7) requires the support rope for single-point adjustable suspension scaffolds to be vertical. OSHA asked if the exception provided by proposed paragraph (o)(2) was appropriate. The Agency further requested suggestions regarding a maximum permissible angle and any other conditions that needed to be specified.

The AGC (Exs. 2–20, 2–55, and 2–390) stated that "[a]ngles that are too severe would impair work operation and thus preclude the use of suspensions." Another commenter (Ex. 2–69) echoed that view, and added that "[f]lexibility is needed for certain operations when using suspended scaffolds." A manufacturer (Ex. 2–43) mentioned skylight and barrel-vault work as examples of situations which preclude the use of vertical lines. The commenter also stated "* * * when suspended, the worker must be accessible to rescuers. One can envision a worker dangling in space below a dome with no way to get to him."

Another commenter (Ex. 2–64) stated "[t]he supporting rope for single-point adjustable suspension scaffolds *should* be allowed to deviate from vertical without defining any maximum limits. Each situation under these conditions is a special case and has its own limiting circumstances. It would not be feasible to establish standard limits for all possible special situations." (emphasis in original)

Another commenter (Ex. 2–22) stated that deviation from vertical should be permitted. The commenter further stated "[t]he same practical field problems arise in the case of a curved surface of any type as does in the case of the dome-type or slanted structure. There is no safety difference in the three special situations and they require an exception because of their unique character."

One commenter (Ex. 2–13) stated as follows:

There never was a reason for the suspension rope for a single point suspension scaffold to be vertical. In fact, most are used with the rope other than vertical. The same applies for two point suspension scaffolds. There is no maximum or minimum angle of deviation from the vertical. The load reaction to the rope does not change; but the rope(s) must be protected from sharp edges at the change in direction.

In addition, the SSFI and the SIA (Exs. 2–367 and 2–368) addressed this issue in their comments on proposed 1926.452(o)(2). They recommended that, when a scaffold is on the outside of a dome-type, slanted or set-in structure, the use of intermediate supports to change the direction of the rope from the vertical be allowed provided that such supports have been designed by a competent person and have been installed in a manner that prevents chafing of the rope.

The SIA (Ex. 2–368) commented that "[m]any work operations require non-vertical lines due to set-backs, curved surfaces, areas under soffits, following a bowser line, spherical water tanks, etc." In addition, the SSFI responded to Issue 10 as follows "[t]he SSFI agrees that some deviation from vertical support should be allowed. Cases in which this would occur are special in nature and should only be allowed when designed by a competent person."

The ACCSH (Tr. 96–97, 6–9–87) recommended that deviation from vertical should be allowed only under the supervision of a "qualified person." A member of the ACCSH stated that the qualified person would be "a competent design engineer that has experience in this discipline."

OSHA agrees that there are circumstances where the support lines of single-point adjustable suspension scaffolds need to deviate from vertical, and that under controlled circumstances, the swaying of support lines should be allowed. The Agency concludes that the requirements for design by a qualified person, accessibility to rescuers, protection of supporting rope from chafing, and prohibition of swaying where the scaffold could contact another surface are appropriate measures, and final rule paragraph (o)(2) reflects this determination.

Paragraph (o)(3) requires that the tackle used with boatswains' chairs be ball bearing or bushed blocks containing safety hooks and properly "eye" spliced minimum five-eight (5/8) inch (1.6 cm) diameter first grade manila rope, or other rope that meets the performance criteria of the above-specified manila rope. The proposed provision, based on existing § 1926.451(l)(5), was effectively identical, except that it did not specifically address the hook used to suspend the boatswains' chair. OSHA recognizes that the use of an open hook could allow a chair to be dislodged if the rigging hung up on an obstruction. The corresponding ANSI standard, A10.8–1988, paragraph 6.14.5, provides for the use of a hook with a safety latch over the opening (safety hook) to prevent dislodging of the chair. The Agency agrees that it is appropriate to explicitly require that employers who have their employees use boatswains' chair rig their scaffolds with safety hooks and has revised the proposed rule accordingly. In addition, OSHA believes that locking safety hooks, such as are required for use with crane and derrick suspended personnel platforms (§ 1926.550(g)(4)(iv)(B)), would provide the most effective protection for affected employees. A minor editorial revision to the proposed paragraph replaces the phrase "or equivalent" with language which states clearly that any rope used in lieu of 5/8 inch diameter first grade manila rope must, at least, satisfy the final rule's criteria (e.g., strength and durability) for manila rope.

Paragraph (o)(4) provides that boatswains' chair seat slings be reeved through four corner holes in the seat; shall cross each other on the underside of the seat; and shall be rigged so as to prevent slippage which could cause an out-of-level condition. This paragraph, which is identical to the proposed provision and is based on existing § 1926.451(l)(2), is intended to prevent tipping of the chair.

Paragraph (o)(5) requires, except as provided in paragraph (o)(6), that boatswains' chair seat slings be a minimum of five-eight (5/8) inch (1.6 cm) diameter fiber or synthetic rope or other rope which satisfies equivalent performance criteria. This provision, which is substantively identical to the proposed provision, is based on existing § 1926.451(l)(2). A minor editorial revision to the proposed paragraph replaces the phrase "or equivalent" with language which states clearly that any rope used in lieu of 5/8 inch diameter fiber or synthetic rope must, at least, satisfy the final rule's criteria (e.g., strength, slip resistance, and durability) for fiber or synthetic rope. In addition, the final rule has deleted the proposed language "when employees are not using a heat-producing process such as gas or arc welding" as being unnecessary since final rule paragraph (o)(6) specifically addresses the issue of rope use when heat producing processes are in operation.

Paragraph (o)(6) requires that boatswains' chair seat slings be a

minimum of three-eight (⅜) inch (1.0 cm) wire rope, when a heat-producing process such as gas or arc welding is being conducted. This provision, which is substantively identical to the proposed provision and is based on existing § 1926.451(l)(3), is necessary to ensure that the chair's sling is made of fire-resistant materials.

Paragraph (o)(7) requires that non-cross-laminated wood boatswains's chairs be reinforced on their underside by cleats securely fastened to prevent the board from splitting. This provision is identical to the proposed provision. Existing § 1926.451(l)(1) requires all boatswains' chairs to be cleated. As noted in the preamble to the proposed rule (51 FR 42694), this paragraph recognizes that plywood-type wood seats which comply with § 1926.451(a)(1) are strong enough to use as boatswains' chairs without being reinforced with cleats.

Paragraph (p) Two-point Adjustable Suspension Scaffolds (Swing Stages)

Paragraph (p) provides additional requirements for two-point adjustable suspension scaffolds (swing stages). The introduction to this paragraph states that paragraph (q) addresses stonesetters' multi-point adjustable suspension scaffolds, masons' multi-point adjustable suspension scaffolds or other multi-point suspension scaffolds.

Paragraph (p)(1) provides that platforms not be more than 36 inches (0.9 m) wide unless designed by a qualified person to prevent unstable conditions. This provision, which is identical to proposed paragraph (p)(1), is essentially the same as existing § 1926.451(i)(1), which limits platform width to 36 inches.

A commenter (Ex. 2–23) recommended that such platforms "* * * not be less than 20 inches nor more than 36 (0.9 m) inches wide unless designed by a registered civil or mechanical engineer to prevent unstable conditions." OSHA has not adopted the commenter's recommendation for a 20-inch minimum width, because the Agency considers the 18-inch minimum platform width set in final rule § 1926.451(b)(2) to be adequate. In addition, OSHA has not adopted a requirement for a platform wider than 36 inches to be designed by a registered engineer, because the Agency believes that a person who is "qualified" as defined in both § 1926.450(b) and § 1926.32(m) will have the skills and expertise needed to design such a platform.

Paragraph (p)(2) requires that the platform be securely fastened to hangers (stirrups) by U-bolts or other means which satisfy § 1926.451(a). This provision is based on existing § 1926.451(i)(1). Proposed paragraph (p)(2) has been editorially revised to replace the term "equivalent means" with language which indicates clearly that "other" means of fastening the platform to hangers must satisfy the criteria of § 1926.451(a).

Paragraph (p)(3) provides that the blocks for fiber or synthetic ropes consist of at least one double and one single block, and that the sheaves of all blocks fit the size of the rope used. This provision, which is identical to the proposed provision and is based on existing § 1926.451(i)(6), is intended to ensure that these types of rope are maintained under proper tension and do not slip out of their sheaves.

Paragraph (p)(4) requires that platforms be of the ladder-type, plank-type, beam-type, or light-metal type. Light metal-type platforms having a rated capacity of 750 pounds or less and platforms 40 feet (12.2 m) or less in length shall be tested and listed by a nationally-recognized testing laboratory. This provision is based on existing § 1926.451(i)(10). Proposed paragraph (p)(4) was similar to this provision of the final rule, except that the final rule excludes platforms rated over 750 pounds or platforms longer than 40 feet. This revision has been made based on a comment (Ex. 2–539) which stated:

> Underwriters' Laboratories has issued a standard for safety called UL 1322 covering fabricated scaffold stages. This standard covers stage platforms with loads up to 750 pounds and lengths up to 40 feet. They do not have standards covering heavier loads or longer lengths. It is not practical to have a requirement for UL testing and approval on products that UL arbitrarily refuses to test or approve.

The Agency notes that the 1994 edition of UL 1322 has the same limits cited by the commenter, and agrees with the commenter that it is not realistic to require testing and approval of a product that nationally-recognized testing laboratories do not test or approve.

Proposed paragraph (p)(5) provided that two-point suspension scaffolds be securely lashed to the building or structure to prevent them from swaying. The paragraph further required that window cleaners' anchors not be used for this purpose. The requirement now appears in final rule § 1926.451(d)(18) and is applicable to all multi-point suspended scaffolds. The provision is based on existing § 1926.451(i)(9).

Final paragraph (p)(5), proposed as paragraph (p)(6), requires that two-point scaffolds not be bridged or otherwise connected one to another during raising and lowering operations unless the bridge connections are articulated and the hoists properly sized. This paragraph is similar to the proposed paragraph, except for editorial revisions made for clarity. No comments were received on this provision.

OSHA notes that paragraph (p)(5) is not intended to prohibit passage from one scaffold to another, but to prevent significant overloading of the hoist nearest the bridging device during operation of the hoist, or displacement of the bridge if the hoist is used to raise or lower one of the scaffolds. Many hoists are only sized to support one end of a two-point system. If one of two bridged scaffolds were to be raised by a hoist, a bridge laid between the scaffolds could be displaced unless the bridge is articulated (connected). This could also significantly increase the load on the hoist if it is not properly sized. The final rule addresses these two hazards by requiring bridge connections to be articulated and requiring that hoists be properly sized. These requirements thus allow for properly engineered solutions.

Final rule paragraph (p)(6), identical to proposed paragraph (p)(7), is a new requirement. It allows passage from one platform to another only when the platforms are at the same height, when the platforms abut each other, and when walk-through stirrups specifically designed for this purpose are used.

Paragraph (q) Multi-point Suspension Scaffolds, Stonesetters' Multi-point Adjustable Suspension Scaffolds, and Masons' Multi-point Adjustable Suspension Scaffolds

Paragraph 1926.452(q) of the final rule provides additional requirements for multi-point suspension scaffolds, stonesetters' multi-point adjustable suspension scaffolds, and masons' multi-point adjustable suspension scaffolds. This paragraph combines and clarifies the provisions of existing § 1926.451(h), stonesetters' adjustable multi-point suspension scaffolds, and existing § 1926.451(j), masons' adjustable multi-point suspension scaffolds, and indicates clearly that paragraph (q) applies to other multi-point adjustable suspension scaffolds as well.

Paragraph (q)(1) provides that, when two or more scaffolds are used, they shall not be bridged one to another unless they are designed to be bridged, the bridge connections are articulated (connected), and the hoists are properly sized. This paragraph of the final rule, which is identical to proposed paragraph (q)(1), is based on the same concerns about displacement of the

bridge and hoist overloading that resulted in final rule § 1926.452(p)(5).

Paragraph (q)(2) provides that, if bridges are not used, passage may be made from one platform to another only when the platforms are at the same height and are abutting. This provision, which is essentially identical to that in the proposed rule, is based on the same concerns that resulted in final rule § 1926.452(p)(6). OSHA has editorially revised proposed paragraph (q)(2) to delete the word "closely" because that word is redundant with the word "abutting."

Paragraph (q)(3) requires that scaffolds be suspended from metal outriggers, brackets, wire rope slings, hooks, or equivalent means. This provision, which is essentially identical to the corresponding requirement in the proposed rule, is virtually the same as existing § 1926.451(j)(4), which addresses stonesetters' adjustable multi-point suspension scaffolds. OSHA has deleted the word "iron" from the proposed language, based on comments from the SSFI and the SIA (Exs. 2–367 and 2–368) stating that it is appropriate to have brackets or hooks fabricated from material other than iron. OSHA agrees with this point and concludes that employees on these scaffolds will be adequately protected by brackets or hooks made of other materials, as long as those components satisfy the strength criteria set in final rule § 1926.451(a)(1). The final rule reflects this conclusion.

Paragraph (r) Catenary Scaffolds

Paragraph 1926.452(r) of the final rule provides additional requirements for catenary scaffolds. In OSHA's existing scaffold standard, catenary scaffolds were addressed only by the general provisions applicable to all scaffolds. The new provisions in paragraph (r) thus address specific concerns not directly addressed by the existing standard. These provisions are identical to proposed § 1926.452(r).

Paragraph (r)(1) allows no more than one platform to be placed between consecutive vertical pickups, and no more than two platforms to be used on a catenary scaffold. These requirements are intended to prevent overloading of this type of scaffold. This paragraph is consistent with the corresponding provision of ANSI A10.8–1988, paragraph 20.4.

Paragraph (r)(2) requires that platforms supported by wire ropes have hook-shaped stops on each end of the platforms to prevent the platforms from slipping off the wire ropes. These hooks shall be so placed that they will prevent the platforms from falling if one of the horizontal wire ropes breaks. This language is consistent with the corresponding provision of ANSI A10.8–1988, paragraph 20.1.

Paragraph (r)(3) of the final rule provides that wire ropes shall not be tightened to the extent that the application of a scaffold load will overstress them. This provision is consistent with the corresponding language of ANSI A10.8–1988, paragraph 20.2.

Paragraph (r)(4) requires that wire ropes be continuous and without splices between anchors. This language is consistent with the corresponding language in ANSI A10.8–1988, paragraph 20.2, and is necessary to ensure that the rope has sufficient integrity to handle the load.

Paragraph (s) Float (Ship) Scaffolds

Paragraph (s) provides additional requirements for float (ship) scaffolds. These provisions are identical to those in proposed § 1926.452(s), which were based on existing § 1926.451(w) (3) and (5).

Paragraph (s)(1) requires that the platform be supported by a minimum of two bearers, each of which shall project a minimum of six inches (15.2 cm) beyond the platform on both sides. This will ensure that the platform will be fully supported. In addition, each bearer shall be securely fastened to the platform to prevent slippage.

Paragraph (s)(2) provides that rope connections shall be such that the platform cannot shift or slip. Platform slippage is a significant factor in scaffold accidents.

Paragraph (s)(3) provides that, when only two ropes are used with each float, those ropes shall be arranged so as to provide four ends which are securely fastened to overhead supports, and each supporting rope shall be hitched around one end of the bearer and pass under the platform to the other end of the bearer where it is hitched again, leaving sufficient rope at each end for the supporting ties. This requirement is necessary to ensure that the supporting ropes are properly attached to both the platform and to the overhead support to prevent the scaffold from falling. These requirements are designed to ensure safe use of these commonly used job-built scaffolds.

Paragraph (t) Interior Hung Scaffolds

Paragraph (t) provides additional requirements for interior hung scaffolds. These provisions are identical to those of the proposed paragraph. Paragraph (t)(1) requires that scaffolds be suspended only from the roof structure or other structural members such as ceiling beams. This requirement is necessary to ensure that these suspended scaffolds are supported by structural members with adequate capacity for safe use. This is the same requirement as existing § 1926.451(r)(1).

Paragraph (t)(2), which is a new provision, requires that the supporting members be inspected and checked for strength before the scaffold is erected. This requirement is necessary because such points of support cannot be assumed to be strong enough to support a scaffold since they may already be loaded to their capacity or they may have deteriorated over time. This provision is consistent with ANSI A10.8–1988, paragraph 16.7.

Paragraph (t)(3) provides that suspension ropes and cables be connected to the overhead supporting members by shackles, clips, thimbles, or by other means which provide equivalent strength, security and durability. This paragraph of the final rule (identical to the proposed paragraph) deletes the specific connection requirements of existing § 1926.451(r)(2), which OSHA determined were obsolete, and specifies criteria that OSHA has found to be current safe practice. The strength requirement of existing § 1926.451(r)(2) is now covered by final rule paragraph § 1926.451(a)(3), which specifies strength criteria for suspension ropes on all types of scaffolds.

Paragraph (u) Needle Beam Scaffolds

Paragraph (u) of the final rule provides additional requirements for needle beam scaffolds. These provisions are identical to proposed paragraph 1926.452(u) except for minor editorial revisions. Paragraph (u)(1) requires that scaffold support beams be installed on edge. This provision is based on existing § 1926.451(p)(1), and is necessary to ensure that support beams are installed in a way that maximizes their strength.

Paragraph (u)(2) provides that ropes or hangers be used for supports, except that one end of a needle beam scaffold may be supported by a permanent structural member. This provision is based on existing §§ 1926.451(p)(2) and (8), and is necessary to ensure that these scaffolds are properly supported by rope or hangers that meet the strength criteria of § 1926.451(a).

Paragraph (u)(3) requires that the ropes be securely attached to the needle beams. This is a change from existing § 1926.451(p)(3), which specified that all rope attachments must be either a scaffold hitch or properly made eye splices. OSHA determined that the existing rule is too restrictive, because other knots and means of attachment, such as wire rope clips, can adequately

support the scaffold without decreasing employee safety.

Paragraph (u)(4) provides that the support connection be arranged so as to prevent the needle beam from rolling or becoming displaced, which could result in tipping of the platform. This provision is based on existing § 1926.451(p)(4).

Paragraph (u)(5) provides that platform units shall be securely attached to the needle beams by bolts or equivalent means. In addition, cleats and overhang are not considered to be adequate means of attachment. Final rule paragraph (u)(5) clarifies the requirements of existing § 1926.451(p)(6), which only required that planks be secured against slipping. Also, under the existing rule, cleats and overhang could be used to secure the units. As stated in the preamble to the NPRM (51 FR 42695), OSHA has concluded that cleats or overhang do not adequately secure platform units to needle beam scaffolds, because needle beam scaffolds have a tendency to twist, and cleats and overhangs used to secure platforms will not provide sufficient means of holding the platforms. This could result in platforms coming loose and falling.

Paragraph (v) Multi-level Suspended Scaffolds

Paragraph 1926.452(v) of the final rule provides additional requirements for multi-level suspended scaffolds. These scaffolds are suspended scaffolds with more than one working level. The provisions of paragraph (v) are identical to those in the proposed paragraph, except for minor editorial changes. Although these types of scaffolds are not specifically addressed in the existing standard, they are covered by the general requirements in existing § 1926.451. The new provisions address concerns not covered by the existing standard or by final rule § 1926.451.

Paragraph (v)(1) requires that multi-level suspended platform scaffolds be equipped with additional independent support lines, equal in number to the number of points supported and of equivalent strength to the suspension ropes, and be rigged to support the scaffold in the event the suspension rope(s) fail. These additional lines would support the scaffold, and prevent collapse in the event of primary support line failure.

Paragraph (v)(2) provides that the independent support lines and suspension ropes shall not be attached to the same points of anchorage. This provision reflects OSHA concern that the independent support lines would not protect workers from scaffold collapse if the independent lines and the suspension ropes were attached to the same anchorage point when the anchorage failed.

Paragraph (v)(3) requires that supports for platforms be attached directly to the support stirrup and not to any other platform. This provision is intended to protect against platform overloading.

Paragraph (w) Mobile Scaffolds

Paragraph (w) provides additional rules for mobile scaffolds. This paragraph consolidates and clarifies the provisions of existing § 1926.451(e) and existing § 1926.453. This paragraph applies to all mobile scaffolds, not just to those which are manually propelled. This paragraph of the final rule is effectively identical to that in the proposed rule, except as discussed below.

Paragraph (w)(1) provides that scaffolds shall be braced by cross, horizontal, or diagonal braces, or combination thereof, to prevent racking or collapse of the scaffold and to secure vertical members together laterally so as to automatically square and align the vertical members. In addition, scaffolds shall be plumb, level, and squared. All brace connections shall be secured. This paragraph also provides that scaffolds constructed of tube and coupler components shall conform to the requirements of § 1926.452(b) (paragraph (w)(1)(i)), and that scaffolds constructed of fabricated frame components shall conform to the requirements of § 1926.452(c) (paragraph (w)(1)(ii)). The provisions of paragraph (w)(1) are substantively identical to the corresponding provisions in existing §§ 1926.451(e)(3) and (e)(9).

Paragraph (w)(2) requires that scaffold casters and wheels be locked with positive wheel and/or wheel and swivel locks, or equivalent means, to prevent movement of the scaffold while the scaffold is used in a stationary manner. This provision is effectively identical to existing § 1926.451(e)(8).

Paragraph (w)(3) provides that manual force used to move the scaffold shall be applied as close to the base as practicable, but not more than five feet (1.5 m) above the supporting surface. This paragraph is essentially the same as existing § 1926.451(e)(6), which required that propelling forces be applied as close to the base as possible. However, the final rule limits the height at which the force can be applied to 5 feet above the supporting surface, to minimize overturning forces. One commenter (Ex. 2–23) recommended that scaffolds not be moved manually unless the propelling force is applied to the wheels only. Although such a requirement may be appropriate for powered scaffolds, the Agency sees no rationale for applying this provision to scaffolds being moved manually. OSHA has not adopted the suggested change because compliance would be unwieldy and would expose employees to hazards from the rolling wheels.

The proposed language has been modified in the final rule to indicate clearly that final paragraph (w)(3) applies only when mobile scaffolds are being moved manually. This provision is consistent with ANSI A10.8–1988, paragraph 11.3.1.

Paragraph (w)(4), which is a new provision, requires that power systems used to propel mobile scaffolds be designed for such use. In addition, forklifts, trucks, similar motor vehicles, or add-on motors shall not be used to propel scaffolds unless the scaffold is designed for such propulsion systems.

Paragraph (w)(5) requires that scaffolds be stabilized to prevent tipping during movement. This provision is effectively identical to the corresponding provision in existing § 1926.451(e)(6).

Paragraph (w)(6) provides that employees shall not be allowed to ride on scaffolds unless the following conditions exist:

1. The surface on which the scaffold is being moved shall be within three degrees of level, and free of pits, holes, and obstructions (paragraph (w)(6)(i));
2. The height-to-base width ratio of the scaffold during movement shall be two to one or less, unless the scaffold is designed and constructed to meet or exceed nationally-recognized stability test requirements (paragraph (w)(6)(ii));
3. Outrigger frames, when used, shall be installed on both sides of the scaffold (paragraph (w)(6)(iii));
4. When power systems are used, the propelling force shall be applied directly to the wheels, and shall not produce a speed in excess of one foot per second (0.3 mps) (paragraph (w)(6)(iv)); and
5. No employee is on any part of the scaffold which extends outward beyond the wheels, casters, or other supports (paragraph (w)(6)(v)).

These provisions are based in part on the provisions of existing § 1926.451(e)(7).

Proposed paragraph (w)(6)(ii) set the maximum height-to-base width ratio at two to one or less. OSHA has revised the proposed provision to allow a higher ratio when the scaffold is designed and constructed in accordance with nationally-recognized stability test requirements. This change is discussed in relation to Issue 4, below.

Proposed paragraph (x)(6)(iv) required that the propelling force be applied

directly to the wheels (not to the frame) when power systems are used to propel scaffolds, and limited the speed of the scaffold to 2 feet per second. The proposed provision was intended to protect against a scaffold toppling over should it strike an object.

One commenter (Ex. 2–423) stated as follows:

> In our initial testing we tested several speeds including 2'/Sec and found these to be far too fast for an operator to drive through narrow areas and through debris that would be encountered on a construction site. With all the units sold by our company, I have never had anyone say the Motorized Scaffold (r) was too slow. I cannot speak for other means of propelling scaffold but we would not allow our Motorized Scaffold (r) to drive faster than one foot per second.

OSHA agrees that allowing motor-propelled scaffolds to drive faster than one foot per second could create problems for operators and has revised the rule accordingly.

Issue 4 raised a question regarding existing § 1926.451(e)(7)(ii), which required manually propelled mobile scaffolds to be not more than twice as high as they are wide when employees ride on them. The proposed rule, § 1926.452(w), extended this requirement to cover both manually propelled and motor-propelled mobile scaffolds. OSHA asked whether the final rule should raise the current ratio, 2:1, to 3:1 or higher on those systems which are built with a lower center of gravity, and, if so, what would be appropriate limitations.

The ACCSH discussed Issue 4 at length (Tr. 48–61, June 9, 1987). Several members expressed concern about employees riding mobile scaffolds while the scaffolds were being moved, regardless of the height-to-base ratio mandated. As OSHA explained to the Committee, scaffold equipment manufacturers had informed the Agency that a motor propelled mobile scaffold which exceeded the existing and proposed 2:1 ratio would be safe for use because the attachment of motor units would lower the center of gravity, thereby increasing the scaffold's stability (Tr. 52–53). Members of the Advisory Committee questioned the extent to which the weight of the motor unit would provide sufficient stability, citing concerns about the manner in which employers would calculate the height-to-base ratio using the weight of the motor unit and the extent to which wind or overhead power lines would pose hazards. Ultimately, the ACCSH voted to recommend simply that OSHA prohibit riding on mobile scaffolds (Tr. 61).

One commenter (Ex. 2–53) stated that the "existing rule on manually propelled mobile scaffolds" should not be extended to motor-propelled mobile scaffolds but did not explain why. The AGC commented (Exs. 2–20, 2–55, and 2–390) that "[i]n maintaining a performance-oriented standard, OSHA should provide for manufacturer's recommendations when movement of a rolling scaffold is required." These three comments further stated that OSHA should allow the use of those mobile scaffolds that have a lower center of gravity and thus have the capability "of being moved at a higher ratio." Another participant (Ex. 2–69) commented that "[W]hen movement of a rolling scaffold is required, OSHA should provide for use of manufacturers' recommendations in keeping with a performance-oriented approach."

One commenter (Ex. 2–70) stated that 3:1 ratio would be acceptable if the scaffold had a low center of gravity. Another commenter (Ex. 2–516) added a number of details and factors involved in calculating or arriving at a safe "gross ratio" for mobile scaffolds, and indicated that "higher ratios may be permitted in specific instances when operated under constant and continuous supervision, and when designed by qualified engineers." In particular, the commenter explained that the 2:1 ratio "is a minimum standard, established for *uniformity, simplicity, and safety.* Higher ratios can easily be achieved in given instances, but allowing those ratios to be in general use is unwise" (emphasis in the original). To illustrate the rationale behind this assertion, the commenter stated, in part, that:

> There is a moment in each vertical rolling scaffold *leg* due to caster offset. This moment is increased when the wheel is stopped by a stone or curb, because the tower inertia then acts on the caster support as a force acting from the center of gravity of the tower, to the wheel.
>
> The force from the 'pushing' and the inertia change depends on the weight of the scaffold, its velocity, how fast it stops, and how hard it is being pushed or driven. The moment felt at the scaffold leg depends on the force, the height of the center of gravity, the flatness of the rolling surface, whether only one wheel carries the load, and where on the scaffold it is being pushed.
>
> The height of the center of gravity depends on how much load is put on top of the scaffold, and the height of the scaffold. [emphasis in original]

Another commenter (Ex. 2–50) stated that an extension of the ratio for some scaffolds should not be limited to 3:1. As an example, the commenter explained that "some motorized scaffolding, and batteries, hydraulics, and motors mounted low on the frame are capable of reaching 20–30 feet high with their bases only 6 feet wide." The commenter, a representative from a building contractor's association, added that "the manufacturers test the machines extensively for upset."

One commenter (Ex. 2–15) stated "[e]ven the 2:1 is too permissive for small, light towers which are usually the most top[-]heavy, especially with a man on top. This provision is not enforceable. [It would be] better to forbid riding at all." Another commenter (Ex. 2–29) commented that "[i]ncreasing the height-to-base ratio of mobile scaffolds ridden by employees would expose employees to an unacceptable fall hazard." In addition, a commenter (Ex. 2–54) stated that "2 to 1 is a good ratio, as there is less chance of tipping over and a better chance for worker[s] to jump off [the] scaffold, and not get hurt, if [the] scaffold began to tip." The SSFI (Ex. 2–367) recommended that "under no circumstances should the 2:1 height-to-width ratio be raised to 3:1 for systems built with a 'lower center of gravity.' Tipping of rolling towers is one of the primary causes of accidents and no changes should be made."

The SSFI further stated that they have "always and will continue to recommend prohibiting riding rolling scaffolds." The commenter noted that "riding of motor[-]propelled scaffolds is especially hazardous as the scaffold is normally not designed for such loads. Motors should not be added to scaffold towers unless the towers are specially designed to accommodate those forces." Another commenter (Ex. 2–476), also holding the view that riding rolling scaffolds should not be allowed, recommended that:

> Motorized means should not be attached to frame scaffold towers to promote riding. The 2 to 1 base-to-height ratio, which allows riding, is not being used by workers riding rolling towers, and workers are riding rolling towers with any base-to-height ratio. The scaffold frame rolling towers were not designed to be ridden, and were not designed for special add-on motors for propulsion.

Another commenter (Ex. 2–13) stated "[m]obile scaffolds should never be moved when occupied. The only time they are involved in accidents is when they are moved while occupied. To allow any but specifically designed scaffolds to be moved while occupied is totally unacceptable."

The SIA (Ex. 2–368) indicated that:

> [M]any of our members advocate prohibiting riding of mobile scaffolds at any time. Others oppose such drastic action, since this would place undue hardship on those trades which perform a high percentage of their work on mobile scaffolds. The

alternative is to develop provisions for their safe use* * * Motors should not be added to scaffold towers unless the towers are specifically designed to accommodate the increased forces exerted on the legs of the scaffold frames.

The SIA (Ex. 2–368) also stated that statistics they had developed over the past 10 years "indicate a high incidence of accidents on rolling scaffolds," and that "[i]t is our position that any raising of the 2:1 ratio would result in increased accidents."

A commenter (Ex. 2–476) stated that scaffold frames are not designed for the forces imposed on them by motors that are added on for propulsion. OSHA agrees with the commenters who raised concerns about the ability of scaffold frames to accommodate motors and has modified proposed § 1926.452(x)(6) accordingly.

OSHA agrees with the commenters who indicated that the riding of some mobile scaffolds can be hazardous. However, OSHA believes that the rulemaking record supports modification of the current regulations to allow greater use of mobile scaffolds for this purpose, provided additional appropriate precautions are taken.

The key concern in specifying the existing 2:1 ratio is stability of the scaffold. OSHA believes, based on the evidence submitted, that the existing 2:1 ratio is still the appropriate limit for all manually-propelled mobile scaffolds and has promulgated final rule paragraph (w)(6)(ii) accordingly.

OSHA also believes that, given appropriate engineering design, there are higher ratios which can be used safely on some power-propelled mobile scaffolds. As recommended by one commenter (Ex. 2–423), such designs must be proven to be safe, however, by subjecting the scaffold to stability tests such as the nationally recognized ANSI A92 tests used by the manufacturers of elevating and rotating work platforms. Where such tests have not been made, employees are not allowed to ride the scaffold. This, OSHA notes, does not preclude manufacturers or others from conducting or establishing such tests to demonstrate that a product meets appropriate stability criteria. The Agency believes that equipment meeting such tests and criteria should be permissible and has promulgated final rule paragraph (w)(6)(iii) accordingly.

OSHA also believes that compliance with the requirements of § 1926.451 and final rule paragraph (w)(6)(iv) (that the power be applied directly to the wheels and that the speed be limited to no more than 1 foot per second, as recommended by a commenter (Ex. 2–423)) adequately addresses cases where a mobile scaffold is equipped with a motor.

Paragraph (w)(7), which is identical to the proposed paragraph, requires that platforms not extend outward beyond the base supports of the scaffold unless outrigger frames or equivalent devices are used to ensure stability. Compliance with this provision will prevent eccentric loading of the scaffold frame that could cause the scaffold to tip over.

Paragraph (w)(8) provides that, where leveling of the scaffold is necessary, screw jacks or equivalent means be used. This is a specific way of complying with § 1926.451(c)(2) of the final rule, which requires firm, level foundations. This provision is consistent with the corresponding provision in ANSI A10.8–1988, paragraph 11.1.4.

Paragraph (w)(9) requires that caster stems and wheel stems be pinned or otherwise secured to scaffold legs or adjustment screws. Proposed paragraph (w)(9) was identical, except that it did not specifically provide for the securing of stems to adjustment screws. This revision is based on input received on this provision from the SSFI and SIA (Exs. 2–367 and 2–368). OSHA agrees that adjustment screws provide appropriate attachment points for caster stems and wheel stems, so that specifically mentioning them in the final rule will clearly express the Agency's intent and facilitate compliance.

Paragraph (w)(10) provides that, before a scaffold is moved, employees on the scaffold shall be made aware of the move. This requirement, which was not part of the proposal, is based on input received from a commenter (Ex. 2–23) on this section. OSHA agrees with this input, and has revised the proposed paragraph accordingly. In addition, OSHA notes that this requirement is consistent with ANSI A10.8–1988, paragraph 11.2.3.5.

Issue 14 asked whether OSHA should allow mobile scaffolds to move only along their longitudinal axes while employees are riding on them. OSHA noted that compliance with this provision, which was suggested by ACCSH (Ex. 4), would maximize scaffold stability during movement, because tipping is more likely to occur when a scaffold is moved along its transverse axis.

Two commenters (Exs. 2–50 and 2–368) stated that such a provision would be difficult to enforce. Three commenters (Exs. 2–22, 2–53, and2–368) also stated that this provision would be impractical. The SIA (Ex.2–368) went on to explain that:

> [S]uch a provision would make it difficult for workers to perform their duties without violating standards. Sometimes it is necessary to make even slight adjusting movement of the scaffold in order to reach the area of work. If workers were prohibited from moving the scaffold even the slightest amount along the narrow axis, they would tend to extend their reach over the side of the scaffold, thus creating an even greater hazard.
>
> Some mobile scaffolds are almost square, which would require a tape measure to determine when there would be a violation. The fatigue created by the worker climbing up and down each time he wished to move the scaffold would tend to increase the likelihood of an accident.

Another commenter (Ex. 2–50) reasoned that it had never had a scaffold accident under the existing standards, so it expected that the proposed requirement would be unreasonably restrictive and difficult to monitor. Another commenter (Ex. 2–22) foresaw no increase in employee safety to balance against possible problems encountered by those required to implement the provisions.

On the other hand, one commenter (Ex. 2–29) simply favored adopting the suggested provision. Another commenter (Ex. 2–43) agreed that "rolling scaffolds should be moved in a safe manner" but added that "[e]nforcing this requirement will continue to provide special challenges."

Five commenters (Exs. 2–13, 2–15,2–37, 2–54, and 2–367) found the provision unacceptable, because they felt employees should not be permitted to ride mobile scaffolds at all. Another commenter (Ex. 2–308), responding to proposed 1926.452(w), also said that employees should never be allowed to ride scaffolds. One other commenter (Ex. 2–13) agreed but added an exception for scaffolds "that have been specifically designed for such movement."

OSHA agrees with the SIA (Ex.2–368), which indicated that such a requirement would make it difficult for workers to perform their duties without violating the standard because it would sometimes be necessary to make slight adjustments of a scaffold to safely reach the work area. OSHA is concerned that if workers were prohibited from moving the scaffold along its transverse axis, even slightly, they would find themselves in circumstances where they would extend their bodies over the side of the scaffold to reach a place where they need to perform work, instead of climbing down the scaffold to reposition it. This would create a greater hazard because the employee would be at risk of falling or of tipping the scaffold.

Accordingly, the Agency has not adopted the suggested language in the

final rule. OSHA believes the proposed provisions set forth in § 1926.452(w), Mobile Scaffolds, appropriately address the concerns of employees riding scaffolds.

(x) Repair Bracket Scaffolds

The March 29, 1993, **Federal Register** notice reopening the rulemaking record (58 FR 16509) sought information regarding "chimney bracket scaffolds." The Agency described such scaffolds as consisting of platforms supported by brackets which are secured in place by one or more wire ropes placed in an approximately horizontal plane around the circumference of the structure and tensioned by a turnbuckle. The Agency noted that it had recently received information (Exs. 31 and 32) which suggested that proposed § 1926.451 might not adequately protect employees on these scaffolds from falls and other hazards.

OSHA noted that it was considering whether specific fall protection requirements were needed in subpart L for protection of employees on chimney bracket scaffolds. The Agency also noted that it was considering the appropriateness of promulgating technical requirements for chimney bracket scaffolds that are more detailed than those proposed for scaffolds in general. Accordingly, the March 29, 1993, **Federal Register** notice presented a series of questions aimed at developing criteria for safe use of chimney bracket scaffolds. One commenter (Ex. 34–35) stated "[u]nless it can be determined by a competent person beforehand that the chimney can support a bracket and an independent safety line and fall protection is used, other means such as balling, explosives or remote crane suspended hydraulic attachments should be used." OSHA also received substantive input on chimney bracket scaffolds [repair bracket scaffolds] from one commenter, the National Advisory Committee for Health & Safety in the Chimney, Stack, Silo and Natural Draft Cooling Tower Industry (NACHS) (Ex. 34–33). Those comments are discussed below in relation to the pertinent provisions of the final rule. The NACHS, a trade association presenting the experience and views of companies which use the scaffolds in question, referred to these scaffolds as "repair bracket work platforms" in its comment. Based on that input, the Agency has determined that the term "repair bracket scaffold" should be used in place of the term "chimney bracket scaffold."

The NACHS (Ex. 34–33) indicated that a "repair bracket scaffold" is a type of supported scaffold that has been used safely for over 80 years for tuckpointing on brick chimneys; crack repairs; the installation of bands on brick or concrete chimneys; painting; access to caps, hoods, and lightning protection systems; installation of permanent platforms; piece-meal demolition of brick, concrete, and steel chimneys; waterproofing brick and concrete chimneys; 360 degree access at any given elevation for any activity; and steeple access. According to the commenter, these scaffolds are installed by encircling a structure with a minimum one-half-inch diameter wire, tensioned by a minimum one-inch turnbuckle. Brackets are then placed over the wire rope, and scaffold planking (12-inch minimum width), guardrail posts and handrails are installed on the brackets.

Based on the information received, OSHA again reopened the rulemaking record (59 FR 4615, February 1, 1994) to solicit comment on draft regulatory text that the Agency was considering for inclusion in the final rule. In addition, the Agency noted that it was considering whether employees working on chimney bracket scaffolds needed to be protected from fall hazards by both a "Type I" guardrail, as would have been required by proposed § 1926.451(e)(4), and a personal fall arrest system. Also, OSHA noted that it was considering what provisions must be made for rescue of employees from chimney bracket scaffolds in the event of scaffold collapse or a medical emergency. The Agency indicated that it was developing criteria for employers who would need to comply with these provisions. As is discussed below in relation to the provisions of final rule paragraph (x), the Agency also raised Items (a) through (l) for consideration as prospective provisions of the final rule. (All references to Items and Issues in this paragraph of the preamble relate to the February 1, 1994 reopening notice.) The one commenter, Monsanto, (Ex. 43–45) who responded to those Items stated that they should be adopted in the final rule.

Based on the rulemaking record, OSHA has determined that it is appropriate to add a new paragraph (x) to § 1926.452 to address the use of 'repair bracket scaffolds'. In addition, a definition of that term, based on the NACHS comment, is being added to § 1926.450(b), Definitions.

Paragraph (x)(1) requires employers to secure brackets in place with ½ inch diameter wire rope that extends around the circumference of the chimney. This provision, which incorporates the language from Items (a) and (b) of the February 1, 1994 notice (59 FR 4617), codifies established good industry practice as described by the NACHS (Ex. 34–33).

Final rule paragraph (x)(2) requires that each bracket be attached to the securing wire rope (or ropes) by a positive locking device capable of preventing the unintentional detachment of the bracket from the rope, or by some other means which prevents unintentional detachment. The NACHS (Ex. 34–33) indicated that brackets are positioned on the cable in the course of erecting the scaffold. Issue 6 asked if OSHA should require a positive locking device on the bracket hook that is placed over the wire rope to prevent unintentional separation of the bracket from the wire rope. Continental Chimney Inc. (CCI) and NACHS (Exs. 43–1 and 43–21) supported such a requirement.

Final rule paragraph (x)(3) requires that each bracket, at the contact point between the supporting structure and the bottom of the bracket, be provided with a "shoe" (heel block or foot) capable of preventing the lateral movement of the bracket. Issue 7 asked if OSHA should incorporate such a requirement in the final rule. CCI and NACHS (Exs. 43–1 and 43–21) commented that a "shoe" was needed to prevent lateral movement. In addition, CCI stated "The bottom of our [bracket] feet have an angle cut into them to prevent them from getting caught up on obstructions on the chimney and becoming disconnected if the scaffold system should slip."

Final rule paragraph (x)(4) requires that platform units be secured to brackets in a manner that prevents the separation of platform units from brackets and prevents movement of platform units or brackets on a completed scaffold. This provision is based on Item (e), which provided that platform units shall be secured to the brackets. Issue 4 asked how employers should fasten platform units to brackets so that they do not inadvertently detach. CCI (Ex. 43–1) stated "We have used ⅛" cable with ¼" rope. ¼" rope is enough most of the time. The ⅛" cable provides added security and can be secured adequately be tying it in right along side the ¼" rope. Using clamps here would never work." The NACHS (Ex. 43–21) responded that employers should secure platform units to brackets "[b]y any positive system available, i.e., wire, rope, etc." OSHA has determined that it is appropriate to allow employers flexibility in choosing the means of securing platform units and has added final rule paragraph (x)(4) accordingly.

Final rule paragraph (x)(5) provides that, when a wire rope is placed around

a structure to provide safe anchorage for personal fall arrest systems that are used by employees erecting or dismantling repair bracket scaffolds, the wire rope shall be at least 5/16 inches in diameter and shall, in all other respects, satisfy the requirements of subpart M, OSHA's Fall Protection Standard. This paragraph, which is effectively identical to Item (l) of the February Notice, codifies established good practices as described by the NACHS (Ex. 34–33).

Final rule paragraph (x)(6) requires that each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems be protected from damage due to contact with edges, corners, protrusions, or other discontinuities of the supporting structure or scaffold components. Issue 10 of the Reopening Notice asked how employers protected wire ropes from abrasion. CCI (Ex. 43–1) stated "Our brackets hold the cable 3" below our decking." The NACHS (Ex. 43–21) responded "[t]he bracket scaffold support cable is static, and abrasion experienced from * * * installation does not affect its integrity. The hardwood cable block spacers (@ [+ or −] 36" centers) minimize and often prevent the cable from making contact with the structure's surface." OSHA has determined, based on the comments, that adequate means of protecting wire rope from abrasion are readily available to affected employers.

Final rule paragraph (x)(7) provides that tensioning of each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems shall be by means of a turnbuckle at least 1 inch in diameter, or by some other equivalent means. This paragraph, which is very similar to Item (b) of the Reopening Notice, codifies established good practice as described by the NACHS (Ex. 34–33). OSHA has allowed employers the flexibility to use means other than a single turnbuckle for tensioning wire ropes, where the alternative means provide equivalent tension, because the Agency wants to encourage innovation and provide flexibility. In addition, OSHA anticipates, based on information from NACHS (Ex. 34–33), that there may be circumstances where more than one turnbuckle will be needed to tension the wire rope, depending on the diameter of the chimney.

Final rule paragraph (x)(8) requires that each turnbuckle be connected to the other end of its rope by use of a proper-size eyesplice thimble. Issue 8 of the February Notice asked if OSHA should add such a requirement to the final rule. CCI (Ex. 43–1) stated "Thimbles are very helpful in keeping the cable in good condition. These can be fit over the turn buckle eye and then closed back up." Also, the NACHS (Ex. 43–21) commented that OSHA should add a requirement for the use of a proper size thimble.

Final rule paragraph (x)(9) provides that U-bolt wire rope clips shall not be used on any wire rope used to secure brackets or to serve as an anchor for personal fall arrest systems. OSHA expressed concern in the February 1, 1994 reopening notice that the use of U-bolt wire rope clips as wire rope fasteners on the horizontal support ropes could result in damage to the dead end of the rope. Further, if a segment of damaged dead end later were to become part of the live end due to an increase in the circumference of the structure, the Agency was concerned that the wire rope would be unable to support the loads imposed on it.

CCI responded (Ex. 43–1) "The use of U wire rope clips does not damage the wire rope significantly when they are not over-tightened. Double-saddle clips are not as strong as U wire rope clips and are difficult to put on the cable." Also, Charles Greene (Ex. 43–47), a safety consultant, stated he "[w]ould recommend that fist or saddle clips be used to fasten the horizontal support ropes that support the bracket scaffolds."

OSHA disagrees with CCI regarding the safety of using U-bolt wire rope clips, based on the Agency's review of *Rosnagles Handbook of Rigging* and the *Wire Rope User's Handbook*. The information in those publications clearly indicates that the use of U-bolt wire rope clips could significantly damage wire ropes. Where wire rope is used to secure brackets, U-bolt clips shall not be used because a segment of damaged dead end could later become part of the live end due to an increase in the circumference of the structure. By contrast, the standard allows U-bolts in other applications, such as where the U-bolt is used at the end (dead end) of the wire rope and that part of the wire rope is never moved into the live section. Accordingly, because of the risk of damaging the wire rope, OSHA is prohibiting the use of U-bolt wire rope clips on repair bracket scaffold support cables.

Final rule paragraph (x)(10) requires employers to ensure that materials are not dropped to the outside of the supporting structure. This paragraph is based on Item (j) of the February Notice. In addition, Issue 2 of the Reopening Notice asked if requirements other than those in proposed § 1926.451(f) (§ 1926.451(h) of the final rule) were needed to address the hazards of materials falling to the outside of the structure. The NACHS (Ex. 34–33) indicated that chunks of material generated during demolition operations are "dropped piecemeal down the inside of the chimney and kept off the scaffold." There was no response to Issue 2. OSHA believes that this requirement simply codifies existing good industry practice and provides an appropriate supplement to the provisions of final rule § 1926.451(h).

Final rule paragraph (x)(11) requires that erection of a repair bracket scaffold be performed in only one direction around the structure. This provision is based on item (k); as with the other "items" from the February 1, 1994 notice, the Agency believes that this paragraph simply codifies established good industry practice.

In addition, the February 1, 1994 reopening notice raised several Issues and Items which did not result in the addition of requirements to the final rule. For example, Reopening Issue 1 asked how employers would provide a safe anchorage point for personal fall arrest systems and whether compliance with the General Industry standard for powered platforms, § 1910.66, Appendix C would be appropriate. The NACHS (Ex. 43–21) stated that a wire rope anchorage point could be attached to a structure "by means of tensioning devices i.e., turnbuckles and hardwood cable spacer (stand off) blocks." The commenter also stated that conformance with § 1910.66, Appendix C, should not be required "because the chimney bracket scaffold erector is secured to an independent anchor (ladder) during the installation process." Based on this information, OSHA has not added the cross-reference to the General Industry standard to the final rule.

In addition, Item (i) provided for a competent person to inspect the supporting structure before scaffold erection begins, and Issue 3 asked what criteria a competent person should apply when inspecting the supporting structure. The NACHS (Ex. 43–21) stated that the criteria should be determined by the "competent person" (as defined in existing § 1926.32(f)) and "should be the responsibility of each contractor on a project by project basis." Charles Greene (Ex. 43–47) stated that OSHA should require inspection of wire rope before each use. The Agency believes that compliance with the general requirements in final rule § 1926.451(f)(3), which provides that a competent person shall inspect scaffolds (including supporting structures and anchorage points) for visible defects prior to each work shift and after any occurrence that could affect the

scaffolds' structural integrity, will provide adequate assurance that unsafe scaffolds are not used. Accordingly, the Agency has not added additional specific criteria for inspection of repair bracket scaffolds to the final rule.

Reopening Issue 3 sought comment on the use of a wire rope placed at the platform level in lieu of an inner guardrail system on tank builders' scaffolds. The Steel Tank Institute (STI) (Ex. 43–5) stated:

> One STI member uses a fabricated hook with an eyelet for attaching a safety lanyard and harness. The hook is hooked over the top plate of steel on the tank being erected. This system allows a high degree of mobility for workers since the hook can slide horizontally along the steel plate, and results in 100% fall protection. If such a system is used, the space between the scaffold planks and the tank shell should not be an issue.

OSHA believes that, in general, the use of guardrail systems or personal fall arrest systems would provide more effective protection than the system described by the STI. The Agency also believes, however, that the method described by this commenter to use personal fall arrest systems could be used in many cases to provide protection equivalent to the wire rope guardrail described in Issue 3.

Reopening Issue 5 asked what criteria, if any, should be set for brackets used with repair bracket scaffolds. CCI (Ex. 43–1) stated that there was "no need" to set such criteria. In addition, the NACHS (Ex. 43–21) responded "[n]o criteria should be set by OSHA that may restrict material and system improvements that are in constant change due to modern technology." The Agency agrees that it is important to encourage development of improved systems and materials. Furthermore, OSHA believes that compliance with the requirements in final rule §§ 1926.451 (a), (b) and (c), will ensure that brackets used on repair bracket scaffolds provide adequate protection for employees. Accordingly, the Agency has not added specific criteria for brackets to the final rule.

Reopening Issue 9 asked whether the safety factor for wire rope used with repair bracket scaffolds should be 4:1, as recommended by the NACHS (Ex. 34–33), or 6:1, as provided in proposed § 1926.451(a) and in Item (d). OSHA noted that a 4:1 safety factor might be inadequate because the use of wire rope clips reduces the strength of the rope. The NACHS (Ex. 43–21) stated "[t]he Committee unanimously recommends a safety factor of 4:1 be satisfied." OSHA believes that the strength of wire ropes used with repair bracket scaffolds is just as important as the strength of ropes used with other scaffolds. Therefore, the Agency has determined that the 6:1 safety factor which OSHA has set as a general requirement for wire ropes (final rule § 1926.451(a)) is also appropriate for wire ropes used with repair brackets.

Reopening Issue 11 asked if OSHA should specify that each platform unit on a chimney bracket scaffold shall extend at least 12 inches over its supports, as recommended by NACHS (Ex. 34–33) and provided by Item (f), or extend at least 6 inches (unless cleated or otherwise restrained) as provided by proposed § 1926.451(b). CCI (Ex. 43–1) stated that platform units should extend out at least 12 inches. The NACHS (Ex. 43–21) stated that OSHA should require minimum extension of 6 inches unless cleated or otherwise restrained as provided by proposed § 1926.451(b), but did not explain why it had changed its position. OSHA believes that compliance with the 6-inch requirement as set forth in final rule § 1926.451(b)(4) will adequately protect employees working on repair bracket scaffolds.

Items (c) and (h) would have incorporated strength and guardrail requirements into paragraph (x). These provisions are not needed because the general requirements in final rule § 1926.451 (a) and (g) adequately address scaffold capacity and fall protection.

Item (g) provided that the span of platform units from bracket to bracket shall not exceed 5 feet on the outside of the brackets. As noted above, Monsanto (Ex. 43–45) supported the inclusion of this provision in the final rule. The Agency notes that while span is a factor, the issue is already addressed by the general requirements for minimum and maximum overhang (final rule § 1926.451(b)(4) and (5)), and the capacity requirements of § 1926.451(a). There is thus no need to add this requirement to the final rule.

Paragraph (y) Stilts

Final rule paragraph (y) provides requirements for the use of stilts. Neither OSHA's existing scaffold standard (subpart L) nor the proposed rule directly addressed the use of stilts. NPRM Issue 20 asked if OSHA should prohibit or regulate the use of stilts. In particular, the Agency requested suggestions as to the appropriate construction and use of stilts, fall protection for employees wearing stilts, floor conditions in areas where stilts are being used, and other necessary considerations.

The SSFI (Ex. 2–367) stated that they "would support OSHA's prohibition on using stilts while undertaking work on scaffolds" as this "would be considered unsafe." Another commenter (Ex. 2–29) stated, "stilts are not recommended for construction conditions. Unlevel working surfaces, debris, etc. are particular problems when using stilts."

On the other hand, a commenter (Ex. 2–13) stated, "OSHA should not prohibit the use of stilts. They have been used safely for many years. They should never be used near any unprotected opening." The SIA (Exs. 2–368, 5a-16) agreed that the Agency should promulgate a rule permitting the use of stilts but should spell out "some safety rules, particularly when their use places the worker at heights above the standard guardrail protection." Many commenters on Issue 20 used a specific height (length) of no more than 40 inches as a cut off point above which they considered the use of stilts to be unsafe (Exs. 2–47, 2–61, 2–63, 2–67, 2–78, 2–156, and 2–304).

Over 460 other commenters expressed the view that Issue 20 was the first step towards a prohibition on the use of stilts. Those comments stated that prohibiting the use of stilts would cause employees to sustain injuries from over-reaching and falling from ladders, stools, platforms, homemade benches, boards, inverted buckets and other devices they would otherwise use to elevate themselves when doing painting, finishing or ceiling work. In particular, one commenter (Ex. 2–99) stated

> Based on our experiences over these many years, we have found stilts to be a very safe and effective means to perform work in a timely and efficient and safe manner. Whenever stilts are used on a project, we have found that general housekeeping improves. There is much less debris found even on a short term basis than there would be with conventional scaffolding. We are able to use stilts to reach areas where conventional scaffolding and even ladders would be unsafe due to jobsite conditions. We do not let just any employee work on stilts. Our safety record attests to that. During the twenty (20) years we have used stilts, we have only had two (2) accidents involving the stilts—and both of these accidents were by the same employee.

Most of the commenters stressed the need for proper training for employees who use stilts (Exs. 2–6, 2–301, 2–379, and 2–406B). Most of the comments also indicated that some safety provisions, such as debris control, are needed if stilts are to be used.

Based on the concerns expressed by commenters, Issue L–4 of the hearing notice (53 FR 2048, January 26, 1988) set out four provisions that OSHA was considering for inclusion in the final rule for subpart L and solicited public input. Final rule §§ 1926.452(y)(1) and (2) address the use of stilts on large area

scaffolds, and §§ 1926.452 (y)(3) and (4) provide criteria for the use of stilts in general. These are based on the first through fourth provisions, respectively, raised in Hearing Notice Issue L–4.

The Association of the Wall and Ceiling Industries International testified (Tr. 3/22/88, p. 86, Ex. 5a–14) in favor of the proposed provisions. The SIA testified that stilt use was widespread and that stilts were considered a useful tool by the ceiling and wall industries (Tr. 3/22/88, pp. 157–158). The SIA testimony supported three provisions that OSHA is adopting, but did not express an opinion on the fourth provision (final paragraph (y)(2)).

Paragraph (y)(1) requires that employees not wear stilts on scaffolds except when the employees are on large area scaffolds. This paragraph is effectively identical to the language in the first provision raised for consideration in Issue L–4.

Paragraph (y)(2) provides, when employees wearing stilts are on large area scaffolds where guardrail systems are being used, that the dimensions of the guardrail system shall be increased to offset the height of the stilts. This paragraph corresponds to the language in the second provision raised for consideration in Issue L–4.

The SIA (Ex. 2–368) commented that a standard providing for the use of stilts on scaffolds should address guardrail height on scaffolds where stilts are being used.

Paragraph (y)(3) of the final rule provides that all surfaces on which stilts are used shall be flat and free of pits, holes and obstructions, such as debris, as well as all other tripping and falling hazards. This paragraph is identical to the language in the third provision raised for consideration in Issue L–4.

Many commenters noted the importance of removing potential tripping hazards where stilts are used (Exs. 2–54, 2–71, 2–99, 2–149, 2–166, 2–205, 2–219, 2–256, 2–272, 2–283, 2–295, 2–307, and 2–324). For example, a commenter (Ex. 2–54) stated:

> It would seem those that would have the opportunity to use stilts the most would be stepping into a lot of loose debris that has fallen and quite vulnerable to injury from slipping and falling.

Paragraph (y)(4) of the final rule provides that stilts shall be properly maintained and that any alterations of the original equipment must be approved by the manufacturer. This paragraph is identical to the language in the fourth provision raised for consideration in Issue L–4.

Several commenters who responded to Issue 20 addressed the condition of stilts. Those commenters (Exs. 2–59, 2–62, 2–71, 2–72, 2–108, 2–211, 2–219, 2–237, 2–243, 2–301, 2–304, 2–304, 2–313, 2–324, 2–379, 2–406B, and 2–409), generally, indicated that requirements for proper maintenance and inspection of stilt equipment, including straps and fittings, were needed. A number of manufacturers, contractors, and workers who use stilts also expressed strong approval for the use of manufactured stilts (as opposed to the use of job-made stilts) (Exs. 2–47, 2–127, 2–154, 2–257, 2–304–25, and 2–411A). The Agency has no information which indicates that job-made stilts pose a greater hazard than manufactured stilts, and therefore is not covering them differently under this paragraph. OSHA will monitor work experience under this provision to determine if it is appropriate to treat manufactured and job-built stilts differently.

Section 1926.453 Aerial Lifts

OSHA proposed to delete existing § 1926.451(f), *Elevating and rotating work platforms*, because the Agency believed that the existing provision was redundant with existing § 1926.556, *Aerial lifts*, which is in subpart N, Cranes, Derricks, Hoists, Elevators and Conveyors, of the Construction Standards. Existing § 1926.451(f) provides only that employers comply with ANSI A92.2–1969, Vehicle Mounted Elevating and Rotating Work Platforms. This requirement is also found in § 1926.556. Section 1926.556, in turn, sets some specific requirements for specified lift operations, but primarily references ANSI A92.2–1969.

The SIA (Ex. 2–368) objected to the proposed deletion, stating that equipment which falls under the definition of "scaffold" should be addressed by subpart L. ANSI A92.2–1969 classifies elevating and rotating work platforms as "scaffolds."

Based on consideration of the comment, OSHA believes that the retention of existing § 1926.451(f) would not be appropriate. However, the Agency agrees with the commenter that this type of equipment is a scaffold and that it should be addressed by subpart L. In order to facilitate the efforts of construction employers to safeguard employees who use elevating and rotating work platforms, the Agency has decided to move the requirements of § 1926.556 to a new § 1926.453, Aerial lifts, in subpart L. The introductory text to this section indicates that § 1926.453 applies only to ANSI A92.2 type equipment (vehicle mounted elevating and rotating work platforms), and further notes that the requirements of § 1926.451 and § 1926.452 do not apply to this type of equipment.

In addition, OSHA recognizes that the A92 Committee has updated A92.2–1969 and has adopted other A92 standards which address technological advances and evolving safe industry practices regarding elevating and rotating work platforms. The Agency has determined that compliance with the pertinent A92 standards adopted by ANSI since 1969 will provide employee safety at least equivalent to that attained through compliance with ANSI A92.2–1969. Accordingly, OSHA is providing a list of post-1969 ANSI A92 standards which are presently available, and is placing this list in a new non-mandatory Appendix C to this standard (subpart L). This non-mandatory appendix can be updated as necessary to include future revisions of the A92 standards or other relevant information.

Paragraph (a) addresses general requirements for aerial lifts, while paragraph (b) contains specific requirements for this equipment. Paragraph (b)(1) through (b)(5) specify requirements for ladder trucks and tower trucks, extensible and articulating boom platforms, electrical tests, bursting safety factors, and welding standards for aerial lifts, respectively

Section 1926.454 Training Requirements

Section 1926.454 addresses training for employees working with scaffolds. The introductory text indicates clearly that this section both supplements and clarifies the training provisions in existing § 1926.21(b)(2). That standard, which applies to all construction work, requires employers to "instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury." While that language clearly articulates the employer's general duty to provide training, OSHA believes it is appropriate to provide more specific direction regarding the training necessary for employees who work on scaffolds. Accordingly, § 1926.454 sets certain criteria allowing employers to tailor training to fit their workplace circumstances.

The introductory text of proposed § 1926.460 indicated that OSHA would cite employers for violations of the added training requirements in this section only when a citation was issued concurrently under the provisions of proposed §§ 1926.450, 1926.451 or 1926.452. However, it is clear to OSHA that this approach is not appropriate and does not provide adequate

employee protection, because the training of an employee does not necessarily ensure that an employee will follow the substantive safety provisions of the standard in every case.

OSHA's enforcement of the standard's training requirement does not depend on the extent to which an employer is fulfilling other compliance obligations under subpart L. In this regard, the scaffold standard is like any other OSHA standard that provides for both hazard prevention and employee training. The employer has separate duties to provide protection and to train employees, and may be cited for violating either or both types of requirements.

Paragraph (a) of the final rule sets training requirements for employers who have employees working on scaffolds. The introductory text requires employers to ensure that each employee whose employment involves being on a scaffold is trained to recognize the hazards associated with the type of scaffold being used and to understand the procedures which must be followed to control or minimize those hazards.

Proposed paragraph (a) required that all employees using scaffolds to perform a job task be instructed in the proper construction, use, placement and care of the scaffolds they are using, and in the applicable provisions of this subpart. OSHA has determined that the proposed provision should be revised to provide more specific direction regarding how employees working on scaffolds are to be trained. In addition, the Agency recognizes that it is appropriate to distinguish between the training needed by employees erecting and dismantling scaffolds and the training needed by employees who are on scaffolds in the course of their work. Accordingly, final rule paragraph (a) addresses employees who are working on scaffolds and final rule paragraph (b) addresses employees who are erecting and dismantling scaffolds. OSHA anticipates that some employees, such as those who use adjustable suspension scaffolds, will need training that complies with both paragraph (a) and paragraph (b).

The SIA and the Duke Power Company (Exs. 2–368 and 2–465) commented that employees who use scaffolds do not need to know how to construct, place, and care for these scaffolds. The SIA (Ex. 2–368) stated "Does every single worker on the job need to know how the scaffold is constructed, or how it was placed, or how it is to be cared for? This should be the responsibility of some "competent" person, but not everyone on the scaffold." In addition, Duke Power (Ex. 2–465) noted "the majority of scaffolds used are not constructed by the employees using them." As noted above, OSHA agrees with these concerns and final rule § 1926.454 reflects this thinking.

The introductory language of final rule paragraph (a) also requires employers to ensure that each affected employee has been trained by a person who is qualified in the pertinent subject matters. The requirement for training by a qualified person has been added to the final rule to ensure that the training is adequate. The ACCSH (Tr. 6/9/87, p. 266) recommended that OSHA require the involvement of a competent person in the program to provide appropriate assurance that employees will be adequately trained. However, the Agency has decided that a qualified person would be more appropriate because it is the knowledge, skill or experience of the trainer, not the trainers authority, which determines the adequacy of the training provided. Limiting the delivery of the required training only to a competant person would prevent employers from taking advantage of outside sources of training, such as scaffold manufacturers and suppliers, that regularly provide these types of services to clients.

Paragraphs (a)(1) through (a)(5) address five areas in which training must be provided, as applicable. Final rule paragraph (a)(1) requires that affected employees be trained in the nature of any electrical hazards, fall hazards and falling object hazards in the work area. Many employees have been killed or seriously injured because they were unaware of workplace hazards or did not understand the consequences of exposure to those hazards. This provision clearly indicates the hazards (i.e., electrocution, falls and falling objects) regarding which training must be provided. This paragraph elaborates on the requirements of existing § 1926.21(b)(2), which addresses training in the general recognition and avoidance of hazards.

Final rule paragraph (a)(2) requires that affected employees be trained in the correct procedures for protection from electrical hazards and for erecting, maintaining, and disassembling the required fall protection systems and falling object protection systems. Employees who are on scaffolds while working need to know how protective systems function, so that they know how to install, maintain or remove these systems, as necessary. For example, where a scaffold has been erected without the protective measures necessary for work to be performed on or from the scaffold, the employees subsequently coming onto the scaffold would need to install them. Even where the scaffold erectors have installed the required protection for affected employees, the employees working on the scaffold need to know when and how to maintain that protection, so that a hazardous situation does not develop during scaffold use. Proposed paragraph (a) addressed this subject only in general terms.

The ANSI Z359 Committee stated (Ex. 2–57)

"[P]ersons who work on scaffolds should be required to undergo *fall protection* training. This is not specified in sufficient detail in 1926.460. The content, specificity and training environment for a fall protection training program should perhaps be considered as the subject of a national standard." OSHA agrees with this comment and has revised the proposed training provision accordingly.

Paragraph (a)(3) requires that employees be trained in the proper use of the scaffold and in the proper handling of materials on the scaffold. This paragraph is effectively identical to the corresponding provision of proposed paragraph (a). The language regarding the proper handling of materials has been added to facilitate compliance with the requirements for falling object protection.

Paragraph (a)(4) requires that employees be trained in the maximum intended load and the load-carrying capacities of the scaffolds used. This language is effectively identical with the corresponding language of proposed paragraph (a).

Paragraph (a)(5) requires that employees be trained in the pertinent requirements of subpart L. This provision is effectively identical to the corresponding language in proposed paragraph (a).

Paragraph (b) of the final rule addresses training for employees assembling, maintaining or dismantling scaffolds. The introductory language of paragraph (b) requires that the employer have each employee who erects, disassembles, moves, operates, repairs, maintains, or inspects a scaffold trained by a competent person so that the employee can recognize any hazards related to such work duties. This provision is effectively identical to the language in proposed paragraph (a). As noted above, final rule paragraph (b) is designed to differentiate clearly between the training needed by employees erecting and dismantling scaffolds and the training needed by employees who are on scaffolds in the course of their work. In addition, this provision corresponds, in part, to the language in proposed paragraph (b), which required that employees repairing scaffolds be

competent individuals "trained and familiar with the design criteria, intended use, and the proper procedures for repairing the defective component(s)."

The introductory language of final paragraph (b) requires the employer to ensure that each affected employee has been trained by a competent person in four areas, as applicable. As discussed above in relation to final rule § 1926.454(a), OSHA has added this requirement in response to a recommendation from the ACCSH (Tr. 266, 2/9/87).

Paragraph (b)(1) requires that affected employees be trained in the nature of scaffold hazards. This provision effectively restates the existing § 1926.21(b)(2) requirement that employees be instructed in the recognition and avoidance of unsafe conditions.

Paragraph (b)(2) requires that affected employees be trained in the correct procedures for erecting, disassembling, moving, operating, repairing, inspecting, and maintaining the type of scaffold in question. This language, which is consistent with the corresponding language in proposed paragraphs (a) and (b), indicates clearly that training must address the particular type(s) of scaffold with which each affected employee will be working. Training provided to an employee to construct, repair or dismantle one type of scaffold will not necessarily enable that employee to repair another type.

Paragraph (b)(3) requires that affected employees be trained in the design criteria, maximum load-carrying capacity, and intended use of the scaffold. This provision is consistent with the corresponding language in final rule paragraph (a)(4).

Final rule paragraph (b)(4) requires that affected employees be trained in the pertinent requirements of subpart L. This provision, like final rule paragraph (a)(5), is effectively identical to the corresponding language in proposed paragraph (a).

Non-mandatory Appendix D lists various training topics that may be important for the employers and employees erecting or dismantling scaffolds. The list is not all-inclusive, and OSHA is providing it solely as informational guidance. The employer may need to address topics or situations not mentioned in the Appendix which are specific to the employer's particular circumstances.

Proposed paragraph (c), which addressed training specifically for employees who operate suspended scaffolds, has been deleted from the final rule, because the Agency has determined that training for these employees is adequately covered by the requirements in paragraphs (a), (b) and (c) of the final rule.

Final paragraph (c) requires the employer to retrain any employee when the employer has reason to believe that the employee does not have the understanding and skill required by paragraph (a) or (b) of this section. Employees must be retrained, as necessary, to restore the requisite scaffold-related proficiency. Circumstances where the provision requires retraining include, but are not limited to, the following situations: first, whenever there is a change at the worksite that presents a hazard about which the employee has not been trained (paragraph (c)(1)(i)); second, where changes in the types of scaffolds, fall protection, falling object protection, or other equipment present a hazard about which the employee has not been trained (paragraph (c)(1)(ii)); and, third, where inadequacies in an affected employee's work practices involving scaffolds indicate that the employee has not retained the requisite proficiency (paragraph (c)(1)(iii)). This provision simply clarifies the language of proposed § 1926.460(d), which stated that employees would receive training and retraining as necessary. OSHA notes that this provision is essentially identical to the corresponding retraining requirements in the Construction Industry fall protection standard (§ 1926.503(d)) and the General Industry standards for permit-required confined spaces (§ 1910.146(g)(2)) and personal protective equipment (§ 1910.132(f)(3)).

NPRM Issue 15 solicited comments regarding employee training and retraining on scaffold use. In particular, OSHA asked for data on the costs and effectiveness of training requirements in reducing the risk of injuries or fatalities, and whether more or less specific requirements were appropriate. Commenters were also asked to provide the Agency with information about currently available safety programs and their adequacy; the safety records of employees who have been trained; the scope and necessary elements of training programs; the relationship of the additional specific provisions in proposed § 1926.460 to the more general § 1926.21 requirements; the costs and benefits of these provisions; and possible recordkeeping burdens these provisions might involve.

The SIA (Ex. 2–368) stated: "[T]he SIA devotes a considerable portion of its budget to promotion of safety and training through audio-visual programs and training courses for the safe use of scaffolds. We believe that training will reduce accidents and would like to see some additional requirements in the scaffold standards." However, the SIA expressed concern that employers would have to "establish and maintain extensive records on each employee" because the rule would expose them to "increased liability from an insurance standpoint" and to OSHA citations. The SIA also indicated that training would not be able to cover all foreseeable equipment use, and that an employer who assumed that training was all-encompassing would be compromising the safety of its employees. Furthermore, the SIA stated that the proposed training requirements would pose practical problems for employers because of employee mobility and related staffing concerns.

Based on the above-discussed concerns, the SIA made the following recommendations regarding 'additional' training requirements:

> As a minimum, employers should be required to furnish to employees working on scaffolds printed safety rules (Codes of Safe Practice) for the particular type scaffold they are using. The employee should be required to read the rules in the presence of the employer or his agent (a competent person) and be questioned as to whether the employee understands the rules.
>
> Due to the extreme hazard associated with the use of suspended scaffolds, a written training program should be required. The program should include formal certification by the employer upon completion of the program by the employee. Persons without such training should not be allowed to work on suspended scaffolds.

OSHA notes that the training requirements in both the final rule and the proposed rule have been framed in performance-oriented language. This approach allows employers the flexibility to establish programs which reconcile the need for training with the circumstances at particular workplaces.

The AGC (Exs. 2–20, 2–55, and 2–390) contended that any additional training requirements would be redundant and economically infeasible, given the construction industry's high employee turnover. The GLFEA and ABC (Exs. 2–22 and 2–69) commented that training requirements would "impose practical problems" due to workforce mobility. In addition, the GLFEA, ABC and the Builders' Association of Missouri (Ex. 2–50) stated that the requirements of § 1926.21 already adequately address training. The GLFEA added that "other constraints * * * such as insurance costs and workers compensation rates, impose a requirement on * * * employers to train their employees and * * * follow safety requirements."

OSHA recognizes that employee turnover can increase an employer's training responsibilities. The Agency notes, however, that the existing standard already requires construction employers to provide training for their employees, notwithstanding employee turnover or other day-to-day changes in the employer's workforce. Furthermore, the Agency believes that § 1926.454, insofar as it elaborates on the training requirements of existing § 1926.21(b)(2), simply codifies good industry practice and provides useful direction for how training programs can "do it right." Accordingly, OSHA has determined, based on the rulemaking record, that any additional responsibilities imposed by final rule § 1926.454 are reasonable and necessary to protect employees from serious hazards.

Furthermore, employers need not retrain employees who are trained by a previous employer or were trained prior to the effective date of the standard, as long as the employee demonstrates the proficiency required by the pertinent provisions of this section. This approach is consistent with that taken in part 1910, subpart I (Personal protective equipment) and part 1926, subpart M (Fall protection).

A manufacturer of suspended scaffolds, Sky Climber, recommended (Ex. 2–64) requiring that all riggers and operators of suspension scaffold equipment be formally trained and certified and carry a certificate or license to evidence their completion of training. That commenter provided the following to explain their position:

> Improper rigging and operator error were the second and third major cause and cost of our product incidents. We believe that training of operators and riggers will substantially reduce the frequency and cost of incidents. In fact, of the over 1500 persons who complete our Training Program in operation, maintenance and rigging since 1980, to our knowledge, not one has been involved in a suspension scaffold incident.

Sky Climber added that this training should be mandatory, and since "[t]he primary responsibility for training rests with the employer * * * he or some other qualified party should provide the required training."

Seedorff Masonry Inc.(Ex. 2–407) commented

> We have always used our foreman as the instructor and this has worked out very well. We can agree that there could be an additional rule on this point, however additional paperwork would not be feasible. We could find our superintendents only doing paperwork without enough time to oversee job sites and develop good safety on the job sites.

The SSFI (Ex. 2–367) commented in favor of proposed § 1926.460, stating as follows:

> Members of the SSFI are in full support of the training requirements for the contractor provided within the OSHA revision. If followed, the training requirements would reduce the number of accidents on construction projects. There currently exist many Institute Safety Rules and Recommendations as well as many recommendations developed by the manufacturers of the equipment. As a minimum, those requirements can be used and, if followed, should dramatically reduce the accidents of construction employees. These construction employees should be trained by the contractor at the construction site prior to their actual start of work, and should not be trained on-the-job as they are working.

Alum-A-Pole Corporation, a manufacturer of pumpjack scaffolds, stated (Ex. 2–31) "[o]n-the-job training is the mode in which pumpjack users gain proficiency in proper installation. On that basis, sequential pictorial instructions with minimal verbiage * * * if adhered to, would virtually eliminate accidents."

Two commenters (Exs. 2–2 and 2–13) expressed the view that cost should not be an issue in matters of safety. In addition, one of these commenters (Ex. 2–13) found from his own experience that both employers and employees should be trained and retrained.

Another commenter (Ex. 2–54) supported training and retraining and provided details of the commenter's training program. The comment touched on the value of discussions, involving both workers and apprentices, regarding the proper way to use equipment. In particular, the commenter indicated that employees are more productive when they are confident that they have the right equipment and know how to use it.

In addition, discussion by the ACCSH on Issue 15 noted that training is cost-effective and beneficial for both employees and employers (Tr. 6/9/87, pp. 130–136). One member stated: "I've heard several employers state that these training programs save 4 to 5 percent of the gross cost of the project, which oftentimes is more than double the amount that they got the bid by in the first place.

They might have gotten the bid by less than 2 percent, but they save 5 percent with the proper training program."

Issue L–1 of the hearing notice (53 FR 2049) requested testimony and related information on any current training programs which issue certificates or licenses to indicate that employees have been adequately trained to erect, use or dismantle specific types of scaffolds. The Agency indicated that it was considering adding a requirement for verification of compliance through a written certification. In particular, OSHA sought comment on the following language:

> § 1926.461 Certification. (a) The employer shall certify that all employees who are erecting, maintaining and dismantling scaffolds, have been adequately trained in the appropriate precautions and safe practices before they are allowed to perform any such scaffold work.
>
> (b) The employer shall certify that the employee has been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training or retraining was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health or designee.

Issue L–1 stated that the above language would not require the "collection of information," and would not, therefore, impose a paperwork burden on the employer under the terms of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the implementing regulations (5 CFR 1320.7(j)).

The Association of Wall and Ceiling Industries (AWCI) (Ex. 9; Tr. 3/22/88, p. 83–84) testified that certifying somebody as adequately trained "opens up a potential of increased liability so what I'm asking OSHA to do for us is to provide some definition of 'adequately trained.' Whether this is a model training program or perhaps a listing of the subjects to be covered under this adequacy of training and also some indication of who's going to do the training." AWCI also asked whether any employee who works on a scaffold must be trained in its proper construction, placement, and care.

The AWCI (Ex. 9; Tr. 3/22/88, p. 84–85) also noted that, given the constant exchange of employees in the construction industry, "portability" of training was a point of concern. They questioned, for example, whether a contractor who has trained employees on a project and rehires them a month and half later would have to retrain them. Similarly, in response to a question regarding the type of training scaffold erectors typically receive, AWCI stated that:

> * * * most of it is on-the-job training that's handed down to new employees as they come aboard the company or is brought by the employees from the previous

company. The training programs could have been derived from the manufacturer of the scaffolding equipment, could be derived from the in-house training program that the contractor has and some of these contractors have extensive programs in place on-site. It could also be derived from the scaffold industry association * * * programs that they have in place * * * " (Ex. 9; Tr. 3/22/88, pp. 91–92.)

The AWCI further testified (Ex. 9; Tr. 3/22/88, p. 90) that EPA's asbestos abatement certification program provided "[t]he ground floor of employee protection." They pointed out that the program requires 3 days of classroom training, including some "hands-on," and includes a listing of all points the program is to cover. In addition, the AWCI testified that "[the program] gives employees an added margin of safety by making them aware of the hostile environment they're going to be in, and added that a foreman, contractor, or supervisor must go for an additional day of training and that they receive instruction regarding insurance programs and legal ramifications." When asked to comment on EPA's certification program versus that which might be required for scaffold erection, the AWCI replied (Tr. 3/22/88, p. 91) that OSHA should specify the points "to be covered in the training program and the credentials of the trainer" if OSHA is going to require a certification program.

In addition, Bristol Steel (Ex. 13; Tr. 3/23/88, pp. 2–147 and 2–148) stated that certification is a weighty responsibility with significant legal implications. Bristol Steel also contended that any legal liability arising from a certification program should be the burden of a trade organization (Tr. 3/23/88, pp. 2–181–182).

Bristol Steel also stated (Ex. 13) that the proposed certification requirement would add a paperwork burden to employers. The commenter added that before requiring certification, OSHA should show that such a requirement could be "implemented and universally enforced and will cause a material reduction in scaffold accidents."

The SIA testified (Ex. 10; Tr. 3/22/88 p. 151) that a certification requirement would expose employers to "tremendous liability to civil and even criminal negligence suits in addition to those penalties prescribed under OSHA." The SIA added that they "worked closely with Cal-OSHA in developing a certification program in 1981, which had to be abandoned because the SIA and its members could not assume the liability created by Cal-OSHA's insistence that we 'certify the competency of the worker'."

The Montague-Betts Company, Inc. and SEAVAC testified that training and certification of workers using scaffolds were appropriate and useful, but that "a lot of definition of scope and what certification consists of is necessary before * * * people can take a final position as to the complete merits and workings of such a proposal" (Tr. 3/23/88, pp. 2–198). Montague-Betts (Ex. 5a–5) stated that certification of employees using scaffolds is appropriate. On the other hand, SEAVAC (Ex. 5a–17) stated that certification is appropriate for employees who erect or dismantle scaffolds but not for other employees.

The SSFI (Ex. 5a–19) stated that training for individuals who use and erect scaffolds had been a subject of great debate within the institute and stated that their members were "very supportive of a [s]tandard that would require training for the use, erection, and dismantling of scaffolds." They recommended the following elements for training:

—Two categories of training: one for scaffold users and one for scaffold erectors and dismantlers;
—Issuing employee "qualification cards" that could be presented to employers, and which would certify completion of a sanctioned training program;
—Nationally uniform training programs;
—A national program requiring certification to balance economic consideration among contractors;
—A gradual transition for the implementation of such a training program;
—Permitting vocational trades, technical, or other qualified teaching organizations or contractors to provide this type of training service;
—Not allowing training and certification to be substituted for existing safety requirements, such as those provided by the equipment manufacturer.

Some commenters opposed the certification language in Issue L–1. One (Ex. 2–593) indicated that the training requirements in § 1926.21 and proposed § 1926.460 were sufficient. Another (Ex. 2–594) called the section regarding certification "too restrictive." Monsanto (Ex. 2–595) disagreed with certification of training and retention of the certification in a file. Monsanto indicated that it had not had problems with scaffold erection, maintenance, and dismantling that would warrant certification of training. They added that the proposed retention requirement for certification information documents would "present an unwarranted paperwork burden on the employer."

The Edison Electric Institute (Ex. 5a–6) responded that a written certification was unnecessary and would add a significant paperwork burden for employers. EEI added that regular training would assure that employees know how to safely "handle scaffolds." EEI also stated that the work involved in these operations is not so sophisticated that routine training should be considered inadequate.

OSHA has determined, based on its review of the record, that a written certification would impose an additional burden on employers without a demonstrable increase in worker safety. OSHA can determine if workers have been adequately trained by talking with the employees and observing their work habits. In addition, the Paperwork Reduction Act, as recently revised, classifies certification as a type of information burden for which OSHA must present a justification. Given the Agency's conclusion that the necessary information can be obtained without referring to documents, such a burden would not be justified. Therefore, the final rule will not contain a requirement for training certification.

Non-Mandatory Appendix A to Subpart L—Scaffold Specifications

This appendix is provided as a guide to assist employers in complying with the requirements of § 1926.451. This appendix is non-mandatory. As stated above in the discussion of paragraph 1926.451(a), scaffolds built in accordance with this Appendix A will be considered to meet the intent of this revised subpart L. A full discussion of the contents of this Appendix A, and any comments on the proposed Appendix A, is found above, in the discussion of § 1926.451(a).

Non-Mandatory Appendix B to Subpart L—Criteria for Determining the Feasibility and Safety of Providing Safe Access and Fall Protection for Scaffold Erectors and Dismantlers

This space is being reserved for publication of informational guidance at a later date.

Non-Mandatory Appendix C to Subpart L—List of National Consensus Standards

This Appendix is provided to serve as a guide to employers required to provide appropriate employee protection under § 1926.453, Aerial Lifts. This Appendix reflects the proliferation of equipment-specific ANSI A92 standards since the adoption of ANSI A92.2–1969.

Non-Mandatory Appendix D to Subpart L—List of Training Topics for Scaffold Erectors and Dismantlers

OSHA has developed this Appendix to assist employers in identifying appropriate topics for training scaffold erectors and dismantlers.

Non-Mandatory Appendix E to Subpart L—Drawings and Illustrations

This Appendix provides drawings of particular types of scaffolds and scaffold components, and graphic illustrations of bracing patterns and tie spacing patterns. It is intended to provide visual guidance to assist the user in complying with the requirements of this standard.

IV. Economic Assessment and Regulatory Flexibility Analysis

Introduction

Executive Order (EO) 12866 requires regulatory agencies to conduct an economic analysis for rules that meet certain criteria. The most frequently used criterion under EO 12866 is that the rule will impose annual costs on the economy of $100 million or more. OSHA's final standard for scaffolds in construction does not meet this criterion, or any of the other criteria specified by EO 12866, and therefore does not require an economic analysis. Nevertheless, OSHA has decided to conduct such an analysis to provide the regulated community with as much information about the rule as possible. The Regulatory Flexibility Act of 1980, as amended in 1996, requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. Making this determination requires OSHA to perform a screening analysis to identify any such impacts. Consistent with these requirements, OSHA has prepared this economic analysis and regulatory flexibility screening analysis of the final rule for scaffolds in construction. The final rule being published today will replace the outdated consensus standard addressing scaffolds in construction that was adopted by OSHA in 1971 and has remained largely unchanged since then.

This analysis includes a description of the industries affected by the regulation, an evaluation of the risks addressed, an assessment of the benefits attributable to the final standard, a determination of the technological feasibility of the new requirements, an estimate of the costs of compliance with the standard, a determination of the economic feasibility of compliance with the standard, and an analysis of the economic and other impacts associated with this rulemaking, including those on small businesses. The following is a summary of this analysis, which is available from OSHA's docket office.

The Final Standard for Scaffolds in Construction

This final standard for scaffolds in the construction industry makes many changes to the consensus standard adopted by OSHA in 1971 and codified at 29 CFR 1926.450 to 1926.453 (Subpart L of OSHA's construction industry standards). Appendix A of the Final Economic Analysis compares, on a provision-by-provision basis, the final standard with the standard that has been on the books since 1971. In this economic analysis, the standard being published today is referred to as the final standard, while the standard it replaces is termed the "existing" standard.

One of the important distinctions between the two standards is the clarity and simplicity of the final standard, which is written in language that people in the construction industry use to describe scaffolds and their components. Technical terms required to convey information accurately and unambiguously are defined clearly in paragraph (b) of final rule § 1926.450. The final rule also updates the regulatory text to reflect changes in technology that have occurred in the quarter century since the existing standard was written. These changes will permit scaffold manufacturers and users to benefit from technological change and give them additional flexibility in using up-to-date equipment. The final standard also clarifies and resolves issues of terminology or areas of confusion that have been identified by scaffold users over the years. In the past, OSHA has addressed implementation problems of this sort in letters of interpretation or compliance memoranda or directives; the final standard corrects and revises the provisions that gave rise to these interpretations. Finally, the final standard adds protection for employees using scaffolds. The principal areas in the new standard that have been strengthened are employee training, protection from electrical hazards, and procedures for employees engaged in the erection and dismantling of scaffolds. These requirements reflect OSHA's long experience in accident investigation in the construction industry, as well as an extensive analysis of the leading causes of scaffold-related fatalities and injuries.

Affected Industries

The requirements of the final standard apply to all establishments in the construction industry. As classified by the 1987 Standard Industrial Classification (SIC) manual, the industry can be divided into three broad types of activities: building construction general contractors (SIC 15), heavy construction general and special trade contractors (SIC 16), and construction by other special trade contractors (SIC 17).

There are 572,850 establishments in the construction sector employing approximately 4.7 million employees. Small establishments with one to nine employees, which represent 82 percent (or 469,349) of establishments, collectively employ only 1.4 million employees (30 percent). The number of construction workers is estimated to be approximately 3.6 million. OSHA estimates that there are approximately 2.34 million construction workers (65 percent of all construction workers) who frequently work on scaffolds and who would be affected by the final standard for scaffolds.

Evaluation of Risk and Potential Benefits

Of the 510,500 injuries and illnesses reportedly occurring in the construction industry annually, an estimated 9,750 are related to scaffolds. Similarly, of the estimated 924 occupational fatalities occurring annually among construction employees, at least 79 fatalities are associated with work on scaffolds. OSHA estimates that the new requirements in the final rule will prevent 47 of these fatalities and 4,455 of these injuries annually; these numbers are above and beyond the fatalities and injuries that would be prevented if construction employers complied with OSHA's existing scaffold standard. OSHA estimates that the total value of the cost savings associated with this revised standard is $90 million per year. This estimate of cost savings considers only those scaffold related injuries that involve lost workdays.

Costs and Technological Feasibility

The total estimated costs associated with the final standard amount to about $12.62 million annually. The largest single cost ($5.85 million) is associated with inspections of non-suspended scaffolds before use. The remaining costs are attributable to requirements for additional training for employees exposed to potential hazards involving work on scaffolds ($5.30 million) and for fall protection for employees erecting and dismantling scaffolds[1] ($1.47 million). Table ES–1 shows the annual costs of compliance associated with the final rule.

TABLE ES–1.—ANNUAL COSTS OF COMPLIANCE WITH THE FINAL RULE FOR SCAFFOLDS IN CONSTRUCTION

Provision	Annual cost
Training:	$5,298,708
Training for Workers Who Use Scaffolds	3,014,949
Training for Scaffold Erectors, Dismantlers, Inspectors and Repairers	2,283,759
Fall Protection for Erectors and Dismantlers of Scaffolds[1]	1,466,431
Scaffold Inspection	5,851,823
Total	12,616,962

Source: US Department of Labor, OSHA, Office of Regulatory Analysis, 1996.

(1) This requirement has a one year delayed implementation date.

Because the requirements of the final standard can be met with existing equipment and methods, the standard is technologically feasible.

Economic Impacts

Compliance with the requirements of the final standard has been determined to be economically feasible and is not expected to produce significant adverse economic impacts on firms in the construction industry. The estimated compliance costs represent less than 0.002 percent of construction revenues. Given the minimal price increase necessary to cover the costs of the final standard, employers should be able to pass these compliance costs on their customers. However, even if all costs were absorbed by the affected firms (a highly unlikely scenario), the average reduction in profits would be only 0.04 percent.

Regulatory Flexibility Screening Analysis

Pursuant to the Regulatory Flexibility Act of 1980 as amended (5 U.S.C. 601 et seq.), OSHA has assessed the small-business impact of the final standard for scaffolds used in construction, and has certified based on that assessment and the underlying data, that the standard will not have a significant impact on a substantial number of small entities. The controlling consideration for a regulatory flexibility analysis is whether the standard would impose significant economic impacts on a substantial number of small entities. The significance of any economic impact is measured by the effect on profits, market share, and an entity's financial viability.

The small establishment size standards established by the U.S. Small Business Administration (SBA) for the construction industry, which are based on establishment receipts, are $17 million for establishments in SICs 15 and 16, and $7 million for establishments in SIC 17. Of the 572,850 establishments affected by the revised standard, 493,637 [1] establishments, or about 86 percent of all construction establishments, are considered small establishments as defined by the SBA.

OSHA assessed the potential economic impacts of the rule on all affected establishments and has concluded that the rule is economically feasible and will not impose a substantial burden on construction employers. As indicated above, firms would only have to increase the price charged for their services by, at most, 0.002 percent of the value of their sales in order to recover the money they expended on compliance. In the unlikely event that firms could not pass any of these costs to their customers and had to absorb all of the costs themselves (a highly unlikely scenario), the average reduction in profits caused by these costs would be only 0.04 percent. On average, the value of receipts for establishments in the construction industry is estimated to be $1.12 million. Firms with sales in this range clearly fall within the SBA size standard.

To ensure that even the smallest firms in this industry would not be significantly impacted by the costs of compliance associated with the final standard, OSHA also examined the financial profile for small construction establishments with 9 or fewer employees at the four-digit SIC code level, which constitutes the overwhelming majority of firms in this industry. To examine the impact of the standard on the smallest and potentially most affected firms, OSHA made a series of extreme-case assumptions: that all employees in these establishments use scaffolds in the course of their work and that these establishments have not implemented any of the new work practices or procedures required by the final rule. In addition, OSHA assumed that two employees at each firm would require fall protection systems and training in the erection and dismantling of supported-scaffolds. Assuming a baseline turnover rate of 15 percent, and using the formulas presented in Chapter V of the Economic Analysis, such a small establishment, which represents an extreme-case impact situation, would incur compliance costs of $603 [2] annually.

Table ES–2 presents the results of this extreme-case analysis. It shows estimated compliance costs and economic impacts relative to revenues and pre-tax income for small businesses by four-digit SIC code level. OSHA compared the baseline financial data for these firms with OSHA's estimate of the standard's annual compliance cost by computing compliance costs as a percentage of revenue. This approach (Table ES–2) reflects extreme case impacts because it assumes that employers have to recover the costs of achieving compliance by increasing their prices. Under this full cost pass-through scenario, the maximum average expected price increase required to recover the full costs of compliance with this standard would be extremely small, approximately 0.1 percent. The four-digit industry estimated to experience the highest potential price increase would be Painting and Paper Hanging (SIC 1721), where firms could have to increase prices by 0.18 percent. Again, since these impacts are based on extreme-case costs, they are likely to be overestimating.

Under the second scenario used to test the impacts of actions on markets—the no cost pass-through scenario—firms are assumed not to be able to pass any of their costs through to their customers in the form of price increases. If no costs can be passed on, firms would have to absorb these costs entirely from their profits (a highly unlikely scenario). Using this assumption, the average expected decline in profits for these very small firms would be only 1.44 percent. The largest potential impact of the standard would be anticipated in the Plastering, Drywall and Acoustical industry (SIC 1742), where firms could experience a decline in profits of 2.71 percent. Such impacts are not large enough to be significant because they mean, for example, that the profit rate for such a company would decline only from 5.0 percent to 4.9 [3] percent. As noted, these figures are based on highly conservative assumptions and are therefore likely to overestimate standard's impact.

Because fixed costs, such as those for preparing training materials, are larger as a percentage of revenues the smaller the firm, the smallest firms will experience the greatest economic

[1] 144,671 establishments in SIC 15, 28,206 establishments in SIC 16 and 320,637 establishments in SIC 17.

[2] Annual 15 minute-training for workers who use scaffolds = $11, annual training cost for erectors and dismantlers = $130, annual cost of fall protection = $106, and annual scaffold inspection cost = $356.

[3] $22,265/$445,303 = 5.0%, $22,265 × (100 − 2.71%) /$445,303 = 4.9%.

impacts. If the smallest firms, with extreme-case costs, will experience no significant impact, it is reasonable to conclude that larger firms will not experience significant economic impacts. Thus, because this standard will not have a significant impact either on the smallest establishments (those with 9 or fewer employees) or on the typical establishment in this industry, OSHA certifies that this final standard will not have a significant economic impact on a substantial number of small entities, as defined by the SBA.

TABLE ES–2.—ECONOMIC IMPACTS OF THE FINAL SCAFFOLD STANDARD ON CONSTRUCTION BUSINESSES WITH 5 EMPLOYEES. BY 4-DIGIT SIC, USING WORST-CASE COMPLIANCE ASSUMPTIONS

	SIC industry	Value of industry receipts per establishment [a]	Pre-tax income per establishment [b]	Compliance costs as a percent of revenues	Compliance costs as a percent of pre-tax income
15	Building Construction-General Contractors	$1,039,353	$56,692	0.06	1.06
1521	General Contractors-Single-Family Houses	824,664	61,225	.07	0.98
1522	General Contractors-Residential Buildings	989,058	73,430	.06	0.82
1531	Operative Builders	2,459,972	81,999	.02	0.73
1541	General Contractors-Industrial Buildings & Warehouses	1,159,689	52,713	.05	1.14
1542	General Contractors-Non-residential Buildings	1,278,174	61,972	.05	0.97
16	Heavy Construction Other than Building Construction	934,365	59,460	.06	1.01
1622	Bridge, Tunnel and Elevated Highway Construction	1,312,204	47,717	.05	1.26
1623	Water, Sewer, Pipeline and Communications	832,093	50,430	.07	1.19
1629	Heavy Construction, nec.	717,664	50,019	.08	1.20
17	Special Trade Contractors	471,876	32,888	.13	1.83
1711	Plumbing, Heating & Air Conditioning	520,496	31,545	.12	1.91
1721	Painting and Paper Hanging	331,775	30,664	.18	1.96
1731	Electrical Work	463,498	34,411	.13	1.75
1741	Masonry, Stone Setting	357,551	25,462	.17	2.37
1742	Plastering, Drywall, Acoustical	445,303	22,265	.14	2.71
1743	Terrazzo, Tile, Marble and Mosaic Work	404,702	28,820	.15	2.09
1751	Carpentry Work	414,681	32,672	.15	1.84
1752	Floor Laying and Other Floor Work, nec.	573,175	39,949	.11	1.51
1761	Roofing, Siding and Sheet Metal Work	470,902	30,680	.13	1.96
1771	Concrete Work	510,955	36,386	.12	1.66
1791	Structural Steel Erection	541,947	36,130	.11	1.67
1793	Glass and Glazing Work	555,960	32,852	.11	1.83
1796	Installation or Erection of Building Equipment, nec.	581,564	30,841	.10	1.95
1799	Special Trade Contractors, nec.	504,453	40,509	.12	1.49
	Average	.....	.....	.10	1.44

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 1996.
[a] Based on Small Business Administration, Office of Advocacy, Table 3: The Number of Firms, Establishments, Employment, Annual Payroll, and Estimated Receipts by Industry and Firm Size, 1993.
[b] Average revenue per establishment x mean profit rate for SIC (derived from Dun and Bradstreet Information Services, Industry Norms and Key Business Ratios 1994–95) x conversion formula based on the federal corporate tax schedule.
[c] Annual cost of compliance of 603 per establishment assumes that all workers (5) would require training in the initial year and that all new workers in subsequent years would require training. Two workers will be trained in dismantling and erecting procedures. Estimates also assume that fall protection will be required for erectors and dismantlers and that inspections of non-suspended scaffolds will be required.
nec=Not elsewhere classified.

In addition, OSHA has drafted the final standard for scaffolds in the construction industry to achieve adequate protection for affected employees while imposing minimal impacts on small employers. For example, the final rule maintains the performance-oriented approach of the proposed standard, allowing employers the flexibility to take workplace conditions into account when framing their compliance strategies. In addition, OSHA considered and adopted several alternatives designed to minimize small business impacts. For example, revisions reflected in the final standard's requirements for fall protection (grandfathering existing guardrail systems and allowing some use of crossbracing in lieu of guardrails) will enable small entities to minimize their compliance burdens. Accordingly, OSHA has determined that the final rule effectively addresses small employer concerns.

V. Environmental Assessment

Finding of No Significant Impact

This final rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and OSHA's DOL NEPA Procedures (29 CFR part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the final rule will have no significant environmental impact.

The revisions to Subpart L—Scaffolds focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspect of the environment. As such, these revisions are, therefore, categorized as excluded actions according to subpart B, § 11.10, of the DOL NEPA regulation.

VI. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. §§ 651

et seq. ("the Act"), is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. § 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. §§ 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of Act's enactment), 655(b) (authorizing promulgation of standards pursuant to notice and comment), 654(b) (requiring employers to comply with OSHA standards).

A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment." 29 U.S.C. § 652(8).

A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk, and is economically feasible, technologically feasible, cost effective, consistent with prior Agency action or a justified departure, supported by substantial evidence, and is better able to effectuate the Act's purposes than any national consensus standard it supersedes. See 58 Fed. Reg. 16612–16616 (March 30, 1993).

OSHA has generally considered, at minimum, a fatality risk of 1/1000 over a 45-year working lifetime to be a significant health risk. See the Benzene standard, *Industrial Union Dep't* v. *American Petroleum Institute*, 448 U.S. 607, 646 (1980); the Asbestos standard, *Building and Constr. Trades Dep't, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1265 (D.C. Cir 1988); the Formaldehyde standard, *International Union, UAW* v. *Pendergrass*, 878 F.2d 389, 392 (D.C. Cir 1989).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA*, 452 U.S. 490, 513 (1981) ("*ATMI*"); *AISI* v. *OSHA*, 939 F.2d 975, 980 (D.C. Cir. 1991).

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long term profitability or competitive structure. See *ATMI*, 452 U.S. at 530 n. 55; *AISI*, 939 F.2d at 980.

A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI*, 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA*, 37 F.3d 665, 668 (D.C. Cir. 1994) ("*LOTO III*").

Section 6(b)(7) authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions. 29 U.S.C. § 655(b)(7).

All standards must be highly protective. See 58 Fed. Reg. at 16614–16615; *LOTO III*, 37 F.3d at 669. Finally, whenever practical, standards shall "be expressed in terms of objective criteria and of the performance desired." *Id.*

VII. Recordkeeping

The Agency has estimated the paperwork burden of the final rule entitled "Scaffolds Used in the Construction Industry" under the guidelines of the Paperwork Reduction Act of 1995. Under that Act, burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. The Agency has concluded that there is only one collection of information in the final rule on "Scaffolds Used in the Construction Industry" that potentially could create a burden [as defined above] for the construction industry. The collection of information in located in § 1926.453(a)(2). This provision requires the employer to obtain a written certification from the manufacture of aerial lifts under certain specified conditions. In particular, the requirement reads as follows:

> Aerial lifts may be "field modified" for uses other than those intended by the manufacturer provided the modification has been certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory, to be in conformity with all the applicable provisions of the ANSI A92.2–1969 and this section and to be at least as safe as the equipment was before modification.

This provision was adopted by OSHA in May 1971 as an established Federal standard which had been promulgated by the Bureau of Labor Standards for the Construction Industry in April 1971. OSHA failed to identify this provision as subject to the Paperwork Reduction Act of 1995 (PRA–95) and did not obtain approval from OMB for this collection as required by PRA–95. This error was discovered in the course of preparing the final rule for Scaffolds Used in the Construction Industry. This provision, currently located in § 1926.556(a)(2) is redesignated as § 1926.453(a)(2) and removed unchanged from its present location in Subpart N to Subpart L (Scaffolds Used in the Construction Industry). Through this final rule, OSHA is soliciting comments on the burden associated with the collection. It is OSHA intent to review and analyze all comments received on the collection of information and then to seek proper approvals from OMB under PRA–95. Once approval is received, OSHA will publish a notice in the **Federal Register** to indicate the OMB Approval Number and the effective date of the provision.

Collections of Information: Request for Comments

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on the respondents can be properly assessed. Currently, OSHA is soliciting comments concerning the proposed approval for the paperwork requirements of 29 CFR part 1926, subpart L, Scaffolds used in the Construction Industry. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have a practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

OSHA in its final rule for Scaffolds Used in the Construction Industry is

redesignating existing § 1926.556 (subpart N), Aerial Lifts to § 1926.453 (subpart L), Aerial Lifts because these type of equipment are, in fact, scaffolds. The existing regulation, § 1926.556(a)(2), contained a requirement for manufacturer certification of "field modified" aerial lifts. This provision, along with the rest of § 1296.556, is being redesignated § 1926.453(a)(2) in this final rule.

OSHA believes that manufacturer certification of "field modified" aerial lifts is necessary to ensure that modifications to these types of scaffolds will not adversely affect the strength, stability, or other characteristics necessary for their safe use.

Current Actions

This notice requests OMB approval of the paperwork requirements in Scaffolds Used in the Construction Industry (29 CFR 1926, subpart L).

Type of Review: New.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Scaffolds Used in the Construction Industry (29 CFR 1926, subpart L).

OMB Number: 1218–AA40.

Agency Docket No.: S–205.

Frequency: On occasion.

Affected Public: Business or other for-profit, Federal government, State and local governments.

Number of respondents: 10,000.

Estimated Time per Respondent: 2 hours.

Total Estimated Cost: $513,200.

Total Burden Hours: 20,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

VIII. State Plan Standards

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of the publication date of the final rule. These states and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New York (for State and local government employees only), Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states and territories.

IX. Federalism

The final rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987) regarding Federalism. The Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with states prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions, see section 18(c)(2).

The Federal standard on construction operations involving scaffolds addresses hazards that are not unique to any one state or region of the country. Nonetheless, States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility to State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this final rule addresses a clear national problem related to occupational safety and health in the construction industry. Those states which have elected to participate under section 18 of the OSH Act are not preempted by this standard, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the state standards are at least as effective as that standard.

List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Occupational safety and health, Protective equipment, Safety, Scaffolds.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, 29 CFR part 1926 is amended as set forth below.

Signed at Washington, D.C., this 16th day of August 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. Subpart L of Part 1926 is revised to read as follows:

Subpart L—Scaffolds

Sec.

1926.450 Scope, application and definitions applicable to this subpart.
1926.451 General requirements.
1926.452 Additional requirements applicable to specific types of scaffolds.
1926.453 Aerial lifts.
1926.454 Training.
Appendix A to Subpart L—Scaffolds
Appendix B to Subpart L—Scaffolds
Appendix C to Subpart L—Scaffolds
Appendix D to Subpart L—Scaffolds
Appendix E to Subpart L—Scaffolds

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR Part 1911.

Subpart L—Scaffolds

§ 1926.450 Scope, application and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all scaffolds used in workplaces covered by this part. It does not apply to crane or derrick suspended personnel platforms, which are covered by § 1926.550(g). The criteria for aerial lifts are set out exclusively in § 1926.453.

(b) *Definitions. Adjustable suspension scaffold* means a suspension scaffold equipped with a hoist(s) that can be operated by an employee(s) on the scaffold.

Bearer (putlog) means a horizontal transverse scaffold member (which may be supported by ledgers or runners) upon which the scaffold platform rests and which joins scaffold uprights, posts, poles, and similar members.

Boatswains' chair means a single-point adjustable suspension scaffold consisting of a seat or sling designed to support one employee in a sitting position.

Body belt (safety belt) means a strap with means both for securing it about the waist and for attaching it to a lanyard, lifeline, or deceleration device.

Body harness means a design of straps which may be secured about the employee in a manner to distribute the fall arrest forces over at least the thighs, pelvis, waist, chest and shoulders, with means for attaching it to other components of a personal fall arrest system.

Brace means a rigid connection that holds one scaffold member in a fixed position with respect to another member, or to a building or structure.

Bricklayers' square scaffold means a supported scaffold composed of framed squares which support a platform.

Carpenters' bracket scaffold means a supported scaffold consisting of a platform supported by brackets attached to building or structural walls.

Catenary scaffold means a suspension scaffold consisting of a platform supported by two essentially horizontal and parallel ropes attached to structural members of a building or other structure. Additional support may be provided by vertical pickups.

Chimney hoist means a multi-point adjustable suspension scaffold used to provide access to work inside chimneys. (See "Multi-point adjustable suspension scaffold".)

Cleat means a structural block used at the end of a platform to prevent the platform from slipping off its supports. Cleats are also used to provide footing on sloped surfaces such as crawling boards.

Competent person means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

Continuous run scaffold (Run scaffold) means a two- point or multi-point adjustable suspension scaffold constructed using a series of interconnected braced scaffold members or supporting structures erected to form a continuous scaffold.

Coupler means a device for locking together the tubes of a tube and coupler scaffold.

Crawling board (chicken ladder) means a supported scaffold consisting of a plank with cleats spaced and secured to provide footing, for use on sloped surfaces such as roofs.

Deceleration device means any mechanism, such as a rope grab, rip-stitch lanyard, specially-woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline lanyard, which dissipates a substantial amount of energy during a fall arrest or limits the energy imposed on an employee during fall arrest.

Double pole (independent pole) scaffold means a supported scaffold consisting of a platform(s) resting on cross beams (bearers) supported by ledgers and a double row of uprights independent of support (except ties, guys, braces) from any structure.

Equivalent means alternative designs, materials or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in the standard.

Exposed power lines means electrical power lines which are accessible to employees and which are not shielded from contact. Such lines do not include extension cords or power tool cords.

Eye or *Eye splice* means a loop with or without a thimble at the end of a wire rope.

Fabricated decking and planking means manufactured platforms made of wood (including laminated wood, and solid sawn wood planks), metal or other materials.

Fabricated frame scaffold (tubular welded frame scaffold) means a scaffold consisting of a platform(s) supported on fabricated end frames with integral posts, horizontal bearers, and intermediate members.

Failure means load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

Float (ship) scaffold means a suspension scaffold consisting of a braced platform resting on two parallel bearers and hung from overhead supports by ropes of fixed length.

Form scaffold means a supported scaffold consisting of a platform supported by brackets attached to formwork.

Guardrail system means a vertical barrier, consisting of, but not limited to, toprails, midrails, and posts, erected to prevent employees from falling off a scaffold platform or walkway to lower levels.

Hoist means a manual or power-operated mechanical device to raise or lower a suspended scaffold.

Horse scaffold means a supported scaffold consisting of a platform supported by construction horses (saw horses). Horse scaffolds constructed of metal are sometimes known as trestle scaffolds.

Independent pole scaffold (see "Double pole scaffold").

Interior hung scaffold means a suspension scaffold consisting of a platform suspended from the ceiling or roof structure by fixed length supports.

Ladder jack scaffold means a supported scaffold consisting of a platform resting on brackets attached to ladders.

Ladder stand means a mobile, fixed-size, self-supporting ladder consisting of a wide flat tread ladder in the form of stairs.

Landing means a platform at the end of a flight of stairs.

Large area scaffold means a pole scaffold, tube and coupler scaffold. systems scaffold, or fabricated frame scaffold erected over substantially the entire work area. For example: a scaffold erected over the entire floor area of a room.

Lean-to scaffold means a supported scaffold which is kept erect by tilting it toward and resting it against a building or structure.

Lifeline means a component consisting of a flexible line that connects to an anchorage at one end to hang vertically (vertical lifeline), or that connects to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Lower levels means areas below the level where the employee is located and to which an employee can fall. Such areas include, but are not limited to, ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, materials, water, and equipment.

Masons' adjustable supported scaffold (see "Self-contained adjustable scaffold").

Masons' multi-point adjustable suspension scaffold means a continuous run suspension scaffold designed and used for masonry operations.

Maximum intended load means the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time.

Mobile scaffold means a powered or unpowered, portable, caster or wheel-mounted supported scaffold.

Multi-level suspended scaffold means a two-point or multi-point adjustable suspension scaffold with a series of platforms at various levels resting on common stirrups.

Multi-point adjustable suspension scaffold means a suspension scaffold consisting of a platform(s) which is suspended by more than two ropes from overhead supports and equipped with means to raise and lower the platform to desired work levels. Such scaffolds include chimney hoists.

Needle beam scaffold means a platform suspended from needle beams.

Open sides and ends means the edges of a platform that are more than 14 inches (36 cm) away horizontally from a sturdy, continuous, vertical surface (such as a building wall) or a sturdy, continuous horizontal surface (such as a floor), or a point of access. Exception: For plastering and lathing operations the horizontal threshold distance is 18 inches (46 cm).

Outrigger means the structural member of a supported scaffold used to increase the base width of a scaffold in order to provide support for and increased stability of the scaffold.

Outrigger beam (Thrustout) means the structural member of a suspension scaffold or outrigger scaffold which provides support for the scaffold by extending the scaffold point of attachment to a point out and away from the structure or building.

Outrigger scaffold means a supported scaffold consisting of a platform resting on outrigger beams (thrustouts) projecting beyond the wall or face of the building or structure, the inboard ends of which are secured inside the building or structure.

Overhand bricklaying means the process of laying bricks and masonry units such that the surface of the wall to be jointed is on the opposite side of the wall from the mason, requiring the mason to lean over the wall to complete the work. It includes mason tending and electrical installation incorporated into the brick wall during the overhand bricklaying process.

Personal fall arrest system means a system used to arrest an employee's fall. It consists of an anchorage, connectors, a body belt or body harness and may include a lanyard, deceleration device, lifeline, or combinations of these.

Platform means a work surface elevated above lower levels. Platforms can be constructed using individual wood planks, fabricated planks, fabricated decks, and fabricated platforms.

Pole scaffold (see definitions for "Single-pole scaffold" and "Double (independent) pole scaffold").

Power operated hoist means a hoist which is powered by other than human energy.

Pump jack scaffold means a supported scaffold consisting of a platform supported by vertical poles and movable support brackets.

Qualified means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

Rated load means the manufacturer's specified maximum load to be lifted by a hoist or to be applied to a scaffold or scaffold component.

Repair bracket scaffold means a supported scaffold consisting of a platform supported by brackets which are secured in place around the circumference or perimeter of a chimney, stack, tank or other supporting structure by one or more wire ropes placed around the supporting structure.

Roof bracket scaffold means a rooftop supported scaffold consisting of a platform resting on angular-shaped supports.

Runner (ledger or ribbon) means the lengthwise horizontal spacing or bracing member which may support the bearers.

Scaffold means any temporary elevated platform (supported or suspended) and its supporting structure (including points of anchorage), used for supporting employees or materials or both.

Self-contained adjustable scaffold means a combination supported and suspension scaffold consisting of an adjustable platform(s) mounted on an independent supporting frame(s) not a part of the object being worked on, and which is equipped with a means to permit the raising and lowering of the platform(s). Such systems include rolling roof rigs, rolling outrigger systems, and some masons' adjustable supported scaffolds.

Shore scaffold means a supported scaffold which is placed against a building or structure and held in place with props.

Single-point adjustable suspension scaffold means a suspension scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels.

Single-pole scaffold means a supported scaffold consisting of a platform(s) resting on bearers, the outside ends of which are supported on runners secured to a single row of posts or uprights, and the inner ends of which are supported on or in a structure or building wall.

Stair tower (Scaffold stairway/tower) means a tower comprised of scaffold components and which contains internal stairway units and rest platforms. These towers are used to provide access to scaffold platforms and other elevated points such as floors and roofs.

Stall load means the load at which the prime-mover of a power-operated hoist stalls or the power to the prime-mover is automatically disconnected.

Step, platform, and trestle ladder scaffold means a platform resting directly on the rungs of step ladders or trestle ladders.

Stilts means a pair of poles or similar supports with raised footrests, used to permit walking above the ground or working surface.

Stonesetters' multi-point adjustable suspension scaffold means a continuous run suspension scaffold designed and used for stonesetters' operations.

Supported scaffold means one or more platforms supported by outrigger beams, brackets, poles, legs, uprights, posts, frames, or similar rigid support.

Suspension scaffold means one or more platforms suspended by ropes or other non-rigid means from an overhead structure(s).

System scaffold means a scaffold consisting of posts with fixed connection points that accept runners, bearers, and diagonals that can be interconnected at predetermined levels.

Tank builders' scaffold means a supported scaffold consisting of a platform resting on brackets that are either directly attached to a cylindrical tank or attached to devices that are attached to such a tank.

Top plate bracket scaffold means a scaffold supported by brackets that hook over or are attached to the top of a wall. This type of scaffold is similar to carpenters' bracket scaffolds and form scaffolds and is used in residential construction for setting trusses.

Tube and coupler scaffold means a supported or suspended scaffold consisting of a platform(s) supported by tubing, erected with coupling devices connecting uprights, braces, bearers, and runners.

Tubular welded frame scaffold (see "Fabricated frame scaffold").

Two-point suspension scaffold (swing stage) means a suspension scaffold consisting of a platform supported by hangers (stirrups) suspended by two ropes from overhead supports and equipped with means to permit the

raising and lowering of the platform to desired work levels.

Unstable objects means items whose strength, configuration, or lack of stability may allow them to become dislocated and shift and therefore may not properly support the loads imposed on them. Unstable objects do not constitute a safe base support for scaffolds, platforms, or employees. Examples include, but are not limited to, barrels, boxes, loose brick, and concrete blocks.

Vertical pickup means a rope used to support the horizontal rope in catenary scaffolds.

Walkway means a portion of a scaffold platform used only for access and not as a work level.

Window jack scaffold means a platform resting on a bracket or jack which projects through a window opening.

§ 1926.451 General requirements.

This section does not apply to aerial lifts, the criteria for which are set out exclusively in § 1926.453.

(a) *Capacity* (1) Except as provided in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (g) of this section, each scaffold and scaffold component shall be capable of supporting, without failure, its own weight and at least 4 times the maximum intended load applied or transmitted to it.

(2) Direct connections to roofs and floors, and counterweights used to balance adjustable suspension scaffolds, shall be capable of resisting at least 4 times the tipping moment imposed by the scaffold operating at either the rated load of the hoist, or 1.5 (minimum) times the tipping moment imposed by the scaffold operating at the stall load of the hoist, whichever is greater.

(3) Each suspension rope, including connecting hardware, used on non-adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope.

(4) Each suspension rope, including connecting hardware, used on adjustable suspension scaffolds shall be capable of supporting, without failure, at least 6 times the maximum intended load applied or transmitted to that rope with the scaffold operating at either the rated load of the hoist, or 2 (minimum) times the stall load of the hoist, whichever is greater.

(5) The stall load of any scaffold hoist shall not exceed 3 times its rated load.

(6) Scaffolds shall be designed by a qualified person and shall be constructed and loaded in accordance with that design. Non-mandatory Appendix A to this subpart contains examples of criteria that will enable an employer to comply with paragraph (a) of this section.

(b) *Scaffold platform construction.* (1) Each platform on all working levels of scaffolds shall be fully planked or decked between the front uprights and the guardrail supports as follows:

(i) Each platform unit (e.g., scaffold plank, fabricated plank, fabricated deck, or fabricated platform) shall be installed so that the space between adjacent units and the space between the platform and the uprights is no more than 1 inch (2.5 cm) wide, except where the employer can demonstrate that a wider space is necessary (for example, to fit around uprights when side brackets are used to extend the width of the platform).

(ii) Where the employer makes the demonstration provided for in paragraph (b)(1)(i) of this section, the platform shall be planked or decked as fully as possible and the remaining open space between the platform and the uprights shall not exceed 9½ inches (24.1 cm).

Exception to paragraph (b)(1): The requirement in paragraph (b)(1) to provide full planking or decking does not apply to platforms used solely as walkways or solely by employees performing scaffold erection or dismantling. In these situations, only the planking that the employer establishes is necessary to provide safe working conditions is required.

(2) Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, each scaffold platform and walkway shall be at least 18 inches (46 cm) wide.

(i) Each ladder jack scaffold, top plate bracket scaffold, roof bracket scaffold, and pump jack scaffold shall be at least 12 inches (30 cm) wide. There is no minimum width requirement for boatswains' chairs.

(ii) Where scaffolds must be used in areas that the employer can demonstrate are so narrow that platforms and walkways cannot be at least 18 inches (46 cm) wide, such platforms and walkways shall be as wide as feasible, and employees on those platforms and walkways shall be protected from fall hazards by the use of guardrails and/or personal fall arrest systems.

(3) Except as provided in paragraphs (b)(3) (i) and (ii) of this section, the front edge of all platforms shall not be more than 14 inches (36 cm) from the face of the work, unless guardrail systems are erected along the front edge and/or personal fall arrest systems are used in accordance with paragraph (g) of this section to protect employees from falling.

(i) The maximum distance from the face for outrigger scaffolds shall be 3 inches (8 cm);

(ii) The maximum distance from the face for plastering and lathing operations shall be 18 inches (46 cm).

(4) Each end of a platform, unless cleated or otherwise restrained by hooks or equivalent means, shall extend over the centerline of its support at least 6 inches (15 cm).

(5)(i) Each end of a platform 10 feet or less in length shall not extend over its support more than 12 inches (30 cm) unless the platform is designed and installed so that the cantilevered portion of the platform is able to support employees and/or materials without tipping, or has guardrails which block employee access to the cantilevered end.

(ii) Each platform greater than 10 feet in length shall not extend over its support more than 18 inches (46 cm), unless it is designed and installed so that the cantilevered portion of the platform is able to support employees without tipping, or has guardrails which block employee access to the cantilevered end.

(6) On scaffolds where scaffold planks are abutted to create a long platform, each abutted end shall rest on a separate support surface. This provision does not preclude the use of common support members, such as "T" sections, to support abutting planks, or hook on platforms designed to rest on common supports.

(7) On scaffolds where platforms are overlapped to create a long platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30 cm) unless the platforms are nailed together or otherwise restrained to prevent movement.

(8) At all points of a scaffold where the platform changes direction, such as turning a corner, any platform that rests on a bearer at an angle other than a right angle shall be laid first, and platforms which rest at right angles over the same bearer shall be laid second, on top of the first platform.

(9) Wood platforms shall not be covered with opaque finishes, except that platform edges may be covered or marked for identification. Platforms may be coated periodically with wood preservatives, fire-retardant finishes, and slip-resistant finishes; however, the coating may not obscure the top or bottom wood surfaces.

(10) Scaffold components manufactured by different manufacturers shall not be intermixed unless the components fit together without force and the scaffold's structural integrity is maintained by the

user. Scaffold components manufactured by different manufacturers shall not be modified in order to intermix them unless a competent person determines the resulting scaffold is structurally sound.

(11) Scaffold components made of dissimilar metals shall not be used together unless a competent person has determined that galvanic action will not reduce the strength of any component to a level below that required by paragraph (a)(1) of this section.

(c) *Criteria for supported scaffolds.* (1) Supported scaffolds with a height to base width (including outrigger supports, if used) ratio of more than four to one (4:1) shall be restrained from tipping by guying, tying, bracing, or equivalent means, as follows:

(i) Guys, ties, and braces shall be installed at locations where horizontal members support both inner and outer legs.

(ii) Guys, ties, and braces shall be installed according to the scaffold manufacturer's recommendations or at the closest horizontal member to the 4:1 height and be repeated vertically at locations of horizontal members every 20 feet (6.1 m) or less thereafter for scaffolds 3 feet (0.91 m) wide or less, and every 26 feet (7.9 m) or less thereafter for scaffolds greater than 3 feet (0.91 m) wide. The top guy, tie or brace of completed scaffolds shall be placed no further than the 4:1 height from the top. Such guys, ties and braces shall be installed at each end of the scaffold and at horizontal intervals not to exceed 30 feet (9.1 m) (measured from one end [not both] towards the other).

(iii) Ties, guys, braces, or outriggers shall be used to prevent the tipping of supported scaffolds in all circumstances where an eccentric load, such as a cantilevered work platform, is applied or is transmitted to the scaffold.

(2) Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates, mud sills or other adequate firm foundation.

(i) Footings shall be level, sound, rigid, and capable of supporting the loaded scaffold without settling or displacement.

(ii) Unstable objects shall not be used to support scaffolds or platform units.

(iii) Unstable objects shall not be used as working platforms.

(iv) Front-end loaders and similar pieces of equipment shall not be used to support scaffold platforms unless they have been specifically designed by the manufacturer for such use.

(v) Fork-lifts shall not be used to support scaffold platforms unless the entire platform is attached to the fork and the fork-lift is not moved horizontally while the platform is occupied.

(3) Supported scaffold poles, legs, posts, frames, and uprights shall be plumb and braced to prevent swaying and displacement.

(d) *Criteria for suspension scaffolds.* (1) All suspension scaffold support devices, such as outrigger beams, cornice hooks, parapet clamps, and similar devices, shall rest on surfaces capable of supporting at least 4 times the load imposed on them by the scaffold operating at the rated load of the hoist (or at least 1.5 times the load imposed on them by the scaffold at the stall capacity of the hoist, whichever is greater).

(2) Suspension scaffold outrigger beams, when used, shall be made of structural metal or equivalent strength material, and shall be restrained to prevent movement.

(3) The inboard ends of suspension scaffold outrigger beams shall be stabilized by bolts or other direct connections to the floor or roof deck, or they shall have their inboard ends stabilized by counterweights, except masons' multi-point adjustable suspension scaffold outrigger beams shall not be stabilized by counterweights.

(i) Before the scaffold is used, direct connections shall be evaluated by a competent person who shall confirm, based on the evaluation, that the supporting surfaces are capable of supporting the loads to be imposed. In addition, masons' multi-point adjustable suspension scaffold connections shall be designed by an engineer experienced in such scaffold design.

(ii) Counterweights shall be made of non-flowable material. Sand, gravel and similar materials that can be easily dislocated shall not be used as counterweights.

(iii) Only those items specifically designed as counterweights shall be used to counterweight scaffold systems. Construction materials such as, but not limited to, masonry units and rolls of roofing felt, shall not be used as counterweights.

(iv) Counterweights shall be secured by mechanical means to the outrigger beams to prevent accidental displacement.

(v) Counterweights shall not be removed from an outrigger beam until the scaffold is disassembled.

(vi) Outrigger beams which are not stabilized by bolts or other direct connections to the floor or roof deck shall be secured by tiebacks.

(vii) Tiebacks shall be equivalent in strength to the suspension ropes.

(viii) Outrigger beams shall be placed perpendicular to its bearing support (usually the face of the building or structure). However, where the employer can demonstrate that it is not possible to place an outrigger beam perpendicular to the face of the building or structure because of obstructions that cannot be moved, the outrigger beam may be placed at some other angle, provided opposing angle tiebacks are used.

(ix) Tiebacks shall be secured to a structurally sound anchorage on the building or structure. Sound anchorages include structural members, but do not include standpipes, vents, other piping systems, or electrical conduit.

(x) Tiebacks shall be installed perpendicular to the face of the building or structure, or opposing angle tiebacks shall be installed. Single tiebacks installed at an angle are prohibited.

(4) Suspension scaffold outrigger beams shall be:

(i) Provided with stop bolts or shackles at both ends;

(ii) Securely fastened together with the flanges turned out when channel iron beams are used in place of I-beams;

(iii) Installed with all bearing supports perpendicular to the beam center line;

(iv) Set and maintained with the web in a vertical position; and

(v) When an outrigger beam is used, the shackle or clevis with which the rope is attached to the outrigger beam shall be placed directly over the center line of the stirrup.

(5) Suspension scaffold support devices such as cornice hooks, roof hooks, roof irons, parapet clamps, or similar devices shall be:

(i) Made of steel, wrought iron, or materials of equivalent strength;

(ii) Supported by bearing blocks; and

(iii) Secured against movement by tiebacks installed at right angles to the face of the building or structure, or opposing angle tiebacks shall be installed and secured to a structurally sound point of anchorage on the building or structure. Sound points of anchorage include structural members, but do not include standpipes, vents, other piping systems, or electrical conduit.

(iv) Tiebacks shall be equivalent in strength to the hoisting rope.

(6) When winding drum hoists are used on a suspension scaffold, they shall contain not less than four wraps of the suspension rope at the lowest point of scaffold travel. When other types of hoists are used, the suspension ropes shall be long enough to allow the scaffold to be lowered to the level below without the rope end passing through

the hoist, or the rope end shall be configured or provided with means to prevent the end from passing through the hoist.

(7) The use of repaired wire rope as suspension rope is prohibited.

(8) Wire suspension ropes shall not be joined together except through the use of eye splice thimbles connected with shackles or coverplates and bolts.

(9) The load end of wire suspension ropes shall be equipped with proper size thimbles and secured by eyesplicing or equivalent means.

(10) Ropes shall be inspected for defects by a competent person prior to each workshift and after every occurrence which could affect a rope's integrity. Ropes shall be replaced if any of the following conditions exist:

(i) Any physical damage which impairs the function and strength of the rope.

(ii) Kinks that might impair the tracking or wrapping of rope around the drum(s) or sheave(s).

(iii) Six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay.

(iv) Abrasion, corrosion, scrubbing, flattening or peening causing loss of more than one-third of the original diameter of the outside wires.

(v) Heat damage caused by a torch or any damage caused by contact with electrical wires.

(vi) Evidence that the secondary brake has been activated during an overspeed condition and has engaged the suspension rope.

(11) Swaged attachments or spliced eyes on wire suspension ropes shall not be used unless they are made by the wire rope manufacturer or a qualified person.

(12) When wire rope clips are used on suspension scaffolds:

(i) There shall be a minimum of 3 wire rope clips installed, with the clips a minimum of 6 rope diameters apart;

(ii) Clips shall be installed according to the manufacturer's recommendations;

(iii) Clips shall be retightened to the manufacturer's recommendations after the initial loading;

(iv) Clips shall be inspected and retightened to the manufacturer's recommendations at the start of each workshift thereafter;

(v) U-bolt clips shall not be used at the point of suspension for any scaffold hoist;

(vi) When U-bolt clips are used, the U-bolt shall be placed over the dead end of the rope, and the saddle shall be placed over the live end of the rope.

(13) Suspension scaffold power-operated hoists and manual hoists shall be tested and listed by a qualified testing laboratory.

(14) Gasoline-powered equipment and hoists shall not be used on suspension scaffolds.

(15) Gears and brakes of power-operated hoists used on suspension scaffolds shall be enclosed.

(16) In addition to the normal operating brake, suspension scaffold power-operated hoists and manually operated hoists shall have a braking device or locking pawl which engages automatically when a hoist makes either of the following uncontrolled movements: an instantaneous change in momentum or an accelerated overspeed.

(17) Manually operated hoists shall require a positive crank force to descend.

(18) Two-point and multi-point suspension scaffolds shall be tied or otherwise secured to prevent them from swaying, as determined to be necessary based on an evaluation by a competent person. Window cleaners' anchors shall not be used for this purpose.

(19) Devices whose sole function is to provide emergency escape and rescue shall not be used as working platforms. This provision does not preclude the use of systems which are designed to function both as suspension scaffolds and emergency systems.

(e) *Access.* This paragraph applies to scaffold access for all employees. Access requirements for employees erecting or dismantling supported scaffolds are specifically addressed in paragraph (e)(9) of this section.

(1) When scaffold platforms are more than 2 feet (0.6 m) above or below a point of access, portable ladders, hook-on ladders, attachable ladders, stair towers (scaffold stairways/towers), stairway-type ladders (such as ladder stands), ramps, walkways, integral prefabricated scaffold access, or direct access from another scaffold, structure, personnel hoist, or similar surface shall be used. Crossbraces shall not be used as a means of access.

(2) Portable, hook-on, and attachable ladders (Additional requirements for the proper construction and use of portable ladders are contained in subpart X of this part—Stairways and Ladders):

(i) Portable, hook-on, and attachable ladders shall be positioned so as not to tip the scaffold;

(ii) Hook-on and attachable ladders shall be positioned so that their bottom rung is not more than 24 inches (61 cm) above the scaffold supporting level;

(iii) When hook-on and attachable ladders are used on a supported scaffold more than 35 feet (10.7 m) high, they shall have rest platforms at 35-foot (10.7 m) maximum vertical intervals.

(iv) Hook-on and attachable ladders shall be specifically designed for use with the type of scaffold used;

(v) Hook-on and attachable ladders shall have a minimum rung length of 11½ inches (29 cm); and

(vi) Hook-on and attachable ladders shall have uniformly spaced rungs with a maximum spacing between rungs of 16¾ inches.

(3) Stairway-type ladders shall:

(i) Be positioned such that their bottom step is not more than 24 inches (61 cm) above the scaffold supporting level;

(ii) Be provided with rest platforms at 12 foot (3.7 m) maximum vertical intervals;

(iii) Have a minimum step width of 16 inches (41 cm), except that mobile scaffold stairway-type ladders shall have a minimum step width of 11½ inches (30 cm); and

(iv) Have slip-resistant treads on all steps and landings.

(4) Stairtowers (scaffold stairway/towers) shall be positioned such that their bottom step is not more than 24 inches (61 cm.) above the scaffold supporting level.

(i) A stairrail consisting of a toprail and a midrail shall be provided on each side of each scaffold stairway.

(ii) The toprail of each stairrail system shall also be capable of serving as a handrail, unless a separate handrail is provided.

(iii) Handrails, and toprails that serve as handrails, shall provide an adequate handhold for employees grasping them to avoid falling.

(iv) Stairrail systems and handrails shall be surfaced to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(v) The ends of stairrail systems and handrails shall be constructed so that they do not constitute a projection hazard.

(vi) Handrails, and toprails that are used as handrails, shall be at least 3 inches (7.6 cm) from other objects.

(vii) Stairrails shall be not less than 28 inches (71 cm) nor more than 37 inches (94 cm) from the upper surface of the stairrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(viii) A landing platform at least 18 inches (45.7 cm) wide by at least 18 inches (45.7 cm) long shall be provided at each level.

(ix) Each scaffold stairway shall be at least 18 inches (45.7 cm) wide between stairrails.

(x) Treads and landings shall have slip-resistant surfaces.

(xi) Stairways shall be installed between 40 degrees and 60 degrees from the horizontal.

(xii) Guardrails meeting the requirements of paragraph (g)(4) of this section shall be provided on the open sides and ends of each landing.

(xiii) Riser height shall be uniform, within ¼ inch, (0.6 cm) for each flight of stairs. Greater variations in riser height are allowed for the top and bottom steps of the entire system, not for each flight of stairs.

(xiv) Tread depth shall be uniform, within ¼ inch, for each flight of stairs.

(5) Ramps and walkways. (i) Ramps and walkways 6 feet (1.8 m) or more above lower levels shall have guardrail systems which comply with subpart M of this part—Fall Protection;

(ii) No ramp or walkway shall be inclined more than a slope of one (1) vertical to three (3) horizontal (20 degrees above the horizontal).

(iii) If the slope of a ramp or a walkway is steeper than one (1) vertical in eight (8) horizontal, the ramp or walkway shall have cleats not more than fourteen (14) inches (35 cm) apart which are securely fastened to the planks to provide footing.

(6) Integral prefabricated scaffold access frames shall:

(i) Be specifically designed and constructed for use as ladder rungs;

(ii) Have a rung length of at least 8 inches (20 cm);

(iii) Not be used as work platforms when rungs are less than 11½ inches in length, unless each affected employee uses fall protection, or a positioning device, which complies with § 1926.502;

(iv) Be uniformly spaced within each frame section;

(v) Be provided with rest platforms at 35-foot (10.7 m) maximum vertical intervals on all supported scaffolds more than 35 feet (10.7 m) high; and

(vi) Have a maximum spacing between rungs of 16¾ inches (43 cm). Non-uniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed 16¾ inches (43 cm).

(7) Steps and rungs of ladder and stairway type access shall line up vertically with each other between rest platforms.

(8) Direct access to or from another surface shall be used only when the scaffold is not more than 14 inches (36 cm) horizontally and not more than 24 inches (61 cm) vertically from the other surface.

(9) Effective September 2, 1997, access for employees erecting or dismantling supported scaffolds shall be in accordance with the following:

(i) The employer shall provide safe means of access for each employee erecting or dismantling a scaffold where the provision of safe access is feasible and does not create a greater hazard. The employer shall have a competent person determine whether it is feasible or would pose a greater hazard to provide, and have employees use a safe means of access. This determination shall be based on site conditions and the type of scaffold being erected or dismantled.

(ii) Hook-on or attachable ladders shall be installed as soon as scaffold erection has progressed to a point that permits safe installation and use.

(iii) When erecting or dismantling tubular welded frame scaffolds, (end) frames, with horizontal members that are parallel, level and are not more than 22 inches apart vertically may be used as climbing devices for access, provided they are erected in a manner that creates a usable ladder and provides good hand hold and foot space.

(iv) Cross braces on tubular welded frame scaffolds shall not be used as a means of access or egress.

(f) *Use.* (1) Scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities, whichever is less.

(2) The use of shore or lean-to scaffolds is prohibited.

(3) Scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift, and after any occurrence which could affect a scaffold's structural integrity.

(4) Any part of a scaffold damaged or weakened such that its strength is less than that required by paragraph (a) of this section shall be immediately repaired or replaced, braced to meet those provisions, or removed from service until repaired.

(5) Scaffolds shall not be moved horizontally while employees are on them, unless they have been designed by a registered professional engineer specifically for such movement or, for mobile scaffolds, where the provisions of § 1926.452(w) are followed.

(6) The clearance between scaffolds and power lines shall be as follows: Scaffolds shall not be erected, used, dismantled, altered, or moved such that they or any conductive material handled on them might come closer to exposed and energized power lines than as follows:

Insulated lines voltage	Minimum distance	Alternatives
Less than 300 volts	3 feet (0.9 M).	
More than 50 kv	10 feet (3.1 M) plus 4.0 inches (10 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

Uninsulated lines voltage	Minimum distance	Alternatives
Less than 50 kv	10 feet (3.1 M).	
More than 50 kv	10 feet (3.1 M) plus 4.0 inches (10 cm) for each 1 kv over 50 kv.	2 times the length of the line insulator, but never less than 10 feet (3.1 m).

Exception to paragraph (b)(6): Scaffolds and materials may be closer to power lines than specified above where such clearance is necessary for performance of work, and only after the utility company, or electrical system operator, has been notified of the need to work closer and the utility company, or electrical system operator, has deenergized the lines, relocated the lines, or installed protective coverings to prevent accidental contact with the lines.

(7) Scaffolds shall be erected, moved, dismantled, or altered only under the supervision and direction of a competent person qualified in scaffold erection, moving, dismantling or alteration. Such activities shall be performed only by experienced and trained employees selected for such work by the competent person.

(8) Employees shall be prohibited from working on scaffolds covered with snow, ice, or other slippery material except as necessary for removal of such materials.

(9) Where swinging loads are being hoisted onto or near scaffolds such that the loads might contact the scaffold, tag lines or equivalent measures to control the loads shall be used.

(10) Suspension ropes supporting adjustable suspension scaffolds shall be of a diameter large enough to provide sufficient surface area for the functioning of brake and hoist mechanisms.

(11) Suspension ropes shall be shielded from heat-producing processes. When acids or other corrosive substances are used on a scaffold, the ropes shall be shielded, treated to protect against the corrosive substances, or shall be of a material that will not be damaged by the substance being used.

(12) Work on or from scaffolds is prohibited during storms or high winds unless a competent person has determined that it is safe for employees to be on the scaffold and those employees are protected by a personal fall arrest system or wind screens. Wind screens shall not be used unless the scaffold is secured against the anticipated wind forces imposed.

(13) Debris shall not be allowed to accumulate on platforms.

(14) Makeshift devices, such as but not limited to boxes and barrels, shall not be used on top of scaffold platforms to increase the working level height of employees.

(15) Ladders shall not be used on scaffolds to increase the working level height of employees, except on large area scaffolds where employers have satisfied the following criteria:

(i) When the ladder is placed against a structure which is not a part of the scaffold, the scaffold shall be secured against the sideways thrust exerted by the ladder;

(ii) The platform units shall be secured to the scaffold to prevent their movement;

(iii) The ladder legs shall be on the same platform or other means shall be provided to stabilize the ladder against unequal platform deflection, and

(iv) The ladder legs shall be secured to prevent them from slipping or being pushed off the platform.

(16) Platforms shall not deflect more than 1/60 of the span when loaded.

(17) To reduce the possibility of welding current arcing through the suspension wire rope when performing welding from suspended scaffolds, the following precautions shall be taken, as applicable:

(i) An insulated thimble shall be used to attach each suspension wire rope to its hanging support (such as cornice hook or outrigger). Excess suspension wire rope and any additional independent lines from grounding shall be insulated;

(ii) The suspension wire rope shall be covered with insulating material extending at least 4 feet (1.2 m) above the hoist. If there is a tail line below the hoist, it shall be insulated to prevent contact with the platform. The portion of the tail line that hangs free below the scaffold shall be guided or retained, or both, so that it does not become grounded;

(iii) Each hoist shall be covered with insulated protective covers;

(iv) In addition to a work lead attachment required by the welding process, a grounding conductor shall be connected from the scaffold to the structure. The size of this conductor shall be at least the size of the welding process work lead, and this conductor shall not be in series with the welding process or the work piece;

(v) If the scaffold grounding lead is disconnected at any time, the welding machine shall be shut off; and

(vi) An active welding rod or uninsulated welding lead shall not be allowed to contact the scaffold or its suspension system.

(g) *Fall protection.* (1) Each employee on a scaffold more than 10 feet (3.1 m) above a lower level shall be protected from falling to that lower level. Paragraphs (g)(1) (i) through (vii) of this section establish the types of fall protection to be provided to the employees on each type of scaffold. Paragraph (g)(2) of this section addresses fall protection for scaffold erectors and dismantlers.

Note to paragraph (g)(1): The fall protection requirements for employees installing suspension scaffold support systems on floors, roofs, and other elevated surfaces are set forth in subpart M of this part.

(i) Each employee on a boatswains' chair, catenary scaffold, float scaffold, needle beam scaffold, or ladder jack scaffold shall be protected by a personal fall arrest system;

(ii) Each employee on a single-point or two-point adjustable suspension scaffold shall be protected by both a personal fall arrest system and guardrail system;

(iii) Each employee on a crawling board (chicken ladder) shall be protected by a personal fall arrest system, a guardrail system (with minimum 200 pound toprail capacity), or by a three-fourth inch (1.9 cm) diameter grabline or equivalent handhold securely fastened beside each crawling board;

(iv) Each employee on a self-contained adjustable scaffold shall be protected by a guardrail system (with minimum 200 pound toprail capacity) when the platform is supported by the frame structure, and by both a personal fall arrest system and a guardrail system (with minimum 200 pound toprail capacity) when the platform is supported by ropes;

(v) Each employee on a walkway located within a scaffold shall be protected by a guardrail system (with minimum 200 pound toprail capacity) installed within 9½ inches (24.1 cm) of and along at least one side of the walkway.

(vi) Each employee performing overhand bricklaying operations from a supported scaffold shall be protected from falling from all open sides and ends of the scaffold (except at the side next to the wall being laid) by the use of a personal fall arrest system or guardrail system (with minimum 200 pound toprail capacity).

(vii) For all scaffolds not otherwise specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section, each employee shall be protected by the use of personal fall arrest systems or guardrail systems meeting the requirements of paragraph (g)(4) of this section.

(2) Effective September 2, 1997, the employer shall have a competent person determine the feasibility and safety of providing fall protection for employees erecting or dismantling supported scaffolds. Employers are required to provide fall protection for employees erecting or dismantling supported scaffolds where the installation and use of such protection is feasible and does not create a greater hazard.

(3) In addition to meeting the requirements of § 1926.502(d), personal fall arrest systems used on scaffolds shall be attached by lanyard to a vertical lifeline, horizontal lifeline, or scaffold structural member. Vertical lifelines shall not be used when overhead components, such as overhead protection or additional platform levels, are part of a single-point or two-point adjustable suspension scaffold.

(i) When vertical lifelines are used, they shall be fastened to a fixed safe point of anchorage, shall be independent of the scaffold, and shall be protected from sharp edges and abrasion. Safe points of anchorage include structural members of buildings, but do not include standpipes, vents, other piping systems, electrical conduit, outrigger beams, or counterweights.

(ii) When horizontal lifelines are used, they shall be secured to two or more structural members of the scaffold, or they may be looped around both suspension and independent

suspension lines (on scaffolds so equipped) above the hoist and brake attached to the end of the scaffold. Horizontal lifelines shall not be attached only to the suspension ropes.

(iii) When lanyards are connected to horizontal lifelines or structural members on a single-point or two-point adjustable suspension scaffold, the scaffold shall be equipped with additional independent support lines and automatic locking devices capable of stopping the fall of the scaffold in the event one or both of the suspension ropes fail. The independent support lines shall be equal in number and strength to the suspension ropes.

(iv) Vertical lifelines, independent support lines, and suspension ropes shall not be attached to each other, nor shall they be attached to or use the same point of anchorage, nor shall they be attached to the same point on the scaffold or personal fall arrest system.

(4) Guardrail systems installed to meet the requirements of this section shall comply with the following provisions (guardrail systems built in accordance with Appendix A to this subpart will be deemed to meet the requirements of paragraphs (g)(4) (vii), (viii), and (ix) of this section):

(i) Guardrail systems shall be installed along all open sides and ends of platforms. Guardrail systems shall be installed before the scaffold is released for use by employees other than erection/dismantling crews.

(ii) The top edge height of toprails or equivalent member on supported scaffolds manufactured or placed in service after January 1, 2000 shall be installed between 38 inches (0.97 m) and 45 inches (1.2 m) above the platform surface. The top edge height on supported scaffolds manufactured and placed in service before January 1, 2000, and on all suspended scaffolds where both a guardrail and a personal fall arrest system are required shall be between 36 inches (0.9 m) and 45 inches (1.2 m). When conditions warrant, the height of the top edge may exceed the 45-inch height, provided the guardrail system meets all other criteria of paragraph (g)(4).

(iii) When midrails, screens, mesh, intermediate vertical members, solid panels, or equivalent structural members are used, they shall be installed between the top edge of the guardrail system and the scaffold platform.

(iv) When midrails are used, they shall be installed at a height approximately midway between the top edge of the guardrail system and the platform surface.

(v) When screens and mesh are used, they shall extend from the top edge of the guardrail system to the scaffold platform, and along the entire opening between the supports.

(vi) When intermediate members (such as balusters or additional rails) are used, they shall not be more than 19 inches (48 cm) apart.

(vii) Each toprail or equivalent member of a guardrail system shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along its top edge of at least 100 pounds (445 n) for guardrail systems installed on single-point adjustable suspension scaffolds or two-point adjustable suspension scaffolds, and at least 200 pounds (890 n) for guardrail systems installed on all other scaffolds.

(viii) When the loads specified in paragraph (g)(4)(vii) of this section are applied in a downward direction, the top edge shall not drop below the height above the platform surface that is prescribed in paragraph (g)(4)(ii) of this section.

(ix) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members of a guardrail system shall be capable of withstanding, without failure, a force applied in any downward or horizontal direction at any point along the midrail or other member of at least 75 pounds (333 n) for guardrail systems with a minimum 100 pound toprail capacity, and at least 150 pounds (666 n) for guardrail systems with a minimum 200 pound toprail capacity.

(x) Suspension scaffold hoists and non-walk-through stirrups may be used as end guardrails, if the space between the hoist or stirrup and the side guardrail or structure does not allow passage of an employee to the end of the scaffold.

(xi) Guardrails shall be surfaced to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(xii) The ends of all rails shall not overhang the terminal posts except when such overhang does not constitute a projection hazard to employees.

(xiii) Steel or plastic banding shall not be used as a toprail or midrail.

(xiv) Manila or plastic (or other synthetic) rope being used for toprails or midrails shall be inspected by a competent person as frequently as necessary to ensure that it continues to meet the strength requirements of paragraph (g) of this section.

(xv) Crossbracing is acceptable in place of a midrail when the crossing point of two braces is between 20 inches (0.5 m) and 30 inches (0.8 m) above the work platform or as a toprail when the crossing point of two braces is between 38 inches (0.97 m) and 48 inches (1.3 m) above the work platform. The end points at each upright shall be no more than 48 inches (1.3 m) apart.

(h) *Falling object protection.* (1) In addition to wearing hardhats each employee on a scaffold shall be provided with additional protection from falling hand tools, debris, and other small objects through the installation of toeboards, screens, or guardrail systems, or through the erection of debris nets, catch platforms, or canopy structures that contain or deflect the falling objects. When the falling objects are too large, heavy or massive to be contained or deflected by any of the above-listed measures, the employer shall place such potential falling objects away from the edge of the surface from which they could fall and shall secure those materials as necessary to prevent their falling.

(2) Where there is a danger of tools, materials, or equipment falling from a scaffold and striking employees below, the following provisions apply:

(i) The area below the scaffold to which objects can fall shall be barricaded, and employees shall not be permitted to enter the hazard area; or

(ii) A toeboard shall be erected along the edge of platforms more than 10 feet (3.1 m) above lower levels for a distance sufficient to protect employees below, except on float (ship) scaffolds where an edging of ¾ × 1½ inch (2 × 4 cm) wood or equivalent may be used in lieu of toeboards;

(iii) Where tools, materials, or equipment are piled to a height higher than the top edge of the toeboard, paneling or screening extending from the toeboard or platform to the top of the guardrail shall be erected for a distance sufficient to protect employees below; or

(iv) A guardrail system shall be installed with openings small enough to prevent passage of potential falling objects; or

(v) A canopy structure, debris net, or catch platform strong enough to withstand the impact forces of the potential falling objects shall be erected over the employees below.

(3) Canopies, when used for falling object protection, shall comply with the following criteria:

(i) Canopies shall be installed between the falling object hazard and the employees.

(ii) When canopies are used on suspension scaffolds for falling object protection, the scaffold shall be equipped with additional independent

support lines equal in number to the number of points supported, and equivalent in strength to the strength of the suspension ropes.

(iii) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(4) Where used, toeboards shall be:

(i) Capable of withstanding, without failure, a force of at least 50 pounds (222 n) applied in any downward or horizontal direction at any point along the toeboard (toeboards built in accordance with Appendix A to this subpart will be deemed to meet this requirement); and

(ii) At least three and one-half inches (9 cm) high from the top edge of the toeboard to the level of the walking/working surface. Toeboards shall be securely fastened in place at the outermost edge of the platform and have not more than ¼ inch (0.7 cm) clearance above the walking/working surface. Toeboards shall be solid or with openings not over one inch (2.5 cm) in the greatest dimension.

§ 1926.452 Additional requirements applicable to specific types of scaffolds.

In addition to the applicable requirements of § 1926.451, the following requirements apply to the specific types of scaffolds indicated. Scaffolds not specifically addressed by § 1926.452, such as but not limited to systems scaffolds, must meet the requirements of § 1926.451.

(a) *Pole scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced, prior to receiving the new platforms.

(2) Crossbracing shall be installed between the inner and outer sets of poles on double pole scaffolds.

(3) Diagonal bracing in both directions shall be installed across the entire inside face of double-pole scaffolds used to support loads equivalent to a uniformly distributed load of 50 pounds (222 kg) or more per square foot (929 square cm).

(4) Diagonal bracing in both directions shall be installed across the entire outside face of all double- and single-pole scaffolds.

(5) Runners and bearers shall be installed on edge.

(6) Bearers shall extend a minimum of 3 inches (7.6 cm) over the outside edges of runners.

(7) Runners shall extend over a minimum of two poles, and shall be supported by bearing blocks securely attached to the poles.

(8) Braces, bearers, and runners shall not be spliced between poles.

(9) Where wooden poles are spliced, the ends shall be squared and the upper section shall rest squarely on the lower section. Wood splice plates shall be provided on at least two adjacent sides, and shall extend at least 2 feet (0.6 m) on either side of the splice, overlap the abutted ends equally, and have at least the same cross-sectional areas as the pole. Splice plates of other materials of equivalent strength may be used.

(10) Pole scaffolds over 60 feet in height shall be designed by a registered professional engineer, and shall be constructed and loaded in accordance with that design. Non-mandatory Appendix A to this subpart contains examples of criteria that will enable an employer to comply with design and loading requirements for pole scaffolds under 60 feet in height.

(b) *Tube and coupler scaffolds.* (1) When platforms are being moved to the next level, the existing platform shall be left undisturbed until the new bearers have been set in place and braced prior to receiving the new platforms.

(2) Transverse bracing forming an "X" across the width of the scaffold shall be installed at the scaffold ends and at least at every third set of posts horizontally (measured from only one end) and every fourth runner vertically. Bracing shall extend diagonally from the inner or outer posts or runners upward to the next outer or inner posts or runners. Building ties shall be installed at the bearer levels between the transverse bracing and shall conform to the requirements of § 1926.451(c)(1).

(3) On straight run scaffolds, longitudinal bracing across the inner and outer rows of posts shall be installed diagonally in both directions, and shall extend from the base of the end posts upward to the top of the scaffold at approximately a 45 degree angle. On scaffolds whose length is greater than their height, such bracing shall be repeated beginning at least at every fifth post. On scaffolds whose length is less than their height, such bracing shall be installed from the base of the end posts upward to the opposite end posts, and then in alternating directions until reaching the top of the scaffold. Bracing shall be installed as close as possible to the intersection of the bearer and post or runner and post.

(4) Where conditions preclude the attachment of bracing to posts, bracing shall be attached to the runners as close to the post as possible.

(5) Bearers shall be installed transversely between posts, and when coupled to the posts, shall have the inboard coupler bear directly on the runner coupler. When the bearers are coupled to the runners, the couplers shall be as close to the posts as possible.

(6) Bearers shall extend beyond the posts and runners, and shall provide full contact with the coupler.

(7) Runners shall be installed along the length of the scaffold, located on both the inside and outside posts at level heights (when tube and coupler guardrails and midrails are used on outside posts, they may be used in lieu of outside runners).

(8) Runners shall be interlocked on straight runs to form continuous lengths, and shall be coupled to each post. The bottom runners and bearers shall be located as close to the base as possible.

(9) Couplers shall be of a structural metal, such as drop-forged steel, malleable iron, or structural grade aluminum. The use of gray cast iron is prohibited.

(10) Tube and coupler scaffolds over 125 feet in height shall be designed by a registered professional engineer, and shall be constructed and loaded in accordance with such design. Non-mandatory Appendix A to this subpart contains examples of criteria that will enable an employer to comply with design and loading requirements for tube and coupler scaffolds under 125 feet in height.

(c) *Fabricated frame scaffolds* (tubular welded frame scaffolds). (1) When moving platforms to the next level, the existing platform shall be left undisturbed until the new end frames have been set in place and braced prior to receiving the new platforms.

(2) Frames and panels shall be braced by cross, horizontal, or diagonal braces, or combination thereof, which secure vertical members together laterally. The cross braces shall be of such length as will automatically square and align vertical members so that the erected scaffold is always plumb, level, and square. All brace connections shall be secured.

(3) Frames and panels shall be joined together vertically by coupling or stacking pins or equivalent means.

(4) Where uplift can occur which would displace scaffold end frames or panels, the frames or panels shall be locked together vertically by pins or equivalent means.

(5) Brackets used to support cantilevered loads shall:

(i) Be seated with side-brackets parallel to the frames and end-brackets at 90 degrees to the frames;

(ii) Not be bent or twisted from these positions; and

(iii) Be used only to support personnel, unless the scaffold has been designed for other loads by a qualified

engineer and built to withstand the tipping forces caused by those other loads being placed on the bracket-supported section of the scaffold.

(6) Scaffolds over 125 feet (38.0 m) in height above their base plates shall be designed by a registered professional engineer, and shall be constructed and loaded in accordance with such design.

(d) *Plasterers', decorators', and large area scaffolds.* Scaffolds shall be constructed in accordance with paragraphs (a), (b), or (c) of this section, as appropriate.

(e) *Bricklayers' square scaffolds (squares).* (1) Scaffolds made of wood shall be reinforced with gussets on both sides of each corner.

(2) Diagonal braces shall be installed on all sides of each square.

(3) Diagonal braces shall be installed between squares on the rear and front sides of the scaffold, and shall extend from the bottom of each square to the top of the next square.

(4) Scaffolds shall not exceed three tiers in height, and shall be so constructed and arranged that one square rests directly above the other. The upper tiers shall stand on a continuous row of planks laid across the next lower tier, and shall be nailed down or otherwise secured to prevent displacement.

(f) *Horse scaffolds.* (1) Scaffolds shall not be constructed or arranged more than two tiers or 10 feet (3.0 m) in height, whichever is less.

(2) When horses are arranged in tiers, each horse shall be placed directly over the horse in the tier below.

(3) When horses are arranged in tiers, the legs of each horse shall be nailed down or otherwise secured to prevent displacement.

(4) When horses are arranged in tiers, each tier shall be crossbraced.

(g) *Form scaffolds and carpenters' bracket scaffolds.* (1) Each bracket, except those for wooden bracket-form scaffolds, shall be attached to the supporting formwork or structure by means of one or more of the following: nails; a metal stud attachment device; welding; hooking over a secured structural supporting member, with the form wales either bolted to the form or secured by snap ties or tie bolts extending through the form and securely anchored; or, for carpenters' bracket scaffolds only, by a bolt extending through to the opposite side of the structure's wall.

(2) Wooden bracket-form scaffolds shall be an integral part of the form panel.

(3) Folding type metal brackets, when extended for use, shall be either bolted or secured with a locking-type pin.

(h) *Roof bracket scaffolds.* (1) Scaffold brackets shall be constructed to fit the pitch of the roof and shall provide a level support for the platform.

(2) Brackets (including those provided with pointed metal projections) shall be anchored in place by nails unless it is impractical to use nails. When nails are not used, brackets shall be secured in place with first-grade manila rope of at least three-fourth inch (1.9 cm) diameter, or equivalent.

(i) *Outrigger scaffolds.* (1) The inboard end of outrigger beams, measured from the fulcrum point to the extreme point of anchorage, shall be not less than one and one-half times the outboard end in length.

(2) Outrigger beams fabricated in the shape of an I-beam or channel shall be placed so that the web section is vertical.

(3) The fulcrum point of outrigger beams shall rest on secure bearings at least 6 inches (15.2 cm) in each horizontal dimension.

(4) Outrigger beams shall be secured in place against movement, and shall be securely braced at the fulcrum point against tipping.

(5) The inboard ends of outrigger beams shall be securely anchored either by means of braced struts bearing against sills in contact with the overhead beams or ceiling, or by means of tension members secured to the floor joists underfoot, or by both.

(6) The entire supporting structure shall be securely braced to prevent any horizontal movement.

(7) To prevent their displacement, platform units shall be nailed, bolted, or otherwise secured to outriggers.

(8) Scaffolds and scaffold components shall be designed by a registered professional engineer and shall be constructed and loaded in accordance with such design.

(j) *Pump jack scaffolds.* (1) Pump jack brackets, braces, and accessories shall be fabricated from metal plates and angles. Each pump jack bracket shall have two positive gripping mechanisms to prevent any failure or slippage.

(2) Poles shall be secured to the structure by rigid triangular bracing or equivalent at the bottom, top, and other points as necessary. When the pump jack has to pass bracing already installed, an additional brace shall be installed approximately 4 feet (1.2 m) above the brace to be passed, and shall be left in place until the pump jack has been moved and the original brace reinstalled.

(3) When guardrails are used for fall protection, a workbench may be used as the toprail only if it meets all the requirements in paragraphs (g)(4) (ii), (vii), (viii), and (xiii) of § 1926.451.

(4) Work benches shall not be used as scaffold platforms.

(5) When poles are made of wood, the pole lumber shall be straight-grained, free of shakes, large loose or dead knots, and other defects which might impair strength.

(6) When wood poles are constructed of two continuous lengths, they shall be joined together with the seam parallel to the bracket.

(7) When two by fours are spliced to make a pole, mending plates shall be installed at all splices to develop the full strength of the member.

(k) *Ladder jack scaffolds.* (1) Platforms shall not exceed a height of 20 feet (6.1 m).

(2) All ladders used to support ladder jack scaffolds shall meet the requirements of subpart X of this part—Stairways and Ladders, except that job-made ladders shall not be used to support ladder jack scaffolds.

(3) The ladder jack shall be so designed and constructed that it will bear on the side rails and ladder rungs or on the ladder rungs alone. If bearing on rungs only, the bearing area shall include a length of at least 10 inches (25.4 cm) on each rung.

(4) Ladders used to support ladder jacks shall be placed, fastened, or equipped with devices to prevent slipping.

(5) Scaffold platforms shall not be bridged one to another.

(l) *Window jack scaffolds.* (1) Scaffolds shall be securely attached to the window opening.

(2) Scaffolds shall be used only for the purpose of working at the window opening through which the jack is placed.

(3) Window jacks shall not be used to support planks placed between one window jack and another, or for other elements of scaffolding.

(m) *Crawling boards (chicken ladders).* (1) Crawling boards shall extend from the roof peak to the eaves when used in connection with roof construction, repair, or maintenance.

(2) Crawling boards shall be secured to the roof by ridge hooks or by means that meet equivalent criteria (e.g., strength and durability).

(n) *Step, platform, and trestle ladder scaffolds.* (1) Scaffold platforms shall not be placed any higher than the second highest rung or step of the ladder supporting the platform.

(2) All ladders used in conjunction with step, platform and trestle ladder scaffolds shall meet the pertinent requirements of subpart X of this part—Stairways and Ladders, except that job-

made ladders shall not be used to support such scaffolds.

(3) Ladders used to support step, platform, and trestle ladder scaffolds shall be placed, fastened, or equipped with devices to prevent slipping.

(4) Scaffolds shall not be bridged one to another.

(o) *Single-point adjustable suspension scaffolds.* (1) When two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, the resulting two-point scaffold shall comply with the requirements for two-point adjustable suspension scaffolds in paragraph (p) of this section.

(2) The supporting rope between the scaffold and the suspension device shall be kept vertical unless all of the following conditions are met:

(i) The rigging has been designed by a qualified person, and

(ii) The scaffold is accessible to rescuers, and

(iii) The supporting rope is protected to ensure that it will not chafe at any point where a change in direction occurs, and

(iv) The scaffold is positioned so that swinging cannot bring the scaffold into contact with another surface.

(3) Boatswains' chair tackle shall consist of correct size ball bearings or bushed blocks containing safety hooks and properly "eye-spliced" minimum five-eighth (5/8) inch (1.6 cm) diameter first-grade manila rope, or other rope which will satisfy the criteria (e.g., strength and durability) of manila rope.

(4) Boatswains' chair seat slings shall be reeved through four corner holes in the seat; shall cross each other on the underside of the seat; and shall be rigged so as to prevent slippage which could cause an out-of-level condition.

(5) Boatswains' chair seat slings shall be a minimum of five-eight (5/8) inch (1.6 cm) diameter fiber, synthetic, or other rope which will satisfy the criteria (e.g., strength, slip resistance, durability, etc.) of first grade manila rope.

(6) When a heat-producing process such as gas or arc welding is being conducted, boatswains' chair seat slings shall be a minimum of three-eight (3/8) inch (1.0 cm) wire rope.

(7) Non-cross-laminated wood boatswains' chairs shall be reinforced on their underside by cleats securely fastened to prevent the board from splitting.

(p) *Two-point adjustable suspension scaffolds (swing stages).* The following requirements do not apply to two-point adjustable suspension scaffolds used as masons' or stonesetters' scaffolds. Such scaffolds are covered by paragraph (q) of this section.

(1) Platforms shall not be more than 36 inches (0.9 m) wide unless designed by a qualified person to prevent unstable conditions.

(2) The platform shall be securely fastened to hangers (stirrups) by U-bolts or by other means which satisfy the requirements of § 1926.451(a).

(3) The blocks for fiber or synthetic ropes shall consist of at least one double and one single block. The sheaves of all blocks shall fit the size of the rope used.

(4) Platforms shall be of the ladder-type, plank-type, beam-type, or light-metal type. Light metal-type platforms having a rated capacity of 750 pounds or less and platforms 40 feet (12.2 m) or less in length shall be tested and listed by a nationally recognized testing laboratory.

(5) Two-point scaffolds shall not be bridged or otherwise connected one to another during raising and lowering operations unless the bridge connections are articulated (attached), and the hoists properly sized.

(6) Passage may be made from one platform to another only when the platforms are at the same height, are abutting, and walk-through stirrups specifically designed for this purpose are used.

(q) *Multi-point adjustable suspension scaffolds, stonesetters' multi-point adjustable suspension scaffolds, and masons' multi-point adjustable suspension scaffolds.* (1) When two or more scaffolds are used they shall not be bridged one to another unless they are designed to be bridged, the bridge connections are articulated, and the hoists are properly sized.

(2) If bridges are not used, passage may be made from one platform to another only when the platforms are at the same height and are abutting.

(3) Scaffolds shall be suspended from metal outriggers, brackets, wire rope slings, hooks, or means that meet equivalent criteria (e.g., strength, durability).

(r) *Catenary scaffolds.* (1) No more than one platform shall be placed between consecutive vertical pickups, and no more than two platforms shall be used on a catenary scaffold.

(2) Platforms supported by wire ropes shall have hook-shaped stops on each end of the platforms to prevent them from slipping off the wire ropes. These hooks shall be so placed that they will prevent the platform from falling if one of the horizontal wire ropes breaks.

(3) Wire ropes shall not be tightened to the extent that the application of a scaffold load will overstress them.

(4) Wire ropes shall be continuous and without splices between anchors.

(s) *Float (ship) scaffolds.* (1) The platform shall be supported by a minimum of two bearers, each of which shall project a minimum of 6 inches (15.2 cm) beyond the platform on both sides. Each bearer shall be securely fastened to the platform.

(2) Rope connections shall be such that the platform cannot shift or slip.

(3) When only two ropes are used with each float:

(i) They shall be arranged so as to provide four ends which are securely fastened to overhead supports.

(ii) Each supporting rope shall be hitched around one end of the bearer and pass under the platform to the other end of the bearer where it is hitched again, leaving sufficient rope at each end for the supporting ties.

(t) *Interior hung scaffolds.* (1) Scaffolds shall be suspended only from the roof structure or other structural member such as ceiling beams.

(2) Overhead supporting members (roof structure, ceiling beams, or other structural members) shall be inspected and checked for strength before the scaffold is erected.

(3) Suspension ropes and cables shall be connected to the overhead supporting members by shackles, clips, thimbles, or other means that meet equivalent criteria (e.g., strength, durability).

(u) *Needle beam scaffolds.* (1) Scaffold support beams shall be installed on edge.

(2) Ropes or hangers shall be used for supports, except that one end of a needle beam scaffold may be supported by a permanent structural member.

(3) The ropes shall be securely attached to the needle beams.

(4) The support connection shall be arranged so as to prevent the needle beam from rolling or becoming displaced.

(5) Platform units shall be securely attached to the needle beams by bolts or equivalent means. Cleats and overhang are not considered to be adequate means of attachment.

(v) *Multi-level suspended scaffolds.* (1) Scaffolds shall be equipped with additional independent support lines, equal in number to the number of points supported, and of equivalent strength to the suspension ropes, and rigged to support the scaffold in the event the suspension rope(s) fail.

(2) Independent support lines and suspension ropes shall not be attached to the same points of anchorage.

(3) Supports for platforms shall be attached directly to the support stirrup and not to any other platform.

(w) *Mobile scaffolds.* (1) Scaffolds shall be braced by cross, horizontal, or

diagonal braces, or combination thereof, to prevent racking or collapse of the scaffold and to secure vertical members together laterally so as to automatically square and align the vertical members. Scaffolds shall be plumb, level, and squared. All brace connections shall be secured.

(i) Scaffolds constructed of tube and coupler components shall also comply with the requirements of paragraph (b) of this section;

(ii) Scaffolds constructed of fabricated frame components shall also comply with the requirements of paragraph (c) of this section.

(2) Scaffold casters and wheels shall be locked with positive wheel and/or wheel and swivel locks, or equivalent means, to prevent movement of the scaffold while the scaffold is used in a stationary manner.

(3) Manual force used to move the scaffold shall be applied as close to the base as practicable, but not more than 5 feet (1.5 m) above the supporting surface.

(4) Power systems used to propel mobile scaffolds shall be designed for such use. Forklifts, trucks, similar motor vehicles or add-on motors shall not be used to propel scaffolds unless the scaffold is designed for such propulsion systems.

(5) Scaffolds shall be stabilized to prevent tipping during movement.

(6) Employees shall not be allowed to ride on scaffolds unless the following conditions exist:

(i) The surface on which the scaffold is being moved is within 3 degrees of level, and free of pits, holes, and obstructions;

(ii) The height to base width ratio of the scaffold during movement is two to one or less, unless the scaffold is designed and constructed to meet or exceed nationally recognized stability test requirements such as those listed in paragraph (x) of Appendix A to this subpart (ANSI/SIA A92.5 and A92.6);

(iii) Outrigger frames, when used, are installed on both sides of the scaffold;

(iv) When power systems are used, the propelling force is applied directly to the wheels, and does not produce a speed in excess of 1 foot per second (.3 mps); and

(v) No employee is on any part of the scaffold which extends outward beyond the wheels, casters, or other supports.

(7) Platforms shall not extend outward beyond the base supports of the scaffold unless outrigger frames or equivalent devices are used to ensure stability.

(8) Where leveling of the scaffold is necessary, screw jacks or equivalent means shall be used.

(9) Caster stems and wheel stems shall be pinned or otherwise secured in scaffold legs or adjustment screws.

(10) Before a scaffold is moved, each employee on the scaffold shall be made aware of the move.

(x) *Repair bracket scaffolds.* (1) Brackets shall be secured in place by at least one wire rope at least ½ inch (1.27 cm) in diameter.

(2) Each bracket shall be attached to the securing wire rope (or ropes) by a positive locking device capable of preventing the unintentional detachment of the bracket from the rope or by equivalent means.

(3) Each bracket, at the contact point between the supporting structure and the bottom of the bracket, shall be provided with a shoe (heel block or foot) capable of preventing the lateral movement of the bracket.

(4) Platforms shall be secured to the brackets in a manner that will prevent the separation of the platforms from the brackets and the movement of the platforms or the brackets on a completed scaffold.

(5) When a wire rope is placed around the structure in order to provide a safe anchorage for personal fall arrest systems used by employees erecting or dismantling scaffolds, the wire rope shall meet the requirements of subpart M of this part, but shall be at least 5/16 inch (0.8 cm) in diameter.

(6) Each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems shall be protected from damage due to contact with edges, corners, protrusions, or other discontinuities of the supporting structure or scaffold components.

(7) Tensioning of each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems shall be by means of a turnbuckle at least 1 inch (2.54 cm) in diameter, or by equivalent means.

(8) Each turnbuckle shall be connected to the other end of its rope by use of an eyesplice thimble of a size appropriate to the turnbuckle to which it is attached.

(9) U-bolt wire rope clips shall not be used on any wire rope used to secure brackets or to serve as an anchor for personal fall arrest systems.

(10) The employer shall ensure that materials shall not be dropped to the outside of the supporting structure.

(11) Scaffold erection shall progress in only one direction around any structure.

(y) *Stilts.* Stilts, when used, shall be used in accordance with the following requirements:

(1) An employee may wear stilts on a scaffold only if it is a large area scaffold.

(2) When an employee is using stilts on a large area scaffold where a guardrail system is used to provide fall protection, the guardrail system shall be increased in height by an amount equal to the height of the stilts being used by the employee.

(3) Surfaces on which stilts are used shall be flat and free of pits, holes and obstructions, such as debris, as well as other tripping and falling hazards.

(4) Stilts shall be properly maintained. Any alteration of the original equipment shall be approved by the manufacturer.

§ 1926.453 Aerial lifts.

(a) *General requirements.* (1) Unless otherwise provided in this section, aerial lifts acquired for use on or after January 22, 1973 shall be designed and constructed in conformance with the applicable requirements of the American National Standards for "Vehicle Mounted Elevating and Rotating Work Platforms," ANSI A92.2–1969, including appendix. Aerial lifts acquired before January 22, 1973 which do not meet the requirements of ANSI A92.2–1969, may not be used after January 1, 1976, unless they shall have been modified so as to conform with the applicable design and construction requirements of ANSI A92.2–1969. Aerial lifts include the following types of vehicle-mounted aerial devices used to elevate personnel to job-sites above ground:

(i) Extensible boom platforms;

(ii) Aerial ladders;

(iii) Articulating boom platforms;

(iv) Vertical towers; and

(v) A combination of any such devices. Aerial equipment may be made of metal, wood, fiberglass reinforced plastic (FRP), or other material; may be powered or manually operated; and are deemed to be aerial lifts whether or not they are capable of rotating about a substantially vertical axis.

(2) Aerial lifts may be "field modified" for uses other than those intended by the manufacturer provided the modification has been certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory, to be in conformity with all applicable provisions of ANSI A92.2–1969 and this section and to be at least as safe as the equipment was before modification.

(b) *Specific requirements.* (1) *Ladder trucks and tower trucks.* Aerial ladders shall be secured in the lower traveling position by the locking device on top of the truck cab, and the manually operated device at the base of the ladder before the truck is moved for highway travel.

(2) *Extensible and articulating boom platforms.* (i) Lift controls shall be tested each day prior to use to determine that such controls are in safe working condition.

(ii) Only authorized persons shall operate an aerial lift.

(iii) Belting off to an adjacent pole, structure, or equipment while working from an aerial lift shall not be permitted.

(iv) Employees shall always stand firmly on the floor of the basket, and shall not sit or climb on the edge of the basket or use planks, ladders, or other devices for a work position.

(v) A body belt shall be worn and a lanyard attached to the boom or basket when working from an aerial lift.

(vi) Boom and basket load limits specified by the manufacturer shall not be exceeded.

(vii) The brakes shall be set and when outriggers are used, they shall be positioned on pads or a solid surface. Wheel chocks shall be installed before using an aerial lift on an incline, provided they can be safely installed.

(viii) An aerial lift truck shall not be moved when the boom is elevated in a working position with men in the basket, except for equipment which is specifically designed for this type of operation in accordance with the provisions of paragraphs (a) (1) and (2) of this section.

(ix) Articulating boom and extensible boom platforms, primarily designed as personnel carriers, shall have both platform (upper) and lower controls. Upper controls shall be in or beside the platform within easy reach of the operator. Lower controls shall provide for overriding the upper controls. Controls shall be plainly marked as to their function. Lower level controls shall not be operated unless permission has been obtained from the employee in the lift, except in case of emergency.

(x) Climbers shall not be worn while performing work from an aerial lift.

(xi) The insulated portion of an aerial lift shall not be altered in any manner that might reduce its insulating value.

(xii) Before moving an aerial lift for travel, the boom(s) shall be inspected to see that it is properly cradled and outriggers are in stowed position except as provided in paragraph (b)(2)(viii) of this section.

(3) *Electrical tests.* All electrical tests shall conform to the requirements of ANSI A92.2–1969 section 5. However equivalent d.c.; voltage tests may be used in lieu of the a.c. voltage specified in A92.2–1969; d.c. voltage tests which are approved by the equipment manufacturer or equivalent entity shall be considered an equivalent test for the purpose of this paragraph (b)(3).

(4) *Bursting safety factor.* The provisions of the American National Standards Institute standard ANSI A92.2–1969, section 4.9 Bursting Safety Factor shall apply to all critical hydraulic and pneumatic components. Critical components are those in which a failure would result in a free fall or free rotation of the boom. All noncritical components shall have a bursting safety factor of at least 2 to 1.

(5) *Welding standards.* All welding shall conform to the following standards as applicable:

(i) Standard Qualification Procedure, AWS B3.0–41.

(ii) Recommended Practices for Automotive Welding Design, AWS D8.4–61.

(iii) Standard Qualification of Welding Procedures and Welders for Piping and Tubing, AWS D10.9–69.

(iv) Specifications for Welding Highway and Railway Bridges, AWS D2.0–69.

Note to § 1926.453: Non-mandatory Appendix C to this subpart lists examples of national consensus standards that are considered to provide employee protection equivalent to that provided through the application of ANSI A92.2–1969, where appropriate. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N2634, Washington, DC or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 1926.454 Training requirements.

This section supplements and clarifies the requirements of § 1926.21(b)(2) as these relate to the hazards of work on scaffolds.

(a) The employer shall have each employee who performs work while on a scaffold trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards. The training shall include the following areas, as applicable:

(1) The nature of any electrical hazards, fall hazards and falling object hazards in the work area;

(2) The correct procedures for dealing with electrical hazards and for erecting, maintaining, and disassembling the fall protection systems and falling object protection systems being used;

(3) The proper use of the scaffold, and the proper handling of materials on the scaffold;

(4) The maximum intended load and the load-carrying capacities of the scaffolds used; and

(5) Any other pertinent requirements of this subpart.

(b) The employer shall have each employee who is involved in erecting, disassembling, moving, operating, repairing, maintaining, or inspecting a scaffold trained by a competent person to recognize any hazards associated with the work in question. The training shall include the following topics, as applicable:

(1) The nature of scaffold hazards;

(2) The correct procedures for erecting, disassembling, moving, operating, repairing, inspecting, and maintaining the type of scaffold in question;

(3) The design criteria, maximum intended load-carrying capacity and intended use of the scaffold;

(4) Any other pertinent requirements of this subpart.

(c) When the employer has reason to believe that an employee lacks the skill or understanding needed for safe work involving the erection, use or dismantling of scaffolds, the employer shall retrain each such employee so that the requisite proficiency is regained. Retraining is required in at least the following situations:

(1) Where changes at the worksite present a hazard about which an employee has not been previously trained; or

(2) Where changes in the types of scaffolds, fall protection, falling object protection, or other equipment present a hazard about which an employee has not been previously trained; or

(3) Where inadequacies in an affected employee's work involving scaffolds indicate that the employee has not retained the requisite proficiency.

Non-Mandatory Appendices

(Non-mandatory) Appendix A to Subpart L—Scaffold Specifications

This Appendix provides non-mandatory guidelines to assist employers in complying with the requirements of subpart L of this part. An employer may use these guidelines and tables as a starting point for designing scaffold systems. However, the guidelines do not provide all the information necessary to build a complete system, and the employer is still responsible for designing and assembling these components in such a way that the completed system will meet the requirements of § 1926.451(a). Scaffold components which are not selected and loaded in accordance with this Appendix, and components for which no specific guidelines or tables are given in this Appendix (e.g., joints, ties, components for wood pole scaffolds more than 60 feet in height, components for heavy-duty horse

scaffolds, components made with other materials, and components with other dimensions, etc.) must be designed and constructed in accordance with the capacity requirements of § 1926.451(a), and loaded in accordance with § 1926.451(d)(1).

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1. General Guidelines and Tables

(a) The following tables, and the tables in Part 2—Specific guidelines and tables, assume that all load-carrying timber members (except planks) of the scaffold are a minimum of 1,500 lb-f/in² (stress grade) construction grade lumber. All dimensions are nominal sizes as provided in the American Softwood Lumber Standards, dated January 1970, except that, where rough sizes are noted, only rough or undressed lumber of the size specified will satisfy minimum requirements.

(b) Solid sawn wood used as scaffold planks shall be selected for such use following the grading rules established by a recognized lumber grading association or by an independent lumber grading inspection agency. Such planks shall be identified by the grade stamp of such association or agency. The association or agency and the grading rules under which the wood is graded shall be certified by the Board of Review, American Lumber Standard Committee, as set forth in the American Softwood Lumber Standard of the U.S. Department of Commerce.

(i) Allowable spans shall be determined in compliance with the National Design Specification for Wood Construction published by the National Forest Products Association; paragraph 5 of ANSI A10.8–1988 Scaffolding-Safety Requirements published by the American National Standards Institute; or for 2 x 10 inch (nominal) or 2 x 9 inch (rough) solid sawn wood planks, as shown in the following table:

Maximum intended nominal load (lb/ft²)	Maximum permissible span using full thickness undressed lumber (ft)	Maximum permissible span using nominal thickness lumber (ft)
25	10	8
50	8	6
75	6	

(ii) The maximum permissible span for 1¼ × 9-inch or wider wood plank of full thickness with a maximum intended load of 50 lb/ft.² shall be 4 feet.

(c) Fabricated planks and platforms may be used in lieu of solid sawn wood planks. Maximum spans for such units shall be as recommended by the manufacturer based on the maximum intended load being calculated as follows:

Rated load capacity	Intended load
Light-duty	• 25 pounds per square foot applied uniformly over the entire span area.
Medium-duty	• 50 pounds per square foot applied uniformly over the entire span area.
Heavy-duty	• 75 pounds per square foot applied uniformly over the entire span area.
One-person	• 250 pounds placed at the center of the span (total 250 pounds).
Two-person	• 250 pounds placed 18 inches to the left and right of the center of the span (total 500 pounds).
Three-person	• 250 pounds placed at the center of the span and 250 pounds placed 18 inches to the left and right of the center of the span (total 750 pounds).

Note: Platform units used to make scaffold platforms intended for light-duty use shall be capable of supporting at least 25 pounds per square foot applied uniformly over the entire unit-span area, or a 250-pound point load placed on the unit at the center of the span, whichever load produces the greater shear force.

(d) Guardrails shall be as follows:
(i) Toprails shall be equivalent in strength to 2 inch by 4 inch lumber; or
1¼ inch × ⅛ inch structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.
(ii) Midrails shall be equivalent in strength to 1 inch by 6 inch lumber; or
1¼ inch × 1¼ inch × ⅛ inch structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.
(iii) Toeboards shall be equivalent in strength to 1 inch by 4 inch lumber; or
1¼ inch × 1¼ inch structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.
(iv) Posts shall be equivalent in strength to 2 inch by 4 inch lumber; or
1¼ inch × 1¼ inch × ⅛ structural angle iron; or
1 inch × .070 inch wall steel tubing; or
1.990 inch × .058 inch wall aluminum tubing.
(v) Distance between posts shall not exceed 8 feet.
(e) Overhead protection shall consist of 2 inch nominal planking laid tight, or ¾-inch plywood.
(f) Screen installed between toeboards and midrails or toprails shall consist of No. 18 gauge U.S. Standard wire one inch mesh.

2. Specific guidelines and tables.

(a) Pole Scaffolds.

SINGLE POLE WOOD POLE SCAFFOLDS

	Light duty up to 20 feet high	Light duty up to 60 feet high	Medium duty up to 60 feet high	Heavy duty up to 60 feet high
Maximum intended load (lbs/ft²)	25	25	50	75
Poles or uprights	2×4 in	4×4 in	4×4 in	4×6 in.
Maximum pole spacing (longitudinal)	6 feet	10 feet	8 feet	6 feet
Maximum pole spacing (transverse)	5 feet	5 feet	5 feet	5 feet

SINGLE POLE WOOD POLE SCAFFOLDS—Continued

	Light duty up to 20 feet high	Light duty up to 60 feet high	Medium duty up to 60 feet high	Heavy duty up to 60 feet high
Runners	1×4 in	1¼×9 in	2×10 in	2×10 in.
Bearers and maximum spacing of bearers:				
3 feet	2×4 in	2×4 in	2×10 in. or 3×4 in	2×10 in. or 3×5 in.
5 feet	2×6 in. or 3×4 in	2×6 in. or 3×4 in. (rough).	2×10 in. or 3×4 in	2×10 in. or 3×5 in.
6 feet			2×10 in. or 3×4 in	2×10 in. or 3×5 in.
8 feet			2×10 in. or 3×4 in	
Planking	1¼×9 in	2×10 in	2×10 in	2×10 in.
Maximum vertical spacing of horizontal members.	7 feet	9 feet	7 feet	6 ft. 6 in.
Bracing horizontal	1×4 in	1×4 in	1×6 in. or 1¼×4 in	2×4 in.
Bracing diagonal	1×4 in	1×4 in	1×4 in	2×4 in.
Tie-ins	1×4 in	1×4 in	1×4 in	1×4 in.

Note: All members except planking are used on edge. All wood bearers shall be reinforced with 3/16×2 inch steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

INDEPENDENT WOOD POLE SCAFFOLDS

	Light duty up to 20 feet high	Light duty up to 60 feet high	Medium duty up to 60 feet high	Heavy duty up to 60 feet high
Maximum intended load	25 lbs/ft²	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Poles or uprights	2×4 in	4×4 in	4×4 in	4×4 in.
Maximum pole spacing (longitudinal)	6 feet	10 feet	8 feet	6 feet.
Maximum (transverse)	6 feet	10 feet	8 feet	8 feet.
Runners	1¼×4 in	1¼×9 in	2×10 in	2×10 in.
Bearers and maximum spacing of bearers:				
3 feet	2×4 in	2×4 in	2×10 in	2×10 in. (rough).
6 feet	2×6 in. or 3×4 in	2×10 in. (rough) or 3×8 in.	2×10 in	2×10 in. (rough).
8 feet	2×6 in. or 3×4 in	2×10 in. (rough) or 3×8 in.	2×10 in	
10 feet	2×6 in. or 3×4 in	2×10 in.— (rough) or 3×3 in.		
Planking	1¼×9 in	2×10 in	2×10 in	2×10 in.
Maximum vertical spacing of horizontal members.	7 feet	7 feet	6 feet	6 feet.
Bracing horizontal	1×4 in	1×4 in	1×6 in. or 1¼×4 in	2×4 in.
Bracing diagonal	1×4 in	1×4 in	1×4 in	2×4 in.
Tie-ins	1×4 in	1×4 in	1×4 in	1×4 in.

Note: All members except planking are used on edge. All wood bearers shall be reinforced with 3/16×2 inch steel strip, or the equivalent, secured to the lower edges for the entire length of the bearer.

(b) Tube and coupler scaffolds.

MINIMUM SIZE OF MEMBERS

	Light duty	Medium duty	Heavy duty
Maximum intended load	25 lbs/ft²	50 lbs/ft²	75 lbs/ft².
Posts, runners and braces	Nominal 2 in. (1.90 inches) OD steel tube or pipe.	Nominal 2 in. (1.90 inches) OD steel tube or pipe.	Nominal 2 in. (1.90 inches) OD steel tube or pipe.
Bearers	Nominal 2 in. (1.90 inches) OD steel tube or pipe and a maximum post spacing of 4 ft.×10 ft..	Nominal 2 in. (1.90 inches) OD steel tube or pipe and a maximum post spacing of 4 ft.×7 ft. or. Nominal 2½ in. (2.375 in.). OD steel tube or pipe and a maximum post spacing of 6 ft.×8 ft.*.	Nominal 2½ in. (2.375 in.). OD steel tube or pipe and a maximum post spacing of 6 ft.×6 ft.
Maximum runner spacing vertically	6 ft. 6 in	6 ft. 6 in	6 ft. 6 in.

*Bearers shall be installed in the direction of the shorter dimension.

Note: Longitudinal diagonal bracing shall be installed at an angle of 45° (±5°).

MAXIMUM NUMBER OF PLANKED LEVELS

	Maximum number of additional planked levels			Maximum height of scaffold (in feet)
	Light duty	Medium duty	Heavy duty	
Number of Working Levels:				
1	16	11	6	125
2	11	1	0	125
3	6	0	0	125
4	1	0	0	125

(c) *Fabricated frame scaffolds.* Because of their prefabricated nature, no additional guidelines or tables for these scaffolds are being adopted in this Appendix.

(d) *Plasterers', decorators', and large area scaffolds.* The guidelines for pole scaffolds or tube and coupler scaffolds (Appendix A (a) and (b)) may be applied.

(e) *Bricklayers' square scaffolds.*

Maximum intended load: 50 lb/ft.²*
Maximum width: 5 ft.
Maximum height: 5 ft.
Gussets: 1 × 6 in.
Braces: 1 × 8 in.
Legs: 2 × 6 in.
Bearers (horizontal members): 2 × 6 in.

(f) Horse scaffolds.

Maximum intended load (light duty): 25 lb/ft.²**
Maximum intended load (medium duty): 50 lb/ft.²**
Horizontal members or bearers:
Light duty: 2 × 4 in.
Medium duty: 3 × 4 in.
Legs: 2 × 4 in.
Longitudinal brace between legs: 1 × 6 in.
Gusset brace at top of legs: 1 × 8 in.
Half diagonal braces: 2 × 4 in.

(g) *Form scaffolds and carpenters' bracket scaffolds.*

(1) Brackets shall consist of a triangular-shaped frame made of wood with a cross-section not less than 2 inches by 3 inches, or of 1¼ inch × 1¼ inch × ⅛ inch structural angle iron.

(2) Bolts used to attach brackets to structures shall not be less than ⅝ inches in diameter.

(3) Maximum bracket spacing shall be 8 feet on centers.

(4) No more than two employees shall occupy any given 8 feet of a bracket or form scaffold at any one time. Tools and materials shall not exceed 75 pounds in addition to the occupancy.

(5) Wooden figure-four scaffolds:

Maximum intended load: 25 lb/ft.²
Uprights: 2 × 4 in. or 2 × 6 in.
Bearers (two): 1 × 6 in.
Braces: 1 × 6 in.
Maximum length of bearers (unsupported): 3 ft. 6 in.

(i) Outrigger bearers shall consist of two pieces of 1 × 6 inch lumber nailed on opposite sides of the vertical support.

(ii) Bearers for wood figure-four brackets shall project not more than 3 feet 6 inches from the outside of the form support, and shall be braced and secured to prevent tipping or turning. The knee or angle brace shall intersect the bearer at least 3 feet from the form at an angle of approximately 45 degrees, and the lower end shall be nailed to a vertical support.

(6) Metal bracket scaffolds:

Maximum intended load: 25 lb/ft.²
Uprights: 2 × 4 inch
Bearers: As designed.
Braces: As designed.

(7) Wood bracket scaffolds:

Maximum intended load: 25 lb/ft.²
Uprights: 2 × 4 in or 2 × 6 in
Bearers: 2 × 6 in
Maximum scaffold width: 3 ft 6 in
Braces: 1 × 6 in

(h) *Roof bracket scaffolds.* No specific guidelines or tables are given.

(i) *Outrigger scaffolds (single level).* No specific guidelines or tables are given.

(j) *Pump jack scaffolds.* Wood poles shall not exceed 30 feet in height. Maximum intended load—500 lbs between poles; applied at the center of the span. Not more than two employees shall be on a pump jack scaffold at one time between any two supports. When 2 × 4's are spliced together to make a 4 × 4 inch wood pole, they shall be spliced with "10 penny" common nails no more than 12 inches center to center, staggered uniformly from the opposite outside edges.

(k) *Ladder jack scaffolds.* Maximum intended load—25 lb/ft². However, not more than two employees shall occupy any platform at any one time. Maximum span between supports shall be 8 feet.

(l) *Window jack scaffolds.* Not more than one employee shall occupy a window jack scaffold at any one time.

(m) *Crawling boards (chicken ladders).* Crawling boards shall be not less than 10 inches wide and 1 inch thick, with cleats having a minimum 1 × 1½ inch cross-sectional area. The cleats shall be equal in length to the width of the board and spaced at equal intervals not to exceed 24 inches.

(n) *Step, platform, and trestle ladder scaffolds.* No additional guidelines or tables are given.

(o) *Single-point adjustable suspension scaffolds.* Maximum intended load—250 lbs. Wood seats for boatswains' chairs shall be not less than 1 inch thick if made of non-laminated wood, or ⅝ inches thick if made of marine quality plywood.

(p) *Two-point adjustable suspension scaffolds.* (1) In addition to direct connections to buildings (except window cleaners' anchors) acceptable ways to prevent scaffold sway include angulated roping and static lines. Angulated roping is a system of platform suspension in which the upper wire rope sheaves or suspension points are closer to the plane of the building face than the corresponding attachment points on the platform, thus causing the platform to press against the face of the building. Static lines are separate ropes secured at their top and bottom ends closer to the plane of the building face than the outermost edge of the platform. By drawing the static line taut, the platform is drawn against the face of the building.

(2) On suspension scaffolds designed for a working load of 500 pounds, no more than two employees shall be permitted on the scaffold at one time. On suspension scaffolds with a working load of 750 pounds, no more than three employees shall be permitted on the scaffold at one time.

(3) Ladder-type platforms. The side stringer shall be of clear straight-grained spruce. The rungs shall be of straight-grained oak, ash, or hickory, at least 1⅛ inches in diameter, with ⅞ inch tenons mortised into the side stringers at least ⅞ inch. The stringers shall be tied together with tie rods not less than ¼ inch in diameter, passing through the stringers and riveted up tight against washers on both ends. The flooring strips shall be spaced not more than ⅝ inch apart, except at the side rails where the space may be 1 inch. Ladder-type platforms shall be constructed in accordance with the following table:

* The squares shall be set not more than 8 feet apart for light duty scaffolds and not more than 5 feet apart for medium duty scaffolds.

** Horses shall be spaced not more than 8 feet apart for light duty loads, and not more than 5 feet apart for medium duty loads.

SCHEDULE FOR LADDER-TYPE PLATFORMS

Length of Platform	12 feet	14 & 16 feet	18 & 20 feet.
Side stringers, minimum cross section (finished sizes):			
At ends	1¾ x 2¾ in	1¾ x 2¾ in	1¾ x 3 in.
At middle	1¾ x 3¾ in	1¾ x 3¾ in	1¾ x 4 in.
Reinforcing strip (minimum)	A ⅛ x ⅞ inch steel reinforcing strip shall be attached to the side or underside, full length.		
Rungs	Rungs shall be 1⅛ inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center.		
Tie rods:			
Number (minimum)	3	4	4
Diameter (minimum)	¼ inch	¼ inch	¼ inch
Flooring, minimum finished size	½ x 2¾ in	½ x 2¾ in	½ x 2¾ in.

SCHEDULE FOR LADDER-TYPE PLATFORMS

Length of Platform	22 & 24 ft	28 & 30 ft.
Side stringers, minimum cross section (finished sizes):		
At ends	1¾x3 in	1¾ x 3½ in.
At middle	1¾ x 4¼ in	1¾ x 5 in.
Reinforcing strip (minimum)	A ⅛ x ⅞-inch steel reinforcing strip shall be attached to the side or underside, full length.	
Rungs	Rungs shall be 1⅛ inch minimum diameter with at least ⅞ inch in diameter tenons, and the maximum spacing shall be 12 inches to center. Tie rods.	
Number (minimum)	5	6.
Diameter (minimum)	¼ in	¼ in.
Flooring, minimum finished size	½ x 2¾ in	½ x 2¾ in.

(4) Plank-Type Platforms. Plank-type platforms shall be composed of not less than nominal 2 × 8 inch unspliced planks, connected together on the underside with cleats at intervals not exceeding 4 feet, starting 6 inches from each end. A bar or other effective means shall be securely fastened to the platform at each end to prevent the platform from slipping off the hanger. The span between hangers for plank-type platforms shall not exceed 10 feet.

(5) Beam-Type Platforms. Beam platforms shall have side stringers of lumber not less than 2 × 6 inches set on edge. The span between hangers shall not exceed 12 feet when beam platforms are used. The flooring shall be supported on 2 × 6 inch cross beams, laid flat and set into the upper edge of the stringers with a snug fit, at intervals of not more than 4 feet, securely nailed to the cross beams. Floor-boards shall not be spaced more than ½ inch apart.

(q)(1) *Multi-point adjustable suspension scaffolds and stonesetters' multi-point adjustable suspension scaffolds.* No specific guidelines or tables are given for these scaffolds.

(q)(2) *Masons' multi-point adjustable suspension scaffolds.* Maximum intended load—50 lb/ft². Each outrigger beam shall be at least a standard 7 inch, 15.3 pound steel I-beam, at least 15 feet long. Such beams shall not project more than 6 feet 6 inches beyond the bearing point. Where the overhang exceeds 6 feet 6 inches, outrigger beams shall be composed of stronger beams or multiple beams.

(r) *Catenary scaffolds.* (1) Maximum intended load—500 lbs.

(2) Not more than two employees shall be permitted on the scaffold at one time.

(3) Maximum capacity of come-along shall be 2,000 lbs.

(4) Vertical pickups shall be spaced not more than 50 feet apart.

(5) Ropes shall be equivalent in strength to at least ½ inch (1.3 cm) diameter improved plow steel wire rope.

(s) *Float (ship) scaffolds.* (1) Maximum intended load—750 lbs.

(2) Platforms shall be made of ¾ inch plywood, equivalent in rating to American Plywood Association Grade B–B, Group I, Exterior.

(3) Bearers shall be made from 2×4 inch, or 1×10 inch rough lumber. They shall be free of knots and other flaws.

(4) Ropes shall be equivalent in strength to at least 1 inch (2.5 cm) diameter first grade manila rope.

(t) *Interior hung scaffolds.*

Bearers (use on edge): 2×10 in.
Maximum intended load: Maximum span
25 lb/ft.²: 10 ft.
50 lb/ft.²: 10 ft.
75 lb/ft.²: 7 ft.

(u) *Needle beam scaffolds.*

Maximum intended load: 25 lb/ft.²
Beams: 4×6 in.
Maximum platform span: 8 ft.
Maximum beam span: 10 ft.

(1) Ropes shall be attached to the needle beams by a scaffold hitch or an eye splice. The loose end of the rope shall be tied by a bowline knot or by a round turn and a half hitch.

(2) Ropes shall be equivalent in strength to at least 1 inch (2.5 cm) diameter first grade manila rope.

(v) *Multi-level suspension scaffolds.* No additional guidelines or tables are being given for these scaffolds.

(w) *Mobile Scaffolds.* Stability test as described in the ANSI A92 series documents, as appropriate for the type of scaffold, can be used to establish stability for the purpose of § 1926.452(w)(6).

(x) *Repair bracket scaffolds.* No additional guidelines or tables are being given for these scaffolds.

(y) *Stilts.* No specific guidelines or tables are given.

(z) *Tank builder's scaffold.*

(1) The maximum distance between brackets to which scaffolding and guardrail supports are attached shall be no more than 10 feet 6 inches.

(2) Not more than three employees shall occupy a 10 feet 6 inch span of scaffold planking at any time.

(3) A taut wire or synthetic rope supported on the scaffold brackets shall be installed at the scaffold plank level between the innermost edge of the scaffold platform and the curved plate structure of the tank shell to serve as a safety line in lieu of an inner guardrail assembly where the space between the scaffold platform and the tank exceeds 12 inches (30.48 cm). In the event the open space on either side of the rope exceeds 12 inches (30.48 cm), a second wire or synthetic rope appropriately placed, or guardrails in accordance with § 1926.451(e)(4), shall be installed in order to reduce that open space to less than 12 inches (30.48 cm).

(4) Scaffold planks of rough full-dimensioned 2-inch (5.1 cm)×12-inch (30.5 cm) Douglas Fir or Southern Yellow Pine of Select Structural Grade shall be used. Douglas Fir planks shall have a fiber stress of at least 1900 lb/in² (130,929 n/cm²) and a modulus of elasticity of at least 1,900,000 lb/in² (130,929,000 n/cm²), while Yellow Pine planks shall have a fiber stress of at least 2500 lb/in² (172,275 n/cm²) and a modulus of elasticity of at least 2,000,000 lb/in² (137,820,000 n/cm²).

(5) Guardrails shall be constructed of a taut wire or synthetic rope, and shall be supported by angle irons attached to brackets welded to the steel plates. These guardrails shall comply with § 1926.451(e)(4). Guardrail supports shall be located at no greater than 10 feet 6 inch intervals.

Non-Mandatory Appendix B to Subpart L—Criteria for Determining the Feasibility of Providing Safe Access and Fall Protection for Scaffold Erectors and Dismantlers

[Reserved]

Non-Mandatory Appendix C to Subpart L—List of National Consensus Standards

ANSI/SIA A92.2–1990 *Vehicle-Mounted Elevating and Rotating Aerial Devices*
ANSI/SIA A92.3–1990 *Manually Propelled Elevating Aerial Platforms*
ANSI/SIA A92.5–1990 *Boom Supported Elevating Work Platforms*
ANSI/SIA A92.6–1990 *Self-Propelled Elevating Work Platforms*
ANSI/SIA A92.7–1990 *Airline Ground Support Vehicle-Mounted Vertical Lift Devices*
ANSI/SIA A92.8–1993 *Vehicle-Mounted Bridge Inspection and Maintenance Devices*
ANSI/SIA A92.9–1993 *Mast-Climbing Work Platforms*

Non-Mandatory Appendix D to Subpart L—List of Training Topics for Scaffold Erectors and Dismantlers

This Appendix D is provided to serve as a guide to assist employers when evaluating the training needs of employees erecting or dismantling supported scaffolds.

The Agency believes that employees erecting or dismantling scaffolds should be trained in the following topics:

- *General Overview of Scaffolding*
  - regulations and standards
  - erection/dismantling planning
  - PPE and proper procedures
  - fall protection
  - materials handling
  - access
  - working platforms
  - foundations
  - guys, ties and braces
- *Tubular Welded Frame Scaffolds*
  - specific regulations and standards
  - components
  - parts inspection
  - erection/dismantling planning
  - guys, ties and braces
  - fall protection
  - general safety
  - access and platforms
  - erection/dismantling procedures
  - rolling scaffold assembly
  - putlogs
- *Tube and Clamp Scaffolds*
  - specific regulations and standards
  - components
  - parts inspection
  - erection/dismantling planning
  - guys, ties and braces
  - fall protection
  - general safety
  - access and platforms
  - erection/dismantling procedures
  - buttresses, cantilevers, & bridges
- *System Scaffolds*
  - specific regulations and standards
  - components
  - parts inspection
  - erection/dismantling planning
  - guys, ties and braces
  - fall protection
  - general safety
  - access and platforms
  - erection/dismantling procedures
  - buttresses, cantilevers, & bridges

Scaffold erectors and dismantlers should all receive the general overview, and, in addition, specific training for the type of supported scaffold being erected or dismantled.

(Non-mandatory) Appendix E to Subpart L—Drawings and Illustrations

This Appendix provides drawings of particular types of scaffolds and scaffold components, and graphic illustrations of bracing patterns and tie spacing patterns.

This Appendix is intended to provide visual guidance to assist the user in complying with the requirements of subpart L, part 1926.

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BRACING – TUBE & COUPLER SCAFFOLDS

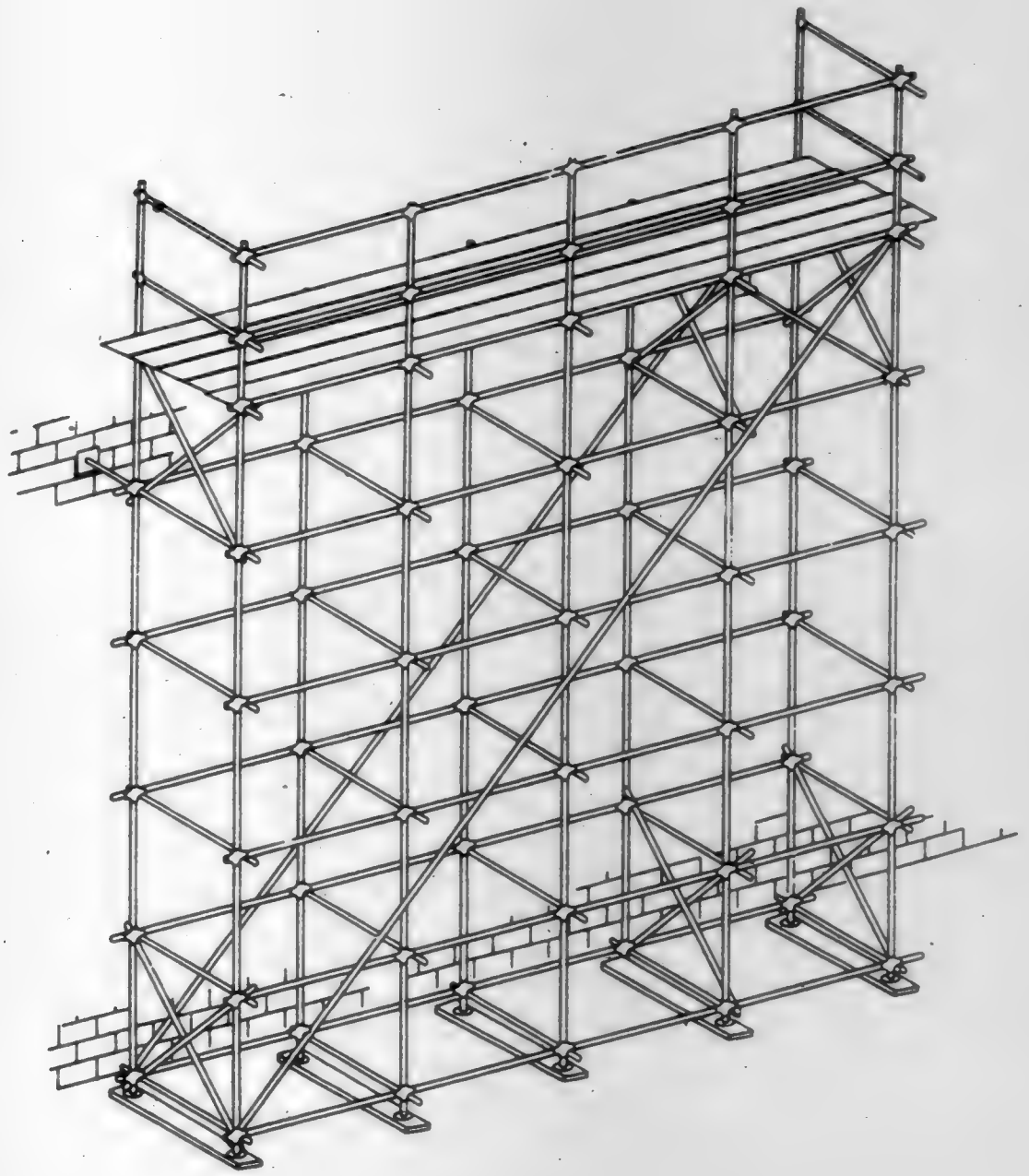

SUSPENDED SCAFFOLD PLATFORM WELDING PRECAUTIONS

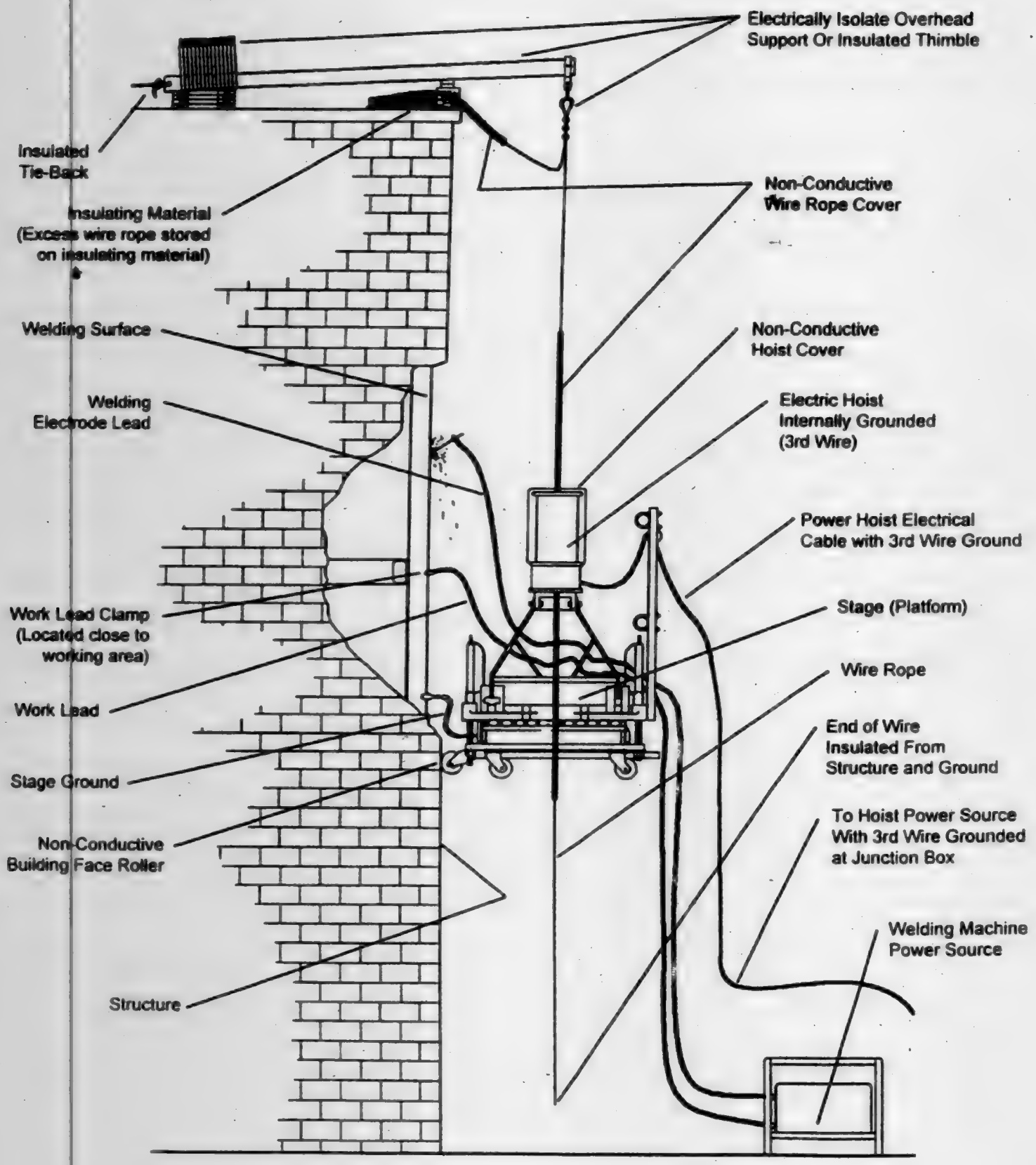

MAXIMUM VERTICAL TIE SPACING
WIDER THAN 3'-0" BASES

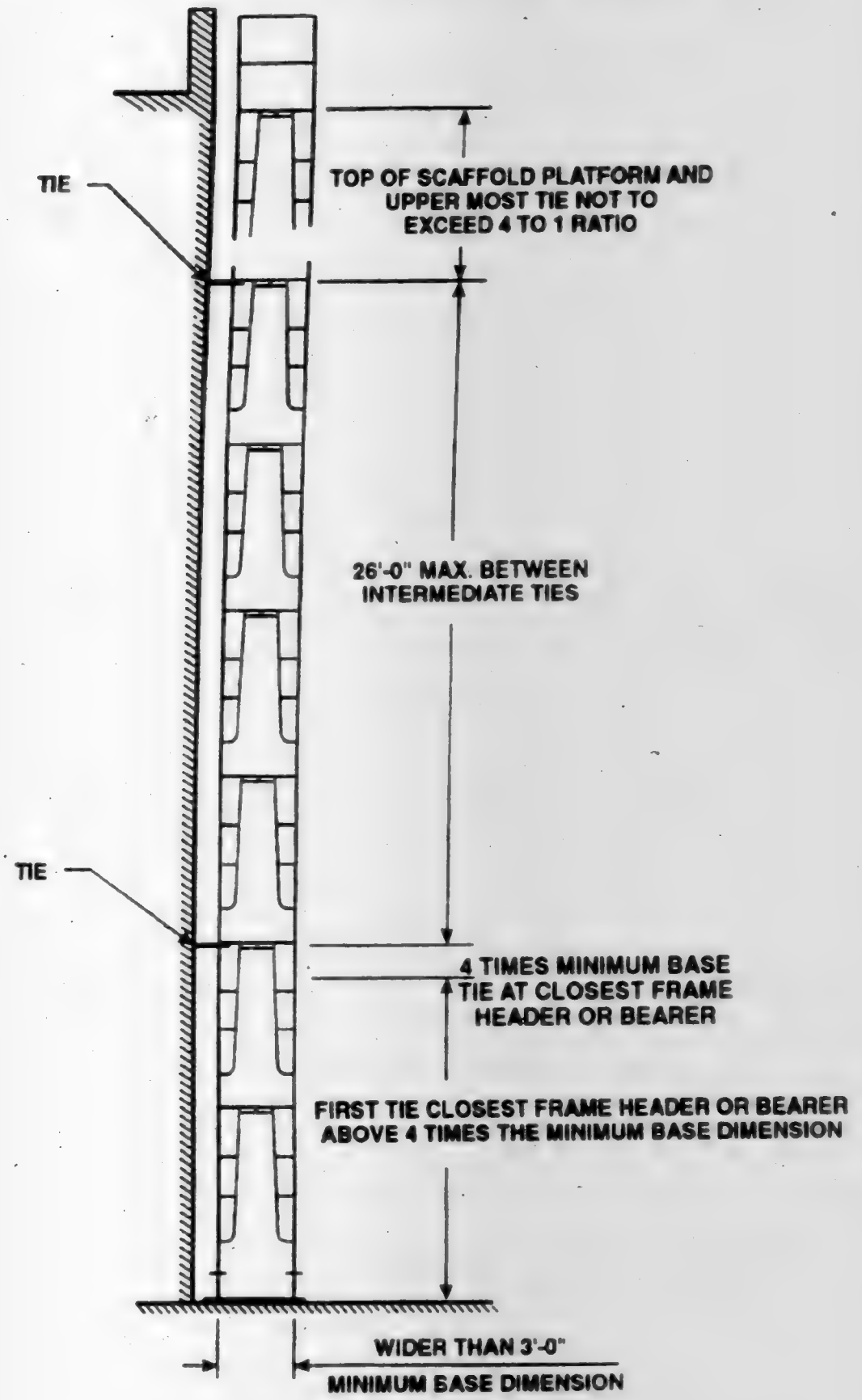

MAXIMUM VERTICAL TIE SPACING
3'- 0" AND NARROWER BASES

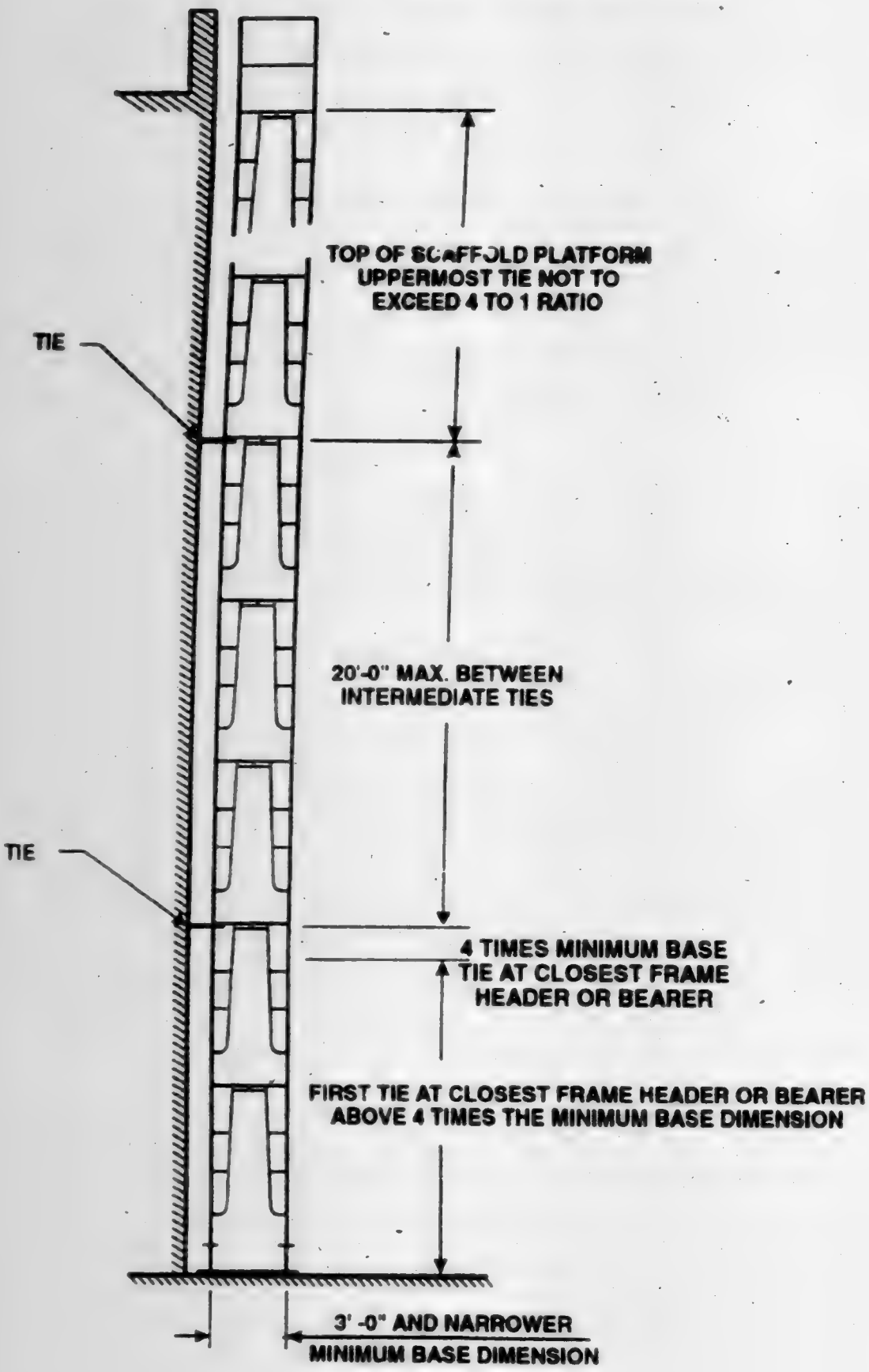

SYSTEM SCAFFOLD

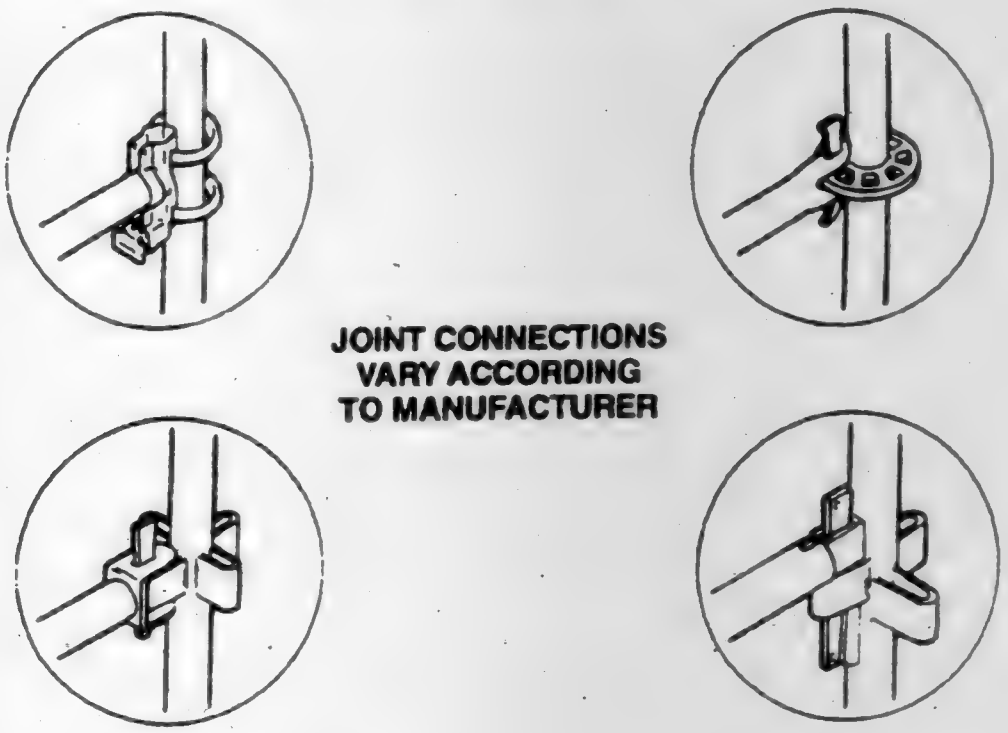

Grade stamp courtesy of West Coast Lumber Inspection Bureau

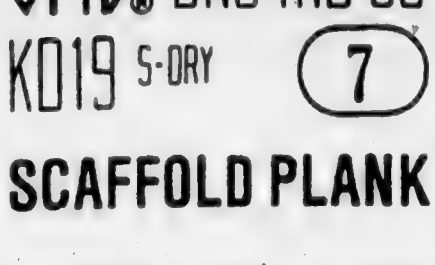

Grade stamp courtesy of Southern Pine Inspection Bureau

TUBE and COUPLER SCAFFOLD

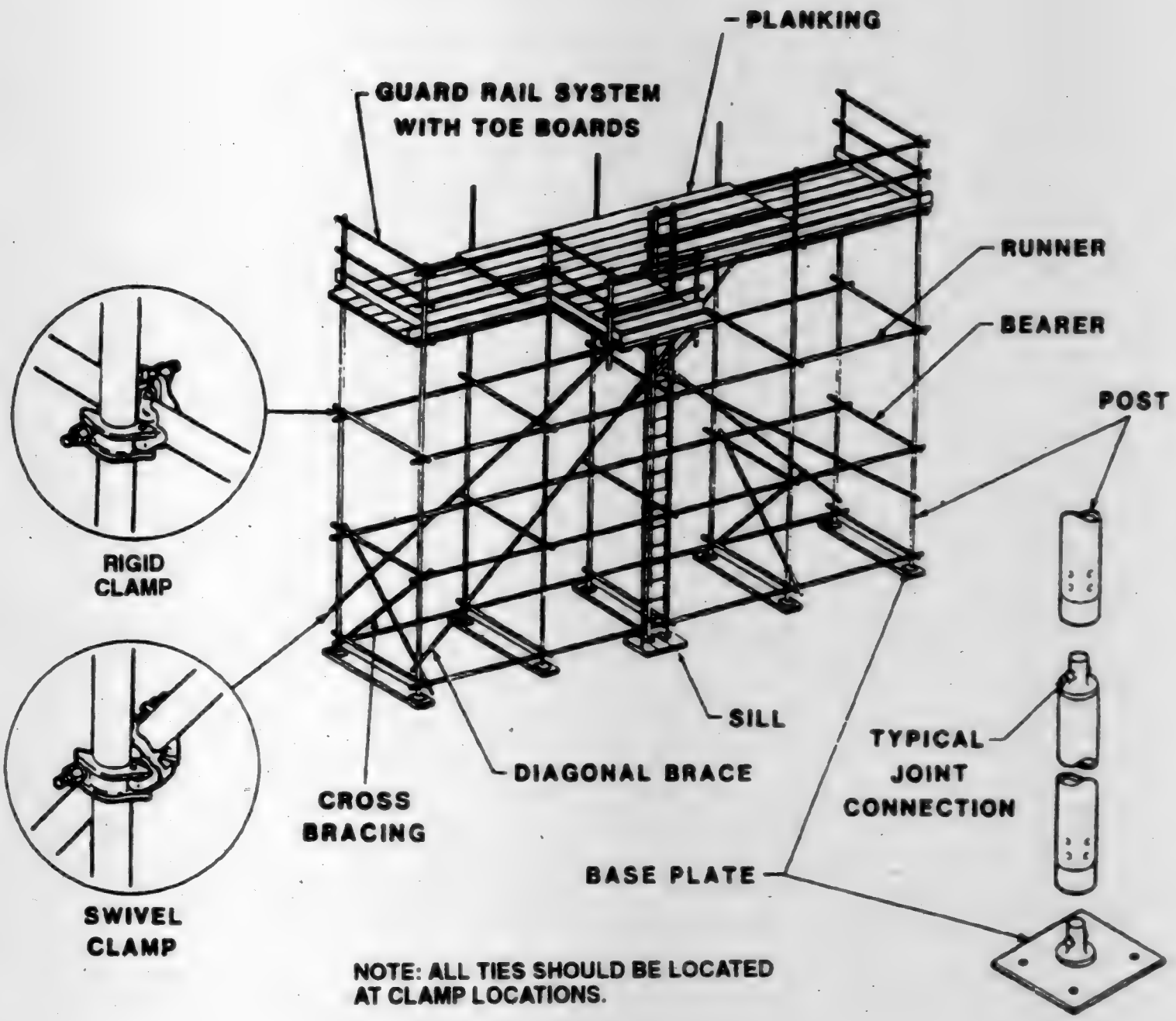

SCAFFOLDING WORK SURFACES

LAMINATED VENIER LUMBER (LVL)

SOLID SAWN LUMBER

SCAFFOLD PLANKS

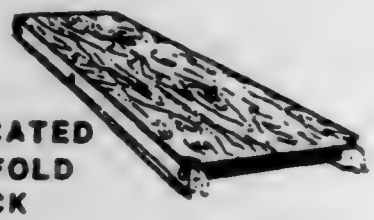

FABRICATED SCAFFOLD DECK

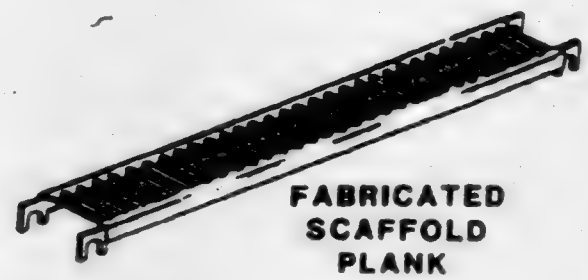

FABRICATED SCAFFOLD PLANK

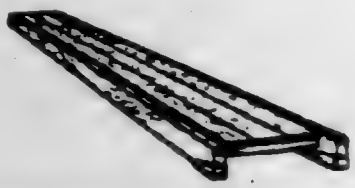

DECORATOR PLANK

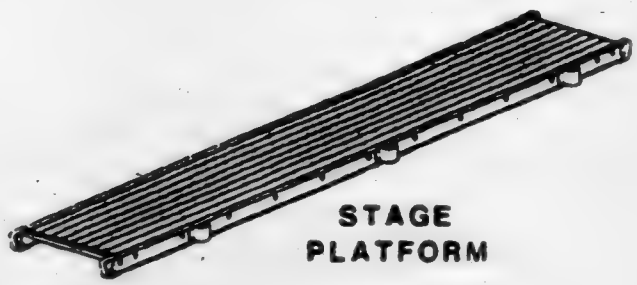

STAGE PLATFORM

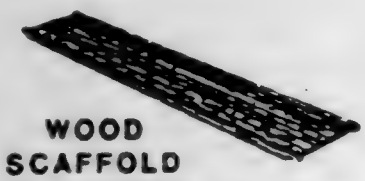

WOOD SCAFFOLD PLATFORM

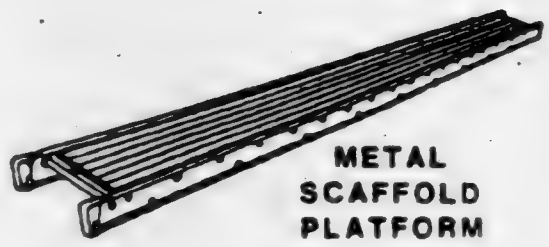

METAL SCAFFOLD PLATFORM

OUTRIGGER SCAFFOLD

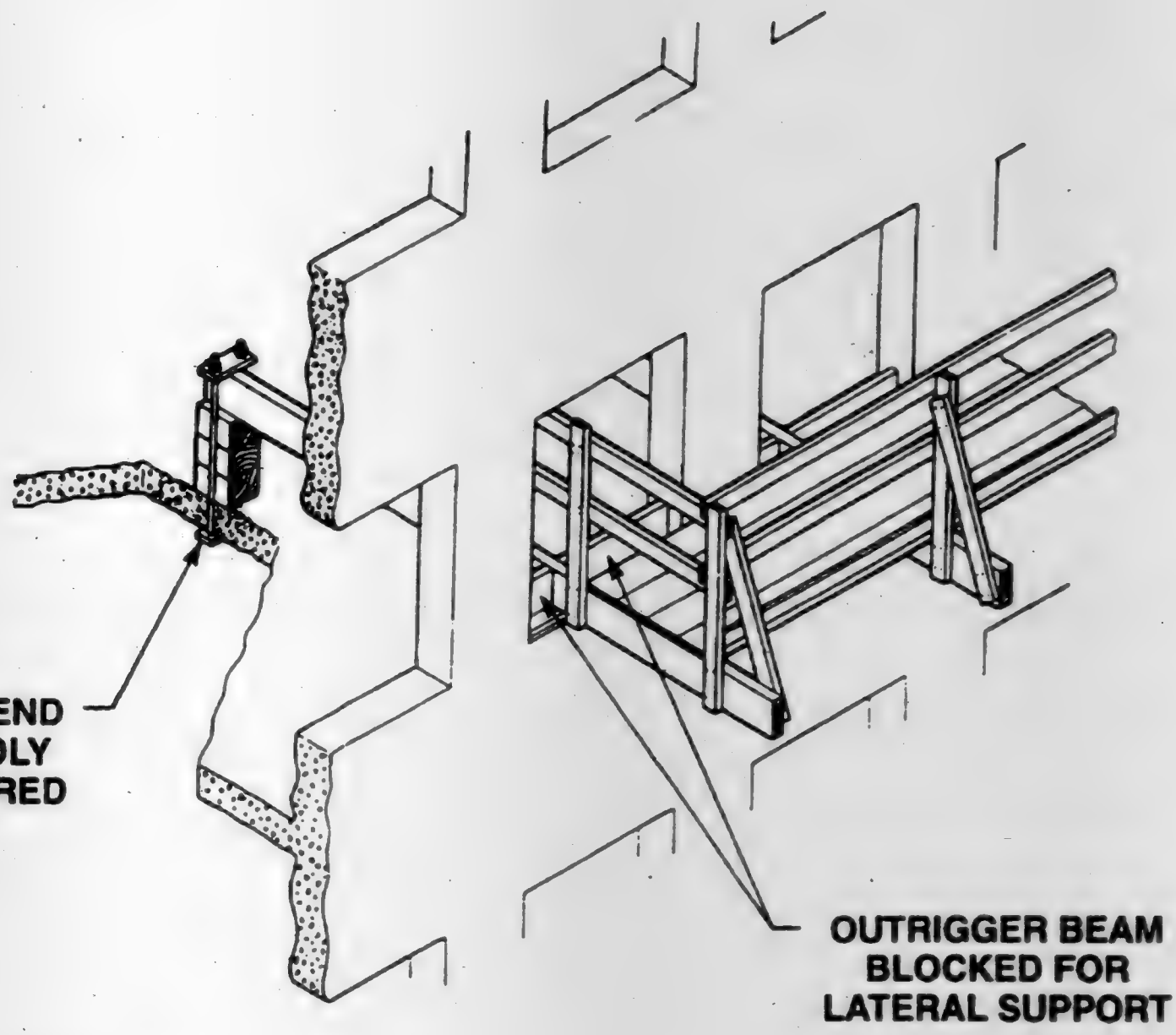

§ 1926.556 [Removed]

2. Section 1926.556 is removed.

[FR Doc. 96–21289 Filed 8–29–96; 8:45 am]
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federal register

Friday
August 30, 1996

Part III

Library of Congress

Copyright Office

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; Notice

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–4]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent To Enforce Restored Copyrights Were Filed in the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of Second List of Notices of Intent to Enforce Copyrights Restored Under the Uruguay Round Agreements Act.

SUMMARY: The Copyright Office is publishing its second list of restored copyrights for which it has received and processed Notices of Intent to Enforce a copyright restored under the Uruguay Round Agreements Act. Publication of the lists creates a record for the public to identify restored copyright owners and works for which Notices of Intent to Enforce have been filed with the Copyright Office.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Uruguay Round General Agreement on Tariffs and Trade and the Uruguay Round Agreements Act (URAA) (Pub.L. No. 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Under section 104A of title 17 [1] of the United States Code as provided by the URAA, copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of World Trade Organization (WTO) or Berne countries that were not protected in the United States for the reasons listed below. 17 U.S.C. 104A (1994). Specifically, to qualify for restoration, a work must be an original work of authorship that:

(1) is not in the public domain in its source country through expiration of term of protection;

(2) is in the public domain in the United States due to:

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure to renew, publishing the work without a proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility (e.g., the work is from a country with which the United States did not have copyright relations at the time of the work's publication); and

(3) has at least one author (or in the case of sound recordings, rightholder) who was, at the time the work was created, a national or domiciliary of an eligible country. If the work was published, it must have been first published in an eligible country and not published in the United States within 30-days of first publication. *See* 17 U.S.C. 104A(h)(6). A work meeting these requirements is protected "for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States." 17 U.S.C. 104A(a)(1)(B).

Unlike the procedure for restoration under the North American Free Trade Agreement Implementation Act, under the URAA, copyright in restored works vests automatically on the date of restoration. 17 U.S.C. 104A(a)(1)(A). That date is January 1, 1996, if the particular nation was already a member of the World Trade Organization (WTO) or the Berne Convention. Otherwise, the effective date of restoration is the date of a particular nation's adherence to the WTO or the Berne Convention or the date when the President issues a proclamation extending copyright restoration to that nation.

Although the copyright owner may immediately enforce the restored copyright against individuals who infringe his or her rights on or after the effective date of restoration, the copyright owner's right to enforce the restored copyright is delayed against reliance parties. Typically, a reliance party is one who was already using the work before December 8, 1994, the date the URAA was enacted. *See* 17 U.S.C. 104A(h)(4). Before a copyright owner can enforce a restored copyright against a reliance party, the copyright owner must first file or serve a Notice of Intent to Enforce (NIE) on such parties.

A copyright owner may file an NIE in the Copyright Office within two years of the date of restoration of copyright. Alternatively, an owner may serve an NIE on an individual reliance party at any time during the term of copyright; however, such notices are effective only against the party served and those who have actual knowledge of the notice and its contents. NIEs appropriately filed with the Copyright Office and published herein serve as constructive notice to all reliance parties.

Pursuant to the URAA, the Office is publishing its second four month list identifying restored works and the ownership for Notices of Intent to Enforce a restored copyright filed with the Office. 17 U.S.C. 104A(e)(1)(B). The first list was published on May 1, 1996. 61 FR 19372. The NIEs listed herein are those entered into the public records of the Office between April 19, 1996, and August 16, 1996.

We have published only the names of the owners and the titles listed in the NIEs because that is all that is required by law and we do not have the funds to include any additional information. By using this information, one may search the Office's database to obtain additional information about a particular NIE. NIEs are located in what is known as the Copyright Office History Documents (COHD) file which is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress; it is also available through Internet. This information may be obtained through the Library of Congress Information System (LOCIS). The hours of availability are Monday through Friday 8:30 a.m.–5:00 p.m. U.S. Eastern Time (Copyright Office) or over the Internet Monday–Friday 6:30 a.m.–9:30 p.m. U.S. Eastern Time, Saturday 8:00 a.m.–5:00 p.m., and Sunday 1:00 p.m.–5:00 p.m. Alternative ways to connect through Internet are: (i) use the Copyright Office Home Page on the World Wide Web at: http://lcweb.loc.gov/copyright; (ii) telnet to locis.loc.gov or the numeric address 140.147.254.3 and log in as marvel; (iii) telnet to marvel.loc.gov, or the numeric address 140.147.248.7 and log in as marvel; or (iv) use a Gopher Client to connect to marvel.loc.gov.

Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of one or more exclusive rights, the date of receipt of the NIE in the Copyright Office; the

[1] The URAA's amendment of 17 U.S.C. 104A replaces section 104A under the North American Free Trade Agreement Implementation Act (Pub.L. No. 103–182, 107 Stat. 2057, 2115 (1993)). The Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994). *See* 60 FR 50414 (Sept. 29, 1995).

date of publication in the **Federal Register**; and the address, telephone and telefax number of the copyright owner. If given on the NIE, the online information will also include the author, the type of work, and the rights covered by the notice. *See* 37 C.F.R. 201.33(f). For the purpose of researching the full Office record of NIEs on the Internet, the Office is preparing online search instructions that will soon be accessible through the Copyright Homep Page. When these instructions become available, a researcher can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Additionally, images of the complete NIEs as filed are on optical disc and available from the Copyright Office.

The following restored works are listed alphabetically by copyright owner; multiple works owned by a particular copyright owner are listed alphabetically by title. Works having more than one copyright proprietor are listed under the first owner and cross-referenced to the succeeding owner(s). A cross-reference to the composite owner (e.g., Title I owned by "A B & C") will state, "see A B & C" at the listing for each individual owner (e.g., for Owner A, for Owner B and for Owner C).

Action Research, Royal National Institute for the Blind & Imperial Cancer Research Fund

The black swan.
Columbus.
The gamester.
King in Prussia.
The Marquis of Carabas.
The romantic prince.
The sword of Islam.
Turbulent tales.

Alexander, David Bradbury

All the flowers came out at once.
A child in the house.
The early harvest.
Finn and the black hag.
A furnished room.
Gospel truth.
If he hollers.
A light dozen.
My friend Specs McCann.
The other side of the wall.
The pattern breakers.
A pinch of salt.
Return journey.
Talk to me.
Tea at four o'clock.
There's a man in that tree.

Ashbee, Richmal

Blind man's bluff.
Just William's luck.
Just William.
More William.
Still William.
Sweet William.
William.
William again.
William and the brain's trust.
William and the evacuees.
William and the moon rocket.
William and the space animal.
William and the tramp.
William carries on.
William does his bit.
William in trouble.
William the bad.
William the bold.
William the conqueror.
William the detective.
William the dictator.
William the fourth.
William the gangster.
William the good.
William the outlaw.
William the pirate.
William the rebel.
William the showman.
William's bad resolution.
William's crowded hours.
William's happy days.
William's treasure trove.

Ashton, Paul. SEE Mommens, Ursula, Lady Darwin & Paul Ashton

Authors' Contingency Fund

The 12.30 from Croydon.
Antidote to venom.
Anything to declare.
The Groote Park murder.
The hog's back mystery.
Many a slip.
Murderers make mistakes.
The mystery of the sleeping car express and other stories.
Mystery on Southampton water.
The pit prop syndicate.
The Ponson case.
Young Robin Brand.

Baring (Maurice) Will Trust, Trustees of

The puppet show of memory.
Robert Peckham.
Unreliable history.

Barstow Brown, Sara Orczy-. SEE Orczy-Barstow Brown, Sara

Bell, Jean

Beware of the trains.
Buried for pleasure.
The case of the gilded fly.
Frequent hearses.
Man overboard.
Merry-go-round.
Swan song.

Berg, Lelia

The adventures of Chunky.
A box for Benny.
Grown-ups don't understand.
Lollipops.
Trust Chunky.

Blair & Associates, Ltd.

Dark eyes of London.
The door with seven locks.
Intimate relations.

Briant, Winfred Lydia

As a thief in the night.
Cat's eye.
Dr. Thorndyke intervenes.
Dr. Thorndyke: his famous cases.
Flighty Phyllis.
Helen Vardon's confession.
Mr. Pottermack's oversight.
The Penrose mystery.
The stoneware monkey.
The surprising experiences of Mr. Shuttlebury Cobb.

British Home Entertainment, Ltd.

An evening with the Royal Ballet.
Uncle Vanya.

Brown, Sara Orczy-Barstow. SEE Orczy-Barstow Brown, Sara

Cinematheque Francaise

Un chapeau de paille d'Italie.

Calderon, SA, Cinematografica

A ritmo de twist.
Los amantes.
Amor a balazo limpio.
El amor abrio los ojos.
Los amores de un torero.
Arma de dos filos.
Aventura en Rio.
Aventurera.
Bellas de noche.
Besos prohibidos.
La bien amada.
Bikinis y rock.
Bolero inmortal.
Cabellera blanca.
Cadetes de la naval.
Camino del deseo.
Carne de gallina.
La casa embrujada.
Casadas en apuros.
Los chiflados del rock and roll.
Con quien andan nuestros locos.
El conde de montecristo.
La conquista del dorado.
Coqueta.
Cuide a su marido.
De hombre a hombre.
De ranchero a empresario.
Del can can al mambo.
Diana la cazadora.
Duelo de pistoleros.
Duelo en el dorado.
Espiritismo.
Ferias de Mexico.
Las ficheras.
Frankestine el vampiro y cia.
La fuerza del deseo.
Una gitana en Jalisco.
El hombre invisible.
La horripilante bestia humana.

Huespedes famosos.
La ilegitima.
La isla de los dinosaurios.
Juventud desnuda.
La ley de las pistolas.
Llevame en tus brazos.
Las lobas del ring.
Locos por la television.
Locura musical.
Las luchadoras vs. el medico asesino.
Las luchadoras vs. la momia.
Las luchadoras vs. robot asesino.
La maldicion de la momia azteca.
Maternidad imposible.
Mi mujer no es mia.
Mis tres padres.
La momia azteca.
La momia azteca vs. robot asesino.
La mujer murcielago.
Mujeres de teatro.
Mujeres en mi vida.
Mujeres encantadoras.
Las mujeres pantera.
Mujeres sacrificadas.
Munecos infernales.
Musica y dinero.
Nido de tiburones.
La nina de mis ojos.
No niego mi pasado.
La noche es nuestra.
Noches de ronda.
Nuestros maridos.
Ocho hombres y una mujer.
Palabras de mujer.
Para toda la vida.
Pecado de ser mujer.
Pecadora.
Peligros de juventud.
Peor que los buitres.
Perdida.
Pervertida.
Pistolas invencibles.
Los pistoleros.
Pokar de reinas.
Pompeyo el conquistador.
Por que peca la mujer.
Por un amor.
Puerto de perdicion.
Recuedos de mi valle.
Revancha.
El revolver sangriento.
Rondalla.
San Francisco de Asis.
San Ignacio de Loyola.
Santa Claus.
Santo en el tesoro de dracula.
Santo en la venganza de la llorona.
Santo en la venganza de la momia.
Santo vs. la hija de Frankestein.
Santo vs. los jinetes del terror.
Santo y Blue Demon vs. Dracula y El Hombre Lobo.
Santo y Blue Demon vs. Frankenstein.
El secreto de Juan Palomo.
El seductor.
Senora Tentacion.
Sensualidad.
Siete ninos de Ecija.
Sindicato de telemirones.
Socios para la aventura.
El sol sale para todos.
Sombra verde.
El tigre negro.
Los tres rohemios.
Tuya en cuerpo y alma.
Un tipo dificil de matar.
Una golfa.
El vestido de novia.
Victimas del divorcio.
Victimas del pecado.
Virgen de Guadalupe.
La virtud desnuda.
Yambao.

Clark, Charles Gordon

An apology for lawyers.
The best detective stories of Cyril Hare.
The Crime of William Graves.
Death among friends.
Death is no sportsman.
The death of Amy Robsart.
An English murder.
Friday's child.
He should have died hereafter.
I never forget a face.
The magic bottle.
Miss Burnside's dilemma.
Monday's child.
The old flame.
The rivals.
Saturday's child.
Sister Bessie.
Suicide excepted.
A surprise for Christmas.
Tenant for death.
That yew tree's shade.
Thursday's child.
Tragedy at law.
Wednesday's child.
Weight and see.
When the wind blows.
With a bare bodkin.

Clasa Films Mundiales, SA de CV

El primer amor.

Comaissance du Cinema

Prix de beaute.

Compagnie Mediterraneenne de Films

Angele.
Le belle menuiere.
Cesar.
Cigalon.
Fanny.
La femme du boulanger.
La fille du puisatier.
Le gendre de Monsieur Poirier.
Jofroi.
Les letters de mon mowlin (I & II).
Manon des sources.
Marius.
Merlusse.
Nais.
Regain.
Le schpountz.
Topaze (1933).
Topaze (1951).
Topaze.
Ugolin.

Connaissance Du Cinema

Les bas fonds.

Cooper, Leo

Fenny.
National Provincial.

Cordon Holding, BV

Acht koppen.
Andere wereld.
Balkon.
Band van Mobius II.
Band.
Belvedere.
Bevryding.
Bolspiralen.
Boven en onder.
Castrovalva.
Cirkellimiet I.
Cirkellimiet III.
Concentrishe schillen.
Dag en nacht.
Daken van Siena.
De brug.
Diepte.
Draaikolken.
Draak.
Drie bollen I.
Drie bollen.
Drie werelden.
Droom (mantis religiosa).
Druppel.
Dubbele planetoide.
Emblemata (colofon).
Emblemata (eerste titelpagina).
Emblemata (I, bloemvaas).
Emblemata (II, aanbeeld).
Emblemata (III, luit).
Emblemata (inhoudsopgave).
Emblemata (IV, vlieger).
Emblemata (IX, stoomwals).
Emblemata (tweede titelpagina).
Emblemata (V, boei).
Emblemata (VI, palmboom).
Emblemata (VII, windvaan).
Emblemata (VIII, zonnewyzer).
Emblemata (X, vuurslag).
Emblemata (XI, kaarsvlam).
Emblemata (XII, handwyzer).
Emblemata (XIII, byenkorf).
Emblemata (XIV, kikvorsch).
Emblemata (XIX, vlinder).
Emblemata (XV, eekhoorn).
Emblemata (XVI, paddestoel).
Emblemata (XVII, weegschall).
Emblemata (XVIII, dobbelsteenen).
Emblemata (XX, cactus).
Emblemata (XXI, waterput).
Emblemata (XXII, schuilnest).
Emblemata (XXIII, gieter).
Emblemata (XXIV, hangslot).
Galery.
Gemummificeerde priesters in Gangi, Sicilie.
Hand met spiegelende bol.
Hol en bol.

Kikker mummie.
Kleiner en kleiner.
Klimmen en dalen.
Knopen.
Kringloop.
Kubus met banden.
Lichtende zee.
Lucht en water I.
Lucht en water II.
Luchtkasteel.
Metamorphose I.
Metamorphose II.
Metamorphose III.
Modderplas.
Nieuwjaarswens 1947 Nederlandsche ex libris-kring, den haag.
Omhulsel.
Ontmoeting.
Ontwikikeling I.
Ontwikkeling II.
Oog.
Orde en chaos (II) kompasroos.
Platwormen.
Predesinatie.
Pretententoon stelling.
Regelmatige vlakverdeling.
Regelmatige vlakvulling met vogels.
Relativiteit.
Reptielen.
Rimpeling.
Ringslagen.
Ruiter.
Scholastica (illustratie, pagina 19).
Scholastica (illustratie, pagina 5).
Scholastica (illustratie, pagina 11).
Scholastica (illustratie, pagina 15).
Scholastica (illustratie, pagina 21).
Scholastica (illustratie, pagina 25).
Scholastica (initaal D, pagina 7).
Scholastica (initaal T, pagina 10).
Scholastica (initiaal A).
Scholastica (initiaal D, pagina 24).
Scholastica (initiaal H, pagina 12).
Scholastica (initiaal H, pagina 13).
Scholastica (initiaal O, pagina 27).
Scholastica (initiaal S, pagina 3).
Scholastica (initiaal S, pagina 4).
Scholastica (initiaal V, pagina 17).
Scholastica (initiaal V, pagina 20).
Scholastica (vignette, pagina 28).
Scholastica (voorkant omslag).
Spiralen.
Sterren.
Stilleven en straat.
Stilleven met spiegel.
Studie voor sterren.
Tekenen.
Toren van Babel.
Toverspiegel.
Trappenhuis.
Twee dorische zuilen.
Twee snydende vlakken.
Valkvullings motief met reptielen.
Verbum.
Vierkantlimiet.
Viervlak-planetoid.
Viseen.
Vissen en schubben.
Vissen ent kikkers.
Vissen.
Vlakvulling I.
Vlakvulling II.
Vlakvullingsmotief met vogels.
Water.
Waterval.
Zelfportret.
Zon en maan.
Zwaartekracht.
Zwanen.

Cummings, Diana

A bullet for Rhino.
The case of the busy bees.
The case of the Michaelmas goose.
Catt out of the bag.
Charles Augustus Milverton.
Dead on time.
Funny peculiar.
The Knights of St. Peerrins.
Let X be the murderer.
Measure for murder.
Midsummer murder.
Mischief in the offing.
The quick one.
Silence after dinner.
Subject: murder.
Villainous saltpetre.

DeAnda (Raul) SA de CV, Producciones

24 horas de vida.
Acapulco a go go.
Alias el Alacran.
Almas rebeldes.
Amanecer ranchero.
Amor a la Mexicana.
Angeles de arrabal.
Apuros de mi ahijada los.
Aqui esta Juan Colorado.
Asi es mi Mexico.
Una aventura en la noche.
Baila mi amor.
Bajo el cielo de sonora.
Banda del Cuervo la.
Bataclan Mexicano.
Buscabullas el.
Caminos de sangre.
Campeon sin corona.
Una cancion a la Virgen.
Carcel de cananea la.
Charro negro el.
Charro negro en el norte el.
Ciel rojo.
Comisario en turno.
Con los dorados de villa.
Con todo el corazon.
Cristeros los.
Cuarto mandamiento el.
Cuatro noches contigo.
Del rancho a la capital.
Diablo a caballo el.
Diablo desaparece el.
Dos caballeros de espada.
Dos gallos de pelea.
Duelo en el desierto.
Duquesa diabolica la.
Enemigos.
Espadachin el.
Espionaje en el golfo.
Estampida.
Fe en Dios la.
Frontera norte.
Fuera de la ley.
Gaviota la.
Genio y figura.
Guadalajara pues.
Guerra de los sexos la.
Hay angeles sin alas.
Hija del ministro la.
Hijo del bandido el.
Hijo del charro negro el.
Hombre de negro el.
Hombre peligroso un.
Hombres de roca.
Konga roja.
Leyenda del bandido la.
Leyenda del bandido la.
Lunar de la familia el.
Manzanas de Dorotea las.
Marcha a zacatecas la.
Mascaara de jade la.
Mascara de carne la.
Matrimonio y mortaja.
Muchacho alegre el.
Muchacho de durango el.
Muerte en bikini la.
Muerte en la feria.
Una mujer decente.
Mula de cullen baker la.
La mula de Cullen Baker.
Negocio del odio el.
Padrino es mi compadre el.
Pozo el.
Prohibido.
Quien mato al abuelo.
Rancho alegre.
Reina del tropico la.
Remolino.
Rio escondido.
Rosalinda.
Sangre en el barrio.
Se la llevo el Remington.
Senoritas.
Si quiero.
Siete evas para adan.
Solitario el.
Sombra de chucho el roto la.
Sota caballo y rey.
Soy puro mexicano.
Su precio unos dolares.
Tierra de violencia.
Tierra del mariachi la.
Tormenta en la cumbre.
Toros amor y gloria.
Tres de presidio.
Tres hombres malos.
Ultimo chinaco el.
Unidos por el eje.
Vagabundo en lalluvia.
Vengador el.
Venganza del chaarro negro la.
Venganza del Diablo la.
Vuelo 701.
Vuelta del chaarro negro la.
Yo mate a Juan Charrasqueado.
Yo mate a Rosita Alvirez.
Zurdo el.

Diana Internacional Films, SA de CV

Aladino y la lampara maravillosa.

Alla en el rancho grande.
Alla en el tropico.
Amor aue malo eres.
Las aventuras de Pito Perez.
Bajo el cielo de Mexico.
Los Beverly de Peralvillo.
Cancion de cuna.
Capullito de alehli.
Una carta de amor.
Cartas marcadas.
Cito con la muerte.
Las colegialas.
Comicos.
Como atrapar a un Don Juan.
Como todas las madres.
Con la musica por dentro.
Corazon de fiera.
La criada bien criada.
El criado malcriado.
Crimen y castigo.
Cuando quiere un mexicano.
Departamento de soltero.
Despedida de soltera.
La devoradora.
Dios los cria.
Dos de la vida airada.
Duro pero seguro.
Educando a papa.
En tiempos de la inquisicion.
Entre abogados te veas.
Escuela der vagabundos.
Escuela para suegras.
Fijate que suave.
Flor de durazno.
Hasta que perdio jalisco.
Hay muertos que no hacen ruido.
El hijo desobediente.
Los hijos de Maria Morales.
Hipolito el de santa.
La instrusa.
Jalisco canta en Sevilla.
El jefe maximo.
Juan sin miedo.
Ley fuga.
Lo que le pasoy a san son.
Lo que va de ayer a hoy.
Las locuras de tin tan.
Los maderos de San Juan.
La madrecita.
Mama Ines.
Las mananitas.
La marca del coyote.
Me he de comer esa tuna.
Medico de guardia.
Muchachas que trabajan.
Una mujer que no miente.
La mujer sin alma.
El nino y el ladron.
El nino y el muro.
No basta ser charro.
No me defiendas compadre.
Nosotros dos.
Paco el elegante.
Padre nuestro.
Papacito lindo.
Pena, penita, pena.
Pina madura.
Playa prohibida.
Pobre pero honrada.
Pobres pero sinverguenzas.
Por la puerta falsa.
Que familia tan cotorrra.
Que me toquen las golondrinas.
El rey se divierte.
Rogaciano el Huapanguero.
La selva de fuego.
Senora Ama.
Si adelita se fuera con otro.
Si me han de matar manana.
Soledad.
Solo veracruz es bello.
La sombra del otoro.
Sonaron cuatro balazos.
El sultan descalzo.
El tigre de jalisco.
Tu y las nubes.
Tonta tonta pero no tanto.
Los tres mosqueteros y medio.
La ultima noche.
Vino el remolino y nos alevanto.

Earl of Oxford and Asquith

Autoboiography of a saint.
Barchester pilgrimage.
The belief of Catholics.
The body in the silo.
Bread of stone.
Bridegroom and bride.
Captive flames.
The creed in slow motion.
Difficulties.
Double cross purposes.
Enthusiasm.
Essays in satire.
The footsteps at the lock.
God and the atom.
The gospel in slow motion.
Heaven and Charing Cross.
The hidden stream.
The imitation of Christ.
In soft garments.
In three tongues.
The layman and his conscience.
Let Dons delight.
Lightning meditations.
The mass in slow motion.
Occasional sermons.
Other eyes than ours.
Pastoral sermons.
A retreat for laymen.
A retreat for priests.
Retreat in slow motion.
Solved by inspection.
Still dead.
Stimuli.
University and Anglican sermons.

Eldin, Madame V

Mediterranean scenes.
The religious interregnum.

Elvira (Gonzalo) SA de CV, Producciones

La ciudad no es para mi.
Dos anos de vacaciones.
Palabras de amor.
La revoltosa.
Rififi en el convento.

Estate of J. R. R. Tolkien. SEE Tolkien (J. R. R.) Estate of

Estate of W. P. Watt. SEE Watt (W. P.) Estate of

Executors of the Estate of David Garnett. SEE Garnett (David) Executors of the Estate of

Executors of the Estate of Fiametta Oliver. SEE Oliver, W. R., & the Executors of the Estate of Fiametta Oliver

Executors of the Estate of Jim Stewart. SEE Stewart (Jim) Executors of the Estate of

Executors of the Estate of K. S. P. McDowell. SEE McDowell (K. S. P.) Executors of the Estate of

Executors of the Estate of Magdalen Perceval Maxwell. SEE Maxwell (Magdalen Perceval) Executors of the Estate of

Fildebroc

Cesar et Rosalie.

Fildebroc, Gueville

Que la fete commence.

Fildebroc, SFP, FR3, UGC

L'a rgent des autres.

Fildebroc, United Artists

Le diable par la queue.
Le roi de coeur.

Fildebroc-Capac

Le complexe du kangourou.

Fildebroc-Capac & Somerville House Production (Montreal)

Au revoir a Lundi.

Films de la Pleiade

La chasse au lion a l'arc.
Fric-Frac.
Jaguar.
Les maitres fous.
Martin Soldat.
Terre sans pain.

Films de la Pleide

L'E au a la bouche.

Films du Jeudi

La chienne.

Fisher, Wyn

Back to ballygullion.
The ballygullion bus.
Dear ducks.
Lobster salad.
An ulster childhog.

Flann O'Brien, Estate of

Two in one.

FR3. SEE Fildebroc, SFP, FR3, UGC

Frazer, Sir James

Aftermath: a supplement to the golden bough.
The belief in immortality and the worship of the dead.
Condorcet on the progress of the human mind.
Creation and evolution in primitive cosomogonies and other pieces.
The fear of the dead in primitive religion.
The gorgon's head and other literary pieces.
Myths of the origin of fire.
Totemism and exogamy.
The worship of nature.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the Majestic Film/ Tobis (Germany)

Tanz auf dem Vulkan.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the Terra-Filmkunst, GmbH (Germany)

Die grosse Freiheit Nr. 7.
Jud Suess.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the Tobis-Filmkunst, GmbH (Germany)

Die Geierwally.
Der grosse Koenig.
Ohm Krueger.
Titanic.

Friedrich Wilhelm-Murnau-Stiftung, Legal Successor of the UFA (Germany)

Amphitryon.
Asphalt.
Bismarck.
Der blaue Engel.
Condottieri.
Die Drei von der Tankstelle.
Die Entlassung.
Es war eine rauschende Ballnacht.
Faust.
Der Feuerteufel.
Das Floetenkonzert von Sanssouci.
Fluechtlinge.
FP1 antwortet nicht.
Friedrich Schiller—Triumph eines Genies.
Geheimzeichen LB 17.
Gold.
Die goldene Stadt.
Der Gouverneur.
Die grosse Liebe.
Der grosse Schatten.
Heimat.
Hitlerjunge Quex.
Immensee.
Der Kaiser von Kalifornien.
Kautschuk.
Kolberg.
Der Kongress tanzt.
Der letzte Mann.
Der Mann, der Sherlock Holmes war.
Metropolis.
Morgenrot.
Muenchhausen.
Nibelungen I (Siegfried's Tod).
Nibelungen II (Kriemhilds Rache).
Nora.
Opfergang.
Quax der Bruchpilot.
Reitet fuer Deutschland.
Ritt in die Freiheit.
Romanze in Moll.
Sensationsprozess Casilla.
Die Strasse.
Stukas.
Trenck der Pandur.
Truxa.
Unter heissem Himmel.
Urlaub auf Ehrenwort.
Variete.
Via Mala.
Victor und Viktoria.
Wasser fuer Canitoga.
Wunschkonzert.
Der zerbrochene Krug.

Galubi, SA, Producciones

El agente viajero.
Al son del mambo.
La alegria de vivir.
Los amores de Juan Chaarrasqueado.
La bandida.
Barridos y regados.
Caballos de acero.
Cafe colon.
Camino del mal.
Cantando nace el amor.
Cementerio del terror.
Cielito lindo.
Como perros y gatos.
El derecho de nacer.
los desalmados.
Los desarraigados.
La doncella de piedra.
La golfa del barrio.
El gran campeon.
Gritenme piedras del campo.
El halcon solitario.
El hijo de los pobres.
El hijo del palenque.
Impaciencia del corazon.
Los invisibles.
Juan Charrasqueado.
Ladron que roba a ladron.
Ladrones de ninos.
El luchador fenomeno.
Magnum 357.
La malaguena.
Manos de seda.
Me quiero casar.
Mi preferida.
La muerte del soplon.
La mugrosita.
La mumer de dos caras.
Nido de fieras.
La nina de la mochila azul.
La noche del Ku Kux Klan.
Nosotras las sirvientas.
Un padre a toda maquina.
Un par a todo dar.
Pecado mortal.
Pegando con tubo.
Pilotos de combate.
Pistoleros bajo el sol.
Pistoleros del diablo.
El plebeyo.
Pobre del pobre.
Que perra vida.
Rescate mortal.
El rey de la selva.
Santo vs. los asesindos de otros mundos.
Serenata en Acapulco.
Sucedio en Acapulco.
Un sueno de amor.
Los tales por cuales.
Vuelven los halcones.
Yo fui novio de Rosita Alvirez.

Garnett (David) Executors of the Estate of

Beany-eye.
The familar faces.
The flowers of the forest.
The grasshoppers come.
Pocahontas, or the nonpareil of Virginia.
A rabbit in the air.
War in the air.

Gaumont and UGC D.A. International

Rendez-vous de Juillet.
Serie noire.

Gaumont, SA

Antoine et Antoinette.
Assassins et voleurs.
Carmen.
Caroline Cherie.
Un condamne a mort s'est echappe.
Cousin cousine.
Les dos au mur.
La passion de Jeanne d'arc.
La poison.
Les tontons flinguers.
Les trois font la paire.

Goebel (W.) Porzellanfabrik, GmbH & Co. KG

's stimmt net (Dose).
's stimmt net.
's stimmt net. Ascher.
53 IV.
Abendlied, Marterl.
Abendlied.
Adventsengel m. Harmonika, candleholder.
Adventsengel m. Laute, candleholder.
Adventsengel m. Mandoline.
Adventsengel m. Trompete, candleholder.
Adventsengel mit Floete, Baumbehang.
Adventsengel mit Floete.
Adventsengel mit Mandoline, Baumbehang.
Adventsleuchter mit 3 Engein.
Das Allerneuste.
Am Wegesrand, bildstockl.
Am Wegesrand, Weihkessel.

Angsthase, Bild.
Angsthase.
Apfeldieb, Junge.
Aschenputtel.
Auf der Alm. Bandoneonspieler.
Auf Wiedersehen.
Baby in Wiege (Wandring).
Bei Mutter Maria, Materl.
Betendes Kind mit Engelein.
Der Blumenfreund.
Blumenmadonna mit Kind.
Bruderlein und Schwesterlein.
Bruederlein und Schwesterlein, table lamp.
Der Buecherwurm.
Der Buecherwurm/Junge.
Der Buecherwurm/Maedchen.
Chef.
Christkind.
Christkindlein kommt, Baumbehang.
Christkindlein kommt, Engel.
Dankgebet, Baumbehang.
Dorfbub.
Dorfheld.
Duett Saengerpaar.
Elibote.
Engel in Wolke, Baumbehang.
Engel mit Trompete, Baumbehang.
Engel rechts, Weihkessel.
Engel, Weihkessel.
Engelgruppchen, Weihkessel.
Entenmuetterchen.
Entenmutterchen.
Der erste Einkauf.
Erster Schultag, Junge.
Erster Schultag, Maedchen.
Esel.
Ferienfreunde, Bild.
Freibiges Lieschen.
Freunde (Buchstutze).
Freunde Tischlampe.
Freunde.
Der fromme Reitersmann.
Fromme Weisen.
Fruehling ist's.
Fruehling, Maedchen im B (Buchstutze).
Fruehling, Maedchen im Baum.
Fruehling, Maedchen in Baum.
Fruehlingsidyll.
Fruehlingslied.
Fruhling Madchen im Baum, table lamp.
Fuer's Vaterle, Rettichbub.
Gaenseliesl (Buchstutze).
Gaenseliesl.
Das Geheimnis.
Geigerlein mit Hund.
Geigerlein, Bild.
Geigerlein.
Gesangsprobe (Dose).
Gesangsprobe, Ascher.
Gesangsprobe.
Glockenturm mit Engeln.
Glueckskauf, Junge mit Schwein.
Gratulant.
Gratulanten.
Die Gratulantin.
Gretel.
Grobreinemachen.
Gute Freunde.
Der gute Hirte, Weihkessel.
Der gute Hirte.
Haendler-Aufstellschild mit Wanderbu.
Haensel und Gretel.
Hans im Glueck.
Hasenvater (Buchstuetze).
Hasenvater (Dose).
Hasenvater.
Hausmusik.
Hausmutterchen.
Heimkehr, Babgeiger.
Heini Bandoneonspieler (Dose).
Heini, Ascher.
Heinl Bandoneonspieler (Dose).
Heldentenor.
Herbst Junge im Baum, table lamp.
Herbst, Junge im Baum (Buchstutze).
Herbst, Junge im Baum.
Der Herr Kapellmeister.
Herr Ober.
Himmlische Klaenge, Baumbehang.
Hinaus in die Ferne.
Hoert Ihr Leute. Nachtwaechter.
Hui, die Hummel.
Ich bringe Gluck, Kaminfeger.
Ich gratuliere.
Ich hab's vergessen.
Im Huehnerhof.
Im Huhnerhof (Buchstutze).
In Sicherheit, Madchen.
In tausend Angsten.
Jagerlein.
Jesulein.
Jesuskind, Weihkessel.
Junge mit Holzpferd (Adv. Leuchter).
Junge mit Vogel, ascher.
Kammersanger.
Kehrliesl.
Kind im Bettchen (Wandring).
Kind mit Haengematte (Wandbild).
Die kleine Gaertnerin.
Der Kleine Konditor.
Der kleine Musikant.
Kniender Engel mit Horn.
Kniender Engel mit Kerze.
Kniender Engel mit Laute.
Kuekenmutterchen (Buchstuetze) = Chick girl, book end.
Kuekenmutterchen (Dose).
Kuekenmutterchen.
Lamm.
Lausbub.
Leise Tone, Baumbehang.
Liebt mich, liebt mich nicht, table lamp.
Liebt mich, liebt mich nicht.
Liebt mich, liebt. (Buchsstutze).
Lobgesang, Baumbehang.
Madonna mit Heiligenschein.
Madonna ohne Heiligenschein.
Madonnen—Bild.
Maedchen mit Blumenstraub, Candleholder.
Maedchen mit T'Baum (Adventsl).
Markt-Christel.
Meister Wichtig.
Mutters Liebste (Maedchen) table lamp.
Mutters Liebste.
Mutters Stutze.
O, du froehliche * * * Engel.
O, du froehliche.
Ochse.
Osterueberrashung.
Puppendoktor.
Puppenmutterchen.
Das Quarttet, Bild.
Ritter St. Georg.
Schaeferbub.
Schulschwanzer, Junge.
Schutzengel (Weihkessel).
Schutzengel Weihkessel.
Schutzengel.
Schweinehirt (Buchstutze).
Schweinehirt.
Sing Kind mit Engelein.
Sitz. Engel mit Laute, Baumbehang.
Sitz. Kind m. Schmetterling (Wall ring).
Sitz. Madonna mit Kind.
Sitzender Engel, Weihkessel.
Ski-Heil.
Soldatenspiel.
Spar-Hummelchen.
Staendchen, Junge mit Flote.
Stehender Junge m. Herz (Bild).
Sterngucker.
Stille Nacht Kerzenhalter.
Stille Nacht, Jesuskind.
Stille Nacht.
Der Storenfried.
Strickliesl (Ascher).
Strickliesl (Dose).
Strickliesl.
Trara—die Post ist da (Bild).
Trara—die Post ist da.
Trommler.
Unter einem Dach.
Vater's G'scheitester.
Vater's G'scheitser, table lamp.
Waldandacht.
Wanderbub, Bild.
Wanderbub.
Wanderlied, Maedchen.
Wandschmuck in Herzform.
Weiber Engel, Weihkessel.
Weihkessel.
Wiegenlied, Kerzenhalter.
Wir gratulieren.
Zaungaste.
Ziegenbub (Buchstutze).
Ziegenbub.
Zum Tanz. Babgeiger.

Grands Films Classiques

L' affaire est dans le sac.
Un chien Andalou.
Drole de drame.
Espoir.
La mort en ce jardin.
Voyage surprise.

Graves (Robert) Copyright Trust, Trustees of

Adam's rib.
All the meaning of dreams.
Another future of poetry.
But it still goes on.
Catacrok!
Collected poems (1914–47).
Collected poems 1938–45.

Collected poems 1938.
The common asphodel.
Contemporary techniques of poetry.
English and Scottish ballads.
The English ballad.
The feather bed.
Impenetrability, or the proper habit of English.
The infant with the globe.
Jesus in Rome.
John Kemp's Wager.
John Skelton (Laureate).
King Jesus.
Lars Porsena, or the future of swearing and improper language.
The less familiar nursery rhymes.
Marmosite's miscellany.
The meaning of dreams.
Mock beggar hall.
The more deserving cases.
More poems 1961.
Mrs. Fisher on the future of humour.
No decency left.
No more ghosts.
Oratio creweiana.
Pharsalia.
Poems (1914–27).
Poems 1926–30.
Poems 1929.
Poems 1930–33.
Poems 1938–45.
Poems 1953.
Poems and satires.
Poems selected by himself.
Poetic unreason.
The real David Copperfield.
Robert Graves.
Selected poetry and prose of Robert Graves.
The shout.
Symptoms of love.
Ten poems more.
To Magdalena Mulet, Margita Mora and Lucia Graves.
To whom else?
Welchman's hose.
Whipperginny.
Winter in Majorca.
Work in hand.

Gueville. SEE Fildebroc, Gueville

Hale, Crystal & Jocelyn Herbert

A book of ballads.
Codd's last case.
Derby day.
Full enjoyment and other poems.
Helen.
Holy deadlock.
Independent member.
Look back and laugh.
Misleading cases.
More misleading cases.
Mr. Pewter.
No fine on fun.
Number nine.
Sea shanties.
Silver stream.
Still more misleading cases.
Uncommon law.
The water gypsies.

Hankinson, Mrs. A.S.

The crime at Vanderlynden's.
For some we loved.
No one will ever know.
Sixty-four, ninety-four.
The Spanish farm.
To hell with Crabb Robinson.
Vanities and verities.
Young man's fancies.

Hannay, Althea C. & Susan Harper

Angel's adventure.
Appeasement.
Daphene's fishing.
Golden apple.
Good intentions.
Goodly pearls.
The grand duchess.
The gun runners.
Laura's Bishop.
Lieutenant commander.
The lost lawyer.
Magilligan strand.
Millicent's corner.
Miss Maitland's spy.
Mrs. Miller's aunt.
Murder most foul.
Now you tell one.
Over the border.
Piccadilly lady.
Poor Sir Edward.
A public scandal.
A sea battle.
The search for Susie.
Ships and sealing wax.
The silver gilt standard.
Spillikins.
Two fools.
The two scamps.
Wild justice.

Harper, Susan. SEE Hannay, Althea C. & Susan Harper

Hemisphere Entertainment, Inc.

Tamango.

Herbert, Jocelyn. SEE Hale, Crystal & Jocelyn Herbert

Holroyd, Michael

An artist of life: Havelock Ellis.
Common misquotations.
Conan Doyle: his life and art.
Dizzy.
Doctor Darwin.
Down to earth.
Farewell to argument.
The fool of love.
Forward to nature.
GBS, a postscript.
Gilbert and Sullivan.
The hero of Delhi.
An Irishman's England.
Labby.
The last actor manager.
A life of Shakespeare.
The man whistler.
Marriage and genius.
Modern men and mummers.
The moving waters.
Paths of light.
A Persian critic.
The pilgrim daughters.
Shaw.
The sounding cataract.
The swan of Lichfield.
Talking of Dick Whittington.
Thinking it over.
Tom Paine: friend of mankind.
The triumph of the tree.
While following the plough.

Holtzman (Elizabeth McManus) Irrevocable Trust

Abstract composition.
Along the Amstel (trees along the Gein; Geinrust farmhouse).
Along the Amstel.
Amaryllis.
The Amstel (Cafe 't Vissertje on the Amstel).
The Amstel in the evening.
The Amstel river, evening impression.
The Amstel: haze (Geinrust farm in the mist).
Anemones in a vase.
Apple tree.
Arum lily (calla lily).
At the Lappenbrink, Winterswijk.
At work.
Autumn landscape.
Banks of the Seine.
Barge (study for the Stadhouderskade).
Barn (farmhouse).
Barns at Nistelrode.
Beach at Domburg.
Beech forest.
Birch woods.
Blue chrysanthemum.
Blue facade; composition no. 9; (composition no. VI).
Blue lily.
Blue rose.
Blue roses with yellow background.
Blue tree.
Boat on a river (landscape with a boat).
Brabant farmyard.
Branches [recto] trees [verso] (sketchbook IV, no. 7 a/b).
Breakwaters at Domburg.
Bridge on the Achter Canal.
Bridge on the Achter Canal: (seen from the Kostverlorenvaart).
The Broek house on the Amstelveenseweg.
Bull.
Calla lilies.
Calla lily.
Calves in a field bordered by willow trees.
Canal in the Schinkel area of Amsterdam.
Canal in the Schinkel area, Amsterdam (the Long Bleekers Channel, seen from the Kostverlo.

Canal scene.
Castle ruin: Brederode.
Cat's tail on dark ground (cattail on dark ground). Cattail (cat's-tail).
Cattail.
Chrysanthemum (dying chrysanthemum).
Chrysanthemum.
Chrysanthemums.
Church apse (church seen from the rear).
Church at Domburg (church facade I).
Church at Domburg (sketchbook I).
Church at Domburg (steeple of the church in Domburg).
Church at Domburg.
Church at Winterswijk.
Church at Zoutelande.
Church facade (sketchbook III, no. 9).
Church facade 2 (church facade).
Church facade 6.
Church facade of Notre Dame des Champs (sketchbook III, no. 10).
Church facade.
Church in Domburg.
Church in Zeeland.
Circular composition: church facade.
Color study.
Composition (composition I).
Composition (composition with blue, red, yellow, and black).
Composition (composition with red, blue, yellow, and black).
Composition (composition with blue and red).
Composition 1–A (composition no. 1; lozenge composition with four black lines).
Composition 1916.
Composition 2 (tableau 2; Composition with yellow, black, blue, red, and gray).
Composition 2 with red and blue.
Composition A; (composition A; composition with red and blue).
Composition B with grey and yellow (composition B; composition with double line and yellow and gray).
Composition B with red.
Composition blue-white.
Composition C (composition A; composition with red and blue).
Composition gray-red.
Composition I (composition no. I; composition with yellow).
Composition I with black lines.
Composition I with blue and yellow (tableau no. 1; lozenge composition with three lines and blue, gray, and yellow).
Composition I with red, yellow, and blue (tableau I: composition with red, black, blue, and yellow).
Composition I with red, yellow, and blue.
Composition II with black lines (composition in white and black II).
Composition II with red, blue, and yellow.
Composition II with yellow and blue.
Composition II with yellow and blue (composition no. II; composition with blue and yellow).
Composition III (composition with red, blue, yellow, and black).
Composition III with red, yellow, and blue.
Composition in a square (composition with blue, yellow, black, and red).
Composition in a square.
Composition in black and white.
Composition in blue and yellow.
Composition in color B.
Composition in gray, blue, yellow, and red.
Composition in gray-blue.
Composition in grey and ochre-brown.
Composition in grey and ochre.
Composition in grey and yellow.
Composition in grey, blue, yellow, and red.
Composition in grey.
Composition in line and color (tableau no. 1).
Composition in line [first state-photograph].
Composition in line [second state] (composition in black and white).
Composition in oval (tableau no. 3).
Composition in oval with color planes 1.
Composition in oval with color planes II.
Composition in red and white.
Composition in white and black (tableau I; lozenge composition with four lines and gray).
Composition in white, black, and red.
Composition in white, black, red, and blue.
Composition in white, red, and yellow.
Composition in yellow, blue, and white.
Composition no. 14.
Composition no. 3 (composition with color planes). Composition no. 3 (trees) (tableau no. 4; composition no. VIII).
Composition no. 7.
Composition no. 8.
Composition no. I (trees).
Composition no. I; composition with black, yellow, and blue.
Composition no. I; composition with red.
Composition no. II (composition with blue and red).
Composition no. II; composition in line and color. Composition no. VI (composition no. II: composition with black, blue, red, yellow, and gray).
Composition with black and blue (Schilderij no. 1; lozenge composition with two lines and blue).
Composition with black lines.
Composition with black, white, yellow (composition with yellow square).
Composition with blue (composition of lines and color, III; composition with blue).
Composition with blue and red.
Composition with blue and yellow.
Composition with blue and yellow (composition with yellow, blue, and double line).
Composition with blue, black, yellow, and red.
Composition with blue, red, and yellow (painting no. 11).
Composition with blue, yellow, and white.
Composition with blue.
Composition with color planes 2.
Composition with color planes 5.
Composition with color planes and gray lines 1.
Composition with color planes and gray lines (composition with planes in gray and ochre).
Composition with color planes and gray lines.
Composition with color planes.
Composition with color planes: lozenge (composition with grid 7).
Composition with colors A.
Composition with gray and red.
Composition with gray lines: lozenge (composition with grid 4).
Composition with grey and black (painting no. 2).
Composition with grey lines (composition with grid 1: lozenge) (lozenge with grey lines).
Composition with large blue plane (composition with large blue plane, red, black, yellow, and gray).
Composition with large red plane, gray-blue, yellow, black, and blue).
Composition with light colors and gray lines: lozenge (composition with grid 6).
Composition with pink, blue, yellow, and white (church facade).
Composition with planes in ochre and gray: lozenge (composition with grid 5).
Composition with red and black (composition with blue, grey, red, white).
Composition with red and black (composition with black, red, and gray).
Composition with red and black (composition no. 1; composition with red and black).
Composition with red and black.
Composition with red and blue.
Composition with red and yellow (opposition of lines, of red and yellow, no. I).
Composition with red, black, and white (composition no. I; composition with red, blue, and yellow).
Composition with red, black, blue, yellow, and gray.
Composition with red, black, yellow, blue, and gray.
Composition with red, blue, and greenish yellow.

Composition with red, blue, and yellow (composition II; composition I; composition in red, blue, and yellow).
Composition with red, blue, black, and yellow-green (composition C; composition with yellow, red, blue-gray, blue).
Composition with red, yellow, and blue (composition with yellow, red, black, blue, and gray).
Composition with red, yellow, and blue (composition with yellow, red, black, red, and gray).
Composition with red, yellow, and blue (composition with red plane, black, blue, yellow, and gray).
Composition with red, yellow, and blue (composition with red, blue, black, yellow, and gray).
Composition with red, yellow, and blue.
Composition with red, yellow, and blue (composition with red, blue, yellow, black, and gray).
Composition with red, yellow, and blue (composition with blue, yellow, red, black, and gray).
Composition with red, yellow, and blue (composition no. III; composition with red, yellow, and blue).
Composition with red, yellow, and blue (composition C; composition no. III).
Composition with red, yellow, blue, and black (composition A; composition with black, red, gray, yellow and blue).
Composition with red, yellow, blue, and black.
Composition with red, yellow, and blue (composition with blue, yellow, red, and black).
Composition with red.
Composition with white and red (composition B).
Composition with white, grey, yellow, and blue (composition with yellow, blue and blue-white).
Composition with white, red, and yellow.
Composition with yellow (lozenge composition with four yellow lines).
Composition with yellow and blue (composition no. II; composition with yellow and blue).
Composition with yellow and blue.
Composition with yellow and double line.
Composition with yellow and red.
Composition with yellow, red, and blue.
Composition with yellow, red, and blue (tableau VII). Composition with yellow.
Composition [photograph].
Composition [recto and verso].
Composition [study].
Composition.
Composition: checkerboard with dark colors (composition with grid 8).
Composition: checkerboard with light colors (composition with grid 9).
Composition: trees I.
Composition: trees II.
Cow in the meadow (cow).
Cow in the meadow.
Cows (study of cows).
Cows in a shed.
Cows in the meadow.
The departure of the fishing fleet; Zuiderzee (the Stadhouderskade near the Bewaring house).
Devotion.
Diamond composition and two rectangles.
Diamond composition.
Diamond compositions.
Ditch near the Kalfje (tree on the Kalfje).
Dredge (the Amstel at twilight).
Dredge on the Amstel near the Omval.
Dredge [recto] (on the Amstel near the Omval) Haystack [verso].
Drydock at Durgerdam.
Duivendrecht (farmhouse on the Gein).
Duivendrecht.
Dune.
Dune (variation).
Dune I.
Dune II.
Dune III.
Dune IV.
Dune V.
Dune VI (summer, dune in Zeeland).
Dunes.
Dunes and sea (sketchbook III, no. 2).
Dunes and sea (sketchbook III, no. 3).
Dunes and sea (sketchbook III, no. 1).
Dunes and sea (sketchbook III, no. 5).
Dunes and sea (sketchbook III, no. 4a/b).
Dunes and sea (sketchbook III, no. 11).
Dunes and sea (sketchbook III, no. 13).
Dunes and sea (sketchbook III, no. 14).
Dunes and sea.
Dunes at Domburg.
Dusk.
Dutch village (village view: landscape with mill * * * near the Kostverlorenvaart).
Dying chrysanthemum.
Empty barges and sheds.
Empty barges.
End of day.
Eucalyptus tree in gray and tan.
Eucalyptus tree.
Eucalyptus trees.
Evening on the Gein (evening on the Gein with isolated tree).
Evening on the Weesperside.
Evening sky.
Evolution (triptych).
Facade (sketchbook VI, no. 2).
Facade in tan and gray (composition no. XII).
Facade in tan and gray.
Farm at Duivendrecht.
Farm at Nistelrode (recto and verso).
Farm at Nistelrode.
Farm behind willows.
Farm in the evening.
Farm near Duivendrecht.
Farm on a canal among the trees.
Farm on a canal.
Farm with cattle.
Farm with trees and water (farm behind trees and water).
Farm with trees.
Farmhouse.
Farmhouse at Duivendrecht.
Farmhouse at evening.
Farmhouse (barn).
Farmhouse on the Gein.
Farmhouse sheltered by trees.
Farmhouse with clothesline.
Farmhouse with peasant woman in the snow: Winterswijk.
Farmhouse with peasant.
Farmstead.
Farmyard.
Farmyard at Blaricum.
Farmyard in the moonlight.
Farmyard with cattle and willows.
Farmyard with peasant.
Female portrait.
Field bordered by trees.
Fields with cows.
Flowering apple tree.
Flowering trees.
Flowers.
Forest.
Fox trot A (composition IV; lozenge composition with three black lines).
Fox trot B.
The French mill on the River Gein.
Gein farmhouse behind trees.
The Gein near the Geinrust farmhouse.
The Gein: trees near the water.
Geinrust farm.
Geinrust farm in the mist.
Geinrust farm in watery landscape.
Geinrust farm with high horizon.
Geinrust farm: close view.
Girl peeling apples.
Girl writing.
Gladioli.
Gnarled willow beside a ditch.
Golden lily.
Grain barn interior.
Gray tree.
Hay sheaves in a field.
Hayrick.
Haystack.
Haystacks I.
Haystacks II.
Haystacks III.
House at Abcoude.
House on the Gein.
House on the River Gein.
Houses on the canal.
Houses with poplars.
Interior.
Interior at Nistelrode.
Interior of a stable.
Interior: kitchen.
Irises.
Irrigation ditch near the Kalfje.
Irrigation ditch near the Kalfje (recto no. 85).
Irrigation ditch overhung with trees.
Isolated farm.

Landscape.
Landscape (riverscape).
Landscape (warmte).
Landscape along the Gein.
Landscape at evening.
Landscape by moonlight.
Landscape near Amsterdam.
Landscape near Oele.
Landscape near the Kalfje Cafe (tree on the Kalfje).
Landscape of a river scene.
Landscape with a ditch.
Landscape with boat.
Landscape with bridge and farmer.
Landscape with cloudy sky.
Landscape with cows and stream.
Landscape with cows.
Landscape with dunes.
Landscape with farmhouse.
Landscape with Hayrick.
Landscape with houses and canal.
Landscape with houses.
Landscape with mill near Abcoude.
Landscape with orchard and guinea fowl.
Landscape with stream at evening.
Landscape with stream.
Landscape with trees along water.
Landscape with trees and water.
Landscape with trees.
Landscape: field and sky.
The Lappenbrink.
The Lappenbrink (farmyard at Lappenbrink).
The Lappenbrink with farmer's wife.
Large composition with red, blue and yellow.
Large landscape (riverscape with pink and yellow-green sky).
Lighthouse at Westkapelle.
Lighthouse in Westkapelle.
Lily.
The Long Bleekers Channel seen from the Wester Church.
Lotus (verso no. 84).
Lozenge (lozenge composition with red, black, blue and yellow).
Lozenge composition with two black lines.
Lozenge composition with yellow, black, blue, red and gray.
Lozenge with red, yellow and blue (tableau no. IV; lozenge composition with red, gray, blue, yellow, and black).
Male nude.
Mauve chrysanthemum.
Mill at Blaricum in the moonlight.
Mill at Domburg.
Mill by the river (the French mill).
Mill by the water.
Mill in moonlight (mill on the Winkel near Abcoude).
Mill in moonlight (sketch) (French mill on the Gein). Mill in moonlight.
Mill in sunlight (mill on the Winkel near Abcoude).
Mill in sunlight (Molen [Mill]).
Mill in the evening.
Mill on the Gein (the French mill on the Gein).
Mill on the Gein.
The mill.
Mill.
Moored barges.
Moored steamboat on the Weesperside.
Moored tugboat on the Amstel.
Notebook page.
Nude.
Ocean.
Ocean 1 (the sea).
Ocean 3.
Ocean 4.
Ocean 5.
The old watermill at Oele with moon.
On the Amstel: the Omval at evening.
On the dunes (reclining nude).
On the land (landscape with boat).
On the shore.
Oval composition.
Oval composition (painting III).
Oval composition (scaffold).
Paris buildings (sketchbook VI, no. 1).
Paris courtyard facades (sketchbook VII).
Paris facade (sketchbook III, no. 12).
Partially demolished building in Paris (sketchbook II).
Partially demolished building in Paris (blue facade) (sketchbook II, no. 43).
Partially demolished building (horizontal pier) (sketchbook II, no. 46).
Passion flower.
Pasture with five cows.
Picture no. 111; lozenge composition with eight lines and red (red corner).
Pier and ocean.
Pier and ocean (composition 10 in black and white).
Pier and ocean (sketchbook I, no. 57).
Pier and ocean 1.
Pier and ocean 3.
Pier and ocean 4 (sea; starry sky above the sea).
Pier and ocean 5 (sea and starry sky).
Pier at Scheveningen.
Polder-landscape.
Pollard willows.
Pond near Saasveld.
Portrait of a girl with flowers.
Portrait of a girl.
Portrait of a lady.
Portrait of a praying girl.
Portrait of a woman.
Portrait of a young girl.
Portrait of a Zeeland girl.
Portrait of Agatha Zethraeus.
Portrait of Aunt J.M. Mondriaan-Desiree.
Portrait of D.J. Hulshoff.
Portrait of Nephew Frits.
Portrait of Niece Johanna Mondriaan.
Portrait of old man.
Portrait of Princess Wilhelmina.
Portrait of Uncle Frits.
Puppy.
Red amaryllis with blue.
Red cloud.
Red dahlia.
Red gladioli.
Red mill (red mill at Domburg).
Red tree (evening; red tree).
Rhododendron.
Rhododendrons.
The River Gein.
River scene with trees and windmill.
Roofs in Paris (sketchbook VIII, no. 1).
Roofs in Paris (sketchbook VIII, no. 2).
Rose.
Rose (sketchbook III, no. 6).
The Royal Wax Candle Factory (on the Boerenwetering).
Rustic house (cottage).
Saint Jacob's church at Winterswijk.
Salon de Mme B * * * a Dresden (for Mrs. Ida Bienert).
Scaffolding.
Schinkelbuurt (factory building and hay near the Schinkel).
The sea (sketchbook I).
Sea after sunset.
Sea towards sunset.
The sea.
Seascape.
Seascape (sea-view I).
Seated girl.
Self portrait.
Self portrait [recto] nude [verso].
Self portrait: eyes.
Set design for Michel Seuphor play, "L'Ephemere est l'Eternel".
Sheds on the water (Schinkelbuurt).
Sheepfold.
Sheepfold in the evening.
Ships in the moonlight.
Shipworks.
Side facade.
Side view of a house in Winterswijk.
The singel.
Sketch for landscape near Oele.
Solitary tree.
Spring.
Spring idyll.
The Stadhouderskade near the Bewaring house.
Stalk with two Japanese lilies.
Still life with apples and plate.
Still life with dead hare.
Still life with gingerpot I.
Still life with gingerpot II.
Still life with herrings.
Still life with jug and onions.
Still life with Moonwort.
Still life with plaster bust.
Study for "summernight".
Study for composition.
Study for gray tree.
Study for gray tree (sketchbook III, no. 7).
Study for gray tree (sketchbook III, no. 8).
Study for tableau I.
Study of a chrysanthemum.
Study of a figure.
Study of a rose.
Study of trees.
Study of trees I.

Study of trees II.
Summer night (landscape in moonlight).
Summer night: oil sketch.
Sunflower.
Sunflower I.
Sunflower II.
Sunflowers.
Tableau I [with indications for yellow/blue/gray]. Tableau I.
Tableau I: composition with black, red, gray, yellow and blue.
Tableau II.
Tableau II; composition with red, black, yellow, blue and light blue.
Tableau no. 2; composition no. VII.
Tableau no. 2; composition no. V.
Tableau no. I; composition no. 1; compositie 7.
Tableau no. III; Composition no. 14; Composition with red, black, yellow, blue and gray.
"Tableau-Poeme" [text: Seuphor].
Tall trees along the river (The Gein near the Oostgein farmhouse).
Tall trees along the River; (the Gein near the Oostgein farmhouse).
Three cattails.
Three compositions.
Three cows.
Three haystacks.
Three rectangle compositions [study].
Three willow-herbs (sketchbook VI, no. 3).
Tiger lily.
Tiger-lilies.
Trafalgar Square [study].
Trafalgar Square.
Tree.
Tree (recto and verso) (sketchbook III, no. 15a/b).
Tree (recto and verso) (sketchbook IV, no. 3a/b).
Tree (study) (sketchbook IV, no. 4).
Tree (study) (sketchbook V).
The tree A.
Tree I.
Tree II.
Tree on the Kalfje.
Trees.
Trees (sketchbook IV, no. 1 [recto]).
Trees (sketchbook IV, no. 2 [verso]).
Trees (study) (sketchbook IV, no. 5).
Trees along the Gein (Weidenbaume).
Trees along the Gein.
Trees along the Gein; (the Geinrust farmhouse).
Trees along the Gein; Geinrust farmhouse with saplings and cows.
Trees along the river.
Trees bordering a river.
Trees by the River Gein.
Trees I.
Trees near the water.
Trees on the Gein (farmhouse under trees).
Trees on the Gein.
Trees on the Gein: moonrise.
Trees on the water.
Trees reflected in the River Gein.
Trees under blue sky.
Trees with cornfield.
Trees [recto] branches [verso] (sketchbook IV, no. 6 a/b).
Two haystacks.
Two lozenge compositions [study].
Two marigolds.
Two women in the woods.
Untitled (oval composition).
Untitled [verso no. 610].
Upright sunflower.
Vertical composition with blue and white.
View of Winterswijk.
Village.
Village church; Jacobskerk.
Vinken Bridge at Diemen.
"Vrachtboot" on the Amstel.
Weaver's house in Winterswijk.
The weaver's house, Winterswijk.
The Weltevreden farmhouse at Duivendrecht.
The white calf.
White rose in a tumbler.
White roses.
Willow tree.
Willow trees on the Gein.
Willow trees.
Windmill.
Windmill and trees.
Windmill at evening.
Windmill by the water.
Windmill in the evening.
Windmill near Saasveld.
Windmill on the Gein (the French Mill on the Gein).
Windmill on the water.
Winter landscape.
Winter landscape with farmhouse.
Woman (composition no. 11).
Woman in profile with young boy.
Women washing clothes.
Women with child in front of a farmhouse.
The wooden bridge.
Woods at Oele.
Woods at sunset.
Woods near Oele.
Woods with stream.
Yellow marigold.
Zeeland farmer.

Horsley, Mrs. E. M.

Encyclopaedia of superstitions.

Hubbard, P. M.

Anna Highbury.
Flush as May.

Humphreys, Jill. SEE Humphreys, Robin & Jill

Humphreys. Humphreys, Robin & Jill Humphreys

And Berry came too.
As berry and I were saying.
B-Berry and I look back.
Blood corner.
Blood royal.
An eye for a tooth.
Fire below.
Gale warning.
The house that Berry built.
Ne'er-do-well.
Perishable goods.
She fell among thieves.
She painted her face.
Shoal water.

Hyams, Sylvia & Michael Simone O'Reilly

The aesthetic adventure.
Arrows of desire.
Bandits in a landscape.
The lady in the castle.
The march of the moderns.
The pre-Raphaelite tragedy.
Victorian olympus.

Imperial Cancer Research Fund. SEE Action Research, Royal National Institute for the Blind & Imperial Cancer Research Fund

Internationale Musikverlage Hans Sikorski

Sonato no. 1 for violin and piano (1965).

Jodorowsky, Alejandro

El topo.

Johns (W. E.) (Publications) Ltd.

Adventure unlimited.
The adventures of the Junior Detective Club.
Another job for Biggles.
Biggles air commodore.
Biggles air detective.
Biggles and Co.
Biggles and the black peril.
Biggles and the black raider.
Biggles and the pirate treasure.
Biggles and the rescue flight.
Biggles at the world's end.
The Biggles book of heroes.
Biggles book of treasure hunting.
Biggles breaks the silence.
Biggles buries a hatchet.
Biggles cuts it fine.
Biggles defies the swastika.
Biggles delivers the goods.
Biggles fails to return.
Biggles flies again.
Biggles flies east.
Biggles flies north.
Biggles flies south.
Biggles flies to work.
Biggles flies west.
Biggles follows on.
Biggles forms a syndicate.
Biggles gets his man.
Biggles goes alone.
Biggles goes to school.
Biggles goes to war.
Biggles hits the trail.
Biggles hunts Bigs game.
Biggles in Africa.
Biggles in Australia.
Biggles in Borneo.
Biggles in Mexico.

Biggles in Spain.
Biggles in the Baltic.
Biggles in the blue.
Biggles in the Gobi.
Biggles in the jungle.
Biggles in the Orient.
Biggles in the South Seas.
Biggles learns to fly.
Biggles makes ends meet.
Biggles of 266.
Biggles of the camel squardron.
Biggles of the Interpol.
Biggles of the special air police.
Biggles on mistery island.
Biggles on the home front.
Biggles pioneer air fighter.
Biggles presses on.
Biggles scores a bull.
Biggles sees it through.
Biggles sets a trap.
Biggles sweeps the desert.
Biggles takes charge.
Biggles takes the case.
Biggles works it out.
Biggles' Chinese puzzle.
Biggles' second case.
Biggles, charter pilot.
Biggles, Foreign Legionnaire.
Biggles, secret agent.
Champion of the main.
Comrades in arms.
The cruise of the condor.
Gimlet bores in.
Gimlet comes home.
Gimlet gets the answer.
Gimlet goes again.
Gimlet lends a hand.
Gimlet mops up.
Gimlet off the map.
Gimlet takes a job.
Gimlet's oriental quest.
King of the commandos.
Kings of space.
The man who lost his way.
Mossyface.
No rest for Biggles.
Now to the stars.
Orchids for Biggles.
Return to Mars.
The rustlers of Rattlesnake Valley.
Sergent Bigglesworth Cid.
Spitfire parade.
The spy flyers.
To outer space.
True tales of treasure.
Worlds of wonder.

Lady Darwin. SEE Mommens, Ursula, Lady Darwin & Paul Ashton

Lady Goodwin

The ghost it was.
Invitation to an inquest.
Keep it quiet.
Last first.
The martineau murders.
A matter of nerves.
The murder of my aunt.
My own murderer.

Landale, Rita E.

The cup and the lip.
Morgan's daughter.
Psyche.
The white witch of Rosehall.

Law, Katharine

The anatomy of Puck.
Hobberdy Dick.
Kate Crackernuts.
The personnel of fairyland.

Lessing, Doris

In pursuit of the English.
Martha Quest.
A proper marriage.

Literary Executors of the Estate of H. G. Wells. SEE Wells (H.G.) Literary Executors of the Estate of

Lumley-Smith, Ruth

Mary Stuart in Scotland.

Madrid, Ediciones Musicales

2A. obertura compuesta para guitarra sola por Fernando Carulli P.
A donde va la Nina.
Ay, madre me llevaron.
Ay, que buena jarana.
Ay, que en esta tierra.
Caminando por el monte.
En la boca de un fandanguillo.
Gloria a dios en las alturas.
Melodias de espana, album 5.
La nana del nino.
El nino querido.
No hay tal andar.
Sonata, codice veneciano, libro I number 2.
Sonata, codice veneciano, libro I number 7.
Ven a belen.
La virgen fue lavendera.

Majestic Film/Tobis (Germany). SEE Friedrich Wilhelm-Murnau-Stiftung, legal successor of the Majestic Film/Tobis (Germany)

Maxwell (Magdalen Perceval) Executors of the Estate of

18th century story.
The diary of a young lady of fashion.
The life and death of the wicked lady skelton.

McDowell (K.S.P.) Executors of the Estate of

And no bird sings.
As we are.
As we were.
The corner house.
Expiation.
The face.
The flint knife.
The hanging of Alfred Wadham.
Home sweet home.
The male impersonator.
Monkeys.
More spook stories.
Pirates.
Queen Victoria.
The sanctuary.
Spinach.
Spook stories.
The step.
The wishing well.

McNeile (H. C.) Trustees of the Estate of

Ask for Ronald Standish.
Challenge.
The female of the species.
The finger of fate.
Him Brent.
The Island of terror.
Knock-out.
The return of bulldog Drummond.
Ronald Standish.
The saving clause.
Shorty Bill.
Temple tower.
Tiny carteret.
When carruthers laughed.

Mier (F.) SA.

Aguila o sol.
Amor en la sombra.
Asi es mi tierra.
La calavera negra.
El capitan aventurero.
El cenicienţo.
Chucho el remendado.
El ciclon.
Con la musica por dentro.
El correo del norte.
Cuando los padres se quedan solos.
El gavilan pollero.
Hay muertos que no hacen ruido.
La hermana blanca.
El hijo desobediente.
Las interesadas.
Isla para dos.
El jinete sin cabesa.
La marca del zorrillo.
Mientras el cuerpo aguante.
Mujers sin manana.
Musico, poeta y loco.
El nino perdido.
Perjura.
El rey del barrio.
El signo de la muerte.
Sinbad el mareado.
Soy charro de levita.
Tal para cual.
Temporado salvaje.
El tesora de Chucho el Roto.
El tesoro de Pancho Villa.
Las tres alegres comadres.
El ultimo cartucho.
Vagabunda.
El vagabundo.
Vivo o muerto.

Mitsuteru, Yokoyama

Tetsujin niju hachi go.

Mommens, Ursula, Lady Darwin & Paul Ashton

A friendly round.

Green memories.
James Braid.
W. G. Grace.

Morro Music Corporation

Burundanga.
Carino verdad.

Mosfilm International. SEE MosFilm Studios, d.b.a. Mosfilm International

MosFilm Studios d.b.a. Mosfilm International

Ja Kuba.

Neill, Ena & Zoe Readhead

A dominie abroad.
A dominie's five.
The free child.
Hearts not heads in school.
The last man alive.
The problem child.
The problem family.
The problem parent.
The problem teacher.
That dreadful school.

Norway (N.S.) Trustees of the Estate of

Landfall.
Marazan.
An old captivity.
Pilotage.
So disdained.
Stephen Morris.
Vinland the good.

O'Reilly, Michael Simone. SEE Hyams, Sylvia & Michael Simone O'Reilly

Oliver, W.R., & the Executors of the Estate of Fiametta Oliver

Arras of youth.
Bells rung backwards.
Collected ghost stories.
The Italian chest.
Leap year love.
Love and a rich girl.
The pained face.
A penny for the harp.
Poor man's tapestry.
Romantic afterthought.
A smile for the past.
The story of ragged Robyn.
We all have our secrets.
Whom God hath sundered.

Orczy-Barstow Brown, Sara

Mam'zelle Guillotine.
Pimpernel and Rosemary.
Sir Percy leads the band.
The triumph of the Scarlet Pimpernel.
The turbulent duchess.
The way of the Scarlet Pimpernel.

Peliculas y Videos Internacionales, SA de CV.

El abanico de lady windermere.
Abismos de pasion.
Acapulco.
Adan Eva.
Adulterio.
Adventuras de un nuevo rico.
El ahijado de la muerte.
Alma de acero.
Ama a tu projimo.
Amar es vivir.
El ametral ladora.
El amor de los amores.
Amor perdido.
Los amores de marieta.
El angel caido.
Angel del infierno.
El angel del silencio.
Angel o Demonio.
Los anos vacios.
Aqui llego el valenton.
Arriba las manos Texano.
Asesino, S.A.
Ave de paso.
Ave sin rumbo.
Ay amor como me has puesto.
Ay chabela.
Barrio bajo.
Barrio de pasiones.
Baru el hombre de la selve.
El bello durmiente.
Besos de arena.
Las bravuconas.
Buenas noches mi amor.
Cabaret tragico.
Cabo de hornos.
Cafe concordia.
Cain y Abel.
Camino del infierno.
El campeon ciclista.
Cara de angel.
Las carinosas.
Carta brava.
La casa colorada.
La casa de la zorra.
Cautiva del pasado.
Cazadores de cabezas.
El cementerio de las aguilas.
Los chacales.
Charro a la fuerza.
El Charro y la dama.
Chucho el roto.
Cielito lindo.
El cielo y la tierra.
El cielo y tu.
Cien gritos de terror.
Cita con la muerte.
El club de los suicidas.
Comicos de la legua.
Como yo te queria.
La complice.
Con el diablo en el cuerpo.
Con la rabia por dentro.
Contigo a la distancia.
Contra la ley de dios.
Un corazon en el ruedo.
Corazon salvaje.
Cristo 70.
El Cristo de mi cabecera.
Cristobal Colon.
Cuando la tierra temblo.
Cuando me vaya.
Cuando vuelvas a mi.
Cuatro horas antes de morir.
Cuatro vidas.
Cuentan de una mujer.
La dama de las camelias.
Delirio tropical.
Deseada.
Despedida de casada.
Dios sabra juzgarnos.
Un domingo en la tarde.
Dona Clarines.
Donde nacen los pobres.
Dos cadetes.
Dos charros y una gitana.
Dos gallos en palenque.
La dulce enemiga.
La duquesda del tepetate.
El.
Ella la inolvidable.
Ellas tambien son rebeldes.
En carne propia.
En la palma de tu mano.
En los altos de Jalisco.
Entre bala y bala.
Esa mi raza.
Escuadron 201.
Esposa o amante.
Estrategia matrimonio.
El fantasma de la opereta.
La feria de la cancion.
La feria de la flores.
La feria de San Marcos.
Fierecilla.
El final de norma.
Flor de fango.
Los forajidos.
Frente al destino.
Frente al pecado de ayer.
El fuego de mi ahijada.
Fuego en la carne.
La fuerza de la sangre.
La fuerza inutil.
El fugitivo.
El gato sin botas.
Gemma.
Una gitanna en Mexico.
Un grito en la noche.
La herencia de la llorona.
La herencia maldita.
Las hijas de Elena.
El hijo del diablo.
Los hijos de satanas.
Hipocrita.
El hombre propone.
Hombres del mar.
Una horca para el Texano.
Horizontes de sangre.
La India bonita.
Los inocentes.
La insaciable.
Jesusita en chihuahua.
Juan el desalmado.
Juan Polainas.
Kermesse.
Lagrimas de amor.
Las leandras.
Una leccion de amor.
La ley del mas rapido.
Los lios de barba azul.
Lo primero es vivir.
El lobo blanco.
Locura pasional.

Lodo y armino.
La madrina del diablo.
La mal casada.
Mala yerba.
El malvado carabel.
Manuel Saldivar el Texano.
Marathon de baile.
Los margaritos.
Maria la voz.
El mariachi desconocido.
Mariachis.
Marina.
Mas fuerte que el amor.
Mater nostra.
Me gustan todas.
Me importa poco.
El medico de las locas.
El mejor del mundo.
La mentira.
Mexico nunca duerme.
Mi mujer necesita marido.
Mi reino por un torero.
Los milagros de San Martin de porrres.
Miradas que matan.
Mis secretaria privadas.
Mis tres viudas alegres.
Misericordia.
El misterioso senor marquina.
El moderno barba azul.
Monte escondido.
Mujer.
La mujer del otro.
La mujer del puerto.
La mujer legitima.
La mujer marcada.
Un mujer sin destino.
La mujer y la bestia.
Mulata.
Los murcielagos.
No me olvides nunca.
No te ofendas beatriz.
La noche avanza.
Noches de gloria.
La nortena de mis amores.
Ojos tapatios.
Ole Cuba.
Ora Ponciano.
Los orgullosos.
Orlak o el infierno de Frankestein.
Otono en primavera.
Pacto de sangre.
Padre de mas de cuatro.
Para siempre amor mio.
El pecado de una madre.
Piel canela.
Los platillos voladores.
Pobre huerfanita.
Por querer a esa mujer.
Preciosa.
La princesa hippie.
Prisionera del pasado.
Pueblo de odios.
Pueblo fantasma.
El puerto de los siete vicios.
El puma.
Que lindo cha cha cha.
Que me mates en tus brazos.
Lo que solo el hombre puede sufrir.
Quiero morir en carnaval.
El rapto de las Sabinas.
Rateros ultimo modelo.
Rayando el sol.
La razon de la culpa.
Recien casados no molestar.
La red.
Refifi entre las mujeres.
Remolino de pasiones.
Reto a la vida.
Retorno a la juventud.
El revoltoso.
Rincon brujo.
El rio de las animas.
Ritmos del caribe.
El rosario.
El rosario de amozoc.
Las rosas del milagro.
Rumba caliente.
A sablazo limpio.
San Juan de Dios es jalisco.
Sangre en la barranca.
La santa del barrio.
Santo frente a la muerte.
Los santos reyes.
Se acabaron la mujeres.
El secreto de mi mujer.
El secreto del Texano.
Secuestro en Acapulco.
Seda sangre y sol.
Sendas del destino.
Sierra Morena.
El siete de copas.
El siete leguas.
Sinfonia de una vida.
Soltera y con gemelos.
La sombra del tunco.
La sospechosa.
El suavecito.
Sublime melodia.
El supermacho.
Tambien de dolor se canta.
Las tapatias nunca pierden.
El tesoro del rey salomon.
El Texano.
Tierra prohibida o la moneda rota.
Tin tan el hombre mono.
Un tipo a todo dar.
Tirando a matar.
A tiro limpio.
Toda una vida.
Traicion.
El tren de la muerte.
Los tres alegres compadres.
Las tres Elenas.
Tres valientes camaradas.
Los tres vivales.
La trinchera.
Tropicana.
Tu solo tu.
El tunco maclovio.
El ultimo amor de Goya.
El ultimo round.
Ultraje al amor.
La valentina.
Los valientes no mueren.
Variedades de media noche.
La venenosa.
Una vez en la noche.
Viaje a la luna.
La vida de agustin lara.
La vida en broma.
Un viejo amor.
El violetero.
Virgen de media noche.
La virgen desnuda.
La virgen morena.
Vistete Cristina.
La viuda celosa.
Viva chihuahua.
Viva la parranda.
El Vizconde de Montecristo.
Voces de primavera.
Vuelta al paraiso.
Vuelve el Texano.
Yo el gobernador.
Yo no creo en los hombres.
Yo pecador.
Yo quiero ser tonta.
Yo sabia demasiado.
Yo tambien soy de Jalisco.
Las zapatillas verdes.
Zorina.
El zorro de jalisco.

Pierce, David

Contraband.
Dreaming lips.
Pastor Hall.
When knights were bold.

Polland, Madeleine

Beorn the proud.
Children of the red king.
The Queen's blessing.
The town across the water.
The white twilight.

Postgate, J

The ledger is kept.
The life of George Lansbury.
Somebody at the door.
The story of a year: 1848.

Prescott, J. W. SEE Thedinga, Mrs. S.C. & J.W. Prescott

Procinema, SA de CV

Como si fueramos novios.
Los dos carnales.

Raymond, Diana

Back to humanity.
The Berg.
The chalice and the sword.
The chatelaine.
Child of Norman's end.
A chorus ending.
The city and the dream.
Corporal of the guard.
Don John's mountain home.
A family that was.
The five sons of Le Faber.
For them that trespass.
Gentle greaves.
In the steps of St. Francis.
In the steps of the Brontes.
The Jesting army.
The Kilburn tale.
The last to rest.

The Lord of Wensley.
The marsh.
Mary Leith.
The miracle of brean.
Morris in the dance.
The Multabello road.
The nameless places.
Newtimber Lane.
The old tree blossomed.
One of our brethren.
Paris, city of enchantment.
The quiet shore.
Rossenal.
The shout of the King.
A song of the tide.
Through literature to life.
To the wood no more.
Two gentlemen of Rome.
Wanderlight.
Was there love once?
We the accused.
The witness of Canon Welcome.

Readhead, Zoe. SEE Neill, Ena & Zoe Readhead

Reeves, Sheila

The adventure of Tornado Smith.
At a Mayfair luncheon.
The blackmailers.
By proxy.
By underground.
Changing 'ats.
Chemical.
The chocolate cigarettes.
The colonel's ring.
The crossword alien.
Dr. Feldman.
Dudley & Gilderoy: a nonsense.
Eliza among the chimney sweeps.
The fire body.
The fruit stoners.
The fruit stoners: being the adventures of Maria among the fruit stoners.
Genius.
How the circus came to tea.
The Italian conjuror.
King's evidence.
The land of green ginger.
Lost.
The magic mirror.
The man who lived backwards.
The man who was milligan.
The man-eater.
Maria (of England) in the rain.
Mr. Cupboard, or the furniture's holiday.
Nephele.
The olive.
Onanonanon.
The Pikestaffe case.
The reformation of St. Jules.
Revenge.
Roman remains.
Sambo and snitch.
Sergeant Poppett and Policeman James.
Shocks.
The stranger.
The survivors.
That Mrs. Winslow.
A threefold cord.
Toby's birthday presents.
Tongues of fire.
The water performance.
What the black chow saw.
When Nick dressed up.
The wolves of God, and other fey stories.

Riefenstahl, Leni

Das Blaue Licht.
Olympia, 1. Teil: Fest der Voelker.
Olympia, 2. Teil: Fest der Schoenheit.
Tiefland.
Triumph des Willens.

Right Honorable Lord Tweedsmuir of Elsfield, CBE, CD

Canadian occasions.
The clearing house.
Homilies and recreations.
Huntingtower.
Julius Caesar.
The massacre of Glencoe.
The runagate's clue.
Sir Walter Scott.

Royal Literary Fund

All I survey.
All is grist.
As I was saying.
Avowals and denials.
The ballad of St. Barbara and other verses.
Chaucer.
Christendon in Dublin.
The coloured lands.
Come to think of it.
The common man.
The dragon at hide and seek.
The end of the armistice.
Eugenics and other evils.
Four faultless felons.
Generally speaking.
GKC as MC.
The glass walking stick.
A handful of authors.
The judgement of Dr. Johnson.
Lunacy and letters.
The outline of sanity.
The paradoxes of Mr. Pond.
The poet and the lunatic.
The queen of seven swords.
The resurrection of Rome.
The return of Don Quixote.
Sidelights: New London and Newer York.
St. Thomas Aquinas.
The surprise.
Tales of the long bow.
The thing.
The turkey and the turk.
UBI ecclesia.
The way of the cross.
The well and the shallows.

Royal National Institute for the Blind. SEE Action Research, Royal National Institute for the Blind & Imperial Cancer Research Fund

Sayer, Chloe

The technique of the love affair.

Schirmer (G.), Inc.

100 devils and one girl, op. 15 (1963).
1905–1917, symphonic monument for large orchestra and chorus, op. 40 (1925–26).
1918 (part two); incidental music to film.
24 preludes and fugues for piano, op. 87.
24 preludes for piano, op. 34.
25 years of the Red army, overture for wind orchestra, op. 84.
8 Japanese melodies for voice and piano, op. 49A.
About our native country, op. 82; cantata for children's chorus and symphony orchestra.
About our native land, op. 82, cantata for children's chorus and symphony orchestra.
About our young pioneer leader; song for children's chorus and piano.
About Petya, young pioneer ditties; for voice and piano.
About the bear; song of children's chorus and piano.
Academician Ivan Pavlov; scenario by M. Papava, directed and produced by G. Roshal, incidental music to film.
Adventures of Korzinkina, op. 59.
Adygeya, sextet for violin, viola, cello, horn, clarinet and piano, op. 48 (1933).
The aerograd; scenario and production by A. Dovzhenko, Mosfilm, and Ukrainfilm, incidental music to film.
Air for trumpet and orchestra.
Alastor, symphonic poem, op. 14 (1912–13).
Album of children's pieces.
Alexander Nevsky cantata, op. 78.
Allegro rustico.
Alone, op. 26.
Andantino for piano.
Anna Snegina, op. 25 (1966).
Anton Ivanovich is angry, incidental music to film.
Aphorisms, op. 13.
Aria for chamber orchestra (1964).
Aria for violin and string orchestra (1963).
At the circus, suite in 4 parts (1968).
At the festivity from the cantata "Leninists, op. 63.".
At the summer camp; young pioneer song for children's chorus and piano.
At the young pioneer summer camp, six pieces, op. 3/86.
Ballad about the Motherland for bass and orchestra.
Ballad for piano, op. 28.

Ballade for piano, op. 7.
Ballet suite no. 1.
Ballet suite no. 2.
Ballet suite no. 3.
Ballet suite no. 4.
Beautiful day, op. 82.
Before the monument to the war hero; song for chorus and piano.
Belinsky, op. 85.
Belinsky, op. 85a for orchestra.
Bleak morning (part three); incidental music to film.
A bonfire at the Dnieper, song for children's chorus and piano.
Boris Gudonov, op. 58.
The boy giant (1969).
Bright lights.
The bronze horseman, ballet in 4 acts, op. 89.
Buffoons (1966).
Bulgarian folk songs.
Bylina about Lenin, op. 58.
The camp of friendship, op. 66; songs of the "Artek" young pioneer summer camp, for children's chorus and piano.
Canon.
Cantata-song about Stalin, for soloist, chorus, and orchestra.
Carnival overture (1957).
Cello concertino, in G, op. 132.
Cello concertino, op. 54 (1961).
Cello concerto in A minor by R. Schumann, op. 125.
Cello concerto no. 1 in E flat major, op. 107.
Cello concerto no. 2 in G minor, op. 126.
Cello sonata in D major, op. 40.
Chaconne.
Chamber symphony (1967).
Cheryomushki, op. 105a.
Children's notebook, op. 69.
Children's suite for small orchestra, op. 6 (1957).
Cinderella.
Clarinet quintet (1955).
Club of the famous captains; songs for voice and piano by A. Alexandrov, D. Kabalevsky, K. Molchanov et al.
Concert fantasia on Slovak and Morovian themes for violin and piano (1956).
Concert waltz for orchestra, op. 90.
Concertino for clarinet and piano.
Concertino for french horn and small orchestra, op. 14, no. 2.
Concertino for two pianos, op. 94.
Concertino for violin and small symphony orchestra.
Concerto.
Concerto buffa for chamber orchestra (1966).
Concerto etude for trumpet and orchestra, op. 49.
Concerto for balalaika and orchestra, op. 63.
Concerto for cello and orchestra.
Concerto for cello and orchestra, op. 16 (1964).
Concerto for cello and orchestra (1964).
Concerto for cello and orchestra, op. 87.
Concerto for cello and orchestra, op. 112.
Concerto for cello and orchestra, op. 43 (1948).
Concerto for clarinet and chamber orchestra (1957).
Concerto for clarinet and orchestra, op. 135.
Concerto for coloratura soprano and orchestra, op. 82.
Concerto for flute and orchestra, op. 75 (1961).
Concerto for french horn and orchestra op. 91.
Concerto for french horn and orchestra, op. 136.
Concerto for harp and orchestra, op. 74.
Concerto for harp and orchestra.
Concerto for harp and orchestra, op. 126.
Concerto for horn and orchestra, op. 40.
Concerto for oboe and strings, op. 50 (1959).
Concerto for orchestra after the legends of Till Eulenspiegel, in 4 movements (1967).
Concerto for orchestra with solo trumpet, piano, vibraphone & double bass (1966).
Concerto for organ and string orchestra, op. 35.
Concerto for piano and orchestra (D-flat major).
Concerto for piano and orchestra, op. 128.
Concerto for piano and orchestra, no. 4, op. 53 (1931).
Concerto for piano with orchestra, op. 21.
Concerto for trumpet and orchestra, op. 94 (1967).
Concerto for viola and chamber orchestra (1967).
Concerto for violin and orchestra (1969).
Concerto for violin and orchestra, op. 100.
Concerto for violin and orchestra, op. 67 (1960).
Concerto for violin and string orchestra, op. 21.
Concerto for violin with orchestra no. 1 (195), op. 9/29.
Concerto in E flat major for trumpet and orchestra.
Concerto in E-flat major for trumpet and orchestra (1950).
Concerto in E-flat minor for trumpet and orchestra, op. 41.
Concerto no. 1.
Concerto no. 1 for cello, 17 winds, percussions and harmonium, op. 23.
Concerto no. 1 for piano and orchestra (1946).
Concerto no. 1 for piano and orchestra (1946).
Concerto no. 1 for piano and string orchestra.
Concerto no. 1 for violin and orchestra in A minor, op. 77.
Concerto no. 1, op. 1 for piano and orchestra (1933).
Concerto no. 1, op. 14 for violin and orchestra (1958).
Concerto no. 2.
Concerto no. 2 for piano and orchestra, op. 102.
Concerto no. 2 for piano and orchestra (1965).
Concerto no. 2 for piano and string orchestra.
Concerto-poem for trumpet and orchestra, op. 113.
Concerto-poem for viola and orchestra, op. 13 (1964).
A conversation with the cactus, op. 91; eight children's songs.
Cossack songs.
Counterplam, op. 33.
Dance no. 1 (B-flat major) for violin and piano.
Dance of the Russian sailors from the ballet the red poppy.
Dance suite for harp.
Dances for symphony orchestra from the musical comedy Bridegroom from the embassy.
The Decembrists, opera in 4 acts.
Divertimento, no. 2 for piano.
Divertisement in E-flat major for symphony orchestra, op. 80 (1948).
Don Quixote, symphonic engravings.
Drawn-out song.
Dreams; piano piece.
Duet of Sir Peter and Lady Teazle; from incidental music to Sheridan's "School for scandal."
Eastern dance for clarinet and piano, op. 47.
Easy piano pieces on folk themes of the peoples of the Volga region (1948).
Eight British and American folksongs.
Eight concert etudes for piano left-hand, op. 82.
Eight romances to words by Mikhail Leromontov.
Eight songs, op. 17; for children's chorus and piano.
Elegy for string orchestra, op. 21.
Encounter with a miracle; from the opera "The sisters, op. 83.".
An encounter; song for children's chorus and piano.
Epic poem on Russian folk themes (1950).
Etude for piano, op. 1, no. 1.
Etude for piano, op. 43.
Etude in E minor for piano (1951).
Events for piano, op. 5.
Excerpts from the opera, "Colas Breugnon" for singing and piano, op. 24.
Excerpts from the operetta, "Spring sings, op. 58.".
Execution of Stephen Razin, op. 119.
The exile.
Exotic suite, op. 13.

Expression, no. 1 of two pieces for, op. 1.
The fair at Sorchinsk completion and orchestration of the opera by Modest Musorgsky.
Fall of Berlin, for chorus and orchestra, op. 82a.
Fall of Berlin, op. 82.
Fantasia for cello and symphony orchestra, op. 52 (1953).
Far-off youth, songs for soprano and piano, op. 12.
A farewell to a friend.
The fatherland, opera (1945).
Festive overture (1970).
Festive overture for symphony orchestra (1955).
Festive overture, op. 97.
Field march no. 1 in A-flat major for wind orchestra.
Field march no. 2 in F minor F.
Field march of the Red army for wind band, op. 64.
First Chinese suite for orchestra, op. 60.
First concert fantasia for violin and orchestra on Finnish themes (1953).
First echelon, op. 99.
First echelon, op. 99a.
First suite from orchestra, op. 18.
First suite from the ballet Genesis, in 4 movements (1968).
Fisherman on Lake Ladoga.
Five choruses to words by Russian poets.
Five days, five nights, op. 111.
Five days, five nights, op. 111a.
Five lyric poems for a capella chorus.
Five merry songs, for soprano and piano (1961).
Five piano preludes (1966).
Five pieces for cello and piano, op. 25.
Five pieces for flute and piano (1947).
Five pieces for violin and piano, op. 53.
Five preludes for orchestra.
Five preludes for piano.
Five romances for voice and piano on texts of Pushkin, op. 10.
Five romances on text from magazine, "Krokodil," for bass and piano, op. 121.
Five romances on verses of V. Dolmatovsky for voice and piano, op. 98.
Five romances, op. 76 to words by Rasul Gamzatov; for mezzo soprano and piano.
Five songs to Shakespeare's comedy, "Much ado about nothing", op. 7.
The flea, comic suite for orchestra, op. 8.
Flute sonata no. 2, op. 94.
The fountain at Bakhchisara ballet-poem after Pushkin.
Four children's songs for piano (1961).
Four easy pieces for violin and piano.
Four girls, song for medium voice and piano.
Four miniatures on Russian folk themes for string quartet (1950).
Four monologues on verses of A. Pushkin for bass and piano, op. 91.
Four pieces for basson and piano.
Four pieces for cello or viola and piano on themes of lutenists of the 14th-16th-centuries, op. 35.
Four pieces for children for soprano and piano, op. 27.
Four pieces for oboe and piano.
Four preludes, op. 5; for piano.
Four romances for voice and piano, op. 44.
Four romances for voice and piano, op. 59.
Four romances on verses of A. Pushkin for bass and piano, op. 46.
Four song-jokes, op. 42; for voice and piano.
Four songs on verses of V. Dolmatovsky for voice and piano, op. 86.
Fourth (Arctic) symphony, op. 82.
Fourth suite from the ballet, "Spartacus."
The friendship of the people op. 79.
Friends, op. 51.
Friendship overture (1959).
Frol Skobeyev, op. 12.
From days of youth for piano.
From Jewish folk poetry, op. 79.
From pioneer life, op. 14, pieces.
From Shakespeare.
From the past, 6 improvisations for piano, op. 74 (1946).
From the songs of Ossian, 3 musical pictures for orchestra, op. 56.
Funeral-ode for large orchestra & mixed chorus (in memory of Lenin).
Funeral-triumphal prelude for symphony orchestra, op. 130.
Gadfly, for orchestra.
Gadfly, op. 97.
Gavotte and minuet for orchestra.
Gavotte from the human comedy, op. 37.
The general from the Kremlin; Red Army song for two-part chorus and piano.
German notebook, vocal cycle.
Ghazals and songs for voice and piano, op. 31.
Girl friends, op. 41 (2).
Glory to great October, ode for baritone and orchestra.
Glory to the Soviet army, cantata, op. 93.
Golden mountains, op. 30.
Golden mountains, op. 30a for orchestra in 6 movements.
Good luck!; sowing song, for children's or women's two or three part chorus and piano.
Good-bye, Girlie!; song for medium voice and piano.
Great citizen, op. 52.
Great citizen, op. 55, part two of the film.
Greeting overture (D-flat major).
Gyulsar, music drama.
Gyulsara, opera in 4 acts, op. 96.
Hail Taiga!; song for chorus and piano.
Hamlet, op. 116a.
Hamlet, op. 32a.
Happy march in F major for wind band, op. 53, no. 2 (1941).
Her first year at school (jointly with M. Ziv).
Hero-city, oratorio for soloists, chorus, and orchestra.
Heroic march in F minor for wind band, op. 53, no. 1 (1941).
Heroic march of the Buryat-Mongolian assr, op. 71.
Heroic poem for high bass or baritone, 2 pianos and percussion (1969).
Hikers' song; for children's chorus and piano.
Hindu suite from the ballet-Pantomme noyya for orchestra, op. 42A.
Hiroshima must not occur again, oratorio, op. 63 (1967).
Hitler calls to Ribbenthrop, musical satire for bass and piano.
Holiday at Ferghana, overture for orchestra, op. 75.
Holiday overture for full orchestra, op. 96.
Hostile whirlwinds; incidental music to film.
A house of warm welcome; song for children's chorus and piano.
How long shall the kite soar? op. 20.
Humoresque for chamber orchestra.
The Hungarian album, cycle of piano pieces for children (1966).
Hungarian fantasy for violin and orchestra (1952).
Hungarian tunes for violin and orchesta (1952).
I feel no fear.
Ice and steel, opera, op. 24.
Impromptu for piano op. 99, no. 1.
Improvisation, op. 21; for violin and piano from incidental music to the film "A night in St. Petersburg."
In a fairy-tale forest, op. 62; musical pictures for recitalist, singing, and piano.
In autumn.
In flames (at Moscow), op. 37, opera in four acts, six scenes.
In memory of our dear Sergo, song for children's chorus and piano.
In memory of S.Y.A. Marshak, 6 lyric epigrams (1964).
In Mongolia, suite in 5 parts for small symphony orcherstra, op. 10 (1952).
In Nizhny Novgorod.
In Rustaveli's footsteps, oratorio.
In the rhythm of hearts (We want to dance).
In these days, song for voice or chorus and piano.
The intenationale.
Into the storm (1939).
Invention for piano, op. 15.
Inventions, suite for piano.
The iron foundry, op. 19.
Ivan Grozny.

Ivan the Terrible oratorio for chorus, narrator, soloists, and full symphony orchestra.
A jaunty young pioneer song; for children's chorus and piano.
Jeanne d'Arc, ballet in 3 acts (1957).
Jeanne d'Arc, suite from the ballet (1958).
Jewish orchestra at the Governor's ball, suite from the music to Gogol's "The Inspector General," op. 41 (1926).
Jewish songs, op. 37 (1923–26).
Joseph the beautiful, ballet, op. 50.
Katerina Izmailova, op. 114 (op. 29/114).
King Lear, op. 137.
Kirov is with us, poem-cantata, p. 61 (1942–43).
The Komsomol locomotive; song for voice, two-part chorus and piano.
The Kremlin by night, cantata-nocturne, op. 75 (1947).
Kursk songs.
The land of the fathers.
The last hour is striking, song in memory of Patrice Lumumba for chorus and piano.
Laurencia, ballet in 3 acts.
Legend.
Legend of love, ballet (1961).
Lenin in our hearts (1957).
Lenin is with us (1968).
Lenin, dramatic symphony, op. 16.
Leninists, op. 63; cantata for three choruses and full symphony orchestra.
Let's sing, comrades; song for two-part chorus and piano.
Letter, young pioneer song; for voice or chorus and piano.
Leyi and medzhun, opera in 4 acts, op. 94.
Leyla and medshun, poem for symphony orchestra (1947).
Light overture in C major.
Lightnings, symphonic poem for orchestra, op. 39.
Like a rosy apple.
The little house in Colomna musical choreograhic episode-vaudeville.
The loneliness of Lermontov cycle of romances for voice and piano.
Love (a parable).
Love's pangs.
The low-born son-in-law (1966).
Loyalty, op. 136.
Lullaby and dance for 2 pianos (1952).
The lyceum years of A.S. Pushkin, vocal cycle, op. 35.
Major-minor studies, op. 68; for solo cello.
Many times I have put up at hotels.
March for piano, op. 1 no. 2.
March from the film "Zangezur."
March of Kirov followers.
March of the Red army for wind orchestra.
March, Gavotte from "The comedians" suite: from incidental music to M. Daniel's play "Inventor and comedian," op. 26.
March; for wind band.
Masha is fair, song for women's trio or three-part chorus and piano.
Masquerade opera in 1 act.
May march; song for two-part chorus and piano.
May-day banners; song for two part chorus and piano.
Mazurka for piano.
Mazurka-caprice for piano, op, 41.
Meditations, 7 pieces for piano, op. 3.
The meeting on the Elbe, op. 80.
Melody and dance for violin and piano (1950).
Melody for piano, op. 99, no. 2.
Melody, no. 2 of two pieces for op. 1.
A merry feast; song for children's chorus and piano.
Michurin, op. 78.
Mindia.
Miniature triptych.
Moldavian rhapsody for violin and orchestra, op. 47, no. 2 (1949).
Moldavian suite for orchestra (1950).
A monument all to oneself, satirical opera in 3 acts (1964).
Moscow, cantata, op. 38.
Moscow, oratorio for soloists, chorus and orchestra.
Moscow—Cheryomushki, op. 105.
Mother, op. 13 (1956).
Motherland hears, op. 86.
Mtsyri, symphonic poem.
Mtsyri, symphonic poem after Lermontov, op. 54.
A Muleteer, op. 11.
Music for chamber orchestra.
Mussorgsky; scenario by A. Abramova and G. Roshal, directed and produced by G. Roshal, incidental music to film.
My father is a peasant.
New Babylon, op. 18.
A new sea; song about the Tsimlyanskoye Storage Lake, for voice or chorus and piano.
The New-Year tree, children's suite in 6 parts for small symphony orchestra, op. 11 (1951).
Night from the old market, suite for orchestra, op. 38.
A night in St. Petersburg; scenario by G. Roshal and V. Stroyeva (on the subject).
Nikita Vershinin, op. 53; opera in four acts, eight scenes.
Nocturne for French horn and piano (1955).
Nonette, ensemble for female voice.
O wert thou in the cauld blast.
Octaves.
Octet.
October, op. 131.
Ode in memory of Vladimir Ilich Lenin.
Ode to joy.
Oldtime romance.
On guard for peace oratorio, op. 124 (1950).
On the field of Kulikovo, symphony-cantata, op. 14.
On the road; song for children's chorus and piano.
An optimistic tragedy, opera, op. 24 (1964).
Oratorio pathetique.
An ordinary girl, operetta in 3 acts (1959).
Our construction projects are our common concern; song for children's chorus and piano.
Our great native country, op. 35; cantata for two soloists (mezzo-soprano and chorus and orchestra).
Our native land; song for children's chorus and piano.
Our Soviet country, song for two- or three-part chorus and piano.
Our yard, op. 19 (1966).
Overture in A minor (1961).
Overture on Mari themes for orchestra, op. 25.
Overture on Russian and Kirghiz folksongs, op. 115.
Overture on Slavonic folk themes for orchestra, op. 77.
Overture pathetique in C minor for symphony orchestra, op. 76 (1947).
Overture to music drama Gyulsara.
Overture to the opera "Taras' Family," op. 47.
Overture to the opera Shakh-senem.
The path of thunder, ballet in 3 acts (1956–57).
The path of thunder, suite no. 1 from the ballet (1958).
The path of thunder, suite no. 2 from the ballet (1957).
People's avengers, op. 36; suite for mixed chorus and symphony orchestra.
Peter I, suite for orchestra from the film music.
Piano concerto (1943).
Piano concerto no. 1 in C minor, op. 35.
Piano concerto no. 1 in F-sharp minor (1954).
Piano concerto no. 1 in minor.
Piano pieces for children (1970).
Piano quintet (1961).
Piano quintet (1962).
Piano quintet, op. 18 (1944).
Piano sonata.
Piano sonata no. 2 in B minor.
Piano sonata no. 4, op. 56 (1955).
Piano sonata no. 5, op. 58 (1956).
Piano sonata no. 6, op. 73 (1960).
Piano trio (1953).
Piano trio in four movements.
Piano trio, op. 24 (1945).
Pieces for piano.
Pioneers plant the forests, op. 81.
Pirogov, op. 76.
Pirogov, op. 76A.
Poem for cello and piano, op. 10.
Poem for organ, strings, 4 trumpets, 2 pianos, and percussion (1966).
Poem for piano.

Poem in C-sharp minor for piano.
Poem in memory of Sergei Yesenin.
The poem of struggle, op. 12; for symphony orchestra and chorus.
Polish tunes, suite for symphony orchestra, op. 47, no. 2 (1950).
Polyphonic sketches for piano, op. 78 (1948).
Prelude and scherzo for string octet, op. 11.
Prelude for organ, trumpet, harp, and string orchestra, op. 24.
Preludes and fugues, op. 61.
Prisoner of the Caucasus, ballet-poem after Pushkin.
Quartet for 2 violins, viola and cello, op. 58.
Quartet on American themes for flute, oboe, clarinet, and bassoon, op. 79.
Quasi-sonata for piano.
Quintet for piano, violin, clarinet, horn, and cello, op. 50.
Quintet in G-minor for viola, 2 violins, cello, and piano, op. 57.
Quintet on Turkmen folk themes for flute, oboe, clarinet, bassoon, and small drum, op. 65.
Rachel, opera in 1 act, op. 81.
Rada an Loiko, a symphony poem after the story by M. Gorky (1954).
Rails, for piano, op. 16.
The raised sword oratorio.
A Raven flies towards a raven.
Recitative and rondo for piano, op. 84.
Red army rhapsody for orchestra, op. 77.
The red poppy ballet in 3 acts, op. 70.
Repairs station song.
Requiem in memory of the fallen heroes, op. 20 (1946).
Restless youth; scenario by L. Trauberg (jointly with G. Roshal) after a like-named autobiographical story.
Return of Maxim, op. 45.
The reward vocal-symphonic novella.
Rhapsody on Moldavian themes for orchestra, op. 47, no. 1 (1949).
Rhapsody on the theme of the song school years; for piano and symphony orchestra, op. 75.
Romance of Benvolio; from incidental music to "Romeo and Juliet, op. 56," for medium voice and piano.
Romances to words by Mikhail Lermontov.
Romeo and Juliet.
Romeo and Juliet, op. 56; musical sketches for Shakespeare's tragedy for full symphony orchestra.
Romeo and Juliet, op. 75.
The rose and the cross for orchestra, op. 26.
Rothchild's violin.
Russia the wooden.
Russian fairy tale, symphonic poem for orchestra, op. 50.
Russian fantasy for symphony orchestra.
Russian notebook, vocal cycle.
Russian overture for orchestra, op. 31.
Russian song.
Russian suite for symphony orchestra (1952).
Russian village landscape, 4 romances on verses of S. Esenin, op. 53.
Sailor's song.
Satires (pictures of the past), op. 109.
Scherzo for piano, op. 6.
School song; for two-part chorus and piano.
School years; song for children's chorus and piano.
The Seasons, songs.
Second concert fantasia for violin and orchestra (1965).
Second piano concerto in G minor, op. 23.
Second suite from the ballet Genesis, in 4 movements (1969).
Serenade for cello and piano, op. 31.
Serenade for symphony orchestra, op. 47, no. 4 (1952).
Seven artistic-instructional pieces for violin and piano, op. 54.
The seven beauties, ballet in 4 acts (1952).
The seven beauties, suite for symphony orchestra (1949).
Seven nursery rhymes, op. 41, for voice and piano, from English folk children's songs.
Seven piano pieces (partita in F minor).
Seven pieces for clarinet and piano.
Seven romances on poems of Alexander Blok for soprano, violin, cello, and piano, op. 127.
Seven songs and a march in A, op. 89.
Seven songs for voice and piano, op. 23.
Shakh-senem, opera in 4 acts, op. 69.
Shchors; scenario and production by A. Dovzhenko, incidental music to film.
Siberian song.
Signal opera in 1 act.
Simple folk, op. 71.
Simple songs, a vocal cycle for soprano, bass, and piano (1956).
Sinfonietta for string orchestra.
Sinfonietta in A major, op. 10 (1910).
Sinfonietta in G minor for string orchestra (1953).
Sinfonietta no. 1 for orchestra, op. 41 (1948).
Sinfonietta no. 2 for string quartet and timpani, op. 74 (1960).
Sinfonietta no. 2 in A minor for string quartet, op. 68 (1945–46).
Sinfonietta on Russian themes for orchestra, op. 43.
The sisters (part one); incidental music to film.
The sisters, op. 83; opera in three parts, with prologue and epilogue.
Six Hindu melodies for voice and piano (+violin), op. 51.
Six pieces for string quartet and harp, op. 16 (1966).
Six romances for voice and piano, op. 45.
Six romances on verses by British poets for low male voice and piano, op. 62.
Six romances to lyrics by Alexander Pushkin.
The Smolensk horn.
Snow is falling.
So much to do in the morning; song for children's chorus and piano.
Soldier's marching song, op. 121.
Solemn march for wind orchestra, op. 76.
Solemn march.
Solemn ode (to the 30th anniversary of October).
Solemn overture for orchestra, op. 72.
Some songs of the wise crocodile (from "The talks of the wise crocodile" radio program), nos. 1–3.
Some songs of the wise crocodile (from "The talks of the wise crocodile" radio program), nos. 4–6.
Son of the sun, opera, op. 62.
Sonata for cello and piano (1966).
Sonata for cello and piano (1957).
Sonata for cello and piano, op. 49 (1961).
Sonata for cello and piano, op. 51, no. 3.
Sonata for cello and piano, op. 21 (1945).
Sonata for clarinet and piano, op. 1 (1952).
Sonata for clarinet and piano, op. 28 (1945).
Sonata for flute and piano, op. 44 (1958).
Sonata for flute and piano.
Sonata for harp and piano, op. 46.
Sonata for oboe and piano.
Sonata for piano (1963).
Sonata for piano and cello, op. 88.
Sonata for piano, no. 1, op. 12.
Sonata for piano, op. 10.
Sonata for piano, op. 34.
Sonata for solo violin (1960).
Sonata for solo violin, op. 115 (1947).
Sonata for trumpet and piano.
Sonata for viola and piano, op. 51, no. 2.
Sonata for viola solo.
Sonata for violin and piano (1959).
Sonata for violin and piano, op. 134.
Sonata for violin and piano, op. 43 (1928).
Sonata for violin and piano, op. 70 (1947).
Sonata for violin and piano, op. 51, no. 1.
Sonata for violin and viola, op. 35.
Sonata in D minor.
Sonata in E-flat major for piano.
Sonata in memory of Sergei Prokofiev for piano, op. 4 (1956).
Sonata in three movements.
Sonata no. 1.
Sonata no. 1 for cello solo, op. 18.
Sonata no. 1 for clarinet and piano (1965).
Sonata no. 1 for clarinet and piano.
Sonata no. 1 for piano.
Sonata no. 1 for piano, op. 1.

Sonata no. 1 for piano, op. 3.
Sonata no. 1 for piano, op. 5.
Sonata no. 1 for cello solo, op. 72 (1960).
Sonata no. 1 for violin and piano, op. 43 (1956).
Sonata no. 1 for violin and piano, op. 12 (1943).
Sonato no. 2.
Sonata no. 2 for cello and piano, op. 81 (1948–49).
Sonata no. 2 for cello and piano, op. 63 (1965).
Sonata no. 2 for clarinet and piano (1965).
Sonata no. 2 for piano, op. 7.
Sonata no. 2 for piano, op. 17.
Sonata no. 2 for violin and piano (1970).
Sonata no. 3 for piano, op. 15.
Sonata no. 4.
Sonata no. 5 for piano, p. 64, no. 1 (1907–08/1917/1944).
Sonata no. 5 for violin and piano, op. 53 (1953).
Sonata no. 6 for piano, op. 64, no. 2 (1908/1917/1944).
Sonata no. 7 for piano, op. 82 (1949).
Sonata no. 8 for piano, op. 83 (1949).
Sonata no. 9 for piano, op. 84 (1949).
Sonata-fantasia, piano quartet, op. 64 (1945).
Sonata-fantasy for piano.
Sonatina.
Sonatina for oboe and piano.
Sonatina for piano (1950).
Sonatina for violin and piano, op. 61 (1966).
Sonatina for violin and piano, op. 46 (1949).
Sonatina in C major for piano.
Sonatina in E minor for piano, op. 57 (1942).
Sonatina no. 1 for harp.
Sonatina no. 1 for violin and piano.
Sonatina no. 2 for harp.
Sonatina no. 2 for piano.
Sonatina no. 2 for violin and piano.
Sonatina no. 2. For piano.
Sonatina no. 3 for harp.
Sonatina no. 3 for piano.
Sonatina no. 4 for piano lyrical.
Song about friendship between Soviet and Chinese children, for voice and piano.
Song about Moscow.
Song about Russia; for voice, men's chorus, and piano.
Song about the brightly clad hiker; for children's chorus and piano.
Song about the locomotive whistle, for voice and piano.
Song about the young pioneer banner; for voice and piano.
Song for violin and piano, op. 6BIS.
Song from the radio production "Don Quixote"; for voice and piano.
Song of frontier-guards, for voice and piano.
Song of morning, spring, and peace, op. 57, cantata for children's chorus & symphony orchestra.
The song of the great rivers, op. 95.
Song of the old captain; from a stage version of Dicken's "Dombey and Son."
Song of the party membership card, for low voice or chorus and orchestra.
Song of the varicoloured ties league; for children's chorus and piano.
Song of the young Muscovite and Song about Moscow; from the opera "In flames (at Moscow), op. 37."
Song of true friends, for children's chorus and piano.
Song of young girl.
Song-poem in honor of the Ashugs for violin and piano.
Songs and dances of death.
Songs from the film "Anton Ivanovich is angry."
Songs from the film "Her first year at school," scenario by A. Zak.
Songs of freedom.
Songs of freedom.
Songs of the present day, a symphony cycle in 9 movements (1964).
Songs of war and peace.
Songs to words by Alexander Prokofiev.
Songs to words by Robert Burns.
Songs, op. 34; for voice and piano.
The Soviet east, suite for orchestra, op. 75.
Spanish songs for soprano and piano, op. 100.
Spartacus.
Spring came (1958).
Spring sings, op. 58, operetta in three acts.
St. Petersburg song.
Starlet; song for children's chorus and piano.
State anthem of the Armenian SSR for chorus and symphony orchestra.
The stone.
The stone flower.
The storm, suite for orchestra from the film music. The story of a real man.
Story of the battle for the Russian land, op. 17.
String quartet (1969).
String quartet no. 1.
String quartet no. (1947).
String quartet no. 1 (1964).
String quartet no. 1 in C-major, op. 49.
String quartet no. 1, op. 2.
String quartet no. 1, op. 33, no. 1 (1929–30).
String quartet no. 1, op. 33.
String quartet no. 10, op. 118 in A-flat major.
String quartet no. 10, op. 67 no. 1 (1907/rev. 1945).
String quartet no. 11, op. 122 in F-minor.
String quartet no. 11, remembrances, op. 67 no. 2 (1945).
String quartet no. 12 in D flat major in 2 movements, op. 133.
String quartet no. 12, op. 77 (1947).
String quartet no. 13 in B flat minor.
String quartet no. 13, op. 86 (1949).
String quartet no. 2.
String quartet no. 2 (1946).
String quartet no. 2 (1956).
String quartet no. 2 in A-major, op. 68.
String quartet no. 2, op. 33, no. 2 (1930).
String quartet no. 2, op. 19.
String quartet no. 2, op. 75.
String quartet no. 3 in F major, op. 73.
String quartet no. 3, op. 28.
String quartet no. 3, op. 33, no. 3 (1910).
String quartet no. 3, op. 67.
String quartet no. 4 in D-major in four movements, op. 83.
String quartet no. 4, op. 20 (1945).
String quartet no. 4, op. 29.
String quartet no. 4, op. 33, no. 4 (1909–10/rev. 1937).
String quartet no. 4, op. 83.
String quartet no. 5 in B flat major in three movements, op. 92.
String quartet no. 5, op. 33.
String quartet no. 5, op. 47 (1938–39).
String quartet no. 6 in G-major in 4 movements, op. 101.
String quartet no. 6, op. 34.
String quartet no. 6, op. 49 (1939–40).
String quartet no. 7 in F-sharp minor, op. 108.
String quartet no. 7, op. 41.
String quartet no. 7, op. 55 (1941).
String quartet no. 7, op. 59 (1957).
String quartet no. 8 in C-minor, op. 110.
String quartet no. 8, op. 53.
String quartet no. 8, op. 59 (1942).
String quartet no. 8, op. 66 (1959).
String quartet no. 9 in E-flat major, op. 117.
String quartet no. 9, op. 58.
String quartet no. 9, op. 62 (1943).
String quartet no. 9, op. 80 (1963).
String quartet number 2 (1961).
String quartet number 3 (1967).
Stylizations, 9 pieces in the form of ancient dances for piano, op. 73 (1946).
Suburban settlement lyrical songs.
Suite.
Suite for balalaika (or violin) and piano, op. 69.
Suite for full orchestra from the Vyborg side, op. 50A.
Suite for jazz orchestra, no. 1.
Suite for piano.
Suite for small symphony orchestra, op. 26 (1945).
Suite for string quartet (1949).
Suite for string quartet (from film music to Peter I).
Suite for symphony orchestra (1950).
Suite for viola and piano (1959).
Suite for violin and piano, op. 58 (1956).
Suite from incidental music to "Don Quixote".
Suite from incidental music to "Much ado about nothing".
Suite from music to Lavrenev's play, "Lermontov."
Suite from music to the ballet Mirandolina, op. 122A.

Suite from music to the film, "Battle of Stalingrad."
Suite from the ballet Tarasbulba, op. 92A.
Suite from the ballet The bronze horseman, op. 89A.
Suite from the ballet The shore of hope in 7 movements (1959).
Suite from the ballet, The gypsies, op. 90A.
Suite no. 1 from the ballet The red poppy, op. 70A.
Suite no. 2. from the ballet The red poppy, op. 70B.
Suite on folk themes for violin and piano, op. 132.
Suite or violin solo.
Summer camp song; for children's chorus and piano.
Sun over the steppe, opera, op. 27.
The Sun shines over our Motherland, op. 90.
Symphonic aria for cello and string orchestra, op. 43.
Symphonic dances on mari themes (1951).
Symphony (1958).
Symphony for mezzo-soprano and chamber orchestra, op. 55 (1962).
Symphony for string orchestra and percussion in 3 movements (1963).
Symphony in C minor, op. 11.
Symphony no. 1.
Symphony no. 1 (1945).
Symphony no. 1 E-flat minor (1959).
Symphony no. 1 for large orchestra, op. 35.
Symphony no. 1 for symphony orchestra, op. 20.
Symphony no. 1 in B minor (1943).
Symphony no. 1 in F minor, op. 6.
Symphony no. 1 in F-minor, op. 10.
Symphony no. 1 in memory of Sergei Kirov.
Symphony no. 1, op. 10 (1942).
Symphony no. 1, op. 12 (1955).
Symphony no. 1, op. 4 (1935).
Symphony no. 1, op. 5.
Symphony no. 10 in E minor, op. 93.
Symphony no. 11 in G minor, op. 103.
Symphony no. 11, op. 34 (1931–32).
Symphony no. 12 in D-minor, op. 112.
Symphony no. 12, op 35 (1931–32).
Symphony no. 13 in B flat minor, op. 113.
Symphony no. 13, op. 36 (1933).
Symphony no. 14, op. 135.
Symphony no. 15 in A major for full orchestra, op. 141.
Symphony no. 17, op. 41 (1936–37).
Symphony no. 18, op. 42 (1937).
Symphony no. 2.
Symphony no. 2 (1946).
Symphony no. 2 (1968).
Symphony no. 2 in a major, "glory to light" (1962).
Symphony no. 2 in B major, op. 14 (October, a symphonic dedication).
Symphony no. 2 in C minor.
Symphony no. 2 in E minor.
Symphony no. 2, Motherland, op. 39.
Symphony no. 2, Youth.
Symphony no. 2, Greek Epigrams (1963).
Symphony no. 2, op. 11.
Symphony no. 2, op. 222.
Symphony no. 2, op. 9 (1942/1944).
Symphony no. 20, op. 50 (1940).
Symphony no. 26, op. 79 (1948).
Symphony no. 3.
Symphony no. 3 (1957).
Symphony no. 3 for chamber orchestra, op. 36.
Symphony no. 3 in C major, op. 17.
Symphony no. 3, Little for string orchestra.
Symphony no. 3, "in memory of my father" (1964).
Symphony no. 3, op. 20 for full orchestra and chorus.
Symphony no. 3, op. 30.
Symphony no. 3, op. 45 (1949).
Symphony no. 3, romantic.
Symphony no. 4 (1965).
Symphony no. 4 for full orchestra, op. 43.
Symphony no. 4, op. 1 (1957).
Symphony no. 4, op. 17 (1917–18).
Symphony no. 4, op. 24.
Symphony no. 5 (1968).
Symphony no. 5 in D minor, op. 47.
Symphony no. 5, B flat, op. 100 (1944).
Symphony no. 5, op. 56.
Symphony no. 5, op. 72 (1962).
Symphony no. 6 in B minor, op. 54.
Symphony no. 6, op. 79 (1963).
Symphony no. 7.
Symphony no. 7 in C major, op. 60.
Symphony no. 7, in C, op. 131 (1952).
Symphony no. 7, op. 81 (1964).
Symphony no. 8, op. 65.
Symphony no. 8, op. 83 (1964).
Symphony no. 9 in E flat major, op. 70.
Symphony number 2 in D major (1967).
Symphony-overture on two Russian themes by Mikhail Glinka.
Symphony-suite no. 23, op. 56 (1941).
A tale about a woman who would not recognize the Soviet Republic song.
The taming of the shrew comic opera, op. 46.
Tarantella and prelude for two pianos.
A teacher's song; for voice and chorus and piano.
The tear song.
Telescope II for large orchestra.
Tempo; song for two-part chorus and piano.
Ten concerto etudes for piano in two books, book 1.
Ten concerto etudes for piano in two books, book 2.
Ten days at Kastornoye.
Ten poems on texts by revolutionary poets for chorus a capella, op. 88.
Ten Russian folksongs.
Testament, symphonic poem, op. 73.
Theme and variations for cello and piano, op. 67 (1953).
There's a girl waiting for me; song for medium voice or unison chorus and piano.
Third piano concerto in D major, op. 50.
Third symphony for strings and kettledrums (1964).
Those black eyes.
Those poor hamlets.
Thou hast left me ever, Jamie, for voice and piano.
Three concert arias for high voice and orchestra.
Three easy pieces.
Three fantastic dances for piano, op. 5.
Three generations; Komsomol song for voice or two-part chorus and piano.
Three jazz melodies for piano (1969).
Three little pieces and two dances for piano, op. 23.
Three lyrical poems for piano, op. 80.
Three lyrical songs for voice and piano.
Three mari melodies (1947).
Three mari songs (1948).
Three octaves by Rasul Gamzatov; for mezzo-soprano and piano, op. 74.
Three piano pieces, op. 30; transcription of excerpts from the opera "Colas Breugnon.".
Three pieces for children for piano (1952).
Three pieces for piano, op. 9.
Three pieces for two pianos.
Three pieces for voice and orchestra, op. 33.
Three pieces for voice and piano on texts of pushkin, op. 31.
Three riddles for piano no. 1, op. 19.
Three Singalese melodies for baritone and piano, op. 55.
Three sonatinas for piano, op. 12.
Three song-dances, op. 70; for voice and piano.
Three songs about Lenin, op. 92 for children, choruses with piano accompaniment.
Three songs to the verses by T. Tsvetayeva for middle voice and piano, op. 48.
Three songs, op. 16; for voice and piano.
Three young pioneer songs, for children's chorus and piano.
To her, 6 romances for voice and piano, op. 40.
To spring, op. 138.
To the heroes of the patriotic war.
To the young ones.
The tobacco captain musical comedy.
Toccata for piano (1951).
Toccata in E-flat minor for piano.
The treasurer's wife opera.
Trio.
Trio for piano, violin and cello (1948).
Trio for piano, violin, and cello "in memory of our perished children", op. 63 (1943).
Trio for violin, cello, and piano, op. 39.
Trio for violin, cello, and piano, op. 74.
Trio for violin, viola, and cello, op. 2.
Trio no. 1 for piano, violin, and cello, op. 8.

Trio no. 2 in E minor for piano, violin, and cello, op. 67.
Triptych for violin and piano.
Triumphal poem.
Trombone concerto.
Turkish fragments, suite no. 3, op. 62.
Turkish march, op. 55.
Turkmen portraits, suite for orchestra, op. 68.
Twelve investions for organ, op. 27.
Twelve piano pieces (partita), book 1 (nos. 1–6).
Twelve piano pieces (partita), book 2 (nos. 7–12).
Twelve pieces for organ, op. 84.
Twelve polyphonic pieces for piano (1968).
Twelve preludes.
Two brothers; song for two-part chorus and piano.
Two choruses by A. Davidenko, op. 124.
Two dance pieces for piano (1955).
Two fables by Krylov, op. 4.
Two fairy tales for piano, op. 51.
Two fugues for piano.
Two herbaic songs for voice and piano, op. 29.
Two little fir-trees; song of children's chorus and piano.
Two lyrical verses of A. Pushkin for voice and piano, op. 22.
Two partitas, no. I.
Two partitas, no. II.
Two piano sonatinas (1960).
Two pieces for cello and orchestra, op. 93.
Two pieces on themes of Armenian folk songs.
Two pieces on themes of Uzbek folk songs.
Two Pushkin waltzes for symphony orchestra, op. 120.
Two romances, op. 55 to words by A. Kovalenko; for tenor and piano.
Two Russian folk songs, op. 43; for bass or baritone and piano.
Two Russian folksongs for chorus a capella, op. 104.
Two songs from incidental music to the play Don Cesar De Bazan.
Two songs from incidental music to the play "Two songs" by N. Shestakov, op. 25; for children's chorus and piano.
Two songs from the film "The Aerograd"; for two-part chorus and piano.
Two songs from Victor Hugo's Ruy Blas.
Two songs to words by S. Vilensky.
Two songs, op. 32; for voice and piano.
The undertaker musical-choreographic illustrations.
The unforgettable year 1919, op. 89.
Unity, op. 95.
USSR-the shock brigade of the world proletariat, symphonic dithyramb for speaker, men's chorus collective.
Uzbek suite for orchestra, op. 104.
Variations for cello and orchestra, op. 142.
Variations for piano (1953).
Variations for solo violin (viola), op. 46 (1960).
Variations on a theme by Glinka.
Variations on a theme of Glinka.
Variations on a theme of Mozart for french horn and piano.
Victorious spring, op 72.
Victory, overture, op. 86.
Violin concerto in C major, op. 43.
Violin concerto no. 1 in G minor (1956).
Violin concerto no. 2 in C sharp minor, op. 129.
Violin concerto, op. 12 (1964).
Virinea: the Gallic invasion.
Visitors to the kitchen-garden, op. 67; action-game (roundelay) for children's chorus and piano.
Vocal monologues, op. 33; for voice and orchestra.
Vocalise in A minor for voice and piano (fr. Three vocalises, op. 3).
A voice from the chorus.
The Volga and the Don; song for chorus and piano.
Volochaevsk's days, op. 48.
The Vyborg side, op. 50.
Waltz from "Pirogov", op. 76a.
Waltz from the human comedy.
Waltz from the operetta "Spring sings," op. 58.
Waltz, Leamington, from incidental music to the play "Dombey and son" after Charles Dickens.
Waltz-caprice in C-sharp minor for piano.
War and peace.
Wash 'em clean, 1-act opera for children (1955).
We can't believe (song about Lenin).
We'll walk the length of our country; song for voice and piano from T. Solodar's play "Leaving footprints on earth."
The wedding musical comedy in 4 acts, op. 70.
Wedding suite from "The tale of the stone flower."
White night, op. 17 (1967).
Wind quintet, in 2 movements (1964).
Woodland.
YCL members' battle song; for two-part chorus and piano.
The year 1918 dawned over Russia; song for voice and piano.
A year as long as a lifetime, op. 120.
A year as long as a lifetime, op. 120a.
The young girl and death, oratorio after M. Gorky (1963).
The young guards, op. 75.
The young guards, op. 75A.
The young pioneer group; song for children's chorus and piano.
Young pioneer palace, Oktyabryonok (primary schoolchildren); song for voice and piano.
Young pioneer songs, cantata (1972).
The youth of Maxim, op. 41 (1).
Youth overture, op. 8 (1951).
The youth sets off on a journey; song for voice and piano.
The Zaporozhy Cossacks symphonic picture-ballet, op. 64.
Zoya (who is she?), op. 64. Schrimer (G.), Inc.
Fiery ring (a) (1967).
Lyric verses.
Motherland (1957).
Northern landscape.
Sonato for cello and piano (1955).
String quartet (1964).
Virinea (1967).

SFP. See Fildebroc, SFP, FR3, UGC

Shepard, David H

On approval.

Societe du Cinema Pantheon

Une partie de campagne.

Somerville House Production (Montreal). See Fildebroc-Capac & Somerville House Production

Son et Lumiere

Petit theatre de Jean Renoir.

Soyuzmultfilm Studios

Babushkin zontik.
Balerina na korable.
Cheburashka.
Chuzhie sledi.
Ded Moroz i leto.
Ded Moroz i seriy volk.
Diadya Misha.
Falshivaya nota.
Fantik.
Foca-na vse ruki doka.
Gorni master.
Hrabrets-udalets.
Icar i mudretsi.
Kak gribi voevali s gorohom.
Kak livionok i cherepaha pesniu peli.
Kak Masha possorilas s podushkoj.
Kak utionok-muzikant stal futbolistom.
Kapriźnaya printsessa.
Kontakt no. 1.
Kuda letish, Vitar?
Legendi Peruanskikh Indeitsev.
Lisa, medved i mototsikl s kaliaskoy.
Masha bolsme ne lentiaika.
Meshok yablok.
Mi s Dshekom.
Mishonok Pik.
Molodilniye yabloki.
Nasledstvo volshebnika Bahrama.
Nu pogodi no. 1.
Nu pogodi no. 12.
Nu pogodi no. 2.
Nu pogodi no. 3.
Nu pogodi no. 4.
Nu pogodi no. 5.
Nu pogodi no. 6.
Nu pogodi no. 7.
Nu pogodi no. 8.
Nu pogodi no. 9.
Nu pogodi! no. 10.
Nu pogodi! no. 11.

O tom kak gnom pokinul dom.
Obeziana s ostrova Suragasima.
Ostrov.
Podarok dlia samogo slabogo.
Poni begaet po krugu.
Poslednaya nevesta zmeya gorinicha.
Pro dudochku i ptichku.
Prometei.
Rasskazi starogo moriaka.
Shakalionok i verbliud.
Shapokliak.
Stoikiy olovianiy soldatik
Talant i poklonniki.
Umka.
Utenok kotoriy ne umel igrat v futbol.
V gostiah u leta.
V tridesiatom veke.
Veselaya karusel no. 1.
Volshebnaya palochka.
Vozvraschenie s Olimpa.
Zaichonok i mooha.
Zhiraf i ochki.

Stewart (Jim) Executors of the Estate of

Appleby on Ararat.
Appleby talking.
Appleby talks again.
Christmas at Candleshoe.
From London far.
The guardians.
Hamlet, revenge!
The journeying boy.
The man from the sea.
The man who wrote detective stories.
Mark Lambert's supper.
The new Sonia Wayward.
Operation Pax.
A private view.
The secret vanguard.
There came both mist and snow.
Three tales of Hamlet.
A use of riches.

Succession Picasso

The absinthe drinker.
Acrobate a la boule (fillette e la boule).
Acrobate et jeune arlequin.
L'acteur.
Les adieux du pecheur.
Les adolescents.
Les amants de la rue.
Angel Fernandez de Soto au cafe.
Angel Fernandez de Soto avec une femme.
Arcadi mas i fontdevilla.
Arlequin a cheval.
Arlequin accoude.
Arlequin assis.
Au lapin agile (arlequin au verre).
L'aubade.
Autoportrait.
Autoportarit en gentilhomme du XVIIIe siecle.
Autoportrait (profil).
Autoportrait (tete de jeune homme).
Autoportrait (Tete).
Autoportrait a l'age de trente-six ans.
Autoportrait a la palette.
Autoportrait aux cheveux courts.
Autoportrait mal coiffe.
Autoportrait yo.
Azul y blanco.
Bacchanalia.
Baraque de foire, montmartre.
Bohemienne devant la musciera.
Bouffon et jeune acrobate.
Le bouquet.
Brasserie a montmartre.
Bullfight.
Bust de femme.
Bust of a young man (academic study).
Buste D'home au chapeau.
Buste de femme.
La buveuse d'absinthe.
Cafe a royan.
Caricatures.
Une carriere.
Celestina.
La chambre blue (le tub).
Le chemineau.
Cheval eventre.
Claude et Paloma dessinant.
La coiffure.
Composition a la tete de mort.
Composition a la tete de mort (etude).
Compotier et guitare.
Contemplation.
Corida.
Cordia et la mort du torero.
Corida la mort de la femme torero.
La coruna.
Le couple.
Course de taureaux.
Course de taureaux (corrida).
Course de taureaux et pigeons.
Les courses.
Dans le laboratoire de l'art.
Les demoiselles torero.
Les deus anmies.
Les deus freres.
Deux buveurs catalans.
Deux enfants.
Deux femmes nues.
Les deux freres.
Deux modeles vetus.
Deux nus et un chat.
Deux personnages.
Les deux saltimbanques (Arlequin et sa compagne).
Deux saltimbanques avec un chien.
Le divan.
Don quixote and Sancho Panza.
Dos soldados a caballo y un torreon.
Double study of a bearded man in profile.
Double study of the left eye.
The dream.
The dwarf.
L'enfant au pigeon.
L'enfant de choeur.
L'entree de la plaza a barcelone.
L'entrevue (les deux soeurs).
L'etreinte.
Etude acdemique.
Etude d'un platre (d'apres l'antique).
Etude pour femme se coiffant.
Etude pour L'entrevue.
Etude pour la vie.
Etude pour Les Demoiselles d'Avignon (1).
Etude pour Les Demoiselles d'Avignon (2).
Etude pour Les Demoiselles d'Avignon.
Etudes dans un livre d'ecole.
Etudes des bateaux a voiles.
Etudes pour autoportrait a la palette.
Evocation (L'enterrement de casagemas).
Famile d'acrobates avec singe.
Famille d'arlequin.
Famille de bateleurs.
La famille de saltimbanques (les bateleurs).
Famille de saltimbanques.
Le famille soler.
The family.
Faune devoilant une femme.
Female nude from behind (after arcadi mas i fontdevilla).
Femme.
Femme a l'eventail.
Femme a la chemise.
Femme a la corneille.
Femme accroupie et enfant.
Femme au casque de cheveus (la femme de l'acrobate).
Femme au chapeau a plumes.
Femme au collier de gemmes.
Femme au mouchoir.
Femme aux bijoux.
Femme couchee sur la plage.
Femme dans la loge.
Femme ecrivant.
Femme en bleu.
Femme lisant.
Femme nu cochee au colier.
Femme nue assise et femme nue debout.
Femme nue assise.
Femme nue aux jambes croisees.
Femme nue couchee.
Femme nue debout de profil.
Femme nue sur fond rouge.
Femme s'appuyant sur une table e trois visages de profil.
Femme se coiffant.
Femmes a leur toilette.
Femmes algeriennes.
La fenetre fermee.
Feuilles d'acanthe.
Feuilles d'etudes a la Greco.
La fillette aux pieds nus.
Fillette nue au panier de fleurs.
Fleurs exotiques.
Fleurs sur une table.
Le fou.
French cancan.
Garcon a la pipe.
Garcon au chien.
Garcon nu.
Girl before a mirror.
Le gourment (Le gourmand).
Grande nature morte.
Le gueridon.
Guitare, partition, verre.
Gurenica.
Le harem.
Head of a boy (academic study).
Hercule avec sa massue.

L'hetaire.
Les hirondelles.
Hollandaise a la coiffe.
L'homme a la casquette.
L'homme au mouton (d'apres l'antique).
Homme en bleue (portrait d'homme).
Homme et femme.
Interieur des quatre gats.
L'Italienne.
Jacqueline aux mains croisees.
Jaqueline aux fleures.
Jeanne (nu couche).
Jeune espagnol.
Jeune fille nue debout.
Joie de vivre.
Joueur d'orgue de barbarie et petit arlequin.
The kiss.
Landscape.
La lecture.
Le livre ouvert.
La madrilene (tete de jeune femme).
La maison bleue.
Maison de campagane.
Mansion dans un champ de ble.
Le maquereau (composition allegorique).
The matador.
Maya et la poupee.
Menage des pauvres.
Meneur de cheval nu.
Menu des quatre gats.
La mere (mere tenant deus enfants).
Mere et enfant (baladins).
Mere et enfant au bord de la mer.
Mere et enfant au fichu.
Mere et enfant aux fleurs.
Mere et enfant et etudes de mains.
Mere et enfant aux fleurs.
Mere et enfant et etudes de mains.
Mere et enfant.
Minotaure et sa proie.
The mirror.
Misereuse accroupie.
La mort d'arelquin.
La mort de Casagemas (Casagemas dans son cercueil).
La mort de casagemas.
Le moulin de la galette.
Le moulin de la Galette.
Nature morte (le dessert).
Nature morte a la tete de toro noire.
Nature morte devant une feinetre.
Nature morte sur la commode.
Neuf tetes.
Les noces de Pierrette.
Nu coche.
Le palais des beaux-arts a Barcelone.
Paul en arlequin.
Paul en Pierrot.
Les pauvres au bord de la mer.
Paysage de Juan-Les-Pins.
Pierreuse, la main sur l'epaule.
Pierreuses au bar.
Pierrot et danseuse.
Pigeons et lapins.
Pigeons.
Portrait d'Allan Stein.
Portrait de bibi la puree.
Portrait de Fernande Olivier au foulard.
Portrait de Gertrude Stein.
Portrait de Gustave Coquoit.
Portrait de Jaime Sabartes.
Portrait de Jime Sabartes (Le bock).
Portrait de Josep Cardona (Homme a la lampe).
Portrait de Juan Vidal i Ventosa.
Portrait de la mere de l'artiste.
Portrait de la tante pepa.
Portrait de madame bendetta canals.
Portrait de Madame Soler.
Portrait de Mateu Fernandex de Soto.
Portrait de Nusch Eluard.
Portrait de Philippe IV (d'apres Velazquez).
Portrait de Sebastian Junyent.
Portrait de Sebastian Junyer-Vidal.
Portrait de Sebastian Junyer-vidal.
Portrait de Suzanne Bloch.
Portrait de sylvette.
Portrait de tailleur Soler.
Portrait du pere de l'artiste.
Portrait of Dora Maar.
Portrait of Marie Therese.
Portrait of Pedro Manach.
La premiere communion.
Reclining nude.
Reclining nude with Picasso at her feet.
Le repas d'aveugle.
Le repas frugal.
La repasseuse.
Rone des enfants.
Salome.
Les saltimbanques.
Science et chrite.
Sculpteur et modele agenouille.
Le sculpteur.
Seated old man.
Seated woman in front of window.
La sieste.
Spanish woman from Majorca (study for the acrobats).
Studio with plaster head.
Study of the left arm (after a plaster cast).
Tete.
Tete d'homme.
Tete d'homme a la Greco.
Tete de femme.
Tete de femme (fernande).
Tete de femme en profil.
La toilette.
La toilette de la mere.
Les toits bleus.
Toro en valauris.
Les trois hollandaises.
Les trois musiciens.
Le verre bleu.
La vie.
Le vieux guitariste aveugle.
Le vieux juif (le viellard).
Vive la France.
Vollard suite no. 85.
Woman with a flower.
Woman with blue hat.
Yo Picasso-self portrait.

Teledis Company, SA

De Mayerling a Sarajevo.
Madame De.
Le plaisir.
Yoshiwara.

Teledis

Montparnasse 19.
Pattes blanches.
Yeux sans visage.

Thedinga, Mrs. S.C. & J.W. Prescott

Dead and not buried.
Jerusalem journey.
The lost fight.
The man on a donkey.
Son of dust.
The unhurrying chase.

Toei Animation Company, Ltd.

Ararara! tama ga nai!
Ayaushi! Kuririn.
Bulma to son goku.
Derukai!? shugyo no iryoku.
Deta! Kyoteki Gillan.
Dragon ball ubawareru.
Dragon ball—makafushigi dai bouken.
Dragon ball—Mashinjo no nemurihime.
Dragon ball—Shenron no densetsun.
Flying pan yama no gyumao.
Fushigina onnanoko lunch.
Gekitotsu! pawa tai pawa.
Goku no dai henshin.
Goku no ribal sanjo!
Goku saidai no pinchi.
Hitosarai youkai Oolong.
Inochigake! gyunyu haitatsu.
Kame sennin no kinto un.
Kamesenryu kitsui shugyo.
Kamke sennin no kamehameha.
Kesshosen da! kamehameha.
Kuririn Hisshi no daikobosen.
Mayonaka no houmonsha tachi.
Shenron eno negai.
Shugyou ishi sagashi.
Tate Goku! osorubeki tenku pekejiken.
Tenkaichi budokai hajimaru.
Tsuini dragon arawaru!
Tsuyokute warui sabaku no Yamucha.
Usagi oyabun no tokuiwaza.
Yamucha vs. Jacky Chun.

Tolkien (J.R.R.) Estate of

Farmer Giles of Ham.
The fellowship of the ring.
The hobbit.
Homecoming of Beorhthelm's son.
Leaf by Niggle.
On fairy stories.
The return of the king.
The two towers.

Trinity College, Oxford

The drum.
Inspector Hanaud investigates.

Trustees of the Maurice Baring Will Trust. SEE Baring (Maurice) Will Trust, Trustees of

Trustees of the Robert Graves Copyright Trust. SEE Graves (Robert) Copyright Trust, Trustees of

Ucelli Production

Interdit aux moins de 13 ans.

Remparts d'argile.

UGC DA International

Le caporal epingle.
Le corbeau.
Le crime de Monsieur Lange.
Le dejeuner sur l'herbe.
Le journal d'un cure de campagne.
La Marseillaise.
Le testament du Dr. Cordelier.

UGC. SEE Fildebroc, SFP, FR3, UGC

United Artists. SEE Fildebroc, United Artists

Viscount Montgomery of Alamein CBE

An approach to sanity: a study in East/West relations.
Command in battle.
El Alamein to the River Sangro.
Normandy to the Baltic.

Warne (Frederick) & Company, Ltd.

The fairy necklaces.
Flower fairies of the autumn.
Flower fairies of the garden.
Flower fairies of the spring.
Flower fairies of the summer.
Flower fairies of the trees.
Flower fairies of the wayside.
A flower fairy alphabet.
Old rhymes for all times.

Watt (A.P.), Ltd.

The altar of honour.
The black knight.
By request.
Charles Rex.
Dona Celestis.
The electric torch.
The gate marked private.
Honeyball farm.
The house of happiness and other stories.
The juice of the pomegranate.
The live bait and other stories.
A man under authority.
The obstacle race.
The odds and other stories.
The passer-by and other stories.
The prison wall.
Rosa Mundi and other stories.
The serpent in the garden.
The silver wedding.
Sown among thorns.
Storm drift.
Tetherstones.
The unkown quantity.
Verses.
Where three roads meet.

Watt (W.P.) Estate of

The bravo of London.
The celestial ominbus.
The eyes of Max Carradox.
Kai Lung beneath the mulberry tree.
Kai Lung unrolls his M at.
Kai Lung's golden hours.
A little flutter.
Max Carrados mysteries.
The moon of much gladness.
The specimen case.

Wells (H.G.) Literary Executors of the Estate of

After democracy.
Anatomy of frustration.
The Camford visitation.
The common sense of war and peace.
The conquest of time.
Crux Ansata.
The dream.
The fate of homo sapiens.
The idea of a world encyclopaedia.
Men like Gods.
Mind at the end of tether.
The outlook for homo sapiens.
Phoenix.
The rights of man.
The secret places of the heart.
A short history of the world.
The story of a great schoolmaster.
Travels of a republican radical in search of hot water.
A year of prophesying.

Westside International

El dedo en el gatillo.
El halcon de Castilla.
Las siete magnificas.

Yeats, Anne

The speckled bird.

Dated: August 26, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–22138 Filed 8–29–96; 8:45 am]

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federal register

Friday
August 30, 1996

Part IV

Department of Education

Intent To Repay to the Maine Department of Education Funds Recovered as a Result of Final Audit Determinations; Notice

DEPARTMENT OF EDUCATION

Intent To Repay to the Maine Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is hereby given that under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the U.S. Secretary of Education (Secretary) intends to repay to the Maine Department of Education (Maine), under a grantback arrangement, an amount equal to 75 percent of the $36,924 recovered by the U.S. Department of Education (Department) as a result of audit findings in 3 audits covering fiscal years (FYs) 1987, 1988, and 1989 (ACNs: 01–93025, 01–93245, and 01–13035G) and arising from Maine's administration of the Perkins Vocational Education Program; the Adult Education Program; the State Education Agency (SEA) Desegregation Program; and Title II of the Education for Economic Security Act of 1984 (EESA, Title II) program. The $36,924 at issue in this notice of proposed grantback was recovered by the Department under the terms of two settlement agreements between Maine and the Department that related to findings resulting from audits of Maine's administration of these four programs. In these audits, the auditors reviewed the financial and program operations of the Maine Department of Education, including an evaluation of Maine's internal administrative control systems for a variety of Maine's education programs for FYs 1987, 1988, and 1989. This notice describes Maine's plan for the use of grantback funds repaid in the specific program areas herein described and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: All comments must be received on or before September 29, 1996.

ADDRESSES: All written comments should be addressed to Dr. Marcel R. DuVall, Chief, Finance Branch, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Mary E. Switzer Building, Room 4320, MS–7324), Washington, D.C. 20202–7324.

FOR FURTHER INFORMATION CONTACT: Dr. Marcel R. DuVall. Telephone: (202) 205–9502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

Under two settlement agreements entered into by the Department and Maine, the Department recovered $97,935 (ACNs: 01–93025, 01–93245, 01–13035G) and $125,635 (ACNs: 01–93245 and 01–13035G) from Maine in full resolution of all claims arising from audits of the Maine Department of Education, covering FYs 1987, 1988, and 1989. On April 2, 1996, the Department's Office of Special Education and Rehabilitative Services published a notice of intent to award grantback funds in response to a grantback request submitted by Maine relative to the settlement repayments resolving the findings arising from Maine's administration of Part B of the then Education of the Handicapped Act, Chapter 1 of Title I of the Elementary and Secondary Act, and the Chapter 1 Migrant Education Program. The grantback request that is the subject of this notice is separate and apart from the grantback request that was the subject of the Department's April 2, 1996 notice. This grantback notice pertains only to the $36,924 that was repaid by Maine as a result of findings arising from Maine's administration of the Adult Education Program, the Perkins Vocational Education Program, the SEA Desegregation Program, and the EESA Title II Program, for the years in question.

The Department's original claims arising from the audits conducted for FYs 1987, 1988, and 1989 were contained in program determination letters (PDLs) issued by various Department officials on March 27, 1991 (ACN: 01–93025), October 24, 1991, and June 29, 1992 (ACN: 01–93245), and March 31, 1992, and August 25, 1992 (ACN: 01–13035G). These claims arose, in part, from findings related to Maine's administration of funds awarded to Maine under the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2301 *et seq.* (1988) (Perkins I); the Adult Education Act, as amended by the National Literacy Act of 1991; SEA Desegregation Program, Title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000(c)–2000(c–5)); and EESA, Title II.

In the March 27, 1991, October 24, 1991, and March 31, 1992 PDLs, the Assistant Secretaries for the program areas for which the auditors issued findings determined that Maine had violated a variety of Federal regulations by improperly charging legal fees incurred by Maine's Attorney General's Office and other miscellaneous attorneys to certain Federal programs. The Assistant Secretaries further determined that the charges incurred were not based upon actual benefits received or provided to those programs or upon any cost allocation plan that equitably distributed costs to programs benefiting from the services rendered.

In the June 29, 1992 and August 25, 1992 PDLs, the Assistant Secretaries for the program areas involved determined, in part, that Maine had failed to maintain accurate time distribution records for employees who worked on more than one cost objective.

The settlement negotiations resulting from Maine's appeals of the aforementioned PDLs culminated in two settlement agreements. The settlement agreement resolving the findings contained in the March 27, 1991, October 24, 1991, and March 31, 1992 PDLs was executed on December 2, 1992. On January 8, 1993, the Department received payment of $97,935 in full settlement of the findings contained in those PDLs. The settlement agreement resolving the findings contained in the June 29, 1992 and August 25, 1992 PDLs was executed on November 8, 1994. On November 4, 1994, the Department received a payment of $125,635 in full settlement of the findings contained in those PDLs.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), the authority applicable to this grantback request, provides that whenever the Secretary has recovered funds paid under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices or procedures of the recipient that resulted in the violation of law have been corrected, and the recipient is, in all other respects, in compliance with the requirements of that program, provided that the recipient was notified of any noncompliance with those requirements and given a reasonable period of time to remedy the noncompliance;

(2) Recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459 of GEPA, Maine has applied for a grantback of $27,577, or 75 percent of the $36,924 repaid to the Department in resolution of the findings related to the Adult Education Program, the Perkins Vocational Education Program, the SEA Desegregation program, and the EESA, Title II Program, in relevant portions of the two settlement agreements discussed in section B of this notice. Maine has submitted a plan for use of the $27,577 in proposed grantback funds, consistent with the Adult Education Act, as amended by the National Literacy Act of 1991; the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Perkins II), 20 U.S.C. 2301, *et seq.*, which is currently in effect; Title IV of the Civil Rights Act of 1964; and Title II of the Elementary and Secondary Education Act of 1965, as amended (Professional Development Program), which is the successor program to the EESA, Title II Program. Maine has stated that it plans to use the grantback funds to provide monitoring and technical assistance for its adult education programs; host regional meetings and workshops for adult education programs at the local educational agency (LEA) level; provide funds for vocational education staff development activities; upgrade computer equipment used by State vocational education administrators; host a conference related to the SEA Desegregation programs; and sponsor regional meetings for educators under the Professional Development Program. Specifically, Maine plans to use the requested grantback funds totaling $27,577, to—

(1) Pay travel expenses for three consultants who will monitor Adult Basic Education (ABE) programs. The consultants will base the monitoring upon the performance objectives contained in the FY 1996 ABE application. The consultants will also provide technical assistance for adult education program development and improvement ($500);

(2) Provide at least two regional meetings and workshops for adult basic education administrators and staff who work in local adult education programs. The topics covered will include one or more of the following: Interagency Collaboration, Welfare Reform and Adult Education, FY 1996 ABE Standards, and an FY 1997 ABE Proposal Writing Workshop ($996);

(3) Purchase computer equipment using vocational education funds for personnel in the Division of Applied Technology (DAT). This equipment includes one color Apple Laser Writer 12/600 PS, one high resolution flatbed color scanner, one CD-Rom drive/recorder, and one network server. The equipment will be used to provide more effective technical assistance to Maine's Regional Workforce Education Center. It will also allow DAT to provide better State leadership in the areas of professional development, curriculum development, program improvement, and accountability by giving it an enhanced ability to collect and to disseminate information ($11,476);

(4) Facilitate vocational education staff development by allowing participation in a series of national conferences, meetings, workshops, and seminars sponsored by the National School-To-Work Opportunities Office, the Office of Vocational and Adult Education, the National Governors Association, the Council of Chief State School Officers, the High Skills State Consortium, Job for the Future and others. The topics to be covered include consolidation of performance measures and standards and occupational and industrial skill standards under the Perkins and the School-To-Work Opportunities Acts; integration of occupational skill development and related academic skill training; new formats for work-based learning; articulation of secondary and post-secondary occupational and technical education; organization of connecting activities; and information system development. The director of DAT will serve as the primary participant; however, other DAT professional staff will attend activities related to their specific areas of responsibility and expertise ($10,000);

(5) Provide a two-day conference, co-sponsored by the Maine Leadership Consortium, that is designed to encourage women to move into the field of public school administration using SEA Desegregation funds. The conference would explore the specific barriers and difficulties experienced by female superintendents in the State and seek to recommend actions that will allow professional organizations to more effectively attract and retain women in the superintendency ($3,705); and

(6) Sponsor a series of six regional meetings under the Professional Development Program that are designed to bring educators from elementary, secondary, and post-secondary institutions together to discuss methods of alternative assessment, including portfolios and task development ($900).

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by Maine and related relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action at a later date. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Maine Department of Education under a grantback arrangement. The grantback award will be in the amount of $27,577, which is 75 percent—the maximum percentage authorized by the statute—of the relevant portion of funds recovered by the Department as a result of the three final audit determinations and two settlements in this matter.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

Maine agrees to comply with the following terms and conditions under which payment under a grantback arrangement will be made:

(1) Maine will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted and any amendments in that plan that are approved in advance of the grantback by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance of the grantback by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1996, in accordance with section 459(c) of GEPA and Maine's plan.

(3) Maine will, no later than December 30, 1996, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained to document the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Numbers 84.002 Basic State Grants for Adult Education; 84.004 Title IV of the Civil Rights Act; 84.048 Basic State Grants for Vocational Education; and 84.164 Title II of the Education for Economic Security Act)

Dated: August 26, 1996.

Patricia W. McNeil,

Assistant Secretary, Office of Vocational and Adult Education.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

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Friday
August 30, 1996

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412, et al.

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, and 489

[BPD–847–F]

RIN 0938–AH34

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the systems. In addition, in the addendum to this final rule, we are describing changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 1996. We are also setting forth rate-of-increase limits as well as policy changes for hospitals and hospital units excluded from the prospective payment systems.

EFFECTIVE DATE: This rule is a major rule as defined in Title 5, United States Code, section 804(2). Pursuant to 5 U.S.C. section 801(a)(3), this rule may not take effect until 60 days after the report required by that section is submitted to the Congress, which is October 29, 1996. However, for purposes of the policy discussions in this document, we have assumed that the effective date of this final rule will be October 1, 1996, the earliest date by which this rule could take effect under 5 U.S.C. section 801 and the Medicare statute.

ADDRESSES: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Nancy Edwards (410) 786–4531: Operating Prospective Payment, DRG, Wage-Index Issues.

Tzvi Hefter (410) 786–4529: Capital Prospective Payment, Direct Graduate Medical Education, Excluded Hospitals.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886(a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs. (See subpart M of 42 CFR part 412, and the August 30, 1991 final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

B. Major Contents of the Provisions of the May 31, 1996 Proposed Rule

On May 31, 1996, we published a proposed rule in the **Federal Register** (61 FR 27444) setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs which would be effective for discharges occurring on or after October 1, 1996. The following is a summary of the major issues addressed and changes that we proposed to make:

- We proposed changes for FY 1997 DRG classifications and relative weighting factors as required by section 1886(d)(4)(c) of the Act.
- We proposed to update the wage index for FY 1997. We also solicited comments on the possible expansion of the types of contract labor costs included in the wage index and on possible revisions in Puerto Rico labor market areas.
- We proposed revisions to the regulations governing the composition of the Medicare Geographic Classification Review Board (MGCRB).
- We proposed to use a rebased and revised hospital market basket in developing the FY 1997 update factor for the operating prospective payment rates, the capital prospective payment rates, and the excluded hospital rate-of-increase limits.
- We discussed several provisions of the regulations in 42 CFR parts 412, 413, and 489 and set forth proposed changes concerning the following:

—Sole community hospitals.
—Rural referral centers.
—Disproportionate share adjustment.
—Direct graduate medical education payments.
—Hospital distribution of "An Important Message from Medicare."

- We discussed several provisions of the regulations in 42 CFR part 412 concerning the prospective payment system for capital-related costs, including possible adjustments to the capital Federal and hospital-specific rates, and set forth a proposed change concerning the use of simplified cost accounting.
- We discussed clarifications concerning the calculation of payments to hospitals excluded from the prospective payment system.
- In the addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining

the FY 1997 prospective payment rates for operating costs and capital-related costs. We also proposed new update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1997 for hospitals and hospital units excluded from the prospective payment system.

• In Appendix A to the proposed rule, we set forth an analysis of the impact that the proposed changes would have on affected entities.

• In Appendix B to the proposed rule, we set forth our technical appendix on the proposed FY 1997 capital acquisition model.

• In Appendix C to the proposed rule, we set forth the data sources used to determine the market basket relative weights and choice of price proxies.

• In Appendix D to the proposed rule, we included our report to Congress on our initial estimate of an update factor for FY 1997 for both hospitals included in and hospitals excluded from the prospective payment systems as required by section 1886(e)(3)(B) of the Act.

• As required by sections 1886(e)(4) and (e)(5) of the Act, in Appendix E we provided our recommendation of the appropriate percentage change for FY 1997 for the following:

—Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.

—Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

• In the proposed rule, we discussed in detail the March 1, 1996 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts. In addition, section 1886(e)(2)(B) of the Act directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. Under section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2) (A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We printed ProPAC's March 1, 1996 report, which included its recommendations, as Appendix F to the proposed rule. The recommendations, and the actions we proposed to take with regard to them (when an action is recommended), were discussed in detail in the appropriate sections of the preamble, the addendum, or the appendices to the proposed rule.

Set forth below in this preamble, the addendum to this final rule, and the appendices are detailed discussions of the May 31 proposed rule, the public comments received in response to the proposed rule, and the responses to those comments, as well as the changes we are making. In addition, in section V.E.3 of this preamble, we address a recent statutory amendment to the Public Health Service Act that prohibits certain abortion-related discrimination by the Federal Government and State and local governments. The new statutory provision requires the Federal Government to deem accredited for certain purposes any postgraduate physician training program that would otherwise be accredited, except for the accrediting agency's reliance on certain standards concerning induced abortions.

C. Public Comments Received in Response to the May 31 Proposed Rule

A total of 511 items of correspondence containing comments on the proposed rule were received timely. We received over 300 letters on payments for direct graduate medical education programs. The main other areas of concern addressed by the commenters were the following:

• Requests for changes in DRG classification and relative weights.

• Issues related to the wage index.

• Disproportionate share adjustment.

• Possible adjustments to the capital Federal and hospital-specific rates.

II. Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The changes to the DRG classification system and the recalibration of the DRG weights for discharges occurring on or after October 1, 1996 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The Medicare fiscal intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG

classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 492 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are five DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver, bone marrow, and lung transplant (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed to make several changes to the DRG classification system for FY 1997 and other decisions concerning DRGs. These proposed changes and other revisions, the comments we received concerning them, our responses to those comments, and the final DRG changes are set forth below.

2. Pre-MDC DRGs

Effective October 1, 1994, ICD–9–CM procedure code 41.04, Autologous hematopoietic stem cell transplant, was created to capture the transplantation of stem cells obtained from bone marrow or peripheral blood. At that time, we designated the code as non-OR. When we created this code, we received comments requesting that it be designated as an OR procedure and assigned to DRG 481 (Bone Marrow Transplant) based on the resource use associated with the type of transplant. However, as we stated in the September 1, 1994 final rule (59 FR 45340), when a new code is introduced, our longstanding practice is to assign it to the same DRG category as its predecessor code. Because we could not separately identify the stem cell transplant cases from the other cases coded with 99.73 (the code previously used for stem cell transplant) in order to reclassify them and their charges to a new DRG, we were unable to predict the new weights of both the DRGs in which this code currently is classified and the new DRG to which it would be assigned. Therefore, we were prevented from redesignating code 41.04 as an OR procedure or assigning it to a DRG. However, we stated that we would analyze the stem cell cases as soon as the FY 1995 cases were available.

This year, the FY 1995 MedPAR file is available for use in DRG analysis and weight setting for FY 1997. Since the average resource use associated with stem cell transplant is similar to that associated with bone marrow transplant, we proposed to assign procedure code 41.04 to DRG 481 effective with discharges occurring on or after October 1, 1996. In addition, we proposed to designate stem cell transplant as an OR procedure. In the proposed rule, we noted that, as set forth in the Medicare Coverage Issues Manual at section 35–30.1 (see Transmittal No. 84, April 1996), autologous stem cell transplants are not covered when performed for the following conditions:

- Acute leukemia not in remission (diagnosis codes 204.00, 205.00, 206.00, 207.00 and 208.00).
- Chronic granulocytic leukemia (diagnosis codes 205.10 and 205.11).
- Solid tumors (other than neuroblastomas) (diagnosis codes 140.0 through 199.1).
- Multiple myeloma (diagnosis codes 203.00, 203.01, and 238.6).

We received five comments supporting our proposal to assign procedure code 41.04 to DRG 481, and we will include this change in the final DRG classifications. Two other commenters had specific questions concerning the assignment of cases to DRG 481.

Comment: One commenter questioned the DRG assignment of cases in which an autologous hematopoietic stem cell transplant is performed for one of the noncovered conditions such as acute leukemia not in remission or multiple myeloma. The commenter is unsure whether those cases would be assigned to DRG 481 or retain their current DRG assignment.

Response: When a stem cell transplant is performed for a noncovered condition, the case will *not* be assigned to DRG 481. If the only reason that the patient is admitted to the hospital is to receive the noncovered procedure, then the case receives no Medicare payment because the hospital stay is not covered. If a patient receives a noncovered stem cell transplant during an otherwise Medicare-covered stay, then the case is assigned to a DRG based on the patient's principal and secondary diagnoses as well as any other covered procedure the patient receives. The stem cell transplant will not be considered in the DRG assignment.

Comment: One commenter was concerned about the assignment of a case in which a kidney transplant patient receives an allogeneic bone marrow transplant (procedure code 41.03) from the kidney donor to reduce the incidence and magnitude of organ rejection. The commenter believes it is inappropriate to assign such a case to DRG 481 rather than DRG 302 (Kidney Transplant) and that we should therefore revise the pre-MDC surgical hierarchy.

Response: Allogeneic bone marrow transplants performed for purposes of reducing rejection during a kidney transplant have not yet been subject to a national coverage decision. Therefore, under HCFA policy, the Medicare contractors (Part A fiscal intermediaries and Part B carriers) determine, on a case-by-case basis, whether or not to cover and pay for such claims. If a contractor did decide that one of these claims should be covered, then it would be paid under DRG 481. If the contractor determines that the bone marrow transplant is not covered, the claim would be assigned to a DRG without considering the bone marrow transplant. In most cases, this assignment would be DRG 302.

3. MDC 1 (Diseases and Disorders of the Nervous System)

a. Sleep apnea. As discussed in the proposed rule, we have received correspondence requesting that we review the DRG assignment of cases in which surgery is performed to correct obstructive sleep apnea (diagnosis code 780.57). When coded as a principal diagnosis, sleep apnea is assigned to DRGS 34 and 35 (Other Disorders of the Nervous System) [1] in MDC 1.

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases

Recently, new surgical interventions to correct sleep apnea have been introduced. The procedures most frequently performed for this condition are the following:

Code	Description
27.69	Other plastic repair of palate.
29.4	Plastic operation on pharynx.
29.59	Other repair of pharynx.

Since none of these surgical procedures is assigned to MDC 1, cases of sleep apnea treated with one of these surgeries are assigned to DRG 468 (Extensive OR procedure Unrelated to Principal Diagnosis) or to DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis), depending on the procedure.

We proposed to address this situation by assigning the three surgical procedures to MDC 1. Based on the charges associated with these cases and the fact that they are not clinically similar to the other surgical DRGs in MDC 1, we proposed to include them in DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures).

We received two comments in support of the addition of codes 27.69, 29.4 and 29.59 to DRGS 7 and 8. The commenters agree that these procedures are frequently used as surgical interventions to correct sleep apnea and are appropriately classified to DRGs 7 and 8. We also received two comments that disagreed, as discussed below.

Comment: One commenter was opposed to moving the procedure codes to DRGS 7 and 8. The commenter stated that if the patient had obstructive sleep apnea, the more appropriate diagnosis code would be the underlying cause of the obstruction, such as upper airway blockage (diagnosis code 528.9, Other and Unspecified Diseases of the Oral Soft Tissues) or diagnosis code 478.29, Other Diseases of Pharynx for Redundant Pharyngeal Mucosa.

Response: We agree that if the medical record provides a precise diagnosis for the obstruction, then that condition should be coded. However, information supporting these codes is not always provided in the medical record. Physicians frequently document obstructive sleep apnea as the reason for the surgery. In these cases, medical record coders are assigning code 780.57. As explained above, we believe that it is inappropriate to continue to assign these cases to DRGS 468 and 477 and that the better policy is to assign the procedures to MDC 1.

Comment: We received one comment suggesting that obstructive sleep apnea reported in conjunction with procedure codes 27.69, 29.4, or 29.59 would be more appropriately classified to DRGs 76 and 77 (Other Respiratory System Procedures) in MDC 4 (Diseases of the Respiratory System). In addition, the commenter recommended that obstructive sleep apnea medical cases be assigned to DRGs 101 and 102 (Other Respiratory Diagnoses).

Response: In order to properly classify each case, a diagnosis code may be assigned to only one MDC. Diagnoses in each MDC correspond to a single organ system or etiology and in general are associated with a particular medical specialty. In order to classify cases of obstructive sleep apnea to DRGs 76, 77, 101, and 102, code 780.57 would have to be reassigned from MDC 1 to MDC 4. We believe that obstructive sleep apnea is more appropriately classified to MDC 1; therefore, these cases cannot be assigned to a DRG in MDC 4.

Comment: One commenter noted an error in the discussion of sleep apnea in the proposed rule. The second time we referred to the codes to be moved to MDC 1, we listed them as 25.59, 78.49, and 29.4 (see 61 FR 27447).

Response: In the proposed rule, we inadvertently referred to procedures codes 25.59 and 78.49. The codes that will be added to DRGs 7 and 8 are 27.69, 29.4 and 29.59.

b. Guillain-Barré Syndrome. Guillain-Barré syndrome (diagnosis code 357.0) is a post-infectious polyneuropathy in which severely affected patients may require ventilatory assistance and long stays in intensive care. In recognition of the high resource consumption associated with this diagnosis, effective with FY 1991, we reassigned code 357.0 from DRGs 18 and 19 (Cranial and Peripheral Nerve Disorders) to DRG 20 (Nervous System Infection Except Viral Meningitis). (See the September 4, 1990 final rule (55 FR 36024).)

We have recently received requests that we again review this assignment. These commenters stated that the treatment for these cases remains very costly and often entails long hospital stays. Therefore, we conducted an analysis of the cases assigned to DRG 20 using the 10 percent random sample of the FY 1995 MedPAR file that we use for analyzing possible classification changes.

Cases coded with 357.0 constitute approximately 20 percent of the cases assigned to DRG 20. The average standardized charges for these cases, approximately $22,400, was higher than the average charge for the DRG, approximately $17,100. However, the length of stay was virtually the same. Since we believe that DRG 20 is the appropriate assignment clinically for Guillain-Barré cases, we reviewed the other cases assigned to DRG 20 for possible change.

We found that herpes zoster of the nervous system, NOS (diagnosis code 053.10) and herpes zoster of the nervous system, NEC (diagnosis code 053.19) had average charges of only $7,700 and $7,100, respectively. They also had lower average lengths of stay (6.2 and 6.1 days, respectively). (In the proposed rule, we mistakenly cited these lengths of stay as 4.4 and 4.2, respectively (61 FR 27447).) Because these two diagnoses account for approximately 20 percent of the cases in DRG 20, their low average charge has the effect of significantly lowering the average charge for the DRG. We proposed to reassign these codes to DRGs 18 and 19.

Comment: We received two comments regarding our proposal to assign diagnosis codes 053.10 and 053.19 to DRGs 18 and 19, both of which supported the change. However, one commenter noted that even though these cases obviously do not consume the amount of resources as other cases assigned to DRG 20, clinically, they are more closely related to cases in DRG 20 than those in DRGs 18 and 19. The commenter also expressed an interest in the length of stay and charges for geniculate herpes zoster (diagnosis code 053.11), which we did not propose to move from DRG 20.

Response: We do not believe that reassigning these codes to DRGs 18 and 19 is clinically unsound. There are currently two other herpes zoster diagnoses classified to those DRGs (Postherpetic trigeminal neuralgia (code 053.12) and postherpetic polyneuropathy (code 053.13)). Further, as the commenter noted, the charges and length of stay for 053.10 and 053.19 are very close to those for the cases assigned to DRGs 18 and 19.

We had considered moving all three herpes diagnosis codes (035.10, 053.11, and 053.19) from DRG 20 to DRGs 18 and 19. However, the higher charges associated with geniculate herpes zoster ($11,000) and slightly higher length of stay (6.7 days) led us to decide instead to leave 053.11 in DRG 20 and to closely monitor these cases in upcoming years.

4. MDC 5 (Diseases and Disorders of the Circulatory System)

Effective for discharges occurring on or after October 1, 1995, we created a

for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs is split on age>17 and age 0–17.

new code for insertion of a coronary artery stent (procedure code 36.06). Until creation of the new code, insertion of coronary artery stent had been included in the codes for percutaneous transluminal coronary angioplasty (PTCA) (procedure codes 36.01, 36.02, and 36.05).

When a new code is introduced, our longstanding practice is to assign it to the same DRG category as its predecessor code or codes. Therefore, in the September 1, 1995 final rule (60 FR 45785), we assigned procedure code 36.06 to DRG 112 (Percutaneous Cardiovascular Procedures), the DRG to which PTCA is assigned. We also stated that the resource use and other data associated with procedure code 36.06 will be available in the FY 1996 Medicare cases which are used for analysis as part of FY 1998 DRG changes. We will evaluate the DRG assignment of coronary artery stent insertion at that time.

Since publication of the September 1, 1995 final rule, we have received data on stent cases provided by the manufacturer of one of the two stent devices currently approved by the Food and Drug Administration (FDA). In addition, the manufacturer has provided us with an analysis of the charges and length of stay of approximately 7,500 Medicare patients who received stents in FY 1995.

The manufacturer's analysis found that the FY 1995 average charge for PTCA cases without stent is approximately $15,700 and the average charge for cases with stent is approximately $21,000. However, our analysis of the data shows that there is wide variation in the hospital standardized charges reported for cases with implant of coronary artery stent. Individual hospital average charges for these cases range from about $9,000 to over $45,000.

This inconsistency in the data illustrates why our policy of not reassigning new codes until we have collected an entire year of coded Medicare data for analysis is prudent. The uncertainty associated with using incomplete data collected outside the Medicare program that cannot be verified remains a problem. Therefore, we did not propose any DRG assignment change for implant of coronary artery stent.

Comment: We received five comments on this issue. One commenter agreed that the strategy of not assigning new codes into different DRGs until Medicare data have been collected and reviewed is appropriate. Four commenters requested that we take action this year. The commenters suggested various options for reassigning code 36.06: assign the code to its own DRG; move the code to a higher-weighted DRG (DRG 116, Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure was suggested); or increase the weight for DRG 112 to recognize that some of these cases involve stents.

One commenter believes that if we delay action, hospitals will not be able to provide stent therapy to Medicare beneficiaries, thereby depriving them of state-of-the-art technology and better outcomes. The commenter noted that although the literature has reported higher costs (for example, cost of the device itself, increased anticoagulation therapy, more frequent monitoring) related to this procedure, there has also been some offset noted because of the reduction in followup medical costs. There is also the potential that further improvement in stent design, implantation techniques, and other anticoagulant therapy could further increase this offset by reducing vascular complications or length of stay.

One commenter, the manufacturer of a coronary stent device, stated that the assignment of coronary stent implant to DRG 112 is inappropriate in light of the higher average lengths of stay and charges associated with this procedure compared to traditional angioplasty. The commenter argued that, given these differences, DRG reclassification of procedure code 36.06 would be consistent with the statutory mandate to adjust the DRG classifications and relative weights to "reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources." (Section 1886(d)(4)(C) of the Act.)

The commenter also cited 1,200 peer-reviewed clinical publications that demonstrate superior clinical outcomes with coronary stent implant. Finally, the commenter stated that the variation in hospital standardized charges for coronary stent implant cases is less than the variation in charges for all PTCA cases without stent implant.

Response: As we stated in the proposed rule (61 FR 27447) and in the September 1, 1995 final rule (60 FR 45785), our practice is to assign a new code to the same DRG or DRGs as its predecessor code. One compelling reason for this practice is our inability to move the cases associated with the new code to a new DRG assignment as part of the DRG reclassification and recalibration process. Because the code is new, we cannot identify the stent cases in DRG 112 to remove the charges from that DRG, revise the relative weight accordingly, and move those cases to another DRG and establish the revised weight of that DRG.

We do not disagree with the commenters that the stent implant cases are more costly, on average, than other PTCA cases. We also do not dispute the clinical superiority of this treatment for certain patients. However, until we can review actual Medicare data to determine exactly what the difference in charges is, we cannot make a reasoned decision as to whether those cases should be moved to another DRG or be assigned to a new DRG. We believe that waiting for appropriate data is entirely consistent with our statutory duty to adjust DRG classifications.

Regarding the comment on the variation in charges for stent versus nonstent PTCA cases, we note that the charges for a specific procedure should vary less than the charges for a set of cases that vary in severity and for which many different treatments may be performed. That is, the homogeneity of the patients who received a stent implant should reflect a lower degree of variation.

Finally, analysis of data provided by the stent manufacturer convinced us that Medicare beneficiaries have access to stent implants that is at least equal to the general population. Moreover, we note that it is a violation of a hospital's Medicare provider agreement to place restrictions on the number of Medicare beneficiaries it will accept for treatment unless it places the same restrictions on all other patients. We will carefully examine the PTCA cases with and without stent implant in the FY 1996 claims data file as soon as it is available. Any DRG changes we determine are supported by the data will be addressed in the FY 1998 proposed rule.

5. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)

In the proposed rule, we reviewed the DRG assignment in MDC 8 of bipolar hip replacement cases as a follow-up to a comment received last year. The commenter believed that the procedure for partial hip replacement (code 81.52), currently assigned to DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity), is very similar to the procedure for open reduction of fracture of the femur with internal fixation (code 79.35), which is assigned to DRGs 210, 211, and 212 (Hip and Femur Procedures Except Major Joint). Further, the commenter noted that partial hip replacement patients are more frail individuals than the population that elects total hip replacement and need longer hospital stays to recover.

After reviewing the FY 1995 MedPAR file, we concluded that the charges and lengths of stay for partial hip replacement cases assigned to DRG 209 were very similar to the other cases assigned to DRG 209. However, the average charge for cases in DRG 210 was significantly less than the partial hip replacement charges. We note that the length of stay for partial hip replacement cases was closer to the average length of stay for DRG 210. However, the higher charges of the partial hip replacement cases indicate that they are more resource-intensive than the cases in DRG 210 and similar to the cases in DRG 209. Therefore, we proposed to retain procedure code 81.52 in DRG 209.

We received three comments, all of which supported our proposal, and we will continue to assign partial hip replacement cases to DRG 209.

6. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource-intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A relative class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "coronary bypass" consists of two DRGs (DRGS 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedure" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weights for the DRG or DRGS in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnosis in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time the proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule.

We proposed to revise the surgical hierarchy for the Pre-MDC DRGs, MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth, and Throat), and MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) as follows:

- In the Pre-MDC DRGs, we proposed to reorder Tracheostomy Except for Face, Mouth and Neck diagnoses (DRG 483) above Liver Transplant (DRG 480).
- In MDC 3, we proposed to reorder Cleft Lip and Palate Repair (DRG 52) and Sinus and Mastoid Procedures (DRGs 53 and 54) above Tonsillectomy and Adenoidectomy, Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57 and 58).
- In MDC 10, we proposed to reorder Adrenal and Pituitary Procedures (DRG 286) above Amputation of Lower Limb for Endocrine, Nutritional, and Metabolic Disorders (DRG 285).

We received two comments in support of the three surgical hierarchy changes. In addition, based on a test of the proposed changes using the most recent MedPAR file and the revised GROUPER software, we have found that the changes are still supported by the data and no additional changes are indicated. Therefore, we are incorporating these changes in this final rule.

7. Refinement of Complications and Comorbidities List

a. Addition or Deletion of CCs. There is a standard list of diagnoses that are considered complications or comorbidities (CCs). We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting any of the diagnosis codes on the CC list.

In the September 1, 1995 final rule (60 FR 45782), we added diagnosis code 008.49 (Bacterial enteritis) to the CC list.

In response to a request from one commenter that we also add diagnosis code 008.45 (Clostridium difficile), we stated that we would review that request as part of our DRG analysis for FY 1997. We have reevaluated diagnosis code 008.45 as well as the remainder of the "family" of codes assigned to the category of Intestinal infections due to other specified bacteria (008.41, 008.42, 008.43, 008.44, 008.46, and 008.47). Our analysis shows that all of these diagnoses, when present as a secondary condition, do lead to higher resource use. Therefore, we proposed to add the following diagnosis codes to the CC list:

008.41 Intestinal infections due to staphylococcus
008.42 Intestinal infections due to pseudomonas
008.43 Intestinal infections due to campylobacter
008.44 Intestinal infections due to yersinia enterocolitica
008.45 Intestinal infections due to clostridium difficile
008.46 Intestinal infections due to other anaerobes
008.47 Intestinal infections due to other gram-negative bacteria

These diagnoses would be considered CCs for any principal diagnosis not shown in Table 6f, Additions to the CC Exclusions List (see discussion of CC Exclusions list in section V of the addendum below).

This same commenter also requested that we add the following codes to the CC list:

331.0 Alzheimer's disease
423.9 Unspecified disease of the pericardium
348.5 Cerebral edema
333.4 Huntington's chorea
458.0 Orthostatic hypotension
458.9 Hypotension, not otherwise specified

Our analysis of these codes demonstrated that their presence as a secondary diagnosis did not significantly add to the resource use of the case. Therefore, we did not propose to add them to the CC list.

Finally, the commenter suggested that the following diagnoses be added as cardiovascular complications for DRG 121 (Circulatory Disorders with AMI and Cardiovascular Complications, Discharged Alive):

434.xx Occlusion of cerebral arteries
436 Acute, but ill-defined, cerebrovascular disease

Based on our analysis, charges associated with those cases were indeed comparable to the other cases assigned to DRG 121. However, when we sought the advice of our medical specialists (physicians who work directly for or under contract with HCFA), they strongly opposed adding these codes to the list of conditions for DRG 121 based on the fact that these are not cardiovascular complications. Therefore, they are not clinically similar to other cases assigned to this DRG.

Our analysis of DRG 121 did reveal a large variation in the charges and lengths of stay within this DRG. We believe that a close examination of the list of complicating conditions assigned to DRG 121 is needed. Therefore, we plan to perform a thorough analysis of the cases assigned to that DRG as part of our DRG analysis agenda for FY 1998. In the meantime, we did not propose any change to DRG 121.

We received three comments supporting the addition of the remainder of the "family" of codes for intestinal infection due to bacteria to the CC list. We received one comment in support of our decision not to add 331.0, 423.9, 348.5, 333.4, 458.0, and 458.9 to the CC list.

Comment: Two commenters requested that we reconsider our decision not to add codes 434.xx (Occlusion of cerebral arteries) and 436 (Acute, but ill-defined, cerebrovascular disease) to the list of conditions that are designated cardiovascular complications for assignment to DRG 121 (Circulatory Disorders with AMI and Cardiovascular Complications, Discharged Alive). One commenter noted that even though these diagnoses are not cardiac in nature, they are vascular complications. The other commenter stated that there are other conditions assigned to DRG 121, such as acute renal failure, that are not strictly cardiovascular conditions. The commenter supports our decisions to completely review DRG 121, but believes diagnosis codes 434.xx and 436 should be added this year.

Response: As explained in the proposed rule (61 FR 27449), in our initial analysis, cases assigned to DRG 121 that had these diagnoses coded as secondary conditions contained charges that were indeed comparable to the other cases assigned to DRG 121. However, our analysis of DRG 121 and the list of cardiovascular conditions revealed large variations in the charges and lengths of stay for cases within this DRG. Because the diagnoses associated with codes 434.xx and 436 are not strictly cardiovascular in nature, we believe the better course would be to do a comprehensive review of DRG 121, including considering adding additional diagnosis as complicating conditions. We will address these issues as part of our DRG analysis agenda for FY 1998.

b. CC Exclusions List. In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCS were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition a CC. (See the September 30, 1988 final rule for the revisions made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revisions (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revisions (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the

FY 1993 revisions (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); the September 1, 1994 final rule for the FY 1995 revisions (59 FR 45334); and the September 1, 1995 rule for the FY 1996 revisions (60 FR 45782).)

The proposed rule reflected a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1996, as well as the proposed CC changes described above. (See section II.B.8, below, for a discussion of ICD–9–CM changes.) These changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

The changes discussed above have been added to Table 6g, Additions to the CC Exclusions List, in section V of the addendum to this final rule.

Table 6g and 6h in section V of the addendum to this final rule contain the revisions to the CC Exclusions List that will be effective for discharges occurring on or after October 1, 1996. Each table shows the principal diagnoses with final changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6g—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1996, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6h—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1996, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained for the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $92.00 plus $6.00 shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, (PB) 88–133970) should be made to the following address: National Technical Information Service; United States Department of Commerce; 5285 Port Royal Road; Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, and 1996) and those in Tables 6g and 6h of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1996.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 13.0, is available for $195.00, which includes $15.00 for shipping and handling. Version 14.0 of this manual, which will include the final FY 1997 DRG changes, will be available in October 1996 for $195.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road; Wallingford, Connecticut 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

8. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6c in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, September 1, 1994, and September 1, 1995, we moved several other procedures from DRG 468 to 477. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, 59 FR 45336, and 60 FR 45783, respectively.)

a. Adding Procedure Codes to MDCs. We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any necessary changes; therefore, we did not propose to move any procedures from DRG 468 or DRG 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also reviewed the list of procedures that produce assignments to DRGs 468, 476, and 477 to ascertain if any of those procedures should be moved from one of these DRGs to another based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we moved one procedure from DRG 468 to DRG 477.

In reviewing the list of OR procedures that produce DRG 468 assignments, we analyzed the average charge and length of stay data for cases assigned to that DRG to identify those procedures that are more similar to the discharges that currently group to either DRG 476 or 477. We identified one procedure, Closed endoscopic biopsy of lung (code

33.27), a needle biopsy, that is significantly less resource-intensive than the other procedures assigned to DRG 468. Therefore, we proposed to move procedure code 33.27 to the list of procedures that result in assignment to DRG 477.

In reviewing the list of procedures assigned to DRG 477, we did not identify any procedures that should be assigned to either DRG 468 or 476. We did, however, identify the following procedures that we believe should be reassigned from an OR to a non-OR designation:

08.81 Linear repair of laceration of eyelid or eyebrow
08.82 Repair of laceration involving lid margin, partial-thickness
08.83 Other repair of laceration of eyelid, partial-thickness
08.84 Repair of laceration involving lid margin, full-thickness
08.85 Other repair of laceration of eyelid, full-thickness
08.86 Lower eyelid rhytidectomy
08.87 Upper eyelid rhytidectomy
08.89 Other eyelid repair

Our analysis of the data associated with these eyelid repair procedures leads us to conclude that the procedures are performed following accidental injury or falls, incurred while the patient is in the hospital. These procedures, which are normally performed at bedside and do not necessitate a trip to the operating room, are significantly less resource-intensive than other procedures designated as OR procedures. Therefore, we proposed to change the procedures from OR to non-OR procedures. We noted that these procedures are assigned to surgical DRGs in MDCs 2, 9, 21, 22, and 24. With this change, cases in which procedure codes 08.81 through 08.89 are the only OR procedure codes listed would no longer be assigned to a surgical DRG.

Comment: We received two comments that generally supported our proposal to move procedure code 33.27 to the list of procedures that result in assignment to DRG 477. However, one of the commenters was concerned because this code also includes transbronchial lung biopsy. The commenter believes that transbronchial lung biopsy is a high-risk procedure and questions whether this would be considered a nonextensive procedure.

Response: In analyzing the procedures that produce assignments to each of DRG 468, 476, and 477 for possible reassignment, we evaluate average charges and lengths of stay. The cases in DRG 468 with procedure code 33.27 are significantly less resource-intensive than the other procedures assigned to DRG 468, and more closely resemble the average charge and length of stay for procedures classified to DRG 477. Although transbronchial lung biopsy may be a more difficult procedure to perform than other procedures assigned to 33.27, we do not know how many of these cases are actually assigned to DRG 468, that is, how many times this procedure is performed for an unrelated principal diagnosis. It is possible that the lower charges associated with closed endoscopic biopsy of lung cases in DRG 468 do not include many transbronchial lung biopsy cases. We also note that in MDC 4, procedure code 33.27 is not assigned to the major procedures DRG (DRG 75). In any case, our data support the reclassification of these procedures to DRG 477. Therefore, we are reassigning procedure code 33.27 from DRG 468 to DRG 477, as proposed.

Comment: We received four comments regarding our proposal to designate procedure code category "other repair of eyelid" (codes 08.81 through 08.89) as non-OR. Two commenters supported our decision, although one of those commenters stated that even though these procedures may not require an operating room, they may require a specialist. One commenter requested that we consider designating these eyelid repair codes as non-OR procedures that affect DRG assignment when the procedure is the only one performed in connection with a related principal diagnosis. The fourth commenter understood that our reason for making this change had to do with our belief that many of these injuries are sustained during hospital stays. That commenter believes that the causes surrounding the injury are not necessarily indicative of the nature of the services furnished or the procedures performed and that we should not make this change unless we reviewed the resources consumed delivering these services.

Response: Our proposal to change the OR designation for these procedures was not based on where the injuries were incurred. Rather, we based the decision on our analysis of claims data as part of our annual review of procedures that result in assignment to DRGs 468, 476, and 477, and on the clinical opinions of our physician consultants. Cases in which 08.81 was coded as the only OR procedure, unrelated to the principal diagnosis, were the second most frequently assigned to DRG 477. Our evaluation of the average charges and length of stay for these cases was the deciding factor in our proposal. Both of these statistics were much lower for the eyelid repair cases than the average case assigned to DRG 477. In addition, the opinion of our medical staff was that these repairs would not normally necessitate a trip to the OR, even if they are performed by a specialist. Because there are so many cases of eyelid repair performed for unrelated diagnoses, we speculated that they were the result of injuries sustained while the patient was in the hospital.

Regarding the request to designate codes 08.81 through 08.89 as non-OR procedures that affect DRG assignment in the MDCs to which they were previously assigned, we analyzed the FY 1995 MedPAR file cases in which one of these codes is assigned to DRG 40 and 41 (Extraocular Procedures Except Orbit) in MDC 2 (Diseases and Disorders of the Eye) and DRG 268 (Skin, Subcutaneous Tissue and Breast Plastic Procedures) in MDC 9 (Disease and Disorders of the Skin, Subcutaneous Tissue and Breast). In both DRGs 40 and 268 (no cases were assigned to DRG 41 in FY 1995), there were no cases in which an eyelid repair was the only related procedure coded. That is, in every case, there was another OR procedure code present on the claim that would cause it to be assigned to either DRG 40 or 268. This means that assignment of cases to these DRGs will not be affected by changing the OR designation for the eyelid repair codes.

9. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in *Volume 1—Diseases: Tabular List* and *Volume 2—Diseases: Alphabetic Index*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in

Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on May 5 and November 30, 1995, and finalized the coding changes after consideration of comments received at the meetings and in writing within 30 days following the November 1995 meeting. The initial meeting for consideration of coding issues for implementation in FY 1998 was held on June 6, 1996. Copies of the minutes of these meetings may be obtained by writing to one of the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, Maryland 20782. Comments may be sent by E-mail to: dfp4@nch11a.em.cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Office of Hospital Policy; Division of Prospective Payment System; C5–06–27; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

The ICD–9–CM codes changes that have been approved will become effective October 1, 1996. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section V of the addendum to this final rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes, and other codes, or have been deleted, are in Table 6c (Invalid Diagnosis Codes). The procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These invalid diagnosis and procedure codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1996. The corresponding new or expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Diagnosis Code Titles) and 6f (Revised Procedure Code Titles), which also include the DRG assignments for these revised codes.

Based on the comments received and our own review, we have corrected a code title and added omitted secondary DRG assignments to several codes in Tables 6a and 6b. The code title corrected is 995.59, Other child abuse and neglect. The codes for which DRG changes have been made are as follows:

- In Table 6a, MDC 15 and DRG 391 were added to 752.51 and 752.52 because they are considered "major problems" in this DRG; 922.31, 922.32, and 922.33 were modified to add MDC 24 and DRGs 484, 485, 486, and 487; and MDC 15 and DRGs 387 and 389 were added to 998.11, 998.12, 998.13, 998.51 and 998.59 because they are considered "major problems" in these DRGs.
- In Table 6b, DRG 303 was added to code 59.03.

Comment: One commenter supported the creation of new procedure codes for partial cholecystectomies; however, the commenter disagreed with their assignment to DRGs 193 and 194 (Biliary Tract Procedures except only Cholecystectomy with or without C.D.E.). The commenter believes that partial cholecystectomy (code 51.21) is similar to cholecystectomy (code 51.22) and laparoscopic partial cholecystectomy (51.23) is similar to laparoscopic cholecystectomy (51.24). Therefore, procedure codes 51.21 and 51.23 should be assigned to the same DRGs as 51.22 and 51.24, respectively.

Response: We agree with the commenter. Partial cholecystectomies are clinically similar to cholecystectomies and laparoscopic partial cholecystectomies are clinically similar to laparoscopic cholecystectomies, as well as being similar in terms of resource use. Therefore, we have revised Table 6b to indicate that procedure code 51.21 is assigned to DRGs 195 and 196 (Cholecystectomy with C.D.E.) and DRGs 197 and 198 (Cholecystectomy except by Laparoscope) and 51.23 is assigned to DRGs 195 and 196 and DRGs 493 and 494 (Laparoscopic Cholecystectomy).

Comment: We received one comment on modifications made to the ICD–9–CM codes involving psychiatric diagnoses. The commenter had participated in the ICD–9–CM Coordination and Maintenance Committee meetings and had submitted written proposals for revisions. The commenter stated that although the proposed rule listed all final code revisions, it did not explain the final action on specific proposals or why that action was taken. The commenter suggested that this information be included in the final rule. The commenter also objected to changing the title of category V61.1 from "Marital Problems" to "Counseling for Marital and Partner Problems" because it narrows the use of the category.

Response: The National Center for Health Statistics (NCHS) has the lead responsibility for maintaining the diagnosis part of ICD–9–CM. As explained above, after receiving comments at the public meetings held by the Coordination and Maintenance Committee and reviewing subsequent written comments, NCHS proposes final revisions to ICD–9–CM diagnosis codes. These revisions are then jointly approved by NCHS and HCFA. The purpose of printing the final codes in the **Federal Register** is simply to notify the public and solicit comment on the proposed DRG classifications. We recommend that the commenter, or any other interested party, contact NCHS directly to discuss the final codes. If further revisions are sought, then these can be handled through future meetings of the Coordination and Maintenance Committee. We will forward the commenter's concerns on category V61.1 to NCHS for review.

Comment: One commenter supported the ICD–9–CM code revisions for October 1, 1996, but suggested that rules relating to the sequencing of the new code V66.7, Encounter for palliative care, should be developed prior to its use beginning on October 1, 1996.

Response: We agree with the commenter that medical records technicians and administrators will

need advice on coding this diagnosis. Specific directions in the form of a note within the tabular section of the ICD–9–CM will direct the coder to "code first underlying disease" when coding V66.7. The NCHS has also developed an extensive set of V code guidelines that will also clarify that V66.7 should be sequenced second. In addition, AHA routinely includes advice on the use of new and modified codes in the fourth quarter issue of their publication, *Coding Clinic for ICD–9–CM Coding*. This year's issue will clarify that V66.7 will be used only as a secondary diagnosis. The coding advice in *Coding Clinic* is a collaborative effort among HCFA, NCHS, AHA, and AHIMA. Information on ordering *Coding Clinic* can be obtained from the following: American Hospital Association, Central Office on ICD–9–CM, One North Franklin, Chicago, IL 60606, (312) 422–3366.

Comment: Although the Committee made no revisions to the pacemaker codes, a commenter noted that there have been advances in pacemaker technology that may have an effect on coding and DRG classification. One new pacemaker device functions as a dual-chamber pacemaker (procedure code 37.83) but has only a single lead (procedure code 37.71 or 37.73). If these pairs of codes are reported on a claim, the case is assigned to a medical DRG rather than DRG 115 or 116 (Permanent Cardiac Pacemaker Implant).

Response: This coding issue was addressed recently by the Editorial Advisory Board of the *Coding Clinic for ICD–9–CM*. After consultation with the manufacturer of the new pacemaker device, the Board decided that, although this pacemaker has a single lead, it functions as dual electrodes. Therefore, the insertion of this pacemaker should be coded with procedure codes 37.83 and 37.72 (dual lead insertion). If a hospital follows this coding advice, the case will be classified to DRG 115 or 116. This advice will be included in an upcoming issue of *Coding Clinic*. We will monitor this situation to determine if hospitals are following this coding advice or if a change in the DRG software is necessary.

C. Recalibration of DRG Weights

We used the same basic methodology for the FY 1997 recalibration as we did for FY 1996. (See the September 1, 1995 final rule (60 FR 45791).) That is, we recalibrated the weights based on charge data for Medicare discharges. However, we used the most current charge information available, the FY 1995 MedPAR file, rather than the FY 1994 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The recalibrated DRG relative weights are constructed from FY 1995 MedPAR data, based on bills received by HCFA through June 1996, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1995 MedPAR file includes data for approximately 11.1 million Medicare discharges.

The methodology used to calculate the DRG relative weights from the FY 1995 MedPAR file is as follows:

- All the claims were regrouped using the final DRG classification revisions discussed above in section II.B of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria as were used in computing the current weights. That is, we eliminated all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1995 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition cost for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant for heart and heart-lung transplants); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We proposed to use that same case threshold in recalibrating the DRG weights for FY 1997. For this final rule, using the June 1996 FY 1995 MedPAR data set, there are 37 DRGs that contain fewer than 10 cases. We computed the weights for the 37 low-volume DRGs by adjusting the FY 1996 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs. We note that the FY 1996 weights for the low-volume DRGs were recalculated based on non-Medicare data we acquired from 19 States. This was the first update of the weights since they were initially calculated for FY 1984 based on data from Maryland and Michigan. For a complete description of this process, see the September 1, 1995 final rule (60 FR 45781).

The weights developed according to the methodology described above, using the DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to

achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b. of the addendum to this final rule, we are making a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred by this provision, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs) (and New England County Metropolitan Areas), issued by the Office of Management and Budget (OMB). In addition, as discussed below, we adjust the wage index to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

Section 1886(d)(3)(E) of the Act requires that the wage index be updated annually beginning October 1, 1993. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services.

B. FY 1997 Wage Index Update

The final FY 1997 wage index (effective for hospital discharges occurring on or after October 1, 1996 and before October 1, 1997) is based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1993 (the FY 1996 wage index is based on FY 1992 wage data). We used the same categories of data that were used in the FY 1996 wage index. Therefore, the FY 1997 wage index reflects the following:

- Total salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Fringe benefits associated with hospital and home office salaries.
- Direct patient care contract labor costs and hours.
- The exclusion of salaries and hours for nonhospital type services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

Finally, we are making a minor revision to § 412.63(s)(1) to state clearly that we update the wage index annually as required by section 1886(d)(3)(E) of the Act.

Although we did not propose any changes in the reporting of hospital wage index data, we received comments regarding our current policies. (Comments specifically related to our policy on contract labor are addressed below in section III.D of this preamble.)

Comment: We received several comments concerning the treatment of Medicare Part A physician salaries in the wage index calculation. One commenter stated that we should immediately exclude all of these costs, using Worksheet A–8–2 of the Medicare cost report to identify physician Part A costs. Alternatively, the commenter suggested that we should include contracted Part A physician salaries in those States where hospitals are prohibited from employing physicians. Two other commenters suggested we should prepare an impact analysis of the effects of the exclusion of Part A physician salaries.

Response: As stated in the September 1, 1994 final rule (59 FR 45355), effective with cost reporting periods beginning on or after October 1, 1994, we revised the Medicare cost report to provide for the separate reporting of all salary costs for physicians (including teaching physicians), interns and residents, and certified registered nurse anesthetists. After evaluating these data, we will consider appropriate changes in developing the FY 1999 wage index update.

In response to the suggestion that we should use Worksheet A–8–2 to expedite our evaluation of excluding physician Part A salaries, we will explore the technical feasibility of using the data from that worksheet. Regarding the suggestion that we should allow contracted Part A physician salaries to be included in the wage index calculation in those States that do not allow hospitals to employ physicians directly, we note that, if we were to adopt such a policy it would not be effective until hospitals' FY 1997 cost reporting periods. Therefore, the data would not be available until the FY 2001 wage index. Because we are already collecting data that would allow us to exclude all physician Part A salaries by the FY 1999 wage index, we are not adopting this comment.

With respect to the comments that we should prepare an analysis of the impact on the wage index of excluding Part A physician salaries, any such analysis is, of course, contingent upon having reliable data to analyze. At this point, we do not foresee having such data prior to the availability of hospitals' FY 1995 cost reports.

Comment: A commenter stated that the wage index value of rural hospitals with swing-bed programs is unfairly deflated by the inclusion of the lower salaries related to skilled nursing level care provided to patients in swing-beds. The commenter indicated that since hospitals can separately identify these salaries, they should be excluded from total salaries to be consistent with the way salaries are reported for hospitals without a swing-bed program.

Response: Salaries related to skilled nursing level care provided to patients in swing-beds are not reported separately on the Medicare cost report. Salary costs for swing-beds are combined with those for general adult and pediatric care on the cost report at line 25 of Worksheet A. Therefore, it would not be possible under the current cost report format to remove from the wage index calculation these costs as we do for direct salaries associated with distinct part skilled nursing facilities and units. Furthermore, given the nature of the swing-bed program, we do not believe it would be appropriate to impose on hospitals the additional recordkeeping requirements that would be necessary to report these salaries.

1. Verification of Wage Data from the Medicare Cost Report

The data for the FY 1997 wage index were obtained from Worksheet S–3, Part II of the Medicare cost report. The data file used to construct the wage index includes FY 1993 data submitted to the Hospital Cost Report Information System (HCRIS). As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

In the proposed rule, we discussed in detail our review of the wage data as well as the process that hospitals could use to verify their wage data and submit requests for corrections if necessary (61 FR 27455). To be reflected in the final wage index, wage data corrections had

to be reviewed, verified, and transmitted to HCFA through HCRIS by June 17, 1996 (any changes after this date are limited to errors related to handling the data, as described below in section III.C of this preamble). All data elements that failed edits have been resolved and are reflected in this final rule.

2. Computation of the Wage Index

As noted above, we are basing the FY 1997 wage index on wage data reported on the FY 1993 cost reports. The final wage index is based on data from 5,231 hospitals paid under the prospective payment system and short-term acute care hospitals in waiver States. The method used to compute the final wage index is as follows:

Step 1—We gathered data from each of the non-Federal short-term, acute care hospitals for which data were reported on the Worksheet S–3, Part II of the Medicare cost report for the hospital's cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1992 and reported a cost reporting period exceeding 52 weeks. The data were included because no other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1993 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To determine total salaries plus fringe benefits, we added direct patient care contract labor costs, hospital fringe benefits, and any home office salaries and fringe benefits reported by the hospital, to the net hospital salaries.

Step 3—For each hospital, we adjusted the total salaries plus fringe benefits resulting from Step 2 to a common period to determine total adjusted wages. To make the wage inflation adjustment, we used the percentage change in average hourly earnings for each 30-day increment from October 14, 1992 through September 15, 1994, for hospital industry workers from Standard Industry Classification 806, Bureau of Labor Statistics Employment and Earnings Bulletin. The annual inflation rates used were 4.8 percent for FY 1992, 3.6 percent for FY 1993, and 2.7 percent for FY 1994. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/92	11/15/92	1.044482
11/14/92	12/15/92	1.041408
12/14/92	01/15/93	1.038343
01/14/93	02/15/93	1.035287
02/14/93	03/15/93	1.032240
03/14/93	04/15/93	1.029203
04/14/93	05/15/93	1.026174
05/14/93	06/15/93	1.023154
06/14/93	07/15/93	1.020143
07/14/93	08/15/93	1.017141
08/14/93	09/15/93	1.014147
09/14/93	10/15/93	1.011163
10/14/93	11/15/93	1.008920
11/14/93	12/15/93	1.006683
12/14/93	01/15/94	1.004450
01/14/94	02/15/94	1.002223
02/14/94	03/15/94	1.000000
03/14/94	04/15/94	0.997782
04/14/94	05/15/94	0.995570
05/14/94	06/15/94	0.993362
06/14/94	07/15/94	0.991159
07/14/94	08/15/94	0.988961
08/14/94	09/15/94	0.986767

For example, the midpoint of a cost reporting period beginning January 1, 1993 and ending December 31, 1993 is June 30, 1993. An inflation adjustment factor of 1.020143 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1993 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 4—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. We increased the net hours by the addition of any direct patient care contract labor hours and home office hours to determine total hours.

Step 5—As part of our editing process, we deleted data for eight hospitals for which we lacked sufficient documentation to verify data that failed edits because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. We retained the data for other hospitals that are no longer participating in the Medicare program because these hospitals reflected the relative wage levels in their labor market areas during their FY 1993 cost reporting period.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area prior to any reclassifications under sections 1886(d)(8)(B) or 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted wages obtained in Step 3 for all hospitals in that area to determine the total adjusted wages for the labor market area.

Step 7—We divided the total adjusted wages obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted wages obtained in Step 3 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $19.5533.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

We note that on June 28, 1996, OMB announced the designation of the Pocatello, Idaho MSA comprising Bannock County, Idaho and the Jonesboro, Arkansas MSA comprising Craighead County, Arkansas and the addition of Chester County, Tennessee to the Jackson, Tennessee MSA. These changes are reflected in the final wage index.

3. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on

the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by 1 percentage point or less, the MSA wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals (the "combined" wage index value). However, the wage index value for the redesignated hospitals cannot be reduced below the wage index value for the rural areas of the State in which the hospitals are located.
- If including the wage data for the redesignated hospitals increases the MSA wage index value, the MSA and the redesignated hospitals receive the combined wage index value.
- Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage indexes calculated exclusive of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index for an urban area below the Statewide rural average, provided the wage index prior to reclassification was greater than the Statewide rural wage index value.
- A change in classification of hospitals from one area to another may not result in the reduction in the wage index for any urban area whose wage index is below the rural wage index for the State. This provision also applies to any urban area that encompasses an entire State.

We note that, except for those rural areas where redesignation would reduce the rural wage index value, and those urban areas whose wage index values are already below the rural wage index and would be reduced by redesignations, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several MSAs listed in Table 4a have no hospitals remaining in the MSA. This is because all the hospitals originally in these MSAs have been reclassified to another area by the MGCRB. These areas receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the MSA remains empty.

The final wage index values for FY 1997 are shown in Tables 4a, 4b, and 4c in the Addendum to this final rule. The FY 1997 wage index values incorporate all hospital redesignations for FY 1997, withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process. For FY 1997, 385 hospitals are redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act). For hospitals that are redesignated, the wage index values are shown in Table 4c. For some areas, Table 4c shows more than one wage index value. This occurs when hospitals from more than one State are included in the group of redesignated hospitals, and one State has a higher Statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4d and 4e list the average hourly wage for each labor market area, prior to the redesignation of hospitals, based on the FY 1993 wage data. In addition, Table 3C in the addendum to this final rule includes the adjusted average hourly wage for each hospital based on the FY 1993 data. Hospitals should use the average hourly wage published in this final rule in applying to the MGCRB for wage index reclassifications that would be effective for FY 1998. The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification, unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(s)(2). In such cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index.

C. Requests for Wage Data Corrections

In the proposed rule, we noted that we would make a diskette available in mid-August that contained the wage data used to construct the wage index values in this final rule. As with the diskette made available in March 1996, HCFA made the August diskette available to hospital associations and the public. (Please note that this data file is also available on HCFA's World-Wide Web page, public use files address (http://www.hcfa.gov/stats/stats.html).) This file is made available only for the purpose of identifying any potential errors made by HCFA or the intermediary in the handling of the final wage data that result from the process described above, not for the initiation of new wage data correction requests.

In addition, as noted above, Table 3C in the Addendum to this final rule contains each hospital's adjusted average hourly wage used to construct the wage index values. A hospital can verify its average hourly wage as reflected on its cost report (after taking into account any adjustments made by the intermediary), by dividing the adjusted average hourly wage in Table 3C by the applicable wage inflation adjustment factors as set forth above in Step 3 of the computation of the wage index.

As noted in the proposed rule, after mid-August, we will make changes to the hospital wage data only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the August diskette. Specifically, after that point, neither the intermediary nor HCFA will accept the following types of requests in conjunction with this process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to the HCRIS system on or before June 17, 1996.
- Requests for correction of errors made by the hospital that were not, but could have been, identified during the hospital's review of the March 1996 data.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

If, after reviewing the data in the August diskette or this final rule, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters should outline why the hospital believes an error exists and provide all supporting information. These requests must be *received* by HCFA and the intermediaries no later than September 16, 1996. We have set this year's deadline one week earlier than last year's deadline because we found the later deadline made it difficult to evaluate the requests and recalculate the wage index values before

the start of FY 1997 (that is, October 1, 1996). Requests sent to HCFA should be sent to: Health Care Financing Administration, Office of Hospital Policy, Attention: Stephen Phillips, Technical Advisor, Division of Prospective Payment System; C5–06–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Each request must also be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt, and, if it is determined that an intermediary or HCFA error exists, the fiscal intermediary will notify HCFA immediately.

We believe the wage data correction process described above and in the proposed rule provides hospitals with sufficient opportunity to bring errors made during the preparation of the Worksheet S–3 to the intermediary's attention. Moreover, because hospitals had access to the wage data in mid-August, they will have had the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the implementation of the FY 1997 wage index on October 1, 1996. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be free of such errors. Nevertheless, in the unlikely event that such errors should occur, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(s)(2), we may make midyear corrections to the wage index only in those limited circumstances where a hospital can show: (1) That the intermediary or HCFA made an error in tabulating its data, and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 1997 (that is, by the September 16, 1996 deadline). As indicated earlier, since a hospital will have had the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

Comment: One commenter commended us for making the wage data file available on the HCFA home page. The commenter also suggested that the file be updated frequently and include such additional information as the MSA name where the hospital is located, the applicable inflation adjustment factors, and the MSA to which each hospital has been reclassified by the MGCRB, if applicable.

Response: The wage data file is currently updated twice a year, in mid-March and mid-August, in conjunction with the issuances of the proposed and final rules for the hospital inpatient prospective payment systems. This effort is very labor intensive, and since hospitals are able to submit cost reports throughout the year, it is impractical to update the wage data file more frequently. In addition, we would point out that the intent of making these data available is primarily to provide hospitals the opportunity to verify the data used in the calculation of their wage index. Updating this file more frequently is not necessary to fulfill this primary objective.

Regarding the suggestion to include additional information on the wage data file that we make available to the public, we note that the suggested data elements are not necessary for the purpose of allowing an opportunity for providers to verify the accuracy of their wage data. We note that we publish the MSA names and inflation adjustment factors in the proposed and final rules, and the MSAs to which hospitals are reclassified can be found on the PPS Payment Impact Public Use File, available shortly after publication of the proposed and final rules.

D. Contract Labor—Costs Included in the Hospital Wage Index

Our policy concerning inclusion of contract labor costs for purposes of calculating the wage index has evolved over the past several years. Primarily, this has occurred as we recognized the role of contract labor in meeting special personnel needs of many hospitals. In addition, improvements in the wage data have allowed us to more accurately identify contract labor costs and hours. As a result, effective with the FY 1994 wage index, we included the costs of direct patient care contract services in the wage index calculation. Effective with the FY 1999 wage index, which will use data from FY 1995 cost reports, we will begin to include the costs and hours of certain management contract services.

In the proposed rule, we provided a general overview of the issues related to including contract labor costs in the wage index calculation and solicited comments from the public regarding further expansion of the types of contract labor costs included in the wage index. We also listed nine specific issues on which we were seeking public comment. The following background material is identical to the overview included in the proposed rule, but we believe it is useful as a reference for responding to many of the comments we received.

1. Background

In the May 9, 1990 proposed rule (55 FR 19442), we reported the results of the 1988 wage index survey which collected, among other information, data on the costs and hours associated with direct patient care contract labor. All prospective payment hospitals completed the wage survey for their cost reporting periods ending in calendar year 1988. The survey data indicated that hospitals had difficulty in tracking and recording the actual hours worked associated with the contract labor. In addition, there were reporting inconsistencies. For example, some hospitals inappropriately reported patient care services furnished directly by physicians, which are not included in the wage data because they are paid under Medicare Part B rather than Part A.

In the May 9, 1990 proposed rule, we also discussed public comments we received in response to issues we raised related to including contract labor costs in the wage index. Specifically, in the May 8, 1989 proposed rule (54 FR 19647), we requested comment on the following issues:

- Should the wage index include data on contract labor?
- Should the definition of contract services in the wage index survey be expanded to include services indirectly related to patient care, such as billing or housekeeping services?

A majority of the commenters supported the inclusion of contract services, and many argued for the expansion of contract labor services to include indirect patient care services. Those opposed to including contract services, in addition to some commenters who supported including contract service costs, were concerned about the difficulty of accurately tracking and recording hours worked for all types of contract labor. Other commenters were also concerned that if a hospital contracts for services from outside its labor market area, the contract wages could artificially increase or decrease the hospital's area wage index. Based on the comments and the overall poor quality of the 1988 survey data, we decided to exclude all contract labor from the FY 1991 wage index.

We stated that we would continue our analysis of contract labor. In addition, we announced that we would develop a new wage index survey with improved

instructions and auditing criteria to facilitate the inclusion of contract labor in future wage index updates. The new survey, Worksheet S–3, Part II, was included in the hospital cost report effective with cost reporting periods beginning on or after October 1, 1989.

The Worksheet S–3, Part II consists of detailed information for use in the hospital wage index including contract labor for direct patient care services. In the instructions for completing this worksheet, contract labor costs and hours were limited to labor-related payments and hours attributable to direct patient care contract services, such as nursing services. Specifically, we instructed hospitals to exclude indirect patient care contract services (for example, management and housekeeping services), nonlabor-related expenses (for example, equipment and supplies), and any contract services for which labor-related payments and hours could not be accurately determined.

In the September 4, 1990 final rule (55 FR 36036), we discussed additional comments we received on the contract labor issue. Those commenters who supported the inclusion of contract labor stated that some hospitals, especially rural hospitals, are dependent on contract labor for nursing services, and it would be unfair not to include these wage data. Other commenters requested that the definition of contract labor be expanded to include indirect patient care services.

We also received several comments requesting that we continue to exclude contract labor from the wage index. These commenters stated that the contract labor data are not reliable because of the difficulty in tracking and reporting hours and the lack of consistency in the reporting of contract labor. In addition, inclusion of nonlabor contract costs would inappropriately drive up labor costs, and contract labor brought in from outside the labor market area would artificially increase or decrease the area wage index value. Finally, commenters were concerned that contract labor costs are too variable, temporary, and not reflective of true wage costs. Therefore, some suggested that contract labor should not be included in the wage index.

The FY 1994 wage index, which was based on the data collected on the Worksheet S–3, Part II, was the first to include direct patient care contract labor costs. In making the decision to include these costs, we analyzed hospitals' FY 1990 data to determine if it was sufficiently complete for inclusion in the wage index calculation (see the May 26, 1993 proposed rule (58 FR 30236)). We noted that, in most labor market areas, including contract labor in the wage index computation had little effect on the average hourly wage. We further stated that, based on our analysis of the data, including direct patient care contract labor would more accurately and fairly reflect wage levels across hospitals and MSAs. In the September 1, 1993 final rule, we also responded to comments from the hospital industry expressing concern that we did not recognize the costs of certain contract management services (58 FR 46296). In particular, many rural hospitals stated they were either unable to recruit or afford top managers such as hospital administrators and must contract for these services.

In the September 1, 1994 final rule (59 FR 45355), we expanded the definition of contract labor for purposes of determining the hospital wage index to include the personnel costs and hours associated with certain contract management personnel. Contract management services would be limited to individuals working in the top four positions in the hospital: the Chief Executive Officer/Hospital Administrator, Chief Operating Officer, Chief Financial Officer, and Nursing Administrator. We noted that while exact titles may vary, individuals should be performing essentially the same duties as customarily assigned these management positions.

We further noted that, since the cost report did not provide at that time for the collection of management contract data, this revised definition would not be effective until cost reporting periods beginning on or after October 1, 1994 (FY 1995). Hospitals were instructed to continue to exclude all management contract costs and hours until the FY 1995 data were reported (these data will be used to compute the FY 1999 wage index). In addition, we began requiring hospitals to provide descriptions and aggregate totals for all management contracts and complete details on all direct patient care contracts on the Form HCFA–339 (the Provider Cost Report Reimbursement Questionnaire). A hospital must file this form with its corresponding cost report.

We continue to receive requests that we expand our contract labor definition to include more types of contract services in the wage index. In particular, we have been asked to include the costs for pharmacy and laboratory services on the basis that these services are consistent with our definition of direct patient care (see the September 1, 1995 final rule (60 FR 45792)). Others have asked that we expand our definition to include all contracted services, both direct and indirect patient care services, in order to more appropriately calculate relative hospital wage costs.

We have limited the contract services that are included in the wage index to direct patient care services and specific management services for several reasons. First, hospitals reported difficulty in accurately tracking the hours associated with contract services, especially for off-site facilities that serve more than one hospital. Second, we are concerned about the contractor's ability to separate nonlabor costs from labor costs. We believe that the generally higher costs for contract labor compared to salaried labor, due at least in part to the added costs of overhead and supplies not separately identified in most contracts, may distort the wage index. Finally, we are concerned that it is difficult to remove the costs and hours for services such as legal and accounting from total management contracts.

Our goal is to ensure that our wage index policy continues to be responsive to the changing need for contract labor, allowing those hospitals that must depend on contract labor to supply needed services to reflect those costs in their wage data. At the same time, however, we wish to avoid providing an opportunity for hospitals to inflate their average hourly wage inappropriately by including nonlabor contract costs. The advantage of our approach of including only contract labor costs and hours associated with direct patient care and specific management services is that it minimizes distortions in the wage index that are due to a hospital's inability to identify and exclude nonlabor costs. While changes to the wage index values are made in a budget neutral manner and are not expected to affect aggregate payments, we strive for policies that are equitable for all hospitals.

Finally, due to the 4-year time lag between the cost reporting period itself and the fiscal year when data for that period are used in calculating the wage index, it is important that we anticipate any need to change our policy on contract labor. Therefore, in order to formulate the most responsive and responsible policy, we solicited comments on the following issues:

- To what extent do hospitals rely on the use of contract services?
- For which services are contracts typically used?
- Can hospitals accurately determine hours related to contract services?
- Can hospitals accurately isolate labor-related costs from nonlabor-related costs?
- Should the contract labor definition be expanded to include contract

services indirectly related to patient care?

• If contract labor remains limited to direct patient care, what categories of services, if any, in addition to those identified above, should be included?

• Would the wage index more accurately reflect relative wage levels if we did not limit contract labor to direct patient care (generally high wage) services?

• Would expanding the types of contract labor that are included in the wage index provide less incentive to hospitals to keep their labor costs low, as higher labor costs may result in a higher wage index value for that hospital or allow it to reclassify to a labor market with a higher wage index?

• What other issues should be considered in revising the policy for including contract labor in the wage index?

2. Discussion of Comments

We received 27 individual letters addressing the issue of contract labor in the wage index. We appreciate the time and attention of all of the commenters. The information provided has already increased our understanding of the issue, and we intend to include in our future analyses an evaluation of many of the points made by commenters. The remainder of this section discusses the comments—first by responding to the general comments we received and some specific policy questions, then summarizing all of the responses we received to the questions listed above. Although we do not respond directly to these latter comments, they will aid us in our future consideration of this issue.

Comment: One commenter who represents a national association of health systems noted that most of the issues raised by us in the proposed rule were addressed by a special wage index Medicare Technical Advisory Group (MTAG) work group. The commenter stated that "(a)fter considering all these issues in the MTAG work group, HCFA decided to limit the inclusion of contract labor to direct patient care services. This was because, in general, these services are in revenue producing cost centers that have higher personnel costs (such as nursing services) where the treatment of contract labor in determining the wage index would have the greatest impact on hospitals. Also, these areas generally have had fewer problems than contract services provided in the overhead departments where average personnel costs are lower. Patient care contract labor is more often billed on an hourly rate, and because these are direct patient care services, they are generally performed by personnel working on the hospital premises and therefore include less indirect overhead cost from the contract organization. On the other hand, contract labor costs related to overhead departments normally has lower average cost, often includes more indirect overhead, and often the related hours are not available."

Response: We appreciate this commenter's past contributions into the development of our contract labor policies and believe that the commenter has presented a generally correct characterization of our rationale for our current policy on contract labor costs. However, as noted above, we are concerned that our policy continue to accurately measure wage costs in a rapidly changing hospital environment and, therefore, have solicited public input into our future policy considerations.

Comment: Several commenters, including ProPAC, supported the principle that all contract labor costs should be included in calculating the wage index if they would have been included had the contract workers been employees of the hospital; but the commenters recognized the problems of accurately collecting contract labor costs. The Commission suggested that, in light of the increasing importance of adjusting payments to reflect input price variations in multiple settings with the accelerating integration of health care delivery, a need exists for a more comprehensive strategy for obtaining geographic input price data. Finally, ProPAC indicated it would "be pleased to work with HCFA staff to develop and explore feasible approaches to a solution."

Response: We agree that, in principle, the wage index should measure labor costs across hospitals without regard to who employs the workers if such costs reflect relative wage levels and can be identified. We also agree that, as health care delivery becomes more integrated, so do the labor costs. Of course, we have increasingly been concerned with this issue as we have worked to develop prospective payment systems for various provider types. Therefore, we appreciate ProPAC's offer of cooperation in this regard and look forward to working together to address these issues.

Comment: Several commenters disagreed with our definition of direct patient care contract labor, specifically, the exclusion of the costs of contracted laboratory and pharmacy services. One commenter stated that a preferable definition would include services that are directly identifiable and billable to individual patients. Laboratory and pharmacy services would be included in this definition. Another commenter called our exclusion discriminatory toward rural hospitals as rural hospitals are more likely to contract for a pharmacist than are urban facilities. This commenter stated that pharmacists do have direct patient care contact, noting that they dispense drugs to patients, provide patient education, and are required to participate on "interdisciplinary patient care" teams.

Response: While there may be some direct patient care contact in providing laboratory and pharmacy services, the amount varies across hospitals and is only a portion of the total time spent providing service to a hospital. As we noted in the proposed rule, one of the reasons we have limited the types of contract services included in the wage index calculation is that hospitals reported difficulty tracking the hours associated with off-site facilities that serve more than one hospital. Our experience and other comments we received indicate this is also the case for contracted laboratory and pharmacy services. For example, it is possible that a contracted pharmacist would spend part of an hour preparing medications for patients in more than one hospital.

We recognize the necessity for many hospitals, particularly small and rural hospitals, to contract for pharmacy and laboratory services, which are likely to be relatively costly. In fact, this is one of the issues that led us to solicit public input into how our contract labor policy may be improved. We believe that the insight from the comments we received, as well as continuing communication with the hospital industry, will ultimately help to resolve these difficult issues.

Comment: Several commenters representing hospital associations recommended that we reinstitute an MTAG to "assist in developing the materials and definitions needed to implement these changes in collecting contract labor data * * *" Other commenters recommended the initiation of a pilot study in selected regions to determine whether "using (contract labor) costs in the wage index methodology are worth the collection effort."

Response: Again, we appreciate the volume of the responses we received. Over the next few weeks, we will review our options for pursuing the reinstitution of an MTAG to evaluate the need to revise our policy on contract labor. We will also contact many of the national and State hospital associations that responded to our solicitation for further input.

Comment: Several commenters pointed to the need for greater clarity regarding our definition of contract labor. There was a call for a "universal model and criteria" for fiscal intermediaries to follow in determining allowable contract labor costs. One commenter submitted an example of what such a model could look like.

Response: We have provided more detailed cost report instructions for reporting contract labor in periods beginning on or after October 1, 1995. We will also include these more detailed instructions in the desk reviews of the FY 1995 cost reports. In addition, on FORM HCFA–339 (the Provider Cost Report Reimbursement Questionnaire), we require hospitals to provide detailed information on contract labor costs currently included in the wage index calculation. This information consists of descriptions and aggregate costs and hours for top management contracts and costs and hours for each type of direct patient care contract.

We will, however, continue to pursue opportunities for policy improvement. In that regard, we welcome the suggestions we received in response to the proposed rule, and encourage further input from interested parties in the future.

Below, we summarize the comments we received in response to the specific questions listed in the proposed rule. Again, we note that while we are not responding to these comments here, we intend to take them into consideration in our future analysis of this issue.

• To what extent do hospitals rely on the use of contract services?

According to the comments received, hospitals, particularly those in rural areas and smaller cities, rely on contract labor for a variety of services. In general, hospitals have begun to reduce ongoing labor costs by employing contract personnel in many operational areas. Because of fluctuating patient volumes, contract labor is a more cost effective alternative to direct hiring. Furthermore, some States prohibit the direct hiring of certain health care personnel; thus, these positions must be contracted. Hospitals located in areas experiencing shortages in health care personnel such as nurses and pharmacists also rely heavily on contract labor.

• For which services are contracts typically used? Virtually all of those who commented stated that hospitals contract for nursing and therapy (occupational, physical, respiratory, speech) services. Most commenters mentioned the following as services for which hospitals contract: radiology (including mammography and ultrasound); anesthesia; dietary (including therapeutic); psychological and social; pharmacy; laboratory and pathology; emergency room; medical records; housekeeping, laundry, and central supply; clerical; legal; accounting and audit; facility and equipment maintenance; and environmental. The following services were also mentioned by at least one commenter: surgery (technicians); air ambulance; management (e.g., medical director); information systems management; education; and biomedical engineering. Based on these comments, hospitals contract for every category of labor.

• Can hospitals accurately determine hours related to contract services?

Most commenters stated that hospitals could accurately determine hours related to contract services, particularly for contracts billed on an hourly basis and for services such as laboratory, pharmacy, and management. Some commenters explained that their hospitals have established methods for tracking hours, such as time sheets maintained for hourly workers, or invoices that include the hours worked and the hourly rate. Others commented that, if necessary, systems to track hours (for example, log-in sheets) could easily be instituted. Several others suggested that hospitals could more accurately report hours associated with contract services if HCFA clarified the contract labor definition, developed acceptable methods for tracking hours and associated costs, and developed a universal model and criteria for the fiscal intermediaries to follow in auditing contract labor costs and hours.

A few commenters stated concerns that hospitals may not be able to accurately report contract labor hours. One suggested there may be difficulty in reporting hours in situations where the contractor serves more than one client. One hospital explained that for some services, it does not report hours, or it relies on the contractor to supply the hours. For services such as physical therapy, this hospital pays contractors based on a percentage of revenue generated. One hospital association stated that hospitals may not be able to accurately determine the hours for services such as laundry, dietary, housekeeping, and maintenance. Another association explained that, while hospitals in its area are required to report contract hourly rates and hours for nonpatient care cost centers, evidence suggests that the data for many hospitals may not be completely accurate, reflecting the difficulty of capturing such detailed information.

• Can hospitals accurately isolate labor-related costs from nonlabor-related costs?

Several commenters stated that hospitals can accurately isolate labor-related costs from nonlabor-related costs using invoices. One commenter explained that for services with little or no nonlabor costs, such as laboratory, pharmacy, and management, there is no need to identify and isolate these costs.

On the other hand, one commenter suggested there may be difficulty in reporting hours in situations where the contractor serves more than one client. One hospital stated that it does not separate labor and nonlabor costs. One association stated that contracts for services such as laundry, dietary, housekeeping, and maintenance may include more nonlabor costs and may be more difficult for hospitals to isolate nonlabor costs. Another association believes that intermediaries are inconsistent in handling nonlabor costs and that HCFA needs to develop better guidelines.

• Should the contract labor definition be expanded to include contract services indirectly related to patient care?

The majority of the commenters support expanding the definition of contract labor to include services indirectly related to patient care. Two commenters stated that, in principle, all contract labor costs and hours should be included if they would have been included had the workers been employed by the hospital. Two commenters responded that excluding contract labor services understates the cost of providing patient services and puts hospitals at a disadvantage. Two others commented that HCFA's definition of direct patient care is too restrictive and should be revised to include services that can be identified and billed separately and are not included in the routine care charge. One commenter, although in support of including indirect patient care contract services, recognized that considerable review would be necessary to determine which labor costs should be included as contract labor. Another commenter noted that reporting additional types of contract labor should not be considered an unnecessary burden. Two associations expressed concern that excluding large labor expenses, for services such as dietary and housekeeping, may create inconsistencies across labor market areas. Some commenters also suggested that we include the following services (that we consider indirectly related to patient care) in the definition of contract labor: pharmacy, dietary, clerical,

housekeeping and environmental, accounting and audit, legal, consultant, and medical director.

Some commenters, including five large hospital associations, expressed concern over expanding the definition of contract labor to include indirect patient care services. Two commented it would add considerably to the complexity of tracking costs and determining which services should be included or excluded. One commenter added that, based on its analyses, it would be difficult to collect reliable data and that including contracted indirect patient care costs would have only a minor impact on the wage index. Another commented that problems that exist with contract labor data are more prevalent in nonrevenue producing areas.

• If contract labor remains limited to direct patient care, what categories of services, if any, in addition to those identified above, should be included?

Commenters named the following services as those that should be included in the direct patient care definition of contract labor: dietary, anesthesia, social, pharmacy, laboratory, pathology, medical records, equipment maintenance, environmental management, central supply, and all clinical services.

• Would the wage index more accurately reflect relative wage levels if we did not limit contract labor to direct patient care (generally high wage services)?

Five hospitals and ProPAC commented that the wage index would more accurately reflect relative wage levels if we did not limit contract labor to direct patient care. One stated that failure to include all contract labor could result in major biases in the wage index because contract services may vary substantially among types of hospitals and across labor market areas. Two rural hospitals argued that the current policy discriminates against rural hospitals because they are more likely to have to contract pharmacists and other personnel because of employee shortages in their wage areas.

Three associations and a hospital commented that the wage index would not more accurately reflect relative wage levels if we did not limit contract labor to direct patient care. One explained that the results would not be more accurate by adding or subtracting categories of care; rather, the key to an accurate calculation is that the components are consistent for all hospitals, not how many components are included. Another added that, based on its analyses, including contracted indirect patient care costs would have only a minor impact on the wage index. A third commenter expressed concern that the time necessary at the hospital level to obtain this information and the time necessary for the intermediary to review such information would not be cost effective.

• Would expanding the types of contract labor that are included in the wage index provide less incentive to hospitals to keep their labor costs low, as higher labor costs may result in a higher wage index value for that hospital or allow it to reclassify to a labor market with a higher wage index?

Commenters were unanimous in their belief that expanding the types of contract labor that are included in the wage index would not provide less incentive to hospitals to keep their labor costs low. Several commenters explained that hospitals in today's environment have every incentive to keep their costs down. Because Medicare is only one payer, allowing labor costs to increase for improved Medicare payment would put hospitals in an uncompetitive position as far as other payers are concerned. Also, it would take 4 years for those costs to be reflected in the wage index. One of them added that it is difficult to conceive of any situation in which a hospital would benefit from paying higher labor rates than necessary.

• What other issues should be considered in revising the policy for including contract labor in the wage index?

An association, located in a mostly rural State, suggested that changes to expand contract labor should be made as soon as possible to provide a more accurate and equitable wage index for all hospitals.

E. Puerto Rico Wage Index Values

For several years, hospitals in Puerto Rico have experienced large swings in their wage index values. We recognize that large shifts in the wage index values can cause shifts in the payment levels for a particular MSA. Because three of the six MSAs in Puerto Rico (Aguadilla, Arecibo, and Caguas) as well as the rural area have four or fewer hospitals, a large change in one hospital's wage data can cause a large increase or decrease in the wage index value for the entire MSA. One possible method to limit these annual swings in wage index values would be to create a single labor market area encompassing all the hospitals in Puerto Rico. That is, the six MSAs and the rural area could be combined into one area with one wage index value. A single labor market area would create a much larger set of hospitals to develop aggregate wage amounts and would mitigate situations where a change in the wage data of a single hospital has a large effect on the wage index of an MSA.

If we created a single labor market area for Puerto Rico, we would do so in a budget neutral manner; therefore, the effect would be to raise wage index values for some hospitals in Puerto Rico and to lower the values for others. Because of the negative effect on some hospitals, rather than propose such a change, we solicited comment on this approach for mitigating the fluctuations in wage index values for hospitals in Puerto Rico. We noted that the potential change would have no impact on hospitals outside Puerto Rico. We received five comments in response to our solicitation. These comments and our responses are set forth below.

Comment: All of the commenters expressed grave concern regarding the creation of a single MSA in Puerto Rico for purposes of the wage index. Most commenters objected to the negative impact this proposal would have on the wage index values of high wage areas. One commenter protested the elimination of large urban status for the San Juan MSA. Two commenters were concerned about the effect this change would have on hospitals that are able to reclassify through the MGCRB. One commenter noted that HCFA relies on OMB for MSA designations and OMB has not approved this change. Finally, a commenter stated that a single labor market area would not recognize the difference between tertiary and secondary hospitals.

Response: We solicited comment on consolidating Puerto Rico into one labor market area because it was one method for addressing swings in wage index values within Puerto Rico without adversely affecting hospitals outside Puerto Rico. Since commenters do not favor this approach, we will not pursue the option. We note that this approach would not have eliminated large urban status of the San Juan MSA for standardized amount purposes. Puerto Rico would have been treated as one labor market area solely for wage index purposes.

We have recently met with representatives of the Puerto Rico Hospital Association to explore other solutions to the problems faced by hospitals in the Commonwealth. In reviewing the latest Medicare cost report data available, we find that hospitals in Puerto Rico continue to demonstrate average Medicare operating margins comparable to all other prospective payment hospitals.

Comment: One commenter urged an add-on adjustment of not less than 7

percent to the Puerto Rico standardized amounts to account for the penalty resulting from the use of temporary cost allocation methods by government hospitals with a noncharge structure in Puerto Rico.

Response: We do not believe it is appropriate to adjust the standardized amounts of Puerto Rico for those government hospitals with a noncharge structure when we have not adjusted the national standardized amounts applicable to all other hospitals to account for government hospitals with noncharge structures that are located in the 50 States and the District of Columbia. We believe the prospective payment system should be fair and equitable to all hospitals, no matter where they are located.

Comment: A commenter requested that we establish a wage index floor for the labor market areas in Puerto Rico.

Response: The wage index measures relative wage levels across labor market areas. Since Puerto Rico labor market areas have not increased wages at the same average rate as all other hospitals, their wage index values have decreased accordingly. If we were to create a floor, it would improperly benefit labor market areas whose wages are not in line with the national experience. The hospitals receiving the floor wage index would receive artificially high DRG payments.

In addition, we note that, if such a change were to ever be adopted, it would be implemented in a budget neutral manner. Thus, a wage index floor for hospitals in Puerto Rico would result in lower payments to other hospitals.

Comment: Two commenters suggested that we eliminate the Puerto Rico rural area classification and classify those hospitals to the nearest MSA.

Response: We do not believe it is appropriate to offer special treatment to hospitals located in the rural area of Puerto Rico. While we acknowledge certain limitations in the current geographic classification system, we have yet to find a system that is demonstrably better. (See the discussion on labor market area research in the June 2, 1995 proposed rule (60 FR 29218).) Unless we decide to adopt a new method for defining labor market areas, we will continue to use rural areas for hospitals in counties that are not designated as part of MSAs. We note that rural hospitals in Puerto Rico may apply for geographic redesignation under the same criteria as all other hospitals and that some hospitals in rural Puerto Rico have been approved for reclassification.

Comment: One commenter suggested that OMB review the San Juan MSA for possible redesignation of certain San Juan municipalities to other urban areas.

Response: As acknowledged by the commenter, it is OMB that makes the determination of which municipalities are included in a particular MSA. We believe that OMB uses the same criteria to create the San Juan MSA as it does for all other MSAs. We urge the commenter to forward any suggestions directly to OMB for its consideration.

F. Changes to the MGCRB Composition and Criteria

Under section 1886(d)(10) of the Act, the MGCRB considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Guidelines concerning the criteria and conditions for hospital reclassification are located at §§ 412.230 through 412.236. The purpose of these criteria is to provide direction, to both the MGCRB and those hospitals seeking geographic reclassification, with respect to the situations that merit an exception to the rules governing the geographic classification of hospitals under the prospective payment system. The composition of the MGCRB and the procedures it follows in making reclassification determinations are set forth in §§ 412.246 through 412.280.

In the May 31, 1996 proposed rule, we proposed one change to the MGCRB regulations. In addition, we requested comments on sources of data that could be used to identify the occupational mix in a given MSA.

1. MGCRB Composition (§ 412.246)

Section 1886(d)(10)(B)(i) of the Act provides that the MGCRB is composed of five members appointed by the Secretary. This provision is implemented in regulations at § 412.246(a). Two of the members must be representative of the concerns of rural hospitals and at least one member must be knowledgeable in the field of analyzing costs of providing inpatient hospital services. Under current § 412.246(b), the term of office for an MGCRB member is 3 years, and appointments are limited to two consecutive 3-year terms. This section further provides that to permit staggered terms of office, initial appointments may be for shorter terms. Finally, the Secretary is permitted to terminate a member's tenure before his or her full term has expired.

In the proposed rule, in order to allow the Secretary maximum flexibility to recruit and retain qualified Board members, we proposed to eliminate the current requirement at § 412.246(b) that a Board member can serve for only two consecutive 3-year terms and to provide that an appointment to the MGCRB may be for any term not to exceed 3 years.

Under the proposed revisions, the Secretary would continue to be able to terminate a member's tenure before his or her full term has expired.

We received no comments on this proposal, and we have incorporated it as final in this document.

2. Occupational Mix Adjustment

Section 1886(d)(10)(D)(i) of the Act requires the Secretary to publish guidelines to be used by the MGCRB in rendering decisions on applications submitted for geographic reclassification. Those are to include guidelines for "comparing wages, taking into account (to the extent the Secretary determines appropriate) occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified."

Section 412.230(e) describes the criteria for hospital reclassification for purposes of the wage index. One of the criteria relates to the relationship between the hospital's wages and those of the area to which it seeks reclassification. Specifically, § 412.230(e)(1)(iv) provides that the hospital must demonstrate that its wages are at least 84 percent of the average hourly wage of hospitals in the area to which it seeks reclassification, or that the hospital's average hourly wage weighted for occupational mix is at least 90 percent of the average hourly wage of hospitals in the area to which it seeks reclassification. Under §§ 412.232(c) and 412.234(b), a group of hospitals seeking to reclassify must demonstrate that its aggregate average hourly wage is at least 85 percent of the average hourly wage of the hospitals in the area to which it seeks reclassification. These sections also provide that the threshold for occupational-mix adjusted hourly wage for hospital groups is the same as that for a single hospital, that is, 90 percent.

In the September 6, 1990 interim final rule (55 FR 36760), we stated that the acceptable sources for occupational mix data were the American Hospital Association (AHA) or the Bureau of Labor Statistics. Since publication of that document, the Bureau of Labor has discontinued its hospital wage surveys. Thus, the only currently acceptable occupational mix data source is the AHA Survey Data. We have been informed by the AHA that the survey for 1993 will be the last survey to collect information on the Hospital Personnel by Occupational Category. Therefore,

requests filed on or before October 1, 1996 for FY 1998 reclassification, which use FY 1993 wage data, may be the last for which we have an appropriate source of occupational mix data.

As we stated in the June 4, 1991 final rule with comment period (56 FR 25458), the reclassification process requires the use of occupational mix data that are comparable across areas and can be consistently applied. We are unaware of any sources other than the AHA data that meet these criteria.

As noted in the proposed rule (61 FR 27459), we did not propose collecting occupational mix data ourselves in light of past experience. Instead, we solicited suggestions about any occupational mix data sources that are available on a national basis. In addition, we indicated that we were willing to consider suggestions about other methods that would account for occupational mix in the wage index reclassification process.

Comment: We received three comments on this issue. One commenter believes that collection of the occupational mix data is burdensome, that the data are unreliable, and that we should therefore eliminate the use of such data. One commenter urged that the AHA continue to collect the data for HCFA. The final commenter suggested that we consider using the Geographic Reference Report to obtain occupational mix information. That commenter noted, however, that this collection effort would have to be expanded for our use.

Response: The AHA has notified us that it does not have enough demand for these data to warrant continued collection. Generally, the AHA, as well as HCFA, have found that hospitals do not want to provide occupational breakdowns in a survey format. The Geographic Reference Report would have to be expanded and tailored to fit our needs, which means that it would be unavailable for at least several years as a data source for this purpose. As there is no readily available data source that can be used immediately to represent occupational mix data for the purposes of reclassification applications, it appears that we will be unable to continue to use such data as an alternative for hospital reclassification applications. However, since the 1993 AHA data are available for reclassification requests for FY 1998, we will not make a final decision in this rule. If a suitable source of occupational mix data becomes available in the next year, we will consider using it beginning with reclassifications for FY 1999.

Comment: We received one comment from a hospital that was concerned that it might not qualify for reclassification for purposes of using the wage index of a proximate area because it could not meet the 108 percent qualifying criteria. This commenter noted that the hospital is located in an area where it materially influences the average hourly wage in its area, but it does not dominate the area. The commenter believes that the current criteria disadvantages such a hospital, because it can no longer meet the 108 percent threshold for reclassification.

Response: We have addressed similar comments a number of times. The purpose of the reclassification wage criteria is to identify situations in which a hospital would receive more appropriate payments if it were redesignated to another area. The 108 percent criterion in particular is designed to identify situations in which a hospital is significantly disadvantaged by its current geographic classification. If a hospital's wages are less than 8 percent higher than the average hourly wage in the hospital's labor market area, we believe the hospital is not significantly disadvantaged by the payments it would receive and, therefore, geographic reclassification is not appropriate.

Comment: One commenter requested confirmation of the process by which a group of hospitals withdraw its application for reclassification. The commenter believes that all the hospitals must be a party to the withdrawal request.

Response: The commenter is correct. The regulations at § 412.273(b) clearly state that all hospitals that are party to the application must request the withdrawal in writing. Therefore, a request to withdraw an approved application by the MGCRB must be agreed upon and requested in writing by the entire group.

IV. Rebasing and Revising of the Hospital Market Baskets

A. Operating Costs

1. Background

Effective for cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") for operating costs. Although "market basket" technically describes the mix of goods and services used to produce hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term "market basket" as used in this document refers to the hospital input price index.

The percentage change in the market basket reflects the average change in the price of goods and services hospitals purchase in order to furnish inpatient care. We first used the market basket to adjust hospital cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish hospital inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the hospital inpatient prospective payment system on October 1, 1983, we continued to use the hospital market basket to update each hospital's 1981 inpatient operating cost per discharge used in establishing the FY 1984 standardized payment amounts. In addition, the projected change in the hospital market basket has been the integral component of the update factor by which the prospective payment rates are updated every year. Under section 1886(b)(3)(B)(i)(XII) of the Act, the prospective payment rates will be updated in FY 1997 by the projected increase in the hospital market basket minus 0.5 percentage points. A detailed explanation of the hospital market basket used to develop the prospective payment rates was published in the **Federal Register** on September 3, 1986 (51 FR 31461). For additional background information on general development of hospital input price indexes, we refer the reader to the article by Freeland, Anderson, and Schendler, "National Hospital Input Price Index," *Health Care Financing Review,* Summer 1979, pp 37–61. We also refer the reader to the September 4, 1990 **Federal Register** (55 FR 35990) in which we discussed the previous rebasing of the hospital input price index.

The hospital market basket is a fixed-weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon type of expenditure. Then, the proportion of total costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price/wage variable, referred to as a price proxy. These price proxies are price levels derived from a publicly available statistical series published on a consistent schedule, preferably at least on a quarterly basis. Third and finally, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, the

expenditure weights multiplied by the price levels) for all cost categories yields the composite index level in the market basket in a given year. Repeating this step for other years produces a series of market basket index levels over time. Dividing one index level by an earlier index level produces rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are not considered. For example, shifting a traditionally inpatient type of care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital, but would not be factored into the price change measured by a fixed weight hospital market basket.

We believe that it is desirable to rebase the market basket periodically so the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. We last rebased the hospital market basket cost weights effective for FY 1991. This market basket, still used through FY 1996, reflected base year data from FY 1987 in the construction of the cost weights.

In its April 1, 1985 report to the Secretary (Appendix C of the June 10, 1985 proposed rule (50 FR 24446)), ProPAC supported HCFA's position on periodic rebasing, stating that the market basket cost weights should be recalculated or "rebased" at least every 5 years, or more frequently if significant changes in the weights occur. We note that there are separate market baskets for prospective payment hospitals and hospitals and hospital units excluded from the prospective payment system. The separate, excluded hospital market basket is set forth in section IV.A.5 of this preamble.

2. Rebasing and Revising the Hospital Market Basket

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, we are moving the base year cost structure from FY 1987 to FY 1992). Revising means changing data sources, cost categories, or price proxies used in the input price index.

We are adopting a rebased and revised hospital market basket in developing the FY 1997 update factor for the prospective payment rates. The new market basket has been rebased to reflect 1992, rather than 1987, cost data.

In developing the rebased and revised market basket, we reviewed hospital operating expenditure data for the market basket cost categories. In a change from the previous methodology, we relied primarily on Medicare hospital cost report data for the rebasing. For the rebased market baskets, we used data on hospital expenditures for four major expense categories (wages and salaries, employee benefits, pharmaceuticals, and a residual "all other") from hospital cost reporting periods beginning in FY 1992 (that is, periods beginning on or after October 1, 1991 and before October 1, 1992). We refer to these as PPS–9 cost reports (the 9th year of the prospective payment system (PPS)). The market basket was previously based on 1987 expense data from the 1988 American Hospital Association (AHA) Annual Survey.

Expenses for wages and salaries, employee benefits, and pharmaceuticals were determined using data from PPS–9 cost reports as reported in the Hospital Cost Report Information System (HCRIS) files. We determined total professional fees using AHA Annual Survey data. Total professional fees include medical and nonmedical professional fees. Since the medical professional fees included in the compensation of provider-based physicians are paid under Medicare Part B, we analyzed HCRIS data to determine the professional component of provider-based physician compensation and subtracted it from total professional fees to obtain an estimate of nonmedical professional fees. Malpractice insurance costs were determined using the cost share for PPS–6 (cost reporting periods beginning in FY 1989), the last year these costs had to be treated separately from all other administrative and general costs, trended forward to 1992 based on the relative importance of malpractice costs found in the previous market basket. The All Other Expenses category was calculated in two steps. First, from PPS–9 cost reports, total operating expenses were tabulated by subtracting capital-related expenses, direct medical education expenses, and the medical professional fees from total expenses. Second, we subtracted the total of the five cost category expenses already determined from total operating expenses to obtain the All Other Expenses category.

After totals for these main cost categories (wages and salaries, employee benefits, professional fees, pharmaceuticals, malpractice insurance, and all other expenses) were calculated, we then determined the proportion each category represents of the total costs. These proportions represent the major rebased market basket weights. The differences between the six major categories for the 1992-based index and the previous 1987-based index are summarized in Table 1 below.

TABLE 1.—COMPARISON OF 1992 AND 1987 PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS

Expense categories	Rebased 1992 hospital market basket	1987-based hospital market basket
Wages and salaries	50.244	52.2
Employee benefits	11.146	9.5
Nonmedical professional fees	2.127	1.6
Malpractice insurance	1.189	1.4
Pharmaceuticals	4.162	3.9
All other	31.132	31.4
Total	100.000	100.0

Note: Although we rounded the weights to the tenths decimal position in the 1987-based market basket as published in the September 4, 1990 final rule, we are presenting the 1992 weights in greater specificity.

Table 2 sets forth the market basket cost categories, weights, and price proxies. Weights for the "Utilities" and the "All Other" cost categories, as well as the subcategories, were determined using the 1987 Department of Commerce's Bureau of Economic Analysis (BEA) Input-Output Table, from which data for the hospital industry were extracted. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business, "Benchmark Input-Output Accounts for the U.S. Economy, 1987" (April 1994). To date, the Department of Commerce has not released final 1992 cost data. Therefore, we plan to incorporate these data into the FY 1998 proposed rule.

We aged the 1987 cost shares to 1992 using historical price changes between 1987 and 1992 for each category. The aged shares were normalized to be consistent with the 1992 hospital cost report data. Relative weights for the new base year were then calculated for various expenditure categories. This work resulted in the identification of 26 separate cost categories in the rebased hospital market basket, two fewer categories than were included in the 1987-based market basket. Detailed

descriptions of each category and respective price proxy are provided in Appendix C to this final rule.

TABLE 2.—1992-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Rebased 1992 hospital market basket	Price proxy
1. Compensation	61.390	
A. Wages and salaries*	50.244	HCFA occupational wage index.
B. Employee benefits*	11.146	HCFA occupational benefits index
2. Professional fees*	2.127	ECI—compensation for professional, specialty and technical.
3. Utilities	2.469	
A. Fuel, oil, and gasoline	0.345	PPI refined petroleum products.
B. Electricity	1.349	PPI commercial electric power.
C. Natural gas	0.670	PPI commercial natural gas.
D. Water and sewerage	0.106	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.189	HCFA professional liability insurance premium index.
5. All other	32.824	
A. All other products	24.033	
(1.) Pharmaceuticals	4.162	PPI ethical (prescription) drugs.
(2.) Food	3.459	
a. Direct purchase	2.363	PPI processed foods and feeds.
b. Contract service	1.096	CPI–U food away from home.
(3.) Chemicals	3.795	PPI industrial chemicals.
(4.) Medical instruments	3.128	PPI medical instruments and equipment.
(5.) Photographic supplies	0.399	PPI photographic supplies
(6.) Rubber and plastics	4.868	PPI rubber and plastic products.
(7.) Paper products	2.062	PPI converted paper and paperboard products.
(8.) Apparel	0.875	PPI apparel.
(9.) Machinery and equipment	0.211	PPI machinery and equipment.
(10.) Miscellaneous products	1.074	PPI finished goods.
B. All other services	8.792	
(1.) Business services*	3.823	ECI—compensation for private workers in business services.
(2.) Computer services*	1.927	AHE computer and data processing services.
(3.) Transportation services	0.188	CPI–U transportation.
(4.) Telephone services	0.531	CPI–U telephone services.
(5.) Postage*	0.272	CPI–U postage.
(6.) All other: labor intensive*	1.707	ECI—compensation for private service occupations.
(7.) All other: nonlabor intensive	0.344	CPI–U all items.
Total	100.000	

*Labor-related.
NOTE: Due to rounding, weights may not sum to total.

The 1987-based market basket included a separate Blood Services cost category. In the 1992-based market basket, Blood Services is contained within the Chemicals cost category. In addition, the 1987-based cost category for Fuel Oil, Coal, etc. has been combined with the 1987-based Motor Gasoline cost category to form the 1992-based Fuel, Oil and Gasoline cost category. Both of these changes are based on revised cost categories from BEA. For comparison purposes, the 1987-based cost categories are set forth in Table 3.

TABLE 3.—1987-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	1987 hospital market basket	Price proxy
1. Compensation	61.7	
A. Wages and salaries*	52.2	HCFA occupational wage index.
B. Employee benefits*	9.5	HCFA occupational benefits index.
2. Professional fees*	1.6	ECI—wages and salaries for professional, specialty and technical.
3. Utilities	2.4	
A. fuel, oil, coal, etc.	0.6	WPI light fuel oils.
B. Electricity	1.1	WPI industrial power.
C. Natural gas	0.3	WPI natural gas.

TABLE 3.—1987-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES—Continued

Expense categories	1987 hospital market basket	Price proxy
D. Motor gasoline	0.2	WPI gasoline.
E. Water and sewerage	0.0	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.4	HCFA professional liability insurance premiums.
5. All other	32.8	
A. All other products	21.8	
(1.) Pharmaceuticals	3.9	WPI prescription drugs.
(2.) Food	3.3	
a. Direct purchase	2.1	WPI processed foods.
b. Contract service	1.2	CPI–U food away from home.
(3.) Chemicals	3.1	WPI industrial chemicals.
(4.) Medical instruments	2.7	WPI medical instruments and equipment.
(5.) Photographic supplies	2.6	WPI photographic supplies.
(6.) rubber and plastics	2.3	WPI rubber and plastic products.
(7.) Paper products	1.4	PPI converted paper and paperboard products.
(8.) Apparel	1.1	WPI textile house furnishings.
(9.) machinery and equipment	0.4	WPI machinery and equipment.
(10.) Miscellaneous products	0.8	WPI finished goods.
B. All other services	11.1	
(1.) Business services*	3.8	AHE business services.
(2.) Computer services*	2.0	AHE computer and data processing services.
(3.) Transportation services	1.2	CPI–U transportation.
(4.) Telephone services	1.0	CPI–U telephone services.
(5.) Blood services*	0.6	WPI blood and derivatives.
(6.) Postage*	0.4	CPI–U postage.
(7.) All other: labor intensive*	1.2	ECI—wages and salaries for private service occupations.
(8.) All other: nonlabor intensive	0.8	CPI–U all items.
Total	100.0	

*Labor-related.
NOTE: Due to rounding, weights may not sum to total.

In the September 4, 1990 final rule, for purposes of determining the labor-related portion of the standardized amounts, we summed the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, computer and data processing, blood services, postage, and all other labor-intensive services) in the hospital market basket. This summation resulted in a labor-related portion of the hospital market basket of 71.4 percent and nonlabor-related portion of 28.6 percent. Under sections 1886 (d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of payments that are labor-related. Since October 1, 1990, then, we have considered 71.4 percent of costs to be labor-related for purposes of the prospective payment system.

In connection with the rebasing of the hospital market basket, we have reestimated the labor-related share of the standardized amounts. Based on the relative weights of the 1992-based prospective payment hospital market basket, as described in Table 2, the labor-related portion that is subject to hospital wage index adjustments (based on wages and salaries, employee benefits, professional fees, business services, computer and data processing, postage, and all other labor-intensive services) is 71.246 percent and the nonlabor-related portion is 28.754 percent. To implement this change, effective with discharges occurring on or after October 1, 1996, we recomputed the labor-related and nonlabor-related shares of the large urban and other areas' standardized amounts used to establish the prospective payment rates.

The amounts in Table 4 reflect the revised labor-related and nonlabor-related portions. Due to the Bureau of Economic Analysis' reclassification of Blood Services to Chemicals, we now allocate Blood Services to a nonlabor cost category. We note that, although there are revisions of the labor and nonlabor portions, due to both weight changes and the Blood Services category change, the labor-related portions of the rates published in Table 4 have remained essentially the same. The labor-related portion has decreased by 0.146 percentage points.

TABLE 4.—LABOR-RELATED SHARE

Cost category	Weight
Wages and salaries	50.244
Employee benefits	11.146
Professional fees	2.127
Business services	3.823
Computer services	1.927
Postal services	0.272
All other labor intensive	1.707
Total labor related	71.246
Total nonlabor related	28.754

Comment: Several commenters noted that because the prospective payment system hospital input price index directly measures changes in the price of labor for the overall economy as well as the changes in the prices of goods and services purchased by hospitals, if legislation is passed increasing the minimum wage in the United States the market basket update should be revised to reflect this change.

Response: The commenters are correct in asserting that an increase in the minimum wage should be appropriately reflected in the prospective payment system hospital input price index. The structure of the prospective payment

system hospital input price index is designed to track the historical increases in compensation for workers comparable to those employed in the hospital sector (as well as the prices of goods and services comparable to those purchased by hospitals). The blend of occupational data represents a composite of the types of labor that hospitals employ in the production of their services. The proxies selected by HCFA to represent these inputs are Employment Cost Indexes (ECIs) compiled by the Bureau of Labor Statistics for the relevant occupational categories. When the historical data for the period of the minimum wage increase becomes available, the ECIs automatically reflect the impacts of increases in the minimum wage. These proxies will therefore reflect any increases in wages and benefits associated with the legislated increase in the minimum wage.

The second quarter 1996 DRI/McGraw-Hill forecast of the prospective payment system hospital input price index, which is included in this final rule, reflects an anticipated increase in the minimum wage.

In the first quarter of 1996, HCFA commissioned DRI/McGraw-Hill to consider the effects of an increase in the minimum wage on the HCFA input price indexes. In its analysis, DRI/McGraw-Hill stated that the critical factor in determining the relative impact on each of HCFA's input price indexes in comparison with the economy-wide impact is the distribution of minimum wage workers associated with the occupational mix within each health sector. Data from the 1990, 5-percent Public Use Micro Data Survey (scaled for consistency with the nonfarm aggregate from the 1994 Current Population Survey) indicate that the share of all hourly workers at or below the minimum wage is approximately 3.3 percent for the health sector as a whole, versus an economy wide share of 3.6 percent. There is a wide variation in the importance of minimum wage workers across health industry sectors as well, ranging from a low of 2.0 percent for the workforce in hospitals, to a high of 9.3 percent for nursing-care related facilities. For the key wage proxies in the prospective payment system hospital input price index (ECI Civilian Hospital workers and the ECI for Professional-Technical workers) the share of minimum wage workers is negligible. The expected increase in minimum wage will likely affect the annual rates of increase in the prospective payment system hospital input price index in the range of about 0.1 percent.

Comment: One commenter noted that there are few who can afford to spend the time necessary to study the proposal to rebase and revise the hospital market baskets in its present form or hire an economist for an interpretation. The commenter suggests that HCFA could save valuable resources and, at the same time, simplify a process that is extremely complicated by using the overall cost data from the cost reports as a means of simplifying and arriving at an accurate market basket.

Response: The Medicare cost report is designed to track hospitals' costs for services that are covered by Medicare. Expenditures or costs are determined by the price of inputs for a particular good or service times the quantity of that input good or service that is used. An increase in costs could result from input price growth (inflation) or growth in the quantity of services used. It is essential to understanding the growth in Medicare program costs to have a rigorous framework for distinguishing the effects of input price growth from the effects of increases in the quantity of inputs. A measure based upon overall cost data from the cost reports, while appearing to simplify the process, would not separate input price changes from changes in the quantity of inputs and consequently would not serve the needs of government or industry.

We do appropriately use Medicare cost report data in developing weights for the Medicare input price indexes. The 1992 base year weights for the four core operating categories (wages and salaries, employee benefits, pharmaceuticals, and all other) were derived from Medicare cost report data on hospitals' relative shares of costs in these four categories in 1992. By holding the weights constant at their 1992 relative values, and applying proxies to measure price change over time, it is possible to estimate the effect of pure input price inflation while holding quantity and quality of inputs constant. This is the purpose of the prospective payment system hospital input price index.

Comment: A commenter stated that, in rebasing the market basket, HCFA has chosen to put malpractice costs into a separate category. In doing so, this cost was taken from 1989 cost reports and "trended" forward. The commenter suggested that, because this cost cannot be taken from cost reports in future years, it would be better to consolidate malpractice cost within an "all other" category.

Response: Malpractice has appropriately been a separate cost category since the inception of the prospective payment system hospital input price index. We are modifying the Medicare cost report to again include relevant malpractice cost questions, so that we will not have to estimate the malpractice share of costs.

3. Selection of Price Proxies

After computing the 1992 cost weights for the rebased hospital market basket, it was necessary to select appropriate wage and price proxies to monitor the rate of increase for each expenditure category. Most of the indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

- Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. For example, we used the PPI for ethical drugs, rather than the Consumer Price Index (CPI) for prescription drugs. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs. The PPIs we used measure price change at the final stage of production.
- Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by the producer, the consumer price indexes were used if no appropriate PPI was available, or if the expenditure was more similar to that of retail consumers in general rather than a purchase at the wholesale level. For example, the CPI for food purchased away from home was used as a proxy for contracted food services.
- Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in employment mix.
- Average Hourly Earnings—Average Hourly Earnings (AHEs) measure the rate of change of hourly earnings for various occupations within a given industry, and, therefore, reflect a weighted occupational mix within a particular industry. The AHE series is calculated by dividing gross payrolls by total hours and measures actual earnings rather than pure wage rates. It is a current-weight series rather than a fixed-weight index and thus reflects shifts in employment mix. An AHE rather than an ECI is used when there is no corresponding ECI category that is an appropriate measure of growth for a

given labor category or when the ECI does not have sufficient length of history to be useful for our purpose.

Our price proxies for the rebased prospective payment hospital market basket are shown in Table 2 above and are summarized in Appendix C to this final rule.

Comment: One commenter believes that the most recent available Medicare cost report and other data should be used to establish the cost weights, particularly because the hospital industry and its cost structure are changing so rapidly.

Response: The prospective payment system hospital input price index was designed to be rebased at 5-year intervals, consistent with the scheduled release of the Commerce Department data on detailed cost structure by industrial sector of the U.S. economy. The Gross Domestic Product (GDP) and other related government statistics are on the same schedule of 5-year intervals between updates. Therefore, when planning for rebasing, HCFA adopted a base year that was 5 years from the most recent previous base year, 1987. We note that the Department of Commerce has not yet made its planned release of the 1992 detailed data on cost structure by industrial sector of the U.S. economy. However, in the proposed rule for FY 1998, we intend to modify the input price indexes for both the prospective payment system and excluded hospitals by incorporating the 1992 detailed cost structure data.

Comment: One commenter requested that we provide a more complete rationale in the final rule concerning the proposed price-proxy changes.

Response: The following discussion is offered to further explain our rationale for the price proxy changes we are adopting.

a. Nonmedical professional fees: The ECI for Compensation for Professional and Technical Workers replaced the ECI for Wages and Salaries for Professional and Technical Workers. The new index measures the growth in input prices associated with employee benefits as well as wages and salaries. Since the nonmedical professional fees category represents the hospital costs associated with obtaining these services, a price measure that accounts for aggregate compensation costs is preferable to one that measures only the wages and salaries component. When the ECI was first collected, it measured only growth in wages and salaries (not employee benefits). We changed the price proxy to reflect the improved data from the Bureau of Labor Statistics (BLS).

b. In an effort to improve the general accuracy and validity of the index's measurement of price growth, we made four minor producer price index changes:

- *Fuel Oil and Gasoline:* In the 1992-based index, the Fuel Oil and Gasoline category represents a combination of the Fuel Oil and Coal category and the Motor Gasoline category from the 1987-based index. The weight for motor gasoline was too small to keep it as a separate category. The price proxy used for the combined group in the 1992-based index, the Producer Price Index for Refined Petroleum Products, encompasses both PPIs used in the 1987-based index.
- *Electricity:* The PPI for Industrial Power was replaced with the PPI for Commercial Electrical Power to reflect information from the hospital industry and utility industry that commercial rates of change for utility costs are generally more appropriate than industrial rates.
- *Paper Products:* The weighted average of the percentage change in the price of converted paper and paperboard products and the percentage change in the price of paper excluding newsprint and packaging paper was replaced by the PPI for converted paper and paperboard products to better reflect the composition of costs in hospitals.
- *Apparel:* The PPI for textile house furnishings was replaced by the PPI for Apparel to better reflect the composition of costs in hospitals.

c. Business Services: The Average Hourly Earnings (AHE) for Business Services (AHE73NS) was replaced by the ECI for Compensation for Business Services. Compensation, which reflects both fringe benefits and wages, more appropriately measures the cost of business services. In addition, the ECI measurement holds the skill mix constant, measuring just the change in the cost of compensation, whereas a change in the AHE for Business Services can reflect a change in skill mix as well as a change in earnings. At the time of publication of the 1987-based index, the ECI for Business Services was not available.

d. All Other Services, Labor Intensive: The ECI Wages and Salaries for Private Service workers was replaced by the ECI Compensation for Private Service workers. A compensation price proxy reflects both a change in the price of benefits as well as a change in the price of wages and salaries.

4. The HCFA Blended Compensation Index

Compensation includes the two largest categories of the rebased market basket: wages and salaries, and employee benefits. Wages and salaries account for 50.244 percent and employee benefits account for 11.146 percent of the total weight in the prospective payment hospital market basket.

The HCFA Blended Compensation Index groups hospital occupations into nine broad categories. For eight of those occupational groups, we believe that hospitals compete for labor generally with employers outside the health care sector. Accordingly, we use economy-wide employment cost indexes (ECI) as price proxies for these eight occupational groups. In the case of compensation for nurses, as well as for certain other health care technicians and professionals, the hospital labor market may be predominant. However, hospitals do compete with other industries to obtain certain skilled professional and technical staff (for example, computer programmers). Therefore, for professional and technical workers, we believe a price proxy that reflects an equal blend of internal and external compensation variables is appropriate.

Similar to the methodology used for the previous rebasing, the weights for the nine cost categories in the occupational blend index were derived from the 1992 Current Population Survey (CPS) produced by BLS. Using the CPS, private hospital workers were classified into the nine occupational categories. Private hospitals better reflect the mix of occupations used to produce acute care services for the prospective payment system hospital input price index. Government hospitals were excluded because their occupational mix reflects the subset of nonacute care hospitals. Once private hospital workers were sorted by occupation into one of the nine occupational groups, weights were estimated using the share of wages and salaries for each of the nine occupations. These shares formed the basis of the weights that were used for the market basket of occupational categories.

An additional adjustment was made for contract labor costs. Rather than treat contract labor as a distinct noncompensation cost category, it was integrated into the occupational blend as a component of hospitals' compensation costs for purposes of the market basket index. Thus, contract labor is treated the same as other labor expenses. Contract labor was allocated to the professional and technical and service occupation categories. After adjusting the professional and technical and service workers' shares to account for contract labor, the weights for the

nine occupational blend categories were renormalized to equal 100.00 percent. The weights and proxies for the nine cost categories of the HCFA Blended Wages and Salaries Index are shown in Table 5.

TABLE 5.—HCFA BLENDED WAGES AND SALARIES INDEX (WAGES AND SALARIES COMPONENT OF THE 1992-BASED MARKET BASKET)

Cost category	Weight	Price proxy
Professional and technical	65.729	Equal blend of ECI for wages and salaries of civilian hospital workers and ECI for wages and salaries of professional, specialty and technical workers.
Managers and administrators	9.554	ECI for wages and salaries for executive, administrative and managerial workers.
Sales	0.402	ECI for wages and salaries for sales workers.
Clerical workers	12.379	ECI for wages and salaries for administrative support including clerical workers.
Craft and kindred	1.689	ECI for wages and salaries for precision production, craft and repair workers.
Operatives except transport	0.437	ECI for wages and salaries for machine operators, assemblers and inspectors.
Transport equipment operatives	0.122	ECI for wages and salaries for transportation and material moving workers.
Nonfarm laborers	0.084	ECI for wages and salaries for handlers, equipment cleaners, helpers and laborers.
Service workers	9.606	ECI for wages and salaries for service occupations.
Total wages and salaries	100.000	Total weight for wages and salaries is 50.2.

Note: Due to rounding, weights may not sum to total.

Comment: One commenter suggested that the manner in which hospital-specific wages and benefits price proxies are incorporated into the market basket should be changed, so that the internal hospital industry wage and benefit price proxies represent more of the compensation weights in the market basket. The ECI for hospital workers should be blended 50–50 for all labor cost categories, not just the professional and technical worker cost group. Although nonprofessional and technical workers may be employed in other settings, many of these workers have skills that are specific to the hospital industry.

Response: The blended compensation index of nine broad occupational groups with the ECI for Hospital Workers that is included in the prospective payment system hospital input price index reflects HCFA's judgment that, except for the professional and technical occupational category, hospitals compete primarily in the economy-wide labor market. Accordingly, HCFA uses Employment Cost Indexes (ECIs) for the private sector of the economy for eight of the nine occupation groups. For one broad occupational group, professional and technical workers, HCFA has recognized that certain subcategory occupations, such as registered nurses and physical therapists, are so specialized that hospitals are the predominant employers. Other types of professional and technical workers such as computer programers and biological researchers are distributed more evenly throughout the private sector economy. Therefore, a blend of the ECI for "Private Professional Specialty and Technical Workers" and the ECI for Civilian Hospital workers is used to measure growth in compensation prices for professional and technical. Since none of the other eight occupational categories are likely to use substantial proportions of hospital specific occupations, extending the blend to other labor categories is not appropriate.

As a practical matter, there is virtually no difference in the overall hospital input price index that results from using only a 50–50 blend of the ECI for Professional-Technical Workers and the ECI for Hospital Workers versus using a 50–50 blend for each of the nine ECI occupation groups with the ECI for Civilian Hospital Workers. The following table illustrates this point:

Difference in the Rate of Increase in the Hospital Index 50–50 Blend of Professional-Technical Workers Versus 50–50 Blend of All Occupations

FEDERAL FISCAL YEAR PERCENT CHANGE

	1997	1998	1999
50–50 blend of ECI P&T and ECI civilian hospital workers	2.5	2.9	3.1
50–50 blend of all nine occupations and ECI civilian hospital workers	2.5	2.8	3.1

The latest forecast of the rate of increase in the hospital input price index indicates that there is no difference for the FY 1997 update. For FY 1998, the current forecasts have a 0.1 percent difference. For FY 1999, the forecasts are identical. We will continue to monitor the effect on the hospital input price index that results from the alternative construction of the compensation sub-index. If a material difference develops between the two versions, we will reevaluate our position on the construction of the compensation sub-index.

Comment: One commenter, noting Table 5, "HCFA Blended Wages and Salaries Index (Wages and Salaries Component of the 1992–Based Market Basket) (61 FR 27463), which lists the nine occupational categories, stated that HCFA is of the opinion that hospitals compete with the general labor market with the first category entitled "Professional and Technical." The commenter questioned how HCFA arrives at this conclusion. The commenter recommended that, unless there is evidence that "Professional and Technical" workers provide an accurate proxy for wages in the hospital industry, the "blend" be dropped and be replaced by a hospital industry measure.

Response: The professional and technical workers category includes computer programmers, computer systems analysts, social workers, accountants, scientists, and lawyers. To varying degrees, hospitals employ each of these types of personnel. As noted in the previous comment and response, these occupations are also in significant demand outside the hospital industry, and hospitals must compete with employers in other industries as well as with other hospitals. For these types of occupations, competitive market forces that affect the compensation levels paid to workers in the nonhospital sector directly influence the compensation that prudent buyer hospitals pay. In order to account for this, it is appropriate to use the ECI Compensation for Private Professional-Technical Workers.

Hospitals are also major employers of other types of workers such as physical therapists, respiratory therapists, and registered nurses. Because hospitals demand substantial proportions of these types of workers, it is appropriate to reflect, at least in part, hospital industry-specific compensation.

The blend of professional-technical workers with the hospital industry specific compensation ECI is also used mitigate the effect of potential labor market imperfections in the hospital industry. Licensure requirements and the existence of third party insurance are believed by some to have enabled certain occupations to command compensation premiums that are above what can be explained by traditional predictors such as education, skill, experience, and location. Because certain professional and technical workers tend to have licensure restrictions that are more limiting than other occupations in the health care industry, there is some reason to believe that workers with the strictest licensure requirements are most able to realize a compensation premium. A blend provides a reasonable way to recognize that hospital compensation of professional and technical workers is influenced by both economy-wide and hospital sector-specific forces and that licensure requirements may influence compensation in ways different from a competitive market.

The advent of managed care may have diminished the ability of certain health sector labor occupations to achieve compensation premiums. This is suggested by the fact that recently the rate of increase in the ECI for Hospital workers has declined relative to the ECI for economy-wide professional-technical workers while in earlier periods the reverse held. Since FY 1992, the ECI for Hospital Workers has grown at a slower rate than the ECI for Private Professional and Technical workers. We will continue to monitor the ECIs and other data to detect changes in the market dynamics for the types of workers that hospitals employ.

Employment Cost Index Hospital Industry Workers Versus Economywide Professional and Technical Occupations

FEDERAL FISCAL YEAR PERCENT CHANGE

	1992	1993	1994	1995
ECI civilian hospital industry workers	4.3	3.7	3.1	2.5
ECI private P&T occupations	4.5	4.0	3.2	2.6

Comment: One commenter believed that the hospital industry does not compete with the general labor market for the cost category entitled "Managers and Administrators." Therefore, the price proxy for this category should be the ECI for hospital workers, a hospital sector-specific proxy.

Response: Occupations in this category require a knowledge of and the capability to put into effect management principles, practices and techniques. The skills that these personnel possess are in demand in the overall economy as well as the hospital sector.

Since FY 1994, the ECI Compensation for Hospital Workers has grown at a slower rate than the ECI Compensation for Private Executive Administrative and Managerial Workers. Recent projections of these price proxies by DRI/McGraw-Hill suggest that this trend will continue.

Comment: One commenter suggested that, as an alternative to using the ECI for Hospital Industry Workers as a price proxy for all nine occupational categories, HCFA could use the data base it has developed over the last few years dealing with hospital wages.

Response: We assume that the commenter's reference to the data base that HCFA has developed over the last few years refers to the Hospital Area Wage Index. This index was developed pursuant to a statutory requirement that the Secretary adjust the standardized amounts for area differences in hospital wage levels. This index is designed to measure geographic differences in wage levels, not changes in wages over time. Also, because the area wage index is computed using total adjusted compensation divided by the sum total hours worked in a labor market (see section III of this preamble), it does not hold constant the skill-mix of employees from year to year. Therefore, any year-to-year index based upon the area wage index would include both price and quantity effects. The hospital input price index is appropriately designed to measure pure price inflation.

5. Separate Market Basket for Hospitals and Hospital Units Excluded from the Prospective Payment System

In its March 1, 1990 report, ProPAC recommended that we establish a separate market basket for hospitals and hospital units excluded from the prospective payment system. Effective with FY 1991, HCFA adopted ProPAC's recommendation to implement separate market baskets. (See the September 4, 1990 final rule (55 FR 36044).) Prospective payment and excluded hospitals tend to have different case mixes, practice patterns, and composition of inputs. The fact that these hospitals are not included under the prospective payment system in part reflects these differences.

Studies completed by HCFA, ProPAC, and the hospital industry have documented different weights for excluded hospitals and prospective payment hospitals. Table 7 compares major weights in the rebased 1992 market basket for excluded hospitals with weights in the rebased 1992 market basket for prospective payment system hospitals. Wages and salaries are 52.152 percent of total operating costs for excluded hospitals compared to 50.244 percent for prospective payment hospitals. Employee benefits are 11.569 percent for excluded hospitals compared to 11.146 percent for prospective payment hospitals. As a result, compensation costs (wages and salaries plus employee benefits) for excluded hospitals are 63.721 percent of costs compared to 61.390 percent for prospective payment hospitals. Noncompensation costs are 36.279 percent for excluded hospitals and 38.610 of costs for prospective payment hospitals.

Two significant differences in the category weights occur in Pharmaceuticals and Business Services. Pharmaceuticals represent 4.162 percent of costs for prospective payment hospitals and 3.070 percent for excluded hospitals. Business services represent 3.823 percent of costs for prospective payment hospitals and 2.337 percent for excluded hospitals. The weights for the excluded hospital market basket were derived using the same data sources and methods as for the prospective payment market basket (see Appendix C to this final rule).

Differences in weights between the excluded hospital and prospective payment hospital market baskets do not necessarily lead to significant differences in the rate of price growth for the two market baskets. If the individual wages and prices move at the approximately same annual rate, both market baskets may have about the same price growth even though weights may differ substantially because both market baskets use the same wages and prices. Also, offsetting price increases for various cost components can result in similar composite price growth in both market baskets.

The wage and price proxies are the same for the excluded hospital and prospective payment hospital market baskets. As discussed in section IV.A.2 of this preamble, all of the cost expenditure weights for both the prospective payment and excluded hospital market baskets are subject to refinement when the U.S. Department of Commerce 1992 data are released, analyzed by HCFA, and incorporated in

the PPS and exempt final market baskets.

The excluded hospital market basket is a composite set of weights for Medicare participating psychiatric, long-term care, rehabilitation, and children's hospitals. We are using cost report data for excluded hospitals and units whose average length of stay for Medicare patients is within 15 percent (that is, 15 percent higher or lower) of the facility average length of stay for all patients. This is a change from the 1987-based market basket, for which data for all excluded hospitals and units were used. We believe that limiting our sample to hospitals with a Medicare average length of stay within 15 percent of the total facility average length of stay provides a more accurate reflection of the structure of costs for Medicare. We note that the forecast for FY 1997 differs by only 0.1 percent when we included all excluded hospitals in the calculation of weights. The forecast for the limited index was 2.5 percent, while the forecast for the full set of excluded hospitals was 2.6 percent.

TABLE 6.—COMPARISON OF SIGNIFICANT WEIGHTS FOR 1992-BASED EXCLUDED HOSPITAL AND PROSPECTIVE PAYMENT HOSPITAL MARKET BASKETS

Category	Excluded hospitals	Prospective payment hospitals
Wages and salaries	52.152	50.244
Employee benefits	11.569	11.146
Professional fees	2.098	2.127
Pharmaceuticals	3.070	4.162
All other	31.111	32.321
Total	100.000	100.000

TABLE 7.—1992-BASED EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Rebased 1992 excluded hospital market basket	Price proxy
1. Compensation	63.721	
A. Wages and salaries	52.152	HCFA occupational wage index.
B. Employee benefits	11.569	HCFA occupational benefits index.
2. Professional fees	2.098	ECI—Compensation for professional, specialty and technical.
3. Utilities	2.557	
A. Fuel, oil, and gasoline	0.357	PPI refined petroleum products.
B. Electricity	1.396	PPI commercial electric power.
C. Natural gas	0.694	PPI commercial natural gas.
D. Water and sewerage	0.110	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.081	HCFA professional liability insurance premiums index.
5. All other	30.543	
A. All other products	23.642	
(1.) Pharmaceuticals	3.070	PPI ethical (prescription) drugs.
(2.) Food	3.581	
a. Direct purchase	2.446	PPI processed foods and feeds.
b. Contract service	1.135	CPI–U food away from home.
(3.) Chemicals	3.929	PPI industrial chemicals.
(4.) Medical instruments	3.238	PPI medical instruments and equipment.
(5.) Photographic supplies	0.413	PPI photographic supplies.
(6.) Rubber and plastics	5.039	PPI rubber and plastic products.
(7.) Paper products	2.134	PPI converted paper and paperboard products.
(8.) Apparel	0.906	PPI apparel.
(9.) Machinery and equipment	0.218	PPI machinery and equipment.
(10.) Miscellaneous products	1.112	PPI finished goods.
B. All other services	6.901	
(1.) Business services	2.337	ECI—compensation for private workers in business services.
(2.) Computer services	1.415	AHE computer and data processing services.
(3.) Transportation services	0.195	CPI–U transportation.
(4.) Telephone services	0.549	CPI–U telephone services.
(5.) Postage	0.282	CPI–U postage.
(6.) All other: labor intensive	1.767	ECI—compensation for private service occupations.
(7.) All other: nonlabor intensive	0.356	CPI–U all items.
Total	100.000	

NOTE: Due to rounding, weights may not sum to total.

Table 8, below, shows what the excluded hospital weights would be if cost data for all excluded hospitals had been used.

TABLE 8.—1992 EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PROXIES USING DATA FROM ALL EXCLUDED HOSPITALS

Expense categories	Rebased 1992 excluded hospital market basket	Price proxy
1. Compensation	68.074	
A. Wages and salaries	55.714	HCFA occupational wage index.
B. Employee benefits	12.360	HCFA occupational benefits index.
2. Professional fees	2.073	ECI—compensation for professional, specialty and technical.
3. Utilities	2.191	
A. Fuel, oil, and gasoline	0.306	PPI refined petroleum products.
B. Electricity	1.196	PPI commercial electric power.
C. Natural gas	0.595	PPI commercial natural gas.
D. Water and sewerage	0.094	CPI–U water and sewerage maintenance.
4. Professional liability insurance	1.081	HCFA professional liability insurance premiums index.
5. All other	26.582	
A. All other products	20.333	
(1.) Pharmaceuticals	2.704	PPI ethical (prescription) drugs.
(2.) Food	3.069	
a. Direct purchase	2.096	PPI processed foods and feeds.
b. Contract Service	0.973	CPI–U food away from home.
(3.) Chemicals	3.367	PPI industrial chemicals.
(4.) Medical instruments	2.775	PPI medical instruments and equipment.
(5.) Photographic supplies	0.354	PPI photographic supplies.
(6.) Rubber and plastics	4.319	PPI rubber and plastic products.
(7.) Paper products	1.829	PPI converted paper and paperboard products.
(8.) Apparel	0.777	PPI apparel.
(9.) Machinery and equipment	0.187	PPI machinery and equipment.
(10.) Miscellaneous products	0.953	PPI finished goods.
B. All other services	6.248	
(1.) Business services	2.337	ECI—compensation for private workers in business services.
(2.) Computer services	1.213	AHE computer and data processing services.
(3.) Transportation services	0.167	CPI–U transportation.
(4.) Telephone Services	0.471	CPI–U telephone services.
(5.) Postage	0.242	CPI–U postage.
(6.) All Other: Labor Intensive	1.514	ECI—compensation for private service occupations.
(7.) All Other: Nonlabor Intensive	0.305	CPI–U all items.
Total	100.000	

The relatively small differences in weights between the excluded hospital market basket data from excluded hospitals that have a Medicare length of stay within 15 percent of the total facility average length of stay and the excluded hospital market basket using data from all excluded hospitals do not lead to significant changes in the rate of price growth for these two market baskets. If all individual wages and prices move at about the same annual rate, both market baskets could have about the same price growth even if weights are somewhat different. Also, offsetting price increases for various costs components can result in the price growth being the same.

To examine the sensitivity of the change to the limited set of excluded hospitals, we developed a comparison for the period 1988–1998. Using historical data and forecasts for the market baskets, we compared limited and full sets of excluded hospitals.

TABLE 9.—A COMPARISON OF THE EXCLUDED HOSPITAL MARKET BASKET AND THE EXCLUDED HOSPITAL MARKET BASKET REBASED USING ALL EXCLUDED HOSPITALS, PERCENT CHANGE, 1988–1998

Federal fiscal year	Excluded (+/– 15%) hospital market basket—1992 base	Excluded hospital market basket using all excluded hospitals—1992 base	Difference
Historical: 1988	4.9	4.8	0.1
1989	5.6	5.5	0.1
1990	4.6	4.7	(0.1)
1991	4.3	4.4	(0.1)

TABLE 9.—A COMPARISON OF THE EXCLUDED HOSPITAL MARKET BASKET AND THE EXCLUDED HOSPITAL MARKET BASKET REBASED USING ALL EXCLUDED HOSPITALS, PERCENT CHANGE, 1988–1998—Continued

Federal fiscal year	Excluded (+/− 15%) hospital market basket—1992 base	Excluded hospital market basket using all excluded hospitals—1992 base	Difference
1992	3.0	3.2	(0.2)
1993	3.1	3.1	(0.0)
1994	2.6	2.7	(0.1)
1995	3.3	3.2	0.1
Forecasted: 1996	2.5	2.7	(0.2)
1997	2.5	2.6	(0.1)
1998	2.8	2.9	(0.1)
Historical average: 1988–1995	3.9	4.0	(0.1)
Forecasted average: 1996–1998	2.6	2.7	(0.1)

Note that the historical average rate of growth from 1988 to 1995 for the excluded hospital market basket including only excluded hospitals with Medicare average length of stay within 15 percent of total facility average length of stay is virtually identical to that for the excluded hospital market basket with all excluded hospitals. The rates of growth using the two methodologies are within 0.1 percent for FY 1996, 1997, and 1998.

Comment: A commenter requested a more detailed explanation about the rationale for dropping from the calculation of the excluded facility market basket those excluded hospitals and units with Medicare average lengths of stay that vary by more than 15 percent from the facility's overall average length of stay. The commenter stated that there is no description of the hospitals being dropped or their characteristics (e.g., if these facilities have low Medicare shares, it may be appropriate to exclude them). More information is needed before the appropriateness of the 15-percent screen can be assessed.

Response: To the extent possible, we used total reimbursable facility costs to determine the weights for Medicare costs. If the patterns of practice for Medicare patients differ significantly from the overall patient population, we believe that total facility costs for facilities with high shares of Medicare patients are more representative of the Medicare population. We chose to compare the average length of stay for all patients to that of Medicare beneficiaries as the test of the similarity of the practice patterns for non-Medicare patients versus Medicare patients. Our method results in retaining hospitals that had a share of patient days attributable to Medicare that was approximately three times that of hospitals that were excluded. Our goal is to measure cost shares that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries.

Comment: A commenter questioned whether there will be a need for a separate market basket for each type of excluded hospital once prospective payment systems are developed for psychiatric and rehabilitation hospitals and units. The commenter recommended that HCFA consider whether it would be beneficial to begin identifying a separate market basket for each type of excluded hospital.

Response: We agree with the commenter that HCFA will have to consider whether to use separate market baskets for each type of excluded hospital once prospective payment systems are developed for psychiatric and rehabilitation hospitals. However, until those systems are designed we believe it is premature to develop separate market baskets.

B. Capital Costs

Rebasing the Capital Input Price Index

1. Background

Effective for cost reporting periods beginning on or after October 1, 1995, the Capital Input Price Index (CIPI) is used to determine the price increase associated with prospective payment hospital capital-related expenses. Capital-related expenses are defined as depreciation expenses, capital-related interest expenses, and other capital-related expenses, such as insurance and taxes. The CIPI measures the input price change of these capital-related expenses, and is included in the capital prospective payment update framework to determine a rate of increase in capital prospective payments.

Like the prospective payment hospital operating input price index, the CIPI is a fixed-weight price index. A fixed-weight price index measures how much it would cost at a later date to purchase the same mix of goods and services purchased in the base period. For the prospective payment hospital operating and capital input price indexes, the base period is selected and cost category weights are determined using available data on hospitals. Next, appropriate price proxy indexes are chosen for each cost category. Then a price proxy index level for each expenditure category is multiplied by the comparable cost category weight. The sum of these products (that is, weights multiplied by price proxy index levels) for all cost categories yields the composite index level of the market basket for a given year. Repeating the step for other years produces a time series of composite market basket index levels. Dividing an index level by a later index level produces a rate of growth in the input price index. Since the percent change is computed for the fixed mix of total capital inputs with a 1992 base, the index is called fixed-weight.

Like the operating input price index, the CIPI measures the price changes associated with costs during a given year. In order to do so, the CIPI must differ from the operating input price index in one important aspect. The CIPI must reflect the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions).

An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year. Using Medicare cost reports, AHA data, and Securities Data Corporation data, a vintage-weighted price index was developed to measure price increases associated with capital expenses.

Comment: A commenter suggested that HCFA's model is overly complicated and relies excessively on assumptions given that capital costs make up approximately 10 percent of total hospital costs. The commenter recommended that HCFA adopt a simpler approach to update the Federal rate for capital-related costs for hospital inpatient services.

Response: Capital payments for prospective payment hospitals are expected to be about $8.6 billion in FY 1997, a significant amount that warrants an appropriate input price index. It would not be appropriate to use a simpler index if it does not accurately reflect the price increases associated with capital costs. Capital costs are inherently complicated and are determined by complex capital purchasing decisions over time, which are based on such factors as interest rates and debt financing decisions. Also, capital is depreciated over periods of time instead of being consumed in the same period it is purchased. The CIPI accurately reflects the annual price increases associated with capital costs, and is a useful simplification of the actual capital accumulation process. By appropriately accounting for the vintage nature of capital in the CIPI, HCFA is able to provide an accurate, stable annual measure of price increases. Annual, non-vintage price changes for capital are highly unstable due to the volatility of interest rate changes. These unstable annual price changes do not reflect the actual annual price changes for Medicare capital-related costs. The HCFA CIPI reflects the underlying stability of the capital acquisition process and provides hospitals with the ability to plan for changes in capital payments.

The most recent discussion on the CIPI and methodological background was published in the May 31, 1996 proposed rule (61 FR 27466). The following **Federal Register** documents describe development and revisions of the methodology involved with the construction of the CIPI: September 1, 1992 (57 FR 40016), May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), and September 1, 1995 (60 FR 45815).

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Previously, both the operating input price index and the CIPI are based to FY 1987. We are updating the base year cost structure to FY 1992, the most recent year with relatively complete data for purposes of rebasing. We explain the process of rebasing the cost structure weights for the CIPI below.

2. Rebasing the Capital Input Price Index

We are using a rebased capital input price index (CIPI) in developing the FY 1997 capital update factor for capital prospective payment rates. The new CIPI is rebased to reflect the 1992, rather than the 1987, structure of capital costs. In developing the rebased CIPI, we reviewed hospital capital expenditure data for capital cost categories (depreciation, interest, and other). Two sets of weights had to be developed in order to compute the rebased CIPI: (1) cost category weights which identify the proportion of total hospital capital expenditures attributable to each capital expenditure category, and (2) relative vintage weights for depreciation and interest which identify the proportion of capital expenditures within a cost category that are attributable to each year over the life of capital assets in that category. Because capital expense data in the Medicare Cost Reports is not available prior to 1980 for use in computing vintage weights, the two sets of weights are measured using the best data sources available as explained below and in Appendix C to this final rule. The computations involved with rebasing the CIPI are explained for each of these sets of weights.

a. Capital Cost Category Weights. The capital cost category weights in Table 10 below were computed using a combination of the FY 1992 Medicare Cost Reports and 1992 AHA Annual Survey data. FY 1992 marked the first year for expanded capital data available in the Medicare Cost Reports. After reviewing the data, we determined that much of the data had been reclassified into different expense categories. Therefore, we removed prospective payment hospital reports that appeared to have reclassified data, and matched the remaining reports to the corresponding reports in the AHA Annual Survey data set. These remaining 2724 prospective payment hospital reports were used to compute capital cost category weights and the expected life of capital, which is used in determining vintage weights for depreciation and interest.

In reviewing the data, we determined that the Medicare Cost Reports provided accurate data for depreciation and other capital expenses, but had reclassified interest data. We determined that AHA Annual Survey data more accurately reflected interest expense, based on past trends in interest rates. Therefore, we used the AHA Annual Survey interest levels along with the Medicare Cost Report levels for depreciation and other capital expenses to develop a more robust capital cost data base.

After removing depreciation, interest, and other capital expenses from total capital expenses, the remainder constitutes lease expenses. Lease expenses are not a separate cost category in the CIPI. They are distributed to the other cost categories (depreciation, interest, other), reflecting an assumption that the underlying cost structure of leases is similar to capital costs in general. We assigned 10 percent of lease expenses to the other capital expenses cost category as overhead, and the remaining lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses. (We base this assignment of 10 percent of lease expenses to overhead on the common assumption that overhead is 10 percent of costs.)

We also used the 1992 Medicare cost reports to determine weights for the building and fixed equipment category and the movable equipment category. Expenses for building and fixed equipment and for movable equipment were determined using the same sample of prospective payment hospital reports as was used to compute the major cost category weights. The split between building and fixed equipment and movable equipment was also used to compute the vintage weights described below. Table 10 presents a comparison of the rebased 1992 capital cost weights and the 1987 capital cost weights.

We only used those hospital reports which we considered to have capital data that was not reclassified. Because we did not use all hospital reports, we were concerned that the hospitals used may not be representative of the universe. Therefore, we compared the distribution of costs for the hospitals used with the data re-weighted to reflect the characteristics of the total universe of hospitals. From this analysis we validated that the cost weights derived from the subset we used were

representative of the cost weights for the entire universe of hospitals.

TABLE 10.—COMPARISON OF 1987 AND 1992 COST CATEGORY WEIGHTS

Expense categories	FY 1987	Rebased FY 1992	Price proxy
1. Building and fixed equipment depreciation	0.3054	0.3009	Boeckh Institutional Construction Index—vintage weighted (22 yrs)
2. Movable equipment depreciation	0.3456	0.3475	PPI for machinery and equipment—vintage weighted (10 yrs)
Total interest	0.3274	0.3184	
1. Government/nonprofit interest	0.2783	0.2706	Average yield on domestic municipal bonds (bond buyer 20 bonds)—vintage weighted (22 yrs)
2. For-profit interest	0.0491	0.0478	Average yield on Moody's Aaa Bonds—vintage weighted (22 yrs)
Other	0.0216	0.0332	CPI(U) for residential rent
Total	1.0000	1.0000	
Total depreciation	0.6510	0.6484	

Source: 1992 Medicare Cost Reports, PPS year 9; 1992 AHA Annual Survey.

Note: Due to rounding, weights may not sum to totals.

Comment: The price proxy for "for-profit interest" was listed in Table 10 of the May 31, 1996 **Federal Register** (61 FR 27468) as the Average Yield on Moody's AAA Corporate Bonds. A commenter pointed out that Moody's highest ratings is Aaa instead of AAA.

Response: As the commenter pointed out, the correct Moody's rating is Aaa. While publications other than Moody's may not be as precise in their presentation of Moody's ratings, HCFA will use the more precise definition of Aaa and refer to the price proxy for for-profit interest as the Average Yield on Moody's Aaa Corporate Bonds throughout this final rule.

We had planned to incorporate the 1992 data from the Department of Commerce for developing capital cost category weights. However, these data are not available for inclusion in this final rule.

b. Relative Vintage Weights for Prices. As we have explained in previous **Federal Register** documents (most recently the September 1, 1995 final rule at 60 FR 45817), the CIPI was developed to capture the vintage nature of capital; that is, because capital is acquired and consumed over time, the capital expenses in any given year are determined by past and current purchases of physical and financial capital. Therefore, a vintage-weighted CIPI was developed which used vintage weights for depreciation (physical capital) and interest (financial capital) to capture the long-term consumption of capital. These vintage weights reflect the purchase patterns of building and fixed equipment and movable equipment over time. Because depreciation and interest expenses are determined by the amount of past and current capital purchases, we use the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense, which is the purpose of the CIPI.

To compute the vintage weights for depreciation and interest expenses, we used a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The Medicare cost reports did not have sufficient capital data to meet this need. The AHA Panel Survey provides a consistent database back to 1963. While the AHA Panel Survey data does not provide annual capital purchases, it does provide a time series of depreciation and interest expenses, which can be used to infer capital purchases over time. The process of using the AHA data to estimate a time series of capital purchases, and eventually vintage weights, is explained in detail below.

In order to estimate capital purchases from AHA data on depreciation and interest expenses, the expected life for building and fixed equipment, for movable equipment, and for debt instruments is needed. The expected life is used in the calculation of vintage weights for building and fixed equipment, movable equipment, and debt instruments as we explain below.

We used the same sample of prospective payment hospitals from FY 1992 Medicare cost reports and the 1992 AHA Annual Survey explained above in computing cost category weights to compute the expected life of building and fixed equipment and movable equipment. (The AHA Panel Survey is a monthly survey of a sample of hospitals, while the AHA Annual Survey is a more detailed survey of all hospitals.) The expected life of any piece of equipment can be determined by dividing the historical asset cost (excluding fully depreciated assets) by the current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation continued at current year levels, assuming straight-line depreciation, which is the only depreciation method allowed under Medicare. From the FY 1992 costs reports, the expected life of building and fixed equipment was determined to be 22 years, and the expected life of movable equipment was determined to be 10 years. By comparison, the expected life using FY 1987 data was 25 years for building and fixed equipment and 10 years for movable equipment.

It was also necessary to compute the expected life of debt instruments held by hospitals. As in prior exercises, we used hospital issuances of municipal and commercial bonds from Securities Data Corporation to determine the expected life of hospital debt instruments, which is used in the estimation of vintage weights for interest expense. This data source produced a weighted average life for the two types of bonds of 22 years for FY 1992, the same expected life as was computed for the 1987-based CIPI.

An annual series of total expenses and depreciation expenses was obtained from the AHA Panel Survey. For the calculation of vintage weights, this expense data was needed back to 1963. However, the depreciation expense data in the AHA Panel survey was available only back to 1976. We noticed an increasing trend in depreciation expenses as a percentage of total expenses. We performed a regression on this percentage, and used the regression

equation to estimate depreciation expenses back to 1963. We then used the fixed and movable weights derived from the FY 1992 Medicare cost reports to partition the AHA Panel Survey depreciation expenses into annual amounts of building and fixed depreciation and movable depreciation.

Multiplying the annual depreciation amounts by the expected life calculations from the FY 1992 Medicare cost reports, year-end asset costs for building and fixed equipment and movable equipment were determined. Then by subtracting the previous year asset costs from the current year asset costs, annual purchases of building and fixed equipment and movable equipment were estimated back to 1963. This capital purchase time series is then used to compute the vintage weights for building and fixed equipment, movable equipment, and debt instruments. Each of these sets of vintage weights is explained in detail below.

For building and fixed equipment vintage weights, the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh institutional construction index. Because building and fixed equipment has an expected life of 22 years, the vintage weights for building and fixed equipment were deemed to represent the average purchase pattern of building and fixed equipment over 22-year periods. With real building and fixed equipment purchase estimates available back to 1963, nine 22-year periods could be averaged to determine the average vintage weights for building and fixed equipment. Averaging different periods produces vintage weights that are representative of average building and fixed equipment purchase patterns over time. Vintage weights for each 22-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 22-year period. For example, for the 22-year period of 1964–1985, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of building and fixed equipment in 1964 into the total amount of real annual capital purchases of building and fixed equipment over the entire 1964–1985 period. This calculation is done for each year in the 22-year period, and for each of the nine 22-year periods. An average is taken of the nine 22-year periods to determine the FY 1992 average building and fixed equipment vintage weights, presented in Table 11 with the FY 1987 vintage weights.

For movable equipment vintage weights, the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was produced by deflating the nominal annual purchase amount by the movable equipment price proxy, the Producer Price Index for machinery and equipment. Because movable equipment has an expected life of 10 years, the vintage weights for movable equipment were deemed to represent the average purchase pattern of movable equipment over 10-year periods. With real movable equipment purchase estimates available back to 1963, 21 10-year periods could be averaged to determine the average vintage weights for movable equipment. Averaging different periods produces vintage weights which are representative of average movable equipment purchase patterns over time. Vintage weights for each 10-year period are calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 10-year period. For example, for the 10-year period of 1976–1985, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of movable equipment in 1976 into the total amount of real annual capital purchases of movable equipment over the entire 1976–1985 period. This calculation is done for each year in the 10-year period, and for each of the 21 10-year periods. The average of the 21 10-year periods is used to determine the FY 1992 average movable equipment vintage weights, presented in Table 11 with the FY 1987 vintage weights.

For interest vintage weights, the nominal annual capital purchase amounts for total equipment (building and fixed, and movable) derived from the AHA Panel Survey were used. Nominal annual purchase amounts were used to capture the value of the debt instrument. Because debt instruments have an expected life of 22 years, the vintage weights for interest were deemed to represent the average purchase pattern of total equipment over 22-year periods. With nominal total equipment purchase estimates available back to 1963, nine 22-year periods could be averaged to determine the average vintage weights for interest. Averaging different periods produces vintage weights which are representative of average capital purchase patterns over time. Vintage weights for each 22-year period are calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 22-year period. For example, for the 22-year period of 1964–1985, the vintage weight for year 1 is calculated by dividing the nominal annual capital purchase amount of total equipment in 1964 into the total amount of nominal annual capital purchases of total equipment over the entire 1964–1985 period. This calculation is done for each year in the 22-year period, and for each of the nine 22-year periods. The average of the nine 22-year periods is used to determine the FY 1992 average interest vintage weights, presented in Table 11 with the FY 1987 weights.

TABLE 11.—VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment		Movable equipment		Interest	
	Fiscal Year 1987 25 yrs	Rebased Fiscal Year 1992 22 yrs	Fiscal Year 1987 10 yrs	Rebased Fiscal Year 1992 10 yrs	Fiscal Year 1987 22 yrs	Rebased Fiscal Year 1992 22 yrs
1	0.015	0.019	0.064	0.069	0.007	0.007
2	0.019	0.020	0.072	0.075	0.009	0.008
3	0.022	0.023	0.077	0.083	0.010	0.010
4	0.024	0.026	0.085	0.091	0.011	0.012
5	0.023	0.028	0.095	0.097	0.013	0.014
6	0.022	0.030	0.101	0.103	0.015	0.016
7	0.020	0.031	0.109	0.109	0.017	0.018
8	0.021	0.032	0.122	0.115	0.020	0.021
9	0.025	0.036	0.132	0.124	0.023	0.024
10	0.030	0.039	0.142	0.133	0.027	0.029
11	0.033	0.043	.....	.....	0.032	0.035
12	0.034	0.047	.....	.....	0.038	0.041
13	0.034	0.050	.....	.....	0.043	0.047
14	0.035	0.052	.....	.....	0.050	0.052
15	0.038	0.055	.....	.....	0.057	0.059
16	0.043	0.059	.....	.....	0.064	0.067
17	0.049	0.062	.....	.....	0.074	0.074
18	0.053	0.065	.....	.....	0.083	0.081
19	0.056	0.067	.....	.....	0.090	0.088
20	0.057	0.069	.....	.....	0.098	0.093
21	0.060	0.072	.....	.....	0.105	0.099
22	0.066	0.073	.....	.....	0.114	0.103
23	0.071	.....	.....	.....	.....	.....
24	0.075	.....	.....	.....	.....	.....
25	0.077	.....	.....	.....	.....	.....
Total	1.000	1.000	1.000	1.000	1.000	1.000

Sources: AHA Panel Survey, 1963–1993; 1992 Medicare Cost Reports; Securities Data Corporation.

Comment: ProPAC again commented that HCFA's capital update framework could be improved, and that ProPAC's capital update framework is similar to the operating update framework. The ProPAC framework also includes a discretionary financing policy adjustment for use in extended periods of unusually high or low interest rates.

Response: The HCFA CIPI measures the annual price increase associated with vintage-weighted capital expenses, making it consistent with the HCFA operating input price index, which measures the annual price increase associated with operating expenses. The ProPAC market basket reflects the price increase of capital purchases from one year to the next, and does not capture the vintage nature of capital that is captured by the HCFA CIPI. Therefore, we believe the HCFA CIPI accurately measures annual price increases in capital expenses, as we stated before in the May 26, 1993 (58 FR 30451), September 1, 1993 (58 FR 46492), May 27, 1994 (59 FR 27889), September 1, 1994 (59 FR 45521), June 2, 1995 (60 FR 29233), and the September 1, 1995 (60 FR 45823) **Federal Registers**. ProPAC has presented no criteria (objective or subjective) for determining when a discretionary financing policy adjustment would be appropriate. HCFA believes that interest rates are intrinsic to a technically sound and fair measure of price increases in capital expenses (which are defined as depreciation, interest, and lease expenses, and insurance and taxes), just as all expense components are appropriately included in the HCFA operating input price index.

3. Selection of Price Proxies

After the 1992 capital cost category weights were computed, it was necessary to select appropriate price proxies to monitor the rate of increase for each expenditure category. Our price proxies for the FY 1992 based CIPI are the same as those for the FY 1987 based CIPI. The rationale for selecting the price proxies is explained in the June 2, 1995 proposed rule (60 FR 29227) and the September 1, 1995 final rule (60 FR 45817). The price proxies are presented in Table 10.

Comment: A commenter contended the average yield on bonds rated Aaa is not representative of the bond rating the for-profit hospital industry is obtaining. The commenter examined the bond rating of some of its member companies and found them to range from A3 (highest) to B1 (lowest). The commenter recommended the selection of a price proxy that better reflects interest costs of taxpaying hospitals.

Response: The commenter is correct that the average yield on lower-rated corporate bonds is different from the average yield on higher-rated corporate bonds, and that some for-profit hospitals have lower ratings than Aaa. However, the interest component for for-profit hospitals in the HCFA CIPI is based on percent changes in yields and not the yields themselves. We analyzed the percent change in the yield for two bond ratings: Aaa and Baa. Despite the yields for the two bond ratings being significantly different for the 15 years between 1981–1995, the percent changes in the yields for the two bond ratings were nearly identical. We used the percent changes in both yields to calculate the CIPI and determined the impact of the different yields on the overall CIPI was essentially zero. Because our analysis did not reveal any significant difference in the percent change in yields for corporate bonds with different ratings, we believe the average yield for Moody's Aaa corporate bonds is an appropriate price proxy for for-profit interest expense.

4. Forecast of the CIPI for Federal Fiscal Year 1997

DRI forecasts a 1.3 percent increase in the rebased 1992 CIPI for FY 1997, as indicated in Table 12. This is the outcome of a 2.4 percent increase in projected depreciation prices (building and fixed equipment, and movable equipment) and a 2.2 percent increase in other capital expense prices in FY 1997, partially offset by a 1.8 percent decline in vintage-weighted interest rates in FY 1997.

TABLE 12.—HCFA CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1979 TO 2000

Fiscal year	Total	Depreciation			Interest	Other
		Total	Building and fixed equipment	Movable equipment		
Weights (fiscal year 1992)	1.0000	0.6484	0.3009	0.3475	0.3184	0.0332
VINTAGE-WEIGHTED PRICE CHANGES						
1979	5.4	7.4	7.0	7.7	2.7	7.1
1980	6.9	8.0	7.3	8.5	5.4	8.6
1981	8.7	8.5	7.7	9.1	9.1	8.8
1982	9.2	8.5	8.0	9.0	10.2	8.0
1983	6.7	8.1	7.9	8.2	4.8	6.3
1984	6.3	7.3	7.6	7.1	4.9	5.0
1985	5.2	6.3	7.0	5.8	3.5	5.9
1986	3.7	5.7	6.4	5.1	0.7	6.2
1987	3.1	5.1	5.9	4.5	−0.1	4.5
1988	3.0	4.6	5.4	4.0	0.3	3.8
1989	2.6	4.4	5.2	3.7	−0.5	3.8
1990	2.3	4.0	4.9	3.2	−0.7	4.2
1991	2.0	3.6	4.6	2.7	−1.1	3.9
1992	1.5	3.2	4.4	2.1	−2.0	2.6
1993	1.1	2.9	4.1	1.8	−2.8	2.4
1994	1.1	2.7	3.9	1.7	−2.7	2.3
1995	1.3	2.6	3.8	1.6	−2.0	2.5
1996	1.1	2.5	3.6	1.5	−2.4	2.4
1997	1.3	2.4	3.5	1.5	−1.8	2.2
1998	1.2	2.4	3.3	1.5	−2.2	3.1
1999	1.2	2.4	3.3	1.5	−2.2	2.2
2000	1.3	2.4	3.3	1.5	−2.3	3.1

5. Comparison of Percent Changes in the FY 1992–Based CIPI and the FY 1987–Based CIPI

Rebasing the CIPI from 1987 to 1992 decreased the percent change in the FY 1997 forecast by only 0.2 percentage points, from 1.5 to 1.3 as indicated in Table 13. The effect of rebasing is analyzed by comparing the 1992-based CIPI forecasted percent changes to the 1987-based CIPI forecasted percent changes using the same DRI forecast of component prices. As shown in Table 13, there is only a 0.2 percentage point difference between the percent changes in the 1992-based CIPI and the 1987-based CIPI using the second quarter 1996 forecast. The difference reflects changes to: (1) cost category weights, (2) expected life, and (3) vintage weights. The changes to cost category weights coupled with the wide disparity in price changes between the different cost categories contributed to lowering the CIPI percent change in the FY 1997 forecast. This was the case with fixed depreciation, which has faster price growth than the other cost categories and now has a lower weight by nearly one-half of a percentage point because of rebasing to 1992. Also contributing to the 0.2 percentage point difference in FY 1997 forecast is the change in the expected life of building and fixed equipment and the change in the vintage weights for all three components: building and fixed equipment, movable equipment, and interest. The shorter expected life (22 years in 1992 versus 25 years in 1987) of building and fixed equipment slightly decreased the FY 1997 forecast CIPI percent change because years with higher price increases were not included as they had been before. The change in vintage weights also tended to decrease the FY 1997 CIPI percent change because vintage weights in all cases changed to be spread more evenly over the life of the asset, decreasing the weight of more recent years and increasing the weight of past years. In the years around FY 1997, prices for depreciation and interest are projected to increase slightly faster than prices in earlier years.

TABLE 13.—COMPARISON OF 1987 AND 1992 BASED CAPITAL INPUT PRICE INDEX USING THE SAME DRI FORECAST, PERCENT CHANGE, 1979–1997

Federal fiscal year	CIPI	
	1987	Rebased 1992
1979	5.6	5.4

TABLE 13.—COMPARISON OF 1987 AND 1992 BASED CAPITAL INPUT PRICE INDEX USING THE SAME DRI FORECAST, PERCENT CHANGE, 1979–1997—Continued

Federal fiscal year	CIPI	
	1987	Rebased 1992
1980	7.1	6.9
1981	8.8	8.7
1982	9.3	9.2
1983	6.7	6.7
1984	6.3	6.3
1985	5.1	5.2
1986	3.7	3.7
1987	3.1	3.1
1988	3.0	3.0
1989	2.7	2.6
1990	2.4	2.3
1991	2.1	2.0
1992	1.7	1.5
1993	1.3	1.1
1994	1.3	1.1
1995	1.5	1.3
1996	1.4	1.1
1997	1.5	1.3

V. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs

A. Sole Community Hospital Criteria (§ 412.92)

Under the prospective payment system, special payment protections are provided to hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals, are the sole source of hospital inpatient services reasonably available to Medicare beneficiaries. The criteria a hospital must meet to be classified as a sole community hospital (SCH) as well as the special payment adjustments available are set forth in the regulations at § 412.92.

One of the ways in which a hospital can qualify for sole community status is to be located between 25 and 35 miles from other like hospitals and prove that no more than 25 percent of residents who become inpatients or no more than 25 percent of the Medicare beneficiaries who become inpatients in the hospital's "service area" are admitted to other like hospitals located within a 35-mile radius of the hospital (or its service area, if larger).

In the final rule published on September 30, 1988, we stated: "A hospital may delineate its service area by identifying the zip codes of all its inpatients for the cost reporting period ending before the date it applies for SCH status. The lowest number of zip codes accounting for at least 75 percent of its inpatients would then constitute its service area." (53 FR 35810).

In March 1990, we issued a revised manual which inadvertently reflected policy prior to October 1, 1988; specifically, section 2810 A.2.c of the Medicare Provider Reimbursement Manual, Part 1 (HCFA Pub. 15–1) stated, "A hospital may define its service area as the lowest number of *contiguous* zip codes from which the hospital draws at least 75 percent of its inpatients." (Emphasis added.) As discussed in the proposed rule, some hospitals have raised questions about the definition of service area. Therefore, we clarified that our definition of "service area" for purposes of determining SCH status does not require contiguous zip code areas. We have applied this definition since October 1, 1988 (the effective date of the September 30, 1988 final rule). We also indicated that we intended to revise the current manual accordingly at our earliest opportunity.

Comment: Two commenters responded to our clarification on the use of zip codes to determine a hospital's service area for SCH purposes. One commenter did not object to the policy clarification, but requested that we also clarify whether use of zip codes and use of a statewide health planning agency are the only two methods of defining a service area. The other commenter believes our current policy may lead to unfair results for some hospitals in sparsely populated areas. The commenter requested that we permit a hospital to use either the lowest number of zip codes or the lowest number of contiguous zip codes to determine its service area.

Response: We discussed the definition of a hospital's service area for SCH purposes at some length in the preamble of the September 30, 1988 final rule (53 FR 38511). In that document, we stated that a hospital's service area is the area from which it draws at least 75 percent of its inpatients for the 12-month cost reporting period ending before it applies for SCH classification.

We noted that not all States have Statewide health planning commissions that identify hospitals' service areas and we offered the zip code methodology as one alternative. We also noted that "(t)he important consideration is that a hospital be able to define its service area as the area from which it draws 75 percent of its inpatient admissions, as stated in the regulations text at § 412.92(c)(3)."

We have not restricted a hospital's source of data for defining its service area to the use of zip codes or to Statewide planning commissions. These are merely the two most common methods and, thus, are the two we have

discussed in detail. There have been instances where a State hospital association has been the source of data used to define the hospital's service area. If a hospital does not wish to use the zip code methodology to define its service area, we will review data from any independent source that can supply documented data to identify the hospital's service area. The important consideration is that we must be able to verify supportable evidence that a hospital drew at least 75 percent of its inpatients from the defined service area.

In regard to the commenter who requested that a hospital be permitted to define its service area using either the lowest number of zip codes *or* the lowest number of contiguous zip codes, we do not agree. Since October 1, 1988, any hospital choosing to define its service area using the zip code methodology has been required to use the lowest number of zip codes from which it drew at least 75 percent of its inpatients during its most recently completed cost reporting period.

We have not permitted any hospital to define its service area using the lowest number of contiguous zip codes because we do not believe this method presents as accurate a picture of a hospital's true service area as does the actual lowest number of zip codes. Although the commenter presented an elaborate example of how a hospital might meet the market share test if its service area is based on contiguous zip codes, but not meet the market share test when service area is defined strictly as the lowest number of zip codes, we do not believe such a scenario is likely to occur with any frequency. And, as noted above, a hospital is not required to use the zip code methodology to define its service area. If a hospital does not qualify using the lowest number of zip codes, it can look to other sources such as a State hospital association, Statewide planning commission, or any other independent body that can present documentable data to verify that at least 75 percent of its inpatients came from the identified area.

Comment: One commenter was concerned about the interim payments that sole community hospitals receive during the year. Specifically, the commenter was troubled by the method we use to account for outlier payments. Because our pricing methodology assumes that all sole community hospitals will receive "average "outlier payments, the aggregate interim payments for a hospital with few outliers are less than the amount ultimately due the hospital. Although the difference is paid to the hospital during its cost report settlement, the commenter claimed that the delay in receiving the money due the hospital has caused dire financial consequences.

Response: One of the difficulties in making interim payments during the year for sole community hospitals is not knowing precisely the amount of outlier payments the hospital is going to receive. Currently, we simply use the overall national expected rate of approximately 5.1 percent to adjust the Federal payment rate. That is, we take the hospital's Federal payment rate, already adjusted for the wage index, indirect medical education factor, and disproportionate share factor, and further adjust the rate by assuming that the hospital's outlier payments will be 5.1 percent of its total DRG payments. Then, we compare this amount to the hospital-specific amount and, if the hospital-specific amount is higher, we make the difference an add-on to the Federal payment rate in making interim payments.

Some sole community hospitals, however, actually receive much less in outlier payments than the national average of 5.1 percent. This causes our estimate of their outlier-adjusted Federal payments to be higher than is really the case. Therefore, the hospital does not receive all of its add-on payments during the year, because the difference between the hospital-specific rate and the estimated adjusted Federal payment rate is understated. The effect is a potentially large payment to the hospital at the time of settlement. We note that for sole community hospitals with higher than average outlier payments, the opposite problem results. That is, the hospitals are overpaid during the year and must repay monies to the Federal Government at cost report settlement.

We believe an assumption based on the expected percentage of overall national outlier payments is reasonable, but we will explore this problem in more detail during the next year and try to determine if use of a hospital-specific outlier adjustment factor for this limited purpose would be more appropriate, as well as feasible.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban rather than the rural standardized amount. As of that date, the other urban and rural standardized amounts are the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we follow the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value included all urban hospitals nationwide, and the proposed regional values were the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

The values in the proposed rule were based on discharges occurring during FY 1995 (October 1, 1994 through September 30, 1995) and included bills posted to HCFA's records through December 1995. Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1,

1996, a hospital's case-mix index value for FY 1995 would have to be at least—

- 1.3332; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located. (See the table set forth in the May 31, 1996 proposed rule at 61 FR 27472.)

Based on the latest data available (FY 1995 bills received through June 1996), the final national case-mix value is 1.3347 and the median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2249
2. Middle Atlantic (PA, NJ, NY)	1.2230
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3396
4. East North Central (IL, IN, MI, OH, WI)	1.2471
5. East South Central (AL, KY, MS, TN)	1.2933
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.2125
7. West South Central (AR, LA, OK, TX)	1.3116
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3339
9. Pacific (AK, CA, HI, OR, WA)	1.3303

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1995 case-mix index value in Table 3C in section V of the Addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we proposed to update the regional standards. The proposed regional standards were based on discharges for urban hospitals' cost reporting periods that began during FY 1994 (that is, October 1, 1993 through September 30, 1994). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1996, the number of discharges a hospital must have for its cost reporting period that began during FY 1995 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located. (See the table set forth in the June 2, 1996 proposed rule at 61 FR 27472.)

Based on the latest discharge data available, the final median numbers of discharges for urban hospitals by census regions are as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6771
2. Middle Atlantic (PA, NJ, NY)	8486
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7504
4. East North Central (IL, IN, MI, OH, WI)	7384
5. East South Central (AL, KY, MS, TN)	6386
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5794
7. West South Central (AR, LA, OK, TX)	4806
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7553
9. Pacific (AK, CA, HI, OR, WA)	5617

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1996, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1995 must be at least 3,000.

3. Retention of Referral Center Status

Section 412.96(f) states that each hospital receiving the referral center adjustment is reviewed every 3 years to determine if the hospital continues to meet the criteria for referral center status. To retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96 (b)(1) or (b)(2) or (c) for 2 of the last 3 years, or for the current year. A hospital may meet any one of the three sets of criteria for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96 (c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second or third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital must meet all of the criteria within any one of these three sections of the regulations in order to meet the retention requirement for a given year. That is, it will have to meet all the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(c)(1) in years 1 and 3 and the number of discharge standards in § 412.96(c)(2) in years 2 and 3, it will not meet the retention criteria. All of the standards would have to be met in the same year.

In accordance with § 412.96(f)(2), the review process is limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria in effect for at least 2 of the last 3 years or if it meets the criteria in effect for the current year (that is, the criteria for FY 1997 outlined above in this section of the preamble), it will retain its status for another 3 years. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1997, a hospital must meet the criteria in § 412.96(c) for FY 1997 or it must meet the criteria for 2 of the last 3 years as follows:

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the Federal Register on
1996	1994	1994	September 1, 1995.
1995	1993	1993	September 1, 1994.
1994	1992	1992	September 1, 1993.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1994. The hospital has fewer than 275 beds. Its 3-year status as a referral center is protected through June 30, 1997 (the end of its cost reporting period beginning July 1, 1996). To determine if the hospital should retain its status as a referral center for an

additional 3-year period, we will review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1994, July 1, 1995, and July 1, 1996. The hospital must meet the criteria in effect either for its cost reporting period beginning July 1, 1997, or for two out of the three past periods. For example, to be found to have met the criteria at § 412.96(c) for its cost reporting period beginning July 1, 1995, the hospital's case-mix index value during FY 1993 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 1, 1994 final rule with comment period. The hospital's total number of discharges during its cost reporting year beginning July 1, 1993, must have equaled or exceeded 5,000 or the regional standard as published in the September 1, 1994 final rule with comment period.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96(b)(1) (i) and (ii) (that is, rural location and at least 275 beds), we will look at the number of beds shown for indirect medical education purposes (as defined at § 412.105(b)) on the hospital's cost report for the appropriate year. We will consider only full cost reporting periods when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the number of beds criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year. We received no comments on the rural referral center criteria.

C. Disproportionate Share Adjustment (§ 412.106)

Section 1886(d)(5)(F) of the Act provides for additional payments for hospitals that serve a disproportionate share of low income patients. The disproportionate share adjustment, which was added to the prospective payment system by section 9105 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), was intended to address the higher Medicare costs associated with treating a large number of low-income patients. Under this provision, patients who are eligible for Medicaid and Supplemental Security Income (SSI) benefits were used as a proxy measure of the proportion of low-income patients.

A hospital's disproportionate share adjustment is generally determined by calculating the sum of two patient percentages (Medicare Part A/ Supplemental Security Income (SSI) covered days to total Medicare Part A covered days, and Medicaid but not Medicare Part A covered days to total inpatient hospital days). Based on the location and size of the hospital, a formula determines if the hospital's patient percentage qualifies the hospital for an adjustment and how much that adjustment will be. There is also a limited exception providing for disproportionate share adjustments for large urban hospitals that receive substantial state and local revenues for indigent (non-Medicare, non-Medicaid) care.

With respect to the Medicare-SSI calculation, hospitals have expressed dissatisfaction with these proxy measures, and have challenged HCFA's implementation of them in recent litigation. Since SSI beneficiary information is confidential, hospitals do not have access to lists of patients who are eligible for both Medicare Part A and SSI benefits. Hospitals are increasingly frustrated by their inability to monitor these data.

With respect to the Medicaid fraction, hospitals have complained that, because of Medicaid coverage restrictions, Medicaid covered days may not be a consistent measure of indigent care across States. Medicaid reforms under consideration by the President and Congress may further interfere with the utility of Medicaid covered days as a measure of the proportion of low-income patients.

Because of these concerns, we have been examining alternative measures of indigent care. Some of the measures we have explored using are estimates of patient income in a hospital's service area, hospital levels of bad debt, and proportion of emergency room admissions in a hospital. Because of data and other limitations, however, we have yet to find an alternative that appears promising as a replacement to the present measure. Therefore, in the proposed rule, we solicited comments from the industry on better and more direct measures of indigent care than the present measure that relies on SSI and Medicaid data. We also discussed ProPAC's recommendations concerning DSH payments (61 FR 27474).

Comment: A large number of commenters responded to our request for input on the Medicare disproportionate share adjustment calculation and the SSI and Medicaid data that go into its development. Some commenters believe that the current method of identifying disproportionate share hospitals is acceptable. Other commenters stated that we should implement a revised formula only if it captures the current base of eligible hospitals as well as additional facilities. Finally, several commenters believe that the current calculation is flawed beyond repair and that we should reevaluate the current base of hospitals that are eligible for payments under the disproportionate share adjustment and revise the formula dramatically. The suggestions we received follow:

- Use the current formula, but expand Medicaid days to include all days that a person eligible for Title XIX spends in the hospital, whether or not Medicaid paid. Further, in the case of States that have replaced traditional Medicaid programs with alternate health care programs for their low-income population, include all days that a person who is covered by the State's program spends in the hospital, whether or not that person would have been eligible for Title XIX benefits.
- Use the current formula and include outpatient data as well as inpatient data.
- Use data from the Department of Commerce based on income levels and zip code information to determine median income levels within designated service areas. These data can then be compared to Federal poverty guidelines to establish the appropriate level of disbursement of disproportionate share payments.
- Combine charity care and bad debts as reported on the hospital's financial statements and multiply by the hospital's overall cost-to-charge ratio. Then, divide these costs by the hospital's net patient revenue excluding Medicare, Medicaid, Medicare health maintenance organization (HMO), and Medicaid (HMO) data. This method is similar to the current qualifying criteria for an exception under the disproportionate share adjustment calculation set forth at § 412.106(c)(2).
- Use the low-income utilization rate that is currently used in the administration of Medicaid disproportionate share adjustments. This is a combination of a hospital's Medicaid revenues and its State and local subsidies divided by its total revenues and its inpatient charity care charges minus its State and local inpatient subsidies divided by total charges.

Some of the commenters referred to the decisions in court cases in the 6th and the 8th Circuits that require the inclusion of days that would have been paid by Medicaid but for a State day limitation in the disproportionate share calculation. These commenters encouraged HCFA to implement the Court's ruling at the national level. Other commenters were concerned

about the inclusion of HMO and other managed care utilization data in the calculation. Many of these commenters suggested that HCFA should require States to more accurately identify the Medicaid enrollees who receive services under a waiver program, possibly by providing these enrollees with encrypted insurance cards to reflect Title XIX eligibility.

Several commenters believe that the adjusted average per capita cost (AAPCC) payment rate for Medicare managed care plans should be revised to exclude any adjustment for disproportionate share and that those payments should be made directly to the eligible hospitals. Several commenters offered to work with HCFA on this issue.

Response: We appreciate the responses that we received on the disproportionate share adjustment issue. Members of the hospital industry and its representatives carefully considered the question of data sources, targeted hospitals, and the indigent population. In general, commenters believe that compensation for hospitals that treat a disproportionate share of the indigent population is valid. However, as noted above, there are conflicting ideas about how to target that set of hospitals.

Although many of these comments will require further analysis, we will address some suggestions here. First, in the current formula, we believe that Medicaid covered days is the correct measure and the correct interpretation of Congressional intent as we have outlined on numerous previous occasions, most notably in the September 1, 1986 final rule (54 FR 31460–31461). Given the current statute, we believe it is not reasonable to include days that a person spent in the hospital while that person was not eligible for Medicaid under any circumstances. The statute clearly states that title XIX eligibility is a requirement under any circumstances. If a State chooses to adopt some sort of a waiver program and elects to cover people who would not have otherwise been eligible for care, those persons will not be included as Medicaid days in the current formula. Further, inpatient data are used in the Medicare disproportionate share adjustment calculation because the payment add-on is applied to the Medicare inpatient payment. It is not designed to reflect either Medicaid shortfalls or outpatient data, since there is a separate Medicaid disproportionate share adjustment, and payment for outpatient services is not made through a prospective payment system.

Data from the Department of Commerce based on the U.S. Census are collected only during decennial census periods. Thus, while the data look promising on first analysis, they become increasingly unrepresentative of the population's income trends as they relate to geographic areas as the years pass from the base year for which the data are collected. We also have a problem with any data that may be reported on a hospital's financial statements but that are not reported on its annual Medicare cost report. The Medicare cost report data are collected annually and subject to a settlement process. The financial statements of hospitals vary from facility to facility, are audited on an erratic schedule, and are not currently collected by Medicare for evaluation.

Finally, we would not want to duplicate the procedure by which the Medicaid disproportionate share adjustment is determined since the Medicaid program already pays hospitals an adjustment under Medicaid based on these criteria.

Regarding commenters' concerns on HMO days, currently we collect data on HMO utilization for use in the disproportionate share adjustment calculation. However, it is up to the hospital, in securing the contract with the HMO, to obtain an agreement from the HMO that allows the hospital to be able to distinguish those Medicare and Medicaid patients that are utilizing services so that it may report those days to the fiscal intermediary. We note that the President's FY 1997 budget includes a provision that would mandate the removal of disproportionate share payments from the AAPCC calculation and allow these payments to be made directly to the eligible hospital.

While there appears to be no easy or quick solution to improving the disproportionate share payment adjustment, we appreciate the comments that the hospital industry provided on this issue. Our concern is that Medicaid data will continue to vary more and more from State to State and SSI data will continue to be protected from the hospital industry's examination by the Privacy Act. Therefore, we will continue to examine the inconsistencies in the current Medicare disproportionate share adjustment calculation and ways to improve the data and the calculation to better target those hospitals that treat a disproportionate share of the indigent population.

D. Direct Graduate Medical Education (§ 413.86)

1. Initial Residency Period Limitations

As discussed in the proposed rule, we are updating the Initial Residency Period Limitations for direct graduate medical education (GME), originally published in the **Federal Register** on September 29, 1989 (54 FR 40286). The regulations in § 413.86(g)(1) state that, "[e]ffective July 1, 1995, an initial residency period is defined as the minimum number of years required for board eligibility."

The update reflects the following:

- Effective July 1, 1995, section 1886(h)(5)(F) of the Act, as amended by Public Law 103–66, defines an initial residency period as the minimum number of years required for initial board eligibility. Previously, this period had been defined as minimum number of years "plus one." The prior listing had included the additional year, not to exceed five years.
- Changes in curriculum requirements regarding the number of years needed for board eligibility for previously approved programs.
- Addition of newly approved graduate medical education programs.

The table of initial residency periods published in the proposed rule (61 FR 27475) did not constitute a proposal in the usual rulemaking sense because we were simply updating the tables in accordance with current policy. Nevertheless, we received many comments that reflected a misunderstanding of the meaning of "initial residency period" in general. The initial residency period, as that term is used in section 1886(h)(5) (F) and (G) of the Act and in § 413.86 refers to the minimum number of years necessary to satisfy the requirements for initial board eligibility in a specialty. During the initial residency period, each full-time resident is weighted at 1.0 full-time equivalent (FTE) for purposes of determining GME payments. Once the resident has worked the minimum number of years required for board eligibility in a specialty, any subsequent training in an approved program is weighted at 0.5 FTE.

The comments on the updated listing also brought to our attention information that has resulted in changes in the table of initial residency periods. We have added allopathic allergy and immunology with an initial residency period of 3 years, osteopathic preventive medicine/aerospace medicine with an initial residency of 4 years, and osteopathic combined programs in internal medicine/emergency medicine and internal medicine/pediatrics with

an initial residency period of 4 years. We have also modified the table by listing pathology/anatomic and pathology/clinical with respective initial residency periods of 3 years and pathology/anatomic and clinical with an initial residency period of 4 years. Finally, in the proposed rule, emergency medicine was listed with an initial residency period of 3/4 years due to our understanding that these programs have been approved for both 3 and 4 years. However, since the Accreditation Council for Graduate Medical Education (ACGME) has approved 3-year programs, the *minimum* number of years of training to become board eligible in emergency medicine is actually 3 years. Accordingly, we are including the appropriate initial residency period limitation of 3 years in the table in this final rule.

INITIAL RESIDENCY PERIOD LIMITATIONS

Residency type	Initial residency period limitation (No. of years)
ALLOPATHY	
ALLERGY AND IMMUNOLOGY	3
ANESTHESIOLOGY	4
Critical Care Medicine	4
Pain Management	4
COLON AND RECTAL SURGERY	5
DERMATOLOGY	4
Dermatopathology	4
Clinical & Laboratory Dermatological Immunology	4
EMERGENCY MEDICINE	3
Sports Medicine	3
FAMILY PRACTICE	3
Geriatric Medicine	5
Sports Medicine	3
INTERNAL MEDICINE	3
Adolescent Medicine	3
Cardiovascular Disease	3
Clinical Cardiac Electrophysiology	3
Clinic & Laboratory Immunology	3
Critical Care Medicine	3
Endocrinology, Diabetes, and Metabolism	3
Gastroenterology	3
Geriatric Medicine	5
Hematology	3
Hematology and Oncology	3
Infectious Disease	3
Medical Oncology	3
Nephrology	3
Pulmonary Disease	3
Pulmonary Disease and Critical Care Medicine	3
Rheumatology	3
Sports Medicine	3
MEDICAL GENETICS	4
NEUROLOGICAL SURGERY	5
Pediatric Neurological Surgery	5
NEUROLOGY	4
Child Neurology	4
Clinical Neurophysiology	4
NUCLEAR MEDICINE	3
OBSTETRICS AND GYNECOLOGY	4
Critical Care Medicine	4
Gynecological Oncology	4
Maternal and Fetal Medicine	4
Reproductive Endocrinology	4
OPHTHALMOLOGY	4
ORTHOPAEDIC SURGERY	5
Adult Reconstructive Orthopaedics	5
Foot and Ankle Orthopaedics	5
Hand Surgery	5
Musculoskeletal Oncology	5
Pediatric Orthopaedics	5
Spinal Cord Injury	5
Sports Medicine	5
OTOLARYNGOLOGY	5
Neurotology/Otolaryngology	5
Pediatric Otolaryngology	5
PATHOLOGY, ANATOMIC	3
PATHOLOGY, CLINICAL	3
PATHOLOGY, ANATOMIC AND CLINICAL	4
Blood Banking/Transfusion Medicine	4
Chemical Pathology	4

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial residency period limitation (No. of years)
Cytopathology	4
Dermatopathology	4
Forensic Pathology	4
Hematology	4
Immunopathology	4
Medical Microbiology	4
Neuropathology	4
Pediatric Pathology	4
PEDIATRICS	3
Adolescent Medicine	3
Clinical and Laboratory Immunology	3
Neonatal-Perinatal Medicine	3
Pediatric Cardiology	3
Pediatric Critical Care Medicine	3
Pediatric Emergency Medicine	3
Pediatric Endocrinology	3
Pediatric Gastroenterology	3
Pediatric Hematology/Oncology	3
Pediatric Infectious Disease	3
Pediatric Nephrology	3
Pediatric Opthamology	3
Pediatric Pulmonology	3
Pediatric Rheumatology	3
Pediatric Sports Medicine	3
PHYSICAL MEDICINE AND REHABILITATION	4
PLASTIC SURGERY	5
Hand Surgery	5
PREVENTIVE MEDICINE	3
Aerospace Medicine	3
Medical Toxicology	3
Occupational Medicine	3
Public Health & General Preventive Medicine	3
PSYCHIATRY	4
Addiction Medicine	4
Child & Adolescent Psychiatry	4
Forensic Psychiatry	4
Geriatric Psychiatry	5
RADIOLOGY, DIAGNOSTIC	4
Neuroradiology	4
Nuclear Radiology	4
Pediatric Radiology	4
Vascular and Interventional Radiology	4
Radiation Oncology	4
SURGERY, GENERAL	5
Critical Care Medicine	5
Hand Surgery	5
Pediatric Surgery	5
Thoracic Surgery	5
Vascular Surgery	5
UROLOGY	5
Pediatric Urology	5
OSTEOPATHY	
ANESTHESIOLOGY	4
Critical Care Medicine	4
DERMATOLOGY	4
Dermatopathology	4
MOHS Micrographic Surgery	4
EMERGENCY MEDICINE	4
Sports Medicine	4
FAMILY PRACTICE	3
Adolescent and Young Adult Medicine	3
Geriatrics	5
Sports Medicine	3
INTERNAL MEDICINE	4
Clinical Allergy and Immunology	4
Cardiology	4
Endocrinology	4
Gastroenterology	4
Hematology	4
Infectious Diseases	4

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial residency period limitation (No. of years)
Nephrology	4
ONCOLOGY	4
Pulmonary Diseases	4
Rheumatology	4
Clinical Cardiac Electrophysiology	4
Critical Care Medicine	4
Geriatrics	6
Sports Medicine	4
NUCLEAR MEDICINE	4
In-Vivo and In-Vitro Nuclear Medicine	4
Nuclear Cardiology	4
Nuclear Imaging and Therapy	4
NEUROLOGY	4
Child Neurology	4
PSYCHIATRY	4
Child Psychiatry	4
OBSTETRICS/GYNECOLOGY	5
Maternal and Fetal Medicine	5
Gynecological Oncology	5
Reproductive Endocrinology	5
FACIAL PLASTIC SURGERY	5
OPHTHALMOLOGY	4
OTORHINO/FACIAL PLASTIC SURGERY	5
OTORHINOLARYNGOLOGY	5
ORTHOPEDIC SURGERY	5
PATHOLOGY, ANATOMIC	4
PATHOLOGY, ANATOMIC/LABORATORY MEDICINE	5
PATHOLOGY, LABORATORY MEDICINE	4
Forensic Pathology	5
Blood Banking/Transfusion Medicine	5
Chemical Pathology	5
Cytopathology	5
Dermatopathology	5
Hematology	5
Immunopathology	5
Medical Microbiology	5
Neuropathology	5
PEDIATRICS	3
Adolescent and Young Adult Medicine	3
Neonatal Medicine	3
Pediatric Allergy/Immunology	3
Pediatric Cardiology	3
Pediatric Hematology/Oncology	3
Pediatric Infectious Diseases	3
Pediatric Intensive Care	3
Pediatric Nephrology	3
Pediatric Pulmonology	3
Pediatric Sports Medicine	3
PREVENTIVE MEDICINE	4
PREVENTIVE/AEROSPACE MEDICINE	4
PROCTOLOGY	3
RADIATION ONCOLOGY	4
RADIOLOGY, DIAGNOSTIC	5
Angiography and Interventional Radiology	5
Diagnostic Ultrasound	5
Neuroradiology	5
Nuclear Radiology	5
Radiological Imaging	5
Pediatric Radiology	5
REHABILITATION MEDICINE	4
Sports Medicine	4
GENERAL SURGERY	5
NEUROSURGERY	5
PLASTIC AND RECONSTRUCTIVE SURGERY	5
THORACIC CARDIOVASCULAR SURGERY	5
UROLOGICAL SURGERY	5
GENERAL VASCULAR SURGERY	5
CRITICAL CARE SURGERY	5
OSTEOPATHIC MANIPULATIVE MEDICINE	3
PODIATRY	
ROTATING PODIATRIC RESIDENCY(PRIMARY CARE)	2

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial residency period limitation (No. of years)
PODIATRIC ORTHOPEDIC RESIDENCY	2
PODIATRIC SURGICAL RESIDENCY	2
DENTISTRY	
DENTAL PUBLIC HEALTH	1
ENDODONTICS	2
ORAL PATHOLOGY	3
ORAL AND MAXILLOFACIAL SURGERY	4
ORTHODONTICS	2
PEDIATRIC DENTISTRY	2
PERIODONTICS	3
PROSTHODONTICS	3
PROSTHODONTICS/MAXILLOFACIAL	3
GENERAL DENTISTRY	1
ADVANCED GENERAL DENTISTRY	2
ALLOPATHY COMBINED PROGRAMS*	
FAMILY PRACTICE(3) AND PSYCHIATRY(4)	4
INTERNAL MEDICINE(3) & EMERGENCY MEDICINE(3)	3
INTERNAL MEDICINE(3) & FAMILY PRACTICE(3)	3
INTERNAL MEDICINE(3) & NEUROLOGY(4)	4
INTERNAL MEDICINE(3) & PEDIATRICS(3)	3
INTERNAL MED(3) & PHYS MED & REHABILITATION(4)	4
INTERNAL MEDICINE(3) & PREVENTIVE MEDICINE(5)	5
INTERNAL MEDICINE(3) & PSYCHIATRY(4)	4
NEUROLOGY(4) & PHYS MEDICINE AND REHAB(4)	4
PEDIATRICS(3) & EMERGENCY MEDICINE(3)	3
PEDIATRICS(3) & PHYSICAL MEDICINE AND REHAB(4)	4
PEDIATRICS(3)/PSYCHIATRY(4)/CHILD&ADOL PSYCH(4)	4
PSYCHIATRY(4) AND NEUROLOGY(4)	4
OSTEOPATHY COMBINED PROGRAMS*	
INTERNAL MEDICINE/EMERGENCY MEDICINE	4
INTERNAL MEDICINE/PEDIATRICS	4

*For residents participating in combined programs, Medicare limits the initial residency period to the time required for individual certification in the longer of the two programs.

2. Combined Residency Programs

As discussed in the proposed rule, when we updated the listing of the Initial Residency Period Limitations for GME, we noted many new programs that were combined specialty residency programs. The combined programs run concurrently for a period of time that is longer than the required time for certification in either specialty, but shorter than would be required if the programs were taken sequentially. Residents completing these programs are eligible for board certification in both specialties.

We use the Internal Medicine and Pediatrics combined program as an example: Taken individually, Internal Medicine is a 3-year program and Pediatrics is also a 3-year program. However, taken as a combined program, Internal Medicine and Pediatrics is a 4-year program, with eligibility for certification in both specialties.

Currently, we are aware of 13 allopathic and 2 osteopathic combined programs, including Internal Medicine/Pediatrics, Pediatrics/Emergency Medicine, Family Practice/Psychiatry, and Neurology/Physical Medicine and Rehabilitation. Due to the increasing prevalence of combined residency programs since our September 29, 1989 final rule, we proposed to clarify how the definition of initial residency period applies in such cases. As discussed in detail in the proposed rule (61 FR 27477), we proposed to clarify the definition of the initial residency period for combined programs as the time required for individual certification in the longer of the two programs. Continuing to use Internal Medicine and Pediatrics as an example, we would define the initial residency for Internal Medicine and Pediatrics as 3 years. The remaining year of the combined program would be treated as 0.5 FTE, in accordance with § 413.86(g)(3). We received numerous comments on this policy, and the issues raised by the commenters are discussed below.

Comment: Many commenters disagreed with our clarification concerning initial residency periods for combined programs. These commenters stated that residents in combined programs are not board eligible in either specialty until they have completed the entire combined program. Some commenters asserted that we did not understand that training in combined programs does not occur sequentially. One commenter noted that the *Graduate Medical Education Directory* states that "applicants may not appear for certifying examinations until all training has been completed." Many commenters stated that the law states that a resident is to be counted as a 1.0 FTE during the resident's initial residency period, which is defined as the "period of board eligibility" in section 1886(h)(5)(F) of the Act. These commenters do not believe we have the authority to establish an initial residency period that is shorter than the length of the combined program, because Medicare will not be paying for residents at 1.0 FTE for the period of initial board eligibility.

Several commenters noted that a resident enrolled in a combined program is enrolling in one program and receives a single certificate upon completion. One commenter stated that the directors of combined programs have not sought to independently certify their graduates with a single examination administered by a single

board. This commenter added that similar to family practice, combined programs are not a composite of separate specialties and should be recognized as a single discipline. Other commenters noted that training in combined internal medicine/pediatrics programs is more intensive than family practice and the initial residency period should recognize this superior training in adult and pediatric medicine. Some commenters believe our proposal implies that training in a second specialty is "superfluous, nonessential or less important."

Response: We have always recognized that the training in combined programs does not occur sequentially, and we acknowledge that residents participating in combined programs are not board eligible in either specialty until they have completed all of their training requirements. We agree that combined training is more intensive than training in each specialty taken separately, and we never stated or meant to imply that training in a second specialty is unimportant or superfluous. Our intent is simply to establish a reasonable policy, consistent with the statute, that provides for full Medicare payment for training in one speciality.

We believe our policy is consistent with section 1886(h)(5)(F) of the Act, which defines "initial residency period" as "the period of board eligibility." Section 1886(h)(5)(G) defines the "period of board eligibility" as "the *minimum* number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training." (Emphasis added.)

The statute does not address how to count the initial residency period in combined programs, perhaps because such programs were not contemplated at the time the statute was enacted. We believe the statutory scheme indicates congressional intent to allow "full" Medicare payment only for the minimum period required to train in *one* specialty. Contrary to the suggestion of the commenters, it is clear that the statute does not require Medicare to apply a weighting factor of 1.0 for a resident until the resident actually becomes board eligible. Rather, the statute requires a weighting factor of 1.0 only for the "minimum number of years necessary to satisfy the requirements for initial board eligibility"; for time beyond the "minimum" period, the statute provides that the weighting factor is 0.5. Thus, the statute contemplates Medicare payments for the costs of graduate medical education, but it does not impose an open-ended obligation for Medicare to pay full costs until a resident becomes board eligible.

The statute defines the initial residency period as the "minimum number of years" necessary to satisfy the requirements for the "particular specialty" for which the resident is training. Based on the public comments we received, we are not persuaded that combined residency programs are "particular specialties" in and of themselves. As we understand it, graduates of these combined residency programs are *not* certified by a single examination by a single board. Rather, they must take each board's examination separately. Thus, these residents can become board eligible for each distinct specialty (for example, Internal Medicine and Pediatrics). It appears that combined programs simply combine training in separate specialties (whose requirements may overlap). As always, we are willing to consider further information on this issue.

We believe our policy on combined programs is reasonable. Residents in combined programs complete all of the training requirements for two specialties, but the *minimum* number of years required to become board eligible in either specialty is less than the length of the combined program. We believe it is reasonable to define the initial residency period for combined programs as the longer of the initial residency periods for the two specialties. Our policy is consistent with the manner in which Medicare payment would be made if the resident trained in two specialties in a sequential manner. In such cases, the resident would be counted as a full 1.0 FTE during the training for the first specialty, and as 0.5 FTE for later years.

Comment: Many commenters stated that Congress established the initial residency period limitation with the intent of discouraging subspecialty training and increasing the primary care work force. These commenters do not believe that Congress intended to limit training in combined programs consisting of two primary care specialties. Similarly, other commenters noted that graduates of combined programs are more likely to enter primary care practice in rural and medically underserved areas than are graduates of other programs. These commenters said that our proposal conflicts with Congress' goal to provide medical care to rural and medically underserved areas.

Response: The initial residency period limitation on full Medicare payment applies to all types of programs, both primary care and non-primary care, and is not intended to discourage primary care practice. We agree with these commenters that in general Federal policy should encourage more training in primary care and that programs designed to encourage practice in rural and medically underserved areas should continue to be an important component of Federal health policy. However, we believe that these concerns are more properly addressed in other contexts. We note that section 1886(h)(2)(D) of the Act provides updates to the per resident amounts for primary care residents, but the statute does not distinguish between primary and non-primary care specialties for purposes of determining the initial residency period.

Comment: Some commenters were concerned that our policy clarification would lead to the dismantling of combined residency programs.

Response: As we have stated, we believe this policy clarification is necessary to avoid full Medicare payments, beyond the time required to train in one specialty. We note that hospitals will continue to be paid for residents in combined programs beyond their initial residency period, with the residents weighted at 0.5 FTE.

Comment: Several commenters were concerned that HCFA developed this policy, in part, to control Medicare's graduate medical education payments. These commenters noted that there are few of these programs in existence with only a small number of graduates who will be affected. Accordingly, Medicare savings resulting from this policy clarification will be small.

Response: This policy clarification is based on considerations concerning the appropriate application of the statute and does not arise solely from a goal of limiting payments. However, we acknowledge that Medicare's payment liabilities will be less under this policy than if hospitals were allowed to weight residents as 1.0 FTE throughout the entire training period in the combined program. We believe that combined training programs may have grown in recent years as physicians seek additional qualifications in a competitive job market. Our understanding is that there are more than 1,400 students in combined programs. Given that only a portion of these students are beyond the initial residency period under this clarification, we agree that any budgetary impact is small relative to the total number of residents participating in approved programs.

Comment: One commenter noted that osteopathic residency programs allow 4 years for internal medicine but that allopathic residency programs allow 3

years. This commenter suggested that if we modified the initial residency periods so that both were of the same duration, the 4-year combined residency could be accommodated.

Response: Allopathic and osteopathic specialty boards set different requirements for board certification. The first year of postgraduate osteopathic training consists of a rotating internship which is followed by subsequent specialty training. Most allopathic training programs do not require similar training. In the September 29, 1989 GME regulation published in the **Federal Register** (54 FR 40293), we stated that the osteopathic rotating internship, like the transitional year required by some allopathic medical residency programs, would not count as an additional year beyond initial board eligibility.

Comment: One commenter questioned the limitation on the number of years noted on the table for geriatric psychiatry. The listing of the initial residency periods permits an additional year for training in geriatric medicine as a subspecialty of internal medicine and family practice but not as a subspecialty of psychiatry. This commenter noted that there is a minimum requirement of 4 years of training in psychiatry and requested that the initial residency period be extended to 5 years for training in geriatric psychiatry. Another commenter noted that section 1886(h)(5)(F) of the Act provides that a 2-year geriatric residency or fellowship program is treated as part of the initial residency period, "but shall not be counted against any limitation on the initial residency period." This commenter stated that the law clearly provides that geriatric psychiatry programs should be eligible for full funding under the special geriatric medical education provision described in the law. Other commenters noted that the Accreditation Council for Graduate Medical Education (ACGME) only accredited geriatric subspecialty programs in family and internal medicine when the 1989 regulations were published but now recognizes geriatric subspecialty programs in psychiatry.

Response: We agree that the initial residency period for geriatric psychiatry programs should be revised. When the September 29, 1989 regulation (54 FR 40286) was published, the ACGME was in the process of approving training programs in geriatrics as a subspecialty of internal medicine and family practice. At that time, we proposed to consider expanding the exception to the initial residency period limitation to fellowships in other programs when the appropriate national organizations establish criteria for approving these programs. Subsequently, the ACGME established criteria for accrediting 12-month programs in geriatric psychiatry, and the American Board of Psychiatry and Neurology recognizes applicants with the required training for certification in geriatric psychiatry. Accordingly, we are including geriatric psychiatry in the table above with an initial residency period of 5 years, which includes a 1-year exception to the 4-year initial residency period for psychiatry. We are also modifying the definition of "approved geriatric program" in § 413.86(b) to reflect that the ACGME is accrediting, and boards are recognizing, training in geriatric medicine in specialties other than internal medicine and family practice.

3. Statutory Provision Regarding Prohibition on Abortion-Related Discrimination in Training and Licensing of Physicians (§§ 412.105(g) and 413.86(b))

Congress recently enacted a statutory provision that prohibits certain abortion-related discrimination by the Federal Government and State and local governments. In section 515 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1996 (see section 101(d) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104–134), enacted April 26, 1996, Congress added a new section 245 to the Public Health Service Act to provide that:

"The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that—

(1) the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;

(2) the entity refuses to make arrangements for any of the activities specified in paragraph (1); or

(3) the entity attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide or refer for training in the performance of induced abortions, or make arrangements for the provision of such training."

For purposes of section 245, the statute defines "financial assistance" to include "governmental payments provided as reimbursement for carrying out health-related activities," and defines "health care entity" to include individual physicians, postgraduate physician training programs (which includes residency training programs), and participants in a program of training in the health professions.

The new section also addresses accreditation of postgraduate physician training programs. Specifically, the statute provides that:

"In determining whether to grant a legal status to a health care entity (including a license or certificate) or to provide such entity with financial assistance, services or other benefits, the Federal government, or any State or local government that receives Federal financial assistance, shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such accreditation standard provides exceptions or exemptions."

The statute further requires that the government involved "shall formulate such regulations or other mechanisms, or enter into such agreements with accrediting agencies, as are necessary to comply with this subsection."

Under the terms of the statute, the provisions of section 245 shall not "prevent any health care entity from voluntarily electing to be trained, to train, or to arrange for training in the performance of, to perform, or to make referrals for induced abortions." Similarly, the provisions of section 245 shall not "prevent an accrediting agency or a Federal, State or local government from establishing standards of medical competency applicable only to those individuals who have voluntarily elected to perform abortions."

In this document, we are making conforming changes to the regulations at § 412.105(g) and § 413.86(b) to reflect the accreditation provisions of section 245. These technical changes merely conform the regulations text to the express requirements of the statute and do not involve an exercise of discretion by the agency.

E. Distribution of an "Important Message from Medicare" (§ 489.27)

Under § 489.27 of our provider agreement regulations, all hospitals that participate in Medicare (including those not paid under the prospective payment system) must agree to furnish each Medicare beneficiary with a notice, at or about the time of admission, that explains the patient's discharge rights. This statement, entitled "An Important Message from Medicare," advises a beneficiary of his or her rights to be fully informed about decisions affecting

Medicare coverage or payment and about his or her appeal rights in response to any hospital's notice to the effect that Medicare will no longer cover the patient's care. The "Important Message" also advises the patient of what to do when he or she receives such a hospital statement and how to elicit more information.

In November 1993, the Medicare Technical Advisory Group (M–TAG) established the Beneficiary Protection and Documentation Issues Task Force. The task force consists of HCFA staff as well as representatives from health care industry organizations, beneficiary advocate groups, fiscal ntermediaries, and peer review organizations (PROs). The task force was charged with reviewing various issues that impact beneficiaries and the health care community, including how to improve the effectiveness of "An Important Message from Medicare."

We proposed to adopt a recommendation of this task force that would respond to numerous requests for clarification on the timing of the written notice of discharge rights that must be given to hospital inpatients. As noted above, existing § 489.27 specifies that a hospital must distribute the statement "at or about the time of admission." We understand that for monitoring purposes some PROs have interpreted this requirement to mean "within 24 hours preceding or following the admission." However, we agree with the task force's determination that the PRO's interpretation is unnecessarily narrow. We believe that during the first 24 hours of a patient's admission, the hospital is primarily concerned with ensuring appropriate treatment of the patient's illness or injury. Therefore, we proposed to change § 489.27 to specify that the hospital must provide timely notice during the course of the hospital stay.

For purposes of this requirement, we would consider the course of the hospital stay to begin when the hospital provides the individual with a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. This would give hospitals more flexibility in meeting the requirement, as well as encourage the distribution of the "Important Message" at a time when the beneficiary is better able to receive and more likely to understand its contents. In complying with the requirement to provide timely notice during the course of the patient's hospital stay, the hospital must give the patient the "Important Message" far enough in advance of the hospital's written notice regarding continued stay to provide the beneficiary time to appeal the hospital's decision. Finally, "timely notice" would also include adherence to any State requirements on the provision of patient rights notices.

We received only one comment on this proposal.

Comment: One commenter agreed with the proposal to permit hospitals to provide timely notice during the course of the hospital stay. However, the commenter stated that the "Important Message" is currently ineffective in meeting its intended purpose, regardless of the timing, because people are too sick and frightened to comprehend the information at the point of hospitalization. The commenter suggested instead using mass mailings to Medicare beneficiaries when they are healthy and have no immediate plans to be hospitalized.

Response: While we agree that making this information available to the Medicare beneficiary prior to hospitalization may enhance comprehension, we believe that the "Important Message" may be ignored during a mass mailing because the information would not be considered needed at the time. Moreover, it is a statutory requirement that the "Important Message" be provided during an individual's hospitalization; therefore, we cannot accept the commenter's suggestion. Furthermore, in our proposal, while we did not intend to address the effectiveness or the content of the "Important Message" in this regulation, we recognize the need to review its contents. Therefore, an internal HCFA workgroup has begun the process to revise the "Important Message," including further consideration of the recommendations for revision made by the Beneficiary Protection and Documentation Issues Task Force of the Medicare Technical Advisory Group (M–TAG). The goals of the Workgroup are to improve clarity for increased comprehension and to improve efficiency of its distribution to Medicare beneficiaries. Comments on the revision will be solicited from selected outside parties in the near future.

VI. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

A. Consistent Cost Finding During the Capital Transition Period (§ 412.302(d))

Section 412.302(d) requires that during the transition period to full prospective payment for capital-related costs, a hospital must follow consistent cost-finding methods for classifying and allocating capital-related costs. Specifically, the regulation requires that unless there is a change of ownership, a hospital must continue the same cost-finding methods for old capital costs, including its practices for direct assignment of costs and its cost-allocation bases, that were in effect in the hospital's last cost-reporting period before becoming subject to payment under the capital prospective payment transition system. A hospital may request a change in its cost-finding methods for new capital, provided that the request is made in a timely fashion as provided in the regulation, the hospital provides justification for the change, and the intermediary determines that the justification is reasonable.

It is important to note that, while the regulation does permit changes in cost-finding methods for new capital, such changes are only permitted where they do not involve any changes in cost-finding for old capital. In practice, this means that if a hospital claims any old capital, the intermediary cannot permit a change in any of the allocation bases on Worksheet B–1 of the cost report from the bases used in the last cost reporting period prior to the capital prospective payment system transition period. Otherwise, the consistency rule governing old capital cost-finding would be violated.

In response to concerns expressed by the hospital industry about the costs of the recordkeeping required under the cost-reporting rules, HCFA has developed new cost reporting instructions, which will be released later this year, that permit hospitals to voluntarily adopt a simplified cost allocation methodology. This methodology reduces the number of statistical bases that a hospital is required to maintain. Under the new instructions for HCFA Form 2552–96 (the cost report instructions for FY 1996 cost reporting periods), hospitals may request the simplified cost allocation methodology. However, hospitals that elect this methodology must employ a prescribed list of statistical bases with no deviations. Hospitals may not pick and choose among the prescribed statistics for the combination that is most advantageous. The election of the simplified method cannot be used to shift costs inappropriately. Furthermore, a hospital that elects the simplified methodology must continue to use it for at least 3 years, unless a change of ownership occurs. In the proposed rule (61 FR 27478), we proposed to add a new paragraph (d)(4) to § 412.302, to provide that hospitals may elect to adopt the simplified cost allocation

methodology, as will be provided in the instructions for HCFA Form 2552–96.

Comment: One commenter agreed with our proposal to revise § 412.302(d)(4) to allow for a simplified cost allocation methodology, but suggested that we make a technical change to existing § 412.302(d)(1) to reflect the availability of the simplified methodology option.

Response: We are adopting the commenter's recommended change to the regulations. Section 412.302(d)(1) will now read: "For cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001, the hospital must follow consistent cost finding methods for classifying and allocating capital-related costs, except as otherwise provided in paragraph (d)(4) of this section."

Comment: In response to our proposal on the simplified cost allocation methodology, one commenter argued that the general capital consistency rule is flawed. The commenter stated that a provider should be able to request that the fiscal intermediary reassign capital costs from the acute care hospital portion of a facility to exempt areas of the facility if the provider is using the space differently than it was used during the capital base year, such as using the space as a skilled nursing facility or a rehabilitation unit.

Response: This comment concerns the underlying intent of the capital consistency rule itself rather than the subject of our May 31, 1995 proposed rule. In the August 30, 1991 final rule that implemented the capital prospective payment system (56 FR 43396), we explained the rationale for the capital consistency rule. We explained that the capital consistency rule is necessary: (1) to prevent cost shifting to outpatient departments through changes in cost finding methods, and (2) to provide consistency with the determination of the hospital-specific rate used in the base year. For these reasons, it is important that the hospital continue the same bases of cost allocation for old capital throughout the transition.

Throughout the transition to a fully prospective payment system for capital, the provider must continue to allocate any space that was part of the acute care hospital in the base year in the same way. However, if the provider opens a new section of the facility as a skilled nursing facility or excluded unit, capital costs in those areas could be allocated directly to those areas.

B. Possible Adjustments to the Capital Prospective Payment System Federal Rate and Hospital-Specific Rates (§§ 412.308(b) and 412.328)

In the proposed and final rules for FY 1996 (60 FR 29238–29239 and 60 FR 45830–45831), we discussed the effects of the expiration of the statutory budget neutrality provision on rates and aggregate payments under the capital prospective payment system. Under the budget neutrality provision, we set the capital-prospective payment system rates during FY 1992 through FY 1995 so that payments were projected to equal 90 percent of Medicare payments that would have been made on a reasonable cost basis for each fiscal year. As a result of the provision's expiration in FY 1996, the capital-prospective payment system rates and payments under the transition system increased significantly. The FY 1996 Federal rate is 22.59 percent higher than the FY 1995 Federal rate. We now estimate that aggregate capital payments will increase 27.5 percent in FY 1996 relative to FY 1995, and that payments will exceed capital costs by 8.8 percent in FY 1996. Under current law and regulations, we estimate that aggregate payments will further increase by 6.8 percent in FY 1997, for an increase of 36.1 percent over 2 years. We also estimate that payments will exceed capital costs by 7.5 percent in FY 1997.

In the May 31, 1996 proposed rule, we stated that we continue to believe that such large increases in capital payments are neither necessary nor warranted. We identified several possible approaches for establishing a more appropriate level for the rates and discussed the options we considered in developing the proposed rule (61 FR 27479). These options included freezing the inflation updates for the rates in FY 1997 or making downward adjustments in the base rates, as discussed below:

- Reduce the standard Federal rate by 7.38 percent and the hospital-specific rates by 9.48 percent to reflect revised data on base year costs used to determine the rates.
- Implement the provision contained in the Administration's budget plan to reduce the base Federal and hospital-specific rates by 15.7 percent.

As discussed in detail in the proposed rule, the rationale for reducing the base rate derives from an analysis of current data compared to data on which the rate was originally based. Under § 412.308, HCFA determined the standard Federal rate, which is used to determine the Federal rate for each fiscal year, on the basis of an estimate of the FY 1992 national average Medicare capital cost per discharge. The FY 1992 national average Medicare capital cost per discharge was estimated by updating the FY 1989 national average Medicare capital cost per discharge by the estimated increase in Medicare inpatient capital cost per discharge.

Section 13501(a)(3) of Public Law 103–66 amended section 1886(g)(1)(A) of the Social Security Act to require that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. The purpose of that reduction was to reflect revised inflation estimates as of May 1993, for the increases in Medicare capital costs per discharge during FY 1989 through FY 1992. We now have extensive cost report data for FY 1992 that shows an audit-adjusted FY 1992 Medicare inpatient capital cost per discharge that is an additional 7.38 percent lower that the estimate on which the Federal rate is currently based. Accordingly, the rate could be reduced to reflect accurate FY 1992 capital cost per discharge data.

Under § 412.328, HCFA determined the FY 1992 hospital-specific rate by using a process similar to the process for determining the FY 1992 Federal rate. The intermediary determined each hospital's allowable Medicare inpatient capital cost per discharge for the hospital's latest cost reporting period ending on or before December 31, 1990. The intermediary then updated each hospital's FY 1990 allowable Medicare capital cost per discharge to FY 1992 based on the estimated increase in Medicare inpatient capital cost per case. As with the Federal rate updates, current data demonstrate that the estimates used to update the hospital specific rates from FY 1990 to FY 1992 were overstated. In order to adjust the hospital-specific rate to reflect actual FY 1992 data, the rates must be reduced by 9.48 percent.

The reduction reflected in the President's budget plan is based on a different consideration. That reduction would build the budget neutrality adjustment for FY 1995 (0.8432, or −15.68 percent) permanently into the base rates, effectively using the FY 1995 base payment rate as the base for future years. The actual payment rates for future years would then be determined by applying the analytical update framework that we adopted in the final rule for FY 1996 (60 FR 45815–45829). Our last analysis (60 FR 45826–45829) suggested that the estimated FY 1992 capital costs used to set the Federal and hospital-specific capital rates exceeded by approximately 28 percent the level that could be accounted for by known factors. This unaccounted for difference

in the rates justifies a 15.7 percent reduction to the rates.

We seriously considered proposing one of these options in the proposed rule, and we invited public comment on their merits and on the advisability of implementing one or the other in the final rule, in the absence of legislative action.

We received many comments on our discussion of possible adjustments to the capital Federal rate, and these comments and our responses are presented below. Although we continue to believe that any of these options is justified on the basis of current data and analysis, we are not implementing any freeze or reduction to the capital Federal rates in this final rule. The President's budget bill includes numerous proposals to reform the Medicare program, including a reduction to the capital prospective payment rate. At this time, we believe it would be more appropriate to adopt a change to the rate in the context of more global changes to the Medicare program than to implement this one specific provision of the President's budget through regulation. Therefore, we are not implementing any of the possible reductions to the capital Federal rate that were discussed in the proposed rule but instead are updating the capital rates in accordance with the capital update framework, as discussed in section III of the addendum to this final rule.

In general, commenters opposed freezing or reducing the capital Federal rate as suggested in the proposed rule. Commenters cited various reasons why the suggested changes were inappropriate or unnecessary. One commenter, ProPAC, agreed that continued significant increases in capital payments are unjustified and supported reductions to the capital rate. ProPAC suggested several options for our consideration, such as using the FY 1995 rates as the base for future years, or rebasing the FY 1992 capital payment rates and updating them to the current year using an analytic framework. As explained earlier, although we agree with ProPAC that a reduction in the rates is warranted, we have decided not to proceed with reducing the rates by regulation at this time. We discuss the comments on the possible changes in more detail below.

Comment: Some commenters contended that it would be illegal for HCFA to implement any of the identified reductions to the rates (including an efficiency adjustment) because HCFA does not have the authority to rebase the capital payment rate. Two commenters characterized the rate reduction options as thinly disguised attempts to rebase hospitals' base year capital costs, and asserted that Congress has not given the Secretary of Health and Human Services the authority to rebase hospital capital costs. One commenter stated that the rate revisions discussed in the proposed rule would violate a fundamental principle of prospective payment: that the system provide certain and predictable payment rates. Another commenter opposed any reduction in the capital Federal rate undertaken without legislative direction.

Finally, one commenter noted that when Congress specified the 7.4 percent reduction in the Federal rate as part of OBRA 93, Congress referenced the capital Federal rate "as described in § 412.308(c)." That regulation describes the methodology for defining the Federal rate. The commenter believes that the regulation does not contemplate the substitution of actual cost data for periods in which estimated data were used initially. The commenter believes that because Congress cited this section of the regulations, it implicitly approved the continued use of estimated data for setting the rates rather than the use of actual data.

Response: Section 1886(g) of the Act states that "the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for [capital-related] costs in accordance with a prospective payment system established by the Secretary." The statute gives the Secretary wide discretion in determining the particular features of the prospective payment system for capital-related costs, including the appropriate level of payment rates.

We believe that, consistent with this broad authority, it is appropriate to make prospective adjustments to the capital rates. We believe that any rate revision implemented prospectively would satisfy the principle of certainty and predictability under a prospective system. We have never contemplated a retroactive adjustment to payment rates used in prior years.

The provision of OBRA 93 cited by the commenter does not indicate that we cannot make other adjustments to the capital Federal rate in future years. Section 412.308(c) describes the process for determining the Federal rate by adjusting the standard Federal rate by an update factor each year. We believe that Congress cited this section solely to identify the rate to which we applied the 7.4 percent reduction.

Since the inception of the capital prospective payment system, rates have been set on the basis of FY 1992 capital costs. Since we set initially set rates before FY 1992 started, we necessarily had to project capital costs for FY 1992. We used FY 1989 costs as the basis for projecting FY 1992 costs because they were the latest cost report data available at that time. (Even the FY 1989 data required an estimated adjustment for the effect of audits not yet performed.) We applied estimated adjustment factors to the FY 1989 data to derive estimated FY 1992 capital costs. We used this estimated FY 1992 cost level to set rates beginning in FY 1992.

When Congress legislated that the unadjusted standard Federal rate be reduced by 7.4 percent in 1993, the size of the adjustment was based on more recent data on FY 1992 costs available at that time. The latest available data now indicate an additional 7.36 percent reduction is appropriate. Again, although we are not implementing this adjustment, we believe that we have the authority to do so and that it would represent a logical extension of our policy of basing the capital Federal rate on FY 1992 capital costs.

Comment: Several commenters stated that the discussion in the proposed rule of the possibility of implementing reductions to the capital Federal rate through the final rule did not constitute sufficient notice to the public of proposed regulatory changes. The commenters asserted that before implementing a reduction in the capital payment rates, HCFA was obligated to provide "formal" public notice and time for the public to respond.

Response: As noted above, we do not intend to implement any reduction to the capital Federal rate at this time. However, we believe that the discussion in the proposed rule would have satisfied the requirements of the Administrative Procedure Act by (1) describing in some detail three potential options for cutting the capital rate, (2) informing the public that we might implement one of these options if Congress and the Administration did not act to cut the rate, and (3) soliciting public comment on the possible options. We stated that it was our intention to consider all of the options in light of the comments received. Moreover, in the FY 1996 proposed rule (60 FR 29238), we discussed in some detail and invited comments on two options for adjusting the Federal and hospital specific rate, to account for the overestimation of the FY 1992 Medicare inpatient capital cost per discharge, and to compensate for the effects of the expiration of budget neutrality. Finally, since FY 1992 we have printed seven discussions of the efficiency issue, and providers have long known that we

might make an adjustment in the rate to account for possible inefficiency.

Comment: Some commenters stated that we should not adjust the Federal rate to reflect the actual level of FY 1992 capital spending because the FY 1992 level is lower than was projected. The commenters asserted that FY 1992 capital cost levels are lower than projected because hospitals responded in FY 1992 to the incentives of the prospective payment system and modified their capital spending behavior. Some commenters argued that hospitals responded to the possible implementation of a capital prospective payment system even prior to FY 1992. These commenters asserted that in order to get a true sense of the impact of the capital prospective payment system on hospital capital expenditure behavior, one must look further back to when hospitals believed implementation of such a system was imminent.

One commenter explained that one reason actual increases in capital costs in FY 1992 were less than projected was because lengthy certificate of need (CON) approval processes prevented hospitals from beginning building projects as planned. The commenter also stated that if rates were reduced, hospitals in States with strict CON processes should not be subjected to the same rate reductions as hospitals in States without such processes. The commenter asserted that facilities in the commenter's State are undercapitalized relative to facilities in the rest of the country.

Finally, some commenters believe that the overestimation of FY 1992 capital costs (discussed above) stems not from a forecast error in the FY 1992 capital cost per case but from a change in the treatment of allowable interest that was implemented in the first capital prospective payment system final rule published on August 30, 1991. Thus, they believe the overestimation resulted from a change in the rules regarding capital and that the proposed reduction based on a revised FY 1992 capital cost data is not justified.

Response: Since the inception of the capital prospective payment system, we have based capital rates on FY 1992 cost levels. We believe it is appropriate for the rate to reflect actual FY 1992 capital spending, even if hospitals had modified capital spending behavior before the current system was implemented.

We agree that the prospective payment system provides an incentive for hospitals to modify their capital spending behavior, and that it is likely that hospitals have done so. However, we do not believe that the magnitude of the difference between the projection for FY 1992 capital costs and the latest measurement of FY 1992 capital costs can be completely explained by changes in capital spending behavior caused by the incentives of the prospective payment system. First, most of the capital costs in FY 1992 would be attributable to capital acquired before FY 1992 that was still being depreciated. Second, most capital acquired in FY 1992 would have been planned and committed prior to FY 1992. Thus, only a small proportion of FY 1992 capital spending would have been impacted by the implementation of the capital prospective payment system. Consequently, the implementation of the prospective payment system would have had little, if any, effect on capital growth in FY 1992. Moreover, the anticipated onset of the prospective payment system for capital-related costs may have encouraged some hospitals to limit spending, but we are aware of several situations in which hospitals actually hastened building projects in order to qualify for possible old capital protections.

We recognize that CON processes may well delay hospital building projects. However, the commenter does not explain why these effects would have been greater in FY 1992 than in previous years. Our data on the cumulative percentage change in capital-related cost per case, which we presented in the September 1, 1995 final rule (60 FR 45828), demonstrate that the growth of capital costs has slowed considerably in recent years, from a high of 19.9 percent per year in 1986 to a low of 2.9 percent per year in 1992. The most recent FY 1992 HCRIS data available show that hospitals' actual FY 1992 capital costs per discharge are an additional 7.36 percent lower than the estimate on which the capital Federal rate is currently based (taking into consideration the adjustment mandated by Public Law 103–66). We believe it is appropriate for the rate to reflect actual costs.

In designing the prospective payment system for capital costs, we recognized the unique position of hospitals in States with CON programs by developing special rules with regard to obligated capital. Those special rules (see § 412.302(c)(2), "Lengthy certificate-of-need process") are designed to ensure that hospitals in States with CON programs receive equitable treatment in terms of recognition "old capital costs." Essentially, this provision permits certain obligated capital costs in CON States to be treated in the same manner as actual capital expenditures in non-CON States. We believe these provisions adequately address the concerns of hospitals in states with CON processes.

Finally, we do not agree that the August 30, 1991 final rule implemented any change in the treatment of allowable interest. Section 412.302(b)(2)(v), which defines old capital costs for purposes of the prospective payment system for capital-related costs, states that "Investment income, excluding income from funded depreciation accounts, is used to reduce old capital interest expense based on the ratio of total old capital interest expense to *total allowable interest expense* in each cost reporting period. "(Emphasis added.) The commenter apparently believes that this statement reflects a change in the treatment of allowable interest because § 413.130(g)(2), which defines capital-related interest expense net of investment income (under our reasonable cost reimbursement rules), provides that in determining the proportion of investment income to be offset, the ratio is to be based on capital-related interest to total interest. However, § 413.130(g) derives from § 413.130(a)(7), and § 413.130(a)(7) addresses only "allowable interest expense" (that is, interest expense as determined under § 413.153), so the ratio expressed in § 413.130(g) is reasonably interpreted to refer to "total *allowable* interest expense."

Comment: Commenters also addressed the possible adjustment based in part on an efficiency analysis. A few commenters stated that higher than expected capital costs per case for FY 1992 were not the result of inefficient use of capital resources, but rather a reaction to pent-up demand in States that had restrictive certificate of need (CON) policies. Another commenter argued that no overexpansion of health facilities has occurred in the commenter's State, because it is highly regulated, and that the average age of hospitals' physical plants in the State is among the oldest in the country. This commenter too believes that it is inappropriate to apply a rate reduction equally in all States.

Some commenters agreed with our statement that economic theory would suggest incentives for the overuse of capital during a period in which capital was paid on a cost basis while operating costs were paid on the basis of a prospective rate. However, the commenters contended that economic theory would also suggest that, if hospitals over purchased capital, they conversely had to under employ operating inputs. Thus, the commenters believe that reductions to the capital Federal rate to account for the

inefficient overuse of capital should be matched by increases in the operating rates to account for inefficient underutilization of operating inputs.

Finally, one commenter suggested that we obtain an independent evaluation of HCFA's capital model and the factors that account for the known increase in costs per case, such as the inflation in capital input prices, quality enhancing intensity increases, and real case-mix growth, as well as the factors that may be responsible for the unexplained growth in capital costs per case.

Response: As noted in our September 1, 1995 final rule in response to a similar comment (60 FR 45829), we agree that the conjunction of rate-based payment for operating costs and cost-based payment for capital costs encouraged hospitals to substitute capital inputs for labor and other operating inputs. However, we do not agree that an inefficiently *high* level of capital inputs under those conditions necessarily implies an inefficiently *low* level of operating inputs. Rather, the conjunction of rate-based payment for operating costs and cost-based payment for capital could also lead to the substitution of inefficient capital inputs for inefficient operating inputs. Indeed, our previous analysis of efficient operating costs for hospitals during FY 1985 through FY 1991 (57 FR 40014) indicates that operating prospective payments during that period were sufficient for the efficient and cost-effective delivery of quality care. In conjunction with the analysis of capital spending during FY 1985 to FY 1992, these results suggest that hospitals may indeed have responded to the existing incentives by substituting an inefficiently high level of capital inputs for inefficient operating inputs. Under these circumstances, it would not be appropriate to increase operating rates in conjunction with a decrease in capital rates. Decreased capital rates, along with the existing level of operating rates, would provide the appropriate incentives for hospitals to achieve efficient levels of both capital and operating inputs.

As we stated in our September 1, 1995 final rule in response to a similar comment (60 FR 45828), our analysis suggests a significant measure of inefficiency in capital costs, and was based on national figures. Therefore, since we are evaluating an efficiency adjustment in the national Federal rate, our analysis does not consider regional differences, such as the existence of CON requirements in some States. The national Federal rate is based on an average; thus, we recognize that some States will have higher costs than the average and other States will have lower costs. We note, however, that although we did not make adjustments for CON policies for purposes of this particular analysis, § 412.302(c)(2) does provide for differential treatment of hospitals in CON States in terms of the recognition of obligated capital (as discussed in more detail above).

In response to the commenter's suggestion that a group of independent economists should evaluate the capital model and our theory about the possible cause of the unexplained growth in capital costs per case, we note that ProPAC has also analyzed the current capital rate and has discussed possible reductions to the capital rate, implicitly endorsing a reduction to the capital rate in the order of magnitude that we discussed in the proposed rule.

Comment: A number of commenters contended that the reductions discussed in the proposed rule would jeopardize the ability of many hospitals to meet current obligations and reduce their ability to meet future capital needs.

Response: Our data indicate that there is ample room to cut the capital rate without a major adverse affect on facilities in any region. Before the implementation of the prospective payment system for capital-related costs, facilities were paid only 85 percent of their capital costs. In the proposed rule, we estimated that payments would exceed capital costs by 9.6 percent in FY 1996 (61 FR 27479). We now estimate that capital payments will exceed capital costs by 8.8 percent in FY 1996 and 7.5 percent in FY 1997.

C. Possible Adjustment to Capital Prospective Payment System Minimum Payment Levels

Section 412.348(b) of the regulations provides that, during the capital prospective payment system transition period, a hospital may receive an additional payment under an exceptions process if its total inpatient capital-related payments under its payment methodology (that is, fully prospective or hold-harmless) are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment levels are established by class of hospitals under § 412.348(c). The minimum payment levels for portions of cost reporting periods occurring in FY 1996 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments for previous cost reporting periods exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

Section 412.348(h) further provides that total estimated exceptions payments under the exceptions process may not exceed 10 percent of the total estimated capital prospective payments (exclusive of hold-harmless payments for old capital) for the same fiscal year. In the final rule implementing the prospective payment system for capital-related costs we stated that the minimum payment levels in subsequent transition years would be revised, if necessary, to keep the projected percentage of payments under the exceptions process at no more than 10 percent of capital prospective payments.

In section III of the addendum to the proposed rule (61 FR 27499), we discussed the factors and adjustments used to develop the FY 1997 Federal and hospital-specific rates. In particular, we discussed the FY 1997 exceptions payment reduction factor. This factor adjusts the annual payment rates for the estimated percentage of additional payments for exceptions in FY 1997. In the proposed rule, we estimated that exceptions would equal 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We indicated that it might be necessary to implement adjustments to the minimum payment levels in the final rule and that it will almost certainly be necessary to adjust the minimum payment levels for FY 1998. We therefore provided public notification that adjustments to the minimum payment levels were imminent, discussed our ideas on the most appropriate method for adjusting the minimum payment levels, and solicited public comment.

We stated that, when it does become necessary to adjust the minimum payment levels, we intended to adjust each of the existing levels (that is, 90 percent for sole community hospitals, 80 percent for large urban DSH hospitals, and 70 percent for all other

hospitals) by 5 percentage point increments until estimated exceptions payments are within the 10 percent limit.

Current estimates indicate that we will not reach the 10 percent exception limit in FY 1997. Therefore, we are not making adjustments to the minimum payment levels at this time; the minimum payment levels for exception payments will remain at the current levels.

We received several comments regarding the necessity and methodology of adjustments to the minimum payment levels.

Comment: Some commenters objected to the proposed method for handling necessary reductions to the minimum payment levels. One commenter suggested that we develop a more sophisticated methodology that would allow more refined adjustment of the minimum payment levels. Another commenter suggested a 1 or 2 percent reduction increment, rather than the proposed 5 percent increment.

Response: As stated above, in this final rule the minimum payment levels for exception payments will remain at the current levels, since our current forecasts indicate that we will not reach the 10 percent limit in FY 1997. All comments received on this issue will be taken under advisement and considered at such time as it becomes necessary to make such an adjustment.

Comment: Some commenters believe that HCFA's capital acquisition model (see appendix B to this final rule for a detailed discussion) projects excessive growth in exception payments. These commenters objected to any reduction in the capital minimum payment levels based on projected rapid growth in exceptions and requested further explanation. The commenters further stated that they could not understand why exception payments would be so large when average payments exceed costs.

Response: Since payments under the capital prospective payment system are based on averages, not on an individual hospital's costs, some hospitals may receive payments exceeding their costs, while other hospitals may receive payments less than their costs. Even if aggregate payments exceed aggregate costs, some hospitals may have costs so much higher than payments that they qualify for large exceptions payments.

It is these large exceptions payments that are driving the aggregate exception payments toward the 10 percent ceiling on exception payments. We have reviewed the cost reports for the first 3 years under the capital prospective payment system. The number of hospitals receiving exceptions payments and the aggregate amount paid for exceptions have increased each year. We expect this trend to continue throughout the transition period, as some hospitals' payments deviate even more from their actual costs. Our model is consistent with these findings. The model projects, as expected, that exceptions payments will continue to grow.

"Low cost" hospitals are paid a blend of their hospital-specific rate, and a higher Federal rate. "High cost" hospitals are paid 85 percent of their old capital plus their ratio of new capital to total capital applied to the Federal rate. In both cases, the capital the hospitals had at the time the capital prospective payment system was implemented is addressed by the standard payments.

Capital prospective payment rates for FY 1992 were designed to adequately address capital costs that existed at the time the prospective payment system began. Since then, hospitals have acquired additional capital, with some hospitals acquiring more than others. With each passing year, more additional capital is accumulated. In some cases, this additional capital is large, and the affected hospitals' capital costs greatly exceed their standard payments. Exceptions payments mitigate the financial impact on these hospitals.

High cost hospitals are more likely to qualify for exceptions payments. Their old capital costs are encompassed in the hold harmless payments, while their new capital costs are reimbursed at a fraction of the Federal rate. If their new capital costs are high, these high cost hospitals will need the full benefit of the exceptions process. Since high cost hospitals will acquire more additional capital over time, more hospitals will qualify for exceptions payments. In fact, high cost hospitals showed rapid growth in exceptions in the first three years under the capital prospective payment system. We expect this rapid growth to continue.

Comment: Regarding minimum payment levels, one commenter suggested we reconcile exceptions payments retrospectively and recoup any overpayments on a pro rata basis by reducing future payments to hospitals. The commenter recommends reductions in subsequent Medicare payments to hospitals.

Response: Section 412.348(d) states that "Total estimated payments under the exceptions process may not exceed 10 percent of the total estimated capital prospective payments (exclusive of hold-harmless payments for old capital) *for the same fiscal year.*" (Emphasis added.) We believe reconciling actual exceptions payments with estimated exceptions payments on a retroactive basis would fundamentally undermine the prospectivity of the system. Moreover, recouping "overpayments" on a retroactive basis may be potentially unfair to individual hospitals. An individual hospital that qualifies for an exception payment in one year may not also qualify for an exception in the later year in which a "retroactive" exception payment is to be made. Hospitals would not be able to predict the effects of retroactive adjustments to supposedly prospective payment rates.

VII. Changes for Hospitals and Units Excluded From the Prospective Payment Systems

Application of Ceiling in Calculating Payment for Hospital Inpatient Operating Costs (§ 413.40 (d) and (g))

Section 1886(b)(1)(B) of the Act provides for an additional payment to a hospital excluded from the prospective payment system when the hospital's reasonable operating costs exceed its target amount. The additional payment is based on the lesser of 50 percent of the amount by which the operating costs exceed the target amount, or 10 percent of the target amount. The Medicare statute further provides that this comparison is made "after any exceptions or adjustments are made to such target amount for any cost reporting period." The regulations, at 42 CFR § 413.40(d)(3), state that the total payment to the hospital for inpatient operating costs (including the additional payment described above) is based on the lesser of the following: the ceiling (target amount multiplied by the number of Medicare discharges) plus 50 percent of the allowable net inpatient operating costs in excess of the ceiling, or 110 percent of the ceiling. However, the regulations do not explicitly include the additional statutory requirement regarding the effect of exceptions or adjustments.

As discussed in the proposed rule (61 FR 27481), we understand that there are questions about the calculation of the additional payment under the regulations, which require comparison of two amounts: the "ceiling" plus 50 percent of the difference between allowable costs and the ceiling, and 110 percent of the "ceiling." Specifically, where a hospital has received an adjustment to the target amount under § 413.40(g), there has been confusion as to whether the "ceiling" used for purposes of calculating the additional payment under § 413.40(d) is the unadjusted ceiling (the amount determined without consideration of

any adjustments granted to the hospital) or the adjusted ceiling.

To address any confusion about these issues, we proposed to revise § 413.40(d)(3) to indicate specifically that calculation of payments for hospital inpatient operating costs under that provision reflects the adjusted ceiling amount (the amount determined after an adjustment under § 413.40(g)). This would apply to all adjustments, including adjustments based on a longer average length of stay in the hospital's rate year as compared to the base year and adjustments for increased routine services.

We received only two comments on this proposal. Both commenters supported the proposal, and we will adopt as final the proposed changes to the regulations at § 413.40(d)(3).

VIII. ProPAC Recommendations

As required by law, we reviewed the March 1, 1996 report submitted by ProPAC to Congress and gave its recommendations careful consideration in conjunction with the proposals set forth in the proposed rule. We also responded to the individual recommendations in the proposed rule (61 FR 27482). The comments we received on the treatment of the ProPAC recommendations are set forth below along with our responses to those comments. However, if we received no comments from the public concerning a ProPAC recommendation, we have not repeated the recommendation and response in the discussion below. The update factors for inpatient operating costs and the update factor for hospitals excluded from the prospective payment system and distinct-part units (ProPAC recommendations 10 and 12, respectively) are discussed in Appendix E to this final rule. Capital payment rates (recommendation 11) are discussed in section VI of this final rule. Disproportionate share hospitals (recommendations 17 and 18) are discussed in section V of this final rule. The remaining recommendations on which we received comments are discussed below.

A. Discharges From Hospitals to Other Facilities (Recommendation 19)

Recommendation: Medicare payments should be modified to account for the shift in services from acute to postacute settings. Broadening the definition of transfer cases, however, is not an appropriate approach.

Response in the Proposed Rule: In both the September 1, 1994 and September 1, 1995 final rules, we expressed our concern that the current trend of declining average lengths of stay as hospitals discharge Medicare patients into alternative health care settings (other than acute care prospective payment hospitals) in less time may result in a misalignment of payments and costs under our existing payment systems (59 FR 45362; 60 FR 29221). In particular, we expressed concern over the potential for hospitals paid under the prospective payment system to shift costs (for which they are compensated through the DRG payments) to alternative settings, which are in turn paid on a cost basis. Although we solicited comments on possible solutions to this problem, we did not propose any change in policy.

The President's FY 1997 budget includes a proposal to redefine discharges from acute care hospitals to excluded hospitals and units and skilled nursing facilities as transfers for payment purposes. Currently, for cases transferred from one acute care hospital paid under the prospective payment system to another like hospital, the sending hospital is paid a per diem rate instead of the full DRG amount. For cases transferred to an excluded hospital or unit or to a skilled nursing facility (as well as cases discharged home or home with home health care), hospitals receive the full DRG payment amount, regardless of the length of stay in the hospital. Under the per diem transfer payment methodology, hospitals receive a per diem amount (doubled for the first day of the stay) until the full DRG amount is reached. Therefore, under the President's budget proposal, hospitals transferring patients to excluded facilities or skilled nursing facilities prior to the geometric mean length of stay for the DRG, minus one day (to account for the double per diem on the first day), would receive less than the full DRG amount for that case.

The basis for ProPAC's opposition to this proposal is that it "* * * thinks this policy would discourage the use of postacute providers. Moreover, it could result in longer inpatient stays, which may not be desirable or cost effective in the long run." We acknowledge that the change in the definition of a transfer is not the ultimate solution to this health care trend. In response to immediate concerns about overpaying hospitals for the reduced services they are providing and the rate of increase in expenditures for postacute care services, however, we believe this is an appropriate interim measure while we continue to explore long-term policy alternatives that will better integrate our payment systems for care provided to Medicare beneficiaries across the acute and postacute care settings.

Comment: We received several comments on this response. ProPAC repeated its concern that redefining transfers may not be the right approach, indicating that "(m)ore needs to be known about the relationships among these services before implementing a policy that assumes that hospitals are being overpaid for cases who use post-acute care." Two other commenters expressed their objections to the redefinition of transfers from acute care hospitals. Generally, both of these commenters agreed with ProPAC's assessment that this would lead to longer inpatient stays and discourage the use of postacute care. Also, both commenters objected to ProPAC's suggestion that HCFA bundle acute and postacute care payments. Finally, one commenter recommended that "the total Medicare funding for hospitals be reduced to recognize the shift of patient days away from the hospital setting."

Response: We agree with ProPAC that a better understanding of this phenomenon is needed, and we are well aware of the improved efficiency claims made by those who advocate even greater use of postacute care. However, while we continue to explore potential refinements to reflect the shift in services from acute to postacute settings, we believe it is appropriate to concurrently explore interim measures for responding to the undisputed trends showing continuing declining lengths of hospital inpatient stays and increasing postacute care utilization, particularly for certain DRGs. The present overlaps between our acute and postacute payment methodologies demand immediate attention, given our responsibility for preserving the Medicare Trust Fund.

We also understand the commenters' concerns about the transfer redefinition. In evaluating any such interim measures two fundamental questions need to be answered: Will this approach protect beneficiaries' access to quality, effective health care and will it adequately compensate the providers of that care for their costs? To the extent that increasing utilization of postacute care allows hospitals to release patients earlier, redefining transfers would better match payments with costs, as well as eliminate some of the potential incentive for premature discharges.

With regard to the comments we received about ProPAC's suggestion that bundling might be a potential alternative, we intend to continue to evaluate all potential payment approaches. For example, implementing an offset to the hospital inpatient standardized amounts to reflect cost

shifting is another approach under examination.

B. Prospective Payment for Postacute Care (Recommendation 20)

Recommendation: Prospective payment systems should be implemented for all postacute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control volume of postacute service use, such as bundling services for a single payment.

Response in the Proposed Rule: We agree that HCFA should develop prospective payment systems for all postacute services, and we have made significant progress in this area. As we discuss in our responses to Recommendations 22 and 23, we have developed detailed implementation plans for interim prospective payment systems for skilled nursing facilities (SNFs) and home health agencies (HHAs) that do not require patient classification systems. Execution of these plans will, of course, require legislative action.

Beyond our interim plan, we have developed a strategy for developing a full-fledged prospective payment system for SNFs. In the absence of legislation, we have been pursuing data that could be used to support a case-mix prospective payment system through our Multi-State Case Mix Demonstration Project. This demonstration project, now in its operational phase, is collecting data on patient case mix using a modified version of the minimum data set, the assessment tool SNFs use in developing patient care plans. Through the course of the demonstration, we hope to gather data on the full range of SNF resources needed for each resource utilization group. We are proceeding to require by regulation that all facilities provide resident assessment data. Consolidated billing of SNF services (that is, requiring SNFs to bill for all services furnished to their patients) and uniform coding of SNF services are also prerequisites for a SNF prospective payment system. Consolidated billing and uniform coding are needed to determine the appropriate payment for the ancillary services component of SNF services and to provide useful data on the range of services SNFs furnish.

We have also been working on a strategy to develop a full-fledged prospective payment system for HHAs. We have funded a project to develop outcome measures for home care that can be used for an outcome-based quality improvement system. These measures will be based largely on a core standard assessment data set that includes items measuring sociodemographic, environmental, support system, health status, functional status, and health service utilization characteristics of patients. Many of the data items included in the core standard assessment data set are not only essential for assessing patient outcomes but are also critical for designing an adequate case-mix system for payment purposes. To test and refine Medicare's approach to outcome based quality improvement for home health care, HCFA is currently sponsoring the Medicare Quality Assurance and Improvement Demonstration, which uses this instrument. We plan to publish regulations identifying the required data elements and addressing the collection of information from the core standard assessment data set. We also plan to sponsor additional research that would lead to an appropriate case mix adjuster that can be used in a national prospective payment system.

In addition to the developmental work underway on SNF and HHA prospective payment systems, we have begun work on the preliminary steps necessary for the development of a prospective payment system for hospital inpatient rehabilitation services. The biggest obstacle we have faced in this effort is the lack of appropriate patient classification systems for the types of patients treated by rehabilitation hospitals. We have recently contracted with the Rand Corporation to evaluate a rehabilitation coding system known as the Functional Independence Measure (FIM), which is a scoring system that measures the degree of functional independence of rehabilitation patients. These researchers will also evaluate the patient classification system known as function related groups (FRGs), which are based on the FIM, as a possible basis for a Medicare prospective payment system for rehabilitation services. If the research confirms functional status measures can be used to develop an appropriate patient classification system, we will begin the additional work necessary to put a prospective payment system into place. This would require collecting patient assessment data from Medicare rehabilitation hospitals and units and developing all the necessary components of the new payment system. It will take at least 3 years to design and implement such a system. To facilitate implementation, we are considering initiating collection of patient assessment data in advance of legislation establishing a prospective payment system. We will be seeking public input on whether to proceed with a requirement for patient assessment data in the absence of legislation and what data elements should be included in a core data set that could be used not only as the basis for a patient classification system but also to assess outcomes.

We recognize that there are advantages to a coordinated approach in developing prospective payment systems for postacute services and we will be evaluating how to make them as consistent as possible. We also recognize that the demand for implementation of prospective payment systems for postacute services is sufficiently immediate so that there may not be time for the broad study, data collection, and research needed to develop a "unified" system using similar resource grouping principles. Most of the current legislative proposals, including the Administration's proposals, would require implementation dates within the next several years. It may not be feasible to develop a "unified" system within the time frames contemplated by the current legislative proposals. Trade-offs may be required between continuation of the interim payment systems versus the prospective payment systems on one hand, and the separate versus "unified" prospective payment systems on the other hand.

Comment: One commenter strongly supported adoption of a prospective payment system for inpatient rehabilitation and believes that the RAND research project will likely produce such a system. The commenter noted that we are considering initiating the collection of patient assessment data in advance of legislation establishing a prospective payment system and urged us to begin collecting the data at the earliest possible date. The commenter believes that imposition of a reporting requirement based on the FIM should not be a great burden on the industry since rehabilitation hospitals and units are already using the FIM or similar patient evaluation measures. Systematizing collection of such data would expedite introduction of a prospective payment system based on FRGs and would considerably reduce the 3-year minimum implementation period suggested in HCFA's response in the proposed rule. The commenter also urged, as a means toward developing a payment system that is consistent across payment sites based on patient characteristics, that HCFA expand the RAND research project to determine the feasibility of using an FRG-based payment system for rehabilitation patients in skilled nursing facilities.

Response: Since the collection of patient assessment data in advance of legislation establishing a prospective payment system would expedite implementation of the system, we are exploring whether we can initiate the collection of data from rehabilitation facilities without legislative action. Our estimate of 3 years to design and implement a payment system includes beginning data collection at the earliest possible time and continuing the collection over a period sufficient to ensure the validity and stability of the components of a payment system, such as payment rates, relative weights of patient groups, outlier payments, and facility payment adjustments, in addition to ensuring the validity of coding within and across hospitals.

We agree with the commenter that, as a step toward developing a payment system that is consistent across delivery sites, it would be desirable to explore the usefulness of FRGs in a payment system for rehabilitation services in skilled nursing facilities. We will, therefore, evaluate our ability to expand the RAND project given the limits of available resources. We note that we are also engaged in research on other case-mix measures for SNF and home health services and we will investigate the suitability of these measures for rehabilitation hospital services.

C. Case-Mix Measures for Postacute Services (Recommendation 21)

Recommendation: Reliable case-mix measurement is important in prospective payment systems to account for resource use and to analyze treatment patterns and costs across sites. The Secretary should coordinate case-mix research across postacute care settings, using consistent methods for measuring patient acuity and resource use.

Response in the Proposed Rule: We are attempting to coordinate our work on case-mix adjustment for home health care, long-term and SNF care, and rehabilitative services. To develop a case-mix adjustment system for SNF care, time studies were conducted in order to measure resource utilization. Similarly, as noted above in response to Recommendation 20, we have funded a new home health case-mix study.

In addition, in the case-mix work to date for both home health care and SNF care, dependence in activities of daily living is the biggest predictor of resource utilization. Some of the other predictors differ across SNF care and home health care due to differences in the treatment settings and the availability of information for a classification system.

As also noted in the preceding response, researchers at the University of Pennsylvania have developed a classification system based on FIMs called Function Related Groups (FIM–FRGs). This system appears promising for use in a case-mix adjusted prospective payment system for rehabilitation and long-term care facilities, and we are working with the Rand Corporation on a research project to evaluate the suitability of FIM–FRGs for this purpose.

We agree that a compatible cross-provider measure of resource use would be the best multiplier in any universal postacute system. We also believe that such measures do not now exist and to produce them would require the program to incur significant costs and impose significant data reporting and collection requirements on providers. We would prefer to obtain explicit legislative direction before we incur these costs and impose these burdens. Even so, we believe several years would be required to gather the data and develop the case-mix measures. For these reasons, we believe that interim prospective payment systems of the types contained in the President's FY 1997 budget should be put in place.

Comment: One commenter agreed with ProPAC's recommendation to develop a unified case-mix prospective payment system for postacute care, but expressed concern that such a prospective payment system based on ICD–9–CM codes will require the development of uniform coding guidelines that do not currently exist.

Response: We have not yet decided whether it would be appropriate to use ICD–9–CM codes in connection with a postacute prospective payment system. We will keep the overall concern of uniform coding guidelines in mind as we progress in our evaluation of postacute prospective payment.

D. Update to the Composite Rate for Dialysis Services (Recommendation 24)

Recommendation: The Secretary should develop methods to control total Medicare per capita expenditures for end stage renal disease (ESRD) beneficiaries. In the meantime, the composite rate should be updated by 2.7 percent for hospital-based dialysis facilities and by 2.0 percent for freestanding facilities for fiscal year 1997. The Secretary should also develop reliable measures of patient severity and outcomes to analyze the relationships among treatment processes, patient outcomes, and costs. These factors should be considered in evaluating the need for and the level of future payment updates.

Response in the Proposed Rule: One of ProPAC's suggestions is that HCFA consider opening enrollment for ESRD beneficiaries to participate in Medicare risk programs. The reason for this recommendation is the rapid growth in total Medicare spending for ESRD beneficiaries. A large part of this increase is attributable to the expanding ESRD population, especially older patients who require more services. These beneficiaries are using more acute inpatient, skilled nursing and other dialysis-related services than ever before. ProPAC suggests that to control these expenditures, Medicare examine the possibility of adopting a capitation payment system for ESRD services, since capitation rates have been successful in controlling expenditure growth for other populations. At a minimum, they are recommending that utilization review or other managed care techniques be used to control the total volume of services provided to ESRD beneficiaries across all sites of care.

Section 1876(d) of the Act currently prevents an individual with ESRD from enrolling in an HMO or a competitive medical plan. However, an individual who is enrolled in a prepaid health plan when he or she is determined to have ESRD may continue enrollment in that plan. A prepaid health plan may only disenroll a beneficiary as provided by regulations at § 417.460.

Congress addressed the issue of paying for ESRD services in a capitation setting in legislation. Section 13567(b) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) (August 10, 1993) amended section 2355 of Public Law 98–369 by requiring the Secretary to include the integration of acute and chronic care management for patients with ESRD through expanded community care case management services in a social health maintenance organization (SHMO). Initial legislation required the Secretary to grant demonstration waivers for SHMOs that provide for the integration of health and social services at a fixed annual prepaid capitation rate. In the January 26, 1996 **Federal Register**, we published a notice informing interested parties of the opportunity to apply for funds for a cooperative agreement to operate an ESRD Managed Care Demonstration (61 FR 2516). Two of the demonstration's purposes would be to test whether ESRD beneficiaries can and should be given access to HMOs during open enrollment and whether the statewide capitation rate can and should be adjusted. The demonstration would adjust rates for treatment status (such as dialysis, transplant, or a functioning graft), age groups and the cause of renal

failure (for example, diabetes). As the legislation requires, rates would be based on 100 percent of the adjusted average per capita costs (AAPCC); additional non-Medicare-covered benefits would be offered by the provider to justify the additional 5 percent beyond the 95 percent of the AAPCC paid to Medicare risk-contracting HMOs on behalf of ESRD enrollees. Based on the results of this demonstration, we would make recommendations to Congress concerning the appropriateness of paying for dialysis services in a capitation setting.

To improve the quality of care ESRD patients are receiving, we are in the process of developing proposed rules for ESRD conditions for coverage. The essence of the regulation is patient-centered and outcome-oriented. The proposed conditions for coverage will focus on facilities achieving an optimal level of health and well-being for all dialysis patients. The proposed rules will be published in Spring 1996 with expected implementation in late fiscal year 1997.

While we share ProPAC's concern that payment rates be sufficient to assure quality care for ESRD patients, we do not believe there is sufficient evidence at this point to conclude that more money is needed to provide appropriate care. Currently, the University of Michigan, as part of a National Institute of Health grant, is examining the relationship between facilities' costs and the level of KT/V. Also the National Institute of Diabetes and Digestive and Kidney Diseases is sponsoring a study on the impact of increasing dialysis as measured by KT/V and the use of high-flux-dialysis on ESRD patients. The results of these studies should help us analyze the relationship between patient outcomes and costs, and thus provide us with a basis for recommending an appropriate payment rate increase.

While we acknowledge that an increase in the composite rate may be appropriate in the next few years, we believe that any rate increase should be linked to implementation of the revised conditions for coverage. Moreover, any ESRD rate increase must be considered within the context of Medicare budgetary concerns and should have a direct link to improved patient outcomes. We will continue to monitor ESRD facility costs, and, if appropriate, we may recommend an update to the ESRD composite rate for FY 1998.

We note that ProPAC's recommendation provides for an across-the-board rate increase for all renal facilities. However, data show that high volume independent facilities (over 6,000 treatments per year) account for about 85 percent of independent dialysis treatments. These high volume facilities report margins between Medicare payments and costs that are higher than average. Therefore, in proposing a future rate increase, we would want to examine the need to adjust payment increases for volume. In addition, we believe that any update to the composite rate should include an update to the wage index currently used to adjust the labor portion of the rate. We are currently using an outdated wage index which is a blend of 1980 Bureau of Labor Statistics (BLS) and 1984 prospective payment system wage data and does not reflect the MSA revisions resulting from the 1990 census.

The Commission's final recommendation is that the Secretary closely monitor treatment patterns and patient outcomes to ensure that facilities use the payment increase to improve quality of care. The proposed ESRD conditions for coverage should address this issue. We expect the proposed rule to be published in the **Federal Register** before Summer 1996. Between the publication of the proposed and final rules, HCFA is planning to meet with the renal community to develop complete clinical data sets to monitor patient outcomes and medical conditions. These data will then be used to evaluate the quality of dialysis services furnished by individual facilities. Of course, this is a long-term project. In the short term, we are exploring the possibility of collecting limited patient outcome data such as KT/V and URR.

Comment: One commenter and the Commission reiterated that ProPAC's recommended update framework was appropriate. According to ProPAC, its analysis suggests that input costs are rising and large productivity gains may no longer be possible. Consequently, renal facilities may be unable to continue to provide quality dialysis without some payment increase.

Response: As discussed above, we recognize that an increase in the composite payment rate may be appropriate in the future, but we believe that any rate increase should be linked to implementation of the revised conditions for coverage for ESRD facilities. Until such implementation, we will continue to monitor facility costs and other factors to determine if it is appropriate to recommend a payment rate increase. At this time, the composite payment rate is set by statute.

IX. Other Required Information

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 provides for notice and comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, in the proposed rule, we solicited public comment on each of these issues for the information collection requirement discussed below.

The only information collection or paperwork burden item contained in the FY 1997 proposed or final rules involves the requirement under § 489.27 that a hospital furnish each Medicare beneficiary with a notice of discharge rights supplied by HCFA, that is, "An Important Message from Medicare."

As discussed in section V of this preamble, we are revising the current requirement that a hospital must distribute the "Important Message" to each Medicare beneficiary at or about the time of admission. In order to permit hospitals more flexibility, but still ensure that beneficiaries are aware of their discharge rights, we are revising § 489.27 to specify that a hospital must provide the notice of discharge rights "during the course of the hospital stay." We estimated that the paperwork burden associated with the requirement that hospital personnel distribute the "Important Message" to each Medicare beneficiary is approximately 1 minute per admission. Based on our most recent available data (1995 Data Compendium, HCFA Pub. No. 03364), there are approximately 11 million Medicare beneficiaries admitted to hospitals each year, resulting in an annual burden of approximately 183,000 hours.

This paperwork burden is not effective until it has been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

B. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format or cartridges; however, some files are available on diskette, and on the internet at HTTP://WWW.HCFA.GOV/STATS/PUBFILES.HTML. In our May 31, 1996 proposed rule, we published a list of data sets that are available for purchase (61 FR 27490).

C. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking for a rule to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to public interest.

Most provisions of this final rule were directly addressed in the May 31, 1996 proposed rule (61 FR 27444) or were made in response to comments on that proposed rule. The only issue raised in this final rule for which we have not provided an opportunity for notice and comment concerns a recently enacted statutory provision. On April 26, 1996, Congress enacted the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Among other things, the new statute requires that, for certain purposes, the Federal Government "shall deem accredited any postgraduate physician training program that would be accredited but for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether such standard provides exceptions or exemptions."

In this final rule, we are revising the regulations at § 412.105 and § 413.86 to conform the regulations to the new statutory provision. We find good cause to waive the procedure for notice and comment with respect to these conforming changes. We find that the procedure for notice and comment is unnecessary because these technical changes merely conform the regulations text to the express requirements of the statute and do not involve an exercise of agency discretion; moreover, delaying these technical changes would be contrary to the public interest because any perceived discrepancy between the regulations and the statute might cause confusion.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR chapter IV is amended as set forth below:

A. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

2. In § 412.63(s)(1), a new sentence is added at the end to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

* * * * *

(s) * * *

(1) * * * The wage index is updated annually.

* * * * *

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

3. In § 412.105, the introductory text of both paragraph (g)(1) and paragraph (g)(1)(i) is republished and a new paragraph (g)(1)(i)(D) is added to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(g) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.*

(1) For cost reporting periods beginning on or after July 1, 1991, the count of full-time equivalent residents for the purpose of determining the indirect medical education adjustment is determined as follows:

(i) The resident must be enrolled in an approved teaching program. An approved teaching program is one that meets one of the following requirements:

* * * * *

(D) Is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether the standard provides exceptions or exemptions.

* * * * *

Subpart L—The Medicare Geographic Classification Review Board

4. In § 412.246, paragraph (b) is revised to read as follows:

§ 412.246 MGCRB members.

* * * * *

(b) *Term of office.* The term of office for an MGCRB member may not exceed 3 years. A member may serve more than one term. The Secretary may terminate a member's tenure prior to its full term.

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

5. In § 412.302, paragraph (d)(1) is revised and a new paragraph (d)(4) is added to read as follows:

§ 412.302 Introduction to capital costs.

* * * * *

(d) *Consistency in cost reporting*—(1) *General rule.* For cost reporting periods beginning on or after October 1, 1991, and before October 1, 2001, the hospital must follow consistent cost finding methods for classifying and allocating capital-related costs, except as otherwise provided in paragraph (d)(4) of this section.

* * * * *

(4) Hospitals may elect the simplified cost allocation methodology under the terms and conditions provided in the instructions for HCFA Form 2552.

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart C—Limits on Cost Reimbursement

2. In § 413.40, paragraph (d)(3) is revised to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(d) * * *

(3) *Net inpatient operating costs are greater than the ceiling.* For cost reporting periods beginning on or after October 1, 1991, if a hospital's allowable net inpatient operating costs exceed the hospital's ceiling (or the adjusted ceiling, if applicable), payment will be based on the lower of the—

(i) Ceiling (or the adjusted ceiling, if applicable) plus 50 percent of the allowable net inpatient operating costs in excess of the ceiling (or the adjusted ceiling, if applicable); or

(ii) One hundred-ten percent of the ceiling (or the adjusted ceiling, if applicable).

* * * * *

Subpart F—Specific Categories of Costs

3. In § 413.86, under paragraph (b), the definition of "Approved geriatric program" is revised and a new paragraph (4) is added to the definition of "Approved medical residency program" and a new sentence is added at the end of paragraph (g)(1) introductory text to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.*

* * * * *

Approved geriatric program means a fellowship program of one or more years in length that is approved by the Accreditation Council for Graduate Medical Education (ACGME) under the ACGME's criteria for geriatric fellowship programs.

Approved medical residency program

* * *

(4) Is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether the standard provides exceptions or exemptions.

* * * * *

(g) * * *

(1) * * * For combined residency programs, an initial residency period is defined as the time required for individual certification in the longer of the programs.

* * * * *

C. Part 489 would be amended as follows:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, and 1871 of the Social Security Act (42 U.S.C. 1302, and 1395hh).

Subpart B—Essentials of Provider Agreements

2. Section 489.27 is revised to read as follows:

§ 489.27 Beneficiary notice of discharge rights.

A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting on his or her behalf, the notice of discharge rights HCFA supplies to the hospital to implement section 1886(a)(1)(M) of the Act. The hospital must provide timely notice during the course of the hospital stay. For purposes of this paragraph, the course of the hospital stay may begin with the provision of a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. The hospital must be able to demonstrate compliance with this requirement.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 23, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 23, 1996.

Donna E. Shalala,

Secretary.

[**Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective With Discharges On or After October 1, 1996 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1996

I. Summary and Background

In this addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1996, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act).

As discussed below in section II, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, will affect the calculation of the Federal rates. In section III, we discuss changes we are making in determining the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to this final rule are presented at the end of this addendum in section V.

II. Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 1997

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating

costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes are effective with discharges occurring on or after October 1, 1996. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 1997.

In summary, the standardized amounts set forth in Tables 1a and 1c of section V of this addendum reflect—

- Updates of 2.0 percent for all areas (that is, the market basket percentage increase of 2.5 percent minus 0.5 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1996 budget neutrality factor and applying a revised factor; and
- An adjustment to apply the revised outlier offset by removing the FY 1996 outlier offsets and applying a new offset.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1997 were made. That is, the standardization adjustments reflected in the FY 1997 standardized amounts are the same as those reflected in the FY 1996 standardized amounts.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1990, when the market basket was last rebased, we have considered 71.4 percent of costs to be labor-related for purposes of the prospective payment system. As discussed in section IV of the preamble, we are using a rebased market basket effective for FY 1997. Based on the rebased market basket, we are revising the labor and nonlabor proportions of the standardized amounts. Effective with discharges occurring on or after October 1, 1996, we are establishing a labor-related proportion of 71.2 percent and a nonlabor- related proportion of 28.8 percent. The standardized amounts in Table 1a of section V of this addendum have been recomputed to reflect the revised labor-related and nonlabor-related proportions. (We are revising the Puerto Rico standardized amounts by the average labor share in Puerto Rico of 82.8 percent. We are also revising the discharged-weighted national standardized amount to reflect the proportion of discharges in large urban and other areas from the FY 1995 MedPAR file.)

2. Computing Large Urban and Other Averages Within Geographic Areas

Section 1886(d)(3) of the Act requires the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban areas" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D). Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1995 population estimates published by the Bureau of the Census, 56 areas meet the criteria to be defined as large urban areas for FY 1997. These areas are identified by an asterisk in Table 4a.

Table 1a contains the two national standardized amounts that are applicable to all hospitals, except for sole community hospitals and hospitals in Puerto Rico. For a number of years, Table 1b had been used to set forth the 18 regional standardized amounts applicable for hospitals located in census areas subject to the regional floor. However, as provided in section 1886(d)(1)(A)(iii)(II) of the Act, the regional floor expires effective with discharges occurring on or after October 1, 1996. Therefore, all hospitals (except sole community hospitals and hospitals in Puerto Rico) will be paid solely on the basis of the national standardized amounts. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national large urban standardized amount and the national

other standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the two standardized amounts that will be applicable to most hospitals in Puerto Rico.

We note that on June 28, 1996, the Office of Management and Budget announced the designation of the Pocatello, Idaho MSA and the Jonesboro, Arkansas MSA. In addition, Chester County was added to the Jackson, Tennessee MSA. We have incorporated these changes in this final rule.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas average standardized amounts for FY 1997 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XII) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1997 is the market basket percentage increase minus 0.5 percentage points.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the rebased hospital market basket increase for FY 1997 is 2.5 percent. For FY 1997, this yields an update to the average standardized amounts of 2.0 percent (2.5 percent minus 0.5 percent). (See section IV of the preamble to this final rule for a discussion of the market basket rebasing.)

As in the past, we are adjusting the FY 1996 standardized amounts to remove the effects of the FY 1996 geographic reclassifications and outlier payments before applying the FY 1997 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. After including the FY 1997 offsets to the standardized amounts for outliers and geographic reclassification, we estimate that there will be an actual increase of 1.8 percent to the large urban and other area standardized amounts.

We note that the FY 1996 standardized amounts reflected a budget neutrality factor of 0.997575 to account for the change in transfer payment policy implemented in FY 1996. See 60 FR 45854. In the proposed rule we stated that "there will be no need for a further budget neutrality adjustment" (61 FR 27573), but we incorrectly suggested that the FY 1996 budget neutrality adjustment for transfers should be removed in setting the FY 1997 rates. The budget neutrality adjustment for the transfer policy is built permanently into the unadjusted rates.

Although the update factor for FY 1997 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress on our initial recommendation of update factors for FY 1997 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we published the report to Congress as Appendix D to the proposed rule. That recommendation was based on an earlier forecast of the market basket increase. Our final recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix D to this final rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.—Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we compared aggregate payments using the FY 1996 relative weights and wage index to aggregate payments using the FY 1997 relative weights and wage index. The same methodology was used for the FY 1996 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to 0.998509. Based on the final FY 1997 relative weights and wage index, the final budget neutrality adjustment factor is 0.998703. This budget neutrality adjustment factor is applied to the standardized amounts without removing the effects of the FY 1996 budget neutrality adjustment. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we will continue to apply the same FY 1997 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1996, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the FY 1997 DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment.—Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including indirect medical education and disproportionate share payments) prior to any reclassifications to total prospective payments after reclassifications. In the proposed rule, we applied an adjustment factor of 0.994059 to ensure that the effects of reclassification are budget neutral. The

final budget neutrality adjustment factor is 0.993514.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1996 budget neutrality adjustment factor. We note that the proposed FY 1997 adjustment reflected wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 14, 1996. The final budget neutrality adjustment factor reflects the effects of all reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 1997 or from a hospital's request for the withdrawal of a reclassification request.

c. Outliers.—Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers) or long lengths of stay (day outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

Beginning with FY 1995, section 1886(d)(5)(A) of the Act requires the Secretary to phase out payments for day outliers (correspondingly, payments for cost outliers would increase). Under the requirements of section 1886(d)(5)(A)(v), the proportion of day outlier payments to total outlier payments is reduced from FY 1994 levels as follows: 75 percent of FY 1994 levels in FY 1995, 50 percent of FY 1994 levels in FY 1996, and 25 percent of FY 1994 levels in FY 1997. We estimated the FY 1994 proportion of day outlier payments to total outlier payments at 31.3 percent in our September 1, 1993 final rule (58 FR 46348). Thus, the proportion of day outlier payments to total outlier payments in FY 1997 will be approximately 8 percent (25 percent of 31.3 percent). For discharges occurring after September 30, 1997, the Secretary will no longer pay for day outliers under the provisions of section 1886(d)(5)(A)(i) of the Act.

i. FY 1997 Outlier Payment Policies, Including Outlier Thresholds

For FY 1996, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. The marginal cost factor for day outliers (the percent of Medicare's average per diem payment paid for each outlier day) is 44 percent for FY 1996. The fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $15,150 ($13,800 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1996 standardized amounts of 0.949054 for the large urban and other areas rates and 0.9526 for the capital Federal rate.

For FY 1997, we proposed to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. Section 1886(d)(5)(A)(iii) of the Act, as amended by section 13501(c)(3) of Public Law 103–66, provides that additional payments for day outlier cases may be reduced below the marginal cost of care to meet the requirements of section 1886(d)(5)(A)(v) of the Act. We also proposed to reduce the marginal cost factor for each outlier day from 44 percent to 35 percent in FY 1997. The thresholds that we are establishing in this final rule will be the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. Based on updated simulations, we are establishing in this final rule a marginal cost factor of 33 percent for each outlier day in FY 1997. We estimate that these policies will reduce the proportion of outlier payments paid to day outliers to approximately 8 percent, in accordance with section 1886(d)(5)(A) of the Act.

In the proposed rule, we proposed to maintain the marginal cost factor for cost outliers at 80 percent and proposed a fixed loss cost outlier threshold in FY 1997 equal to the prospective payment rate for the DRG plus $11,050 ($10,075 for hospitals that have not yet entered the prospective payment system for capital-related costs). In this final rule, based on simulations using updated data and a revised cost inflation factor (discussed below), we are establishing a fixed loss cost outlier threshold in FY 1997 equal to the prospective payment rate for the DRG plus $9,700 ($8,850 for hospitals that have not yet entered the prospective payment system for capital-related costs). We are also establishing a marginal cost factor for cost outliers of 80 percent, as proposed. We note that the FY 1997 cost outlier calculations are to be completed using the revised labor/nonlabor shares discussed above in section II.A.1 in this Addendum.

The final FY 1997 cost outlier threshold reflects a revised cost inflation factor. As explained in the proposed rule, in setting the proposed FY 1997 cost outlier threshold, we used a cost inflation factor of 0.0 percent to simulate payments using FY 1995 hospital bills (61 FR 27497). That is, to determine when a case should qualify for cost outlier payments in FY 1997, we calculated FY 1997 "costs" for each bill in the FY 1995 MedPAR file by applying a cost inflation factor of 0.0 percent. We indicated that we would reevaluate this factor in developing the final rule.

The latest available Medicare cost reports indicate that hospital cost per case *decreased* from FY 1993 to FY 1994 as well as from FY 1994 to FY 1995. Cost report data for 4,600 hospitals for cost reporting periods beginning in FYs 1993 and 1994 show that cost per case decreased 1.906 percent from FY 1993 to FY 1994. Preliminary data for cost reports beginning in FY 1995, which were unavailable when we developed the proposed rule, show that cost per case decreased 2.392 percent from FY 1994 to FY 1995. The latter figure is preliminary to the extent that it reflects only 1,800 hospitals and also reflects "as submitted" cost reports. Nevertheless, it suggests a continued trend in cost *deflation*. Accordingly, based on the more complete data for hospital cost reporting periods beginning in FYs 1993 and 1994, we have decided to use a cost inflation factor of minus 1.906 percent (a cost per case decrease of 1.906 percent) for purposes of setting the final FY 1997 outlier thresholds (as compared with our proposed FY 1997 cost inflation factor of 0.0 percent). We note that this is the first time we have deflated costs in making the outlier projection.

The use of a negative cost inflation factor results in lower FY 1997 "costs" for the set of cases analyzed. For example, if a bill in the FY 1995 MedPAR file reflects FY 1995 "costs" of $1,000, the FY 1997 "costs" will be $\$1{,}000 \times (1 - 0.01906) \times (1 - 0.01906)$ (reflecting 2 years of cost deflation), or $962.24. These lower costs, in turn, result in a lower cost outlier threshold relative to a methodology using a positive or zero cost inflation factor (other things being equal). As stated above, the final FY 1997 cost outlier threshold is the DRG amount plus $9,700, rather than $11,050 as indicated in the proposed rule.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the FY 1997 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the thresholds for FY 1997 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.2 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1997 were as follows:

Operating standardized amounts	Capital Federal rate
0.948766	0.9476

The final outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1997 are as follows:

Operating standardized amounts	Capital Federal rate
0.949001	0.9481

As in the proposed rule, we apply the final outlier adjustment factors after removing the effects of the FY 1996 outlier adjustment factors on the standardized amounts and the capital Federal rate.

ii. Other Changes Concerning Outliers

Table 5 of section V of this addendum contains the DRG relative weights, geometric and arithmetic mean lengths of stay, as well as the day outlier threshold for each DRG. When we recalibrate DRG weights, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight and geometric mean length of stay. DRGs that do not have at least 10 cases are considered to be low volume DRGs. For the low volume DRGs, we use the original geometric mean lengths of stay, because no arithmetic mean length of stay was calculated based on the original data.

Table 8a in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios will replace the ratios published in the September 1, 1995 final rule (60 FR 45922), effective October 1, 1996. Table 8b contains comparable Statewide average capital cost-to-charge ratios. These average ratios will be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.24265 or greater than 1.28879 and capital cost-to-charge ratios lower than 0.013243 or greater than 0.19730. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8a and 8b will be used for all cost reports settled during FY 1997 (regardless of the actual cost reporting period) when hospital-specific cost-to-charge ratios are either not available or outside the three standard deviations range.

iii. FY 1995 and FY 1996 Outlier Payments

In the proposed rule, we estimated that actual outlier payments for FY 1995 were approximately 3.7 percent of actual total DRG payments (lower than the 5.1 percent we projected in setting outlier policies for FY 1995). This percentage was computed by simulating payments using actual FY 1995 bill data available at the time of the proposed rule. Our current estimate is that actual outlier payments for FY 1995 were approximately 3.8 percent of actual total DRG payments. These estimates are based on simulations using the July 1996 update of the provider-specific file and the June 1996 update of the FY 1995 MedPAR file.

In the proposed rule, we estimated that actual outlier payments for FY 1996 would be approximately 4.2 percent of actual total DRG payments (lower than the 5.1 percent we projected in setting outlier policies for FY 1996). We currently estimate that FY 1996 outlier payments will approximate 4.0 percent of total DRG payments. This current estimate is based on simulations using the July 1996 update of the provider-specific file and the June 1996 update of the FY 1995 MedPAR file. We used these data to calculate an estimate of the actual outlier percentage for FY 1996 by applying FY 1996 rates and policies to the FY 1995 bills.

In the proposed rule, we discussed in detail our methodology for setting outlier thresholds, our periodic refinements to that methodology, and some possible explanations for the recent differences between projected and actual outlier percentages (61 FR 27496). We invited comments and suggestions for further refinements to the methodology. The comments on our outlier policies and methodology and our responses are set forth below.

Comment: A number of commenters are concerned that the percentages of actual outlier payments for FYs 1995 and 1996 are lower than we projected when we set the respective thresholds for those years. Some commenters requested that we monitor outlier payments during a fiscal year, so that we can change the thresholds in the middle of the year in the event that projected actual outlier payments are not between 5 and 6 percent of projected actual total DRG payments. Other commenters requested that any difference between outlier payments and the amount set aside be used to offset the amount required in the next year. One commenter argued that it is fundamentally inequitable, even assuming that it is not illegal, not to make additional outlier payments after the end of the fiscal year to assure that we meet our 5.1 percent goal. The commenter cited historical figures on outlier payments from a pending court case in the United States District Court for the District of Columbia, *County of Los Angeles v. Shalala*, C.A. No. 93–0146 SSH (D.D.C).

Response: We have responded to similar comments a number of times, including the final rules for FY 1993 (57 FR 39784), FY 1994 (58 FR 46347), FY 1995 (59 FR 45408), and FY 1996 (60 FR 45856). As we have explained before and as explained below, we believe our outlier policies are consistent with the statute and the goals of the prospective payment system and are not inequitable.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we set outlier thresholds before a fiscal year so that outlier payments for the fiscal year are projected to be 5.1 percent of total DRG payments. In doing so, we use the best available Medicare discharge data and hospital-specific data.

Many of the factors used to set prospective payment amounts for a given fiscal year are based on estimates. These factors include not only the outlier thresholds, but also the market basket rate of increase used to establish

the update factors, the recalibration of the DRG weights, and the various required budget neutrality provisions. We do not believe that Congress intended for us to revise these factors in midyear. Similarly, we do not believe that Congress intended that the standardized amounts for a given fiscal year should be adjusted (upward or downward) to reflect any difference between projected and actual outlier payments for a past fiscal year. Payments for a given discharge in a given fiscal year are generally intended to reflect or address the average costs of that discharge in that year; that goal would be undermined if we adjusted prospective payment system payments to account for "underpayments" or "overpayments" in other years.

Moreover, the midyear or retroactive adjustments contemplated by the commenters would be extremely difficult or impracticable (if not impossible) to administer. Hospital bill data with respect to a given fiscal year continues to be added to the MedPAR file for some time after the end of the fiscal year. (We update the MedPAR file for 2 full years after the end of the respective fiscal year.) Therefore, precise figures on actual outlier payments for a given fiscal year cannot be determined until well after that fiscal year ends. We do publish estimates of "actual" outlier payments for recent fiscal years, but those estimates are based on available bills (and sometimes based on simulations using bills for a previous year, adjusted for estimates of inflation).

In short, we believe our outlier policies are consistent with the statute and the goals of the prospective payment system. In a recent court decision, the United States District Court for the Central District of California upheld the agency's interpretation of the statute as reasonable, writing in part that "[a]ny retroactive adjustment would be inconsistent with [prospective payment system] because the incentives for cost reduction and efficiency would be eliminated." *Alvarado Community Hospital* v. *Shalala*, Case No. CV 94–0972 RMT (Ex) (C.D. Cal May 6, 1996), *appeal filed*, No. 96–55967 (9th Cir.). (There is pending litigation on the same issues in the U.S. District Court for the District of Columbia.)

Finally, we do not agree that our outlier policies are fundamentally inequitable. As we discussed in the proposed rule, we believe that one reason outlier payments have been lower than expected is that hospital costs are not increasing at the rate we expected, and costs may even be decreasing. Available data show that, beginning in FY 1994, for the first time since the inception of the prospective payment system, hospitals are experiencing actual decreases in cost per case from one year to the next. This information is confirmed by ProPAC in its June 1996 Report to Congress "Medicare and the American Health Care System" (Table 3–3, Annual Change in PPS Operating Costs and Payments, First 11 Years of PPS, p. 65). These actual decreases in cost per case follow a period of several years in which the rate of increase in operating cost per case declined from one year to the next.

The thresholds for a given fiscal year reflect a certain level of costs, so if hospitals are generally holding costs down, then fewer cases qualify for outlier payments and outlier payments are lower than expected. But if lower hospital costs result in lower than expected outlier payments, it also results in higher than expected "profits" (at least with respect to nonoutlier cases). Hospital, Medicare profit margins have rebounded to levels not seen since the middle of the 1980s. In the June 1996 report, ProPAC found the aggregate prospective payment system operating margin to be 6.0 percent for FY 1994 (Figure 3–2, Aggregate PPS Operating Margin, First 13 Years of PPS p. 68). ProPAC believes that aggregate prospective payment system margins are even higher for FYs 1995 and 1996.

Therefore, we believe that "underpayments" for outliers are not fundamentally inequitable because one factor contributing to this result—lower hospital costs—results in "overpayments" with respect to the standard DRG payments. We do not make retroactive adjustments to the standard DRG payments to account for the effect of actual costs being lower than expected; similarly, we do not make retroactive adjustments to outlier payments.

As we have stated previously, we believe the more appropriate action for addressing outlier payments is to continue to examine the outlier policy and try to refine our estimation methodology.

Comment: Two commenters stated that, after modeling the outlier payments, they were able to replicate HCFA's result of 5.1 percent for operating outlier payments, but that their analysis yielded only 4.8 percent for capital outlier payments as compared with HCFA's result of 5.2 percent.

Response: We have determined that the methodology used by the commenters contained several technical errors.

Comment: Two commenters requested that we develop an econometric hospital cost model to help us predict the cost inflation factors used for purposes of setting outlier thresholds.

Response: Currently, we calculate the cost inflation factor used to set outlier thresholds by analyzing hospital cost report data on cost per case for recent cost reporting periods. The nature of the econometric cost model contemplated by the commenters is not entirely clear to us, but we are interested in exploring such an approach and welcome specific suggestions for developing an econometric model. We believe such an approach might be helpful if the model could analyze data that are more recent than the data available in hospital cost reports.

We did not receive any specific suggestions for refinements to our outlier estimation methodology. We note that one commenter believes that the 0.0 percent cost inflation factor reflected in the proposed rule is warranted. As explained above, in this final rule, we are using a cost inflation factor of minus 1.906 percent to further reflect the decreases in cost per case.

B. Adjustments for Area Wage Levels and Cost of Living

The adjusted standardized amounts are divided into labor and nonlabor portions. Tables 1a and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4e of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1997, we are adjusting the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.15
County of Kauai	1.20
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V of this addendum contains the relative weights that we will use for discharges occurring in FY 1997. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1997

General Formula for Calculation of Prospective Payment Rates for FY 1997

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1996 and before October 1, 1997, except for sole community hospitals and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate. Section 1866(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Tables 1a, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1997.—We are increasing the hospital-specific rates by 2.0 percent (the hospital market basket percentage increase of 2.5 percent minus 0.5 percentage points) for sole community hospitals located in all areas in FY 1997. Section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for FY 1997, is the market basket rate of increase minus 0.5 percentage points.

b. Calculation of Hospital-Specific Rate.—For sole community hospitals, the applicable FY 1997 hospital-specific rate will be calculated by multiplying a hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (2.0 percent), which is the same as the update for all prospective payment hospitals. In addition, the hospital-specific rate will be adjusted by the budget neutrality adjustment factor (that is, 0.998703) as discussed in section II.A.4.a of this addendum. This resulting rate will be used in determining under which rate a sole community hospital is paid for its discharges beginning on or after October 1, 1996, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1996 and Before October 1, 1997

a. Puerto Rico Rate.—The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1c, section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

b. National Rate.—The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section V of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1997

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid based on an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of the hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the Federal rate and the hospital-specific rates for FY 1997. The rates will be effective for discharges occurring on or after October 1, 1996.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of total capital payments under the Federal rate. Section 412.308(c)(3) further requires that the Federal rate be reduced by an adjustment factor equal to the estimated additional payments made for exceptions under § 412.348, and § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that estimated aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year after FY 1992 for inflation and for changes in the exceptions payment adjustment factor. For FY 1992 through FY 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described more fully in Appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. These hospitals are paid a blended rate that consists of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital. Hospitals in Puerto Rico are paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1996, the Federal rate was $461.96. In the proposed rule, we stated that the proposed FY 1997 Federal rate was $441.84. In this final rule, we are establishing an FY 1997 Federal rate of $438.92.

In the discussion that follows, we explain the factors that were used to determine the FY 1997 Federal rate. In particular, we explain why the FY 1997 Federal rate has decreased 4.99 percent compared to the FY 1996 Federal rate. We also explain that capital payments per case are estimated to increase by 3.92 percent. Taking into account the effects of increases in projected discharges, we estimate that aggregate capital payments will increase 6.77 percent.

The major factor contributing to the decrease in the FY 1997 rate in comparison to FY 1996 is the change in the exceptions reduction factor. We have expected the number and amount of exceptions payments generally to increase throughout the transition period.

Total payments to hospitals under the prospective payment system are relatively insensitive to changes in the capital prospective payments. Since capital payments are about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 1997 compared to FY 1996. Specifically, we estimate that aggregate payments in FY 1997 will be 6.77 percent higher than they were in FY 1996. Changes in aggregate payments include changes in capital payments per discharge and changes in the number of discharges. Under the prospective payment system for capital-related costs, payments per discharge (or case) are estimated to increase 3.92 percent in FY 1997 compared to FY 1996.

1. Standard Federal Rate Update

Section 412.308(c)(1)(ii) has provided that the standard Federal rate is updated based on an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for

case-mix index related changes, for intensity, and for errors in previous CIPI forecasts. The proposed rule reflected an update factor of 1.0 percent, based on the data available at the time. The final update factor for FY 1997 under that framework is 0.7 percent. This update factor is based on a projected 1.3 percent increase in the CIPI, and on policy adjustment factors of −0.6 percent. We explain the basis for the FY 1997 CIPI projection in section IV.B of the preamble to this final rule. Here we describe the policy adjustments that have been applied.

The case-mix index (CMI) is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the CMI corresponds to an equal percentage increase in hospital payments.

The CMI can change for any of several reasons: because the average resource use of Medicare patients changes ("real" case-mix change); because changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and because the annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect"). We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the CMI. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all CMI-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation.) The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We have adopted this CMI adjustment in the capital update framework as well.

For FY 1997, we are projecting a 1.6 percent increase in the case-mix index. We now estimate that real case-mix increase will be 1.0 percent in FY 1997. In previous years, we have assumed that real case mix will increase at about 1.0 percent per year. We expect this pattern to continue. The final net adjustment for case-mix change in FY 1997 is therefore 0.6 percentage points.

We estimate that DRG reclassification and recalibration resulted in a 0.0 percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs.

The current operating update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. In setting a prospective payment rate under the proposed framework, we make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1996 through an adjustment to the FY 1998 update. Because we only introduced this analytical framework in FY 1996, FY 1998 is the first year in which a forecast error adjustment could be required.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component) and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We have therefore incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 1997, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1991–1995. In determining case-mix constant intensity, we found that observed case-mix increase was 2.8 percent in FY 1991, 1.8 percent in FY 1992, 0.9 percent in FY 1993, 0.8 percent in FY 1994, and 1.6 percent in FY 1995. For FY 1991, FY 1992 and FY 1995, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was rather a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1991 through FY 1995.

Given estimates of real case-mix increase of 1.0 percent for FY 1991 and FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.0 percent for FY 1995, we estimate that case-mix constant intensity declined by an average 1.1 percent during FY 1991 through FY 1995, for a cumulative decrease of 5.3 percent. If we assume that real case-mix increase was 1.4 percent for FY 1991 and FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.4 percent for FY 1995, we estimate that case-mix constant intensity declined by an average 1.2 percent during FY 1991 through FY

1995, for a cumulative decrease of 5.8 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1997.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate used to calculate the hospital's inpatient capital-related payments (for example, 60 percent for cost reporting periods beginning in FY 1997 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that estimated outlier payments are 5.1 percent of estimated total DRG payments. The inpatient capital-related outlier reduction factor is then set according to the estimated inpatient capital-related outlier payments that would be made if all hospitals were paid according to 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model all hospitals as if paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the September 1, 1995 final rule, we estimated that outlier payments for capital in FY 1996 would equal 4.64 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9536 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of the addendum, we estimate that outlier payments will equal 5.19 percent of inpatient capital-related payments based on the Federal rate in FY 1997. We are, therefore, applying an outlier adjustment factor of 0.9481 to the Federal rate. Thus, estimated capital outlier payments for FY 1997 represent a higher percentage of total capital payments than in FY 1996.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net change in the outlier adjustment to the Federal rate for FY 1997 is 0.9942 (.9481/.9536). Thus, the outlier adjustment decreases the FY 1997 Federal rate by 0.58 percent (1–0.9942) compared with the FY 1996 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor equal estimated aggregate payments that would have been made based on the Federal rate without such changes. We use the actuarial model described in Appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the geographic adjustment factor.

For FY 1996, we calculated a GAF/DRG budget neutrality factor of 0.9994. In the proposed rule for FY 1997, we proposed a GAF/DRG budget neutrality factor of 0.9992. In this final rule, based on calculations using updated data, we are applying a factor of 0.9987 to meet this requirement. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the geographic adjustment factor. The incremental change in the adjustment from FY 1996 to FY 1997 is 0.9987. The cumulative change in the rate due to this adjustment is 1.0012 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, and FY 1997: $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 = 1.0012$).

This factor accounts for DRG reclassifications and recalibration and for changes in the geographic adjustment factor. It also incorporates the effects on the geographic adjustment factor of FY 1997 geographic reclassification decisions made by the MGCRB compared to FY 1996 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to estimate payments under the exceptions payment process and to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this final rule.

For FY 1996, we estimated that exceptions payments would equal 1.51 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9849 (1–.0151) in determining the Federal rate. For FY 1997, we estimated in the May 31, 1996, proposed rule that exceptions payments would equal 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we proposed to apply an exceptions reduction factor of 0.9393 (1–0.0607) to determine the FY 1997 Federal rate. For this final rule, we estimate that exceptions payments for FY 1997 will equal 6.42 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are, therefore, applying an exceptions payment reduction factor of 0.9358 to the Federal rate for FY 1997.

The final exceptions reduction factor for FY 1997 is thus 4.99 percent lower than the factor for FY 1996, and 0.37 percent lower than the factor in the FY 1997 proposed rule. As we have stated before, we have expected the number and amount of exceptions payments generally to increase throughout the transition period.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the net adjustment to the FY 1997 Federal rate is 0.9358/0.9849, or 0.9501.

5. Standard Capital Federal Rate for FY 1997

For FY 1996, the capital Federal rate was $461.96. With the changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 1997 Federal rate would be $441.84. In this final rule, we are establishing an FY 1997 Federal rate of $438.92. The final Federal rate for FY 1997 was calculated as follows:

- The FY 1997 update factor is 1.0070, that is, the update is 0.70 percent.
- The FY 1997 outlier adjustment factor is 0.9481.
- The FY 1997 budget neutrality adjustment factor applied to the standard Federal payment rate for changes in the DRG relative weights and in the geographic adjustment factor is 0.9987.
- The FY 1997 exceptions payments adjustment factor is 0.9358.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we are making no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the geographic adjustment factor.

We are providing a chart that shows how each of the factors and adjustments for FY 1997 affected the computation of the final FY 1997 Federal rate in comparison to the FY 1996 Federal rate. The final FY 1997 update factor increases the Federal rate 0.70 percent compared to the rate in FY 1996, while the final geographic and DRG budget neutrality factor decreases the Federal rate by 0.13 percent. The final FY 1997 outlier adjustment factor decreases the Federal rate by 0.58 percent compared to FY 1996. The final FY 1997 exceptions reduction factor decreases the Federal rate by 4.99 percent compared to the exceptions reduction for FY 1996. The combined effect of all the changes is to decrease the Federal rate by 4.99 percent compared to the Federal rate for FY 1996.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1996 FEDERAL RATE AND FY 1997 FEDERAL RATE

		Change	Percent change
Update factor[1]:			
FY 1996	1.0120		
FY 1997	1.0070	1.0070	0.70
GAF/DRG adjustment factor[1]:			
FY 1996	0.9994		
FY 1997	0.9987	0.9987	–0.13
Outlier adjustment factor[2]:			
FY 1996	0.9536		
FY 1997	0.9481	0.9942	–0.58
Exceptions adjustment factor[2]:			
FY 1996	0.9849		
FY 1997	0.9358	0.9501	–4.99
Federal Rate:			
FY 1996	$461.96		
FY 1997	$438.92	0.9501	–4.99

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1996 to FY 1997 resulting from the application of the 0.9987 GAF/DRG budget neutrality factor for FY 1997 is 0.9987.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1997 exceptions reduction factor is 0.9358/0.9849, or 0.9501.

We are also providing a chart that shows how the final FY 1997 Federal rate differs from the proposed FY 1997 Federal rate.

This chart shows the factors that contributed to the 0.66 percent decrease in the rate since the proposed rule. The update factor decreased 0.30 percent since the proposed rule. Another change since the proposed rule is seen in the exceptions reduction factor, decreasing 0.37 percent from the earlier estimate. The GAF/DRG reduction factor decreased only 0.05 percent since the proposed rule and the outlier reduction factor increased 0.05 percent since the proposed estimate.

COMPARISON OF FACTORS AND ADJUSTMENTS: PROPOSED FY 1997 FEDERAL RATE AND FINAL FY 1997 FEDERAL RATE

		Net adjustment	Percent change
Update factor:			
Proposed FY 1997	1.0100		
Final FY 1997	1.0070	0.9970	–0.30
Outlier reduction factor:			
Proposed FY 1997	0.9476		
Final FY 1997	0.9481	1.0005	0.05
GAF/DRG reduction factor:			
Proposed FY 1997	0.9992		
Final FY 1997	0.9987	0.9995	–0.05
Exceptions reduction factor:			
Proposed FY 1997	0.9393		
Final FY 1997	0.9358	0.9963	–0.37
Federal rate:			
Proposed FY 1997	$441.84		
Final FY 1997	$438.92	0.9934	–0.66

6. Special Rate for Puerto Rico Hospitals

For FY 1996, the special rate for Puerto Rico hospitals was $355.35. With the changes we proposed to the factors used to determine the rate, the proposed FY 1997 special rate for Puerto Rico was $339.87. In this final rule, the FY 1997 capital rate for Puerto Rico is $337.63.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1997 be determined by adjusting the FY 1996 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1997, the hospital-specific rate will be updated by a factor of 1.0070.

2. Exceptions Payment Adjustment Factor

For FY 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1997, we estimated in the proposed rule that exceptions payments would be 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore proposed that the updated hospital-specific rate be reduced by a factor of 0.9393. In this final rule, we estimate that exceptions payments will be 6.42 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are therefore applying an exceptions reduction factor of 0.9358 to the hospital-specific rate. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. Therefore, the net adjustment to the FY 1997 hospital-specific rate is 0.9358/0.9849, or 0.9501.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1996 and FY 1997 and the net adjustment for each factor. It also shows that the cumulative net adjustment from FY 1996 to FY 1997 is 0.9568, which represents a decrease of 4.32 percent to the hospital-specific rate. The FY 1997 hospital-specific rate for each hospital is determined by multiplying the FY 1996 hospital-specific rate by the cumulative net adjustment of 0.9568.

FY 1997 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

		Net adjustment	Percent change
Update factor:			
FY 1996	1.0100		
FY 1997	1.0070	1.0070	0.70
Exceptions payment adjustment factor:			
FY 1996	0.9849		
FY 1997	0.9358	0.9501	−4.99
Cumulative adjustments:			
FY 1996	0.9947		
FY 1997	0.9518	0.9568	−4.32

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1996 to FY 1997 is 1.0070. In contrast, the exceptions payment adjustment factor and the budget neutrality factor are not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1996 to FY 1997 is 0.9358/0.9849, or 0.9501.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1997

During the capital prospective payment system transition period, a hospital is paid for inpatient capital-related costs under one of two alternative payment methodologies: the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate is determined by adjusting:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + Indirect Medical Education Adjustment Factor, if applicable).

The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after

obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1997 are 60 percent of the adjusted Federal rate and 40 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the hospital's inpatient capital-related payments that is based on the Federal rate. For fully prospective hospitals, that portion is 60 percent Federal rate for discharges occurring in cost reporting periods beginning during FY 1997. Thus, a fully prospective hospital will receive 60 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1997. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid based on 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The outlier thresholds for FY 1997 are published in section II.A.4.c of this addendum. For FY 1997, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $9,700. A case qualifies as a day outlier for FY 1997 if the length of stay is greater than the geometric mean length of stay for the DRG plus the lesser of 3 standard deviations of the length of stay or 24 days.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 1997 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

IV. Changes to Payment Rates for Excluded Hospitals and Hospital Units

A. Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has Medicare inpatient operating costs in excess of its ceiling is paid its ceiling plus 50 percent of its costs in excess of the ceiling. Total payment may not exceed 110 percent of the ceiling. A hospital that has inpatient operating costs less than its ceiling is paid its costs plus the lower of—

- Fifty percent of the difference between the allowable inpatient operating costs and the ceiling; or
- Five percent of the ceiling.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage. Section 1886(b)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1993 and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's "update adjustment percentage" except for hospitals with an "update adjustment percentage" of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case is the market basket percentage increase. The "update adjustment percentage" is the percentage by which a hospital's allowable inpatient operating costs exceeds the hospital's ceiling for the cost reporting period beginning in FY 1990. For cost reporting periods beginning on or after October 1, 1994 and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the previous year's

applicable reduction. The applicable reduction and applicable rate of increase percentage are then determined in the same manner as for FY 1994. The most recent forecast of the market basket increase for FY 1997 for hospitals and hospital units excluded from the prospective payment system is 2.5 percent.

B. Wage Index Exceptions for Excluded Hospitals and Units

In the August 30, 1991 final rule (56 FR 43232), we set forth our policy for target amount adjustments for significant wage increases. Effective with cost reporting periods beginning on or after April 1, 1990, significant increases in wages since the base period are recognized as a basis for an adjustment in the target amount under § 413.40(g).

To qualify for an adjustment, the excluded hospital or hospital unit must be located in a labor market area for which the average hourly wage increased significantly more than the national average hourly wage between the hospital's base period and the period subject to the ceiling. We use the hospital wage index for prospective payment hospitals to determine the rate of increase in the average hourly wage in the labor market area. For a hospital to qualify for an adjustment, the wage index value for the cost reporting period subject to the ceiling must be at least 8 percent higher than the wage index based on wage survey data collected for the base year cost reporting period. If survey data are not available for one (or both) of the cost reporting periods used in the comparison, the wage index based on the latest available survey data collected before that cost reporting period will be used. For example, to make the comparison between a 1983 base period and a hospital's cost reporting period beginning in FY 1994, we would use the rate of increase between the wage index based on 1982 wage data and the wage index based on the FY 1993 data, since the FY 1993 data are the most recent data currently available. Further, the comparison is made without regard to geographic reclassifications made by the MGCRB under sections 1886(d) (8) and (10) of the Act. Therefore, the comparison is made based on the wage index value of the labor market area in which the hospital is actually located.

We determine the amount of the adjustment for wage increases by considering three factors for the time between the base period and the period for which an adjustment is requested: the rate of increase in the hospital's average hourly wage; the rate of increase in the average hourly wage in the labor market area in which the hospital is located; and, the rate of increase in the national average hourly wage for hospital workers. The adjustment is limited to the amount by which the lower of the hospital's or the labor market area's rate of increase in average hourly wages significantly exceeds the national increase (that is, exceeds the national rate of increase by more than 8 percent). For purposes of computing the adjustment, the relative rate of increase in the average hourly wage for the labor market area is assumed to have been the same over each of the intervening years between the wage surveys.

To determine the rate of increase in the national average hourly wage, we use the average hourly earnings (AHE) component of the wages and salaries portion of the market basket. This measure is derived from the 1982-based market basket since the 1987-based market basket uses the employment cost index (ECI) for hospital workers as the price proxy for this component. Unlike the AHE, the ECI for hospital workers can be measured historically only back to 1986. In addition, the ECI does not adjust for skill-mix shifts and, therefore, measures only the change in wage rates per hour.

The average hourly earnings for hospital workers as measured by the market basket show the following increases:

1992 = 4.8 percent
1993 = 3.6 percent
1994 = 2.7 percent
1995 = 3.3 percent
1996 = 3.3 percent
1997 = 3.2 percent

We note that this section merely provides updated information with respect to areas that would qualify for the wage index adjustment under § 413.30(g). This information was calculated in accordance with established policy and does not reflect any change in that policy. The geographic areas in which the percentage difference in wage indexes was sufficient to qualify for a wage index adjustment are listed in Table 10 of section V of the addendum to this final rule. The table is constructed with old MSAs instead of the revised MSAs effective October 1, 1993 because current adjustment requests are for years prior to FY 1995.

V. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this Addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 3C, 4a, 4b, 4c, 4d, 4e, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, 8B, and 10 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1995 and Hospital Average Hourly Wage for Federal Fiscal Year 1997 Wage Index
Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4d—Average Hourly Wage for Urban Areas
Table 4e—Average Hourly Wage for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Invalid Procedure Codes
Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 95 MEDPAR Update 06/95 GROUPER V13.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 95 MEDPAR Update 06/95 GROUPER V14.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) August 1996
Table 8B—Statewide Average Capital Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) August 1996

Table 10—Percentage Difference in Wage Indexes for Areas that Qualify for a Wage Index Exception for Excluded Hospitals and Units

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,782.84	$1,125.64	$2,738.79	$1,107.83

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$2,759.22	$1,116.09	$2,759.22	$1,116.09
Puerto Rico	2,488.70	518.65	2,449.31	510.446

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$438.92
Puerto Rico	337.63

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1995

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
010001	01.3404	14.82	010095	00.9193	11.25	030004	01.0049	13.48	040003	01.0725	13.23	040106	01.2549	12.84
010004	00.9693	11.10	010097	00.9352	15.20	030006	01.5554	17.52	040004	01.4587	14.83	040107	01.1909	14.95
010005	01.1626	15.40	010098	01.1820	11.02	030007	01.3159	16.41	040005	01.0378	11.59	040109	01.1653	12.69
010006	01.4724	15.23	010099	01.1144	15.49	030008	02.0954	20.42	040007	01.8743	18.12	040114	01.8503	16.64
010007	01.1025	13.12	010100	01.1699	14.77	030009	01.2852	15.58	040008	01.0326	10.77	040116	01.3868	19.25
010008	01.1344	09.54	010101	01.1120	14.21	030010	01.4117	17.75	040010	01.2297	13.78	040118	01.1263	14.29
010009	01.1393	14.82	010102	00.9570	13.63	030011	01.5040	17.66	040011	00.9313	10.75	040119	01.0928	14.34
010010	01.1289	14.33	010103	01.7657	17.15	030012	01.2238	15.81	040014	01.1951	16.07	040124	01.2159	14.30
010011	01.6182	18.94	010104	01.6869	17.90	030013	01.2435	18.99	040015	01.1979	12.12	040126	00.9606	11.74
010012	01.2658	16.27	010106	01.1476	13.68	030014	01.4395	17.86	040016	01.7360	16.43	050002	01.5608	25.91
010015	01.0576	15.63	010109	01.0643	11.48	030016	01.2487	17.09	040017	01.2593	11.68	050006	01.3917	19.15
010016	01.2642	16.76	010110	01.0158	13.44	030017	01.5214	18.98	040018	01.1718	16.66	050007	01.5863	25.29
010018	00.9019	16.19	010112	01.1218	14.09	030018	01.7970	19.57	040019	01.1544	13.52	050008	01.5106	25.48
010019	01.2853	14.99	010113	01.6345	13.69	030019	01.2020	19.31	040020	01.5961	14.08	050009	01.7160	31.63
010021	01.2330	12.20	010114	01.3192	15.37	030022	01.5026	17.41	040021	01.2317	14.69	050013	01.8083	22.05
010022	01.0214	16.89	010115	00.8472	11.98	030023	01.2631	17.64	040022	01.6987	14.73	050014	01.1762	22.55
010023	01.4798	14.71	010117	00.8122	13.54	030024	01.7885	21.04	040024	01.1694	12.16	050015	01.3901	22.18
010024	01.4003	15.62	010118	01.2505	15.07	030025	01.1635	12.76	040025	00.9192	11.81	050016	01.1490	18.51
010025	01.4321	13.16	010119	01.4921	16.36	030027	01.0796	14.69	040026	01.5567	16.35	050017	02.0442	24.39
010027	00.8360	13.55	010120	00.9671	14.32	030030	01.6810	18.19	040027	01.2885	12.56	050018	01.3313	18.49
010029	01.4936	14.84	010121	01.2282	12.92	030033	01.2472	16.40	040028	01.0910	11.40	050021	01.4226	23.40
010031	01.1845	14.58	010123	01.2531	16.95	030034	01.0470	15.89	040029	01.2512	14.12	050022	01.4532	22.63
010032	00.8480	12.45	010124	01.2853	16.15	030035	01.3434	20.77	040030	00.8948	11.09	050024	01.3916	21.31
010033	01.9155	17.61	010125	01.0231	12.86	030036	01.1448	18.23	040032	01.0009	11.18	050025	01.7849	21.97
010034	01.0754	13.48	010126	01.1654	13.13	030037	02.0251	19.60	040035	01.0269	10.24	050026	01.4559	21.79
010035	01.2416	15.13	010127	01.2974	16.29	030038	01.6224	18.82	040036	01.4885	16.45	050028	01.4384	15.33
010036	01.1248	15.34	010128	00.9619	12.34	030040	01.1863	15.88	040037	01.1075	11.55	050029	01.3835	25.55
010038	01.3476	16.70	010129	01.0826	13.29	030041	00.9847	13.68	040039	01.2413	12.23	050030	01.3340	19.24
010039	01.7027	16.14	010130	01.0405	15.28	030043	01.1901	18.25	040040	01.0021	15.73	050032	01.2750	22.76
010040	01.5324	18.21	010131	01.3555	17.75	030044	01.0338	13.19	040041	01.3902	13.95	050033	01.4227	25.47
010043	01.1075	10.35	010134	00.9077	13.36	030046	00.9532	16.38	040042	01.2961	12.03	050036	01.6184	18.61
010044	01.0952	11.01	010137	01.2701	16.36	030047	00.9496	19.91	040044	00.9581	10.04	050038	01.4467	29.05
010045	01.2215	10.79	010138	00.9454	09.85	030049	00.9747	17.30	040045	01.0339	14.28	050039	01.6003	21.04
010046	01.5270	15.51	010139	01.6545	19.67	030054	00.8681	12.63	040047	01.0992	14.78	050040	01.0789	22.92
010047	01.0203	10.05	010143	01.1818	15.83	030055	01.2107	16.85	040048	01.2128	13.48	050041	02.8307	22.21
010049	01.1130	15.66	010144	01.3065	18.42	030059	01.2755	19.95	040050	01.1009	11.66	050042	01.3156	20.20
010050	01.0631	13.48	010145	01.3277	14.59	030060	01.2055	13.90	040051	01.0953	12.64	050043	01.5742	30.15
010051	00.8526	10.24	010146	01.1731	15.59	030061	01.6515	16.75	040053	01.1051	11.67	050045	01.2631	17.44
010052	00.9891	12.78	010148	00.9991	12.83	030062	01.2298	15.56	040054	01.0313	12.44	050046	01.1948	23.81
010053	01.0623	12.67	010149	01.3548	16.86	030064	01.6287	17.31	040055	01.4492	14.51	050047	01.6384	29.15
010054	01.1715	16.17	010150	01.0458	16.29	030065	01.6550	18.87	040058	01.0595	13.61	050051	01.1150	16.63
010055	01.4799	16.35	010152	01.5001	16.29	030067	01.0493	15.92	040060	00.9905	09.85	050054	01.1945	20.55
010056	01.3958	17.99	010155	01.0155	09.42	030068	00.9533	14.04	040062	01.6183	16.66	050055	01.3688	27.48
010058	01.0940	12.96	020001	01.4883	25.53	030069	01.3387	19.11	040063	01.4690	15.67	050056	01.3269	25.23
010059	01.0172	14.17	020002	01.0275	24.16	030071	00.9564	.....	040064	01.0568	10.49	050057	01.4831	20.22
010061	01.0121	14.70	020004	01.1018	25.46	030072	00.8597	.....	040066	01.1450	14.63	050058	01.4657	22.78
010062	01.0056	13.45	020005	00.9023	28.36	030073	00.9795	.....	040067	01.0823	11.34	050060	01.5871	24.25
010064	01.8006	17.85	020006	01.1404	23.19	030074	00.8590	.....	040069	01.1002	14.90	050061	01.4278	22.12
010065	01.3671	14.30	020007	00.8988	21.82	030075	00.8591	.....	040070	00.9422	14.98	050063	01.4169	21.44
010066	00.9765	10.87	020008	01.1004	26.45	030076	00.9802	.....	040071	01.5971	15.42	050065	01.6154	22.37
010068	01.2347	18.82	020009	00.9164	21.29	030077	00.8769	.....	040072	01.0869	13.39	050066	01.2719	24.33
010069	01.1593	13.06	020010	00.9035	22.13	030078	01.0972	.....	040074	01.2491	14.51	050067	01.3827	21.09
010072	01.2165	12.72	020011	01.0329	22.27	030079	00.7727	.....	040075	01.0588	11.57	050068	01.0946	19.05
010073	00.9681	09.66	020012	01.3114	23.99	030080	01.6582	20.82	040076	01.0307	14.71	050069	01.6194	23.15
010078	01.1765	15.50	020013	01.0331	24.03	030083	01.3074	21.70	040077	00.9164	10.72	050070	01.2861	30.65
010079	01.2797	13.72	020014	01.0795	24.52	030084	00.9397	.....	040078	01.4848	17.29	050071	01.3190	30.60
010080	01.0410	12.99	020017	01.5155	26.83	030085	01.5017	20.21	040080	01.0736	15.45	050072	01.3045	30.90
010081	01.9870	16.16	020018	00.8963	.....	030086	01.3255	18.76	040081	00.9292	09.91	050073	01.3242	31.28
010083	01.0482	13.25	020019	00.8718	.....	030087	01.6136	18.77	040082	01.2135	13.69	050074	01.2333	33.23
010084	01.4758	16.64	020020	00.8462	.....	030088	01.3530	19.90	040084	01.0970	14.83	050075	01.4037	30.63
010085	01.3193	17.11	020021	00.8338	.....	030089	01.5845	18.66	040085	01.2469	15.18	050076	01.7727	29.53
010086	01.0497	13.54	020024	01.0892	22.64	030092	01.5679	20.62	040088	01.3050	13.73	050077	01.6129	22.83
010087	01.6125	16.88	020025	01.0122	24.44	030093	01.3720	18.08	040090	00.8995	13.78	050078	01.3591	24.44
010089	01.1896	15.13	020026	01.3245	.....	030094	01.2482	18.57	040091	01.2939	18.25	050079	01.5793	28.30
010090	01.5738	16.40	020027	01.0132	.....	030095	01.2170	13.09	040093	00.9710	10.98	050080	01.2370	16.56
010091	00.9216	13.43	030001	01.3125	19.28	030098	00.9899	.....	040095	00.9117	10.56	050081	01.6631	24.01
010092	01.4203	15.35	030002	01.8022	20.25	040001	01.1237	12.37	040100	01.2420	12.81	050082	01.5000	21.34
010094	01.1427	16.76	030003	01.8995	21.05	040002	01.1641	13.07	040105	01.0034	11.90	050084	01.5602	22.33

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050088	01.1393	21.94	050188	01.3477	25.25	050295	01.4128	20.86	050419	01.3115	18.88	050542	01.2233	13.79
050089	01.3622	19.92	050189	00.9734	21.50	050296	01.2084	22.69	050420	01.4349	25.15	050543	00.9225	21.68
050090	01.2815	21.75	050191	01.5035	20.64	050298	01.2991	20.77	050421	01.4202	24.62	050545	00.8302	20.39
050091	01.2000	24.42	050192	01.1398	18.74	050299	01.3639	22.49	050423	00.9862	19.25	050546	00.7201	21.10
050092	00.8597	16.12	050193	01.3513	22.56	050300	01.3143	18.87	050424	01.8327	22.16	050547	00.9283	20.65
050093	01.5911	22.35	050194	01.2422	25.03	050301	01.3882	21.54	050425	01.2730	30.30	050549	01.7151	25.86
050096	01.1293	12.95	050195	01.5895	31.26	050302	01.4072	24.31	050426	01.3016	23.89	050550	02.3039	23.34
050097	01.4914	18.40	050196	01.4171	16.40	050305	01.5823	29.82	050427	00.9243	18.44	050551	01.3441	24.20
050099	01.4623	22.91	050197	01.8264	29.07	050307	01.4384	20.51	050430	00.9414	15.94	050552	01.1681	22.44
050100	01.7458	29.38	050199	00.8980	19.48	050308	01.5751	29.77	050431	01.0690	22.58	050557	01.4977	21.08
050101	01.4057	25.12	050204	01.5012	23.12	050309	01.3320	23.63	050432	01.5759	23.69	050559	01.3565	24.18
050102	01.4495	22.34	050205	01.4071	19.99	050310	01.2559	22.24	050433	01.0471	17.37	050560	01.1958	.....
050103	01.6149	26.74	050207	01.2968	20.58	050312	01.9778	23.66	050434	01.1429	18.08	050561	01.2258	30.34
050104	01.3954	21.73	050208	00.9598	27.60	050313	01.1978	20.90	050435	01.2450	18.98	050564	01.2054	24.02
050107	01.4293	22.92	050211	01.3146	29.60	050315	01.1780	20.82	050436	01.0070	15.77	050565	01.1520	21.26
050108	01.5836	22.79	050213	01.3874	21.12	050317	01.3273	20.90	050438	01.6314	23.33	050566	00.8825	19.75
050109	02.3476	24.68	050214	01.4375	21.76	050320	01.3287	27.27	050440	01.3954	19.93	050567	01.6587	23.01
050110	01.2507	18.72	050215	01.5190	27.75	050324	01.8319	25.93	050441	01.9149	28.55	050568	01.4204	18.28
050111	01.3798	18.81	050217	01.3643	18.44	050325	01.2523	20.87	050443	00.9587	15.95	050569	01.3542	22.93
050112	01.5220	22.15	050219	01.3321	20.37	050327	01.6010	21.00	050444	01.3523	22.19	050570	01.6980	24.91
050113	01.2853	28.23	050222	01.5922	24.56	050328	01.4495	32.92	050446	00.8940	17.25	050571	01.4204	22.37
050114	01.3991	21.65	050224	01.5653	22.17	050329	01.3164	20.34	050447	01.0844	18.59	050573	01.6397	23.66
050115	01.5990	21.11	050225	01.3294	20.67	050331	01.4127	27.08	050448	01.1051	19.82	050575	01.2273	.....
050116	01.4567	22.73	050226	01.3370	22.58	050333	00.9784	18.66	050449	01.3604	21.99	050577	01.3597	20.32
050117	01.2834	20.93	050228	01.3736	29.90	050334	01.7734	28.22	050454	01.8370	26.64	050578	01.1992	23.70
050118	01.2808	23.24	050230	01.2918	26.22	050335	01.2452	19.62	050455	01.9214	22.89	050579	01.5677	26.94
050121	01.4021	19.96	050231	01.6412	24.14	050336	01.3479	21.04	050456	01.1402	20.24	050580	01.3586	23.47
050122	01.7000	22.90	050232	01.7744	24.17	050337	01.1692	23.87	050457	01.9338	28.66	050581	01.4202	24.63
050124	01.2720	19.72	050233	01.2916	30.88	050342	01.3725	17.55	050459	01.1867	28.20	050583	01.5832	23.08
050125	01.3165	25.98	050234	01.3192	22.00	050343	01.0360	18.56	050464	01.8999	22.62	050584	01.2104	22.39
050126	01.4674	23.23	050235	01.5083	25.00	050348	01.5885	22.83	050468	01.3992	16.26	050585	01.2578	23.70
050127	01.2913	22.89	050236	01.6581	24.28	050349	00.9126	14.28	050469	01.0927	17.33	050586	01.3811	21.76
050128	01.5432	20.97	050238	01.4934	22.95	050350	01.3885	22.68	050470	01.1184	21.29	050588	01.3856	26.55
050129	01.5533	22.11	050239	01.5043	21.24	050351	01.4758	24.81	050471	01.7401	24.07	050589	01.3208	25.37
050131	01.2667	27.78	050240	01.3972	22.82	050352	01.2909	23.35	050476	01.3455	19.12	050590	01.4063	23.00
050132	01.4398	24.55	050241	01.2317	25.78	050353	01.5639	21.45	050477	01.5165	24.50	050591	01.2961	22.97
050133	01.3529	20.16	050242	01.4661	27.10	050355	00.9639	15.53	050478	00.9231	21.73	050592	01.3448	20.34
050135	01.3822	26.86	050243	01.5339	21.58	050357	01.7182	23.17	050481	01.4226	24.85	050593	01.5312	24.40
050136	01.3787	21.89	050245	01.3997	21.74	050359	01.2130	18.78	050482	00.9467	14.55	050594	02.0186	23.81
050137	01.3809	31.46	050248	01.2055	24.50	050360	01.4693	30.15	050483	01.1688	23.89	050597	01.2823	21.91
050138	01.8792	32.07	050251	01.0803	17.68	050366	01.3068	20.47	050485	01.6321	22.34	050598	01.4008	26.87
050139	01.3410	31.14	050253	00.7756	18.87	050367	01.2858	27.02	050486	01.4321	24.94	050599	01.6761	22.70
050140	01.4209	30.76	050254	01.1917	22.13	050369	01.3286	23.30	050488	01.3939	30.41	050601	01.3057	29.03
050144	01.5867	26.03	050256	01.7682	19.70	050373	01.4241	23.83	050489	00.9463	27.10	050603	01.4202	23.50
050145	01.3536	27.67	050257	01.0737	20.65	050376	01.3722	25.86	050491	01.2864	23.76	050604	01.5879	29.45
050146	01.3368	.....	050260	01.0937	21.96	050377	00.9038	15.01	050492	01.2453	23.05	050607	01.2965	21.79
050147	00.6982	20.55	050261	01.1916	17.91	050378	01.1132	22.45	050494	01.1689	24.95	050608	01.3088	15.23
050148	01.1363	19.62	050262	01.9314	26.89	050379	01.0922	19.04	050496	01.7816	31.64	050609	01.4337	31.39
050149	01.4384	21.97	050263	01.2879	24.44	050380	01.6730	28.31	050497	00.7940	.....	050613	01.1371	22.70
050150	01.2549	23.23	050264	01.3787	26.01	050382	01.4475	20.97	050498	01.2605	22.42	050615	01.7184	23.31
050152	01.4365	24.60	050267	01.5206	24.88	050385	01.3946	24.83	050502	01.6552	23.61	050616	01.3002	20.68
050153	01.6526	30.53	050270	01.2597	23.60	050388	00.9121	14.19	050503	01.3025	23.01	050618	01.0773	19.37
050155	01.1138	23.60	050272	01.3290	19.69	050390	01.2239	20.80	050506	01.4050	25.57	050623	01.1535	24.40
050158	01.6868	27.88	050274	00.9762	18.36	050391	01.2734	21.61	050510	01.3660	30.46	050624	01.3672	25.95
050159	01.2594	22.01	050276	01.2209	26.99	050392	00.9526	17.49	050512	01.4632	31.27	050625	01.5887	24.00
050167	01.4435	21.67	050277	01.3813	21.30	050393	01.4172	21.56	050515	01.3623	30.78	050630	01.3492	21.26
050168	01.6111	24.83	050278	01.5176	23.01	050394	01.5474	20.71	050516	01.6598	24.33	050633	01.2939	21.76
050169	01.5874	24.53	050279	01.2425	20.58	050396	01.6173	21.89	050517	01.2778	19.15	050635	01.4086	31.06
050170	01.5243	21.58	050280	01.6603	22.80	050397	01.0096	19.97	050522	01.3194	30.40	050636	01.4306	20.37
050172	01.2559	19.96	050281	01.4482	22.74	050401	01.1146	19.09	050523	01.2674	27.65	050638	01.0967	24.28
050173	01.2322	23.70	050282	01.3406	21.42	050404	01.1459	16.51	050526	01.3671	24.28	050641	01.2440	12.26
050174	01.6918	27.89	050283	01.1645	27.24	050406	01.1157	15.29	050528	01.3348	16.46	050643	00.7692	.....
050175	01.3877	21.97	050286	01.0345	17.99	050407	01.3194	27.06	050531	01.3097	23.60	050644	00.9068	26.86
050177	01.2949	18.76	050289	01.7959	27.38	050410	01.0758	17.45	050534	01.3868	23.83	050660	01.3466	.....
050179	01.2634	17.29	050290	01.6280	32.31	050411	01.4012	29.35	050535	01.3837	22.46	050661	00.8839	20.21
050180	01.5556	30.12	050291	01.2616	24.46	050414	01.2883	24.32	050537	01.2702	21.30	050662	00.8598	21.17
050183	01.1975	19.09	050292	01.0830	21.20	050417	01.3024	21.14	050539	01.2222	21.90	050663	01.0612	23.51
050186	01.2894	24.12	050293	01.0595	19.93	050418	01.4205	24.24	050541	01.5919	30.97	050666	00.7408	22.84

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050667	01.1876	24.88	060043	00.9469	11.78	080003	01.3117	19.32	100069	01.3695	17.29	100165	01.3116	13.45
050668	01.1891	26.20	060044	01.2667	17.32	080004	01.2876	17.59	100070	01.4431	17.56	100166	01.4649	20.31
050670	00.7582	20.12	060046	01.1210	16.56	080005	01.3302	16.82	100071	01.2985	16.98	100167	01.3941	20.54
050672	00.6286	23.77	060047	00.9812	11.40	080006	01.3946	20.49	100072	01.2499	17.24	100168	01.3762	19.35
050674	01.2103	29.09	060049	01.3584	17.47	080007	01.3606	17.99	100073	01.7985	20.61	100169	01.8614	18.29
050675	01.7287	16.32	060050	01.1733	13.77	090001	01.4141	19.64	100075	01.6343	17.85	100170	01.5053	16.56
050676	01.0181	13.83	060052	01.1025	12.56	090002	01.2979	20.51	100076	01.3934	17.15	100172	01.3679	13.38
050677	01.4291	32.99	060053	00.9924	13.73	090003	01.3037	24.74	100077	01.3130	17.25	100173	01.6821	16.33
050678	01.0695	24.07	060054	01.3339	16.80	090004	01.7183	23.49	100078	01.1660	15.14	100174	01.5414	18.20
050680	01.2184	26.13	060056	00.9638	13.37	090005	01.3403	27.07	100079	01.8349	16.01	100175	01.2188	16.18
050682	00.8554	14.98	060057	01.0526	21.45	090006	01.3699	19.52	100080	01.6185	19.40	100176	02.0480	21.95
050684	01.2032	21.30	060058	00.9353	12.54	090007	01.4082	19.58	100081	01.1190	13.33	100177	01.3381	18.55
050685	01.2265	26.94	060060	00.9689	12.21	090008	01.5337	24.06	100082	01.5411	17.93	100179	01.6547	19.03
050686	01.3481	30.96	060062	00.9518	15.85	090010	00.9987	21.70	100083	01.3214	17.50	100180	01.4234	17.67
050688	01.2759	27.89	060063	01.0378	11.12	090011	01.9774	24.77	100084	01.5306	16.53	100181	01.2716	17.59
050689	01.4006	29.12	060064	01.4255	20.21	090015	01.1679	.....	100085	01.4393	19.50	100183	01.3672	19.33
050690	01.4817	30.29	060065	01.3431	19.98	100001	01.5420	18.86	100086	01.3389	21.32	100186	01.4766	16.70
050693	01.9223	28.80	060066	00.9927	13.10	100002	01.4781	19.71	100087	01.8063	20.83	100187	01.4519	18.35
050694	01.3722	21.20	060068	01.2574	14.00	100004	01.0281	11.81	100088	01.6818	17.41	100189	01.3788	23.13
050695	01.1715	24.30	060070	01.0379	14.99	100005	01.0125	16.26	100090	01.4281	16.49	100191	01.3328	19.19
050696	02.0081	27.85	060071	01.2272	14.69	100006	01.5475	18.99	100092	01.4493	16.91	100199	01.4386	21.91
050697	01.1596	17.93	060073	00.9804	14.32	100007	01.8482	19.61	100093	01.5191	14.28	100200	01.3968	21.35
050698	01.1420	22.83	060075	01.3519	20.27	100008	01.7482	19.80	100098	01.1444	17.43	100203	01.2655	19.34
050699	00.5836	23.13	060076	01.3688	15.97	100009	01.5619	18.17	100099	01.2518	13.09	100204	01.6212	19.95
050700	01.4316	32.46	060085	00.9849	10.28	100010	01.5539	20.58	100102	01.1013	16.44	100206	01.3436	19.47
050701	01.3067	27.13	060087	01.6543	18.67	100012	01.6867	16.73	100103	01.1795	14.46	100207	01.4708	19.86
050702	00.8621	16.98	060088	01.0424	15.38	100014	01.4263	18.57	100105	01.4672	18.08	100208	01.6280	21.86
050704	01.2122	20.48	060090	00.9635	14.23	100015	01.2474	17.60	100106	01.0473	15.46	100209	01.6581	22.39
050706	00.9234	16.16	060096	01.0000	21.70	100017	01.6490	17.18	100107	01.4657	18.26	100210	01.6673	16.51
050707	01.1851	25.62	060100	01.4179	20.95	100018	01.2838	19.94	100108	01.1057	15.45	100211	01.3452	19.17
050708	00.9454	15.13	060103	01.2446	21.10	100019	01.4953	18.81	100109	01.3492	16.81	100212	01.6712	18.54
050709	01.3089	.....	060104	01.3185	20.32	100020	01.3391	18.31	100110	01.4144	18.91	100213	01.5487	20.00
050710	01.4032	.....	070001	01.7660	24.78	100022	01.8412	23.05	100112	00.9727	10.84	100217	01.2995	17.06
050711	02.3704	.....	070002	01.8658	24.78	100023	01.3492	15.88	100113	02.0782	18.19	100220	01.9605	19.66
050712	02.1909	.....	070003	01.1262	24.50	100024	01.3428	19.54	100114	01.4899	17.73	100221	01.5710	20.68
060001	01.5508	18.95	070004	01.1725	23.70	100025	01.8824	16.22	100117	01.3400	18.32	100222	01.3999	18.80
060003	01.2948	16.17	070005	01.3749	25.45	100026	01.6407	15.52	100118	01.2643	16.03	100223	01.4871	18.53
060004	01.2527	19.46	070006	01.3549	26.73	100027	00.9771	11.53	100121	01.3066	15.44	100224	01.4719	19.83
060006	01.1975	16.19	070007	01.3479	24.08	100028	01.2652	16.38	100122	01.4506	16.39	100225	01.3254	19.52
060007	01.2004	13.06	070008	01.3150	23.47	100029	01.4199	18.94	100124	01.3626	19.41	100226	01.3465	16.58
060008	01.0187	14.31	070009	01.2763	25.01	100030	01.2742	18.25	100125	01.1588	17.77	100228	01.3104	21.73
060009	01.4655	19.88	070010	01.5525	22.46	100032	01.9211	17.39	100126	01.4979	18.74	100229	01.3245	16.27
060010	01.5260	20.98	070011	01.3234	22.80	100034	01.7396	18.34	100127	01.6887	17.42	100230	01.5387	18.97
060011	01.3370	20.75	070012	01.2507	23.38	100035	01.6148	16.60	100128	02.2486	20.13	100231	01.6719	17.53
060012	01.3930	15.79	070013	01.2967	24.01	100038	01.6027	21.18	100129	01.2547	17.45	100232	01.2671	17.95
060013	01.2675	18.83	070015	01.3575	23.82	100039	01.7141	21.15	100130	01.2030	17.45	100234	01.5302	19.03
060014	01.7036	20.52	070016	01.3214	25.46	100040	01.6660	17.04	100131	01.3906	20.00	100235	01.4767	17.51
060015	01.5654	19.33	070017	01.3822	23.54	100043	01.4572	17.78	100132	01.4161	15.67	100236	01.4469	17.14
060016	01.0699	11.42	070018	01.3711	27.83	100044	01.5020	19.01	100134	01.0905	14.50	100237	02.1542	22.65
060018	01.2065	16.36	070019	01.2155	24.04	100045	01.4043	17.12	100135	01.5238	16.11	100238	01.4815	18.68
060020	01.5157	16.73	070020	01.3663	24.32	100046	01.5110	18.53	100137	01.3214	18.42	100239	01.4625	19.34
060022	01.6703	17.89	070021	01.3063	25.47	100047	01.9063	18.62	100138	00.9490	13.00	100240	00.8493	15.06
060023	01.6452	16.65	070022	01.7748	24.30	100048	01.0049	11.69	100139	01.0446	14.54	100241	00.9419	12.47
060024	01.8238	21.86	070024	01.3565	23.81	100049	01.3205	18.04	100140	01.2494	16.91	100242	01.4130	16.29
060026	01.4257	19.44	070025	01.7832	24.06	100050	01.2217	15.06	100142	01.1998	16.68	100243	01.4202	18.82
060027	01.6710	19.41	070026	01.2095	23.07	100051	01.1641	16.60	100144	01.1391	13.65	100244	01.4365	17.32
060028	01.4813	21.26	070027	01.2527	24.31	100052	01.3742	15.60	100145	01.3457	14.87	100246	01.3480	20.92
060029	00.9561	13.93	070028	01.4842	24.67	100053	01.2969	17.36	100146	01.2636	14.27	100248	01.7029	17.88
060030	01.3302	20.36	070029	01.3530	21.65	100054	01.2845	17.74	100147	01.1046	13.43	100249	01.3523	18.87
060031	01.6125	18.60	070030	01.3017	24.71	100055	01.3733	17.47	100150	01.3716	18.64	100252	01.2487	19.21
060032	01.5798	19.35	070031	01.2736	22.24	100056	01.4638	19.83	100151	01.8558	18.63	100253	01.4795	20.60
060033	01.1592	11.96	070033	01.2928	28.25	100057	01.3486	16.78	100154	01.5652	17.95	100254	01.5994	17.50
060034	01.4918	15.10	070034	01.3756	24.74	100060	01.8574	17.64	100156	01.2197	18.65	100255	01.3326	19.11
060036	01.1876	14.12	070035	01.3467	24.31	100061	01.5097	20.88	100157	01.6104	19.31	100256	01.8928	19.32
060037	01.0382	13.22	070036	01.4357	26.98	100062	01.7312	17.34	100159	00.9792	12.76	100258	01.6487	21.12
060038	01.0165	12.25	070039	00.9163	.....	100063	01.3440	16.12	100160	01.1077	18.07	100259	01.4550	16.36
060041	00.9131	16.53	080001	01.6108	23.66	100067	01.4273	16.38	100161	01.5218	19.76	100260	01.4008	20.44
060042	01.0563	15.65	080002	01.1901	17.34	100068	01.3898	17.42	100162	01.3906	14.53	100262	01.4078	19.32

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
100263	01.3780	15.44	110061	01.0125	10.61	110154	00.8337	12.68	130009	00.9607	14.78	140042	01.0485	13.30
100264	01.3927	18.24	110062	00.9133	09.73	110155	01.2457	12.27	130010	00.9378	15.04	140043	01.1788	16.37
100265	01.3736	17.47	110063	01.0733	11.44	110156	01.0063	12.68	130011	01.2462	16.74	140045	01.0658	14.21
100266	01.2340	15.64	110064	01.2886	15.87	110161	01.3364	20.79	130012	01.0306	18.53	140046	01.3024	14.83
100267	01.3054	16.39	110065	01.0226	12.00	110162	00.8869	.....	130013	01.2406	17.21	140047	01.1337	13.20
100268	01.1963	22.00	110066	01.4492	15.93	110163	01.4519	18.52	130014	01.3064	16.43	140048	01.2661	21.68
100269	01.3576	19.07	110069	01.1724	15.22	110164	01.4148	19.63	130015	00.8651	12.43	140049	01.5736	19.35
100270	00.8215	12.95	110070	01.1711	11.37	110165	01.3220	17.47	130016	00.9236	16.18	140051	01.4909	19.14
100271	01.6484	19.22	110071	01.0312	10.29	110166	01.4938	16.67	130017	01.3329	13.03	140052	01.3125	17.02
100273	00.5356	19.72	110072	01.0247	11.53	110168	01.6565	19.22	130018	01.6907	17.60	140053	01.8943	17.53
100275	01.4323	21.96	110073	01.2039	12.67	110169	00.7217	19.70	130019	01.1299	13.74	140054	01.3596	.....
100276	01.3023	21.94	110074	01.4766	18.11	110171	01.4568	21.21	130021	01.0465	11.96	140055	00.9522	13.00
100277	01.0092	12.71	110075	01.2078	15.29	110172	01.3364	22.83	130022	01.1801	15.79	140058	01.2417	15.26
100279	01.3749	18.35	110076	01.3901	18.01	110174	01.0421	17.57	130024	01.0502	15.25	140059	01.1373	13.52
100280	01.3702	16.93	110078	01.6719	20.46	110176	01.1237	19.42	130025	01.1504	15.21	140061	01.0923	13.80
100281	01.2549	20.85	110079	01.3994	21.08	110177	01.4754	19.21	130026	01.1837	17.88	140062	01.2440	23.10
100282	01.0458	16.99	110080	01.1584	17.55	110178	01.3367	16.78	130027	00.9547	17.18	140063	01.4167	22.48
100283	01.5652	.....	110082	02.0181	20.36	110179	01.2418	21.56	130028	01.2487	16.08	140064	01.3103	16.15
110001	01.2981	17.40	110083	01.7259	20.66	110181	00.9808	12.59	130029	01.0228	17.07	140065	01.4933	23.68
110002	01.2392	15.22	110086	01.2202	13.76	110183	01.3677	17.07	130030	01.0169	16.20	140066	01.3703	13.39
110003	01.3058	15.41	110087	01.3382	19.17	110184	01.1756	17.58	130031	01.0188	13.26	140067	01.8244	18.24
110004	01.3077	16.17	110088	00.9695	11.17	110185	01.0884	12.23	130034	01.0391	16.38	140068	01.3717	19.00
110005	01.1844	21.40	110089	01.2124	15.37	110186	01.3073	15.75	130035	01.0662	15.37	140069	01.0074	14.23
110006	01.3576	18.87	110091	01.3396	19.15	110187	01.2468	17.19	130036	01.2648	12.50	140070	01.2760	16.18
110007	01.4531	16.31	110092	01.1806	12.55	110188	01.4230	18.00	130037	01.2740	14.58	140074	00.9717	14.60
110008	01.2394	15.47	110093	01.0117	09.81	110189	01.1532	19.78	130043	00.9512	14.61	140075	01.4676	21.53
110009	01.0428	15.71	110094	00.9605	12.06	110190	01.0880	14.41	130044	01.1521	12.37	140077	01.1406	17.05
110010	02.1537	21.39	110095	01.2790	13.86	110191	01.3522	18.06	130045	01.0312	12.15	140079	01.2381	20.90
110011	01.2831	16.01	110096	01.1394	14.30	110192	01.3947	22.17	130048	01.0694	11.90	140080	01.5767	19.60
110013	01.1303	14.36	110097	01.0211	15.58	110193	01.2332	16.16	130049	01.2951	17.55	140081	01.0786	13.92
110014	01.0358	14.48	110098	01.0943	11.76	110194	00.9677	11.77	130054	00.9652	17.12	140082	01.5017	22.10
110015	01.3568	16.52	110100	01.0953	12.27	110195	01.0807	10.50	130056	00.8422	09.45	140083	01.2513	16.51
110016	01.2935	14.21	110101	01.0963	09.24	110198	01.3335	22.58	130058	00.9768	12.87	140084	01.2323	17.94
110017	00.8913	11.01	110103	00.9600	10.35	110200	01.9391	15.79	130060	01.1395	18.38	140086	01.1440	13.93
110018	01.1312	17.20	110104	01.1190	13.28	110201	01.4569	16.13	130061	00.9484	.....	140087	01.3815	17.10
110020	01.2347	17.30	110105	01.1311	15.17	110203	00.9715	14.94	140001	01.2991	14.63	140088	01.6591	23.33
110023	01.2424	17.53	110107	01.8265	17.61	110204	00.8135	13.48	140002	01.2823	17.06	140089	01.2280	15.85
110024	01.4719	16.51	110108	00.9766	11.27	110205	01.1045	11.84	140003	01.0185	13.14	140090	01.5067	23.62
110025	01.4105	16.85	110109	01.1048	12.14	110207	01.0934	15.59	140004	01.0772	13.75	140091	01.8655	17.70
110026	01.1893	14.02	110111	01.1951	15.43	110208	00.9744	14.94	140005	00.9515	09.98	140093	01.1958	17.17
110027	01.1003	14.56	110112	01.1526	16.19	110209	00.8260	.....	140007	01.4661	20.56	140094	01.2893	18.81
110028	01.6029	17.75	110113	01.1372	12.86	120001	01.7306	24.22	140008	01.4816	20.57	140095	01.4253	.....
110029	01.3446	17.71	110114	01.0725	13.75	120002	01.1982	21.46	140010	01.3912	22.14	140097	00.9264	14.15
110030	01.2789	16.60	110115	01.6206	21.82	120003	01.1664	21.82	140011	01.1461	15.31	140100	01.2257	17.62
110031	01.3373	19.59	110118	01.0282	13.18	120004	01.2809	20.56	140012	01.2854	17.59	140101	01.2060	18.04
110032	01.2263	15.31	110120	01.0844	13.35	120005	01.2640	18.34	140013	01.6583	16.49	140102	01.0399	14.09
110033	01.5143	20.32	110121	01.1813	11.84	120006	01.2131	22.75	140014	01.0788	16.53	140103	01.3225	16.66
110034	01.5234	16.64	110122	01.3572	16.03	120007	01.6283	20.27	140015	01.2919	13.45	140105	01.3087	18.25
110035	01.4060	18.53	110124	01.0707	15.32	120009	00.9840	18.05	140016	00.9315	11.59	140107	01.0822	11.63
110036	01.6813	.....	110125	01.2239	15.97	120010	01.8462	22.11	140018	01.4546	18.85	140108	01.3622	20.00
110037	01.0852	10.18	110127	00.9150	14.43	120011	01.2509	30.31	140019	00.9900	11.80	140109	01.1367	12.95
110038	01.4649	15.04	110128	01.2059	17.54	120012	00.9944	20.30	140024	01.0188	13.59	140110	01.2343	14.51
110039	01.3761	17.93	110129	01.6793	14.06	120014	01.3609	21.25	140025	01.0804	15.88	140112	01.1043	13.55
110040	01.0393	16.26	110130	01.0709	10.57	120015	00.8375	21.01	140026	01.1408	15.58	140113	01.4630	19.21
110041	01.2212	16.43	110132	01.1522	12.87	120016	00.8646	21.94	140027	01.3210	15.96	140114	01.3392	18.95
110042	01.2049	14.63	110134	00.8920	11.65	120018	01.0071	21.16	140029	01.3790	19.62	140115	01.2253	19.32
110043	01.7109	15.17	110135	01.1993	13.83	120019	01.1783	19.48	140030	01.6766	21.46	140116	01.2899	19.68
110044	01.0952	14.31	110136	01.1192	13.74	120021	01.0173	19.68	140031	01.1664	13.02	140117	01.4908	17.63
110045	01.2460	22.04	110140	00.8194	15.03	120022	01.7340	17.83	140032	01.2528	16.44	140118	01.6836	23.01
110046	01.1964	15.07	110141	00.9075	11.65	120026	01.2870	22.30	140033	01.2626	19.10	140119	01.6901	19.58
110048	01.3156	12.97	110142	00.9799	11.15	120027	01.5254	21.16	140034	01.1754	16.74	140120	01.5071	14.72
110049	01.0670	13.71	110143	01.4049	18.27	130001	01.0518	17.21	140035	01.0183	10.70	140121	01.5259	10.91
110050	01.0687	14.00	110144	01.1632	16.44	130002	01.3744	14.66	140036	01.2342	15.03	140122	01.5567	21.02
110051	00.9846	16.35	110146	01.0267	09.43	130003	01.3166	18.11	140037	00.9837	12.24	140124	01.1235	23.06
110052	00.9986	09.11	110149	01.1280	12.17	130005	01.4466	18.49	140038	01.1512	15.00	140125	01.3444	15.60
110054	01.2820	16.57	110150	01.3562	16.56	130006	01.9033	18.19	140039	00.9224	11.51	140127	01.3521	17.11
110056	00.9698	12.61	110152	01.1389	13.06	130007	01.6435	19.45	140040	01.3038	14.34	140128	01.0617	16.10
110059	01.2862	14.39	110153	01.0201	15.49	130008	00.9993	10.28	140041	01.2502	15.01	140129	01.0511	13.18

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140130	01.2732	21.67	140224	01.3678	22.10	150039	01.0056	14.51	150125	01.4257	18.17	160068	01.1088	13.30
140132	01.4192	18.58	140228	01.7080	17.36	150042	01.2901	15.47	150126	01.5188	19.24	160069	01.4027	16.05
140133	01.3737	19.77	140230	00.9428	15.48	150043	01.0529	16.65	150127	01.0449	14.34	160070	01.0379	13.84
140135	01.3066	14.29	140231	01.6699	19.79	150044	01.2628	17.63	150128	01.2306	18.59	160072	01.0673	12.08
140137	01.0318	13.61	140233	01.7418	16.57	150045	01.0901	15.00	150129	01.2088	20.35	160073	01.0129	11.50
140138	00.9833	12.15	140234	01.1961	16.03	150046	01.5910	16.06	150130	01.1433	16.23	160074	01.1103	12.98
140139	01.0713	13.46	140236	01.0474	12.82	150047	01.6262	17.74	150132	01.3406	19.17	160075	01.1107	13.84
140140	01.1363	13.05	140239	01.5891	18.81	150048	01.1670	16.18	150133	01.2048	14.96	160076	01.0695	16.33
140141	00.9005	13.30	140240	01.5057	20.90	150049	01.0814	13.72	150134	01.3003	16.53	160077	01.1355	10.97
140143	01.0710	15.95	140242	01.5840	22.51	150050	01.1857	14.50	150136	00.9384	18.69	160079	01.4258	15.22
140144	00.9814	16.57	140245	01.1287	13.55	150051	01.3842	16.92	150138	01.1552	.....	160080	01.2094	15.46
140145	01.1986	14.80	140246	01.0547	12.03	150052	01.0656	12.93	150139	01.5412	.....	160081	01.0669	14.36
140146	00.9645	14.85	140250	01.3128	21.35	150053	01.0612	16.69	150141	01.1063	.....	160082	01.7526	17.09
140147	01.1905	13.32	140251	01.3100	18.25	150054	01.1373	12.39	150142	02.4300	.....	160083	01.5750	17.49
140148	01.7984	16.51	140252	01.4282	21.53	150056	01.7052	21.58	160001	01.2713	16.39	160085	01.0913	12.79
140150	01.5793	26.00	140253	01.4398	.....	150057	02.3094	15.06	160002	01.1942	13.14	160086	01.0153	12.88
140151	01.1069	17.61	140258	01.5311	20.98	150058	01.6859	18.64	160003	01.0183	11.87	160088	01.0346	13.10
140152	01.0701	22.68	140271	01.0187	13.54	150059	01.3219	18.93	160005	01.1028	12.93	160089	01.1654	14.12
140155	01.1892	16.91	140275	01.2297	18.20	150060	01.1301	12.79	160007	01.0097	12.02	160090	01.0018	13.98
140158	01.2623	21.41	140276	01.9808	20.48	150061	01.3042	15.86	160008	01.1070	13.93	160091	01.1032	10.56
140160	01.2330	15.34	140280	01.2730	16.16	150062	01.0694	15.20	160009	01.1682	13.54	160092	00.9729	12.93
140161	01.1376	17.05	140281	01.6371	20.19	150063	01.0497	18.88	160012	01.0622	14.05	160093	01.1433	15.20
140162	01.7733	18.38	140285	01.1995	14.75	150064	01.2128	16.48	160013	01.2233	16.64	160094	01.2151	14.79
140164	01.2955	16.01	140286	01.1484	17.59	150065	01.1479	15.94	160014	01.0356	12.21	160095	01.0295	12.30
140165	01.1122	13.06	140288	01.7729	22.68	150066	01.0006	12.89	160016	01.2891	15.68	160097	01.0918	13.47
140166	01.2945	16.62	140289	01.3068	15.73	150067	01.1174	14.35	160018	00.9441	13.19	160098	01.0813	13.90
140167	01.1593	14.64	140290	01.3353	19.21	150069	01.2347	16.53	160020	01.0854	12.11	160099	00.9773	12.80
140168	01.1855	15.02	140291	01.2791	22.84	150070	01.0425	16.70	160021	01.0514	13.85	160101	01.1119	17.71
140170	01.1292	12.39	140292	01.1677	19.04	150071	01.1521	12.69	160023	01.1553	13.66	160102	01.3846	16.69
140171	00.9125	12.53	140294	01.1871	16.10	150072	01.1943	15.32	160024	01.5685	17.39	160103	01.0159	12.95
140172	01.5867	18.29	140297	01.2576	21.42	150073	01.0179	15.49	160026	01.0997	15.21	160104	01.2441	19.21
140173	00.9787	13.11	140300	01.6558	24.90	150074	01.5921	18.63	160027	01.1632	13.22	160106	01.0809	14.18
140174	01.4289	18.89	150001	01.0902	16.95	150075	01.2189	13.82	160028	01.3375	17.78	160107	01.1459	13.78
140176	01.2609	18.83	150002	01.4428	19.23	150076	01.1446	19.89	160029	01.4982	17.46	160108	01.1575	14.09
140177	01.2794	16.44	150003	01.7127	18.32	150077	01.2631	16.21	160030	01.2329	16.67	160109	01.1710	12.01
140179	01.3813	19.51	150004	01.4240	20.15	150078	01.0858	17.20	160031	01.1857	13.26	160110	01.5051	17.76
140180	01.5279	20.22	150005	01.1897	17.17	150079	01.1456	13.01	160032	01.1518	14.66	160111	01.1008	10.75
140181	01.3085	18.82	150006	01.2020	16.72	150082	01.4952	18.38	160033	01.7266	15.82	160112	01.4058	14.48
140182	01.3245	19.11	150007	01.2261	17.95	150084	01.8742	21.80	160034	01.0638	13.81	160113	00.9632	11.39
140184	01.1998	14.20	150008	01.3450	18.38	150086	01.3003	15.76	160035	00.9589	11.91	160114	01.0691	14.13
140185	01.4563	16.35	150009	01.3279	16.97	150088	01.1875	16.71	160036	01.0735	12.83	160115	01.0315	13.87
140186	01.3197	18.48	150010	01.2026	16.10	150089	01.4010	18.99	160037	01.1648	14.80	160116	01.1763	15.46
140187	01.4891	16.33	150011	01.2227	16.76	150090	01.2547	19.34	160039	01.0829	15.23	160117	01.3429	15.52
140188	00.9624	10.54	150012	01.6885	20.57	150091	01.0744	15.66	160040	01.3465	16.04	160118	01.0327	12.42
140189	01.1723	15.74	150013	01.1612	13.09	150092	01.0659	12.44	160041	01.0613	12.88	160120	01.0161	09.94
140190	01.1204	13.36	150014	01.4250	18.85	150094	00.9984	16.65	160043	01.0335	13.38	160122	01.1556	14.96
140191	01.3847	23.16	150015	01.2351	17.85	150095	01.1097	15.78	160044	01.1566	13.36	160123	01.1606	12.18
140192	01.1887	16.51	150017	01.8496	17.26	150096	01.1003	17.15	160045	01.6893	17.48	160124	01.2587	15.35
140193	01.0150	12.24	150019	01.2888	17.47	150097	01.1268	16.64	160046	01.0357	11.92	160126	01.1486	13.82
140197	01.2770	16.05	150019	01.1204	13.[illegible]	150098	01.1387	11.81	160047	01.3555	15.87	160129	01.0397	13.07
140199	01.0179	15.13	150020	01.1507	13.[illegible]	150099	01.2979	17.10	160048	01.0230	11.76	160130	01.1619	13.04
140200	01.4263	20.12	150021	01.6805	18.22	150100	01.8831	18.15	160049	00.9816	12.04	160131	01.0980	12.63
140202	01.3108	20.09	150022	01.1445	17.62	150101	01.0919	14.46	160050	01.0242	14.12	160134	00.9706	11.37
140203	01.1667	19.02	150023	01.4993	17.81	150102	01.0920	14.61	160051	00.9990	12.90	160135	01.0543	13.24
140205	00.9105	13.88	150024	01.4398	16.96	150103	01.0356	17.63	160052	01.0599	14.80	160138	01.0612	13.48
140206	01.0979	19.58	150025	01.4540	16.32	150104	01.1461	15.09	160054	01.0268	10.82	160140	01.0940	14.86
140207	01.3773	26.85	150026	01.1855	16.69	150105	01.4058	16.61	160055	01.0383	11.48	160142	01.0318	13.60
140208	01.6155	23.94	150027	01.0681	16.04	150106	01.1387	15.58	160056	01.0434	12.84	160143	01.1292	13.03
140209	01.7014	17.46	150029	01.2766	20.57	150109	01.4513	16.04	160057	01.3212	15.92	160145	01.0839	13.74
140210	01.0830	12.87	150030	01.1946	16.20	150110	00.9917	14.72	160058	01.6811	18.42	160146	01.4188	15.32
140211	01.2257	20.44	150031	01.0622	15.93	150111	01.2066	12.88	160060	01.0858	13.82	160147	01.2744	15.02
140212	01.2970	22.65	150032	01.7930	18.85	150112	01.2228	16.84	160061	01.0104	14.19	160151	01.0694	12.75
140213	01.2892	20.44	150033	01.6075	20.07	150113	01.1843	16.78	160062	00.9605	11.95	160152	01.0169	13.30
140215	01.1640	13.22	150034	01.4013	18.15	150114	01.0253	13.44	160063	01.2810	14.24	160153	01.7061	17.05
140217	01.2388	21.09	150035	01.4004	17.90	150115	01.4004	17.31	160064	01.6369	16.41	170001	01.2005	15.90
140218	01.0602	13.64	150036	01.0404	17.35	150122	01.1415	17.55	160065	01.0755	14.51	170004	01.0839	13.18
140220	01.1066	14.22	150037	01.2647	17.06	150123	01.1703	12.81	160066	01.1226	14.06	170006	01.1973	13.48
140223	01.5408	25.37	150038	01.2712	16.65	150124	01.1239	15.00	160067	01.3756	16.70	170008	00.9787	13.35

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Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
170009	01.1209	16.81	170089	00.9887	14.21	180011	01.1747	15.71	180103	02.0746	17.85	190060	01.4965	16.51
170010	01.2604	16.38	170090	01.0970	09.58	180012	01.3355	17.14	180104	01.5020	16.55	190064	01.5617	17.46
170011	01.4042	14.59	170092	00.8625	11.45	180013	01.5057	17.38	180105	00.9303	12.23	190065	01.4781	15.75
170012	01.4938	15.48	170093	00.9308	11.58	180014	01.6061	19.67	180106	00.9112	12.65	190071	00.8601	11.38
170013	01.3148	13.27	170094	01.0437	12.81	180015	01.2422	14.91	180108	00.8502	12.49	190077	00.9184	13.41
170014	01.0357	15.18	170095	01.0793	13.80	180016	01.3158	14.91	180115	01.0276	14.18	190078	01.1344	11.21
170015	00.9779	13.74	170097	01.0290	13.42	180017	01.2736	13.52	180116	01.3708	14.92	190079	01.2606	13.61
170016	01.6634	21.80	170098	01.0823	16.21	180018	01.2225	15.73	180117	01.1829	16.14	190081	00.8818	09.70
170017	01.1668	16.76	170099	01.3430	11.00	180019	01.3412	17.22	180118	01.0472	11.72	190083	00.9480	12.45
170018	01.0636	12.23	170100	00.9977	14.63	180020	01.0343	15.37	180120	01.0465	12.49	190086	01.3623	14.02
170019	01.1792	15.13	170101	00.9112	14.13	180021	01.1778	13.25	180121	01.2193	13.09	190088	01.1960	16.01
170020	01.3277	14.54	170102	01.0195	12.78	180023	00.8339	11.27	180122	01.0457	14.47	190089	01.1207	09.60
170022	01.1643	14.15	170103	01.2461	15.28	180024	01.3934	15.69	180123	01.4536	19.34	190090	01.0617	15.75
170023	01.4219	15.57	170104	01.4212	19.52	180025	01.1240	16.18	180124	01.4782	16.00	190092	01.3320	20.14
170024	01.1563	12.71	170105	01.0263	14.45	180026	01.1079	13.66	180125	00.9495	16.23	190095	00.9953	14.04
170025	01.1622	18.37	170106	00.8380	12.54	180027	01.2747	14.17	180126	01.1697	11.90	190098	01.5422	17.56
170026	01.0141	16.38	170108	00.9468	10.88	180028	00.9964	16.19	180127	01.2380	16.63	190099	01.1497	17.31
170027	01.3730	15.02	170109	01.0494	14.67	180029	01.2190	15.99	180128	01.1870	15.40	190102	01.5854	16.15
170030	01.0399	13.61	170110	01.0197	13.62	180030	01.1777	12.89	180129	01.0306	13.93	190103	00.8408	09.66
170031	00.9163	12.36	170112	00.9254	13.44	180031	01.0461	12.38	180130	01.4219	17.87	190106	01.1388	17.27
170032	01.1121	14.18	170113	01.1501	13.43	180032	00.9926	15.30	180132	01.2453	15.43	190109	01.1894	14.20
170033	01.3417	14.08	170114	00.9540	12.96	180033	01.1325	12.57	180133	01.2455	18.31	190110	00.9431	11.96
170034	00.9579	13.74	170115	00.9905	11.01	180034	01.0720	13.61	180134	01.0124	13.71	190111	01.5456	17.24
170035	00.9370	12.37	170116	01.0367	13.94	180035	01.5668	18.26	180136	01.5752	16.63	190112	01.5143	20.35
170036	00.8755	12.31	170117	00.9947	12.63	180036	01.2433	17.36	180137	01.6637	17.00	190113	01.3748	17.85
170037	01.1197	15.02	170119	00.9470	11.32	180037	01.2824	20.29	180138	01.2089	17.02	190114	01.0043	11.51
170038	00.9180	10.94	170120	01.2814	14.66	180038	01.4336	14.73	180139	01.0714	16.41	190115	01.2409	16.75
170039	01.1372	11.69	170122	01.9013	19.69	180040	02.0237	19.04	180140	01.0106	.....	190116	01.2969	14.97
170040	01.5594	18.21	170123	01.7740	17.69	180041	01.0904	13.03	190001	00.9354	16.67	190118	01.0464	11.87
170041	00.9886	11.41	170124	00.9495	12.10	180042	01.1215	13.43	190002	01.6389	16.28	190120	00.9281	12.89
170043	00.9329	13.41	170126	00.9261	11.07	180043	01.0168	15.31	190003	01.4461	17.16	190122	01.2732	12.96
170044	01.1174	14.73	170128	01.0762	14.31	180044	01.0336	14.68	190004	01.3781	14.81	190124	01.5748	18.80
170045	01.0311	13.54	170131	01.0910	10.54	180045	01.2089	16.86	190005	01.6913	14.94	190125	01.5826	16.74
170049	01.3345	18.05	170133	01.1401	14.09	180046	01.2073	16.81	190006	01.2839	14.07	190128	01.2172	17.04
170050	00.8380	09.63	170134	00.9226	12.10	180047	01.0087	13.79	190007	01.0054	12.79	190130	00.9983	11.74
170051	00.9591	13.31	170137	01.1832	16.81	180048	01.1345	15.53	190008	01.6481	17.79	190131	01.2691	17.33
170052	01.0675	13.31	170139	00.9838	11.66	180049	01.3619	14.47	190009	01.1897	13.40	190133	01.0518	15.09
170053	01.0064	13.09	170140	00.9990	11.17	180050	01.2650	15.58	190010	01.1104	15.31	190134	00.9992	12.16
170054	01.0821	12.86	170142	01.2590	16.10	180051	01.4236	14.35	190011	01.1162	14.08	190135	01.4027	17.70
170055	01.0629	17.05	170143	01.1201	12.53	180053	01.1138	14.22	190013	01.4152	15.27	190136	01.1264	10.66
170056	00.9457	10.99	170144	01.6225	18.74	180054	01.1573	14.02	190014	01.0568	15.36	190138	00.7080	15.62
170057	01.0529	13.75	170145	01.1678	17.02	180055	01.0383	13.61	190015	01.2394	16.38	190140	00.9434	11.60
170058	01.1738	17.54	170146	01.4164	17.58	180056	01.1035	16.68	190017	01.3740	17.22	190142	00.9384	12.20
170060	01.1254	12.73	170147	01.2279	18.33	180058	01.0125	12.85	190018	01.1705	13.78	190144	01.2227	18.82
170061	01.1532	12.59	170148	01.4736	18.35	180059	00.9719	11.98	190019	01.5074	17.57	190145	00.9867	13.77
170062	00.9501	10.45	170150	01.0772	13.13	180060	00.7427	13.48	190020	01.1936	15.83	190146	01.5911	18.99
170063	00.8993	09.30	170151	00.9962	11.69	180063	00.9643	10.28	190025	01.2979	12.36	190147	00.9929	13.30
170064	00.9472	11.38	170152	00.9812	13.27	180064	01.3019	14.40	190026	01.4497	15.65	190148	00.8949	11.81
170066	00.9901	12.26	170160	01.0305	11.25	180065	00.9850	09.05	190027	01.4805	15.62	190149	00.9972	11.02
170067	01.0335	11.05	170164	01.0288	13.87	180066	01.2107	16.87	190029	01.1364	14.09	190151	01.1567	12.30
170068	01.3864	14.01	170166	01.1446	13.49	180067	01.8972	15.96	190033	00.9673	09.64	190152	01.4477	20.50
170069	01.1712	13.20	170168	00.9486	09.97	180069	01.0363	16.08	190034	01.2482	14.93	190155	00.9246	10.54
170070	01.0193	11.83	170171	01.0923	11.15	180070	01.0919	14.86	190035	01.4173	20.27	190156	00.8872	11.89
170072	00.9565	11.53	170172	00.9841	11.07	180072	01.0544	13.80	190036	01.6581	21.15	190158	01.2399	20.36
170073	01.1115	12.66	170174	01.0916	11.58	180075	00.9745	13.08	190037	00.9667	11.05	190160	01.2163	15.56
170074	01.1546	12.86	170175	01.2906	16.30	180078	01.1237	17.35	190039	01.4275	16.41	190161	01.0457	12.98
170075	00.8688	10.55	170176	01.5023	18.40	180079	01.2461	13.75	190040	01.3850	19.03	190162	01.1677	21.04
170076	01.0722	11.15	170181	01.0745	.....	180080	01.0640	15.16	190041	01.4986	19.72	190164	01.2267	16.86
170077	00.9683	11.12	170182	00.8647	.....	180085	01.2920	17.49	190043	01.1369	12.38	190166	01.0709	14.81
170079	01.0838	11.81	170183	02.1585	.....	180087	01.0844	13.72	190044	01.1725	18.27	190167	01.2039	16.09
170080	00.9559	11.05	180001	01.2298	16.16	180088	01.5754	19.42	190045	01.3644	19.09	190170	00.9613	12.34
170081	00.9254	10.42	180002	01.0070	17.16	180092	01.0511	14.43	190046	01.4846	16.87	190173	01.4516	19.47
170082	01.0572	10.60	180004	01.0887	13.54	180093	01.3575	14.76	190048	01.0651	14.55	190175	01.2790	.....
170084	00.9830	11.06	180005	01.0375	17.40	180094	01.0158	11.93	190049	00.9679	14.74	190176	01.7076	18.06
170085	00.9074	12.01	180006	00.9157	08.63	180095	01.1597	12.78	190050	01.0446	13.90	190177	01.6056	22.02
170086	01.7241	18.04	180007	01.5430	14.17	180099	01.2008	11.72	190053	01.0575	11.98	190178	00.9842	11.20
170087	01.4580	18.87	180009	01.3358	17.70	180101	01.3403	18.84	190054	01.4118	13.67	190182	01.1627	20.12
170088	00.9068	10.59	180010	01.8318	16.91	180102	01.5134	16.31	190059	00.9449	13.58	190183	01.1310	13.81

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
190184	01.0574	12.13	210002	01.9575	16.84	220028	01.4667	22.45	220162	01.0805	.....	230102	01.1047	.....
190185	01.3141	19.03	210003	01.5314	22.97	220029	01.1906	22.25	220163	02.0697	24.73	230103	01.0214	17.37
190186	00.9515	11.69	210004	01.3228	20.30	220030	01.0842	16.42	220171	01.6908	22.55	230104	01.6223	20.32
190187	00.7862	14.05	210005	01.2352	17.70	220031	02.0234	27.21	230001	01.2061	15.98	230105	01.6171	19.46
190189	00.9439	14.54	210006	01.1253	16.84	220033	01.3931	19.40	230002	01.2210	19.28	230106	01.1730	18.07
190190	00.9294	18.74	210007	01.6144	18.82	220035	01.2748	19.72	230003	01.0891	18.07	230107	00.8972	12.56
190191	01.3146	18.47	210008	01.3145	21.21	220036	01.6198	23.26	230004	01.6087	20.96	230108	01.2387	16.64
190194	01.1471	19.16	210009	01.7113	18.57	220038	01.2797	21.85	230005	01.2812	18.02	230110	01.3356	17.10
190196	00.9084	16.46	210010	01.2016	17.00	220041	01.2446	20.87	230006	01.1331	16.19	230111	00.9762	15.13
190197	01.2631	19.05	210011	01.2066	20.12	220042	01.2043	24.10	230007	01.0869	16.51	230113	00.9500	17.66
190199	01.3557	12.82	210012	01.4880	21.27	220046	01.3991	21.48	230013	01.2823	20.70	230114	00.6368	23.27
190200	01.5122	21.33	210013	01.2755	20.65	220049	01.2668	21.58	230015	01.1305	18.28	230115	01.0218	15.14
190201	01.2417	18.24	210015	01.2700	18.48	220050	01.0656	17.45	230017	01.5161	20.40	230116	00.9079	15.58
190202	01.4412	18.34	210016	01.7323	20.37	220051	01.2701	19.70	230019	01.5116	20.50	230117	01.9633	23.81
190203	01.5963	19.50	210017	01.1297	15.36	220052	01.2969	22.76	230020	01.7218	21.17	230118	01.2381	17.25
190204	01.5211	20.12	210018	01.2426	20.93	220053	01.2476	18.86	230021	01.5949	17.25	230119	01.3162	21.13
190205	01.6559	17.63	210019	01.3982	17.42	220055	01.3472	20.61	230022	01.2454	17.62	230120	01.2209	19.00
190206	01.4848	21.17	210022	01.4541	20.07	220057	01.4402	20.91	230024	01.4230	21.79	230121	01.2308	19.67
190207	01.1759	19.43	210023	01.2870	20.31	220058	01.0628	17.55	230027	01.0568	16.25	230122	01.3310	18.32
190208	00.8210	10.20	210024	01.5093	18.06	220060	01.2567	24.78	230029	01.5980	20.91	230124	01.1514	16.49
190218	01.1418	15.05	210025	01.3259	17.84	220062	00.6041	19.30	230030	01.2372	16.55	230125	01.3587	13.01
190223	00.4998	12.04	210026	01.3221	24.54	220063	01.2982	18.42	230031	01.4622	18.32	230128	01.3795	19.33
190227	00.8050	30.01	210027	01.2047	17.47	220064	01.2108	20.66	230032	01.7401	18.97	230129	01.8851	19.07
190230	00.8511	.....	210028	01.2362	16.66	220065	01.2162	20.00	230034	01.1936	16.64	230130	01.6896	22.37
190231	01.3052	.....	210029	01.3022	20.04	220066	01.2825	19.39	230035	01.1374	15.84	230132	01.5360	22.92
190232	01.0623	.....	210030	01.0938	15.77	220067	01.2910	22.82	230036	01.2859	19.78	230133	01.2321	14.06
190233	01.1753	.....	210031	01.6379	16.97	220068	00.5210	15.95	230037	01.1680	16.96	230134	01.1066	15.87
190234	01.0977	.....	210032	01.2064	18.42	220070	01.2693	17.77	230038	01.6453	21.18	230135	01.2023	19.88
200001	01.2668	15.74	210033	01.1813	17.38	220071	01.8550	24.38	230040	01.1967	18.35	230137	01.1665	17.78
200002	01.0219	16.15	210034	01.3999	20.29	220073	01.3821	25.34	230041	01.2106	19.17	230141	01.6842	20.84
200003	01.1282	15.90	210035	01.1950	17.25	220074	01.2579	21.18	230042	01.1517	19.03	230142	01.2118	18.71
200006	01.0627	14.95	210037	01.2862	16.14	220075	01.3235	20.09	230046	01.8323	24.65	230143	01.1404	15.23
200007	01.0052	16.86	210038	01.3397	19.90	220076	01.1791	22.47	230047	01.3036	19.61	230144	01.1171	21.06
200008	01.2463	18.34	210039	01.1588	15.25	220077	01.7205	22.32	230053	01.5335	23.82	230145	01.1817	15.41
200009	01.7644	19.84	210040	01.2948	20.32	220079	01.1871	21.28	230054	01.8245	19.74	230146	01.2933	19.49
200012	01.1610	16.11	210043	01.2538	20.04	220080	01.2723	17.77	230055	01.1799	17.36	230147	01.4832	19.34
200013	01.1360	15.32	210044	01.2025	20.28	220081	00.9625	23.55	230056	00.9745	14.17	230149	01.2487	14.92
200015	01.2341	17.15	210045	01.0197	11.73	220082	01.2932	19.28	230058	01.0807	17.42	230151	01.3634	21.32
200016	01.0283	16.10	210046	01.1047	12.34	220083	01.1845	19.80	230059	01.4913	19.00	230153	01.1245	15.61
200017	01.2444	16.86	210048	01.1780	22.47	220084	01.2361	22.24	230060	01.2802	16.90	230154	00.9519	12.09
200018	01.1671	14.27	210049	01.1482	16.57	220086	01.5481	24.60	230062	01.0313	13.61	230155	00.9759	13.80
200019	01.2445	18.01	210051	01.4488	13.94	220088	01.5772	21.76	230063	01.3188	18.41	230156	01.7043	21.57
200020	01.1821	19.86	210054	01.2726	20.17	220089	01.3301	22.99	230065	01.5013	18.63	230157	01.2036	19.67
200021	01.1844	17.66	210055	01.2866	22.48	220090	01.2380	20.78	230066	01.3628	18.72	230159	01.3967	18.93
200023	00.8848	14.61	210056	01.4106	16.51	220092	01.2548	20.86	230068	01.4399	22.29	230162	00.9885	13.73
200024	01.2892	19.16	210057	01.3623	.....	220094	01.2795	19.76	230069	01.1716	18.86	230165	01.8687	20.92
200025	01.2698	18.81	210058	01.6823	18.09	220095	01.2220	17.77	230070	01.4873	19.30	230167	01.3648	19.18
200026	01.0913	15.20	210059	01.2586	21.91	220098	01.2874	19.81	230071	01.1375	20.78	230169	01.4359	21.16
200027	01.1419	16.51	210060	01.1661	25.28	220099	01.1836	15.97	230072	01.2839	18.87	230171	00.9842	14.18
200028	00.9343	14.83	210061	01.0947	14.25	220100	01.2742	23.48	230075	01.5188	19.29	230172	01.3154	17.85
200031	01.2955	14.96	220001	01.1632	20.98	220101	01.5044	22.58	230076	01.3263	21.53	230174	01.2896	19.11
200032	01.3528	17.72	220002	01.5425	21.62	220104	01.2488	23.12	230077	01.9786	18.44	230175	04.1740	14.83
200033	01.7115	19.57	220003	01.0771	16.92	220105	01.2188	21.97	230078	01.0937	14.82	230176	01.2350	20.89
200034	01.1951	17.19	220004	01.1778	18.85	220106	01.2489	21.83	230080	01.1934	20.41	230178	01.0502	16.02
200037	01.2200	15.53	220006	01.4287	21.79	220107	01.1695	18.46	230081	01.2169	16.55	230180	01.0710	15.03
200038	01.1115	17.66	220008	01.2538	19.26	220108	01.1491	20.96	230082	01.1611	14.88	230184	01.2276	16.99
200039	01.2513	18.06	220010	01.2956	20.94	220110	01.9412	30.07	230085	01.1161	17.10	230186	01.3686	15.81
200040	01.0917	16.48	220011	01.1550	27.95	220111	01.2575	21.21	230086	00.9918	14.03	230188	01.1727	15.49
200041	01.2221	17.37	220012	01.3665	27.84	220116	01.9442	23.95	230087	01.0641	13.65	230189	00.8937	14.50
200043	00.5614	16.96	220015	01.1777	20.35	220118	02.0524	26.47	230089	01.3393	21.55	230190	01.0395	22.66
200050	01.1978	16.71	220016	01.3747	20.16	220119	01.3288	24.40	230092	01.3264	17.77	230191	00.8900	14.99
200051	00.9723	17.70	220017	01.4278	23.78	220123	01.0371	23.85	230093	01.2267	17.37	230193	01.2471	16.03
200052	00.9716	13.07	220019	01.1780	17.06	220126	01.3041	19.39	230096	01.2357	15.53	230194	01.2111	14.37
200055	01.1557	14.56	220020	01.2189	18.47	220128	01.1441	20.85	230098	01.1957	19.85	230195	01.2822	19.80
200062	00.9198	14.64	220021	01.3862	23.21	220133	00.8406	30.53	230097	01.5406	17.75	230197	01.2640	22.00
200063	01.1662	16.63	220023	01.1469	19.37	220135	01.2559	23.97	230099	01.2173	19.06	230199	01.1553	17.72
200066	01.1689	14.34	220024	01.1752	20.14	220153	01.0402	19.74	230100	01.1533	15.19	230201	01.2138	14.02
210001	01.4102	17.94	220025	01.1894	18.87	220154	00.9268	18.96	230101	01.0658	16.79	230204	01.3660	19.78

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
230205	01.0570	14.54	240044	01.2004	16.02	240129	01.0159	12.18	250032	01.2599	15.70	250134	00.9882	12.70
230207	01.2586	19.85	240045	01.0731	18.49	240130	01.0112	14.54	250033	00.9948	11.57	250136	00.7904	16.84
230208	01.1857	16.10	240047	01.5172	18.27	240132	01.2360	21.80	250034	01.5348	12.99	250138	01.3513	16.94
230211	00.9823	13.86	240048	01.2728	20.43	240133	01.1709	16.16	250035	00.9044	11.82	250140	00.9213	09.37
230212	01.0970	21.13	240049	01.7768	20.33	240135	00.8166	11.38	250036	00.9786	11.34	250141	01.2098	15.50
230213	01.0251	12.69	240050	01.1319	19.89	240137	01.2521	15.40	250037	00.8704	09.53	250144	00.9384	11.18
230216	01.5269	17.91	240051	00.9956	15.97	240138	00.8994	13.09	250038	00.9851	12.52	250145	00.9432	.....
230217	01.2172	18.06	240052	01.2612	17.21	240139	00.9643	14.24	250039	01.0021	11.71	250146	01.0011	13.25
230219	01.0186	15.18	240053	01.5152	19.67	240141	01.0919	19.12	250040	01.2981	15.65	250148	01.1518	.....
230221	01.1845	18.15	240056	01.2438	20.13	240142	01.1289	15.16	250042	01.1494	13.78	250149	00.9174	.....
230222	01.3604	18.98	240057	01.7426	22.04	240143	01.0597	12.48	250043	01.0352	10.49	260001	01.6549	16.08
230223	01.3187	19.85	240058	00.9668	09.64	240144	00.9459	13.39	250044	00.9822	13.98	260002	01.4877	20.05
230227	01.5187	22.00	240059	01.0942	17.98	240145	00.9654	12.37	250045	01.1477	17.17	260003	00.9457	12.45
230228	01.2121	17.29	240061	01.7512	20.93	240146	00.9209	17.20	250047	00.9674	09.12	260004	01.0314	11.86
230230	01.5400	20.38	240063	01.4674	20.88	240148	00.9490	11.34	250048	01.4542	13.51	260005	01.6146	19.68
230232	01.0356	15.87	240064	01.2630	18.13	240150	00.8906	11.72	250049	00.9037	09.93	260006	01.5247	16.72
230235	01.1038	14.65	240065	01.1600	11.14	240152	01.0128	17.85	250050	01.2407	12.30	260007	01.4679	16.03
230236	01.3542	21.07	240066	01.4040	19.08	240153	01.0199	14.30	250051	00.8548	09.44	260008	01.2220	15.65
230239	01.1770	16.07	240069	01.1629	18.35	240154	01.0158	13.15	250057	01.1806	14.06	260009	01.2407	15.63
230241	01.1553	17.08	240071	01.1200	18.05	240155	00.9827	14.39	250058	01.1385	13.65	260011	01.6765	16.87
230244	01.3134	20.14	240072	01.0257	16.08	240157	01.1226	13.92	250059	01.0304	12.16	260012	01.0472	11.96
230253	01.0735	17.39	240073	00.9213	15.13	240160	01.0116	14.65	250060	00.8121	12.19	260013	01.1520	14.09
230254	01.2785	22.64	240075	01.2132	18.79	240161	00.9351	14.56	250061	00.8654	10.75	260014	01.7769	17.84
230257	01.1031	19.01	240076	01.1434	19.94	240162	00.9629	15.28	250063	00.8615	12.68	260015	01.2698	13.16
230259	01.1967	19.06	240077	01.0646	14.15	240163	00.9381	14.10	250065	00.8878	11.72	260017	01.2272	15.94
230264	00.9614	16.74	240078	01.4510	21.46	240166	01.1661	14.67	250066	00.9422	12.17	260018	00.9658	09.56
230269	01.3062	21.71	240079	01.0143	12.57	240169	00.9528	15.25	250067	01.1241	14.14	260019	00.9862	12.63
230270	01.2238	20.08	240080	01.3766	20.87	240170	01.1518	14.42	250068	00.8546	11.19	260020	01.7312	19.29
230273	01.6568	22.11	240082	01.1233	14.55	240171	00.9973	14.02	250069	01.1820	13.42	260021	01.5117	18.47
230275	00.5764	16.53	240083	01.3779	16.60	240172	01.0856	14.50	250071	00.9499	08.06	260022	01.3423	18.69
230276	00.8113	16.23	240084	01.3446	17.20	240173	00.9609	14.82	250072	01.2933	17.40	260023	01.2569	15.58
230277	01.2440	21.76	240085	00.9356	14.90	240179	00.9990	14.30	250076	00.9378	10.32	260024	01.0179	12.28
230278	02.1143	19.50	240086	01.0496	15.23	240180	01.0157	10.51	250077	00.9481	11.08	260025	01.3240	13.61
230279	00.7080	.....	240087	01.1088	15.69	240184	01.0352	11.31	250078	01.4504	14.21	260027	01.5963	18.92
230280	01.0737	.....	240088	01.4423	18.10	240187	01.2576	16.56	250079	00.8573	15.12	260029	01.1241	15.76
230281	01.8228	.....	240089	00.9966	15.23	240193	01.0505	14.73	250081	01.3046	15.19	260030	01.0922	09.73
240001	01.5705	21.24	240090	01.0889	13.57	240196	00.6134	22.50	250082	01.2852	12.30	260031	01.5029	18.49
240002	01.6951	19.40	240093	01.3149	16.49	240200	00.8945	13.34	250083	01.0297	11.01	260032	01.5899	17.59
240004	01.4733	20.16	240094	01.0470	17.26	240205	00.9066	.....	250084	01.0930	13.92	260034	00.9820	14.22
240005	00.9911	13.49	240096	01.0126	14.12	240206	00.8405	.....	250085	01.0146	11.42	260035	01.0725	11.44
240006	01.1243	19.75	240097	01.1262	17.05	240207	01.2516	21.47	250088	00.9555	15.43	260036	01.0697	15.72
240007	01.1114	15.15	240098	00.9639	16.41	240210	01.2558	21.44	250089	01.0349	11.77	260037	01.3946	15.17
240008	01.0447	15.22	240099	01.1186	11.00	240211	00.9295	11.18	250093	01.1144	12.17	260039	01.1393	11.17
240009	00.9722	14.18	240100	01.3180	19.58	240212	01.9942	.....	250094	01.2380	14.41	260040	01.6081	14.92
240010	01.9804	20.17	240101	01.1585	17.32	250001	01.6860	15.91	250095	00.9763	13.57	260042	01.4179	15.65
240011	01.1378	15.69	240102	00.8877	12.27	250002	00.7948	13.34	250096	01.3058	16.49	260044	01.0453	14.29
240013	01.3077	15.90	240103	01.0788	14.10	250003	01.0260	14.13	250097	01.1879	13.83	260047	01.3608	14.19
240014	01.0825	17.79	240104	01.2317	21.71	250004	01.4695	15.12	250098	00.8668	13.73	260048	01.2801	18.05
240016	01.3045	15.46	240105	01.0024	12.70	250005	00.9707	09.15	250099	01.2736	12.73	260050	01.0896	14.71
240017	01.1365	15.15	240106	01.3351	23.68	250006	00.9603	12.27	250100	01.2423	14.53	260052	01.3429	15.95
240018	01.2985	15.82	240107	00.9779	15.07	250007	01.2699	16.88	250101	00.9416	09.89	260053	01.1239	09.46
240019	01.2259	19.58	240108	00.9570	11.64	250008	00.9041	11.36	250102	01.5340	14.80	260054	01.3205	16.08
240020	01.1410	18.11	240109	00.9926	13.59	250009	01.1772	15.04	250104	01.3615	15.58	260055	01.0344	13.67
240021	00.9545	12.49	240110	01.0347	15.18	250010	01.0374	11.07	250105	00.9185	13.13	260057	01.1563	13.85
240022	01.1265	17.33	240111	00.9806	13.06	250012	00.9543	13.77	250107	00.9101	14.16	260059	01.1218	14.17
240023	01.0070	15.86	240112	01.0585	13.30	250015	01.0921	09.75	250109	00.9351	11.54	260061	01.1737	10.87
240025	01.1710	15.02	240114	00.9961	11.13	250017	01.0049	13.77	250112	00.9915	14.22	260062	01.1677	19.89
240027	00.9990	12.60	240115	01.6186	22.30	250018	00.9576	09.81	250117	01.0706	13.28	260063	01.1867	14.82
240028	01.1340	16.50	240116	00.9450	12.43	250019	01.4239	17.43	250119	01.2057	10.80	260064	01.3241	15.40
240029	01.1619	15.70	240117	01.0688	16.21	250020	01.0024	10.78	250120	01.0683	12.04	260065	01.7807	15.31
240030	01.2995	16.78	240119	00.8459	16.93	250021	00.8612	07.74	250122	01.2814	15.87	260066	01.0907	12.78
240031	00.9285	13.50	240121	00.8986	17.10	250023	00.8655	11.22	250123	01.3253	17.72	260067	00.9812	10.43
240036	01.5566	19.05	240122	01.0462	16.80	250024	00.9845	08.25	250124	00.9123	10.69	260068	01.6696	18.49
240037	01.0463	16.40	240123	01.0518	13.30	250025	01.1440	13.58	250125	01.3189	18.35	260070	01.0868	11.09
240038	01.4513	22.50	240124	01.0123	15.71	250027	01.0290	10.40	250126	00.9867	10.22	260073	00.9754	11.58
240040	01.2271	17.67	240125	00.9399	10.75	250029	00.8857	11.87	250127	00.7659	.....	260074	01.2444	11.49
240041	01.3105	14.43	240127	01.0272	12.51	250030	00.9703	11.39	250128	01.0941	12.64	260077	01.7237	16.30
240043	01.2029	16.83	240128	01.1234	14.55	250031	01.3147	17.20	250131	01.0545	09.36	260078	01.1752	12.39

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
260079	00.9806	11.78	270002	01.1914	13.92	280024	01.0190	13.22	280111	01.2501	16.06	310014	01.7262	23.69
260080	00.9748	09.77	270003	01.2463	18.65	280025	00.9834	11.07	280114	00.9302	10.26	310015	01.7788	24.34
260081	01.4994	16.44	270004	01.6543	17.33	280026	01.1268	12.80	280115	00.9762	13.59	310016	01.2218	22.93
260082	01.1249	13.50	270006	01.0348	18.67	280028	01.0603	13.64	280117	01.2367	14.48	310017	01.3316	21.95
260085	01.5653	18.92	270007	00.9630	12.26	280029	01.0513	12.62	280118	00.9917	13.47	310018	01.2149	21.06
260086	01.0538	12.67	270009	01.0369	14.91	280030	01.7482	23.06	280119	00.8442	.....	310019	01.6444	20.84
260089	00.9595	13.31	270011	01.1240	16.46	280031	01.0457	12.48	280123	00.7968	.....	310020	01.1914	19.66
260091	01.6036	18.96	270012	01.5997	17.10	280032	01.3205	15.11	290001	01.6296	22.35	310021	01.3482	21.15
260094	01.1818	15.96	270013	01.2868	16.78	280033	00.9881	13.62	290002	00.9009	17.99	310022	01.2391	19.38
260095	01.4416	16.05	270014	01.7155	15.97	280034	01.2104	13.41	290003	01.6155	21.15	310024	01.2539	22.60
260096	01.5553	21.52	270016	00.8195	11.51	280035	00.9439	11.75	290005	01.4321	19.66	310025	01.2317	21.92
260097	01.1803	15.82	270017	01.2264	18.32	280037	01.0150	13.55	290006	01.2223	16.54	310026	01.2770	21.91
260100	00.9672	13.12	270019	01.0747	13.34	280038	01.0733	13.39	290007	01.9023	25.07	310027	01.3756	18.17
260102	01.0113	16.75	270021	01.1036	15.55	280039	01.1841	14.24	290008	01.2244	17.14	310028	01.1453	20.46
260103	01.3826	16.73	270023	01.2906	18.76	280040	01.5869	18.30	290009	01.6096	21.07	310029	01.8972	20.69
260104	01.6337	19.57	270024	00.9931	11.15	280041	00.9988	10.95	290010	01.2116	19.33	310031	02.6282	24.14
260105	01.8722	19.18	270026	00.8677	11.95	280042	01.0970	13.22	290011	00.8854	14.39	310032	01.2962	20.00
260107	01.3844	18.55	270027	01.0389	12.69	280043	01.1235	12.75	290012	01.4484	19.97	310034	01.2537	19.14
260108	01.8056	18.26	270028	01.0735	14.91	280045	01.1409	13.48	290013	01.0180	14.85	310036	01.2137	18.44
260109	00.9922	11.92	270029	00.9056	14.51	280046	01.0729	11.09	290014	01.0424	16.52	310037	01.3032	25.43
260110	01.6069	14.16	270031	00.8747	09.71	280047	01.1632	15.70	290015	00.9691	15.38	310038	01.9189	22.82
260111	00.9994	08.04	270032	01.1776	16.46	280048	01.0813	11.17	290016	01.1476	18.71	310039	01.2906	20.51
260112	01.4123	17.47	270033	00.8822	11.39	280049	01.0363	13.82	290019	01.2779	17.92	310040	01.2680	23.12
260113	01.1111	14.05	270035	01.0294	15.87	280050	00.9263	13.11	290020	01.0783	17.65	310041	01.3192	22.90
260115	01.2400	14.92	270036	00.9483	10.42	280051	01.0572	13.72	290021	01.5602	19.17	310042	01.2513	21.74
260116	01.1317	13.70	270039	01.0661	11.99	280052	01.0352	11.85	290022	01.7398	22.47	310043	01.2027	20.60
260119	01.1592	15.01	270040	01.0819	17.60	280054	01.2613	15.54	290027	00.9516	14.68	310044	01.2981	20.16
260120	01.1606	15.72	270041	01.0700	11.14	280055	00.9274	11.63	290029	00.9400	.....	310045	01.3866	25.76
260122	01.1407	13.12	270044	01.1997	13.40	280056	00.9925	10.99	290032	01.4088	18.66	310047	01.3405	23.05
260123	01.0309	11.17	270046	00.9328	13.50	280057	01.0060	14.48	290036	01.4927	.....	310048	01.1853	20.69
260127	00.9517	13.71	270048	01.0968	13.30	280058	01.3349	13.75	290038	01.1066	.....	310049	01.3247	23.54
260128	00.9877	08.95	270049	01.8369	18.19	280060	01.5930	18.38	300001	01.3969	20.70	310050	01.2623	20.88
260129	01.2126	13.51	270050	01.0374	15.96	280061	01.4692	14.76	300003	01.8661	20.92	310051	01.3232	24.26
260131	01.3183	16.32	270051	01.2969	18.02	280062	01.2236	11.92	300005	01.2669	18.65	310052	01.2516	20.53
260134	01.1485	13.87	270052	01.0663	18.02	280064	01.0732	12.61	300006	01.1225	16.24	310054	01.2937	23.19
260137	01.2635	13.71	270053	00.8716	09.53	280065	01.2934	16.22	300007	01.1477	16.76	310056	01.1800	20.11
260138	01.9683	20.66	270057	01.1700	17.35	280066	01.0101	11.38	300008	01.2465	16.95	310057	01.2906	20.10
260141	01.8935	16.53	270058	00.9419	11.20	280068	00.9716	09.31	300009	01.1071	17.45	310058	01.1047	25.35
260142	01.1604	14.50	270059	00.8676	19.21	280070	01.0712	10.75	300010	01.2380	17.80	310060	01.2112	17.55
260143	00.9437	10.52	270060	00.9653	11.92	280073	01.0399	12.78	300011	01.3508	21.36	310061	01.2156	19.85
260147	01.0490	12.81	270063	00.8933	12.94	280074	01.0981	12.87	300012	01.2779	21.64	310062	01.2941	23.90
260148	00.9639	09.33	270068	00.8629	12.38	280075	01.2063	12.90	300013	01.2250	16.87	310063	01.3515	20.78
260158	01.1355	11.80	270072	00.8526	14.88	280076	01.0602	12.54	300014	01.2336	18.41	310064	01.2988	21.35
260159	01.2962	18.17	270073	01.0764	11.06	280077	01.3589	17.36	300015	01.1776	17.37	310067	01.3199	21.14
260160	01.0683	14.07	270074	00.8861	.....	280079	01.0649	09.40	300016	01.3172	17.41	310069	01.1308	18.19
260162	01.6912	17.70	270075	00.8706	.....	280080	01.0842	11.34	300017	01.2081	20.49	310070	01.3980	22.16
260163	01.3188	14.11	270076	00.8386	.....	280081	01.5683	17.24	300018	01.2333	18.85	310072	01.2980	20.74
260164	00.9955	12.07	270079	00.9563	13.36	280082	01.1154	13.03	300019	01.2621	18.43	310073	01.5552	22.31
260166	01.2126	21.51	270080	01.1536	14.27	280083	01.0646	15.64	300020	01.2622	19.78	310074	01.4149	21.08
260172	01.0128	12.07	270081	01.0790	09.77	280084	01.0366	10.92	300021	01.1644	15.69	310075	01.2933	21.67
260173	00.9588	11.15	270082	01.0039	16.10	280085	00.7201	14.02	300022	01.1031	17.08	310076	01.3854	28.16
260175	01.1310	14.60	270083	01.1160	10.96	280088	01.8032	18.12	300023	01.3278	20.13	310077	01.5172	23.09
260176	01.6716	19.26	270084	00.9034	12.77	280089	01.0548	13.79	300024	01.2736	16.56	310078	01.3568	22.70
260177	01.3854	19.46	280001	01.0830	14.11	280090	00.9850	11.70	300028	01.2674	15.52	310081	01.2644	20.80
260178	01.4707	19.06	280003	01.9484	18.11	280091	01.1370	13.17	300029	01.3084	21.29	310083	01.2592	22.20
260179	01.5633	18.48	280005	01.3783	16.64	280092	00.8990	11.63	300033	01.1012	13.70	310084	01.2622	20.43
260180	01.6919	18.45	280009	01.7335	16.70	280094	01.1464	13.32	300034	01.9356	21.31	310086	01.1738	20.89
260183	01.6448	16.51	280011	00.9513	11.56	280097	01.0552	12.56	310001	01.7775	24.91	310087	01.2345	18.95
260186	01.2538	15.20	280012	01.2413	14.88	280098	01.0077	09.68	310002	01.7278	25.68	310088	01.2566	19.57
260188	01.2759	15.70	280013	02.0235	19.71	280101	01.1173	10.92	310003	01.2230	23.16	310090	01.1884	22.86
260189	00.9409	11.23	280014	00.9990	10.78	280102	01.1321	11.77	310005	01.2257	19.20	310091	01.2193	21.35
260190	01.2003	18.46	280015	01.0254	13.78	280104	00.9599	09.88	310006	01.2209	19.02	310092	01.3080	20.52
260191	01.1725	19.44	280017	01.1524	13.42	280105	01.2988	16.46	310008	01.2785	21.23	310093	01.2193	19.52
260193	01.2262	19.13	280018	01.1939	12.25	280106	00.9481	13.23	310009	01.2877	21.35	310096	01.9014	21.19
260195	01.1678	.....	280020	01.5198	18.97	280107	01.0284	12.36	310010	01.2966	21.05	310105	01.1914	22.41
260197	01.3273	20.38	280021	01.3322	14.01	280108	01.1433	13.26	310011	01.3050	21.71	310108	01.3940	21.08
260198	01.2292	14.98	280022	00.9740	11.07	280109	00.9424	10.61	310012	01.5915	23.53	310110	01.2108	19.69
260200	01.3542	19.14	280023	01.3802	13.73	280110	01.0201	10.88	310013	01.2813	19.91	310111	01.2536	19.70

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
310112	01.2441	20.58	330024	01.9152	30.03	330126	01.2229	20.35	330230	01.5076	26.44	330396	01.2740	25.30
310113	01.2115	20.70	330025	01.1879	13.80	330127	01.3974	25.01	330231	01.1364	27.57	330397	01.3146	26.82
310115	01.1954	19.78	330027	01.4751	28.56	330128	01.3390	25.26	330232	01.2180	15.46	330398	01.2362	26.59
310116	01.2905	21.67	330028	01.3453	23.76	330132	01.1636	13.74	330233	01.5344	29.08	330399	01.3284	29.65
310118	01.1883	21.86	330029	01.1091	17.36	330133	01.3525	28.31	330234	02.1947	24.17	340001	01.4939	19.54
310119	01.5440	27.27	330030	01.2330	15.20	330135	01.2522	16.25	330235	01.1384	17.37	340002	01.8814	18.53
310120	01.0653	17.24	330033	01.2702	13.46	330136	01.2620	20.45	330236	01.3985	26.57	340003	01.1186	16.56
310121	01.0416	16.61	330034	00.7745	36.61	330140	01.7171	17.19	330238	01.1734	14.53	340004	01.4952	17.21
320001	01.4645	16.76	330036	01.3260	21.00	330141	01.3544	23.17	330239	01.2034	15.44	340005	01.2172	14.57
320002	01.4190	21.55	330037	01.1403	15.17	330144	00.9809	13.27	330240	01.3472	26.47	340006	01.2315	14.56
320003	01.1694	15.57	330038	01.2154	14.91	330148	01.0806	14.39	330241	01.8842	20.92	340007	01.1793	14.81
320004	01.2647	17.86	330039	00.8474	13.18	330151	01.0508	13.77	330242	01.3486	22.98	340008	01.1505	16.90
320005	01.3207	17.86	330041	01.3957	27.81	330152	01.4256	27.77	330245	01.2684	17.15	340009	01.3744	19.12
320006	01.3742	15.20	330043	01.2516	26.92	330153	01.6484	17.44	330246	01.2600	22.99	340010	01.3111	16.41
320009	01.5332	16.49	330044	01.2413	17.05	330154	01.5904	.....	330247	00.7043	26.49	340011	01.1105	13.98
320011	00.9883	17.79	330045	01.4206	24.83	330157	01.3111	18.41	330249	01.2271	15.89	340012	01.2599	15.82
320012	01.0365	16.57	330046	01.5166	30.08	330158	01.3798	24.33	330250	01.3148	16.01	340013	01.2783	16.58
320013	01.2196	18.28	330047	01.2282	16.63	330159	01.3217	17.55	330252	00.9107	15.40	340014	01.5898	22.15
320014	01.0172	13.13	330048	01.3029	16.10	330160	01.4707	26.09	330254	01.0280	15.94	340015	01.2409	16.44
320016	01.1611	12.00	330049	01.2452	17.52	330161	00.7237	16.00	330258	01.4226	25.28	340016	01.2062	15.18
320017	01.2209	17.34	330053	01.1285	14.39	330162	01.2663	26.18	330259	01.4498	21.99	340017	01.2587	15.96
320018	01.4884	16.61	330055	01.5084	29.02	330163	01.2137	17.75	330261	01.2244	24.35	340018	01.1282	14.78
320019	01.4863	19.01	330056	01.4474	28.37	330164	01.3963	18.96	330263	00.9929	17.00	340019	01.0519	13.69
320021	01.7092	20.62	330057	01.7158	16.48	330166	00.9723	14.11	330264	01.2681	20.00	340020	01.1686	17.33
320022	01.1787	16.34	330058	01.3270	15.85	330167	01.6440	27.45	330265	01.3105	15.78	340021	01.2198	15.08
320023	01.0348	13.29	330059	01.6224	29.66	330169	01.4303	31.95	330267	01.2786	22.78	340022	01.0527	14.56
320030	00.9822	16.54	330061	01.2977	23.38	330171	01.2804	22.28	330268	00.9740	15.79	340023	01.3923	18.44
320031	00.9008	14.78	330062	01.1779	14.99	330175	01.1255	14.11	330270	01.9655	30.33	340024	01.2228	15.49
320032	00.9936	16.66	330064	01.3752	28.38	330177	01.0208	12.46	330273	01.2942	21.36	340025	01.1893	14.38
320033	01.1484	19.23	330065	01.1890	17.14	330179	00.8617	14.09	330275	01.2178	18.34	340027	01.1954	15.46
320035	01.0033	14.82	330066	01.2343	17.26	330180	01.1952	16.36	330276	01.1877	16.61	340028	01.5380	17.48
320037	01.2052	15.17	330067	01.3770	19.68	330181	01.3076	28.32	330277	01.1372	16.35	340030	02.0110	19.06
320038	01.1660	15.62	330072	01.3458	26.89	330182	02.5837	26.92	330279	01.2893	17.24	340031	00.9808	12.56
320046	01.1839	18.23	330073	01.1820	14.32	330183	01.4389	18.88	330285	01.8218	21.81	340032	01.3999	17.87
320048	01.3187	13.90	330074	01.1874	17.35	330184	01.3396	25.83	330286	01.3203	22.59	340035	01.1695	14.97
320056	00.9819	.....	330075	01.0879	16.48	330185	01.2256	24.23	330290	01.7578	28.28	340036	01.1713	17.04
320057	01.0573	.....	330078	01.4454	16.90	330186	00.9205	18.79	330293	01.1689	13.72	340037	01.1725	15.50
320058	00.9038	.....	330079	01.3130	16.60	330188	01.1850	17.75	330304	01.2689	25.52	340038	01.1103	14.52
320059	00.9778	.....	330080	01.4167	24.95	330189	01.3177	16.20	330306	01.4522	26.59	340039	01.2748	19.18
320060	00.9187	.....	330082	01.1199	16.29	330191	01.2688	17.18	330307	01.2171	18.33	340040	01.7746	17.75
320061	01.1051	.....	330084	00.9919	15.59	330193	01.3086	27.34	330308	01.1772	28.68	340041	01.2471	15.99
320062	00.9353	.....	330085	01.3266	18.66	330194	01.8119	26.07	330309	01.2334	24.67	340042	01.1864	13.80
320063	01.3272	15.84	330086	01.2540	24.13	330195	01.6272	29.02	330314	01.3526	21.07	340044	01.1056	13.26
320065	01.2822	16.76	330088	01.1094	24.41	330196	01.3367	25.53	330315	01.2558	24.58	340045	01.0365	10.95
320067	00.8203	09.19	330090	01.5534	16.86	330197	01.0945	14.43	330316	01.3037	26.23	340047	01.9028	17.98
320068	00.9119	17.98	330091	01.3842	17.64	330198	01.3399	22.17	330327	00.9253	15.30	340048	00.9055	09.39
320069	01.0454	09.08	330092	01.1025	13.64	330199	01.4635	24.80	330331	01.2220	27.78	340049	00.6394	15.10
320070	01.0243	.....	330094	01.2299	15.78	330201	01.5377	27.83	330332	01.2606	24.30	340050	01.1904	14.69
320074	01.1107	17.15	330095	01.2598	16.49	330202	01.4872	25.07	330333	01.3624	22.00	340051	01.2639	16.23
320079	01.2049	17.41	330096	01.0679	14.88	330203	01.3994	19.16	330336	01.3438	27.39	340052	01.0447	18.62
330001	01.1955	24.84	330097	01.1652	14.63	330204	01.4236	24.90	330338	01.1329	22.52	340053	01.6969	18.96
330002	01.4938	24.26	330100	00.6895	25.95	330205	01.1568	19.46	330339	00.8034	18.09	340054	01.0901	12.68
330003	01.3393	19.29	330101	01.8031	33.09	330208	01.2061	23.16	330340	01.2081	23.91	340055	01.2079	16.69
330004	01.2785	19.10	330102	01.3004	16.32	330209	01.1871	21.17	330350	01.8138	27.96	340060	01.1390	16.38
330005	01.8133	19.53	330103	01.2486	15.94	330211	01.2093	16.31	330353	01.3975	27.49	340061	01.7128	19.20
330006	01.3128	24.11	330104	01.3604	25.44	330212	01.1755	20.25	330354	01.3898	.....	340063	01.0555	13.01
330007	01.3289	17.43	330106	01.5666	33.04	330213	01.1241	16.19	330357	01.3757	32.07	340064	01.2278	17.24
330008	01.1187	15.77	330107	01.2590	24.38	330214	01.7379	28.90	330359	00.9471	23.70	340065	01.3129	12.82
330009	01.3480	28.08	330108	01.2119	15.85	330215	01.2197	15.65	330372	01.2689	22.53	340067	01.1907	12.84
330010	01.1648	15.34	330111	01.0877	14.62	330218	01.1661	17.16	330381	01.1945	27.09	340068	01.2333	14.21
330011	01.2464	17.22	330114	00.8876	15.48	330219	01.6358	18.39	330385	01.1735	29.27	340069	01.7159	18.31
330012	01.6173	27.84	330115	01.2008	14.46	330221	01.3421	26.57	330386	01.1478	20.82	340070	01.3795	16.78
330013	02.0611	16.93	330116	00.9149	13.82	330222	01.2611	15.28	330387	00.8589	23.28	340071	01.0726	14.30
330014	01.3852	27.12	330118	01.6360	18.19	330223	01.0811	15.10	330389	01.8045	29.95	340072	01.1400	13.86
330016	01.0249	14.55	330119	01.7390	29.88	330224	01.2647	18.85	330390	01.2587	28.38	340073	01.4546	20.50
330019	01.1339	23.60	330121	01.0050	14.35	330225	01.1856	23.23	330393	01.7319	25.24	340075	01.1558	15.98
330020	01.0573	14.25	330122	01.2081	20.92	330226	01.2808	16.83	330394	01.5114	17.27	340080	01.1240	13.55
330023	01.2492	22.80	330125	01.8059	19.91	330229	01.3242	14.92	330395	01.3557	30.16	340084	01.0689	14.51

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
340085	01.2597	15.46	350006	01.0366	15.15	360032	01.0867	16.18	360108	01.0267	15.08	360197	01.2031	16.76
340087	01.1439	16.80	350009	01.1592	15.74	360034	01.1593	13.30	360109	01.0942	17.43	360200	01.0011	13.48
340088	01.1199	16.46	350010	01.1821	12.30	360035	01.5736	19.90	360112	01.7563	21.61	360203	01.1469	15.55
340089	00.9632	12.28	350011	01.9090	17.37	360036	01.3217	17.31	360113	01.3031	18.24	360204	01.2935	16.96
340090	01.1321	16.30	350012	01.1445	12.36	360037	02.1462	20.14	360114	01.1423	16.05	360210	01.2312	19.23
340091	01.0457	18.32	350013	01.0749	14.58	360038	01.5947	18.31	360115	01.3193	18.08	360211	01.2323	17.25
340093	01.0600	11.60	350014	01.0459	14.29	360039	01.2539	15.34	360116	01.1312	16.04	360212	01.3976	20.25
340094	01.3349	16.83	350015	01.7084	15.42	360040	01.3179	17.72	360118	01.3243	17.37	360213	01.1708	15.77
340096	01.2029	17.18	350016	01.0584	10.36	360041	01.3771	18.25	360121	01.2823	16.74	360218	01.2976	16.21
340097	01.1577	16.04	350017	01.4608	14.88	360042	01.1043	16.74	360122	01.3977	17.77	360230	01.3323	20.27
340098	01.6813	19.05	350018	01.1656	10.67	360044	01.1490	15.84	360123	01.2541	17.50	360231	01.1369	12.45
340099	01.1020	13.36	350019	01.6065	18.69	360045	01.4935	19.25	360124	01.2534	17.08	360234	01.3572	17.90
340101	01.0289	11.11	350020	01.4956	18.57	360046	01.1278	18.52	360125	01.1047	16.87	360236	01.1905	18.56
340104	00.9432	10.60	350021	01.0704	10.94	360047	01.2351	13.85	360126	01.2042	18.97	360239	01.2400	18.70
340105	01.3861	17.75	350023	00.8923	15.59	360048	01.7480	21.00	360127	01.1566	16.28	360241	00.5347	17.69
340106	01.1062	17.79	350024	01.1031	13.69	360049	01.2653	17.36	360128	01.1287	13.85	360242	01.7176	.....
340107	01.3146	16.17	350025	01.0558	12.60	360050	01.1666	12.43	360129	01.0400	14.06	360243	00.7473	14.35
340109	01.3269	15.91	350027	00.9712	12.57	360051	01.5445	21.82	360130	01.1366	15.16	360244	00.7208	16.77
340111	01.1675	13.78	350029	01.0062	12.34	360052	01.7086	17.88	360131	01.4162	16.27	360245	00.8023	12.10
340112	01.2839	14.03	350030	01.0917	15.42	360054	01.2621	15.55	360132	01.2311	20.78	360246	00.8798	15.05
340113	02.0160	19.50	350033	00.9596	13.23	360055	01.2391	18.92	360133	01.4596	17.61	360247	00.4357	.....
340114	01.5131	19.16	350034	01.0571	13.58	360056	01.3529	16.92	360134	01.5973	18.25	370001	01.6944	18.41
340115	01.5532	17.23	350035	00.9015	10.11	360057	01.0445	13.04	360135	01.1672	17.12	370002	01.2462	13.60
340116	01.9191	20.30	350038	01.0538	13.26	360058	01.2628	15.35	360136	01.0528	14.73	370004	01.2787	15.30
340119	01.2839	15.21	350039	00.9705	13.53	360059	01.5433	20.00	360137	01.5604	18.98	370005	01.0273	14.12
340120	01.1296	12.33	350041	01.0446	13.05	360062	01.4697	18.40	360140	01.0178	15.47	370006	01.3096	14.88
340121	01.0450	14.52	350042	01.0504	12.39	360063	01.1243	17.19	360141	01.4412	19.84	370007	01.1404	12.80
340122	00.9921	10.30	350043	01.6433	16.58	360064	01.5567	19.65	360142	01.0184	14.99	370008	01.4080	16.02
340123	01.1293	14.07	350044	00.9113	10.01	360065	01.2287	16.97	360143	01.2979	17.74	370011	01.0616	12.47
340124	01.0275	12.27	350047	01.2204	16.64	360066	01.3889	17.16	360144	01.3148	20.19	370012	00.8457	10.05
340125	01.4145	16.94	350049	01.2419	10.38	360067	01.2670	12.11	360145	01.6244	16.84	370013	01.7611	18.61
340126	01.4353	16.23	350050	00.9371	10.24	360068	01.6576	21.91	360147	01.2662	.....	370014	01.3196	17.14
340127	01.3099	16.30	350051	00.9466	14.13	360069	01.1437	16.38	360148	01.0715	16.50	370015	01.2617	13.84
340129	01.3429	18.65	350053	01.0767	09.58	360070	01.6677	16.57	360149	01.1450	20.33	370016	01.3790	14.25
340130	01.3332	16.03	350055	00.9216	11.50	360071	01.2655	15.42	360150	01.2825	17.70	370017	01.1042	12.14
340131	01.4267	16.05	350056	00.9601	12.92	360072	01.1448	16.29	360151	01.3167	16.55	370018	01.2647	14.06
340132	01.3222	12.41	350058	00.9496	12.18	360074	01.3535	19.15	360152	01.4765	17.73	370019	01.3066	11.91
340133	01.0518	13.87	350060	00.7458	08.17	360075	01.4875	20.80	360153	01.1500	13.64	370020	01.2884	12.53
340136	00.7885	24.45	350061	01.0625	13.77	360076	01.3060	18.84	360154	01.0235	12.39	370021	00.9781	10.01
340137	01.2154	12.68	350063	00.8969	.....	360077	01.4820	18.59	360155	01.3290	18.75	370022	01.2741	15.13
340138	01.1811	17.60	350064	00.9840	.....	360078	01.2766	18.97	360156	01.3403	16.47	370023	01.3301	14.95
340141	01.6320	18.27	350066	00.7996	.....	360079	01.7539	19.31	360159	01.1943	18.50	370025	01.4024	15.37
340142	01.1998	14.94	360001	01.3171	17.88	360080	01.1169	14.39	360161	01.2798	18.78	370026	01.4279	16.08
340143	01.3874	18.50	360002	01.2012	15.33	360081	01.3564	17.96	360162	01.2593	17.27	370028	01.8659	17.67
340144	01.4263	14.85	360003	01.7460	20.67	360082	01.3158	19.81	360163	01.8617	19.87	370029	01.2335	12.79
340145	01.3230	16.80	360006	01.7465	19.53	360083	01.2516	15.77	360164	00.8576	13.98	370030	01.2425	12.05
340146	01.0175	15.42	360007	01.0523	15.41	360084	01.6097	18.16	360165	01.2134	14.31	370032	01.5284	14.28
340147	01.2925	17.80	360008	01.2955	16.20	360085	01.8261	19.63	360166	01.1750	15.83	370033	01.0754	11.23
340148	01.4427	18.28	360009	01.3969	17.35	360086	01.4494	16.75	360169	00.9859	16.99	370034	01.2609	12.79
340151	01.1215	14.05	360010	01.2298	15.38	360087	01.4106	17.32	360170	01.2826	15.68	370035	01.6338	15.21
340153	01.9740	21.08	360011	01.2267	17.83	360088	01.2136	15.48	360172	01.3727	16.62	370036	01.0298	09.22
340155	01.3941	20.91	360012	01.2961	17.61	360089	01.1654	16.92	360174	01.2295	19.24	370037	01.7224	16.37
340156	00.8042	.....	360013	01.0861	16.71	360090	01.2325	17.90	360175	01.2416	17.61	370038	00.9103	12.01
340158	01.1785	15.94	360014	01.1236	17.57	360091	01.2653	18.90	360176	01.1811	15.62	370039	01.4595	17.22
340159	01.1571	16.88	360016	01.5986	17.81	360092	01.2754	17.85	360177	01.2619	16.30	370040	01.1036	10.89
340160	01.0888	12.88	360017	01.7484	19.82	360093	01.2219	16.66	360178	01.2206	15.58	370041	01.0290	13.52
340162	01.2211	17.78	360018	01.5417	18.51	360094	01.3012	20.27	360179	01.2895	19.01	370042	00.8626	11.22
340164	01.4594	18.17	360019	01.2939	18.22	360095	01.3299	16.68	360180	02.0595	22.07	370043	00.9753	12.91
340166	01.4192	18.51	360020	01.4334	20.05	360096	01.1102	16.20	360184	00.4913	17.11	370045	01.1501	10.20
340168	00.5028	14.78	360021	01.2759	18.04	360098	01.3988	18.00	360185	01.2472	17.09	370046	00.9820	09.22
340171	01.1220	.....	360024	01.4300	17.76	360099	01.1087	16.91	360186	01.1741	15.04	370047	01.3236	15.40
350001	01.0070	11.08	360025	01.2331	17.66	360100	01.3108	15.63	360187	01.2880	16.00	370048	01.1790	13.46
350002	01.7570	16.04	360026	01.1939	15.59	360101	01.7511	19.71	360188	01.0028	14.77	370049	01.3544	16.07
350003	01.1983	15.67	360027	01.5318	19.06	360102	01.2675	19.68	360189	01.0113	15.40	370051	00.9804	13.31
350004	01.9399	17.94	360028	01.4723	15.28	360103	01.3274	18.70	360192	01.2451	19.28	370054	01.3882	14.79
350005	01.0794	13.14	360029	01.1573	16.41	360104	01.9146	20.28	360193	01.3171	16.77	370056	01.5659	15.41
350006	01.3898	16.16	360030	01.1350	14.82	360106	01.0557	13.89	360194	01.1178	16.14	370057	01.1762	15.05
350007	00.9506	12.20	360031	01.3576	18.42	360107	01.2429	16.98	360195	01.1297	17.72	370059	01.1142	13.53

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
370060	01.0828	12.88	370190	01.6289	17.49	390002	01.3694	17.03	390078	01.0673	15.98	390164	01.9539	19.14
370063	01.0959	13.12	370192	01.1353	.....	390003	01.2550	15.57	390079	01.7078	16.83	390166	01.1034	17.40
370064	00.9954	10.14	370194	02.0879	.....	390004	01.3802	16.70	390080	01.2568	18.66	390167	01.2653	20.71
370065	01.0424	14.76	370195	02.4526	.....	390005	01.0808	14.82	390081	01.3530	20.23	390168	01.2043	17.54
370071	01.0343	10.18	380001	01.3214	19.27	390006	01.7350	17.39	390083	01.2270	20.87	390169	01.2058	18.63
370072	00.9116	11.67	380002	01.2073	22.74	390007	01.1796	21.33	390084	01.2421	15.29	390170	01.8570	22.43
370076	01.3116	12.42	380003	01.1475	18.75	390008	01.1300	15.08	390086	01.1340	16.87	390173	01.1954	17.08
370077	01.2139	16.30	380004	01.8006	22.89	390009	01.6087	18.07	390088	01.3283	18.42	390174	01.7088	24.17
370078	01.7084	14.58	380005	01.1861	19.47	390010	01.1790	16.58	390090	01.8006	19.41	390176	01.1460	16.79
370079	00.9678	11.98	380006	01.3890	18.29	390011	01.2467	16.49	390091	01.1700	17.09	390178	01.2822	17.74
370080	00.9908	11.12	380007	01.5689	22.66	390012	01.1943	19.15	390093	01.1538	15.20	390179	01.2710	22.80
370082	00.9103	12.48	380008	01.0706	18.69	390013	01.2311	16.77	390095	01.1758	13.95	390180	01.5397	22.83
370083	00.9505	10.95	380009	01.8307	22.17	390014	01.6424	16.42	390096	01.2633	16.88	390181	01.0583	17.80
370084	01.0351	08.88	380010	01.0879	24.15	390015	01.2054	13.06	390097	01.3262	20.91	390183	01.1883	17.16
370085	00.8092	12.94	380011	01.1042	14.95	390016	01.2233	15.58	390098	01.7539	20.06	390184	01.1032	17.69
370086	01.1831	09.89	380013	01.2681	21.54	390017	01.1747	14.20	390100	01.6285	19.30	390185	01.2281	16.12
370089	01.2759	14.01	380014	01.4266	18.89	390018	01.2261	19.47	390101	01.2027	15.70	390189	01.0384	18.41
370091	01.6816	16.13	380017	01.7014	21.77	390019	01.1185	14.53	390102	01.3635	20.34	390191	01.0441	13.91
370092	01.0706	12.73	380018	01.8329	19.21	390022	01.3887	21.81	390103	01.0941	17.17	390192	01.1158	17.15
370093	01.8716	18.67	380019	01.2061	18.88	390023	01.2485	19.71	390104	01.0526	15.15	390193	01.1854	15.39
370094	01.4235	16.67	380020	01.4312	20.06	390024	00.8664	22.60	390106	01.0134	14.85	390194	01.1543	18.97
370095	00.9189	11.62	380021	01.2831	19.10	390025	00.6470	16.64	390107	01.2490	18.66	390195	01.8317	22.08
370097	01.3652	18.99	380022	01.1731	19.92	390026	01.2710	20.58	390108	01.4094	19.97	390196	01.3947	.....
370099	01.1641	12.91	380023	01.2312	17.76	390027	01.9535	23.48	390109	01.1447	14.44	390197	01.3094	18.40
370100	01.0343	13.02	380025	01.2677	21.90	390028	01.7850	18.54	390110	01.6460	17.36	390198	01.1948	15.21
370103	00.9027	11.77	380026	01.1914	16.87	390029	01.9570	18.73	390111	01.8484	26.22	390199	01.2026	14.89
370105	02.0050	17.06	380027	01.2567	20.25	390030	01.2446	16.29	390112	01.1485	12.16	390200	01.0202	14.67
370106	01.5501	16.96	380029	01.1523	17.29	390031	01.1536	16.93	390113	01.2135	16.04	390201	01.2674	18.75
370108	01.0589	10.82	380031	01.0334	15.92	390032	01.2594	17.80	390114	01.1068	21.07	390203	01.3159	20.45
370112	01.0733	12.33	380033	01.7873	22.97	390035	01.2733	17.28	390115	01.3311	21.40	390204	01.2627	20.05
370113	01.1633	12.33	380035	01.3604	18.58	390036	01.3360	17.63	390116	01.2395	19.91	390205	01.3650	22.42
370114	01.6326	14.69	380036	01.1184	17.27	390037	01.3511	18.49	390117	01.1590	15.65	390206	01.3418	19.91
370121	01.1757	15.78	380037	01.2075	18.24	390039	01.0973	15.60	390118	01.1514	16.34	390209	01.0388	15.48
370122	01.1255	09.78	380038	01.3358	21.15	390040	01.0015	12.71	390119	01.3484	17.17	390211	01.1864	17.10
370123	01.2080	14.12	380039	01.3285	18.89	390041	01.2556	16.82	390121	01.3362	18.95	390213	00.9413	14.55
370125	01.0313	11.90	380040	01.2529	19.23	390042	01.4303	21.35	390122	01.0707	16.06	390215	01.1567	20.69
370126	00.9473	10.66	380042	01.1547	18.06	390043	01.1059	15.65	390123	01.3002	20.58	390217	01.2820	17.92
370131	01.0515	12.93	380047	01.6980	19.84	390044	01.6035	18.80	390125	01.2243	15.08	390219	01.3126	18.57
370133	01.1108	09.82	380048	01.0877	13.92	390045	01.7250	17.35	390126	01.3270	20.07	390220	01.2051	19.33
370138	01.1139	14.40	380050	01.3535	16.37	390046	01.5479	18.49	390127	01.2341	20.26	390222	01.3047	20.42
370139	01.0952	10.62	380051	01.5153	19.13	390047	01.6934	23.83	390128	01.2022	17.96	390223	01.6436	23.15
370140	00.9914	11.71	380052	01.1886	16.70	390048	01.1867	16.26	390130	01.1400	16.62	390224	00.9380	13.04
370141	01.3994	19.17	380055	01.2332	23.88	390049	01.5481	19.82	390131	01.2704	16.24	390225	01.2136	15.42
370146	01.0334	12.03	380056	01.0805	15.78	390050	02.1410	21.21	390132	01.2472	20.25	390226	01.7849	23.22
370148	01.5867	19.01	380060	01.5427	21.51	390051	02.1789	24.98	390133	01.7840	20.57	390228	01.2097	18.67
370149	01.2406	15.19	380061	01.5190	21.85	390052	01.1942	16.68	390135	01.2903	19.73	390231	01.3073	21.89
370153	01.0980	13.17	380062	01.1022	15.07	390054	01.2238	14.56	390136	01.2304	15.66	390233	01.3224	16.71
370154	01.0184	12.31	380063	01.3291	19.90	390055	01.7758	21.82	390137	01.3205	17.80	390235	01.5737	23.94
370156	01.0910	13.37	380064	01.4379	18.47	390056	01.1158	15.73	390138	01.3335	17.41	390236	01.1730	15.90
370158	01.0520	12.08	380065	01.0522	19.24	390057	01.3213	18.94	390139	01.5034	23.50	390237	01.6110	20.17
370159	01.3498	13.95	380066	01.3198	17.60	390058	01.3256	17.46	390142	01.6703	22.64	390238	01.3009	16.12
370163	00.8598	10.99	380068	01.0572	19.31	390060	01.1441	16.68	390145	01.3568	18.64	390242	01.2706	18.69
370165	01.0906	11.74	380069	01.1302	17.51	390061	01.4388	20.47	390146	01.3133	16.19	390244	00.9314	13.32
370166	01.0846	15.48	380070	01.3936	21.21	390062	01.1400	15.76	390147	01.2593	19.22	390245	01.3505	23.15
370169	01.1130	10.66	380071	01.2923	18.06	390063	01.7390	19.30	390149	01.2546	19.59	390246	01.2343	15.91
370170	00.9813	.....	380072	00.9776	14.15	390064	01.5536	16.30	390150	01.1045	17.50	390247	01.0532	17.11
370171	01.0235	.....	380075	01.4343	20.90	390065	01.2840	18.85	390151	01.2950	18.26	390249	01.0339	10.81
370172	00.8846	.....	380078	01.1630	16.95	390066	01.2949	17.15	390152	01.0397	17.07	390256	01.7863	23.51
370173	01.2880	.....	380081	01.1420	17.66	390067	01.8124	18.03	390153	01.2439	21.93	390258	01.2630	19.78
370174	00.9656	.....	380082	01.2830	20.35	390068	01.3206	18.13	390154	01.1846	13.93	390260	01.1752	20.02
370176	01.1460	16.48	380083	01.2473	18.93	390069	01.3149	19.23	390155	01.2947	20.56	390262	01.9683	17.25
370177	00.9746	10.10	380084	01.2083	20.61	390070	01.2872	19.49	390156	01.4292	22.61	390263	01.4329	18.66
370178	01.0093	12.17	380087	01.0126	12.30	390071	01.1143	13.36	390157	01.3465	17.97	390265	01.3177	17.72
370179	00.8839	14.28	380088	01.0041	15.71	390072	01.1098	15.76	390158	01.5904	.....	390266	01.2130	16.69
370180	01.0671	.....	380089	01.2966	21.87	390073	01.5899	18.94	390160	01.2106	17.51	390267	01.2925	18.93
370183	01.0923	14.00	380090	01.3003	24.41	390074	01.2338	16.26	390161	01.0926	14.87	390268	01.3885	19.94
370186	01.0180	12.72	380091	01.2100	23.79	390075	01.2463	15.92	390162	01.4285	19.03	390270	01.3067	15.89
370189	00.9704	10.13	390001	01.3711	18.16	390076	01.3156	20.45	390163	01.2240	16.55	390272	00.4528	.....

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
390277	00.5603	20.34	420002	01.3814	18.80	430011	01.3374	14.33	440024	01.3270	16.22	440146	00.9338	11.08
390278	00.7678	17.52	420004	01.8677	18.35	430012	01.3054	14.99	440025	01.1364	13.01	440147	01.1985	17.06
390279	01.0751	13.63	420005	01.2066	14.35	430013	01.2411	15.06	440029	01.2900	16.30	440148	01.1378	14.37
390281	03.2278	.....	420006	01.2691	18.90	430014	01.2803	16.77	440030	01.2038	13.21	440149	01.2007	15.19
400001	01.2220	08.25	420007	01.5104	16.31	430015	01.1797	14.41	440031	00.9661	12.29	440150	01.2814	19.58
400002	01.4856	10.96	420009	01.2122	15.70	430016	01.8135	17.59	440032	01.0524	12.65	440151	01.3711	15.86
400003	01.2332	08.92	420010	01.1103	14.35	430018	00.9842	14.06	440033	01.0875	14.84	440152	01.5691	16.91
400004	01.1483	07.59	420011	01.0948	14.89	430022	00.9711	10.91	440034	01.5752	16.64	440153	01.2623	15.10
400005	01.1206	08.10	420014	01.1243	14.11	430023	00.9247	09.95	440035	01.3207	15.65	440156	01.5611	18.85
400006	01.2016	08.16	420015	01.3249	15.96	430024	00.9133	12.28	440039	01.6370	16.76	440157	01.0908	13.64
400007	01.2693	07.56	420016	01.0738	14.39	430026	01.0802	11.36	440040	00.9724	17.03	440159	01.2247	14.83
400009	01.0262	07.68	420018	01.7297	18.63	430027	01.8126	16.64	440041	01.0380	12.36	440161	01.6915	20.63
400010	00.9203	07.94	420019	01.2334	14.90	430028	01.0919	13.68	440046	01.3297	13.59	440166	01.4435	17.80
400011	00.9992	08.65	420020	01.3863	15.98	430029	00.9945	13.10	440047	00.9562	15.31	440168	01.0268	13.03
400012	01.2240	07.45	420023	01.4196	18.07	430031	00.9633	11.31	440048	01.7952	16.64	440173	01.5203	16.91
400013	01.3026	07.90	420026	01.9243	18.05	430033	01.0190	11.90	440049	01.6599	15.62	440174	00.9800	13.30
400014	01.3669	07.72	420027	01.3766	15.51	430034	01.0691	11.58	440050	01.2144	16.03	440175	01.2313	18.06
400015	01.2460	10.88	420030	01.3136	15.83	430036	01.0403	10.11	440051	00.9274	13.29	440176	01.2943	18.36
400016	01.3669	10.57	420031	00.9596	12.15	430037	00.9746	12.89	440052	01.2208	14.25	440178	01.1828	20.20
400017	01.2323	06.27	420033	01.2169	19.24	430038	01.0102	10.77	440053	01.3082	15.64	440180	01.1590	16.68
400018	01.3497	09.15	420035	00.8201	12.43	430039	01.0851	11.53	440054	01.2219	12.82	440181	01.0247	11.75
400019	01.6713	09.52	420036	01.2109	15.61	430040	00.9125	12.17	440056	01.0837	13.45	440182	00.9496	15.33
400021	01.4363	07.63	420037	01.2790	19.65	430041	00.9368	11.91	440057	01.0173	10.77	440183	01.5317	15.06
400022	01.3221	09.94	420038	01.3043	14.43	430042	00.9807	10.63	440058	01.3195	14.95	440184	01.3454	18.63
400024	01.0278	08.62	420039	01.1575	14.52	430043	01.1884	12.02	440059	01.3263	15.63	440185	01.1231	14.24
400026	00.9518	05.90	420042	01.2023	12.15	430044	00.9113	13.17	440060	01.1970	14.76	440186	01.1936	16.21
400027	01.1389	08.01	420043	01.1809	18.82	430047	01.1401	12.24	440061	01.2086	15.46	440187	01.2024	14.85
400028	01.0186	07.77	420048	01.1316	14.26	430048	01.2003	15.01	440063	01.6128	17.43	440189	01.4803	18.81
400029	01.1282	06.64	420049	01.1758	14.55	430049	00.9292	12.66	440064	01.1917	15.05	440192	01.1477	14.18
400031	01.1362	08.00	420051	01.5589	17.99	430051	01.0196	13.48	440065	01.2342	16.18	440193	01.2835	17.88
400032	01.1227	07.75	420053	01.1416	14.03	430054	01.0137	13.13	440067	01.1944	15.54	440194	01.4255	16.89
400044	01.2346	09.09	420054	01.3673	16.39	430056	00.8553	08.93	440068	01.2212	16.43	440196	00.9505	13.32
400048	01.1349	07.30	420055	01.0608	12.51	430057	00.9283	10.47	440069	01.1286	14.17	440197	01.4034	19.15
400061	01.6729	11.80	420056	01.1544	13.41	430060	01.1566	08.46	440070	01.1243	12.52	440200	01.1971	15.41
400079	01.2619	08.43	420057	01.1466	14.96	430062	00.8743	10.31	440071	01.3952	14.87	440203	00.9399	13.17
400087	01.3682	07.87	420059	00.9934	13.96	430064	01.1303	11.89	440072	01.5223	13.92	440205	01.0953	14.15
400094	01.0449	07.49	420061	01.1508	16.16	430065	00.9479	09.93	440073	01.3496	16.96	440206	01.0265	13.82
400098	01.2488	07.50	420062	01.4491	15.65	430066	00.9678	10.93	440078	01.0256	13.28	440208	01.8205	.....
400102	01.1685	08.67	420064	01.1139	13.45	430073	01.0704	.....	440081	01.1542	15.31	450002	01.4659	19.35
400103	01.3822	08.80	420065	01.3039	16.72	430076	00.9751	09.41	440082	01.9853	20.54	450004	01.1678	12.38
400104	01.3757	08.97	420066	00.9103	14.40	430077	01.5817	16.53	440083	01.1097	10.96	450005	01.1514	13.79
400105	01.1767	08.37	420067	01.2427	16.24	430079	00.9610	11.47	440084	01.1791	11.41	450007	01.2393	13.73
400106	01.2375	08.39	420068	01.2907	16.08	430080	01.1317	08.89	440087	00.9425	14.44	450008	01.3554	14.96
400109	01.5324	09.13	420069	01.1030	13.71	430081	01.0291	.....	440090	00.9368	13.29	450010	01.3345	15.37
400110	01.1163	07.65	420070	01.2642	15.05	430082	00.8067	.....	440091	01.5497	16.53	450011	01.5020	17.43
400111	01.1523	07.98	420071	01.3101	16.13	430083	00.8649	.....	440100	01.0343	12.82	450014	01.0617	13.84
400112	01.2541	06.01	420072	01.0775	10.64	430084	00.9278	.....	440102	01.0720	12.26	450015	01.5403	15.15
400113	01.2466	08.20	420073	01.3072	18.13	430085	00.9194	.....	440103	01.2317	17.24	450016	01.6194	17.57
400114	01.0452	06.50	420074	00.9037	11.72	430087	00.9027	09.29	440104	01.6500	17.68	450018	01.6073	21.75
400115	01.0096	07.56	420075	00.9694	12.66	440001	01.1291	12.18	440105	01.3509	16.69	450020	01.0239	15.47
400117	01.1759	09.23	420078	01.8104	18.59	440002	01.6019	15.73	440109	01.1368	12.28	450021	01.8149	21.11
400118	01.1868	08.61	420079	01.5628	16.94	440003	01.0727	15.23	440110	00.9697	16.06	450023	01.4758	15.46
400120	01.3057	09.14	420080	01.2627	19.18	440006	01.6333	17.56	440111	01.3691	18.00	450024	01.3739	16.46
400121	01.0090	05.80	420082	01.3944	19.13	440007	01.0099	11.83	440114	01.0453	12.68	450025	01.5088	16.23
400122	00.9993	05.88	420083	01.1937	18.36	440008	00.9877	13.50	440115	01.1184	14.66	450028	01.6360	17.17
400123	01.1685	08.24	420084	00.7413	13.56	440009	01.1773	13.22	440120	01.5405	16.14	450029	01.3996	12.98
400124	02.6681	09.27	420085	01.3941	16.86	440010	00.9181	08.75	440125	01.4435	16.09	450031	01.5825	18.72
410001	01.3237	23.02	420086	01.3585	16.90	440011	01.2884	16.28	440130	01.1725	14.16	450032	01.2733	13.63
410004	01.3672	21.15	420087	01.5958	16.53	440012	01.4781	17.72	440131	01.1390	13.44	450033	01.6352	16.84
410005	01.3477	21.90	420088	01.1487	15.05	440014	01.0633	09.06	440132	01.1117	14.01	450034	01.6414	16.28
410006	01.2581	21.40	420089	01.2296	19.40	440015	01.6236	16.42	440133	01.5475	17.78	450035	01.4498	18.91
410007	01.6598	20.37	420091	01.2145	13.16	440016	01.0124	11.35	440135	01.3052	17.20	450037	01.6198	17.78
410008	01.1681	21.05	430004	01.0941	17.25	440017	01.6214	18.42	440137	00.9781	12.14	450039	01.3536	18.70
410009	01.2979	20.66	430005	01.3166	14.06	440018	01.4781	16.10	440141	01.0780	13.59	450040	01.5551	17.75
410010	01.0163	25.40	430007	01.0466	12.56	440019	01.6255	19.06	440142	01.0334	10.75	450042	01.6664	15.75
410011	01.2082	22.25	430008	01.1342	14.01	440020	01.2332	15.43	440143	01.1007	17.21	450043	01.4465	20.40
410012	01.7245	19.51	430009	01.0881	11.86	440022	01.2045	13.72	440144	01.3344	18.35	450044	01.6233	20.51
410013	01.3149	24.63	430010	01.1233	09.23	440023	01.0084	11.58	440145	01.0427	10.99	450046	01.3659	14.67

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450047	01.1220	13.43	450152	01.2584	16.04	450292	01.2041	20.69	450473	01.0025	17.83	450648	01.0330	11.36
450050	01.0646	16.00	450153	01.5850	17.97	450293	00.9718	13.55	450475	01.1382	14.13	450649	01.0760	14.64
450051	01.5938	18.22	450154	01.1993	12.23	450296	01.3113	16.46	450484	01.4918	18.53	450651	01.8202	21.97
450052	01.0170	13.18	450155	01.0180	12.61	450297	01.0190	12.01	450488	01.2564	15.04	450652	00.9227	13.44
450053	01.1454	13.11	450157	01.0065	12.97	450299	01.3347	17.02	450489	00.9782	11.56	450653	01.2431	18.84
450054	01.7192	21.32	450160	00.9923	17.50	450303	00.9406	09.97	450497	01.1271	12.05	450654	01.0022	11.11
450055	01.1447	12.92	450162	01.1938	16.77	450306	01.0853	12.50	450498	01.2476	13.88	450656	01.4892	16.48
450056	01.6156	18.26	450163	01.0440	15.34	450307	00.8981	13.62	450508	01.5513	16.37	450658	00.9782	14.01
450058	01.5801	14.76	450164	01.0742	12.56	450309	01.0840	12.74	450514	01.2130	18.78	450659	01.5709	21.98
450059	01.2524	13.14	450165	00.9592	14.34	450315	01.1187	19.65	450517	00.9987	10.94	450660	01.5676	21.85
450060	01.3645	22.17	450166	00.9684	10.06	450320	01.3390	18.20	450518	01.5354	16.84	450661	01.1458	19.26
450063	00.9796	11.51	450169	00.9080	13.82	450321	00.9595	12.45	450523	01.5274	21.38	450662	01.6776	16.53
450064	01.5134	15.34	450170	00.9791	11.32	450322	00.7151	15.40	450530	01.4471	21.64	450665	00.9352	11.45
450065	01.1489	14.75	450176	01.2251	15.23	450324	01.6544	15.19	450534	00.9729	20.29	450666	01.2706	19.71
450068	01.7905	20.31	450177	01.0924	13.18	450325	01.2253	11.93	450535	01.2548	14.12	450668	01.5402	18.90
450070	01.2681	15.46	450178	01.0088	14.65	450327	00.9860	12.11	450537	01.3601	17.80	450669	01.2864	19.10
450072	01.2416	18.19	450181	01.0019	15.15	450330	01.2227	16.86	450538	01.3999	21.17	450670	01.3009	19.44
450073	01.1264	12.84	450184	01.5407	23.27	450334	01.0534	11.65	450539	01.2984	13.27	450672	01.6541	19.75
450076	01.5782		450185	01.1327	08.47	450337	01.2371	17.14	450544	01.4369	22.65	450673	01.1436	11.38
450078	00.9932	11.17	450187	01.2814	16.44	450340	01.3187	14.54	450545	01.2718	14.13	450674	01.0111	22.09
450079	01.4322	19.03	450188	01.0119	12.46	450341	01.0248	16.26	450546	01.8222	18.37	450675	01.5087	17.94
450080	01.2955	15.79	450190	01.1860	19.53	450346	01.3451	16.27	450547	01.1713	15.09	450677	01.4313	19.18
450081	01.0995	12.87	450191	01.0888	15.75	450347	01.1474	15.48	450550	00.9808	17.01	450678	01.4822	20.45
450082	00.9666	12.75	450192	01.2364	16.25	450348	01.0026	10.99	450551	01.1921	13.75	450681	03.0551	17.29
450083	01.7113	17.42	450193	02.0587	21.32	450351	01.1755	18.65	450558	01.7741	17.17	450683	01.3220	20.22
450085	01.0883	14.38	450194	01.2395	18.11	450352	01.1091	16.21	450559	00.9492	12.75	450684	01.2741	18.53
450087	01.4225	19.35	450196	01.5055	17.58	450353	01.3200	17.98	450561	01.6456	17.65	450686	01.5540	14.30
450090	01.2033	12.40	450197	01.0524	19.66	450355	01.1377	11.18	450563	01.2363	21.98	450688	01.2881	18.65
450092	01.2143	13.12	450200	01.3821	16.35	450358	02.0797	20.57	450565	01.3067	15.63	450690	01.4332	20.17
450094	01.2606	19.39	450201	01.0166	15.38	450362	01.1880	18.62	450570	01.0343	11.74	450691	01.0990	14.91
450096	01.5374	19.25	450203	01.1911	18.13	450369	01.0899	10.21	450571	01.4975	14.52	450694	01.2392	15.91
450097	01.4459	18.33	450209	01.5470	16.62	450370	01.1322	13.02	450573	01.0043	13.58	450696	01.6532	23.37
450098	01.1700	13.75	450210	01.1942	12.03	450371	01.1439	11.02	450574	00.9401	13.41	450697	01.5296	16.28
450099	01.2845	17.70	450211	01.3875	15.53	450372	01.2685	20.49	450575	01.0588	16.98	450698	00.9741	11.66
450101	01.4874	15.03	450213	01.5135	16.27	450373	01.1458	13.68	450578	00.9188	12.94	450700	00.9361	12.68
450102	01.7024	21.87	450214	01.3724	18.61	450374	00.9606	12.20	450580	01.1043	12.59	450702	01.6116	17.58
450104	01.2215	13.74	450217	01.0493	12.61	450376	01.5130	16.26	450583	01.0101	12.24	450703	01.5347	22.71
450107	01.6114	18.75	450219	01.1376	14.22	450378	01.0872	21.56	450584	01.2252	12.86	450704	01.3685	17.86
450108	00.9951	14.49	450221	01.0919	14.05	450379	01.5119	21.28	450586	00.9990	11.26	450705	01.0325	16.80
450109	00.9937	15.36	450222	01.6583	17.32	450381	01.0501	12.56	450587	01.2284	16.93	450706	01.2203	21.90
450110	01.2581	19.34	450224	01.3804	16.16	450388	01.7618	17.41	450591	01.1443	16.28	450709	01.2258	20.05
450111	01.2467	19.56	450229	01.5720	15.17	450389	01.2091	16.74	450596	01.3111	17.29	450711	01.6445	17.90
450112	01.3458	13.87	450231	01.5952	18.09	450393	01.3286	20.94	450597	01.0558	14.23	450712	00.7326	15.03
450113	01.2354	16.99	450234	00.9894	11.27	450395	01.0373	14.68	450603	00.8313	16.27	450713	01.4795	18.10
450118	01.5684	21.60	450235	01.0641	13.47	450399	00.9972	13.37	450604	01.3843	13.57	450715	01.4608	19.89
450119	01.2883	16.37	450236	01.0680	14.17	450400	01.1529	13.70	450605	01.4572	17.91	450716	01.2763	19.64
450121	01.4394	18.70	450237	01.5497	16.60	450403	01.3695	19.91	450609	00.8873	12.25	450717	01.3876	22.95
450123	01.1501	17.47	450239	01.2041	12.35	450411	00.9528	11.46	450610	01.4525	16.09	450718	01.2410	20.52
450124	01.5911	19.48	450241	01.0376	15.67	450417	01.0520	12.95	450614	01.0500	12.43	450723	01.3595	18.17
450126	01.3790	11.95	450243	00.8397	11.57	450418	01.3231	17.42	450615	01.0751	11.70	450724	01.2949	16.59
450128	01.2417	14.78	450246	00.9745	15.02	450419	01.2764	22.40	450617	01.2951	20.82	450725	01.0238	20.88
450130	01.5026	16.34	450249	00.9682	10.70	450422	00.8069	23.47	450620	01.0721	12.48	450726	00.8634	14.54
450131	01.3704	21.35	450250	00.9525	09.93	450423	01.4345	21.03	450623	01.1422	17.62	450727	00.9554	09.78
450132	01.6500	16.45	450253	01.3238	13.51	450424	01.2052	16.33	450626	01.0899	14.09	450728	00.9742	14.31
450133	01.5434	16.49	450258	01.0987	11.17	450429	01.1218	13.35	450628	00.9432	15.48	450730	01.3596	21.14
450135	01.7232	21.81	450259	01.2053	17.44	450431	01.6621	17.30	450630	01.6460	20.60	450733	01.3642	16.91
450137	01.5052	24.28	450264	00.8888	11.94	450438	01.1814	14.39	450631	01.7443	18.24	450735	00.8814	12.70
450140	00.8514	16.46	450269	01.1527	12.62	450446	00.8552	13.07	450632	01.0135	11.17	450742	01.3392	21.43
450142	01.4322	19.50	450270	01.1746	10.16	450447	01.3578	17.69	450633	01.5955	19.99	450743	01.4512	18.56
450143	01.0933	12.23	450271	01.2705	14.41	450450	01.0892	16.43	450634	01.6915	21.57	450746	01.0348	13.39
450144	01.1100	16.23	450272	01.2918	16.29	450451	01.1189	20.23	450637	01.3801	18.24	450747	01.3596	16.51
450145	00.8715	12.46	450276	01.1012	10.44	450457	01.7888	17.14	450638	01.5960	22.52	450749	01.0066	12.35
450146	01.0002	16.53	450278	00.8518	18.12	450460	01.0391	12.06	450639	01.4075	21.41	450750	01.0207	11.86
450147	01.4238	17.66	450280	01.5267	20.58	450462	01.8388	19.89	450641	01.0270	12.60	450751	01.3180	21.80
450148	01.3128	19.02	450283	01.0534	12.09	450464	00.9829	13.41	450643	01.2616	17.57	450754	00.8914	13.19
450149	01.3535	19.71	450286	01.0404	14.54	450465	01.3156	14.66	450644	01.4772	20.30	450755	01.1576	13.66
450150	00.8833	13.62	450288	01.2198	12.58	450467	00.9614	14.39	450646	01.6091	19.59	450757	00.9791	13.32
450151	01.1042	13.27	450289	01.4806	17.37	450469	01.3754	16.94	450647	02.0177	20.35	450758	01.2161	13.21

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450760	01.1995	16.97	460047	01.7910	19.49	490067	01.2066	14.95	500028	01.0863	14.76	500139	01.4752	21.33
450761	01.0624	09.63	460049	01.9373	17.36	490069	01.4041	15.74	500029	00.9240	14.30	500141	01.3369	21.93
450763	01.0137	16.27	460050	01.3229	20.35	490071	01.4437	17.56	500030	01.4741	22.13	500143	00.7548	14.92
450766	02.3026	21.39	460051	01.1889	.....	490073	01.3572	21.49	500031	01.2908	20.19	500146	01.0356	.....
450769	01.0302	13.28	470001	01.2042	17.11	490074	01.3267	16.06	500033	01.2023	18.05	510001	01.7170	17.08
450770	00.9569	13.59	470003	01.8186	20.22	490075	01.3350	16.62	500036	01.3243	19.11	510002	01.2898	16.31
450771	01.9684	19.76	470004	01.1082	14.18	490077	01.1612	16.87	500037	01.1182	17.63	510004	00.9340	12.62
450774	00.9029	23.99	470005	01.2621	18.71	490079	01.3172	14.30	500039	01.3816	21.32	510005	00.9906	13.71
450775	01.2196	19.26	470006	01.1890	17.05	490083	00.6451	14.63	500041	01.2847	22.09	510006	01.2547	17.08
450776	00.9203	.....	470008	01.2515	15.41	490084	01.2474	15.98	500042	01.3841	20.95	510007	01.4719	17.81
450777	01.0133	15.01	470010	01.1785	18.58	490085	01.2069	13.36	500043	01.2790	16.56	510008	01.1392	15.33
450779	01.3433	20.59	470011	01.1576	19.30	490088	01.2040	13.97	500044	01.8929	20.56	510012	01.0689	14.26
450780	01.6396	19.78	470012	01.2641	17.52	490089	01.0777	14.37	500045	01.1206	20.65	510013	01.1401	15.10
450781	01.5121	16.23	470013	01.1730	18.38	490090	01.1910	14.25	500048	00.9121	16.01	510015	00.9645	12.51
450785	01.0061	26.08	470015	01.0821	16.29	490091	01.2048	20.14	500049	01.4662	19.34	510016	00.9894	11.27
450788	01.4240	.....	470018	01.1960	17.37	490092	01.2073	14.32	500050	01.4046	20.41	510018	01.1325	14.40
450793	01.6623	.....	470020	00.9790	14.50	490093	01.2886	15.31	500051	01.6400	22.71	510020	01.0439	10.16
450794	01.4607	.....	470023	01.3025	17.20	490094	01.0703	14.57	500052	01.2844	.....	510022	01.8032	19.52
450795	00.8583	.....	470024	01.1065	17.08	490095	01.4704	16.32	500053	01.2764	20.10	510023	01.1453	15.14
450797	00.6907	.....	490001	01.0855	19.41	490097	01.1309	13.69	500054	01.8765	20.41	510024	01.4123	17.94
450798	00.8914	.....	490002	01.0634	13.61	490098	01.3117	11.69	500055	01.0919	20.32	510026	00.9431	12.19
450799	01.4105	.....	490003	00.6013	17.55	490099	00.9354	15.29	500057	01.3473	16.24	510027	00.9624	13.86
450800	01.3490	.....	490004	01.2275	16.67	490100	01.3718	16.69	500058	01.5006	19.82	510028	01.0722	14.90
450801	01.4785	.....	490005	01.5365	16.10	490101	01.1892	23.64	500059	01.1568	20.02	510029	01.2911	16.69
450802	01.0743	.....	490006	01.1550	13.27	490104	00.8927	14.46	500060	01.4852	20.70	510030	01.1024	14.87
450803	00.8537	.....	490007	02.0173	17.19	490105	00.7368	16.55	500061	00.9874	17.95	510031	01.3462	16.27
450804	01.5317	.....	490009	01.8300	18.08	490106	00.8894	14.86	500062	01.0881	17.16	510033	01.2683	14.42
450805	01.1690	.....	490010	01.0896	17.08	490107	01.3168	22.65	500064	01.5317	21.69	510035	01.1333	16.46
450807	00.9104	.....	490011	01.4141	17.03	490108	00.8692	13.78	500065	01.2988	17.67	510036	01.0124	09.34
450809	01.6695	.....	490012	01.2074	15.55	490109	00.9193	14.09	500068	01.0249	17.17	510038	01.1602	13.71
460001	01.7915	19.82	490013	01.2459	14.82	490110	01.3951	15.90	500069	01.1604	18.62	510039	01.3713	15.02
460003	01.7205	18.38	490014	01.3674	21.04	490111	01.2384	16.79	500071	01.3704	19.46	510043	00.9246	11.33
460004	01.7759	20.68	490015	01.4613	17.30	490112	01.7317	19.07	500072	01.1955	21.19	510046	01.2634	15.26
460005	01.5560	18.80	490017	01.3610	16.58	490113	01.2998	20.96	500073	01.0893	16.86	510047	01.2119	17.26
460006	01.4316	18.71	490018	01.2531	16.88	490114	01.1055	15.00	500074	01.1764	14.80	510048	01.0836	17.39
460007	01.5439	19.27	490019	01.2029	15.60	490115	01.2378	14.25	500075	03.7376	20.25	510050	01.4644	15.34
460008	01.3622	16.02	490020	01.1532	14.16	490116	01.2262	15.61	500077	01.3928	21.63	510053	01.0373	13.50
460009	01.8858	18.11	490021	01.1440	17.12	490117	01.1727	13.62	500079	01.4051	19.87	510055	01.2326	19.41
460010	01.9311	20.15	490022	01.4164	17.59	490118	01.7640	21.32	500080	00.8347	11.56	510058	01.1980	16.23
460011	01.3873	16.16	490023	01.2222	17.03	490119	01.3430	16.41	500084	01.1384	20.05	510059	01.2369	13.65
460013	01.5121	18.54	490024	01.7777	17.06	490120	01.3210	16.90	500085	01.0600	17.19	510060	01.1653	15.36
460014	01.0302	15.38	490027	01.1366	13.11	490122	01.5068	20.86	500086	01.4233	18.48	510061	01.0684	12.59
460015	01.2578	19.75	490028	01.3505	18.42	490123	01.1433	14.80	500088	01.3681	22.86	510062	01.2001	15.38
460016	00.8956	13.54	490030	01.0966	11.16	490124	01.1494	16.99	500089	00.9699	13.99	510063	01.0086	10.63
460017	01.4587	16.52	490031	01.1399	12.61	490126	01.3829	14.72	500090	00.9942	12.60	510065	01.0057	12.04
460018	00.9760	13.59	490032	01.7447	19.06	490127	01.0153	14.44	500092	01.0866	15.65	510066	01.1328	12.02
460019	01.1474	12.90	490033	01.1930	15.58	490129	01.4271	17.98	500094	00.9216	15.53	510067	01.2442	15.91
460020	01.0550	14.21	490035	01.2134	09.64	490130	01.3112	16.58	500096	01.0818	17.13	510068	01.1194	14.01
460021	01.3930	19.20	490037	01.1236	13.27	490131	01.0313	14.06	500097	01.1361	16.12	510070	01.2176	16.05
460022	00.9379	19.41	490038	01.2160	12.54	500001	01.3320	20.92	500098	00.9259	13.66	510071	01.2805	14.49
460023	01.1852	20.75	490040	01.4126	21.19	500002	01.4806	18.75	500101	01.0231	17.84	510072	01.0631	13.50
460024	00.8925	13.88	490041	01.3528	16.82	500003	01.4107	21.28	500102	00.9438	18.43	510077	01.1112	14.36
460025	00.8072	12.63	490042	01.3424	15.18	500005	01.8423	22.52	500104	01.2581	18.71	510080	01.1526	09.35
460026	01.0894	16.98	490043	01.3567	16.74	500007	01.4103	20.14	500106	00.9357	15.53	510081	01.0273	13.19
460027	00.9427	18.71	490044	01.3652	16.65	500008	01.8538	22.88	500107	01.1326	15.58	510082	01.0492	12.08
460029	01.0225	15.71	490045	01.1326	18.60	500009	01.2784	21.07	500108	01.6728	21.40	510084	00.9917	13.25
460030	01.2159	15.78	490046	01.4684	17.24	500011	01.3857	21.44	500110	01.2764	18.75	510085	01.2369	17.99
460032	01.0099	19.00	490047	01.0719	16.34	500012	01.5255	20.94	500118	01.1356	20.88	510086	01.0561	15.65
460033	00.9544	18.22	490048	01.4849	17.53	500014	01.5705	22.36	500119	01.3328	20.48	520002	01.2922	17.24
460035	00.9610	11.43	490050	01.4304	20.06	500015	01.3611	20.92	500122	01.1907	20.27	520003	01.1620	15.19
460036	00.9397	19.41	490052	01.6110	15.34	500016	01.4832	22.76	500123	00.8533	14.78	520004	01.1559	16.53
460037	01.0591	15.92	490053	01.2500	14.14	500019	01.3350	19.82	500124	01.3275	22.39	520006	01.0574	18.05
460039	01.0976	21.08	490054	01.1202	13.91	500021	01.5313	20.77	500125	00.9883	10.72	520007	01.2421	14.14
460041	01.2170	18.29	490057	01.5395	17.05	500023	01.1880	19.09	500129	01.7287	22.41	520008	01.5505	20.54
460042	01.4763	16.14	490059	01.5677	18.24	500024	01.6344	21.06	500132	00.9951	19.79	520009	01.5958	16.88
460043	00.9968	20.44	490060	01.0692	16.72	500025	01.8629	21.69	500134	00.8092	15.75	520010	01.1719	19.34
460044	01.2081	19.41	490063	01.6593	22.34	500026	01.4296	22.42	500137	00.7050	19.99	520011	01.2046	16.46
460046	00.7432	10.23	490066	01.2205	17.58	500027	01.5358	23.68	500138	03.4209	.....	520013	01.2869	17.88

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
520014	01.2027	15.56	520103	01.3253	17.70	530025	01.3617	17.99						
520015	01.1208	16.65	520107	01.2590	17.46	530026	01.0549	14.63						
520016	01.0905	12.75	520109	00.9991	17.25	530027	00.8298	09.56						
520017	01.1856	16.87	520110	01.1737	16.47	530029	00.9607	13.49						
520018	01.0817	15.88	520111	00.9881	14.44	530031	00.8790	10.95						
520019	01.2831	16.65	520112	01.0774	18.15	530032	01.1497	17.34						
520021	01.3589	19.16	520113	01.1649	17.80									
520024	01.0340	13.33	520114	01.1065	12.61									
520025	01.1366	15.19	520115	01.3241	15.89									
520026	01.0973	17.48	520116	01.2614	17.66									
520027	01.2310	19.22	520117	01.0328	15.40									
520028	01.3213	17.60	520118	00.9426	10.95									
520029	00.9672	16.70	520120	00.8716	11.95									
520030	01.6756	20.19	520121	00.9752	14.18									
520031	01.1149	16.11	520122	00.9991	13.96									
520032	01.1627	14.56	520123	01.1304	16.55									
520033	01.1838	15.91	520124	01.1231	14.34									
520034	01.1326	17.17	520130	01.0848	12.60									
520035	01.2520	14.67	520131	01.0608	15.82									
520037	01.6526	18.23	520132	01.1759	14.31									
520038	01.4892	17.14	520134	01.0288	15.14									
520039	01.0077	16.24	520135	00.9463	13.84									
520040	01.4307	20.05	520136	01.4791	18.87									
520041	01.1426	14.54	520138	01.8806	18.18									
520042	01.0710	16.25	520139	01.2886	18.50									
520044	01.3714	16.09	520140	01.6140	19.31									
520045	01.6919	17.97	520141	01.1169	15.63									
520047	01.0188	14.50	520142	00.9147	12.48									
520048	01.4400	17.67	520144	01.0393	16.10									
520049	01.9950	17.97	520145	00.9143	16.57									
520051	02.0353	19.41	520146	01.0746	13.71									
520053	01.0992	14.78	520148	01.1623	15.34									
520054	01.0858	16.40	520149	00.9555	13.31									
520056	01.3107	17.77	520151	01.0897	14.43									
520057	01.1288	16.08	520152	01.1331	16.38									
520058	01.0509	17.87	520153	00.9798	13.19									
520059	01.3228	18.17	520154	01.1472	16.15									
520060	01.2997	15.15	520156	01.1203	16.37									
520062	01.2655	16.18	520157	00.9424	13.70									
520063	01.2607	17.61	520159	00.9388	16.25									
520064	01.7082	18.60	520160	01.7678	17.77									
520066	01.4098	17.73	520161	01.0250	14.76									
520068	00.8915	15.82	520170	01.2443	18.51									
520069	01.1870	16.75	520171	00.9943	13.69									
520070	01.5908	16.93	520173	01.1567	17.36									
520071	01.1171	17.71	520174	01.4333	20.57									
520074	01.0987	14.96	520177	01.6449	20.33									
520075	01.4698	17.44	520178	01.0559	14.61									
520076	01.1236	14.40	520186	02.5806	.....									
520077	01.0257	14.50	530002	01.1980	18.07									
520078	01.5135	17.89	530003	00.9289	12.59									
520082	01.3440	15.25	530004	01.0252	13.17									
520083	01.5917	21.59	530005	01.1380	13.19									
520084	01.0815	15.73	530006	01.1263	16.83									
520087	01.6157	17.16	530007	01.0519	11.52									
520088	01.2441	17.56	530008	01.2819	17.75									
520089	01.5181	18.76	530009	00.9693	20.60									
520090	01.2798	16.16	530010	01.2110	16.30									
520091	01.3653	17.25	530011	01.0901	15.27									
520092	01.1109	15.11	530012	01.5887	17.25									
520094	01.0028	16.07	530014	01.3344	15.01									
520095	01.3845	18.56	530015	01.1465	19.22									
520096	01.4966	17.78	530016	01.2083	11.87									
520097	01.3301	17.90	530017	00.9927	16.09									
520098	01.7373	19.40	530018	01.0650	14.57									
520100	01.2315	15.91	530019	00.9451	14.32									
520101	01.1002	15.75	530022	01.1165	15.94									
520102	01.2175	19.00	530023	00.8533	17.76									

Note: Case mix indexes do not include discharges from PPS-exempt units. Case mix indexes include cases received in HCFA central office through June 1996.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index	GAF
0040 Abilene, TX	0.8147	0.8691
Taylor, TX		
0060 Aguadilla, PR	0.4237	0.5554
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9853	0.9899
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8597	0.9017
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8624	0.9036
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9350	0.9550
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8194	0.8725
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	0.9992	0.9995
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9510	0.9662
Blair, PA		
0320 Amarillo, TX	0.8730	0.9112
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.3255	1.2128
Anchorage, AK		
0440 Ann Arbor, MI	1.1662	1.1110
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8023	0.8600
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8890	0.9226
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4397	0.5697
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9344	0.9546
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9408	0.9591
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 *Atlanta, GA	1.0033	1.0023
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic-Cape May, NJ	1.1077	1.0726
Atlantic, NJ		
Cape May, NJ		
0600 Augusta-Aiken, GA–SC	0.8836	0.9187
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 Austin-San Marcos, TX	0.9254	0.9483
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA	1.0189	1.0129
Kern, CA		
0720 *Baltimore, MD	0.9798	0.9861
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME	0.9391	0.9579
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.3651	1.2375
Barnstable, MA		
0760 Baton Rouge, LA	0.8433	0.8898
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8576	0.9001
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1317	1.0884
Whatcom, WA		
0870 Benton Harbor, MI	0.8550	0.8983
Berrien, MI		
0875 *Bergen-Passaic, NJ	1.1785	1.1190
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.9086	0.9365
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.8554	0.8986
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.8822	0.9178
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9036	0.9329
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.8074	0.8637
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.8652	0.9056
Monroe, IN		
1040 Bloomington-Normal, IL	0.8990	0.9297
McLean, IL		
1080 Boise City, ID	0.9383	0.9573
Ada, ID		
Canyon, ID		
1123 *Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1613	1.1078
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.9522	0.9670
Boulder, CO		
1145 Brazoria, TX	0.8845	0.9194
Brazoria, TX		
1150 Bremerton, WA	1.0901	1.0609
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8542	0.8977
Cameron, TX		
1260 Bryan-College Station, TX	0.8851	0.9198
Brazos, TX		
1280 *Buffalo-Niagara Falls, NY	0.9107	0.9380
Erie, NY		
Niagara, NY		
1303 Burlington, VT	1.0068	1.0047
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4589	0.5866
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
1320 Canton-Massillon, OH	0.8648	0.9053
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.8821	0.9177
Natrona, WY		
1360 Cedar Rapids, IA	0.8458	0.8916
Linn, IA		
1400 Champaign-Urbana, IL	0.9391	0.9579
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8963	0.9278
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9526	0.9673
Kanawha, WV		
Putnam, WV		
1520 *Charlotte-Gastonia-Rock Hill, NC–SC	0.9620	0.9738
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	0.9155	0.9413
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN–GA	0.8847	0.9195
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.7678	0.8345
Laramie, WY		
1600 *Chicago, IL	1.0760	1.0514
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0417	1.0284
Butte, CA		
1640 *Cincinnati, OH–KY–IN	0.9568	0.9702
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN–KY	0.7716	0.8373
Christian, KY		
Montgomery, TN		
1680 *Cleveland-Lorain-Elyria, OH	0.9886	0.9922
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9341	0.9544
El Paso, CO		
1740 Columbia, MO	0.8904	0.9236
Boone, MO		
1760 Columbia, SC	0.9160	0.9417
Lexington, SC		
Richland, SC		
1800 Columbus, GA–AL		
Russell, AL	0.7779	0.8420
Chattanoochee, GA		
Harris, GA		
Muscogee, GA		
1840 *Columbus, OH	0.9681	0.9780
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8881	0.9219
Nueces, TX		
San Patricio, TX		
1900 Cumberland, MD–WV	0.8671	0.9070
Allegany, MD		
Mineral, WV		
1920 *Dallas, TX	0.9729	0.9814
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8497	0.8945
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA–IL	0.8388	0.8866
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9559	0.9696
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.8871	0.9212
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8384	0.8863
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.7848	0.8471
Macon, IL		
2080 *Denver, CO	1.0166	1.0113
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8815	0.9173
Dallas, IA		
Polk, IA		
Warren, IA		
2160 *Detroit, MI	1.0724	1.0490
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7740	0.8391
Dale, AL		
Houston, AL		
2190 Dover, DE	0.8997	0.9302
Kent, DE		
2200 Dubuque, IA	0.8112	0.8665
Dubuque, IA		
2240 Duluth-Superior, MN–WI	0.9416	0.9596
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0589	1.0400
Dutchess, NY		
2290 Eau Claire, WI	0.8678	0.9075
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9464	0.9630
El Paso, TX		
2330 Elkhart-Goshen, IN	0.8801	0.9163
Elkhart, IN		
2335 Elmira, NY	0.8417	0.8887
Chemung, NY		
2340 Enid, OK	0.7862	0.8481
Garfield, OK		
42360 Erie, PA	0.9159	0.9416
Erie, PA		
2400 Eugene-Springfield, OR	1.1477	1.0989
Lane, OR		
2440 Evansville-Henderson, IN–KY	0.8983	0.9292
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND–MN	0.9045	0.9336

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.9007	0.9309
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7220	0.8001
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ–UT	0.9019	0.9317
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1248	1.0839
Genesee, MI		
2650 Florence, AL	0.8111	0.8664
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8594	0.9014
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0562	1.0382
Larimer, CO		
2680 *Ft. Lauderdale, FL	1.0586	1.0398
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9032	0.9327
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0169	1.0115
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR–OK	0.7867	0.8485
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.9192	0.9439
Okaloosa, FL		
2760 Fort Wayne, IN	0.8800	0.9162
Adams, IN		
Allen, IN		
DeKalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 *Forth Worth-Arlington, TX	1.0153	1.0105
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.1177	1.0792
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8881	0.9219
Etowah, AL		
2900 Gainesville, FL	0.9434	0.9609
Alachua, FL		
2920 Galveston-Texas City, TX	1.0997	1.0672
Galveston, TX		
2960 Gary, IN	0.9155	0.9413
Lake, IN		
Porter, IN		
2975 Glens Falls, NY	0.8562	0.8991
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8393	0.8869
Wayne, NC		
2985 Grand Forks, ND–MN	0.9207	0.9450
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.8625	0.9180
Mesa, CO		
3000 Grand Rapids-Muskegon-Holland, MI	1.0119	1.0081
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9015	0.9315
Cascade, MT		
3060 Greeley, CO	0.9690	0.9787
Weld, CO		
3080 Green Bay, WI	0.9366	0.9561
Brown, WI		
3120 *Greensboro-Winston-Salem-High Point, NC	0.9314	0.9525
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9078	0.9359
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.8927	0.9252
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9175	0.9427
Washington, MD		
3200 Hamilton-Middletown, OH	0.9490	0.9648
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	1.0158	1.0108
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 *Hartford, CT	1.2367	1.1566
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 *Hattiesburg, MS	0.7252	0.8025
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.7953	0.8548
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1461	1.0979
Honolulu, HI		
3350 Houma, LA	0.7853	0.8475
Lafourche, LA		
Terrebonne, LA		
3360 *Houston, TX	1.0000	1.0000
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV–KY–OH	0.9174	0.9427
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8206	0.8734
Limestone, AL		
Madison, AL		
3480 *Indianapolis, IN	0.9903	0.9933
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9361	0.9558
Johnson, IA		
3520 Jackson, MI	0.9045	0.9336
Jackson, MI		
3560 Jackson, MS	0.7928	0.8530
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8288	0.8793
Chester, TN		
Madison, TN		
3600 Jacksonville, FL	0.9089	0.9367
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 Jacksonville, NC	0.7055	0.7875
Onslow, NC		
3610 Jamestown, NY	0.7670	0.8339
Chautaqua, NY		
3620 Janesville-Beloit, WI	0.8645	0.9051
Rock, WI		
3640 Jersey City, NJ	1.1382	1.0927
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8901	0.9234
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8398	0.8873
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.7220	0.8001
Craighead, AR		
3710 Joplin, MO	0.7659	0.8331
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0542	1.0368
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.9115	0.9385
Kankakee, IL		
3760 *Kansas City, KS–MO	0.9478	0.9640
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9145	0.9406
Kenosha, WI		
3810 Killeen-Temple, TX	1.0392	1.0267
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8502	0.8948
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.8590	0.9012
Howard, IN		
Tipton, IN		
3870 La Crosse, WI–MN	0.8618	0.9032
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8165	0.8704
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8804	0.9165
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.8034	0.8608
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8668	0.9067
Polk, FL		
4000 Lancaster, PA	0.9583	0.9713
Lancaster, PA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
4040 Lansing-East Lansing, MI	1.0010	1.0007
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.7073	0.7889
Webb, TX		
4100 Las Cruces, NM	0.8497	0.8945
Dona Ana, NM		
4120 *Las Vegas, NV–AZ	1.0870	1.0588
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8597	0.9017
Douglas, KS		
4200 Lawton, OK	0.8365	0.8849
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9410	0.9592
Androscoggin, ME		
4280 Lexington, KY	0.8303	0.8804
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8732	0.9113
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9161	0.9418
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8597	0.9017
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8645	0.9051
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 *Los Angeles-Long Beach, CA	1.2382	1.1576
Los Angeles, CA		
4520 Louisville, KY–IN	0.9447	0.9618
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8510	0.8954
Lubbock, TX		
4640 Lynchburg, VA	0.8052	0.8621
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.8824	0.9179
Bibb, GA		
Houston, GA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0021	1.0014
Dane, WI		
4800 Mansfield, OH	0.8524	0.8964
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4215	0.5534
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8485	0.8936
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0082	1.0056
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9068	0.9352
Brevard, FL		
4920 *Memphis, TN–AR–MS	0.8166	0.8705
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0660	1.0447
Merced, CA		
5000 *Miami, FL	0.9938	0.9958
Dade, FL		
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0688	1.0466
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 *Milwaukee-Waukesha, WI	0.9645	0.9756
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 *Minneapolis-St. Paul, MN–WI	1.0777	1.0526
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7981	0.8569
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0112	1.0077
Stanislaus, CA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
5190 *Monmouth-Ocean, NJ	1.0996	1.0672
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8211	0.8737
Ouachita, LA		
5240 Montgomery, AL	0.7876	0.8492
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9714	0.9803
Delaware, IN		
5330 Myrtle Beach, SC	0.7790	0.8428
Horry, SC		
5345 Naples, FL	1.0199	1.0136
Collier, FL		
5360 *Nashville, TN	0.9081	0.9361
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford, TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 *Nassau-Suffolk, NY	1.3547	1.2311
Nassau, NY		
Suffolk, NY		
5483 *New Haven-Bridgeport-Stamford-Waterbury-	1.2750	1.1810
Danbury, CT		
Fairfield, CT		
New Haven, CT		
5523 New London-Norwich, CT	1.2317	1.1534
New London, CT		
5560 *New Orleans, LA	0.9294	0.9511
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 *New York, NY	1.4154	1.2686
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 *Newark, NJ	1.1036	1.0698
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY–PA	1.0803	1.0543
Orange, NY		
Pike, PA		
5720 *Norfolk-Virginia Beach-Newport News, VA–NC	0.8348	0.8837
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
5775 *Oakland, CA	1.5069	1.3242
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9105	0.9378
Marion, FL		
5800 Odessa-Midland, TX	0.8566	0.8994
Ector, TX		
Midland, TX		
5880 *Oklahoma City, OK	0.8371	0.8854
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0689	1.0467
Thurston, WA		
5920 Omaha, NE–IA	0.9480	0.9641
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 *Orange County, CA	1.1902	1.1266
Orange, CA		
5960 *Orlando, FL	0.9470	0.9634
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.7575	0.8268
Daviess, KY		
6015 Panama City, FL	0.8061	0.8628
Bay, FL		
6020 Parkersburg-Marietta, WV–OH	0.7877	0.8492
Washington, OH		
Wood, WV		
6080 Pensacola, FL	0.8202	0.8731
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8905	0.9237
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 *Philadelphia, PA–NJ	1.1237	1.0831
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 *Phoenix-Mesa, AZ	0.9810	0.9870
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7886	0.8499
Jefferson, AR		
6280 *Pittsburgh, PA	0.9701	0.9794
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA	1.0552	1.0375
Berkshire, MA		
6340 Pocatello, ID	0.8784	0.9150
Bannock, ID		
6360 Ponce, PR	0.4685	0.5950
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9619	0.9738
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 *Portland-Vancouver, OR–WA	1.1235	1.0830
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 Providence-Warwick-Pawtucket, RI	1.1092	1.0736
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	1.0116	1.0079
Utah, UT		
6560 Pueblo, CO	0.8284	0.8790
Pueblo, CO		
6580 Punta Gorda, FL	0.8353	0.8841
Charlotte, FL		
6600 Racine, WI	0.8835	0.9187
Racine, WI		
6640 Raleigh-Durham-Chapel Hill, NC	0.9728	0.9813

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8458	0.8916
Pennington, SD		
6680 Reading, PA	0.9445	0.9617
Berks, PA		
6690 Redding, CA	1.1605	1.1073
Shasta, CA		
6720 Reno, NV	1.1018	1.0686
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	0.9970	0.9979
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9194	0.9441
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 *Riverside-San Bernardino, CA	1.1234	1.0829
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8702	0.9092
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.0428	1.0291
Olmsted, MN		
6840 *Rochester, NY	0.9649	0.9758
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8994	0.9300
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8955	0.9272
Edgecombe, NC		
Nash, NC		
6920 *Sacramento, CA	1.2351	1.1556
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9667	0.9771
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9457	0.9625
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.8551	0.8983
Andrews, MO		
Buchanan, MO		
7040 *St. Louis, MO–IL	0.9022	0.9319
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	0.9728	0.9813
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.3803	1.2470
Monterey, CA		
7160 *Salt Lake City-Ogden, UT	0.9677	0.9778
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7577	0.8270
Tom Green, TX		
7240 *San Antonio, TX	0.8390	0.8867
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 *San Diego, CA	1.2154	1.1429
San Diego, CA		
7360 *San Francisco, CA	1.4211	1.2721
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 *San Jose, CA	1.4455	1.2870
Santa Clara, CA		
7440 *San Juan-Bayamon, PR	0.4506	0.5793
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1561	1.1044
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1242	1.0835
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3520	1.2294
Santa Cruz, CA		
7490 Santa Fe, NM	1.0823	1.0557
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.2487	1.1643
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9789	0.9855
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9649	0.9758
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8752	0.9128
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 *Seattle-Bellevue-Everett, WA	1.1384	1.0928
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA	0.8885	0.9222
Mercer, PA		
7620 Sheboygan, WI	0.7764	0.8409
Sheboygan, WI		
7640 Sherman-Denison, TX	0.8631	0.9041
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9359	0.9556
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA–NE	0.8313	0.8812
Woodbury, IA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Dakota, NE		
7760 Sioux Falls, SD	0.8620	0.9033
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9934	0.9955
St. Joseph, IN		
7840 Spokane, WA	1.0524	1.0356
Spokane, WA		
7880 Springfield, IL	0.8671	0.9070
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.7842	0.8466
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA	1.0586	1.0398
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9538	0.9681
Centre, PA		
8080 Steubenville-Weirton, OH–WV	0.8266	0.8777
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.1391	1.0933
San Joaquin, CA		
8140 Sumter, SC	0.7699	0.8360
Sumter, SC		
8160 Syracuse, NY	0.9396	0.9582
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.0866	1.0585
Pierce, WA		
8240 Tallahassee, FL	0.8313	0.8812
Gadsden, FL		
Leon, FL		
8280 *Tampa-St. Petersburg-Clearwater, FL	0.9302	0.9517
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.8591	0.9012
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8509	0.8953
Miller, AR		
Bowie, TX		
8400 Toledo, OH	1.0361	1.0246
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	1.0086	1.0059
Shawnee, KS		
8480 Trenton, NJ	1.0549	1.0373
Mercer, NJ		
8520 Tucson, AZ	0.9075	0.9357
Pima, AZ		
8560 Tulsa, OK	0.8095	0.8653
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.7784	0.8424
Tuscaloosa, AL		
8640 Tyler, TX	0.9996	0.9997
Smith, TX		
8680 Utica-Rome, NY	0.8413	0.8884
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3452	1.2252
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.1052	1.0709
Ventura, CA		
8750 Victoria, TX	0.8393	0.8869
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	0.9993	0.9995
Cumberland, NJ		
8780 Visalia-Tulare-Porterville, CA	1.0151	1.0103
Tulare, CA		
8800 Waco, TX	0.7772	0.8415
McLennan, TX		
8840 *Washington, DC–MD–VA–WV	1.0823	1.0557
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpepper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8705	0.9094
Black Hawk, IA		
8940 Wausau, WI	1.0323	1.0220
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL	1.0002	1.0001
Palm Beach, FL		
9000 Wheeling, OH–WV	0.7563	0.8259
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9369	0.9563
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.8041	0.8613
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8467	0.8923
Lycoming, PA		
9160 Wilmington-Newark, DE–MD	1.1315	1.0883
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9046	0.9336
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	1.0026	1.0018
Yakima, WA		
9270 Yolo, CA	1.1444	1.0968
Yolo, CA		
9280 York, PA	0.9104	0.9377
York, PA		
9320 Youngstown-Warren, OH	0.9742	0.9823
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0414	1.0282
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.9497	0.9653
Yuma, AZ		

*Large Urban Area

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7150	0.7947
Alaska	1.2444	1.1615
Arizona	0.7928	0.8530
Arkansas	0.6954	0.7798
California	1.0002	1.0001
Colorado	0.8092	0.8650
Connecticut	1.2759	1.1816
Delaware	0.9447	0.9618
Florida	0.8668	0.9067
Georgia	0.7653	0.8326
Hawaii	1.0245	1.0167
Idaho	0.8277	0.8785
Illinois	0.7553	0.8252
Indiana	0.8124	0.8674
Iowa	0.7366	0.8111
Kansas	0.7107	0.7915
Kentucky	0.7753	0.8401
Louisiana	0.7253	0.8026
Maine	0.8317	0.8814

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Maryland	0.8427	0.8894
Massachusetts	1.0770	1.0521
Michigan	0.8836	0.9187
Minnesota	0.8144	0.8688
Mississippi	0.6793	0.7674
Missouri	0.7261	0.8032
Montana	0.8128	0.8677
Nebraska	0.7214	0.7996
Nevada	0.8775	0.9144
New Hampshire	0.9751	0.9829
New Jersey [1]	.....	.....
New Mexico	0.8000	0.8583
New York	0.8558	0.8989
North Carolina	0.7953	0.8548
North Dakota	0.7358	0.8105
Ohio	0.8332	0.8825
Oklahoma	0.6942	0.7788
Oregon	0.9664	0.9769
Pennsylvania	0.8459	0.8917
Puerto Rico	0.4026	0.5363
Rhode Island [1]	.....	.....
South Carolina	0.7668	0.8337
South Dakota	0.7063	0.7881
Tennessee	0.7341	0.8092
Texas	0.7462	0.8183
Utah	0.8848	0.9196
Vermont	0.8921	0.9248
Virginia	0.7729	0.8383
Washington	0.9933	0.9954
West Virginia	0.7923	0.8526
Wisconsin	0.8430	0.8896
Wyoming	0.8177	0.8713

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index	GAF
Abilene, TX	0.8147	0.8691
Albuquerque, NM	0.9350	0.9550
Alexandria, LA	0.8194	0.8725
Allentown-Bethlehem-Easton, PA	0.9992	0.9995
Amarillo, TX	0.8730	0.9112
Anchorage, AK	1.3255	1.2128
Asheville, NC	0.9344	0.9546
Atlanta, GA	1.0033	1.0023
Bangor, ME	0.9391	0.9579
Baton Rouge, LA	0.8433	0.8898
Benton Harbor, MI	0.8550	0.8983
Benton Harbor, MI (Rural Michigan Hosp.)	0.8836	0.9187
Billings, MT	0.9086	0.9365
Birmingham, AL	0.9036	0.9329
Bismarck, ND	0.8074	0.8637
Boise City, ID	0.9383	0.9573
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1613	1.1078
Caguas, PR	0.4589	0.5866
Champaign-Urbana, IL	0.8978	0.9288
Charleston-North Charleston, SC	0.8963	0.9278
Charlotte-Gastonia-Rock Hill, NC–SC	0.9620	0.9738
Charlottesville, VA	0.8990	0.9297
Chattanooga, TN–GA	0.8847	0.9195
Chicago, IL	1.0658	1.0446
Cincinnati, OH–KY–IN	0.9568	0.9702
Cleveland-Lorain-Elyria, OH	0.9886	0.9922
Columbia, MO	0.8904	0.9236
Columbus, OH	0.9681	0.9780
Dallas, TX	0.9729	0.9814
Davenport-Moline-Rock Island, IA–IL	0.8388	0.8866
Denver, CO	1.0166	1.0113
Des Moines, IA	0.8714	0.9100
Duluth-Superior, MN–WI	0.9416	0.9596
Dutchess County, NY	1.0291	1.0198
Elkhart-Goshen, IN	0.8801	0.9163
Eugene-Springfield, OR	1.1477	1.0989
Fargo-Moorhead, ND–MN	0.8879	0.9218
Fayetteville, NC	0.8640	0.9047
Flagstaff, AR–UT	0.8828	0.9182
Flint, MI	1.1248	1.0839
Florence, AL	0.8111	0.8664
Florence, SC	0.8594	0.9014
Fort Lauderdale, FL	1.0586	1.0398
Fort Pierce-Port St. Lucie, FL	1.0027	1.0018
Fort Smith, AR–OK	0.7867	0.8485
Fort Walton Beach, FL	0.8980	0.9290
Fort Worth-Arlington, TX	1.0153	1.0105
Gadsden, AL	0.8881	0.9219
Gary, IN	0.9155	0.9413
Grand Forks, ND–MN	0.9207	0.9450
Grand Junction, CO	0.8825	0.9180
Grand Rapids-Muskegon-Holland, MI	1.0119	1.0081
Great Falls, MT	0.9015	0.9315
Greeley, CO	0.9388	0.9577
Green Bay, WI	0.9366	0.9561
Greensboro-Winston-Salem-High Point, NC	0.9314	0.9525
Greenville-Spartanburg-Anderson, SC	0.8927	0.9252
Hartford, CT	1.2191	1.1453
Honolulu, HI	1.1461	1.0979
Houston, TX	1.0000	1.0000
Huntington-Ashland, WV–KY–OH	0.9174	0.9427
Huntsville, AL	0.8081	0.8642
Indianapolis, IN	0.9796	0.9860
Jackson, MS	0.7928	0.8530
Jacksonville, FL	0.9089	0.9367
Johnson City-Kingsport-Bristol, TN–VA	0.8901	0.9234
Joplin, MO	0.7659	0.8331
Kalamazoo-Battlecreek, MI	1.0542	1.0368
Kansas City, KS–MO	0.9478	0.9640
Knoxville, TN	0.8502	0.8948
Lafayette, LA	0.8165	0.8704
Lansing-East Lansing, MI	1.0010	1.0007
Las Vegas, NV–AZ	1.0870	1.0588
Lexington, KY	0.8303	0.8804
Lima, OH	0.8732	0.9113
Lincoln, NE	0.9030	0.9325
Little Rock-North Little Rock, AR	0.8597	0.9017
Longview-Marshall, TX	0.8504	0.8950
Los Angeles-Long Beach, CA	1.2382	1.1576
Louisville, KY–IN	0.9447	0.9618
Macon, GA	0.8468	0.8924
Madison, WI	1.0021	1.0014
Mansfield, OH	0.8524	0.8964
Medford-Ashland, OR	1.0082	1.0056
Memphis, TN–AR–MS	0.8166	0.8705
Middlesex-Somerset-Hunterdon, NJ	1.0688	1.0466
Milwaukee-Waukesha, WI	0.9645	0.9756
Minneapolis-St. Paul, MN–WI	1.0777	1.0526
Modesto, CA	1.0112	1.0077
Monmouth-Ocean, NJ	1.0764	1.0517
Montgomery, AL	0.7876	0.8492
Nashville, TN	0.9081	0.9361
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2750	1.1810
New London-Norwich, CT	1.2317	1.1534
New Orleans, LA	0.9294	0.9511
New York, NY	1.4010	1.2597
Newark, NJ	1.1036	1.0698
Oakland, CA	1.5069	1.3242
Odessa-Midland, TX	0.8566	0.8994
Oklahoma City, OK	0.8371	0.8854
Omaha, NE–IA	0.9480	0.9641
Orange County, CA	1.1902	1.1266
Peoria-Pekin, IL	0.8905	0.9237
Philadelphia, PA–NJ	1.1237	1.0831
Pittsburgh, PA	0.9539	0.9682
Portland, ME	0.9619	0.9738
Portland-Vancouver, OR–WA	1.1235	1.0830
Provo-Orem, UT	1.0116	1.0079
Raleigh-Durham-Chapel Hill, NC	0.9602	0.9726
Rapid City, SD	0.8458	0.8916
Roanoke, VA	0.8702	0.9092
Rochester, MN	1.0428	1.0291
Rockford, IL	0.8994	0.9300
Sacramento, CA	1.2351	1.1556
Saginaw-Bay City-Midland, MI	0.9667	0.9771
St. Cloud, MN	0.9457	0.9625
St. Louis, MO–IL	0.9022	0.9319
Salt Lake City-Ogden, UT	0.9677	0.9778
San Diego, CA	1.2154	1.1429
San Francisco, CA	1.4211	1.2721
San Jose, CA	1.4455	1.2870
Santa Rosa, CA	1.2363	1.1563
Sarasota-Bradenton, FL	0.9789	0.9855
Seattle-Bellevue-Everett, WA	1.1384	1.0928
Sharon, PA	0.8885	0.9222
Sherman-Denison, TX	0.8631	0.9041

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Sioux Falls, SD	0.8620	0.9033
South Bend, IN	0.9934	0.9955
Springfield, IL	0.8671	0.9070
Springfield, MO	0.7842	0.8466
Stockton-Lodi, CA	1.1391	1.0933
Syracuse, NY	0.9396	0.9582
Tacoma, WA	1.0866	1.0585
Tampa-St. Petersburg-Clearwater, FL	0.9302	0.9517
Texarkana, AR-Texarkana, TX	0.8509	0.8953
Toledo, OH	1.0361	1.0246
Topeka, KS	0.9795	0.9859
Tucson, AZ	0.9075	0.9357
Tulsa, OK	0.8095	0.8653
Tyler, TX	0.9605	0.9728
Victoria, TX	0.8185	0.8718
Washington, DC–MD–VA–WV	1.0823	1.0557
Waterloo-Cedar Falls, IA	0.8591	0.9012
Wausau, WI	0.9698	0.9792
Wichita, KS	0.9211	0.9453
Rural Alabama	0.7150	0.7947
Rural Florida	0.8668	0.9067
Rural Kentucky	0.7753	0.8401
Rural Louisiana	0.7253	0.8026
Rural Michigan	0.8836	0.9187
Rural Minnesota	0.8144	0.8688
Rural New Hampshire	0.9751	0.9829
Rural North Carolina	0.7953	0.8548
Rural Virginia	0.7729	0.8383
Rural Virginia (Rural Kentucky Hosp.)	0.7753	0.8401
Rural Washington	0.9933	0.9954
Rural West Virginia	0.7923	0.8526
Rural Wyoming	0.8177	0.8713

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	15.7361
Aguadilla, PR	8.2856
Akron, OH	19.2662
Albany, GA	16.8101
Albany-Schenectady-Troy, NY	16.8634
Albuquerque, NM	18.2712
Alexandria, LA	15.8746
Allentown-Bethlehem-Easton, PA	19.5376
Altoona, PA	18.5951
Amarillo, TX	17.0704
Anchorage, AK	25.8567
Ann Arbor, MI	22.8035
Anniston, AL	15.6871
Appleton-Oshkosh-Neenah, WI	17.3835
Arecibo, PR	8.5979
Asheville, NC	18.2517
Athens, GA	18.3967
Atlanta, GA	19.6186
Atlantic-Cape May, NJ	21.6594
Augusta-Aiken, GA–SC	17.2764
Austin-San Marcos, TX	18.0941
Bakersfield, CA	19.9230
Baltimore, MD	19.1581

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Bangor, ME	18.3630
Barnstable-Yarmouth, MA	26.6928
Baton Rouge, LA	16.4888
Beaumont-Port Arthur, TX	16.7698
Bellingham, WA	22.1285
Benton Harbor, MI	16.6319
Bergen-Passaic, NJ	23.0426
Billings, MT	17.7662
Biloxi-Gulfport-Pascagoula, MS	16.7252
Binghamton, NY	17.2505
Birmingham, AL	17.6684
Bismarck, ND	15.4928
Bloomington, IN	16.9184
Bloomington-Normal, IL	17.5793
Boise City, ID	18.3461
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	22.7074
Boulder-Longmont, CO	18.6194
Brazoria, TX	17.9908
Bremerton, WA	21.3152
Brownsville-Harlingen-San Benito, TX	16.7030
Bryan-College Station, TX	17.3076
Buffalo-Niagara Falls, NY	17.8073
Burlington, VT	19.6864
Caguas, PR	8.9423
Canton-Massillon, OH	16.9098
Casper, WY	17.2484
Cedar Rapids, IA	16.5386
Champaign-Urbana, IL	18.3634
Charleston-North Charleston, SC	17.5265
Charleston, WV	18.6261
Charlotte-Gastonia-Rock Hill, NC–SC	18.8112
Charlottesville, VA	17.9005
Chattanooga, TN–GA	17.2991
Cheyenne, WY	15.0126
Chicago, IL	21.0400
Chico-Paradise, CA	20.3689
Cincinnati, OH–KY–IN	18.7085
Clarksville-Hopkinsville, TN–KY	15.0873
Cleveland-Lorain-Elyria, OH	19.3308
Colorado Springs, CO	18.2642
Columbia, MO	17.4002
Columbia, SC	17.9118
Columbus, GA–AL	15.2114
Columbus, OH	18.9295
Corpus Christi, TX	17.3648
Cumberland, MD–WV	16.9547
Dallas, TX	19.0236
Danville, VA	16.6152
Davenport-Moline-Rock Island, IA–IL	16.4021
Dayton-Springfield, OH	18.6913
Daytona Beach, FL	17.3459
Decatur, AL	16.3934
Decatur, IL	15.3452
Denver, CO	19.8786
Des Moines, IA	17.2370
Detroit, MI	20.9694
Dothan, AL	15.1351
Dover, DE	17.5916
Dubuque, IA	15.8624
Duluth-Superior, MN–WI	18.4105
Dutchess County, NY	20.7053
Eau Claire, WI	16.9692
El Paso, TX	18.5059
Elkhart-Goshen, IN	17.2083
Elmira, NY	16.4576

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Enid, OK	15.3724
Erie, PA	17.9082
Eugene-Springfield, OR	22.0384
Evansville, Henderson, IN–KY	17.5644
Fargo-Moorhead, ND–MN	17.6861
Fayetteville, NC	17.6113
Fayetteville-Springdale-Rogers, AR	14.1177
Flagstaff, AZ–UT	17.6344
Flint, MI	21.9933
Florence, AL	15.5219
Florence, SC	16.8047
Fort Collins-Loveland, CO	20.6529
Fort Lauderdale, FL	20.6250
Fort Myers-Cape Coral, FL	17.6607
Fort Pierce-Port St. Lucie, FL	19.8836
Fort Smith, AR–OK	15.3772
Fort Walton Beach, FL	17.9727
Fort Wayne, IN	17.2067
Fort Worth-Arlington, TX	19.8533
Fresno, CA	21.8549
Gadsden, AL	17.3656
Gainesville, FL	18.4465
Galveston-Texas City, TX	21.5032
Gary, IN	18.8504
Glens Falls, NY	16.7411
Goldsboro, NC	16.4109
Grand Forks, ND–MN	17.6200
Grand Junction, CO	16.2997
Grand Rapids-Muskegon-Holland, MI	19.7853
Great Falls, MT	16.9748
Greeley, CO	18.9481
Green Bay, WI	17.6730
Greensboro-Winston-Salem-High Point, NC	18.2112
Greenville, NC	17.7503
Greenville-Spartanburg-Anderson, SC	17.4559
Hagerstown, MD	17.9394
Hamilton-Middletown, OH	18.5562
Harrisburg-Lebanon-Carlisle, PA	19.8630
Hartford, CT	24.1823
Hattiesburg, MS	14.1809
Hickory-Morganton-Lenoir, NC	16.8672
Honolulu, HI	22.4099
Houma, LA	15.3561
Houston, TX	19.5534
Huntington-Ashland, WV–KY–OH	17.9378
Huntsville, AL	16.0449
Indianapolis, IN	19.3630
Iowa City, IA	18.3037
Jackson, MI	17.6864
Jackson, MS	15.4167
Jackson, TN	16.2068
Jacksonville, FL	17.7663
Jacksonville, NC	13.7955
Jamestown, NY	14.9979
Janesville-Beloit, WI	16.9030
Jersey City, NJ	22.2562
Johnson City-Kingsport-Bristol, TN–VA	17.3717
Johnstown, PA	16.4213
Jonesboro, AR	14.1168
Joplin, MO	14.9353
Kalamazoo-Battlecreek, MI	20.6127
Kankakee, IL	17.8236
Kansas City, KS–MO	18.5333
Kenosha, WI	17.8819

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Killeen-Temple, TX	20.3189
Knoxville, TN	16.6250
Kokomo, IN	16.7962
La Crosse, WI–MN	16.8513
Lafayette, LA	15.9607
Lafayette, IN	17.1690
Lake Charles, LA	15.7084
Lakeland-Winter Haven, FL	17.1559
Lancaster, PA	18.7384
Lansing-East Lansing, MI	19.5719
Laredo, TX	13.8306
Las Cruces, NM	16.6145
Las Vegas, NV–AZ	21.2545
Lawrence, KS	16.8098
Lawton, OK	16.3566
Lewiston-Auburn, ME	18.3998
Lexington, KY	16.2159
Lima, OH	17.0746
Lincoln, NE	17.9136
Little Rock-North Little Rock, AR	16.8095
Longview-Marshall, TX	16.9037
Los Angeles-Long Beach, CA	24.1347
Louisville, KY–IN	18.4730
Lubbock, TX	16.6400
Lynchburg, VA	15.7441
Macon, GA	17.2534
Madison, WI	19.5953
Mansfield, OH	16.6677
Mayaguez, PR	8.2422
McAllen-Edinburg-Mission, TX	16.5901
Medford-Ashland, OR	19.6857
Melbourne-Titusville-Palm Bay, FL	17.7314
Memphis, TN–AR–MS	15.9681
Merced, CA	20.8439
Miami, FL	19.4323
Middlesex-Somerset-Hunterdon, NJ	21.2792
Milwaukee-Waukesha, WI	18.8591
Minneapolis-St. Paul, MN–WI	21.0727
Mobile, AL	15.6052
Modesto, CA	20.7262
Monmouth-Ocean, NJ	21.1825
Monroe, LA	16.0553
Montgomery, AL	15.4009
Muncie, IN	18.9936
Myrtle Beach, SC	15.2321
Naples, FL	19.9423
Nashville, TN	17.7573
Nassau-Suffolk, NY	26.4893
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	24.8405
New London-Norwich, CT	23.9754
New Orleans, LA	18.1738
New York, NY	27.6763
Newark, NJ	22.9987
Newburgh, NY–PA	21.1229
Norfolk-Virginia Beach-Newport News, VA–NC	16.3222
Oakland, CA	29.3127
Ocala, FL	17.8031
Odessa-Midland, TX	16.5854
Oklahoma City, OK	16.3683
Olympia, WA	20.9003
Omaha, NE–IA	18.5371
Orange County, CA	23.3969
Orlando, FL	18.5164
Owensboro, KY	14.8119
Panama City, FL	15.7629
Parkersburg-Marietta, WV–OH	15.4018
Pensacola, FL	16.0371
Peoria-Pekin, IL	17.4120
Philadelphia, PA–NJ	21.9722
Phoenix-Mesa, AZ	19.1821
Pine Bluff, AR	15.4205
Pittsburgh, PA	18.9688
Pittsfield, MA	20.6334
Pocatello, ID	17.1752
Ponce, PR	9.1599
Portland, ME	18.8079
Portland-Vancouver, OR–WA	21.9679
Providence-Warwick, RI	21.6876
Provo-Orem, UT	19.7809
Pueblo, CO	16.1970
Punta Gorda, FL	16.3323
Racine, WI	17.2751
Raleigh-Durham-Chapel Hill, NC	19.0221
Rapid City, SD	16.5325
Reading, PA	18.4690
Redding, CA	22.6922
Reno, NV	21.5443
Richland-Kennewick-Pasco, WA	19.4956
Richmond-Petersburg, VA	17.9776
Riverside-San Bernardino, CA	22.2475
Roanoke, VA	17.0151
Rochester, MN	20.3908
Rochester, NY	18.8662
Rockford, IL	17.5872
Rocky Mount, NC	17.5097
Sacramento, CA	24.1510
Saginaw-Bay City-Midland, MI	18.7939
St. Cloud, MN	18.4907
St. Joseph, MO	16.7196
St. Louis, MO–IL	17.6400
Salem, OR	19.0205
Salinas, CA	26.9904
Salt Lake City-Ogden, UT	18.9211
San Angelo, TX	14.8158
San Antonio, TX	16.4044
San Diego, CA	23.7268
San Francisco, CA	27.8836
San Jose, CA	28.3887
San Juan-Bayamon, PR	8.8111
San Luis Obispo-Atascadero-Paso Robles, CA	22.6053
Santa Barbara-Santa Maria-Lompoc, CA	21.9816
Santa Cruz-Watsonville, CA	26.4364
Santa Fe, NM	21.1622
Santa Rosa, CA	24.4155
Sarasota-Bradenton, FL	19.1406
Savannah, GA	18.8663
Scranton-Wilkes Barre-Hazleton, PA	17.1121
Seattle-Bellevue-Everett, WA	22.2595
Sharon, PA	17.3726
Sheboygan, WI	15.1817
Sherman-Denison, TX	16.8423
Shreveport-Bossier City, LA	18.2999
Sioux City, IA–NE	16.2539
Sioux Falls, SD	16.8540
South Bend, IN	19.4248
Spokane, WA	20.5788
Springfield, IL	16.9538
Springfield, MO	15.2957
Springfield, MA	20.6983
State College, PA	18.6507
Steubenville-Weirton, OH–WV	16.1632
Stockton-Lodi, CA	22.1532
Sumter, SC	15.0540
Syracuse, NY	18.3703
Tacoma, WA	21.2354
Tallahassee, FL	16.2555
Tampa-St. Petersburg-Clearwater, FL	18.0859
Terre Haute, IN	16.7989
Texarkana, AR-Texarkana, TX	16.6266
Toledo, OH	20.2601
Topeka, KS	19.7210
Trenton, NJ	20.6259
Tucson, AZ	17.7311
Tulsa, OK	15.8281
Tuscaloosa, AL	15.2197
Tyler, TX	19.5462
Utica-Rome, NY	16.4509
Vallejo-Fairfield-Napa, CA	27.2708
Ventura, CA	22.3964
Victoria, TX	16.4116
Vineland-Millville-Bridgeton, NJ	19.5394
Visalia-Tulare-Porterville, CA	19.8483
Waco, TX	15.1959
Washington, DC–MD–VA–WV	21.1632
Waterloo-Cedar Falls, IA	17.0208
Wausau, WI	20.1856
West Palm Beach-Boca Raton, FL	19.9482
Wheeling, OH–WV	14.7877
Wichita, KS	18.3188
Wichita Falls, TX	15.7237
Williamsport, PA	16.5567
Wilmington-Newark, DE–MD	22.1249
Wilmington, NC	17.6887
Yakima, WA	19.6049
Yolo, CA	22.3769
York, PA	17.8006
Youngstown-Warren, OH	19.0484
Yuba City, CA	20.3622
Yuma, AZ	18.5693

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	13.9255
Alaska	24.3314
Arizona	15.5012
Arkansas	13.5966
California	19.5577
Colorado	15.8231
Connecticut	24.9480
Delaware	18.4711
Florida	16.9485
Georgia	14.9642
Hawaii	20.0330
Idaho	16.1848
Illinois	14.7683
Indiana	15.8851
Iowa	14.4039
Kansas	13.8962
Kentucky	15.1598
Louisiana	14.1417
Maine	16.2618
Maryland	16.4777
Massachusetts	21.0582
Michigan	17.2651

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Minnesota	15.9249
Mississippi	13.2829
Missouri	14.1978
Montana	15.8928
Nebraska	14.1063
Nevada	17.1588
New Hampshire	19.0549
New Jersey [1]	.....
New Mexico	15.6424
New York	16.7329
North Carolina	15.5456

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
North Dakota	14.3865
Ohio	16.2910
Oklahoma	13.5735
Oregon	18.8958
Pennsylvania	16.5277
Puerto Rico	7.8716
Rhode Island [1]	.....
South Carolina	14.9937
South Dakota	13.8107
Tennessee	14.3532
Texas	14.5903

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Utah	17.3014
Vermont	17.4440
Virginia	15.0809
Washington	19.4229
West Virginia	15.4544
Wisconsin	16.4842
Wyoming	15.9886

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0486	7.7	11.1	32
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.0134	8.4	11.6	32
3	01	SURG	*CRANIOTOMY AGE 0–17	1.9167	12.7	12.7	37
4	01	SURG	SPINAL PROCEDURES	2.3399	5.9	9.1	30
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5143	3.4	4.4	26
6	01	SURG	CARPAL TUNNEL RELEASE	.7419	2.4	3.4	26
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC.	2.4886	8.1	12.6	32
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	1.0962	2.6	3.9	27
9	01	MED	SPINAL DISORDERS & INJURIES	1.2677	5.4	7.8	29
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2196	5.7	8.1	30
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8000	3.5	5.0	28
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9457	5.4	7.7	29
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7770	5.0	6.2	29
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA.	1.1999	5.5	7.5	30
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS.	.7231	3.5	4.5	27
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0371	4.9	6.6	29
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC.	.6331	3.0	4.0	26
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9319	4.8	6.4	29
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6230	3.4	4.5	27
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS.	2.4854	8.6	11.6	33
21	01	MED	VIRAL MENINGITIS	1.4910	5.8	7.8	30
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.8353	3.8	4.9	28
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8089	3.6	5.1	28
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9694	4.2	5.8	28
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5793	3.0	3.9	24
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.7387	3.3	4.6	27
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3060	3.6	6.3	28
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC.	1.2033	4.8	7.1	29
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC.	.6371	3.0	4.1	27
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3241	2.0	2.0	17
31	01	MED	CONCUSSION AGE >17 W CC	.8412	3.7	5.4	28
32	01	MED	CONCUSSION AGE >17 W/O CC	.4861	2.3	3.1	20
33	01	MED	*CONCUSSION AGE 0–17	.2037	1.6	1.6	9
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0673	4.6	6.5	29
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.6149	3.2	4.3	27
36	02	SURG	RETINAL PROCEDURES	.6134	1.3	1.6	6
37	02	SURG	ORBITAL PROCEDURES	.9323	2.7	4.0	27
38	02	SURG	PRIMARY IRIS PROCEDURES	.4282	1.9	2.6	17
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5184	1.5	2.0	10
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17.	.7072	2.2	3.4	26
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17.	.3299	1.6	1.6	7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS.	.5816	1.6	2.2	13
43	02	MED	HYPHEMA	.4520	3.3	4.2	27
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6237	4.7	5.7	29
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6525	3.1	3.8	22
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7656	4.0	5.6	28
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4664	2.8	3.8	27
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2907	2.9	2.9	27
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7245	4.1	5.7	28
50	03	SURG	SIALOADENECTOMY	.7686	1.7	2.1	9
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY.	.7345	1.9	2.9	20
52	03	SURG	CLEFT LIP & PALATE REPAIR	1.0271	2.1	3.4	24
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.0128	2.2	3.6	26
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4712	3.2	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.7880	2.0	3.0	22
56	03	SURG	RHINOPLASTY	.8283	2.1	2.7	18
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.9325	2.8	4.1	27
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2676	1.5	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.7439	2.3	3.6	26
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2038	1.5	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.1960	2.7	5.1	27
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2885	1.3	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES.	1.2168	3.2	4.7	27
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1737	4.8	7.6	29
65	03	MED	DYSEQUILIBRIUM	.5195	2.7	3.4	20
66	03	MED	EPISTAXIS	.5366	2.9	3.6	21
67	03	MED	EPIGLOTTITIS	.8397	3.4	4.2	24
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.7098	3.9	4.8	27
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5239	3.1	3.8	20
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3727	2.4	2.9	15
71	03	MED	LARYNGOTRACHEITIS	.7702	3.1	4.0	27
72	03	MED	NASAL TRAUMA & DEFORMITY	.6532	3.1	4.4	27
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17.	.7505	3.7	5.0	28
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	.3278	2.1	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.1951	8.8	11.2	33
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.6036	9.1	12.5	33
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1593	3.8	5.5	28
78	04	MED	PULMONARY EMBOLISM	1.4292	7.0	8.3	31
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC.	1.6300	7.2	9.3	31
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.9436	5.3	6.6	29
81	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17.	1.4845	6.3	7.8	30
82	04	MED	RESPIRATORY NEOPLASMS	1.3319	5.7	7.9	30
83	04	MED	MAJOR CHEST TRAUMA W CC	.9782	4.9	6.4	29
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5319	2.9	3.7	23
85	04	MED	PLEURAL EFFUSION W CC	1.2200	5.6	7.4	30
86	04	MED	PLEURAL EFFUSION W/O CC	.7117	3.4	4.5	27
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3615	5.1	6.9	29
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9846	4.9	6.1	29
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1156	5.8	7.1	30
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6978	4.3	5.1	24
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.7524	3.5	4.5	27
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2029	5.6	7.3	30
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7498	4.0	4.9	28
94	04	MED	PNEUMOTHORAX W CC	1.1780	5.3	7.1	29
95	04	MED	PNEUMOTHORAX W/O CC	.5996	3.3	4.1	25
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.8272	4.5	5.5	29
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6035	3.6	4.3	22
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.7807	2.9	4.3	27

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

					Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
99		04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6869	2.7	3.5	22
100		04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5113	2.0	2.4	12
101		04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8748	3.9	5.2	28
102		04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5335	2.4	3.1	20
103		05	SURG	HEART TRANSPLANT	15.3358	28.4	40.0	52
104		05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.3199	12.0	14.6	36
105		05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.5998	9.0	11.0	33
106		05	SURG	CORONARY BYPASS W CARDIAC CATH	5.5564	10.3	11.7	34
107		05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.0685	7.8	8.8	32
108		05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9135	9.8	12.6	34
109				NO LONGER VALID	.0000	.0	.0	0
110		05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1589	8.2	10.9	32
111		05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2875	5.9	6.7	30
112		05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0946	3.5	4.7	27
113		05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.6935	10.6	14.4	35
114		05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5152	6.8	9.5	31
115		05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK.	3.6827	9.1	11.5	33
116		05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PROC.	2.4150	3.9	5.4	28
117		05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.1764	2.7	4.1	27
118		05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5825	2.1	3.2	25
119		05	SURG	VEIN LIGATION & STRIPPING	1.1435	3.3	5.5	27
120		05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9318	5.4	9.2	29
121		05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE.	1.6482	6.4	7.8	30
122		05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE.	1.1617	4.4	5.3	28
123		05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4555	2.7	4.7	27
124		05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.3258	3.8	5.0	28
125		05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	.9246	2.3	3.1	20
126		05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5379	11.0	14.3	35
127		05	MED	HEART FAILURE & SHOCK	1.0265	4.8	6.2	29
128		05	MED	DEEP VEIN THROMBOPHLEBITIS	.7861	5.9	6.7	27
129		05	MED	CARDIAC ARREST, UNEXPLAINED	1.1316	2.0	3.5	26
130		05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9352	5.3	6.7	29
131		05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6038	4.3	5.2	28
132		05	MED	ATHEROSCLEROSIS W CC	.6840	2.9	3.6	20
133		05	MED	ATHEROSCLEROSIS W/O CC	.5537	2.3	2.9	16
134		05	MED	HYPERTENSION	.5787	3.0	3.9	23
135		05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC.	.8838	3.7	5.0	28
136		05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.5629	2.6	3.3	18
137		05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17.	.7999	3.3	3.3	27
138		05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC.	.8008	3.5	4.6	27
139		05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC.	.4971	2.4	2.9	16
140		05	MED	ANGINA PECTORIS	.6205	2.8	3.5	20
141		05	MED	SYNCOPE & COLLAPSE W CC	.7128	3.4	4.5	27
142		05	MED	SYNCOPE & COLLAPSE W/O CC	.5288	2.5	3.2	18
143		05	MED	CHEST PAIN	.5223	2.1	2.6	14
144		05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0857	4.1	5.7	28
145		05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6208	2.5	3.2	20
146		06	SURG	RECTAL RESECTION W CC	2.6363	9.8	11.2	34
147		06	SURG	RECTAL RESECTION W/O CC	1.6018	6.7	7.3	27
148		06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3710	11.2	13.5	35
149		06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.5999	7.0	7.7	25
150		06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.6828	9.5	11.7	34
151		06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2910	5.2	6.5	29
152		06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9311	7.6	9.0	32

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
153 ...	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.1568	5.6	6.2	24
154 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1817	11.6	15.0	36
155 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.4059	4.5	5.9	29
156 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8238	6.0	6.0	30
157 ...	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.1352	4.2	5.8	28
158 ...	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6077	2.3	2.9	18
159 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.2268	4.0	5.3	28
160 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7026	2.4	3.0	16
161 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC.	1.0066	3.0	4.4	27
162 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC.	.5707	1.7	2.2	11
163 ...	06	SURG	*HERNIA PROCEDURES AGE 0–17	.7706	2.1	2.1	11
164 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC.	2.3386	8.0	9.4	32
165 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC.	1.2582	5.1	5.8	24
166 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC.	1.4497	4.5	5.7	29
167 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC.	.8431	2.8	3.2	15
168 ...	03	SURG	MOUTH PROCEDURES W CC	1.0929	3.2	5.0	27
169 ...	03	SURG	MOUTH PROCEDURES W/O CC	.6717	2.0	2.5	15
170 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.7453	8.5	12.5	33
171 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC.	1.1202	4.0	5.4	28
172 ...	06	MED	DIGESTIVE MALIGNANCY W CC	1.2920	5.7	8.2	30
173 ...	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6769	3.0	4.4	27
174 ...	06	MED	G.I. HEMORRHAGE W CC	.9952	4.4	5.6	28
175 ...	06	MED	G.I. HEMORRHAGE W/O CC	.5485	2.9	3.5	17
176 ...	06	MED	COMPLICATED PEPTIC ULCER	1.0856	4.7	6.2	29
177 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8335	4.0	5.0	28
178 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6091	3.0	3.6	19
179 ...	06	MED	INFLAMMATORY BOWEL DISEASE	1.1188	5.5	7.2	30
180 ...	06	MED	G.I. OBSTRUCTION W CC	.9194	4.7	6.1	29
181 ...	06	MED	G.I. OBSTRUCTION W/O CC	.5338	3.3	4.0	22
182 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7789	3.8	5.0	28
183 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5553	2.8	3.4	20
184 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.5414	2.8	3.9	27
185 ...	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8424	3.7	5.2	28
186 ...	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3140	2.9	2.9	23
187 ...	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7104	3.1	4.2	27
188 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC.	1.0591	4.5	6.1	28
189 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC.	.5640	2.7	3.7	27
190 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	.8769	3.9	5.1	28
191 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4543	12.1	16.3	36
192 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7889	6.2	7.9	30
193 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.2878	11.4	13.9	35
194 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.7549	6.8	8.5	31
195 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.6894	8.8	10.5	33
196 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6127	5.8	6.7	30
197 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.2679	7.5	9.2	31
198 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1738	4.3	4.9	23

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
199 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY.	2.3728	8.4	11.2	32
200 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.1772	7.9	12.4	32
201 ...	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES.	3.7669	12.1	16.8	36
202 ...	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3675	5.7	7.8	30
203 ...	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS.	1.2486	5.5	7.7	30
204 ...	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2004	5.1	6.8	29
205 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC.	1.2194	5.3	7.3	29
206 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC.	.7159	3.6	4.7	28
207 ...	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0508	4.4	5.8	28
208 ...	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6045	2.6	3.5	21
209 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.2606	5.9	6.7	23
210 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8460	7.2	8.6	31
211 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2740	5.6	6.3	23
212 ...	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17.	1.1487	11.1	11.1	35
213 ...	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7049	7.0	9.7	31
214 ...	08	SURG	BACK & NECK PROCEDURES W CC	1.9255	4.9	6.5	29
215 ...	08	SURG	BACK & NECK PROCEDURES W/O CC	1.1119	3.0	3.7	20
216 ...	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.0784	7.9	11.1	32
217 ...	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	2.8812	10.2	15.4	34
218 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4574	4.8	6.2	29
219 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9553	3.1	3.8	19
220 ...	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5706	5.3	5.3	29
221 ...	08	SURG	KNEE PROCEDURES W CC	1.8340	5.8	8.1	30
222 ...	08	SURG	KNEE PROCEDURES W/O CC	1.0177	3.1	4.0	27
223 ...	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.8720	2.2	2.9	16
224 ...	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.7417	1.9	2.3	10
225 ...	08	SURG	FOOT PROCEDURES	1.0020	3.3	5.0	27
226 ...	08	SURG	SOFT TISSUE PROCEDURES W CC	1.3831	4.4	6.7	28
227 ...	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.7449	2.3	3.0	18
228 ...	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	.9349	2.3	3.5	26
229 ...	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC.	.6512	1.8	2.4	13
230 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.0567	3.3	5.2	27
231 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.2263	3.3	5.1	27
232 ...	08	SURG	ARTHROSCOPY	1.0884	2.6	4.5	27
233 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC.	2.0170	6.4	9.1	30
234 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	1.0675	3.1	4.1	27
235 ...	08	MED	FRACTURES OF FEMUR	.8395	4.7	6.9	29
236 ...	08	MED	FRACTURES OF HIP & PELVIS	.7620	4.7	6.4	29
237 ...	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.	.5637	3.3	4.4	27
238 ...	08	MED	OSTEOMYELITIS	1.3796	7.6	10.1	32
239 ...	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0115	5.8	7.6	30
240 ...	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2112	5.5	7.5	30
241 ...	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6029	3.5	4.6	28
242 ...	08	MED	SEPTIC ARTHRITIS	1.0492	5.8	7.7	30

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
243	08	MED	MEDICAL BACK PROBLEMS	.7241	4.3	5.6	28
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7279	4.3	5.8	28
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC.	.4954	3.2	4.3	27
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5887	3.6	4.6	28
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5523	2.9	4.0	27
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7325	3.9	5.3	28
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6522	2.9	4.3	27
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6915	3.6	5.1	28
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4640	2.5	3.3	22
252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17.	.2479	1.8	1.8	15
253	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7438	4.3	5.8	28
254	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4451	2.9	3.9	25
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17.	.2886	2.9	2.9	27
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7651	4.0	5.7	28
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.9015	2.8	3.4	17
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7087	2.2	2.5	10
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8640	2.3	3.5	26
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6083	1.6	1.9	8
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.8286	1.9	2.3	12
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY.	.7695	2.7	3.9	27
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKIN ULCER OR CELLULITIS W CC.	2.1226	9.9	13.9	34
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKIN ULCER OR CELLULITIS W/O CC.	1.1270	6.0	8.3	30
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.4993	4.8	7.7	29
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.7629	2.7	3.7	27
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.8330	2.8	4.3	27
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	.9916	2.5	4.1	27
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6416	6.3	9.3	30
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7003	2.4	3.4	26
271	09	MED	SKIN ULCERS	1.0816	6.6	8.5	31
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0158	5.6	7.5	30
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6346	4.1	5.5	28
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.0760	5.3	7.9	29
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5085	2.5	3.7	27
276	09	MED	NON-MALIGNANT BREAST DISORDERS	.6374	3.9	5.0	28
277	09	MED	CELLULITIS AGE >17 W CC	.8526	5.5	6.7	29
278	09	MED	CELLULITIS AGE >17 W/O CC	.5774	4.3	5.2	25
279	09	MED	*CELLULITIS AGE 0–17	.7190	4.2	4.2	24
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC.	.6750	3.7	5.1	28
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4560	2.7	3.6	24
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17.	.2509	2.2	2.2	19
283	09	MED	MINOR SKIN DISORDERS W CC	.6990	4.1	5.5	28
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4340	2.9	3.8	26
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.2015	9.5	13.7	34
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.3775	6.6	8.7	31
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.9765	9.4	13.4	33
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0104	5.2	6.9	29
289	10	SURG	PARATHYROID PROCEDURES	1.0198	2.7	4.0	27
290	10	SURG	THYROID PROCEDURES	.8798	2.1	2.8	15

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
291	10	SURG	THYROGLOSSAL PROCEDURES	.5189	1.4	1.8	8
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC.	2.6450	8.4	12.8	32
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC.	1.2671	4.6	6.8	29
294	10	MED	DIABETES AGE >35	.7594	4.3	5.7	28
295	10	MED	DIABETES AGE 0–35	.7159	3.3	4.3	27
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC.	.8929	4.7	6.4	29
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5364	3.3	4.3	26
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17.	.5221	2.5	3.4	23
299	10	MED	INBORN ERRORS OF METABOLISM	.8330	3.9	5.4	28
300	10	MED	ENDOCRINE DISORDERS W CC	1.0950	5.5	7.3	30
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6182	3.4	4.4	27
302	11	SURG	KIDNEY TRANSPLANT	3.9047	10.4	12.3	34
303	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.6409	8.4	10.2	32
304	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3716	7.5	10.3	31
305	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1776	3.9	4.9	28
306	11	SURG	PROSTATECTOMY W CC	1.2258	4.3	6.2	28
307	11	SURG	PROSTATECTOMY W/O CC	.6708	2.4	3.0	15
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5252	4.7	7.0	29
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.8860	2.3	3.0	18
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.0015	3.2	4.6	27
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5670	1.8	2.2	11
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	.9124	3.2	4.8	27
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.5223	1.8	2.3	13
314	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4836	2.3	2.3	26
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0574	5.3	9.3	29
316	11	MED	RENAL FAILURE	1.3034	5.4	7.6	29
317	11	MED	ADMIT FOR RENAL DIALYSIS	.4845	1.9	2.9	20
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1296	5.0	7.2	29
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5772	2.3	3.2	24
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC.	.9048	5.1	6.4	29
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC.	.6077	3.9	4.7	24
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.5133	3.6	4.4	23
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7496	2.7	3.6	24
324	11	MED	URINARY STONES W/O CC	.4159	1.7	2.1	10
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	.6377	3.4	4.6	27
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4320	2.4	3.4	19
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17.	.2341	3.1	3.1	27
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.6886	3.1	4.3	27
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4567	2.1	2.8	17
330	11	MED	*URETHRAL STRICTURE AGE 0–17	.3115	1.6	1.6	9
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC.	.9914	4.6	6.2	29
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.6070	2.8	3.9	27
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17.	.8562	4.3	5.8	28
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.6653	5.3	6.1	23
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.2610	4.2	4.6	17
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8848	3.2	4.1	24
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6147	2.3	2.7	11
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.0499	3.5	5.3	27
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.0194	3.1	5.3	27
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2769	2.4	2.4	13
341	12	SURG	PENIS PROCEDURES	1.0745	2.3	3.3	21
342	12	SURG	CIRCUMCISION AGE >17	.7578	2.7	4.0	27
343	12	SURG	*CIRCUMCISION AGE 0–17	.1504	1.7	1.7	6

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
344 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0083	2.3	3.5	25
345 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8422	2.8	4.0	27
346 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9559	4.8	6.8	29
347 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC.	.5096	2.4	3.3	25
348 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7107	3.6	4.9	28
349 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.3974	2.2	3.0	20
350 ...	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM.	.6611	3.9	4.8	24
351 ...	12	MED	*STERILIZATION, MALE	.2309	1.3	1.3	5
352 ...	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5877	2.8	3.9	27
353 ...	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9174	6.7	8.3	31
354 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4643	5.2	6.3	28
355 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9056	3.6	3.9	11
356 ...	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7376	2.6	3.0	12
357 ...	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3824	8.0	9.8	32
358 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC.	1.1713	4.1	4.8	19
359 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC.	.8285	3.0	3.3	10
360 ...	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8459	2.9	3.5	17
361 ...	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1148	2.5	3.5	23
362 ...	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.2951	1.4	1.4	5
363 ...	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY.	.6911	2.6	3.5	21
364 ...	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.6739	2.6	3.6	27
365 ...	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES.	1.7237	5.3	8.1	29
366 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1941	5.3	7.8	29
367 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC.	.5216	2.3	3.2	24
368 ...	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.0230	5.3	6.9	29
369 ...	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5454	2.6	3.7	27
370 ...	14	SURG	CESAREAN SECTION W CC	1.0401	4.3	5.6	26
371 ...	14	SURG	CESAREAN SECTION W/O CC	.6838	3.2	3.6	11
372 ...	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5439	2.4	3.4	20
373 ...	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3602	1.7	1.9	7
374 ...	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.6775	2.0	2.6	11
375 ...	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C.	.6698	4.4	4.4	28
376 ...	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.5638	2.3	3.4	25
377 ...	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	.8188	2.1	3.3	26
378 ...	14	MED	ECTOPIC PREGNANCY	.8054	2.4	2.9	15
379 ...	14	MED	THREATENED ABORTION	.3591	2.0	3.0	21
380 ...	14	MED	ABORTION W/O D&C	.4775	1.7	2.3	12
381 ...	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.5151	1.7	2.3	14
382 ...	14	MED	FALSE LABOR	.2013	1.3	1.6	6
383 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.4655	2.8	4.1	27
384 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.3921	1.8	3.1	22
385 ...	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3443	1.8	1.8	26
386 ...	15		*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.4329	17.9	17.9	42
387 ...	15		*PREMATURITY W MAJOR PROBLEMS	3.0276	13.3	13.3	37
388 ...	15		*PREMATURITY W/O MAJOR PROBLEMS	1.8268	8.6	8.6	33
389 ...	15		FULL TERM NEONATE W MAJOR PROBLEMS	2.2451	7.9	10.7	32
390 ...	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	1.2845	3.6	4.7	28

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
391	15		*NORMAL NEWBORN	.1490	3.1	3.1	11
392	16	SURG	SPLENECTOMY AGE >17	3.2443	8.9	11.7	33
393	16	SURG	*SPLENECTOMY AGE 0–17	1.3168	9.1	9.1	33
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.5994	4.5	8.0	28
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8362	3.9	5.4	28
396	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	.6966	2.7	3.8	27
397	16	MED	COAGULATION DISORDERS	1.2612	4.4	6.1	28
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC.	1.2106	5.2	6.6	29
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC.	.7030	3.5	4.4	27
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5572	6.7	10.4	31
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.4834	8.5	12.4	32
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0255	3.1	4.7	27
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6925	6.5	9.3	30
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8059	3.7	5.1	28
405	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17.	1.8669	4.9	4.9	29
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC.	2.6841	8.1	11.3	32
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC.	1.1787	3.8	4.9	28
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC.	1.7393	5.0	8.2	29
409	17	MED	RADIOTHERAPY	.9763	4.7	6.7	29
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.7514	2.6	3.4	20
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3837	2.1	2.7	16
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4080	2.1	3.0	23
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	1.3257	6.0	8.4	30
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7337	3.7	5.2	28
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES.	3.4430	11.4	15.8	35
416	18	MED	SEPTICEMIA AGE >17	1.4838	6.2	8.3	30
417	18	MED	SEPTICEMIA AGE 0–17	.8089	3.7	4.6	28
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9697	5.4	6.8	29
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8991	4.4	5.7	28
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6264	3.5	4.3	24
421	18	MED	VIRAL ILLNESS AGE >17	.7153	3.6	4.7	28
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17.	.5347	2.9	3.8	25
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES.	1.5947	6.3	8.8	30
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.3637	10.9	18.0	35
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION.	.7051	3.5	4.9	27
426	19	MED	DEPRESSIVE NEUROSES	.5680	3.9	5.5	28
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5495	3.7	5.2	28
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7303	5.2	8.4	29
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9075	5.9	9.0	30
430	19	MED	PSYCHOSES	.8391	6.9	9.8	31
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6556	4.9	7.2	29
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7363	3.9	6.5	28
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2986	2.5	3.4	25
434	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.7141	4.3	5.8	28
435	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4164	3.8	4.8	28
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY.	.8183	12.1	14.8	36
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.7657	9.2	10.9	33
438			NO LONGER VALID	.0000	.0	.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6144	5.9	8.9	30

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
440 ...	21	SURG	W/OUND DEBRIDEMENTS FOR INJURIES	1.7725	6.3	9.9	30
441 ...	21	SURG	HAND PROCEDURES FOR INJURIES	.9294	2.4	4.4	26
442 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.1653	5.6	8.7	30
443 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.8849	2.5	3.6	26
444 ...	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7312	4.0	5.3	28
445 ...	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4845	2.9	3.9	25
446 ...	21	MED	*TRAUMATIC INJURY AGE 0–17	.2894	2.4	2.4	22
447 ...	21	MED	ALLERGIC REACTIONS AGE >17	.4918	2.1	2.8	17
448 ...	21	MED	ALLERGIC REACTIONS AGE 0–17	.0777	1.0	1.0	1
449 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC.	.7902	3.0	4.5	27
450 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.	.4274	1.8	2.3	13
451 ...	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2570	2.1	2.1	17
452 ...	21	MED	COMPLICATIONS OF TREATMENT W CC	.9473	3.8	5.4	28
453 ...	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4822	2.4	3.2	20
454 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC.	.8575	3.4	5.1	27
455 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC.	.4467	2.1	2.8	18
456 ...	22	MED	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.8327	4.1	8.4	28
457 ...	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.4657	2.4	4.8	26
458 ...	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.4991	11.9	16.9	36
459 ...	22	SURG	NON-EXTENSIVE BURNS W W/OUND DEBRIDEMENT OR OTHER O.R. PROC.	1.6538	6.7	10.3	31
460 ...	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	.9547	4.6	6.6	29
461 ...	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	.9963	2.5	4.9	27
462 ...	23	MED	REHABILITATION	1.4298	11.0	13.9	35
463 ...	23	MED	SIGNS & SYMPTOMS W CC	.7101	3.8	5.2	28
464 ...	23	MED	SIGNS & SYMPTOMS W/O CC	.5028	2.8	3.8	24
465 ...	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5571	2.3	3.9	26
466 ...	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5905	2.5	4.8	27
467 ...	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4588	2.4	4.1	26
468 ...			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6028	10.6	15.3	35
469 ...			**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS.	.0000	.0	.0	0
470 ...			**UNGROUPABLE	.0000	.0	.0	0
471 ...	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.5980	6.8	8.1	31
472 ...	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	10.9989	17.0	30.2	41
473 ...	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17.	3.5740	8.5	14.7	33
474 ...			NO LONGER VALID	.0000	.0	.0	0
475 ...	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.6765	8.6	12.3	33
476 ...		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2479	10.3	13.9	34
477 ...		SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.7266	5.9	9.3	30
478 ...	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.2883	5.6	8.3	30
479 ...	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4080	3.5	4.6	27
480 ...		SURG	LIVER TRANSPLANT	13.9424	26.4	32.6	50
481 ...		SURG	BONE MARROW TRANSPLANT	11.2299	29.7	32.6	54
482 ...		SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES.	3.6578	11.4	14.9	35
483 ...		SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES.	16.0413	36.0	46.4	60
484 ...	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.6821	10.6	15.9	35
485 ...	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR.	3.2058	9.2	11.7	33
486 ...	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.7915	9.0	13.6	33
487 ...	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.0305	6.2	9.1	30
488 ...	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.7905	14.3	20.5	38
489 ...	25	MED	HIV W MAJOR RELATED CONDITION	1.8141	7.2	10.7	31

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
490 ...	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0116	4.4	6.6	28
491 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6308	3.6	4.3	19
492 ...	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.0299	11.2	17.4	35
493 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC.	1.7100	4.2	5.9	28
494 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC.	.9169	1.8	2.4	15
495 ...		SURG	LUNG TRANSPLANT	9.2870	18.0	22.7	42

* Medicare data have been supplemented by data from 19 States for low volume DRGS.
** DRGS 469 and 470 contain cases which could not be assigned to valid DRGS.
Note: Geometric mean is used only to determine payment for transfer cases.
Note: Arithmetic mean is used only to determine payment for outlier cases.
Note: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
079.6	Respiratory syncytial virus (RSV)	N	15	387,[1] 389[1]
			18	421, 422
291.81	Alcohol withdrawal	Y	20	434, 435, 436, 437
291.89	Other specified alcoholic psychosis, not elsewhere classified	Y	20	434, 435, 436, 437
293.84	Organic anxiety syndrome	Y	19	429
300.82	Undifferentiated somatoform disorder	N	19	427
315.32	Receptive language disorder (mixed)	N	19	431
414.04	Coronary atherosclerosis of artery bypass graft	N	5	132, 133
414.05	Coronary atherosclerosis of unspecified type of bypass graft	N	5	132, 133
466.11	Acute bronchiolitis due to respiratory syncytial virus (RSV)	N	4	96, 97, 98
466.19	Acute bronchiolitis due to other infectious organisms	N	4	96, 97, 98
483.1	Pneumonia due to Chlamydia	Y	4	89, 90, 91
			15	387,[1] 389[1]
574.60	Calculus of gallbladder and bile duct with acute cholecystitis without mention of obstruction.	Y	7	207, 208
574.61	Calculus of gallbladder and bile duct with acute cholecystitis with obstruction	Y	7	207, 208
574.70	Calculus of gallbladder and bile duct with other cholecystitis without mention of obstruction.	Y	7	207, 208
574.71	Calculus of gallbladder and bile duct with other cholecystitis with obstruction	Y	7	207, 208
574.80	Calculus of gallbladder and bile duct with acute and chronic cholecystitis without mention of obstruction.	Y	7	207, 208
574.81	Calculus of gallbladder and bile duct with acute and chronic cholecystitis with obstruction	Y	7	207, 208
574.90	Calculus of gallbladder and bile duct without cholecystitis without mention of obstruction	Y	7	207, 208
574.91	Calculus of gallbladder and bile duct without cholecystitis with obstruction	Y	7	207, 208
575.10	Cholecystitis, unspecified	N	7	207, 208
575.11	Chronic cholecystitis	N	7	207, 208
575.12	Acute and chronic cholecystitis	Y	7	207, 208
752.51	Undescended testis	N	12	352
			15	391[1]
752.52	Retractile testis	N	12	352
			15	391[1]
752.61	Hypospadias	N	12	352
752.62	Epispadias	N	12	352
752.63	Congenital chordee	N	12	352
752.64	Micropenis	N	12	352
752.65	Hidden penis	N	12	352
752.69	Other penile anomalies	N	12	352
753.20	Unspecified obstructive defect of renal pelvis and ureter	N	11	331, 332, 333
753.21	Congenital obstruction of ureteropelvic junction	N	11	331, 332, 333
753.22	Congenital obstruction of ureterovesical junction	N	11	331, 332, 333
753.23	Congenital ureterocele	N	11	331, 332, 333
753.29	Obstructive defects of renal pelvis and ureter, not elsewhere classifed	N	11	331, 332, 333
758.81	Other conditions due to sex chromosome anomalies	N	12	352
			13	358, 359, 369
758.89	Other conditions due to chromosome anomalies, not elsewhere classified	N	12	352
			13	358, 359, 369
922.31	Back contusion	N	9	280, 281, 282
			24	484, 485, 486, 487

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
922.32	Buttock contusion	N	9	280, 281, 282
			24	484, 485, 486, 487
922.33	Interscapular region contusion	N	9	280, 281, 282
			24	484, 485, 486, 487
995.50	Child abuse, unspecified	N	21	454, 455
995.51	Child emotional/psychological abuse	N	21	454, 455
995.52	Child neglect (nutritional)	N	21	454, 455
995.53	Child sexual abuse	N	21	454, 455
995.54	Child physical abuse	N	21	454, 455
995.55	Shaken infant syndrome	N	21	454, 455
995.59	Other child abuse and neglect	N	21	454, 455
995.80	Adult maltreatment, unspecified	N	21	454, 455
995.82	Adult emotional/psychological abuse	N	21	454, 455
995.83	Adult sexual abuse	N	21	454, 455
995.84	Adult neglect (nutritional)	N	21	454, 455
995.85	Other adult abuse and neglect	N	21	454, 455
998.11	Hemorrhage complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.12	Hematoma complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.13	Seroma complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.51	Infected postoperative seroma	Y	15	387,[1] 389[1]
			18	418
998.59	Other postoperative infection	Y	15	387,[1] 389[1]
			18	418
998.83	Non-healing surgical wound	Y	21	452, 453
V15.41	History of physical abuse	N	23	467
V15.42	History of emotional abuse	N	23	467
V15.49	Psychological trauma, not elsewhere classified	N	23	467
V61.10	Counseling for marital and partner problems, unspecified	N	23	467
V61.11	Counseling for victim of spousal and partner abuse	N	23	467
V61.12	Counseling for perpetrator of spousal and partner abuse	N	23	467
V61.22	Counseling for perpetrator of parental child abuse	N	23	467
V62.83	Counseling for perpetrator of physical/sexual abuse	N	23	467
V66.7	Encounter for palliative care	N	23	467

[1] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
36.17	Abdominal-coronary artery bypass	Y	5	106, 107
39.90	Insertion of non-coronary artery stent or stents	N	.....	
47.01	Laparoscopic appendectomy	Y	6	164, 165, 166, 167
47.09	Other appendectomy	Y	6	164, 165, 166, 167
47.11	Laparoscopic incidental appendectomy	Y	13	365
			21	442, 443
				24
				486
47.19	Other incidental appendectomy	Y	13	365
			21	442, 443
			24	486
51.21	Other partial cholecystectomy	Y	7	195, 196, 197, 198
			17	400, 406,
			17	407
			21	442, 443
			24	486
51.24	Laparoscopic partial cholecystectomy	Y	7	195, 196, 493, 494
			17	400, 406,
			17	407,
			21	442, 443
			24	486
52.84	Autotransplantation of cells of Islets of Langerhans	N	.....	
52.85	Allotransplantation of cells of Islets of Langerhans	N	.....	
52.86	Transplantation of cells of Islets of Langerhans, not otherwise specified	N	.....	
54.51	Laparoscopiclysis of peritoneal adhesions	Y	6	150, 151
			7	201
			13	365

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
			21	442, 443
			24	486
54.59	Otherlys is of peritoneal adhesions	Y	6	150, 151
			7	201
			13	365
			21	442, 443
			24	486
59.03	Laparoscopic lysis of perirenal or periureteral adhesions	Y	11	303, 304, 305
			12	344, 345
			13	365
			17	400
			17	406, 407
			21	442, 443
			24	486
59.12	Laparoscopic lysis of perivesical adhesions	Y	11	308, 309
			12	344, 345
			13	365
			17	400
			17	406, 407
			21	442, 443
			24	486
65.01	Laparoscopic oophorotomy	Y	13	354, 355, 357, 358, 359
65.09	Other oophorotomy	Y	13	354, 355, 357, 358, 359
65.13	Laparoscopic biopsy of ovary	Y	13	354, 355, 357, 358, 359
65.14	Other laparoscopic diagnostic procedures on ovaries	Y	13	354, 355, 357,358, 359
65.23	Laparoscopic marsupialization of ovarian cyst	Y	13	354, 355, 357, 358, 359
65.24	Laparoscopic wedge resection of ovary	Y	10	292, 293
			13	354, 355, 357, 358, 359
65.25	Other laparoscopic local excision or destruction of ovary	Y	13	354, 355, 357, 358, 359
65.31	Laparoscopic unilateral oophorectomy	Y	13	354, 355, 357, 358, 359
65.39	Other unilateral oophorectomy	Y	13	354, 355, 357, 358, 359
65.41	Laparoscopic unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.49	Other unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.53	Laparoscopic removal of both ovaries at same operative episode	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.54	Laparoscopic removal of remaining ovary	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.63	Laparoscopic removal of both ovaries and tubes at same operative episode	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.64	Laparoscopic removal of remaining ovary and tube	Y	13	354, 355, 357, 358, 359
65.74	Laparoscopic simple suture of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.75	Laparoscopic reimplantation of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.76	Laparoscopic salpingo-oophoroplasty	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
65.81	Laparoscopic lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.89	Other lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
68.23	Endometrial ablation	Y	13	354, 355, 357, 358, 359
68.51	Laparoscopically assisted vaginal hysterectomy (LAVH)	Y	13	354, 355,
				13
				357, 358,
				13
				359
			14	375
			22	477
68.59	Other vaginal hysterectomy	Y	13	354, 355,
			13	357, 358,
			13	359
			14	375
			22	477

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
291.8	Other specified alcoholic psychosis	Y	20	434, 435, 436, 437
466.1	Acute bronchiolitis	N	4	96, 97, 98
575.1	Other cholecystitis	N	7	207, 208
752.5	Undescended testicle	N	12	352
752.6	Hypospadias and epispadias	N	12	352
753.2	Obstructive defects of renal pelvis and ureter	N	11	331, 332, 333
758.8	Other conditions due to sex chromosome anomalies	N	12	352
			13	358, 359, 369
922.3	Contusion of back	N	9	280, 281,
			9	282
			24	484, 485, 486, 487
995.5	Child maltreatment syndrome	N	21	454, 455
998.1	Hemorrhage or hematoma complicating a procedure	Y	15	387,[1] 389[1]
			21	452, 453
998.5	Postoperative infection	Y	15	387,[1] 389[1]
			18	418
V15.4	Psychological trauma	N	23	467
V61.1	Marital problems	N	23	467

[1] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
47.0	Appendectomy	Y	6	164, 165, 166, 167
47.1	Incidental appendectomy	Y	13	365,
			21	442, 443,
			24	486
54.5	Lysis of peritoneal adhesions	Y	6	150, 151,
			7	201
			13	365
			21	442, 443
			24	486
59.01	Ureterolysis with freeing or repositioning of ureter for retroperitoneal fibrosis	Y	11	303, 304,
			11	305
			12	344, 345
			13	365
			17	400, 406,

TABLE 6D.—INVALID PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
			17	407
			21	442, 443
			24	486
65.0	Oophorotomy	Y	13	354, 355 357, 358, 359
65.3	Unilateral oophorectomy	Y	13	354, 355 357, 358, 359
65.4	Unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.8	Lysis of adhesions of ovary and fallopian tube	Y	13	354, 365,
			13	357, 358,
			13	359
			21	442, 443
			24	486
68.5	Vaginal hysterectomy	Y	13	354, 355,
			13	357, 358,
			13	359
			14	375
			22	477

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
414.00	Coronary atherosclerosis of unspecified type of vessel, native or graft	N	5	132, 133
995.81	Adult physical abuse	N	21	454, 455
997.60	Amputation stump complication, unspecified complication	N	8	256
997.61	Amputation stump complication, neuroma of amputation stump	N	8	256
997.62	Amputation stump complication, infection (chronic)	Y	8	256
997.69	Amputation stump complication, not elsewhere classified	N	8	256
V61.20	Counseling for parent-child problem, unspecified	N	23	467
V61.21	Counseling for victim of child abuse	N	23	467
V67.4	Follow-up examination, following treatment of healed fracture	N	23	465, 466

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
59.11	Other lysis of perivesical adhesions	Y	11	308, 309
			12	344, 345
			13	365
			17	400, 406,
			17	407
			21	442, 443
			24	486
65.51	Other removal of both ovaries at same operative episode	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.52	Other removal of remaining ovary	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.61	Other removal of both ovaries and tubes at same operative episode	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.62	Other removal of remaining ovary and tube	Y	13	354, 355, 357, 358, 359
65.71	Other simple suture of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.72	Other reimplantation of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.73	Other salpingo-oophoroplasty	Y	11	308, 309,
			12	344, 345
			13	365
			17	400, 406,
			17	407
			21	442, 443
			24	486

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST
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CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*0011	00844	*00800	00844	*0085	00844	*01133	*01182
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00842	00846	00842	00846	00842	00846	*01134	*01183
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0061	00844	*00841	00844	*0088	*01135	*01184
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00846	00842	00846	00842	00846	00842	*01136	*01185
00847	00843	00847	00843	00847	00843	4831	4831
*0020	00844	*00801	00844	*00861	00844	*01140	*01186
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00842	00846	00842	00846	00842	00846	*01141	*01190
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0062	00844	*00842	00844	*0090	*01142	*01191
00845	00841	00845	00841	00845	00841	4831	4831
00846	00842	00846	00842	00846	00842	*01143	*01192
00847	00843	00847	00843	00847	00843	4831	4831
*0029	00844	*00802	00844	*00862	00844	*01144	*01193
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00842	00846	00842	00846	00842	00846	*01145	*01194
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0069	00844	*00843	00844	*01100	*01146	*01195
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00846	00842	00846	00842	00846	*01101	*01150	*01196
00847	00843	00847	00843	00847	4831	4831	4831
*0030	00844	*00803	00844	*00863	*01102	*01151	*01200
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00842	00846	00842	00846	00842	*01103	*01152	*01201
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00844	*0071	00844	*00844	00844	*01104	*01153	*01202
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00846	00842	00846	00842	00846	*01105	*01154	*01203
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*0049	00844	*00804	00844	*00864	*01106	*01155	*01204
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*0050	00844	*00809	00844	*00865	*01113	*01162	*01211
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00842	00846	00842	00846	00842	*01114	*01163	*01212
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00844	*0073	00844	*00846	00844	*01115	*01164	*01213
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00842	00846	00842	00846	00842	*01121	*01170	*01216
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00844	*0078	00844	*00847	00844	*01122	*01171	*01280
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00846	00842	00846	00842	00846	*01123	*01172	*01281
00847	00843	00847	00843	00847	4831	4831	4831
*0052	00844	*0082	00844	*00867	*01124	*01173	*01282
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00844	*0079	00844	*00849	00844	*01126	*01175	*01284
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00846	00842	00846	00842	00846	*01130	*01176	*01285
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*0060	00844	*0083	00844	*00869	*01131	*01180	*01286
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00842	00846	00842	00846	00842	*01132	*01181	*01480
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00846	00843	30301	29382	*2922	29181	29664	29181
00847	00844	30302	29383	29181	29189	2980	29189
*01481	00845	30390	29384	29189	29384	2983	29384
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00847	*11595	30411	30400	29181	29189	29181	29189
*01482	4831	30412	30401	29189	29384	29189	29384
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00843	*2911	30490	30472	29181	29510	29181	29189
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00847	*2914	30550	30532	29181	29533	29181	29189
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99813	*53401	99811	00846	00847	57450	57411	57411
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99811	99812	99813	*5565	99811	57460	57430	57430
99812	99813	*5550	00841	99812	57461	57431	57431
99813	*53420	00841	00842	99813	57470	57440	57440
*53200	99811	00842	00843	*56203	57471	57441	57441
99811	99812	00843	00844	99811	57490	57450	57450
99812	99813	00844	00845	99812	57491	57451	57451
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*53201	99811	00846	00847	*56212	*57461	57471	57461
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*53221	99811	00846	00847	*5641	57440	57431	57512
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99813	*53460	00841	00842	00843	57451	57450	57401
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99812	99813	00844	00845	00846	57470	57471	57421
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*53241	99811	00846	00847	*5693	57490	57491	57431
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99812	99813	*5559	00841	99812	5750	57430	57441
99813	*53501	00841	00842	99813	*57470	57431	57450
*53260	99811	00842	00843	*56985	57430	57440	57451
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*53261	99811	00846	00847	*57430	57450	57470	57471
99811	99812	00847	*5570	57470	57451	57471	57480
99812	99813	*5560	00841	57471	57470	57490	57481
99813	*53521	00841	00842	57490	57471	57491	57490
*53300	99811	00842	00843	57491	57490	*5750	57491
99811	99812	00843	00844	*57431	57491	57460	5750
99812	99813	00844	00845	57470	*57471	57461	57512
99813	*53531	00845	00846	57471	57430	57470	*5759
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99812	99813	*5561	00841	*57440	57441	57481	57480
99813	*53541	00841	00842	57470	57450	57490	57481
*53320	99811	00842	00843	57471	57451	57491	57512
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99813	*53551	00845	00846	*57441	57490	57400	57461
*53321	99811	00846	00847	57470	57491	57401	57470
99811	99812	00847	*5579	57471	*57480	57410	57471
99812	99813	*5562	00841	57490	57400	57411	57480
99813	*53561	00841	00842	57491	57401	57421	57481
*53340	99811	00842	00843	*57450	57410	57430	57490
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99812	99813	00844	00845	57471	57421	57440	57512
99813	*5363	00845	00846	57490	57430	57441	*5769
*53341	00841	00846	00847	57491	57431	57450	57460
99811	00842	00847	*5582	*57451	57440	57451	57461
99812	00843	*5563	00841	57470	57441	57460	57470
99813	00844	00841	00842	57471	57450	57461	57471
*53360	00845	00842	00843	57490	57451	57470	57480
99811	00846	00843	00844	57491	57470	57471	57481
99812	00847	00844	00845	*57460	57471	57480	57490
99813	*5368	00845	00846	57400	57480	57481	57491
*53361	00841	00846	00847	57401	57481	57490	57512
99811	00842	00847	*5589	57410	57490	57491	*5780
99812	00843	*5564	00841	57411	57491	5750	99811
99813	00844	00841	00842	57421	5750	57512	99812
*53400	00845	00842	00843	57430	*57481	*57511	99813

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TABLE 6H.—DELETIONS TO THE CC EXCLUSIONS LIST

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CCs that are deleted from the list are in Table 6H—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*2910	30502	2918	2918	2918	9981	57421
2918	30530	*30303	*30471	*30563	*53261	57430
*2911	30531	2918	2918	2918	9981	57431
2918	30532	*30390	*30472	*30570	*53300	57440
*2912	30540	2918	2918	2918	9981	57441
2918	30541	*30391	*30473	*30571	*53301	57450
*2913	30542	2918	2918	2918	9981	57451
2918	30550	*30392	*30480	*30572	*53320	5750
*2914	30551	2918	2918	2918	9981	*5780
2918	30552	*30393	*30481	*30573	*53321	9981
*2915	30560	2918	2918	2918	9981	*5781
2918	30561	*30400	*30482	*30580	*53340	9981
*2918	30562	2918	2918	2918	9981	*5789
2910	30570	*30401	*30483	*30581	*53341	9981
2911	30571	2918	2918	2918	9981	*7526
2912	30572	*30402	*30490	*30582	*53360	5970
2913	30590	2918	2918	2918	9981	5981
2914	30591	*30403	*30491	*30583	*53361	5982
2918	30592	2918	2918	2918	9981	5994
2919	*2919	*30410	*30492	*30590	*53400	*7532
2920	2918	2918	2918	2918	9981	5845
29211	*2920	*30411	*30493	*30591	*53401	5846
29212	2918	2918	2918	2918	9981	5847
2922	*29211	*30412	*30500	*30592	*53420	5849
29281	2918	2918	2918	2918	9981	585
29282	*29212	*30413	*30501	*30593	*53421	5996
29283	2918	2918	2918	2918	9981	78820
29284	*2922	*30420	*30502	*4560	*53440	78829
29289	2918	2918	2918	9981	9981	*7724
2929	*29281	*30421	*30503	*45620	*53441	9981
29381	2918	2918	2918	9981	9981	*7903
29382	*29282	*30422	*30520	*53081	*53460	2918
29383	2918	2918	2918	9981	9981	*99791
30300	*29283	*30423	*30521	*53082	*53461	9981
30301	2918	2918	2918	9981	9981	9985
30302	*29284	*30430	*30522	*53083	*53501	*99799
30390	2918	2918	2918	9981	9981	9981
30391	*29289	*30431	*30523	*53089	*53511	9985
30392	2918	2918	2918	9981	9981	*9980
30400	*2929	*30432	*30530	*53100	*53521	9981
30401	2918	2918	2918	9981	9981	*9981
30402	*2930	*30433	*30531	*53101	*53531	9585
30410	2918	2918	2918	9981	9981	9954
30411	*2931	*30440	*30532	*53120	*53541	9980
30412	2918	2918	2918	9981	9981	9981
30420	*29381	*30441	*30533	*53121	*53551	*9985
30421	2918	2918	2918	9981	9981	9985
30422	*29382	*30442	*30540	*53140	*53561	*99881
30440	2918	2918	2918	9981	9981	9981
30441	*29383	*30443	*30541	*53141	*53783	9985
30442	2918	2918	2918	9981	9981	*99889
30450	*29389	*30450	*30542	*53160	*56202	9981
30451	2918	2918	2918	9981	9981	9985
30452	*2939	*30451	*30543	*53161	*56203	*9989
30460	2918	2918	2918	9981	9981	9981
30461	*2940	*30452	*30550	*53200	*56212	9985
30462	2918	2918	2918	9981	9981	
30470	*2941	30453	*30551	*53201	*56213	
30471	2918	2918	2918	9981	9981	
30472	*2948	*30460	*30552	*53220	*5693	
30480	2918	2918	2918	9981	9981	
30481	*2949	*30461	*30553	*53221	*56985	
30482	2918	2918	2918	9981	9981	
30490	*30300	*30462	*30560	*53240	*5751	
30491	2918	2918	2918	9981	57400	
30492	*30301	*30463	*30561	*53241	57401	
30500	2918	2918	2918	9981	57410	
30501	*30302	*30470	*30562	*53260	57411	

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	34442	11.0870	3	4	8	14	23
2	6577	11.5545	3	5	8	14	23
3	1	10.0000	10	10	10	10	10
4	6221	9.1249	2	3	6	11	20
5	100697	4.4155	2	2	3	5	9
6	464	3.4030	1	1	2	4	7
7	11182	12.6678	3	5	8	14	25
8	2377	4.1586	1	1	3	5	9
9	1768	7.6697	2	3	5	9	16
10	20201	7.9723	2	3	6	10	16
11	3044	4.9152	1	2	4	6	10
12	24534	7.6319	2	3	5	9	14
13	6348	6.2098	2	4	5	7	11
14	368912	7.4277	2	3	6	9	14
15	145736	4.4476	1	2	3	5	8
16	12479	6.5732	2	3	5	8	12
17	3377	4.0269	1	2	3	5	7
18	22488	6.3283	2	3	5	8	12
19	7265	4.5076	1	2	4	6	8
20	8354	10.1263	2	4	8	13	20
21	1176	7.8180	2	3	5	10	16
22	2753	4.8554	2	2	4	6	9
23	6038	5.0600	1	2	4	6	10
24	56498	5.8137	2	3	4	7	11
25	23104	3.8625	1	2	3	5	7
26	48	4.5625	1	2	3	6	10
27	3729	6.3130	1	1	4	7	14
28	11872	7.0601	1	3	5	8	14
29	3959	4.0054	1	2	3	5	8
31	3381	5.4590	1	2	4	6	10
32	1848	3.1483	1	1	2	4	6
34	17083	6.4969	2	3	5	8	13
35	3832	4.3072	1	2	3	5	8
36	9404	1.6325	1	1	1	2	3
37	1995	4.0551	1	1	3	5	8
38	246	2.6098	1	1	2	3	5
39	3436	1.9744	1	1	1	2	4
40	2958	3.3966	1	1	2	4	7
42	7697	2.2076	1	1	1	2	5
43	105	4.1524	1	2	3	5	8
44	1705	5.7238	2	3	5	7	10
45	2545	3.8310	1	2	3	5	7
46	3116	5.5209	1	2	4	7	10
47	1417	3.7890	1	1	3	5	7
49	2260	5.6518	1	2	4	7	11
50	3511	2.1191	1	1	2	2	3
51	323	2.9195	1	1	1	2	7
52	84	3.5357	1	1	2	3	8
53	3546	3.5491	1	1	2	4	8
54	2	4.0000	1	1	7	7	7
55	2035	2.9666	1	1	2	3	6
56	766	2.7454	1	1	2	3	6
57	677	4.0694	1	1	3	5	8
59	94	3.6064	1	1	2	4	7
60	3	1.0000	1	1	1	1	1
61	226	5.1372	1	1	2	7	14
62	1	2.0000	2	2	2	2	2
63	4238	4.6487	1	2	3	5	10
64	3550	7.5346	1	2	5	9	16
65	30917	3.4293	1	2	3	4	6
66	6878	3.5650	1	2	3	4	6
67	532	4.1992	2	2	3	5	8
68	10392	4.7941	2	3	4	6	9
69	3353	3.7739	1	2	3	5	7
70	32	2.9375	1	2	3	3	5
71	96	4.0313	1	2	3	5	8
72	612	4.4167	1	2	3	5	9
73	6332	4.9588	1	2	4	6	9
75	41590	11.1419	4	6	8	14	22
76	40960	12.4911	3	6	10	15	24

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
77	2446	5.5200	1	2	4	8	12
78	30530	8.2292	4	5	7	10	13
79	220024	9.2606	3	5	7	11	17
80	9456	6.6214	2	4	5	8	12
81	10	7.4000	1	4	6	12	15
82	72211	7.8884	2	3	6	10	16
83	7541	6.3896	2	3	5	8	12
84	1582	3.6846	1	2	3	5	7
85	19391	7.3326	2	3	6	9	14
86	1444	4.5062	1	2	4	6	9
87	62143	6.8199	1	3	6	9	13
88	368008	6.0847	2	3	5	7	11
89	442736	7.0834	3	4	6	9	12
90	43190	5.1359	2	3	4	6	9
91	53	4.4151	1	2	3	6	8
92	12548	7.2620	2	4	6	9	13
93	1332	4.9234	1	3	4	6	9
94	13242	7.0497	2	3	5	9	14
95	1458	4.1221	1	2	3	5	8
96	65710	5.5228	2	3	5	7	10
97	27798	4.2826	2	2	4	5	7
98	20	4.3000	1	1	3	6	10
99	26552	3.4947	1	2	3	4	7
100	10746	2.4205	1	1	2	3	4
101	20899	5.1925	1	2	4	7	10
102	4669	3.1371	1	1	2	4	6
103	487	39.8973	10	15	29	54	82
104	24152	14.5670	6	8	12	18	26
105	20847	10.9617	5	7	9	13	19
106	101038	11.7331	6	8	10	14	19
107	64206	8.8424	5	6	7	10	14
108	6883	12.5720	4	7	10	15	23
110	62140	10.7845	3	6	9	13	20
111	6119	6.6568	3	5	7	8	10
112	201028	4.7049	1	2	4	6	9
113	47381	14.3687	4	6	10	17	28
114	9250	9.4685	2	4	7	12	18
115	11017	11.4341	4	6	9	14	20
116	85879	5.4281	1	2	4	7	11
117	4837	4.1211	1	1	2	5	8
118	7120	3.2142	1	1	2	4	7
119	1791	5.5366	1	1	3	7	13
120	42743	9.1977	1	2	6	12	21
121	167116	7.4255	2	4	6	9	13
122	91508	5.0063	1	3	5	7	9
123	48692	4.6628	1	1	2	6	11
124	145526	4.9010	1	2	4	6	9
125	62240	3.0708	1	1	2	4	6
126	4864	14.0113	4	7	11	17	29
127	705511	6.2183	2	3	5	8	12
128	20583	6.7301	3	4	6	8	11
129	4847	3.5251	1	1	1	4	8
130	96345	6.6835	2	4	6	8	12
131	26865	5.1799	1	3	5	7	8
132	133374	3.5805	1	2	3	4	6
133	6162	2.9761	1	1	2	4	5
134	30025	3.9084	1	2	3	5	7
135	7497	4.9941	1	2	4	6	9
136	1079	3.2586	1	2	3	4	6
138	205732	4.5589	1	2	3	6	9
139	70666	2.9401	1	1	2	4	5
140	184595	3.4847	1	2	3	4	6
141	80056	4.4979	1	2	3	5	8
142	37589	3.2040	1	2	3	4	6
143	138969	2.6105	1	1	2	3	5
144	70455	5.7021	1	2	4	7	11
145	7063	3.2390	1	1	2	4	6
146	9116	11.2399	6	7	9	13	18
147	1716	7.3462	4	6	7	9	11
148	147240	13.4390	6	8	11	16	24

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
149	16479	7.7172	4	6	7	9	11
150	23661	11.7462	4	7	10	14	21
151	4727	6.4637	2	4	6	8	11
152	4681	9.0305	4	6	8	10	15
153	1810	6.1663	3	4	6	8	9
154	37523	14.9701	5	8	12	18	28
155	4800	5.8863	2	3	5	8	10
156	4	15.7500	4	4	10	22	27
157	11976	5.8075	1	2	4	7	11
158	5338	2.9039	1	1	2	4	6
159	18014	5.3347	1	2	4	7	10
160	10461	2.9524	1	1	2	4	5
161	15500	4.3536	1	2	3	5	9
162	8397	2.1870	1	1	2	3	4
163	8	3.0000	1	1	3	4	5
164	5240	9.3945	4	6	8	11	16
165	1757	5.7518	3	4	5	7	9
166	3440	5.7122	2	3	4	7	10
167	2409	3.2333	1	2	3	4	6
168	1870	4.9610	1	2	3	6	10
169	1091	2.5371	1	1	2	3	5
170	13152	12.4993	2	5	9	15	25
171	1205	5.4008	1	2	4	7	11
172	32440	8.1497	2	3	6	10	16
173	2286	4.3994	1	2	3	5	9
174	243520	5.5478	2	3	4	7	10
175	24208	3.5122	1	2	3	4	6
176	16840	6.1428	2	3	5	7	11
177	12619	4.9756	2	3	4	6	9
178	4386	3.6147	1	2	3	5	7
179	11791	7.1640	2	4	6	9	14
180	82971	6.0508	2	3	5	7	11
181	23209	3.9601	1	2	3	5	7
182	237577	4.9658	2	2	4	6	9
183	75774	3.4541	1	2	3	4	6
184	77	3.8831	1	2	2	4	7
185	4037	5.1850	1	2	4	6	10
186	2	1.5000	1	1	2	2	2
187	944	4.2108	1	2	3	6	8
188	64209	6.1263	2	3	5	8	12
189	8146	3.6866	1	1	3	5	7
190	68	5.0882	1	2	4	7	10
191	11098	16.2616	5	8	12	20	32
192	930	7.9161	2	4	7	10	14
193	8975	13.9348	5	8	11	17	25
194	847	8.4652	3	5	7	10	15
195	9686	10.4650	4	6	9	12	18
196	845	6.7136	3	4	6	8	11
197	29491	9.1586	4	5	7	11	16
198	8311	4.9344	2	3	4	6	8
199	2348	11.1661	3	5	9	14	22
200	1655	12.3329	2	4	8	15	26
201	1557	16.7534	4	7	13	21	34
202	26477	7.7437	2	3	6	10	15
203	30205	7.6570	2	3	6	10	15
204	51448	6.7152	2	3	5	8	13
205	22675	7.2389	2	3	5	9	14
206	1783	4.7196	1	2	4	6	10
207	37006	5.7262	2	3	4	7	11
208	10751	3.5105	1	2	3	4	6
209	344259	6.6642	3	4	6	7	10
210	138205	8.5738	4	5	7	10	14
211	26619	6.2716	3	4	6	7	10
212	9	5.0000	2	3	4	5	8
213	7164	9.7067	3	4	7	12	19
214	53836	6.4605	2	3	5	8	12
215	43190	3.6846	1	2	3	5	7
216	6760	11.0719	2	5	8	14	22
217	20436	15.3636	3	6	10	18	31
218	23224	6.2155	2	3	5	7	11

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
219	19076	3.7567	1	2	3	5	6
220	2	5.5000	5	5	6	6	6
221	5227	8.1037	2	4	6	10	16
222	3750	4.0496	1	2	3	5	8
223	19410	2.8704	1	1	2	3	5
224	8378	2.2731	1	1	2	3	4
225	6594	5.0059	1	2	3	6	11
226	5651	6.7383	1	2	4	8	14
227	4846	2.9610	1	1	2	4	6
228	3199	3.5261	1	1	2	4	7
229	1427	2.4043	1	1	2	3	5
230	2578	5.2002	1	2	3	6	11
231	10890	5.0626	1	2	3	6	11
232	602	4.4651	1	1	2	5	10
233	4808	9.0422	2	4	7	11	18
234	2363	4.1727	1	2	3	5	8
235	5827	6.7833	1	3	4	7	13
236	39844	6.2907	2	3	5	7	12
237	1586	4.4067	1	2	3	5	8
238	7925	10.0430	3	5	7	12	19
239	62430	7.6248	2	4	6	9	14
240	12701	7.5282	2	3	5	9	15
241	3183	4.5922	1	2	4	5	9
242	2644	7.6539	2	4	6	9	15
243	84034	5.6150	2	3	4	7	10
244	12036	5.8284	2	3	4	7	11
245	4477	4.3044	1	2	3	5	8
246	1391	4.6161	1	2	4	6	9
247	11132	3.9656	1	2	3	5	8
248	7135	5.2685	1	2	4	6	10
249	10593	4.2878	1	1	3	5	9
250	3359	5.0473	1	2	4	6	9
251	2228	3.3039	1	1	3	4	6
252	1	1.0000	1	1	1	1	1
253	18452	5.8248	2	3	4	7	11
254	9735	3.8817	1	2	3	5	7
255	1	2.0000	2	2	2	2	2
256	4819	5.6921	1	2	4	7	11
257	24829	3.4343	1	2	3	4	6
258	19718	2.4910	1	2	2	3	4
259	4225	3.5089	1	1	2	3	7
260	5083	1.8702	1	1	2	2	3
261	2489	2.3403	1	1	2	3	4
262	749	3.9439	1	1	2	5	8
263	30581	13.9228	4	6	10	16	28
264	3723	8.3503	2	4	6	10	17
265	4517	7.6810	1	3	5	9	16
266	2850	3.7140	1	1	3	5	8
267	238	4.3361	1	1	3	5	9
268	983	4.0651	1	1	2	4	9
269	10745	9.2352	2	4	7	12	19
270	3643	3.4161	1	1	2	4	8
271	22531	8.5207	3	4	7	10	15
272	6142	7.4650	2	3	6	9	14
273	1500	5.4860	2	2	4	7	11
274	2654	7.7939	2	3	5	9	16
275	258	3.6705	1	1	2	4	8
276	928	5.0151	1	2	4	6	9
277	82879	6.7243	3	4	5	8	12
278	27272	5.1610	2	3	4	6	9
279	6	4.1667	1	2	3	4	4
280	13880	5.0710	1	2	4	6	9
281	6277	3.6106	1	2	3	4	7
283	5522	5.4681	2	2	4	7	10
284	1841	3.8403	1	2	3	5	7
285	5132	13.6613	3	6	10	16	26
286	2035	8.6993	3	4	6	9	16
287	6605	13.3889	3	6	9	16	26
288	1020	6.8824	3	4	5	7	11
289	5276	3.9780	1	2	2	4	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
290	8909	2.8289	1	1	2	3	5
291	91	1.7692	1	1	1	2	3
292	5308	12.7491	2	5	9	16	25
293	310	6.7935	1	3	5	8	14
294	90532	5.6749	2	3	4	7	10
295	3894	4.2766	1	2	3	5	8
296	230295	6.3598	2	3	5	8	12
297	33134	4.2911	1	2	3	5	8
298	108	3.3796	1	1	2	4	6
299	927	5.4132	1	2	4	7	10
300	14815	7.2798	2	3	6	9	14
301	2247	4.3796	1	2	3	5	9
302	8314	12.3018	6	7	9	14	21
303	19404	10.2201	4	6	8	12	18
304	13543	10.2916	3	5	7	13	21
305	2681	4.9276	1	3	4	6	9
306	11853	6.2378	2	2	4	8	13
307	2696	2.9841	1	2	2	3	5
308	9573	7.0330	1	2	5	9	15
309	3563	3.0230	1	1	2	4	6
310	30025	4.6157	1	2	3	6	9
311	10221	2.1764	1	1	2	3	4
312	2120	4.8198	1	2	3	6	10
313	788	2.2855	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	29516	9.3027	1	2	6	12	20
316	73804	7.4996	2	3	6	9	15
317	838	2.9033	1	1	2	3	6
318	6303	7.1525	2	3	5	9	14
319	522	3.2184	1	1	2	4	7
320	177322	6.4439	2	3	5	8	11
321	26732	4.7118	2	3	4	6	8
322	87	4.3333	2	2	4	5	8
323	18552	3.5564	1	2	3	4	7
324	9159	2.0887	1	1	2	3	4
325	7781	4.5729	1	2	3	5	9
326	2305	3.4265	1	1	2	4	6
327	9	3.3333	1	2	2	4	5
328	853	4.2579	1	2	3	6	8
329	113	2.7965	1	1	2	3	5
330	1	1.0000	1	1	1	1	1
331	40267	6.1796	2	3	5	8	12
332	4973	3.8520	1	2	3	5	8
333	379	5.7968	1	3	4	7	13
334	19978	6.0539	3	4	5	7	9
335	10312	4.6223	2	3	4	6	7
336	63889	4.1249	1	2	3	5	8
337	40544	2.6722	1	2	2	3	4
338	5063	5.2558	1	2	3	6	11
339	2416	5.2562	1	2	3	6	11
340	2	3.0000	1	1	5	5	5
341	6766	3.2573	1	1	2	4	6
342	231	4.0649	1	1	2	5	8
344	4022	3.4510	1	1	2	4	7
345	1428	4.0210	1	2	3	5	9
346	5626	6.7600	1	3	5	8	14
347	443	3.2889	1	1	2	4	7
348	3187	4.8892	1	2	4	6	9
349	734	2.9646	1	1	2	4	6
350	7234	4.7432	2	3	4	6	8
352	603	3.9005	1	1	3	5	8
353	2743	8.3252	3	4	6	9	15
354	10187	6.3342	3	4	5	7	11
355	5884	3.8600	2	3	4	4	6
356	30093	3.0252	1	2	3	4	5
357	6842	9.8297	4	5	8	12	18
358	28152	4.7532	2	3	4	5	8
359	28825	3.2709	2	3	3	4	5
360	17592	3.5444	1	2	3	4	6
361	655	3.4580	1	1	2	4	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
363	4555	3.5139	1	2	2	3	6
364	1879	3.6003	1	1	2	4	8
365	2522	8.1257	2	3	5	10	18
366	4694	7.6877	2	3	5	10	16
367	571	3.3135	1	1	2	4	7
368	2408	6.9049	2	3	5	8	13
369	2531	3.7246	1	1	3	5	7
370	1201	5.5679	3	3	4	5	9
371	1044	3.6236	2	3	3	4	5
372	872	3.3601	1	2	2	3	6
373	3961	1.9258	1	1	2	2	3
374	141	2.5957	1	2	2	3	4
375	5	2.2000	1	1	2	3	4
376	164	3.3537	1	1	2	4	7
377	27	3.2963	1	1	2	3	8
378	172	2.9186	1	2	3	3	5
379	332	3.0361	1	1	2	3	5
380	75	2.2800	1	1	2	2	4
381	209	2.2967	1	1	1	2	5
382	54	1.5741	1	1	1	1	3
383	1557	4.0873	1	2	3	5	8
384	135	3.1481	1	1	1	2	7
385	4	13.5000	1	1	1	3	49
386	1	36.0000	36	36	36	36	36
389	23	10.7391	3	4	8	10	18
390	11	4.7273	1	2	3	5	9
392	2622	11.6484	4	6	8	14	24
394	1734	7.9862	1	3	5	9	16
395	69281	5.3835	1	2	4	7	10
396	19	3.7895	1	1	3	5	8
397	16238	6.0846	2	3	5	7	12
398	17490	6.5883	2	3	5	8	12
399	1505	4.4399	1	2	4	6	8
400	7877	10.4160	2	4	7	13	23
401	6683	12.3822	2	5	9	16	25
402	1621	4.7218	1	1	3	6	10
403	36569	9.2960	2	4	7	12	19
404	4137	5.1047	1	2	4	7	10
406	3407	11.2548	3	5	8	14	23
407	761	4.9304	1	2	4	6	9
408	3100	8.1632	1	2	5	10	18
409	5931	6.7132	2	3	4	6	15
410	89997	3.3583	1	2	3	4	5
411	58	2.6724	1	1	2	3	7
412	37	2.9730	1	1	2	4	5
413	8878	8.3323	2	3	6	10	17
414	845	5.1361	1	2	4	7	11
415	40783	15.7224	4	7	12	19	31
416	201554	8.2165	2	4	7	10	15
417	54	4.5741	1	2	4	7	10
418	19614	6.7661	2	3	5	8	13
419	16484	5.6830	2	3	4	7	10
420	3023	4.3126	2	2	4	5	8
421	12216	4.6523	2	2	4	5	8
422	97	3.8041	1	2	3	4	7
423	9588	8.7110	2	4	6	10	18
424	2102	17.9139	3	6	12	20	35
425	16010	4.8731	1	2	3	6	10
426	4920	5.5150	1	2	4	7	11
427	1856	5.2333	1	2	4	6	11
428	956	8.3347	1	3	5	10	18
429	40733	8.9700	2	3	6	10	17
430	55753	9.7545	2	4	7	12	19
431	200	7.1500	1	3	5	9	13
432	457	6.5252	1	2	4	6	11
433	8283	3.4066	1	1	2	4	7
434	21933	5.8212	2	3	4	7	11
435	16378	4.8060	1	3	4	6	8
436	3128	14.3744	4	8	14	21	28
437	14927	10.8952	4	6	10	14	20

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
439	910	8.9264	2	3	6	11	18
440	5007	9.8354	2	3	6	12	21
441	648	4.4213	1	1	2	4	8
442	14653	8.7421	1	3	6	11	18
443	3469	3.5509	1	1	2	5	7
444	3543	5.2882	1	3	4	6	10
445	1415	3.9046	1	2	3	5	7
446	1	1.0000	1	1	1	1	1
447	3991	2.8013	1	1	2	3	5
448	88	1.0000	1	1	1	1	1
449	30264	4.4273	1	2	3	5	9
450	7178	2.3403	1	1	2	3	5
451	8	6.0000	2	3	4	5	7
452	20326	5.4275	1	2	4	6	11
453	3831	3.1929	1	1	2	4	6
454	5391	5.1330	1	2	3	6	10
455	1181	2.8442	1	1	2	3	5
456	213	8.3803	1	1	4	9	21
457	135	4.8222	1	1	2	5	12
458	1650	16.8358	3	7	13	22	35
459	582	10.2887	2	4	7	13	21
460	2437	6.6422	1	3	5	8	13
461	3230	4.8920	1	1	2	5	12
462	9786	13.7570	4	6	12	18	26
463	12587	5.1722	1	2	4	6	10
464	3225	3.7479	1	2	3	5	7
465	202	3.8762	1	1	2	4	7
466	1943	4.8101	1	1	2	4	10
467	1820	4.1264	1	1	2	4	8
468	62094	15.2184	3	7	12	19	30
471	9604	8.0717	4	5	6	9	14
472	159	30.1635	1	9	28	40	61
473	8650	14.3806	2	4	8	21	36
475	94974	12.1639	2	5	10	16	24
476	7275	13.8367	3	7	11	17	25
477	29790	8.9095	1	3	6	11	18
478	123960	8.3140	1	3	6	10	17
479	18606	4.5577	1	2	4	6	9
480	43	33.5581	12	16	24	39	61
481	122	36.2787	21	25	31	42	60
482	7121	14.8666	5	8	11	17	28
483	38597	45.9566	15	23	37	56	85
484	366	15.8115	2	6	12	22	32
485	3426	11.6985	4	6	9	14	22
486	2316	13.4473	1	6	11	18	28
487	4136	8.9350	1	3	7	11	18
488	1694	17.6251	5	8	13	22	35
489	18721	10.4348	2	4	7	13	22
490	5263	6.5565	1	2	4	8	14
491	9897	4.2698	2	3	3	5	7
492	2139	17.3703	3	5	10	28	37
493	54769	5.8892	1	2	5	8	11
494	28573	2.4247	1	1	2	3	5
495	131	22.7176	10	12	17	26	39
	11135858						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	34442	11.0870	3	4	8	14	23
2	6577	11.5545	3	5	8	14	23
3	1	10.0000	10	10	10	10	10
4	6221	9.1249	2	3	6	11	20
5	100697	4.4155	2	2	3	5	9
6	464	3.4030	1	1	2	4	7

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
7	11326	12.5507	2	5	8	14	25
8	2651	3.8989	1	1	2	5	9
9	1768	7.6697	2	3	5	9	16
10	20201	7.9723	2	3	6	10	16
11	3044	4.9152	1	2	4	6	10
12	24534	7.6319	2	3	5	9	14
13	6348	6.2098	2	4	5	7	11
14	368912	7.4277	2	3	6	9	14
15	145736	4.4476	1	2	3	5	8
16	12480	6.5737	2	3	5	8	12
17	3376	4.0243	1	2	3	5	7
18	23963	6.3732	2	3	5	8	12
19	7792	4.5249	1	2	4	6	8
20	6352	11.2835	3	5	9	15	22
21	1176	7.8180	2	3	6	10	16
22	2753	4.8554	2	3	4	6	9
23	6038	5.0600	1	2	4	6	10
24	56509	5.8142	2	3	4	7	11
25	23093	3.8603	1	2	3	5	7
26	48	4.5625	1	2	3	6	10
27	3729	6.3130	1	1	4	7	14
28	11873	7.0603	1	3	5	8	14
29	3958	4.0341	1	2	3	5	8
31	3382	5.4595	1	2	4	6	10
32	1847	3.1462	1	1	2	4	6
34	17085	6.4968	2	3	5	8	13
35	3830	4.3065	1	2	3	5	8
36	9404	1.6325	1	1	1	2	3
37	1994	4.0341	1	1	3	5	8
38	246	2.6098	1	1	2	3	5
39	3436	1.9744	1	1	1	2	4
40	2958	3.3966	1	1	2	4	7
42	7697	2.2076	1	1	1	2	5
43	105	4.1524	1	2	3	5	8
44	1705	5.7238	2	3	5	7	10
45	2545	3.8310	1	2	3	5	7
46	3117	5.5201	1	2	4	7	10
47	1416	3.7895	1	1	3	5	7
49	2260	5.6518	1	2	4	7	11
50	3511	2.1191	1	1	2	2	3
51	323	2.9195	1	1	1	2	7
52	100	3.3600	1	1	2	3	7
53	3624	3.5566	1	1	2	4	8
54	2	4.0000	1	1	7	7	7
55	2035	2.9666	1	1	2	3	6
56	766	2.7454	1	1	2	3	6
57	637	4.1334	1	1	3	5	8
59	94	3.6064	1	1	2	4	7
60	3	1.0000	1	1	1	1	1
61	226	5.1372	1	1	2	7	14
62	1	2.0000	2	2	2	2	2
63	4238	4.6487	1	2	3	5	10
64	3550	7.5346	1	2	5	9	16
65	30917	3.4293	1	2	3	4	6
66	6878	3.5650	1	2	3	4	6
67	532	4.1992	2	2	3	5	8
68	10400	4.7953	2	3	4	6	9
69	3345	3.7677	1	2	3	5	7
70	32	2.9375	1	2	3	3	5
71	96	4.0313	1	2	3	5	8
72	612	4.4167	1	2	3	5	9
73	6332	4.9588	1	2	4	6	9
75	41590	11.1419	4	6	8	14	22
76	40962	12.4917	3	6	10	15	24
77	2444	5.5041	1	2	4	8	12
78	30530	8.2292	4	5	7	10	13
79	220099	9.2617	3	5	7	11	17
80	9381	6.5760	2	4	5	8	12
81	10	7.4000	1	4	6	12	15
82	72211	7.8884	2	3	6	10	16

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
83	7541	6.3896	2	3	5	8	12
84	1582	3.6846	1	2	3	5	7
85	19393	7.3333	2	3	6	9	14
86	1442	4.4938	1	2	4	6	9
87	62143	6.8199	1	3	6	9	13
88	368008	6.0847	2	3	5	7	11
89	442908	7.0843	3	4	6	9	12
90	43018	5.1184	2	3	4	6	9
91	53	4.4151	1	2	3	6	8
92	12552	7.2631	2	4	6	9	13
93	1328	4.9059	1	3	4	6	9
94	13243	7.0498	2	3	5	9	14
95	1457	4.1187	1	2	3	5	8
96	65750	5.5233	2	3	5	7	10
97	27758	4.2796	2	2	4	5	7
98	20	4.3000	1	1	3	6	10
99	26556	3.4948	1	2	3	4	7
100	10742	2.4197	1	1	2	3	4
101	20903	5.1927	1	2	4	7	10
102	4665	3.1346	1	1	2	4	6
103	487	39.8973	10	15	29	54	82
104	24152	14.5670	6	8	12	18	26
105	20847	10.9617	5	7	9	13	19
106	101038	11.7331	6	8	10	14	19
107	64206	8.8424	5	6	7	10	14
108	6883	12.5720	4	7	10	15	23
110	62161	10.7839	3	6	9	13	20
111	6098	6.6496	3	5	6	8	10
112	201028	4.7049	1	2	4	6	9
113	47381	14.3687	4	6	10	17	28
114	9250	9.4685	2	4	7	12	18
115	11017	11.4341	4	6	9	14	20
116	85879	5.4281	1	2	4	7	11
117	4837	4.1211	1	1	2	5	8
118	7120	3.2142	1	1	2	4	7
119	1791	5.5366	1	1	3	7	13
120	42743	9.1977	1	2	6	12	21
121	167116	7.4255	2	4	6	9	13
122	91508	5.0063	1	3	5	7	9
123	48692	4.6628	1	1	2	6	11
124	145526	4.9010	1	2	4	6	9
125	62240	3.0708	1	1	2	4	6
126	4864	14.0113	4	7	11	17	29
127	705511	6.2183	2	3	5	8	12
128	20583	6.7301	3	4	6	8	11
129	4847	3.5251	1	1	1	4	8
130	96377	6.6838	2	4	6	8	12
131	26833	5.1772	1	3	5	7	8
132	133378	3.5806	1	2	3	4	6
133	6158	2.9737	1	1	2	4	5
134	30025	3.9084	1	2	3	5	7
135	7497	4.9941	1	2	4	6	9
136	1079	3.2586	1	2	3	4	6
138	205779	4.5592	1	2	3	6	9
139	70619	2.9382	1	1	2	4	5
140	184595	3.4847	1	2	3	4	6
141	80072	4.4984	1	2	3	5	8
142	37573	3.2025	1	2	3	4	6
143	138969	2.6105	1	1	2	3	5
144	70462	5.7020	1	2	4	7	11
145	7056	3.2372	1	1	2	4	6
146	9120	11.2398	6	7	9	13	18
147	1712	7.3376	4	6	7	9	11
148	147283	13.4382	6	8	11	16	24
149	16436	7.7095	4	6	7	9	11
150	23670	11.7463	4	7	10	14	21
151	4718	6.4532	2	4	6	8	11
152	4688	9.0299	4	6	8	10	15
153	1803	6.1570	3	4	6	8	9
154	37530	14.9694	5	8	12	18	28

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
155	4793	5.8782	2	3	5	8	10
156	4	15.7500	4	4	10	22	27
157	11982	5.8109	1	2	4	7	11
158	5332	2.8931	1	1	2	4	6
159	18017	5.3350	1	2	4	7	10
160	10458	2.9512	1	1	2	4	5
161	15509	4.3541	1	2	3	5	9
162	8388	2.1838	1	1	2	3	4
163	8	3.0000	1	1	3	4	5
164	5242	9.3937	4	6	8	11	16
165	1755	5.7499	3	4	5	7	9
166	3444	5.7134	2	3	4	7	10
167	2405	3.2274	1	2	3	4	5
168	1837	4.9559	1	2	3	6	10
169	1070	2.5421	1	1	2	3	5
170	13155	12.5003	2	5	9	15	25
171	1202	5.3719	1	2	4	7	11
172	32447	8.1498	2	3	6	10	16
173	2279	4.3857	1	2	3	5	9
174	243715	5.5466	2	3	4	7	10
175	24013	3.5080	1	2	3	4	6
176	16840	6.1428	2	3	5	7	11
177	12681	4.9738	2	3	4	6	9
178	4324	3.6004	1	2	3	5	7
179	11791	7.1640	2	4	6	9	14
180	83016	6.0517	2	3	5	7	11
181	23164	3.9529	1	2	3	5	7
182	237845	4.9666	2	2	4	6	9
183	75506	3.4460	1	2	3	4	6
184	77	3.8831	1	2	2	4	7
185	4037	5.1850	1	2	4	6	10
186	2	1.5000	1	1	2	2	2
187	944	4.2108	1	2	3	6	8
188	64238	6.1261	2	3	5	8	12
189	8117	3.6789	1	1	3	5	7
190	68	5.0882	1	2	4	7	10
191	11104	16.2586	5	8	12	20	32
192	924	7.8983	2	4	7	9	14
193	8979	13.9328	5	8	11	17	25
194	843	8.4603	3	5	7	10	15
195	9690	10.4638	4	6	9	12	18
196	841	6.7099	3	4	6	8	11
197	29506	9.1575	4	5	7	11	16
198	8296	4.9306	2	3	4	6	8
199	2348	11.1661	3	5	9	14	22
200	1655	12.3329	2	4	8	15	26
201	1557	16.7534	4	7	13	21	34
202	26477	7.7437	2	3	6	10	15
203	30205	7.6570	2	3	6	10	15
204	51448	6.7152	2	3	5	8	13
205	22678	7.2389	2	3	5	9	14
206	1780	4.7163	1	2	4	6	10
207	37033	5.7267	2	3	4	7	11
208	10724	3.5030	1	2	3	4	6
209	344259	6.6642	3	4	6	7	10
210	138220	8.5746	4	5	7	10	14
211	26604	6.2664	3	4	6	7	10
212	9	5.0000	2	3	4	5	8
213	7164	9.7067	3	4	7	12	19
214	53845	6.4613	2	3	5	8	12
215	43181	3.6830	1	2	3	5	7
216	6760	11.0719	2	5	8	14	22
217	20436	15.3636	3	6	10	18	31
218	23230	6.2178	2	3	5	7	11
219	19070	3.7531	1	2	3	5	8
220	2	5.5000	5	5	6	6	8
221	5230	8.1076	2	4	6	10	16
222	3747	4.0408	1	2	3	5	8
223	19412	2.8709	1	1	2	3	5
224	8377	2.2724	1	1	2	3	4

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
225	6594	5.0059	1	2	3	6	11
226	5654	6.7386	1	2	4	8	14
227	4843	2.9583	1	1	2	4	6
228	3200	3.5291	1	1	2	4	7
229	1426	2.3969	1	1	2	3	5
230	2578	5.2002	1	2	3	6	11
231	10890	5.0626	1	2	3	6	11
232	601	4.4609	1	1	2	4	10
233	4811	9.0518	2	4	7	11	18
234	2360	4.1470	1	2	3	5	8
235	5827	6.7833	1	3	4	7	13
236	39844	6.2907	2	3	5	7	12
237	1586	4.4067	1	2	3	5	8
238	7925	10.0430	3	5	7	12	19
239	62429	7.6246	2	4	6	9	14
240	12705	7.5277	2	3	5	9	15
241	3179	4.5908	1	2	4	5	9
242	2644	7.6539	2	4	6	9	15
243	84034	5.6150	2	3	4	7	10
244	12041	5.8294	2	3	4	7	11
245	4472	4.3001	1	2	3	5	8
246	1391	4.6161	1	2	4	6	9
247	11132	3.9656	1	2	3	5	8
248	7135	5.2685	1	2	4	6	10
249	10593	4.2878	1	1	3	5	9
250	3360	5.0461	1	2	3	6	9
251	2227	3.3049	1	1	3	4	6
252	1	1.0000	1	1	1	1	1
253	18457	5.8264	2	3	4	7	11
254	9730	3.8776	1	2	3	5	7
255	1	2.0000	2	2	2	2	2
256	4819	5.6921	1	2	4	7	11
257	24832	3.4341	1	2	3	4	6
258	19715	2.4910	1	2	2	3	4
259	4225	3.5089	1	1	2	3	7
260	5083	1.8702	1	1	2	2	3
261	2489	2.3403	1	1	2	3	4
262	749	3.9439	1	1	2	5	8
263	30590	13.9231	4	6	10	16	28
264	3714	8.3341	2	4	6	10	16
265	4518	7.6835	1	3	5	9	16
266	2849	3.7087	1	1	3	5	8
267	238	4.3361	1	1	3	5	9
268	983	4.0651	1	1	2	4	9
269	10750	9.2391	2	4	7	12	19
270	3638	3.3966	1	1	2	4	8
271	22531	8.5207	3	4	7	10	15
272	6144	7.4653	2	3	6	9	14
273	1498	5.4820	2	2	4	7	11
274	2654	7.7939	2	3	5	9	16
275	258	3.6705	1	1	2	4	8
276	928	5.0151	1	2	4	6	9
277	82941	6.7266	3	4	5	8	12
278	27210	5.1505	2	3	4	6	9
279	6	4.1667	1	2	3	4	4
280	13881	5.0709	1	2	4	6	9
281	6276	3.6109	1	2	3	4	7
283	5523	5.4677	2	2	4	7	10
284	1840	3.8408	1	2	3	5	7
285	5132	13.6613	3	6	10	16	26
286	2035	8.6993	3	4	6	9	16
287	6605	13.3889	3	6	9	16	26
288	1020	6.8824	3	4	5	7	11
289	5276	3.9780	1	2	2	4	8
290	8909	2.8289	1	1	2	3	5
291	91	1.7692	1	1	1	2	3
292	5308	12.7491	2	5	9	16	25
293	310	6.7935	1	3	5	8	14
294	90532	5.6749	2	3	4	7	10
295	3894	4.2766	1	2	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
296	230483	6.3598	2	3	5	8	12
297	32946	4.2799	1	2	3	5	8
298	108	3.3796	1	1	2	4	6
299	927	5.4132	1	2	4	7	10
300	14816	7.2798	2	3	6	9	14
301	2246	4.3780	1	2	3	5	9
302	8314	12.3018	6	7	9	14	21
303	19404	10.2201	4	6	8	12	18
304	13549	10.2932	3	5	7	13	21
305	2675	4.9073	1	3	4	6	9
306	11854	6.2386	2	2	4	8	13
307	2695	2.9796	1	2	[illegible]	3	5
308	9574	7.0326	1	2	5	9	15
309	3562	3.0230	1	1	2	4	6
310	30028	4.6161	1	2	3	6	9
311	10218	2.1747	1	1	2	3	4
312	2120	4.8198	1	2	3	6	10
313	788	2.2855	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	29516	9.3027	1	2	6	12	20
316	73804	7.4996	2	3	6	9	15
317	838	2.9033	1	1	2	3	6
318	6305	7.1543	2	3	5	9	14
319	520	3.1808	1	1	2	4	7
320	177433	6.4459	[illegible]	3	5	8	11
321	26621	4.6916	2	3	4	6	8
322	87	4.3333	[illegible]	2	4	5	8
323	18556	3.5566	1	2	3	4	7
324	9155	2.0877	1	1	2	3	4
325	7785	4.5742	1	2	3	5	9
326	2301	3.4203	1	1	2	4	6
327	9	3.3333	1	2	2	4	5
328	853	4.2579	1	2	3	6	8
329	113	2.7965	1	1	2	3	5
330	1	1.0000	1	1	1	1	1
331	40274	6.1795	2	3	5	8	12
332	4966	3.8494	1	2	3	5	8
333	379	5.7968	1	3	4	7	13
334	19982	6.0546	3	4	5	7	9
335	10308	4.6203	2	3	4	6	7
336	63893	4.1251	1	2	3	5	8
337	40540	2.6719	1	2	2	3	4
338	5063	5.2558	1	2	3	6	11
339	2416	5.2562	1	2	3	6	11
340	2	3.0000	1	1	5	5	5
341	6766	3.2573	1	1	2	4	6
342	231	4.0649	1	1	[illegible]	5	8
344	4022	3.4510	1	1	2	4	7
345	1428	4.0210	1	2	3	5	9
346	5626	6.7600	1	3	5	8	14
347	443	3.2889	1	1	2	4	7
348	3188	4.8943	1	2	4	6	9
349	733	2.9400	1	1	2	4	6
350	7234	4.7432	2	3	4	6	8
352	603	3.9005	1	1	3	5	8
353	2743	8.3252	3	4	6	9	15
354	10191	6.3351	3	4	5	7	11
355	5880	3.8566	2	3	4	4	6
356	30093	3.0252	1	2	3	4	5
357	6842	9.8297	4	5	8	12	18
358	28157	4.7538	2	3	4	5	8
359	28820	3.2702	2	3	3	4	5
360	17592	3.5444	1	2	3	4	6
361	655	3.4580	1	1	2	4	7
363	4555	3.5139	1	2	2	3	6
364	1879	3.6003	1	1	2	4	8
365	2522	8.1257	2	3	5	10	18
366	4697	7.6915	2	3	5	10	16
367	568	3.2588	1	1	2	4	7
368	2408	6.9049	2	3	5	8	13

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
369	2531	3.7246	1	1	3	5	7
370	1201	5.5679	3	3	4	5	9
371	1044	3.6236	2	3	3	4	5
372	872	3.3601	1	2	2	3	6
373	3961	1.9258	1	1	2	2	3
374	141	2.5957	1	2	2	3	4
375	5	2.2000	1	1	2	3	4
376	164	3.3537	1	1	2	4	7
377	27	3.2963	1	1	2	3	8
378	172	2.9186	1	2	3	3	5
379	332	3.0361	1	1	2	3	5
380	75	2.2800	1	1	2	2	4
381	209	2.2967	1	1	1	2	5
382	54	1.5741	1	1	1	1	3
383	1557	4.0873	1	2	3	5	8
384	135	3.1481	1	1	1	2	7
385	4	13.5000	1	1	1	3	49
386	1	36.0000	36	36	36	36	36
389	23	10.7391	3	4	8	10	18
390	11	4.7273	1	2	3	5	9
392	2622	11.6484	4	6	8	14	24
394	1734	7.9862	1	2	5	9	16
395	69281	5.3835	1	2	4	7	10
396	19	3.7895	1	1	3	5	8
397	16238	6.0846	2	3	5	7	12
398	17498	6.5878	2	3	5	8	12
399	1496	4.4285	1	2	4	6	8
400	7875	10.4036	2	4	7	13	23
401	6682	12.3664	2	5	9	16	25
402	1619	4.7140	1	1	3	6	10
403	36528	9.2740	2	4	7	12	19
404	4124	5.0902	1	2	4	7	10
406	3407	11.2548	3	5	8	14	23
407	761	4.9304	1	2	4	6	9
408	3100	8.1632	1	2	5	10	18
409	5931	6.7132	2	3	4	6	15
410	89995	3.3580	1	2	3	4	5
411	58	2.6724	1	1	2	3	7
412	37	2.9730	1	1	2	4	5
413	8878	8.3323	2	3	6	10	17
414	845	5.1361	1	2	4	7	11
415	40783	15.7224	4	7	12	19	31
416	201554	8.2165	2	4	7	10	15
417	54	4.5741	1	2	4	7	10
418	19614	6.7661	2	3	5	8	13
419	16497	5.6833	2	3	4	7	10
420	3010	4.3050	2	2	4	5	8
421	12216	4.6523	2	2	4	5	8
422	97	3.8041	1	2	3	4	7
423	9588	8.7110	2	4	6	10	18
424	2102	17.9139	3	6	12	20	35
425	16010	4.8731	1	2	3	6	10
426	4920	5.5150	1	2	4	7	11
427	1856	5.2333	1	2	4	6	11
428	956	8.3347	1	3	5	10	18
429	40733	8.9700	2	3	6	10	17
430	55753	9.7545	2	4	7	12	19
431	200	7.1500	1	3	5	9	13
432	457	6.5252	1	2	4	6	11
433	8283	3.4066	1	1	2	4	7
434	21935	5.8210	2	3	4	7	11
435	16376	4.8062	1	3	4	6	8
436	3128	14.3744	4	8	14	21	28
437	14927	10.8952	4	6	10	14	20
439	910	8.9264	2	3	6	11	18
440	5007	9.8354	2	3	6	12	21
441	648	4.4213	1	1	2	4	8
442	14657	8.7406	1	3	6	11	18
443	3465	3.5512	1	1	2	5	7
444	3543	5.2882	1	3	4	6	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 06/96 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
445	1415	3.9046	1	2	3	5	7
446	1	1.0000	1	1	1	1	1
447	3991	2.8013	1	1	2	3	5
448	88	1.0000	1	1	1	1	1
449	30267	4.4278	1	2	3	5	9
450	7175	2.3376	1	1	2	3	5
451	8	6.0000	2	3	4	5	7
452	20338	5.4282	1	2	4	6	11
453	3819	3.1825	1	1	2	4	6
454	5391	5.1330	1	2	3	6	10
455	1181	2.8442	1	1	2	3	5
456	213	8.3803	1	1	4	9	21
457	135	4.8222	1	1	2	5	12
458	1650	16.8358	3	7	13	22	35
459	582	10.2887	2	4	7	13	21
460	2437	6.6422	1	3	5	8	13
461	3230	4.8920	1	1	2	5	12
462	9786	13.7570	4	6	12	18	26
463	12591	5.1721	1	2	4	6	10
464	3221	3.7464	1	2	3	5	7
465	202	3.8762	1	1	2	4	7
466	1943	4.8101	1	1	2	4	10
467	1820	4.1264	1	1	2	4	8
468	59655	15.3127	3	7	12	19	30
471	9604	8.0717	4	5	6	9	14
472	159	30.1635	1	9	28	40	61
473	8643	14.3722	2	4	8	21	36
475	94974	12.1639	2	5	10	16	24
476	7280	13.8379	3	7	11	17	25
477	31806	9.3027	1	3	7	12	19
478	123973	8.3143	1	3	6	10	17
479	18593	4.5529	1	2	4	6	9
480	40	32.5750	12	16	24	34	55
481	193	32.6166	19	22	28	36	53
482	7121	14.8666	5	8	11	17	28
483	38600	45.9567	15	23	37	56	85
484	366	15.8115	2	6	12	22	32
485	3426	11.6985	4	6	9	14	22
486	2316	13.4473	1	6	11	18	28
487	4136	8.9350	1	3	7	11	18
488	843	20.4152	5	8	14	25	41
489	19523	10.6298	2	4	7	13	22
490	5312	6.5849	1	2	4	8	14
491	9897	4.2698	2	3	3	5	7
492	2139	17.3703	3	5	10	28	37
493	54799	5.8913	1	2	5	8	11
494	28543	2.4171	1	1	2	3	5
495	131	22.7176	10	12	17	26	39
	11135858						

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996

State	Urban	Rural
ALABAMA	0.420	0.476
ALASKA	0.505	0.796
ARIZONA	0.423	0.568
ARKANSAS	0.540	0.495
CALIFORNIA	0.405	0.540
COLORADO	0.513	0.604
CONNECTICUT	0.553	0.551
DELAWARE	0.503	0.500
DISTRICT OF COLUMBIA	0.525	.....
FLORIDA	0.414	0.418

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996—Continued

State	Urban	Rural
GEORGIA	0.527	0.532
HAWAII	0.484	0.567
IDAHO	0.580	0.635
ILLINOIS	0.478	0.599
INDIANA	0.564	0.613
IOWA	0.540	0.684
KANSAS	0.449	0.649
KENTUCKY	0.506	0.574

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996—Continued

State	Urban	Rural
LOUISIANA	0.475	0.540
MAINE	0.593	0.570
MARYLAND	0.765	0.816
MASSACHUSETTS	0.574	0.600
MICHIGAN	0.489	0.594
MINNESOTA	0.563	0.641
MISSISSIPPI	0.525	0.527
MISSOURI	0.459	0.529

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1996—Continued

State	Urban	Rural
MONTANA	0.513	0.615
NEBRASKA	0.526	0.684
NEVADA	0.321	0.563
NEW HAMPSHIRE	0.591	0.611
NEW JERSEY	0.479	.....
NEW MEXICO	0.484	0.546
NEW YORK	0.584	0.679
NORTH CAROLINA	0.539	0.498
NORTH DAKOTA	0.651	0.694
OHIO	0.557	0.594
OKLAHOMA	0.489	0.558
OREGON	0.577	0.671
PENNSYLVANIA	0.436	0.580
PUERTO RICO	0.495	0.643
RHODE ISLAND	0.587	.....
SOUTH CAROLINA	0.477	0.501
SOUTH DAKOTA	0.559	0.648
TENNESSEE	0.536	0.572
TEXAS	0.462	0.565
UTAH	0.462	0.675
VERMONT	0.576	0.587
VIRGINIA	0.499	0.536
WASHINGTON	0.634	0.688
WEST VIRGINIA	0.578	0.542
WISCONSIN	0.604	0.665
WYOMING	0.495	0.734

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1996

State	Ratio
ALABAMA	0.055
ALASKA	0.077
ARIZONA	0.050
ARKANSAS	0.056
CALIFORNIA	0.040
COLORADO	0.052
CONNECTICUT	0.037
DELAWARE	0.054
DISTRICT OF COLUMBIA	0.042
FLORIDA	0.051
GEORGIA	0.052
HAWAII	0.051
IDAHO	0.064
ILLINOIS	0.044
INDIANA	0.058
IOWA	0.056
KANSAS	0.055
KENTUCKY	0.056
LOUISIANA	0.069
MAINE	0.044
MARYLAND	0.013
MASSACHUSETTS	0.060
MICHIGAN	0.049
MINNESOTA	0.055
MISSISSIPPI	0.056
MISSOURI	0.053
MONTANA	0.061
NEBRASKA	0.058
NEVADA	0.034

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) AUGUST 1996—Continued

State	Ratio
NEW HAMPSHIRE	0.066
NEW JERSEY	0.045
NEW MEXICO	0.055
NEW YORK	0.056
NORTH CAROLINA	0.049
NORTH DAKOTA	0.074
OHIO	0.056
OKLAHOMA	0.056
OREGON	0.052
PENNSYLVANIA	0.045
PUERTO RICO	0.090
RHODE ISLAND	0.039
SOUTH CAROLINA	0.054
SOUTH DAKOTA	0.066
TENNESSEE	0.057
TEXAS	0.055
UTAH	0.055
VERMONT	0.049
VIRGINIA	0.057
WASHINGTON	0.063
WEST VIRGINIA	0.059
WISCONSIN	0.048
WYOMING	0.067

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCLUDED HOSPITALS AND UNITS

Area	1982–1993 difference	1984–1993 difference	1988–1993 difference	1990–1993 difference	1991–1993 difference	1992–1993 difference
Rural Connecticut	22.9642	25.4054	.....	.....	.....	.....
Rural Delaware	8.2430	11.4258	8.2051	9.1337	.....	.....
Rural Hawaii	.....	15.9050	.....	.....	.....	.....
Rural Massachusetts	20.2198	24.1342	.....	.....	.....	.....
Rural New Hampshire	.....	9.8512	.....	.....	.....	.....
Albany, GA	.....	10.3581	.....	.....	.....	.....
Anchorage, AK	.....	.....	.....	8.2863	.....	.....
Andreson, SC	.....	.....	9.1948	17.8927	.....	.....
Arecibo, PR	.....	.....	11.1448	18.6084	15.7978	.....
Athens, GA	15.1448	21.0519	13.7293	13.6463	.....	.....
Atlanta, GA	.....	8.6086	.....	.....	.....	.....
Atlantic City, NJ	.....	12.4784	.....	.....	.....	.....
Bergen-Passaic, NJ	10.5317	12.4189	14.3717	.....	.....	.....
Biloxi-Gulfport, MS	.....	11.1443	10.6209	12.4040	.....	.....
Boise City, ID	.....	.....	.....	8.3390	.....	.....
Boston-Lowell-Brockton-Lawrence-Salem, MA	.....	9.8215	.....	.....	.....	.....
Bremerton, WA	11.9762	13.8828	14.2288	14.3007	12.7288	.....
Bridgeport-Stamford-Norwalk-Danbury, CT	10.0485	14.3994	.....	.....	.....	.....
Burlington, NC	11.2298	14.5664	9.4207	.....	.....	.....
Burlington, VT	.....	8.8170	9.1074	.....	.....	10.3206
Caguas, PR	.....	15.1271	.....	.....	.....	.....
Charleston, WV	.....	.....	8.3229	.....	.....	.....
Charlotte-Gastonia-Rock Hill, NC–SC	.....	14.9051	.....	.....	.....	.....
Clarksville-Hopkinsville, TN–KY	.....	.....	12.9537	.....	.....	.....
Columbia, SC	.....	8.4912	.....	.....	.....	.....
Danville, VA	.....	11.3907	13.1106	.....	.....	.....
Decatur, AL	.....	13.3721	11.9044	.....	.....	.....
El Paso, TX	.....	8.5187	.....	.....	9.8283	.....
Eugene-Springfield, OR	.....	10.5206	10.8031	18.7777	.....	.....
Fayetteville, NC	9.0029	10.4192	8.4909	.....	.....	.....
Flint, MI	.....	.....	.....	.....	9.2030	.....
Florence, AL	.....	11.9746	.....	.....	.....	.....
Florence, SC	12.7213	11.5654	.....	.....	.....	.....

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCLUDED HOSPITALS AND UNITS—Continued

Area	1982–1993 difference	1984–1993 difference	1988–1993 difference	1990–1993 difference	1991–1993 difference	1992–1993 difference
Fort Walton Beach, FL		12.3564				
Fresno, CA				10.8664	9.4732	8.0939
Gadsden, AL			8.2379	14.6656	9.8985	
Galveston-Texas City, TX			16.5166	11.3722	8.4081	
Greeley, CO				11.0971		
Greensboro-Winston-Salem-High Point, NC	9.2662					
Hamilton-Middleton, OH					8.1472	8.0733
Hartford-Middletown-New Britain, CT	8.7767	12.4966	3.7059	2.2400	−0.1050	−0.1775
Houma-Thibodaux, LA			9.3263			
Jackson, TN		9.6429				
Jersey City, NJ			8.0391			
Killeen-Temple, TX	18.3848					
Lima, OH			8.2156			
Macon-Warner Robins, GA		13.0975				
McAllen-Edinburg-Mission, TX		10.4962	9.8809			
Medford, OR				8.0133		
Merced, CA					8.1676	
Middlesex-Somerset-Hunterdon, NJ		9.6183				
Monmouth-Ocean, NJ	10.0345	15.4149	9.3349			
Munice, IN			20.3096	13.5593		
Nassau-Suffolk, NY		11.9105				
New Bedford-Fall River-Attleboro, MA	13.7683	16.6368	10.4385			
New Haven-West Haven-Waterbury, CT	11.8620	16.2147				
New London-Norwich, CT	11.3300	14.9405				
Newark, NJ		8.8979				
Ocala, FL		11.8261				
Orange County, NY	17.1382	21.4157	11.8518			
Portsmouth-Dover-Rochester, NH	9.0870					
Poughkeepsie, NY		8.8610				
Providence-Pawtucket-Woonsocket, RI		13.9497				
Provo-Orem, UT		9.0782				
Redding, CA		17.2205	9.9157			
Richland-Kennewick, WA				8.1102		
Salinas-Seaside-Monterey, CA	10.6879	9.7202				
Santa Cruz, CA	9.6319	9.7120				
Santa Fe, NM	11.2207	14.0809	18.3339	8.2941		
Sarasota, FL		8.9573				
Savannah, GA	9.0765	14.6762	15.7768	11.1239		
Topeka, KS			8.3342	9.2849		
Tyler, TX				9.5202		
Vallejo-Fairfield-Napa, CA		13.6478		11.7807		
Wilmington, DE–NJ–MD		8.9989				
Wilmington, NC		12.2020				
Worcester-Fitchburg-Leomister, MA	10.9147	17.9463				
Yuma, AZ					9.4870	

Appendix A—Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Social Security Act (the Act) requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

II. Changes in the Final Rule

Any differences in this final rule impact analysis compared to that in the proposed rule are the result of using more recent or more complete hospital data. For example, a more complete FY 1995 MedPAR file (June 1996 update) is

now available compared to the one available at the time of the proposed rule. In addition, more recent hospital-specific data, including cost reports, are used in this analysis.

Our most recent hospital market basket forecasts are: 2.5 percent for prospective payment system hospitals and 2.5 percent for hospitals excluded from the prospective payment system. The respective update factors in the proposed rule were both 2.7 percent. Beyond this change in the hospital market basket forecast, there are no operating or capital prospective payment policy changes from those discussed in the impact analysis in the proposed rule.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our final policy changes, as well as statutory changes effective for FY 1997, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix.

We received no comments on the methodology used for the impact analysis in the proposed rule.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 46 Indian Health Service hospitals in our data base, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, we have included 5,129 hospitals in our analysis. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, childrens', and cancer hospitals. The impacts of our policy changes on these hospitals are discussed below.

V. Impact on Excluded Hospitals and Units

As of August 1996, there were 1,125 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, there were 2,315 psychiatric and rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40.

In accordance with section 1886(b)(3)(B)(ii)(V) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 1997 is 1.5 percent (excluded hospital market basket minus 1.0 percentage points), adjusted to account for the relationship between the hospital's allowable operating cost per case and its target amounts.

The impact on excluded hospitals and units of the final update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital and excluded unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limit, the major effect will be the amount of excess costs that the hospitals would have to absorb.

In this context, we note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed the rate-of-increase limit is allowed to receive the lower of its rate-of-increase ceiling plus 50 percent of reasonable costs in excess of the ceiling, or 110 percent of its ceiling. In addition, under the various provisions set forth in § 413.40. excluded hospitals and units can obtain payment adjustments for significant and justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Final Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate analyses of the final changes to each system, beginning here with changes to the operating prospective payment system. Estimated payment impacts of final FY 1997 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The data used in developing the quantitative analyses presented below are taken from the FY 1995 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to create some of the variables by which hospitals are categorized. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1995 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here.

The following changes are discussed separately below:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative

weights required by section 1886(d)(4)(C) of the Act.

- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1993 data).
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 1997.
- The effects of phasing out payments for extraordinarily lengthy cases (day outlier cases) with a corresponding increase in payments for extraordinarily costly cases (cost outliers), in accordance with section 1886(d)(5)(A)(v) of the Act.
- The total change in payments based on FY 1997 policies relative to payments based on FY 1996 policies.

To illustrate the impacts of the FY 1997 final changes, our analysis begins with an FY 1997 baseline simulation model using: the FY 1996 GROUPER (version 13.0); the FY 1996 wage indexes (based on FY 1992 data); no MGCRB reclassifications; and current outlier policy (50 percent phase-out of day outlier payments). Outlier payments are estimated to be 5.1 percent of total DRG payments.

Each policy change is then added incrementally to this baseline model, finally arriving at an FY 1997 model incorporating all of the final rule and statutory changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1996 to FY 1997. Four factors not displayed in the previous five columns have significant impacts here. First is the update to the standardized amounts for FY 1997. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas average standardized amounts for FY 1997 using the most recently forecasted hospital market basket increase for FY 1997 of 2.5 percent, minus 0.5 percentage points. Thus, the update to the large urban and other areas standardized amounts is 2.0 percent. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs) and essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes) is also the market basket increase minus 0.5 percent, or 2.0 percent.

A second significant factor impacting changes in hospitals' payments per case from FY 1996 to FY 1997 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1996 that are no longer reclassified in FY 1997 may have a negative payment impact going from FY 1996 to FY 1997; conversely, hospitals not reclassified in FY 1996 that are reclassified in FY 1997 may have a positive impact. In some cases, these impacts can be quite substantial, so that if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage increase in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 1996 will be 4.0 percent of actual total DRG payments. When the FY 1996 final rule was published, we projected FY 1996 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were reduced correspondingly. The effects of the lower than expected outlier payments during FY 1996 (as discussed in the Addendum to this final rule) are reflected in the analyses below comparing our current estimates of FY 1996 payments per case to estimated FY 1997 payments per case.

Finally, the regional floor provision (section 1886(d)(1)(A)(iii)(II) of the Act) expires effective with discharges occurring on or after October 1, 1996. Under this provision (applicable during FY 1996), hospitals within any census division having a regional standardized amount greater than the national standardized amount (large urban or other, depending on which amount was applicable) received a blend of 85 percent of the national amount and 15 percent of the regional amount. Hospitals in census divisions where the regional floor was applicable during FY 1996 will be negatively impacted by its expiration when comparing FY 1996 to FY 1997.

Table I demonstrates the results of our analysis. This table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 5,129 hospitals included in the analysis. This is 78 fewer hospitals than were included in the impact analysis in the FY 1996 final rule (60 FR 45924). Data for 108 hospitals that were included in last year's analysis were not available for analysis this year; however, data were available this year for 30 hospitals for which data were not available last year.

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,881 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,596 hospitals located in large urban areas (populations over 1 million), and 1,285 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,248 hospitals in rural areas. The next two groupings are by bed size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 1997 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural, show the numbers of hospitals being paid based on these categorizations (after consideration of geographic reclassifications), are 2,981, 1,791, 1,190, and 2,148, respectively.

The next three groupings examine the impacts of the final changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an indirect medical education (IME) adjustment), receive disproportionate share (DSH) payments, or some combination of these two adjustments. There are 4,044 nonteaching hospitals in our analysis, 850 teaching hospitals with fewer than 100 residents, and 235 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next four rows examine the impacts of the final changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and EACHs), as well as rural hospitals not receiving a special payment designation. Rural hospitals reclassified for FY 1997 for purposes of the standardized amount are not included here.

The RRCs (90), SCH/EACHs (645), and SCH/EACH and RRCs (38) shown here were not reclassified for purposes of the standardized amount. There are seven EACHs included in our analysis and four EACH/RRCs.

There are two RRCs and three SCHs that will be reclassified for the standardized amount in FY 1997 that, therefore, are not included in these rows. There are significantly fewer reclassifications among these groups than there were in FY 1996, owing to the new criterion under § 412.230(a)(5)(ii) that a hospital may not be reclassified for purposes of the standardized amount if the area to which the hospital seeks reclassification does not have a higher standardized amount than that currently received by the hospital. (See the September 1, 1995 final rule (60 FR 45799).) Before this change (effective with reclassifications for FY 1997), some rural hospitals reclassified to other urban areas in order to qualify for urban DSH payments. For other rural hospitals that already qualified for DSH payments, the urban designation enabled them to qualify for a higher DSH adjustment than they would receive as a rural hospital.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1994 Medicare cost report files, if available (otherwise FY 1993 data are used). Cost report data needed to determine hospital ownership and to calculate Medicare utilization percentages were unavailable for 116 hospitals. For the most part, these are either new hospitals or hospitals filing manual cost reports that are not yet entered into the data base.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for either FY 1996 or FY 1997, or for both years, by urban/rural status. The next rows illustrate the overall number of FY 1997 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hospitals[1]	DRG recalibration[2]	New wage data[3]	Combined wage and recal[4]	MGCRB reclassification[5]	Day outlier policy changes[6]	All FY 97 changes[7]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)
(By Geographic Location)							
All hospitals	5,129	0.1	0.1	0.0	0.0	0.0	2.9
Urban hospitals	2,881	0.1	0.1	0.0	−0.4	−0.1	2.9
Large urban	1,596	0.1	0.1	0.0	−0.4	−0.1	2.9
Other urban	1,285	0.1	0.1	0.0	−0.2	0.1	3.0
Rural hospitals	2,248	0.0	0.0	−0.1	2.3	0.1	2.4
Bed size (urban):							
0–99 beds	715	0.0	−0.1	−0.3	−0.5	0.1	2.7
100–199 beds	945	0.0	−0.1	−0.2	−0.4	0.1	2.6
200–299 beds	576	0.1	0.0	0.0	−0.4	0.0	2.9
300–499 beds	478	0.1	0.1	0.1	−0.4	−0.1	3.1
500 or more beds	167	0.1	0.1	0.1	−0.2	−0.2	3.1
Bed size (rural):							
0–49 beds	1,177	−0.1	0.1	−0.1	0.0	0.1	2.4
50–99 beds	657	−0.1	0.1	−0.1	1.0	0.1	2.4
100–149 beds	241	0.0	0.1	−0.1	3.1	0.1	2.6
150–199 beds	98	0.1	0.0	0.0	2.7	0.1	2.7
200 or more beds	75	0.1	−0.1	−0.1	4.9	0.1	1.9
Urban by census division:							
New England	160	0.1	0.0	0.0	−0.2	−0.1	2.0
Middle Atlantic	434	0.0	0.4	0.3	−0.2	−0.7	3.3
South Atlantic	419	0.1	−0.2	−0.2	−0.4	0.1	3.1
East North Central	483	0.1	0.4	0.4	−0.3	0.1	2.5
East South Central	163	0.1	−0.2	−0.2	−0.5	0.2	3.1
West North Central	193	0.1	0.0	0.0	−0.5	0.2	3.3
West South Central	376	0.1	0.1	0.0	−0.5	0.2	3.6
Mountain	127	0.2	−0.3	−0.3	−0.4	0.2	2.9
Pacific	478	0.1	−0.4	−0.4	−0.5	0.1	2.5
Puerto Rico	48	−0.1	−1.2	−1.4	−0.5	0.0	1.9
Rural by census division:							
New England	53	0.1	−0.9	−1.0	2.0	0.2	1.2
Middle Atlantic	85	0.0	−0.5	−0.6	0.9	−0.1	1.7
South Atlantic	297	−0.1	−0.4	−0.5	3.0	0.1	2.3
East North Central	304	0.1	0.3	0.3	2.0	0.1	2.6
East South Central	278	−0.1	0.3	0.1	2.4	0.1	1.9
West North Central	525	0.0	0.1	0.0	2.1	0.1	2.5
West South Central	349	−0.1	0.5	0.2	3.1	0.1	2.8
Mountain	211	0.1	−0.1	−0.1	0.8	0.1	2.6
Pacific	141	0.1	0.6	0.5	2.3	0.1	3.7
Puerto Rico	5	−0.2	−4.2	−4.5	3.3	0.0	1.7
(By Payment Categories)							
Urban hospitals	2,981	0.1	0.1	0.0	−0.3	0.0	2.9

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hospitals [1] (0)	DRG recalibration [2] (1)	New wage data [3] (2)	Combined wage and recal [4] (3)	MGCRB reclassification [5] (4)	Day outlier policy changes [6] (5)	All FY 97 changes [7] (6)
Large urban	1,791	0.1	0.1	0.0	−0.2	−0.1	2.9
Other urban	1,190	0.1	0.0	0.0	−0.4	0.1	3.0
Rural hospitals	2,148	0.0	0.0	−0.1	1.9	0.1	2.2
Teaching status:							
Non-teaching	4,044	0.0	0.0	−0.1	0.3	0.1	2.8
Less than 100 residents	850	0.1	0.1	0.0	−0.3	0.0	3.0
100+ residents	235	0.1	0.2	0.2	−0.2	−0.4	2.8
Disproportionate Share Hospitals (DSH):							
Non-DSH	3,201	0.1	0.0	0.0	0.2	0.1	2.9
Urban DSH:							
100 beds or more	1,410	0.0	0.1	0.0	−0.3	−0.1	2.9
Fewer than 100 beds	101	−0.2	−0.3	−0.6	−0.3	0.2	2.2
Rural DSH:							
Sole community (SCH)	156	−0.1	0.0	−0.3	0.3	0.0	3.6
Referral centers (RRC)	27	0.0	0.1	−0.1	3.7	0.0	3.3
Other rural DSH hospitals:							
100 beds or more	83	0.0	−0.1	−0.2	2.4	0.2	0.3
Fewer than 100 beds	151	−0.2	0.0	−0.3	−0.3	0.1	2.0
Urban teaching and DSH:							
Both teaching and DSH	692	0.0	0.2	0.1	−0.4	−0.2	2.8
Teaching and no DSH	339	0.2	0.0	0.1	−0.1	0.0	3.0
No teaching and DSH	819	0.0	−0.1	−0.2	0.0	0.1	3.0
No teaching and no DSH	1,131	0.1	0.0	−0.1	−0.3	0.2	3.1
Rural hospital types Nonspecial status:							
Hospitals	1,375	0.0	0.0	−0.1	1.7	0.1	1.6
RRC	90	0.1	0.1	0.1	5.0	0.1	3.4
SCH/each	645	−0.1	0.0	−0.2	0.3	0.0	2.6
SCH/each and RRC	38	0.1	0.1	0.0	1.1	−0.1	2.7
Type of ownership:							
Voluntary	2,951	0.1	0.1	0.1	−0.1	−0.1	2.9
Proprietary	696	0.0	−0.2	−0.4	0.3	0.2	2.9
Government	1,366	0.0	0.0	−0.1	0.1	0.0	2.6
Unknown	116	−0.2	0.6	0.3	−0.4	−1.3	2.1
Medicare utilization as a percent of inpatient days:							
0–25	258	−0.1	−0.1	−0.3	−0.4	−0.2	2.0
25–50	1,284	0.1	0.0	0.0	−0.2	−0.1	2.9
50–65	2,097	0.1	0.1	0.0	0.2	0.0	2.9
Over 65	1,374	0.0	0.0	−0.1	0.2	0.1	2.9
Unknown	116	−0.2	0.6	0.3	−0.4	−1.3	2.1
Hospitals Reclassified by the Medicare Geographic Review Board							
Reclassification status during FY96 and FY97:							
Reclassified during both FY96 and FY97	379	0.1	0.2	0.2	5.9	0.0	2.7
Urban	130	0.1	0.4	0.4	3.5	−0.1	3.0
Rural	249	0.0	0.0	−0.1	8.9	0.1	2.5
Reclassified during FY97 only	98	0.2	0.3	0.3	3.8	−0.3	8.3
Urban	29	0.2	0.4	0.5	2.5	−0.5	7.6
Rural	69	0.0	−0.1	−0.1	7.1	0.1	10.2
Reclassified during FY96 only	253	0.1	−0.5	−0.5	−1.2	0.1	−0.5
Urban	91	0.1	−0.8	−0.8	−1.7	0.0	0.6
Rural	162	0.0	0.0	−0.1	−0.4	0.2	−2.2
FY 97 reclassifications:							
All reclassified hospitals	477	0.1	0.2	0.2	5.4	−0.1	3.8
Standard amount only	119	0.1	0.1	0.1	1.7	0.0	2.8
Wage index only	272	0.1	−0.2	−0.2	8.2	−0.1	3.3
Both	86	0.1	0.9	0.9	4.7	−0.2	5.5
Nonreclassified	4,625	0.1	0.0	0.0	−0.6	0.0	2.8
All urban reclassifed	159	0.1	0.4	0.4	3.3	−0.2	4.1
Standard amount only	62	0.1	0.2	0.1	0.9	0.0	2.9
Wage index only	27	0.2	−0.6	−0.5	7.2	−0.4	3.7
Both	70	0.1	1.0	1.0	3.4	−0.2	5.1

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hospitals [1] (0)	DRG recalibration [2] (1)	New wage data [3] (2)	Combined wage and recal [4] (3)	MGCRB reclassification [5] (4)	Day outlier policy changes [6] (5)	All FY 97 changes [7] (6)
Nonreclassified	2,722	0.1	0.0	0.0	−0.6	0.0	2.9
All rural reclassified	318	0.0	0.0	−0.1	8.6	0.1	3.5
Standard amount only	57	0.1	−0.1	−0.1	4.4	0.2	2.5
Wage index only	245	0.0	0.0	−0.1	8.6	0.1	3.2
Both	16	0.1	−0.1	−0.1	18.5	0.2	9.2
Nonreclassified	1,903	0.0	0.1	−0.1	−0.4	0.1	1.9
Other reclassifed:							
Hospitals (section 1886(d)(8)(B))	27	0.1	0.2	0.1	1.2	0.1	2.7

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1995, and hospital cost report data are from reporting periods beginning in FY 1993 and FY 1994.

[2] This column displays the payment impacts of the recalibration of the DRG weights, based on FY 1995 MedPAR data and the DRG classification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1993 cost reports.

[4] This column displays the combined impacts of the reclassification and recalibration of the DRGs, the updated wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 1 and 2, and the FY 1997 budget neutrality factor of 0.998702.

[5] Shown here are the combined effects of geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1997 payment impacts of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1997. Reclassification for prior years has no bearing on the payment impacts shown here.

[6] This column illustrates the payment impacts of phasing out day outlier payments and increasing cost outlier payments, in accordance with section 1886(d)(5) of the Act.

[7] This column shows changes in payments from FY 1996 to FY 1997. It incorporates all of the changes displayed in columns 3 through 5 (the changes displayed in columns 1 and 2 are included in column 3). It also displays the impacts of the updates to the FY 1997 standardized amounts, changes in hospitals' reclassification status in FY 1997 compared to FY 1996, the expiration of the regional floor provision at section 1886(d)(1)(A)(iii)(II) of the Act, and the difference in outlier payments from FY 1996 to FY 1997. The sum of the columns 3 through 5 plus these effects may be different from the percentage changes shown here due to changes in hospitals' geographic reclassification status from FY 1996 to FY 1997, rounding errors and interactive effects.

B. The Impact of the Final Changes to the DRG Classifications and Relative Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us each year to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

Consistent with the minor changes we are proposing for the FY 1997 GROUPER, the redistributional impacts across hospital groups are very small (an increase of 0.1 for large and other urban hospitals). Among other hospital categories, the net effects are slightly negative changes for small (up to 99 beds) rural hospitals and slightly positive changes for larger rural (over 150 beds) and urban (over 200 beds) hospitals.

The largest negative effect on any of the hospital categories examined is a 0.2 percent decrease in payments for smaller urban (100 or fewer beds) and rural hospitals that receive DSH payments, as well as rural hospitals in Puerto Rico.

We attribute these negative changes to the increasing gap between the relative weights for medical, diagnostic, and less complicated surgical DRGs and the weights for the more complicated surgical DRGs. Since the cases associated with the former DRGs tend to be treated more often in smaller hospitals with fewer resources available, lowering the relative weights associated with those cases would disproportionately affect these hospitals. In general, small hospitals that serve a disproportionate share of low-income patients and hospitals in rural Puerto Rico fit this definition. We note, however, that these negative impacts are relatively minor and do not result solely from the limited DRG revisions we are making for FY 1997.

C. The Impact of Updating the Wage Data (Column 2)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the final wage index for FY 1997 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from a model using the FY 1996 wage index before geographic reclassifications based on FY 1992 wage data to a model using the FY 1997 prereclassification wage index based on FY 1993 wage data.

The results indicate that the new wage data do not have a significant overall impact on hospital payments. Thus, hospitals with significant changes in their wage indexes are not concentrated within any particular hospital group. Some of the largest changes are found among both urban and rural hospitals grouped by census division. Our review of the wage data (as described below) indicates that these changes were attributable to improved reporting, as well as relative changes in labor costs.

Among urban hospitals in the 50 States and the District of Columbia, the largest increases (0.4 percent) are in the Middle Atlantic and the East North Central census divisions. Significantly, New York City's wage index rises by over 2.4 percent (this also contributes to the 0.2 percent increase among major

teaching hospitals and the 0.6 percent increase in the Unknown category under the Type of Ownership and the Medicare Utilization rows, where a cluster of New York City hospitals that file manual cost reports are grouped). Last year, the Middle Atlantic experienced one of the largest decreases (0.6 percent), which contributed to the 0.4 percent decline among major teaching hospitals—New York City's wage index fell by nearly 2.0 percent in FY 1996 (60 FR 45929). The largest decrease among urban hospitals (outside of Puerto Rico, which is discussed separately below) occurs in the Pacific census division, with a decline of 0.4 percent.

Among the rural hospitals, the largest increases are in the Pacific census division (0.6 percent) and the West South Central census division (0.5 percent); the largest decreases are in the census divisions of New England (0.9 percent), the Middle Atlantic (0.5 percent) and the South Atlantic (0.4 percent). The decrease among rural New England hospitals is primarily due to a 2.7 percent decrease in the wage index for rural Connecticut and rural New Hampshire hospitals. Among rural hospitals last year, the Pacific rural hospitals experienced one of the greatest increases (0.6 percent), while the rural West South Central hospitals experienced one of the greatest decreases (0.4 percent).

In Puerto Rico, payments decline by 4.2 percent for the five rural hospitals and by 1.2 percent for the urban hospitals. The average hourly wages reported in FY 1993 by two rural Puerto Rico hospitals fell from those reported in FY 1992 by 22.4 percent and 18.1 percent, leading to the 4.2 percent overall decline. Also, all six urban areas in Puerto Rico experience decreases in their wage index values. Two of these six experience a decline of more than 5 percent. These MSAs have relatively few hospitals (two and five), thus the decreases appear to be the result of one hospital in each area having a decrease of more than 5 percent in its average hourly wage.

The final FY 1997 wage index represents the fourth annual update to the wage data, and will continue to include salaries, fringe benefits, home office salaries, and certain contract labor costs. In the past, updates to the wage data have resulted in significant payment shifts among hospitals. Since the wage index is now updated annually, we expect these payment fluctuations will continue to decrease.

This expectation is borne out by comparing the FY 1997 wage index (after reclassifications under sections 1886(d)(8)(B) and 1886(d)(10) of the Act) to the FY 1996 wage index. The following chart compares the shifts in wage index values (after reclassifications) for labor markets for FY 1997 with those from FY 1996. The majority of labor market areas (334) experience less than a 5 percent change. Only 19 labor market areas experience a change between 5 and 10 percent; 10 of those experience increases. Still fewer labor markets experience a change of more than 10 percent; one experiences an increase and three experience decreases. For FY 1996, by comparison, 10 labor market areas experienced an increase in their wage index value of more than 10 percent.

Percentage change in area wage index values	Number of labor market areas	
	FY 1997	FY 1996
Increase more than 10 percent	1	6
Increase between 5 and 10 percent, (inclusive)	10	19
Increase/decrease below 5 percent	334	323
Decrease between 5 and 10 percent, (inclusive)	9	6
Decrease more than 10 percent	3	0

Note: There are two new MSAs in FY 1997. Also, there are some MSAs that, after geographic reclassification have no providers remaining and, therefore, are not reflected in this table.

Under the final FY 1997 wage index, 96.6 percent of urban hospitals and 93.9 percent of rural hospitals would experience a change in their wage index of less than 5 percent. Approximately 2.6 percent of urban hospitals and 1.4 percent of rural hospitals would experience a change of between 5 and 10 percent, and 0.9 percent of urban hospitals and 4.6 percent of rural hospitals would experience a change of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Percent of hospitals (by urban/rural)	
	Urban	Rural
Increase more than 10 percent	0.3	2.6
Increase between 5 and 10 percent (inclusive)	1.5	0.4
Increase or decrease less than 5 percent	96.6	93.9
Decrease between 5 and 10 percent (inclusive)	1.1	1.0
Decrease more than 10 percent	0.6	2.0

Note: The sum of the columns may not total to 100 due to rounding.

D. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 3)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are budget neutral. As pointed out in the Addendum to this final rule, we compared aggregate payments using the FY 1996 DRG relative weights and wage index to aggregate payments using the FY 1997 DRG relative weights and wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.998509. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 3. The 0.0 percent impact for All Hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 1 and 2, minus the approximately 0.2 percent decrease attributable to the budget neutrality factor. In calculating the total changes shown in column 6, readers should begin with this column and add across, excluding the impacts shown in columns 1 and 2.

E. The Impact of MGCRB Reclassifications (Column 4)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 4 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1997. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural

hospitals reclassified for purposes of receiving the large urban standardized amount also qualify to be treated as urban for purposes of the DSH adjustment. However, effective FY 1997, rural hospitals can no longer be reclassified to an other urban area for purposes of the standardized amount in order to receive a higher DSH adjustment.

By March 30 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may reclassify a hospital for the purpose of using the other area's standardized amount, wage index value, or both. (RRCs and SCHs are exempt from the proximity requirement.)

This impact analysis incorporates all of the MGCRB's reclassification decisions for FY 1997. It also reflects any decisions made by the HCFA Administrator through the appeals and review process. Additional changes that resulted from a request by a hospital to withdraw its application are also reflected in this final rule.

The overall effect of geographic reclassification is required to be budget neutral by section 1886(d)(8)(D) of the Act. Therefore, we applied an adjustment of 0.993511 to ensure that the effects of reclassification are budget neutral. (See section II.A.4 of the Addendum to this final rule).

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.3 percent, while payments to urban hospitals decline 0.4 percent. Large urban hospitals lose 0.4 percent because, as a group, they have the smallest percentage of hospitals that are reclassified (fewer than 3 percent of large urban hospitals are reclassified). There are enough hospitals in other urban areas that are reclassified to limit the decrease in payments to these urban hospitals stemming from the budget neutrality offset to 0.2 percent. Among urban hospital groups generally (that is, bed size, census division, and special payment status), payments fall between 0.1 and 0.5 percent.

A positive impact is evident among all rural hospital groups except rural hospitals with up to 49 beds, which experience a 0.0 percent impact. The smallest effect among all rural census divisions is 0.8 percent for the Mountain division. This division has relatively few MGCRB reclassifications. Among urban census divisions, the New England and the Middle Atlantic display the smallest negative impact, 0.2 percent.

Among the 90 rural hospitals designated as RRCs, 50 hospitals are reclassified for purposes of the wage index only and experience a 9.5 percent increase in payments due to MGCRB reclassification. This group is not shown separately in the table, but this large increase is reflected in several of the rural hospital categories. For example, rural hospitals with 200 or more beds have a 4.9 percent increase in payments in column 4, largely due to this effect.

Rural hospitals reclassified for FY 1996 and FY 1997 experience an 8.9 percent increase in payments, the greatest of any group in the category. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 1997 only experience a 7.1 percent increase in payments while rural hospitals reclassified for FY 1996 only experience a 0.4 decrease in payments. This is due to the budget neutrality adjustment, since the changes in this column reflect FY 1997 payments relative to no reclassifications, rather than to FY 1996 reclassifications. Urban hospitals reclassified for FY 1996 but not FY 1997 experience a 1.7 percent decline in payments overall. This appears to be due to the combined impacts of the budget neutrality adjustment and a number of hospitals in this category that experience a 6 percent drop in their wage index after reclassification. Urban hospitals reclassified for FY 1997 but not for FY 1996 experience a 2.5 percent increase in payments.

The FY 1997 Reclassification rows of Table I show the changes in payments per case for all FY 1997 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive an 18.5 percent increase in payments. The number of hospitals in this category has declined from 42 in FY 1996 to 16 in FY 1997. In addition, 245 rural hospitals reclassified for the wage index receive an 8.6 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.4 percent for FY 1997.

Among the 27 rural hospitals deemed to be urban under section 1886(d)(8)(B) of the Act, payments increase 1.2 percent due to MGCRB reclassification. This is because, although these hospitals are treated as being attached to an urban area in our baseline (their redesignation is ongoing, rather than subject to annual review, like the MGCRB reclassifications), they are still eligible for MGCRB reclassification. For FY 1997, one hospital in this category reclassified to a large urban area, resulting in a net increase due to reclassifications of 1.2 percent.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of 0.6 percent, which corresponds closely with the geographic reclassification budget neutrality factor. Rural nonreclassified hospitals decrease slightly less, a 0.4 percent decrease. This occurs because the wage index values in some rural areas increase after reclassified hospitals are excluded from the calculation of those index values.

The number of reclassifications for purposes of the standardized amount, or for both the standardized amount and the wage index, has declined from 358 in FY 1996 to 205 in FY 1997. This is not surprising because of the elimination of standardized amount reclassifications from rural to other urban areas for individual hospitals. Individual rural (and other urban) hospitals can continue to reclassify to large urban areas for purposes of the standardized amount. The number of wage index only reclassifications increased slightly from 260 in FY 1996 to 272 in FY 1997.

F. Outlier Changes (Column 5)

Medicare provides extra payment in addition to the basic DRG payment amount for extremely costly or extraordinarily lengthy cases (cost outliers and day outliers, respectively). Section 1886(d)(5)(A)(v) of the Act requires the Secretary to phase out payment for day outliers from FY 1994 day outlier levels in 25 percent increments beginning in FY 1995. Day outliers in FY 1997 should account for approximately 8 percent of total outlier payments (25 percent of FY 1994 levels). This reduction in day outlier payments will be offset by an increase in cost outlier payments.

As discussed in the Addendum, for FY 1997, the day outlier threshold will be equal to the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. The marginal cost factor for day outliers is 33 percent. For FY 1997, a case would receive cost outlier payments if its costs exceed the DRG payment plus $9,700.

We are maintaining the marginal cost factor for cost outliers at 80 percent.

The payment impacts of these changes are minimal. Hospital categories negatively affected by phasing out day outliers are consistent with the categories negatively affected in previous years: urban New England (0.1 percent decline); urban and rural Middle Atlantic census divisions (0.7 percent and 0.1 percent declines, respectively); urban hospitals with 300–499 beds and those with 500 or more beds (0.1 and 0.2 percent declines, respectively); teaching hospitals with 100 or more residents (0.4 percent decline); and hospitals for which data were unavailable to calculate type of ownership or Medicare utilization rates (1.3 percent decline). As noted previously in the wage index discussion, this last category contains a number of New York City hospitals because they file manual cost reports. Because the changes to outlier policy result in a shift in payments from cases paid as day outliers to cases paid as cost outliers, this indicates that these categories have higher percentages of day outliers. The largest positive impact of 0.2 percent affected numerous hospital groups.

G. All Changes (Column 6)

Column 6 compares our estimate of payments per case incorporating all of our changes for FY 1997 to our estimate of payments per case in FY 1996. It also includes the effects of the 2.0 percent update to the standardized amounts and the hospital-specific rates for SCHs and EACHs, and the difference between the percentage of projected outlier payments in FY 1997 (5.1 percent) and the current estimate of the percentage of actual outlier payments in FY 1996 (4.0 percent), as described in the introduction to this Appendix and the Addendum.

Also, column 6 includes the impacts of FY 1997 MGCRB reclassifications compared to the payment impacts of FY 1996 reclassifications. Therefore, when comparing FY 1997 payments to FY 1996, the percent changes due to FY 1997 reclassifications shown in column 4 are offset by the effects of reclassification on hospitals' FY 1996 payments (column 4 of Table I, September 1, 1995 final rule; 60 FR 45926). That is, column 4 of Table I shows the impacts of going from no MGCRB reclassifications to the FY 1997 reclassifications. When comparing FY 1996 and FY 1997 payments, hospitals similarly reclassified during FY 1996 would not experience the full extent of the change shown in column 4. For example, the impact of MGCRB reclassifications on rural hospitals' FY 1996 payments was approximately a 2.3-percent increase, equal to the 2.3-percent increase for FY 1997. Therefore, the net increase in FY 1997 payments due to reclassification for rural hospitals is 0.0 percent.

The FY 1996 standardized amounts were adjusted by a budget neutrality factor of 0.997575, in accordance with section 1886(d)(5)(I) of the Act, so that the change to the transfer payment methodology we implemented last year (doubling the per diem payment for the first day of a transfer) would not affect aggregate payments. As we indicated in last year's final rule (60 FR 45854), this adjustment was applied on a one-time basis to the FY 1996 standardized amounts. In the proposed rule, we indicated that this was interpreted to mean that there was no transfer budget neutrality factor applied after FY 1996, and we estimated the impact of this to be a 0.2 percent increase in FY 1997 payments. As discussed in the Addendum to this final rule, we have corrected this interpretation so that we will continue to apply this budget neutrality factor of 0.997575 in FY 1997, and in the future.

In addition, eliminating the regional floor provision effective for discharges occurring on or after October 1, 1996, results in approximately a 0.2 percent lower average payment in FY 1997 than would occur otherwise. This effect is attributable to particular census divisions, as discussed below.

There may also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 6 may not equal the sum of columns 3 through 5 plus the other impacts that we are able to identify. The point should be repeated here, as well, that when comparing the percent changes in column 6 attributable to the isolated changes in the prior columns in this table, columns 1 and 2 are incorporated into column 3. Therefore, just the effect in column 3 should be added into the total change shown in column 6.

The overall payment increase from FY 1997 to FY 1996 for all hospitals is a 2.9 percent increase. This reflects the 0.0 percent net change in total payments due to the final changes for FY 1997 shown in columns 3 through 5, the 2.0 percent update for FY 1997, the 1.1 percent higher outlier payments in FY 1997 compared to FY 1996, and the 0.2 overall negative effect of eliminating the regional floor.

Hospitals in urban areas experience a 2.9 percent rise in payments per case over FY 1996. Similar to all hospitals nationally, this is primarily due to the factors discussed above: the 2.0 percent update; a 1.1 percent impact of the higher level of outlier payments estimated for FY 1997; and the effect of the expiration of the regional floor.

Hospitals in large and other urban areas experience 2.9 percent and 3.0 percent increases, respectively. The lower increase for hospitals in large urban areas appears to be attributable primarily to the 0.1 percent negative impact of the continuing phase-out of day outliers.

Hospitals in rural areas experience a 2.4 percent increase. Their FY 1997 payments are estimated to be 0.4 percent higher than for FY 1996 due to higher outlier payments, in contrast to the national average of 1.1 percent. Like urban hospitals, the impact of geographic reclassification in FY 1997 is offset by an identical 2.3 percent increase in FY 1996.

Among urban bed size groups, column 6 shows changes in payments are higher for the largest urban hospitals compared to smaller urban hospitals. The relatively smaller increases for the smaller urban hospitals appear to be due to the negative impacts of the new wage data, as shown in column 2. Among rural bed size groups, the impacts range from 2.4 percent to 2.7 percent, with the exception of rural hospitals with 200 or more beds. Payments per case for this group of hospitals are estimated to increase 1.9 percent during FY 1997. This below average increase appears to be attributable primarily to a smaller, though still significant, impact of MGCRB reclassifications for FY 1997 compared to FY 1996. In column 4, the FY 1997 impact of reclassification is shown to be 4.9 percent. For FY 1996, however, this impact was 5.4 percent. Thus, the increase is 0.5 percent less for FY 1997 due to a smaller reclassification impact.

As discussed previously, effective for discharges on or after October 1, 1996, the regional floor, which benefitted certain census divisions, expires. The regional floor provided that, in those census divisions where the regional standardized amount exceeded the national standardized amount, hospitals would be paid a blend of 85 percent of the national amount and 15 percent of the regional amount. The census divisions affected by the regional floor during FY 1996 are New England and East North Central. In New England, the impacts of eliminating the regional floor are a 0.7 percent decrease for urban hospitals and a 0.6 percent decrease among rural hospitals. In the East North Central census division, the impacts are a 1.0 percent reduction for urban

hospitals, and a 0.7 percent reduction for rural hospitals. The negative impacts of losing the regional floor for urban hospitals in the East North Central census division are largely offset by higher estimated outlier payments in FY 1997 compared to FY 1996, the 0.4 percent higher payments due to the FY 1993 wage data (column 2), and the 0.1 percent increase due to the phase-out of day outliers (column 5). Urban New England hospitals' higher outlier payments in FY 1997 are also offset by the negative impacts of the expiration of the regional floor. Rural New England hospitals also see a 0.9 percent decrease in payments stemming from the FY 1993 wage data.

Other census divisions below the average payment increase are urban Pacific, urban Puerto Rico, rural Middle Atlantic, rural East South Central, and rural Puerto Rico. With the exception of the rural East South Central, the below average overall payment impacts of these census divisions are related to negative impacts of introducing the FY 1993 wage data. In the rural Middle Atlantic, the negative impact of the new wage data is combined with a smaller impact stemming from MGCRB reclassifications in FY 1997 (0.9 percent compared to 1.5 percent in FY 1996). A smaller FY 1997 reclassification impact (2.4 percent compared to 3.7 percent in FY 1996) is also the reason for the relatively small (1.9 percent) rate of increase in the rural East South Central census division. In rural Puerto Rico, although hospitals experience the greatest negative impact due to the updated wage data, this group benefits from reclassifications by the MGCRB in FY 1997 (of the five rural Puerto Rico hospitals, one is reclassified), with a 3.3 percent increase compared to a 0.5 percent decrease in their FY 1996 payments due to the reclassification budget neutrality factor.

Conversely, the urban Middle Atlantic, urban West North Central, urban West South Central, and rural Pacific census divisions all have overall increases at least 0.4 percent above the national average. The urban West South Central gains from the continued phase-out of day outliers, as well as higher estimated FY 1997 outlier payments compared to FY 1996 (1.5 percent). As noted previously, the urban Middle Atlantic benefits significantly from the updated wage index data. These hospitals also have higher estimated FY 1997 outlier payments, which offset their 0.7 percent decrease due to the phase-out of day outliers. Rural Pacific hospitals benefit from geographic reclassification in FY 1997 (2.3 percent compared to 1.4 percent in FY 1996) and the new wage data (0.5 percent).

The only hospital groups with negative payment impacts from FY 1996 to FY 1997 are hospitals that were reclassified for FY 1996 and are not reclassified for FY 1997. Overall, these hospitals lose 0.5 percent. The urban hospitals in this category actually experience a slight payment increase over FY 1996 (0.6 percent), while the rural hospitals lose 2.2 percent. On the other hand, hospitals reclassified for FY 1997 that were not reclassified for FY 1996 experience the greatest payment increases: 10.2 percent for 69 rural hospitals in this category and 7.8 percent for 29 urban hospitals.

Reclassification appears to be a significant factor influencing the payment increases for a number of rural hospital groups with above average overall payment increases in column 6. For example, among hospital groups identified in the discussion of the impacts of MGCRB reclassifications for FY 1997 (column 4), all have overall increases above the national average. This outcome highlights the redistributive effects of reclassification decisions upon hospital payments. This impact is illustrated even more clearly when one examines the rows categorizing hospitals by their reclassification status for FY 1997. All nonreclassified hospitals have an average payment increase of 2.8 percent. The average payment increase for all reclassified hospitals is 3.8 percent.

Among SCH/EACHs, the payment increase is 2.6 percent. Because these hospital groups receive their hospital-specific rate if it exceeds the applicable Federal amount (including outliers), there is less of an impact due to changes in outlier payment levels, which are not applied to the hospital-specific rate. In addition, nonspecial status rural hospitals experience only a 1.6 percent increase. This below average increase is largely attributable to 123 hospitals in this category that lost their reclassification status from FY 1996 to FY 1997.

Another notably small increase appearing in this column is the 0.3 percent increase for rural DSH hospitals with 100 or more beds. This impact is primarily due to a number of hospitals in this category that lost their MGCRB reclassification from FY 1996 to FY 1997, stemming from the elimination of standardized amount reclassifications solely for higher DSH payments.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals	Average FY 1996 payment per case	Average FY 1997 payment per case	All changes
	(1)	(2) [1]	(3) [1]	(4)
(By Geographic Location)				
All hospitals	5,129	6,478	6,664	2.9
Urban hospitals	2,881	7,013	7,218	2.9
Large urban areas	1,596	7,544	7,762	2.9
Other urban areas	1,285	6,313	6,502	3.0
Rural areas	2,248	4,297	4,400	2.4
Bed size (urban):				
0–99 beds	715	4,705	4,832	2.7
100–199 beds	945	5,951	6,108	2.6
200–299 beds	576	6,527	6,715	2.9
300–499 beds	478	7,444	7,674	3.1
500 or more beds	167	9,147	9,426	3.1
Bed size (rural):				
0–49 Beds	1,177	3,538	3,622	2.4
50–99 beds	657	3,992	4,090	2.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 1996 payment per case (2) [1]	Average FY 1997 payment per case (3) [1]	All changes (4)
100–149 beds	241	4,462	4,579	2.6
150–199 beds	98	4,594	4,716	2.7
200 or more beds	75	5,417	5,518	1.9
Urban by census div.:				
New England	160	7,525	7,672	2.0
Middle Atlantic	434	7,718	7,973	3.3
South Atlantic	419	6,682	6,889	3.1
East North Central	483	6,735	6,905	2.5
East South Central	163	6,181	6,374	3.1
West North Central	193	6,645	6,866	3.3
West South Central	376	6,508	6,743	3.6
Mountain	127	6,766	6,962	2.9
Pacific	478	8,102	8,304	2.5
Puerto Rico	48	2,595	2,644	1.9
Rural by census div.:				
New England	53	5,242	5,304	1.2
Middle Atlantic	85	4,691	4,769	1.7
South Atlantic	297	4,473	4,578	2.3
East North Central	304	4,321	4,434	2.6
East South Central	278	3,969	4,045	1.9
West North Central	525	4,004	4,105	2.5
West South Central	349	3,845	3,952	2.8
Mountain	211	4,569	4,689	2.6
Pacific	141	5,307	5,505	3.7
Puerto Rico	5	2,038	2,073	1.7
(By Payment Categories)				
Urban hospitals	2,981	6,968	7,174	2.9
Large urban areas	1,791	7,370	7,586	2.9
Other urban areas	1,190	6,317	6,504	3.0
Rural areas	2,148	4,263	4,358	2.2
Teaching status:				
Non-teaching	4,044	5,288	5,437	2.8
Fewer than 100 Residents	850	6,895	7,099	3.0
100 or More residents	235	10,565	10,865	2.8
Disproportionate share hospitals (DSH):				
Non-DSH	3,201	5,595	5,755	2.9
Urban DSH:				
100 beds or more	1,410	7,614	7,834	2.9
Fewer than 100 beds	101	4,806	4,911	2.2
Rural DSH:				
Sole community (SCH)	156	4,349	4,507	3.6
Referral centers (RRC)	27	5,179	5,352	3.3
Other Rural DSH hosp.:				
100 beds or more	83	4,198	4,211	0.3
Fewer than 100 beds	151	3,432	3,500	2.0
Urban teaching and DSH:				
Both teaching and DSH	692	8,587	8,832	2.8
Teaching and no DSH	339	7,095	7,310	3.0
No teaching and DSH	819	6,126	6,309	3.0
No teaching and no DSH	1,131	5,438	5,605	3.1
Rural hospital types:				
Nonspecial status hospitals	1,375	3,895	3,958	1.6
RRC	90	5,076	5,246	3.4
SCH/Each	645	4,405	4,519	2.6
SCH/Each and RRC	38	5,213	5,352	2.7
Type of ownership:				
Voluntary	2,951	6,629	6,823	2.9
Proprietary	696	5,948	6,120	2.9
Government	1,366	6,040	6,195	2.6
Unknown	116	7,564	7,724	2.1
Medicare Utilization as a percent of Inpatient days:				
0–25	258	8,741	8,917	2.0
25–50	1,284	7,878	8,103	2.9
50–65	2,097	5,947	6,122	2.9

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 1996 payment per case (2)[1]	Average FY 1997 payment per case (3)[1]	All changes (4)
Over 65	1,374	5,055	5,204	2.9
Unknown	116	7,564	7,724	2.1
Hospitals Reclassified by the Medicare Geographic Review Board				
Reclassification status during FY96 and FY97				
Reclassified during both FY96 and FY97	379	5,780	5,939	2.7
Urban	130	6,606	6,802	3.0
Rural	249	5,012	5,136	2.5
Reclassified during FY97 only	98	6,132	6,642	8.3
Urban	29	7,307	7,860	7.6
Rural	69	4,369	4,815	10.2
Reclassified during FY96 only	253	5,893	5,861	−0.5
Urban	91	7,497	7,543	0.6
Rural	162	4,503	4,403	−2.2
FY97 Reclassifications:				
All reclassified hosp.	477	5,845	6,069	3.8
Stand. amt. only	119	5,753	5,914	2.8
Wage index only	272	5,665	5,854	3.3
Both	86	6,254	6,600	5.5
Nonreclass	4,625	6,563	6,744	2.8
All urban reclass	159	6,760	7,035	4.1
Stand. amt. only	62	6,218	6,398	2.9
Wage index only	27	8,949	9,282	3.7
Both	70	6,446	6,777	5.1
Nonreclass	2,722	7,031	7,231	2.9
All Rural Reclass	318	4,916	5,088	3.5
Stand. amt. only	57	4,622	4,737	2.5
Wage index only	245	4,977	5,136	3.2
Both	16	4,904	5,354	9.2
Nonreclass	1,903	4,051	4,127	1.9
Other reclassified:				
Hospitals (Section 1886(d)(8)(B))	27	4,620	4,743	2.7

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the final changes for FY 1997 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 1997 with the average estimated per case payments for FY 1996, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table I equal the percentage changes in average payments from column 6 of Table I.

VII. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

We now have data that were unavailable in previous impact analyses for the capital prospective payment system. Specifically, we have cost report data for the third year of the capital prospective payment system (cost reports beginning in FY 1994) available through the June 1996 update of the Hospital Cost Report Information System (HCRIS). We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year.

The lack of such information affects our impact analysis in several ways. Specifically, major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals. Moreover, our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is

put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 1997 capital cost projections. We discuss in Appendix B the assumptions and computations we employ to generate the amount of obligated capital commitments for use in the FY 1997 capital cost projections.

In Table III of this appendix, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 1997. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the FY 1997 capital payment policies by the standard prospective payment system hospital groupings. We caution that while we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 1997 capital costs for individual hospitals, but with the more recent data on the experience to date under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

We present the transition payment methodology by hospital grouping in Table IV. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model. This table presents the aggregate impact of the FY 1997 payment policies.

B. Projected Impact Based on the FY 1997 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1996 to FY 1997 using a capital acquisition model. The FY 1997 model, described in Appendix B of this final rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1994 received through the June 1996 update of the Hospital Cost Reporting Information System (HCRIS), interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through July 1, 1996 in the Provider-Specific file. We used this data to determine the FY 1997 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1994, and we age that capital by a formula described in Appendix B. We therefore need to randomly generate only new capital acquisitions for any year after FY 1994. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1997 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

AVERAGE PERCENTAGE INCREASE IN CAPITAL

Fiscal year	Costs per discharge
1995	−0.53
1996	5.06
1997	5.21

- The Medicare case-mix index will increase by 1.4 percent in FY 1996 and 1.6 percent in FY 1997.
- The Federal capital rate as well as the hospital-specific rate is updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The FY 1997 update factor is .7 percent. (see Addendum, Part III).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1996 to FY 1997. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1997 percent of discharges	FY 1997 percent of capital costs	FY 1997 percent of capital payments
Low Cost Hospital	66	62	52	56
High Cost Hospital	34	38	48	44

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital in use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we have continued to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from

FY 1996 to FY 1997 using the above described actuarial model.

TABLE III.—IMPACT OF FINAL CHANGES FOR FY 1997 ON PAYMENTS PER DISCHARGE

FY 1996 payments per discharge

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment
Low Cost Hospitals	3,363	6,868,405	$411.84	54.85	$200.68	$15.75	$18.28	$846.55
Fully Prospective	1,548	3,287,821	375.12	50.00	237.10	.....	11.40	623.62
Rebase—Fully Prospective	1,483	2,743,886	371.61	50.00	218.24	.....	27.88	617.74
Rebase—100% Federal Rate	228	643,922	793.64	100.00	.....	.....	0.25	793.89
Rebase—Hold Harmless	104	192,764	335.30	46.49	.....	561.32	59.11	955.72
High Cost Hospitals	1,741	4,288,642	668.50	86.23	.....	145.12	19.59	833.21
100% Federal Rate	1,135	3,010,570	785.30	100.00	.....	.....	2.23	787.53
Hold Harmless	606	1,278,072	393.38	52.33	.....	486.95	60.48	940.81
Total Hospitals	5,104	11,157,046	510.50	67.15	123.54	65.48	18.78	718.30

FY 1997 payments per discharge

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change
Low Cost Hospitals	3,363	7,056,653	$471.51	63.97	$157.25	$12.43	$40.25	$681.44	5.40
Fully Prospective	1,548	3,377,933	441.20	60.00	185.78	.....	30.53	657.51	5.43
Rebase—Fully Prospective	1,483	2,819,103	438.15	60.00	171.01	.....	54.23	663.39	7.39
Rebase—100% Federal Rate	238	677,500	778.75	100.00	.....	.....	2.63	781.38	−1.58
Rebase—Hold Harmless	94	182,117	407.13	56.47	.....	481.80	144.04	1,032.97	8.08
High Cost Hospitals	1,741	4,406,184	694.20	89.74	.....	117.32	49.69	861.21	3.36
100% Federal Rate	1,173	3,160,803	779.30	100.00	.....	.....	11.40	790.70	0.40
Hold Harmless	568	1,245,382	478.21	63.00	.....	415.08	146.89	1,040.17	10.56
Total Hospitals	5,104	11,462,838	557.11	74.17	96.80	52.75	43.88	750.54	4.49

Under section 1886(g)(1)(A) of the Act, aggregate payments under the capital prospective payment system for FY 1992 through 1995 respectively, were projected to equal 90 percent of payments that would have been payable on a reasonable cost basis in each year. With the expiration of the capital budget neutrality provision, we now estimate that there was an aggregate 27.50 percent increase in FY 1996 Medicare capital payments over the FY 1995 payments. We estimate aggregate Medicare capital payments will increase by 6.77 percent in FY 1997.

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 4.75 percent, and high capital cost hospitals will experience an average increase of 2.86 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 50 percent to 60 percent and the hospital-specific rate payment percentage will decrease from 50 to 40 percent in FY 1997. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for hospitals receiving a hold-harmless payment for old capital will increase from 52.33 percent to 62.81 percent. (We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 65.8 percent to 67.8 percent.)

We expect that the average hospital-specific rate payment per discharge will decrease from $123.54 in FY 1996 to $96.10 in FY 1997. This is partly due to the 4.32 percent decrease in the FY 1997 hospital-specific rate compared to FY 1996.

We proposed no changes in our exceptions policies for FY 1997. As a result, the minimum payment levels will be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or,
- 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 2.61 percent of total capital payments in FY 1996 to 5.97 percent of payments in FY 1997. The number and amount of exceptions payments is expected to increase throughout the transition period. The projected distribution of the payments is shown in the table below:

ESTIMATED FY 1997 EXCEPTIONS PAYMENTS

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	464	57
High Capital Cost	348	43
Total	812	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	5,104	13.0	27.6	59.4
Large urban areas (populations over 1 million)	1,584	15.3	34.8	49.9
Other urban areas (populations of 1 million or fewer)	1,275	15.8	32.9	51.3
Rural areas	2,245	9.7	19.6	70.7
Urban hospitals	2,859	15.5	34.0	50.5
0–99 beds	697	16.4	27.4	56.2
100–199 beds	941	19.2	36.9	43.9
200–299 beds	576	14.4	36.6	49.0
300–499 beds	478	10.3	34.5	55.2
500 or more beds	167	10.2	34.1	55.7
Rural hospitals	2,245	9.7	19.6	70.7
0–49 beds	1,175	7.0	14.6	78.5
50–99 beds	656	12.5	21.6	65.9
100–149 beds	241	13.7	30.7	55.6
150–199 beds	98	15.3	22.4	62.2
200 or more beds	75	8.0	41.3	50.7
By Region:				
Urban by Region	2,859	15.5	34.0	50.5
New England	160	6.9	25.0	68.1
Middle Atlantic	434	10.1	29.7	60.1
South Atlantic	418	20.1	40.2	39.7
East North Central	480	9.6	30.0	60.4
East South Central	162	22.8	34.6	42.6
West North Central	190	18.4	27.4	54.2
West South Central	367	27.8	46.0	26.2
Mountain	126	15.9	42.1	42.1
Pacific	474	12.7	31.2	56.1
Puerto Rico	48	10.4	25.0	64.6
Rural by Region	2,245	9.7	19.6	70.7
New England	53	7.5	15.1	77.4
Middle Atlantic	84	10.7	15.5	73.8
South Atlantic	297	11.8	25.6	62.6
East North Central	304	10.2	11.8	78.0
East South Central	278	9.7	31.3	59.0
West North Central	525	7.0	15.2	77.7
West South Central	347	9.2	24.8	66.0
Mountain	211	12.3	15.2	72.5
Pacific	141	11.3	15.6	73.0
Large urban areas (populations over 1 million)	1,779	15.2	34.5	50.4
Other urban areas (populations over 1 million or fewer)	1,180	15.8	32.2	51.9
Rural areas	2,145	9.6	19.5	71.0
Teaching Status:				
Non-teaching	4,019	13.5	26.6	59.8
Fewer than 100 Residents	850	11.3	32.4	56.4
100 or more Residents	235	9.4	27.7	63.0
Disproportionate share hospitals (DSH):				
Non-DSH	3,178	12.3	24.0	63.7
Urban DSH:				
100 or more beds	1,409	15.4	36.1	48.5
Less than 100 beds	100	17.0	23.0	60.0
Rural DSH:				
Sole Community (SCH/EACH)	156	11.5	18.6	69.9
Referral Center (RRC/EACH)	27	7.4	37.0	55.6
Other Rural:				
100 or more beds	83	8.4	45.8	45.8
Less than 100 beds	151	7.3	25.8	66.9
Urban teaching and DSH:				
Both teaching and DSH	692	11.1	32.2	56.6
Teaching and no DSH	339	11.2	29.8	59.0
No teaching and DSH	817	19.2	37.7	43.1
No teaching and no DSH	1,111	16.7	32.5	50.9
Rural Hospital Types:				
Non special status hospitals	1,372	7.7	19.5	72.8
RRC/EACH	90	10.0	34.4	55.6
SCH/EACH	645	13.3	17.2	69.5

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
SCH, RRC and EACH	38	13.2	21.1	65.8
Type of Ownership:				
Voluntary	2,951	12.3	27.6	60.1
Proprietary	696	23.4	46.7	29.9
Government	1,366	8.7	17.6	73.7
Medicare Utilization as a Percent of Inpatient Days:				
0–25	258	15.1	25.2	59.7
25–50	1,284	14.5	33.4	52.1
50–65	2,097	12.9	28.0	59.1
Over 65	1,374	10.8	21.6	67.5

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 25 of the 5,129 hospitals in our data base. Consequently, the payment methodology distribution is based on 5,104 hospitals. This data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) geographic location, (2) region, and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and under the hold-harmless methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 27.5 percent in FY 1997.

Table IV indicates that 59.4 percent of hospitals are paid under the fully prospective payment methodology. (This figure, unlike the figure of 66 percent for low cost capital hospitals in the previous section, takes account of the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (70.7 percent and 73.7 percent, respectively by payment classification) are being paid under the fully prospective methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 29.9 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1997 actuarial model to estimate the potential impact of our changes for FY 1997 on total capital payments per case, using a universe of 5,104 hospitals. The individual hospital payment parameters are taken from the best available data, including: the July 1, 1996 update to the Provider-Specific file, cost report data, and audit information supplied by intermediaries. Table V presents estimates of payments per case under our model for FY 1996 and FY 1997 (columns 2 and 3). Column 4 shows the total percentage change in payments from FY 1996 to FY 1997. Column 5 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 5 include the 4.99 percent decrease in the Federal rate, a 1.6 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the Medicare Geographic Classification Review Board. Column 4 includes the effects of the Federal rate changes represented in column 3. Column 4 also reflects the effects of all other changes, including: the change from 50 percent to 60 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) geographic location and (2) payment classification and payment region.

The simulation results show that, on average, capital payments per case can be expected to increase 3.9 percent in FY 1997. The results show that the effect of the Federal rate changes alone is to decrease payments by 1.3 percent. The decrease attributable to the Federal rate changes is more than offset by a 5.2 percent increase attributable to the effects of all other changes.

Our comparison by geographic location shows that overall, urban hospitals will gain slightly less than rural hospitals from the final rule changes (increases of 3.8 percent and 4.7 percent, respectively). Payments per case for urban hospitals will decrease at about the same rate as payments per case for rural hospitals (1.2 percent and 1.7 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain slightly less than rural hospitals (5.0 percent compared to 6.4 percent) from the effects of all other changes.

By region, there is relatively little variation compared to some previous years. All regions are estimated to receive increases in total capital payments per case. Changes by region vary from a low of 2.1 percent increase (rural hospitals of the West South Central region) to a high of 15.2 percent increase (rural hospitals of the New England region).

By type of ownership, government hospitals are projected to have the largest rate of increase (5.1 percent, –1.5 percent due to Federal rate changes and a 6.6 percent positive offset from the effects of all other changes). Payments to voluntary hospitals will increase 3.8 percent (a 1.3 percent decrease due to Federal rate changes and a 5.1 percent

positive offset from the effects of all other changes) and payments to proprietary hospitals will increase 3.4 percent (a 0.9 percent decrease due to Federal rate changes and a 4.3 percent positive offset from the effects of all other changes).

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1997 compared to the effects of reclassification for FY 1996, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1997 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 1997 as a whole are projected to experience a 4.5 percent increase in payments (a 0.8 percent decrease attributable to Federal rate changes and a 5.3 percent positive offset attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly less (3.9 percent) than reclassified hospitals (4.5 percent). Payments to nonreclassified hospitals will decrease slightly more than reclassified hospitals from the Federal rate changes (1.3 percent compared to 0.8 percent), but they will gain about the same from the effects of all other changes (5.2 percent compared to 5.3 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1996 Payments Compared to FY 1997 Payments]

	Number of hospitals	Average FY 1996 payments/case	Average FY 1997 payments/case	All changes	Portion attributable to federal rate change
By Geographic Location:					
All hospitals	5,104	718	746	3.9	−1.3
Large urban areas (populations over 1 million)	1,584	823	852	3.6	−1.2
Other urban areas (populations of 1 million of fewer)	1,275	715	745	4.1	−1.1
Rural areas	2,245	478	501	4.7	−1.7
Urban hospitals	2,859	776	806	3.8	−1.2
0–99 beds	697	566	589	4.0	−1.3
100–199 beds	941	705	732	3.7	−1.3
200–299 beds	576	744	774	4.0	−1.3
300–499 beds	478	801	830	3.7	−1.2
500 or more beds	167	944	980	3.8	−0.9
Rural hospitals	2,245	478	501	4.7	−1.7
0–49 beds	1,175	367	385	5.0	−2.0
50–99 beds	656	447	468	4.8	−1.6
100–149 beds	241	511	532	4.2	−1.7
150–199 beds	98	511	540	5.6	−1.4
200 or more beds	75	612	638	4.3	−2.0
By Region:					
Urban by Region	2,859	776	806	3.8	−1.2
New England	160	784	817	4.3	−1.9
Middle Atlantic	434	813	848	4.2	−1.2
South Atlantic	418	780	814	4.3	−1.1
East North Central	480	727	749	3.1	−1.2
East South Central	162	707	733	3.7	−0.8
West North Central	190	772	809	4.8	−1.0
West South Central	367	796	823	3.4	−0.4
Mountain	126	775	797	2.7	−1.5
Pacific	474	855	883	3.3	−1.7
Puerto Rico	48	305	326	6.8	−0.4
Rural by Region	2,245	478	501	4.7	−1.7
New England	53	606	698	15.2	−2.3
Middle Atlantic	84	497	525	5.6	−2.7
South Atlantic	297	498	511	2.8	−2.0
East North Central	304	482	510	5.9	−1.3
East South Central	278	446	463	3.8	−1.8
West North Central	525	454	477	5.2	−1.7
West South Central	347	440	449	2.1	−1.3
Mountain	211	504	534	6.1	−0.8
Pacific	141	555	587	5.9	−1.3
By Payment Classification:					
All hospitals	5,104	718	746	3.9	−1.3
Large urban areas (populations over 1 million)	1,779	807	836	3.6	−1.2
Other urban areas (populations of 1 million of fewer)	1,180	715	746	4.2	−1.1
Rural areas	2,145	472	494	4.7	−1.8

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued
[FY 1996 Payments Compared to FY 1997 Payments]

	Number of hospitals	Average FY 1996 payments/case	Average FY 1997 payments/case	All changes	Portion attributable to federal rate change
Teaching Status:					
Non-teaching	4,019	622	645	3.8	−1.3
Fewer than 100 Residents	850	757	787	3.9	−1.2
100 or more Residents	235	1,034	1,079	4.3	−1.2
Urban DSH:					
100 or more beds	1,409	813	843	3.7	−1.2
Less than 100 beds	100	576	607	5.4	−1.2
Rural DSH:					
Sole Community (SCH/EACH)	156	449	486	8.1	−1.5
Referral Center (RRC/EACH)	27	533	541	1.5	−1.0
Other Rural:					
100 or more beds	83	488	504	3.3	−2.5
Less than 100 beds	151	367	379	3.3	−2.2
Urban teaching and DSH:					
Both teaching and DSH	692	879	911	3.6	−1.2
Teaching and no DHS	339	786	821	4.5	−1.1
No teaching and DSH	817	710	737	3.9	−1.2
No teaching and no DSH	1,111	673	697	3.6	−1.1
Rural Hospital Types:					
Non special status hospitals	1,372	439	458	4.2	−2.2
RRC/EACH	90	559	573	2.6	−1.1
SCH/EACH	645	470	502	6.8	−1.6
SCH, RRC and EACH	38	582	6.5	5.7	−1.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY96 and FY97:					
Reclassified During Both FY96 and FY97	379	662	685	3.5	−1.5
Reclassified During FY97 Only	98	673	732	8.7	2.0
Reclassified During FY96 Only	230	652	661	1.4	−3.9
FY 97 Reclassifications:					
All Reclassified Hospitals	477	664	694	4.5	−0.8
All Nonreclassified Hospitals	4,600	726	754	3.9	−1.3
All Urban Reclassified Hospitals	159	756	782	3.5	−1.0
Urban Nonreclassified Hospitals	2,700	778	808	3.8	−1.2
All Reclassified Rural Hospitals	318	570	604	5.9	−0.7
Rural Nonreclassified Hospitals	1,900	442	460	4.1	−2.2
Other Reclassified Hospitals (Section 1886 (D)(8)(B))	27	541	561	3.7	−1.8
Type of Ownership:					
Voluntary	2,951	731	760	3.8	−1.3
Proprietary	696	751	777	3.4	−0.9
Government	1,366	625	657	5.1	−1.5
Medicare Utilization as a Percent of Inpatient Days:					
0–25	258	797	830	4.1	−2.0
25–50	1,284	843	875	3.9	−1.2
50–60	2,097	676	703	4.0	−1.2
Over 65	1,374	603	627	4.0	−1.3

Appendix B: Technical Appendix on the Capital Acquisition Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expires effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor, and the reduction in the Federal and hospital-specific rates for exceptions payments. We continue to use the capital acquisition model to determine these factors.

The following data are used in the capital acquisition model for FY 1997: the June 30, 1996 update of the cost reports for PPS-IX (cost reporting periods beginning in FY 1992), PPS-X (cost reporting periods beginning in FY 1993) and PPS-XI (cost reporting periods beginning in FY 1994), the July 1, 1996 update of the provider-specific file, and the March 1994 update of the intermediary audit file. The available data still lack certain items that were required for the determination of budget neutrality, including each hospital's projected new capital costs for each year, its projected old capital costs for each year, and the projected obligated capital amounts that will be put in use for patient care services and recognized as old capital each year.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective

payment system, we excluded these hospitals from our model.

We then developed FY 1992, FY 1993, FY 1994, FY 1995, and FY 1996 hospital-specific rates using the provider-specific file, the intermediary audit file, and, when available, cost reports. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We also ensured that the FY 1993 increase in the hospital-specific rate was at least 0.62 percent (the net FY 1993 update), that the FY 1994 hospital-specific rate was at least as large as the FY 1993 hospital-specific rate decreased by 2.16 percent (the net FY 1994 update), that the FY 1995 increase in the hospital-specific rate was at least 0.05 percent (the net FY 1995 update), and that the FY 1996 increase in the hospital-specific rate was at least 21.10 percent (the net FY 1996 update). We were able to match hospitals to the files as shown in the following table.

Source	Number of hospitals
Provider-Specific File Only	99
Provider-Specific and Audit File	5029
Other	1
Total	5129

Sixty-six of these hospitals had unusable or missing data. We were able to backfill a hospital-specific rate for 41 of these hospitals from the cost reports as shown in the following table.

Source	Number of hospitals
PPS-VII Cost Reports	1
PPS-VIII Cost Reports	2
PPS-IX Cost Reports	3
PPS-X Cost Reports	7
PPS-XI Cost Reports	28
Total	41

We did not have data for 25 hospitals, and had to eliminate them from the capital analysis. These hospitals likely are new hospitals or hospitals with very few Medicare admissions. This leaves us with 5104 hospitals and should not affect the precision of the required adjustment factors.

Next, we determined old and new capital amounts for FY 1992 using the PPS-IX cost reports as the first source of data. For FY 1993 amounts, we used PPS-IX and PPS-X cost reports as the first source of data, weighting each cost report by the number of days in FY 1993. For FY 1994 amounts, we used PPS-X and PPS-XI cost reports as the first source of data, weighting each cost report by the number of days in FY 1994. We were able to match 5,049 PPS-IX cost reports, 5,064 PPS-X cost reports, and 4,924 PPS-XI cost reports. In cases where cost reports could not be matched, we used the provider-specific file for old capital information. Even in cases where a cost report was available, the breakout of old and new capital was not always available. In these cases, we used the old capital amounts and new capital ratios from the provider-specific file. If these were missing, we derived the old capital amount from the hospital-specific rate.

Finally, we used the intermediary audit file to develop obligated capital amounts. Since the obligated amounts are aggregate projected amounts, we computed a Medicare capital cost per admission associated with these amounts. We adjusted the aggregate amounts by the following factors:

(1) Medicare inpatient share of capital. This was derived from cost reports and was limited to the Medicare share of total inpatient days. It was necessary to limit the Medicare share because of data integrity problems. Medicare share of inpatient days is a reasonably good proxy for allocating capital. However, it may be understated if Medicare utilization is high, and may be overstated because it does not reflect the outpatient share of capital.

(2) Capitalization factor. This factor allocates the aggregate amount of obligated capital to depreciation and interest amounts. Consistent with the assumptions in the capital input price index, we used a 25-year life for fixed capital and a 10-year life for movable capital, and an average projected interest rate of 6.7 percent. We also assumed that fixed capital acquisitions are about one-half of total capital. In conjunction with the useful life and interest rate assumptions, the resulting capitalized fixed capital is about one-half of total capitalization. This is consistent with the allocations between fixed and movable capital found on the cost reports. The ratio we developed is 0.137, which produces the first year capitalization based on the aggregate amount.

(3) A divisor of Medicare admissions to derive the capital costs per discharge amount. Since we must project capital amounts for each hospital, we continued to use a Monte Carlo simulation to develop these amounts. (This model is described in detail in the August 30, 1991 final rule (56 FR 43517).) The Monte Carlo simulation is now used only to project capital costs per discharge amounts for each hospital. We analyzed the distributions of capital increases, and noted a slightly negative correlation between the dollar level of capital cost per admission, and the rate of increase in capital. To determine the rate of increase in capital cost per admission, we multiplied the lesser of $3,000 or the capital cost per admission by .00006 and subtracted this result from 1.2. (Increases for capital levels over $3,000 were not influenced by the level of capital, so this part of the calculation was capped at $3,000.) We selected a random number from the normal distribution, multiplied it by 0.17 (the standard deviation) and added it to −0.04 (the mean) and then added 1 to create a multiplier. This random result was multiplied by the previous result to assign a rate of increase factor which was multiplied by the prior year's capital per discharge amount to develop a capital per discharge amount for the projected year.

To model a projected year, we used the old and new capital for the prior year multiplied by 0.85 (aging factor). The 0.85 aging factor is the average of changes in capital over its life due to the gradual decrease in interest payments and the retirement of fully depreciated capital. The aged new and old capital is subtracted from the projected capital described in the previous paragraph. The difference represents newly acquired capital. If the hospital has obligated capital, any increase in "old" capital up to the total amount of obligated capital in FY 1993 and FY 1994 is assigned to obligated capital. Any remaining obligated capital is assigned to FY 1995 up to the amount of the modeled increase in capital for FY 1995. Even though obligated capital must be put in use for patient care by October 1, 1994, the use of the obligated capital may have started late in FY 1994 with only part of the "first year" depreciation and interest realized in FY 1994. The remainder of the "first year" depreciation and interest would be realized in FY 1995. With the exception of certain hospitals about whom we have information to the contrary, we assume that hospitals would meet the expiration dates provided under the obligated capital provision. Hence, no obligated capital is assigned to years FY 1996 and later. Once obligated capital is assigned, it is included with the "old" capital and is capitalized into future years as part of "old" capital. The on-line obligated amounts are added to old capital and subtracted from the newly acquired capital to yield residual newly acquired capital, which is then added to new capital. The residual newly

acquired capital is never permitted to be less than zero.

Next, we computed the average total capital cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the model. We adjusted the newly acquired capital amounts proportionately, so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology indicated in the PPS–IX cost reports or the provider-specific file. Otherwise, the model determines the methodology by comparing the hospital's FY 1992 hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1995 MedPAR file using the FY 1997 DRG relative weights published in this final rule. The case-mix index is increased each year after FY 1995 based on analysis of past experiences in case-mix increases.

We analyzed the case-mix increases for the recent past and found that case-mix increases have decelerated to about 1.53 percent in FY 1992, 0.80 percent in FY 1993, and 0.75 percent in FY 1994. It appears that the case-mix increase for FY 1995 accelerated to around 1.6 percent. Early indications show that FY 1996 case-mix is increasing at FY 1995 level, that is, approximately 1.6 percent. Thus, it appears that the deceleration of case-mix increases in FY 1993 and FY 1994 were anamolous, rather than the beginning of a trend. Therefore, in the model we are using the recent experience and have used a case-mix increase of 1.6 percent in FY 1995 and a projected case-mix increase of 1.6 percent in both FY 1996 and FY 1997. (Since we are using FY 1995 cases for our analysis, the FY 1995 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 1886(g)(1)(A) of the Act requires that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. Consequently, the model reduces the unadjusted standard Federal rate by 7.4 percent effective in FY 1994. Since budget neutrality expires effective with FY 1996, this adjustment affects the adjusted Federal rate starting in FY 1996.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1996, the budget neutrality adjustment factor was 1.0025. To determine the factor for FY 1997, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1997 based on its applicable payment methodology. Using our model, we then compared estimated aggregate Federal rate payments based on the FY 1996 DRG relative weights and the FY 1996 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1997 relative weights and the FY 1997 geographic adjustment factor. In making the comparison, we held the FY 1997 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and DRG classifications and relative weights, an incremental budget neutrality adjustment of 0.9987 for FY 1997 should be applied to the previous cumulative FY 1996 adjustment of 1.0025 (the product of the FY 1993 incremental adjustment of 0.9980, the FY 1994 incremental adjustment of 1.0053, the FY 1995 incremental adjustment of 0.9998, and the FY 1996 incremental adjustment of 0.9994), yielding a cumulative adjustment of 1.0012 through FY 1997.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low income patients or the large urban add-on.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FY 1992, FY 1993, FY 1994, FY 1995, FY 1996, the final FY 1997 factor, and the estimated factors that would be applicable through FY 2001. We caution that, except with respect to FY 1992, FY 1993, FY 1994, FY 1995, FY 1996 and FY 1997, these are estimates only, and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes that may occur. In this regard, we note that in making these projections we have assumed that the cumulative DRG/GAF adjustment factor will remain at 1.0012 for FY 1997 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1997.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier) reduction)
1992	N/A	0.9813	0.9602	415.59
1993	6.07	.9756	.9162	[1] 417.29
1994	3.04	.9485	.8947	[2] 378.34
1995	3.44	.9734	.8432	[3] 376.83
1996	1.20	.9849	N/A	[4] 461.96
1997	0.70	.9358	N/A	[5] 438.92
1998	1.20	.9121	N/A	432.94
1999	1.20	.9206	N/A	442.22
2000	1.30	9148	N/A	445.15
2001	1.30	[6] N/A	N/A	492.93

[1] NOTE: Includes the DRG/GAF adjustment factor of 0.9980 and the change in the outlier adjustment from 0.9497 in FY 1992 to 0.9496 in FY 1993.

[2] NOTE: Includes the 7.4 percent reduction in the unadjusted standard Federal rate. Also includes the DRG/GAF adjustment factor of 1.0033 and the change in the outlier adjustment from 0.9496 in FY 1993 to 0.9454 in FY 1994.

[3] NOTE: Includes the DRG/GAF adjustment factor of 1.0031 and the change in the outlier adjustment from 0.9454 in FY 1994 to 0.9414 in FY 1995.

[4] NOTE: Includes the transfer adjustment of .9972. Also includes the DRG/GAF adjustment factor of 1.0025 and the change in the outlier adjustment from 0.9414 in FY 1995 to 0.9536 in FY 1996.

[5] NOTE: Includes the DRG/GAF adjustment factor of 1.0012 and the change in the outlier adjustment from 0.9536 in FY 1996 to 0.9481 in FY 1997. Future adjustments are, for purposes of this projection, assumed to remain at the same level.

[6] NOTE: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

Appendix C: Rebased Market Basket Data Sources

I. Data Sources Used to Determine the Market Basket Relative Weights and Choice of Price Proxy Variables for the Operating Hospital Input Price Indexes

As discussed in section IV of the preamble to this final rule, we are rebasing and revising the hospital market baskets. This appendix describes the technical features of the 1992-based indexes that we are implementing in this rule. For both the prospective payment and excluded hospital market baskets, the differences between the 1992-based market basket and the previous 1987-based market basket are noted. In the September 4, 1990 final rule (55 FR 36170), we discussed in detail the 1987-based hospital market baskets.

We present this description of the hospital operating market baskets in three steps:

- A synopsis of the structural differences between the 1987-based market baskets and the proposed 1992-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1992-based market baskets, making note of the differences from the methodology used to develop the 1987-based market baskets.
- A description of the data sources used to measure price change for each component of the 1992-based market baskets, making note of the differences from the price proxies used in the 1987-based hospital market baskets.

A. Synopsis of Structural Changes Adopted in the Rebased 1992 Operating Hospital Market Baskets.

Three major structural differences exist between the 1987-based and the 1992-based operating hospital market baskets.

- The 1992-based hospital market baskets are based on more recent hospital expenditure data. The 1987-based market baskets contained skeletal cost shares that were derived from the 1987 cost data from the 1988 Annual Survey of the American Hospital Association (AHA). The 1992-based market baskets use data from the hospital cost reports for cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992.
- Some cost categories have been combined, namely Fuel, Oil, Coal, and Other Fuel with Motor Gasoline, and Blood Services with Chemicals. These category mergers reflect the Bureau of Economic Analysis (BEA) reclassification decisions in the 1987 update of the BEA Input-Output Tables.
- In the 1992-based market basket, the sample of excluded hospitals is restricted to more closely reflect the average Medicare length of stay in excluded hospitals. We have used cost report data for excluded hospitals from only those hospitals in which the average length of stay of Medicare patients in the hospital is within 15 percent of the average length of stay of all patients in the hospital to more accurately reflect the structure of costs for Medicare cases. This is a change from the FY 1987-based market basket, for which data from all excluded hospitals were used.

B. Methodology for Developing the Cost Category Weights.

Cost category weights for the 1992-based market baskets were developed in four stages. First, base weights for three (Wages and Salaries, Employee Benefits, Pharmaceuticals) of the six main categories were derived from the 1992 Medicare cost reports for operating costs. Second, the weight for Nonmedical Professional Fees was developed by subtracting Medical Professional Fees reported in the Hospital Cost Report Information System (HCRIS) file from AHA Annual Survey Total Professional Fees to obtain Nonmedical Professional Fees, and the weight for Professional Liability Insurance was developed using 1989 HCRIS data trended forward to 1992, using the relative importance values in the previous market baskets. Third, the sum of Wages and Salaries, Employee Benefits, Pharmaceuticals, Nonmedical Professional Fees, and Professional Liability Insurance was subtracted from total expenses to obtain All Other Expenses. Finally, the weight for All Other Expenses was divided into subcategories using cost shares from the 1987 Input-Output Table for the hospital industry, produced by the U.S. Department of Commerce, Bureau of Economic Analysis, aged to 1992 using price changes. As of this writing the Department of Commerce has not released final 1992 cost data. Therefore we plan to incorporate these data into the FY 1998 proposed rule.

Below, we describe the source of the six main category weights and their subcategories in the 1992-based market

baskets. We make note of the differences between the methodologies used to develop the 1987-based and the 1992-based market baskets.

1. Wages and Salaries

The cost weight for the Wages and Salaries category was derived using the 1992 Medicare cost reports. Contract Labor, which is also derived from the 1992 Medicare cost reports, is split between the Wages and Salaries and Employee Benefits cost categories, using the relationship for employed workers. Examples of Contract Labor are registered nurses and workers in hospital food service or security who are employed and paid by firms that contract for their work with the hospital. The Wages and Salaries cost category was disaggregated into nine occupational subcategories (professional and technical, managers and administration, sales, clerical, craft and kindred, operatives excluding transport, transport equipment operatives, nonfarm laborers and service workers) to reflect the mix of occupational inputs used by hospitals. The Contract Labor wages and salaries component was allocated proportionally to Professional-Technical and Service occupations. The 1987-based weights were developed from the 1987 Current Population Survey, while the 1992-based weights were developed from the 1992 Current Population Survey.

2. Employee Benefits

The cost weight for the employee benefits category was derived from the 1992 cost reports. Like wages and salaries, the employee benefit weight in each 1992-based market basket is a composite of nine labor subcategories. The employee benefits categories in the 1987-based market baskets were developed from the 1987 AHA Annual Survey and used the 1987 Current Population Survey. In 1987 Contract Labor's implied fringe benefits were allocated proportionally to Professional and Technical occupations, while in 1992 they were allocated to Professional-Technical and Service occupations.

3. Nonmedical Professional Fees

The cost weight for the nonmedical professional fees category was derived from the 1992 Medicare Cost Reports and AHA Annual Survey data. Total professional fees were split into the subcategories medical and other (nonmedical) fees using AHA Total Professional Fees minus HCRIS Medical Professional Fees to equal Nonmedical Professional Fees. The 1987-based nonmedical professional fees cost category was derived from the 1987 AHA Annual Survey and American Medical Association (AMA) data. It was split into the subcategories medical and other fees using data derived from the American Medical Association. The medical professional fees category is excluded from the hospital market basket since it is paid under Medicare Part B.

4. Professional Liability Insurance

The 1987-based market baskets have weights for professional liability insurance that were derived from the June 30 and December 31, 1987 HAS/Monitrend surveys. The cost weight for the 1992-based professional liability insurance category was derived from 1989 HCRIS cost shares trended to 1992 using the change in the relative importance factor for professional liability insurance (malpractice) from the previous 1987-based prospective payment hospital and excluded hospital market baskets.

5. Utilities

For the 1987-based market baskets, the cost weight for utilities was derived by extrapolating the 1985 AHA Annual Survey utilities cost weight forward to 1987 using the rate of growth in the HAS/Monitrend cost weight for utilities between 1985 and 1987. The 1987 Utility subcategory weights were aged from their 1982-based index subcategory weights using price changes from 1982 to 1987. The 1992-based market basket cost weights for the subcategories (fuel, oil and gasoline; electricity; natural gas; and water and sewage) were derived from the Bureau of Economic Analysis' 1987 Input-Output table for the hospital industry, aged forward to 1992 by price changes and summed to a weight for utilities.

6. All Other Goods and Services

The all other goods and services category has more subcategories than any other market basket category. Goods found in this category include: direct service food, contract service food, pharmaceuticals, chemicals, medical instruments, photo supplies, rubber and plastics, paper products, apparel, machinery and equipment and miscellaneous products. Services found in this category include: business services, computer services, transportation and shipping, telephone, postage, other labor-intensive services, and other nonlabor-intensive services. The share for pharmaceuticals was derived from the 1992 Medicare cost reports. Relative shares for the other subcategories were derived from the 1987 Bureau of Economic Analysis' Input-Output table for the hospital industry and were aged forward to 1992 using price changes.

C. Price Proxies Used To Measure Cost Category Growth

1. Wages and Salaries

For measuring price growth in the 1992-based market basket, 10 price proxies are applied to the 9 occupational subcategories within the wages and salaries component. As in the 1987-based market basket, the professional and technical subcategory was split in half. An Employee Cost Index (ECI) for hourly wages paid to civilian hospital workers was applied to one half. An ECI of hourly wages and salaries paid to professional and technical workers in private industry was applied to the other half of the professional and technical component. The other eight occupations subcategories of the wages and salaries component were proxied using ECIs for wages and salaries for private industry workers in their respective occupational categories.

2. Employee Benefits

The 1992-based hospital market baskets use occupation-specific ECIs for employee benefits. The distribution of weights and price proxies is the same as for wages and salaries discussed above, but occupation-specific employee benefit ECIs replace occupation-specific wages and salaries ECIs. The components are summed into a composite index, just as was done for the 1987-based market basket.

3. Nonmedical Professional Fees

The ECI for compensation for professional and technical workers in private industry is applied to this category. This is a revision from the 1987-based market basket in which the ECI for wages and salaries for professional and technical workers in private industry was used.

4. Fuel, Oil, and Gasoline

The percentage change in the price of refined petroleum products as measured by the Producer Price Index (PPI) (Commodity Code #057) was applied to this component. This is a revision from the 1987-based indexes in which the PPIs for Light Fuel Oil (Commodity Code #0573) and Gasoline (Commodity Code #0571) were used.

5. Electricity

The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) was applied to this component. This is a revision from the 1987-based indexes in

which the PPI for industrial power (Commodity Code #0543) was used.

6. Natural Gas

The percentage change in the price of gas fuels as measured by the PPI (Commodity Code #0552) was applied to this component. This is a revision from the 1987-based indexes in which the PPI for Natural Gas (Commodity Code #0531) was used.

7. Water and Sewerage

The percentage change in the price of water and sewerage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

8. Professional Liability Insurance

The percentage change in the hospital professional liability insurance price as estimated by hospital industry professional liability insurance premium increase was applied to this component. The same price measure was used in the 1987-based market baskets.

9. Pharmaceuticals

The percentage change in the price of ethical preparations as measured by the PPI (Commodity Code #0635) was applied to this variable. The same price measure was used in the 1987-based market baskets.

10. Food, Direct Purchases

The percentage change in the price of processed foods and feeds as measured by the PPI (Commodity Code #02) was applied to this component. The same price measure was used in the 1987-based market baskets.

11. Food, Contract Services

The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

12. Chemicals

The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) was applied to this component. The same price measure was used in the 1987-based market baskets.

13. Surgical and Medical Equipment

The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) was applied to this component. The same price measure was used in the 1987-based market baskets.

14. Photographic Supplies

The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) was applied to this component. The same price measure was used in the 1987-based market baskets.

15. Rubber and Plastics

The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) was applied to this component. The same price measure was used in the 1987-based market baskets.

16. Paper Products

The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code #0915) was used. This is a revision from the 1987-based indexes in which a weighted average of the percentage change in the price of converted paper and paperboard products and the percentage change in the price of paper excluding newsprint and packaging paper (Commodity Code #091301) was used.

17. Apparel

The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) was applied to this component. This is a revision from the 1987-based indexes in which the PPI for textile house furnishings (Commodity Code #0382) was used.

18. Minor Machinery and Equipment

The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) was applied to this component. The same price measure was used in the 1987-based market baskets.

19. Miscellaneous Products

The percentage change in the price of all finished goods as measured by the PPI was applied to this component. The same price measure was used in the 1987-based market baskets.

20. Business Services

The ECI for compensation for workers in the business services industry was applied to this component. This is a revision from the 1987-based indexes in which the percentage change in the AHE for wages and salaries for production and nonsupervisory workers in the business services industry as measured by the Bureau of Labor Statistics (SIC Code 73) was used.

21. Computer and Data Processing Services

The percentage change in the AHE of production and nonsupervisory workers engaged in firms furnishing computer data processing services (SIC Code 737) was applied to this component. The same price measure was used in the 1987-based market baskets.

22. Transportation and Shipping

The percentage change in the transportation component of the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

23. Telephone

The percentage change in the price of telephone services as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

24. Postage

The percentage change in the price of postage as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

25. All Other Services, Labor Intensive

The percentage change in the ECI for compensation paid to service workers employed in private industry was applied to this component. This is a revision from the 1987-based indexes in which the ECI for wages and salaries paid to service workers employed in private industry was used.

26. All Other Services, Nonlabor Intensive

The percentage change in the all-items component of the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

For further discussion of the rationale for choosing specific price proxies, we refer the reader to the September 3, 1986 final rule (51 FR 31582).

II. Data Sources Used to Determine the Cost Category Weights and Vintage Weights, and Choices of Price Proxy Variables for the Hospital Capital Input Price Index

In the preamble to this final rule, we discuss the rebasing of the capital input price index (CIPI). This appendix describes certain technical features of the 1992-based index, as well as differences between the 1992-based CIPI and the 1987-based CIPI. We discussed

the 1987-based CIPI in the September 1, 1995 final rule (60 FR 45817.)

This discussion has the following three parts:

- A synopsis of the differences between the 1987-based CIPI and the 1992-based CIPI.
- A description of the methodology used to develop the cost category weights and vintage weights in the 1992-based CIPI, making note of the differences from the methodology used to develop the 1987-based CIPI.
- A description of the data sources used to measure price change for each component of the 1992-based CIPI, making note of the differences from the price proxies used in the 1987-based CIPI.

A. Synopsis of Changes Adopted in the Rebased 1992 CIPI

We made no structural changes in the 1992-based CIPI. The only major change is the use of more recent hospital capital expenditure data. The 1987-based CIPI contained cost category weights that were derived from 1987 Medicare cost report data and the 1987 Annual Survey of the AHA. The 1992-based CIPI uses data from the hospital Medicare cost reports for cost periods beginning between October 1, 1991 and September 30, 1992. The 1992-based CIPI also uses data from the 1992 Annual Survey of the AHA.

The 1987-based CIPI contained vintage weights that were derived from 1987 Medicare cost report data, the 1963–1987 Panel Survey of the AHA, and the 1980–1989 Securities Data Corporation data on hospital bonds. The 1992-based CIPI uses data from the 1992 Medicare cost reports, the 1963–1992 Panel Survey of the AHA, and 1980–1992 Securities Data Corporation data on hospital bonds.

B. Methodology for Developing Cost Category Weights and Vintage Weights for the 1992-based CIPI

There are five cost categories in the CIPI: Building and fixed equipment depreciation, movable equipment depreciation, capital-related interest expense from government/nonprofit debt instruments, capital-related interest expense from for-profit debt instruments, and other capital-related expenses, such as taxes and insurance. The methodology for developing each of these cost category weights is described below:

1. Building and Fixed Equipment Depreciation

The 1992-based cost weight for building and fixed equipment depreciation was derived using the 1992 Medicare cost reports. The proportion of lease expenses attributable to building and fixed equipment was included in the cost weight based on the proportion of overall capital expenses allocated to building and fixed equipment depreciation. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 AHA Annual Survey.

2. Movable Equipment Depreciation

The 1992-based cost weight for movable equipment depreciation was derived using the 1992 Medicare Cost Reports. The proportion of lease expenses attributable to movable equipment was included in the cost weight based on the proportion of overall capital expenses allocated to movable equipment depreciation. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 AHA Annual Survey.

3. Government/Nonprofit Interest

The 1992-based cost weight for government/nonprofit interest was derived using the 1992 AHA Annual Survey data. The government/nonprofit interest is 85 percent of total interest, reflecting the relative debts of the government/nonprofit hospital sector and the for-profit hospital sector. The proportion of lease expenses attributable to government/nonprofit interest was included in the cost weight based on the proportion of overall capital expenses allocated to government/non-profit interest expense. The 1987-based weight was developed from the 1987 AHA Annual Survey.

4. For-Profit Interest

The 1992-based cost weight of for-profit interest was derived using the 1992 AHA Annual Survey data. The for-profit interest is 15 percent of total interest, reflecting the relative debts of the government/nonprofit hospital sector and the for-profit hospital sector. The proportion of lease expenses attributable to for-profit interest was included in the cost weight based on the proportion of overall capital expenses allocated to for-profit interest expense. The 1987-based weight was developed from the 1987 AHA Annual Survey.

5. Other Capital-Related Expenses

The 1992-based cost weight for other capital-related expenses was derived using 1992 Medicare cost reports. The proportion of lease expenses attributable to other capital-related expenses was included in the cost weight based on the proportion of overall capital expenses allocated to other capital-related expenses. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 Capital Expenditure Survey.

6. There are three sets of vintage weights in the CIPI

Building and fixed equipment depreciation, movable equipment depreciation, and interest expense. The methodology for developing each of these vintage weights is described below.

a. Building and Fixed Equipment: The 1992-based building and fixed equipment vintage weights were derived from the 1992 Medicare cost reports and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1987 Medicare cost reports and the 1963–1987 AHA Panel Survey.

b. Movable Equipment: The 1992-based movable equipment vintage weights were derived from the 1992 Medicare cost reports and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1987 Medicare cost reports and the 1963–1987 AHA Panel Survey.

c. Capital-Related Interest: The 1992-based movable equipment vintage weights were derived from the 1980–1992 Securities Data Corporation data on hospital bonds and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1980–1989 Securities Data Corporation data on hospital bonds and the 1963–1987 AHA Panel Survey.

C. Price Proxies Used to Measure Cost Category Growth in the CIPI

1. Building and Fixed Equipment Depreciation

The percentage change in the vintage-weighted price of building and fixed equipment depreciation as measured by the Boeckh institutional construction index was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

2. Movable Equipment Depreciation

The percentage change in the vintage-weighted price of movable equipment depreciation as measured by the Producer Price Index (PPI) for machinery and equipment was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

3. Government/Nonprofit Interest Expense

The percentage change in the vintage-weighted price of government/nonprofit interest expense as measured by the Average yield on Domestic Municipal Bonds from the Bond Buyer index of 20 bonds was applied to this category in

the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

4. For-Profit Interest Expense

The percentage change in the vintage-weighted price of for-profit interest expense as measured by the Average yield on Moody's Aaa Bonds was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

5. Other Capital-Related Expenses

The percentage change in the price of other capital-related expenses as measured by the CPI for all urban consumers for residential rent was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

We provided more detailed discussion of the rationale for the choice of these price proxies in the June 2, 1995 proposed rule (60 FR 29227) and in the September 1, 1995 final rule (60 FR 45815).

Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) address the setting of update factors for inpatient services furnished in FY 1997 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XII) of the Act sets the FY 1997 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 0.5 percentage points for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1997 percentage increase in the hospital-specific rates applicable to sole community hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 0.5 percentage points. Section 1886(b)(3)(B)(ii) of the Act sets the FY 1997 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system equal to the rate of increase in the excluded hospital market basket minus the applicable reduction or, in the case of a hospital in a fiscal year for which the hospital's update adjustment percentage is at least 10 percent, the excluded hospital market basket percentage increase. Under section 1886(b)(3)(B)(v) of the Act, a hospital's update adjustment percentage increase for FY 1997 is the percentage increase by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the cost reporting period beginning in FY 1990 exceed the hospital's target amount for such cost reporting period, increased for each fiscal year (beginning with FY 1994) by the sum of any of the hospital's applicable reductions for previous years. The applicable reduction with respect to a hospital for FY 1997 is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for FY 1997.

In accordance with section 1886(d)(3)(A) of the Act, we are updating the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded for the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the second quarter 1996 forecast of the FY 1997 rebased market basket increase of 2.5 percent for hospitals subject to the prospective payment system, the updates in the standardized amounts are 2.0 percent for hospitals in both large urban and other areas. The update in the hospital-specific rate applicable to sole community hospitals is 2.0 percent (that is, the market basket rate of increase of 2.5 percent minus 0.5 percentage points). The update for hospitals excluded from the prospective payment system is based on the percentage increase in the excluded hospital market basket (currently estimated at 2.5 percent) minus the applicable reduction factor. The applicable reduction factor is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage. Therefore, for excluded hospitals, the hospital-specific update can vary between 1.5 and 2.5 percent.

Sections 1886(e)(2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1 of each year an update factor that takes into account changes in the market basket rate of increase index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we published the FY 1996 update factors recommended under section 1886(e)(4) of the Act as Appendix E of the May 31, 1996 final rule (61 FR 27591).

II. Secretary's Final Recommendation for Updating the Prospective Payment System Standardized Amounts

We did not receive any public comments concerning our proposed recommendation. Therefore, our final recommendation will be the same as our proposed recommendation. That is, we are recommending that the standardized amounts be increased by an amount equal to the market basket rate of increase minus 1.5 percentage points for hospitals located in large urban and other areas. We are also recommending an update of the market basket rate of increase minus 1.5 percentage points to the hospital-specific rate for sole community hospitals. These figures are consistent with the President's budget recommendation.

In recommending these increases, we have followed section 1886(e)(4) of the Act, which requires that we take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. We believe our analyses, which measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix, support our recommendations. These figures are consistent with the President's FY 1997 budget recommendation, which continues the reductions imposed by section 13501 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), that is, reductions in the hospital market basket of 2.5 percentage points for FYs 1994 and 1995 and 2.0 percentage points for FY 1996. We believe these recommended changes in the update factor would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund. When the President's budget was submitted, the market basket rate of increase was projected at 3.6 percent. As noted above, our final recommendation is based on the most recent forecast of the rebased market basket. (See section IV of the

preamble to this final rule for a detailed discussion of the market basket.)

III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals and Units

Our final recommendation is that hospitals and hospital units excluded from the prospective payment system receive an update equal to percentage increase in the rebased market basket that measures input price increases for services furnished by excluded hospitals minus 1.5 percentage points. Thus, given the current estimate of the change in the market basket rate of increase for excluded hospitals of 2.5 percent (compared with the earlier estimate of 2.7 percent used in the proposed rule), our final recommendation is for an update of 1.0 percent. This recommendation is consistent with the President's budget, acknowledging that the market basket rate of increase for these hospitals was forecast at 3.6 percent at the time the budget was submitted.

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Part VI

Federal Emergency Management Agency

44 CFR Parts 65, 70, and 72

Flood Insurance Program: Identification and Mapping of Special Flood Hazard Areas, Procedures for Map Correction, and Procedures and Fees for Processing Map Changes; Interim Final Rule and Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 65, 70, and 72

RIN 3067–AC53

Identification and Mapping of Special Flood Hazard Areas, Procedures for Map Correction, and Procedures and Fees for Processing Map Changes

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: This interim final rule will revise the National Flood Insurance Program (NFIP) regulations concerning the identification and mapping of Special Flood Hazard Areas (SFHAs) and revision of NFIP maps by revising the fee requirements and schedule for processing certain changes to NFIP maps. Under this interim final rule, the fees will be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private-sector labor rate on which the fees are predicated. Revised fees will be published in the **Federal Register**.

DATES: This interim final rule is effective August 30, 1996. We invite your comments on this interim final rule. Please submit comments on or before October 1, 1996.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC.20472, or by facsimile at (202) 646–4536 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472; (202) 646–2756 or by facsimile at (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: This interim final rule will revise the National Flood Insurance Program (NFIP) regulations concerning the identification and mapping of Special Flood Hazard Areas (SFHAs) and revision of NFIP maps by revising the fee requirements and schedule for processing certain changes to NFIP maps. The current fee requirements and schedule were established under a final rule published in the **Federal Register** on June 30, 1992, 57 FR 29036.

This action will reduce expenses to the NFIP and will contribute to the NFIP's self-support by: (1) Establishing flat user fees for most requests for Conditional Letters of Map Amendment (CLOMAs), Letters of Map Revision Based on Fill (LOMR–Fs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Letters of Map Revision (LOMRs), Conditional Letters of Map Revision (CLOMRs), and Physical Map Revisions (PMRs); (2) reducing the number of user fee categories; (3) requiring payment of user fees in full before beginning work on a request; (4) changing the initial fee and hourly rate for LOMR, CLOMR, and PMR requests based on structural measures on alluvial fans; (5) limiting fee exemptions for requests involving LOMAs and requests to correct mapping or analysis errors; and (6) replacing the mechanism for recovering the cartographic production costs related to incorporating map changes made by letter in Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs).

This interim final rule supersedes the fee schedules that were established on June 30, 1992. It also expands the payment method to include credit card payments.

Under this interim final rule, the fees will be adjusted periodically, but no more than once annually, to provide for changes in the prevailing private-sector labor rate on which the fees are predicated. Revised fees will be published as a notice in the **Federal Register**.

These amendments to the NFIP criteria for identification and mapping of SFHAs are a result of the continuing reappraisal of the NFIP for the purposes of achieving greater administrative and fiscal effectiveness and encouraging sound floodplain management so that reductions in the loss of life and property and in disaster-related expenditures can be realized.

Establishment of Flat User Fees

The existing fee collection process is complex and its administration requires time-intensive efforts on the part of FEMA. It also increases the time required to provide requesters with the Letter of Map Change (LOMC) product or PMR they require. The current system requires requesters to submit an initial fee that is not intended to cover the full review and processing costs or the cartographic production costs. Requesters subsequently receive invoices for the balance. The current system is further complicated by the pre-authorized spending limits placed on each product. When FEMA determines that these limits will be exceeded, written authorization must be obtained before proceeding with their review. Processing the request is delayed until the written authorization is received.

Under this interim final rule, FEMA will charge a single flat user fee for most LOMC and PMR requests, thereby reducing the turnaround time for preparing and issuing determination letters and reducing FEMA costs of administering the fee-charge system. FEMA could recover more of the actual costs than are recovered by the current system and redistribute the overall cost of operations.

Requirement for Full Up-Front Payment

Under this interim final rule, the requester will be required to submit the full fee payment before any work is begun on most map change requests. This will minimize the need for follow-up invoicing and ensure FEMA collects appropriate fees for services rendered.

Consolidation of Product Categories

Under this interim final rule, LOMC services and PMRs with similar review and processing requirements will be consolidated into the same fee category. As a result, the number of fee categories is reduced from 19 to 10.

Limitation of Fee Exemptions

Under current standards, requesters are exempted from paying user fees when they submit requests for changes to (1) remove properties or structures from the SFHA shown on the FIRM that were inadvertently included in the SFHA because of map scale limitations. This is handled by the LOMA process detailed in part 70 of the NFIP regulations; (2) reflect more detailed information on flooding sources, floodways, or topographic data; (3) correct mapping errors or errors in the effective Flood Insurance Study analysis; or (4) reflect projects that are for public benefit and are primarily intended for flood loss reduction to insurable structures in identified flood hazard areas that were in existence prior to the commencement of the projects. Such exemptions preclude FEMA from recovering fees for a substantial volume of work.

Under this interim final rule, exemptions are maintained only for requests for LOMAs and requests to correct mapping or analysis errors.

Maintenance of Initial Fee for Requests Based on Structural Measures on Alluvial Fans

Under this interim final rule, the initial fee for LOMC requests based on structural measures on alluvial fans will be maintained because these requests are rare, the FEMA engineering review for these requests is usually very complex, and FEMA's costs for processing these requests can fluctuate

significantly. Based on a review of actual processing costs for Fiscal Year 1995, $5,000 will be established as the initial fee for such requests, with the remaining costs to be recovered before the LOMC is issued, consistent with current fee-reimbursement practices. Under this interim final rule, the hourly rate used to calculate the total fees that must be reimbursed is increased to $50.

National Environmental Policy Act

This interim final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this interim final rule does not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 610 *et seq.*, because it is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. A regulatory flexibility analysis has not been prepared.

Executive Order 12612, Federalism

This interim final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim final rule is required by statute, 42 U.S.C. 4014(f), which also specifies the regulatory approach taken in the interim final rule. To the extent possible under the statutory requirements of 42 U.S.C. 4014(f), this interim final rule adheres to the principles of regulation as set forth in Executive Order 12866, Regulatory Planning and Review.

(Catalog of Federal Domestic Assistance No. 83.100, Flood Insurance)

List of Subjects in 44 CFR Parts 65, 70, and 72

Administrative practice and procedure, Flood insurance, Floodplains, and Reporting and recordkeeping requirements.

Accordingly, 44 CFR Parts 65, 70, and 72 are amended as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL FLOOD HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.4(c) is revised to read as follows:

§ 65.4 Right to submit new technical data.

* * * * *

(c) Requests for changes to effective Flood Insurance Rate Maps and Flood Boundary and Floodway Maps are subject to the cost recovery procedures described in part 72 of this subchapter. As indicated in part 72, revisions requested to correct mapping errors or errors in the Flood Insurance Study analysis are not subject to cost-recovery procedures.

3. Section 65.5(d) is revised to read as follows:

§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.

* * * * *

(d) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

4. Section 65.6(g) is revised to read as follows:

§ 65.6 Revision of base flood elevation determinations.

* * * * *

(g) *Submission procedures.* All requests shall be submitted to the FEMA Regional Office servicing the community's geographic area or the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

5. Section 65.8 is revised to read as follows:

§ 65.8 Review of proposed projects.

A community, or an individual through the community, may request FEMA's comments on whether a proposed project will justify a map revision, if built as proposed. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Revision, in accordance with part 72 of this subchapter. The data required to support such requests are the same as those required for final revisions in accordance with §§ 65.5, 65.6, and 65.7, except as-built certification is not required. All such requests shall be submitted to the FEMA Headquarters Office in Washington, DC, and shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter.

6. Section 65.9(h) is added to read as follows:

§ 65.9 Review and response by the Administrator.

* * * * *

(h) The required payment, in accordance with part 72 of this subchapter, has not been submitted, and no review will be conducted and no determination will be issued until payment is received.

PART 70—PROCEDURE FOR MAP CORRECTION

7. The authority citation for part 70 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

8. Section 70.9 is revised to read as follows:

§ 70.9 Review of proposed projects.

An individual who proposes to build one or more structures on a portion of property that may be inadvertently included in a Special Flood Hazard Area (SFHA) may request FEMA's comments on whether the proposed structure(s) will be in the SFHA if built as proposed. FEMA's comments will be issued in the form of a letter, termed a Conditional Letter of Map Amendment (CLMA). The data required to support such requests are the same as those required for final Letters of Map Amendment in accordance with § 70.3, except as-built certification is not required and the requests shall be accompanied by the appropriate payment, in accordance with part 72 of this subchapter. All such requests for CLOMAs shall be submitted to the FEMA Regional Office servicing the community's geographic area or the FEMA Headquarters Office in Washington, DC.

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

9. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

10. Section 72.1 is revised to read as follows:

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost-recovery procedures for the engineering review and administrative processing associated with FEMA's response to requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision (CLOMRs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions (PMRs). Such requests are based on proposed or actual manmade alterations within the floodplain, such as the placement of fill; modification of a channel; construction or modification of a bridge, culvert, levee, or similar measure; or construction of single or multiple residential or commercial structures on single or multiple lots.

11. Section 72.2 is revised to read as follows:

§ 72.2 Definitions.

Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part. For the purpose of this part, the products are defined as follows:

CLOMA. A CLOMA is FEMA's comment on a proposed structure or group of structures that upon construction, will be located on existing natural ground above the base (1-percent annual chance) flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.

CLOMR. A CLOMR is FEMA's comment on a proposed project that upon construction will affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing effective base flood elevations, the Special Flood Hazard Area (SFHA), or the regulatory floodway.

CLOMR–F. A CLOMR–F is FEMA's comment on a proposed project that upon construction will result in a modification of the SFHA through the placement of fill outside the regulatory floodway.

LOMR. A LOMR is FEMA's modification to an effective Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), or both, based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA. The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

LOMR–F. A LOMR–F is FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the regulatory floodway.

Physical Map Revision. A Physical Map Revision (PMR) is FEMA's revision and republication of an effective FIRM, FBFM, or FIS report based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA.

12. Section 72.3 is revised to read as follows:

§ 72.3 Fee schedule.

(a) For requests for CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans, an initial fee subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins review of the request. The initial fee represents the minimum cost for reviewing these requests and is based on the prevailing private-sector labor rate. A revision to this initial fee, if necessary, will be published as a notice in the **Federal Register**.

(b) For requests for CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans, the total fee is to be calculated based on the total hours expended by FEMA in reviewing and processing the request multiplied by an hourly rate based on the prevailing private-sector labor rate. The hourly rate is published as a notice in the **Federal Register**. A revision to the hourly rate, if necessary, will be published as a notice in the **Federal Register**.

(c) For conditional and final map revision requests for the following categories, flat user fees, subject to the provisions of § 72.4, shall be paid to FEMA before FEMA begins review of the request.

(1) Requests for CLOMAs, CLOMR–Fs, and LOMR–Fs for single structures or single lots;

(2) Requests for CLOMAs for multiple structures or multiple lots;

(3) Requests for CLOMR–Fs and LOMR–Fs for multiple structures or multiple lots;

(4) Requests for LOMRs and Physical Map Revisions based on projects involving bridges, culverts, or channels, or combinations thereof;

(5) Requests for LOMRs and Physical Map Revisions based on projects involving levees, berms, or other structural measures;

(6) Requests for LOMRs and Physical Map Revisions based on as-built information for projects for which CLOMRs were issued previously by FEMA;

(7) Requests for LOMRs and Physical Map Revisions based solely on more detailed data;

(8) Requests for CLOMRs based on projects involving new hydrologic information, bridges, culverts, or channels, or combinations thereof; and

(9) Requests for CLOMRs based on projects involving levees, berms, or other structural measures.

(d) The flat user fees for conditional and final map amendments and map revisions are based on the actual costs for reviewing and processing the requests. The fees for requests for LOMR–Fs, LOMRs, and PMRs also shall include FEMA's costs for physically revising affected FIRM and FBFM panels to reflect map changes at a later date.

(e) In addition to the flat user fees for Physical Map Revisions, payment of a fee for FEMA's cartographic production costs, based on actual per-panel costs, shall be required.

(f) Revisions to the fees, if necessary, will be published as a notice in the **Federal Register**.

13. Section 72. 4 is revised to read as follows:

§ 72.4 Submittal/payment procedures and FEMA response.

(a) The initial fee shall be submitted with a request for FEMA review and processing of CLOMRs, LOMRs, and Physical Map Revisions based on structural measures on alluvial fans; the appropriate flat user fee shall be submitted with all other requests for FEMA review and processing.

(b) FEMA must receive initial and flat user fees before it will begin any review. The fee is non-refundable when FEMA begins its review.

(c) Following completion of FEMA's review for any CLOMR, LOMR, or Physical Map Revision based on structural measures on alluvial fans, FEMA shall invoice the requester at the established hourly rate for any actual costs exceeding the initial fee incurred for review and processing. FEMA will

not issue a determination letter or revised map panels until the invoice amount is received.

(d) For all map revision requests, FEMA will bear the cost of reprinting and distributing the revised FIRM or FBFM panels, or combination.

(e) The entity that applies to FEMA through the local community for review is responsible for the cost of the review. The local community incurs no financial obligation under the reimbursement procedures set forth in this part as a result of transmitting the application by another party to FEMA.

(f) Requesters shall submit payments by check or money order or by credit card. Checks or money orders, in U.S. funds, shall be made payable to the National Flood Insurance Program.

(g) For CLOMA, CLOMR–F, LOMA, and LOMR–F requests, FEMA shall:

(1) Notify the requester and the community within 30 days as to the adequacy of the submittal, and

(2) Provide to the requester and the community, within 60 days of receipt of adequate information and fee, a determination letter or other written comment in response to the request.

(h) For CLOMR, LOMR, and PMR requests, FEMA shall:

(1) Notify the requester and the community within 60 days as to the adequacy of the submittal; and

(2) Provide to the requester and the community, within 90 days of receipt of adequate information and fee, a CLOMR, a LOMR, other written comment in response to the request, or preliminary copies of the revised FIRM panels, FBFM panels, or affected portions of the FIS report to the community and the requester for review and comment.

14. In § 72.5, paragraphs (a) and (b) are revised to read as follows:

§ 72.5 Exemptions.

(a) Requests for map changes based on mapping or analysis errors or the effects of natural changes within Special Flood Hazard Areas shall be exempt from fees.

(b) Requests for LOMAs shall be exempt from fees.

* * * * *

15. Section 72.6 is revised to read as follows:

§ 72.6 Unfavorable response.

(a) A request for a CLOMA, CLOMR, or CLOMR–F may be denied or the determination may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requester is not entitled to any refund of the fees paid if the determination contains such comments, concerns, or conditions, or if the request is denied. A requester is not entitled to any refund of the fees paid if the requester is unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which the CLOMA, CLOMR, or CLOMR–F was sought.

(b) A request for a LOMR, LOMR–F, or Physical Map Revision may be denied or the revisions to the FIRM, FBFM, or both, may not be in the manner or to the extent desired by the requester. A requester is not entitled to any refund of the fees paid if the revision request is denied or if the LOMR, LOMR–F, or Physical Map Revision action does not revise the map specifically as requested.

16. Section 72.7 is revised to read as follows:

§ 72.7 Resubmittals.

(a) Any resubmittal of a CLOMA, CLOMR, CLOMR–F, LOMR, LOMR–F, or Physical Map Revision request more than 90 days after FEMA notification that the request has been denied or after the review has been terminated because insufficient information was provided by the requester will be treated as an original submission and subject to all submittal/payment procedures described in § 72.4. The procedure in § 72.4 also applies to any resubmitted request (regardless of when it is submitted) if the project on which the request is based has been altered significantly in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

(b) When a LOMR, LOMR–F, or Physical Map Revision request is made following a CLOMR or CLOMR–F issued previously by FEMA, the procedures in § 72.4 and the appropriate fee, as referenced in § 72.3(c), apply when the as-built conditions differ from the proposed conditions on which the issuance of the CLOMR or CLOMR–F was based.

Dated: August 23, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–22077 Filed 8–29–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee Schedule for Processing Requests for Map Changes and for Flood Insurance Study Backup Data for FY 1997

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice contains the revised fee schedules for processing certain requests for changes to National Flood Insurance Program (NFIP) maps and for processing requests for Flood Insurance Study (FIS) backup data. The changes in the fee schedules will allow FEMA to reduce further the expenses to the NFIP by recovering more fully the costs associated with (1) processing conditional and final map change requests and (2) retrieving, reproducing, and distributing technical and administrative support data related to FIS analyses and mapping.

DATES: The revised fee schedules are effective October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, 500 C Street SW., Washington, DC 20472; (202) 646–2756 or by facsimile at (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: This notice contains the revised fee schedules for processing certain requests for changes to National Flood Insurance Program (NFIP) maps and for processing requests for Flood Insurance Study (FIS) backup data. The revised fee schedule for map changes is effective October 1, 1996, in accordance with the rule for changes to 44 CFR parts 65, 70, and 72, published elsewhere in this edition of the **Federal Register**, and supersedes the current fee schedule established on June 30, 1992.

The revised fee schedule for requests for FIS backup data also is effective October 1, 1996, and supersedes the current fee schedule, also published in the **Federal Register**.

The basis for the initial fees, flat user fees, and hourly rates for requests for Conditional Letters of Map Amendment (CLOMAs), Conditional Letters of Map Revision Based on Fill (CLOMR–Fs), Conditional Letters of Map Revision (CLOMRs), Letters of Map Revision Based on Fill (LOMR–Fs), Letters of Map Revision (LOMRs), and Physical Map Revisions and requests for FIS backup data received by FEMA on or after October 1, 1996 are provided in the separately published rule.

A primary component of the fees is the prevailing private-sector rates charged to FEMA for labor and materials. Because these rates and the actual review and processing costs may vary from year to year, FEMA will publish revised fee schedules periodically, when needed, as notices in the **Federal Register**.

Simplification of Fee Schedule for Conditional and Final Map Changes

The existing fee collection process is complex and its administration requires time-intensive efforts on the part of FEMA. It also increases the time required to provide requesters with the product they require. The current system requires requesters to submit an initial fee that is not intended to cover the full review and processing costs or the cartographic production costs. Requesters subsequently receive invoices for the balance. The current system is complicated further by the pre-authorized spending limits placed on each product. When FEMA determines that these limits will be exceeded, written authorization must be obtained before proceeding with their review. Processing the request is delayed until the written authorization is received.

FEMA has streamlined the process by (1) charging flat user fees for most map change products and services; (2) requiring full payment of fees before work is begun on most map change requests; (3) consolidating similar products or services into a limited number of user fee categories; and (4) limiting the number of products for which requesters may receive exemptions from payment of fees. As a result, requesters and FEMA know the cost of providing a product or service before any work is begun.

The initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans has been maintained because (1) such requests are rare, (2) the FEMA review for these requests is usually very complex, and (3) the costs involved in processing the requests can fluctuate significantly.

Fees for Conditional and Final Map Revisions Based on Structural Measures on Alluvial Fans

Based on a review of actual cost data for Fiscal Year 1995, FEMA established $5,000 as the initial fee for requests for LOMRs and CLOMRs based on structural measures on alluvial fans. The remainder of the review and costs is to be recovered by invoicing the requester before FEMA issues a determination letter, consistent with current practice. The prevailing private-sector labor rate charged to FEMA ($50/hour) shall be used to calculate the total fees that must be reimbursed.

Fee Schedule for Conditional Letters of Map Amendment and Conditional and Final Letters of Map Revision Based on Fill

Based on a review of actual cost data for Fiscal Year 1995, FEMA established the following flat user fees, which are to be submitted by requesters with requests received by FEMA on and after October 1, 1996:

Single-lot/single-structure CLOMA, CLOMR–F, and LOMR–F	$400
Multiple-lot/multiple-structure CLOMA	$700
Multiple-lot/multiple-structure CLOMR–F and LOMR–F	$800

Fee Schedule for Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, the flat user fees shown below are to be submitted by requesters with requests for LOMRs and Physical Map Revisions that are not based on structural measures on alluvial fans that are received by FEMA on and after October 1, 1996. These fees are based on a review of actual cost data for Fiscal Year 1995.

Request based on bridge, culvert, channel, or combination thereof	$3,700
Request based on levee, berm, or other structural measure	$4,300
Request submitted as followup to CLOMR.	
Request based solely on submission of more detailed data	$2,300

Fee Schedule for Conditional Map Revisions

Unless the request is otherwise exempted under 44 CFR 72.5, the flat user fees shown below are to be submitted by requesters with requests for CLOMRs that are not based on structural measures on alluvial fans that are received by FEMA on and after October 1, 1996. These fees are based on a review of actual cost data for Fiscal Year 1995.

Request based on new hydrology, bridge, culvert, channel, or combination	$3,100
Request based on levee, berm, or other structural measure	$3,300

Fee Schedule for Requests for Flood Insurance Study Backup Data

The user fees shown below are to be submitted by requesters with requests for FIS backup data that are received by FEMA on and after October 1, 1996. These fees are based on a review of actual cost data for Fiscal Year 1995. They are based on the complete recovery of FEMA's costs for retrieving, reproducing, and distributing the data, as well as a pro rata share of the costs

for maintaining the data and operating the fee reimbursement system.

As under the previous fee schedule, all entities except FEMA's Study Contractors, FEMA's Technical Evaluation Contractors, and the Federal agencies involved in performing FISs (i.e., U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, National Oceanic and Atmospheric Administration, and Tennessee Valley Authority) will be charged for requests for FIS backup data. The only exception is that one copy of the FIS backup data will be provided to a community free of charge if the data are requested during the statutory 90-day appeal period for an FIS.

FEMA has established seven categories into which requests for FIS backup data are separated. These categories are:

(1) Category 1—Paper copies or microfiche of hydrologic and hydraulic backup data for current FIS

(2) Category 2—Paper copies of topographic mapping developed during FIS process

(3) Category 3—Paper copies of survey notes developed during FIS process

(4) Category 4—Paper copies of individual Letters of Map Change

(5) Category 5—Paper copies of preliminary map panels

(6) Category 6—Computer tapes of Digital Line Graph files

(7) Category 7—Computer diskettes and user's manuals for FEMA programs

The costs of processing requests in Categories 1, 2, and 3 above will vary based on the complexity of the research involved in retrieving the data and the volume and medium of data to be reproduced and distributed. For these categories of requests, FEMA will require the payment of an initial minimum fee, shown below, to cover the preliminary costs of research and retrieval. This fee will then be applied against the total labor costs, and the requester will be invoiced for the remainder of the fees. No data will be provided to a requester until all required fees have been paid.

The costs for processing requests under Categories 4 through 7 above will not vary. Therefore, FEMA has established flat user fees for these categories of requests.

Initial Fee for Requests in Categories 1, 2, and 3 (per request)	$90
Labor Fee for Requests in Categories 1, 2, and 3 (per hour)	$33
Library Maintenance Fee for Requests in Categories 1, 2, and 3 (per request)	$28
Microfiche Production Fee for Requests in Categories 1, 2, and 3 (per request)	$22
Overhead Fee for Requests in Categories 1, 2, and 3 (per request)	$43
Total Fee for Category 4 Requests (per letter)	$40
Total Fee for Category 5 Requests (first panel)	$35
Total Fee for Category 5 Requests (additional panels)	$2
Total Fee for Category 6 Requests (per community)	$150
Total Fee for Category 7 Requests (per copy)	$25

Payment Submission Requirements

Fee payments must be made in advance of services being rendered. These payments are to be in the form of a check or money order or by credit card payment. Checks and money orders are to be made payable, in U.S. funds, to the National Flood Insurance Program. FEMA will provide receipts to requesters for their records or billing purposes.

The fees collected will be deposited to the National Flood Insurance Fund, which is the source of funding for providing these services.

Dated: August 23, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–22076 Filed 8–29–96; 8:45 am]

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federal register

Friday
August 30, 1996

Part VII

Department of Education

34 CFR Part 263
Indian Fellowship and Professional Development Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AA79

Indian Fellowship and Professional Development Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing grants for the Indian Fellowship Program. This program is authorized under Title IX of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act of 1994, enacted October 20, 1994. These regulations identify eligible applicants for the program and the specific application and other program requirements that applicants must meet in order to be considered for funding. These regulations also provide certain general provisions and requirements for the new payback provisions that apply to both the Indian Fellowship Program and the Professional Development Program.

EFFECTIVE DATE: These regulations take effect September 29, 1996.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, U.S. Department of Education, 600 Independence Avenue, SW., Room 4300 Portals Building, Washington, DC 20202–6335. Telephone: (202) 260–1683. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 20, 1994 the Professional Development Program and the Indian Fellowship Program were substantially revised and recodified, respectively, as sections 9122 and 9123 of Subpart 2 of Part A of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 103–382. These regulations identify eligible applicants for the Indian Fellowship Program and address the specific program requirements, including application requirements and requirements concerning the new payback provisions that applicants must meet in order to be considered for funding for both new and continuation awards. The criteria for selecting participants for the Professional Development Program are not included in these regulations. The selection criteria in the Education Department General Administrative Regulations (EDGAR), 34 CFR part 75, are used for competitions under the Professional Development Program.

In addition, certain of these regulations govern the Professional Development Program (§ 263.3, (definitions), § 263.1 (b) and (c), and §§ 263.35 through 263.37 (the new payback provisions that also apply to this program)).

With regard to the payback provisions, the Indian Fellowship Program and Professional Development Program now require that an individual receiving financial assistance either (1) perform work related to the training for which assistance was received and that benefits Indian people; or (2) repay all or a prorated portion of the assistance.

These regulations apply to all FY 1996 awards, both new and continuation, and subsequent fiscal years' awards.

On July 26, 1996 the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (61 FR 39246). Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Public Comment

In the NPRM the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

Intergovernmental Review

The Indian Fellowship Program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

The Professional Development Program, with the exception of assistance to federally recognized tribes, is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 263

Grant programs—education, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: August 27, 1996.

(Catalog of Federal Domestic Assistance Numbers: 84.087 Indian Education—Fellowships for Indian Students; and 84.299 Indian Education—Special Programs.)

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

PART 263—INDIAN FELLOWSHIP AND PROFESSIONAL DEVELOPMENT PROGRAMS

Subpart A—General

Sec.

263.1 What are the Indian Fellowship and the Professional Development Programs?
263.2 Who is eligible to apply under the Indian Fellowship Program?
263.3 What definitions apply to the Indian Fellowship and Professional Development Programs?
263.4 What are the allowable fields of study in the Indian Fellowship Program?
263.5 What does a fellowship award include?
263.6 What is the time period for a fellowship award?

Subpart B—How Does the Secretary Select Fellows?

263.20 What priority is given to certain applicants?
263.21 What should the fellowship application contain?
263.22 How does the Secretary evaluate applications?

Subpart C—What Conditions Must be Met by Fellows?

263.30 What are the basic requirements of a fellow?
263.31 What information must be submitted after a fellowship is awarded?

263.32 What are the requirements for a leave of absence?
263.33 What is required for continued funding under a fellowship?
263.34 When is a fellowship discontinued?
263.35 What are the payback requirements?
263.36 When does payback begin?
263.37 What are the payback reporting requirements?

Subpart D—How Are Fellowship Payments Made?

263.40 How are payments made?

Authority: 20 U.S.C. 7832 and 7833, unless otherwise noted.

Subpart A—General

§ 263.1 What are the Indian Fellowship and the Professional Development Programs?

(a) The Indian Fellowship Program provides fellowships to enable Indian students to pursue a course of study leading to—

(1) A postbaccalaureate degree in medicine, law, education, psychology, clinical psychology, or a related field; or

(2) An undergraduate or postbaccalaureate degree in business administration, engineering, natural resources, or a related field.

(b) The Professional Development Program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the capacities described in paragraph (b)(2) of this section.

(c) The Indian Fellowship and the Professional Development Programs require individuals who receive training under either program to—

(1) Perform work that is related to the training received under either program and that benefits Indian people or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.2 Who is eligible to apply under the Indian Fellowship Program?

In order to be eligible for a fellowship, an applicant must be—

(a) An Indian as defined in § 263.3;

(b) A United States citizen;

(c) Currently in attendance or have been accepted for admission as a full-time undergraduate or graduate student at an accredited institution of higher education in one of the fields listed in § 263.4 or a related field;

(d) Recognized by the institution as a degree candidate; and

(e) Eligible under 34 CFR 75.60.

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 263.3 What definitions apply to the Indian Fellowship and Professional Development Programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Dependent allowance means costs for the care of minor children who reside with the fellow and for whom the fellow has responsibility.

Expenses means tuition and required fees; required university health insurance; room, personal living expenses, and board at or near the institution; dependent allowance; instructional supplies; and reasonable travel and research costs associated with doctoral dissertation completion.

Fellow means the recipient of a fellowship under the Indian Fellowship Program. The term "fellow" also includes individual project participants under the Professional Development Program with regard to the payback provisions contained in §§ 263.35 through 263.37.

Fellowship means an award under the Indian Fellowship Program.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a degree candidate;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a postbaccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides; or

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition; or

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect on October 19, 1994.

Institution of higher education means an accredited college or university within the United States that offers a baccalaureate or postbaccalaureate degree.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Indian Fellowship or the Professional Development Program.

Stipend means that portion of an award that is used for room and board and personal living expenses.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7832, 7833, and 7881)

§ 263.4 What are the allowable fields of study in the Indian Fellowship Program?

(a) The following are allowable fields for an undergraduate degree under this program:

(1) Business administration.
(2) Engineering.
(3) Natural resources.

(b) The following are allowable fields for a graduate degree under this program:

(1) Medicine.
(2) Clinical psychology.
(3) Law.
(4) Education.
(5) Psychology.
(6) Engineering.
(7) Natural resources.
(8) Business administration.

(c) The Secretary considers under paragraphs (a) and (b) of this section, on a case-by-case basis, the eligibility of applications for fellowships in related fields of study.

(Authority: 20 U.S.C. 7833)

§ 263.5 What does a fellowship award include?

(a) The Secretary awards a fellowship in an amount up to, but not more than, the expenses as defined in this part. The assistance provided by the program either—

(1) Fully finances a student's educational expenses; or

(2) Supplements other sources of financial aid, including other Federal financial aid other than loans, for meeting educational expenses.

(b) The Secretary announces the expected maximum amounts for subsistence and other fellowship costs in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7833)

§ 263.6 What is the time period for a fellowship award?

(a) The Secretary awards a fellowship for a period of time not exceeding—

(1) Four academic years for an undergraduate or doctorate degree; and

(2) Two academic years for a master's degree.

(b) With prior approval from the Secretary, summer school may be allowed for eligible continuation students after completion of the first academic year.

(Authority: 20 U.S.C. 7833)

Subpart B—How Does the Secretary Select Fellows?

§ 263.20 What priority is given to certain applicants?

The Secretary awards not more than 10 percent of the fellowships, on a priority basis, to persons receiving training in guidance counseling with a specialty in the area of alcohol and substance abuse counseling and education.

(Authority: 20 U.S.C. 7833)

§ 263.21 What should the fellowship application contain?

In addition to the requirements specified in § 263.22, an applicant shall provide—

(a) Evidence that the applicant is an Indian as defined in § 263.3. Evidence may be in the form of—

(1)(i) A copy of the applicant's documentation of tribal enrollment or membership; or

(ii) A copy of the parent's or grandparent's documentation of tribal enrollment or membership, with supporting birth certificates or similar documents showing the applicant's descendance from the enrolled member;

(2) A letter of certification on official letterhead with the appropriate signature from a federally or State recognized tribe or band; or

(3) A certificate of degree of Indian blood (CDIB) issued by an authorized representative of the Bureau of Indian Affairs or an official of a federally recognized tribe;

(b)(1) Evidence that the applicant is currently in attendance or has been accepted for admission as a full-time student at an accredited institution of higher education in one of the eligible fields of study listed in § 263.4; or

(2) For an applicant who has not yet been accepted for admission, documentation of having been accepted by an accredited institution of higher education by a date to be specified by the Secretary;

(c)(1) The most current official high school and, if appropriate, undergraduate transcripts for undergraduate applicants; or

(2) The most current official undergraduate and, if appropriate, graduate transcripts for graduate applicants;

(d) The certification required under 34 CFR 75.61; and

(e) The certification contained within the application regarding agreement to fulfill the requirements of the payback provision that is signed and dated by the applicant.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833; 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 263.22 How does the Secretary evaluate applications?

(a) The Secretary reviews and ranks an application with other applications for the same field and related fields of study.

(b) The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new fellowship award:

(1) *Official academic record* (60 points). The Secretary considers the quality of the applicant's academic record by reviewing—

(i) The applicant's grade point average and, if applicable, scores from such standardized tests as the Scholastic Aptitude Test (SAT), American College Testing Assessment Program (ACT), Graduate Record Examination (GRE), Law School Admissions Test (LSAT), Medical College Admission Test (MCAT), and achievement tests; and

(ii) The applicant's official transcripts and any grade reports.

(2) *Letters of recommendation* (15 points). The Secretary considers the applicant's potential for success in completing the academic requirements for his or her field of study by reviewing one letter of recommendation from each of the following categories:

(i) A school principal, teacher, academic or non-academic instructor or counselor, a college professor, or academic advisor.

(ii) A member of the community or civic leader who has observed the applicant in educational, social, or civic activities.

(iii) A tribal representative or an Indian community member.

(3) *Commitment essay* (25 points). The Secretary considers the applicant's commitment by reviewing an essay, written by the applicant, that addresses—

(i) The applicant's career goals and why the chosen field of study will benefit Indian people;

(ii) The applicant's life experiences and personal and family expectations that will enhance the applicant's anticipated career accomplishments; and

(iii) The applicant's anticipated commitment to providing service to Indian people.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

Subpart C—What Conditions Must be Met by Fellows?

§ 263.30 What are the basic requirements of a fellow?

A fellow shall—

(a) Start school during the first semester of the award at the institution named on the grant award document and complete at least one full academic term;

(b) Submit to the Secretary two copies of his or her official grade report at the close of each academic term and upon completion of the training program at that institution;

(c) Submit an annual continuation application, in the form and timeframes specified by the Secretary, to request funding for each remaining academic year approved under the initial application;

(d) Request from the Secretary a written leave of absence at least 30 days prior to withdrawal, unless an emergency situation has occurred, for any interruption in his or her program of academic studies; and

(e) Sign an agreement with the Department to meet the provisions of the payback requirement.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.31 What information must be submitted after a fellowship is awarded?

To verify further the accuracy of the information provided in the application, the applicant shall provide all information and documents as requested by the Secretary, including information on other financial aid sources for educational purposes. The applicant's failure to provide the requested information and documents invalidates the application, and the Secretary will not consider it for funding.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.32 What are the requirements for a leave of absence?

(a) The Secretary may approve a leave of absence for a period not longer than one academic year if a fellow has successfully completed at least one academic year.

(b) A written request for a leave of absence must be submitted to the Secretary not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the Secretary waives the prior notification requirement.

(c) The Secretary permits a leave of absence only if the institution certifies that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(d) The Secretary withdraws any remaining funds of the fellow's award if a leave of absence occurs prior to the end of an academic term.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.33 What is required for continued funding under a fellowship?

(a) The Secretary reviews the status of each fellow at the end of each year and continues support only if the fellow—

(1) Has complied with requirements under this part;

(2) Has remained a full-time student in good standing in the field in which the fellowship was awarded; and

(3) Has submitted a noncompeting continuation application requesting additional support.

(b) A fellowship terminates when the fellow receives the degree being sought or after the fellow has received the fellowship for the maximum number of years allowed as defined in § 263.6, whichever comes first.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7833)

§ 263.34 When is a fellowship discontinued?

(a) The Secretary may discontinue the fellowship if the fellow—

(1) Fails to comply with the provisions under this part, including failure to obtain an approved leave of absence under § 263.32, or with the terms and conditions of the fellowship award; or

(2) Fails to report any change in his or her academic status.

(b) The Secretary discontinues a fellowship only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Authority: 20 U.S.C. 7833)

§ 263.35 What are the payback requirements?

(a) Individuals receiving assistance under the Indian Fellowship Program or the Professional Development Program are required to—

(1) Perform work related to the training received and that benefits Indian people; or

(2) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Indian Fellowship Program or the Professional Development Program.

(c) The cash payback required must be equivalent to the total amount of funds received and expended for training received under either of these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.36 When does payback begin?

(a) For all fellows who complete their training under the Indian Fellowship Program or the Professional Development Program, except for medical degree and doctoral degree candidates, payback must begin within six months from the date of completion of the training.

(b) For fellows in a doctoral degree program requiring a dissertation, payback must begin not later than two years after the program's academic course work has been completed or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a doctoral degree program shall submit an annual written report to the Secretary on the status of the dissertation.

(2) Within 30 days of completion of the dissertation, fellows in a doctoral degree program shall provide written notification to the Secretary of completion of the dissertation and of the participant's plans for completing a work-related or cash payback.

(c) For fellows in a doctoral degree program with clinical or internship requirements, payback must begin within six months after the clinical or internship requirements have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a doctoral degree program with clinical or internship requirements shall submit an annual written report to the Secretary on the status of completion of the clinical or internship requirements.

(2) Within 30 days of completion of the clinical or internship requirements, fellows shall provide written notification to the Secretary of completion of those requirements and the participant's plans for completing a work-related or cash payback.

(d) For fellows in a medical degree program, payback must begin six months from the date that all residency requirements of the program have been met or the institution determines the student is no longer eligible to participate in the training program, whichever occurs first.

(1) After academic course work has been completed, fellows in a medical degree program shall submit an annual written report to the Secretary on the status of completion of the residency requirements of the program.

(2) Within 30 days of completion of the residency requirements, fellows in a medical degree program shall provide written notification to the Secretary of completion of the residency requirements and of the participant's plans for completing a work-related or cash payback.

(e) For fellows who do not complete their training under the Indian Fellowship Program or the Professional Development Program, payback must begin within six months from the date the fellow leaves the Indian Fellowship Program or the Professional Development Program, unless he or she continues as a full-time student, without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the fellow leaves the Indian Fellowship Program or the Professional Development Program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment must be submitted to the Secretary within 30 days of leaving the Indian Fellowship Program or the Professional Development Program and must provide the following information:

(i) The name of the accredited institution the student will be attending.

(ii) A copy of the letter of admission from the institution.

(iii) The degree being sought.

(iv) The projected date of completion.

(2) After approval by the Secretary of the deferment of the payback provision

on the basis of continuing as a full-time student, former fellows are required to submit to the Secretary, after every grading period, a status report from an academic advisor or other authorized representative of the institution of higher education showing verification of enrollment and status.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

§ 263.37 What are the payback reporting requirements?

(a) *Written notice.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent must include information explaining how the work-related service is related to the training received and benefits Indian people.

(1) For work-related service, the Secretary reviews each participant's payback plan to determine if the work-related service is related to the training received and benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service must identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such a change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports must include a certification from the participant's employer that the service or services have been performed without interruption.

(5) Upon written request, and if appropriate, the Secretary may extend the period for completing a work-related payback by a total of 18 months.

(6) For participants who initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0020)

(Authority: 20 U.S.C. 7832 and 7833)

Subpart D—How Are Fellowship Payments Made?

§ 263.40 How are payments made?

(a) Fellowship payments are made directly to the institution of higher education where a fellow is enrolled, with stipends provided to the fellow in installments by the institution. No fewer than two installments per academic year may be made.

(b) If a fellow transfers to another institution, the fellowship may also be transferred provided the fellow maintains basic eligibility for the award.

(c) A fellow who officially or unofficially withdraws or is expelled from an institution before completion of a term shall refund a prorated portion of the stipends received, as determined by the Secretary. The Secretary requires the institution to return any unexpended funds.

(Authority: 20 U.S.C. 7833)

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Part VIII

Department of Housing and Urban Development

24 CFR Parts 913 and 950
Office of the Assistant Secretary for Public and Indian Housing: Optional Earned Income Exclusions; Interim Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 913 and 950

[Docket No. FR–4080–I–01]

RIN 2577–AB66

Office of the Assistant Secretary for Public and Indian Housing; Optional Earned Income Exclusions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends HUD's regulations for the definition of "annual income" applicable to Public Housing Agencies and Indian Housing Authorities (collectively called Housing Agencies or HAs) in the operation of public housing and Indian housing programs. The change is not applicable to the Section 8 Housing Assistance Payments program. The rule is necessary to encourage HAs to take action to further the efforts of applicants and tenants to seek employment and to increase their earned income. The intended effect is to permit HAs to adopt an exclusion for earned income, tailored to their own circumstances, to support the efforts of working families.

DATES: Effective date: September 30, 1996.

Comment due date: October 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: For the public housing program, contact Linda Campbell, Director, Marketing and Leasing Management Division, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 708–0744, extension 4020. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

For the Indian housing programs, contact Deborah Lalancette, Director, Housing Management Division, Office of Native American Programs, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 755–0088, extension 122. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. General

This rule amends HUD's regulations for the public housing and Indian housing programs that govern the definition of annual income, which the Secretary is authorized to define. Since income eligibility for the public and Indian housing programs is determined based on this term, and rents are based on annual income, as modified by statutorily prescribed adjustments, changes in this definition influence who lives in these types of housing and how much they are required to pay. (The change is not applicable to the Section 8 Housing Assistance Payments program.)

The rule is necessary to encourage public housing agencies and Indian Housing Authorities (collectively called housing authorities or HAs) to take action to further the efforts of applicants and tenants to seek employment and to increase their earned income. The intended effect is to permit HAs to adopt an exclusion for earned income, tailored to their own circumstances, to support the efforts of working families.

The Department believes that, in light of the shortfall in funding full HA eligibility for the Performance Funding System (PFS) expected over the next two years and the possibility that an HA can develop a higher income base by use of this type of exclusion, it is in the best interests of the program to encourage occupancy in these programs by working families.

II. The Nature of Special Treatment for Earned Income

The Balanced Budget Downpayment Act I, enacted on January 26, 1996 (Pub. L. No. 104–99), also known as the Continuing Resolution or "CR", specifically authorized housing agencies to allow earned income adjustments, as long as HUD's operating subsidy obligation was not affected. That provision and others were implemented by HUD by issuance of a Notice to HAs (PIH 96–6) on February 13, 1996, which expires on September 30, 1996, based on the expiration of the CR on that date.

The CR enacted by Congress, effective for Federal Fiscal Year 1996, permitted housing agencies to take actions to attract and retain working families in occupancy such as the adoption of ceiling rents and the adoption of earned income adjustments that would ease the impact on working tenants. The Act also repealed Federal admissions preferences, permitting HAs to use working preferences to greater advantage. This rule codifies for Federal Fiscal Years 1997 and 1998 a provision permitting housing agencies to provide for special treatment of earned income.

The rationale for making this provision effective via a rule is to ensure some degree of consistency in Departmental policy, on which HAs can rely. The Department believes that this measure can contribute to improving the stability of HAs by permitting them to improve the income mix in their developments, thus increasing dwelling rental income.

There is a difference between the special treatment of earned income specifically authorized by the CR and that authorized by this rule. There are two defined terms related to income under the United States Housing Act of 1937: "annual income" and "adjusted income." The former is a gross income amount, which is used to determine the eligibility of a family for participation in the program based on whether that amount is less that 50% or 80% of median income for the area (adjusted by family size). The latter is a net amount after adjustments are made to the gross income, which is used to determine the amount of rent a family pays under the affected programs because rent is generally based on a percentage of "adjusted income." The CR authorized an "adjustment" to income affecting the amount of "adjusted income", while this rule authorizes an "exclusion" from income, which affects income at an earlier stage—the definition of "annual income."

The reason that this rule authorizes an exclusion rather than an adjustment is that the scope of the Department's authority does not clearly include authorizing "adjustments" without specific Congressional action. The statute prescribes the definition of "adjusted income" but leaves to the Secretary of HUD the authority (under section 3 of the United States Housing Act of 1937, 42 U.S.C. 1437a) to define the term "income," as it is used for purposes of determining eligibility and rental payment in the public and Indian housing programs. The term HUD uses

that corresponds to this statutory term is "annual income."

Although the CR provision expires at the end of the current fiscal year (September 30, 1996), a change made by the Secretary in the definition of income permitting an exclusion for earned income can have longer lasting effect. The Secretary is exercising this authority in this rule.

Under this rule, HAs have the authority to establish their own earned income exclusion, as a means of attracting and retaining more tenants with earned income. The "exclusion" an HA adopts may be similar or identical to the "adjustment" it had adopted under the CR.

The adoption of an earned income exclusion under this rule will have the same effect on an HA's operating subsidy as the adoption of an earned income adjustment under the previously issued HUD Notice. (See discussion below.) In general, HAs that opt to adopt earned income exclusions will increase their total income if they are successful in obtaining more and/or higher income working tenants but will lose income if their policies do not produce a net increase in rent revenues.

III. Specific Changes in Existing Rules

For the public housing program, this change to permit a new exclusion is accomplished by adding a new paragraph (d) to § 913.106, which states the definition of "annual income." The change to the Indian housing program occurs in § 950.102, in the definition of "annual income," where a new paragraph (3) is added. The new paragraphs authorize an HA to adopt a written earned income exclusion, after considering certain enumerated possibilities. No HUD approval is required for adoption of such an exclusion. However, if the HA experiences a decrease in dwelling rental income as a result, it will have to absorb the cost.

IV. Effect on Operating Subsidy

In addition to the HUD Notice to housing agencies described above, HUD issued a second Notice (PIH 96–24) in the spring of 1996, implementing the CR with respect to its impact on the Performance Funding System of determining operating subsidy eligibility. Specifically, that Notice permitted HAs to offset PFS funding shortfalls by retaining increases in dwelling rental income that result from increases in residents' earned incomes and non-dwelling rental income earned by the HAs through entrepreneurial activities. That Notice made the changes effective for the shorter period through Federal Fiscal Year 1998 or the time by which HUD no longer has a shortfall in the availability of funds to pay full operating subsidy eligibility to all HAs.

Under this rule, as under that Notice, the special treatment given earned income by an HA will not affect its PFS subsidy eligibility. That eligibility will be calculated without respect to either decreases in rental income resulting from the exclusion, or increases resulting from higher rents received from households with earned income. Another pending rulemaking (FR–4072) codifies those changes.

V. Scope of rule

The CR authorized the earned income adjustment only for the public and Indian housing programs and only based on the premise that operating subsidy obligations of the Department would not be affected. This rule follows those limits on the scope of the optional special treatment of earned income. Therefore, the change is not applied to other programs usually governed by the same definition of "annual income," such as the Section 8, Section 236, and Rent Supplement programs.

Findings and Certifications

Justification for Interim Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

The change made by this interim rule merely adds an optional exclusion to the definition of income used by Housing Agencies, which supports the policy of obtaining a broad range of income levels in public housing and Indian housing developments and the Secretary's policy of encouraging HAs to increase the number of working families residing in these developments. As noted earlier, the Department has already authorized the use of such income exclusions for a limited period of time, based on the Balanced Budget Downpayment Act I, in a Notice. Authorization of such an optional exclusion in this rule is expected to increase the number of HAs using it, helping to encourage the participation of working families in these programs.

Implementation of the rule's provisions is needed as soon as possible to facilitate the adoption of this type of exclusion to realize the benefits of increasing the incentives for working families to participate and to prevent HAs that are now deducting earned income from having to change their policy starting on October 1, 1996, only to institute earned income exclusions later. Therefore, the Department has determined that good cause exists to omit prior public procedure for this interim rule because such delay would be contrary to the public interest and unnecessary.

In the interest of obtaining the fullest participation possible in determining the factors that should be considered in an HA's determination to adopt an earned income exclusion, the Department does invite public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the provisions of this interim rule simply add an option for housing agencies to adopt. To the extent there is an impact, it is advantageous to the HAs, which are creatures of State or local government.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the rule is not subject to review under the Order. The rule merely broadens the options for housing agencies in managing their public housing or Indian housing programs to encourage families to obtain employment and to increase their earnings.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it makes available additional options for housing agencies but does not impose mandatory obligations.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.850.

List of Subjects

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 913 and 950 of title 24 of the Code of Federal Regulations are amended as follows:

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

1. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

2. In § 913.106, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and a new paragraph (d) is added, to read as follows:

§ 913.106 Annual income.

* * * * *

(d) In addition to the exclusions from annual income covered in paragraph (c) of this section, a housing agency may adopt additional exclusions for earned income pursuant to an established written policy.

(1) In establishing such a policy, a housing agency must adopt one or more of the following types of earned income exclusions, including variations thereof:

(i) Exclude all or part of the family's earned income;

(ii) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(iii) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(iv) Apply the exclusion only to the earned income of persons other than the primary earner;

(v) Apply the exclusion to applicants, newly admitted families, existing tenants, or persons joining the family;

(vi) Make the exclusion temporary or permanent, for the HA, the family, or the affected family member;

(vii) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(viii) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(ix) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(x) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(xi) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(2) Any amounts that are excluded from annual income under this paragraph (d) may not also be deducted in determining adjusted income, as defined in § 913.102.

(3) Housing agencies do not need HUD approval to adopt optional earned income exclusions.

(4) In the calculation of Performance Funding System operating subsidy eligibility, housing agencies will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (d)(1) of this section, including any variations of the listed options.

PART 950—INDIAN HOUSING PROGRAMS

3. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee and 3535(d).

4. In the definition of "Annual income" in § 950.102, paragraphs (3) and (4) are redesignated as paragraphs (4) and (5), and a new paragraph (3) is added, to read as follows:

§ 950.102 Definitions.

* * * * *

Annual income. * * *

(3) In addition to the exclusions from annual income covered in paragraph (2) of this definition, an IHA may adopt additional exclusions for earned income pursuant to an established written policy.

(i) In establishing such a policy, an IHA must adopt one or more of the following types of earned income exclusions, including variations thereof:

(A) Exclude all or part of the family's earned income;

(B) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(C) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(D) Apply the exclusion only to the earned income of persons other than the primary earner;

(E) Apply the exclusion to applicants, newly admitted families, existing residents, or persons joining the family;

(F) Make the exclusion temporary or permanent, for the IHA, the family, or the affected family member;

(G) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(H) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(I) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(J) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(K) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(ii) Any amounts that are excluded from annual income under paragraph (3) of this definition may not also be deducted in determining adjusted income, as defined in this section.

(iii) IHAs do not need HUD approval to adopt optional earned income exclusions.

(iv) In the calculation of Performance Funding System operating subsidy eligibility, IHAs will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (3)(i) of this definition, including any variations of the listed options.

* * * * *

Dated: August 6, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–22214 Filed 8–29–96; 8:45 am]

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Part IX

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Harvest Information Program; Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands; Early Seasons and Bag and Possession Limits; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AD08

Migratory Bird Harvest Information Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) and State wildlife agencies (States) are cooperatively establishing a national Migratory Bird Harvest Information Program (Program). The Program requires licensed migratory game bird hunters to supply their names, addresses, and other necessary information to the hunting licensing authority of the State in which they hunt. The Program improves the quality and extent of information about the harvests of migratory game birds to better manage these populations. The Program requires hunters to have evidence of current Program participation (Program validation) on their person while hunting migratory game birds in participating States. Hunters' names and addresses will provide a sample frame for voluntary hunter surveys needed to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys. This specific action adds 7 States to the list of those participating in the Program, bringing the total to 17.

EFFECTIVE DATE: This rule takes effect on September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Larry J. Hindman, Migratory Bird Harvest Information Program Coordinator, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (410) 827–8612, FAX (410) 827–5186.

SUPPLEMENTARY INFORMATION: This final rule facilitates the collection of needed information about migratory game birds harvests. A proposed rule was published in the April 29, 1996, **Federal Register** (61 FR 18936). This final rule amends Section 20.20 of 50 CFR by adding Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont to the list of participating States. Licensed hunters, as a condition for hunting migratory game birds in these States, would be required to annually provide their names, addresses, and other necessary information to the licensing authority of the State in which they hunt. This information will provide a nationwide sampling frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys that the Service will conduct annually.

The Service and States are currently implementing this Program over a 5-year period, starting with the 1994–95 hunting season. During this implementation, the Program's participation requirement will not apply on Federal Indian Reservations or to tribal members hunting on ceded lands. Participating States will provide the sample frame by annually collecting the name, address, and date of birth of each State licensed migratory bird hunter. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter provide a brief summary of his or her migratory bird hunting activity for the previous year. States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published in the June 24, 1991, **Federal Register** (56 FR 28812). A final rule establishing the Program and initiating a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published in the March 19, 1993, **Federal Register** (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota.

A State/Federal group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Their evaluation resulted in Program changes specified in a final rule, published in the October 21, 1994, **Federal Register** (59 FR 53334), initiating the implementation phase of the Program.

Currently, all licensed migratory game bird hunters in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on or attached to the annual State hunting license or on a State-specific supplementary permit.

The State/Federal technical group continues evaluating the Program to determine the adequacy and timeliness of the sample frame, time burden, cost, and other impacts on hunters, State license agents, State wildlife agencies, and the Service. Current emphasis is on the time requirement for the sample frame and alternative survey methods for special groups of unlicensed hunters (e.g., junior and senior hunters).

Names, addresses, and other information are needed in time to distribute hunting record forms to selected hunters before they forget the details of their hunts. Previously, the Service's survey design required participating States to send the required information to the Service within 5 business days of the hunting license or permit issuance (10 business days if the information is in electronic form). Several States expressed concern that they could not meet this time requirement. The Service conducted an experiment during the 1994–95 hunting season to determine whether extending the time requirement would adversely affect the accuracy of survey results. Based on the results of that experiment, the Service now requires participating States to forward hunter information to the Service within 30 calendar days from the date of license or permit issuance.

The Service does not require hunters exempted from State permit and licensing requirements to participate in the Program. This would include junior hunters, senior hunters, landowners, and other special categories. Exemptions vary on a State-by-State basis. Excluding these hunters from the Program also excludes their harvest from the estimates which may result in serious bias. Thus States may require exempted hunters to participate; and the Service encourages States to provide any available information about these groups (for example, junior hunter safety course participant lists, names and addresses of landowners, State harvest estimates for exempted categories) to the Service for use in improving harvest estimates. Methodology may vary by State and will be incorporated into individual Memoranda of Agreement with the Service.

The Service will use the names and addresses only for conducting hunter surveys. Names and addresses will be deleted after the surveys. State uses of these names and addresses will be governed by State laws.

Under 5 U.S.C. 553(d)(3) at least 30 days is required for a rule to become effective unless an agency has good cause to make it sooner. The Service and the States are currently implementing this Program over a five-year period at the request of the International Association of Fish and

Wildlife Agencies. The States added by this rule to the list of participating States, Alabama, Georgia, Idaho, Illinois, Maine, Minnesota, Mississippi, Pennsylvania, Tennessee, and Vermont, have all prepared for a September 1 implementation date of the Program. Generally, migratory game bird hunting seasons may begin as early as September 1, 1996, and since migratory game bird hunters are required to have a Program validation on their person while hunting migratory game birds in these States, the Service believes this rule should be effective on September 1, 1996.

Review of Comments and the Service's Response

The Service received comments on the proposed rule from six States. All supported the Program, but requested a delay in their implementation date.

1. Implementation Phase—Schedule of State Participation

Comment: North Carolina requested implementation be delayed to 1997. North Carolina is considering a major license system change in 1997 and wants to implement the Harvest Information Program with this change. Arkansas, Colorado, Virginia, and Wisconsin requested implementation be delayed to 1998, due to anticipated changes in their licensing systems. South Carolina requested implementation be delayed to 1998 to obtain approval from their State legislature to implement the Program.

Service Response: The Service has consistently encouraged States to advance in the implementation schedule, and discourage any delays. However, the proposed delays by Arkansas, Colorado, North Carolina, Virginia, and Wisconsin are premised on improved license procedures that will better accommodate the Program. South Carolina's proposed delay is based on implementing the Program with the endorsement of their State legislature which will help ensure successful implementation. Thus, the Service agrees to North Carolina's Program implementation and implementation in 1998 for Arkansas, Colorado, South Carolina, Virginia, and Wisconsin.

NEPA Consideration

The Service considered the establishment of this Harvest Information Program and options in the "Environmental Assessment: Migratory Bird Harvest Information Program." Copies of this document are available from the Service at the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Regulatory Flexibility Act and the Paperwork Reduction Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded the rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act 5 USC 601 *et seq.* This rule will eventually affect about 3–5 million migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have Program validation on their person while hunting migratory game birds.

The States may require a fee to cover their administrative costs. State hunting-license vendors range from small to very large entities. This rule should not economically impact any vendors/agents. Only migratory game bird hunters (individuals) must provide this information, so this rule should not adversely affect small entities.

The collection of information contained in this rule was approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The Service requires information from licensed hunters before they can hunt migratory game birds.

The public reporting burden for this collection of information is estimated to average 0.015 hours per response. This includes the time needed to review instructions; search existing data sources; gather and maintain data; and complete and review the collection of information. Comments regarding the burden estimate or any other aspect of these reporting requirements should be directed to the Service Information Collection Clearance Officer, ms 224 ARLSQ, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503.

Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

Executive Order 12612—Federalism

The regulations do not have significant Federalism effects as provided in Executive Order 12612. Due to the migratory nature of certain bird species, the Federal Government was given responsibility for their management under the Migratory Bird Treaty Act. State harvest surveys presently cannot provide adequate national estimates of migratory game bird harvests for the following reasons: (1) Some States do not now conduct annual harvest surveys or maintain accessible lists of hunter names and addresses; (2) comparable information is not available from all States because States have different survey procedures; (3) many State license lists are not available in time to permit distribution of hunter records early in the hunting season; and (4) budget constraints often prevent States from conducting harvest surveys during certain years and may cause some States to eliminate them completely.

The regulations do not have a substantial direct effect on fiscal capacity; do not change the roles or responsibilities of Federal or State Governments; and do not intrude on State policy or administration. Therefore, these regulations have no significant Federalism effects and do not warrant the preparing of a Federalism Assessment. In fact, they promote Federal/State cooperation and reduce duplication of survey efforts.

These regulations do not constitute a significant regulatory action as defined by Executive Order 12866. Therefore an assessment of their effects on State governments, under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), is not required. The States may require a handling fee from licensed migratory bird hunters to cover the administrative costs of implementing the Program. Thus these regulations will not have a significant economic impact on the States.

Executive Order 12360—Taking of Individual Property Rights

Executive Order 12360 discussed guidelines for the taking of individual property rights. These regulations, authorized by the Migratory Bird Treaty Act, do not affect any constitutionally-protected property rights. They would not result in the physical occupancy, physical invasion, or regulatory taking of any property.

Authorship

The primary author of this rule is Larry J. Hindman, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and record keeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, 50 CFR Part 20 is amended as set forth below.

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

2. Section 20.20 is amended by revising paragraphs (b) and (e) to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

* * * * *

(b) General provisions. Each person hunting migratory game birds in Alabama, California, Georgia, Idaho, Illinois, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and Vermont must identify himself or herself as a migratory bird hunter and give his or her name, address, and date of birth to the respective State hunting licensing authority and must have on his or her person evidence, provided by that State, of compliance with this requirement.

* * * * *

(e) Implementation schedule. The Service continues to implement the Program over the next 2-year period from 1997–1998. States must participate on or before the following schedule:

1997—Arizona, Florida, Kentucky, Ohio, North Carolina, and Texas.

1998—Alaska, Arkansas, Colorado, Connecticut, Delaware, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Dated: August 27, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22245 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–F

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50 CFR Part 20

RIN 1018–AD69

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1996–97 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on September 1, 1996.

ADDRESSES: The public may inspect comments received, if any, on the proposed special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. The public should send communications regarding the documents to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 16, 1996, **Federal Register** (61 FR 42730), the Service proposed special migratory bird hunting regulations for the 1996–97 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines responds to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the March 22, 1996, **Federal Register** (61 FR 11986), the Service requested that tribes desiring special hunting regulations in the 1996–97 hunting season submit a proposal including details on:

(1) Requested season dates and other regulations to be observed;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest;

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. The Service has successfully used the guidelines since the 1985–86 hunting season. The Service finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As

a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Comments and Issues Concerning Tribal Proposals

For the 1996–97 migratory bird hunting season, the Service proposed regulations for 22 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 10 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 16, 1996, closed on August 26, 1996. Because of the necessary brief comment period, the Service will respond to any comments received on the proposed rule and/or these early-season regulations not responded to herein in the September late-season final rule.

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

To date, the Service has received one comment letter. The Wisconsin Department of Natural Resources (WIDNR) July 5, 1996, letter to the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), was copied to the Service. In this letter, the WIDNR communicated concerns regarding: (1) The suggested monitoring of harvest impacts on giant Canada geese; (2) the consistency between the length of other goose seasons and bag limits for the GLIFWC and the State of Wisconsin; (3) the initiation and completion of studies on the impacts of a September 15 duck season opening on local breeding populations; and (4) honoring the noon opening for shooting hours for the first day of the State's duck season and the State's open water hunting restrictions.

The Service believes it is necessary to place this GLIFWC proposal in the context of a tribal entity having court established legal rights on ceded lands. Further, the Service's policy is to recognize treaty rights wherever there is substantial proof that they occur, e.g., more recently in the Michigan 1836 Treaty area. Thus, the GLIFWC proposal has as its umbrella the recognition by the Federal Government of those reserved rights by bands to an unquantified amount of any harvestable migratory bird surpluses in the ceded areas. Our position derives from the special status that Native Americans have with regard to the Federal Government's trust responsibility, as well as precedent setting court decisions in Wisconsin and elsewhere when these reserved treaty rights have been at issue.

As to the details of the proposal comments, our response remains that the current populations of birds can support the bands' limited harvest. In past years, the GLIFWC's member bands have annually harvested about 2,000 and 500 ducks and geese, respectively. In 1995–96, under nearly identical regulations, 2,747 ducks and 319 geese were harvested. Under the proposed regulations, the GLIFWC anticipates an annual harvest of approximately 3,000 ducks and 900 geese. Further, the GLIFWC's proposed specific sex and species considerations are in line with current management concerns. If approved, the GLIFWC is obligated to monitor harvest to ensure that local breeding populations of ducks are not being adversely affected.

The September 15 opening date for the GLIFWC meets the Service's established framework for approval of tribal duck seasons. This date should provide ample time for even late broods and molting ducks to be flighted. Originally established by the Service's Region 3 Office in the Twin Cities, Minnesota, for use in the Great Lakes areas, these guidelines have been generally applied elsewhere in the States, as appropriate. The Service also requests that tribal members honor both the noon opening for shooting hours for the first day of the State's duck season and Wisconsin's open water hunting restrictions.

As the Service is approving these regulations in this early season final rule, it is incumbent upon the GLIFWC to continue to closely monitor both duck and goose harvests to ensure that local and/or regional breeding populations are not being negatively impacted by harvest.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations were conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the March 22, 1996, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1995 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $258 and $586 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. The Service is currently updating and expanding the 1995 Analysis. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Department examined these proposed regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published,

the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1996–97 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

(**Editorial Note:** The following hunting regulations provided for by §20.110 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.)

2. Section 20.110 is revised to read as follows:

§20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Non-Tribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 1996; then open November 16, close January 15, 1997.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

Ducks

Minnesota 1854 Zone:

Season Dates: Open September 14, close November 24, 1996.

Daily Bag Limit: 20 ducks, including no more than 10 mallards; only 5 of which may be hen mallards; 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Mergansers

Minnesota 1854 Zone:

Season Dates: Open September 14, close November 24, 1996.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese

Minnesota 1854 Zone:

Season Dates: Open September 7, close November 24, 1996.

Daily Bag Limit: 10 geese.

Coots and Common Moorhens (Gallinule)

Minnesota 1854 Zone:

Season Dates: Open September 14, close November 24, 1996.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Minnesota 1854 Zone:

Season Dates: Open September 7, close November 24, 1996.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.

Common Snipe

Minnesota 1854 Zone:

Season Dates: Open September 1, close November 24, 1996.

Daily Bag Limit: 8 snipe.

Woodcock

Minnesota 1854 Zone:

Season Dates: Open September 1, close November 24, 1996.

Daily Bag Limit: 5 woodcock.

General Conditions:

(i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in Lac Courte Oreilles v. State of Wisconsin regarding migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR Part 20, and shooting hour regulations in 50 CFR Part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(iv) Minnesota—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to applicable State statutes.

(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise specified.

(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State

conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State statutes. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(c) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

Ducks

Michigan, 1836 Treaty Zone:
Season Dates: Open September 15, close November 30, 1996.
Daily Bag Limit: 7 ducks, which may include no more than 1 pintail, 1 canvasback, 1 black duck, 2 wood ducks, 2 redheads, and 2 hen mallards.

Canada Geese

Michigan, 1836 Treaty Zone:
Season Dates: Open September 1, close November 30, 1996, and open January 1, close February 7, 1997.
Daily Bag Limit: 5 geese.
General Conditions: A valid Grand Traverse Band Tribal license is required for all persons 12 years and older and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(d) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 20 ducks, including no more than 10 mallards; only 5 of which may be hen mallards; 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Mergansers

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Canada Geese

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close December 1, 1996.
Daily Bag Limit: 10 geese, minus the number of blue, snow or white-fronted geese taken.
Michigan, 1842 Treaty Zone:
Season Dates: Open September 1, close September 10, 1996.
Daily Bag Limit: 5 geese.
Michigan, 1836 Treaty Zone:
Season Dates: Open September 1, close September 10, 1996, except for that small portion of the ceded territory which coincides with the State of Michigan's Southern Zone will open September 1 and close on September 15.
Daily Bag Limit: 5 geese.

Other Geese (Blue, Snow, and White-fronted)

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close December 1, 1996.
Daily Bag Limit: 10 geese, minus the number of Canada geese taken.

Coots and Common Moorhens (Gallinules)

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.
Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1996.
Daily Bag and Possession Limits: 25 sora and Virginia rails, singly or in aggregate. The possession limit is 25.

Common Snipe

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 15, close November 7, 1996.
Daily Bag Limit: 8 snipe.
Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1996.
Daily Bag Limit: 8 snipe.

Woodcock

Wisconsin and Minnesota 1837 and 1842 Zones:
Season Dates: Open September 3, close November 30, 1996.
Daily Bag Limit: 5 woodcock.
Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1996.
Daily Bag Limit: 5 woodcock.
General Conditions:
(i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in Lac Courte Oreilles v. State of Wisconsin regarding migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR Part 20, and shooting hour regulations in 50 CFR Part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.
(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.
(iv) Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to applicable State statutes. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.
(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise specified.
(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State statutes. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(e) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1996.
Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 1996.
Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(f) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members)

Ducks

Season Dates: Open September 15, close November 30, 1996.

Daily Bag and Possession Limits: 5 ducks, including no more than 3 mallards (only 1 of which can be a mallard hen), 4 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, close November 30, 1996.

Daily Bag and Limits: 2 Canada geese, that must be tagged after harvest with tribal tags. The tribe will reissue tags upon registration of the daily bag limit. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Mourning Dove

Season Dates: Open September 1, close November 30, 1996.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Woodcock

Season Dates: Open September 1, close November 30, 1996.

Daily Bag and Possession Limits: 6 and 12 woodcock, respectively.

General Conditions: Indians and non-Indians hunting on the Oneida Indian Reservation or on lands under the jurisdiction of the Oneida Nation will observe all basic Federal migratory bird hunting regulations found in 50 CFR. Indian hunters are exempt from the requirement to purchase a Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp) and the plugging of shotgun to limit capacity to 3 shells.

(g) Point No Point Treaty Tribes, Kingston, Washington (Tribal and Non-Tribal Hunters)

Mourning Doves

Season Dates: Open September 1, close September 15, 1996.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, close December 16, 1996.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

(h) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal and Non-Tribal Hunters)

Mourning Doves

Season Dates: Open September 22, 1996, close January 15, 1997.

Daily Bag and Possession Limits: 12 and 24 doves, respectively.

General Conditions: Hunting would be on Sundays only from 1:00 p.m. to sunset. All other Federal regulations contained in 50 CFR part 20 would apply.

(i) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members)

Ducks

Season Dates: Open September 15, 1996, close January 15, 1997.

Daily Bag and Possession Limits: 5 ducks, including no more than 1 canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1996, close January 15, 1997.

Daily Bag and Possession Limits: 4 geese, and may include no more than 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 1996.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

Coots

Season Dates: Open September 15, 1996, close January 15, 1997.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 1996, and close January 15, 1997.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 15, close December 1, 1996.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(j) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members)

Ducks/Coot

Season Dates: Open September 15, 1996, and close February 1, 1997.

Daily Bag and Possession Limits: 5 and 12 ducks, respectively; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 15, 1996, and close February 1, 1997.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

Snipe

Season Dates: Open September 15, 1996, and close February 1, 1997.

Daily Bag and Possession Limits: 6 and 12 snipe, respectively.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations

enforced by the tribes and available at the tribal office.

(k) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

Band-Tailed Pigeons

Season Dates: Open September 6, close September 15, 1996.

Daily Bag and Possession Limits: 3 and 6 pigeons, respectively.

Mourning Doves

Season Dates: Open September 6, close September 15, 1996.

Daily Bag and Possession Limits: 8 and 16 doves, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 27, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22249 Filed 8–29–96; 8:45 am]

BILLING CODE 4310–55–F

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50 CFR Part 20

RIN 1018–AD69

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 1996–97 season.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1996

On March 22, 1996, the Service published in the **Federal Register** (61 FR 11992) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under Sections 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 13, 1996, the Service published in the **Federal Register** (61 FR 30114) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 13 supplement also provided detailed information on the 1996–97 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 14, 1996, the Service published in the **Federal Register** (61 FR 30490) a third document describing the Service's proposed 1996–97 regulatory alternatives for duck hunting and its intent to consider establishing a special youth waterfowl hunting day.

On June 27, 1996, the Service held a public hearing in Washington, DC, as announced in the March 22 and June 14 **Federal Registers** to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 22, 1996, the Service published in the **Federal Register** (61 FR 37994) a fourth document specifically dealing with proposed early-season frameworks for the 1996–97 season. This document also extended the public comment period to August 1, 1996, for early-season proposals.

On August 2, 1996, the Service held a public hearing in Washington, DC, as announced in the March 22, June 14, and July 22 **Federal Registers** to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 15, 1996, (61 FR 42506), the Service published a fifth and sixth document on migratory bird hunting. The fifth document dealt specifically with proposed frameworks for the 1996–97 late-season migratory bird hunting regulations. The sixth document proposed establishing a youth waterfowl hunting day for the 1996–97 duck-hunting season. On August 29, 1996, the Service published a seventh document containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. The final rule described here is the eighth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations were conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are

included in a biological opinion and may have modified some regulatory measures previously proposed. The final frameworks here reflect any such modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Office of Migratory Bird Management, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act; Executive Order 12866 and the Paperwork Reduction Act

In the March 22, 1996, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Department examined these proposed regulations under the Paperwork Reduction Act of 1995. The various information collection requirements are utilized in the formulation of migratory game bird hunting regulations. OMB has approved these information collection requirements and assigned clearance numbers 1018–0015 and 1018–0023.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1996–97 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 27, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, Part 20, subpart K is amended as follows.

1. The authority citation for Part 20 is revised to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

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Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits	
		Bag	Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 7-Nov. 4	10	10
Scaly-naped pigeons	Sept. 7-Nov. 4	5	5
Ducks	Nov. 16-Dec. 23 &	5	10
	Jan. 11-Jan. 27	5	10
Common Moorhens	Nov. 16-Dec. 23 &	6	12
	Jan. 11-Jan. 27	6	12
Common Snipe	Nov. 16-Dec. 23 &	8	16
	Jan. 11-Jan. 27	8	16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon.

Closed Areas: Closed areas are described in the August 29, 1996, Federal Register.

(b) Virgin Islands

	Season Dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits						
Area	Ducks(1)	Dark Geese(2)(3)	Light Geese (2)	Brant	Common Snipe	Sandhill Cranes(4)
North Zone	10-30	4-8	3-6	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	3-6	2-4	8-16	2-4
Southeast Zone	7-21	4-8	3-6	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	3-6	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	3-6	2-4	8-16	2-4

(1) In State Game Management Units (Units) 1-26 (Statewide), the basic bag limits may include not more than 1 canvasback daily, 3 in possession. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, king and common eider, oldsquaw, harlequin ducks, and common and red-breasted mergansers. The season is closed for Steller's and spectacled eiders. In Units 6(D) and 7, the season for harlequin ducks will be October 1 through December 16, and bag limits are 2 daily, 6 in possession. The season is closed Statewide for Steller's and spectacled eiders.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant and emperor geese. The season for emperor geese is closed Statewide.

(3) In Units 9(E) and 18, dark goose limits may include no more than 1 Canada goose daily, 2 in possession. In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In Units 8 and 10 (except Unimak Island), and the Middleton Island portion of Unit 6, the taking of Canada geese is prohibited. In Units 1-26 (Statewide), the taking of Aleutian Canada geese and emperor geese is prohibited.

(4) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Unit 22, there will be a tundra swan season from September 1 through October 31 with a season limit of 1 tundra swan per hunter. This season is by registration permit only. Up to 300 permits may be issued. In Unit 18, there will be a tundra swan season from September 1 through October 31 with a limit of 1 tundra swan per permit. More than 1 permit per season may be issued to a hunter, with issuance one at a time upon filing a harvest report. Up to 500 permits may be issued.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits Bag	Limits Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 14 only &	15	15
	Dec. 26-Jan. 10	15	15
1/2 hour before sunrise to sunset	Sept. 15-Oct. 27	15	15
South Zone			
12 noon to sunset	Oct. 5-Nov. 22 &	12	12
	Dec. 26-Jan. 15	12	12
Delaware			
12 noon to sunset	Sept. 2-Sept. 28	12	24
1/2 hour before sunrise to sunset	Oct. 21-Nov. 2 &	12	24
	Dec. 13-Jan. 11	12	24
Florida (1)			
12 noon to sunset	Oct. 5-Oct. 28	12	24
1/2 hour before sunrise to sunset	Nov. 16-Dec. 1 &	12	24
	Dec. 14-Jan. 12	12	24

	Season Dates	Limits Bag	Limits Possession
Georgia			
Zone 1			
12 noon to sunset	Sept. 7 only	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 6 &	12	24
	Nov. 28-Nov. 30 &	12	24
	Dec. 10-Jan. 15	12	24
Zone 2			
12 noon to sunset	Sept. 28 only	12	24
1/2 hour before sunrise to sunset	Sept. 29-Oct. 27 &	12	24
	Nov. 28-Nov. 30 &	12	24
	Dec. 10-Jan. 15	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 14 &	15	30
	Nov. 2-Nov. 17	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 8-Nov. 17 &	15	30
	Nov. 28-Dec. 1	15	30
Kentucky			
11 a.m. to sunset	Sept. 1-Sept. 30 &	15	30
	Oct. 5-Oct. 28	15	30
sunrise to sunset	Nov. 28-Dec. 3	15	30
Louisiana			
12 noon to sunset	Sept. 7-Sept. 8 &	15	30
	Oct. 19-Oct. 20 &	15	30
	Dec. 14-Dec. 15	15	30
1/2 hour before sunrise to sunset	Sept. 9-Sept. 15 &	15	30
	Oct. 21-Nov. 8 &	15	30
	Dec. 16-Jan. 12	15	30
Maryland			
12 noon to sunset	Sept. 2-Oct. 22	12	24
1/2 hour before sunrise to sunset	Nov. 18-Nov. 23 &	12	24
	Dec. 26-Jan. 7	12	24
Mississippi			
North Zone	Sept. 1-Sept. 22 &	15	30
	Oct. 12-Nov. 10 &	15	30
	Dec. 26-Jan. 2	15	30
Mississippi (cont)			
South Zone	Sept. 21-Oct. 12 &	15	30
	Nov. 16-Dec. 1 &	15	30
	Dec. 21-Jan. 11	15	30
North Carolina			
12 noon to sunset	Sept. 2-Sept. 7	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 5 &	12	24
	Nov. 25-Nov. 30 &		
	Dec. 13-Jan. 11	12	24
Ohio	Sept. 16-Oct. 15 &	15	30
	Nov. 1-Nov. 30	15	30
Pennsylvania			
12 noon to sunset	Sept. 2-Oct. 12	12	24
1/2 hour before sunrise to sunset	Nov. 2-Nov. 30	12	24
Rhode Island			
12 noon to sunset	Sept. 9-Sept. 22	12	24
1/2 hour before sunrise to sunset	Oct. 19-Nov. 17 &	12	24
	Dec. 21-Jan. 15	12	24
South Carolina			
12 noon to sunset	Sept. 2-Sept. 7	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 5 &	12	24
	Nov. 23-Nov. 30 &	12	24
	Dec. 19-Jan. 15	12	24
Tennessee			
12 noon to sunset	Sept, 1 only	15	30
1/2 hour before sunrise to sunset	Sept. 2-Sept. 27 &	15	30
	Oct. 12-Oct. 26 &	15	30
	Dec. 21-Jan. 7	15	30
Virginia			
12 noon to sunset	Sept. 2-Sept. 28	12	24
1/2 hour before sunrise to sunset	Oct. 4-Nov. 2 &	12	24
	Dec. 23-Jan. 4	12	24

	Season Dates	Limits Bag	Limits Possession
West Virginia			
12 noon to sunset	Sept. 2 only	12	24
1/2 hour before sunrise to sunset	Sept. 3-Oct. 5 &	12	24
	Oct. 28-Nov. 9 &	12	24
	Dec. 16-Jan. 7		
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 1-Oct. 30	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas	Sept. 1-Oct. 30	15	30
Missouri	Sept. 1-Oct. 30	15	30
Montana	Sept. 1-Oct. 30	15	30
Nebraska	Sept. 1-Oct. 30	15	30
New Mexico (2)	Sept. 1-Sept. 30 &	15	30
	Dec. 1-Dec. 30	15	30
North Dakota	Sept. 1-Oct. 30	15	30
Oklahoma	Sept. 1-Oct. 30	15	30
South Dakota (3)	Sept. 1-Oct. 18	15	30
Texas (4)			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 19 &	15	30
	Dec. 26-Jan. 5	15	30
South Zone			
Special Area	Sept. 20-Nov. 3 &	15	30
	Dec. 26-Jan. 5	15	30
(Special Season) 12 noon to sunset	Sept. 7-Sept. 8 &	10	20
	Sept. 14-Sept. 15	10	20
Remainder of the South Zone	Sept. 20-Nov. 7 &	15	30
	Dec. 26-Jan. 5	15	30
Wyoming	Sept. 1-Oct. 20	15	30
WESTERN MANAGEMENT UNIT			
Arizona (5)	Sept. 1-Sept. 10 &	10	20
	Nov. 24-Jan. 11	10	20
California (6)	Sept. 1-Sept. 15 &	10	20
	Nov. 9-Dec. 23	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (6)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah	Sept. 2-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (7)	Nov. 2-Jan. 5 &	10	10
	Jan. 11-Jan. 12 &	10	10
	Jan. 18-Jan. 20	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate.

(3) In South Dakota, shooting hours are from sunrise to sunset.

(4) In Texas, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 6 may be white-winged doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(5) In Arizona, during September 1 through 10, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 26 through January 14, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(6) In the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning and lace-necked doves in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is only permitted on weekends and holidays.

(b) Band-tailed Pigeons

Seasons in:	Season Dates	Limits Bag	Limits Possession
Arizona (1)	Oct. 16-Oct. 25	5	10
California			
North Zone	Sept. 21-Sept. 29	2	2
South Zone	Dec. 21-Dec. 29	2	2
Colorado (1)	Sept. 1-Sept. 30	5	10
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	2
Utah (1)	Sept. 2-Sept. 30	5	10

(1) Each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	6 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
ATLANTIC FLYWAY				
Connecticut (4)	Sept. 2-Nov. 10	Sept. 2-Nov. 10	Oct. 19-Dec. 2	Oct. 19-Dec. 2
Delaware	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Oct. 21-Nov. 2 & Nov. 25-Dec. 26	Nov. 25-Jan. 31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 14-Jan. 27	Nov. 1-Feb. 15
Georgia	Sept. 25-Dec. 3	Sept. 25-Dec. 3	Dec. 14-Jan. 27	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
Maryland	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Oct. 22-Nov. 23 & Dec. 16-Dec. 27	Sept. 18-Nov. 29 & Dec. 18-Jan. 20
Massachusetts (5)	Sept. 2-Nov. 9	Closed	Deferred	Sept. 2-Dec. 17
New Hampshire	Closed	Closed	Oct. 1-Nov. 14	Sept. 15-Nov. 30
New Jersey (6)				
North Zone	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Oct. 12-Nov. 15	Sept. 27-Jan. 11
South Zone	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Nov. 4-Nov. 30 & Dec. 21-Dec. 28	Sept. 27-Jan. 11
New York (7)	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
North Carolina	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Dec. 7-Jan. 20	Nov. 14-Feb. 28
Pennsylvania	Sept. 2-Nov. 2	Closed	Oct. 26-Nov. 9	Oct. 26-Nov. 30
Rhode Island (8)	Sept. 14-Nov. 22	Sept. 14-Nov. 22	Oct. 23-Dec. 6	Sept. 14-Dec. 6 & Dec. 21-Jan. 12
South Carolina	Sept. 23-Sept. 30 & Oct. 24-Dec. 24	Sept. 23-Sept. 30 & Oct. 24-Dec. 24	Nov. 28-Dec. 14 & Dec. 21-Jan. 17	Nov. 8-Feb. 22
Vermont	Deferred	Deferred	Deferred	Deferred
Virginia	Sept. 16-Oct. 17 & Oct. 24-Nov. 30	Sept. 16-Oct. 17 & Oct. 24-Nov. 30	Oct. 28-Nov. 23 & Dec. 18-Jan. 4	Oct. 9-Oct. 12 & Oct. 21-Jan. 31
West Virginia	Sept. 2-Nov. 9	Closed	Oct. 12-Nov. 23	Sept. 2-Dec. 17

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
MISSISSIPPI FLYWAY				
Alabama (9)	Sept. 7-Sept. 15 & Nov. 21-Jan. 20	Sept. 7-Sept. 15 & Nov. 21-Jan. 20	Nov. 25-Jan. 28	Nov. 14-Feb. 28
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 2-Dec. 15 & Jan. 4-Jan. 24	Nov. 9-Feb. 23
Illinois (10)	Sept. 7-Nov. 15	Closed	Oct. 1-Dec. 4	Sept. 7-Dec. 22
Indiana (11)	Sept. 1-Nov. 9	Closed	Sept. 21-Nov. 24	Sept. 1-Dec. 16
Iowa (12)	Sept. 7-Nov. 15	Closed	Sept. 21-Nov. 24	Sept. 7-Nov. 30
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 12-Dec. 15	Sept. 18-Nov. 3 & Nov. 28-Jan. 26
Louisiana	Sept. 21-Sept. 29 & Nov. 9-Jan. 8	Sept. 21-Sept. 29 & Nov. 9-Jan. 8	Nov. 28-Jan. 31	Nov. 9-Feb. 23
Michigan (13)	Sept. 15-Nov. 14	Closed	Sept. 15-Nov. 14	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 1-Nov. 4	Sept. 1-Nov. 4
Mississippi	Oct. 12-Dec. 20	Oct. 12-Dec. 20	Nov. 28-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Dec. 18	Sept. 1-Dec. 16
Ohio	Sept. 2-Nov. 9	Closed	Sept. 27-Nov. 30	Sept. 2-Nov. 30 & Dec. 16-Jan. 1
Tennessee	Deferred	Closed	Oct. 12-Dec. 15	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 14-Nov. 17	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 5-Dec. 8	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (14)	Sept. 1-Nov. 9	Closed	Sept. 15-Nov. 18	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
North Dakota	Closed	Closed	Sept. 14-Nov. 17	Sept. 14-Dec. 1
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Jan. 4	Oct. 1-Jan. 15
South Dakota (15)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 14-Sept. 22 & Nov. 9-Jan. 8	Sept. 14-Sept. 22 & Nov. 9-Jan. 8	Deferred	Deferred
Wyoming	Sept. 14-Nov. 17	Closed	Closed	Sept. 14-Dec. 15
PACIFIC FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho	Closed	Closed	Closed	Oct. 5 - Jan. 17
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
New Mexico	Deferred	Deferred	Deferred	Deferred
Wyoming	Sept. 14-Nov. 17	Closed	Closed	Sept. 14-Dec. 15

NOTE: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail.

(5) In Massachusetts, the sora bag limit is 5 daily and 10 in possession; the Virginia rail bag limit is 10 daily and 20 in possession.

(6) In New Jersey, the season for king rails is closed by State regulation.

(7) In New York, seasons for sora and Virginia rails and common snipe are closed on Long Island.

(8) In Rhode Island, the sora and Virginia rails bag limit is 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail bag limit is 5 daily and 10 in possession, singly or in the aggregate; the common snipe bag limit is 5 daily and 10 in possession.

(9) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(10) In Illinois, shooting hours are from sunrise to sunset.

(11) In Indiana, the sora and Virginia rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(12) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(13) In Michigan, the season opens concurrently with the duck season in certain areas.

(14) In Nebraska, the rail limits are 10 daily and 20 in possession.

(15) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (d) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits: Bag	Limits: Possession
ATLANTIC FLYWAY			
Delaware	Sept. 2-Nov. 9	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Deferred	--	--
Maine	Sept. 1-Nov. 9	15	30
New Jersey	Sept. 2-Nov. 9	15	30
New York			
Long Island	Closed	--	--
Remainder of State	Sept. 1-Nov. 9	15	30
North Carolina	Sept. 2-Nov. 9	15	30
Pennsylvania	Sept. 2-Nov. 2	15	30
South Carolina	Sept. 23-Sept. 30 &	15	30
	Oct. 24-Dec. 24	15	30
Virginia	Deferred	--	--
West Virginia	Deferred	--	--
MISSISSIPPI FLYWAY			
Alabama	Sept. 7-Sept. 15 &	15	15
	Nov. 21-Jan. 20	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Indiana	Sept. 1-Nov. 9	10	20
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana	Sept. 21-Sept. 29 &	15	30
	Nov. 9-Jan. 8	15	30
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Oct. 12-Dec. 20	15	30
Ohio	Sept. 2-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
New Mexico	Deferred	--	--

	Season Dates	Limits Bag	Limits Possession
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 14-Sept. 22 & Nov. 9-Jan. 8	15 15	30 30
Wyoming	Deferred	--	--
PACIFIC FLYWAY			
All States	Deferred	--	--

(1) The season applies to common moorhens only.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Connecticut	Deferred	--	--
Delaware	Sept. 28-Jan. 11	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 4-Jan. 18	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 11-Jan. 20	7	14
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Florida (1)	Sept. 21-Sept. 25	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 7-Sept. 15	4	8
Arkansas (2)	Sept. 14-Sept. 22	4	8
Illinois (2)	Sept. 7-Sept. 15	4	8
Indiana (2)	Sept. 1-Sept. 9	4	8
Iowa (3)			
North Zone	Sept. 21-Sept. 28	--	--
South Zone	Sept. 21-Sept. 23	--	--
Kentucky (4)	Sept. 18-Sept. 22	4	8
Louisiana	Sept. 21-Sept. 29	4	8
Mississippi	Sept. 21-Sept. 29	4	8
Missouri (2)	Sept. 7-Sept. 15	4	8
Ohio (2)	Sept. 7-Sept. 15	4	8

	Season Dates	Limits Bag	Limits Possession
Tennessee (4)	Sept. 14-Sept. 18	4	8
CENTRAL FLYWAY			
Colorado	Sept. 7-Sept. 15	4	8
Kansas	Sept. 14-Sept. 22	4	8
New Mexico	Sept. 14-Sept. 22	4	8
Oklahoma	Sept. 14-Sept. 22	4	8
Texas	Sept. 14-Sept. 22	4	8

(1) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate. The possession limit is twice the daily bag limit.

(2) Shooting hours are from sunrise to sunset.

(3) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(4) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Connecticut			
North Zone	Sept. 3-Sept. 25	5	10
Delaware	Sept. 2-Sept. 14	5	10
Maine	Sept. 9-Sept. 25	5	10
Maryland			
Eastern Unit	Sept. 3-Sept. 14	5	10
Western Unit	Sept. 3-Sept. 25	5	10
Massachusetts (1)			
Central Zone	Sept. 3-Sept. 25	5	10
Coastal Zone	Sept. 3-Sept. 25	5	10
Western Zone	Sept. 3-Sept. 25	3	6
New Hampshire (1)			
Early-Season Hunt Unit	Sept. 3-Sept. 25	5	10
New Jersey	Sept. 3-Sept. 30	5	10
New York			
Lake Champlain Zone	Closed	-	-
Northeastern Zone	Sept. 1-Sept. 25	5	10
Western Zone	Sept. 1-Sept. 25	5	10
Montezuma Zone	Sept. 1-Sept. 15	5	10
Southeastern Zone	Sept. 1-Sept. 25	5	10
Long Island Zone (2)	Sept. 16-Sept. 25	5	10
North Carolina (1)(3)			
Northeast Hunt Unit	Sept. 3-Sept. 20	3	6
Rest of State	Sept. 3-Sept. 30	3	6
Pennsylvania	Sept. 2-Sept. 25	3	6
Rhode Island	Sept. 11-Sept. 25	5	10
South Carolina			
Early-Season Hunt Unit (1)	Sept. 14-Sept. 28	5	10
Virginia	Sept. 3-Sept. 21	5	10
West Virginia	Sept. 2-Sept. 11	3	6
MISSISSIPPI FLYWAY			
Illinois			
Northeast Zone	Sept. 7-Sept. 15	5	10
North Zone	Sept. 7-Sept. 15	2	10
Indiana	Sept. 1-Sept. 15	5	10
Iowa			
North Zone	Sept. 14-Sept. 15	2	4

	Season Dates	Limits: Bag	Limits: Possession
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula (4)	Sept. 1-Sept. 15	5	10
Minnesota			
Twin Cities Metro Zone	Sept. 7-Sept. 15	5	10
Two Goose Zone	Sept. 7-Sept. 15	2	4
Four Goose Zone	Sept. 7-Sept. 15	4	8
Ohio (5)	Sept. 1-Sept. 15	4	8
Tennessee			
Middle Tennessee Zone	Sept. 7-Sept. 11	2	4
Cumberland Plateau Zone	Sept. 3-Sept. 15	5	10
East Tennessee Zone	Sept. 3-Sept. 15	5	10
Wisconsin			
Early-Season Subzone A	Sept. 3-Sept. 15	5	10
Early-Season Subzone B	Sept. 3-Sept. 15	3	6
CENTRAL FLYWAY			
South Dakota			
Unit A	Sept. 1-Sept. 15	1	2
Unit B	Sept. 1-Sept. 15	2	4
PACIFIC FLYWAY			
Idaho (1)			
East Canada Goose Zone	Sept. 1-2, 6, 8, 14 and 15	2	4
Nez Perce County	Sept. 7-Sept. 13	4	8
Oregon			
Northwest Zone	Sept. 1-Sept. 14	3	6
Southwest Zone	Sept. 7-Sept. 13	3	6
East Zone	Sept. 7-Sept. 13	3	6
Washington			
Southwest Zone	Sept. 1-Sept. 15	3	6
East Zone	Sept. 7-Sept. 13	3	6
Wyoming (1)(6)	Sept. 1-Sept. 8	2	6 per season

(1) State permit required.

(2) In areas located inland, the season opens Sept. 3. See State regulations for additional information.

(3) In North Carolina, the season is closed in Currituck and Dare Counties.

(4) In Michigan, the season is closed in Huron, Saginaw, and Tuscola Counties.

(5) Additional restrictions apply in some areas. See State regulations.

(6) Shooting hours are sunrise to sunset.

(a) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the remainder of the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Wisconsin	Sept. 21-Sept. 30

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 29, 1996 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits: Bag	Limits: Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 5-Dec. 1	3	6
Kansas (1)(2)	Nov. 2-Dec. 29	2	4
Montana			
Regular Season Area (1)	Sept. 28-Nov. 24	3	6

	Season Dates	Limits: Bag	Limits: Possession
New Mexico			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (3)(4)(5)	Oct. 26-Oct. 27 &	2	4
	Dec. 14-Dec. 15 &	2	4
	Jan. 4-Jan. 5	2	4
Southwest Area (3)(4)(5)	Dec. 21-Dec. 22	2	4
North Dakota (1)	Sept. 7-Nov. 3	3	6
Oklahoma (1)	Deferred	--	--
South Dakota (1)	Sept. 28-Nov. 24	3	6
Texas (1)	Deferred	--	--
Wyoming			
Regular Season Area (1)	Sept. 14-Nov. 10	3	6
Riverton-Boysen Unit (3)(5)	Sept. 21-Sept. 27	1 per permit	
Big Horn and Park Counties (3)(5)	Sept. 21-Sept. 23	1 per permit	
PACIFIC FLYWAY			
Arizona (3)	Oct. 28-Oct. 30	2 per season	
	Nov. 1-Nov. 3 &	2 per season	
	Nov. 5-Nov. 7 &	2 per season	
	Nov. 9-Nov. 11 &	2 per season	
	Nov. 13-Nov. 15	2 per season	
Idaho	Sept. 1-Sept. 8	1 per season	
Montana			
Special-season Area (3)	Sept. 14-Sept. 15 &	1 per season	
	Sept. 21-Sept. 22	1 per season	
Utah (3)(6)	Sept. 7-Sept. 15	1 per season	
Wyoming			
Bear River Area (3)(5)	Sept. 1-Sept. 8	1 per permit	
Salt River Area (3)(5)	Sept. 1-Sept. 8	1 per permit	
Eden-Farson Area (3)(5)	Sept. 1-Sept. 8	1 per permit	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) Shooting hours are sunrise to 2:00 p.m.

(3) Hunting is by State permit only.

(4) The seasonal bag limit is 4.

(5) Shooting hours are sunrise to sunset.

(6) In Utah, the season is open in Rich County only.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 29, 1996, Federal Register. For those extended seasons for Ducks, Mergansers, and Coots, area descriptions were published in the September 27, 1995, Federal Register (60 FR 50042) and will be published again in a September 1996 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit ..... 3 migratory birds, singly or in the aggregate.

Possession limit ..... 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Florida	
Mourning and white-winged doves	Oct. 29-Nov. 15 & Dec. 2-Dec. 13 & Jan. 13-Jan. 19
Rails and common moorhens	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 13 & Jan. 28-Mar. 10
Maryland	
Mourning doves	Oct. 23-Nov. 17 & Dec. 14-Dec. 24
Rails	Nov. 10-Dec. 17
Woodcock	Oct. 1-Oct. 21 & Nov. 24-Dec. 15 & Dec. 28-Jan. 15
Pennsylvania	
Mourning doves	Oct. 14-Nov. 1 & Dec. 2-Dec. 19
Virginia	
Doves	Sept. 29-Oct. 3 & Dec. 9-Dec. 22 & Jan. 6-Jan. 22
Rails	Oct. 18-Oct. 23 & Dec. 1 only & Dec. 21-Jan. 19
Woodcock	Nov. 24-Dec. 17 & Jan. 5-Jan. 31

	Extended Falconry Dates
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 15-Nov. 1 & Nov. 16-Dec. 16
Rails	Nov. 16-Dec. 22
Woodcock	Sept. 1-Sept. 30
Indiana	
Mourning doves	Oct. 17-Nov. 7 & Jan. 1-Jan. 25
Woodcock	Sept. 1-Sept. 20 & Dec. 2-Dec. 23
Ducks, mergansers, and coots (1) North Zone	Sept. 22-Sept. 30
Michigan	
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 12 & Mar. 1-Mar. 10
Ducks, mergansers, coots, and moorhens (1)	Sept. 7-Sept. 27
Minnesota	
Rails, snipe, and woodcock	Nov. 5-Dec. 16
Ducks, mergansers, coots, and moorhens (1)	Sept. 1-Sept. 27
Missouri	
Mourning doves	Oct. 31-Dec. 16
Ducks, mergansers, and coots	Sept. 7-Sept. 15
Tennessee	
Mourning doves	Sept. 28-Oct. 11 & Oct. 27-Nov. 26
Ducks (1)	Sept. 19-Sept. 30

	Extended Falconry Dates
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 30
Woodcock	Sept. 1-Sept. 13
Ducks, mergansers, and coots (1)	Sept. 14-Sept. 27
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers and coots (1)	Sept. 16-Sept. 20
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 14-Sept. 27
New Mexico (2)	
Doves	Oct. 1-Nov. 3 & Nov. 24-Nov. 30 & Dec. 31-Jan. 5
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30
North Dakota	
Ducks, mergansers, and coots	Sept. 2-Sept. 25
Snipe	Sept. 1-Sept. 13
Oklahoma	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 23-Sept. 30
South Dakota	
Ducks, mergansers, and coots (1)	Sept. 4-Sept. 26
Texas	
Mourning and white-winged doves	Nov. 13-Dec. 19
Rails and gallinules	Oct. 3-Nov. 8
Wyoming	
Rails and snipe	Sept. 1-Sept. 13
Ducks, mergansers, and coots (1)	Sept. 21-Oct. 4
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 16-Nov. 1
Idaho	
Mourning doves	Nov. 1-Jan. 16
Ducks, mergansers, and coots	
Areas 1 & 2	Sept. 13-Sept. 18 & Sept. 28 only
Area 3	Sept. 21-Oct. 4
New Mexico	
Doves	Oct. 1-Nov. 3 & Nov. 24-Nov. 30 & Dec. 31-Jan. 5
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15

	Extended Falconry Dates
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Ducks and coots Zone 2	Sept. 23-Sept. 30
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 31
Wyoming	
Rails and snipe	Sept. 1-Sept. 13
Ducks, mergansers, and coots (1)	Sept. 21-Oct. 4

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana and New Mexico, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

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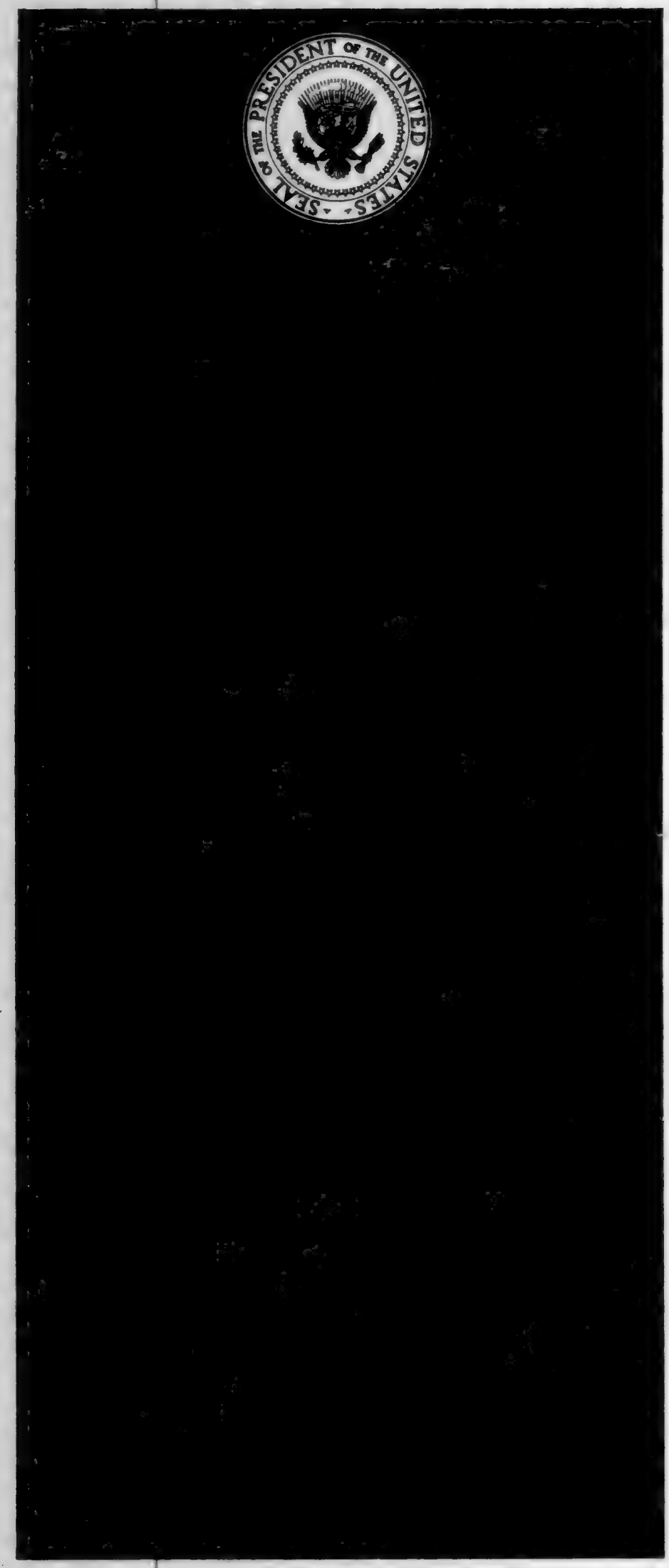

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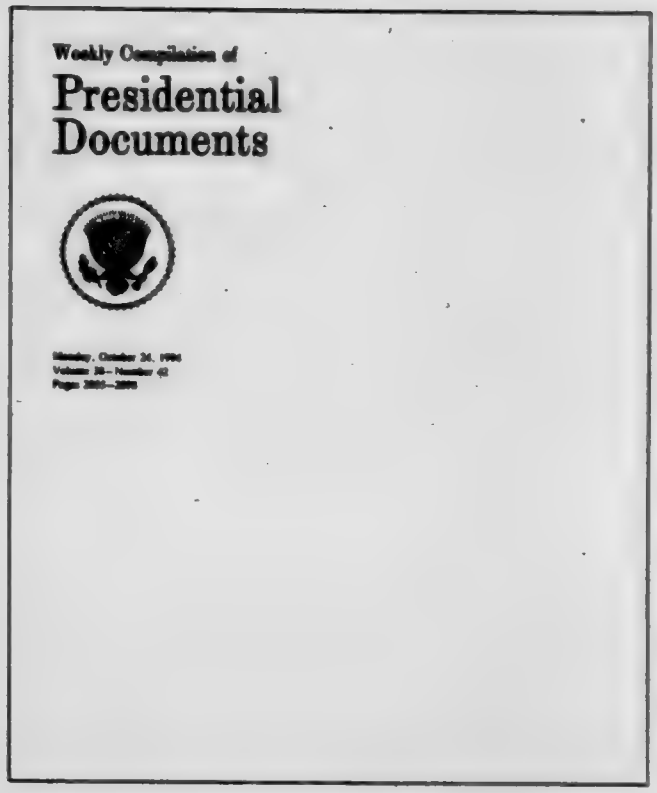

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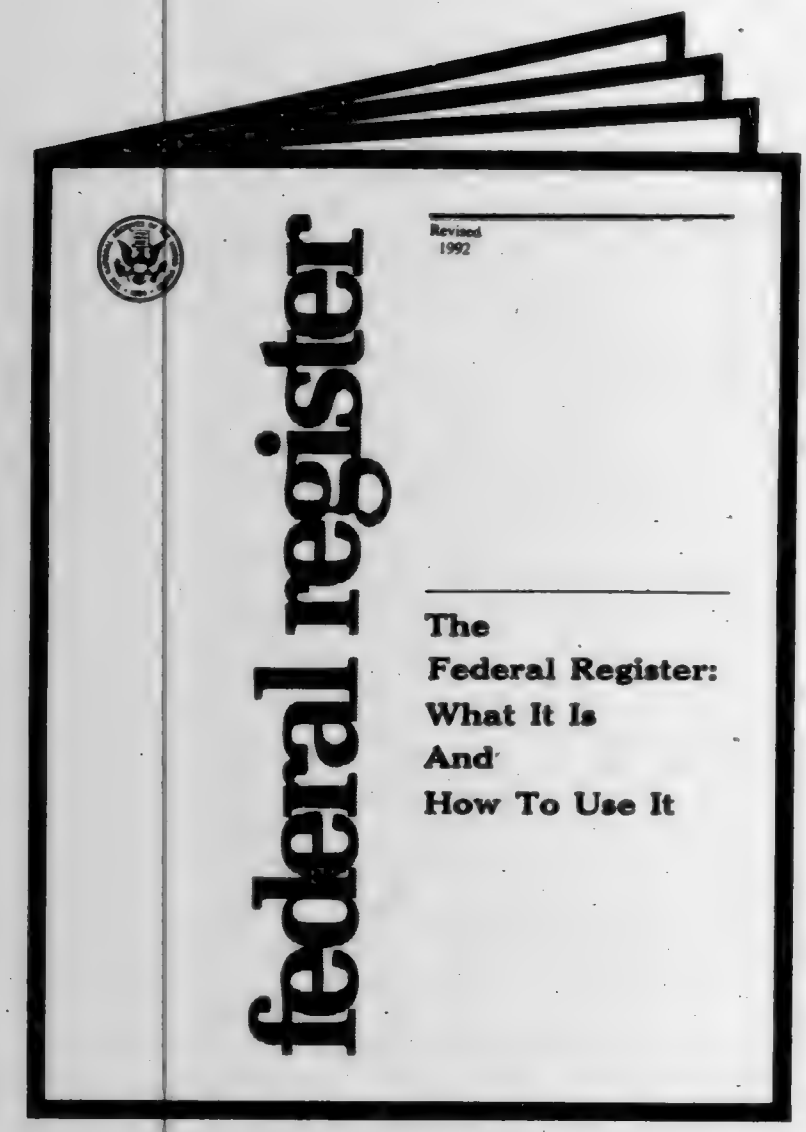

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September 3, 1996

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 61, No. 171
Tuesday, September 3, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, and 242

[EOIR No. 114I; A.G. Order No. 2051–96]

RIN 1125–AA15

Fees for Motions To Reopen or Reconsider

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule clarifies when and how fees must be paid when a motion to reopen or reconsider is filed concurrently with any application for relief under the immigration laws for which a fee is chargeable. This interim rule applies to motions to reopen or reconsider that are filed in all types of immigration proceedings, including those over which the Immigration and Naturalization Service (the "Service") and the Board of Immigration Appeals (the "Board") have appellate jurisdiction, respectively.

DATES: This interim rule is effective September 3, 1996. Written comments must be received on or before November 4, 1996.

ADDRESSES: Please submit written comments to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, and Ernest B. Duarte, Branch Chief, Immigration and Naturalization Service, 425 I Street NW., Suite 3214, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470, or Ernest B. Duarte, Branch Chief, Immigration and Naturalization Service, 425 I Street NW., Suite 3214, Washington, DC 20536, telephone (202) 307–3587.

SUPPLEMENTARY INFORMATION: This interim rule amends 8 CFR parts 3, 103, and 242 by clarifying when the required fees must be paid when a motion to reopen or reconsider is filed concurrently with any application for relief under the immigration laws for which a fee is chargeable. This interim rule applies to motions to reopen or reconsider that are filed in all types of immigration proceedings, including those over which the Service and the Board of Immigration Appeals have appellate jurisdiction, respectively.

This interim rule is necessary to eliminate questions that have arisen regarding the payment of fees for applications for relief that require their own separate fees when filed concurrently with motions to reopen or reconsider. For example, if an individual files a motion to reopen his or her deportation case in order to apply for suspension of deportation, is the individual required to pay only one fee for the motion to reopen, or one fee for the motion, and a second fee for the application?

Prior to April 4, 1989, the provision at 8 CFR 103.7(b) regarding motions to reopen or reconsider contained a sentence that specified that "[w]hen the motion to reopen or reconsider is made concurrently with any application under the immigration laws, the application will be considered an integral part of the motion and only for the fee for filing the motion or the fee for filing the application, whichever is greater, is payable." When this provision was amended in April 1989, *see* 54 FR 13515, this sentence was deleted without explanation. During the ensuing years, confusion mounted as to the meaning, if any, of this deletion from the regulation and its effect on the fee requirements. The Executive Office for Immigration Review ("EOIR") and the Service are prepared to eliminate this confusion by amending the fee requirement for motions to reopen or reconsider as follows:

If a motion to reopen or reconsider is filed by an individual concurrently with any application for relief under the immigration laws for which a fee is chargeable (*e.g.*, an application for suspension of deportation, adjustment of status, or registry), the individual initially must pay only the fee required for the motion (currently, $110), unless a fee waiver has been granted pursuant to 8 CFR 103.7(c)(1). If the motion to reopen or reconsider is granted, the individual then will have to pay the fee set forth in 8 CFR 103.7(b) required for the underlying application for relief in order to complete the application. Fee remittance for the underlying application for relief should be made payable to the "Immigration and Naturalization Service". Unless a fee waiver has been granted pursuant to 8 CFR 103.7(c)(1), failure to pay the subsequent fee for the underlying application for relief will result in the denial of the application. If the motion to reopen or reconsider is denied, no further fee will be required because the underlying application for relief, in effect, will be moot. This procedure provides a fair and equitable fee structure for motions and their underlying applications by requiring payment of a fee for the underlying application only if the motion to reopen or reconsider is granted. This will prevent imposing undue financial burdens on those individuals filing such motions.

The implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: Immediate implementation of this rule will ensure that fees for motions to reopen or reconsider, and their underlying applications for relief, are acceptable in a consistent manner by all immigration courts and the Board. Immediate implementation of this rule also will eliminate any existing confusion with regard to the payment of such fees at the earliest possible time, while still affording the agencies the opportunity to solicit and consider all public comments that are timely submitted. Finally, this interim rule provides a benefit to individuals who wish to file motions to reopen or reconsider. Hence, immediate implementation will make this benefit available without any further delay, which would be contrary to the public interest.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals filing

motions to reopen or reconsider concurrently with applications for the relief from deportation. Therefore, this rule does not have a significant economic impact on a substantial number of small entities. The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612. The rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens.

Accordingly, chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart C—Rules of Procedure for Immigration Judge Proceedings

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362, 1362; 28 U.S.C. 509, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953 Comp., p. 1002.

2. In § 3.31, paragraph (b) is amended by revising the first sentence to read as follows:

§ 3.31 Filing documents and applications.

* * * * *

(b) Except as provided in 8 CFR 242.17(e), all documents or applications requiring the payment of a fee must be accompanied by a fee receipt from the Service or by an application for a waiver of fees pursuant to 8 CFR 3.24. * * *

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701, E.O. 12356, 47 FR 14874; 15557; 3 CFR, 1982, Comp., p. 166; 8 CFR part 2.

4. In § 103.7, paragraph (b)(1) is amended by revising the two entries for "Motion", respectively, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals has appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of $110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—$110.

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable. (The fee of $110 shall be charged whenever an appeal or motion is filed by on or behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the fee of $110 will be charged when the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—$110.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

5. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1524, 1362; 8 CFR , part 2.

6. In § 242.17, paragraph (e) is amended by adding two new sentences after the 4th sentence, to read as follows:

§ 242.17 Ancillary matters, applications.

* * * * *

(e) * * * When a motion to reopen or reconsider is made concurrently with an application for relief seeking one of the immigration benefits set forth in paragraphs (a) and (c) of this section, only the fee set forth in § 103.7(b)(1) of this chapter for the motion must accompany the motion and application for relief. If such a motion is granted, the appropriate fee for the application for relief, if any, set forth in 8 CFR 103.7(b)(1), must be paid within the time specified in order to complete the application.* * *

Dated: August 26, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22335 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 95F–0160]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of peroxyacetic acid, acetic acid, hydrogen peroxide and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP) to reduce the microbial load in water used to wash certain fruits and vegetables. Elsewhere in this issue of the **Federal Register**, FDA is publishing a document that provides for the safe use of a mixture of peroxyacetic acid, acetic acid, and hydrogen peroxide

to reduce the microbial load in water used to wash certain fruits and vegetables. This action is in response to a petition filed by Ecolab Inc.

DATES: Effective September 3, 1996; written objections and requests for a hearing by October 3, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 13, 1995 (60 FR 36150), FDA announced that a food additive petition (FAP 5A4460) had been filed by Ecolab Inc., 370 North Wabasha St., St. Paul, MN 55102. The petition proposed to amend the food additive regulations in § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315) to provide for the safe use of a mixture of peroxyacetic acid, acetic acid, hydrogen peroxide and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP) to control microbial growth in water contacting fruits and vegetables.

An antimicrobial solution used to wash fruits and vegetables is potentially subject to regulation as a food additive under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), or as a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136(u)), depending upon the status of the fruit or vegetable. FDA regulates antimicrobial solutions as food additives under the act when such solutions are used on processed food. The Environmental Protection Agency (EPA) regulates antimicrobial solutions as pesticide chemicals under FIFRA when the solutions are used on raw agricultural commodities.

Under section 201(q)(1) of the act (21 U.S.C. 321(q)(1)), as amended by the Food Quality Protection Act of 1996, the term "pesticide chemical" means a pesticide as defined in FIFRA. Under FIFRA's regulatory scheme, an antimicrobial solution used on or in processed food does not come within the definition of the term pesticide. FIFRA defines a pesticide as any substance intended for preventing, destroying, repelling, or mitigating any pest (7 U.S.C. 136(u)); the definition of pest includes "fungus" (7 U.S.C. 136(t)). However, excluded from the definition of fungus are rust, smut, mildew, mold, yeast, and bacteria on or in processed food (7 U.S.C. 136(k)). Therefore, by definition, an antimicrobial solution used on or in processed food is not a pesticide because it does not prevent, destroy, repel, or mitigate a "pest," within the meaning of that term (7 U.S.C. 136(t)). Thus, such a solution is not a pesticide chemical under the act.

FDA received one comment in response to the notice of filing of this petition. The comment expressed concern that the chemical mixture appeared to be a biocide and may require FIFRA pesticide registration. The comment also stated that the preparation would be regulated more accurately under § 178.1010 *Sanitizing solutions* (21 CFR 178.1010). Lastly, the comment stated that one of the components of the mixture contained phosphoric acid, which needed to be declared as an ingredient.

As noted above, an antimicrobial formulation used on raw agricultural commodities is regulated as a pesticide chemical and thus, may require registration, under FIFRA, as well as a tolerance established under section 408 of the act (21 U.S.C. 346a). Similarly, FDA has jurisdiction over antimicrobial solutions used on processed foods. Thus, consistent with FDA's jurisdiction, FDA's approval of this formulation is limited to its use in washing fruits and vegetables other than those that are raw agricultural commodities. This approval is consistent with the division of responsibility between FDA and EPA over solutions of this type. FDA has, however, referred the petitioner to EPA in order to ascertain whether FIFRA pesticide registration and a tolerance under section 408 of the act are required for any uses not regulated by FDA. Thus, FDA's decision in this final rule takes into consideration the jurisdictional question between FDA and EPA raised by the comment.

FDA disagrees with the comment to the extent that it suggests that the solution in question should be regulated as a sanitizing solution. FDA notes that this formulation is presently approved for use as a sanitizing solution, under § 178.1010(b)(30). However, the petitioned use for this formulation is to reduce the microbial load in water used to wash fruits and vegetables, consistent with the technical effect listed in 21 CFR 170.3(o)(2). This use is different from its use as a sanitizing solution. Because the petitioned conditions of use differ from those for a sanitizing solution, approval under § 173.315 is necessary and appropriate. The point of this comment is not entirely clear. To the extent that this comment suggests that the solution is not safe for use as a washing solution for fruits and vegetables, the agency has determined that the petitioned use is safe. To the extent that the comment suggests that the solution should be regulated as a sanitizing solution under § 178.1010, the comment is meaningless because the solution is already approved for such use (§ 178.1010(b)(30)).

Finally, the agency disagrees with the comment to the extent that it asserts that one of the components of the mixture contains phosphoric acid, which should be considered an ingredient. Importantly, there is no phosphoric acid in the formulation and thus there is no need to consider it as an ingredient. Commercial HEDP does contain a low level (approximately 3 percent by weight) of phosphorous acid, not phosphoric acid (Ref. 1), which is used as a reactant in the preparation of HEDP. The agency has evaluated the level of phosphorous acid in HEDP and concludes that essentially no residue of phosphorous acid would remain on treated produce and that this use of HEDP is safe. Because this antimicrobial solution contains no phosphoric acid, FDA finds no merit in the comment stating that phosphoric acid needs to be disclosed as an ingredient.

FDA has evaluated data in the petition and other relevant material. As part of its review, FDA evaluated the safety of each of the components of the antimicrobial solution. Based on this information, the agency concludes that the proposed use of the additive is safe, that it will achieve its intended technical effect of reducing the microbial load in water used to wash fruits and vegetables, and that therefore, the regulations in § 173.315 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence

supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 3, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Monsanto Material Safety Data Sheet for Monsanto Product Name DEQUEST 2010 DEFLOCCULANT and SEQUESTRANT.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Section 173.315 is amended in the table in paragraph (a)(2) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 173.315 Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
* * *	* * * *
1-Hydroxyethylidene-1,1-diphosphonic acid.	May be used only with peroxyacetic acid. Not to exceed 4.8 ppm in wash water. Limited to use on fruits and vegetables that are not raw agricultural commodities.
* * *	* * * *

* * * * *

Dated: August 26, 1996.

Fred A. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22286 Filed 8–30–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 173

[Docket No. 95F–0161]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of peroxyacetic acid, acetic acid, and hydrogen peroxide to reduce the microbial load in water used to wash certain fruits and vegetables. Elsewhere in this issue of the **Federal Register**, FDA is also publishing a document that provides for the safe use of a mixture of peroxyacetic acid, acetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP) to reduce the microbial load in water used to wash certain fruits and vegetables. This action is in response to a petition filed by Ecolab Inc.

DATES: Effective September 3, 1996; written objections and requests for a hearing by October 3, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 13, 1995 (60 FR 36150), FDA announced that a food additive petition (FAP 5A4459) had been filed by Ecolab Inc., 370 North Wabasha St., St. Paul, MN 55102. The petition proposed to amend the food additive regulations in § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315) to provide for the safe use of a mixture of peroxyacetic acid, acetic acid and hydrogen peroxide to control microbial growth in water contacting fruits and vegetables.

An antimicrobial solution used to wash fruits and vegetables is potentially subject to regulation as a food additive under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), or as a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136(u)), depending upon the status of the fruit or vegetable. FDA regulates antimicrobial solutions as food additives under the act when such solutions are used on processed food.

The Environmental Protection Agency (EPA) regulates antimicrobial solutions as pesticide chemicals under FIFRA when the solutions are used on raw agricultural commodities.

Under section 201(q)(1) of the act (21 U.S.C. 321(q)(1)), as amended by the Food Quality Protection Act of 1996, the term "pesticide chemical" means a pesticide as defined in FIFRA. Under FIFRA's regulatory scheme, an antimicrobial solution used on or in processed food does not come within the definition of the term pesticide. FIFRA defines a pesticide as any substance intended for preventing, destroying, repelling, or mitigating any pest (7 U.S.C. 136(u)); the definition of pest includes "fungus" (7 U.S.C. 136(t)). However, excluded from the definition of fungus are rust, smut, mildew, mold, yeast, and bacteria on or in processed food (7 U.S.C. 136(k)). Therefore, by definition, an antimicrobial solution used on or in processed food is not a pesticide because it does not prevent, destroy, repel, or mitigate a "pest," within the meaning of that term (7 U.S.C. 136(t)). Thus, such a solution is not a pesticide chemical under the act.

FDA received one comment in response to the notice of filing of this petition. The comment expressed concern that the chemical mixture appeared to be a biocide and may require FIFRA pesticide registration. The comment also stated that the preparation would be regulated more accurately under § 178.1010 *Sanitizing solutions* (21 CFR 178.1010).

As noted above, an antimicrobial formulation used on raw agricultural commodities is regulated as a pesticide chemical and thus, may require registration under FIFRA, as well as a tolerance established under section 408 of the act (21 U.S.C. 346a). Similarly, FDA has jurisdiction over antimicrobial solutions used on processed foods. Thus, consistent with FDA's jurisdiction, FDA's approval of this formulation is limited to its use in washing fruits and vegetables other than those that are raw agricultural commodities. This approval is consistent with the division of responsibility between FDA and EPA over solutions of this type. FDA has, however, referred the petitioner to EPA in order to ascertain whether FIFRA pesticide registration and a tolerance under section 408 of the act are required for any uses not regulated by FDA. Thus, FDA's decision in this final rule takes into consideration the jurisdictional question between FDA and EPA raised by the comment.

FDA disagrees with the comment to the extent that it suggests that the solution in question should be regulated as a sanitizing solution. The petitioned use for this formulation is to reduce the microbial load in water used to wash fruits and vegetables, consistent with the technical effect listed in 21 CFR 170.3(o)(2). This use is different from its use as a sanitizing solution. Because the petitioned conditions of use differ from those for a sanitizing solution, approval under § 173.315 is necessary and appropriate. The point of this comment is not entirely clear. To the extent that this comment suggests that the solution is not safe for use as a washing solution for fruits and vegetables, the agency has determined that the petitioned use is safe.

FDA has evaluated data in the petition and other relevant material. As part of its review, FDA evaluated the safety of each of the components of the antimicrobial solution. Based on this information, the agency concludes that the proposed use of the additive is safe, that it will achieve its intended technical effect of reducing the microbial load in water used to wash fruits and vegetables, and that therefore, the regulations in § 173.315 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 3, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

2. Section 173.315 is amended in the table in paragraph (a)(2) by alphabetically adding two new entries under the headings "Substances" and "Limitations" to read as follows:

§ 173.315 Chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
* * *	* * * *
Hydrogen peroxide.	Used in combination with acetic acid to form peroxyacetic acid. Not to exceed 59 ppm in wash water. Limited to use on fruits and vegetables that are not raw agricultural commodities.
Peroxyacetic acid.	Prepared by reacting acetic acid with hydrogen peroxide. Not to exceed 80 ppm in wash water. Limited to use on fruits and vegetables that are not raw agricultural commodities.
* * *	* * * *

* * * * *

Dated: August 26, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22287 Filed 8–30–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS HOPPER (DDG 70) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant M.W. Kerns, JAGC, U.S. Navy, Assistant Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS HOPPER (DDG 70) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding the following entry:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * *	* * *	* *
USS HOPPER	DDG 70	1.83 meters.
* * *	* * *	* *

3. Table Four, Paragraph 16 of § 706.2 is amended by adding the following entry:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * *	* * *	* *
USS HOPPER	DDG 70	102.25 thru 112.50°
* * *	* * *	* *

4. Table Five of § 706.2 is amended by adding the following entry:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
• • • •	•	•	•	•	
USS HOPPER	DDG70	X	X	X	20.4
• • • •	•	•	•	•	

Dated: August 1, 1996.

M.W. Kerns,

LT, JAGC, U.S. Navy, Acting Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 96–22288 Filed 8–30–96; 8:45 am]

BILLING CODE 3810–FF–P

Department of the Air Force

32 CFR Part 801

Industrial Labor Relations Activities

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is removing the rule on Industrial Labor Relations Activities because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to ensure that only rules which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Ms Patsy Conner, Air Force Federal Register Liaison Officer, SAF/AAX, 1720 Air Force Pentagon, Washington DC 20330–1720.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 801

Equal employment opportunity, Federal buildings and facilities, Government contracts, Investigations, Labor unions, Military personnel.

PART 801—[REMOVED]

Accordingly under the authority 10 U.S.C. 8013, 32 CFR Chapter VII is amended by removing Part 801.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–22388 Filed 8–30–96; 8:45 am]

BILLING CODE 3910–01–W

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC52

Lassen Volcanic National Park

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is removing the current regulations concerning boating, fishing and limit of catch in Lassen Volcanic National Park. With this deletion, the park will allow for catch and release fishing only, using a barbless hook, when fishing at Manzanita Lake. The existing regulation allows for the taking of native fish species (rainbow trout) in this small fishery. The taking of the native species has and would continue to adversely affect native species composition if allowed to continue. The NPS intends to maintain and, where necessary, restore the aquatic ecosystem to a natural state while allowing recreational fishing to continue at levels that allow natural processes to continue. The park will continue to manage boating, a restricted fishing season, closed waters, limits of catch and the catch and release program through the Superintendent's Compendium.

EFFECTIVE DATE: This final rule becomes effective on September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Gilbert E. Blinn, Lassen Volcanic National Park, P.O. Box 100, Mineral, CA 96063.

SUPPLEMENTARY INFORMATION:

Background

This final rule addresses a problem where a special park regulation (36 CFR 7.11) was not removed at the time improved management means were instituted to manage boating, fishing and limit of catch at Lassen Volcanic National Park. Operation of motorboats on all waters in the park and the closure to all vessels on four of the lakes within the park is now documented and addressed in Superintendent's Compendium under the authority found at 36 CFR 1.5, *Closures and public use limits.* Fishing restrictions on Grassy Creek during certain months of the year, and closure of certain other waters to fishing is also documented and addressed in the Superintendent's Compendium.

In 1976, fish stocking of Manzanita Lake was discontinued after 44 years of almost annual stocking due to the policy of the NPS to cease artificial management of natural resources. In 1982, due to observations that the fishery at Manzanita Lake was declining, a fisheries study of the lake was conducted. As a result of this study, two recommendations were made for Manzanita Lake: (1) Reduce the current limit of 5 trout or 5 pounds and 1 trout, to 1 or 2 fish of 18 inches or more; or (2) designate the lake as catch and release only, using artificial lures and barbless hooks. In 1984, the California Game and Fish Commission recommended that the NPS adopt regulations for catch and release fishing only using artificial lures with a barbless hook in Manzanita Lake.

In March of 1985, in order to restore natural aquatic ecosystems while allowing recreational fishing in Manzanita Lake, the park adopted catch and release fishing with artificial lures and barbless hooks. This is addressed in the Superintendent's Compendium.

Other management options considered included leaving the current regulation in place and returning to more consumptive methods of fishing. Continuing fishery studies and public comment favor the catch and release fishing method. Closures and restrictions are documented and addressed in the Superintendent's

Compendium and need not be repeated in the special regulations.

The deletion of the existing rule allows the park to continue to restore the natural aquatic ecosystem while allowing recreational fishing in all park waters. Closures and restrictions have been in place in the park for over 20 years and are fully accepted and supported by the visiting public and the State of California.

Administrative Procedure Act

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the NPS is promulgating this rule under the "good cause" exception of the Act from general notice and comment rulemaking. As discussed above, the NPS believes this exception is warranted because the existing regulations are no longer used and have not been used for over 20 years. This final rule will not impose any additional restrictions on the public and comments on this rule are deemed unnecessary. Based upon this discussion, the NPS finds pursuant to 5 U.S.C. 533(b)(B) that it would be contrary to the public interest to publish this rule through general notice and comment rulemaking.

The NPS also believes that publishing this final rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay in this instance would be unnecessary and contrary to the public interest. Therefore, under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this final rulemaking is excepted from the 30-day delay in the effective date and will therefore become effective on the date published in the **Federal Register**.

Drafting Information

The primary authors of this rule are Bryan Swift, Chief Ranger of Lassen Volcanic National Park, and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

The NPS has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of comprising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or lands uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based upon this determination, this final rule is categorically excluded from the procedural requirements of the National Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.11 [Removed]

2. Section 7.11 is removed.

Dated: August 15, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22331 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–5602–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a petition submitted by Giant Refining Company (Giant) to exclude from hazardous waste control (delist) certain solid wastes. The wastes being delisted consist of excavated soils contaminated with K051 currently being stored in an on-site waste pile. This action responds to Giant's petition to delist these wastes on a one-time basis from the hazardous waste lists. After careful analysis, EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies only to excavated soils generated at Giant's Bloomfield, New Mexico facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills.

EFFECTIVE DATE: September 3, 1996.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Library of the 12th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "F–96–NMDEL-GIANT." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this document, contact Michelle Peace, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7430.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists

of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Giant petitioned EPA to exclude from hazardous waste control the excavated soils contaminated with K051–API separator sludge waste presently stored in an on-site waste pile at Bloomfield, New Mexico facility. After evaluating the petition, EPA proposed, on May 20, 1996 to exclude Giant's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (See 61 FR 25175). This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Giant's petition.

II. Disposition of Petition

Giant Refining Company, Bloomfield, New Mexico

A. Proposed Exclusion

Giant petitioned EPA to exclude from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, a discrete volume of contaminated soil excavated from its wastewater treatment impoundments. Specifically, in its petition, Giant requested that EPA grant a one-time exclusion for 2,000 cubic yards of excavated soil presently stored in an on-site waste pile. The soil is classified as EPA Hazardous Waste No. K051—"API separator sludge from the petroleum refining industry." The listed constituents of concern for EPA Hazardous Waste No. K051 are hexavalent chromium and lead (see Part 261, Appendix VII). Giant petitioned the EPA to exclude this discrete volume of excavated soil because it does not believe that the waste meets the criteria for which it was listed. Giant also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4).

In support of its petition, Giant submitted: (1) descriptions of its wastewater treatment processes and the excavation activities associated with the petitioned waste; (2) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24 (i.e., the TC metals) antimony, beryllium, cyanide, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (3) results from the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) for the eight TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (4) results from the Oily Waste Extraction Procedure (OWEP, SW–846 Method 1330) for the eight TC metals, antimony, beryllium, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (5) results from the Extraction Procedure Toxicity Test (EP, SW–846 Method 1310) for the eight metals listed in § 261.24 from representative samples of the stockpiled waste; (6) results from total oil and grease analyses from representative samples of the stockpiled waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; and (8) results from total constituent and TCLP analyses for certain volatile and semi-volatile organic compounds from representative samples of the stockpiled waste.

B. Summary of Responses to Public Comments

The EPA received public comment on the May 20, 1996, proposal from two interested parties, the American Zinc Association (AZA) and Horsehead Resource Development Company (HRD). The comments consisted of the concern that zinc is incorrectly viewed as a hazardous constituent to which the EPA Composite Model for Landfills (EPACML) must be applied and the need to evaluate delisting decisions in relation to the Pollution Prevention Act and the Land Disposal Restrictions.

Classification of Zinc as a Hazardous Constituent

Comment: The AZA is concerned that, for some reason, EPA in connection with the delisting petition filed by Giant Refining Company appears to view zinc as a "hazardous constituent" to which the EPACML must be applied. The AZA contends that zinc is not considered a "hazardous constituent" as defined under RCRA, is not listed on Appendix VIII to 40 CFR Part 261 and is specifically excluded from the definition of "underlying hazardous constituents" in 40 CFR 268.2 (i). The AZA requests that the final rule be changed to exclude zinc.

Response: The criteria for making a successful petition to amend Part 261 to exclude a waste produced at a particular facility can be found in 40 CFR Part 260.22. The regulations in 40 CFR Part 260.22(a)(2) states that based on a complete application, the Administrator must determine where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

The EPA understands the AZA's concern regarding implication that zinc is being viewed as a "hazardous constituent" in this delisting petition. In response to this concern, EPA will revise the preamble language to future rulemakings to read that " the EPACML will be used to predict the concentrations of constituents that may be released from the petitioned waste, once it is disposed." To evaluate delisting petitions, *any* constituent detected in the leachate of the petitioned waste must be evaluated by the EPACML. All organic and inorganic constituents detected in the leachate of a petitioned waste are evaluated for their potential hazard to human health and the environment. Zinc, while it may not meet the definitions of hazardous constituent or "underlying hazardous constituent" as defined under the Land Disposal Restrictions, is a constituent found in Giant Refining's waste and moreover, in the leachate of the petitioned waste. Therefore, to meet the delisting criteria, zinc must be evaluated to determine if as a result of leaching into the groundwater the concentration of zinc would pose a hazard to human health or the environment.

In the analysis of the leachate from Giant's waste, levels of zinc were detected and the maximum value is reported on the list of inorganic constituents found in Table 1 of the May 20, 1996, notice. The evaluation of zinc as an "additional constituent" is conducted and compared to its health-based value and the secondary drinking water regulations to determine whether the levels of zinc detected could cause

the waste to be a potential hazard. In the case of Giant's waste, the value for zinc is below the level of regulatory concern and should not present a hazard to human health or the environment.

Impact of This Delisting Upon Recycling of K051

Comment: The commenter did not object to the proposed decision to delist Giant's waste, since the constituent levels in the waste were low enough that HRD did not feel that any statutory mandates were violated. The commenter summarized two principal statutory requirements that HRD feels must be accounted for in order for any delisting decision to be valid:

(a) The Pollution Prevention Act of 1990 established a hierarchy of waste management methods, in order of decreasing preference as: (1) source reduction, (2) recycling, (3) treatment, and (4) land disposal. The commenter emphasized that recycling, such as high temperature metal recovery, is favored over waste treatment methods, such as stabilization. The commenter also stated that the low levels of metals in the petitioned waste were not amenable to recycling; and

(b) The Land Disposal Restrictions (LDR) of RCRA include stringent treatment standards which must be met prior to land disposal of hazardous wastes. The commenter felt that LDR treatment standards should be one of the "factors (including additional constituents) other than those for which the waste was listed" that could cause the waste to be a hazardous waste or to be retained as a hazardous waste (see 40 CFR 260.22(d)(2)). Again, the commenter did not feel that the constituent levels in the petitioned waste were high enough to exceed LDR treatment standards.

Response: The EPA agrees with the commenter that the statutory mandates summarized above are very important considerations. The EPA also agrees that the decision to delist the waste which is the subject of this final rule is not in conflict with either of these mandates. It is also EPA's position that if the evaluation of a delisting petition reveals that the petitioned waste meets all the appropriate criteria in *Petitions to Delist Hazardous Wastes—A Guidance Manual, Second Edition,* EPA Publication No. EPA/530–R–93–007, March 1993, the conditions specified in 40 CFR 260.22(d)(2) have been met, and the waste need not be subject to RCRA Subtitle C. That is to say, the delisting levels established by EPA are protective of human health and the environment, and a waste that meets these levels does not have factors that "could cause the waste to be a hazardous waste." Many LDR treatment standards are concentration levels below those that would be protective of human health and the environment, because they are based on what is technologically achievable, rather than on risk.

The EPA has responded, in an earlier rulemaking, to similar comment by HRD concerning the effect that delisting stabilized wastes might have on the recycling of wastes to recover metals (see 60 FR 31109, June 13, 1995). The EPA's position continues to be that no policies are undermined nor regulations violated by the delisting of a waste which meets all applicable criteria for delisting. Specifically, the existence of an alternate treatment and/or recycling technology is not a factor that "could cause the waste to be a hazardous waste."

C. Final Agency Decision

For reasons stated in both the proposal and this document, EPA believes that Giant's excavated soil should be excluded from hazardous waste control. The EPA, therefore, is granting a final exclusion to Giant Refining Company, Bloomfield, New Mexico for its 2,000 cubic yards of excavated soil, described in its petition as EPA Hazardous Waste No. K051. This exclusion only applies to the waste described in the petition. The maximum volume of contaminated soil covered by this exclusion is 2,000 cubic yards.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation (see 40 CFR part 260, Appendix I).

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their wastes under the State law.

Furthermore, some States (e.g., Louisiana, Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Giant must obtain delisting authorization from that State before the waste can be managed as non-hazardous in the State.

IV. Effective Date

This rule is effective September 3, 1996. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling a facility to treat its waste as non-hazardous. As discussed in EPA's response to public comments, this rule is unlikely to have an adverse annual effect on the economy of $100 million or more. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an agency is required to publish a general

notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This regulation will not have an adverse impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 21, 1996.

Jane N. Saginaw,

Regional Administrator.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Giant Refining Company, Inc	Bloomfield, New Mexico	Waste generated during the excavation of soils from two wastewater treatment impoundments (referred to as the South and North Oily Water Ponds) used to contain water outflow from an API separator (EPA Hazardous Waste No. K051). This is a one-time exclusion for approximately 2,000 cubic yards of stockpiled waste. This exclusion was published on September 3, 1996. Notification Requirements: Giant Refining Company must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

[FR Doc. 96–22377 Filed 8–30–96; 8:45 am]
BILLING CODE 4120–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OMC–010–FC]

RIN 0938–AF74

Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule correction; Notice of changes in compliance dates, with comment period.

SUMMARY: In the March 27, 1996, issue of the **Federal Register**, we published, at 61 FR 13430, a final rule with comment period that implements requirements in sections 4204(a) and 4731 of the Omnibus Budget Reconciliation Act of 1990 that concern physician incentive plans. In the preamble of that rule, we set forth dates by which prepaid health plans had to comply with certain of the rule's provisions. This document clarifies and changes some of those deadlines, and provides an opportunity for public comments on them. It does not otherwise change the requirements set forth in the rule.

In addition this document corrects the March 27 rule's inadvertent reversal of the nomenclature change made by a previous final rule.

DATES: *Effective date:* September 3, 1996.

Comment dates: Comments on the decision to change the compliance dates published in the March 27, 1996 preamble will be considered if received at the appropriate address provided below, no later than 5 p.m. on November 4, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OMC–010–CN, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OMC–010–CN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Medicare: Tony Hausner, (410) 786–1093. Medicaid: Beth Sullivan, (410) 786–4596.

SUPPLEMENTARY INFORMATION:

I. Change in Compliance Dates

The preamble for the March 27, 1996, rule (61 FR 13430) stated that the regulation was effective on April 26, 1996. The preamble also set forth a set of "compliance dates," by which times the prepaid health plans affected by the regulation would be required to have taken actions to be in compliance with the regulation. These dates varied, depending on the specific requirements of the regulations. They also varied depending on whether the prepaid health plan had a contract with Medicare or Medicaid in place on March 27, 1996, or entered into its initial contract at a later date.

These compliance dates ranged from a date certain—May 28, 1996—to a date determined by when the prepaid health plan applied for a contract, renewed an existing contract, or took other actions specified in the regulation. For example, most of the requirements that prepaid health plans disclose specified elements of information to us would become applicable by May 28, 1996, or by the renewal date of the plan's contract with us, whichever is later. Since all Medicare risk contracts with prepaid health plans are put on a January 1 renewal cycle, this meant that, for practical purposes, these requirements would all become effective on January 1, 1997.

The explanation of these compliance dates in the March 27, 1996, preamble, however, was not sufficiently comprehensive and unambiguous to be fully understood. There has been considerable confusion, doubt, and misunderstanding about them, particularly with respect to their applicability to new contracts entered into subsequent to March 27, 1996. It is also now apparent that some of the compliance dates were clearly impracticable. Most notably, the regulation requires plans, under certain circumstances, to obtain "stop-loss" insurance; the compliance date set forth for doing so was May 28, 1996. This was not only unrealistic, but it was also inconsistent with the related disclosure requirements that would not go into effect until January 1, 1997, and with the wording in the congressional authorizing legislation stating that the law should become effective with the start of a contract year. We notified prepaid health plans on May 28 that this requirement would not be enforced before January 1, 1997.

Because of these difficulties with the compliance dates set forth in the March 27 publication, we have decided to simplify and clarify all of the compliance dates. Stated in general terms, the compliance date for all provisions (other than the two exceptions noted below) is now the first renewal date falling on or after January 1, 1997, or the effective date of a new contract or agreement having an effective date on or after January 1, 1997. To explain how this statement applies to contracts and agreements having various renewal dates or effective dates, and how it applies differently to Medicare contracts and to Medicaid contracts or agreements, we provide the following details:

- For all affected health maintenance organizations (HMOs), competitive medical plans (CMPs), and health insuring organizations (HIOs) that have contracts or agreements with HCFA or State Medicaid Agencies in effect on the date of this notice, the March 27, 1996, regulation becomes applicable (according to the terms set forth in the regulation) at the time the contract or agreement is next renewed on or after January 1, 1997. For all plans with Medicare risk contracts, this means the compliance date is January 1, 1997, since that is uniformly the renewal date for all risk contracts. That is also the renewal date for the majority of Medicare cost contracts, although there are a few for which the renewal date will occur later in 1997, at which time this regulation becomes applicable to them. Medicaid agreements have varying dates for renewal and some of them are written as multi-year agreements. For Medicaid agreements, compliance is required for all plans at a date during calendar year 1997. That date is the date on which the agreement is renewed or, in the case of multi-year agreements, the anniversary date of the effective date of the agreement.
- For all affected HMOs and CMPs that enter into Medicare contracts between the date of this notice and the end of calendar year 1996, the

compliance date is January 1, 1997. For HMOs and HIOs entering into Medicaid contracts or agreements during this period, the regulation becomes applicable on the first anniversary date in 1997 of the effective date of their contract or agreement.

• For all affected HMOs, CMPs, and HIOs that enter into contracts or agreements on or after January 1, 1997, whether for Medicare or Medicaid, the regulation becomes applicable on the effective date of the contract or agreement.

There are two exceptions to the general rule set forth above:

• The requirement in § 417.479(g)(1) that surveys be conducted of plan enrollees and disenrollees under specified circumstances must be met within 1 year of the compliance date for the plan in question, as set forth above. This allows affected HMOs, CMPs, and HIOs discretion on the timing of the survey and permits them to combine it with a survey they may already be conducting and to survey all the enrollees in their sample at the same time.

• The requirement in § 417.479(h)(1)(vi) that plans disclose capitation payments for the most recent year must be met, by all plans with contracts or agreements in effect on December 31, 1996, by April 1, 1997, disclosing information for calendar year 1996. Plans with new agreements on or after January 1, 1997, must comply by April 1 of the first year after the year of the effective date, disclosing data for the calendar year of the effective date.

II. Other Provisions of the March 27 Regulation

This document does not address any of the requirements set forth in the March 27, 1996, final rule other than the compliance dates. All of the obligations of prepaid plans set forth in the regulation remain intact. The March 27, 1996, rule provided a 60-day opportunity for comment. We have received a variety of comments in response to it. We will be publishing a document in the **Federal Register** later, evaluating and responding to these comments. In the meantime, prepaid plans affected by this regulation should be making arrangements to comply with the requirements as set forth on March 27, in accordance with the compliance dates established in this document.

III. Technical Corrections in Nomenclature

The March 27 rule inadvertently reversed a nomenclature change that a previous final rule identified as OCC–015 (published on July 15, 1993, at 58 FR 134) had made throughout part 417. This document corrects the oversight by restoring the precise terms "HMO" and "CMP" that are currently used throughout part 417 instead of the generic "organization".

IV. Waiver of Prior Notice and Comment

Changes in final regulations are ordinarily published in proposed form to provide for a period of public comment prior to the change taking effect. However, we may waive this procedure if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest. We find good cause to implement the changes made in this notice without prior notice and comment because the delay in prior notice and comment would be impractical and contrary to the public interest. As set forth above, we do not believe that it would be reasonable to expect HMOs, CMPs, and HIOs to be in compliance with the requirements that the final rule indicated these entities were required to comply with by May 28, 1996. We have already communicated with affected entities the fact that we were planning to publish a notice changing these compliance dates and would not take enforcement actions under the regulations pending this change. We believe that it is not in the public interest for regulatory compliance obligations to be imposed under a timeframe that both the entities affected and we believe to be unreasonable and impractical. Given the fact that some of these compliance obligations have already taken effect, we believe that it would be impractical to leave these obligations in place pending a public notice and comment process.

Corrections

§ 417.479 [Corrected]

1. On page 13446, column 3, in § 417.479(a) introductory text, "organization" is revised to read "HMO or CMP".

2. On page 13447, column 1, in paragraph (b), "eligible organizations" is revised to read "HMOs and CMPs"; in the definitions in paragraph (c) of "bonus", "payments", and "physician incentive plan", "organization", wherever it appears, is revised to read "HMO or CMP", and in the definition of "payments", "this subpart" is revised to read "this section".

3. On page 13447, column 2, in the definition of "withhold", "organization" is revised to read "HMO or CMP", and in paragraph (d), "organization's" is revised to read "HMO's or CMP's".

4. On page 13447, column 3, in paragraph (g) introductory text, "organizations" is revised to read "HMOs and CMPs", and in paragraph (g)(1)(i), "organization" is revised to read "HMO or CMP", and "organization's" is revised to read "HMO's or CMP's".

5. On page 13448, column 1, in paragraph (g)(2)(ii) introductory text and paragraph (g)(2)(iii), "organization", wherever it appears, is revised to read "HMO or CMP", and in paragraphs (h)(1) introductory text and (h)(1)(v)(B), "organization" is revised to read "HMO or CMP".

6. On page 13448, column 2, in paragraphs (h)(2)(i) introductory text, (h)(2)(ii) introductory text, (h)(3) introductory text, and paragraph (i)(1) introductory text, "organization" is revised to read "HMO or CMP".

7. On page 13448, column 3, in paragraph (i)(2) introductory text, and the heading of paragraph (j), "organization" is revised to read "HMO or CMP", and in the text of paragraph (j), "eligible organization" is revised to read "HMO or CMP".

(Catalog of Federal Domestic Assistance Program No. 93.733—Medicare—Hospital Insurance Program; No. 93.774—Medicare Supplementary Medical Insurance Program; No. 93.778—Medical Assistance Program)

Dated: August 4, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 14, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–22147 Filed 8–30–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. 92–64; Notice 9]

RIN 2127–AG46

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Temporary final rule; Request for comments.

SUMMARY: Under NHTSA's content labeling program, passenger motor vehicles (passenger cars and other light vehicles) are required to be labeled with

information about their domestic and foreign parts content. In response to petitions for rulemaking submitted by the American Automobile Manufacturers Association and General Motors, the agency is making a limited, temporary amendment to its content calculation procedures to provide vehicle manufacturers added flexibility in making content determinations where outside suppliers have not responded to requests for content information. This flexibility will only be available for up to 10 percent, by value, of a carline's total parts content from outside suppliers, and only for carlines offered for sale prior to January 1, 1997. It will also only be available where manufacturers or allied suppliers have made a good faith effort to obtain the information. The agency is requesting comments on whether to provide this or similar added flexibility for a longer period of time.

DATES: *Effective date:* The amendments made by this temporary rule are effective September 3, 1996.

Comments: Comments must be received on or before October 3, 1996.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Orron Kee, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–0846).

For legal issues: Mr. J. Edward Glancy, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a new regulation, 49 CFR Part 583, Automobile Parts Content Labeling, to implement the American Automobile Labeling Act (Labeling Act). That Act, which is codified at 49 U.S.C. 32304, requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content. Interested persons are encouraged to read the July 1994 notice for a detailed explanation of this program.

NHTSA received several petitions for reconsideration of the July 1994 final rule, and has subsequently published three notices addressing issues raised in those or subsequent petitions. In a final rule published in the **Federal Register** (60 FR 14228) on March 16, 1995, NHTSA partially responded to the petitions for reconsideration by extending, for an additional year, a temporary alternative approach for data collection and calculations. This option, which ceased to be available effective June 1, 1996, permitted manufacturers and suppliers to use procedures that are expected to yield similar results to the full procedures set forth in Part 583. NHTSA provided this temporary alternative approach in the 1994 final rule because there was insufficient remaining time, before the statutory date for beginning to provide labeling information, for manufacturers to complete the full procedures. The agency provided the one-year extension of the temporary approach in light of a substantial number of complex issues raised about the full procedures in the petitions for reconsideration and the time needed by the agency to address those issues.

The agency completed its response to the initial set of petitions in a final rule published in the **Federal Register** (60 FR 47878) on September 15, 1995. The agency made a number of changes to reduce the burdens associated with making content calculations and to produce more accurate information.

NHTSA received one petition for reconsideration of the September 1995 final rule, from the American Automobile Manufacturers Association (AAMA). That organization re-raised an issue that it had raised in its first petition, concerning a provision in Part 583 which specifies that the U.S./Canadian content of components is defaulted to zero if outside suppliers fail to respond to a manufacturer's or allied supplier's request for content information.

On April 19, 1996, NHTSA published in the **Federal Register** (61 FR 17253) a notice denying AAMA's petition. The agency explained that it believes that the ability to obtain the necessary content information from suppliers is within the control of the vehicle manufacturers.

Petitions for Rulemaking

NHTSA has received petitions for rulemaking from AAMA (on behalf of some of its members) and General Motors (GM) which again raise concerns about the provision in Part 583 which specifies that the U.S./Canadian content of components is defaulted to zero if suppliers fail to respond to a manufacturer's or allied supplier's request for content information. According to the petitioners, although a great deal of effort has been put forth to obtain certificates from suppliers, some vehicle manufacturers continue to have difficulty with non-responsive suppliers. The petitioners requested that the agency immediately extend for an additional six months the temporary procedures that have been in place for the last two years. The petitioners also requested again that NHTSA permit vehicle manufacturers and allied suppliers to make good-faith content determinations when their outside suppliers fail to do so.

AAMA and GM made several arguments in support of their petitions. First, the petitioners stated that NHTSA took six months to respond to the earlier petition for reconsideration, leaving only six weeks for manufacturers to calculate U.S./Canadian content for 1997 model year vehicles under new rules. They argued that it is unreasonable to expect compliance with this provision of the rule when the agency took so long to respond to the earlier petition.

Second, AAMA and GM stated that while NHTSA has concluded that automakers can easily cause supplier compliance by contract, the supplier relationship is much more complex than whether the supplier provides one piece of data to the purchaser. They argued that to expect a shift in production from one supplier to another for not supplying AALA data is not realistic. The petitioners also argued that even if a non-responsive supplier is penalized under the contract, the penalty paid to the manufacturer is not compensatory because the "damages" that result are not financial but result in an understated U.S./Canadian content value for the manufacturer's vehicles.

Third, AAMA and GM argued that any procedure that requires 100 percent compliance and does not provide alternative approaches to determine the result will understate the U.S./Canadian value and provide false information to the consumer. Finally, AAMA and GM stated that NHTSA permits outside suppliers to make certain "best effort" determinations of where value was added, and argued that it is inequitable not to permit allied suppliers and vehicle manufacturers this same flexibility.

Representatives of GM met with NHTSA staff on June 12 to provide additional information in support of that company's petition. Among other things, they discussed a letter which Chrysler had sent to NHTSA Deputy Administrator Philip R. Recht on May 9 concerning Chrysler's success in

obtaining information from suppliers. Chrysler's letter, from Vice Chairman and Chief Administrative Officer T. G. Denomme, read as follows:

> At our recent meeting with Secretary Peña, I mentioned that we were not experiencing much success with our suppliers on submitting information required under labeling legislation. You asked if we had leveraged our suppliers on this issue.
>
> After our meeting, I got into the issue in more detail. As it turns out, you were correct on this one. We had not pushed the suppliers hard enough. On April 25, only 46% of our suppliers had returned the labeling forms (873 suppliers out of 1,924 total). With a renewed effort on our part, by May 7 we had pushed that figure to 81% response with an expectation of getting well into the 90% level by this summer.
>
> I send you this because I did not want to leave you with the wrong impression on this issue. It now appears Chrysler should be in position to not only comply with the terms of the legislation, but also to have virtually all of our suppliers reporting as well.

The GM representatives stated that GM's situation is different than Chrysler's because of several factors. GM said it has more than 13,000 suppliers, while Chrysler has 1,924. GM is highly vertically integrated; Chrysler is not. Because of vertical integration, GM must trace parts through multiple tiers internally and externally. Finally, the GM representatives stated that their company's multiplicity of carlines makes the determination of domestic content more complex.

The GM representatives also discussed their efforts to obtain certificates from outside suppliers. A number of GM employees have been working full-time for the past several weeks to obtain certificates from outside suppliers who have not responded to previous requests.

The GM representatives indicated that, despite these efforts, the stated domestic content of some of GM's cars will fall by about 10 percentage points (e.g., from 95% in model year 1996 to 85% in model year 1997), solely as a result of defaulting non-reporting supplier content to zero domestic content. They also discussed, by way of example, a vehicle for which GM has had particular difficulty "getting the last 9% [of content] identified."

The GM representatives argued that, unless the agency provides immediate relief, consumers will receive information about that company's vehicles which is inaccurate. The need for immediate relief arises from the fact that the vehicle manufacturers are in the final stages of making content calculations for their model year 1997 vehicles. Under the content labeling program, these calculations are made only once per model year for a carline. Subsequent to the meeting, GM sent the agency a list of its 1997 model year startup dates. Most of the startup dates were between late June and very early August, with many in the middle of July.

Response to Petitions

NHTSA notes that the AAMA and GM petitions re-raise many issues which the agency has addressed at length in responding to previous petitions. Since the petitions did not provide any new arguments significantly different from the ones previously offered by the petitioners, the agency is not changing its views with respect to those basic issues.

However, based on the new information provided by AAMA and GM, NHTSA has decided that a very narrow, temporary change should be made in the content calculation procedures. The agency is amending Part 583 to provide that, in limited situations where outside suppliers have not responded to requests for content information, allied suppliers and manufacturers are permitted to make those content calculations. This flexibility will only be available if the allied supplier or manufacturer has a good faith basis for making the calculation. Moreover, this flexibility will only be available for up to 10 percent, by value, of a carline's total parts content from outside suppliers. Finally, the flexibility will only be available where manufacturers or allied suppliers have made a good faith effort to obtain the information.

Today's amendment applies only to carlines offered for sale before January 1, 1997. The agency has not decided whether the applicability of the amendment, or a similar one, should be extended past that date. However, the agency is requesting comments on that issue.

NHTSA is issuing today's amendment in light of several factors. On the one hand, NHTSA believes that Chrysler's experience demonstrates that the ability to obtain the necessary content information from suppliers is within the control of the vehicle manufacturers. However, the agency also agrees that there are differences between Chrysler and GM, related to number of suppliers and degree of vertical integration, which make efforts by GM to obtain content information from its suppliers considerably more complex.

The agency has previously recognized that a certain amount of confusion is likely during the time period when a new program, such as content labeling, is implemented. The content labeling program is still a relatively new program. Indeed, model year 1997 is the first year for which the full content calculation procedures of Part 583 are required, i.e., the temporary alternative procedures are not available.

The agency believes that GM has demonstrated that it has been making significant efforts in recent months to obtain content information from non-responsive suppliers. Moreover, GM has shown that, despite those efforts, it is having difficulty obtaining information for the last portion of a carline's content.

Finally, NHTSA believes that, all other things being equal, a good faith content determination by a vehicle manufacturer or allied supplier of equipment it receives is likely to be more accurate than simply applying a "default-to-zero" provision. Thus, adoption of today's amendment should result in more accurate information for consumers.

The agency recognizes, of course, that the most accurate determinations are those provided by the outside suppliers themselves, since they obviously have much more complete information about the content of the equipment they manufacture than the purchaser. Therefore, the agency must consider whether its actions would have the effect of reducing the incentives for outside suppliers to provide the required information, or for the vehicle manufacturers to make efforts to obtain the information.

NHTSA has concluded that adoption of today's temporary amendment will not reduce incentives for outside suppliers or vehicle manufacturers for model year 1997. Given that the vehicle manufacturers are already in the final stages of making content calculations for these vehicles, today's amendment should not have any effect on whether outside suppliers provide, or do not provide, the required information for model year 1997. However, the agency will consider this issue further in deciding whether to extend the applicability of today's temporary amendment. NHTSA also emphasizes that today's amendment does not excuse outside suppliers for failure to comply with Part 583.

The agency notes that today's temporary amendment is much narrower than the temporary one requested by AAMA and GM. The petitioners requested a six-month extension of the temporary procedures that have been in place for the last two years. However, they raised concerns about only one of Part 583's provisions, the one concerning non-responsive outside suppliers. AAMA and GM did not give any reasons why the agency

should provide flexibility for other aspects of the content labeling calculation procedures. Therefore, the agency declines to provide relief related to other sections.

In addition, as noted above, the added flexibility is limited to no more than 10 percent, by value, of a carline's total parts content from outside suppliers. The relief is thus tailored to the fact that the problem faced by the vehicle manufacturers is in obtaining the last portion of outside content value for particular carlines. Also, the amendment ensures that the added flexibility can only be used for a very small portion of a carline's total outside content, and that the vast majority of U.S./Canadian content determinations will be based on supplier certificates.

This flexibility will also only be available where manufacturers or allied suppliers have made a good faith effort to obtain the information. NHTSA is not including a specific definition of what constitutes "good faith effort" in today's final rule. However, the agency intends the term to mean at least some effort beyond the request for information and certificates that is required by Part 583, e.g., some kind of follow-up effort.

NHTSA will not provide specific responses to all of the other issues raised by AAMA and GM in their petitions, because the agency has responded to many of those issues in previous notices. The agency specifically incorporates by reference its responses to these issues set forth in the September 15, 1995 and April 19, 1996 notices referenced earlier in this document.

However, the agency will address two issues. First, NHTSA rejects the suggestion that it should amend Part 583 because it took six months to respond to AAMA's earlier petition for reconsideration. NHTSA's regulations clearly specify that the filing of a petition for reconsideration does not mean that a rule does not take effect. See 49 CFR 553.35(d).

Second, the agency does not believe there is anything inequitable about providing different procedures for outside and allied suppliers. The Labeling Act establishes vastly different procedures for outside and allied suppliers. For example, in making domestic content calculations, outside suppliers need determine only whether an item of equipment has at least 70 percent U.S./Canadian content, while allied suppliers must make precise calculations based on certificates from outside suppliers. The differences in Part 583's procedures for outside and allied suppliers reflect the specific statutory differences for these two groups and/or the agency's efforts to limit the regulatory burdens associated with the content labeling program. For example, a significant reason why the agency permits outside suppliers to make good faith estimates of the U.S./Canadian content of the materials they purchase is that, unlike the situation for allied suppliers, suppliers to outside suppliers are not required, by statute or regulation, to provide certificates of content.

NHTSA finds that the issuance of this final rule without prior opportunity for comment is necessary in view of the immediate difficulties that some manufacturers, including GM, are having obtaining content information from a number of outside suppliers, and the fact that the manufacturers are necessarily in the final stages of making content determinations for their model year 1997 vehicles. Unless the agency amends the standard on an immediate basis, consumers will receive less accurate content information for model year 1997 vehicles. NHTSA also finds good cause to establish an immediate effective date for this final rule. In the absence of an immediate effective date, the manufacturers could not avail themselves of the added flexibility in making content determinations for their model year 1997 vehicles. The final rule does not impose any new requirements but instead provides additional flexibility to manufacturers in making content determinations.

NHTSA notes that, since model year 1997 production has begun for some carlines, some vehicles have probably already been labeled. Given the circumstances of today's final rule, the agency believes it would be appropriate for manufacturers to re-label these vehicles, should they wish to do so.[1] In such an instance, however, NHTSA urges manufacturers to take steps to prevent confusion when consumers compare the labels of vehicles within the same carline manufactured at different times. For example, manufacturers could take steps to re-label all of the vehicles within a carline that have not yet been sold to a consumer. Alternatively, the revised label could include a note indicating that the carline percentages have been revised during the model year.

The second issue to be considered is whether the applicability of today's amendment, or a similar one, should be extended for a longer period of time. The agency believes that the guiding principle for making this decision should be the statutory direction specifying that regulations promulgated under the Labeling Act are to provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign and U.S./Canadian origin of the equipment of the vehicles without imposing costly and unnecessary burdens on the manufacturers. 49 U.S.C. 32304(e).

There is no question that the "best" determinations of the content of equipment provided by outside suppliers are those provided by the suppliers themselves, since they obviously have much more complete information about the content of the equipment they manufacture than the purchaser. There is also no question that the Labeling Act contemplates the vehicle manufacturers basing their content calculations on certificates provided by the outside suppliers, and that outside suppliers are statutorily required to provide this information. See 49 U.S.C. 32304(e). Thus, the only question is the extent, if any, to which the agency should provide alternatives to address situations where outside suppliers fail to provide the required information despite being asked to do so by the vehicle manufacturers.

As indicated above, an important consideration is whether such alternatives would have the effect of reducing the incentives for outside suppliers to provide the required information, or for the vehicle manufacturers to make efforts to obtain the information. It is clear that the "default-to-zero" provision does provide significant incentives in this regard. Therefore, the agency will not simply drop that provision.

To the extent that the non-responsive supplier problem experienced by GM is likely to continue, it could be argued that, at some point, the costs of obtaining the last portion of outside supplier content value for a particular carline become unreasonable. This argument could be used to support extending the temporary amendment. The length of such extension would depend on how long the problem was likely to continue.

On the other hand, NHTSA is not convinced that the vehicle manufacturers cannot ultimately obtain the necessary content information from essentially 100 percent of their suppliers, without costly efforts. The agency included the following discussion in its March 16, 1996 notice

[1] While content percentages are ordinarily calculated only once for a carline for a particular model year, NHTSA has previously concluded that, under special circumstances, manufacturers may revise the carline percentages. See interpretation letter to Diamond Star Motors dated February 10, 1995.

denying AAMA's earlier petition on this subject:

NHTSA notes that AAMA's petition did not discuss whether its member companies experienced difficulty in obtaining content information from suppliers in the presence or absence of specific contractual provisions intended to ensure the provision of content information by suppliers. As stated in the September 1995 notice, outside suppliers are dependent on the vehicle manufacturers for their business. Therefore, the agency believed, and continues to believe, that the ability to obtain the necessary content information is within the control of the vehicle manufacturers.

The purpose of including any specific provision in a business contract is to make observance of the terms of that provision a required element of the business relationship. Just as such things as meeting material specifications, strength requirements and specified time of delivery are a necessary part of a supplier's doing business with a vehicle manufacturer and are ensured by provisions included in contractual agreements, the providing of content information can also be made a necessary part of that business relationship and be reflected in the purchase contract.

Moreover, just as liquidated damages clauses can be inserted in a contract for failure to comply with any other part of the contract, so can such a provision be included for failure to provide timely content reports. If a supplier knows that it will be paid less money if it fails to provide content information, it will have a strong incentive to provide the information.

The agency also notes that the supplier industry is highly competitive. If one supplier is unwilling to agree to provide content information (an agreement to do no more than comply with existing Federal law), other suppliers would step in to take advantage of the opportunity for new business.

For the above reasons, including those presented in the September 1995 notice, NHTSA continues to believe that the vehicle manufacturers will be able to obtain the required content information from their suppliers.

As indicated above, AAMA and GM argued in their new petitions that even if a non-responsive supplier is penalized under the contract, the penalty paid to the manufacturer is not compensatory because the "damages" cannot offset the effects of understating the U.S./Canadian content value for the manufacturer's vehicles. NHTSA believes, in contrast, that the contractual provisions would help ensure that outside suppliers provide content information without the need to actually impose "damages." The agency believes outside suppliers would not sign contracts that they planned to violate. Also, given that it is not very costly to provide content information, it would be irrational for outside suppliers to decide to pay damages instead of simply providing the information (information that they are, in any event, required by Federal law to provide).

In addition to providing an extra incentive for outside suppliers, such contractual provisions would provide an educational function. AAMA stated in its petition that "suppliers that deliberately do not respond cite the uncompensated cost to establish the information on content in their parts, the increased employees to calculate the data, and the burdens they already face in generating multiple content reports such as for NAFTA, AALA, CAFE and others each with its own rules." These sorts of explanations by suppliers suggest that they were unaware of the need to provide content information when they signed their contracts. The inclusion of a specific contract provision concerning the need to provide content information would make suppliers aware of this obligation. While the costs of providing content information may not be compensated directly, such costs are simply a necessary part of doing business. Assuming that suppliers are aware of these costs, they will presumably consider them in negotiating their contracts, just as they consider other costs of doing business.

As indicated above, NHTSA has not decided whether to extend today's amendment beyond December 31 of this year, but is requesting comments on this issue. The agency requests commenters to address the following questions:

1. Can the problems being experienced by some vehicle manufacturers with non-responsive suppliers be resolved by contractual provisions? Have the vehicle manufacturers experiencing these problems included specific provisions concerning content labeling in their contracts? If not, why? If such provisions are not included in contracts, how long would it take to add them? Are there other ways to resolve these problems, particularly without costly efforts by the vehicle manufacturers?

2. If the agency were to extend the applicability of today's amendment beyond December 31 of this year, how long should the extension be? Should such an extension continue to provide the same type and degree of flexibility, i.e., flexibility for up to 10 percent, by value, of a carline's total parts content from outside suppliers? Would another value, or a somewhat different means for providing flexibility, be more appropriate?

3. If the agency provides flexibility past December 31 of this year, should the flexibility be limited to situations where the vehicle manufacturers have made specified good-faith efforts to obtain the information from an outside supplier (beyond the initial request to the supplier)? If so, what good-faith efforts should be specified in the regulation, e.g., certain contractual provisions, follow-up letters and/or phone calls, etc.?

NHTSA recognizes that, to the extent commenters argue that a somewhat different amendment should apply to models introduced after December 31 of this year, those arguments may bear also on the appropriateness of the relief provided up to that date. However, given the imminence of the introduction of most model year 1997 vehicles, it is not clear whether it would be feasible to consider amendments to the relief provided for models introduced before December 31. Nonetheless, the agency invites commenters to address this issue. Moreover, to accommodate the possibility of making such an amendment, the agency expediting the comment process by limiting the comment period to 30 days.

For the reasons discussed above, NHTSA is granting the AAMA and GM petitions to the extent reflected in today's final rule and request for comments. The petitions are otherwise denied.

Rulemaking Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under Executive Order 12866. NHTSA has considered the economic implications of this regulation and determined that it is not significant within the meaning of the DOT Regulatory Policies and Procedure. Today's amendments will not affect manufacturer or supplier costs. They simply provide additional flexibility to vehicle manufacturers and their allied suppliers in making content calculations.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the final rule will not have a significant economic impact on a substantial number of small entities. Today's amendments simply provide additional flexibility to vehicle manufacturers and their allied suppliers in making content calculations. Therefore, a regulatory flexibility analysis is not required for this action.

C. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule did not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No state laws are affected.

D. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of this rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that this rule will not significantly affect the human environment.

Comments

Interested persons are invited to submit comments on this document. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the NHTSA Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to this rulemaking action will be considered as suggestions for further rulemaking action. Comments on the document will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 583 is amended as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority for part 583 continues to read as follows:

Authority: 49 U.S.C. 32304, 49 CFR 1.50, 501.2(f).

2. Section 583.6 is amended by revising paragraph (c)(5) and adding paragraph (c)(6) to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

* * * * *

(c) * * *

(5) Except as provided in paragraph (c)(6) of this section, if a manufacturer or allied supplier does not receive information from one or more of its suppliers concerning the U.S./Canadian content of particular equipment, the U.S./Canadian content of that equipment is considered zero. This provision does not affect the obligation of manufacturers and allied suppliers to request this information from their suppliers or the obligation of the suppliers to provide the information.

(6) For carlines which are first offered for sale to ultimate purchasers before January 1, 1997, if a manufacturer or allied supplier requests information in a timely manner from one or more of its outside suppliers concerning the U.S./Canadian content of particular equipment, but does not receive that information despite a good faith effort to obtain it, the manufacturer or allied supplier may make its own good faith value added determinations, subject to the following provisions:

(i) The manufacturer or allied supplier shall make the same value added determinations as would be made by the outside supplier, i.e., whether 70 percent or more of the value of equipment is added in the United States and/or Canada;

(ii) The manufacturer or allied supplier shall consider the amount of value added and the location in which the value was added for all of the stages that the outside supplier would be required to consider;

(iii) The manufacturer or allied supplier may determine that the value added in the United States and/or Canada is 70 percent or more only if it has a good faith basis to make that determination;

(iv) A manufacturer and its allied suppliers may, on a combined basis, make value added determinations for no more than 10 percent, by value, of a carline's total parts content from outside suppliers;

(v) Value added determinations made by a manufacturer or allied supplier under this paragraph shall have the same effect as if they were made by the outside supplier;

(vi) This provision does not affect the obligation of outside suppliers to provide the requested information.

Issued on: August 28, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–22409 Filed 8–28–96; 5:08 pm]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AD76

1996–97 Refuge-Specific Hunting and Sport Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) amends certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges for the 1996–97 seasons. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications

ensuring continued compatibility of hunting and fishing with the purposes for which individual refuges were established. The Service determines that such use is compatible with the purposes for which these refuges were established. The Service further determines that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges.

EFFECTIVE DATE: This rule is effective September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, (703) 358–2397.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to:

- Ensure compatibility with refuge purposes;
- Properly manage the fish and wildlife resource;
- Protect other refuge values; and
- Ensure refuge user safety.

On many refuges, the Service policy of adopting State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Statutory Authority." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

Text in this final rule is somewhat different than that used in the proposed rule because it reflects conformity to plain English writing standards. In the June 24, 1996, issue of the **Federal Register** (61 FR 32415–32422) the Service published a proposed rulemaking containing a description of the refuges, their proposed hunting and/or fishing programs and invited public comment.

The State of New Jersey, Department of Environmental Protection, Division of Fish, Game and Wildlife, commented that the proposed rule did not include any openings for sport fishing in New Jersey. This concern has been forwarded to the Service's Regional Director, having jurisdiction in New Jersey. To open new fishing programs in New Jersey, a separate rulemaking is necessary. The refuge managers, in consultation with other Fish and Wildlife Service offices and the New Jersey Division of Fish, Game and Wildlife, will determine whether to open additional public fishing areas on refuges in New Jersey through a compatible use determination process.

The State of Utah, Department of Natural Resources, Division of Wildlife Resources commented that the proposed regulations for Bear River Migratory Bird Refuge were overly restrictive regarding: (1) The requirement for cased or dismantled firearms while being carried and/or transported on the refuge, since this regulation is more restrictive than State law; (2) refuge closure 90 minutes after hunting hours, where at least two hours should be allowed; and (3) a ten-shell limit for swan hunting could create a significant law enforcement problem.

The Humane Society of the United States (HSUS) generally supports the changes made to the refuge regulations, but expressed concern about hunting tundra swans on this refuge and other national wildlife refuges. They were supportive of steps taken by the refuge manager to better regulate the swan hunt. The HSUS further recommends that the number of shotshells used to hunt swans be limited to five shells.

The Fund for Animals Inc. commented on the proposed 1995–96 late season migratory bird hunting frameworks, 60 FR 44463 (August 28, 1995), and the Draft Bear River Refuge Hunt Plan Environmental Assessment (DEA). Both of these documents follow a separate public comment process and therefore will be responded to elsewhere and not addressed in this rulemaking.

The Biodiversity Legal Foundation (BLF) commented that regulations for Bear River Migratory Bird Refuge are insufficient to protect and encourage adequate restoration of the trumpeter swan in Utah. They specifically recommend: (1) The refuge be closed 60 minutes after shooting time to discourage sky-busting and the resultant crippling of swans. They feel this is more than sufficient time to accumulate all equipment and depart from the refuge; (2) illegal shooting from dikes is well documented and the Service should take all necessary steps to eliminate this activity, particularly on those areas that lie between closed (security) areas where low flying trumpeters are observed; and (3) the Service should consider the kind of regulations and recovery effects that would exist if the trumpeter were listed under the ESA. They suggest that these same recovery goals should be in effect at this time; and refuge regulations clearly allow for an excessive and unreasonable incidental take (mortality) of trumpeters in contradiction to the Migratory Bird Treaty Act.

The Service has reviewed the above comments regarding proposed changes in waterfowl hunting regulations at the Bear River Migratory Bird Refuge. A number of alternatives were considered while trying to improve the swan hunt with a minimum impact to waterfowlers and birdwatchers. The Service considered: assigning blinds; limiting hunter numbers; closing portions of the Refuge to swan hunting; requiring check-in and check-out; limiting shooting hours and requiring swan hunters to pass a special training class.

The requirement for all guns, when not being used in the act of hunting, to be dismantled or cased when in vehicles is a System-wide regulation contained in 50 CFR 27.42(b), therefore, the proposed refuge specific regulation for Bear River is removed from this final rule.

The Service will extend the refuge closing time from the proposed ninety minutes to two hours after shooting time ends. This will allow adequate time for avid hunters with decoys to traverse remote areas of the refuge during darkness. However, we remain concerned with the possibility of increased wildlife disturbance, lost or injured hunters and those who may avoid being checked by enforcement officers. Refuge patrol plans will be made to specifically address these issues.

The Service feels it is important to retain the regulation requiring a 10-shell possession limit for swan hunting. Hunters may reasonably expect to be successful within this 10-shell limit. This technique has worked well at other refuges, along with modified law enforcement techniques, to minimize shooting at out-of-range birds.

In an effort to improve the overall quality of refuge visits for both hunters and birdwatchers, time and space zoning will be used to better separate the two activities.

The Refuge Manager understands the above concerns about hunting at the

Bear River NWR, and will continue to consult with representatives of the Utah Division of Wildlife Resources, The Humane Society of the United States, The Fund for Animals, Inc. and the Biodiversity Legal Foundation. The Refuge Manager will closely monitor this year's hunt program and has ample authority to place greater restrictions, amend, and/or relax these refuge specific hunting requirements during the course of the season with local, public/hunter notice in accordance with 50 CFR,32.3(f).

This rule is effective upon publication. The Service has determined that any further delay in the implementation of these refuge-specific hunting and sport fishing regulations would not be in the public interest in that it would hinder the effective planning and administration of the hunting and fishing programs. The Service received public comment on these proposals during the 30-day comment period and delay of an additional 30 days would jeopardize holding the hunting and/or fishing programs this year, or shorten their duration and thereby lessen the management effectiveness of this regulation. Therefore, the Service finds good cause to make this rule effective upon publication (5 U.S.C. 553(d)(3)).

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing, and public recreation, accommodations, and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

The Service develops hunting and sport fishing plans for each existing refuge prior to opening it to hunting or fishing. It also develops refuge-specific regulations, in many cases, to ensure the compatibility of the programs with the purposes for which the refuge was established. An interim determination of compatibility for hunting and sport fishing on newly acquired refuges, made at the time of acquisition, ensures initial compliance with the NWRSAA and the RRA. This process ensures the determinations required by these acts were made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The Service ensures continued compliance by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

The Service determines that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Order 12962 (Recreational Fisheries), and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges. Sufficient funds are available within the refuge budgets to operate the hunting and sport fishing programs as proposed.

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and has found it to contain no information collection requirements.

Economic Effect

Service review has revealed that the rulemaking will increase hunter and fishermen visitation to the surrounding area of the refuges before, during or after the recreational uses, compared to closing the refuges to these recreational uses. When the Service acquired these lands, all public use ceased under law until opened to the public in accordance with this rulemaking.

Refuges generally are located away from large metropolitan areas. Businesses in the area of the refuges consist primarily of small family-owned stores, restaurants, gas stations and other small commercial enterprises. In addition, there are several small commercial and recreational fishing and hunting camps and marinas in the general areas. This rule has a positive effect on such entities; however, the amount of revenue generated is not large.

Many area residents enjoy a rural lifestyle that includes frequent recreational use of the abundant resources of the area. A high percentage of the households enjoy hunting, fishing, and boating in area wetlands, rivers and lakes. Refuge lands generally were not available for public use prior to government acquisition; however, friends and relatives of the landowners fished and hunted there and some lands operated under commercial hunting and fishing leases. Many nearby residents also participate in other forms of nonconsumptive outdoor recreation such as biking, hiking, camping, birdwatching, canoeing, and other outdoor sports.

Economic impacts of refuge fishing and hunting programs on local communities are calculated from average expenditures in the "1995 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation". In 1995, 42 million U.S. residents 16 years old and older hunted and/or fished. More specifically, 37 million fished and 14.5 million hunted. Those who both fished and hunted account for the 9.5 million overage. Nationwide expenditures by sportsmen totaled $42 billion. Trip-related expenditures for food, lodging, and transportation were $16 billion or 37 percent of all fishing and hunting expenditures; equipment expenditures amounted to $19 billion, or 46 percent of the total; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $6.9 billion, or 16 percent of all expenditures. Overall, anglers spent an average of $41 per day. For each day of hunting, big game hunters averaged spending $40, small game hunters $20, and migratory bird hunters $33.

At these 40 National Wildlife Refuges in 24 states, 816,000 fisherman are expected to spend $33.5 million annually in pursuit of their sport, while an estimated 203,000 hunters will spend $6.7 million annually hunting on the refuges. While many of these fishermen and hunters already made expenditures prior to the refuge opening, additional expenditures directly are due to the new recreational opportunities being provided by the land now being open to the general public.

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that although the rulemaking would increase visitation and expenditures in the surrounding area of the refuge, it would not have a significant effect on a substantial number of small entities in the area, such as businesses, organizations and governmental jurisdictions.

Environmental Considerations

The Service ensures compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when it develops hunting and sport fishing plans, and the required determinations are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The Service reviewed the changes in hunting and fishing herein adopted with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and found them to either have no effect on or not likely to adversely affect listed species or critical habitat. The amendments of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The Service employs the exclusion found at 516 DM 6, App.1.4 B(5) as these amendments are "[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures." These refuge-specific hunting and fishing revisions to existing regulations qualify or otherwise define an existing hunting or fishing activity, for purposes of resource management. These documents are on file in the offices of the Service and may be viewed by contacting the primary author noted below. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts and sport fishing activities, and maps of the respective areas are at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Primary Author

Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing,* is amended by alphabetically adding the listings "Windom Wetland Management District" to the State of Minnesota; "William L. Finley National Wildlife Refuge" to the State of Oregon; "Upper Mississippi River National Wildlife and Fish Refuge" to the State of Wisconsin; and revising the existing name of "Patuxent Wildlife Research Center" to read "Patuxent Research Refuge" in the State of Maryland.

3. Section 32.23 *Arkansas* is amended by adding paragraph D.3. to Cache River National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

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Cache River National Wildlife Refuge

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D. Sport Fishing. * * *

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3. Fishermen must fish and frog in accordance with refuge regulations and applicable state fishing and frogging regulations.

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4. Section 32.24 *California* is amended by revising paragraph A.7., of Lower Klamath National Wildlife Refuge; and by revising paragraph A.2., of Salton Sea National Wildlife Refuge to read as follows:

§ 32.24 California.

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Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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7. Hunters may only use nonmotorized boats and boats with electric motors on units 4b and 4c from the start of hunting season through November 30. Hunters may use motorized boats on units 4b and 4c from December 1 through the end of hunting season.

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Salton Sea National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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2. Hunters must hunt from assigned blinds on the Union Tract and within

100 feet (.9144 meters) of blind sites on the Hazard Tract, except when shooting to retrieve crippled birds.

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5. Section 32.28 *Florida* is amended by revising paragraphs A. and D. of Merritt Island National Wildlife Refuge to read as follows:

§ 32.28 Florida.

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Merritt Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt ducks and coots in designated areas of the refuge subject to the following conditions:

1. Hunters must possess a valid refuge hunting permit at all times while hunting on the refuge.

2. Hunters may hunt only on Wednesday, Saturday, Sunday, and the following holidays: Thanksgiving, Christmas, and New Years Day only within the designated state season.

3. Hunters may hunt only in four designated areas of the refuge subject to delineation in the refuge hunting map and brochure, including the open waters of Mosquito Lagoon, Indian River, and designated impoundments outside the NASA security area.

4. Hunting hours are one-half hour before sunrise until 1:00 pm. each hunting day.

5. Hunters in Areas 1, 2 or 4 must complete and carry proof of completing an approved hunter safety training course. Hunters in Area 3 born after June 1, 1975 must complete and carry proof of completing an approved hunter safety training course in accordance with State law.

6. An adult 21 years of age or older must supervise and remain in sight and normal voice contact with hunters under the age of 16.

7. The public must not enter the refuge between sunset and sunrise except: hunters may access the refuge for waterfowl hunting only after 2:00 am each hunting day during waterfowl hunting season; and a valid refuge hunting permit must be in possession during these times.

8. Hunters may not park along Blackpoint Wildlife Drive or Playalinda Beach Road for the purposes of waterfowl hunting.

9. Hunters may not trespass or hunt migratory game birds in refuge areas posted "AREA CLOSED".

10. Vehicles must use only designated public access routes and boat launching areas north and south of Haulover Canal.

11. Hunters must not construct permanent above ground, or pit blinds, nor dig into dikes.

12. Hunters must not shoot from within 10 feet of any dike, roadway, or railroad fill.

13. Hunters must remove decoys, boats, and other personal property from the refuge by 2:00 pm daily.

14. Refuge guides must purchase and have Guide Permits on their person while in the field hunting.

15. Hunters may not launch boats off Black Point Wildlife Drive.

16. Hunters may not use air thrust boats, hovercraft, jetskis or similar craft on refuge waters.

17. Boats must not exceed "Idle Speed" in Bairs Cove nor 8 mph or "Slow speed-Minimum Wake" in Haulover Canal.

* * * * *

D. Sport Fishing. Fishermen may fish, crab, clam, oyster and shrimp in designated areas of the refuge subject to the following conditions:

1. Fishermen may night fish from a boat only in Mosquito Lagoon, Indian River, Banana River, and Haulover Canal. All fishermen must possess a valid refuge night fishing permit.

2. Fishermen must attend their lines at all times.

3. Vehicles must use only designated public access routes and boat launching areas north and south of Haulover Canal.

4. Fishermen may not launch boats from Black Point Wildlife Drive.

5. Fishermen may not use air thrust boats, hovercraft, jetskis or similar craft on refuge waters.

6. Fishermen may launch or moor boats only between sunset and sunrise at Beacon 42 fish camp and Bairs Cove at Haulover Canal Recreation Area.

7. The public must not use motorized boats in the Banana River Manatee sanctuary (north of KARS Park on the west side of the Barge Channel and north of the Air Force power line on the east side of the Barge Channel). This includes any boat having an attached motor or a non-attached motor that is capable of use (including electric trolling motors). This regulation is in effect throughout the year.

8. Boats must not exceed "Idle Speed" in Bairs Cove and KARS Marina nor 8 mph or "Slow speed-Minimum Wake" in Haulover Canal.

9. The public must not enter the refuge between sunset and sunrise except fishermen may launch boats while fishing from Beacon 42 Fish Camp or Bairs Cove at Haulover Canal. Nighttime fishermen must also possess a valid refuge fishing permit while fishing on the refuge.

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6. Section 32.32 *Illinois* is amended by removing paragraph A.4., and revising paragraphs D.2. and D.5 of Chautauqua National Wildlife Refuge; by revising paragraphs C.1. and D.1. of Crab Orchard National Wildlife Refuge; by revising Mark Twain National Wildlife Refuge; by revising paragraphs D.1., D.2., D.3., adding paragraph D.4. of Meredosia National Wildlife Refuge; and revising paragraph A.1., adding paragraph A.3., revising paragraphs B.1., B.2. and B.3.; revising paragraphs C.1., C.2., and C.3. of Upper Mississippi River Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

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Chautauqua National Wildlife Refuge

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D. Sport Fishing. * * *

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2. Anglers must not use more than two poles and each pole may not have more than two hooks or lures attached while fishing in the Kikunessa Pool of Chautauqua National Wildlife Refuge.

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5. The public may not enter Weis Lake on the Cameron-Billsbach Unit of Chautauqua National Wildlife Refuge from October 16 through January 14, to provide sanctuary for migratory birds.

Crab Orchard National Wildlife Refuge

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C. Big Game Hunting. * * *

1. Hunters must possess a special permit issued by the Illinois Department of Natural Resources.

* * * * *

D. Sport Fishing. * * *

1. Fishermen may fish from boats all year west of Wolf Creek Road.

2. From March 15 through September 30 fishermen may fish from boats east of Wolf Creek Road.

3. Fishermen may fish from the bank east of Wolf Creek Road all year, but only at the Wolf Creek and Route 148 causeways.

4. Fishermen must remove trotlines and jugs west of Wolf Creek Road from sunrise to sunset from Memorial Day through Labor Day.

5. Fishermen must remove trotlines and jugs from the entire lake on the last day of use.

6. Fishermen may anchor trotlines only with portable weights that are removed from the water, along with the trotlines and jugs.

7. Fishermen must not use stakes or employ any floatation device which has previously contained any petroleum based materials or toxic substances.

8. Fishermen may use all non-commercial fishing methods except

those requiring underwater breathing apparatus.

* * * * *

Mark Twain National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to posted regulations.

B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge subject to posted regulations.

1. Hunters must possess and use only nontoxic shot while hunting all permitted birds, except wild turkeys. Hunters may possess and use lead shot for hunting wild turkey.

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to posted regulations.

D. Sport Fishing. Fishermen may fish on designated areas of the refuge subject to posted regulations.

Meredosia National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishermen may sport fish on all refuge waters during daylight hours from January 15 through October 15.

2. From October 16 through January 14, fishermen may fish south of Carver Lake by foot access only.

3. Private boats may not be left in refuge waters overnight.

4. Motorboats must not exceed "slow speed/minimum wake."

Upper Mississippi River National Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. * * *

1. Hunters may not hunt migratory birds on refuge closed areas posted "Area Closed", on the Goose Island "No Hunting" zone in Pool 8, and on the Upper Halfway Creek Marsh "No Hunting" zone in Pool 7.

* * * * *

3. Hunters may only use and possess nontoxic shot when hunting for any permitted migratory bird.

B. Upland Game Hunting. * * *

1. Hunters may not hunt or possess firearms between March 15 and the opening of the State fall hunting seasons except that hunters may hunt wild turkeys during the State spring turkey season.

2. Hunters may hunt on refuge areas posted as "Area Closed" beginning the day after the close of the applicable State duck hunting season until season closure or March 15, whichever occurs first, except that hunters may hunt wild turkey during the State spring wild turkey season.

3. Hunters must not hunt at any time within the Goose Island "No Hunting" zone in Pool 8, nor Upper Halfway Creek Marsh "No Hunting" zone in Pool 7.

* * * * *

C. Big Game Hunting. * * *

1. Hunters may only hunt until season closure or March 15, whichever date occurs first.

2. Hunters may hunt on refuge areas posted "Area Closed" beginning the day after the close of the applicable State duck hunting season until season closure or March 15, whichever date occurs first.

3. Hunters must not hunt at any time on the Goose Island "No Hunting" zone in Pool 8 and Upper Halfway Creek Marsh "No Hunting" zone in Pool 7.

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7. Section 32.34 *Iowa* is amended by removing paragraph C.2., and redesignating paragraphs C.3. and C.4. as paragraphs C.2. and C.3. of Desoto National Wildlife Refuge; and by removing paragraphs C.6. and C.7. of Driftless Area National Wildlife Refuge; and revising the introductory text of paragraph B. and paragraph B.2. of Walnut Creek National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

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DeSoto National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. Hunters must not construct or use permanent blinds, platforms or ladders at any time.

3. Hunters must remove all hunting stands from the refuge by the close of the season.

* * * * *

Walnut Creek National Wildlife Refuge

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B. Upland Game Hunting. Hunters may hunt ringnecked pheasants, bobwhite quail, cottontail rabbits, and squirrels on designated areas of the refuge subject to the following conditions:

* * * * *

2. Hunters may hunt from the opening of state season until closed on the dates posted by the refuge manager.

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8. Section 32.36 *Kentucky* is amended by revising paragraphs A., B., and C., of Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

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Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to the following conditions:

1. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. Hunters may hunt rabbit and squirrel on designated areas of the refuge subject to the following conditions:

1. Hunters must not use dogs for pursuit while rabbit hunting.

2. Hunters may only use shotguns for taking squirrels and rabbits.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

4. Hunters will possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following conditions:

1. Hunters may only archery hunt.

2. Hunters may not hunt by organized deer drives of two or more hunters. The definition of a drive is: the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.

3. Hunters may not bait deer on refuge lands.

4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Regulations Leaflet while participating in a refuge hunt.

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9. Section 32.37 *Louisiana* is amended by revising paragraph C.1., of D'Arbonne National Wildlife Refuge; by revising paragraph A. of Lake Ophelia National Wildlife Refuge; and revising paragraph C.1. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

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D'Arbonne National Wildlife Refuge

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C. Big Game Hunting. * * *

1. Hunters may hunt either-sex deer with firearms during the second and third either-sex firearms seasons for Union Parish.

* * * * *

Lake Ophelia National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt ducks and coots on

designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge daily permit.

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Upper Ouachita National Wildlife Refuge

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C. Big Game Hunting. * * *

1. Hunters may hunt either-sex deer with firearms during the second and third either-sex firearms seasons for Union Parish.

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10. Section 32.38 *Maine* is amended by revising paragraphs A., B., and C., of Rachel Carson National Wildlife Refuge to read as follows:

§ 32.38 Maine.

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Rachel Carson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt ducks, geese, coots, woodcock and snipe on designated areas of the refuge subject to the following conditions:

1. Hunters must possess a refuge permit.

2. Hunters must remove all personal property from the refuge after each day's hunt.

B. Upland Game Hunting. Hunters may hunt upland game birds, gray squirrel, cottontail rabbit, snowshoe hare, fox and coyote on designated areas of the refuge subject to the following conditions:

1. Hunters must possess a refuge permit.

2. Hunters may hunt fox and coyote only during the State firearm deer season.

3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches (10.16 square meters) of solid-colored hunter orange clothing or material.

4. Hunters will possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. Hunters may hunt deer on designated areas of the refuge subject to the following conditions:

1. Hunters must possess a refuge permit.

2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches (10.16 square meters) of solid-colored hunter orange clothing or material.

* * * * *

11. Section 32.39 *Maryland* is amended by revising the refuge heading, the introductory text of paragraphs A., B., and C.; and revising paragraph D., of Patuxent Research Refuge, to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Research Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to the following conditions:

* * * * *

B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge subject to the following conditions:

* * * * *

C. Big Game Hunting. Hunters may hunt deer on designated areas of the refuge subject to the following conditions:

* * * * *

D. Sport Fishing. Fishermen may fish in designated waters of the refuge at designated times subject to the following conditions:

1. Fishermen may fish only in delineated areas as shown on a map available at the refuge.

2. Fresh water fishing and boating laws of the State of Maryland apply to include opening/closing of seasons and creel limits.

3. Fishermen may use hook and line tackle and baits permitted by Maryland law, with the exception of live minnows or other fish.

4. Special provisions: Cash Lake, a 54 acre lake located on the South Tract requires a federal permit to fish, and a limit of 25 daily permits will be issued. Persons may request a permit application by contacting: National Wildlife Visitor Center, Laurel, Maryland, during normal working hours. Each request must include the person's name, address, and phone number, and the model, year and license number of the vehicle that will drive to the refuge. You may request a fishing date 1 week prior to when you plan to fish. One licensed angler or up to two children under the age of 16 may accompany the permit holder. Open season is June 15 through October 15: 6 a.m. to legal sunset daily. You may fish for the following species: Bass, pickerel, catfish, and sunfish. Daily creel limits: bass, catch and release only; pickerel, catch and release only except you may keep one pickerel greater than 15 inches in length; sunfish and catfish, 15 per day total fish limit. Permittees may use boats subject to the following conditions: no gasoline motors permitted; You may not trailer boats to the water; boats other than canoes may not exceed 14 feet; you may not use sailboats or kayaks.

12. Section 32.40 *Massachusetts* is amended by revising paragraph C., of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

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Parker River National Wildlife Refuge

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C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following conditions:

1. Hunters must possess a refuge permit.

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13. Section 32.42 *Minnesota* is amended by revising introductory text of paragraph B., of Rice Lake National Wildlife Refuge; by adding in alphabetical order Windom Wetland Management District to read as follows:

§ 32.42 Minnesota.

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Rice Lake National Wildlife Refuge

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B. Upland Game Hunting. Hunters may hunt ruffed grouse, spruce grouse, grey and fox squirrels, cottontail rabbit and snowshoe hare on designated areas of the refuge.

Windom Wetland Management District

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds throughout the district except that hunters may not hunt on the Worthington Waterfowl Production Area in Nobles County.

B. Upland Game Hunting. Hunters may hunt upland game throughout the district except that hunters may not hunt on the Worthington Waterfowl Production Area in Nobles County.

C. Big Game Hunting. Hunters may hunt big game throughout the district except that hunters may not hunt on the Worthington Waterfowl Production Area in Nobles County.

D. Sport Fishing. Fishermen may fish throughout the district.

14. Section 32.43 *Mississippi* is amended by revising paragraph D., of Dahomey National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

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Dahomey National Wildlife Refuge

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D. Sport Fishing. Fishermen may fish on designated areas of the refuge subject to the following condition:

1. Fishermen must possess a refuge permit.

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15. Section 32.44 *Missouri* is amended by revising paragraphs B., C., and D., of Mingo National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

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Mingo National Wildlife Refuge

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B. Upland Game Hunting. Hunters may hunt upland game on designated areas of the refuge subject to posted regulations.

C. Big Game Hunting. Hunters may hunt big game on designated areas of the refuge subject to posted regulations.

D. Sport Fishing. Fishermen may fish on designated areas of the refuge subject to posted regulations.

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16. Section 32.47 *Nevada* is amended by revising paragraph B., of Ash Meadows National Wildlife Refuge; and by revising paragraphs D.2, D.4., D.5., and D.8. of Ruby Lake National Wildlife Refuge to read as follows:

§ 32.47 Nevada.

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Ash Meadows National Wildlife Refuge

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B. Upland Game Hunting. Hunters may hunt quail, cottontail rabbits, and jackrabbits on designated areas of the refuge subject to the following conditions:

1. Hunters may hunt cottontail rabbits and jackrabbits only during the State quail hunting season.

2. Hunters must only use shotguns.

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Ruby Lake National Wildlife Refuge

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D. Sport Fishing. * * *

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2. Fishermen may only fish on dikes in the areas north of the Brown Dike and east of the Collection Ditch with the exception that you may fish by wading and from personal flotation devices (float tubes) in Unit 21.

* * * * *

4. Fishermen may annually, beginning June 15 and continuing until December 31, only use motorless boats or boats with battery powered electric motors on the South Marsh.

5. Fishermen may annually, beginning August 1 and continuing until December 31, use boats propelled with a motor or combination of motors in the aggregate, but not to exceed 10 horsepower rating, on the South Marsh.

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8. Fishermen may bank fish in the South Marsh only at Brown Dike, the Main Boat Landing, and Narciss Boat Landing.

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17. Section 32.49 *New Jersey* is amended by revising paragraph A. and adding paragraphs A.1., A.2., and A.3., of Cape May National Wildlife Refuge to read as follows:

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§ 32.49 New Jersey.

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Cape May National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl, coots, moorhens and rails, common snipe, and woodcock is permitted in designated areas of the refuge subject to State of New Jersey regulations and the following special refuge conditions:

1. All persons while hunting migratory game birds, except waterfowl, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

2. All hunting blind materials, boats, and decoys must be removed at the end of each hunting day. Permanent and pit blinds are not permitted.

3. The common snipe season on the refuge begins with the early woodcock south zone season. (The refuge common snipe season will continue through the end of the State-set common snipe season.)

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18. Section 32.50 *New Mexico* is amended by revising paragraphs A.1. and D., of Bitter Lake National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

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Bitter Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds.

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1. Hunters may hunt for migratory game birds only on Tuesdays, Thursdays, and Saturdays of each week until 1 p.m.

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D. Sport Fishing. [Reserved]

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19. Section 32.52 *North Carolina* is amended by revising paragraphs C. and D.3., of Mattamuskeet National Wildlife Refuge; and revising introductory language of paragraphs A., B., C. and D., and revising paragraphs B.1., D.1–5; and removing paragraphs B.2–4 of Pee Dee National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

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Mattamuskeet National Wildlife Refuge

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C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

D. Sport Fishing. * * *

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3. Fishermen may not dip herring (alewife).

* * * * *

Pee Dee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt mourning doves on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

B. Upland Game Hunting. Hunters may hunt quail, squirrel, rabbit, raccoon and opossum on designated areas of the refuge subject to the following condition:

1. Hunters must possess a refuge permit.

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following condition:

1. Hunters always must possess a refuge permit and a special quota permit for gun deer hunts.

D. Sport Fishing. Fishermen may fish in designated waters of the refuge subject to the following conditions:

1. Fishermen may fish with a pole and line or rod and reel from March 15 to October 15 during daylight hours only.

2. Fishermen may use boats in Andrews Pond, Beaver Ponds, and Arrowhead Lake only.

3. Fishermen may only use electric motors in refuge waters.

4. Fishermen may not possess or use of trotlines, set hooks, gigs, yo-yo's, juglines, limblines, nets, seines, fish traps, and other similar equipment on the refuge.

5. Fishermen may not possess or use minnows as bait on the refuge.

6. Fishermen may not frog or turtle on the refuge.

7. The refuge may close certain fishing areas at anytime for management purposes.

* * * * *

20. Section 32.55 *Oklahoma* is amended by revising paragraphs B. and C., of Deep Fork National Wildlife

Refuge; and by revising paragraphs A., B.1., B.2., C. and D.1.; adding paragraphs B.3, B.4., B.5. and D.4., of Sequoyah National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Deep Fork National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunters may hunt squirrels on portions of the refuge in accordance with State hunting regulations subject to the following exceptions and conditions:

1. Hunters may not hunt squirrels on the refuge during the first half of the archery deer season.

2. Hunters may use only shotguns with non-toxic shot.

3. The refuge leaflet designates parking and hunting areas.

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated portions of Deep Fork NWR subject to the following conditions:

1. Hunters must pay fees and obtain a refuge permit.

2. Hunters must not drive off designated refuge roads.

3. Each hunter entering the refuge must possess a refuge permit.

* * * * *

Sequoyah National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt waterfowl, dove, coots, rail, snipe and woodcock on designated areas of the refuge subject to the following conditions:

1. The Sequoyah National Wildlife Refuge is open during seasons, dates, and times as posted by signs and/or indicated on refuge leaflets, special regulations, permits, and maps.

2. All hunters shall possess and use, while in the field, only nontoxic shot.

3. Hunters may not build pits or permanent blinds.

4. Neither hunters nor dogs may enter closed areas to retrieve game.

5. Hunters may not hunt or shoot within 50 ft. (15.24 meters) of designated roads or parking areas.

6. Hunters may only hunt with shotguns and bows with arrows (excluding broadhead arrows).

7. Hunters must remove decoys, boats and other personal property from the refuge following each days hunt.

B. Upland Game Hunting. * * *

1. The Sequoyah National Wildlife Refuge is open during seasons, dates, and times as posted by signs and/or indicated on refuge leaflets, special regulations, permits, and maps.

2. All hunters shall possess and use, while in the field, only nontoxic shot.

3. Neither hunters nor dogs may enter closed areas to retrieve game.

4. Hunters may not shoot or hunt within 50 ft.(15.24 meters) of designated roads or parking areas.

5. Hunters may only hunt with shotguns and bows with arrows (excluding broadhead arrows).

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following conditions:

1. Hunters must pay fees and obtain a refuge permit.

2. All hunters must attend a hunter orientation briefing prior to each hunt.

D. Sport Fishing. * * *

1. The Sequoyah National Wildlife Refuge is open to fishing as specified on refuge leaflets, special regulations, permits, maps, or as posted on signs.

* * * * *

4. Fishermen may not take turtles or mussels.

* * * * *

21. Section 32.56 *Oregon* is amended by revising paragraphs B.3, of Cold Springs National Wildlife Refuge; by revising paragraph B.3. of McKay Creek National Wildlife Refuge, and by revising paragraph B.3. of Umatilla National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Cold Springs National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

McKay Creek National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

22. Section 32.57 *Pennsylvania* is amended by revising paragraphs A., B. and C., of Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt migratory game birds on designated areas of the refuge subject to the following conditions:

1. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. Hunters may hunt rabbits and squirrels on designated areas of the refuge subject to the following conditions:

1. Hunters may not use dogs for pursuit while rabbit hunting.

2. Hunters may only use shotguns for hunting squirrels and rabbits.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

4. Hunters will possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. Hunters may hunt white-tailed deer on designated areas of the refuge subject to the following conditions:

1. Hunters may only archery hunt.

2. Hunters may not hunt deer with organized deer drives by two or more hunters. A drive hereby is defined as the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.

3. Hunters must not bait deer on refuge lands.

4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Regulations Leaflet while participating in a refuge hunt.

* * * * *

23. Section 32.64 *Utah* is amended by revising paragraphs A., B. and D. of Bear River Migratory Bird Refuge to read as follows:

§ 32.64 Utah.

* * * * *

Bear River Migratory Bird Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt geese, ducks, coots, and tundra swan on designated areas of the refuge subject to the following conditions:

1. Hunters may not shoot or hunt within 100 yards (30.48 meters) of principal refuge roads (the tour route).

2. While in the field, hunters shall possess and use only nontoxic shot.

3. Hunters may not use pits or permanent blinds.

4. Airboats are permitted only in Unit 9 and in Block C of the Refuge.

5. Refuge closes two (2) hours after sunset (end of shooting hours), including parking sites. Decoys, boats, vehicles and other personal property may not be left on the refuge overnight.

6. Hunters may only park in designated parking sites.

7. Hunters who take or attempt to take tundra swans must possess a Utah State Swan Permit and may not possess or use more than 10 shells per day while hunting swans.

8. Any person entering, using or occupying the refuge for waterfowl hunting must abide by all the terms and conditions in the Refuge Hunting Brochure.

B. Upland Game Hunting. Hunters may hunt pheasants on designated areas of the refuge subject to the following conditions:

1. While in the field, hunters shall possess and use only nontoxic shot.

C. Big Game Hunting. * * *

D. Sport Fishing. Fishermen may fish on designated areas of the refuge subject to the following conditions:

1. Fishermen may fish year-round in designated areas of the Refuge.

* * * * *

24. Section 32.65 *Vermont* is amended by revising introductory text of paragraph B., and revising paragraph B.2. of Missisquoi National Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunters may hunt rabbits, ruffed grouse and squirrels on designated areas of the refuge subject to the following conditions:

* * * * *

2. Hunters may not use rifles on that portion of the refuge lying east of the *Missisquoi* River.

* * * * *

25. Section 32.66 *Virginia* is amended by revising paragraph C., of Chincoteague National Wildlife Refuge to read as follows:

* * * * *

§ 32.66 Virginia.

* * * * *

Chincoteague National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunters may hunt white-tailed deer and sika in designated areas of the refuge subject to the following conditions:

1. Hunters must possess a refuge permit.

* * * * *

26. Section 32.67 *Washington* is amended by revising paragraph A., of Ridgefield National Wildlife Refuge; and by revising paragraph B.2., of Toppenish National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Ridgefield National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunters may hunt geese, ducks, and coots on designated areas of the refuge subject to the following condition:

1. Hunting is by permit only.

* * * * *

Toppenish National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

27. Section 32.69 *Wisconsin* is amended by revising paragraphs B.1., B.2., C.4. and D., of Necedah National Wildlife Refuge; and adding Upper Mississippi River National Wildlife and Fish Refuge alphabetically to read as follows:

§ 32.69 Wisconsin.

* * * * *

Necedah National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Hunters must unload or case guns in the retrieval zone of Refuge Area 7 during the State waterfowl hunting season.

2. During the spring turkey hunting season only, persons with an unexpired State spring turkey permit in possession may enter and hunt wild turkeys in all open refuge areas.

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Refuge Areas 1, 2, 4, 5, 6 and 7 are open to deer hunting.

* * * * *

D. Sport Fishing. Fishermen may fish in designated waters of the refuge at designated times subject to the following conditions.

1. Fishermen may use non-motorized boats in Sprague-Goose Pools only when these pools are open to fishing. Fishermen may use motorized boats in Suk Cerney Pool.

* * * * *

Upper Mississippi River National Wildlife and Fish Refuge Refer to 32.32 Illinois for regulations.

28. Section 32.71 *Pacific Islands Territory* is amended by revising paragraphs D.1., D.3., D.4., removing paragraph D.5., and redesignating paragraph D.6 as paragraph D.5. of Johnson Atoll National Wildlife Refuge to read as follows:

§ 32.71 Pacific Islands Territory.

* * * * *

Johnson Atoll National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishermen may take lobsters of 3¼-inch carapace length or more in the lagoon area from September 1 through May 31, but not by spearing, traps, or the use of pry bars or related methods destructive to coral; fishermen may not take female lobsters bearing eggs at any time.

* * * * *

3. Fishermen or divers may not take fish by the use of a spear "gun", either above or below the water. Hand-propelled spears or "Hawaiian Slings" consisting of a single shaft propelled by a rubber tube are permitted for underwater fishing.

4. The public may not, by any means, collect, export or take any form of live or dead coral.

* * * * *

Dated: August 27, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22507 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 082796E]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Closure in Registration Area H

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in the Kamishak Bay District of Registration Area H (Cook Inlet). This action is necessary to prevent exceeding

the scallop total allowable catch (TAC) in this area.

EFFECTIVE DATE: 800 hrs, Alaska local time (A.l.t.), August 27, 1996, until 1159 hrs, A.l.t., July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at 50 CFR parts 600 and 679.

In accordance with § 679.62(b) the 1996 scallop TAC for the Kamishak Bay District of Registration Area H was established by the Final 1996–97 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) as 20,000 lb (9,074 kg) shucked meat.

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.62(c), that the scallop TAC for the Kamishak Bay District of Registration Area H has been reached. Therefore, NMFS is prohibiting the taking and retention of scallops in the Kamishak Bay District of Registration Area H from 800 hrs, Alaska local time (A.l.t.), August 27, 1996 through 1159 hrs, A.l.t., July 1, 1997.

Classification

This action is taken under § 679.62 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22369 Filed 8–28–96; 12:07 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 171
Tuesday, September 3, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB53

Common Crop Insurance Regulations; Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Cotton Crop Insurance Provisions. The intended effect of this action is to provide policy changes to better meet the needs of the insured and implement changes made to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business October 3, 1996 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through October 29, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.–5:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in the regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Cotton Crop Provisions." The information to be collected includes: a crop insurance acreage report, an insurance application, and continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of cotton that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues for the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, P.O. Box 2415, Ag Box 0570, U.S. Department of Agriculture, Washington, D.C. 20013–2415. Telephone (202)690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above-stated address.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome

alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured may elect to report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No.12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR Section 457.104 effective for the 1997 and succeeding crop years. The principal changes to the provisions for insuring cotton are as follows:

1. Section 1—Specify that the yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring-planted crop. Current regulations specify that the yield conversion factor cannot be applied if the land between the rows of cotton is planted to any crop. This conflicts with the definition of "skip-row" in section 1(q)(1), which allows a planting pattern of alternating rows of cotton and land planted to another crop the previous fall. Change "ASCS" to "Farm Service Agency (FSA)" to conform with the United States Department of Agriculture Reorganization Act of 1994. Amend the definition of "written agreement" to move the substantive provision to section 13.

2. Sections 2(d) (1) and (2)—Change "ASCS" to "FSA."

3. Section 2(d)(2)—Clarify unit division for non-irrigated corners of center-pivot irrigation systems.

4. Section 5—Change the cancellation and termination dates of February 15 to January 15. This change is necessary to correspond with the requirement of the Federal Crop Insurance Reform Act of 1994 that moved the sales closing dates for spring-planted crops to 30 days earlier. Those areas with the present cancellation and termination dates of February 28 and March 15 will remain the same because these dates have already been moved 30 days earlier in the 1995 crop year.

List of Subjects in 7 CFR Part 457

Cotton, Crop insurance.

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1997 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1) and 1506(p)

2. Section 457.104 is amended by revising 1(l) as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring-planted crop.

* * * * *

3. Subsection 1(q)(2) is revised to read as follows:

(q) * * *

(1) * * *

(2) Qualifies as a skip-row planting pattern as defined by the Farm Service Agency (FSA).

* * * * *

4. Subsection 1(s) is revised to read as follows:

(s) *Written agreement*—A written document that alters designated terms of a policy in accordance with section 13.

* * * * *

5. Subsection 2(d)(1) is amended by removing "ASCS" and inserting in its place "FSA."

* * * * *

6. Subsection 2(d)2 is revised to read as follows:

2. Unit Division

* * * * *

(d) * * *

(1) * * *

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to, or instead of, establishing optional units by Section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except that the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage unless separate acceptable records of production from the corners are provided indicating otherwise. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be considered part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

* * * * *

7. Section 5 is revised to read as follows:

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagon, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, Matagorda Counties, Texas.	February 28.
All other Texas counties and all other States	March 15.

* * * * *

8. Section 13 is added to read as follows:

13. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e).

(b) The application for written agreement must contain all terms of the contract between the insurance provider and the insured that will be in effect if the written agreement is not approved.

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for 1 year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for written agreement submitted after the sales closing date may be approved if, after physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on August 23, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–22320 Filed 8–30–96; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 838]

RIN 1512–AA07

Redwood Valley Viticultural Area (95R–053P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), has received a petition for the establishment of a viticultural area located within the east central interior portion of Mendocino County, California to be known as "Redwood Valley," under 27 CFR part 9. This proposal is the result of a petition submitted by Mr. Timothy R. Buckner and prepared by Mr. Buckner, Mr. Jefferson Hinchliffe, Mr. Ulysses Lolonis, and Rudolph H. Light. The petition was signed by 20 growers and winemakers in "Redwood Valley." In addition, 4 letters of support for the proposed area have been received from growers and winemakers in the proposed area. "Redwood Valley" is an unincorporated rural community in Mendocino County of northwestern California with approximately 6,000 people spread out over about 35 square miles. It is currently the home of seven wineries that produce varietal wines distributed around the world. There are 66 vineyard owners farming 2,371 acres of wine grapes.

DATES: Written comments must be received by October 18, 1996.

ADDRESS: Send written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, PO Box 50221, Washington, DC 20091–0221 (Attn: . Notice No. 838). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650

Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF has received a petition from Mr. Timothy Buckner proposing to establish a new viticultural area located within the east central interior portion of Mendocino County, California to be known as "Redwood Valley," under 27 CFR part 9.

There are currently seven wineries in "Redwood Valley." The dates they were bonded are as follows: Fetzer (1968), Weibel (1972), Frey (1980), Lolonis (1983), Elizabeth (1987), Konrad (1989), and Gabrielli (1991).

Evidence That the Name of the Proposed Area Is Locally or Nationally Known

The petitioner states that, "Redwood Valley" is an unincorporated rural community in Mendocino County of northwestern California with approximately 6,000 people spread out over about 35 square miles. According to the petitioner, it is currently the home of seven wineries that produce premium to ultra premium varietal wines distributed around the world. According to the petitioner, "Redwood Valley" grapes are used in vineyard designated wines made by wineries throughout the region. The petitioner further states that, there are 66 vineyard owners farming 2,371 acres of wine grapes in Redwood Valley. There are 855 acres of white winegrapes (36%) and 1,516 (64%) planted in red varieties in Redwood Valley according to the petitioner.

History and Tradition

According to the petitioner, the area has been known by the proposed viticultural area name for over a century. The petitioner states that some early settlers arrived in "Redwood Valley" in the mid 1850s, and that there was a thriving community by 1900. The petitioner states that from as early as the 1870s, grape growing and wine making were an important part of the economy and culture of "Redwood Valley." According to the petitioner, one of the earliest published mentions of "Redwood Valley" as a grape growing region was in a March 7, 1913, article in the Ukiah *Republican Press* (1885–1954), which described "Redwood Valley" as "* * * admirably adapted for the grape and fruit land in Northern California."

In the March 17, 1913 issue of the Ukiah *Dispatch Democrat*, the petitioner found the following article: *The Redwood Valley Improvement Club Accomplishing Splendid Results By Concentrated Action and Progressiveness*, which stated as follows: "This is perhaps at the present time one of the most important industries of the valley, with hundreds of acres in vineyards and several important wineries in active operation, and because of the statements made * * * by Professor Bioletti, the grape question has taken on a renewed activity. Redwood Valley grapes are exceptionally rich in sugar and are in demand because they raise the quality of wine. Much of the valley's product is contracted for over a term of years * * * (g)rapes produce splendidly on the bench lands of the valley, and because of the sunshine and climatic conditions mature and produce the ideal wine grapes."

In the Santa Rosa *Press Democrat*, the petitioner found an article printed on July 31, 1949, and titled, "It's Howdy Neighbor To Calpella, Redwood Valley," by Mike Pardee. According to the petitioner, this article states that, "[a]pproximately half of Mendocino County's present grape acreage of 7,700 acres is in Redwood Valley. Farm Advisor R.D. Foote of Mendocino County said. "The Valley thus raised about half of the county's 17,000 tons produced last year (1948) * * * Redwood Valley for years has been one of Mendocino County's most important farming sections. Its 314 families for the most part farmers * * *. They'll tell you that those grapes make the finest wines in the region'."

Name Evidence

"Redwood Valley" is recognized by the United States Postal Service as a distinct community with the Zip Code 95470. The U.S.G.S. uses the name "Redwood Valley" Quadrangle on its 1:24,000 topographic map. The petitioner states that the valley has a domestic and irrigation water supplier known as "Redwood Valley County Water District." The petitioner points out that a number of entities give the area its sense of identity, including the "Redwood Valley Grange," "Redwood Valley School," "Redwood Valley Shopping Center," "Redwood Valley Industrial Park." According to the petitioner, businesses and organizations using the "Redwood Valley" name include a large vineyard, a gravel plant, 2 churches, a Pomo Indian Rancheria, and so on. The petitioner provided photocopies of stationery and business cards from six private and three public entities that use the name "Redwood Valley" in their title. According to the petitioner, each of the entities are currently in business and located in "Redwood Valley."

Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area Are as Specified in the Petition

According to the petitioner, the proposed "Redwood Valley" viticultural area boundaries are roughly the watershed that forms the headwaters of the west fork of the Russian River, including Forsythe Creek. Starting at the northern tip of the valley and following the ridge tops, the area widens out to the south as far as State Highway 20.

Across Highway 20 to the south is the community of Calpella. Highway 20 provides a distinct southern boundary for the proposed viticultural area. The petitioner states that Calpella has a different zip code, water district, school, etc. than Redwood Valley. Furthermore, according to the petitioner, the soils and climate of Calpella occupy a transition zone between Ukiah and "Redwood Valley."

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish the Viticultural Features of the Proposed Area From Surrounding Areas

Topography

According to the petitioner, the geography of the area sets it apart from surrounding areas in several respects. The petitioner states that, "Redwood Valley" is clearly defined by the ridges of the coastal mountain range that surrounds it and that the Valley floor slopes gently up in elevation from around 750′ to 900′ above sea level. The petitioner states that the mountain ridges rise steeply from the valley floor to over 3,350′ elevation. The petitioner states that most of the grapes are grown at an elevation between 750′ and 1,500′ above sea level. At the south end of the valley the foothills close in from the east and west to form a narrowed throat through which the Russian River flows south. This narrowing is also where Highway 20 crosses the valley and the river to intersect with Highway 101. The petitioner states that this combination of landforms provides a natural set of boundaries for the proposed viticultural area. These features combine in several ways to produce growing conditions which distinguish the proposed area from surrounding areas, according to the petitioner. The petition contends that the soils, as well as the micro, meso, and macro climates are all factors that distinguish the proposed viticultural area from surrounding areas.

Soils

According to the petitioner, while all of the specific soil series that are found in "Redwood Valley" also exist in the surrounding areas, the proportions of the soils in "Redwood Valley" distinguish it from the surrounding areas. The petitioner states that, *The Wine Regions of America*, a book written by John J. Baxevanis in 1992, gives the following description of the Redwood Valley area. "*Redwood Valley*, the northernmost of the string of Russian River Valleys, lies (eight) miles north of Ukiah and Lake Mendocino on a series of higher terraces. Representing the birthplace of Mendocino winemaking, it is the home of some of the county's largest wineries. With more than 40 percent of the county's acreage, it is the most important of all the producing regions in the two county region [Lake and Mendocino]. A region II area, it produces above-average quality Zinfandel, Cabernet Sauvignon, Chardonnay, Petite Sirah, and Sauvignon Blanc. One of its elements of celebrity is the considerable quantity of Manzanita soil." (pg. 295). The petitioner was unable to ascertain the origin of the term "Manzanita soil." However, he states that, "Redwood Valley does contain the largest deposit of the famous Redvine soil in the region and perhaps it is this to which Baxevanis refers."

According to the petitioner, the soils in the proposed area have several unique features as determined by the U.S.D.A. Soil Conservation Service (SCS).

The 1991 *Soil Survey of Mendocino County, Eastern Part, and Trinity County, Southwestern Part, California,* was used extensively by the petitioner to determine the identity and areas of soils for comparison. Whereas all of the specific soil series that are found in "Redwood Valley" occur in the surrounding area, it is the proportions in which they appear in "Redwood Valley" that are unique.

The petitioner states that "Redwood Valley" has by far the largest deposit of Redvine Series soil (#184–186 SCS Survey) in the area. According to the petitioner, nearly one quarter of the proposed viticultural area's plantable acreage is composed of soils of the Redvine Series. Potter Valley Viticultural Area to the east has no Redvine Series soils. The petitioner contends that the Calpella/Ukiah area to the south of "Redwood Valley" has a few small and isolated pockets of Redvine soils but their combined area amounts to less than 10% of the area covered by Redvine Series soils in "Redwood Valley."

Another soil series that stands out, according to the petitioner, is the Pinole Gravelly Loam (#178–180 SCS Survey), which also occurs in the Potter Valley and Ukiah areas, but is a much smaller component of the areas' overall composition. According to the petitioner, "Redwood Valley" has three times as much Pinole Gravelly Loam as either of these other two areas. The petitioner states that this soil type makes up nearly a third of "Redwood Valley's" growing area.

The petitioner states that the Redvine and Pinole Gravelly Loam soil series comprise over half of the vineyard acreage of "Redwood Valley," and that the rest are an amalgam of six other types: Feliz, Pinnobie, Yokayo, Russian, Talmage, and Yokayo/Pinole/Pinobie. According to the petitioner, these last six general types (plus traces of a few more types) evidence themselves in the neighboring areas in varying proportion, but all play a larger role elsewhere than they do in "Redwood Valley."

The petitioner provided a table illustrating the proportions of soil types in the "Redwood Valley" area compared with the Ukian/Calpella area. These figures were derived from SCS maps and soil descriptions, and were measured with a Compensating Polar Planimeter. The table indicates that, while "Redwood Valley" contains most of the same soil types as the Ukia Valley, such soils are present in different quantities in the respective areas.

Climate

One local winemaker, Jefferson Hinchliffe of Gabrielli Winery stated as follows about the way "Redwood Valley's" unique climate and soils manifest themselves in the wine: "I have been making wines from the many districts of Mendocino County for (t)en years. During that period I have developed a sense of what distinguishes the wines of Redwood Valley * * *. The wines in general are of higher acidity and later maturity than of Ukiah Valley. The typical picking schedule for a given variety would begin with the Hopland-Sanel area, followed by Ukiah-Calpella, and then Redwood Valley. Comparisons with Potter Valley are based on fewer varieties since Potter Valley is planted mainly to early ripening Pinot and Chardonnay. Anderson Valley north of Boonville ripens later than Redwood Valley * * * Acidity, color (especially in Pinot Noir), and phenolic content are higher in Redwood Valley than in adjacent regions. Higher temperatures in general lower phenolic content, color, and acidity * * *. Late ripening varieties can have difficulty ripening in Redwood Valley. Cabernet in general is able to tolerate the rain associated with the late season, but more fragile varieties such as Petite Sirah, Carignane, and Sangiovese can rot before ripening in heavier soils when bearing large crops. Conservative farming can produce stellar examples of these varieties * * *."

Another wine maker, Jed Steele, of Steele Wines submitted a letter of support for the petition, in which he stated as follows. "[T]he REDWOOD VALLEY of Mendocino County is an

excellent and singular grape growing region, certainly worthy of receiving a separate viticultural district designation * * *. It appears that REDWOOD VALLEY'S particular climate allows for attaining many of the positive quality factors found in grapes grown in the cooler regions of Mendocino (Anderson Valley, etc.) as well as giving harvests that allow for more consistent maturity found in the more interior valleys (Potter Valley, etc.) of this county."

In addition, the February 15, 1993 issue of *The Wine Spectator*, page 11, contains an article entitled "California's Redwood Valley Moves Out of the Shadows," by Robyn Bullard, which states as follows. "Wineries such as Fetzer, Weibel, and Frey have been in Redwood Valley for years, but now four more wineries have cropped up. The region boasts good soil and operating costs that are cheaper than other areas in Northern California * * * Costs aside, Redwood Valley vineyards have long yielded quality grapes * * * Compared to the hot Ukiah Valley, Redwood Valley is much cooler. The area rarely gets fog, but the terrain and location allow ocean breezes—the same winds that cool Anderson Valley."

According to the petitioner, there are a number of factors that make "Redwood Valley" climatically distinct. The petitioner provided a table listing the major agricultural areas of Mendocino County and their respective climatic region and number of degree days, as reflected in the SCS *Soil Survey*, 1991, pg. 4. Degree day figures for Anderson Valley were unavailable. The table indicates that "Redwood Valley" has 2,914 degree days and is the only Region II Climate in Mendocino County, factors that the petitioner states are significant. In support of this assertion, the petitioner cites the grape growing textbook *General Viticulture*, 1974, by Winkler et al., which he states contains the following excerpt: "Region II.—An area of great importance. The valleys can produce most of the premium-quality and good standard white and red table wines of California. The less productive slopes and hillsides vineyards cannot compete in growing grapes for standard wines, because of lower yield, but, nevertheless, can produce favorable yields of fine wines" (pgs. 66–67).

The petitioner states that, "(s)ince November of 1987, Light Vineyard of Redwood Valley (Latitude 39 degrees 18.32', Longitude 123 degrees 12.46', elevation 800') has maintained a U.S. Weather Bureau standard weather station including the following instruments: maximum/minimum thermometer, Belfort Recording Hygrothermograph, Belfort Recording Pyranograph, Totalizing Anemometer, Evaporation Pan, and Rain Gauge. Readings are taken daily, and data are transmitted monthly to the California Irrigation Management Information Service in Sacramento."

According to the petitioner, records from this station show that, in the most recent eight year period, the "Redwood Valley" received 22% more rainfall than the Ukiah Valley. The petitioner provided a table comparing the monthly totals for rainfall in "Redwood Valley" and Ukiah, for the eight year period for which they have maintained records. The table and charts were prepared from data gathered from the Light Vineyard Weather station which meets U.S. Weather Bureau standards. According to these records, the average total monthly rainfall in Ukiah Valley was 32.48 inches during the period of July through June compared to an average total of 39.62 inches for "Redwood Valley" during the same period. The petitioner also provided a graph comparing the annual rainfall values for "Redwood Valley" and Ukiah Valley averaged over a six year period. The graph indicates that the precipitation values for "Redwood Valley" were consistently higher than those for Ukia Valley over the six year period measured.

According to the petitioner, "Redwood Valley's" temperatures are several degrees lower in daily lows than Ukiah Valley. The petitioner states that, "(t)his accounts for the lower growing degree day totals in Redwood Valley and its placement in Region II. So, although Redwood Valley may reach daily high temperatures similar to the Ukiah area, because of cooler nights there remains a longer morning cool period. The petitioner also provided a chart comparing monthly average temperatures for the two areas averaged over a six year period.

This chart supports the petitioner's contentions regarding average maximum and minimum temperatures.

Proposed Boundaries

The proposed "Redwood Valley" viticultural area is located in east central Mendocino County, California. The proposed boundaries of the viticultural area can be found on four U.S. Geological Survey Quadrangle Maps labeled, "Redwood Valley, Calif." 1960, photorevised 1975, "Ukiah, Calif." 1958, photorevised 1975, "Laughlin Range, Calif." 1991 and, "Orr Springs, California, provisional edition" 1991. All are 7.5 minute series maps. It should be noted that the entire eastern boundary of the proposed "Redwood Valley" viticultural area abuts the western boundary of the Potter Valley viticultural area.

Public Participation—Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½"×11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas

merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this executive order.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9. to read as follows:

* * * * *

§ 9 Redwood Valley.

(a) *Name.* The name of the viticultural area described in this section is "Redwood Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Redwood Valley viticultural area are four Quadrangle 7.5 minute series 1:24,000 scale U.S.G.S. topographical maps. They are titled:

(1) "Redwood Valley, Calif." 1960, photorevised 1975.

(2) "Ukiah, Calif." 1958, photorevised 1975.

(3) "Laughlin Range, Calif." 1991.

(4) "Orr Springs, California, provisional edition" 1991.

(c) *Boundary.* The Redwood Valley viticultural area is located in the east central interior portion of Mendocino County, California. The boundaries of the Redwood Valley viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) The beginning point is the intersection of State Highway 20 with the eastern boundary of Section 13, T16N/R12W located in the extreme northeast portion of the U.S.G.S. map, "Ukiah, Calif.";

(2) Then north along the east boundary line of Sections 12 and 1 to the northeast corner of Section 1, T16N/R12W on the U.S.G.S. map, "Redwood Valley, Calif.";

(3) Then west along the northern boundary line of Section 1 to the northwest corner of Section 1, T16N/R12W;

(4) Then north along the east boundary line of sections 35, 26, 23, 14, 11, and 2 to the northeast corner of Section 2, T17N/R12W;

(5) Then west along the northern boundary of Sections 2, 3, 4, 5, and 6 to the northwest corner of Section 6, T17N/R12W;

(6) Then 10 degrees southwest cutting diagonally across Sections 1, 12, 13, 24, 25, and 36 to a point at the northwest corner of Section 1, T16N/R13W on the U.S.G.S. map, "Laughlin, Range, Calif.";

(7) Then south along the western boundary line of Sections 1 and 12 to the southwest corner of Section 12, T16N/R13W;

(8) Then 13 degrees southeast across Sections 13, 18, and 17 to the intersection of State Highway 20 and U.S. Highway 101, T16N/R12W on the U.S.G.S. map, Ukiah, Calif.";

(9) Then easterly along a line following State Highway 20 back to the beginning point at the eastern boundary of Section 13, T16N/R12W located in the extreme northeast portion of the U.S.G.S. map "Ukiah, Calif."

Dated: August 23, 1996.

John W. Magaw,

Director.

[FR Doc. 96–22346 Filed 8–30–96; 8:45 am]

BILLING CODE 4810–31–P

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207–AA38

Tolls for Use of Canal; Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rulemaking; request for comments; notice of hearing.

SUMMARY: The Panama Canal Commission (PCC) proposes increasing the general toll rates for the Canal and applying certain rules of measurement for on-deck container capacity.

Current toll rates will not produce revenues sufficient to cover costs of operations and maintenance and PCC's capital program for plant replacement, expansion and modernization. For FYs 1996–1998 alone, the toll deficiencies projected are $2.2, $34.5 and $69.7 million, respectively. To address this, the PCC here proposes a two-phase toll-rate increase—8.2 percent in FY 1997 and 7.5 percent in FY 1998—coupled with an amendment to apply rules of measurement to on-deck container capacity as well as the volume of the vessel itself. If for any reason rules of measurement are not applied as proposed here, the general toll-rate increase will be adjusted to 8.7 and 7.9 percent, respectively.

The proposed increases comply with the statutory requirement that tolls be set at rates that produce revenues sufficient to cover Canal costs of operation and maintenance, including capital for plant replacement, expansion and improvements, and working capital.

PCC anticipates that, in FYs 1996–1998 alone, it will experience, in the aggregate, a significant deficit resulting from increased traffic demands on capacity and the resultant capital program. To meet this challenge, PCC's Board of Directors approved management's recommendation to increase and accelerate the capital program to ensure a Canal operating capacity that meets future traffic demands and an acceptable long-term quality of transit service. More specifically, the PCC's capital program for FYs 1996–1998 totals $248 million; an additional $228 million is programmed for FYs 1999–2000. This capital program will augment and advance the implementation of many modernization and improvement programs in response to projected customer requirements.

The maximum general toll rate increases that could result from this proposal are 8.7 percent, effective January 1, 1997, and 7.9 percent,

effective January 1, 1998. However, if Canal measurement rules are adopted so as to apply to on-deck container capacity, the general toll rate increases will be 8.2 percent and 7.5 percent, respectively.

In 1994, PCC completely revised the Rules for Measurement of Vessels for the Canal in 35 CFR Part 135. This change simplified PCC's measurement procedures and brought measurement rules at the Canal in line with the worldwide standard of tonnage measurement. These new rules are referred to collectively as PC/UMS.

This proposal will allow PCC to charge its customers more equitably for revenue producing capacity. Specifically, the adjustments proposed here include in the PC/UMS Net Tonnage a portion of the volume of the maximum capacity of containers carried on or above the upper deck (VMC). The proposed rule authorizes PCC to determine which ships qualify for the assessment and to calculate their VMC. The VMC multiplied by an appropriate factor, described below, produces the portion to be included in the PC/UMS Net Tonnage.

This notice also announces the availability from PCC of an analysis showing the basis and justification for the proposed changes, solicits written data, views, or arguments from interested parties, and sets the time and place for two public hearings, one in the United States and one in Panama.

DATES: Written comments and requests to present oral testimony must be received on or before September 25, 1996; public hearings will be held on October 8, 1996, in Washington, DC; and in Panama, Republic of Panama on October 10, 1996.

ADDRESSES: Comments and requests to testify at the hearings in Panama City, Panama and in Washington, DC may be mailed to: John A. Mills, Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402, Telephone: (202) 634–6441, Fax: (202) 634–6439, Internet E-Mail: PanCanalWO@AOL.COM; or the Office of Financial Management, Panama Canal Commission, Balboa Heights, Republic of Panama (Telephone: 011–507–272–3194, Fax: 011–507–272–3040).

For the first time, the PCC will be holding two hearings on the same toll-rate/measurement-rule proposal. Those hearings will be held at the ANA HOTEL, Ballroom I, 2401 M Street, NW, Washington, DC, at 8:00 a.m.; and at MIRAFLORES VISITOR'S PAVILION THEATER, Building 6–A, Miraflores Locks, Republic of Panama (accessible from Gaillard Highway), at 9:00 a.m. Oral presentations should be limited to 20 minutes. Regulations governing the content of the notice of appearance or intention to present supplementary data at the hearing appear at 35 CFR 70.8 and 70.10.

FOR FURTHER INFORMATION CONTACT: John A. Mills at the above address, (telephone: (202) 634–6441). Copies of PCC's analysis showing the detailed basis and justification for the proposed changes are available from PCC (at the above addresses).

SUPPLEMENTARY INFORMATION: Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover as nearly as practicable all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, as well as to provide capital for plant replacement, expansion and improvements, and working capital.

Toll rates were last increased on October 1, 1992. The 1992 rate increase was adequate to recover operating costs and capital expenditures through FY 1995. However, record-breaking traffic levels are rapidly approaching the Canal's existing operating capacity, and have caused the PCC to re-evaluate its financial requirements to meet its longstanding commitment to quality customer service which includes an average 24-hour Canal Waters Time (CWT). Average CWT in FY 1995 rose to 28.2 hours and has increased further during the first ten months of FY 1996 to 32.6 hours. Unless major improvements to increase Canal capacity are completed, CWT cannot be meaningfully improved as Canal traffic continues to grow and strain the existing operating capacity.

PCC will increase Canal capacity by implementing a number of modernization and improvement projects, including the acceleration of the Gaillard Cut widening project, augmentation of the tugboat fleet, design and procurement of additional locomotives, modernization of the vessel traffic management system, hydraulic conversion of miter gates and rising stem valves moving machinery, and automation of locks machinery controls. As a result, at present toll rates, total operating expenses and capital expenditure requirements are estimated to exceed revenues by $2.2 million in FY 1996, $34.5 million in FY 1997, and $69.7 million in FY 1998. This necessitates an increase in the general toll rate. As noted above, a detailed written analysis is available further explaining the basis and justification for the changes.

The 1994 revision of the Rules for Measurement of Vessels was designed to simplify the measurement procedures in effect at the Canal and to bring those rules in line with the worldwide standard of tonnage measurement contained in the 1969 International Convention of Tonnage Measurement of Ships. Those rules, which are currently in effect and which are referred to collectively as the Panama Canal/Universal Measurement System (or PC/UMS), presently do not include in the calculation of a ship's earning capacity any open spaces available for the carriage of containers on or above the main deck.

The evolution of container ships has resulted in improved design and increased capacity to permit far greater use of on-deck space. Today, 40 to 60 percent of useable capacity of modern container ships is on or above the main deck. Thus, these ships have increased their earning capacity in terms of volume, whereas their PC/UMS Net Tonnage calculation under current rules does not include this revenue-producing space. The same is true with respect to a significant number of other ships which, in addition to the bulk and other cargoes they carry below deck, also have the capacity to carry containers on and above the main deck. In other words, PCC is not currently charging equitably for full revenue producing space.

The costs of PCC's expanded capital program have prompted PCC to focus on this practice and conclude that it is inconsistent with the basic principle governing all Canal toll assessments, i.e., that tolls are to be based on net vessel tons of earning capacity. Containers carried on or above the main deck expand the earning capacity. That added capacity should therefore be taken into account in setting Canal tolls.

This proposal includes in PC/UMS Net Tonnage a portion of the volume of the capacity of containers carried on or above the main deck. The rules would authorize the PCC to determine which ships qualify for the assessment and to calculate the volume of their on-deck container capacity (VMC). The VMC would then be multiplied against an appropriate factor (designated in the amendments as "CF_1") to produce the portion to be included in PC/UMS Net Tonnage.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes procedures for proposing toll rate increases and changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR Part 70, which

also provide interested parties with instructions for participating in the process governing changes in toll rates and measurement rules.

PCC will consider and strongly encourages all interested parties to present in writing or orally at the hearings, pertinent data, views or arguments, along with other relevant information, before PCC publishes its final rules in the **Federal Register**. The final rules, as approved and published by the PCC, will be effective no earlier than 30 days from the date of their publication in the **Federal Register**.

PCC is exempt from Executive Order 12866. Accordingly, provisions of that directive do not apply to this rule. Even if the Order were applicable, the change would not constitute a "rule" as that term is defined in the Regulatory Flexibility Act [5 U.S.C. 601(2)] because it concerns "rates" and "practices relating" thereto.

Further, PCC has determined that implementation of this rule will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of the PCC certifies that these proposed regulatory changes meet the applicable standards in sections 3(a) and 3(b)(2) of Executive Order No. 12988 of February 7, 1996.

List of Subjects in 35 CFR Part 133 and 135

Measurement, Navigation, Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR parts 133 and 135 be amended as follows:

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 is revised to read as follows:

Authority: 22 U.S.C. 3791.

2. Section 133.1 is revised to read as follows (Note: Alternative versions of toll rates are shown in this proposed rule):

§ 133.1 Rates of Toll.

The following rates of toll shall be paid by vessels using the Panama Canal to become effective January 1, 1997 and January 1, 1998:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, per PC/UMS Net Ton that is, the Net Tonnage determined in accordance with part 135 of this chapter:

Effective date	With amendment		Without Amendment	
	Percent	Toll rate	Percent	Toll rate
1/1/97	8.2	$2.39	8.7	$2.40
1/1/98	7.5	2.57	7.9	$2.59

(b) On vessels in ballast without passengers or cargo, per PC/UMS Net Ton.

Effective date	With amendment		Without amendment	
	Percent	Toll rate	Percent	Toll rate
1/1/97	8.2	$1.90	8.7	$1.91
1/1/98	7.5	2.04	7.9	2.06

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, per ton of displacement:

Effective date	With amendment		Without amendment	
	Percent	Toll rate	Percent	Toll rate
1/1/97	8.2	$1.33	8.7	$1.34
1/1/98	7.5	1.43	7.9	1.45

PART 135—RULES FOR MEASUREMENT OF VESSELS

1. The authority citation for part 135 is revised to read as follows:

Authority: 22 U.S.C. 3791.

2. Section 135.2 is amended by adding at the end thereof a new sentence to read as follows:

§ 135.2 Vessels generally to present tonnage certificate or be measured.

* * * In addition, these same vessels shall provide documentation, such as plans and classification certificates, with sufficient information to determine the volume of the maximum capacity of containers that may be carried on or above the upper deck, or VMC as defined in § 135.13 (a)(11).

3. In § 135.3 the heading and paragraph (a) are revised to read as follows:

§ 135.3 Determination of total volume and VMC.

(a) Determination of total volume and VMC used to calculate PC/UMS Net Tonnage shall be carried out by the Panama Canal Commission. In so doing, however, the Commission may rely upon total volume and VMC information provided by such officials as are authorized by national governments to undertake surveys and issue national tonnage certificates. Total volume and VMC information presented to the Commission shall be subject to verification, and if necessary, correction as necessary to ensure accuracy to a degree acceptable to the Commission.

* * * * *

4. Section 135.13 is amended by revising the formula for determining PC/UMS Net Tonnage in paragraph (a), by adding new paragraphs (a)(10) and (a)(11), and by revising paragraph (b) to read as follows:

§ 135.13 Determination of PC/UMS Net Tonnage.

* * * * *

(a) * * *

$$\text{PC/UMS Net Tonnage} = K_4(V)+K_5(V)+CF_1(VMC)$$

* * * * *

(10) "CF_1" = .031 for ships which the Commission determines are designed to carry containers on or above the upper deck; otherwise "CF_1" = 0. In making the foregoing determination, the Commission may consider documentation provided by such officials as are authorized by national governments to undertake surveys and issue national tonnage certificates.

(11) "VMC" = the volume (in cubic meters) of maximum capacity of the containers that can be carried on or above the upper deck. This volume may be calculated by multiplying the maximum number of containers by 29.2 m^3, or by other generally accepted methods that meet the Commission's accuracy standards. VMC will not include any container capacity that is included in "V".

(b) For vessels subject to transitional relief measures, the existing Panama Canal Net Tonnage as specified on the certificate issued by the Commission plus CF_1 (VMC) shall be the PC/UMS Net Tonnage. In such case, the formula for determining PC/UMS Net Tonnage is: PC/UMS Net Tonnage=Panama Canal Net Tonnage+CF_1(VMC).

5. Section 135.14, is amended by adding a new paragraph (d) to read as follows:

§ 135.14 Change of PC/UMS Net Tonnage.

* * * * *

(d) If the VMC of a vessel is changed due to any physical modification after the vessel's PC/UMS Net Tonnage has been determined at the Canal, the PC/UMS Net Tonnage may be revised by the Commission.

6. Section 135.15 is amended by adding new paragraphs (d) and (e), to read as follows:

§ 135.15 Calculation of volumes.

* * * * *

(d) VMC may be calculated by multiplying the maximum number of containers by 29.2 m^3, or by other generally accepted methods that meet the Commission's accuracy standards.

(e) For purposes of this part, the outside dimension of a container is 8 ft. × 8 ft. × 20 ft, or 36.25 m^3. These parameters will be used for determining the maximum above-deck container capacity.

7. Section 135.31 is amended by adding at the end thereof a new sentence to read as follows:

§ 135.31 Transitional relief measures.

* * * Vessels subject to relief measures shall provide Canal authorities with sufficient documentation, such as plans and classification certificates, for the Commission to determine the VMC.

8. Section 135.41 is amended by revising the first sentence to read as follows:

§ 135.41 Measurement of vessels when volume information is not available.

When an ITC 69 or suitable substitute and documentation for the calculation of the VMC are not presented, or when the certificate, substitute or VMC documentation presented does not meet accuracy standards acceptable to the Commission, vessels will be measured in a manner that will include the entire cubical contents of V and VMC as defined in this part. * * *

9. Section 135.42 is amended by adding a new paragraph (c) to read as follows:

§ 135.42 Measurement of vessels when tonnage cannot be otherwise ascertained.

* * * * *

(c) VMC may be determined by any accepted method or combination of methods, including but not limited to, simple geometric formulas, multiplication of a container by 29.2 m^3, or other standard mathematical formula. The on-deck container capacity of a vessel for VMC purposes will be determined by the Commission.

Dated: August 28, 1996.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 96–22398 Filed 8–30–96; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD–FRL–5604–1]

National Volatile Organic Compound Emission Standards for Architectural Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is publishing the proposed regulatory text and extending the public comment period for the proposed National Volatile Organic Emission Standards for Architectural Coatings. As initially published in the **Federal Register** on June 25, 1996 (61 FR 32729), written comments on the proposed rule were to be submitted to the EPA on or before August 30, 1996 (a 60-day public comment period). The public comment period is being extended and will end on September 30, 1996.

Two errors in the proposed rule are being corrected in this notice, and the text of the corrected proposed rule is printed herein for the convenience of interested parties.

In addition, this document discusses the definition of "small entity" used to evaluate impacts under the Regulatory Flexibility Act since it is different than the definition used by the Small Business Administration (SBA). The EPA requests comments on this alternative definition.

DATES: Written comments must be submitted by September 30, 1996.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–92–18, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–92–18. No Confidential Business Information (CBI) should be submitted through e-mail.

Docket. The proposed regulatory text and other materials related to this rulemaking, excepting any information claimed as CBI, are available for public review. This public record has been established for the rulemaking under Docket No. A–92–18 and contains supporting information used in developing the proposed rule. The docket, including paper versions of electronic comments, is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at the U.S. Environmental Protection Agency Air and Radiation Docket and Information Center (6102), Waterside Mall, Room M1500, 401 M Street, SW, Washington, DC 20460; telephone number (202) 260–7548, FAX (202) 260–4400. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Ducey, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5408.

SUPPLEMENTARY INFORMATION: On June 25, 1996, at 61 FR 32729, the EPA published the proposed National Volatile Organic Compound Emission Standards for Architectural Coatings and provided a 60-day public comment period. Requests have been received to extend the public comment period beyond the 60 days originally provided. In consideration of these requests, some of which were from small businesses that will be affected by the rule, the EPA is extending the comment period by 30 days (until September 30, 1996), in order to give all interested persons the opportunity to comment fully.

The proposed rule text is included in this notice to enhance its availability to commenters. Corrections of two errors in the previous version of the rule text are highlighted below.

The first correction is in the definition of volatile organic compound (VOC) content in Section 59.401. Both Equation 1 and Equation 2 define the term W_s. This term is used to represent "the weight of *volatiles*, in grams." In the previous version of the proposed rule, it was incorrectly defined as "the weight of VOC, in grams." The EPA's Method 24—Determination of volatile matter content, water content, density, volume solids, and weight solids of surface coatings details the standard methods used to determine the VOC content of a coating, including the volatile content of coatings.

The second correction is in Section 59.403 which details container labeling requirements. The error in the rule text

was in paragraph (a)(3), which describes the VOC content type of information that must be on the label. The incorrect portion of the proposed rule text required the label to include a statement of the VOC content in the container. This is being corrected to specify that the VOC content statement on the label shall refer to the *maximum* VOC content of the coating in the container, displayed in units of grams of VOC per liter of coating thinned to the manufacturer's recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases.

Information on the label about the maximum VOC content of the coating may not allow consumers to compare VOC contents of different coatings. This is because manufacturers would tend to specify on the label that the maximum VOC content of the coating is the applicable standard. Use of a maximum VOC content on the label that is well above the actual VOC content of the coating would allow a manufacturer to account for fluctuations in VOC content of the coating due to batch variation, as well as formulation modifications without requiring a label change to reflect the actual VOC content adjustment. The EPA requests comment on whether consumers would benefit from a VOC labeling requirement that more accurately reflects the actual VOC content of the coating. For example, the requirement could specify that the VOC content of the coating must be within 75 grams of the VOC content on the label. Alternatively, the EPA requests comment on the use of a label which would specify "this coating meets all applicable State and Federal VOC requirements."

Request for Comment on Definition of Small Business

The Regulatory Flexibility Act of 1980 requires special consideration of the effect of Federal regulations on small entities. Results of the initial regulatory flexibility analysis were summarized in Section VII.D of the June 25, 1996 **Federal Register** notice for the architectural coatings proposed rule. Docket No. A–92–18 contains the complete initial regulatory flexibility analysis.

To conduct a regulatory flexibility analysis, small entities may be defined using the criteria prescribed in the Regulatory Flexibility Act or some other criteria identified by the EPA. The SBA's general size standard definitions for Standard Industrial Classification (SIC) codes is one way to define small businesses. These size standards are presented either by number of employees or by annual receipt levels, depending on the SIC code. For SIC 2851, Paint and Allied Products, the SBA defines small business as fewer than 500 employees. Because the coating manufacturing industry is not labor intensive, a revenue value cut-off rather than a number of employees cut-off appears to be a better measure to reflect the ability of a manufacturer to devote time as well as research and development resources to meet regulation requirements. Based on input from stakeholders, the EPA has defined small manufacturers as having less than $10 million in annual architectural coating sales and less than $50 million in total annual sales of all products. Using this alternative definition, between 70 and 85 percent of the architectural coating industry would be classified as small. The EPA requests comment on use of this alternative definition to identify small entities under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 59

Environmental protection, Air pollution control, Architectural coatings, Ozone, Volatile organic compound.

Dated: August 23, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, it is proposed that 40 CFR Part 59 be added consisting of subpart D to read as follows:

PART 59—NATIONAL VOLATILE ORGANIC COMPOUND EMISSION STANDARDS FOR CONSUMER AND COMMERCIAL PRODUCTS

Subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings

Secs.

59.400 Applicability and designation of source.
59.401 Definitions.
59.402 Standards.
59.403 Container labeling requirements.
59.404 Test methods.
59.405 Recordkeeping requirements.
59.406 Reporting requirements.
59.407 Variances.

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings

§ 59.400 Applicability and designation of source.

(a) The provisions of this subpart apply to architectural coatings manufactured or imported on or after April 1, 1997 for sale or distribution in the United States.

(b) The provisions of this subpart apply to each manufacturer or importer of architectural coatings that sells or distributes these coatings in the United States.

(c) The provisions of this subpart do not apply to architectural coatings meeting the requirements in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), or (c)(5) of this section.

(1) Coatings that are manufactured exclusively for sale or distribution outside the United States.

(2) Coatings that are manufactured or imported prior to April 1, 1997.

(3) Coatings that are sold in nonrefillable aerosol containers.

(4) Coatings that are collected and redistributed at community-based paint exchanges.

(5) Coatings that are sold in containers with a volume of one liter or less.

§ 59.401 Definitions.

Administrator means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or his or her authorized representative.

Antenna coating means a coating formulated and recommended for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

Anti-fouling coating means a coating formulated and recommended for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms, including, but not limited to, coatings registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) and nontoxic foul-release coatings.

Anti-graffiti coating means a clear or opaque high performance coating specifically labeled as an anti-graffiti coating and formulated and recommended for application to interior and exterior walls, doors, partitions, fences, signs, and murals to deter adhesion of graffiti and to resist repeated scrubbing and exposure to harsh solvents, cleansers, or scouring agents used to remove graffiti.

Appurtenance means any accessory to a stationary structure, whether installed or detached at the proximate site of installation, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lamp posts;

partitions; pipes and piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks, and fire escapes; and window screens.

Architectural coating means a coating recommended for field application to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs.

Architectural coating importer or *importer* means a company, group, or individual that brings architectural coatings from a location outside the United States into the United States for sale or distribution within the United States.

Architectural coating manufacturer or *manufacturer* means a company, group, or individual that produces, packages, or repackages architectural coatings for sale or distribution in the United States. A company, group, or individual that repackages architectural coatings as part of a community-based paint exchange, and does not produce, package, or repackage any other architectural coatings for sale or distribution in the United States, is excluded from this definition.

Below-ground wood preservative means a coating that is formulated and recommended to protect below-ground wood from decay or insect attack and that is registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, *et seq.*).

Bituminous coating and mastic means a coating or mastic formulated and recommended for roofing, pavement sealing, or waterproofing that incorporates bitumens. Bitumens are black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits of asphalt or as residues from the distillation of crude petroleum or coal.

Bond breaker means a coating formulated and recommended for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

Chalkboard resurfacer means a coating formulated and recommended for application to chalkboards to restore a suitable surface for writing with chalk.

Clear coating means a coating that produces a dry film that allows light to pass through, so that the substrate may be distinctly seen.

Clear and semitransparent wood preservative means a coating that is formulated and recommended to protect exposed wood from decay or insect attack, registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, *et seq.*), that may change the color of the substrate but does not conceal the substrate.

Coating means a protective, decorative, or functional film applied to a surface. Such materials include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, and temporary protective coatings.

Coating product means all coatings produced by one manufacturer or imported by one importer that have the same formulation and are defined within the same architectural coating category listed in Table 1 of this subpart.

Colorant means a concentrated pigment dispersion of water, solvent, and/or binder that is added to an architectural coating in a paint store or on-site to produce the desired color.

Community-based paint exchange means a program in which members of the general public may drop off and pick up usable post-consumer architectural coatings in order to reduce household hazardous waste.

Concrete curing compound means a coating formulated and recommended for application to freshly placed concrete to retard the evaporation of water.

Concrete protective coating means a high build coating formulated and recommended for application in a single coat over concrete, plaster, or other cementitious surfaces. These coatings are formulated to be primerless, one-coat systems that can be applied over form oils and/or uncured concrete. These coatings prevent spalling of concrete in freezing temperatures by providing long-term protection from water and chloride ion intrusion.

Container means the individual receptacle that holds the coating for storage and distribution.

Dry fog coating means a coating formulated and recommended only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

Exempt compounds means specific organic compounds that are not considered volatile organic compounds due to negligible photochemical reactivity. The exempt compounds are specified in § 51.100(s) of this chapter.

Exterior coating means an architectural coating formulated and recommended for use in conditions exposed to the weather.

Extreme high durability coating means an air dry fluoropolymer-based coating that is formulated and recommended for the protection of architectural subsections and that meets the weathering requirements of American Architectural Manufacturer's Association specification 605.2 Section 7.9.

Fire-retardant/resistive coating means a clear or opaque coating formulated and recommended to retard ignition and flame spread, or to delay melting or structural weakening due to high heat that has been fire tested and rated by a certified laboratory for use in bringing buildings and construction materials into compliance with Federal, State, and local building code requirements.

Flat coating means a coating that is not defined under any other definition in this section and that registers gloss less than 15 on an 85-degree meter or less than 5 on a 60-degree meter according to American Society for Testing and Materials Method D523, Standard Test Method for Specular Gloss.

Floor coating means a coating that is formulated and recommended for application to flooring including, but not limited to, decks, porches, and steps and that has a high degree of abrasion resistance.

Flow coating means a coating that is used by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

Form release compound means a coating formulated and recommended for application to a concrete form to prevent the freshly placed concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

Graphic arts coating or *sign paint* means a coating formulated and recommended for hand-application either on site or in shop by artists using brush or roller techniques to indoor or outdoor signs (excluding structural components) and murals including lettering enamels, poster colors, copy blockers, and bulletin enamels.

Heat reactive coating means a high performance phenolic-based coating requiring a minimum temperature of 191 °C (375 °F) to 204 °C (400 °F) to obtain complete polymerization or cure. These coatings are formulated and recommended for commercial and industrial use to protect substrates from degradation and maintain product purity in which one or more of the following extreme conditions exist:

(1) Continuous or repeated immersion exposure to 90 to 98 percent sulfuric acid or oleum;

(2) Continuous or repeated immersion exposure to strong organic solvents;

(3) Continuous or repeated immersion exposure to petroleum processing at high temperatures and pressures; and

(4) Continuous or repeated immersion exposure to food or pharmaceutical products which may or may not require high temperature sterilization.

High temperature coating means a high performance coating formulated and recommended for application to substrates exposed continuously or intermittently to temperatures above 260 °C (500 °F).

Impacted immersion coating means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage caused by floating ice or debris.

Importer (See the definition for architectural coating importer.)

Industrial maintenance coatings mean high performance architectural coatings including primers, sealers, undercoaters, and intermediate and topcoats formulated for substrates in industrial, commercial, or institutional situations that are exposed to one or more of the following extreme environmental conditions:

(1) Immersion in water, wastewater, or chemical solutions (aqueous and nonaqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(2) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;

(3) Repeated exposure to temperatures above 120 °C (250 °F);

(4) Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or

(5) Exterior exposure of metal structures and structural components.

Interior clear wood sealer means a low viscosity coating formulated and recommended for sealing and preparing porous wood by penetrating the wood and creating a uniform smooth substrate for a finish coat of paint or varnish.

Interior coating means an architectural coating formulated and recommended for use in conditions not exposed to natural weathering.

Label means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any architectural coating container for purposes of branding, identifying, or giving information with respect to the product, use of the product, or contents of the container.

Lacquer means a clear or pigmented wood finish including clear lacquer sanding sealers formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

Low solids stain means a stain containing one pound or less of solids per gallon (0.12 kilograms per liter) of coating material and for which at least half of the volatile component is water.

Low solids wood preservative means a wood preservative containing one pound or less of solids per gallon (0.12 kilograms per liter) of coating material and for which at least half of the volatile component is water.

Manufacturer (See the definition for architectural coating manufacturer.)

Magnesite cement coating means a coating formulated and recommended for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

Mastic texture coating means a coating formulated and recommended to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (0.010 inches; dry film thickness).

Metallic pigmented coating means a nonbituminous coating containing at least 0.4 pounds of metallic pigment per gallon (0.048 kilograms per liter) of coating including, but not limited to, zinc pigment.

Multi-colored coating means a coating that is packaged in a single container and exhibits more than one color when applied.

Nonferrous ornamental metal lacquers and surface protectant means a clear coating formulated and recommended for application to ornamental architectural metal substrates (bronze, stainless steel, copper, brass, and anodized aluminum) to prevent oxidation, corrosion, and surface degradation.

Nonflat coating means a coating that is not defined under any other definition in this section and that registers a gloss of 15 or greater on an 85-degree meter or five or greater on a 60-degree meter according to American Society for Testing and Materials Method D523, Standard Test Method for Specular Gloss.

Nuclear coating means any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (American Society for Testing and Materials Method D4082), relatively easy to decontaminate (American Society for Testing and Materials Method D4256), and resistant to various chemicals to which the coatings are likely to be exposed (American Society for Testing and Materials Method D3912). General protective requirements are outlined by the Department of Energy (formerly U.S. Atomic Energy Commission *Regulatory Guide 1.54*).

Opaque coating means a coating producing a dry film that does not allow light to pass through, so that the substrate is concealed from view.

Opaque stain means a coating labeled as a stain and formulated and recommended to hide the surface but not conceal its texture.

Opaque wood preservative means a coating formulated and recommended to protect wood from decay or insect attack that is not classified as a clear, semitransparent, or below-ground wood preservative and that is registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

Pigmented means containing finely ground insoluble powder dispersed to give a characteristic color.

Post-consumer coating means an architectural coating that has previously been purchased or distributed but not applied, and reenters the marketplace to be purchased by or distributed to a consumer. Post-consumer coatings include, but are not limited to, coatings collected during community-based household hazardous waste collection programs for repackaging or blending with virgin coating materials.

Pretreatment wash primer means a primer that contains a minimum of 0.5 percent acid, by weight, that is applied directly to bare metal surfaces in thin films to provide corrosion resistance and to promote adhesion of subsequent topcoats.

Primer means a coating formulated and recommended for application to substrates to provide a firm bond between the substrate and subsequent coats.

Quick-dry enamel means a nonflat coating that has the following characteristics:

(1) Is capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27 °C (60 and 80 °F);

(2) When tested in accordance with American Society for Testing Materials Method D1640, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature, sets to touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

(3) Has a dried film gloss of 70 or above on a 60 degree meter.

Quick-dry primer, sealer, and undercoater means a primer, sealer, or undercoater that is dry to the touch in one-half hour and can be recoated in two hours when tested in accordance with American Society for Testing and Materials Method D1640, Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature.

Recycled coating means an architectural coating that contains some portion of post-consumer coating. Recycled architectural coatings include, but are not limited to, post-consumer coatings that have been repackaged or blended with virgin coating materials.

Repackaging means to transfer an architectural coating from one container to another container for sale or distribution in the final container.

Repair and maintenance thermoplastic coating means an industrial maintenance coating that has vinyl or chlorinated rubber as a primary resin and is recommended solely for the repair of existing vinyl or chlorinated rubber coatings without the full removal of the existing coating system.

Roof coating means a nonbituminous coating or a nonthermoplastic rubber coating formulated and recommended for application to exterior roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and reflecting ultraviolet radiation.

Rust preventive coating means a coating formulated and recommended for use in preventing the corrosion of ferrous metal surfaces in residential situations.

Sales means the introduction of a coating product into U.S. commerce.

Sanding sealer means a clear wood coating formulated and recommended for application to bare wood to seal the wood and to provide a coat that can be sanded to create a smooth surface. A sanding sealer that also meets the definition of a lacquer sanding sealer shall not be considered in this category, but shall be considered to be in the lacquer category.

Sealer means a coating formulated and recommended for application to substrates for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate; to prevent harm to subsequent coatings by materials in the substrate; to block stains, odors, or efflorescence; to seal fire, smoke, or water damage; or to condition chalky surfaces.

Semitransparent stain means a coating formulated and recommended for application to substrates to impart a desired color without completely concealing the surface or its natural texture or grain pattern.

Shellac means a clear or pigmented coating formulated with natural resins soluble in alcohol (including, but not limited to, the resinous secretions of the lac beetle, *Laciffer lacca*). Shellacs dry by evaporation without chemical reaction and provide a quick-drying, solid protective film that may be used for blocking stains.

Swimming pool coating means a coating formulated and recommended to coat the interior of swimming pools and to resist swimming pool chemicals.

Thermoplastic rubber coating and mastic means a coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments, and modifying resins.

Tint Base means a coating to which colorant is added to produce a desired color.

Traffic marking coating means a coating formulated and recommended for marking and striping streets, highways, and other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, and airport runways.

Undercoater means a coating formulated and recommended to provide a smooth surface for subsequent coats.

Varnish means a clear or semi-transparent coating (excluding lacquers and shellacs) formulated to provide a durable, solid, protective film. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

Volatile organic compound or *VOC* means any organic compound that participates in atmospheric photochemical reactions, that is, any organic compound other than those which the Administrator designates as having negligible photochemical reactivity. For a list of compounds that the Administrator has designated as having negligible photochemical reactivity, also referred to as exempt compounds, refer to 40 CFR 51.100.

VOC content. (1) VOC content means the amount of VOC, in grams, in one liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases. Grams of VOC per liter of material means the weight of VOC per volume of material and is calculated by using equation 1 unless the coating meets the definition of a "low solids" stain or wood preservative, in which case, Equation 2 is used.

$$VOC = \frac{(W_s - W_w - W_{ec})}{(V_m - V_w - V_{ec})} \quad \text{(Equation 1)}$$

where:

VOC = grams of VOC per liter of coating
W_s = weight of volatiles, in grams
W_w = weight of water, in grams
W_{ec} = weight of exempt compounds, in grams
V_m = volume of coating, in liters
V_w = volume of water, in liters
V_{ec} = volume of exempt compounds, in liters

(2) Equation 2 may be used to calculate the VOC content of the coating for low solids stains and wood preservatives:

$$VOC_{ls} = \frac{(W_s - W_w - W_{ec})}{(V_m)} \quad \text{(Equation 2)}$$

where:

VOC_{ls} = the VOC content of a low solids coating in grams of VOC per liter of coating
W_s = weight of volatiles, in grams
W_w = weight of water, in grams
W_{ec} = weight of exempt compounds, in grams
V_m = volume of coating, in liters

Waterproofing (treatment) sealer means a coating that is applied to porous substrates for the primary purpose of preventing the penetration of water.

§ 59.402 Standards.

(a) Effective April 1, 1997 and thereafter, manufacturers and importers of architectural coatings subject to this subpart shall limit the VOC content of each architectural coating manufactured or imported to the VOC levels in Table 1, except as provided in § 59.407.

TABLE 1.—ARCHITECTURAL COATING VOLATILE ORGANIC COMPOUND CONTENT LEVELS

[Unless otherwise specified, units are in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases]

Coating category	Effective April 1, 1997
Antenna coatings	530
Anti-fouling coatings	400
Anti-graffiti coatings	600
Bituminous coatings and mastics	500
Bond breakers	600
Chalkboard resurfacers	450
Concrete curing compounds	350
Concrete protective coatings	400
Dry fog coatings	400
Extreme high durability coatings	800
Fire-retardant/resistive coatings:	
Clear	850
Opaque	450
Flat coatings:	
Exterior	250
Interior	250
Floor coatings	400
Flow coatings	650
Form release compounds	450
Graphic arts coatings (sign paints)	500
Heat reactive coatings	420
High temperature coatings	650
Impacted immersion coatings	780
Industrial maintenance coatings	450
Lacquers (including lacquer sanding sealers)	680
Magnesite cement coatings	600
Mastic texture coatings	300
Metallic pigmented coatings	500
Multi-colored coatings	580
Nonferrous ornamental metal lacquers and surface protectants	870
Nonflat coatings:	
Exterior	380
Interior	380
Nuclear coatings	420
Pretreatment wash primers	780
Primers and undercoaters	350
Quick-dry coatings:	
Enamels	450
Primers, sealers, and undercoaters	450
Repair and maintenance thermoplastic coatings	650
Roof coatings	250
Rust preventative coatings	400
Sanding sealers (other than lacquer sanding sealers)	550
Sealers (including interior clear wood sealers)	400
Shellacs:	
Clear	650
Opaque	550
Stains:	
Clear and semitransparent	550
Opaque	350
Low solids	[a]120
Swimming pool coatings	600
Thermoplastic rubber coatings and mastics	550
Traffic marking coatings	150
Varnishes	450
Waterproofing sealers and treatments:	
Clear	600
Opaque	400
Wood preservatives:	
Below ground wood preservatives	550
Clear and semitransparent	550
Opaque	350
Low solids	[a]120

[a] Units are grams of VOC per liter of coating, including water and exempt compounds, thinned to the maximum thinning recommended by the manufacturer.

(b) If anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or importer or anyone acting on their behalf, any representation is made that the coating may be suitable for use in more than one of the coating categories listed in Table 1, then the most restrictive VOC level shall apply. This requirement does not apply to the representation of the following coatings in paragraphs (b)(1) through (b)(7).

(1) High temperature coatings that may also be suitable for use as metallic pigmented coatings shall only be subject to the VOC level in Table 1 for high temperature coatings.

(2) Lacquer sanding sealers that may also be suitable for use as sanding sealers in conjunction with clear lacquer topcoats shall only be subject to the VOC level in Table 1 for lacquer sanding sealers.

(3) Metallic pigmented coatings that may also be suitable for use as roof coatings, industrial maintenance coatings, or primers shall only be subject to the VOC level in Table 1 for metallic pigmented coatings.

(4) Shellacs that may also be suitable for use as primers, sealers, or undercoaters shall only be subject to the VOC level in Table 1 for shellacs.

(5) Fire-retardant/resistive coatings that may be suitable for use as any other architectural coating shall only be subject to the VOC level in Table 1 for fire-retardant/resistive coatings.

(6) Pretreatment wash primers that may be suitable for use as primers shall only be subject to the VOC level in Table 1 for pretreatment wash primers.

(7) Industrial maintenance coatings that may also be suitable for use as primers shall only be subject to the VOC level in Table 1 for industrial maintenance coatings.

(c) For the purpose of determining compliance with the standards of this subpart, the VOC content shall be determined using the procedure in § 59.404. With the exception of low solids stains and low solids wood preservatives, the VOC content shall be determined in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases. For low solids stains and low solids wood preservatives, the VOC content shall be determined in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation including the volume of any water and exempt compounds.

(d) For the purpose of determining compliance with the requirements of this subpart, manufacturers or importers of recycled architectural coatings may calculate an adjusted VOC content to account for the post-consumer coating content. The adjusted VOC content shall be determined using Equation 3.

$$\text{Adjusted VOC} = \text{Actual VOC} - \left[\text{Actual VOC}\left[\frac{\text{Percent Post-consumer Coating}}{100}\right]\right] \quad \text{(Equation 3)}$$

Where:

Adjusted VOC = The VOC content assigned to the recycled coating for purposes of complying with provisions of this section (grams VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases.)

Actual VOC = The VOC content of the coating product as determined using the procedure in § 59.404.

Percent Post-consumer Coating = The volume percent of the coating product that is post-consumer architectural coating as determined in paragraph (e) of this section.

(e) Manufacturers or importers of recycled architectural coatings calculating an adjusted VOC as described in § 59.402(d) of this section shall determine the post-consumer architectural coating content of each recycled coating using Equation 4.

$$\text{Percent Post-consumer} = \frac{\text{Volume of Post-consumer Coating}}{(\text{Volume of Post-consumer Coating} + \text{Volume of Virgin Materials})} \times 100 \text{ Percent} \quad \text{(Equation 4)}$$

Where:

Percent Post-consumer = The volume percent of a recycled coating that is post-consumer coating materials.

Volume of Post-consumer Coating = The volume of post-consumer coating materials per gallon used in the production of a recycled coating.

Volume of Virgin Materials = The volume of virgin coating materials per gallon used in the production of a recycled coating.

§ 59.403 Container labeling requirements.

(a) Manufacturers and importers subject to the provisions of this subpart shall include the information listed in paragraphs (a)(1) through (a)(3) of this section on the label or lid of all architectural coatings subject to this subpart that are manufactured or imported on or after April 1, 1997.

(1) The date of manufacture of the contents or a code indicating the date of manufacture.

(2) A statement of the manufacturer's recommendation regarding thinning of the coating. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation shall specify that the coating is to be applied without thinning.

(3) The maximum VOC content of the coating in the container, including any recommended thinning. With the exception of low solids stains and low solids wood preservatives, this VOC content shall be displayed in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases. For low solids stains and low solids wood preservatives, the VOC content shall be displayed in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation including the volume of any water and exempt compounds.

(b) Manufacturers and importers of industrial maintenance coatings manufactured or imported on or after April 1, 1997 that are subject to the provisions of this subpart shall display on the label or lid of the container the phrase "NOT INTENDED FOR RESIDENTIAL USE."

(c) Manufacturers or importers of recycled coatings complying with the requirements of § 59.402(d) shall indicate the post-consumer coating content by including the following statement on the container label or lid: "CONTAINS NOT LESS THAN X PERCENT BY VOLUME POST-CONSUMER COATING," where "X" is replaced by the percent, by volume, of post-consumer architectural coating.

§ 59.404 Test methods.

(a) Except as provided in paragraph (b) of this section, the EPA's Reference Method 24 of Appendix A of Part 60 of this chapter shall be used to determine compliance with the VOC levels in Table 1 of § 59.402. Analysis of waterborne coating VOC content determined by Reference Method 24 shall be adjusted as described in Section 4.4 of Reference Method 24.

(b) The Administrator may approve, on a case-by-case basis, alternative methods of determining the VOC content of coatings if they are demonstrated to the Administrator's satisfaction to provide results equivalent to or more accurate than those obtained using Reference Method 24.

§ 59.405 Recordkeeping requirements.

(a) Each manufacturer or importer complying with the recycled coating provisions in § 59.402(d) shall maintain records in written or electronic form of the information specified in paragraphs (a)(1) through (a)(6) of this section for a period of three years.

(1) The minimum percent post-consumer coating content for each recycled coating.

(2) Calculations of the adjusted VOC as determined using Equation 3 in § 59.402(d) for each recycled coating.

(3) The volume of coating received for recycling.

(4) The volume of coating received that was unusable.

(5) The volume of virgin materials.

(6) The volume of the final recycled coating manufactured or imported.

§ 59.406 Reporting requirements.

(a) All reports in this section shall be submitted to the appropriate address as listed in § 60.4 of subpart A of this chapter.

(b) Each manufacturer and importer of coatings subject to the provisions of this subpart shall submit an initial report no later than April 1, 1997 or within 180 days after the date of the first architectural coating manufactured or imported. The initial report shall include the information in paragraphs (b)(1) and (b)(2) of this section.

(1) The name and mailing address of the manufacturer or importer.

(2) A list of the categories from Table 1 in § 59.402 in which coating products are manufactured or imported.

(c) Manufacturers or importers of recycled architectural coatings shall report to the Administrator the information in paragraphs (c)(1) through (c)(5) of this section for each coating product for which the adjusted VOC content, as determined in § 59.402(d) is to be used to demonstrate compliance. This report shall be submitted by February 1 of the calendar year following the year in which the coating(s) is (are) introduced into commerce.

(1) The volume of coating received for recycling.

(2) The volume of coating received that was unusable.

(3) The volume of virgin materials used.

(4) The minimum post-consumer content of the coatings manufactured or imported.

(5) The volume of the final recycled coating manufactured or imported.

(d) In cases where codes are used to represent the date of manufacture, as provided in § 59.403(a)(1), the manufacturer or importer shall submit an explanation of each date code to the Administrator by April 1, 1997 or within 30 days after becoming subject to the requirements of this subpart. This report may be included with the initial compliance report. An explanation of any new date codes shall be filed with the Administrator no later than 30 days after the new data code is first introduced into commerce.

§ 59.407 Variances.

(a) Any manufacturer or importer of architectural coatings subject to the provisions of this subpart that cannot comply with the requirements of this subpart because of extraordinary circumstances beyond reasonable control may apply in writing to the Administrator for a variance. The variance application shall include the information specified in paragraphs (a)(1) through (a)(3).

(1) The specific grounds upon which the variance is sought.

(2) The proposed date(s) by which compliance with the provisions of this subpart will be achieved.

(3) A compliance report reasonably detailing the method(s) by which compliance will be achieved.

(b) Upon receipt of a variance application containing the information required in paragraph (a) of this section, the Administrator will hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in this subpart is necessary and will be permitted. A hearing will be initiated no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing will be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing will also be published in the **Federal Register** and sent to every person who requests such notice, not less than 30 days prior to the hearing. At least 30 days prior to the hearing, the variance application will be made available to the public for inspection. Information submitted to the Administrator by a variance applicant may be claimed as confidential. The Administrator may consider such confidential information in reaching a decision on a variance application. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing and their testimony will be considered.

(c) The Administrator may grant a variance if the criteria specified in paragraphs (c)(1) through (c)(3) are met.

(1) If there are reasons beyond the reasonable control of the applicant that complying with the provisions of this subpart would result in economic hardship,

(2) The public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions or air contaminants that would result from issuing the variance, and

(3) The compliance report proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(d) Any variance order will specify a final compliance date by which the requirements of this subpart will be achieved. Any variance order will contain a condition that specifies increments of progress necessary to assure timely compliance..

(e) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.

(f) Upon the application of any party, the Administrator may review, and for good cause, modify, or revoke a variance from requirements of this subpart after holding a public hearing in accordance with the provisions of paragraph (b) of this section.

[FR Doc. 96–22266 Filed 8–30–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 64, 70, and 71

[FRL–5605–1]

Compliance Assurance Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to notice of public meeting; notice of document availability.

SUMMARY: The August 13, 1996, notice concerning the availability of the draft Compliance Assurance Monitoring (CAM) rule and the notice of public meeting (61 FR 41991) included a statement that the draft documents concerning required impact analyses would be available no later than August 30, 1996. This was a misstatement and the documents will not be available until the CAM rule is promulgated.

FOR FURTHER INFORMATION CONTACT: Peter Westlin, Office of Air Quality Planning and Standards, (919) 541–1058.

Dated: August 29, 1996.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 96–22505 Filed 8–30–96; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 300

[FRL–5557–7]

National Oil and Hazardous Substances Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Seldon Clark Property from the General Electric/Shepherd Farm Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA), Region IV, announces its intent to delete the Seldon Clark Property from the General Electric/Shepherd Farm Superfund Site from the National Priorities List (NPL), and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated by EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of North Carolina Department of Environment, Health, and Natural Resources have determined that the Seldon Clark Property poses no significant threat to public health or the environment and therefore, CERCLA remedial measures are not appropriate.

DATES: Comments must be submitted by October 3, 1996.

ADDRESSES: Comments may be mailed to: Giezelle S. Bennett, Remedial Project Manager, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, GA 30365.

Comprehensive information on this Site is available through the EPA Region IV public docket, which is located at EPA's Region IV office and is available for viewing by appointment from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region IV docket office.

The address for the regional docket office is Ms. Debbie Jourdan, U.S. EPA, Region IV, 345 Courtland St, NE, Atlanta, GA 30365. The telephone number is 404–347–5059, ext 6217.

Background information from the regional public docket is also available for viewing at the Site information repository located at the Henderson County Public Library, 301 N. Washington Street, Hendersonville, NC 28792. The telephone number is 704–697–4725. The library is open Monday through Thursday from 9:00 a.m. to 9:00 p.m., and on Friday and Saturday from 9:00 a.m. until 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Please contact either Giezelle Bennett or Diane Barrett, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365, 1–800–435–9233 ext. 2065 or 2073.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice is to announce EPA's intent to delete the Seldon Clark Property portion of the General Electric/Shepherd Farm Superfund Site from the NPL. It also serves to request public comments on the deletion proposal. EPA will accept comments on this proposed action for deletion for thirty days after publication of this document in the **Federal Register**.

EPA identifies sites that appear to present a significant risk to public health, welfare, or environment and maintains the NPL as the list of these sites. Sites on the NPL qualify for remedial responses financed by the Hazardous Substances Response Trust Fund (Fund). As described in § 300.425 (e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with Section 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, considers whether the site has met any of the following criteria for site deletion:

(i) Responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate response actions under CERCLA have been implemented and no further response actions are deemed necessary; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, no remedial action is appropriate.

III. Deletion Procedures

EPA Region IV will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Seldon Clark Property portion of the General Electric/Shepherd Farm Site: (1) EPA Region IV has recommended deletion and has prepared the relevant documents. (2) The State has concurred with the decision to delete the Seldon Clark property. (3) Concurrent with this announcement, a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials announcing the commencement of a 30-day public comment period on the Notice of Intent to Delete. (4) EPA has made all relevant documents available for public review at the information repository and in the Regional Office.

Partial deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist EPA management. As mentioned earlier, Section 300.425(e)(30) of the NCP states that deletion of a site from the NPL does not preclude eligibility of the site for future Fund-financed response actions.

For the partial deletion of this Site, EPA will accept and evaluate public comments on this Notice of Intent to Delete before finalizing the decision. The Agency will prepare a Responsiveness Summary to address any significant public comments

received during the comment period. The deletion is finalized after the Regional Administrator places a Notice of Deletion in the **Federal Register**.

The NPL will reflect any deletions in the next publication of the final rule. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region IV.

IV. Basis for Intended Seldon Clark Property Deletion

The following Site summary provides the Agency's rationale for the proposed intent for partial deletion of this Site from the NPL.

The General Electric/Shepherd Farm Site consists of three non-contiguous disposal areas in East Flat Rock, Henderson County, North Carolina. These disposal areas (subsites) are known as the GE property, the Shepherd Farm property, and the Seldon Clark property.

The GE Subsite is approximately 50 acres in size and located at the southeastern corner of Spartanburg Highway and Tabor Road. The Shepherd Farm Subsite is approximately 31 acres in size and is located on Roper Road, approximately 2500 feet southwest of the GE Subsite.

The Seldon Clark Subsite is 1 acre in size and is located at the northeastern corner of Spartanburg Highway and Tabor Road, directly across the street from the GE Subsite. Geographically, the center of the subsite is located at 35°16′35″N latitude and 82°25′00″W longitude according to the Hendersonville, North Carolina, USGS 7.5 minute topographic map.

From 1955 to present, the GE facility has been used to develop, design, and manufacture complete high intensity discharge luminaire systems, which consists of the assembly of optical components, ballasts, mountings, and high mast lowering devices. From about 1955 until 1975, GE also manufactured "constant-current" transformers at this facility. These transformers were filled with PCB-containing oil, which were delivered to the facility in railroad tank cars.

Waste streams generated by GE's facility from the beginning of plant operations have included construction wastes, buffing compound, epoxy compound, phenolic residue, paint sludges, PCB capacitors, solvents, transformer oil, electrical insulators/capacitors, waste acids, dye cast mold released hydrocarbons, heavy petroleum greases, and varnish residues. These waste streams contain many VOCs, heavy metals, acids, and PCBs.

The GE facility contains three landfills, two unlined wastewater treatment ponds, 26 acres of landspreading plots, and 18 areas where underground storage tanks were located. From approximately 1957 to 1970, GE wastes were also intermittently deposited at the Shepherd Farm property where it was dumped, burned, and bulldozed in an approximate 3-acre area onsite. The Spring Haven community was later constructed over a portion of this dumping area.

During the 1960s and early 1970s, GE wastes were also dumped in an approximate 0.3 acre ravine on the Seldon Clark property. GE reported that the property was used for the disposal of construction rubble only, but according to Mr. Clark, the ravine was also filled in with drums of aluminum paint and drums of cleaning fluid from dye-casting machinery. Old transformers are also reported to have been deposited in the ravine. However, none of these items were found during EPA's investigation.

In 1988 and 1989, EPA conducted Site Inspections and investigations at all three Subsites. The Site was proposed for inclusion on the NPL in February 1992 and finalized on the NPL in December 1994.

EPA performed a Remedial Investigation of all three subsites in September 1994. This Notice of Intent to Delete (NOID) is limited to the Seldon Clark Subsite.

Five soil samples were collected from two soil borings on the Seldon Clark Subsite. Semi-volatile organic compounds, pesticides and PCBs were found, but all were at concentrations under the soil cleanup levels (SCLs) determined in the feasibility study. One surface water/sediment sample was taken downgradient of this Subsite. Again, semi-volatiles and PCBs were found at concentrations below the SCLs. One groundwater sample was collected downgradient of the suspected fill area. This sample contained one semi-volatile compound at trace concentrations.

A Record of Decision (ROD) for the Site was signed on September 29, 1995. The ROD recommended soil and groundwater remediation at the GE Subsite and the Shepherd Farm Subsite, but not for the Seldon Clark Subsite.

The EPA community relations activities at the Site included a public meeting on August 3, 1995 to present to the public the Agency's Proposed Plan for remediation at the Site. Public comments received during the 60-day public comment period were considered and addressed in the Responsiveness Summary. This document was included as an appendix to the ROD.

There are no institutional controls for this Subsite. A five-year review will not be conducted at the Subsite, due to the fact that soil and groundwater contaminants are below the SCLs. The concentrations found in the samples taken do not present a current or future threat to public health or the environment.

EPA, with concurrence of the State of North Carolina, has determined that all appropriate Fund-financed responses under CERCLA for the Seldon Clark Subsite have been completed, and that no further activities by responsible parties are appropriate. Therefore, EPA proposes to delete this Subsite from the NPL.

Dated: June 11, 1996.

A. Stanley Meiburg,

Deputy Regional Administrator, Region IV, U.S. Environmental Protection Agency.

[FR Doc. 96–21823 Filed 8–30–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 87–75]

Provision of Aeronautical Services via the Inmarsat System

ACTION: Proposed rule; extension of comment date.

SUMMARY: BT North America, Inc. (BTNA) requested a 45-day extension of time to file comments in response to the *Further Notice of Proposed Rulemaking*. BTNA pointed to the numerous changes in the marketplace since the initial petition was filed and the *Further Notice* was issued, and the need for an in-depth analysis of these changes. The Commission found that the public interest would be served by allowing additional time for an in-depth analysis of the technical and policy issues presented in the *Further Notice*. The Commission granted BTNA's extension request and the comment deadline is extended to September 3, 1996.

DATES: Comments are due on or before September 3, 1996. Replies are due on or before October 4, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Olga Madruga-Forti at (202) 418–0749.

SUPPLEMENTARY INFORMATION: The following is a summary of Public Notice, Report No. SPB–52 (released June 26, 1996):

The Commission issued a Further Notice of Proposed Rulemaking in *Provision of Aeronautical Services via*

the Inmarsat System, FCC 96–161, 61 FR 30579 (June 17, 1996). Based on the publication date, comments are due July 17, 1996 and replies are due August 16, 1996.

BT North America, Inc. (BTNA) has filed a Motion for an Extension of Time to extend the comment date an additional 45 days, or 75 days from publication in the **Federal Register**. BTNA states that more time is needed for parties to provide in-depth comments based on changes in the industry over the past seven years and to conduct the complex technical analysis required to address the Commission's tentative conclusions.

Accordingly, pursuant to section 0.261 of the Commission's rules on delegations of authority, 47 CFR 0.261, and for good cause shown, BTNA's motion is granted.

Comments may be filed on or before September 3, 1996. Replies may be filed on or before October 4, 1996.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–22198 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–U

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47 CFR Parts 1 and 25

[IB Docket No. 95–59]

Preemption of Local Zoning Regulation of Satellite Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Commission issued a *Report and Order and Further Notice of Proposed Rulemaking* adopting rules implementing Section 207 of the Telecommunications Act of 1996 relating to nonfederal restrictions on installation of satellite and certain other antennas. The Public Notice seeks to refresh the record and requests comments on any remaining issues pertaining to satellite earth station antennas and local restrictions.

DATES: Comments are due on or before September 27, 1996. Replies are due on or before October 28, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara at (202) 418–0749.

SUPPLEMENTARY INFORMATION: The following is a summary of Public Notice, Report No. SPB–55 (released August 7, 1996):

On August 6, 1996, the Commission released a Report and Order and Further Notice of Proposed Rulemaking adopting rules implementing Section 207 of the Telecommunications Act with respect to nonfederal restrictions on installation of satellite and certain other antennas used to receive video programming. (*See* FCC 96–328 (released August 6, 1996)) In this order, the Commission stated that the International Bureau would issue this public notice soliciting comment to update and refresh the record with respect to issues that are not addressed in the August 6 order but which remain pending in IB Docket 95–59. Accordingly, we seek comment on any issues pertaining to satellite earth station antennas and local restrictions that remain in light of the Commission's August 6 action.

Comments filed in response to this public notice should be filed on or before September 27, 1996 and replies should be filed on or before October 28, 1996. Copies of relevant documents can be obtained in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. For further information contact Rosalee Chiara, 202–418–0749.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22199 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 22

[WT Docket No. 96–162; GEN Docket No. 90–314; FCC 96–319]

Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Notice of Proposed Rulemaking* (*NPRM*), in WT Docket No. 96–162 and GEN Docket No. 90–314, the Commission initiates a comprehensive review of the existing regulatory framework of structural and nonstructural safeguards for local exchange carrier (LEC) provision of commercial mobile radio services (CMRS). The Commission proposes to eliminate the current requirement that Bell Operating Companies (BOCs) must provide cellular service through a structurally separate corporation. The Commission also proposes rule changes necessary to implement those provisions of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) ("the 1996 Act") that govern the joint marketing of CMRS and landline services, protections for customer proprietary network information (CPNI) and network information disclosure. The Commission's objective is to implement further the mandate of the Omnibus Budget Reconciliation Act of 1993, Title VI, Sections 6002(b)(2)(A), 6002(b)(2)(B), Public Law No. 103–66, 107 Stat. 312, 392 (1993) to treat similar commercial mobile radio services similarly by placing all CMRS licensees under a uniform set of nonstructural safeguards.

DATES: Comments must be filed on or before October 3, 1996. Reply comments are to be filed on or before October 24, 1996. Comment of the Office of Management and Budget on the information collections contained herein are due November 4, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Halprin or Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking* in WT Docket No. 96–162 and GEN Docket No. 90–314, adopted on July 25, 1996 and released on August 13, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 575, 2000 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. Synopsis of the *Notice of Proposed Rulemaking*:

I. Background

1. Currently, there are distinct rules for BOC provision of cellular service versus non-BOC provision of personal communications service (PCS) and other commercial mobile radio services. BOCs are required to provide cellular service through structurally separate subsidiary corporations, whereas all other LECs may provide cellular service on an unseparated basis. Moreover, the Commission has declined to impose these restrictions on LEC, including BOC, provision of other CMRS, such as PCS and specialized mobile radio (SMR)

service. The BOCs have sought relief from the Commission's cellular structural separation rule on the grounds of changed circumstances and competitive necessity. The BOCs' challenges to the continued viability of the restrictions contained in Section 22.903 are premised on two points: (1) the Commission's existing interconnection rules and accounting safeguards are sufficient to protect against anti-competitive behavior by the BOCs; and (2) LECs that are not BOCs are treated differently with respect to the provision of cellular service and other commercial mobile radio services. In response, parties opposing grant of such waivers have cited the broader competitive implications of the individual waiver requests, and have generally disputed the BOC claims.

2. A central purpose of the 1996 Act is to provide open access to local and other telecommunications markets in order to encourage entry by new competitors. Structural separation was originally imposed over a decade ago on certain LECs to prevent them from leveraging their market power in the local exchange market into other competitive markets, such as cellular service. The Commission notes that CMRS providers will, in the very near term, need to enter into a series of agreements with local exchange incumbents for such things as the mutual exchange of traffic, the location of equipment, and the sharing of network functionalities. Effective competitive safeguards, where a demonstrated need exists, should permit competitors to construct their networks, implement their business plans, and begin offering service to customers with the reasonable assurance that the incumbent LEC will not be able to extend its market power into the critical new PCS market.

3. The original version of Section 22.903 was adopted as Section 22.901 in 1981 when the Commission amended Part 22 of the rules to provide for the authorization of two cellular licensees in each market—one wireline carrier and one non-wireline carrier. To preserve the competitive potential of the non-wireline cellular provider, the Commission required the wireline carrier to provide its cellular service through a structurally separate subsidiary, *i.e.*, an independent corporation with separate officers, separate books of account, and separate operating, marketing, installation and maintenance personnel, and also prohibited cellular licensees affiliated with landline LECs from owning facilities for the provision of landline telephone service. The structural separation requirement was intended to protect against improper cross-subsidization, to assure equitable interconnection arrangements, and to make the detection of anti-competitive conduct somewhat easier for regulatory authorities.

4. In 1982, the Commission revised Section 22.901 to apply only to AT&T and its affiliates. In 1983, the Commission further amended Section 22.901 in response to the breakup of AT&T under the divestiture agreement entered into by AT&T and the Department of Justice. A final revision of the cellular structural separation requirement occurred in the *Part 22 Rewrite Order*, Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92–115, *Report and Order*, 59 FR 59502 (November 17, 1994) (*Part 22 Rewrite Order*), *reconsideration pending*, as part of the Commission's comprehensive reorganization of Part 22 of the rules. In the *Part 22 Rewrite Order*, Section 22.903 was amended to incorporate the provisions of former Section 22.901. Section 22.903 essentially consists of two parts: (1) the requirement that BOCs provide cellular service through a separate corporation; and (2) a series of restrictions on the operation of that separate affiliate, including restrictions on use and ownership of landline transmission facilities and requirements for the independent operation of the separate cellular affiliate through separate books of account, officers, operating, marketing, installation and maintenance personnel and utilization of separate computer and transmission facilities in the provision of cellular service. In addition, Section 22.903(d) requires that all transactions between the BOC and the cellular subsidiary or its affiliates be reduced to writing and that a copy of all agreements (other than interconnection agreements) between such entities be kept available for inspection upon reasonable request by the Commission. It also requires that all affiliate contracts with respect to cellular/landline interconnection be filed with the Commission; however, this requirement does not apply to any transaction governed by an effective state or federal tariff. Section 22.903(e) prohibits BOCs from engaging in the sale or promotion of cellular service on behalf of the separate corporation. This prohibition does not extend to joint advertising or promotions by the landline carrier and its cellular affiliate. Finally, the rule prohibits the provision of BOC customer proprietary network information (CPNI) to the cellular affiliate, unless such CPNI is made publicly available on the same terms and conditions.

5. *The Broadband PCS Order*, Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, *Second Report and Order*, 58 FR 59174 (November 8, 1993), *reconsideration*, 59 FR 32830 (June 24, 1994) (*Broadband PCS Order*), found that allowing LECs to participate in PCS may produce significant economies of scope between wireline and PCS networks, and that these economies will promote more rapid development of PCS, yield a broader range of PCS services at lower costs to consumers, and should encourage LECs to develop their wireline architectures to better accommodate all PCS. Thus, the Commission declined to impose structural separation for PCS providers affiliated with LECs, including the BOCs, reasoning that such limitations on the ability of LECs to take advantage of their potential economies of scope would jeopardize, if not eliminate, the public interest benefits sought through LEC participation in PCS. The Commission further concluded that the cellular-PCS cross-ownership policies are adequate to ensure that LECs do not behave in an anti-competitive manner. The Commission also found that existing accounting safeguards were sufficient to protect against cross-subsidization by the LECs, and therefore declined to impose additional cost-accounting rules on LECs that provide PCS service. The *Broadband PCS Order* also reiterated that commencement of PCS operations by LECs would be contingent on the LEC implementing an acceptable non-structural safeguards plan.

6. In the *CMRS Second Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93–252, *Second Report and Order*, 59 FR 18493 (April 19, 1994) *CMRS Second Report and Order*), *reconsideration pending*, the Commission concluded that all LECs with CMRS affiliates must follow the same accounting safeguards that were adopted in the PCS proceeding. The Commission observed that these safeguards were necessary to prevent cost-shifting from the non-regulated affiliates to the regulated ratebase of the LEC. The Commission also noted that the commenters had raised important issues with respect to the potential role of accounting, structural separation, and other safeguards in promoting a competitive CMRS environment. At that time, due to inadequate notice and an insufficient record, the Commission

again declined to address the issue of removing the cellular structural separations requirements for the BOCs.

7. In *Cincinnati Bell, Cincinnati Bell Telephone v. FCC*, 69 F.3d 752 (6th Cir. 1995) (*Cincinnati Bell*), the Sixth Circuit Court of Appeals found that the Commission had failed to adequately justify its retention of Section 22.903, in light of the Commission's decision permitting LECs (including BOCs) to provide PCS under nonstructural safeguards. The court stated that the Commission was required to give a reasoned explanation of its disparate treatment of the Bell companies. Accordingly, the court remanded the matter to the Commission with instructions to promptly conduct an inquiry into whether the structural separation requirement continues to serve as a necessary regulatory restriction on BellSouth and other Bell Operating Companies. Both before and after *Cincinnati Bell*, a number of BOCs filed waiver petitions seeking varying forms of relief from the requirements of Section 22.903. The Commission has granted one such waiver (Southwestern), another has been withdrawn (BellSouth), and the remainder (US West, Bell Atlantic) are pending.

8. The 1996 Act contains specific requirements that BOCs be permitted to enter into previously prohibited or constrained lines of business, including, *inter alia*, in-region interLATA telecommunications services, interLATA manufacturing, information, and electronic publishing services through a separate affiliate. In certain cases, this separate subsidiary requirement "sunsets" after a number of years. With respect to in-region interLATA service, these separate affiliates are under additional structural and transactional constraints including the requirement that the BOC deal with the separate affiliate on an arm's length basis. Section 272(c), 47 U.S.C. § 272(c), imposes additional nondiscrimination safeguards on a BOC's dealings with its separate affiliate. With the addition of Section 601(d), Public Law 104–104, 110 Stat. 56 (1996), the 1996 Act expressly permits BOCs to market jointly and sell CMRS together with a variety of landline services. Section 222, 47 U.S.C. § 222, contains new requirements for maintaining the confidentiality of proprietary information.

II. Notice of Proposed Rulemaking

A. BOC Cellular Safeguards

In this *NPRM*, the Commission addresses one of the issues remanded by the Sixth Circuit in *Cincinnati Bell*: whether the structural separation requirement continues to serve as a necessary regulatory restriction on the BOCs. The Commission proposes a series of amendments to the rule intended to provide BOCs sufficient flexibility in serving the public, while preserving the ability to detect and correct any potential anti-competitive behavior, whether that be cost shifting, interconnection discrimination, or some other form of leveraging the BOCs' dominant position in the local exchange market. The Commission also seeks comment on whether the public interest would be better served by (1) a transitional arrangement whereby some aspects of the current structural separation requirements would be retained during an interim period; or (2) immediate replacement of Section 22.903 with the uniform streamlined safeguards proposed for in-region LEC PCS and other commercial mobile radio services.

10. One of the primary objectives underlying the Commission's adoption of structural separations was to prevent interconnection discrimination by BOCs in their relationship with affiliated and unaffiliated cellular carriers. In considering whether to retain structural separation for BOC cellular service, the Commission is taking into account whether proposed changes to the existing LEC CMRS interconnection policies either support retention of Section 22.903, or demonstrate its obsolescence. In addition, the 1996 Act contains significant new provisions with respect to interconnection. The Commission has examined LEC CMRS interconnection issues in recent dockets. In the *Interconnection Compensation NPRM*, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95–185, *Notice of Proposed Rulemaking*, 61 FR 03644 (February 1, 1996) (*Interconnection Compensation NPRM*), the Commission found that if the commercial mobile radio services are to compete directly against LEC landline services, it is important that the prices, terms and conditions of interconnection arrangements not serve to buttress LEC market power against erosion by competition. Section 251, 47 U.S.C. § 251, imposes extensive interconnection obligations on all telecommunications carriers, and particularly on LECs and incumbent LECs. Section 251(a) imposes a general duty on all telecommunications carriers (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to Section 255 or 256. The new interconnection obligations in Section 251(b) for LECs govern LEC provision of resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation for the transport and termination of traffic originating on another carrier's facilities. Section 251(c) contains additional obligations for incumbent LECs, which include, *inter alia*: (1) good faith negotiation of terms and conditions of agreements to fulfill Section 251 (b) and (c) interconnection obligations; (2) provision of interconnection with the LEC's network for transmission and routing of telephone exchange and exchange access service, at any technically feasible point, that is at least equal in quality to that provided by the LEC to itself or any affiliate or other party, on rates, terms and conditions that are just, reasonable and nondiscriminatory; (3) provision of unbundled, nondiscriminatory access to network elements to any requesting telecommunications carrier, at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory; (4) provision of public notice of changes in the information necessary for transmission and routing of services using the LEC's network or of changes that would affect interoperabililty; and (5) the duty to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the LEC, on reasonable and nondiscriminatory rates, terms and conditions, unless the LEC demonstrates to the State commission that physical collocation is not practical due to technical reasons or space limitations, in which case the LEC may provide virtual collocation. Section 252 contains procedures for negotiation, arbitration, and approval of agreements, and gives the States authority to resolve interconnection disputes arising under Sections 251 and 252. In addition, a LEC must make available to any requesting carrier, on the same terms and conditions, any interconnection, service, or network element provided under an approved agreement to which it is a party.

11. The question remanded by the Sixth Circuit is whether the structural separation requirements of Section 22.903 continue to serve as a necessary

regulatory restriction on the BOCs, or whether changed circumstances have either obviated the need for such restrictions, or rendered them contrary to the public interest. The Section 22.903 restrictions on the BOCs were imposed, as a general matter, to prevent them from leveraging their dominance into the newly created cellular service markets. The structural separation requirements were specifically intended to protect BOC local exchange ratepayers by preventing cross-subsidization of the more competitive cellular service, and to prevent discriminatory interconnection practices with respect to the non-wireline cellular provider, by requiring that the wireline and non-wireline entities exist independently from one another with respect to facilities, operations, management and other personnel. With respect to both cross-subsidization and interconnection, structural separation was believed to permit easier detection and disclosure of improper activities and to reduce unnecessary regulatory intrusion into competitive or unregulated operations.

12. The Commission has also recognized that structural separation entails costs to the carriers, in the form of lost efficiencies of scope and added costs of establishing separate facilities, operations, and personnel, as well as lost opportunities for customers to obtain integrated and innovative service packages. In the case of CPE and enhanced services, the Commission recognized costs to small business and residential customers because the BOCs, which already had existing marketing contacts with households in their service regions, could not inform them of new and desirable enhanced service offerings, such as voice messaging, through existing marketing contacts. The result, in many cases, was that such customers would never learn of the availability of such desired offerings at all. Thus, the public benefit of dissemination of advanced telephone offerings that has been the product of joint marketing of basic and enhanced services and CPE was found to outweigh the costs to competition of integrated BOC offerings, if such integrated services were provided pursuant to appropriate nonstructural safeguards.

13. The Commission referred to the economies of scope arising from the use of wireless loops and wireless tails in the broadband PCS orders, but there were no specific findings about the public benefits of integrated operations or joint marketing of BOC cellular and landline services. The only nonstructural safeguards specifically addressed in the broadband PCS proceeding were the cost accounting and allocation rules contained in Parts 32 and 64 of the Commission's rules. Thus, the nature of the nonstructural safeguards, other than the accounting rules, that might be applied in lieu of structural separations to LEC-provided CMRS has never been squarely addressed by this Commission until this *NPRM*.

14. The Commission observes that Congress has concluded as a general matter that such requirements, together with associated nondiscrimination safeguards, constitute an appropriate initial safeguard for BOC entry into the provision of certain competitive services, which can be phased out as markets become more competitive. At the same time, the Commission notes that the BOCs have been subject to structural separation requirements for their cellular operations since their inception, and that the BOCs are generally incumbents in CMRS markets, facing market entry by PCS competitors. In this *NPRM*, the Commission explores varying approaches to separate affiliate and nondiscrimination safeguards for BOC cellular operations, while proposing to give full expression to Congressional intent regarding joint marketing, customer proprietary information and network information disclosure requirements.

15. The Commission finds that although there have been vast changes in the nature of the wireless market since the 1981 imposition of the BOC cellular structural separation requirement, the market power of the BOCs in the landline local exchange and exchange access markets has remained relatively stable, and is likely to remain so until the market entry and interconnection changes authorized by the 1996 Act occur. The BOCs thus currently retain market power in the local exchange market, and therefore control over public switched network interconnection within their in-region states. The Commission seeks comment as to whether in-region application of separate affiliate and nondiscrimination requirements would continue to serve as an important regulatory check on the BOCs' market power in local exchange.

16. *Interconnection*. Prevention of interconnection discrimination was one of the central justifications for imposing structural separation. A separate cellular affiliate provides a template by which to measure the rates, terms, and conditions of these entities' interconnection agreements with their affiliated LECs. The effective enforcement of nondiscrimination rules depends on the visibility of the transactions under scrutiny. Such visibility does not depend on structural separation *per se*, but could be achieved through a more limited separate affiliate requirement, including one that permitted integrated management with affiliates providing landline services. The Commission believes that it will be particularly crucial to retain some form of separate affiliate requirement, either structural or non-structural, as the new CMRS entrants begin to negotiate their interconnection arrangements with the incumbent BOCs. The Commission seeks comment on this analysis.

17. *Price Discrimination*. The Commission is concerned that the possibility of discrimination by a BOC or incumbent LEC in favor of its own cellular operations and against other CMRS providers could be increased absent some form of separate subsidiary requirement, either structural or non-structural, and that the Commission's tasks of detecting such discrimination and determining whether it is reasonable or unreasonable would be greatly complicated. The Commission seeks comment on the value of separate affiliates in detecting and deterring pricing discrimination, and whether the degree of separation (*i.e.*, structural versus non-structural) has any effect on the value of this safeguard.

18. *Cross-subsidization*. The Commission observes that some commenters continue to argue that cross-subsidization is possible even under a price cap regime, for those services that are either not subject to a pure price cap option, or continue to be regulated under a rate-of-return system at the intrastate level. Presumably, the cost-shifting these parties are concerned with would occur between the as-yet primarily intrastate competitive cellular service and the intrastate as-yet primarily monopoly local exchange service. The Commission seeks further comment on these issues, and urges the parties alleging continued cross-subsidy problems under price caps to provide specific data in support of their claims and to address the relative value of structural and non-structural separate affiliate requirements in this regard.

19. *Leveraging of Market Power*. The Commission notes that one concern with respect to integrated landline and cellular operations has been the incentives and opportunities such a corporate structure provides for leveraging of the LEC's local exchange market power into the more competitive cellular market. The Commission is concerned about the potential for abuses in provisioning, installation, maintenance and customer network design that might not be addressed adequately by the uniform nonstructural

safeguards proposed for LEC provision of CMRS, at least during the transitional period before implementation of the 1996 Act's interconnection and network unbundling provisions. Structural separation, if continued on an interim basis, could prevent, for example, the BOC from tasking a single set of officers and personnel with the interconnection arrangements for its cellular unit's PCS competitor as well as dealings with that competitor's major customers to provide local exchange service, or cellular service, or both. The Commission notes that nonstructural safeguards would not prevent such sharing of personnel and integrated management decisionmaking. The Commission seeks comment on whether such integrated operations would present realistic opportunities for anti-competitive conduct and, if so, whether safeguards less restrictive than our current structural separation rules would sufficiently constrain such conduct.

20. *Costs and Benefits of Integrated Versus Structurally Separated Operations.* The Commission notes that the BOCs have sought relief from Section 22.903 primarily so that they could benefit from the cost efficiencies of integrated operations, and so that their customers could benefit from "one-stop-shopping," *i.e.*, a single point of contact for all service, repair and billing needs. The Commission observes Section 601(d) increases the flexibility afforded the BOCs to meet customer demands without necessarily eliminating the remainder of the structural separation requirement. The Commission seeks comment on this analysis. Additionally, the Commission seeks data on the relative benefit of integrated operations other than those relating to joint marketing. The Commission seeks comment on specific public benefits from integrated cellular/landline operations that structural separation precludes. Parties submitting comments should provide specific instances of savings, economies of scale and/or scope, or other consumer benefits that they contend would be impossible without integrated operations. The Commission is particularly interested in receiving information and comment on the effect on the cost-benefit analysis of recent initiatives seeking to introduce greater flexibility for CMRS licensees' use of their spectrum.

21. *Proposed revisions to Section 22.903—limitation to in-region BOC cellular services.* The Commission tentatively concludes that, at a minimum, certain aspects of Section 22.903 may be safely relaxed to permit the BOCs increased flexibility in meeting customer needs, while at the same time protecting BOC ratepayers and wireless competitors. The Commission believes that for out-of-region combined service offerings, the costs to the carrier of establishing a subsidiary in addition to their structurally separate cellular subsidiary to provide integrated competitive landline local exchange (CLLE) and cellular services outweigh any possible benefits to the public of such fragmented operations. The Commission also believes that additional relief is warranted for BOC provision of out-of-region cellular service. The Commission tentatively concludes that Section 22.903 should be limited in scope to in-region services of the BOC and its cellular operations, or, in the case of a joint venture between two or more BOCs, the in-region services of all of the joint venture participants together. The Commission tentatively concludes that such relief would promote local exchange competition in those areas in which the affiliated LEC is not the incumbent local exchange provider. The Commission seeks comment on these tentative conclusions.

22. *Proposed revisions to Section 22.903—interim relief for out-of-region operations.* The Commission eliminates any out-of-region effect of Section 22.903, as part of the effort to narrowly tailor restrictions to reach only the relationship between the incumbent BOC and its cellular subsidiary in the incumbent's in-region service area. The Commission concludes that the public interest would be served by granting the BOCs interim relief from the out-of-region reach of our existing Section 22.903 requirements. The Commission also concludes that immediate out-of-region relief from Section 22.903 will benefit consumers by promoting competition in those areas in which the BOC cellular operation is not affiliated with the incumbent LEC by permitting the BOCs to structure their out-of-region offerings to suit their business judgment. The Commission further concludes that the BOCs may exercise this degree of flexibility in provisioning their out-of-region cellular services without undermining the core protections of the rule for either the BOCs' in-region local exchange ratepayers, or their cellular competitors. The Commission is granting to all BOCs a waiver of the requirements of Section 22.903 with respect to the provision of cellular service outside of their in-region service areas.

23. *Ownership of Landline Facilities.* Section 22.903(a) prohibits, *inter alia*, BOC separate cellular affiliates from owning any facilities for the provision of landline service. The Commission proposes to amend the portion of Section 22.903(a) prohibiting the cellular affiliate from owning any facilities for the provision of landline service to permit a BOC cellular affiliate to own landline facilities for the provision of landline services, including competitive landline local exchange (CLLE) and interexchange service, in the same market with the affiliated incumbent LEC. Thus, the rule would be modified only to prohibit the cellular affiliate from owning, including jointly owning with the incumbent affiliated LEC, landline facilities that the latter uses in the provision of landline local exchange services. The Commission believes that retention of this prohibition is appropriate for the same reasons that the Commission proposes to include a limited separate affiliate requirement in the proposed uniform LEC/CMRS safeguards, *i.e.*, to distinguish clearly between charges applied to all interconnectors and joint cost allocations resulting from integrated operations. The Commission believes that such relief would benefit the public by enabling a new entrant to the local exchange market to provide a package of services without the risk of LEC monopoly cross-subsidization or interconnection discrimination. The Commission seeks comment on this proposal.

24. *BOC CMRS Joint Marketing and Resale; Section 222 CPNI Requirements; and Section 251(c)(5) Network Information Disclosure Obligations.* The 1996 Act expressly permits a BOC to market jointly and sell CMRS in conjunction with several types of landline service in Section 601(d). The Commission tentatively concludes that Section 601(d) does not necessarily require the elimination of the remainder of our current structural separation requirements. As support for this conclusion, the Commission notes that the authority to engage in joint marketing and sale of landline and CMRS services is expressly made subject to the provisions of Section 272, which include separate affiliate requirements. The Commission believes that it retains authority and responsibility to determine the scope of Section 601(d), the definition of joint marketing intended, and the rules to define the relationship between the affiliated entities engaged in such joint marketing. The Commission seeks comment on this interpretation of the effect of Section 601(d).

25. The Commission proposes to define "joint marketing" as referenced in that provision as the advertising, promotion, and sale, at a single point of

contact, of the CMRS, telephone exchange service, exchange access, intraLATA and interLATA telecommunications, and information services provided by the BOC. Such joint marketing also includes, but is not limited to, activities such as promotion, advertising and in-bound service marketing. The Commission further tentatively concludes that Section 601(d) restores the ability of the BOCs to engage in the joint sale or promotion of cellular and landline service. The Commission tentatively concludes that the public interest in preventing, and permitting easy detection of, cross-subsidization requires that such joint marketing be done on behalf of the separate affiliate, subject to affiliate transaction rules and classified as a non-regulated activity, on a compensatory, arms-length basis. The Commission seeks comment on these tentative conclusions, and whether it should impose a requirement similar to that of Section 272(b)(5) requiring that all transactions be reduced to writing and made available for public inspection.

26. Integrated sales and marketing of resold cellular and incumbent LEC landline local exchange service are clearly permitted under Section 601(d). The Commission seeks comment on whether it should impose conditions implementing the resale authority under Section 601(d) of the 1996 Act, and if so, what these conditions should be. In addition, the Commission seeks comment on whether it should mandate public disclosure of rates, terms, and conditions of service in cases where the LEC is reselling its cellular affiliate's service. In the alternative, the Commission seeks comment on whether the general proscription against unjust or unreasonable discrimination in Section 202(a) and the formal complaint process are sufficient deterrents to discriminatory resale practices. In addition, the Commission seeks comment as to how implementation of Section 601(d) should affect potentially related joint marketing and sale activities that are currently prohibited under Section 22.903, such as joint installation, maintenance, and repair of BOC cellular and landline local exchange services. The Commission also seeks comment on the effect of the joint marketing authorization on activities such as billing and collection.

27. Section 22.903(f) currently prohibits BOCs from providing any customer proprietary information to a cellular affiliate unless such information is publicly available on the same terms and conditions. The Commission seeks comment whether the current CPNI rule in Part 22 is inconsistent with Section 222. The Commission notes that continued application of the existing rule would limit a customer's options in granting approval for use or disclosure of, or access to, individually identifiable CPNI under Section 222(c)(1) and (2). In addition, the Commission seeks comment whether it should eliminate Section 22.903(f) even if it were to determine that continued application of this rule is not inconsistent with Section 222, on the grounds that the current rule would be superfluous in light of the comprehensive statutory scheme put in place by Section 222. In addition, the Commission seeks comment on whether, in considering the joint marketing authorization in Section 601(d) of the 1996 Act together with the CPNI requirements contained in the new Section 222, the Commission should require any particular BOC organizational structure or procedures to guard against the unauthorized disclosure of CPNI in the context of joint marketing of CMRS and other BOC-provided services. The Commission asks for comment on the need for, and formulation of, appropriate organizational and procedural guidelines specific to the BOC/CMRS joint marketing situation that would be in accord with both Section 601(d) and Section 222.

28. The Commission tentatively concludes that no specific Part 22 rule pertaining to network information disclosure by the BOCs is necessary or appropriate. The Commission seeks comment on this tentative conclusion. Commenters supporting a specific Part 22 rule should provide information about particular technical or regulatory issues to be addressed by such a rule.

29. *Sunset/Elimination of Section 22.903.* Section 22.903 and its predecessor, Section 22.901, were established without sunset provisions, or the requirement that the Commission periodically review the continued need for the restrictions contained therein. In contrast, the general approach of the 1996 Act to BOC-provided competitive services is initial entry pursuant to establishment of separate subsidiary corporations, through which the competitive service must be provided for a period of years. In the case of BOC entry into interLATA services, a competitive checklist must be met prior to BOC entry into that competitive market, and such entry must be through a structurally separate corporation. This structural separation continues for three years after the BOC receives in-region interLATA authorization, unless extended by order of this Commission. With respect to other competitive services, the Act imposes sunset provisions of varying lengths.

30. The Commission seeks ultimately to eliminate any regulatory asymmetry between BOC provision of cellular services, on the one hand, and BOC provision of other CMRS as well as LEC provision of any CMRS, on the other. Yet, the competitive safeguards contained in Section 22.903, as modified through the proposals above, may continue to serve the public interest during the present crucial phase of entry of new wireless competitors into the CMRS markets. Further, the realization of the fundamental regulatory reforms contained in the 1996 Act, including the opening of the LEC network for purposes of local exchange competition pursuant to Section 251, would reduce the need for these safeguards in the not too distant future, and would provide a convenient milepost to mark a transition period. The Commission therefore seeks comment on the addition of a sunset provision to Section 22.903, similar to those contained in the 1996 Act for BOC provision of other competitive services. Upon the sunset of the Section 22.903 requirements for each BOC's cellular operations, the Commission proposes that such service would be governed by the uniform set of competitive safeguards proposed below for all in-region LEC CMRS.

31. The Commission proposes to sunset the effectiveness of the Section 22.903 requirements for a particular BOC in tandem with that BOC's receipt of authorization pursuant to Section 271(d) to provide interLATA service originating in any in-region State. In addition to the interconnection requirements, the competitive checklist requires BOCs to provide, *inter alia,* further unbundling of local loops, switching and transport; nondiscriminatory access to 911 and E911 services; directory assistance, and operator call completion services; and nondiscriminatory access to databases and associated signaling necessary for call routing and completing. The effective implementation of these requirements should provide potential CMRS competitors with sufficient protection from interconnection discrimination and monopoly leveraging such that the Commission may safely relax the degree of separation required for BOC cellular operations. The Commission believes that effectively conditioning relief from Section 22.903 upon each BOC's meeting a "competitive checklist" may be a viable approach to assure that, from the regulator's and the competitor's standpoint, a sufficiently level playing

field is in place such that structural safeguards may safely be eliminated. Moreover, this approach to sunsetting Section 22.903 would provide the BOCs with an added incentive to meet the requirements of the competitive checklist. The Commission seeks comment on this formulation of an approach to sunsetting Section 22.903.

32. The Commission also seeks comment on alternative sunset dates. Parties advocating a different sunset should provide information supporting their recommendations. Parties proposing a sunset date and/or competitive checklist different than that contained in Section 271 (c)(2)(B) and (d) should detail why their proposed factors are relevant to the question of BOC cellular safeguards. Parties may also suggest alterations to the list for purposes of setting a sunset date for our Section 22.903 requirements. The Commission also notes that BOC entry in some areas could potentially occur without a single facilities-based competitor actually obtaining interconnection arrangements consistent with Sections 251 and 252 as long as the BOC is generally offering access and interconnection in a manner that meets the requirements of the competitive checklist. The Commission seeks comment on the effect of this aspect of Section 271 on the proposal to tie sunset of Section 22.903 to BOC entry into in-region interLATA markets.

33. The Commission seeks comment on whether it should forgo the transition period described above, where a streamlined Section 22.903 would be in effect for BOC cellular operations until a designated sunset, in favor of immediate elimination of Section 22.903 and its replacement by the uniform set of safeguards proposed below. The Commission is concerned about whether transitional structural separation for BOC provision of cellular service, which is more restrictive than any rules applying to other cellular providers or any provision of PCS, will promote or inhibit the development of competition. The Commission seeks comment on this aspect of our two alternative safeguards proposals, and whether immediate elimination of Section 22.903 in favor of uniform LEC CMRS safeguards will promote competition and the public interest more effectively than the sunset approach outlined above.

34. The Commission seeks comment on the relative costs and benefits for the public and the BOCs if the independent operation and joint research requirements were eliminated before the BOCs meet the requirements of the competitive checklist in Section 271. Parties should focus specifically on how the relative costs and benefits of independent versus integrated management and personnel bear upon the competitive equity issues discussed above.

35. *BOC Provision of Incidental InterLATA CMRS.* The Commission does not believe that the authorization contained in Sections 271(g)(3) and 272(a)(2)(B)(i) for immediate BOC provision of in-region, incidental interLATA service, defined as commercial mobile radio service, limits the Commission's authority to retain the current BOC cellular separate affiliate rules, or to prescribe alternative rules, should the Commission determine that such rules constitute an appropriate competitive safeguard. The Commission notes that Section 271(f)(3) preserves the Commission's authority to prescribe safeguards consistent with the public interest, convenience, and necessity. The Commission seeks comment on this analysis.

B. Symmetry of Cellular Safeguards

36. The Commission notes that one of the principal criticisms of the cellular structural separation requirement is that it applies only to the BOCs, but not to other large LECs with similar characteristics, particularly GTE. The lack of regulatory symmetry between BOC-provided cellular service and LEC-provided cellular service under Section 22.903 presents a difficult problem in this period of transition to more competitive landline and wireless markets. Rather than distinguish between BOCs and other LECs, it would arguably be more consistent to apply Section 22.903 to GTE, which is similar in size to the BOCs, or to all LECs above a particular size, *e.g.*, all Tier 1 LECs. The rationale for imposing structural separation on the BOCs' cellular service would appear to apply to all Tier 1 LECs. The Commission does not propose to apply Section 22.903 to any additional LECs at this time. The Commission seeks comment on this approach.

37. The Commission also proposes to require all the Tier 1 LECs to implement the same service safeguards for their in-region cellular service that is proposed for in-region PCS and other CMRS below. The Commission seeks comment on the costs to the Tier 1 LECs of establishing nonstructurally separate affiliates. The Commission does not believe it appropriate to impose either a streamlined Section 22.903 or the proposed nonstructural competitive safeguards on any non-Tier 1 independent and rural LECs because, on balance, the cost and potential disruption of requiring non-Tier 1 LECs to establish new separate affiliates for the provision of cellular service would likely be significant, both in terms of the direct costs of incorporation and lost efficiencies of joint operations, facilities, and staff. These costs are obviously different than the going-forward costs of retaining a structurally separate corporate entity, discussed above. The Commission seeks comment on the nature and extent of such costs, and asks that commenters be specific in their quantification of both direct costs of separate incorporation, and of lost economies of scope. The Commission seeks comment on the tentative conclusion that such costs likely outweigh the benefits of imposing a limited separate affiliate requirement.

C. Safeguards for Provision of CMRS by LECS

38. *Cellular/PCS Regulatory Parity.* The Commission seeks comment on whether there are differences between cellular and PCS that justify different regulatory treatment, at least in the short term. The Commission notes that PCS was intended to be competitive with both incumbent cellular systems and landline networks, and its identity as a new entrant places PCS providers in a different competitive situation from incumbent cellular carriers. The Commission intended that PCS would compete with cellular service at the outset, and eventually compete with, complement, or, where appropriate, replace landline local exchange service. In addition, PCS providers face competitive hurdles unlike those existing when the cellular service was established, such as auction payments, competition with incumbent cellular providers themselves, and the need, in some cases, to relocate incumbent microwave users before PCS can become fully operational. Permitting LECs greater flexibility in the provision of PCS than the BOCs enjoy with respect to cellular was part of the Commission's plan to get PCS into the market quickly, and to encourage the LECs to engineer their network architectures in a "PCS-friendly" manner. This added degree of flexibility may act as a counterbalance to the competitive hurdles unique to PCS. The Commission seeks comment on whether this analysis pertains today in the same way as when PCS was established as a new service.

39. *Need for Uniform Safeguards.* The Commission believes that the imposition of competitive safeguards in addition to accounting safeguards for LEC provision of in-region broadband PCS will serve the public interest. The Commission believes it is time to

replace the initial case-by-case approach with a uniform set of requirements. This should be more efficient for both the carriers and the Commission, as it will streamline the review process and provide a consistent regulatory framework for future competition. The Commission seeks comment on this analysis. The potential costs of imposing additional nonstructural safeguards on LEC provision of PCS at this time are different from the costs for either retaining structural separation for BOC cellular service, or for extending such structural separation requirements for the first time to other LECs, such as GTE. In the case of BOC cellular service, the costs of establishing the subsidiary have already been incurred, whereas in the case of the independent LECs, the re-arrangement of existing corporate structures would entail additional costs of a particular scope and nature. The Commission also recognizes that, in the case of an entirely new service such as in-region LEC broadband PCS, the start-up costs of structural separation would likely be of a different nature and scope altogether. Few LECs currently have in-region PCS licenses as a result of the cellular-PCS cross-ownership and spectrum cap requirements. It is also not clear how far along those other LECs are in building-out their PCS networks and in structuring their PCS operations from an organizational perspective. The Commission seeks comment on this analysis and on the relative costs of imposing the requirements proposed herein.

40. *In-Region/Spectrum Allocation Limitations.* With respect to the imposition of nonstructural safeguards, the *Broadband PCS Order* did not distinguish between in-region versus out-of-region PCS, nor did it distinguish among LEC PCS providers on the basis of the amount of PCS spectrum they would be utilizing to provide service. The Commission does not believe that the competitive dangers of integrated LEC provision of landline and PCS outside of the local exchange service areas in which they are the incumbent LEC raises the same concerns as in-region integrated services. In fact, the Commission has found that out-of-region competition from LECs offering integrated service packages will promote local exchange competition. The Commission therefore proposes to limit LEC PCS nonstructural safeguards to in-region broadband PCS service. The Commission seeks comment on this tentative conclusion. In addition, the Commission seeks comment on the relevance of the distinction raised in the record between LEC holders of 30 MHz versus 10 MHz in-region PCS licenses for the proposed uniform nonstructural safeguards. Specifically, the Commission seeks comment on whether it should exempt LEC licensees with no more than 10 MHz of PCS spectrum from some or all of the competitive safeguards discussed herein, with the exception of those safeguards which arise from the provisions of the 1996 Act.

41. *Applicability to Tier 1 LECs.* The Commission believes that the goal of regulatory symmetry should be tempered by a realistic assessment of the costs and benefits of applying the proposed competitive safeguards to small telephone companies. The Commission notes that small telephone companies, particularly those operating in rural areas, are uniquely positioned to provide wireless services to populations which might otherwise not receive them. The Commission does not want to unduly burden or discourage small telephone company entry into cellular and PCS markets. The Commission does not believe that these companies pose a significant threat of anti-competitive conduct toward potential wireless competitors, as their ability to leverage their bottleneck local exchange facilities is limited as compared to that of the BOCs and the larger independents. The Commission also seeks to ensure that the local exchange and exchange access customers of the small telephone companies are not unduly burdened with the costs of these companies' ventures in competitive wireless markets. The Commission therefore would apply the uniform set of competitive safeguards proposed here only to the Tier 1 LECs. The Commission seeks comment on this proposal and on what changes, if any, to our accounting rules are necessary or appropriate to ensure that LECs not subject to the proposed competitive safeguards will not cross-subsidize PCS activities from the regulated telephone ratebase.

42. The Commission proposes that all Tier 1 LECs providing broadband PCS within their in-region states implement a nonstructural safeguard plan, and file the plan for approval with the Commission. The plan would include the following elements: (1) a description of a separate affiliate, as defined herein, for the provision of PCS; (2) a description of compliance with Part 64 and Part 32 accounting rules, with copies of the relevant CAM changes attached; (3) a description of planned compliance with all outstanding interconnection obligations; (4) a description of compliance with all outstanding network disclosure rules; and (5) a description of planned compliance with the CPNI requirements in new Section 222. Additionally, the Commission proposes to require that LEC in-region broadband PCS services should be provided through a corporate affiliate that is separate from the LEC.

43. The Commission proposes to require the affiliate to meet the following separation conditions: the affiliate must (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the exchange telephone company; and (3) obtain any exchange telephone company-provided communications services at tariffed rates and conditions. The Commission proposes to modify the second requirement to conform with the proposed modification of the facilities-sharing prohibition of Section 22.903(a). That is, the separate PCS affiliate would not be permitted to have joint ownership with the incumbent LEC of transmission and switching facilities that the latter uses in the provision of landline services in the same in-region market. The Commission seeks comment on these proposals.

44. The Commission tentatively concludes that these requirements will not impose excessive burdens on LECs, while providing some protection against cost-shifting and anti-competitive conduct, in the case of Tier 1 LEC in-region PCS. The Commission tentatively concludes that the separate affiliate requirement permits greater flexibility for the LEC than the Section 22.903 structural separation requirement, while preserving the competitive safeguards of separate books of account, facilities, and tariffed services between the PCS affiliate and its affiliated LEC. The Commission seeks comment on the effect that changes in interconnection tariffing requirements under Sections 251 and 252 have on the requirement that the separate affiliate obtain any exchange telephone company service at tariffed rates and conditions. In addition, the Commission tentatively concludes that joint marketing of PCS and LEC landline services should be permitted on a compensatory, arm's length basis. Any such joint marketing must be subject to the Part 64 cost allocation and affiliate transaction rule and the CPNI requirements. The Commission seeks comment on these tentative conclusions.

45. The Commission believes that the nonstructural safeguards plan should address the separation of costs engendered by joint marketing operations. The Commission believes that even with these filing requirements only an annual audit will help

determine compliance with the accounting, affiliate transaction and cost allocation rules. The Commission notes that all CAM changes are also subject to comment and review by the Commission and interested parties. The Commission believes that a description of the carrier's procedures to ensure compliance with the Part 32 and 64 rules, together with copies of the relevant CAM changes, is sufficient for purposes of initial review of the carriers' nonstructural safeguards plans. This initial review will determine whether adequate accounting procedures are in place. The company's compliance with these procedures, however, can only be determined through the existing annual audit process. The Commission seeks comment on this analysis.

46. The Commission seeks comment on whether the same type of organizational and procedural guidelines for the protection and dissemination of CPNI for which the Commission is seeking comment relating to BOC cellular operations, should apply to the PCS operations of any LEC (including non-Tier 1 LECs) or interexchange carrier possessing CPNI gathered in the provision of landline services. The Commission also seeks comment as to whether there are any circumstances under which the Commission should forbear from requiring a description of such organizational structures and procedures, and rely instead on enforcement procedures for any violations of the CPNI statutory mandates. Such circumstances could include a weighing of relative costs and benefits, as well as the significance of the CPNI at issue. The Commission tentatively concludes that the filing of such descriptions by non-Tier 1 LECs and non-dominant interexchange carriers holding PCS licenses is not needed. The Commission seeks comment on this tentative conclusion and this issue generally. In addition, the Commission seeks comment on whether, for purposes of applying Section 222, cellular service and PCS should be considered the same service (*i.e.*, CMRS) such that CPNI gained in the provision of one could be utilized without restriction in the marketing of the other. The Commission also seeks comment whether other CMRS, such as paging and Specialized Mobile Radio, should be considered the same service as cellular service and PCS for purposes of implementing Section 222 and what distinctions, if any, should be made among these different types of CMRS. Finally, the Commission seeks comment whether a toll service provided by means of CMRS (*e.g.*, cellular long distance) should be treated as a distinct telecommunications service for purposes of implementing the new Section 222.

47. The Commission believes that in the case of LEC PCS two factors render a lesser degree of separation appropriate. First, and most importantly, the public interest benefits the Commission anticipates from permitting LECs somewhat more flexibility in establishing their PCS operations counterbalance the loss of the added level of protection that complete structural separation under Section 22.903 provides. The Commission's proposal that LECs establish nonstructurally separate affiliates for the provision of in-region PCS is intended as an interconnection safeguard that will render visible the LEC's interconnection arrangements with its affiliate. The second factor is one of timing. The Commission believes that the possible retention of structural separation for the in-region BOC cellular service may act as additional protection against anti-competitive actions with respect to PCS competitors of the BOC cellular providers who are seeking interconnection arrangements. The Commission seeks comment on this, and asks that parties disagreeing with this analysis provide specific examples and argument in support of their position.

48. In light of the statutory provision regarding public notice by incumbent LECs of network technical changes and the implementation of that provision, the Commission seeks comment on the need for specific PCS rules pertaining to network information disclosure. Commenters supporting a specific Part 24 rule should provide information about particular technical or regulatory issues to be addressed by such a rule.

49. With respect to LEC in-region broadband PCS, the Commission has proposed a set of flexible service safeguards that strike an appropriate balance between the Commission's pro-competitive goals and the goal of expediting in-region LEC-provided broadband PCS service. Nonetheless, assuming that competition in the local exchange market increases to the point where LECs do not have market power in the provision of local exchange service, those safeguards that are not mandated by statute could be relaxed or eliminated. The Commission seeks comment on whether the rules proposed here should be subject to a sunset provision. The Commission also seeks comment on the appropriate term of such a provision, or the conditions that would justify relaxing or eliminating these restrictions in the future.

50. The Commission notes that Congress created the CMRS regulatory classification and mandated that similar commercial mobile radio services be accorded similar regulatory treatment under the rules. Therefore, the Commission tentatively concludes that the nonstructural safeguards discussed above for LEC provision of PCS should apply to Tier 1 LEC provision of other in-region CMRS. The Commission seeks comment on this proposal.

III. Conclusion

51. The Commission believes that the proposals in this *NPRM* are consistent with the legislative mandate in the 1996 Act and will promote competition in wireless communications markets by applying the least intrusive means to curb the residual market power of the LECs. The Commission intends to move rapidly to complete the comprehensive review of the CMRS safeguards initiated by this *NPRM*, and to put into place new, streamlined rules which accomplish the goals of promoting wireless competition, limiting the exercise of market power, and establishing regulatory symmetry.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

Summary: As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *NPRM*. Written public comments are requested on the IRFA.

Reason for Action: The Commission is issuing this *NPRM* to review the regulatory regime for the provision of commercial mobile services, and to implement certain provisions of the Telecommunications Act of 1996. The proposals advanced in the *NPRM* are designed to explore whether the BOC separate subsidiary requirement of Section 22.903 continues to be relevant in today's marketplace. The *NPRM* also proposes streamlined safeguards for Tier 1 LECs seeking to provide PCS and other commercial mobile services.

Objectives: The objective of the *NPRM* is to provide an opportunity for public comment and to provide a record for a Commission decision regarding appropriate competitive safeguards for landline telephone companies seeking to provide wireless services. The *NPRM* proposes two alternatives for modification of Section 22.903, the BOC/cellular separate subsidiary

requirement. The first alternative is to retain the rule for in-region provision of cellular service, subject to a sunset period. The second alternative is to eliminate the rule immediately for in-region cellular services. (The Commission waives the requirement for out-of-region cellular service.) Further, the *NPRM* proposes a uniform set of safeguards for Tier 1 LECs seeking to provide PCS and other CMRS services.

Reporting, Recordkeeping and Other Compliance Requirements: The LEC/PCS safeguards proposed in the *NPRM* would require that Tier 1 LECs submit to the Commission a nonstructural safeguards plan. Smaller LECs would not be subject to this requirement.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description and Number of Small Entities Involved: Because Section 22.903 only applies to the BOCs and because the proposed LEC/PCS safeguards would apply only to the 23 Tier 1 LECs (including the BOCs), no small entities would be affected by the proposals included in the *NPRM*.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives: The *NPRM* proposes to adopt LEC/PCS safeguards only for Tier 1 LECs and not for smaller LECs. A Tier 1 LEC is a local exchange carrier with over $100 million in revenues from regulated telecommunications operations that are subject to the CAM filing requirements of Section 64.903 of the Commission's Rules. The Commission notes that small telephone companies are uniquely positioned to provide wireless services to populations that might otherwise receive them. The *NPRM* points out that the Commission wishes to take no action that would unduly burden or discourage small telephone company entry into cellular and PCS markets, nor do we believe that these companies pose a significant threat of anti-competitive conduct toward potential wireless competitors.

Legal Basis. The *NPRM* is adopted pursuant to Sections 1, 2, 4, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, and 332.

IRFA Comments. The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses of the IRFA and must be filed by the deadline for comments in response to the *NPRM*.

B. Paperwork Reduction Act

This *NPRM* contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *NPRM* as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due October 3, 1996; OMB notification of action is due November 4, 1996. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Dates: Written comments by the public on the proposed information collections are due October 3, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before November 4, 1996.

Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *NPRM* contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

Supplementary Information:

Title: Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services.

Type of Review: New Collection.

Respondents: Business or other for profit.

Number of Respondents: We estimate that approximately 25 Tier 1 LECs may submit a nonstructural safeguard plan.

Estimated Time Per Response: The average burden on the LEC is 30 hours to do the research and development and 30 hours to write and review the plan. 25 plans×60 hours=1,500 hours.

Estimated Cost to the Respondent: We presume that the LECs would use attorneys and engineers (average $200 per hour) to prepare the information. 25 plans×$200 per hour×60 hours=$300,000.

Needs and Uses: This proceeding initiates a comprehensive review of the existing regulatory framework of structural and nonstructural safeguards for local exchange carrier (LEC) provision of commercial mobile radio services (CMRS). All Tier 1 LECs providing broadband Personal Communications Service (PCS) within their in-region states will be required to implement a nonstructural safeguard plan and file the plan for approval with the Commission. The plan should include the following elements: (1) a description of a separate affiliate for the provision of PCS; (2) a description of compliance with Part 64 and Part 32 accounting rules, with copies of the relevant Cost Allocation Manual (CAM) changes attached; (3) a description of planned compliance with all outstanding interconnection obligations; (4) a description of compliance with all outstanding network disclosure rules; and (5) a description of planned compliance with the Customer Propriety Network Information (CPNI) requirements in Section 702 of the Telecommunications Act of 1996 (which creates a new Section 222 of the Communications Act). The Commission will use the information to determine if the Tier 1 LECs are in compliance with our rules.

C. Ex Parte Presentations—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

D. Comment Period

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 3, 1996. Reply comments are to be filed on or before October 24, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each

Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties should also submit two copies of comments and reply comments to Bobby Brown, Commercial Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Room 7130, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

E. Authority

The above action is authorized under the Communications Act of 1934, §§ 1, 4, 222, 252(c)(5), 301, and 303, 47 U.S.C. §§ 151, 154, 222, 252(c)(5), 301, and 303, as amended, and Section 601(d) of the Telecommunications Act of 1996, Section 601(d), Public Law 104–104, 110 Stat. 56 (1996).

F. Ordering Clauses

It is ordered that pursuant to Sections 1, 4, 222, 252(c)(5), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 222, 252(c)(5), 301, and 303, and Section 601(d) of the Telecommunications Act of 1996, Section 601(d), Public Law 104–104, 110 Stat. 56 (1996), a *notice of proposed rulemaking* is hereby *adopted.*

It is further ordered that comments in WT Docket No. 96–162 will be due October 3, 1996 and reply comments will be due October 24, 1996.

It is further ordered that, pursuant to Sections 1.3 and 22.19 of the Commission's Rules, 47 CFR 1.3, 22.19, all Bell Operating Companies are hereby granted a WAIVER of the provisions of Section 22.903 of the Commission's Rules, 47 CFR 22.903 with respect to the provision of cellular service outside of their in-region service areas as defined herein.

It is further ordered that, pursuant to Sections 1.3 and 22.19 of the Commission's Rules, 47 CFR §§ 1.3, 22.19, a waiver of Section 22.903 with respect to the provision of cellular service outside of their in-region service areas as defined herein, is GRANTED to Bell Atlantic NYNEX Mobile, Inc. and US West, Inc.

It is further ordered that, the Secretary shall send a copy of this *Notice of Proposed Rulemaking,* including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

List of Subjects in 47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22348 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–153; RM–8804]

Radio Broadcasting Services; Batesville, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Arkansas Radio Broadcasters, seeking the allotment of Channel 258A to Batesville, Arkansas, as that community's second local FM service. Coordinates used for this proposal are 35–50–28 and 91–34–45.

DATES: Comments must be filed on or before September 16, 1996, and reply comments on or before October 1, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Arkansas Radio Broadcasters, Attn: Carol B. Ingram, President, P.O. Box 73, Batesville, MS 38606.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–153, adopted May 24, 1996, and released July 26, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22347 Filed 8–30–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Threatened and Endangered Status for Seven Desert Milk-Vetch Taxa From California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period for five plants that have been proposed as endangered: Lane Mountain milk-vetch (*Astragalus jaegerianus*), Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), Fish Slough milk-vetch (*Astragalus lentiginosus* var. *piscinensis*), Peirson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*), and triple-ribbed milk-vetch (*Astragalus lentiginosus* var. *micans*); and two plants that have been proposed as threatened: shining milk-vetch (*Astragalus tricarinatus*) and Sodaville milk-vetch (*Astragalus lentiginosus* var. *sesquimetralis*). The comment period has been reopened to acquire additional information from interested parties, and to reconsider the proposed listing actions.

DATES: The public comment period closes October 18, 1996. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Steeck (see **ADDRESSES** section) at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

The seven taxa included within the proposed rule occur in Inyo, Mono, Riverside, San Bernardino, and Imperial Counties within California; Mineral and Nye Counties in Nevada; and northeastern Baja California, Mexico. Like many taxa in the genus *Astragalus*, these seven taxa are endemic to habitats with specific substrate or hydrologic conditions and are, therefore, naturally limited in distribution by the availability of habitat. Five of the seven taxa occur primarily on public lands.

The seven plant taxa may be threatened by one or more of the following: off-road vehicle (ORV) use, grazing and trampling by livestock and feral burros, competition from alien plants, urban development, alteration of soil hydrology, and construction related to fisheries development. Several of the plants may also be threatened with random naturally occurring events by virtue of their small numbers and population sizes.

On May 8, 1992, the Service published a rule proposing endangered status for *Astragalus jaegerianus, A. lentiginosus* var. *coachellae, A. lentiginosus* var. *piscinensis, A. magdalenae* var. *peirsonii,* and *A. lentiginosus* var. *micans*; and threatened status for *A. tricarinatus* and *A. lentiginosus* var. *sesquimetralis* (57 FR 19844). The original comment period closed on July 7, 1992.

The Service was unable to make a final listing determination on these species because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Public Law 104–6), which took affect on April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that limited funding has been restored and the President has waived the moratorium on the use of appropriated funds for final listing and critical habitat determinations, the Service is proceeding with a final determination for these seven plants. This final decision, however, must address and consider any changes in the administration of desert lands since 1992, like the lands transferred from the Bureau of Land Management to the National Park Service, and any conservation efforts, like the West Mohave Conservation Plan, that may have influenced management of desert areas.

Due to the length of time that has elapsed since the close of the initial comment period, changing procedural and biological circumstances and the need to review the best scientific and commercial information available during the decision-making process, the comment period is being reopened. The Service particularly seeks information that has become available in the last four years, concerning:

(1) Biological, commercial, or other relevant data on any threat (or lack thereof) to these species;

(2) Additional information on the size, number, or distribution of populations; and

(3) Whether one or more of these plant species are subject to conservation agreements or other protection instruments, and their possible impacts to such species.

Written comments may now be submitted until October 18, 1996 to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Diane Steeck (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 26, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1.

[FR Doc. 96–22332 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–55–U

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50 CFR Part 21

Availability of a Draft Environmental Assessment on Permits for Control of Injurious Canada Geese and Request for Comments on Potential Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Draft Environmental Assessment on Permits for Control of Injurious Canada Geese is available for public review and announces the U.S. Fish and Wildlife Service's (hereinafter Service) intent to consider regulatory changes to the process for issuing these permits. Comments and suggestions are requested.

DATES: Written comments are requested by October 18, 1996.

ADDRESSES: Copies of the Draft Environmental Assessment can be obtained by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240. Written comments can be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION: The Draft Environmental Assessment reviews the existing regulations governing issuance of permits to control injurious Canada geese. The Assessment was prompted by requests from States and the U. S. Department of Agriculture to improve the permit issuance process. The Assessment deals only with how permits are issued and does not address specific control measures used to control injury problems in the field. The Service's proposed action is to issue a blanket permit to State Conservation Agencies and/or the U. S. Department of Agriculture on a State-specific basis. This permit will be limited to the period March 11 through August 31 to avoid conflicts with existing hunting seasons. This approach is intended to provide a quicker response time to problem situations, allow for greater local oversight in control actions, and reduce government administrative costs and overhead related to issuance of these permits. Three alternatives, including the proposed action, are considered.

Dated: August 23, 1996

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 96–22194 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 61, No. 171
Tuesday, September 3, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the Pub. L. 480, Title I program.

DATES: Comments on this notice must be received by November 4, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION:

Title: Declaration of Sale, Form FAS–359.

OMB Number: 0551–0009.

Expiration Date of Approval: December 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 et seq. Commodity suppliers must report details of sales for price approval. Form FAS–359, "Declaration of Sale," is the written record, signed by the commodity supplier, of the terms of sale as reported by telephone. When signed for the General Sales Manager, it provides evidence of the USDA price approval required for CCC financing.

Estimate of Burden: The public reporting burden is 15 minutes per response for commodity suppliers reporting details of sales.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden on Respondents: 36.25 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033 U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033. Telephone (202) 720–3664.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC on August 26, 1996.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 96–22367 Filed 8–30–96; 8:45 am]
BILLING CODE 3410–10–M

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on September 17, 1996 at J. Herbert Stone Nursery, Central Point, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:15 p.m. Agenda items to be covered include: (1) Local area issues presentation; (2) Subcommittee assignments; (3) Riparian reserves and grazing; (4) Implementation monitoring results approval; (5) Presentation on the Applegate AMA Draft Guide; and (6) Public comments.

All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kurt Austermann, Province Advisory Committee staff, USDI, Medford District, Bureau of Land Management, 3040 Biddle Rd., Medford, Oregon 97504, phone 541–770–2200.

Dated: August 26, 1996.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 96–22394 Filed 8–30–96; 8:45 am]
BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Springfield (IL) Area and the State of Alabama

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act),

provides that official agency designations will end not later than triennially and may be renewed. The designation of Springfield Grain Inspection, Inc. (Springfield), will end March 31, 1997, according to the Act and the designation of Alabama Department of Agriculture and Industries (Alabama) will end February 28, 1997, according to the Act, and GIPSA is asking persons interested in providing official services in the Springfield and Alabama areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before October 3, 1996.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Ave. S.W., Washington, DC 20250–3604. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Springfield, main office located in Springfield, Illinois, to provide official inspection services under the Act on April 1, 1994, and Alabama, main office located in Mobile, Alabama, to provide official inspection services under the Act on March 1, 1994.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Springfield ends on March 31, 1997, and the designation of Alabama ends on February 28, 1997.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to Springfield.

Bounded on the North by the northern Schuyler, Cass, and Menard County lines; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason;

Bounded on the East by a straight line from the west side of Beason southwest to Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16;

Bounded on the South by State Route 16 west to the eastern Macoupin County line; the eastern, southern, and western Macoupin County lines; the southern and western Greene County lines; the southern Pike County line; and

Bounded on the West by the western Pike County line west to U.S. route 54; U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the western Morgan County line. The western Morgan, Cass, and Schuyler County lines.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: East Lincoln Farmers Grain Co., Lincoln, Logan County (located inside Central Illinois Grain Inspection, Inc.'s, area).

Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Alabama, except those export port locations within the State, is assigned to Alabama.

Interested persons, including Springfield, and Alabama, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Springfield geographic area is for the period beginning April 1, 1997, and ending February 29, 2000. Designation in the Alabama geographic area is for the period beginning March 1, 1997, and ending February 29, 2000. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 22, 1996.

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–22109 Filed 8–30–96; 8:45 am]

BILLING CODE 3410–EN–F

Designation for the Mid-Iowa (IA) Area and the State of Oregon

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), and Oregon Department of Agriculture (Oregon) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: October 1, 1996.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Ave. S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1996, **Federal Register** (61 FR 14289), GIPSA asked persons interested in providing official services in the geographic areas assigned to Mid-Iowa and Oregon to submit an application for designation. Applications were due by May 1, 1996. Mid-Iowa and Oregon, the only applicants, each applied for designation to provide official services in the entire areas currently assigned to them.

Since Mid-Iowa and Oregon were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Mid-Iowa and Oregon are able to provide official services in the geographic areas for which they applied. Effective October 1, 1996, and ending September 30, 1999, Mid-Iowa and Oregon are designated to provide official services in the geographic areas specified in the April 1, 1996, **Federal Register**.

Interested persons may obtain official services by contacting Mid-Iowa at 319–363–0239 and Oregon at 503–276–0939.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: August 22, 1996
Neil E. Porter
Director, Compliance Division
[FR Doc. 96–22373 Filed 8–30–96; 8:45 am]
BILLING CODE 3410–EN–F

Rural Utilities Service

Refinancing Water and Wastewater Loans

AGENCY: Rural Utilities Service, USDA.
ACTION: Notice.

SUMMARY: This Notice describes the Rural Utilities Service's Water and Wastewater (WW) loan program refinancing policies, informs commercial lenders of the availability of a list of eligible WW borrowers that have the potential to refinance outstanding debt, and invites cooperatives and private credit sources to participate in refinancing loans from the Agency's loan portfolio.

FOR FURTHER INFORMATION CONTACT: Deborah Pope, Loan Specialist, Rural Utilities Service, USDA, Room 6336, South Agriculture Building, 1400 Independence Avenue S.W., Washington, D.C. 20250, Telephone: (202) 720–1938.

SUPPLEMENTARY INFORMATION: The Agency provides credit to public entities such as municipalities, counties, special-purpose districts, Indian tribes, tribal organizations and nonprofit corporations. The eligible WW loan purposes are to construct, enlarge, extend, or otherwise improve water and wastewater systems. The Agency's credit programs are administered in a manner which ensures that they do not compete with credit available from other reliable sources. Loan agreements require financially capable borrowers to refinance debts owed to the Agency when other credit is available at reasonable rates and terms from a cooperative or private credit source.

The Agency would like to further develop its public/private partnerships while enhancing its refinancing efforts. As part of these efforts, each Rural Development State office, which administers the WW program in the field, will maintain a current listing of borrowers that have the potential to refinance. The Agency requests that any interested lenders contact the State office in each State for the current list of borrowers with potential to graduate. The Agency will develop a unified database of lenders interested in this refinancing initiative as part of their ongoing effort to establish a stronger alliance with private sector lenders. Each interested lender should submit its name and address to the State office located in its residing State. Each State office will be required to provide a copy of its current list of lenders annually to the National office for compilation of a nationwide database. This list should be submitted to the National office by October 1, of each year.

Dated: August 21, 1996.
Wally Beyer,
Adminstrator, Rural Utilities Service.
[FR Doc. 96–22368 Filed 8–30–96; 8:45 am]
BILLING CODE 3410–15–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Telecommunications Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.
ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice of the dates and location of the meetings of the Telecommunications Access Advisory Committee.

DATES: The Telecommunications Access Advisory Committee will meet on September 25, 26, and 27, 1996. The meetings will begin at 9:30 a.m. and end no later than 5:00 p.m.

ADDRESSES: The meetings will be held in the Steptoe & Johnson building, 1330 Connecticut Avenue, NW., Washington, DC on the concourse level. The meetings are open to the public. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real-time transcription will be available.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, D.C. 20004–1111. Telephone number (202) 272–5434 extension 35 (voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov. This document is available in alternate formats (cassette tape, braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: On May 24, 1996, the Access Board published a notice appointing members to its Telecommunications Access Advisory Committee (Committee). 61 FR 26155 (May 24, 1996). The Committee will make recommendations to the Access Board on accessibility guidelines for telecommunications equipment and customer premises equipment. These recommendations will be used by the Access Board to develop accessibility guidelines under section 255(e) of the Telecommunications Act of 1996. The Committee is composed of representatives of manufacturers of telecommunications equipment and customer premises equipment; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines. At its first meeting on June 12–14, 1996, the Committee took the following actions:

- The statutory definitions of telecommunications, telecommunications equipment and customer premises equipment are to be construed broadly.
- Providing access is not a "change in form" of information within the meaning of the statute's definition of telecommunications and, therefore, not excluded.
- A listserv was created through the Trace Center: taac-l@trace.wisc.edu. To subscribe, send e-mail to listproc@trace.wisc.edu with the message subscribe taac-l <firstname lastname>.

At its second meeting on August 14–16, 1996, the Committee agreed on the following points:

- In customer premises equipment (CPE), it is not always possible to separate the effects of software from hardware and one manufacturer may choose to perform the same function with one or the other. Therefore, the guidelines must cover both.
- It is not always possible to determine whether a particular function resides with the CPE, the telecommunications carrier or the source material. Therefore, the guidelines will be developed with the assumption that the function resides in the CPE and urge the FCC to apply the same guidelines to entities and services under its jurisdiction.
- The Committee also agreed that the existing definitions of CPE and telecommunications equipment are sufficient.

The Committee also took the following administrative and procedural actions:

- While the definition of "readily achievable" in the Telecommunications Act is the same as in the Americans with Disabilities Act (ADA), the term is applied differently. In the ADA, the term applies to barrier removal in existing facilities whereas the

Telecommunications Act applies the term to the manufacture of new equipment. An ad hoc task group was formed to develop criteria to assess "readily achievable" in this new context.

• Subcommittees on Compliance Assessment and Guidelines content were created: Discussions will be conducted primarily by e-mail. To participate in a subcommittee, send e-mail to cannon@access-board.gov or rbreden@tia.eia.org.

The Committee will meet again on: November 6–8, December 16–18, and January 14–15. Subsequent meetings will be held at locations to be announced.

The Committee will meet on the dates and at the location announced in this notice. There will be a public comment period each day for persons interested in presenting their views to the Committee.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 96–22336 Filed 8–30–96; 8:45 am]

BILLING CODE 8150–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

Date: September 26–27, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for Education Development and Demonstration submitted to the Division of Research and Education Programs, for projects at the September 15, 1996 deadline.

Michael S. Shapiro,

Acting, Advisory Committee Management Officer.

[FR Doc. 96–22374 Filed 8–30–96; 8:45 am]

BILLING CODE 7536–01–M

Department of Commerce

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Trademark Registration Processing.

Agency Approval Number: 0651–0009.

Form Numbers: PTO Forms 1478, 1478a, 4.8, 4.9, 4.17a, 1553, and 1581.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 193,988 hours.

Number of Respondents: 239,571.

Avg. Hours Per Response: 1 hour for PTO Forms 1478, 1478s, 4.8 and 4.9, and 4.17a; .25 hour for PTO Form 1553.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1501, et. eq, which provides for the Federal registration of trademarks and service marks. Any individual or business owning a valid mark, that is used in connection with goods or services traveling in commerce regulable by the U.S. Congress, may apply to federally register its mark. A registration is valid for ten years and renewable, by affidavit, for like periods.

The Patent and Trademark Office administers the Trademark Act according to 37 CFR Part 2, containing the rules that implement the Trademark Act. Registration is not required to obtain rights in a mark; however, registration provides certain benefits, such as access to the Federal court system and nationwide constructive notice of the Registrant's rights. No individual or business is required to register a trademark, or to use the forms in this collection. The forms are provided as a convenience to the public, and serve as guidance on what information is legally mandated, should an individual or business desire registration.

The PTO uses this information to determine the eligibility of each mark for registration and to maintain a public search library where copies of the registration certificates for marks can be searched. The PTO also provides the information to the Patent and Trade Depository Libraries (PTDLs) that also maintain the information for use by the public.

The information is a matter of public record, and used by the public for a variety of private business purposes related to establishing and reinforcing trademark rights. This information is important to the public, since both common law trademark owners and Federal trademark registrants must actively protect their own rights.

Affected Public: Trademark Owners and Trademark Practitioners.

Frequency: When filing a mark application.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–4816.

Copies of the above information collection proposal can be obtained by a calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Maya Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: August 27, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22282 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1997 Vehicle Inventory and Use Survey.

Form Number(s): TC–9501, TC–9502, TC–9503, TC–9504.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 103,257 hours in FY 1998.

Number of Respondents: 140,000.

Avg Hours Per Response: 45 minutes.

Needs and Uses: The 1997 Vehicle Inventory and Use Survey (VIUS), a component of the economic census, will survey a sample of private and commercial trucks, automobiles, and buses registered in the 50 States and the District of Columbia. Government vehicles will not be sampled. The VIUS will produce basic statistics on the physical and operational characteristics of the nation's trucks, automobiles, and buses. It also will yield a variety of subject statistics, including vehicles by annual miles, major use, fuel type, miles per gallon, and products carried. The Census Bureau will publish truck estimates at the state and national level, and automobile and bus estimates at the national level. Federal, state, and local transportation agencies will use VIUS data for analysis of safety issues, proposed investments in new roads and technology, vehicle size and weight issues, user fees, cost allocation, energy and environmental constraints, hazardous materials transport, and other aspects of the Federal-aid highway program. Although the 1997 Vehicle Inventory and Use Survey is being submitted as a new collection, similar data are collected every five years as part of the economic census. The 1992 collection was known as the Truck Inventory and Use Survey (TIUS). The VIUS was renamed for this census to reflect a change in the scope of the survey to include two additional modes of transportation—automobiles and busses. The Bureau of Transportation Statistics, Department of Transportation is contributing funds to sponsor the inclusion of these two types of motor vehicles.

Affected Public: Individuals or households, Businesses or other for-profit, Not-for-profit institutions, Farms.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131 and 224.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeir, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 27, 1996.

Linda Engelmeir,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22410 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–07–M

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1997 American Community Survey.

Form Number(s): TACS–1/1A, 10/10A, 12(L)/12A(L), 13(L)/13A(L), 14(L)/14A(L), 16(L)/16A(L), 20/20A, 30/30A.

Agency Approval Number: 0607–0810.

Type of Request: Revision of a currently approved collection.

Burden: 72,325 hours.

Number of Respondents: 144,650.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau is developing a methodology known as "Continuous Measurement" which will produce socioeconomic data on a continual basis throughout the decade for small areas and small subpopulations. The American Community Survey (ACS), implemented in November 1995, is a continuing full-scale operation of a continuous measurement system in four survey sites (three urban and one rural) designed to determine the feasibility of a continuous measurement system. The survey also includes a national sample to test response rates and our ability to obtain telephone numbers for nonresponse households. The data collected in this survey will be within the general scope and nature of those inquiries covered in the decennial census every ten years. We plan to continue sampling and enumeration in the ACS in 1997 and 1998. We also plan to add testing of procedures for identification, sampling, and data collection for persons living in special situations such as Indian reservations, military bases, and large institutional and noninstitutional group quarters. We will also develop and implement procedures to create listing procedures and a national list of special places. In addition to the present survey sites, we plan to add sites in Douglas County, Nebraska; Otero County, New Mexico; Harris and Fort Bend Counties, Texas; and Franklin County, Ohio, including the entire city of Columbus.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 27, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22411 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–07–M

Bureau of the Census

1997 Economic Census of the Outlying Areas Including Puerto Rico, Guam, Northern Mariana Islands and the U.S. Virgin Islands

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before November 4, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph T. Reilly, Bureau of the Census, Agriculture and Financial Statistics Division, Room 437, Iverson Mall, Washington, DC 20233. Phone: (301) 763–8557.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States including Puerto Rico, Guam, Northern Mariana Islands, and the Virgin Islands. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under the authority of Title 13, United States Code, is the primary source of dependable facts about each of the outlying areas' economy, and features the only recognized source of data at a geographic level equivalent to U.S. counties. Outlying areas economic census statistics serve to benchmark estimates of net income and gross product, and provide essential information for government (Federal and local), business, and the general public. The 1997 Economic Census of the Outlying Areas will cover the following sectors: retail and wholesale trades, certain services industries, construction, and manufactures.

The information collected in the 1997 Economic Census of the Outlying Areas will produce basic statistics by kind of business for number of establishments, sales, payroll, and employment. It also will yield a variety of industry-specific statistics, including value of shipments, sales by commodity and merchandise lines, and number of hotel rooms.

II. Method of Collection

The 1997 Economic Census of the Outlying Areas will be conducted using mailout/mailback procedures. Mailout/mailback procedures will replace canvassing for Guam, Northern Marianas, and the Virgin Islands. The use of the mail helps reduce respondent burden for establishments that are not within the scope of the census while allowing in-scope establishments the flexibility to complete the form when convenient. As in the 1992 census, only one form covering all economic activity within the scope of the census is used for each area. Since administrative records for the outlying areas sometimes have classification deficiencies the use of one form eliminates time spent by the respondent requesting a sector-appropriate form. Establishments will be selected from the Census Bureau's Standard Statistical Establishment List. An establishment will be included in the 1997 Economic Census of the Outlying Areas if: (a) It is engaged in retail, wholesale, certain services activities, construction, or manufacturing; (b) it is an active establishment with payroll; and (c) it is located in Puerto Rico, Guam, Northern Mariana Islands or the Virgin Islands. No data are tabulated for establishments without payroll.

III. Data

OMB Number: Not Available.

Form Number: OA9819 (Puerto Rico Spanish), OA9820 (Puerto Rico English), OA9863 (Guam), OA9883 (Northern Mariana Islands), and OA9873 (Virgin Islands).

Type of Review: Regular Review.

Affected Public: Businesses or Other For-Profit Organizations.

Estimated Number of Respondents:
Puerto Rico—45,000
Guam—4,000
Northern Mariana Islands—2,000
Virgin Islands—3,000
Total—54,000

Estimated Time Per Response:
Puerto Rico—1 hr.
Guam—.5 hr.
Northern Mariana Islands—.5 hr.
Virgin Islands—.5 hr.
Total—2.5 hrs.

Estimated Total Annual Burden Hours:
Puerto Rico—45,000
Guam—2,000
Northern Mariana Islands—1,000
Virgin Islands—1,500
Total—49,500

Estimated Total Annual Cost: The total cost to the government for this work is included in the total cost of the 1997 Economic Census, estimated at $218 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 28, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22421 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of September 1996.

EFFECTIVE DATE: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Germany
Certain Forged Steel Crankshafts
A–428–604
52 FR 35751
September 23, 1987
Contact: Amy Wei at (202) 482–1131
Italy
Pads for Woodwind Instrument Keys
A–475–017
49 FR 37137
September 21, 1984
Contact: Lyn Johnson at (202) 482–5287
The People's Republic of China
Greige Polyester/Cotton Printcloth
A–570–101
48 FR 41614
September 16, 1983
Contact: Amy Wei at (202) 482–1131

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of September 1996. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: August 26, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–22415 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–614–801]

Fresh Kiwifruit From New Zealand; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On April 10, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand. The review cover one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB), and the period from June 1, 1994, through May 31, 1995. Based on our analysis of the comments received, we have revised the dumping margin for NZKMB.

EFFECTIVE DATES: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz or Thomas F. Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4474 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1996, the Department published the preliminary results (61 FR 15924) of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand (57 FR 23203 (June 2, 1992)). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Departments regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

The product covered by the order under review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of the order. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from respondent, the New Zealand Kiwifruit Marketing Board (NZKMB), and petitioner, the California Kiwifruit Commission.

Comment 1

The petitioner alleged a number of specific ministerial errors pertaining to the application of the computer program used by the Department and submitted specific suggested program edits.

Respondents also alleged ministerial errors pertaining to the computer program. In one instance, respondent alleged a ministerial error with regard to transportation insurance, and petitioner argued that this was not an error. This issue is considered in comment 2. In all other instances there was no disagreement between the petitioner and respondent concerning the alleged

ministerial errors made by the Department.

The errors alleged by the petitioner and respondent related to the following: 1) exchange rates were incorrectly applied; 2) certain indirect selling expenses were erroneously labeled as direct expenses while certain direct expenses were labeled as indirect; 3) delivery premiums were not added to the starting price for both U.S. and New Zealand sales; 4) inventory carrying costs were not included in home market indirect selling expenses; 5) imputed credit expenses were deducted from the price in performing the cost test; 6) General and Administrative (G&A) expenses were double counted.

DOC Position

With respect to the ministerial error allegations other than that which is considered in comment 2, the Department has incorporated the suggested edits into the computer program. (*See* memorandum to the file dated July 22, 1996, for a detailed description of all adjustments made.)

Comment 2

Respondent claims that transportation insurance expenses to U.S. sales should not be deducted from the constructed export price (CEP) starting price as this is an indirect selling expense. Respondent states that these expenses are incurred in New Zealand and are therefore not direct U.S. expenses. Furthermore, respondent states that in the Department's analysis memorandum for the preliminary determination in this proceeding, the Department stated that it intended to treat transportation insurance as an indirect selling expense.

Petitioner states that transportation insurance should be deducted from the CEP starting price because it is an expense identifiable with U.S. sales regardless of whether respondent considers it to be a direct or indirect selling expense.

DOC Position

Although the Department did indicate in its analysis memorandum for the preliminary results that it was treating transportation insurance as an indirect selling expense, upon reassessment of this point, we agree with petitioner that transportation insurance should be deducted from CEP as it should similarly be deducted from New Zealand normal value (NV). Transportation insurance is a movement expense and can be linked to specific shipments to different markets. We have made the appropriate adjustments to the computer program to deduct the amount of transportation insurance allocated to U.S. sales for the CEP starting price and New Zealand NV.

Comment 3

Petitioner argues that although New Zealand home market sales exceeded five percent of U.S. sales during the period of review (POR), particular market conditions in New Zealand during the POR were such that the Department should not consider that market to be viable. Petitioner claims that particular market conditions in New Zealand did not permit proper comparisons between New Zealand sales and U.S. sales. Petitioner relies on an exception outlined in the URAA Statement of Administrative Action (SAA) at 151–152: "The Administration intends that Commerce will normally use the five percent threshold except where some unusual situation renders its application inappropriate. * * * In unusual situations * * * home market sales constituting more than five percent of sales to the United States could be considered not viable." Petitioner states that the New Zealand market was distorted because New Zealand law and respondent's own regulations establish respondent as the exclusive exporter of export quality kiwifruit from New Zealand. Petitioner claims that New Zealand has been a "dumping ground" for production that cannot be sold in export markets, thus driving down domestic prices. Finally, petitioner claims that all home market sales are below cost, and that this should be a factor in evaluating the viability of the market. Petitioner requested that the Department require respondent to submit Japanese sales and that the Department use this information to establish NV.

The respondent asserts that the URAA explicitly and clearly establishes that a home market is considered viable if home market sales equal or exceed five percent of U.S. sales. Respondent notes that the SAA at 151, establishes an exception to this rule for "particular market situations." Respondent notes that such circumstances only exist where "* * * a single sale in the home market constitutes five percent of sales to the United States or there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set. It may also be the case that a particular market situation could arise from differing patterns of demand in the United States and in the foreign market. For example, if significant price changes are closely correlated with holidays which occur at different times of the year in the two markets, the prices in the foreign market may not be suitable for comparison to prices in the United States." Respondent asserts that none of these situations prevailed in the New Zealand home market during the POR.

DOC Position

We disagree with petitioner. The home market clearly meets the quantitative standard set forth in 19 U.S.C. 1677b(a)(1)(C). We note that, in past reviews of kiwifruit from New Zealand, where the quantitative test was based on third country markets rather than the U.S. market, the New Zealand home market was not viable. Under the new law, viability is determined on the basis of the relationship between home market sales and U.S. sales. Since sales of subject merchandise in New Zealand substantially exceeded five percent of those in the U.S. market, the quantitative test of the home market under current law is satisfied.

Petitioner alleges that the New Zealand market is an inappropriate basis for normal value because the "particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price," as these terms are used in 19 U.S.C. 1677b(a)(1)(C)(iii). The SAA that accompanied the URAA, at 822, establishes that a "particular market situation" might exist where a single sale in the home market exceeds the quantitative viability threshold or where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set. The SAA also mentions situations in which demand patterns are different in the foreign market and the United States.

As the language of the SAA makes clear, we are not limited by the examples of "particular market situations" described in that document. However, based on the evidence on the record, we find that there is no "particular market situation," within the meaning of 19 U.S.C. 1677b(a)(1)(c)(iii) which warrants a departure from the normal five percent test. We are not persuaded by petitioner's assertion that, during the POR, New Zealand was used as a "dumping ground" for production that could not be sold in export markets. The record does not demonstrate that kiwifruit sold in export markets by the NZKMB is of higher quality than kiwifruit sold in the home market by the NZKMB. Nor does NZKMB's dominance in the exportation of kiwifruit from New Zealand establish that there were price controls in the New Zealand kiwifruit market. Indeed, evidence on the record

demonstrates that the NZKMB is not strictly the exclusive exporter of kiwifruit from New Zealand. Sales of kiwifruit by any grower, reseller or other party, to the Australian market is permissible under New Zealand law. Also, New Zealand resellers of kiwifruit are permitted to export to other markets if they are licensed by the NZKMB. Thus export markets and export pricing are not subject to absolute control and manipulation by the NZKMB. Even if the NZKMB were in a position to manipulate export prices, there is no evidence on the record that the NZKMB acts on behalf of the New Zealand government to control prices in the home market. As a result, we find that petitioners have not presented evidence of "price control" sufficient to satisfy the "particular market situation" standard under the new law.

A finding of sales below cost of production does not, in and of itself, establish that a "particular market situation" exists. It is the Department's longstanding practice to first determine whether the home market is viable and then to determine whether sales are made below cost of production. In this review, we applied the below-cost test, as described in the preliminary results of review, and found that within an extended period of time, substantially more than 80 percent of the home market sales were sold at prices below the COP, which would not permit the recovery of all costs within a reasonable period of time. Since a substantial number of sales were made below cost we relied on constructed value (CV). Since the remaining above-cost sale(s) in this review segment had no corresponding model matches, we also relied on CV where sale(s) were above-cost.

For these reasons, based on the evidence on the record, we find that the New Zealand market does not represent a "particular market situation" within the meaning of 19 U.S.C. 1677b(a)(1)(C)(iii). As a result, we reaffirm our preliminary determination on this issue.

Final Results of Review

As a result of comments received and programming errors corrected, we have revised our preliminary results.

Manufacturer/exporter	Margin (Percent)
New Zealand Kiwifruit Marketing Board	2.81

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the review firm will be 2.81 percent; and (2) the cash deposit rate for merchandise exported by all other manufacturers and exporters will be the "all others" rate of 98.60 percent established in the less-than-fair-value investigation; in accordance with the Department practice. See *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (1993), and *Federal Mogul Corporation*, 822 F. Supp. 782 (1993).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 22, 1996.

Robert S. La Russa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22412 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–506]

Porcelain on Steel Cookware From the People's Republic of China; Antidumping Duty Administrative Review; Extension of Time Limits for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary and final results of this antidumping duty administrative review of Porcelain on Steel Cookware from the People's Republic of China. The review covers the period December 1, 1994, through November 30, 1995.

EFFECTIVE DATE: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3146.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limits for the completion of the preliminary results until January 21, 1997 and of the final results until 120 days after publication of the preliminary results of this review, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (*See* Memorandum to the file from Jeffrey P. Bialos to Robert S. LaRussa.)

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 U.S.C. 1675(a)(3)(A)).

Dated: August 28, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–22414 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–825]

Sebacic Acid From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review of Sebacic Acid from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) in response to requests from petitioner, Union Camp Corporation and three respondents: Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong) and Sinochem International Chemicals Company, Ltd. (SICC). This review covers four exporters of the subject merchandise, including the three respondent companies above and Sinochem Jiangsu Import and Export Corporation (Jiangsu). The period of review (POR) is July 13, 1994 through June 30, 1995.

We have preliminarily determined that sales have been made below normal value (NV) during this period. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between United States price (USP) and NV. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Patience or Jean Kemp, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on sebacic acid from the PRC on July 14, 1994 (59 FR 35909). On July 3, 1995, the Department published in the **Federal Register** (60 FR 34511) a notice of opportunity to request an administrative review of the antidumping duty order on sebacic acid from the PRC covering the period July 13, 1994 through June 30, 1995.

On July 26, 1995, in accordance with 19 CFR 353.22(a), Union Camp requested that we conduct an administrative review of Tianjin, Guangdong, SICC, and Jiangsu. On July 28, 1996, Tianjin, Guangdong and SICC requested that we conduct an administrative review. We published a notice of initiation of this antidumping duty administrative review on September 15, 1995 (60 FR 47930). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

This review covers the period July 13, 1994 through June 30, 1995, and four exporters of Chinese sebacic acid.

Verification

We conducted verifications of the sales and factor information provided by SICC and Tianjin Zhong He Chemical Plant (Zhong He) in Beijing and Tianjin, PRC. We conducted the verifications using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Separate Rates

1. Background and Summary of Findings

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (Sparklers), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (Silicon Carbide). Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a de facto absence of government control with respect to exports is based on four factors, whether the respondent: (1) Sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide* at 22587; see also *Sparklers* at 20589.

In our final determination of sales at less than fair value, the Department determined that there was de jure and de facto absence of government control and determined that each company warranted a company-specific dumping margin. *See Final Determination of Sales at Less Than Fair Value: Sebacic Acid From the People's Republic of China*, 59 FR 28053 (May 31, 1994) (Sebacic Acid). For this period of review, SICC, Tianjin, and Guangdong have responded to the Department's request for information regarding separate rates. We have found that the

evidence on the record is consistent with the final determination in the LTFV investigation and continues to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. For SICC, although we applied the PRC, country-wide rate to two sales reported by SICC, we have preliminarily determined that SICC is separate from government control and Jiangsu. During verification of SICC, we examined its business license and charter, government notices announcing its separation from the government, its tax registration certificate, company management election ballots, and financial statements. These documents showed no evidence of government control of SICC or of any affiliation between Jiangsu and SICC.

2. Separate Rate Determination for Non-responsive Company

For Jiangsu, which did not respond to the questionnaire, we preliminarily determine that this company does not merit a separate rate. Although Jiangsu met the Department's criteria for separate rates in the LTFV investigation, because it failed to respond in this review, we have no information to support continued application of a separate rate. Therefore, because the Department assigns a single rate to companies in a non-market economy unless an exporter can demonstrate absence of government control, we preliminarily determine that Jiangsu is subject to the country-wide rate for this case.

United States Price

For SICC, Tianjin, and Guangdong, the Department based USP on export price (EP), in accordance with section 772(a) of the Act. We made deductions from EP, where appropriate, for foreign inland freight, ocean freight, brokerage and handling, and marine insurance. We valued these adjustments using surrogate data based on Indian internal freight costs and international shipping costs. We selected India as the surrogate country for the reasons explained in the "Normal Value" section of this notice.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices or CV under section 773(a) of the Act. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise. In such cases, the factors include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation.

In accordance with section 773(c)(4) of the Act and section 353.52(b) of the Department's regulations, we determined that India is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. (See Memorandum from Director, Office of Policy, to Division Director, Office of Antidumping Compliance, dated March 4, 1996.) The statute directs us to select a country that is comparable economically to the PRC. Based on the list of possible surrogate countries, we find that India is a comparable economy to the PRC.

The statute also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to sebacic acid. The countries that we were able to confirm still produce sebacic acid, such as Japan and the United States, do not have economies comparable to the PRC. However, we found that India was a significant producer of comparable merchandise (*e.g.*, oxalic acid) during the POR. Though sebacic acid and oxalic acid have different end uses, both are dicarboxylic acids. In addition, many of the inputs used to produce sebacic acid are also used to produce oxalic acid. Therefore, we find that India fulfills both requirements of the statute.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. In determining which surrogate value to use for valuing each factor of production, we selected, where possible, the publicly available published value which was: (1) An average non-export value; (2) representative of a range of prices within the POR if submitted by an interested party, or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. We chose values with a preference for prices representative of the POR because these prices more closely reflect the prices paid for inputs in the surrogate during the POR. Where we could not obtain a POR-representative price for an input, we selected a value in accordance with the remaining criteria mentioned above and which was closest in time to the POR. In accordance with this section methodology, we valued the factors of production as follows:

For castor oil, the Department valued this material at the market rate as reported in *The Economic Times* (Bombay) for Calcutta, Delhi, Hyderabad, Kanpur, and Madras during the months of July, August, and November 1994. These values were reported by counsel for the respondents. The Department adjusted these values to account for freight costs between the supplier and the respondents' sebacic acid manufacturing facilities.

For caustic soda, the Department used the value reported in the publication *Indian Chemical Weekly*, using data from the months of October–December 1994, and January and April, 1995. These reported values were adjusted to include freight expense incurred from the suppliers to the respondents' sebacic acid manufacturing facilities.

For cresol, also referred to as orthol cresol, respondents reported the market value as indicated in *Chemical Weekly*. Respondents provided information concerning prices during the months of October and November, 1994. The Department reviewed pricing information for other months of the POR which indicated that the market prices reported by respondents is representative of the market price of the material for the entire POR.

The valuation of activated carbon, which is interchangeable with macropore resin, was based upon information found in the publication *India's Imports by Commodities-Countries* (Monthly Statistics of the Foreign Trade of India (IMF). This pricing information reflects the average unit price for the period April–October, 1994. This average unit value was adjusted to account for inland freight expense.

The market value for sodium chloride (also referred to as sodium chlorite or vacuum salt) and zinc oxide was based upon the published market prices

reported in *Chemical Weekly*. Respondents provided information concerning the market price of sodium chloride on December 27, 1994 and March 28, 1995, and of zinc oxide on March 28, 1995. The Department reviewed other dates throughout the POR and determined that the market prices published on these dates were representative of the prices for the entire POR.

For direct labor, we used 1994 data from *Investing, Licensing & Trading Conditions Abroad, India,* published in November 1994 by the Economist Intelligence Unit. We then adjusted the 1994 labor value to the POR to reflect inflation using wholesale price indices (WPI) of India as published in the *International Financial Statistics* by the International Monetary Fund (IMF).

For factory overhead, we used information obtained from the April 1995 *Reserve Bank of India Bulletin*. From "Statement 1—Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group-wise" of that report for the Indian metals and chemicals industries, we summed those components which pertain to overhead expenses and divided them by the sum of those components pertaining to the cost of manufacturing to calculate an overhead rate of 10.74 percent.

For coal we used prices published in the *Gazette of India* for June 1994; for electricity we used information obtained from the *Current Energy Scene in India* for July 1995.

For selling, general, and administrative (SG&A) expenses, we used information from the same source as was used for factory overhead. We summed the values which comprised the components of SG&A and divided that figure by the same cost of manufacturing figure used to determine factory overhead, to arrive at an SG&A rate of 17.99 percent.

For the calculation of profit, we used information from the same *Reserve Bank of India Bulletin*. We divided the reported before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A to calculate a profit rate of 5.71 percent.

For the value of export packing (plastic bags), the Department used the value of imports into India during April 1994–February 1995 and for April 1995, as obtained from the Indian Import Statistics, for HTS number 3923.21.

For foreign inland freight, the Department relied upon the trucking freight rates reported to the Department in an August 1993 embassy cable from India, pursuant to the less-than-fair-value investigation of certain helical spring lock washers from the PRC. This is the same information we used in the sebacic acid less-than-fair-value investigation. We adjusted these rates to the POR to reflect inflation.

For ocean freight, the Department used the information provided by respondents, which is based upon the common rates tariff filed by Nippon Yusen Kaisha with the Federal Maritime Commission for rates from China to New York.

To calculate the expense for marine insurance, the Department used information from a publicly summarized version of the questionnaire response for the investigation of sales of less than fair value of sulphur dyes from India. The marine insurance rate reported in the public version of the October 8, 1992 response was adjusted to reflect marine insurance charges during the POR.

To value fatty acid, we used publicly available published information from the *Monthly Statistics of the Foreign Trade of India* (Monthly Statistics) and adjusted the value to account for inflation between the time period applicable to the value in question and the POR using wholesale price indices (WPI) published in International Financial Statistics (IFS) by the IMF. To value glycerine, we used a value for crude glycerine in the publication *Monthly Statistics of the Foreign Trade of India* and adjusted the value to account for inflation between the time period applicable to the value in question and the POR using WPI published in IFS by the IMF. Consistent with the methodology employed in the final determination in the less-than-fair-value investigation, we have determined that fatty acid and glycerine are by-products. See *Sebacic Acid* at 28056. Therefore, as by-products, we subtracted the sales revenue of fatty acid and glycerine from the production costs of sebacic acid. This treatment of by-products is consistent with generally accepted accounting principles. (See Cost Accounting: A Managerial Emphasis (1991) at pages 539–544).

To value caproyl alcohol, we used publicly available published information from *Chemical Weekly*. Consistent with the methodology employed in the final determination in the less-than-fair-value investigation, we have determined that caproyl alcohol is a co-product. Therefore, we have allocated the factor inputs, based on the relative quantity of output of this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the products. This treatment of co-products is consistent with generally accepted accounting principles. (See Cost Accounting: A Managerial Emphasis (1991) at pages 528–533).

Margin Calculation

For SICC, at verification we found that certain sales reported as SICC sales were in fact sales by another respondent company, Jiangsu, (See Memorandum from Analyst to File: Verification of Sales Questionnaire Response of Sinochem International Chemicals Company, dated August 26, 1996.) Therefore, for these sales, we applied the rate applicable to Jiangsu's sales, 243.40 percent, and then weighted these sales into the overall calculation of SICC's margin. (See Memorandum from Edward Yang, Office Director for AD/CVD Enforcement to Joseph Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement: Appropriate Rate for Certain Sales Reported by Sinochem International Chemical Corporation, First Administrative Review of the Antidumping Duty Order on Sebacic Acid from the People's Republic of China, dated August 27).

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Tianjin Chemicals I/E Corp	7/13/94–6/30/95	35.42
Guangdong Chemicals I/E Corp	7/13/94–6/30/95	14.06
Sinochem International Chemicals Corp	7/13/94–6/30/95	70.55
Country-Wide Rate	7/13/94–6/30/95	243.40

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 180 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates (SICC, Tianjin and Guangdong) will be the rates for those firms established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rates will be 243.40 percent; and (3) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: August 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22413 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 960726208–6208–01]

RIN 0693–XX21

Proposed Withdrawal of Thirty-two Federal Information Processing Standards (FIPS) Publications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The following Federal Information Processing Standards (FIPS) Publications are proposed for withdrawal from the FIPS series:

—FIPS 1–2, Code for Information Interchange, Its Representations, Subsets, and Extension (ANSI X3.4–1986/R1992, X3.32–1990, X3.41–1990)
—FIPS 11–3, Guideline: American National Dictionary for Information Systems (ANSI X3.172–1990 & X3.172A–1992)
—FIPS 16–1, Bit Sequencing of Code for Information Interchange in Serial-By-Bit Data Transmission (ANSI X3.15–1976/R1983&R1990)
FIPS 17–1, Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the Code for Information Interchange (ANSI X3.16–1976/R1983&R1990)
—FIPS 19–2, Catalog of Widely Used Code Sets
—FIPS 22–1, Synchronous Signaling Rates Between Data Terminal and Data Communication Equipment (ANSI X3.1–1976)
—FIPS 34, Guide for the Use of International System of Units (SI) in Federal Information Processing Standards Publications
—FIPS 49, Guideline on Computer Performance Management: An Introduction
—FIPS 57, Guidelines for the Measurement of Interactive Computer Service Response Time and Turnaround Time
—FIPS 58–1, Representations of Local Time of the Day for Information Interchange (ANSI X3.43–1986)
—FIPS 59, Representations of Universal Time, Local Time Differentials, and United States Time Zone References for Information Interchange (ANSI X3.51–1975)
—FIPS 68–2, BASIC (ANSI X3.113–1987)
—FIPS 70–1, Representation of Geographic Point Locations for Information Interchange (ANSI X3.61–1986)
—FIPS 75, Guideline on Constructing Benchmarks for ADP System Acquisitions
—FIPS 76, Guideline for Planning and Using a Data Dictionary System
—FIPS 77, Guideline for Planning and Management of Database Applications
—FIPS 86, Additional Controls for Use with American National Standard Code for Information Interchange (ANSI X3.64–1979/R1990)
—FIPS 88, Guideline on Integrity Assurance and Control in Database Administration
—FIPS 94, Guideline on Electrical Power for ADP Installations
—FIPS 96, Guideline for Developing and Implementing a Charging System for Data Processing Services
—FIPS 99, Guideline: A Framework for the Evaluation and Comparison of Software Development Tools
—FIPS 103, Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas (USGS/CIRCULAR #878–A & ANSI X3.145–1986)
—FIPS 104–1, ANS Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange
—FIPS 109, Pascal (ANSI/IEEE 770X3.97–1983/R1990)
—FIPS 110, Guideline for Choosing a Data Management Approach
—FIPS 123, Specification for a Data Descriptive File for Information Interchange (DDF) (ANSI/ISO 8211–1985/R1992)
—FIPS 124, Guideline on Functional Specifications for Database Management Systems
—FIPS 126, Database Language NDL (ANSI X3.133–1986)
—FIPS 152, Standard Generalized Markup Language (SGML) (ISO 8879–1986)
—FIPS 156, Information Resource Dictionary System (IRDS) (ANSI X3.138–1988&X3.138A–1991)
—FIPS 157, Guideline for Quality Control of Image Scanners (ANSI/AIIM MS44–1988)
—FIPS 158–1, The User Interface Component of the Applications Portability Profile (MIT X Version 11, Release 5)

Many of these FIPS adopt voluntary industry standards for Federal government use, but the FIPS documents have not been updated to reference current or revised voluntary industry standards. In some cases, commercial products implementing the voluntary industry standards, such as the American National Code for Information Interchange, are widely available. In other cases, the industry specifications have not been implemented in commercial off-the-shelf products. As a result, it is no longer necessary for the government to mandate standards in these areas.

Others of these FIPS provide advisory guidance to Federal agencies with no requirements for compulsory and binding use. They explain and

recommend practices in the management and selection of systems. The earliest of these guidelines is nearly twenty years old, and the most recent guideline is ten years old. Information technology has changed considerably since they were issued during the era of centralized computing on mainframe computers. Today, Federal organizations use a wide variety of hardware, software, distributed systems, and networks, and there are many sources of information on all aspects of managing these resources.

NIST believes that it would not be cost effective to revise these standards and guidelines, thereby duplicating information that is broadly available from a variety of sources. Withdrawal means that the FIPS standards and guidelines will no longer be part of a subscription service that is provided by the National Technical Information Service, and that NIST will no longer be able to revise or answer questions about the FIPS.

Current voluntary industry standards should be used by agencies in their procurement actions where appropriate, in accordance with OMB Circular A–119, Federal Participation and Use of Voluntary Industry Standards. NIST will continue to provide information about good information technology practices through publications, electronic bulletin boards and Internet pages.

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of these standards and guidelines from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487–4650.

DATE: Comments on this proposed withdrawal of these FIPS must be received on or before December 2, 1996.

ADDRESSES: Written comments concerning the withdrawal should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed Withdrawal of 32 FIPS, Technology Building, Room A–231, National Institute of Standards and Technology, Gaithersburg, MD 20899. Electronic comments should be sent to: fips.comments@nist.gov.

Comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Public Law 104–106.

Dated: August 28, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–22404 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[I.D. 082696A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board, and the Law Enforcement Committee will hold a public meeting. There will also be opportunity for Council to hear comments on the Maine mahogany ocean quahog experimental fishery.

DATES: The meetings will be held on September 17–19, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Doubletree Guest Suites, 4101 Island Avenue, Philadelphia, PA; telephone: (215) 365–6600.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: On September 17, the Council will hold Election of Officers between 8:00–8:30 a.m. From 8:30 a.m. until 5:00 p.m., the Demersal Species Committee will meet with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board as a Council Committee of the Whole. On September 18, the Demersal Species Committee with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board will meet again until noon. The full Council will meet from 1:00–4:00 p.m. The Enforcement Committee will meet from 4:00–5:00 p.m. On September 19, the Council will meet from 8:00 a.m. until early afternoon.

The NMFS Northeast Regional Administrator is seeking comment on a proposed experimental fishery for mahogany ocean quahogs in the Gulf of Maine. This experiment was jointly requested by the Council and the State of Maine to test the operational aspects of a management program under consideration for this fishery. This experimental fishery will provide information on the logistical operation of this management program prior to its adoption for implementation by the Council. Written comments must be received by this date.

The purpose of this meeting is to decide the 1997 allowable catch, commercial quota, commercial management measures, and recreational target harvest levels for summer flounder and scup; adopt the scup regulatory amendment for Secretarial approval; consider enforceable regulations for filleting at sea, and other fishery management matters.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting dates.

Dated: August 26, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22321 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 082796C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 2 to permit 921 (P503P) and notification of withdrawal of an application for a permit (P510C).

SUMMARY: Notice is hereby given that NMFS has issued a modification to a permit that authorizes takes of an Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein, to the Idaho Department of Fish and Game at Boise, ID (IDFG) and has received a notification of withdrawal of an application for an incidental take permit from the Shoshone-Bannock Tribes at Fort Hall, ID (SBT).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The modification to a permit was issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

An application was submitted by IDFG (P503P) for modification 2 to scientific research/enhancement permit 921. Modification 2 to permit 921 was issued to IDFG on August 2, 1996. Permit 921 authorizes IDFG annual takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at McCall Hatchery. For Modification 2, IDFG is authorized to allow a proportion of the adult, ESA-listed, natural-origin fish that are released upstream of IDFG's weir at the South Fork of the Salmon River each year for natural spawning to migrate volitionally to their respective spawning locations. IDFG may transport the remaining adult, ESA-listed, natural-origin fish to be released for natural spawning to Stolle Meadows. Previously, NMFS had required IDFG to transport all of the adult, ESA-listed, natural-origin fish to be released for natural spawning to Stolle Meadows. Modification 2 is valid for the duration of the permit. Permit 921 expires on December 31, 1998.

Notice was published on June 20, 1996 (61 FR 31510) that an application had been filed by SBT (P510C) for an incidental take permit. SBT requested a 5-year permit for an annual incidental take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to determine the distribution and abundance of bull trout (*Salvelinus confluentus*) in the Herd Creek watershed of the East Fork Salmon River and Burnt Creek of the Pahsimeroi River. NMFS has received notification that SBT would like to withdraw their request for an incidental take permit. SBT now believe that their sampling in the East Fork Salmon River drainage will not result in a take of ESA-listed salmon because no chinook salmon redds or parr were observed recently in the areas where SBT propose to conduct their research. Furthermore, SBT will survey their chosen research sites by snorkeling prior to sampling to confirm the absence of ESA-listed fish.

Issuance of the permit modification, as required by the ESA, was based on a finding that such action: (1) Was requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: August 27, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–22322 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Prospective Exclusive or Partially Exclusive License(s); Davis Liquid Crystals, Inc. and Thermographic Measurements Incorporated

SUMMARY: Davis Liquid Crystals, Inc. has applied for an exclusive license to practice the Government-owned invention described in U.S. Patent No. 5,480,482 entitled "Reversible Thermochromic Pigments" issued January 2, 1996, and Thermographic Measurements Incorporated has also applied for an exclusive license to practice the same invention. The Department of the Navy is considering the granting to either one or both of these entities of revocable, nonassignable, exclusive or partially exclusive license(s) to practice this invention in the United States.

Anyone wishing to object to the granting of licenses to either or both of these prospective licensees has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: August 22, 1996.

D. E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–22271 Filed 8–30–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 4, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 27, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Application for Grants Under the Library Services and Construction Act, Titles I, II and III.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:

Responses: 55.

Burden Hours: 2,475.

Abstract: The Office of Library Programs needs the information to know how the respondents plan to use the funds. The information is used to determine compliance with matching, four separate maintenance-of-effort requirements, and use of funds for allowable activities. The respondents are State Library Administrative Agencies.

[FR Doc. 96–22277 Filed 8–30–96; 8:45 am]

BILLING CODE 4000–01–U

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 3, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 27, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.

Title: Survey of State Correctional Education.

Frequency: One-time.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51.

Burden Hours: 510.

Abstract: This survey is part of the Evaluation of State Correctional Education that the Department of Education is conducting to be able to provide federal and state policymakers with information about which approaches to correctional education are associated with the most positive outcomes.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Robert C. Byrd Honors Scholarship Program.

Frequency: Annually.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 148.

Abstract: This performance report is used by State educational agencies that have participated in the Robert C. Byrd Honors Scholarship Program. The U.S. Department of Education uses the information collected to assess the accomplishments of project goals and objectives and to aid in effective management.

[FR Doc. 96–22276 Filed 8–30–96; 8:45 am]

BILLING CODE 4000–01–U

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes

the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: September 23, 1996 from 9 a.m. to 11 a.m.

ADDRESS: The meeting will be held at the Park Hyatt Hotel located at 1201 24th Street NW, Washington, DC.

FOR FURTHER INFORMATION, CONTACT: Amy Billingsley, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW, the Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive order 12876 of November 1, 1993. The Board is established to advise on the financial stability of Historically Black Colleges and Universities, to issue an annual report to the President on HBCU participation in Federal programs, and to advise the Secretary of Education on increasing the private sector role in strengthening HBCUs.

The meeting of the Board is open to the public. The meeting will be primarily devoted to the adoption of the Board's Annual Report and Recommendations.

Records are kept of all Board procedures, and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1250 Maryland Avenue, S.W., The Portals Building, Suite 605, Washington, DC 20202, from the hours of 8:30 a.m. to 5:00 p.m.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–22416 Filed 8–30–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Friday, September 6, 1996: 8:30 a.m.–4:00 p.m.

ADDRESSES: Cavanaugh's, 1101 Columbia Center Boulevard, Kennewick, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

September Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: Introduction of Fluor Daniels Hanford Company, DOE Ten-Year Plan and Strategic Issues, Vadose Zone Data Gathering, Proposed Use of Effluent Treatment Facility, and Proposed Comments on Tri-Party Agreement M–33 (Milestone 33). The Board will also receive updates from various Subcommittees, including updates on: the Hanford Technology Development Center, National Equity Dialogue, Plutonium Roundtable, Community Relations Plan, Environmental Management Science Program, and the status of the Board's Request for Proposal for Administrative Management and Facilitation Contract.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on August 27, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22397 Filed 8–30–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, September 5, 1996, 6:00 pm–9:30 pm.

ADDRESSES: Westminster City Hall, 4800 West 92nd Avenue, Westminster, CO 80030 (lower level Multi-Purpose Room).

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

(1) Presentation from an expert panel that is reviewing past studies of the movement of plutonium in the soil around Rocky Flats. This evaluation will lead to a set of recommendations for future research in this area. This review was prompted by research data collected in May of 1995 which indicated that plutonium was moving in areas on-site where it was thought to have been immobile.

(2) Presentation on Kaiser-Hill's Fiscal Year 1997 Performance Measures.

(3) Plans to complete work on a set of principles that the agencies should use to guide environmental cleanup plans at Rocky Flats.

(4) Discussion of current options for privatizing work at Rocky Flats.

Public Participation: The meeting is open to the public. Written statements

may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC, on August 27, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22399 Filed 8–30–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, September 11, 6:00 pm–9:00 pm.

ADDRESSES: Oak Ridge Inn (formerly Holiday Inn), 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

September Meeting Topics

This meeting will be a business meeting with no technical presentations planned. The Board will be working on the 1996 Self Evaluation and it's Annual Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on August 27, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22400 Filed 8–30–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, September 28, 8:30 am—12:30 pm (public comment session, 12:15 pm—12:30 pm).

ADDRESSES: The Alpha Building, 10967 Hamilton Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

8:30 am Call to Order
8:30–8:45 Chair's Remarks and New Business
8:45–9:15 Committee Chairs' Reports
9:15–9:25 Report on FERMCO/Labor Initiatives
9:25–9:35 Report on Progress Toward Task Force Recommendations
9:35–9:50 Site Development Map for the Community Reuse Organization
9:50–10:15 Overview of Contaminant Screening Process
10:15–10:30 Break
10:30–11:15 Review of Comments of the Integrated Environmental Monitoring Plan
11:15–12:00 Discuss Proposed Changes to Silo 3 Recommendation
12:00–12:15 Task Force Planning Issues
12:15–12:30 Opportunity for Public Input
12:30 pm Adjourn

A final agenda will be available at the meeting, Saturday, September 28, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior

to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on August 27, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22401 Filed 8–30–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

High Energy Physics Advisory Panel; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the High Energy Physics Advisory Panel.

DATES: Monday, October 7, 1996; 9:00 a.m. to 6:00 p.m.; and Tuesday, October 8, 1996; 9:00 a.m. to 4:00 p.m.

ADDRESSES: Brookhaven National Laboratory, Berkner Hall, Upton, New York 11973.

FURTHER INFORMATION CONTACT: Dr. Robert Diebold, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–22, GTN, Germantown, Maryland 20874; Telephone: (301) 903–5490.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, October 7, 1996 and Tuesday, October 8, 1996

Discussion of Department of Energy High Energy Physics Programs and FY 1997 Budget
Discussion of National Science Foundation Elementary Particle Physics Programs and FY 1997 Budget
Discussion of the Status of the Large Hadron Collider Project and U.S. Participation
Discussion of the Brookhaven High Energy Physics Program
Discussion of the Snowmass Workshop on New Directions for High Energy Physics
Discussion of University-based High Energy Physics Programs
Reports on and Discussions of Topics of General Interest in High Energy Physics
Public Comment (10 minute rule)

Public Participation: The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 28, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22396 Filed 8–30–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–182–007]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 20, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective September 1, 1996:

Fourth Revised Sheet No. 120
Fourth Revised Sheet No. 121
Fourth Revised Sheet No. 153

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's August 5, 1996 "Order on Rehearing and Clarification, and Accepting Compliance Filing Subject to Conditions" in the captioned proceeding. The revised tariff sheets address directed changes to ANR's tariff provisions regarding the segmentation of capacity.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, D.C. 02426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22299 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–67–000]

Canyon Creek Compression Company; Notice of Proposed Changes In FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 6, to be effective October 1, 1996.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Federal Energy Regulatory Commission (Commission) pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1996 is $.00203 per Mcf. Under Canyon's billing basis, this rate converts to $.0019 per MMBtu.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22289 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–81–000]

Carnegie Interstate Pipeline Company; Notice of Informal Settlement Conference

August 27, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on September 5, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purposes of exploring the possible settlement of the referenced docket.

Any party, as defined by 18 CFR 385.102(c) or any participant, as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Kathleen Dias at (202) 208–0524 or Lorna Hadlock at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22297 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–734–000]

CNG Transmission Corporation; Notice of Request Under Blanket Authorization

August 27, 1996.

Take notice that on August 21, 1996, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP96–734–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct a new tap and appurtenant facilities to serve as a new delivery point to Hope Gas, Inc. (Hope) in Monongalia County, WV, under CNG's blanket certificate issued in Docket No. CP82–537–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG states that Hope, a local distribution company in West Virginia and an affiliate of CNG, needs the new delivery point in order to provide natural gas services to Swanson Plating Co., Inc., ViTech Enterprises, Inc., and Morgantown Construction Group, Inc. (Customer Group) in Monongalia County, West Virginia. CNG relates that it will transport quantities of natural gas to Hope destined for the Customer Group under existing certificated transportation arrangements with Hope. CNG says it has sufficient system delivery capacity to deliver these quantities, without disadvantaging its existing customers.

CNG explains that is will construct a two-inch "hot" tap and valve on its TL–323 pipeline. Hope will be installing a new meter and regulator (M&R) within a 20-foot by 20-foot fenced area, which is within CNG's existing TL–323 right-of-way, and approximately 7,675 feet of 3-inch connecting line to the Customer Group. CNG indicates the maximum design capacity of the 2-inch tap and M&R is 960 Mcf per day. CNG states that the total cost of CNG's construction will be fully reimbursed by Hope.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22312 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–344–000]

East Tennessee Gas Transmission Company; Notice of Cashout Report

August 27, 1996.

Take notice that on August 22, 1996, East Tennessee Gas Transmission Company (East Tennessee) tendered for filing its cashout report for the November 1994 through October 1995 period.

East Tennessee states that the cashout report reflects a total cashout loss during this period of $28,822.

East Tennessee states that copies of the filing have been mailed to all affected parties and state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 3, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22293 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–24–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 21, 1996, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective September 20, 1996:

First Revised Sheet No. 200
Second Revised Sheet No. 293
Third Revised Sheet No. 357

Additionally, El Paso states that it tendered for filing and acceptance a revised Statement on Standards of Conduct (Statement) pursuant to Section 161.3(i) of the Commission's Regulations.

El Paso states that its revised Statement on Standards of Conduct and

the tendered tariff sheets identify El Paso Energy Marketing Company, Cornerstone Natural Gas, Inc., and El Paso Gas Marketing Company as marketing affiliates of El Paso. El Paso also reports that it has revised its tariff to state that it no longer shares operating facilities with its marketing affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22305 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 22, 1996, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective October 1, 1996, the following tariff sheets:

Seventeenth Revised Sheet No. 8A
Tenth Revised Sheet No. 8A.01
Ninth Revised Sheet No. 8A.02
Fifteenth Revised Sheet No. 8B
Eighth Revised Sheet No. 8B.01

FGT states that Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. The fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. Both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that it is filing to establish an FRCP of 3.06% to become effective October 1, 1996 based on the actual company fuel use, lost and unaccounted for volumes, and Market Area Deliveries for the period from October 1, 1995 through March 31, 1996. FGT states that it is also filing to establish the Initial Winter Period UFS pursuant to Section 27.D of the GTC to be effective October 1, 1996. The proposed Initial Winter Period Unit Fuel Surcharge is calculated to be <$0.0087> per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22308 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 21, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective August 1, 1996.

Sixteenth Revised Sheet No. 8A
Ninth Revised Sheet No. 8A.01
Eighth Revised Sheet No. 8A.02
Fourteenth Revised Sheet No. 8B
Seventh Revised Sheet No. 8B.01

FGT states that the above referenced tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions ("GTC") of FGT's Tariff to reflect a decrease of the ACA charge to 0.22¢ per MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken; but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22319 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–46–000]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective October 1, 1996:

Second Revised Sheet No. 4
Second Revised Sheet No. 5
Fifth Revised Sheet No. 163

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1996 ACA unit surcharge approved by the Commission is $.0020 per Mcf. Kentucky West has converted this Mcf rate to a dekatherm (Dth) rate of $.0016 per Dth.

Kentucky West states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22314 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–296–002]

K N Interstate Gas Transmission Company; Notice of Compliance Filing

August 27, 1996.

Take notice that on August 22, 1996, K N Interstate Gas Transmission Company (K N Interstate) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1–B, Second Substitute Original Sheet No. 86, in compliance with the Commission's July 31, 1996 order in the above-referenced proceeding. K N Interstate proposes an effective date of August 1, 1996.

K N Interstate states that copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22295 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–172–003]

Koch Gateway Pipeline Company; Notice of Compliance Filing

August 27, 1996.

Take notice that on August 22, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC GAS Tariff, Fifth Revised Volume No. 1, the following tariff sheet, with an effective date of April 12, 1996:

2nd Sub First Revised Sheet No. 1408

Koch states that the purpose of this filing is to correct a section reference which incorrectly references a section which was deleted in Koch's August 7, 1996 compliance filing.

Koch states that copies of the filing will be served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22315 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–343–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 22, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective July 1, 1996:

Seventeenth Revised Sheet No. 5
Seventeenth Revised Sheet No. 6
Fourteenth Revised Sheet No. 7

MRT states that the purpose of this filing is to adjust its rates to reflect the removal of its Gas Supply Realignment Costs (GSRC) included in MRT's GSRC Reservation Surcharges and that portion of the GSRC included in the volumetric rates charged to MRT's ITS customers. MRT collects such GSRC pursuant to Section 16.3 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, and the Base Stipulation and Agreement approved by the Federal Energy Regulatory Commission in Docket Nos. RP93–4, RP94–68 and RP94–190. MRT's current recovery period expired March 31, 1996 for its price differential GSRC and June 30, 1996 for its buyout/buydown GSRC, both as approved for recovery in Docket No. RP96–890. Personnel changes and a company-wide restructuring of MRT's operations is the reason for failure to file to remove its GSRC prior to the conclusion of its permitted recovery periods.

MRT further states it discovered this oversight in time to remove all GSRC for its customers' July, 1996 invoices, and any overcollection of the Price Differential GSRC that MRT has collected will be credited or refunded to customers, with interest, when MRT makes its next Price Differential GSRC recovery filing, with a proposed effective date of October 1, 1996.

MRT states that copies of its filing have been mailed to all of its affected customers and State Commissions of Arkansas, Missouri, Illinois and Louisiana.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.211 and CFR 385.211 and 385.214. All such motions and protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22294 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–23–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 19, 1996, Mojave Pipeline Company (Mojave) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective September 18, 1996:

First Revised Sheet No. 128
Original Sheet No. 128A

Additionally, Mojave states that it tendered for filing and acceptance a Statement on Standards of Conduct ("Statement") pursuant to Section 161.3(i) of the Commission's Regulations.

Mojave states that copies of the filing were served upon all of Mojave's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22306 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–26–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 26, to be effective October 1,1996.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed to Natural by the Federal Energy Regulatory Commission (Commission) pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1996 is $.0023 per Mcf. Under Natural's billing basis, this rate converts to $.0020 per MMBtu.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22290 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–100–000]

Nora Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Nora Transmission Company (Nora) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective October 1, 1996.

Second Revised Sheet No. 4
Third Revised Sheet No. 163

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1996 ACA unit surcharge approved by the Commission is $.0020 per Mcf. Nora has converted this Mcf rate to a dekatherm (Dth) rate of $.0019 per Dth.

Nora states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22313 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–26–000]

Overthrust Pipeline Company; Notice of Tariff Filing

August 27, 1996.

Take notice that on August 21, 1996, Overthrust Pipeline Company, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1–A, Second Revised Sheet No. 76 and Third Revised Sheet No. 77, to be effective September 21, 1996. The proposed tariff sheets update § 28, Affiliate-Related Information, as required by 18 CFR 250.16 (b)(1).

Overthrust states that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are avaialble for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22303 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–189–000]

Ozark Gas Transmission System; Notice of Informal Settlement Conference

August 27, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, September 18, 1996, at 1 p.m., to be continued if needed on Thursday, September 19, 1996, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 for the purpose

of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Robert A. Young at (202) 208–5705 or Michael D. Cotleur at (202) 208–1076.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22296 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–229–000 and RP92–166–000, et al.]

Panhandle Eastern Pipe Line Company; Notice of Informal Settlement Conference

August 27, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, September 10, 1996, at 9:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Carmen Gastilo at (202) 208–2182 or Kathleen M. Dias (202) 208–0524.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22300 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2149–059]

Public Utility District No. 1 of Douglas County, Washington; Notice of Application for Approval of Contracts for the Sale of Power for a Period Extending Beyond the Term of the License

August 27, 1996.

On August 5, 1996, pursuant to Section 22 of the Federal Power Act, 16 U.S.C. 815, Public Utility District No. 1 of Douglas County, Washington (Douglas County PUD), filed an application requesting Commission approval of contracts for the sale of power for the Wells Project No. 2149, for the approximately six years that the power sales contracts extend beyond the 2012 expiration date of the license. The project is located on the Columbia River in Douglas, Chelan, and Okanogan Counties, Washington.

Section 22 provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service Commission or other similar authority in the state in which the sale or delivery of power is made. Douglas County PUD states in its application that Commission approval of the Wells Project power sales contracts is in the public interest because the revenues from those contracts have been pledged to secure repayment of bonds (which expire when the power sales contracts expire) that Douglas County PUD issued to finance construction of the Wells Project and that the contracts were essential to the development of the project.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Comments, protests, or motions to intervene must be filed by October 3, 1996; must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and "Project No. 2149–059." Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any filing must also be served upon each representative of the licensee specified in its application.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22302 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–25–000]

Questar Pipeline Company; Notice of Tariff Filing

August 27, 1996.

Take notice that on August 21, 1996, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 96. The proposed tariff sheet updates § 24, Affiliate-Related Information, as required by 18 CFR 250.16(b)(1).

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22304 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–79–000]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 21, 1996, Sabine Pipe Line Company (Sabine) tendered for filing the following proposed change to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 1, 1996:

Third Revised Sheet No. 20

Sabine states that the Commission has specified the Annual Charge Adjustment (ACA) unit charge of $.0023111291/Mcf to be applied to rates in 1996 for recovery of 1995 annual charges. The ACA unit rate of $.0023111291/Mcf converts to $.0022/MMBtu under Sabine's basis for billing.

Sabine states that copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of

Conservation and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR, Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22309 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–64–002]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

August 27, 1996.

Take notice that on August 22, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective as shown:

	Effective date
Fourth Revised Sheet No. 5	Jan. 1, 1996.
Fourth Revised Sheet No. 6	Jan. 1, 1996.
First Revised First Sheet No. 14.	Jan. 1, 1996.
Third Revised Sheet No. 14	Jan. 29, 1996.
Third Revised Sheet No. 32	Jan. 1, 1996.

South Georgia states that the purpose of this filing is to implement Tariff revisions proposed by South Georgia in its Stipulation and agreement filed on June 10, 1996, in Docket Nos. RP96–64–000, et al., and approved by the Commission in its order issued on July 18, 1996. Under the Stipulation and Agreement, which addresses South Georgia's recovery to its costs under Financial Accounting Standards No. 106 (SFAS 106), South Georgia is required to implement these revisions retroactively to January 1, 1996.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 88 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR Section 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22316 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–346–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective September 1, 1996:

Second Revised Sheet No. 139a
Third Revised Sheet No. 140
First Revised Sheet No. 140a
Second Revised Sheet No. 141
Second Revised Sheet No. 142

Southern states that the purpose of this filing is to revise the monthly cashout mechanism of its imbalance resolution procedures to provide that the tolerance level for shippers who accrue monthly imbalances in the same direction as the net system imbalance for that month will change from two percent to one percent and that imbalance percentages will be based on the actual imbalance at the end of the month. Southern also states that monthly imbalances of less than or equal to 1,000 MMBtu will be priced at the index price and that the last weekly posting used from Natural Gas Intelligence Gas Price Index for determining the monthly low price, high price, and index price will be the posting in the last issue of the month. Southern has requested that these sheets be made effective as of September 1, 1996.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions and protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22291 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–69–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 5, to be effective October 1, 1996.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Federal Energy Regulatory Commission (Commission) pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1996 is $.00203 per Mcf. Under Stingray's billing basis, this rate converts to $.0020 per MMBtu.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22310 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–345–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Tennessee Gas Pipeline Company (Tennessee), submitted for filing to become part of its FERC Gas Tariff, Fifth Revised Volume 1, the following revised tariff sheets, to be effective on September 23, 1996:

Third Revised Sheet No. 319
Third Revised Sheet No. 319A

Tennessee states that the purpose of this filing is to correct an inadvertent error in its October 4, 1995 compliance filing in Docket No. RP95–112–000, et al. Tennessee states that the revised tariff sheets reinstate its Unscheduled Flow provision that governs the flow of gas at receipt or delivery point(s) where a nomination has not been made for such flow.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22292 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–275–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 27, 1996.

Take notice that on August 15, 1996, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 1996:

Substitute First Revised Sheet No. 405
Substitute Original Sheet No. 405A
Substitute Original Sheet No. 405B
Substitute Original Sheet No. 405C

Tennessee states that it is filing the revised tariff sheets in compliance with the Commission's July 31 Order in the above referenced proceeding. The Commission directed Tennessee to make certain modifications to its filings in this docket and to more thoroughly explain certain aspects of its net present value criteria which the pipeline will utilize to evaluate bids for available capacity posted during open seasons.

Any person desiring to make any protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests were due to be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Louis D. Cashell,

Secretary.

[FR Doc. 96–22349 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–737–000]

Texas-Ohio Pipeline, Inc.; Notice of Application

August 27, 1996.

Take notice that on August 21, 1996, Texas-Ohio Pipeline, Inc. (Texas-Ohio), 800 Gessner, Suite 900, Houston, Texas 77024, filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale to Total Compression Incorporated (TCI), two compressors and appurtenant equipment from its existing facilities located in Garrard County, Kentucky, and for the authority to lease back from TCI one of the compressors for continued service on its existing pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas-Ohio requests that the Commission treat the proposed abandonment and leaseback arrangement as one transaction for purposes of granting the necessary authorizations. Texas-Ohio further requests that the Commission grant the requested abandonment and leaseback authority retroactive to October 1, 1995, the date the abandonment and leaseback transaction actually took place, or alternatively, grant whatever waivers of the Commission's rules and regulations are necessary to amend Texas-Ohio's NGA Section 7(c) certificate to reflect these transactions.

Texas-Ohio states that it was constructed to operate as a winter peaking service which allowed gas flow around historical bottlenecks created in Tennessee Gas Pipeline Company's (Tennessee) and Texas Eastern Transmission Corporation's (TETCO) supply area. Texas-Ohio states that its facilities consist of approximately 600 feet of 10-inch pipeline and two gas compression units each with approximately 980 horsepower. With the advent of Order No. 636 and the restructuring of the interstate pipeline industry, Texas-Ohio states that its pipeline operations have significantly changed. It is stated that unbundling of pipeline services and rate structure changes on the interstate pipelines have changed the economics and the flow of natural gas on both the interconnecting pipelines of Texas-Ohio's system to a point where historical bottlenecks occur less often, requiring substantially less peaking service. It is stated that the original transportation design capacity of Texas-Ohio's facilities is 60,000 Mcf per day. At present, Texas-Ohio states that it has no long-term firm transportation shippers; it only transports gas pursuant to interruptible and short-term firm (less than 30 days) transportation agreements.

Texas-Ohio states that in early 1995, it began evaluating alternatives to reduce the costs of operating its facilities in light of a significant reduction in system throughput since the advent of Order No. 636. Since Order No. 636, which has led to the increased use of released firm capacity at the expense of interruptible capacity on both Tennessee and TETCO, shippers have become for less reliant on interruptible transportation, alleviating much of the bottlenecks that historically occurred on these systems, and, more

importantly, dramatically lessening the throughput on Texas-Ohio's facilities.

Texas-Ohio states that in an effort to reduce operating costs, in the Spring of 1995 it explored various business opportunities, including the potential abandonment and sale of surplus compression facilities that it owned and the leasing back of such facilities at lower operating expenses, thus reducing its overall cost-of-service and rates. Specifically, Texas-Ohio estimates that a net rate reduction from 5.18¢/MMBtu to approximately 4.5¢/MMBtu would occur (on a 100 percent volumetric basis) as a result of the proposed transaction with TCI.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas-Ohio to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22307 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–68–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1996.

Take notice that on August 23, 1996, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet Nos. 5 and 6, to be effective October 1, 1996.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Federal Energy Regulatory Commission (Commission) pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1996 is $.00203 per Mcf. Under Trailblazer's billing basis, this rate converts to $.0019 per MMBtu.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22311 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–015 and RP96–211–002]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

August 27, 1996.

Take notice that on August 19, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are listed below. The proposed effective date is June 1, 1996:

Substitute First revised Sheet No. 261
2nd Sub 3rd Revised First Revised Sheet No. 339
2nd Sub 4th Revised First Revised Sheet No. 339

Transco states that the purpose of the instant filing is to comply with the Commission's letter order issued August 2, 1996 in Docket Nos. RP95–197–012 and RP96–211–001 (August 2 Order). The August 2 Order accepted certain tariff sheets to be effective June 1, 1996 and directed Transco to file, within 15 days of such order, revised tariff sheets to provide the same curtailment priority for primary and secondary receipt and delivery points. The Commission states that such directive is consistent with the Commission's "Opinion and Order on Initial Decision" (Opinion No. 405), issued July 3, 1996, in Docket No. RP92–137–016, *et al.* In compliance with the Commission's August 2 Order, Transco has revised Sections 11.3(b) and 28.4(c) of its General Terms and Conditions.

Transco is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22298 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2728–000, et al.]

Illinois Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 26, 1996.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER96–2728–000]

Take notice that on August 14, 1996, Illinois Power Company (Illinois

Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Coastal Electric Service Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 15, 1996.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2729–000]

Take notice that on August 14, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison's Rate Schedule FERC No. 128, the PARS Facilities Agreement under which Con Edison is responsible for the purchase, installation, operation, and maintenance of phase angle regulators at the Branchburg-Ramapo Interconnection between the New York Power Pool (NYPP) and the Pennsylvania-New Jersey-Maryland (PJM) Interconnection. Con Edison has requested waiver of notice requirements so that the decreases in charges under the Supplement can be made effective as of January 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon NYPP and PJM.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER96–2730–000]

Take notice that on August 14, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Federal Energy Sales, Inc. under Rate TS.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER96–2731–000]

Take notice that on August 15, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company's FERC Electric Tariff, Second Revised, Volume No. 1 between Questar Energy Trading Company and Idaho Power Company, and a Certificate of Concurrence.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company

[Docket No. ER96–2732–000]

Take notice that on August 15, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Calpine Power Service.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Public Service Company

[Docket No. ER96–2733–000]

Take notice that on August 14, 1996, Central Illinois Public Service Company (CIPS), submitted a service agreement, dated July 19, 1996, establishing LG&E Power Marketing, Inc. (LG&E) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of July 19, 1996 for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon LG&E and the Illinois Commerce Commission.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas & Electric Company

[Docket No. ER96–2734–000]

Take notice that on August 16, 1996, Southern Indiana Gas & Electric Company (SIGECO), filed its proposed Wholesale Power Sales Tariff. The proposed tariff would allow SIGECO to sell capacity and energy to eligible customers at market-based rates.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER96–2735–000]

Take notice that on August 16, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a copy of the fully executed Power Marketing and Resource Management Service Agreement (Agreement) dated July 26, 1996 between PacifiCorp and Deseret Generation & Transmission Cooperative.

PacifiCorp requests that the Commission grant a waiver of prior notice pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of July 26, 1996 be assigned to the Agreement.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Public Service Commission of Utah.

A copy of this filing may be obtained from PacifiCorp's Regulation Administration Department's Bulletin Board System through a personal computer by calling (502) 464–0122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Power Company

[Docket No. ER96–2736–000]

Take notice that on August 16, 1996, American Electric Power Service Corporation (AEPSC), on behalf of Ohio Power Company (OPCO), tendered for filing a borderline agreement, dated March 27, 1996, between OPCO and the Ohio Edison Company (OE). This agreement provides for OPCO to deliver power and energy to the distribution system of OE, under a state approved retail rate, for resale by OE to end-use customers in the immediate vicinity of Myers Lake. The parties have requested an effective date of July 17, 1996.

A copy of the filing was served upon OE and the Public Utility Commission of Ohio.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Louisville Gas and Electric Company

[Docket No. ER96–2737–000]

Take notice that on August 16, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that it had approved LG&E's application for good membership. LG&E requests that the Commission amend the WSPP Agreement to include it as a member.

LG&E requests an effective date of August 13, 1996, for the proposed amendment. Accordingly, LG&E requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: Septmeber 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER96–2738–000]

Take notice that on August 16, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, an executed Service Agreement between PGE and City of Shasta Lake.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002). PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective August 1, 1996.

Copies of this filing were served upon City of Shasta Lake.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER96–2739–000]

Take notice that on August 16, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to the City of Dover pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of July 23, 1996, the date on which it was executed.

Comment date: September 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22350 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. QF88–438–003]

Warbasse-Cogeneration Technologies Partnership L.P.; Notice of Amendment to Filing

August 27, 1996.

On August 21, 1996, Warbasse-Cogeneration Technologies Partnership L.P. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. A motion or protest must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. A person who wishes to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22318 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2210–010]

Appalachian Power Company; Notice of Availability of Environmental Assessment

August 27, 1996.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the license for the Smith Mountain Hydroelectric Project. The application is to: (1) Make an administrative correction to the project's licensed installed capacity; and (2) upgrade two turbine runners at the project's Smith Mountain Powerhouse. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Smith Mountain Hydroelectric Project is located on the Roanoke River in Bedford, Franklin, Pittsylvania, Cambell, and Roanoke Counties, Virginia.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager, John Mudre, at (202) 219–1208.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22301 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–199–000]

Egan Hub Partners, L.P.; Errata Notice to Notice of Availability of the Environmental Assessment for the Proposed Egan Gas Storage Expansion Project

August 27, 1996.

The comment expiration date of September 23, 1996 should be replaced with September 18, 1996, in the notice issued August 19, 1996 (61 FR 43539, August 23, 1996), and in the letter transmitting the environmental assessment in Docket No. CP96–199–000 to the parties addressed.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22317 Filed 8–30–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5604–6]

Proposed Partial Consent Decree, Clean Air Act Petition Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed partial consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed partial consent decree in the following case: *Sierra Club* v. *Carol M. Browner, and U.S. Environmental Protection Agency*, No. 96–436 (D.C.); (consolidated with No. 95–1747). This action was filed under section 304(a)(2) of the Act, 42 U.S.C. 7604(a)(2), contesting among other matters EPA's failure to promulgate regulations containing standards applicable to emissions from new locomotives and new locomotive engines pursuant to section 213(a)(5) of the Act.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed partial consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the

proposed decree if the comments disclose facts or circumstances that indicate that such agreement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed partial consent decree is available from Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to John T. Hannon, Esq. at the above address and must be submitted on or before October 3, 1996.

Dated: August 19, 1996.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 96–22379 Filed 8–30–96; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5602–7]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory CSIC Computers and Electronics Sector Subcommittee meeting; Common Sense Initiative Council meeting; and CSIC Metal Finishing and Iron and Steel Sector Subcommittee meetings; open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the CSIC Computers and Electronics Sector Subcommittee, the Common Sense Initiative Council, and the Metal Finishing and Iron and Steel Sector Subcommittees of the Common Sense Initiative Council, will meet on the dates and times described below. All meetings are open to the public. Seating at all four meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the Council and three Sector Subcommittee announcements below.

(1) Computers and Electronics Sector Subcommittee—September 17 and 18, 1996

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Computers and Electronics Sector Subcommittee on Tuesday, September 17, 1996, from 8:30 a.m. EDT to 5:00 p.m., EDT, and Wednesday, September 18, 1996, from 8:30 a.m. EDT to 3:00 p.m. EDT, at the One Washington Circle Hotel, One Washington Circle, NW, Washington, DC 20037.

The first day of the meeting, September 17, will be devoted partly to breakout sessions for the three subcommittee workgroups (Reporting and Public Access to Information; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Integrated and Sustainable Alternative Strategies for the Electronics Industry) and partly to plenary session. The second day, September 18, will also consist of both workgroup and plenary sessions. Over the course of the two days, the Subcommittee will be discussing ongoing reporting reinvention projects, management of the end of life of consumer electronic products, and the development of pilots to test alternative regulatory strategies. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning this meeting of the Computers and Electronics Sector Subcommittee, please contact Gina Bushong at 202–260–3797, Fax 202–260–1096, or by mail at US EPA (MC 7405), 401 M Street, SW, Washington, DC 20460; Mark Mahoney, Region 1, US EPA at 617–565–1155; or David Jones, Region 9, US EPA at 415–744–2266.

(2) Common Sense Initiative Council—September 19 and 20, 1996

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative Council on Thursday, September 19, 1996 from 12:30 p.m. EDT, to 5:30 p.m. EDT and on Friday, September 20, 1996, from 8:30 a.m. EDT to 1:00 p.m. EDT. The meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, N.W., Washington, DC 20036. The telephone number is 202–483–6000.

The Council agenda will focus on a variety of topics including: Updates on actions taken since the June 1996 Council Meeting and the CSI budget; the President's Council on Sustainable Development; One Stop Reporting Guide; economic assessments relating to environmental regulations; and community involvement/outreach. In addition, the Iron and Steel, Automobile Manufacturing, and Printing Sector Subcommittees will make presentations to the Council on examples of their projects that are addressing community involvement/outreach. Presentations will also be given by the Metal Finishing Sector on their National Goals Project; the Petroleum Sector on One Stop Reporting and the Computers and Electronics sector on managing End of Life issues for Computer and Electronic Equipment.

For further information concerning this meeting of the Common Sense Initiative Council, please contact Prudence Goforth, Designated Federal Officer (DFO) on (202) 260–7417, or by e-mail on goforth.prudence@epamail.epa.gov.

(3) Metal Finishing Sector Subcommittee—September 25 and 26, 1996

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Metal Finishing Sector Subcommittee on Wednesday, September 25 and Thursday, September 26, 1996, from approximately 9:00 a.m. EDT to 4:00 p.m. EDT., and will include breakout sessions for the sector subcommittee workgroups. The meeting will be held at the Hyatt Regency Hotel, (Crystal City) 2799 Jefferson Davis Highway, Arlington, VA 22202. The telephone number is 703–418–1234.

The Metal Finishing Sector Subcommittee anticipates focusing on a number of topics including: the Strategic Goals Project; the Strategic Research Plan, the Tier 4 targeted enforcement project; and the Tier 3 environmentally responsible site transition case studies. The topics of discussion are subject to change; however, an agenda will be available in mid-September.

For further information concerning meeting times and agenda of the Metal Finishing Sector Subcommittee, please contact Bob Benson, DFO, at 202–260–8668 in Washington, DC, or e-mail him at benson.robert @ epamail.epa.gov.

(4) Iron and Steel Sector Subcommittee—September 26, 1996

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Iron and Steel Sector Subcommittee on Thursday, September 26, 1996. The meeting will begin at 8:00 a.m. CDT and will run until 4:00 p.m. CDT. The meeting will be held at the Metcalf Federal Building, Great Lakes Conference Center, 12th floor, 77 West Jackson Boulevard, Chicago, Illinois 60604. Picture identification will be required for entry into the building.

The Iron and Steel Sector Subcommittee has created four work groups which are responsible for proposing to the full Subcommittee, for its review and approval, potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects

once approved. The subcommittee has approved nine projects (Brownfields, Consolidated Multi-media Reporting, Alternative Compliance Strategy, Iron and Steel Web Site, Barriers to the Use of Innovative Technology, Spent Pickle Liquor Conference, Multi-media Permitting, Permit Issues, and Community Involvement). The purpose of this meeting is to discuss the status of these projects and to review any recommendations that the workgroups propose. Additionally, the subcommittee will be discussing the status of an effort to analyze compliance data and of a potential self-evaluation and EPA will give a brief presentation on its current activities regulating air particulates and potential revisions to the existing standard. The Subcommittee's four workgroups will meet the preceding day, Wednesday, September 25, 1996, from approximately 10:00 a.m. CDT to 5:00 p.m. CDT at the Metcalf Building.

For further information concerning this Iron and Steel Sector Subcommittee Meeting, please call either Ms. Judith Hecht at 202–260–5682 in Washington, DC., or by e-mail on hecht.judy@epamail.epa.gov.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above Sector Subcommittee announcements, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Katherine Brown at brown.katherines@epamail.epa.gov.

Dated: August 26, 1996.

Prudence Geforth,

Designated Federal Officer.

[FR Doc. 96–22385 Filed 8–30–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5604–5]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is convening separate public meetings for the Urban Wet Weather Flows (UWWF) Advisory Committee; the Storm Water Phase II Advisory Subcommittee; and the Sanitary Sewer Overflow (SSO) Advisory Subcommittee. These meetings are open to the public without need for advance registration. The UWWF Advisory Committee will continue discussions of issues related to monitoring, watershed framework, storm water effluent limitations, no exposure, physical impacts, and water quality standards in a wet weather context. The Storm Water Phase II Advisory Subcommittee will continue discussions on issues concerning the framework for Phase II implementation. The SSO Advisory Subcommittee will continue discussions on key issues and the overall SSO strategy.

DATES:

(1) *Urban Wet Weather Flows (UWWF) Advisory Committee:*
- September 26–27, 1996
- November 18–19, 1996

(2) *Storm Water Phase II Advisory Subcommittee:*
- October 17–18, 1996
- December 12–13, 1996

(3) *Sanitary Sewer Overflow Advisory Subcommittee:*
- September 9–10, 1996
- October 21–22, 1996 (tentative)

The UWWF Advisory Committee meetings will begin at 10 a.m. EST and end at approximately 5:30 p.m. On the second day, the meetings will run from 8:00 a.m. until 3:30 p.m. The Storm Water Phase II meeting will begin at 9:00 a.m. EST and end at approximately 5:30 p.m. On the second day, the meeting will begin at 9:00 a.m. and end at approximately 4:30 p.m. The SSO Advisory Subcommittee meetings will begin at 10:00 a.m. EST and end at approximately 5:00 p.m. On the second day, the meetings will begin at 8:30 a.m. and end at approximately 4:00 p.m. A decision will be made at the September SSO meeting on the necessity of holding the October 21–22 meeting. If the decision is made to not hold the October meeting, a notice of cancellation will be published in the **Federal Register** by the end of September.

ADDRESSES: All meetings will be held at the Holiday Inn Historic-District, 625 First Street, Alexandria, Virginia. The Holiday Inn's telephone number is (703) 548–6300.

FOR FURTHER INFORMATION CONTACT:

For the UWWF Advisory Committee meeting, contact Will Hall, Office of Wastewater Management, at (202) 260–1458, or Internet: hall.william@epamail.epa.gov

For the Phase II Subcommittee meeting, contact Sharie Centilla, Office of Wastewater Management, at (202) 260–6052 or Internet: centilla.sharie@epamail.epa.gov

For the SSO meeting, contact Charles Vanderlyn, Office of Wastewater Management, at (202) 260–7277 or Internet: vanderlyn.charles@epamail.epa.gov

Dated: August 21, 1996.

Alfred W. Lindsey,

Deputy Director, Office of Wastewater Management Designated Federal Official.

[FR Doc. 96–22380 Filed 8–30–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5604–3]

Southern Crop Site; Amendment Notice of Proposed Purchaser Agreement

Notice is hereby given that a proposed prospective purchaser agreement associated with Southern Crop Superfund Site in Palm Beach, Florida has been approved by the Agency and by the Department of Justice. The Prospective Purchaser Agreement would resolve certain potential EPA claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), against John McCrocklin, the prospective purchaser ("the purchaser"). The Settlement would require the purchaser to pay to EPA the sum of $150,000.00 within 120 calendar days of the effective date of the Agreement, provide EPA access to the Site, and place certain deed restrictions on the property. EPA will consider public comments on the proposed agreement for thirty (30) days. EPA may withdraw from or modify the proposed purchaser agreement should such comments disclose facts or considerations which indicate the proposed agreement is inappropriate, improper, or inadequate. Copies of the agreement are available from: Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Waste Management Division, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/347–5059, vmx. 6169.

Written comments must be submitted to Ms. Batchelor at the above address within thirty (30) days from the date of publication.

Dated: August 21, 1996.

James S. Kutzman,

Acting Director, Waste Management Division.

[FR Doc. 96–22383 Filed 8–30–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5602–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9622(i), notice is hereby given of a proposed administrative settlement concerning the Marco of Iota Superfund Site in Iota, Louisiana, with the settling parties referenced in the Supplementary Information portion of this Notice.

The settlement requires the settling parties to pay $1,081,025.69 to the Hazardous Substances Superfund. The settlement is designed to resolve fully the *de minimis* and *de micromis* settling parties' liability at the site through a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 ("RCRA"), U.S.C. § 6973, and to resolve the past liabilities of the settling non-*de minimis/de micromis* parties under Section 107 of CERCLA, 42 U.S.C. § 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

DATES: Comments must be submitted on or before October 3, 1996.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Marco of Iota Superfund Site in Iota, Louisiana, and EPA Docket No. 6–22–95, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: John Dugdale, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8027.

SUPPLEMENTARY INFOMATION:

3M (Minnesota Mining & Manufacturing Company)
Acadian Shipyard, Inc
Aero Technologies, Inc.
Agrico Chemical Company (IMC Agrico)
Agrolinz, Inc.
Airco, Inc. (The BOC Group, Inc.)
Alamo Heights I.S.D.
Alumax, Inc. (Alumax Mill Products, Inc.)
Alza Corporation
Americold
Ameritech Services
Ampad Corporation
Baton Rouge Machine Works
BFI (Browning-Ferris Industries Chemical Services)
Brown & McKenzie, Inc.
Butterfield Building Supply
Buttes Resources (Reunion Energy Company)
C. Thomas Pearson, Jr.
C.M.I/Megahertz Corp. (Component Manufacturing, Inc.)
Cardiopulmonics, Inc. (InnerDyne, Inc.)
CBS Metering
Central Detroit Diesel-Allison, Inc.
Central Park Apartments
Central Washington University
Chemical Waste Disposal Corporation
Chevron U.S.A., Inc.
Citgo Petroleum Corporation
Cities Service Company
Cities Service Trading Company
Columbia Gulf Transmissions (Columbia Gulf Transmission Company)
Commonwealth of Kentucky
Conoco, Inc.
Continental Grain Rail Shop (Continental Grain Company)
Continental-COF (Continental Grain Company)
Cook Composites & Polymers
Cooper Industries, Inc.
Core Labs (Western Atlas International, Inc.)
Crown Zellerbach (Hanson Natural Resources Company)
Cummins & Walker Oil Co., Inc.
Dearborn Chemical Company (W.R. Grace & Co.-Conn's. Dearborn Unit)
Delgado Community College
Diamond Shamrock (Maxus Energy Corporation)
Dresser Industries
Dupré Transport, Inc.
Dynamic Exploration, Inc.
Eastern Washington University
Eastman Christensen (Baker Hughes)
Edmonds District Community College
Eimco Process Equipment Company (Baker Hughes)
Empak, Inc.
Enron Oil Trading and Transportation Company (EOTT Energy Operating Ltd. Ptrshp.)
ENSCO
Environmental Specialists, Inc.
Everco Industries
Exchange Parts
Exxon Co. USA (Exxon Corporation)
FaKouri Construction Company, Inc.
Fashion Tech
Firestone Tire & Rubber (Bridgestone/Firestone, Inc.)
Fisher Scientific Company
Flexel, Inc.
Florida Gas (Enron Corporation)
Freeport Oil Company/Freeport-McMoran (Crescent Technology, Inc.)
G&B Oil Products
Gem Seal of Texas, Inc.
Genmark
Georgia Institute of Technology
Georgia-Pacific Corporation
GMAC (General Motors Corporation)
Good Nature Laboratory (Nestle USA, Inc.)
Goodrich Oil Company (Brammer Engineering, Inc.)
Great Western Manufacturing
Gulf States Utilities Company (Entergy Services, Inc.)
Hayward Unified School District
HESCO (Laidlaw Environmental Services)
Histotec
Holy Cross Hospital
Houston Oil & Minerals Corporation
Hoyt, U.S.A.
Hughes Tool Division (Baker Hughes)
Hunt Oil Co.
Immunex Corporation
Independent VW
Industrial Solvents
Inspectorate America Corporation
International Oilfield Services/Petrotest, Inc.
J.M. Huber Corporation
John W. McGowan (McGowan Working Partners)
Johnson Controls, Inc.
Kansas City Kansas Community College
Kennedy Print Shop, Inc.
Lases Company, Inc.
Lee Scientific (Dionex Corporation)
Leger Production Company, Inc.
Lig Liquids Corporation
Louisiana Department of Corrections (Dept. Of Public Safety & Corrections)
Louisiana State University (L.S.U.)

Louisiana Department of Wildlife and Fisheries
L.S.U. Dental School
L.S.U. Medical Center
Lubriport Laboratories, Inc.
Lucas Western, Inc.
Marathon Oil Co./Marathon Petroleum Co.
Master Well Works, Inc.
Melamine Chemicals, Inc.
Merrill Bean Chevrolet
Metricor (Corning, Inc.)
Metro Environmental Laboratory
Metro Transit Power Distribution
Metro West Point Treatment Plant
Metropolitan Water District of Salt Lake City
Missouri Southern State College
Mountain States Analytical
Multichemical Products, Inc.
Natchez Boat Store (Canal Barge Company, Inc.)
New Orleans Spice Co. Labs
Newark Unified School District
North Seattle Community College
Northeast Louisiana University
NPI (Agridyne)
Nuclear Sources & Services
Occidental Chemical Corporation (OxyChem)
Oregon Regional Primate Center
Our Lady of the Lake Medical Center
Oxwell, Inc.
Packard Instrument Company
PATCO (Port Arthur Towing Company)
Pepperidge Farm, Inc.
Pepsi Cola Bottling of Ogden
Peterson/Puritan, Inc. (CCL Custom Manufacturing)
Petrofunds, Inc.
Petroleum Stripping, Inc.
Phillips 66 Company (Phillips Petroleum Company)
Phillips Philtex (Phillips Petroleum Company)
Physio-Control Corporation (Eli Lilly & Company)
Placid Refining Company
Plantation Pipe Line Company
Plaza Point Investment
Portland State University
Providence Medical Center Hospital (Sisters of Providence)
Puget Sound Power & Light Company
Rayne City Hall
Rent-It Center, Inc.
Rexene Products Co./El Paso Products Company (Rexene Corporation)
Safelite Industries (Safelite Glass Corp.)
Salt Lake City
Sears, Roebuck and Co.
Sherwin-Williams Company
Smith Flooring, Inc.
South Seattle Community College
Southern Research Institute
Southern University, Baton Rouge, and Southern University, New Orleans
Southwall Technologies
Spell Brothers Trucking
St. Tammany Parish Hospital
Sterling Drug Co. (Sterling Winthrop, Inc.)
Tenneco Oil Company
Tennessee Gas Pipeline (Tenneco Energy)
Texas City Refining, Inc.
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation
Texas Southern University
Texas Tech University
The Woodlands Technology Center (Pennzoil Company)
Tidewater Marine, Inc.
Transco/Transcontinental Gas Pipe Line Corporation
Trumbull Asphalt (Owens-Corning)
U.S. Post Office
University of Alabama
University of Arkansas
University of California, Riverside
University of Houston
University of South Alabama
University of Southern Mississippi
University of Texas
University of Utah
Utah Correctional Industries
Utah Correctional Institute
Utah State University
Varian Associates, Inc.
Virginia Mason Hospital (Virginia Mason Medical Center)
Washington State Department of Transportation
Welchem, Inc. (Amoco Corporation)
Westlake Polymers Corporation
Weyerhaeuser Technology Center
Wil-Cor, Inc.
Wilson Supply Co./Wilson Industries, Inc.
Xavier University of Louisiana

Dated: August 22, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–22384 Filed 8–30–96; 8:45 am]

BILLING CODE 6560–60–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Thursday, September 26, 1996, at 9:30 a.m. to 12:00 noon. The meeting will be held at EX-IM Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

Agenda: The meeting agenda will include a discussion of the following: Reports from the 3 Working Groups, Discussion on GAO Ideas, Next Steps and other topics.

Public Participation: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503, not later than September 23, 1996. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 26, 1996, Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3955 or TDD: (303) 565–3377.

FURTHER INFORMATION: For further information, contact Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503.

Kenneth Hansen,

General Counsel.

[FR Doc. 96–22268 Filed 8–30–96; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–010786–008.

Title: Contship Containerlines Limited/Italia di Navigazione SPA Space Charter and Sailing Agreement.

Parties: Contship Containerlines Limited Italia di Navigazione S.P.A.

Synopsis: The proposed amendment revises Article 5.7 by deleting the Agreement's authority to agree upon rates, rules, regulations and other tariff items. It also deletes Article 5.8.

Agreement No.: 232–011553.

Title: CSAV/Nacional Space Charter Agreement.

Parties: Compania Sud Americana de Vapores ("CSAV") Companhia Maritima Nacional ("Nacional").

Synopsis: The proposed Agreement permits Nacional to charter space on CSAV's vessels and coordinate sailings in the trade between East Coast ports in South America and U.S. Atlantic Coast ports and points.

Dated: August 28, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–22355 Filed 8–30–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 17, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Raye Plahn Revocable Trust (Trustee is Ms. Raye Plahn), both of Shell Lake, Wisconsin; to retain a total of 10.52 percent of the voting shares of Shell Lake Bancorp, Inc., Shell Lake, Wisconsin, and thereby indirectly acquire Shell Lake State Bank, Shell Lake, Wisconsin.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Joe Dan Coe, Winnsboro, Texas; to retain a total of 14.09 percent of the voting shares of Franklin National Bankshares, Inc., Mt. Vernon, Texas, and thereby indirectly acquire Franklin National Bank, Mt. Vernon, Texas.

Board of Governors of the Federal Reserve System, August 27, 1996.

William W. Wiles

Secretary of the Board.

[FR Doc. 96–22281 Filed 8–30–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–3 p.m., September 19, 1996.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The Committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters to be Discussed: Agenda items will include updates from CDC Director, David Satcher, M.D., Ph.D., followed by committee discussion on strategic thinking about the future of CDC and public health, and on lessons from the Los Angeles measles vaccine study.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Linda Kay McGowan, Acting Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333, telephone 404/639–7080.

Dated: August 27, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–22333 Filed 8–30–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96E–0102]

Determination of Regulatory Review Period for Purposes of Patent Extension; CEDAX® Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CEDAX® capsules and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be

subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CEDAX® capsules (ceftibuten dihydrate). CEDAX® capsules is indicated for the treatment of individuals with mild-to-moderate infections caused by susceptible strains of the designated microorganisms in the specific conditions: Acute Bacterial Exacerbations of Chronic Bronchitis due to *Haemophilus influenzae* (including B-lactamase-producing strains), *Moraxella catarrhalis* (including B-lactamase producing strains) or *Streptococcus pneumoniae* (penicillin-susceptible strains only), Acute Bacterial Otitis Media due to *H. influenzae* (including B-lactamase producing strains), *M. catarrhalis* (including B-lactamase producing strains), or *S. pyogenes*, or Pharyngitis and Tonsillitis due to *S. pyogenes*. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CEDAX® capsules (U.S. Patent No. 4, 634,697) from Schering-Plough Corp. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 10, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CEDAX® capsules represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CEDAX® capsules is 3,065 days. Of this time, 1,603 days occurred during the testing phase of the regulatory review period, while 1,462 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: August 1, 1987. The applicant claims August 2, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 1, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357)*: December 20, 1991. FDA has verified the applicant's claim that the new drug application (NDA) for CEDAX® capsules (NDA 20–685) was initially submitted on December 20, 1991.

3. *The date the application was approved*: December 20, 1995. FDA has verified the applicant's claim that NDA 20–685 was approved on December 20, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term restoration.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 4, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 3, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–22285 Filed 8–30–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–842–NC]

RIN 0938–AH70

Medicare Program; Schedule of Prospectively Determined Payment Rates for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This final notice with comment period sets forth the schedule of payment rates for low Medicare volume skilled nursing facilities for prospective payments for routine service costs for Federal fiscal year 1997 (cost reporting periods beginning on or after October 1, 1996 and before October 1, 1997). Section 1888(d) of the Social Security Act requires the Secretary to establish and publish the prospectively determined payment rates 90 days prior to the beginning of the affected Federal fiscal year.

DATES: Effective date: The schedule of payment rates is effective for cost reporting periods beginning on or after October 1, 1996.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on November 4, 1996.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–842–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: BPD–842–NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In

commenting, please refer to file code BPD–842–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joseph Menning (410) 786–4594.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1888 of the Social Security Act (the Act) sets forth the statutory requirements concerning Medicare payments to skilled nursing facilities (SNFs) for their routine service costs for services furnished to Medicare beneficiaries. Most SNFs are paid on a reasonable cost basis up to a schedule of routine service per diem cost limits established in accordance with the general reasonable cost provisions of section 1861(v)(1) of the Act and the specific SNF payment provisions of section 1888 of the Act. However, under the provision at section 1888(d) of the Act, for cost reporting periods beginning on or after October 1, 1986, a SNF with fewer than 1,500 Medicare covered days in a given cost reporting period may choose to receive payment based on a prospectively determined payment rate in the subsequent cost reporting period. The prospectively determined payment rates for low Medicare volume SNFs are established on a per diem basis and include payment for the cost of furnishing general inpatient routine services and capital-related costs associated with routine services.

The per diem amounts may not exceed the limit on routine service costs set forth in section 1888(a) of the Act with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility. The limit used for this purpose is the applicable routine service cost limit in effect when the provider elects to be paid under the prospectively determined payment rates.

For SNFs located in an urban area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of services for SNFs in urban areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels.

For SNFs located in a rural area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of covered services for SNFs in rural areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels.

Prior to the enactment of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993; Public Law 103–66), we published guidelines specifying the methodology and data used and the actual prospectively determined payment rates annually in the Medicare Provider Reimbursement Manual (HCFA Pub. 15–1). The general requirements for the rates were included under sections 2820 and 2821 of the manual and the actual rates, the most recent effective for Federal fiscal year 1993, were in section 2828 of the manual.

Section 13503(b) of OBRA 1993 prohibited changes to the Federal fiscal year 1993 prospectively determined payment rates paid under section 1888(d) of the Act for services furnished during cost reporting periods beginning in Federal fiscal year 1994 and in Federal fiscal year 1995, except as may be necessary to take into account the amendments made by section 13503(c). Section 13503(c) of OBRA 1993 amended sections 1861(v)(1)(B) and 1878(f)(2) of the Act by eliminating return on owner's equity for services furnished on or after October 1, 1993.

On July 21, 1995, we published in the **Federal Register** a final rule (60 FR 37590) that codified in the Code of Federal Regulations the statutory requirements for the optional prospectively determined payment system for low Medicare volume SNFs and the guidelines on the methodology and data used that were in the Provider Reimbursement Manual. These implementing regulations, effective on August 21, 1995, appear at 42 CFR 413.1, 413.24 and 413.300 through 413.321.

Under the provisions of § 413.312(a)(1), to calculate the prospectively determined payment rates, we use the SNF cost data that were used to develop the applicable SNF inpatient routine service cost limits, a wage index to adjust for area wage differences, and the most recent projections of increases in the costs from the SNF market basket (inflation factors). Section 413.312(a)(2) provides that we will announce in the **Federal Register** the wage index and the annual percentage increases in the market basket used in the calculation of the rates. In addition, § 413.320 provides that at least 90 days before the beginning of a Federal fiscal year to which revised prospectively determined payment rates are to be applied, HCFA will publish a notice in the **Federal Register** establishing the rates for routine services and explaining the basis on which the rates are calculated.

This notice announces the schedule of payment rates for prospective payments for routine service costs in Federal fiscal year 1997 (cost reporting periods beginning on or after October 1, 1996 and before October 1, 1997) for low Medicare volume SNFs that elect this method of payment. This notice represents the first schedule of prospectively determined payment rates published in a **Federal Register** notice after the effective date of the July 1995 implementing regulations. In addition, this notice includes the inflation factors to update the routine service cost limits applicable for Federal fiscal year 1997, which are necessary to compute a SNF's prospectively determined payment rate.

II. Update of the Schedule of Prospectively Determined Payment Rates

As mentioned earlier, the statute provided that both the SNF routine service cost limits and the prospectively determined payment rates be frozen at the Federal fiscal year 1993 amounts for cost reporting periods beginning in Federal fiscal year 1994 and in Federal fiscal year 1995. As a result of these rates and limits remaining at the Federal fiscal year 1993 levels, the Medicare program experienced a savings in Medicare trust funds. We had anticipated that, because of these prior years' savings, we would have legislative support to preserve these program savings for Federal fiscal year 1996 and later. We expected to do this

by trending the Federal fiscal year 1993 limits and rates to cost reporting periods beginning in Federal fiscal year 1996, except that the inflation factors for Federal fiscal year 1994 and Federal fiscal year 1995 would not be included. However, such legislation has not been enacted. Therefore, in the interim for Federal fiscal year 1996, we provided the Medicare intermediaries with updated Federal fiscal year 1996 limits and rates by trending the Federal fiscal 1993 data to Federal fiscal 1996 by using the projected inflation factors and the methodology described in the October 7, 1992 **Federal Register** notice (57 FR 46177) that announced the Federal fiscal year 1993 limits (including the inflation factors for Federal fiscal years 1994 and 1995).

In addition, in May 1996, we provided all Medicare intermediaries with revisions to the Federal fiscal year 1993 cost limits and prospectively determined payment rates that reflected corrections to the projected inflation factors used in the October 7, 1992 notice. (An explanation of the circumstances under which HCFA corrects projected inflation factors is in the October 7, 1992 notice (57 FR 46179 through 46180).) These revised Federal fiscal year 1993 limits and rates were also used to compute updated limits and rates for cost reporting periods beginning in Federal fiscal year 1996. However, these revisions did not affect prospectively determined payment rates issued before the May 1996 notification to the intermediaries.

In developing the prospectively determined payment rates effective with this notice, we are using the basic methodology and cost report data specified in § 413.312 of the regulations (and described in section 2828 of the Provider Reimbursement Manual). We will continue to use the same wage indexes and the same urban and rural designations used to compute the Federal fiscal year 1993 cost limits and prospectively determined rates, as specified in the October 7, 1992 **Federal Register** notice and described in section 2828 of the Provider Reimbursement Manual, respectively. In addition, we will continue to provide a per diem add-on to the prospectively determined payment rates to account for costs incurred by SNFs in complying with the nursing home reform provisions specified in section 1819 of the Act (enacted by OBRA 1987), including the costs of conducting nurse aide training and competency evaluations, and for costs associated with the Occupational Safety and Health Administration (OSHA) universal precaution requirements.

Tables I and II under section IV. of this notice contain the Federal fiscal year 1997 prospectively determined payment rates. Table III under section IV. of this notice contains the Federal fiscal year 1997 routine service cost limits. Table IV under section IV. of this notice contains the monthly inflation factors to be applied to full 12 month cost reporting periods beginning in Federal fiscal year 1997.

III. Methodology for Determining Prospectively Determined Per Diem Payment Rates

The schedule of rates set forth in Tables I and II under section IV. of this notice applies to all SNFs that qualify and request to receive the optional prospective payment rate for routine services under the provisions of subpart I of part 413. Under § 413.314(d), a SNF's prospective payment rate, excluding capital-related costs, cannot exceed its actual routine service cost limit (without regard to exceptions, exemptions, or retroactive adjustments) in effect at the time of the election to be paid a prospectively determined payment rate. The prospectively determined payment rate is in place of payment that would otherwise be made for routine service costs and associated capital-related costs under section 1861(v) of the Act. There are no retroactive adjustments to these rates and under § 413.308(c), an SNF may not revoke its request to be paid under this provision after it has received the initial determination of eligibility from the intermediary and the cost reporting period has begun.

A. Data

The actual cost data used to develop the prospectively determined payment rates for cost reporting periods beginning in FY 1993 were obtained from settled freestanding SNF Medicare cost reports for periods ending on or after June 30, 1989, and through May 31, 1990. Comparable data for hospital-based SNFs were obtained from settled Medicare cost reports for periods ending on or after October 31, 1988, and through September 30, 1989. We are continuing to use the same cost report data to develop the prospectively determined payment rates in this notice.

B. Use of the Most Recent Available Inflation Factors

We are continuing to use the SNF input price market basket index (inflation factor) to adjust the cost report data to the initial cost reporting period to which the prospectively determined payment rates apply. The inflation factors are comprised of a "market basket" of the most commonly used categories of SNF routine service expenses. The categories used are based primarily on those used in the National Center for Health Statistics in its National Nursing Home Surveys. The categories are weighted according to the estimated proportion of SNF routine service cost attributable to each category. The Appendix to this notice specifies the weights used in each category.

We are adjusting the cost report data described above using the most recent available inflation factors shown below. These inflation factors are similar to those used in the May 1996 notification to the intermediaries described in section II. of this notice. These inflation factors, representing the annual percentage increases in the market basket over the previous year, are:

1988	5.1
1989	6.6
1990	6.3
1991	4.4
1992	3.8
1993	3.7
1994	3.4
1995	2.9
1996	2.9
1997	3.2
1998	3.4

If a facility has a cost reporting period beginning in a month after October 1, 1996, the intermediary increases the adjusted routine operating portion of the rate that otherwise apply to the SNF by the factor from Table IV of this notice that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded monthly increase derived from the annual increase in the market basket index and is used to account for inflation in costs that occur after the date on which the prospective payment rates are effective.

If a facility uses a cost reporting period that is not 12 months in duration, a special adjustment factor will be calculated. This is necessary because market basket increases are computed to the midpoint of a cost reporting period and the adjustment factors in Table IV of this notice are based on an assumed 12-month cost reporting period. For cost reporting periods of other than 12 months, the calculation is done for the midpoint of the specific cost reporting period. The SNF's intermediary obtains this adjustment factor from HCFA central office.

C. Use of Wage Index to Adjust Labor-Related Cost

We are continuing to use the hospital industry wage index to account for area

wage differences. We are continuing to apply the wage index to five categories of labor-related costs: wages, employee benefits, health service costs, business service costs, and other miscellaneous costs. The portion of labor-related costs remains at the level of 83.1 percent. In addition, the same wage index values and urban/rural designations, as shown in Tables V and VI of this notice, are to be applied to the labor-related portion of the prospectively determined payment rates in this notice. (These are the same wage index values and urban/rural designations shown in the October 7, 1992 cost limit notice and section 2828 of the Provider Reimbursement Manual.)

D. Use of Classification System

We will retain the classification system based on grouping SNFs by census regions and by urban or rural area designation within the region. As required by sections 1888(d)(3) and 1886(d)(2)(D) of the Act, the term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of Census for statistical and reporting purposes. The term "urban area" means an area within a Metropolitan Statistical Area (MSA) (as defined by the Office of Management and Budget (OMB), with exceptions for certain New England County Metropolitan Areas (NECMAs), as described in a notice published in the **Federal Register** on April 1, 1991 (56 FR 13319)). The term "rural area" means an area outside of an MSA.

E. Use of OBRA 1987 and OSHA Per Diem Add-on

Section 1861(v)(1)(E) of the Act provides for payment for costs incurred by SNFs in complying with the nursing home reform provisions specified in section 1819 of the Act, including the costs of conducting nurse aide training and competency evaluations (referred to as the OBRA 1987 nursing home reform). Since the cost report data used in this notice does not account for the costs of implementing the OBRA 1987 nursing home reform provisions, we will continue to provide a per diem add-on for these costs. In addition, we will continue to provide a per diem add-on for the costs associated with the Occupational Safety and Health Administration (OSHA) universal precaution requirements. A detailed description of the derivation of the per diem add-on is contained in section 2828 of the Provider Reimbursement Manual. The amount of the OBRA/OSHA per diem add-on to determine prospectively determined payment rates for cost reporting periods beginning in Federal fiscal year 1997 is $2.06. (For cost limit purposes, the per diem add-on is $2.20 for Federal fiscal year 1997.)

F. Comparison of Provider's Prospective Payment Rate with Provider's Cost Limit

Below is an example of the calculation of the prospectively determined payment rate for a provider including the comparison of the adjusted routine operating portion of the rate with the applicable routine operating cost limit applicable to the specific provider. The capital-related component of the rate is added to the lower of the SNF's specific cost limit or its adjusted routine operating portion of the rate to arrive at the provider's actual prospectively determined payment rate.

Example: In this case, the adjusted cost limit is less than the adjusted routine operating portion of the rate for a freestanding SNF located in Providence, Rhode Island (MSA Region 1), with a cost reporting period beginning January 1, 1997. Therefore, the prospectively determined payment rate for this SNF is the adjusted cost limit plus the capital-related component of the rate ($126.12).

	Labor-related component	Non-labor related component	Capital-related component
Limit (From Table III)	$88.45	$18.99	
Rate (From Table I)	$116.46	$22.21	$10.00

CALCULATION OF PROSPECTIVE PAYMENT RATE

	Limit	Rate	Rate source
Labor-Related Component	$88.45	$116.46	(Table I).
Wage Index	×1.0630	×1.0630	(Table V).
Adjusted Labor Component	$94.02	$123.80	—
Non-Labor Component	$18.99	22.21	(Table I).
OBRA/OSHA Per Diem Add-on	+$2.20	+$2.06	(Sec III.E).
Adjusted Limit/Rate	$115.21	$148.07	—
Cost Reporting Year Adjustment Factor	×1.00796	×1.00796	(Table IV).
Applicable Limit and Operating Rate Portion	$116.12	$149.25	—
Capital-Related Component	+10.00	—	(Table I).
Prospectively Determined Payment Rate	$126.12	—	—

TABLE I.—PROSPECTIVE RATES—MSA LOCATIONS, EFFECTIVE FOR COST REPORTING PERIODS BEGINNING IN FY 1997

Region [1]	Labor-related	Nonlabor-related	Capital-related
1. New England (CT, ME, MA, NH, RI, VT)	$116.46	$22.21	$10.00
2. Middle Atlantic (PA, NJ, NY)	112.33	20.30	9.79
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	100.69	16.19	9.81
4. East North Central (IL, IN, MI, OH, WI)	95.68	15.90	9.18
5. East South Central (AL, KY, MS, TN)	96.25	14.16	7.32
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	102.64	17.05	10.23
7. West South Central (AR, LA, OK, TX)	89.81	14.03	10.06

TABLE I.—PROSPECTIVE RATES—MSA LOCATIONS, EFFECTIVE FOR COST REPORTING PERIODS BEGINNING IN FY 1997—Continued

Region [1]	Labor-related	Nonlabor-related	Capital-related
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	106.86	18.25	13.04
9. Pacific (AK, CA, HI, OR, WA)	97.24	19.93	8.40

[1] There are 16 MSAs that have counties in two or more regions. For each of these MSAs, the region in which a majority of the SNFs are located determines the regional rate that is paid as shown below. This is the same methodology as that used to implement the requirements of section 1886(d)(2)(D) of the Act as they apply to the hospital prospective payment.

The MSAs are as follows:

MSA	Region
Chattanooga, TN–GA	5
Cincinnati, OH–KY–IN	4
Columbus, GA–AL	3
Davenport-Rock Island-Moline, IA–IL	4
Duluth-Superior, MN–WI	6
Evansville-Henderson, IN–KY	4
Huntington-Ashland, WV–KY–OH	3
Johnson City-Kingsport-Bristol, TN–VA	5
Louisville, KY–IN	5
Memphis, TN–AR–MS	5
Minneapolis-St. Paul, MN–WI	6
Parkersburg-Marietta, WV–OH	3
St. Louis, MO–IL	6
Steubenville-Weirton, OH–WV	4
Wheeling, WV–OH	3
Wilmington-Newark, DE–NJ–MD	3

TABLE II.—PROSPECTIVE RATES—NON-MSA LOCATIONS EFFECTIVE FOR COST REPORTING PERIODS BEGINNING IN FY 1997

Region	Labor-related	Nonlabor-related	Capital-related
1. New England (CT, ME, MA, NH, RI, VT)	$125.72	$20.96	$10.58
2. Middle Atlantic (PA, NJ, NY)	117.44	16.86	7.94
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	111.02	15.09	9.19
4. East North Central (IL, IN, MI, OH, WI)	104.72	14.62	8.28
5. East South Central (AL, KY, MS, TN)	105.49	13.28	6.77
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	108.01	14.37	6.66
7. West South Central (AR, LA, OK, TX)	102.51	13.03	9.22
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	107.03	15.69	8.36
9. Pacific (AK, CA, HI, OR, WA)	119.77	20.11	10.16

TABLE III.—ROUTINE SERVICE COST LIMITS IN EFFECT FOR COST REPORTING PERIODS BEGINNING IN FEDERAL FISCAL YEAR 1997

Provider type/location	Labor-related component	Non-labor-related component	OBRA/OSHA add-ons
Freestanding:	.....	.....	$2.20
MSA	$88.45	$18.99	
Non-MSA	89.81	15.16	
Hospital based:	.....	.....	2.20
MSA limit	124.76	26.45	
Non-MSA limit	114.31	19.01	

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTORS[1] EFFECTIVE FOR COST REPORTING PERIODS BEGINNING IN FY 1997

If an SNF cost reporting period begins:	The adjustment factor is:
November 1, 1996	1.00268
December 1, 1996	1.00528
January 1, 1997	1.00796
February 1, 1997	1.01083
March 1, 1997	1.01343
April 1, 1997	1.01631
May 1, 1997	1.01910
June 1, 1997	1.02200
July 1, 1997	1.02481
August 1, 1997	1.02773
September 1, 1997	1.03066

[1] Based on compounded actual market basket inflation rates of 3.70 percent for 1993, 3.40 percent for 1994 and projected rates of 2.90 percent for 1995, 2.90 percent for 1996, 3.20 percent for 1997, and 3.40 percent for 1998.

TABLE V—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene TX	0.9220
Taylor, TX	
Aguadilla, PR	0.4568
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9493
Portage, OH	
Summit, OH	
Albany, GA	0.8050
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8922
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0123
Bernalillo, NM	
Alexandria, LA	0.8275
Rapides, LA	
Allentown-Bethlehem, PA–NJ	0.9857
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9238
Blair, PA	
Amarillo, TX	0.8739
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2130
Orange, CA	
Anchorage, AK	1.4176
Anchorage, AK	
Anderson, IN	0.9583
Madison, IN	
Anderson, SC	0.7258
Anderson, SC	
Ann Arbor, MI	1.1384
Washtenaw, MI	
Anniston, AL	0.7931
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9179
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.3953
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8739
Buncombe, NC	
Athens, GA	0.8209
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9596
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0507
Atlantic City , NJ	
Cape May, NJ	
Augusta, GA–SC	0.9401
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9665
Kane, IL	
Kendall, IL	
Austin, TX	0.9599
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0868
Kern, CA	
Baltimore, MD	1.0156
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9064
Penobscot, ME	
Baton Rouge, LA	0.9089
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9465
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9604
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0165
Beaver, PA	
Bellingham, WA	1.0497
Whatcom, WA	
Benton Harbor, MI	0.8406
Berrien, MI	
Bergen-Passaic, NJ	1.0295
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9325
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8062
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9260
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8769
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.8812
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.8639
Monroe, IN	
Bloomington-Normal, IL	0.8658
McLean, IL	
Boise City, ID	0.9757
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1809
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0149
Boulder, CO	
Bradenton, FL	0.9262
Manatee, FL	
Brazoria, TX	0.9314
Brazoria, TX	
Bremerton, WA	0.9535
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury	1.2032
Fairfield, CT	
Brownsville-Harlingen, TX	0.8601
Cameron, TX	
Bryan-College Station, TX	0.9489
Brazos, TX	
Buffalo, NY	0.8908
Erie, NY	
Burlington, NC	0.7986
Alamance, NC	
Burlington, VT	0.9358

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4479
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8811
Carroll, OH	
Stark, OH	
Casper, WY	0.8891
Natrona, WY	
Cedar Rapids, IA	0.8907
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8745
Champaign, IL	
Charleston, SC	0.8331
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9692
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC–SC	0.9486
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9615
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN–GA	0.9198
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7908
Laramie, WY	
Chicago, IL	1.0518
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0981
Butte, CA	
Cincinnati, OH–KY–IN	0.9821
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN–KY	0.7319
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.0739
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9616
El Paso, CO	
Columbia, MO	0.9506
Boone, MO	
Columbia, SC	0.8940
Lexington, SC	
Richland, SC	
Columbus, GA–AL	0.7482
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9673
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8594
Nueces, TX	
San Patricio, TX	
Cumberland, MD–WV	0.8188
Allegany, MD	
Mineral, WV	
Dallas, TX	0.9638
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7506
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA–IL	0.8471
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9664
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8943
Volusia, FL	
Decatur, AL	0.7487
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8286
Macon, IL	
Denver, CO	1.0758
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9171
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.0824
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7555
Dale, AL	
Houston, AL	
Dubuque, IA	0.8374
Dubuque, IA	
Duluth, MN–WI	0.9517
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8478
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8714
El Paso, TX	
Elkhart-Goshen, IN	0.8949
Elkhart, IN	
Elmira, NY	0.8810
Chemung, NY	
Enid, OK	0.8912
Garfield, OK	
Erie, PA	0.9155
Erie, PA	
Eugene-Springfield, OR	1.0164
Lane, OR	
Evansville, IN–KY	0.9276
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND–MN	0.9707
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8296
Cumberland, NC	
Fayetteville-Springdale, AR	0.7990
Washington, AR	
Flint, MI	1.1544
Genesee, MI	
Florence, AL	0.7679
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8429
Florence, SC	
Fort Collins-Loveland, CO	1.0238
Larimor, CO	
Ft Lauderdale-Hollywood-Pompano Beach, FL	1.0356
Broward, FL	
Fort Myers-Cape Coral, FL	0.9799
Lee, FL	
Fort Pierce, FL	1.1041
Martin, FL	
St. Lucie, FL	
Fort Smith, AR–OK	0.7931
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8916
Okaloosa, FL	
Fort Wayne, IN	0.8901
Allen, IN	
De Kalb, IN	
Whitley, IN	
Forth Worth-Arlington, TX	0.9747

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Johnson, TX Parker, TX Tarrant, TX	
Fresno, CA	1.0737
Fresno, CA	
Gadsden, AL	0.8199
Etowah, AL	
Gainesville, FL	0.8798
Alachua, FL Bradford, FL	
Galveston-Texas City, TX	0.9431
Galveston, TX	
Gary-Hammond, IN	0.9866
Lake, IN Porter, IN	
Glens Falls, NY	0.9231
Warren, NY Washington, NY	
Grand Forks, ND	0.9577
Grand Forks, ND	
Grand Rapids, MI	0.9883
Kent, MI Ottawa, MI	
Great Falls, MT	0.9992
Cascade, MT	
Greeley, CO	0.9358
Weld, CO	
Green Bay, WI	0.9585
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.9165
Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	
Greenville-Spartanburg, SC	0.8923
Greenville, SC Pickens, SC Spartanburg, SC	
Hagerstown, MD	0.9157
Washington, MD	
Hamilton-Middletown, OH	0.9384
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9919
Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1916
Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	
Hickory, NC	0.8741
Alexander, NC Burke, NC Catawba, NC	
Honolulu, HI	1.1580
Honolulu, HI	
Houma-Thibodaux, LA	0.7344
Lafourche, LA Terrebonne, LA	
Houston, TX	0.9935

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	
Huntington-Ashland, WV–KY–OH	0.9438
Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	
Huntsville, AL	0.8835
Madison, AL	
Indianapolis, IN	0.9663
Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Marion, IN Morgan, IN Shelby, IN	
Iowa City, IA	0.9528
Johnson, IA	
Jackson, MI	0.9664
Jackson, MI	
Jackson, MS	0.7733
Hinds, MS Madison, MS Rankin, MS	
Jackson, TN	0.7910
Madison, TN	
Jacksonville, FL	0.9051
Clay, FL Duval, FL Nassau, FL St. Johns, FL	
Jacksonville, NC	0.7154
Onslow, NC	
Jamestown-Dunkirk, NY	0.7735
Chautaqua, NY	
Janesville-Beloit, WI	0.8466
Rock, WI	
Jersey City, NJ	1.0526
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN–VA	0.8668
Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	
Johnstown, PA	0.9067
Cambria, PA Somerset, PA	
Joliet, IL	1.0278
Grundy, IL Will, IL	
Joplin, MO	0.7957
Jasper, MO Newton, MO	
Kalamazoo, MI	1.1709
Kalamazoo, MI	
Kankakee, IL	0.8489
Kankakee, IL	
Kansas City, KS–MO	0.9588

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	
Kenosha, WI	0.8855
Kenosha, WI	
Killeen-Temple, TX	1.1295
Bell, TX Coryell, TX	
Knoxville, TN	0.8693
Anderson, TN Blount, TN Grainger, TN Jefferson, TN Knox, TN Sevier, TN Union, TN	
Kokomo, IN	0.9435
Howard, IN Tipton, IN	
LaCrosse, WI	0.8956
LaCrosse, WI	
Lafayette, LA	0.8227
Lafayette, LA St. Martin, LA	
Lafayette, IN	0.8432
Tippecanoe, IN	
Lake Charles, LA	0.8374
Calcasieu, LA	
Lake County, IL	0.9994
Lake, IL	
Lakeland-Winter Haven, FL	0.8171
Polk, FL	
Lancaster, PA	0.9258
Lancaster, PA	
Lansing-East Lansing, MI	1.0222
Clinton, MI Eaton, MI Ingham, MI	
Laredo, TX	0.7278
Webb, TX	
Las Cruces, NM	0.7909
Dona Ana, NM	
Las Vegas, NV	1.0631
Clark, NV	
Lawrence, KS	0.8937
Douglas, KS	
Lawton, OK	0.8388
Comanche, OK	
Lewiston-Auburn, ME	0.9057
Androscoggin, ME	
Lexington-Fayette, KY	0.8446
Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Scott, KY Woodford, KY	
Lima, OH	0.8062
Allen, OH Auglaize, OH	
Lincoln, NE	0.8956
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8420

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8691
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8969
Lorain, OH	
Los Angeles-Long Beach, CA	1.2354
Los Angeles, CA	
Louisville, KY–IN	0.9092
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8790
Lubbock, TX	
Lynchburg, VA	0.8544
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8804
Bibb, GA	
Huston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0311
Dane, WI	
Manchester-Nashua, NH	1.0261
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8392
Richland, OH	
Mayaguez, PR	0.4771
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7715
Hidalgo, TX	
Medford, OR	1.0045
Jackson, OR	
Melbourne-Titusville Fl	0.9199
Brevard, Fl	
Memphis, TN–AR–MS	0.9060
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0312
Merced, CA	
Miami-Hialeah, FL	1.0188
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0401
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0377
Midland, TX	
Milwaukee, WI	0.9719

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN–WI	1.0818
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8319
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1577
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9900
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7864
Ouachita, LA	
Montgomery, AL	0.7738
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8068
Delaware, IN	
Muskegon, MI	0.9568
Muskegon, MI	
Naples, FL	1.0324
Collier, FL	
Nashville, TN	0.9397
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.2938
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.0002
Bristol, MA	
New Haven Waterbury-Meriden, CT	1.2095
New Haven, CT	
New London, London-Norwich	1.1571
New London, CT	
New Orleans, LA	0.8908
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3460

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1232
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8382
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.8515
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4283
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8614
Marion, FL	
Odessa, TX	1.0817
Ector, TX	
Oklahoma City, OK	0.9145
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.1002
Thurston, WA	
Omaha, NE–IA	0.8989
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange, County, NY	0.9653
Orange, NY	
Orlando, FL	0.9621
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8114
Daviess, KY	
Oxnard-Ventura, CA	1.2309
Ventura, CA	
Panama City, FL	0.8632
Bay, FL	
Parkersburg-Marietta, WV–OH	0.8540
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8755
Jackson, MS	
Pensacola, FL	0.8623

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8710
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA–NJ	1.0952
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0429
Maricopa, AZ	
Pine Bluff, AR	0.7872
Jefferson, AR	
Pittsburgh, PA	1.0127
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0782
Berkshire, MA	
Ponce, PR	0.4601
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9292
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR	1.1576
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0080
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0447
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0630
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0230
Utah, UT	
Pueblo, CO	0.8722
Pueblo, CO	
Racine, WI	0.8849
Racine, WI	
Raleigh-Durham, NC	0.9465
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8400
Pennington, SD	
Reading, PA	0.8814
Berks, PA	
Redding, CA	1.0549
Shasta, CA	
Reno, NV	1.1618
Washoe, NV	
Richland-Kennewick, WA	0.9402
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9417
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.1160
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8284
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.1030
Olmsted, MN	
Rochester, NY	0.9710
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9283
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2232
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0451
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9420
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9414
Buchanan, MO	
St. Louis, MO–IL	0.9388
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0445
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3041
Monterey, CA	
Salt Lake City-Ogden, UT	0.9932
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8139
Tom Green, TX	
San Antonio, TX	0.8452
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.1934
San Diego, CA	
San Francisco, CA	1.4539
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4900
Santa Clara, CA	
San Juan, PR	0.4987
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1768
Santa Barbara, CA	
Santa Cruz, CA	1.2784
Santa Cruz, CA	
Santa Fe, NM	0.9139
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2957
Sonoma, CA	
Sarasota, FL	0.9781
Sarasota, FL	
Savannah, GA	0.8327
Chatham, GA	
Effingham, GA	
Scranton, Wilkes Barre, PA	0.8952
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.0871
King, WA	
Snohomish, WA	
Sharon, PA	0.9061
Mercer, PA	
Sheboygan, WI	0.8872

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Sheboygan, WI	
Sherman-Denison, TX	0.9089
Grayson, TX	
Shreveport, LA	0.9299
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	0.8504
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8833
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0067
St. Joseph, IN	
Spokane, WA	1.0691
Spokane, WA	
Springfield, IL	0.9295
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8082
Christian, MO	
Greene, MO	
Springfield, MA	1.0316
Hampden, MA	
Hampshire, MA	
State College, PA	0.9901
Centre, PA	
Steubenville-Weirton, OH–WV	0.8712
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1612
San Joaquin, CA	
Syracuse, NY	0.9917
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0317
Pierce, WA	
Tallahassee, FL	0.9220
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9188
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8758
Clay, IN	
Vigo, IN	
Texarkana, TX–AR	0.7892
Miller, AR	
Bowie, TX	
Toledo, OH	1.0097
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9302
Shawnee, KS	
Trenton, NJ	1.0038
Mercer, NJ	
Tucson, AZ	0.9591
Pima, AZ	
Tulsa, OK	0.8532
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8521

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Tuscaloosa, AL	
Tyler, TX	0.9838
Smith, TX	
Utica-Rome, NY	0.8512
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3203
Napa, CA	
Solano, CA	
Vancouver, WA	1.0798
Clark, WA	
Victoria, TX	0.8994
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9760
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0392
Tulare, CA	
Waco, TX	0.7814
McLennan, TX	
Washington, DC–MD–VA	1.0941
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.8642
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9748
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0135
Palm Beach, FL	
Wheeling, WV–OH	0.8067
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	0.9809
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8172
Wichita, TX	
Williamsport, PA	0.8864
Lycoming, PA	
Wilmington, DE–NJ–MD	1.0869
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.8712
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0826
Worcester, MA	
Yakima, WA	1.0111
Yakima, WA	
York, PA	0.9021

TABLE V—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Adams, PA	
York, PA	
Youngstown-Warren, OH	0.9866
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0167
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.8885
Yuma, AZ	

TABLE VI.—WAGE INDEX FOR RURAL AREAS

Non-urban areas	Wage index
ALABAMA	0.7121
ALASKA	1.3426
ARIZONA	0.8747
ARKANSAS	0.6966
CALIFORNIA	1.0142
COLORADO	0.8415
CONNECTICUT	1.1905
DELAWARE	0.8572
FLORIDA	0.8730
GEORGIA	0.7767
HAWAII	0.9618
IDAHO	0.8953
ILLINOIS	0.7700
INDIANA	0.7806
IOWA	0.7532
KANSAS	0.7446
KENTUCKY	0.7793
LOUISIANA	0.7384
MAINE	0.8328
MARYLAND	0.8061
MASSACHUSETTS	1.1654
MICHIGAN	0.8826
MINNESOTA	0.8309
MISSISSIPPI	0.6957
MISSOURI	0.7249
MONTANA	0.8255
NEBRASKA	0.6995
NEVADA	0.9702
NEW HAMPSHIRE	0.9547
NEW JERSEY	[1]
NEW MEXICO	0.8318
NEW YORK	0.8402
NORTH CAROLINA	0.7936
NORTH DAKOTA	0.7719
OHIO	0.8453
OKLAHOMA	0.7400
OREGON	0.9607
PENNSYLVANIA	0.8613
PUERTO RICO	[2] 0.4333
RHODE ISLAND	[1]
SOUTH CAROLINA	0.7650
SOUTH DAKOTA	0.7168
TENNESSEE	0.7340
TEXAS	0.7591
UTAH	0.8983
VERMONT	0.9035
VIRGINIA	0.7815
VIRGIN ISLANDS	[2] 0.5734
WASHINGTON	0.9635
WEST VIRGINIA	0.8488
WISCONSIN	0.8447

TABLE VI.—WAGE INDEX FOR RURAL AREAS—Continued

Non-urban areas	Wage index
WYOMING	0.8457

[1] All counties within State are classified urban.
[2] Approximate value for area.

V. Impact Statement

For notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

The purpose of the July 21, 1995 final rule was to allow SNFs that provide fewer than 1,500 days of care to Medicare beneficiaries in a cost reporting period to have the option of receiving prospectively determined payment rates in the following cost reporting period. In our analysis of the impact of the July 21 final rule (60 FR 37593), we noted that Medicare payments to SNFs constitute only about 5.3 percent of total SNF revenues and indicated that the rule would have only a small impact on those revenues. We estimate that the prospectively determined payment rates contained in this notice will result in a cost to the Medicare program of $10 to $20 million for FY 1997. These costs represent the difference between estimated aggregate payments to SNFs that elect to be paid under the prospectively determined payment rates and estimated aggregate payments to the same SNFs if paid on a reasonable cost basis under the routine SNF cost limits. Thus, we continue to believe that this optional payment system will have a positive impact on small entities, while easing their cost reporting burden.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this final notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final notice was reviewed by the Office of Management and Budget.

Under the provisions of Public Law 104–121, we have determined that this notice is not a major rule.

VI. Other Required Information

A. Collection of Information Requirements

This final notice with comment period does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Waiver of Proposed Notice and 30-Day Delay in the Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to the public interest.

As discussed in section II of this notice, we have used the same basic methodology to develop this schedule of rates that was used in setting the rates published in section 2828 of the Provider Reimbursement Manual for cost reporting periods beginning in Federal fiscal year 1993. As discussed above, section 13503(b) of OBRA 1993 delayed the update to the schedule of prospectively determined payment rates until Federal fiscal year 1996. However, the delay in passing the proposed Federal fiscal year 1996 budget legislation, which contained provisions affecting the Federal fiscal year 1996 and Federal fiscal year 1997 prospectively determined payment rates, resulted in a delay in publishing updated Federal fiscal year 1996 rates. Regardless of that delay and in conformance with the clear direction of section 1888(d) of the Act and § 413.320, this notice announces the update to the schedule of prospectively determined payment rates for SNF inpatient service costs for cost reporting periods beginning in Federal fiscal year 1997. However, given the publishing time constraints mandated in § 413.320, it would not have been possible to publish a proposed notice and still implement the updated prospectively determined payment rates set forth in this notice. To do so would have been impractical, unnecessary, and contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in the effective date of this notice with comment period. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

C. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, if we proceed with a subsequent document, we will respond to the comments in that document.

APPENDIX.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS

Category of costs	Relative [1] importance 1993	Price variable used [2]
Payroll Expense	64.0	Percentage changes in average hourly earnings of employees in nursing and personal care facility. (SIC 805) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly). Table C–2.

APPENDIX.—DERIVATION OF "MARKET BASKET" INDEX FOR SNF ROUTINE SERVICE COSTS—Continued

Category of costs	Relative[1] importance 1993	Price variable used[2]
Employee Benefits	7.8	Supplements to wages and salaries per worker in nonagricultural establishments. For supplements to wages. Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business*. Table 1.11. For total employment. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment and Earnings* (monthly). Table B–4.
Food	7.6	Processed foods and feeds component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23. Food and beverage component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 22.
Other business services	5.1	Services component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Fuel and other utilities	4.0	A. Implicit price deflator-consumption of fuel oil and coal (derived from fuel oil component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, *Survey of Current Business* (monthly), Table 7.11. B. Implicit price deflator-consumer of electricity (derived from electricity component of Consumer Price Index). Source: U.S. Dept. of Commerce, Bureau of Economic Analysis. C. Implicit price deflator for natural gas (derived from utility (piped) gas component of Consumer Price Index). Source: Same as electricity above. D. Water and sewage maintenance component of the Consumer Price Index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Supplies	3.1	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Drugs	2.2	Pharmaceutical preparations, ethical component of producer price index. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Prices and Price Indexes* (monthly), Table 6.
Health services	1.6	Physician services component of Consumer Price Index for all urban consumers. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.
Miscellaneous	4.6	All Item Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Table 23.

[1] The basic weights for all major categories of skilled nursing home costs were obtained from the DHEW-National Center for Health Statistics (NCHS) National Nursing Home Surveys (NNHS) for 1972 and 1976 for home certified for participation in the Medicare program. See *Nursing Home Costs 1972, United States: National Nursing Home Survey, August 1973–April 1974, DHEW, NCHS: National Nursing Home Survey: 1977 Summary for the United States, Vital and Health Statistics, Series 13, Number 43.*

A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. In calendar year 1977 each "price" variable has an index of 100.0. The relative routine service cost weights change each period in accordance with price changes for each price variable. Cost categories with relatively higher "price" increases get relatively higher cost weights and vice versa.

[2] Forecasted by DRI/McGraw Hill, Health Care Costs, First Quarter, 1992, 1750 K St., NW, Washington D.C. 20006.

Authority: Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy); sec. 13503(b) and (c) of Pub. L. 103–66 (42 U.S.C. 1395x(v)(1)(B) and 1395yy (note)) and 42 CFR 413.1, 413.24, and 413.300 through 413.321).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 1, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 2, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–22376 Filed 8–30–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Fusion Proteins That Include Antibody and Non-Antibody Portions

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks one or more companies that can collaboratively pursue the pre-clinical and clinical development of Fusion Proteins That Include Antibody and Non-Antibody Portions. The following disease states are of interest: neoplasia, arteriosclerosis, tumor vascularization, fibrotic diseases, psoriasis and wound healing. The National Cancer Institute, Laboratory of Cellular and Molecular Biology has developed an assay system to identify receptor agonists and antagonists using fusion protein technology. The selected sponsor will be awarded a CRADA with the National Cancer Institute for the co-development of agents identified using the fusion protein technology.

ADDRESS: Questions about this opportunity may be addressed to Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd. MSC 7182, Bethesda, MD 20892–7182, Phone: (301) 496–0477, Facsimile: (301) 402–2117, from whom further information may be obtained.

DATE: In view of the important priority of developing new agents for the treatment or prevention of cancer, interested parties should notify this office in writing no later than October 18, 1996. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: "Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of

1986 and amendments (including 104 P.L. 133) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Government is seeking one or more companies which, in accordance with the requirements of the regulations governing the transfer of agents in which the Government has taken an active role in developing (37 CFR 404.8), can further develop the identified compounds and related diagnostic methods through Federal Food and Drug Administration approval and to a commercially available status to meet the needs of the public and with the best terms for the Government. The government has applied for domestic and foreign patent applications directed to Fusion Proteins That Include Antibody and Non-Antibody Portions.

The Fusion Proteins comprise an IgG sequence covalently joined at the IgG hinge and Fc domain to a non-antibody effector domain such as a ligand, toxin, or receptor. The effector domain or IgG non-antibody portion may be linked to a heterologous signal peptide to facilitate secretion. The resulting fusion protein exhibits the effector properties of both the antibody and non-antibody portions. Applications of this technology include development of diagnostic methods to monitor binding and expression of a protein of interest *in vitro*, *in vivo* and *in situ* (i.e. immunohistochemistry). In addition, the technology can be used to identify agonists and antagonists that modulate the binding of an effector molecule to its target. Fusion proteins may also be employed as a therapeutic to deliver radiation, a cytotoxic agent or a drug directly to a target cell.

The LCMB, Division of Basic Sciences, NCI is interested in establishing a CRADA with one or more companies to assist in the development of diagnostic, screening and therapeutic applications of the technology. The Government will provide all available expertise and information to date and will jointly pursue pre-clinical and clinical studies as required, giving the company full access to existing data and data developed pursuant to the CRADA. The successful company will provide the necessary scientific, financial and organizational support to establish clinical efficacy and possible commercial status of subject compounds and/or diagnostic and therapeutic applications.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute, includes the following:

1. Construction of fusion proteins comprising a molecule of interest covalently joined to an IgG hinge and FC antibody regions.
2. Expression and harvesting of the resulting fusion protein from conditioned medium of a suitable transfectant such as NIH 3T3 cells.
3. Develop a screen of ligand-HFc on receptor or receptor-HFc on ligand to identify putative agonists and antagonists.
4. Conduct in vitro studies to identify putative agonists and/or antagonists by screening libraries of compounds.
5. Conduct in vitro and in vivo studies to characterize the properties of putative agonists and/or antagonists.
6. Evaluation of test results.
7. Preparation of manuscripts for publication.

Relevant Government intellectual property rights are available for licensing through the Office of Technology Transfer, National Institutes of Health.

FOR FURTHER INFORMATION CONTACT

Susan Rucker, J.D., NIH Office of Technology Transfer, 6011 Executive Blvd, Suite 325, Rockville, MD 20852, Phone: (301) 496–7056 (ext. 245); Facsimile: (301) 402–0220.

The role of the collaborator company, includes the following

For agonist/antagonist screening:

1. Provide growth factor or receptor cDNA clones for fusion protein construction if not available in NCI/LCMB clone bank
2. Scale-up production of fusion proteins constructed by NCI if required
3. Conduct in vitro studies to identify putative antagonists/agonists by screening libraries of compounds
4. Conduct in vitro and in vivo studies to characterize the properties of putative antagonists/agonists
5. Conduct clinical studies of best candidates

For ligand-mediated histochemical experiments:

1. Test conditioned medium for suitability in histochemical experiments
2. Screen tumor samples or biopsies for reactivity
3. Conduct clinical studies of diagnostic test

Criteria for choosing the company include its demonstrated experience and commitment to the following:

1. Scientific expertise in and demonstrated commitment to the treatment of neoplasia, arteriosclerosis, fibrotic diseases and related disorders.
2. Scientific expertise in and demonstrated commitment to the development of drug delivery systems.
3. Experience in preclinical and clinical drug development.
4. Experience and ability to produce, package, market and distribute pharmaceutical products.
5. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.
6. A willingness to cooperate with the NCI in the collection, evaluation, publication and maintaining of data from pre-clinical studies and clinical trials regarding the subject compounds.
7. Provide defined financial and personnel support for the CRADA to be mutually agreed upon.
8. An agreement to be bound by the DHHS rules involving human and animal subjects.
9. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.
10. Provisions for equitable distribution of patent rights to any CRADA inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government and (2) an option for the collaborator to elect an exclusive or nonexclusive license to Government owned rights under terms that comply with the appropriate licensing statutes and regulations.

Dated: August 14, 1996.

Thomas D. Mays,

Director, Office of Technology Development, OD, NCI.

[FR Doc. 96–22393 Filed 8–30–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: September 10–11, 1996.

Time: September 10–8 am to 5 pm; September 11–8 am to adjournment.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications. The meeting will be

closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: August 28, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–22392 Filed 8–30–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: September 11, 1996.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4190, Telephone Conference.

Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 671 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Clinical Sciences.

Date: September 16, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4100, Telephone Conference.

Contact Person: Dr. Jeanne Ketley, Scientific Review Administrator, 671 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435–1788.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–22391 Filed 8–30–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–24–1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0074

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request an extension of approval for the collection of information which will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal lease (Form 3000–2) and enable the BLM to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200–9). The information supplied allows the BLM to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operations under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1969.

DATE: Comments must be submitted on or before November 4, 1996.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS Bldg., Washington, D.C. 20240.

Comments may be sent via Internet to: WOComment@WO0033wp.wo.blm.gov.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street N.W., Washington, D.C.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, (202) 452–0340.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), the BLM is required to provide a 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.) gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 600 million acres of public lands and national forests, and private lands where minerals have been reserved by the Federal Government. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 was passed by Congress to require that all public lands that are available for oil and gas leasing be offered first by competitive oral bidding. The Department of the Interior Appropriations Act of 1981 (43 U.S.C. 6508) provides for the competitive leasing of the lands in the National Petroleum Reserve-Alaska (NPR–A). The Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025) authorizes the Secretary of the Interior to issue leases for geothermal development. The lands available for exploration and leasing include public, withdrawn, reserved, and acquired lands administered by the Bureau of Land Management (BLM). The National Environmental Policy Act (NEPA) of 1969 established a national policy to protect the environment.

The regulations within 43 CFR Group 3100 outline procedures for obtaining a lease to explore for, develop, and produce oil and gas resources located on Federal lands. The regulations within 43 CFR Group 3200 provide for the issuance of geothermal leases and the exploration, development and utilization of Federally-owned geothermal resources. The BLM needs the information requested on the two forms to process bids for oil and gas and geothermal lands and to complete environmental reviews required by the NEPA.

The information will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources parcel on

form 3000–2, "Competitive Oil and Gas or Geothermal Resources Lease Bid". In the case of form 3200–9, "Notice of Intent to conduct Geothermal Resources Exploration Operations", the information will be used to enable the BLM to complete environmental reviews in compliance with the National Environmental Policy Act of 1969. The BLM needs the information requested to determine the eligibility of an applicant to hold, explore for, develop and produce oil and gas and geothermal resources on Federal lands.

The forms are submitted in person or by mail to the proper BLM Office. For Form 3000–2, the name and address of the bidder is needed to identify the bidder and allow the authorized officer to ensure that the bidder meets the requirements of the regulations. The total bid and payment submitted with bid is necessary to determine the specific bid and that the bid is accompanied by one-fifth of the amount bid as required by the regulations for a Geothermal bid or the minimum acceptable bid, first year's rental and administrative fee as required by the regulations for an oil and gas bid. For Form 3200–9, names and addresses are needed to identify entities who will be conducting operations on the land. The description of land is necessary to determine the area to be entered or disturbed by the proposed exploration operation. Dates of commencement and completion are necessary to determine how long the applicant/operator/contractor intends to conduct operations on the land. The forms were developed in 1990 and 1986 respectively and the information required from the public remains the same.

Based on past experience conducting oil and gas and geothermal lease sales and administering geothermal exploration operations, the BLM estimates that the public reporting burden for completing to be two hours. The bidder/lessee/operator/contractor has access to records, plats, and maps necessary for providing land descriptions. The estimate includes time spent researching bids and assembling information as well as the time of clerical personnel.

It is estimated that approximately 393 Form 3000–2 will be filed annually for a total of 786 reporting hours and approximately 50 form 3200–9 will be filed annually for a total of 100 reporting hours. Respondents vary from individuals and small businesses to large corporations.

Any interested member of the public may request and obtain, without charge, a copy of Form 3000–2 or 3200–9 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.** All responses to the notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: August 23, 1996.

Annetta Cheek,

Leader, Regulatory Management Team.

[FR Doc. 96–22362 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–84–M

[UTU–72033]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (P.L. 97–451), a petition for reinstatement of oil and gas lease UTU–72033 for lands in San Juan County, Utah, was timely filed and required rentals accruing from July 1, 1996, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease and set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–72033, effective July 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,

Group Leader, Minerals Adjudication Group.

[FR Doc. 96–22390 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–056–1430–01 and CA–059–1430–01; CACA 7337, CACA 7366, and CAS 585]

Termination of Classifications of Public Lands for Small Tract Classification Number 506, Recreation and Public Purpose, and Multiple-Use Management, and Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the following classifications of public lands, either in their entirety or in part: CACA 7337—Small Tract Classification Number 506, CACA 7366—Recreation and Public Purposes, and CAS 585—Multiple-Use Management. The lands will be opened to the operation of the public land laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The lands have been and remain open to the operation of the mineral leasing laws.

EFFECTIVE DATE: Termination of the classifications are effective on September 3, 1996. The lands will be open to entry at 10 a.m. on October 3, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Gary or Duane Marti, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California 95825–0451; telephone number 916–979–2858.

SUPPLEMENTARY INFORMATION:

(1). CACA 7337—Small Tract Act Classification Number 506

On January 4, 1957, 1,581.65 acres of public lands were classified as suitable for lease under the Act of June 1, 1938, as amended (43 U.S.C. 682a–e). The lands were segregated from appropriation under the public land laws and the general mining laws. The classification decision was published in the **Federal Register** on January 11, 1957 (22FR245). On March 25, 1992, that classification was terminated for all but 180 acres, which are described below. The decision to terminate the classification, in part, was published in the **Federal Register** on February 24, 1992 (57FR6331).

Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and the regulations contained in 43 CFR 2091.7–1(b)(2), Small Tract Act Classification Number 506 is hereby terminated in its entirety and the segregation for the following described land is hereby terminated:

Mount Diablo Meridian

T. 33 N., R. 10W.,
Sec. 13, lots 4 through 18, inclusive, W½NE¼, E½NE¼NW¼, E½NW¼NE¼NW¼.

The area described aggregates 180 acres in Trinity County.

The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

(2). CACA 7366—Recreation and Public Purposes Classification Number C3–1131

On May 20, 1971, 231.85 acres of public lands were classified as suitable for lease or sale under the Recreation

and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.). The land was segregated from appropriation under the public lands laws and the general mining laws.

Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and the regulations contained in 43 CFR 2091.7–1(b)(1), Recreation and Public Purposes Classification Number C3–1131 is hereby terminated, in part, and the segregation for the following described land is hereby terminated:

T. 33N., R. 9W.,
Sec. 5, NE¼SE¼
Sec. 6, lots 7, 11, 18 and 19;
Sec. 18, lot 91 and tract 86.

The areas described aggregate 168.69 acres in Trinity County.

The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

(3). CAS 585—Classification of Public Lands for Multiple-Use Management

On January 25, 1968, approximately 103,683 acres of public lands were classified for multiple-use management under the Act of September 19, 1964 (43 U.S.C. 1411–18). The lands were segregated from appropriation only under the agricultural land laws (43 U.S.C., Chs. 7 and 9, 25 U.S.C. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171).

Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), and the regulations contained in 43 CFR 2091.7–1(b)(3) and 2461.5(c)(2), the classification of public lands for multiple-use management, CAS 585, is hereby terminated in its entirety and the segregation for the following described land is hereby terminated:

Mount Diablo Meridian

All public lands in

T. 42 N., R. 9 E.,
Secs. 1, 2, 3, 10, 11, 12, 14, and 15;
T. 41 N., R. 10 E.,
Secs. 1 to 3, inclusive, and 10 to 13, inclusive;
T. 42 N., R. 10 E.,
Secs. 1 to 12, inclusive;
T. 40 N., R. 11 E.,
Secs. 1 to 4, inclusive, 9 to 16, inclusive, 21 to 27, inclusive, 34, and 35;
T. 41 N., R. 11 E.,
Secs. 1 to 19, inclusive, and 32 to 36, inclusive;
T. 42 N., R. 11 E.,
Secs. 1 to 12, inclusive;
T. 40 N., R. 12 E.,
Secs. 3 to 10, inclusive, 15 to 20, inclusive, 22, and 30;
T. 41 N., R. 12 E.,
Secs. 4 to 9, inclusive, 16 to 22, inclusive, 24, 25, and 28 to 34, inclusive;
T. 42 N., R. 12 E.,
Secs. 5 to 7, inclusive, 28, 29, 32, 33, and 34;
T. 43 N., R. 12 E.,
Secs. 22 to 27, inclusive;
T. 39 N., R. 13 E.,
Secs. 1 to 5, inclusive, 11, and 12;
Tps. 40 to 41 N., R. 13 E.,
T. 42 N., R. 13 E.,
Sec. 1, SE¼NE¼;
Secs. 23 to 26, inclusive, and 35;
T. 43 N., R. 13 E.,
Secs. 2, 3, 10, 13, and 15;
Secs. 19 to 24, inclusive, and 26 to 30, inclusive;
T. 44 N., R. 13 E.,
Secs. 1, 2, 3, 10, and 11;
Secs., 14 to 16, inclusive, 22, 23, 26, 27, 34, and 35;
T. 45 N., R. 13 E.,
Secs. 27, 34, and 35;
T. 39 N., R. 14 E.,
Secs. 5 and 6;
T. 40 N., R. 14 E.,
Secs. 4 to 9, inclusive, 16 to 20, inclusive, and 29 to 32, inclusive;
T. 42 N., R. 14 E.,
Secs. 6 to 8, inclusive, 17, 19, 30, and 31;
T. 43 N., R. 14 E.,
Secs. 4, 5, 7, and 17 to 19, inclusive;
T. 44 N., R. 14 E.,
Secs. 3, 17, 19 to 21, inclusive, 28 to 32, inclusive;
Sec. 33, NE¼NE½;
T. 46 N., R. 14 E.,
Sec. 33;
T. 47 N., R. 14 E.,
Sec. 25.

The areas described aggregate approximately 103,683 acres in Modoc County.

The classification no longer serves a needed purpose as to the lands described above and is hereby terminated.

At 10 a.m. on October 3, 1996, the lands described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on October 3, 1996 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on October 3, 1996, the lands described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this notice under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: August 23, 1996.

Ed Hastey,

State Director.

[FR Doc. 96–22270 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–40–P

[ID–957–1220–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. August 22, 1996.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 28, and the survey of lot 1 in section 28, T. 9 N., R. 36 E., Boise Meridian, Idaho, Group No. 971, was accepted, August 22, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: August 22, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–22269 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

[FES 96–43]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to the Proposed Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002 pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

Information on the availability of the final EIS can be obtained from: Regional Director, Alaska Region, Minerals

Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, attention: Public Information, telephone (907) 271–6070 or (800) 764–2627. For availability of the final EIS along the Pacific Coast, contact: Regional Director, Pacific Region, Minerals Management Service, 770 Paseo, Camarillo, California 93010, attention: Public Information, telephone (805) 389–7520 or (800) 672–2627. For availability of the final EIS along the Gulf of Mexico Coast and Atlantic Coast, contact Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, attention: Public Information, telephone (504) 736–2519 or (800) 200–GULF. Information on the availability of the final EIS can be obtained from Chief, Environmental Projects Coordination Branch, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817, telephone (703) 787–1674.

Copies of the final EIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the final EIS will be available may be obtained from the offices listed above.

Lucy R. Querques,

Acting Associate Director for Offshore Minerals Management.

Approved: August 27, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–22338 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Notice of Request for Reinstatement, With Change, of a Previously Approved Information Collection

AGENCY: National Park Service, DOI.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's (NPS') intention to request a reinstatement of, and revisions to, a previously approved information collection for certain activities related to 36 CFR 61, *Procedures for State, Tribal, and Local Historic Preservation Programs.* The proposed revisions are based on program changes made since 1989.

DATES: Comments to this notice must be received by November 4, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact John W. Renaud, Project Coordinator, Branch of State, Tribal, and Local Programs, Heritage Preservation Services Division, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington D.C. 20013–7127, (202) 343–1059.

SUPPLEMENTARY INFORMATION:

Title: 36 CFR 61, *Procedures for State, Tribal, and Local Government Historic Preservation Programs.*

OMB Number: 1024–0038.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This information collection has an impact on State and local governments that wish to participate formally in the national historic preservation program and who wish to apply for Historic Preservation Fund grant assistance. The National Park Service uses the information to ensure compliance with the National Historic Preservation Act and government-wide grant requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 14.06 hours per response.

Respondents: State and Local Governments.

Estimated Number of Respondents: 363. This is the gross number of respondents for all of the documents included in this information collection. The net number of States and local governments participating in this information collection annually is 119.

Estimated Number of Responses per Respondent: 1.07.

Estimated Total Annual Burden on Respondents: 5,384 hours.

Copies of this information collection can be obtained from Mr. John W. Renaud, Project Coordinator, at (202 343–1059).

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection or other forms of information technology, or any other aspect of this collection of information to:

Mr. John W. Renaud, Project Coordinator, Branch of State, Tribal, and Local Programs, Heritage Preservation Services, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Terry N. Tesar,

Information Collection Coordinator.

[FR Doc. 96–22329 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–70–M

Draft General Management Plan/ Environmental Impact Statement, Independence National Historical Park, PA; Notice of Public Meeting

Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces two public meetings to gather public comments on a September, 1996 Supplement to the draft Independence National Historical Park General Management Plan/Environmental Impact Statement and newsletter.

In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service has prepared a general management plan/environmental impact statement for Independence National Historical Park which was on public review during September, October, and November, 1995. A Supplement has been produced and will be distributed to cooperating agencies, interested groups, individuals, and institutions. The Supplement, as well as the GMP/EIS, are available by telephoning 215–597–1841 and also will be available at the Independence National Historical Park Visitor Center, Third and Chestnut Streets during public meetings.

Further written public comments will be accepted on the GMP/EIS and Supplement up to October 18, 1996 and oral comments will be accepted at the public meetings to be held in the Independence National Historical Park Visitor Center between the hours of 2:00 p.m. and 4:00 p.m. on September 24, 1996 and again on September 25, 1996 between the hours of 7:00 p.m. and 9:00 p.m. The Visitor Center is located at Third and Chestnut Streets, Philadelphia, Pennsylvania.

The GMP/EIS analyzes the issues, needs, and concerns of Independence National Historical Park and attempts to address them. Examples of such items include preservation and use of historic structures, visitor orientation and circulation, facilities use and development, park interpretation, and the proposed redevelopment of the Independence Mall. Six alternatives for addressing these issues, needs and concerns are outlined within the document. The Supplement addresses revisions to the preferred alternative

being considered as a result of public comment on the plan.

Written comments may be sent to Independence National Historical Park, 313 Walnut Street, Philadelphia, Pennsylvania 19106.

Dated: August 20, 1996.

Warren D. Beach,

Associate Field Director, Northeast Field Area.

[FR Doc. 96–22330 Filed 8–30–96; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Submission for OMB Emergency Review; Comment Request

U.S. Agency for International Development has submitted the following information collection (ICR), utilizing emergency review procedures, to the Office of Management Budget (OMB) for review and clearance accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by September 20, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling Mary Ann Ball, M/AS/ISS, (202) 736–4743 or via email MABall@USAID.GOV.

Written comments and questions about ICR listed below should be forwarded to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

The Office of Management and Budget is particularly interested in comments which: (a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

Title: Financial Status Report.

OMB Number: None.

Type of Review: New Collection.

Description: USAID for Eastern Europe and Newly Independent States (ENI), requests a class deviation from 22 CFR 226.52 concerning the use of standard forms 269–269A and 272/272A for financial reporting. 22 CFR 226.52(b)(1) states that "when additional information is needed to comply with legislative requirements, USAID shall issue instructions to require recipients to submit such information in the "remarks" section that is not legislatively required and, therefore seeks a class deviation to the statute from the Office of Management and Budget (OMB) in accordance with 22 CFR 2276.4. The ENI Bureau wants to require that grant and cooperative agreement recipients working in multiple countries submit expenditure reports by country.

ANNUAL REPORTING BURDEN:

Number of Respondents: 80.

Total Annual Responses: 640.

Total Annual Hours requested: 320.

Dated: August 13, 1996.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 96–22389 Filed 8–30–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Universal Shippers Association, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Virginia in *United States* v. *Universal Shippers Association, Inc.*, Civil No. 96–1154–A as to Universal Shippers Association, Inc.

The Complaint alleges that the defendant and Lykes Bros. Steamship Co., Inc. entered into a contract containing an "automatic rate differential clause," which required Lykes to charge competing shippers of wine and spirits from Europe to the United States rates for ocean transportation services that were at least 5% higher than Universal's for any lesser volume of cargo. This clause required maintenance of a 5% differential in favor of Universal at all times, thereby placing shippers who compete with Universal at a competitive disadvantage.

The proposed Final Judgment enjoins the defendant from maintaining, agreeing to, or enforcing an automatic rate differential clause in any of its contracts, and also requires defendant to establish an antitrust compliance program.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Suite 500, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, D.C. 20530 (telephone: 202/307–6351).

Rebecca P. Dick,

Deputy Director, Office of Operations, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties thereto, and venue of this action is proper in the Eastern District of Virginia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court;

3. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

This 22nd day of August, 1996.

For the Plaintiff United States of America:

Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section.

Donna N. Kooperstein,

Assistant Chief, Transportation, Energy and Agriculture Section.

Michele B. Cano,

Attorney, Transportation, Energy and Agriculture Section.

Dennis E. Szybala,

Assistant United States Attorney V.S.B. # 22785.

For the Defendant Universal Shippers Association, Inc.:

Ronald N. Cobert, Esquire,

Grove, Jaskiewicz and Cobert, Suite 400, 1730 M Street, N.W., Washington, D.C. 20036–4579.

Final Judgment

Plaintiff, United States of America, filed its Complaint on August 22, 1996. United States of America and Universal Shippers Association, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against nor an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II

Definitions

As used herein, the term:

(A) *Automatic rate differential clause* means any provision in a contract the defendant has with an ocean common carrier or conference that requires the ocean common carrier or conference to maintain a differential in rates, whether expressed as a percentage or as a specific amount, between rates charged by the ocean common carrier or conference to the defendant under the contract and rates charged by the ocean common carrier or conference to any other shipper of the same or competing commodities for lesser volumes.

(B) *Contract* means any contract for the provision of ocean liner transportation services, including a service contract. "Contract" does not include any contract for charter services or for ocean common carriage provided at a tariff rate filed pursuant to 46 U.S.C. App. § 1707.

(C) *Conference* means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff in accordance with 46 U.S.C. App. § 1701, et seq.

(D) *Defendant* means Universal Shippers Association, Inc., each of its predecessors, successors, divisions, and subsidiaries, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former employees, directors, officers, agents, consultants or other persons acting for or on behalf of any of them.

(E) *Service contract* means any contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level.

(F) *Shipper* means the owner of cargo transported or the person for whose account the ocean transportation of cargo is provided or the person to whom delivery of cargo is made; "shipper" also means any group of shippers, including a shippers' association.

(G) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

III

Applicability

(A) This Final Judgment applies to the defendant, and to each of its subsidiaries, successors, assigns, officers, directors, employees, and agents.

IV

Prohibited Conduct

Defendant is restrained and enjoined from maintaining, adopting, agreeing to, abiding by, or enforcing an automatic rate differential clause in any contract.

V

Nullification

Any automatic rate differential clause in any of defendant's contracts shall be null and void by virtue of this Final Judgment. Promptly upon entry of this Final Judgment, defendant shall notify in writing each ocean common carrier or conference with whom defendant has a contract containing an automatic rate differential clause that this Final Judgment prohibits such clause.

VI

Compliance Measures

Defendant is ordered:

(A) To send, promptly upon entry of this Final Judgment, a copy of this Final Judgment to each ocean common carrier or conference whose contract with defendant contains an automatic rate differential clause;

(B) To provide a copy of this Final Judgment to each director and officer at the time they take office, and to those employees that negotiate contracts, and to maintain a record or log of signatures of those persons that they received, read, understand to the best of their ability, and agree to abide by this Final Judgment and that they have been advised and understand that noncompliance with the Final Judgment may result in disciplinary measures and also may result in conviction of the person for criminal contempt of court;

(C) To maintain an antitrust compliance program which shall include an annual briefing of the defendant's Board of Directors, officers and non-clerical employees on this Final Judgment and the antitrust laws.

VII

Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the defendant's office hours to inspect and copy all documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the

defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VIII

Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____.

_____

United States District Judge

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against and with the consent of defendant Universal Shippers Association, Inc. ("Universal") in this civil proceeding.

I

Nature and Purpose of the Proceeding

On August 22, 1996, the United States filed a civil antitrust Complaint alleging that Universal Shippers Association, Inc. ("Universal") entered into an agreement with an ocean common carrier that unreasonably restrains competition for ocean transportation services in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

On the same date, the United States and Universal filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to undo the challenged agreement and prevent any recurrence of such agreements in the future.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce or modify the Judgment or to punish violations of any of its provisions.

II

Practices Giving Rise to the Alleged Violation

Defendant Universal is a Delaware corporation with its principal place of business in Bedford, Virginia. A shippers' association is a group of ocean transportation customers ("shippers") that consolidates or distributes freight for its members on a nonprofit basis in order to secure volume discounts. Universal is itself a shippers' association and is composed of member shippers' associations and large independent distillers that ship their own products. Universal accounts for about half of the wine and spirits carried across the North Atlantic.

Prices in the ocean shipping industry are not set in a vigorously competitive market. The ocean shipping industry is comprised of both conference and independent ocean common carriers. A conference is a legal cartel of ocean common carriers; its members receive immunity from the antitrust laws (46 U.S.C. App. § 1701, *et seq.*, "1984 Shipping Act") to agree on prices and engage in other otherwise illegal concerted activity. There are over 15 carriers that serve the North Atlantic trade between the United States and Europe, but the majority of these are members of the Trans-Atlantic Conference Agreement ("TACA"). TACA is a conference that has received antitrust immunity to jointly fix prices and limit capacity in the North Atlantic trade. Their prices are set forth in tariffs filed with the Federal Maritime Commission ("FMC") and are available to all shippers. Lykes Bros. Steamship Co., Inc. ("Lykes") is not a member of TACA. Lykes is an ocean common carrier that provides ocean transportation services for cargo worldwide, including services in the North Atlantic trade between the United States and Northern Europe. It operates as an independent carrier in the North Atlantic, offering transportation services to all shippers at tariff prices that it sets independently. In trades with a significant conference, such as the North Atlantic trade, independents as well as the conference possess some degree of market power over freight rates because there are relatively few separate sellers.

Under the 1984 Shipping Act, independent carriers or conferences may enter into service contracts with shippers or shippers' associations. In a service contract, a shipper or shippers' association commits to provide a certain minimum quantity of cargo over a fixed period, and the ocean carrier or conference commits to a certain price schedule based on that volume. Service contract prices are typically lower than the tariff prices.[1]

Universal entered into a service contract with Lykes on or about October 26, 1993, for the ocean transportation of wine and spirits from Northern Europe to the United States. The Lykes/Universal contract contained the following "automatic rate differential clause":

> Carrier guarantees that rates and charges in this Contract shall at all times be at least 5% lower than any other tariff, Time Volume or other service contract rates for similar commodities at a lesser volume and essentially similar transportation service. As necessary, Carrier shall reduce rates/charges in this Contract as necessary to honor this guarantee, promptly informing the Association and the FMC.

This clause requires Lykes to charge competing shippers or shippers' associations that purchase lesser volumes than Universal a rate that is at least 5% higher than Universal's.

Other shippers and shippers' associations compete with Universal and its members for importing wines and spirits into the United States. Universal's competitors seek to minimize their costs by, *inter alia*, obtaining the lowest possible rates for the ocean transportation of wine and

[1] Independent carriers and conferences may also enter into service contracts with non-vessel operating common carriers ("NVOCCs"). An NVOCC offers transportation services to shippers but does not operate the vessels. NVOCCs typically consolidate the freight of small shippers and then arrange for carriage of the consolidated freight.

spirits. But the automatic rate differential clause limited Lykes' incentive to offer to Universal's competitors transportation rates as favorable as Lykes could otherwise offer. To comply with the clause, Lykes must either offer these shippers prices that are at least 5% higher than the prices in Universal's service contract, or it must lower Universal's price for *all* of Universal's service contract shipments in order to maintain the 5% differential. The latter is not an attractive alternative for Lykes, given Universal's volume. And in either case, Universal's competitors pay prices 5% higher than Universal—regardless of Lykes' cost of providing them with transportation—which adversely affects their ability to compete with Universal.

Where there are few separate sellers, as is the case here, an automatic rate differential clause in effect places a tax on the buyer's competitors. There is a danger that this tax will protect the buyer from competition from firms whose costs may otherwise be lower than its own, thus erecting barriers to competition. It is the raising of these barriers to competition with Universal, which already has a substantial market presence, that constitutes the unreasonable restraint of trade in this case.

III

Explanation of the Proposed Final Judgment

The Plaintiff and Universal have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission of any party concerning any issue of fact or law.

Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section VIII(C) of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is designed to eliminate the automatic differential clause from defendant's contracts for the provision of ocean liner transportation services with ocean common carriers or conferences. Under Section IV of the proposed Final Judgment, Universal is restrained and enjoined from maintaining, adopting, agreeing to, abiding by, or enforcing an automatic rate differential clause in any contract with an ocean common carrier or conference. Section VIII(A) of the proposed Final Judgment provides for a term of ten years. Section V nullifies any automatic rate differential clauses currently in effect in any of Universal's contracts with an ocean common carrier or conference.

Section VI(A) of the proposed Final Judgment requires Universal to send a copy of the Final Judgment to each ocean common carrier whose contract with Universal contains an automatic rate differential clause. Section IV(B) requires Universal to provide a copy of the Final Judgment to each director and officer at the time they take office, and to those employees that negotiate contracts for the provision of ocean liner transportation services, and to maintain a record and log of those signatures that they received, read, understand, and agree to abide by the Final Judgment. Section VI also obligates Universal to maintain an antitrust compliance program that meets the obligations specified in Section VI(C). In addition, Section VII of the Final Judgment sets forth a series of measures by which the plaintiff may have access to information needed to determine or secure Universal's compliance with the Final Judgment.

The relief in the proposed Final Judgment removes the contractual clause that requires the ocean common carrier or conference to place in essence a 5% "tax" on the shipping costs of Universal's competitors. It restores to Universal's competitors the ability to compete for the lowest shipping prices.

IV

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice, such a trial would involve substantial costs to both the United States and Universal and is not warranted because the proposed Final Judgment provides relief that will fully remedy the violations of the Sherman Act alleged in the United States' Complaint.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damage suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent action that may be brought against the defendant in this matter.

VI

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to Roger W. Fones, Chief; Transportation, Energy, and Agriculture Section; Department of Justice, Antitrust Division; Liberty Place Building, Suite 500; 325 Seventh Street, N.W.; Washington, D.C. 20530, within the 60-day period provided by the Act. Comments received, and the Government's responses to them, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry if the Department should determine that some modification of the Judgment is warranted in the public interest. The proposed Judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VII

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Judgment, consequently, none are filed herewith.

Dated: August 22, 1996.

Respectfully submitted,

Michele B. Cano,

Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 2530, (202) 307–0813.

Dennis E. Szybala,

Assistant United States Attorney, V.S.B. #22785.

Certificate of Service

I hereby certify that, on this day August 22, 1996, I have caused to be served, by hand delivery, a copy of the foregoing Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement on counsel for Universal Shippers

Association, Inc. at the address below: Ronald N. Cobert, Esq., Grove, Jaskiewicz and Cobert, 1730 M Street, N.W., Suite 400, Washington, D.C. 20036–4579.

Michele B. Cano,

United States Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

[FR Doc. 96–22274 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on August 1, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the ATM Forum ("Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: CYLINK Corporation, Sunnyvale, CA; California Eastern Labs, Santa Clara, CA; Canon, Inc., Tokyo, JAPAN; Global One, Reston, VA; Lucent Technologies, Holmdel, NJ; Netro Corporation, Santa Clara, CA; and Vebacom, Koln, GERMANY have been added to the venture. Company name changes include the following: ABB HAFO to Mitel Semiconductor AB; Anritsu Wiltron to Anritsu Corporation; and Cellstream Networks to Sentient Networks. Stratacom has withdrawn from the venture. The following members have changed from auditing members to principal members: Coreel Microsystems; Olivetti Research; and UNI Inc.

No changes have been made in the planning activities of the Forum. Membership remains open, and the members intend to file additional written notifications disclosing all changes in membership.

On April 19, 1993, the Forum filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 2, 1993 (58 FR 31415). The last notification was filed on May 3, 1996. The Department of Justice published a notice in the **Federal Register** on June 3, 1996 (61 FR 27935).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–22273 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 16, 1996, Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121–4340, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I

Drug	Schedule
Amphetamine (1100)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research community.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22353 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 25, 1996, Radian International LLC, 8501 North Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I

Drug	Schedule
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Benzoylecgonine (9180)	II

The firm plans to import the listed controlled substances to make deuterated and non-deuterated drug reference standards for analytical and forensic laboratories.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22354 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances Notice of Registration

By Notice dated June 27, 1996, and published in the **Federal Register** on July 5, 1996, (61 FR 35265), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Triangle Institute to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22352 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

Bureau of Justice Statistics

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Capital Punishment Annual Data Collection.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with Code of Federal Regulations, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the United States Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be sent to DOJ via facsimile to 202–514–1534.

Requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) Title of the Form/Collection: Capital Punishment Report of Inmates Under Sentence of Death.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms: NPS–8 Report of Inmates Under Sentence of Death; NPS–8A Update Report of Inmates Under Sentence of Death; NPS–8B Status of Death Penalty—No Statute in Force; NPS–8C Status of Death Penalty—Statute in Force. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief

abstract: Primary: State or Local governments. Others: Individuals or households, and Federal Government. Approximately 52 Attorneys General and 52 designated officials responsible for keeping records of inmates under sentence of death will be asked to provide information on condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal if no longer under sentence of death, method of execution, and cause of death other than by execution. This program analyzes capital punishment statutes, and persons under sentence of death in State and Federal correctional institutions. The Bureau of Justice Statistics uses this information in published reports, and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others in the criminal justice community.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 304 responses at 1 hour each for the NPS–8; 2,890 responses at ½ hour each for the NPS–8A; and 52 responses at ½ hour each for the NPS–8B or NPS–8C.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,775 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 27, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22334 Filed 8–30–96; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–102]

NASA Advisory Council (NAC), Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 40662, Notice Number 96–089, August 5, 1996.

PREVIOUSLY ANNOUNCED DATES OF MEETING: August 27, 1996, August 28, 1996, and August 29, 1996. Meeting has been canceled.

FOR FURTHER INFORMATION CONTACT: Mr. P. Douglas Arbuckle, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–4072.

Dated: August 22, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–22339 Filed 8–30–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–101]

NASA Advisory Council, Aeronautics Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee meeting.

DATES: September 25, 1996, 9:00 a.m. to 5:00 p.m.; September 26, 1996, 8:30 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 262, Room 100, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Schlickenmaier, National Aeronautics and Space Administration, Headquarters, Washington, DC 20546, 202/358–4638.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—National Perspective: NASA Aeronautics Update
—Report on Status of FAA–NASA Interagency Air Traffic Management Integrated Product Team
—Report on On-Going Air Traffic Management-Related Research and Technology at NASA
—Report on Advanced Air Traffic Technology Element of NASA Advanced Subsonic Technology Program

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: August 23, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–22340 Filed 8–30–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–100]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Honeywell, Inc., of Glendale, Arizona, has requested an exclusive license to practice the invention described in U.S. Patent No. 5,173,944, entitled "Head Related Transfer Function Pseudo-Stereophony," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Ken Warsh, Patent Counsel, Ames Research Center.

DATES: Responses to this notice must be received by November 4, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (415) 604–5104, fax (415) 604–1592.

Dated: August 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–22341 Filed 8–30–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: September 24, 1996.

Time of Meeting: 10:00 a.m. to 12:00 p.m.

Place of Meeting: National Archives and Records Administration, Room 410, Seventh

Street and Pennsylvania Avenue, NW, Washington, DC.

Purpose: To discuss National Industrial Security Program policy matters. The agenda will include a discussion on the current status of the program, an update on reporting on security costs pertaining to industry, a discussion of possible approaches to bring greater consistency and uniformity to the National Industrial Security Program Operating Manual chapter on automated information systems security, and an update on the most recent draft safeguarding directive.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than September 20, 1996. Written statements from the public will be accepted in lieu of an opportunity for comment.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

L. Reynolds Cahoon,

Assistant Archivist for Policy and IRM Services.

[FR Doc. 96–22272 Filed 8–30–96; 8:45 am]

BILLING CODE 6820–AF–M

OFFICE OF PERSONNEL MANAGEMENT

[RI 30–9]

Submission for OMB Review; Comment Request for Reclearance of Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will submit to the Office of Management and Budget a request for reclearance of the following information collection. RI 30–9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, informs former disability annuitants of their right to request restoration under title 5, U.S.C., Section 8337. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Approximately 200 forms are completed annually. The form takes approximately 60 minutes to respond, including a medical examination. The annual estimated burden is 200 hours. Burden may vary depending on the time required for a medical examination.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before October 3, 1996.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Dierctor.

[FR Doc. 96–22364 Filed 8–30–96; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia Paige, (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on Monday, July 29, 1996 (61 FR 39483). Individual authorities established or revoked under Schedules A and B and established under Schedule C between July 1, 1996, and July 31, 1996, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked in July 1996.

Schedule B

No Schedule B authorities were established or revoked in July 1996.

Schedule C

The following Schedule C authorities were established July 1996:

Council on Environmental Quality

Special Assistant to the Chair. Effective July 12, 1996.

Department of Agriculture

Confidential Assistant to the Under Secretary for Rural Economic and Community Development. Effective July 3, 1996.

Special Assistant to the Administrator, Farm Service Agency. Effective July 3, 1996.

Confidential Assistant to the Administrator, Rural Business Service. Effective July 3, 1996.

Confidential Assistant to the Chief, Natural Resources Conservation Service. Effective July 3, 1996.

Director, Congressional Relations to the Assistant Secretary for Congressional Relations. Effective July 3, 1996.

Confidential Assistant to the Administrator, Food, Nutrition and Consumer Service. Effective July 23, 1996.

Confidential Assistant to the Administrator, Agricultural Research Service. Effective July 26, 1996.

Department of Commerce

Senior Advisor to the Assistant Secretary for Import Administration. Effective July 2, 1996.

Special Assistant to the Senior Advisor to the Department for Puerto Rico Initiatives. Effective July 8, 1996.

Deputy Assistant Secretary for Policy and Planning to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective July 26, 1996.

Department of Defense

Office Director and Special Coordinator for Cooperative Threat Reduction to the Deputy Assistant Secretary of Defense for Threat Reduction Policy. Effective July 3, 1996.

Special Assistant to the Assistant Secretary of Defense, International Security Policy. Effective July 11, 1996.

Department of Education

Special Assistant to the Director, Office of Educational Technology. Effective July 3, 1996.

Special Assistant to the Deputy Secretary of Agriculture. Effective July 31, 1996.

Department of Energy

Director, Office of Scheduling and Logistics to the Assistant Secretary for Human Resources and Management. Effective July 30, 1996.

Department of Health and Human Services

Director, Office of Scheduling to the Chief of Staff, Office of the Secretary. Effective July 19, 1996.

Department of Housing and Urban Development

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Congressional and Intergovernmental Affairs. Effective July 10, 1996.

Special Assistant to the Senior Advisor to the Secretary. Effective July 26, 1996.

Director, Office of Executive Scheduling to the Deputy Secretary. Effective July 30, 1996.

Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective July 30, 1996.

Deputy Director, Office of Executive Scheduling to the Director, Office of Executive Scheduling. Effective July 30, 1996.

Department of the Interior

Special Assistant to the Secretary of the Interior. Effective July 30, 1996.

Special Assistant to the Assistant Secretary for Policy, Management and Budget. Effective July 31, 1996.

Special Assistant to the Deputy Secretary. Effective July 31, 1996.

Department of Justice

Chief of Staff to the Assistant Attorney General, Office of Justice Programs. Effective July 3, 1996.

Department of Labor

Special Assistant to the Deputy Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective July 18, 1996.

Staff Assistant to the Chief of Staff. Effective July 29, 1996.

Department of the Navy (DOD)

Special Assistant to the Principal Deputy Secretary of the Navy (Manpower and Reserve Affairs). Effective July 15, 1996.

Department of State

Special Assistant to the Under Secretary for Economic Affairs. Effective July 2, 1996.

Senior Women's Coordinator to the Under Secretary for Global Affairs. Effective July 10, 1996.

Special Assistant to the Assistant Secretary, International Organizational Affairs. Effective July 12, 1996.

Policy Advisor to the Assistant Secretary, Bureau of European and Canadian Affairs. Effective July 30, 1996.

Department of Transportation

Special Assistant to the Secretary of Transportation. Effective July 19, 1996.

Department of the Treasury

Special Assistant to the Deputy Assistant Secretary (Public Liaison). Effective July 3, 1996.

Senior Advisor, Public Affairs to the Director of the U.S. Mint. Effective July 3, 1996.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective July 26, 1996.

Export-Import Bank of the United States

Personal and Confidential Assistant to the President and Chairman. Effective July 12, 1996.

National Credit Union Administration

Staff Assistant to the Board Member. Effective July 2, 1996.

Selective Service System

Special Assistant to the Director of Selective Service. Effective July 10, 1996.

Small Business Administration

Director of Scheduling to the Chief of Staff. Effective July 2, 1996.

Senior Advisor to the Deputy Administrator, Small Business Administration. Effective July 3, 1996.

Special Assistant to the Associate Administrator for Communications and Public Liaison. Effective July 19, 1996.

Special Assistant to the Assistant Administrator for Field Operations. Effective July 22, 1996.

U.S. International Trade Commission

Confidential Assistant to the Commissioner. Effective July 23, 1996.

United States Tax Court

Trial Clerk to the Judge. Effective July 12, 1996.

Trial Clerk to the Judge. Effective July 19, 1996.

Trial Clerk to the Judge. Effective July 23, 1996.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–22365 Filed 8–30–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22175; 811–8708]

Arizona Limited Maturity Municipals Portfolio; Notice of Application

August 26, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Arizona Limited Maturity Municipals Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 28, 1996 and an amendment thereto on August 14, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a New York trust. Applicant is a master fund in a master-feeder structure.

2. On August 19, 1994, applicant registered under the Act and filed a

registration statement on Form N–1A. No registration was filed under the Securities Act of 1933 ("Securities Act") because applicant's beneficial interests were issued solely in private placement transactions that did not involve any public offering within the meaning of section 4(2) of the Securities Act.

3. Applicant's sole feeder fund terminated its operations and, therefore, applicant is doing the same. On November 20, 1995, applicant's Board of Trustees unanimously approved the liquidation of applicant, effective January 31, 1996. No shareholder approval was requested by the Declaration of Trust of Applicant, or by applicable law.

4. By May 2, 1996, applicant redeemed both of its beneficial interests which were held by Eaton Vance Arizona Limited Maturity Municipals Fund, a series of Eaton Vance Investment Trust, and Eaton Vance Management. Each interest holder received cash equal to the net asset value of its interest in applicant.

5. Applicant has no securityholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

6. Applicant will take all required actions to terminate its existence as a New York trust upon receipt of an order from the SEC that it has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22360 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22173; 812–10236]

First American Strategy Funds, Inc., et al.; Notice of Application

August 26, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("Act").

APPLICANTS: First American Strategy Funds, Inc. ("FASF"); First American Investment Funds, Inc. ("FAIF"); First American Funds, Inc. ("FAF"); First Bank National Association ("First Bank"); SEI Financial Services Company ("SEI").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit FASF to invest primarily in the securities of certain affiliated investment companies in excess of the limits of section 12(d)(1).

FILING DATE: The application was filed on July 5, 1996, and amended on August 22, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: FASF, FAIF, FAF and SEI, 680 East Swedesford Road, Wayne, Pennsylvania, 19087; First Bank, 601 Second Avenue South, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Branch Chief, at (202) 942–0564, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FASF, a Minnesota corporation, is registered as an open-end management investment company under the Act. On July 2, 1996, FASF filed a registration statement under the Securities Act of 1933 for the offering of four series: Income Fund, Growth and Income Fund, Growth Fund, and Aggressive Growth Fund (collectively, "FASF Portfolios"). Each FASF Portfolio will be separately managed and pursue a distinct set of investment objectives and policies. The FASF Portfolios will pursue their objectives by investing primarily in series of FAIF and FAF ("Underlying Portfolios"). Additional FASF Portfolios may be organized in the future.[1]

2. The FASF Portfolios initially will offer their shares in one class that will be subject to an annual shareholder servicing fee equal to .25% of average daily assets. This class will not be subject to front-end or deferred sales charges, redemptions fees, or Rule 12b–1 distribution fees, although such charges and fees may be imposed in the future.

3. FAIF is organized under Maryland law and registered as an open-end management investment company under the Act. FAIF offers its shares in 20 series with varying investment objectives and policies. The series of FAIF that are currently proposed to be used as Underlying Portfolios are: Equity Income Fund, Stock Fund, Diversified Growth Fund, Emerging Growth Fund, Regional Equity Fund, Special Equity Fund, International Fund, Technology Fund, Health Sciences Fund, Real Estate Securities Fund, and Fixed Income Fund. FAF is organized under Minnesota law and registered as an open-end management investment company under the Act. FAF offers its shares in three series. Each series holds itself out to the public as a money market fund and is subject to the requirements of rule 2a–7 under the Act. The series of FAF that is currently proposed to be used as an Underlying Portfolio is the Prime Obligations Fund. Additional series of FAIF and FAF that comply with the conditions set forth herein may be used as Underlying Portfolios in the future.

4. The Underlying Portfolios offer their shares in several classes. The FASF Portfolios initially will invest only in a class of an Underlying Portfolio which is not subject to front-end of deferred sales charges, redemption fees, rule 12b–1 distribution fees, or shareholder servicing fees. The FASF Portfolios in the future may invest in one or more classes of the Underlying Portfolios which bear such charges and fees.

5. First Bank, a national banking association, is the investment adviser for each of the FASF Portfolios and the Underlying Portfolios. First Bank is a wholly-owned subsidiary of First Bank System, Inc. ("FBS"), a bank holding company. First Bank's investment advisory fees with respect to each FASF Portfolio and Underlying Portfolio are

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[1] Applicants request relief for such additional FASF Portfolios, subject to the terms and conditions set forth herein.

calculated as a per annum percentage of net assets of each Portfolio. With respect to one of the Underlying Portfolios (FAIF's International Fund), First Bank has engaged a subadviser, Marvin & Palmer Associates, Inc., which is not affiliated with First Bank or any of its affiliates. First Trust National Association, a wholly-owned subsidiary of FBS, is the custodian for the FASF Portfolios and the Underlying Portfolios.

6. SEI, which is not affiliated with First Bank, is principal underwriter for each FASF Portfolio and Underlying Portfolio. Applicants request relief for SEI only in its capacity as principal underwriter for the FASF Portfolios and Underlying Portfolios and not in its capacity as principal underwriter for other groups of investment companies.[2] Applicants request that the relief extend to any future principal underwriter for the FASF Portfolios and the Underlying Portfolios, provided the conditions set forth herein are satisfied.

7. The investment objectives of the FASF Portfolios are intended to provide differing balances between the objectives of current income and growth of capital. First Bank will allocate and re-allocate the FASF Portfolios' assets among the Underlying Portfolios according to initial percentage ranges as described in the application.

8. The FASF Portfolios will invest primarily in Underlying Portfolio shares. The FASF Portfolios also may invest in cash and cash item for temporary defensive purposes and to maintain liquidity, and in futures contracts and options on futures in order to: remain fully invested in proportions consistent with their current asset allocation strategy in a cost effective manner; re-allocate assets among asset categories while minimizing transaction costs; maintain cash reserves while simulating full investment; facilitate trading; or seek higher investment returns when a futures contract is priced more attractively than the underlying security or index.

9. The FASF Portfolios may redeem Underlying Portfolio shares through in-kind distributions of portfolio securities of Underlying Portfolios. The FASF Portfolio would hold such securities until its adviser determined that is was appropriate to dispose of them. Such in-kind distributions would be made only in order to resolve potential conflicts of interest between an FASF Portfolio and an Underlying Portfolio. For example, when a redemption by an FASF Portfolio would cause the Underlying Portfolio to incur sizable brokerage commissions, the transaction may be effected in-kind so that the brokerage costs would be borne only by the FASF Portfolio and not by the Underlying Portfolio's shareholders. Any such in-kind redemption would be made *pro rata* and comply with paragraph (a) through (f) of rule 17a–7 under the Act, except that the consideration for the securities distributed by the Underlying Portfolio would be the Underlying Portfolio's shares rather than cash.

10. Applicants request that any relief granted pursuant to the application also apply to any open-end management investment company that is or will be part of the same "group of investment companies," as defined in rule 11a–3 under the Act, as FASF.[3]

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. The restrictions in section 12(d)(1) were intended to prevent certain abuses perceived to be associated with the pyramiding of investment companies, including: (1) Unnecessary duplication of costs (*e.g.* sales loads, advisory fees, and administrative costs); (2) undue influence by the fund holding company over its underlying funds; (3) the threat of large scale redemptions of the securities of the underlying investment companies; and (4) unnecessary complexity. For the following reasons, applicants believe that the proposed arrangements will not give rise to these dangers.

4. Applicants contend that the proposed structure will not raise the sales charge layering concerns underlying section 12(d)(1). The FASF initially will offer one class of shares that charges an annual shareholder servicing fee of .25% of average daily assets. This class will not be subject to any front-end or deferred sales charges, redemption fees, or rule 12b–1 distribution fees. The class of Underlying Portfolio shares in which the FASF Portfolios will invest initially will not be subject to any front-end or deferred sales charges, redemption fees, rule 12b–1 distribution fees, or shareholder servicing fees. Although future classes of FASF Portfolios and classes of Underlying Portfolios in which the FASF Portfolios invest may be subject to such charges and fees, any sales charges or service fees relating to the shares of an FASF Portfolio will not exceed the limits set forth in rule 2830 of the NASD's Conduct Rules when aggregated with any sales charges or service fees that the FASF Portfolio pays relating to Underlying Portfolio shares.

5. With regard to concerns about layering of advisory fees, applicants state that, before approving any advisory contract under section 15 of the Act, the board of directors of FASF, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that any advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio advisory contract.

6. Applicants believe that, while administrative and other fees are expected to be charged at both the FASF Portfolio and Underlying Portfolio levels, overall expenses may be reduced under the proposed arrangement. Applicants anticipate that the total expense ratio of the FASF Portfolios, including the expenses borne directly at the FASF Portfolio level and indirectly at the Underlying Portfolio level, will be disclosed in the FASF Portfolios' prospectuses. Applicants contend that investors will have a means for determining whether the layering of administrative and other expenses results in total expense ratios which are

[2] SEI previously received an SEC order to permit the operation of a "fund or funds" similar to that proposed herein where all of the funds were advised or distributed by SEI. *SEI Institutional Managed Trust*, Investment Company Act Release No. 21539 (Nov. 22, 1995) (notice) and 21615 (Dec. 20, 1995) (order).

[3] Rule 11a–3 under the Act defines "group of investment companies" as two or more companies that: (1) Hold themselves out to investors as related companies for purposes of investment and investor services, and (2) have a common investment adviser or principal underwriter.

out of line from those of other mutual funds.

7. Applicants believe that the FASF Portfolios will provide a simple means through which investors can obtain professional allocation services. Applicants also believe that any additional expenses associated with investing in FASF will be deemed by many investors to be outweighed by the benefits received by such investors in the form of such asset allocation services.

8. Applicants contend that the risk that a "fund of funds" may be able to control the management decisions of the underlying funds by threatening large redemptions is not relevant to the proposed arrangements. The FASF Portfolios and the Underlying Portfolios will be part of the same "group of investment companies," as defined in rule 11a–3 under the Act, and the FASF Portfolios and Underlying Portfolios therefore will share the same or affiliated investment advisers or principal underwriters. Applicants argue that, where the FASF Portfolios and Underlying Portfolios have a common investment adviser and investment decisions for the Underlying Portfolios already are controlled by the adviser for the FASF Portfolios, the adviser has no incentive to wield this control in a manner which is detrimental to the Underlying Portfolios.

9. Applicants contend that the FASF Portfolios will be structured in a manner intended to minimize problems related to the impact that large scale redemptions may have on the orderly management of the Underlying Portfolios. The FASF Portfolios generally are designed for long-term investors, which applicants assert should reduce the possibility of the FASF Portfolios being used as short-term trading vehicles and further protect the FASF Portfolios and the Underlying Portfolios from unexpected large redemptions.

10. Applicants believe that the problem of unnecessarily complex investment vehicles is addressed by the condition set forth herein that prohibits Underlying Portfolios from acquiring securities in another investment company in excess of the limits of section 12(d)(1)(A), except as authorized under a prior SEC order that permits series of FAIF to invest in series of FAF in excess of the limits of section 12(d)(1)(A)(ii) of the Act up to the greater of $2.5 million or 5% of the FAIF series' assets ("Cash Sweep Order").[4]

11. Section 17(a) of the Act makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Applicants believe that the FASF Portfolios and the Underlying Portfolios could be deemed "affiliated persons" of each other, as defined in section 2(a)(3) of the Act, by virtue of being under the control of a common investment adviser, First Bank, or because an FASF Portfolio owns 5% or more of the shares of an Underlying Portfolio. Applicants believe that purchases by the FASF Portfolios of Underlying Portfolio shares and sales by the Underlying Portfolios of their shares to the FASF Portfolios may be deemed to be principal transactions between affiliated persons under section 17(a).

12. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (1) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (2) the proposed transaction is consistent with the policies of the registered investment company involved; and (3) the proposed transaction is consistent with the general provisions of the Act.

13. Applicants request an exemption under section 6(c) from the limits of sections 12(d)(1) (A) and (B), and under sections 6(c) and 17(b) from section 17(a), to permit the transactions described above. Applicants believe that the requested exemptions are fully consistent with the policies and purposes of the Act and that, for the reasons provided above, it would be appropriate for the SEC to grant the requested relief under section 6(c).

14. Applicants also believe that the section 17(b) standard has been satisfied for the following reasons. First, the consideration paid for the sale and redemption of Underlying Portfolio shares will be based on the net asset values of the Portfolios, subject to any applicable sales charges. Second, the investment of assets of the FASF Portfolios in Underlying Portfolio shares and the issuance of Underlying Portfolio shares will be effected in accordance with each FASF Portfolio's investment restrictions and will be consistent with the policies as set forth in each FASF Portfolio's registration statement. Finally, the Proposed arrangement does not involve overreaching by applicants and is consistent with the purposes of the Act for the reasons discussed above.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each FASF Portfolio and each Underlying Portfolio will be part of the same "group of investment companies," as defined in rule 11a–3 under the Act.

2. No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in Section 12(d)(1)(A) of the 1940 Act, except as permitted under the Cash Sweep Order.

3. A majority of the Board of Directors of FASF will not be "interested persons," as defined in section 2(a)(19) of the Act.

4. Any sales charges or service fees charged relating to the shares of an FASF Portfolio, when aggregated with any sales charges or service fees paid by the FASF Portfolio relating to its acquisition, holding or disposition of shares of the Underlying Portfolios, will not exceed the limits set forth in rule 2830 of the NASD's Conduct Rules.

5. Before approving any advisory contract under section 15 of the Act, the Board of Directors of FASF, including a majority of Directors who are not "interested persons," as defined in section 2(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the FASF Portfolios.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets of each FASF Portfolio and Underlying Portfolio; monthly purchases and redemptions (other than by exchange) for each FASF Portfolio and each Underlying Portfolio; monthly exchanges into and out of each FASF Portfolio and each Underlying Portfolio; month-end allocations of each FASF Portfolio's assets among the Underlying Portfolios; annual expense ratios for each FASF Portfolio and each Underlying Portfolio; and a description of any vote taken by the shareholders of any Underlying Portfolio, including a statement of the percentage of votes case for and against the proposal by the FASF Portfolios and by the other shareholders of the Underlying Portfolio. The information will be

[4] *First American Investment Funds, Inc.*, Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

provided as soon as reasonably practicable following each fiscal year-end of the FASF Portfolio (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22356 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22174; 811–8712]

North Carolina Limited Maturity Municipals Portfolio; Notice of Application

August 26, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: North Carolina Limited Maturity Municipals Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 28, 1996 and an amendment thereto on August 14, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Allison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a New York trust. Applicant is a master fund in a master-feeder structure.

2. On August 19, 1994, applicant registered under the Act and filed a registration statement on Form N–1A. No registration was filed under the Securities Act of 1933 ("Securities Act") because applicant's beneficial interests were issued solely in private placement transactions that did not involve any public offering within the meaning of section 4(2) of the Securities Act.

3. Applicant's sole feeder fund terminated its operations and, therefore, applicant is doing the same. On November 20, 1995, applicant's Board of Trustees unanimously approved the liquidation of applicant, effective January 31, 1996. No shareholder approval was required by the Declaration of Trust of Applicant, or by applicable law.

4. By March 7, 1996, applicant redeemed both of its beneficial interests which were held by Eaton Vance North Carolina Limited Maturity Municipals Fund, a series of Eaton Vance Investment Trust, and Eaton Vance Management. Each interest holder received cash equal to the net asset value of its interest in applicant.

5. Applicant has no securityholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

6. Applicant will take all required actions to terminate its existence as a New York trust upon receipt of an order from the SEC that it has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22359 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22176; 811–8710]

Virginia Limited Maturity Municipals Portfolio; Notice of Application

August 26, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Virginia Limited Maturity Municipals Portfolio.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 28, 1996 and an amendment thereto on August 14, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be receive by the SEC by 5:30 p.m. on September 20, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 24 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a New York trust. Applicant is a master fund in a master-feeder structure.

2. On August 19, 1994, applicant registered under the Act and filed a registration statement on Form N–1A. No registration was filed under the Securities Act of 1933 ("Securities Act")

because applicant's beneficial interests were issued solely in private placement transactions that did not involve any public offering within the meaning of section 4(2) of the Securities Act.

3. Applicant's sole feeder fund terminated its operations and, therefore, applicant is doing the same. On November 20, 1995, applicant's Board of Trustees unanimously approved the liquidation of applicant, effective January 31, 1996. No shareholder approval was required by the Declaration of Trust of Applicant, or by applicable law.

4. By March 7, 1996, applicant redeemed both of its beneficial interests which were held by Eaton Vance Virginia Limited Maturity Municipals Fund, a series of Eaton Vance Investment Trust, and Eaton Vance Management. Each interest holder received cash equal to the net asset value of its interest in applicant.

5. Applicant has no security holders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

6. Applicant will take all required actions to terminate its existence as a New York trust upon receipt of an order from the SEC that it has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22361 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37612; File No. SR–CBOE–96–51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Eligibility Requirements for Participation on the RAES System in SPX Options

August 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 26, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On August 22, 1996, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to conform the qualifications that members participating through joint accounts must meet in order to participate on the Retail Automatic Execution System ("RAES") in Standard & Poor's 500 options ("SPX") to those qualifications that must be met by market-makers trading on RAES through their individual accounts.[4] Pursuant to the change, members of joints accounts who execute at least 50%, instead of 75% (as Rule 24.16 currently states), of their market-maker contracts for the preceding calender month in SPX may participate on RAES. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the qualifications for members of joint accounts to participate in SPX RAES.[5] Specifically, the Exchange is proposing to specify that market-makers participating in RAES through joint accounts must meet the same eligibility requirements for market-makers participating through individual accounts. Currently, the one difference in the requirements is that each member of a joint account that participates on RAES must execute at least 75% of his or her market-maker contracts for the preceding month in SPX, while those participating through individual accounts have a 50% requirement, as recently approved by the Commission.[6]

The Exchange notes that at the time it proposed to change the eligibility requirements for market-makers participating in RAES through individual accounts, the Exchange intended to make the same eligibility change for market-makers participating in RAES through joint accounts. Through an oversight, however, the Exchange did not revise the Rule 24.16(c)(i) language describing the eligibility requirements for market-makers participating in joint accounts.

The Exchange believes that the rational for minimum eligibility requirements is the same for market-makers participating through individual accounts and those participating through joint accounts. Accordingly, the Exchange believes that the minimum eligibility requirements for individual and joint accounts should be set at the same threshold. In both cases, the eligibility requirements generally ensure that those market-makers who are satisfying the public customer orders at the prevailing bid or offer are the same market-makers who have made a commitment to make markets on a regular basis at the SPX post.

The Exchange notes that whether a particular market-maker participates in

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 is a technical amendment clarifying the term "preceding month" as used in Rules 24.16 and 24.17. *See* letter from Timothy Thompson, Senior Attorney, CBOE to John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated August 20, 1996.

[4] *See* Securities Exchange Act Release No. 37348 (June 21, 1996), 61 FR 33788 (June 28, 1996) (File No. SR–CBOE–96–19).

[5] RAES is the Exchange's automatic execution system for small (generally less than 10 contracts) public customer market or marketable limit orders. When an order is entered through RAES, the system automatically attaches to the order its execution price, determined by the prevailing market quote at the time or the order's entry into the system. A buy order pays the offer; a sell order sells at the bid. An eligible SPX market-maker who is signed onto the system at the time the order is received will be designated to trade with the public customer order at the assigned price.

[6] *See* Release No. 34–37348, *supra* note 4.

RAES through an individual or a joint account is a business decision of the market-maker, and should not affect that market-maker's eligibility to participate in RAES. The Exchange believes that without making this change to equalize the eligibility requirements, those market-makers who, for business reasons, have decided to participate through joint accounts would have stricter eligibility requirements than those market-markers participating on RAES through individual accounts.

2. Statutory Basis

By equalizing the eligibility requirements of all market-makers to participate on SPX RAES, the CBOE believes that the proposed rule change will treat all market-makers more fairly. As such, the Exchange believes the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act. Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the presence of an adequate number of market-makers protects investors and contributes to the maintenance of a fair and orderly market. The Commission also believes it is reasonable for the Exchange to apply the same minimum eligibility requirements for participation in SPX RAES through joint accounts as apply to participation through individual accounts. The Commission believes that the Exchange's proposal help ensure continued availability of RAES for SPX options, thereby contributing to the effective and efficient execution of public investor orders at the best available prices. The Commission believes that requiring market-makers, whether participating through joint or individual accounts, to execute at least 50% of their contracts in SPX in the preceding month to participate in SPX RAES is a reasonable means for achieving this goal.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, as stated above, the Commission believes that the presence of an adequate number of market-makers protects investors and contributes to the maintenance of a fair and orderly market. The Commission also believes that the CBOE proposal to conform its rules for eligibility requirements for market-makers participating on RAES through joint accounts with the eligibility requirements for those participating through individual accounts raises no new regulatory issues. Additionally, as noted above, the Exchange recently proposed the same minimum SPX RAES eligibility requirements for individual accounts. The proposal regarding SPX RAES eligibility for individual accounts was published in the **Federal Register**,[7] and was subject to a full notice and comment period. No comments were received on the proposal. Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists to approve the proposed rule change on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the day of publication of notice hereof in the **Federal Register**. Specifically, Amendment No. 1 clarifies that the "preceding month" reviewed by the Exchange to determine both SPX and OEX RAES eligibility is the preceding calendar month. The Commission believes that the Amendment further clarifies and strengthens the rule language, and raises no new regulatory issues. Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–96–51 and should be submitted by September 24, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–96–51), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret McFarland,

Deputy Secretary.

[FR Doc. 96–22358 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37608; File No. SR–DTC–96–11]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Seeking Authority To Release Clearing Data Relating to Participants

August 26, 1996.

On May 28, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–96–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 19, 1996.[2] No

[7] *See* Release No. 34–37348, *supra* note 4.

[8] 15 U.S.C. § 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37433 (July 12, 1996), 61 FR 37783.

comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

The rule change establishes Rule 2, Section 6, of DTC's rules to govern the release of certain participant information which DTC obtained during its ordinary course of business. The new rule authorizes DTC to release information relating to a participant's participants fund deposit, collateral, net credit balance, and net debit balance (referred to herein as "clearing information") to authorized parties. Such authorized parties include other clearing agencies registered with the Commission at which the participant is a member; any clearing organization that is affiliated with or has been designated by a futures contract market under the oversight of the Commodities Futures Trading Commission of which the participant is a member; and upon the request of the participant, to such other entities as the participant may designate.

The rule change will permit DTC to release clearing information to the National Securities Clearing Corporation ("NSCC") for use in its Collateral Management Service ("CMS").[3] CMS provides collateral information regarding a participant to the participant and to other clearing agencies at which the participant is a member.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The Commission believes the proposed rule change is consistent with DTC's obligation under Section 17A(b)(3)(F) because the proposal sets forth DTC's responsibilities and obligations with regard to releasing participants' clearing data and facilitates DTC's participation in NSCC's CMS by enabling DTC to provide participant information to NSCC for use in its CMS. DTC's and its participants' participation in NSCC's CMS should help DTC and other clearing agencies to better monitor their members' clearing fund, margin, and other similar by required deposits that protect the clearing agencies against loss should a member default on its obligations. Furthermore, NSCC's CMS will be especially beneficial to those participating clearing entities that have executed cross-guaranty agreements or other similar cross-guarantee arrangements.[5]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22357 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37602; File No. SR–OCC–95–17]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving a Proposed Rule Change Modifying the Escrow Deposit Program

August 26, 1996.

On November 2, 1995, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–95–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 7, 1996.[2] OCC amended the proposed rule change on March 22, 1996, and on July 22, 1996.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

OCC is modifying its escrow deposit program to (i) permit escrow deposits for stock put options and stock index put options; (ii) delete provisions regarding OCC's batch system for processing escrow receipts; (iii) change provisions regarding the timing of the release of escrow deposits; and (iv) delete provisions for bulk deposits for call options and deposits of Treasury bills for put options. In addition, OCC is modifying other OCC rules and the On-line Escrow Deposit Agreement to conform to this rule change.

Pursuant to OCC rules, clearing members may deposit, which deposit may be in the form of an escrow deposit, with an OCC approved custodian shares of stock underlying certain options in lieu of margin. Escrow deposits are specific deposits of assets held by OCC at an approved custodian for the account of a specific customer. Presently, OCC's rules restrict escrow deposits to short positions in stock call option contracts and stock index call option contracts. For stock call options, the underlying security may be deposited in escrow, and for stock index call options, any combination of cash, short-term government securities, or marginable equity securities may be deposited in escrow.

Permitting escrow deposits with respect to short positions in stock put option contracts and short positions in stock index put option contracts had been deferred until sufficient interest existed and an acceptable system was developed to process escrow deposits for put options. After receiving requests to expand its escrow program to include such deposits for stock and stock index puts, OCC determined to make several enhancements and modifications to its escrow program.

First, OCC is expanding its escrow program to permit escrow deposits for short positions in stock put option contracts and in stock index put option contracts and to process those deposits through its on-line Escrow Receipt Depository ("ERD") system.[4] To accomplish the proposed expansion of

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[3] For a complete description of the CMS, refer to Securities Exchange Act Release No. 36091 (August 5, 1995), 60 FR 30912 [File No. SR–NSCC–95–06] (order approving the CMS).

[4] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[5] Currently, DTC and NSCC operate pursuant to a netting and limited cross-guaranty agreement. The agreement provides that in the event of a default of a common member, any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guaranty is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be the failed member's settlement net credit balances and deposits to the clearing agencies' clearing funds. For a complete description of DTC's and NSCC's agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 [File Nos. SR–DTC–93–08 and SR–NSCC–93–07].

[6] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37258 (May 30, 1996), 61 FR 29160.

[3] Letters from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (March 20, 1996, and July 22, 1996). Because the amendments are technical rather than substantive in nature, the Commission believes it is not necessary to re-notice the proposed rule change.

[4] For a complete description of the batch ERD system and the transition to the on-line ERD system, refer to Securities Exchange Act Release No. 31595 (December 11, 1992), 57 FR 61139 [SR–OCC–92–30] (order approving on an accelerated basis a proposed rule change relating to the conversion of OCC's current batch ERD system to an on-line system).

its escrow program, certain changes to OCC Rules 610 and 1801 are necessary. In general, the changes will accommodate the deposit of any combination of cash and short-term government securities [5] for short positions in put contracts, will provide for the valuation and substitution of deposited assets, and in the event of the value of the property declines below a specified amount, will permit OCC to disregard the escrow deposit and require the clearing member to deposit margin upon notice.

Second, OCC is eliminating its batch ERD system for processing escrow receipts. OCC contemplated the eventual replacement of the batch ERD system with its on-line ERD system. OCC believes that all its clearing members and custodian banks now have completed their transition to the on-line system because the batch ERD system is no longer used. Therefore OCC is eliminating references to escrow receipts in Rule 610 and 1801 and to the batch processing system described in Rule 613(a).

Third, OCC is amending Rule 613 to modify the time at which it releases escrow deposits. OCC currently releases an escrow deposit on the second business day following the expiration of the short position covered by the deposit, and thereafter if assigned, collects margin for the position formerly covered by the deposit until the next business day after the exercise settlement date. With this proposed rule change OCC will hold an escrow deposit covering a short position to which an exercise has been allocated until the business day after the exercise settlement date and will no longer collect margin.

Fourth, OCC is amending Rule 610 to eliminate bulk deposits of underlying securities for call options and the deposit of Treasury bills for put options because these capabilities have been rarely, if ever, used by clearing members. Furthermore, the provisions for depositing Treasury bills for put options is being superseded by the new provisions for providing escrow deposits for put option contracts.

Finally, OCC is modifying rules that relate to the suspension and liquidation of a clearing member to conform to OCC's escrow deposit program described above. Specifically, OCC is amending Rule 1106(b)(2) to make explicit that OCC would make timely settlement on an exercise assigned to a covered short position of a suspended clearing member even if the depository had not turned over the deposited property to OCC at the time of settlement. OCC would be entitled to reimburse itself for the cost of effecting such settlement from the deposited property when such property is remitted to OCC. Similarly, Rule 1107(b)(2) is being amended to reflect the same principles to assignments pending at the time of a clearing member's suspension. Also, OCC amended its Restated On-Line Escrow Deposit Agreement which is to be executed between OCC and each approved escrow deposit bank. The amended agreement parallels the principal purposes of the filing, which are to provide for the expansion of the program to include escrow deposits for short positions in stock and stock index put options, the elimination of hard copy receipts, and the modification of the time at which escrow deposits are released.

[5] As defined in Rule 610, proposed Interpretation .02, short-term government securities is defined as securities with a fixed principal amount issued or guaranteed by the United States and having one year or less to maturity.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[6] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that OCC's proposed rule change meets these requirements by establishing a framework in which existing OCC systems, rules, and procedures are extended to allow escrow deposits for short positions in stock put option contracts and stock index put option contracts. The elimination of the batch ERD system and the designation of the on-line ERD system as the means of processing escrow deposits should make processing such deposits more efficient and should promote the safeguarding of the deposits in the possession of OCC or for which it is responsible. By expanding the escrow receipt framework to include short positions in stock put and stock index put option contracts and by eliminating unnecessary steps in the escrow receipt process (*e.g.*, release of deposits followed by margin collection and bulk deposits for put options), OCC is creating more efficient procedures in order to streamline the processing of escrow receipts. As a result, the prompt and accurate clearance and settlement of securities transactions should be promoted.

[6] 15 U.S.C. § 78q-1(b)(3)(F) (1988).

III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–95–17) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22278 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37603; File No. SR–OCC–95–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Issuance, Clearance, and Settlement of Buy-Write Options Unitary Derivatives

August 26, 1996.

On December 27, 1995, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–95–20) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On February 5, 1996, OCC filed Amendment No. 1 to the proposed rule change.[2] Notice of the proposed rule change, as amended, was published in the **Federal Register** on March 20, 1996.[3] No comment letters were received. On March 20, 1996, OCC filed Amendment No. 2.[4] Notice of the amendment was published in the **Federal Register** on May 15, 1996.[5] No comment letters were received. For the reasons discussed below, the

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from James C. Yong, First Vice President and General Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (February 5, 1996).

[3] Securities Exchange Act Release No. 36960 (March 13, 1996), 61 FR 11458.

[4] Letter from James C. Yong, First Vice President and General Counsel, OCC, to Jerry W. Carpenter, Esq., Assistant Director, Division, Commission (March 19, 1996).

[5] Securities Exchange Act Release No. 37203 (May 10, 1996), 61 FR 24995.

Commission is approving the proposed rule change.

I. Description of the Proposal

The purpose of the proposed rule change is to amend certain OCC By-Laws and Rules and to add new sections to OCC's By-Laws and Rules to provide for the issuance, clearance, and settlement of a new equity derivatives product referred to as Buy-Write Options Unitary Derivatives ("BOUNDs"). The Commission recently approved proposed rule changes filed by the American Stock Exchange ("Amex"), the Chicago Board Options Exchange ("CBOE"), and the Pacific Stock Exchange ("PSE") (collectively referred to as the "exchanges") to list and trade BOUNDs.[6]

The purchase of a BOUND is intended to be substantially equivalent to a buy-write transaction (*i.e.*, the simultaneous writing of a call option and purchase of the underlying stock). However, unlike an actual buy-write transaction, the purchase of a BOUND is effected in a single exchange transaction. As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of every such order will increase the open interest in BOUNDs.[7]

The exchanges have indicated that BOUNDs will be listed on the same securities on which Long-Term Equity Options Series ("LEAPS")[8] are listed because the criteria used for stocks underlying BOUNDs will be the same criteria that is used for stocks underlying LEAPS. The exchanges expect that BOUNDs will be listed with a duration equal to that of LEAPS, which is currently thirty-nine months from the date of issuance.

A BOUND holder will be in essentially the same economic position as a covered writer of a European-style call option. BOUND holders will profit from the stock's movement up to the strike price and will receive payments equivalent to any cash dividends paid on the underlying stocks ("dividend equivalent"). Non-cash distributions may be reflected either through the delivery of the distributed property or by means of adjustments in the terms of the BOUNDs. The right of a BOUND holder to receive and the obligation of a BOUND writer to pay or deliver a dividend equivalent will be fixed at the close of trading on the business day preceding the ex dividend date. The actual payment of the dividend equivalent may occur days or weeks later to coincide with the payable date for the corresponding dividend on the underlying stock.[9]

BOUNDs are European style options because the holder cannot exercise a BOUND prior to expiration. In contrast, LEAPS are American style options, which can be exercised at any time prior to expiration. At the expiration of a BOUND, either delivery of the underlying stock or payment of the strike price is always required, and notice of exercise is not required. Therefore, the concepts of exercise and assignment are not used in relation to BOUNDs.

Under the proposed rule change, the expiration settlement date of a BOUND contract is the third business day following the expiration date. The expiration settlement date for a particular BOUND contract will not depend on whether the contract is to be settled by cash or by the delivery of stock. BOUNDs to be settled in cash will be settled through OCC's cash settlement system. BOUNDs that are to be settled by delivery of stock ordinarily will be settled in the same manner that exercised stock options are settled (*i.e.*, through stock clearing corporations).[10]

Like put and call stock options, BOUNDs ordinarily will trade in standardized contract units of one hundred shares of underlying stock per BOUND contract. Positions in BOUNDs will be included in the formula to determine a clearing member's stock clearing fund contribution, and BOUNDs will be included with stock options for purposes of margin calculations. The clearing fund pool for BOUNDs will be the same fund pool used for stock options, and the rule change amends the definition of a "stock clearing member" to be a clearing member approved to clear transactions in stock options and BOUNDs. Accordingly, stock clearing members will be qualified automatically to engage in transactions in BOUNDs without any additional qualification.

At expiration, if on the last day of trading the underlying stock closes at or below the strike price, BOUND holders will receive one hundred shares of the underlying stock for each BOUND contract held, and BOUND writers will be required to deliver one hundred shares of the underlying stock for each BOUND contract written. If at expiration the underlying stock closes above the strike price, the BOUND holder will receive a payment equal to one hundred times the BOUND's strike price for each BOUND contract held, and BOUND writers will be required to make payment equal to one hundred times the BOUND's strike price for each BOUND contract written. In either case, the BOUND holder ordinarily will be left in the same economic position as a covered call writer that holds the position until the expiration of the call option.

Technically, there is no premium in a BOUND transaction because that term generally is used to denote the purchase price of an option. However, in order to accommodate transactions in BOUNDs, the proposed rule change amends the definition of the term "premium" to permit the term to include the trade price with respect to BOUNDs.

Pursuant to the rule change, OCC will margin BOUNDs as part of the stock option product group and will include BOUNDs in the same class group with put and call options on the same underlying stock. Special provisions have been added to the definition of "premium margin" to provide an appropriate definition of the term when applied to an expired but unsettled BOUND contract. The added provisions reflect that premium margin with respect to an expired long or short position in a BOUND may call for either the marking price of such underlying security due to be settled by delivery or the payment of the strike price depending upon the closing price of the underlying stock when the BOUND expires. The definition of the term "marking price" with respect to margins on options and BOUNDs has been changed to reflect that OCC will use the highest reported asked quotation in valuing an underlying security if no last sale price is available. The minimum margin required for the stock option product group includes protection against the bid/ask spread; therefore, it is not necessary to use a different

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[6] For a complete description of the characteristics of BOUNDs, refer to Securities Exchange Act Release No. 36710 (January 11, 1996), 61 FR 1791 [File Nos. SR–AMEX–94–56, SR–CBOE–95–14, and SR–PSE–95–01] (order approving proposed rule changes relating to BOUNDs).

[7] Open interest refers to the total number of contracts that have neither been closed out nor been allowed to expire.

[8] Generally, LEAPS are long-term equity option securities that expire up to 39 months from the date of issuance. For a complete description of LEAPS, refer to Securities Exchange Act Release No. 28890 (February 15, 1991), 56 FR 7439 [File No. SR–CBOE–90–32] (order approving proposed rule change regarding the listing of LEAPS).

[9] It is possible that an obligation to pay or a right to receive a dividend equivalent that accrued prior to the expiration date of a BOUND will remain outstanding after the expiration date and even after expiration settlement has been completed. OCC simply will continue to carry the dividend equivalent right or obligation in a manner similar to a settlement obligation of an exercised option. It will be margined and marked to the market each day similar to other settlement obligations.

[10] In the event the BOUND transaction cannot be settled through regular-way settlement (*i.e.*, on the third business day following the expiration date), the contract will be settled on a broker-to-broker basis.

quotation for puts than for calls (*i.e.*, highest reported ask quotation for call options and the lowest reported bid quotation for put options).

The term "closing price" is defined under the rule change to mean the closing price for the underlying security on the primary market on the business day prior to the expiration date of the BOUND contract. However, the exchange(s) on which any series of BOUNDs trades may provide that the closing price of a BOUND be based on an average of prices of the underlying security near the close of trading on such business day.[11] The rule change also sets forth the steps OCC may take in the event the closing price for an underlying security is unreported or otherwise unavailable. In addition to any other actions OCC may be entitled to take under its By-Laws and Rules, OCC may suspend settlement obligations for the affected BOUNDs until a closing price is available or until OCC determines the closing price. OCC has the authority to determine the closing price for BOUNDs by means of a panel consisting of two designated representatives of each exchange on which the affected series is open for trading and OCC's Chairman.

The rule change adds a provision to OCC's By-Laws to specify that the closing price for the underlying security of a BOUND is conclusively presumed to be accurate and shall be final for purposes of determining settlement rights and obligations with respect to a BOUND. The rule change also adds an Interpretation to OCC's By-Laws to provide that except in extraordinary circumstances OCC will not adjust an officially reported closing price for exercise settlement purposes even if the closing price is subsequently found to have been erroneous.

OCC's Securities Committee shall have the authority to make adjustments in BOUNDs contracts through the same procedures as in the case of option adjustments.[12] BOUNDs ordinarily will be adjusted according to existing adjustment rules, and adjustments are expected to ordinarily conform to adjustments made with respect to LEAPs on the same underlying stock. Whenever additional shares or other property are distributed with respect to shares of an underlying security (*i.e.*, a stock split or stock dividend) and the number of BOUND contracts outstanding is adjusted to reflect the number of shares distributed or the unit of trading for such BOUND contract is adjusted to include the distributed property, then such adjustment will not include the obligation to pay and received a dividend equivalent. However, when the strike price of a BOUND is reduced to reflect the value of a distribution, the writer of the BOUND will be obligated to pay a dividend equilvant to the holder of the BOUND. This will occur because, unlike in the case of adjusting an option, lower the strike price of a BOUND will not give the holder the benefit of the distribution because the holder does not pay the strike price (The strike price of a BOUND caps the value that the holder will receive upon expiration of the BOUND.) Therefore, it is appropriate to give the holder the benefit of certain extraordinary distributions through a dividend equivalent at the time the distribution is made and also to reduce the strike price so that the BOUND holder cannot again receive the benefit of the distribution when the BOUND expires.

In the case of a cash-out merger of similar transaction, a BOUND will be adjusted to require the writer to pay expiration an amount equal to the lesser of the price paid for the underlying security in the merger or the strike price of the BOUND. Because there no longer will be an underlying security, the expiration date of the BOUND will be accelerated so that the cash will be paid to the BOUND holder at or about the same time that payment of the cash-out value is paid to holders of the underlying security. While the mechanics are somewhat different from the adjustment ordinarily made for the same event in the case of an option, the economic result is quite similar. Because the value of an option because fixed as the result of adjusting for a cash-out merger, in-the-money options are effectively terminated because they have no time value and because holders have every incentive to exercise them immediately to receive the cash. The expiration date of the BOUND will be accelerated because BOUNDs are European style and cannot be exercised prior to expiration.

II. Discussion

Section 17A(b)(3)(F)[13] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that OCC's proposal is consistent with OCC's obligations under Section 17A(3)(F) to assure the safeguarding of securities and funds in its custody or control because the proposal provides that OCC will process BOUNDs transactions in accordance with its existing risk-reduction methodology. For example, under the proposal, BOUNDs will be included with stock options for purposes of margin calculations, and positions in BOUNDs will be included in the formula to determine a clearing member's proportionate share of contribution to the clearing fund. Therefore, a clearing member's activity in BOUNDs will be reflected in the amount of funds collected (*e.g.*, margin and clearing fund deposits) by OCC to safeguard it against losses resulting from a clearing member's failure to settle.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 71A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–95–20) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22279 Filed 8–30–96; 8:45 am]

BILLING CODE 8010–01–M

[11] The exchange(s) must specify that an average of prices will be used prior to the opening of trading in any BOUNDs series.

[12] OCC's Securities Committee consists of one designated representative of each exchange and the Chairman of OCC.

[13] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[14] 17 CFR 200.30–3(a)(12) (1996).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below requires extension of the current OMB approval(s).

(Call the SSA Reports Clearance Officer on (410) 965–4125 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. Application for Supplemental Security Income—0960–0229. The information on form SSA–8000 is used by the Social Security Administration to determine a claimant's eligibility for

benefits and the amount payable in claims for Supplemental Security Income (SSI). The respondents are certain applicants for SSI.

Number of Respondents: 1,316,678.

Frequency of Response: 1.

Average Burden Per Response:

25 minutes for paper application.

35 minutes for automated collection of information.

Estimated Annual Burden: 581,533 hours.

2. Statement of Living Arrangements, In-Kind Support and Maintenance—0960–0174. The information on form SSA–8006 is used by the Social Security Administration to determine if an applicant or recipient meets the income criteria for eligibility to Supplemental Security Income (SSI) benefits. The respondents are individuals who apply for or are receiving SSI payments.

Number of Respondents: 438,400.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 51,147 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: August 26, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–22191 Filed 8–30–96; 8:45 am]

BILLING CODE 4190–29–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of a Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

August 27, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit and guaranteed access level.

EFFECTIVE DATE: September 3, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The United States Government has decided to cancel the limit and guaranteed access level (GAL) on imports of cotton and man-made fiber nightwear in Categories 351/651 from Jamaica established for the period beginning on January 1, 1996 and extending through December 31, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs, effective on September 3, 1996, to cancel the 1996 limit and GAL for Categories 351/651. Also, U.S. Customs Service is directed not to sign the form ITA–370P for export of U.S. formed and cut parts in Categories 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 1360, published on January 19, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 27, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 3, 1996, you are directed to cancel the current limit and guaranteed access level for Categories 351/651.

Also effective on September 3, 1996, U.S. Customs Service is directed to no longer sign the form ITA–370P for export of U.S. formed and cut parts in Categories 351/651.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–22351 Filed 8–30–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST–96–1548]

Application of Valujet Airlines, Inc. for an Exemption

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 96–8–45).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding ValuJet Airlines, Inc., fit, willing, and able, to resume air transportation operations.

DATES: Persons wishing to file objections should do so no later than September 5, 1996.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–96–1548 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: August 29, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–22594 Filed 8–30–96; 8:57 am]

BILLING CODE 4910–62–P

White House Commission on Aviation Safety and Security; Change to Notice of Meeting

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Change to notice of meeting.

SUMMARY: The White House Commission on Aviation Safety and Security has had to change the time and place of the meeting on September 5, 1996 to discuss aviation safety and security issues, and to close part of it to the public.

DATES: As changed, the open portion of the meeting will be held on Thursday, September 5, 1996, from 12:00 noon to 1:00 PM; from 1:00 PM to 2:00 PM, the meeting will continue but will be closed to the public because matters will be discussed that are classified in the interest of national security.

ADDRESSES: As changed, the meeting will take place in the Commerce Department Auditorium, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Room 6210, General Services Administration Headquarters Building, 18th & F Streets, NW, Washington, DC 20405; telephone 202.501.3863; telecopier 202.501.6160.

Issued in Washington, DC on August 27, 1996.

Thomas W. Herlihy,

Acting General Counsel, Department of Transportation.

[FR Doc. 96–22419 Filed 8–30–96; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

RTCA, Inc.; RTCA Special Committee 188, Minimum Aviation System Performance Standards for High Frequency Data Link (HFDL)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Special Committee 188 meeting to be held September 23–26, 1996, starting at 9:30 a.m. on Monday, September 23, and at 9:00 am on September 23, 25, and 26. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

September 23: Working Group 1 MASPS; September 24: Working Group 1 and begin Working Group 2 MOPS; September 25: Working Group 2, continued; September 26: Plenary Session.

The agenda of the Plenary Session will be as follows: (1) Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Approval of the Summary of the Previous Meeting; (4) Presentations; (5) Reports from Working Groups 1 and 2; (6) Other Business; (7) Set Agenda for Next Meeting; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, August 27, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–22408 Filed 8–30–96; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent to Rule on Application (96–01–C–00–MDT) to Impose and Use the Revenue From a Passenger Facility Charge (PCF) at Harrisburg International Airport, Harrisburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrisburg International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 3, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Lawrence W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles H. Hostetter, Director of the Bureau of Aviation of the Pennsylvania Department of Transportation at the following address: 208 Airport Road, Harrisburg International Airport, Middletown, Pennsylvania 17057.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bureau of Aviation of the Pennsylvania Department of Transportation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717–782–4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Harrisburg International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 23, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Bureau of Aviation of the Pennsylvania Department of Transportation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 1996.

The following is a brief overview of the application.

Application number: 96–01–C–00–MDT.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1997.

Proposed charge expiration date: September 1, 1999.

Total estimated PFC revenue: $4,047,000.

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following AIP project.

—Overlay of Runway 13–31—Phase II

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice

and other documents germane to the application in person at the Bureau of Aviation of the Pennsylvania Department of Transportation Airport.

Issued in Jamaica, New York on August 23, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 96–22406 Filed 8–30–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (96–02–C–00–JST) to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Johnstown-Cambria Airport, Johnstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Johnstown-Cambria County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 3, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Lawrence W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William L. Santoro, Manager of the Johnstown-Cambria Airport Authority at the following address: Johnstown-Cambria Airport, 479 Airport Road, Suite 1, Johnstown, Pennsylvania 15904.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Johnstown-Cambria Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: L.W. Walsh, Manager Harrisburg Airports District Office, 3911 Hartzdale Dr., suite 1, Camp Hill, PA 17011. 717–782–4548. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Johnstown-Cambria County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 23, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Johnstown-Cambria Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 2, 1996.

The following is a brief overview of the application.

Application number: 96–02–C–00–JST.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1996.

Proposed charge expiration date: February 1, 1998.

Total estimated PFC revenue: $201,250.

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following AIP projects.

—Purchase Tow Snow Removal Equipment

—Seal Coat Terminal Apron

—Conduct Terminal Building Renovation Study

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Johnstown-Cambria Airport Authority.

Issued in Jamaica, New York on August 23, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch Eastern Region.

[FR Doc. 96–22407 Filed 8–30–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (96–02–C–00–HTS) to Impose and use the revenue from a passenger facility charge (PFC) at Tri-State Airport, Huntington, West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 3, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Elonza Turner, Beckley Airports Field Office, Main Terminal building, 176 Airport Circle, Beaver, West Virginia 25813–9350.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry G. Salyers, Airport Director of the Tri-State Airport Authority at the following address: Tri-State Airport Authority, 1449 Airport Road, Unit 1, Box, Huntington, West Virginia 26505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-State Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Elonza Turner, Beckley Airports Field Office, Main Terminal building 176 Airport Circle, Beaver, West Virginia 25813–9350 (Tel. 304–252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 12, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tri-State Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will

approve or disapprove the application, in whole or in part, no later than December 6, 1996.

The following is a brief overview of the application.

Application number: 96–02–C–00–HTS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1996.

Proposed charge expiration date: July 1, 1998.

Total estimated PFC revenue: $366,600.

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP project.

—Repair Land Slide in Runway 30 Safety Area

Class or classes of air carriers which the public agency has requested not to be required to collect PFCs: Non-Scheduled Part 135 and 121 charter operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-State Airport Authority.

Issued in Jamaica, New York on August 23, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 96–22405 Filed 8–30–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Docket No. AB–3 (Sub-No. 138X]

Missouri Pacific Railroad Company—Abandonment and Discontinuance Exemption—In Douglas County, NE

Missouri Pacific Railroad Company (MP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* over approximately 0.61-mile portion of the Omaha Belt Line from milepost 485.55 to the end of the line at milepost 486.16, near Omaha, in Douglas County, NE.[2]

MP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 3, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29[5] must be filed by September 13, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 23, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Missouri Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 6, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 28, 1996.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22455 Filed 8–30–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Douglas County Environmental Services (County) filed a request for an issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the County's trail use request, and any others that may be filed, in a subsequent decision.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] See Exempt. of Rail Abandonment—Offers of Finan. Assist., *4 I.C.C.* 2d 164 (1987).

[5] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Grape Variety Names, Varietal (Grape-Type Labeling) and Approval of New Grape Variety Names.

DATES: Written comments should be received on or before November 4, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Charles N. Bacon, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8518.

SUPPLEMENTARY INFORMATION:

Title: Grape Variety Names, Varietal (Grape-Type Labeling) and Approval of New Grape Variety Names.

OMB Number: 1512–0513.

Recordkeeping Requirement ID Number: ATF REC 5100/2.

Abstract: The type of grape wine may be described in labeling and advertising by using the variety name of the grape from which the wine is made. Grape variety names have been listed in regulations to assure accuracy. This collection provides ATF with information about new grape varieties in use. This information collection is voluntary. There is no record retention requirement.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 10.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing these forms.

Dated: August 26, 1996.

John W. Magaw,

Director.

[FR Doc. 96–22280 Filed 8–30–96; 8:45 am]

BILLING CODE 4810–31–P

[Notice No. 837]

Appointments of Individuals to Serve as Members of the Performance Review Board (PRB); Senior Executive Service

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Performance Review Board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating period beginning July 1, 1995, and ending September 30, 1996. This notice effects changes in the membership of the ATF PRB previously appointed May 17, 1995 (60 FR 26478).

The *names* and *titles* of the ATF PRB members are as follows:

Stephen J. McHale, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

John A. Dooher, Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury

Suellen P. Hamby, Executive Director, Treasury Executive Institute, Department of the Treasury.

FOR FURTHER INFORMATION CONTACT: Clarence Wheeler, Jr., Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8600.

Dated: August 27, 1996.

John W. Magaw,

Director.

[FR Doc. 96–22345 Filed 8–30–96; 8:45 am]

BILLING CODE 4810–31–M

Office of Thrift Supervision

Submission for OMB Review; comment request

August 27, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Number: 1550–0029.

Form Number: OTS Form 1583.

Type of Review: Extension without change.

Title: Capital Distributions.

Description: The information collection provides uniform treatment for capital distributions made by savings associations. It ensures adequate supervision of distributions of capital by savings associations, thereby fostering safety and soundness of the thrift industry.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1,027.

Estimated Burden Hours Per Response: 4.

Frequency of Response: 4.

Estimated Total Reporting Burden: 16,432.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–22283 Filed 8–30–96; 8:45 am]

BILLING CODE 6720–01–P

[AC–44; OTS No. 4921]

Fulton Savings Bank, FSB, Fulton, Missouri; Approval of Conversion Application

Notice is hereby given that on August 15, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fulton Savings Bank, FSB, Fulton, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

By the Office of Thrift Supervision.

Dated: August 28, 1996.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–22344 Filed 8–30–96; 8:45 am]

BILLING CODE 6730–01–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the 1997 Solicited Grant Topics

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency is Soliciting Applications for its 1997 Solicited Grant Competition. The 1997 Themes/Topics are:

- Solicitation A: Post-Settlement Peacebuilding.
- Solicitation B: Negotiation, Mediation, and "Track II" Diplomacy. Subtopic: Training of International Affairs Professionals and Practitioners. Subtopic: Mediation.
- Solicitation C: Regional Security Issues And Conflicts. Subtopic: European Security. Subtopic: South and Southeast Asia.
- Solicitation D: Cross Cultural Negotiation Country Studies.

DATES: Application material available upon request. Receipt date for return of applications: January 2, 1997. Notification of awards: March 1997.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program, Solicited Grants, 1550 M Street, NW., Suite 700, Washington, DC 20005–1708, (202) 429–6063 (fax), (202) 429–1719 (TTY), E-mail: grant ____ program@usip.org.

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842.

Dated: August 19, 1996.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 96–22363 Filed 8–30–96; 8:45 am]

BILLING CODE 3155–01–M

federal register

Tuesday
September 3, 1996

Part II

Department of Housing and Urban Development

24 CFR Part 3500

Real Estate Settlement Procedures Act: Streamlining Regulatory Reform and Escrow Accounting Procedures; Final Rule and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR-4023-F-03]

RIN 2502-AG69

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Real Estate Settlement Procedures Act; Streamlining Final Rule; Correction and Clarification

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Correction to final rule and clarification.

SUMMARY: On March 26, 1996 (61 FR 13232), the Department published a final rule streamlining its regulations under the Real Estate Settlement Procedures Act (RESPA). That rule, when published, left unchanged references in the rule to "effective date[s]" in certain provisions. HUD's intent was that these references should continue to refer to the effective date of the escrow accounting procedures rule, which was May 24, 1995, not to the effective date of the streamlining rule. By this document, the text of the streamlining rule is corrected to include expressly the May 24, 1995, effective date in the applicable provisions.

In addition, this document contains a technical clarification of the streamlining rule concerning the use of toll-free numbers.

EFFECTIVE DATE: October 8, 1996.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 5241, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–4560 (this is not a toll-free number); or for legal questions: Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Grant Mitchell, Senior Attorney for RESPA, or Richard S. Bennett, Attorney, Room 9262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1550 (this is not a toll-free number). For hearing- or speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Corrections

The March 26, 1996 (61 FR 13232) streamlining rule left unchanged references in §§ 3500.17(b) and (c)(4)(i) to the "effective date of this rule", the "effective date of this final rule", and "effective date of this section". These references appeared in the definitions of "phase-in period", "post rule account", and "pre-rule account". HUD is issuing this correction to substitute the May 24, 1995, effective date of the applicable rule escrow accounting procedures rule (60 FR 8812, February 15, 1995), for the unclear references in those provisions.

Technical Clarification

The streamlining rule was first corrected on April 29, 1996 (61 FR 18674). Subsequently, some servicers have noted that the streamlining rule removed from the Code of Federal Regulations (CFR) a number of examples of Initial and Annual Escrow Account Statements. Each example of the statements referenced "[Servicer's name, address and toll-free number]" under the format's title. Some have questioned whether the removal of these formats from the CFR constitutes a change in the requirements pertaining to toll-free numbers.

The requirements have not changed. As the preamble to the streamlining rule makes clear, while the Department removed from codification several of the appendices that previously accompanied part 3500, these materials have been preserved and are available as Public Guidance Documents. Because the removal of these formats from codification did not change any requirements, including those for toll-free numbers (see, e.g., paragraph 6(b)(3)(B) of RESPA; 12 U.S.C. 2605(b)(3)(B)), HUD does not believe that any change to the rule text is required to make this clarification.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

Accordingly, part 3500 of title 24 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation is revised to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

2. Section 3500.17 is amended:

a. In paragraph (b) by revising the definitions of "Phase-in period", "Post-rule account", and "Pre-rule account"; and

b. In paragraph (c)(4)(i) by revising the last sentence, to read as follows:

§ 3500.17 Escrow Accounts.

* * * * *

(b) * * *

Phase-in period means the period beginning on May 24, 1995, and ending on the conversion date, i.e., October 27, 1997, by which date all servicers shall use the aggregate accounting method in conducting escrow account analyses.

Post-rule account means an escrow account established in connection with a federally related mortgage loan whose settlement date is on or after May 24, 1995.

* * * * *

Pre-rule account is an escrow account established in connection with a federally related mortgage loan whose settlement date is before May 24, 1995.

* * * * *

(c) * * *

(4) * * *

(i) * * * After May 24, 1995, refinancing transactions (as defined in § 3500.2) shall comply with the requirements for post-rule accounts.

* * * * *

Dated: August 27, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–22370 Filed 8–30–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4079–P–01]

RIN 2502–AG75

Office of the Assistant Secretary for Housing-Federal Housing Commissioner Real Estate Settlement Procedures Act (Regulation X): Escrow Accounting Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses three problems that have arisen in applying HUD's current escrow accounting rule under the Real Estate Settlement Procedures Act (RESPA), proposes a minor additional change to the RESPA rule, and provides public notice of certain technical clarifications to the rule. This proposed rule includes several appendices, which in the final rule are likely to be published as Public Guidance Documents (rather than codified appendices), in the interests of regulatory streamlining. However, these materials are set forth in this proposed rule as appendices, for the convenience of commenters during the review period.

The first problem addressed in this rule involves the application of requirements respecting the method of servicers' disbursements from mortgage escrow accounts where the payee (i.e., the entity to which escrow items are owed, such as a taxing jurisdiction) offers a choice of disbursements on an annual or installment basis. Because of perceived ambiguities in the current rule, there have been disparities in performance among mortgage servicers. Some servicers switched to making annual disbursements for escrow items, such as property taxes, where discounts for these payments were available, while other servicers switched to installment disbursements for items where installments were allowed. The choice of disbursement methods has consequences for borrowers, including increasing or decreasing the amounts required to be deposited into the escrow account at closing and during the life of the escrow account. The disbursement method may also have income tax ramifications, depending on the timing of disbursements for deductible items. Because of these consequences, this rule proposes several alternatives for addressing this problem, including, as the preferred option, offering the borrower the choice of disbursement method.

The second problem involves cases where the servicer anticipates that disbursements for items such as property taxes will increase substantially in the second year of the escrow account. Because HUD's current escrow rule provides for calculating escrow payments based on the projection of escrow disbursements for a 12-month period, when escrow items increase substantially after the initial 12-month period, the result could be that the servicer may require of the borrower a substantial increase in monthly payments for the second year, not only to reflect the higher disbursements, but to make up a deficiency or shortage in the escrow account. To avoid this type of surprise for the borrower, who may not be prepared to make the higher payments, the rule proposes several solutions to this problem, including, as a preferred option, offering the borrower the choice at closing of how the account is to be calculated.

A third problem that this rule proposes to address, in the interest of avoiding confusion, is the means of disclosure on the HUD–1 and HUD–1A settlement forms of amounts required for the escrow account. HUD is also proposing a minor additional change to the RESPA rule and is clarifying existing regulations regarding matters that do not require substantive modifications to the regulatory language.

DATES: Comment due date: November 4, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 5241, telephone 202–708–4560; or, for legal questions, Richard S. Bennett, Attorney; Grant Mitchell, Senior Attorney for RESPA; or Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Room 9262, telephone 202–708–3137 (these are not toll-free telephone numbers). For hearing- and speech-impaired persons, these telephone numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free). The address for each of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

SUPPLEMENTARY INFORMATION:

I. Background

Section 10 of the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2609) establishes the statutory limits on the amounts that mortgage servicers [1] may require a borrower to deposit into an escrow account if the servicer chooses to establish one. (RESPA does not require the use of escrow accounts.) Section 10(a)(1) prohibits a servicer, at the time the escrow account is created, from requiring the borrower to make payments to the escrow account that exceed the maximum amounts calculated in accordance with the statute. These maximum amounts are calculated by analyzing how much money will be needed to cover disbursements for the mortgaged property, such as taxes and insurance, and to maintain a cushion no greater than one-sixth of the estimated total annual disbursements from the account. Section 10(a)(2) prohibits the lender, over the rest of the life of the escrow account, from requiring the borrower to make payments to the escrow account that exceed the amounts allowed under RESPA. The maximum monthly amount that may be collected from the borrower is equal to one-twelfth of the total annual escrow disbursements that the lender reasonably anticipates paying from that account during a year, plus the amount necessary to maintain the one-sixth cushion. No provision of Section 10 requires that the servicer collect the maximums allowable under the statute; the servicer may always collect less and is not required to collect any cushion at all.

Section 10 and section 6(g) of RESPA (12 U.S.C. 2605(g)) govern the timing of disbursements from escrow accounts. In choosing a disbursement date, section 10 requires that the servicer follow "normal lending practices of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice." Section 6(g)

[1] At times RESPA uses the term "lender" and at other times it uses the term "servicer." A lender creates a loan obligation, but may or may not service the loan. Within this proposed rule, HUD uses the term "servicer" to include the lender when the lender performs the servicing function.

requires servicers to "make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due."

On October 26, 1994 (59 FR 53890) (October 1994 rule), HUD published a final rule implementing sections 6(g) and 10 of RESPA and changes to RESPA made in section 942 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990). The effective date of this rule was extended to May 24, 1995, as a result of a February 15, 1995, rulemaking (60 FR 8812), which also modified and clarified the October 1994 rule, because of questions on the rule. HUD issued further clarifications and corrections on December 19, 1994 (50 FR 65442); March 1, 1995 (60 FR 11194); and May 9, 1995 (60 FR 24734), and published a notice of software availability on April 4, 1995 (60 FR 16985). Further, HUD's RESPA regulations were streamlined on March 26, 1996 (61 FR 13232) to comply with the President's regulatory reform initiatives.

Today, HUD is proposing a rule primarily to address three problems under HUD's existing escrow accounting procedures. These problems, explained in greater detail below, are designated for purposes of discussion as:

1. Annual vs. Installment Disbursements;
2. Payment Shock; and
3. Single-item Analysis with Aggregate Adjustment.

These problems were brought to HUD's attention by borrowers, members of Congress, local government officials, and industry representatives.

This proposed rule is consistent with three principles articulated by the Secretary in the preamble to the October 1994 rule:

(1) Reduce the cost of homeownership, by ensuring that funds are not held in escrow accounts in excess of the amounts that are necessary to pay expenses for the mortgaged property and allowed by law;

(2) Establish reasonable, uniform practices for escrow accounting; and

(3) Provide servicers with clear, specific guidance on the requirements of Section 10.

With respect to the first two identified problems, HUD is proposing to revise the escrow rules in ways that would give borrowers more choices. For these two problems, HUD is proposing to require that disclosures be given to borrowers so that they can make informed choices as to their preferences. The proposal would require escrow accounts to be maintained according to those preferences. At the same time, HUD recognizes that providing borrowers this choice may impose additional burdens and costs on servicers, which are frequently passed on to borrowers. Thus, this proposed rule also highlights approaches that have been proposed by industry representatives. HUD seeks comments on all approaches and is also asking a number of questions that are designed to help HUD make decisions among alternatives for the final rule.

II. Annual vs. Installment Disbursements

A. Statement of Problem

The first problem HUD is proposing to address arises when a servicer is confronted with the option of disbursing escrow items, such as taxes, either in an annual lump sum or in installments during the year. In general, payments from an escrow account in installments work to the borrower's benefit, because, on average, they result in lower up-front payments to establish the account (*i.e.*, lower closing costs).[2] However, sometimes payees offer a discount to the borrower if disbursements are made on an annual basis. These discounts are most commonly offered by taxing jurisdictions, which may offer a discount for annual payments of property taxes.

After publication of HUD's October 1994 rule (discussed below in this preamble), many servicers who had been disbursing escrow payments in installments switched to annual disbursements where discounts were available. There were many consequences of the switch that have been described to HUD, and other consequences that HUD speculates may have resulted.

Most of these actual or expected consequences would affect borrowers, and it is borrowers who have expressed the greatest concern about this problem. After HUD issued the escrow rule, some borrowers may have been required by their servicers to make up substantial shortages in their escrow accounts (generally in increased monthly payments over a year), which arose when taxes were switched from installment disbursements to one annual lump sum disbursement. Some borrowers with loans that were switched from installments to annual disbursement may have faced financial hardship in meeting the higher payments. Some borrowers may have believed that the outlay to make up the shortage created with the switch to annual disbursements simply was not worth the discount offered. Other borrowers who were applying for loans may have been unable to come up with the cash required to close as a result of the escrow account being calculated based on annual disbursements instead of installments.

In contrast, some borrowers whose servicers switched from annual to installment disbursements may have preferred to pay more at closing or to have disbursements from an existing escrow account paid in annual disbursements, in order to receive a discount and thereby reduce the overall amount paid or to accelerate property tax deductions on their income tax. Some of these borrowers may have lost a significant portion of their property tax deductions for the year in which the switch was made and may have been unhappy with that consequence.

Of course, although some borrowers may have been adversely affected by a change in disbursement method, there may have been others who benefited, perhaps unknowingly, from such a change. For example, a change from installment to annual disbursements to take advantage of a discount lowered the total tax burden for many homeowners. Similarly, a change from annual to installment disbursements resulted in lower escrow payments and, possibly, refunds for many homeowners. HUD has not heard much about these positive effects. Finally, for many borrowers, HUD's rules apparently have not resulted in any change to the disbursement method for their escrow accounts.

Some taxing jurisdictions may also have been adversely affected by a change in disbursement method. As a result of the servicers changing from annual to installment disbursements, some taxing jurisdictions may have faced an unexpected temporary shortfall in receipts of property taxes. Other taxing jurisdictions may have found that servicers changed from installment payments to annual disbursements; this could have resulted in unexpected

[2] The choice of installment, rather than annual, disbursements often results in substantial reductions in up-front cash requirements for the buyer. For example, if two equal installments could be paid 6 months apart instead of paying the entire bill on one of the installment dates, then homebuyers who close on their loans less than 6 months before the date on which the entire bill would otherwise have been due could come to settlement with 6 months less in tax deposits to the escrow account. This results from the accrued taxes being a half-year's taxes less for those homebuyers. Assuming closings are evenly distributed throughout the year, households with the option of two equal installment payments 6 months apart, will, on average, be able to reduce the average up-front cash required at settlement by 3-months' worth of taxes. In general, as the number of installments grows, so does the average up-front savings.

changes to receipts of property taxes or could have led to shortfalls in income tax receipts as deductions increased for the year the switch was made.

HUD recognizes that promulgating new rules that result in switching accounts from one disbursement method to another could again affect borrowers and taxing jurisdictions and is seeking a way to clear up the problem that resulted from the prior rule while minimizing any further disruption.

B. HUD's Current Regulations

HUD's regulation at 24 CFR 3500.17(k)(1) provides: "In calculating the disbursement date, the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty." *See also* §§ 3500.17(b) (definition of "disbursement date"), 3500.17(c)(2) and (c)(3), and 3500.17(d)(1)(i)(A) and (2)(i)(A). Some mortgage servicers have interpreted this rule to require that a servicer, when offered an option of making a disbursement from the escrow account in installments or in an annual disbursement with a discount, choose the lump sum annual disbursement with a discount, no matter how small the discount is, even if the borrower and the servicer would otherwise agree to forego the discount and have the escrow account computed for disbursements on an installment basis.

On the other hand, other servicers have interpreted HUD's rule, in light of preamble language, to require installments where available and allow, but not require, annual disbursement at the servicer's discretion where a discount is offered for annual disbursement.[3] This approach is in keeping with HUD's intention that the regulations generally favor installment payments, because in many cases they result in lower up-front payments and lower average escrow balances for the borrower. HUD also sought for servicers to take advantage of discounts that would benefit borrowers.

In response to further questions on this issue, HUD indicated in its February 1995 clarifications of the rule that the rule's focus had been to deal "with a practice, previously engaged in by some servicers, of collecting and paying a full-year's taxes in advance, although they were billed on an installment basis." 59 FR 8813. In the preamble to a May 1995 rule, HUD stated that "servicers were permitted (but not required) to make disbursements on an annual basis if a discount were available." The preamble explained:

> [T]he Department received a number of questions regarding circumstances in which the payee offered an option of either installment payments or a one-time payment with a discount. The preamble to the October 26, 1994, and February 15, 1995, rules indicated that when a choice was available, servicers should make disbursements on an installment basis, rather than an annual basis; however, servicers were permitted (but not required) to make disbursements on an annual basis if a discount were available. Once the choice of payment basis is made, the disbursement date chosen for that basis depends on discount and penalty dates. Section 3500.17(k) states that "[i]n calculating the disbursement date, the servicer shall use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty." This provision is consistent with the rule, which is designed to avoid excessive upfront payments and balances in escrow accounts and, therefore, favors installment payments, unless there are penalties or discounts that make annual payments advantageous for the consumer. Also, after settlement a servicer and borrower are not prevented by this rule from mutually agreeing, on an individual case basis, to a different payment basis (installment or annual) or disbursement date.
>
> 60 FR 24734.

HUD recognizes that the rule text and the preamble language may have created confusion. Until such time as HUD publishes a final rule on this subject, servicers should adhere to the following approach, consistent with HUD's prior guidance: Where a payee offers the option of installment disbursements or a discount for annual disbursements, the servicer should make disbursements on an installment basis, but may, at the servicer's discretion (but is not required by RESPA to), make annual disbursements, in order to take advantage of the discount for the borrower; HUD encourages (but does not require) servicers to follow the preference of the borrower. Where the payee offers the option of either annual disbursements with no discount or installment payments, the servicer is required to make installment payments.

C. Possible Revisions to Regulations to Address Problem

There are several rulemaking alternatives to address whether servicers are to make installment or annual disbursements. These alternatives propose to distinguish between escrow accounts for loans that settle on or after the effective date of a final rule and escrow accounts for loans that settle or settled before the effective date of a final rule.

Each alternative proposes that once a disbursement method has been selected in accordance with the requirements of the alternative, servicers would be prohibited from switching disbursement methods without the borrower's consent. This would mean that even where one servicer acquires servicing from another servicer, the second servicer would be required to apply the same disbursement method as the first servicer, as long as that option is offered by the payee, unless the borrower consents to changing disbursement methods. The reason for this approach is that many loans shifted disbursement dates as a result of the 1994 rule. HUD seeks to develop an approach with the minimum negative impact for borrowers, servicers, and third parties, such as taxing jurisdictions. HUD is concerned that, if the approach adopted results in a large number of additional shifts in the way escrows are disbursed, HUD will create new problems while attempting to solve old ones. HUD believes the approach proposed, if ultimately adopted, would be the approach that would minimize disruption.

If borrowers could be involuntarily switched from annual disbursements to installment disbursements as a result of a transfer of servicing or unilateral change by the servicer, some borrowers would face consequences they did not desire. A switch could result in a surplus that a servicer would be required to return to a borrower, but could also reduce the amount of the borrower's tax deduction for escrow items, such as property taxes, in the year of the switch. If a borrower could be involuntarily switched from installment disbursements to annual disbursements as a result of a transfer of servicing or unilateral change by the servicer, the transfer or change could increase the tax deductions for escrow items such as property taxes in the year of the switch, but could result in shortages for many borrowers.

The approach of prohibiting a servicer from switching disbursement methods without the borrower's consent, including requiring a servicer to use the disbursement method used by the former servicer when there is a transfer of servicing, does not mean that the borrower would have to consent to a transfer of servicing or would have veto authority over such a transfer. Transfer of servicing is governed by section 6 of RESPA and regulations at 24 CFR 3500.21. However, this approach would mean that a borrower would have to consent to a change in the disbursement

[3] The preamble to the October 1994 rule explained, "Unless there is a discount to the borrower for early payments, the regulation does not allow servicers to pay installment payments on an annual or other prepayment basis." 59 FR 53893.

method, including a change proposed by a subsequent servicer. HUD seeks comments on whether this policy would adversely affect the value, and efficiency of the transfer, of servicing rights.

This proposed rule contains the main substance of proposed rule language to implement the various alternatives discussed. Additional conforming amendments to the rule, appropriate to whichever alternative is ultimately adopted, would be required.

Alternative 1: Consumer Choice

New loans. For escrow accounts on any loan closed on or after the effective date of a final rule, servicers would be required to give borrowers the choice of making disbursements of property taxes on an installment or on an annual basis, when those options are offered by the taxing jurisdiction. HUD's proposal does not currently address the choice between installments and annual disbursements for other escrow items, because the question has only been raised to HUD in the context of property taxes; however, HUD would consider addressing other escrow items, depending on comments received.[4]

This alternative would require servicers, at some time before settlement, to provide a disclosure form (in the format of Appendix F) to borrowers whose property taxes will be paid from an escrow account and whose taxing jurisdictions offer the choice between disbursements on an installment or an annual basis. The form indicates some of the advantages and disadvantages to the borrower of installment and annual disbursements and asks the borrower to make a choice between the two methods. If the borrower does not make a choice, the servicer will be required to make installment disbursements of property taxes.

This alternative also provides that once the consumer has made a choice (or installments are required because the consumer has failed to make a choice), the servicer and subsequent servicers are prohibited from changing the method of disbursement for property taxes, as long as the taxing jurisdiction offers a choice, without the borrower's prior written consent.

Existing loans. For loans that settled prior to the effective date of a final rule, the servicer and subsequent servicers would be prohibited from changing the method of disbursement for property taxes without the borrower's prior written consent where the taxing jurisdiction offers a choice between installments and annual disbursements. In addition, no later than the first escrow analysis for such escrow accounts performed after the effective date of a final rule, servicers would be required to offer borrowers, in writing, an opportunity to switch from one method of disbursement for property taxes to another.

This approach provides the greatest flexibility to the borrower. However, it may impose higher costs on servicers; servicers will likely need two different disbursement systems to reflect the disbursement preferences of borrowers.

Alternative 2: Servicer Flexibility

Under this alternative, HUD would revise the rule to provide that a servicer must make disbursements by a date that avoids a penalty, but the servicer is otherwise free to make disbursements on such date as complies with normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice. Under this alternative, once the servicer has made a choice of the disbursement method, the servicer and subsequent servicers are prohibited from changing the method of disbursement, as long as a choice continues to exist in the taxing jurisdiction, without the borrower's prior written consent.

The benefit of this alternative is that it is the least-intrusive regulatory approach for HUD to take. In addition, it provides flexibility to servicers. This alternative would also leave servicers free to accommodate borrowers with a particular preference, as long as the borrower's preference is in accordance with normal lending practice of the lender and local custom and constitutes prudent lending practice. The disadvantage of this alternative is that it would not guarantee that servicers would accommodate the preferences of individual borrowers and, therefore, provides less choice for borrowers.

Alternative 3: Keep, But Clarify, Current Requirements

Under this alternative, HUD would clear up any inconsistencies between the regulatory text and the earlier preamble language that have created confusion, as discussed above in this preamble. The rule would be revised to provide that, generally, servicers must make disbursements from escrow accounts on an installment basis, where payees offer that option as an alternative to annual disbursements. Where a payee offers the option of installment disbursements or a discount for annual disbursements, the servicer may, at the servicer's discretion (but would not be required as a result of RESPA to), make annual disbursements, in order to take advantage of the discount for the borrower. Where the payee offers the option of annual disbursements with no discount or installment payments, the servicer would be required to make installment payments. Where a payee offers the option of installment disbursements or a discount for annual disbursements, the rule would provide that HUD encourages (but does not require) servicers to follow the preference of the borrower on whether to make disbursements on an annual or installment basis.

In addition, the servicer and subsequent servicers are prohibited from changing the method of disbursement, as long as a choice continues to exist in the taxing jurisdiction, without the borrower's prior written consent.

The advantage of this option is that, like Alternative 2 (discussed above in this preamble), it provides flexibility to servicers. It would also allow servicers to accommodate borrowers with a particular preference. The disadvantage of this alternative is that it would not guarantee that servicers would accommodate the preferences of individual borrowers, providing less choice for borrowers.

D. Questions for Commenters

While the description of each alternative discussed under the heading "Annual vs. Installment Disbursements" in this preamble, indicates some of the possible advantages and disadvantages, there could be other alternatives, as well as unanticipated negative consequences for the industry, borrowers, taxing authorities, or others. HUD seeks comments from the public on which, if any, of these alternative approaches should result from this rulemaking, or whether other permissible approaches under RESPA would better serve the interests of the public and the intent of the statute. HUD also invites commenters to comment on HUD's proposed regulatory language and to submit specific regulatory language to implement their proposals.

HUD is particularly interested in comments on the following issues:

1. How are servicers currently addressing the problem of setting the appropriate disbursement date when

[4] If the servicer is given a choice between installment or annual disbursements for other escrow items (such as property or hazard insurance), HUD's rule would require the servicer to make disbursements by a date that avoids a penalty, but the servicer would otherwise be free to make disbursements on such date as complies with normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice.

given a choice of annual or installment disbursements?

2. What would be the impact of changing the requirements on particular servicers operating under existing RESPA regulations, particularly with respect to any changes in the requirements for loans settled before the effective date of a final rule?

3. What are the discounts obtained by servicers for borrowers? How large are the discounts? When must disbursements be made in order to receive the discounts?

4. What would be the impact on servicers of requiring them to provide borrowers with a choice? Should this be limited to a one-time choice at closing or should the borrower be free to switch disbursement methods during the life of the loan, and, if so, how often and under what circumstances?

5. What are the relative benefits and disadvantages of an approach that treats loans that settle on or after the effective date of a final rule differently from loans that have settled before the effective date of a final rule—e.g., minimizing the need for a servicer to switch from one method to another for existing loans, but potentially requiring servicers to use different disbursement methods for different borrowers within a single taxing authority?

6. Should the size of an available discount matter and, if so, how? Should HUD provide that once the discount meets a certain percentage or other threshold that: (a) Annual disbursements with a discount must be used; (b) it becomes the borrower's choice whether to make disbursements in that manner; or (c) it becomes the servicer's choice whether to make disbursements in that manner? Should the threshold that determines whether to take the discount be tied to a particular market rate that varies over time, *e.g.*, some percentage above or below the discount rate, the rate on 3-month Treasury Bills, etc.? Should a "reasonable servicer" standard be applied, *i.e.*, allowing a servicer to choose whether to take advantage of the discount if a reasonable person would make such a decision with his or her own money?

7. If an approach is adopted in which the borrower's preference for installments or annual disbursements is controlling, when should the servicer give the borrower the disclosure? If the borrower is required to designate which option is preferred before loan approval, how can the borrower be protected from pressure to select an option that is merely the lender's preference and not necessarily in the borrower's best interest? Because the method selected could affect escrow payments due at closing and each month thereafter, what timing would be necessary for the servicer to prepare the closing documents and perform related work? How will the option selected affect underwriting?

8. If an approach is adopted in which the borrower's preference for installments or annual disbursements is controlling, should HUD prescribe a disclosure format as proposed? Is the information HUD proposes to provide on the disclosure format appropriate for providing the borrower with a fair and informed choice?

9. If an approach is adopted in which the borrower's preference for installments or annual disbursements is controlling, what period of time is needed for the servicer to change the disbursement method?

10. The issue of annual or installment disbursements most often arises in the context of property taxes. If an approach is adopted in which the borrower's preference for installments or annual disbursements is controlling, should this approach apply only to disbursements for property taxes, as proposed, or should it extend to other escrow items for which a choice between installments and annual disbursements may be offered? What should be the rule for other escrow items when a choice is offered?

11. What rules should apply to loans that settle before the effective date of a final rule? What rules should apply to loans that settle after the effective date of the final rule, once those loans have settled? What rules should apply when there is a transfer of servicing?

III. Payment Shock

A. Statement of Problem

Another problem HUD is proposing to address arises when disbursements for escrow items such as property tax disbursements are expected by the servicer to be much higher in the second year of the escrow account than in the first year. As a result, the borrower will be faced with a substantial increase in the monthly escrow payment during the second year and, possibly, a lump sum payment to eliminate a deficiency from the account.[5] For purposes of this rule, a substantial increase is defined as an increase of 50 percent or more in the monthly escrow payment between the payment under the initial escrow accounting and the payment in the second year of the escrow account. A substantial increase in property taxes in the second year often occurs in cases of new construction. In many jurisdictions, the taxes the locality charges for the first year are based on the assessed value of the unimproved property, while for the second year the taxes are based on the improved value. A substantial increase in payments may also occur where a tax disbursement that would normally appear on the projection for the coming year is paid prior to the borrower's first regular payment, *i.e.*, these regularly occurring taxes do not appear in the projection. Reassessments after a property is sold may also cause a substantial second year increase. While the servicer could alert the borrower at closing that an increase will occur, if the servicer does not, the borrower may be unpleasantly surprised by the increase.

This situation results in several problems. Disclosures received at closing show low payment amounts throughout the first year when, in fact, the escrow payment will substantially increase for the second year, or even during the first year if a short year statement is issued at the point when the higher disbursement shows up in the 12-month projection.[6] Some borrowers may be unable to meet the increased escrow payments because the shortage will raise payments even more. A customer relations issue may be created for servicers who have to explain to borrowers why the payment is increased so much.

These concerns have come largely from industry representatives who have responded to numerous borrower inquiries and complaints about increases in escrow payments to reflect higher disbursements and make up shortages. Mortgage servicers have indicated that they would like to avoid any payment change in subsequent years by collecting more money in the first year of servicing.

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[5] The increase in the monthly payment can be broken down into two components. Any time an escrow account disbursement increases, it will have the effect of raising the monthly borrower escrow payment by approximately one-twelfth of that increase. In addition, the projection for the coming year shows what the target balance (accruals plus the cushion) should be at the beginning of the coming year. To the extent that expected disbursements in the second year exceed what they were in the first, the beginning target balance for the second year may be in excess of the actual balance at the end of the first year. If so, then there is a shortage to be made up as well. If the 12-month approach is taken to eliminate the shortage, then monthly payments will also rise by approximately one-twelfth of the shortage. If a cushion is used, the payment increases will be slightly higher, until the cushion is built up.

[6] HUD regulations at 24 CFR 3500.17(f)(1) (i) and (ii) provide that, aside from conducting an escrow account analysis when an escrow account is established and at completion of the escrow account computation year, a servicer may conduct an escrow account analysis at other times. The escrow account analyses conducted at other times result in short-year statements.

B. Analysis Under HUD's Current Regulations

Consistent with Section 10 of RESPA, HUD regulations specify the maximum amount that a servicer may legally require borrowers to deposit in escrow accounts. HUD regulations prescribe that in conducting an escrow account analysis, the servicer considers only the disbursements that are expected to come due for a 12-month period. *See, e.g.*, §§ 3500.17(b) (definition of "escrow account computation year") and 3500.17(c) (limits on payments to escrow accounts). While the servicer can take into account expected changes to disbursements over the 12-month period,[7] even if the servicer knows that payments from an escrow account will substantially increase at a time more than 12 months in the future, the servicer cannot, when preparing the initial escrow account statement, calculate the borrower's payments to cover the expected increases. However, HUD's existing regulations (3500.17(f)(1)(ii)) allow the servicer to perform short year statements. The regulations also allow borrowers to make additional escrow payments voluntarily to avoid a shortage in the following year. HUD's existing regulations provide that if the borrower makes such additional payments, they must normally be returned to the borrower if they result in a surplus the next time the escrow account analysis is performed. *See* 59 FR 53893 (voluntarily escrowed funds not excluded from the trial running balance calculations).[8] If the additional payments do not result in a surplus the next time the escrow account analysis is performed (*i.e.*, where disbursements will substantially increase), the additional payments do not have to be returned to the borrower.

C. Possible Revisions to Regulations to Address Problem

There are many possible ways to respond to the Payment Shock problem identified. Just as in the case of the Annual vs. Installment Disbursements problem discussed above in this preamble, the Secretary believes that providing the consumer with information to make an informed choice, and allowing the consumer's choice to control, is likely the best approach for addressing this problem. Set forth below are three alternatives, some of which contain options within the alternatives. This proposed rule contains the main substance of proposed regulatory language to implement the various alternatives discussed. Additional conforming amendments to the regulations would be required, consistent with whichever alternative is ultimately adopted.

Alternative 1: Consumer Choice

Under this alternative, when the servicer expects that the bills paid out of the escrow account will increase substantially after the first year, the servicer would provide to the borrower, at some time prior to closing, a written disclosure in the format of appendix G to this proposed rule or a similar format. The borrower would make a choice from several accounting options for his or her account on a format that would indicate, under each option, the amount due at closing; the monthly escrow payments in the first, second, and third years; and the corresponding surpluses anticipated at the end of the first year.[9] The borrower would therefore have the opportunity to make a voluntary choice to limit payment changes in the second year of the escrow account. As would be explained on the disclosure format, if the borrower did not make a choice, the accounting method would "default" to the method prescribed under the current regulations (which may result in substantially increased payments in the second year). Once an escrow accounting method is selected by choice or default, that method may not be changed without the consent of the borrower, even if the servicing rights are transferred to another servicer.

Under this alternative, the following accounting methods (illustrated in "The Payment Shock Problem," Appendix H–1 to this proposed rule) would be presented to the borrower for his or her selection:

Method A. Analysis of the account using the accounting method required under the current rule, which results in a shortage at the end of the first year and higher payments in the second year.

Method B. Analysis of the account using an accounting method that has the following characteristics:

—Requires an initial deposit of $0 into the escrow account at closing;
—Requires a monthly payment in the first year equal to one-twelfth of the estimated total annual disbursements from the escrow account for the second year;
—Causes surpluses or smaller shortages at the end of the first year, which causes escrow payments to increase in the second year less than under Method A or not at all.

Method C. Analysis of the account using an alternative accounting method [10] that has the following characteristics:

—Requires an initial deposit into the escrow account at closing greater than the initial deposits required under Method B;
—Requires the same monthly payment during the first year as under Method B, which is greater than under Method A;
—Generates month-end balances such that the lowest month-end balance for the first year equals one-sixth of the estimated total annual disbursements for the second year (the initial deposit is not considered in finding the lowest month-end balance);
—Requires an initial deposit into escrow at closing greater than the initial deposits required under Method B;
—Generates even larger balances at the end of the first year than under Method B, eliminating shortages and increasing surpluses that must be returned to the borrower;
—Causes no increase in escrow payments in the second year.

Note: If the consumer selects Methods B or C, the amounts held in escrow could be greater than allowed under Section 10. In order to permit these options, the Secretary would invoke his exemption authority under section 19(a) of RESPA, 12 U.S.C. 2617.

Alternative 2: Make No Change

Under this alternative, even where the servicer expects that the bills paid out of the escrow account will increase substantially after the first year, the current requirements for escrow

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[7] HUD's current regulations address the issue of estimating disbursement amounts for the 12-month computation year:

To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

24 CFR 3500.17(c)(7).

[8] Surpluses generated by voluntary borrower prepayments (frequently of principal, interest, and escrow account amounts) do not constitute a violation of the escrow account limits, even if they remain in the account in the next escrow account computation year. 60 FR 8813.

[9] Whether disbursements from escrow accounts will be made on an annual or installment basis and whether there is a discount for annual disbursement will affect the numbers to be filled in and, potentially, the number of calculations on the Escrow Accounting Method Selection Format.

[10] The Mortgage Bankers Association indicated to HUD that it favors this alternative in correspondence to HUD dated April 10, 1996.

analysis would continue to apply. This alternative would not specifically prevent the problems of shortages at the end of the first year of the escrow account and substantial escrow payment increases in the second year as a result of large increases in escrow disbursements during the second year of servicing. However, under the existing rule, servicers may disclose the problem to borrowers, and borrowers may make voluntary overpayments to escrow accounts. Servicers may also calculate short-year statements. Thus, under the existing rule, some methods are available to alleviate the payment shock problem, although they are not required.

Alternative 3: Mandate First Year Overpayment

Under this alternative, when the servicer expects that the bills paid out of the escrow account will increase substantially after the first year, HUD would require the servicer to calculate the escrow account under a procedure that has the characteristics described under Alternative 1, Method C, described above (illustrated in "The Payment Shock Problem," Appendix H–2 to this proposed rule). This approach would result in requiring amounts held in escrow to be greater than allowed under Section 10. The Secretary could, however, mandate the use of this escrow accounting method pursuant to his exemption authority under section 19(a) of RESPA, 12 U.S.C. 2617.

D. Questions for Commenters

HUD seeks comments from the public on which, if any, of these alternative approaches should result from this rulemaking, or whether other permissible approaches would better serve the interests of the public and the intent of the statute. Other possible alternatives on which HUD would welcome comment include:

1. As variations on Alternative 2, either:

(A) Require servicers to disclose to borrowers that it is anticipated that they will have a substantial payment increase in the second year, so borrowers will be less surprised when such an increase occurs, but do not require servicers to indicate specifically to borrowers methods of avoiding the shortage; or

(B) Require servicers to disclose to borrowers that it is anticipated that they will have a substantial payment increase in the second year and to inform borrowers of the amount of the expected shortage at the end of the first year and of the opportunity to make additional payments to escrow ahead of schedule to avoid Payment Shock.

2. As a variation on Alternative 1, Method C, calculate the cushion as one-sixth of the estimated annual disbursements for the first year, instead of 2 months of the escrow payments for the first year.

3. For each new account for which it is anticipated that there will be a substantial payment increase in the second year for one or more escrow items, allow the servicer, with the consent of the borrower, the option of calculating the escrow payments on a 24-month basis. This would allow the servicer to look ahead to the second year and estimate the payment that would be due, thereby mitigating the deficiency or shortage after the first year, leaving a smaller deficiency or shortage after the second year. (Using an escrow account period of more than one year has precedent. *See* the treatment of flood insurance and water purification escrow funds in § 3500.17(c)(9).) Under this option, since the amounts held in escrow would be greater than allowed under Section 10, it would be necessary for the Secretary to invoke his exemption authority under section 19(a) of RESPA, 12 U.S.C. 2617.

HUD invites commenters to submit specific regulatory language to implement their proposals and to comment on HUD's proposed regulatory language. HUD is also interested in comments on the following issues:

1. How are servicers dealing with payment increases in the second year under the current rule?

2. How should mortgage servicers determine whether bills paid out of escrow accounts are expected to increase substantially after the first year? Is it appropriate to define a substantial increase as an increase of 50 percent or more in the monthly escrow payment between the payment under the initial escrow accounting and the payment in the second year of the escrow account, and is it appropriate for this threshold to trigger additional requirements? What method should be used in calculating the expected payments?

3. What, if any, impact would there be in changing the requirements regarding payment increases on servicers operating under existing RESPA regulations?

4. What, if any, impact would there be on servicers if they are required to provide borrowers a one-time choice at closing? What would be the impact on servicers of requiring them to provide borrowers a choice at other times? What would be the burden in having different procedures for different borrowers?

5. If the consumer choice option is adopted, what should be the timing of the servicer's inquiry to the borrower and the borrower's response? If the borrower is required to designate before loan approval which option he or she prefers, would the borrower be pressured into selecting an option that may not be in the borrower's best interest? Because the method selected could affect escrow payments due at closing and each month thereafter, what timing would be sufficient for the closing agent to prepare the closing documents and perform related work? How would the option selected affect underwriting?

6. If the consumer choice option is adopted, should HUD prescribe a disclosure format as proposed? Is the information HUD is proposing to provide on the disclosure format appropriate?

7. Should there be limits on the borrower's opportunity to switch escrow accounting methods? How frequently should the borrower be allowed to change methods and under what circumstances? Should the borrower be allowed to make only a one-time choice at closing?

8. Should any alternatives be offered to borrowers whose escrow payments are not expected to increase substantially after the first year?

IV. Single-Item Analysis With Aggregate Adjustment Problem

A. Statement of Problem and HUD's Current Regulations

The October 1994 escrow rule established a uniform nationwide standard accounting method known as aggregate accounting. This replaced the common method of accounting in the industry—treating each escrow account item as a separate or single item. The amounts on the HUD–1 in the 1000 series historically were shown in a single-item mode—that is, the reserve amount for each separate escrow account item was listed.

When the October 1994 rule was being developed, Federal Reserve Board staff indicated that it needed a single-item amount for private mortgage insurance (PMI) reserves in order to make annual percentage rate (APR) calculations under the Truth In Lending Act. For this reason, and in an effort to avoid altering the basic format of the HUD–1 or HUD–1A in the October 1994 rule, the Department required that an aggregate adjustment (either zero or a negative number) be made after each individual item was listed in the 1000 series, so that the reserve amount for escrow account items conformed to the aggregate accounting method. Before the October 1994 escrow rule, Section L of

the HUD–1 and HUD–1A only showed positive numbers, that is, payments that were being allocated to various settlement costs. After publication of the October 1994 final rule, the Department received complaints that the itemization of the reserve amounts with an aggregate adjustment was confusing and the information was not useful to borrowers. Settlement agents and others indicated that individual itemization of reserves in the 1000 series imposed an additional paperwork and explanation burden, when the only relevant number for calculations is the aggregate deposit amount.

B. Possible Revisions to Address Problem

This rule proposes a method of correcting the problem: HUD would no longer require the single-item listing of escrow deposits on the HUD–1 or HUD–1A. The rule would create a new option in the instructions for the 1000 series of these forms to reflect the aggregate deposit. As proposed, the settlement agent could also continue to itemize the 1000-series reserves, at the settlement agent's discretion. If the charges are not itemized, an asterisk (*) would have to be placed next to each item in the 1000 series for which a reserve is taken. The amount collected would be described as "Aggregate Escrow Deposit for Items Marked (*) Above" on a line at the end of the 1000 series. In the discussion "Clarifications of Existing Rule" in Part V of this preamble, HUD has made clear that entries on the Good Faith Estimate may be based on single-item analysis, with a maximum 1-month cushion. The rule is proposed to be amended to make clear that the use of the estimating method remains available after the end of the phase-in period (October 24, 1997).

Federal Reserve Board staff has indicated that it generally concurs with this approach, inasmuch as the PMI number for APR calculations is otherwise available. HUD seeks comments from the public on this proposal, as well as other approaches that would be permissible under RESPA and might better serve the interests of the public and the intent of the statute. HUD also invites commenters to submit specific regulatory language to implement their proposals.

V. Additional Proposed Change

HUD proposes to add information to the Good Faith Estimate format to help make purchasers of pre-1978 residential dwellings aware that, pursuant to 42 U.S.C. 4852d (implemented by HUD in regulations published on March 6, 1996, 61 FR 9064), they have the right to arrange for a timely paint inspection or risk assessment for the presence of lead-based paint or lead-based paint hazards before becoming obligated under a sales contract. Generally, a prospective purchaser has 10 days to conduct such a lead-based paint evaluation of the property. A prospective purchaser, however, may waive in writing the opportunity to conduct this evaluation. Therefore, HUD proposes to add language to the Good Faith Estimate format (appendix C) to reference a lead-based paint inspection or risk assessment and to add a reference to such inspections or assessments in the instructions for completing the 1300 series of the HUD–1 or HUD–1A. HUD anticipates that a more detailed explanation of purchasers' rights in this regard will be contained in the next revision of the HUD Settlement Costs booklet.

VI. Clarifications to Existing Rule

The following paragraphs discuss clarifications of the escrow rule that do not require substantive modifications to language in the existing provisions. These clarifications are in response to questions that have been raised about the escrow rule.

(a) *Question:* Does the rule permit a cushion to be taken on private mortgage insurance (PMI) premium payments?

Answer: Yes. Nothing in the rule distinguishes these payments from any other payments into the escrow account and, thus, a cushion may be based on such payments. The question arises because Federal Housing Administration (FHA) program rules *do* prohibit a cushion on the FHA Mortgage Insurance Premium (MIP), but the FHA limitation is applicable only to the FHA mortgage insurance.

(b) *Question:* During the phase-in period under the escrow rule for accounts existing prior to May 24, 1995, there is an alternative approach permitted for disclosing potential escrow charges under § 3500.8(c)(2), involving the use of single-item analysis with a 1-month cushion. In the final rule of February 15, 1995 (60 FR 8812), the clarifications indicated that for Good Faith Estimate purposes, as well as for the HUD–1 or HUD–1A, a single-item analysis with a maximum 1-month cushion is acceptable. *See* 60 FR at 8812 and 8813. Is the single-item analysis with a 1-month-cushion approach acceptable on the Good Faith Estimate, even when the aggregate approach is subsequently used on the HUD–1 or HUD–1A, and will this be true after the phase-in period ends?

Answer: Yes. The good faith estimate is an *estimate* and HUD does not impose strict methodologies for delivering information that frequently is unavailable or difficult to obtain. As long as the estimates are developed in good faith, the use of single-item analysis with a maximum 1-month cushion to establish a range or amount for Good Faith Estimate purposes will be acceptable. The Good Faith Estimate instructions in § 3500.7(c)(2) are proposed to be amended to clarify that this method of estimation is available after the phase-in period has passed.

(c) *Question:* Appendix E assumes that the same cushion applies to all escrow items. However, lenders may prefer to use, for instance, a 2-month cushion for hazard insurance and a 1-month cushion for property taxes. Is that permissible?

Answer: Yes. The rule does not require that the cushion be the same fraction of annual anticipated disbursements for each escrow item, provided, of course, that no cushion exceeds the limit of 2 months' disbursements.

(d) *Question:* When filling out the HUD–1, it is necessary to calculate the aggregate adjustment so that the amount the borrower has to pay into the escrow account at closing will not exceed the RESPA limits (which are defined in terms of aggregate accounting, whereas the rest of the 1000 series of the HUD–1 is reported using single-item accounting). The aggregate adjustment is the difference between the deposit calculated under the aggregate accounting method and the sum of the deposits that would be calculated using single-item accounting. Must the same cushion be used when making the aggregate calculations as was used when making the single-item calculations?

Answer: Yes. So, for example, if a 1-month cushion were taken for taxes and a 2-month cushion were taken for insurance in making the single-item entries, then the cushion in making the aggregate calculations would be the sum of one-twelfth of the projected taxes and one-sixth of the projected insurance.

Other Matters

Paperwork Reduction Act Statement

The proposed information collection requirements contained in § 3500.17 and Appendices A and C of this rule will be submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal: Escrow account tax disbursement method disclosure; escrow account tax calculation procedure disclosure; and changes to lines pertaining to lead-based paint risk assessments or inspections in settlement statements and good faith estimates.

(2) Summary of the collection of information: The escrow account tax disbursement method disclosure will allow the consumer to choose whether taxes are paid on an annual, a semiannual, or other basis. The escrow account tax calculation procedure disclosure allows consumers to choose the procedure that is used to calculate the escrow account, when it is anticipated that the second-year charges for an item will be substantially higher than the first-year charges.

(3) Description of the need for the information and its proposed use: *(i) Escrow account tax disbursement method disclosure.* The Real Estate Settlement Procedures Act (RESPA) at 12 U.S.C. 2609 provides for escrow accounts. The implementing regulations at 24 CFR 3500.17(k) provide that the servicer shall use as the disbursement date a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. Consequently, some lenders changed disbursement methods and some borrowers were adversely affected by the change. The proposed rule suggests three alternatives in addressing this problem. One alternative will require an escrow tax disbursement method disclosure which will allow the consumer to choose whether taxes are paid on annual, semi-annual or other basis. The other two alternatives do not require a new disclosure.

(ii) Escrow account tax calculation procedure disclosure. Another problem the rule addresses is where the charges for an item are expected to be substantially higher the second year than in the first year. The increased charges may result in payment shock as well as a deficiency in the escrow account and substantially increased escrow payments the following year. For example, in the case of new construction, the real estate tax amount may be estimated on the unimproved value of the property. Frequently, borrowers are then required to pay taxes based on the improved value of the property.

Current regulations limit the amount that the lender may require the borrower to deposit in an escrow account at settlement and the amount the lender may require the borrower to maintain in an account. The regulations at 24 CFR 3500.17 prescribe the method for determining these amounts. The proposed rule offers three alternative solutions. One alternative requires a disclosure that allows the consumer to choose the procedure for calculating escrow payments. Another alternative would require lenders to calculate the escrow under a new procedure which is also a consumer choice under the first alternative. Both of these alternatives would require lenders to make adjustments to escrow calculation software. The third alternative does not require an additional burden.

(iii) Changes for lead-based paint. In addition, information is proposed to be added in the Good Faith Estimate format to make purchasers of pre-1978 residential dwellings aware that, pursuant to 42 U.S.C. 4852d, they have the right to arrange for a lead-based paint inspection or risk assessment.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: The 2,000 respondents for both disclosures are mortgage lenders/servicers. (i) It is estimated that respondents must give a one-time disclosure to 34.9 million borrowers who establish or maintain mortgage loan escrow accounts. (ii) It is estimated that respondents must give a one-time disclosure to 1 million borrowers who are identified as having a substantially increased tax charge the second year of the loan. (iii) Settlement statements and good faith estimates currently provide for inclusion of costs associated for lead-based paint inspection costs, but not as a discrete line item. The number of respondents will not change as a result of this rule.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information: (There is no additional burden expected to result from specifying a discrete line for lead-based paint risk assessment or inspection costs in the settlement statements (appendix A) or good faith estimate format (appendix C).)

REPORTING BURDEN

Reference	Number of respondents	Frequency of response	Est. ave. response time (hrs.)	Annual burden hrs.
Disbursement Disclosure	34.9 mill	1	0.0833	2,908,332
Method C Calculation	2,000	1	10	20,000
Calculation and Disclosure (Borrower Choice)	1.0 mill	1	0.3333	333,000

RECORDKEEPING BURDEN

No. recordkeepers	Hrs. per recordkeeper	Annual burden hours
Disbursement Disclosure: 2,000	1,454	2,908,000
Calculation Disclosure: 2,000	42	84,000
Total Burden Hours		6,253,332

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4079) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of the Assistant Secretary for Housing, Federal Housing Commissioner, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410

Status: Extension of currently approved collection (2502–0501).

Executive Order 12866

The Office of Management and Budget reviewed this proposed rule under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of this proposed rule with regard to small entities, nor are there any unusual procedures that would need to be complied with by small entities. The requirements of RESPA must be uniformly adhered to by all lenders and servicers. To the extent that small entities are affected by any of the provisions in the proposed rule, the impact is expected to be relatively insignificant and will be reviewed in developing the final rule.

However, this proposed rule describes possible alternative requirements and seeks comments to help the Department make a final decision regarding these alternatives. Although a complete and thorough analysis of all the possible permutations in the rule is impractical, the proposed rule provides sufficient information for the public to provide the Department with informed comments and, to the extent feasible, otherwise addresses areas that would be included in a regulatory flexibility analysis.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Promulgation of this rule expands coverage of the applicable regulatory requirements pursuant to statutory direction.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and Recordkeeping requirements.

For the reasons stated in the preamble, part 3500 of Title 24 of the Code of Federal Regulations is proposed to be amended as follows.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

2. Appendix A is amended in Section L under the text heading "Line Item Instructions" as follows:

a. By revising the paragraph beginning with the phrase "Lines 1301 and 1302";

b. In the paragraph beginning with the phrase "Lines 1303–1305", by removing the number "1303" and adding in its place the number "1304"; and

c. By adding a new paragraph after the paragraph beginning with the phrase "Lines 1301 and 1302", to read as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements; Sample HUD–1 and HUD–1A Statements

* * * * *

Lines 1301 and 1302 are used for fees for survey, pest inspection, radon inspection, or other similar inspections.

Line 1303 is used for lead-based paint hazard risk assessments, lead-based paint inspections, or other lead-based paint evaluations.

* * * * *

3. Appendix C, Sample Form of Good Faith Estimate, is amended in the chart by adding a new row, with three columns, after the row with the phrase "Pest inspection....." in the first column, to read as follows:

Appendix C to Part 3500—Sample Form of Good Faith Estimate

* * * * *

Item[2]	HUD–1 or HUD–1A	Amount or range
* * * * * * *		
Lead-based paint inspection	1303	$
* * * * * * *		

[2] Footnote remains unchanged.

Annual Vs. Installment Disbursements [Items 4–5]

4. Section 3500.17 is amended by revising the definition of "disbursement date" in paragraph (b) and by revising paragraphs (c)(2) and (3), to read as follows:

§ 3500.17 Escrow accounts.

* * * * *

(b) * * *

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account.

* * * * *

(c) * * *

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer shall conduct an escrow account analysis to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of paragraph (c)(1)(i) of this section and the amount of the borrower's periodic payments into the escrow account, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer shall estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer shall use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item. Upon completing the initial escrow account analysis, the servicer shall prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer shall use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists since settlement and shall make any adjustments to the account pursuant to paragraph (f) of this section.

(3) *Subsequent escrow account analyses.* For each escrow account, the servicer shall conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer shall estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer shall use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item. The servicer shall use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and shall make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer shall prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

* * * * *

5. Section 3500.17 is further amended and, if applicable, Appendix F is added to part 3500 in accordance with one of the following alternatives:

a. Under ALTERNATIVE 1 (Consumer Choice): By revising paragraph (k) and adding Appendix F to part 3500, to read as follows; or

b. Under ALTERNATIVE 2 (Servicer Flexibility): By revising paragraph (k), to read as follows; or

c. Under ALTERNATIVE 3 (Keep, But Clarify, Current Requirements): By revising paragraph (k), to read as follows:

§ 3500.17 Escrow accounts.

* * * * *

[Alternative 1 (Consumer Choice)]

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer shall pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer shall advance funds to make disbursements in a timely manner, as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For those borrowers whose property taxes will be paid from an escrow account where the applicable taxing jurisdiction offers the choice between disbursements on an installment or an annual basis, at some time before closing the servicer shall provide to the borrower an Escrow Account Property Tax Disbursement Alternatives Selection sheet in the format of Appendix F to this part and shall provide the borrower with an opportunity to make a selection.

(4) For a loan that settles on or after [*INSERT EFFECTIVE DATE OF FINAL RULE*], when the taxing jurisdiction offers the servicer the option of making disbursements for property taxes on an installment or an annual basis, the servicer must make disbursements for property taxes on an installment basis, unless the borrower has indicated on the Escrow Account Property Tax Disbursement Alternatives Selection sheet that disbursements for property taxes are to be made on an annual basis. The servicer and subsequent servicers are prohibited from changing the method of disbursement for property taxes from the method the borrower selected on the Escrow Account Property Tax Disbursement Alternatives Selection sheet, without the borrower's prior written consent.

(5) For a loan that has settled prior to [*INSERT EFFECTIVE DATE OF FINAL RULE*], when the taxing jurisdiction offers the servicer the option of making disbursements for property taxes on an installment or an annual basis, the servicer and subsequent servicers are prohibited from changing the method of disbursement for property taxes from the method that was used on [*INSERT DATE OF PUBLICATION OF FINAL RULE*] or the date of settlement (whichever is later), without the borrower's prior written consent, as long as such method of disbursement complies with normal lending practice of the lender and local custom and constitutes prudent lending practice. In addition, no later than the first escrow account analysis performed after [*INSERT EFFECTIVE DATE OF FINAL RULE*], a servicer shall offer a borrower, in writing, the opportunity to switch from one disbursement method for property taxes to the other.

(6) If the payee for escrow items other than property taxes offers the servicer

the option of making disbursements on an installment or an annual basis, the servicer must make disbursements by a date that avoids a penalty, but may otherwise make disbursements on either an installment or an annual basis as the servicer prefers, as long as such method of disbursement complies with normal lending practice of the lender and local custom and constitutes prudent lending practice.

* * * * *

Appendix F—Escrow Account Property Tax Disbursement Alternatives Selection Format

Your property taxes will be disbursed out of your escrow account by your loan servicer. Your jurisdiction provides the option of paying the property taxes in installment payments spread out over the year, or in one annual lump sum payment.

You are being offered alternative methods for these property taxes to be paid. They are described below.

As shown by the choices below, if you choose installment payments, the amount you have to deposit into your escrow account at closing may be less. On the other hand, if you choose annual payments, the total amount of property taxes you will pay may be less if your taxing jurisdiction provides a discount for annual payments. The alternative you choose could also affect the amount of your tax deductions during the first year of the loan, if you itemize—you may wish to consult a tax advisor.

If you do not make a selection, disbursements will be made on an installment basis.

ESCROW ACCOUNT PROPERTY TAX DISBURSEMENT ALTERNATIVES

	Installment payments	Annual payments
Property tax bill for next 12 months.	_____	_____
Due at closing	_____	_____
Monthly escrow payment first year.	_____	_____

I prefer the indicated option (check one and sign below)

☐ Installment Payments

☐ Annual Payments

_____

Borrower's Signature

[*Or* Alternative 2 (Servicer Flexibility)]

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer shall pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer shall advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency, pursuant to paragraph (f) of this section.

(3) If the payee for escrow items (including property taxes) offers the servicer the option of making disbursements on an installment basis or a lump sum annual basis, the servicer must make disbursements by a date that avoids a penalty, but may otherwise make disbursements on either an installment basis or a lump sum annual basis as the servicer prefers, as long as such method of disbursement complies with normal lending practice of the lender and local custom and constitutes prudent lending practice.

(4) The servicer and subsequent servicers are prohibited from changing the method of disbursement as long as a choice continues to exist, without the borrower's prior written consent.

* * * * *

[*Or* Alternative 3 (Keep, But Clarify, Current Requirements)]

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer shall pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer shall advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) If the payee for escrow items (including property taxes) offers the servicer the option of making disbursements on an installment or a lump sum annual basis, the servicer shall make disbursements by a date that avoids a penalty. If such payee does not offer a discount for disbursements on a lump sum annual basis, the servicer must make disbursements on an installment basis. If, however, the payee offers a discount for disbursements on a lump sum annual basis, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower, as long as such method of disbursement selected by the servicer complies with normal lending practice of the lender and local custom and constitutes prudent lending practice. Where the payee offers the option of installment disbursements or a discount for lump sum annual disbursements, HUD encourages, but does not require, the servicer to follow the preference of the borrower as to whether to make disbursements on a lump sum annual or installment basis, if such preference is known to the servicer.

(4) The servicer and subsequent servicers for an escrow account are prohibited from changing the method of disbursement as long as a choice of disbursement methods exists, without the borrower's prior written consent.

* * * * *

Payment Shock [Item 6]

6. Except with respect to Alternative 2 in this amendatory instruction, § 3500.17 is further amended and, if applicable, appendices are added to part 3500, in accordance with either Alternative 1 or Alternative 3, as follows:

a. Under ALTERNATIVE 1 (Consumer Choice): By adding, in alphabetical order, a definition of "Substantial increase"; by revising the introductory text of paragraph (c); by revising paragraph (d); by adding new paragraphs to be designated later; and by adding Appendices G and H–1, to read as follows; or

b. ALTERNATIVE 2 (Make No Change); or

c. Under ALTERNATIVE 3 (Mandate First Year Overpayment): By adding, in alphabetical order, in paragraph (b), a definition of "Substantial increase"; by revising the introductory text of paragraph (c); by revising paragraph (d); by adding new paragraphs, to be designated later; and by adding Appendix H–2, to read as follows:

§ 3500.17 Escrow accounts.

* * * * *

Alternative 1 (Consumer Choice)

(b) * * *

Substantial increase means an increase of 50 percent or more in the monthly escrow payment in the second year of an escrow account is projected as compared to the payment under the initial escrow accounting.

* * * * *

(c) *Limits on payments to escrow accounts; acceptable accounting methods to determine limits.* Except as otherwise provided in paragraph (__) of this section, the following applies:

* * * * *

(d) *Methods of escrow account analysis.* Paragraph (c) of this section

prescribes acceptable accounting methods except as otherwise provided in paragraph (__) of this section. The following sets forth the steps servicers shall use to determine whether their use of an acceptable accounting method conforms with the limitations in paragraph (c)(1) of this section. The steps set forth in this section derive maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

* * * * *

(__) *Rules of special applicability when servicer expects a substantial increase in bills paid out of escrow account after the first year for loans that settle on or after [INSERT EFFECTIVE DATE OF FINAL RULE].*

(X) *Opportunity for Selection of Escrow Account Method.* When a servicer expects that there will be a substantial increase in the bills paid out of an escrow account after the first year, at some time before closing, the servicer shall provide to the borrower an Escrow Accounting Method Selection sheet in the format of Appendix G to this part and shall provide the borrower with an opportunity to make a selection. The servicer must perform the escrow accounting in accordance with the method selected by the borrower. If the borrower does not make a selection, the servicer must perform the escrow accounting in accordance with Method A.

(XX) *No Change in Escrow Accounting Method without Borrower Consent.* (1) Once an escrow accounting method is determined by the process in paragraph (X) of this section, the servicer and subsequent servicers are prohibited from changing the escrow accounting method unless either paragraph (__)(XX) (i) or (ii) applies:

(i) The borrower provides his or her prior written consent; or

(ii) The servicer no longer projects that there will be a substantial increase in bills paid out of the escrow account after the 12-month period covered in the projection for the coming year.

(2) If the servicer changes escrow account methods in reliance on paragraph (__)(XX)(ii) of this section, the servicer may switch only to the escrow accounting procedure in paragraph (d) of this section.

(XXX) *Limits on payments to escrow accounts; acceptable accounting methods to determine limits when servicer expects substantial increase in bills paid out of escrow account after the first year for loans which settle on or after [INSERT EFFECTIVE DATE OF RULE].* When the servicer expects a substantial increase in bills paid out of the escrow account after the first year, the servicer may deviate from the requirements of paragraph (c) of this section to the extent necessary to comply with paragraph (XXXX) of this section.

(XXXX) *Methods of escrow account analysis for the initial statement when the servicer expects a substantial increase in bills paid out of the escrow account after the first year.* When the servicer expects a substantial increase in the bills paid out of the escrow account after the first year, the servicer shall use the following steps in producing the projection for the initial statement:

(1) *Method A.* When a servicer uses Method A in conducting the initial escrow account analysis, paragraph (d) of this section applies.

(2) *Method B.* When a servicer uses Method B in conducting the initial escrow account analysis, the target balances may not exceed the balances computed according to the following arithmetic operations: The servicer projects a trial balance for the account as a whole over the next computation year (a trial running balance) with a beginning balance of 0. The servicer may include as disbursements only those amounts that are expected to be paid in the 12-month period covered by the projection. In doing so, the servicer assumes that it will make estimated disbursements on or before the deadline to avoid a penalty. The servicer does not use pre-accrual on the disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements for the second year.

(3) *Method C.* When a servicer uses Method C in conducting the initial escrow account analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(i) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). The servicer may include as disbursements only those amounts that are expected to be paid in the 12-month period covered by the projection. In doing so, the servicer assumes that it will make estimated disbursements on or before the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements for the second year.

(ii) The servicer then examines the monthly trial balances and adds to the initial deposit an amount just sufficient to bring the lowest monthly trial balance (not considering the initial deposit) to zero, and adjusts all other monthly balances and the initial deposit accordingly.

(iii) The servicer then adds to the initial deposit the permissible cushion. The cushion is one-sixth of the estimated total annual escrow account disbursements for the second year or a lesser amount specified by State law or the mortgage document.

(4) The steps set forth in this paragraph (XXXX) derive maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This paragraph (XXXX) does not require the use of a cushion.

* * * * *

Appendix G—Sample Escrow Accounting Method Selection Format

The bills paid out of your escrow account are expected to increase substantially after the first year. Under normal escrow practices, your monthly escrow payment in the second year could be much higher than in the first, both to pay the larger bills and to make up for a shortage at the end of the first year. (*See* Method A.) You may voluntarily choose to make higher payments during the first year to reduce or eliminate the monthly payment increase in the second year. (*See* Methods B or C.) You are being offered alternative escrow payment schedules. They are described below. If you do not make a selection, Method A will be used.

ESCROW ACCOUNT ALTERNATIVES

	Method A	Method B	Method C
Due at closing			
Monthly escrow payment first year			
Estimated surplus refunded at end of first year			
Estimated monthly escrow payment second year			

ESCROW ACCOUNT ALTERNATIVES—Continued

	Method A	Method B	Method C
Estimated monthly escrow payment third year			

I prefer the indicated method (check one and sign below)
A ☐
B ☐
C ☐

Borrower's Signature

Appendix H–1—The Payment Shock Problem

Instructions and Sample Mathematical Calculations for Completing Escrow Accounting Method Selection Format

Assumptions

Disbursements

Year 1

$720 for insurance—disbursed in April
$288 for property taxes—disbursed in November

Year 2

$720 for insurance—disbursed in April
$2,880 for property taxes—disbursed in November

First Payment: June 15

Method A

[Demonstrates calculation for completing Method A of Escrow Accounting Method Selection Format (Appendix G).]

Assumption: Cushion selected by servicer equals one-sixth of estimated total annual disbursements.

Step 1.—Projection for Year 1

See 24 CFR 3500.17(k) for instructions and Appendix E to Part 3500 for sample calculation (example below uses aggregate analysis).

Year 1	Payment	Disburs	Balance
Initial deposit:			252
Jun	84	0	336
Jul	84	0	420
Aug	84	0	504
Sep	84	0	588
Oct	84	0	672
Nov	84	288	468
Dec	84	0	552
Jan	84	0	636
Feb	84	0	720
Mar	84	0	804
Apr	84	720	168
May	84	0	252

Step 2.—Projection for Year 2

Year 2	Payment	Disburs	Balance
Starting balance:			1680
Jun	300	0	1980
Jul	300	0	2280
Aug	300	0	2580
Sep	300	0	2880
Oct	300	0	3180
Nov	300	2880	600
Dec	300	0	900
Jan	300	0	1200
Feb	300	0	1500
Mar	300	0	1800
Apr	300	720	1380
May	300	0	1680

Shortage (or surplus) = Desired starting balance—Actual starting balance
= 1680 − 252
= 1428
Additional Monthly Escrow Payment = Shortage/12
= 1428/12
= 119
Monthly escrow payment = Shortage/12 + Disbursements/12
= 119 + 300
= 419

Step 3.—Projection for Year 3

Same as year 2. Since there is no shortage or surplus, the monthly payment is $300 per month.

Method A Summary To Appear on Disclosure

Due at closing = $252
Monthly escrow payment first year = $84/month
Estimated surplus refunded at end of first year = $0
Estimated monthly escrow payment second year = $419
Estimated monthly escrow payment third year = $300

Method B

[Demonstrates calculation for completing Method B of Escrow Accounting Method Selection Format (Appendix G).]

Assumption: On the initial statement, the initial deposit equals $0 and the monthly deposit equals 1/12 of second year's estimated total annual disbursements. Any subsequent analysis uses the escrow accounting technique in 24 CFR 3500.17(c)(3).

Step 1.—Projection for Year 1

Year 1	Payment	Disburs	Balance
Initial deposit:			0
Jun	300	0	300
Jul	300	0	600
Aug	300	0	900
Sep	300	0	1200
Oct	300	0	1500
Nov	300	288	1512
Dec	300	0	1812
Jan	300	0	2112
Feb	300	0	2412
Mar	300	0	2712
Apr	300	720	2292
May	300	0	2592

Step 2.—Projection for Year 2

Projection same as for Method A.

Shortage/Surplus = Desired starting balance − Actual balance
= 1680–2592
= −912 (912 surplus)

This $912 surplus is refunded to borrower at end of Year 1. Thus, the borrower starts Year 2 with the desired starting balance of 1680 and the monthly payment is $300.

Step 3.—Projection for Year 3

Same as year 2. Since there is no shortage or surplus, the monthly payment is $300 per month.

Method B Summary To Appear on Disclosure

Due at closing = $0
Monthly escrow payment first year = $300/month
Estimated surplus refunded at end of first year = $912
Estimated monthly escrow payment second year = $300
Estimated monthly escrow payment third year = $300

Method C

[Demonstrates calculation for completing Method C of Escrow Accounting Method Selection Format (Appendix G).]

Assumption: On the initial statement, the cushion selected by servicer equals 1/6 of estimated total annual disbursements for the second year and the Monthly deposit equals 1/12 of estimated total annual disbursements for the second year. Any subsequent analysis uses the escrow accounting technique in 24 CFR 3500.17(c)(3).

Step 1.—Projection for Year 1

Year 1	Payment	Disburs	Balance
Initial deposit:			300
Jan	300	0	600
Feb	300	0	900
Mar	300	0	1200
Apr	300	0	1500
May	300	0	1800
Jun	300	288	1812
Jul	300	0	2112
Aug	300	0	2412
Sep	300	0	2712
Oct	300	0	3012
Nov	300	720	2592
Dec	300	0	2892

Step 2.—Projection for Year 2

Projection same as for methods A and B.

Shortage/Surplus = Desired starting balance − Actual balance
= 1680–2892
= −1212 (1212 surplus)

This $1212 surplus is refunded to borrower at end of Year 1. Thus, the borrower starts Year 2 with the desired starting balance of $1680 and the monthly payment is $300.

Step 3.—Projection for Year 3

Same as year 2. Since there is no shortage or surplus, the monthly payment is $300 per month.

Method C Summary To Appear on Disclosure

Due at closing = $300
Monthly escrow payment first year = $300/month
Estimated surplus refunded at end of first year = $1212
Estimated monthly escrow payment second year = $300
Estimated monthly escrow payment third year = $300

Comparative Illustrations

1. The escrow account methods for the example shown in the text, with insurance disbursed in the eleventh month and taxes disbursed in the sixth month of the escrow cycle, are shown below:

	Methods		
	A	B	C
Due at closing ...	252	0	300
Monthly escrow payment first year	84	300	300
Estimated surplus refunded at end of first year	0	912	1212
Estimated monthly escrow payment second year ...	419	300	300
Estimated monthly escrow payment third year	300	300	300

2. The following set of options shows the resulting values if, as before, insurance were disbursed in the eleventh month of the escrow cycle, but taxes were disbursed in the first rather than the sixth month of the escrow cycle. Note how payments change as the month in which the taxes are disbursed changes and all other factors remain constant.

	Methods		
	A	B	C
Due at closing ...	372	0	588
Monthly escrow payment first year	84	300	300
Estimated surplus refunded at end of first year	0	1992	2592
Estimated monthly escrow payment second year ...	534	349	300
Estimated monthly escrow payment third year	300	300	300

3. The final set of options shows the resulting values if, as before, insurance were disbursed in the eleventh month of the escrow cycle, but taxes were disbursed in the last month of the escrow cycle.

	Methods		
	A	B	C
Due at closing ...	168	0	300
Monthly escrow payment first year	84	300	300
Estimated surplus refunded at end of first year	0	1992	2292
Estimated monthly escrow payment second year ...	336	300	300
Estimated monthly escrow payment third year	330	300	300

[*or* Alternative 3 (Mandate First Year Overpayment)]

(b) * * *

Substantial increase means an increase of 50 percent or more in the monthly escrow payment in the second year of an escrow account is projected as compared to the payment under the initial escrow accounting.

* * * * *

(c) *Limits on payments to escrow accounts; acceptable accounting methods to determine limits.* Except as provided in paragraph (__) of this section, the following applies:

* * * * *

(d) *Methods of escrow account analysis.* Paragraph (c) of this section prescribes acceptable accounting methods except as otherwise provided in paragraph (__) of this section. The following sets forth the steps servicers shall use to determine whether their use of an acceptable accounting method conforms with the limitations in paragraph (c)(1) of this section. The steps set forth in this section derive maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

* * * * *

(__) *Rules of special applicability where servicer expects substantial increase in bills paid out of escrow account after the first year for loans which settle on or after [INSERT EFFECTIVE DATE OF FINAL RULE].*

(X) *Limits on payments to escrow accounts; acceptable accounting methods to determine limits when servicer expects substantial increase in bills paid out of escrow account after the first year for loans which settle on or after [INSERT EFFECTIVE DATE OF FINAL RULE].* When the servicer expects a substantial increase in bills paid out of escrow account after the first year, the servicer may deviate from the requirements of paragraph (c) of this section to the extent necessary to comply with paragraph (XX) of this section.

(XX) *Methods of escrow account analysis for the initial statement when the servicer expects a substantial increase in the bills paid out of the escrow account after the first year.* When the servicer expects a substantial increase in the bills paid out of the escrow account after the first year, the servicer shall use the following steps in producing the projection for the initial statement:

(1) When a servicer uses this method of escrow accounting in conducting the initial escrow account analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(i) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). The servicer may include as disbursements only those amounts that are expected to be paid in the 12-month period covered by the projection. In doing so, the servicer assumes that it will make estimated disbursements on or before the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements for the second year.

(ii) The servicer then examines the monthly trial balances and adds to the initial deposit an amount just sufficient to bring the lowest monthly trial balance (not considering the initial deposit) to zero, and adjusts all other monthly

balances and the initial deposit accordingly.

(iii) The servicer then adds to the initial deposit the permissible cushion. The cushion is one-sixth of the estimated total annual escrow account disbursements for the second year or a lesser amount specified by State law or the mortgage document.

(2) The steps set forth in this paragraph (XX) derive maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This paragraph (XX) does not require the use of a cushion.

* * * * *

Appendix H–2

The Payment Shock Problem

Instructions and Sample Mathematical Calculations for Alternative Escrow Accounting Method

Assumptions

Disbursements:

Year 1

$720 for insurance—disbursed in April
$288 for property taxes—disbursed in November

Year 2

$720 for insurance—disbursed in April
$2,880 for property taxes—disbursed in November

First Payment: June 15

Assumption: On the initial statement, the cushion selected by servicer equals ⅙ of estimated total annual disbursements for the second year and the Monthly deposit equals 1/12 of estimated total annual disbursements for the second year. Any subsequent analysis uses the escrow accounting technique in 24 CFR 3500.17(c)(3).

Step 1.—Projection for Year 1

Year 1	Payment	Disburs	Balance
Initial deposit	.....	.....	300
Jan	300	0	600
Feb	300	0	900
Mar	300	0	1200
Apr	300	0	1500
May	300	0	1800
Jun	300	288	1812
Jul	300	0	2112
Aug	300	0	2412
Sep	300	0	2712
Oct	300	0	3012
Nov	300	720	2592
Dec	300	0	2892

Step 2.—Projection for Year 2

Year 2	Payment	Disburs	Balance
Starting balance:	.....	.....	1680
Jun	300	0	1980
Jul	300	0	2280
Aug	300	0	2580
Sep	300	0	2880
Oct	300	0	3180
Nov	300	2880	600
Dec	300	0	900
Jan	300	0	1200
Feb	300	0	1500
Mar	300	0	1800
Apr	300	720	1380
May	300	0	1680

Shortage/Surplus = Desired starting balance − Actual balance
= 1680 − 2892
= −1212 (1212 surplus)

This $1212 surplus is refunded to borrower at end of Year 1. Thus, the borrower starts Year 2 with the desired starting balance of $1680 and the monthly payment is $300.

Step 3.—Projection for Year 3

Same as year 2. Since there is no shortage or surplus, the monthly payment is $300 per month.

Single-Item Analysis With Aggregate Adjustment Problem [Items 7–9]

7. Section 3500.7 is amended by revising paragraph (c)(2), to read as follows:

§ 3500.7 Good Faith Estimate.

* * * * *

(c) * * *

(2) The borrower will normally pay or incur at or before settlement, based upon common practice in the locality of the mortgaged property. Each such estimate must be made in good faith and bear a reasonable relationship to the charge a borrower is likely to be required to pay at settlement and must be based upon experience in the locality of the mortgaged property. Reserves to be deposited with the lenders for the 1000 series in the HUD–1 and HUD–1A may be estimated using a 1-month single item amount for each item. For each charge for which the lender requires a particular settlement service provider to be used, the lender shall make its estimate based upon the lender's knowledge of the amounts charged by such provider.

8. Section 3500.8 is amended by revising paragraph (c), to read as follows:

§ 3500.8 Use of HUD–1 and HUD–1A settlement statements.

* * * * *

(c) *Aggregate Accounting At Settlement.* Servicers may choose Option 1 or Option 2 of this paragraph:

(1) *Option 1.* The servicer may choose the method in either paragraph (c)(1)(i) or (ii) of this section:

(i) After computing individual deposits in the 1000 series using single-item accounting, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference in the deposit required under aggregate accounting and the sum of the deposits required under single-item accounting, with both sets of calculations using the same cushion. The computation steps for both accounting methods are set out in § 3500.17(d). The adjustment will always be a negative number or zero (–0–). The settlement agent shall enter the aggregate adjustment amount on a line at the end of the 1000 series of the HUD–1 or HUD–1A statement.

(ii) The settlement agent may initially calculate the 1000-series deposits for the HUD–1 and HUD–1A settlement statement using single-item analysis with a maximum 1-month cushion (unless the mortgage loan documents indicate a smaller amount). In the escrow account analysis conducted within 45 days of settlement, however, the servicer shall adjust the escrow account to reflect the aggregate accounting balance. Appendix A to this part contains instructions for completing the HUD–1 or HUD–1A settlement statements using single item analysis with an aggregate adjustment and the alternative process during the phase-in period. Appendix E to this part illustrates the arithmetic steps for aggregate analysis.

(2) *Option 2.* The servicer may complete the aggregate computation, as set forth in 24 CFR 3500.17(d), and record the aggregate deposit by inserting the words "Aggregate Escrow Deposit for Items Marked (*) Above" on a line at the end of the 1000 series and placing the total on that line. While no individual deposits are to be recorded on the other lines of the 1000 series, an asterisk (*) shall be placed next to each item in the 1000 series for which a reserve has been collected.

9. Appendix A is amended in Section L, under the text heading "Line Item Instructions," by revising in the discussion of "Lines 1000–1008" the second paragraph and the second sentence of the third paragraph and by adding a new fourth paragraph, to read as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1A Settlement Statements; Sample HUD–1 and HUD–1A Statements

* * * * *

Lines 1000–1008. * * *

The servicer shall pick Option 1 or Option 2. *Option 1.* After itemizing individual deposits in the 1000 series using single-item

accounting, the settlement agent shall make an adjustment based on an aggregate analysis to reflect the difference between the deposit required under aggregate accounting and the sum of the deposits required under single-item accounting, with both sets of calculations using the same cushion. The computation steps for both accounting methods are set out in 24 CFR 3500.17(d). The adjustment will always be either a negative number or zero (-0-). The servicer shall enter the aggregate adjustment amount on a final line in the 1000 series of the HUD–1 or HUD–1A statement.

* * * If a servicer has not yet conducted the escrow account analysis to determine the aggregate accounting starting balance, the settlement agent may initially calculate the 1000 series deposits for the HUD–1 and HUD–1A settlement statement using single-item analysis with a maximum 1-month cushion (unless the mortgage loan documents indicate a smaller amount). * * *

Option 2. The servicer may complete the aggregate computation, as set forth in 24 CFR 3500.17(d), and record the aggregate deposit by inserting the words "Aggregate Escrow Deposit for Items Marked (*) Above" on a line at the end of the 1000 series and placing the total on that line. While no individual deposits are to be recorded on the other lines of the 1000 series, an asterisk (*) shall be placed next to each item in the 1000 series for which a reserve has been collected.

* * * * *

Dated: July 5, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–22371 Filed 8–30–96; 8:45 am]

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CFR PARTS AFFECTED DURING SEPTEMBER

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

DEFENSE DEPARTMENT
Air Force Department
Industrial labor relations activities; CFR part removed; published 9-3-96

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	¹ Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
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27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
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700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
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1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
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10 Parts:			
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400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
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200-End	(869-028-00105-0)	13.00	Apr. 1, 1996
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100-499	(869-028-00109-2)	12.00	July 1, 1996
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1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
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30 Parts:			
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300-399	(869-026-00134-1)	21.00	July 1, 1995
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35	(869-026-00136-7)	12.00	July 1, 1995
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60	(869-026-00146-4)	36.00	July 1, 1995
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September 11	September 26	October 11	October 28	November 12	December 10
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September 16	October 1	October 16	October 31	November 15	December 16
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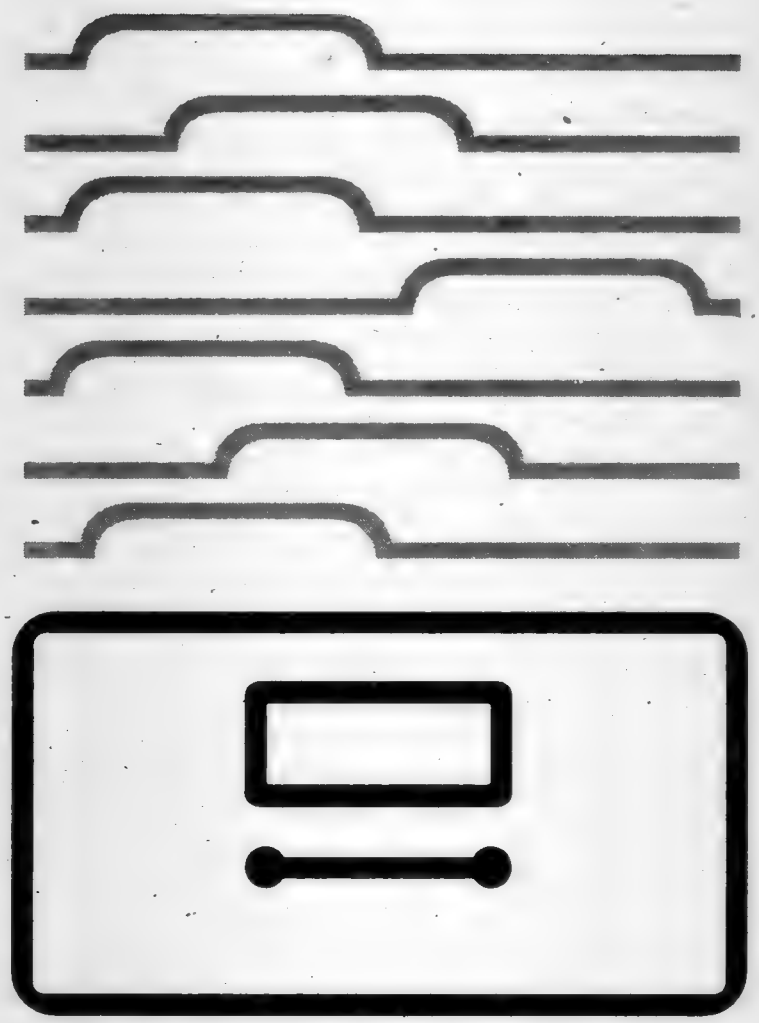

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Presidential Documents

Title 3—

The President

Presidential Determination No. 96–43 of August 27, 1996

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 8, 1995 (60 FR 47659), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1996.

I hereby determine that the extension for 1 year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I extend for 1 year, until September 14, 1997, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505; and

(3) the Cuban Assets Control Regulations, 31 CFR Part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 27, 1996.

[FR Doc. 96–22710
Filed 9–3–96; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 61, No. 172
Wednesday, September 4, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 412

RIN 3602–AF96

Executive, Management, and Supervisory Development

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to eliminate the 3-year limitation on the validity of Qualifications Review Board (QRB) certification for appointment to the Senior Executive Service (SES). The Office is also revising its regulations governing executive and management development. The coverage has been expanded to include supervisory development. The revised regulations present broad program criteria on the systematic development of executives, managers, supervisors, and candidates for these positions. They also establish minimum requirements for formal SES candidate development programs. The revisions are intended to promote training and development activities which foster a corporate perspective of Government within the Federal executive cadre.

EFFECTIVE DATE: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Constance Maravell at 202–606–1832.

SUPPLEMENTARY INFORMATION: OPM published proposed regulations to make changes in parts 317 and 412 on December 11, 1995 (60 FR 63454). We received comments from 7 agencies, 1 individual, and the Senior Executives Association (SEA). Most comments were supportive of the changes. There were some reservations about requirements for SES candidate development programs.

Part 317—Employment in the Senior Executive Service

The proposed regulations included a change in 5 CFR 317.501(c)(5) which would have allowed Executive Resources Boards to refer to the selecting official all candidates as best qualified when there were less than 10 applicants for a position. This was proposed in response to a recommendation from the Executive Resources Management Group's (ERMG) Staffing Work Group, with the goal of simplifying and streamlining the merit staffing process. However, we recognize that such a provision presents difficulties in the context of other requirements of 5 CFR 317.501(c), calling for the "relative ranking of the candidates" and requiring selection "from among the candidates identified as best qualified." Two agencies as well as the Senior Executives Association raised concerns relating to the interpretation and application of the proposed revision. In evaluating the proposal and the subsequent comments, we placed primary emphasis on the language of the merit principle requiring selection and advancement "solely on the basis of relative ability, knowledge, and skills * * *" (5 U.S.C. 2301(b)(1)). In light of these considerations, the proposals has been deleted from the final regulation.

Another recommendation put forward by the ERMG's Staffing Work Group involves a larger role for agencies in the management of the QRB process. Two agencies commenting on these proposed regulations recommended that the QRB process be delegated to agencies or, alternatively, eliminated entirely. Our research of the legislative history of the Civil Service Reform Act indicates that Congressional intent in legislating Qualifications Review Boards was to assure an independent review of executive qualifications outside the selecting agency. This is incompatible with full delegation of the QRB process to agencies. We currently have an interagency advisory group reviewing the function and operations of the QRBs as they are presently conducted. If we conclude that the QRB process does not "add value" to the selection of Federal executives, we will recommend appropriate changes, including revisions to the statute if necessary.

Part 412—Executive, Management, and Supervisory Development

One agency raised a question about sabbaticals, which are spelled out in statute (5 U.S.C. 3396(c)) and which are not covered in this final rule. The question concerned whether agencies would have complete authority for deciding the merits of requests for sabbaticals. Agencies have always had complete decision-making authority regarding the use of sabbaticals. Agencies should continue to report the use of sabbaticals to OPM, including submission of appropriate documentation (currently OPM Form 1390, Executive Personnel Transaction).

One agency suggested including the role of "team leader" in the supervisory, managerial, and executive continuum. At this time the role of the team leader is still evolving and may vary widely, depending on the type of team or the specific agency. There is no prohibition barring an agency from setting whatever training policies it deems appropriate for the training of teams and team leaders. However, we are not broadening the scope of part 412 to incorporate such a requirement for all agencies.

Another agency asked for verification of its assumption that a person who leaves the Government and has been certified as qualified for the SES by a QRB retains that certification. Since the certification has no time limit, this is a correct assumption. The individual could use that certification to return to the Government and receive a noncompetitive appointment to the SES, provided that he or she had competed Governmentwide to enter the Candidate Development Program (CDP).

One agency commented that agencies should be encouraged to train their managerial corps as needed to meet their program needs rather than being required to provide managerial training generally. The regulations require that training and development programs be consistent with an agency's strategic plan. We would like to emphasize the importance of training for enhancing organizational achievement. Training and development play a critical role in assuring high quality customer service, information management, and improved management skills. This is widely recognized in the private sector as well as in Government. Furthermore, the requirements for managerial

development are flexible enough to allow agencies to comply within the limits of their financial resources.

Section 412.104 Formal Candidate Development Programs for SES Positions

OPM believes that formal SES Candidate Development Programs (CDPs) provide an excellent vehicle for creating and reinforcing a corporate perspective within the SES. The idea of a "corporate SES" originated with the Civil Service Reform Act of 1978 and was reinforced by the National Performance Review (NPR) in 1994. One agency asked us to clarify the concept of corporate SES perspective; another questioned whether it was a valid objective. We believe that a corporate SES (a Governmentwide executive service with shared values, a common identity, and a certain fundamental uniformity in personnel systems) contributes to stronger Government, and we will continue our efforts to promote a corporate SES culture in our policies and programs.

The essence of a corporate SES is shared values. These values must transcend a commitment to agency mission; they must extend beyond an executive's individual profession and aspirations. The SES values must respect and embrace the dynamics of American democracy, an approach to governance that provides a continuing vehicle for change. The NPR report on the SES captures the original vision of the SES:

> to serve the twin objectives of change and continuity: On one hand helping the top officials of a new administration to steer their agencies in the direction set by the newly elected President; on the other hand carrying forward the institutional memory of government and maintaining high standards of public service.

We believe that this vision is still valid, and we believe that balancing continuity and change is the fundamental responsibility of the Senior Executive. Inherent in this responsibility is respect for both merit and diversity, both the dignity and importance of the individual and the richness and wisdom that diversity of individuals brings to organizations and societies.

Two agencies commented in favor of adding a provision to establish a cadre of "precertified" managers in order to expedite the filling of executive positions. The ERMG's Staffing Work Group has recommended that OPM examine ways to allow agencies to precertify the qualifications of executive candidates outside of the candidate development process. We are currently considering the feasibility of possible options for implementing such a recommendation. We recognize that even experienced managers, who would otherwise meet the requirements for SES appointment, can benefit from the training and development provided through a formal CDP. However, given the limitations of formal training budgets, the CDP is not a cost-effective vehicle for certifying executive qualifications obtained outside a formal program.

One agency advocated substituting a general statement of purpose for formal candidate development programs, in place of the specific program requirements at § 412.104(e), saying that such specifications are "unnecessary and rigid." Another agency took exception to the requirement specifying the aggregate length of developmental assignment(s) outside the candidate's position of record. We do not find these requirements to be unnecessary, and it is not our intention to be rigid in their application or interpretation. In all cases except where competition for entry into the CDP is restricted to agency employees, QRB certification based on successful completion of an OPM-approved executive development program makes an individual eligible Governmentwide for noncompetitive appointment to the SES. Therefore, to support development of a corporate perspective in Government, there is a Governmentwide interest in assuring that a minimum level of training and development is shared by successful DCP participants. The regulations allow a great deal of flexibility in choosing the formal interagency training experience, and the 4 months of developmental assignments can be accomplished through a series of shorter assignments. Furthermore, OPM will work with agencies to develop program plans that are tailored to specific agency needs and circumstances, and we will permit individual participants to have development plans which deviate from their agencies' approved program plans, provided these deviations are approved by OPM in advance. We absolutely agree with the comment that developmental assignments should be "tailored to the individual developmental needs of each candidate."

At the same time, some work experiences would not normally provide the depth and breadth of experience needed to enhance a candidate's executive qualifications. For example, one agency asked if a candidate could stay in his/her current position and have extra duties added to that position. This does not go far enough to achieve the principal goal of the developmental assignment, which is to have the person gain a broader perspective on his/her agency and the Federal Government. To achieve this requires experience in other lines of work and/or in different working relationships within the organization, or in different organizations. Adding duties to an existing position does not accomplish that purpose.

One agency commented that not all candidates have equivalent backgrounds and, therefore, that development should be based on individual requirements needed to reach a set level of expected job performance. As we have previously indicated, we agree that development plans should be tailored to the individual needs of each candidate. The regulations require that each candidate have a development plan prepared from a competency-based needs assessment. The minimum standards are sufficiently broad so that individual development plans can be tailored to meet each candidate's needs.

Another agency requested that OPM not restrict formal training to "interagency sources." In fact, the regulations do not restrict formal training to any particular source or sources. The regulations allow agencies to choose any source, including nongovernmental, for the required training experience, which must be Governmentwide or multi-agency in its nature and scope. The purpose of this requirement is to expose potential executives to multiple points of view and foster a corporate perspective.

One agency questioned the necessity of requiring OPM approval of agency programs prior to announcement for the first time under the new regulations. We believe these regulations are a significant departure from the superseded regulations, such that prior OPM review and approval will contribute to the development of agency programs that both meet minimum regulatory standards and are tailored to individual agency needs. We encourage agencies to meet with us early in the development of their programs so that the concerns of all parties can be surfaced and adequately addressed. By engaging in such discussion before agencies' programs are announced for the first time, we can minimize problems which might arise as individual candidates are submitted for QRB certification.

The Senior Executives Association (SEA) commented on the requirement that agencies' recruitment efforts comply with statutory merit principles (1) and (2) and also take "into consideration the goal of achieving a

diversified workforce" (412.104(b)). SEA believes "To provide additional emphasis will create an appearance that preferential treatment for some is the desired, but unclearly stated, goal." In *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995), the Supreme Court ruled that all Federal programs which use race-based decision-making are subject to strict judicial scrutiny. However, the provision in question speaks to the recruiting process and not to the selection process. In a Department of Justice memorandum to General Counsels providing guidance on the *Adarand* decision (February 29, 1996), agencies were advised:

Adarand does not apply, however, to actions in which race is not used as a basis for making employment decisions about individuals. For example, action to increase minority applications for employment is not subject to *Adarand.* Outreach and recruitment efforts * * * which merely seek to expand the pool of qualified applicants generally would not be subject to strict scrutiny under *Adarand.*

Our purpose in highlighting the value of achieving a diversified workforce is not to influence selections or other employment decisions but to articulate the principle that members of all groups should have an opportunity for consideration.

The SEA suggested that we list in the regulations the 22 generic competencies identified in the Leadership Effectiveness Framework to assist potential candidates in assessing their qualifications for SES positions. For purposes of assessing an individual's executive qualifications, these 22 competencies are grouped into five "executive core qualification:" strategic vision, human resources management, program development and evaluation, resource planning and management, and organizational representation and liaison. It is against these five core qualifications that individuals are evaluated by Qualifications Review Boards to determine "demonstrated executive experience" and/or "likelihood of executive success," as required by 5 U.S.C. 3393. OPM has already published guidance which describes the five core qualifications and provides additional information on how to present a candidate's executive qualifications for consideration by a QRB.

Operational Issues

One agency raised a number of operational issues, such as the appropriate organizational level for seeking OPM approval of agency programs and the lowest organizational level appropriate for seeking exceptions to Governmentwise recruitment under section 412.104(a)(2). We plan to discuss these and other procedural questions with all stake holders and issue operational guidance at the time the regulations become final.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only federal employees and agencies.

List of Subjects in 5 CFR Parts 317 and 412

Government employees.

James B. King,

Director, Office of Personnel Management.

Accordingly, the Office of Personnel Management is amending 5 CFR parts 317 and 412 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3395, 3397, 3593, and 3595.

2. In subpart E, § 317.502, paragraph (c) is revised to read as follows:

Subpart E—Career Appointments

§ 317.502 Qualifications Review Board certification.

* * * * *

(c) Qualifications Review Board certification of executive qualifications just be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. Any existing time limit on a previously approved certification is removed.

* * * * *

PART 412—EXECUTIVE, MANAGEMENT, AND SUPERVISORY DEVELOPMENT

3. Part 412 is revised to read as follows:

Subpart A—General Provisions

Sec.

412.101 Coverage.
412.102 Purpose.
412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.
412.104 Formal candidate development programs for Senior Executive Service positions.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

412.201 Purpose.
412.202 "Status" programs.
412.203 "Non-status" programs.

Authority: 5 U.S.C. 3397, 4101, *et seq.*

Subpart A—General Provisions

§ 412.101 Coverage.

This subpart applies to all incumbents of or candidates for supervisory, managerial, and executive positions in the General Schedule, the Senior Executive Service (SES), or equivalent pay systems who are also covered by part 410 of this chapter.

§ 412.102 Purpose

(a) This subpart implements for supervisors, managers, and executives the provisions of chapter 41 of title 5 of the United States Code related to training and section 3396 of title 5 related to the criteria for programs of systematic development of candidates for the SES and the continuing development of SES members.

(b) The subpart identifies a continuum of preparation starting with supervisory positions and proceeding through management and executive positions Governmentwide. For this reason, the subpart establishes a comprehensive system that is intended to:

(1) Provide the competencies needed by supervisors, managers, and executives to perform their current functions at the mastery level of proficiency; and

(2) Provide learning through development and training in the context of succession planning and corporate perspective to prepare individuals for advancement, thus supplying the agency and the government with an adequate number of well prepared and qualified candidates to fill supervisory, managerial, and executive positions Governmentwide.

§ 412.103 Criteria for programs for the systematic training and development of executives, managers, supervisors, and candidates.

Each agency must provide for the initial and continuing development of individuals in executive, managerial, and supervisory positions, and candidates for those positions. The agency must issue a written policy to assure that their development programs:

(a) Are designed as part of the agency's strategic plan and foster a corporate perspective.

(b) Make assignments to training and development consistent with the merit

system principles set forth in 5 U.S.C. 2301(b) (1) and (2).

(c) Provide for:

(1) Initial training as an individual makes critical career transitions to become a new supervisor, a new manager, or a new executive consistent with the results of needs assessments;

(2) Continuing learning experiences, both short- and long-term, throughout an individual's career in order for the individual to achieve the mastery level of proficiency for his or her current management level and position; and

(3) Systematic development of candidates for advancement to a higher management level. Formal candidate development programs leading to noncompetitive placement eligibility represent one, but not the only, type of systematic development.

§ 412.104 Formal candidate development programs for Senior Executive Service positions.

Formal SES candidate development programs permit the certification of the executive qualifications of graduates by a Qualifications Review Board under the criterion of 5 U.S.C. 3393(c)(2)(B) and selection for the SES without further competition. The agency must have a written policy describing how the program will operate. The agency must obtain OPM approval of the program before it is conducted for the first time under these regulations and whenever there are substantive changes to the program. Agency programs must meet the following criteria.

(a) Recruitment.

(1) Recruitment for the program is from all groups of qualified individuals within the civil service, or all groups of qualified individuals whether or not within the civil service.

(2) Agencies may request an exception to the provision in paragraph (a) of this section if they can show that during the 5-year period prior to the announcement of a program they have made at least 15% of their career SES appointments from sources outside the agency. Notwithstanding this exception recruitment must be competitive and be announced at least agencywide. Graduates of these programs who have been certified by a QRB must then compete Governmentwide for entry to the SES, but do not have to obtain a second QRB certification before appointment.

(b) In recruiting, the agency, consistent with the merit system principles in 5 U.S.C. 2301(b) (1) and (2), takes into consideration the goal of achieving a diversified workforce.

(c) All candidates are selected through SES merit staffing procedures. The number selected shall be consistent with the number of expected vacancies.

(d) Each candidate has an SES development plan covering the period of the program. The plan is prepared from a competency-based needs determination. It is approved by the Executive Resources Board.

(e) The minimum program requirements, unless an exception is obtained in advance of the beginning of the candidate's program, for an SES development plan are as follows:

(1) There is a formal training experience that addresses the executive core qualifications and their application to SES positions Governmentwide. The training experience must include interaction with a wide mix of Federal employees outside the candidate's department or agency to foster a corporate perspective but may include managers from the private sector and state and local governments. The nature and scope of the training must have Governmentwide or multi-agency applicability. If formal interagency training is used to meet this requirement, it must total at least 80 hours. If an interagency work experience is used, it must be of significantly longer duration than 80 hours.

(2) There are developmental assignments that total at least 4 months of full-time service outside the candidate's position of record. The purpose of the assignments is to broaden the candidate's experience and/or increase knowledge of the overall functioning of the agency so that the candidate is prepared for a range of agency positions.

(3) There is a member of the Senior Executive Service as a mentor.

(f) Each candidate's performance in the program is evaluated periodically, and there is a written policy for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(g) Each candidate has a documented starting and finishing date in the program.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.201 Purpose.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. This subpart sets forth regulations establishing two types of SES candidate development programs, "status" and "non-status."

§ 412.202 "Status" programs.

Only employee serving under career appointments, or under career-type appointments as defined in § 317.304(a)(2) of this chapter, may participate in "status" candidate development programs.

§ 412.203 "Non-status" programs.

(a) *Eligibility.* Candidates are from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service.

(b) *Requirements.*

(1) Candidates must be appointed using the Schedule B authority authorized by § 213.3202(j) of this chapter. The appointment may not exceed or be extended beyond 3 years.

(2) Assignments must be to a full-time position created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an agency's regular positions on a continuing basis.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under § 302.101(c)(6) of this chapter from the appointment procedures of part 302.

[FR Doc. 96–22366 Filed 9–3–96; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 210, 245a, 264, 274a and 299

[INS No. 1399 E–96]

RIN 1115–AB73

Introduction of New Employment Authorization Document

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service (Service) is publishing a final rule introducing a more secure Employment Authorization Document (EAD), Form I–766. The

Service will begin issuing Form I–766 on or after October 4, 1996. This rule will confer authority for INS to begin issuing Form I–766 to certain classes of aliens as evidence of authorization to work temporarily in the United States. Form I–766 may be used by employees and employers for purposes of employment verification eligibility requirements on the Service Form I–9. No action is necessary for those aliens who have valid evidence of employment authorization on Service Forms I–688A and I–688B.

EFFECTIVE DATE: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: MayBurn DeBoe, Senior Immigration Examiner, Immigration and Naturalization Service, Adjudications and Nationality Division, 425 I Street NW., room 3214, Washington, DC. 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: The Service published a supplemental proposed rule (INS No. 1399S–94) in the **Federal Register** at 60 FR 32472–32477 on June 22, 1995. That rule, among other things, proposed to introduce a new, more secure Employment Authorization Document (EAD), Form I–766. This final rule introduces Form I–766 as a designated employment authorization document and, for Form I–688A and I–688B Employment Authorization Document holders, evidence of alien registration; while also amending 8 CFR parts 210 and 245a to reflect revised document numbers.

The Service will begin to issue Form I–766 on October 4, 1996. At this time, the Service is publishing in final form those provisions which will allow for the use of Form I–766. Form I–766 will eventually replace two existing Employment Authorization Documents, Forms I–688A and I–688B. These provisions were contained in the proposed document reduction rule (INS No. 1399–92) published on November 23, 1993, at 58 FR 61846–61850, and the supplemental proposed rule (INS No. 1399S–94) published on June 22, 1995. The Service has elected to publish only these select provisions in final form at this time. The remainder of the provisions contained in the proposed document reduction rule and supplemental proposed rule will be published in final form at a later date.

Centralized EAD Production

The Service will centralize I–766 production at the service centers. The Service has determined that utilizing state-of-the-art technology at one or more of its service centers will enable the Service to produce a more secure EAD which will benefit employers, aliens who have been granted employment authorization, and the Service as well.

Currently, more than half of all EAD applications are filed and processed at the service centers through direct mail, and the Service plans to shift all remaining EAD applications to direct mail as a new production system becomes available in the service centers. As noted in the proposed supplemental rule, direct mail is a Service program which allows the public to file certain applications and petitions for benefits under the Immigration and Nationality Act (Act), as amended, at service centers instead of field offices. This centralization has improved inventory control, data integrity, and overall service.

Introduction of Form I–766

In the proposed rule published November 23, 1993, the Service proposed amending 8 CFR parts 210 and 245a to reflect the eventual replacement of Form I–688A with Form I–766. The Service will amend those parts to include specific references to the form number of Service-issued employment authorization documents (e.g., Form I–688B and Form I–766). In addition, current language in sections under 8 CFR parts 210 and 245a provide for employment authorization in 6-month increments. This rule amends those sections to make them consistent with language in 8 CFR 274a.12(c) which provides for employment authorization in increments not to exceed 1 year.

Related Regulatory and Process Changes

To clarify the regulatory provisions for legalization applicant work authorization in 8 CFR 274a.12, the Service is adding paragraphs to (c) (20) and (22) to include these legalization groups as classes of aliens who must apply for employment authorization while their applications are pending before the Service. The addition of these *two (2)* paragraphs will permit the Service to indicate on the EAD, the different terms and conditions of legalization applicants under sections 210 and 245A of the Act.

In addition, since Form I–688A, which is issued to legalization applicants, is designated by existing regulation as evidence of alien registration, 8 CFR part 264 will be amended to permit Form I–766, which eventually will replace Form I–688A, to be used as evidence of alien registration. Also, because an employment authorization document is considered an alien registration document for purposes of identity and employment eligibility (List A) of the Form I–9, the Service is amending part 264 to add Forms I–688B and I–766.

Elimination of Certain Service-Issued Paper Documents

In the supplemental proposed rule published on June 22, 1995, the Service notified the public of its intent to eliminate from circulation an unknown number of paper work authorization documents issued prior to June 1, 1987. These pre-1987 paper work authorization documents neither adhered to uniform standards for issuance and recordkeeping nor contained security features. The Service, by its own regulation, intended that these paper documents be terminated automatically on June 1, 1988. However, the Service was not in a state of readiness to issue a secure employment authorization document on June 1, 1988 and published in the **Federal Register** a stay and suspension of this paragraph of its regulation. The Service is now prepared to issue a highly secure document, Form I–766. Accordingly, effective December 31, 1996, consistent with the provisions of 8 CFR 274a.14(c), this rule will lift the stay on the expiration of Service-issued paper work permits issued before June 1, 1987, that was noticed at 53 FR 20086–87 on June 1, 1988. The stay was imposed "to promote clarity in the issuance of employment authorization documents" while the Service investigated technologies for a secure, standardized employment authorization system. The technology behind Form I–766 represents an important step towards such a system. Holders of such documents will be required to obtain the new, secure Form I–766, through the prescribed process for filing an Application for Employment Authorization (Form I–765. This provision applies exclusively to paper documents evidencing periods of temporary employment authorization issued prior to June 1, 1987. Although the Service does not know the precise number of aliens holding these pre-1987 paper work permits, it is reasonable to expect that most such aliens have applied for immigration benefits under the legalization program enacted in 1986 or otherwise sought immigration benefits at which time the question of employment authorization would have been revisited.

Comments

Many of the comments received on the proposed supplement relate to sections that are not the subject of this final rule. Those will be addressed when the Service publishes the final

document reduction rule. One commenter supported the eventual elimination of the Form I–688B in conjunction with Form I–688A with the introduction of the Form I–766. However, another commenter requested that prompt adjudication of EAD applications be ensured. The commender expressed concern that the processing time for Form I–766 will further increase overall adjudication and processing time. The commenter also encouraged the Service to engage in an aggressive informational campaign to make affected aliens aware of the need to eventually replace their EADs and to advise employers about the proposed changes so that inadvertent discrimination and verification mistakes do not occur.

The Service is prepared to institute an aggressive informational and educational campaign advising both employers and employees of the introduction of the Form I–766. The Form I–766 is a more secure card and is being introduced by the Service as a means to ensure quicker processing time, as well as greater uniformity and consistency among EADs. It is anticipated that the new EAD will ultimately result in less confusion for the employment community.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. Employers, including small entities, are required to comply with existing employment verification eligibility requirements under the Act. Introduction of the more secure EAD, Form I–766, imposes no such additional requirement. Rather, introduction of the more secure EAD and centralizing its production are intended to streamline the current process and simplify existing employment verification eligibility requirements imposed on employers.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and has been reviewed by the Office of Management and Budget (OMB). As noted in the supplementary section of this rule, this action is intended to streamline and simplify compliance with the employment eligibility verification requirements of the Act.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 210

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for part 210 continues to read as follows:

Authority: 8 U.S.C. 1103, 1160; 8 CFR part 2.

2. In § 210.4 paragraphs (b) (2) and (3) are revised to read as follows:

§ 210.4 Status and benefits.

* * * * *

(b) * * *

(2) *Employment and travel authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant after an interview has been conducted in connection with a nonfrivolous application at a Service office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments not exceeding 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the Employment Authorization Document (Form I–766, Form I–688A or Form I–688B) that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office. Persons submitting applications who currently have work authorization incident to status as defined in § 274a.12(b) of this chapter shall be granted work authorization by the Service effective on the date the alien's prior work authorization expires. Permission to travel abroad shall be granted in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office, and upon surrender of the previously issued Employment Authorization Document, will be issued Form I–688, Temporary Resident Card. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted to permanent residence.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

3. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

4. In § 245a.2 paragraph (n)(2) heading, and paragraphs (n)(2)(ii) and (n)(3) are revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(n) * * *

(2) *Employment authorization prior to the granting of temporary resident status.*

* * * * *

(ii) If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be restricted to increments of 1 year, pending final determination on the application for temporary resident status. If a final determination has not been made prior to the expiration date on the Employment Authorization Document (Form I–766, Form I–688A or Form I–688B), that date may be extended upon return of the employment authorization document by the applicant to the appropriate Service office.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office and, upon surrender of the previously issued Employment Authorization Document, will be issued Form I–688, Temporary Resident Card, authorizing employment and travel abroad.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

5. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

6. In § 264.1 paragraph (b) is amended by adding the entries for "Form I–766" and "Form I–688B" to the listing of forms, in proper numerical sequence, to read as follows:

§ 264.1 Registration and fingerprinting.

* * * * *

(b) * * *

Form No. and Class

* * * * *

I–688B, Employment Authorization Document.

I–766, Employment Authorization Document.

* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

7. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

8. Section 274a is amended by revising paragraph (b)(1)(v)(A)(*6*) and removing and reserving paragraphs (b)(1)(v)(A)(*7*) and (b)(1)(v)(A)(*10*) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(A) * * *

(*6*) An unexpired Employment Authorization Document issued by the Immigration and Naturalization Service which contains a photograph, Form I–766; Form I–688, Form I–688A, or Form I–688B;

(*7*) [Reserved]

* * * * *

(*10*) [Reserved]

* * * * *

9. In § 274a.12, new paragraphs (c)(20) and (c)(22) are added, to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(20) Any alien who has filed a completed legalization application pursuant to section 210 of the Act (and part 210 of this chapter). Employment authorization shall be granted in increments not exceeding 1 year during the period the application is pending (including any period when an administrative appeal is pending) and shall expire on a specified date.

* * * * *

(22) Any alien who has filed a completed legalization application pursuant to section 245A of the Act (and part 245a of this chapter). Employment authorization shall be granted in increments not exceeding 1 year during the period the application is pending (including any period when an administrative appeal is pending) and shall expire on a specified date.

* * * * *

10. In 274a.14 paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 274a.14 Termination of employment authorization.

* * * * *

(c) *Automatic termination of temporary employment authorization granted prior to June 1, 1987*—(1) Temporary employment authorization granted prior to June 1, 1987, pursuant to 8 CFR 274a.12(c) (§ 109.1(b) contained in the 8 CFR edition revised as of January 1, 1987), shall automatically terminate on the date specified by the Service on the document issued to the alien, or on December 31, 1996, whichever is earlier. Automatic termination of temporary employment authorization does not preclude a subsequent application for temporary employment authorization.

(2) A document issued by the Service prior to June 1, 1987, that authorized temporary employment authorization for any period beyond December 31, 1996, is null and void pursuant to paragraph (c)(1) of this section. The alien shall be issued a new employment authorization document upon application to the Service if the alien is eligible for temporary employment authorization pursuant to 274A.12(c).

* * * * *

PART 299—IMMIGRATION FORMS

11. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

12. Section 299.1 is amended by adding the entry for "Form I–766" in proper numerical sequence to the listing of forms, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–766	01–03–96	Employment Authorization Document.
*	*	*

Dated: May 20, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–22426 Filed 9–3–96; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Report on the NRC Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of NRC Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the *NRC Regulatory Agenda* for the period covering January through June of 1996. This agenda provides the public with information about NRC's rulemaking activities. The NRC Regulatory Agenda is a compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936), Vol. 15, No. 1, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–7163, toll-free number (800) 368–5642.

Dated at Rockville, Maryland, this 28th day of August 1996. For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–22508 Filed 9–3–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–54–AD; Amendment 39–9731; AD 96–18–07]

RIN 2120–AA64

Airworthiness Directives; Bellanca, Incorporated Models 17–30, 17–30A, 17–31, 17–31A, 17–31TC, and 17–31ATC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Bellanca, Incorporated (Bellanca) Models 17–30, 17–30A, 17–31, 17–31A, 17–31TC, and 17–31ATC airplanes. This action requires repetitively inspecting, testing, and possibly replacing the nose landing gear (NLG) strut and brackets. A collapse of a Bellanca airplane's NLG during a landing prompted this action. The actions specified by this AD are intended to prevent possible failure of the nose landing gear, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

DATES: Effective October 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Bellanca, Incorporated, P.O. Box 964, Alexandria, Minnesota 56308; telephone (612) 762–1501. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven J. Rosenfeld, Aerospace Engineer, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Rm. 232, Des Plaines, Illinois 60018; (847) 294–7030; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Bellanca Models 17–30, 17–30A, 17–31, 17–31A, 17–31TC, and 17–31ATC airplanes was published in the **Federal Register** on January 22, 1996 (61 FR 1532). The action proposed to require repetitively inspecting, testing, and possibly replacing the nose landing gear (NLG) strut and brackets. Accomplishment of the proposed action would be in accordance with Bellanca Service Letter (SL) B–107, dated September 20, 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 1,109 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 24 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $160 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,774,400 or approximately $1,600 per airplane. Bellanca has informed the FAA that no parts have been distributed to owners/operators for this replacement; therefore, this figure is based on the assumption that no owners/operators have accomplished the proposed inspection, testing, and replacement. In addition, the FAA has no way of determining the number of repetitive inspections each owner/operator will incur prior to replacing the bracket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–18–07. Bellanca, Incorporated: Amendment 39–9731; Docket No. 95–CE–54–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
17–30	(30123 through 30262)
17–30A	(30263 through 78–30905, except 76–30824)
17–31	(32–1 through 32–14)
17–31A	(32–15 through 78–32172)
17–31TC	(31001 through 31003)
17–31ATC	(31004 through 79–31155)

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially upon accumulating 500 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent failure of the nose landing gear (NLG), which, if not detected and corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect the NLG drag strut brackets for cracks or bends in accordance with the instructions in section 4, NLG DRAG STRUT BRACKET INSPECTION, of Bellanca Service Letter (SL) B–107, dated September 20, 1995. Prior to further flight, replace any cracked or bent bracket with a part number (P/N) 194650–0 (right side) bracket or a P/N 194383–0 (left side) bracket in accordance with the instructions in section 5, INSTALLATION NEW BRACKETS, of Bellanca SL B–107, dated September 20, 1995.

(b) Inspect the NLG installation, including the upper and lower leg assemblies, upper and lower drag struts, over-center spring assembly, and engine mount for corroded or worn bolts in accordance with the instructions in Section 6, NLG DRAG STRUT INSPECTION, of Bellanca SL B–107, dated September 20, 1995. Prior to further flight, replace any corroded or worn bolts.

(c) Check the NLG drag strut rigging, the overcenter of the drag strut, and the NLG cylinder actuator stroke limit, and adjust any discrepancies in accordance with the applicable instructions contained in the following:

(1) Section 7, PRELIMINARY NLG DRAG STRUT RIGGING CHECK (including section 7.1, Preliminary Nose-Wheel-In-The-Well Test, and section 7.2, Preliminary NLG Cylinder Down Test), of Bellanca SL B–107, dated September 20, 1995.

(2) Section 8, DRAG STRUT OVERCENTER TEST AND ADJUSTMENT, of Bellanca SL B–107, dated September 20, 1995.

(3) Section 9, NLG CYLINDER DOWN TEST AND ADJUSTMENT, of Bellanca SL B–107, dated September 20, 1995.

(d) If any discrepancies are found during any of the checks accomplished as required by paragraph (c) of this AD, and the right side NLG drag strut bracket has not been replaced with P/N 194650–0 (accomplished as possible requirement of paragraph (a) of this AD), accomplish the following:

(1) Reinspect the NLG drag strut brackets for cracks or bends at intervals not to exceed 50 hours TIS in accordance with Section 4, NLG DRAG STRUT BRACKET INSPECTION, of Bellanca SL B–107, dated September 20, 1995.

(2) Prior to further flight, replace any cracked or bent bracket with a P/N 194650–0 (right side) bracket or a P/N 194383–0 (left side) bracket in accordance with the instructions in section 5, INSTALLATION NEW BRACKETS, of Bellanca SL B–107, dated September 20, 1995. Installing the P/N 194650–0 (right side) bracket eliminates the repetitive inspection requirement in paragraph (d)(1) of this AD.

(3) The P/N 194650–0 (right side) bracket may be installed at any time to eliminate the repetitive inspection requirement of this AD.

(e) Check the NLG retraction (NLG-In-The-Well Test) in accordance with the instructions in Section 10, NLG–IN–THE–WELL TEST AND NLG CYLINDER MODIFICATION, of Bellanca SL B–107, dated September 20, 1995. If the nose gear cylinder rod motion is greater than 0.015 inches, prior to further flight, replace the cylinder internal stroke limiting sleeve with a new sleeve, P/N 195577–4, in accordance with the instructions in Section 10, NLG–IN–THE–WELL TEST AND NLG CYLINDER MODIFICATION, of Bellanca SL B–107, dated September 20, 1995.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Rm. 232, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago Aircraft Certification Office.

(h) The inspections, modifications, and replacements required by this AD shall be done in accordance of Bellanca Service Letter B–107, dated September 20, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bellanca, Incorporated, P.O. Box 964, Alexandria, Minnesota 56308; telephone (612) 762–1501. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment (39–9731) becomes effective on October 25, 1996.

Issued in Kansas City, Missouri, on August 23, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22247 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–237–AD; Amendment 39–9736; AD 96–18–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires an inspection to detect damage to the electrical wiring of the fuel tank of the wings and to verify if the proper P-clip is installed in the electrical wiring. This amendment also requires re-fitting any proper P-clip, replacing any improper P-clip with a new P-clip, and repairing damaged electrical wiring. This amendment is prompted by a report that incorrect P-clips were found installed in the electrical wiring of the fuel system on these airplanes. The actions specified by this AD are intended to ensure that the proper P-clips are installed. Improper P-clips could fail to adequately safeguard the fuel tank of the wing against a lightning strike, which could result in electrical arcing and resultant fire.

DATES: Effective October 9, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 9, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on April 29, 1996 (61 FR 18709). That action proposed to require a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings. That action also proposed to require re-fitting proper P-clips, replacing improper P-clips with certain new fuel-resistant P-clips, and repairing damaged electrical wiring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 44 Airbus Model A320 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $100 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,320, or $280 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–12 Airbus Industrie: Amendment 39–9736. Docket 95–NM–237–AD.

Applicability: Model A320 series airplanes, manufacturer's serial numbers 129 through 343 inclusive, 345 through 347 inclusive, and 349 through 363 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the proper P-clips are installed, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection to detect damage to the electrical wiring and to verify if the proper P-clip is installed in the electrical wiring at outboard rib 6 in the inner cell of the fuel tank of the wings, in accordance with Airbus Service Bulletin A320–28–1052, Revision 2, dated September 8, 1994.

Note 2: Accomplishment of the actions specified in this paragraph in accordance with Airbus Service Bulletin A320–28–1052, Revision 1, dated July 7, 1993, prior to the effective date of this AD is considered acceptable for compliance with this paragraph.

(1) If any damage is detected to the wiring, prior to further flight, repair it in accordance with the Airplane Wiring Manual.

(2) If a P-clip having P/N NSA5515–03NF or NSA5516–03NV is installed, prior to further flight, re-fit it in accordance with the service bulletin.

(3) If a P-clip having P/N NSA5516–03NJ is installed, prior to further flight, replace it with a new fuel-resistant P-clip having P/N NSA5515–03NF or NSA5516–03NV, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Airbus Service Bulletin A320–28–1052, Revision 2, dated September 8, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–5 ...	2	September 8, 1994.
6–9 ...	Original	July 7, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 9, 1996.

Issued in Renton, Washington, on August 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22263 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–175–AD; Amendment 39–9734; AD 96–18–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes Equipped With General Electric Model CF6–80 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that requires an inspection to detect defects of the directional pilot valves (DPV); and replacement of any defective DPV with a new DPV, or deactivation of the thrust reverser system, if necessary. This amendment is prompted by a report indicating that, during a maintenance check, an uncommanded deployment and stowage of the thrust reverser occurred due to improperly modified DPV's. The actions specified by this AD are intended to prevent uncommanded deployment and stowage of the thrust reverser during maintenance activities, as a result of improperly modified DPV's, which could result in injury to maintenance personnel or other people on the ground.

DATES: Effective October 9, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 9, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 and A310 series airplanes was published in the **Federal Register** on April 29, 1996 (61 FR 18699). That action proposed to require a one-time inspection to detect defects of the DPV. If a defective DPV is detected, it will be required to be replaced with a new DPV, or the thrust reverser system will be required to be deactivated until the DPV is replaced.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 43 Airbus Model A300–600 and A310 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required one-time inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $25,800, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–10 Airbus Industrie: Amendment 39–9734. Docket 95–NM–175–AD.

Applicability: Model A300B4–601, –603, –605R, A300–F4–605R, and A310–203, –203C, –204, –304, –308 series airplanes, equipped with General Electric Model CF6–80 engines; on which General Electric Service Bulletin 78–031 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded deployment and stowage of the thrust reverser during maintenance activities, accomplish the following:

(a) Within 600 flight hours after the effective date of this AD, perform an inspection to detect defects of the directional pilot valves (DPV), in accordance with Airbus All Operators Telex (AOT) 78–05, Revision 01, February 8, 1995.

(1) If no defects are detected, no further action is required by this AD.

(2) If any defect is detected, prior to further flight, either replace the defective DPV with a new DPV in accordance with the AOT; or deactivate the thrust reverser system in accordance with approved procedures of the Minimum Equipment List (MEL) until the DPV is replaced.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and replacement shall be done in accordance with Airbus All Operators Telex (AOT) 78–05, Revision 01, February 8, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 9, 1996.

Issued in Renton, Washington, on August 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22260 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–165–AD; Amendment 39–9733; AD 96–18–09]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model BAe 125–800A and –1000A, and Model Hawker 800 and 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech (Raytheon) Model BAe 125–800A and –1000A, and Model Hawker 800 and 1000 series airplanes, that requires modification of the TKS metering pump in the airframe ice protection system. This amendment is prompted by a report that the pump was found fitted with silver plated wiring. The actions specified by this AD are intended to ensure that silver plated wiring is removed from these pumps; silver plated wiring carrying a direct current can ignite the ice protection fluid (glycol) when exposed to it, which could result in a possible fire hazard.

DATES: Effective October 9, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 9, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech (Raytheon) Model BAe 125–800A and –1000A, and Model Hawker 800 and 1000 series airplanes was published in the **Federal Register** on May 13, 1996 (61 FR 21979). That action proposed to require modification of the TKS metering pump in the airframe ice protection system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour.

Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,380, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

. Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–09 Beech Aircraft Company (Formerly DeHavilland; Hawker Siddeley; British Aerospace, PLC; Raytheon Corporate Jets, Inc.): Amendment 39–9733. Docket 95–NM–165–AD.

Applicability: Model BAe 125–800A and –1000A, and Model Hawker 800 and 1000 series airplanes; on which Modification 257676A has not been accomplished (reference Hawker Service Bulletin SB.30–61–7676A or Aerospace Systems and Technology Service Bulletin S.B.30–25); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Beech (Raytheon) Model BAe 125–800B and BAe 125–1000B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125–800B and BAe 125–1000B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure that silver plated wiring is removed from the TKS metering pump and a possible fire hazard eliminated, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the TKS metering pump in the airframe ice protection system in accordance with Hawker Service Bulletin SB.30–61–7676A, dated February 15, 1995.

(b) As of the effective date of this AD, no person shall install on any airplane a TKS metering pump, having part number XA9511E003–3 or XA9511E009, unless it has been modified in accordance with the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Hawker Service Bulletin SB.30–61–7676A, dated February 15, 1995. (NOTE: The issue date of this service bulletin is indicated only on Page 1; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 9, 1996.

Issued in Renton, Washington, on August 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22261 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 95F–0402]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *di*(4-methylbenzoyl) peroxide as an accelerator for silicone polymers and elastomers for use in contact with food. This action is in response to a petition filed by Registration and Consulting Co., Ltd., on behalf of Peroxid-Chemie GmbH.

DATES: Effective September 4, 1996; written objections and requests for a hearing by October 4, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–

305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 20, 1995 (60 FR 65658), FDA announced that a food additive petition (FAP 6B4489) had been filed by Registration and Consulting Co., Ltd., on behalf of Peroxid-Chemie GmbH, c/o Bruce A. Schwemmer, Bruce EnviroExcel Group, Inc., 94 Buttermilk Bridge Rd., Washington, NJ 07882 (formerly 55 River Dr. South No. 1808, Jersey City, NJ 07310). The petition proposed to amend the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of *di*(4-methylbenzoyl) peroxide as an accelerator for silicone polymers and elastomers complying with § 177.2600 for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that it will achieve its intended technical effect, and that the regulations in § 177.2600 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2600 is amended in paragraph (c)(4)(ii)(*b*) by alphabetically adding a new entry for "*Di*(4-methylbenzoyl) peroxide" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *
(4) * * *
(ii) * * *
(*b*) * * *

Di(4-methylbenzoyl) peroxide (CAS Reg. No. 895–85–2) for use only as a crosslinking agent in silicone polymers and elastomers identified under paragraph (c)(4)(i) of this section at levels not to exceed 1 percent by weight of such polymers and elastomers where the total of all accelerators does not exceed 1.5 percent by weight of rubber product.

* * * * *

Dated: August 22, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22482 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 178

[Docket No. 96F–0092]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester for use as an antioxidant and/or stabilizer at levels not to exceed 0.05 percent by weight of olefin polymers intended for use in contact with food. This action is in response to a petition filed by Asahi Denka Kogyo K. K.

DATES: Effective September 4, 1996; written objections and requests for a hearing by October 4, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 25, 1996 (61 FR 12075), FDA announced that a food additive petition (FAP 6B4498) had been filed by Asahi Denka Kogyo K. K., 2–13 Shirahata 5–Chome, Urawa City, Saitama 336, Japan. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester for use as an antioxidant and/or stabilizer at levels not to exceed 0.05 percent by weight of olefins complying with 21 CFR 177.1520 intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material.

Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e):

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for "Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester" under the heading "Substances" and by adding a new entry "2." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester (CAS Reg. No. 80693–00–1).	For use only: 1. At levels not to exceed 0.25 percent by weight of polypropylene complying with § 177.1520 of this chapter. * * * 2. At levels not to exceed 0.05 percent by weight of polymers complying with § 177.1520(c) of this chapter, item 3.1 or 3.2, and with a maximum thickness of 100 micrometers (0.004 inch) for use with all food types under conditions of use B, C, D, E, F, G, and H described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * *

Dated: August 20, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22483 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 96F–0027]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(2,4-di-*tert*-butyl-6-methylphenyl) ethyl phosphite as a processing stabilizer for olefin polymers intended for use in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective September 4, 1996; written objections and requests for a hearing by October 4, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and

Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 9, 1996 (61 FR 5001), FDA announced that a food additive petition (FAP 6B4492) had been filed by Ciba-Geigy Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005, proposing that food additive regulations be amended in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of bis(2,4-di-*tert*-butyl-6-methylphenyl) ethyl phosphite as a processing stabilizer for olefin polymers complying with 21 CFR 177.1520 intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and that the regulations in § 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry for bis(2,4-di-*tert*-butyl-6-methylphenyl) ethyl phosphite to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers

* * * * * * *

(b) * * *

List of Substances	Limitations
* * * * * * *	
Bis(2,4-di-*tert*-butyl-6-methylphenyl) ethyl phosphite (CAS Reg. No. 145650–60–8).	For use only: 1. At levels not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter. The finished polymers may only be used with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories I, II, IV-B, VI-A, VI-B, VII-B, and VIII, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.1 percent by weight of propylene polymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 1.3, 3.2b, 3.4, or 3.5, or 3.1a (where the density of this polymer is at least 0.85 gram per cubic centimeter and less than 0.91 gram per cubic centimeter). The finished polymers may only be used in contact with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV-A, V, VI-C, VII-A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.

List of Substances	Limitations
	3. At levels not to exceed 0.1 percent by weight of high-density ethylene polymers complying with §177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may only be used in contact with food of the types identified in §176.170(c) of this chapter, Table 1, under Categories III, IV-A, V, VI-C, VII-A, and IX, and under conditions of use C (maximum temperature 70 °C) through G described in Table 2 of §176.170(c) of this chapter. *Provided*, that the finished food contact articles have a volume of at least 18.9 liters (5 gallons). 4. At levels not to exceed 0.01 percent by weight of low-density ethylene polymers complying with §177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, 3.4, 3.5, or 3.6 (where the density of each of these polymers is less than 0.94 gram per cubic centimeter). The finished polymers may only be used in contact with food of the types identified in §176.170(c) of this chapter, Table 1, under Categories III, IV-A, V, VI-C, VII-A, and IX, and under conditions of use B through H described in Table 2 of §176.170(c) of this chapter. *Provided*, that the average thickness of such polymers in the form in which they contact food shall not exceed 0.001 inch.

* * * * *

Dated: August 22, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22484 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Roussel-UCLAF to Roussel-UCLAF SA.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Roussel-UCLAF, Division Agro-Veterinaire, 163 Avenue Gambetta, 75020 Paris, France, has informed FDA of a change of sponsor name and address to Roussel-UCLAF SA, Animal Health Division, 102 Route de Noisy, 93235 Romainville Cedex, France. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name and address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "Roussel-UCLAF" and adding in its place a new entry for "Roussel-UCLAF SA" and in the table in paragraph (c)(2) in the entry for "012579" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Roussel-UCLAF SA, Animal Health Division, 102 Route de Noisy, 93235 Romainville Cedex, France	012579

(2) * * *

Drug labeler code	Firm name and address
012579	Roussel-UCLAF SA, Animal Health Division, 102 Route de Noisy, 93235 Romainville Cedex, France.

Dated: August 20, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–22486 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Xylazine Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Chanelle Pharmaceuticals Manufacturing Ltd. The ANADA provides for intravenous, intramuscular, or subcutaneous use of xylazine injection in dogs and cats to produce sedation accompanied by a shorter period of analgesia.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center For Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Chanelle Pharmaceuticals Manufacturing Ltd., Loughrea, County Galway, Ireland, filed ANADA 200–184, which provides for intravenous, intramuscular, and subcutaneous use of Chanazine® (20 milligrams/milliliter (mg/mL)) Injectable (xylazine hydrochloride equivalent to 20 mg xylazine per mL) in dogs and cats to produce sedation accompanied by a shorter period of analgesia. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of ANADA 200–184 for Chanelle's Chanazine® (xylazine 20 mg/mL) Injectable is as a generic copy of Bayer's NADA 47–955 for Rompun® (xylazine 20 mg/mL) injectable. The ANADA is approved as of July 12, 1996, and the regulations are amended by revising 21 CFR 522.2662(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2662 is amended by revising the first two sentences in paragraph (b) to read as follows:

§ 522.2662 Xylazine hydrochloride injection.

* * * * *

(b) *Sponsor.* See 000856 in § 510.600(c) of this chapter for use in horses, wild deer, and elk. See 000859 and 061651 in § 510.600(c) of this chapter for use in horses, wild deer, elk, dogs, and cats. * * *

* * * * *

Dated: August 20, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–22487 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–238–FOR, #72]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Ohio regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio proposed revisions to rules pertaining to underground mining. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, OSM, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of

approval can be found in the August 10, 1982, **Federal Register** (42 FR 34668). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated May 23, 1996, (Administrative Record No. OH–2166–00) Ohio submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Ohio proposed to revise the Ohio Administrative Code (OAC) at sections 1501:13–4–12(G)(3)(d) and 4(f),(I)—Requirements for Special Categories of Mining; 1501:13–9–08(A),(B)—Protection of Underground Mining; and 1501:13–13–01—Concurrent Surface and Underground Mining.

OSM announced receipt of the proposed amendment in the June 24, 1996, **Federal Register** (61 FR 32382), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 24, 1996.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

State regulation	Subject	Federal counterpart
OAC 1501:13–4–12(G)(3)(d)	Variances	30 CFR 785.18(b)(4)
OAC 1501:13–4–12(G)(4)(f)	Permit Issuance	30 CFR 785.18(c)(6)
OAC 1501:13–4–12(G)(4)(i)	Permit Issuance	30 CFR 785.18(c)(9)(iii)
OAC 1501:13–9–08(A)(1)	Protection of Underground Mining	30 CFR 816.79(b)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Ohio's proposed rules are no less effective than the Federal rules.

B. Revisions to Ohio's Regulations With No Corresponding Federal Regulations

Ohio proposed to delete OAC 1501:13–9–08(B) which required that surface mining operations be designed to protect disturbed surface areas, including spoil disposal sites, so as not to endanger any present or future coal mining operation. There is no corresponding Federal requirement to this provision. Therefore, the Director finds that the proposed deletion will not render the State program less effective than the Federal regulations.

Ohio proposed to delete OAC 1501:13–13–01 which specifies performance standards for concurrent surface and underground mining activities operating under a variance from contemporaneous reclamation requirements. These provisions have no corresponding Federal requirements. Ohio's provisions for variances in contemporaneous reclamation appear in OAC 1501:13–4–12(G). The Director finds that the proposed deletion will not render the State program less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Two public comments were received. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

One commenter stated that by rescinding OAC 1501:13–13–01, underground and surface coal reserves will be sterilized needlessly. The commenter suggests that this provision provides a degree of flexibility and that the 500 foot barrier was meant for underground and surface mines in the same seam. The Director notes that the changes proposed by Ohio simplify its rule structure by eliminating OAC 1501:13–13–01 which duplicates requirements found under 1501:13–4–12(G) (contemporaneous reclamation) and 1501:13–9–08 (concurrence). The revisions are not intended to create the loss of any flexibility nor cause any impact that would sterilize or impact the ability to mine certain reserves beyond those that currently exist in the Ohio program and do not render the program less effective than the Federal regulations.

The second commenter, the Ohio Historic Preservation Office (OHPO), expressed several concerns. OHPO feels that proposed rule changes pertaining to surface mining operations are not routinely sent to OHPO for review. OHPO is particularly concerned that there is no basis for selecting the 500 foot distance requirement specified in OAC 1501:13–9–08. If feels this could create situations where there are adverse effects to a property eligible for inclusion in the National Register of Historic Places (NRHP). OHPO is also concerned that the proposed changes could result in an acceleration of surface affectment actions with increased risks for adverse effects to properties that may be eligible for inclusion in the NRHP. The Director acknowledges that all requirements of coordination and consultation between agencies responsible for implementing the National Historic Preservation Act (NHPA) must be met. However, the changes proposed by Ohio do not impact compliance with NHPS and the OHPA comments are, therefore, outside the scope of this amendment. The Director notes that the referenced 500 foot distance concerns the amount of barrier that may be necessary to ensure the protection of underground coal miners and is consistent with Federal requirements. The barrier is a hydrologic and structural consideration and not considered as a direct limitation on surface impacts as OHPA suggests. The Director concludes that none of the changes proposed by Ohio create barriers to compliance with the NHPA.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. None were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et. seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Ohio proposed to make in its amendment pertains to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment. EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Ohio on May 23, 1996.

The Federal regulations at 30 CFR Part 935, codifying decisions concerning the Ohio program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extend allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 19, 1996.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended by adding paragraph (bbbb) to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(bbbb) The following rules, as submitted to OSM on May 23, 1996 are approved effective September 4, 1996.

OAC 1501:13–4–12(G)(3)(d)—Variance
OAC 1501:13–4–12(G)(4)(f),(i)—Permit Issuance
OAC 1501:13–9–08(A)(1)—Protection of Underground Mining
OAC 1501:13–9–08(B) (Deletion)—Protection of Underground Mining
OAC 1501:13–13–01 (Deletion)—Concurrent Surface and Underground Mining

[FR Doc. 96–22447 Filed 9–3–96; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 944

[SPATS No. UT–034]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to petitions to initiate rulemaking, and backfilling and grading and highwall retention. The amendment revises the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 30, 1995, and March 11, 1996, Utah submitted to OSM rules that it had promulgated for its program (administrative record Nos. UT–1079 and UT–1081) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). With three exceptions, these rules were substantively identical to rules that

Utah had previously submitted to OSM and for which the Director made a decision in the May 30, 1995, **Federal Register** (60 FR 28040, administrative record No. UT–1057). The three exceptions occurred in rules that Utah revised in response to required amendments and in response a disapproval that OSM set forth in the May 30, 1995, notice. In response to the required program amendments at 30 CFR 944.16 (c) and (d) (May 30, 1995, 60 FR 28040, 28043–4, finding Nos. 4 and 5), Utah proposed to revise Utah Admin. R. 645–301–553.110 and Utah Admin. R. 534–301–553.120. In response to the Director not approving proposed Utah Admin. R. 645–301–553.651 (May 30, 1995, 60 FR 28040, 28046–7, finding No. 15), Utah did not promulgate the rule. The rule concerned a proposed applicability date for the backfilling and grading of highwalls.

In addition to the aforementioned revisions, Utah by letter dated December 4, 1995, submitted to OSM a proposed revision to Utah Admin. R. 645–100–500, pertaining to petitions to initiate rulemaking (administrative record No. UT–1080). Utah submitted the proposed revision in response to a November 22, 1995, OSM letter (administrative record No. UT–1078) notifying Utah of a needed revision to Utah's rule.

These revisions constitute a proposed amendment to Utah's program. OSM announced receipt of the proposed amendment in the March 20, 1996, **Federal Register** (61 FR 11350), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–1085). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 19, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Utah on November 30 and December 4, 1995, and March 11, 1996, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Utah Admin. R. 645–100–500, Petitions To Initiate Rulemaking

Utah proposed to revise Utah Admin. R. 645–100–500 to provide that persons other than the Division or Board of Oil, Gas and Mining may petition to initiate rulemaking pursuant to Utah Admin. R. Part 641 and the Utah Administrative Rulemaking Act at Utah Code Annotated (U.C.A.) "63–46a–1, *et seq.*" instead of "63–46–8."

Utah deleted the reference to the statute at U.C.A. 63–46–8 because it previously repealed it. Newly referenced "U.C.A. 63–46a–1 *et seq.*" includes the statutory provisions at U.C.A. 63–46a–12, which allow interested persons to petition agencies requesting the making, amendment, or repeal of rules.

The Federal counterpart regulation to proposed Utah Admin. R. 645–100–500 is at 30 CFR 700.12. The Federal counterpart statutory provision to U.C.A. 63–46a–12 is at section 201(g)(1) of SMCRA. They both provide for persons to petition OSM requesting the issuance, amendment, or repeal of a rule.

The proposed revision to Utah Admin. R. 645–100–500 is no less effective than the Federal regulations at 30 CFR 700.12 and no less stringent than section 201(g)(1) of SMCRA. Therefore, the Director approves the proposed revision to Utah Admin. R. 645–100–500.

2. Utah Admin. R. 645–301–553.110 and .120, Backfilling and Grading and Highwall Retention

Utah Admin. R. 645–301–553.110.— On May 30, 1995, OSM at 30 CFR 944.16(c) (finding No. 4, 60 FR 28040, 28043) required Utah to revise Utah Admin. R. 645–301–553.110 to correct the cross referenced provisions in the phrase "R645–301–500 through R645–301–540," regarding previously mined areas, continuously mined areas, and areas subject to the approximate original contour provisions, to read "R645–301–*553*.500 through R645–301–*553*.540" (emphasis added).

In response to the required amendment, Utah proposed to make the changes in the citations. For the reasons discussed in the May 30, 1995, **Federal Register** notice, the Director finds that the proposed revisions to Utah Admin. R. 645–301–553.110 are consistent with the Federal regulations at 30 CFR 816.102(k) and 817.102(k). Accordingly, the Director approves the proposed revisions to Utah Admin. R. 645–301–553.110 and removes the required amendment at 30 CFR 944.16(c).

Utah Admin. R. 534–301–553.120.— On May 30, 1995, OSM at 30 CFR 944.16(d) (finding No. 5, 60 FR 28040, 28043) required Utah to revise Utah Admin. R. 645–301–553.120 to correct the cross-referenced provisions in the phrase "R645–301–553.500 through R645–301–540," regarding previously mined areas, continuously mined areas, and areas subject to the approximate original contour provisions, to read "R645–031–553.500 through R645–301–*553*.540" (emphasis added). In response to the required amendment, Utah made the revision in the citation.

OSM also at 30 CFR 944.16(d) required Utah to revise Utah Admin. R. 645–301–553.120 to correct the cross-referenced provisions in the phrase "R645–301–553.650 through R645–301–553.653" to read "R645–301–553.650 through R645–301–553.*651*" (emphasis added), or otherwise make a revision that had the same effect. As discussed in following finding No. 4, Utah did not promulgate Utah Admin. R. 645–301–553.651. Therefore, at Utah Admin. R. 645–301–553.120, Utah proposed to only reference Utah Admin. R. 645–301–553.650.

For the reasons discussed in the May 30, 1995, **Federal Register** notice, the Director finds that the proposed revisions to Utah Admin. R. 645–301–553.120 are consistent with the Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2). Accordingly, the Director approves the proposed revisions to Utah Admin. R. 645–301–553.120 and removes the required amendment at 30 CFR 944.16(d).

3. Utah Admin. R. 645–301–553.651, Applicability Date

On May 30, 1995, the Director did not approve Utah's proposed rule at Utah Admin. R. 645–301–553.651 (finding No. 15, 60 FR 28040, 28046) because it was less stringent than section 515 of SMCRA, not in accordance with the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls for areas with remaining highwalls subject to the approximate original contour provisions, and not in accordance with the Director's previous finding in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605–6; finding No. 3(C)(3)(b)).

In response to this disapproval, Utah deleted the proposed rule at Utah Admin. R. 645–301–553.651 (i.e., did not promulgate the rule in the State rulemaking process). Utah's deletion of the proposed rule is consistent with the Director's disapproval.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program (administrative record No. UT–1082). None of the Federal agencies responded.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT–1082). It did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT–1082). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on November 30 and December 4, 1995, and March 11, 1996.

The Director approves, as discussed in: finding No. 1, Utah Admin. R. 645–100–500, concerning petitions to initiate rulemaking; and finding No. 2, Utah Admin. R. 645–301–553.110 and .120, concerning backfilling and grading and highwall retention.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 21, 1996.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (hh) to read as follows:

§ 944.15 Approval of amendments to the State regulatory program.

* * * * *

(hh) Revisions to Utah Admin. R. 645–100–500, concerning petitions to initiate rulemaking, and revisions to Utah Admin. R. 645–301–553.110 and Utah Admin. R. 534–301–553.120, concerning backfilling and grading and highwall retention, as submitted to OSM on November 30 and December 4, 1995, and March 11, 1996, are approved effective September 4, 1996.

§ 944.16 [Amended]

3. Section 944.16 is amended by removing and reserving paragraphs (c) and (d).

[FR Doc. 96–22524 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

[VA–108–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia regulatory program (hereinafter referred to as the "Virginia program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of regulatory changes to implement the remining standards of the Federal Energy Policy Act of 1992. The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal regulations as amended on November 27, 1995. (60 FR 58480)

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Robert A. Penn, Director, Big Stone Gap Field Office, 1941 Neely Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219 Telephone: (540) 523–4303

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61088). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Proposed Amendment

By letter dated May 28, 1996, (Administrative Record No. VA–885) Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia submitted the proposed amendment at its own initiative. Virginia proposed amendments to implement the remining standards of the Federal Energy Policy Act of 1992.

OSM announced receipt of the proposed amendment in the June 19, 1996, **Federal Register** (61 FR 31071) and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on July 19, 1996.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Virginia Regulations That Are Substantively Identical to the Corresponding Federal Regulations

The amendments proposed by Virginia are as follows:

1. Section 480–03–19.700.5 Definitions

(a) "Lands eligible for remining" has been added to mean those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Federal Act.

(b) "Unanticipated event or condition" has been added to mean (as used in § 480–03–19.773.15), an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit.

2. Section 480–03–19.773.15 Review of Permit Applications

(a) New subsection (b)(4) has been added to provide, at (b)(4)(i) that subsequent to October 24, 1992, the prohibitions of paragraph (b) of this section regarding issuance of a new permit shall not apply to any violation that: occurs after that date; is unabated; and results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit which is issued before September 30, 2004, or any renewals thereof, and held by the person making applications for the new permit.

New subsection (b)(4)(ii) provides that for permits issued under § 480–03–19.785.25 of this chapter, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it: arose after permit issuance; was related to prior mining; and was not identified in the permit.

(b) New subsection (c)(14) has been added to provide that for permits to be issued under § 480–03–19.785.25 of this chapter, the permit application must contain: lands eligible for remining; an identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of this chapter can be accomplished.

3. Section 480–03–19.785.25 Lands Eligible for Remining

This new section contains permitting requirements to implement § 480–03–19.773.15(b)(4), and provides that: any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remaining must comply with this section; any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall: to the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions; with regard to potential environmental and safety problems referred to in paragraph (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of this chapter can be met; The requirements of this section shall not apply after September 30, 2004.

4. Section 480–03–19.816/817.116 Revegetation: Standards for Success

Subsections (c)(2)(i) have been amended by adding the phrase "except as provided in paragraph (c)(2)(ii) of this section" to the first sentence. This modification was made in response to the new language added at subsection (c)(2)(ii), and that is identified below.

New subsection (c)(2)(ii) provide that the responsibility period shall be two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulation, the Director finds that Virginia's proposed rules are no less effective than the Federal rule.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Department of Agriculture, Natural Resources Conservation Service responded and recommended that the amendments be accepted. The U.S. Fish and Wildlife Service responded and stated that the proposed regulatory changes are not likely to adversely affect threatened or endangered species or critical habitats. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the amendments should be accepted.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA on May 31, 1996. EPA responded that the amendment was acceptable.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. They did not respond.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed amendment as submitted by Virginia on May 28, 1996.

The Federal regulations at 30 CFR Part 946, codifying decisions concerning the Virginia program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has concluded the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a special State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 14, 1996.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended by adding paragraph (ll) to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ll) The amendment to the Virginia program concerning implementation of the remining standards of the Federal Energy Policy Act of 1992 as submitted to OSM on May 28, 1996, is approved effective September 4, 1996.

[FR Doc. 96–22448 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Parts 1 and 15

RIN 1024–AC50

Use of Environman and Human Figure and Design Symbol

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is adopting this final rule to

remove the regulations on the "Environman" symbol and program which was developed in the late 1960's during the early days of the NPS Division of Environmental Education. The Environman symbol was developed as the NPS symbol for environmental education. Portions of the environmental education program never materialized as envisioned, however, and the Environman symbol was seldom used and has not been used since the early 1970's. Therefore, these regulations are no longer necessary and will be removed from the CFR. A conforming amendment is also made to the regulation regarding symbolic signs.

EFFECTIVE DATE: The rule will become effective on September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Washington Office of Ranger Activities, P.O. Box 37127, Washington, D.C. 20013–7127. Telephone 202–208–4874.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1971, the NPS published in the **Federal Register** (36 FR 25406) a final rule adding a new Part 15 to the CFR. The purpose of the rule was to give notice that the name "Environman" and an Environman symbol named "Human Figure and Design", were owned and protected by the U.S. Government. The symbol was to identify the role of the NPS in promoting high-quality environmental education and to represent and symbolize such activities. The "Human Figure and Design" was the official sign to identify a National Environmental Study Area (NESA). The name "Environman" was used in connection with NESA's and that name and the "Human figure and Design" were used in connection with National Environmental Education Developments and National Environmental Education Landmarks.

The regulation provided the necessary protection of the symbol from unauthorized use, while listing guidelines for individuals wishing a license to reproduce, manufacture, sell or use either "Environman" or the "Human Figure and Design". Portions of the environmental education program never materialized as envisioned, however, and the Environman symbol has not been used since the early 1970's. Therefore, 36 CFR Part 15 is no longer needed and will be deleted from the CFR.

Administrative Procedure Act

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the NPS is promulgating this rule under the "good cause" exception of the Act from general notice and comment rulemaking. As discussed above, the NPS believes this exception is warranted because the existing regulations are no longer used. This final rule will not impose any additional restrictions on the public and comments on this rule are deemed unnecessary. Based upon this discussion, the NPS finds pursuant to 5 U.S.C. 533(b)(B) that it would be contrary to the public interest to publish this rule through general notice and comment rulemaking.

The NPS also believes that publishing this final rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay in this instance would be unnecessary and contrary to the public interest. Therefore, under the "good cause" exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), it has been determined that this final rulemaking is excepted from the 30-day delay in the effective date and will therefore become effective on the date published in the **Federal Register**.

Drafting Information. The primary author of this rule is Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et. seq.*). The economic effects of this rulemaking are nonexistent.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

The NPS has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses which compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this final rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 15

National parks, Signs and symbols.

In consideration of the foregoing, and under the authority of 16 U.S.C. 1 and 5 U.S.C. 301, the NPS is amending 36 CFR Chapter I as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460 1–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981)

§ 1.10 [Amended]

2. Section 1.10 is amended in paragraph (b) by revising the second page of symbolic signs to read as follows:

BILLING CODE 4310–70–M

AREA WHERE PETS UNDER PHYSICAL CONTROL PERMITTED

ACCOMMODATIONS OR SERVICE

PUBLIC OVERNIGHT ACCOMMODATIONS (HOTEL, LODGE, MOTEL, ETC.)

PUBLIC TELEPHONE

RESTAURANT, CAFETERIA, SNACK SHOP, LUNCHROOM

U.S. POST OFFICE

GROCERIES, FOOD OR CAMP STORE

AUTOMOBILE OR BOAT REPAIRS

MEN'S RESTROOM

FACILITY FOR THE PHYSICALLY HANDICAPPED

RESTROOMS FOR BOTH MEN AND WOMEN

AIRPORT OR LANDING STRIP

WOMEN'S RESTROOM

LOCKED STORAGE

FIRST AID STATION

BUS OR TOUR VEHICLE STOP

PART 15—[REMOVED]

3. 36 CFR Part is removed.

Dated: August 13, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–22430 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–70–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[CS Docket No. 96–83; IB Docket No. 95–59; FCC 96–328]

Telecommunications Act of 1996; Preemption of Restrictions on Over-the-Air Reception Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Report and Order ("R&O") implements Section 207 of the Telecommunications Act of 1996. Section 207 directs that the Commission shall: "pursuant to Section 303 of the Communications Act, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service or direct broadcast satellite services." The R&O prohibits restrictions that impair a viewer's ability to install, use and maintain devices used to receive TVBS, MMDS and DBS signals on property within the exclusive use or control of the antenna user and in which the user has a direct or indirect ownership interest. The Memorandum Opinion and Order (MO&O) addresses petitions for reconsideration in IB Docket No. 95–59 as they relate to implementation of Section 207. The intended effect of this R&O and MO&O is to complete the implementation of Section 207 of the Telecommunications Act of 1996. The R&O and MO&O will foster competition among video programming service providers and will increase consumer options for receiving video programming.

EFFECTIVE DATE: Upon approval by the Office of Management and Budget (OMB) of the new information collection requirements adopted herein, but no sooner than October 4, 1996. The Commission will publish a document at a later date advising of the effective date.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington, DC 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW, Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION, CONTACT: Jacqueline Spindler, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's R&O and MO&O in CS Docket No. 96–83, IB Docket No. 95–59, FCC No. 96–328, adopted August 5, 1996 and released August 6, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, DC 20554. This R&O and MO&O contain proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to comment on the modified information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due on September 27, 1996; OMB comments are due November 4, 1996. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0707.

Title: Preemption of Restrictions on Over-the-Air Reception Devices—Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking.

Type of Review: Revision of an existing collection. The following are burden estimates for the Order portion of the document, as well as the Further Notice of Proposed Rulemaking portion of the document. We account for the burdens estimates separately. If, in a subsequent rulemaking, the proposed rules in the Further Notice of Proposed Rulemaking are not adopted in part or in whole, the Commission will adjust its burden estimates accordingly.

Respondents: State and local governments; small organizations; small businesses.

Number of Respondents for the Order: 248. (100 requests for declaratory rulings, 24 comments on requests, 100 petitions for wavers, 24 comments on petitions.)

Estimated Time Per Response for the Order: 2–5 hours.

Total Annual Burden for the Order: 844 hours. It is estimated that 50% of declaratory rulings will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hours = 100 hours. It is estimated that 50% of comments on declaratory rulings will be prepared without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hours = 24 hours. It is estimated that 50% of petitions for waivers will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hours = 100 hours. It is estimated that 50% of comments on waivers will be prepared without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hours = 24 hours.

Estimated Costs Per Respondent for the Order: It is estimated that 50 requests for declaratory rulings, 12 comments on requests for declaratory rulings, 50 petitions for waivers and 12 comments on petitions for waivers will be prepared each year through outside counsel. The estimated annual costs are $89,400, illustrated as follows: 50 declaratory rulings × 5 hours × $150/hr. = $37,500. 12 comments on declaratory rulings × 4 hours × $150/hr. = $7,200. 50 petitions for waivers × 5 hours × $150/hr. = $37,500. 12 comments on petitions for waivers × 4 hours × $150/hr. = $7,200.

Number of Respondents for the FNPRM: 248. (100 requests for declaratory rulings, 24 comments on

requests, 100 petitions for waivers, 24 comments on petitions.)

Estimated Time Per Response for the FNPRM: 2–5 hours.

Total Annual Burden for the FNPRM: 844 hours. It is estimated that 50% of declaratory rulings will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hours = 100 hours. It is estimated that 50% of comments on declaratory rulings will be prepared without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hours = 24 hours. It is estimated that 50% of petitions for waivers will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hours = 100 hours. It is estimated that 50% of comments on waivers will be prepared without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hours = 24 hours.

Estimated Costs Per Respondent for the FNPRM: It is estimated that 50 requests for declaratory rulings, 12 comments on requests for declaratory rulings, 50 petitions for waivers and 12 comments on petitions for waivers will be prepared each year through outside counsel. The estimated annual costs are $89,400, illustrated as follows: 50 declaratory rulings × 5 hours × $150/hr. = $37,500. 12 comments on declaratory rulings × 4 hours × $150/hr. = $7,200. 50 petitions for waivers × 5 hours × $150/hr. = $37,500. 12 comments on petitions for waivers × 4 hours × $150/hr. = $7,200.

Needs and Uses: Submitted information will be used to evaluate requests for declaratory ruling regarding the reasonableness of state, local and nongovernmental restrictions, or to requests for waiver of the rule.

I. Synopsis of Report and Order, Memorandum Opinion and Order

1. On February 8, 1996, the Telecommunications Act of 1996 ("1996 Act") became law. Section 207 of the 1996 Act directs that the Commission shall, "pursuant to Section 303 of the Communications Act, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services." In this Report and Order (R&O) and Memorandum Opinion and Order (MO&O) we consolidate two rulemaking proceedings, IB Docket No. 95–59, 11 FCC Rcd 5809 (1996) (61 FR 10710) (*DBS Order and Further Notice of Proposed Rulemaking*), and CS Docket No. 96–83, 11 FCC Rcd 6357 (1996) (61 FR 16890) (*TVBS-MMDS Notice of Proposed Rulemaking*), to implement Section 207 with respect to direct broadcast satellite ("DBS") service, television broadcast signals ("TVBS") and multichannel multipoint distribution service ("MMDS"). We adopt a rule that prohibits restrictions that impair a viewer's ability to install, maintain and use devices designed to receive these services on property within the exclusive use or control of the viewer and in which the viewer has a direct or indirect property interest.

2. In the *DBS Order and Further Notice of Proposed Rulemaking* and the *TVBS-MMDS Notice of Proposed Rulemaking* we adopted and proposed a rule, respectively, establishing a rebuttable presumption of unreasonableness for restrictions on TVBS, MMDS and DBS. In the R&O, we replace the presumptive approach with a *per se* preemption of such restrictions. Although the rebuttable presumption was created in an effort to be less intrusive in local government affairs, it was broadly viewed as creating unsustainable burdens on all parties, including the Commission. Consequently, we replaced the rebuttable presumption approach with a narrower, clearer preemption. In addition, the rule we adopt preempts restrictions and regulations that "impair" rather than "affect" reception, in order to narrow the preemption and adhere more closely to the language of the statute. A law, regulation or restriction impairs installation, maintenance or use of an antenna if it: (1) Unreasonably delays or prevents installation, maintenance or use, (2) unreasonably increases the cost of installation, maintenance or use, or (3) precludes reception of an acceptable quality signal.

3. In the *DBS Order and Further Notice of Proposed Rulemaking* and *TVBS-MMDS Notice of Proposed Rulemaking*, we proposed to preempt nongovernmental restrictions on DBS, TVBS, and MMDS reception devices, and did not provide any recourse for nongovernmental authorities seeking to enforce their restrictions. In the rule we adopt today, we preempt nongovernmental restrictions on the same basis as governmental, and provide the same declaratory ruling and waiver opportunities to nongovernmental associations as we offer to governmental authorities. The legislative history of Section 207 consists of the House Commerce Committee Report, which states clearly that the provision applies to nongovernmental restrictions, including restrictive covenants and homeowners' association rules. The final rule treats nongovernmental restrictions the same as governmental and establishes waiver and declaratory ruling processes.

4. The rule we adopt creates exemptions for regulations serving safety and historic preservation goals. The rule that we adopted in the *DBS Order and Further Notice of Proposed Rulemaking* and proposed in the *TVBS-MMDS Notice of Proposed Rulemaking* required that any governmental entity seeking to enforce a restriction or regulation that affects reception secure a declaration or waiver. Parties generally agree that some restrictions are *prima facie* justified, and we accordingly create exemptions for safety and historic preservation regulations. While these restrictions must be tailored to impose as little burden as possible on the use of receiving devices, they are permissible even if they impair the ability to receive video programming services.

5. To the extent that they receive video programming services, our rule applies to services closely related to DBS, TVBS and MMDS, including medium-power satellite services using antennas one meter or less in diameter or diagonal measurement to receive over-the-air video programming, and multipoint distribution services (MDS), instructional television fixed service (ITFS) and local multipoint distribution service (LMDS). Our rule defines DBS and MMDS by the size and shape of the services' receiving devices, and preempts restrictions on antennas one meter or less in diameter or diagonal measurement. We also include masts in our definition of MMDS, and preempt restrictions on antennas that extend 12 feet or less above the roofline; such

installations cannot require a permit or prior approval, absent a safety or historic preservation reason. In addition, governmental and nongovernmental authorities cannot require permits or prior approvals for installation of an antenna placed a distance at least as far from the lot line as the height of the antenna. Because there is no history of controversy concerning their size or shape, we decline to establish any size or shape limits on TVBS antennas. However, TVBS antennas are subject to the same height limitations as MMDS and DBS.

II. Regulatory Flexibility Analysis

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's Regulatory Flexibility Analysis with respect to the R&O, MO&O is as follows:

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *DBS Order and Further Notice of Proposed Rulemaking* and the *TVBS-MMDS Notice of Proposed Rulemaking*. The Commission sought written public comments on the proposals in the two proceedings, including comments on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. 104–121, 110 Stat. 847.

7. *Need for Action and Objectives of the Rule.* The rulemaking implements Section 207 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56. Section 207 directs the Commission to promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of TVBS, MMDS and DBS. This action is authorized under the Communications Act of 1934 section 1, *as amended*, 47 U.S.C. 151, pursuant to the Communications Act of 1934 section 303, *as amended*, 47 U.S.C. 303, and by Section 207 of the Telecommunications Act of 1996.

8. The Commission seeks to promote competition among video service providers and to enhance consumer choice. To accomplish these objectives, the Commission implements Congress' directive by adopting a rule that prohibits restrictions that impair a viewer's ability to install, maintain and use devices designed for over-the-air reception of video programming through TVBS, MMDS, and DBS services. The rule that we adopt preempts governmental and nongovernmental regulations and restrictions on property within the exclusive use or control of the viewer in which the viewer has a direct or indirect ownership interest. Our rule exempts regulations and restrictions which are clearly and specifically designed to preserve safety or historic districts, allowing for the enforcement of such restrictions even if they impair a viewer's ability to install, maintain or use a reception device.

9. *Summary and Assessment of Issues Raised by Commenters in Response to the Initial Regulatory Flexibility Analysis.* The Commission, in its *DBS Order and Further Notice of Proposed Rulemaking* and *TVBS-MMDS Notice of Proposed Rulemaking*, invited comment on the IRFA and the potential economic impact the proposed rules would have on small entities. NLC comments that the proposed rule would have a "substantial economic and administrative impact" on over 37,000 small local governments. NLC states that the proposed rule would require "local governments to amend their laws and to file petitions at the FCC * * * for permission to enforce those laws."

10. The Commission has modified its proposed rule and has addressed the concerns raised by NLC by providing greater certainty regarding the application of the rule, and by clarifying that local regulations need not be rewritten or amended. The Commission recognizes that some regulations are integral to local governments' ability to protect the safety of its citizens. The rule that we adopt exempts restrictions clearly defined as necessary to ensure safety, and permits enforcement of safety restrictions during the pendency of any challenges. In addition, limiting the rule's scope to regulations that "impair," rather than the proposed preemption of regulations that "affect," will minimize the impact on small local governments, while effectively implementing Congress' directive. Finally, the inclusion in the Report and Order of examples of permissible and prohibited restrictions will minimize the need for local governments to submit waiver or declaratory ruling petitions to the Commission, decreasing the potential economic burden.

11. Numerous apartment complexes filed comments seeking clarification of Section 207's impact on their lease terms. These filings express concern about the impact the rule will have on the rental property industry. This Report and Order applies only to property in the exclusive control or use of the viewer and in which the viewer has a direct or indirect ownership interest. Thus, this Order will have no major impact on the rental property industry. The question of the applicability of Section 207 and our rule to rental properties is raised in the Further Notice of Proposed Rulemaking.

12. Several neighborhood associations suggest that our rule will have a negative economic impact on the value of their land and that such a prohibition would constitute a taking, requiring compensation under the Fifth Amendment of the Constitution. We do not believe that implementation of our rule results in a taking of property. There is nothing in the record here to indicate that nullifying a homeowner's ability to prevent his neighbor from installing antennas has a measurable economic impact on the homeowner's property, nor that it interferes with investment-backed expectations. In support of the rule, several commenters argue that the rule enhances the value of the homeowner's property.

13. The Commission also notes the positive economic impact the new rule will have on many small businesses. The new rule will allow small businesses that use video programming services to select from a broader range of providers, which could result in significant economic savings; because providers will be competing for customers, more services will be available at lower prices. In addition, small business video programming providers will be faced with fewer entry hurdles, and will thus be able to develop their markets and compete more effectively, achieving one of the purposes of Section 207.

14. *Description and Estimate of the Number of Small Entities Impacted.* The Regulatory Flexibility Act, 5 U.S.C. 601(3) (1980), defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and "the same meaning as the term 'small business concern' under section 3 of the Small Business Act." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA), 15 U.S.C. 632 (1996). The rule we adopt today applies to small organizations and small governmental jurisdictions, rather than businesses.

15. The term "small governmental jurisdiction" is defined as "governments of * * * districts, with a population of less than fifty thousand." 5 U.S.C. 601(5). There are 85,006 governmental entities in the United States. United States Dept. of Commerce, Bureau of the Census, *1992 Census of Governments.*

This number includes such entities as states, counties, cities, utility districts and school districts. We note that restrictions concerning antenna installation are usually promulgated by cities, towns and counties, not school or utility districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns; and of those, 37,566, or 96%, have populations of fewer than 50,000. The NLC estimates that there are 37,000 "small governmental jurisdictions" that may be affected by the proposed rule.

16. Section 601(4) of the Regulatory Flexibility Act defines "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). This definition includes homeowner and condominium associations that operate as not-for-profit organizations. The Community Associations Institute estimates that there were 150,000 associations in 1993. Given the nature of a neighborhood association, we assume for the purposes of this FRFA that all 150,000 associations are small organizations.

17. *Reporting, Recordkeeping, and Other Compliance Requirements.* The rule does not establish any filing requirements. However, state and local governments and neighborhood associations promulgating regulations that are prohibited by this rule may seek declaratory rulings concerning the validity of a restriction, or may request waivers of the rule. Petitions for declaratory ruling and requests for waiver will be considered through a paper hearing process, and the initiating petition will require only standard secretarial skills to prepare.

18. If a governmental or nongovernmental authority wishes to enforce a safety restriction, the rule requires that the safety reasons for the restrictions be clearly defined in the legislative history, preamble or text of the restriction. Alternatively, the local entity may include a restriction on a list of safety restrictions related to antennas, that is made available to interested parties (including those who wish to install antennas). Thus, governmental entities will not be required to amend their rules. Local officials may need time to review regulations to determine if the safety reasons are clearly defined in the legislative history, preamble or text, or to create a list of applicable restrictions.

19. *Steps Taken to Minimize the Economic Impact on Small Entities and Significant Alternatives Rejected.* The Commission considered various alternatives that would have impacted small entities to varying extents. These included a rebuttable presumption approach, the use of the term "affect" in the rule, and a rule that allowed for adjudicatory proceedings in courts of competent jurisdiction, all of which were adopted in the *DBS Order and Further Notice of Proposed Rulemaking* and proposed in the *TVBS–MMDS Notice of Proposed Rulemaking.* The rule we adopt today replaces the rebuttable presumption with a simpler preemption approach, adheres to the statutory language by using the term "impair" rather than "affect" in the rule, and allows for adjudication at the Commission or in a court of competent jurisdiction. We believe that we have effectively minimized the rule's economic impact on small entities.

20. In the *DBS Order and Further Notice of Proposed Rulemaking* and the *TVBS–MMDS Notice of Proposed Rulemaking,* we adopted and proposed, respectively, a rebuttable presumption approach to governmental regulations, and proposed strict preemption of nongovernmental restrictions. We acknowledged in the *DBS Order and Further Notice of Proposed Rulemaking* that a rule relying on a presumptive approach would be more difficult to administer than a rule based upon a *per se* prohibition, and we sought comment in the *TVBS–MMDS Notice of Proposed Rulemaking* on less burdensome approaches. Under the rebuttable presumption approach, local governments would have been required to request a declaratory ruling from the Commission every time they sought to enforce or enact a restriction; and neighborhood associations would not have been able to enforce or enact any restrictions that impaired a viewer's ability to receive the signals in question. The rebuttable presumption approach was adopted to ensure the protection of local interests, including local governments. Based on the record, the Commission recognizes that the burden of rebutting a presumption could strain the resources of local authorities. The Commission has rejected the rebuttable presumption approach for a less burdensome preemption approach. In addition we have provided recourse for both neighborhood associations and municipalities. The rule we adopt today provides for a *per se* prohibition of restrictions that impair a viewer's ability to install, maintain or use devices designed for over-the-air reception of video programming services. Our Report and Order provides examples of reasonable regulations that can be enforced without a waiver application. The Commission believes that the Report and Order provides such clarity as will make the enforcement of the rule the most efficient and least burdensome for local governments, neighborhood associations, and this Commission.

21. In adopting the new rule, the Commission rejected the alternative of preempting all restrictions that "affect" the reception of video programming services through devices designed for over-the-air reception of TVBS, MMDS and DBS services. The new rule prohibits only those local restrictions that "impair" a viewer's ability to receive these signals and exempts restrictions necessary to ensure safety or to preserve historic districts. In defining the term "impair" we reject the interpretation that impair means prevent because that definition would not properly implement Congress' objective of promoting competition. We find that a restriction impairs a viewer's ability to receive over-the-air video programming signals, if it (a) unreasonably delays or prevents installation, maintenance or use of a device used for the reception of over-the-air video programming signals by DBS, TVBS, or MMDS; (b) unreasonably increases the cost of installation, maintenance or use of such devices; (c) precludes reception of an acceptable quality signal. The use of the term impair will decrease the burden on small entities while implementing Congress' objective.

22. In the *DBS Order and Further Notice of Proposed Rulemaking* and the *TVBS–MMDS Notice of Proposed Rulemaking,* we discussed the possibility of parties seeking judgment from either the Commission or a court of competent jurisdiction. The Commission is concerned about uniformity in the application of our rule, and about the financial burden that litigation might place on small entities. While we cannot prohibit parties' applications to courts of competent jurisdiction, we address this concern by exercising our Congressional grant of jurisdiction and implementing a waiver process, and encouraging parties to use this approach rather than relying on costly litigation.

23. Waiver proceedings will be paper hearings, allowing the Commission to alleviate the negative potential economic impact from costly litigation. Further, any regulations necessary to the safeguarding of safety will remain enforceable pending the Commission's resolution of waiver requests. The Commission believes that the rule we adopt today effectively implements Congress' intent while minimizing any significant economic impact on small entities.

24. *Report to Congress.* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

III. Paperwork Reduction Act of 1995 Analysis

25. *Final Paperwork Reduction Act of 1995 Analysis.* This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain an information collection requirement on the public. Implementation of an information collection requirement is subject to approval by the Office of Management and Budget as prescribed by the Act.

26. In the *DBS Order and Further Notice of Proposed Rulemaking* and the *TVBS–MMDS Notice of Proposed Rulemaking* we proposed an information collection process, utilizing waivers and declaratory rulings, that has now been approved by the Office of Management and Budget (OMB). This Report and Order contains a modified information collection that we believe is less burdensome. As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to comment on the modified information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due on September 27, 1996; OMB comments are due November 4, 1996. Comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

27. Written comments by the public on the modified information collections are due on September 27, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified collections on or before November 4, 1996. A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington DC 20503 or via the Internet to fain__t@al.eop.gov.

IV. Ordering Clauses

28. Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, and section 207 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56, that the rule discussed in this Report and Order *is adopted* as § 1.4000 of the Commission's rules, 47 CFR 1.4000.

29. *It is further ordered* that § 25.104 of the Commission's rules, 47 CFR 25.104, is amended as set forth below.

30. *It is further ordered* that the Petitions for Reconsideration filed in IB Docket No. 95–59 by Alphastar Television Network, Inc.; County of Boulder, State of Colorado; DIRECTV, Inc.; Florida League of Cities; Hughes Network Systems, Inc.; City of Dallas *et al.*; National League of Cities *et al.*; Primestar, Inc.; Satellite Broadcasting and Communications Association of America; and United States Satellite Broadcasting Co., to the extent that they address issues related to section 207, *are granted* in part as discussed herein, and are otherwise *denied*.

31. *It is further ordered* that the requirements and regulations established in this decision shall become effective upon approval by the Office of Management and Budget (OMB) of the new information collection requirements adopted herein, but no sooner than October 4, 1996.

32. This Report and Order and Memorandum Opinion and Order contains a modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the OMB to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due September 27, 1996; OMB comments are due November 4, 1996. Comments should address: (a) Whether the modified and proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

33. *It is further ordered* that the Secretary shall send a copy of this Report and Order and Memorandum Opinion and Order including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Part 1

Telecommunications, Television.

47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 1 and 25 of Title 47 of the Code of Federal Regulations are amended to read as follows:

1. The authority citation for Part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

2. A new subpart S is added to part 1 to read as follows:

Subpart S—Preemption of Restrictions That "Impair" a Viewer's Ability To Receive Television Broadcast Signals, Direct Broadcast Satellite Services or Multichannel Multipoint Distribution Services

Sec. 1.4000. Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

Subpart S—Preemption of Restrictions That "Impair" a Viewer's Ability To Receive Television Broadcast Signals, Direct Broadcast Satellite Services or Multichannel Multipoint Distribution Services

§ 1.4000. Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulation, or any private covenant, homeowners' association rule or similar restriction on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property, that impairs the installation, maintenance, or use of: An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska; or an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or an antenna that is designed to receive television broadcast signals; is prohibited, to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance or use,

(ii) Unreasonably increases the cost of installation, maintenance or use, or

(iii) Precludes reception of an acceptable quality signal.

(3) No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (c) or (d) of this section. No fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size, weight and appearance to these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve an historic district listed or eligible for listing in the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470a, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described above.

(c) Local governments or associations may apply to the Commission for a waiver of this rule under § 1.3. Waiver requests will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted.

Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(d) Parties may petition the Commission for a declaratory ruling under § 1.2, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission will be put on public notice. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) In any Commission proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(f) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 1919 M St. NW.,Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, DC. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: Sections 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 416–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.104 is amended by revising paragraph (b)(1) and adding new paragraph (f) to read as follows:

§ 25.104 Preemption of local zoning of earth stations.

* * * * *

(b)(1) Any state or local zoning, land-use, building, or similar regulation that affects the installation, maintenance, or use of a satellite earth station antenna that is two meters or less in diameter and is located or proposed to be located in any area where commercial or industrial uses are generally permitted by non-federal land-use regulation shall be presumed unreasonable and is therefore preempted subject to paragraph (b)(2) of this section. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any regulation covered by this presumption unless the promulgating authority has obtained a waiver from the Commission pursuant to paragraph (e) of this section, or a final declaration from the Commission or a court of competent jurisdiction that the presumption has been rebutted pursuant to paragraph (b)(2) of this section.

* * * * *

(f) a satellite earth station antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska is covered by the regulations in § 1.4000 of this chapter.

[FR Doc. 96–22494 Filed 9–3–96; 8:45 am]
BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 87–267]

Radio Broadcast Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rules that were published Thursday, December 12, 1991 (56 FR 64842). The rules related to improvement of the AM broadcast service.

EFFECTIVE DATE: April 19, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Dever, (202) 418–2689.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of these corrections were adopted in the Federal Communications Commission's Report and Order in MM Docket No. 87–267, which was published on December 12, 1991 (56 FR 64842). The rules, which related generally to improvement of the AM broadcast service, were intended to include all of the rules adopted in the Commission's Report and Order in MM Docket No. 89–46, which were published on August 13, 1990 (55 FR 32922), and which provided for interference reduction between AM broadcast stations.

Need for Correction

The amendatory text accompanying the Report and Order in MM Docket No. 87–267 omitted two provisions that were adopted in MM Docket No. 89–46, and that were intended to be included in the final rules in MM Docket No. 87–267.

Correction of Publication

Accordingly, 47 CFR Part 73 is corrected by making the following correcting amendments:

PART 73—AMENDED

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

§ 73.1750 [Corrected]

2. Section 73.1750 is amended to add the following language at the end to read as follows:

§ 73.1750 Discontinuance of operation.

* * * If a licensee surrenders its license pursuant to an interference reduction arrangement, and its surrender is contingent upon the grant of another application, the licensee surrendering the license must identify in its notification the contingencies involved.

3. Section 73.3571(c)(1) is amended by redesignating paragraphs (c)(1) and (c)(2) as (c)(2) and (c)(3), and by adding new paragraph (c)(1) to read as follows:

§ 73.3571 Processing of AM broadcast station applications. [Corrected]

* * * * *

(c) * * *

(1) In order to grant a major or minor change application made contingent upon the grant of another licensee's request for a facility modification, the Commission will not consider mutually exclusive applications by other parties that would not protect the currently authorized facilities of the contingent applicants. Such major change applications remain, however, subject to the provisions of §§ 73.3580 and 1.1111. The Commission shall grant contingent requests for construction permits for station modifications only upon a finding that such action will promote the public interest, convenience and necessity.

* * * * *

William F. Caton,

Acting Secretary.

[FR Doc. 96–22429 Filed 9–3–96; 8:45 am]

BILLING CODE 6712–01–U

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47 CFR Parts 80 and 95

[WT Docket No. 95–56; FCC 96–315]

Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216–217 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the maritime service and personal radio service rules to permit the shared use of the 216–217 MHz band on a secondary, non-interference basis, for a new Low Power Radio Service (LPRS) to include auditory assistance devices, health care assistance devices, law enforcement tracking systems, and automated maritime telecommunications system (AMTS) point-to-point network control communications. The effect of this rule is to: increase educational opportunities and access to telecommunications devices for persons with disabilities; facilitate health care services, strengthen law enforcement, and maximize efficiency in the use of AMTS coast stations frequencies. This action promotes effective utilization of presently unused radio spectrum.

EFFECTIVE DATE: October 4, 1996.

FOR FURTHER INFORMATION CONTACT: Roger Noel or Ira Keltz of the Commission's Wireless Telecommunications Bureau at (202) 418–0680 or via email at mayday@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 96–315, adopted July 25, 1996, and released August 2, 1996. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Order

1. The 216–220 MHz band was originally allocated to the AMTS to provide automated, integrated, interconnected ship-to-shore communications for vessel operators. The 216–217 MHz portion of the band, however, was found to be unusable by high power AMTS coast stations within 105 miles of TV channel 13 stations, which operate on the immediately adjacent 210–216 MHz band, due to the potential for harmful interference. On May 16, 1995, the Commission released a *Notice of Proposed Rule Making*, 60 FR 28079 (May 30, 1995), in this proceeding proposing to permit the shared use of the 216–217 MHz band for a new LPRS and low power AMTS communications.

2. This action authorizes use of the 216–217 MHz band for a new service, the LPRS, for auditory assistance, radio-based health care, law enforcement tracking, and AMTS point-to-point network control communications. LPRS transmitters will be authorized on a secondary, non-interference, basis and must not cause harmful interference to TV receivers within the Grade B contour of any TV channel 13 station or cause harmful interference to the United States Navy's Space Surveillance System (SPASUR) operating in the 216.88–217.08 MHz band.

3. Rather than licensing each station individually, this action authorizes LPRS transmitters by rule under the Citizens Band Radio Service in Part 95 of the Commission's rules. This approach greatly reduces administrative and economic burdens for individuals and organizations that will use LPRS systems by not requiring them to file license applications and remit fees to the Commission prior to using these low

power devices. Although these devices may be used anywhere in the United States, its territories, and possessions, LPRS devices may only be operated as follows: for auditory assistance communications (including but not limited to applications such as assistive listening devices, audio description for the blind, and simultaneous language translation); for health care related communications; for law enforcement tracking purposes; and for AMTS point-to-point network control communications.

4. In order to promote flexible use of the 216–217 MHz band, the LPRS channel plan accommodates a variety of channel bandwidths and technologies. We believe that this flexible channel plan will allow consumers to choose equipment that best suits their needs. The channel plan permits LPRS transmitters (excluding AMTS) to utilize 40 twenty-five kilohertz (standard band) channels, 20 fifty kilohertz (extra band) channels, or 200 five kilohertz (narrow band) channels. These channels are overlapping and extend throughout the entire one megahertz band. AMTS transmissions, however, will be limited to the 216.750–217.000 MHz band and may use this entire segment as a single wideband channel or may use any of the three channelizations described above. In order to minimize the potential for harmful interference to TV reception and federal government radar, all LPRS transmissions are limited to 100 milliwatts effective radiated power and must comply with the out of band emission and frequency stability requirements as described in the final rules.

5. This rule is necessary in order to provide for the utilization of presently unused radio spectrum. This action also furthers the goals of the Americans with Disabilities Act of 1990 and the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994 by promoting the development and use of affordable telecommunications devices by persons with disabilities in places such as educational settings, public gathering places, and health care facilities. Additionally, this action promotes the development of state-of-the-art law enforcement tools that will facilitate the reduction of crime and law enforcement costs by expediting the retrieval of stolen goods and apprehension of suspects. Finally, this action benefits vessel operators on our nation's waterways by increasing the efficiency of channel usage for AMTS coast stations.

5. This *Report and Order* is issued under the authority of sections 4(i), 302, 303(r), and 307(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(r), and 307(e).

Final Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making*. The Commission sought written public comments on the proposals in the *Notice of Proposed Rule Making*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996).

I. Need For and Purpose of this Action

Our objective is to permit the shared use of the 216–217 MHz band on a secondary basis by a new Low Power Radio Service (LPRS)—consisting of auditory assistance devices, health care aids, law enforcement tracking systems and AMTS point-to-point network control communications. This action will: (1) promote the utilization of presently unused spectrum; (2) speed development and delivery of advanced telecommunications devices for persons with disabilities and illnesses; (3) promote the development of tools for use by federal, state, and local law enforcement agencies in retrieving stolen goods and deterring crime; and (4) increase system efficiency in the AMTS.

In creating a new LPRS, we find that the potential benefits to persons with disabilities and illnesses, the law enforcement community, and vessel operators exceed any negative effects that may result from the promulgation of rules for this purpose. Thus, we conclude that the public interest is served by creating a new LPRS in the 216–217 MHz band.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

No comments were filed in direct response to the IRFA. In general comments on the *Notice of Proposed Rule Making*, however, some small business commenters raised issues that might affect small entities. In particular, some small business commenters argued that requiring very low power LPRS devices to be licensed by the Commission would be overly burdensome on small entities and individuals and could deter them from using LPRS systems. Small business commenters also noted that the Commission should channelize the 216–217 MHz band in order to promote the conversion of existing equipment (operating in 72–76 MHz band) to the higher band and the rapid deployment of auditory assistance systems. Further, small business commenters asked the Commission to eliminate the requirement for LPRS transmitters to employ crystal oscillators to control frequency stability. These small business commenters noted that there may be other technologies that may be economically and technically viable, while providing adequate frequency control. The Commission carefully considered each of these comments in reaching the decisions set forth in this Notice.

III. Changes Made to the Proposed Rules

In the *Notice of Proposed Rule Making*, the Commission proposed to generally license LPRS stations regionally based on Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs), with the AMTS stations licensed under the Maritime Service Rules in Part 80 and two of the law enforcement tracking channels under the Police Radio Service in Part 90. The Commission also proposed to require the public to apply for these licenses using FCC Form 600 or FCC Form 503 (AMTS only). However, the Commission here determines that the public interest is served by licensing all LPRS stations by rule, rather than individually. The Commission proposed to divide the 216–217 MHz band into 40, twenty-five kilohertz channels. In order to promote technical flexibility and allow consumers to choose among a broader range of low power equipment, the Commission decided to instead divide the band into 40, twenty-five kilohertz channels (standard band), 20, fifty kilohertz channels (extra band), 200, five kilohertz channels (narrowband), and permit AMTS operations in the highest two hundred fifty kilohertz block of the band. The Commission proposed to permit 100 milliwatt and 1 watt transmissions in the lower and upper portions of the 216–217 MHz band, respectively. Based on the comments, however, the Commission decides to instead limit LPRS transmitter power to 100 milliwatts. The Commission also deviates from the proposed rules to expand the scope of the LPRS to include auditory assistance services for all persons in educational settings and persons that require language translation in any setting. The

Commission decides not to specify the means by which manufacturers may provide for frequency stability in LPRS transmitters. Finally, the Commission determines that it is unnecessary for AMTS licensees to notify channel 13 TV stations of proposed LPRS point-to-point operations other than those stations that were not originally notified at licensing.

IV. Description and Estimate of the Small Entities Subject to the Rules

The rules adopted in this *Report and Order* will apply to small businesses that choose to use, manufacturer, design, import, or sell auditory assistance devices, radio-based health care aids, law enforcement tracking systems, or AMTS point-to-point transmitters. There is no requirement, however, for any entity to use or produce these types of products.

A. Estimates for LPRS Manufacturers/ Importers

The Commission has not developed a definition of small entities specifically applicable to LPRS manufacturers and importers. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radio and television broadcasting and communications equipment manufacturers. This definition provides that a small entity is any entity employing less than 750 persons. *See* 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 3663. Additionally, the Small Business Administration rules state that wholesale electronic parts and equipment firms must have 100 or fewer employees in order to qualify as a small business entity. *See* 13 CFR § 121.201. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small entities that may choose to manufacture LPRS equipment and is unable at this time to make a meaningful estimate of the number of potential manufacturers which are small businesses.

The 1992 Census of Manufacturers, conducted by the Bureau of Census, which is the most comprehensive and recent information available, shows that approximately 925 out of the 948 entities manufacturing radio and television transmitting equipment in 1992 employed less than 750 persons. We are unable to discern from the Census data precisely how many of these manufacturers produce devices similar to those that will be used under the new LPRS. Further, any entity may choose to manufacture LPRS equipment. Further, 12,161 of the 12,654 wholesale electronic parts and equipment firms have fewer than 100 employees, and would be classified as small entities. Therefore, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, we estimate that there are at least 13,086 potential manufacturers or importers of LPRS equipment which are small businesses, as that term is defined by the Small Business Administration.

B. Estimates for AMTS Licensees

The Commission has not developed a definition of small entities specifically applicable to AMTS licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration rules applicable to radiotelephone service providers. This definition provides that a small entity is any entity employing less than 1,500 persons. *See* 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small AMTS businesses and is unable at this time to determine the precise number of AMTS firms which are small businesses.

The size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS firms which are small businesses. Therefore, we used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. There are three AMTS licensees which are authorized on an exclusive basis along the Mississippi River, portions of the West Coast, and nearly the entire East Coast. Because most of the nation's coastline has or will be covered by the present licensees, it is unlikely that a large number of additional licenses will be authorized in the future. Therefore, for purposes of our evaluations and conclusions in this Final Regulatory Flexibility Analysis, we estimate that there are three AMTS licensees which are small businesses, as that term is defined by the Small Business Administration.

V. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

In order to facilitate operation of LPRS devices without individual licenses, we are imposing four separate regulatory burdens that may affect small businesses.

(1) Prior to marketing an LPRS device in the U.S., a manufacturer must have the unit type accepted by the Commission under the technical criteria set forth in the final rules. The criteria include channel specifications and emission limitations that will facilitate the shared use of the 216–217 MHz band by a diverse group of users. All classes of small businesses could potentially be affected by this requirement. In order to have a unit type accepted, a small entity would have to test the radio equipment and provide clerical support to file the requisite FCC application forms. Both of these functions could be handled by a third party.

(2) Each LPRS transmitter sold must have included with it the following statement: "This transmitter is authorized by rule under the Low Power Radio Service (47 C.F.R. Part 95) and must not cause harmful interference to TV reception or United States Navy SPASUR installations. You do not need an FCC license to operate this transmitter. This transmitter may only be used to provide: auditory assistance to persons with disabilities, persons who require language translation, or persons in educational settings; health care services to the ill; law enforcement tracking services under agreement with a law enforcement agency; or automated maritime telecommunications system (AMTS) network control communications Two-way voice communications and all other types of uses are expressly prohibited." All classes of small businesses could potentially be affected. Because the Commission is providing specific language to be included with each device, a small business would need clerical support to add this language to the instruction manual for the device.

(3) Unless the transmitter is so small as to make this requirement impractical, each LPRS transmitter sold must bear the following statement in a conspicuous location on the device: "This device may not interfere with TV reception or federal government radar, and must accept any interference received, including interference that may cause undesired operation." The Commission does not specifiy whether this statement must be inscribed into

the unit or attached via a label or sticker.

(4) AMTS licensees must notify, in writing, each television station that may be affected by these new low power operations. There is no need, however, for AMTS licensees to renotify television stations that were previously alerted concerning AMTS operations in their areas.

VI. Steps Taken to Minimize the Significant Economic Impact on Small Entities

The Commission in this proceeding has considered comments on ways to implement a new LPRS. In doing so, the Commission has adopted alternatives which minimize burdens placed on small entities. First, it has decided not to require LPRS transmitters to be individually licensed, as proposed in the *Notice of Proposed Rule Making* in this proceeding. This approach eliminates the need for small entities and individuals to apply for a license and remit processing fees. Second, as the small business commenters point out, dividing the 216–217 MHz band into forty, twenty-five kilohertz channels will allow existing equipment designs (*e.g.*, 72–76 MHz band equipment) to be converted to permit operation in the higher band. This approach promotes the rapid delivery of LPRS devices to the public with a minimum negative impact on manufacturers who are small businesses. Third, it has decided not to require LPRS transmitter stability to be controlled by crystal oscillators. This approach permits manufacturers to use other technologies that may be cheaper to implement and can provide equivalent, if not better, control of a unit's operating frequency. Fourth, it has decided not to require AMTS licensees to renotify broadcast licensees prior to commencing point-to-point operations under the LPRS. Renotification is unnecessary because AMTS applicants already notify affected broadcast licensees prior to licensing. Further, it is unlikely that AMTS point-to-point operations will affect broadcast licensees that have not already been notified. This action eliminates unnecessary economic and administrative burdens for AMTS providers that are also small businesses. Fifth, the Commission has taken steps to minimize the economic burdens associated with the labeling requirement found in § 95.1017. The Commission minimized the number of words to be included in the label (half the number of words required for similar devices under Part 15 of our rules) and did not require the words to be engraved or molded into the transmitter unit. This action reduces burdens and increases flexibility for manufacturers that are also small entities.

VII. Significant Alternatives Considered and Rejected

The Commission considered and rejected several significant alternatives. The Commission rejected the alternative of requiring LPRS transmitters to be licensed individually because it determined that such a procedure would not further spectrum management or enforcement goals and would place administrative and economic burdens on the public. The Commission also rejected the alternative of permitting one-watt transmissions in the 216–217 MHz band because of the potential for harmful interference to TV reception. Finally, the Commission rejected the alternative of requiring the use of crystal oscillators because there are other technologies that can control frequency stability that may be cheaper and just as efficient to implement. By rejecting these alternatives, the Commission seeks to provide flexibility in the licensing and design of these low power transmitters while eliminating unnecessary regulatory burdens for small entities.

VIII. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 80

Communications equipment, Radio, Vessels.

47 CFR Part 95

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 80 and 95 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.385 is amended by revising footnote 2 to the table in paragraph (a)(2) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(2) * * *

[2] Coast station operation on frequencies in Groups C and D are not currently assignable and are shared on a secondary basis with the Low Power Radio Service in part 95 of this chapter. Frequencies in the band 216.750–217.000 MHz band are available for low power point-to-point network control communications by AMTS coast stations under the Low Power Radio Service (LPRS). LPRS operations are subject to the conditions that no harmful interference is caused to the United States Navy's SPASUR radar system (216.88–217.08 MHz) or to TV reception within the Grade B contour of any TV channel 13 station or within the 68 dBu predicted contour of any low power TV or TV translator station operating on channel 13.

* * * * *

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.401 is amended by adding paragraph (c) to read as follows:

§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?

* * * * *

(c) The Low Power Radio Service (LPRS)—a private, short-distance communication service providing auditory assistance to persons with disabilities, persons who require language translation, and persons in educational settings, health care assistance to the ill, law enforcement tracking services in cooperation with law enforcement, and point-to-point network control communications for Automated Marine Telecommunications System (AMTS) coast stations licensed under part 80 of this chapter. The rules for this service are listed under subpart G of this part. Two-way voice communications are prohibited.

3. Section 95.601 is revised to read as follows:

§ 95.601 Basis and purpose.

This section provides the technical standards to which each *transmitter* (apparatus that converts electrical energy received from a source into RF (radio frequency) energy capable of

being radiated) used or intended to be used in a station authorized in any of the Personal Radio Services must comply. This section also provides requirements for obtaining type acceptance or type certification for such transmitters. The Personal Radio Services are the GMRS (General Mobile Radio Service)—subpart A, the Family Radio Service (FRS)—subpart B, the R/C (Radio Control Radio Service)—subpart C, the CB (Citizens Band Radio Service)—subpart D, and the Low Power Radio Service (LPRS)—subpart G.

4. Section 95.603 is amended by adding paragraph (e) to read as follows:

§ 95.603 Type acceptance or certification required.

* * * * *

(e) Each Low Power Radio Service transmitter (a transmitter that operates or is intended to operate in the LPRS) must be type accepted.

5. Section 95.605 is revised to read as follows:

§ 95.605 Type acceptance and certification procedures.

Any entity may request type acceptance for its transmitter when the transmitter is used in the GMRS, R/C, CB, IVDS, or LPRS following the procedures in part 2 of this chapter.

Any entity may request certification for its transmitter when the transmitter is used in the FRS following the procedures in part 2 of this chapter.

6. Sections 95.629 through 95.671 are redesignated as 95.631 through 95.673 respectively, and a new Section 95.629 is added to read as follows:

§ 95.629 LPRS transmitter frequencies.

(a) LPRS transmitters may operate on any frequency listed in paragraphs (b), (c), and (d) of this section. Channels 19, 20, 50, and 151–160 are available exclusively for law enforcement tracking purposes. AMTS transmissions are limited to the 216.750–217.000 MHz band for low power point-to-point network control communications by AMTS coast stations. Other AMTS transmissions in the 216–217 MHz band are prohibited.

(b) Standard band channels.

(1) The following table indicates standard band frequencies. The channel bandwidth is 25 kHz.

Channel No.	Center frequency (MHz)
1	216.0125
2	216.0375
3	216.0625
4	216.0875
5	216.1125
6	216.1375
7	216.1625
8	216.1875
9	216.2125
10	216.2375
11	216.2625
12	216.2875
13	216.3125
14	216.3375
15	216.3625
16	216.3875
17	216.4125
18	216.4375
19	216.4625
20	216.4875
21	216.5125
22	216.5375
23	216.5625
24	216.5875
25	216.6125
26	216.6375
27	216.6625
28	216.6875
29	216.7125
30	216.7375
31	216.7625
32	216.7875
33	216.8125
34	216.8375
35	216.8625
36	216.8875
37	216.9125
38	216.9375
39	216.9625
40	216.9875

(2) LPRS transmitters operating on standard band channels must be maintained within a frequency stability of 50 parts per million.

(c) Extra band channels.

(1) The following table indicates extra band frequencies. The channel bandwidth is 50 kHz.

Channel No.	Center frequency (MHz)
41	216.025
42	216.075
43	216.125
44	216.175
45	216.225
46	216.275
47	216.325
48	216.375
49	216.425
50	216.475
51	216.525
52	216.575
53	216.625
54	216.675
55	216.725
56	216.775
57	216.825
58	216.875
59	216.925
60	216.975

(2) LPRS transmitters operating on extra band channels must be maintained within a frequency stability of 50 parts per million.

(d) Narrowband channels..

(1) The following table indicates narrowband frequencies. The channel bandwidth is 5 kHz and the authorized bandwidth is 4 kHz.

Channel No.	Center frequency (MHz)
61	216.0025
62	216.0075
63	216.0125
64	216.0175
65	216.0225
66	216.0275
67	216.0325
68	216.0375
69	216.0425
70	216.0475
71	216.0525
72	216.0575
73	216.0625
74	216.0675
75	216.0725
76	216.0775
77	216.0825
78	216.0875
79	216.0925
80	216.0975
81	216.1025
82	216.1075
83	216.1125
84	216.1175
85	216.1225
86	216.1275
87	216.1325
88	216.1375
89	216.1425
90	216.1475
91	216.1525
92	216.1575
93	216.1625
94	216.1675
95	216.1725
96	216.1775
97	216.1825
98	216.1875
99	216.1925
100	216.1975
101	216.2025
102	216.2075
103	216.2125
104	216.2175
105	216.2225
106	216.2275
107	216.2325
108	216.2375
109	216.2425
110	216.2475
111	216.2525
112	216.2575
113	216.2625
114	216.2675
115	216.2725
116	216.2775
117	216.2825
118	216.2875
119	216.2925
120	216.2975
121	216.3025
122	216.3075
123	216.3125
124	216.3175

Channel No.	Center frequency (MHz)	Channel No.	Center frequency (MHz)
125	216.3225	197	216.6825
126	216.3275	198	216.6875
127	216.3325	199	216.6925
128	216.3375	200	216.6975
129	216.3425	201	216.7025
130	216.3475	202	216.7075
131	216.3525	203	216.7125
132	216.3575	204	216.7175
133	216.3625	205	216.7225
134	216.3675	206	216.7275
135	216.3725	207	216.7325
136	216.3775	208	216.7375
137	216.3825	209	216.7425
138	216.3875	210	216.7475
139	216.3925	211	216.7525
140	216.3975	212	216.7575
141	216.4025	213	216.7625
142	216.4075	214	216.7675
143	216.4125	215	216.7725
144	216.4175	216	216.7775
145	216.4225	217	216.7825
146	216.4275	218	216.7875
147	216.4325	219	216.7925
148	216.4375	220	216.7975
149	216.4425	221	216.8025
150	216.4475	222	216.8075
151	216.4525	223	216.8125
152	216.4575	224	216.8175
153	216.4625	225	216.8225
154	216.4675	226	216.8275
155	216.4725	227	216.8325
156	216.4775	228	216.8375
157	216.4825	229	216.8425
158	216.4875	230	216.8475
159	216.4925	231	216.8525
160	216.4975	232	216.8575
161	216.5025	233	216.8625
162	216.5075	234	216.8675
163	216.5125	235	216.8725
164	216.5175	236	216.8775
165	216.5225	237	216.8825
166	216.5275	238	216.8875
167	216.5325	239	216.8925
168	216.5375	240	216.8975
169	216.5425	241	216.9025
170	216.5475	242	216.9075
171	216.5525	243	216.9125
172	216.5575	244	216.9175
173	216.5625	245	216.9225
174	216.5675	246	216.9275
175	216.5725	247	216.9325
176	216.5775	248	216.9375
177	216.5825	249	216.9425
178	216.5875	250	216.9475
179	216.5925	251	216.9525
180	216.5975	252	216.9575
181	216.6025	253	216.9625
182	216.6075	254	216.9675
183	216.6125	255	216.9725
184	216.6175	256	216.9775
185	216.6225	257	216.9825
186	216.6275	258	216.9875
187	216.6325	259	216.9925
188	216.6375	260	216.9975
189	216.6425		
190	216.6475		
191	216.6525		
192	216.6575		
193	216.6625		
194	216.6675		
195	216.6725		
196	216.6775		

(2) LPRS transmitters operating on narrowband channels must be maintained within a frequency stability of 1.5 parts per million.

7. Section 95.631 is amended by adding paragraph (g) to read as follows:

§ 95.631 Emission types.

* * * * *

(g) An LPRS station may transmit any emission type appropriate for communications in this service. Two-way voice communications, however, are prohibited.

8. Section 95.633 is amended by adding paragraph (d) to read as follows:

§ 95.633 Emission bandwidth.

* * * * *

(d) For transmitters in the LPRS:

(1) The authorized bandwidth for narrowband frequencies is 4 kHz and the channel bandwidth is 5 kHz

(2) The channel bandwidth for standard band frequencies is 25 kHz.

(3) The channel bandwidth for extra band frequencies is 50 kHz.

(4) AMTS stations may use the 216.750–217.000 MHz band as a single 250 kHz channel so long as the signal is attenuated as specified in § 95.635(c).

9. Section 95.635 is amended by adding paragraph (c) to read as follows:

§ 95.635 Unwanted radiation.

* * * * *

(c) For transmitters designed to operate in the LPRS, emissions shall be attenuated in accordance with the following:

(1) Emissions for LPRS transmitters operating on standard band channels (25 kHz) shall be attenuated below the unmodulated carrier in accordance with the following:

(i) Emissions 12.5 kHz to 22.5 kHz away from the channel center frequency: at least 30 dB; and

(ii) Emissions more than 22.5 kHz away from the channel center frequency: at least 43 + 10log(carrier power in watts) dB.

(2) Emissions for LPRS transmitters operating on extra band channels (50 kHz) shall be attenuated below the unmodulated carrier in accordance with the following:

(i) Emissions 25 kHz to 35 kHz from the channel center frequency: at least 30 dB; and

(ii) Emissions more than 35 kHz away from the channel center frequency: at least 43 + 10log(carrier power in watts) dB.

(3) Emissions for LPRS transmitters operating on narrowband channels (5 kHz) shall be attenuated below the power (P) of the highest emission, measured in peak values, contained within the authorized bandwidth (4 kHz) in accordance with the following:

(i) On any frequency within the authorized bandwidth: Zero dB;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz)

of more than 2 kHz up to and including 3.75 kHz: The lesser of 30 + 20(f_d-2) dB, or 55 + 10 log(P), or 65 dB; and

(iii) On any frequency beyond 3.75 kHz removed from the center of the authorized bandwidth: At least 55 + 10 log(P) dB.

(4) Emissions from AMTS transmitters using a single 250 kHz channel shall be attenuated below the unmodulated carrier in accordance with the following:

(i) Emissions from 125 kHz to 135 kHz away from the channel center frequency; at least 30 dB; and

(ii) Emissions more than 135 kHz away from the channel center frequency; at least 43 + 10log(carrier power in watts) dB.

10. Section 95.639 is amended by adding paragraph (e) to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(e) The maximum transmitter output power authorized for LPRS stations is 100 mW.

11. Section 95.649 is revised to read as follows:

§ 95.649 Power capability.

No CB, R/C, LPRS transmitter, or FRS unit shall incorporate provisions for increasing its transmitter power to any level in excess of the limits specified in § 95.639.

12. Section 95.651 is revised to read as follows:

§ 95.651 Crystal control required.

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that transmits in the 26–27 MHz frequency band, a FRS unit, and a LPRS unit.

13. A new Subpart G is added to Part 95 to read as follows:

Subpart G—Low Power Radio Service (LPRS).

General Provisions

Sec.

95.1001 Eligibility.
95.1003 Authorized locations.
95.1005 Station identification.
95.1007 Station inspection.
95.1009 Permissible communications.
95.1011 Channel use policy.
95.1013 Antennas.
95.1015 Disclosure policies.
95.1017 Labeling requirements.
95.1019 Marketing limitations.

Subpart G—Low Power Radio Service (LPRS).

General Provisions

§ 95.1001 Eligibility.

An entity is authorized by rule to operate a LPRS transmitter and is not required to be individually licensed by the FCC if it is not a representative of a foreign government and if it uses the transmitter only in accordance with § 95.1009. Each entity operating a LPRS transmitter for AMTS purposes must hold an AMTS license under part 80 of this chapter.

§ 95.1003 Authorized locations.

LPRS operation is authorized:

(a) Anywhere CB station operation is permitted under § 95.405(a); and

(b) Aboard any vessel or aircraft of the United States, with the permission of the captain, while the vessel or aircraft is either travelling domestically or in international waters or airspace.

§ 95.1005 Station identification.

An LPRS station is not required to transmit a station identification announcement.

§ 95.1007 Station inspection.

All LPRS system apparatus must be made available for inspection upon request by an authorized FCC representative.

§ 95.1009 Permissible communications.

LPRS stations may transmit voice, data, or tracking signals as permitted in this section. Two-way voice communications are prohibited.

(a) Auditory assistance communications (including but not limited to applications such as assistive listening devices, audio description for the blind, and simultaneous language translation) for:

(1) Persons with disabilities. In the context of the LPRS, the term "disability" has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)), *i.e,* persons with a physical or mental impairment that substantially limits one or more of the major life activities of such individuals;

(2) Persons who require language translation; or

(3) Persons who may otherwise benefit from auditory assistance communications in educational settings.

(b) Health care related communications for the ill.

(c) Law enforcement tracking signals (for homing or interrogation) including the tracking of persons or stolen goods under authority or agreement with a law enforcement agency (federal, state, or local) having jurisdiction in the area where the transmitters are placed.

(d) AMTS point-to-point network control communications.

§ 95.1011 Channel use policy.

(a) The channels authorized to LPRS systems by this part are available on a shared basis only and will not be assigned for the exclusive use of any entity.

(b) Those using LPRS transmitters must cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. Channels must be selected in an effort to avoid interference to other LPRS transmissions.

(c) Operation is subject to the conditions that no harmful interference is caused to the United States Navy's SPASUR radar system (216.88–217.08 MHz) or to TV reception within the Grade B contour of any TV channel 13 station or within the 68 dBu predicted contour of any low power TV or TV translator station operating on channel 13.

§ 95.1013 Antennas.

(a) The maximum allowable ERP for a station in the LPRS is 100 mW.

(b) AMTS stations must employ directional antennas.

(c) Antennas used with LPRS units must comply with the following:

(1) For LPRS units operating entirely within an enclosed structure, e.g., a building, there is no limit on antenna height;

(2) For LPRS units not operating entirely within an enclosed structure, the tip of the antenna shall not exceed 30.5 meters (100 feet) above ground. In cases where harmful interference occurs the FCC may require that the antenna height be reduced; and

(3) The height limitation in paragraph (c)(2) of this section does not apply to LPRS units in which the antenna is an integral part of the unit.

§ 95.1015 Disclosure policies.

(a) Manufacturers of LPRS transmitters used for auditory assistance, health care assistance, and law enforcement tracking purposes must include with each transmitting device the following statement: "This transmitter is authorized by rule under the Low Power Radio Service (47 C.F.R. Part 95) and must not cause harmful interference to TV reception or United States Navy SPASUR installations. You do not need an FCC license to operate this transmitter. This transmitter may only be used to provide: auditory assistance to persons with disabilities, persons who require language translation, or persons in educational settings; health care services to the ill; law enforcement tracking services under agreement with a law enforcement agency; or automated maritime telecommunications system (AMTS) network control communications. Two-

way voice communications and all other types of uses not mentioned above are expressly prohibited."

(b) Prior to operating a LPRS transmitter for AMTS purposes, an AMTS licensee must notify, in writing, each television station that may be affected by such operations, as defined in § 80.215(h) of this chapter. The notification provided with the station's license application is sufficient to satisfy this requirement if no new television stations would be affected.

§ 95.1017 Labeling requirements.

(a) Each LPRS transmitting device shall bear the following statement in a conspicuous location on the device: "This device may not interfere with TV reception or federal government radar, and must accept any interference received, including interference that may cause undesired operation."

(b) Where an LPRS device is constructed in two or more sections connected by wires and marketed together, the statement specified in this section is required to be affixed only to the main control unit.

(c) When the LPRS device is so small or for such use that it is not practicable to place the statement specified in the section on it, the statement must be placed in a prominent location in the instruction manual or pamphlet supplied to the user or, alternatively, shall be placed on the container in which the device is marketed.

§ 95.1019 Marketing limitations.

Transmitters intended for operation in the LPRS may be marketed and sold only for those uses described in § 95.1109.

[FR Doc. 96–21583 Filed 9–3–96; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 082796B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1996 pollock total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 3, 1996, until 2400 hrs, December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1996 pollock TAC in Statistical Area 630 was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 13,680 metric tons (mt). (See § 679.20(c)(3).)

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 679.20(d)(1), that the 1996 pollock TAC in Statistical Area 630 has been reached. The Regional Director established a directed fishing allowance of 12,080 mt, and has set aside the remaining 1,600 mt as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 29, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22512 Filed 8–29–96; 4:30 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 172
Wednesday, September 4, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–96–11]

Milk in the Iowa Marketing Area; Notice of Proposed Revision of Pool Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposal to increase the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage would be increased by 10 percentage points, from 35 percent to 45 percent for the months of September through November 1996, and from 20 percent to 30 percent for the months of December 1996 through March 1997. The action is requested by Anderson-Erickson Dairy Company of Des Moines, Iowa, a proprietary distributing plant that is regulated under the order. Proponent contends that the action is needed to obtain an adequate supply of milk for fluid use.

DATES: Comments are due no later than September 11, 1996.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that an adequate supply of fluid milk is available to consumers in the marketing area.

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed revision of rules has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 and the provisions of § 1079.7(b)(1) of the order, the revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of September 1, 1996 through March 31, 1997.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The filing period is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include September in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Small Business Consideration

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purpose of determining which dairy farms are "small businesses", the $500,000 per year criterion was divided by 12, then by the uniform price, to arrive at a 300,000 pounds-per-month limit for "small" dairy farmers.

The supply plant shipping percentage provisions proposed to be revised are incorporated in the order to assure an adequate supply of milk for the fluid market. It is expected that producers and their handlers who share in the benefits of the higher-valued fluid uses of the market through their participation in a marketwide pool should be required to help supply milk to fluid milk distributing plants when additional supplies are needed. As a result of this expectation, order provisions based on testimony and data presented at a public hearing in which all interested parties were encouraged to participate were promulgated and approved by at least two-thirds of the dairy farmers whose milk was pooled under the Iowa order.

The Iowa order provides that the pool supply plant shipping percentages in the order may be increased or reduced by the Director of the Dairy Division, Agricultural Marketing Service, to assure that an adequate supply of milk will be made available to distributing plants, or to avoid excessive costs of

hauling and handling milk that may be moved to distributing plants only to pool plentiful supplies of producer milk.

For the month of June 1996, 2,896 dairy farmers were producers under the Iowa milk order. Of these, all but 24 would be considered small businesses, having under 300,000 pounds of production for the month. Of the dairy farmers in the small business category, 2,312 produced under 100,000 pounds of milk, 515 produced between 100,000 and 200,000 pounds, and 45 produced between 200,000 and 300,000 pounds of milk during June.

The reports filed on behalf of the slightly more than 20 milk handlers pooled, or regulated, under the Iowa order in June 1996 were filed for individual establishments that, for the most part, would meet the SBA definition of a small business, having less than 500 employees. However, most of these establishments are part of larger businesses that operate multiple plants, and meet the definition of large entities on that basis.

The proposed revision would increase the percentage of milk receipts that handlers are required to move to fluid milk distributing plants. If the shipping percentages are revised, some handlers may choose to move increased volumes of their milk supplies from manufacturing uses to fluid use in order to assure that all of their producer milk supplies will be able to share in the benefits of the marketwide pool. Some handlers may elect to not pool some of their producer milk supplies rather than ship more milk to distributing plants. Others may already be moving as much as they would be required to move under increased percentages, and would be unaffected by the proposed revision.

If the shipping percentages are not increased the distributing plant operator requesting the revision, who would be described as a large entity on the basis of its multiple plant operations, may not be able to obtain an adequate supply of milk at a competitive price to meet its needs. The handlers from whom the distributing plant handler would be most likely to receive increased shipments are also, for the most part, large entities.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small businesses. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Statement of Consideration

The provision proposed for revision is the percentage of a supply plant's receipts required to be shipped to pool distributing plants pursuant to § 1079.7(b) of the Iowa Federal milk order (Order 79). As proposed, the percentage of a supply plant's receipts that must be shipped to pool distributing plants (fluid milk plants) if the supply plant is to be considered a pool plant would be increased by the maximum allowable 10 percentage points, from 35 percent to 45 percent for the period September 1, 1996, through November 30, 1996, and from 20 percent to 30 percent for the period December 1, 1996, through March 31, 1997.

Section 1079.7(b)(1) allows the Director of the Dairy Division to reduce or increase a pool supply plant's minimum shipping requirement by up to 10 percentage points to prevent uneconomic milk shipments or to assure an adequate supply of milk for fluid use.

Anderson-Erickson Dairy Company (A–E), a fluid milk processing plant that is a pool distributing plant under Order 79, requested that the shipping percentage be increased. The handler's request states that it is unable to obtain a supply of milk at the present market price, leaving A–E short of its needs for fluid milk. A–E cites difficulty in attracting milk for high-valued bottling use, which requires drawing milk away from lower-valued uses of milk such as nonfat dry milk and cheese that may be more remunerative to processors.

In view of the foregoing, it may be appropriate to increase the shipping percentage requirements for pool supply plants as proposed to provide for the efficient and economic marketing of milk during the months of September 1, 1996, through March 31, 1997.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: August 26, 1996.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 96–22452 Filed 9–3–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–69–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes. This proposal would require replacement of the hubcap drive coupling of the main wheel with an improved coupling. This proposal is prompted by reports of unexpected decreases in the pressure of the main wheel brake due to incorrect engagement between the main wheel coupling and the wheel speed transducer, which can result in false signals being sent to the anti-skid control box. The actions specified by the proposed AD are intended to prevent loss of brake effectiveness due to a decrease in the pressure of the main wheel brake.

DATES: Comments must be received by October 15, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount

Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–69–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A, SAAB 340B and SAAB 2000 series airplanes. The LFV advises that it has received reports indicating that sudden and unexpected decreases in the pressure of the main wheel brake occurred due to incorrect engagement between the drive coupling of the main wheel and the wheel speed transducer. Investigation revealed that constant removal and reinstallation of the main wheel hubcap during maintenance eventually can cause large gaps or cracks in the drive coupling. Such damage can prevent the drive coupling and wheel speed transducer from engaging properly, and ultimately, can result in a false signal being sent to the anti-skid control box; this can cause main wheel brake pressure to decrease. This condition, if not corrected, could result in a loss of brake effectiveness.

Explanation of Relevant Service Information

Saab has issued Service Bulletins SAAB 340–32–107 (for Model SAAB SF340A and SAAB 340B series airplanes), and SAAB 2000–32–019 (for Model SAAB 2000 series airplanes), both dated January 18, 1996. These service bulletins describe procedures for replacing the hubcap drive coupling of the main wheel with an improved coupling that is more resistant to damage from the removal and reinstallation of the main wheel hubcap. The Saab service bulletins reference Crane Hydro-Aire Division Service Bulletins 140–041–32–1 (for wheel hubcaps having part number 140–04120) and 140–159–32–1 (for wheel hubcaps having part number 140–15920), both dated December 21, 1995, as additional sources of service information for replacement of the hubcap drive coupling.

The LFV classified these Saab service bulletins as mandatory and issued Swedish Airworthiness Directive (SAD) 1–085R1, dated January 22, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the hubcap drive coupling of the main wheel with an improved coupling. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 235 Model SAAB SF340A and SAAB 340B series airplanes and 3 Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD.

For Model SAAB SF340A and SAAB 340B series airplanes, it would take approximately 2 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model SAAB 340A and SAAB 340B series airplanes is estimated to be $75,200, or $320 per airplane.

For Model SAAB 2000 series airplanes, it would take approximately 2 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $120 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model SAAB 2000 series airplanes is estimated to be $720, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by

contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 96–NM–69–AD.

Applicability: Model SAAB SF340A series airplanes having serial numbers 004 through 159 inclusive; Model SAAB 340B series airplanes having serial numbers 160 through 378 inclusive; and Model SAAB 2000 series airplanes having serial numbers 002 through 029 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of brake effectiveness due to a decrease in pressure of the main wheel brake, accomplish the following:

(a) Within 90 days after the effective date of this AD, replace each main wheel hubcap drive coupling having part number (P/N) 40–91115 with a main wheel hubcap drive coupling having P/N 40–91115, Rev. D, in accordance with Saab Service Bulletin SAAB 340–32–107, dated January 18, 1996 (for Model SAAB SF340A and SAAB 340B series airplanes), or Saab Service Bulletin SAAB 2000–32–019, dated January 18, 1996 (for Model SAAB 2000 series airplanes), as applicable.

Note 2: The Saab service bulletins reference Crane Hydro-Aire Division Service Bulletins 140–041–32–1 (for wheel hubcaps having part number 140–04120) and 140–159–32–1 (for wheel hubcaps having part number 140–15920), both dated December 21, 1995, as additional sources of service information for replacement of the hubcap drive coupling.

(b) As of the effective date of this AD, no person shall install on any airplane a main wheel hubcap drive coupling having P/N 40–91115 in a wheel hubcap having P/N 140–04120 (for Model SAAB SF340A and SAAB 340B series airplanes), or P/N 140–15920 (for Model SAAB 2000 series airplanes), as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 28, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22475 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–136–AD]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech (Raytheon) Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes. This proposal would require the filling of two tooling holes on the firewalls of the left and right engine pylons with sealant. This proposal is prompted by notification from the manufacturer that these holes were not sealed during production. The actions specified by the proposed AD are intended to prevent an engine fire from moving to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall.

DATES: Comments must be received by October 15, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4146; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–136–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The manufacturer has notified the FAA that two, unused (open) tooling holes in the firewalls of the left and right engine pylons on certain Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes were not sealed during production. This condition, if not corrected, compromises the integrity of the pylon firewall, and could allow an engine fire to move to the fuselage and to the lines that carry flammable fluid that are located inboard of the firewall.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996, which describes procedures for filling the two, unused tooling holes in the firewalls of the left and right engine pylons of Model BAe 125–800A and 800B, Model Hawker 800 (including Special Variants C29A, U125 and U125A), and Model Hawker 800XP series airplanes. These procedures involve the removal of access panels to the firewall, the application of sealant, and the reinstallation of the access panels.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the filling of the two, unused (open) holes in the firewall of each engine pylon. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 286 Model BAe 125–800A, Model Hawker 800, and Model Hawker 800XP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 170 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $20,400, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation (Formerly de Havilland; Hawker Siddeley; British Aerospace, plc; Raytheon Corporate Jets, Inc.): Docket 96–NM–136–AD.

Applicability: Model BAe 125–800A series airplanes, Model Hawker 800 series airplanes including Special Variants (C29A, U125, and U125A), and Model Hawker 800XP series airplanes; on which the modification described in Raytheon Service Bulletin SB.54–1–3815B, or a production equivalent, has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Beech (Raytheon) Model BAe 125–800B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, may also be subject to the unsafe condition addressed by this AD. As of the effective date of this AD, however, this model is not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125–800B series airplanes are approved for operation should consider adopting corrective action, applicable to this model, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent an engine fire from moving to the fuselage and flammable fluid carrying lines located inboard of the firewalls on the left and right engine pylons, accomplish the following:

(a) Within six months after the effective date of this AD, fill the two, unused (open) tooling holes in the firewalls of the left and right engine pylons, in accordance with Raytheon Service Bulletin SB.54–1–3815B, dated March 26, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 28, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22474 Filed 9–03–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1123, 1124, and 1124A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all IAI, Ltd., Model 1123, 1124, and 1124A series airplanes. This proposal would require repetitive inspections of the aileron push-pull tubes for excessive wear and the guide rollers for smooth rotation; and repair or replacement of worn parts with serviceable parts, if necessary. This proposal is prompted by reports of excessive wear on the aileron push-pull tube in the area of the guide rollers. The actions specified by the proposed AD are intended to prevent such wear, which could result in uneven movement of the control wheel, perforation of the aileron push-pull tube, and consequent reduced roll control of the airplane.

DATES: Comments must be received by October 15, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on all IAI, Ltd., Model 1123, 1124, and 1124A series airplanes. The CAAI advises that it has received reports indicating that excessive wear was found on the aileron push-pull tube in areas where the tube comes in contact with guide rollers. The cause of this excessive wear has been determined to be abrasion between the guide rollers and push-pull tube, possibly due to sticking of the guide rollers. This condition, if not corrected, could result in uneven movement of the control wheel, perforation of the aileron push-pull tube, and consequent reduced roll control of the airplane.

Explanation of Relevant Service Information

Astra Jet has issued Service Bulletins SB 1123–27–043 (for Model 1123 series airplanes), and SB 1124–27–129 (for Model 1124 and 1124A series airplanes), both dated June 12, 1995. The service bulletins describe procedures for repetitive inspections of the left and right aileron push-pull tubes for excessive wear and the guide rollers for smooth rotation; replacement of the push-pull tubes with serviceable parts, if necessary; and repair or replacement of the guide rollers with serviceable parts, if necessary. The CAAI classified these service bulletins as mandatory and issued Israeli airworthiness directive 95–28, dated May 10, 1995, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections of the left and right aileron push-pull tubes for excessive wear and the guide rollers for smooth rotation; replacement of the push-pull tubes with serviceable parts, if necessary; and repair or replacement of the guide rollers with serviceable parts, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 213 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,780, or $60 per airplane, per inspection.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries (IAI), Ltd.: Docket 96–NM–173–AD.

Applicability: All IAI, Ltd., Model 1123, 1124, and 1124A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive wear of the aileron push-pull tube, which could result in uneven movement of the control wheel, perforation of the aileron push-pull tube, and consequent reduced roll control of the airplane; accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, inspect the left and right aileron push-pull tubes for wear and the guide rollers for smoothness of rotation, in accordance with Astra Jet Service Bulletin SB 1123–27–043, dated June 12, 1995 (for Model 1123 series airplanes); or Service Bulletin SB 1124–27–129, dated June 12, 1995 (for Model 1124 and 1124A Series airplanes); as applicable.

(1) If no wear is detected or if wear is within the limits specified in the applicable service bulletin, repeat the inspections thereafter at intervals not to exceed 600 hours time-in-service.

(2) If any wear is detected and that wear is outside the limits specified in the applicable service bulletin, prior to further flight, replace the tube with serviceable parts in accordance with the applicable service bulletin. Thereafter, repeat the inspections at intervals not to exceed 600 hours time-in-service.

(3) If the guide rollers do not rotate smoothly, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD. Thereafter, repeat the inspections at intervals not to exceed 600 hours time-in-service.

(i) Prior to further flight, repair the guide roller in accordance with the applicable service bulletin. Or

(ii) Prior to further flight, replace the guide roller with serviceable parts in accordance with the applicable service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 28, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22473 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–210]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kentucky statues pertaining to bonds, permitting, coal waste disposal, administrative hearings, and civil penalties. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.], October 4, 1996. If requested, a public hearing on the proposed amendment will be held on September 30, 1996. Requests to speak at the hearing must be received by 4:00 p.m., [E.D.T.], on September 18, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896.

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated August 15, 1996, (Administrative Record No. KY–1371) Kentucky submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. Senate Bill 231 and House Bill 764 enacted on March 28, 1996, revised the following provisions of the Kentucky Revised Statutes (KRS): KRS 350.131(3); KRS 350.150(1); KRS Chapter 350 Section (3); KRS 350.0301(1); and KRS 350.990(1).

Specifically, Kentucky proposes to make the following changes. Senate Bill 231 creates a new subsection at KRS 350.131(3) that allows Kentucky to use money from a forfeited bond, other than a surety bond or letter credit, to enter a contract with an overlapping permittee to perform reclamation on the forfeited permit area. KRS 350.150(1) is amended to exempt contracts negotiated under new subsection KRS 350.131(3) from the requirement that reclamation contracts be awarded to the lowest responsible bidder upon competitive bids. KRS Chapter 350 Section (3) is added to allow Kentucky to negotiate improved coordination among Federal and State agencies in reviewing proposals for reinjection or backstowing of coal processing waste and underground development waste. House Bill 764 amends KRS 350.0301(1) to allow a person contesting a failure-to-abate cessation order to also contest the underlying noncompliance at the hearing on the cessation order. KRS 350.990(1) is amended to require that Kentucky assess up to $5,000 on each violation in a noncompliance underlying an imminent danger cessation order but prohibits the assessment of a separate penalty on the cessation order itself.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on September 19, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. If on one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTRACT.**

All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 27, 1996.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–22446 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD–820–P]

RIN 0938–AG93

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a methodology to update the wage index used to adjust Medicare payment rates for hospice care. The wage index is used to reflect local differences in wage levels. A new wage index is needed because the index currently applied is based on 1981 wage and employment data and has not been updated since 1983. The methodology is based on the recommendations of a negotiated rulemaking advisory committee comprised of persons who represent interests affected by the hospice rules.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 4, 1996.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–820–P, P.O. Box 7517, Baltimore, MD 21207–0519.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–820–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Jennifer Carter, (410) 786–4615.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute and Regulations

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through the use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Public Law 97–248) added section 1861(dd) to the Social Security Act (the Act) to provide coverage for hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

On December 16, 1983, we published a final rule in the **Federal Register** (48 FR 56008) that, effective for hospice services furnished on or after November 1, 1983, established eligibility requirements and payment standards and procedures, defined covered services, and delineated the conditions a hospice must meet to be approved for participation in the Medicare program.

Regulations at 42 CFR part 418, subpart G, Payment for Hospice Care, provide for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

The final rule of December 16, 1983 (48 FR 56034) included the following provisions with regard to payment:

- Provision for adjustment to the payment rates to reflect differences in area wage levels. Since hospice care is labor-intensive, adjustment was necessary to permit payment of higher

rates in areas with relatively high wage levels, and proportionately lower rates in areas with wage levels below the national average.

• Provision that the labor market areas be based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB).

• Provision that the wage index used to adjust the hospice payment rates was to be the wage index published in the **Federal Register** on September 1, 1983 (48 FR 39871) for purposes of determining Medicare inpatient hospital prospective payment rates. This hospital wage index, which is still in use for hospices, was based on calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS) ES 202 Employment, Wages and Contributions file for hospital workers.

• Provision that, in applying the hospital wage index to the hospice rates, we use an index value of 0.8 if the hospital wage index value were lower than 0.8. The use of a wage index "floor" reflected our belief that an index value below 0.8 would make payment levels very low. We believed this would unduly jeopardize the availability of the benefit in rural areas by discouraging participation in the Medicare hospice program by hospices that are located in these areas, and by inhibiting the ability of these rural hospices to attract and retain sufficient skilled staff.

The hospice wage index has not been updated since 1983. Over the ensuing years, we instituted many changes in the hospital wage index in order to ensure its continuing accuracy for hospitals. Since these changes have not been applied to hospices, there are widening differences between the existing hospice wage index and actual wage levels. The existing hospice wage index is based on 1981 BLS hospital data; however, BLS data are no longer used in determining the hospital wage index. Based on our concern that the BLS data did not accurately reflect hospital wages, we conducted a survey of hospital wage and wage related costs and, in fiscal year 1986, implemented a hospital wage index based solely on HCFA survey data. We repeated the survey in 1988 and implemented a revised hospital wage index during fiscal year 1991.

Additionally, in fiscal year 1991, we began adjusting the hospital wage index to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act. Beginning in fiscal year 1994, in accordance with section 1886(d)(3)(E) of the Act, we have updated the hospital wage index annually, based on a survey of wages and wage-related costs of short-term, acute care hospitals.

The most recent hospital wage index was published in the **Federal Register** on September 1, 1995 (60 FR 45778). It is based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in fiscal year 1992.

B. The Negotiated Rulemaking Advisory Committee

The Negotiated Rulemaking Act of 1990 (Public Law 101–648), which encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process, established a framework for the conduct of negotiated rulemaking. Negotiated rulemaking is a process by which a proposed rule is developed by a committee of representatives of interests that may be significantly affected by the rule, including a government representative. The goal of the process is to reach consensus on the text or content of the proposed rule, which then is published for public comment. The committee is assisted by a neutral facilitator (mediator). Consensus means unanimous concurrence of all committee members.

We chose to use the negotiated rulemaking process to update the hospice wage index for the following reasons:

• There was a general recognition by the hospice industry that the existing wage index is not satisfactory and that further inaction will likely widen the gap between the existing index and a revised index.

• Industry and consumer representatives exhibited a high degree of willingness to participate.

• There were opportunities for compromises among the various interests, as well as an opportunity for creative problemsolving that could lead to an acceptable result.

• Even if consensus were not achieved, acceptability of the resulting wage index would be enhanced by the type of information-sharing that would occur in the context of negotiation.

On October 14, 1994, we published in the **Federal Register** a notice of intent to establish an advisory committee under the Federal Advisory Committee Act to negotiate the hospice wage index (59 FR 52129). The purpose of this committee was to provide advice and make recommendations to the Secretary with respect to the text or content of a proposed rule on the wage index used to adjust payment rates for hospices under the Medicare program to reflect local differences in area wage levels. The notice solicited public comment on the appropriateness of the negotiated rulemaking process for updating the hospice wage index and on whether we identified all of the interests that would be affected. As a result, we received eight public comments. The commenters supported our decision to establish a negotiating committee and utilize the negotiated rulemaking process for this purpose.

We published a notice in the **Federal Register** on December 29, 1994 to announce establishment of the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index (59 FR 67264). The Committee represented interests that would be significantly affected by the adoption of a new wage index and included an appropriate mix of interests and backgrounds. Committee members included representatives of national hospice associations; rural, urban, large, and small hospices; multi-site hospices; and consumer groups. In addition, during the process, when the Committee identified large groups of hospices likely to suffer a significant negative impact as a result of the revised wage index, attempts were made to contact representatives of those groups for their input, as well as to provide them an opportunity to participate in the meetings and discussions.

C. Consensus Agreement

The Committee met five times from November 1994 to April 1995. Its deliberations focused on the following issues: the data source for the wage index; the budget neutrality adjustment; continued application of a wage index floor; the transition period; future updates; and the effective date of a revised index. The Committee reached consensus on a hospice wage index that results from the methodology described below. The Committee Statement is included as an addendum at the end of this proposed rule.

In the Agreement with which all Committee members concurred, HCFA agreed that it would, to the maximum extent possible and consistent with applicable legal obligations, draft a proposed rule consistent with the Committee Statement, and publish it as a Notice of Proposed Rulemaking. Accordingly, under the proposed rule, the revised hospice wage index will be calculated in a manner fully consistent with the negotiated rulemaking process and the Committee Statement. The one exception will be the wage index value for the Virgin Islands, as noted in section III.D of this preamble.

1. Data to be Used

A primary concern of the Committee was the data to be used to construct a revised hospice wage index. Options considered by the Committee included continued use of BLS data, updated hospital wage data, hospice-specific data, and data used for the physician payment system. The Committee considered the following criteria in evaluating the available data sources:

- Fundamental equity of the wage index.
- Data that reflected actual work performed by hospice personnel.
- Reliability of data.
- Variability of data (that is, fewer shifts in wage index values from year to year).
- Uniform treatment across MSAs.
- Compatibility with wage indices used by HCFA for other Medicare providers.
- Accuracy of data (that is, ability to eliminate data errors).
- Preserving access to hospice care.
- Minimizing losses in payment to a high percentage of hospices, or minimizing the total amount hospices would lose on an individual basis.
- Limitation of data to Medicare-certified agencies.
- Cost of data collection.
- Lack of bias against rural areas or urban areas.
- Availability of the data for timely implementation.

The Committee heard presentations about the different types of data available and determined that, since hospice-specific data are unavailable, the hospital wage index data best represents hospices.

The Committee agreed that the revised wage index would be based for each fiscal year on the most currently available data used by HCFA to construct a wage index for hospitals under the prospective payment system, before adjustments are made to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and (d)(10) of the Act. Among the reasons the Committee chose to recommend use of unadjusted hospital wage data was to avoid further reductions in certain rural statewide wage index values that result from reclassification. (Reductions occur because, when rural hospitals are reclassified to urban areas, the wage data from the affected hospitals are not included in determining the statewide rural rate.)

Each hospice's labor market area would be established by the MSA definitions issued by the OMB on December 28, 1992, based on the 1990 census, and updated periodically by OMB. Any changes to the MSA definitions would be effective annually and announced in the final rule updating the hospice wage index.

2. Budget Neutrality

Options considered by the Committee regarding budget neutrality included the following: (1) whether to apply a budget neutrality adjustment; (2) whether the adjustment would be applied equally to all wage index values; and (3) whether the budget neutrality adjustment would be applied after the transition period (see section I.C.4. of this preamble).

The Committee determined that, each year in updating the wage index, aggregate Medicare payments to hospices would remain the same, using the revised wage index as if the 1983 wage index had not been updated. Thus, although payments to individual hospice programs may change each year, overall Medicare payments to hospices would not be affected by updating the wage index, that is, budget neutrality will be maintained during and after the transition period.

In order to ensure budget neutrality, an adjustment would be made to the payments that would otherwise be made to individual hospices for the period beginning on the effective date of the final rule and ending September 30, 1997. We would determine the amount of the budget neutrality adjustment by first computing the amount of hospice payments that would have resulted from the hospice payment methodology using the 1983 hospice wage index. To perform this computation for this proposed rule, we obtained the 1995 December update of the national claims history file of all bills submitted during fiscal year 1995. We deleted all bills from hospices that have since closed. Then, we computed program expenditures using updated hospital wage data (that is, 1993 hospital wage data for fiscal year 1997). To achieve budget neutrality, we have determined that it would be necessary to apply a budget neutrality adjustment factor of 1.020702 to the wage portion of the payment rate. That is, an increase of 2 percent to the wage portion of the payment rate results in the same program expenditures as would have been realized had we continued to apply the 1983 hospice wage index. For fiscal year 1998 and subsequent years, a budget neutrality adjustment would be made using the most currently available HCFA hospital data. A budget neutrality adjustment factor would be calculated each year in order to maintain aggregate payments that would have been made under the 1983 wage index.

3. Wage Index Floor

The Committee discussed retention of the wage index floor in terms of its original intended purpose—allowing hospices in rural areas to recruit and retain staff. In addition, the Committee discussed transportation issues experienced by hospice programs in both rural and urban areas. Information was provided to the Committee illustrating those wage index areas that are protected by the current wage index floor. The Committee determined that in order to maintain the viability of the hospice programs in rural and other low wage index areas, it was appropriate to continue to assist those areas with wage index values below 0.8 by providing an adjustment to the wage component of the rate. In reaching consensus on the adjustment factor, the Committee considered alternatives such as retention of the 0.8 wage index floor, the impact of other floor values on the budget neutrality adjustment, and use of a two-tiered floor. The Committee reached consensus on a 15-percent increase adjustment for those wage areas below 0.8, up to a maximum of 0.8, to assist hospices in areas with low wage index values to continue to provide access to hospice care.

However, the Committee also agreed that hospices should not receive the benefit of both the budget neutrality adjustment and a wage index floor adjustment. Thus, for those wage areas below 0.8, the revised wage index for the area will be the greater of the following—

- The pre-reclassification hospital wage index value times a budget neutrality adjustment factor; or
- The pre-reclassification hospital wage index value multiplied by 1.15, but subject to a maximum wage index value of 0.8.

4. Transition Period

The revised wage index would not be fully implemented until October 1, 1998. For the transition period beginning on the effective date of the final rule and ending September 30, 1997, a blended index value would be calculated by adding two-thirds of the wage index value currently in effect for hospices in an area (the 1983 index) to one-third of the pre-reclassification hospital wage index value or the adjusted index value, as applicable. During the second year of the transition period, beginning October 1, 1997, the calculation would be similar, except that the blend would be one-third of the 1983 index value and two-thirds of the pre-reclassification or adjusted wage index value. A fully updated hospice

wage index, based on the most current hospital wage index, would be implemented beginning October 1, 1998.

The hospital wage index establishes a wage index value for each MSA and rural statewide values. However, because MSA definitions have changed since 1983, we also need to develop a methodology for setting wage index values for hospices in counties that are no longer in the same MSA as they were in 1983. The Committee agreed that the wage index value for hospices located in these counties for the first year of the transition would be calculated by adding two-thirds of the wage index value for the MSA to which the county was assigned in 1983 to one-third of the updated wage index value for the area to which the county is now assigned. Throughout the transition period, new hospices would be treated the same as existing hospices based in the same county.

5. Annual Updates

The revised hospice wage index would be updated annually, beginning on October 1, 1997, so that it is based on the most currently available HCFA hospital data, including any changes to the definitions of MSAs.

While Committee members supported the use of the most currently available data, the Committee determined that this must be balanced against the interest of allowing hospices sufficient time to adjust to shifts in wage index values. Accordingly, it was agreed by the Committee that HCFA would use the most current hospital cost report data available that would allow us to publish a proposed rule containing wage index values for hospices at least 4 months in advance of the effective date.

II. Current Payment Procedures for Hospice Care

A. Annual Increase in Payment Rates

Section 1814(i)(1)(C)(ii) of the Act provides for an annual increase in the hospice payment rates based on the rate of increase in the hospital market basket index used to adjust payments for inpatient hospital services under the prospective payment system for hospitals. However, section 13504 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) amended section 1814(i) of the Act to decrease the amount of the market basket percentage increase that is applied to hospice rates for fiscal years 1994 through 1997. For hospice payments in fiscal years 1996 and 1997, the market basket increase is reduced by 1.5 percent and 0.5 percent, respectively. For fiscal years after 1997, hospices receive the full hospital market basket increase. Following is a brief description of each level of care and the current daily payment rates for the period October 1, 1995 through September 30, 1996.

- *Routine Home Care*—As specified in § 418.302(d)(3) of the regulations, the payment rate for routine home care is paid to the hospice for each day during which a Medicare beneficiary is under the care of the hospice, and not receiving the care described under continuous home care, inpatient respite care, or general inpatient care, regardless of the volume and intensity of the services provided on any given day. The current routine home care rate is $92.32.
- *Continuous Home Care*—The hospice is paid the continuous home care rate when, in order to maintain the terminally ill patient at home in a period of crisis, nursing care is required on a continuous basis. Either home health aide or homemaker services or both may also be provided. Medicare regulations at § 418.302(e)(4) specify that the hospice payment on a continuous home care day varies depending on the number of hours of continuous care. The continuous home care rate is divided by 24 to yield an hourly rate. The number of hours of continuous home care furnished during a continuous home care day is multiplied by the hourly rate to calculate the hospice payment amount for that day. The hospice must furnish a minimum of 8 hours of continuous home care on a particular day to qualify for the continuous home care daily rate. The continuous home care rate is intended only for periods of crisis when predominantly skilled continuous care is necessary to achieve palliation or management of the patient's acute medical symptoms and only as necessary to maintain the patient at home. The current continuous home care hourly rate is $22.45 and the daily payment rate is $538.87.
- *Inpatient Respite Care*—The hospice is paid the inpatient respite care rate for each day the patient is in a Medicare or Medicaid approved inpatient facility receiving respite care. The inpatient respite rate applies specifically to situations where the patient's family members or other persons caring for the patient need a short period of relief. Payment is limited to no more than 5 consecutive days. Subsequent days of respite care are paid at the routine home care rate. The current daily payment rate for inpatient respite care is $95.50.
- General Inpatient Care—The hospice is paid the general inpatient care rate for each day the patient is in a Medicare or Medicaid approved inpatient setting to receive services that are reasonable and necessary for the palliation or management of acute and severe clinical problems related to the terminal condition that cannot be managed in other settings. The current daily payment rate for general inpatient care is $410.72.

B. Adjustment for Wage Variations

In adjusting the payment rates, we separate the national payment rates into components that reflect the estimated proportion of the rate that is attributable to wage and nonwage costs. We then multiply the wage component of each rate by the wage index value applicable to the area in which the hospice is located (adjusted wage component). The rate paid to a hospice is the sum of the non-wage component and the adjusted wage component.

The following table indicates the current hospice payment rates and the amount (in dollars) of each rate subject to adjustment by the wage index:

Payment category	National rate	Component subject to index	Nonwage component
Routine home	$92.32	$63.43	$28.89
Continuous home	538.87	370.26	168.61
Inpatient respite	95.50	51.69	43.81
General inpatient	410.72	262.90	147.82

III. Proposed Hospice Wage Index

Existing hospice regulations at § 418.306(c) provide that the payment rates established by HCFA are adjusted by the intermediary to reflect local differences in wages. We are proposing to amend § 418.306(c) to add that:

- The hospice wage index is updated annually based on the most current available hospital wage data, and
- This data will include any changes to the definitions of Metropolitan Statistical Areas.

As noted above, the revised hospice wage index is based on the recommendations of a Negotiated Rulemaking Advisory Committee. In the Agreement concurred in by all Committee members, HCFA agreed that it would, to the maximum extent possible consistent with the applicable legal obligations, draft a proposed rule consistent with the Committee Statement and publish it as a Notice of Proposed Rulemaking. We intend to interpret and apply the proposed rule, if adopted in final form, in a manner fully consistent with the Committee Statement.

If the final rule were adopted without change from the proposed rule, the only difference between the final rule and the Committee Statement would be the calculation of the wage index value for the Virgin Islands, as noted in section III.D below. The wage index value for the Virgin Islands was not addressed by the Committee, since at the time of its meetings there were no certified hospices located in the Virgin Islands.

A. Computation of the Hospice Wage Index

The hospice wage index would be derived from the following 1993 hospital cost report data:

- Total short-term, acute care hospital salaries and hours.
- Home office costs and hours.
- Fringe benefits associated with hospital and home office salaries.
- Direct patient care related contract labor cost and hours.
- The exclusion of salaries and hours for nonhospital type services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

The raw hospital wage data would undergo a series of reviews and edits to verify the wage data from the Medicare cost report. A detailed description of this process is contained in the September 1, 1995 (60 FR 45778) hospital prospective payment final rule. A brief description of the process follows:

The wage data are reported electronically to HCFA through the Hospital Cost Report Information System (HCRIS). The HCRIS system includes several screens to identify unusual data. Then, we initiate an intensive review of the wage data by the fiscal intermediaries to ensure quality and accuracy. Finally, we subject the revised cost report data to several edit checks. Edit failures involve data that appear unusual and need to be verified by the intermediary.

The wage file that will be used to construct the fiscal year 1997 proposed hospital wage index will include data that we obtained in late January 1996 from the HCRIS database and subsequent changes that we received from intermediaries through March 1996. The intermediaries will be instructed to complete verification of questionable data elements and to transmit any changes to the wage data, through HCRIS, no later than mid-June 1996. We expect that all outstanding data elements will be resolved by then, so that we will be able to reflect the corrected data in the final hospital wage index.

In addition, in March 1996, we afforded hospitals an opportunity to evaluate the raw hospital wage data that would be used to construct the proposed fiscal year 1997 hospital wage index. Also, we will publish information in the fiscal year 1997 hospital prospective payment system proposed rule to enable hospitals to identify inconsistencies. To be reflected in the final hospital wage index, any wage data corrections must be reviewed by the intermediary and transmitted to HCFA through HCRIS by mid-June 1996.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the raw wage data for the fiscal year 1997 hospital wage index.

As noted above, we are proposing to base the fiscal year 1997 hospice wage index on hospital wage data reported on the fiscal year 1993 cost report prior to reclassification; that is, the hospital wage index will not be adjusted to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act. The method used to compute the hospital wage index is as follows:

Step 1—We gather data from each of the non-Federal short-term, acute care hospitals for which data were reported on the Worksheet S–3, Part II of the Medicare cost report for the hospital's cost reporting periods beginning on or after October 1, 1992, and before October 1, 1993.

Step 2—For each hospital, we subtract the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To the net hospital salaries, we add hospital contract labor costs, hospital fringe benefits, and any home office salaries and fringe benefits reported by the hospital to determine total salaries plus fringe benefits.

Step 3—For each hospital, we inflate or deflate, as appropriate, the total salaries plus fringe benefits resulting from Step 2 to a common period to determine total adjusted salaries. A complete description of this step appeared in the September 1995 final Prospective Payment System regulation for fiscal year 1996 (60 FR 45792).

Step 4—For each hospital, we subtract the reported excluded hours from the gross hospital hours to determine net hospital hours. We increase the net hours by the addition of any reported contract labor hours and home office hours to determine total hours.

Step 5—As part of our editing process, we delete data for hospitals for which we lacked sufficient documentation to verify data that failed edits because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. We retained the data for other hospitals that are no longer participating in the Medicare program because these hospitals contributed to the relative wage levels in their labor market areas during their fiscal year 1993 cost reporting period.

Step 6—Within each urban or rural labor market area, we add the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in that area to determine the total adjusted salaries plus fringe benefits for the labor market area.

Step 7—We divide the total adjusted salaries plus fringe benefits obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We add the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in the nation and then divide the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage.

Step 9—For each urban or rural labor market area, we calculate the hospital wage index value by dividing the area average hourly wage obtained in Step 7

by the national average hourly wage computed in Step 8.

B. Budget Neutrality Adjustment and Application of Wage Index Floor for the Proposed Hospice Index

All hospice wage index values below 0.8 would receive the greater of the following:

- A 15 percent increase, subject to a maximum wage index value of 0.8; or
- An adjustment, by multiplying the hospice wage index value for a given area by the budget neutrality adjustment factor. In this way, wage areas with values below 0.8 would not receive both the wage index floor adjustment and the budget neutrality adjustment. All hospice wage index values of 0.8 or greater would receive a budget neutrality adjustment, which would be calculated by multiplying the hospice wage index value for a given area by the budget neutrality factor.

To determine a budget neutrality adjustment factor, we would establish the payments that would be made under the 1983 wage index. We would do this by calculating the labor-related payments for each of the four types of hospice services using patient bills for the most recent completed fiscal year (that is, fiscal year 1995 bills would be used to calculate the fiscal year 1997 index). That dollar amount would be the target for the budget neutrality calculation. Then payments would be calculated separately for the labor-related portion of the rates using the wage index proposed in this rule. The budget neutrality factor would be calculated as the multiplier by which labor-related payments using the proposed wage index must be adjusted to equal labor-related payments using the 1983 wage index. The calculation would be made taking into account the respective adjustments applicable to wage index values below, at, or above the 0.8 threshold described above. The payments would be for the total of labor-related payments for each of the four types of hospice services. The budget neutrality factor would then be applied to the wage index. To confirm the accuracy of the calculation, total payments would then be calculated by using the new budget neutrality adjusted wage index and would be compared to payments using the 1983 wage index.

The budget neutrality factor would be calculated and applied annually, both during and after the transition period.

C. Transition and Annual Updates

We are proposing a 3-year transition period with annual updates as noted in sections I.C.4 and I.C.5 and in the Committee Statement.

D. Wage Index Value for the Virgin Islands

At the time of negotiations, there were no certified hospices located in the Virgin Islands. However, since that time, a hospice program has been certified to provide services under Medicare. Since the Virgin Islands is not an area designated under the prospective payment system for hospitals, there is no hospital wage index value for the Virgin Islands. Therefore, though this was not an issue discussed by the Committee, we are proposing that the methodology to calculate a wage index value for the Virgin Islands would be to gather information from the hospital cost report and compare hourly wages of the hospital located in the Virgin Islands to the national average. This would generate a wage index value of 0.6594.

IV. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all hospices are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This impact analysis compares hospice payments under the current wage index (column 3 of the table) to the first transition year blend (column 4). The wage index blend for the first transition year of the 3 year transition is two-thirds of the current wage index added to one-third of the new wage index. The data used in developing the quantitative analysis for this proposed rule were obtained from the December 1995 update of the national claims history file of all bills submitted during fiscal year 1995. We deleted bills from hospices that have since closed.

The table demonstrates the results of our analysis. The table categorizes hospices by various geographic and provider characteristics. The top row of the table demonstrates the neutral overall payment impact on 1,755 hospices included in the analysis. The next two rows of the table categorize hospices according to their geographic location (urban and rural). There are 1,143 hospices located in urban areas included in our analysis and 612 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate: therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 1995. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

In column 2 of the table we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Columns 3 and 4 show the payments that would have been made to hospices under the 1983 wage index and payments that would be made under the 1997 wage index. As the first row in column 4 indicates, the wage index is budget neutral. The final column shows the percent change in hospice payments based on the category of the hospice.

The results of our analysis show that the greatest increases are for urban hospices in the New England and Pacific regions, 4.4 percent and 1.7 percent respectively. The greatest decreases, besides Puerto Rico, are the urban East South Central and West South Central regions with 1.6 percent and 1.4 percent respectively. The most dramatic shift occurs in Puerto Rico, where urban payments decrease by 7.3 percent and rural payments decrease by 8.5 percent. Since the wage index values for the Puerto Rico region are more than 15 percent below 0.8, this region is most affected by the revision to the wage index floor.

Small hospice programs show small decreases while larger programs show slight increases. Proprietary hospices show slight decreases in payment due to the wage index change while voluntary programs gain slightly. Finally, freestanding hospices show small decreases while provider-based hospice programs show small increases.

IMPACT OF PROPOSED HOSPICE WAGE INDEX CHANGE

	Number of hospices (1)	Number of routine home care days (thousands) (2)	Payments using old wage index (thousands) (3)	Payments using new wage index first transition year blend (thousands) (4)	Percent change in hospice payments (5)
All Hospices	1,755	15,085	$1,600,527	$1,600,527	−0.0
Urban Hospices	1,143	12,995	1,415,499	1,416,030	0.0
Rural Hospices	612	2,090	185,028	184,497	−0.3
Region (Urban):					
New England	88	476	53,435	55,769	4.4
Middle Atlantic	155	1,453	164,613	165,971	0.8
South Atlantic	152	2,960	326,084	326,984	0.3
East North Cent	189	2,317	251,746	249,521	−0.9
East South Cent	76	549	59,309	58,359	−1.6
West North Cent	76	865	85,963	85,615	−0.4
West South Cent	148	1,693	168,385	165,986	−1.4
Mountain	68	702	84,373	83,439	−1.1
Pacific	162	1,842	210,740	214,321	1.7
Puerto Rico	29	138	10,852	10,065	−7.3
Region (Rural):					
New England	17	48	4,620	4,690	1.5
Middle Atlantic	33	138	13,438	13,310	−1.0
South Atlantic	102	450	39,330	39,165	−0.4
East North Cent	104	392	35,140	35,073	−0.2
East South Cent	65	282	23,743	23,656	−0.4
West North Cent	124	290	25,412	25,310	−0.4
West South Cent	66	212	17,756	17,688	−0.4
Mountain	57	137	12,343	12,273	−0.6
Pacific	41	129	12,289	12,456	1.4
Puerto Rico	3	12	957	876	−8.5
Size (Routine home care days):					
0–1,555 Days	438	315	32,087	32,077	−0.0
1,555–4,068 Days	439	1,164	113,549	113,134	−0.4
4,068–9,202 Days	439	2,770	273,259	273,948	0.3
9,202 + Days	439	10,836	1,181,632	1,181,367	−0.0
Unknown	0	0	0	0	0.0
Type of Ownership					
Voluntary	821	7,889	832,891	834,314	0.2
Proprietary	756	6,706	720,070	718,637	−0.2
Government	177	487	47,330	47,340	0.0
Unknown	1	3	236	236	0.2
Hospice Base:					
Freestanding	651	8,242	877,025	874,053	−0.3
Home Health Agency	651	4,073	428,636	430,987	0.5
Hospital	437	2,596	272,480	273,149	0.2
Unknown	16	174	22,386	22,337	−0.2

We have concluded that this regulation will have an impact on small hospices. However, the provisions of this regulation were determined by consensus through a negotiated rulemaking committee. Based on all of the options considered, the committee determined that the provisions proposed in this regulation were favorable for the hospice community as a whole, as well as for the beneficiaries that they serve.

We have also determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. For these reasons, we are not preparing analyses for the RFA or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Other Information

A. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

B. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR part 418 would be amended as set forth below.

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 418.306, paragraph (c) is revised to read as follows:

§ 418.306 Determination of payment amounts.

* * * * *

(c) *Adjustment for wage differences.* HCFA will publish annually, in the **Federal Register**, a hospice wage index based on the most current available HCFA hospital data, including any changes to the definitions of Metropolitan Statistical Areas. The payment rates established by HCFA are adjusted by the intermediary to reflect local differences in wages according to the revised wage index.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 16, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 27, 1996.

Donna E. Shalala,

Secretary.

Appendix—United States Department of Health and Human Services Negotiating Committee on the Medicare Hospice Wage Index

Committee Statement

April 13, 1995

The Negotiating Committee on Medicare Hospice Wage Index has concurred in the following recommendations, considered as a whole, concerning the wage index used to adjust Medicare payment rates for hospice services to reflect geographic differences in wages:

A. Data to be Used

The wage index for hospices will be based on the wage index used by the Health Care Financing Administration (HCFA) for hospitals under the Medicare Prospective Payment System, prior to reclassification. This means that the hospital wage index will not be adjusted to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Social Security Act.

The hospital wage index prior to reclassification will be referred to in this statement as the Raw Index and will be adjusted as provided below to calculate what will be referred to as the Revised Wage Index.

Special provisions governing a transition period are described in paragraph D below.

B. Budget Neutrality

HCFA will determine a Budget Neutrality Factor that will be applied to achieve budget neutrality during and after the transition period. Budget neutrality means that, in a given year, estimated aggregate payments for Medicare hospice services using the Revised Wage Index will equal estimated payments that would have been made for the same services if the wage index adopted for hospices in 1983 (1983 Index) had remained in effect. HCFA will estimate aggregate payments for Medicare hospice services using the best available utilization data.

C. Adjustments

Each Raw Index value will be adjusted in one of two ways to determine the Revised Wage Index value applicable to each area.

(1) If the Raw Index value for any area is 0.8 or greater, the Revised Wage Index will be calculated by multiplying the Raw Index value for that area by the Budget Neutrality Factor.

(2) If the Raw Index value for any area is less than 0.8, the Revised Wage Index will be the greater of either:

(a) The Raw Index value for that area multiplied by the Budget Neutrality Factor; or

(b) The Raw Index value for that area multiplied by 1.15 (in effect, a 15-percent increase), but subject to a maximum index value of 0.8.

D. Transition Period

The Revised Wage Index will be implemented over a 3-year transition period beginning on or about October 1, 1996. For the first year of the transition period, a blended index will be calculated by adding two-thirds of each 1983 Index value for an area to one-third of the Revised Wage Index value for that area. During the second year of the transition period, the calculation will be similar, except that the blend will be one-third of the 1983 Index values and two-thirds of the Revised Wage Index values. During the third year the Revised Wage Index will be fully implemented.

Throughout the transition period, new hospices will be treated the same as existing hospices based in the same county.

E. Annual Updates

The Revised Wage Index will be updated annually, so that it is based on the most current available data used by HCFA to construct the hospital wage index, as well as on changes by the Office of Management and Budget to Metropolitan Statistical Areas as adopted by HCFA in calculating the hospital wage index.

HCFA will use the most current hospital cost report data available that allows HCFA to publish a proposed rule containing wage index values at least 4 months in advance of the effective date of each annual update to the Revised Wage Index.

F. Effective Date

The effective date of a final rule revising the wage index as stated above should be October 1, 1996.

G. Statement to Accompany Proposed and Final Hospice Wage Index Notice

The proposed rule is based upon a Committee Statement developed by a Negotiating Committee on the Medicare hospice wage index which was convened under the Negotiated Rulemaking Act. A new hospice wage index is needed because the existing hospice wage index is based on a 1983 wage index using 1981 Bureau of Labor Statistics (BLS) data which is inaccurate and outdated.

The Committee reached consensus; however, this means only that all Committee members could "live with" the agreement, considered as a whole, even if elements of that agreement were not the preferred choice of individual Committee members. The Committee Statement reflects those issues upon which the Committee ultimately concurred, but does not address many issues that were considered by the Committee.

The Committee considered the appropriate data to be used to construct a wage index, the appropriateness of retaining a 0.8 floor, budget neutrality, and how to structure a transition to timely update the index yet ensure access to hospice care. In particular, the Committee considered the problems faced by hospices that would receive significant decreases under the new wage indices, rural hospices, hospices with low wage indices, and hospices that may have disproportionately high non-wage costs.

The Committee received extensive information from experts who appeared before the Committee and from the hospice community, and sought public input. While considerable data were reviewed, the Committee acknowledges

that hospice data collection is maturing and encourages its continued development. In addition, while other issues were identified, the scope of the Committee's negotiations was limited by the Notice of Intent to Negotiate.

Given these constraints, and taking into account the differing and conflicting interests that would be significantly affected, the Committee sought to develop a wage index that would be as accurate, reliable, and equitable as possible, but would not threaten access to hospice care.

The Committee recognizes that hospice care is still not universally available. The Committee further recognizes that there may be geographic or other circumstances that inhibit the provision of hospice care. The Committee strongly requests that HCFA consider options to address these access problems.

Reaching consensus was a long and deliberative process. The Committee concurred that the wage index it recommends will be better both for the hospice community as a whole, and for the Medicare beneficiaries it serves, than a wage index developed by the traditional rulemaking process.

TABLE A.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
Abilene, TX: Taylor, TX	0.9105
Aguadilla, PR:	
Aguada, PR	0.7032
Aguadilla, PR	0.7032
Moca, PR	0.7032
Akron, OH:	
Portage, OH	1.0664
Summit, OH	1.0664
Albany, GA:	
Dougherty, GA	0.8903
Lee, GA	0.8903
Albany-Schenectady-Troy, NY:	
Albany, NY	0.8969
Montgomery, NY	0.8969
Rensselaer, NY	0.8969
Saratoga, NY	0.8969
Schenectady, NY	0.8969
Schoharie, NY	0.8826
Albequerque, NM:	
Bernalillo, NM	1.0392
Sandoval, NM	0.9517
Valencia, NM	0.9517
Alexandria, LA: Rapides, LA	0.9393
Allentown-Bethlehem-Easton, PA:	
Carbon, PA	1.0564
Lehigh, PA	1.0564
Northampton, PA	1.0564
Altoona, PA: Blair, PA	1.0217
Amarillo, TX:	
Potter, TX	0.9509
Randall, TX	0.9509
Anchorage, AK: Anchorage, AK	1.4483
Ann Arbor, MI:	
Lenawee, MI	1.0424
Livingston, MI	1.2137
Washtenaw, MI	1.2204
Anniston, AL: Calhoun, AL	0.8539
Appleton-Oshkosh-Neenah, WI:	
Calumet, WI	0.9635
Outagamie, WI	0.9635
Winnebago, WI	0.9635
Arecibo, PR:	
Arecibo, PR	0.7109
Camuy, PR	0.7109
Hatillo, PR	0.7109
Asheville, NC:	
Buncombe, NC	0.9653
Madison, NC	0.8969
Athens, GA:	
Clarke, GA	0.9150
Madison, GA	0.9150
Oconee, GA	0.9150
Atlanta, GA:	
Barrow, GA	0.9841
Bartow, GA	0.9218
Carroll, GA	0.9218
Cherokee, GA	0.9841
Clayton, GA	0.9841
Cobb, GA	0.9841
Coweta, GA	0.9841
De Kalb, GA	0.9841
Douglas, GA	0.9841
Fayette, GA	0.9841
Forsyth, GA	0.9841
Fulton, GA	0.9841
Gwinnett, GA	0.9841
Henry, GA	0.9841
Newton, GA	0.9841
Paulding, GA	0.9841
Pickens, GA	0.9218
Rockdale, GA	0.9841
Spalding, GA	0.9841
Walton, GA	0.9841
Atlantic City-Cape May, NJ:	
Atlantic City, NJ	1.1024
Cape May, NJ	1.1024
Augusta-Aiken, GA–SC:	
Columbia, GA	0.9553
McDuffie, GA	0.9553
Richmond, GA	0.9553
Aiken, SC	0.9553
Edgefield, SC	0.8514
Austin-San Marcos, TX:	
Bastrop, TX	0.8675
Caldwell, TX	0.8675
Hays, TX	1.0354
Travis, TX	1.0354
Williamson, TX	1.0354
Bakersfield, CA: Kern, CA	1.1821
Baltimore, MD:	
Anne Arundel, MD	1.0731
Baltimore, MD	1.0731
Baltimore City, MD	1.0731
Carroll, MD	1.0731
Harford, MD	1.0731
Howard, MD	1.0731
Queen Annes, MD	1.0731
Bangor, ME: Penobscot, ME	0.9511
Barnstable-Yarmouth, MA:	
Barnstable, MA	1.1262
Baton Rouge, LA:	
Ascension, LA	0.9795
East Baton Rouge, LA	0.9795
Livingston, LA	0.9795
West Baton Rouge, LA	0.9795
Beaumont-Port Arthur, TX:	
Hardin, TX	0.9637
Jefferson, TX	0.9637
Orange, TX	0.9637
Bellingham, WA: Whatcom, WA	1.1034
Benton Harbor, MI: Berrien, MI	0.8838
Bergen-Passaic, NJ:	
Bergen, NJ	1.0989
Passaic, NJ	1.0989
Billings, MT: Yellowstone, MT	0.9594
Biloxi-Gulfport-Pascagoula, MS:	
Hancock, MS	0.8844
Harrison, MS	0.8844
Jackson, MS	0.9816
Binghamton, NY:	
Broome, NY	0.9490
Tioga, NY	0.9490
Birmingham, AL:	
Blount, AL	0.9915
Jefferson, AL	0.9915
St. Clair, AL	0.9915
Shelby, AL	0.9915
Bismarck, ND:	
Burleigh, ND	0.9400
Morton, ND	0.9400
Bloomington, IN: Monroe, IN	0.9154
Bloomington-Normal, IL: McLean, IL	0.9934
Boise City, ID:	
Ada, ID	1.0470
Canyon, ID	0.9277
Boston-Brockton-Nashua, MA–NH:	
Bristol, MA	1.0535
Essex, MA	1.1410
Middlesex, MA	1.1410
Norfolk, MA	1.1410
Plymouth, MA	1.1410
Suffolk, MA	1.1410
Worcester, MA	1.0607
Hillsborough, NH	1.0320
Merrimack, NH	1.0320
Rockingham, NH	0.9713
Strafford, NH	0.9713
Boulder-Longmont, CO: Boulder, CO	0.9985
Brazoria, TX: Brazoria, TX	0.8860
Bremerton, WA: Kitsap, WA	0.9834
Brownsville-Harlingen-San Benito, TX: Cameron, TX	0.9185
Bryan-College Station, TX: Brazos, TX	0.9157
Buffalo-Niagara Falls, NY:	
Erie, NY	0.9764
Niagara, NY	0.9052
Burlington, VT:	
Chittenden, VT	0.9674
Franklin, VT	0.9075
Grand Isle, VT	0.9674
Caguas, PR:	
Caguas, PR	0.7111
Cayey, PR	0.7111
Cidra, PR	0.7111
Gurabo, PR	0.7111
San Lorenzo, PR	0.7111
Canton-Massillon, OH:	
Carroll, OH	0.9615
Stark, OH	0.9615
Casper, WY: Natrona, WY	0.9986
Cedar Rapids, IA: Linn, IA	0.9266
Champaign-Urbana, IL: Champaign, IL	1.0174

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Charleston-North Charleston, SC:	
Berkeley, SC	1.0040
Charleston, SC	1.0040
Dorchester, SC	1.0040
Charleston, WV:	
Kanawha, WV	1.0756
Putnam, WV	1.0756
Charlotte-Gastonia-Rock Hill, NC–SC:	
Cabarrus, NC	0.9929
Gaston, NC	0.9929
Lincoln, NC	0.9929
Mecklenburg, NC	0.9929
Rowan, NC	0.9929
Union, NC	0.9929
York, SC	0.9929
Charlottesville, VA:	
Albemarle, VA	1.1917
Charlottesville City, VA	1.1917
Fluvanna, VA	1.1917
Greene, VA	1.1917
Chattanooga, TN–GA:	
Catoosa, GA	0.9598
Dade, GA	0.9598
Walker, GA	0.9598
Hamilton, TN	0.9598
Marion, TN	0.9598
Cheyenne, WY: Laramie, WY	0.9043
Chicago, IL:	
Cook, IL	1.1959
De Kalb, IL	0.9568
Du Page, IL	1.1959
Grundy, IL	1.1072
Kane, IL	1.0436
Kendall, IL	1.0436
Lake, IL	1.1203
McHenry, IL	1.1959
Will, IL	1.1072
Chico-Paradise, CA: Butte, CA	1.0737
Cincinnati, OH–KY–IN:	
Dearborn, IN	1.0409
Ohio, IN	0.9088
Boone, KY	1.0409
Campbell, KY	1.0409
Gallatin, KY	0.8773
Grant, KY	0.8773
Kenton, KY	1.0409
Pendleton, KY	0.8773
Brown, OH	0.9447
Clermont, OH	1.0409
Hamilton, OH	1.0409
Warren, OH	1.0409
Clarksville-Hopkinsville, TN–KY:	
Christian, KY	0.8228
Montgomery, TN	0.8228
Cleveland-Lorain-Elyria, OH:	
Ashtabula, OH	0.9594
Cuyahoga, OH	1.1556
Geauga, OH	1.1556
Lake, OH	1.1556
Lorain, OH	1.0549
Medina, OH	1.1556
Colorado Springs, CO: El Paso, CO	1.0749
Columbia, MO: Boone, MO	1.0763
Columbia, SC:	
Lexington, SC	0.9657
Richland, SC	0.9657
Columbus, GA–AL:	
Russell, AL	0.8799
Chattahoochee, GA	0.8799
Harris, GA	0.8335
Muscogee, GA	0.8799
Columbus, OH:	
Delaware, OH	1.0392
Fairfield, OH	1.0392
Franklin, OH	1.0392
Licking, OH	1.0392
Madison, OH	1.0392
Pickaway, OH	1.0392
Corpus Christi, TX:	
Nueces, TX	0.9505
San Patricio, TX	0.9505
Cumberland, MD–WV:	
Allegany, MD	0.9368
Mineral, WV	0.9368
Dallas, TX:	
Collin, TX	1.0574
Dallas, TX	1.0574
Denton, TX	1.0574
Ellis, TX	1.0574
Henderson, TX	0.8770
Hunt, TX	0.8770
Kaufman, TX	1.0574
Rockwall, TX	1.0574
Danville, VA:	
Danville City, VA	0.8818
Pittsylvania, VA	0.8818
Davenport-Rock Island-Moline, IA–IL:	
Scott, IA	0.9543
Henry, IL	0.9543
Rock Island, IL	0.9543
Dayton-Springfield, OH:	
Clark, OH	1.0825
Greene, OH	1.0825
Miami, OH	1.0825
Montgomery, OH	1.0825
Daytona Beach, FL:	
Flagler, FL	0.8959
Volusia, FL	0.9621
Decatur, AL:	
Lawrence, AL	0.8303
Morgan, AL	0.8303
Decatur, IL: Macon, IL	0.9366
Denver, CO:	
Adams, CO	1.1763
Arapahoe, CO	1.1763
Denver, CO	1.1763
Douglas, CO	1.1763
Jefferson, CO	1.1763
Des Moines, IA:	
Dallas, IA	1.0272
Polk, IA	1.0272
Warren, IA	1.0272
Detroit, MI:	
Lapeer, MI	1.1817
Macomb, MI	1.1817
Monroe, MI	1.1817
Oakland, MI	1.1817
St. Clair, MI	1.1817
Wayne, MI	1.1817
Dothan, AL:	
Dale, AL	0.8565
Houston, AL	0.8565
Dover, DE: Kent, DE	0.9202
Dubuque, IA: Dubuque, IA	0.9768
Duluth-Superior, MN–WI:	
St. Louis, MN	0.9440
Douglas, WI	0.9440
Dutchess County, NY: Dutchess, NY	1.1038
Eau Claire, WI:	
Chippewa, WI	0.9562
Eau Claire, WI	0.9562
El Paso, TX: El Paso, TX	0.9346
Elkhart-Goshen, IN: Elkhart, IN	0.9062
Elmira, NY: Chemung, NY	0.9850
Enid, OK: Garfield, OK	0.8817
Erie, PA: Erie, PA	0.9864
Eugene-Springfield, OR: Lane, OR	1.0568
Evansville-Henderson, IN–KY:	
Posey, IN	0.9927
Vanderburgh, IN	0.9927
Warrick, IN	0.9927
Henderson, KY	0.9927
Fargo-Moorhead, ND–MN:	
Clay, MN	0.9905
Cass, ND	0.9905
Fayetteville, NC: Cumberland, NC	0.9416
Fayetteville-Springdale-Rogers, AR:	
Benton, AR	0.8000
Washington, AR	0.8205
Flagstaff, AZ–UT:	
Coconino, AZ	0.9165
Kane, UT	0.8697
Flint, MI: Genesee, MI	1.1676
Florence, AL:	
Colbert, AL	0.8222
Lauderdale, AL	0.8222
Florence, SC: Florence, SC	0.8424
Fort Collins-Loveland, CO: Larimer, CO	0.9929
Ft. Lauderdale, FL: Broward, FL	1.1146
Fort Myers-Cape Coral, FL: Lee, FL	0.9383
Fort Pierce-Port St. Lucie, FL:	
Martin, FL	1.0234
St. Lucie, FL	1.0234
Fort Smith, AR–OK:	
Crawford, AR	0.9286
Sebastian, AR	0.9286
Sequoyah, OK	0.9286
Fort Walton Beach, FL: Okaloosa, FL	0.8569
Fort Wayne, IN:	
Adams, IN	0.8864
Allen, IN	0.9428
De Kalb, IN	0.9428
Huntington, IN	0.8864
Wells, IN	0.8864
Whitley, IN	0.9428
Fort Worth-Arlington, TX:	
Hood, TX	0.8962
Johnson, TX	0.9750
Parker, TX	0.9750
Tarrant, TX	0.9750
Fresno, CA:	
Fresno, CA	1.1944
Madera, CA	1.0689
Gadsden, AL: Etowah, AL	0.9312
Gainesville, FL: Alachua, FL	0.9824
Galveston-Texas City, TX: Galveston, TX	1.1795
Gary, IN:	
Lake, IN	1.0917
Porter, IN	1.0917
Glens Falls, NY:	
Warren, NY	0.8909
Washington, NY	0.8909
Goldsboro, NC: Wayne, NC	0.8648
Grand Forks, ND–MN:	
Polk, MN	0.8918

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Grand Forks, ND	0.9716
Grand Junction, CO: Mesa, CO	0.8504
Grand Rapids-Muskegon-Holland, MI:	
Allegan, MI	0.9880
Kent, MI	1.0236
Muskegon, MI	0.9778
Ottawa, MI	1.0236
Great Falls, MT: Cascade, MT	0.9974
Greeley, CO: Weld, CO	1.0673
Green Bay, WI: Brown, WI	0.9869
Greensboro-Winston-Salem-High Point, NC:	
Alamance, NC	0.8944
Davidson, NC	0.9691
Davie, NC	0.9691
Forsyth, NC	0.9691
Guilford, NC	0.9691
Randolph, NC	0.9691
Stokes, NC	0.9691
Yadkin, NC	0.9691
Greenville, NC: Pitt, NC	0.8881
Greenville-Spartanburg-Anderson, SC:	
Anderson, SC	0.8995
Cherokee, SC	0.8547
Greenville, SC	0.9491
Pickens, SC	0.9491
Spartanburg, SC	0.9491
Hagerstown, MD: Washington, MD	0.9995
Hamilton-Middletown, OH: Butler, OH	1.0338
Harrisburg-Lebanon-Carlisle, PA:	
Cumberland, PA	1.0511
Dauphin, PA	1.0511
Lebanon, PA	1.0511
Perry, PA	1.0511
Hartford, CT:	
Hartford, CT	1.1493
Litchfield, CT	1.1493
Middlesex, CT	1.1493
Tolland, CT	1.1493
Hattiesburg, MS:	
Forrest, MS	0.8013
Lamar, MS	0.8013
Hickory-Morganton-Lenoir, NC:	
Alexander, NC	0.9408
Burke, NC	0.9408
Caldwell, NC	0.8728
Catawba, NC	0.9408
Honolulu, HI: Honolulu, HI	1.1714
Houma, LA:	
Lafourche, LA	0.9328
Terrebonne, LA	0.9328
Houston, TX:	
Chambers, TX	0.8858
Fort Bend, TX	1.0897
Harris, TX	1.0897
Liberty, TX	1.0897
Montgomery, TX	1.0897
Waller, TX	1.0897
Huntington-Ashland, WV–KY–OH:	
Boyd, KY	0.9803
Carter, KY	0.9803
Greenup, KY	0.9803
Lawrence, OH	0.9803
Cabell, WV	0.9803
Wayne, WV	0.9803
Huntsville, AL:	
Limestone, AL	0.8215

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Madison, AL	0.8889
Indianapolis, IN:	
Boone, IN	1.0568
Hamilton, IN	1.0568
Hancock, IN	1.0568
Hendricks, IN	1.0568
Johnson, IN	1.0568
Madison, IN	0.9979
Marion, IN	1.0568
Morgan, IN	1.0568
Shelby, IN	1.0568
Iowa City, IA: Johnson, IA	1.0965
Jackson, MI: Jackson, MI	1.0080
Jackson, MS:	
Hinds, MS	0.8872
Madison, MS	0.8872
Rankin, MS	0.8872
Jackson, TN: Madison, TN	0.8281
Jacksonville, FL:	
Clay, FL	0.9814
Duval, FL	0.9814
Nassau, FL	0.9814
St. Johns, FL	0.9814
Jacksonville, NC: Onslow, NC	0.8565
Jamestown, NY: Chautaqua, NY	0.8477
Janesville-Beloit, WI: Rock, WI	0.9009
Jersey City, NJ: Hudson, NJ	1.1307
Johnson City-Kingsport-Bristol, TN–VA:	
Carter, TN	0.9317
Hawkins, TN	0.9317
Sullivan, TN	0.9317
Unicoi, TN	0.9317
Washington, TN	0.9317
Bristol City, VA	0.9317
Scott, VA	0.9317
Washington, VA	0.9317
Johnstown, PA:	
Cambria, PA	0.9862
Somerset, PA	0.9862
Joplin, MO:	
Jasper, MO	0.9053
Newton, MO	0.9053
Kalamazoo-Battlecreek, MI:	
Calhoun, MI	1.0808
Kalamazoo, MI	1.1943
Van Buren, MI	1.0042
Kankakee, IL: Kankakee, IL	0.9283
Kansas City, KS–MO:	
Johnson, KS	0.9897
Leavenworth, KS	0.9897
Miami, KS	0.9897
Wyandotte, KS	0.9897
Cass, MO	0.9983
Clay, MO	0.9983
Clinton, MO	0.8886
Jackson, MO	0.9983
Lafayette, MO	0.9983
Platte, MO	0.9983
Ray, MO	0.9983
Kenosha, WI: Kenosha, WI	1.0545
Killeen-Temple, TX:	
Bell, TX	0.9941
Coryell, TX	0.9941
Knoxville, TN:	
Anderson, TN	0.9150
Blount, TN	0.9150
Knox, TN	0.9150
Loudon, TN	0.8343
Sevier, TN	0.9150

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Union, TN	0.9150
Kokomo, IN:	
Howard, IN	0.9468
Tipton, IN	0.9468
La Crosse, WI–MN:	
Houston, MN	0.8783
La Crosse, WI	0.9337
Lafayette, LA:	
Acadia, LA	0.8469
Lafayette, LA	0.9698
St. Landry, LA	0.8469
St. Martin, LA	0.9698
Lafayette, IN:	
Clinton, IN	0.8857
Tippecanoe, IN	0.9194
Lake Charles, LA: Calcasieu, LA	0.9505
Lakeland-Winter Haven, FL: Polk, FL	0.9304
Lancaster, PA: Lancaster, PA	1.0326
Lansing-East Lansing, MI:	
Clinton, MI	1.0562
Eaton, MI	1.0562
Ingham, MI	1.0562
Laredo, TX: Webb, TX	0.8374
Las Cruces, NM: Dona Ana, NM	0.8651
Las Vegas, NV–AZ:	
Mohave, AZ	0.9796
Clark, NV	1.2001
Nye, NV	1.0632
Lawrence, KS: Douglas, KS	0.9598
Lawton, OK: Comanche, OK	0.9149
Lewiston-Auburn, ME: Androscoggin, ME	0.9453
Lexington, KY:	
Bourbon, KY	0.9366
Clark, KY	0.9366
Fayette, KY	0.9366
Jessamine, KY	0.9366
Madison, KY	0.8400
Scott, KY	0.9366
Woodford, KY	0.9366
Lima, OH:	
Allen, OH	0.9774
Auglaize, OH	0.9774
Lincoln, NE: Lancaster, NE	0.9027
Little Rock-North Little Rock, AR:	
Faulkner, AR	0.9861
Lonoke, AR	0.9861
Pulaski, AR	0.9861
Saline, AR	0.9861
Longview-Marshall, TX:	
Gregg, TX	0.8763
Harrison, TX	0.8763
Upshur, TX	0.8465
Los Angeles-Long Beach, CA: Los Angeles, CA	1.3075
Louisville, KY–IN:	
Clark, IN	1.0599
Floyd, IN	1.0599
Harrison, IN	1.0599
Scott, IN	0.9077
Bullitt, KY	1.0599
Jefferson, KY	1.0599
Oldham, KY	1.0599
Lubbock, TX: Lubbock, TX	0.9764
Lynchburg, VA:	
Amherst, VA	0.9022
Bedford City, VA	0.8531
Bedford, VA	0.8531
Campbell, VA	0.9022

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Lynchburg City, VA	0.9022
Macon, GA:	
Bibb, GA	0.9709
Houston, GA	0.9709
Jones, GA	0.9709
Peach, GA	0.9709
Twiggs, GA	0.8792
Madison, WI : Dane, WI	1.0400
Mansfield, OH:	
Crawford, OH	0.9129
Richland, OH	0.9151
Mayaguez, PR:	
Anasco, PR	0.6938
Cabo Rojo, PR	0.6938
Hormigueros, PR	0.6938
Mayaguez, PR	0.6938
Sabana Grande, PR	0.6938
San German, PR	0.6938
McAllen-Edinburg-Mission, TX: Hidalgo, TX	0.8594
Medford-Ashland, OR: Jackson, OR	1.0138
Melbourne-Titusville-Palm Bay, FL: Brevard, Fl	0.9443
Memphis, TN–AR–MS:	
Crittenden, AR	1.0110
De Soto, MS	1.0110
Fayette, TN	0.8229
Shelby, TN	1.0110
Tipton, TN	1.0110
Merced, CA: Merced, CA	1.0513
Miami, FL: Dade, FL	1.1198
Middlesex-Somerset-Hunterdon, NJ:	
Hunterdon, NJ	1.0911
Middlesex, NJ	1.0911
Somerset, NJ	1.0911
Milwaukee-Waukesha, WI:	
Milwaukee, WI	1.0449
Ozaukee, WI	1.0449
Washington, WI	1.0449
Waukesha, WI	1.0449
Minneapolis-St Paul, MN–WI:	
Anoka, MN	1.0659
Carver, MN	1.0659
Chisago, MN	1.0659
Dakota, MN	1.0659
Hennepin, MN	1.0659
Isanti, MN	1.0659
Ramsey, MN	1.0659
Scott, MN	1.0659
Sherburne, MN	0.9662
Washington, MN	1.0659
Wright, MN	1.0659
Pierce, WI	0.9319
St. Croix, WI	1.0659
Mobile, AL:	
Baldwin, AL	0.9070
Mobile, AL	0.9070
Modesto, CA: Stanislaus, CA	1.0960
Monmouth-Ocean, NJ:	
Monmouth, NJ	1.0400
Ocean, NJ	1.0400
Monroe, LA: Ouachita, LA	0.9300
Montgomery, AL:	
Autauga, AL	0.9323
Elmore, AL	0.9323
Montgomery, AL	0.9323
Muncie, IN: Delaware, IN	0.9970
Myrtle Beach, SC: Horry, SC	0.8058
Naples, FL: Collier, FL	0.9412
Nashville, TN:	
Cheatham, TN	1.1445
Davidson, TN	1.1445
Dickson, TN	1.1445
Robertson, TN	1.1445
Rutherford TN	1.1445
Sumner, TN	1.1445
Williamson, TN	1.1445
Wilson, TN	1.1445
Nassau-Suffolk, NY:	
Nassau, NY	1.2838
Suffolk, NY	1.2838
New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT:	
Fairfield, CT	1.2207
New Haven, CT	1.1591
New London-Norwich, CT: New London, CT	1.1440
New Orleans, LA:	
Jefferson, LA	1.0126
Orleans, LA	1.0126
Plaquemines, LA	0.8896
St. Bernard, LA	1.0126
St. Charles, LA	1.0126
St. James, LA	0.8896
St. John The Baptist, LA	1.0126
St. Tammany, LA	1.0126
New York, NY:	
Bronx, NY	1.4070
Kings, NY	1.4070
New York, NY	1.4070
Putnam, NY	1.4070
Queens, NY	1.4070
Richmond, NY	1.4070
Rockland, NY	1.4070
Westchester, NY	1.4070
Newark, NJ:	
Essex, NJ	1.1686
Morris, NJ	1.1686
Sussex, NJ	1.1686
Union, NJ	1.1686
Warren, NJ	1.1162
Newburgh, NY–PA:	
Orange, NY	1.0531
Pike, PA	1.0713
Norfolk-Virginia Beach-Newport News, VA–NC:	
Currituck, NC	0.8619
Chesapeake City, VA	0.9490
Gloucester, VA	0.9490
Hampton City, VA	0.9490
Isle of Wight, VA	0.8630
James City, VA	0.9490
Mathews, VA	0.8630
Newport News City, VA	0.9490
Norfolk City, VA	0.9490
Poquoson City, VA	0.9490
Portsmouth City, VA	0.9490
Suffolk City, VA	0.9490
Virginia Beach City VA	0.9490
Williamsburg City, VA	0.9490
York, VA	0.9490
Oakland, CA:	
Alameda, CA	1.3699
Contra Costa, CA	1.3699
Ocala, FL: Marion, FL	0.9934
Odessa-Midland, TX:	
Ector, TX	0.9545
Midland, TX	1.0230
Oklahoma City, OK:	
Canadian, OK	1.0074
Cleveland, OK	1.0074
Logan, OK	1.0074
McClain, OK	1.0074
Oklahoma, OK	1.0074
Pottawatomie, OK	1.0074
Olympia, WA: Thurston, WA	1.0840
Omaha, NE–IA:	
Pottawattamie, IA	0.9293
Cass, NE	0.8650
Douglas, NE	0.9293
Sarpy, NE	0.9293
Washington, NE	0.9293
Orange County, CA: Orange, CA	1.2549
Orlando, FL:	
Lake, FL	0.9164
Orange, FL	1.0133
Osceola, FL	1.0133
Seminole, FL	1.0133
Owensboro, KY: Daviess, KY	0.8565
Panama City, FL: Bay, FL	0.8926
Parkersburg-Marietta, WV–OH:	
Washington, OH	0.9459
Wood, WV	0.9459
Pensacola, FL:	
Escambia, FL	0.8993
Santa Rosa, FL	0.8993
Peoria-Pekin, IL:	
Peoria, IL	1.0629
Tazewell, IL	1.0629
Woodford, IL	1.0629
Philadelphia, PA–NJ:	
Burlington, NJ	1.1812
Camden, NJ	1.1812
Gloucester, NJ	1.1812
Salem, NJ	1.1222
Bucks, PA	1.1812
Chester, PA	1.1812
Delaware, PA	1.1812
Montgomery, PA	1.1812
Philadelphia, PA	1.1812
Phoenix-Mesa, AZ:	
Maricopa, AZ	1.0913
Pinal, AZ	0.9435
Pine Bluff, AR: Jefferson, AR	0.8660
Pittsburgh, PA:	
Allegheny, PA	1.1058
Beaver, PA	1.0701
Butler, PA	1.0338
Fayette, PA	1.1058
Washington, PA	1.1058
Westmoreland, PA	1.1058
Pittsfield, MA: Berkshire, MA	1.0275
Ponce, PR:	
Guayanilla, PR	0.7058
Juana Diaz, PR	0.7058
Penuelas, PR	0.7058
Ponce, PR	0.7058
Villalba, PR	0.7058
Yauco, PR	0.7058
Portland, ME:	
Cumberland, ME	0.9841
Sagadahoc, ME	0.9841
York, ME	0.9841
Portland-Vancouver, OR–WA:	
Clackamas, OR	1.1451
Columbia, OR	1.0340
Multnomah, OR	1.1451
Washington, OR	1.1451
Yamhill, OR	1.1451
Clark, WA	1.1202

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Providence-Warwick, RI:	
Bristol, RI	1.0432
Kent, RI	1.0432
Newport, RI	1.0432
Providence, RI	1.0432
Washington, RI	1.0432
Provo-Orem, UT: Utah, UT	0.9894
Pueblo, CO: Pueblo, CO	1.0718
Punta Gorda, FL: Charlotte, FL	0.8753
Racine, WI: Racine, WI	0.9827
Raleigh-Durham-Chapel Hill, NC:	
Chatham, NC	0.9100
Durham, NC	1.0213
Franklin, NC	1.0213
Johnston, NC	0.9100
Orange, NC	1.0213
Wake, NC	1.0213
Rapid City, SD: Pennington, SD	0.8327
Reading, PA: Berks, PA	1.0220
Redding, CA: Shasta, CA	1.1132
Reno, NV: Washoe, NV	1.2595
Richland-Kennewick-Pasco, WA:	
Benton, WA	0.9896
Franklin, WA	0.9896
Richmond-Petersburg, VA:	
Charles City County, VA	0.9159
Chesterfield, VA	0.9159
Colonial Heights City, VA	0.9159
Dinwiddie, VA	0.9159
Goochland, VA	0.9159
Hanover, VA	0.9159
Henrico, VA	0.9159
Hopewell City, VA	0.9159
New Kent, VA	0.9159
Petersburg City, VA	0.9159
Powhatan, VA	0.9159
Prince George, VA	0.9159
Richmond City, VA	0.9159
Riverside-San Bernardino, CA:	
Riverside, CA	1.1875
San Bernardino, CA	1.1875
Roanoke, VA:	
Botetourt, VA	0.9785
Roanoke, VA	0.9785
Roanoke City, VA	0.9785
Salem City, VA	0.9785
Rochester, MN: Olmsted, MN	1.0534
Rochester, NY:	
Genesee, NY	0.9201
Livingston, NY	1.0333
Monroe, NY	1.0333
Ontario, NY	1.0333
Orleans, NY	1.0333
Wayne, NY	1.0333
Rockford, IL:	
Boone, IL	1.0166
Ogle, IL	0.8976
Winnebago, IL	1.0166
Rocky Mount, NC:	
Edgecombe, NC	0.8831
Nash, NC	0.8831
Sacramento, CA:	
El Dorado, CA	1.1985
Placer, CA	1.1985
Sacramento, CA	1.1985
Saginaw-Bay City-Midland, MI:	
Bay, MI	1.0692
Midland, MI	1.0692
Saginaw, MI	1.0692
St. Cloud, MN:	
Benton, MN	0.9217
Stearns, MN	0.9217
St. Joseph, MO:	
Andrews, MO	0.8562
Buchanan, MO	0.9636
St. Louis, MO–IL:	
Clinton, IL	0.9649
Jersey, IL	0.9561
Madison, IL	0.9561
Monroe, IL	1.0329
St. Clair, IL	0.9649
Franklin, MO	1.0329
Jefferson, MO	1.0329
Lincoln, MO	0.8683
St. Charles, MO	1.0329
St. Louis, MO	1.0329
St. Louis City, MO	1.0329
Warren, MO	0.8683
Salem, OR:	
Marion, OR	1.0516
Polk, OR	1.0516
Salinas, CA: Monterey, CA	1.3392
Salt Lake City-Ogden, UT:	
Davis, UT	0.9872
Salt Lake, UT	0.9872
Weber, UT	0.9872
San Angelo, TX: Tom Green, TX	0.8859
San Antonio, TX:	
Bexar, TX	1.0003
Comal, TX	1.0003
Guadalupe, TX	1.0003
Wilson, TX	0.8373
San Diego, CA: San Diego, CA	1.2234
San Francisco, CA:	
Marin, CA	1.4361
San Francisco, CA	1.4361
San Mateo, CA	1.4361
San Jose, CA: Santa Clara, CA	1.3749
San Juan-Bayamon, PR:	
Aguas Buenas, PR	0.7103
Barceloneta, PR	0.7103
Bayamon, PR	0.7103
Canovanas, PR	0.7103
Carolina, PR	0.7103
Catano, PR	0.7103
Ceiba, PR	0.7103
Comerio, PR	0.7103
Corozal, PR	0.7103
Dorado, PR	0.7103
Fajardo, PR	0.7103
Florida, PR	0.7103
Guaynabo, PR	0.7103
Humacao, PR	0.7103
Juncos, PR	0.7103
Los Piedras, PR	0.7103
Loiza, PR	0.7103
Luguillo, PR	0.7103
Manati, PR	0.7103
Morovis, PR	0.7103
Naguabo, PR	0.7103
Naranjito, PR	0.7103
Rio Grande, PR	0.7103
San Juan, PR	0.7103
Toa Alta, PR	0.7103
Toa Baja, PR	0.7103
Trujillo Alto, PR	0.7103
Vega Alta, PR	0.7103
Vega Baja, PR	0.7103
Yabucoa, PR	0.7103
San Luis Obispo-Atascadero-Paso Robles, CA: San Luis Obispo, CA	1.0820
Santa Barbara-Santa Maria-Lompoc, CA: Santa Barbara, CA	1.1398
Santa Cruz-Watsonville, CA: Santa Cruz, CA	1.2359
Santa Fe, NM:	
Los Alamos, NM	1.0014
Santa Fe, NM	1.0014
Santa Rosa, CA: Sonoma, CA	1.2324
Sarasota-Bradenton, FL:	
Manatee, FL	0.9584
Sarasota, FL	1.0047
Savannah, GA:	
Bryan, GA	0.9218
Chatham, GA	0.9911
Effingham, GA	0.9911
Scranton—Wilkes-Barre—Hazleton, PA:	
Columbia, PA	0.9626
Lackawanna, PA	0.9626
Luzerne, PA	0.9626
Wyoming, PA	0.9626
Seattle-Bellevue-Everett, WA:	
Island, WA	1.0345
King, WA	1.1286
Snohomish, WA	1.1286
Sharon, PA: Mercer, PA	0.9555
Sheboygan, WI: Sheboygan, WI	0.8571
Sherman-Denison, TX: Grayson, TX	0.9072
Shreveport-Bossier City, LA:	
Bossier, LA	1.0442
Caddo, LA	1.0442
Webster, LA	0.8877
Sioux City, IA–NE:	
Woodbury, IA	0.9858
Dakota, NE	0.9858
Sioux Falls, SD:	
Lincoln, SD	0.8372
Minnehaha, SD	0.9357
South Bend, IN: St. Joseph, IN	0.9504
Spokane, WA: Spokane, WA	1.1205
Springfield, IL:	
Menard, IL	1.0757
Sangamon, IL	1.0757
Springfield, MO:	
Christian, MO	0.9157
Greene, MO	0.9157
Webster, MO	0.8313
Springfield, MA:	
Hampden, MA	1.0329
Hampshire, MA	1.0329
State College, PA: Centre, PA	1.0214
Steubenville-Weirton, OH–WV:	
Jefferson, OH	0.9448
Brooke, WV	0.9448
Hancock, WV	0.9448
Stockton-Lodi, CA: San Joaquin, CA	1.1789
Sumter, SC: Sumter, SC	0.8058
Syracuse, NY:	
Cayuga, NY	0.9131
Madison, NY	1.3105
Onondaga, NY	1.3105
Oswego, NY	1.3105
Tacoma, WA: Pierce, WA	1.0811
Tallahassee, FL:	
Gadsden, FL	0.9143
Leon, FL	0.9143
Tampa-St. Petersburg-Clearwater, FL:	

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Hernando, FL	0.9947
Hillsborough, FL	0.9947
Pasco, FL	0.9947
Pinellas, FL	0.9947
Terre Haute, IN:	
Clay, IN	0.8968
Vermillion, IN	0.8793
Vigo, IN	0.8968
Texarkana, AR-Texarkana, TX:	
Miller, AR	1.0438
Bowie, TX	1.0438
Toledo, OH:	
Fulton, OH	1.1242
Lucas, OH	1.1242
Wood, OH	1.1242
Topeka, KS: Shawnee, KS	1.1013
Trenton, NJ: Mercer, NJ	1.0664
Tucson, AZ: Pima, AZ	0.9990
Tulsa, OK:	
Creek, OK	0.9832
Osage, OK	0.9832
Rogers, OK	0.9832
Tulsa, OK	0.9832
Wagoner, OK	0.9832
Tuscaloosa, AL: Tuscaloosa, AL	0.9457
Tyler, TX: Smith, TX	1.0281
Utica-Rome, NY:	
Herkimer, NY	0.9228
Oneida, NY	0.9228
Vallejo-Fairfield-Napa, CA:	
Napa, CA	1.3804
Solano, CA	1.3804
Ventura, CA: Ventura, CA	1.2087
Victoria, TX: Victoria, TX	0.8760
Vineland-Millville-Bridgeton, NJ:	
Cumberland, NJ	0.9871
Visalia-Tulare-Porterville, CA:	
Tulare, CA	1.1188
Waco, TX: McLennan, TX	0.8220
Washington, DC–MD–VA–WV:	
District of Columbia, DC	1.1607
Calvert, MD	1.1607
Charles, MD	1.1607
Frederick, MD	1.1607
Montgomery, MD	1.1607
Prince Georges, MD	1.1607
Alexandria City, VA	1.1607
Arlington, VA	1.1607
Clarke, VA	0.9486
Culpepper, VA	0.9486
Fairfax, VA	1.1607
Fairfax City, VA	1.1607
Falls Church City, VA	1.1607
Fauquier, VA	0.9486
Fredericksburg City, VA	0.9486
King George, VA	0.9486
Loudoun, VA	1.1607
Manassas City, VA	1.1607
Manassas Park City, VA	1.1607
Prince William, VA	1.1607
Spotsylvania, VA	0.9486
Stafford, VA	1.1607
Warren, VA	0.9486
Berkeley, WV	0.9937
Jefferson, WV	0.9937
Waterloo-Cedar Falls, IA: Black Hawk, IA	0.9160
Wausau, WI: Marathon, WI	0.9859
West Palm Beach-Boca Raton, FL:	
Palm Beach, FL	1.0152

TABLE A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Wheeling, OH–WV:	
Belmont, OH	0.9221
Marshall, WV	0.9221
Ohio, WV	0.9221
Wichita, KS:	
Butler, KS	1.0844
Harvey, KS	0.8750
Sedgwick, KS	1.0844
Wichita Falls, TX:	
Archer, TX	0.8273
Wichita, TX	0.8678
Williamsport, PA: Lycoming, PA	0.9871
Willington-Newark, DE–MD:	
New Castle, DE	1.1271
Cecil, MD	1.1271
Willington, NC:	
New Hanover, NC	0.8873
Brunswick, NC	0.9221
Yakima, WA: Yakima, WA	1.0250
Yolo, CA: Yolo, CA	1.1675
York, PA: York, PA	1.0118
Youngstown-Warren, OH:	
Columbiana, OH	0.9545
Mahoning, OH	1.0834
Trumbull, OH	1.0834
Yuba City, CA:	
Sutter, CA	1.0920
Yuba, CA	1.0920
Yuma, AZ: Yuma, AZ	0.9328

TABLE B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama:	
Barbour, AL	0.8000
Bibb, AL	0.8000
Bullock, AL	0.8000
Butler, AL	0.8000
Chambers, AL	0.8000
Cherokee, AL	0.8000
Chilton, AL	0.8000
Choctaw, AL	0.8000
Clarke, AL	0.8000
Clay, AL	0.8000
Cleburne, AL	0.8000
Coffee, AL	0.8000
Conecuh, AL	0.8000
Coosa, AL	0.8000
Covington, AL	0.8000
Crenshaw, AL	0.8000
Cullman, AL	0.8000
Dallas, AL	0.8000
De Kalb, AL	0.8000
Escambia, AL	0.8000
Fayette, AL	0.8000
Franklin, AL	0.8000
Geneva, AL	0.8000
Greene, AL	0.8000
Hale, AL	0.8000
Henry, AL	0.8000
Jackson, AL	0.8000
Lamar, AL	0.8000
Lee, AL	0.8000
Lowndes, AL	0.8000
Macon, AL	0.8000
Marengo, AL	0.8000

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Marion, AL	0.8000
Marshall, AL	0.8000
Monroe, AL	0.8000
Perry, AL	0.8000
Pickens, AL	0.8000
Pike, AL	0.8000
Randolph, AL	0.8000
Sumter, AL	0.8000
Talladega, AL	0.8000
Tallapoosa, AL	0.8000
Walker, AL	0.9365
Washington, AL	0.8000
Wilcox, AL	0.8000
Winston, AL	0.8000
Alaska:	
Aleutians East, AK	1.3612
Aleutians West, AK	1.3612
Bethel, AK	1.3612
Bristol Bay Borough, AK	1.3612
Dillingham, AK	1.3612
Fairbanks North Star, AK	1.3612
Haines, AK	1.3612
Juneau, AK	1.3612
Kenai Peninsula	1.3612
Ketchikan Gateway, AK	1.3612
Kodiak Island, AK	1.3612
Lake and Peninsula, AK	1.3612
Matanuska-Susitna, AK	1.3612
Nome, AK	1.3612
North Slope, AK	1.3612
Northwest Arctic, AK	1.3612
Pr. of Wales-out Ketchikanak, AK	1.3612
Sitka, AK	1.3612
Skagway-Yakutat-Angoon, AK	1.3612
Southeast Fairbanks, AK	1.3612
Valdez-Cordova, AK	1.3612
Wade Hampton, AK	1.3612
Wrangell-Petersburg, AK	1.3612
Yukon-Koyukuk, AK	1.3612
Arizona:	
Apache, AZ	0.8793
Cochise, AZ	0.8793
Gila, AZ	0.8793
Graham, AZ	0.8793
Greenlee, AZ	0.8793
Lapaz, AZ	0.8793
Navajo, AZ	0.8793
Santa Cruz, AZ	0.8793
Yavapai, AZ	0.8793
Arkansas:	
Arkansas, AR	0.8000
Ashley, AR	0.8000
Baxter, AR	0.8000
Boone, AR	0.8000
Bradley, AR	0.8000
Calhoun, AR	0.8000
Carroll, AR	0.8000
Chicot, AR	0.8000
Clark, AR	0.8000
Clay, AR	0.8000
Cleburne, AR	0.8000
Cleveland, AR	0.8000
Columbia, AR	0.8000
Conway, AR	0.8000
Craighead, AR	0.8000
Cross, AR	0.8000
Dallas, AR	0.8000
Desha, AR	0.8000
Drew, AR	0.8000

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Franklin, AR	0.8000
Fulton, AR	0.8000
Garland, AR	0.8000
Grant, AR	0.8000
Greene, AR	0.8000
Hempstead, AR	0.8000
Hot Spring, AR	0.8000
Howard, AR	0.8000
Independence, AR	0.8000
Izard, AR	0.8000
Jackson, AR	0.8000
Johnson, AR	0.8000
Lafayette, AR	0.8000
Lawrence, AR	0.8000
Lee, AR	0.8000
Lincoln, AR	0.8000
Little River, AR	0.8000
Logan, AR	0.8000
Madison, AR	0.8000
Marion, AR	0.8000
Mississippi, AR	0.8000
Monroe, AR	0.8000
Montgomery, AR	0.8000
Nevada, AR	0.8000
Newton, AR	0.8000
Ouachita, AR	0.8000
Perry, AR	0.8000
Phillips, AR	0.8000
Pike, AR	0.8000
Poinsett, AR	0.8000
Polk, AR	0.8000
Pope, AR	0.8000
Prairie, AR	0.8000
Randolph, AR	0.8000
St. Francis, AR	0.8000
Scott, AR	0.8000
Searcy, AR	0.8000
Sevier, AR	0.8000
Sharp, AR	0.8000
Stone, AR	0.8000
Union, AR	0.8000
Van Buren, AR	0.8000
White, AR	0.8000
Woodruff, AR	0.8000
Yell, AR	0.8000
California:	
Alpine, CA	1.0277
Amador, CA	1.0277
Calaveras, CA	1.0277
Colusa, CA	1.0277
Del Norte, CA	1.0277
Glenn, CA	1.0277
Humboldt, CA	1.0277
Imperial, CA	1.0277
Inyo, CA	1.0277
Kings, CA	1.0277
Lake, CA	1.0277
Lassen, CA	1.0277
Mariposa, CA	1.0277
Mendocino, CA	1.0277
Modoc, CA	1.0277
Mono, CA	1.0277
Nevada, CA	1.0277
Plumas, CA	1.0277
San Benito, CA	1.0277
Sierra, CA	1.0277
Siskiyou, CA	1.0277
Tehama, CA	1.0277
Trinity, CA	1.0277
Tuolumne, CA	1.0277

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Colorado:	
Alamosa, CO	0.8438
Archuleta, CO	0.8438
Baca, CO	0.8438
Bent, CO	0.8438
Chaffee, CO	0.8438
Cheyenne, CO	0.8438
Clear Creek, CO	0.8438
Conejos, CO	0.8438
Costilla, CO	0.8438
Crowley, CO	0.8438
Custer, CO	0.8438
Delta, CO	0.8438
Dolores, CO	0.8438
Eagle, CO	0.8438
Elbert, CO	0.8438
Fremont, CO	0.8438
Garfield, CO	0.8438
Gilpin, CO	0.8438
Grand, CO	0.8438
Gunnison, CO	0.8438
Hinsdale, CO	0.8438
Huerfano, CO	0.8438
Jackson, CO	0.8438
Kiowa, CO	0.8438
Kit Carson, CO	0.8438
Lake, CO	0.8438
La Plata, CO	0.8438
Las Animas, CO	0.8438
Lincoln, CO	0.8438
Logan, CO	0.8438
Mineral, CO	0.8438
Moffat, CO	0.8438
Montezuma, CO	0.8438
Montrose, CO	0.8438
Morgan, CO	0.8438
Otero, CO	0.8438
Ouray, CO	0.8438
Park, CO	0.8438
Phillips, CO	0.8438
Pitkin, CO	0.8438
Prowers, CO	0.8438
Rio Blanco, CO	0.8438
Rio Grande, CO	0.8438
Routt, CO	0.8438
Saguache, CO	0.8438
San Juan, CO	0.8438
San Miguel, CO	0.8438
Sedgwick, CO	0.8438
Summit, CO	0.8438
Teller, CO	0.8438
Washington, CO	0.8438
Yuma, CO	0.8438
Connecticut: Windham, CT	1.1137
Delaware: Sussex, DE	0.9354
Florida:	
Baker, FL	0.8887
Bradford, FL	0.9559
Calhoun, FL	0.8887
Citrus, FL	0.8887
Columbia, FL	0.8887
De Soto, FL	0.8887
Dixie, FL	0.8887
Franklin, FL	0.8887
Gilchrist, FL	0.8887
Glades, FL	0.8887
Gulf, FL	0.8887
Hamilton, FL	0.8887
Hardee, FL	0.8887
Hendry, FL	0.8887

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Highlands, FL	0.8887
Holmes, FL	0.8887
Indian River, FL	0.8887
Jackson, FL	0.8887
Jefferson, FL	0.8887
Lafayette, FL	0.8887
Levy, FL	0.8887
Liberty, FL	0.8887
Madison, FL	0.8887
Monroe, FL	0.8887
Okeechobee, FL	0.8887
Putnam, FL	0.8887
Sumter, FL	0.8887
Suwannee, FL	0.8887
Taylor, FL	0.8887
Union, FL	0.8887
Wakulla, FL	0.8887
Walton, FL	0.8887
Washington, FL	0.8887
Georgia:	
Appling, GA	0.8335
Atkinson, GA	0.8335
Bacon, GA	0.8335
Baker, GA	0.8335
Baldwin, GA	0.8335
Banks, GA	0.8335
Ben Hill, GA	0.8335
Berrien, GA	0.8335
Bleckley, GA	0.8335
Brantley, GA	0.8335
Brooks, GA	0.8335
Bulloch, GA	0.8335
Burke, GA	0.8335
Butts, GA	0.8945
Calhoun, GA	0.8335
Camden, GA	0.8335
Candler, GA	0.8335
Charlton, GA	0.8335
Chattooga, GA	0.8335
Clay, GA	0.8335
Clinch, GA	0.8335
Coffee, GA	0.8335
Colquitt, GA	0.8335
Cook, GA	0.8335
Crawford, GA	0.8335
Crisp, GA	0.8335
Dawson, GA	0.8335
Decatur, GA	0.8335
Dodge, GA	0.8335
Dooly, GA	0.8335
Early, GA	0.8335
Echols, GA	0.8335
Elbert, GA	0.8335
Emanuel, GA	0.8335
Evans, GA	0.8335
Fannin, GA	0.8335
Floyd, GA	0.8335
Franklin, GA	0.8335
Gilmer, GA	0.8335
Glascock, GA	0.8335
Glynn, GA	0.8335
Gordon, GA	0.8335
Grady, GA	0.8335
Greene, GA	0.8335
Habersham, GA	0.8335
Hall, GA	0.8335
Hancock, GA	0.8335
Haralson, GA	0.8335
Hart, GA	0.8335
Heard, GA	0.8335

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Irwin, GA	0.8335
Jackson, GA	0.8545
Jasper, GA	0.8335
Jeff Davis, GA	0.8335
Jefferson, GA	0.8335
Jenkins, GA	0.8335
Johnson, GA	0.8335
Lamar, GA	0.8335
Lanier, GA	0.8335
Laurens, GA	0.8335
Liberty, GA	0.8335
Lincoln, GA	0.8335
Long, GA	0.8335
Lowndes, GA	0.8335
Lumpkin, GA	0.8335
McIntosh, GA	0.8335
Macon, GA	0.8335
Marion, GA	0.8335
Meriwether, GA	0.8335
Miller, GA	0.8335
Mitchell, GA	0.8335
Monroe, GA	0.8335
Montgomery, GA	0.8335
Morgan, GA	0.8335
Murray, GA	0.8335
Oglethorpe, GA	0.8335
Pierce, GA	0.8335
Pike, GA	0.8335
Polk, GA	0.8335
Pulaski, GA	0.8335
Putnam, GA	0.8335
Quitman, GA	0.8335
Rabun, GA	0.8335
Randolph, GA	0.8335
Schley, GA	0.8335
Screven, GA	0.8335
Seminole, GA	0.8335
Stephens, GA	0.8335
Stewart, GA	0.8335
Sumter, GA	0.8335
Talbot, GA	0.8335
Taliaferro, GA	0.8335
Tattnall, GA	0.8335
Taylor, GA	0.8335
Telfair, GA	0.8335
Terrell, GA	0.8335
Thomas, GA	0.8335
Tift, GA	0.8335
Toombs, GA	0.8335
Towns, GA	0.8335
Treutlen, GA	0.8335
Troup, GA	0.8335
Turner, GA	0.8335
Union, GA	0.8335
Upson, GA	0.8335
Ware, GA	0.8335
Warren, GA	0.8335
Washington, GA	0.8335
Wayne, GA	0.8335
Webster, GA	0.8335
Wheeler, GA	0.8335
White, GA	0.8335
Whitfield, GA	0.8335
Wilcox, GA	0.8335
Wilkes, GA	0.8335
Wilkinson, GA	0.8335
Worth, GA	0.8335
Hawaii:	
Hawaii, HI	1.1503
Kalawao, HI	1.1503
Kauai, HI	1.1503
Maui, HI	1.1503
Idaho:	
Adams, ID	0.8969
Bannock, ID	0.8969
Bear Lake, ID	0.8969
Benewah, ID	0.8969
Bingham, ID	0.8969
Blaine, ID	0.8969
Boise, ID	0.8969
Bonner, ID	0.8969
Bonneville, ID	0.8969
Boundary, ID	0.8969
Butte, ID	0.8969
Camas, ID	0.8969
Caribou, ID	0.8969
Cassia, ID	0.8969
Clark, ID	0.8969
Clearwater, ID	0.8969
Custer, ID	0.8969
Elmore, ID	0.8969
Franklin, ID	0.8969
Fremont, ID	0.8969
Gem, ID	0.8969
Gooding, ID	0.8969
Idaho, ID	0.8969
Jefferson, ID	0.8969
Jerome, ID	0.8969
Kootenai, ID	0.8969
Latah, ID	0.8969
Lemhi, ID	0.8969
Lewis, ID	0.8969
Lincoln, ID	0.8969
Madison, ID	0.8969
Minidoka, ID	0.8969
Nez Perce, ID	0.8969
Oneida, ID	0.8969
Owyhee, ID	0.8969
Payette, ID	0.8969
Power, ID	0.8969
Shoshone, ID	0.8969
Teton, ID	0.8969
Twin Falls, ID	0.8969
Valley, ID	0.8969
Washington, ID	0.8969
Illinois:	
Adams, IL	0.8455
Alexander, IL	0.8455
Bond, IL	0.8455
Brown, IL	0.8455
Bureau, IL	0.8455
Calhoun, IL	0.8455
Carroll, IL	0.8455
Cass, IL	0.8455
Christian, IL	0.8455
Clark, IL	0.8455
Clay, IL	0.8455
Coles, IL	0.8455
Crawford, IL	0.8455
Cumberland, IL	0.8455
De Witt, IL	0.8455
Douglas, IL	0.8455
Edgar, IL	0.8455
Edwards, IL	0.8455
Effingham, IL	0.8455
Fayette, IL	0.8455
Ford, IL	0.8455
Franklin, IL	0.8455
Fulton, IL	0.8455
Gallatin, IL	0.8455
Greene, IL	0.8455
Hamilton, IL	0.8455
Hancock, IL	0.8455
Hardin, IL	0.8455
Henderson, IL	0.8455
Iroquois, IL	0.8455
Jackson, IL	0.8455
Jasper, IL	0.8455
Jefferson, IL	0.8455
Jo Daviess, IL	0.8455
Johnson, IL	0.8455
Knox, IL	0.8455
La Salle, IL	0.8455
Lawrence, IL	0.8455
Lee, IL	0.8455
Livingston, IL	0.8455
Logan, IL	0.8455
McDonough, IL	0.8455
Macoupin, IL	0.8455
Marion, IL	0.8455
Marshall, IL	0.8455
Mason, IL	0.8455
Massac, IL	0.8455
Mercer, IL	0.8455
Montgomery, IL	0.8455
Morgan, IL	0.8455
Moultrie, IL	0.8455
Perry, IL	0.8455
Piatt, IL	0.8455
Pike, IL	0.8455
Pope, IL	0.8455
Pulaski, IL	0.8455
Putnam, IL	0.8455
Randolph, IL	0.8455
Richland, IL	0.8455
Saline, IL	0.8455
Schuyler, IL	0.8455
Scott, IL	0.8455
Shelby, IL	0.8455
Stark, IL	0.8455
Stephenson, IL	0.8455
Union, IL	0.8455
Vermilion, IL	0.8455
Wabash, IL	0.8455
Warren, IL	0.8455
Washington, IL	0.8455
Wayne, IL	0.8455
White, IL	0.8455
Whiteside, IL	0.8455
Williamson, IL	0.8455
Indiana:	
Bartholomew, IN	0.8626
Benton, IN	0.8626
Blackford, IN	0.8626
Brown, IN	0.8626
Carroll, IN	0.8626
Cass, IN	0.8626
Crawford, IN	0.8626
Daviess, IN	0.8626
Decatur, IN	0.8626
Dubois, IN	0.8626
Fayette, IN	0.8626
Fountain, IN	0.8626
Franklin, IN	0.8626
Fulton, IN	0.8626
Gibson, IN	0.8626
Grant, IN	0.8626
Greene, IN	0.8626
Henry, IN	0.8626
Jackson, IN	0.8626

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Jasper, IN	0.8626
Jay, IN	0.8626
Jefferson, IN	0.8626
Jennings, IN	0.8626
Knox, IN	0.8626
Kosciusko, IN	0.8626
Lagrange, IN	0.8626
La porte, IN	0.8626
Lawrence, IN	0.8626
Marshall, IN	0.8626
Martin, IN	0.8626
Miami, IN	0.8626
Montgomery, IN	0.8626
Newton, IN	0.8626
Noble, IN	0.8626
Orange, IN	0.8626
Owen, IN	0.8626
Parke, IN	0.8626
Perry, IN	0.8626
Pike, IN	0.8626
Pulaski, IN	0.8626
Putnam, IN	0.8626
Randolph, IN	0.8626
Ripley, IN	0.8626
Rush, IN	0.8626
Spencer, IN	0.8626
Starke, IN	0.8626
Steuben, IN	0.8626
Sullivan, IN	0.8626
Switzerland, IN	0.8626
Union, IN	0.8626
Wabash, IN	0.8626
Warren, IN	0.8626
Washington, IN	0.8626
Wayne, IN	0.8626
White, IN	0.8626
Iowa:	
Adair, IA	0.8116
Adams, IA	0.8116
Allamakee, IA	0.8116
Appanoose, IA	0.8116
Audubon, IA	0.8116
Benton, IA	0.8116
Boone, IA	0.8116
Bremer, IA	0.8733
Buchanan, IA	0.8116
Buena Vista, IA	0.8116
Butler, IA	0.8116
Calhoun, IA	0.8116
Carroll, IA	0.8116
Cass, IA	0.8116
Cedar, IA	0.8116
Cerro Gordo, IA	0.8116
Cherokee, IA	0.8116
Chickasaw, IA	0.8116
Clarke, IA	0.8116
Clay, IA	0.8116
Clayton, IA	0.8116
Clinton, IA	0.8116
Crawford, IA	0.8116
Davis, IA	0.8116
Decatur, IA	0.8116
Delaware, IA	0.8116
Des Moines, IA	0.8116
Dickinson, IA	0.8116
Emmet, IA	0.8116
Fayette, IA	0.8116
Floyd, IA	0.8116
Franklin, IA	0.8116
Fremont, IA	0.8116

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Greene, IA	0.8116
Grundy, IA	0.8116
Guthrie, IA	0.8116
Hamilton, IA	0.8116
Hancock, IA	0.8116
Hardin, IA	0.8116
Harrison, IA	0.8116
Henry, IA	0.8116
Howard, IA	0.8116
Humboldt, IA	0.8116
Ida, IA	0.8116
Iowa, IA	0.8116
Jackson, IA	0.8116
Jasper, IA	0.8116
Jefferson, IA	0.8116
Jones, IA	0.8116
Keokuk, IA	0.8116
Kossuth, IA	0.8116
Lee, IA	0.8116
Louisa, IA	0.8116
Lucas, IA	0.8116
Lyon, IA	0.8116
Madison, IA	0.8116
Mahaska, IA	0.8116
Marion, IA	0.8116
Marshall, IA	0.8116
Mills, IA	0.8116
Mitchell, IA	0.8116
Monona, IA	0.8116
Monroe, IA	0.8116
Montgomery, IA	0.8116
Muscatine, IA	0.8116
O'Brien, IA	0.8116
Osceola, IA	0.8116
Page, IA	0.8116
Palo Alto, IA	0.8116
Plymouth, IA	0.8116
Pocahontas, IA	0.8116
Poweshiek, IA	0.8116
Ringgold, IA	0.8116
Sac, IA	0.8116
Shelby, IA	0.8116
Sioux, IA	0.8116
Story, IA	0.8116
Tama, IA	0.8116
Taylor, IA	0.8116
Union, IA	0.8116
Van Buren, IA	0.8116
Wapello, IA	0.8116
Washington, IA	0.8116
Wayne, IA	0.8116
Webster, IA	0.8116
Winnebago, IA	0.8116
Winneshiek, IA	0.8116
Worth, IA	0.8116
Wright, IA	0.8116
Kansas:	
Allen, KS	0.8090
Anderson, KS	0.8090
Atchison, KS	0.8090
Barber, KS	0.8090
Barton, KS	0.8090
Bourbon, KS	0.8090
Brown, KS	0.8090
Chase, KS	0.8090
Chautauqua, KS	0.8090
Cherokee, KS	0.8090
Cheyenne, KS	0.8090
Clark, KS	0.8090
Clay, KS	0.8090

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Cloud, KS	0.8090
Coffey, KS	0.8090
Comanche, KS	0.8090
Cowley, KS	0.8090
Crawford, KS	0.8090
Decatur, KS	0.8090
Dickinson, KS	0.8090
Doniphan, KS	0.8090
Edwards, KS	0.8090
Elk, KS	0.8090
Ellis, KS	0.8090
Ellsworth, KS	0.8090
Finney, KS	0.8090
Ford, KS	0.8090
Franklin, KS	0.8090
Geary, KS	0.8090
Gove, KS	0.8090
Graham, KS	0.8090
Grant, KS	0.8090
Gray, KS	0.8090
Greeley, KS	0.8090
Greenwood, KS	0.8090
Hamilton, KS	0.8090
Harper, KS	0.8090
Haskell, KS	0.8090
Hodgeman, KS	0.8090
Jackson, KS	0.8090
Jefferson, KS	0.8090
Jewell, KS	0.8090
Kearny, KS	0.8090
Kingman, KS	0.8090
Kiowa, KS	0.8090
Labette, KS	0.8090
Lane, KS	0.8090
Lincoln, KS	0.8090
Linn, KS	0.8090
Logan, KS	0.8090
Lyon, KS	0.8090
Mcpherson, KS	0.8090
Marion, KS	0.8090
Marshall, KS	0.8090
Meade, KS	0.8090
Mitchell, KS	0.8090
Montgomery, KS	0.8090
Morris, KS	0.8090
Morton, KS	0.8090
Nemaha, KS	0.8090
Neosho, KS	0.8090
Ness, KS	0.8090
Norton, KS	0.8090
Osage, KS	0.8090
Osborne, KS	0.8090
Ottawa, KS	0.8090
Pawnee, KS	0.8090
Phillips, KS	0.8090
Pottawatomie, KS	0.8090
Pratt, KS	0.8090
Rawlins, KS	0.8090
Reno, KS	0.8090
Republic, KS	0.8090
Rice, KS	0.8090
Riley, KS	0.8090
Rooks, KS	0.8090
Rush, KS	0.8090
Russell, KS	0.8090
Saline, KS	0.8090
Scott, KS	0.8090
Seward, KS	0.8090
Sheridan, KS	0.8090
Sherman, KS	0.8090

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Smith, KS	0.8090
Stafford, KS	0.8090
Stanton, KS	0.8090
Stevens, KS	0.8090
Sumner, KS	0.8090
Thomas, KS	0.8090
Trego, KS	0.8090
Wabaunsee, KS	0.8090
Wallace, KS	0.8090
Washington, KS	0.8090
Wichita, KS	0.8090
Wilson, KS	0.8090
Woodson, KS	0.8090
Kentucky:	
Adair, KY	0.8103
Allen, KY	0.8103
Anderson, KY	0.8103
Ballard, KY	0.8103
Barren, KY	0.8103
Bath, KY	0.8103
Bell, KY	0.8103
Boyle, KY	0.8103
Bracken, KY	0.8103
Breathitt, KY	0.8103
Breckinridge, KY	0.8103
Butler, KY	0.8103
Caldwell, KY	0.8103
Calloway, KY	0.8103
Carlisle, KY	0.8103
Carroll, KY	0.8103
Casey, KY	0.8103
Clay, KY	0.8103
Clinton, KY	0.8103
Crittenden, KY	0.8103
Cumberland, KY	0.8103
Edmonson, KY	0.8103
Elliott, KY	0.8103
Estill, KY	0.8103
Fleming, KY	0.8103
Floyd, KY	0.8103
Franklin, KY	0.8103
Fulton, KY	0.8103
Garrard, KY	0.8103
Graves, KY	0.8103
Grayson, KY	0.8103
Green, KY	0.8103
Hancock, KY	0.8103
Hardin, KY	0.8103
Harlan, KY	0.8103
Harrison, KY	0.8103
Hart, KY	0.8103
Henry, KY	0.8103
Hickman, KY	0.8103
Hopkins, KY	0.8103
Jackson, KY	0.8103
Johnson, KY	0.8103
Knott, KY	0.8103
Knox, KY	0.8103
Larue, KY	0.8103
Laurel, KY	0.8103
Lawrence, KY	0.8103
Lee, KY	0.8103
Leslie, KY	0.8103
Letcher, KY	0.8103
Lewis, KY	0.8103
Lincoln, KY	0.8103
Livingston, KY	0.8103
Logan, KY	0.8103
Lyon, KY	0.8103
McCracken, KY	0.8103

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
McCreary, KY	0.8103
McLean, KY	0.8103
Magoffin, KY	0.8103
Marion, KY	0.8103
Marshall, KY	0.8103
Martin, KY	0.8103
Mason, KY	0.8103
Meade, KY	0.8103
Menifee, KY	0.8103
Mercer, KY	0.8103
Metcalfe, KY	0.8103
Monroe, KY	0.8103
Montgomery, KY	0.8103
Morgan, KY	0.8103
Muhlenberg, KY	0.8103
Nelson, KY	0.8103
Nicholas, KY	0.8103
Ohio, KY	0.8103
Owen, KY	0.8103
Owsley, KY	0.8103
Perry, KY	0.8103
Pike, KY	0.8103
Powell, KY	0.8103
Pulaski, KY	0.8103
Robertson, KY	0.8103
Rockcastle, KY	0.8103
Rowan, KY	0.8103
Russell, KY	0.8103
Shelby, KY	0.9903
Simpson, KY	0.8103
Spencer, KY	0.8103
Taylor, KY	0.8103
Todd, KY	0.8103
Trigg, KY	0.8103
Trimble, KY	0.8103
Union, KY	0.8103
Warren, KY	0.8103
Washington, KY	0.8103
Wayne, KY	0.8103
Webster, KY	0.8103
Whitley, KY	0.8103
Wolfe, KY	0.8103
Louisiana:	
Allen, LA	0.8237
Assumption, LA	0.8237
Avoyelles, LA	0.8237
Beauregard, LA	0.8237
Bienville, LA	0.8237
Caldwell, LA	0.8237
Cameron, LA	0.8237
Catahoula, LA	0.8237
Claiborne, LA	0.8237
Concordia, LA	0.8237
De Soto, LA	0.8237
East Carroll, LA	0.8237
East Feliciana, LA	0.8237
Evangeline, LA	0.8237
Franklin, LA	0.8237
Grant, LA	0.8237
Iberia, LA	0.8237
Iberville, LA	0.8237
Jackson, LA	0.8237
Jefferson Davis, LA	0.8237
La Salle, LA	0.8237
Lincoln, LA	0.8237
Madison, LA	0.8237
Morehouse, LA	0.8237
Natchitoches, LA	0.8237
Pointe Coupee, LA	0.8237
Red River, LA	0.8237

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Richland, LA	0.8237
Sabine, LA	0.8237
St. Helena, LA	0.8237
St. Mary, LA	0.8237
Tangipahoa, LA	0.8237
Tensas, LA	0.8237
Union, LA	0.8237
Vermilion, LA	0.8237
Vernon, LA	0.8237
Washington, LA	0.8237
West Carroll, LA	0.8237
West Feliciana, LA	0.8237
Winn, LA	0.8237
Maine:	
Aroostook, ME	0.8737
Franklin, ME	0.8737
Hancock, ME	0.8737
Kennebec, ME	0.8737
Knox, ME	0.8737
Lincoln, ME	0.8737
Oxford, ME	0.8737
Piscataquis, ME	0.8737
Somerset, ME	0.8737
Waldo, ME	0.8737
Washington, ME	0.8737
Maryland:	
Caroline, MD	0.9212
Dorchester, MD	0.9212
Garrett, MD	0.9212
Kent, MD	0.9212
St. Marys, MD	0.9212
Somerset, MD	0.9212
Talbot, MD	0.9212
Wicomico, MD	0.9212
Worcester, MD	0.9212
Massachusetts:	
Dukes, MA	1.0280
Franklin, MA	1.0280
Nantucket, MA	1.0280
Michigan:	
Alcona, MI	0.9451.
Alger, MI	0.9451.
Alpena, MI	0.9451.
Antrim, MI	0.9451.
Arenac, MI	0.9451.
Baraga, MI	0.9451.
Barry, MI	0.9451.
Benzie, MI	0.9451.
Branch, MI	0.9451.
Cass, MI	0.9451.
Charlevoix, MI	0.9451.
Cheboygan, MI	0.9451.
Chippewa, MI	0.9451.
Clare, MI	0.9451.
Crawford, MI	0.9451.
Delta, MI	0.9451.
Dickinson, MI	0.9451.
Emmet, MI	0.9451.
Gladwin, MI	0.9451.
Gogebic, MI	0.9451.
Grand Traverse, MI	0.9451.
Gratiot, MI	0.9451.
Hillsdale, MI	0.9451.
Houghton, MI	0.9451.
Huron, MI	0.9451.
Ionia, MI	0.9451.
Iosco, MI	0.9451.
Iron, MI	0.9451.
Isabella, MI	0.9451.
Kalkaska, MI	0.9451.

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Keweenaw, MI	0.9451.
Lake, MI	0.9451.
Leelanau, MI	0.9451.
Luce, MI	0.9451.
Mackinac, MI	0.9451.
Manistee, MI	0.9451.
Marquette, MI	0.9451.
Mason, MI	0.9451.
Mecosta, MI	0.9451.
Menominee, MI	0.9451.
Missaukee, MI	0.9451.
Montcalm, MI	0.9451.
Montmorency, MI	0.9451.
Newaygo, MI	0.9451.
Oceana, MI	0.9451.
Ogemaw, MI	0.9451.
Ontonagon, MI	0.9451.
Osceola, MI	0.9451.
Oscoda, MI	0.9451.
Otsego, MI	0.9451.
Presque Isle, MI	0.9451.
Roscommon, MI	0.9451.
St. Joseph, MI	0.9451.
Sanilac, MI	0.9451.
Schoolcraft, MI	0.9451.
Shiawassee, MI	0.9451.
Tuscola, MI	0.9451.
Wexford, MI	0.9451.
Minnesota:	
Aitkin, MN	0.8621.
Becker, MN	0.8621.
Beltrami, MN	0.8621.
Big Stone, MN	0.8621.
Blue Earth, MN	0.8621.
Brown, MN	0.8621.
Carlton, MN	0.8621.
Cass, MN	0.8621.
Chippewa, MN	0.8621.
Clearwater, MN	0.8621.
Cook, MN	0.8621.
Cottonwood, MN	0.8621.
Crow Wing, MN	0.8621.
Dodge, MN	0.8621.
Douglas, MN	0.8621.
Faribault, MN	0.8621.
Fillmore, MN	0.8621.
Freeborn, MN	0.8621.
Goodhue, MN	0.8621.
Grant, MN	0.8621
Hubbard, MN	0.8621
Itasca, MN	0.8621
Jackson, MN	0.8621
Kanabec, MN	0.8621
Kandiyohi, MN	0.8621
Kittson, MN	0.8621
Koochiching, MN	0.8621
Lac Qui Parle, MN	0.8621
Lake, MN	0.8621
Lake of Woods, MN	0.8621
Le Sueur, MN	0.8621
Lincoln, MN	0.8621
Lyon, MN	0.8621
McLeod, MN	0.8621
Mahnomen, MN	0.8621
Marshall, MN	0.8621
Martin, MN	0.8621
Meeker, MN	0.8621
Mille Lacs, MN	0.8621
Morrison, MN	0.8621
Mower, MN	0.8621

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Murray, MN	0.8621
Nicollet, MN	0.8621
Nobles, MN	0.8621
Norman, MN	0.8621
Otter Tail, MN	0.8621
Pennington, MN	0.8621
Pine, MN	0.8621
Pipestone, MN	0.8621
Pope, MN	0.8621
Red Lake, MN	0.8621
Redwood, MN	0.8621
Renville, MN	0.8621
Rice, MN	0.8621
Rock, MN	0.8621
Roseau, MN	0.8621
Sibley, MN	0.8621
Steele, MN	0.8621
Stevens, MN	0.8621
Swift, MN	0.8621
Todd, MN	0.8621
Traverse, MN	0.8621
Wabasha, MN	0.8621
Wadena, MN	0.8621
Waseca, MN	0.8621
Watonwan, MN	0.8621
Wilkin, MN	0.8621
Winona, MN	0.8621
Yellow Medicine, MN	0.8621
Mississippi:	
Adams, MS	0.7956
Alcorn, MS	0.7956
Amite, MS	0.7956
Attala, MS	0.7956
Benton, MS	0.7956
Bolivar, MS	0.7956
Calhoun, MS	0.7956
Carroll, MS	0.7956
Chickasaw, MS	0.7956
Choctaw, MS	0.7956
Claiborne, MS	0.7956
Clarke, MS	0.7956
Clay, MS	0.7956
Coahoma, MS	0.7956
Copiah, MS	0.7956
Covington, MS	0.7956
Franklin, MS	0.7956
George, MS	0.7956
Greene, MS	0.7956
Grenada, MS	0.7956
Holmes, MS	0.7956
Humphreys, MS	0.7956
Issaquena, MS	0.7956
Itawamba, MS	0.7956
Jasper, MS	0.7956
Jefferson, MS	0.7956
Jefferson Davis, MS	0.7956
Jones, MS	0.7956
Kemper, MS	0.7956
Lafayette, MS	0.7956
Lauderdale, MS	0.7956
Lawrence, MS	0.7956
Leake, MS	0.7956
Lee, MS	0.7956
Leflore, MS	0.7956
Lincoln, MS	0.7956
Lowndes, MS	0.7956
Marion, MS	0.7956
Marshall, MS	0.7956
Monroe, MS	0.7956
Montgomery, MS	0.7956

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Neshoba, MS	0.7956
Newton, MS	0.7956
Noxubee, MS	0.7956
Oktibbeha, MS	0.7956
Panola, MS	0.7956
Pearl River, MS	0.7956
Perry, MS	0.7956
Pike, MS	0.7956
Pontotoc, MS	0.7956
Prentiss, MS	0.7956
Quitman, MS	0.7956
Scott, MS	0.7956
Sharkey, MS	0.7956
Simpson, MS	0.7956
Smith, MS	0.7956
Stone, MS	0.7956
Sunflower, MS	0.7956
Tallahatchie, MS	0.7956
Tate, MS	0.7956
Tippah, MS	0.7956
Tishomingo, MS	0.7956
Tunica, MS	0.7956
Union, MS	0.7956
Walthall, MS	0.7956
Warren, MS	0.7956
Washington, MS	0.7956
Wayne, MS	0.7956
Webster, MS	0.7956
Wilkinson, MS	0.7956
Winston, MS	0.7956
Yalobusha, MS	0.7956
Yazoo, MS	0.7956
Missouri:	
Adair, MO	0.8198
Atchison, MO	0.8198
Audrain, MO	0.8198
Barry, MO	0.8198
Barton, MO	0.8198
Bates, MO	0.8198
Benton, MO	0.8198
Bollinger, MO	0.8198
Butler, MO	0.8198
Caldwell, MO	0.8198
Callaway, MO	0.8198
Camden, MO	0.8198
Cape Girardeau, MO	0.8198
Carroll, MO	0.8198
Carter, MO	0.8198
Cedar, MO	0.8198
Chariton, MO	0.8198
Clark, MO	0.8198
Cole, MO	0.8198
Cooper, MO	0.8198
Crawford, MO	0.8198
Dade, MO	0.8198
Dallas, MO	0.8198
Daviess, MO	0.8198
De Kalb, MO	0.8198
Dent, MO	0.8198
Douglas, MO	0.8198
Dunklin, MO	0.8198
Gasconade, MO	0.8198
Gentry, MO	0.8198
Grundy, MO	0.8198
Harrison, MO	0.8198
Henry, MO	0.8198
Hickory, MO	0.8198
Holt, MO	0.8198
Howard, MO	0.8198
Howell, MO	0.8198

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Iron, MO	0.8198
Johnson, MO	0.8198
Knox, MO	0.8198
Laclede, MO	0.8198
Lawrence, MO	0.8198
Lewis, MO	0.8198
Linn, MO	0.8198
Livingston, MO	0.8198
McDonald, MO	0.8198
Macon, MO	0.8198
Madison, MO	0.8198
Maries, MO	0.8198
Marion, MO	0.8198
Mercer, MO	0.8198
Miller, MO	0.8198
Mississippi, MO	0.8198
Moniteau, MO	0.8198
Monroe, MO	0.8198
Montgomery, MO	0.8198
Morgan, MO	0.8198
New Madrid, MO	0.8198
Nodaway, MO	0.8198
Oregon, MO	0.8198
Osage, MO	0.8198
Ozark, MO	0.8198
Pemiscot, MO	0.8198
Perry, MO	0.8198
Pettis, MO	0.8198
Phelps, MO	0.8198
Pike, MO	0.8198
Polk, MO	0.8198
Pulaski, MO	0.8198
Putnam, MO	0.8198
Ralls, MO	0.8198
Randolph, MO	0.8198
Reynolds, MO	0.8198
Ripley, MO	0.8198
St. Clair, MO	0.8198
St. Genevieve, MO	0.8198
St. Francois, MO	0.8198
Saline, MO	0.8198
Schuyler, MO	0.8198
Scotland, MO	0.8198
Scott, MO	0.8198
Shannon, MO	0.8198
Shelby, MO	0.8198
Stoddard, MO	0.8198
Stone, MO	0.8198
Sullivan, MO	0.8198
Taney, MO	0.8198
Texas, MO	0.8198
Vernon, MO	0.8198
Washington, MO	0.8198
Wayne, MO	0.8198
Worth, MO	0.8198
Wright, MO	0.8198
Montana:	
Beaverhead, MT	0.8689
Big Horn, MT	0.8689
Blaine, MT	0.8689
Broadwater, MT	0.8689
Carbon, MT	0.8689
Carter, MT	0.8689
Chouteau, MT	0.8689
Custer, MT	0.8689
Daniels, MT	0.8689
Dawson, MT	0.8689
Deer Lodge, MT	0.8689
Fallon, MT	0.8689
Fergus, MT	0.8689

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Flathead, MT	0.8689
Gallatin, MT	0.8689
Garfield, MT	0.8689
Glacier, MT	0.8689
Golden Valley, MT	0.8689
Granite, MT	0.8689
Hill, MT	0.8689
Jefferson, MT	0.8689
Judith Basin, MT	0.8689
Lake, MT	0.8689
Lewis and Clark, MT	0.8689
Liberty, MT	0.8689
Lincoln, MT	0.8689
McCone, MT	0.8689
Madison, MT	0.8689
Meagher, MT	0.8689
Mineral, MT	0.8689
Missoula, MT	0.8689
Musselshell, MT	0.8689
Park, MT	0.8689
Petroleum, MT	0.8689
Phillips, MT	0.8689
Pondera, MT	0.8689
Powder River, MT	0.8689
Powell, MT	0.8689
Prairie, MT	0.8689
Ravalli, MT	0.8689
Richland, MT	0.8689
Roosevelt, MT	0.8689
Rosebud, MT	0.8689
Sanders, MT	0.8689
Sheridan, MT	0.8689
Silver Bow, MT	0.8689
Stillwater, MT	0.8689
Sweet Grass, MT	0.8689
Teton, MT	0.8689
Toole, MT	0.8689
Treasure, MT	0.8689
Valley, MT	0.8689
Wheatland, MT	0.8689
Wibaux, MT	0.8689
Yellowstone Natl Park, MT	0.8689
Nebraska:	
Adams, NE	0.8000
Antelope, NE	0.8000
Arthur, NE	0.8000
Banner, NE	0.8000
Blaine, NE	0.8000
Boone, NE	0.8000
Box Butte, NE	0.8000
Boyd, NE	0.8000
Brown, NE	0.8000
Buffalo, NE	0.8000
Burt, NE	0.8000
Butler, NE	0.8000
Cedar, NE	0.8000
Chase, NE	0.8000
Cherry, NE	0.8000
Cheyenne, NE	0.8000
Clay, NE	0.8000
Colfax, NE	0.8000
Cuming, NE	0.8000
Custer, NE	0.8000
Dawes, NE	0.8000
Dawson, NE	0.8000
Deuel, NE	0.8000
Dixon, NE	0.8000
Dodge, NE	0.8000
Dundy, NE	0.8000
Fillmore, NE	0.8000

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Franklin, NE	0.8000
Frontier, NE,	0.8000
Furnas, NE	0.8000
Gage, NE	0.8000
Garden, NE	0.8000
Garfield, NE	0.8000
Gosper, NE	0.8000
Grant, NE	0.8000
Greeley, NE	0.8000
Hall, NE	0.8000
Hamilton, NE	0.8000
Harlan, NE	0.8000
Hayes, NE	0.8000
Hitchcock, NE	0.8000
Holt, NE	0.8000
Hooker, NE	0.8000
Howard, NE	0.8000
Jefferson, NE	0.8000
Johnson, NE	0.8000
Kearney, NE	0.8000
Keith, NE	0.8000
Keya Paha, NE	0.8000
Kimball, NE	0.8000
Knox, NE	0.8000
Lincoln, NE	0.8000
Logan, NE	0.8000
Loup, NE	0.8000
McPherson, NE	0.8000
Madison, NE	0.8000
Merrick, NE	0.8000
Morrill, NE	0.8000
Nance, NE	0.8000
Nemaha, NE	0.8000
Nuckolls, NE	0.8000
Otoe, NE	0.8000
Pawnee, NE	0.8000
Perkins, NE	0.8000
Phelps, NE	0.8000
Pierce, NE	0.8000
Platte, NE	0.8000
Polk, NE	0.8000
Red Willow, NE	0.8000
Richardson, NE	0.8000
Rock, NE	0.8000
Saline, NE	0.8000
Saunders, NE	0.8000
Scott Bluff, NE	0.8000
Seward, NE	0.8000
Sheridan, NE	0.8000
Sherman, NE	0.8000
Sioux, NE	0.8000
Stanton, NE	0.8000
Thayer, NE	0.8000
Thomas, NE	0.8000
Thurston, NE	0.8000
Valley, NE	0.8000
Wayne, NE	0.8000
Webster, NE	0.8000
Wheeler, NE	0.8000
York, NE	0.8000
Nevada:	
Churchill, NV	0.9918
Douglas, NV	0.9918
Elko, NV	0.9918
Esmeralda, NV	0.9918
Eureka, NV	0.9918
Humboldt, NV	0.9918
Lander, NV	0.9918
Lincoln, NV	0.9918
Lyon, NV	0.9918

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Mineral, NV	0.9918
Pershing, NV	0.9918
Storey, NV	0.9918
White Pine, NV	0.9918
Carson City, NV	0.9918
New Hampshire:	
Belknap, NH	1.0345
Carroll, NH	1.0345
Cheshire, NH	1.0345
Coos, NH	1.0345
Grafton, NH	1.0345
Sullivan, NH	1.0345
New Mexico:	
Catron, NM	0.9002
Chaves, NM	0.9002
Cibola, NM	0.9002
Colfax, NM	0.9002
Curry, NM	0.9002
De Baca, NM	0.9002
Eddy, NM	0.9002
Grant, NM	0.9002
Guadalupe, NM	0.9002
Harding, NM	0.9002
Hidalgo, NM	0.9002
Lea, NM	0.9002
Lincoln, NM	0.9002
Luna, NM	0.9002
McKinley, NM	0.9002
Mora, NM	0.9002
Otero, NM	0.9002
Quay, NM	0.9002
Rio Arriba, NM	0.9002
Roosevelt, NM	0.9002
San Juan, NM	0.9002
San Miguel, NM	0.9002
Sierra, NM	0.9002
Socorro, NM	0.9002
Taos, NM	0.9002
Torrance, NM	0.9002
Union, NM	0.9002
New York:	
Allegany, NY	0.8845
Cattaraugus, NY	0.8845
Chenango, NY	0.8845
Clinton, NY	0.8845
Columbia, NY	0.8845
Cortland, NY	0.8845
Delaware, NY	0.8845
Essex, NY	0.8845
Franklin, NY	0.8845
Fulton, NY	0.8845
Greene, NY	0.8987
Hamilton, NY	0.8845
Jefferson, NY	0.8845
Lewis, NY	0.8845
Otsego, NY	0.8845
St Lawrence, NY	0.8845
Schuyler, NY	0.8845
Seneca, NY	0.8845
Steuben, NY	0.8845
Sullivan, NY	0.8845
Tompkins, NY	0.8845
Ulster, NY	0.8845
Wyoming, NY	0.8845
Yates, NY	0.8845
North Carolina:	
Alleghany, NC	0.8488
Anson, NC	0.8488
Ashe, NC	0.8488
Avery, NC	0.8488

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Beaufort, NC	0.8488
Bertie, NC	0.8488
Bladen, NC	0.8488
Camden, NC	0.8488
Carteret, NC	0.8488
Caswell, NC	0.8488
Cherokee, NC	0.8488
Chowan, NC	0.8488
Clay, NC	0.8488
Cleveland, NC	0.8488
Columbus, NC	0.8488
Craven, NC	0.8488
Dare, NC	0.8488
Duplin, NC	0.8488
Gates, NC	0.8488
Graham, NC	0.8488
Granville, NC	0.8488
Greene, NC	0.8488
Halifax, NC	0.8488
Harnett, NC	0.8488
Haywood, NC	0.8488
Henderson, NC	0.8488
Hertford, NC	0.8488
Hoke, NC	0.8488
Hyde, NC	0.8488
Iredell, NC	0.8488
Jackson, NC	0.8488
Jones, NC	0.8488
Lee, NC	0.8488
Lenoir, NC	0.8488
McDowell, NC	0.8488
Macon, NC	0.8488
Martin, NC	0.8488
Mitchell, NC	0.8488
Montgomery, NC	0.8488
Moore, NC	0.8488
Northampton, NC	0.8488
Pamlico, NC	0.8488
Pasquotank, NC	0.8488
Pender, NC	0.8488
Perquimans, NC	0.8488
Person, NC	0.8488
Polk, NC	0.8488
Richmond, NC	0.8488
Robeson, NC	0.8488
Rockingham, NC	0.8488
Rutherford, NC	0.8488
Sampson, NC	0.8488
Scotland, NC	0.8488
Stanly, NC	0.8488
Surry, NC	0.8488
Swain, NC	0.8488
Transylvania, NC	0.8488
Tyrrell, NC	0.8488
Vance, NC	0.8488
Warren, NC	0.8488
Washington, NC	0.8488
Watauga, NC	0.8488
Wilkes, NC	0.8488
Wilson, NC	0.8488
Yancey, NC	0.8488
North Dakota:	
Adams, ND	0.8217
Barnes, ND	0.8217
Benson, ND	0.8217
Billings, ND	0.8217
Bottineau, ND	0.8217
Bowman, ND	0.8217
Burke, ND	0.8217
Cavalier, ND	0.8217

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Dickey, ND	0.8217
Divide, ND	0.8217
Dunn, ND	0.8217
Eddy, ND	0.8217
Emmons, ND	0.8217
Foster, ND	0.8217
Golden Valley, ND	0.8217
Grant, ND	0.8217
Griggs, ND	0.8217
Hettinger, ND	0.8217
Kidder, ND	0.8217
La Moure, ND	0.8217
Logan, ND	0.8217
McHenry, ND	0.8217
McIntosh, ND	0.8217
McKenzie, ND	0.8217
McLean, ND	0.8217
Mercer, ND	0.8217
Mountrail, ND	0.8217
Nelson, ND	0.8217
Oliver, ND	0.8217
Pembina, ND	0.8217
Pierce, ND	0.8217
Ramsey, ND	0.8217
Ransom, ND	0.8217
Renville, ND	0.8217
Richland, ND	0.8217
Rolette, ND	0.8217
Sargent, ND	0.8217
Sheridan, ND	0.8217
Sioux, ND	0.8217
Slope, ND	0.8217
Stark, ND	0.8217
Steele, ND	0.8217
Stutsman, ND	0.8217
Towner, ND	0.8217
Traill, ND	0.8217
Walsh, ND	0.8217
Ward, ND	0.8217
Wells, ND	0.8217
Williams, ND	0.8217
Ohio:	
Adams, OH	0.9063
Ashland, OH	0.9063
Athens, OH	0.9063
Champaign, OH	0.9063
Clinton, OH	0.9063
Coshocton, OH	0.9063
Darke, OH	0.9063
Defiance, OH	0.9063
Erie, OH	0.9063
Fayette, OH	0.9063
Gallia, OH	0.9063
Guernsey, OH	0.9063
Hancock, OH	0.9063
Hardin, OH	0.9063
Harrison, OH	0.9063
Henry, OH	0.9063
Highland, OH	0.9063
Hocking, OH	0.9063
Holmes, OH	0.9063
Huron, OH	0.9063
Jackson, OH	0.9063
Knox, OH	0.9063
Logan, OH	0.9063
Marion, OH	0.9063
Meigs, OH	0.9063
Mercer, OH	0.9063
Monroe, OH	0.9063
Morgan, OH	0.9063

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Morrow, OH	0.9063
Muskingum, OH	0.9063
Noble, OH	0.9063
Ottawa, OH	0.9063
Paulding, OH	0.9063
Perry, OH	0.9063
Pike, OH	0.9063
Preble, OH	0.9063
Putnam, OH	0.9063
Ross, OH	0.9063
Sandusky, OH	0.9063
Scioto, OH	0.9063
Seneca, OH	0.9063
Shelby, OH	0.9063
Tuscarawas, OH	0.9063
Union, OH	0.9933
Van Wert, OH	0.9063
Vinton, OH	0.9063
Wayne, OH	0.9063
Williams, OH	0.9063
Wyandot, OH	0.9063
Oklahoma:	
Adair, OK	0.8395
Alfalfa, OK	0.8395
Atoka, OK	0.8395
Beaver, OK	0.8395
Beckham, OK	0.8395
Blaine, OK	0.8395
Bryan, OK	0.8395
Caddo, OK	0.8395
Carter, OK	0.8395
Cherokee, OK	0.8395
Choctaw, OK	0.8395
Cimarron, OK	0.8395
Coal, OK	0.8395
Cotton, OK	0.8395
Craig, OK	0.8395
Custer, OK	0.8395
Delaware, OK	0.8395
Dewey, OK	0.8395
Ellis, OK	0.8395
Garvin, OK	0.8395
Grady, OK	0.8395
Grant, OK	0.8395
Greer, OK	0.8395
Harmon, OK	0.8395
Harper, OK	0.8395
Haskell, OK	0.8395
Hughes, OK	0.8395
Jackson, OK	0.8395
Jefferson, OK	0.8395
Johnston, OK	0.8395
Kay, OK	0.8395
Kingfisher, OK	0.8395
Kiowa, OK	0.8395
Latimer, OK	0.8395
Le Flore, OK	0.8395
Lincoln, OK	0.8395
Love, OK	0.8395
McCurtain, OK	0.8395
McIntosh, OK	0.8395
Major, OK	0.8395
Marshall, OK	0.8395
Mayes, OK	0.8395
Murray, OK	0.8395
Muskogee, OK	0.8395
Noble, OK	0.8395
Nowata, OK	0.8395
Okfuskee, OK	0.8395
Okmulgee, OK	0.8395
Ottawa, OK	0.8395
Pawnee, OK	0.8395
Payne, OK	0.8395
Pittsburg, OK	0.8395
Pontotoc, OK	0.8395
Pushmataha, OK	0.8395
Roger Mills, OK	0.8395
Seminole, OK	0.8395
Stephens, OK	0.8395
Texas, OK	0.8395
Tillman, OK	0.8395
Washington, OK	0.8395
Washita, OK	0.8395
Woods, OK	0.8395
Woodward, OK	0.8395
Oregon:	
Baker, OR	0.9812
Benton, OR	0.9812
Clatsop, OR	0.9812
Coos, OR	0.9812
Crook, OR	0.9812
Curry, OR	0.9812
Deschutes, OR	0.9812
Douglas, OR	0.9812
Gilliam, OR	0.9812
Grant, OR	0.9812
Harney, OR	0.9812
Hood River, OR	0.9812
Jefferson, OR	0.9812
Josephine, OR	0.9812
Klamath, OR	0.9812
Lake, OR	0.9812
Lincoln, OR	0.9812
Linn, OR	0.9812
Malheur, OR	0.9812
Morrow, OR	0.9812
Sherman, OR	0.9812
Tillamook, OR	0.9812
Umatilla, OR	0.9812
Union, OR	0.9812
Wallowa, OR	0.9812
Wasco, OR	0.9812
Wheeler, OR	0.9812
Pennsylvania:	
Adams, PA	0.9895
Armstrong, PA	0.9910
Bedford, PA	0.9910
Bradford, PA	0.9910
Cameron, PA	0.9910
Clarion, PA	0.9910
Clearfield, PA	0.9910
Clinton, PA	0.9910
Crawford, PA	0.9910
Elk, PA	0.9910
Forest, PA	0.9910
Franklin, PA	0.9910
Fulton, PA	0.9910
Greene, PA	0.9910
Huntingdon, PA	0.9910
Indiana, PA	0.9910
Jefferson, PA	0.9910
Juniata, PA	0.9910
Lawrence, PA	0.9910
McKean, PA	0.9910
Mifflin, PA	0.9910
Monroe, PA	0.9524
Montour, PA	0.9910
Northumberland, PA	0.9910
Potter, PA	0.9910
Schuylkill, PA	0.9910
Snyder, PA	0.9910
Sullivan, PA	0.9910
Tioga, PA	0.9910
Susquehanna, PA	0.9910
Union, PA	0.9910
Venango, PA	0.9910
Warren, PA	0.9910
Wayne, PA	0.9910
Puerto Rico:	
Adjuntas, PR	0.6936
Aibonito, PR	0.6936
Arroyo, PR	0.6936
Barranquitas, PR	0.6936
Ciales, PR	0.6936
Coamo, PR	0.6936
Culebra, PR	0.6936
Guanica, PR	0.6936
Guayama, PR	0.6936
Isabela, PR	0.6936
Jayuya, PR	0.6936
Lajas, PR	0.6936
Lares, PR	0.6936
Las Marias, PR	0.6936
Maricao, PR	0.6936
Maunabo, PR	0.6936
Orocovis, PR	0.6936
Patillas, PR	0.6936
Quebradillas, PR	0.6936
Rincon, PR	0.6936
Salinas, PR	0.6936
San Sebastian, PR	0.6936
Santa Isabel, PR	0.6936
Utuado, PR	0.6936
Vieques, PR	0.6936
Puerto Rico, Nfd, PR	0.6936
South Carolina:	
Abbeville, SC	0.8058
Allendale, SC	0.8058
Bamberg, SC	0.8058
Barnwell, SC	0.8058
Beaufort, SC	0.8058
Calhoun, SC	0.8058
Chester, SC	0.8058
Chesterfield, SC	0.8058
Clarendon, SC	0.8058
Colleton, SC	0.8058
Darlington, SC	0.8058
Dillon, SC	0.8058
Fairfield, SC	0.8058
Georgetown, SC	0.8058
Greenwood, SC	0.8058
Hampton, SC	0.8058
Jasper, SC	0.8058
Kershaw, SC	0.8058
Lancaster, SC	0.8058
Laurens, SC	0.8058
Lee, SC	0.8058
McCormick, SC	0.8058
Marion, SC	0.8058
Marlboro, SC	0.8058
Newberry, SC	0.8058
Oconee, SC	0.8058
Orangeburg, SC	0.8058
Saluda, SC	0.8058
Union, SC	0.8058
Williamsburg, SC	0.8058
South Dakota:	
Aurora, SD	0.8000
Beadle, SD	0.8000
Bennett, SD	0.8000

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Bon Homme, SD	0.8000
Brookings, SD	0.8000
Brown, SD	0.8000
Brule, SD	0.8000
Buffalo, SD	0.8000
Butte, SD	0.8000
Campbell, SD	0.8000
Charles Mix, SD	0.8000
Clark, SD	0.8000
Clay, SD	0.8000
Codington, SD	0.8000
Corson, SD	0.8000
Custer, SD	0.8000
Davison, SD	0.8000
Day, SD	0.8000
Deuel, SD	0.8000
Dewey, SD	0.8000
Douglas, SD	0.8000
Edmunds, SD	0.8000
Fall River, SD	0.8000
Faulk, SD	0.8000
Grant, SD	0.8000
Gregory, SD	0.8000
Haakon, SD	0.8000
Hamlin, SD	0.8000
Hand, SD	0.8000
Hanson, SD	0.8000
Harding, SD	0.8000
Hughes, SD	0.8000
Hutchinson, SD	0.8000
Hyde, SD	0.8000
Jackson, SD	0.8000
Jerauld, SD	0.8000
Jones, SD	0.8000
Kingsbury, SD	0.8000
Lake, SD	0.8000
Lawrence, SD	0.8000
Lyman, SD	0.8000
McCook, SD	0.8000
McPherson, SD	0.8000
Marshall, SD	0.8000
Meade, SD	0.8000
Mellette, SD	0.8000
Miner, SD	0.8000
Moody, SD	0.8000
Perkins, SD	0.8000
Potter, SD	0.8000
Roberts, SD	0.8000
Sanborn, SD	0.8000
Shannon, SD	0.8000
Spink, SD	0.8000
Stanley, SD	0.8000
Sully, SD	0.8000
Todd, SD	0.8000
Tripp, SD	0.8000
Turner, SD	0.8000
Union, SD	0.8000
Walworth, SD	0.8000
Washabaugh, SD	0.8000
Yankton, SD	0.8000
Ziebach, SD	0.8000
Tennessee:	
Bedford, TN	0.8000
Benton, TN	0.8000
Bledsoe, TN	0.8000
Bradley, TN	0.8000
Campbell, TN	0.8000
Cannon, TN	0.8000
Carroll, TN	0.8000
Chester, TN	0.8000

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Claiborne, TN	0.8000
Clay, TN	0.8000
Cocke, TN	0.8000
Coffee, TN	0.8000
Crockett, TN	0.8000
Cumberland, TN	0.8000
Decatur, TN	0.8000
DeKalb, TN	0.8000
Dyer, TN	0.8000
Fentress, TN	0.8000
Franklin, TN	0.8000
Gibson, TN	0.8000
Giles, TN	0.8000
Grainger, TN	0.8791
Greene, TN	0.8000
Grundy, TN	0.8000
Hamblen, TN	0.8000
Hancock, TN	0.8000
Hardeman, TN	0.8000
Hardin, TN	0.8000
Haywood, TN	0.8000
Henderson, TN	0.8000
Henry, TN	0.8000
Hickman, TN	0.8000
Houston, TN	0.8000
Humphreys, TN	0.8000
Jackson, TN	0.8000
Jefferson, TN	0.8791
Johnson, TN	0.8000
Lake, TN	0.8000
Lauderdale, TN	0.8000
Lawrence, TN	0.8000
Lewis, TN	0.8000
Lincoln, TN	0.8000
McMinn, TN	0.8000
McNairy, TN	0.8000
Macon, TN	0.8000
Marshall, TN	0.8000
Maury, TN	0.8000
Meigs, TN	0.8000
Monroe, TN	0.8000
Moore, TN	0.8000
Morgan, TN	0.8000
Obion, TN	0.8000
Overton, TN	0.8000
Perry, TN	0.8000
Pickett, TN	0.8000
Polk, TN	0.8000
Putnam, TN	0.8000
Rhea, TN	0.8000
Roane, TN	0.8000
Scott, TN	0.8000
Sequatchie, TN	0.9114
Smith, TN	0.8000
Stewart, TN	0.8000
Trousdale, TN	0.8000
Van Buren, TN	0.8000
Warren, TN	0.8000
Wayne, TN	0.8000
Weakley, TN	0.8000
White, TN	0.8000
Texas:	
Anderson, TX	0.8082
Andrews, TX	0.8082
Angelina, TX	0.8082
Aransas, TX	0.8082
Armstrong, TX	0.8082
Atascosa, TX	0.8082
Austin, TX	0.8082
Bailey, TX	0.8082

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Bandera, TX	0.8082
Baylor, TX	0.8082
Bee, TX	0.8082
Blanco, TX	0.8082
Borden, TX	0.8082
Bosque, TX	0.8082
Brewster, TX	0.8082
Briscoe, TX	0.8082
Brooks, TX	0.8082
Brown, TX	0.8082
Burleson, TX	0.8082
Burnet, TX	0.8082
Calhoun, TX	0.8082
Callahan, TX	0.8082
Camp, TX	0.8082
Carson, TX	0.8082
Cass, TX	0.8082
Castro, TX	0.8082
Cherokee, TX	0.8082
Childress, TX	0.8082
Clay, TX	0.8082
Cochran, TX	0.8082
Coke, TX	0.8082
Coleman, TX	0.8082
Collingsworth, TX	0.8082
Colorado, TX	0.8082
Comanche, TX	0.8082
Concho, TX	0.8082
Cooke, TX	0.8082
Cottle, TX,	0.8082
Crane, TX	0.8082
Crockett, TX	0.8082
Crosby, TX	0.8082
Culberson, TX	0.8082
Dallam, TX	0.8082
Dawson, TX	0.8082
Deaf Smith, TX	0.8082
Delta, TX	0.8082
De Witt, TX	0.8082
Dickens, TX	0.8082
Dimmit, TX	0.8082
Donley, TX	0.8082
Duval, TX	0.8082
Eastland, TX	0.8082
Edwards, TX	0.8082
Erath, TX	0.8082
Falls, TX	0.8082
Fannin, TX	0.8082
Fayette, TX	0.8082
Fisher, TX	0.8082
Floyd, TX	0.8082
Foard, TX	0.8082
Franklin, TX	0.8082
Freestone, TX	0.8082
Frio, TX	0.8082
Gaines, TX	0.8082
Garza, TX	0.8082
Gillespie, TX	0.8082
Glasscock, TX	0.8082
Goliad, TX	0.8082
Gonzales, TX	0.8082
Gray, TX	0.8082
Grimes, TX	0.8082
Hale, TX	0.8082
Hall, TX	0.8082
Hamilton, TX	0.8082
Hansford, TX	0.8082
Hardeman, TX	0.8082
Hartley, TX	0.8082
Haskell, TX	0.8082

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Hemphill, TX	0.8082
Hill, TX	0.8082
Hockley, TX	0.8082
Hopkins, TX	0.8082
Houston, TX	0.8082
Howard, TX	0.8082
Hudspeth, TX	0.8082
Hutchinson, TX	0.8082
Irion, TX	0.8082
Jack, TX	0.8082
Jackson, TX	0.8082
Jasper, TX	0.8082
Jeff Davis, TX	0.8082
Jim Hogg, TX	0.8082
Jim Wells, TX	0.8082
Jones, TX	0.8082
Karnes, TX	0.8082
Kendall, TX	0.8082
Kenedy, TX	0.8082
Kent, TX	0.8082
Kerr, TX	0.8082
Kimble, TX	0.8082
King, TX	0.8082
Kinney, TX	0.8082
Kleberg, TX	0.8082
Knox, TX	0.8082
Lamar, TX	0.8082
Lamb, TX	0.8082
Lampasas, TX	0.8082
La Salle, TX	0.8082
Lavaca, TX	0.8082
Lee, TX	0.8082
Leon, TX	0.8082
Limestone, TX	0.8082
Lipscomb, TX	0.8082
Live Oak, TX	0.8082
Llano, TX	0.8082
Loving, TX	0.8082
Lynn, TX	0.8082
McCulloch, TX	0.8082
McMullen, TX	0.8082
Madison, TX	0.8082
Marion, TX	0.8082
Martin, TX	0.8082
Mason, TX	0.8082
Matagorda, TX	0.8082
Maverick, TX	0.8082
Medina, TX	0.8082
Menard, TX	0.8082
Milam, TX	0.8082
Mills, TX	0.8082
Mitchell, TX	0.8082
Montague, TX	0.8082
Moore, TX	0.8082
Morris, TX	0.8082
Motley, TX	0.8082
Nacogdoches, TX,	0.8082
Navarro, TX	0.8082
Newton, TX	0.8082
Nolan, TX	0.8082
Ochiltree, TX	0.8082
Oldham, TX	0.8082
Palo Pinto, TX	0.8082
Panola, TX	0.8082
Parmer, TX	0.8082
Pecos, TX	0.8082
Polk, TX	0.8082
Presidio, TX	0.8082
Rains, TX	0.8082
Reagan, TX	0.8082

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Real, TX	0.8082
Red River, TX	0.8082
Reeves, TX	0.8082
Refugio, TX	0.8082
Roberts, TX	0.8082
Robertson, TX	0.8082
Runnels, TX	0.8082
Rusk, TX	0.8082
Sabine, TX	0.8082
San Augustine, TX	0.8082
San Jacinto, TX	0.8082
San Saba, TX	0.8082
Schleicher, TX	0.8082
Scurry, TX	0.8082
Shackelford, TX	0.8082
Shelby, TX	0.8082
Sherman, TX	0.8082
Somervell, TX	0.8082
Starr, TX	0.8082
Stephens, TX	0.8082
Sterling, TX	0.8082
Stonewall, TX	0.8082
Sutton, TX	0.8082
Swisher, TX	0.8082
Terrell, TX	0.8082
Terry, TX	0.8082
Throckmorton, TX	0.8082
Titus, TX	0.8082
Trinity, TX	0.8082
Tyler, TX	0.8082
Upton, TX	0.8082
Uvalde, TX	0.8082
Val Verde, TX	0.8082
Van Zandt, TX	0.8082
Walker, TX	0.8082
Ward, TX	0.8082
Washington, TX	0.8082
Wharton, TX	0.8082
Wheeler, TX	0.8082
Wilbarger, TX	0.8082
Willacy, TX	0.8082
Winkler, TX	0.8082
Wise, TX	0.8082
Wood, TX	0.8082
Yoakum, TX	0.8082
Young, TX	0.8082
Zapata, TX	0.8082
Zavala, TX	0.8082
Utah:	
Beaver, UT	0.8634
Box Elder, UT	0.8634
Cache, UT	0.8634
Carbon, UT	0.8634
Daggett, UT	0.8634
Duchesne, UT	0.8634
Emery, UT	0.8634
Garfield, UT	0.8634
Grand, UT	0.8634
Iron, UT	0.8634
Juab, UT	0.8634
Millard, UT	0.8634
Morgan, UT	0.8634
Piute, UT	0.8634
Rich, UT	0.8634
San Juan, UT	0.8634
Sanpete, UT	0.8634
Sevier, UT	0.8634
Summit, UT	0.8634
Tooele, UT	0.8634
Uintah, UT	0.8634

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Wasatch, UT	0.8634
Washington, UT	0.8634
Wayne, UT	0.8634
Vermont:	
Addison, VT	0.9012
Bennington, VT	0.9012
Caledonia, VT	0.9012
Essex, VT	0.9012
Lamoille, VT	0.9012
Orange, VT	0.9012
Orleans, VT	0.9012
Rutland, VT	0.9012
Washington, VT	0.9012
Windham, VT	0.9012
Windsor, VT	0.9012
Virgin Islands	0.6594
Virginia:	
Accomack, VA	0.8346
Alleghany, VA	0.8346
Amelia, VA	0.8346
Appomattox, VA	0.8346
Augusta, VA	0.8346
Bath, VA	0.8346
Bland, VA	0.8346
Brunswick, VA	0.8346
Buchanan, VA	0.8346
Buckingham, VA	0.8346
Caroline, VA	0.8346
Carroll, VA	0.8346
Charlotte, VA	0.8346
Craig, VA	0.8346
Cumberland, VA	0.8346
Dickenson, VA	0.8346
Essex, VA	0.8346
Floyd, VA	0.8346
Franklin, VA	0.8346
Frederick, VA	0.8346
Giles, VA	0.8346
Grayson, VA	0.8346
Greensville, VA	0.8346
Halifax, VA	0.8346
Henry, VA	0.8346
Highland, VA	0.8346
King and Queen, VA	0.8346
King William, VA	0.8346
Lancaster, VA	0.8346
Lee, VA	0.8346
Louisa, VA	0.8346
Lunenburg, VA	0.8346
Madison, VA	0.8346
Mecklenburg, VA	0.8346
Middlesex, VA	0.8346
Montgomery, VA	0.8346
Nelson, VA	0.8346
Northampton, VA	0.8346
Northumberland, VA	0.8346
Nottoway, VA	0.8346
Orange, VA	0.8346
Page, VA	0.8346
Patrick, VA	0.8346
Prince Edward, VA	0.8346
Pulaski, VA	0.8346
Rappahannock, VA	0.8346
Richmond, VA	0.8346
Rockbridge, VA	0.8346
Rockingham, VA	0.8346
Russell, VA	0.8346
Shenandoah, VA	0.8346
Smyth, VA	0.8346
Southampton, VA	0.8346

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Surry, VA	0.8346
Sussex, VA	0.8346
Tazewell, VA	0.8346
Westmoreland, VA	0.8346
Wise, VA	0.8346
Wythe, VA	0.8346
Buena Vista City, VA	0.8346
Clifton Forge City, VA	0.8346
Covington City, VA	0.8346
Emporia City, VA	0.8346
Franklin City, VA	0.8346
Galax City, VA	0.8346
Harrisonburg City, VA	0.8346
Lexington City, VA	0.8346
Martinsville City, VA	0.8346
Nansemond City, VA	0.8346
Norton City, VA	0.8346
Radford City, VA	0.8346
South Boston City, VA	0.8346
Staunton City, VA	0.8346
Waynesboro City, VA	0.8346
Winchester City, VA	0.8346
Washington:	
Adams, WA	0.9850
Asotin, WA	0.9850
Chelan, WA	0.9850
Clallam, WA	0.9850
Columbia, WA	0.9850
Cowlitz, WA	0.9850
Douglas, WA	0.9850
Ferry, WA	0.9850
Garfield, WA	0.9850
Grant, WA	0.9850
Grays Harbor, WA	0.9850
Jefferson, WA	0.9850
Kittitas, WA	0.9850
Klickitat, WA	0.9850
Lewis, WA	0.9850
Lincoln, WA	0.9850
Mason, WA	0.9850
Okanogan, WA	0.9850
Pacific, WA	0.9850
Pend Oreille, WA	0.9850
San Juan, WA	0.9850
Skagit, WA	0.9850
Skamania, WA	0.9850
Stevens, WA	0.9850
Wahkiakum, WA	0.9850
Walla Walla, WA	0.9850
Whitman, WA	0.9850
West Virginia:	
Barbour, WV	0.8944
Boone, WV	0.8944
Braxton, WV	0.8944
Calhoun, WV	0.8944
Clay, WV	0.8944
Doddridge, WV	0.8944
Fayette, WV	0.8944
Gilmer, WV	0.8944
Grant, WV	0.8944
Greenbrier, WV	0.8944
Hampshire, WV	0.8944
Hardy, WV	0.8944
Harrison, WV	0.8944
Jackson, WV	0.8944
Lewis, WV	0.8944
Lincoln, WV	0.8944
Logan, WV	0.8944
McDowell, WV	0.8944
Marion, WV	0.8944

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Mason, WV	0.8944
Mercer, WV	0.8944
Mingo, WV	0.8944
Monongalia, WV	0.8944
Monroe, WV	0.8944
Morgan, WV	0.8944
Nicholas, WV	0.8944
Pendleton, WV	0.8944
Pleasants, WV	0.8944
Pocahontas, WV	0.8944
Preston, WV	0.8944
Raleigh, WV	0.8944
Randolph, WV	0.8944
Ritchie, WV	0.8944
Roane, WV	0.8944
Summers, WV	0.8944
Taylor, WV	0.8944
Tucker, WV	0.8944
Tyler, WV	0.8944
Upshur, WV	0.8944
Webster, WV	0.8944
Wetzel, WV	0.8944
Wirt, WV	0.8944
Wyoming, WV	0.8944
Wisconsin:	
Adams, WI	0.8524
Ashland, WI,	0.8524
Barron, WI	0.8524
Bayfield, WI	0.8524
Buffalo, WI	0.8524
Burnett, WI	0.8524
Clark, WI	0.8524
Columbia, WI	0.8524
Crawford, WI	0.8524
Dodge, WI	0.8524
Door, WI	0.8524
Dunn, WI	0.8524
Florence, WI	0.8524
Fond Du Lac, WI	0.8524
Forest, WI	0.8524
Grant, WI	0.8524
Green, WI	0.8524
Green Lake, WI	0.8524
Iowa, WI	0.8524
Iron, WI	0.8524
Jackson, WI	0.8524
Jefferson, WI	0.8524
Juneau, WI	0.8524
Kewaunee, WI	0.8524
Lafayette, WI	0.8524
Langlade, WI	0.8524
Lincoln, WI	0.8524
Manitowoc, WI	0.8524
Marinette, WI	0.8524
Marquette, WI	0.8524
Menomonee, WI	0.8524
Monroe, WI	0.8524
Oconto, WI	0.8524
Oneida, WI	0.8524
Pepin, WI	0.8524
Polk, WI	0.8524
Portage, WI	0.8524
Price, WI	0.8524
Richland, WI	0.8524
Rusk, WI	0.8524
Sauk, WI	0.8524
Sawyer, WI	0.8524
Shawano, WI	0.8524
Taylor, WI	0.8524
Trempealeau, WI	0.8524

TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Vernon, WI	0.8524
Vilas, WI	0.8524
Walworth, WI	0.8524
Washburn, WI	0.8524
Waupaca, WI	0.8524
Waushara, WI	0.8524
Wood, WI	0.8524
Wyoming:	
Albany, WY	0.9299
Big Horn, WY	0.9299
Campbell, WY	0.9299
Carbon, WY	0.9299
Converse, WY	0.9299
Crook, WY	0.9299
Fremont, WY	0.9299
Goshen, WY	0.9299
Hot Springs, WY	0.9299
Johnson, WY	0.9299
Lincoln, WY	0.9299
Niobrara, WY	0.9299
Park, WY	0.9299
Platte, WY	0.9299
Sheridan, WY	0.9299
Sublette, WY	0.9299
Sweetwater, WY	0.9299
Teton, WY	0.9299
Uinta, WY	0.9299
Washakie, WY	0.9299
Weston, WY	0.9299

[FR Doc 96–22375 Filed 9–3–96; 8:45 am]
BILLING CODE 4120–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 96–83; IB Docket No. 95–59; FCC 96–328]

Telecommunications Act of 1996; Preemption of Restrictions on Over-the-Air Reception Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice of Proposed Rulemaking seeks comment on the implementation of Section 207 as it relates to nongovernmental restrictions on property not within the exclusive use or control of the viewer and/or in which the viewer may not have a direct or indirect ownership interest. Section 207 directs that the Commission shall: "pursuant to Section 303 of the Communications Act, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint

distribution service or direct broadcast satellite services." This FNPRM will provide interested parties an opportunity to submit comments that will provide the Commission with a sufficient record on which to base ultimate regulations.

DATES: Interested parties may file comments to the FNPRM on or before September 27, 1996 and reply comments on or before October 28, 1996. Written comments by the public on the proposed and/or modified information collections are due on or before September 27, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before November 4, 1996.

ADDRESSES: An original and six copies of all comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Jacqueline Spindler of the Cable Services Bureau, 2033 M Street, N.W., Room 700, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20054, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain____t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's FNPRM in CS Docket No. 96–83, IB Docket No. 95–59, FCC No. 96–328, adopted August 5, 1996 and released August 6, 1996. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554. This FNPRM contains a proposed information collection subject to the Paperwork Reduction Act of 1995 (PRA). As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to comment on the information collection contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due on September 27, 1996; OMB comments are due 60 days from the date of publication in the **Federal Register**. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0707.

Title: Preemption of Restrictions on Over-the-Air Reception Devices—Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking.

Type of Review: Revision of an existing collection. The following are burden estimates for the Order portion of the document, as well as the Further Notice of Proposed Rulemaking portion of the document. We account for the burdens estimates separately. If, in a subsequent rulemaking, the proposed rules in the Further Notice of Proposed Rulemaking are not adopted in part or in whole, the Commission will adjust its burden estimates accordingly.

Respondents: State and local governments; small organizations; small businesses.

Number of Respondents for the Order: 248. (100 requests for declaratory rulings, 24 comments on requests, 100 petitions for waivers, 24 comments on petitions.)

Estimated Time Per Response for the Order: 2–5 hours.

Total Annual Burden for the Order: 844 hours. It is estimated that 50% of declaratory rulings will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hours = 100 hours. It is estimated that 50% of comments on declaratory rulings will be prepared without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hours = 24 hours. It is estimated that 50% of petitions for waivers will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hours = 100 hours. It is estimated that 50% of comments on waivers will be prepared without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hours = 24 hours.

Estimated Costs Per Respondent for the Order: It is estimated that 50 requests for declaratory rulings, 12 comments on requests for declaratory rulings, 50 petitions for waivers and 12 comments on petitions for waivers will be prepared each year through outside counsel. The estimated annual costs are $89,400, illustrated as follows: 50 declaratory rulings × 5 hours × $150/hr. = $37,500. 12 comments on declaratory rulings × 4 hours × $150/hr. = $7,200. 50 petitions for waivers × 5 hours × $150/hr. = $37,500. 12 comments on petitions for waivers × 4 hours × $150/hr. = $7,200.

Number of Respondents for the FNPRM: 248. (100 requests for declaratory rulings, 24 comments on requests, 100 petitions for wavers, 24 comments on petitions.)

Estimated Time Per Response for the FNPRM: 2–5 hours.

Total Annual Burden for the FNPRM: 844 hours. It is estimated that 50% of declaratory rulings will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hour = 100 hours. It is estimated that 50% of comments on declaratory rulings will be prepared

without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hour = 24 hours. It is estimated that 50% of petitions for waivers will be prepared without outside counsel with a burden of 5 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 50 (50% without outside counsel) × 5 hours = 250 hours. 50 (50% with outside counsel) × 2 hour = 100 hours. It is estimated that 50% of comments on waivers will be prepared without outside counsel with a burden of 4 hours each and 50% of parties will hire outside counsel. The estimated burden to coordinate information with outside counsel is 2 hours. 12 (50% without outside counsel) × 4 hours = 48 hours. 12 (50% with outside counsel) × 2 hour = 24 hours.

Estimated Costs Per Respondent for the FNPRM: It is estimated that 50 requests for declaratory rulings, 12 comments on requests for declaratory rulings, 50 petitions for waivers and 12 comments on petitions for waivers will be prepared each year through outside counsel. The estimated annual costs are $89,400, illustrated as follows: 50 declaratory rulings × 5 hours × $150/hr. = $37,500. 12 comments on declaratory rulings × 4 hours × $150/hr. = $7,200. 50 petitions for waivers × 5 hours × $150/hr. = $37,500. 12 comments on petitions for waivers × 4 hours × $150/hr. = $7,200.

Needs and Uses: Submitted information will be used to evaluate requests for declaratory ruling regarding the reasonableness of state, local and nongovernmental restrictions, or to requests for waiver of the rule.

I. Synopsis of Further Notice of Proposed Rulemaking

1. On February 8, 1996, the Telecommunications Act of 1996 ("1996 Act") became law. Section 207 of the 1996 Act directs that the Commission shall, "pursuant to Section 303 of the Communications Act, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services." On August 6, 1996, the Commission released a Report and Order implementing Section 207. In this Further Notice of Proposed Rulemaking (FNPRM) we seek comment on the implementation of Section 207 as it relates to restrictions on property not within the exclusive use or control of the viewer and/or in which the viewer may not have a direct or indirect ownership interest.

2. Neither the *DBS Order and FNPRM* nor the *TVBS–MMDS NPRM* specifically proposed rules to govern or sought comment on the question of whether the antenna restriction preemption rules should apply to the placement of antennas on rental and other property not within the exclusive control of a person with an ownership interest. As a consequence many of the specific practical problems of how possible regulations might apply were not commented on, nor were the policy and legal issues fully briefed. We conclude that the record before us at this time is incomplete and insufficient on the legal, technical and practical issues relating to whether, and if so how, to extend our rule to situations in which antennas may be installed on common property for the benefit of one with an ownership interest or on a landlord's property for the benefit of a renter. Accordingly, we request further comment on these issues. We invite comment on the potential for central reception facilities in situations where restrictions on individual antenna placement are preempted by the rules, and thus no involuntary use of common or landlord-owned property is involved. We seek comment on the technical and practical feasibility of an approach that would allow the placement of over-the-air reception devices on rental or commonly-owned property. In particular, we invite commenters to address technical and/or practical problems or any other considerations they believe the Commission should take into account in deciding whether to adopt such a rule and, if so, the form such a rule should take.

3. Specifically, we seek comment on the Commission's legal authority to prohibit nongovernmental restrictions that impair reception by viewers who do not have exclusive use or control and a direct or indirect ownership interest in the property. On the question of our legal authority, we note that in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the Supreme Court held that a state statute that allowed a cable operator to install its cable facilities on the landlord's property constituted a taking under the Fifth Amendment. In the same case, the Court stated, in dicta, that "a different question" might be presented if the statute required the landlord to provide cable installation desired by the tenant. *Id.* at 440 n.19. We therefore request comment on the question of whether adoption of a prohibition applicable to restrictions imposed on rental property or property not within the exclusive control of the viewer who has an ownership interest would constitute a taking under *Loretto*, for which just compensation would be required, and if so, what would constitute just compensation in these circumstances.

4. In this regard, we also request comment on how the case of *Bell Atlantic Telephone Companies* v. *FCC*, 24 F.3d 1441 (D.C. Cir. 1994), should affect the constitutional and legal analysis. In that case, the U.S. Court of Appeals for the District of Columbia invalidated Commission orders that permitted competitive access providers to locate their connecting transmission equipment in local exchange carrier central offices because these orders directly implicated the Just Compensation Clause of the Fifth Amendment.

II. Initial Regulatory Flexibility Analysis

5. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (1996), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the potential economic impact on small entities of the approach proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided above.

6. *Reason for Action.* The rulemaking is initiated to obtain comment on the implementation of Section 207 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56, as it applies to the installation, maintenance or use of antennas on common areas or rental properties, property not within the exclusive control of a person with an ownership interest, where a community association or landlord is legally responsible for maintenance and repair.

7. *Objectives.* The Commission seeks to evaluate whether preempting non-federal Restrictions on commonly owned property and property subject to lease agreements, would: (1) enhance viewers' ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals and multichannel multipoint distribution services; (2) provide an unreasonable management burden for parties owning and legally responsible for the property

at issue; and (3) result in the Commission exceeding its statutory authority and Congress' constitutional authority.

8. *Legal Basis.* The proposed action is authorized under Section 1 of the Communications Act of 1934, *as amended*, 47 U.S.C. § 151, and Section 207 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56.

9. *Reporting, Recordkeeping, and Other Compliance Requirements.* Depending on the outcome of the Further Notice of Proposed Rulemaking, neighborhood associations, property management companies and individual landlords promulgating regulations that restrict the installation, maintenance or use of devices designed for receiving over-the-air signals of DBS, MMDS and TVBS may, in certain circumstances, request declaratory rulings from the Commission that their regulations are reasonable, or petition the Commission for waiver of the rule.

10. *Federal Rules that Overlap, Duplicate or Conflict with These Requirements.* None.

11. *Description and Estimate of the Number of Small Entities Impacted.* The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and "the same meaning as the term 'small business concern' under section 3 of the Small Business Act." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA), 15 U.S.C. § 632. Neighborhood associations and property rental businesses may be affected by the ultimate outcome in the Further Notice of Proposed Rulemaking. These entities might need to revise their covenants and lease restrictions so that they conform with the rule.

12. Section 601(4) of the Regulatory Flexibility Act defines "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. § 601(4). This definition includes homeowner and condominium associations that operate as not-for-profit organizations. The Community Associations Institute estimates that there were 150,000 associations in 1993.

13. The U.S. Small Business Administration classifies a small entity as a firm with fewer than 500 employees. United States Small Business Administration, *A Guide to the Regulatory Flexibility Act*, App. A (1996). Utilizing the Standard Industrial Classification Codes for Real Estate Agents and Managers, 100,135 firms (of a total of 100,554) have fewer than 500 employees. United States Dept. of Commerce, Bureau of the Census, *1993 Census of Cable and Other Pay Television Services* (quoted by Dr. William Whiston, Chief, Research Contracts Branch, Office of Advocacy for the Small Business Administration, July 31, 1996). This number does include real estate agents, who would not be burdened by the proposed rule, but does not include sole proprietors engaged in leasing rental property, who might be burdened.

14. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives.* This Notice solicits comments on a general approach only.

III. Paperwork Reduction Act of 1995 Analysis

15. *Final Paperwork Reduction Act of 1995 Analysis.* This FNPRM has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain an information collection requirement on the public. Implementation of an information collection requirement is subject to approval by the Office of Management and Budget as prescribed by the Act.

16. This FNPRM contains a proposed/modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and OMB to comment on the information collection contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law No.104–13. Public and agency comments are due on September 27, 1996; OMB comments are due November 4, 1996. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

17. Written comments by the public on the modified information collections are due on September 27, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed collections on or before November 4, 1996. A copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington DC 20503 or via the Internet to fain_t@al.eop.gov.

IV. Procedural Provisions

18. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, provided that they are disclosed as provided in Commission's rules. *See generally* 47 CFR §§ 1.1202, 1.1206.

19. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before September 27, 1996, and reply comments on or before October 28, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Jacqueline Spindler of the Cable Services Bureau, 2033 M Street, N.W., Room 700, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

V. Ordering Clauses

20. It is ordered that pursuant to Sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303, and Section 207 of the Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56, notice is hereby given and comment is sought regarding the proposals, discussion, and statement of issues in the Further Notice of Proposed Rulemaking.

21. It is further ordered that the requirements and regulations

established in this decision shall become effective upon approval by the Office of Management and Budget (OMB) of the new information collection requirements adopted herein, but no sooner than October 4, 1996.

22. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission rules. *See generally*, 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

23. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before September 27, 1996, and reply comments on or before October 28, 1996. All pleadings must conform to Section 1.49(a) of the Commission's rules, 47 CFR § 1.49(a). To file formally in this proceeding, parties must file an original and six copies of all comments, reply comments and supporting comments. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus eleven copies. Parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. For further information, contact Jacqueline Spindler at (202) 418–7200.

24. This Further Notice of Proposed Rulemaking contains a proposed information collection. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in the Further Notice of Proposed Rulemaking. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the OMB to comment on the information collections contained in this Further Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due on September 27, 1996; OMB comments are due November 4, 1996. Comments should address: (a) Whether the modified and proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

25. It is further ordered that the Secretary shall send a copy of this Report and Order and Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

List of Subjects in 47 CFR Part 1

Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22427 Filed 9–3–96; 8:45 am]

BILLING CODE 6712–01–U

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 504, 507, 510, 511, 512, 514, 515, 538, 539, 543, 546, 552 and 570

[APD 2800.12A, CHGE 70]

RIN 3090–AF86

General Services Administration Acquisition Regulation; Acquisition of Commercial Items

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Extension of comment period and notice of public meeting.

SUMMARY: This public notice is issued to familiarize the public with the status of finalizing the interim rule which amended the General Services Administration Acquisition Regulation (GSAR) to implement Items I and III of Federal Acquisition Circular 90–32. These items in FAC 90–32 amended the Federal Acquisition Regulation (FAR) to implement the portions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) dealing with the Truth in Negotiation Act and with the acquisition of commercial items. The GSAR interim rule also canceled the Multiple Award Schedule (MAS) policy Statement of October 1, 1982 (47 FR 50242, November 5, 1982). This notice also extends the period for public comment and provides notification of a public meeting. GSA has made some revisions to the interim rule that was published in the February 16, 1996, **Federal Register** to address public comments and to take into account the enactment of the Federal Acquisition Reform Act of 1996. The revised coverage has been mailed to the public commentors and copies may be obtained by other interested parties.

DATES: *Comment Date:* Comments should be submitted in writing to the address shown below on or before September 30, 1996.

Meeting Date: The meeting will be held at 10:00 a.m. on September 19, 1996.

ADDRESSES: A copy of the revised coverage may be obtained by calling the GSA Acquisition Policy Division at 501–1224. Interested parties should submit written comments to the Office of Acquisition Policy (MV), General Services Administration, Room 4010, 18th & F Streets, NW, Washington, DC 20405.

The public meeting will be held at: General Services Administration Auditorium, 18th & F Streets, NW, Washington, DC, 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION: On February 16, 1996, a interim rule was published in the **Federal Register** (61 FR 6164). The interim rule afforded the public a 60-day comment period. During that time 13 organizations submitted comments. Based on comments received and the enactment of the Federal Acquisition Reform Act of 1996, GSA has refined the coverage. Accordingly, a copy of the revised coverage has been mailed to previous public commenters. The purpose of this notice is to advise the public generally of the availability of the revised coverage and enable other interested parties to obtain a copy by contacting the GSA Acquisition Policy Division.

To allow the public to present its views on the refinements to this interim rule, a public meeting will be held at the GSA Auditorium on September 19, 1996. Persons or organizations wishing to make presentations should notify

Marjorie Ashby at (202) 501–1224, and provide an advance copy of your remarks not later than September 17, 1996.

Dated: August 28, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 96–22488 Filed 9–3–96; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Barton Springs Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Fish and Wildlife Service (Service) withdraws the February 17, 1994, proposed rule (59 FR 7968) to list the Barton Springs salamander (*Eurycea sosorum*) as an endangered species under the Endangered Species Act of 1973, as amended. The Service finds that information now available, discussed below, justifies withdrawal of the proposed listing of this species as endangered. Various agencies of the State of Texas have committed to expedite developing and implementing conservation measures needed for the species and the Barton Springs segment of the Edwards Aquifer supporting its spring habitat, as set forth in the "Barton Springs Salamander Conservation Agreement and Strategy" (Agreement), signed August 13, 1996. The Texas Parks and Wildlife Department, Texas Natural Resource Conservation Commission, the Texas Department of Transportation, and the Service are signatories to the Agreement. The cooperative Agreement addresses risks to the survival and recovery of the Barton Springs salamander through a combination of measures. These measures include: revision, adoption, and implementation of regulations to protect water quality in the Barton Springs watershed and the Barton Springs segment of the Edwards Aquifer from degradation; development and implementation of Best Management Practices to address point source contaminants; refinement and enforcement of storage and disposal of hazardous waste protocols; increased commitment to compliance enforcement, monitoring, and reporting; and development and implementation of local management plans to prevent degradation of surface and springhead habitat. The Agreement contains measures to address potential water quantity concerns and to establish captive refugia to prevent extinction in case of catastrophic or chronic events. Because the commitment by the State of Texas to fully implement the cooperative Agreement significantly reduces the risks to the species, the Service concludes that listing is no longer warranted.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

FOR FURTHER INFORMATION CONTACT: Steve Helfert, Field Supervisor (see **ADDRESSES** section) (512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

The Service withdraws the proposal to designate the Barton Springs salamander (*Eurycea sosorum*) as endangered, under the authority of the Endangered Species Act (Act) (16 U.S.C. 1531 *et. seq.*). The Barton Springs salamander is entirely aquatic and neotenic (meaning it does not metamorphose into a terrestrial form and retains its bright red external gills throughout life) and depends on a constant supply of clean, flowing water from Barton Springs. Adults attain an average length of 6.35 cm (2.5 in). This species is slender, with slightly elongate limbs and reduced eyes. Dorsal coloration varies from pale purplish-brown or gray to yellowish-cream. Irregular spacing of dorsal pigments and pigment gaps results in a mottled, "salt and pepper" pattern (Sweet 1978, Chippindale *et al.* 1993a).

The Barton Springs salamander was first collected from Barton Springs Pool in 1946 by Bryce Brown and Alvin Flury (Chippindale *et al.* 1993a,b). Although he did not publish a formal description, Dr. Samuel Sweet (University of California at Santa Barbara) was the first to recognize the Barton Springs salamander as distinct from other central Texas *Eurycea* salamanders based on its restricted distribution and unique morphological and skeletal characteristics (such as its reduced eyes, elongate limbs, dorsal coloration, and reduced number of presacral vertebrae) (Sweet 1978, 1984). Based on Sweet's work and genetic studies conducted by the University of Texas and Chippindale *et al.* (1990, 1992, 1993b), the Barton Springs salamander was formally described in June 1993 (Chippindale *et al.* 1993a). An adult male (based on external examination only) collected from Barton Springs Pool in November 1992, was selected to be the holotype (Chippindale *et al.* 1993a).

The water that discharges at Barton Springs originates from the Barton Springs segment of the Edwards Aquifer (hereafter referred to as the "Barton Springs segment"). Barton Springs is the fourth largest spring in Texas, exceeded only by Comal, San Marcos, and San Felipe springs (Brune 1981). The Barton Springs salamander is found near three of four hydrologically connected spring outlets that collectively make up Barton Springs. These three spring outlets are known as Parthenia (=Main), Eliza (=Concession, =Elk's), and Sunken Garden (=Old Mill, =Walsh) springs, and they occur in Zilker Park, which is owned and operated by the City of Austin. No salamanders have been found at the fourth spring outlet, which is in Barton Creek immediately above Barton Springs Pool (Chippindale *et al.* 1993a,b; Sweet, pers. comm., 1993; Hansen, *in litt.*, 1995a; William Russell, Texas Speleological Survey, *in litt.* 1995). The area around the main spring outlet (Parthenia Springs) was impounded in the late 1920's to create Barton Springs Pool. Flows from Eliza and Sunken Garden springs also are retained by concrete structures, forming small pools located on either side of Barton Springs Pool. The salamander has been observed at depths of about 0.1 to 5 m (0.3 to 16 ft) of water under gravel and small rocks, submerged leaves, and algae; among aquatic vegetation; and buried in organic debris. It is generally not found on exposed limestone surfaces or in silted areas (Sweet 1978; Dr. Charles Sexton, City of Austin, *in litt.*, 1992; Chippindale *et al.* 1993a,b; Jim Collett, Robert Hansen, and Mateo Scoggins, City of Austin, pers. comms., 1994–1995; O'Donnell, pers. obs., 1996).

"Dozens or hundreds" of individuals were estimated to occur among sunken leaves in Eliza Pool during the 1970's (Chippindale *et al.* 1993a,b), while fewer than 15, and occasionally no individuals, were observed during surveys conducted in Eliza Pool between 1987 and 1992 (Chippindale *et al.* 1993a, b). Fifteen salamanders were observed on November 16, 1992 (Chippindale *et al.* 1993a,b). No salamanders were observed at this location between December 1993 and

May 1995 (Paul Chippindale, University of Texas at Arlington, Collett, Hansen, and Scoggins; pers. comms., 1994–1995; Hansen *in litt.* 1995b). Numbers ranged from 0 to 28 between June 1995 and July 1996. Dead salamanders also have been found (O'Donnell, unpubl. data, 1995–1996).

The Barton Springs salamander was reportedly abundant among the aquatic vegetation in the deep end of Barton Springs Pool when salamanders were collected there in 1946 (Hillis and Chippindale 1992; Chippindale *et al.* 1993a,b). Between 1989 and 1991, Sexton (*in litt.*, 1992) reported finding salamanders under rock rubble immediately adjacent to the main spring outflows on "about one out of four [snorkeling] dives." On July 28, 1992, at least 50 salamanders (David Hillis, University of Texas at Austin, pers. comm., 1993) were found over an area of roughly 400 sq. m (4,300 sq. ft) near the spring outflows in Barton Springs Pool, about 3 to 5 m (10 to 15 ft) below the water (Chippindale *et al.* 1993a,b). Following reports of a fish kill on September 28, 1992, which was attributed to the improper application of chlorine to clean Barton Springs Pool, only 10 to 11 salamanders were observed and could only be found in an area of about 5 sq. m (54 sq. ft) in the immediate vicinity of the Parthenia Spring outflows (Chippindale *et al.* 1993a,b). At least 80 individuals were observed during the first comprehensive survey effort conducted in Barton Springs Pool on November 16, 1992, and about 150 individuals were seen on November 24, 1992 (Chippindale *et al.* 1993a,b). A comprehensive survey conducted immediately following an October 1994 flood event found a total of 16 salamanders. A total of 10 salamanders were counted in March 1995 (Hansen, *in litt.* 1995c).

The City of Austin initiated monthly transect surveys in June 1993 to provide more consistent data concerning the range and size of the Barton Springs salamander population in Barton Springs Pool. Survey counts ranged from 1 to 27 individuals (mean=13) between July 1993 and March 1995. The highest survey counts (27 individuals) were reported in November 1993 and May 1994. The lowest counts (ranging from 1 to 6 individuals) occurred during a five-month period following the October 1994 flood event (Hansen, *in litt.* 1995c). Survey counts between April 1995 and April 1996 ranged from 3 to 45 salamanders (City of Austin, unpubl. data).

The salamander was first observed at Sunken Garden Springs on January 12, 1993 (Chippindale *et al.* 1993b). Less than 20 individuals have been sighted on any given visit to that outlet (Chippindale 1993b; Hansen, pers. comm., 1995). Because it is part of the Barton Springs complex and is hydrologically connected to Parthenia Springs, biologists had speculated that the salamander occurred at Sunken Garden Springs. However, no salamanders were observed during previous surveys conducted at this location between 1987 and 1992. Low water levels and the presence of large rocks and sediment make searching for salamanders difficult at Sunken Garden Springs (Chippindale *et al.* 1993b; O'Donnell, pers. obs., 1995).

No evidence exists that the species' range extends beyond the immediate vicinity of Barton Springs. Despite survey efforts and searches at other spring outlets (including the spring outlet immediately above Barton Springs Pool), caves, and uncased wells in the Barton Springs segment, no other locations of the Barton Springs salamander have been found (Chippindale *et al.* 1993a,b; Russell, *in litt.* 1995; Russell 1996; Hillis; Andy Price, Texas Parks and Wildlife Department; Sweet; pers. comms., 1993; Hansen, *in litt.* 1995a). No other species of *Eurycea* is known to occur in this portion of the aquifer. Although the extent to which the Barton Springs salamander occurs in the aquifer is unknown, it is likely concentrated near the spring openings where light is available for photosynthesis and food supplies are abundant, water chemistry and temperatures are relatively constant, and where the salamander has immediate access to both surface and subsurface habitats. Barton Springs is also the main discharge point for the entire Barton Springs segment, and is one of the few perennial springs in the area.

The Barton Springs salamander's diet is believed to consist almost entirely of amphipods (*Hyallela azteca*) and other small invertebrates (James Reddell, Texas Memorial Museum, University of Texas at Austin, pers. comm., 1993; Hillis and Chippindale 1992; Chippindale *et al.* 1993a,b). Primary predators of the Barton Springs salamander are believed to be fish and crayfish (Chippindale *et al.* 1993a,b; Collett, Hansen, and Scoggins, pers. comms., 1995). Observations of larvae and females with eggs indicate breeding occurs year-round (Chippindale, pers. comm., 1993; Collett, Hansen, and Scoggins, pers. comms., 1994–1995). The Barton Springs salamander's eggs are white (Lynn Ables and Streett Coale, Dallas Aquarium; Jim Dwyer, Midwest Science Center; pers. comms., 1996) and have never been observed in the wild (Chippindale, Hillis, and Price, pers. comms. 1993; Collett, Hansen, and Scoggins, pers. comms., 1994–1995; O'Donnell, pers. obs., 1995–1996), and thus oviposition likely occurs in subsurface habitat.

Captive propagation of the Barton Springs salamander has been initiated at the Dallas Aquarium in Texas and at the National Biological Service's Midwest Science Center in Missouri. Although each facility has had one successful spawning, hatching success was less than 8 percent (Ables, Coale, and Dwyer, pers. comms., 1996).

The Barton Springs segment covers roughly 400 sq. km (155 sq. mi) from southern Travis County to northern Hays County, Texas, and has a storage capacity of over 37,000 hectare-meters (300,000 acre-feet) (Slade *et al.* 1985, 1986). The approximate boundaries are the "bad-water" line to the east (where dissolved solids are less than 1,000 milligrams/liter (mg/l) (1,000 parts per million (ppm)) in the aquifer, but greater than this to the east); the Colorado River to the north; the geologic divide between contiguous Edwards limestones overlying the aquifer and the Glen Rose limestones to the west (Slade *et al.* 1985, 1986); and a groundwater divide occurring roughly between the Onion Creek and Blanco River watersheds to the south. The area south of the southern boundary is known as the San Antonio segment of the Edwards aquifer and drains toward San Marcos Springs. Significant groundwater movement from the San Antonio segment northward to the Barton Springs segment is believed to occur only during extreme drought conditions. North of the southern boundary, water in the aquifer moves toward Barton Springs (Slade *et al.* 1985, 1986; Stein 1995). Transmissivity (the rate at which groundwater is transmitted through the aquifer) values for the Barton Springs segment have been estimated at 0.3 to 4,000 sq. m (3 to 47,000 sq. ft) per day and tend to increase as one moves northward toward the springs (Slade *et al.* 1985, 1986).

Barton Springs drains about 391 sq. km (151 sq. mi) of the Barton Springs segment. The remaining 10 sq. km (4 sq. mi) discharge at Cold and Deep Eddy springs and are believed to be hydrologically distinct from the area discharging from Barton Springs. Cold and Deep Eddy springs are recharged by Dry Creek and a portion of Barton Creek. About 96 percent of all springflow from the aquifer discharges through Barton Springs. The remaining 4 percent exits through intermittent springs. These intermittent springs flow only about 30

percent of the time and discharge up to 170 liters per second (l/s) (6 cubic feet per second (cfs)). The long-term mean discharge from Barton Springs is about 1,415 l/s (50 cfs), ranging from 283 l/s (10 cfs) to 4,700 l/s (166 cfs) (Andrews *et al.* 1984; Slade *et al.* 1985, 1986). The mean water temperature is 20°C (68°F) (Martyn-Baker *et al.* 1992). Depending on flow conditions and whether the pool is full or drained, about 55 to 82 percent of the total springflow from Barton Springs exits the main springs into Barton Springs Pool (Slade *et al.* 1986).

The Barton Springs segment is divided into the recharge and artesian zones. The recharge zone is that portion of the aquifer where Edwards limestones are exposed at the surface, and covers the western 79 percent (about 233 sq. km (90 sq. mi)) of the aquifer. The artesian zone is confined by an impermeable layer of Del Rio clay and covers the eastern 21 percent of the aquifer. About 85 percent of all recharge is through sinkholes, fractures, and other openings in the beds of six major creeks that cross the recharge zone, including (from north to south) Barton, Williamson, Slaughter, Bear, Little Bear, and Onion creeks. The remaining 15 percent of recharge is through tributaries and direct infiltration between the creeks (Andrews *et al.* 1984; Slade *et al.* 1985, 1986).

The watersheds of the six creeks upstream (west) of the recharge zone span about 684 sq. km (264 sq. mi). This area is referred to as the contributing zone and includes portions of Travis, Hays, and Blanco counties. The recharge and contributing zones (hereafter referred to collectively as the "Barton Springs watershed") make up the total area that provides water to the aquifer, which equals about 917 sq. km (354 sq. mi). Based on streamflow studies, Onion Creek and Barton Creek contribute the greatest percentages of total recharge to the aquifer (34 percent and 28 percent, respectively). Williamson, Slaughter, Bear, and Little Bear creeks each contribute 12 percent or less to total recharge (Andrews *et al.* 1984; Slade *et al.* 1985, 1986). The total maximum instantaneous recharge for the creeks has been estimated at 10,000 to 11,000 l/s (350 to 400 cfs), above which runoff does not infiltrate into the aquifer. Water flowing downstream off the recharge zone is runoff that has been rejected (Slade *et al.* 1985).

Water quality is highly variable throughout the Barton Springs segment and waters flowing from Barton Springs represent a mixture of these waters originating primarily from the six streams crossing the recharge zone. Owing to the amount of recharge contributed by Barton Creek and its proximity to Barton Springs, this creek has a greater impact on the water quality at the springs than any other recharge source in the Barton Springs segment (Slade *et al.* 1985, 1986). Although some development has occurred along Barton Creek near Barton Springs, these waters are diluted by recharge waters from more rural watersheds, such as Onion Creek. Although farthest from the springs, Onion Creek provides a significant amount of recharge and thus makes an important contribution to the water quality at Barton Springs (Andrews *et al.* 1984; Slade *et al.* 1985, 1986).

The Edwards Aquifer is a "karst" aquifer, characterized by subsurface features such as caves, sinkholes, and other conduits. The aquifer is made up of limestones that have high localized permeability and porosity. Dissolution of calcium carbonate along faults and fractures in the bedrock forms solution channels similar to an underground network of pipes. Since these subsurface "pipes" are not uniformly distributed, groundwater movement in the aquifer is highly variable, being rapid in areas where the "pipes" are large and extensive, and slow where permeability and porosity are low.

The potential of the Edwards Aquifer and other karst aquifers to rapidly transmit large volumes of water with little filtration makes them highly susceptible to pollution (Slade *et al.* 1986; Texas Water Commission (TWC) 1989; Environmental Protection Agency (EPA) 1990; City of Austin 1991; Margaret Hart, TWC, *in litt.* 1991; Ford and Williams 1994; Notenboom *et al.* 1994). Major potential sources of groundwater contamination have been attributed to construction activities, leaking underground storage tanks, pipelines, septic tanks, accidental spills, and pesticide and fertilizer use (EPA 1990, TWC 1989). Pollutants entering the creeks or other recharge features may then be rapidly transported into the aquifer. Once in a karst aquifer, treatment of water-borne contaminants is generally ineffective because: (1) Few materials (such as sand, gravel, and organic matter) are present to filter out pollutants; (2) little evaporation occurs, which is important in eliminating highly volatile organic compounds; (3) little filtration occurs through thin karst soils; (4) water is transported rapidly through a conduit system with little or no filtration (EPA 1990; TWC 1989; Slade *et al.* 1986; Ford and Williams 1994; Notenboom *et al.* 1994); and (5) some contaminants (such as nitrates and petroleum hydrocarbons) tend to be highly insoluble and mobile in water and may not adsorb onto karst substrates (TWC 1989).

Because of the characteristics of karst aquifers, Barton Springs is believed to be heavily influenced by the quality and quantity of runoff, particularly in the recharge zone (City of Austin 1991, Slade *et al.* 1986). Thus, increasing urban development over the area supplying recharge waters to the Barton Springs segment can threaten water quality within the aquifer. The Texas Water Commission (now known as the Texas Natural Resource Conservation Commission (TNRCC)) identified the Edwards Aquifer as being one of the most sensitive aquifers in Texas to groundwater pollution (TWC 1989; Hart, *in litt.*, 1991; TNRCC 1994).

Previous Federal Action

The Barton Springs salamander was a Category 2 candidate species on the Service's candidate notices of review from December 30, 1982 (47 FR 58454; September 18, 1985: 50 FR 37958; January 6, 1989: 54 FR 554; and November 21, 1991: 56 FR 58804) until publication of the proposed rule to list the species as endangered (59 FR 7968). Dr. Mark Kirkpatrick and Ms. Barbara Mahler petitioned the Service to list the Barton Springs salamander on January 22, 1992, and on December 11, 1992 (57 FR 58779), the Service published a notice in the **Federal Register** that the petitioner presented substantial information that the requested action may be warranted. A proposed rule to list the Barton Springs salamander was published in the **Federal Register** on February 17, 1994 (59 FR 7968). The Service held a public hearing on June 16, 1994, in Austin, Texas (59 FR 27257). On March 10, 1995, the Service published a notice extending the 1-year deadline for final action on the proposed rule until August 17, 1995, and reopened the public comment period (59 FR 27257). Reasons for the 6-month extension are provided in the March 10, 1995, **Federal Register** notice.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104–6) and eliminated funding for the Service to conduct final listing actions. On November 27, 1995, in response to a lawsuit from the Save Our Springs Legal Defense Fund (Save Our Springs Legal Defense Fund, Inc., et al., v. Bruce Babbitt), a U.S. District Court invalidated the Service's March 10, 1995, notice of extension and ruled that the Service had to make a final determination on whether to list the Barton Springs salamander within 14 days of the court order. The court

granted a stay pending the Service's appeal of the order, on the grounds that the moratorium and lack of funding prohibited the Service from making a final listing determination. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Budget Reconciliation Act of 1996 (Public Law No. 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722). Due to the potential for new information during the lapse between the reinstatement of the listing program and the close of the last comment period (May 17, 1995), the Service reopened the public comment period on June 24, 1996, for 30 days. That comment period closed July 10, 1996, by U.S. District Court order.

Development of Conservation Agreement

Following the Service's decision to propose the species for listing as endangered, the City of Austin and the Texas Parks and Wildlife Department (TPWD) formed the Aquatic Biological Assessment Team (ABAT) to conduct independent peer review of the listing proposal and to address salamander issues. The ABAT concluded that important information gaps exist that prevent a conclusive scientific assessment regarding the biology of the salamander. The ABAT also noted that both short-term and long-term threats to the viability of the species exist. On September 20, 1995, the ABAT issued a report detailing its recommendations for further study of the Barton Springs salamander so that improved scientific understanding could lead to the development of factually based conservation measures for the species. Those recommendations led to the "Barton Springs Salamander Conservation Agreement and Strategy" (Agreement) signed by the State agencies on August 13, 1996.

In order to meet the objectives of the Agreement, agencies of the State of Texas will implement five conservation actions. These actions are: (1) Enforcement and monitoring of compliance with existing regulations and adoption, implementation, and enforcement of currently proposed regulations; (2) prevention of catastrophic contaminant releases into the spring waters; (3) prevention of degradation of the springhead habitat; (4) establishment of a captive breeding program; and (5) development of a better biological understanding of the salamander population. In addition, the State will effect four general administrative actions: (1) Coordination of conservation activities; (2) implementation of the conservation schedule; (3) funding of conservation actions; and (4) assessment of the conservation progress. The actions listed above are adequate to reduce risks to the salamander. But, if in the future, the adequacy is questioned, the Barton Springs Salamander Conservation Team (Conservation Team) will assess such issues for follow up on conservation actions.

The Conservation Team was formed under the Agreement to administer and revise the Agreement as needed, based on new biological information on the species. Such information will include the results of a TPWD-sponsored population and habitat study, which may lead to a population viability and habitat analysis (PVHA) workshop. The Conservation Team will coordinate conservation activities and monitor conservation actions taken by the signatories of the Agreement. The Service understands that the Conservation Team will review the current and proposed regulatory programs that contribute to conserving the Barton Springs salamander, its habitat and the ecosystem, the Barton Springs segment of the Edwards Aquifer.

The Service believes that the Agreement ensures the implementation of conservation measures that will reduce the threats to the salamander to the point that it does not warrant listing. The Service therefore withdraws the proposal to list the Barton Springs salamander as endangered.

Public Comments on the Proposed Rule

In the February 17, 1994, proposed rule (59 FR 7968) and associated **Federal Register** notices, including notification of a public hearing (59 FR 27257) and each of the five comment periods (February 17 to April 18, 1994 (59 FR 7968); May 26 to July 1, 1994 (47 FR 13105); July 8 to July 29, 1994 (59 FR 35089); March 10 to May 17, 1995 (47 FR 13105); and June 24 to July 10, 1996 (61 FR 32414)), all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and asked to comment. Legal notices of the public hearing which invited general public comment were published in the Dripping Springs Century News and Austin-American Statesman on June 8, 1994, in the Drippings Springs Dispatch on June 9, 1994, and in the Austin Chronicle on June 10, 1994.

The Service received 657 written and oral comments, 8 videotapes, 5 petitions, and 2 resolutions from individuals and agencies. Of the 657 comments, 524 supported the proposed action, 123 opposed it, and 10 stated neither support nor opposition. Four petitions totaling over 1,800 signatures and one resolution from the City of Austin supported listing, and one petition containing 29 signatures and one resolution from the city of Dripping Springs opposed the listing.

The Service held a public hearing in two sessions on June 16, 1994, at the Lyndon Baines Johnson Auditorium at the University of Texas at Austin. Over 160 people attended the public hearing, and 74 individuals provided oral testimony.

Written and oral comments are incorporated into this withdrawal notice where appropriate. Most of the comments were directly related to listing the salamander as endangered. Many of the comments supporting listing provided substantive factual information that documented risks to the Barton Springs salamander. Those comments were considered, and listing appeared warranted prior to the signing of the Agreement. Conversely, substantive comments opposing listing generally discussed the adequacy of existing regulatory mechanisms then in place to protect the salamander. Since development of the Agreement, commitment to conservation of the species has been insured, rendering most of the comments on this action moot, outdated, or otherwise irrelevant to this withdrawal notice. The Service carefully considered all comments submitted relevant to the decision to withdraw the proposed listing. Comments submitted are available for review at the Service's Austin Ecological Services Office (see **ADDRESSES**).

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list the Barton Springs salamander, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary risks to the Barton Springs salamander and its habitat, which the Service identified in its proposal to list the species (59 FR 7968), are degradation of water quality and

quantity resulting from urban expansion over the Barton Springs watershed (including roadway, residential, commercial, and industrial development). The Service identified cumulative degradation, catastrophic spills (such as hazardous materials), and increased water withdrawals from the aquifer (compounded by drought) as factors contributing to declining water quality and quantity in the portion of the Edwards Aquifer upon which the species depends. Other concerns identified by the Service are potential impacts to the salamander's surface habitat in Barton Springs pool caused by pool maintenance and cleaning activities.

The Agreement includes a State commitment to implement specific conservation measures to protect the salamander, its habitat and the ecosystem, the Barton Springs segment of the Edwards Aquifer. The Agreement addresses these risks to the Barton Springs salamander through a combination of measures. They are: (1) Revision, adoption, and implementation of regulations to protect water quality in the Barton Springs watershed and the Barton Springs segment of the Edwards Aquifer from degradation; (2) development and implementation of Best Management Practices (BMPs) to address point source contaminants; (3) refinement and enforcement of storage and disposal of hazardous waste protocols; (4) increased commitment to compliance enforcement, monitoring, and reporting; and (5) development of local management plans to prevent degradation of surface and springhead habitat.

The Agreement includes specific responsibilities to be implemented immediately and in Fiscal Year 1997 by the lead State agencies. Those responsibilities for the TPWD include: provide the team leader for the Conservation Team (formed in the Agreement); assist the City of Austin in Barton Springs pool maintenance; assist other State and local agencies in evaluating existing and proposed conservation actions that benefit the Barton Springs salamander; sponsor a salamander population and habitat study and follow up on a population viability and habitat analysis (PVHA) workshop; serve as the responsible State agency for protection and conservation of the salamander and its unique ecosystem; serve as the responsible State agency for enforcement of the Act; and serve as the responsible lead for establishing a captive breeding/refugium program. The responsibilities of the TNRCC include: evaluate existing and proposed water quality regulations for State and local agencies and private development compliance in the protection and conservation of Barton Springs, the Barton Springs segment of the Edwards Aquifer, and the recharge zone and contributing streams and watersheds; serve as the responsible State agency for ensuring water quality compliance and monitoring; and serve as the responsible State agency for coordinating State/regional/local response and remediation on hazardous materials spills and contingency plans and operations. Commitments by The Texas Department of Transportation (TxDOT) include: serve as the responsible State agency for ensuring that all transportation projects over the recharge zone are developed with BMPs that will minimize or prevent the degradation of recharging waters to Barton Springs; serve as responsible State agency for the design, construction and maintenance of permanent structural controls (e.g., hazardous materials traps, detention ponds, filtration basins, etc.) on transportation projects over the recharge zone; serve as the responsible State agency for ensuring that transportation projects are constructed in a manner to minimize water quality impacts in accordance with State law and regulations; and work with TPWD on conservation issues related to transportation activities in accordance with the Memorandum of Understanding between the two State agencies. The Service is responsible for: serving on the Conservation Team and providing technical assistance to all State agencies, regional and local agencies and cooperators; and providing technical input to State, regional and local agencies and cooperating interests concerning the conservation of the salamander.

The Agreement includes measures to address potential water quantity concerns and to minimize chances of a catastrophic event, however the Agreement establishes captive refugia to prevent extinction in case of catastrophic or chronic events. The Barton Springs salamander is still considered rare and potentially vulnerable; however, the commitment by the State of Texas to implement the cooperative Agreement reduces the imminence and severity of threats to the species so that listing is no longer considered warranted.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known at this time.

C. *Disease or predation.* The Service is not aware of diseases or parasites of the Barton Springs salamander. Primary predators of the Barton Springs salamander are believed to be predatory fish and crayfish; however, no information exists to indicate that predation poses a major threat to this species.

D. *The inadequacy of existing regulatory mechanisms.* The conservation and recovery of this species is tied to the protection of water quality and quantity through regulatory mechanisms for Barton Springs, the Barton Creek watershed, and the Barton Springs segment of the Edwards Aquifer. The Service evaluated existing State and local regulatory mechanisms and BMPs prior to preparing the proposed rule for listing the species. The Service found evidence of inadequacy of existing regulatory mechanisms in 1994 and published the proposed rule with information on this factor. Several commentors, including the State of Texas, presented information on the issue of existing regulatory programs. The Service reopened the comment period on June 24, 1996, in part due to the potential for new information on proposed regulatory protection under State authorities and disagreement concerning data on existing regulatory mechanisms that would conserve the species. The State of Texas developed the Agreement specifically to implement conservation measures using existing and proposed regulatory mechanisms in a comprehensive program for the conservation of the Barton Springs salamander.

The Service recognizes that the Agreement reduces the threats to the salamander. The Agreement addresses the issue of reducing threats by charging the Conservation Team to review the adequacy of those regulatory mechanisms, rules, regulations, and State agency policies for conserving the species and its habitat. This review will ensure that revisions or changes will be developed cooperatively and implemented expeditiously through State government mechanisms to conserve the salamander and its ecosystem. As team leader, TPWD is charged with ensuring that these conservation measures are implemented. The Service serves on the team, but if the team's recommendations to State agencies are not implemented, the Service may withdraw from the Agreement and will consider the use of the full range of its listing authority, including emergency listing, to protect the species.

The signatories of the Agreement are those agencies with the responsibility, authority, and funding mechanisms to implement the provisions of the Agreement. The signatories include the

TPWD, the TNRCC, the TXDOT, and the Service. Other parties may be included as additional measures are added to the Agreement. The Agreement follows the recommendations presented by the ABAT report (1995), using an ecosystem approach to conserve the Barton Springs salamander population by maintaining the high quality spring ecosystem within which the salamander exists.

The Agreement focuses on two objectives. The main objective is to eliminate or significantly reduce the threats to the species. This includes eliminating risk of catastrophic events. In case this does not work, the Agreement establishes a captive breeding/refugium program in order to avoid extinction of the species should any potential threats actually cause the species to disappear in the wild. These objectives will be reached through implementation of the Agreement for the species.

The TNRCC has implemented a comprehensive water quality protection program for the Edwards Aquifer and related surface waters. This program covers the Barton Springs segment of the Edwards Aquifer that yields flow to Barton Springs and provides the most stringent groundwater quality protection measures in the State.

The Federal Clean Water Act and the Environmental Protection Agency's (EPA) rules require each State to develop and implement an anti-degradation policy, as a part of its water quality standards (40 CFR 131.6). Such standards, including the anti-degradation policy, must be approved by the EPA. The TNRCC's policy, which has been approved by EPA, is contained in 30 TAC 307.5 and adopts the language used by the EPA in its anti-degradation policy (40 CFR 131.12).

The Tier II Anti-degradation Policy contained in section 307.5 of the TNRCC's rules is currently applicable to the Barton Creek watershed. This policy provides that no activities subject to regulatory action which would cause degradation of waters which exceed fishable/swimmable quality will be allowed, unless it can be shown that the lowering of the water quality is necessary for important economic or social development. Degradation is defined as a lowering of water quality beyond a de minimus extent, to the extent that an existing use is impaired. Fishable/swimmable waters are waters which have quality sufficient to support propagation of indigenous fish, shellfish and wildlife, as well as recreation in and on the water. Water quality sufficient to protect existing uses is to be maintained. The Conservation Team will assess the potential impact to the salamander of the anti-degradation policy exception (important economic or social development) that could lead to degradation of the salamander's habitat. The policy exception would require careful assessment and recommended action to alleviate the threat to the salamander, its habitat and the ecosystem, the Barton Springs segment of the Edwards Aquifer. If the Conservation Team's recommended action is not implemented, the Service may withdraw from the Agreement and will consider the use of the full range of its listing authority, including emergency listing, to protect the species.

The TNRCC's rules seek to maintain and protect the water quality standards and related aquatic life uses designated for the Barton Creek watershed. The regulation of point discharges and effluent on and upstream of the recharge zone (section 313.6), as well as the design, installation, and removal of petroleum storage tanks (PSTs) (sections 313.10 and 313.11) and on-site sewage systems (section 285.9) are the most stringent in the State and are summarized in the TNRCC's July 1, 1996, memo entitled "Protecting Water Quality in the Edwards Aquifer." No new or increased discharges are allowed in the recharge zone. Additionally, no confined animal operations may be located in the recharge zone (section 313.10).

In addition to the more broadly applicable chapter 313 TNRCC's rules, for which revisions are currently proposed, under State Senate Bill 1017 (codified as section 26.179, Texas Water Code), special water quality protection plans are being developed and implemented in the Barton Creek watershed within the contributing zone of the Edwards Aquifer. This legislation applies to property of 200 hectares (500 acres) or more within the City of Austin's extraterritorial jurisdiction where a designated water quality protection zone and a water quality protection plan are subject to review and approval by the TNRCC. The legislation provides a non-degradation water quality goal by providing that development on the property may not result in exceeding background water quality. The quality of runoff water must be comparable to those levels that existed prior to new development. Proposed rules under 30 TAC chapter 216 (relating to Water Quality Protection Zones) that implement this legislation were published in the *Texas Register* on April 14, 1996, for public comment. Adoption of these rules by the TNRCC is expected in October 1996. If not adopted in a timely manner, the Service would withdraw from the Agreement and re-propose the salamander for listing.

The TNRCC proposed a new Edwards Aquifer rule as a new chapter 213 to streamline and consolidate the existing chapter 313 Edwards Aquifer rule, which are also expected to be adopted in October, 1996. The proposed rule would also update the current day-to-day operations of the agency relating to the protection of the water quality of the Edwards Aquifer and make the administration of the Edwards Aquifer Protection Program more efficient and effective. The proposed rule also provides: new or revised definitions for regulated activity, BMP, aboveground and underground storage tank facilities, commencement of construction, geologic or manmade feature, sensitive feature, and site. The rule consolidates into one section the requirement for filing and processing an Edwards Aquifer protection plan, details how the plan will be processed by the agency; prohibits the commencement of construction of any regulated activity until a plan has been approved by the agency; and provides that the term of approval of a plan will expire two years after the initial issuance unless commencement of construction has occurred. The rule also consolidates the description of activities that require an Edwards Aquifer protection plan, the contents of various plans, notification and inspection requirements, and exemptions from submitting a plan.

Five new requirements for the technical report submitted as part of an Edwards Aquifer protection plan are proposed under the new rule in chapter 213. The report must include a description of measures to be taken to avoid or minimize instream erosion from water flowing off the site. Measures that would decrease instream erosion will protect water quality. The report must include a description of the BMPs and measures that will be taken to prevent pollutants from entering the aquifer while, to the extent practicable, maintaining flow to sensitive features identified in either the assessment of area geology or during excavation, blasting, or construction. The report must include a plan for inspection of BMPs and measures and their maintenance and repair. The existing rule requires measures to prevent pollution of stormwater flowing onto and off a site. The submission of this plan will formalize maintenance and repair as part of an Edwards Aquifer protection plan. The requirement for a downgradient assessment of area geology has been changed from one mile to one-half mile. A geological assessment will be performed 15 m (50

feet) on either side of the path of a proposed sewer line, allowing for pre-planning to address sensitive features. The rule prohibits construction on either the recharge or transition zone of new municipal solid waste landfill activities and restricts further the construction and use of underground and aboveground storage tanks and facilities.

Prior to commencement of construction, a developer of a project on the Edwards Aquifer recharge zone must submit a Water Pollution Abatement Plan (WPAP) to the TNRCC for review and approval. The developer must propose in the plan measures and practices that will prevent pollution of stormwater entering the site, on-site, and leaving the site. Pollution is defined in the rule as the alteration of the physical, chemical or biological quality of, or the contamination of, any water in the State that renders the water harmful, detrimental or injurious to humans, animal life, vegetation or property, or to public health, safety or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose. The plans must meet this performance goal of water quality protection. Under the proposed new rule in chapter 213, BMPs must be included and implemented as part of the WPAP.

The TNRCC is responsible for compliance monitoring of water pollution abatement plans for the Barton Creek watershed. The TNRCC's staff perform pre-construction onsite inspections prior to approval of WPAPs. This includes inspection to verify that all recharge features have been identified on the site. The TNRCC's staff conduct a follow-up inspection for each site during construction to ensure that all pollution prevention measures are in place, maintained properly and working as required. A reporting requirement in all approved plans is the immediate notification by the permittee to the TNRCC of any previously unidentified recharge feature discovered during construction. If such a feature is found, construction must stop until the TNRCC's staff can inspect the feature and approve the proposed measures to prevent pollution from entering the feature. The TNRCC conducts inspections before, during, and after construction of all TxDOT road and highway projects as well as commercial developments. The TNRCC also inspects any non-State road development project (e.g., city) to ensure that water quality protection under permitted WPAPs is enforced. During Fiscal Year 1996, TNRCC Austin field staff conducted 182 initial site assessments and 289 follow-up inspections. Almost all non-compliances (typically failure to properly maintain a BMP such as a sediment control fence or other structure) were remedied immediately during these inspections. The remainder were remedied after receipt of a "Notice of Violation" letter. In only one instance during Fiscal Year 1996 was it necessary for the field staff to refer a violation for formal enforcement in order to achieve compliance.

Statewide rules for the protection of water quality have been applied to the Barton Springs area since their inception. This includes requirements for PSTs, spill response and remediation, hazardous waste control, and point and non-point source pollution prevention programs. The Edwards Aquifer rules contained in chapter 313 were extended to Travis County beginning in 1990. Chapter 313 provides that if construction on a project has not commenced within two years of application approval, a new application must be submitted for review and approval. However, rules in effect at the time of resubmission of the initial application shall apply to the new application.

Pursuant to the TNRCC's authority to protect the water quality of the Edwards Aquifer, the TNRCC's rules contained in section 313.4(b)(4)(D) provide that a water pollution abatement plan must contain a description of the measures that will be taken to prevent pollutants from entering recharge features "while maintaining or enhancing the quantity of water entering the recharge features. * * *" This language is also contained in the proposed amendments to these rules and more clearly states that the sealing of a recharge feature may not be an acceptable measure to prevent contaminants from entering the aquifer unless there is no reasonable, practicable alternative.

The Edwards Aquifer/Barton Springs Conservation District controls the withdrawal and use of the Barton Springs segment of the Edwards Aquifer. The District's rules require users to implement water conservation measures and mandate reduction measures during a drought. When fully implemented, the District's drought contingency plan is set up to prevent the aquifer from dropping below historically low levels and thus conserve springflow at Barton Springs.

Full implementation of spill contingency plans and hazardous materials storage, transportation, and use during construction is a key component of protection of the waters supporting Barton Springs and the salamander. In particular, the potential for catastrophic spills from a highway over the recharge zone is a major risk to the species. In order to eliminate the risk, the TNRCC works with the TxDOT to address both potential contamination issues surrounding the construction of highways and the placement of hazardous materials traps (HMTs) to capture accidental spills resulting from accidents.

The U.S. Department of Transportation (USDOT) regulates the transportation of hazardous materials. The requirements for driver training, shipping papers, insurance, placarding and container integrity and labeling are established by the USDOT pursuant to the Hazardous Materials Uniform Transportation Safety Act. The TNRCC imposes additional regulations on the transportation of hazardous wastes, which call for tracking of shipments to ensure that they reach their intended destination. The Texas Department of Public Safety provides enforcement of both the USDOT and TNRCC transporter regulations.

The TxDOT began implementing stormwater runoff controls on projects over the Barton Springs segment of the Edwards Aquifer recharge zone in 1991. These controls include facilities to capture spills of hazardous material occurring on roadways that contribute runoff to creeks and streams in the recharge zone. To date, the TxDOT has constructed 44 HMTs at a cost of over $15 million at outfalls over the recharge zone on three major projects: Loop 1, State Highway (SH) 45, and U.S. Highway 290. These outfalls discharge to the watersheds of Slaughter, Williamson, and Barton creeks, all of which contribute to the recharge of the Barton Springs segment of the Edwards Aquifer. All new and retrofit TxDOT project plans incorporate stormwater runoff controls and HMTs where needed for water quality protection.

The HMT is a concrete-lined basin located at the end of the storm drainage system just prior to discharging to the natural drainageway. The HMT is designed to hold 38,000 l (10,000 gallons), the capacity of a large tanker truck. The HMTs operate as stand-alone structures or work in combination with other stormwater runoff controls such as detention ponds or filtration basins. Routine maintenance procedures for HMTs include regular inspections by TxDOT personnel. The HMTs are inspected at least monthly and/or after each rainfall event. Based on these inspections, the HMTs are cleaned, drained or otherwise repaired as necessary.

The TNRCC is authorized by statute to conduct emergency spill response and

cleanup activities statewide pursuant to section 26.264 of the Texas Water Code. This includes spills occurring on the recharge zone, within the transition zone and in the contributing watershed of the Edwards Aquifer. The TNRCC is the lead State agency for response to all hazardous substance spills into State waters. The TNRCC works with State, regional and local entities to carry out a comprehensive, coordinated plan that can be implemented in the event of a crisis. The TNRCC works closely with the TxDOT by implementing a contractual agreement (statute requirement) whereby personnel, equipment and materials under TxDOT control may be diverted and utilized for spill and discharge cleanup. The TNRCC works closely with the Edwards Aquifer/Barton Springs Conservation District in spill response and cleanup planning and action for the Barton Springs segment of the Edwards Aquifer. The TNRCC, the District and the TxDOT conduct joint training exercises to respond to simulated spills. The TNRCC works with local fire departments and county emergency services districts to develop and implement spill response plans, such as in the Barton Creek watershed with the Oak Hill Fire Department and Travis County Services District Number 3.

The TNRCC prohibits the storage of hazardous materials and waste in the recharge zone of the Edwards Aquifer. Hazardous waste storage facilities, waster piles or landfills containing hazardous waste may not be located in the recharge zone of the Edwards Aquifer unless secondary containment is provided to preclude migration to groundwater from spills, leaks or discharges. Approximately 70 to 80 percent of the recharge to the Edwards Aquifer comes from surface streams. Protection of water quality is provided in these affected riparian areas in the recharge zone as well as in the contributory watershed.

Wetlands are a major contributor of surface water to groundwater recharge and serve a vital water quality protection function. They trap sediments, filter contaminants, and help prevent flooding and increased soil erosion. The State regulates the location of hazardous material storage facilities in wetlands. Protected wetlands include those that may provide recharge to the Barton Springs segment of the Edwards Aquifer and serve a water quality protection function for the aquifer and related springs. Transition zones, areas of downgradient of the recharge zone but where faults and fractures may occur, provide additional recharge to the Edwards Aquifer. Waster disposal wells and disposal are also prohibited in the transition zone.

The Barton Springs pool is an on-channel impoundment on Barton Creek and constitutes a State water under the TNRCC's water quality rules and statutes. Any pool maintenance activity carried out by the City of Austin must have prior TNRCC review and approval. The TPWD and the Service have been working with the City to develop and implement BMPs for Barton Springs pool maintenance. The City of Austin is continuing to review and revise as necessary its pool maintenance practices in order to protect the salamander and its habitat while considering human recreational needs. The maintenance plan is designed to avoid impacting the salamander and maintain the highest possible level of water quality. The TPWD will work with the City of Austin to continue to improve the BMPs for the Barton Springs pool. The Service believes that current pool maintenance BMPs are sufficient to reduce threats to the salamander.

The Baron Spring salamander's limited geographic distribution, small population size, and presumed delayed reproductive strategy contribute to the recommendation for a captive breeding program for the species. Such a program may prevent extinction of the species should any of the potential threats previously described cause the salamander to disappear at Barton Springs. Small breeding populations are currently maintained at the Dallas Aquarium and at the Midwest Science Center of the National Biological Service in Columbia, Missouri. Both of these captive programs will continue and could serve as refugia in the event of a catastrophe. The Agreement commits to a third more local captive breeding/refugium program, to be established when sufficient founding stock are available. Local facilities may be available at either the national fish center at San Marcos, Texas, or the TPWD fish hatchery in San Marcos.

The Service believes that the actions noted above are sufficient to reduce the risks to the salamander. But uncertainty exists on the biological information on the species. Therefore, the Agreement makes the TPWD responsible for providing population monitoring studies for the Barton Springs salamander . These studies will include surveys of population numbers and observations on distribution, body sizes, stages of development, and habitat. Surveys will include times immediately following storm events, during periods of low spring flow, and during recovery periods from abnormal events such as prolonged drought or contamination events. Surveys will be conducted at all three springs. The TPWD will sponsor a Barton Springs salamander PVHA workshop based upon these studies and other information concerning the salamander.

By protecting the water quality and quantity at Barton Springs and in the Barton Springs segment of the Edwards Aquifer, the involved agencies will reduce the threats to the species to the point that it does not warrant listing. The Service will closely monitor the implementation of the Agreement and, if the Agreement is not accomplishing its purpose the Service will consider the use of the full range of its listing authority, including emergency listing, to protect the species.

E. *Other natural or manmade factors affecting its continued existence.* The very restricted range of the Barton Springs salamander makes this species especially vulnerable to acute and/or cumulative groundwater contamination. As described above, the threat to the salamander due to limited distribution, along with catastrophic spills and drought-related effects on the salamander through groundwater use of the Barton Springs segment of the Edwards Aquifer are factors that are addressed in the Agreement. The signatories of the Agreement will conduct a salamander population and habitat study, including sponsoring a PVHA workshop; develop a captive breeding/refugium program; and work with other agencies, local water conservation districts, local communities and private landowners to protect water quality in the Barton Springs segment of the Edwards Aquifer.

Finding and Withdrawal

The Barton Springs salamander is known only from the immediate vicinity of the three spring outlets that are collectively known as Barton Springs in Zilker Park, Austin, Travis County, Texas. The waters at Barton Springs originate from a 920 sq. km (354 sq. mile) area, which consists of the recharge zone of the Barton Springs segment of the Edwards Aquifer and its contributing zone. The Barton Springs segment is a designated sole source of water for over 35,000 people in a three-county area. The Barton Springs watershed occurs in Blanco, Hays and Travis counties.

The proposed rule identified degradation of water quality and quantity of Barton Springs, resulting from urban expansion over the Barton Springs watershed, as the primary threat to the Barton Springs salamander.

Reasons for this degradation were listed as: chronic degradation, catastrophic spills, and increasing water withdrawals from the Barton Springs segment of the Edwards Aquifer. Following the Service's publication of the proposed rule, the City of Austin and the TPWD initiated an effort to develop an independent peer review process to address salamander issues. The resulting Aquatic Biological Assessment Team (ABAT) concluded that both short-term and long-term threats to the viability of the salamander exist. The ABAT concluded that important information gaps exist that prevent a conclusive scientific assessment regarding the biology of the salamander. The ABAT report included conservation recommendations that emphasize an ecosystem approach to conservation and recovery of the Barton Springs salamander. Through its signatory agencies, the state of Texas developed the "Barton Springs Salamander Conservation Agreement and Strategy" (Agreement) to expedite conservation measures recommended by the ABAT. The signatory State agencies have committed to implement those conservation measures using existing and proposed regulatory mechanisms in a comprehensive program for the conservation of the salamander.

One function of the implemented Agreement is for the Barton Springs Salamander Conservation Team (Conservation Team) to review the adequacy of those regulatory mechanisms, rules, regulations, and State agency policies to ensure that revisions or changes can be developed cooperatively and implemented expeditiously through State responsibility for conservation of the salamander and its ecosystem. The goal of the Agreement is to conserve the Barton Springs salamander by protecting the high quality spring ecosystem within which the salamander exists.

The agreement focuses on two objectives. The primary objective is to eliminate or significantly reduce the threats to the species and to minimize chances of a catastrophic event. The Agreement establish a captive breeding/refugium program in order to avoid extinction of the species should any potential threats cause the species to disappear in the wild. These objectives will be reached through implementing the five management actions: (1) Enforce and monitor compliance with existing regulations and adopt, implement, and enforce currently proposed regulations to protect the Barton Springs recharge zone; (2) prevent catastrophic contaminant releases into spring waters; (3) prevent degradation of springhead habitat; (4) establish a captive breeding/refugium program; and (5) study the salamander population. In addition, four administrative actions will be implemented: (1) Coordinate conservation activities; (2) implement the conservation schedule; (3) fund conservation actions; and (4) assess conservation progress. The Agreement establishes the Conservation Team to ensure that the coordination and assessment roles are carried out under the team leadership of the TPWD. The Agreement will provide for conservation and recovery of the Barton Springs salamander by establishing a framework for interagency cooperation, State and local community leadership, and coordination on conservation efforts, setting recovery priorities, and assessing existing, proposed and future regulatory programs to ensure that the threats are reduced. By protecting water quality at Barton Springs and in the Barton Springs segment of the Edwards Aquifer and conserving water quantity, this Agreement reduces the threats to the species to the point that the Service no longer believes the species warrants listing. The Service will closely monitor the implementation of the Agreement and, if the Agreement is not accomplishing its purpose, the Service may list the salamander on an emergency basis if appropriate and re-propose it for permanent listing.

After a thorough review and consideration of all information available, including the development and implementation of the Agreement, the Service has determined that listing the Barton Springs salamander as endangered or threatened is no longer warranted. The Service has carefully assessed the best scientific and commercial information available in the development of this withdrawal notice.

References Cited

A complete list of all references cited herein is available upon request from the Austin Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Steve Helfert, Austin Ecological Services Field Office (see **ADDRESSES** section).

AUTHORITY: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: August 28, 1996.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 96–22503 Filed 9–3–96; 8:45 am]

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Notices

Federal Register
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Wednesday, September 4, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of Determination of Termination of Existence of Price Conditions Necessary for Imposition of Temporary Duty on Frozen Concentrated Orange Juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act of 1993 ("NAFTA Implementation Act"), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2974.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term "daily price" means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the "Exchange"), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term "business day" means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange.

The term "trigger price" means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price. Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term "entered" means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period August 5–9, the daily price for frozen concentrated orange juice has exceeded the trigger price.

Issued at Washington, DC the 26th day of August 1996.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 96–22451 Filed 9–3–96; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review: Not later than September 30, 1996, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings:	
Argentina: Silicon Metal, A–357–804	9/1/95–8/31/96
Canada: Steel Jacks, A–122–006	9/1/95–8/31/96
Canada: Steel Rail, A–122–804	9/1/95–8/31/96
Germany: Crankshafts, A–428–604	9/1/95–8/31/96
Italy: Woodwind Pads, A–475–017	9/1/95–8/31/96
Japan: Electroluminescent Flat Panel Diplays, A–588–838	9/1/93–8/31/94
	9/1/94–8/31/95
	9/1/95–8/31/96
Taiwan: Lug Nuts, A–583–810	9/1/95–8/31/96
The People's Republic of China: CDIW Fittings & Glands, A–570–820	9/1/95–8/31/96
The People's Republic of China: Greige Polyester Cotton Printcloth, A–570–101	9/1/95–8/31/96
The People's Republic of China: Lug Nuts, A–570–808	9/1/95–8/31/96
The United Kingdom: Crankshafts, A–412–602	9/1/95–8/31/96
Countervailing Duty Proceedings:	
Canada: New Steel Rail, Except Light Rail, C–122–805	1/1/95–12/31/95
Thailand: Steel Wire Rope, C–459–806	1/1/95–12/31/95

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 CFR 355.22(a) of the regulations, an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review, (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to: Sheila Forbes in room 3061 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by the last day of September 1996. If the Department does not receive, by September 30, 1996, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: August 27, 1996.

Holly Kuga,

Acting Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–22522 Filed 9–3–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–601]

Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 27, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Wolverine Tube (Canada) Inc. (Wolverine), during the period January 1, 1994, through December 31, 1994.

The review indicates the existence of no dumping margins for this period.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have made certain changes for these final results.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On February 27, 1996, the Department published in the **Federal Register** (61 FR 7238) the preliminary results of its administrative review of the

antidumping duty order on brass sheet and strip (BSS) from Canada (51 FR 44319). The preliminary results indicated that no dumping margin existed for Wolverine.

Scope of the Review

Imports covered by this review are shipments of BSS, other than leaded and tinned BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

Pursuant to the final affirmative determination of circumvention of the antidumping duty order, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. *See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610 (June 18, 1993).

The review covers one manufacturer/exporter, Wolverine, and the period January 1, 1994, through December 31, 1994.

Analysis of Comments Received

We received a case brief from the petitioners, Hussey Copper, Ltd., The Miller Company, Olin Corporation-Brass Group, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), Mechanics Educational Society of America (Local 56), United Steelworkers of America (AFL–CIO/CLC). We received a rebuttal brief from the respondent.

Comment 1: The petitioners argue that the Department must match Wolverine's U.S. and home market sales based on the actual physical characteristics of the finished brass sheet and strip, rather than Wolverine's product control number system. The petitioners contend that Wolverine has not defined its product control numbers and that Wolverine's system contains an element that does not reflect the physical characteristics of the finished brass sheet and strip, namely, alloy designations which distinguish between reroll and non-reroll materials. Reroll materials are those which Wolverine purchases from outside suppliers that do not require casting. Non-reroll materials are those which Wolverine processes from the casting stage. The petitioners argue that no distinction should be made or allowed for model-matching purposes because products made from either source of brass are physically identical.

The respondent counters that the petitioners' claims are untimely and incorrect, and that the Department was correct in using Wolverine's control numbers. The respondent notes that the petitioners raised this issue for the first time in their March 28, 1996, case brief, and not in their September 12 or 19, 1995, comments, in which the petitioners urged the Department to reject certain other aspects of Wolverine's response, including other aspects of the product code numbering system not pertaining to the distinction between reroll and non-reroll brass. The respondent argues that to adopt the petitioners' arguments for changing the product codes to erase the distinction between the Wolverine sources of raw material would deprive Wolverine of the opportunity to meaningfully participate in this proceeding, since it could not respond or place new information on the record to rebut the petitioners' claim.

Concerning the substance of the petitioners' complaint, the respondent answers that certain applications require low impurities, which produce a fine grain size at a heavy finished gauge and, therefore, require reroll inputs, not material cast by Wolverine.

Department's Position: We agree with the respondent. The respondent's distinction between the two metal categories is supported by the record evidence and was used in prior reviews of this order.

Wolverine explained the physical differences between the two types of brass in its September 1, 1995, response. The petitioners furnished no evidence in rebuttal to support their claim that the product codes wrongly differentiate between what it alleges to be physically identical materials.

The petitioners' claim that the respondent never defined its product control numbers in the CONNUMH/U fields is correct; however, we derived and used this information from the PRODCODH/U fields.

Comment 2: The petitioners argue that the Department should revise Wolverine's reported general and administrative (G&A) expenses to include expenses incurred by the U.S. parent in support of Wolverine. The respondent argues that the cost of production (COP) data which it submitted accurately reflected G&A expenses, and that the Department correctly determined not to artificially inflate Wolverine's G&A expenses by adding a portion of the U.S. parent's G&A expenses to COP and constructed value. The respondent also argues that to allocate the U.S. parent's G&A to the Canadian facility's COP would double-count the subsidiary's G&A, because the latter is included in the parent's consolidated financial statements.

The respondent further argues that it complied with our questionnaire by including a proportionate amount of G&A expenses from its Canadian headquarters, which supplies it with administrative, computer, and other services, whereas the U.S. parent provides no services which would warrant an allocation of the latter's G&A expenses.

Department's Position: We agree with the respondent, in light of the record evidence in this case and our policy as stated in *Certain Hot-Rolled Carbon Steel Flat Products et al., from Japan* (58 FR 37154, 37166, July 9, 1993) (*Certain Steel/Japan*):

> The Department normally computes the G&A and other non-operating income and expense ratio of a company based on its unconsolidated operations and includes an amount of G&A from related companies which pertains to the product under investigation. G&A and other non-operating income and expense items are not considered fungible in nature. Thus, other non-operating income and expenses realized by a related company does not necessarily affect the general activity of [the respondent].

Since the record shows the U.S. headquarters provides no support services to Wolverine, allocating a portion of the U.S. G&A expenses to Wolverine would be inappropriate.

Comment 3: The petitioners argue that Wolverine's submitted G&A expenses fail to reflect expenses which the respondent's parent company incurred in holding an inactive manufacturing facility in New Westminster, Canada. The petitioners note that in the 1992 review of this order, the respondent also did not report the same expense item, and the Department included an allocated amount for it in Wolverine's G&A in the final review results.

The respondent argues that such an adjustment would be inappropriate because 1) information concerning the inactive facility which the petitioners submit in its brief was available in the response, but the petitioners did not raise the issue earlier, 2) the Department's supplemental questionnaire did not request additional information or calculations concerning the respondent's G&A, and 3) the Department altered its treatment of this expense in its preliminary results of review of the 1993 period of review because it verified that the inactive plant had handled only non-subject merchandise, whereas the Department only accounts for G&A expenses that relate to covered merchandise. The respondent cites the Department's position in *Certain Steel/Japan* in this regard.

Department's Position: We agree with the respondent. The plant in question never handled subject merchandise, and, as explained in *Certain Steel/Japan*, we allocate G&A based on expenses associated with subject merchandise.

Comment 4: The petitioners argue that the Department must consider Wolverine's selling functions when performing its level-of-trade (LOT) analysis. The petitioners state that Wolverine neglected to identify the selling functions corresponding to what it claimed to be three different home market levels of trade.

The petitioners note that the Statement of Administrative Action accompanying the Uruguay Round Agreements Act requires the Department to calculate normal value for sales at the same level of trade as the U.S. sales, to the extent possible. The petitioners claim that "in recent cases the Department has expressed its emphasis on the seller's functions in its level of trade analysis." To support this contention the petitioners cite the *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Pasta From Italy*, 61 FR 1344, 1347 (January 19, 1996) and *Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Administrative Review*, 61 FR 8915, 8916 (March 6, 1996).

The respondent argues that the Department would err if it were to reject Wolverine's LOT claim on the basis of a perceived change in the Department's policy, after issuing the preliminary review results. The respondent claims that it fully documented the fact that it sells to three different levels of trade in the home market, that it maintains separate price lists for each of these customer categories, and that it performs significantly different processing services for each.

The respondent claims that in a recent final determination, "the Department appeared to disregard the criteria where there were sales at identical levels of trade in U.S. and home markets," citing *Polyvinyl Alcohol from Taiwan*, 61 FR 14064, 14069 (March 29, 1996)(*Polyvinyl Alcohol*).

The respondent argues that we should not apply a new set of criteria at this stage of the review, that "it would be an even greater abuse of the Department's discretion to apply such a standard when it has not requested the pertinent information from Wolverine," and cites *Usinor Sacilor* v. *United States*, 893 F. Supp. 1112, 1141–42 (CIT 1995) and *Creswell Trading Co., Inc.* v. *United States*, 15 F. 3d 1054, 1062 (Fed. Cir. 1994) to support this point. The respondent also notes that in the cases cited by the petitioners, the Department issued specific questions to elicit detailed LOT data.

Department's Position: We agree with the petitioners. Contrary to the respondent's claims, in our questionnaire we specifically asked the respondent to describe the functions performed and services offered in each distribution channel, for each customer or class of customer in the U.S. market and the comparison market. We gave examples of selling functions and asked the respondent to specify whether sales services were provided by the respondent or by an affiliate. Wolverine stated only that it provides customized slit-to-width products to original equipment manufacturers, and not to processing distributors. The respondent did not mention any other of the selling functions identified in our questionnaire, or provide any further information to document, justify, or quantify the differences it claims the Department should recognize between three different LOTs in the home market.

As documentation to support its LOT claim, the respondent supplied price lists, but these lists do not identify any particular LOT or show any differences in selling functions. On the contrary, if anything, the price lists show that Wolverine offers identical terms, services, and service charges to all customers.

Wolverine's assertion that it provided information on different selling functions to three different LOTs is not supported by information on the record. Here, just as in *Carbon and Alloy Steel Wire Rod From Canada*, 59 FR 18791, 18794 (April 20, 1994), the respondent "did not demonstrate that any differences in sales process or expenses were directly related to differences in selling at the claimed levels of trade."

We note that the case which Wolverine cites as evidence that the Department may overlook the selling function criteria, *Polyvinyl Alcohol*, does not support the respondent's argument. On the contrary, rather than overlooking these criteria in that case, we applied them and determined that the respondent provided "nearly all of the same or very similar selling functions to all customers," and that there was only one level of trade in the home market.

Because Wolverine performed similar selling functions in all channels of distribution, we determined that there is only one LOT in the home market. Furthermore, we determined that this level is comparable to the LOT in the U.S. market and, therefore, no LOT adjustment is necessary.

We also disagree with the respondent's claim that to disallow the claimed differences in home market LOTs would be an unwarranted reversal of our preliminary determination. Although the Department allowed the LOT distinctions in its preliminary determination, further analysis of the LOT claim, the petitioners' arguments, and the evidence on the record indicates that our preliminary results were in error, and that there was only one LOT in the home market.

The respondent's argument that, in making its final determination, Commerce cannot apply the LOT standards associated with the new statute is incorrect. This statute, and the interpretive approach taken in the SAA, clearly apply to this review.

As for the respondent's argument that it would be unfair to place it at risk of losing its LOT distinctions without having been asked for detailed information, in our original questionnaire we clearly asked Wolverine for detailed information on the selling functions it provided at each claimed LOT. We acknowledge that in our supplemental questionnaire we did not repeat our earlier request for this information. However, we are not obligated by law or practice to repeat every original request in a supplemental questionnaire. The Department's practice of requesting additional information or clarification of a previous response does not relieve a respondent of its obligation to answer every question in an original questionnaire.

Comment 5: The petitioners argue that the Department's computer program for the preliminary results omitted selling expenses that Wolverine reported in its

home market COP database under the category "INDSELEX". The respondent did not address this claim.

Department's Position: We agree with the petitioners, and have amended our final results to include these indirect selling expenses in our COP calculations.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margin exists for Wolverine:

Manufacturer/exporter	Period	Margin (percent)
Wolverine	1/1/94–12/31/94.	0

Individual differences between the U.S. price and normal value may vary from the above percentage. The Department shall instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act.

(1) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.10 percent, the "all others" rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. § 1675(a)(1)) and 19 CFR § 353.22.

Dated: August 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22520 Filed 9–03–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–837]

Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: William Crow at (202) 482–0116 or Irene Darzenta at (202) 482–6320, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA).

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on July 15, 1996, the Department made its final determination that large newspaper printing presses (LNPPs) and components thereof from Japan are being, or are likely to be, sold in the United States at less than fair value (61 FR 38139, July 23, 1996). Subsequent to the final determination, on July 27, 1996, we received a submission, timely filed pursuant to 19 CFR 353.28(b), from Mitsubishi Heavy Industries Ltd. (MHI), alleging ministerial errors in the Department's final determination. We also received comments from the petitioner rebutting MHI's allegations on August 2, 1996.

We determine, in accordance with 19 CFR 353.28(d), that ministerial errors were made in our margin calculations for MHI. Specifically, we inadvertently: (1) overstated the amount of the outstanding payment on the Guard sale in our calculations; (2) did not take into account the reduction in the sales price for the outstanding payment in the calculation of imputed credit; (3) incorporated the total costs from our preliminary determination imputed interest schedules instead of our final determination interest schedules in the calculation of imputed interest on SG&A; and (4) included the interest income associated with the commission on the Guard sale in the schedule of payments used in the calculation of imputed credit, while we excluded this amount from the commission deducted from the constructed export price. For a detailed discussion of the above-cited ministerial errors and the Department's analysis, *see* Memorandum from The Team to Susan Kuhbach, dated August 12, 1996. In accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of LNPPs from Japan to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer exporter	Original margin percentage	Revised margin percentage
Mitsubishi Heavy Industries, Ltd	62.96	62.26
Tokyo Kikai Seisakusho, Ltd	56.28	56.28
All Others	58.97	58.69

Scope of Order

The products covered by this investigation are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of this investigation includes the five press system components. They are:

(1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) a reel tension paster, which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) a computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: the term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this investigation covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this investigation are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On August 28, 1996, the U.S. International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Japan. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of the subject merchandise, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, only unliquidated entries of LNPP from Japan entered or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** are liable for the assessment of antidumping duties.

Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation of entries of LNPP imported from Japan, entered or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of merchandise exceeds constructed export price of all relevant entries of LNPP from Japan. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below. The "All Others" rate listed applies to all Japanese exporters of LNPP not specifically listed below.

The ad valorem weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Revised margin percentage
Mitsubishi Heavy Industries, Ldt ...	62.26
Tokyo Kikai Seisakusho, Ltd	56.28
All Others	58.69

This notice constitutes the antidumping duty order with respect to LNPPs from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act (19 USC 1673e(a)) and 19 CFR 353.21.

Dated: August 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22677 Filed 9–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–821]

Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: William Crow at (202) 482–0116 or Irene Darzenta at (202) 482–6320, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA).

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on July 15, 1996, the Department made its final determination that large newspaper printing presses (LNPPs) and components thereof from Germany is being, or is likely to be, sold in the United States at less than fair value (61 FR 38166, July 23, 1996). Subsequent to the final determination, on July 29, 1996, we received a submission, timely filed pursuant to 19 CFR 353.28(b), from the petitioner, alleging ministerial errors in the Department's final determination. We also received such allegations from MAN Roland Druckmaschinen AG (MRD) on August 5, 1996. In addition, we received comments from the petitioner rebutting MRD's allegations on August 12, 1996.

We determine, in accordance with 19 CFR 353.28(d), that ministerial errors were made in our margin calculations for MRD. Specifically, we failed to exclude from our calculations for the Fargo and Global sales, certain non-subject parts (*i.e.*, imported parts which did not constitute at least 50 percent of the cost of manufacture of the LNPP component of which they are a part). We also incorrectly calculated the indirect selling expenses incurred in Germany for the Global sale. For a detailed discussion of the above-cited ministerial errors and the Department's analysis, *see* Memorandum for Susan Kuhbach from Neal Halper, *et al.*, dated August 15, 1996. In accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of LNPPs from Germany to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer exporter	Original margin percentage	Revised margin percentage
MAN Roland Druckmaschinen AG	30.80	30.72
Koenig Bauer-Albert AG	46.40	46.40
All Others	30.80	30.72

Scope of Order

The products covered by this investigation are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of this investigation includes the five press system components. They are:

(1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) a reel tension paster, which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) a computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: the term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this investigation covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this investigation are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS

subheadings 8443.21.00 and 8443.40.90. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On August 28, 1996, the U.S. International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Germany. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of the subject merchandise, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, only unliquidated entries of LNPP from Germany entered or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** are liable for the assessment of antidumping duties.

Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation of entries of LNPP imported from Germany, entered or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of merchandise exceeds constructed export price of all relevant entries of LNPP from Germany. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins noted below. The "All Others" rate listed applies to all German exporters of LNPP not specifically listed below.

The ad valorem weighted-average dumping margins are as follows :

Manufacturer/producer/exporter	Revised margin percentage
[illegible] Roland Druckmaschinen AG	30.72
Koenig Bauer-Albert AG	46.40
All Others	3.72

Any securities posted on entries of elements relevant to MAN Roland's Charlotte contract shall be refunded or canceled.

This notice constitutes the antidumping duty order with respect to LNPPs from Germany, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act (19 USC 1673e(a)) and 19 CFR 353.21.

Dated: August 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary, for Import Administration.

[FR Doc. 96–22678 Filed 9–3–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–823]

Professional Electric Cutting Tools from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, Makita Corporation and Makita U.S.A. Inc. (Makita), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on professional electric cutting tools (PECTs) from Japan. The review covers shipments of the subject merchandise to the United States during the period July 1, 1994, through June 30, 1995. The review indicates the existence of dumping margins during the period of review.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the constructed export price (CEP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 4, 1996.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On July 12, 1993, the Department published in the **Federal Register** the antidumping duty order on PECTs from Japan (58 FR 37461). On July 3, 1995, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order (60 FR 34511). On July 27, 1995, Makita requested that we conduct an administrative review in accordance with 19 CFR 353.22(a)(1). We published the notice of initiation of this antidumping duty administrative review on August 16, 1995 (60 FR 42500).

The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review are PECTs from Japan. PECTs may be assembled or unassembled and corded or cordless.

The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features. The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term "unassembled" means components, which when taken

as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations, (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

"Corded" and "cordless" PECTs are included within the scope of this order. "Corded" PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat-treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT.

"Cordless" PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description remains dispositive as to the scope of the order.

This review covers one manufacturer/exporter of PECTs from Japan, Makita, and the period July 1, 1994 through June 30, 1995.

Verification

From June 3 through June 12, 1996, the Department conducted verification of Makita's questionnaire responses, as provided in section 782(i) of the Act. We used standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant accounting, sales, and other financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Constructed Export Price

In calculating United States price, we used CEP, in accordance with subsections 772(b), (c), and (d) of the Act, because Makita's sales to the first unaffiliated purchaser occurred after importation into the United States. We calculated CEP based on the packed, delivered prices to the first unrelated purchaser in the United States.

Where appropriate, we made deductions from the starting price for discounts, rebates, Japanese and U.S. inland freight, ocean freight, Japanese and U.S. brokerage and handling, and those imputed credit and warranty expenses that were incurred in the United States. In accordance with section 772(d)(1) and the Statement of Administrative Action (SAA) at 823–24, we also deducted those selling expenses that related to commercial activity in the United States, and added revenues earned from drop-ship fees and miscellaneous charges, where appropriate. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

Normal Value

Based on a comparison of the aggregate quantity of Makita's home-market and U.S. sales, we determined that the quantity of the foreign like product Makita sold in Japan was sufficient to permit a proper comparison to its sales of PECTs to the United States, pursuant to section 773(a) of the Act. Makita's quantity of home-market sales was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in Japan.

In calculating NV, we disregarded sales to affiliated customers where we determined that such sales were not made at arm's-length prices, *i.e.*, at prices comparable to prices at which Makita sold identical merchandise to unrelated customers.

Based on petitioner's allegation, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that Makita made sales in the home market at prices below the cost of production (COP). As a result, we initiated a sales-below-cost investigation. We calculated COP based on the sum of Makita's cost of materials and fabrication employed in producing the foreign like product plus amounts for home-market selling, general, and administrative expenses (SG&A) and packing costs, in accordance with section 773(b)(3) of the Act. We compared Makita's weighted-average COP for the review period to home-market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and whether they were at prices which permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices, less any applicable movement charges,

discounts, rebates, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales during the review period of a given product were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities" in accordance with section 773(b)(2)(B) and (C) of the Act, and because we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all sales of a specific model were at prices below the COP, we disregarded all sales of that model, and calculated NV based on CV, in accordance with section 773(b)(1) of the Act.

Home-market prices were based on the packed, delivered prices to affiliated or unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with section 773(a)(6)(A) and (B) of the Act. We also made adjustments for discounts and rebates, and differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. If appropriate, we made COS adjustments by deducting home-market direct selling expenses and adding U.S. direct selling expenses, except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act.

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we based NV on sales at the same level of trade as the CEP sales. If NV was calculated at a different level of trade, we made an adjustment, if appropriate, and if possible, in accordance with section 773(a)(7) of the Act. This adjustment is discussed further in the Level of Trade section below.

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, profit, and U.S. packing. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home-market selling expenses. We calculated CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market.

Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 353.56 for COS differences and level-of-trade differences. We made COS adjustments by deducting home-market direct selling expenses and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare U.S. sales to comparison market sales at a different level of trade.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison-market sales used to determine NV. In making this determination, we consider all selling functions and activities performed by the exporter. The fact that there is some overlap in selling functions and activities does not preclude us from finding that sales were made at different levels of trade. Where selling functions and activities are substantially the same, however, we normally will consider sales to have been made at the same level of trade. *See, Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7348 (February 27, 1996).

Second, pursuant to section 773(a)(7)(A), the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

Makita reported two levels of trade in the home market and one level of trade in the United States. We reviewed and verified the selling functions and activities associated with each claimed level of trade. Because Makita's sales to the United States were all CEP sales made by an affiliated company, we considered only the parent company's selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Act. In examining all of Makita's selling functions and activities, we found that no single selling function or activity was sufficient to warrant distinguishing separate levels of trade.

We also determined that Makita's selling functions with respect to the channels of distribution for wholesalers and retailers in the home market are sufficiently dissimilar to conclude that two separate levels of trade exist in the home market. Further, we determined that Makita's aggregate selling functions and activities in the United States were substantially the same as those it performs in Japan at the wholesaler channel of distribution. Thus, we concluded that sales to the United States and sales in the home market at the wholesaler channel of distribution were made at the same level of trade.

When we were unable to find sales of the foreign like product in the home market at the same level of trade as the U.S. sale, we examined whether a level of trade adjustment was appropriate. We will make this adjustment when it is demonstrated that a difference in level of trade has an effect on price comparability. This is the case when it is established that, with respect to sales used to calculate NV, there is a pattern of consistent price differences between sales made at the two different levels of trade. To make this determination, we compared the weighted average of Makita's NV prices of sales made in the ordinary course of trade at the two levels of trade for models sold at both levels, after making any other adjustments required under section 773(a)(6). If the weighted-average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the weighted-average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each

model sold, in making this determination. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews*, 61 FR 35713 (July 8, 1996). As a result of our analysis, we found that there was a pattern of consistent price differences between the two levels of trade in the home market. Thus, we made an adjustment to NV for the differences in levels of trade.

We calculated the level of trade adjustment based on home-market sales made in the ordinary course of trade and on prices net of movement expenses, discounts, rebates, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted average of these model-specific percentage differences. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

The level of trade methodology employed in these preliminary results of review is based on the facts particular to this review. We will continue to examine our policy for making level-of-trade comparisons and adjustments for the final results of review.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
Makita Corporation.	7/1/94–6/30/95	6.34

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit comments are requested to submit with their comments (1) A statement of the issue and (2) a brief summary of the comment. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments. The Department will issue the final results of this review within 180 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between CEP and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Makita will be the rate we determine in the final results of review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 54.52 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: August 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22521 Filed 9–3–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 082796D]

Marine Mammals; Scientific Research Permit No. 1012 (P616)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. David R. Young, Professor, Oregon State University, College of Oceanography, Hatfield Marine Science Center, Newport, Oregon 97365–5260, has been issued a permit to import Baikal seal specimens for scientific purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: On July 9, 1996, notice was published in the **Federal Register** (61 FR 36036) that a request for a scientific research permit to import Baikal seal (*Phoca sibirica*) samples from Russia had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 27, 1996.

William Windom,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–22523 Filed 9–3–96; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of the AmeriCorps*VISTA Project Pre-Application Inquiry, Project Application and Project Progress Report Forms

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of 30-day OMB Review of Project Application and Project Progress Report Forms.

SUMMARY: On June 14, 1996, AmeriCorps*VISTA announced a 60-day review and comment ending on August 13, 1996, during which project sponsors and the public were encouraged to submit comments suggesting revisions to the Americorps*VISTA Pre-Application Inquiry, CNCS 3045–0042 (formerly form A–1421), Project Application and Grant Application CNCS 3045–0038 (formerly forms 1421 and 1421–B), Project Progress Report forms (CNCS 3045–0042, and Project Progress Report, CNCS–3045–0033 (formerly form 1433).

The Pre-Application Inquiry and Project Application were submitted by prospective grantees to apply for, or renew sponsorship of projects under the AmeriCorps*VISTA Program. Completion of the application is required to obtain or retain sponsorship and to refund the continuation of projects. The Project Progress Report is submitted by project sponsors to periodically report on activities listed in an approved application.

In the June 14 announcements, comments were invited on (1) whether the forms collect information sufficient to meet operational management, planning and reporting needs of the AmeriCorps*VISTA program; (2) ways to enhance the quality, utility and clarity of the information collected (3) accuracy of Corporation estimates of reporting burden; and (4) ways to further reduce the reporting burden.

No comments were received.

AmeriCorps*VISTA is requesting extension of the authorization to use the revised Project Application Part A and Part B (new title of the combined Pre-Application Inquiry and Project Application) and the Project Progress Report.

DATES: AmeriCorps*VISTA and the Office of Management and Budget will consider written comments on the Project Application and Project Progress Report and record keeping requirements which are received within 30 days from the date of publication.

ADDRESSES: David Gurr, Corporation for National Service, 1201 New York Ave., N.W,, Washington, D.C. 20525.

Estimated Annual Reporting Burden: 13,500 hours (900 annual respondents at an average of 15 hours per respondent) for the Project Application. 10,800 hours (900 respondents at an average of 3 hours, submitted 4 times each year).

FOR FURTHER INFORMATION, PLEASE CONTACT: David Gurr (202) 606–5000, extension 212.

*This document will be made available in alternate format upon request. TDD (202) 606–5256.

REGULATORY AUTHORITY: National Service Trust Act of 1993.

Dated: August 29, 1996.

Larry Bevan,

*Program and Field Support Manager, AmeriCorps*VISTA.*

[FR Doc. 96–22519 Filed 9–3–96; 8:45 am]

BILLING CODE 6050–28–M

Availability of Education Awards under the AmeriCorps Education Awards Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of education awards.

SUMMARY: The Corporation for National Service (The Corporation) seeks to expand opportunities for individuals to serve as AmeriCorps Members and earn educational benefits, broaden the network of national service programs and strategies, and increase the number of communities joining with AmeriCorps to better meet their education, public safety, environmental, and other human needs.

Accordingly, the Corporation announces the availability of up to 5,000 education awards from the National Service Trust (the Trust) through a simplified application process for community service programs that (1) Can support most or all of the AmeriCorps Member and program costs from sources other than the Corporation; (2) meet certain AmeriCorps program requirements; and (3) are judged to be high quality according to Corporation criteria, as highlighted below and set forth in the application materials. The education awards being made available may be earned by AmeriCorps Members successfully completing Full-time or Part-time terms in a community service program approved through this application process.

While programs supported under this Notice should be similar to other AmeriCorps*State and *National programs to maintain the integrity of the AmeriCorps national service network, the Corporation is modifying certain AmeriCorps requirements and permitting programs greater management and operating flexibility. In addition, the Corporation will consider requests for up to $1,000 per full-time Member (pro-rated for a part-time Member) to manage these programs.

Potential program sponsors eligible to apply under this Notice include national nonprofit organizations, multi-state collaborations, state commissions for national and community service, institutions for higher education, and state education agencies. Other applicants may apply through state commissions, provided they meet criteria established by the state commission.

DATES: Applications may be obtained on or after September 4, 1996. For applications received by October 31, 1996, we anticipate making decisions by November 30, 1996. For applications received by February 28, 1997, we anticipate making decisions by March 31, 1997. For applications received by June 30, 1997, we anticipate making decisions by July 31, 1997.

ADDRESSES: Application materials may be obtained from, and must be submitted to, the following address: AmeriCorps Education Awards Program, Corporation for National Service, 1201 New York Avenue NW, Washington, DC 20525. They may also be requested by telephone, at 202/606–5000, ext. 260, or (TDD) 202/565–2700. This notice may be requested in an alternative format for the visually impaired.

FOR FURTHER INFORMATION: For further information about this program, contact the Corporation for National Service, Hank Oltmann at 202/606–5000, ext. 417, or (TDD) 202/565–2700.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, environmental, or other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as

amended, 42 U.S.C. 12501, *et seq.* (the Act), the Corporation may "support innovative and model programs." 42 U.S.C. Sec. 12653(b). In addition, an individual can receive an education award from the National Service Trust if, among other things, the individual "successfully completes the required term of service . . . in an approved national service position." 42 U.S.C. 12602. The Act defines an approved national service position to include six specific service positions and "such other national service positions as the Corporation considers to be appropriate." 42 U.S.C. 12573.

Although AmeriCorps Education Award programs should be similar to existing AmeriCorps programs to maintain the integrity of the AmeriCorps national service network, the Corporation recognizes that some modifications to program and administrative requirements are appropriate. Program, grant, and administrative requirements are set forth in the application guidelines.

Program Eligibility and Design

The Corporation will accept applications from eligible applicants proposing to sponsor a national service program that addresses the unmet education, public safety, environmental, and other human needs in the community served, and provides a direct and demonstrable benefit that is valued by the community. The Corporation is looking for high-quality programs that (1) "get things done" to meet local needs, (2) strengthen communities, and (3) develop Members. Programs must establish specific objectives for the program, which are subject to the Corporation's approval.

For this initiative, the Corporation seeks programs that will support most or all program and participant costs (other than education awards) through sources other than the Corporation. The Corporation will consider requests for up to $1,000 per new full-time Member (pro-rated for a part-time Member) to manage the program. A request for funds in addition to the education awards should reflect the minimum support necessary to manage the program; should, in the case of existing service programs, reflect only the management costs related to adding new Members; may affect approval of the proposal due to lack of available funding; and will be the subject of negotiation between the applicant and the Corporation.

By "getting things done," programs will help their communities meet education, public safety, environmental, or other human needs through direct and demonstrable service. Programs must be large enough to achieve a demonstrable impact on the community served. Accordingly, the Corporation expects programs to enroll a sufficient number of either full-time or part-time Members, regardless of whether they are placed individually or in teams, to produce a demonstrable impact. If the program uses part-time Members, the program must demonstrate that the service provided by individual Members will be sustained and ongoing, not merely episodic.

To strengthen communities, programs should engage a full range of local partners to build a self-sustaining commitment to service. Service projects should be designed, implemented, and evaluated with appropriate local input and consultation with representatives of the community served, including community-based agencies, foundations, businesses, local labor organizations representing employees of service sponsors, and local government.

To develop Members, programs should provide appropriate training, education, supervision, and support, and emphasize the ethic and skills needed for productive, active citizenship.

Programs must keep time and attendance records on all AmeriCorps Members to document their eligibility for the education award. Programs will be required to cooperate with the Corporation and its evaluators in all its monitoring and evaluation efforts. Semi-annual program progress reports will be required. Member enrollment, end-of-term, and other National Service Trust forms must be submitted in compliance with existing requirements.

Program Models

The Corporation intends to support a variety of models under this initiative. The following is a list of models for both part-time (including summer) and full-time programs the Corporation intends to support. Applicants are encouraged to propose additional models.

(1) School-based and community-based service programs, including youth corps. Potential projects include tutoring and mentoring younger children and leading them in service projects after school, on weekends, and during summer.

(2) College-based programs in which student AmeriCorps Members eligible for education awards act as part-time service-learning coordinators in local schools, or perform other service.

(3) Programs run by colleges in which institutions agree to provide (a) future scholarships to middle and secondary level students if they qualify for admission, and (b) provide younger students with college student mentors, who are part-time AmeriCorps Members.

(4) Summer programs in which AmeriCorps Members organize service and other activities for children and youth.

(5) Joint initiatives between community organizations and private sector organizations in which full-time employees perform service in the community on their own time as AmeriCorps Members and receive a part-time education award.

(6) Before and after-school child care programs led by AmeriCorps Members funded by local communities.

(7) Full-time service programs run by religious organizations, youth corps, or other entities where expansion will be achieved by offering additional education awards.

(8) Fellowship programs in which individuals such as recent college or professional school graduates serve in public interest positions in their field of service for a year before seeking more permanent employment.

(9) Programs initiated by mayors and other local officials to integrate locally funded AmeriCorps Members into community-wide strategies to solve local problems; for example, a city or town with a shortage of supervised activities for middle-school students during summer months might design and fund a program for AmeriCorps Members to lead teams of youth in service activities.

Matching Funds Requirements

There is no matching funds requirement under the AmeriCorps Education Award Program.

Member Recruitment and Development

Programs must enroll Members to complete full-time (at least 1700 hours in a nine to twelve month period) or part-time (at least 900 hours over not more than two years or approved reduced part-time) terms of service.

Programs must select their Members in a non-partisan, non-political, and non-discriminatory manner. Members must be U.S. citizens, U.S. nationals, or lawful permanent resident aliens. Members must be at least 17 years old, except that out-of-school 16 year olds may participate in youth corps programs and programs for disadvantaged youth that address the need for housing and other community facilities in low-income areas.

Programs are encouraged to recruit Members who possess leadership potential and a commitment to the goals of national service, regardless of the

Member's educational level, work experience, or economic background. In recruiting and placing their Members, programs must not displace any employee or position, or otherwise violate the non-displacement provisions of the Corporation's regulations, which are published at 45 CFR Sec. 2540.100(f).

In addition, programs should strive to build strong communities by engaging diverse Members, community volunteers and staff in service activities and by encouraging mutual understanding and cooperation. Programs should actively seek to include Members and staff from the communities in which projects are conducted, as well as individuals of different races and ethnicities, ages, education levels, socioeconomic backgrounds, both men and women, and individuals with physical and cognitive disabilities.

Programs must provide Members with the training, skills, and knowledge necessary to perform the tasks required in their respective projects. In addition, programs are encouraged to help participants who have not completed their secondary education to earn the equivalent of a high school diploma.

Member Benefits

The Corporation will not set a minimum living allowance for full-time Members (which, for current AmeriCorps programs, is $7,945 per year) under the AmeriCorps Education Award Program. The maximum living allowance for full-time AmeriCorps Members under this program is $10,000 per year. Any living allowance for a part-time Member may not exceed a prorated share of a maximum of $10,000 per year on a full-time basis. This maximum may be waived by the Corporation, upon request, for certain professional corps and similar programs.

Health care and child care are not required under the AmeriCorps Education Award Program, but may be offered by the local program which is responsible for all Member benefits.

Programs must provide reasonable accommodation, including auxiliary aids and services, based on the individualized need of a Member who is a qualified individual with a disability. Programs must also establish and maintain a procedure for receiving and resolving grievances from participants and other interested individuals concerning the program.

Eligibility for the Education Award

Members who successfully complete full-time or part-time terms of service are eligible for education awards for each of up to two terms of service. Full-time Members must serve at least 1700 hours during a period of not less than nine months and not more than a year. Part-time Members must generally serve at least 900 hours during a period of not more than two years. Members may also serve in approved reduced part-time programs (such as summer programs or other programs requiring less than 900 hours), with education awards prorated to the number of hours served.

Under the AmeriCorps Education Awards Program, the Corporation will not accept proposals for part-time service of more than two years. Full-time education awards are $4,725 and part-time education awards are $2,362.50.

Use of Education Award

The education award may be used only for specific educational purposes: (1) To repay a Member's qualified loans; or (2) towards the cost of a Member's attendance at a qualified institution of higher education or approved School-to-Work program. The education award is not transferable to anyone other than the Member. The award must be paid directly to the loan holder or the educational institution. Regulations governing AmeriCorps education awards are published at 45 CFR Sec. 2525–2529.

Prohibited Service

Prohibited activities may not be performed by Members in the course of their duties, at the request of program staff, or in a manner that would associate the activities with the national service program or the Corporation. However, Members are free to engage in such activities on their own initiative, on their own time, and at their own expense. These activities include:

(1) any effort to influence legislation, as defined under Sec. 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501);

(2) organizing or engaging in protests, petitions, boycotts, or strikes;

(3) assisting, promoting, or deterring union organizing;

(4) impairing existing contracts for services or collective bargaining agreements;

(5) engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(6) participating in, or endorsing, events or activities which are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

(7) engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious education or worship, constructing or operating facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization; and providing a direct benefit to (a) A business organized for profit, (b) a labor union, (c) a partisan political organization, (d) a nonprofit organization that fails to comply with the restrictions contained in Sec. 501(c)(3) of the Internal Revenue Code of 1986, or (e) an organization engaged in the religious activities described in paragraph (6) above, unless Corporation assistance is not used to support those religious activities.

Eligible Applicants

State Commissions, national non-profit organizations proposing to operate in more than one state, multi-state collaborations, institutions of higher education, and state education agencies may apply directly to the Corporation.

Local non-profit organizations, State and local units of government (other than state education agencies), other state-wide programs, and programs operating only within the state must apply through respective State Commissions on National and Community Service. Interested applicants should first contact their respective Commissions.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities is not eligible to apply, serve as a host site for Member placements, or act in any type of supervisory role in the program.

This Notice does not apply to organizations interested in applying to become AmeriCorps*VISTA cost-share projects. Such organizations should contact their respective State Office of the Corporation for National Service.

Criteria for the Selection of Programs

The Corporation will employ the following criteria in the review of proposals under this initiative:

1. Program Quality. A proposal must demonstrate the applicant's capacity to establish clear and specific objectives to meet compelling community needs, design meaningful service activities based on these needs, and recruit, select, train and manage AmeriCorps Members to carry out these needs. The proposal should demonstrate the applicant's organizational and staff

capacity to manage a high quality program. The proposal should evidence strong community support, and have a demonstrable impact on the community being served, together with the capacity to document that impact.

2. Program Growth. If the applicant currently sponsors an AmeriCorps project or another service project, there must be evidence that the availability of education awards will increase the size and scope of the service program and/or enhance its quality.

3. Preference for Children and Youth Programs. The Corporation will give preference to those programs addressing the needs of our Nation's children and youth, such as tutoring, mentoring, after-school and summer programs, and immunization. Especially important are efforts designed to involve children and youth being served in performing service themselves, not simply the implementation of programs designed to serve them.

4. Preference for identified models. Although the Corporation will consider all model program proposals, the Corporation will give preference to the models identified in this announcement.

Selection Process

The Corporation will judge proposals with a process that includes review by outside experts, staff review and recommendations, and final decisions by the Corporation Board. The Corporation will enter into negotiations with potentially successful applicants in a manner that may require significant modifications to original proposals. Awards are contingent on successful completion of negotiations. The number of applications approved, the number of education awards provided to approved programs, and the duration of approved programs are subject to the availability of funds and education awards.

Dated: August 28, 1996.

Shirley Sagawa,

Managing Director for Planning, Corporation for National Service.

[FR Doc. 96–22449 Filed 9–3–96; 8:45 am]

BILLING CODE 6050–28–P

Availability of Funds for Technical and Administrative Support for the National Service Scholarship Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service (the Corporation) announces the availability of up to $250,000 to provide technical and administrative support for a new National Service Scholarship Program to recognize high school juniors and seniors engaged in outstanding community service. Students selected for recognition will receive locally-funded scholarships, matched or supplemented with federal funds provided by the Corporation. Of the National Service Scholars, a small number selected at the State level will receive special recognition and larger scholarships, and an even smaller number selected at the national level will receive special recognition and still larger scholarships. The Corporation's goal in this effort is to highlight the outstanding community service performed by high school students across the country, to recognize the particularly noteworthy service accomplishments of outstanding young individuals, and to assist those individuals in pursuing higher education.

As part of this effort, the Corporation is interested in selecting an organization to provide administrative and technical support related to this program. The successful applicant will assist in the design of the program, conduct outreach and promote the program, solicit input from interested nonprofit organizations with relevant expertise, work with local nonprofits and other organizations to carry out the program, and provide the administrative and technical support necessary to accomplish the objectives described above.

DATES: The deadline for submission of applications is October 15, 1996. Applications must be received by the Corporation no later than 3:00 p.m. Eastern Standard Time on that date.

ADDRESSES: Applications must be addressed to: Corporation for National Service, 1201 New York Avenue NW, Ninth Floor, Washington, DC 20525. Attention: Simon G. Woodard. Applications may not be submitted by facsimile.

FOR FURTHER INFORMATION CONTACT: For further information, contact Simon G. Woodard at (202) 606–5000, ext. 114. This notice may be requested in an alternative format for the visually impaired by calling (202) 606–5000, ext. 260. The Corporation's T.D.D. number is (202) 565–2799.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. Sec. 12501, et seq. (the Act), the Corporation may "support innovative and model programs." Under this authority, the Corporation intends to conduct a National Service Scholarship Program that will recognize high school juniors/seniors for outstanding service in their communities and provide modest scholarship support in recognition of such service.

Through this notice, the Corporation invites proposals from interested applicants to design and implement the program. An outline of the program, and the expectations of performance are provided below.

Purpose and Potential Design of the National Service Scholarship Program

The purpose of this program is to highlight the outstanding community service performed by high school students across the country, to recognize the particularly noteworthy service accomplishments of outstanding young individuals, and to assist those individuals in pursuing higher education.

The Corporation anticipates that the final design of this program will come from a collaboration involving the organization selected under this notice, an independent panel of experts in the field, and State and local stakeholders. The Corporation expects that the national service scholarship program will be implemented by local schools and communities across the country according to guidelines and procedures they will establish, consistent with the following general guidelines:

(1) The volunteer activities of the high school junior/senior should demonstrate effort over a sustained period of no less than one year, and should have a significant impact in meeting the needs of the local community.

(2) The awarding of the scholarship should be made by a local organization in recognition of the individual's community service and in accordance with procedures that are equitable and provide the opportunity for consideration of all eligible candidates.

(3) It may be connected with service learning programs of the school district.

(4) The selection process should be strictly non-partisan and non-political.

(5) The scholarship recipient should be acknowledged by the community and school in an appropriate fashion, such as high school graduation.

(6) The scholarship should be provided by private funding sources, and should be a minimum of $500.

The following is one potential design of the program to assist organizations in understanding the scope and magnitude of the effort required in this project. In this scenario, individuals might be selected by local high schools or community organizations as National Service Scholars. They, in turn, might complete a brief application and submit them to either the State Education Agency, which now administers service learning programs, or to the State Commission on National and Community Service, as determined by the governor of the State. That organization, based on merit criteria and consistent with the local guidelines, could select a number of individuals who would have their scholarship matched by the Corporation; and award a number of larger scholarships to particularly noteworthy individuals. The application might also include reference to the connection between service and school studies. Each State agency would forward the applications of the statewide scholarship recipients to a panel of nationally renowned individuals who will select several larger scholarship recipients across the nation.

The scholarships provided by private organizations should be for the purpose of paying the cost of a student's higher education and will be granted under the terms and conditions set by those organizations. The matching amount provided by the Corporation, as well as the larger scholarships, would be paid directly to an institution of higher education.

Eligible Applicants

To be eligible, applicants must be a non-profit organization or educational institution. Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities is not eligible.

Required Activities of the Successful Applicant

The organization selected will (1) Complete a final program design and implementation plan for approval by the Corporation; (2) publicize the program to local school districts, State agencies, and other affected parties; (3) provide assistance to local nonprofits and seek input from national nonprofit organization with relevant expertise and knowledge; (4) respond to inquiries from all parties in timely fashion; (5) organize the selection process for nationally-selected scholarships; and (6) provide administrative and technical support to the Corporation at all phases of the program.

Corporation Involvement

Substantial involvement is expected between the Corporation and the successful applicant when carrying out the program. The Corporation anticipates providing sufficient staff to support this effort and to oversee the provision of Corporation funds. The applicant must keep relevant Corporation staff informed of its activities; work with Corporation staff during development, delivery and assessment of services provided; and attend meetings/conferences at the Corporation's request.

Project Duration

The Corporation anticipates entering into a cooperative agreement covering a project period of approximately November, 1996 through approximately October, 1997, with the possibility of renewal based on performance, need, and the availability of funds at the discretion of the Corporation.

Overview of Application Requirements

The application should include a narrative section describing the organization's background and capacity to provide the technical and administrative support for this program, an implementation timeline, a staffing plan, and a certification that it will comply with all conditions attendant to the receipt of federal funding. The application may be no longer than 20 single-sided pages double-spaced in 12-point font.

Initially all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains the information required. The Corporation will assess applications based on the criteria listed below (in descending order of importance):

(1) *Quality*

(2) *Organizational Capacity*

(3) *Proposed Costs.*

The Corporation reserves the right to request additional written information from applicants subsequent to the submission of initial applications.

Dated: August 28, 1996.

Shirley Sagawa,

Managing Director for Planning, Corporation for National Service.

[FR Doc. 96–22450 Filed 9–3–96; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Pharmacoeconomic Center Notice Regarding Use of Drugs for Unlabeled Applications

AGENCY: Department of Defense Pharmacoeconomic Center.

ACTION: Notice.

SUMMARY: The Pharmacoeconomic Center (PEC) announces as a matter of policy that Food and Drug Administration (FDA) approved drugs may be used, where appropriate, for unlabeled indications. It is the further intent of the Department of Defense (DoD) that such drugs may be included, where appropriate, in disease state analyses which may result in their selection to the Tri-Service Formulary and promotion for a given disease state.

FOR FURTHER INFORMATION CONTACT: Captain Charles S. Reeves, USN, DoD Pharmacoeconomic Center, Fort Sam Houston, Texas 78234, (210) 221–5596.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 352(f) et seq., notice is given that pharmacies on DoD installations will, as a matter of policy, fill prescriptions in appropriate cases with drugs that are not necessarily approved by the FDA for the treatment of the underlying medical condition but have nonetheless been proven effective for treatment of the disease state in question.

Errol L. Moran,

Director, Pharmacoeconomic Center.

[FR Doc. 96–22479 Filed 9–3–96; 8:45 am]

BILLING CODE 3710–08–M

Performance Review Boards

AGENCY: Assistant Secretary of the Army (Manpower and Reserve Affairs).

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: David Stokes, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower &

Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives; performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Materiel Command (AMC) are:

1. Major General (MG) Michael S. Davison, Jr., Commander, U.S. Army Security Assistance Command
2. MG Robert D. Orton, Program Manager for Chemical Demilitarization
3. Brigadier General (BG) Jerry L. Laws, Commander, U.S. Army White Sands Missile Range
4. BG David R. Gust, Program Executive Officer, Intelligence and Electronic Warfare, Army Acquisition Executive
5. BG James R. Snider, Comanche Program Manager, Program Executive Office, Aviation, Army Acquisition Executive
6. Mr. Dale G. Adams, Principal Deputy for Acquisition, U.S. Army Materiel Command
7. Mr. Edward Bair, Deputy PEO, Intelligence and Electronic Warfare, Army Acquisition Executive
8. Mr. Jerry L. Chapin, Director, Tank Automotive RD&E Center, U.S. Army Tank-automotive and Armaments Command, AMC
9. Dr. Andrew Crowson, Director, Materiels Science Division, U.S. Army Research Office, AMC
10. Ms. L. Marlene Cruze, Director, Acquisition Center, U.S. Army Missile Command, AMC
11. Dr. Larry O. Daniel, Director, Systems Engineering and Production, U.S. Army Missile Command, AMC
12. Mr. Vito J. DeMonte, Director, Information Sciences and Technology, U.S. Army Research Laboratory, AMC
13. Mr. Edward G. Elgart, Director, CECOM Acquisition Center, U.S. Army Communications-Electronics Command, AMC
14. Mr. Eugene Famolari, Jr., Associate Technical Director, CECOM RD&E Center, U.S. Army Communications-Electronics Command, AMC
15. Mr. Alexander Farkas, Director for Development Business Group, U.S. Army Tank-Automotive and Armaments Command, AMC
16. Mr. Frank E. Fiorilli, Comptroller, U.S. Army Communications-Electronic Command, AMC
17. Mr. James L. Flinn III, Director, Integrated Materiel Management Center, U.S. Army Missile Command, AMC
18. Dr. John T. Fraiser, Associate Director for Science and Technology, U.S. Army Research Laboratory, AMC
19. Mr. John F. Gehbauer, Deputy Director, Close Combat Armaments Center, Armament RD&E Center, AMC
20. Ms. Linda J. Glasgow, Executive Director, Integrated Materiel Management Center, U.S. Army Aviation and Troop Command, AMC
21. Mr. Spencer S. Hirshman, Associate Technical Dir, Producibility and Process Technology, U.S. Army Armament RD&E Center, AMC
22. Ms. Kathryn T. Hoener, Chief Counsel, U.S. Army Communications-Electronics Command, AMC
23. Mr. Gary L. Holloway, Director for Test and Assessment, U.S. Army Test and Evaluation Command, AMC
24. Mr. Thomas L. House, Executive Director, Aviation RD&E Center, U.S. Army Aviation and Troop Command, AMC
25. Dr. Paul L. Jacobs, Associate Director for Technology, U.S. Army Missile Command, AMC
26. Mr. Larry H. Johnson, Director, Redstone Technical Test Center, U.S. Test and Evaluation Command, AMC
27. Mr. Arthur R. Keltz, Principal Deputy for Logistics, U.S. Army Materiel Command
28. Ms. Barbara A. Leiby, Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command
29. Mr. Harold L. Mabrey, Executive Director, Acquisition Center, U.S. Army Aviation and Troop Command, AMC
30. Dr. Ingo W. May, Acting Director, Weapons Technology Directorate, U.S. Army Research Laboratory, AMC
31. Mr. Douglas R. Newberry, Deputy to the Commander, U.S. Army Tank-Automotive and Armaments Command, AMC
32. Ms. Renata F. Price, Associate Technical Director, U.S. Army Armament RD&E Center, U.S. Army Tank-Automotive and Armaments Command, AMC
33. Dr. Bhakta Rath, Associate Director for Research, U.S. Naval Research Laboratory
34. Mr. Arend H. Reid, Retired SES Member
35. Mr. Daniel J. Rubery, Deputy to the Commander, U.S. Army Aviation and Troop Command, AMC
36. Mr. Carmine Spinelli, Technical Director, U.S. Army Armament RD&E Center, U.S. Army Tank-Automotive and Armaments Command, AMC
37. Dr. James J. Streilein, Chief, Reliability Analysis Division, U.S. Army Materiel Systems Analysis Activity
38. Mr. Joseph J. Vervier, Acting Technical Director, Edgewood RD&E Center, U.S. Army Chemical and Biological Defense Command, AMC
39. Mr. Walter Wynbelt, Program Executive Officer, Tactical Wheeled Vehicles, Army Acquisition Executive

The members of the Performance Review Board for the Office of the Chief of Staff, Army are:

1. Mr. Chester A. Kowalczyk, Assistant Director, Energy and Troop Support, Office of the Deputy Chief of Staff for Logistics (DCSLOG)
2. Mr. A. David Mills, Assistant Director for Maintenance Management, DCSLOG
3. MG Charles S. Mahan, Acting Assistant Deputy Chief of Staff for Logistics, DCSLOG
4. BG Boyd E. King, Director, Transportation, Energy and Troop Support, DCSLOG
5. Mr. Mark W. Ewing, Assistant Deputy Chief of Staff for Intelligence, Office of the Deputy Chief of Staff for Intelligence (DCSINT)
6. MG Claudia J. Kennedy, Assistant Deputy Chief of Staff for Intelligence, DCSINT
7. Dr. James R. Fisher, Director, Missile Defense and Space Technology Center, U.S. Army Space and Strategic Defense Command (SSDC)
8. Mr. Mark J. Lumer, Principal Assistant Responsible for Contracting, SSDC
9. MG F.E. Vollrath, Assistant Deputy Chief of Staff for Personnel, Office of the Deputy Chief of Staff for Personnel (DCSPER)
10. BG Stephen Smith, Director of Enlisted Personnel Management Directorate, DCSPER
11. Dr. Jack H. Hiller, Director of MANPRINT, DCSPER

12. Dr. Zita M. Simutis, Deputy Director, Army Research Institute, DCSPER
13. Mr. John Riente, Technical Advisor to the Deputy Chief of Staff for Operations and Plans, Office of the Deputy Chief of Staff for Operations and Plans

The members of the Performance Review Board for the Consolidated Commands are:

1. Mr. William R. Lucas, Deputy to the Commander, Military Traffic Management Command (MTMC)
2. Mr. Thomas D. Collinsworth, Director, MTMC Transportation Engineering Agency
3. MG Robert H. Scales, Deputy Chief of Staff for Doctrine, U.S. Army Training and Doctrine Command (TRADOC)
4. Mr. Roy Reynolds, Director of Operations, White Sands Missile Range, TRADOC
5. Mr. Robert Seger, Assistant Deputy Chief of Staff for Training (Plans and Policy), TRADOC
6. BG Timothy J. Maude, Deputy Chief of Staff for Personnel, U.S. Army, Europe (USAREUR)
7. Mr. Leland A. Goeke, Assistant Deputy Chief of Staff for Personnel (Civilian Personnel), USAREUR
8. Dr. Michael Gentry, Technical Director/Chief Engineer, U.S. Army Information Systems Command (ISC)
9. Mr. James A. Macinko, Deputy Chief of Staff for Resource Management, ISC
10. BG Joseph E. Oder, Director of Resource Management, Forces Command (FORSCOM)
11. Mr. Philip Sakowitz, Assistant Deputy Chief of Staff for Personnel and Installation Management, FORSCOM
12. Ms. Vickie Jefferies, Deputy Director of Resource Management, FORSCOM
13. Mr. William S. Rich, Jr., Deputy/Technical Director, National Ground Intelligence Center, U.S. Army Intelligence and Security Command

The members of the Performance Review Board for the U.S. Army Acquisition Executive are:

1. Mr. Edward Bair, Program Executive Officer (PEO), Intelligence & Electronic Warfare
2. Mr. Paul Bogosian, PEO, Aviation
3. MG William Campbell, PEO, Command and Control Systems
4. Dr. Herbert K. Fallin, Jr., Director for Assessment & Evaluation, Office of the Assistant Secretary of the Army (Research, Development & Acquisition)
5. Mr. Bennett Hart, PEO, Command and Control Systems
6. MG John Michitsch, PEO, Field Artillery Systems
7. Mr. Walter Wynbelt, PEO, Tactical Wheeled Vehicles
8. Mr. Daryl White, Deputy Director, Army Digitization Office

The members of the Performance Review Board for the Office of the Secretary of the Army are:

1. Mr. Walter Hollis, Deputy Under Secretary of the Army (Operations Research) (DUSA{OR})
2. Mr. Vernon Bettencourt, Special Assistant for Forces and Program Evaluation, DUSA(OR)
3. Mr. John Zirschky, Principal Deputy Assistant Secretary of the Army (Civil Works) (ASA{CW})
4. Mr. Steven Dola, Deputy Assistant Secretary of the Army (Management & Budget & Budget), ASA(CW)
5. Mr. William K. Takakoshi, Special Assistant to the Under Secretary of the Army
6. Ms. Alma Moore, Principal Deputy Assistant Secretary of the Army (Installations, Logistics & Environment) (ASA{ILE})
7. Mr. Eric Orsini, Deputy Assistant Secretary of the Army (Logistics), ASA(ILE)
8. Mr. Thomas Brown, Director, Acquisition and Force Management, Army Audit Agency
9. Mr. Francis Reardon, The Auditor General
10. Dr. Richard Chait, Director for Research, Office of the Assistant Secretary of the Army (Research, Development and Acquisition) (ASA {RDA})
11. BG Harry D. Gatanas, Assistant Deputy for Systems Management and International Cooperation, ASA(RDA)
12. Mr. David Borland, Vice Director to the Director for Information Systems for Command, Control, Communications, and Computers
13. Mr. Robert Young, Deputy for Cost Analysis, Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
14. Mr. Archie Barrett, Principal Deputy Assistant Secretary of the Army (Manpower & Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs) (ASA{MRA})
15. Ms. Carol Smith, Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director of Civilian Personnel, ASA(MRA)
16. Mr. Claude M. Kicklighter, Deputy Under Secretary of the Army (International Affairs)
17. Mr. Joel B. Hudson, Administrative Assistant to the Secretary of the Army

The members of the Performance Review Board for the United States Army, Corps of Engineers (USACE) are:

1. MG Stanley Genega, Director of Civil Works, USACE
2. Mr. Lester Edelman, Chief Counsel, USACE
3. Dr. William Roper, Assistant to the Chief of Engineers for Research and Development (R&D) and Director, Directorate of R&D, USACE
4. Mr. Charles Schroer, Chief, Construction Division, Directorate of Military Programs, USACE
5. Mr. Charles Hess, Director of Engineering and Technical Services, Ohio River Division, USACE
6. Dr. William Marcuson, Director, Geotechnical Laboratory, Waterways Experiment Station, USACE
7. BG Robert Flowers, Commander, Lower Mississippi Division, USACE
8. Dr. G. Edward Dickey, Chief, Planning Division, Directorate of Civil Works, USACE
9. Mr. William Brown, Sr., Chief, Programs Management Division, Directorate of Military Programs, USACE
10. Mr. Frank Oliva, Director of Programs Management, North Atlantic Division, USACE
11. Mr. Earl Stockdale, Deputy General Counsel (Civil Works and Environment), Office of the General Counsel.

The members of the Performance Review Board for the United States Army, Office of The Surgeon General are:

1. BG John S. Parker, Assistant Surgeon General, Health Services, Operations, & Logistics, Office of The Surgeon General
2. BG Patrick D. Sculley, Assistant Surgeon, Personnel & Resources Management, and Commander, U.S. Army Center for Health Promotion & Preventive Medicine
3. Mr. John L. Maddy, Principal Director, Office of Deputy Assistant Secretary (Health Budgets and Programs), Office of the Assistant Secretary of Defense (Health Affairs)
4. Ms. Jean Storck, Principal Director, Office of Deputy Assistant Secretary (Health Services Financing), Office of the Assistant Secretary of Defense (Health Affairs)
5. Dr. John F. Mazzuchi, Deputy Assistant Secretary (Clinical Services), Office of the Assistant

Secretary of Defense (Health Affairs).

6. Dr. Edgar M. Johnson, Director, U.S. Army Institute for Behavioral Sciences, Office of the Deputy Chief of Staff for Personnel

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–22477 Filed 9–3–96; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Final Environmental Impact Statement/ Report for Proposed U.S. Food & Drug Administration Laboratory, Irvine, California

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Food and Drug Administration (FDA) plans to consolidate the functions of several of its California facilities as recommended by the April 15, 1994 document, "Proposal for Implementing and Managing the Restructuring of the Field Laboratories". As a consolidated facility, the laboratory would be multi-functional with respect to FDA activities, including administration functions, such as investigation and compliance activities, and laboratory testing and analytical services. The facility would have a Food Chemistry Branch, Drug Chemistry Section, Pesticide Branch, Microbiology Branch, and Biochemistry section for its testing and analytical services. In addition, the FDA, in cooperation with University of California, Irvine, may utilize portions or functions of the laboratory for educational purposes.

No long-term adverse ecological or environmental health effects are expected due to the land acquisition for, and the construction and operation of the proposed U.S. Food and Drug Administration Laboratory. No significant impacts are expected to occur.

The Draft EIS/EIR was released for a 45 day public comment period on June 14, 1996.

FOR FURTHER INFORMATION CONTACT: For a copy of the FEIS/EIR or for further information, please contact Mr. Dale Bulick, (213) 452–4010, or by writing to the U.S. Army Corps of Engineers, Los Angeles District (Attn: CESPL–PM–C), P.O. Box 2711, Los Angeles, CA 90053–2325. Written comments on the Final EIS/EIR can be sent to Mr. Dale Bulick, U.S. Army Corps of Engineers, at the above address, or Faxed to him at (213) 452–4213.

SUPPLEMENTARY INFORMATION: *Scoping:* A Public Hearing was held in Irvine, California on July 10, 1996. Public notices requesting comments from the public concerning the environmental impact statement were issued in the regional area surrounding University of Irvine Campus. Separate notification of the hearing was sent to all parties on the project mailing list.

The Final EIS/EIR has been prepared as an addendum to the Draft, and includes all comments received on the Draft document, responses to the comments, and changes made to the text of the document.

Copies of the FEIS/R, including the Draft EIS/EIR, are available for review at the following locations:

UCI Main Library, Government Publications, P.O. Box 19557, Irvine, California 92623–9557

Heritage Park Regional Library, 14361 Yale Avenue, Irvine, California 92714

Newport Beach Public Library, Central Library, 1000 Avocado Avenue, Newport Beach, California 92660

University Park Library, 4512 Sandburg Way, Irvine, CA 92715

U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, 911 Wilshire Boulevard, 14th Floor, Los Angeles, CA 90017

Dated: August 22, 1996.

Michal R. Robinson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 96–22478 Filed 9–3–96; 8:45 am]

BILLING CODE 3710–KF–M

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement, Environmental Restoration, Jackson Hole, Wyoming

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Walla Walla District, intends to prepare a Draft Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). The EIS will evaluate the environmental effects of providing environmental restoration to riverine, wetland, and riparian habitat for four sites within the active Snake River channel between Grand Teton National Park and the South Park Elk Feed Grounds in Jackson Hole, Wyoming. Teton County and the Teton County Natural Resources District are cost sharing sponsors and participating partners in the project and in developing the EIS.

The objective of this study is to provide site-specific restoration measures. Formulation of the restoration activities focuses on examining the condition of the existing ecosystem and determining the feasibility of restoring degraded ecosystem structure, function, and dynamic processes to a less degraded and more natural condition. Ecosystem restoration provides a more comprehensive approach than focusing only on fish and wildlife habitat for addressing problems associated with disturbed and degraded ecological resources.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Bill MacDonald, Study Manager, Walla Walla District, Corps of Engineers, CENPW–PL–PF, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7253 or Ms. Anneli Aston, NEPA Coordinator, Walla Walla District, Corps of Engineers, CENPW–PL–ER, 201 North Third Avenue, Walla Walla, WA 99362, phone (509) 527–7263.

SUPPLEMENTARY INFORMATION: By focusing on the Upper Snake River ecosystem structure, the Corps' interdisciplinary planning team will identify parameters that are altering water quantity or quality and adversely impacting the ecosystem, or parts thereof, within the watershed. Consideration must be given, during plan formulation, to those activities and conditions in the watershed that may influence the success and resilience of the restoration proposal, even though they may exist outside of the study area. Hydrology and sediment transport are two key functions that must be investigated in order for this restoration effort to be successful.

Alternatives: Along a 25-mile reach of the Snake and Gros Ventre rivers, twelve locations which showed the best potential for restoration were selected for evaluation. In an effort to reduce the scope and cost of the study, the number of sites was reduced to four. Alternatives that could be implemented at the four sites include:

a. Channel restoration to rehabilitate fisheries.

b. Island protection measures to preserve riparian island values.

c. Island restoration measures to restore riparian island values.

d. Fish habitat creation through stream structure alteration.

e. Headgate opportunities to provide for future water diversions to restore spring creeks, wetlands, and riparian habitats.

f. No action.

Scoping Process: The Corps invites affected Federal, state and local

agencies, Native American tribes, and other interested organizations, parties, and the public to participate in the scoping process for the EIS. Input from other agencies and organizations that have a special interest and expertise in key resource areas such as fisheries, wildlife, water quality, hydrology, and stream restoration techniques is welcome. The EIS process includes environmental review and consultation in accordance with other environmental statutes, rules, and regulations which apply to the proposed action.

Scoping meeting: A public scoping meeting for the EIS will be held in Jackson, Wyoming on September 25, 1996. Time and location information will be advertised and provided in a scoping letter that will be distributed throughout the region.

Availability: The draft EIS should be available in September 1998.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–22480 Filed 9–3–96; 8:45 am]

BILLING CODE 3710–GC–M

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement and to Open Scoping for the Disposal and Reuse of Long Beach Naval Shipyard, Long Beach, California

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) and to open scoping to evaluate the environmental effects associated with the disposal and reuse of Long Beach Naval Shipyard (NSY), Long Beach, California. Long Beach NSY is located in Long Island Beach Harbor, immediately east of Long Beach Naval Station, and includes approximately 259 acres of real estate. On this, approximately 4 acres will be retained as a government-owned, contractor-operated parcel, and 85 acres will revert automatically to the City of Long Beach in conformance with the original deed which transferred land from the City to the Navy. These parcels are not included as part of the disposal and reuse of the Long Beach NSY. The proposed action involves the disposal of land, buildings, and infrastructure for subsequent reuse of the remaining 170 acres.

As a result of the Defense Base Closure and Realignment Act (DBCRA) of 1990 (Public Law 101–510), and in accordance with the Base Realignment and Closure (BRAC) process of 1995, Long Beach NSY is slated for operational closure on September 30, 1997. The DBCRA, as amended by the Defense Authorization Act for Fiscal Year 1996, established procedures to minimize hardships on local communities adversely affected by base closures and to facilitate economic recovery of such communities. In this regard, job creation and economic development are given the highest priority in the reuse of closed military bases, in accordance with objectives for disposal of federal property.

The Secretary of the Navy must consider the community's redevelopment plan proposed for the base slated for closure. The development plan is a plan approved by the Local Redevelopment Authority (LRA) which provides for the reuse or redevelopment of the closed military installation. The City of Long Beach was designated as the LRA by the Secretary of Defense. The City of Long Beach has prepared a reuse plan (July 1996) with recommendations for the reuse of surplus Long Beach Naval Shipyard property.

An Environmental Impact Statement (EIS) is being prepared by the Department of the Navy in accordance with NEPA and DBCRA requirements. The EIS will analyze the environmental effect of the disposal and reuse of the Long Beach NSY. The environmental studies will be based on the reasonably foreseeable reuse of the existing buildings and redevelopment of the site. The EIS will analyze three reuse alternatives in an equal level of detail and a "no action" alternative. The proposed action is the disposal of the base for reuse. Alternative 1 is consistent with the reuse plan proposed by the LRA and would involve demolition of three piers, two dry-docks (one large dry-dock would remain), and most buildings. These would be replaced by a 152-acre container terminal; an intermodal railyard; an 18-acre (one pier) shipyard facility surrounding the remaining dry-dock, with a 100,000 square-foot support building (possibly an existing building); and six 500,000-barrel tanks in a 36-acre liquid bulk facility. Alternative 2, Two-pier Shipyard, would be identical to the proposed action except that the shipyard area would be expanded to 32 acres and contain 2 piers and some additional buildings. Alternative 3, Commercial Shipyard, would involve the conversion of the existing shipyard for commercial use. Under this alternative, all the piers and dry-docks would remain and most of the buildings could be reused. The EIS will also address any alternatives that are raised during the public scoping process. Environmental issues to be addressed in the EIS include: geology, topography, and soils; hydrology; biology; noise; air quality; land use; historic and archaeological resources; socio-economic; transportation/circulation; public facilities/recreation; safety and environmental health; aesthetics; and utilities. Issue analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts associated with the proposed action. The decision to implement the proposed action will not be made until the NEPA process is complete.

ADDRESSES: The Department of the Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to this action. A public meeting to allow oral comments from the public will be held at the Long Beach Public Library, Main Branch, 101 Pacific Avenue, Long Beach, California on September 18, 1996 at 7:00 P.M. This meeting will be advertised in area newspapers. Navy representatives will be available at the scoping meeting to receive comments from the public regarding issues of concern. A brief presentation describing the disposal and NEPA processes will precede request for public comments. It is important that federal, state, and local agencies, as well as interested organizations and individuals, take this opportunity to identify environmental concerns that they feel should be addressed during the preparation of the EIS.

Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. Written comments or questions regarding the scoping process and/or EIS should be postmarked no later than October 4, 1996 and sent to the following address.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Ault (Code 232MA), BRAC Program Office, Southwest Division, Naval Facilities Engineering Command, 1420 Kettner Boulevard, Suite 507, San Diego, CA 92101–2404; telephone (619) 556–0250 Ext. 226.

Dated: August 28, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–22425 Filed 9–3–96; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation

Date and Time: Wednesday, September 18, 1996, 9:00 a.m. until 5:30 p.m.; Thursday, September 19, 1996, 9:00 a.m. until 5:30 p.m.; Friday, September 20, 1996, 9:00 a.m. until 5:30 p.m.

Place: The Latham Hotel, 3000 M Street, N.W., Washington, D.C. 20007.

Status: Parts of this meeting will be open to the public. Parts of this meeting will be closed to the public.

Matters to be Considered: The standards of accreditation applied to medical schools by a number of foreign countries and the comparability of those standards to standards of accreditation applied to the United States medical schools. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision.

SUPPLEMENTARY INFORMATION: Pursuant to section 481 of the Higher Education Act of 1965, as amended in 1992 (20 U.S.C. § 1088), the Secretary established within the Department of Education the National Committee on Foreign Medical Education and Accreditation. The Committee's responsibilities are to (1) evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

FOR FURTHER INFORMATION CONTACT:

Carol F. Sperry, Executive Director, National Committee on Foreign Medical Education and Accreditation, 600 Independence Avenue, S.W., Room 3905, ROB #3, Washington, D.C. 20202–7563. Telephone: (202) 260–3636. Beginning Tuesday, September 10, 1996, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

August 28, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–22424 Filed 9–3–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Deviation for the Research for Improving Vehicular Transportation, and Reducing Energy Consumption, and Pollution from Manufacturing Processes Program

AGENCY: Department of Energy.

ACTION: Notice of Class Deviation.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 600.4, announces a deviation from its Financial Assistance Rules for the Research for Improving Vehicular Transportation, and Reducing Energy Consumption, and Pollution from Manufacturing Processes program. This program is a joint effort between DOE and the National Science Foundation (NSF) to further basic research involving vehicles of the future and environmental technologies. The approval of this deviation from the requirement of 10 CFR 600.26(b) permits coextensive budget and project periods for multi-year awards.

EFFECTIVE DATE: September 19, 1996.

FOR FURTHER INFORMATION CONTACT: Cherlyn D. Seckinger, Business and Financial Policy Division, [HR–51], U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8246.

SUPPLEMENTARY INFORMATION: In this notice, the DOE announces that, pursuant to 10 CFR 600, the Deputy Assistant Secretary for Procurement and Assistance Management has made a determination of the need for a deviation to the DOE Financial Assistance Rules. The determination document, dated August 26, 1996 provides for a deviation for 18 grants under the Improving Vehicular Transportation, and Reducing Energy Consumption and Pollution from Manufacturing Processes program.

The deviation has been approved to achieve program objectives of uniformity of treatment among proposed awardees and between DOE and NSF in the administration of the resulting grants. By agreement with NSF, DOE released a Program Notice (96–05) under 10 CFR 605 for the subject program which has resulted in 35 applicants being selected for award. Awards will be of three types: totally DOE funded, totally NSF funded, and jointly funded. DOE will award all the grants. The proposed detailed research projects range in term from 12 to 39 months. Standard NSF grants are made for durations of 6 months to three years and are fully funded at the time of award. DOE multi-year grants are typically funded incrementally on an annual basis. Without the deviation, recipients funded totally by NSF funds could have budget periods longer than those which will be jointly funded by DOE and NSF or solely by DOE. Since DOE will award the grants and will oversee their administration, a consistent approach for handling award requirements for reporting, budgeting, and continuation/renewal purposes is needed to assure uniformity in administration of the program.

The deviation waives the limitation of 600.26(b) that coextensive budget and project periods only be used when the period of performance for a DOE award will be twelve months or less. Multi-year awards are generally funded on an annual basis. In such awards, funding for each budget period within a project period is contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE. This deviation will allow both DOE and NSF funded awards under the program to have coextensive budget and project periods. This action is necessary to achieve program objectives [see 10 CFR 600.4(b)(1)] in order to ensure consistency in award administration.

Issued in Washington, DC, August 26, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 96–22490 Filed 9–3–96; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under section 3507(a)(1)(D)of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507 (d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title of the collection of information; (2) summary of the collection of

information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed by October 4, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. ERA–766R, "Recordkeeping Requirements of DOE's Allocation and Price Rules;

2. Economic Regulatory Administration, OMB No. 1903–0073, Extension, Mandatory;

3. ERA–766R requires firms in all segments of the oil industry to maintain only those records essential to the orderly and timely completion of the oil pricing enforcement program. Firms not having such records would be exempt from the recordkeeping requirements of 10 CFR 210.1;

4. Firms in the oil industry

5. 912 hours (40 hrs. × 1 response per year × 228 respondents)

Statutory Authority: 44 U.S.C. 3506(a)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., August 28, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards Energy Information Administration.

[FR Doc. 96–22492 Filed 9–3–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM97–1–24–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1996.

Take notice that on August 23, 1996, Equitrans, L.P. (Equitrans), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1996.

Seventh Revised Sheet No. 5
Seventh Revised Sheet No. 6
Sixth Revised Sheet No. 8

Pursuant to Order No. 472, the Commission authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1996 ACA unit surcharge approved by the Commission is $.0020 per Mcf. Equitrans has converted this Mcf rate to a dekatherm (Dth) rate of $.0019 per Dth.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22461 Filed 9–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–16–000]

Natural Gas Pipeline Company of America; Notice of Technical Conference

August 28, 1996.

In the Commission's order issued on November 22, 1995, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

Take notice that the technical conference to address the issues will be held on Thursday, September 5, 1996, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22459 Filed 9–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–347–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 1996.

Take notice that on August 23, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective November 1, 1996:

Third Revised Sheet No. 263
Second Revised Sheet No. 263A

Northern states that its filing contains Northern's proposal for a permanent Carlton Resolution in response to the Commission's August 6 Order Establishing Guidelines in Docket No. RP93–206–000. Northern further states that the proposal is consistent with the Commission Guidelines and believes its proposal is the most efficient method of resolving the Carlton sourcing issue on its system.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed as provided in Section 154.210 of

the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22460 Filed 9–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–733–000]

Texas Eastern Transmission Corporation; Notice of Application

August 28, 1996.

Take notice that on August 21, 1996, Texas Eastern Transmission Corporation ("Texas Eastern"), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in the above docket an application with the Federal Energy Regulatory Commission ("Commission") pursuant to Section 7(b) of the Natural Gas Act for authorization permitting the abandonment of Texas Eastern's Rate Schedule X–8, an emergency exchange of natural gas between Texas Eastern and Arkla (formerly Arkansas Louisiana Gas Company) ("Arkla"), and for authorization to abandon certain pipeline interconnect facilities between Texas Eastern and Arkla ("Interconnection Facilities").

Texas Eastern requests expedited consideration and approval of the authorizations requested herein in order to remove the Interconnection Facilities on or before October 1, 1996, in connection with a runway expansion project in Little Rock, Arkansas which is currently being undertaken by the Little Rock National Airport (formerly Adams Field Municipal Airport).

The FPC issued an order in Docket No. G–1500 on November 29, 1950, authorizing Texas Eastern to operate and maintain the Interconnection Facilities and to exchange gas on an emergency basis with Arkla pursuant to an emergency exchange agreement dated November 20, 1950 ("Exchange Agreement"). The Exchange Agreement is included as Rate Schedule X–8 in Texas Eastern's Ferc Gas Tariff Original Volume No. 2. Pursuant to the Exchange Agreement, both parties agreed to the exchange of gas and use of the Interconnection Facilities by either party without charge during temporary periods of emergency.

Texas Eastern and Arkla have agreed to abandon the Exchange Agreement as evidenced by the termination agreement dated August 16, 1996, ("Termination Agreement") attached to the application, and provides that the Exchange Agreement will terminate effective as of August 31, 1996.

More specifically, Texas Eastern proposes to abandon by removal the following Interconnection Facilities:

Facilities South of Arkansas River:

(1) Approximately 501 feet of 12-inch diameter pipeline.

(2) Miscellaneous valves, fittings, and appurtenant facilities.

Facilities North of Arkansas River:

(3) Approximately 1,013 feet of 12-inch diameter pipeline.

(4) Approximately 807 feet of 24-inch diameter pipeline.

(5) Miscellaneous valves, fittings, and appurtenant facilities.

Physical abandonment of the Interconnection Facilities will be performed on Texas Eastern's existing right of way. Those facilities located South of the Arkansas River which are proposed to be abandoned are within the work area included in the environmental scope of the airport's expansion.

On August 27, 1996, Texas Eastern filed a supplement to its application withdrawing its request to abandon those Interconnect Facilities located north of the Arkansas River and a revised Exhibit Y to facilitate expeditious consideration of the remaining authorizations requested on or before October 1, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 6, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22457 Filed 9–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR96–17–000]

Ultramar Inc., Complainant v. SFPP, L.P., Respondent; Notice of Complaint

August 28, 1996.

Take notice that on August 21, 1996, pursuant to sections 9, 13(1), and 15(1) of the Interstate Commerce Act of 1887 (49 U.S.C. §§ 9, 13(1), 15(1)), Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), and the Commission's Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(c)), Ultramar Inc. (Ultramar) tendered for filing a complaint against charges collected by SFPP, L.P. (SFPP) for the pipeline transportation of petroleum products. Ultramar complains against the charge collected for transportation of refined products over SFPP's pipeline in California from Sepulveda Junction to Watson Station (Sepulveda Line).

Ultramar complains that the foregoing charges (1) are not covered by tariffs filed with the Commission, (2) are not justified by the cost of service, (3) discriminate against shippers which use the Sepulveda Line, and (4) result in overcharges in excess of filed tariff rates.

Ultramar respectfully requests that the Commission action upon this Complaint, by (1) examine the charges collected by SFPP for transportation through the Sepulveda Line, (2) order refunds to Ultramar to the extent that the Commission finds that the rates were unlawful, (3) determine and prescribe just, reasonable, and non-discriminatory rates for the Sepulveda Line, and (4) award Ultramar reasonable attorney's fees and costs.

Any person desiring to be heard or to protest said complaint should file a

motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 27, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before September 27, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22458 Filed 9–3–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of July 17 through July 21, 1995

During the week of July 17 through July 21, 1995, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Dated: August 19, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Request for Exception

Big Little Stores, Inc., 7/19/95, VEF–0005

Big Little Stores, Inc., filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied the Big Little Stores' Application for Exception.

Implementation for Special Refund Procedures

Western Asphalt Service, Inc., et al., 7/17/95 LEF–0047 et al.

The DOE issued a Decision and Order implementing procedures for the distribution of $29,376,255.50 (plus accrued interest) obtained from Western Asphalt Service, Inc., Gray Trucking Company, William Valentine & Sons, Inc., Dorchester Master Limited Partnership, Howell Corporation, Placid Oil Company, Eton Trading Corporation. These funds were remitted by each firm to the DOE to settle possible pricing violations with respect to sales of crude oil. The DOE determined that these monies will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Under that policy, 20% will be reserved for injured purchasers of refined products, 40% will be distributed to the federal government, and 40% to the states.

Personnel Security Hearing

Albuquerque Operations Office, 7/21/95, VSO–0023, VSZ–0003, VSZ–0004

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. As preliminary matters, a motion to dismiss the proceeding for lack of authority and a motion to strike certain documentary evidence were denied. The Hearing found that although the individual has used marijuana a limited number of times over a 20-year period, his subsequent rehabilitation from that behavior mitigated the DOE's security concerns. The Hearing Officer also found, however, that the individual had misrepresented his marijuana use to the DOE by omitting significant information from forms and at interviews, and that the DOE's security concerns regarding this behavior were not overcome by any mitigating factors. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CITY OF CANTON	RF272–97125	07/17/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–12	07/17/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–21	07/17/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–19	07/17/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–23	07/19/95
CRUDE OIL SUPPLEMENTAL REFUND	RB272–28	07/19/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–26	07/19/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272–16	07/20/95
DALCO PETROLEUM, INC./GREAT PLAINS GAS	RF248–13	07/17/95
DALE TRACY ET AL	RK272–81	07/19/95
M.S.A.D. #29 ET AL	RF272–86541	07/19/95
MARION COUNTY, KY ET AL	RF272–95475	07/19/95
McLOUD SCHOOL DISTRICT, OKLAHOMA ET AL	RF272–95451	07/19/95
METROPOLITAN PETROLEUM & FUEL/ZINN COMPANIES, INC	RF349–21	07/19/95
MOHASCO CARPET CORPORATION	RC272–308	07/17/95
MOHAWK COMMERCIAL CARPET	RC272–309	
MOHASCO CARPET CORPORATION	RC272–310	
SUPERIOR KNITS ET AL	RF272–77524	07/20/95
TEXACO INC./ROOSEVELT TEXACO ET AL	RF321–12899	07/19/95
TOMS RIVER SCHOOLS ET AL	RF272–86349	07/19/95

Dismissals

The following submissions were dismissed:

Name	Case No.
BUCK'S TRUCK STOP, INC.	RF315–10189
CITY OF SANGER	RF272–96104
KALAMA CHEMICAL, INC.	RF272–90203
McREE TEXACO & DRIVE IN GROCERY	RF321–14130
OLD TOWN PLAZA SERVICE STATION	RF304–14463
RICHMOND, FREDERICKSBURG, AND POTOMAC RAILROAD CO.	RF321–14111

[FR Doc. 96–22491 Filed 9–3–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00450; FRL–5395–1]

Food Safety Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 9 of the Federal Advisory Committee Act (Public Law 92–463), EPA's Office of Pesticide Programs (OPP) is giving notice of the establishment of the Food Safety Advisory Committee (FSAC), and to announce a series of FSAC meetings, the first of which will be September 26, 1996.

DATES: The initial meeting will take place September 26, 1996, from 9 a.m. to 5 p.m.. Subsequent meetings will be held on October 22 and 23, November 14 and 15, and, if necessary, December 4, 1996.

ADDRESSES: The meetings will be held at: The Green Room (next to Rm. 3204) of the Ariel Rios Federal Office Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach, Designated Federal Official, or Carol Peterson, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7090; e-mail: fehrenbach.margie@epamail.epa.gov or peterson.carol@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Food Quality Protection Act (FQPA), signed into law on August 3, 1996, (Public Law 104–170) amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) to provide greater protection for U.S. consumers, particularly infants and children. EPA is forming the FSAC to provide a structured environment for exchange of information and ideas on regulatory, policy, and implementation issues. These discussions will assist EPA in the implementation of the new food safety statute and are essential if EPA is to be responsive to the needs of the public and the affected industry.

II. Participation

The FSAC will be composed of a balanced group of participants from the following sectors: pesticide user and commodity groups; environmental/public interest groups, including the general public; federal and state governments; academia; industry; the public health community; and congressional offices.

FSAC meetings will be open to the public. Statements by observers are welcome. Oral statements will be limited to three minutes, and it is preferred that only one person present the statement. In the event that there are more people wanting to speak than time will allow, written statements will be accepted at the time of the meeting. In addition, any person who wishes to file a written statement can do so before or after an FSAC meeting. These statements will become part of the permanent file and will be available to FSAC members for their information.

Materials relating to the Food Safety Advisory Committee will be maintained in a public record. These materials will be available for inspection from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

III. Meeting Schedule

The first meeting of the FSAC will be held on September 26, 1996, in the Green Room of the Ariel Rios Federal Office Building (next to Room 3204), 1200 Pennsylvania Avenue, NW., Washington, DC 20044. Subsequent meetings have been scheduled for October 22 and 23, November 14 and 15, and, if necessary, December 4, 1996, in the same location. Agendas and background materials will be available two weeks prior to the meeting from Martha Tableman, PhD., telephone: (970) 468–5822, fax: (970) 262–0152, e-mail: mtableman@keystone.org.

List of Subjects

Environmental protection.

Dated: August 27, 1996.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

[FR Doc. 96–22506 Filed 9–3–96; 8:45 am]
BILLING CODE 6560–50–F

[FRL–5603–9]

Contractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the following contractors for access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended. (1) Environmental Consulting and Research (EC/R) Incorporated, 3721–D University Drive, Durham, North Carolina 27707, contract number 68D60008, (prime contractor); (2) Environmental Investigations, 2327 Englert Drive, Suite 1, Durham, North Carolina 27713, contract number 68D60008, (subcontractor).

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than ten days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Doris Maxwell, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5312.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all

submitters of information under section 114 of the CAA that EPA may provide the above mentioned contractors access to these materials on a need-to-know basis. These contractors will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in economic impact assessment for Federal Air Pollution Control Regulations.

In accordance with 40 CFR 2.301(h), EPA has determined that each contractor requires access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contracts. The contractors' personnel will be given access to information submitted under section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The contractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All contractor access to CAA CBI will take place at the contractors' facility. Each contractor will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the contractor has access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 1998 under contract 68D40099 and on September 30, 1997 under contract 68D40107.

Dated: August 23, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–22382 Filed 9–3–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5605–2]

Guidelines for Implementing the Hardship Grants Program for Rural Communities

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency is making Guidelines for Implementing the Hardship Grants Program for Rural Communities available for public review and comment. Members of the public can obtain a copy of the Guidelines by telephoning (202) 260–2268 and leaving a name and mailing address. Interested parties may also view or download a copy of the Guidelines via Internet, at either the Environmental Protection Agency Homepage under "What's New" (http://www.epa.gov/WhatsNew.html), or on the Office of Water Homepage under "What's New" (http://www.epa.gov/OW/sec8).

DATES: Comments on the Guidelines must be received by October 21, 1996.

ADDRESSES: Address comments to Sheila Hoover (4204), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or via Internet at hoover.sheila@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Sheila Hoover (4204), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–2268.

SUPPLEMENTARY INFORMATION: These guidelines implement a $50 million grant program contained in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134). The Agency will make grants to states, which in turn can provide assistance to improve wastewater treatment services in poor, rural communities with populations of 3,000 or fewer where such services are currently inadequate. The Hardship Grants Program for Rural Communities will be coordinated with the Clean Water Act State Revolving Fund (SRF) program and in accordance with the SRF program regulations at 40 CFR Part 35, Subpart K and existing Agency grant regulations and procedures, including 40 CFR Part 31.

Dated: August 28, 1996.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 96–22504 Filed 9–3–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30418; FRL–5391–9]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted byOctober 4, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30418] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30418]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person: Contact the person named in each registration at the following office location/telephone number:

Contact Person	Office location/telephone number	Address
Rita Kumar,	5th Fl, CS #1 (703–308–8291); e-mail: kumar.rita@epamail.epa.gov.	Environmental Protection Agency Westfield Building North Tower 2800 Crystal Drive Arlington, VA 22202
Paul Zubkoff,	5th Fl, CS #1 (703–308–8694); e-mail: zubkoff.paul@epamail.epa.gov.	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of the applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 62552–RE. Applicant: Agridyne Technologies, Inc. 2401 S. Foothill Drive, Salt Lake City, UT 84109. Product name: Daza Technical. Biological Insecticide. Active ingredient: Dihydroazadirachtin at 17.5 percent. Proposed classification/Use: None. For manufacturing use only. (Paul Zubkoff)

2. File Symbol: 62552–RG. Applicant: AgriDyne Technologies, Inc. Product name: Daza EC. Biological Insecticide. Active ingredient: Dihydroazadirachtin at 3.0 percent. Proposed classification/Use: None. For indoor and outdoor use on ornamentals, turf, agronomic and horticultural crops. (Paul Zubkoff)

3. File Symbol: 62552–RU. Applicant: AgriDyne Technologies, Inc. Product name: Daza 4.5 WDG. Biological Insecticide. Active ingredient: Dihydroazadirachtin at 4.5 percent. Proposed classification/Use: None. For indoor and outdoor use on ornamentals, turf, agronomic and horticultural crops. (Paul Zubkoff)

4. File Symbol: 68822–R. Applicant: Tuttle Apiary Laboratory, 3030 Lewis River Road, Woodland, WA 98674. Product name: Mite Solution. Insecticide. Active ingredient: Tea tree oil, a natural plant extract, at 5 percent. Proposed classification/Use: None. For mite control in honey bee populations. (Rita Kumar)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30418] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 20, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–22243 Filed 9–3–96; 8:45 am]
BILLING CODE 6560–50–F

[OPP–30419; FRL–5392–1]

S.C. Johnson and Son; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 4, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30419] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30419]. No "Confidential Business

Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Keigwin, Product Manager (PM 10), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 210, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6788; e-mail: keigwin.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 4822–ULI. Applicant: S.C. Johnson and Son, 1525 Howe St., Racine, WI 53403. Product name: Raid TVK. Insecticide. Active ingredient: Lithium perfluorooctane sulfonate at 0.03 percent. Proposed classification/Use: General. For use as a wasp and hornet bait trap.

2. File Symbol: 4822–ULT. Applicant: S.C. Johnson and Son. Product name: Sulfotine. Insecticide. Active ingredient: Lithium perfluorooctane sulfonate at 26 percent. Proposed classification/Use: General. For manufacturing purpose only.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30419] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 15, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–22242 Filed 9–3–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

August 26, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by November 4, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: None.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace,

CC Docket No. 96–61 (Integrated Rate Plans).

Form No.: N/A.

Type of Review: New Collection.

Respondents: businesses or other for profit.

Number of Respondents: 6.

Estimated Hour Per Response: 70 hours.

Total Annual Burden: 720 hours.

Needs and Uses: Section 254(g) of the 1934 Communications Act, as amended, and our rules extend rate integration to all U.S. territories and possessions. We will require certain carriers to submit no later than February 1, 1997, preliminary plans to achieve rate integration by August 1, 1997, and final plans no later than June 1, 1997. These plans will permit the Commission to review progress toward achieving rate integration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22428 Filed 9–3–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Schedule on Trust Income and Expense

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Final action.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) [1] has approved the addition of Schedule E, "Fiduciary Income Statement," to the Annual Report of Trust Assets (form FFIEC 001), effective for the December 31, 1996, report date. The new trust income statement must be completed only by those banks and savings associations with $100 million or more in total trust assets and by all nondeposit trust companies. In general, institutions will report trust fees by type of trust account, three general categories of expense, and the amount of settlements, surcharges, and other losses gross and net of recoveries. If an institution's aggregate losses are $100,000 or more in any year, individual losses of $10,000 or more must be reported by type of account. The information reported by individual institutions in Schedule E will not be publicly available, but aggregate data will be published by the FFIEC. The new trust income schedule is intended to enable the agencies to better target their supervision of trust activities to those areas that pose greater risk to institutions.

EFFECTIVE DATE: For the Annual Report of Trust Assets (form FFIEC 001) to be prepared as of December 31, 1996.

FOR FURTHER INFORMATION CONTACT:

Board: Donald R. Vinnedge, Manager, Trust Activities Program, (202) 452–2717; William R. Stanley, Supervisory Trust Analyst, Trust Activities Program, (202) 452–2744.

FDIC: John F. Harvey, Trust Review Examiner, Division of Supervision, (202) 898–6762.

OCC: William F. Granovsky, National Bank Examiner, Fiduciary Activities, (202) 874–4447.

OTS: Larry A. Clark, Program Manager, Compliance and Trust, (202) 906–5628.

SUPPLEMENTARY INFORMATION:

Background

There are approximately 3,000 banks, savings associations, and trust companies that actively engage in trust activities. These institutions administered $11.6 trillion of assets as of December 31, 1994, or nearly three times the commercial banking industry's on-balance sheet assets. The information that the agencies have been collecting from institutions engaging in trust activities has been limited to data reported in the Annual Report of Trust Assets (form FFIEC 001) showing discretionary and nondiscretionary trust assets by various types of accounts.

The off-balance sheet nature of fiduciary activities has presented certain impediments to the agencies in the development and implementation of fiduciary and related supervision policy. The lack of uniform, consistent and industry-wide information on fiduciary income and expenses has precluded effective analysis of fiduciary profitability and risk management for an individual institution, a peer group, and the entire industry. It also has hampered the agencies' ability to measure the risk associated with particular lines of fiduciary business and to evaluate the functional activities causing losses. Thus, the agencies have not been able to ensure that they have targeted their supervision of trust activities to those areas that pose greater risks to institutions.

Proposed Schedule on Trust Income and Expense

On June 29, 1995, the FFIEC published a request for comment on a proposed Schedule E, "Fiduciary Income Statement," that would be added to the Annual Report of Trust Assets and prepared on a calendar year basis beginning with the year ending December 31, 1996 (60 FR 34252). The comment period closed on August 29, 1995.

The FFIEC proposed that this schedule be required to be filed by all institutions with $100 million or more in total trust assets as reported on Schedule A, "Annual Report of Trust Assets," on form FFIEC 001. In addition, all nondeposit trust companies, whether or not they report any assets on Schedule A, would be required to file Schedule E. Under this proposal, less than one third of all institutions actively engaging in trust activities were to be required to report trust income and expense on the new schedule, but these institutions accounted for approximately 99 percent of all trust assets.

The proposal called for institutions to provide a breakdown of fiduciary income along six categories that correspond to the existing account classifications on Schedule A, "Annual Report of Trust Assets," and Schedule C, "Corporate Trusts," of the form FFIEC 001. This would permit the agencies to compare income data with information on assets managed and to enhance their understanding of the operations of individual institutions.

Expense information was proposed to be broken out by three categories: (1) Salaries and Employee Benefits, (2) Other Direct Expense, and (3) Allocated Indirect Expense. This would permit the development of efficiency or overhead ratios comparable to those commonly used in the analysis of commercial bank operations.

The proposed schedule included two types of breakdowns of losses resulting from surcharges and settlements (e.g., replenishment of losses incurred by fiduciary customers). For the first breakdown, these losses were to be separately reported for ten categories of fiduciary activities, including eight types of accounts reported on Schedule A, "Annual Report of Trust Assets," and corporate trusts reported on Schedule C of the form FFIEC 001. For the second breakdown, loss data were to be reported for three types of losses: (1) Investment, (2) Administrative, and (3) Operational. If an institution or group of

[1] The FFIEC consists of representatives from the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) (referred to as the "agencies"), and the National Credit Union Administration. However, this reporting requirement is not applicable to credit unions. Section 1006(c) of the Federal Financial Institutions Examination Council Act requires the FFIEC to develop uniform reporting standards for federally-supervised financial institutions.

institutions show loss data or trends in loss data for certain categories of fiduciary activities or certain types of losses, this information should help the agencies develop and implement appropriate supervisory policies and examination emphasis.

Since the trust income and expense information proposed for collection generally pertains to only a portion of a reporting institution's total operations, the proposal stated that the data reported in Schedule E by individual institutions would be regarded as confidential by the FFIEC and the agencies. Aggregate information, however, would be published annually in an FFIEC publication entitled "Trust Assets of Financial Institutions."

Public Comments

The FFIEC solicited comment on all aspects of the proposed trust income schedule and specifically requested comments on seven issues. The FFIEC received 58 comments on the proposal, 56 from institutions or the parent holding companies of institutions that engage in trust activities and two from bank trade associations.

Comments submitted by the largest institutions dealt primarily with the initial cost of establishing data collection systems in environments where many of them are no longer structured along traditional trust business or reporting lines. Most respondents of all sizes indicated that required income and expense information was available, but that it might need to be reformatted to be used for reporting in the proposed schedule and that the reporting burden in years after the first year would diminish significantly. Several respondents indicated that, while available, expense information might not be meaningful due to the wide variety of indirect expense allocation formulas in use throughout the industry. The settlements, surcharges, and other losses portion of the proposed schedule generated six comments indicating that manual collection procedures would have to be utilized because of the unique nature of this information. The confidentiality of the Schedule E data was a concern of several respondents.

The first issue for which comments were specifically requested—the availability of the information proposed to be collected—elicited comments from 13 respondents. Eleven of these indicated that the information was already available, although three stated that it would have to be obtained manually. Only two respondents indicated that none of the information to be collected in the proposed schedule would be readily available. Four respondents stated that the data on settlements, surcharges, and other losses would cause difficulties because the records they maintain do not use the categories that were proposed in the schedule. In addition, three respondents also believed that the information on expenses, gross losses, and recoveries was not readily available to them and would be difficult to obtain.

Only five respondents supplied information concerning the second issue for which comments were requested—the cost and time required to implement any needed changes in institutions' recordkeeping systems to provide the information requested in proposed Schedule E. Two of these respondents indicated that there would be little or no cost and time involved. One stated that five to six hours would be needed while another reported that 20 hours would be needed to make the needed changes. One respondent only stated that extensive time plus changes to computer systems would be needed to obtain the required information.

Ten respondents commented on the third issue for which comments were requested—the cost and time that would be required to complete the proposed schedule each year after the initial year. Five of these respondents indicated that there would be either minimal or no additional time or cost involved. The other five respondents gave cost estimates for preparing the new schedule along with time commitments ranging from one hour to 48 hours per year.

Seven commenters expressed opinions about the fourth issue for which comment was requested—the feasibility of providing the information in the proposed schedule for the calendar year ending December 31, 1996. Four of these commenters indicated that this would not present any problem for them since the information is already available, with one stating that most banking institutions already produce the requested information in a similar format. Two commenters indicated that the schedule would not present any problem for them, provided that they were given sufficient lead time. They noted that sufficient lead time would perhaps be 12 months. One respondent stated that there would be no problem with supplying the information with the exception of the proposed data on settlements, surcharges, and other losses.

Nine respondents expressed opinions on the fifth issue for which comment was requested—the proposed reporting threshold for depository institutions of $100 million in total trust assets. Of these nine, five indicated that the $100 million threshold was appropriate since it would eliminate the small institutions while including the majority of trust assets. One respondent stated that institutions below this level should be asked to file the schedule on a voluntary basis. Three respondents stated that the threshold level was too low and should be raised. One respondent believed that there should be no threshold level and that all trust institutions should be required to file the schedule.

Only three respondents commented on the sixth issue for which comment was requested—the proposed requirement that all nondeposit trust companies, regardless of size, file the trust income schedule. Each respondent felt that all of the trust companies should be required to supply income and expense information.

Finally, seven respondents replied to the seventh issue for which comment was requested—the adequacy and clarity of the proposed instructions. Each one indicated that the instructions were clearly written, adequate in scope and detail, and easy to follow. No suggestions were made for improvement.

A total of fourteen respondents supplied other comments covering a wide range of topics in addition to those detailed above. One objected to the inclusion of allocated expenses as well as to the amount of detail required for settlements, surcharges, and other losses. Another respondent, however, felt that there should be a more detailed breakdown of expenses. One respondent suggested that a threshold level should be used for the reporting of losses so that small items would be eliminated. Another respondent felt that the proposed single item on total non-fiduciary income, which would be applicable to non-deposit trust companies only, should be eliminated completely since it is often only an estimate. On the other hand, one commenter felt that this item should be expanded to detail all types of non-fiduciary income.

Final Action

After reviewing the comments received and giving further consideration to the issues involved, on December 15, 1995, the FFIEC approved the addition of Schedule E to the Annual Report of Trust Assets (form FFIEC 001), effective for the December 31, 1996, report date. All banks, savings associations, and trust companies engaged in trust activities were directly notified of the FFIEC's decision on December 28, 1995, in Financial

Institutions Letter (FIL) 85–95. Copies of FIL–85–95 may be obtained from the FDIC's Office of Corporate Communications, Public Information Center, 801 17th Street, N.W., Washington, D.C. 20434–0001, (202) 416–6940.

As proposed, the new trust income statement must be completed only by those depository institutions with $100 million or more in total trust assets and by all nondeposit trust companies. Also as proposed, the information reported by individual institutions in Schedule E will not be publicly available, but aggregate data will be included in "Trust Assets of Financial Institutions," which is published annually by the FFIEC.

However, the version of Schedule E adopted by the FFIEC incorporates changes made to the proposal to address commenters' concerns about reporting burden. First, the proposed breakdown of settlements, surcharges, and other losses by type of loss, i.e., Investment, Administrative, and Operational Losses, was eliminated. Second, a threshold of $100,000 was established for reporting the breakdown of losses incurred by type of fiduciary activity. Thus, only if an institution's aggregate losses are greater than $100,000 in any year must individual losses greater than $10,000 be reported by type of fiduciary activity. Finally, in recognition of the limited amount of time between the date of the FFIEC's final action and the beginning of the initial calendar year for which trust income statement data must be compiled, i.e, January 1, 1996, the FFIEC decided that institutions may report reasonable estimates in Schedule E for 1996 if the requested information is not readily available. Institutions were advised of this decision in FIL–85–95.

In approving the trust income reporting requirement, the Examination Council noted that the trust activities of federally-supervised financial institutions have grown substantially in recent years, both in terms of the types and volume of assets administered and the variety and sophistication of investment services offered. Trust assets administered by the industry have grown by 74 percent over the five years from 1989 to 1994, including increases of 12 percent from 1992 to 1993 and 10 percent from 1993 to 1994. At year-end 1994, 2,892 institutions administered total trust assets of $11.6 trillion, with the 886 institutions with $100 million or more in trust assets holding more than 99 percent of this total. Trust activities have also been an important source of fee income for financial institutions with trust powers. For the 50 largest bank holding companies, gross trust fee income of $10.8 billion was nearly 20 percent of noninterest income in 1994, and this dollar amount was 83 percent higher than the $5.9 billion in trust fee income earned in 1989.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the current Annual Report of Trust Assets required from those institutions with trust powers and under the supervision of one of the agencies has been submitted to, and approved by, the U.S. Office of Management and Budget (OMB). (OMB Control Numbers: for the Board, 7100–0031; for the OCC, 1557–0127; for the FDIC, 3064–0024; and for the OTS, 1550–0026.) Each of the agencies is submitting the Annual Report of Trust Assets, revised to include Schedule E, "Fiduciary Income Statement," to OMB for its review.

Schedule E and its accompanying (draft) instructions are illustrated as follows:

Dated: August 29, 1996.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

BILLING CODE 6210–01–P

SCHEDULE E - FIDUCIARY INCOME STATEMENT

Reporting Year 199_ **(Confidential Information)**

Dollar Amounts in Thousands

1.GROSS FEES, COMMISSIONS AND OTHER FIDUCIARY INCOME

(a)	Employee Benefit Trust Accounts		
(b)	Personal Trust & Estate Accounts		
(c)	Employee Benefit Agencies		
(d)	Other Agency Accounts		
(e)	Corporate Trust & Agency Accounts		
(f)	All Other Fiduciary Income		
(g)	Total Fiduciary Income *(Sum of items 1(a) through 1(f))*		

2.EXPENSES

(a)	Salaries and Employee Benefits		
(b)	Other Direct Expense		
(c)	Allocated Indirect Expense		
(d)	Total Expense *(Sum of items 2(a) through 2(c))*		

3.SETTLEMENTS, SURCHARGES & OTHER LOSSES

(a)	Gross Settlements, Surcharges & Other Losses	*	
(b)	Recoveries to Reported Losses		
(c)	Net Settlements, Surcharges & Losses		

** (If the amount in item 3(a) is $100 thousand or more, details of this item must be provided in item 7 below)*

4.NET OPERATING INCOME (LOSS) *(Item 1(g) minus items 2(d) and 3(c))* _____

5.CREDIT FOR OWN-INSTITUTION DEPOSITS _____

6.NET TRUST INCOME (LOSS) *(Item 4 plus item 5)* _____

7. Settlements, Surcharges & Other Losses
(To be completed if the amount in item 3(a) above is $100 thousand or more - see instructions)

By Type of Account		Discretionary	Non-Discretionary
Employee Benefit Trust Accounts		(a)	(e)
Personal Trust & Estate Accounts		(b)	(f)
Employee Benefit Agencies		(c)	(g)
Other Agency Accounts		(d)	(h)
Corporate Trust & Agency Accounts	(i)		
All Other Activities	(j)		

(Total of amounts in items 7(a) through 7(j) must equal item 3(a) above)

MEMO ITEM FOR ENTRY BY NON-DEPOSIT TRUST COMPANIES ONLY - SEE INSTRUCTIONS

8.NON-FIDUCIARY INCOME _____

BILLING CODE 6210-01-C

Annual Report of Trust Assets—Form FFIEC 001 Specific Instructions

Schedule E—Fiduciary Income Statement

Who Must Report: This Schedule must be completed by each financial institution with more than $100 million in Total Trust Assets as reported on Schedule A (Line 16, Column F). In addition, all non-deposit trust companies, whether or not they report any assets on Schedule A, must also file Schedule E. Institutions which are not required to file Schedule E are encouraged to file it on a voluntary basis.

Public Availability of Schedule E: The information on Schedule E is confidential and will not be publicly available. The aggregate information will be included in the annual FFIEC publication, *Trust Assets of Financial Institutions.*

Instructions: Institutions filing Schedule E must complete *all* portions of the Schedule. Enter a zero on any line item that does not apply to your institution.

1. Gross Fees, Commission and Other Fiduciary Income

1(a through e) Trust and Agency Accounts

Gross fees, commissions and other fiduciary income data is to be reported by line of business. Please refer to the instructions for Schedules A and C for guidance in defining these lines of business. For employee benefit trust accounts, see Schedule A, column A; for personal trust & estate accounts, see Schedule A, columns B and C; for other agency accounts, see Schedule A, column E; and for corporate trust and agency accounts, see Schedule C.

Fees received for IRA, Keogh Plan or other accounts that are not administered by the trust department should be excluded from this Schedule. If these accounts require the bank to have trust powers, then their fees should be reported on this Schedule.

1(f) All Other Fiduciary Income

Report all other direct income derived from other fiduciary sources not included in any of the above categories (e.g. 12b–1 fees and income from providing fiduciary services under agreement with another institution). Include all internal allocations of income to the trust function (such as transfer agent or pension plan administration credits), except for credits for deposits held in own or affiliated institutions, which are to be reported on line 5.

1(g) Total Fiduciary Income

The total of lines 1(a) through 1(f).

(It should be noted that banks with more than $100 million in commercial bank assets are required to itemize "Income from fiduciary activities" in the quarterly FFIEC Report of Condition and Income ("Call Report") on line 5(a) of Schedule RI. Instructions for fiduciary income to be reported on line 5(a) of Call Report Schedule RI differ from those for line 1(g) of this Schedule with respect to allocated income. Consequently, banks should be aware that the amounts reported in these two items will differ by the amount of such allocated income.)

2. Expenses

2(a) Salaries and Employee Benefits

Include salaries, bonuses, hourly wages, overtime pay, and incentive pay for officers and employees of the trust department. If officers or employees spend only a portion of their time in the trust department, allocate that proportional share of their salaries and employee benefits. Expenses associated with employee benefit plans (pension, profit-sharing, 401(k), ESOP, etc.), health and life insurance, Social Security and unemployment taxes, tuition reimbursement, and all other so-called fringe benefits, should be included on this line.

(b) Other Direct Expense

In general, direct expenses are immediately identifiable as costs expended for and under the control of the trust function. These include expenses related to the use of trust premises, furniture, fixtures, and equipment, as well as depreciation/amortization, ordinary repairs and maintenance, service or maintenance contracts, utilities, lease or rental payments, insurance coverage, and real estate and other property taxes if they are directly chargeable to the trust function.

2(c) Allocated Indirect Expense

Allocated indirect expenses are those charged to the trust function from other departments of the institution as reflected in the institution's internal management accounting system. These include any allocation for the trust function's proportionate share of corporate expenses that cannot be directly charged to particular departments or functions. If the institution's internal accounting system is not able to provide this information, the institution may use a reasonable alternate method to estimate indirect expenses.

Indirect expenses include audit and examination fees, marketing, charitable contributions, customer parking, holding company overhead, and, in many cases, functions such as personnel, corporate planning, and corporate financial staff. Other indirect expenses include the trust function's proportionate share of building rent or depreciation, utilities, real estate taxes, and insurance.

If no direct expense is shown for occupancy on line 2(b) and the institution's internal accounting system does not provide an allocated amount, an allocated occupancy expense based on proportionate floor space used by the trust function or some other reasonable alternate method should be shown on line 2(c).

2(d) Total Expense

The total of lines 2(a) through 2(c).

3. Settlements, Surcharges & Other Losses

See the instructions for line 7 for information about the reporting of settlements, surcharges and other losses.

3(a) Gross Settlements, Surcharges & Other Losses

Report the total losses prior to any adjustments for recoveries. If the amount shown on this line is $100,000 or more, a breakdown of this amount should be shown on line 7 below. The amount shown on this line should then agree to the total of the details shown in that box.

3(b) Recoveries to Reported Losses

Show all recoveries received on reported losses, including recoveries on prior years' losses.

3(c) Net Settlements, Surcharges & Losses

Line 3(a) less 3(b).

4. Net Operating Income (Loss)

Line 1(g) minus lines 2(d) and 3. If the result is less than zero, the figure should be shown in parentheses.

5. Credit For Own-Institution Deposits

Uninvested cash belonging to fiduciary accounts is available to the commercial banking side of the institution for investment, trust functions are often given credit for the use of these monies. When this credit is given to the trust department or trust company as part of the bank's profit tracking system, it should be reported on line 5. Do not include actual interest earned on fiduciary funds on deposit, as this income would normally belong to the fiduciary account.

6. Net Trust Income (Loss)

Report the total amount of trust income or loss, prior to any income taxes, experienced by the trust function for the full year. The number for this line is the result of adding line 5 to the sub-total shown on line 4. If the total on line 6 is less than zero, the resulting figure should be shown in parentheses.

7. Settlements, Surcharges & Other Losses

This box should only be completed where total settlements, surcharges and other losses for the reporting year on line 3(a) are $100,000 or more. If they are, report individual gross losses of $10,000 or ore on lines (a) through (j). Report individual gross losses of less than $10,000 on line (j). These amounts should not be shown net of any recoveries or insurance payments. Legal expenses should be included on line 2(b) or 2(c). Do not include contingent liabilities related to outstanding litigation.

Report settlements, surcharges, and other losses arising from errors, misfeasance or malfeasance according to the type of account and capacity. The sum of lines 7(a) through 7(j) should equal the total shown on line 3(a) above.

Memo Item to be Completed by Non-Deposit Trust Companies Only

8. Non-Fiduciary Income

Stand alone or non-deposit trust companies, whose activities are limited to providing fiduciary services, may have income not directly attributable to the furnishing of fiduciary services. This income should be reported on this line 8 as a memo figure and should not be included in the data shown on lines 1 through 6.

[FR Doc. 96–22518 Filed 9–3–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public, Indemnification of Passengers for Nonperformance of Transportation; Notice of Filing an Application for Certificate (Performance)

Notice is hereby given that the following have filed an application for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Royal Venture Cruise Line, Inc., 2727 Ulmerton Road, Clearwater, Florida 34622

Vessel: SUN VENTURE

Dated: August 29, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–22497 Filed 9–3–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

AGS International Forwarders, Inc., 1092 W. Baltimore Pike, West Grove, PA 19390. Officers: Andreas G. Steinmetz, President, Silke Steinmetz, Secretary

American Pacific Cargo Inc., 875 Mahler Road, Suite 202, Burlingame, CA 94010. Officer: Sam Wong, President

Dated: August 29, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–22498 Filed 9–3–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with Texarkana National Bancshares, Inc., Texarkana, Texas, and thereby indirectly acquire Texarkana National Bank, Texarkana, Texas.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hometown Financial Group, Inc., Flanagan, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Flanagan State Bank, Flanagan, Illinois.

2. Northern Trust Corporation, Chicago, Illinois; to acquire 100 percent of the voting shares of Metroplex Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Metroplex Delaware Financial Corporation, Dallas, Texas, and Bent Tree National Bank, Dallas, Texas.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Mountain Parks Financial Corp., Denver, Colorado, and thereby indirectly acquire Mountain Parks Bank, Denver, Colorado.

2. Jorgenson Holding Company, Kenmare, North Dakota; to acquire 100 percent of the voting shares of First National Bancshares, Inc., Williston, North Dakota, and thereby indirectly acquire First National Bank & Trust Company of Williston, Williston, North Dakota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Central Financial Corporation, Hutchinson, Kansas, and Mesquite Financial Corporation, Mequite, Nevada; to acquire 52.25 percent of the voting shares of Mesquite Financial Corporation, Mesquite, Nevada, and thereby indirectly acquire Mesquite State Bank (in organization), Mesquite, Nevada.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. MainBancorp, Inc., Austin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Maincorp Intermediate Holding Company, Inc., Wilmington, Delaware, and thereby indirectly acquire ROSB Bancorp, Inc., Red Oak, Texas, and MainBank, Red Oak, Texas.

In connection with this application, Maincorp Intermediate Holding Company, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of ROSB Bancorp, Inc., Red Oak, Texas, and thereby indirectly acquire MainBank, Red Oak, Texas.

Board of Governors of the Federal Reserve System, August 28, 1996.
William W. Wiles
Secretary of the Board
[FR Doc. 96–22469 Filed 9-3-96; 8:45 am]
BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Sun Bancorp, Inc., Selinsgrove, Pennsylvania; to engage *de novo* through its subsidiary, Anthony Court Associates, L.P., Bloomsburg, Pennsylvania, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. I.S.B. Financial Corp., Oak Forest, Illinois; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Farmers Capital Bank Corporation, Frankfort, Kentucky; to engage *de novo* through its subsidiary, FCB Services, Frankfort, Kentucky, in providing data processing services to unaffiliated banks, including, but not limited to, general ledger, deposit systems, and loan systems, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The geographic scope for these activities is Kentucky.

2. Mountain Bancshares, Inc., Yellville, Arkansas; to engage *de novo* through its subsidiary, The Bank of Yellville Financial Services, Yellville, Arkansas, in tax planning and preparation to be provided to individuals, businesses, corporations and nonprofit organizations, pursuant to § 225.25(b)(21) of the Board's Regulation Y. The geographic scope for these activities is Marion County, Arkansas and contiguous counties.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Development Company, Billings Montana; to engage *de novo* in data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The geographic scope of this activity is Iroquois, South Dakota.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Plains Capital Corporation, Lubbock, Texas; to engage *de novo* through its subsidiary, Plains Service Corporation, Lubbock, Texas, in data processing, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The geographic scope for this activity is Texas and New Mexico.

Board of Governors of the Federal Reserve System, August 28, 1996.
William W. Wiles
Secretary of the Board
[FR Doc. 96–22470 Filed 9-3-96; 8:45 am]
BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0266]

Agency Information Collection Activities: Proposed New Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed survey of operating room nurse managers at health care facilities. The purpose of the survey is to estimate the proportion of the population at risk from the use of adhesive-backed tape to mark surgical instruments.

DATES: Submit written comments on the collection of information by November 4, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA), 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests

or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Surgical Instrument Marking Tape Survey

The mandate of FDA's Center for Devices and Radiological Health under the authority of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301–395) and regulations contained in Title 21 of the Code of Federal Regulations includes the approval and adequate labeling of medical devices. Section 903(b)(2)(c) of the act (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to medical devices.

The regulatory status of adhesive-backed, colored tape on medical devices is under review by FDA. The tape is frequently applied to medical devices, particularly surgical instruments, to facilitate sorting. It may be considered an accessory to medical devices used in surgical treatment as defined by 21 CFR 878.4800.

There are two case reports in the literature in which adverse events are attributed to the use of adhesive-backed, colored tape to mark surgical instruments (*Journal of Oral Maxillofacial Surgery*, 41:687–688, 1983; and *British Journal of Surgery*, 74:696, 1987). Two additional adverse event reports have been submitted to FDA.

The purpose of the survey is to estimate the proportion of the population at risk from this practice, and to determine if use of operating room nurse managers as proxies for sampling health care facilities for this purpose is effective. In addition, data will be collected to identify tape durability, extent of use, and whether there are any practices or procedures for marking surgical instruments and/or any human factors that could be altered to better protect the public health. Labeling information will also be collected.

The proposed randomized survey will be a one-time data collection effort. Completion of the survey is voluntary, and anonymity of individuals and institutions will be protected. Survey results will be available to participants upon request.

The only respondent burden will derive from the time needed to respond to survey questions. This will occur on a one-time basis. The length of the screening portion (questions 1 to 7) is estimated at 5 minutes, and the full survey length is estimated at an additional 25 minutes. Burden estimates are based on the need to have 308 surveys returned to achieve a statistically significant sampling.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screening Questions Only (30%)	92	1	92	0.083	7.63
Complete Survey (70%)	216	1	216	0.50	108
TOTAL	308	-	-	-	115.63

There are no capital costs or operating and maintenance costs associated with this survey.

Dated: August 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22441 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Antiviral Drugs Advisory Committee

Date, time, and place. September 26, 1996, 1 p.m. and September 27, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Goshen Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, September 26, 1996, 1 p.m. to 3 p.m.; open public hearing, 3 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; open committee discussion, September 27, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4:30 p.m.; Rhonda W. Stover, Center for

Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531. Please call the hotline for information concerning any possible changes.

General functions of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 20, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 26, 1996, the committee will discuss data relevant to the approved drug, saquinavir (Invirase™, Hoffmann-La Roche), for use in combination with nucleoside analogues for the treatment of human immunodeficiency virus (HIV) infection. On September 27, 1996, the committee will discuss data relevant to new drug application 20–705, delavirdine (Rescriptor®, Pharmacia and Upjohn Co.) for use in the treatment of HIV infection.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 27, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–22485 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

Bioresearch; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Nashville District Office, and the Center for Drug Evaluation and Research) is announcing a free public workshop on FDA regulatory requirements for the bioresearch industry. The workshop is designed to assist the industry in complying with regulations for clinical investigators, institutional review boards, and sponsor-monitors.

DATES: The public workshop will be held on Tuesday, September 24, 1996, from 8:45 a.m. to 4:45 p.m.

ADDRESSES: The public workshop will be held at the University of Alabama—Birmingham, University Hospital, 620 South 19th St., Spain Wallace Bldg., Margaret Cameron Spain Auditorium, rm. S100, Birmingham, AL.

FOR FURTHER INFORMATION CONTACT: William H. Oates, FDA's Nashville District Office, 296 Plus Park Blvd., Nashville, TN 37217, 615–781–5374 ext. 118, FAX 615–781–5391.

Those persons interested in attending this meeting should FAX their registration, including name(s), firm name, address, telephone and FAX numbers, and any specific questions to William H. Oates (address above) by September 13, 1996. There is no registration fee for this workshop. Space is limited, therefore, interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's survey of the bioresearch industry shows that many of these firms are either unaware of applicable regulations and guidelines or not in compliance with applicable requirements. This workshop is designed to assist the bioresearch industry in complying with applicable regulations.

Dated: August 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22442 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

Food And Drug Administration

Open Meeting for Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting for representatives of health professional organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs, FDA. This meeting will provide participants an opportunity to hear a discussion on the prevention of errors in the use of medications and other medical products.

DATES: The meeting will be held on Monday, September 30, 1996, from 1:30 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD. Interested persons may register with Betty Palsgrove at 301–443–1652. Registration also may be transmitted by FAX to 1–800–344–3332 or 301–443–2446.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff and to provide an opportunity for informal discussion and comment on the prevention of errors in the use of medications and other medical products.

This public meeting is free of charge; however, space is limited. Registration for the meeting will be accepted in the order received, and should be sent to the contact person listed above. Registration should include the name and title of the person attending and the name of the organization being represented, if any.

Dated: August 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22444 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of its clinical hold review committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held in November 1996. Biological product companies may submit review requests for the November meeting by October 1, 1996.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting a review committee to review clinical holds (see 61 FR 1033, January 11, 1996). CBER held its first clinical hold review committee meeting on May 17, 1995, and plans to conduct further quality assurance oversight of the IND process. The committee last met in May 1996. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered "anonymously." The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review some of the clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical

holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review at its November 1996 meeting. Submissions should be made by October 1, 1996, to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman (address above).

Dated: August 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22443 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–106]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Criteria for Medicare Coverage of Heart Transplants; *Form No.:* HCFA–R–106; *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of heart transplants performed on Medicare beneficiaries. *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 5; *Total Annual Responses:* 5; *Total Annual Hours Requested:* 500.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 26, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–22456 Filed 9–03–96; 8:45 am]

BILLING CODE 4120–3–P

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs—Forms (OMB No. 0915–0044)—Extension and Revision—The HPSL Program provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligiblity of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The Deferment form (HRSA Form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR—HRSA Form 501) provides the Federal Government with information from participating schools relating to HPSL & NSL program operations and financial activities. The AOR is submitted electronically.

The estimated annual reponse burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per respondent	Total annual hour burden
Deferment-519	10,375	1	10 min.	1,729
AOR–501	1,178	1	4 hrs.	4,712
Total	11,553			6,441

Three additional forms were previously approved under the OMB number cited above. These forms have been discontinued for the following reasons:

HRSA–514, HPSL & NSL Application to Participate: This form was used by schools to apply to participate in the programs. Because there have been no program appropriations for several years, and the schools are operating the program only with revolving loan funds, the application form is no longer used.

HRSA 518, Request for Postponement of Installment Payment, and HRSA 520, Request for Partial Cancellation of Loan: These forms, which were used by borrowers to request cancellation or postponement of their student loan payments in return for service as a Registered Nurse, are no longer needed. The NSL cancellation provision for service as a Registered Nurse has been repealed for loans made on or after September 29, 1979. There are now no students eligible for these benefits.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 20, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–22434 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–15–P

Special Projects of National Significance; Adolescent-focused HIV Service Delivery and Care Demonstration Models

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of limited competition.

SUMMARY: The Health Resources and Services Administration (HRSA) announces a limited competition to support the completion and dissemination of innovative programs to advance knowledge and skills in the delivery of health and support services for adolescents at high risk for infection or who are living with HIV disease. The purpose of the Special Projects of National Significance (SPNS) Program is to demonstrate innovative and replicable service delivery models of HIV care, to conduct rigorous evaluations on the models proposed, and to disseminate the project findings and lessons learned. Awards will be made under the program authority of Section 2691 of the Public Health Service Act, as amended by the Ryan White CARE Act Amendments of 1996, Public Law 104–146, dated May 20, 1996.

HRSA is limiting competition among those ten (10) currently funded Special Projects of National Significance (SPNS) Program Adolescent-focused HIV Service Delivery and Care Demonstration Model grants that were initially funded in fiscal years (FY) 1992 and 1993 for three years; including: Bay Area Young Positives, San Francisco, CA; Children's Hospital of Boston, Boston HAPPENS Program, Boston, MA; Children's Hospital of Los Angeles, Division Of Adolescent Medicine, Los Angeles, CA; Greater Bridgeport Adolescent Pregnancy Project, TOPS Program, Bridgeport, CT; Health Initiatives for Youth, Youth Empowerment Services Project, San Francisco, CA; Indiana State Department of Health/Indiana Youth Access Project, Indianapolis, IN; University of Alabama at Birmingham, Division of Adolescent Medicine, Birmingham, AL; University of Minnesota Youth & AIDS Project, Minneapolis, MN; Walden House, Inc., Adolescent Planetree Program, San Francisco, CA; and YouthCare, Adolescent Health Promotion Program, Seattle, WA.

Experience has taught the SPNS Program that a minimum five year project period is required to maximize the opportunity to fully and comprehensively initiate, evaluate and disseminate the models of HIV care developed by SPNS Program grantees. In their first three years of funding, these ten (10) adolescent-focused SPNS Program grantees have successfully identified a set of core characteristics relating to the provision of services for young people.

GRANTS/AMOUNTS: This program announcement is a contingency action being taken to assure that should funds become available in fiscal year (FY) 1997 for this purpose, grants can be awarded in a timely fashion consistent with the needs of the program. It is anticipated that a maximum of ten (10) projects will be approved and funded for fiscal year (FY) 1997. All budget periods for funded projects will begin on December 1, 1996. Project periods will be for two years.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Mr. Russell E. Brady, Project Officer, SPNS Branch, Office of Science and Epidemiology, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7A–08, Rockville, MD 20857. The telephone number is (301) 443–3496 or (301) 443–9976 and the FAX number is (301) 594–2511.

OTHER GRANT INFORMATION:

Certification Regarding Environmental Tobacco Smoke: The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

(OMB Catalog of Federal Domestic Assistance: The number for the Special Projects of National Significance is 93.928.)

Dated: August 27, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–22431 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement for a Cooperative Agreement with a Professional Trade Association Representing Health Maintenance Organizations

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for a fiscal year (FY) 1996 Cooperative Agreement with a professional trade association representing health maintenance organizations. This activity will be supported under the authority of Title III, Section 301, of the Public Health Service Act. Approximately $125,000 is available to fund one competitive cooperative agreement in FY 1996. The project period will be three years.

Background

Several years ago the Health Resources and Services Administration (HRSA) in the Department of Health and Human Services (the Department) became aware of the low numbers of minority health administrators in health maintenance organizations and other managed care systems in the United States. In response to this concern, HRSA supported the development of a Health Management Training Institute for Minorities in Health Maintenance Organizations which has been demonstrated in the Baltimore-Washington area. Since July 1993, 28

Fellows have graduated from this management training program. Of these Fellows, less than one-third are of Hispanic or Asian American origin. Therefore, to increase the diversity of potential managers and administrators in the managed health care field, the Department proposes to expand minority management training to the southwest region of the United States.

Purpose

The principal objectives of the cooperative agreement are to support: (1) the continuation of the Minority Training Program in the Baltimore-Washington area; (2) the planning and implementation of a model managerial, fellowship training program in the southwest region of the United States, and (3) the development and field testing of a two to three week training module designed to strengthen the business communication and computer skills of Fellows entering management and administration positions in the coordinated health care field. The training module should be field tested with a managerial training program located in the Baltimore-Washington area.

The recipient will achieve these objectives using a two-phase approach. During year one, or the first phase of the project, the recipient will develop detailed strategies for implementing at least two approaches of the Minority Training Program in the southwest region of the United States. The plan must include, but not be limited to strategies for: recruiting health plans to host Fellows; recruiting and selecting Fellows; selecting preceptors and matching them with Fellows; selecting the faculty; coordinating activities with other health-related organizations and health professions schools; and obtaining funding to sustain the program when federal support ceases. The business communication and computer training module shall also be developed, implemented, and field tested during the first year of the project. The training module shall include strategies for acquiring a set of core competencies in computer usage and communication that are required for successful employment in management and administration positions in the managed health care field.

The second phase of the project will occur during years two and three of the project. The recipient will implement the minority management training program in the southwest region of the United States during the second phase of the project.

During phases one and two, the cooperative agreement shall be designed to include activities such as:

1. Continuation of the Minority Training program in the Baltimore-Washington area.

2. Continuation of an Advisory Board to monitor implementation of the training program.

3. Monitoring of the knowledge, skills and abilities/attitudes required of minority health managers working in the managed care field.

4. Assessment and refinement of the pedagogical methods used to implement the educational objectives of the management training program, e.g., didactic lectures, role playing, on-the-job training with an experienced mentor, etc.

5. Recruitment and matriculation of at least 12 Fellows for years two and three of the project according to the plans developed during the first year of the 3-year project period.

6. Assessment of health plans used for experiential learning rotations in the southwest region of the United States.

7. Development of working relationships with accredited health administration programs and health professions schools in the southwest region of the United States.

8. Development of relationships with health plans willing to hire Fellows upon completion of the training program.

9. Evaluation of the implemented training program with the intent of determining how to upgrade and refine the program, and appraising the overall impact of the program, including the extent to which the program succeeded in placing Fellows in management and administration positions in the managed health care field.

10. Efforts to obtain substantial private funding to support a Baltimore/Washington-based project, as well as the project in the southwest region of the United States.

Eligibility

An entity eligible to apply for funding under this Cooperative Agreement must:

1. Be a recognized professional association representing health maintenance organizations and other managed care plans, and

2. Be headquartered in the Washington, D.C. metropolitan area.

The Washington, D.C. area is specified because of the substantial involvement of Federal officials in developing the training program, proximity to Federal expertise, and scarce Federal resources for travel.

Substantial Federal Programmatic Involvement

The Cooperative Agreement mechanism is being used for this project to allow for substantial Federal programmatic involvement with the planning, development, administration, and evaluation of the minority management training program. Substantial Federal programmatic involvement will occur through Federal membership on the Advisory Board representing the Health Resources and Services Administration, including the Office of Minority Health and the Bureau of Health Professions. The Federal government will provide additional assistance and advice in the following areas:

1. Identification of emerging health management practice issues in managed care settings.

2. Identification of special needs of minority population using coordinated health care systems, and how this might be reflected in the management training program.

3. Identification of appropriate consultation for implementation of the training program.

4. Refinement of the educational objectives of the training program, including the business communication and computer skills training module.

5. Refinement of the educational methods to most appropriately convey the knowledge, skills, and attitudes contained in the educational objectives.

6. Development of appropriate linkages with academic institutions and professional associations in the southwest region of the United States.

7. Participation in the selection process for faculty, preceptors, and Fellows.

8. Participation in the review and selection of contracts and agreements developed in implementing the project.

9. Participation in all appropriate meetings, committees, sub-committees and working groups related to the project.

National Health Objectives for the Year 2000

The HRSA urges applicants to submit work plans that address specific objectives of *Healthy People 2000*. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (summary Report; Stock No. 017–001000473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between HRSA education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The HRSA strongly encourages all grant recipients to provide a smoke-free workplace; to promote the non-use of all tobacco products; and to promote Public Law 103–227, the Pro-Children Act of 1994, which prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Review Criteria

The following criteria will be used when reviewing the applications:

1. The degree to which the proposal contains clearly stated, realistic, and measurable objectives;

2. The extent to which the proposal includes a methodology compatible with scope of project objectives, including collaborative agreements with relevant institutions and professional associations;

3. The administrative and management capability of the applicant to carry out the Cooperative Agreement, including the demonstrated ability to expand the project to the southwest of the United States;

4. The extent to which the budget justifications are complete, appropriate, and cost-effective; and

5. The extent to which the applicant can demonstrate the ability to obtain non-federal funding to continue the management training beyond the project period.

Application Request

Eligible entities interested in receiving materials regarding this program should notify HRSA. Materials will be sent only to those entities making a request. Requests for proposal instructions and questions regarding grants policy and business management issues should be directed to: Ms. Sandra Bryant, Health Resources and Services Administration, Bureau of Health Professions, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857 FAX: (301) 443–6343.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Ms. Gwendolyn B. Clark, Office of Minority Health, Health Resources and Services Administration, Parklawn Building, Room 14–48, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–2964 FAX: (301) 443–7853.

The standard application form PHS 6025–1, Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060. (Insert deadline date that reflects 20 days from date of publication in the **Federal Register**.)

Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Sent* on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, as indicated in the application kit, applications which exceed the page limitation, or do not follow format instructions, will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: August 28, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–22435 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–15–P

Public Forum on Liver Allocation and Patient Listing Criteria for Liver, Kidney, and Kidney/Pancreas Transplantation

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of public meeting and opportunity to provide written comments and oral testimony.

SUMMARY: On September 25–26, 1996, a public forum will be held as an adjunct to the United Network for Organ Sharing (UNOS) public comment process. This forum will provide an opportunity for presentation of public and professional testimony with regard to the proposed modifications to the current UNOS policy on allocation of livers and patient listing criteria for liver, kidney, and kidney/pancreas transplantation. UNOS is under contract with the Health Resources and Services Administration, Bureau of Health Resources Development's Division of Transplantation to perform the requirements of the Organ Procurement and Transplantation Network (OPTN).

Participants may present written comments and brief oral testimony on these proposals to a forum hearing panel. Selection of participants will be determined on the basis of achieving an appropriate balance of patient, public, and professional testimony within the available time. All individuals and organizations interested in presenting testimony who are not selected to participate in the forum may still provide written testimony which will be considered by the hearing panel.

Interested participants should contact Douglas A. Heiney, Director, Department of Membership Services and Policy Development, United Network for Organ Sharing (UNOS) and indicate on which of the following topic areas they will provide comment: (1) Proposed amended policy on allocation of livers; (2) standard minimum patient listing criteria for liver transplantation; and/or (3) standardized patient listing criteria for kidney transplantation and combined kidney-pancreas transplantation.

Purpose: The meeting will provide a forum for presentation and discussion of proposed policy changes to the allocation of livers and patient listing criteria for transplantation.

Contact: For more information, contact Douglas A. Heiney, Director, Department of Membership Services and Policy Development, UNOS, 1100 Boulders Parkway, Suite 500, P.O. Box 13770, Richmond, VA 23225–8770. Telephone: (804) 330–8500 Fax: (804) 330–8517.

Date and Time: September 25, 1996—10 a.m. to 4:00 p.m. September 26, 1996—10 a.m. to 2:30 p.m.

Place: Airport Hilton Hotel, 10330 Natural Bridge Road, St. Louis, MO 63134 (314) 426–5500.

Dated: August 27, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–22432 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–15–P

Division of Nursing's Third Minority Congress; "Caring for the Emerging Majority: A Blueprint in Action"

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Request for team proposals.

SUMMARY: The Health Resources and Services Administration (HRSA), Bureau of Health Professions (BHPr), Division of Nursing (DN), announces plans for a Third Minority Congress and requests team proposals that will be the basis for selection of attendees at the Congress. The Third Congress, "Caring for the Emerging Majority: A Blueprint in Action," will bring together approximately 100 minority nurses and community leaders from across the country to further the development of an agenda for meeting the health care needs of the emerging majority. This is a national invitational meeting. Attendees will be invited participants selected from teams submitting the most promising proposals to advance this agenda. Teams will receive advice from experts in the field and receive assistance with writing a strong proposal which may be submitted to other funding sources for funding consideration. DN is soliciting proposals from teams composed of minority nurse leaders and others who have entered into partnerships with key community leaders committed to enhancing the health care of minority and underserved populations. These proposals will be reviewed and evaluated by a DN Selection Committee. Team members from selected proposals will be invited to attend the Congress. Each proposal must address one of the three themes of the Congress (see Supplementary Information section).

DATES: Proposals must be submitted to the Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 9–36, Rockville, Maryland 20857, on or before October 18, 1996. FAXED proposals will not be accepted. The Congress will be held in Denver, Colorado on May 28 to 30, 1997.

ADDRESSES: The review of proposals and actual selection of teams to be invited to attend the Congress will occur on November 6, 1996 at the Parklawn Building, Division of Nursing, 5600 Fishers Lane, Room 9–36, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Captain Audrey M. Koertvelyessy, Nurse Consultant, Division of Nursing, at telephone number (301) 443–6333; or E-mail address at akoertve@hrsa.ssw.dhhs.gov.

SUPPLEMENTARY INFORMATION: One of the national strategic directions identified by the Division of Nursing is to enhance racial and ethnic diversity and cultural competence in the nursing workforce. Two Minority Congresses held in 1992 and 1993 identified a series of important recommendations in the areas of policy, legislation, practice, research, and education. These recommendations revolved around key issues of concern which affect the health of the emerging majority and underserved populations in the country. The Third Minority Congress will build on the two previous Congresses.

In preparation for the Third Minority Congress, a national planning committee of minority nurse leaders was assembled to identify critical issues and areas of concern in implementing a national agenda, and to plan the design for the Third Minority Congress. The themes of the Third Minority Congress are to increase the recruitment, retention, and graduation of minority students in schools of nursing; to increase the numbers of well prepared minority nurse leaders; and to develop the cultural competency of all nurses to care for the emerging majority populations in the Nation.

The participants selected to attend the Congress will consist of teams composed of minority nurse leaders and identified key community leaders. Community leaders should be identified as key stakeholders committed to enhancing the health care of minority and underserved populations. Teams may be composed of 3–5 members with five serving as the maximum number per team. Each team roster should include at least one minority nurse who is in the early phase of her/his career development as a leader. Other team members should be those individuals (this includes both nurses and non-nurses) who can contribute to the successful implementation of the proposed action plan contained in the proposal. A rationale for each member's presence on the team should be provided in the narrative. A diverse team membership that is appropriate to accomplishing the goals of the proposal is strongly encouraged. All team members from each team selected must be able to attend the entire Congress.

Each proposal should address an issue or problem and describe its relationship to one of the three main themes of the Congress. The proposal may be in a preliminary state when submitted to the Division of Nursing for review since it is expected that the Congress workshops will assist teams in refining their proposals. The originality of the approach as described in the proposal will be considered in the final evaluation and selection to attend the Congress.

The team proposals should be limited to 3–5 written pages in length. Each proposal should contain the following: Title of the proposal; identification with the name, title, address, phone, Internet and FAX number of the primary contact person on the team; identification of each team member and rationale for being on the team; description of issue or problem to be addressed; objectives; outcome measures; methodology; and an evaluation plan.

A Selection Committee within the Division of Nursing will review and evaluate each proposal received. Criteria used to evaluate each proposal and the weights assigned to each element are as follows:

	Points
Presence of at least one minority nurse team member at beginning of career	5
Diverse team membership appropriate to meeting goals described	15
Objectives and methodology appropriate to the stated problem/issue described	25
The proposal shows a relationship to one of the three main themes of the Congress	5
Proposal problem/issue is described	20
Outcome measures of success are described	15
Originality of proposal problem/issue	15
	100

The Selection Committee will meet to evaluate the proposals on November 6, 1996. Selected teams will be notified by November 29, 1996.

Travel and per diem expenses to attend the Congress in May 1997 will be provided for selected teams. The team proposals will contribute to the national agenda, which when implemented, will further the national goal of caring for the emerging majority populations in the Nation.

Dated: August 27, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–22433 Filed 9–3–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Technical/Agency Draft Recovery Plan for Rock Gnome Lichen (Gymnoderma lineare), a Plant Species, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for *Gymnoderma lineare* (rock gnome lichen). This rare lichen grows in the mountains of North Carolina and Tennessee, on rocks in areas of high humidity, either at high elevations, where it is frequently bathed in fog, or in deep gorges at lower elevations. Only 33 populations survive, with most of these covering an area smaller than two square meters. The species is threatened by collection, logging, and habitat disturbance due to heavy use by hikers and climbers. It is also indirectly threatened by exotic insect pests and possibly air pollution, which are contributing to the demise of the Fraser fir forests at higher elevations in the Southern Appalachians. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before November 4, 1996, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address and telephone number shown above (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and cost to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is *Gymnoderma lineare* (rock gnome lichen). The areas of emphasis for recovery actions for this plant are the southern Appalachian Mountains of North Carolina and Tennessee. Initial attention will be focused on high-elevation cliffs and rock outcrops, and lower elevation river gorges in Tennessee (Sevier County) and North Carolina (Mitchell, Jackson, Yancey, Swain, Transylvania, Buncombe, Avery, Ashe, Rutherford, and Haywood Counties). Research on threats, habitat protection, reintroduction, and the preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 28, 1996.

Brian P. Cole,

State Supervisor.

[FR Doc. 96–22476 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–55–M

U.S. Fish and Wildlife Service

Klamath Fishery Management Council Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 1), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8:00 a.m. to 5:00 p.m. on Wednesday, September 25, 1996, and from 8:00 a.m. to 12:00 p.m. on Thursday, September 26, 1996.

PLACE: The meeting will be held at the Victorian Inn, 1709 Main St, Highway 299 West, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project leader, U.S. Fish and Wildlife Service, P.O. Box 1006, (1215 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: August 27, 1996.

Thomas Dwyer,

Acting Regional Director.

[FR Doc. 96–22472 Filed 9–03–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Office of Tribal Services' Proposed Funding Distribution Methodologies

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Transfer of Funds to Tribal Priority Allocations.

SUMMARY: In compliance with House Report Language 103–551, notice is hereby given that in Fiscal Year (FY) 1997, the Bureau of Indian Affairs (BIA), Office of Tribal Services, proposes to permanently transfer Contract Support Funds, Housing Improvement Program Funds, and Social Services Welfare Assistance Funds to each eligible Indian tribe's Tribal Priority Allocations (TPA) budget based on the methodology selected for each program. Currently, funds are allotted annually to and

distributed by the twelve BIA area offices and the Office of Self-Governance (OSG) for further distribution to tribes and BIA agencies based on the level of current year appropriations using the procedures and guidelines established by the BIA for payment of these funds. Under the new proposal, an initial amount of funds will be identified for each eligible tribe, including Self-Governance Tribes, which will recur annually.

DATES: Written comments regarding the above proposed actions must be received by Close of Business in the Office of Tribal Services on or before October 21, 1996 in order to be considered in the final decisions on the distribution methodologies for the above programs. Tribal leaders will be notified by letter of the methodology selected for all three programs.

FOR FURTHER INFORMATION CONTACT: The Office of Tribal Services, Bureau of Indian Affairs, MS–4603–MIB, 1849 C Street, N.W., Washington, D.C. 20240, telephone number (202) 208–3463.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide Indian tribes an opportunity to submit written comments on the above proposed actions.

Based on information received from the Congress and through tribal consultation, the Bureau is seeking input from Indian Country on proposed distribution methodologies for all three programs. Two alternative proposals for each of these programs are listed for consideration and all tribes are encouraged to comment on the methodologies as described and identify which alternative they prefer for each program within 45 days from the date this notice is published in the **Federal Register**. In order for the BIA to select the most fair and equitable methodology that would best serve all tribes under all three programs, broad-based tribal support from the majority of areas will be required. Widespread support in one or two areas for one alternative could constitute a national majority of tribes; however, that alternative will not automatically be implemented unless it also receives majority support in other areas as well. The following methods are being considered by the BIA for determining each tribe's share of the Contract Support, Housing Improvement Program, and Social Services Welfare Assistance program funds for allocation to the TPA budget category.

1. The BIA's Division of Social Services proposes to transfer welfare assistance funds to each Indian tribe currently benefitting from a welfare assistance program or eligible to participate in a welfare assistance program.

Alternative No. 1

The Division of Social Services proposes to use an average of the most recent funding history covering the period of 1993–1995. Those tribes without a three-year funding history must be eligible for operation of a BIA social services program and use 25 CFR 20 as their standard in order to determine funding needs for their programs. They must submit verifiable data of actual expenditures and projected expenditures for an entire year to the Area Director by September 15, 1996 for the Area Director's certification. If the data is not submitted, the Area Director will formulate an average yearly funding for that tribe based upon caseload and funding projections and certify the results. The data certified by the Area Director will be included in the nationwide totals for welfare assistance.

Alternative No. 2

The Division of Social Services proposes to allocate to each eligible tribe a base amount of $20,000 plus a percentage of the remaining funds based on the total population within the BIA Total Category in the 1993 Bureau of Indian Affairs' Indian Service Population and Labor Force Estimates Report. A tribe's percentage share would represent a comparison of the tribe's data to the national totals. For example, tribe X receives a total of $1,302,617 for its share of welfare assistance funds. This consists of a $20,000 base and $1,282,617 in additional funds, based on the following formula:

$$\frac{\text{20,000 (total for one tribe) divided by}}{\text{1,183,967 (total nationwide for all tribes)}} = .0169 = 1.69\%$$

which translates into: 75,894,501 (total funds after $20,000 deducted per tribe) multiplied by .0169=$1,282,617 in additional funds which results in:

$20,000	(base amount for tribe X) plus
$1,282,617	(additional funding)
$1,302,617	total funding for tribe X

If any eligible tribe, including an OSG tribe, was not included in the 1993 BIA Labor Force Report and chooses to obtain additional funding beyond the $20,000 tribal base, it must submit verifiable data that tribal members in the BIA Total Category exist in its service population to the Area Director by September 15, 1996 for certification. If the data is not submitted, the Area Director will formulate an average yearly funding for that tribe based upon caseload and funding projections and certify the results. The data certified by the Area Director will be included in the nationwide totals for welfare assistance. If the 1995 BIA Indian Service Population and Labor Force Estimate Report is published in final form, this document will be used to calculate the appropriate tribal share.

2. The BIA's Division of Self-Determination Services proposes to transfer Contract Support Funds (CSF) to the TPA budget system in FY 1997. This proposal concerns the payment of CSF for tribes and tribal organizations contracting under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended, and is limited to ongoing or continuing contracts and would not affect the Indian Self-Determination Fund which will continue to be maintained at the Central Office and distributed to meet indirect cost needs for new contracts. Under each of the alternatives explained below, the BIA will provide a pro rata distribution of the available funds to the eligible tribes.

Alternative No. 1

In determining the amount of the one-time transfer of CSF to the tribal base, the Division of Self-Determination Services proposes to use each tribe's most current indirect cost rate in effect during the period between 1994–1996, as negotiated with the Office of the Inspector General.

Alternative No. 2

The Division proposes to use an average of the most recent three-year indirect cost rates, as negotiated with the Office of the Inspector General.

It is proposed that tribes contracting under the Act without indirect cost rates would also have CSF added to their recurring TPA base at the time the transfer is executed. The BIA will add a standard percentage (approximately 20 percent) based on the national average indirect cost rate. The amount derived from this percentage will be added to the program amount being contracted.

3. The BIA's Division of Housing Services proposes to transfer Housing Improvement Program (HIP) funds to the TPA budget of each federally recognized Indian tribe. The HIP is not intended to meet the overall housing needs in Indian Country but is meant to provide standard housing opportunities through repairs of existing homes and, in a limited number of cases, replacement homes for eligible applicants.

Alternative No. 1

The Division of Housing Services proposes to allocate to each eligible tribe a base amount of $20,000 plus a percentage of the remaining funds based on the total populations within the following four categories in the 1993 Bureau of Indian Affairs' Indian Service Population and Labor Force Estimates Report: (1) Over 65 years of age, (2) Unable to Work, (3) Total Not Employed of the Potential Labor Force, and (4) Total number of Labor Force earning $7,000 or less per year. A tribe's percentage share would represent a comparison of the tribe's data to the national totals. For example, tribe X receives a total of $25,000 for its share of housing funds. This consists of a $20,000 base and $5,000 additional funds based on the following formula:

$$\frac{\text{400 (total for one tribe in four categories) divided by}}{\text{400,000 (total nationwide for all tribes in four categories)}} = .001 = 0.10\%$$

which translates into: 5,000,000 (total funds after $20,000 deducted per tribe) multiplied by .001 = $5,000 in additional funds, which results in: $20,000 (base amount for tribe X) plus $5,000 (additional funding) $25,000 total funding for tribe X

If any eligible tribe, including an OSG tribe, was not included in the 1993 BIA Labor Force Report and chooses to obtain additional funding beyond the $20,000 tribal base, it must submit verifiable data that tribal members in the four categories exist in its service population to the Area Director by September 15, 1996 for certification. If the data is not submitted, the Area Director will formulate a total for the four categories based upon Service Population estimates and certify the results. The data certified by the Area Director will be included in the nationwide totals for HIP. If the 1995 BIA Indian Service Population and Labor Force Estimate Report is published in final form, this document will be used to calculate the appropriate share.

Alternative No. 2

The Division proposes to use the same methodology as the first alternative, but allocate a base of $10,000 rather than $20,000. If the 1995 BIA Indian Service Population and Labor Force Estimate Report is published in final form, this document will be used to calculate the appropriate share.

Dated: August 23, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–22481 Filed 9–03–96; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon Gaming Compact, which was executed on June 21, 1996.

DATES: This action is effective September 4, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: August 21, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–22439 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approval for Amendment II to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Tribal-State Compact For Regulation of Class III Gaming Between the Confederated Tribes of Siletz Indians Tribe and the State of Oregon, which was executed on June 21, 1996.

DATES: This action is effective September 4, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: August 21, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–22440 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Tribal-State Compact for Regulation of Class III Gaming Between the Coquille Indian Tribe and the State of Oregon, which was executed on June 21, 1996.

DATES: This action is effective September 4, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: August 21, 1996.

Michael J. Anderson,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 96–22438 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment III

to the Tribal-State Compact For Regulation of Class III Gaming Between the Cow Creek Band of Umpqua Tribe of Indians and the State of Oregon, which was executed on June 21, 1996.

DATES: This action is effective September 4, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: August 13, 1996.

Michael J. Anderson,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 96–22437 Filed 9–3–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[AZ–054–06–1990–00; 1535]

Arizona, Notice of Change of Mailing Address and Telephone Number

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice sets forth the new mailing address and phone number for the Bureau of Land Management, Lake Havasu Field Office, Lake Havasu City, Arizona. The new mailing address and phone number for the Lake Havasu Field Office is 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406 (520) 505–1200.

DATES: Effective August 26, 1996.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406 (520) 505–1200.

Dated: August 20, 1996.

Robert M. Henderson,

Acting Field Manager.

[FR Doc. 96–22500 Filed 9–03–96; 8:45 am]

BILLING CODE 4310–32–P

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Gambell, AK, in the Control of the Alaska State Office, Bureau of Land Management, Anchorage, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of the Alaska State Office, Bureau of Land Management, Anchorage, AK. These human remains and associated funerary objects are currently in the possession of the University of Alaska Museum.

A detailed assessment of the human remains and associated funerary objects was made by Bureau of Land Management professional staff and University of Alaska Museum professional staff in consultation with representatives of the Native Village of Gambell.

Between 1972–1973, human remains representing 53 individuals were recovered by Hans-Georg Bandi during legally authorized excavations near Sekloghyaget (or "Old Gambell") site, a nineteenth century habitation section of Gambell, AK, the Troutman Lake site, a 19th century grave site near Gambell, AK, and a 19th century habitation site near modern Gambell, AK. No known individuals were identified. The 142 associated funerary objects include abraders, a blubber scraper, buttons, foreshafts, ground slate tools, a ground slate point, faunal remains, walrus tusks and tusk fragments, chert flakes, pottery sherds, unworked stone, and a winged object.

The three sites listed above have been identified as 19th century habitation and cemetery areas at or near the Native Village of Gambell through historical documentation, cultural items found at the sites, and oral history.

In 1939, human remains representing four individuals were recovered by Louis Giddings at the Ayveghyaget site, a precontact habitation site near Gambell, AK. No known individuals were identified. Between 1972–1973, human remains representing three individuals were recovered by Hans-Georg Bandi during legally authorized excavations from the vicinity of the Ayveghyaget site. No known individuals were identified. Three associated funerary objects recovered include ground slate, worked ivory and faunal remains.

In 1939, human remains representing three individuals were recovered by Louis Giddings from the Kitngipalak site, a precontact habitation site near Gambell, AK. No known individuals were identified. Between 1972–1973, human remains representing 133 individuals were recovered by Hans-Georg Bandi during legally unauthorized excavations from the Kitngipalak site. No known individuals were identified. The 328 associated funerary objects include ground slate tools, chert flakes, worked ivory, faunal remains, a whetstone, abraders and ulu blades.

In 1967, human remains representing 24 individuals were recovered by Hans-Georg Bandi during legally authorized excavations from the vicinity of the Ayveghyaget and Mayaghaaq sites, precontact habitation sites near Gambell, AK. No known individuals were identified. The two associated funerary objects are faunal remains.

In 1968, human remains representing one individual were removed from the Pagughileq site, a precontact habitation site on BLM land, and donated to the University of Alaska Museum by a State of Alaska employee in 1985. No known individual was identified. No associated funerary objects are present.

Between 1972–1973, human remains representing 36 individuals were recovered by Hans-Georg Bandi during legally authorized excavations from the vicinity of the Mayaghaaq site, a precontact habitation site near Gambell, AK. No known individuals were identified. The 57 associated funerary objects include ivory harpoon heads, faunal remains, ground slate fragments, ulu blades, and ivory fragments.

Between 1972–1973, human remains representing seventeen individuals were recovered by Hans-Georg Bandi during legally authorized excavations from the Dovlaqhyaget site, a precontact habitation site near Gambell, AK. No known individuals were identified. The 24 associated funerary objects include worked bone and ivory, faunal remains, ground slate points and a winged object.

In 1950, human remains representing eighteen individuals were donated to the University of Alaska Museum by a private individual after being illegally removed from BLM lands in the vicinity of Gambell, AK. No known individuals were identified. No associated funerary objects are present.

In 1962, human remains representing two individuals were recovered from BLM lands during legally authorized excavations in the vicinity of Gambell, AK by Otto Geist. No known individuals were identified. No associated funerary objects are present.

The precontact sites and sites in the vicinity of Gambell, AK listed above have been identified as occupied during the Okvik, Old Bering Sea, and Punuk periods based on site organization, habitation structures, cultural material, and Carbon0914 assays. The Carbon0914 assays and ethnohistorical data indicate these occupations represent a continuity of cultural occupation of St. Lawrence Island from approximately 300 AD to the historically documented epidemic and famine of 1879 AD. The associated funerary objects from the ten sites located at or near Gambell are

stylistically and functionally consistent with the Gambell cultural development sequence. Additionally, the present-day Native residents of Gambell are the documented descendants of the survivors of the 1879 epidemic and famine. Oral history evidence provided by representatives of the Native Village of Gambell indicates on-going recognition of the above Gambell grave sites as traditional burial grounds.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 294 individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 556 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Native Village of Gambell.

This notice has been sent to officials of the Native Village of Gambell. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, 1B13, Anchorage, AK 99513–7599; telephone: (907) 271–5510, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains and associated funerary objects to the Native Village of Gambell may begin after that date if no additional claimants come forward.

Dated: August 29, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–22495 Filed 9–3–96; 8:45 am]

BILLING CODE 4310970-F

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 11, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–750 (Preliminary)—(Vector Supercomputers from Japan)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: August 30, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22637 Filed 8–30–96; 1:16pm]

BILLING CODE 7020-02-U

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that on August 26, 1996, a proposed Partial Consent Decree in *United States* v. *Metallics, Inc.*, Civil Action No. 96–C–0275–S, was lodged, with the United States District Court for the Western District of Wisconsin. This consent decree represents a settlement of claims of the United States and the State of Wisconsin against the Town of Onalaska, Wisconsin for reimbursement of response costs and injunctive relief in connection with the Onalaska Municipal Landfill site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*

Under this settlement between the United States, the State of Wisconsin, and the Town of Onalaska, the Town will pay the United States $482,550 in partial reimbursement of response costs incurred by the Environmental Protection Agency at the Site, perform operation and maintenance activities at the site throughout the contemplated thirty-year remedial action, provide access to the site and to properties adjacent to the site, and impose conservation easements on such properties consistent with their location adjacent to a wildlife refuge, and institute appropriate institutional controls.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Metallics, Inc.*, D.J. Ref. 90–11–3–605B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Room 420, Madison, Wisconsin 53703, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $11.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–22467 Filed 9–3–96; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 95–41]

Johnson Matthey, Inc.; Termination of Proceedings

On May 8, 1995, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued a final order granting the September 14, 1992, application of Johnson Matthey, Inc. (Johnson Matthey) to register as a bulk manufacturer of methylphenidate, subject to certain conditions. (Johnson Matthey I) 60 FR 26050 (May 16, 1995). On January 2, 1996, the United States Court of Appeals for the District of Columbia Circuit denied a petition for review of that final order. MD Pharmaceutical, Inc. v. Drug Enforcement Administration, Docket No. 95–1267, 1996 U.S. App. Lexis 1229 (D.C. Cir. 1996).

In the meantime, on February 24, 1995, Johnson Matthey filed an application for calendar year 1995 for registration as a bulk manufacturer of various Schedule I and II controlled substances, including methylphenidate, notice of which was filed in the **Federal**

Register. 60 FR 20751 (April 27, 1995). However, on July 27, 1995, Johnson Matthey withdrew its application, except as to methylphenidate. See 60 FR 53804 (October 17, 1995). Therefore, the only aspects of Johnson Matthey's February 1995 application pending is the request to manufacture methylphenidate. By letter dated May 10, 1995, MD Pharmaceutical, Inc. (MD) filed comments, objecting to Johnson Matthey's application with respect to methylphenidate, and by letter dated May 26, 1995, Ciba-Geigy Corporation (Ciba) requested a hearing, giving rise to the instant case.

Also by letter dated May 26, 1995, Mallinckrodt Chemical, Inc. (Mallinckrodt), stated that it took no position on Johnson Matthey's application to manufacture methylphenidate, but that it "wish[ed] to participate fully in a hearing if one is scheduled." The matter was docketed and assigned to Administrative Law Judge Mary Ellen Bittner. Extensive prehearing communications followed, with the Government filing its prehearing memorandum on July 28, 1995, and Johnson Matthey, Ciba, Mallinckrodt, and MD filing their prehearing memoranda on July 31, 1995. Again, the parties engaged in extensive prehearing filings surrounding the issue of whether to hold in abeyance a hearing in this matter pending the decision of the Court of Appeals in Johnson Matthey I.

Subsequently, on October 17, 1995, the DEA published a notice in the **Federal Register,** stating, among other things, that "[d]ue to the pending administrative proceeding concerning methylphenidate, Johnson Matthey will continue on a day-to-day registration to bulk manufacture methylphenidate pending resolution of Docket No. 95–41." 60 FR 53804 (1995). On November 13, 1995, Johnson Matthey filed an application to be registered as a bulk manufacturer of various controlled substances, including methylphenidate, for calendar year 1996. See Notice of Application, 61 FR 8303 (March 4, 1996).

Following the circuit court's decision in Johnson Matthey I, on February 23, 1996, Johnson Matthey filed a motion to dismiss, or in the alternative to terminate, the current proceeding. On March 14, 1996, the Government filed a Motion for Summary Disposition, seeking dismissal of this proceeding on various grounds. On March 18, 1996, MD filed an Objection to Johnson Matthey's Motion to Dismiss, and Ciba filed a Memorandum in Response to Motion of Johnson Matthey, Inc., to Dismiss and Government's Motion for Summary Disposition. Also, on March 19, 1996, Mallinckrodt filed a Response to Johnson Matthey's Motion to Dismiss, and on April 8, 1996, MD filed an Opposition to the Government's Motion for Summary Disposition.

By order dated May 15, 1996, Judge Bittner (1) denied the Government's motion for summary disposition, (2) denied Johnson Matthey's motion to dismiss, (3) found, however, that there was no longer a basis for holding a hearing in this proceeding, and (4) terminated the proceeding. She afforded the parties an opportunity to file an appeal from her ruling, and on June 3, 1996, the Government filed exceptions to her ruling, but agreed with her termination of the proceedings. No other appeals were filed.

The Deputy Administrator finds that as of May 8, 1995, Johnson Matthey had a Certificate of Registration as a bulk manufacturer of methylphenidate. See Johnson Matthey I. As noted by Judge Bittner, both the Administrative Procedure Act and DEA's regulations provide that a timely application for reregistration operates to continue an existing registration until there is a determination on that application. 5 U.S.C. § 558(c)[1] and 21 C.F.R. 1301.47.[2] Therefore, the Deputy Administrator agrees with Judge Bittner's findings that (1) the November 1995 application for reregistration operates to continue Johnson Matthey's registration granted by final order on May 8, 1995, with respect to methylphenidate, (2) Johnson Matthey's reregistration cannot be denied until DEA takes further action,[3] and (3) the November 1995 application is not before Judge Bittner (nor the Deputy Administrator) as a result of Ciba's hearing request relevant to the February 1995 application. See 60 FR 32099 (June 30, 1995) (amending 21 C.F.R. 1301.43, effective July 20, 1995, by eliminating third-party manufacturers' hearing opportunities, pursuant to their own request). The Deputy Administrator also finds that the termination of these proceedings will not impact upon the continuation of Johnson Matthey's day-to-day registration to manufacture methylphenidate, given the lack of a resolution of its pending November 1995 application.

The Deputy Administrator agrees with Judge Bittner's termination of the hearing procedure raised by Ciba's request in response to Johnson Matthey's registration application of February 1995. As Judge Bittner noted, "if a hearing were held in this proceeding, whatever recommendation [she] would make with respect to Johnson Matthey's [February] 1995 application would be of no consequence." If Judge Bittner recommended granting the February 1995 application, she would be recommending Johnson Matthey be given a right already flowing from the May 1995 final order and the November 1995 reregistration application. If, however, Judge Bittner recommended the application be denied, and if the Deputy Administrator concurred with that recommendation, a show cause proceeding would need to be instigated. See 21 U.S.C. § 824(c), quoted at footnote 3 supra. Therefore, since the hearing will have no impact upon Johnson Matthey's registration at this point in the registration process, the Deputy Administrator concurs with Judge Bittner's decision to terminate this proceeding. See, e.g., National Classification Comm. & Natl. Motor Freight Traffic Assn., Inc. v. United States, 779 F.2d 687, 693 (D.C. Cir. 1985) (noting that "a hearing is required only when it would serve some purpose").

Judge Bittner made findings necessary to resolve the Government's Motion for Summary Disposition and Johnson Matthey's Motion to Dismiss. The Deputy Administrator has reviewed those findings, Judge Bittner's resolution of the two motions, and the Government's exceptions thereto. However, the Deputy Administrator concludes that it is unnecessary to address those matters here, since they do not impact upon the propriety of the termination decision. Therefore, the Deputy Administrator makes no findings concerning those issues.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 C.F.R. 0.100(b) and 0.104,

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[1] 5 U.S.C. § 558(c) states: "When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency."

[2] 21 C.F.R. 1301.47 provides: "In the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Administrator has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Administrator so issues his order."

[3] 21 U.S.C. § 824(c) provides, in relevant part, that "[b]efore taking action pursuant * * * to a denial of registration under section 823 of this title, the Attorney General shall serve upon the applicant or registrant an order to show cause why registration should not be denied. * * *"

hereby orders that the request for a hearing concerning Johnson Matthey's February 1995 registration application, and the proceedings following and relevant to that request be, and they hereby are, terminated.

This order is effective October 4, 1996.

Dated: August 27, 1996.

Stephen H. Greene,

Deputy Administrator

[FR Doc. 96–22496 Filed 9–3–96; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Nonimmigrant Checkout Letter.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 29, 1996, at 61 FR 26932–26933, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The proposed collection is listed below:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection.* Nonimmigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–146. Detention and Deportation, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection of information is used in making inquiries of persons in the United States or abroad concerning the whereabouts of aliens, and also requests departure information by the Immigration and Naturalization Service, when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 respondents at 10 minutes (.166) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,320 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: August 28, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22468 Filed 9–3–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Compensation for Ex-Servicemembers (UCX) Handbook; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the Unemployment Compensation for Ex-Servicemembers (UCX) Handbook.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 4, 1996.

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Written comments on this notice may be mailed or delivered to Charles E. Longus, Jr., Unemployment Insurance Service, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, DC 20210, telephone (202) 219–5340 ext 16 (this is not a toll-free number), fax number (202) 219–8506.

SUPPLEMENTARY INFORMATION:

I. Background

The UCX law (5 U.S.C. 8521–8523) requires State employment security agencies to administer the UCX program in accordance with the same terms and conditions of the paying State's unemployment insurance law which apply to unemployed claimants who worked in the private sector. Each State agency must be able to obtain certain military service information from each claimant filing claims for UCX benefits to enable them to determine his/her eligibility for benefits. The State agencies record or obtain required UCX information on forms developed by the Department of Labor, ETA 841, ETA 842 and ETA 843. The use of each of these forms is essential to the UCX claims process.

Information pertaining to the UCX claimant can only be obtained from the individuals's military discharge papers, the appropriate branch of military service or the Department of Veterans Affairs (formerly the Veterans Administration). If the claimant does not have this information available, the most feasible and effective way to obtain this information is by use of the forms prescribed by the Department of Labor for State agency use. Without this information, we could not adequately determine the eligibility of ex-servicemembers and would not be able to properly administer the program.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control No. 1205–0176. A current inventory of 255,000 UCX claims were filed in FY 1994 and a proposed inventory of 138,573 UCX claims will be reported for FY 1995 reflecting a significant decrease of 116,427 from the previous fiscal year resulting in a reduction of −3,009 hours toward ETA's Information Collection Budget.

Fifty-three (53) SESAs fill out these forms. Form ETA 841 is completed by SESAs whenever an ex-servicemember files: (1) A "first claim" (UCX) for unemployment compensation, whereby an assignment of Federal military service is recorded; or (2) a request for determination of entitlement to UCX benefits, whether or not such request results in a "first claim." Form ETA 842 is very rarely used under current legislation so our estimate is zero burden. ETA 843 is used by SESAs only when it is necessary to obtain additional clarifying information from the military pertaining to the UCX claimant or to obtain a copy of DD Form 214 that was not issued to the claimant when separated from military service. Accordingly, the ETA 843 is used for only 5% of the UCX "first claims." This is then sent to any one of the four branches of military service (Army, Navy, Marines, Air Force), the Coast Guard, or the National Oceanic Atmospheric Administration (they are considered branches of military service for UCX purposes but are not under the jurisdiction of the Department of Defense).

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Ex-Servicemembers (UCX) Handbook.

OMB Number: 1205–0176.

Recordkeeping: The Department of Labor (DOL) does not maintain a system of records for the UCX program. UCX records are maintained by the SESAs acting as agents for the Federal Government in the administration of the UCX program. The DOL procedures permit the SESAs, upon request, to dispose of UCX records according to State law provisions, 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than 3-year period if microphotographed in accordance with appropriate microphotography standards.

Affected Public: State governments (State employment security agencies).

Cite/Reference/Form/etc: Forms ETA 841, ETA 842 and ETA 843

Total Respondents: 138,573

Frequency: As needed

Total Responses: 138,573

Average Time per Response: 1.5 min.

Estimated Total Burden Hours: 3,579 hrs. or chart for multiple forms/ information collections.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (min.)	Burden (hrs.)
ETA 841	138,573	As needed	138,573	1.5	3,464
ETA 842	0	As needed	0	0	0
ETA 843	6,929	As needed	6,929	1.0	115
Totals	.....	.....	145,502	.....	3,579

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/ maintaining): $3,201,036.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 28, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 96–22511 Filed 9–3–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–103]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 40663, Notice Number 96–090, August 5, 1996.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: Monday, September 9, 1996, 8:30 a.m. to 5:00 p.m., and Tuesday, September 10, 1996, 8:30 a.m. to 4:30 p.m.; NASA Headquarters, Conference Room MIC 6–A/B West, 300 E Street, SW, Washington, DC 20546.

CHANGES IN THE MEETING: The meeting will be closed to the public on Monday, September 9, 1996, 8:30 a.m. to 9:00 a.m. and on Tuesday, September 10, 1996, 12:00 p.m. to 1:00 p.m. in accordance with 5 U.S.C. 552b(c)(6), to allow for a discussion on procedures and conflicts of interest of scientific priorities by the members.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364. The remainder of the meeting will be open to the public up to the capacity of the room.

Dated: August 27, 1996.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 96–22445 Filed 9–3–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public meeting.

TIME AND DATE: Monday, September 16, 1996; 2:00 P.M. to 4:00 P.M.; Wednesday, September 18, 1996; 8:30 A.M. to 4:45 P.M.; and Thursday, September 19, 1996; 8:30 A.M. to 4:00 P.M.

PLACE: On Monday, September 16, 1996, the Government Working Group of the Commission will hold a Planning Meeting at the State Capitol Building—Room 303, Santa Fe, New Mexico. On Wednesday and Thursday, September 18–19, 1996, the Commission will hold its Meeting at the State Capitol Building—Room 307, Santa Fe, New Mexico. The State Capitol Building is located at the intersection of Old Santa Fe Trail and Paseo de Peralta in Santa Fe, New Mexico.

STATUS: All meetings will be open to the public.

MATTERS TO BE CONSIDERED: General administrative matters for the Commission, including substantive agenda; Commission working groups will consider the following substantive matters: government as creditor or debtor; small businesses, single asset real estate cases and partnerships: a special case?; improving jurisdiction and procedure; consumer bankruptcy; Chapter 11: uses and consequences; and service to the estate: ethical and economic choices. An open forum for public participation will be held on Wednesday, September 18, 1996 from 8:45 A.M. to 10:00 A.M. and on Thursday, September 19, 1996, from 2:30 P.M. to 4:00 P.M.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite G–350, Washington, D.C. 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 96–22464 Filed 9–3–96; 8:45 am]

BILLING CODE 6820–36–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 2, 9, 16, and 23, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 2

Wednesday, September 4

9:30 a.m.
Briefing by DOE on Status of HLW Program (Public Meeting)

11:00 a.m.
Affirmation Session (Public Meeting)
a. SECY–96–100—Final Amendments to 10 CFR Parts 20 and 35 on Criteria for the Release of Individuals Administered Radioactive Material (tentative)
b. SECY–96–118—Amendments to 10 CFR Parts 50, 52, and 100, and Issuance of a New Appendix S to Part 50 (tentative)

Thursday, September 5

3:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Week of September 9—Tentative

There are no meetings scheduled for the Week of September 9.

Week of September 16—Tentative

There are no meetings scheduled for the Week of September 16.

Week of September 23—Tentative

There are no meetings scheduled for the Week of September 23.

The schedule for Commission meetings is subject to change on short notice.

To verify the status of Meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers. If you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

Dated: August 30, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–22692 Filed 8–30–96; 2:02 pm]

BILLING CODE 7590–01–M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued two final reports on estimating boiling water reactor (BWR) decommissioning costs. They are NUREG/CR–6174, "Revised Analyses of the Decommissioning for the Reference Boiling Water Reactor Power Station," and NUREG/CR–6270, "Estimating Boiling Water Reactor Decommissioning Costs." The reports discuss and provide methods for estimating decommissioning costs for BWRs. They also provide background information to support rulemaking activities to modify funding assurance requirements for nuclear power reactor licensees.

Copies of NUREG/CR–6174 and NUREG/CR–6270 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection and copying for a fee in the NRC Public Document Room, 2120 L

Street, NW. (Lower Level), Washington, DC. The computer software for NUREG/CR–6270 can be purchased from the Energy Science and Technology Software Center, P.O. Box 1020, Oak Ridge, TN 37831–1020, Phone: (423) 576–2606.

For further information contact George J. Mencinsky, U.S. Nuclear Regulatory Commission, Mail Stop T–9 F31, Washington, DC 20555, Phone: (301) 415–6206.

Dated at Rockville, Maryland, this 23rd day of August, 1996.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 96–22509 Filed 9–3–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, September 12, 1996, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: August 27, 1996.

Phyllis G. Foley,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 96–22499 Filed 9–3–96; 8:45 am]

BILLING CODE 6325–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 19, 1996 and Friday, September 20, 1996, at the Washington Marriott, 1221 22nd Street NW, Washington, DC, in the third floor conference center. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. The Commission expects to discuss such issues as its comments on the Secretary's report on Volume Performance Standards, workforce trends, managing Medicare fee for service, Medigap portability, PSOs, federal premium contributions, and to hear updates on revising practice expense relative values in the Medicare Fee Schedule, antitrust issues, the 5-year review of Medicare work relative values, HCFA regulations on physician financial incentives, and the Medicare SELECT evaluation. Panels on Medicare managed care, the response of academic medical centers, and structuring choice in the Medicare program are scheduled. The agenda is tentative at this time; a final agenda will be available on Friday, September 13, 1996 and will be mailed at that time.

ADDRESS: 2120 L Street, N.W., Suite 200; Washington, D.C. 20037. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after September 13, 1996.

Lauren LeRoy,

Executive Director.

[FR Doc. 96–22502 Filed 9–3–96; 8:45 am]

BILLING CODE 6820–BE–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22180; File No. 812–10052]

Schwab Annuity Portfolios, et al.

August 27, 1996.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Schwab Annuity Portfolios (the "Trust").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order to the extent necessary to permit shares of the Trust and shares of any other investment company (the "Future Funds," collectively, with the Trust, the "Funds") that is designed to fund variable insurance products, and for which Charles Schwab Investment Management, Inc. (the "Investment Manager") or an affiliate may serve as investment adviser, manager, principal underwriter or sponsor, to be sold to and held by: (a) variable annuity and variable life insurance separate accounts (the "Separate Accounts") of both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies"); and (b) qualified pension and retirement plans outside of the separate account context (the "Plans").

FILING DATE: The application was filed on March 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 23, 1996, and accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Frances Cole, Esq., Charles Schwab Investment Management, Inc., 101 Montgomery Street, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Mark Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. The Trust, an open-end management investment company organized as a Massachusetts business trust on January 21, 1994, currently consists of one series: the Schwab Money Market Portfolio (the "Series").

2. The Investment Manager, registered investment adviser under the Investment Advisers Act of 1940, serves as the investment adviser and administrator to each Fund. The Investment Manager is a wholly-owned subsidiary of the Charles Schwab Corporation, a parent of investment services companies incorporated in California.

3. The Trust currently offers shares of the Series only to Transamerica Separate Account VA–5, a separate account of Transamerica Occidental Life Insurance Company and to Separate Account VA–5 NLNY, a separate account of First Transamerica Life Insurance Company (collectively referred to as "Transamerica"), to fund the benefits of Schwab Investment Advantage™, a variable annuity contract issued by Transamerica. It is intended, however, that shares of the Funds will be offered to separate accounts of other insurance companies, including insurance companies that are not affiliated with Transamerica. The Funds also may be used as investment vehicles for qualified pension and retirement plans outside of the separate account context.

4. Upon the granting of the order requested in the application, the Funds intend to offer to Separate Accounts of Participating Insurance Companies shares of the Series and of future investment series to serve as the investment vehicle for various types of variable insurance products, including, but not limited to, variable annuity contracts, single premium variable life insurance policies, and flexible premium variable life insurance contracts (collectively, the "Contracts"). The Funds also may offer shares of the Series and of future investment series directly to Plans outside of the separate account context.

5. Participating Insurance Companies will establish their own Separate Accounts and design their own variable contracts. The role of the Funds under this arrangement, insofar as the federal securities laws are applicable, will consist of offering shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Tax law permits the Funds to increase their asset base through the sale of shares of the Funds to Plans. Plans may choose the Funds as the sole investment option under the Plan or as one of several investment options. Which investment choices are available to a Plan participant will depend upon the Plan. Shares of the Funds sold to Plans will be held by the trustees of the Plans, as mandated by Section 403(a) of the Employee Retirement Income Security Act ("ERISA").

Applicant's Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to the investment adviser, principal underwriter, and sponsor or depositor of the Separate Account. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicant states that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e–3(T) also is available to the investment adviser, principal underwriter, and sponsor or depositor of the Separate Account. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where the UIT's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Thus, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicant states that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans.

5. Applicant states that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contracts for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5(1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated assets accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicant states that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury Regulations. Applicant asserts that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicant therefore requests relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser

to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicant states that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicant states that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicant notes that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicant asserts, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a Separate Account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that an insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between an underlying fund and its investment adviser, when required to do so by an insurance regulatory authority. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each rule.

12. Applicant states that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts, and are subject to extensive state regulation. Applicant maintains, therefore, that in adopting Rule 6e–2, the Commission expressly recognized that exemptions from pass-through voting requirements are necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicant notes that, in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts, and submits that the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2. Applicant further submits that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such mixed and shared funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

13. Applicant further represents that the Funds' sale of shares to the Plans does not affect the relief requested in this regard. As noted previously, shares of the Funds sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan, with two exceptions: (a) When the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicant notes that, unlike the case with Separate Accounts of Participating Insurance Companies, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

14. Applicant states that no increased conflicts of interest would be presented if the requested relief were granted. Applicant asserts that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicant notes that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicant submits that this possibility is no different from and no greater than what exists where a single insurer and its affiliates offer their insurance products in several states.

15. Applicant further submits that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are

designed to safeguard against any adverse effects these differences may produce. If a particular state insurance regulator's decision conflicts with that of a majority of other state regulators, the affected insurer may be required to withdraw its Separate Account's investment in the relevant Fund.

16. Applicant also argues that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by Contract owners. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

17. Applicant states that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicant therefore argues that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicant represents that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

18. Applicant notes that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. An investment company supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers.

19. Applicant also notes that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and Separate Accounts to share the same underlying management investment company. Therefore, Applicant has concluded that neither the Code, the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity Separate Accounts and variable life insurance Separate Accounts all invest in the same management investment company.

20. Applicant states that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made and the Separate Account or the Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan then will make distributions in accordance with the terms of the Plan. A Participating Insurance Company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the variable contract.

21. Applicant also states that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicant represents that the Funds will inform each shareholder, including each Separate Account and Plan, of its respective share of ownership in the respective Funds. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

22. Applicant submits that the ability of the Funds to sell their respective shares directly to Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as compared to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Separate Accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicant states that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually are unable to simply redeem their Separate Accounts out of one fund and invest those monies in another fund. Complex and time consuming transactions must be undertaken to accomplish such redemptions and transfers. By contrast, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicant represents that even should there arise issues where the interest of Contract owners and the interests of Plans conflict, the issues can be resolved almost immediately in that trustees of the Plans can, independently, redeem shares out of the Funds.

24. Applicant states that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicant, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicant argues that use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the Funds' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicant states that making the Funds available as common investment media for variable insurance contracts would benefit contract owners by: (a) Eliminating a significant portion of the costs of establishing and administering separate funds; (b) increasing the amount of assets available for investment by the Funds, thereby promoting economies of scale, permitting increased safety of investments through greater diversification, and making the addition of new portfolios more feasible; and (c) encouraging more insurance companies to offer variable contracts, resulting in

increased competition with respect to both the design and the pricing of variable contracts, which can be expected to result in greater product variation and lower charges. Applicant believes that there is no significant legal impediment to permitting mixed and shared funding.

Applicant's Conditions

Applicant has consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Directors of each Fund (each, a "Board") shall consist of persons who are not "interested persons" of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, of bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all of the Separate Accounts investing in the respective Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series of the Funds are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. The Participating Insurance Companies, the Investment Manager (or any affiliated adviser), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the "Participants") will report any potential or existing conflicts to the respective responsible Board. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded. The responsibility to report such information and conflicts to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Plans investing in the Funds under their agreements governing participation in the Funds and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners, and, if applicable, Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested trustees or directors, that an irreconcilable material conflicts exists, the relevant Participating Insurance Company and Plan shall, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take any steps necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the affected Funds and reinvesting such assets in a different investment medium including another series of the relevant Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected variable contract owners the option of making such a charge; (b) withdrawing the assets allocable to some or all of the Plans from the affected Fund or any series of the Fund and reinvesting such assets in a different investment medium, including another series of the Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw its Separate Account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

5. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans under the agreements governing their participation in the Funds. The responsibility to take such remedial action shall be carried out with a view only to the intents of Contract owners and Participants in the Plan.

6. For purposes of Condition Four, a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or the Investment Manager (or any affiliated adviser) be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by Condition Four to establish a new funding medium for any Contract if any offer to do so has been declined by a vote of a majority of the Contract owners materially affected by the material irreconcilable conflict.

7. A Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participants.

8. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Funds held in their Separate Accounts in a manner consistent with voting instructions timely received from Contract owners. Each Participating Insurance Company will vote shares of a Fund held in the Participating Insurance Company's Separate Account(s) for which no voting instructions from the Contract owners are timely received, as well as shares of the Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts that participates in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate

voting privileges in a manner consistent with all other Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Funds.

9. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. Each Fund shall disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and certain qualified pension and retirement plans; (b) material irreconcilable conflicts may arise; and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. Each Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

11. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. If, and to the extent that, Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicant, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

13. No less than annually, the Participants shall submit to each Fund's Board such reports, materials, or data as the Board reasonably may request so that the directors or trustees, as appropriate, of the Fund may carry out fully the obligations imposed upon them by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Plans to provide these reports, materials, and data to a Fund's Board, when the appropriate Board so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Plans under the agreements governing their participation in the Funds.

14. If a Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with the applicable Fund including the conditions set forth herein to the extent applicable. A Plan will execute an application with each of the Funds containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

For the reasons stated above, Applicant asserts that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2 and 6e–3(T) thereunder are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22454 Filed 9–3–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Enterprise Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

[License No. 07/07–0098]

On September 19, 1995, an application was filed by Enterprise Fund, L.P., Clayton, Missouri 63105–3753, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107–102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07–0098 on May 14, 1996, to Enterprise Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 26, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–22463 Filed 9–3–96; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–0406]

FNF Ventures, Inc.; Notice of Issuance of a Small Business Investment Company License

On December 14, 1995, an application was filed by FNF Ventures, Inc., Fidelity National Ventures, Inc., 17911 Von Karman, Suite 500, Irvine, California 92714–6253, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09–0406 on August 20, 1996, to FNF Ventures, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 26, 1996

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–22466 Filed 9–3–96; 8:45 am]

BILLING CODE 8025–01–P

[License No. 02/02–0568]

Toronto Dominion Capital (U.S.A.), Inc.; Notice of Issuance of a Small Business Investment Company License

On January 19, 1996, an application was filed by Toronto Dominion Capital

(U.S.A.), Inc., The Toronto Dominion Bank, 31 West 52nd Street, 20th Floor, New York, New York 10019–6101, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0568 on August 1, 1996, to Toronto Dominion Capital (U.S.A.), Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 26, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–22465 Filed 9–3–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Report of New System of Records

AGENCY: Social Security Administration (SSA).

ACTION: New system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a(e)(4) and (11)), we are notifying the public of our intent to establish a new system of records. The proposed system is entitled "Plans for Achieving Self-Support (PASS) Management Information System, SSA/OPBP, 05–009." Supplemental Security Income (SSI) recipients can engage in gainful employment or receive income in other ways that contribute toward their regaining the ability to participate normally in the work force. Individuals can report their earnings from work activity or other job-related income by means of a PASS, which becomes part of their SSI claim documentation.

The system will maintain information about plans to establish financial self-sufficiency submitted by certain recipients of SSI under title XVI of the Social Security Act. SSA management will use the information in the system to keep track of SSI claims involving PASS and perform quality assurance and program reviews and other studies regarding PASS.

We are also proposing to establish certain routine use disclosures of the information to be maintained in the system. The routine uses are discussed below.

We invite public comment on this publication.

DATES: We filed a report of the proposed system of records with the Senate Committee on Governmental Affairs, the House Committee on Government Reform and Oversight, and the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, on August 20, 1996. We have requested a waiver of the OMB 40-day advance notice period for this system of records. If OMB grants the waiver, the system of records is effective upon publication in the **Federal Register**; if OMB does not grant the waiver, we will implement the system on October 4, 1996. In any event, we will not disclose any information under a routine use until 30 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer. The mailing address is 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235; telephone 410–965–1736. Comments may be faxed to 410–966–0869. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Benson, Office of Disclosure Policy, 6401 Security Boulevard, Baltimore, Maryland 21235; telephone 410–965–1736.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

Sections 1612(b)(4)(A), 1612(b)(4)(B), and 1613(a)(4) of the Social Security Act authorize the Commissioner of Social Security, when determining eligibility for, or the amount of, supplemental security income (SSI) benefits, to exclude such income or resources as determined to be necessary for the fulfillment of Plans for Achieving Self-Support (PASS) approved by the Commissioner.

We are proposing to establish a more effective and efficient case control and management information system than we now have for PASS program evaluation purposes. The system would maintain information about individuals who have submitted a PASS.

The proposed system will consist of computerized files and some paper records retrievable by the Social Security number (SSN) and name of the individual who has submitted a PASS. Based on past experience, we expect to process approximately 5,500 new PASS per year. We will collect and maintain only the information that is essential for program evaluation and case control purposes.

II. Collection and Maintenance of Data in the System

Most of the information in this system of records will already be in existing SSA Privacy Act systems of records, in the Claims Folder system (09–60–0089) or the Supplemental Security Income Record system (09–60–0103). Some new information will be obtained from SSI recipients or from other persons, or will be generated by SSA. Holding this information together will facilitate review and oversight of SSI claims involving PASS by SSA management.

III. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information which will be maintained in the system:

1. To third-party contacts when the party to be contacted has, or is expected to have, information relating to the individual's PASS, when:

(a) The individual is unable to provide the information being sought. An individual is considered to be unable to provide certain types of information when:

(1) He or she is incapable or of questionable mental capability;

(2) He or she cannot read or write;

(3) He or she cannot afford the cost of obtaining the information;

(4) He or she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(5) A language barrier exists; or

(6) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual in connection with his or her PASS; or SSA is reviewing the information as a result of suspected abuse or fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

Although most of the information that will be maintained in this system will already be in SSA's files, SSA will occasionally need to obtain additional information from SSI recipients or other sources. When an SSI recipient has difficulty communicating with SSA or obtaining needed information because

of a physical handicap, a language barrier, or other reason, SSA helps the individual as needed. There can also be other situations in which SSA requests information from a source other than the subject individual. To request needed information from such other sources, SSA must disclose minimal information about the individual to them, for example, information identifying the individual and the fact that the subject individual is, or was, a recipient of SSI payments.

2. To a Congressional office in response to an inquiry from that office made at the request of the subject of the record.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before SSA. The Member of Congress then writes SSA, and SSA must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of the Treasury, Internal Revenue Service, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

Wage and self-employment income information in SSA's files, obtained through the Federal tax reporting process, is considered to be "tax return" information, subject to the confidentiality provisions of section 6103 of the Internal Revenue Code, 26 U.S.C. 6103, administered by the Internal Revenue Service (IRS). SSA must give IRS information to allow IRS to carry out its necessary auditing functions under that statute to determine whether SSA is maintaining and disclosing tax return information in accordance with that statute.

4. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

Individuals sometimes request the help of the President in resolving some issue relating to matters before SSA. The Office of the President then writes SSA, and SSA must be able to give sufficient information to be responsive to the inquiry.

5. Information may be disclosed to a contractor or another Federal agency, as necessary for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an SSA function relating to this system of records.

SSA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. SSA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

6. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration or the National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906.

The General Services Administration (GSA) and NARA are responsible for archiving old records no longer actively used but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. SSA must be able to turn records over to these agencies in order to determine the proper disposition of such records.

7. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when:

(a) SSA or any component thereof, or

(b) any SSA employee in his or her official capacity, or

(c) any SSA employee in his or her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee, or

(d) the United States or any agency thereof (when SSA determines that the litigation is likely to affect the operations of SSA or any of its components) is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal, or party before such court or tribunal is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information that is subject to the disclosure provisions of the Internal Revenue Code (IRC, 26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

Whenever SSA is involved in litigation, or occasionally when another party is involved in litigation and SSA's policies or operations could be affected by the outcome of the litigation, SSA would be able to disclose information to the court or the parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation is compatible with a purpose for which SSA collects the information.

IV. Compatibility of the Proposed Routine Uses

We are proposing the routine use statements discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), (e)(4) and (e)(11) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for a routine use, i.e., when the information will be used for a purpose that is compatible with the purpose for which we collected the information.

Our disclosure regulation allows us to disclose information under a routine use when the disclosure will be used to administer one of our programs or a similar program of another government agency, or when disclosure is required by law. See 20 CFR 401.205 and 401.310.

In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of SSA's programs (for example, disclosures to obtain other information needed for a purpose related to PASS from sources other than the SSI recipient, disclosures to contractors assisting SSA with an administrative function, disclosure in connection with litigation relating to (or affecting) a program administered by SSA) or disclosure is required by law (for example, to IRS, GSA and NARA). Uses of information in connection with matters affecting SSA's programs are self-evidently "compatible." Where disclosure is required by law, the statute establishes that the mandated use of information described in that statute is one of the statutorily prescribed uses for which that information is collected and maintained by SSA.

V. Safeguards

We will employ a number of security measures to minimize the risk of unauthorized access to or disclosure of personal data in the proposed system. These measures include the use of passwords and access codes to enter the computer system which will maintain the data, and storage of the computerized records and paper records, in secured areas which are accessible only to employees who require the information in performing their official duties. SSA employees

who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system.

VI. Effect of the Proposed System of Records on Individual Rights

While some new information will be collected or generated by SSA for this system, most of the information maintained in the system will be obtained from other SSA systems of records. Routine use disclosures of information in this system will be even more limited than those permitted from the other systems or records furnishing information to this system. SSA will use the data internally to track cases involving PASS, and perform quality assurance and program integrity reviews and other management studies. SSA will apply the safeguards described above to information in this system and will comply with the provisions of the Privacy Act, the Social Security Act and other laws pertaining to the maintenance, use and disclosure of such information. Any action, resulting from SSA's use of information maintained in this system of records and affecting an individual's Supplemental Security Income benefits, will be taken in accordance with the Social Security Act and regulations and procedures established to implement that statute. Consequently, we do not anticipate that this system of records or the routine uses established for the disclosure of information maintained in this system of records would have any unwarranted adverse effect on the privacy rights or other rights of individuals covered by the system.

Dated: August 20, 1996.

Shirley S. Chater,

Commissioner of Social Security.

05–009

SYSTEM NAME:

Plans for Achieving Self-Support (PASS) Management Information System, SSA/OPBP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Program Benefits Policy, 760 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235

In addition, PASS documents may be temporarily transferred to other locations within the Social Security Administration (SSA). Contact the system manager to inquire about these addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on disabled and blind individuals who are Supplemental Security Income recipients and who have submitted plans for achieving self-support under sections 1612(b)(4)(A), 1612(b)(4)(B), and 1613(a)(4) of the Social Security Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the beneficiary's name; Social Security number (SSN); disability diagnosis; occupational objective; information as to whether the individual's plan was developed by a third party and, if so, the identity of the third party; if the PASS was disapproved, terminated or suspended, the basis for that action; information relating to his or her earnings and employment at the beginning and end of the PASS; the nature and costs of those goods and services which the individual has purchased or proposes to purchase under his or her plan; information about goods and services actually purchased with respect to an approved plan; and information about plans that were not approved (e.g., the basis for denial of approval of a plan).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 1602, 1612(b)(4)(A), 1612(b)(4)(B), and 1613(a)(4) of the Social Security Act.

PURPOSE(S):

SSA uses the information in the system for program evaluation purposes and to determine the number and types of individuals that are successfully returning to work as a result of the PASS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To third-party contacts when the party to be contacted has, or is expected to have, information relating to the individual's PASS, when:

(a) The individual is unable to provide the information being sought. An individual is considered to be unable to provide certain types of information when:

(1) He or she is incapable or of questionable mental capability;

(2) He or she cannot read or write;

(3) He or she cannot afford the cost of obtaining the information;

(4) He or she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(5) A language barrier exists; or

(6) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual in connection with his or her PASS; or SSA is reviewing the information as a result of suspected abuse or fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

2. To a Congressional office in response to an inquiry from that office made at the request of the subject of the record.

3. To the Department of the Treasury, Internal Revenue Service, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

4. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

5. Information may be disclosed to a contractor or another Federal agency, as necessary for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an SSA function relating to this system of records.

6. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration or the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906.

7. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when:

(a) SSA or any component thereof, or

(b) Any SSA employee in his or her official capacity, or

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof (when SSA determines that the litigation is likely to affect the operations of SSA or any of its components) is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records to DOJ, the court or other tribunal, or party before such court or tribunal, is relevant and necessary to the litigation, provided, however, that in

each case SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information that is subject to the disclosure provisions of the Internal Revenue Code (IRC, 26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in magnetic media (e.g., computer hard drives) and on paper. Paper printouts of these data are made when required for study. The system also contains photocopies of benefit application forms, keyed application forms, and other claims documentation, when relevant to the PASS system.

RETRIEVABILITY:

Records are retrieved from the system by the name or SSN of the individual who submitted the PASS.

SAFEGUARDS:

Safeguards for automated data have been established in accordance with the Systems Security Program Handbook. This includes maintaining computer disk packs or other magnetic fields with personal identifiers in secured storage areas accessible only to authorized personnel. SSA employees having access to the computerized records and employees of any contractor who may be utilized to develop and maintain the software for the automated system will be notified of criminal sanctions for unauthorized disclosure of information about individuals. Also, contracts, if any, will contain language that delineates the conditions under which contractors will have access to data in the system and the safeguards that must be employed to protect the data.

Paper documents are stored either in lockable file cabinets within locked rooms or in otherwise secured areas. Access to these records are restricted to those employees who require them to perform their assigned duties.

RETENTION AND DISPOSAL:

Computerized records are maintained for a period of six years and three months after the end of the fiscal year in which final adjudication was made. Paper records produced for purposes of studies will be destroyed upon completion of the study. Photocopies of forms and documentation will be destroyed upon approval or denial of the PASS. Original copies of the forms and documentation are maintained in the Claims Folder System, (SSA/OSR 09–60–0089). Means of disposal are appropriate to the storage medium (e.g., erasure of disks, shredding of paper records, or transfer to another system of records).

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Program Benefits Policy, 760 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235

NOTIFICATION PROCEDURE:

An individual can find out if this system of records contains information about him/her by writing to the system manager at the address shown above and providing his or her name, address, and SSN. (Furnishing the SSN is voluntary. However, searching for the individual's data will be easier and faster if it is furnished.)

An individual can also find out if this system of records contains information about him/her by contacting any Social Security office.

When requesting notification of records in person, an individual should provide his/her name, Social Security claim number (the SSN plus alphabetic symbols), address, and proper identification. If the Social Security number is not known, the requester's date and place of birth and mother's birth name may be provided instead.

An individual requesting notification of records in person need not furnish any special documents of identity. Documents normally carried on one's person are sufficient (e.g., driver's license, voter registration card, or credit cards). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth, and address in order to establish identity, plus any additional information which SSA may request.

RECORD ACCESS PROCEDURES:

Same as notification procedures described above. Individuals requesting access to their records should also reasonably describe the records they are seeking.

CONTESTING RECORD PROCEDURES:

Same as notification procedures described above. Individuals contesting the contents of a record in the system should also reasonably describe the record, specify the information being contested, and state the corrective action sought with supporting justification showing how the record is untimely, incomplete, inaccurate, or irrelevant.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from other SSA systems of records (i.e., Claims Folder System (SSA/OSR 09–60–0089) and Supplemental Security Income Record (SSA/OSR 09–60–0103), from information provided by the beneficiary, and from investigations conducted by SSA employees relating to beneficiaries' PASS activities.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 96–22489 Filed 9–3–96; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Sunday, October 13, 1996. The agenda includes the following: (1) Call to order and instructions; (2) Statement of anti-trust compliance; (3) Approval of July 24, 1996, meeting minutes; (4) Federal Reports—Modal Administrations; (5) ITS AMERICA President's Report; (6) Sunset-Sunrise Task Force Report; (7) U.S. DOT's ATMS Research and Technology Business Plan Review; (8) Dedicated Short-Range Communications (DSRC) Report; (9) Joint Meteorological Task Force Update; (10) Research Agenda Task Force Update; (11) CVO Guiding Principles; (12) Standards Needs Timeline; (13) ARTS Conference Report; (14) AVCS Committee Workshop; (15) World Congress and Annual Meeting Update; (16) Other Business; (17) Adjourn.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Sunday,

October 13, 1996, from 1:00 p.m. to 5:00 p.m. (Eastern Standard time)

ADDRESSES: Omni-Rosen Hotel, 9840 International Drive, Orlando, Florida, phone: (407) 354–9840; Fax (407) 351–2659.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130, or by FAX at (202) 484–3483. The DOT contact is Mary Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.
(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 28, 1996.

Jeffery Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–22418 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–22–P

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Tuesday, October 15, 1996. The session begins with an Administrative Business session (non-Federal Board members only). The General Program Session (open to all members and observers) is as follows: (1) Review of ITS America Antitrust Policy and Conflict of Interest Statements; (2) Welcome; (3) Review and Approval of Previous Meeting's Minutes; (4) Report of the Executive Committee; (5) Coordinating Council Report; (6) State Chapters Council Report; (7) Report of the U.S. Federal ITS Initiatives; (8) Friends of ITS Report; (9) President's Report; (10) Report of the World Congresses (i.e. Orlando and Berlin); (11) Other Business; (12) Adjournment until the next Board meeting in January 1997 at the Sheraton Washington Hotel in Washington, D.C., in conjunction with the Annual Transportation Research Board (TRB) meeting.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Tuesday, October 15, 1996, from 1:00 p.m.–5:00 p.m.

ADDRESSES: Omni-Rosen Hotel, 9840 International Drive, Orlando, Florida, phone: (407) 354–9840; Fax (407) 351–2659.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Kenneth Faunteroy at ITS AMERICA by telephone at (202) 484–4130 or by FAX at (202) 484–3483. The DOT contact is Mary C. Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.
(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 28, 1996.

Jeffery Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 96–22420 Filed 9–3–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305A–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305A Salary Reduction and other Elective–SEP, Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before November 4, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–0499.

Form Number: Form 5305A–SEP.

Abstract: Form 5305–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions made to the SEP.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 2 hr., 39 min.

Estimated Total Annual Burden Hours: 265,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22515 Filed 9–3–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 5305A–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305A–SEP, Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before November 4, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Salary Reduction and Other Elective Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–1012.

Form Number: Form 5305A–SEP.

Abstract: Form 5305–SEP is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS, but is to be retained in the employer's records as proof of establishing such a plan, thereby justifying a deduction for contributions to the SEP.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000

Estimated Time Per Respondent: 2 hr., 39 min.

Estimated Total Annual Burden Hours: 265,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22516 Filed 9–3–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8308

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8308, Report of a Sale or Exchange of Certain Partnership Interests.

DATES: Written comments should be received on or before November 4, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Report of a Sale or Exchange of Certain Partnership Interests.

OMB Number: 1545–0941.

Form Number: Form 8308.

Abstract: Form 8308 is an information return that gives the IRS the names of the parties involved in an exchange of a partnership interest under Internal Revenue Code section 751(a). It is also used by the partnership as a statement to the transferor and transferee. It alerts the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 7 hr., 40 min.

Estimated Total Annual Burden Hours: 1,534,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22517 Filed 9–3–96; 8:45 am]

BILLING CODE 4830–01–U

Joint Board for the Enrollment of Actuaries; Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Office of The Wyatt Company, The Board Room, 303 West Madison Street, Chicago, IL, on September 30, 1996, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: August 23, 1996.

Patrick W. McDonough,

Acting Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–22513 Filed 9–3–96; 8:45 am]

BILLING CODE 4830–01–U

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Marlene Gross, Deputy Chief Counsel;
2. Neal S. Wolin, Deputy General Counsel;
3. Michael Danilack, III, Associate Chief Counsel (International);
4. William A. Goss, Southeast Regional Counsel;
5. John B. Cummings, Assistant Chief Counsel (Disclosure Litigation);
6. Catherine L. Lau, Deputy Regional Counsel, Western Region.

This publication is required by 5 U.S.C. 4314(c)(4).

Stuart L. Brown,

Chief Counsel, Internal Revenue Service.

[FR Doc. 96–22514 Filed 9–3–96; 8:45 am]

BILLING CODE 4830–01–U

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Wednesday
September 4, 1996

Part II

Environmental Protection Agency

Filing of Electronic Reports via Electronic Data Interchange; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5601–4]

Notice of Agency's General Policy for Accepting Filing of Environmental Reports via Electronic Data Interchange (EDI)

AGENCY: Environmental Protection Agency.

ACTION: Interim final notice.

SUMMARY: Agency regulations require that specified parties submit environmental reports under various statutory and regulatory provisions. These reports are to be submitted via forms and procedures specified by the Administrator. Today's notice of policy announces the Environmental Protection Agency's (EPA's) general approach for accepting electronic filing of environmental reports via Electronic Data Interchange (EDI). As specific EPA programs adopt EDI for their reports, details about specific reporting requirements will be announced, supplementing today's notice.

This action supports the President's overall regulatory reinvention goals of reducing the burdens of compliance and streamline regulatory reporting, as stated in the President's March, 1996, Reinventing Environmental Regulation Report. Also, EDI directly supports the Administrator's "One-Stop Reporting" initiative, the reengineering of regulatory reporting under the Common Sense Initiative (CSI), and the Administrator's goal of reducing baseline reporting burden by twenty-five percent. The use of EDI under this policy will make the tools of automation and business process reengineering available wherever the goal is to streamline and simplify the regulatory reporting processes. In addition, transmission of reports via EDI facilitates the availability of more timely and accurate environmental information to the public, in support of the Agency's efforts to improve public access to data and information.

The scope of this policy includes any Agency regulatory, compliance, or informational (e.g., voluntary reporting programs) reporting via EDI, and excludes any procurement-related reporting, as well any reporting via other electronic means that may be adopted in the future. In addition to EDI, the Agency is currently evaluating alternative means of electronic reporting for those reporting facilities that may not be equipped to engage in EDI.

This policy is based on EPA's experience with pilot tests of EDI for compliance reports and reflects substantial involvement, as well as ongoing dialogue, with our state and industry partners. While the policy does not explicitly address state-delegated reporting, EPA urges uniform EDI implementation across State-delegated programs and believes it is in the interest of all the participants to conform to the approach set forth in today's policy. The Agency will continue to consult and work with States to address the implementation of EDI under delegated programs in the Final Notice. We are therefore very interested in receiving comments on our EDI policy from States and from submitters subject to State-delegated reporting.

DATES: This action is effective on September 4, 1996.

ADDRESSES: The Agency is soliciting public comments on today's notice. EPA is particularly interested in comments on the PIN Management System outlined in today's notice, on common business practices for maintaining electronic files associated with the conduct of EDI (e.g., transmission logs), and on the Generic Terms and Conditions Agreement Model. The Agency also invites the regulated community, contractors, and vendors to provide comments on viable electronic alternatives to EDI and viable methods of handling other forms of electronic commerce.

Comments should be addressed to EPA EDI Implementation Policy Comment Clerk, Water Docket MC–4101; United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Commenters are requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who want receipt of the their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by December 30, 1996. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow–docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. All comments and data in electronic form must be identified by the **Federal Register** Notice title and date. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Comments on *electronic alternatives* to EDI should also be directed to: U.S. Environmental Protection Agency, RTP (MD–34), ATTN: Julie Dyrdek, Research Triangle Park, North Carolina 27711 OR sent by FAX to (919) 541–5091; OR by Internet to Dyrdek.Julie@EPAMail.EPA.GOV.

FOR FURTHER INFORMATION CONTACT: For questions about this policy notice or EPA EDI environmental reporting in general, contact Evi Huffer, U.S. Environmental Protection Agency, OPPE (2137), ATTN: EDI Team, 401 M Street, S.W., Washington, D.C. 20460 or call (202) 260–4825 and leave a brief message. This telephone number has been setup to respond to inquiries concerning today's notice.

SUPPLEMENTARY INFORMATION:

I. Introduction

Generally

The primary purpose of today's notice is to announce the Agency's general policies concerning the receipt of electronic submissions of EPA environmental reports from the reporting community via Electronic Data Interchange (EDI). Unless specified in a separate program-specific notice, members of the reporting community are not required to use EDI to submit reports. However, EPA is making EDI available because there are specific, well-documented advantages to using EDI in lieu of paper forms. To get the full benefits of these advantages, this policy is designed to promote consistency across EPA program offices implementing EDI.

For environmental reports covered by this policy, today's notice presents an overall framework for accepting electronic reports filed via EDI. This notice does not announce EPA's intent at this time to accept any specific report via EDI.[1] As specific EPA programs adopt EDI for the filing of a specific report, the Agency will publish a separate notice in the Federal Register announcing our intent to accept filing of that report via EDI. Such subsequent program-specific notices shall supplement today's notice, following

[1] EPA currently accepts electronic filing via EDI for the Reformulated Gasoline and Anti-Dumping Reports under 40 CFR Part 80 and, starting in August, 1996, for the Discharge Monitoring Report under the National Pollution Discharge Elimination System.

the general approach outlined in this notice of policy, and providing detailed information for electronically filing those specific reports.

EDI and Its Benefits

EDI is the transmission, in a standard syntax, of unambiguous information between computers that may belong to organizations completely external to each other. It has been widely used by the private sector for commercial transactions. As an "open systems" approach to data exchange, EDI is largely independent of technology environments, providing a transparent bridge between incompatible hardware and software platforms.

EDI is the dominant form of electronic commerce across almost all business sectors—from aerospace to wood products—both nationally and internationally. EDI also predominates in the Federal government, most visibly at the Department of Defense. At least in the U.S., EDI is based on standard formats and protocols developed and maintained under the auspices of the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) x12. Supporting these standards are a wide array of commercial software packages and communications networks, and a growing reservoir of industry EDI expertise available both to us and our regulated community.

The benefits of EDI include:

For EPA and Delegated States—

- dollars saved in data processing costs;
- significant enhancement of data quality;
- potential for dramatic improvements in speed/ease of data access; and
- opportunities to change business practices (such as integrating data collections across programs, States, and agencies; automating routine program management functions);

For our Industry Partners—

- dollars saved in reporting costs;
- much greater control of data quality in submissions;
- new opportunities to improve internal management of environmental data;
- dramatic improvements in access to EPA and State environmental databases; and
- productivity-enhancing possibilities (such as more uniform reporting requirements and procedures across States and programs; more streamlined data submissions reflecting the integration of reporting requirements;

For the Public—

- The availability of much more timely and accurate environmental information, in support of the Agency's efforts to improve the public's access to data and information in the public domain.

In summary, EDI can both reduce the costs of reported data and information, and enhance its value. EPA expects many regulated entities will recognize the benefits of EDI and choose to implement it as their preferred method for electronic submission of environmental reports.

History of EPA's EDI Initiative

The EPA first endorsed EDI for electronic reporting of environmental data in its Policy on Electronic Reporting (**Federal Register** Notice No. FRL–3815–4, vol. 55, no. 146, July 30, 1990). This policy was intended to promote electronic reporting and a uniform Agency approach that would be compatible with current industry and federal government practices. The policy recommends a standards-based approach, and encourages the use of ANSI ASC X12 standards for EDI.

EPA's 1990 policy anticipated a broader federal policy establishing EDI as the uniform approach to electronic reporting for Federal agencies, published the following year as Federal Information Processing Standard (FIPS PUB) 161, effective September 30, 1991. The stated objectives of FIPS PUB 161 are: to have Federal agencies achieve the benefits of EDI; to minimize the cost of EDI implementation by preventing duplication of effort; and to ensure that electronic reporting is implemented in a manner consistent across Agencies and compatible with current practices in the regulated community.

Since 1990, EPA has been working to fulfill the goals of these two policy statements by demonstrating the technical feasibility of EDI for reporting environmental data, primarily through a series of pilot projects involving partnerships between EPA and the States, industry, and foreign governments. In keeping with the spirit of collaborative partnerships that EDI embodies, EPA has conducted these pilots: (1) working closely with our industry partners in the ASC X12 community, as a member of the appropriate committees and subcommittees; (2) seeking voluntary industry collaboration, whenever possible, working through such industry groups as the Chemical Industry Data Exchange (CIDX) and the Petroleum Industry Data Exchange (PIDX); (3) working with EDI software vendors to adapt their existing products to EPA applications—fostering a marketplace solution that will support the use of EDI for environmental data operations; and (4) avoiding any proprietary formats and standards for electronic reporting.

Some of EPA's programs have now reached the stage where the technical issues surrounding implementation of EDI have largely been resolved. For such programs, the issues that stand between pilot and full EDI implementation center on the legal effects of using the electronic medium for regulatory and other environmental reporting. Hence EPA's need for the policy set out in today's notice that defines the functional requirements and specifications for legally admissible electronic submission of environmental reports. Our hope is that today's notice of policy will allow the Agency to go forward with the actual implementation of EDI.

EPA began work on this policy in April 1994, forming an Agency-wide workgroup, the Electronic Data Interchange Implementation Workgroup (EDIIW), which involved all interested EPA programs, including regional offices. EDIIW was formed to address issues in three areas: (1) Electronic signature/certification—determining which technologies will satisfy legal requirements for signature/certification under EPA's statues and regulations; (2) terms and conditions of electronic submission—setting out the general requirements for admissible electronic submissions of environmental reports from the reporting community, and addressing such questions as determining time of submission, resolving disputes with the Submitter, assigning responsibility for errors, and so on; and (3) regulatory/statutory obstacles to electronic submissions—identifying provisions that, for example, refer directly or indirectly to paper, and taking steps to eliminate these to the greatest extent possible.

Consistent with the 1990 policy, EDIIW's goal has been to develop an implementation approach that is as uniform as possible across Agency programs and as consistent as possible with the practices of other Federal Agencies and the private sector. In developing this policy, EDIIW has drawn upon the Agency's government/industry collaborative pilot project experience, as well as the practical expertise of other government agencies and industry. To the extent possible, the workgroup has sought to confine the resulting policy to functional requirements so as not to tie Agency policy to particular hardware/software/network platforms or products. In addition, the effort has focused on assessing existing technologies and practices, and applying them as appropriate, rather than attempting to

develop approaches that are wholly new.

How the EPA EDI Reporting Program Will Work

Today's policy sets forth the basic approach for implementing EDI for environmental reporting. As EPA implements specific reporting initiatives (e.g, when a program is ready to move forward with actual EDI implementation for a particular report), a notice will be published in the **Federal Register** announcing the Agency's intent to accept a specific environmental report electronically. The program-specific notice will reference or incorporate today's notice, and outline the program-specific requirements for electronic filing of that report. Following publication of a program-specific notice, EPA will accept reports filed via EDI in lieu of paper reports so long as the electronic reports are consistent with the program-specific notice and the Submitter has signed a formal document that sets forth the "Terms and Conditions" for submitting reports via EDI and abides by the provisions set forth in that document.

The Agency Generic Terms and Conditions Agreement (TCA) Model, the text of which appears in Section II below, sets forth the basic responsibilities of the Submitters. A program-specific notice of intent to accept specific reports via EDI will specify a TCA that is correspondingly program-specific, following the approach of today's TCA Mode.

EPA will accept electronic reporting of environmental reports covered under today's notice *only if* the Submitter signs the applicable program-specific Terms and Conditions Agreement. EPA offices publishing program-specific TCAs will state their intent to be bound by the TCA once the Submitter signs the Terms and Conditions Memorandum and, where applicable, EPA issues a PIN. By signing the TCA, the reporting party will be subject to the procedural requirements discussed in this and subsequent program-specific **Federal Register** notices.

In addition, program-specific notices will incorporate by reference associated program-specific technical EDI Implementation Guidelines. The program-specific Implementation Guidelines will define the application of specific ANSI ASC X12 transaction sets for the individual environmental reports in question.

These Implementation Guidelines may also address other technical issues as dictated by the needs of the specific program and its Submitters. In any event, they shall be understood as program-specific amendments to the generic EPA technical guidance document titled "EPA Electronic Data Interchange Implementation Guideline". This generic guideline sets forth EPA's general goals in using EDI and the related business issues; outlines the Agency's general approach to developing, maintaining, and using EDI standards; and discusses such issues as choice of systems architecture, value added network (VAN) and translator products. Copies of this document are currently available for the public's review. [Copies of both the generic and—as they become available—program-specific guidelines will be sent to Submitters and other interested parties, and may be obtained from a Bulletin Board System listed in **SUPPLEMENTARY INFORMATION** or by contacting the person(s) listed in **FOR FURTHER INFORMATION CONTACT**.

Finally, it is EPA's policy to promote public access to environmental data and information. Where a program is able to make a database available to the public online, electronic reporting to EPA via EDI will greatly enhance public access to submissions for the reasons already noted. In any case, programs implementing EDI under this policy must insure that the public has at least the same or better access to electronically submitted reports as they currently have to reports submitted on paper.

The Personal Identification Number (PIN) System

Where EPA requires certification to insure the integrity and authenticity of electronically submitted Documents, EPA will generally require the Submitter to use a personal identification number (PIN) assigned by EPA. The minimum requirement is a single PIN approach for each Submitter; however, specific program needs may require the use of an additional PIN. These PIN requirements are elaborated on in what follows as well as in the applicable TCAs.

Each PIN will consist of a sequence of alpha-numeric characters. The Submitter must ensure that this PIN is included in each Document that such party transmits to EPA.

When the PIN is received as part of an electronic message, the PIN will be deemed to indicate authenticity. Further, responsibility and accountability for the PIN is directly linked to the individual assigned that PIN. Regardless of how a corporation delegates authority, a PIN is assigned to an individual, and that individual within the scope of the agreement is responsible for the accuracy and authenticity of the information electronically received by EPA.

Management of PINs. During this interim policy period, PIN's for program-specific reports will be assigned and managed by individual EPA Program Offices. While EPA recognizes the advantages of centralized management of electronic signature devices (PINs or other digital alternatives), we feel that it is impractical to provide for such a system at this time. The electronic commerce marketplace is still very much in transition, and the roles that other government agencies (both at the State and Federal levels), as well as third-party commercial service providers will play in electronic certification are yet to be fully determined. EPA will continue to monitor developments in the electronic commerce marketplace and requests comments from the public on management of electronic signature devices. The Final Policy Notice will address the Agency's streamlined management of electronic signature devices.

Assignment of PINs. In conjunction with the Terms and Condition Agreement, the responsible corporate officer of the Submitter must identify authorized representatives (i.e., corporate employees who are authorized to submit reports). EPA will then assign an individual PIN or dual PIN, depending on program-specific needs, to each authorized representative so identified, mailing the PINs directly to such representatives via U.S. Postal Service or recognized carrier.

Once PINs are assigned, EPA does not intend to routinely change them. However, the Agency will issue a new PIN at the written request, on company letterhead, of a responsible corporate officer of the Submitter.

In addition, EPA will change PINs where Submitters undergo personnel changes that affect the identity of their authorized representatives, or where there is evidence of compromise, as detailed in the following section, Security of PINs. In such cases, the Submitter is responsible for immediately notifying EPA (in writing and on company letterhead and signed by an authorized corporate officer) of termination of employment, or reassignment, of any authorized representative, and of any new or newly assigned employee(s) who will act as authorized representative(s). Depending on the reporting cycle, EPA will then cancel such authorized representative's individual PIN before the next reporting cycle to which the PIN applies, or no later than fourteen (14) business days of

receiving such notice, whichever comes first.

Security of PINs. The Submitters must institute and maintain security procedures to protect their PINs from unauthorized disclosure, and EPA will do the same within the context of Agency systems. The Submitter is responsible for notifying EPA immediately if it has reason to believe the security of any PIN(s) has been compromised and must revoke such PIN(s) and request a change. If EPA has reason to believe that PIN security has been compromised, the Agency will initiate PIN revocation and/or changes.

Record Retention Requirements

Certain records must be created and maintained for the specific purposes of transmitting reports to EPA via EDI. However, in addressing such records, this notice should not be understood to in any way affect any other record-keeping requirements in existing regulations, or to apply to the question of satisfying such requirements by maintaining electronic files in lieu of paper files for audit purposes.

Concerning EDI transmission of reports to EPA then, in general, Submitters must retain sufficient records to demonstrate the authenticity, completeness, accuracy, and integrity of those transmissions. It is EPA's view that this requirement is inherent in the standard business practices associated with EDI. That is, EPA considers, and the Submitter agrees in the TCA, that by electing to submit reports to EPA via EDI the Submitter commits to adopting business practices consistent with EDI, to include maintaining an auditable system of records associated with the creation and transmission of electronic files.

EPA considers auditability to be defined, at least conceptually, by the Data Interchange Standards Association's (DISA) 'Model EDI Audit Program', and expects Submitters to maintain records that conform to the substance of that model. Submitters should always bear in mind that the creation and management of adequate and proper documentation of all EDI transactions is essential to ensuring that they can serve as the official record of the reports submitted to EPA for administrative, programmatic, and legal purposes. For EPA reports covered under today's notice, the required records must be sufficient to serve as the official record of those reports.

Central to these required records is a Transmission Log, which must be retained by all parties using EDI for reporting purposes. The Transmission Log includes the date, time, destination address and telephone number, and a copy of the file transmitted; it also documents who had access to the Submitter's system during the creation of the files and during their transmission. Following the guidance of the DISA Audit Model, EPA views these Transmission Log elements to constitute the minimum records required to provide an auditable system for creating and transmitting reports via EDI. Therefore, EPA expects each Submitter to create an official Transmission Log of all transactions and maintain it without any modification. Each Submitter shall designate one or more qualified individuals with appropriate authority to certify the accuracy and completeness of the Transmission Log and this designation shall be retained as part of the records. Each Submitter shall also maintain records concerning the assignment and revocation of PINs, as discussed elsewhere in this notice.

These two items (the Transmission Log and PIN records) constitute the minimum records required for EDI transactions under this notice. Submitters should determine what additional records to retain to ensure their record of EDI transmissions is adequate to resolve any discrepancies between the Submitter's record and EPA's record. Submitters must maintain such records, together with the Transmission Log and PIN records for the applicable retention period specified in the regulations. This period is frequently three (3) years or more, and should be specified in the program-specific notice, guidance, and/or TCA.

Correspondingly, at a minimum, EPA will maintain a secure copy of all EDI transmissions, both in-bound and out-bound, in addition to the Transmission Log and PIN assignment records. EPA will also maintain a record that documents our procedures and processes for managing EDI transmissions. EPA will maintain its documentation for the time period set by the Agency's records disposition schedules.

Individual EPA Program Offices may mandate additional recordkeeping requirements for Submitters or themselves based on their audit needs. Individual Program Offices will also determine whether and under what conditions the EDI transmission records can serve as the Submitter's auditable record. In addition, of course, the Submitter must maintain whatever other records the applicable statute or regulation require, including, e.g., the files, databases, laboratory reports, calculations, etc. that might be involved in preparing the document for submission. Submitters should refer to the applicable statute or regulation, as well as to the program-specific notice, guidance, and/or TCA for recordkeeping requirements.

Paperwork Reduction Act

In general, while EPA information collection requirements are subject to approval by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, EPA considers the activities associated with accepting electronic filing of environmental reports via EDI, detailed in today's notice of policy, not subject to approval by OMB under the PRA. In addition, Electronic submission of reports in the manner of EDI do not require the inclusion of the OMB control number to satisfy PRA display requirements, provided that the public receives adequate notice of OMB clearance through other means. While the PRA requires display of OMB numbers on a legally valid form, in the case of EDI, adequate notice will be provided by including a citation of the OMB number in a PRA section of all program-specific **Federal Register** notices announcing the availability of EDI, and also including a citation in the program-specific Terms and Conditions Agreement.

Receipt of Documents

Date of Receipt. EPA will consider an electronically filed report received when it can be fully processed by the translator at the EPA's receipt computer, i.e. when the document is retrievable from the electronic mailbox by EPA and syntactically correct (to applicable EDI standards), able to be successfully translated by EPA. No document shall satisfy any reporting requirement until it is received. Upon receipt of any report, EPA will promptly send a functional acknowledgment in return within "X" business days.[2] A positive functional acknowledgment indicating no syntactical errors will constitute conclusive evidence that EPA has properly received a report and will establish the "Received Date".

Retransmission. If the Submitter does not receive this functional acknowledgment promptly[3] after its transmission to the EPA, then the Submitter must re-send the document and follow any recovery procedures

[2] The number of business days shall depend on specific program needs and will be specified in the program-specific Notice or related documents (e.g., Implementation Guidelines, TCA).

[3] "Promptly" shall be determined by each program-specific EDI application and defined in the program-specific notice or related documents (e.g., Implementation Guideline, TCA).

stated in the applicable EPA EDI Implementation Guidelines.

The Submitter must retransmit any document within "X" days[4] of receiving a re-transmission request by EPA. Likewise, EPA will re-send any transmission originated by EPA at the Submitter's request.

Inability to Transmit. Circumstances, both foreseeable and unforeseeable, may prevent a reporting party from conducting EDI. Nevertheless, no Submitter will be excused from the requirement to file reports with the Agency by the appropriate regulatory deadline. If a party is unable to electronically file a required report by such deadline, it must submit a paper report on forms required by the applicable regulation.

Legal Status of Electronic Submissions

EPA regulatory programs will, where practicable and not in conflict with applicable law, initiate EDI for their reporting requirements by creating program-specific Implementation Guidelines, which—taken together with program-specific **Federal Register** notices (including Terms and Conditions Agreements) that are consistent with this Notice—will outline the specific procedures required for electronic submission. For such programs, EPA will consider the electronic reports that are filed in a manner consistent with the procedures thus outlined to fulfill the requirements of an equivalent paper submission as required under the applicable existing Agency regulations pertaining to form/format, submission procedure and signature requirements for reports.

Specifically, concerning the requirement that reports must be signed and certified as correct by the Submitter or its authorized representative, EPA will consider a properly filed electronic report—filed in a manner consistent with the procedures outlined in applicable program-specific Implementation Guidelines and **Federal Register** notices—to meet the legal signature/certification requirements of equivalent paper submissions. For practical purposes, EPA will consider the use of the PIN, which is required to be included in each and every submitted document, to constitute certification of correctness—by the owner or responsible corporate officer of the Submitter—within the meaning of signature/certification for that report.

EPA considers, and the Submitter agrees in the TCA, that use of the PIN(s) is required on each and every report and that use of the PIN constitutes a certification, under penalty of perjury (or other program-specific requirement), that the information submitted is true and accurate. However, it should be stressed that the PIN will have this status only to the extent that the electronic filing satisfies all the requirement procedures.

As technology evolves, EPA may embrace other, or alternative, electronic manifestations of signature/certification. However, based on current technology, and considering issues of costs and the level of certainty required for authentication, PIN-based certification provides the most suitable approach available to EPA and our regulated community.

II. Text of EPA Generic Terms and Conditions Agreements Model

Scope

Use of this generic Terms and Conditions Agreement (TCA) model applies when EPA requires certification and/or authentication by the Submitter of a report. Where neither certification or authentication is required but use of a TCA is desired by EPA, the Agency may modify this TCA to eliminate unnecessary paragraphs: The model TCA is designed to promote consistency in implementing EDI by Program Offices within the Agency.

Model

EPA Generic Terms and Conditions Agreement (TCA) Model for Submission of Environmental Reports via Electronic Data Interchange (EDI)

THIS ELECTRONIC DATA INTERCHANGE TERMS AND CONDITIONS AGREEMENT (the "Agreement"), by and between the United States Environmental Protection Agency ("EPA"), 401 M St., SW, Washington, D.C., a federal governmental agency, and reporting party ("Submitter") who has signed and returned the Terms and Conditions Agreement (TCA) Memorandum, included in today's notice referenced above, is effective on the date on which EPA issues the initial PIN(s), in response to receipt and acceptance of Submitter's signed TCA Memorandum.[5] (When a program is not using a PIN system, some other determinant for the effective date will be specified in the program-specific notice.)

1. *RECITALS.* The intent of this agreement is to create legally binding obligations upon the parties using EDI and to ensure that (a) use of any electronic functional equivalent of documents referenced or exchanged under this agreement shall be deemed an acceptable practice in the ordinary course of Submitter-to-EPA environmental reporting and (b) such electronic records shall be admissible as evidence on the same basis as paper documents. The parties intend to be legally bound by them.

2. *VALIDITY AND ENFORCEABILITY*

2.1 This Agreement has been executed by the parties to evidence their mutual intent to create binding regulatory reporting documents using electronic transmission and receipt of such records.

2.2 Any records properly communicated pursuant to this Agreement shall be considered to be a "writing" or "in writing"; and any such records which contain or to which there is affixed, a Signature, as defined by para. 6 of this Agreement, ("Signed Documents") shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

2.3 The conduct of the parties pursuant to this Agreement, including the use of Signed Records properly communicated pursuant to the Agreement, shall, for all legal purposes, evidence a course of dealing and a course of performance accepted by the parties in furtherance of this Agreement.

2.4 The Submitter agrees not to contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of the Signed Documents under the Federal Rules of Evidence as inadmissible or in violation of either the business records exception of the rule on hearsay, or the best evidence rule, or on the basis that the Signed Documents were not originated or maintained in documentary (paper) form.

3. *RECEIPT.* A Document shall be deemed to have been properly received by EPA when it is accessible to EPA, can be fully processed by the translator at EPA's Receipt Computer, and is syntactically correct to applicable EDI

[4] The number of days shall depend on specific program needs and will be specified in the Program-Specific Notice or related documents (e.g., Implementation Guideline, TCA).

[5] Or, in the case where PIN is not required, as otherwise noted in the program-specific notice.

standards. No Document shall satisfy any reporting requirement or be of any legal effect until it is received.

4. *VERIFICATION.* Upon receipt of any Document, the receiving party shall promptly and properly transmit a functional acknowledgment in return within "x" business day of receipt to verify that the Document has been received.[6] If a positive functional acknowledgment is not received in return for a Document, the party initially transmitting the Document shall be responsible for re-sending the Document.

5. *DATE OF RECEIPT.* EPA will consider an electronically filed report received when it can be fully processed by the translator at the EPA's receipt computer, i.e., when the document is retrievable from the electronic mailbox by EPA, syntactically conforms to applicable EDI standards, and is able to be successfully translated by EPA. A positive functional acknowledgment indicating no syntactical errors will constitute conclusive evidence that EPA has properly received a report and will establish the "Received Date".

6. *RE-TRANSMISSION.* If the Submitter does not receive a functional acknowledgment promptly[7] after its transmission to the EPA, then the Submitter must re-send the document and follow any recovery procedures stated in the applicable EPA EDI Implementation Guidelines.

The Submitter must retransmit any document within "X" days[8] of receiving a re-transmission request by EPA. Likewise, EPA will re-send any transmission originated by EPA at the Submitter's request.

7. *INABILITY TO TRANSMIT.* Circumstances, both foreseeable and unforeseeable, may prevent a reporting party from conducting EDI. Nevertheless, no Submitter will be excused from the requirement to file reports with the Agency by the appropriate regulatory deadline. If a party is unable to electronically file a required report by such deadline, it must submit a paper report on forms required by the applicable regulation.

8. *SIGNATURE.* The Submitter shall adopt as its signature an electronic identification consisting of symbols (i.e., the Personal Identification Number [PIN] which is affixed to or contained in each Document transmitted by the Submitter ("Signature"). The Submitter agrees that any such Signature affixed to or contained in any transmitted Document shall be sufficient to verify such party originated and possessed the requisite authority both to originate the transaction and to verify the accuracy of the content of the document at the time of transmittal. Unless otherwise specified in the TCA, affixing the Personal Identification Number (PIN) issued to the Submitter by EPA to any transmitted Document constitutes a valid Signature. The Submitter expressly agrees that it will sign each and every report it submits by using its PIN(s) [or other electronic identification, if provided for in the TCA], and that the use of the PIN(s) [or other electronic identification, if provided for in the TCA] constitutes certification of the truth and accuracy, upon penalty of perjury (or other program specific requirement), of the information contained in each such report.

9. *DEFINITIONS.* Whenever used in this Agreement or any documents incorporated into this Agreement by reference, the following terms shall be defined as follows:

9.1 *Compromise.* When the PIN is intentionally or unintentionally disclosed to individuals and organizations who are not authorized to know or use the PIN.

9.2 *Data.* Facts or descriptions of facts.

9.3 *Document/Record.* Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

9.4 *Electronic Agent.* A computer program designed, selected or programmed by a party to initiate or respond to electronic messages or performances without review by an individual. An electronic agent acts within the scope of its agency if its performance is consistent with the functions intended by the party who utilizes the electronic agent.

9.5 *Electronic Message/Transaction.* A record generated or communicated by electronic, optical or other analogous means for transmission from one information system to another. The term includes electronic data interchange and electronic mail.

9.6 *Functional Acknowledgement.* Is the sending of a 997 transaction set (under ANSI ASC X12 Standards) indicating the results of the translator's syntactical analysis of the electronically submitted file. A positive acknowledgement indicates that the syntax of the submitted file conforms to the standard and can be processed by the translator. A negative acknowledgement indicates nonconformance to the standards.

9.7 *Guidelines.* **Federal Register** Notice and EPA Implementation Guidelines.

9.8 *Message.* Data structured in accordance with the protocol specified in the Guidelines and transmitted electronically between the parties and relating to a Transaction.

9.9 *Personal Identification Number (PIN).* Assigned by EPA, each PIN will consist of a sequence of alpha-numeric characters.

9.10. *Receive/Receipt.* To take delivery of a record or information. An electronic record or information is received when it enters an information processing system in a form capable of being processed by that system if the recipient has designated that information system for the purpose of receiving such records or information.

9.11 *Date of Receipt.* EPA will consider an electronically filed report received when it is accessible to the receiver (i.e. EPA) at its receipt computer. Upon receipt of any report, EPA will promptly submit a functional acknowledgment in return. A positive functional acknowledgment indicating no syntactical errors will constitute conclusive evidence that EPA has properly received a report and will establish the "Received Date". No document shall satisfy any reporting requirement until it is received.

9.12 *Report.* The report required by _____ [Program-specific notice will insert applicable regulatory/statutory cite for program-specific report].

9.13 *Signed.* For the purposes of EDI, a transaction is "signed" if it includes a symbol and/or action that is adopted or performed by a party or its electronic agent with the present intent to authenticate or manifest assent to a record, a performance, or a message. Actions or symbols adopted or performed by an electronic agent serve to authenticate with present intent a record or message on behalf of a party if the party designed, programmed or selected the electronic agent with an intent that the agent produce the result and the electronic agent performs in a manner consistent with its intended programming. That a record or message is signed is conclusively presumed as a matter of law if the parties agreed to an authentication procedure and the symbol or action taken complies with that procedure. Otherwise, that a document is signed may be proved in any manner including by a showing that a procedure existed by which a party

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[6] The number of days shall depend on specific program needs and will be specified in the Program-Specific Notice or related documents (e.g., Implementation Guideline, TCA).

[7] "Promptly" shall be determined by each program-specific EDI application and defined in the program-specific notice or related documents (e.g., Implementation Guideline, TCA).

[8] The number of days shall depend on specific program needs and will be specified in the Program-Specific Notice or related documents (e.g., Implementation Guideline, TCA).

must of necessity have taken an action or executed a symbol in order to have proceeded further in the use or processing of the information.

9.14 *Transaction.* Any communication made or transaction carried out and identified as the communication or transaction to which a Message refers including but not limited to the filing of a specific report.

9.15 *Transmission Log.* Must be retained by all parties using EDI for reporting purposes. The Transmission Log includes the date, time, destination address and telephone number, and a copy of the file transmitted; it also documents the persons who had access to the Submitter's system during the creation of the files and during their transmission. The Submitter shall create an official Transmission Log of all transactions and maintain it without any modification. Each Submitter shall designate one or more qualified individuals with appropriate authority to certify the accuracy and completeness of the Transmission Log and this designation shall be retained as part of the records. Each Submitter shall also maintain records concerning the assignment and revocation of PINs, as discussed elsewhere in this notice.

9.16 *Transaction set.* [Cite for specific program].

9.17 *User Manual.* [Cite, if any].

9.18 *Writing.* Any document properly transmitted pursuant to this Agreement shall be considered to be a "writing" or "in writing".[9]

9.19 *Other Definitions.* (As required, additional Definitions may be included in Program-specific TCAs.)

10. *EDI TRANSACTION PARAMETERS.* Each party may electronically transmit to or receive from the other party any of the transaction sets listed in the Appendix and transaction sets which by agreement are added to the Appendix (collectively referred to as "Documents" or "Reports"). All Documents/Reports shall be transmitted in accordance with the standards set forth herein and in the Appendix. Appendix(es) are hereby incorporated herein by reference. Any transmission of data which is not a Document/Report (i.e., which is not one of the specified transaction sets) shall have no force or effect between the parties.

10.1 *Implementation Guidelines.* All Documents/Reports transmitted between the parties shall strictly adhere to published Accredited Standards Committee (ASC) X12 standards for Electronic Data Interchange (EDI) and shall comply with data conventions and implementation guidelines set forth in this Agreement and **Federal Register** notice ("Guidelines") and all modifications of the Guidelines.

10.2 *Modifications of Standards.* Whenever EPA intends to upgrade to a new version and release of the ASC X12 standard or modify the Guidelines, EPA shall give notice of its intent and shall establish a conversion date. The Submitter shall have a minimum of sixty (60) days from the conversion date to upgrade to the new standard.[10] EPA can discontinue support of the previous standard no sooner than ninety (90) days after the conversion date.[11]

11. *SYSTEM AND OPERATION EXPENSES.* Each party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive Documents.

12. *SECURITY.* The parties shall take reasonable actions to implement and maintain security procedures necessary to ensure the protection of transmissions against the risk of unauthorized access, alteration, loss or destruction including, but not limited to those set forth [in Appendix A, in guidelines set forth in F.R., etc.].

12.1 *Creation of PIN.* Where EPA requires certification to insure the authenticity of electronically submitted documents, EPA will generally require the Submitter to use a PIN assigned by EPA. If EPA agrees to enter into a trading partner relationship with a Submitter, EPA will assign PIN(s) upon receipt and receipt by EPA of the Submitter's signed TCA. EPA will mail the PIN(s) directly to each authorized representative(s) identified in the PIN request. The Agency will issue a new PIN at the written request, on company letterhead, of a responsible corporate officer of the submitter. In addition, EPA will change PINs where Submitters undergo personnel changes that affect the identity of their authorized representatives, or where there is evidence of compromise. Depending on the reporting cycle, EPA will then cancel such authorized representative's individual PIN before the next reporting cycle to which the PIN applies, or no later than fourteen (14) business days of receiving such notice, whichever comes first.

12.2 *Protection of PIN.* Each party must protect the security of its PIN(s) from compromise and shall take all necessary steps to prevent its loss, disclosure, modification, or unauthorized use. The Submitter shall notify EPA immediately if it has reason to believe the security of any PIN(s) has been compromised and must request a change. If EPA has reason to believe that PIN security has been compromised, the Agency will consult with the Submitter and initiate PIN changes where necessary. Also, the Submitter is responsible for immediately notifying EPA (in writing and on company letterhead and signed by an authorized corporate officer) of termination of employment, or reassignment, of any authorized representative, and of any new or newly assigned employee(s) who will act as authorized representative(s).

12.3 *Access Control.* [If required, additional program-specific measures to control access to the transmitted files.]

12.4 *Confidentiality.* (If Applicable, program-specific clause.) The submitter may claim as confidential information submitted to EPA pursuant to this agreement. In order to assert a claim of confidentiality, the Submitter must mark the response **CONFIDENTIAL BUSINESS INFORMATION** or with a similar designation, and must clearly specify which information in the Document is so claimed. [The program may wish to insert here specific instructions for asserting confidentiality claims for electronic submissions.] Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR Part 2. If the Submitter fails to claim the information as confidential in accordance with the provisions of this paragraph, 10.4, the information may be available to the public without further notice.

12.5 *Other Specific Security Requirements.* [If required, other program-specific measures.]

13. *MISDIRECTED AND CORRUPTED TRANSMISSIONS.* If EPA has reason to believe that a Message is not intended for EPA or is corrupted, EPA shall notify the Submitter and shall delete from EPA's system the information contained

[9] "For the purpose of interpreting federal statutes, 'writing' is defined to include 'printing and typewriting and reproductions of visual symbols by photographing, multi graphing, mimeographing, manifolding, or otherwise.' Although the terms of contracts formed using EDI are stored in a different manner than those of paper and ink contracts, they ultimately take the form of visual symbols. . . .it is sensible to interpret federal law in a manner to accommodate technological advancements. . . .It is evident that EDI technology had not been conceived nor, probably, was even anticipated at the times section 1501 and the statutory definition of "writing" were enacted. Nevertheless, we conclude that, given the legislative history of section 1501 and the expansive definition of writing, section 1501 and 1 U.S.C. Section 1 encompass EDI technology." U.S. Comptroller General decision, "Use of Electronic Data Interchange Technology to Create Valid Obligations," File: B–245714 (13 December 1991).

[10] These dates may vary with specific program requirements.

[11] These dates may vary with specific program requirements.

in such Message (where allowed by applicable law) but not the record of its receipt. Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified as incorrect, EPA shall notify the Submitter and it shall be re-transmitted by the Submitter as soon as practicable with a clear indication that it is a corrected Message. [Dependent on circumstances, corresponding requirement may be needed if EPA will be sending messages.]

14. *COMMUNICATIONS CONNECTIONS.* Unless otherwise stipulated in program-specific notice, documents shall be transmitted electronically to each party through a third party service provider ("Provider"), designated in the program-specific Implementation Guidelines, who shall be considered the designated provider. The Submitter may transmit through EPA's designated Provider or through a third party service provider of their choice. In either case, the Submitter assumes all risks associated with their interaction with third party service providers. Upon written consent of EPA, at Submitter's own expense and at sender's own risk, documents may be electronically transmitted to EPA directly. EPA will specify procedures for doing so. Upon thirty days advance notice EPA may change its third party service providers.

14.1 *Third-Party Service Provider Fees.*[12] [Apportionment of the following fees: (could be incorporated by reference from guidelines, appendix etc.)]

14.2 *Third-Party Service Provider Liability Apportionment.* Each party shall be responsible for ensuring the correctness of its transmission except as otherwise provided in this Agreement.

14.3 *Records Transmitted Through Provider.* The parties agree that either of them may have access to Providers' copies of the records, at the expense of the requesting party.

15. *RECORD RETENTION AND STORAGE.*

15.1 *Transmission Log.* The Transmission Log shall be maintained by the Submitter without any modification for as long as required for the paper record [Specific program must insert applicable regulations]. The Submitter shall designate one or more individuals with appropriate authority to certify the accuracy and completeness of the Transmission Log.

15.2 *Record Retention.* Nothing herein is intended to release the Submitter from or waive any requirement of law applicable to the Submitter pertaining to record or document retention, or to create new or additional requirements for retention of records or documents except as specifically noted herein or in the Appendix(es). Sender shall retain all records, regardless of the medium on which they are recorded, used in the derivation of the Documents/Reports or information therein transmitted pursuant to this Agreement for the period which would be required for functionally equivalent paper records.

16. *CONFLICTING TERMS AND CONDITIONS.* This Agreement and all appendices attached constitute the entire agreement between the parties. As the parties develop additional capabilities respecting EDI, additional addenda may be added to this Agreement. EPA will publish notice of new Addenda appending this Agreement and their effective date in the **Federal Register**. Upon the effective date, each Addendum shall be appended to this Agreement. If the Submitter does not agree to specified changes in the terms and conditions of this Agreement, as provided in the newly published Addenda, the Submitter must notify EPA in accordance with paragraph 15 below. In the absence of such notification, each addendum shall be appended to this Agreement and the date published in the **Federal Register** notice shall be the effective date.

17. *TERMINATION.* This Agreement shall remain in effect until terminated by either party with not less than 30 days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement prior to the effective date of termination. Termination of this Agreement shall not affect any action required to complete or implement Messages which are sent prior to such termination. Emergency temporary termination of computer connections may be made to protect data from illegal access or other incidental damage.

18. *SURVIVABILITY.* Notwithstanding termination for any reason, Clauses #2 (Validity and Enforceability), #10 (Security), #13 (Record Retention and Storage), #21 (Governing Law), #22 (Choice of Language), and #23 (Dispute Resolution) shall survive termination of this Agreement.

19. *ASSIGNABILITY.* This Agreement is for the benefit of, and shall be binding upon, the Submitter and their respective successors and assigns.

20. *SEVERABILITY.* Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

21. *NOTICE.* All notices or other forms of notification, request or instruction required to be given by a party to any other party under paragraphs 10, 14, and 15 of this Agreement shall be delivered by hand, or sent by first class post or other recognized carrier to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this clause, or sent by electronic means of message transmission producing hard copy read-out including telex and facsimile, or published in the **Federal Register** notice, and shall be deemed to have been received:

- if sent by electronic means: at the time of transmission if transmitted during business hours of the receiving instrument and if not during business hours, one hour after the commencement of the next working day following the day transmission;
- if sent by first-class post or recognized carrier: 3 business days after posting exclusive of the day of posting;
- if delivered by hand: on the day of delivery.

Notwithstanding the above, EPA may at its discretion provide notices under paragraphs 7.2, 13, and 17 of this Agreement via publication in the **Federal Register**. Notice shall be deemed to be received on the day of publication of the **Federal Register** notice.

Notice address for EPA follows: USEPA, _____.

22. *INABILITY TO FILE REPORTS VIA EDI.* No party shall be liable for any failure to perform its obligations in connection with any EDI Transaction or any EDI Document, where such failure results from any act or cause beyond such party's control which prevents such party from transmitting or receiving any Documents via EDI, except that the Submitter is nonetheless required to submit records or information required by law via other means, as provided by applicable law and within the time period provided by such law.

23. *GOVERNING LAW.* This Agreement shall be governed by and interpreted in accordance with the Federal laws of the United States.

[12] EPA does not foresee clause 12.1 being included in it's TCA during the Interim Policy Phase and is uncertain if such provisions will be included in future TCAs.

24. *CHOICE OF LANGUAGE.* (Optional Program-specific application clause) The parties have requested that this Agreement and all Documents and other communications transmitted via the EDI Network or otherwise delivered with respect to this Agreement be expressed in the English language. (Should include translation.)

25. *DISPUTE RESOLUTION.* All disputes, differences, disagreements, and/or claims between the parties arising under or relating to this agreement that are not resolved by negotiation and that the parties cannot agree to submit for arbitration or other procedure for the resolution of disputes, shall be subject to the jurisdiction of U.S. Courts.

26. *ENTIRE AGREEMENT.* This Agreement [and the Implementation Guide and Appendix] constitute the complete agreement of the parties relating to the matters specified in this Agreement and supersede all prior representations or agreements, whether oral or written, with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. As the Partners develop additional capabilities respecting EDI, additional Addenda may be added to this Agreement. EPA does not intend to change guidelines without just cause or without consulting industry, however, as a practical matter it is too cumbersome to obtain formal agreements from each Submitter when technical or procedural changes are required, particularly to the Implementation Guidelines. Therefore, EPA will publish notice of new Addenda appending this Agreement and their effective date in the **Federal Register**. Upon the effective date, each Addendum shall be appended to this Agreement.

This Agreement is for the benefit of, and shall be binding upon, the parties and their respective successors and assigns.

(To be signed by the Delegated Authority in specific EPA Office)

Dated: _____

_____

Name of Delegated Authority
Title of Delegated Authority

III. Model of EPA Terms and Conditions Agreement Memorandum

Program-specific notices will contain the memorandum, similar to this model agreement memorandum, which the Submitter will sign and return to EPA. The program-specific TCA will stipulate what actions will constitute acceptance by EPA of a Submitter's signed and returned agreement memorandum and the effective date of the agreement.

BILLING CODE 6560-50-M

Model TCA Memorandum Agreement

(If report or information is subject to PRA, OMB# and Date are included.) OMB No. _____
Expiration Date_____

NOTICE OF ADMINISTRATOR'S INTENT TO PERMIT FILING OF "ABC" REPORT VIA ELECTRONIC DATA INTERCHANGE (EDI)

TERMS AND CONDITIONS AGREEMENT MEMORANDUM:[13]

FROM: (Submitter's Address)

TO: (USEPA's Address)

The terms and conditions for submitting the "abc" report to EPA via Electronic Data Interchange (EDI) as set forth in the Terms and Conditions Agreement published in the *Federal Register* on _____ (page citation to *Federal Register* notice) are hereby accepted and agreed to by the Submitter. Upon receipt of this properly signed Terms and Conditions Memorandum and the list of reporting facilities and authorized representatives, EPA will issue PINs and accept electronic reports from the Submitter. The Submitter hereby expressly agrees that it will sign each and every report it submits by using it's PIN(s) or other electronic identification and that use of the PIN(s) or other electronic identification constitutes certification of the truth and accuracy, upon penalty of perjury (or other program-specific requirement), of the information contained in each such report. The Submitter has caused this Agreement to be properly executed on its behalf as of the date first written below. The Submitter:

_____ _____
Signature of Submitter's Responsible Corporate Officer Date

_____
Printed/Typed Name of Responsible Corporate Officer

_____
Title of Responsible Corporate Officer

_____
Submitter's Company Name

_____
Submitter's Company Address

_____
Submitter's Notice Address (In accordance with para. 19 of the TCA.)

ATTACHMENT: PIN REQUEST

SAMPLE ONLY

[13] Submission by potential trading partners of this memorandum does not necessarily constitute agreement by EPA of entering into an electronic trading partner agreement with a given Submitter. Receipt of the Submitter's TCA and entry into an Agreement by EPA will be confirmed by assignment of PIN(s). Date of PIN Issuance will constitute effective date of Agreement.

SAMPLE ONLY

Dated: August 21, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–22381 Filed 9–3–96; 8:45 am]

BILLING CODE 6560–60–C

federal register

Wednesday
September 4, 1996

Part III

The President

Memorandum of August 30, 1996—Determinations Under Section 203 of the Trade Act of 1974 and Section 304 of the North American Free Trade Agreement Implementation Act Concerning Broom Corn Brooms

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Federal Register
Vol. 61, No. 172
Wednesday, September 4, 1996

Presidential Documents

Title 3—

The President

Memorandum of August 30, 1996

Determinations Under Section 203 of the Trade Act of 1974 and Section 304 of the North American Free Trade Agreement Implementation Act Concerning Broom Corn Brooms

Memorandum for the United States Trade Representative, the Secretary of Agriculture, the Secretary of Commerce, [and] the Secretary of Labor

On August 1, 1996, the United States International Trade Commission (USITC) submitted to me a report that included:

(a) a determination pursuant to section 202 of the Trade Act of 1974 ("the Trade Act") that imports of broom corn brooms are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article;

(b) a finding pursuant to section 311(a) of the North American Free Trade Agreement (NAFTA) Implementation Act ("NAFTA Act") that imports of broom corn brooms produced in Mexico account for a substantial share of total imports of such brooms and contribute importantly to the serious injury caused by imports; but that imports of broom corn brooms produced in Canada do not account for a substantial share of total imports and thus do not contribute importantly to the serious injury caused by imports;

(c) a determination under section 302 of the NAFTA Act that, as a result of the reduction or elimination or a duty provided for under the NAFTA, broom corn brooms produced in Mexico are being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article that is like, or directly competitive with, the imported article; and

(d) recommendations for action by the President in response to these determinations.

Pursuant to section 203(a) of the Trade Act, I have determined to take appropriate and feasible action within my power that will facilitate efforts by the domestic industry to make a positive adjustment to competition from imports of broom corn brooms. I have not implemented at this time any of the actions recommended by the USITC, because I believe it would be more appropriate first to seek a negotiated solution with appropriate foreign countries that would address the serious injury to our domestic broom corn broom industry, promote positive adjustment, and strike a balance among the various interests involved.

Therefore, after considering all relevant aspects of the investigation, including the factors set forth in section 203(a)(2) of the Trade Act, I hereby direct the Trade Representative to negotiate and conclude, within 90 days, agreements of a type described in section 203(a)(3)(E) of the Trade Act, and to carry out any agreements reached. Not later than the end of this 90-day period, I would implement action of a type described in section 203(a)(3). I hereby direct the Secretaries of Agriculture, Commerce, and Labor to develop and present to me, within 90 days, a program of measures designed to enable our domestic industry producing broom corn brooms to adjust to import competition.

I agree with the USITC's finding under section 311(a) of the NAFTA Act, and therefore determine, pursuant to section 312(a) of the Act, that imports of broom corn brooms from Mexico account for a substantial share of total imports of such brooms and contribute importantly to the serious injury caused by imports; but that imports of broom corn brooms from Canada do not account for a substantial share of total imports and thus do not contribute importantly to the serious injury caused by imports. Therefore, pursuant to section 312(b) of the NAFTA Act, agreements reached, and action of a type described in section 203(a)(3) of the Trade Act, would apply to imports of broom corn brooms from Mexico, but would not apply to imports of broom corn brooms from Canada. Also, in light of the USITC's findings, any agreements and action would not apply to imports of broom corn brooms from Israel.

As a result of the action I have taken under section 203 of the Trade Act, I have fully preserved my ability to implement tariff increases of a magnitude equal to or greater than the increases recommended by USITC commissioners under section 303 of the NAFTA Act. Section 203 of the Trade Act also authorizes a wider array of types of action than the tariff increases permitted under the NAFTA Act. Thus, through section 203 of the Trade Act, I maintain the full power to address the serious injury found by the USITC to have resulted from the reduction in tariffs under the NAFTA. For these reasons, I have determined that additional action under section 304 of the NAFTA Act is not necessary and would not provide greater benefits than costs.

The United States Trade Representative is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 30, 1996.

[FR Doc. 96-22756
Filed 9-3-96; 10:24 a.m.]
Billing code 3190-01-M

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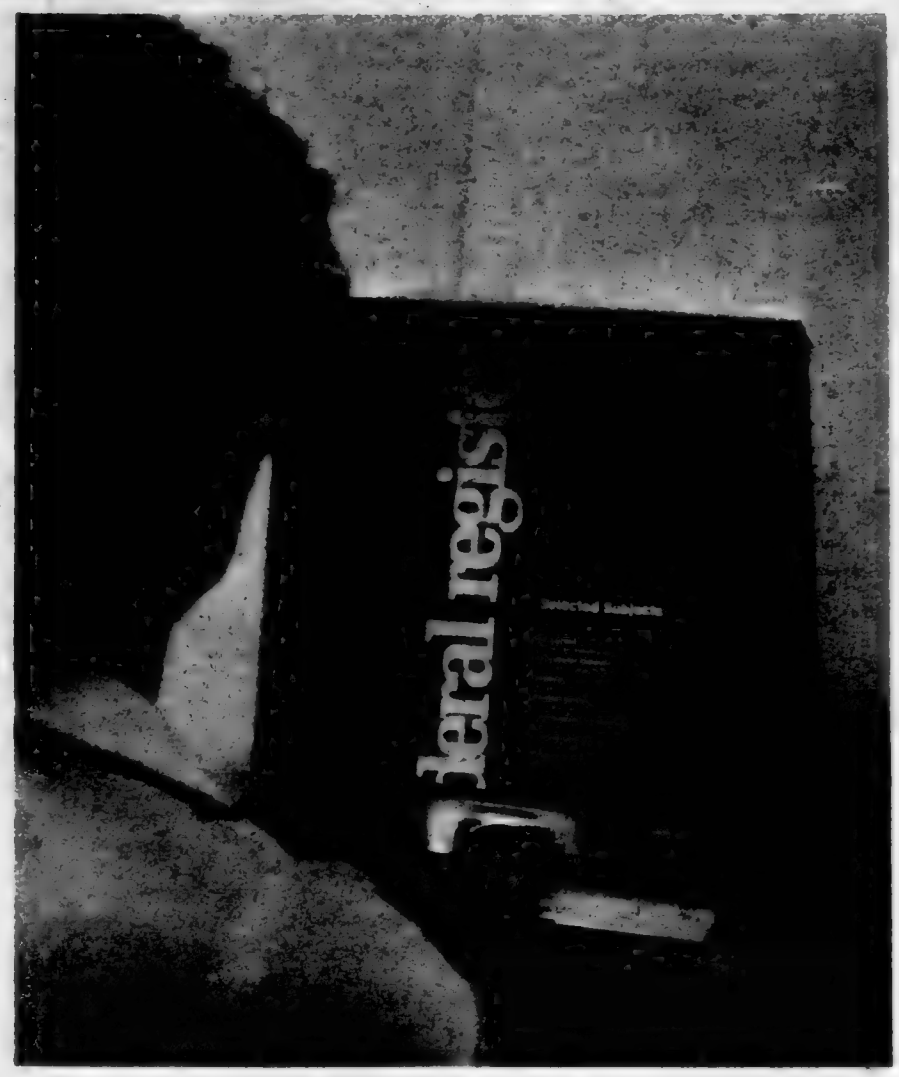

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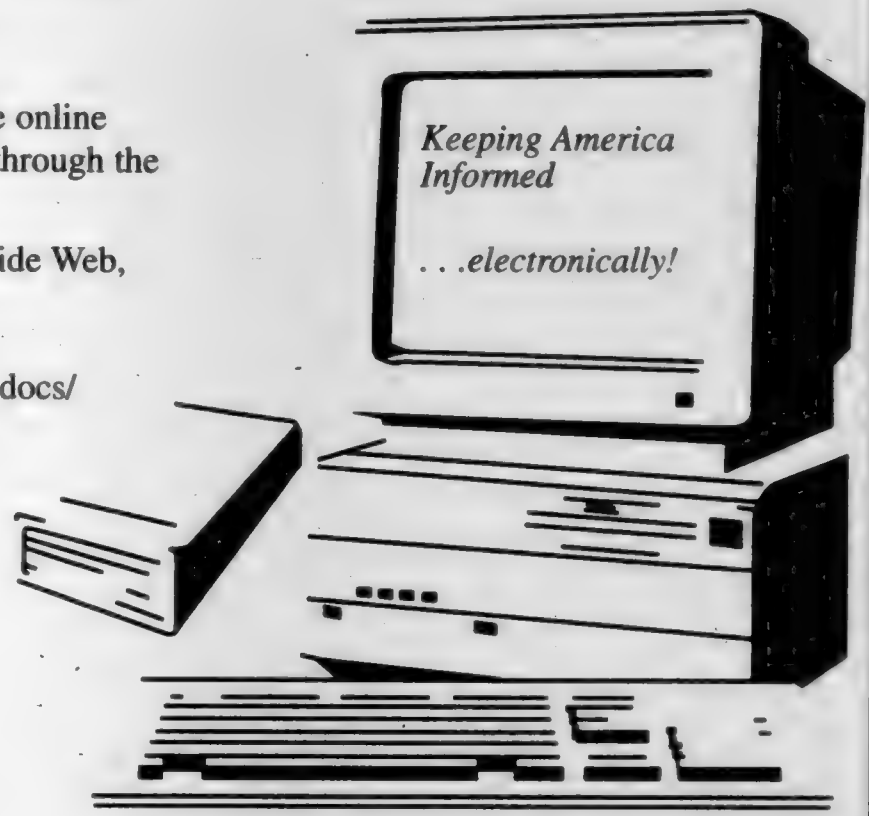

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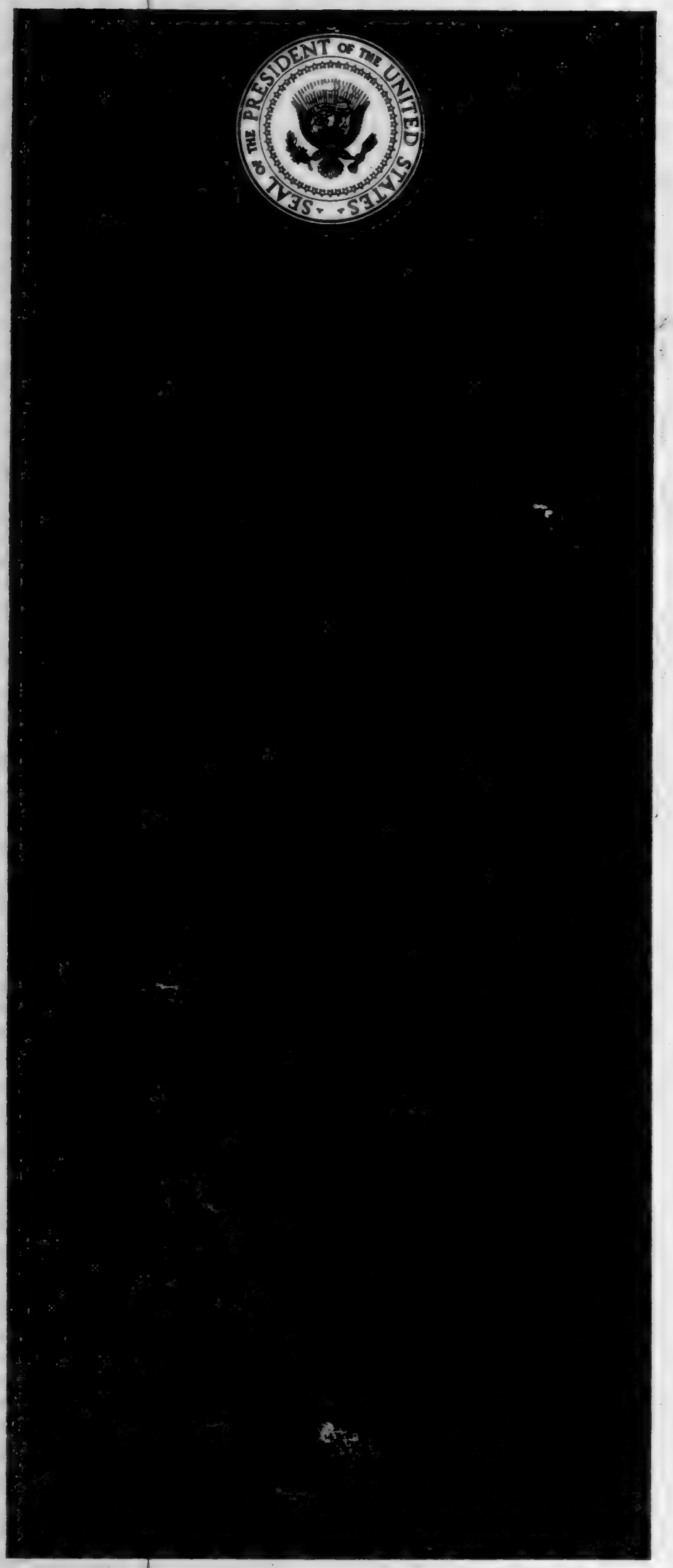

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The President

Presidential Determination No. 96–42 of August 24, 1996

POW/MIA Military Drawdown for Vietnam

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 535 of the 1996 Foreign Operations Assistance Act (Public Law 104–107) (the "Act"), I hereby determine that it is necessary to draw down defense articles from the stocks of the Department of Defense for Vietnam for the purposes set forth in the Act of supporting efforts to locate and repatriate members of the United States Armed Forces and civilians employed directly or indirectly by the United States Government who remain unaccounted for from the Vietnam War.

Therefore, I hereby authorize and direct the drawdown of up to $3 million of such defense articles from the stocks of the Department of Defense for Vietnam, for the purposes and under the authorities of section 535 of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 24, 1996.

[FR Doc. 96–22854
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV95–911–2 FIR]

Limes and Avocados Grown in Florida; Suspension of Certain Volume Regulations and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule to suspend indefinitely certain volume regulation provisions of the marketing order covering limes grown in Florida. This rule indefinitely suspends the pack-out reporting requirements for the marketing orders covering limes and avocados grown in Florida. The marketing orders regulate the handling of limes and avocados grown in Florida and are administered by the Florida Lime Administrative Committee and the Avocado Administrative Committee, respectively. These provisions are not needed due to reduced Florida lime and avocado production. This rule will also reduce handler reporting burdens for both marketing orders.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone: 202–720–5127; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act; and of Marketing Agreements and Marketing Orders No. 911 (7 CFR Part 911) and No. 915 (7 CFR Part 915) regulating the handling of limes grown in Florida and avocados grown in South Florida, respectively. These agreements and orders are effective under the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this rule will be applicable for the entire 1996 fiscal year which began April 1, 1996, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 10 Florida lime handlers subject to regulation under the marketing order covering limes grown in Florida, and about 30 lime producers in Florida. Also, there are approximately 35 handlers of avocados and approximately 95 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

This rule continues to suspend indefinitely volume regulation provisions of the Florida lime marketing order. These provisions permitted the collection of information from handlers so that the Florida Lime Administrative Committee (FLAC) could recommend to the Department that lime volume regulations be issued, when and if needed. FLAC determined that volume regulations will not be needed in the near future because of reduced production due to hurricane damage in 1992. Thus, the Department has determined such information will not be needed. This rule also suspends indefinitely certain reporting requirements under the Florida lime and avocado marketing orders. This rule is a relaxation in regulations which reduces handler reporting burdens, resulting in lower industry costs under both marketing orders. Thus, the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small businesses.

The FLAC met on December 13, 1995, and unanimously recommended a two year suspension of their lime volume regulations and pack-out reporting requirements. However, the Department revised the FLAC recommendation by suspending both of these requirements

indefinitely. The Department determined that since volume regulations have not been implemented for at least the past five years and lime production has been reduced to low levels, these regulations should be suspended indefinitely. The Department does not anticipate that such regulations will be needed in the near future.

Also, the Avocado Administrative Committee (AAC) met on January 10, 1996, and recommended indefinite suspension of their pack-out reporting requirements.

The initial suspension of §§ 911.53–59 and 911.111 of the lime marketing order volume regulations and pack-out reporting requirements was published in the **Federal Register** (59 FR 13429, March 22, 1994) and remained in effect through March 31, 1996. Also, the previous suspension of § 915.150 paragraph (d) of the avocado marketing order pack-out reporting requirements was published in the **Federal Register** (59 FR 30866, June 16, 1994) and remained in effect through March 31, 1996.

An interim final rule was issued on April 16, 1996, to extend the suspension indefinitely. That rule was published in the **Federal Register** (61 FR 17551, April 22, 1996), with an effective date of April 1, 1996. That rule provided a 30-day comment period which ended May 22, 1996. No comments were received.

Sections 911.53–59 (7 CFR 911.53–59) of the lime marketing order cover volume regulations and were used by FLAC to collect and maintain information from handlers, so that it could recommend to the Department that lime volume regulations be issued, when and if needed. FLAC determined that volume regulations will not be needed in the near future, and thus such information will not be needed because of reduced production due to hurricane damage in 1992.

Concerning pack-out reporting requirements, both FLAC and AAC recommended suspension of their pack-out reporting requirements. Section 911.111 (7 CFR 911.111) and § 915.150 (7 CFR 915.150) contain provisions requiring Florida handlers to file certain reports with either the FLAC or the AAC concerning their Florida lime and avocado shipments, respectively. This rule continues the suspension of these provisions since information collected under these provisions is not needed because lime and avocado production is so low. These provisions would require handlers to furnish information on types and numbers of containers of limes and avocados they pack each day. Sufficient information from other sources is available to meet the committees' needs during future seasons. Information needed for the committees' operations, marketing policies, and compliance is available from inspection certificates collected on a daily basis by committee staff. These resources are used to collect such information. Low lime and avocado production has also resulted in a substantial reduction of both committees' staff and a reduction of assessment income. Thus, the continuation of the suspension will reduce administrative costs and work load.

These continued suspensions are a result of damage to the lime and avocado groves caused by Hurricane Andrew in August 1992. For limes, Hurricane Andrew reduced production acreage from approximately 6,500 acres to approximately 1,500 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,682,677 bushels. In the 1992–93 season, production prior to the hurricane was 1,146,000 bushels. After the hurricane, in the 1993–94 season, production fell to 228,455 bushels and in the 1994–95 season, it was 283,977 bushels. This was well below the levels reached prior to the hurricane.

For avocados, Hurricane Andrew reduced production acreage from approximately 9,000 acres to less than 6,000 acres with many non-producing trees in the remaining acreage. Production in the 1991–92 season was 1,110,105 bushels. In the 1992–93 season, production fell to 283,000 bushels and in the 1993–94 season it was 174,712 bushels. Although the 1994–95 season recovered to 778,951 bushels, it is well below the levels reached prior to the hurricane.

Therefore, this action reflects the committees' and the Department's appraisal of the need to continue the suspension of certain volume regulations and pack-out reporting requirements under the orders, as specified. This rule finalizes the interim final rule that indefinitely suspended certain reporting requirements for Florida limes and avocados, and lessens the overall reporting and recordkeeping burden under the orders. The Department's view is that this continued suspension will have a beneficial impact on Florida lime and avocado producers and handlers, since it lessens the reporting burden on handlers and will reduce the committees' expenses incurred under the orders.

The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0581–0091 and 0581–0078 for limes and avocados respectively.

This final rule continues to indefinitely suspend the annual reporting burden currently estimated at 210.4 hours for all regulated Florida lime handlers to: (1) apply for a prorate base and allotment; (2) report daily the percentages, by size category, of the limes packed by them; and (3) report daily the number of containers of limes sold and delivered by them within the State of Florida.

This final rule continues to indefinitely suspend the annual reporting burden currently estimated at 62 hours for all regulated Florida avocado handlers who file Avocado Handler Daily Size Report Forms. The Supplementary Information section of the interim final rule published on April 22, 1996 (61 FR 17551) indicated that the Avocado Weekly Report Form was also being discontinued. That statement was in error. Only paragraph (d) of section 915.150 *Reports* of the avocado marketing order's rules and regulations was suspended. Paragraph (a) of that section, which pertains to the weekly report, was not suspended.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees, and other information, it is found that the provisions as they appeared in the interim rule, as published in the **Federal Register** (61 FR 17551, April 22, 1996), and as finalized herein no longer tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

PART 911—LIMES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 911 which was published at 61 FR 17551 on April 22, 1996, is adopted as a final rule without change.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 915 which was

published at 61 FR 17551 on April 22, 1996, is adopted as a final rule without change.

Dated: August 29, 1996.

Terry L. Medley,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–22661 Filed 9–04–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–249–AD; Amendment 39–9730; AD 96–18–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that requires visual inspections to detect cracks of the fittings of the pressurized floor at frame 36, and renewal of the zone protective finish or replacement of fittings with new fittings, if necessary. This amendment is prompted by a report of fatigue cracking found on the pressurized floor fitting at frame 36 under the lower surface panel. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in failure of a floor fitting and subsequent depressurization of the fuselage.

DATES: Effective October 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes was published in the **Federal Register** on April 19, 1996 (61 FR 17257). That action proposed to require visual inspection(s) to detect cracks of the six fittings of the pressurized floor at frame 36 under the lower surface panel, and renewing the zone protective finish or replacement of the fittings with new fittings, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

New Service Information

Airbus has issued Revision 1 of Service Bulletin A320–57–1028, dated April 19, 1996. This revision is essentially identical in its technical content as the original version, which was cited in the proposal as the appropriate source of service information. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has classified this revised service bulletin as mandatory. Accordingly, this final rule has been revised to reference Revision 1 of the service bulletin. It has also been revised to note that any of the required actions that were performed in accordance with the originally issued service bulletin prior to the effective date of the final rule are considered acceptable for compliance with this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 22 Airbus Model A320–111, –211, and –231 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,960, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96-18-06 Airbus Industrie: Amendment 39-9730. Docket 95-NM-249-AD.

Applicability: Model A320-111, -211, and -231 series airplanes; manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, and 080 through 104 inclusive; on which Airbus Modification 21282P01497 (reference Airbus Service Bulletin A320-57-1029) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking on the pressurized floor fitting at frame 36 under the lower surface panel, which could result in failure of a fitting and subsequent depressurization of the fuselage, accomplish the following:

Note 2: Inspections and replacement(s) that were performed prior to the effective date of this AD in accordance with Airbus Service Bulletin A320-57-1028, dated April 12, 1996, are considered acceptable for compliance with this AD.

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, perform a visual inspection to detect cracks of the 6 fittings of the pressurized floor at frame 36 under the lower surface panel, in accordance with Airbus Service Bulletin A320-57-1028, Revision 1, dated April 19, 1996.

(1) If no cracking is found, prior to further flight, renew the zone protective finish in accordance with the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 12,000 landings.

(2) If only 1 of the 6 fittings is found to be cracked and that crack is less than or equal to 0.59 inch (15 mm) in length, prior to further flight, replace the cracked fitting with a new fitting in accordance with the service bulletin. Thereafter, prior to the accumulation of 500 landings following accomplishment of this replacement, replace the remaining 5 fittings with new fittings in accordance with the service bulletin.

(3) If only 1 of the 6 fittings is found to be cracked and that crack is greater than 0.59 inch (15 mm) in length, prior to further flight, replace all six fittings with new fittings in accordance with the service bulletin.

(4) If 2 or more fittings are found to be cracked, prior to further flight, replace all 6 fittings with new fittings in accordance with the service bulletin.

(b) Replacement of all 6 fittings with new fittings in accordance with Airbus Service Bulletin A320-57-1028, Revision 1, dated April 19, 1996, constitutes terminating action for the inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) The actions shall be done in accordance with Airbus Service Bulletin A320-57-1028, Revision 1, dated April 19, 1996, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1-3	1	Apr. 19, 1996.
4-15	Original	Aug. 12, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 10, 1996.

Issued in Renton, Washington, on August 23, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-22144 Filed 9-4-96; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 95-NM-204-AD; Amendment 39-9735; AD 96-18-11]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-10-10 and -15 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10-10 and -15 series airplanes, that requires repetitive inspections to detect cracks in the bulkhead tee caps, and repair and follow-on actions, if necessary. It also provides for an optional terminating modification for the repetitive inspections. This amendment is prompted by reports of cracking in the bulkhead tee caps at a fuselage station in the area of certain longerons due to fatigue. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in loss of pressurization and damage to adjacent structure.

DATES: Effective October 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5238; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10-10 and -15 series airplanes was published in the **Federal Register** on March 28, 1995 (61 FR 13787). That action proposed to require repetitive inspections to detect cracks in the bulkhead tee caps, and repair and follow-on actions, if necessary. The proposal would also provide for an optional terminating modification for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposal.

Request to Ensure that Parts are Available

One commenter who supports the proposal is concerned that enough replacement parts may not be available to support the repair requirements of the proposed rule.

The FAA responds to this concern by stating that the manufacturer has advised that ample replacement tee cap splices will be available to the U.S. fleet in support of any necessary repair that may be required as a result of the inspection required by this rule.

Request for a Revision of Initial Inspection Interval

Two commenters request that the proposed rule be revised to extend the initial inspection interval for airplanes on which the modification specified in the manufacturer's Structural Repair Manual (SRM), Chapter 53–40–00, Volume 1, has been accomplished. This modification involves installing an arrowhead doubler at station Y=1156.000. For airplanes with this modification, the commenters request that the initial inspection interval be changed from the proposed 1,500 landings to 2,200 landings. The commenters state that this extension will allow the inspection to be accomplished during regularly scheduled maintenance (i.e., a "C" check) at a main base. One commenter states that trying to accomplish a radiographic inspection at a field station (rather than at a main base) is very difficult and, if cracks are detected during the inspection, it is nearly impossible to repair them at a field station since trained personnel and appropriate equipment may not be available.

The FAA does not concur with the commenters' request for two reasons:

First, the accomplishment of the SRM modification specified by the commenters has been determined—via an assessment by both the airframe manufacturer and the FAA—to have no effect on the time that cracks may initiate and grow in the bulkhead tee caps at fuselage station Y=1156.00. Although the McDonnell Douglas service bulletin cited in this rule does refer to that SRM modification, the reference is made only to discuss the fact that the accomplishment of the SRM modification affects the methodology that must be used for the inspection and installation of a preventative modification of the bulkhead tee cap. Therefore, there is no basis to connect the inspection times required by this AD to whether or not the SRM modification has been accomplished.

Second, the compliance time for the initial inspection required by this AD is based on the reports of fatigue cracking in the bulkhead tee caps on airplanes that had accumulated between 56,394 and 72,931 total flight hours and between 21,629 and 26,094 total landings. The FAA has determined that inspections of this area by the time the airplane has accumulated at least 20,000 total landings will ensure that fatigue cracking is detected before it reaches a critical length.

The "1,500 landings" specified in the AD's compliance time is a "grace period" that was established to preclude grounding airplanes that have exceeded the 20,000-landing threshold. In determining an appropriate "grace period" for this action, the FAA not only considered the degree of urgency associated with addressing the unsafe condition, but normal scheduled maintenance for the majority of affected operators, recommendations of the manufacturer, analysis of the rate of crack growth, and reports of cracking found in the in-service fleet. In consideration of all of these factors, the FAA finds that the 1,500-landing "grace period" for initiating the required inspections on higher-time airplanes to be warranted, in that it represents an appropriate interval of time allowable for airplanes to continue to operate without compromising safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 133 Model McDonnell Douglas Model DC–10–10 and –15 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 121 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $21,780, or $180 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–11 McDonnell Douglas: Amendment 39–9735. Docket 95–NM–204–AD.

Applicability: Model DC–10–10 and –15 series airplanes, as listed in McDonnell Douglas Service Bulletin DC10–53–168, dated August 9, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could result in loss of pressurization and damage to adjacent structure, accomplish the following:

(a) Prior to the accumulation of 20,000 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current and radiographic inspection, as applicable, to detect cracks in the bulkhead tee caps (left and right sides) in the area of longerons 38.0 through 41.0 at fuselage station Y=1156.000, in accordance with McDonnell Douglas Service Bulletin DC10–53–168, dated August 9, 1995.

(1) If no cracks are detected, repeat the inspections thereafter at intervals not to exceed 2,600 landings until paragraph (b) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, accomplish the repair specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Splice in a new bulkhead tee cap section at cracked area of bulkhead tee cap in accordance with the service bulletin. Within 20,000 total landings after accomplishing this repair, perform eddy current inspections to detect cracks in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 2,600 landings until paragraph (b) of this AD is accomplished. If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(ii) Repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(b) Terminating action for the repetitive inspections required by paragraphs (a)(1) and (a)(2)(i) of this AD is as follows:

(1) Accomplish the preventative modification and eddy current open hole inspection in accordance with Condition 1 (no cracks in bulkhead tee cap), Option 2, of McDonnell Douglas Service Bulletin DC10–53–168, dated August 9, 1995. And

(2) Within 14,450 total landings following accomplishment of the modification specified in paragraph (b)(1) of this AD, perform an eddy current and radiographic inspection to detect cracks, in accordance with Condition 1 (no cracks in bulkhead tee cap), Option 2, of the service bulletin.

(i) If no cracks are detected, repeat the inspections thereafter at intervals not to exceed 3,950 landings.

(ii) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with McDonnell Douglas Service Bulletin DC10–53–168, dated August 9, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 10, 1996.

Issued in Renton, Washington, on August 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22262 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 97

[Docket No. 28667; Amdt. No. 1750]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on August 23, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Oct. 10, 1996*

Angola, IN, Tri-State Steuben County, NDB or GPS RWY 5, Amdt 6 CANCELLED
Angola, IN, Tri-State Steuben County, NDB RWY 5, Amdt 6
Dayton, OH, Dayton-Wright Brothers, NDB or GPS RWY 9, Amdt 7 CANCELLED
Dayton, OH, Dayton-Wright Brothers, NDB or GPS–A, Orig

[FR Doc. 96–22545 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28666; Amdt. No. 1749]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are

incorporated by reference in the amendment under U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on August 23, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective upon publication.

FDC date	State	City	Airport	FDC No.	SIAP
07/17/96	NY	New York	John F. Kennedy Intl	6/4927	ILS RWY 4L AMDT 8...
07/25/96	GA	Atlanta	Peachtree City-Falcon Field	6/5239	NDB RWY 31 AMDT 1... THIS NOTAM CORRECTS 6/5239 IN TL 96–18
08/08/96	NC	Rutherfordton	Rutherfordton County	6/5824	NDB RWY 1, AMDT 4B...
08/08/96	SC	Darlington	Darlington County Jetport	6/5838	NDB OR GPS RWY 23, ORIG. DELETE NOTE...
08/08/96	SC	Darlington	Darlington County Jetport	6/5839	VOR/DME OR GPS–A, AMDT 6. DELETE NOTE...
08/13/96	NH	Lebanon	Lebanon Muni	6/5996	ILS RWY 18 AMDT 3... THIS REPLACES NOTAM 6/5297 LEB
08/13/96	NH	Lebanon	Lebanon Muni	6/5997	VOR OR GPS RWY 25 ORIG... THIS REPLACES NOTAM 6/5251 LEB
08/13/96	NH	Lebanon	Lebanon Muni	6/5999	VOR/DME OR GPS RWY 7, ORIG... THIS REPLACES NOTAM 6/5250 LEB
08/16/96	GA	Marietta	Cobb County-McCollum Field	6/6161	VOR/DME OR GPS RWY 9 ORIG–A...
08/16/96	MI	Oscoda	Oscoda-Wurtsmith	6/6163	VOR OR GPS RWY 6, ORIG...

FDC date	State	City	Airport	FDC No.	SIAP
08/16/96	PR	San Juan	Luis Munoz Marin Intl	6/6158	NDB RWY 8 AMDT 7...
08/16/96	PR	San Juan	Luis Munoz Marin Intl	6/6159	VOR RWY 8/10 AMDT 9...
08/16/96	PR	San Juan	Luis Munoz Marin Intl	6/6160	VOR OR GPS RWY 26 AMDT 18...
08/16/96	PR	San Juan	Luis Munoz Marin Intl	6/6189	NDB RWY 10 AMDT 5...
08/16/96	PR	San Juan	Luis Munoz Marin Intl	6/6190	ILS RWY 8 AMDT 15...
08/16/06	PR	San Juan	Luis Munoz Marin Intl	6/6195	RNAV RWY 10 AMDT 7...
08/19/06	MS	Jackson	Jackson Intl	6/6274	LOC BC RWY 15R AMDT 4...
08/19/96	MS	Jackson	Jackson Intl	6/6275	ILS RWY 33L AMDT 4...
08/19/96	PR	San Juan	Luis Munoz Marin Intl	6/6286	ILS RWY 10 AMDT 4...
08/19/96	TX	Fort Stockton	Fort Stockton-Pecos County	6/6279	GPS RWY 12, ORIG...
08/19/96	TX	Fort Worth	Fort Worth Meacham Intl	6/6296	ILS RWY 34R, ORIG...
08/19/96	WV	Bluefield	Mercer County	6/6306	ILS RWY 23 AMDT 14A...
08/19/96	WV	Bluefield	Mercer County	6/6310	VOR/DME OR GPS RWY 23 AMDT 4...
08/19/96	WV	Bluefield	Mercer County	6/6322	VOR RWY 23 AMDT 8...
08/20/96	OK	Durant	Eaker Field	6/6355	NDB OR GPS RWY 35, AMDT 5...
08/20/96	RI	Providence	Theodore Francis Green State	6/6349	VOR/DME OR GPS RWY 23 AMDT 6...
08/20/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	6/6358	ILS RWY 17L, ORIG...
08/20/96	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	6/6359	ILS RWY 35R, ORIG...
08/21/96	AK	Anchorage	Anchorage Intl	6/6371	ILS/DME RWY 14, ORIG...
08/21/96	CA	Palo Alto	Palo Alto Arpt of Santa Clara Co	6/6375	GPS RWY 30 ORIG...
08/21/96	CT	Windsor Locks	Bradley Intl	6/6385	ILS RWY 24 AMDT 7...
08/21/96	CT	Windsor Locks	Bradley Intl	6/6386	VOR RWY 15, ORIG...
08/22/96	MS	Jackson	Jackson Intl	6/6407	ILS RWY 15L AMDT 7A...
08/22/96	MS	Jackson	Jackson Intl	6/6408	NDB OR GPS RWY 15L AMDT 4...

ANCHORAGE

ANCHORAGE INTL
Alaska
ILS/DME RWY 14 ORIG...
FDC Date: 08/21/96
FDC 6/6371/ANC/ FI/P ANCHORAGE INTL, ANCHORAGE, AK. ILS/DME 14 ORIG...S–ILS 14... VIS CAT A–D ¾. THIS IS ILS/DME RWY 14 ORIG A.

PALO ALTO

PALO ALTO ARPT OF SANTA CLARA CO
California
GPS RWY 30 ORIG...
FDC Date: 08/21/96
FDC 6/6375/PAO/ FI/P PALO ALTO ARPT OF SANTA CLARA CO, PALO ALTO, CA. GPS RWY 30 ORIG...DELETE NOTE... PROC NA AT NIGHT. THIS IS GPS RWY 30 ORIG-A.

WINDSOR LOCKS

BRADLEY INTL
Connecticut
ILS RWY 24 AMDT 7...
FDC Date: 08/21/96
FDC 6/6385/BDL/ FI/P BRADLEY INTL, WINDSOR LOCKS, CT. ILS RWY 24 AMDT 7...CHANGE MISSED APPROACH TO READ...CLIMB TO 3000 VIA BDL VOR/DME R–229 TO DITTI INT/BDL 10.3 DME AND HOLD. THIS IS ILS RWY 24 AMDT 7A.

WINDSOR LOCKS

BRADLEY INTL
Connecticut
VOR RWY 15 ORIG...
FDC Date: 08/21/96
FDC 6/6386/BDL/ FI/P BRADLEY INTL, WINDSOR LOCKS, CT. VOR RWY 15 ORIG...CHANGE MISSED APPROACH TO READ...CLIMB TO 3000 VIA BDL VOR/DME R–149 TO DODAY INT/BDL 11.2 DME AND HOLD. THIS IS VOR RWY 15 ORIG-A.

ATLANTA

PEACHTREE CITY-FALCON FIELD
Georgia
NDB RWY 31 AMDT 1...
FDC Date: 07/25/96
THIS NOTAM CORRECTS 6/5239 IN TL 96–18
FDC 6/5239/FFC/ FI/P PEACHTREE CITY-FALCON FIELD, ATLANTA, GA. NDB RWY 31 AMDT 1...CHANGE ALTIMETER NOTE TO READ...IF LOCAL ALTIMETER SETTING NOT RECEIVED, USE ATLANTA ALTIMETER SETTING AND INCREASE ALL MDAS 80 FT. DELETE...ATLANTA ALTIMETER SETTING MINIMUMS BLOCK.

MARIETTA

COBB COUNTY-MCCOLLUM FIELD
Georgia
VOR/DME OR GPS RWY 9 ORIG-A...
FDC Date: 08/16/96
FDC 6/6161/RYY/ FI/P COBB COUNTY-MCCOLLUM FIELD, MARIETTA, GA. VOR/DME OR GPS RWY 9 ORIG-A...CHANGE ALTM NOTE TO READ...IF LOCAL ALSTG NOT RECEIVED, USE FULTON COUNTY/BROWN FIELD ALSTG AND INCREASE ALL MDA'A 80 FEET. THIS IS VOR/DME OR GPS RWY 9 ORIG-B.

OSCODA

OSCODA-WURTSMITH
Michigan
VOR OR GPS RWY 6, ORIG...
FDC Date: 08/16/96
FDC 6/6163/OSC/ FI/P OSCODA-WURTSMITH, OSCODA, MI. VOR OR GPS RWY 6, ORIG...PROFILE NOTE...DELETE *1760 WHEN USING ALPENA ALSTG. THIS IS VOR OR GPS RWY 6 ORIG-A.

JACKSON

JACKSON INTL
Mississippi
LOC BC RWY 15R AMDT 4...
FDC Date: 08/19/96
FDC 6/6274/JAN/ FI/P JACKSON INTL, JACKSON, MS. LOC BC RWY 15R AMDT 4...RWY 33L–15R NOW RWY 34L–16R. CHANGE ALL REFERENCES FROM 33L TO 34L AND 15R TO 16R. THIS IS LOC BC RWY 15R AMDT 4A.

JACKSON

JACKSON INTL
Mississippi
ILS RWY 33L AMDT 4...
FDC Date: 08/19/96
FDC 6/6275/JAN/ FI/P JACKSON INTL, JACKSON, MS. ILS RWY 33L AMDT 4...RWY 33L–15R NOW RWY 34L–16R. CHANGE ALL REFERENCES FROM 33L TO 34L AND 15R TO 16R. THIS IS ILS RWY 34L AMDT 4A.

JACKSON

JACKSON INTL
Mississippi
ILS RWY 15L AMDT 7A...
FDC Date: 08/22/96
FDC 6/6407/JAN/ FI/P JACKSON INTL, JACKSON, MS. ILS RWY 15L AMDT 7A...RWY 15L–33R NOW RWY 16L–34R. CHANGE ALL REFERENCES FROM 15L TO 16L AND 33R TO 34R. THIS IS ILS RWY 16L AMDT 7B.

JACKSON

JACKSON INTL
Mississippi
NDB OR GPS RWY 15L AMDT 4...
FDC Date: 08/22/96
FDC 6/6408/JAN/ FI/P JACKSON INTL, JACKSON, MS. NDB OR GPS RWY 15L AMDT 4...RWY 15L–33R NOW RWY 16L–34R. CHANGE ALL REFERENCES FROM 15L TO 16L AND 33R TO 34R. THIS IS NDB OR GPS RWY 16L AMDT 4A.

RUTHERFORDTON

RUTHERFORDTON COUNTY
North Carolina
NDB RWY 1, AMDT 4B...
FDC Date: 08/08/96
FDC 6/5824/57A/ FI/P RUTHERFORDTON COUNTY, RUTHERFORDTON, NC. NDB RWY 1, AMDT 4B...REVISED MISSED APPROACH TO READ...CLIMB TO 2000 THEN CLIMBING LEFT TURN TO 3000 DIRECT RFE NDB AND HOLD. THIS IS NDB RWY 1 AMDT 4C.

LEBANON

LEBANON MUNI
New Hampshire
ILS RWY 18 AMDT 3...
FDC Date: 08/13/96
THIS REPLACES NOTAM 6/5297 LEB
FDC 6/5996/LEB/ FI/P LEBANON MUNI/ LEBANON, NH. ILS RWY 18 AMDT 3...ADD NOTE...WHEN CONTROL TOWER CLOSED, EXCEPT FOR OPERATORS WITH APPROVED WEATHER REPORTING SERVICE PROC NA. THIS IS ILS RWY 18, AMDT 3A.

LEBANON

LEBANON MUNI
New Hampshire
VOR OR GPS RWY 25 ORIG...
FDC Date: 08/13/96
THIS REPLACES NOTAM 6/5251 LEB
FDC 6/5997/LEB/ FI/P LEBANON MUNI, LEBANON, NH. VOR OR GPS RWY 25 ORIG...ADD NOTE...WHEN CONTROL TOWER CLOSED, EXCEPT FOR OPERATORS WITH APPROVED WEATHER REPORTING SERVICE, PROC NA. THIS IS VOR OR GPS RWY 25, ORIG–A.

LEBANON

LEBANON MUNI
New Hampshire
VOR/DME OR GPS RWY 7, ORIG...
FDC Date: 08/13/96
THIS REPLACES NOTAM 6/5250 LEB
FDC 6/5999/LEB/ FI/P LEBANON MUNI, LEBANON, NH. VOR/DME OR GPS RWY 7, ORIG...ADD NOTE...WHEN CONTROL TOWER CLOSED, EXCEPT FOR OPERATORS WITH APPROVED WEATHER REPORTING SERVICE, PROC NA. THIS IS NOR/DME OR GPS RWY 7 ORIG–A.

NEW YORK

JOHN F. KENNEDY INTL
New York
ILS RWY 4L AMDT 8...
FDC Date: 07/17/96
FDC 6/4927/JFK/ FI/P JOHN F. KENNEDY INTL, NEW YORK, NY. ILS RWY 4L AMDT 8...DH 223/HAT 211 ALL CATS. CIRCLING MDA 640/HAA 627 ALL CATS, CAT C VIS 1 3/4. ALTN MNMS ILS 700–2. THIS IS ILS RWY 4L AMDT 8A.

DURANT

EAKER FIELD
Oklahoma
NDB OR GPS RWY 35, AMDT 5...
FDC DATE: 08/20/96
FDC 6/6355/DUA/ FI/P EAKER FIELD, DURANT, OK. NDB OR GPS RWY 35, AMDT 5...DELETE TERMINAL ROUTE FROM BLUE RIDGE /BUJ/ VORTAC. DELETE TERMINAL ROUTE FROM RADEX INTERSECTION. THIS IS NDB OR GPS RWY 35, AMDT 5A.

SAN JUAN

LUIS MUNOZ MARTIN INTL
Puerto Rico
NDB RWY 8 AMDT 7...
FDC Date: 08/16/96
FDC 6/6158/SJU/ FI/P LUIS MUNOZ MARIN INTL, SAN JUAN, PR. NDB RWY 8 AMDT 7...MISSED APCH...CLIMB TO 2000 THEN CLIMBING LEFT TURN TO 3000 VIA SJU R–004 TO CARIB INT/SJU 15 DME AND HOLD N RT 184 INBOUND. THIS BECOMES NDB RWY 8 AMDT 7A.

SAN JUAN

LUIS MUNOZ MARIN INTL
Puerto Rico
VOR RWY 8/10 AMDT 9...
FDC Dare: 08/16/96
FDC 6/6159/SJU/ FI/P LUIS MUNOZ MARIN INTL, SAN JUAN, PR. VOR RWY 8/10 AMDT 9...MISSED APCH...CLIMB TO 2000 THEN CLIMBING LEFT TURN TO 3000 VIA SJU R–004 TO CARIB INT/SJU 15 DME AND HOLD N RT 184 INBOUND. THIS BECOMES VOR RWY 8/10 AMDT 9A.

SAN JUAN

LUIS MUNOZ MARIN INTL
Puerto Rico
VOR OR GPS RWY 26 AMDT 18...
FDC Date: 08/16/96
FDC 6/6160/SJU/ FI/P LUIS MUNOZ MARIN INTL, SAN JUAN, PR. VOR OR GPS RWY 26 AMDT 18...MISSED APCH...CLIMB TO 2000 THEN CLIMBING RIGHT TURN TO 3000 VIA SJU R–004 TO CARIB INT/SJU 15 DME AND HOLD N RT 184 INBOUND. THIS BECOMES VOR OR GPS RWY 26 AMDT 18A.

SAN JUAN

LUIS MUNOZ MARIN INTL
Puerto Rico
NDB RWY 10 AMDT 5...
FDC Date: 08/16/96
FDC 6/6189/SJU/ FI/P LUIS MUNOZ MARIN INTL, SAN JUAN, PR. NDB RWY 10 AMDT 5...MISSED APCH...CLIMB TO 2000 THEN CLIMBING LEFT TURN TO 3000 VIA SJU R–004 TO CARIB INT/SJU 15 DME AND HOLD N RT 184 INBOUND. THIS BECOMES NDB RWY 10 AMDT 5A.

SAN JUAN

LUIS MUNOZ MARIN INTL
Puerto Rico
ILS RWY 8 AMDT 15...
FDC Date: 08/16/96
FDC 6/6190/SJU/ FI/P LUIS MUNOZ MARIN INTL, SAN JUAN, PR. ILS RWY 8 AMDT 15...MISSED APCH...CLIMB TO 2000 THEN CLIMBING LEFT TURN TO 3000 VIA SJU R–004 TO CARIB INT/SJU 15 DME AND HOLD N RT 184 INBOUND. THIS BECOMES ILS RWY 8 AMDT 15A.

SAN JUAN

LUIS MUNOZ MARIN INTL
Puerto Rico
RNAV RWY 10 AMDT 7...
FDC Date: 08/16/96
FDC 6/6195/SJU/ FI/P LUIS MUNOZ MARIN INTL, SAN JUAN, PR. RNAV RWY 10 AMDT 7...MISSED APCH...CLIMB TO 2000 THEN CLIMBING LEFT TURN TO 3000 VIA SJU R–004 TO CARIB INT/SJU 15 DME AND HOLD N RT 184 INBOUND. THIS BECOMES RNAV RWY 10 AMDT 7A.

SAN JUAN

LUIS MUNOZ MARIN INTL
Puerto Rico
ILS RWY 10 AMDT 4...
FDC Date: 08/19/96
FDC 6/6286/SJU/ FI/P LUIS MONOZ MARIN INTL, SAN JUAN, PR. ILS RWY 10 AMDT 4...MISSED APPROACH... CLIMB TO 2000, THEN CLIMBING LEFT TURN TO 3000 VIA SJU R–004 TO CARIB INT/ SJU 15 DME AND HOLD N, RT, 184 INBOUND. THIS BECOMES ILS RWY 10 AMDT 4A.

PROVIDENCE

THEODORE FRANCIS GREEN STATE
Rhode Island
VOR/DME OR GPS RWY 23 AMDT 6...
FDC Date: 08/20/96
FDC 6/6349/PVD/ FI/P THEODORE FRANCIS GREEN STATE, PROVIDENCE, RI. VOR/DME OR GPS RWY 23 AMDT 6...S–23... MDA 440/ HAT 389 ALL CATS. VSBY CATS A/B/ C RVR 4000. CIRCLING... CATS A/B MDA 560/HAA 505. CHANGE NOTE TO READ... FOR INOP MALSR INCREASE S–23 CATS A/B/C VSBY TO RVR 5000. CAT D VSBY TO RVR 6000. THIS IS VOR/DME OR GPS RWY 23 AMDT 6A.

DARLINGTON

DARLINGTON COUNTY JETPORT
South Carolina
NDB OR GPS RWY 23, ORIG. DELETE NOTE...
FDC Date: 08/08/96
FDC 6/5838/04J/ FI/P DARLINGTON COUNTY JETPORT, DARLINGTON, SC. NDB OR GPS RWY 23, ORIG. DELETE NOTE... FIRST 1200 FT RWY 23 AND FIRST 800 FT RWY 5 NOT LIGHTED. THIS IS NDB OR GRPS RWY 23, ORIG–A.

DARLINGTON

DARLINGTON COUNTY JETPORT
South Carolina
VOR/DME OR GPS–A, AMDT 6. DELETE NOTE...
FDC Date: 08/08/96
FDC 6/5839/04J/FI/P DARLINGTON COUNTY JETPORT, DARLINGTON, SC.

VOR/DME OR GPS–A, AMDT 6. DELETE NOTE... FIRST 800 FT RWY 5 AND FIRST 1200 FT RWY 23 NOT LIGHTED. THIS IS VOR/DME OR GPS–A, AMDT 6A.

FORT STOCKTON

FORT STOCKTON-PECOS COUNTY
Texas
GPS RWY 12, ORIG...
FDC Date: 08/19/96
FDC 6/6279/FST/ FI/P FORT STOCKTON-PECOS COUNTY, FORT STOCKTON, TX. GPS RWY 12, ORIG... REMOVE NOTE... OBTAIN LOCAL ALTIMETER ON CTAF, WHEN NOT RECEIVED PROCEDURE NOT AUTHORIZED. THIS IS GPS RWY 12, ORIG–A.

FORT WORTH

FORT WORTH MEACHAM INTL
Texas
ILS RWY 34R, ORIG...
FDC Date: 08/19/96
FDC 6/6296/FTW/ FI/P FORT WORTH MEACHAM INTL, FORT WORTH, TX. ILS RWY 34R. ORIG... GLIDEPATH ALTITUDE AT FAF 1860. IN THE PROFILE VIEW, AT THE THRESHOLD, DELETE I–UXT 0.3 DME. THIS IS ILS RWY 34R, ORIG–A.

DALLAS-FORT WORTH

DALLAS-FORT WORTH INTL
Texas
ILS RWY 17L, ORIG...
FDC Date: 08/20/96
FDC 6/6358/DFW/ FI/P DALLAS-FORT WORTH INTL, DALLAS-FORT WORTH, TX. ILS RWY 17L, ORIG... TAKE-OFF MINIMUMS STANDARD. THIS IS ILS RWY 17L, ORIG–A.

DALLAS-FORT WORTH

DALLAS-FORT WORTH INTL
Texas
ILS RWY 35R, ORIG...
FDC Date: 08/20/96
FDC 6/6359/DFW/FI/P DALLAS-FORT WORTH INTL, DALLAS-FORT WORTH, TX. ILS RWY 35R, ORIG... TAKE-OFF MINIMUMS STANDARD. CHANGE S–LOC 35R HAT TO 464 ALL CATS. CHANGE TDZE TO 576 FT. THIS IS ILS RWY 35R, ORIG–A.

BLUEFIELD

MERCER COUNTY
West Virginia
ILS RWY 23 AMDT 14A...
FDC Date: 08/19/96
FDC 6/6306/BLF/FI/P MERCER COUNTY, BLUEFIELD, WV. ILS RWY 23 AMDT 14A... ALTN MNMS NA. THIS IS ILS RWY 23 AMDT 14B.

BLUEFIELD

MERCER COUNTY
West Virginia
VOR/DME OR GPS RWY 23 AMDT 4...
FDC Date: 08/19/96
FDC 6/6310/BLF/ FI/P MERCER COUNTY, BLUEFIELD, WV. VOR/DME OR GPS RWY 23 AMDT 4... ALTN MNMS NA WHEN CLASS E AIRSPACE NOT IN-EFFECT. THIS IS VOR/DME OR GPS RWY 23 AMDT 4A.

BLUEFIELD

MERCER COUNTY
West Virginia
VOR RWY 23 AMDT 8...
FDC Date: 08/19/96
FDC 6/6322/BLF/ FI/P MERCER COUNTY, BLUEFIELD, WV. VOR RWY 23 AMDT 8... ALTN MNMS NA WHEN CLASS E AIRSPACE NOT IN EFFECT. THIS IS VOR RWY 23 AMDT 8A.

[FR Doc. 96–22544 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28665; Amdt. No. 1748]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase— Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription— Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulation (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP

amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on August 23, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 917.213, 917.25, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * *Effective July 18, 1996*

Chico, CA, Chico Muni, ILS RWY 13L, Amdt 10

** * *Effective September 12, 1996*

Deadhorse, AK, Deadhorse, VOR/DME or TACAN RWY 4L, Orig
Deadhorse, AK, Deadhorse, VOR/DME or TACAN or GPS RWY 22L, Amdt 1

** * *Effective October 10, 1996*

Albertville, AL, The Albertville Muni-Thomas J. Brumlik Fld, GPS RWY 23, Orig
Brewton, AL, Brewton Muni, VOR/DME OR GPS RWY 30, Amdt 7
Carlisle, AR, Carlisle Muni, VOR/DME RWY 9, Amdt 1
Carlisle, AR, Carlisle Muni, GPS RWY 9, Orig
Newport, AR, Newport Muni, GPS RWY 36, Orig
Coolidge, AZ, Coolidge Muni, VOR/DME RWY 5, Orig
Coolidge, AZ, Coolidge Muni, GPS RWY 23, Orig
Phoenix, AZ, Phoenix-Deer Valley Muni, GPS RWY 7R, Orig
Oakland, CA, Metropolitan Oakland Intl, GPS RWY 11, Orig
Oakland, CA, Metropolitan Oakland Intl, GPS RWY 29, Orig
Washington, DC, Washington Dulles Intl, ILS/DME RWY 1L, Amdt 4
Boca Raton, FL, Boca Raton, GPS RWY 5, Orig
Marco Island, FL, Marco Island, VOR/DME OR GPS RWY 17, Amdt 6
Marco Island, FL, Marco Island, NDB OR GPS RWY 35, Amdt 6
Naples, FL, Naples Muni, VOR OR GPS RWY 5, Amdt 5
Naples, FL, Naples Muni, VOR OR GPS RWY 23, Amdt 6
Naples, FL, Naples Muni, NDB RWY 5, Amdt 7
Naples, FL, Naples Muni, NDB RWY 23, Amdt 8
Des Moines, IA, Des Moines Intl, ILS RWY 13L, Amdt 7
Marshfield, MA, Marshfield, NDB RWY 6, Amdt 4
Marshfield, MA, Marshfield, NDB OR GPS RWY 24, Amdt 1
Belmar-Farmingdale, NJ, Belmar/Allaire, LOC RWY 14, Orig
Belmar-Farmingdale, NJ, Belmar/Allaire, LOC/DME RWY 14, Orig, CANCELLED
Carlsbad, NM, Cavern City Air Trml, GPS RWY 21, Orig
Brockport, NY, Ledgedale Airpark, GPS RWY 28, Orig
Norwich, NY, Lt Warren Eaton, VOR/DME–A, Amdt 4
Norwich, NY, Lt Warren Eaton, GPS RWY 1, Orig
Norwich, NY, Lt Warren Eaton, VOR/DME RNAV OR GPS RWY 19, Amdt 2
Plattsburgh, NY, Clinton County, VOR/DME OR GPS–A, Amdt 1
Plattsburgh, NY, Clinton County, VOR OR GPS RWY 19, Amdt 2
Plattsburgh, NY, Clinton County, ILS RWY 1, Amdt 3
Weedsport, NY, Whitfords, VOR/DME–A, Orig
Albemarle, NC, Stanly County, GPS RWY 4, Orig
Beaufort, NC, Michael J. Smith Field, GPS RWY 14, Orig
Edenton, NC, Northeastern Rgnl, GPS RWY 1, Orig
Dickinson, ND, Dickinson Muni, VOR or GPS–A, Amdt 5
Dickinson, ND, Dickinson Muni, VOR/DME RNAV or GPS RWY 14, Amdt 5
Las Vegas, NV, North Las Vegas, GPS RWY 12, Orig
Las Vegas, NV, North Las Vegas, GPS RWY 30, Orig
Reno, NV, Reno/Tahoe Intl, ILS RWY 16R, Amdt 10
Oklahoma City, OK, Will Rogers World, ILS RWY 17L, Orig
Dalhart, TX, Dalhart Muni, GPS RWY 17, Orig
Dallas-Fort Worth, TX, Dallas-Fort Worth International, NDB OR GPS RWY 17R, Amdt 7
Dallas-Fort Worth, TX, Dallas-Fort Worth International, NDB OR GPS RWY 35C, Amdt 9
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 13R, Amdt 4
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 13R, Amdt 4
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 17R, Amdt 18
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 17R, Amdt 5
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 17C, Amdt 6
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 17C, Amdt 4
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 18R, Amdt 5
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 18R, Amdt 3
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 18L, Amdt 16
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 18L, Amdt 3
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 31R, Amdt 8
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 31R, Amdt 3
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 35L, Amdt 1
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 35L, Amdt 1
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 35C, Amdt 6
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 35C, Amdt 4

Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 36R, Amdt 2
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 36R, Amdt 1
Dallas-Fort Worth, TX, Dallas-Fort Worth International, ILS RWY 36L, Amdt 5
Dallas-Fort Worth, TX, Dallas-Fort Worth International, CONVERGING ILS RWY 36L, Amdt 3
Del Rio, TX, Del Rio Intl, GPS RWY 13, Orig
Forth Worth, TX, Luck Field, VOR/DME OR GPS–A, Amdt 1, CANCELLED
Levelland, TX, Levelland Muni, GPS RWY 17, Orig
Levelland, TX, Levelland Muni, GPS RWY 35, Orig
Longview, TX, Gregg County, RADAR–1, Amdt 3 CANCELLED
Palacios, TX, Palacios Muni, GPS RWY 13, Orig
Tyler, TX, Tyler Pounds Field, GPS RWY 31, Orig
Barre-Montpelier, VT, Edward F. Knapp State, NDB RWY 35, Amdt 3, CANCELLED
Barre-Montpelier, VT, Edward F. Knapp State, VOR RWY 35, Amdt 3
Barre-Montpelier, VT, Edward F. Knapp State, VOR/DME RWY 35, Amdt 1
Barre-Montpelier, VT, Edward F. Knapp State, ILS RWY 17, Amdt 5
Danville, VA, Danville Regional, VOR RWY 2, Amdt 13
Danville, VA, Danville Regional, VOR RWY 20, Amdt 1
Danville, VA, Danville Regional, ILS RWY 2, Amdt 2
Danville, VA, Danville Regional, GPS RWY 20, Orig
Richmond/Ashland, VA, Hanover County Muni, GPS RWY 16, Orig

* * * *Effective December 5, 1996*

Columbia, CA, Columbia, GPS RWY 35, Orig
Richlands, VA, Tazewell County, GPS RWY 25, Orig

* * * *Effective Upon Publication*

Greenville, SC, Donaldson Center, NDB or GPS RWY 5, Amdt 5
Greenville, SC, Donaldson Center, ILS RWY 5, Amdt 4

Note: The FAA published a Procedure in Docket No. 28657, Amdt No. 1745 to Part 97 of the Federal Aviation Regulations (Vol 61, FR No. 160, Page 42553, dated 16 August 1996 Section 97.25 Effective 10 Oct 96 which is hereby amended:

Change effective date to PROPOSED 10 OCT 96 for the following procedure:

Amarillo, TX, Amarillo Intl, LDA/DME RWY 22, Orig.

[FR Doc. 96–22543 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1215

RIN 2700–AA29

Tracking and Data Relay Satellite System (TDRSS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is revising Appendix A to reflect the estimated service rates in 1997 dollars for Tracking and Data Relay Satellite System (TDRSS) standard services, based on NASA escalation estimates. 14 CFR Part 1215 sets forth the policy governing the TDRSS services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved communications and tracking services to spacecraft in low earth orbit or to mobile terrestrial users such as aircraft or balloons.

EFFECTIVE DATE: September 5, 1996.

ADDRESSES: Network Operations Branch, Code 532, Goddard Space Flight Center, Greenbelt, Maryland 20770.

FOR FURTHER INFORMATION CONTACT: Roger Flaherty, 301–286–8422.

SUPPLEMENTARY INFORMATION: This regulation was first published in the **Federal Register** on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR Part 1215 has been amended by revising Appendix A to reflect the rate changes for the appropriate Calendar Years (CY). Since this revision of Appendix A to 14 CFR Part 1215 reflects the rate changes for CY 1997 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12866.

Due to the advent of commercial launch service customers, an addendum to Appendix A is required to reflect rates for service rendered under the Commercial Space Launch Act (CSLA). Due to statutory requirements, the rates are slightly different for CSLA customers.

List of Subjects in 14 CFR Part 1215

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

For reasons set out in the Preamble, 14 CFR Part 1215 is amended as follows:

PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

1. The authority citation for 14 CFR Part 1215 continues to read as follows:

Authority: Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended, 42 U.S.C. 2473; 49 U.S.C. 2601.

2. Appendix A is revised to read as follows:

Appendix A—Estimated Service Rates in 1997 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)

TDRSS user service rates for services rendered in CY–97 based on current projections in 1997 dollars are as follows:

1. *Single Access Service*—Forward command, return telemetry, or tracking, or any combination of these, the base rate is $184.00 per minute for non-U.S. Government users.

2. *Multiple Access Forward Service*—Base rate is $42.00 per minute for non-U.S. Government users.

3. *Multiple Access Return Service*—Base rate is $13.00 per minute for non-U.S. Government users.

Due to the advent of commercial launch service customers, an addendum will be required to reflect rates for service rendered under the Commercial Space Launch Act (CSLA). Due to statutory requirements, the rates are slightly different for CSLA customers.

CSLA customer rates:

1. *Single Access Service*—Base rate is $180 per minute for CSLA users.

2. *Multiple Access Forward Service*—Base rate is $39 per minute for CSLA users.

3. *Multiple Access Return Service*—Base rate is $13 per minute for CSLA users.

Dated: August 29, 1996.

David W. Harris,

Acting Associate Administrator for Space Communications.

[FR Doc. 96–22674 Filed 9–4–96; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 136, 137, and 139

[Docket No. 91N–100S]

RIN 0910–AA19

Food Standards: Amendment of Standards of Identity for Enriched Grain Products to Require Addition of Folic Acid; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Clarification.

SUMMARY: The Food and Drug Administration (FDA) is clarifying how it intends to implement regulations that it issued in March 1996 that require that, by January 1, 1998, certain standardized enriched grain products be fortified with folic acid, with respect to foods to which this substance is to be added or that include ingredients to which this substance is to be added. Given that the U.S. Public Health Service (PHS) has recommended that women of childbearing age consume at least 0.4 milligrams (mg) (400 micrograms (mcg)) of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects, FDA encourages firms to initiate the required fortification before the 1998 effective date of the regulations. To facilitate initiation of fortification for firms who elect to voluntarily fortify foods in a manner that is consistent with the new folic acid fortification requirements, the agency is unlikely to enforce the ingredient declaration and nutrition labeling requirements of the Federal Food, Drug, and Cosmetic Act (the act) with respect to this nutrient until after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

A. Folic Acid Requirements for Standardized Foods

In September 1992, PHS recommended that all women of childbearing age in the United States consume 0.4 mg (400 mcg) of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects (Ref. 2). In response to the PHS recommendation, FDA issued regulations in the **Federal Register** of March 5, 1996 (61 FR 8781), that require that by January 1, 1998, certain standardized enriched grain products be fortified with folic acid (hereinafter referred to as the 1996 fortification final rule). Affected foods are enriched bread, rolls, and buns (21 CFR 136.115); enriched flour (21 CFR 137.165); enriched self-rising flour (21 CFR 137.185); enriched corn meals (21 CFR 137.260); enriched farina (21 CFR 137.305); enriched rice (21 CFR 137.350); enriched macaroni products (21 CFR 139.115); enriched nonfat milk macaroni (21 CFR 139.122); and enriched noodle products (21 CFR 139.155) and, by cross-reference, the standards of identity for enriched bromated flour (21 CFR 137.160), enriched vegetable macaroni products (21 CFR 139.135), and enriched vegetable noodle products (21 CFR 139.165).

B. Effective Date

In the **Federal Register** of October 14, 1993 (58 FR 53305), FDA published a proposed rule entitled "Food Standards: Amendment of the Standards of Identity for Enriched Grain Products to Require Addition of Folic Acid" (hereinafter referred to as the 1993 fortification proposal). In the 1996 fortification final rule, FDA advised that many comments had expressed concern over the statement in the 1993 fortification proposal that the final rule would become effective 1 year after publication. The comments addressed both manufacturing and labeling issues. Comments explained that it would be difficult and impractical to synchronize the addition of a folic acid-fortified enriched cereal-grain product to a food with the availability of labels for that food that have been revised to declare folic acid in the ingredient statement and, where necessary, in the nutrition label. These comments pointed out that enrichment nutrients are generally not added to each product separately but are added, for example, to thousands of pounds of flour at the flour mill. The flour is sold to manufacturers as an ingredient, and this ingredient is used in many different products. Thus, the comments asserted that, as a matter of economic necessity, the enrichment of all products using the ingredient occurs at the same time, regardless of the availability of new labeling.

To resolve the problems of coordinating fortification with labeling, comments requested an effective date for the fortification requirement of 2 years or more from the date of publication of the final rule adopting that requirement. Further, comments pointed out that any less time to comply with the fortification requirement would create economic burdens on firms because large inventories of labels would have to be discarded. However, the comments did not provide data concerning the extent of the economic burdens from discarded label inventory. A few comments suggested that the agency permit folic acid to be added to the product without requiring declaration in the ingredient statement and the nutrition label.

In the preamble to the 1996 fortification final rule, FDA acknowledged the significance of the logistical concerns regarding label changes that must accompany the addition of folic acid to enriched cereal-grain products and the resultant addition of folic acid to the foods in which these products are used as ingredients. FDA stated that it was persuaded that it should provide 2 years for manufacturers to implement the label and formulation changes required by the 1996 fortification final rule. The agency concluded that a 2-year period should allow manufacturers time to exhaust current packaging inventory and to add folic acid to the statement of ingredients and nutrition label as other changes are made to update package labeling. Furthermore, the agency pointed out that a 2-year period is consistent with the amount of time given for implementation of the requirements of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). Thus, the effective date of this final rule was established as January 1, 1998.

The agency noted, however, that compliance with the requirements established in this final rule could begin immediately, provided that the label accurately reflects that folic acid has been added to the product. FDA explained that it would not permit folic acid fortification without label declaration because, traditionally, it has not permitted manufacturers who change their formulas by adding or deleting ingredients to use labels that do not reflect this fact. Furthermore, the agency believed that it was establishing an effective date that would provide manufacturers ample time to ensure that products enriched with folic acid are labeled in compliance with the regulations. The agency also reminded manufacturers that it considered stickers an acceptable means to correct labels.

C. Problems With Folate Labeling

After the March 1996 regulations requiring that standardized enriched

grain foods be fortified with folic acid were issued, the National Pasta Association (NPA) submitted a request (Ref. 1) that, at least until January 1, 2000, the agency permit folic acid addition to products without requiring declaration in the ingredient statement. NPA stated that such flexibility was urgently needed because, without it, manufacturers of all affected standardized enriched grain foods would suffer tremendous financial losses.

More specifically, NPA stated that pasta manufacturers would lose millions of dollars of label inventory. NPA advised that the logistical problems regarding label changes that must accompany folic acid fortification were not fully resolved by the agency's extension of the effective date until 1998 or by the agency's explicit permission for using stickering to correct ingredient lists on labels. NPA explained that the industry still faces high costs from labels that must be discarded, because coordinating folic acid fortification with labeling changes is a monumental task. NPA stated that once folic acid is added to a raw material that serves as an ingredient in food, all products using that material will include the substance, but it is not possible to change all labels for such products at the same time. Furthermore, because firms must regularly replenish label supplies, NPA stated that, without the requested labeling flexibility, firms would face losing the same level of label inventory, regardless of when the regulations take effect. NPA stated that its members had advised that about 5,000 pasta products would have label inventories costing more than $27 million that would have to be discarded when the regulations take effect.

In addition, NPA advised that using stickering to correct ingredient lists on labels would not resolve logistical problems regarding label changes because many companies would have to purchase special machines for stickering. A machine would have to be purchased for each packaging line, and pasta manufacturers typically have multiple packaging lines. NPA stated that each machine would cost about $10,000. In addition to these costs, NPA stated that production problems would be created by stickering. NPA explained that it is generally not practicable to cover the ingredient statement on pasta packaged in a folding carton because of the high speed of the cartoners and the manner in which the cartons are oriented as they move through the packaging line. Stickers would have to be applied to cartons before they enter the packaging line with significant loss of packaging efficiency. Production could be drastically reduced.

NPA explained that stickering would also not be practicable on pasta packaged in bags because stickers cannot be affixed to the package film without making the film significantly thicker. A thicker film could not be wound tightly on the packaging spool. Also, the stickers would not move smoothly through the forming tubes on the baggers. If manufacturers tried to sticker the bags after filling, they could not reliably cover existing ingredient information, given the speed of the packaging line and the fact that the bags are neither flat nor consistently oriented after they are filled.

Furthermore, NPA asked whether the effective date ultimately designated for fortification of standardized enriched grain products would apply to products labeled on or after that date or to products introduced into interstate commerce on or after that date. NPA suggested that the agency should adopt the former approach for consistency with the effective date established in the 1990 amendments, ease of enforcement, equity between small and large manufacturers, and maximization of cost savings derived from a delayed effective date.

II. The Agency's Position

Given the more specific information that was provided by NPA regarding folic acid label changes, the logistical problems with these changes, and the costs associated with label inventories that would have to be discarded, FDA has reviewed its position regarding the effective date of these regulations. FDA recognizes that its allowance, without label flexibility, of nearly 2 years for compliance with the fortification requirements did not resolve significant problems associated with formulation and label changes, and that there are significant reasons for flexibility in label declaration of folate content, at least pending the effective date of the regulations requiring fortification. These reasons are listed as follows:

(1) Among firms that add folic acid to their foods themselves (e.g., flour manufacturers), the raw material is commonly fortified in large batches, and the fortified material is then used in numerous products. Because each product requires at least one label (e.g., often a firm will pack one product for several companies, each of which uses a different label), numerous labels will have to be corrected once fortification begins. If all these labels have to be changed at once, existing label inventories would have to be discarded. Even if it were possible to change all (perhaps hundreds) labels at once, firms would logically postpone fortification as long as possible to allow for depletion of label inventory.

(2) For firms that do not themselves perform all folic acid fortification of the ingredients in the products they manufacture, the logistics of coordinating label changes with fortification are even more complicated. These firms have little or no control over when the fortification of ingredients with folic acid is to begin. Suppliers of ingredients that are to be fortified with folic acid are likely to initiate fortification at different times. In many, if not most, situations, firms may be advised of the fortification only through the ingredient list that comes from the supplier. Firms will thus have significant difficulty anticipating when label stocks that do not list folic acid as an ingredient will have to be depleted. Firms also will have difficulty anticipating how far in advance of the 1998 effective date new label stocks will be needed. Thus, many firms will likely incur costs associated with discarding label stocks. Also, where suppliers fortify early, some firms may not have new label stocks that appropriately reflect the composition of their food.

(3) Where firms purchase an enriched ingredient from multiple suppliers, planning for depletion of old label stock and for acquiring new label stock will present particular problems. Some ingredient shipments may be fortified with folic acid, others may not. Consequently, such firms will be faced with having to switch back and forth between old and new label stocks. Where enriched ingredient shipments are pooled into an automatic bulk handling system, folic acid-enriched and non-folic acid-enriched ingredients will be commingled. The commingled ingredient may not conform to fortification requirements, and both old and new label stocks may be inappropriate as a result.

(4) NPA has presented logical reasons why stickering will not provide a practicable way to correct lists of ingredients and nutrient declarations on old labels because of adverse impact on manufacturing productivity.

(5) NPA has provided data concerning the extent of the economic burden from discarded label inventory in the pasta industry. For that industry, the costs appear to be substantial. Pasta manufacturers are not likely to be the only firms affected by the problems associated with the folic acid label changes and the logistical problems and costs associated with these changes. Thus, costs from discarded label inventory may be much higher than the

$27 million that NPA estimated. Such costs will surely be passed on to consumers.

Although NPA has demonstrated that significant problems will be presented by the transition to fortification of enriched grains with folic acid, it has not explained why the effective date should be changed from January 1, 1998, to January 1, 2000. If firms have flexibility to use existing label stocks that do not have folic acid ingredient labeling until January 1, 1998, most of the cost burdens on these firms should be eliminated. The only continuing concern would be if label suppliers could not meet the demand for new labels by January 1, 1998. However, neither NPA nor the comments on the 1993 fortification proposal indicated that large numbers of firms would be faced with such a situation. To the contrary, the agency knows of no reason why most firms cannot acquire new label stocks by that date.

On May 23, 1996, the March of Dimes wrote to FDA that the desire to begin to fortify early was widespread in the industry, but that many firms were not doing so because fortifying their foods would mean that they could not use up existing label stocks (Ref. 3). The March of Dimes suggested that if the agency provided flexibility in the use of label supplies, it would make it more likely that firms would proceed with folic acid fortification at an earlier date, thereby helping to reduce a woman's risk of having a pregnancy affected with spina bifida or other neural tube defects.

Given this significant benefit from folic acid fortification and the significant difficulties in label modification as folic acid is being phased into enriched grain products, FDA advises that, until the amendments to the standards of identity for enriched grain products are effective on January 1, 1998, it is unlikely to take regulatory action against enriched grain products, or products that contain enriched grain products, because the ingredient list in the labeling of such foods fails to include folic acid, or because the nutrition label fails to accurately declare the level of folate, unless folate claims are made for the product. If folate claims are made FDA will expect the food to comply fully with all applicable labeling requirements.

With respect to NPA's request for clarification of the applicability of the effective date, FDA advises that the January 1, 1998, effective date for fortification of standardized enriched grain products applies to the date such products are initially introduced into interstate commerce. FDA does not agree with the NPA suggestion that the effective date should be tied to the date that products are labeled. The agency has for many years used the date of initial introduction into interstate commerce as the effective date for compliance with regulations. Using the date of initial introduction into interstate commerce is a more efficient enforcement approach because this date is easier to determine (e.g., from shipping documents) than the date the food was labeled (from manufacturers' records). Even though the effective date established by the 1990 amendments was the date on which the label was applied to the food, there is no indication in that law or its legislative history that Congress intended that provision to change FDA's approach to effective dates for other labeling requirements from the one the agency has traditionally used.

III. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Centers for Disease Control and Prevention, "Recommendations for the Use of Folic Acid to Reduce the Number of Cases of Spina Bifida and Other Neural Tube Defects," in *Morbidity and Mortality Weekly Reports*, 41, 1–7, 1992.

2. Kinnaird, Jula J., letter to F. Edward Scarbrough, April 18, 1996.

3. Howse, Jennifer L., letter to Secretary Donna Shalala, May 23, 1996.

Dated: August 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22606 Filed 9–04–96; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 177

[Docket No. 84F–0330]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a copolymer of ethyl acrylate, methyl methacrylate, and methacrylamide in combination with melamine-formaldehyde resin as a coating for polyethylene phthalate films intended for use in contact with food. This action is in response to a petition filed by ICI Americas, Inc.

DATES: Effective September 5, 1996; written objections and requests for a hearing by October 7, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of October 26, 1984 (49 FR 43111), FDA announced that a food additive petition (FAP 4B3786) had been filed by ICI Americas, Inc., Wilmington, DE 19897. The petition proposed that the food additive regulations be amended to provide for the safe use of a copolymer of ethyl acrylate, methyl methacrylate, and methacrylamide in combination with melamine-formaldehyde resin for use in contact with food in coatings for polyethylene phthalate films as defined by § 177.1630(a) (21 CFR 177.1630(a)).

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted ethyl acrylate, 1,4-dioxane, and ethylene oxide, all of which are carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethyl acrylate, 1,4-dioxane, and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

II. Determination of Safety

Under the so-called "general safety clause" of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer or Delaney clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

III. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, a copolymer of ethyl acrylate, methyl methacrylate, and methacrylamide in combination with melamine-formaldehyde resin, will result in exposure to the additive of no greater than 50 parts per billion (ppb) in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and has determined that these data support the safety of the additive under the intended conditions of use.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime risk presented by the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Ethyl Acrylate

FDA has estimated the hypothetical worst-case exposure to ethyl acrylate from the petitioned use of the additive in coatings for polyethylene phthalate films to be 8 parts per trillion (ppt) of the daily diet or 24 nanograms per person per day (ng/person/day) (Refs. 1 and 3). The agency used data from the National Toxicology Program report (No. 259:1986), a bioassay on ethyl acrylate, to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 4). The results of the bioassay demonstrated that ethyl acrylate was carcinogenic for rats and mice under the conditions of the study. The test material induced squamous cell neoplasms in both sexes of F344/N rats and B6C3F1 mice when administered by gavage in corn oil.

Based on the estimated worst-case exposure to ethyl acrylate of 24 ng/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from exposure to ethyl acrylate from the use of the subject additive is 1.9×10^{-9} (or 2 in 1 billion) (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure, the actual lifetime-averaged individual exposure to ethyl acrylate is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethyl acrylate would result from the proposed use of the additive.

B. Ethylene Oxide

FDA has estimated the hypothetical worst-case exposure to ethylene oxide from the petitioned use of the additive in coatings for polyethylene phthalate films to be 0.04 ppt of the daily diet or 0.12 ng/person/day (Refs. 1 and 3). The agency used data from a carcinogenesis bioassay on ethylene oxide, conducted for the Institute of Hygiene, University of Mainz, Germany, to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 6). The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinoma in situ of the glandular stomach.

Based on the estimated worst-case exposure to ethylene oxide of 0.12 ng/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from exposure to ethylene oxide from the use of the subject additive is 2.2×10^{-10} (or 2 in 10 billion) (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure, the actual lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

C. 1,4-Dioxane

FDA has estimated the hypothetical worst-case exposure to 1,4-dioxane from the petitioned use of the additive in coatings for polyethylene phthalate films to be 0.04 ppt of the daily diet or 0.12 ng/person/day (Refs. 1 and 3). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute, to estimate the upper-bound lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 7). The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the estimated worst-case exposure to 1,4-dioxane of 0.12 ng/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from exposure to 1,4-dioxane from the use of the subject additive is 4.2×10^{-12} (or 4 in 1 trillion) (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure, the actual lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

D. Formaldehyde

FDA's review of the subject petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years formaldehyde has been known to be a carcinogen by the inhalation route, but it concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal

turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 8) and a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 9). The Committee reviewed both studies and concluded, concerning the Soffritti study, "* * * that data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde" (Ref. 10). This conclusion is based on a lack of critical detail in the study, questionable histopathologic conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

E. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of ethyl acrylate, ethylene oxide, and 1,4-dioxane present as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which ethyl acrylate, ethylene oxide, and 1,4-dioxane may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to the impurities, even under worst-case assumptions, are very low, in the range of less than 4 in 1 trillion to 2 in 1 billion.

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive in coating polyethylene phthalate films is safe, that it will achieve its intended technical effect, and that the regulations in § 177.1630 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated September 20, 1984, from the Food Additive Chemistry Evaluation Branch (HFF–458), to the Petitions Control Branch (HFF–334), entitled "FAP 4B3786–ICI Americas, Inc. Copolymer coating for polyethylene phthalate films complying with § 177.1630(c). Submission dated 7/30/84 (Rohm & Haas)."

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in "Chemical Safety Regulation and Compliance," edited by F. Homburger, and J. K. Marquis, S. Karger, New York, pp. 24–33, 1985.

3. Memorandum dated October 30, 1992, from the Food and Color Additives Review Section (HFF–415), to the Indirect Additives Branch (HFF–335), concerning FAP 4B3786—ICI Americas, Inc.—exposures acrylamide and methacrylamide, ethyl acrylate, and formaldehyde.

4. "Carcinogenesis Studies of Ethyl Acrylate (CAS Reg. No. 140–88–5) in F–344/N Rats and B6C3F¹ Mice" (gavage studies), National Toxicology Program, Technical Report Series, No. 259, December 1986.

5. Memorandum, "Report of the Quantitative Risk Assessment Committee," July 1, 1993.

6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2–Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924–933, 1982.

7. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

8. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, vol. 5, No. 5:699–730, 1989.

9. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two-Year Drinking-Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

10. Memorandum of Conferences concerning "Formaldehyde," Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 7, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1630 is amended in paragraph (e)(4) by alphabetically adding a new substance to paragraph (iii) in the "List of Substances and Limitations" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *

(4) * * *

List of Substances and Limitations

* * * * *

(iii) * * *

Acrylic copolymers (CAS Reg. No. 30394–86–6): Prepared by reaction of ethyl acrylate (CAS Reg. No. 140–88–5), methyl methacrylate (CAS Reg. No. 80–62–6), and methyacrylamide (CAS Reg. No. 79–39–0) blended with melamine-formaldehyde resin (CAS Reg. No. 68002–20–0). For use in coatings for polyethylene phthalate films complying with paragraph (a) of this section.

* * * * *

Dated: August 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–22695 Filed 9–4–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Sulfadimethoxine/Ormetoprim Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The approved NADA provides for oral use of sulfadimethoxine/ormetoprim tablets in dogs for the treatment of certain bacterial skin and soft tissue infections (wounds and abscesses). The supplement adds the treatment of certain bacterial urinary tract infections. This product is limited to veterinary prescription use.

EFFECTIVE DATE: September 5, 1996

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 100–929, which provides for oral use of Primor® (sulfadimethoxine/ormetoprim) tablets in dogs for the treatment of urinary tract infections caused by *Escherichia coli*, *Staphylococcus* spp., and *Proteus mirabilis* susceptible to the combination of sulfadimethoxine/ormetoprim in addition to its approved use for skin and soft tissue infections (wounds and abscesses) caused by strains of *S. aureus* and *E. coli* susceptible to sulfadimethoxine/ormetoprim. This product is limited to use by or on the order of a licensed veterinarian. The supplement is approved as of August 5, 1996, and the regulations are amended in 21 CFR 520.2220d to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning August 5, 1996, because the supplement contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant. Marketing exclusivity applies only to use in treating urinary tract infections.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2220d [Amended]

2. Section 520.2220d *Sulfadimethoxine-ormetoprim tablets* is amended in paragraph (c)(2) by adding the phrase "and urinary tract infections caused by *Escherichia coli*, *Staphlococcus* spp., and *Proteus mirabilus*" after "*Escherichia coli*".

Dated: August 23, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–22694 Filed 9–4–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8029]

Furnishing Statements Required With Respect to Certain Substitute Payments; Correction

AGENCY: Internal Revenue Services (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 8029), which were published in the **Federal Register** on Wednesday, June 5, 1985 (50 FR 23676) relating to statements required to be furnished by brokers and information returns of brokers.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Donna Welch, (202) 622–4910, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 6042, 6045 and 6049 of the Internal Revenue Code.

Need for Correction

The final regulations (TD 8029) omitted instructions to remove § 1.6045–2T and the entry for the OMB control number. It is the intent of this document to make these removals as of the publication of the final regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Correcting Amendment to Regulations

Accordingly, 26 CFR parts 1 and 602 are corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6045–2T [Removed]

Par. 2. Section 1.6045–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by removing the entry for § 1.6045–2T from the table.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–22592 Filed 9–4–96; 8:45 a.m.]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[DEA–136C]

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Official

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Under delegated authority, the Deputy Administrator of the Drug Enforcement Administration (DEA), Department of Justice, is amending the Appendix to Subpart R of the Justice Department regulations to make a technical correction to reflect a change in the position classification series for DEA Diversion Investigators.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: On October 1, 1995, Drug Enforcement Administration Diversion Investigators were converted from the Office of Personnel Management position classification series 1810 to series 1801. Section 3(b) of the Appendix to Subpart R is being amended to reflect that change by removing the reference to series 1810 and replacing it with series 1801.

The Deputy Administrator certifies that this action will have no impact upon entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601). Pursuant to Executive Order 12866, this is not a significant regulatory action since it relates only to the organization of functions within DEA. Accordingly, it has not been reviewed by the Office of Management and Budget and does not require certification under Executive Order 12778. This action has been analyzed in accordance with Executive Order 12616. It has been determined that this matter has no federalism implications which would require preparation of a federalism assessment.

List of Subjects in 28 CFR Part 0

Authority Delegations (Government Agencies), Organizations and functions (Government Agencies).

For the reasons set forth above, and pursuant to the authority vested in the Deputy Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, title 28 of the Code of Federal Regulations, part 0, appendix to subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301: 28 U.S.C. 509, 510, 515–519.

2. In the Appendix to subpart R, Section 3(b) remove the words "series 1810" and replace them with the words "series 1801".

Dated: August 28, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–22707 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE94

Schedule for Rating Disabilities; Respiratory System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Respiratory System. The intended effect of this action is to update the respiratory portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances which have occurred since the last review.

DATES: This amendment is effective October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: As part of its first comprehensive review of the rating schedule since 1945, VA published a proposal to amend 38 CFR 4.96 and 4.97, which address the respiratory system. The proposal was published in the **Federal Register** of January 19, 1993 (58 FR 4962–69). Interested persons were invited to submit written comments on or before March 22, 1993. We received comments from Paralyzed Veterans of America, Disabled American Veterans, Veterans of Foreign Wars, the American Legion, several VA employees, and one member of the general public.

One commenter suggested a need for a zero percent level for all conditions.

On October 6, 1993, VA revised its regulation addressing the issue of zero percent evaluations (38 CFR 4.31) to authorize assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for a compensable evaluation are not met. In general, that regulatory provision precludes the need for zero percent criteria for every condition. VA believes that it is useful to include a zero percent evaluation only if it is necessary to give the rating board clear and unambiguous instructions on rating where it might otherwise be unclear whether commonly occurring minor findings warrant a zero percent or higher evaluation.

One commenter suggested that the proposed revision would discriminate against veterans whose initial evaluations would be assigned under a new and deliberalized schedule.

Significant medical advances have occurred since the last comprehensive review of the rating schedule, and it is appropriate to take these advances into account in revising the rating schedule. Doing so is, in fact, one of the primary reasons for conducting this review. In our judgment, veterans will not be discriminated against by having their disabilities evaluated under criteria which reflect the effects of those medical advances. For veterans evaluated under the former criteria, Congress amended 38 U.S.C. 1155 to prohibit a reduction in a veteran's disability rating because of a readjustment of the rating schedule

unless an improvement in the disability has been shown.

One commenter stated that rating schedule revisions appear to be based on optimum success in overcoming the effects of disease rather than average impairment.

VA disagrees. 38 U.S.C. 1155 directs that "ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations." The word "average," as used in the statute, refers to the "usual or normal kind, amount, quantity, rate, etc." ("Webster's New World Dictionary," Third College Edition). To the extent possible, we have based our changes on average or usual or normal courses of disease and recovery.

The previous schedule provided a two-year period of total evaluation following the cessation of treatment for malignant neoplasms of the respiratory tract (DC 6819). As with malignant neoplasms in other revised sections of the rating schedule, we proposed that a 100-percent rating continue following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, with a mandatory examination six months following cessation of treatment. Before any change in evaluation based upon the examination can be made, the provisions of § 3.105(e) must be implemented, and evaluation is made on residuals if there has been no metastasis or recurrence. We received a number of comments about that proposed change. One commenter said that six months is not a long enough convalescence.

We believe that an examination six months following the cessation of treatment affords sufficient time for convalescence and stabilization of residuals, particularly since the rule requires only an examination, not a reduction, at that time. If the results of that or any subsequent examination warrant a reduction in evaluation, the reduction will be implemented under the provisions of 38 CFR 3.105(e), which require a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The revised procedure, by requiring an examination, will not only assure that all residuals are documented, but also that the veteran receives timely notice of any proposed action and an expanded opportunity to present evidence showing that the proposed action should not be taken or should be mitigated. In our judgment, this method will better ensure that actual residual disabilities and recuperation times are taken into account because they will be documented on the required examination, and the veteran will have better opportunities to present evidence demonstrating the current level of disabilities.

We have revised the note under DC 6819 for the sake of clarity and consistency. We have added to the note a direction to rate on residuals, if there has been no local recurrence or metastasis, in order to make these provisions consistent with the revised provisions for malignancies of the genitourinary system. This is not a substantive change.

One commenter felt that applying § 3.105(e) will cause administrative problems and will significantly lengthen the period of a total evaluation when claims are received months or years after surgery. He felt that a retroactive increase to 100 percent simultaneously with the initiation of due process under § 3.105(e) to determine the extent of residual disability would be inconsistent.

Since § 3.105(e) applies only to reductions in "compensation payments currently being made," it does not apply where a total evaluation is assigned and reduced retroactively.

When the proposed rule was published, we cited improvements in the administration of chemotherapy and radiation therapy as one reason for eliminating a fixed convalescent period. One commenter requested that we justify our statement that chemotherapy has improved.

While the first effective drugs for treating cancer were introduced in the mid and late 1940's, the results were disappointing because responses were incomplete and of short duration, and doses were limited by toxicity ("Cecil Textbook of Medicine" 1118 (James B. Wyngaarden, M.D. et al. eds., 19th ed. 1992)). In 1945 there was only one drug known to be effective—nitrogen mustard. Today there are nearly 50 chemotherapeutic agents in use. The dose and frequency of administration of the newer agents often differ from those of earlier agents, and the actions of some of the newer agents are more targeted in their actions, so that side effects may be fewer and treatment shorter than before. In use since the 1960's, combination chemotherapy has also marked a turning point in the effective treatment of neoplastic disease ("Harrison's Principles of Internal Medicine" 1587 (Jean D. Wilson, M.D. et al. eds., 12th ed. 1991)).

Another commenter stated that the proposed changes in convalescence should be justified by medical experts or text citations and that our medical consultants should be named.

As part of the process of reviewing the rating schedule, we contracted with an outside consultant, Abt Associates Incorporated, to submit recommendations for revisions to those portions of the rating schedule dealing with the respiratory system. We also received advice and suggestions from physicians in the Veterans Health Administration, and we consulted standard medical and surgical textbooks, including "Harrison's Principles of Internal Medicine" (Jean D. Wilson, M.D. et al. eds., 12th ed. 1991), "Cecil Textbook of Medicine" (James B. Wyngaarden, M.D. et al. eds., 19th ed. 1992), and "The Merck Manual," (16th ed. 1992). The convalescent periods adopted in this change represent, in our judgment, based on sound medical advice, neither the longest nor the shortest periods that any individual patient might require for recovery, but the usual or normal periods during which a normal patient, under normal circumstances, would be expected to recover from a specific condition or surgical procedure. For the unusual case where a longer convalescence is needed, the provisions of §§ 4.29 and 4.30 allow an extension of convalescence.

One commenter said that the reductions in the revision appear to be on a purely economic basis.

This review was carried out from a medical perspective. Its purpose is to ensure that the rating schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances which have occurred since the last review. Cost cutting was not an issue.

One commenter suggested that we revise the title of DC 6522, allergic rhinitis, to "allergic or vasomotor rhinitis" because both conditions exhibit the same manifestations and are at times indistinguishable.

We agree and have revised the title of DC 6522 accordingly.

Another commenter, without giving his reasons, suggested that we combine DC's 6510 through 6514 (the codes for chronic pansinusitis, ethmoid sinusitis, frontal sinusitis, maxillary sinusitis, and sphenoid sinusitis) into a single code for sinusitis.

Retaining a separate code for each of the sinuses will allow statistical tracking of disease of individual sinuses. Since the commenter gave no reason for suggesting the change, and no substantial advantage to either the veteran or the rating board is evident, we have kept separate codes.

One commenter felt that subjective descriptors like "marked" under DC's 6522 (allergic rhinitis), 6523 (chronic rhinitis), and 6516 (laryngitis), and "abundant" in DC 6601 (bronchiectasis) in the proposed revision should be eliminated for the sake of objectivity.

VA agrees, and we have revised the criteria accordingly. In some cases we have simply removed subjective terms such as "marked" and "mild" when they did not substantively explain or clarify the evaluation criteria. In other cases, we have supplied objective definitions of terms. In still others, establishing more objective and unambiguous criteria required greater modification of the proposed criteria, and these changes will be discussed under the affected diagnostic codes.

In the case of chronic laryngitis (DC 6516), removing "marked" and "moderate" required additional changes in the criteria to distinguish the 10- and 30-percent levels. We proposed a ten-percent evaluation for moderate hoarseness with inflammation of cords or mucous membrane and a thirty-percent evaluation for marked hoarseness with pathological changes such as inflammation of cords or mucous membrane, thickening or nodules of cords, or submucous infiltration. We have revised the requirements for a ten-percent evaluation to hoarseness with inflammation of cords or mucous membrane and for a thirty-percent evaluation to hoarseness with thickening or nodules of cords, polyps, submucous infiltration, or pre-malignant changes on biopsy. This clarifies the criteria for the given percentages.

For several conditions with nasal obstruction: septum, nasal, deviation of (DC 6502), allergic or vasomotor rhinitis (DC 6522), and bacterial rhinitis (DC 6523), we proposed a ten-percent evaluation if there is "marked" interference with breathing space. We replaced that subjective criterion with "more than 50-percent obstruction of nasal passage on both sides or complete obstruction on one side" for a ten-percent evaluation in all three conditions. This clarifies the criteria for the given percentages.

In the general rating formula for sinusitis, the criteria included such subjective terms as "severe symptoms," "frequently incapacitating recurrences," and "frequent severe headaches." We proposed a 100-percent evaluation for "following radical surgery with chronic osteomyelitis, or; severe symptoms after repeated surgeries." We proposed a 30-percent evaluation for "frequently incapacitating recurrences, and frequent severe headaches, and purulent discharge or crusting reflecting purulence." We proposed a ten-percent level for "infrequent headaches with discharge or crusting or scabbing." We have revised these criteria by specifying the frequency of incapacitating or non-incapacitating episodes of sinusitis per year and the specific symptoms for the various levels. For example, we changed the criteria for a 30-percent evaluation to a requirement for three or more incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment, or; more than six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting. The change is to clarify the criteria.

One commenter, while agreeing with the removal of ambiguous words such as "severe," urged that the rules not be made too concrete.

We believe that providing clear and objective criteria is the best way to assure that disabilities will be evaluated fairly and consistently. At the same time we are aware that there must be some flexibility in application of the criteria because patients do not commonly present as textbook models of disease. Rating boards are required to assess all the evidence of record before determining a disability evaluation and must use their judgment in determining, for example, which level of evaluation is more appropriate when there is conflicting information. Therefore, no matter how objective the criteria, an element of judgment in their application remains.

We proposed criteria for bronchiectasis (DC 6601) that included "severe" hemoptysis, "chronic" antibiotic usage, and "chronic recurrent" pneumonia. One commenter said that the words "severe," "chronic," and "chronic recurrent" are not objective and that in fact they are unnecessary.

VA agrees. However, simply eliminating those adjectives would not have left appropriate criteria, so we have revised the criteria to make them more objective. We have specified the required duration of incapacitating episodes of infection or frequency of antibiotic usage for each level of severity of bronchiectasis. At the 60- and 30-percent levels, we also provided alternative objective criteria based on such symptoms as cough, purulent sputum, and weight loss. Our change is to clarify the criteria for the evaluation of bronchiectasis.

The previous schedule used a variety of symptoms, signs, and X-ray findings to evaluate pulmonary diseases. We proposed that many be evaluated, at least in part, on criteria based on the results of pulmonary function tests (PFT's). One commenter, concerned that a single set of PFT's on a given day might not accurately represent the veteran's usual condition, recommended that VA place greater emphasis on interpreting examination reports in light of all evidence of record and require that test results be reviewed by a pulmonary disease specialist or by the medical specialist on the rating board.

Rating boards are required by § 4.2 to evaluate all evidence of record before assigning an evaluation. It is highly unlikely that the results of a single set of PFT's would be the only available evidence on which to evaluate the level of severity of a pulmonary condition. Current clinical information, treatment records, previous examination reports, and other laboratory results are generally available for consideration. Rating boards seek medical consultation when they feel it is necessary. The medical consultant to the rating board is readily available for information and advice, and the rating board may request an examination by a pulmonary disease specialist when it feels it is needed. It would be both impractical and unnecessary to consult with a pulmonary disease specialist on every case in which PFT's have been conducted.

One commenter suggested that the criteria in the previous rating schedule for evaluating respiratory diseases be retained as a backup for cases where pulmonary function testing is not available.

The equipment for carrying out PFT's is widely available, but if an examining facility is not equipped for the tests, the examination will need to be conducted at another facility, as is the case with other specialized testing, such as for vision or hearing. VA therefore does not believe retention of the previous criteria as backup is necessary.

Another commenter stated that pulmonary function testing is contraindicated in certain instances for medical reasons, such as a history of spontaneous pneumothorax, a hole in the tympanic membrane, or a recent history of active tuberculosis, and that provisions are therefore needed for evaluating these conditions when PFT's cannot be done.

The Veterans Health Administration has advised us that the medical conditions listed by the commenter do not contraindicate pulmonary function testing. The major limiting factor in carrying out such testing is the inability of some patients to follow directions, as

might occur, for example, in individuals who are severely ill following a stroke. Even in such individuals, the new criteria allow assignment of a total evaluation for respiratory disease because there are a number of criteria warranting a 100-percent evaluation, including cor pulmonale, right ventricular hypertrophy, and respiratory failure, that can be assessed without the need for patient cooperation. As under the previous criteria, for a small number of patients with a less severe respiratory disease, an evaluation may have to be deferred until pulmonary function testing is feasible.

Machines that are used for disability testing purposes must meet the calibration standards of The American Thoracic Society, which are internationally accepted. This assures that the basis of evaluations will be the most accurate and consistent measurements possible.

We proposed a 100-percent level of evaluation for larynx, stenosis of, (DC 6520) if there is either a Forced Expiratory Volume in one second (FEV–1) of less than 40-percent predicted, or a permanent tracheostomy, and a 60-percent evaluation if there is an FEV–1 of 40- to 55-percent predicted. We proposed a 100-percent evaluation for chronic bronchitis (DC 6600), pulmonary emphysema (DC 6603), chronic obstructive pulmonary disease (DC 6604) and restrictive lung diseases if there is an FEV–1 of less than 40-percent predicted, a ratio of FEV–1 to Forced Vital Capacity (FVC) less than 40-percent, a DLCO less than 40-percent predicted, maximum exercise capacity less than 15 ml/kg/min oxygen consumption, cor pulmonale (right heart failure), right ventricular hypertrophy, pulmonary hypertension, episode(s) of acute respiratory failure, or a requirement for outpatient oxygen therapy. We proposed a 60-percent evaluation for the same group of conditions if there is an FEV–1 of 40- to 55-percent predicted, an FEV–1/FVC of 40- to 55-percent, a DLCO of 40- to 55-percent predicted, or maximum oxygen consumption of 15 to 20 ml/kg/min. We proposed a 100-percent evaluation for bronchial asthma (DC 6602) if there is an FEV–1 less than 40-percent predicted, an FEV–1/FVC less than 40-percent, more than one attack per week with episodes of respiratory failure, or daily use of systemic high dose corticosteroids or immuno-suppressive medication, and a 60-percent evaluation if there is an FEV–1 of 40- to 55-percent predicted, an FEV–1 of 40- to 55-percent, at least monthly visits to a physician for exacerbations, or intermittent courses of systemic corticosteroids.

One commenter said that the levels of reduction of pulmonary function for the 60- and 100-percent evaluation levels of DC's 6520, 6600, 6602, 6603, 6604, and 6844 (one of the restrictive lung conditions) that we proposed are extreme and do not represent average impairments.

VA disagrees. The criteria we have provided for a 100-percent evaluation for these conditions are consistent with the criteria used by the American Thoracic Society for its "severely impaired (unable to meet the physical demands of most jobs)" category. This is not more stringent than the requirement for "dyspnea at rest" or "dyspnea on slight exertion," which were among the criteria for a 100-percent level of evaluation for many pulmonary conditions in the previous schedule. We also provided alternative requirements for a 100-percent evaluation, such as heart failure, that are consistent with criteria for this level in other sections of the rating schedule. The criteria we have provided for 60 percent are proportionately lower than those for the 100-percent level.

One commenter questioned what values will be assigned as normals in PFT's.

Normal values of PFT's, for VA purposes, are those that exceed the requirements for a 10-percent evaluation, and those levels are also consistent with the American Thoracic Society standards for normal values except in the case of the FEV–1/FVC ratio, where we include the 75- to 80-percent level in the criteria that warrant a ten-percent evaluation. Although the American Thoracic Society uses an evaluation of 75 percent as the normal level of the FEV–1/FVC ratio, two widely used medical textbooks use other normals: Cecil (374) uses "80 percent," and Harrison (1035) uses "approximately 75 to 80 percent." Therefore, our designation of over 80 percent as normal is consistent with current medical teaching.

The same commenter recommended that we specify that pulmonary function be tested before bronchodilatation in order to reflect ordinary conditions of life.

VA disagrees. The American Lung Association/American Thoracic Society Component Committee on Disability Criteria recommends testing for pulmonary function after optimum therapy. The results of such tests reflect the best possible functioning of an individual and are the figures used as the standard basis of comparison of pulmonary function. Using this standard testing method assures consistent evaluations.

One commenter stated that, while pulmonary function testing provides a very accurate picture of functional impairment of the respiratory system, compensation should be based on the limitation of earning capacity.

The determination of compensation based on limitation of earning capacity is not inconsistent with the use of objective PFT's. A major objective of the rating schedule revision is to provide criteria that are accurate, consistent, and unambiguous. The widespread use and acceptance of PFT's (American Thoracic Society, American Medical Association, etc.) indicates their value in assessing the severity of pulmonary diseases. Their usefulness lies in part in the fact that they correlate with the functional impairment that an individual experiences. The more severe the pulmonary disease, the more abnormal one or more PFT's are likely to be, and the more interference there is likely to be with occupational functioning. Using PFT's as a means of evaluation fulfills to as great an extent as is possible, the desire for evaluation criteria that allow accuracy and consistency and that are not ambiguous. The commenter offered no alternative suggestions for criteria to evaluate pulmonary disease.

One commenter felt that PFT's should be the exclusive basis for evaluating lung disorders because they are strictly objective.

VA disagrees. While we have used the results of pulmonary function tests as evaluation criteria when they are appropriate, they are not suitable for the evaluation of all lung conditions. Asthma, for example, is an episodic condition that may exhibit normal PFT's at most times despite significantly disabling disease, and it therefore requires other criteria for its evaluation, such as the need for a certain type or frequency of treatment.

One commenter, noting that we had proposed to assign most lung disorders (restrictive lung diseases, chronic bronchitis, asthma, emphysema, chronic obstructive pulmonary disease, and bronchiectasis) evaluation levels of 10, 30, 60, and 100 percent, but interstitial lung diseases levels of 0, 10, 40, 70, and 100 percent, said that it would be more logical and consistent to assign all lung conditions the same evaluation levels. Another commenter stated that lung conditions with similar impairments of lung functions should receive similar ratings. He suggested listing FEV–1, FVC, FEV–1/FVC, and DLCO under all lung diseases requiring PFT's, as recommended by the American

Thoracic Society and found in the AMA Guides.

Individual categories of pulmonary disorders often affect the results of one PFT more than another. Our non-VA panel of specialist consultants felt that FEV–1 and the ratio of FEV–1 to FVC are good indicators of the level of severity of many pulmonary diseases, but that the FVC and DLCO are more appropriate PFT's to evaluate interstitial diseases. The American Medical Association's "Guides to the Evaluation of Permanent Impairment," Third Edition, Revised (1990), says that "for interstitial lung disease, the FVC has proved to be a reliable and valid index of significant impairment," and it goes on to say that the DLCO is especially useful in detecting abnormalities that limit gas transference, such as emphysema or interstitial fibrosis of the lung parenchyma. A standard medical textbook (Cecil, 401), says that the ratio of FEV–1 to FVC may be normal or increased in interstitial disease. It is therefore not useful as a criterion to evaluate the severity of this type of disease. Our use of the proposed criteria is thus consistent with the effects of the various conditions on PFT's.

Regarding the comment about using the same evaluation levels for all lung disorders, VA agrees that there is no compelling reason to use evaluation levels for interstitial lung disease that differ from those used for the majority of other lung diseases. We have, therefore, for the sake of greater consistency, revised the criteria for interstitial lung disease by substituting 30- and 60-percent levels for the 40- and 70-percent levels. This required adjustments in the FVC and DLCO levels used as criteria, both because of the changed evaluation levels and to make them correspond with the PFT criteria for other pulmonary conditions. We also removed the zero-percent evaluation for consistency.

One commenter said that while an FEV–1 above 80 percent is considered normal in the proposed revision of the respiratory disease section of the rating schedule, the Veterans Health Administration's "Physician's Guide for Disability Evaluation Examinations" (a manual that gives guidance to examining physicians who do compensation and pension examinations) states that 83 percent is normal, and these figures are inconsistent.

The "Physician's Guide" is meant to insure that all necessary tests are performed and that all findings are provided for diagnosis and/or evaluation to meet the specific requirements of the Schedule for Rating Disabilities and related programs. It is available to VA and fee basis examiners conducting examinations for VA disability benefits. The current version of the Guide (revised 1994), which is computerized and no longer available in printed form, does not provide lists of normal PFT results. The examining physician is required to obtain PFT's where the criteria call for them but need not interpret the results since the criteria themselves contain the actual figures that warrant various evaluations. As with any examination, it is incumbent upon the rating board to return to the examiner reports that lack information necessary to apply the provisions of the rating schedule (see 38 CFR 4.2).

We proposed notes under DC's 6600 (chronic bronchitis), 6603 (pulmonary emphysema), 6604 (chronic obstructive pulmonary disease) and under the general rating formula for restrictive lung diseases outlining the requirements for home oxygen. One commenter said that the requirements for home oxygen are too specific and should be flexible enough to allow for a physician's assessment that the patient needs oxygen. Another commenter said that the term "home oxygen" is confusing because many use oxygen away from home and the requirement for oxygen may be temporary, pending stabilization or during an acute illness.

VA agrees that the decision to use home oxygen should be a medical, not a rating, decision, and we have therefore deleted the note explaining the technical requirements for home oxygen. We proposed that "meets requirements for home oxygen" be one of the criteria for the 100-percent level of the conditions listed above, but the preferred current term for such treatment is "outpatient oxygen therapy," and we have revised the language accordingly.

A commenter asked how VA will deal with results of PFT's from non-VA facilities that are at variance with VA test results.

This potential problem is not unique to the area of PFT's. Any laboratory test may show different results when performed on the same individual in the same facility at different times or when the same test is performed on the same individual at more than one facility. Rating boards are required to consider and reconcile all evidence of record, and at times they may seek additional testing or a medical opinion to help reconcile differences.

One commenter suggested we assign a minimum evaluation of 10 percent for any lung disorder if the patient must take daily medication.

VA disagrees. Because of the broad range of pulmonary conditions and medications used to treat them, a 10-percent evaluation would not necessarily be warranted in all cases on the basis of daily medication alone. For example, daily use of an expectorant or cough medicine would not necessarily be indicative of a condition warranting a ten-percent level of evaluation.

We proposed to add sarcoidosis (DC 6846) to the rating schedule with evaluation levels of 0, 30, and 60 percent. We received two comments about this change. One stated that while the criteria of pulmonary involvement with fever, weight loss, and night sweats requiring high dose systemic corticosteroids for control establish a 60-percent level of evaluation in the case of sarcoidosis, similar criteria (active infection with systemic symptoms such as fever, night sweats, weight loss, or hemoptysis) establish a 100-percent evaluation for bacterial infections of the lung (DC's 6822, 6823, and 6824). He felt that the criteria described should be considered totally disabling for both conditions.

VA agrees that some of the criteria we had proposed for the 60-percent level of sarcoidosis are more consistent with total disability. We have therefore revised the criteria for the 60-percent evaluation level and added a 100-percent evaluation level. We have made fever, night sweats, and weight loss part of the criteria for the 100-percent level and pulmonary disease requiring systemic high dose (therapeutic) steroids for control of the criterion for the 60-percent level. We also slightly revised the 30 percent criteria by adding "maintenance" in parentheses as a description of the steroid therapy and removed "mild" modifying symptoms because it is a subjective term, and whether maintenance or therapeutic doses of steroid are used makes a clearer differentiation of the level of severity.

The other commenter stated that it will be difficult to establish service connection for sarcoidosis on a presumptive basis if there is no ten-percent level, because presumptive service connection requires that a condition be manifest to a degree of ten percent or more within one year of discharge.

The evaluation levels we provide for various conditions are meant to reflect the ordinary levels of severity that may be seen in those conditions, and we do not provide ten-percent evaluation levels in order to aid presumptive service connection. The proposed evaluation criteria for sarcoidosis included 30- and 60-percent evaluation levels, and either of those levels would

establish presumptive service connection if present within one year of discharge. Sarcoidosis may also be evaluated under other criteria, however, as indicated in a note following the evaluation criteria. Therefore, a 10-percent level, as well as other levels of evaluation, may be assigned under DC 6600 (chronic bronchitis) based on the results of pulmonary function tests, or under skin disease, eye disease, etc., when there is extra-pulmonary involvement.

One commenter suggested that we add a diagnostic code and evaluation criteria for asbestosis. He suggested that we evaluate the condition based on its restrictive aspects, X-ray changes, and pleural changes.

VA agrees that asbestosis is a common enough disease in the veteran population to warrant its own diagnostic code. We have therefore removed asbestosis from the list of pneumoconioses in DC 6832 and have added asbestosis as DC 6833. It will be evaluated under the general rating formula for interstitial diseases, as recommended by our panel of consultants. The X-ray changes unique to asbestosis are not necessarily related to the degree of disability but are helpful in establishing the fact of asbestos exposure. They therefore relate more to the issue of service connection rather than to evaluation, and we have not made them part of the evaluation criteria. We have adjusted the numbering of the proposed diagnostic codes following asbestosis to accommodate the added condition. We have changed the proposed DC's for histoplasmosis of lung from 6833 to 6834, coccidioidomycosis from 6834 to 6835, blastomycosis from 6835 to 6836, cryptococcosis from 6836 to 6837, aspergillosis from 6837 to 6838, mucormycosis from 6838 to 6839, diaphragm paralysis or paresis from 6839 to 6840, spinal cord injury with respiratory insufficiency from 6840 to 6841, kyphoscoliosis, pectus excavatum, pectus carinatum from 6841 to 6842, traumatic chest wall defect, pneumothorax, hernia, etc., from 6842 to 6843, post-surgical residual from 6843 to 6844, chronic pleural effusion or fibrosis from 6844 to 6845, sarcoidosis from 6845 to 6846, and sleep apnea from 6846 to 6847.

One commenter asked why we have not proposed to rate the disfigurement and disability from radical neck surgery under respiratory disorders.

Radical neck surgery is not appropriate for inclusion in the respiratory system section of the rating schedule because it primarily results in loss of muscle tissue (of the neck), subcutaneous tissue, and lymph nodes. There is ordinarily no effect on the respiratory system from such surgery. Disability from this loss of tissue can be most appropriately evaluated under diagnostic codes in other sections, such as DC 5322 (Muscle Group XXII, muscles of the front of the neck) or DC 7800 (disfiguring scars of the head, face, or neck).

We proposed that injuries to the pharynx (DC 6521) have a single evaluation level of 50 percent based on the presence of stricture or obstruction of the pharynx or nasopharynx or on paralysis or absence of the soft palate. A commenter said that the resulting symptoms are severe enough to be considered 60-percent disabling, equivalent to complete organic aphonia (DC 6519) or stenosis of larynx (DC 6520), which have both 60- and 100-percent evaluation levels.

VA disagrees. The impairments from these three conditions differ because they are in different locations. The major effect of pharyngeal and palatal injuries is swallowing difficulty rather than respiratory difficulty, and any resulting speech impairment is not likely to approach the level of aphonia. (A 50-percent evaluation for these injuries is comparable to the 50-percent evaluation criteria in the digestive system for severe esophageal stricture, permitting passage of liquids only.) Laryngeal stenosis, on the other hand, causes both respiratory and speech impairment. However, if there is a case where the impairment from pharyngeal injury more closely resembles aphonia or the effects of laryngeal stenosis, an evaluation analogous to one of those conditions may be used instead (§ 4.20). In our judgment, the criteria and level of evaluation we have provided are appropriate for most pharyngeal injuries, and there are adequate provisions for evaluating those few that may be more severe.

Note (1) under the proposed general rating formula for inactive pulmonary tuberculosis stated that when a veteran is placed on the 100-percent rating for inactive tuberculosis, the medical authorities will be appropriately notified of the fact, and of the necessity under 38 U.S.C. 356 to notify the Adjudication Division in the event of failure to submit to examination or to follow prescribed treatment. A commenter said that the citation of 38 U.S.C. 356, repealed by Public Law 90–493, should be followed by a notation that it is to be found as footnote 1 to section 1156 of title 38, United States Code.

We agree and have revised the note accordingly.

One commenter felt that there is inequity in the evaluation criteria for laryngectomy and partial aphonia because if partial aphonia allows a person to whisper, the rating is 60 percent while if laryngectomy allows a person to whisper, the rating is 100 percent.

VA disagrees. Disability resulting from a laryngectomy is not comparable to partial aphonia with an intact larynx. In the case of laryngectomy, a significant organ has been removed which has functions beyond that of speech. The larynx acts as the sphincter guarding the gateway to the trachea, and a laryngectomy produces a serious compromise of the respiratory tract, requiring a permanent tracheostomy. Partial aphonia may result from any of several causes, including inflammatory and benign neoplastic conditions, but since they affect speech without affecting respiration, we have retained the evaluation criteria as proposed.

Another comment regarding total laryngectomy (DC 6518) and complete organic aphonia (DC 6519) was that there should be a footnote at these codes as a reminder to consider special monthly compensation (SMC), which may be awarded for complete organic aphonia under the provisions of 38 CFR 3.350.

In our judgment, the rating agency should refer directly to the complex and extensive regulations regarding special monthly compensation in § 3.350 whenever the question of special monthly compensation arises. However, in response to the comment, we have taken two steps to remind the rating board to consider the possibility of SMC. We added paragraph (c), "Special monthly compensation," to § 4.96 requiring the rating board to refer to § 3.350 any time it evaluates a claim involving complete organic aphonia; and we placed footnotes at DC's 6518 and 6519, conditions which may be associated with complete organic aphonia, instructing rating boards to review for entitlement to SMC. While those conditions clearly call for review for entitlement to SMC, there are other conditions in this portion of the rating schedule where there might also be entitlement to SMC. The lack of a footnote does not relieve the rating board of the responsibility of recognizing additional circumstances where SMC might be warranted. We believe that the combination of the regulatory requirement contained in the note and the footnotes is the best method of making sure that potential entitlement to SMC is considered.

In view of the addition of paragraph (c) to § 4.96, we have changed the title

of this section to "Special provisions regarding evaluation of respiratory conditions," which is more descriptive of its current contents.

The previous rating schedule had separate diagnostic codes and evaluations for pneumonectomy (60 percent under DC 6815) and lobectomy (50 percent if bilateral, and 30 percent if unilateral, under DC 6816). We proposed that all pulmonary post-surgical residuals, including lobectomy and pneumonectomy, be evaluated under DC 6843, post-surgical residual, as restrictive lung disease, based on the objective findings of PFT's. One commenter said this change is an arbitrary decrease because no advancement in medical science can change the degree of disability resulting from such surgery.

VA does not concur. Since there is an objective method to measure residual breathing impairment, it is more equitable to use that method so that evaluation of the residuals of any type of lung resection is made on the actual residuals found. The previous schedule did not provide evaluations for residuals more severe than the levels specified under those codes. It required, for example, that lobectomy be bilateral to qualify for a 50-percent level of impairment. Under the revised criteria, a veteran will be assigned an evaluation according to the level of disability reflected by the PFT's, whatever the extent of the surgery. This will assure that veterans with comparable residual pulmonary disabilities are consistently evaluated.

We proposed that chronic lung abscess (DC 6824) be evaluated under a general rating formula for bacterial infections of the lung and directed that post-surgical residuals and post-treatment fibrosis and scars be rated as chronic bronchitis (DC 6600). One commenter pointed out that there may be other types of residuals besides fibrosis and scars, such as thoracoplasty, lobectomy, or purulent pleurisy, and suggested that the residuals be rated as appropriate.

We agree, and have revised the statement under DC 6824 to read: "Depending on the specific findings, rate residuals as interstitial lung disease, restrictive lung disease, or, when obstructive lung disease is the major residual, as chronic bronchitis (DC 6600)."

The previous schedule called for a 100-percent rating for one year following the date of inactivity of active pulmonary tuberculosis (DC 6731). We proposed that once pulmonary tuberculosis becomes inactive, it be evaluated on the residual scar or fibrosis as chronic bronchitis (DC 6600). Three commenters objected to the change. One said that eliminating a period of convalescence when there is a new worldwide outbreak of tuberculosis is questionable, one said that the change is not justifiable, and one said that we should provide a period of readjustment because individuals have difficulty finding employment after release from treatment for tuberculosis.

On further consideration, VA agrees that some provision for readjustment is appropriate, and we have revised DC 6731 to require that a mandatory examination be requested immediately after notification that active tuberculosis has become inactive. Any change in evaluation will be carried out under the provisions of § 3.105(e). This will assure that a total evaluation will continue for at least several months, which will provide a period of readjustment, and will also assure that the extent of any residual impairment has been documented by examination.

The third commenter stated that the proposal to rate residual scar or fibrosis of inactive tuberculosis (DC 6731) as chronic bronchitis (DC 6600) is too restrictive because there may be other residuals.

We agree, and have revised the statement under DC 6731 to read: "Depending on the specific findings, rate residuals as interstitial lung disease, restrictive lung disease, or, when obstructive lung disease is the major residual, as chronic bronchitis (DC 6600). Rate thoracoplasty as removal of ribs under DC 5297."

We proposed separate diagnostic codes for chronic bronchitis (DC 6600), pulmonary emphysema (DC 6603), and chronic obstructive pulmonary disease (DC 6604), with evaluation under identical criteria. One commenter suggested a single diagnostic code, "chronic obstructive pulmonary disease (bronchitis or emphysema)," for all of these conditions, since the proposed criteria are essentially identical.

VA disagrees. While pulmonary emphysema, chronic obstructive pulmonary disease (COPD), and chronic bronchitis often coexist and are sometimes hard to differentiate, they are not synonymous. COPD ordinarily refers to a combination of chronic obstructive bronchitis and emphysema (Cecil, 389), but the term is not always used precisely. Emphysema may be localized or generalized, and is not always categorized as COPD. Since an individual may receive a diagnosis of any of the three conditions, it is useful to have a separate diagnostic code for each entity for statistical purposes and to aid the rating board in selecting appropriate evaluation criteria.

We proposed to add spinal cord injury with respiratory insufficiency (DC 6840) as one of six restrictive lung diseases to be evaluated under a general rating formula. One commenter, without explaining how the conditions differ or offering an alternative for us to consider, suggested that spinal cord injury with respiratory insufficiency not be evaluated as a restrictive lung disease because ventilator dependency secondary to spinal cord injury is distinct from other lung diseases.

VA disagrees. The panel of non-VA specialists convened by a contract consultant included spinal cord injury with respiratory insufficiency among the restrictive pulmonary diseases. Cecil (377), in discussing restrictive pulmonary disease, includes those conditions that affect the chest wall or respiratory muscles. We have provided alternative criteria for restrictive lung disease at each evaluation level, and if any one of the criteria for a particular level is present, that level of evaluation can be assigned. A wide range of respiratory conditions with a predominantly restrictive effect can therefore be evaluated under our criteria, even though one condition might be reflected in an abnormality of one PFT more than another. As a result, our criteria are broad enough to encompass any likely functional impairment spinal cord injury with respiratory insufficiency may produce.

The previous rating schedule provided a one hundred-percent evaluation for six months following spontaneous pneumothorax (now DC 6843). We proposed to provide a convalescent period of three months following total pneumothorax. We received two comments objecting to this proposal. One commenter said that our statement in the preamble to the proposed revision that pneumothorax resolves sooner than six months is not supported by medical evidence, and the other said that decreasing the convalescent period may impede full recovery.

VA disagrees. "The Merck Manual," (731, 16th ed. 1992), states that a small pneumothorax requires no special treatment and that the air is reabsorbed in a few days. It also says that full absorption of a larger airspace may take two to four weeks, a period which can be shortened by the use of a tube for drainage. Cecil (450), states that a small pneumothorax is reabsorbed in 7 to 14 days and that larger ones may be treated with a tube for 2 to 4 days if very large, under tension, or very symptomatic. A persistent or complicated pneumothorax

may require surgery, and in that case, the provisions of § 4.30(b)(2) allow the rating board to assign convalescence for up to a total of six months. Therefore, it is our judgment that three months of convalescence is adequate in the average case.

We received one comment on avoiding pyramiding, the prohibited practice of evaluating the same disability under various diagnoses (see 38 CFR 4.14). The commenter suggested that we direct that DC 6520, stenosis of larynx, not be combined with other codes in this section because the criterion for airflow obstruction due to stenosis of the larynx is similar to those for disease of bronchi or lungs.

Stenosis of the larynx may be evaluated on the basis of the results of pulmonary function tests, if there is respiratory impairment, or as aphonia, when interference with speech is the main impairment. Only in cases of laryngeal stenosis where respiratory impairment is the basis of evaluation would it be pyramiding to combine such an evaluation with the evaluation of another pulmonary condition. Therefore, a strict prohibition against combining evaluations for stenosis of the larynx with evaluations for pulmonary conditions is not warranted. The statement in § 4.96, paragraph (a), stipulating that when there is lung or pleural involvement, DC's 6819 and 6920 will not be combined with each other or with DC's 6600 through 6817 or 6822 through 6847 is sufficient to alert the rating board to possible problems of pyramiding when evaluating pulmonary conditions.

The same commenter additionally said that, to prevent pyramiding, VA should state that evaluations under DC's 6520 (stenosis of larynx), 6511, 6512, 6513, and 6514 (sinusitis in various locations) should not be combined with one another and likewise that evaluations under DC's 6522, 6523, and 6524 (rhinitis of various types) should not be combined with one another.

In VA's judgment, there is no need to specifically prohibit pyramiding of the various codes for sinusitis or rhinitis as the commenter suggests. The rating board is required in general by § 4.14 not to pyramid disabilities. The board must use its judgment as to whether a single evaluation encompasses all disability present or not. A specific prohibition might be useful if all conditions involved always had the same manifestations, but this is not true of either sinusitis or rhinitis.

The commenter went on to say that, alternatively, § 4.96 could be amended to state that it does not remove the prohibition against pyramiding that may apply to other diagnostic codes.

VA disagrees. Such an amendment is not necessary because § 4.14, which prohibits the practice of "pyramiding," applies to the entire rating schedule, and all rating boards are required to follow it.

For further clarity, we have revised the criteria for pulmonary vascular disease, DC 6817. We proposed that the criterion for 30 percent be "acute pulmonary embolism with residual symptoms," and we changed that language to "symptomatic following resolution of acute pulmonary embolism." We proposed that the criterion at the zero-percant level be "resolved pulmonary thromboembolism with no residual symptoms," and we changed that language to "asymptomatic, following resolution of pulmonary thromboembolism." These do not represent substantive changes. Because pulmonary vascular disease may result in residuals other than those included in the proposed criteria, such as chronic pleural thickening, for the sake of completeness, we added a note under DC 6817 directing to evaluate other residuals under the most appropriate diagnostic code.

In the proposed regulation for chronic bronchitis (DC 6600), pulmonary emphysema (DC 6603), chronic obstructive pulmonary disease (DC 6604), and restrictive lung diseases, we inadvertently omitted an upper level of DLCO that would warrant a ten percent evaluation. We have corrected this oversight in the final regulation by making the DLCO requirement for the 10-percent evaluation "66- to 80-percent predicted."

An additional change we made for the sake of completeness was the addition of a note following DC 6504, nose, loss of part of, or scars, stating that this disability may alternatively be evaluated as DC 7800, disfiguring scars of the head, face, or neck.

We made minor editorial changes in language in several cases, such as changing "rate" to "evaluate" and "applicable" to "appropriate", but these are not substantive changes.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: May 13, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. In § 4.96, the section heading and paragraph (a) are revised, and paragraph (c) is added to read as follows:

§ 4.96 Special provisions regarding evaluation of respiratory conditions.

(a) *Rating coexisting respiratory conditions.* Ratings under diagnostic codes 6600 through 6817 and 6822 through 6847 will not be combined with each other. Where there is lung or pleural involvement, ratings under diagnostic codes 6819 and 6820 will not be combined with each other or with diagnostic codes 6600 through 6817 or 6822 through 6847. A single rating will be assigned under the diagnostic code which reflects the predominant disability with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation. However, in cases protected by the provisions of Pub. L. 90–493, the graduated ratings of 50 and 30 percent for inactive tuberculosis will not be elevated.

* * * * *

(c) *Special monthly compensation.* When evaluating any claim involving complete organic aphonia, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate

conditions which potentially establish entitlement to special monthly compensation; however, there are other conditions in this section which under certain circumstances also establish entitlement to special monthly compensation.

(Authority: 38 U.S.C. 1155)

3. Section 4.97 is revised to read as follows:

§ 4.97 Schedule of ratings—respiratory system.

	Rating
DISEASES OF THE NOSE AND THROAT	
6502 Septum, nasal, deviation of:	
Traumatic only,	
With 50-percent obstruction of the nasal passage on both sides or complete obstruction on one side	10
6504 Nose, loss of part of, or scars:	
Exposing both nasal passages	30
Loss of part of one ala, or other obvious disfigurement	10
Note: Or evaluate as DC 7800, scars, disfiguring, head, face, or neck.	
6510 Sinusitis, parsinusitis, chronic.	
6511 Sinusitis, ethmoid, chronic.	
6512 Sinusitis, frontal, chronic.	
6513 Sinusitis, maxillary, chronic.	
6514 Sinusitis, sphenoid, chronic.	
General Rating Formula for Sinusitis (DC's 6510 through 6514):	
Following radical surgery with chronic osteomyelitis, or; near constant sinusitis characterized by headaches, pain and tenderness of affected sinus, and purulent discharge or crusting after repeated surgeries	50
Three or more incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment, or; more than six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting	30
One or two incapacitating episodes per year of sinusitis requiring prolonged (lasting four to six weeks) antibiotic treatment, or; three to six non-incapacitating episodes per year of sinusitis characterized by headaches, pain, and purulent discharge or crusting	10
Detected by X-ray only	0
Note: An incapacitating episode of sinusitis means one that requires bed rest and treatment by a physician.	
6515 Laryngitis, tuberculous, active or inactive.	
Rate under §§ 4.88c or 4.89, whichever is appropriate.	
6516 Laryngitis, chronic:	
Hoarseness, with thickening or nodules of cords, polyps, submucous infiltration, or pre-malignant changes on biopsy	30
Hoarseness, with inflammation of cords or mucous membrane	10
6518 Laryngectomy, total.	[1] 100
Rate the residuals of partial laryngectomy as laryngitis (DC 6516), aphonia (DC 6519), or stenosis of larynx (DC 6520).	
6519 Aphonia, complete organic:	
Constant inability to communicate by speech	[1] 100
Constant inability to speak above a whisper	60
Note: Evaluate incomplete aphonia as laryngitis, chronic (DC 6516).	
6520 Larynx, stenosis of, including residuals of laryngeal trauma (unilateral or bilateral):	
Forced expiratory volume in one second (FEV–1) less than 40 percent of predicted value, with Flow-Volume Loop compatible with upper airway obstruction, or; permanent tracheostomy	100
FEV–1 of 40- to 55-percent predicted, with Flow-Volume Loop compatible with upper airway obstruction	60
FEV–1 of 56- to 70-percent predicted, with Flow-Volume Loop compatible with upper airway obstruction	30
FEV–1 of 71- to 80-percent predicted, with Flow-Volume Loop compatible with upper airway obstruction	10
Note: Or evaluate as aphonia (DC 6519).	
6521 Pharynx, injuries to:	
Stricture or obstruction of pharynx or nasopharynx, or; absence of soft palate secondary to trauma, chemical burn, or granulomatous disease, or; paralysis of soft palate with swallowing difficulty (nasal regurgitation) and speech impairment	50
6522 Allergic or vasomotor rhinitis:	
With polyps	30
Without polyps, but with greater than 50-percent obstruction of nasal passage on both sides or complete obstruction on one side	10
6523 Bacterial rhinitis:	
Rhinoscleroma	50
With permanent hypertrophy of turbinates and with greater than 50-percent obstruction of nasal passage on both sides or complete obstruction on one side	10
6524 Granulomatous rhinitis:	
Wegener's granulomatosis, lethal midline granuloma	100
Other types of granulomatous infection	20
DISEASES OF THE TRACHEA AND BRONCHI	
6600 Bronchitis, chronic:	
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy	100

	Rating
FEV–1 of 40- to 55-percent predicted, or; FEV–1/FVC of 40 to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56- to 70-percent predicted, or; FEV–1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted	30
FEV–1 of 71- to 80-percent predicted, or; FEV–1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted	10
6601 Bronchiectasis:	
With incapacitating episodes of infection of at least six weeks total duration per year	100
With incapacitating episodes of infection of four to six weeks total duration per year, or; near constant findings of cough with purulent sputum associated with anorexia, weight loss, and frank hemoptysis and requiring antibiotic usage almost continuously	60
With incapacitating episodes of infection of two to four weeks total duration per year, or; daily productive cough with sputum that is at times purulent or blood-tinged and that requires prolonged (lasting four to six weeks) antibiotic usage more than twice a year	30
Intermittent productive cough with acute infection requiring a course of antibiotics at least twice a year	10
Or rate according to pulmonary impairment as for chronic bronchitis (DC 6600).	
Note: An incapacitating episode is one that requires bedrest and treatment by a physician.	
6602 Asthma, bronchial:	
FEV–1 less than 40-percent predicted, or; FEV–1/FVC less than 40 percent, or; more than one attack per week with episodes of respiratory failure, or; requires daily use of systemic (oral or parenteral) high dose corticosteroids or immuno-suppressive medications	100
FEV–1 of 40- to 55-percent predicted, or; FEV–1/FVC of 40 to 55 percent, or; at least monthly visits to a physician for required care of exacerbations, or; intermittent (at least three per year) courses of systemic (oral or parenteral) corticosteroids	60
FEV–1 of 56- to 70-percent predicted, or; FEV–1/FVC of 56 to 70 percent, or; daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication	30
FEV–1 of 71- to 80-percent predicted, or; FEV–1/FVC of 71 to 80 percent, or; intermittent inhalational or oral bronchodilator therapy	10
Note: In the absence of clinical findings of asthma at time of examination, a verified history of asthmatic attacks must be of record.	
6603 Emphysema, pulmonary:	
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy.	100
FEV–1 of 40- to 55-percent predicted, or; FEV–1/FVC of 40 to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56- to 70-percent predicted, or; FEV–1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted	30
FEV–1 of 71- to 80-percent predicted, or; FEV–1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted	10
6604 Chronic obstructive pulmonary disease:	
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy.	100
FEV–1 of 40- to 55-percent predicted, or; FEV–1/FVC of 40 to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56- to 70-percent predicted, or; FEV–1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted	30
FEV–1 of 71- to 80-percent predicted, or; FEV–1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted	10

DISEASES OF THE LUNGS AND PLEURA—TUBERCULOSIS
Ratings for Pulmonary Tuberculosis Entitled on August 19, 1968

6701 Tuberculosis, pulmonary, chronic, far advanced, active	100
6702 Tuberculosis, pulmonary, chronic, moderately advanced, active	100
6703 Tuberculosis, pulmonary, chronic, minimal, active	100
6704 Tuberculosis, pulmonary, chronic, active, advancement unspecified	100
6721 Tuberculosis, pulmonary, chronic, far advanced, inactive.	
6722 Tuberculosis, pulmonary, chronic, moderately advanced, inactive.	
6723 Tuberculosis, pulmonary, chronic, minimal, inactive.	
6724 Tuberculosis, pulmonary, chronic, inactive, advancement unspecified.	
General Rating Formula for Inactive Pulmonary Tuberculosis: For two years after date of inactivity, following active tuberculosis, which was clinically identified during service or subsequently	100
Thereafter for four years, or in any event, to six years after date of inactivity	50
Thereafter, for five years, or to eleven years after date of inactivity	30
Following far advanced lesions diagnosed at any time while the disease process was active, minimum	30
Following moderately advanced lesions, provided there is continued disability, emphysema, dyspnea on exertion, impairment of health, etc	20
Otherwise	0
Note (1): The 100-percent rating under codes 6701 through 6724 is not subject to a requirement of precedent hospital treatment. It will be reduced to 50 percent for failure to submit to examination or to follow prescribed treatment upon report to that effect from the medical authorities. When a veteran is placed on the 100-percent rating for inactive tuberculosis, the medical authorities will be appropriately notified of the fact, and of the necessity, as given in footnote 1 to 38 U.S.C. 1156 (and formerly in 38 U.S.C. 356, which has been repealed by Public Law 90–493), to notify the Adjudication Division in the event of failure to submit to examination or to follow treatment.	

	Rating
Note (2): The graduated 50-percent and 30-percent ratings and the permanent 30 percent and 20 percent ratings for inactive pulmonary tuberculosis are not to be combined with ratings for other respiratory disabilities. Following thoracoplasty the rating will be for removal of ribs combined with the rating for collapsed lung. Resection of the ribs incident to thoracoplasty will be rated as removal.	
Ratings for Pulmonary Tuberculosis Initially Evaluated After August 19, 1968	
6730 Tuberculosis, pulmonary, chronic, active	100
Note: Active pulmonary tuberculosis will be considered permanently and totally disabling for non-service-connected pension purposes in the following circumstances: (a) Associated with active tuberculosis involving other than the respiratory system. (b) With severe associated symptoms or with extensive cavity formation. (c) Reactivated cases, generally. (d) With advancement of lesions on successive examinations or while under treatment. (e) Without retrogression of lesions or other evidence of material improvement at the end of six months hospitalization or without change of diagnosis from "active" at the end of 12 months hospitalization. Material improvement means lessening or absence of clinical symptoms, and X-ray findings of a stationary or retrogressive lesion.	
6731 Tuberculosis, pulmonary, chronic, inactive: Depending on the specific findings, rate residuals as interstitial lung disease, restrictive lung disease, or, when obstructive lung disease is the major residual, as chronic bronchitis (DC 6600). Rate thoracoplasty as removal of ribs under DC 5297.	
Note: A mandatory examination will be requested immediately following notification that active tuberculosis evaluated under DC 6730 has become inactive. Any change in evaluation will be carried out under the provisions of § 3.105(e).	
6732 Pleurisy, tuberculous, active or inactive: Rate under §§ 4.88c or 4.89, whichever is appropriate.	
NONTUBERCULOUS DISEASES	
6817 Pulmonary Vascular Disease: Primary pulmonary hypertension, or; chronic pulmonary thromboembolism with evidence of pulmonary hypertension, right ventricular hypertrophy, or cor pulmonale, or; pulmonary hypertension secondary to other obstructive disease of pulmonary arteries or veins with evidence of right ventricular hypertrophy or cor pulmonale	100
Chronic pulmonary thromboembolism requiring anticoagulant therapy, or; following inferior vena cava surgery without evidence of pulmonary hypertension or right ventricular dysfunction	60
Symptomatic, following resolution of acute pulmonary embolism	30
Asymptomatic, following resolution of pulmonary thromboembolism	0
Note: Evaluate other residuals following pulmonary embolism under the most appropriate diagnostic code, such as chronic bronchitis (DC 6600) or chronic pleural effusion or fibrosis (DC 6844), but do not combine that evaluation with any of the above evaluations.	
6819 Neoplasms, malignant, any specified part of respiratory system exclusive of skin growths	100
Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
6820 Neoplasms, benign, any specified part of respiratory system. Evaluate using an appropriate respiratory analogy.	
Bacterial Infections of the Lung	
6822 Actinomycosis. 6823 Nocardiosis. 6824 Chronic lung abscess. General Rating Formula for Bacterial Infections of the Lung (diagnostic codes 6822 through 6824): Active infection with systemic symptoms such as fever, night sweats, weight loss, or hemoptysis	100
Depending on the specific findings, rate residuals as interstitial lung disease, restrictive lung disease, or, when obstructive lung disease is the major residual, as chronic bronchitis (DC 6600).	
Interstitial Lung Disease	
6825 Diffuse interstitial fibrosis (interstitial pneumonitis, fibrosing alveolitis). 6826 Desquamative interstitial pneumonitis. 6827 Pulmonary alveolar proteinosis. 6828 Eosinophilic granuloma of lung. 6829 Drug-induced pulmonary pneumonitis and fibrosis. 6830 Radiation-induced pulmonary pneumonitis and fibrosis. 6831 Hypersensitivity pneumonitis (extrinsic allergic alveolitis). 6832 Pneumoconiosis (silicosis, anthracosis, etc.). 6833 Asbestosis. General Rating Formula for Interstitial Lung Disease (diagnostic codes 6825 through 6833):	
Forced Vital Capacity (FVC) less than 50-percent predicted, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption with cardiorespiratory limitation, or; cor pulmonale or pulmonary hypertension, or; requires outpatient oxygen therapy	100
FVC of 50- to 64-percent predicted, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum exercise capacity of 15 to 20 ml/kg/min oxygen consumption with cardiorespiratory limitation	60
FVC of 65- to 74-percent predicted, or; DLCO (SB) of 56- to 65-percent predicted	30

	Rating
FVC of 75- to 80-percent predicted, or; DLCO (SB) of 66- to 80-percent predicted	10
Mycotic Lung Disease	
6834 Histoplasmosis of lung. 6835 Coccidioidomycosis. 6836 Blastomycosis. 6837 Cryptococcosis. 6838 Aspergillosis. 6839 Mucormycosis.	
General Rating Formula for Mycotic Lung Disease (diagnostic codes 6834 through 6839):	
Chronic pulmonary mycosis with persistent fever, weight loss, night sweats, or massive hemoptysis	100
Chronic pulmonary mycosis requiring suppressive therapy with no more than minimal symptoms such as occasional minor hemoptysis or productive cough	50
Chronic pulmonary mycosis with minimal symptoms such as occasional minor hemoptysis or productive cough	30
Healed and inactive mycotic lesions, asymptomatic	0
Note: Coccidioidomycosis has an incubation period up to 21 days, and the disseminated phase is ordinarily manifest within six months of the primary phase. However, there are instances of dissemination delayed up to many years after the initial infection which may have been unrecognized. Accordingly, when service connection is under consideration in the absence of record or other evidence of the disease in service, service in southwestern United States where the disease is endemic and absence of prolonged residence in this locality before or after service will be the deciding factor.	
Restrictive Lung Disease	
6840 Diaphragm paralysis or paresis. 6841 Spinal cord injury with respiratory insufficiency. 6842 Kyphoscoliosis, pectus excavatum, pectus carinatum. 6843 Traumatic chest wall defect, pneumothorax, hernia, etc. 6844 Post-surgical residual (lobectomy, pneumonectomy, etc.). 6845 Chronic pleural effusion or fibrosis.	
General Rating Formula for Restrictive Lung Disease (diagnostic codes 6840 through 6845):	
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy	100
FEV–1 of 40- to 55-percent predicted, or; FEV–1/FVC of 40 to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56- to 70-percent predicted, or; FEV–1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted	30
FEV–1 of 71- to 80-percent predicted, or; FEV–1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted	10
Or rate primary disorder.	
Note (1): A 100-percent rating shall be assigned for pleurisy with empyema, with or without pleurocutaneous fistula, until resolved.	
Note (2): Following episodes of total spontaneous pneumothorax, a rating of 100 percent shall be assigned as of the date of hospital admission and shall continue for three months from the first day of the month after hospital discharge.	
Note (3): Gunshot wounds of the pleural cavity with bullet or missile retained in lung, pain or discomfort on exertion, or with scattered rales or some limitation of excursion of diaphragm or of lower chest expansion shall be rated at least 20-percent disabling. Disabling injuries of shoulder girdle muscles (Groups I to IV) shall be separately rated and combined with ratings for respiratory involvement. Involvement of Muscle Group XXI (DC 5321), however, will not be separately rated.	
6846 Sarcoidosis:	
Cor pulmonale, or; cardiac involvement with congestive heart failure, or; progressive pulmonary disease with fever, night sweats, and weight loss despite treatment	100
Pulmonary involvement requiring systemic high dose (therapeutic) corticosteroids for control	60
Pulmonary involvement with persistent symptoms requiring chronic low dose (maintenance) or intermittent corticosteroids	30
Chronic hilar adenopathy or stable lung infiltrates without symptoms or physiologic impairment	0
Or rate active disease or residuals as chronic bronchitis (DC 6600) and extra-pulmonary involvement under specific body system involved.	
6847 Sleep Apnea Syndromes (Obstructive, Central, Mixed):	
Chronic respiratory failure with carbon dioxide retention or cor pulmonale, or; requires tracheostomy	100
Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine	50
Persistent day-time hypersomnolence	30
Asymptomatic but with documented sleep disorder breathing	0

[1] Review for entitlement to special monthly compensation under § 3.350 of this chapter.

[FR Doc. 96–22593 Filed 9–4–96; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7648]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Acting Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New York:				
Ticonderoga, town of, Essex County	361159	Apr. 15, 1975, Emerg.; May 17, 1988, Reg.; Sept. 6, 1996, Susp.	Sept. 6, 1996	Sept. 6, 1996.
Wellsville, village of, Allegany County	360036	May 10, 1975, Emerg.; July 17, 1978, Reg.; Sept. 6, 1996, Susp.	....do	Do.
Region III				
West Virginia: Danville, town of, Boone County	540230	July 1, 1975, Emerg.; Apr. 16, 1991, Reg.; Sept. 6, 1996, Susp.	....do	Do.
Region V				
Indiana: Brownstown, town of, Jackson County	180317	Jan. 29, 1976, Emerg.; Jan. 3, 1985, Reg.; Sept. 6, 1996, Susp.	....do	Do.
Minnesota: Cannon Falls, city of, Goodhue County	270141	Apr. 5, 1974, Emerg.; Jan. 2, 1981, Reg.; Sept. 6, 1996, Susp.	....do	Do.
Region II				
New York:				
Dresden, town of, Washington County	361410	Jan. 25, 1977, Emerg.; July 3, 1986, Reg.; Sept. 20, 1996, Susp.	Sept. 20, 1996	Sept. 20, 1996.
Hillburn, village of, Rockland County	360683	June 18, 1975, Emerg.; Jan. 6, 1982, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Region III				
Pennsylvania: Shirley, township of, Huntingdon County	421700	Feb. 4, 1976, Emerg.; Aug. 15, 1989, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Region IV				
Florida: Bay County, unincorporated areas	120004	May 12, 1975, Emerg.; July 2, 1981, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Region V				
Indiana: Scottsburg, city of, Scotts County	180234	Apr. 7, 1975, Emerg.; Aug. 19, 1985, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Michigan: Hartland, township of, Livingston County	260784	Nov. 25, 1986, Emerg.; May 17, 1989, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Ohio: Riverside, city of, Montgomery County	390416	May 12, 1976, Emerg.; Dec. 15, 1981, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Region VI				
New Mexico:				
Albuquerque, city of, Bernalillo County	350002	Sept. 9, 1974, Emerg.; October 14, 1983, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Bernalillo County, unincorporated areas	350001	Aug. 26, 1974, Emerg.; Sept. 15, 1983, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Tijeras, village of, Bernalillo County	350135	July 9, 1975, Emerg.; Jan. 6, 1983, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Region X				
Alaska: Fairbanks North Star, borough of, Fairbanks North Star Borough.	025009	May 15, 1970, Emerg.; June 25, 1969, Reg.; Sept. 20, 1996, Susp.	....do	Do.
Washington: Skagit County, unincorporated areas	530151	June 25, 1971, Emerg.; Jan. 3, 1985, Reg.; Sept. 20, 1996, Susp.	Sept. 29, 1989	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: August 22, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–22670 Filed 9–4–96; 8:45 am]

BILLING CODE 6718–05–P

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2400

Fellowship Program Requirements

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Final rule.

SUMMARY: The following are revised regulations governing the annual competition for James Madison Fellowships and the obligations of James Madison Fellows. These regulations update and replace several aspects of the the Foundation's existing regulations as implemented by the James Madison Memorial Fellowship Act of 1986. These revised regulations govern the qualifications and applications of candidates for fellowships; the selection of Fellows by the Foundation; the graduate programs Fellows must pursue; the terms and conditions attached to awards; the Foundation's annual Summer Institute on the Constitution; and related requirements and expectations regarding fellowships.

DATES: September 5, 1996.

ADDRESSES: James Madison Memorial Fellowship Foundation, 2000 K Street, NW, Suite 303, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Lewis F. Larsen, (202) 653–8700.

SUPPLEMENTARY INFORMATION: The reason for the changes to the Foundation's regulations comes as a result of the Foundation's desire to clarify several of the rules and regulations which James Madison Fellows must observe when accepting their fellowships. Although many of the changes are minor insertions of words and punctuation, this document specifically expands the definition section to include further detailed definitions on Credit Hour Equivalent, Incomplete, Repayment, Satisfactory Progress, Stipend, Teaching Obligation, Termination and Withdrawal. The Foundation now encourages James Madison Fellows to choose a graduate program which does not include the writing of a thesis. Graduate programs for which Fellows may apply have been broadened to include political science. Finally, a section entitled "Teaching Obligation" was added to further clarify the obligation to teach, required by the Foundation once each fellow has earned a master's degree.

The Foundation did not receive any comments regarding these regulations during the public comment period.

List of Subjects in 45 CFR Part 2400

Education, Fellowships.

Dated: August 26, 1996.

Paul A. Yost, Jr.,

President.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 *et seq.*, Chapter XXIV, Title 45 of the Code of Federal Regulations is amended by revising part 2400 to read as follows:

CHAPTER XXIV—JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

Part 2400—Fellowship Program Requirements

Subpart A—General

2400.1 Purposes.
2400.2 Annual competition.
2400.3 Eligibility.
2400.4 Definitions.

Subpart B—Application

2400.10 Application.
2400.11 Faculty representatives.

Subpart C—Application Process

2400.20 Preparation of application.
2400.21 Contents of application.
2400.22 Application deadline.

Subpart D—Selection of Fellows

2400.30 Selection criteria.
2400.31 Selection process.

Subpart E—Graduate Study

2400.40 Institutions of graduate study.
2400.41 Degree programs.
2400.42 Approval of Plan of Study.
2400.43 Required courses of graduate study.
2400.44 Commencement of graduate study.
2400.45 Special consideration: Junior Fellows' Plan of study.
2400.46 Special consideration: second master's degrees.
2400.47 Summer Institute's relationship to fellowship.
2400.48 Fellows' participation in the Summer Institute.
2400.49 Contents of the Summer Institute.
2400.50 Allowances and Summer Institute costs.
2400.51 Summer Institute accreditation.

Subpart F—Fellowship Stipend

2400.52 Amount of stipend.
2400.53 Duration of stipend.
2400.54 Use of stipend.
2400.55 Certification for stipend.
2400.56 Payment of stipend.
2400.57 Termination of stipend.
2400.58 Repayment of stipend.

Subpart G—Special Conditions

2400.59 Other awards.
2400.60 Renewal of award.
2400.61 Postponement of award.
2400.62 Evidence of master's degree.
2400.63 Excluded graduate study.
2400.64 Alterations to Plan of Study.
2400.65 Teaching obligation.
2400.66 Completion of fellowship.

Authority: 20 U.S.C. 4501 et seq.

Subpart A—General

§ 2400.1 Purposes.

(a) The purposes of the James Madison Memorial Fellowship Program are to:

(1) Provide incentives for master's degree level graduate study of the history, principles, and development of the United States Constitution by outstanding in-service teachers of American history, American government, social studies, and political science in grades 7–12 and by outstanding college graduates who plan to become teachers of the same subjects; and

(2) Strengthen teaching in the nation's secondary schools about the principles, framing, ratification, and subsequent history of the United States Constitution.

(b) The Foundation may from time to time operate its own programs and undertake other closely-related activities to fulfill these goals.

§ 2400.2 Annual competition.

To achieve its principal purposes, the Foundation holds an annual national competition to select teachers in grades 7–12, college seniors, and college graduates to be James Madison Fellows.

§ 2400.3 Eligibility.

Individuals eligible to apply for and hold James Madison Fellowships are United States citizens, United States nationals, or permanent residents of the Northern Mariana Islands who are:

(a) Teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are teaching full time during the year in which they apply for a fellowship;

(2) Are under contract, or can provide evidence of being under prospective contract, to teach full time as teachers of American history, American government, social studies, or political science in grades 7–12;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities and to professional and collegial activities within their schools and school districts;

(4) Are highly recommended by their department heads, school heads, school district superintendents, or other supervisors;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs allowing at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions of other forms of government;

(6) Are able to complete their proposed courses of graduate study within five calendar years from the commencement of study under their fellowships, normally through part-time study during summers or in evening or weekend programs;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign agreements that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is the number of credit hours determined by each university at which Fellows are studying as constituting a full year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

(b) Those who aspire to become full-time teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are matriculated college seniors pursuing their baccalaureate degrees full time and will receive those degrees no later than August 31st of the year of the fellowship competition in which they apply or prior recipients of baccalaureate degrees;

(2) Plan to begin graduate study on a full-time basis;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities;

(4) Are highly recommended by faculty members, deans, or other persons familiar with their potential for graduate study of American history and government and with their serious intention to enter the teaching profession as secondary school teachers of American history, American government, social studies, or political science in grades 7–12;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs that allow at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions and history of other forms of government;

(6) Are able to complete their proposed courses of graduate study in no more than two calendar years from the commencement of study under their fellowships, normally through full-time study;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign an agreement that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is the number of credit hours determined by each university at which Fellows are studying as constituting a full year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

§ 2400.4 Definitions.

As used in this part:

Academic year means the period of time in which a full-time student would normally complete two semesters, two trimesters, three quarters, or their equivalent of study.

Act means the James Madison Memorial Fellowship Act.

College means an institution of higher education offering only a baccalaureate degree or the undergraduate division of a university in which a student is pursuing a baccalaureate degree.

Credit Hour Equivalent means the number of graduate credit hours obtained in credits, courses or units during a quarter, a trimester, or a semester which are needed to equal a specific number of semester graduate credit hours.

Fee means a typical and usually non-refundable charge levied by an institution of higher education for a service, privilege, or use of property which is *required* for a Fellow's enrollment and registration.

Fellow means a recipient of a fellowship from the Foundation.

Fellowship means an award, called a James Madison Fellowship, made to a person by the Foundation for graduate study.

Foundation means the James Madison Memorial Fellowship Foundation.

Full-time study means study for an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in a particular educational program.

Graduate study means the courses of study beyond the baccalaureate level, which are offered as part of a university's master's degree program and which lead to a master's degree.

Incomplete means a course which the Foundation has paid for but the Fellow has received an incomplete grade or the Fellow has not received graduate credit for the course.

Institution of higher education has the meaning given in Section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior Fellowship means a James Madison Fellowship granted either to a college senior or to a college graduate who has received a baccalaureate degree and who seeks to become a secondary school teacher of American history, American government, social studies, or political science for full-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

Master's degree means the first pre-doctoral graduate degree offered by a university beyond the baccalaureate degree, for which the baccalaureate degree is a prerequisite.

Matriculated means formally enrolled in a master's degree program in a university.

Repayment means if the fellowship is relinquished by the fellow or is terminated by the Foundation prior to the completion of the Fellow's degree, and/or the Fellow fails to fulfill the teaching obligation after the graduate degree is awarded, the Fellow must repay to the Foundation all Fellowship

costs received plus interest at a rate of 6% per annum and, if applicable, reasonable collection fees.

Resident means a person who has legal residence in the state, recognized under state law. If a question arises concerning a Fellow's state of residence, the Foundation determines, for the purposes of this program, of which state the person is a resident, taking into account the Fellow's place of registration to vote, his or her parent's place of residence, and the Fellow's eligibility for in-state tuition rates at public institutions of higher education.

Satisfactory progress for a Junior Fellow means the completion of the number of required courses normally expected of full-time master's degree candidates at the university that the Fellow attends, with grades acceptable to that university, in not more than two calendar years from the commencement of that study. Satisfactory progress for a Senior Fellow means the completion each year of a specific number of required courses in the Fellow's master's degree program, as agreed upon each year with the Foundation and outlined on the Plan of Study form, with grades acceptable to the Fellow's university, in not more than five calendar years from the commencement of that study.

Secondary school means grades 7 through 12.

Senior means a student at the academic level recognized by an institution of higher education as being the last year of study before receiving the baccalaureate degree.

Senior Fellowship means a James Madison Fellowship granted to a secondary school teacher of American history, American government, social studies, or political science for part-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and, until adoption of its Compact of Free Association, the Republic of Palau.

Stipend means the amount paid by the Foundation to a Fellow or on his or her behalf to pay the allowable costs of graduate study which have been approved under the fellowship.

Teaching Obligation means that a Fellow, upon receiving a master's degree, must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each year for which financial assistance was received.

Term means the period—semester, trimester, or quarter—used by an institution of higher education to divide its academic year.

Termination means the non-voluntary ending of a fellowship by the Foundation when the Fellow has not complied with the rules and regulations of the fellowship or has not made satisfactory progress in his or her program of study.

University means an institution of higher education that offers post-baccalaureate degrees.

Withdrawal means the voluntary relinquishment or surrender of a Fellowship by the Fellow.

Subpart B—Application

§ 2400.10 Application.

Eligible applicants for fellowships must apply directly to the Foundation.

§ 2400.11 Faculty Representatives.

Each college and university that chooses to do so may annually appoint or reappoint a faculty representative who will be asked to identify and recruit fellowship applicants on campus, publicize the annual competition on campus, and otherwise assist eligible candidates in preparation for applying. In order to elicit the appointment of faculty representatives, the Foundation will each year request the head of each college and university campus to appoint or reappoint a faculty representative and to provide the Foundation with the name, business address, and business telephone number of a member of its faculty representative on forms provided for that purpose.

Subpart C—Application Process

§ 2400.20 Preparation of application.

Applications, on forms mailed directly by the Foundation to those who request applications, must be completed by all fellowship candidates in order that they be considered for an award.

§ 2400.21 Contents of application.

Applications must include for

(a) Senior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about his or her background, interests, goals, and the school in which he or she teaches; and includes a statement about the applicant's educational plans and specifies how those plans will enhance his or her career as a secondary school teacher of American history, American government, social studies, or political science;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contributions to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) The applicant's proposed course of graduate study, including the name of the degree to be sought, the required courses to be taken, as well as information about the specific degree sought;

(4) Three evaluations, one from an immediate supervisor, that attest to the applicant's strengths and abilities as a teacher in grades 7–12; and

(5) A copy of his or her academic transcript.

(b) Junior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about the applicant's background, interests, goals, and the college which he or she attends or attended; and includes a statement about the applicant's educational plans and specifies how those plans will lead to a career as a teacher of American history, American government, social studies, or political science in grades 7–12;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contribution to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) Applicant's proposed course of graduate study, including the name of the degree sought, the name of the required courses to be taken, and information about the specific degree sought;

(4) Three evaluations that attest to the applicant's academic achievements and to his or her potential to become an outstanding secondary school teacher; and

(5) A copy of his or her academic transcript.

§ 2400.22 Application deadline.

Completed applications must be received by the Foundation no later than March 1st of each year preceding the start of the academic year for which candidates are applying.

Subpart D—Selection of Fellows

§ 2400.30 Selection criteria.

Applicants will be evaluated, on the basis of materials in their applications, as follows:

(a) Demonstrated commitment to teaching American history, American government, social studies, or political science at the secondary school level;

(b) Demonstrated intention to pursue a program of graduate study that emphasizes the Constitution and to offer classroom instruction in that subject;

(c) Demonstrated record of willingness to devote themselves to civic responsibility;

(d) Outstanding performance or potential of performance as classroom teachers;

(e) Academic achievements and demonstrated capacity for graduate study; and

(f) Proposed courses of graduate study, especially the nature and extent of their subject matter components, and their relationship to the enhancement of applicants' teaching and professional activities.

§ 2400.31 Selection process.

(a) An independent Fellow Selection Committee will evaluate all valid applications and recommend to the Foundation the most outstanding applicants from each state for James Madison Fellowships.

(b) From among candidates recommended for fellowships by the Fellow Selection Committee, the Foundation will name James Madison Fellows. The selection procedure will assure that at least one James Madison Fellow, junior or senior, is selected from each state in which there are at least two legally resident applicants who meet the eligibility requirements set forth in § 2400.3 and are judged favorably against the selection criteria in § 2400.30.

(c) The Foundation may name, from among those applicants recommended by the Fellow Selection Committee, an alternate or alternates for each fellowship. An alternate will receive a fellowship if the person named as a James Madison Fellow declines the award or is not able to pursue graduate study as contemplated at the time the fellowship was accepted. An alternate may be named to replace a Fellow who declines or relinquishes an award until, but no later than, March 1st following the competition in which the alternate has been selected.

(d) Funds permitting, the Foundation may also select, from among those recommended by the Fellow Selection Committee, Fellows at large.

Subpart E—Graduate Study

§ 2400.40 Institutions of graduate study.

Fellowship recipients may attend any accredited university in the United States with a master's degree program offering courses or training that emphasize the origins, principles, and development of the Constitution of the United States and its comparison with the constitutions and history of other forms of government.

§ 2400.41 Degree programs.

(a) Fellows may pursue a master's degree in history or political science (including government or politics), the degree of Master of Arts in Teaching in history or political science (including government or politics), or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science. Graduate degrees under which study is excluded from fellowship support are indicated in § 2400.63.

(b) A master's degree pursued under a James Madison Fellowship may entail either one or two years or their equivalent of study, according to the requirements of the university at which a Fellow is enrolled.

§ 2400.42 Approval of Plan of Study.

The Foundation must approve each Fellow's Plan of Study. To be approved, the plan must:

(a) On a part-time or full-time basis lead to a master's degree in history or political science, the degree of Master of Arts in Teaching in history or political science, or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science;

(b) Include courses, graduate seminars, or opportunities for independent study in topics directly related to the framing and history of the constitution of the United States;

(c) Be pursued at a university that assures a willingness to accept up to 6 semester hours of accredited transfer credits from another graduate institution for a Fellow's satisfactory completion of the Foundation's Summer Institute on the Constitution. For the Foundation's purposes, these 6 semester hours may be included in the required minimum of 12 semester hours or their equivalent of study of the United States Constitution; and

(d) Be pursued at a university that encourages the Fellow to enhance his or her capacities as a teacher of American history, American government, social studies, or political science and to continue his or her career as a secondary school teacher. The Foundation reserves the right to refuse to approve a Fellow's Plan of Study at a university that will not accept on transfer the 6 credits for the Institute.

§ 2400.43 Required courses of graduate study.

(a) To be acceptable to the Foundation, those courses related to the Constitution referred to in § 2400.43(b) must amount to at least 12 semester or 18 quarter hours or their credit hour equivalent of study of topics directly related to the United States Constitution. More than 12 semester hours or their credit hour equivalent of such study is strongly encouraged.

(b) The courses that fulfill the required minimum of 12 semester hours or their credit hour equivalent of study of the United States Constitution must cover one or more of the following subject areas:

(1) The history of colonial America leading up to the framing of the Constitution;

(2) The Constitution itself, its framing, the history and principles upon which it is based, its ratification, the *Federalist Papers*, Anti-Federalist writings, and the Bill of Rights;

(3) The historical development of political theory, constitutional law, and civil liberties as related to the Constitution;

(4) Interpretations of the Constitution by the Supreme Court and other branches of the federal government;

(5) Debates about the Constitution in other forums and about the effects of constitutional norms and decisions upon American society and culture; and

(6) Any other subject clearly related to the framing, history, and principles of the Constitution.

(c) If a master's degree program in which a Fellow is enrolled requires a master's thesis in place of a course or courses, the Fellow will have the option of writing the thesis based on the degree requirements. The preparation of a master's thesis should not add additional required credits to the minimum number of credits required for the master's degree. If a Fellow must write a thesis, the topic of the thesis must relate to subjects concerning the framing, principles, or history of the United States Constitution. If the Fellow can choose between two degree tracks, a thesis track or a non-thesis track, the Foundation strongly encourages the non-thesis track.

§ 2400.44 Commencement of Graduate Study.

(a) Fellows may commence study under their fellowships as early as the

summer following the announcement of their award. Fellows are normally expected to commence study under their fellowships in the fall term of the academic year following the date on which their award is announced. However, as indicated in § 2400.6, they may seek to postpone the commencement of fellowship study under extenuating circumstances.

(b) In determining the two- and five-year fellowship periods of Junior and Senior Fellows respectively, the Foundation will consider the commencement of the fellowship period to be the date on which each Fellow commences study under a fellowship.

§ 2400.45 Special consideration: Junior Fellows' Plan of Study.

Applicants for Junior Fellowships who seek or hold baccalaureate degrees in education are strongly encouraged to pursue master's degrees in history or political science. Those applicants who hold undergraduate degrees in history, political science, government, or any other subjects may take some teaching methods and related courses, although the Foundation will not pay for them unless they are required for the degree for which the Fellow is matriculated. The Foundation will review each proposed Plan of Study for an appropriate balance of subject matter and other courses based on the Fellow's goals, background, and degree requirements.

§ 2400.46 Special consideration: second master's degree.

The Foundation may award Senior Fellowships to applicants who are seeking their second master's degrees providing that the applicants' first master's degree was obtained at least five years prior to the year in which the applicants would normally commence study under a fellowship. In evaluating applications from individuals intending to pursue a second master's degree, the Fellow Selection Committee will favor those applicants who are planning to become American history, American government, social studies, or political science teachers after having taught another subject and applicants whose initial master's degree was in a subject different from that sought under the second master's degree.

§ 2400.47 Summer Institute's relationship to fellowship.

Each year, the Foundation offers, normally during July, a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution at an accredited university in the Washington, DC area. The Institute is an integral part of each fellowship.

§ 2400.48 Fellows' participation in the Summer Institute.

Each Fellow is required as part of his or her fellowship to attend the Institute, normally during the summer following the Fellow's commencement of graduate study under a fellowship.

§ 2400.49 Contents of the Summer Institute.

The principal element of the Institute is a graduate history course, "Foundations of American Constitutionalism." Other components of the Institute include study visits to sites associated with the lives and careers of members of the founding generation.

§ 2400.50 Allowances and Summer Institute costs.

For their participation in the Institute, Fellows are paid an allowance to help offset income foregone by their required attendance. The Foundation also funds the costs of the Institute and Fellows' round-trip transportation to and from the Institute site. The costs of tuition, required fees, books, room, and board entailed by the Institute will be paid for by the Foundation directly but may be offset against fellowship award limits if the credits earned for the Institute are included within the Fellows' degree requirements.

§ 2400.51 Summer Institute accreditation.

The Institute is accredited for six graduate semester credits by the university at which it is held. It is expected that the universities at which Fellows are pursuing their graduate study will, upon Fellows' satisfactory completion of the Institute, accept these credits or their credit-hour equivalent upon transfer from the university at which the Institute is held in fulfillment of the minimum number of credits required for Fellows' graduate degrees. Satisfactory completion of the Institute will fulfill 6 of the Foundation's 12 semester credits required in graduate study of the history and development of the Constitution. Fellows, with the Foundation's assistance, are strongly encouraged to make good faith efforts to have their universities incorporate the Institute into their Plan of Study and accept the 6 Institute credits toward the minimum number of credits required for their master's degrees.

Subpart F—Fellowship Stipend

§ 2400.52 Amount of stipend.

Junior and Senior Fellowships carry a stipend of up to a maximum of $24,000 pro-rated over the period of Fellows' graduate study. In no case shall the stipend for a fellowship exceed $12,000 per academic year. Within this limit, stipends will be pro-rated over the period of Fellows' graduate study as follows: a maximum of $6,000 per academic semester or trimester of full-time study, and a maximum of $4,000 per academic quarter of full-time study. Stipends for part-time study will be pro rata shares of those allowable for full-time study.

§ 2400.53 Duration of stipend.

Stipends for Junior Fellowships may be payable over a period up to 2 calendar years of full-time graduate study, and those for Senior Fellowships may be payable over a period of not more than 5 calendar years of part-time graduate study, beginning with the dates under which Fellows commence their graduate study under their fellowships. However, the duration of stipend payments will be subject to the maximum payment limits, the length of award time limits, and the completion of the minimum degree requirements, whichever occurs first.

§ 2400.54 Use of stipend.

Stipends shall be used only to pay the costs of tuition, required fees, books, room, and board associated with graduate study under a fellowship. The costs allowed for a Fellow's room and board will be the amount the Fellow's university reports to the Foundation as the cost of room and board for a graduate student if that student were to share a room at the student's university. If no shared graduate housing exists, then costs for regular shared student housing will be used. If no campus housing exists, the equivalent room and board costs at neighboring universities will be used. Stipends for room, board, and books will be pro-rated for Fellows enrolled in study less than full time. The Foundation will not reimburse Fellows for any portion of their master's degree study, that Fellows may have completed prior to the commencement of their fellowships. Nor will the Foundation reimburse Fellows for any credits acquired above the minimum number of credits required for the degree. If a Fellow has already taken and paid for courses that can be credited toward the Fellow's graduate degree under a fellowship, those must be credited to the degree; the remaining required courses will be paid for by the Foundation.

§ 2400.55 Certification for stipend.

In order to receive a fellowship stipend, a Fellow must submit the following nine items in writing:

(a) An acceptance of the terms and conditions of the fellowship including a completed certificate of compliance form;

(b) Evidence of admission to an approved graduate program;

(c) Certified copies of undergraduate and, if any, graduate transcripts;

(d) A certified payment request form indicating the estimated costs for tuition, required fees, books, room, and board;

(e) a photo copy of the university's bulletin of cost information;

(f) the amount of income from any other grants or awards;

(g) information about the Fellow's degree requirements, including the number of required credits to fulfill the degree;

(h) a statement of the university's willingness to accept the transfer of 6 credits toward the Fellow's degree requirements for the Fellow's satisfactory completion of the Summer Institute (see § 2400. 51); and

(i) a full Plan of Study over the duration of the fellowship, including information on the contents of required courses. Senior Fellows must provide evidence of their continued full-time employment as teachers in grades 7–12.

§ 2400.56 Payment of stipend.

Payment for tuition, required fees, books, room, and board subject to the limitations in § 2400.52 through § 2400.55 and § 2400.59 through § 2400.60 will be paid to each Fellow at the beginning of each term of enrollment upon the Fellow's submission of a completed Payment Request Form and the University bulletin of cost information.

§ 2400.57 Termination of stipend.

(a) The Foundation may suspend or terminate the payment of a stipend if a Fellow fails to meet the criteria set forth in § 2400.40 through § 2400.44 and § 2400.60, except as provided for in § 2400.61. Before it suspends or terminates a fellowship under these circumstances, the Foundation will give notice to the Fellow, as well as the opportunity to be heard with respect to the grounds for suspension or termination.

(b) The Foundation will normally suspend the payment of a stipend if a Fellow has more than one grade of "Incomplete" in courses for which the Foundation has made payment to the Fellow.

§ 2400.58 Repayment of stipend.

(a) If a Fellow fails to secure a master's degree, fails to teach American history, American government, social studies, or political science on a full-time basis in a secondary school for at least one school year for each academic year for which assistance was provided under a fellowship, fails to secure fewer than 12 semester hours or their credit hour equivalent for study of the Constitution as indicated in § 2400.43(b), or fails to attend the Foundation's Summer Institute on the Constitution, the Fellow must repay all of the fellowship costs received plus interest at the rate of 6% per annum or as otherwise authorized and, if applicable, reasonable collection fees, as prescribed in Section 807 of the Act (20 U.S.C. 4506(b)).

(b) If a Fellow withdraws from the fellowship or has a fellowship terminated by the Foundation, the Foundation will seek to recover all fellowship funds which have been remitted to the Fellow or on his or her behalf under a fellowship.

Subpart G—Special Conditions

§ 2400.59 Other awards.

Fellows may accept grants from other foundations, institutions, corporations, or government agencies to support their graduate study or to replace any income foregone for study. However, the stipend paid by the Foundation for allowable costs indicated in § 2400.52 will be reduced to the extent these costs are paid from other sources, and in no case will fellowship funds be paid to Fellows to provide support in excess of their actual total costs of tuition, required fees, books, room, and board. The Foundation may also reduce a Fellow's stipend if the Fellow is remunerated for the costs of tuition under a research or teaching assistantship or a work-study program. In such a case, the Foundation will require information from a Fellow's university about the intended use of assistantship or work-study support before remitting fellowship payments.

§ 2400.60 Renewal of award.

(a) Provided that Fellows have submitted all required documentation and are making satisfactory academic progress, it is the intent of the Foundation to renew Junior Fellowship awards annually for a period not to exceed two calendar years or the completion of their graduate degrees, whichever comes first, and Senior Fellowships for a period not to exceed 5 calendar years (except when those periods have been altered because of changes in Fellows' Plan of Study as provided for in § 2400.64), or until a Fellow has completed all requirements for a master's degree, whichever comes first. In no case, however, will the Foundation continue payments under a fellowship to a Fellow who has reached the maximum payments under a fellowship as indicated in § 2400.52, or completed the minimum number of credits required for the degree. Although Fellows are not discouraged in taking courses in addition to those required for the degree or required to maintain full-time status, the Foundation will not in such cases pay for those additional courses unless they are credited to the minimum number of credits required for the degree.

(b) Fellowship renewal will be subject to an annual review by the Foundation and certification by an authorized official of the university at which a Fellow is registered that the Fellow is making satisfactory progress toward the degree and is in good academic standing according to the standards of each university.

(c) As a condition of renewal of awards, each Fellow must submit an annual activity report to the Foundation by July 15th. That report must indicate, through submission of a copy of the Fellow's most recent transcript, courses taken and grades achieved; courses planned for the coming year; changes in academic or professional plans or situations; any awards, recognitions, or special achievements in the Fellow's academic study or school employment; and such other information as may relate to the fellowship and its holder.

§ 2400.61 Postponement of award.

Upon application to the Foundation, a Fellow may seek postponement of his or her fellowship because of ill health or other mitigating circumstances, such as military duty, temporary disability, necessary care of an immediate family member, or unemployment as a teacher. Substantiation of the reasons for the requested postponement of study will be required.

§ 2400.62 Evidence of master's degree.

At the conclusion of graduate studies, each Fellow must provide a certified transcript which indicates that he or she has secured an approved master's degree as set forth in the Fellow's original Plan of Study or approved modifications thereto.

§ 2400.63 Excluded graduate study.

James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public

administration, or toward the award of teaching certificates. Nor do fellowships support practice teaching required for professional certification or other courses related to teaching unless those courses are required for the degree. In those cases, however, the Foundation will provide reimbursement only toward those courses related to teaching that fall within the minimum number of courses required for the degree, not in addition to that minimum.

§ 2400.64 Alterations to Plan of Study.

Although Junior Fellows are expected to pursue full-time study and Senior Fellows to pursue part-time study, the Foundation may permit Junior Fellows with an established need (such as the need to accept a teaching position) to study part time and Senior Fellows with established need (such as great distance between the Fellow's residence and the nearest university, thus necessitating a full-time leave of absence from employment in order to study) to study full time.

§ 2400.65 Teaching obligation.

Upon receiving a Master's degree, each Fellow must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each academic year for which financial assistance was received. Each Fellow will be required to provide the Foundation with an annual certification from an official of the secondary school where the Fellow is employed indicating the teaching activities of the Fellow during the past year. This same certification will be required each year until the Fellow's teaching obligation is completed. Any teaching done by the Fellow prior to or during graduate studies does not count towards meeting this teaching obligation.

§ 2400.66 Completion of fellowship.

A Fellow will be deemed to have satisfied all terms of a fellowship and all obligations under it when the Fellow has completed no fewer than 12 graduate semester hours or the equivalent of study of the Constitution, formally secured the masters degree, attended the Foundation's Summer Institute on the Constitution, completed teaching for the number of years and fractions thereof required as a condition of accepting Foundation support for study, and submitted all required reports.

[FR Doc. 96–22525 Filed 9–4–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. 94–66; Notice 3]

RIN 2127–AF16

Manufacturing Incentives for Alternative Fuel Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for reconsideration.

SUMMARY: This notice announces the denial of a petition for reconsideration of the agency's decision to set a 200 mile minimum driving range for dual fueled passenger automobiles other than electric vehicles.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590:

For non-legal issues: Ms. Henrietta L. Spinner, Consumer Programs Division, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366–4802.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Establishment of a Minimum Driving Range for Dual Fueled Vehicles

On April 2, 1996, NHTSA published a notice in the **Federal Register** (61 FR 14507) announcing a final rule establishing a minimum driving range for dual fueled vehicles other than electric vehicles. This notice also established gallons equivalent measurements for gaseous fuels other than natural gas and eliminated provisions relating to the granting of alternative range requirements for alternative fueled vehicles not powered by electricity.

The agency promulgated this rule in response to amendments in the Energy Policy Act of 1992 (EPACT) (P.L. 102–486) expanding the scope of the alternative fuels promoted by section 513 of the Motor Vehicle and Cost Savings Act (Cost Savings Act), now recodified as 49 U.S.C. § 32905. Section 32901(c), the replacement section for section 513(h)(2), requires dual fueled passenger automobiles to meet specified criteria, including meeting a minimum driving range, in order to qualify for special treatment in the calculation of their fuel economy for purposes of the CAFE standards.

One change made by EPACT concerning driving ranges was that, under section 32901(c), the minimum driving range set by NHTSA for dual fueled passenger automobiles other than electric vehicles could not be less than 200 miles. The EPACT amendments also provided that the agency may not, in response to petitions from manufacturers, set an alternative range for a particular model or models that is lower than 200 miles, except for electric vehicles.

The EPACT amendments necessitated amending Part 538. In response, the agency established gallons equivalent measurements for the wider range of alternative fuels included in the EPACT amendments and deleted provisions relating to the establishment of alternative minimum driving ranges for non-electric alternative-fueled vehicles. In regard to the minimum driving range, NHTSA concluded that both the text and the legislative history of these amendments indicated that the agency was required to set a minimum driving range of not less than 200 miles for all dual passenger automobiles other than electric vehicles.

II. Petition for Reconsideration of the Minimum Driving Range

On April 19, 1996, the agency received a petition from Volvo Cars of North America, Inc., (Volvo) requesting reconsideration of NHTSA's decision to set a minimum driving range of 200 miles for all dual fueled passenger automobiles other than electric vehicles.

Volvo's petition argues that a 200 mile driving range is too stringent for compressed natural gas (CNG) passenger automobiles. The petition indicates Volvo believes that attaining a 200 mile range in a CNG vehicle would require large fuel storage cylinders. These large cylinders, in Volvo's view, would increase vehicle weight and cost while reducing usable space in the vehicle. The combination of increased weight and cost with decreased utility would discourage consumers from purchasing these passenger automobiles.

III. Response To Petition for Reconsideration

In response to the petition, the agency has reconsidered its decision to set a 200 mile minimum driving range for non-electric dual fueled passenger automobiles when operating on an alternative fuel. As explained below, the

agency is, on reconsideration, reaffirming that decision.

The petition raises several points that are not disputed by NHTSA; however, the agency does not have the discretion to set a lower range for these vehicles. NHTSA's examination of the EPACT amendments and their legislative history indicates that the agency is required by the amendment to Section 513(h)(2) of the Cost Savings Act to set a minimum driving range of not less than 200 miles for all alternative fueled passenger automobiles other than electric vehicles. The agency does not dispute that the 200 mile minimum driving range will place increased fuel storage demands on gaseous fueled vehicles and that these increased demands, particularly in the case of CNG powered passenger automobiles, will increase weight and cost while decreasing usable vehicle space. Nonetheless, the explicit language of the EPACT amendments, the legislative history, and the congressional determination contained in those amendments to restrict the exemption from the minimum driving range requirements to electric passenger automobiles, compels the conclusion that NHTSA does not have the discretion to set the range below 200 miles. Accordingly, the agency is denying the petition.

Issued on: August 29, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–22539 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 61, No. 173
Thursday, September 5, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–03–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc.—Manufactured Restricted Category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI)—manufactured restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters. This proposal would require a one-time inspection of the tail rotor slider (slider) to verify that it was manufactured with the correct outside diameter. This proposal is prompted by a United States (U.S.) Army Safety of Flight message that reports that some sliders may have been improperly manufactured with an undersized wall thickness by U.S. Army vendors. The actions specified by the proposed AD are intended to prevent fatigue failure of the slider, which could cause loss of tail rotor control and subsequent loss of control of the helicopter.

DATES: Comments must be received by November 4, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5157, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–SW–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–03–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to BHTI-manufactured restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, which would require, within 5 hours time-in-service after the effective date of this AD, a one-time inspection of the slider, P/N 204–010–720–3 or P/N 204–010–720–003, to verify that it has a correct outside diameter dimension, and was therefore manufactured with the correct wall thickness. The U.S. Army reports that some sliders may have been manufactured by U.S. Army vendors with a 30 percent undersized wall thickness. The reduced wall thickness will reduce the fatigue strength of the slider. This condition, if not corrected, could result in fatigue failure of the slider, which could cause loss of tail rotor control and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI-manufactured restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters of the same type design, the proposed AD would require, within 5 hours time-in-service after the effective date of this AD, a one-time inspection of the slider using a calibrated caliper or micrometer to verify that it has a correct minimum outside diameter dimension. If the outside diameter is less than 1.300 inches, removal and replacement with a slider that has an outside diameter of 1.300 inches or greater is required.

The FAA estimates that 80 helicopters of U.S. registry would be affected by this proposed AD, and that it would take 0.5 work hours per helicopter to accomplish the proposed inspection. The average labor rate is $60 per work hour. Replacement of the slider requires 8 hours, and required parts would cost approximately $72 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $46,560 if replacement of the slider is required in all of the fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

California Department of Forestry; Erickson Air Crane Co.; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Smith Helicopters; Southwest Florida Aviation; West Coast Fabrications; Western International Aviation, Inc.; Williams Helicopter Technology, Inc.; and UNC Helicopters: Docket No. 96–SW–03–AD.

Applicability: Bell Helicopter Textron, Inc.-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H UH–1L, and UH–1P helicopters, certificated in the restricted category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 5 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the tail rotor slider (slider), which could cause loss of tail rotor control and subsequent loss of control of the helicopter, accomplish the following:

(a) Using a calibrated caliper or micrometer, measure the outside diameter of the splined shaft of the slider, part number (P/N) 204–010–720–3 or P/N 204–010–720–003, at two points that are 90 degrees apart on the outside circumference of the splined shaft, one-half to one inch from either end of the slider. If the outside diameter of the slider is less than 1.300 inches, remove the slider and replace it, prior to further flight, with a slider that has an outside diameter of 1.300 inches or greater.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished. Issued in Fort Worth, Texas, on August 27, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22572 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–20]

Proposed Amendment of Class E Airspace; Tonopah, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Tonopah, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 15 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tonopah Airport, Tonopah, NV.

DATES: Comments must be received on or before September 16, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–20, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AWP–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for

examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Tonopah, NV. The development of GPS SIAP at Tonopah Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 15 SIAP at Tonopah Airport, Tonopah, NV. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP NV E2 Tonopah, NV [Revised]

Tonopah Airport, NV
(Lat. 38°03′29″N, long. 117°05′22″W)
Tonopah VORTAC
(Lat. 38°01′50″N, long. 117°02′01″W)

Within a 4.3-mile radius of the Tonopah Airport and within 2 miles each side of the 358° bearing from the Tonopah Airport, extending from the 4.3-mile radius to 10.5 miles north of the Tonopah Airport and within 1.8 miles each side of the Tonopah VORTAC 115° radial, extending from the 4.3-mile radius to 8.7 miles southeast of the Tonopah VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Tonopah, NV [Revised]

Tonopah Airport, NV
(Lat. 38°03′29″N, long, 117°05′22″W)
Tonopah VORTAC
(Lat. 38°01′50″N, long. 117°02′01″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Tonopah Airport and that airspace northwest of the Tonopah Airport bounded by a line beginning at lat. 38°18′00″N, long. 117°17′30″W; thence eastbound to lat. 38°18′00″N, long. 117°03′00″W; thence southbound to lat. 38°07′30″N, long. 117°03′00″W; thence counterclockwise via the 4.3-mile radius of the Tonopah Airport to lat. 38°04′00″N, long. 117°11′00″W, thence north westbound to lat. 38°12′00″N, long. 117°17′00″W, northbound to the point of beginning. That airspace extending upward from 1,200 feet above the surface within the area beginning at lat. 37°53′00″N, long. 117°05′41″W; thence south westbound along the southeastern edge of V–135 to the 24-mile radius of the Tonopah VORTAC; thence clockwise along the 24-mile radius of the Tonopah VORTAC to the southern edge of V–244; thence eastbound along the southern edge of V–244 to the 20-mile radius of the Tonopah VORTAC; thence clockwise along the 20-mile radius of the Tonopah VORTAC to lat. 38°18′00″N, long. 117°17′30″W; thence eastbound to lat. 38°18′00″N, long. 117°00′00″W; thence southbound to lat. 38°14′00″N, long. 117°00′00″W; thence eastbound to lat. 38°17′00″N, long. 116°36′00″W; thence southbound to lat. 38°00′00″N, long. 116°33′00″W; thence westbound to lat. 37°59′30″N, long. 116°38′30″W; thence southbound to lat. 37°53′00″W, long. 116°38′30″W, thence to point of beginning.

* * * * *

Issued in Los Angeles, California, on August 8, 1996.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–22540 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–16]

Proposed Establishment of Class E Airspace; Phoenix, Deer Valley Municipal Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace area at Phoenix, Deer Valley Municipal Airport, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 07R at Phoenix-Deer Valley Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Phoenix-Deer Valley Municipal Airport, AZ.

DATES: Comments must be received on or before September 20, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–16, Air Traffic Division, P. O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited ion the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AWP–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Available of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P. O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace area at Phoenix, Deer Valley Municipal Airport, AZ. The development of GPS SIAP at Phoenix-Deer Valley Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 07R SIAP at Phoenix-Deer Valley Municipal Airport, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface on the earth are published in Paragraph 6002 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport.

* * * * *

AWP AZ E2 Phoenix, Deer Valley Municipal Airport, AZ [New]

Phoenix, Deer Valley Municipal Airport, AZ
(Lat. 33°41′18″N, long. 112°04′57″W)

Within 3 miles south and 2 miles north of the 287° bearing from the Deer Valley Municipal Airport extending from the 4.4-mile radius of the Deer Valley Municipal Airport to 9.2 miles west of the airport.

* * * * *

Issued in Los Angeles, California, on August 9, 1996.

James H. Snow,

Acting Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 96–22542 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would amend existing regulations governing the Agency's internal Exchange Visitor Waiver Review Board and requests for waiver of the two-year home-country physical presence requirement made by interested United States Government agencies on behalf of an exchange visitor. Changes in the regulations providing for the Agency's Waiver Review Board are proposed to reconcile them with Agency policy and to control the number of cases mandatorily referred to the Board. The Agency expects that the number of cases afforded Board review will be reduced. Changes to the regulations governing waiver requests by interested United States Government agencies are believed necessary to provide for uniform administration of such requests. The Agency anticipates that the proposed changes will increase administrative efficiency and speed of response and also ensure that multiple interested U.S. Government agency (or state) waiver requests on behalf of an individual exchange visitor are not processed.

DATES: Comments regarding this proposed rule will be accepted until November 4, 1996.

ADDRESSES: Comments may be mailed to Rulemaking Clerk, Room 700, Office of General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW., Washington, DC 20547; Telephone, (202) 619–6829.

SUPPLEMENTARY INFORMATION: Under the aegis of the Exchange Visitor Program, some 175,000 foreign nationals come to this country to work, study, or train in the United States annually. As part of the public diplomacy efforts of the United States Government, these foreign nationals enter the United States as participants in the Exchange Visitor Program which seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Accordingly, many exchange visitors entering the United States are subject to a statutory provision, set forth at 8 U.S.C. 1182(e) (section 212(e) of the Immigration and Nationality Act), which requires that they return to their home country for a period of two years to share with their countrymen the knowledge, experience and impressions gained during their sojourn in the United States.

Foreign nationals entering the United States as Exchange Visitor Program participants are subject to the return home requirement if they: (i) Received U.S. or foreign government financing for any part of their studies or training in the U.S.; (ii) studied or trained in a field deemed of importance to their home government and such field is on the "skills list" maintained by the Agency in consultation with foreign governments; or, (iii) entered the U.S. to pursue graduate medical education or training. An exchange visitor subject to this requirement is not eligible for an H or L visa, or legal permanent resident status until the return-home requirement is fulfilled or waived.

If subject to the two-year return-home requirement, an exchange visitor may seek a waiver of such requirement. The bases upon which a waiver may be granted are: (i) A no objection statement from visitor's home government; (ii) exceptional hardship to the visitor's U.S. citizen (or legal permanent resident) spouse or child; (iii) a request, on the visitor's behalf, by an interested United States Government agency; (iv) a reasonable fear of persecution if the visitor were to return to his or her home country; and, (v) a request by a state on behalf of an exchange visitor who has pursued graduate medical education or training in the U.S.

Interested U.S. Government Agency Waiver Requests

The Agency's Exchange Visitor Program Services, Waiver Review Branch, is responsible for processing waiver applications. Last year, this branch received approximately 6,000 waiver applications, approximately 95 percent of which were based upon either a no objection statement from the visitor's home government or a request from an interested government agency. Over the past four years, the number of interested government agency requests submitted to the Agency has increased approximately five-fold to some 1,700 annually for calendar year 1995.

The vast majority of interested government agency requests processed by the Agency involve foreign medical graduates who entered the United States to pursue graduate medical education or training. At present, the Department of Veterans Affairs, the Department of Housing and Urban Development, the Department of Agriculture, and the Appalachian Regional Commission will act as an interested government agency on behalf of a foreign medical graduate seeking a waiver of his or her two-year home-country physical presence requirement. In return for agency request, the foreign medical graduate must agree to practice patient care in a geographic area designated by the Secretary of Health and Human Services as either a Primary Care Health Professional Shortage Area ("HPSA"), or Medically Underserved Area ("MUA"), or psychiatric care in a Mental Health Professional Shortage Area or to work at a facility operated by the Department of Veterans Affairs.

For years, the Department of Veterans Affairs and the Appalachian Regional Commission were the only agencies making requests for waivers on behalf of these foreign medical graduates, but in the past three years the Department of Agriculture and the Department of Housing and Urban Development also have begun to act on their behalf. With the entry into the waiver process of these two additional agencies, inconsistency in the administration of waiver requests among the different agencies has created a degree of confusion in the administrative process. Further, foreign medical graduates have also pursued concurrent waiver requests with multiple agencies. These concurrent requests reflect conflicting commitments or are duplicative and are therefore inappropriate, waste limited administrative staff resources, and do not further the requesting agency's mission and policy objectives. Further, such concurrent requests are unfair to the communities named in the unapproved applications given the considerable expenditure of resources that local communities devote to the waiver process. Accordingly, the Agency proposes to amend § 514.44(c) to both provide uniformity to this process and prevent the filing of concurrent waiver requests.

Waiver Review Board

An increase in the number of interested government agency and "no objection" waiver requests has also placed an increased burden on the Agency's internal Waiver Review Board. Many of these waiver requests involve exchange visitors who have received government funding for part or all of their exchange activities. Current regulations require that such cases be referred to the Waiver Review Board if the government sponsor that has provided funding objects to the exchange visitor's receiving a waiver. Other circumstances that require automatic referral to the Waiver Review Board are set forth in 22 CFR 514.44(g).

Given the increased number of waiver requests and the questionable value to program goals added by the Waiver Review Board process in certain types of mandatorily-referred cases, the Agency has identified a need to streamline the waiver review process and to reduce significantly the number of waiver applications routinely or mandatorily referred to the Waiver Review Board for decision. Further, organizational and staffing changes within the Agency's Exchange Visitor Program Services unit have resulted in the abolishment of the position of Director, Exchange Visitor Program Services and an alteration of the duties of the Waiver Branch Chief. The loss of the Director position has, in turn, rendered certain procedures set forth in § 514.44 (g) and (h) no longer germane. Accordingly, the Agency proposes new provisions to reflect the administrative changes in the Waiver Review Branch and to adjust the existing requirement of automatic referral to the Board of certain cases.

Comment

The Agency invites comments regarding this proposed rule notwithstanding the fact that it is under no legal requirement to do so. The oversight and administration of the Exchange Visitor Program are deemed to be foreign affairs functions of the United States Government. The Administrative

Procedures Act, 5 U.S.C. 553(a)(1), (1989) specifically exempts foreign affairs functions from the rulemaking requirements of the Act.

The Agency extends a 60-day public comment period. In response to suggestions and requests from immigration practioners, the Agency is also requesting public comment on certain matters related to this proposed rule but not set forth therein. Specifically, the Agency welcomes comment regarding the need for and merits of non-compete and punitive damages clauses that are set forth in contracts between local health facilities and foreign medical graduates receiving a waiver in order to work at such facility. These contractual clauses impose limitations upon the geographical area in which waiver recipients may practice medicine at the end of the employment contract and also penalize waiver recipients who fail to complete their contractual obligations by providing the health care facility the opportunity to pursue significant monetary damages against the waiver recipient. It is the Agency's belief that some, but not all, of these contracts contain such provisions and the Agency is accordingly interested in learning whether such provisions should be uniformly mandated. Further, based upon suggestions from the private bar, the Agency is interested in comment that discusses the need for and merits of an internal audit procedure for use by federal agencies or departments making interested government agency waiver requests. The Agency believes that such internal audit procedures could safeguard the integrity of the waiver request process.

In accordance with 5 U.S.C. 605(b), the Agency certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federal implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 22 CFR Part 514

Cultural Exchange programs.

Dated August 29, 1996.

R. Wallace Stuart,

Acting General Counsel.

Accordingly, 22 CFR part 514 is amended as follows:

PART 514—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 514 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1258; 22 U.S.C. 1431–1442, 2451–2460; Reorganization Plan No 2 of 1977, 42 FR 62461, 3 CFR, 1977 Comp. p. 200; E.O. 12048 43 FR 13361, 3 CFR, 1978 Comp. p 168; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.44 is amended by removing paragraph (h) and revising paragraphs (c) and (g) to read as follows:

§ 514.44 Two-year home-country physical presence requirement.

* * * * *

(c) *Requests for waiver made by an interested United States Government Agency.* (1) A United States Government agency may request a waiver of the two-year home-country physical presence requirement on behalf of an exchange visitor if such exchange visitor is actively and substantially involved in a program or activity sponsored by or of interest to such agency.

(2) A United States Government agency requesting a waiver shall submit its request in writing and fully explain why the grant of such waiver request would be in the public interest and the detrimental effect that would result to the program or activity of interest to the requesting agency if the exchange visitor is unable to continue his or her involvement with the program or activity.

(3) A request by a United States Government agency shall be signed by the head of the agency, or his or her designee, and shall include copies of all IAP–66 forms issued to the exchange visitor, his or her current address, and his or her country of nationality or last legal permanent residence.

(4) A request by a United States Government agency, excepting the Department of Veterans Affairs, on behalf of an exchange visitor who is a foreign medical graduate who entered the United States to pursue graduate medical education or training, and who is willing to provide primary patient care in a designated Primary Medical Car Health Professional Shortage Area, or a Medically Underserved Area, or psychiatric care in a Mental Health Professional Shortage Area, shall, in addition to the requirements set forth in § 514.44 (c)(2) and (3), include:

(i) A copy of the employment contract between the foreign medical graduate and the health care facility at which he or she will be employed. Such contract shall specify a term of employment of not less than three yeas and that the foreign medical graduate is to be employed by the facility for the purpose of providing primary medical care in a designated Primary Medical Care Health Professional Shortage Area or designated Medically Underserved Area ("MUA") or psychiatric care in a designated Mental Health Professional Shortage Area.

(ii) A statement, signed and dated by the head of the health care facility at which the foreign medical graduate will be employed, that the facility is located in an area designated by the Secretary of Health and Human services as a Medically Underserved Area or Primary Medical Care Health Professional Shortage Area or Mental Health Professional Shortage Area. The statement shall also list the Health Professional Shortage Area or Medically Underserved Area identifier number assigned to the area by the Secretary of Health and Human Services.

(iii) A statement, signed and dated by the foreign medical graduate exchange visitor that shall read as follows:

I, _____ (name of exchange visitor) hereby declare and certify, under penalty of the provisions of 18 U.S.C. 1101, that: (1) I have sought or obtained the cooperation of _____ (enter name of United States Government agency which will submit/is submitting an IGA request on behalf of the Exchange Visitor to obtain a waiver of the 2-year home residence requirement); and (2) I do not now have pending nor will I submit during the pendency of this request, another request to any United States Government department or agency or any State Department of Public Health, or equivalent, to act on my behalf in any matter relating to a waiver of my two-year home-country physician presence requirement.

(iv) Evidence that unsuccessful efforts have been made to recruit an American physical for the position to be filled by the exchange visitor.

(5) Except as set forth in § 514.44(g)(4), infra, the recommendation of the Waiver Review Branch shall constitute the recommendation of the Agency and such recommendation shall be forwarded to the Commissioner.

* * * * *

(g) *The Exchange Visitor Waiver Review Board.* (1) The Exchange Visitor Waiver Review Board ("Board") shall consist of the following Agency officers:

(i) The Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee;

(ii) The Director of the geographic area office responsible for the geographical area of the waiver applicant, or his or her designee;

(iii) The Director of the Office of Congressional and Intergovernmental Affairs, or his or her designee;

(iv) The Director of the Office of Academic Exchange, or his or her designee; and

(v) The Director of the Office of Research, or his or her designee.

(2) A person who has had substantial prior involvement in a particular case referred to the Board may not be appointed to serve on the Board for that particular case unless the General Counsel determines that the individual's inclusion on the Board is otherwise necessary or practicably unavoidable.

(3) The Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, shall serve as Board Chairman. No designee under this paragraph (g)(3) shall serve for more than 2 years.

(4) Cases will be referred to the Board at the discretion of the Branch Chief, Waiver Review Branch, of the Agency's office of Exchange Visitor Program Services. The Waiver Review Branch shall prepare a summary of the particular case referred and forward it along with a copy of the relevant file to the Board Chairman. The Chief, Waiver Review Branch, or his or her designee, may, at the Chairman's discretion, appear and present facts related to the case but shall not participate in Board deliberations.

(5) The Chairman of the Board shall be responsible for convening the Board and distributing all necessary information to its members. Upon being convened, the Board shall review the case file and weigj the request against the program, policy, and foreign relations aspects of the case.

(6) At the conclusion of its review of the case, the Board shall make a written recommendation either to grant or to deny the waiver application. The written recommendation of a majority of the Board shall constitute the recommendation of the Board. Such recommendation shall be promptly transmitted by the Chairman to the Branch Chief, Waiver Review Branch.

(7) The recommendation of the Board in any case reviewed by it shall constitute the recommendation of the Agency and such recommendation shall be forwarded to the Commissioner by the Branch Chief, Waiver Review Branch.

[FR Doc. 96–22586 Filed 9–4–96; 8:45 am]
BILLING CODE 8230–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35, 270, and 271

[FRL–5606–8]

Authorization of Indian Tribe's Hazardous Waste Programs Under RCRA Subtitle C; Proposed Rule; Notice of Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of reopening of comment period.

SUMMARY: Since publication of the proposed rule for Authorization of Indian Tribe's Hazardous Waste Programs Under RCRA Subtitle C (61 FR 30471 (June 14, 1996)), EPA has received requests to extend the comment period. The Agency has reopened the comment period 30 days to September 12, 1996.

DATES: The comment period on the proposed rule for Authorization of Indian Tribe's Hazardous Waste Programs Under RCRA Subtitle C (61 FR 30471) is reopened from August 13, 1996 to September 12, 1996.

ADDRESSES: Commenters on the Subtitle C Indian Authorization Rule proposal must send an original and two copies of their comments referencing Docket Number F–96–AITP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460, or (2) if using special delivery, such as overnight express service : RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. For other information regarding submitting comments electronically or viewing the comments received and supporting information, please refer to the proposed rule (61 FR 30471 (June 14, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia, and is open for public inspection and copying of supporting information for RCRA rules from 9 am to 4 pm, Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 a.m. to 6 p.m., Eastern Standard Time. For more detailed information on specific aspects of the Subtitle C Indian Authorization rulemaking, contact Felicia Wright, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, phone (703) 308–8634 (or email: wright.felicia@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: On June 14, 1996, EPA proposed Authorization of Indian Tribe's Hazardous Waste Programs Under RCRA Subtitle C. See 61 FR 30471. The Agency established a 60-day comment period and indicated that comments on the proposal would be accepted until August 13, 1996.

EPA received a written request to extend the comment period for the Subtitle C Indian Authorization proposal from the Navajo Nation and Morgan, Lewis & Bockius LLP on behalf of the FMC Corporation (FMC). The additional time requested was 30 days.

As justification for a time extension, the Navajo Nation pointed out that they need additional time to meet with the hazardous waste generator industries located on the Navajo Nation reservation to inform them of the proposed rule, and of the Navajo's plans to apply for authorization under a final rule. The extension will provide the Navajo Nation with adequate time to set up public meetings with the industries so that all parties may discuss the potential situation with the Navajo Nation and develop comments on the proposed rule to EPA. Similarly, FMC requested a time extension to better address the proposed rule in light of the complex legal issues relating to Indian Tribes.

The Agency has decided to grant an additional 30 days beyond the proposed 60-day comment period to allow stakeholders enough time to review the provisions of the rulemaking and to formulate comments and recommendations for the Agency's consideration in developing the final rule. The Agency believes that 90 days allows for sufficient time for commenters to analyze legal considerations, evaluate the proposal, and coordinate comments with others.

Dated: August 29, 1996.

Elliott P. Laws,

Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 96–22658 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–40–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5606–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent for Partial Deletion of the Harbor Island Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Lockheed Shipyard portion of the Harbor Island Superfund Site, known as Operable Unit (OU) No. 3, located in Seattle (King County), Washington, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion of the Harbor Island site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the NPL, published in the **Federal Register** on November 1, 1995 at (60 FR 55466).

This proposal for partial deletion pertains to OU No. 3, which is defined as the Lockheed Shipyard facility, located in the Harbor Island site. EPA bases its proposal to delete OU No. 3 on the determination by EPA and the State of Washington Department of Ecology (Ecology) that all appropriate actions under CERCLA have been implemented to protect health, welfare, and the environment at OU No. 3.

This partial deletion pertains only to OU No. 3 of the Harbor Island site. Response activities at OU Nos. 1, 2, 4, and 5 of this Site are not yet complete and these OUs will remain on the National Priorities List and are not subject of this partial deletion.

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty days (30) after publication of this document in the **Federal Register** and a newspaper of record.

ADDRESSES: Comments may be mailed to: Mr. Keith Rose, Remedial Project Manager, U. S. Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop: ECL–111, Seattle, Washington 98101.

Comprehensive information on the Harbor Island site as well as information specific to this proposed partial deletion is available for review at the Harbor Island information repository at the following location: U.S. Environmental Protection Agency, Region 10, Environmental Cleanup Office Records Center, 1200 Sixth Avenue, Seattle, Washington 98101. Attn: Lynn Williams.

FOR FURTHER INFORMATION CONTACT: Keith Rose, U.S. EPA, 1200 Sixth Avenue, Mail Stop: ECL–111, Seattle, Washington 98101, (206) 553–7721.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region 10 announces its intent to delete a portion of the Harbor Island site (Site) from the NPL, Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this proposal. Sites listed on the NPL are those which present a significant risk to human health or the environment. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

This proposal for partial deletion pertains to OU No. 3, which consists of the Lockheed Shipyard in the Harbor Island site. OU No. 3 is located at 2929 16th Avenue Southwest, and is bounded on the north by the ARCO petroleum storage tank facility, on the east by 16th Avenue Southwest, on the south by the Fisher Mills facility, and on the west by the West Waterway of the Duwamish River.

Lockheed Martin, the Potentially Responsible Party for OU No. 3, completed a Remedial Investigation and feasibility study for this OU. EPA conducted a risk assessment of OU No. 3 as part of a Site-wide risk assessment conducted during the Site-wide Remedial Investigation. On June 28, 1994, EPA issued a Record of Decision (ROD) for OU No. 3. In September 1995, Lockheed Martin completed the remedial action selected in the ROD. EPA proposes to delete OU No. 3 because all appropriate CERCLA response activities have been completed in this OU. Response activities at OU Nos. 1, 2, 4, and 5 of this Site are not yet complete and these OUs will remain on the NPL and are not subject of this partial deletion.

EPA will accept comments concerning its intent for partial deletion for thirty days (30) after publication of this document in the **Federal Register** and a newspaper of record.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Lockheed Shipyard OU and explains how this OU meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites, where a release of hazardous substances have occurred, may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or

revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the proposed deletion of OU No. 3 of the Harbor Island site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The Washington State Department of Ecology has concurred with this partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a display ad has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and interested members of the community. These notices announce a thirty (30) day public comment period on the deletion, which commences on the date of publication of this document in the **Federal Register** and a newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously.

For deletion of the Lockheed Shipyard OU, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary in response to any significant public comments received.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously.

If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of deletion in the **Federal Register**. Deletion of OU 3 does not actually occur until the final Notice of Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following summary provides the Agency's rationale for deletion of OU No. 3 of the Harbor Island site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

A. Site Background

Harbor Island is a man-made island, of approximately 400 acres in size, located about one mile southwest of Seattle, in King County, Washington. Since its construction at the turn of the century, the island has been used for commercial and industrial activities including ship building and maintenance, cargo shipping, secondary lead smelting, bulk petroleum storage and transfer, and metal fabrication. Primary contaminants of concern at the Harbor Island site include arsenic, lead, mercury, PCBs, polynuclear aromatic hydrocarbons (PAHs), and petroleum products. The Harbor Island site was added to the NPL in 1983.

In order to expedite Superfund response actions at this large Site, EPA has divided the Site into five OUs:

(1) The Soil and Groundwater OU
(2) The Petroleum Storage Tank OU
(3) The Lockheed Shipyard OU
(4) The Shipyard Sediment OU
(5) The Island-wide Sediment OU

EPA has been investigating and making CERCLA response action decisions for each OU separately.

The Lockheed Shipyard OU is an 18 acre shipbuilding facility located on the west side of Harbor Island at 2929 16th Avenue Southwest. This OU is bounded on the north by the ARCO petroleum storage tank facility, on the east by 16th Avenue Southwest, on the south by the Fisher Mills facility, and on the west by the West Waterway of the Duwamish River. The Lockheed Shipyard was used as a shipbuilding facility from the 1930's until 1986. Shipbuilding activities included metal fabrication, sandblasting and painting. Paints used at this facility contained copper, lead, mercury, and zinc. The sandblast grit used at this facility contained arsenic and lead.

B. Response Actions Taken at the Lockheed Shipyard OU

A Remedial Investigation of the Lockheed Shipyard was completed in 1993 by Lockheed Martin, the Potentially Responsible Party. Based on data collected during the Remedial Investigation, a risk assessment was conducted to identify contaminants of concern, potential exposure pathways, and potential human health risks resulting from exposure to contaminants found at the Lockheed Shipyard. This risk assessment determined that the most significant potential human health risk was exposure to arsenic, lead, and PAHs through accidental ingestion of contaminated soil by industrial workers.

During the Remedial Investigation, high concentrations of petroleum products in the soil, referred to as "hot spots", were also identified at four locations on the Lockheed Shipyard OU. These petroleum hot spots were considered to be potential sources of contamination to the groundwater.

Contaminants found in the groundwater included benzene, tetrachloroethylene, copper, lead, and zinc. Since the groundwater at Harbor Island is not a drinking water source, groundwater contaminants do not pose a risk to human health. However, groundwater contaminants which reach the shoreline and enter the adjacent surface water are of concern because of their potential adverse effects on marine organisms. Groundwater modeling conducted during the Remedial Investigation indicate that it is unlikely that groundwater contaminants would reach the shoreline at concentrations exceeding the marine chronic criteria in less than 50 years.

A Record of Decision (ROD) for the Lockheed Shipyard OU was signed EPA's Regional Administrator on June 28, 1994. The ROD established cleanup levels for arsenic, lead, PAHs, and petroleum in soil based on standards in the State of Washington Model Toxics Control Act (MTCA). The ROD also established the marine chronic criteria as the cleanup goal for groundwater at the shoreline, which would be protective of marine organisms. The main components of the selected remedy were: (1) excavation and treatment of petroleum hot spot soil by thermal desorption, (2) placing three inches of asphalt over exposed soil contaminated above MTCA cleanup goals, (3) consolidating and capping sandblast grit on-site or disposing the grit off-site, and (4) monitoring groundwater quality semi-annually to verify that response actions taken will prevent groundwater contaminants from reaching the shoreline at concentrations which exceed the marine chronic criteria.

The selected remedy was completed by Lockheed Martin in September 1995. Confirmational soil sampling conducted after completing the remedy demonstrates that no significant risk to public health or the environment is posed by residual levels of contamination remaining in the soil. Groundwater monitoring conducted to date indicate that groundwater contaminant have not reached the shoreline at concentrations exceeding the marine chronic criteria. Semi-annual groundwater monitoring will be conducted at the Lockheed Shipyard until it is confirmed that groundwater contaminants will not exceed the

marine chronic criteria at the shoreline in the future.

C. Community Involvement

During the remedial activities at the Site, including the Lockheed Shipyard OU, EPA kept the community informed of its cleanup actions primarily through fact sheets, public meetings, and newspaper articles. EPA representatives met with facility owners and operators, local officials, and interested members of the community in order to develop a Community Relations Plan. EPA representatives also met several times with the Potentially Responsible Parties to discuss their potential liability for cleanup at the Site. A Proposed Plan for the Lockheed OU was issued on April 22, 1994, and subject to public comment for 30 days. This Proposed Plan was mailed to individuals on EPA's mailing list and was also announced in a local newspaper notice. EPA also held a public meeting on the Proposed Plan in EPA's regional office in Seattle on May 11, 1994. EPA responded to all comments received in the Responsiveness Summary, which is attached to the ROD.

D. Current Status

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "Responsible parties or other persons have implemented all appropriate response actions required." EPA, with concurrence of Ecology, believes that this criterion for deletion has been met for the Lockheed Shipyard OU. Groundwater quality will be monitored semi-annually to verify that response actions taken will prevent groundwater contaminants from reaching the shoreline at concentrations which exceed the marine chronic criteria. Five-year reviews will be conducted by EPA to evaluate trends in groundwater contamination until it has been determined that cleanup goals will not be exceeded at the shoreline and that additional groundwater monitoring is not necessary.

While EPA does not believe that any future response actions in OU No. 3 will be needed, if future conditions warrant such action, the proposed deletion area of the Harbor Island site remains eligible for future Fund-financed response actions. Furthermore, this partial deletion does not alter the status of OU Nos. 1, 2, 4, and 5 of the Site which are not proposed for deletion and remain on the NPL.

EPA, with concurrence from the State of Washington, has determined that all appropriate CERCLA response actions have been completed at OU No. 3 of the Harbor Island site and protection of human health and the environment has been achieved in this area. Therefore, EPA makes this proposal to delete only OU No. 3 of the Harbor Island Superfund site from the NPL.

Dated: August 28, 1996.

Charles E. Findley,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 10.

BILLING CODE 6560-60-P

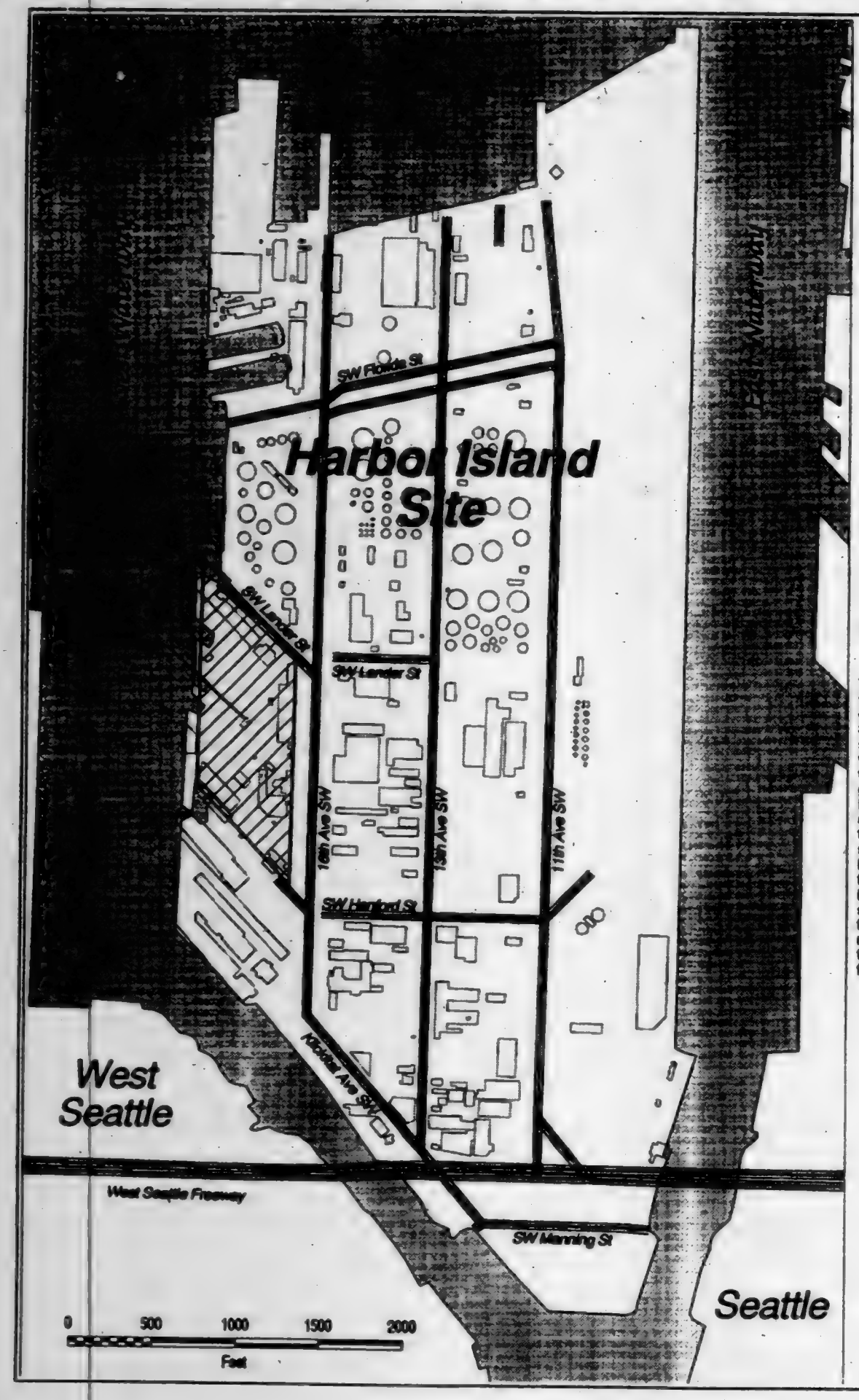

Figure 1

Harbor Island Superfund Site

Area Proposed for Partial Deletion

Note:

This map has been compiled by EPA Region 10 from spatial data provided by the City of Seattle. The accuracy of the spatial data has not been verified by EPA. Therefore, this map is to be used as a general representation only. EPA does not guarantee the accuracy or completeness of the information shown, and shall not be liable for any loss or injury resulting from reliance upon the information shown. Please see the accompanying report for detailed survey information and legal descriptions of the area proposed for partial deletion.

[FR Doc. 96–22646 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–50–C

40 CFR Part 300

[FRL–5558–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Ambler Asbestos site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the Ambler Asbestos site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of Pennsylvania have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this site from the NPL may be submitted on or before October 7, 1996.

ADDRESSES: Comments may be submitted to James J. Feeney, (3HW21), Project Manager, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–3190.

Comprehensive information on this site is available for viewing at the Site information repositories at the following locations:

U.S. EPA, Region 3, Hazardous Waste Technical Information Center, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–5363

Wissahickon Valley Public Library, Ambler Branch, 209 Race Street, Ambler, PA 19002, (610) 646–1072

FOR FURTHER INFORMATION CONTACT: Mr. James J. Feeney (3HW21), U. S. Environmental Protection Agency, Region 3, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 566–3190.

SUPPLEMENTARY INFORMATION:

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I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV. Basis for Intended Site Deletion.

I. Introduction

The Environmental Protection Agency (EPA) Region 3 announces its intent to delete the Ambler Asbestos site, Montgomery County, Pennsylvania, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous substance Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty calendar days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

(iv) In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, it is EPA's policy that sites should generally not be deleted from the NPL until at least one five-year review has been conducted following completion of all remedial actions at a site (except operation and maintenance), any appropriate actions have been taken to ensure that the site remains protective of public health and the environment, and the site meets EPA's deletion criteria as outlined above. EPA must also assure that five-year reviews will continue to be conducted at the site until no hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure. States may conduct five-year reviews pursuant to Cooperative Agreements or Superfund State Contracts with EPA, and submit five year review reports to EPA.

An exception to this requirement involves situations where a Consent Decree contains language specifically committing EPA to delete a site from the NPL upon completion of certain response activities. In such cases, EPA Regions must consult with EPA Headquarters prior to initiation of any deletion activities. However, such an exception would apply only to the general policy of not deleting sites before completion of the first five-year review, not to the requirement to conduct reviews. EPA would still need to assure that five-year reviews will be conducted at the site. Given the October 30, 1989 policy directive from the Acting Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) regarding the performance of five-year reviews and their relationship to the deletion process, Consent Decrees should now require one five-year review following completion of the remedial action (except operation and maintenance) before deletion.

III. Deletion Procedures

In the NPL rulemaking published on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice of comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP proposed on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any

individuals rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region III will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

(i) EPA Region III has recommended deletion and has prepared the relevant documents.

(ii) The State of Pennsylvania has concurred with the deletion decision. Concurrent with this National Notice of Intent to Delete, local notice will be published in local newspapers and distributed to appropriate federal, state and local officials, and other interested parties. This local notice presents information on the site and announces the thirty (30) day public comment period on the deletion package.

(iii) The Region has made information supporting the proposed deletion available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address significant comments received during the public comment period.

A deletion will occur after the EPA Regional Administrator places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region III.

IV. Basis for Intended Site Deletion

The Ambler Asbestos Superfund Site is composed of three piles of asbestos-containing wastes and a series of waste water settling and filter bed lagoons. The Site, which covers approximately twenty-five (25) acres, is located in the center of a mixed commercial/residential area in Ambler, Pennsylvania.

Historically, the Site was owned by Keasbey & Mattison Company (K&M), a manufacturer of pharmaceuticals, such as Milk of Magnesia, and asbestos insulation products. K&M owned the site from the late 1800's to 1962, when it sold the property and operations in parcels. One parcel, including the CertainTeed Scrap Pile (also known as the Pipe Plant Pile), was sold to CertainTeed, Inc. That pile became Operable Unit Two (OU–2) of the Site. Nicolet Industries, Inc. purchased the remaining property, including the Locust Street Pile, the Plant Pile and the filter bed lagoons. Those two piles and the lagoons constitute Operable Unit One (OU–1) of the Site. The total volume of asbestos-containing waste in the piles is estimated to exceed 1.5 million cubic yards.

The Site came under the scrutiny of the EPA in 1971, and subsequent field investigations showed visible dust emissions that were determined to contain asbestos. In 1974, the State denied disposal permit applications and ordered both companies to stop dumping and to stabilize and cover the piles. CertainTeed stabilized the CertainTeed Scrap Pile with a vegetated soil cover in 1977. The Nicolet Corporation decontaminated and removed the equipment from the Locust Street playground in 1984. The Locust Street and Plant Piles were regraded and stabilized by EPA and Nicolet and the Site was partially fenced in removal actions undertaken in 1984 and 1989. The Site was proposed for inclusion on the Superfund National Priorities List October 10, 1984 and finalized on that list on June 6, 1986.

The Remedial Investigations and Feasibility Studies for the operable units were conducted separately by EPA and CertainTeed Corporation and showed the potential for exposure to airborne asbestos particles originating from the Site if the existing cover systems were not upgraded. Potential erosion of the Piles by the action of the Wissahickon and Stuart Farm Creeks was also identified. Remedies for the Operable Units were selected and described in separate Records of Decision issued September 3, 1988, for OU–1, and September 29, 1989, for OU–2.

Negotiations with the potentially responsible parties continued for the design and actual construction of the remedies selected for the operable units of the Site. Nicolet, however, dissolved in bankruptcy in 1988. Subsequently, T&N Industries, Inc. (T&N) was joined for CERCLA liability as the parent corporation of the former owner, K&M. Two parties, T&N and CertainTeed, entered into separate Consent Decrees for the Remedial Designs and Remedial Actions, under the oversight of EPA, of their respective operable units. Physical construction of the remedies for the Site was completed by the parties in October 1992 and both construction Remedial Action Reports were accepted by EPA on April 28, 1993.

The Remedial Action selected and constructed for OU–1 included draining and back-filling the lagoons, installing a semi-permeable cap and surface drainage system on the piles, and constructing an erosion control device; a concrete revetment installed on the west slope of the Locust Street Pile to inhibit the erosion of the stream bank and the pile by the action of the Wissahickon. The west slope of the pile abuts against and into the Wissahickon Creek along Butler Pike. The existing fences on the property were also moved and repaired to discourage trespassing and vandalism. This remedy eliminated the lagoons and stabilized the piles against erosion by wind, precipitation and the action of the Wissahickon, reducing the threat of release to the air or surface water, and potential exposure to airborne asbestos.

The Remedial Action selected and constructed for OU–2 included supplementing the existing soil cover, clearing and grading to promote proper surface drainage, revegetating the pile, and installing gabion boxes to reinforce the banks of the Stuart Farm Creek along the East slope of the pile. The existing fences on the property were upgraded and replaced to discourage trespassing and vandalism. A verification study was also conducted during the Remedial Design to determine the extent and source of metals contamination in the creek. That study showed no significant contamination attributable to the Site. This remedy stabilized the pile against erosion by wind, precipitation and the action of the Stuart Farm Creek, reducing the threat of release to the air or surface water, and potential exposure to airborne asbestos.

Separate long-term Operation and Maintenance (O&M) Plans were submitted and subsequently approved for each Operable Unit to ensure the continued integrity of the pile cover. There are no operating facilities. As such there will be only maintenance of the remedies, which will be performed by the Respondents. Inspections will be conducted to ensure the continuing maintenance of the security fence, gates, warning signs, cap system, cap vegetation and the constructed erosion and sedimentation control measures. Site inspections will also be conducted after major storm events that cause local flooding to ensure the integrity of all permanent erosion and sedimentation controls. Specific Maintenance will be triggered by the inspections and performed as necessary. The O&M Plans were prepared in sufficient detail to allow the EPA and the State of Pennsylvania to determine that the protectiveness of the remedy for the site will be maintained over time.

A statutory Five-Year Review of the selected Remedy is to be completed on or before July 27, 1997 to ensure that no

future threats to the public health or environment exist. Further Five-Year Reviews will be conducted pursuant to OSWER Directive 9355.7–02. "Structure and Components of Five-Year Reviews," or other applicable guidance where it exists.

The remedies selected for this Site have been implemented in accordance with the Records of Decision, as modified and expanded in the EPA-approved Remedial Designs for the two Operable Units. These remedies have resulted in the significant reduction of the long-term potential for release of asbestos fibers to the surrounding surface soils, the ambient air and the aquatic environment. Human health threats and potential environmental impacts have been minimized. EPA and the State of Pennsylvania find that the remedies implemented continue to provide adequate protection of human health and the environment.

EPA, with concurrence of the State of Pennsylvania, believes that the criteria for deletion of this Site have been met. Therefore, EPA is proposing deletion of this Site from the NPL.

Dated: August 12, 1996.

Thomas J. Maslany,

Acting Regional Administrator, USEPA Region III.

[FR Doc. 96–22378 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 96–16, DA 96–1279]

Revision of Broadcast EEO Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: In *Streamlining Broadcast EEO Rules and Policies*, DA 96–1279, released August 9, 1996, (*Streamlining*), the Commission granted a motion for extension of time and for waiver of filing deadline concerning the Commission's *Order and Notice of Proposed Rule Making*, MM Docket No. 96–16, (*NPRM*). A group of organizations requested the extension of time and waiver of filing deadline due to difficulties resulting from staff shortages, computer failures, and "obtaining consensus" from each of the 20 participating organizations. In the interest of compiling a full record in the rulemaking, the Commission extended the dates for filing comments and reply comments.

DATES: Initial comments were due August 26, 1996; reply comments due September 25, 1996.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hope G. Cooper, Mass Media Bureau, Enforcement Division. (202) 418–1450.

SUPPLEMENTARY INFORMATION:

Adopted: August 9, 1996.

Released: August 9, 1996.

Comment Date: August 26, 1996.

Reply Comment Date: September 25, 1996.

1. On February 8, 1996, the Commission adopted an *Order and Notice of Proposed Rule Making*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996) (*NPRM*), which vacated the Commission's *EEO Forfeiture Policy Statement* and requested comment on proposals for amending the Commission's EEO Rule and policies. Comment and reply comment dates were established for April 30, 1996, and May 30, 1996, respectively.

2. On April 12, 1996, twenty organizations, including the Minority Media and Telecommunications Council (hereinafter "Petitioners"), filed a Motion for Extension of Time to file comments in response to the above-captioned proceeding.[1] On April 26, 1996, the Commission granted the Petitioners' request for extension of time.[2] The date for filing comments was extended to July 1, 1996, and the date for filing reply comments was extended to July 31, 1996.

3. On June 20, 1996, Petitioners filed a Motion for Further Extension of Time. Therein, Petitioners requested that we extend further the date for submission of comments in response to the NPRM by ten days, until July 11, 1996.[3] On June 26, 1996, we granted the Petitioners' request for extension of time to file comments and, on our own motion, extended the date for filing reply comments.[4] The date for filing comments was extended to July 11, 1996, and the date for filing reply comments was extended to August 12, 1996.

4. On August 5, 1996, the Petitioners filed a Further Motion for Extension of Time, and for Waiver of Filing Deadline. Therein, Petitioners request that the Commission waive the filing deadline for its comments and extend the reply comment deadline. In support of their request, Petitioners state that staff shortages, computer failures, and "obtaining consensus" from each of the 20 organizations, have presented difficulties in assembling their filing. They state that they need "approximately two weeks" to complete their research and file comments.

5. It is Commission policy that extensions of time not be routinely granted. *See* Section 1.46(a) of the Commission's Rules, 47 CFR Section 1.46(a). Petitioners have requested and received two extensions of time to file comments in this rulemaking. In addition, the instant motion was filed more than three weeks after the deadline for filing comments in this proceeding. Finally, Petitioners' failure to file comments in a timely manner is entirely attributable to matters under their control. Nevertheless, in the interest of compiling a full record in this rulemaking, we will accept comments through August 26, 1996. Consequently, we shall extend the deadline for filing reply comments to September 25, 1996. Petitioners are hereby advised that we do not contemplate further extensions of time in this proceeding.

6. *Accordingly, it is ordered that* the Further Motion for Extension of Time, and for Waiver of Filing Deadline is granted.

7. *It is further ordered* that comments will be accepted through August 26, 1996, and reply comments will be due on September 25, 1996.

8. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4(i) and 303(r), and Sections 0.204(b), 0.283 and 1.46 of the Commission's Rules, 47 CFR Sections 0.204(b), 0.283 and 1.46.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

Editorial Note: This document was received at the Office of the Federal Register on August 29, 1996.

[FR Doc. 96–22533 Filed 9–4–96; 8:45 am]

BILLING CODE 6712–01–P

[1] *See* National Council of Churches *et al.*, Petition For Reconsideration and Clarification, MM Docket No. 96–16, filed April 11, 1996, at 1.

[2] FCC 96–198 (released: April 26, 1996), 61 FR 25163 (May 20, 1996).

[3] Minority Media and Telecommunications Council *et al.*, Motion For Further Extension of Time, MM Docket No. 96–16, filed June 20, 1996, at 1.

[4] 11 FCC Rcd 7624 (1996), 61 FR 37241 (July 17, 1996).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

49 CFR Part 531

[Docket No. 96–085; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision To Grant Exemption

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1998 and 1999 and that a lower alternative standard be established. In this document, NHTSA proposes that the requested exemption be granted and that an alternative standard of 16.3 mpg be established for MYs 1998 and 1999 for Rolls-Royce.

DATES: Comments on this proposed decision must be received on or before October 21, 1996.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590:

For non-legal issues: Mr. P.L. Moore, Motor Vehicle Requirements Division, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590, (202) 366–5222.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy, and
(4) The need of the United States to conserve energy.

Section 32902(d)(2) permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on Rolls-Royce

Rolls-Royce is a small company concentrating wholly on the production of high quality, prestigious cars. Rolls-Royce markets cars under the Bentley and Rolls-Royce nameplates and currently seeks an exemption for both Bentley and Rolls-Royce cars. The annual production rate for these cars is less than 2,500 automobiles, of which one-third are sold in the United States. The corporate philosophy concentrates on this limited production as the only way to maintain their reputation for producing what is widely perceived as the best car in the world. It believes that its customers will continue to demand substantial cars, craftsman-built, using traditional materials and equipped to the highest standards. Rolls-Royce operates as an independent unit within the Vickers group of companies and is required to generate its own financial resources. The limited financial resources of this small company and its market position preclude Rolls-Royce from improving fuel economy by any means involving significant changes to the basic concept of a Rolls-Royce car.

Fuel economy improvements are particularly difficult in the short run. Rolls-Royce traditionally manufactures its own engine and bodies and is a very low volume manufacturer. Because of this integration of component manufacturing and low volume, model changes are much less frequent than with larger manufacturers. Rolls-Royce may manufacture a body shell for fifteen years before making a major change. The opportunities for improving fuel economy through changing the model mix are also quite limited as Rolls-Royce manufactures only one basic model in different configurations and all have similarly low fuel economy.

Rolls-Royce's ability to make long term fuel economy improvements is also very limited. Any change in the basic concept of its cars to reduce size or downgrade the specifications would not, according to the petitioner, be acceptable to its customers.

Nevertheless, Rolls-Royce states that it is making every effort to achieve the lowest possible fuel consumption consistent with meeting emission, safety, and other standards while maintaining customer expectations of its product. In the 18-year period from 1978, when Federal fuel economy standards were introduced, Rolls-Royce has achieved fuel economy improvements by substituting lighter weight components and tuning its powertrain while leaving basic features of the vehicles unchanged.

Rolls-Royce states that technical innovation and switching to lighter weight materials should result in worthwhile improvements in its vehicles. The company believes that it has been conscious of the need for weight saving for many years, and since the introduction of the Silver Shadow, has made many parts of aluminum. These include the engine block and cylinder heads, transmission and axle casings, doors, hood and deck lid.

In addition to discussing opportunities for weight reduction, Rolls-Royce also included in its petition discussions of improving its fuel economy through mix shifts, engine improvements, and drive train and transmission improvements.

Rolls-Royce's Petition

On December 15, 1995, Rolls-Royce petitioned NHTSA for an exemption from the average fuel economy standards for vehicles to be manufactured by Rolls-Royce in model years (MYs) 1998 and 1999. The petition also requested an alternative standard be established, not to exceed 16.3 mpg, for each model year, 1998 and 1999. A number of petitions have been filed by Rolls-Royce covering all model years from 1978. The last was submitted in November 1994, which resulted in Rolls-Royce being granted an exemption

from the generally applicable fuel economy standard for MY 1997.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Rolls-Royce

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Rolls-Royce in MYs 1998 and 1999, the agency considered whether there were technical or other improvements that would be feasible for these Rolls-Royce vehicles, whether or not the company currently plans to incorporate such improvements in those vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Rolls-Royce for use on its MYs 1998 and 1999 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, engine improvements, and drive line improvements.

The agency interprets "economic practicability" as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its MYs 1998 and 1999 automobiles. In assessing that capability, the agency has always considered market demand since it is an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Rolls-Royce automobiles. NHTSA assumes that Rolls-Royce will continue to produce a five-passenger luxury car. Hence, design changes that would make the cars unsuitable for five adult passengers with luggage or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and power windows, were not examined. Such changes to the basic design could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Mix Shift

Rolls-Royce has little opportunity for improving fuel economy by changing the model mix since it makes only one basic model in various configurations, all with similarly low fuel economy. The differences in fuel economy values among the different models available in MYs 1998 and 1999 will likewise be small. For the 1998 and 1999 model years, Rolls-Royce and Bentley cars will fall into five fuel economy configurations, three from the naturally aspirated engine family and two from the turbocharged engine family. The differences in fuel economy values between the different models are small, and the models with the lower projected fuel economies have significantly lower projected volumes. The Rolls-Royce model mix is essentially fixed by the market demand, and variations in sales percentages between the models would produce negligible improvement in CAFE.

Weight Reduction

Rolls-Royce is conscious of the need to improve automotive fuel economy of its passenger vehicles. For MYs 1998 and 1999, aerodynamic improvements to the basic Rolls-Royce platform are expected to yield some fuel economy benefits. However, Rolls Royce, being a small manufacturer of prestigious automobiles, cannot afford to change the design of its cars by downsizing since its customers desire traditional size cars.

Engine and Drivetrain Improvements

Rolls Royce has a tradition of attempting to reconcile improved fuel economy with its limited technical resources and a need for powerplants suitable for large heavy cars. Past developmental activities include test and evaluation of various technologies applied to the Rolls-Royce engine. These included the Texaco Controlled Combustion system, the Honda Compound Vortex Controlled Combustion system, diesel engines, cylinder disablement, increased engine displacement (to reduce NO_x emissions and permit timing for improved fuel economy), the May "Fireball" combustion chamber, and overall downsizing of the engine and car incorporating all new features including bodyshell, engine, transmission, and suspension. Each of these approaches was discarded in turn as failing to provide a feasible option for simultaneously meeting fuel economy and emission requirements, and exacting customer expectations.

For MYs 1998 and 1999, Rolls-Royce intends to implement several engine and drivetrain improvements. Changes to the induction and exhaust systems will produce greater efficiency. Other planned improvements will lower friction losses and further enhance fuel economy. Modified transmission shift patterns and torque converter characteristics will also result in improved economy. However, because of the nature of Rolls Royce automobiles and the need to retain large displacement engines, the fuel economy gains expected will not be large.

Effect of Other Motor Vehicle Standards

The Rolls-Royce petition cites several emission and safety standards as having a significant impact on its ability to improve fuel economy. As with other low volume manufacturers, the demands of meeting these standards place a strain on Rolls Royce's relatively limited technical resources.

Calfiornia emission regulations for the 1998 model year will require Rolls Royce and Bentley cars to meet new "enhanced" evaporative emission standards for all models. Meeting these new requirements will require substantial revisions to the fuel and emission control systems along with the introduction of an onboard diagnostic leak detection system, increasing vehicle weight and reducing fuel economy. Rolls Royce also contends that changes to the Federal Emission Test Procedures for the 1998 model year will also have a negative impact on fuel economy, particularly for the heavier models.

The Rolls Royce petition also claims that compliance with safety standards will impair its ability to improve fuel economy. In particular, Rolls Royce indicates that compliance with FMVSS 208 (Occupant Crash Protection) continues to impose fuel economy costs by forcing some models to move into a higher test weight class. Rolls Royce also contends in its petition that 49 CFR Part 581 (energy absorbing bumpers) and FMVSS 214 (side intrusion beam in doors) will also have fuel economy impacts for the 1998 and 1999 model years. Rolls-Royce is a small company, and engineering resources are limited, and priority must be given to meeting mandatory standards to remain in the marketplace. Conflict often exists between the priority of meeting standards and the need to remain competitive.

The Need of the United States To Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Rolls-Royce to achieve an average fuel economy in MYs 1998 and 1999 above

16.3 mpg. Granting an exemption to Rolls-Royce and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the United States to conserve energy. In fact, there would not be any increase since Rolls-Royce cannot attain those generally applicable standards. Nevertheless, for illustrative purposes the agency estimates that the additional fuel consumed by operating the MYs 1998 and 1999 fleet of Rolls-Royce vehicles over their operating lifetime at the company's projected CAFE of 16.3 mpg (compared to an hypothetical 27.5 mpg fleet) is 115,959 barrels of fuel. This averages about 15.9 bbls. of fuel per day over the 20-year period that these cars will be an active part of the fleet. Obviously, this is insignificant compared to the daily fuel used by the entire motor vehicle fleet which amounts to some 4.8 million bbls. per day for passenger cars in the U.S. in 1994.

Maximum Feasible Average Fuel Economy for Rolls-Royce

This agency has tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its MYs 1998 and 1999 automobiles above an average of 16.3 mpg, that compliance with other Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Rolls-Royce's projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard. Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Rolls-Royce in MYs 1998 and 1999 is 16.3 mpg.

Proposed Level and Type of Alternative Standard

The agency proposes to exempt Rolls-Royce from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Rolls-Royce for MYs 1998 and 1999 at its maximum feasible average fuel economy of 16.3 mpg. NHTSA tentatively concludes that it would be appropriate to establish a separate standard for Rolls-Royce for the following reasons. The agency has already established (60 FR 47877) an alternate standard of 17.0 mpg for MedNet, Inc. for MYs 1996, 1997, and 1998. Therefore, the agency cannot use the second (class standards) or third (single standard for all exempted manufacturers) approaches for MY 1998. The agency also anticipates that it will receive petitions from other manufacturers seeking alternate standards for MY 1999. NHTSA tentatively concludes that the use of class standards or a single standard for all manufacturers would not provide sufficient flexibility for those manufacturers the agency anticipates will be filing petitions for MY 1999. Given the limited resources of these small manufacturers and their relative lack of ability to make significant changes to their product lines over the short term, the agency believes that establishing alternative standards for individual manufacturers is the most appropriate course of action for the 1999 model year. Accordingly, NHTSA is proposing that an alternate standard be established for Rolls Royce in MY 1999.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Rolls-Royce, Inc., as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible level for MYs 1998 and 1999, no fuel would be saved by establishing a higher alternative standard. NHTSA finds that, because of the minuscule size of the Rolls-Royce fleet, incremental usage of gasoline by Rolls-Royce's customers would not affect the United States's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the National Environmental Policy Act and determined that this proposed exemption, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemption and alternative standard. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting this proposed exemption would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 would be amended as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

2. In 49 CFR 531.5, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

Model year	Average fuel economy standard (miles per gallon)
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7
1992	13.8
1993	13.8
1994	13.8
1995	14.6
1996	14.6
1997	15.1
1998	16.3
1999	16.3

* * * * *

[Docket No. 96–085; N.1]

Issued on: August 29, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–22536 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 173
Thursday, September 5, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV96–946–3NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision of a currently approved information collection for Irish Potatoes Grown in Washington, Marketing Order No. 946.

DATES: Comments on this notice must be received by November 4, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, 1220 SW Third Avenue, Room 369, Portland, OR 97204, Tel: (503) 326–2724, Fax: (503) 326–7440.

SUPPLEMENTARY INFORMATION:

Title: Irish Potatoes Grown in Washington, Marketing Order No. 946.

OMB Number: 0581–0070.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of good quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The Washington potato marketing order, which has been operating since 1949, authorizes the issuance of grade, size, quality, maturity, pack, inspection, and reporting requirements. Regulatory provisions apply to potatoes shipped both within and out of the production area to any market, except those specifically exempt.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the Washington potato marketing order program.

Under the Washington potato marketing order, potatoes sent to processing are exempt from inspection and grade requirements, but must be shipped under a special purpose shipment exemption. To ensure good quality fresh market shipments, handlers must notify the State of Washington Potato Committee (committee), which locally administers the marketing order, of such special purpose shipments. Further, any business which operates as a potato canner, freezer, processor, or pre-peeler must register with the committee. Also, shipments of potatoes from areas where inspection is not readily available are exempt from inspection requirements, but handlers must apply for a modification of inspection exemption. The order requires handlers to notify the committee of the disposition of any potatoes that fail to meet the handling requirements. These forms enable the committee, and thus, the Secretary to better monitor exempt shipments and ensure compliance with provisions of the marketing order and the AMAA.

Potato producers and handlers who are nominated by their peers to serve as representatives on the committee must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the committee. AMS is the primary user of the information and authorized committee employees are the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.1505 hours per response.

Respondents: Potato producers and for-profit businesses handling fresh potatoes and potatoes for processing produced in Washington.

Estimated Number of Respondents: 490.

Estimated Number of Responses per Respondent: 2.976.

Estimated Total Annual Burden on Respondents: 246 hours.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0070 and Washington Potato Marketing Order No. 946, and be sent to the USDA in care of Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, U. S. Department of Agriculture, 1220 SW Third Avenue, Room 369, Portland, OR 97204. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 29, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–22660 Filed 9–04–96; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on September 19, 1996, at the Red Lion Hotel, Columbia River, 1401 N. Hayden Island Drive, Portland, OR 97217. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be discussed include, but are not limited to: (1) recommendations on the riparian reserve evaluation methods and techniques, (2) implementation monitoring, and (3) recommendations from the Joint Planning Team. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: August 29, 1996.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 96–22603 Filed 9–4–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office.

Title: Fastener Quality, Fastener Insignia, Insignia Recordal.

Agency Number: PTO Form 1611.

OMB Number: 0651–0028.

Type of Request: Reinstatement of a previously approved collection.

Burden: 100 hours.

Number of Respondents: 600.

Avg. Hours Per Response: 10 minutes.

Needs and Uses: The purpose of this collection is to ensure that a fastener (nuts, bolts, etc.) can be traced to its manufacturer or private label distributor. The information is used by PTO to process applications for recorded of insignias, and to maintain a database of recordal information for use by the public. The information is needed to comply with the Fastener Quality Act, Public Law 101–592.

Affected Public: Individuals, business or other for-profit organizations, not-for profit institutions, farms, federal government, state, local or tribal government.

Frequency: On occasion, recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maya A. Bernstein, (202) 395–4816.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should sent to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, D.C. 20503.

Dated: August 30, 1996.

Linda Engelmeier,

Acting Department Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22675 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–16–M

Bureau of the Census

Survey of Income and Program Participation—Wave 4 of the 1996 Panel

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 4, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, c/o U.S. Census Bureau, DSD—Room 3319–3, Washington, DC 20233–8400, or telephone 301/457–3819.

SUPPLEMENTARY INFORMATION

I. Abstract

The Survey of Income and Program Participation (SIPP) is a household-based survey designed as a continuous series of national panels, each lasting four years. Respondents are interviewed once every four months, in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits, and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population.

The SIPP has provided these kinds of data on a continuing basis since late 1983, permitting levels of economic

well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs such as obtaining information on the ownership and contributions made to IRA, Keogh, and 401K plans; examining patterns in respondent work schedules and their possible impact on child care arrangements; and developing data on various characteristics of persons with disabilities. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 1996 Panel Wave 4 are the following: (1) Annual Income and Retirement Accounts; (2) Taxes; (3) Work Schedule; (4) Child Care; and (5) Disability. Wave 4 interviews will be conducted from April 1997 through July 1997.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years, with each panel having a duration of about 4 years in the survey. All household members 15 years old or older are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals, making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit (PSU) will be followed and interviewed at their new address. Persons 15 years old or older who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607–0813.
Form Number: SIPP–16003 Reminder Card; SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 77,700.
Estimated Time Per Response: 30 minutes per person.
Estimated Total Annual Burden Hours: 117,800.
Estimated Total Annual Cost: $28,000,000.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22588 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–07–P

Economic Development Administration

Proposed Information Collection Activity

ACTION: Proposed agency information collection activity; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–12 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 4, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Leon T. Douglas, Economic Development Administration, Room 7814B, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

These forms are used by local and state governments, Indian tribes, and eligible nonprofit organizations to apply for Federal assistance under the Public Works and Economic Development Act of 1965 (P.L. 89–136), as amended. These forms are needed to assure that applicants meet statutory and program requirements for program administration.

II. Title of Collection

Preapplication for Federal Assistance and Application for Federal Assistance forms.

III. Data

OMB Number: 0610–0094.
Form Number: ED–900P and ED–900A.
Type of Review: Extension of a currently approved collection.
Affected Public: State, local or Tribal governments and non-for-profit organizations.
Estimated Number of Respondents: 2,500 (1,500 for ED–900P and 1,000 for ED–900A).
Estimated Time per Response: 8 hours ED–900P and 60 hours ED–900A.
Estimated Total Annual Burden Hours: 72,000 hours.
Estimated Total Annual Cost: $2.3 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 30, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22676 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–34–M

Foreign-Trade Zones Board

[Order No. 842]

Expansion of Foreign-Trade Zone 202; Los Angeles, CA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, for authority to expand its general-purpose zone to include five new sites in the Los Angeles, California, area, was filed by the Board on October 30, 1995 (FTZ Docket 66–95, 60 FR 56566, 11/9/95); and

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 202 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of August 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration; Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–22682 Filed 9–04–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 843]

Expansion of Foreign-Trade Zone 70; Detroit, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Greater Detroit Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 70, for authority to expand its general-purpose zone to include an additional site in Detroit, Michigan, was filed by the Board on February 5, 1996 (FTZ Docket 8–96, 61 FR 6623, 2/21/96); and

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 70 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of August 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration; Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–22683 Filed 9–4–96; 8:45 am]

BILLING CODE: 3510–DS–P

International Trade Administration

[A–351–806]

Silicon Metal from Brazil; Final Results of Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 20, 1995, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. The review period is July 1, 1992, through June 30, 1993. The review covers four manufacturers/exporters. The review indicates the existence of margins for two firms.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results as described below in the comments section of this notice.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Baker or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1995, the Department of Commerce (the Department) published in the **Federal Register** (60 FR 14731) the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil (July 31, 1991, 56 FR 36135).

Applicable Statute and Regulations

The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The period of review (POR) is July 1, 1992, through June 30, 1993. This review involves four manufacturers/exporters of Brazilian silicon metal; Companhia Brasileira Carburetto de Calcio (CBCC), Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), Eletroila, S.A. (currently known as Eletrosilex Belo Horizonte (Eletrosilex)), and Rima Electrometalurgia S.A. (RIMA).

Compsumption Tax

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, the

Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by the court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to his amount so that the tax adjustment would not alter a "zero" per-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the "*Zenith* footnote 4" methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax- neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Analysis of Comments Received

We received case and rebuttal briefs from Minasligas, Eletrosilex, and a group of five domestic producers of silicon metal (collectively, the petitioners). Those five domestic producers are American Alloys, Inc., Elken Metals, Co., Globe Metallurgical, Inc. SMI Group, and SKW Metals,and Alloys, Inc. We also received written comments and written rebuttal comments from CBCC and RIMA.

Comment 1: Petitioners argue that the Department erred by basing the margin calculation for each of the four respondents on U.S. sales of silicon metal that did not enter U.S. Customs territory during the POR. Petitioners cite to section 751(a)(2) of the Tariff Act for support that the statute requires that margins be based on entries. Petitioners also cite to *Torrington Co.* v. *United States*, 818 F. Supp. 1563, 1573 (CIT 1993) (*Torrington*) to demonstrate that the Court of International Trade (CIT) has held that the word "entry" as used in the statute refers to the "formal entry of merchandise into the U.S. Customs territory." Furthermore, petitioners argue that the Department itself has stated that the use of the term "entry" in the antidumping law refers unambiguously to the release of merchandise into the customs territory of the United States (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991) (*AFBs from Germany*)). Petitioners also state that the Department's past practice has been to conduct reviews of sales based on entries of subject merchandise and argue that any unusual circumstances that may have prompted the Department to base reviews on sales, rather than entries, in other case are not present here. Finally, petitioners argue that basing reviews on entries rather than sales is sound policy. By limiting reviews to entries, petitioners argue, the Department precludes respondents from controlling the outcome of administrative reviews. They Claim that basing the review on entries prevents manipulation because the transactions subject to review are determined by an objective administrative act performed by the U.S. Customs Service.

CBCC and RIMA argue that the petitioners have confused the issue of the liquidation of entries with the issue of the scope of inquiry in an administrative review. They allege that, in effect, the petitioners have argued that a company that does not have shipments that entered the United States during the POR should not be reviewed. Such a policy, CBCC and RIMA argue, would be contrary to the express language of the statute and the regulations, and also a departure from the Department's practice in the previous administrative review of this order. Furthermore, they argue that the purpose of an administrative review is, in part, to redetermine the deposit rate based on commercial activities during the POR. Thus, it makes sense to base the review on sales because the terms of sale are established by the exporter on the date of sale, and not when the entry arrives in the United States.

Eletrosilex and Minasligas argue that the petitioners made the same argument in the previous administrative review of this order, and the Department rejected it in its final results of review. They argue that in that review the Department cited its regulations for support that a review covers either "entries or sales of the merchandise during the 12 months immediately preceding the most recent anniversary month." *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42806, 42813 (DOC Position to Comment 25) (August 19, 1994). They state that the Department also noted in that review that it had based other administrative reviews on sales rather than entries. Furthermore, they argue, the Department in its *Advance Notice of Proposed Rulemaking* (56 FR 63696, 63697 (December 5, 1991)) (*Advance Notice*) stated that the statutory language *in toto* shows that Congress did not intend to limit administrative reviews solely to entries, and that to do so would hinder the achievement of statutory goals governing review and assessments.

Additionally, Minasligas argues that there are not compelling policy reasons that would require the Department to base administrative reviews solely on entries of subject merchandise because,

contrary to the petitioners' assertions, the respondent does not control the outcome of an administrative review when the Department bases its review on sales. First, the terms of the transaction involving the subject merchandise will remain the same, whether the Department bases the review on sales, shipments, or entries. Second, the entry of the subject merchandise into the customs territory of the United States is, in practical terms, of no importance to the Department's *comparison* of United States price (USP) to FMV to determine a dumping margin. Third, Minasligas argues that petitioners have misconstrued *Torrington*. *Torrington*, Minasligas argues, deals with the issue of whether entry of merchandise subject to an antidumping duty order into a Free Trade Zone (FTZ) "required that antidumping duties be imposed on merchandise imported into a FTZ until such time as the merchandise *enters* the Customs territory of the U.S." (*Torrington*, 818 F. Supp. at 1572, 1573 (emphasis added)). It did not, Minasligas argues, deal with the question at issue here, and is therefore irrelevant.

Department's Position

We agree with all parties in part, and disagree with all parties in part.

We agree with petitioners that normally the Department reviews sales where there are entries of subject merchandise during the POR. In determining a respondent's antidumping duty margin, the Department first determines whether the respondent had entries during the POR. In reviews where the respondent had one or more entries during the POR, the Department reviews the respondent's sales to determine the antidumping duty margin and, in accordance with section 751 (a)(2), uses this margin to assess on the entries during the POR. In reviews where the respondent had no entries during the POR, the Department normally conducts a no-shipment review (*i.e.*, a review in which a respondent's margin from the last review/investigation in which it had entries is carried forward and applied in a period in which there were no entries). This approach is in accordance with the explicit language of the stastute which requires that we asses antidumping duties on entries during the POR.

We do not agree with petitioners that section 751(a)(2) requires that we review only sales that entered U.S. customs territory during the POR. Section 751(a)(2) mandates that the dumping duties determined be assessed on entries during the POR. It does not limit administrative reviews to sales associated with entries during the POR. Furthermore, to review only sales associated with entries during the POR would require that we tie sales to entries. In many cases we are unable to do this. Moreover, the methodology the Department should use to calculate antidumping duty assessment rates is not explicitly addressed in the statute, but rather has been left to the Department's expertise based on the facts of each review. "* * * the statute merely requires that PUDD [*i.e.*, potentially uncollected dumping duties] * * * serve as the basis for both assessed duties and cash deposits of estimated duties." *See The Torrington Company* v. *United States* 44 F.3d 1572, 1578 (CAFC 1995).

The Department agrees with CBCC and RIMA that a company should not be precluded from review simply because it has no entries during the POR. However, the review we normally conduct under such circumstances is a no-shipment review (described above), and not a review of sales that may have occurred during the POR. No-shipment reviews ensure that a respondent continues to be "reviewed" even in situations where it had no entries during the POR.

We also agree with Eletrosilex and Minasligas that the Department's regulations permit a review of either "entries or sales." However, this language pertains to the methodology to employ in conducting a review, and does not address situations where a respondent had no entries during a POR.

We also agree with Eletrosilex and Minasligas that the Department's *Advance Notice of Proposed Rulemaking* states that the statutory language *in toto* shows that Congress did not intend to limit administrative reviews solely to entries. However, although we may base a review on either sales or entries during the POR, we must rely on entries to determine which type of review to conduct (*i.e.*, a sales-based review of a no-shipment review). Contrary to Minasligas' claims, the entry of subject merchandise into the customs territory of the United States is a necessary prerequisite for a sales-based review, because if a respondent had no entries during a POR, we would be unable to assess any antidumping duties determined to be due as a result of our review.

We have determined, based on information received from the U.S. Customs Service, that all respondents in this review had at least one consumption entry into U.S. customs territory during the POR. However, we have also determined that some respondents made sales to importers who had not entries during the POR. In these final results of review, we included all four respondents and adopted the following approach in determining which sales to review:

1. Where a respondent sold subject merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR.

2. Where a respondent sold subject merchandise to an importer who had no entries during the POR, we did not review the sales of subject merchandise to that importer in this administrative review. Instead, we will review those sales in our administrative review of the next period in which there is an entry by that importer.

After completion of this review, we will issue liquidation instructions to Customs which will instruct Customs to assess dumping duties against importer-specific entries during the period.

Comment 2: Petitioners argue that the Department erred in its calculations for each of the four respondents by comparing the United States price (USP) to the constructed value (CV) for the month of the sale. They argue that in hyperinflationary economy cases it is the Department's practice to compare the USP to the CV for the month of shipment. In support of their contention, they cite *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 55 FR 21061, 21065 (May 22, 1990) (*Porcelain-On-Steel Cooking Ware*), in which the Department stated:

> where, as here, a country's economy experiences hyperinflation, we use a company's replacement costs incurred during the month of shipment, rather than its historical costs, to calculate CV and COP. See Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order; Tubeless Steel Disc Wheels from Brazil, 53 FR 34566 (1988); and Oil Country Tubular Goods from Argentina, 50 FR 12595 (1985). This practice enables us to achieve a fair comparison by examining contemporaneous costs and prices, and thereby avoid distortions caused by hyperinflation. (emphasis added.)

Accordingly, petitioners argue that in the final results of review the Department should base its margin calculations for each of the four respondents by comparing USP to the CV for the months of shipment.

Eletrosilex argues that the Department's regulations contemplate that, in purchase price situations, the CV will be based on "relevant costs and

expenses at a time *preceding* the time the producer * * * sells the merchandise for exportation to the United States." 19 CFR § 353.50(b)(1) (emphasis added). Furthermore, Eletrosilex argues that the Department has long recognized that price and cost comparisons are relevant only when made in a narrow and comparable time period, and has in the past paid special attention in hyperinflationary economy cases to avoid time frames that cause distortions that result from hyperinflation. Moreover,the determination of what is the appropriate time period is, Eletrosilex argues, a discretionary call that the Department makes based on the facts of each case. According to Eletrosilex, the Department's Antidumping Manual, Chapter 8, p. 61 (August 1991 ed.) states: "The determination of proper comparison periods is made on the basis of the facts in a particular investigation." The facts of this situation, Eletrosilex argues, warrant comparing the U.S. sale to the CV for the month of sale because there was a six-month interval between the date of sale and the date of shipment. On the date of sale (a time when prices were substantially depressed) the price was fixed and did not subsequently change. Six months later, when the merchandise was shipped, Brazil was facing inflation in excess of 2000 percent annually. Therefore, Eletrosilex claims that costs at that time had no relevance to costs or prices on the date of sale six months earlier.

Minasligas argues that petitioners' argument is moot because the department did not compare its USP to a CV; the Department compared USP to a weighted-average home market sales price. However, if the Department uses the CV of the month of shipment in the final results, Minasligas argues that the Department should adjust the CV to account for inflation between the date of sale and the date of shipment, as was done in the investigation of this case. *See Silicon Metal from Brazil; Final Determination of Sales at Less Than Fair Value*, 56 FR 26977, 26983 (June 12, 1991) (*Silicon Metal Final Determination*).

Department's Position: We agree with petitioners that, when using CV in hyperinflationary economies, our normal practice is to compare the U.S. price to the CV of the month of shipment. *See Porcelain-On-Steel Cooking Ware* at 21065. Therefore, we have compared USP to CV of the month of shipment in these final results of review, unlike in the preliminary results of review. However, we also agree with Minasligas that an adjustment should be made to CV to account for inflation between the date of sale and the date of shipment. Therefore, in these final results of review we have calculated a circumstance-of-sale inflation adjustment as described in *Tubeless Steel Disc Wheels from Brazil; Amended Final Determination of Sales at Less than Fair Value and Amended Antidumping Duty Order*, 53 FR 34566 (September 7, 1988). This was the same methodology followed in the original investigation of this proceeding. *See Silicon Metal Final Determination*, at 26983.

Comment 3: Petitioners argue that the Department erred in using the shipment date as the date of sale for Minasligas' sales made pursuant to long-term contracts. They base this argument on Appendix 2–2 of the Department's questionnaire which says that, for sales made pursuant to a long-term contract, the date of sale is the date of the contract, and that only if the terms of sale are subject to change, and do in fact change up to, or even subsequent to, the date of shipment, may the date of shipment be taken as the date of sale. Petitioners allege that there is no evidence on the record to indicate that the essential terms of sale changed, for the sales made pursuant to a long-term contract, after the date of the contract. Therefore, petitioners argue the Department should take the date of the contract as the date of sale for each sale made pursuant to a long-term contract. Furthermore, as the dates of the contracts are not on the record of this review, petitioners argue that the Department should either require Minasligas to report the date of the contracts, or else use the best information available (BIA) in the final results of review.

Minasligas argues that the Department acted properly and in full accord with its own precedent in using the shipment date as the date of sale. The Department has previously articulated, Minasligas argues, that the date of sale is the date on which the essential terms of the sale, specifically price and quantity, are finalized (*See* Department's questionnaire, Appendix 2–2, and *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan* (56 FR 12156, 12163, March 22, 1991 (*Cement from Japan*). Here, Minasligas argues that, contrary to petitioners' assertions, evidence on the record indicates that the price and quantity are not finalized until the date of shipment.

Department's Position: We agree with Minasligas. In *Cement from Japan* at 12163 we said:

> It is the Department's practice to determine the date of sale as that date on which the essential terms of the sale, specifically price and quantity, are finalized to the extent that they are outside the parties' control. See *Titanium Sponge from Japan* (54 FR 13403, 13404 (April 3, 1989)) (aff'd *Toho Titanium Co. v. United States*, 743 F. Supp. 888 (CIT 1990)); *Brass Sheet and Strip from France*, 52 FR 812, 814 (1987). The Department normally considers the contract date as the date of sale because a written contract best represents the date at which the terms of sale are formalized and the parties are bound.

From our review of the price and quantity information on the record of this review, we have determined that prices for sales made pursuant to the same contract sometimes vary. Thus, we conclude that the parties are not in fact bound by the contract, and that the terms of sale are not finalized until the date of shipment. Hence, in these final results of review, as in the preliminary results of review, we have used the date of shipment as the date of sale.

Comment 4: Petitioners argue that the Department lacked the information necessary to "treat properly" Minasligas' home market sales of silicon metal to a particular Brazilian producer of silicon metal. These sales were included in the margin calculation in the preliminary results of review. Petitioners argue that the sales volumes and prices to Minasligas' customer raise fundamental questions regarding the relationship between Minasligas and the customer. Thus, petitioners argue, the Department needs to know the ultimate disposition of the silicon metal sold to the Brazilian producer and whether Minasligas knew the ultimate disposition of the silicon metal at the time of sale, (*i.e.*, whether the silicon metal was subsequently resold by the Brazilian producer to an American or third-country buyer) in order to determine whether the sale should have been included in Minasligas' home market sales listing and used in the margin calculation. Petitioners argue that the Department should solicit this information or else not use the sales in the calculation of the final results of review.

Minasligas argues that the Department had all necessary information to treat properly all of Minasligas' home market sales. It argues that the petitioners have inaccurately cited Minasligas' sales volumes and prices to this customer, and that there is nothing on the record to suggest that the sales to the Brazilian producer were anything other than arms-length transactions. It further argues that the petitioners' claim that Minasligas may have known that the sales to the Brazilian producer may have been resold and, therefore, should have

been treated differently than they were, is based on vague, hypothetical conjecture, and is without any support in the record.

Department's Position: We agree with Minasligas. From our review of the proprietary version of the record in this proceeding, we have determined that there is an insufficient basis for concluding that the sales to this particular home market customer were not arms-length transactions. Where prices to this customer differ from prices to other customers, the disparity can usually be explained as a function of differing quantities. Furthermore the questionnaire to which Minasligas responded in this review required that it report as U.S. sales, all sales made to unrelated intermediaries outside the U.S. that it knew at the time of sale were destined for delivery in the U.S. market. No evidence exists on the record that Minasligas failed to comply with this requirement. Hence, in these final results of review, as in the preliminary results of review, we have included the sales to this customer in the calculation of FMV.

Comment 5: Petitioners argue that the Department should reject RIMA's cost of production (COP) response and base the margin for RIMA on BIA. They base this argument on numerous alleged weaknesses they find in the cost data that RIMA submitted. Among those alleged weaknesses are the following:

(1) RIMA's financial accounting system did not record depreciation and inventory in accordance with Brazilian Generally Accepted Accounting Principles (GAAP), thus, petitioners argue, rendering the reported cost from the audited financial statements completely unreliable for antidumping purposes;

(2) RIMA's cost accounting system (which was used to value finished inventory values) was not totally integrated into its financial accounting system;

(3) RIMA's cost accounting system did not reconcile with supporting documentation (*e.g.*, payroll and purchase ledgers).

(4) the monthly adjustments RIMA used to reconcile the cost accounting system to the financial account system fluctuated immensely.

Petitioners conclude from these points that the accounting systems that generated the numbers to which the reported COP/CV data were reconciled are completely unreliable, and that, therefore, the Department should reject RIMA's submitted cost data and assign RIMA a margin based on BIA.

RIMA argues that none of petitioners' criticisms of its cost accounting system is pertinent. RIMA argues that it is permitted under Brazilian tax and corporate laws to not report depreciation on its financial statements. RIMA also claims that its failure to report depreciation on its financial statements is not relevant to this case because depreciation was calculated, verified, and taken into account in the cost computations. Moreover, RIMA argues that because the Department's methodology has departed entirely from the approach taken in standard Brazilian accounting, the fact that RIMA's financial statement may not comply with Brazilian GAAP should not be a basis for using BIA. Furthermore, RIMA argues that the integration of the cost accounting system with the financial accounting system has been explained in responses and shown to verifiers, who found the reconciliations acceptable.

Department's Position: For the final results, we accepted RIMA's submitted costs as the basis for COP and CV calculations. The Department recognizes that concerns exist about whether RIMA's valuation and presentation of its production costs are in accordance with Brazilian GAAP (see notes 3 & 4 of the independent auditor's opinion on the financial statements, cost verification exhibit 4). However, the Department also realizes that RIMA's auditors believed that the cost reported in the financial statements could still be relied upon and stated, "[i]n our opinion, except for that contained in paragraphs 3 and 4, the accounting reports * * * adequately represent, in all relevant respects, the net worth and financial position of RIMA * * *" (see independent auditor's opinion on the financial statement, note 5, cost verification exhibit 4, emphasis added). For purposes of the Department's calculations, we note that RIMA did calculate and submit depreciation based on internal schedules maintained by the company. At verification, we reviewed these schedules and traced selected information to both RIMA's audited balance sheet and source documentation (see cost verification exibit 7). We noted no discrepancies. Furthermore, because the Department required RIMA to use monthly replacement costs, the petitioners' concern about RIMA's ending inventory not being recorded in accordance with Brazilian GAAP is moot. The Department has determined in previous cases that Brazilian GAPP does not reasonably reflect the costs of producing silicon metal in Brazil. (*See Silicon Metal Final Determination* at 26986.) Therefore, in accordance with our replacement cost methodology, the Department valued RIMA's actual monthly production using its respective current month's cost and did not use RIMA's ending inventory in calculating RIMA's COP.

The Department also tested RIMA's cost and financial accounting systems. The company's cost accounting system was used to prepare managerial reports of product specific costs and the financial accounting system was used to prepare the annual financial statement. The two systems were linked (or integrated) through finished inventory values. The costs reflected in the managerial reports were adjusted monthly to conform with the accumulated production costs from the financial accounting system. RIMA officials contended at verification that their cost system produced questionable results and was not reliable. Therefore, they based cost of production on data obtained only from the financial accounting system. The Department found this approach reasonable because the figures produced by the company's cost accounting system were usually understated and required adjustment to conform with the audited financial accounting system results (*See* cost verification exhibit 9). Therefore, we were able to rely upon RIMA's financial statements to verify its submitted costs.

Comment 6: Petitioners argue that the Department should increase RIMA's direct material input quantities by the percentages recommended by the Department's Office of Accounting (OA) in its preliminary calculation adjustment memo dated December 22, 1994. By failing to follow OA's recommendation that RIMA's direct material input quantities be increased, petitioners argue that the Department used cost figures and input quantities in its calculations that were unverifiable and specifically rejected by the verifiers. They claim that this usage of RIMA's data was a violation of section 776(b) of the Tariff Act which requires that the Department rely on BIA for unverifiable information. Petitioners also argue that relying on RIMA's reported cost information is not adverse to RIMA and, therefore, allows the company to control the outcome of the proceeding to its advantage.

RIMA argues that there is no justification for applying a BIA figure to all of RIMA's direct material input quantities. RIMA believes that the Department properly rejected OA's BIA recommendation for direct materials. However, RIMA argues that the computer program used to calculate the preliminary review results shows that the Department increased costs. This

error, RIMA argues, should be corrected in the final results.

Department's Position: We accepted RIMA's submitted direct material quantities as the basis for COP and CV calculations for the final results. We disagree with the petitioners' contention that the quantities were unverifiable and specifically rejected by the verifiers. In fact, we were able to trace the submitted quantities to RIMA's source documents in this review period. In the verification report, we stated that we traced the direct materials quantities from RIMA's characteristic numbers report, which is used as a basis for reporting its quantity of inputs, to RIMA's daily production records, which are maintained in the furnace control room. (*See* cost verification report, page 8, October 31, 1994). However, due to a discrepancy between the information provided at the first and second review verifications concerning the availability of furnace reports through November 1993, OA contemplated an adjustment to increase RIMA's submitted direct material quantities. Upon reflection, however, we decided to accept RIMA's submitted information for this review because each review is conducted independently of other reviews and should not, on such matters, be influenced by other reviews. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 49569, 49570 (September 26, 1995).

Furthermore, we have determined that, contrary to RIMA's assertion, the computer program used to calculate the preliminary results of review does not contain an increase to direct material input quantities. Therefore, for purposes of these final results of review, we have not adjusted the quantity of direct material inputs in the computer program.

Comment 7: Petitioners argue that the Department made two mistakes with regard to RIMA's overhead costs. They allege that the first mistake was the Department's calculation of overhead by averaging ratios for direct labor, electricity, and direct materials calculated by comparing the usage for each item for silicon metal production to the usage for overall production. Petitioners argue that this use of a simple average does not accurately reflect the relationship of material costs, direct labor, and electricity costs to the sum of RIMA's cost of materials, direct labor, and utility costs. Petitioners claim that the Department needs to add an additional step to its calculations that weight-averages the adjustment ratios (based on the relationship of each cost item to the sum of the direct materials, electricity, and direct labor) to account accurately for the amount of overhead attributable to the production of silicon metal. Petitioners' second argument is that the Department erred in using the overhead costs for the month of sale rather than the month of shipment.

RIMA argues that it allocated its direct labor, direct materials, and electricity costs to most accurately reflect its true cost of production. RIMA argues that it is inappropriate for the Department to decide whether a company's approach is the "best allocation." It states that unless there is something seriously wrong with the overall cost accounting system of a company, the Department must use the figures developed by the company in its ordinary course of business. RIMA also argues that OA was incorrect to characterize the direct labor hours as "estimates." It states that the direct labor hours are programmed hours, developed over time and based on actual production performance. Finally, RIMA argues that there is no evidence on the record that a more complex allocation program would be better. In fact, RIMA argues that electricity consumption, which the Department used in its revised allocation methodology, is a poor method of allocating indirect costs because the amount of electricity consumed varies greatly with the product being made and the quality of raw materials.

Department's Position: We believe the allocation of overhead costs used in the preliminary results of review is appropriate, and applied the same methodology in these final results of review. We reviewed RIMA's submitted allocation method and found that it understates the cost of the subject merchandise. RIMA used estimated direct labor hours to allocate overhead costs. This method is not used in RIMA's normal course of business. Furthermore, the Department does not believe that direct labor hours alone are an adequate basis for cost allocations in this case because RIMA derived the hours from its cost accounting system which, as discussed in comment 5, does not produce accurate results. We believe that, based upon the specific facts of this case, an average of ratios based on direct labor hours, electricity usage, and direct material usage provides a broad and stable base for allocation purposes. Furthermore, this combination corresponds very closely to RIMA's production furnaces' machinery, and labor requirements. For example, silicon metal production consumes a larger quantity of electricity than non-subject merchandise. Therefore, a larger portion of the cost of maintaining the power lines and transformers should be allocated to the product. Finally, we note that RIMA's normal allocation method was examined at verification, and produced appropriately the same results as the method used in these final results (see cost verification exhibit 7).

We also reviewed the petitioners' criticism of our calculation, and disagree with their suggested additional step to weight the three ratios based on April 1993 values. Because Brazil's economy was hyperinflationary during the POR, we believe that the use of a specific month's values in the calculation could create inappropriate results when applied to the remaining months of the POR. Therefore, in these final results of review, we have used the same computation of RIMA's overhead costs as we did in the preliminary results of review. However, we agree with petitioner that overhead costs, like the other elements of CV, should be based on the CV of the month of shipment. In these final results of review, we have based CV on the month of shipment. See Department's Position to comment 2.

Comment 8: Petitioners argue that the Department erred by deducting RIMA's home market packing expenses from RIMA's CV before adding U.S. packing expenses to RIMA's CV. They argue that RIMA's CV did not include home market packing expenses and, therefore, these expenses did not need to be deducted before adding U.S. packing expenses.

Department's Position: We agree, and have corrected this error in these final results of review.

Comment 9: Petitioners cite to page two of the Department's March 14, 1995, preliminary results analysis memorandum to argue that the Department erred by excluding a line item called "HM Taxes" from Eletrosilex's CV. The line item in question, petitioners believe, represents Eletrosilex's Program of Social Integration (PIS), Social Investment Fund (FINSOCIAL), and Industrialized Products (IPI), taxes. Petitioners argue that these taxes must be included in CV since they are not remitted or refunded upon exportation of the merchandise. The statutory authority they cite to support their argument is section 773(e)(1)(A) of the Tariff Act, which provides that:

> the constructed value of imported merchandise shall be the sum of * * * the cost of material (exclusive of any internal tax applicable in the country of exportation directly to such materials of their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used * * * (emphasis added)

Eletrosilix argues that petitioners' argument is flawed because page two of the preliminary results analysis memo to which petitioners cite refers not to CV, but to the calculation of Net Home Market Price.

Department's Position: Eletrosilix is correct that page two of the preliminary results analysis memorandum concerns Net Home Market Price, and not CV. However, we believe petitioners intended to reference page five of the analysis memorandum, where we stated that in our computation of CV, we subtracted from COM the field "HM taxes."

Petitioners are correct that, in accordance with section 773(e)(1)(A) of the Tariff Act, internal taxes should be included in CV if they are not remitted or refunded upon exportation of the merchandise. After publishing the preliminary results of review, we solicited information from all respondents in this review regarding their tax payments. Eletrosilex stated that its PIS and FINSOCIAL (currently known as COFINS) taxes are already included in its reported direct materials costs (*See* Eletrosilex's September 6, 1995, submission, p. 4) Furthermore, in these final results of review, unlike the preliminary results of review, we have included the IPI tax (and also the tax on Circulation of Merchandise (ICMS)) in the calculation of CV for all respondents because these taxes are not remitted or refunded upon export of silicon metal. Because section 773(e)(1)(A) of the Tariff Act does not account for offsets of taxes paid due to home market sales, we did not account for the reimbursement to the respondents of ICMS and IPI taxes due to home market sales of silicon metal. The experience with regard to home market sales is irrelevant to the tax burden borne by the silicon metal exported to the U.S. Therefore, in these final results of review, all of the taxes Eletrosilex paid on its purchases of inputs for the production of silicon metal are included in CV.

In adopting this methodology, we are using the methodology applied in the less-than-fair-value (LTFV) investigation of this case (*See Silicon Metal Final Determination* at 26984). We believe this methodology more strictly accords with the language of section 773(e)(1)(A) of the Tariff Act than does the methodology used in the preliminary results of this review.

Comment 10: Petitioners argue that the Department erred by calculating Eletrosilex's net financial expenses from information contained in Eletrosilex's financial statements. Petitioners argue that the financial statements are unreliable for calculating Eletrosilex's net financial expenses for antidumping purposes because they include both long and short-term interest income, whereas the Department's practice is to offset interest expenses by only short-term interest income. Furthermore, petitioners note that in response to further questioning by the Department, Eletrosilex reported monthly total interest income rather than only short-term interest income. Petitioners argue that the Department should, therefore, make no offset to Eletrosilex's short-term interest expense.

Eletrosilex argues that it had no long-term interest income during the POR, and that all of its interest income was from short-term investments. Therefore, Eletrosilex argues, the Department properly subtracted all of its reported interest income from interest expenses in determining its net interest expenses.

Department's Position: We agree with the respondent. During verification, we traced financial receipts to source documentation to confirm that Eletrosilex's audited interest income figure was derived from only short-term investments (cost verification exhibit 12). We noted no discrepancies. Therefore, in these final results of review, as in the preliminary results of review, we allowed Eletrosilex to offset financing costs by the reported interest income.

Comment 11: Petitioners argue that the Department incorrectly calculated Eletrosilex's cost of overhauling one of its furnaces. Petitioners argue that the Department's calculation, which allocated costs equally to all months of the POR and applied each month's inflation rate to those costs, fails to account for the compounding effect of inflation. However, petitioners claim that the Department properly rejected Eletrosilex's September 1992 projected costs. Petitioners argue that using projected figures would violate the Department's practice of calculating replacement costs based on actual figures.

Eletrosilex argues that the use of compounded inflation rates by the Department is discretionary. Furthermore, it argues that the merits of using compounded inflation rates should be weighed against Eletrosilex's argument that the maintenance costs should be allocated over a longer period of time, not less than three years, because the furnace breakdown was a highly aberrational event. Eletrosilex also contends that the Department erred in using the actual production volume in the COP/CV calculations for the month of September 1992, and argues that the Department should instead use Eletrosilex's projected output.

Department's Position: We agree with petitioners. First, the petitioners are correct in arguing that COP/CV data should be based upon actual results and not projections. *See Final Determination of Sales at less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33557 (June 28, 1995). Therefore, in these final results of review, as in the preliminary results of review, the Department used actual production tons and not projected results to obtain Eletrosilex's actual per-ton costs for September 1992. Second, we amortized Eletrosilex's shut down costs over the POR since the repairs benefited production during this period. We are rejecting Eletrosilex's three year amortization period because the longer time period is unsupported by facts on the record. Additionally, we discussed the POR amortization period with company officials at verification. At that time, company officials agreed with the suggested period and did not offer any alternate amortization periods (*see* October 5, 1994, cost verification report, p. 5). Third, we have adjusted our calculation to account for the compounding effects of inflation.

Comment 12: Petitioners argue that the Department double-counted Eletrosilex's claimed duty drawback for ICMS and IPI taxes paid on imported electrodes by adding the duty drawback adjustment to USP, but also excluding ICMS and IPI taxes from CV. They argue that the Department's practice has been to perform its calculation in such a way that double-counting does not occur. In support of their view, petitioners cite *Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan*, 55 FR 335, 343 (January 4, 1990), in which the Department said that if duty drawback is "not included in the materials costs in the calculation of COM (cost of manufacture), the Department [adds] these uncollected duties to the CV."

Eletrosilex argues that it does not include ICMS and IPI taxes in its COM because they are not costs to Eletrosilex. Rather, because they are value-added taxes, their cost is passed along to the next user. Therefore, Eletrosilex argues, the Department should not consider these taxes in its calculation of CV. Furthermore, Eletrosilex argues, it is the Department's practice, in accordance with section 773(e)(1)(a) of the Tariff Act, not to include in CV any internal tax which is remitted or refunded upon exportation of the product in which the material is used. Eletrosilex states that because more than 87 percent of their product is exported, nearly all of the tax

would be excluded from the CV calculation under any circumstances.

Department's Position: We agree with petitioners. Eletrosilex's argument with respect to section 773(e)(1)(a) of the Tariff Act is not valid because the duty drawback law applicable to Eletrosilex suspends the payment of ICMS and IPI taxes that would ordinarily be due upon importation of electrodes. Therefore, because the ICMS and IPI taxes are suspended, we cannot conclude that they are already included in the COM or the tax payments that Eletrosilex has reported. Thus, in order to make an "apples-to-apples" comparison between USP And CV, we need to add to CV the full amount of the duty drawback that we added to USP in accordance with section 772(d)(1)(B) of the Tariff Act. We have done so in these final results of review.

Comment 13: Petitioners argue that the Department used an incorrect exchange rate in converting five of Eletrosilex's U.S. selling and movement charges from cruzeiros to U.S. dollars. They argue that the Department should use a devalued exchange rate because Eletrosilex reported its charges in devalued cruzeiros.

Eletrosilex argues that the petitioners's argument is confused because the Department used the exchange rate which petitioners, in their case brief, argued should be used, *i.e.*, the exchange rate of the month of shipment.

Department's Position: We agree with Eletrosilex. Our standard methodology in reviews involving hyperinflationary economies is to convert U.S. movement expenses using the exchange rate in effect on the date the costs were incurred. We employ this methodology to avoid creating dumping margins that result only from the rapid depreciation of a local currency during the interval between the month of sale and the month of shipment. *See Steel Wheels from Brazil, Final Determination of Sales at Less than Fair Value,* 54 FR 21456, 21459 (May 18, 1989) (*Steel Wheels*). Thus, in these final results of review, as in the preliminary results of review, we have converted Eletrosilex's U.S. export costs into U.S. dollars using the monthly exchange rate in effect during the month of shipment.

Comment 14: Petitioners argue that the Department erred by comparing Eletrosilex's U.S. prices inclusive of ICMS tax to a CV exclusive of ICMS tax. By doing so, the Department failed to make an "applies-to-apples" comparison. Moreover, they argue that section 772(d)(2) of the Tariff Act states that the USP shall be reduced by "any additional costs and charges * * * incident to bringing the merchandise * * * the United States" and by "any export tax * * * or other charge imposed by the country of exportation on the exportation of the merchandise to the United States * * *" if included in the price of the merchandise. Therefore, petitioners argue that the Department should subtract from Eletrosilex's USP the ICMS taxes that were included in the reported gross prices.

Eletrosilex argues that the ICMS tax is applied to the sale of semi-industrialized products, such as silicon metal, and the law specifically excludes any waiver of the tax upon exportation. Therefore, Eletrosilex argues, the ICMS tax is not an export tax and is, therefore, properly included in the calculation of USP.

Department's Position: We disagree with petitioners that the ICMS tax is an export tax or other charge imposed on the exportation of the merchandise to the United States as defined in section 772(d)(2) of the Act. The ICMS tax is imposed upon all sales of this product, regardless of the market to which it is destined. Since the tax is not levied solely upon exported merchandise, it does not constitute an export tax and cannot be subtracted from the USP of the merchandise under section 772(d)(2). However, the Department has concluded that the ICMS tax must be added to the constructed value (CV) of the product. Section 773(e)(1)(A) of the Act requires the deduction from CV of any internal tax applicable directly to material inputs or their disposition which has been rebated or not collected upon exportation. For Eletrosilex, this tax was collected upon exportation, but not rebated. Thus, the tax must be added to the CV to properly reflect the true costs and expenses borne by the product.

Comment 15: Petitioners argue that the Department used an incorrect exchange rate in converting three of CBCC's U.S. movement charges from cruzeiros to U.S. dollars. They argue that the Department should use a devalued exchange rate because CBCC reported its charges in devalued cruzeiros.

CBCC argues that the petitioners' only argument for using an artificially-determined rate rather than the true and real rate in effect on the date the expense was incurred is that it results in a very small increase in the expense in dollars. The Department was correct, CBCC argues, to seek a calculation of values based on the prevailing and correct economic indices in effect at the time of the transaction.

Department's Position: Our standard methodology in reviews involving hyperinflationary economies is to convert U.S. movement expenses using the exchange rate in effect on the date the costs were incurred. We employ this methodology to avoid creating dumping margins that result only from the rapid depreciation of a local currency during the interval between the month of sale and the month of shipment. (*See* Department's Position to comment 13.) Thus, in these final results of review we have converted CBCC's U.S. export costs into U.S. dollars using the monthly exchange rate in effect during the month of shipment. We intended to employ this methodology for all U.S. movement expenses in the preliminary results. However, in our review of the computer programs used for the preliminary results, we determined that for warehousing we used the exchange rate during the month of sale. We have corrected this error in these final results of review.

Comment 16: Petitioners argue that the Department erred by deducting CBCC's home market packing expenses from CBCC's CV before adding U.S. packing expenses to CBCC's CV. They argue that CBCC's CV did not include home market packing expenses and, therefore, they did not need to be deducted before adding U.S. packing expenses.

Department's Position: We agree, and have corrected this error in these final results of review.

Comment 17: Petitioners argue that the Department erred by using the incorrect indirect selling expenses in its calculation of CBCC's CV. The Department's preliminary results analysis memorandum for CBCC states that the Department used the indirect selling expenses CBCC submitted in its March 22, 1994, submission. Petitioners allege that, in reality, the Department used the indirect selling expenses submitted by CBCC in its March 17, 1994, submission.

Department's Position: We disagree. Upon review of the computer program used to calculate the preliminary results of review, we have determined that we used the indirect selling expenses that CBCC reported in exhibit 9 of its March 22, 1994, submission.

Comment 18: Minasligas argues that the Department erred in its method of calculating an ICMS tax rate to be applied to its USP. According to Minasligas, the Department's method was to calculate an average rate based on home market sales prices for the entire POR, and to then deduct from that rate the ICMS tax payable on exports. Minasligas contends that this method is flawed in two ways. First, it is distortive in a hyperinflationary

economy such as Brazil's because it biases the result in favor of sales that occur later in the POR. A more accurate method, Minasligas argues, is to perform the calculation on a monthly basis. Second, Minasligas argues that the method is flawed because Minasligas is exempt from paying ICMS tax on its exports which is evident in the information on the record of this review. Thus, the Department should not have made a deduction from the calculated ICMS tax rate for any ICMS tax allegedly due on exports.

Petitioners comment that the Department used the wrong set of home market sales in calculating Minasligas' FMV (see comments 3 and 4 above). Thus, any recalculation of the ICMS tax rate that the Department performs should be based on the correct set of sales.

Department's Position: In these final results of review, we have not calculated a tax rate to be applied to USP. Rather, as discussed under the "Consumption Tax" section of this notice, where we have made price-to-price comparisons, we have added to U.S. price the absolute amount of tax charged in the home market. Moreover, because Brazil had a hyperinflationary economy during the period of review, we have calculated the absolute amount of tax on a monthly basis, rather than an annual basis, in order to avoid distortion resulting from hyperinflation. Finally, we agree with Minasligas that evidence on the record indicates that Minasligas' export customers were not charged ICMS tax. In the preliminary results we made a deduction from the home market tax rate that we applied to the U.S. price because we mistakenly believed that Minasligas paid ICMS tax on its exports. In these final results of review, we have added to Minasligas's U.S. selling price the absolute amount of tax without making any deductions.

We disagree with petitioners' argument that we based FMV on the wrong set of sales. See the Department's Position to comments 3 and 4.

Comment 19: Minasligas argues that the Department erred in including inventory carrying costs in its computation of CV. It argues that it is the Department's longstanding practice to exclude inventory carrying costs from the computation of CV when all of the U.S. sales were purchase price transactions, as is the case here. (*See Notice of Amended Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Brazil;* 59 FR 8598, 8599 (February 23, 1994).) Thus, Minasligas argues that if the Department resorts to CV in the final results of review, inventory carrying costs should be removed from the computation of CV.

Department's Position: This issue is moot with respect to Minasligas because we did not use CV as the basis of FMV for Minasligas in these final results.

Comment 20: Minasligas argues that the Department erred in its computation of CV by not removing its inland freight costs from the direct selling expenses before calculating profit. The effect of this error, Minasligas argues, is to increase profit by 8 percent of the amount of inland freight.

Department's Position: This issue is moot with respect to Minasligas because we did not use CV as the basis of FMV for Minasligas in these final results.

Comment 21: RIMA argues that the Department erred in calculating an arm's-length price for the cost of RIMA's self-produced charcoal by using the April 1993 cost as the basis for calculating a write-up for the entire POR. It argues that there is no reasons to take an arbitrarily chosen month and apply it across a year's worth of data where, as here, data exist for each month of the POR, and the calculation is relatively simple.

Petitioners argue that RIMA is incorrect in stating that sufficient information is on the record to enable the Department to calculate an adjusted charcoal cost for each month of the POR. Specifically, RIMA did not submit information on the quantity of charcoal purchased each month from related and unrelated suppliers. Therefore, petitioners argue that in the final results of review the Department should base its adjustment for charcoal cost on the information submitted by RIMA for April 1993, as it did in the preliminary results of review. The petitioners also contend that the Department should increase the cost of quartz to account for wastage.

Department's Position: We agree with petitioners that our charcoal adjustment used in the preliminary results of review is appropriate. RIMA obtained charcoal from unrelated suppliers, related suppliers, and company-owned plantations. At verification, RIMA did not provide information to support its claim for costs incurred for self-produced charcoal and for costs incurred for charcoal acquired from related suppliers. Instead, RIMA suggested that the Department value all charcoal consumed during the POR using the replacement cost of monthly purchases from related suppliers. Therefore, as representational figures in this case, we used the relative quantity and value of charcoal purchased from related and unrelated suppliers during the month of April 1993 as BIA to increase charcoal costs (see cost verification exhibit 15). Furthermore, we reviewed the information on the record and not that RIMA reported monthly per-unit prices of charcoal in its submitted inventory holding gain and loss calculation, but did not submit information on the quantity of charcoal purchased from related and unrelated suppliers (see most verification exhibit 13). Therefore, contrary to RIMA's statement, the Department could not calculate monthly charcoal adjustments for any month other than April 1993.

As for the petitioners' concern about waste, in these final results of review we have increased RIMA's quartz quantity based on the waste factor provided by RIMA officials at verification. (*See* cost verification report, p. 3.)

Comment 22: RIMA states that there is a discrepancy between the cost spreadsheet from the preliminary results analysis memorandum and the computer printout that calculated the margins. It claims that the COM in the computer printout is approximately ten percent higher than the spreadsheet. RIMA argues that this error should be corrected in the final results.

Department's Position: In its case brief, RIMA cited to no specific numbers in the computer program that vary from the COP spreadsheet. Nevertheless, we have extensively reviewed the computer program used to calculate the margins for the preliminary results for any possible errors with regard to COM, and we have found none. We believe that RIMA's confusion may be due to the fact that the variable COM on the computer output pages labeled "Constructed Value Profit" of the margin calculation program is the COM of the month of payment, rather than the COM of the month of sale.

Comment 23: RIMA argues that the Department erred by not making an adjustment for inventory holding gains and losses. It states that this adjustment is necessary in order to account for short-term inventory gains that accrue when using a replacement cost accounting system, as was done in this administrative review. Furthermore, RIMA argues that it is not clear from the decision memorandum what the perceived defect is in the inventory holding figures that RIMA reported. RIMA speculates that the apparent problem is that the Department has changed methodologies between the original investigation and this review. RIMA claims that the Department cannot ask for data, verify the data, and then use a methodology that does not use the data.

Petitioners argue that the Department correctly rejected RIMA's inventory

holding gain and loss calculation because RIMA had failed to follow the Department's methodology for calculating inventory holding gains and losses in a hyperinflationary economy. Petitioners cite the Department's preliminary results analysis memorandum (p. 7) to document that the Department determined that RIMA had failed to properly layer the inventory and to value it at the production cost for each month. Thus, petitioners argue, the Department's basis for rejecting RIMA's calculation was not because the Department had changed methodologies. Petitioners further argue that because RIMA submitted inaccurate information, the Department is required not only to reject RIMA's inventory carrying gains/losses calculation, but to resort to BIA for RIMA's inventory holding gains and losses.

Department's Position: We reviewed RIMA's inventory gains and losses calculation and found certain inconsistencies which render that calculation unacceptable. In its calculation, RIMA failed to follow our instructions to layer inventory by month, and identify when the finished goods and direct materials were produced or purchased (See question C.5 of the questionnaire and cost verification exhibit 13). RIMA cannot shift the burden of correcting the calculation to the Department when, as here, doing so would require substantial inventory identification and the performance of numerous recalculation. (*See, e.g., Chinsung Indus, Co., Ltd.* v. *United States*, 705 F. Supp. 598 (February 7, 1989.) Thus, we have denied RIMA an adjustment for inventory carrying gains/losses. Furthermore, we do not agree with petitioners that we must use BIA. There is no legal or policy precedent which requires the Department to resort to BIA when we deny an adjustment that a respondent failed to accurately and adequately substantiate.

Comment 24: RIMA argues that the Department double-counted its credit expenses in the cost test by imputing them to COP and also deducting credit from the home market price compared to COP.

Petitoners argue that, contrary to RIMA's assertion, the Department did not reduce home market price by a credit adjustment prior to performing the cost test. The analysis memorandum and the computer program used to calculate the preliminary results of review both indicate, petitioners' argue, that the only adjustment the Department made to the home market price before comparing the price to the COP of the month of payment is that for the ICMS tax.

Department's Position: We agree with petitioners. In the preliminary results of review we made no deduction of credit from the home market selling price before comparing the price to COP. Thus, we did not double-count RIMA's credit expenses.

Comment 25: CBCC argues that the Department erred in performing the cost test when it applied a deflator to CBCC's home market selling prices before comparing them to the COP. It argues that because nothing on the record defines the deflator or explains its use, it should be removed from the computer program because its use was not in accordance with law.

Department's Position: We agree in part. In the preliminary results of review we compared CBCC's home market selling prices, net of adjustments, to the COP for the month of payment. This information was contained on page 4 of the preliminary results analysis memorandum for CBCC. Inadvertently omitted from the analysis memorandum (but included in the analysis memoranda for other respondents in this review) was the explanation that for sales with payment dates after the POR, we performed the cost test by comparing the COP of the last month of the review period to a deflated sales price. We have followed this methodology in these final results of review as we did in the preliminary results of review. The specifics of how we calculated the deflator are contained in the final results analysis memorandum for CBCC. However, in the computer program used to calculate the preliminary results of review, we mistakenly applied the deflator to all home market sales, and not just those with payment dates after the POR. We have corrected this error in these final results of review.

Comment 26: CBCC argues that the Department erred in calculating the direct selling expenses used in computing its COP/CV. These selling expenses consist of three elements: shipping, warehousing, and commission. CBCC states that the Department's computation of shipping expenses incorrectly included shipping expenses for all products that CBCC produces, and not just silicon metal. CBCC argues that in the final results, the Department should allocate shipping expenses to silicon metal based on the volume of silicon metal shipped as a percentage of shipments of all products. With respect to warehousing, CBCC argues that it incurs no warehousing expenses on its domestic sales; therefore, warehousing should not be considered a home market direct selling expense. Furthermore, in the computation of CV, warehousing expenses (which are all incurred on exports) are already included in the computation of the foreign unit price in dollars. Thus, by also including them in the calculation of CV, warehousing expenses are double-counted. With respect to commissions, CBCC argues that it incurs no commission in the home market on sales of silicon metal, and that, therefore, commissions also should not be included as direct selling expenses.

Petitioners argue that the Department should not consider the arguments CBCC has set forth in support of its position because they are untimely and unsupported. The antidumping questionnaire to which CBCC responded, petitioners state, requests CBCC to report selling expenses "associated with the same general class or kind of merchandise sold in the home market/third country." The arguments in CBCC's case brief, which CBCC failed to supply in its questionnaire response are, according to petitioners, based on untimely information which the Department is obliged under its regulations not to consider. Moreover, petitioners argue that CBCC's proposed methodology for reducing shipping costs is flawed because it is based on quantities produced, and not on quantities sold.

Department's Position: We have reviewed the record of this proceeding and determined that the information CBCC submitted in its case brief is not new information. Contrary to petitioners' assertions, CBCC did provide this information in its November 1, 1993, questionnaire response (pp. 8, 9, 23, and exhibit 11). We agree with CBCC that because it incurs no warehousing expenses on sales of silicon metal in the home market and pays no commissions in the home market, these expenses should not be included in its COP/CV for silicon metal. Because we have removed warehousing expenses from COP/CV, they are not double-counted in these final results of review. Furthermore, the Department does not treat shipping expenses as direct selling expenses. *See Color Televisions Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 55 FR 26225, 26230 (June 27, 1990), where we stated that inland freight was a movement expense, and not part of selling, general, and administrative expense. Therefore, because CBCC incurred no direct selling expenses on its home market sales of silicon metal, we have removed the

selling expense category from the calculation of COP/CV.

Comment 27: CBCC argues that the Department incorrectly calculated CBCC's general and administrative (G&A) expenses. It states that, in the preliminary results, the Department divided the financial statement G&A by the financial statement cost of goods sold (both of which were calculated on a historical cost basis), and multiplied the resulting percentage by the replacement cost COM for each month. CBCC states that this methodology was explicitly found deficient by the CIT on an appeal of the initial investigation in this case. There, CBCC states, the CIT remanded the case to the Department and directed it to use a consistent criterion. As a result, the percentage or ratio of G&A expenses to historical cost in the financial statement had to be applied to the historical cost of silicon metal in each respective month of the POR. CBCC argues that the Department should do the same in this review.

Petitioners argue that the CIT decision relied upon by CBCC has been vacated by the U.S. Court of Appeals for the Federal Circuit (CAFC). (*See Camargo Corrêa Metais, S.A.* v. *United States*, 52 F.3d 1040 (Fed. Cir. April 17, 1995).) As a result, petitioners argue, CBCC's argument should be rejected, and the Department should calculate monthly G&A and financial expenses for all respondents based on replacement COM in accordance with its long-established practice prior to the CIT decision relied upon by CBCC.

Department's Position: We agree, in part, with both the respondent and the petitioners. First, the petitioner is current that the CIT decision has been vacated by the CAFC. Therefore, we could calculate monthly C&A and financial expenses for all respondents based on replacement COM in accordance with our establishment practice prior to the CIT decision. However, CBCC correctly points out that this methodology does not use a consistent criterion. Therefore, we recalculated CBCC's G&A factor on a replacement cost basis. We readjusted CBCC's G&A factor on a company-wide annual basis by indexing CBCC's submitted monthly nominal G&A and cost of sales figures. The purpose of indexing the respondent's monthly figures is to obtain values at a uniform price level because the simple addition of monthly nominal values during a period of high inflation would yield a meaningless result. We then divided the indexed G&A figure by the indexed cost of sales figure to derive the company's annual G&A factor on a replacement cost basis. We then multiplied this factor by the monthly replacement COM. For these final results, the Department used this method to calculate G&A factors for all respondents except Electrosilex because it submitted a constant purchasing power, audited financial statement.

Comment 28: CBCC argues that the Department double-counted its credit expenses by imputing them to COP and also deducting credit from the home market price compared to COP.

Petitioners argue that, contrary to CBCC's assertion, the Department did not reduce home market price by a credit adjustment prior to performing the cost test. The analysis memorandum and the computer program used to calculate the preliminary results of review both indicate, petitioners argue, that the only adjustment the Department made to the home market price before comparing the price to the COP for the month of payment is that for the ICMS tax.

Department's Position: We agree with petitioners. In the preliminary results of review we made no deduction of credit from the home market selling price before comparing the price to COP. Thus, we did not double-count CBCC's credit expenses.

Comment 29: CBCC argues that the Department incorrectly calculated CBCC's financial expenses by using an interest factor based on historical cost multiplied by the monthly replacement COM. CBCC contends that this method is contrary to the CIT decision in the initial investigation of this case. CBCC also argues that the Department should not consolidate CBCC's financial expenses with those of its parent company, Solvay do Brasil (Slovay), because CBCC incurred no financial expense during 1992 and 1993. Furthermore, CBCC states that Slovay's financial expenses do not relate to the production of silicon metal.

The petitioners contend that the Department's interest calculation is permissible since the CIT ruling was subsequently vacated by the CAFC. Furthermore, the petitioners argue that the Department correctly consolidated the financial expense. To support its argument the petitioners cite the *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21946 (May 26, 1992), in which the Department said its practice "is based on the fact that the group's parent, primary operating company, or other controlling entity, because of its influential ownership interest, has the power to determine the capital structure of each member within the group." The petitioners also cite *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 57 FR 21065, 21069 (May 18, 1992), in which the Department said that it "is the Department's policy to combine the financing activities of a parent or subsidiary when the parent exercises control over the subsidiary (*i.e.*, meets the requirements for consolidation)." Therefore, the petitioners argue that consolidating the financial statements of CBCC and Solvay is justified because Solvay has a controlling interest in CBCC, and thus has the power to decide the composition of CBCC's capital structure. Finally, the petitioners believe that the Department's interest calculation incorrectly subtracted CBCC's total financial revenue from its total financial expenses. The petitioners argue that the correct method is to subtract only the short-term interest income from CBCC's financing costs.

Department's Position: We disagree with CBCC's claim that its interest factor should be based on only historical figures. The Department's preferred methodology is to calculate CBCC's interest factor on a replacement cost basis (see Department's Position to comment 27 for details on this methodology). However, in this case we do not have the necessary information on the record to index monthly interest costs. Therefore, we calculated financial expenses based on our established practice prior to the CIT decision because it is still a viable method (see comment 27 for details). *See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 59 FR 42806 (August 19, 1994).

Regarding CBCC's argument that we should not have consolidated the interest expenses of CBCC with Solvay, we agree with the petitioners that CBCC should report interest expenses on a consolidated basis regardless of what they produce. We maintain that the cost of capital is fungible, and we allocate a proportional share of interest expenses to all goods produced by a respondent during the POR. The Department considers financing expenses to be costs incurred for the general operations of the corporation. We recognize the fungible nature of a corporation's invested capital resources, including debt and equity, and we do not allocate corporate financing expenses to individual divisions of a corporation on the basis of sales per division. Instead, we allocate the interest expense related to the debt portion of the capitalization of the corporation, as we appropriate, to the total operations of the consolidated corporation. This consolidation methodology is consistent with our longstanding practice for computing

interest expense in cases involving parent-subsidiary corporate relationships. *See, e.g., Final Determination of Sales at Less Than Fair Value, Small Business Telephones from Korea*, 54 FR 53141, 53149 (December 27, 1989). Therefore, for these final results we calculated net financing costs on a consolidated basis.

Regarding CBCC's claim that it is inappropriate to use consolidated interest figures because CBCC has no debt, we note that this argument fails to take into consideration any borrowing costs associated with Solvay's initial and subsequent capital investment in the company. CBCC maintains that all interest expenses incurred by Solvay pertain solely to the parent's operations. Under this principle, CBCC would have us accept that its parent funds its own operations from borrowing while, at the same time, funding its investment in CBCC solely through equity capital. Such a principle ignores the fact that Solvay's capital structure is comprised of both debt and equity. Therefore, it is neither possible, nor appropriate, in our analysis to allow the company to pick and chose which portions of its parent's operation should incur the additional interest costs associated with borrowed funds.

Regarding petitioners' claim that financing costs should not be reduced by interest income, we note that during verification we confirmed that Solvay's audited interest income figure was derived from only short-term investments. (See cost verification exhibit 19.) We noted no discrepancies. Therefore, we allowed Solvay to offset financing costs by the reported interest income.

Comment 30: CBCC alleges that the Department applied an incorrect criterion for profit in the CV calculation. It states that, although it is impossible to determine from the disclosure documents the source of the profit calculations, the profit margins indicated in the output of the computer program suggest that there was a programming error.

Department's Position: The profit calculation was skewed in the preliminary results of review because we calculated a profit ratio using cost and revenue data computed over the entire POR. Because Brazil was a hyperinflationary economy during the POR, we have, in these final results of review, calculated a profit ratio for each month of the review period using cost and revenue data calculated on a monthly basis. We then weight-averaged these profit ratios to calculate an annual profit ratio. For any respondent whose profit ratio was greater than eight percent, we used the actual profit ratio in the computation of profit for CV. For any respondent whose profit ratio was less than eight percent, we used the statutory minimum of eight percent.

Comment 31: CBCC argues that the Department incorrectly calculated the FMV for March 1993. It states that the CV for March 1993, according to the expanded sales listing of the program output, is one figure, whereas the FMV used in the margin calculation for the same month is a different figure. CBCC argues that the disclosure documents do not explain the reason for the differences in the two figures, and therefore, CBCC concludes that there was an error either in the program or in the criteria employed.

Department's Position: We have reviewed extensively the computer program and output, including the expanded sales listing for March 1993, and have been unable to determined why CBCC believes the CV for March 1993 is the figure that it cites in its case brief. This figure appears nowhere in the output. Therefore, we found no error in the computer program based on this comment from CBCC.

Comment 32: Eletrosilex argues that the Department erred in calculating its imputed credit expense by using the short-term interest rates charged by the state bank of Minas Gerais. It states that it reported its own actual short-term borrowing rates, and that these rates should have been used in the imputed credit calculation. Use of the exogenous rates, Eletrosilex argues, inflated the determination of CV and distorted the CV in a manner prejudicial to Eletrosilex.

Petitioners argue that it is the Department's policy to calculate home market imputed credit expenses based on an interest rate tied to the currency in which the home market sales were made. (*See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Mexico*, 57 FR 42953, 42956 (September 17, 1992) and *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolle Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083, 37089 (July 9, 1993).) Because Eletrosilex's home market prices were invoiced in Brazilian currency and the interest rates that Eletrosilex reported were for loans denominated in U.S. dollars, petitioners argue that the Department was correct in not using Eletrosilex's reported rates for home market imputed credit. For the final results, petitioners claim that the Department should continue to use a home market interest rate denominated in Brazilian currency to calculate home market credit expenses. Moreover, petitioners argue that in the preliminary results the Department erroneously divided a monthly interest rate by 365 instead of 30 days, and that this error should be corrected in the final results.

Department's Position: We agree with petitioners that because the loans Eletrosilex reported were loans denominated in U.S. dollars, we cannot use the interest rates on those loans for calculations involving Brazilian currency. *See Notice of Final Determination of Sales at less Than Fair Value and Negative Critical Circumstances Determination: Disposable Pocket Lighters from Thailand*, 60 FR 14263, 14269 (March 16, 1995); *Final Determination of Sales at Less Than Fair Value; Fresh Cut Roses from Colombia*, 60 FR 6980, 6998 (February 6, 1995). Therefore, for the computation of home market credit, we have used the short-term interest rates charged by the state bank of Minas Gerais, as we did for the preliminary results. In these final results of review, we have, however, applied Eletrosilex's U.S. dollar-denominated interest rates to its calculation of U.S. imputed credit. We also agree with the petitioners that because the interest rates used in the calculation are monthly rates, the denominator should be 30, rather than 365. We have corrected this error in these final results of review.

Comment 33: Eletrosilex argues that the Department erred in not granting an inventory carrying cost offset to its CV financing costs. Eletrosilex argues that in making a CV calculation the Department uses annualized calculations for G&A and interest expense. Therefore, there is no sound reason for the Department to ignore an accurate calculation designed to make the CV calculation conform as closely as possible to reality.

Department's Position: We disagree with Eletrosilex. For the final results, we disallowed Eletrosilex's submitted CV inventory carrying cost offset because the company's POR sales were purchase price transactions, and not exporter's sales price transactions (see Eletrosilex's November 1, 1993, submission, p. 17). Thus, the inventory carrying cost offset is not a factor.

Comment 34: Petitioners argue that because Eletrosilex failed to properly layer its inventory, the Department was correct in rejecting Eletrosilex's reported inventory holding gains/losses calculation. Petitioners argue that in its calculation, Eletrosilex also failed to report beginning inventory for one of the months for charcoal, wood, quartz,

and electrodes. Furthermore, according to petitioners, Eletrosilex also calculated inventory holding gains/losses for only direct materials, and not for secondary materials or for finished goods. Moreover, petitioners argue, because Eletrosilex's calculation was inaccurate and incomplete, the Department is required to use BIA for Eletrosilex's inventory holding gains/losses.

Department's Position: We rejected Eletrosilex's submitted inventory holding gains and losses calculation because we found certain inconsistencies which render that calculation unacceptable. In its calculation, Eletrosilex failed to follow our questionnaire instructions to layer inventory by month, and identify when the finished goods and direct materials were produced or purchased (see question C.5 of the Department's questionnaire and cost verification exhibit 22). As explained with respect to RIMA in comment 23, Eletrosilex cannot shift to the Department the burden of correcting the calculation where, as here, doing so would require substantial inventory identification and the performance of numerous calculations. Thus, we have denied Eletrosilex and adjustment for inventory carrying gains/losses. Furthermore, we do not agree with petitioners that we must use BIA. There is no legal or policy precedent which requires the Department to resort to BIA when we deny an adjustment that a respondent failed to accurately and adequately substantiate.

Comment 35: Eletrosilex argues that the preliminary results analysis memorandum shows that in making adjustments for secondary material replacement costs, the Department improperly transcribed numbers for the months of September and October under column "b."

Department's Position: We agree, and corrected this error in these final results of review.

Comment 36: Eletrosilex argues that the Department double-counted some of its G&A expenses. It claims that this occurred because of Eletrosilex's bookkeeping method. Eletrosilex states that it included in its variable and fixed overhead some of the salaries and costs attributable to administrative functions at its manufacturing facility at Copitao Eneas. However, Eletrosilex's auditors did not consider these costs to be variable and fixed factory overhead, and included them instead in G&A. Thus, they were included in both Eletrosilex's reported factory overhead and in the G&A expenses recorded on its audited financial statement. Because the Department's methodology for calculating G&A was to devise a ratio of G&A to cost of goods sold, utilizing figures drawn from the financial statements, and multiplying the ratio by Eletrosilex's COM (which includes overhead), Eletrosilex argues that the salaries and costs attributable to administrative functions at its manufacturing facility at Copitao Eneas were, in effect, double-counted. Therefore, these costs should be removed from the COM. Doing so would also lower Eletrosilex's calculated interest expenses, Eletrosilex argues, because these too were calculated by applying a ration to the COM.

Petitioners argue that there is no evidence on the record of this review to support the claim that Eletrosilex included salaries and costs attributable to administrative functions at its Copitao Eneas facility in its reported fixed or variable overhead. This information was first submitted, petitioners argue, in Eletrosilex's case brief and, therefore, to accept this information would be a violation of 19 CFR § 353.31(a)(3).

Department's Position: We reviewed the schedules provided by Eletrosilex and concur that our preliminary adjustment overstates cost. However, the Department does not believe that Eletrosilex's suggestion of reducing submitted COM is the best way to correct the cost overstatement. Instead, we have reduced the G&A figure used to calculate the Department's G&A factor by the amount of the salaries and costs attributable to administrative functions. We used this methodology because these production costs were correctly submitted as a cost of manufacturing. Furthermore, we adjusted the cost-of-sales figures used in both the G&A and interest factor calculation to account for Eletrosilex's reclassification of costs.

With regard to petitioners' argument that Eletrosilex's information is untimely and therefore in violation of 19 CFR § 353.31(a)(3), we have determined that the respondent's information is already on the record of this review. It can be found in cost verification exhibit 7 and in exhibit 5 of the June 10, 1994 submission. Therefore, we have allowed this information to remain on the record of this review.

Comment 37: Eletrosilex argues that the test for sales below cost was flawed due to errors in methodology, analysis, and transcription. First, it claims that each of the errors noted in comments 32–36 are applicable to the Department's computation of COP. Eletrosilex claims that the correction of these errors will result in a substantially reduced COP. Second, according to Eletrosilex, the Department erred in its calculation of the home market price to be compared to COP by deducting a charge for home market credit using the short-term interest rate charged by the state bank of Minas Gerais, rather than Eletrosilex's own actual short-term borrowing rate. Third, Eletrosilex argues that the Department erred in not comparing home market sales price at the time of sale to the COP for the month of sale. With hyperinflation, that comparison is truer than using the month of payment and a deflation index.

Petitioners argue, with regard to the last point, that Eletrosilex reported in its November 1, 1993, questionnaire response (at 16) that the home market sales prices reported in its sales listing are "increased to incorporate the projected inflation rate between the date of sale and the actual date of payment." In light of this method of reporting, petitioners claim that it would be improper to compare Eletrosilex's unadjusted prices at the time of sale to its COP for the month of sale because it is the Department's practice to subtract inflation adjustments from the home market sales prices used in the COP comparison when those prices include adjustments for anticipated inflation (See *Ferrosilicon from Brazil, Notice of Amended Final Determination of Sales at Less Than Fair Value*, 59 FR 8598, February 23, 1994) (*Ferrosilicon from Brazil Amended Final Determination*).

Department's Position: With regard to Eletrosilex's first point, the Department applied to the cost test the same determinations that it made with respect to CV as described in our responses to comments 33–36. The issue Eletrosilex raised in comment 32 does not apply to COP because we do not use any imputed values in the computation of COP. With respect to Eletrosilex's second point, we used the same interest rate to calculate credit (which we deducted from the price to be compared to COP) that we used in the computation of credit that we included in CV. Therefore, see Department's position to comment 32, where this issue is addressed with respect to CV. With regard to Eletrosilex's third point, we agree with petitioners that the record indicates that Eletrosilex's selling prices include an element for anticipated inflation between the date of sale and the date of payment, and that it would, therefore, be incorrect to compare Eletrosilex's unadjusted prices at the time of sale to the COP of the month of sale. *See Ferrosilicon from Brazil Amended Final Determination*. Hence, in these final results of review, as in the preliminary results of review, we have

compared Eletrosilex's home market prices to the COP of the month of payment.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period July 1, 1992, through June 30, 1993:

Manufacturer/Exporter	Margin (percent)
CBCC	16.81
Minasligas	0.00
Eletrosilex	0.00
RIMA	31.60

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until the final results of the next administrative review:

(1) The cash deposits rates for the reviewed companies will be those rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this or any previous review conducted by the Department, the cash deposit rate will be 91.06 percent, the "all others" rate established in the LTFV investigation.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. § 1675(a)(1)) and 19 CFR § 353.22.

Dated: August 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22679 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–806]

Silicon Metal From Brazil; Preliminary Results of Antidumping Duty Administrative Review, Intent To Revoke in Part, and Intent Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review, intent to revoke in part, and intent not to revoke in part.

SUMMARY: In response to requests from petitioners and five respondents, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on silicon metal from Brazil. This review covers five manufacturers/exporters and the period July 1, 1993, through June 30, 1994. The review indicates that one of the companies had a margin during the period of review, and that three of the companies had no margins during the period for review. Our review also indicates that one company had no shipments during the period of review.

We intend to revoke the order for Companhia Ferroligas Minas Gerasis—Minasligas (Minasligas). We have preliminarily determined that Minasligas has not sold the subject merchandise at less than foreign market value (FMV) in this review and for at least three consecutive administrative review periods, and that it is not likely that Minasligas will sell the subject merchandise at less than FMV in the future. Minasligas has also submitted a certification that it will not sell to the United States at less than FMV in the future, and has agreed in writing to its immediate reinstatement in the order if the Secretary concludes under 19 CFR § 353.22(f) that subsequent to revocation Minasligas sold the merchandise at less than FMV.

We do not intend to revoke the order with respect to Companhia Brasileira Carbureto de Cálcio (CBCC). CBCC submitted an untimely request for revocation. Furthermore, in the final results of our most recently completed administrative review of this order, CBCC had a margin that was greater than *de minimis*. Therefore, CBCC does not qualify for revocation.

We have preliminarily determined that sales have been made below the FMV for one company. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Baker or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5253.

Applicable Statute: Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. On July 1, 1994, the Department published (59 FR 33951) a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period July 1, 1993, through June 30, 1994. We received timely requests for review from CBCC, Minasligas, Eletrosilex Belo Horizonte (Eletrosilex), Rima Industrial S.A. (RIMA), and Camargo Corrêa Metais S.A. (CCM). We also received a request for review of the same five manufacturers/exporters of

silicon metal from a group of four domestic producers of silicon metal (the petitioners). The four domestic producers are American Silicon Technologies, Elkem Metals Co., Globe Metallurgical, Inc., and SKW Metals and Alloys, Inc.

On August 24, 1994, the Department published a notice of initiation (59 FR 43537) covering the five manufacturers/exporters named above.

The Department has now completed the preliminary results of this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

In accordance with 19 CFR 353.25(a) we have preliminarily determined to revoke the antidumping duty order for Minasligas. Minasligas submitted a request in accordance with 19 CFR 353.25(b) to revoke the order with respect to its sales of silicon metal in the United States. Minasligas's request was accompanied by the required certifications which state that it has not sold silicon metal in the United States at less than FMV for at least three consecutive years, including the subject review period, and that it will not do so in the future. Minasligas has also agreed in writing to its immediate reinstatement in the order if the Secretary concludes under 19 CFR § 353.22(f) that subsequent to revocation Minasligas sold the merchandise at less than FMV. Since we preliminarily determine that Minasligas has not sold the subject merchandise at less than FMV for at least three consecutive years, and because we believe that it is not likely that Minasligas will sell the subject merchandise at less than FMV in the future, we intend to revoke the order with respect to Minasligas.

In response to the Department's request for information RIMA submitted to the Department a list of U.S. sales made during the POR. However, based upon information from U.S. Customs, we have determined that none of RIMA's U.S. sales made during this POR entered U.S. customs territory during the POR. Therefore, we have determined to treat RIMA as a non-shipper for this review.

Scope of the Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

The review period is July 1, 1993, through June 30, 1994. This review involves five manufacturers/exporters of Brazilian silicon metal.

Use of Best Information Available (BIA)

Because CBCC failed to produce information requested at verification to substantiate significant portions of its response, in accordance with section 776(c) of the Act, we have preliminarily determined that the use of BIA is appropriate. For these preliminary results we applied the following two-tier BIA analysis in choosing what to apply as BIA:

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, it assigns that company first-tier BIA, which is the higher of:

(a) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value investigation (LTFV) or prior administrative review; or

(b) The highest rate found in the present administrative review for any firm for the same class or kind of merchandise from the same country or origin.

2. When a company substantially cooperates with our requests for information including, in some cases, verification, but fails to provide the information requested in a timely manner or in the form required, it assigns to that company second-tier BIA, which is the higher of:

(a) The firm's highest rate (including the "all others" rate) of the same class or kind of merchandise from a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or

(b) The highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

See Allied-Signal Aerospace Co. v. United States, 28 F.3d 1188, 1189, 1190 n.2 (CAFC 1994).

CBCC cooperated with the Department by responding to the Department's questionnaires. However, we determined at verification that this company could not substantiate significant portions of its responses. Therefore, we have determined to apply second-tier BIA to CBCC for those sales for which we were unable to verify sales or cost information. (*See* Use of BIA memorandum to Joseph Spetrini, Deputy Assistant Secretary, Enforcement Group Three.) The second-tier BIA rate we have assigned to CBCC is 87.79 percent. This rate is CBCC's rate from the LTFV investigation. Accordingly, the rate we have assigned to CBCC for this review reflects the weighted-average rate for those sales for which we did not apply BIA and those sales for which we did apply BIA.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by Minasligas, CCM, RIMA, and CBCC by using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

United States Price

In calculating USP, we used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, F.O.B. or C&F price to the first unrelated purchaser in the United States.

We made deductions from USP, where appropriate, for foreign inland freight, ocean freight, foreign inland insurance, brokerage and handling, and export taxes. We made an addition to USP, where appropriate, for duty drawback. These adjustments were in accordance with section 772(d)(2) of the Tariff Act. We also adjusted USP for taxes in accordance with our practice as outlined in the final results of the second administrative review of this case published concurrently with this notice.

No other adjustments were claimed or allowed.

Foreign Market Value (FMV)

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as a viable basis for calculating FMV, we compared the volume of each respondent's home market sales to the volume of its third-country sales, in accordance with section 773(a)(1)(B) of the Tariff Act. In each case we found that the respondent's sales of silicon metal in the home market constituted at least five percent of its sales to third-country markets. Thus, we based FMV on sales in the home market. *See* 19 C.F.R. 353.46(a).

Due to the existence of sales below the cost of production (COP) in the last completed review of Eletrosilex, Minasligas, and CBCC, and the LTFV investigation of CCM, the Department determined that it had reasonable grounds to believe or suspect that sales below the COP may have occurred during this review. Accordingly, the Department initiated a COP investigation to determine whether Eletrosilex, Minasligas, CBCC, and CCM made sales during the POR at prices below their respective cost of productions within the meaning of section 773(b) of the Act.

Calculation of COP

We calculated each respondent's COP based on the sum of each respondent's reported cost of materials, fabrication, selling, general, and administrative (SG&A) expenses, and home market packing expenses in accordance with 19 CFR 353.51(c). We made an adjustment to COP, where applicable, for revenue received from the sale of by-products produced while producing silicon metal. Because the Brazilian economy was hyperinflationary during the period of review (POR), we instructed respondents to follow our longstanding methodology for hyperinflationary economies, including the use of replacement costs. (*See Silicon Metal from Brazil, Final Results of Antidumping Duty Administrative Review*, 59 FR 42806 (August 19, 1994).)

After calculating COP, we tested whether, as required by section 773(b) of the Act, the respondent's home market sales of subject merchandise were made at price below COP, over an extended period of time in substantial quantities, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. On a model-specific basis, we compared monthly COPs to the reported home market prices. To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If over 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." If between ten and 90 percent of the respondent's sales of a given product were at prices equal to or greater than the COP, we disregarded only the below-cost sales, provided sales of that product were also found to be made over an extended period of time. Where we found that more than 90 percent of the respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POR in which that product was sold. If a product was sold in three or more months of the POR, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POR. When we found that sales of a product occurred in only one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.*, where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. See *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

For CBCC, Minasligas, Eletrosilex, and CCM, we found that, for certain models, between 10 and 90 percent of home market sales were made at below-COP prices. Since CBCC, Minasligas, Eletrosilex, and CCM provided no indication that these sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded the below-cost sales of those models, if those sales were made over an extended period of time. *See* 19 CFR § 353.50.

Other than where we used BIA for CBCC, we based FMV for CBCC on constructed value (CV). In accordance with section 773(e) of the Tariff Act, it consisted of the sum of the cost of manufacture (COM) of silicom metal, home market SG&A expenses, home market profit, and the cost of export packing. The COM of silicon metal is the sum of direct material, direct labor, and variable and fixed overhead expenses. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by CBCC or 10 percent of the COM, the statutory minimum for general expenses. For home market profit we used the larger of the actual profit reported by CBCC, or the statutory minimum of eight percent of the sum of COM and SG&A expenses. *See* section 773(e)(1)(B) of the Tariff Act. We also made adjustments, where applicable, for differences between direct selling expenses incurred in the home market and the U.S. market. These direct selling expenses consisted of credit and warehousing. Finally, we made a circumstance-of-sale inflation adjustment as we did in the final results of the second administrative review of this proceeding, published concurrently with this notice.

We based FMV for Minasligas, Eletrosilex, and CCM on prices to unrelated purchasers in the home market. We calculated a monthly, weighted-average price. Where applicable, we made adjustments for post-sale inland freight. We also made adjustments, where applicable, for differences between home market and U.S. expenses for packing, credit, and warehousing.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1993, through June 30, 1994:

Manufacturer/exporter	Margin (percent)
CBCC	57.32
Minasligas	0.00
Eletrosilex	0.00
RIMA	[1]31.60
CCM	9.29

[1] No shipments during the POR; rate is from last review in which there were shipments.

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement

instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 91.06 percent, the "all others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22.

Dated: August 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22680 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–806]

Silicon Metal from Brazil; Preliminary Results of Antidumping Administrative Review; Intent Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review; intent not to revoke in part.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicon metal from Brazil in response to requests by respondents Eletrosilex Belo Horizonte (Eletrosilex), Companhia Ferroligas Minas Gerais—Minasligas (Minasligas), Companhia Brasileira Carbureto de Cálcio (CBCC), and RIMA Industrial S/A (RIMA). We also received a request for a review of the same four companies and Camargo Corrêa Metais (CCM) from a group of four domestic producers of silicon metal (the petitioners). The four domestic producers are American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc., and SKW Metals & Alloys, Inc. This review covers sales of this merchandise during the period July 1, 1994, through June 30, 1995.

We do not intend to revoke the order with respect to RIMA, CBCC, or Minasligas. RIMA and CBCC submitted requests for revocation, but in the final results of our most recently completed administrative review of this order they both had margins that were greater than *de minimis*. As a result, they have not had three consecutive years with zero or *de minimis* dumping margins, and therefore do not qualify for revocation. Minasligas also submitted a request for revocation. We do not intend to revoke the order with respect to this company at the completion of this administrative review because at this time we intend to revoke the order with respect to this company at the completion of the third administrative review, covering the period immediately preceding the period covered by this administrative review.

We have preliminarily determined that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Baker or John Kugelman, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2924.

SUPPLEMENTARY INFORMATION

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil on July 31, 1991 (56 FR 36135). On July 3, 1995, we published in the **Federal Register** (60 FR 34511) a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil covering the period July 1, 1994, through June 30, 1995.

In accordance with 19 CFR 353.22(a)(1), Eletrosilex, Minasligas, CBCC, and RIMA requested that we conduct an administrative review of their sales. Petitioners requested that we conduct an administrative review of the sales of Eletrosilex, Minasligas, CBCC, RIMA, and CCM. We published a notice of initiation of this antidumping duty administrative review on August 16, 1995 (60 FR 42500). On April 25, 1996, the Department published in the **Federal Register** its notice extending the deadline in this review (61 FR 18375). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item

numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

The review period is July 1, 1994, through June 30, 1995. This review involves four manufacturers/exporters of Brazilian silicon metal.

Use of Facts Available

As explained in the preliminary results of the third administrative review (covering the period July 1, 1993 through June 30, 1994), none of the RIMA's sales made during the third period of review (POR) entered U.S. customs territory during the third POR. Therefore, we treated RIMA as a non-shipper for the third administrative review. In these preliminary results of the fourth POR (covering the period July 1, 1994 through June 30, 1995), we included all of RIMA's sales made during the third POR that entered U.S. customs territory during the fourth POR. We also included in these preliminary results of review all of RIMA's U.S. sales during the fourth POR for which RIMA's U.S. customers made at least one import of silicon metal manufactured by RIMA. This policy is consistent with that outlined in the Department's response to comment 1 of the final results of the second administrative review.

For these reasons, because some of RIMA's sales included in this review were made during the prior POR, we conducted two separate verifications of RIMA. The first of these verifications covered RIMA's sales made during the third POR; the second covered RIMA's sales made during the fourth POR. We found that at RIMA's third review verification, RIMA was unable to substantiate significant portions of its responses.

Section 776(a) of the Act requires that the Department use the facts otherwise available when necessary information is not on the record or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. In addition, section 776(b) permits the Department to use "adverse inferences" in determining facts available where a party does not cooperate to the best of its ability. In this case, as explained above, we determined at RIMA's verification covering sales from the third POR that RIMA could not substantiate significant portions of its response. (*See* Use of Facts Available Memorandum to Joseph Spetrini, Deputy Assistant Secretary, Enforcement Group III.) For this reason, we have resorted to the facts otherwise available pursuant to section 776(2). However, the sales during the third POR were comparatively few in number. Therefore, we are not using total facts available. We do find, however, that RIMA did not cooperate to the best of its ability with respect to the third review sales. Therefore, we have determined to apply "adverse inferences" pursuant to section 776(b) for RIMA's third review sales.

Section 776(b) of the Act authorizes the Department to use as facts otherwise available information derived from the petitioner, the final determination, a previous administrative review, or other information placed on the record. The rate we have assigned to RIMA for its third review sales is 91.06 percent, which is the highest rate ever assigned to RIMA in any previous review. The rate we have calculated for RIMA for this review reflects the weighted-average rate for those sales for which we did not apply facts available (its fourth review sales and those sales for which we did apply facts available (its third review sales).

Because the facts available information which we used in this review constitutes secondary information, we are required under section 776(c) of the Act to corroborate, to the extent practicable, the facts available from independent sources reasonably at our disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extend practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department relies upon a calculated dumping margin from a prior segment of the proceeding as facts available, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as facts available, the Department will disregard the margin and determine an appropriate margin (see *e.g., Fresh-Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review* (61 FR 6812, February 22, 1996), where the Department disregarded the highest margin in that case as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this case, for those sales for which we have used facts available we have used the highest rate ever calculated for RIMA in a previous review because there is not evidence on the record indicating that it is not appropriate as facts available.

United States Price

In calculating United States Price (USP) we used export price (EP), as defined in section 772(b) of the Act, because the subject merchandise was first sold to unrelated purchasers prior to the date of importation into the United States.

We based EP on the packed, F.O.B., C.I.F., or C&F price to the first unrelated purchaser in the United States, or to unrelated trading companies who export to the United States. We made deductions from USP, where appropriate, for foreign inland freight, international freight, marine insurance, weighing and sampling charges, and brokerage and handling. We made an addition to USP, where appropriate, for duty drawback. These adjustments were made in accordance with section 772(d)(2) of the Tariff Act. We also adjusted USP for taxes in accordance with our practice as outlined in the "Consumption Tax" section of the final results of the second administrative review of this proceeding, published concurrently with this notice.

No other adjustments were claimed or allowed.

Cost of Production Analysis

In prior segments of this proceeding, we disregarded home market sales found to be below the cost of production (COP). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during the review period. Thus, pursuant to section 773(b) of the Act, in this review we initiated a COP investigation of all five respondents.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We

relied on the home market sales and COP information provided by each respondent in its questionnaire responses.

On July 17 and 18, 1996, the petitioners filed comments about the appropriateness of using historical costs, rather than replacement costs, for two of the respondents. Although we received these comments too late in the review to consider them for these preliminary results, we intend to request information from the two respondents that will better enable us to evaluate the petitioners' argument. We will then consider using replacement costs for the final results of this review.

In determining whether to disregard home market sales made at prices below the COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. We compared model-specific COP to the reported home market price less any applicable movement charges.

Pursuant to section 773(b) (2) (C) of the Act, where less than 20 percent of the respondents' home market sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time "in substantial quantities." Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because we determined that the below-cost sales were made within an extended period of time in "substantial quantities," in accordance with section 773(b) (2) (B) of the Act), and because we determined that the below-cost home market sales of a given product were at prices which would not permit recovery of all costs within a reasonable period of time (in accordance with section 773(b) (2) (D) of the Act).

We found that, for certain models of silicon metal, more than 20 percent of the home market sales were at below-cost prices within the period of review and that such sales were in substantial quantities, and that sales of these models were at prices which would not premit recovery of all costs within a reasonable period of time. As a result, we excluded these below-cost sales and used the remaining above-cost sales as the basis of determining normal value if such sales existed, in accordance with section 773(b) (1) of the Act.

Normal Value (NV)

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared such of the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) (1) (C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for all respondents.

We compared the EPs of individual transactions, pursuant to section 777A(d) (2) of the Act, to the monthly weighted-average price of sales of the foreign like product. In such cases we based NV on packed, ex-factory or delivered prices to unaffiliated purchasers in the home market. Where applicable, we made adjustments to home market price for inland freight, early payment discounts, and interest revenue. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market price by an amount for home market credit and packing expenses, and increased it by U.S. packing costs and U.S. credit expenses. We increased NV, where appropriate, for bank charges and warehousing expenses incurred on U.S. sales. We decreased NV, where appropriate, by the amount of commissions paid in the home market, but limited this amount to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR § 353.56(b) (1).

Non-Shippers

CCM stated that it did not have shipments during the POR, and we confirmed this information with the U.S. Customs Service. Therefore, we are treating CCM as a non-shipper for this review, and are rescinding this review with respect to this company. *See Sulfanilic Acid from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Administrative Review*, 61 FR 29073, 29077 (June 7, 1996). The cash deposit rate for CCM will continue to be the rate established for CCM in the LTFV determination, which is the last segment of this proceeding in which the Department analyzed CCM's sales.

Preliminary Results of Review

As a result of our comparison of EP and NV, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 1994 through June 30, 1995:

Manufacturer/exporter	Margin (percent)
CBCC	7.54
Minasligas	2.12
Eletrosilex	9.95
RIMA	3.67
CCM	[1]93.2

[1] No shipments during the POR; margin taken from the last completed segment in which there were shipments.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 91.06 percent, the all others rate

established in the LTFV investigation (56 FR 36135, July 31, 1991).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: August 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–22681 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–DS–M

Carnegie Institution of Washington, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–021. *Applicant:* Carnegie Institution of Washington, Washington, DC 20015. *Instrument:* Mass Spectrometer, Model IMS 6F. *Manufacturer:* CAMECA, France. *Intended Use:* See notice at 61 FR 25622, May 22, 1996. *Reasons:* The foreign instrument provides a mass spectrometer with spherical ion optics for imaging and analysis of trace elements and isotopes.

Docket Number: 96–049. *Applicant:* University of California at San Diego, La Jolla, CA 92093. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* See notice at 61 FR 30220, June 14, 1996. *Reasons:* The foreign instrument provides: (1) Seven Faraday collectors and an ion counting Daly detector, (2) thermal ionization of solid samples and (3) negative ion operation.

Docket Number: 96–055. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 61 FR 30221, June 14, 1996. *Reasons:* The foreign instrument provides a multielement multicollector and an external precision of 0.15 per mil STP for gas samples as small as 100cc.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–22685 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–083. *Applicant:* The University of Texas at Austin, Purchasing Department, CRB 2.204, Austin, TX 78712. *Instrument:* Gas Composition Analyzer, Model Epison III. *Manufacturer:* Thomas Swan & Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used to perform research into the growth of In-Al-Ga containing alloys of the compound semiconductors in the InAlGaAsPN systems using the metallorganic chemical vapor deposition process. The instrument will permit the direct measurement and control of the vapor-phase composition of organometallic sources in the gas stream entering the reactor chamber. In addition, the instrument will be used for educational purposes in the courses EE397C and EE697C Research Problems. *Application accepted by Commissioner of Customs:* July 30, 1996.

Docket Number: 96–084. *Applicant:* Mayo Foundation, 200 First Street SW, Rochester, MN 55905. *Instrument:* IR Mass Spectrometer with Gas Sampling Inlet, Model TracerMAT. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to measure $^{13}CO_2$ in expired air samples collected in association with specific medical diagnostic tests. Such measurements are important for studies such as malabsorption, short bowel syndrome and the diagnosis of peptic ulcers. In addition, the instrument will be used to monitor $C^{18}O_2$ in total body water studies (total energy expenditure). *Application accepted by Commissioner of Customs:* August 2, 1996.

Docket Number: 96–085. *Applicant:* National Institutes of Health, Biomedical Engineering & Instrumentation Program, Building 13, Room 3N17, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CM 120. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to relate the structure to the function of subcellular compartments and macromolecular assemblies in a number of biological systems. *The objectives include study of:* (a) Biosynthetic pathways in terminally-differentiated squamous epithelium, (b) slow axonal transport, (c) calcium regulation in dendrites of hippocampal neurons, (d) water regulation in protozoa and (e) virus assembly. The aim of all these projects is to understand factors that control the normal physiological states of cells and their diseased states. *Application accepted by Commissioner of Customs:* August 2, 1996.

Docket Number: 96–086. *Applicant:* The University of Tennessee, Knoxville, Department of Geological Sciences, Knoxville, TN 37996–1410. *Instrument:* IR Mass Spectrometer, Model DELTA^{plus}. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to provide light stable isotope ratios of geological and biological materials for the following investigations: (1) Stable isotope studies of pedogenic (soil-formed) minerals, (2) evolution and diagenesis of carbonate rock successions, (3) process biogeochemical studies in the Arctic

marine environment, (4) oxygen, hydrogen and carbon isotopic composition as tracers in studies of hydrologic processes and (5) plant ecophysiological research. The instrument will also be used for educational purposes in the graduate course Geology 563: Stable Isotope Geology. *Application accepted by Commissioner of Customs:* August 2, 1996.

Docket Number: 96–087. *Applicant:* Cornell University, 212 Clark Hall, Ithaca, NY 14853. *Instrument:* Scanning Tunneling Microscope, Model JSTM–4500. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study device-quality semiconductor materials, including Si, GaAs, AlGaAs, InP, AlInAs, GaInP and possibly GaN. The objectives of the proposed experiments are to increase the understanding of the microscopic structure of grown semiconductor multilayers, including the electronic band structure and the effect of defects. An additional objective is to understand the effect of defects and doping centers on luminescence of the samples. *Application accepted by Commissioner of Customs:* August 9, 1996.

Docket Number: 96–088. *Applicant:* The University of Texas at Austin, Center for Materials Science and Engineering, ETC 9.104, MC 62201, Austin, TX 78712. *Instrument:* Electron Microscope, Model JEM–2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the microstructures of metals, metal alloys, ceramics, polymers, minerals, and composites of these materials. It will also be used to study systems of materials used in electronic, opto-electronic, photonic and or magnetic applications. In the course of the investigations, the instrument will be used to measure particle/crystallite size and morphology, crystal structure, chemical composition and the number, type and extent of defects. In addition, the instrument will be used for educational purposes through training of graduate students, faculty and staff who carry out the actual research. *Application accepted by Commissioner of Customs:* August 14, 1996.

Docket Number: 96–089. Applicant: Northern Kentucky University, Department of Chemistry, NS 234, Highland Heights, KY 41099–1905. *Instrument:* Rapid Kinetics Apparatus, Model SFA–20. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* The instrument will be used in CHE 362L, Physical Chemistry Laboratory 2H, and CHE 363L, Physical Chemistry 3H laboratory courses involving experiments in thermodynamics, kinetics, transport properties, elementary quantum mechanics, and spectroscopy. *Application accepted by Commissioner of Customs:* August 15, 1996.

Docket Number: 96–090. *Applicant:* National Renewable Energy Laboratory, Division of Midwest Research Institute, 1617 Cole Boulevard, Golden, CO 80401–3393. *Instrument:* TOF Secondary Ion Mass Spectrometer. *Manufacturer:* ION-TOF GmbH, Germany. *Intended Use:* The instrument will be used in studies of photovoltaics, semiconductors, polymers, glasses, tissues, fibers and renewable energy materials to provide qualitative and quantitative distributions of elemental and molecular species as a function of mass, lateral position, and in some cases, depth. This information is fundamental to understanding the properties and operations of photovoltaic and other renewable energy materials and devices. *Application accepted by Commissioner of Customs:* August 15, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–22684 Filed 9–4–96; 8:45 am]

BILLING CODE 3410–DS–P

[C–357–004]

Certain Carbon Steel Wire Rod From Argentina: Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to terminate the countervailing duty suspended investigation on certain carbon steel wire rod from Argentina. Domestic interested parties who object to termination of this suspended investigation must submit their comments in writing not later than the last day of September 1996.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

The Department may terminate a countervailing duty suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke this countervailing duty suspended investigation, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to terminate this suspended investigation, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request an administrative review, we shall conclude that the countervailing duty suspended investigation is no longer of interest to interested parties and proceed with the termination. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request an administrative review, or a domestic interested party does object to the Department's intent to terminate pursuant to this notice, the Department will not terminate this suspended investigation.

Opportunity to Object

Not later than the last day of September 1996, domestic interested parties may object to the Department's intent to terminate this countervailing duty suspended investigation. Any submission objecting to the termination must contain the name and case number of the suspended investigation and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W. Washington, D.C. 20230. This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: August 29, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–22686 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC); Meeting

ACTION: Notice of public meeting.

Time and Date: September 19, 1996 from 8:00 a.m. to 3:00 p.m.

Place: This meeting will take place at the National Climatic Data Center (NCDC), Federal Plaza, 151 Patton Avenue, Asheville, North Carolina.

Status: The meeting will be open to the public. On September 19, 1996, 10:30 a.m. to 11:00 a.m. will be set aside for oral comments or questions from the public. Approximately 50 seats will be available on a first-come first-served basis for the public. There will be an optional tour of the NCDC facility the afternoon of September 18, for MTC members.

Matters to be Considered: This meeting will cover: Consultation on 10 final Consolidation Certifications, update and consultation on Automation Criteria for Service Level "D" locations, and a presentation and consultation on Closure Criteria (including public comments received).

Contact Person for More Information: Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1324 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: August 29, 1996.

Nicholas R. Scheller,

Manager, National Implementation Staff.

[FR Doc. 96–22669 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

August 29, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6715. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for carryover, carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 4627, published on February 7, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 29, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on August 30, 1996, you are directed to adjust the limits for the following categories, as provided for in the recent bilateral agreement, as amended and extended, between the Governments of the United States and Romania:

Category	Adjusted twelve-month limit [1]
Sublevels in Group III	
433/434	10,466 dozen.
435	10,366 dozen.
442	11,782 dozen.
443	100,406 numbers.
444	47,332 numbers.
447/448	24,078 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–22616 Filed 9–4–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership; Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA) Department of Defense (DoD).

ACTION: Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Board provides fair and impartial performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT: B.R. Webster, Defense Mapping Agency, Office of Human Resources, 8613 Lee Highway, Fairfax, VA 22031–2137, telephone (703) 285–9151.

SUPPLEMENTARY INFORMATION: Per 5 U.S.C. 4314(c)(4), the following is a standing register of DMA executives appointed to the DMA PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective 13 September 1996.

ANCELL, A. Clay
Associate Director, Requirements and Operations

BELL, Paula J.
Assistant Director, Source Management Division Eastern Office

BOGNER, Cynthia K.

Comptroller
BOYD, Jimmy W.
Associate Director, Engineering and Maintenance Support Division
BUCK, Irvin P.
Associate Director, Customer Support Division
COGHLAN, Thomas K.
Director, Planning and Analysis
CRUMPTON, Darryl E.
Assistant Director, Data Generation Division Western Office
GUSTIN, Russell T.
Associate Director, Program Management Division
HENNIG, Thomas A.
Associate Director, Technology and Information
HOGAN, William N.
Director, Requirements and Policy Integration Directorate
IVERY, Barbara A.
Assistant Director, Source Management Division Western Office
JACKSON, Mikel F.
Assistant Director, Data Generation Division Eastern Office
JOHNSON, James E.
Associate Director, Support Staff
LENCZOWSKI, Roberta E.
Director, Acquisition and Technology Group
MADISON, Harold W.
Director, Installation and Management Group
MUNCY, Larry N.
Associate Director, Source Management Division
PHILLIPS, Earl W.
Director, Operations Group
SCHNEIER, Jan S.
Associate Director, Data Generation Division
SCHULT, Mark E.
Associate Director, Operations Support Division
SMALLING, Marvin E.
Director, Procurement
SMITH, Kathleen M.
Associate Director, Interoperability Division
SMITH, Lon M.
Associate Director, OG Support Staff
SMITH Robert N.
Associate Director, Customer Services Division
SMITH, W. Douglas
Deputy Director
SORVIK, John R.
Associate Director, International Operations Division
WALLACH, Steven P.
Assistant Director for Customer Support/Modeling and Simulation
WARD, Curtis B.
Associate Director, Customer Support Division

Dated: August 28, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–22529 Filed 9–4–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF SAB 1996 Fall General Board Meeting, USAF Scientific Advisory Board, will meet on 16–17 October 1996 at the Embassy Suites, Old Towne, Alexandria, VA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to conduct an informative session of high-level briefings, SAB Activity updates, and to welcome new members and honor departing members.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–22659 Filed 9–4–96; 8:45 am]

BILLING CODE 3910–01–W

Department of the Navy

Notice of Availability of Supplemental Information Report for Realignment of Naval Air Station Miramar to Marine Corps Air Station, Miramar, CA

SUMMARY: DON has prepared a Supplemental Information Report (SIR) for realignment of Naval Air Station Miramar to Marine Corps Air Station, Miramar, California, which further explains matters presented in the Final Environmental Impact Statement (FEIS) and solicits public participation and written comment on the SIR. The comment period will close on October 7, 1996.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE SIR: Contact Lieutenant Colonel George Martin at (619) 537–6678. Written comments should be sent to Timarie Seneca (Code 09M1.TS), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190, and must be received by 4:00 PM, October 7, 1996.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality (CEQ) regulations implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy (DON) prepared and published a FEIS analyzing the impacts associated with the proposal to realign Naval Air Station (NAS) Miramar, in accordance with the Defense Base Closure and Realignment Act (BRAC) of 1990 (Public Law 101–510). This SIR has been prepared in response to comments received on the FEIS during the comment period, which began May 10, 1996 and ended June 10, 1996, and to address the Biological Opinion issued by the U. S. Fish and Wildlife Service. The Department of the Navy is committed to working with the communities who support its national defense mission by hosting its bases. That commitment includes protection of the environment. The Department of the Navy received over 200 additional comments expressing community concerns after publication of the FEIS. As a result, the Department of the Navy decided to publish this Supplemental Information Report to provide more information on the factors it is considering as part of the decision-making process and to provide a more thorough discussion of matters of concern to the community. Although use of a Supplemental Information Report to address comments on the FEIS is neither required by NEPA nor directed by CEQ Regulations, the Department of the Navy determined that such a document would serve as a vehicle for a more thorough discussion of matters over which there remains public concern. The Supplemental Information Report and the public comments it generates will also provide the decision maker with more detailed analysis for consideration in coming to a final decision, thereby furthering the purposes of NEPA. As the SIR does not present new circumstances or new information relevant to significant environmental impacts of the proposed action or alternatives, it is not intended as a supplement to the FEIS, as defined in section 1502.9(c) of the CEQ Regulations.

The majority of the information contained in this SIR is taken from reports, studies and analyses referenced in the FEIS, such as the Defense Base Closure and Realignment Act (BRAC), the BRAC Commission Reports for 1993 and 1995 and supporting analyses, and a biological opinion prepared by the U.S. Fish and Wildlife Service (USFWS). This SIR clarifies information concerning the alternatives analysis used in the FEIS, discusses issues raised in comments received on the FEIS that addressed specific environmental impacts, summarizes the USFWS Biological Opinion, and provides the public with the opportunity to review and comment on this information. It discusses the BRAC process, how that process led to the development of the purpose and need for the proposed

action, the bases for the criteria used to define the range of reasonable alternatives to be examined, the rationale for eliminating alternatives from detailed discussion, mitigation of noise impacts, and the biological opinion prepared by USFWS concerning endangered species. An outline of the issues addressed in this SIR is set out below .

Introduction

A. Effect of BRAC Recommendations

1. The Relationship Between the Proposed Action and the Purpose of the Defense Base Closure and Realignment Act (BRAC) of 1990 (Public Law 101–510).
2. Intent of BRAC.
3. Recommendations of the 1993 BRAC Commission.
4. Recommendations of the 1995 BRAC Commission.
5. Implications of the Purpose of BRAC on the Reasonableness of Alternatives.

B. Screening Potential Sites

1. Reasonableness of Alternative Sites.
2. Selection and Screening of Reasonable Sites.
a. Requirements of BRAC Recommendations.
b. Criteria for Selection and Screening.
(1) Operational Requirements.
(2) Infrastructure.
(3) Personnel Requirements.
c. Military Air Installations Initially Considered.
d. Application of the Criteria.
(1) MCAS Camp Pendleton.
(2) NAF El Centro.
(3) NAS North Island.
(4) March Air Reserve Base (ARB).
(5) NAS Miramar.
e. Summary of Comparative Costs, NAS Miramar and March ARB.
(1) Comparison of the Costs of Construction of Infrastructure.
(2) Comparison of Yearly Operating Costs.
(3) Cost of Construction and Operating for 20 Years.

C. Operations, Noise, and Safety Considerations

1. Operations at NAS Miramar.
a. Navy Operations at NAS Miramar.
(1) A History of Changing Operations.
(2) Aircraft Loading at NAS Miramar.
(3) Operational Tempo.
b. USMC Units Being Relocated to Miramar.
(1) Fixed-Wing Squadrons.
(2) Rotary-Wing Squadrons.
c. Existing F/A–18 Operations at Miramar.
d. Projected Operational Tempo at MCAS Miramar.
e. Analysis of Projected Operations.
f. Effect on Navy Operations at Miramar.
2. Noise Issues.
a. Noise Measurement.
b. Average Busy Day Versus Average Annual Day.
c. Mitigation of Aircraft Noise.
d. Continuing Community Involvement.
3. Safety Issues.
a. Combined Fixed- and Rotary-Wing Operations.
b. Interface with Class B Aircraft Operations and Local Airfields.
c. Community Involvement in Airspace Usage.
D. Other Environmental Issues at Miramar.
1. Endangered Species and Biological Resources.
a. Information in Biological Opinion and Multi-Species Habitat Management Plan.
b. Formal Consultation on Endangered Species.
c. Information in the Biological Opinion.
d. No Jeopardy Opinion.
e. Biological Opinion and Incidental Take Statement.
f. Reasonable and Prudent Measures.
g. Enhanced Mitigation Measures.
h. Additional Study of Effects of Noise on Gnatcatchers.
2. Wildlife Management.
3. Air Quality.
a. Concerns about Emissions Budgets.
b. Classification of Air Quality Regions for Non-Attainment.
c. Accuracy of Estimates Used in State Implementation Plans.
d. Accuracy of Data Used for Conformity Determination and Air Quality Analysis.
e. Conformity Analysis for NAS Miramar.
f. Differences Between Historical Emission Rates and Calculated Rates.
4. Traffic Congestion.
5. Ordnance Training Facility.
Where to Comment or Obtain Further Information.

Dated: August 30, 1996.

D. E. Koenig, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–22639 Filed 9–4–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 4, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate

of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 29, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Guidance on the Goals 2000 Amendments (Draft).
Frequency: One-time submission.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 30
Burden Hours: 3,000
Abstract: The Omnibus Consolidated Rescissions and Appropriations Act of 1996 amended portions of Titles II and III of the Goals 2000: Educate America Act. Included within those amendments is a provision which offers states an alternative to submitting their Goals 2000 plans in order to receive funding.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Guidance on the Goals 2000 Amendments (Draft).
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 56
Burden Hours: 5,600
Abstract: The Omnibus Consolidated Rescissions and Appropriations Act of 1996 amended portions of Titles II and III of the Goals 2000: Educate American Act. The guidance document which was created to clarify these amendments addresses the reporting requirements of states participating in Goals 2000.

[FR Doc. 96–22585 Filed 9–4–96; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Construction and Operation of an Accelerator for the Production of Tritium at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) for the Construction and Operation of an Accelerator for the Production of Tritium at the Savannah River Site pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321 et seq.). DOE intends to select various options and a location on the Savannah River Site (SRS) for the construction and operation of an accelerator to produce tritium to support the nuclear weapons stockpile, as announced in the Record of Decision for the Tritium Supply and Recycling Environmental Impact Statement.

DOE has also decided to prepare an EIS for the Construction and Operation of a Tritium Extraction Facility at the SRS. That EIS is the subject of a separate Notice of Intent (NOI), but will have scoping meetings concurrent with the Accelerator Production of Tritium (APT) EIS scoping meetings.

DATES: Comments from the public and others will be accepted during the scoping period, which will continue until November 1, 1996. Written comments submitted by mail should be postmarked by that date to ensure consideration. DOE will consider comments mailed after that date to the extent practicable. DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS and identifying significant environmental issues to be addressed. Meetings for the APT EIS will be held concurrently with those of the Operation of the Tritium Extraction Facility EIS, with separate workshops possible depending on attendance levels. Notices of the dates, times, and locations of the scoping meetings will be announced in the local media at least 15 days before the meetings.

ADDRESSES: Please direct written comments or suggestions on the scope of the EIS, requests to speak at the public scoping meetings, and questions concerning the project to: Mr. Andrew R. Grainger, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, SC 29804–5031; phone 1–800–242–8269; or E-mail: nepa@barms036.b-r.com. Mark envelopes: "Accelerator Production of Tritium EIS Comments"

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; telephone 202–586–4600; or to leave a message at 1–800- 472–2756.

SUPPLEMENTARY INFORMATION: SRS is an 800 square kilometer (300 square mile) controlled access area located in southwestern South Carolina. The Site is approximately 25 miles southeast of Augusta, Georgia, and 20 miles south of Aiken, South Carolina. Since its establishment, the mission of SRS has been to produce nuclear materials that support the defense, research, and medical programs of the United States.

With the end of the Cold War and the reduction in the size of the U.S. nuclear weapons stockpile, there is no longer a requirement to produce new nuclear materials for defense purposes with the exception of tritium. As a result, activities at SRS have shifted from nuclear material production to cleanup and environmental restoration. All production reactors are permanently shut down. However, a new source of tritium is needed to support the nuclear weapons stockpile well into the twenty-first century. Tritium has a relatively short half life (12.3 years) and therefore must be periodically replenished in each weapon in the stockpile.

The Department evaluated the programmatic need for a new tritium source in a Programmatic Environmental Impact Statement (PEIS) for Tritium Supply and Recycling (DOE/EIS–0161, October 1995). Based on the findings in the PEIS and other technical, cost, and schedule evaluations, the Department issued a Record of Decision (ROD) on December 5, 1995 (60 FR 63877, December 12, 1995). In the ROD, the Department decided to pursue a dual-track approach on the two most promising tritium supply alternatives: (1) To initiate purchase of an existing commercial reactor (operating or partially complete) for conversion to a defense facility, or purchase of irradiation services with an option to purchase the reactor; and (2) to design, build, and test critical components of an accelerator system for tritium production. Within a three-year period, the Department would select one of these approaches to serve as the primary source of tritium. The other alternative, if feasible, would continue to be developed as a backup tritium source. SRS was selected as the location for an accelerator, should one be built. Under the ROD, the tritium recycling facilities at SRS would be upgraded and consolidated, and a tritium extraction facility would be constructed at SRS to support both of the dual-track options.

The Department's strategy for compliance with NEPA has been, first, to make decisions on programmatic alternatives as described and evaluated in the Tritium Supply and Recycling PEIS. This evaluation was intended to

be followed by site-specific analyses to implement the selected programmatic decisions. The decisions made in the December 5, 1995, ROD have resulted in the Department proposing to prepare the following NEPA documents:

1. An EIS for the Selection of One or More Commercial Light Water Reactors for Tritium Production
2. An EIS for the Construction and Operation of an Accelerator for the Production of Tritium at the Savannah River Site
3. An Environmental Assessment for the Tritium Facility Modnerzation and Consolidation at the Savannah River Site
4. An EIS for the Construction and Operation of a Tritium Extraction Facility at the Savannah River Site

The EIS that is the subject of this NOI is the second of the proposed NEPA documents listed above. The preparation of the EIS for Construction and Operation of the Accelerator for Production of Tritium supports the planning within the Department for a long-term supply of tritium. However, the Department has not yet decided to actually build the accelerator. As noted in the Record of Decision for the Tritium Supply and Recycling PEIS, about three years of feasibility demonstration research are needed before the Department will decide whether the accelerator would be the lead (or backup) technology for tritium production.

Accelerator Production of Tritium: Production of tritium in an accelerator would occur through the following process: Protons are produced in an injector by ionizing hydrogen atoms to form a proton beam. The proton beam is initially accelerated by a series of radio-frequency magnetic sectors to increase the proton beam to its final speed of approximately 90% the speed of light. In each of these sections, electrical energy is converted to microwave energy by klystrons (a vacuum tube that converts electrical power into high power microwaves). The proton beam is then expanded to distribute the protons evenly across the face of a tungsten target. The proton beam strikes the target, producing neutrons by a process called spallation. Additional neutrons are produced and then slowed in a blanket assembly composed of lead and water which surrounds the target. The blanket also contains pipes with either helium-3 gas or solid lithium-6 aluminum alloy targets that capture the neutrons to produce tritium. The tritium is extracted continuously from the helium-3 in a co-located tritium separation facility. The lithium-6 aluminum alloy targets must be periodically removed and shipped to a nearby Tritium Extraction Facility for batch removal of the tritium. The accelerator will be designed with the capacity to produce up to 3 kilograms of tritium per year.

The construction and operation impacts of the alternatives will be examined in this EIS. The alternatives to be considered are combinations of site location and technology options:

1. Site location options: An initial evaluation of the entire SRS was made using four categories of disqualifying conditions: ecology, human health, geology/hydrology, and engineering. This evaluation identified those parts of the site where an APT could not be sited. A footprint 2000 meters long and 500 meters wide (247 acres) was used to identify potential locations. This size was considered conservative and bounding. Once disqualified locations were identified, a second set of screening criteria was used on the remaining candidates to evaluate the suitability of each particular site, based on impact to twenty-one factors: (1) Terrestrial ecology; (2) Aquatic ecology; (3) Wetland ecology; (4) Distance to population centers; (5) Distance to SRS boundary; (6) Impact of incidents at existing facilities on APT; (7) Ability of groundwater to supply 6000 gpm (0.38 m^3 /sec); (8) Depth to groundwater; (9) Stability of subsurface conditions; (10) Thermal capacity of soil; (11) Distance to the tritium loading facility; (12) Distance to rail lines; (13) Archaeology; (14) Distance to acceptable road; (15) Terrain; (16) Foundation conditions; (17) Distance to NPDES discharge point; (18) Distance to site utilities; (19) Distance to Centralized Sewage Treatment Plant tie-in; (20) Disruption to site infrastructure; and (21) Presence of existing waste site. Based on this evaluation scores were calculated and the potential sites ranked, as described below:

Proposed Action: A site located 3 miles northeast of the Tritium Loading Facility (TLF), formerly known as the Replacement Tritium Facility (RTF) (Building 233–H in H-Area); ALTERNATIVE: a site located 2 miles northwest of the TLF. OTHER ALTERNATIVES, which were dismissed from detailed analysis, included eight potential locations; these were screened out in a siting study based on the 21 factors listed above.

2. Cooling water system options: PROPOSED ACTION: Mechanical draft cooling towers with river water makeup. ALTERNATIVES: once-through cooling using river water; mechanical draft cooling towers with groundwater makeup; and use of the K-Reactor cooling tower with river water makeup.

A study performed at SRS evaluated these four choices for cooling. In some cases, parts of the existing River Water System would be used. As described in the Notice of Intent to Prepare an Environmental Impact Statement for Shutdown of the River Water System (61 FR 29744), some portions of the River Water System could be placed in a higher state of readiness than in "layup" condition, and could be restarted in a relatively short period of time. The use of river water makeup to mechanical draft cooling towers was used as the base case for comparison and is the proposed cooling mechanism. Under this alternative, major portions of the existing River Water System would be upgraded or replaced with modern components. Approximately 6000 gpm (0.38 m^3/sec) of makeup water would be supplied to the cooling water system to make up for losses due to blowdown and evaporation. Blowdown would be directed to Par Pond.

With the second alternative, once-through cooling, approximately 125,000 gpm (7.88 m^3/sec) of river water would flow through heat exchangers and discharge to Par Pond. The third cooling water alternative would use 6000 gpm (0.38 m^3/sec) of groundwater makeup to the cooling water system to make up for losses due to blowdown and evaporation. This alternative would also use mechanical draft cooling towers. Blowdown would be directed to Par Pond. The fourth cooling water alternative would involve the existing K- Reactor natural draft cooling tower. Approximately 125,000 gpm (7.88 m^3/sec) of cooling water would circulate from heat exchangers at the APT to the cooling tower. This alternative would need 6000 gpm (0.38 m^3/sec) of river water makeup. Blowdown would be directed to Pen Branch, which flows into the Savannah River.

Two cooling water alternatives were eliminated in the study. The first was to use Par Pond as a source of once-through cooling water for the APT. This alternative was eliminated based on cost and technical uncertainty, due to the conditions of the components in the Par Pond pump house. The second alternative dismissed was to construct a new cooling pond to dissipate heat. Preliminary estimates of the size of pond necessary to dissipate the heat indicated the need for a very large pond, which would present permitting and environmental issues greater than those under other alternatives.

3. Accelerator technology: PROPOSED ACTION: room temperature. ALTERNATIVE: superconducting.

A room temperature accelerator has a higher demand for electricity when compared to a superconducting accelerator. In an accelerator, large currents are set up inside metal cavities, which in turn create the electric fields that accelerate the proton beam. Energy losses occur as a result of the internal resistance of the cavity material. In a room temperature accelerator, these energy losses are significant. In a superconducting accelerator, the cavities are cooled to the point that resistance is negligible, thus minimizing the energy loss. A room temperature accelerator by definition requires no special temperature for operation, but a superconducting APT would require the construction and operation of a cryogenic plant in the APT complex.

4. Target physics: PROPOSED ACTION: Blanket type: Helium-3. ALTERNATIVE: Lithium-6 Aluminum alloy blanket.

The proposed blanket utilizes helium-3. Through neutron capture, the helium-3 is converted to tritium, which can be extracted continuously in the co-located tritium separations facility. The lithium-6 aluminum alloy blanket through neutron capture converts lithium to tritium and helium-4. The lithium-6 aluminum alloy is a metal, which must be removed and the tritium extracted in a batch process. This extraction would take place in the Tritium Extraction Facility (TEF). The impacts of extraction will be discussed in the separate EIS being prepared for the TEF.

5. Accelerator Power Source: **PROPOSED ACTION:** Radio frequency (RF) power tube (klystron). **ALTERNATIVE:** Inductive-Output Tube (IOT).

A klystron is an evacuated electron-beam tube that is used as an oscillator/amplifier in ultrahigh frequency circuits like television transmitters and radar equipment. In the APT, klystrons are used as RF power amplifiers to convert electric power to amplified RF (microwave) power which in turn accelerates the protons. An IOT is an RF amplifier currently under development. Its different design results in an improved efficiency and lower electrical power requirements.

6. Electric power supply: **PROPOSED ACTION:** Existing sources. **ALTERNATIVE:** a new power plant.

Because of the APT's power requirements (up to approximately 550 megawatts), the options for availability and reliability of the electric power supply to the accelerator will be analyzed. The purchase of power from South Carolina Electric and Gas (SCE&G) is the proposed option. This option includes system upgrades, capacitor bank or an additional 230 KV transmission line and a storage device, and use of an open access strategy. A second option is the generation of 550 megawatts from a generic new fossil fuel generating plant at an unknown location. This option would require a subsequent environmental analysis to meet the requirements of the National Environmental Policy Act, if it is selected.

Proposed Action

DOE proposes to design a room temperature APT which is cooled using mechanical draft cooling towers with river water to make up for losses. Klystrons would supply the RF power, and helium-3 would capture neutrons. The APT would be located at the proposed site (see above) and would use existing sources of electricity.

Alternatives to the Proposed Action

One alternative to the proposed action is not to select a technology or site. This is the No Action alternative required by the Council on Environmental Quality regulations. Under this alternative, the stockpile demands for tritium would have to be met through other means, such as the existing commercial reactor discussed above.

Other alternatives to the proposed action consist of any combination of the above APT technologies and two sites. Because of the large number of combinations, DOE will not explicitly describe the impacts of each possible combination. However, the EIS will describe the individual impacts of each option, and allow the reader to combine effects from any desired combination. In addition, DOE will identify the combination that has the most impact on the environment, thus providing a bounding case for comparison.

Identification of Environmental and Other Issues

The Department has identified the following issues for analysis for proposed and alternative actions in the EIS. Additional issues may be identified as a result of the scoping process.

1. Public and Worker Safety, Health Risk Assessment: Radiological and nonradiological impacts including projected effects on workers and the public from construction, operation and accident conditions.

2. Impacts from releases to air, water, and soil.

3. Impacts to plants, animals, and habitat, including impacts to wetlands, and threatened or endangered species and their habitat.

4. The consumption of natural resources and energy including water and natural gas.

5. Socioeconomic impacts to affected communities from construction and operation on labor forces and project purchases in the SRS area.

6. Environmental justice: Disproportionately high and adverse human health or environmental effects on minority and low-income populations.

7. Impacts to cultural resources such as historic, archaeological, scientific, or culturally important sites.

8. Compliance with all applicable Federal, state, and local statutes and regulations; required Federal and state environmental consultations and notifications; and DOE Orders on waste management, waste minimization initiatives, and environmental protection.

9. Cumulative impacts from the proposed action and other past, present, and reasonably foreseeable actions at the SRS.

10. Potential irreversible and irretrievable commitments of resources.

11. Pollution prevention and waste management practices, including waste characterization, storage, treatment and disposal.

Public Scoping Process: DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS and to identify significant environmental issues to be addressed. Because another EIS for a separate tritium-related activity at SRS is commencing simultaneously (the TEF; see the notice in today's **Federal Register**), the public scoping meetings for the APT will be held concurrently with the public scoping meetings for the TEF EIS. DOE will begin each scoping meeting with an overview of tritium activities at SRS. Following the initial presentation, DOE will hold workshops on the APT and the TEF. These will either be separate workshops or a combined workshop depending on attendance levels. There will be two sessions at each meeting location. Copies of handouts from the meetings will be available to those unable to attend by writing Mr. Grainger at the address above, or by calling 1–800–242–8269.

Public notices on the dates, times, and locations of the scoping meetings will be announced in the local media at least 15 days before the meetings. DOE is committed to providing opportunities for the involvement of interested individuals and groups in this and other DOE planning activities.

The public, organizations, and agencies are invited to present oral and

written comments concerning (1) the scope of the EIS, (2) the issues the EIS should address, and (3) the alternatives the EIS should analyze. Please address written comments to Mr. Grainger at the address indicated above. These comments should be postmarked by November 1, 1996 to ensure full consideration.

Organizations and individuals wishing to participate in the public meeting can call 1–800–242–8269 between 8:30 AM and 5:00 PM Eastern Time, Monday through Friday, or submit their requests to Mr. Grainger at the address indicated above. DOE requests that anyone who wishes to speak at the scoping meeting preregister by contacting Mr. Grainger, either by phone or in writing. Preregistration should occur at least two days before the designated meeting. Persons who have not preregistered to speak may register at the meeting and will be called on to speak as time permits.

Related Documentation: Completed and ongoing environmental reviews both may affect the scope of this EIS. Background information is listed below on past, present, and future activities at the Savannah River Site.

Final Interim Management of Nuclear Materials Environmental Impact Statement, DOE/EIS–0220, 1995. This EIS contains information on DOE waste management activities which could be affected by APT waste streams.

Final Savannah River Site Waste Management, DOE/EIS–0217, 1995. This EIS contains information on SRS waste management activities which could be affected by APT waste streams.

Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling, DOE/DOE–0161, 1995. This PEIS presents a programmatic environmental analysis of various ways to produce tritium, including commercial light water reactors, and the APT technology, including the location of an accelerator at SRS, if DOE decides to proceed with the APT.

Draft Programmatic Environmental Impact Statement for Stockpile Stewardship and Management, DOE/EIS–0236, February, 1996. The cumulative analysis of the PEIS includes the impacts at the Savannah River Site from the Tritium Supply and Recycling Programmatic EIS for the construction of an accelerator, an upgraded tritium recycling facility, and an extraction facility.

Environmental Assessment for the Natural Fluctuation of Water Level In Par Pond and Reduced Water Flow In Steel Creek Below L Lake at the Savannah River Site, DOE/EA–1070, 1995. This EA contains information on PAR Pond, which could receive cooling water blowdown from some of the cooling options examined for the APT.

Environmental Impact Statement for Shutdown of the River Water System, DOE/EIS–0268 (in preparation; see 61 FR 29744).

Environmental Impact Statement for the Construction and Operation of a Tritium Extraction Facility at the Savannah River Site, (see notice in today's **Federal Register**).

Environmental Assessment for the Tritium Facility Modernization and Consolidation, (anticipated). The environmental assessment is to include the impacts of modernizing and consolidating the existing tritium recycling facilities at the Savannah River Site.

This information is available in the following two DOE public reading rooms: DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, phone 202–586–6020; and DOE Public Document Room, University of South Carolina, Aiken Campus, University Library, 2nd Floor, 171 University Parkway, Aiken, SC 29801, phone 803–648–6851.

Issued in Washington, D.C., this 29th day of August, 1996.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 96–22607 Filed 9–4–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Intent To Prepare an Environmental Impact Statement for Construction and Operation of a Tritium Extraction Facility at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) for construction and operation of a Tritium Extraction Facility (TEF) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321 et seq.). In the Record of Decision (ROD) for the Tritium Supply and Recycling Final Programmatic Environmental Impact Statement issued December 5, 1995, and published in the **Federal Register** on December 12, 1995 (60 FR 63878), DOE decided to construct and operate a Tritium Extraction Facility (TEF) at the Savannah River Site (SRS) as part of a dual track strategy to ensure a supply of tritium to support the continuing nuclear weapons stockpile of the United States. One of the strategy tracks is the Commercial Light Water Reactor (CLWR) alternative, and the other is an accelerator system for tritium production. The primary tritium source will be selected within three years of the ROD issuance. The TEF would be built at SRS, and would be capable of extracting tritium both from CLWR targets and from an alternate design for accelerator targets. (The primary accelerator design would use a different technology to extract tritium.) This site-specific EIS would analyze the environmental impacts of construction and operation of the proposed TEF.

DOE has also decided to prepare an EIS for Accelerator Production of Tritium (APT) at the SRS. That EIS will be the subject of a separate Notice of Intent (NOI), but will have scoping meetings concurrent with the TEF process.

DATES: The public scoping period will be open until November 1, 1996. Written comments submitted by mail should be postmarked by that date to ensure consideration. DOE will consider comments mailed after that date to the extent practicable. DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS and identifying significant environmental issues to be addressed. Meetings for the TEF EIS and the APT EIS will be held concurrently, with separate workshops possible depending upon attendance levels. Notices of the dates, times, and locations of the scoping meetings will be announced in the local media at least 15 days before the meetings.

ADDRESSES: Please direct written comments or suggestions on the scope of the EIS, requests to speak at the public scoping meetings, and questions concerning the project to: Mr. Andrew R. Grainger, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, S.C. 29804–5031, 1–800–242–8269, E-mail: nepa@barms036.b-r.com. Mark the envelopes: "Tritium Extraction Facility EIS Comments"

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, telephone 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The SRS is an 800 square kilometer (300 square mile) controlled access area located in

southwestern South Carolina. The Site is approximately 25 miles southeast of Augusta, Georgia, and 20 miles south of Aiken, South Carolina. Since its establishment, the mission of the SRS has been to produce nuclear materials that support the defense, research, and medical programs of the United States.

With the end of the Cold War and the reduction in the size of the U.S. nuclear weapons stockpile, there is no longer a requirement to produce new nuclear materials for defense purposes, with the exception of tritium. As a result, activities at SRS have shifted from nuclear material production to cleanup and environmental restoration. All production reactors are permanently shut down. However, a new source of tritium is needed to support the nuclear weapons stockpile well into the twenty-first century. Tritium has a relatively short half life (12.3 years) and therefore must be periodically replenished in each weapon in the stockpile.

The Department evaluated the programmatic need for a new tritium source in a Programmatic Environmental Impact Statement (PEIS) for Tritium Supply and Recycling (DOE/EIS–0161, October 1995). Based on the findings in the PEIS and other technical, cost, and schedule evaluations, the Department issued a Record of Decision (ROD) on December 5, 1995 (60 FR 63877, December 12, 1995). In the ROD, the Department decided to pursue a dual-track approach on the two most promising tritium supply alternatives: (1) To initiate purchase of an existing commercial reactor (operating or partially complete) for conversion to a defense facility, or purchase of irradiation services with an option to purchase the reactor; and (2) to design, build, and test critical components of an accelerator system for tritium production. Within a three-year period, the Department would select one of these approaches to serve as the primary source of tritium. The other alternative, if feasible, would continue to be developed as a backup tritium source. SRS was selected as the location for an accelerator, should one be built. Under the ROD, the tritium recycling facilities at SRS would be upgraded and consolidated and a tritium extraction facility would be constructed at SRS to support both of the dual-track options.

The Department's strategy for compliance with NEPA has been, first, to make decisions on programmatic alternatives as described and evaluated in the Tritium Supply and Recycling PEIS. This evaluation was intended to be followed by site-specific analyses to implement the selected programmatic decisions. The decisions made in the December 5, 1995 ROD have resulted in the Department proposing to prepare the following NEPA documents:

1. An EIS for the Selection of One or More Commercial Light Water Reactors for Tritium Production;
2. An EIS for the Construction and Operation of an Accelerator for the Production of Tritium at the Savannah River Site;
3. An Environmental Assessment for the Tritium Facility Modernization and Consolidation at the Savannah River Site; and
4. An EIS for the Construction and Operation of a Tritium Extraction Facility at the Savannah River Site.

The EIS proposed by this Notice of Intent is the fourth of the proposed NEPA documents listed above.

Proposed Action: The Department proposes to construct and operate a TEF at the SRS. The overall mission of the TEF would be to extract tritium gas from targets irradiated in a CLWR or an accelerator, and deliver weapons-quality tritium to the Tritium Loading Facility, also known as the Replacement Tritium Facility, Building 233–H, at the SRS. The TEF would also be capable of extracting tritium from the accelerator alternate target design (lithium-6 aluminum alloy), if required. (The primary design for the accelerator calls for use of helium-3 gas as a target material and for continuous removal of tritium in a tritium separation facility co-located with the accelerator.) The proposed action includes co-location of the TEF with Building 233–H, and the design of the TEF for an operating life of about 40 years. Under the proposed action, the TEF would share common plant support facilities with Building 233–H. Construction of the TEF would require 4 to 5 years. The TEF would be a hardened concrete industrial structure, partially below ground.

Alternatives to the Proposed Action: DOE has identified two preliminary alternatives to the proposed action. Comments on these alternatives, or identification and comment on other reasonable alternatives, are welcome.

The No Action alternative is not to build the proposed Tritium Extraction Facility. Under this alternative, the facility would not be constructed. At the SRS, tritium can be extracted from heavy water reactor targets in the Tritium Extraction, Concentration and Enrichment Facility (Building 232–H), but there are no facilities in operation to fabricate or irradiate heavy water reactor targets. Currently, the Tritium Extraction, Concentration and Enrichment Facility cannot extract tritium safely from light water reactor targets or the accelerator alternate targets (lithium-6 aluminum alloy) without process modifications, in sufficient quantities to meet stockpile demands. Therefore, under this alternative, the stockpile demands for tritium could not be met if the existing commercial reactor option is selected for tritium production, or if the alternative target is used in the accelerator.

The second alternative is to make substantial modifications to Building 232–H, the Tritium Extraction, Concentration and Enrichment Facility. This facility is currently in use for tritium extraction but would require modification to attain safety and environmental performance requirements for tritium extraction from light water irradiated targets. Under this alternative, this existing facility would be modified to receive and handle remotely the light water reactor or accelerator-irradiated targets; no new building would be constructed. Additionally, a new furnace would be needed to achieve the required extraction temperatures and comply with current environmental requirements.

Identification of Environmental and Other Issues: The Department has identified the following issues for analysis for proposed and alternative actions in the EIS. Additional issues may be identified as a result of the scoping process.

1. Public and Worker Safety, Health Risk Assessment: radiological and nonradiological impacts of the proposed action and alternatives, including projected effects on workers and the public from construction, normal operations, and accidents.
2. Impacts from releases to air, water, and soil.
3. Impacts to plants, animals, and habitat, including impacts to wetlands and threatened or endangered species and their habitat.
4. The consumption of natural resources and energy including water, natural gas, and electricity.
5. Socioeconomic impacts to affected communities from construction and operation labor forces and support services in the SRS area.
6. Environmental justice: disproportionately high and adverse human health or environmental effects on minority and low-income populations.
7. Impacts to resources such as historically, archaeologically, scientifically, or culturally important sites.
8. Compliance with all applicable Federal, state, and local statutes and regulations; required Federal and state

environmental consultations and notifications; and DOE Orders on waste management, waste minimization initiatives, and environmental protection.

9. Cumulative impacts from the proposed action and other past, present, and reasonably foreseeable actions at SRS.

10. Potential irreversible and irretrievable commitments of resources.

Public Scoping Process: DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS and to identify significant environmental issues to be addressed. Because another EIS for a separate tritium-related activity at SRS is commencing simultaneously (the APT; see the notice in today's **Federal Register**), the public scoping meetings for the TEF will be held concurrently with the public scoping meetings for the APT EIS. DOE will begin each scoping meeting with an overview of tritium activities at SRS. Following the initial presentation, DOE will hold workshops on the APT and the TEF. These will either be separate workshops or a combined workshop depending on attendance levels. There will be two sessions at each meeting location. Copies of handouts from the meetings will be available to those unable to attend by writing Mr. Grainger at the address above, or by calling 1–800–242–8269.

Public notices of the dates, times, and locations of the scoping meetings will be announced in the local media at least 15 days before the meetings. DOE is committed to providing opportunities for the involvement of interested individuals and groups in this and other DOE planning activities.

The public, organizations, and agencies are invited to present oral and written comments concerning (1) the scope and issues of the EIS, and (2) the alternatives the EIS should analyze. Please address written comments to Mr. Grainger at the address indicated above.

Organizations and individuals wishing to participate in the public meeting can call 1–800–242–8269 between 8:30 AM and 5:00 PM. Eastern Standard Time, Monday through Friday, or submit their requests to Mr. Grainger at the address indicated above. DOE requests that anyone who wishes to speak at the scoping meeting preregister by contacting Mr. Grainger, either by phone or in writing. Preregistration should occur at least two days before the designated meeting. Persons who have not preregistered to speak may register at the meeting and will be called on to speak as time permits.

Related Documentation: Completed and ongoing environmental reviews and public comments and concerns may affect the scope of this EIS. Background information is listed below on past, present, and future activities at the SRS.

Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling, DOE/EIS–0161, 1995. This PEIS presents a programmatic environmental analysis for selection of the CLWR option, as well as the analysis for the APT technology, both of which would require the TEF to support the lithium-6 aluminum alloy target alternative.

Final Interim Management of Nuclear Materials Environmental Impact Statement, DOE/EIS–0220, 1995. This EIS contains information on DOE waste management activities which could be affected by TEF waste streams.

Final Savannah River Site Waste Management, DOE/EIS–0217, 1995. The EIS contains information on SRS waste management activities which could be affected by TEF waste streams.

Draft Programmatic Environmental Impact Statement for Stockpile Stewardship and Management, DOE/EIS–0236, February, 1996. The cumulative analysis of this PEIS includes the impacts at the Savannah River Site from the Tritium Supply and Recycling Programmatic EIS for the construction of an accelerator, an upgraded tritium recycling facility, and an extraction facility.

Environmental Impact Statement for the Construction and Operation of an Accelerator for the Production of Tritium at the Savannah River Site (see notice in today's **Federal Register**).

Environmental Assessment for the Tritium Facility Modernization and Consolidation (anticipated). The environmental assessment is to include the impacts of modernizing and consolidating the existing tritium recycling facilities at the Savannah River Site.

This information is available in these DOE public reading rooms: DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, phone 202–586–6020; and DOE Public Document Room, University of South Carolina, Aiken Campus, University Library, 2nd Floor, 171 University Parkway, Aiken, S.C. 29801, phone 803–648–6851.

Issued in Washington, D.C., this 29th day of August, 1996.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 96–22608 Filed 9–4–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, September 10, 1996: 6:30 p.m.–9:30 p.m., 7:00 p.m. to 7:30 p.m. (public comment session).

ADDRESSES: Fr. Marcy Compound, Taoseno Room, 320 Artist Road, Santa Fe, New Mexico 87501, 505–988–3400.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800) 753–8970, or (505) 753–8970, or (505) 262–1800.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Tuesday, September 10, 1996

6:30 PM	Call to Order and Welcome
7:00 PM	Public Comment
7:30 PM	Old Business
8:30 PM	Sub-Committee Reports
9:30 PM	Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Ann DuBois, at (800) 753–8970. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance

of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on August 30, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22664 Filed 9–4–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Monday, September 23, 1996, 3:00 p.m.—9:00 p.m.; Tuesday, September 24, 1996, 8:30 a.m.—4:00 p.m.

ADDRESSES: The Holiday Inn, U.S. 21—Loveless Street, Beaufort, South Carolina.

FOR FURTHER INFORMATION CONTACT: Tom Heenan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–8074.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

Monday, September 23, 1996

3:00 p.m. Outreach Subcommittee Meeting
6:00 p.m. Public Comment Period (5-minute rule)
7:00 p.m. Subcommittee Meetings
9:00 p.m. Adjourn

Tuesday, July 23, 1996

8:30 a.m. Approval of Minutes, Agency Updates (~ 15 minutes)
Public Comment Session (5-minute rule)(~ 30 minutes)
Risk Management & Future Use Subcommittee Report (~ 1 hour)
Environmental Remediation & Waste Management Subcommittee Report (~ 1 hour and 15 minutes)
12:00 p.m. Lunch
1:00 p.m. Citizens for Nuclear Technology Awareness (~ 45 minutes)
Nuclear Materials Management Subcommittee (~ 1 hour)
Administrative Subcommittee Report (~ 30 minutes)
Budget Subcommittee Report (~ 15 minutes)
Outreach Subcommittee (~ 15 minutes)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, September 23, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)–725–8074.

Issued at Washington, DC on August 30, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22665 Filed 9–4–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory (INEL).

DATES: Tuesday, September 17, 1996 from 8:00 a.m. to 6:00 p.m., Mountain Savings Time (MST); Wednesday, September 18, 1996 from 8:00 a.m. to 5:00 p.m. MST. There will be a public comment availability session on Tuesday, September 17, 1996 from 5:00 p.m. to 6:00 p.m. MST.

ADDRESSES: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The EM SSAB, INEL will meet to finalize recommendations regarding the Ten-Year Plan and Low-Level Waste. The Board will select the issues they wish to study for the next 6–12 months and select corresponding committees to head up those issues. They will also finalize meeting dates and locations for the next fiscal year. This agenda is subject to change as the Board meeting nears. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Marsha Hardy, Jason Associates, (208) 522–1662. The final agenda will be available at the meeting.

Public Participation: The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, September 19, 1996 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the

addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on August 30, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22666 Filed 9–4–96; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board.

DATE AND TIME: Tuesday, September 10, 1996, 1:30 PM - 5:30 PM.

PLACE: Mound Facility Cafeteria, 1 Mound Road, Miamisburg, Ohio 45342.

FOR FURTHER INFORMATION CONTACT: David Cheney, Acting Executive Director, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Secretary of Energy Advisory Board (Board), comprised of distinguished members of the private sector, provides expert, independent advice, information and recommendations to the Secretary. Issues addressed by the Board include the Department's management reforms, basic and applied research and development activities, and other issues related to the Department's energy, science and technology, environmental quality and national security responsibilities.

Tentative Agenda

1:30 PM Opening Remarks & Status of Major Departmental Re-engineering Initiatives
2:30 PM Accelerated Clean-up of DOE Defense Sites
3:00 PM DOE's Privatization Initiative
3:30 PM Fissile Materials Disposition Panel Status
4:00 PM Openness Advisory Panel Activities
4:30 PM Laboratory Operations Board Update
5:00 PM Public Comment
5:30 PM Adjourn

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Miamisburg, Ohio the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to David Cheney, Acting Executive Director, Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on August 30, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–22668 Filed 9–4–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Fusion Energy Sciences Advisory Committee.

DATES: Tuesday, September 24, 1996, 9:00 a.m. to 5:00 p.m., and Wednesday, September 25, 1996, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, Maryland 20877.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker III, Executive Assistant, Office of Fusion Energy Sciences, U.S. Department of Energy Germantown, MD 20874, Telephone: 301–903–4941.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To make recommendations to the Department of Energy on fiscal year 1997 program priorities in light of the available funds.

Tentative Agenda

Tuesday–Wednesday, September 24–25, 1996:

—Presentation by DOE on Conference Committee Results
—Discussion of Program Funding Priorities
—Public Comments
—Preparation of a Letter to DOE on FY 1997 Funding Priorities
—Presentation and Discussion of Additional Fusion Energy Sciences Advisory Committee Charges

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Albert Opdenaker at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on August 30, 1996.

Rachel M. Samuel,

Acting Deputy Advisory, Committee Management Officer.

[FR Doc. 96–22667 Filed 9–4–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–199–001]

Egan Hub Partners, L.P.; Notice of Amendment

August 29, 1996.

Take notice that on August 27, 1996, Egan Hub Partners, L.P. (Egan Hub) 44084 Riverside Parkway, Suite 340, Leesburg, Virginia 20176, filed, in Docket No. CP96–199–001, an application pursuant to Section 7(c) of the Natural Gas Act to amend its application for a certificate of public convenience and necessity authorizing construction and operation of underground storage facilities in Acadia Parish, Louisiana previously filed with the Commission on February 16, 1996, in Docket No. CP96–199–000.

Egan Hub states that the purpose of the amendment is to revise Egan Hub's proposed FERC Gas Tariff to clarify the nature of services to be offered.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 5, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22564 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–17–000]

El Paso Natural Gas Co.; Notice of Filing

August 29, 1996.

Take notice that on August 21, 1996, El Paso Natural Gas Company (El Paso) filed revised standards of conduct under section 161.3 of the Commission's regulations, 18 CFR 161.3. El Paso states that it is updating its standards of conduct to reflect a name change, a corporate acquisition and a corporate relocation.

El Paso states that copies of this filing have been mailed to all interstate pipeline system transportation customers of El Paso and interested regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22566 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–16–000]

Mojave Pipeline Operating Co.; Notice of Filing

August 29, 1996.

Take notice that on August 19, 1996, Mojave Pipeline Operating Company (Mojave) filed standards of conduct under section 161.3 of the Commission's regulations, 18 CFR 161.3.

Mojave states that copies of this filing have been mailed to all interstate pipeline system transportation customers of Mojave and interested regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22565 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–718–000]

Northwest Pipeline Corporation; Notice of Request under Blanket Authorization

August 29, 1996.

Take notice that on August 15, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP96–718–000 a request pursuant to Section 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon, its Columbia meter station in Klickitat County, Washington, since the power plant and associated pipeline to be served by the Columbia meter station were never constructed. Northwest makes such request, under it's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Northwest indicates that it constructed the Columbia meter station pursuant to prior notice approval in Docket No. CP92–571–000. Northwest states that the Columbia meter station was built to deliver natural gas to a new pipeline that was planned to be built by Columbia Power Associates, an affiliate of Columbia Aluminum Corporation, to serve a planned new power generating facility adjacent to existing plant facilities of Columbia Aluminum.

It is indicated that Golendale Aluminum Company (Goldendale) successor to Columbia Aluminum, does not object to Northwest's proposed abandonment. Northwest therefore, indicates that it proposes to remove the existing meter facilities and appurtenances, the meter building, all cement foundations and underground piping from the station site, but that the above ground tap valve extension will be retired in place.

Northwest further states that the estimated cost of removing the Columbia meter station is approximately $30,000, with an estimated salvage value of $133,954 for the materials to be returned to inventory.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22611 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–86–000]

Pacific Gas Transmission Company; Notice of Annual Charge Adjustment

August 29, 1996.

Take notice that on August 26, 1996, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance Thirteenth Revised Sheet No. 4, Fifth Revised Sheet No. 4A, Thirteenth Revised Sheet No. 5, and Fourth Revised Sheet No. 6C to be included in its FERC Gas Tariff, First Revised Volume No. 1–A and Eleventh Revised Sheet No. 7 to be included in its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1996.

PGT asserts that the purpose of this filing is to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to PGT. PGT further states that a copy of this filing has been served upon all jurisdictional customers and upon interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22570 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–348–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 29, 1996.

Take notice that on August 26, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective October 1, 1996.

Panhandle states that the purpose of this filing is to modify Panhandle's FERC Gas Tariff, First Revised Volume No. 1 to: (1) clarify Section 7.2 of the General Terms and Conditions to state the responsibilities of Panhandle and shippers and to establish time lines in connection with a shipper's exercise of its Right of First Refusal to continue a Long-Term Agreement for Firm Service; (2) establish a Primary Path priority for firm shippers by defining Primary Path in Section 1, modifying the scheduling provisions in Section 8.9 and revising the curtailment provisions in Section 9.3 of the General Terms and Conditions and to implement more fully the scheduling of gas based upon economic value; (3) add Section 12.16 to the General Terms and Conditions to provide for an overrun penalty for gas taken in excess of a shipper's Maximum Daily Contract Quantity (MDCQ); (4) add Section 12.17(a) to the General Terms and Conditions to provide for escalating daily scheduling charges during periods when Panhandle has declared an extreme condition; and (5) add Section 12.17(b) to the General Terms and Conditions to provide for escalating overrun penalties for unauthorized takes during periods when Panhandle has declared an extreme condition.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22569 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–931–009, et al.]

PowerNet Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 28, 1996.

Take notice that the following filings have been made with the Commission:

1. PowerNet Corporation Prairie Winds Energy, Inc.

[Docket No. ER94–931–009; Docket No. ER95–1234–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On August 20, 1996, PowerNet Corporation filed certain information as required by the Commission's April 22, 1994, order in Docket No. ER94–931–000. On August 12, 1996, Prairie Winds Energy, Inc. filed certain information as required by the Commission's August 28, 1995, order in Docket No. ER95–1234–000.

2. Florida Power Corporation

[Docket Nos. ER96–85–000 and ER96–89–000]

Take notice that on August 12, 1996, Florida Power Corporation filed refund information pursuant to the Commission's order approving the Settlement Agreement issued June 28, 1996. Florida Power states that because the rates billed under the tariff were less than the settlement rates, no refunds were required. Further, in order to conserve Staff resources, Florida Power did not provide a formal report; but will make detailed information available on request.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Duke/Louis Dreyfus Energy Services (New England) L.L.C.

[Docket No. ER96–1121–001]

Take notice that on July 25, 1996, Duke/Louis Dreyfus Energy Services (New England) L.L.C. filed its revised code of conduct.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER96–2040–000]

Take notice that on August 16, 1996, New England Power Company tendered for filing an amendment to its June 3, 1996 filing in the above-referenced docket.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Energy2, Inc.

[Docket No. ER96–2361–000]

Take notice that on August 21, 1996, Energy2, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Energy Services, Inc.

[Docket No. ER96–2523–000]

Take notice that on August 19, 1996, Northeast Energy Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Hubbard Power & Light, Inc.

[Docket No. ER96–2583–000]

Take notice that on August 19, 1996, Hubbard Power & Light Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER96–2702–000]

Take notice that on July 31, 1996, Northeast Utilities Service Company (NUSCO) on behalf of the Northeast Utilities system operating companies (NU System Companies), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Network Integration Transmission Service between Designated Agent for the retail customers of PSNH who are participating in the New Hampshire Retail Competition Pilot Program initiated by the New Hampshire Public Utilities Commission.

NUSCO requests an effective date for the Service Agreement of July 9, 1996. NUSCO requests that the Commission waive the 60-day notice requirement in Section 205 of the Federal Power Act as necessary to permit the Service Agreement to be placed into effect on such date.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER96–2740–000]

Take notice that on August 19, 1996, Wisconsin Public Service Corporation, tendered for filing Supplement No. 1 with Consolidated Water Power Company under its CS–1 Coordination Sales Tariff, Service Agreement No. 3.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER96–2741–000]

Take notice that on August 19, 1996, Arizona Public Service Company (APS), tendered for filing the proposed Wholesale Power Agreement No. 1 between APS and the Idaho Power Company (IPC).

The agreement proposes that APS will sell to IPC, 100 MW of firm capacity and associated energy during the months of September, October, November, December, January, February and March, commencing on September 1, 1996 and ending March 31, 2001.

A copy of this filing has been served on IPC, the Idaho Public Service Commission and the Arizona Corporation Commission.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER96–2743–000]

Take notice that on August 19, 1996, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, revised sheets to PacifiCorp FERC Electric Tariff, Second Revised Volume No. 3 and Informational Rates Sheet for PacifiCorp FERC Electric Tariffs, Second Revised Volume No. 4 and Original Volume No. 6.

These tariff sheets were removed from PacifiCorp's compliance filing under Order No. 888 and are resubmitted in this filing at the request of the Commission's staff.

Copies of this filing were supplied to the Public Service Commission of Utah, Wyoming Public Service Commission, the Public Utility Commission of Oregon and PacifiCorp's wholesale requirements customers.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER96–2744–000]

Take notice that on August 19, 1996, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Morgan Stanley Capital Group, Inc. under its CS–1 Coordination Sales Tariff.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER96–2745–000]

Take notice that on August 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow Energy Marketing Corp. under Rate GSS.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER96–2746–000]

Take notice that on August 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER96–2747–000]

Take notice that on August 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER96–2748–000]

Take notice that on August 19, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Vitol Gas & Electric L.L.C. under Rate GSS.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Interstate Power Company

[Docket No. ER96–2749–000]

Take notice that on August 19, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Municipal Electric Wholesale Agreement with the City of St. Charles filed with FERC under Original Volume No. 1.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Interstate Power Company

[Docket No. ER96–2750–000]

Take notice that on August 19, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Municipal Electric Wholesale Agreement with the City of Fredericksburg filed with FERC under Original Volume No. 1.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER96–2751–000]

Take notice that on August 19, 1996, Florida Power & Light Company (FPL), filed the Contract for Sales of Power and Energy by FPL to Virginia Electric & Power Company. FPL requests an effective date of August 21, 1996.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric

[Docket No. ER96–2752–000]

Take notice that on August 19, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a Service Agreement between LG&E and Engelhard Power Marketing, Inc. under Rate Schedule GSS—Generation Sales Service.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Interstate Power Company

[Docket No. ER96–2753–000]

Take notice that on August 19, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Municipal Electric Wholesale Agreement with the City of Rushford filed with FERC under Original Volume No. 1.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER96–2754–000]

Take notice that on August 19, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Tariff (the Tariff) entered into between Cinergy and PacifiCorp Power Marketing, Inc.

Cinergy and PacifiCorp Power Marketing, Inc. are requesting an effective date of August 15, 1996.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Wisconsin Public Service Corporation

[Docket No. ER96–2755–000]

Take notice that on August 19, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Morgan Stanley Capital Group Inc. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC asks that the agreement become effective on the date of execution by WPSC.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ER96–2756–000]

Take notice that on August 19, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *VTEC Energy, Inc.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *VTEC Energy Inc.* pursuant to the tariff, and for the sale of capacity and energy by *VTEC Energy Inc.* to WestPlains Energy-Colorado pursuant to *VTEC Energy Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *VTEC Energy, Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Florida Power Corporation

[Docket No. ER96–2757–000]

Take notice that on August 19, 1996, Florida Power Corporation, tendered for filing a service agreement providing for service to Tennessee Valley Authority, pursuant to Florida Power's power sales tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on August 20, 1996.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Northern Indiana Public Service Company

[Docket No. ER96–2758–000]

Take notice that on August 19, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Coral Power, L.L.C.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–399–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 71 FERC ¶ 61,014 (1996). Northern Indiana Public Service Company has requested waiver of the Commission's Regulations to allow the Transmission Service Agreement to become effective as of September 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Commonwealth Edison Company

[Docket No. ER96–2759–000]

Take notice that on August 20, 1996, Commonwealth Edison Company (ComEd), submitted eight Service Agreements, variously dated, establishing Calpine Power Services Company (Calpine), Tennessee Power Company (TPCO), Minnesota Power Light (MP&L), Entergy Power Inc. (EPI), Entergy Power Marketing Corp. (EPMC), Southern Energy Marketing, Inc. (Southern), Illinova Power Marketing, Inc. (Illinova), and PanEnergy Power Services, Inc. (PanEnergy), as non-firm

customers under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd also submitted for filing an additional Service Agreement establishing Wisconsin Electric Power Company (WEPCO), dated July 26, 1996, as a firm customer under the terms of ComEd's OATT.

ComEd requests an effective date of July 21, 1996 for all seven Non-Firm Service Agreements and an effective date of July 16, 1996 for the Firm Service Agreement, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Calpine, TPCO, MP&L, EPI, EMPT, Illinova, PanEnergy, WEPCO and the Illinois Commerce Commission.

Comment date: September 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22610 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11478–000]

Central Vermont Public Service Corporation; Notice of Availability of Draft Environmental Assessment

August 29, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Silver Lake Hydroelectric Project, located in Addison County, Vermont, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing, unlicensed project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference and Files Maintenance Branch of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Silver Lake Hydroelectric Project, No. 11478–000" to all comments. For further information, please contact Jim Haines at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22568 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1932–004, 1933–010, and 1934–010]

Southern California Edison Company; Notice of Intent to Prepare a Multiple Project Environmental Assessment and Conduct Public Scoping Meetings

August 29, 1996.

The Federal Energy Regulatory Commission (FERC) has received applications for new licenses (relicenses) for the existing Lytle Creek Project No. 1932, Santa Ana River 1 and 2 Project No. 1933, and Mill Creek 2/3 Project No. 1934. The Lytle Creek Project is located on Lytle Creek, the Santa Ana River 1 and 2 Project is located on the Santa Ana River, and the Mill Creek 2/3 Project is located on Mill Creek. All three projects are located in San Bernardino County, California.

The FERC staff intends to prepare a Multiple Project Environmental Assessment (EA) on the three hydroelectric projects in accordance with the National Environmental Policy Act.

The staff's EA will objectively consider both site specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EA will be issued and circulated for review to all the interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Site Visit and Scoping Meetings

The FERC will visit the project sites and conduct two scoping meetings. Staff will visit the project sites on September 25, 1996, and will meet at the U.S. Army Corps of Engineers 7 Oaks Dam construction office parking lot, adjacent to the guard office at 8:30 a.m. The parking lot is located on Santa Ana Canyon Road, northeast of Mentone, CA.

Both scoping meetings will be held at the Council Chambers, City Hall of San Bernardino, 300 North D Street, San Bernardino, California, 92418. The first meeting will be held on September 26, 1996, from 9:00 a.m. to 12:00 p.m. and will focus primarily on issues of concern to the resource agencies. The second meeting will also be held on September 26, 1996, from 7:00 p.m. to 10:00 p.m. and will focus primarily on issues of concern to the general public. All interested individuals, organizations, and agencies are invited to attend either or both scoping meetings and assist the staff in identifying the scope of environmental issues that should be analyzed by the EA.

Prior to the site visit and meetings, a scoping document will be mailed to the list of interested parties. The scoping document identifies resource issues to be addressed in the EA. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) determine the relative depth of analysis for issues to be addressed in the EA; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings. Individuals presenting statements at the meetings will be asked

to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Participants at the meetings are asked to keep oral comments brief and concise to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, until October 10, 1996.

All written correspondence should clearly show the following caption on the first page: Lytle Creek Project No. 1932, Santa Ana Project No. 1933, or Mill Creek 2/3 Project No. 1934.

All those that are formally recognized by the Commission as intervenors in the licensing proceeding are asked to refrain from engaging staff or its contractor in discussions of the merits of the project outside of any announced meeting.

Further, parties are reminded of the Commission's rules of Practice and Procedures, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

For further information, please contact Thomas Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22567 Filed 9–4–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5606–6]

Agency Information Collection Activities Under OMB Review; NSPS Synthetic Fiber Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for NSPS subpart HHH, Synthetic Fiber Production Facilities described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before October 7, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1156.07.

SUPPLEMENTARY INFORMATION: Title: NSPS for Synthetic Fiber Production Facilities (subpart HHH); OMB Control No. 2060–0059; EPA ICR No. 1156.07. This requests an extension for a currently approved collection.

Abstract: This ICR collects compliance information from sources subject to NSPS subpart HHH. The recordkeeping and reporting provisions include initial notifications, performance tests, and quarterly excess emissions reports or semiannual reports. In addition to the general recordkeeping and reporting required by NSPS sources, subpart HHH requires a report if a source is claiming exemption under 60.600(a). The information is used to determine initial compliance and continued compliance through proper maintenance and operation. The collection of information is mandatory (40 CFR Part 60, CAA section 111). It has been determined that emissions data is not confidential information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 26, 1996, Volume 61 number 59; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 32 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of synthetic fiber production plants.

Estimated Number of Respondents: 29.

Frequency of Response: Initial notifications, semiannually and annually.

Estimated Total Annual Hour Burden: 2449 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1156.07. and OMB Control No. 2060–0059 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW., Washington, DC 20503.

Dated: August 29, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–22641 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5605–6]

Agency Information Collection Activities Under OMB Review; NESHAP for Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP for Coke Oven Batteries. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before October 7, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR Number 1362.03.

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Coke Oven Batteries, Part 63, Subpart L;

OMB No. 2060–0253; EPA No. 1362.03; expiration date: October 31, 1996. This is an extension of a currently approved collection.

Abstract: Owners or operators of coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted, are required to develop work practice and startup, shutdown, and malfunction plans, and record and submit reports including notifications and semiannual compliance certifications. Daily monitoring of coke oven batteries is required and is conducted by a certified observer provided by the enforcement agency at the respondent expense.

The information and data will be used by EPA and states to: (1) Identify batteries subject to the standards; (2) ensure that MACT and LAER are properly applied; and (3) ensure that daily monitoring and work practice requirements are implemented as required. Effective enforcement of the standard is particularly necessary because of the hazardous nature of coke oven emissions.

Based on recorded and reported information, EPA and states can identify compliance problems and specific records or processes to be inspected at the plant. The records that plants maintain help indicate whether plants are in compliance with the standard, reveal misunderstandings about how the standard is to be implemented, and indicate to EPA whether plant personnel are operating and maintaining their process equipment properly.

Reporting and recordkeeping requirements are mandatory under Sections 112 and 114 of the Clean Air Act as amended. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 26, 1996.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of coke oven batteries.

Estimated Number of Respondents: 35.

Frequency of Response: semiannual and on occasion.

Estimated Total Annual Hour Burden: 10,740 hours.

Estimated Total Annualized Cost Burden: $2.4 million.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR Number 1362.03 and OMB Control Number 2060–0253 in any correspondence. Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: August 29, 1996.

Joseph Retzer,

Director Regulatory Information Division.

[FR Doc. 96–22647 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5605–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Part B Permit Application, Permit Modifications, and Special Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Part B Permit Application, Permit Modifications, and Special Permits, OMB Control No. 2050–0009, expiring on October 31, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 7, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1573.05.

SUPPLEMENTARY INFORMATION:

Title: Part B Permit Application, Permit Modifications, and Special Permits, (OMB Control No. 2050–0009) expiring 10/31/96. This is a request for extension of a currently approved collection.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste, or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify the EPA of their activities, including the location and general description of the activities and the regulated waste handled. Section 3005 of Subtitle C of RCRA requires TSDs to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the application—Part A and Part B. Part A defines the processes to be used for treatment, storage and disposal of hazardous waste; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modification are proposed by an applicant or EPA, modifications must conform to the requirements under Sections 3004 and 3005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/4/96 (61FR15065); 4 comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for

this collection of information is estimated to average for:

Demonstrations and Exemptions from Requirements

Releases from Regulated Units: 0.0 hours per response
Demonstrations and Exemptions from Requirements: 3.4 hours per response

Contents of the Part B Application

Legal Review: 100.0 hours per response
General Information: 0.0 hours per response
Permit Application: 12.1 hours per response
General Requirements: .1 hours per response
General Facility Standards: 495.2 hours per response
Financial Assurance: 22.0 hours per response
Other Part B Requirements: 12.0 hours per response
Ground-Water Protection: 242.3 hours per response
Solid Waste Management Units: 21.0 hours per response
Specific Part B Information Requirements: 1743.9 hours per response
Schedules of Compliance: 0.7 hours per response

Permit Modifications and Special Permits

Permit Modifications: 2.6 hours per response
Expiration and Continuation of Permits: .9 hours per response
Special Forms of Permits: 100.3 hours per response
Interim Status: 0.0 hours per response

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous waste treatment, storage, and disposal facilities.

Estimated Number of Respondents: 228
Frequency of Response: 1
Estimated Total Annual Hour Burden: 125,027 hours.
Estimated Total Annualized Cost Burden: $14, 986,151

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. (Please refer to EPA ICR No. 1573.05 and OMB Control No. 2050–0009 in any correspondence.)

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503

Dated: August 29, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–22652 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5605–3]

Agency Information Collection Activities Under OMB Review; Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program. OMB Control Number 2040–0164. Expiration Date November 30, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 7, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202 260–2740, and refer to EPA ICR No. 1654.02.

SUPPLEMENTARY INFORMATION:

Title: Renewal—Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program (OMB Control Number 2040–0164; EPA ICR No. 1654.02) expiring 11/30/96. This is a revision of a currently approved collection.

Abstract: EPA will annually collect water, energy, and cost savings information from "Partners" in the WAVE program. Partners can be commercial businesses, governments, or institutions that voluntarily agree to implement cost-effective water efficiency measures in their facilities. Initially the WAVE Program will target the lodging industry. Another type of participant, "Supporters," will work with EPA to promote water efficiency and provide information on products and services. Supporters could be equipment manufacturers, water management companies, utilities, local governments, or the like.

The purpose of the WAVE Program is pollution prevention. As defined by EPA, pollution prevention means "source reduction" as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or through protection of natural resources by conservation.

EPA will use this information to monitor the success of the program, to demonstrate that pollution prevention can be accomplished with a non-regulatory approach, and to promote the program to potential partners. Participation in the WAVE Program is voluntary; however, once a participant joins the program, it is required to sign and submit a Memorandum of Understanding (MOU), an annual Results Report, and information on miscellaneous additional activities to EPA to receive and retain program benefits, such as software and publicity. No participant will be required to submit confidential business information. EPA will present aggregated data only in its program progress reports.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/17/96 (61 FR 30609); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average nine hours and 45 minutes per MOU response, four hours and 45 minutes per Results Report

response, and eight hours and 30 minutes for additional information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are commercial businesses, hospitals, educational institutions, and multi-family housing units that voluntarily join EPA's WAVE Program. Major respondents are hotels and motels.

Estimated Number of Respondents: 55

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 4,654 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1654.02 and OMB Control No. 2040–0164 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW., Washington, DC 20503.

Dated: August 28, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–22653 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5606–7]

Agency Information Collection Activities: Submission for OMB review; Comment Request; General Hazardous Waste Facility Standards; and Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: General Hazardous Waste Facility Standards, OBM No. 2050–0120; and Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types, OMB No. 2050–0050, both expiring on October 31, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 7, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1571.05 (General Hazardous Waste Facility Standards) and 1572.04 (Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types).

SUPPLEMENTARY INFORMATION:

Title: General Hazardous Waste Facility Standards (OMB Control No. 2050–0120; EPA ICR No. 1571.05); and Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types (OMB Control No. 2050–0050; EPA ICR No. 1572.04), both expiring 10/31/96. This is a request for extension of a currently approved collection.

Abstract: Owner/operators of hazardous waste treatment, storage and disposal facilities must comply with the standards developed by EPA under Section 3004(a) (1), (3), (4), (5) and (6) of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended to protect human health and the environment. The standards specified in Section 3004(a) include, but are not limited to, the following requirements:

(1) Maintaining records of all hazardous wastes identified or listed under this title which are treated, stored, or disposed of, * * * and the manner in which such wastes were treated, stored, or disposed of;

(3) Treatment, storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) The location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and

(6) The maintenance or operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are published in the *Code of Federal Regulations* (CFR) Title 40, Parts 261, 264, 265, and 266, Subpart F. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of *Section* 3004(a) of RCRA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/4/96 (61FR15066); 1 comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for the General Hazardous Waste Facility Standards collection of information is estimated to average 331 hours per response, and the annual public reporting and recordkeeping burden for the Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types is estimated to average for:

Subpart J—20 hours per response
Subpart K—155 hours per response
Subpart L—19 hours per response
Subpart M—2 hours per response
Subpart N—85 hours per response
Subpart O—233 hours per response
Subpart P—0 hours per response
Subpart Q—0 hours per response
Subpart X—8 hours per response
Subpart W—40 hours per response
Subpart AA—815 hours per response
Subpart BB—95 hours per response
Subpart DD—61 hours per response
Part 266—Specific Hazardous Waste Recovery/Recycling Facilities—4 hours per response

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

For the General Hazardous Waste Facility Standards

Respondents/Affected Entities: Hazardous waste treatment, storage and disposal facilities.
Estimated Number of Respondents: 5772
Frequency of Response: 1
Estimated Total Annual Hour Burden: 1,927,553 hours.
Estimated Total Annualized Cost Burden: $79,246,198

For the Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types:

Respondents/Affected Entities: Hazardous waste treatment, storage, and disposal facilities
Estimated Number of Respondents: 6658
Frequency of Response: 1
Estimated Total Annual Hour Burden: 368,543 hours
Estimated Total Annualized Cost Burden: $19,081,484

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. (In any correspondence, please refer to EPA ICR No. 1571.05 and OMB Control No. 2050–0120 when referring to the General Hazardous Waste Facility Standards; and EPA ICR No. 1572.04 and OMB No. 2050–0050 when referring to Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types.)

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503

Dated: August 29, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–22657 Filed 9–04–96; 8:45 am]

BILLING CODE 6560–60–P

[FRL–5605–5]

Draft Guidance for the Implementation of EPA's Radiation Protection Standards for Management and Storage of Radioactive Waste at the Waste Isolation Pilot Plant ("WIPP Subpart A Guidance")

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Pursuant to the 1992 Waste Isolation Pilot Plant Land Withdrawal Act (LWA), Public Law 102–579, EPA is required to determine, on a biennial basis, whether the Waste Isolation Pilot Plant (WIPP) complies with 40 CFR Part 191, Subpart A, the standards for management and storage of radioactive waste. EPA is developing guidance for the implementation of the generally applicable standards of Subpart A at the WIPP to evaluate the facility's compliance with radiation dose limits to the public during the receipt and emplacement of waste in the disposal system, and associated activities. EPA is hereby announcing that draft guidance, known as the WIPP Subpart A Guidance, is available for public comment. The EPA will fully consider timely public comments in revising the guidance document.

DATES: Comments in response to today's document must be received by October 7, 1996.

ADDRESSES: Copies of the draft WIPP Subpart A Guidance are available to the public by calling EPA's WIPP Information Line at 1–800–331–WIPP. Copies of the draft WIPP Subpart A Guidance and supporting materials are also available for review at EPA's Office of Radiation and Indoor Air located at 501 3rd Street, N.W., Washington, D.C. 20001; and at the following addresses in New Mexico where EPA maintains public information files for the guidance: (1) Government Publications Department of the Zimmerman Library of the University of New Mexico in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (2) The Fogelson Library of the College of Santa Fe, located at 1600 St. Michael's Drive, Santa Fe, New Mexico (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); and (3) The Municipal Library of Carlsbad, New Mexico, located at 101 South Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). Citizens wishing to review these materials should request to see the EPA "WIPP Subpart A Guidance File."

Comments on the draft WIPP Subpart A Guidance should be submitted in duplicate to: Betsy Forinash, U.S. Environmental Protection Agency, Office of Radiation and Indoor Air (6602J), 401 M Street, S.W., Washington, D.C. 20460; (202) 233–9310.

FOR FURTHER INFORMATION CONTACT: Betsy Forinash, U.S. Environmental Protection Agency, Office of Radiation and Indoor Air (6602J), 401 M Street, S.W., Washington, D.C. 20460; (202) 233–9310.

SUPPLEMENTARY INFORMATION: The draft guidance document pertains to the requirements established in the WIPP LWA and the federal regulations at 40 CFR Part 191, Subpart A. The document does not establish new binding requirements but will guide EPA's implementation of 40 CFR Part 191, Subpart A at the WIPP. Subpart A is a generally applicable radiation protection standard that limits radiation doses to the public from management of transuranic radioactive waste at disposal facilities operated by the Department of Energy (DOE). The DOE is proposing to use the WIPP, located in Eddy County, New Mexico, as a deep geologic repository for the disposal of transuranic radioactive waste generated by nuclear defense activities. The Subpart A regulations apply to activities associated with receiving and emplacing the waste in the disposal system. (Limitations on radiation doses which may occur after closure of the disposal system are separately addressed by EPA's disposal regulations at Subparts B and C of 40 CFR Part 191, and by WIPP compliance criteria at 40 CFR Part 194.) The WIPP LWA requires EPA to determine, on a biennial basis, whether WIPP complies with Subpart A of 40 CFR Part 191. EPA may also conduct this determination at any other time. If EPA determines that the WIPP does not comply with the Subpart A dose standards at any time after emplacement

of waste has begun, the WIPP LWA requires the DOE to submit a remedial plan to EPA.

This guidance describes the application of Subpart A to activities associated with the 25- to 30-year period during which packaged waste would arrive at the above ground portion of the WIPP, be unloaded and prepared for emplacement in the underground repository, and ultimately lowered down a mechanical hoist and emplaced in the mined-out repository, if the WIPP is approved for use as a disposal system. During this period, the annual doses from radiation received by members of the general public must not exceed the limits specified by Subpart A. The WIPP Subpart A Guidance interprets Subpart A for the WIPP and provides the Agency's recommendations for methods used to demonstrate and document compliance with the standards. The guidance also describes information DOE should report to EPA for the Agency's evaluation of the WIPP's compliance with the Subpart A dose limits.

By today's action, the EPA is inviting the public to comment on the WIPP Subpart A Guidance, available in draft at the addresses identified above, by submitting written comments for EPA's consideration. EPA requests comments on all aspects of the draft guidance for the implementation of 40 CFR Part 191, Subpart A for the WIPP.

The draft WIPP Subpart A Guidance will be revised and made available to the public. Revised guidance is expected to be made available in fall 1996. The draft guidance interprets 40 CFR Part 191, Subpart A. The guidance does not establish a new standard and does not establish binding rights or duties, but will be a non-binding guide for EPA's evaluation of the WIPP's compliance with Subpart A. Because it is a non-binding, interpretive document, the WIPP Subpart A Guidance is not subject to the notice-and-comment rulemaking requirements of the Administrative Procedures Act, 5 U.S.C. 553. Thus, EPA does not plan to provide written responses to the public comments submitted. Nevertheless, EPA will fully consider public comments in developing the WIPP Subpart A Guidance.

Dated: August 28, 1996.

Richard Wilson,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 96–22651 Filed 9–04–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5604–8]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing its Fall meeting of the Ozone Transport Commission to be held on October 8, 1996.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on October 8, 1996 from 10:00 a.m. to 4:00 p.m.

PLACE: The meeting will be held at: The Sheraton Inn Plymouth, 180 Water Street, Plymouth, MA 02360, (508) 747–4900.

FOR FURTHER INFORMATION CONTACT: *EPA:* Susan Studlien, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

THE STATE CONTACT: *Host Agency:* Sonia Hamel, Executive Office of Environmental Affairs, 100 Cambridge Street, Boston, MA 02202, (617) 727–9800, ext. 244.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on October 8, 1996. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (or by e-mail: ozone@sso.org) on Tuesday, October 1, 1996. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, and to discuss market-based programs to reduce pollutants that cause ozone.

Dated: August 27, 1996.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 96–22643 Filed 9–4–96; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: September 26–27, 1996. The Hay-Adams Hotel, The John Hay Room, First Floor, 16th and H Streets, NW, Washington, DC 20006.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The PCAST will meet in open session on Thursday, September 26, 1996, at approximately 9:30 AM to discuss the work of various PCAST panels. This session will end at approximately 12:00 Noon. The Committee will reconvene in open session at approximately 2:00 PM to discuss current activities of the National Science and Technology Council (NSTC), and to review the university-government partnership. This session will end at approximately 5:00 PM.

The Committee will meet again in open session on Friday, September 27, 1996, at approximately 9:30 AM, to discuss science and technology policies of national importance and future PCAST activities. This session will end at approximately 12:00 Noon.

Any of the morning or afternoon sessions may be interrupted for the PCAST to gather at the White House to meet with the President and/or Vice President of the United States.

FOR FURTHER INFORMATION: For information regarding time, place, and agenda, please call Jeanie Hall, at (202) 456–6100, prior to 3:00 PM on Friday, September 20, 1996. Other questions may be directed to Angela Phillips Diaz, Executive Secretary of PCAST, or Elizabeth M. Gunn, Senior Policy Analyst for PCAST, at (202) 456–6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established on November 23, 1993, by Executive Order 12882, as amended, and continued through September 30, 1997, by Executive Order 12974. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and John Young, former President and CEO of Hewlett-Packard Company.

Dated: August 29, 1996.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 96–22471 Filed 9–4–96; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

August 29, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 7, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This collection of information was not submitted to OMB as part of an NPRM since it was developed as a result of comments received in WT 95–56 .

OMB Approval Number: New Collection.

Title: Section 95.1015 Disclosure Policies.

Form No: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 3.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 3 hours.

Estimated Costs Per Respondent: 0.

Needs and Uses: This collection of information is made necessary by the amendments of the Commission's Rules regarding the Low Power Radio and Automated Maritime Telecommunications System (AMTS) operations in the 216–217 MHz band. The reporting requirement is necessary to ensure that television stations that may be affected by harmful interference from AMTS operations are notified. The information will be used by Commission staff and affected television stations in order to be aware of the location of potential harmful interference from AMTS operations.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–22700 Filed 9–4–96; 8:45 am]

BILLING CODE 6713–01–P

[CC Docket No. 96–45; DA 96–1432]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 27, 1996 the Federal Communications Commission released a public notice, as required by law, to announce a meeting of the Federal-State Joint Board on September 13, 1996. The purpose of the notice is to inform the general public of a meeting that will be held by the Federal-State Joint Board on universal service.

FOR FURTHER INFORMATION CONTACT: John Clark, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, at (202) 530–6024.

SUPPLEMENTARY INFORMATION: The Federal-State Joint Board in CC Docket No. 96–45 will hold an Open Meeting on Friday, September 13, 1996 at 9:00 a.m., in Room 856 at 1919 M Street, N.W., Washington, D.C. At the meeting, the Federal-State Joint Board will hear from a panel of experts addressing universal service issues set forth in Section 254 of the Telecommunications Act.

Federal Communications Commission.

Mary Beth Richards,

Deputy Bureau Chief, Common Carrier Bureau.

[FR Doc. 96–22535 Filed 9–4–96; 8:45 am]

BILLING CODE 6712–01–P

[Report No. 2150]

Petitions for Reconsideration of Action in Rulemaking Proceedings

August 30, 1996.

Petitions for reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 20, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Moncks Corner, Kiawah Island and Sampit, SC) (MM Docket No. 94–70, RM–8474, RM–8706).

Number of Petition Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Chester, Shasta Lake City, Alturas, McCloud and Weaverville, CA) (MM Docket No. 94–76, MM Docket No. 94–77, RM–8470, RM–8477, RM–8523, RM–8524).

Number of Petition Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Shingletown, CA) (MM Docket No. 95–51, RM–8591).

Number of Petition Filed: 1.

Subject: Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers. (WT Docket No. 95–47)*.

Number of Petitions Filed: 3.

*This Public Notice includes the petition filed by William J. Franklin on behalf of ITV, Inc and IVDS Affiliates, LC. A previous Public Notice, Report No. 2146, was released on August 7, 1996 and published in the Federal Register on August 14, 1996, listed only two petitions filed on July 25, 1996. We are therefore placing all three petitions on public notice at this time.

Subject: Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services. (CC Docket No. 96–21).

Number of Petition Filed: 1.

Subject: Order to Show Cause Why the License for Station KOJC(FM), Cedar Rapids, Iowa Should Not Be Revoked. (MM Docket No. 96–47).

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22534 Filed 9–4–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on the Use of Offering Circulars

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Revision of Statement of Policy.

SUMMARY: The FDIC is revising its Statement of Policy Regarding Use of Offering Circulars in Connection with Public Distribution of Bank Securities. The revision updates the informational standards for the public distribution of bank securities by insured state nonmember banks, clarifies the meaning of certain standards, and provides references for bank management and counsel for mutual-to-stock conversions, public distribution of securities and private placements. The FDIC Board of Directors believes that the statement of policy enhances public confidence in the banking system by providing for full disclosure in offering circulars.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence H. Pierce, Section Chief, (202/898–8902) or Mary S. Frank, Senior Financial Analyst, (202/898–8903), Division of Supervision; Gerald Gervino, Senior Attorney, (202/898–3723), Legal Division.

SUPPLEMENTARY INFORMATION:

I. Current Statement

The current statement of policy was adopted by the FDIC's Board of Directors in July 1979. The policy discusses the antifraud provisions of the securities laws and contains a brief statement of the information that should be furnished when a state nonmember bank offers and sells equity or debt securities in a public offering.

II. Need for Revision

The offer and sale of securities issued by financial institutions are subject to the antifraud provisions of the federal securities laws. These antifraud provisions presume certain common disclosure standards on the banking industry. The standards and needs of the industry have evolved in the 17 years since the FDIC Board of Directors issued the initial statement of policy. These revisions represent an update and clarification of the standards delineated in the initial statement of policy and are expected to enhance capital formation.

III. Modifications

The primary changes to the original statement of policy pertain to mutual-to-stock conversions and sales of the bank's securities on bank premises. The revisions reflect the FDIC's expanded review responsibility with respect to mutual-to-stock conversions and also the need to enhance disclosures in response to changes in the securities markets.

Other areas of change pertain to limitations on advertising activity, minimum requirements for subscription order forms, and references to regulations of the Office of Thrift Supervision and the Securities Exchange Commission in particular circumstances. The statement of policy no longer refers to the Securities Offering Disclosure Rules (12 CFR part 16) of the Comptroller of the Currency because part 16 has been cross-referenced to the regulations of the Securities and Exchange Commission since April 1995. The list of essential items of disclosure is also revised.

Additional guidance in the areas of disclosure and advertising, suitability and sales practices, as well as setting and circumstances relating to sales activities on the premises of a depository institution is provided by the "Interagency Statement on Retail Sales of Nondeposit Investment Products". Portions of that statement may be applicable when a bank sells or distributes securities as part of the capital formation process.

IV. Approach

The revised statement of policy does not impose a filing requirement, although the FDIC will continue to review offering circulars used in connection with mutual-to-stock conversions and deposit insurance applications. This approach provides flexibility to small banks and allows the banks to incorporate disclosure material prepared for other purposes, including state securities requirements, in offering circulars. The statement of policy allows for informal consultation with the staff in the Registration and Disclosure Section. This method of review has proven beneficial to small banks over the past few years.

V. The Statement of Policy

The text of the statement of policy follows:

Statement of Policy Regarding Use of Offering Circulars in Connection With Public Distribution of Bank Securities

This statement of policy concerns the use of offering circulars in connection with the public distribution of bank securities by insured state nonmember banks. The FDIC is issuing this statement in view of its statutory duties relating to capital adequacy, the safety and soundness of insured banks, and its review responsibilities with respect to mutual-to-stock conversions of FDIC-regulated financial institutions. The statement of policy also is intended to protect insured state nonmember banks against the risk of serious capital loss or litigation that could result if bank securities are sold in violation of the antifraud provisions of the federal securities laws.[1]

The issuance of securities by banks is subject to the antifraud provisions of the federal securities laws which require full and adequate disclosure of material facts.[2] It is the FDIC's goal to have banks comply with the antifraud provisions of the federal securities laws in a manner which meets the needs of investors, depositors and issuers. It is the responsibility of bank management and the promoters of a bank in organization to understand these requirements and utilize an offering circular in appropriate situations.[3]

In view of the FDIC's statutory duty to determine capital adequacy when passing upon an application for federal deposit insurance, the FDIC reviews whether public investors have been provided sufficient disclosure of material facts by an insured state nonmember bank in organization. The FDIC also reviews any offering circular used by a bank operating under an administrative order, or used in a mutual-to-stock conversion as part of the application process.

The FDIC believes that every insured state nonmember bank or bank in organization publicly offering its securities, including offerings under preemptive rights, should use an offering circular.

(1) The offering circular should include the following statements in capital letters printed in boldfaced type:

THESE SECURITIES ARE NOT DEPOSITS. THESE SECURITIES ARE NOT INSURED BY THE FDIC OR ANY OTHER AGENCY, AND ARE SUBJECT TO INVESTMENT RISK, INCLUDING THE POSSIBLE LOSS OF PRINCIPAL.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION NOR HAS THE FEDERAL DEPOSIT INSURANCE CORPORATION PASSED ON THE ADEQUACY OR ACCURACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

(2) The offering circular should indicate in capital letters and boldfaced type, if debt securities are offered:

THESE OBLIGATIONS ARE SUBORDINATE TO THE CLAIMS OF DEPOSITORS AND OTHER CREDITORS AS MORE FULLY DESCRIBED IN THE OFFERING CIRCULAR.

(3) The offering circular should identify the offeror and principal business address; state the title, number, aggregate dollar amount and per unit price of securities offered; describe the subscription rights and limitations, risk factors, business of the offeror, use of proceeds and capital structure, management and principal shareholders, compensation and business transactions, material features of the securities offered, dividend policy, the plan of distribution, and legal or administrative proceedings; provide selected financial data for each of the last five fiscal years and interim periods, and a management's discussion and analysis of the results of operation for at least the past two years and the interim periods; and present comparative financial statements, footnotes and schedules of the bank.

The financial statements, footnotes and schedules for each fiscal year and interim period presented should be at least as inclusive as that required by the annual disclosure statement for insured state nonmember banks (12 CFR part 350). Banks that have an annual audit of financial statements by an independent public accountant, which the FDIC strongly encourages, should include the audited financial statements in the offering circular. Banks are encouraged to include an introductory "plain English" summary of the essential information contained in the offering circular, along with a profile of the terms of the offer and the telephone number of the principal executive office of the bank.

Banks in organization should disclose the expected relationship that the institution will have with each promoter, organizer, proposed director and executive officer, including compensation, business transactions, and stock option or award plans. A balance sheet and statement of organizational and pre-operating expenses, a pro forma capitalization table and a business plan should be provided as of the latest practicable date for the bank in organization.

(4) The offering circular should be accompanied by a subscription order form that states the maximum subscription price per share of capital stock, the maximum and minimum number of shares that may be purchased pursuant to subscription rights, the time period within which the subscription rights must be exercised, any withdrawal rights, any required method of payment, and the escrow arrangements. The subscription order form should provide specifically designated blank spaces for dating and signing. The order form should contain an acknowledgement by the subscriber that he or she received an offering circular prior to signing.

Sales of securities issued by insured state nonmember banks should be conducted in a segregated area of the depository institutions' offices, whenever possible. Offers and sales should be conducted by authorized personnel, excluding tellers, in places where deposits are not ordinarily received. An insured depository institution should obtain a signed and dated certification from the purchaser confirming that the purchaser has read and understands the disclosures set out in paragraphs (1) and (2) above. The certification should contain a separate place where a purchaser should indicate, by initialing or by comparable method, that the purchaser is aware of the absence of deposit insurance covering the securities being sold.[4]

Any written advertisement, letter, announcement, film, radio, or television broadcast which refers to a present or proposed public offering of securities covered by this Statement of Policy

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[1] The FDIC recognizes the efforts of certain states in regulating the offering of securities by insured state nonmember banks and encourages the adoption of regulations and review procedures at the state level; however, because of a lack of uniformity among all states, FDIC considers the adoption of this statement of policy which will apply to all insured state nonmember banks appropriate.

[2] Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and rule 10b–5 (17 CFR 240.10b–5) of the Securities Act of 1933 ("SEC") promulgated under section 10(b) of the Securitites Exchange Act of 1934 (15 U.S.C. 78j(b)).

[3] SEC rule 10b–5 (17 CFR 240.10b–5) makes it unlawful in connection with the offer or sale of a security: * * *

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

[4] Sales of securities on bank premises are also subject to the guidance contained in the "Interagency Statement on Retail Sales of Nondeposit Investment Products" dated February 15, 1994.

should contain: (a) A statement that the announcement is neither an offer to sell nor a solicitation of an offer to buy any of the securities and that the offer may be made only by an offering circular, (b) the names and addresses of the bank and the lead underwriter, (c) the title of the security, the dollar amount and the number of securities being offered, and the per unit offering price to the public, (d) instructions for obtaining an offering circular and (e) a statement that the securities are neither insured nor approved by the FDIC.

The FDIC uses the Office of Thrift Supervision's conversion regulations as a frame of reference in reviewing the form and content of offering circulars used in connection with mutual-to-stock conversions. Banks utilizing an offering circular in connection with a mutual-to-stock conversion should consult 12 CFR 563b.102 (Form OC—Offering Circular).

The disclosure goals of this statement of policy will be met if:

(A) The offer and sale satisfy the information and disclosure requirements of SEC Regulation A—Conditional Small Issues Exemption (17 CFR part 230), or Regulation S–B (Small Business Issuers) (17 CFR part 228), or

(B) The securities are offered and sold in a transaction that satisfies the requirements of SEC Regulation D (17 CFR 230.501–230.506), relating to private offers and/or sales to accredited investors, or

(C) The securities are offered and sold in a transaction that satisfies the informational requirements of SEC Rule 701(17 CFR 230.701) for certain employee benefit plans, or

(D) The securities are offered and sold in a transaction that satisfies the information and disclosure requirements of OTS's part 563g—Securities Offerings (12 CFR 563g).

Inasmuch as the statement of policy does not impose the burden of filing and awaiting regulatory approval, and allows for certain flexibility, the FDIC believes it will be beneficial to small banks.

Banks or their legal counsel may contact the FDIC's Registration and Disclosure Section, Division of Supervision, for a copy of Suggested Form and Content for Offering Circular (Existing Bank) or Suggested Form and Content for Offering Circular (Bank in Organization). The address is Registration and Disclosure Section, Division of Supervision, 550 17th Street, N.W., Washington, D.C. 20429. (202) 898–8902.

By order of the Board of Directors, dated at Washington, DC, this 13th day of August, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–22622 Filed 9–4–96; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 10, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, September 12, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, DC (Ninth floor).

STATUS: This meeting will be open the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1996–25: Stanley M. Brand on behalf of Seafarers Political Activity Donation ("SPAD")
Advisory Opinion 1996–34: Susan Wenger, Treasurer, Thornberry for U.S. Congress Committee
Advisory Opinion 1996–36: Robert F. Bauer on behalf of the Honorable Martin Frost, Sheila Jackson Lee, Ken Bentsen, Gene Green, and Eddie Bernice Johnson
Advisory Opinion 1996–37: Kindra L. Hefner, Director, Brady for Congress Committee
Clinton/Gore '96 Primary Committee, Inc.—Request to Suspend Public Funds (LRA #485)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96–22841 Filed 9–3–96; 3:11 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1133–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1133–DR), dated August 21, 1996, and related determinations.

EFFECTIVE DATE: August 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 21, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on June 15–30, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Eric Jenkins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been

affected adversely by this declared major disaster:

The Counties of Audubon, Boone, Cherokee, Crawford, Hamilton, Hardin, Harrison, Ida, Monona, Plymouth, Pottawattamie, Sac, Shelby, Story and Woodbury for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–22672 Filed 9–4–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1132–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1132–DR), dated August 14, 1996, and related determinations.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 14, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from heavy rains, high winds, flooding and slides on July 18–31, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

Barbour, Braxton, Clay, Gilmer, Monongalia, Nicholas, Randolph, and Webster Counties for Individual Assistance, Public Assistance and Hazard Mitigation; and,

Cabell and Upshur Counties for Individual Assistance and Hazard Mitigation only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–22671 Filed 9–4–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

United Shipping Agent, Inc., 15 Penn Plaza, Suite 107, New York, NY 10001,

Officers: Mohamed Abouelmaati, President; Blanche Yarkish, Vice President

J F Hillebrand USA West Coast Inc., 621 West Spain Street, Sonoma, CA 95476

Officers: Christophe Bernard, President; Jo Garces Ruzicka, Secretary

Dated: August 29, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–22528 Filed 9–4–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, September 9, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 30, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–22739 Filed 8–30–96; 4:42 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 705]

Grants for Injury Control Research Centers; Notice of Availability Of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Control Research Centers (ICRCs). CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. For ordering a copy of "Healthy People 2000," see the Section Where to Obtain Additional Information.

Authority

This program is authorized under Sections 301 and 391–394A of the Public Health Service Act (42 U.S.C. 241 and 280b–280b–3). Program regulations are set forth in 42 CFR Part 52.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are limited to organizations in Region 1 (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont), Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands), Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin) and Region 6 (Louisiana, New Mexico, Oklahoma, Texas, Arkansas). This will enable funding for ICRCs in regions which do not have funded centers or have re-competing centers. Presently, there are existing funded centers in Regions 3, 4, 7, 8, 9 and 10 who are eligible for supplemental funding.

Eligible applicants include all nonprofit and for-profit organizations in Regions 1, 2, 5 and 6. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Applicants from non-academic institutions should provide evidence of a collaborative relationship with an academic institution. Current recipients of CDC injury control research center grants and injury control research program project grants are eligible to apply for continued support.

Availability of Funds

Approximately $750,000 is expected to be available in fiscal year (FY) 1997 to fund one new or re-competing center project. It is expected that the award will begin on or around August 1, 1997, and will be made for a 12-month budget period, not to exceed a project period of three years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

New center grant awards will not exceed $500,000 per year (*total of direct* and *indirect costs*) with a project period not to exceed three years. Depending on availability of funds, re-competing center awards may range from $750,000 to $1,500,000 per year (*total of direct* and *indirect costs*) with a project period not to exceed five years. The range of support provided is dependent upon the degree of comprehensiveness of the center in addressing the *phases of injury control (i.e., Prevention, Acute Care, and Rehabilitation)* as determined by the Injury Research Grants Review Committee (IRGRC).

Incremental levels within this range for successfully re-competing ICRCs will be determined as follows:

Base funding (included in figures below)—Up to $750,000
One phase ICRC (addresses one of the three phases of injury control)—Up to $1,000,000
Two phase ICRC (addresses two of the three phases of injury control)—Up to $1,250,000
Comprehensive ICRC (addresses all three phases of injury control)—Up to $1,500,000

Subject to program needs and the availability of funds, supplemental awards to expand/enhance existing projects, to add a new phase(s) to an existing ICRC grant, or to add biomechanics project(s) that support phases may be made for up to $250,000 per year.

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: *Healthy People 2000; Injury Control in the 1990's: A National Plan for Action; Injury in America; Injury Prevention: Meeting the Challenge; and Cost of Injury: A Report to the Congress.* Information on these reports may be obtained from the individuals listed in the section Where to Obtain Additional Information;

B. To support ICRCs which represent CDC's largest national extramural investment in injury control research and training, intervention development, and evaluation;

C. To integrate collectively, in the context of a national program, the disciplines of engineering, epidemiology, medicine, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively;

D. To identify and evaluate current and new interventions for the prevention and control of injuries;

E. To bring the knowledge and expertise of ICRCs to bear on the development and improvement of effective public and private sector programs for injury prevention and control; and

F. To facilitate injury control efforts supported by various governmental agencies within a geographic region.

Program Requirements

The following are applicant requirements:

A. Applicants must demonstrate and apply expertise (as defined in the Section Background and Definitions of the program announcement included in the application kit) in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) as a core component of the center. The second and/or third phases do not have to be supported by core funding but may be achieved through collaborative arrangements. Comprehensive ICRCs must have all three phases supported by core funding.

B. Applicants must document ongoing injury-related research projects or control activities currently supported by other sources of funding.

C. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health. The director must have no less than 30 percent effort devoted solely to this project with an anticipated range of 30 to 50 percent.

D. Applicants must demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

E. Applicants must provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

F. Applicants must provide evidence of involvement of specialists or experts in medicine, engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and/or public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs. An ICRC is encouraged to involve biomechanicists in its research. This, again, may be achieved through collaborative relationships as it is no longer a requirement that all ICRCs have biomechanical engineering expertise.

G. Applicants must have an established curricula and graduate training programs in disciplines relevant to injury control (e.g., epidemiology, biomechanics, safety

engineering, traffic safety, behavioral sciences, or economics).

H. Applicants must demonstrate the ability to disseminate injury control research findings, translate them into interventions, and evaluate their effectiveness.

I. Applicants must have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the State or region in which the ICRC is located. Cooperation with private-sector programs is encouraged.

Applicants should have an established or documented planned relationship with organizations or individual leaders in communities where injuries occur at high rates, e.g., minority health communities.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage). CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. The primary review will be a peer evaluation by the Injury Research Grant Review Committee/(IRGRC), for the scientific and technical merit of the application. The final review will be conducted by the CDC Advisory Committee for Injury Prevention and Control (ACIPC), which will consider the results of the peer review together with program need and relevance. Funding decisions will be made by the Director, National Center for Injury Prevention and Control (NCIPC), based on merit and priority score ranking by the IRGRC, program review by the ACIPC, and the availability of funds.

A. Review by the Injury Research Grants Review Committee

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend the application for further consideration or not for further consideration. As a part of the review process the committee may conduct a site visit to the applicant organization for re-competing ICRCs. New applicants may be asked to travel to CDC for a meeting with the committee.

Factors to be considered by IRGRC include:

1. The specific aims of the application, e.g., the long-term objectives and intended accomplishments.

2. The scientific and technical merit of the overall application, including the significance and originality (e.g., new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

3. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives.

4. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

5. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

6. The appropriateness (e.g., responsiveness, quality, and quantity) of consultation, technical assistance, and training in identifying, implementing, and/or evaluating intervention/control measures that will be provided to public and private agencies and institutions, with emphasis on State and local health departments, as evidenced by letters detailing the nature and extent of this commitment and collaboration. Specific letters of support or understanding from appropriate governmental bodies must be provided.

7. Evidence of other public and private financial support.

8. Details of progress made in the application if the applicant is submitting a re-competing application. Documented examples of success include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; impact on injury control outcomes including legislation/regulation, treatment, and behavior modification interventions.

B. Review by CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Factors to be considered by ACIPC include:

1. The results of the peer review.

2. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.

3. National and programmatic needs and geographic balance.

4. Overall distribution of the thematic focus of competing applications; the nationally comprehensive balance of the program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control (such as biomechanics and epidemiology).

5. Within budgetary considerations, the ACIPC will establish annual funding levels as detailed under the heading, Availability of Funds.

C. Applications for Supplemental Funding

Existing CDC Injury Centers may submit an application for supplemental grant awards to support research work or activities. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the ACIPC.

D. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan allows management to monitor whether the methods are effective by having clearly

defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;

5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and

6. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by State and local governments and private sector organizations.

Funding Preference

Special consideration will be given to re-competing Injury Control Research Centers.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

A. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

B. Animal Subjects

If the proposed project involves research on animal subjects, the applicant must comply with the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for Protection from Research Risks at the National Institutes of Health.

C. Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting review for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment.

This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Application Submission and Deadlines

A. Preapplication Letter of Intent

In order to schedule and conduct site visits as part of the formal review process, potential applicants are encouraged to submit a nonbinding letter of intent to apply. It should be postmarked no later than one month prior to the submission deadline (October 6, 1996, for November 6, 1996, submission). The letter should be submitted to the Grants Management Specialist whose address is given in Section B, below. The letter should identify the relevant announcement number for the response, name the principal investigator, and specify the injury control theme or emphasis of the proposed center (e.g., acute care, biomechanics, epidemiology, prevention, intentional injury, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants should use Form PHS–398 (OMB 0925–0001) and adhere to the ERRATA Instruction Sheet contained in the Grant Application Kit. The narrative section for *each* project within an ICRC should not exceed 25 typewritten pages. Refer to section 1, page 6, of PHS–398 instructions for font type and size. *Applications not adhering to these specifications may be returned to applicant.*

Applicants must submit an original and five copies on or before November 6, 1996 to Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, MS E–13, Atlanta, GA 30305.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C.1. or C.2. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404)332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 705. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13, Atlanta, GA 30305, telephone (404) 842–6803. Internet address: kcr8@opspgo.1.em.cdc.gov.

Programmatic technical assistance may be obtained from Tom Voglesonger, Program Manager, Injury Control Research Centers, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, MS–K58, Atlanta, GA 30341–3724, telephone (770) 488–4265. Internet address: tdv1@cipcod1.em.cdc.gov.

Please refer to Announcement 705 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1), referenced in the Introduction, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: August 29, 1996.

Arthur C. Jackson,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–22601 Filed 9–4–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95F–0255]

GE Silicones; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by GE Silicones to indicate that the petitioner also proposed that the food additive regulations be amended to provide for the safe use of diallyl maleate as an optional polymerization inhibitor and dimethyl(methyl hydrogen) polysiloxane as a cross-linking agent for vinyl-containing siloxanes used in coatings on paper and paperboard that contact food. The agency is also clarifying that the petitioner proposed to expand the safe use of vinyl-containing siloxanes in coatings that contact additional food types and under additional conditions of use. The previous filing notice stated that the petition proposed that the food additive regulations be amended to list 1-ethynyl-1-cyclohexanol as an optional inhibitor for vinyl-containing siloxanes and to increase to 200 parts per million (ppm) the level of platinum used in the manufacture of the additive.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 25, 1995 (60 FR 49414), FDA announced that a food additive petition (FAP 5B4475) had been filed by GE Silicones, c/o 700 13th St. NW., Washington, DC 20005, proposing to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of vinyl-containing siloxanes as a component of coatings for paper and paperboard in contact with food, to provide for the safe use of 1-ethynyl-1-cyclohexanol as an optional inhibitor (more accurately termed a polymerization inhibitor) for the additive, and to increase the level of platinum catalyst used in the manufacture of the additive to 200 ppm.

Upon further review of the petition, the agency notes that the petitioner also requested the use of diallyl maleate as an optional polymerization inhibitor and dimethyl(methylhydrogen) polysiloxane as a cross-linking agent in the manufacture of vinyl-containing siloxanes. In addition, the agency would like to clarify that the petitioner proposed to expand the safe use of coatings with vinyl-containing siloxanes for contact with additional food types and under additional conditions of use. Therefore, FDA is amending the filing notice of September 25, 1995, to state that the petitioner requested that the food additive regulations be amended: (1) To provide for the safe use of diallyl maleate and 1-ethynyl-1-cyclohexanol as optional polymerization inhibitors and dimethyl(methyl hydrogen) polysiloxane as a cross-linking agent in the manufacture of vinyl-containing siloxanes that are used in coatings for paper and paperboard that contact food; (2) to increase the level of the platinum catalyst used in the manufacture of vinyl-containingsiloxanes to 200 ppm; and (3) to expand the safe use of coatings with vinyl-containing siloxanes for contact with additional food types and under additional conditions of use.

Dated: August 5, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–22693 Filed 9–4–96; 8:45 am]

BILLING CODE 4160–01–F

Open Meeting for Clinical Investigators, Coordinators, and Institutional Review Board Personnel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing an open educational meeting entitled "Current Issues in Human Subject Protection: An FDA Perspective." This national conference will present a unique opportunity for participants to hear about issues in human research subject protections from an FDA perspective. Current regulatory issues, historical perspectives, and future directions will be presented. The meeting will be chaired by Stuart L. Nightingale, Associate Commissioner for Health Affairs, and Sharon Smith Holston, Deputy Commissioner for External Affairs.

DATES: The meeting will be held on Friday, September 13, 1996, from 7:30 a.m. to 4:15 p.m.

ADDRESSES: The meeting will be held at the National Institutes of Health, Bldg. 45, Natcher Auditorium, 9000 Rockville Pike, Bethesda, MD. There will be no registration fee, however, space is limited. Persons will be registered in the order in which registration forms are received. Registration information can be obtained from the FDA Office of Health Affairs FAX-back line at 800–993–0098, document number 24 or from the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Regarding information concerning the meeting and registration forms: Gary L. Chadwick, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1685.

Dated: August 29, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–22696 Filed 9–4–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–R–197]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. HCFA–R–197 *Type of Information Collection Request:* New collection; *Title of Information Collection:* Maximizing the Effective Use of Telemedicine: A study of the Effects, Cost Effectiveness and Utilization Patterns of Consultations via Telemedicine."; *Form No.:* HCFA–R–197; *Use:* The major objective of this study is to evaluate the medical and cost effectiveness of three different categories of telemedicine services; *Frequency:* Other (periodically); *Affected Public:* Individuals and households, Business or other for profit, not for profit institutions; *Number of Respondents:* 1819; *Total Annual Responses:* 11,095; *Total Annual Hours:* 1,564.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 26, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–22547 Filed 9–4–96; 8:45 am]

BILLING CODE 4210–03–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Authorization Agreement for Electronic Funds Transfer; *Form No.:* HCFA–588; *Use:* This information is needed to allow providers to receive funds electronically in their bank; *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions; *Number of Respondents:* 78,550; *Total Annual Responses:* 78,550; *Total Annual Hours:* 9,819.

2. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Application for Health Insurance Under Medicare for Individuals with Chronic Renal Disease; *Form No.:* HCFA–43; *Use:* This form is used as a standard method of eliciting information necessary to determine entitlement to Medicare under the end stage renal disease provision of the law; *Frequency:* On occasion; *Affected Public:* Individuals and households, Federal government; *Number of Respondents:* 80,000; *Total Annual Responses:* 80,000; *Total Annual Hours:* 34,400.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments Application Form; *Form No.:* HCFA–116; *Use:* This application is completed by entities performing laboratory testing on human specimens for health purposes; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal government and State, local or tribal governments; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 20,000.

4. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Post Laboratory Survey Questionnaire—Surveyor; *Form No.:* HCFA–668A; *Use:* This survey provides the surveyor with an opportunity to evaluate the survey process. The form is completed in conjunction with the HCFA form 668B. This information will help HCFA evaluate the entire survey process from the surveyor's prospective; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal government and State, local or tribal governments; *Number of Respondents:* 1,560; *Total Annual Responses:* 1,560; *Total Annual Hours:* 390.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 27, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–22548 Filed 9–4–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

HRSA Competing Training Grant Application, Instructions and Related Regulations—(0915–0060)—Extension and Revision

The Health Resources and Services Administration uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. This is a request for renewed clearance with several changes in the application form. The form will be distributed electronically via the Internet, the budget will be negotiated for all years of the project period based on this application, and program-specific instructions will include greater standardization of content for the project summary and the detailed description of the project. Regulations which authorize the application form and other reporting requirements for various programs are cleared in this package. No changes were made to the regulations.

The estimated annual application burden is as follows:

Type of collection	Number of respondents	Number of responses per respondents	Average burden response	Total burden hours
Basic Application	1769	1	61.25	108,351
Statutory Requirements*	1121	1	105	117,705

* In 1992, a law was passed which required applicants for selected grant programs to provide specified data in the grant application.

The burden for the regulatory requirements included in this package are as follows:

Type of requirement	Number of respondents	Number of responses per respondents	Average burden response (hours)	Total burden hours
Reporting Requirements	28	1.4	1	39
Disclosure Requirements	148	1.4	3.3	669

Type of requirements	Number of recordkeepers	Hours per recordkeeper per year (hours)	Total burden hours
Recordkeeping	17	10	170

The total burden for these activities is 226,934 hours.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 29, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–22605 Filed 9–4–96; 8:45 am]

BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CORNING Clinical Laboratories, 4771 Regent Blvd., Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–284–7515, (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories)

CORNING Clinical Laboratories, 4444 Giddings Road, Auburn Hills, MI 48326, 800–444–0106/810–373–9120 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratory, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927, (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100, (Formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000, (Formerly: Regional Toxicology Services)

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784, (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800, 800–999–LABS

Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–989–2520

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory withdrew from the National Laboratory Certification Program on August 1:

Drs. Weber, Palmer, Macy, Chartered, 338 N. Front St., Salina, KS 67401, 913–823–9246.

Pat Bransford,

Director of Personnel, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–22387 Filed 9–4–96; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–818911

Applicant: John Thrower, Saxonburg, PA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–816948

Applicant: The Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to export and reimport one male Asian elephant (*Elephas maximus*) born in captivity at the applicant's facilities. The export and reimport will be to/from worldwide locations to enhance the survival of the species through conservation education.

PRT–819035

Applicant: Siegfried & Roy Enterprises, Inc., Las Vegas, NV.

The applicant requests a permit to import one Bengal tiger (*Panthera tigris tigris*) from Guadalajara Zoo, Mexico for the purpose of enhancement of the species through propagation and conservation education.

PRT–818603

Applicant: University of Georgia, Athens, GA.

The applicant requests a permit to import frozen serum samples from a female Asian elephant (*Elephas maximus*) from Calgary Zoo, Canada for the purpose of enhancement of the species through scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 30, 1996.

Carol Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–22640 Filed 9–4–96; 8:45 am]

BILLING CODE 4310–55–U

Notice of Availability of a Draft Recovery Plan for the Alabama Cave Shrimp (Palaemonias alabamae) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Alabama cave shrimp (*Palaemonias alabamae*). The albinistic Alabama cave shrimp has been found in five caves (three cave systems) near the city of Huntsville, Madison County, Alabama. One cave is found on the Redstone Arsenal, an army installation, while the other four caves are privately owned. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 15, 1996, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Jacobson at the above address (601–965–4900, ext. 30).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of

the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the Alabama cave shrimp (*Palaemonias alabamae*). The Alabama cave shrimp is a small, colorless, and nearly transparent decapod crustacean up to 30 millimeters (1.2 inches) in total length. The shrimp occurs in pools of water in a cave environment. In caves with high energy flows, the shrimp must have access through cave windows (openings) to calmer groundwater habitat. This species was listed as endangered on September 7, 1988. Available information indicates the overall population may be declining and the shrimp is apparently extirpated from Shelta Cave, the type locality. Groundwater contamination represents the major threat to this cave-dwelling species. Other threats include destruction of habitat, collecting, and predation.

The objective of this proposed plan is reclassification of the Alabama cave shrimp to threatened status. Reclassification will be considered when five reproducing populations have been identified and protected in five groundwater basins, and the populations persist in these basins, as evidenced by monitoring, over a 20-year period. Proper public stewardship of groundwater and surface water quality and quantity surrounding the five populations is essential for recovery. Actions needed to reach this goal—1) protecting populations and habitat, 2) encouraging local stewardship for caves and recharges areas through education, 3) monitoring populations, 4) searching for additional populations, 5) studying species biology, and 6) modifying or replacing gated entrance to Shelta cave.

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 29, 1996.

Cary Norquist,

Acting Field Supervisor.

[FR Doc. 96–22602 Filed 9–4–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[NV–930–1430–01; N–40257, N–40258, N–40259, N–40260, N–40261, N–40262, N–40263, N–40264, N–40268, N–40269, N–40270, N–40990]

Termination of Desert Land Act/Carey Act Classification and Opening Order, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Desert Land Act/Carey Act classifications N–40257, N–40258, N–40259, N–40260, N–40261, N–40262, N–40263, N–40264, N–40268, N–40269, N–40260, and N–40990 in their entirety and opens the land to appropriation under the public land laws and general mining laws, subject to any valid existing rights.

EFFECTIVE DATE: September 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mary R. Craggett, Bureau of Land Management, Battle Mountain Field Office, 50 Bastian Road, P.O. Box 1420, Battle Mountain, Nevada 89820, (702) 635–4000.

SUPPLEMENTARY INFORMATION: On August 20, 1985, the public lands described below were classified as suitable for entry under the Desert Land Act (19 Stat. 377; 43 U.S.C. 231, as amended) and the Carey Act (28 Stat. 372, 422; 43 U.S. C. 641–647, as amended)

Mount Diablo Meridian, Nevada

T. 3 N., R. 53 E.,
Sec. 1, lots 3 & 4, S½NW¼, SW¼;
Sec. 3, S½;
Sec. 7, lots 1 & 2, NE¼, E½NW¼;
Sec. 8, N½;
Sec. 10, N½;
Sec. 12, N½.
T. 4 N., R. 53 E.,
Sec. 14;
Sec. 2, SW¼;
Sec. 3, SE¼;
Sec. 7, lot 4, SE¼SW¼, S½SE¼;
Sec. 16;
Sec. 18, lot 1, N½NE¼, NE¼NW¼.

The area described contains 3,833.84 acres in Nye County.

Entry to the lands was allowed in June and July of 1990 under provisions of the Desert Land Act, segregating the entered land from all other forms of appropriation under the public land laws, including location under the mining laws. Final proof on each entry was due within four years of entry allowance. Final proof was not made on any of the 12 entries, which were cancelled in 1995.

The classification no longer serves any purpose; accordingly, pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272), the aforementioned classification for entry under the Desert Land Act or the Carey Act is hereby terminated.

At 10 a.m. on September 20, 1996, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law.

At 10 a.m. on September 20, 1996, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing and material disposal laws, subject to valid existing rights, the provision of existing withdrawals, other segregation of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 22, 1996.

Gerald M. Smith,

District Manager, Battle Mountain.

[FR Doc. 96–22549 Filed 9–04–96; 8:45 am]

BILLING CODE 4310–HC–P

[AZ-056-1430-01; AZA 29642]

Public Land Order No. 7212; Withdrawal of Public Lands for the Gila River Cultural Area of Critical Environmental Concern; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,720 acres of public lands from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the archaeological resources within the Gila River Cultural Area of Critical Environmental Concern. The lands have been and will remain open to mineral leasing. An additional 1,900 acres of non-Federal lands, if acquired by the United States, would also be withdrawn by this order.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, BLM Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 520–726–6300.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2(1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Gila River Cultural Area of Critical Environmental Concern:

Gila and Salt River Meridian

Public Lands

T. 6 S., R. 11 W.,
Sec. 1, SW¼SW¼;
Sec. 3, S½SE¼;
Sec. 4, S½;
Sec. 9, N½, E½SW¼, and SE¼;
Sec. 10, NE¼, and N½NW¼;
Sec. 11, N½N¼, N½S½N½, S½SW¼NW¼, and N½S½;
Sec. 12, NW¼NW¼, and N½SW¼NW¼.

The areas described aggregate 1,720 acres in Yuma County.

2. The following described non-Federal lands are located within the boundary of the Gila River Cultural Area of Critical Environmental Concern. In the event these lands return to public ownership, they would be subject to the terms and conditions of this withdrawal as described in Paragraph 1:

Non-Federal Lands

T. 6 S., R. 11 W.,
Sec. 2, S½;
Sec. 3, SW¼, and N½SE¼;
Sec. 9, W½SW¼;
Sec. 10, S½NW¼, and S½;
Sec. 11, S½S½NE¼, S½SE¼NW¼, and S½S½;
Sec. 15, N½;
Sec. 16, N½.

The areas described aggregate 1,900 acres in Yuma County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 27, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–22582 Filed 9–4–96; 8:45 am]

BILLING CODE 4310–32–P

[AZ–950–5700–77; AZA 5968, AZA 29172]

Public Land Order No. 7214; Partial Revocation and Modification of Public Land Order No. 5279; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 103.81 acres of National Forest System lands withdrawn for the Payson Administrative Site and the Cline Cabin Wildlife Enclosure. The revocation is needed to accommodate a proposed land exchange. Of the 103.81 acres being revoked, 63.81 acres are temporarily closed to mining by a Forest Service land exchange proposal, and 40 acres will be opened to mining. This order also modifies the withdrawal on the remaining 296.41 acres to establish a 20-year term under which these lands would remain closed to mining. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 5279, which withdrew lands for an administrative site and a wildlife enclosure, is hereby revoked insofar as it affects the following described lands:

Gila and Salt River Meridian

Tonto National Forest

1a. Payson Administrative Site

T. 10 N., R. 10 E.,
Sec. 2, lots 5, 7, 9, and 11.

1b. Cline Cabin Wildlife Enclosure

T. 4 N., R. 9 E.,
Sec. 3, NE¼NE¼.

The areas described aggregate 103.81 acres in Gila and Maricopa Counties.

2. The land described under Paragraph 1a above is temporarily segregated by a pending land exchange and will not be opened at this time.

3. At 10 a.m. on October 7, 1996 the land described under Paragraph 1b above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described under Paragraph 1b of this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. Public Land Order No. 5279 is hereby modified to expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended insofar as it affects the following described land:

Gila and Salt River Meridian

Tonto National Forest

T. 10 N., R. 10 E.,
Sec. 2, lots 6, 8, 10, and 12, SE¼NW¼, SW¼NE¼, N½SW¼, and NW¼SE¼.

The area described contains 296.41 acres in Gila County.

5. The land described in Paragraph 4 continues to be withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2

(1988)), but not from leasing under the mineral leasing laws, to protect the Forest Service's Payson Administrative Site.

Dated: August 27, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–22587 Filed 9–4–96; 8:45 am]

BILLING CODE 4310–32–P

National Park Service

Niobrara/Missouri National Scenic Riverways

AGENCY: National Park Service, Interior.

ACTION: Availability of final environmental impact statement for Niobrara National Scenic River in Brown, Cherry, Keya Paha, and Rock counties, Nebraska.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of a final environmental impact statement (FEIS) for the Niobrara National Scenic River. The draft environmental impact statement for the scenic river was on 45-day public review from April 5 to May 20, 1996.

The NPS will manage a 76-mile section of the Niobrara River. The action is in response to a mandate by Congress in P.L. 102–50, an amendment to the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287) designating 40 miles of the river from Borman Bridge downstream to Chimney Creek, and a 30 mile section from Rock Creek to the Highway 137 bridge as a National Scenic River. A 6-mile segment from Chimney Creek to Rock Creek could be added after May 24, 1996 if no water resources projects were proposed within that section. The plan recommends the 6-mile addition. The FEIS was prepared by the NPS.

The NPS's preferred alternative for the Niobrara National Scenic River is identified in the FEIS as Alternative B: Local Council Management with Federal Funding. Under the preferred alternative a local council would be developed by the county commissions of Brown, Cherry, Keya Paha, and Rock counties. The local council and the National Park Service would sign a cooperative agreement giving the council certain management responsibilities along the scenic river. Three other alternatives were also considered: The no action alternative; an alternative under which the National Park Service would coordinate management of the river through cooperative agreements with private landowners and public agencies; and an alternative calling for direct National Park Service management.

DATES: The 30-day no action period for review of the FEIS will end on October 7, 1996. A record of decision will follow the no action period.

FOR FURTHER INFORMATION CONTACT: Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763. Telephone 402–336–3970.

Dated: August 28, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–22526 Filed 9–4–96; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before AUGUST 24, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 20, 1996.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Perry County

Hollis CCC Camp Site (Facilities Constructed by the Civilian Conservation Corps in Arkansas MPS) Approximately 4,000 ft. N of jct. of Co. Rd. 4 and AR 7, Hollis vicinity, 96001019

Colorado

Otero County

Art Building, Arkansas Valley Fairgrounds, near jct. of Main St. and US 50, Rocky Ford, 96001027

Georgia

Toombs County

Vidalia Commercial Historic District, Roughly bounded by Meadow, Jackson, Pine, and Thompson Sts., Vidalia, 96001020

Illinois

Peoria County

Grand View Drive, Roughly bounded by N. Prospect Rd., the Illinois River bluffs, Adams St., and the Grand View Dr. W. right of way, Peoria, 96000399

New Jersey

Morris County

Sisters of Charity Dairy Barn, 184 Park Ave., Borough of Florham Park, Morristown vicinity, 96001021

New York

Jefferson County

Rottiers, John N., Farm (Orleans MPS) E side of NY 180, approximately 2 mi. S of the Hamlet of Lafargeville, Orleans, 96001022

Suffolk County

Setauket Presbyterian Church and Burial Ground, 5 Caroline Ave., Village of Setauket, Brookhaven, 96001023

Oklahoma

Oklahoma County

Edwards Historic District, Roughly bounded by N. Page Ave., N.E. 16th St., N.E. Grand Blvd., and E. Park Pl., Oklahoma City, 96001028

South Carolina

Orangeburg County

Orangeburg City Cemetery (Orangeburg MRA) Jct. of Bull and Windsor Sts., Orangeburg, 96001025

South Carolina State College Historic District (Civil Rights Movement in Orangeburg County MPS) 300 College St., Orangeburg, 96001024

Wisconsin

Crawford County

Carved Cave (Indian Rock Art Sites MPS) Address Restricted, Petersburg vicinity, 96001026

[FR Doc. 96–22527 Filed 9–4–96; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–368]

Crawfish: Competitive Conditions in the U.S. Market

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: August 28, 1996.

SUMMARY: Following receipt on July 31, 1996, of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted investigation No. 332–368, Crawfish: Competitive Conditions in the U.S. Market, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested by the Committee, the Commission's report on the investigation will focus on the period 1991–95, and to the extent possible, 1996, and will include the following:

(1) U.S. and foreign industry profiles, with special emphasis on the Chinese crawfish industry;

(2) a description of U.S. and foreign markets;

(3) U.S. imports and exports, and U.S. market penetration;

(4) price comparisons of domestic and imported crawfish; and

(5) any other information relating to competitive factors that affect the U.S. crawfish industry, including government programs.

As requested by the Committee, the Commission will transmit its report to the Committee no later than February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Information on industry aspects may be obtained from David Ludwick, Office of Industries (202–205–3329) or William Hoffmeier, Office of Industries (202–205–3321); economic aspects, from Ronald Babula, Office of Industries (202–205–3331); and legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on November 7, 1996. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m. October 22, 1996. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m. October 28, 1996; the deadline for filing posthearing briefs or statements is 5:15 p.m. November 22, 1996. In the event that, as of the close of business on October 25, 1996, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after October 25, 1996, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the public hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than November 22, 1996. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission may wish to use the confidential business information you provide in this investigation in other investigations of the same products which are conducted under other statutory authority, but will do so only with your consent. Any confidential business information so used will be afforded the protection provided under the appropriate statutory authority. In your request for confidential treatment, please state whether you consent to such use. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: August 29, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22636 Filed 9–4–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–738 (Final)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the investigation.

EFFECTIVE DATE: August 23, 1996.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov* or *ftp://ftp.usitc.gov*).

SUPPLEMENTARY INFORMATION: Effective May 10, 1996, the Commission instituted this final antidumping investigation and established a schedule for its conduct in the **Federal Register** (61 FR 27097, May 30, 1996). The Commission is hereby amending its published schedule for the investigation as follows: the deadline for filing prehearing briefs is September 23, 1996; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on September 27, 1996; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 1, 1996; and the deadline for filing posthearing briefs is October 4, 1996. If briefs contain business proprietary information, a nonbusiness proprietary version is due the following business day.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

Issued: August 26, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22632 Filed 9–4–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–367 (Final), 731–TA–740 (Final), 731–TA–741–743 (Final), 731–TA–744 (Final), 731–TA–745 (Final), 731–TA–746 (Final), 731–TA–747 (Final), and 731–TA–748 (Final)]

Certain Laminated Hardwood Flooring From Canada; Sodium Azide From Japan; Melamine Institutional Dinnerware From China, Indonesia, and Taiwan; Certain Brake Drums and Rotors From China; Steel Concrete Reinforcing Bars From Turkey; Beryllium Metal and High-Beryllium Alloys From Kazakhstan; Fresh Tomatoes From Mexico; Engineered Process Gas Turbo-Compressor Systems From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of commencement of final phase countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the commencement of final phase countervailing duty Investigation No. 701–TA–367 (Final) under section 705(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. § 1671d(b)) to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of subsidized imports of certain laminated hardwood flooring from Canada, provided for in subheadings 4421.90.98 and 9905.44.50 of the Harmonized Tariff Schedule of the United States.

The Commission additionally gives notice of the commencement of the following final phase antidumping investigations under section 735(d) of the Act (19 U.S.C. § 1673d(b)):

1. Investigation No. 731–TA–740 (Final), to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of sodium azide from Japan, provided for in subheading 2850.00.50 of the Harmonized Tariff Schedule of the United States.

2. Investigations Nos. 731–TA–741–743 (Final), to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of melamine institutional dinnerware from China, Indonesia, and Taiwan, provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States.

3. Investigation No. 731–TA–744 (Final), to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of certain brake drums and rotors from China, provided for in subheading 8708.39.50 of the Harmonized Tariff Schedule of the United States.

4. Investigation No. 731–TA–745 (Final), to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of steel concrete reinforcing bars from Turkey, provided for in subheadings 7213.10.00 and 7214.20.00 of the Harmonized Tariff Schedule of the United States.

5. Investigation No. 731–TA–746 (Final), to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of beryllium metal and high-beryllium alloys from Kazakhstan, provided for in subheadings 8112.11.30, 8112.11.60, and 7601.20.90 of the Harmonized Tariff Schedule of the United States.

6. Investigation No. 731–TA–747 (Final), to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of fresh tomatoes from Mexico, provided for in subheadings 0702.00.20, 0702.00.40, and 0702.00.60 of the Harmonized Tariff Schedule of the United States.

7. Investigation No. 731–TA–748 (Final), to determine whether an industry in the United States is materially injured, or threatened with material injury, or establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports of engineered process gas turbo-compressor systems from Japan, provided for in subheadings 8406.81.10, 8406.82.10, 8406.90.20 through 8406.90.45, 8414.80.20, 8414.90.40, 8419.60.50, and 9032.89.60 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: August 21, 1996.

FOR FURTHER INFORMATION CONTACT: Vera A. Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Amendments to the Commission's Rules of Practice and Procedure concerning countervailing duty and antidumping investigations in 19 C.F.R. parts 201 and 207 became effective on August 21, 1996. Under its revised regulations, the Commission will conduct a single, continuous, countervailing duty or antidumping investigation, in contrast to the discrete preliminary and final investigations it previously conducted. The regulations provide that the Commission will normally commence its final phase investigation at the same time that it publishes notice of an affirmative preliminary determination.

The Commission has reached affirmative preliminary determinations in each of the captioned investigations. Because these determinations were issued before the amendments to the Commission's regulations became effective, the Commission did not commence final phase investigations at the time it published notice of these determinations. It does so now to conform these investigations to the single, continuous investigation concept of the amended regulations, which are applicable to ongoing antidumping and countervailing duty investigations as well as those initiated by petitions filed after the effective date of the amendments.

Accordingly, persons wishing to participate in any of the investigations as parties, who did not enter an appearance in the applicable preliminary investigation, may file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(3) of the Commission rules. The entry of appearance for an

investigation must be filed no later than 21 days before the scheduled hearing date in that investigation. That scheduled hearing date will be specified in the Final Phase Notice of Scheduling which will be published for each investigation in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in that investigation under section 703(b) or 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 705(a) or 735(a) of the Act. (In the *Sodium Azide* and *Melamine* investigations, in which Commerce has issued affirmative preliminary determinations, the Commission will issue Final Phase Notices of Scheduling when it receives further information from Commerce concerning scheduling of Commerce's final investigation.) Parties that filed entries of appearance in a preliminary investigation need not enter a separate appearance for the final phase of that investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to each investigation.

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information (BPI) available to authorized applicants (which must be interested parties that are parties to the investigation) under the Administrative Protective Order (APO) issued in each investigation, provided that the application is made not later than the time that entries of appearance are due in that investigation. A separate service list will be maintained by the Secretary for each investigation for those parties authorized to receive BPI under the APO.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to any of the captioned investigations must be served on all other parties to that investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Act. This notice is published pursuant to section 207.20(a) of the Commission's rules.

Issued: August 29, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22635 Filed 9–4–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–736 and 737 (Final)]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from Germany and Japan of large newspaper printing presses (LNPPs) and components thereof, whether assembled or unassembled, whether complete or incomplete, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3] [4] The subject imports are provided for in subheadings 8443.11.10, 8443.11.50, 8443.21.00, 8443.30.00, 8443.40.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the Harmonized Tariff Schedule of the United States (HTS). LNPP computerized control systems (including equipment and/or software) may enter under HTS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90.

Background

The Commission instituted these investigations effective February 28, 1996, following preliminary determinations by the Department of Commerce that imports of LNPPs and components thereof, whether assembled or unassembled, whether complete or incomplete, from Germany and Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 13, 1996 (61 FR 10381). The hearing was held in Washington, DC, on July 17, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 28, 1996. The views of the Commission are contained in USITC Publication 2988 (August 1996), entitled "Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan: Investigations Nos. 731–TA–736 and 737 (Final)."

Issued: August 27, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22633 Filed 9–4–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–749 (Preliminary)]

Persulfates From China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of persulfates, provided for in subheadings 2833.40.20 and 2833.40.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[3]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Miller did not participate.

[3] Commissioner Crawford determines that an industry in the United States is materially injured by reason of the LTFV imports.

[4] Vice Chairman Bragg, and Commissioners Newquist, Nuzum, and Watson, who find that an industry in the United States is threatened with material injury, further determine pursuant to 19 U.S.C. § 1673d(b)(4)(B), that they would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Miller not participating.

[3] Commissioners Crawford and Watson find a reasonable indication of material injury by reason of the subject imports.

Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On July 11, 1996, a petition was filed with the Commission and the Department of Commerce by FMC Corp., Chicago, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of persulfates from China. Accordingly, effective July 11, 1996, the Commission instituted antidumping Investigation No. 731–TA–749 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 17, 1996 (61 FR 37283). The conference was held in Washington, DC, on July 31, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 26, 1996. The views of the Commission are contained in USITC Publication 2989 (August 1996), entitled "Persulfates from China: Investigation No. 731–TA–749 (Preliminary)."

Issued: August 27, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–22634 Filed 9–4–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Excel Corp.*, Civil Action No. 3:93CV0119RM, was lodged on August 13, 1996 with the United States District Court for the Northern District of Indiana. The consent decree resolves the claims alleged against Excel Corporation, Elkhart Products Corporation, Detrex Corporation, NIBCO, Inc., Miles, Inc. and Adams & Westlake, Ltd. under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, ("CERCLA"). The proposed Consent Decree provides for the payment by these settling parties of $4,452,500 of the United States unrecovered response costs at the Main Street Well Field Site in Elkhart, Indiana (the "Site"). The proposed Consent Decree also resolves the United States claim against Detrex Corporation for a civil penalty for its alleged failure to perform response activities at the Site pursuant to an administrative order issued by the United States Environmental Protection Agency.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Excel Corp.*, DOJ Ref. #90–11–3–799.

The proposed consent decree may be examined at the office of the United States Attorney, 301 Federal Building, 204 South Main Street, South Bend, Indiana; the Region 5 Office of the Environment Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–22552 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Settlement Agreement in *In re: The Parson's Company*, Case No. 82 B 751, was lodged with the United States Bankruptcy Court for the Northern District of Illinois, on August 27, 1996, among the United States, on behalf of the Environmental Protection Agency ("EPA"), the State of Illinois, and the debtor. The United States filed an application for reimbursement of administrative expenses against the debtor in the action for the debtor's liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, for investigation and clean-up costs at the debtor's property, in Belvidere, Illinois. The State also filed a claim against the debtor for the State's own clean-up costs. Under the Settlement Agreement, the debtor will pay the United States and the State, in equal shares, the assets remaining in the estate after payment of professionals' fees and taxes. The Settlement Agreement includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 ("RCRA").

The Department of Justice will receive comments relating to the proposed Settlement Agreement for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *In re: The Parson's Company*, D.J. Ref. 90–11–2–691. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreement may be examined at the office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $3.25 for the Agreement (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *In re: The Parson's Company*, D.J. Ref. No. 90–11–2–891.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–22551 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy, notice is hereby given that a proposed Consent Decree in *United States* v. *Pesses, et al.*, Civil Action No. 90–654 (W.D. Pa.), was lodged on August 19, 1996 with the United States District Court for the Western District of Pennsylvania. This proposed Consent Decree will, if entered, settle a complaint filed against twenty-six defendants by the United States on behalf of the Environmental Protection Agency ("EPA"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9607, in connection with the Metcoa Radiation Superfund Site, in Pulaski, Pennsylvania. Certain defendants in turn sued over two hundred (200) third party defendants and brought counterclaims against various federal agencies, the counterclaim defendants.

The proposed Consent Decree provides for reimbursement of past response costs incurred by the United States in the amount of $1,950,000.00 and payment of future response costs, and for performance of response actions at the Metcoa Radiation Superfund Site. The proposed Consent Decree also provides for payment of response costs by the counterclaim defendants in the amount of $291,000.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pesses, et al.*, DOJ Ref. #90–11–3–613.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Pennsylvania, 633 Post Office and Courthouse, Seventh and Grant Street, Pittsburgh, Pennsylvania 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $50.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–22553 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* versus *Rohm and Haas Company, et al.*, Civil Action No. 85–4386, was lodged on August 21, 1996, with the United States District Court for the District of New Jersey, Camden Vicinage. The proposed decree resolves the United States' claims under CERCLA against defendants Manor Care, Inc., Manor Healthcare Corp., and Portfolio One, Inc. (the "Manor Defendants") with respect to the Lipari Landfill Superfund Site, in Mantua Township, New Jersey. The Manor Defendants are the alleged successors to a transporter that disposed of hazardous substances at the Site. Under the terms of the proposed decree, the Manor Defendants will pay $2,100,000 in reimbursement of past and future response costs incurred and to be incurred by the United States and the State of New Jersey.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Rohm and Haas Company, et al.*, DOJ Ref. #90–11–3–86.

The proposed consent decree may be examined at the office of the United States Attorney, 402 East State Street, Trenton, New Jersey; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–22571 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Michigan Materials and Processing Institute

Notice is hereby given that, on August 13, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following companies were recently accepted as a Class A Shareholders in MMPI: Applied Sciences, Inc., Cedarville, OH; Brennan Recycling, Inc., St. Claire, Shores, MI; Quantum Consultants, Inc., East Lansing, MI; and Nanocor, Inc., Arlington Heights, IL. Lincoln Composites, Inc., is no longer a Class A Shareholder in MMPI.

No other changes have been made in either the membership or the planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 Fed. Reg. 36710. The last notification was filed with the Department on March 13, 1996. A notice was published in the **Federal Register** on April 22, 1996, 61 Fed. Reg. 17728.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–22554 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 1996, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application, which was received for processing on June 27, 1996, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 4, 1996.

Dated: August 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–22631 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–09–M

Foreign Claims Settlement Commission

Privacy Act of 1974; New System of Records Notice; Registration of Potential Claims Against Iraq

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Notice of new system of records.

SUMMARY: The Foreign Claims Settlement Commission (FCSC) hereby publishes notice of the establishment of an additional records system to be effective as of October 1, 1996, and designated "FCSC–38, Iraq, Registration of Potential Claims Against." Any person interested in commenting on this system may do so by submitting comments in writing to the Administrative Office of the Foreign Claims Settlement Commission, 600 E Street, NW, Washington, DC 20579. Comments must be submitted on or before October 1, 1996. This record system will be added to the Commission's current Privacy Act Systems of Records.

EFFECTIVE DATE: The system of records designated "FCSC–38, Iraq, Registration of Potential Claims Against" shall be established and become effective on October 1, 1996, as published herein unless amended by notice published prior to that date. The existing systems of records continue in effect.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, 600 E Street NW, Room 6002, Washington, DC 20579, telephone (202) 616–6975, fax (202) 616–6993.

FCSC–38

SYSTEM NAME:

Iraq, Registration of Potential Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street NW, Room 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural and juridical persons with potential claims against Iraq that are outside the jurisdiction of the United Nations Compensation Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of property or other asset or interest that is the subject of the claim; other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Information in the system was collected under the Foreign Claims Settlement Commission's general authority to adjudicate claims conferred by 22 U.S.C. 1621 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

Records are used for the purpose of determining the validity and amount of potential claims, to facilitate planning for adjudication of such claims in the future. Names and other information furnished by registrants may be used for verifying citizenship status with the Immigration and Naturalization Service. Names and addresses of individual registrants will be subject to public disclosure. Other information provided by the individual registrants will be maintained as confidential information which will be exempt from disclosure to the public.

Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by registration number. Alphabetical index used for identification of registrant.

SAFEGUARDS:

At FCSC: Building employs security guards.

Records are maintained in a locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579; telephone 202–616–6975, fax 202–616–6993.

NOTIFICATION PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Registrant on whom the record is maintained.

Delissa A. Ridgway,

Chair.

[FR Doc. 96–22662 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–01–M

Privacy Act of 1974; New System of Records Notice; Holocaust Survivors Claims Program

AGENCY: Foreign Claims Settlement Commission, Justice.

ACTION: Notice of new system of records.

SUMMARY: The Foreign Claims Settlement Commission (FCSC) hereby publishes notice of the establishment of an additional records system to be effective as of October 1, 1996, and designated "FCSC–37, Germany, Holocaust Survivors' Claims Against." Any person interested in commenting on this system may do so by submitting comments in writing to the Administrative Office of the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC 20579. Comments must be submitted on or before October 1, 1996. This records system will be added to the Commission's current Privacy Act Systems of Records.

EFFECTIVE DATE: The system of records designated "FCSC–37, Germany, Holocaust Survivors' Claims Against" shall be established and become effective on October 1, 1996, as published herein unless amended by notice published prior to that date. The existing systems of records continue in effect.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC 20579, telephone (202) 616–6975, fax (202) 616–6993.

FCSC–37

SYSTEM NAME:

Germany, Holocaust Survivors' Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 600 E Street NW., Room 6002, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural persons who assert claims for loss of liberty or damage to body or health as a result of National Socialist measures of persecution conducted directly against them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of measures of persecution; other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 104–99, and the Agreement Between the Government of the United States of America and the Government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution of September 19, 1995.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

Records are used for the purpose of determining the validity and amount of claims; issuance of decisions concerning eligibility to receive compensation under the Act and Agreement; notifications to claimants of rights to appeal; preparation of decisions for certification to the Secretary of State for use in diplomatic settlement negotiations with Germany; and preparation of certifications of awards to the Secretary of the Treasury for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the Immigration and Naturalization Service. As required by the authorizing statute, the information contained in this system of records will be maintained as confidential information which will be exempt from disclosure to the public.

Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim.

SAFEGUARDS:

At FCSC: Building employees security guards.

Records are maintained in a locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGERS AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579; telephone 202–616–6975, fax 202–616–6993.

NOTIFICATION PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Delissa A. Ridgway,

Chair.

[FR Doc. 96–22663 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1783–96; AG Order No. 2052–96]

RIN 1115–AC63

Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iranian and Libyan Travel Documents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice provides for the registration and fingerprinting of certain nonimmigrants bearing Iranian or Libyan travel documents who apply for admission to the United States. This notice is published in response to concern for national security resulting from terrorist attacks and uncovered plots directed by nationals of Iran and Libya. This procedure is necessary to assist in protecting national security.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: Patrice Ward, Acting Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, telephone number: (202) 514–0964.

SUPPLEMENTARY INFORMATION: On January 16, 1991, a final regulation was published in the **Federal Register** at 56 FR 1566 requiring the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents. The requirement was promulgated in response to the United States condemnation of Iraq's invasion of Kuwait, United States sanctions against Iraq, and the theft of thousands of Kuwaiti passports during the occupation of Kuwait by Iraq, all of which heightened the potential for domestic anti-United States terrorist activities.

The Service published an interim rule in the **Federal Register** on December 23, 1993 at 58 FR 68024 that removed the requirement for the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents and added a new paragraph (f) to 8 CFR 264.1. Paragraph (f) provides that the Attorney General may require, by public notice in the **Federal Register**, certain nonimmigrants of specific countries to be registered and fingerprinted upon arrival in the United States, pursuant to section 263(a)(5) of the Immigration and Nationality Act.

Notice of Requirement for Registration and Fingerprinting of Certain Iranian and Libyan Nonimmigrants

Recent terrorist activities perpetrated against the United States make it necessary for the United States to register and fingerprint certain nonimmigrants from Iran and Libya upon their application for admission to the United States. Therefore, all nonimmigrants bearing Iranian or Libyan travel documents who apply for admission to the United States, except those applying for admission under section 101(a)(15)(A) or 101(a)(15)(G) of the Immigration and Nationality Act, shall be registered on Form I–94 (Arrival/Departure Record), photographed, and fingerprinted on Form FD–258 (Fingerprint Chart) by the Service at the Port-of-Entry where the aliens apply for admission to the United States.

Dated: August 28, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22609 Filed 9–4–96; 8:45 am]

BILLING CODE 4410–10–M

MARINE MAMMAL COMMISSION

Sunshine Act Meeting

Time and Date: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, November 12, 1996 from 8:30 a.m. to 9:45 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, November 12, from 10:00 a.m. to 6:00 p.m., on Wednesday, November 13, from 9:00 a.m. to 6:00 p.m., and on Thursday, November 14, from 9:00 a.m. to 12:30 p.m.

Place: Amelia Island Plantation, Amelia Island, Florida 32305.

Status: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

Matters To Be Considered: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. For most of the meeting discussion will focus on the conservation of manatees in Florida and right whales in the northwest Atlantic. While subject to change, other major issues that the Commission plans to consider at the meeting include: efforts to reduce the take of harbor porpoise incidental to commercial fisheries; marine mammal conservation in Russia, including cooperative efforts between Russia and the United States; the Arctic Environmental Protection Strategy; co-management plans for marine mammals in Alaska; the care and maintenance of captive marine mammals; and the effects of pollutants and contaminants on marine mammals.

Contact Person for More Information: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, N.W., Room 512, Washington, D.C. 20009, 202/606–5504.

Dated: August 29, 1996.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 96–22738 Filed 8–30–96; 4:25 pm]

BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–116]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: September 18, 1996, 8:30 to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Overview
—University Strategy Update
—Potential for Propulsion Advancements
—National Transonic Facility (NTF)
—Subcommittee Restructuring
—Aviation Safety Reporting System
—Aeronautics Enterprise (Metrics)
—Global Strategy Workshop
—High-Speed Research IIA
—Environmental Research Aircraft and Sensor Technology (ERAST)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 28, 1996.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 96–22530 Filed 9–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–107]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 42919; Notice Number 96–094, August 19, 1996.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: September 11, 1996, 8:30 a.m. to 5:00 p.m. Marshall Space Flight Center, Building 4200, Room P110, Huntsville, AL 35812.

CHANGES IN THE MEETING: Dates changed to include September 12, 1996, 3:30 p.m. to 5:00 p.m. Address for this date only changed to Marshall Space Flight Center, Building 4203, Room 2002, Huntsville, AL 35812.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Luna, Code M–4, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1101.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 29, 1996.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 96–22673 Filed 9–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–105]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Active Control eXperts, Inc. of Cambridge, MA 02142–1227, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. LAR–15348–1, entitled "Thin-Layer Composite-Unimorph Piezoelectric Driver Sensor, 'THUNDER'" for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Ms. Kimberly Chasteen, Patent Attorney, Langley Research Center.

DATE: Responses to this notice must be received by (insert 60 days from the date of publication in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Chasteen, Patent Attorney, Langley Research Center, (804) 864–3227.

Dated: August 27, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–22531 Filed 9–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–104]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Rochester Gas & Electric Corporation, of Rochester, New York 14649–0001, has applied for a partially exclusive license to practice the invention disclosed in NASA Case No. LAR–15327–1–CU, entitled "Process for Coating Substrates with Catalytic Materials," for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by (insert 60 days from date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (757) 864–9260; (757) 864–9260.

Dated: August 27, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–22532 Filed 9–4–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Advisory Panel for Biomolecular Processes is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 *et seq.* This determination follows consultation with the Office of Management and Budget and with the Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: Advisory Panel for Biomolecular Processes.

PURPOSE & OBJECTIVE: Primarily, to advise on the merit of proposals for research in Biomolecular Processes and for research-related purposes submitted to NSF for financial support. Additionally, the Panel provides perspective and advice regarding progress in the scientific areas supported by the program.

BALANCED MEMBERSHIP PLANS: The panel consists of 50 members, of whom approximately 28 attend a given meeting. Every effort is made to select panel members who are outstanding scientifically and are objective. A balance is needed and scientists knowledgeable in the areas of science encompassed by the program is essential. These factors are important and weight is given to geographical distribution, gender, minority status, institution, and scientific maturity.

DURATION: Continuing.

RESPONSIBLE NSF OFFICIALS: Dr. Julius H. Jackson, Director, Division of Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, telephone 202/306–1440.

Dated: August 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22563 Filed 9–4–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194)

Date and Time: September 20, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 380, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Anthony Centodocati, SBIR Director, SBIR Office (703) 306–1391, John Rosendale, Program Officer, CISE/ASE, (703) 306–1370, Frank Anger, Program Officer, CISE/CCR, (703) 306–1912, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I Advanced Scientific Computing proposals and Computer and Computational Research: Software Engineering and Languages proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a priorietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22558 Filed 9–4–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) submitted to the Phase I Small Business Innovation Research Program in the areas of Civil Mechanical Systems, Mechanics and Materials, Computer and Computational Research: Computer Graphics, Computer and Computational Research: Software Systems and Architectures. In order to review the large volume of proposals, panel meetings will be held on September 20, 1996 in rooms 340, 375, and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA. from 8:30 a.m. to 5:00 p.m. each day.

Contact Person: Anthony Centodocati, SBIR Program Manager, SBIR Office, (703) 306–1391, George Patrick Johnson, SBIR Program Manager, SBIR Office, (703) 306–1391, Ken Chong, Program Manager, CMS/ENG, (703) 306–1361, Kamal Abdali, Program Manager, CISE/CCR, (703) 306–1912, Anand R. Tripathi, CISE/CCR, (703) 306–1912, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22559 Filed 9–4–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: September 25, 26, and 27, 1996, 8:30 a.m.–5:00 p.m.

Place: Rooms 360, 365, and 530 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Yousef Hashimi, SBIR Director, SBIR Office, (703) 306–1391, Sara Nerlove, SBIR Director, SBIR Office, (703) 306–1391, George Patrick Johnson, SBIR Director, SBIR Office, (703) 306–1391, Paul Werbos, Program Officer, ECS/ENG, (703) 306–1339, Jorn Larsen-Basse, Program Officer, (703) 306–1361, Edward Bryan, BES/ENG, (703) 306–1320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I Next Generation Vehicles, Systems Integration and Control proposals, Civil Mechanical Systems, Tribology proposals, and Environmental Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–22560 Filed 9–4–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following two meetings of the Special Emphasis Panel in Materials Research #1203.

1. Dates & Times: 9–25–96, 7:00 p.m.–9:00 p.m., 9–26 and 9–27–96, 8:00 a.m.–5:00 p.m. Contact Person: Dr. H. Hollis Wickman, Program Director, Condensed Matter Physics, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone (703) 306–1818.

Purpose of Meeting: To provide advice and recommendations concerning the Condensed Matter Physics Program, Science and Technology Center for Superconductivity, University of Illinois at Urbana-Champaign.

2. Dates & Times: 9–26–96, 5:00 p.m.–9:00 p.m. and 9–27–96, 8:00 a.m.–5:00 p.m. Contact Person: Dr. W. Lance Haworth, Coordinating Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, NSF, 4201 Wilson Blvd., Arlington, VA 22230, Telephone (703) 306–1815.

Purpose of Meeting: To review progress and provide advice and recommendations concerning support for the Materials Research Science and Engineering Center, University of California—San Diego.

Agenda for both meetings: Presentation and evaluation of progress.

Types of Meetings: Closed.

Reason for Closings: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 29, 1996.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 96–22562 Filed 9–4–96; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis for NSFNET Connections Panel (#1207)
Date and Time: September 25, 1996; 8:30 a.m. to 5:00 p.m.
Place: Room 1175
Type of Meeting: Closed
Contact Person(s): Mark Luker, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted for the NSFNET Connections Program.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 29, 1996.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 96–22561 Filed 9–4–96; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 86th meeting on September 26 and 27, 1996, at the Hotel San Remo, 115 East Tropicana Avenue, Las Vegas, Nevada, in Chateau 1 and Chateau 2. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 6, 1995 (60 FR 62485).

The entire meeting will be open to public attendance. The agenda for this meeting shall be as follows: *Thursday, September 26, 1996—8:30 A.M. until 6:00 P.M. Friday, September 27, 1996—8:30 A.M. until the conclusion of business*

During this meeting, the Committee plans to consider the following:

A. *Radionuclide Transport at Yucca Mountain*—The Committee will investigate the status and results of studies and modeling of radionuclide transport in the saturated and unsaturated zone at Yucca Mountain. This topic will constitute the entire meeting on Thursday. Specific focus will be on the transport of radionuclides in fracture systems at Yucca Mountain. This will include the ingress of water to the repository horizon and geochemical processes that affect transport of radionuclides out of the repository via fracture systems.

B. *Site Characterization*—The Committee will discuss site characterization integration through the use of performance assessment. A continuation of discussions with the Department of Energy on Total System Performance Assessment will be held with emphasis on the use of expert elicitation panels.

C. *Repository Design for Viability Assessment*—The Committee will discuss the advanced conceptual design for the proposed repository at Yucca Mountain, Nevada, with representatives of the Department of Energy and other interested parties.

D. *Public Comments*—The Committee will hear comments from members of the public on concerns related to nuclear waste disposal.

E. *Preparation of ACNW Reports*—The Committee will discuss proposed reports, including: radionuclide transport at Yucca Mountain, specifying a critical group and reference biosphere to be used in a performance assessment of a nuclear waste disposal facility, the consideration of coupled processes (thermal-mechanical-hydrological-chemical) in the design of a high-level waste repository, time of compliance in high- and low-level waste disposal, and the DOE program plan and waste isolation strategy.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49924). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: August 29, 1996
Andrew L. Bates,
Advisory Committee Management Office.
[FR Doc. 96–22612 Filed 9–04–96; 8:45 am]
BILLING CODE 7590–01–P

Issuance of a Memorandum of Understanding between the Nuclear Regulatory Commission and the Pennsylvania Department of Environmental Protection

AGENCY: Nuclear Regulatory Commission.
ACTION: Notice of issuance of a Memorandum of Understanding.

SUMMARY: This notice is to advise the public of the issuance of a Memorandum of Understanding (MOU)

between the U.S. Nuclear Regulatory Commission (NRC) and the Commonwealth of Pennsylvania Department of Environmental Protection (PADEP). The MOU provides the basis for cooperation between the agencies to facilitate the safe and timely remediation and decommissioning of Site Decommissioning Management Plan Sites (SDMP) and other decommissioning sites in Pennsylvania at which both agencies exercise regulatory authority.

The broad MOU expresses the desire of PADEP and the NRC to cooperate in areas subject to the jurisdiction of both parties. Under the MOU, PADEP and NRC will designate site coordinators for each SDMP site in Pennsylvania. Each agency will provide the other with reasonable notice of inspections, and meetings with other agencies or the public which concern a particular SDMP site. The MOU also provides the basis for the dissemination of information between the agencies and the review and comment of draft documents.

EFFECTIVE DATE: This MOU was effective July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Heather Astwood, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop T–7–F27, Washington, D.C., 20555, telephone (301) 415–5819.

Dated at Rockville, MD this 28th day of August 1996.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

Memorandum of Understanding Between the United States Nuclear Regulatory Commission and the Commonwealth of Pennsylvania Department of Environmental Protection

1. *Purpose.* This Memorandum of Understanding ("MOU") is intended to provide a framework for voluntary cooperation between the United States Nuclear Regulatory Commission ("NRC") and the Commonwealth of Pennsylvania, Department of Environmental Protection ("DEP") to facilitate the safe and timely remediation and decommissioning of Site Decommissioning Management Plan ("SDMP") and other decommissioning sites in Pennsylvania at which both agencies exercise regulatory authority.

2. *Regulatory Authority.* The NRC regulates radioactive material and related activities at SDMP sites and licensed nuclear facilities under authority of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 *et seq.* The DEP administers and enforces Pennsylvania's environmental statutes, including the Solid Waste Management Act, 35 P.S. § 6018.101 *et seq.*; the Clean Streams Law, 35 P.S. § 691.1 *et seq.*; and the Radiation Protection Act, 35 P.S. § 7110.101 *et seq.*

3. *Designation of Site Coordinators.* Within ninety (90) days after execution of this MOU, each agency will designate a site coordinator for each SDMP site identified in Appendix A. Each agency shall notify the other, in writing, of the name, address, telephone and facsimile numbers of each site coordinator. Each agency may also designate coordinators for other decommissioning sites. Any changes in the designation of a coordinator will be communicated in writing to the other agency.

4. *Meetings and Conference Calls between the Agencies.* At the request of either agency, with reasonable notice, a meeting or conference call will be scheduled between the site coordinators and other agency representatives to discuss coordination of remediation and decommissioning activities.

5. *Technical and Regulatory Consultation.* At the request of either agency, with reasonable notice, representatives of each will be made available to discuss technical or regulatory matters pertaining to the SDMP site or other decommissioning sites.

6. *Meetings with the Public.* Except in response to site emergencies, each agency will notify the other, at least two weeks in advance, of any public meeting related to remediation or decommissioning activities at an SDMP or other decommissioning site.

7. *Meetings with Other Regulatory Entities.* At its discretion, an agency may invite representatives of the other agency to attend meetings with other regulatory entities who share some responsibility for the SDMP or other decommissioning site. At a minimum, an agency will keep the other agency informed of such meetings and the results of those meetings. It should be noted that the NRC has an Open Meeting Policy which would require these meetings to be open to the public because they would almost always involve discussions concerning a specific licensee (Open Meeting Statement of NRC Staff Policy, 59 **Federal Register** 48340, 9/20/94).

8. *Notice of Site Inspections.* Each agency will make a good faith effort to coordinate routine site inspections of SDMP sites and other decommissioning sites by providing advance notice to the other agency.

9. *Dissemination of Information to Other Agencies.* As necessary to effectively implement remediation and decommissioning of SDMP and other decommissioning sites, the agencies will coordinate pertinent and appropriate dissemination of information to other Federal, State and local Government agencies.

10. *Exchange of Information Between Agencies.*

A. The agencies will exchange information concerning the remediation and decommissioning of SDMP or other decommissioning sites as follows:

i. Within two weeks of receipt, the following information will be forwarded from one agency to the other: plans and reports relating to site assessment/characterization; remediation or decommissioning; and all available related analytic data generated through site remediation or decommissioning.

ii. Upon request, NRC will make available to DEP for review and copying any documents disclosable to the public under the Freedom of Information Act, 5 U.S.C. § 552, NRC regulations in 10 CFR Part 9, Public Records, and in 10 CFR Part 2.790, public inspections, exemptions, requests for withholding, and any other applicable Federal statute, regulation, or policy.

iii. Upon request, DEP will make available to the NRC for review and copying any documents disclosable to the public under the Public Right to Know Act, 65 P.S. § 66.1 *et seq.*, DEP's public information policy, and any other applicable Pennsylvania statute, regulation, or policy.

B. All documents exchanged by the agencies will be addressed to the designated coordinator for the SDMP site.

C. Nothing in this MOU shall be construed as compelling either agency to produce information or documents which the agency deems confidential or privileged. If such documents are exchanged, each agency will respect the confidentiality of the information and will make every attempt to avoid disclosure in accordance with administrative procedures.

11. *Disclosure of Information to the Public.* The right of access by the public to information under Federal and State law, regulation, or policy is not affected by this MOU.

12. *Review and Comment on Documents.*

A. Each agency should expeditiously forward drafts of documents it has prepared, or copies of documents

received from third persons which potentially impact remediation of hazards under the other agency's jurisdiction, to solicit the other agency's review and comments.

B. The agency requesting comments will specify the date by which a response is needed. The review and comments should be completed in a reasonable time (or approximately 30 days).

C. Comments will be returned within the specified response period. In cases where there are no comments, that information will be provided within the response period.

D. Requests for comments or responses will be addressed to the agency's site coordinator.

E. Final agency decisions and documents potentially impacting remediation of hazards under the other agency's jurisdiction will be transmitted by facsimile the same day these documents are sent to the facility management or released to the public.

13. *Modifications.* Any modifications or changes to this MOU shall only be effective if agreed to by the parties and set forth in writing as an amendment of this MOU.

14. *Reservation of Rights.* Nothing in this MOU shall affect the rights, duties and authority of either agency under the law. The agencies reserve their respective authority and rights to take any enforcement action which they deem necessary to fulfill their duties and responsibilities under the law.

15. *Non-binding Memorandum.* This memorandum is not intended to and does not create any contractual rights or obligations with respect to the NRC, DEP, or any other parties.

Dated: April 11, 1996.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

Dated: July 15, 1996

James W. Rue,

Deputy Secretary, Air, Recycling and Radiation Protection, Commonwealth of Pennsylvania, Department of Environmental Protection.

Appendix A—Site Decommissioning Management Plan Sites in the Commonwealth of Pennsylvania

Babcock & Wilcox; Apollo, PA
Babcock & Wilcox; Parks Township, PA
Cabot Corporation; Boyertown, PA
Cabot Corporation; Reading, PA
Cabot Corporation; Revere, PA
Molycorp, Inc.; Washington, PA
Molycorp, Inc.; York, PA
Permagrain Products; Media, PA
Pesses Company, METCOA Site; Pulaski, PA
Safety Light Corporation; Bloomsburg, PA
Schott Glass Technologies; Duryea, PA
Westinghouse Electric Corporation; Waltz Mill, PA
Whittaker Corporation; Greenville, PA

[FR Doc. 96–22614 Filed 9–4–96; 8:45 am]
BILLING CODE 7590–01–P

Draft Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment drafts of six guides planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

These draft guides, presently identified by their task numbers, endorse industry consensus standards of the Institute of Electrical and Electronics Engineers. The guides and the standards they endorse are DG–1054, "Verification, Validation, Reviews, and Audits for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 1012–1986, "IEEE Standard for Software Verification and Validation Plans," and IEEE Std 1028–1988, "IEEE Standard for Software Reviews and Audits"; DG–1055, "Configuration Management Plans for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 828–1990, "IEEE Standard for Software Configuration Management Plans," and ANSI/IEEE Std 1042–1987, "IEEE Guide to Software Configuration Management"; DG–1056, "Software Test Documentation for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses ANSI/IEEE Std 829–1983, "IEEE Standard for Software Test Documentation"; DG–1057, "Software Unit Testing for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses ANSI/IEEE Std 1008–1987, "IEEE Standard for Software Unit Testing"; DG–1058, "Software Requirements Specifications for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 830–1993, "IEEE Recommended Practice for Software Requirements Specifications"; and DG–1059, "Developing Software Life Cycle Processes for Digital Computer Software Used in Safety Systems of Nuclear Power Plants," which endorses IEEE Std 1074–1995, "IEEE Standard for Developing Software Life Cycle Processes." These guides will be in Division 1, "Power Reactors." These draft guides are being developed to provide current guidance on methods acceptable to the NRC staff for complying with the NRC's regulations for promoting high functional reliability and design quality in software used in safety systems of nuclear power plants.

The draft guides have not received complete staff review and do not represent official NRC staff positions. No backfitting is intended or approved in connection with the issuance of these proposed guides. Any backfitting that may result from application of this new guidance to operating plants will be justified in accordance with established NRC backfitting guidance and procedures. These draft guides have been released to encourage public participation in their development. Except in those cases in which an applicant proposes an acceptable alternative method for complying with specified portions of the NRC's regulations, the methods to be described in the active guide reflecting public comments will be used in the evaluation of submittals in connection with applications for construction permits, standard design certifications and design approvals, and combined operating licenses. The active guides will also be used to evaluate submittals from operating reactor licensees who propose modifications that go beyond the current licensing basis, if those modifications are voluntarily initiated by the licensee and there is a clear connection between the proposed modifications and this guidance. The final guides will be used in conjunction with, and will eventually be reflected in, the Standard Review Plan, which is currently under revision.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by October 31, 1996.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact J.J. Kramer at the NRC, telephone (301)415–5891; e-mail JJK@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301)415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 2nd day of August 1996.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Director, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 96–22613 Filed 9–4–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Notice of Availability of Draft Performance-Based Service Contracting (PBSC) Documents on Professional and Technical Services

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

SUMMARY: OFPP initiated an interagency project to develop generic guidance materials to assist agencies in converting selected professional and technical services to PBSC methods. Working groups, consisting of agency technical and procurement personnel, are developing generic PBSC documents that include: performance requirements, performance standards, quality assurance techniques, positive and negative incentives, and evaluation criteria for selected services. Draft documents have been prepared for software development and ADP maintenance services. We are still in the developmental stages for preparation of documentation for such services such as training, telephone customer assistance 800 numbers, aircraft maintenance, and test range support. After the documents have been finalized, they will be published as a reference source for agency voluntary use. We feel that public review and comment on the draft documents would provide us with valuable feedback and insight. OFPP will review and consolidate this information and provide it to the specific workgroups for their information and potential use.

ADDRESSES: Those persons interested in reviewing and obtaining a copy of the draft documents should contact Ms. Linda Mesaros, OFPP, New Executive Office Building, Room 9001, 725 17th Street, NW., Washington, DC 20503.

ADDITIONAL INFORMATION: For additional information contact Linda Mesaros at 202–395–4821.

Steven Kelman,

Administrator.

[FR Doc. 96–22595 Filed 9–04–96; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1996, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted

appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Reinvention Office, Room 6A12, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, or by calling (202) 606–0830.

The following exceptions were current on June 30, 1996.

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring needs exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110 but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under § 353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(s) (Reserved).

(t) Positions when filled by mentally retarded persons in accordance with the

guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj–kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–14; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)–(d) (Reserved).

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) (Reserved)..

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Office.

(h) *Bureau of Administration.* (1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(5) (Reserved).

(6) Two hundred positions of Criminal Investigator for special assignments.

(7)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years, but may be extended for not to exceed an additional 90 days to complete critical projects.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) (Reserved).

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.*

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.* (1) The Provost and professors in grades GS–13 through 15.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.* (1) The Director, Deputy

Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(2) (Reserved).

(3) Not to exceed 500 Medical and Dental Intern, Resident and Fellow positions, whose incumbents are training under graduate medical/dental education programs in Army Medical Department facilities worldwide, and whose compensation is fixed under 5 U.S.C. 5351–5356. Employment under this authority may not exceed 4 years, unless extended with prior approval of OPM.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1)–(2) (Reserved).

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientist, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) *General.* (1) (Reserved).

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating nonfederal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(3) (Reserved).

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from nonfederal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) (Reserved).

(6) Positions of Student Operating Room Technician for temporary, part-time, or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating nonfederal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of Student Social Worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of Student Practical Nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a nonfederal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) (Reserved).

(10) Positions of Medical Technology Intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in nonfederal institutions. Employment under this authority may be on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of Medical Intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating nonfederal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of Student Speech Pathologist at U.S. naval regional medical centers, hospitals, and

dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of Student Dental Assistant in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Scientific and technical positions, GS/GM–13/15, in the Office of Naval Research Asian Office in Tokyo, Japan, which covers East Asia, New Zealand and Australia. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) Office of the Secretary. (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Ninety-five positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM-ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of Professor, Instructor, or Lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions established to implement the Crime Control and Law Enforcement Act of 1994 or the Violent Crime Control Appropriations Act, 1995. No new appointments may be made under this authority after September 30, 1996.

(3) U.S. Marshal in the Virgin Islands.

(4) Positions at GS–15 and below on the staff of an office of an independent counsel, that is established under 28 CFR Part 600. No office may use this authority for more than 4 years to make appointments and position changes unless prior approval of OPM is obtained.

(b) *Immigration and Naturalization Service.* (1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, 8 range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this

authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* That an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1–2) (Reserved).

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; State performance assistants in the Consolidated Farm Service Agency; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102 or positions within the Forest Service.

(6) (Reserved).

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b)–(c) (Reserved).

(d) *Consolidated Farm Service Agency.* (1) (Reserved).

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program. (3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM be further extended for additional periods not to exceed 1 year each.

(4)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 8 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) *Food Safety and Inspection Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Grain Inspection, Packers and Stockyards Administration.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time, or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided*, that temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members,

Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) (Reserved).

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions; *Provided*, that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(15) Not to exceed 200 staff positions, GS–15 and below, in the Office of Refugee Health, for an emergency staff to provide health related services to Haitian entrants.

(c)–(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

(g)–(i) (Reserved).

(j) *Health Care Financing Administration.* (1) (Reserved).

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) (Reserved).

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3121 Corporation for National and Community Service

(a) All positions on the staff of the Corporation for National Community Service. No new appointments may be made under this authority after September 30, 1995.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as

provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco, and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3129 Thrift Depositor Protection Oversight Board

(a) All positions. No new appointments may be made under this authority after December 31, 1995.

Section 213.3130 Securities and Exchange Commission

(a)–(b) (Reserved).

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows: (1) Seven positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year term; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

(f) Not to exceed four positions of Accountant, GS–14/15, when filled by persons selected as SEC Accounting Fellows for the Capital Markets Risk Assessment Program. Employment under this authority may not exceed 2 years.

Section 213.3131 Department of Energy

(a) (Reserved).

(b) *Bonneville Power Administration.* (1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a)–(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3137 General Services Administration

(a) (Reserved).

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

(c) All Law Clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program. Appointments under this authority at GS–11 and GS–12 will be limited to 2 years with provision for a 1-year extension at the GS–13 level only in cases of exceptional circumstances, as determined by the Chief Judge and Chairman.

Section 213.3138 Federal Communications Commission

(a) Fifteen positions of Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of not to exceed 2 years with provision for two 1-year extensions.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.
(b)–(c) (Reserved).
(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.
(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.
(c)–(e) (Reserved).
(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed 1 additional year.
(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.
(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.
(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Public Law 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3162 Ounce of Prevention Council

(a) Up to 25 positions established to create the President's Prevention Council Office supporting the Ounce of Prevention Council created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after February 28, 1997.

Section 213.3174 Smithsonian Institution

(a) (Reserved).
(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.
(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 22, 1996.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.*
(1) One position of Assistant Director, Artists-in-Education Programs, Office of Partnerships.
(2) One position of Assistant Director for State Programs.
(3) One position of Director of Literature Programs.
(4) One position of Assistant Director of Theater Programs.
(5) One position of Director of Folk Arts Programs.
(6) One position of Director, Opera/Musical Theater Programs.
(7) One position of Assistant Director of Opera/Musical Theater Programs.
(8) One position of Assistant Director of Literature Programs.
(9) One position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.
(10) One position of Deputy Chairman for Public Partnership.
(11) Four Project Evaluators.
(12) One position of Director of Museum Programs.
(13) One position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.
(14) One position of Assistant Director of Music Programs.
(15) One position of Director of Expansion Arts Programs.
(16) One position of Director of Media Arts Programs.
(17) One position of Director, Challenge and Advancement Grant Program.
(18) One position of Assistant Director, Challenge and Advancement Grant Program.
(19) One position of Art Specialist, International Programs.
(20) One position of Director of Inter Arts Program.
(21) One position of Assistant Director of Expansion of Arts Programs.
(22) One position of Assistant Director of Media Arts Programs.
(23) One position of Assistant Director of Design Arts Program.
(24) One position of Assistant Director of Dance Programs.
(25) One position of Assistant Director of Visual Arts Programs.
(26) One position of Assistant Director of Museum Programs.
(27)–(29) (Reserved).
(30) One position of Director of Education Programs.
(31) One position of Director of Music Programs.

(32) One position of Director of Theater Programs.
(33) One position of Director of Dance Programs.
(34) One position of Director of Visual Arts Programs.
(35) One position of Director of Design Arts Program.
(36) (Reserved).
(37) One Director for State Programs.
(38) One Director for Artists-in-Education Programs.
(39) One position of Assistant Director of Inter-Arts Program.
(40) One position of Assistant Director of the International Program.

Section 213.3184 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.
(b) *Office of Federal Housing Enterprise Oversight.* (1) All positions on the staff. No new appointments may be made under this authority after September 30, 1996.

Section 213.3191 Office of Personnel Management

(a)–(c) (Reserved).
(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) (Reserved).
(2) Lamplighters.
(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.
(b)–(d) (Reserved).
(e) *Maritime Administration.* (1)–(2) (Reserved).
(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.
(4)–(5) (Reserved).
(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.
(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.
(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.
(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.
(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) *Student Educational Employment Program—*
(1) The Student Educational Employment Program consists of two components and two appointing authorities:
(i) The Student Temporary Employment Program (Schedule B 213.3202(a)).
(ii) The Student Career Experience Program (Schedule B 213.3202(b)).
(2) The appointment authority for each program is the same regardless of the educational program being pursued. Students may be appointed to these programs if they are pursuing any of the following educational programs:
(i) High School Diploma or General Equivalency Diploma (GED)
(ii) Vocational/Technical Certificate
(iii) Associate Degree
(iv) Baccalaureate Degree
(v) Graduate Degree
(vi) Professional Degree
(3) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the student career experience program, Schedule B, 213.3202(b).

* * * * *

[The remaining text of provisions pertaining to the Student Educational Employment Program can be found in 5 CFR 213.3202 (b)–(d).]

(e)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 through and GS–13 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 2½ years.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contacts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employment under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical

school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–14, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) (Reserved).

(c) One Director of Instruction and 14 civilian instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Foreign Agricultural Service.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b)-(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)-(c) (Reserved).

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–9, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3221 Corporation for National and Community Service

(a) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15 in the Department of the Executive Director.

(b) Three positions of Program Specialist at grades GS–7 through GS–15 in the Department of the Executive Director.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* (1) Not to exceed 200 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, DC. Appointments under this authority shall not exceed 3 years.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3237 General Services Administration

(a) One position of Deputy Director of Network Services.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Professorial positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

(Grades 5 through 15)

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEA 1 Secretary to the Chairman
CEA 4 Secretary to the Chairman
CEA 5 Secretary to a Council Member
CEA 6 Secretary to a Council Member

Council on Environmental Quality

CEQ 6 Associate Director for Toxics and Environmental Protection to the Chair
CEQ 7 Special Assistant to the Chair

Office of Management and Budget

OMB 80 Confidential Assistant to the Executive Assistant, Office of the Director
OMB 81 Executive Assistant to the Deputy Director for Management
OMB 82 Executive Assistant to the Director, Office of Management and Budget
OMB 92 Confidential Assistant to the Associate Director for Legislative Reference and Administration
OMB 96 Confidential Assistant to the Associate Director for Human Resources
OMB 97 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs
OMB 102 Special Assistant to the Director, Office of Management and Budget
OMB 103 Staff Assistant to the Deputy Director, Office of Management and Budget.
OMB 104 Legislative Assistant to the Associate Director for Legislative Affairs
OMB 107 Writer-Editor to the Associate Director for Communications
OMB 107 Writer-Editor to the Associate Director for Communications
OMB 108 Staff Assistant to the Executive Associate Director
OMB 109 Confidential Assistant to the Associate Director, Health Personnel
OMB 110 Confidential Assistant to the Executive Associate Director
OMB 111 Special Assistant to the Controller
OMB 112 Confidential Assistant to the Associate Director, National Resources Energy and Science
OMB 113 Confidential Assistant to the Associate Director, Health and Personnel Division

Office of National Drug Control Policy

ONDCP 78 Staff Assistant for Scheduling to the Director
ONDCP 82 Legislative Analyst to the Director, Office of Public Affairs and Legislative Affairs
ONDCP 83 Director, Public Affairs to the Director, Public and Legislative Affairs
ONDCP 84 Director, Communications Planning to the Director
ONDCP 85 Staff Assistant to the Chief of Staff
ONDCP 86 Confidential Assistant to the Director

Office of Science and Technology Policy

OSTP 17 Deputy Director for Management and General Counsel to the Director, Office of Science and Technology Policy
OSTP 18 Special Assistant to the Director, Office of Science and Technology Policy
OSTP 19 Assistant for Intergovernmental Affairs and Policy to the Director, Office of Science and Technology Policy OSTP 21 Confidential Assistant to the Associate Director, Technology Division
OSTP 23 Confidential Assistant to the Associate Director for National Security and International Affairs
OSTP 25 Research Assistant to the Director, Office of Science Technology and Policy

Office of the United States Trade Representative

USTR 36 Confidential Assistant to the U.S. Trade Representative
USTR 39 Supervisory Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
USTR 40 Confidential Assistant to the Deputy U.S. Trade Representative
USTR 45 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
USTR 47 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
USTR 50 Confidential Assistant to the Deputy U.S. Trade Representative, Geneva Switzerland
USTR 51 Confidential Assistant to the Special Counsel for Financial and Investment Policy
USTR 52 Confidential Assistant to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison
USTR 53 Private Sector Liaison to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison
USTR 54 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
USTR 55 Deputy Assistant U.S. Trade Representative for Congressional Affairs

Official Residence of the Vice President

ORVP 1 Special Assistant to the Special Assistant to the Vice President and Chief of Staff to Mrs. Gore

President's Commission on White House Fellowships

PCWHF 7 Education Director to the Director, President's Commission on White House Fellowships
PCWHF 9 Special Assistant to the Director, President's Commission on White House Fellowships
PCWHF 10 Special Assistant to the Director, President's Commission on White House Fellowships

Section 213.3304 Department of State

ST 329 Staff Assistant to the Deputy Secretary of State
ST 358 Special Assistant to the Secretary of State
ST 359 Legislative Officer to the Under Secretary for Management
ST 364 Special Assistant to the Assistant Secretary for African Affairs, Bureau of African Affairs
ST 374 Special Assistant to the United States Permanent Representative to the Organization of American States, Bureau of Inter-American Affairs
ST 376 Secretary to the Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs
ST 391 Special Assistant to the Counselor to the Department
ST 393 Legislative Analyst to the Assistant Secretary, Bureau of Legislative Affairs
ST 397 Special Assistant to the Principal Deputy Assistant Secretary/ Spokesman for Public Affairs
ST 399 Confidential Assistant to the Secretary of State
ST 400 Special Assistant to the Under Secretary for International Security Affairs
ST 402 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs
ST 403 Foreign Affairs Officer (Ceremonials) to the Chief of Protocol
ST 405 Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
ST 406 Secretary (Typing) to the Assistant Secretary, Bureau of Economic And Business Affairs
ST 408 Staff Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 411 Protocol Assistant to the Supervisory Protocol Officer for Visits
ST 412 Senior Advisor to the Assistant Secretary, Bureau of Inter-American Affairs
ST 416 Protocol Officer (Visits) to the Supervisory Protocol Officer for Visits
ST 417 Foreign Affairs Officer to the Chief of Protocol
ST 424 Secretary (OA) to the Assistant Secretary, Bureau of Intelligence and Research
ST 425 Public Affairs Specialist to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
ST 426 Secretary (Steno) to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
ST 429 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs
ST 431 Special Assistant to the Assistant Secretary, Bureau of Intelligence and Research

ST 432 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs
ST 433 Correspondence Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 434 Staff Assistant to the Director of White House Liaison
ST 438 Staff Assistant to the Deputy Secretary of State
ST 441 Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs
ST 442 Senior Advisor to the Secretary of State
ST 445 Foreign Affairs Officer to the Deputy Assistant Secretary for Public Affairs/Chief Speechwriter
ST 446 Foreign Affairs Officer to the Deputy Secretary
ST 447 Special Assistant to the Assistant Secretary for Economic and Business Affairs
ST 448 Legislative Management Officer to the Assistant Secretary, Legislative Affairs
ST 449 Special Assistant to the Assistant Secretary, Bureau of International Narcotics Matters
ST 450 Special Advisor to the Principal Deputy Assistant Secretary for Public Affairs
ST 451 Special Assistant to the Senior Coordinator
ST 452 Foreign Affairs Officer to the Deputy Assistant Secretary for Public Affairs
ST 456 Staff Assistant to the Assistant Secretary, Legislative Affairs
ST 458 Special Assistant to the Assistant Secretary, Bureau for Population, Refugees and Migration
ST 460 Secretary (Steno) to the United States Ambassador and U.S. Representative to the United Nations
ST 461 Senior Advisor to the Director, Policy Planning Staff
ST 462 Secretary to the Assistant Secretary, Bureau of European and Canadian Affairs
ST 463 Secretary to the Assistant Secretary, Consular Affairs
ST 465 Special Assistant to the U.S. Permanent Representative to the United Nations
ST 467 Protocol Officer to the Chief of Protocol
ST 468 Protocol Assistant to the Deputy Chief of Protocol
ST 469 Legislative Management Officer to the Deputy Assistant Secretary for the House
ST 470 Counselor to the Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 471 Special Assistant to the Legal Advisor, Office of the Legal Advisor
ST 473 Senior Advisor to the Assistant Secretary, Bureau of Population, Refugees, and Migration
ST 474 Legislative Management Officer to the Assistant Secretary for Legislative Affairs
ST 475 Staff Assistant to the Deputy Assistant Secretary, Bureau for International Narcotics and Law Enforcement Affairs
ST 476 Special Advisor to the Senior Advisor to the Secretary to Coordinate Economic Initiatives for Ireland
ST 477 Senior Advisor to the Assistant Secretary for Democracy, Human Rights and Labor
ST 478 Foreign Affairs Officer to the Deputy Assistant Secretary for International Labor, External and Multilateral Affairs
ST 479 Resources, Plans and Policy Advisor to the Director, Plans and Policy
ST 480 Legislative Management Officer to the Under Secretary, for Management
ST 481 Special Assistant to the Director of Policy Planning Staff
ST 482 Foreign Affairs Officer to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 483 Foreign Affairs Officer to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 484 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 485 Member Policy Planning Staff to the Director
ST 486 Policy Analyst to the Assistant Secretary, Oceans and International Environmental and Scientific Affairs
ST 487 Senior Policy Advisor to the Assistant Secretary, Office of Legislative Affairs

International Boundary and Water Commission, the United States and Mexico

IBWC 1 Confidential Assistant (OA) to the Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico

Section 213.3305 Department of the Treasury

TREA 170 Assistant Director, Travel and Special Events Services to the Director, Administrative Operations Division
TREA 202 Director, Office of Legislative Affairs to the Senior Deputy Assistant Secretary for Legislative Affairs
TREA 213 Special Assistant to the Assistant Secretary for Legislative Affairs
TREA 230 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 244 Administrative Assistant to the Director, Office of Thrift Supervision
TREA 250 Senior Advisor and Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs)
TREA 254 Review Officer to the Executive Secretary and Senior Advisor
TREA 284 Director, Office of Business Liaison to the Deputy Assistant Secretary (Public Liaison)
TREA 290 Special Assistant to the Deputy Assistant Secretary for Administration
TREA 291 Confidential Assistant to the Assistant Secretary (Management)
TREA 315 Senior Advisor to the Chief of Staff
TREA 316 Public Affairs Specialist to the Senior Advisor and Director, Office of Public Affairs
TREA 322 Senior Advisor to the Executive Secretary and Senior Adviser to the Secretary
TREA 325 Executive Assistant to the Director of the Mint
TREA 334 Staff Assistant to the Assistant Secretary (Enforcement)
TREA 336 Director, Administrative Operations Division to the Deputy Assistant Secretary (Administration)
TREA 337 Senior Policy Analyst to the Assistant Secretary (Enforcement)
TREA 338 Staff Assistant to the Director, Scheduling and Advance, Office of the Secretary
TREA 339 Policy Analyst to the Under Secretary for Domestic Finance
TREA 340 Senior Advisor and Special Assistant (Public Affairs) to the Assistant Secretary (Public Affairs)
TREA 342 Senior Advisor to the Treasurer of the United States
TREA 343 Deputy Executive Director for Special Programs to the Executive Director, United States Bond Division, Bureau of Public Debt
TREA 345 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 346 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 347 Senior Advisor to the Assistant Secretary (Enforcement)
TREA 349 Senior Advisor to the Assistant Secretary (Management)
TREA 351 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 352 Senior Policy Analyst to the Deputy Assistant Secretary, Governmental Financial Policy
TREA 354 Deputy Director of Scheduling to the Director of Scheduling and Advance
TREA 355 Special Assistant to the Chief of Staff
TREA 356 Policy Advisor to the Deputy Under Secretary, Government Financial Policy
TREA 357 Director, Office of Public Correspondence to the Executive Secretary

TREA 358 Special Assistant to the Assistant Secretary (Economic Policy)
TREA 361 Attorney-Advisor (General) to the General Counsel
TREA 362 Special Assistant to the Assistant Secretary for Financial Institutions
TREA 364 Special Assistant to the Under Secretary for Domestic Finance
TREA 365 Special Assistant to the Assistant Secretary (Legislative Affairs and Public Liaison)
TREA 366 Policy Advisor to the Senior Advisor to the Assistant Secretary (Enforcement)
TREA 367 Senior Advisor to the Comptroller of the Currency
TREA 368 Special Assistant to the Deputy Secretary of the Treasury
TREA 369 Confidential Staff Assistant to the Deputy Secretary of the Treasury
TREA 370 Assistant to the Commissioner of Internal Revenue
TREA 371 Policy Advisor to the Under Secretary (Enforcement)
TREA 372 Special Assistant to the Assistant Secretary (Financial Markets)
TREA 373 Senior Advisor to the Under Secretary of International Affairs
TREA 374 Senior Policy Analyst to the Deputy Executive Secretary

Section 213.3306 Department of Defense

DOD 5 Private Secretary to Deputy Secretary
DOD 19 Personal and Confidential Assistant to the Director, Program Analysis and Evaluation
DOD 22 Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Atomic Energy
DOD 24 Chauffeur to the Secretary of Defense
DOD 33 Personal Secretary to the Deputy Secretary of Defense
DOD 66 Executive Assistant to the Physician to the President
DOD 75 Chauffeur to the Deputy Secretary of Defense
DOD 101 Special Assistant to the Director of Net Assessment to the Director of Net Assessment
DOD 236 Director for Programs to the Assistant to the Secretary of Defense for Public Affairs
DOD 271 Private Secretary to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
DOD 279 Personal and Confidential Assistant to the Director Operational Test and Evaluation
DOD 295 Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness
DOD 298 Confidential Assistant to the Under Secretary for Acquisition and Technology
DOD 310 Civilian Executive Assistant to the Chairman of the Joint Chiefs of Staff
DOD 317 Confidential Assistant to the Director, Defense Research and Engineering
DOD 320 Executive Assistant to the Secretary of Defense
DOD 321 Executive Assistant to the Assistant to the Vice President for National Security Affairs
DOD 332 Personal and Confidential Assistant to the Assistant Secretary of Defense (Regional Security)
DOD 335 Public Affairs Specialist to the Special Assistant to the Secretary for Public Affairs
DOD 339 Speechwriter to the Special Assistant to the Secretary of Defense for Public Affairs
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary of Defense (Legislative Affairs)
DOD 368 Personal and Confidential Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 386 Personal and Confidential Assistant to the Assistant Secretary of Defense for Reserve Affairs
DOD 434 Speechwriter to the Assistant to Secretary of Defense for Public Affairs
DOD 435 Public Affairs Specialist to the Assistant Secretary of Defense for Public Affairs
DOD 439 Staff Specialist to the Under Secretary (Acquisition and Technology)
DOD 440 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Acquisition Reform
DOD 443 Assistant to the Deputy Secretary of Defense
DOD 449 Staff Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 451 Assistant for Strategy Development to the Deputy Assistant Secretary of Defense (Strategy)
DOD 456 Special Assistant for Family Advocacy and External Affairs to the Deputy Assistant Secretary of Defense, (Prisoner of War/Missing in Action Affairs)
DOD 457 Staff Assistant to the Deputy Assistant Secretary of Defense (Democracy and Human Rights)
DOD 458 Defense Fellow to the Special Assistant to the Secretary of Defense and Deputy Secretary of Defense
DOD 459 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 460 International Counterdrug Specialist to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 464 Defense Fellow to the Deputy Under Secretary for Logistics
DOD 466 Defense Fellow to the Deputy Under Secretary for Environmental Security
DOD 468 Staff Specialist (International) to the Director, Defense Information Systems Agency
DOD 469 Defense Fellow to the Under Secretary of Defense, Personal and Readiness
DOD 473 Personal and Confidential Assistant to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
DOD 474 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 475 Personal and Confidential Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation)
DOD 479 Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs)
DOD 480 Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources)
DOD 488 Personal and Confidential Assistant to the Comptroller
DOD 493 Special Assistant to the Assistant Secretary of Defense (Policy and Plans)
DOD 494 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DOD 495 Special Assistant for Demining and Landmine Control to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 500 Staff Specialist to the Project Director for National Performance Review
DOD 501 Special Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 502 Special Assistant to the Under Secretary of Defense for Policy
DOD 503 Counselor and Senior Assistant for Counterproliferation Policy to the Deputy Assistant Secretary of Defense (Counterproliferation Policy)
DOD 504 Special Assistant to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)
DOD 506 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 506 Staff Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DOD 508 Defense Fellow to the Assistant Secretary of Defense (Legislative Affairs)
DOD 508 Defense Fellow to the Assistant Secretary of Defense (Legislative Affairs)

DOD 510 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 512 Staff Specialist to the Deputy Assistant Secretary for Economic Reinvestment and Base Realignment and Closure
DOD 516 Staff Specialist to the Deputy Under Secretary of Defense for Environmental Security
DOD 519 Private Secretary to the Assistant Secretary of Defense (Regional Security Affairs)
DOD 520 Personal and Confidential Assistant to the Secretary of Defense
DOD 523 Special Assistant to the Assistant Secretary of Defense for Health Affairs
DOD 524 Confidential Assistant to the Deputy Secretary of Defense
DOD 527 Special Assistant for Demand Reduction to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 529 Staff Specialist to the Assistant to the Secretary of Defense, Legislative Affairs
DOD 534 Confidential Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 535 Special Assistant to the Deputy to the Under Secretary of Defense for Policy Support
DOD 536 Personal and Confidential Assistant to the Assistant Secretary of Defense for Economic Security
DOD 540 Senior Advisor for Defense Conversion Policy to the Deputy Under Secretary of Defense (Threat Reduction Policy)
DOD 545 Public Affairs Specialist to the Office of the Assistant Secretary of Defense (Public Affairs)
DOD 546 Private Secretary to the Assistant Secretary of Defense (International Security Policy)
DOD 547 Personal and Confidential Assistant to the Assistant Secretary of Defense (International and Security Policy)
DOD 548 Special Assistant to the Executive Director, President's Foreign Intelligence Advisory Board
DOD 550 Staff Specialist to the Principal Deputy Assistant Secretary of Defense for Dual Use Technology Policy and International Programs
DOD 551 Secretary to the Assistant Secretary of Defense, Strategy and Requirements
DOD 552 Special Assistant to the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support
DOD 553 Program Assistant to the Deputy Under Secretary of Defense for Environmental Security
DOD 555 Confidential Assistant to the General Counsel, Department of Defense
DOD 557 Defense Fellow to the Deputy Assistant Secretary of Defense, Humanitarian and Refugee Affairs
DOD 558 Special Assistant to the Director, Program Analysis and Evaluation
DOD 559 Confidential Assistant to the Assistant Secretary of Defense, Force Management Policy
DOD 560 Staff Assistant to the Deputy Assistant Secretary of Defense (Inter-American Affairs)
DOD 561 Intergovernmental Affairs Specialist to the Under Secretary of Defense (Personal and Readiness)
DOD 562 Defense Fellow to the Assistant Secretary of Defense (International Security Affairs)
DOD 564 Program Analyst to the Deputy Under Secretary (Environmental Secretary)
DOD 566 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Policy)
DOD 568 Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 569 Staff Assistant to the Counselor and Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 570 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Acquisition and Technology)
DOD 571 Secretary (OA) to the Inspector General, Department of Defense
DOD 572 Special Assistant to the Inspector General
DOD 573 Special Assistant for Policy Planning and Analysis to the Head, Plans and Policy Group
DOD 574 Special Assistant to the Assistant Secretary of Defense, International Security Policy
DOD 577 Staff Specialist to the Principal Deputy Assistant Secretary of Defense (Legislative Affairs)
DOD 578 Personal and Confidential Assistant to the Under Secretary of Defense (Policy)
DOD 579 Defense Fellow to the Deputy Assistant Secretary of Defense (European and Nato Policy)
DOD 580 Defense Fellow to the Deputy Assistant Secretary of Defense, African Affairs
DOD 581 Associate Director Communications to the Senior Director, Communications, National Security Council
DOD 582 Foreign Affairs Specialist to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement)
DOD 583 Speechwriter to the Assistant to the Secretary of Defense for Public Affairs
DOD 584 Staff Specialist for Cuban Affairs to the Deputy Assistant Secretary of Defense (Inter-American Affairs)
DOD 585 Staff Assistant to the Special Assistant to the Principal Deputy Under Secretary of Defense (Policy)
DOD 586 Personal and Confidential Assistant to the General Counsel
DOD 587 Staff Assistant to the Director, Policy Planning
DOD 588 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 589 Speechwriter to the Assistant to Secretary of Defense for Public Affairs
DOD 590 International Counterdrug Specialist to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 591 Executive Director (House Affairs) to the Assistant Secretary of Defense (Legislative Affairs)
DOD 592 Program Analyst to the Deputy Assistant Secretary of Defense, Humanitarian and Refugee Affairs
DOD 593 Assistant for China to the Deputy Assistant Secretary of Defense, Asian and Pacific
DOD 594 Director of Requirements to the Deputy Assistant Secretary of Defense (Requirements and Plans)
DOD 595 Confidential Assistant to the Assistant Secretary of Defense (Public Affairs)
DOD 596 Confidential Assistant to the Deputy Advisor for National Security Affairs
DOD 597 Staff Specialist to the Deputy Under Secretary for Logistics
DOD 598 Executive Director (Outreach and Integration) to the Deputy Under Secretary (Industrial Affairs and Installations)
DOD 599 Staff Specialist to the Chief, Plans and Analysis Group
DOD 601 Personal and Confidential Assistant to the Special Assistant to the Secretary of Defense for White House Liaison

Section 213.3307 Department of the Army (DOD)

ARMY 1 Executive Staff Assistant to the Secretary of the Army
ARMY 2 Personal and Confidential Assistant to the Under Secretary of the Army
ARMY 5 Secretary (Stenography/Office Automation) to the Assistant Secretary of the Army (Installations, Logistics and Environment)
ARMY 6 Secretary (Office Automation) to the Assistant Secretary of the Army (Research, Development and Acquisition)
ARMY 21 Secretary (Steno/OA) to the General Counsel
ARMY 55 Secretary (Office Automation) to the Assistant Secretary of the Army (Financial Management)

ARMY 59 Confidential Assistant to the Secretary of the Army
ARMY 68 Special Assistant to the Executive Director (Special Assistant to the Secretary of the Army), World War II Commemorative Committee
ARMY 69 Defense Fellow (Public Affairs) to the Chief of Public Affairs
ARMY 70 Defense Fellow to the Assistant Secretary of the Army (Manpower and Reserve Affairs)
ARMY 71 Special Assistant for Policy to the Secretary of the Army
ARMY 73 Special Assistant for Policy to the Executive Staff Assistant

Section 213.3308 Department of the Navy (DOD)

NAV 49 Staff Assistant to the Under Secretary of the Navy
NAV 50 Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)
NAV 54 Staff Assistant to the General Counsel
NAV 56 Staff Assistant to the Assistant Secretary of the Navy (Financial Management)
NAV 57 Staff Assistant to the Secretary of the Navy
NAV 59 Staff Assistant to the Assistant Secretary of Navy (Manpower and Reserve Affairs)
NAV 60 Staff Assistant to the Assistant Secretary of Navy (Research, Development and Acquisition)

Section 213.3309 Department of the Air Force (DOD)

AF 1 Secretary (S/OA) to the Secretary of the Air Force
AF 2 Confidential Assistant to the Under Secretary of the Air Force
AF 5 Assistant Secretary (Steno) to the Assistant Secretary Acquisition
AF 6 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs)
AF 8 Secretary (Steno/OA) to the General Counsel of the Air Force
AF 22 Secretary (Stenography/OA) to the Assistant to the Vice President for National Security Affairs
AF 29 Confidential Assistant to the Secretary of the Air Force
AF 31 Staff Assistant (Typing) to the Assistant to the Vice President for National Security Affairs
AF 39 Secretary (OA) to the Assistant Secretary of the Air Force (Financial Management and Comptroller)
AF 41 Confidential Assistant for Environmental Legislation to the Deputy Assistant Secretary for Environmental Safety and Occupational Health
AF 42 Staff Assistant to the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment).

Section 213.3310 Department of Justice

JUS 13 Special Assistant to the Deputy Attorney General
JUS 21 Confidential Assistant to the Assistant Attorney General
JUS 27 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 37 Secretary (OA) to the United States Attorney, District of Columbia
JUS 38 Secretary (OA) to the United States Attorney, Northern District of Illinois
JUS 40 Secretary (OA) to the United States Attorney, Eastern District of Michigan
JUS 47 Secretary (OA) to the United States Attorney, Western District of New York
JUS 70 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 75 Secretary (OA) to the United States Attorney, Northern District of Texas
JUS 97 Staff Assistant to the Attorney General
JUS 114 Staff Assistant to the Attorney General
JUS 115 Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 122 Public Affairs Specialist to the Director, Public Affairs
JUS 128 Secretary (OA) to the United States Attorney, District of Arizona
JUS 132 Special Assistant to the Commissioner, Immigration and Naturalization Service
JUS 133 Staff Assistant to the Attorney General
JUS 137 Counselor to the Commissioner, Immigration and Naturalization Service
JUS 140 Attorney Advisor to the Assistant Attorney General
JUS 141 Special Assistant to the Assistant Attorney General (Legislative Affairs)
JUS 144 Special Assistant to the Solicitor General
JUS 149 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 167 Assistant to the Attorney General
JUS 169 Secretary (OA) to the United States Attorney, Middle District of Florida
JUS 170 Assistant to the Attorney General
JUS 173 Secretary (OA) to the United States Attorney, Western District of Louisiana
JUS 184 Counselor to the Assistant Attorney General, Antitrust Division
JUS 186 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 205 Council to the Executive Director, Office of Congressional and Intergovernmental Relations
JUS 207 Staff Assistant to the Director of Public Affairs
JUS 208 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 216 Special Assistant to the Administrator, Office for Juvenile Justice and Delinquency Prevention
JUS 217 Special Assistant to the Director, Bureau of Justice Assistance
JUS 224 Special Assistant to the Deputy Attorney General
JUS 233 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 235 Public Affairs Specialist to the Director of Public Affairs
JUS 242 Special Assistant to the Assistant Attorney General, Civil Division
JUS 243 Staff Assistant to the Assistant Attorney General, Civil Rights Division
JUS 245 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 247 Special Assistant to the Commissioner, Immigration and Naturalization Service
JUS 264 Confidential Assistant to the Assistant Attorney General
JUS 266 Director, Special Projects to the Director, Office of Public Affairs
JUS 268 Litigation Counsel to the Assistant Attorney General
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 273 Special Assistant to the Associate Attorney General
JUS 274 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 279 Deputy Director, Office of Public Liaison and Intergovernmental Affairs to the Assistant Attorney General, Office of Legislative Affairs
JUS 280 Special Assistant to the Assistant Attorney General, Office of Policy Development
JUS 281 Special Advisor to the Deputy Assistant Attorney General
JUS 282 Special Assistant to the Assistant Attorney General, Office of Policy Development
JUS 285 Logistics Coordinator to the Assistant Attorney General, Office of Legislative Affairs
JUS 288 Associate Deputy Attorney General to the Deputy Attorney General
JUS 289 Special Assistant to the Deputy Attorney General

JUS 293 Special Assistant to the Deputy Attorney General
JUS 296 Special Assistant to the Deputy Attorney General
JUS 299 Public Affairs Assistant to the Director, Office of Public Affairs
JUS 309 Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development
JUS 312 Special Assistant to the Assistant Attorney General
JUS 316 Special Assistant to the Director, Office for Victims of Crime
JUS 324 Special Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 330 Assistant Director, Public Liaison and Intergovernmental Affairs to the Assistant Attorney General, Office of Policy Development
JUS 331 Special Assistant to the Director, National Institute of Justice
JUS 353 Confidential Assistant to the Solicitor General
JUS 361 Special Assistant to the Director, Bureau of Justice Statistics
JUS 387 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 386 Special Assistant to the Director, United States Marshals Service
JUS 389 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 401 Counsel to the Deputy Attorney General
JUS 404 Assistant to the Attorney General
JUS 409 Special Assistant to the Director, Violence Against Women Program
JUS 412 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 418 Secretary (OA) to the United States Attorney, District of Nebraska
JUS 419 Secretary (OA/Stenography) to the United States Attorney, Northern District of Florida
JUS 420 Confidential Assistant to the United States Attorney, Eastern District of Pennsylvania
JUS 421 Special Assistant to the Special Representatives to the United States Attorney, Southern District of California
JUS 422 Secretary (OA) to the United States Attorney, Eastern District of Wisconsin
JUS 423 Secretary to the United States Attorney, District of New Mexico
JUS 424 Secretary to the United States Attorney, Northern District of Iowa
JUS 425 Secretary (OA) to the United States Attorney, Middle District of Pennsylvania
JUS 426 Secretary (OA) to the United States Attorney, Sioux Falls, South Dakota
JUS 427 Secretary (OA) to the United States Attorney, District of New Hampshire
JUS 428 Secretary (OA) to the United States Attorney, District of Minnesota
JUS 431 Secretary (OA) to the United States Attorney, District of Oregon, Portland, OR
JUS 433 Secretary (OA) to the United States Attorney, Middle District of Louisiana
JUS 434 Confidential Assistant, to the United States Attorney, Sacramento, CA
JUS 435 Secretary (OA) to the United States Attorney, Western District of Arkansas
JUS 436 Secretary (OA) to the United States Attorney, Middle District of Alabama
JUS 437 Secretary (OA) to the United States Attorney, District of Delaware
JUS 442 Special Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 443 Attorney Advisor (Special Counsel) to the Director, Executive Office for United States Attorney
JUS 444 Deputy Director, Office of Public Liaison and Intergovernmental Affairs to the Assistant Attorney General, Office of Legislative Affairs

Section 213.3312 Department of the Interior

INT 171 Special Assistant to the Commissioner of Reclamation, Bureau of Reclamation
INT 271 Special Assistant to the Director, Minerals Management Service
INT 369 Staff Assistant to the Director, Office of Surface Mining Reclamation and Enforcement
INT 375 Special Assistant to the Secretary and White House Liaison to the Chief of Staff
INT 378 Special Assistant to the Director, Office of Surface Mining
INT 426 Press Secretary to the Director of Communications
INT 431 Special Assistant to the Assistant Secretary for Policy, Management and Budget
INT 436 Special Assistant to the Deputy Director, Bureau of Land Management
INT 442 Special Assistant to the Director, National Parks Service
INT 443 Assistant to the Director and Counselor to the Director, National Park Service
INT 444 Deputy Director for Legislative and Intergovernmental Affairs to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 447 Special Assistant to the Assistant to the Secretary
INT 449 Special Assistant to the Director, Fish & Wildlife Service
INT 450 Special Assistant to the Director, United States Fish & Wildlife Service
INT 451 Deputy Director, Office of Insular Affairs to the Director, Office of Insular Affairs
INT 454 Special Assistant to the Special Assistant to the Deputy Chief of Staff
INT 455 Special Assistant to the Counselor to the Secretary, Deputy Assistant Secretary for Policy
INT 460 Special Assistant and Director of Scheduling and Advance to the Deputy Chief of Staff
INT 461 Special Assistant to the Director, National Park Service
INT 463 Special Assistant to the Director of the National Park Service
INT 466 Special Assistant to the Deputy Director
INT 467 Special Assistant to the Chief of Staff
INT 468 Special Assistant to the Chief of Staff
INT 474 Special Assistant to the Commissioner of Reclamation
INT 475 Special Assistant to the Commissioner of Reclamation
INT 476 Special Assistant to the Director, Bureau of Land Management
INT 479 Special Assistant to the Deputy Director, Minerals Management Service
INT 480 Special Assistant to the Commissioner of Reclamation
INT 483 Special Assistant to the Assistant Secretary, Water and Science
INT 485 Special Assistant to the Deputy Director, External Affairs, U.S. Fish and Wildlife Service
INT 486 Special Assistant (Speech Writer) to the Director, Office of Communications
INT 487 Special Assistant to the Deputy Chief of Staff
INT 490 Special Assistant (Advance) to the Deputy Chief of Staff
INT 491 Deputy Scheduler to the Deputy Chief of Staff
INT 493 Special Assistant and Director of Executive Secretariat to the Deputy Chief of Staff
INT 494 Special Assistant to the Director, National Biological Service
INT 496 Special Assistant to the Deputy Assistant Secretary, Indian Affairs
INT 497 Special Assistant to the Deputy Chief of Staff

Section 213.3313 Department of Agriculture

AGR 3 Confidential Assistant to the Executive Assistant to the Secretary
AGR 24 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 26 Confidential Assistant to the Administrator, Farmers Home Administration

AGR 27 Confidential Assistant to the Director, Legislative Affairs and Public Information Staff
AGR 31 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 32 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 33 Confidential Assistant to the Administrator, Consolidated Farm Service Agency
AGR 34 Special Assistant to the Administrator, Agricultural Stabilization Conservation Service
AGR 35 Staff Assistant to the Administrator, Farm Service Agency
AGR 48 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 56 Private Secretary to the Assistant Secretary for Congressional Relations
AGR 64 Confidential Assistant to the Director of Legislative Affairs and Public Information Staff, Rural Economic and Community Development
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 81 Confidential Assistant to the Director, Legislative Affairs and Public Information Staff
AGR 96 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 100 Special Assistant to the Administrator, Food and Nutrition Service
AGR 106 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 111 Confidential Assistant to the Secretary of Agriculture
AGR 114 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 131 Private Secretary to the Assistant Secretary for Natural Resources and Environment
AGR 139 Staff Assistant to the Secretary of Agriculture
AGR 143 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 151 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 157 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 159 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 160 Confidential Assistant to the Associate Administrator, Foreign Agricultural Service
AGR 161 Special Assistant to the Director, Office of Public Affairs
AGR 164 Confidential Assistant to the Under Secretary for Research, Education and Economics
AGR 182 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 186 Special Assistant to the Secretary of Agriculture
AGR 188 Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service
AGR 190 Area Director, Midwest Region to the Administrator, Agricultural Stabilization and Conservation Service
AGR 203 Special Assistant to the Secretary of Agriculture
AGR 205 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 218 Confidential Assistant to the Assistant Secretary for Administration
AGR 225 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 238 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services to the Assistant Secretary for Food and Consumer Services
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 268 Special Assistant to the Administrator, Rural Electrification Administration
AGR 276 Director, Legislative Affairs to the Under Secretary, Cooperative State Research, Education and Extension Service
AGR 281 Confidential Assistant to the Administrator, Farm Service Agency
AGR 285 Confidential Assistant to the Executive Assistant to the Secretary
AGR 287 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 290 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 293 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 294 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 295 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 298 Confidential Assistant to the Administrator, Food, Nutrition and Consumer Service
AGR 308 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 311 Confidential Assistant to the Administrator, Agricultural Research Service
AGR 312 Executive Assistant to the Administrator, Farmers Home Administration
AGR 316 Staff Assistant to the Chief, Soil Conservation Service
AGR 327 Staff Assistant to the Director of Public Affairs
AGR 328 Special Assistant to the Director of Intergovernmental Affairs, Office of Public Affairs
AGR 330 Confidential Assistant to the Director, Office of Public Affairs
AGR 332 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 341 Confidential Assistant to the Manager, Farm and Foreign Agriculture Service
AGR 343 Executive Assistant to the Director, Office of Public Affairs
AGR 346 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 347 Confidential Assistant to the Deputy Director, Office of Public Affairs
AGR 349 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 352 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 359 Executive Speech Writer to the Director, Office of Public Affairs
AGR 366 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 368 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 369 Confidential Assistant to the Administrator, Rural Development Administration
AGR 370 Senior Policy Director to the Administrator, Rural Business-Cooperative Service
AGR 374 Deputy Administrator for Policy and Planning to the Administrator, Policy and Planning
AGR 377 Confidential Assistant to the Administrator, Rural Development Administration
AGR 381 Confidential Assistant to the Under Secretary for Small Community and Rural Development
AGR 384 Confidential Assistant to the Secretary of Agriculture
AGR 385 Confidential Assistant to the Deputy Director, Office of the Executive Secretariat

AGR 388 Staff Assistant to the Chief, Soil Conservation Service
AGR 393 Confidential Assistant to the Administrator, Rural Development Administration
AGR 395 Confidential Assistant to the Director, Office of Advocacy and Enterprise
AGR 396 Staff Assistant to the Assistant Secretary for Congressional Relations
AGR 397 Confidential Assistant to the Chief, Soil Conservation Service
AGR 399 Secretary (Typing) to the Assistant Secretary for Administration
AGR 400 Special Assistant to the Assistant Secretary for Administration
AGR 401 Staff Assistant to the Chief Economist
AGR 404 Confidential Assistant to the Director of Personnel
AGR 406 Confidential Assistant to the Executive Assistant to the Secretary
AGR 411 Confidential Assistant to the Assistant Secretary for Administration
AGR 412 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 413 Special Assistant to the Chief of the Soil Conservation Service
AGR 414 Special Assistant to the Secretary of Agriculture
AGR 415 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 417 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 418 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 421 Director, Public Liaison to the Director, Office of Public Liaison
AGR 422 Special Assistant (Jackson, MS) to the Administrator, Farmers Home Administration
AGR 425 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 426 Deputy Director, Special Projects to the Director, Office of Communications
AGR 427 Special Assistant to the Deputy Assistant Secretary
AGR 428 Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service
AGR 429 Confidential Assistant to the Director, Office of Civil Rights Enforcement
AGR 430 Deputy Press Secretary to the Director, Office of Public Affairs
AGR 431 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 432 Confidential Assistant to the Secretary of Agriculture
AGR 434 Area Director to the Deputy Administrator, State and County Operations
AGR 435 Confidential Assistant to the Administrator, Grain Inspection, Packers and Stockyards Administration
AGR 436 Staff Assistant to the Administrator, Rural Electrification Administration
AGR 437 Confidential Assistant to the Chief, Forest Service
AGR 438 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 439 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 440 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 441 Deputy Under Secretary for Rural Economic and Community Development to the Under Secretary, Rural Economic and Community Development
AGR 442 Special Assistant to the Administrator, Cooperative State Research Education, and Extension Service
AGR 443 Confidential Assistant to the Under Secretary for Natural Resources and Environment
AGR 444 Confidential Assistant to the Administrator, Food and Safety Inspection Service
AGR 445 Special Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 446 Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service

Section 213.3314 Department of Commerce

COM 1 Special Assistant to the Senior Policy Advisor
COM 16 Special Assistant to the General Counsel, Office of the General Counsel
COM 19 Private Chauffeur to the Secretary
COM 48 Confidential Assistant to the Under Secretary for Travel and Tourism
COM 70 Director of Congressional Affairs to the Assistant Secretary for Economic Development, Economic Development Administration
COM 74 Director, Office of Public Affairs to the Assistant Secretary for Economic Development
COM 100 Special Assistant to the Director, Minority Business Development Agency
COM 152 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 162 Special Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 181 Special Assistant to the Assistant Secretary for Communications and Information
COM 189 Special Assistant to the Assistant Secretary for National Communications and Information Administration
COM 190 Director, Office of Congressional Affairs to the Assistant Secretary for Communication and Information
COM 194 Special Assistant to the Under Secretary, National Oceanic and Atmospheric Administration
COM 204 Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration
COM 237 Special Assistant to the Under Secretary for International Trade
COM 258 Special Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration
COM 259 Director of Congressional Affairs to the Under Secretary for International Trade, International Trade Administration
COM 260 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
COM 262 Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration
COM 266 Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration
COM 268 Executive Assistant to the Counsellor and Chief of Staff
COM 274 Confidential Assistant to the Director, Office of Business Liaison
COM 275 Confidential Assistant to the Director, Office of Business Liaison
COM 284 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
COM 288 Confidential Assistant to the Director, Office of Business Liaison
COM 291 Special Assistant to the Press Secretary and Acting Director, Office of Public Affairs
COM 294 Executive Assistant to the Secretary of Commerce
COM 298 Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
COM 303 Special Assistant to the Chief Financial Officer and Assistant Secretary for Administration
COM 306 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 308 Special Assistant to the Assistant Secretary for Trade Development

COM 312 Special Assistant to the Director General of the U.S. and Foreign Commercial Service
COM 314 Special Assistant to the Director, Office of the White House Liaison
COM 320 Confidential Assistant to the Director, Office of External Affairs
COM 321 Director, Office of Public Affairs to the Under Secretary for International Trade, the International Trade Administration
COM 326 Confidential Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service
COM 342 Confidential Assistant to the Director of White House Liaison
COM 350 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison
COM 352 Confidential Assistant to the Deputy Chief of Staff
COM 365 Special Assistant to the Director, Minority Business Development Agency
COM 370 Chief, Legislative and Intergovernmental Affairs to the Assistant Director for External Affairs
COM 374 Congressional Liaison Specialist to the Congressional Affairs Officer
COM 385 Special Assistant to the Director, Bureau of Census
COM 390 Confidential Assistant to the Under Secretary for Economic Affairs/ Administrator, Economics and Statistics Administration
COM 397 Congressional Affairs Officer to the Assistant Director for Communications, Census Bureau
COM 398 Special Assistant to the Deputy Assistant Secretary for Domestic Operations
COM 415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration
COM 416 Director, Office of Consumer Affairs to the Secretary of Commerce
COM 418 Confidential Assistant to the Under Secretary for Economic Affairs
COM 420 Special Assistant to the Director General of the United States and Foreign Commercial Service, International Trade Administration
COM 423 Director of Congressional Affairs to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 427 Special Assistant to the Deputy Under Secretary for Export Administration
COM 428 Deputy Director to the Director, White House Liaison
COM 432 Confidential Assistant to the Assistant to the Deputy Secretary
COM 439 Special Assistant to the General Counsel
COM 448 Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 452 Confidential Assistant to the Chief of Staff
COM 466 Director of Public Affairs to the Under Secretary, Technology Administration
COM 468 Confidential Assistant to the Under Secretary for Export Administration, Bureau of Export Administration
COM 469 Deputy Director, Office of White House Liaison to the Director, Office of White House Liaison
COM 477 Director of Legislative and Intergovernmental Affairs to the Deputy Under Secretary for Travel and Tourism
COM 480 Director of Congressional Affairs to the Under Secretary for Technology
COM 481 Special Assistant to the Under Secretary for Technology
COM 482 Director, Executive Secretariat to the Chief of Staff
COM 485 Special Assistant to the Chief of Staff
COM 490 Deputy Director of External Affairs and Director of Scheduling to the Director, Office of External Affairs
COM 500 Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism
COM 511 Confidential Assistant to the Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 519 Special Assistant to the General Council, National Oceanic and Atmospheric Administration
COM 527 Executive Assistant to the Secretary
COM 528 Deputy Director of Scheduling to the Director of Scheduling, Office of the Secretary
COM 530 Special Assistant to the Under Secretary for Technology, Technology Administration
COM 535 Congressional Liaison Specialist to the Director, Office of Congressional Affairs
COM 536 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 538 Special Assistant and Chief of Protocol to the Chief of Staff
COM 539 Special Assistant to the Chief of Staff
COM 544 Special Assistant to the Under Secretary for International Trade, International Trade Administration
COM 548 Confidential Assistant to the Assistant Secretary Legislative and Interagency Affairs
COM 549 Special Assistant to the Deputy Under Secretary Economic Affairs
COM 550 Special Assistant to the Assistant Secretary, Legislative and Intergovernmental Affairs
COM 556 Confidential Assistant to the Assistant to the Deputy Secretary
COM 560 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 561 Confidential Assistant to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 563 Deputy Director of Scheduling to the Deputy Director of External Affairs and Director of Scheduling
COM 571 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance
COM 574 Confidential Assistant to the Director, Office of Business Liaison
COM 579 Director of Legislative, Intergovernmental and Public Affairs to the Under Secretary, Bureau of Export Administration
COM 585 Chief, Intergovernmental Affairs to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 586 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 587 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 588 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration
COM 588 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration
COM 589 Special Assistant to the Director, Office of Public and Constituent Affairs, National Oceanic and Atmospheric Administration
COM 592 Special Assistant to the Deputy Assistant Secretary for Technology and Aerospace Industries, International Trade Administration
COM 594 Deputy Director of Advance to the Deputy Director of External Affairs
COM 595 Confidential Assistant to the Director, Office Space Commerce
COM 595 Confidential Assistant to the Director, Office Space Commerce
COM 597 News Analyst to the Director, Office of Public Affairs
COM 598 Special Assistant to the Deputy General Counsel
COM 599 Confidential Assistant to the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration
COM 601 Director, Office of Public Affairs to the Under Secretary for

Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 604 Assistant Director for Communications to the Director, Bureau of the Census
COM 607 Intergovernmental Affairs Specialist to the Chief Intergovernmental Affairs, Office of Sustainable Development and Intergovernmental Affairs (NOAA)
COM 608 Confidential Assistant to the Director of Public Affairs
COM 610 Special Assistant to the Deputy Assistant Secretary for International Economic Development
COM 611 Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration
COM 612 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration
COM 616 Confidential Assistant to the Assistant Secretary for Export Administration, Bureau of Export Administration
COM 617 Director, Office of Energy, Infrastructure and Machinery to the Deputy Assistant Secretary for Basic Industries
COM 618 Confidential Assistant to the Director, Secretariat Staff, Office of the Executive Secretariat
COM 620 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration
COM 622 Confidential Assistant to the Assistant Secretary for Economic Development Administration
COM 623 Confidential Assistant to the Deputy Under Secretary for International Trade
COM 625 Special Assistant to the Deputy Assistant Secretary for Technology Policy
COM 627 Special Assistant for Public Affairs to the Under Secretary for Travel and Tourism
COM 629 Deputy Director to Director, the Office of Public, Congressional and Intergovernmental Affairs
COM 630 Assistant Director for Operations to the Director for Strategic Planning
COM 631 Special Advisor to the Director, Oceanic and Atmospheric Administrator
COM 632 Deputy Assistant Secretary for Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 634 Confidential Assistant to the Deputy Assistant Secretary for Administration
COM 635 Special Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service
COM 636 Director, Office of Export Promotion Coordination to the Deputy Assistant Secretary for Trade Development
COM 640 Confidential Assistant to the Director, Office of Public, Congressional and Intergovernmental Affairs, International Trade Administration
COM 641 Special Assistant to the Director, Office of External Affairs
COM 642 Confidential Assistant to the Director, Office of External Affairs
COM 643 Confidential Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks
COM 644 Special Assistant to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 645 Special Assistant to the Director, Legislative, Intergovernmental and Public Affairs
COM 646 Confidential Assistant to the Press Secretary
COM 647 Deputy Press Secretary to the Press Secretary
COM 648 Press Secretary to the Secretary of Commerce
COM 649 Confidential Assistant to the Press Secretary
COM 650 Confidential Assistant to the Press Secretary
COM 652 Confidential Assistant to the Deputy Director, Office of Public Affairs
COM 654 Confidential Assistant to the Counselor to the Department of Commerce
COM 655 Confidential Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service, International Trade Administration
COM 657 Confidential Assistant to the Director of Legislative, Intergovernmental and Public Affairs
COM 659 Director, Office of White House Liaison to the Deputy Chief of Staff
COM 660 Congressional Liaison Specialist to the Director of Congressional Affairs
COM 662 Confidential Assistant to the Deputy Assistant Secretary for International Economic Development
COM 663 Confidential Assistant to the Assistant Director for External Affairs
COM 664 Special Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service
COM 665 Director, National Information Infrastructure Initiatives to the Assistant Secretary for Communications and Information
COM 666 Confidential Assistant to the Director, Office of Legislative Affairs
COM 667 Senior Advisor for Policy and Planning to the Deputy Assistant Secretary for International Economic Development
COM 668 Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods to the Assistant Secretary for Trade Development
COM 669 Confidential Assistant to the Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods
COM 670 Director, Office of Legislative Affairs to the Assistant Secretary for Oceans and Atmosphere
COM 671 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 672 Speechwriter to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 673 Special Assistant to the Deputy Assistant Secretary for International Economic Development
COM 674 Speechwriter to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 675 Special Assistant to the Deputy Assistant Secretary for International Economic Development
COM 676 Confidential Assistant to the Deputy Assistant Secretary for Environmental Technologies Exports
COM 677 Special Assistant to the Director of External Affairs
COM 678 Special Assistant to the Deputy Assistant Secretary for Basic Industries
COM 679 Confidential Assistant to the Deputy Press Secretary
COM 680 Deputy Press Secretary-Agency Coordination to the Director for Communications and Press Secretary
COM 681 Special Assistant to the Assistant Secretary for International Economic Policy
COM 682 Associate Under Secretary for Economic Affairs to the Under Secretary for Economic Affairs

Section 213.3315 Department of Labor

LAB 3 Special Assistant to the Secretary of Labor
LAB 17 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 25 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 35 Special Assistant to the Director of the Women's Bureau
LAB 41 Chief of Staff to the Assistant Secretary for Office of Congressional and Intergovernmental Affairs
LAB 66 Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration

LAB 76 Special Assistant to the Director of the Women's Bureau
LAB 79 Counselor to the Assistant Secretary for Policy
LAB 87 Staff Assistant to the Assistant Secretary for Employment Standards, Employment Standards Administration
LAB 92 Special Assistant to the Counselor to the Secretary
LAB 93 Staff Assistant to the Secretary of Labor
LAB 94 Deputy Chief of Staff to the Chief of Staff
LAB 96 Chief of Staff to the Assistant Secretary for Employment and Training
LAB 99 Special Assistant to the Assistant Secretary of Labor
LAB 101 Special Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration
LAB 103 Secretary's Representative, Boston, MA, to the Associate Director, Intergovernmental Affairs
LAB 104 Secretary's Representative New York, NY, to the Associate Director, Intergovernmental Affairs
LAB 105 Secretary's Representative, Philadelphia, PA, to the Associate Director, Office of Congressional and Intergovernmental Affairs
LAB 106 Secretary's Representative, Atlanta, GA, to the Director, Office of Intergovernmental Affairs
LAB 107 Secretary's Representative, Chicago, IL, to the Associate Director, Intergovernmental Affairs
LAB 109 Secretary's Representative, Kansas City, MO, to the Associate Director, Intergovernmental Affairs
LAB 112 Secretary's Representative, Seattle, WA, to the Director, Office of Intergovernmental Affairs
LAB 123 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 129 Press Secretary to the Assistant Secretary, Occupational Safety and Health Administration
LAB 130 Special Assistant to the Executive Secretary
LAB 132 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 137 Special Assistant to the Assistant Secretary for Public Affairs
LAB 137 Press Secretary to the Assistant Secretary for Public Affairs
LAB 145 Intergovernmental Officer to the Associate Director Intergovernmental Affairs
LAB 151 Special Assistant to the Director, Women's Bureau
LAB 152 Special Assistant to the Director, Women's Bureau
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs
LAB 160 Director of Scheduling and Advance to the Chief of Staff
LAB 161 Special Assistant to the Chief Economist
LAB 163 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration
LAB 168 Special Assistant to the Deputy Secretary
LAB 169 Chief of Staff to the Assistant Secretary for Policy
LAB 171 Special Assistant to the Secretary of Labor
LAB 172 Special Assistant to the Deputy Secretary of Labor
LAB 174 Special Assistant to the Executive Secretary
LAB 177 Staff Assistant to the Chief of Staff
LAB 179 Special Assistant to the Assistant Secretary, Employment Standards Administration
LAB 180 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 189 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration
LAB 190 Special Assistant to the Assistant Secretary for Policy
LAB 191 Special Assistant to the Assistant Secretary for Policy
LAB 196 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 197 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 199 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 204 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 208 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 210 Speech Writer to the Assistant Secretary for Policy
LAB 211 Special Assistant to the Executive Secretary
LAB 212 Special Assistant to the Assistant Secretary for Policy
LAB 215 Special Assistant to the Director of the Women's Bureau
LAB 217 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 219 Special Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 220 Chief of Staff to the Assistant Secretary for Public Affairs
LAB 225 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 231 Staff Assistant to the Chief of Staff
LAB 234 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 237 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 239 Special Assistant to the Chief of Staff
LAB 241 Special Assistant to the Assistant Secretary for Public Affairs
LAB 252 Director of Special Projects to the Assistant Secretary for Public Affairs
LAB 253 Staff Assistant to the Chief of Staff
LAB 255 Special Assistant to the Assistant Secretary for Public Affairs
LAB 259 Special Assistant to the Assistant Secretary for Policy
LAB 260 Special Assistant to the Chief of Staff
LAB 263 Special Assistant to the Administrator, Wage and Hour Division
LAB 266 Staff Assistant to the Deputy Under Secretary for International Labor Affairs
LAB 269 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 272 Special Assistant to the Assistant Secretary for Mine Safety and Health
LAB 273 Chief of Staff to the Assistant Secretary for Administration and Management
LAB 276 Advisor to the Assistant Secretary, Mine Safety and Health
LAB 277 Special Assistant to the Assistant Secretary for Administration Managment
LAB 278 Special Assistant to the Assistant Secretary for Administration and Management

Section 213.3316 Department of Health and Human Services

HHS 14 Special Assistant to the Executive Secretary
HHS 17 Director, Office of Scheduling to the Chief of Staff, Office of the Secretary
HHS 31 Special Assistant to the Secretary of Health and Human Services
HHS 127 Special Assistant to the Director, Office for Civil Rights
HHS 187 Special Assistant to the Deputy Assistant Secretary for Legislation (Health)
HHS 230 Attorney Advisor (Special Assistant) to the General Counsel
HHS 276 Special Assistant for Liaison to the Associate Commissioner for Legislative Affairs
HHS 315 Special Assistant to the Director of Intergovernmental Affairs

HHS 331 Special Assistant to the Administrator, Health Care Financing Administration
HHS 336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 340 Executive Assistant to the Assistant Secretary for Legislation
HHS 344 Congressional Liaison Specialist to the Deputy Assistant for Legislation (Congressional Liaison)
HHS 346 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 368 Director, Office of Media Relations to the Associate Administrator for External Affairs
HHS 370 Confidential Assistant to the Associate Administrator for External Affairs
HHS 373 Confidential Assistant to the Executive Secretary
HHS 374 Confidential Assistant to the Executive Secretary
HHS 395 Special Assistant to the Director, Office of Community Services, Administration for Children and Families.
HHS 415 Special Assistant to the Secretary, Department of Health and Human Services
HHS 427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for the Administration for Children and Families
HHS 457 Special Assistant to the Deputy Secretary
HHS 487 Confidential Assistant to the Administrator, Health Care Financing Administration
HHS 500 Director, Office of Professional Relations to the Associate Administrator for External Affairs, Health Care Financing Administration
HHS 510 Deputy Director, Office of Professional Relations to the Director, Office of Professional Relations, Health Care Financing Administration
HHS 512 Special Assistant to the Assistant Secretary for Children and Families
HHS 529 Confidential Assistant (Scheduling) to the Director of Scheduling
HHS 539 Special Assistant to the General Counsel
HHS 549 Speechwriter to the Director of Speechwriting, Office of the Deputy Assistant Secretary for Public Affairs (Media)
HHS 553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 558 Confidential Assistant to the Assistant Secretary for Public Affairs
HHS 585 Special Assistant (Speechwriter) to the Director of Speechwriting
HHS 588 Director, Division of Intergovernmental Affairs to the Director, Office of Public Affairs
HHS 589 Speechwriter to the Director of Speechwriting
HHS 590 Confidential Assistant (Advance) to the Director of Scheduling and Advance
HHS 594 Confidential Assistant (Advance) to the Director of Scheduling
HHS 609 Special Initiatives Coordinator to the Assistant Secretary for Public Affairs
HHS 610 Executive Assistant to the Deputy Assistant Secretary for Aging (Operations)
HHS 613 Executive Assistant to the Assistant Secretary for Planning and Evaluation
HHS 614 Confidential Assistant to the Assistant Secretary for Aging
HHS 615 Special Assistant to the Director of Communications, Communications Services Division
HHS 617 Confidential Assistant to the Special Assistant to the Secretary of Health and Human Services
HHS 622 Special Assistant to the Director, Office of Professional Relations
HHS 624 Special Assistant to the Commissioner, Administration for Children and Families
HHS 628 Special Assistant to the Administrator, Substance Abuse and Mental Health Services Administration
HHS 633 Special Assistant to the Director, Office of Community Services, Administration for Children and Families
HHS 634 Special Assistant to the Deputy Director, Office of Child Support Enforcement
HHS 636 Senior Advisor to the Director, Indian Health Service
HHS 637 Special Assistant for Legislative Affairs to the Director, U.S. Office of Consumer Affairs
HHS 639 Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs
HHS 642 Special Assistant to the Director, Office of Community Services
HHS 643 Executive Assistant for Legislative Projects to the Assistant Secretary for Health
HHS 644 White House Liaison to the Chief of Staff
HHS 645 Strategic Planning and Policy Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 646 Deputy Chief of Staff to the Chief of Staff
HHS 647 Deputy Assistant Secretary for Legislative (Congressional Liaison) to the Assistant Secretary for Legislation
HHS 648 Director, Secretarial Briefing and Policy Coordinator to the Executive Secretary
HHS 650 Confidential Advisor to the Associate Commissioner, Child Care Bureau

Section 213.3317 Department of Education

EDU 1 Special Assistant to the Secretary's Regional Representative, Region IX
EDU 2 Confidential Assistant to the Director, Scheduling and Briefing
EDU 3 Confidential Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 4 Deputy Secretary's Regional Representative, to the Secretary's Regional Representative, Region IV (Atlanta, GA)
EDU 5 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 6 Confidential Assistant to the Special Advisor to the Secretary
EDU 7 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 8 Special Assistant to the Director, Office of Public Affairs
EDU 9 Special Assistant to the Director, Office of Public Affairs
EDU 12 Confidential Assistant to the Chief of Staff
EDU 12 Special Assistant to the Director, Office of Educational Technology
EDU 14 Special Assistant to the Assistant Secretary (Office of Elementary and Secondary Education)
EDU 16 Special Assistant to the Assistant Secretary, Intergovernmental and Interagency Affairs
EDU 18 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 19 Special Assistant to the Secretary of Education
EDU 20 Steward to the Chief of Staff
EDU 24 Confidential Assistant to the Director, Regional Services Team
EDU 25 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 27 Confidential Assistant to the Assistant Secretary, Office of Civil Rights

EDU 29 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 30 Director, Scheduling and Briefing Staff to the Chief of Staff, Office of the Secretary
EDU 31 Special Assistant to the Secretary of Education
EDU 33 Special Assistant to the Chief of Staff
EDU 34 Special Assistant to the Commissioner, Rehabilitation Service Administration
EDU 35 Special Assistant to the Secretary's Regional Representative, Region I
EDU 36 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 39 Special Assistant to the Deputy Secretary
EDU 43 Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 44 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 46 Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 48 Special Assistant/Chief of Staff to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 49 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 50 Special Assistant to the Director, Office of Public Affairs
EDU 53 Special Assistant to the Under Secretary
EDU 55 Special Assistant (Special Advisor, HBCU) to the Director, Historically Black Colleges and Universities Staff
EDU 57 Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 58 Confidential Assistant to the Director, Executive Secretariat
EDU 62 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 66 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 67 Special Assistant to the Secretary of Education
EDU 70 Confidential Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 71 Executive Assistant to the Deputy Secretary of Education
EDU 73 Confidential Assistant to the Senior Advisor on Education Reform
EDU 74 Chief of Staff to the Deputy Secretary
EDU 75 Confidential Assistant to the Secretary's Regional Representative, Region IX
EDU 76 Special Assistant to the Chief of Staff
EDU 78 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 79 Special Assistant to the Director, Office of Public Affairs
EDU 81 Special Assistant to the Secretary of Education
EDU 84 Special Assistant to the Chief of Staff
EDU 85 Special Assistant to the Deputy Assistant Secretary, Office of Student Financial Assistance Programs
EDU 87 Special Assistant to the Director, Office of Special Education Programs
EDU 94 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 95 Special Assistant to the Assistant Secretary, Office for Civil Rights
EDU 98 Special Assistant to the Assistant Secretary for Special Education and Rehabilitation Services
EDU 99 Executive Assistant for Policy and Operations to the Assistant Secretary, Office of Civil Rights
EDU 101 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region I, Boston, MA
EDU 103 Secretary's Regional Representative, Region VIII-Denver, CO, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 104 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 106 Special Assistant to the Assistant Secretary, Office of Human Resources Division
EDU 107 Secretary's Regional Representative, Region V, Chicago, IL, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 108 Special Assistant to the Director, Office of Public Affairs
EDU 109 Secretary's Regional Representative, Region VII, Kansas City, MO, to the Director, of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 110 Secretary's Regional Representative-Region II-New York, NY, to the Director of State, Local and Regional Services Staff
EDU 111 Director, White House Initiatives on Hispanic Education to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 113 Special Assistant to the Chief of Staff, Office of the Deputy Secretary
EDU 114 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 115 Special Assistant to the Senior Advisor on Education
EDU 117 Director, Historically Black Colleges to the Assistant Secretary, Postsecondary Education
EDU 119 Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 120 Director, Congressional Affairs Staff to the Assistant Secretary for Legislation and Congressional Affairs
EDU 122 Deputy Secretary's Regional Representative Region VI, Dallas, Texas to the Secretary's Regional Representative
EDU 123 Secretary's Regional Representatives Region VI-Dallas, TX, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 124 Executive Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 125 Deputy Director to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 127 Secretary's Regional Representative Region I-Boston, MA, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 129 Special Assistant to the Assistant Secretary for Vocational and Adult Education
EDU 131 Secretary's Regional Representative, Region IX, San Francisco, CA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 132 Confidential Assistant to the Director, Educational Technology
EDU 134 Confidential Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs
EDU 136 Confidential Assistant to the Assistant Secretary, Intergovernmental and Interagency Affairs
EDU 138 Special Assistant to the Under Secretary
EDU 139 Confidential Assistant to the General Counsel
EDU 140 Liaison for Community and Junior Colleges to the Assistant Secretary for Vocational and Adult Education
EDU 141 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 142 Special Assistant to the Director, Office of Public Affairs

EDU 144 Director, Intradepartmental Services to the Director, Federal Interagency and Internal Services
EDU 145 Special Assistant to the Under Secretary
EDU 156 Special Assistant to the Director, Historically Black Colleges and Universities
EDU 157 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 159 Confidential Assistant to the Deputy Assistant Secretary, Student Financial Assistance Programs, Office of Postsecondary Education.
EDU 161 Confidential Assistant to the Counselor to the Secretary
EDU 164 Special Assistant to the Chief of Staff
EDU 169 Special Assistant to the Director, Community Development Field Services Staff, Community Reform Initiatives Services
EDU 174 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary
EDU 175 Confidential Assistant to the Special Assistant, Office of the Secretary
EDU 175 Confidential Assistant to the Special Assistant, Office of the Secretary
EDU 177 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 180 Special Assistant to the Director of Scheduling and Briefing Staff
EDU 184 Confidential Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs
EDU 186 Confidential Assistant to the Director Scheduling and Briefing
EDU 191 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 202 Confidential Assistant to the Director, Community Reform Initiatives Services
EDU 227 Confidential Assistant to the Chief of Staff, Office of the Secretary
EDU 227 Confidential Assistant to the Special Advisor to the Secretary
EDU 273 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 282 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 299 Confidential Assistant to the Special Assistant
EDU 340 Deputy Secretary's Regional Representative, Region II, New York, NY, to the Secretary's Regional Representative
EDU 347 Secretary's Regional Representative, Region X, Seattle, WA, to the Director of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 356 Deputy Director, Office of Public Affairs to the Director Office of Public Affairs
EDU 404 Secretary's Regional Representative, Region IV, Atlanta, GA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 427 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 428 Confidential Assistant to the Director of Scheduling and Briefing Staff
EDU 432 Special Assistant to the Director, Community Development Field Services Staff, Community Reform Initiatives Services
EDU 433 Confidential Assistant to the Director, Constituent Relations Staff
EDU 437 Special Assistant to the Deputy Secretary
EDU 438 Confidential Assistant to the Assistant Secretary, Office for Civil Rights
EDU 439 Special Assistant to the Deputy Chief of Staff

Section 213.3318 Environmental Protection Agency

EPA 155 Congressional Liaison Specialist to the Associate Administrator
EPA 160 Director, Congressional Liaison Division to the Associate Administrator for Congressional and Legislative Affairs
EPA 163 Communications Specialist to the Associate Administrator for Communications, Education and Public Affairs
EPA 167 Director, Public Liaison Division to the Associate Administrator for Communications, Education and Public Affairs
EPA 168 Program Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 170 Staff Assistant (Management) to the Assistant Administrator for Office of Policy, Planning and Evaluation
EPA 171 Congressional Liaison Specialist to the Director, Congressional Liaison Division
EPA 172 Special Assistant to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 175 Director, Office of the Executive Secretariat to the Chief of Staff, Office of the Administrator
EPA 176 Staff Assistant to the Deputy Associate Administrator, Office of Communications
EPA 177 Senior Policy Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 179 Advanced Program Advisor to the Assistant Administrator for Enforcement
EPA 180 Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations
EPA 182 Legal Advisor to the Assistant Administrator for Prevention, Pesticides and Toxic Substances
EPA 183 Confidential Assistant to the Chief of Staff
EPA 184 Chief, Policy Counsel to the Assistant Administrator, Office of Water
EPA 187 Counsel to the Assistant Administrator for Air and Radiation
EPA 188 Legislative Coordinator to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 190 Special Assistant to the General Counsel
EPA 192 Director, State/Local Relations Division to the Associate Administrator, for Regional Operations and State/Local Relations
EPA 193 Executive Assistant to the Assistant Administrator for Prevention, Pesticides and Toxic Substances
EPA 194 Special Assistant to the Associate Administrator for Communications, Education, and Public Affairs
EPA 197 Confidential Assistant to the Chief of Staff
EPA 198 Assistant to the Deputy Administrator for External Affairs
EPA 199 Policy Advisor to the Assistant Administrator for Air and Radiation
EPA 200 Senior Policy Advisor to the Director, Common Sense Initiative Program Staff

Section 213.3322 Surface Transportation Board (DOT)

STB 1 Confidential Assistant to the Chairman
STB 2 Congressional Affairs Advisor to the Chairman
STB 3 Staff Advisor (Management) to a Commissioner

Section 213.3323 Federal Communications Commission

FCC 11 Chief, Office of Public Affairs to the Chairman,
FCC 23 Special Assistant to the Director, Office of Legislative Affairs
FCC 24 Special Assistant to the Chief, International Bureau
FCC 25 Special Assistant to the Deputy Chief, Cable Service Bureau
FCC 26 Special Assistant (Public Affairs) to the Chief, Cable Services Bureau

Section 213.3323 Overseas Private Investment Corporation

OPIC 14 Special Assistant to the Senior Vice President for Policy and Investment Development

Section 213.3325 United States Tax Court

TCOUS 40 Secretary and Confidential Assistant to a Judge
TCOUS 41 Secretary and Confidential Assistant to a Judge
TCOUS 42 Secretary and Confidential Assistant to a Judge
TCOUS 44 Secretary and Confidential Assistant to a Judge
TCOUS 45 Secretary and Confidential Assistant to a Judge
TCOUS 46 Secretary and Confidential Assistant to a Judge
TCOUS 47 Secretary and Confidential Assistant to a Judge
TCOUS 48 Secretary and Confidential Assistant to a Judge
TCOUS 49 Secretary and Confidential Assistant to a Judge
TCOUS 50 Secretary and Confidential Assistant to a Judge
TCOUS 51 Secretary and Confidential Assistant to a Judge
TCOUS 52 Secretary and Confidential Assistant to a Judge
TCOUS 53 Secretary and Confidential Assistant to a Judge
TCOUS 54 Secretary and Confidential Assistant to a Judge
TCOUS 55 Secretary and Confidential Assistant to a Judge
TCOUS 56 Secretary and Confidential Assistant to a Judge
TCOUS 57 Secretary and Confidential Assistant to a Judge
TCOUS 58 Secretary and Confidential Assistant to a Judge
TCOUS 59 Secretary and Confidential Assistant to a Judge
TCOUS 60 Secretary and Confidential Assistant to a Judge
TCOUS 61 Secretary and Confidential Assistant to a Judge
TCOUS 62 Secretary and Confidential Assistant to a Judge
TCOUS 63 Secretary and Confidential Assistant to a Judge
TCOUS 64 Secretary and Confidential Assistant to a Judge
TCOUS 65 Secretary and Confidential Assistant to a Judge
TCOUS 66 Trial Clerk to a Judge
TCOUS 67 Trial Clerk to a Judge
TCOUS 68 Trial Clerk to a Judge
TCOUS 69 Trial Clerk to a Judge
TCOUS 70 Trial Clerk to a Judge
TCOUS 71 Trial Clerk to a Judge
TCOUS 72 Trial Clerk to a Judge
TCOUS 74 Trial Clerk to a Judge
TCOUS 75 Trial Clerk to a Judge
TCOUS 77 Trial Clerk to a Judge
TCOUS 78 Trial Clerk to a Judge
TCOUS 79 Trial Clerk to a Judge
TCOUS 80 Secretary and Confidential Assistant to a Judge
TCOUS 81 Secretary and Confidential Assistant to a Judge
TCOUS 82 Secretary and Confidential Assistant to a Judge

Section 213.3327 Department of Veterans Affairs

VA 72 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 73 Special Assistant to the Secretary
VA 74 Special Assistant to the Secretary
VA 77 Special Assistant to the Director, National Cemetery System
VA 78 Special Assistant to the Assistant Secretary for Finance and Information Resources Management
VA 79 Special Assistant to the Assistant Secretary for Human Resources and Administration
VA 80 Special Assistant to the Deputy Secretary
VA 81 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 82 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 83 Special Assistant to the Assistant Secretary for Policy and Planning
VA 84 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 86 Executive Assistant to the Secretary
VA 87 Special Assistant to the Secretary

Section 213.3328 United States Information Agency

USIA 12 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 14 Program Officer to the Associate Director, Bureau of Information
USIA 22 Supervisory Public Affairs Specialist (New York, N.Y.) to the Associate Director Bureau of Information, Foreign Press Center
USIA 37 Special Assistant to the Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs
USIA 54 Special Assistant to the Director, Office of Citizen Exchanges
USIA 67 Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs
USIA 89 Staff Director, Advisory Board for Cuba Broadcasting to the Chairman of the Advisory Board
USIA 93 Program Officer to the Deputy Director, Office of European and New Independent States Affairs
USIA 99 White House Liaison to the Chief of Staff, Office of the Director
USIA 101 Public Affairs Specialist to the Director, New York Foreign Press Center, New York, NY
USIA 112 Special Assistant to the Associate Director, Office of Program Coordination and Development, Bureau of Policy and Programs
USIA 116 Special Projects Officer to the Director, Office of Citizen Exchanges
USIA 118 Senior Assistant to the Director,
USIA 124 Special Assistant to the Associate Director for Programs, Bureau of Information
USIA 125 Special Assistant to the Director, Office of Academic Affairs, Bureau of Educational and Cultural Affairs
USIA 126 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 127 Writer to the Director, Office of Policy
USIA 132 Director, Office of International Visitors, to the Associate Director of the Bureau of Educational and Cultural Affairs
USIA 135 Senior Advisor to the Associate Director, Bureau of Information
USIA 136 Senior Advisor to the Director, Office of Public Liaison
USIA 137 Deputy Director to the Director, Office of Arts America
USIA 138 Multi-Media Development Coordinator to the Director, Office of Information Resources
USIA 139 Special Assistant to the Director, Worldnet
USIA 140 Confidential Assistant to the Director, Voice of America, International Broadcasting Bureau
USIA 141 Director, Office of Support Services to the Associate Director of the Bureau of Information

Section 213.3330 Securities and Exchange Commission

SEC 3 Confidential Assistant to a Commissioner
SEC 4 Confidential Assistant to the Chief of Staff
SEC 5 Confidential Assistant to a Commissioner
SEC 6 Confidential Assistant to a Commissioner
SEC 8 Secretary (OA) to the Chief Accountant
SEC 9 Secretary to the General Counsel
SEC 11 Confidential Assistant to the Chairman
SEC 12 Supervisory Public Affairs Specialist to the Chairman
SEC 15 Secretary to the Director, Division of Market Regulations
SEC 16 Secretary to the Director, Division of Enforcement
SEC 18 Secretary to the Director, Division of Investment Management

SEC 19 Secretary to the Director, Division of Corporate Finance
SEC 24 Secretary to the Chief Economist
SEC 27 Secretary (Typing) to the Director, Office of International Affairs
SEC 28 Confidential Assistant to the Chairman
SEC 29 Secretary to the Deputy Director of Market Regulation
SEC 31 Public Affairs Specialist to the Director of Public Affairs, Office of Public Affairs, Policy Evaluation and Research
SEC 32 Confidential Assistant to the Director of Public Affairs
SEC 34 Secretary to the Executive Director
SEC 37 Writer-Editor to the Chairman
SEC 39 Director of Legislative Affairs to the Chairman

Section 213.3331 Department of Energy

DOE 439 Public Affairs Specialist to the Director of Public and Consumer Affairs
DOE 580 Staff Assistant to the Director, Office of Nonproliferation and National Security
DOE 587 Staff Assistant to the Assistant Secretary for Environmental Safety and Health
DOE 591 Staff Assistant to the Deputy Assistant Secretary for Building Technologies
DOE 592 Staff Assistant to the Deputy Assistant Secretary for Gas and Technology
DOE 599 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management
DOE 600 Special Assistant to the Principal Deputy Assistant Secretary for Policy
DOE 601 Program Information Coordinator to the Director, Office of Strategic Planning
DOE 602 Senior Staff Advisor to the Director, Office of Energy Research
DOE 603 Special Assistant to the Director, Office of Strategic Planning and Analysis
DOE 604 Special Assistant to the Principal Deputy Assistant Secretary for Policy
DOE 605 Special Assistant to the Principal Deputy Assistant Secretary for Policy, Planning and Program Evaluation
DOE 606 Staff Assistant to the Senior Staff Assistant, Office of the Deputy Assistant Secretary for Gas and Petroleum Technology
DOE 607 Special Assistant to the General Counsel
DOE 610 Staff Assistant to the Director, Office of Energy Research
DOE 613 Special Assistant to the Assistant Secretary for Environmental Restoration and Waste Management
DOE 615 Staff Assistant to the Director, Office of Intelligence and National Security
DOE 616 Policy Analyst to the Chief Financial Officer
DOE 620 Executive Assistant to the Chief of Staff
DOE 622 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs
DOE 624 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 625 Staff Assistant to the Associate Deputy Secretary for Field Management
DOE 626 Staff Assistant to the Assistant Secretary for Environmental Management
DOE 628 Staff Assistant to the Assistant Secretary, Office of Policy
DOE 631 Special Assistant to the Press Secretary, Press Services Division, Office of Public and Consumer Affairs
DOE 636 Deputy Director, Scheduling and Logistics to the Director, Scheduling and Logistics
DOE 639 Staff Assistant to the Press Secretary, Office of Public and Consumer Affairs
DOE 641 Staff Assistant (Legal) to the Assistant General Counsel for General Law
DOE 642 Staff Assistant to the Assistant Secretary for Policy
DOE 644 Staff Assistant to the Assistant Secretary for Efficiency and Renewable Energy
DOE 645 Special Assistant to the Deputy Secretary
DOE 646 Staff Assistant to the Deputy Assistant Secretary for Transportation Technologies
DOE 646 Staff Assistant to the Deputy Assistant Secretary for Transportation Technologies
DOE 649 Special Assistant to the Director, Office of Public Accountability
DOE 653 Special Assistant to the Assistant Secretary for Policy
DOE 654 Confidential Staff Assistant to the Director, Office of Economic Impact and Diversity
DOE 655 Special Assistant for Regulatory Compliance to the Deputy Assistant Secretary for Compliance and Program Coordination
DOE 657 Special Assistant to the Director, Office of Economic Impact and Diversity
DOE 658 Director, Office of Natural Gas Policy to the Principal Deputy Assistant Secretary for Policy
DOE 659 Staff Assistant to the Principal Deputy Assistant Secretary for Policy
DOE 660 Special Assistant to the Deputy Secretary of Energy
DOE 661 Staff Assistant to the Principal Deputy Assistant Secretary for Human Resources and Administration
DOE 662 Staff Assistant to the Assistant Secretary for Human Resources and Administration
DOE 663 Assistant Director for Energy Research (Communications and Development) to the Director, Office of Energy Research
DOE 664 Staff Assistant to the Assistant Secretary for Environmental Management
DOE 665 Special Liaison (Federal Power Marketing Administration) to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 666 Special Assistant to the Director, Press Services Division
DOE 667 Special Assistant to the Assistant Secretary for Energy and Renewable Energy
DOE 668 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 670 Staff Assistant to the Director, Office of Nuclear Energy
DOE 671 Staff Assistant to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 672 Staff Assistant to the Assistant Secretary for Policy
DOE 673 Special Assistant to the Assistant Secretary for Environmental Management
DOE 674 Staff Assistant to the Deputy Assistant Secretary for Technical and Financial Assistance
DOE 676 Confidential Assistant to the Assistant Secretary for Environmental Management
DOE 677 Confidential Assistant to the General Counsel,
DOE 678 Staff Assistant to the Assistant Secretary for Fossil Energy
DOE 679 Special Assistant to the Assistant Secretary for Policy
DOE 680 Staff Assistant to the Chief Financial Officer
DOE 681 Special Assistant to the Director, Office of Worker and Community Transition
DOE 682 Senior Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 684 Program Specialist to the Director, International Policy and Analysis Division
DOE 685 Associate Director to the Director, Office of Nuclear Energy, Science and Technology
DOE 686 Associate Director to the Director, Office of Nuclear Energy, Science and Technology

DOE 687 Staff Assistant to the Director, Scheduling and Logistics
DOE 688 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 689 Special Assistant to the Director, Office of Civilian Radioactive Waste Management
DOE 690 Staff Assistant to the Deputy Secretary
DOE 691 Special Assistant to the Deputy Secretary
DOE 692 Staff Assistant to the Assistant Secretary for Environment, Safety and Health
DOE 693 Special Assistant to the Assistant Secretary for Environment, Safety and Health
DOE 694 Staff Assistant to the Director, Office of Budget Planning and Customer Service
DOE 695 Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for House Liaison
DOE 696 Special Assistant to the Principal Deputy Assistant Secretary for Congressional Public and Intergovernmental Affairs

Federal Energy Regulatory Commission

FERC 1 Executive Assistant to the Chairman, Federal Energy Regulatory Commission
FERC 2 Attorney Advisor (Public Utilities) to the Chairman
FERC 3 Confidential Assistant to a Member

Section 213.3332 Small Business Administration

SBA 11 Deputy Assistant Administrator to the Assistant Administrator for Congressional and Legislative Affairs
SBA 18 Special Assistant to the Administrator, Office of Human Resources
SBA 19 Special Assistant to the Deputy Administrator for Economic Development
SBA 45 Special Assistant to the Associate Deputy Administrator for Economic Development
SBA 90 Executive Assistant to the Administrator
SBA 92 Assistant to the Administrator
SBA 97 Confidential Assistant to the General Counsel
SBA 100 Special Assistant to the Regional Administrator, Dallas Regional Office
SBA 114 Special Assistant to the Assistant Administrator for Women's Business Ownership
SBA 128 Assistant Administrator for Women's Business Ownership to the Associate Deputy Administrator for Economic Development
SBA 151 Director of External Affairs to the Associate Administrator for Communications and Public Liaison
SBA 157 Special Assistant to the Associate Deputy Administrator for Economic Development
SBA 168 Director of Intergovernmental Affairs to the Associate Administrator for Communications and Public Liaison
SBA 169 Regional Administrator, Region I, Boston, MA, to the Administrator
SBA 170 Regional Administrator, Region VIII, Denver CO, to the Administrator
SBA 172 Regional Administrator, Region VII, Kansas City, MO, to the Administrator
SBA 173 Regional Administrator, Region VI, Dallas, TX, to the Administrator
SBA 174 Regional Administrator, Region V, Chicago, IL to the Administrator
SBA 175 Regional Administrator, Region IV, Atlanta, GA, to the Administrator
SBA 176 Regional Administrator, Region II, New York, NY, to the Administrator
SBA 178 Regional Administrator, Region III, Philadelphia, PA, to the Administrator
SBA 179 Press Secretary and Special Assistant to the Assistant Administrator for Communications
SBA 181 Associate Administrator for Field Operations to the Administrator
SBA 182 Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison
SBA 188 Regional Administrator, Region IX, San Francisco, to the Administrator
SBA 189 Regional Administrator, Region X, Seattle, WA, to the Administrator
SBA 190 Chief of Staff to the Administrator
SBA 193 Director of International Trade to the Assistant Administrator for International Trade

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 15 Secretary to the Chairman

Section 213.3334 Federal Trade Commission

FTC 2 Director of Public Affairs (Supervisory Public Affairs Specialist) to the Chairman
FTC 14 Congressional Liaison Specialist to the Director of Congressional Relations
FTC 20 Special Assistant to a Commissioner
FTC 21 Special Assistant to a Commissioner
FTC 22 Secretary (Office Automation) to the Director, Bureau of Competition

Section 213.3337 General Services Administration

GSA 24 Special Assistant to the Commissioner, Public Buildings Service
GSA 26 Special Assistant to the Commissioner, Public Buildings Service
GSA 44 Special Assistant to the Chief of Staff
GSA 51 Special Assistant to the Administrator
GSA 52 Special Assistant to the Commissioner, Public Buildings Service
GSA 82 Special Assistant to the Regional Administrator, Region 4, Atlanta, GA
GSA 88 Special Assistant to the Regional Administrator, Region 10, Auburn, WA
GSA 89 Congressional Liaison Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 90 Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 94 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 95 Deputy Chief of Staff to the Chief of Staff
GSA 105 Special Assistant to the Associate Administrator for Public Affairs
GSA 113 Senior Advisor (Region 1 - Boston, MA) to the Regional Director
GSA 114 Special Assistant to the Regional Administrator, Northeast and Caribbean Region
GSA 118 Senior Advisor to the Regional Administrator, Great Lakes Region
GSA 119 Special Assistant to the Regional Administrator, Great Lakes Region
GSA 126 Director, Office of Media Relations to the Associate Administrator for Public Affairs
GSA 128 Director of Industry and Public Outreach to the Commissioner, Information Resources Management Services

Section 213.3339 U.S. International Trade Commission

ITC 1 Confidential Secretary (Office Automation) to the Chairman
ITC 3 Staff Assistant (Legal) to a Commissioner
ITC 6 Staff Assistant (Legal) to a Commissioner
ITC 7 Special Assistant (Economics) to a Commissioner
ITC 12 Staff Assistant to the Chairman
ITC 13 Staff Assistant (Economics) to a Commissioner

ITC 14 Staff Assistant (Legal) to a Commissioner
ITC 15 Confidential Assistant to a Commissioner
ITC 17 Staff Assistant (Legal) to a Commissioner
ITC 18 Staff Assistant (Legal) to a Commissioner
ITC 19 Staff Assistant (Economics) to a Commissioner
ITC 20 Staff Assistant (Economics) to a Commissioner
ITC 24 Staff Assistant (LEGAL) to the Chairman
ITC 25 Staff Assistant to a Commissioner
ITC 30 Confidential Assistant to a Commissioner
ITC 31 Executive Assistant to a Commissioner
ITC 32 Special Assistant to a Commissioner
ITC 33 Staff Assistant to the Chairman
ITC 34 Staff Assistant (Legal) to the Chairman
ITC 36 Confidential Assistant to the Chairman

Section 213.3340 National Archives and Records Administration

NARA 3 Presidential Diarist to the Archivist of the United States

Section 213.3341 National Labor Relations Board

NLRB 1 Confidential Assistant to the Chairman

Section 213.3342 Export-Import Bank of the United States

EXIM 3 Administrative Assistant to the Director
EXIM 30 Administrative Assistant to the Director
EXIM 44 Personal and Confidential Assistant to the Vice Chairman
EXIM 45 Administrative Assistant to the Bank Director
EXIM 46 Administrative Assistant to the Chief of Staff
EXIM 48 Administrative Assistant to the Director, Member of the Board
EXIM 49 Deputy Chief of Staff to the Chief of Staff and Vice President, Congressional and External Affairs

Section 213.3343 Farm Credit Administration

FCA 1 Special Assistant to the Chairman
FCA 8 Secretary to the Chairman
FCA 11 Special Assistant to a Member
FCA 12 Public & Congressional Affairs Specialist to the Director, Congressional and Public Affairs
FCA 15 Congressional and Public Affairs Specialist to the Director of Congressional and Public Affairs

Section 213.3344 Occupational Safety and Health Review Commission

OSHRC 2 Special Assistant to the Chairman
OSHRC 3 Confidential Assistant to a Member (Commissioner)
OSHRC 6 Confidential Assistant to a Member (Commissioner)
OSHRC 11 Counselor to a Member (Commissioner)

Section 213.3346 Selective Service System

SSS 15 Confidential Assistant to the Director of Selective Service

Section 213.3347 Federal Mediation and Conciliation Service

FMCS 8 Public Affairs Director to the Director
FMCS 9 Staff Assistant to the Director

Section 213.3348 National Aeronautics and Space Administration

NASA 25 Public Affairs Specialist to the Senior Public Affairs Specialist
NASA 28 Public Affairs Specialist to the Associate Administrator for Public Affairs
NASA 29 Public Affairs Specialist to the Associate Administrator for Public Affairs
NASA 30 White House Liaison Officer to the Administrator
NASA 31 Executive Assistant to the Administrator

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 7 Attorney Advisor (General) to a Commissioner
FM 17 Confidential Assistant to a Commissioner
FM 24 Confidential Assistant to the Chairman
FM 25 Attorney-Advisor to a Commissioner
FM 26 Attorney-Advisor (General) to the Chairman

Section 213.3352 Government Printing Office

GPO 3 Congressional and Public Affairs Officer to the Public Printer

Section 213.3356 Commission on Civil Rights

CCR 1 Special Assistant to the Staff Director
CCR 12 Special Assistant to a Commissioner
CCR 13 Special Assistant to a Commissioner
CCR 15 Special Assistant to a Commissioner
CCR 23 Special Assistant to a Commissioner
CCR 28 Special Assistant to a Commissioner
CCR 29 Special Assistant to a Commissioner
CCR 30 Special Assistant to a Commissioner
CCR 32 Special Assistant to a Commissioner

Section 213.3357 National Credit Union Administration

NCUA 9 Staff Assistant to the Chairman
NCUA 12 Executive Assistant to the Vice Chairman
NCUA 20 Executive Assistant to a Board Member
NCUA 23 Special Assistant to the Executive Director
NCUA 24 Writer-Editor to the Chairman

Section 213.3358 United States Court of Appeals for the Armed Forces

CAAF 1 Personal and Confidential Assistant to a Judge
CAAF 2 Personal and Confidential Assistant to the Chief Judge
CAAF 3 Private Secretary to a Judge
CAAF 4 Private Secretary to a Judge
CAAF 5 Personal and Confidential Assistant to a Judge
CAAF 6 Private Secretary to a Judge
CAAF 7 Private Secretary to a Judge
CAAF 8 Personal and Confidential Assistant to a Judge
CAAF 9 Personal and Confidential Assistant to a Judge
CAAF 10 Private Secretary to a Judge
CAAF 12 Paralegal Specialist to the Chief Judge

Section 213.3360 Consumer Product Safety Commission

CPSC 49 Special Assistant to a Commissioner
CPSC 50 Staff Assistant to a Commissioner
CPSC 52 Director, Office of Information and Public Affairs to the Chairman
CPSC 53 Special Assistant to the Chairman
CPSC 55 Executive Assistant to the Chairman
CPSC 56 Director, Office of Congressional Relations to the Chairman
CPSC 60 Special Assistant to the Chairman
CPSC 61 Staff Assistant to a Commissioner
CPSC 62 Special Assistant to a Commissioner
CPSC 63 Special Assistant to a Commissioner
CPSC 64 Special Assistant (Legal) to a Commissioner

Section 213.3361 Social Security Administration

SSA 2 Special Assistant to the Principal Executive Officer
SSA 3 Speech Writer to the Deputy Commissioner for Communications

Section 213.3364 U.S. Arms Control and Disarmament Agency

ACDA 2 Secretary (Steno O/A) to the Deputy Director
ACDA 17 Secretary (OA) to the Director
ACDA 20 Special Assistant to the Director of Public Affairs
ACDA 23 Confidential Assistant to the Assistant Director, Multilateral Affairs Bureau
ACDA 27 Special Assistant to the Director
ACDA 28 Special Assistant to the Director
ACDA 31 Speechwriter to the Director
ACDA 32 Secretary (Office Automation) to the Assistant Director, Strategic and Eurasian Affairs Bureau
ACDA 35 Policy Analyst to the Director
ACDA 36 Director of Public Information to the Director

Section 213.3367 Federal Maritime Commission

FMC 5 Counselor to a Commissioner
FMC 10 Special Assistant to a Commissioner
FMC 26 Administrative Assistant to the Counsel to the Chairman
FMC 30 Special Assistant to a Commissioner
FMC 33 Counsel to the Chairman
FMC 34 Special Assistant to a Commissioner
FMC 35 Counsel to a Commissioner
FMC 37 Counsel to a Commissioner
FMC 40 Confidential Assistant to the Chairman

Section 213.3368 Agency for International Development

AID 125 Executive Assistant to the Chief of Staff
AID 127 Supervisory Public Affairs Specialist to the Director, Office of External Affairs
AID 131 Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs
AID 133 Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs
AID 134 Special Assistant to the Chief of Public Relations, Office of External Affairs
AID 135 Junior Press Officer to the Chief of Press Relations Division, Office of External Affairs
AID 136 Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs
AID 138 Public Affairs Specialist to the Assistant Administrator, Bureau of Legislative and Public Affairs
AID 141 Special Assistant and Legal Counsel to the General Counsel
AID 145 Public Affairs Specialist to the Chief, Public Liaison Office, Bureau for Legislation and Public Affairs
AID 146 Special Assistant to the Assistant Administrator, Bureau for Europe and New Independent States
AID 147 Congressional Liaison Officer to the Deputy Assistant Administrator
AID 148 Special Assistant to the Assistant Administrator

Section 213.3371 Office of Government Ethics

OGE 2 Executive Secretary to the Director

Section 213.3373 United States Trade and Development Agency

TDA 2 Congressional Liaison Officer to the Director,
TDA 3 Special Assistant for Policy and Public Affairs to the Director

Section 213.3376 Appalachian Regional Commission

ARC 12 Senior Policy Advisor to the Federal Co-Chairman
ARC 13 Special Assistant to the Federal Co-Chairman

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2 Special Assistant to the Chairman
EEOC 9 Special Assistant to the Chairman
EEOC 10 Special Assistant to the Director, Office of the Communications and Legislative Affairs
EEOC 13 Confidential Assistant to the Director, Legal Counsel
EEOC 15 Media Contact Specialist to the Director, Office of Communications and Legislative Affairs
EEOC 22 Director, Legislative Affairs Staff to the Director, Office of Communications and Legislative Affairs

Section 213.3379 Commodity Futures Trading Commission

CFTC 3 Administrative Assistant to a Commissioner
CFTC 5 Administrative Assistant to a Commissioner
CFTC 6 Administrative Assistant to a Commissioner
CFTC 14 Special Assistant to a Commissioner
CFTC 26 Special Assistant to a Commissioner

Section 213.3382 National Endowment for the Arts

NEA 9 Congressional Liaison Officer to the Chairman
NEA 68 Attorney Adviser to the Chairman
NEA 70 Special Assistant to the Chairman
NEA 72 Director of Policy, Planning and Research to the Chairman
NEA 73 Chief of Staff and White House Liaison to the Chairman
NEA 76 Executive Secretary to the Chairman
NEA 77 Director of Public Affairs to the Chairman,
NEA 78 Special Assistant to the Chairman

Section 213.3382 National Endowment for the Humanities

NEH 48 Congressional Liaison Officer to the Chairman

Section 213.3384 Department of Housing and Urban Development

HUD 39 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 41 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 64 Staff Assistant to the Assistant Secretary, Community Planning and Development
HUD 65 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 68 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 126 Special Assistant (Litigation Liaison) to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 153 Executive Assistant to the President, Government National Mortgage Association
HUD 175 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 176 Staff Assistant to the Special Assistant to Secretary
HUD 182 Special Assistant to the Assistant Secretary for Housing
HUD 187 Special Assistant to the Deputy Assistant Secretary for Single Family Housing, Federal Housing Commission
HUD 187 Special Assistant to the Deputy Assistant Secretary for Single Family Housing, Federal Housing Commission
HUD 188 Special Assistant to the Assistant Secretary for Administration
HUD 238 Special Assistant to the Secretary
HUD 247 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
HUD 249 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 259 Special Assistant to the Secretary
HUD 260 Executive Assistant to the Assistant Secretary for Public and Indian Housing
HUD 272 Deputy Assistant Secretary for Grant Programs to the Assistant

Secretary for Community Planning and Development
HUD 281 Special Administrator to Regional Administrator
HUD 288 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 289 Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development
HUD 292 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 317 Special Assistant to the Regional Administrator-Regional Housing Commissioner, Region V
HUD 323 Executive Assistant to the Assistant Secretary for Housing, Federal Housing Commission
HUD 335 Deputy Assistant Secretary for Economic Development to the Assistant Secretary for Community Planning and Development
HUD 337 Special Assistant to the Assistant Secretary for Public Affairs
HUD 339 Special Assistant to the Secretary's Representative
HUD 340 Special Assistant to the Secretary
HUD 354 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 372 Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 381 Special Assistant to the Secretary
HUD 384 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 385 Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations
HUD 387 Staff Assistant to the Assistant Secretary for Public Affairs
HUD 390 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 404 Special Assistant to the Regional Administrator-Regional Housing Commissioner, Region V
HUD 410 Special Assistant to the General Counsel
HUD 412 Special Assistant to the Secretary
HUD 421 Assistant Director to the Director, Executive Secretariat, Office of Administration
HUD 437 Special Assistant to the Assistant Secretary for Public Affairs
HUD 438 Director, Hospital Mortgage Insurance Staff to the Assistant Secretary for Housing-Federal Housing
HUD 441 Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy Development and Research
HUD 445 Special Assistant to the Deputy Assistant Secretary for Operations
HUD 446 Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 448 Special Assistant to the Director of Executive Scheduling
HUD 458 Special Assistant to the Assistant Secretary for Administration
HUD 460 Staff Assistant to the Assistant Secretary for Administration
HUD 462 Staff Assistant to the Director, Office of Executive Scheduling
HUD 468 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 472 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 478 Special Projects Officer to the Senior Advisor to the Secretary
HUD 480 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 482 Special Projects Officer to the Director, Special Actions Office
HUD 483 Special Assistant (Advance/Security) to the Director, Executive Scheduling
HUD 485 Special Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 492 Special Assistant to the Deputy Assistant Assistant Secretary for Economic Development
HUD 494 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 498 Special Projects Officer to the Senior Advisor to the Secretary
HUD 500 Deputy Assistant Secretary for Plans and Policy to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 501 Executive Assistant to the Assistant Secretary for Community Planning and Development
HUD 503 Special Projects Officer to the Deputy Secretary, Field Management
HUD 504 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 505 Legislative Officer to the Deputy Assistant Secretary for Legislation
HUD 507 Field Operations Officer to the Secretary's Representative
HUD 508 Assistant Chief of Staff for Executive Scheduling to the Secretary of Housing and Urban Development
HUD 509 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 510 Assistant Chief of Staff for Legislation and Policy to the Secretary
HUD 511 Special Projects Officer to the Secretary's Representative, Mid-Atlantic Office
HUD 512 Deputy Assistant for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 514 Special Assistant to the Secretary's Representative
HUD 516 General Deputy Assistant Secretary to the Assistant Secretary for Housing
HUD 517 Secretary's Representative to the Deputy Secretary for Field Management
HUD 518 Special Assistant to the Chief of Staff
HUD 519 Staff Assistant to the Senior Advisor to the Secretary
HUD 520 Special Assistant to the Chief Financial Officer
HUD 521 Deputy Assistant Secretary for Public Housing Investments to the Assistant Secretary, Public and Indian Housing

Section 213.3389 National Mediation Board

NMB 52 Confidential Assistant to a Board Member
NMB 53 Confidential Assistant to a Board Member
NMB 54 Confidential Assistant to the Chairman

Section 213.3391 Office of Personnel Management

OPM 62 Confidential Assistant to the Director
OPM 63 Confidential Assistant to the Director, Office of Congressional Relations
OPM 64 Deputy Chief of Staff to the Chief of Staff
OPM 65 Special Assistant to the Director, Office of Congressional Relations
OPM 67 Executive Assistant to the Deputy Director
OPM 74 Public Affairs Specialist to the Deputy Director, Office of Communications
OPM 76 Speech Writer to the Director, Office of Communications
OPM 78 Director, Interagency Affairs/White House Liaison to the Chief of Staff
OPM 79 Special Assistant to the Director, Office of Congressional Relations
OPM 80 Deputy Director of Communications to the Director of Communications

Section 213.3392 Federal Labor Relations Authority

FLRA 13 Staff Assistant to the General Counsel

FLRA 14 Executive Assistant to the General Counsel
FLRA 19 Staff Assistant to the Chair
FLRA 20 Director of External Affairs/ Special Projects to the Chair

Section 213.3393 Pension Benefit Guaranty Corporation

PBGC 7 Assistant Executive Director for Legislative Affairs to the Executive Director
PBGC 11 Special Assistant to the Deputy Executive Director and Chief Financial Officer
PBGC 14 Special Assistant to the Deputy Executive Director and Chief Financial Officer

Section 213.3394 Department of Transportation

DOT 38 Special Assistant to the Deputy Administrator, National Highway Traffic Safety Administration
DOT 54 Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 61 Special Assistant to the Deputy Secretary of Transportation
DOT 69 Public Affairs Officer to the Administrator, Federal Railroad Administration
DOT 69 Director, Office of Public Affairs to the Federal Railroad Administrator
DOT 70 Special Assistant to the Assistant Secretary for Governmental Affairs
DOT 100 Chief, Consumer Information Division to the Director, Office of Public and Consumer Affairs
DOT 105 Staff Assistant to the Administrator, Federal Highway Administration
DOT 121 Deputy Director of Congressional Affairs to the Director, Office of Congressional Affairs
DOT 127 Special Assistant and Chief, Administrative Operations Staff to the Assistant Secretary for Budget and Programs
DOT 129 Special Assistant to the General Counsel
DOT 141 Special Assistant to the Secretary
DOT 147 Special Assistant to the Assistant to Secretary and Director of Public Affairs
DOT 148 Associate Director of Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs
DOT 150 Special Assistant to the Administrator, National Highway Traffic Safety Administration
DOT 159 Special Assistant to the Administrator, Federal Highway Administration
DOT 173 Special Assistant to the Administrator, Federal Railroad Administration
DOT 235 Special Assistant for Scheduling and Advance to the Secretary
DOT 254 White House Liaison to the Chief of Staff
DOT 257 Deputy Director of Public Affairs to the Assistant to the Secretary and Director of Public Affairs
DOT 265 Special Assistant to the Director of External Communications
DOT 271 Special Assistant to the Administrator, Federal Aviation Administration
DOT 274 Special Assistant to the Associate Director for Media Relations and Special Projects
DOT 279 Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs
DOT 287 Scheduling Assistant to the Special Assistant for Scheduling and Advance, Office of the Secretary
DOT 292 Intergovernmental Liaison Officer to the Director of Intergovernmental Affairs
DOT 294 Special Assistant to the Associate Deputy Secretary
DOT 301 Director, Office of Intergovernmental Affairs and Consumer Affairs to the Assistant Secretary for Governmental Affairs
DOT 315 Director of Intergovernmental Affairs to the Administrator, National Highway Traffic Safety Administration
DOT 316 Special Assistant to the Assistant Secretary for Transportation Policy
DOT 319 Congressional Liaison Officer to the Assistant Administrator for Government and Indian Affairs
DOT 320 Special Assistant to the Chief of Staff
DOT 324 Scheduling Assistant to the Special Assistant for Scheduling and Advance
DOT 338 Special Assistant to the Deputy Administrator, Federal Highway Administration
DOT 342 Special Assistant to the Special Assistant for Scheduling and Advance
DOT 347 Deputy Scheduler to the Special Assistant for Scheduling and Advance
DOT 351 Special Assistant to the Deputy Secretary
DOT 352 Regional Administrator, Region II, New York, N.Y. to the Deputy Administrator, Federal Transit Administration
DOT 355 Director for Drug Enforcement and Program Compliance to the Chief of Staff
DOT 356 Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs

Section 213.3395 Federal Emergency Management Agency

FEMA 53 Policy Advisor to the Director

Section 213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to a Member
NTSB 25 Special Assistant to a Member
NTSB 30 Confidential Assistant to the Chairman
NTSB 31 Confidential Assistant to the Chairman
NTSB 31 Confidential Assistant to the Chairman
NTSB 92 Director, Office of Government Affairs to the Chairman
NTSB 102 Special Assistant to a Member
NTSB 105 Special Assistant to a Member
NTSB 106 Director, Office of Public Affairs to the Chairman

Section 213.3397 Federal Housing Finance Board

FHFB 3 Special Assistant to the Chairman

Senior Level Schedule C Positions

(Above GS–15)

Section 213.3342 Export-Import Bank

Vice President for Public Affairs and Publications to the President and Chairman
Chief of Staff and Vice President for Congressional and External Affairs to the President and Chairman
Assistant to the President and Chairman
Assistant to the President and Chairman
Vice President for Communications to the President and Chairman
General Counsel to the President and Chairman
Special Counselor to the President and Chairman

Section 213.3382 National Endowment for the Arts

Executive Director, President's Commission on the Arts and Humanities to the President of the United States

Section 213.3357 National Credit Union Administration

Executive Director to the Chairman
Director of Community Development Credit Unions to the Chairman

Section 213.3390 African Development Foundation

Vice President to the President

Section 213.3343 Farm Credit Administration

Secretary of the Board to the Chairman

Section 213.3393 Pension Benefit Guaranty Corporation

Executive Director to the Secretary of Labor
Deputy Executive Director and Chief Negotiator to the Executive Director
Deputy Executive Director and Chief Financial Officer to the Executive Director

Section 213.3333 Federal Deposit Insurance Corporation

General Counsel to the Chairman
Director, Office of Corporate Communication to Deputy to the Chairman for Policy
Deputy to the Chairman for Policy to the Chairman

Section 213.3305 Department of the Treasury

Advisor to the Assistant Secretary for Tax Policy
Senior Deputy Comptroller for Economic Analysis and Public Affairs to the Comptroller of the Currency

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–22501 Filed 9–4–96; 8:45 am]

BILLING CODE 6325–01–U

The National Partnership Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 3:00 p.m., September 11, 1996.

PLACE: Old Executive Office Building, Room 450, 17th and Pennsylvania Avenue, NW., Washington, DC 20503.

STATUS: This meeting will be open to the public. Although the number of seats will be limited because of the capacity of the meeting room, seating will be available on a first-come, first-served basis. Also, because the Old Executive Office Building is a secure building, members of the public will require a security clearance and identification. Consequently, anyone who would like to attend this meeting should telephone OPM's Center for Partnership and Labor-Management Relations at (202) 606–2930 or 606–2707 on or before September 6, 1996, with his/her date of birth and social security number. Individuals with special access needs wishing to attend should also contact OPM to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: This meeting will consist of an awards ceremony. The winners of the 1996 National Partnership Award will be announced; and the winners will receive their awards. The National Partnership Award is given in recognition of outstanding labor-management partnership activities. A reception will be held immediately after the awards ceremony.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–0010.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 96–22755 Filed 9–4–96; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determine that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1996, shall be at the rate of 34 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1996, 33.8 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.2 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: August 27, 1996.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–22550 Filed 9–4–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22185; File No. 812–10060]

Connecticut General Life Insurance Company, et al.

August 28, 1996.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Connecticut General Life Insurance Company ("CG Life"), CG Corporate Insurance Variable Life Separate Account 02 ("Account 02"), and CIGNA Financial Advisors, Inc. ("CFA").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants request an order permitting Account 02 and any other separate account established in the future by CG Life (the "Future Accounts," collectively, with Account 02, the "Accounts") to support certain flexible premium variable life insurance contracts ("Current Contracts") or contracts which are substantially similar in all material respects to the Current Contracts ("Future Contracts") issued by CG Life to deduct a charge ("federal tax burden charge") that is reasonable in relation to CG Life's increased federal income tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATE: The application was filed on March 26, 1996 and amended and restated on August 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, Robert A. Picarello, Esq.,

Connecticut General Life Insurance Company, 900 Cottage Grove Road, Hartford, CT 06152, copy to George N. Gingold, Esq., 197 King Philip Drive, West Hartford, CT 06117–1409.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. CG Life, a stock life insurance company domiciled in Connecticut, is a wholly owned subsidiary of CIGNA Holdings, Inc., which is, in turn, wholly owned by CIGNA Corporation.

2. Account 02, established by CG Life on February 23, 1996, pursuant to Connecticut law, is registered with the Commission as a unit investment trust. The assets of Account 02 are divided among subaccounts, each of which invests in shares of a portfolio of a registered open-end management investment company. Each of the Future Accounts will be organized as unit investment trusts and will file registration statements under the 1940 Act and the Securities Act of 1933.

3. CFA will serve as the distributor and the principal underwriter of the Current Contracts. Applicants expect CFA also to serve as the distributor and principal underwriter of the Future Contracts. CFA is a wholly owned subsidiary of Connecticut General Corporation, which, in turn, is a wholly owned subsidiary of CIGNA Corporation. CFA is a member of the National Association of Securities Dealers, Inc., and is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser the Investment Advisers Act of 1940.

4. The Current Contracts are flexible premium variable individual life insurance policies. The Future Contracts will be substantially similar in all material respects to the Current Contracts (collectively, Future Contracts and Current Contracts, the "Contracts"). The Contracts will be issued in reliance on Rule 6e-3(T)(b)(13)(i)(A).

5. CG Life will deduct 1.25% of each premium payment made under the Current Contracts to cover CG Life's estimated cost for the federal income tax treatment of deferred acquisition costs.

6. In the Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"), Congress amended the Internal Revenue Code of 1986 (the "Code") by, among other things, enacting Section 848 thereof. Section 848 changed how a life insurance company must compute its itemized deductions from gross income for federal income tax purposes. Section 848 requires a life insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the gross income of the current year.

7. The amount of expenses that must be capitalized and amortized over ten years rather than deducted in the year incurred is based upon "net premiums" received in connection with certain types of insurance contracts. Section 848 of the Code defines "net premium" for a type of contract as gross premiums received by the insurance company on the contracts minus return premiums and premiums paid by the insurance company for reinsurance of its obligations under such contracts. The effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that Section and, accordingly, the payment of taxes on the income generated by those contracts.

8. The amount of general expenses that must be capitalized depends upon the type of contract to which the premiums received relate, and varies according to a schedule set forth in Section 848. The Contracts are "specified insurance contracts" that fall into the category of life insurance contracts, under Section 848, for which 7.7% of the year's net premiums received must be capitalized and amortized.

9. The increased tax burden on CG Life resulting from the application of Section 848 may be quantified as follows. For each $10,000 of net premiums received by CG Life under the Contracts in a given year, Section 848 requires CG Life to capitalize $770 (7.7% of $10,000). $38.50 of this $770 may be deducted in the current year, leaving $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35 percent. This results in an increase in tax for the current year of $256.03 (.35 × $731.50). This current increase in federal income tax will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

10. In the business judgment of CG Life, a discount rate of 10% is appropriate for use in calculating the present value of CG Life's future tax deductions resulting from the amortization described above. CG Life seeks an after tax rate of return on the investment of its capital in excess of 10%.[1] To the extent that capital must be used by CG Life to meet its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available to CG Life for investment. Thus, the cost of capital used to satisfy CG Life's increased federal income tax burden under Section 848 is, in essence, CG Life's after tax rate of return on capital, and, accordingly, the rate of return on capital, is appropriate for use in this present value calculation. To the extent that the 10% discount rate is lower than CG Life's actual targeted rate of return, a margin of comfort is provided that the calculation of CG Life's increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax rate or targeted rate of return is lowered. CG Life undertakes to monitor the tax burden imposed on it and to reduce the charge to the extent of any significant decrease in the tax burden.

11. Assuming a 35% corporate federal income tax rate, and applying the 10% discount rate, the present value of the federal income tax effect of the increased deductions allowable in the following 10 years is $160.40. Because this amount partially offsets the increased federal income tax burden, Section 848 imposes an increased federal income tax burden on CG Life with present value of $95.63 (*i.e.*, $256.03 minus $160.40, or 0.96%) for each $10,000 of net premiums.

12. State premium taxes are deductible when computing federal income taxes. Thus, CG Life does not incur incremental federal income tax when it passes on state premium taxes

[1] In determining the after-tax rate of return used in arriving at this discount rate, CG Life considered a number of factors, including: actual historical costs CG Life has incurred for capital; market interest rates; CG Life's anticipated long term growth rate; the risk level for this type of business; and inflation. CG Life represents that such factors are appropriate factors to consider in determining CG Life's cost of capital. CG Life first projects its future growth rate based on its sales projections, the current interest rates, the inflation rate, and the amount of capital that CG Life can provide to support such growth. CG Life then uses the anticipated growth rate and other factors enumerated above to set a rate of return on capital that equals or exceeds this rate of growth. CG Life seeks to maintain a ratio of capital to assets that is established based on its judgment of the risks represented by various components of its assets and liabilities. Maintaining the ratio of capital to assets is critical to offering competitively priced products and, as to CG Life, to maintaining a competitive rating from various rating agencies. Consequently, CG Life's capital should grow at least at the same rate as do its assets.

to owners of the Contracts. Federal income taxes, however, are not deductible when computing CG Life's federal income taxes. To compensate CG Life fully for the impact of Section 848, therefore, it would be necessary to allow CG Life to impose an additional charge that would make it whole not only for the $95.63 additional federal income tax burden attributable to Section 848, but also for the federal income tax on the additional $95.63 itself. This federal income tax can be determined by dividing $95.63 by the complement of the 35% federal corporate income tax rate, *i.e.*, 65%, resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47% of net premiums.

13. Based on prior experience, CG Life expects that all of its current and future deductions will be fully taken. A charge of 1.25% of net premium payments would reimburse CG Life for the impact of Section 848 on its federal income tax liabilities, taking into account the benefit of CG Life of the amortization permitted by Section 848 and the use by CG Life of a discount rate of 10% (the equivalent of CG Life's cost of capital) in computing the future deductions resulting from such amortization.

14. Although a charge of 1.25% of net premium payments would reimburse CG Life for the impact of Section 848 (as currently written) on its federal income tax liabilities, CG Life will have to increase this charge if any future change in, or interpretation of Section 848, or any successor provision, results in an increased federal income tax burden as a consequence of the receipt of premiums. Such an increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Applicants' Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder, to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to CG Life's increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) under the 1940 Act to permit the proposed deductions to be treated as other than "sales load" for the purposes of Section 27 of the 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

3. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Applicants note that certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts. For example, subject to certain conditions, Rule 6e–3(T)(b)(13)(iii) provides exemptions from Section 27(c)(2) that include permitting the payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the "deduction of premium taxes imposed by any state or governmental entity."

4. Rule 6e–3(T)(c)(4)(v) defines "sales load" charged during a contract period as the excess of any payments made during the period over the sum of certain specified charges and adjustments, including "a deduction for and approximately equal to state premium taxes."

5. Applicants submit that the proposed federal tax burden charge to be deducted in connection with the Contracts is akin to a state premium tax charge in that it is an appropriate charge related to CG Life's tax burden attributable to premiums received. Thus, Applicants submit that the proposed federal tax burden charge should be treated as other than "sales load," as is a state premium tax charge, for purposes of the 1940 Act.

6. Applicants maintain that the requested exemptions from Rule 6e–3(T)(c)(4)(v) are necessary in connection with Applicants' reliance on certain provisions of Rule 6e–3(T)(b)(13), and particularly on subparagraph (b)(13)(i) which provides exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may rely on Rule 6e–3(T)(b)(13)(i) only if they meet the Rule's alternative limitations on sales load, as defined in Rule 6e–3(T)(c)(4). Applicants state that, depending upon the load structure of a particular contract, these alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Applicants acknowledge that a deduction for an insurance company's increased federal tax burden related to deferred acquisition costs does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of "sales load" in Rule 6e–3(T)(c)(4). Nevertheless, Applicants submit that there is no public policy reason for treating such federal tax burden charge as "sales load."

7. Applicants assert that the public policy underlying Rule 6e–3(T)(b)(13)(i), like that underlying Sections 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as "sales load" would in no way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred in this conclusion by excluding deductions for state premium taxes from the definition of "sales load" in Rule 6e–3(T)(c)(4).

8. Applicants assert that the source for the definition of "sales load" found in Rule 6e–3(T) supports this analysis. Applicants state that the Commission's intent in adopting Rule 6e–3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts. In this regard, Applicants note that just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of "sales load" in Section 2(a)(35) for their efficacy, the percentage limits in Rule 6e–(T)(b)(13)(i) depend on Rule 6e–3(T)(c)(4), which does not depart, in principle, from Section 2(a)(35).

9. Applicants assert that Section 2(a)(35) also excludes from "sales load" administrative expenses or fees that are "not properly chargeable to sales or promotional activities". Applicants submit that this suggests that the only deductions intended to fall within the definition of "sales load" are those that are properly chargeable to such activities. Because the proposed federal tax burden charge will be used to compensate CG Life for its increased federal income tax burden attributable to the receipt of premiums, and such cost is not properly chargeable to sales

or promotional activities, Applicants submit that this language of Section 2(a)(35) is another indication that not treating such federal tax burden charge as "sales load" is consistent with the policies of the 1940 Act.

10. Applicants further assert that Section 2(a)(35) excludes from the definition of "sales load" under the 1940 Act deductions from premiums for "issue taxes." Applicants submit that the exclusion from "sales load" of charges attributable to federal tax obligations is consistent with the policies of the 1940 Act.

11. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, CG Life would have to request and obtain exemptive relief for each Contract to be issued through one of the Accounts. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

12. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the need for CG Life or Future Accounts to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek exemptive relief repeatedly would impair the ability of CG Life and the Future Accounts to take advantage fully of business opportunities as those opportunities arise.

13. Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If CG Life and the Future Accounts were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for CG Life and the Future Accounts.

Conditions for Relief

1. Applicants agree to comply with the following conditions for relief.

a. CG Life will monitor the reasonableness of the federal tax burden charge to be duducted pursuant to the requested exemptive relief.

b. The registration statement for each Contract under which the federal tax burden charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to CG Life's increased federal income tax burden under Section 848 of the Code resulting from the receipt of premiums.

c. The registration statement for each Contract under which the federal tax burden charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to CG Life's increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return that is used in calculating the federal tax burden charge and the relationship that such charge has to CG Life's cost of capital; and (iii) the appropriateness of the factors taken into account by CG Life in determining the after tax rate of return.

2. Applicants undertake to rely on the exemptive relief requested herein with respect to Future Contracts only if such contracts are substantially similar in all material respects to the Contracts described in the Application.

Conclusion

For the reasons summarized above, Applicants represent that the requested relief from Sections 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22579 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22181; 812–10216]

First American Investment Funds, Inc., et al.; Notice of Application

August 28, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First American Investment Funds, Inc. ("FAIF"), First American Funds, Inc. ("FAF") (collectively, the "Funds"), First Trust National Association ("First Trust"), and First Bank National Association ("First Bank").

RELEVANT ACT SECTIONS: Order requested under rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The requested order would permit the Funds to pay First Trust, and First Trust to accept, fees for acting as lending agent with respect to securities lending transactions by the Funds.

FILING DATES: The application was filed on June 21, 1996, and amended on August 22, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: the Funds, 680 East Swedesford Road, Wayne, PA 19087; First Trust, 180 East Fifth Street, St. Paul, MN 55101; and First Bank, 601 Second Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. FAIF and FAF are registered under the Act as open-end management investment companies and are incorporated under the laws of the States of Maryland and Minnesota, respectively. FAIF has twenty separate series and FAF has three. First Trust serves as custodian for each Fund and First Bank is the investment adviser for each Fund. First Trust and First Bank are wholly-owned subsidiaries of First Bank System, Inc. ("FBS").

2. Each Fund and its series, with one exception, is currently permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. Since the Funds currently do not have the internal resources necessary to lend securities efficiently or effectively without the services of a third-party lending agent, First Bank has proposed that the Funds engage First Trust, or other third-party agents, to act

as lending agent for the Fund. The lending agent will be responsible for establishing contact with potential borrowers, monitoring daily the value of the loaned securities and collateral, requesting that borrowers add to the collateral when required, and performing other administrative functions. In addition, the lending agent would invest cash collateral in instruments pre-approved by First Bank.

3. The duties of the lending agent, as well as procedures governing the securities lending, will be included in the Fund's agreement with the lending agent or otherwise detailed in writing. The ultimate responsibility for determining which securities are available to be loaned and to whom the securities may be loaned will reside with First Bank, subject to parameters set forth in procedures approved by the Fund's board of directors. First Bank will monitor the lending agent to ensure that the securities loans are effected in accordance with procedures adopted by the Fund's board of directors. For its services, the lending agent will receive a pre-negotiated percentage of the lending fee or portion of the return on the investment of cash collateral received by a Fund. Applicants represent that the duties to be performed by the lending agent will be consistent with and not exceed the parameters set forth in *Norwest Bank*, a no-action letter issued by the staff of the Division of Investment Management (pub. Avail. May 25, 1995).

4. Each borrower of a Fund's securities will be required to tender collateral to be held by First Trust, or other custodian to the Fund, in the form of cash, securities issued or guaranteed by the United States Government, its agencies or instrumentalities, or irrevocable letters of credit issued by approved banks.

5. In transactions where the collateral consists of U.S. Government securities or bank letters of credit, the lending agent typically will negotiate on behalf of the Fund a lending fee to be paid by the borrower to the Fund. The borrower will deliver to the Fund's custodian U.S. Government securities or bank letters of credit equal to at least 100% of the securities loaned, which collateral will be supplemented to cover differences between the market value of the collateral and the market value of the loaned securities as necessary. At the termination of the loan, the borrower will pay to the Fund the lending fee, and the lending agent will receive its pre-negotiated percentage.

6. In transactions where the collateral consists of cash, the Fund typically will receive a portion of the return earned on the investment of the cash collateral by or under the direction of First Bank. Depending on the arrangements negotiated with the borrower by the lending agent, a percentage of the return on the investment of the cash collateral may be remitted by the Fund to the borrower. Cash collateral delivered by the borrower will equal at least 100% of the portfolio securities loaned and will be supplemented to cover increases in the market value of the loaned securities, as necessary. Out of the amounts earned on the investment of the cash collateral, the borrower would first be paid the amount agreed upon, if any, and then, out of any remaining earnings, the lending agent would receive its pre-negotiated percentage. The Fund will bear the risk of loss of the collateral.

7. Applicants request an order to permit the Funds to pay First Trust, and First Trust to accept, fees in connection with First Trust's acting as lending agent in the manner described in the application. Applicants request that the relief sought also apply to any other registered investment company or series thereof which in the future may be created for which First Bank, or any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with First Bank, serves as investment adviser.

Applicants' Legal Analysis

1. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, or under common control with, such investment adviser. Under section 2(a)(3), First Bank, as investment adviser of each of the Funds, is an "affiliated person" of each Fund. Further, because First Trust and First Bank are under the common control of FBS, First Trust is an "affiliated person" of First Bank and, therefore, First Trust is an "affiliated person of an affiliated person" of each Fund. In addition, First Trust may be deemed to be an affiliated person of certain Funds because it and its affiliates hold of record more than 5% of the outstanding shares of these Funds.

2. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The proposed lending transactions may be deemed to involve a joint transaction because First Trust as lending agent would receive a percentage of the revenue generated by a Fund's securities lending program.

3. Rule 17d–1 authorizes the SEC to permit a proposed joint transaction. In determining whether to permit a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. For the reasons discussed below, applicants believe that the requested relief satisfies the standards for relief set forth in rule 17d–1.

4. Applicants believe that First Trust can provide lending agent services to the Funds in an efficient and profitable manner, and in a manner comparable to that of other potential lending agents. Applicants state that First Trust is experienced in securities lending services and has in place the personnel and systems necessary to provide services in an efficient and cost-effective manner. In addition, First Bank, as investment adviser to the Funds, will direct and monitor the activities of First Trust as lending agent.

5. Individual employees of First Trust who are involved in its securities lending activities may be "dual employees" of First Trust and First Bank. As employees of First Bank, such individuals also may be involved in the portfolio lending activities of First Bank, as investment adviser to the Funds. However, the individuals within First Bank, as investment adviser to the Funds, who will direct and monitor the activities of First Trust, as securities lending agent for the Funds, will not have operating or supervisory responsibility with respect to First Trust's securities lending activities.

6. Applicants propose that each Fund will adopt the following procedures to ensure that the fee arrangement and other terms governing the relationship between the Fund and First Trust will be fair:

a. In connection with the initial approval of First Trust as lending agent to the Fund, the board of directors of a Fund, including a majority of the directors who are not "interested persons" of the Fund within the meaning of the Act, will determine that (i) the contract with First Trust is in the best interests of the Fund and its shareholders; (ii) the services to be performed by First Trust are required by the Fund; (iii) the nature and quality of the services provided by First Trust are at least equal to those provided by others offering the same or similar

services; and (iv) the fees for First Trust's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. Each Fund's contract with First Trust for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the board of directors of each Fund, including a majority of the directors who are not "interested persons" of the Fund within the meaning of the Act, makes the findings referred to in paragraph (a) above.

c. In connection with the initial approval of First Trust as lending agent to a Fund, the board of directors will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the board of directors in making the findings referred to in paragraph (a) above.

d. The board of directors of each Fund, including a majority of the directors who are not "interested persons" of the Fund within the meaning of the Act, (i) will determine at each quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) will review no less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants will adhere to the following conditions:

1. No Fund may lend its portfolio securities to a borrower that is an affiliated person of the Fund, any adviser of the Fund, or First Trust, or to an affiliated person of any such person.

2. Except as set forth herein, the securities lending program of each Fund will comply with all present and future applicable SEC staff positions regarding securities lending arrangements, *i.e.*, with respect to the type and amount of collateral, voting of loaned securities, limitations on the percentage of portfolio securities on loan, prospectus disclosure, termination of loans, receipt of dividends or other distributions, and compliance with fundamental policies.[1]

3. The approval of the board of directors of a Fund, including a majority of the directors who are not "interested persons" within the meaning of the Act, shall be required for the initial and subsequent approvals of First Trust's service as lending agent for the Funds, for the institution of all procedures relating to the securities lending programs of the Funds, and for any periodic review of loan transactions for which First Trust acted as lending agent.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22578 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22187; 812–9838]

GE Funds, et al.; Notice of Application

August 29, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Elfun Trusts, Elfun Global Fund, Elfun Diversified Fund, Elfun Tax-Exempt Income Fund, Elfun Income Fund (collectively, the "Elfun Funds"), Variable Investment Trust ("Variable Trust"), GE S&S Program Mutual Fund, GE S&S Long-Term Interest Fund (collectively, all of the foregoing are the "Registered Investing Entities"), General Electric Pension Trust, GE Savings and Security (collectively, the previous two are the "Retirement Trusts"), GE Insurance Plan Trust, Ge Medical Care Trust for Pensioners, GE General Relief and Loan Funds (collectively, the previous three are the "Welfare Trusts"), GE Investments International Fund, GE Investment International Fund—NYC, GE Investments Group Trust (collectively, the previous three are the "Group Trusts"), GE Investments Canada Fund (the "Canada Fund"), GE Investment Realty Partners I, GE Investment Realty Partners II, GE Investment Realty Partners III, GE Investment Hotel Partners I (collectively, the previous four arethe "Limited Partnerships") collectively, all of the foregoing are the "Investing Entities", GEI Short-Term Investment Fund (the "Investment Trust"), GE Investment Management Incorporated ("GEIM"), and General Electric Investment Corporation ("GEIC").

RELEVANT ACT SECTIONS: Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1), under sections 6(c) and 17(b) that would grant an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order to permit the Investing Entities to purchase shares of the Investment Trust for cash management purposes.

FILING DATES: The applicant was filed on October 31, 1995 and amended on July 24, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

[1] *See, e.g.*, SIFE Trust Fund (pub. avail. Feb. 17, 1982).

Applicants' Representations

1. The GE Funds, the Elfun Funds, the Variable Trust, and the S&S Funds are registered open-end management investment companies that are organized either under the laws of Connecticut, Massachusetts or New York. Certain of the foregoing funds are organized as series companies. In addition, the Elfun Funds and the S&S Funds are employee securities companies as defined in section 2(a)(13) of the Act. The Retirement Trusts hold assets for the benefit of current and previous employees of General Electric Company ("GE") and its affiliates. The Welfare Trusts hold the assets of various health and welfare benefit plans for the benefit of current or previous employees of GE and its affiliates. The Group Trusts are each a pooled trust established by GEIM for the pooled investment of pension and profit sharing plans and certain governmental plans which are exempt from federal income taxation. The Canada Fund is a fund governed by the laws of Canada and established for the pooled investment by pension funds sponsored by an employer for the benefit of its employees. The Limited Partnerships are investment limited partnerships established for the purposes of acquiring and developing real estate assets and are offered only to "accredited investors" with the meaning of Rule 501 of Regulation D under the Securities Act of 1933.

2. GEIM provides investment advisory and administrative services to the GE Funds, the Variable Trust, and the Canada Fund. GEIM also provides investment management services to the Limited Partnerships in its capacity as general partner. GEIC provides investment advisory and/or administrative services to the Elfun Funds, the S&S Funds, the Retirement Trusts, the Welfare Trusts, the Group Trusts, and the Canada Fund. Both GEIM and GEIC are wholly-owned subsidiaries of GE.

3. The Investment Trust will be organized as a New Hampshire investment trust and will be excluded from the definition of investment company under section 3(c)(1) of the Act. Shares will be non-voting and will be offered only to the Investing Entities. The Investment Trust will invest exclusively in certain short-term money market instruments, will maintain a dollar weighted average portfolio maturity of ninety days or less, and will not purchase any security with a remaining maturity of greater than 397 days. GEIM will serve as investment adviser to the investment trust.

4. Each Investing Entity has, or may be expected to have, uninvested cash held by its custodian bank. Such cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors. Applicants propose that the Investing Entities be able to invest such uninvested cash in shares of the Investment Trust. In addition, to facilitate the establishment of the Investment Trust, relief is also being requested to allow a Registered Investing Entity to participate initially in the Investment Trust through a one-time contribution of portfolio securities.

5. Applicants request that relief be extended to any investment adviser controlled by or common control with GEIM or GEIC (collectively, the "Advisers"). In addition, applicants request that relief be extended to all future registered investment companies and series thereof, future pension plans, or future limited partnerships for which an Adviser may act as investment adviser. (Such entities are also the "Investing Entities" and/or "Registered Investing Entities.") In no case will an Investing Entity be a registered investment company that values its assets in accordance with rule 2a–7 under the Act.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits any registered investment company (the "acquiring company") or any company or companies controlled by such acquiring company to purchase any security issued by any other investment company (the "acquired company") if such purchase will result in the acquiring company or companies it controls owning in the aggregate (a) more than 3% of the outstanding voting stock of the acquired company, (b) securities issued by the acquired company with an aggregate value in excess of 5% of the acquiring company's total assets, or (c) securities issued by the acquired company and all other investment companies with an aggregate value in excess of 10% of the value of the acquiring company's total assets. Section 12(d)(1)(B) prohibits a registered investment company (the "acquired company") from selling any security to another investment company (the "acquiring company") if such sale will result in (a) more than 3% of the outstanding stock of the acquired company is owned by the acquiring company and more than 10% of the total outstanding voting stock of the acquired company is owned by the acquiring company or other investment companies.

2. Applicants state that, while the size of the Investment Trust may vary significantly from day to day, it is likely that one or more of the Investing Entities would have an investment in the Investment Trust that would exceed the section 12(d)(1) limits. In addition, applicants propose that each Registered Investing Entity be permitted to invest in, and holding shares of, the Investment Trust to the extent that a Registered Investing Entity's aggregate investment in the Investment Trust at the time the investment is made does not exceed 25% of the Registered Investing Entity's total assets. Accordingly, applicants seek an exemption from the provisions of section 12(d)(1) to the extent necessary to implement the proposed transactions.

3. Applicants state that the Investment Trust will be excluded from the definition of investment company under section 3(c)(1).[1] Applicants further state that the Investment Trust will issue any non-voting securities. Applicants request relief from section 12(d)(1), however, because they are concerned that the Investment Trust's non-voting securities could be deemed to be "voting securities" for purposes of section 3(c)(1). Applicants believe that if interests in the Investment Trust were deemed to be "voting securities," applicants then must rely on the second 10% test of section 3(c)(1) in order to avoid a look through to the shareholders of the Investing Entities for purposes of determining the number of persons owning shares of the Investment Trust. Reliance on the second 10% test would

[1] Section 3(c)(1) provides, in pertinent part, that the term "investment company" shall not include:

Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).

cause the Investment Trust to be deemed an investment company for purposes of section 12(d) of the Act pursuant to the last sentence of section 3(c)(1)(A).

4. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. For the reasons provided below, applicants argue that the requested order meets the section 6(c) standards.

5. Applicants believe that relief is appropriate to permit the Registered Investing Entities to invest in the Investment Trust because a private investment company is less expensive to operate than a registered investment company. In addition, applicants state that the use of a private investment company would maximize participation in the Investment Trust, thereby facilitating the ability of the Trust to obtain the advantages of a larger size.

6. Applicants believe that at any given time it is possible that 25% or more of an Investing Entity's total assets may be comprised of uninvested cash. Cash balances of this size may result from volatility in the marketplace, from cash collateral that is derived from securities lending transactions and cash generated from mortgage dollar rolls, and for other reasons. In addition, applicants believe that the Investment Trust need not be limited to making investments in eligible money market instruments under rule 2a–7 because the Investing Entities do not hold themselves out as money market funds subject to the constraints of rule 2a–7.

7. Applicants state that section 12(d)(1) is intended, among other things, to protect an investment company's shareholders against (a) undue influence over portfolio management through the threat of large-scale redemptions, and the disruption of orderly management of the investment company through the maintenance of large cash balances to meet potential redemptions and (b) the layering of sales charges, advisory fees, and administrative costs. Applicants state that the Investment Trust will be managed specifically to maintain a highly liquid portfolio and that access to the Investment Trust will enhance each Investing Entity's ability to manage and invest cash. In addition, the Investment Trust will not charge any sales charges, underwriting or distribution fees, or advisory fees. Therefore, applicants believe none of the perceived abuses meant to be addressed by section 12(d)(1) is created by the proposed transactions.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of that company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person that owns more than 5% of the outstanding voting securities of that company and any investment adviser of the investment company and any person directly or indirectly controlling, or under common control with, such investment adviser. As the investment adviser to the Investment Trust, each Adviser may be deemed to be an "affiliated person" under section 2(a)(3), and as members of the same complex of funds and other investment entities, with the same investment adviser and similar members of the boards of directors or trustees, the Registered Investing Entities and the Investment Trust may be considered affiliated persons of each other.

2. The sale by the Investment Trust of its shares to the Registered Investing Entities could be deemed to be a principal transaction between affiliated persons that is prohibited under section 17(a). Therefore, applicants request an order to permit the Investment Trust to sell its shares to the Registered Investing Entities and to allow the redemption of such shares from the Registered Investing Entities. In addition, applicants request an order to allow the Registered Investing Entities to make a one-time contribution of portfolio securities to the Investment Trust.

3. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned. Section 17(b) could be interpreted to exempt only a single transaction. However, the Commission, under section 6(c) of the Act, may exempt a series of transactions that otherwise would be prohibited by section 17(a). For the reasons stated below, applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b).

4. With respect to the relief requested from section 17(a) for the proposed transactions, applicants state that the terms of the proposed transactions are fair because the consideration paid and received for the sale and redemption of shares of the Investment Trust will be based on the net asset value per share of the Investment Trust. In addition, the purchase of shares of the Investment Trust by the Investing Entities will be effected in accordance with each Investing Entity's investment restrictions and policies as set forth in its registration statement.

5. With respect to the one-time contribution of shares by the Registered Investing Entities to the Investment Trust, applicants state that such relief is requested primarily in order to enable the Investment Trust quickly to achieve a size sufficient to benefit the Registered Investing Entities without requiring the Registered Investing Entities to have to sell portfolio securities in order to contribute cash. The one-time contribution will comply with the provisions of paragraphs (a) through (f) of the rule 17a–7 [2] under the Act except that the consideration for the securities contributed to the Investment Trust will be Investment Trust shares rather than cash.

C. Section 17(d)

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The proposed transaction could be deemed to be a joint enterprise or other joint arrangement because the Advisers will be pooling uninvested cash from across a number of funds advised by the Advisers. In doing so, each Investing Entity will be acting collectively to avail themselves of the benefits afforded by pooling these cash balances.

2. Rule 17d–1 permits the SEC to approve a proposed joint transaction. In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. For the reasons stated below, applicants believe that the requested relief meets these standards.

3. Applicants state that the proposed transactions would be beneficial to each of the participants. Applicants state that there is no basis on which to believe that if the uninvested cash of the Investing Entities were invested directly in money market instruments, any

[2] Rule 17a–7 provides for purchase or sale transactions between registered investment companies and certain affiliated persons provided that certain conditions are met.

participant would benefit to a greater extent than any other. Applicants also believe that a Registered Investing Entity's contribution of portfolio securities, in lieu of cash, in exchange for shares of the Investment Trust, creates no adverse effects on any other Investment Entity because all shares of the Investment Trust will be sold at net asset value.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The shares of the Investment Trust sold to and redeemed from the Investing Entities will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' Rules of the Association). There will be no investment advisory fee charged to the Investment Trust.

2. Investment in shares of the Investment Trust will be in accordance with each Registered Investing Entity's respective investment restrictions and will be consistent with each Registered Investing Entity's policies as set forth in its prospectuses and statements of additional information.

3. The Investment Trust shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. A majority of the directors of each Registered Investing Entity (except the Elfun Funds and the S&S Funds [3]) will not be "interested persons" as defined in section 2(a)(19) of the Act.

5. Each Investing Entity, the Investment Trust, and any future fund that may rely on the order shall be advised by one of the Advisers or a person controlling, controlled by, or under common control with one of the Advisers.

6. Each of the Registered Investing Entities will invest uninvested cash in, and hold shares of, the Investment Trust only to the extent that the Registered Investing Entity's aggregate investment in the Investment Trust does not exceed 25% of the Registered Investing Entity's total assets.

7. The Investment Trust will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Investment Trust were a registered open-end investment company. With respect to all redemption requests made by a Registered Investing Entity, the Investment Trust will comply with section 22(e) of the Act. The Investment Trust will value its shares, as of the close of business on each business day in accordance with section 2(a)(41) of the Act.

8. The Advisers shall adopt procedures designed to ensure that the Investment Trust complies with sections 2(a)(41), 17(a), (d), and (e), 18, and 22(e) to the same extent that procedures for compliance with these sections have been adopted for the Registered Investing Entities. The Advisers will also periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be kept under this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

9. Each Investing Entity will purchase and redeem shares of the Investment Trust as of the same time and at the same price, and will receive dividends and bear its proportionate shares of expenses on the same basis, as other shareholders of the Investment Trust. A separate account will be established in the shareholder records of the Investment Trust for the account of each Investing Entity.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22625 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[3] Each Elfun Fund and S&S Fund is an "employees' securities company" as defined in the Act. Each of these funds has obtained an SEC order exempting it from section 10(a) of the Act to permit more than 60% of its respective trustees to be "interested persons" as defined in the Act and from section 15(c) to exempt it from the requirement that a majority of its disinterested trustees approve any renewal of its advisory contract (Elfun Funds, Investment Company Act Release Nos. 17038 (June 30, 1989) (notice) and 17083 (July 25, 1989) (order) and S&S Funds, Investment Company Act Release Nos. 10929 (Nov. 6, 1979) (notice) and 10971 (Dec. 4, 1979) (order)).

[Investment Company Act Release No. 22182; 811–9056]

The Jefferson Funds Trust; Notice of Application

August 28, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Jefferson Funds Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on February 23, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 233 South Wacker Drive, Suite 4500, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a Delaware business trust. Applicant has one series, the Jefferson U.S. Treasury Money Market Fund. On June 19, 1995, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act, and filed a registration statement on Form N–1A under section 8(b) of the Act. Applicant's registration statement became effective on July 8, 1995; however, applicant made no public offering of its shares.

2. On December 31, 1995, applicant's board of trustees approved a resolution to dissolve applicant. Applicant sold no securities, and has no securityholders, assets, or liabilities. Applicant is not a

party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

3. Applicant filed a Certificate of Cancellation with the Delaware Secretary of State on February 15, 1996.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22577 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22189; File No. 812–10180]

The Lincoln National Life Insurance Company, et al.

August 29, 1996.

AGENCY: U.S. Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Lincoln National Life Insurance Company ("Lincoln Life"), Lincoln Life & Annuity Company of New York ("Lincoln Life of NY"), Lincoln National Variable Annuity Account L ("Account L"), Lincoln Life & Annuity Company of New York Variable Annuity Account L ("Account L–NY), and LNC Equity Sales Corporation ("LNC").

RELEVANT ACT SECTIONS: Order requested pursuant to Section 17(b) of the 1940 Act from Section 17(a) thereof, and pursuant to Section 11 of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order approving: (i) the transfer of assets from the VA–1 Separate Account of UNUM Life Insurance Company of America ("UNUM VA–1 Separate Account") to Account L and Account L–NY, and from the VA–1 Separate Account of First UNUM Life Insurance Company of America ("First UNUM VA–1 Separate Account") to Account L–NY; and (ii) the offer of exchange of interests in the UNUM VA–1 Separate Account for interests in Account L and Account L–NY, and the offer of exchange of interests in the First UNUM VA–1 Separate Account for interests in Account L–NY, through the assumption reinsurance by Lincoln Life and Lincoln Life of NY of group variable annuity contracts issued by UNUM Life Insurance Company of America ("UNUM") and First UNUM Life Insurance Company of America ("First UNUM").

FILING DATE: The application was filed on June 3, 1996, and amended and restated on August 28, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, John L. Steinkamp, Esq., The Lincoln National Life Insurance Company, 1300 South Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Lincoln Life, a stock life insurance company organized in Indiana in 1905, is principally engaged in the sale of life insurance and annuity policies. Lincoln Life is wholly-owned by Lincoln National Corporation, a publicly-held insurance and financial services company.

2. Lincoln Life of NY is a stock life insurance company incorporated under the laws of New York in 1996. Lincoln Life of NY is principally engaged in the sale of life insurance and annuity policies in the State of New York, and is a wholly-owned subsidiary of Lincoln Life.

3. LNC will serve as the principal underwriter and distributor of group variable annuity contracts issued through Account L (the "Lincoln Life Contracts") and group variable annuity contracts issued through Account L–NY (the "Lincoln Life of NY Contracts"). LNC is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. LNC is a wholly-owned subsidiary of Lincoln National Corporation.

4. Account L, a separate account established in Indiana on April 29, 1996, pursuant to a resolution of the board of directors of Lincoln Life, will be the funding medium for Lincoln Life Contracts.

5. Account L–NY, a separate account established in New York on July 24, 1996, pursuant to a resolution of the board of directors of Lincoln Life of NY, will be the funding medium for Lincoln Life of New Contracts

6. Lincoln Life and UNUM have entered into an amended and restated asset transfer and acquisition agree, dated as of January 24, 1996 (the "UNUM Acquisition Agreement"), which provides for the sale of UNUM's tax-sheltered annuity business to Lincoln Life and the assumption of UNUM's obligations under its group variable annuity contracts by Lincoln Life. The UNUM Acquisition Agreement provides that UNUM's group variable annuity contracts issued in states other than New York (the "UNUM Non-NY Contracts") will be assumed directly by Lincoln Life, and that UNUM's group variable annuity contracts issued in New York (the "UNUM NY Contracts") will be assumed by Lincoln Life of NY.[1] The UNUM Acquisition Agreement also provides that, for a limited period of time after the acquisition is effected and at Lincoln Life's request, UNUM will issue in certain states group variable annuity contracts of the type being assumed by Lincoln Life. The acquisition is to be effected on September 30, 1996, subject to certain state insurance regulatory approvals (the "Closing Date").

7. Lincoln Life, on behalf of Lincoln Life of NY, has entered into a virtually identical acquisition agreement with First UNUM dated March 20, 1996 (the "First UNUM Acquisition Agreement"), which provides for the sale of First UNUM's tax-sheltered annuity business to Lincoln Life of NY and the assumption of First UNUM's obligations under its group variable annuity contracts (the "First UNUM Contracts") by Lincoln Life of NY. The First UNUM Acquisition Agreement also provides that for a limited period of time after the acquisition is effected (also on the Closing Date), and at the request of Lincoln Life of NY, First UNUM will issue in New York group variable annuity contracts of the type being assumed by Lincoln Life of NY.

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[1] UNUM formerly issued contracts in New York but no longer does business in that state.

8. Assumption of the UNUM NY Contracts, the UNUM Non-NY Contracts, and the First UNUM Contracts by Lincoln Life and Lincoln Life of NY will occur sometime after the Closing Date, depending on when applicable state insurance department approval and other regulatory approvals are obtained, and subject to giving contractholders and participants the opportunity to opt-out of the transfer to Lincoln Life Contracts or Lincoln Life of NY Contracts. Any participants who opt-out will have either UNUM or First UNUM as the insurer; those participants who do not opt-out will have either Lincoln Life or Lincoln Life of NY as the insurer.

9. The UNUM Non-NY Contracts and the UNUM NY Contracts (together, the "UNUM Contracts") represent three types of group variable annuity contracts sold to retirement programs meeting the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code"). The three types of First UNUM Contracts correspond with the three types of UNUM Contracts, except where differences are required by New York law.

10. Each type of UNUM Contract and each type of First UNUM Contract is registered separately under the Securities Act of 1933 (the "1933 Act"). The three types of UNUM Contracts are funded by the UNUM VA–1 Separate Account; the three types of First UNUM Contracts are funded by the First UNUM VA–1 Separate Account. Both the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account are registered with the Commission under the 1940 Act as unit investment trusts. Each of these separate accounts consists of nine subaccounts; each subaccount invests exclusively in a matching underlying fund.

11. Lincoln Life will enter into administrative services agreements with both UNUM and First UNUM under which, as of the Closing Date, Lincoln Life will be solely responsible for administering the UNUM Contracts, the First UNUM Contracts, the UNUM VA–1 Separate Account, and the First UNUM VA–1 Separate Account.

12. Additionally, Lincoln Life will enter into an indemnity reinsurance agreement (the "Lincoln Life Indemnity Agreement") with UNUM which provides for the indemnity reinsurance by Lincoln Life of the general account liabilities of UNUM with respect to the UNUM Non-NY Contracts as of the Closing Date, pending assumption of those contracts by Lincoln Life. Lincoln Life of NY will enter into similar indemnity reinsurance agreements with both UNUM and First UNUM with respect to the UNUM NY Contracts and the First UNUM Contracts (the "Lincoln Life of NY Indemnity Agreements," together with the Lincoln Life Indemnity Agreement, the "Indemnity Reinsurance Agreements").

13. Furthermore, Lincoln Life will enter into an assumption reinsurance agreement with UNUM pursuant to which Lincoln Life will assumptively reinsure all of UNUM's obligations under the UNUM Non-NY Contracts. Lincoln Life of NY will enter into virtually identical assumption reinsurance agreements with UNUM and First UNUM pursuant to which Lincoln Life of NY will assumptively reinsure all of UNUM's and First UNUM's obligations under the UNUM NY Contracts and the First UNUM Contracts, respectively. Upon novation, the assets supporting the variable benefits of the reinsured UNUM Non-NY Contracts will be transferred from the UNUM VA–1 Separate Account to Account L, which thereafter will support the relevant UNUM Non-NY Contracts; Lincoln Life will assume all obligations and liabilities of UNUM under those contracts. Similarly, all assets supporting the variable benefits of the reinsured UNUM NY Contracts and First UNUM Contracts will be transferred from the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account, respectively, to Account L–NY, which thereafter will support the reinsured UNUM NY Contracts and First UNUM Contracts; Lincoln Life of NY will assume all obligations and liabilities of UNUM and First UNUM under those contracts. (The transactions implementing the various assumption reinsurance agreements described above are referred to herein collectively as the "Reinsurance Transactions.")

14. The Reinsurance Transactions are subject to certain state insurance regulatory approvals and, in certain states, may require the affirmative consent of contractholders and individual participants. Each UNUM and First UNUM contractholder (collectively, "Contractholders") will be given the right to opt-in or opt-out of the Reinsurance Transaction; these options will be described in a notice that will be sent to Contractholders. The notice will be accompanied by a rejection or acceptance form, a certificate of assumption, and a definitive prospectus for the applicable Lincoln Life Contract or Lincoln Life of NY Contract. The notice will: (i) state that the underlying assumption reinsurance transaction has been approved by the insurance departments of the domiciliary states of the insurance companies that are parties to the assumption reinsurance agreement; (ii) describe the options available to the Contractholder to either accept the transfer of the Contract from UNUM or First UNUM to Lincoln Life or Lincoln Life of NY as appropriate, or reject the proposed transfer by completing and returning the rejection form; and (iii) state that Lincoln Life will administer the Contract whether or not the Contractholder accepts the assumption reinsurance. If the Contractholder accepts the assumption reinsurance, a certificate notice, a rejection or acceptance form, a certificate of assumption, and a definitive prospectus for the applicable Lincoln Life Contract or Lincoln Life of NY Contract will be sent to each participant under the respective contract, giving those participants a similar opportunity to accept or reject the assumption reinsurance (*i.e.*, an "opt-out right").

15. Upon the assumption reinsurance of each UNUM Contract and First UNUM Contract (each now a "Novated Contract"), Lincoln Life or Lincoln Life on NY will assume all of UNUM's or First UNUM's liabilities under the Novated Contract. Any premiums from participants who do not opt-out of the Reinsurance Transactions will be sent directly to either Lincoln Life or Lincoln Life of NY for allocation to Account L or Account L–NY, as appropriate. If Contractholders or participants reject the assumption reinsurance, premiums will be sent to the UNUM VA–1 Separate Account or First UNUM VA–1 Separate Account, as appropriate. Accordingly, whether Contractholders or participants opt-in or opt-out of the Reinsurance Transactions, Contractholders will deal directly with Lincoln Life as the administrator for the UNUM Contracts and the First UNUM Contracts, as well as for the Lincoln Life Contracts and the Lincoln Life of NY Contracts.

16. The Novated Contracts will be identical to the relevant UNUM Contracts and First UNUM Contracts, but for the separate account supporting variable contract benefits and the identity of the depositor for such separate account. The same underlying funds will be available under the Novated Contracts as are available under the UNUM Contracts and the First UNUM Contracts. Lincoln Life will establish accumulation units in its separate account for the Novated Contracts with the same values as those in the UNUM VA–1 Separate Account for the UNUM Non-NY Contracts. Likewise, Lincoln Life of NY will establish accumulation units in its

separate account for the Novated Contracts with the same values as those in the UNUM VA–1 Separate Account for the UNUM NY Contracts.[2] Since the accumulation unit values will be based on the net asset values of the same underlying funds, and will reflect identical deductions for asset-based charges, the accumulation unit values of the UNUM VA–1 Separate Account for the UNUM Non-NY Contracts and the First UNUM VA–1 Separate Account for the First UNUM Contracts that are not assumed by Lincoln Life or Lincoln Life of NY will be identical to the corresponding values in Account L and Account L–NY for the Novated Contracts for each valuation period after the Reinsurance Transactions have been effected.

17. The Reinsurance Transactions will be carried out by transferring supporting underlying fund shares from the UNUM VA–1 Separate Account or First UNUM VA–1 Separate Account L or Account L–NY, as appropriate, as of the close of business on the day the reinsurance is effected. Therefore, there will be no interruption of investment of contract value in the underlying funds. No charge or expense will be incurred by the UNUM VA–1 Separate Account, the First UNUM VA–1 Separate Account, Account L, Account L–NY, or the underlying funds in connection with the transfer of shares of the underlying funds. Accordingly, the contract values under the Novated Contracts will be the same as they would have been under the corresponding UNUM Contracts and First UNUM Contracts had the Reinsurance Transactions not been effected. Finally, Lincoln Life and Lincoln Life of NY will not assess any charge as a result of the Reinsurance Transactions.

18. If either the Contractholder or participant exercises opt-out rights, the participant's interest in the UNUM Contract or the First UNUM Contract will not be reinsured with Lincoln Life or Lincoln Life of NY, and the assets supporting the variable benefits of such participant's interest in such contract will remain in either the UNUM VA–1 Separate Account or First UNUM VA–1 Separate Account, as appropriate. In that event, UNUM and First UNUM will continue to accept purchase payments under the terms of their respective contracts.

19. There will be no adverse tax consequences to Contractholders and participants as a result of the assumption reinsurance of the UNUM Contracts and the First UNUM Contracts or the exercise of any opt-out rights in connection with the Reinsurance Transactions.

20. UNUM has agreed to continue to issue its contracts in each state except New York for up to 18 months after the Closing Date in the event Lincoln Life has not received policy form approval or other necessary regulatory approvals to issue the Lincoln Life Contracts to the residents of a particular state. LNC will be the principal underwriter for such sales.

21. Lincoln Life and UNUM will enter into a coinsurance and assumption agreement (the "UNUM Coinsurance Agreement") which will provide for the indemnity reinsurance, on a coinsurance basis, by Lincoln Life of the general account obligations of UNUM under the UNUM Contracts issued in states where Lincoln Life has not yet received the necessary regulatory approvals to issue its Contracts (the "UNUM Coinsured Contracts"). Lincoln Life will assume by novation the UNUM Coinsured Contracts on a state-by-state basis as Lincoln Life receives the necessary regulatory approvals. Lincoln Life of NY will enter into a similar arrangement and coinsurance and assumption agreement with First UNUM (the "First UNUM Coinsurance Agreement"). (First UNUM Contracts issued under such an arrangement are referred to herein as the "First UNUM Coinsured Contracts.") LNC will be the principal underwriter of the First UNUM Coinsured Contracts. The First UNUM Coinsured Contracts will be assumed by Lincoln Life of NY as the necessary state approvals are obtained. When the UNUM Coinsured Contracts and First UNUM Coinsured Contracts and certificates thereunder are issued, the Contractholder and participants will consent to the assumption of the contract and certificate by Lincoln Life or Lincoln Life of NY.

Applicants' Legal Analysis and Conditions

Section 17(b) of the 1940 Act

1. Section 2(a)(3) of the 1940 Act defines "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person. Section 2(a)(9) of the 1940 Act defines control as the power to exercise controlling influence over management or policies of a company. Section 17(a)(1) of the 1940 Act, in pertinent part, prohibits any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of such a person, acting as principal, to knowingly sell to or purchase from such registered company any security or other property. Section 17(b) of the 1940 Act provides that a person may apply for an order of exemption from the provisions of Section 17(a) and that the Commission shall grant such an application if the evidence establishes that:

(i) the terms of the proposed transaction, including the conditions to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(ii) the proposed transaction is consistent with the policy of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. After the Closing Date, LNC will serve as principal underwriter for the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account. Applicants submit that LNC and Lincoln Life, as wholly-owned subsidiaries of Lincoln National Corporation, may be deemed to be under common control for purposes of Section 2(a)(3) of the 1940 Act and, therefore, affiliates of one another. Similarly, Lincoln Life of NY, as an indirect wholly-owned subsidiary of Lincoln National Corporation, may be deemed to be under common control with LNC and, therefore, an affiliate of LNC. As such, Lincoln Life and Lincoln Life of NY, as affiliates of LNC, would be deemed for purposes of Section 17(a) to be affiliated persons of the principal underwriter of the UNUM VA–1 Separate Account and the First UNUM VA–1 Separate Account.

3. Because of these relationships, Applicants submit, the Reinsurance Transactions may be deemed to involve purchase and/or sale transactions between a registered investment company and an affiliated person of its principal underwriter in that the Reinsurance Transactions will be effected by a transfer of separate account assets (*i.e.*, shares of the underlying funds) from: (i) the UNUM VA–1 Separate Account to Account L with regard to the UNUM Non-NY Contracts and the UNUM Coinsured Contracts; (ii) the UNUM VA–1 Separate Account to Account L–NY with regard to the UNUM NY Contracts; and (iii) the First UNUM VA–1 Separate Account to Account L–NY with regard to the First UNUM Contracts and the First UNUM

[2] Applicants state that because of differences in accumulation unit values between the UNUM NY Contracts and the First UNUM Contracts, the accumulation unit values in Account L–NY will not correspond to the accumulation unit values in the First UNUM VA–1 Separate Account for the First UNUM Contracts. The number of accumulation units will be adjusted so that for the First UNUM Contracts that are reinsured, participant interests under such contracts will not be diluted as a result of the reinsurance.

Coinsured Contracts. Accordingly, Applicants suggest that these transfers may be prohibited by Section 17(a) of the 1940 Act in the absence of an exemption pursuant to Section 17(b) thereof, and note that none of the rules granting self-executing exemptions under Section 17(a) appear to be relevant to the Reinsurance Transactions.

4. Applicants state that the 1940 Act does not provide any specific standards or guidelines for the Commission to apply in determining whether a transaction being considered under Section 17(b) is reasonable and fair and does not involve overreaching. Applicants submit that the Reinsurance Transactions are reasonable and fair because: (i) the contractual rights of Contractholders and participants vis-a-vis the separate account supporting the variable benefits of their contracts will not change as a result of the Reinsurance Transactions; (ii) the same underlying funds will be available after the Reinsurance Transactions; (iii) no charges will be imposed in connection with effecting the Reinsurance Transactions; (iv) the charges under the contracts will not change after the Reinsurance Transactions; and (v) the respective operations and objectives of the Lincoln Life and Lincoln Life of NY separate accounts will be identical to the operations and objectives of the UNUM and First UNUM separate accounts.

5. Applicants assert that the Reinsurance Transactions do not involve overreaching on the part of any person concerned. Applicants represent that neither Lincoln Life nor Lincoln Life of NY will impose any charge in connection with the Reinsurance Transactions, and that participants' interests will not be diluted as a result of the Reinsurance Transactions. Applicants also note that the Reinsurance Transactions will have been subjected to regulatory approval in most states before being implemented.

6. Section 17(b) requires that the proposed transaction be consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act. Applicants represent that the UNUM VA–1 Separate Account, the First UNUM VA–1 Separate Account, Account L and Account L–NY have the same policies insofar as the Novated Contracts are concerned. In particular, Applicants represent that because the assets underlying the Novated Contracts will continue to be invested in shares of the same underlying funds—in the same manner and subject to the same rules—before and after the Reinsurance Transactions have been effected, the assets underlying the Novated Contracts will continue to be invested according to the investment policies recited in the registration statements for the UNUM Contracts and the First UNUM Contracts.

7. Applicants assert that the Reinsurance Transactions are consistent with the general purposes of the 1940 Act, and do not present any of the issues or abuses that Section 17(a), in particular, and the 1940 Act, in general, were designed to prevent. The interests of participants will not be adversely effected by the reinsurance of their contracts: the terms and provisions of the Novated Contracts will remain unchanged and participants' interests will be unaffected by the Reinsurance Transactions. Further, Contractholders and participants will be provided with the definitive prospectus for the Novated Contracts, and will thereby be informed about Lincoln Life, Lincoln Life of NY, and their respective separate accounts.

Section 11 of the 1940 Act

8. Section 11(a) of the 1940 Act provides, in relevant part, that it shall be unlawful for any registered open-end management investment company (a "fund") or its principal underwriter to make an offer to a shareholder of that fund or of another fund to exchange his or her security for a security in the same or another fund on a basis other than the relative net asset values of the securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or the offer compiles with the Commission's rules. Section 11(c) makes this prohibition applicable, regardless of the basis of the exchange, to any type of offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company. In other words, prior Commission approval is required for exchange offers subject to Section 11(c) even if made on the basis of relative net asset values.

9. Rule 11a–2 under the 1940 Act permits registered insurance company separate accounts and their principal underwriters to make certain exchange offers to holders of variable contracts supported by separate accounts having the same or an affiliated insurance company depositor or sponsor without prior Commission approval, provided that certain conditions are met. With respect to variable annuity contracts, these conditions require that: (i) the exchange be made on the basis of the relative net asset values of the securities to be exchanged (less any administrative fee disclosed in the offering account's registtation statement and certain front-end sales loads); and (ii) any deferred sales loads which may be imposed be calculated and deducted to give full credit for the sales load paid under the exchanged security.

10. Applicants note that Section 11 does not set forth specific standards for Commission approval of exchange offers. Applicants maintain that the public policy underlying Section 11 may be inferred from Section 1(b)(1) of the 1940 Act, which declares that the national public interest and the interests of investors are adversely affected when, among other things, investors exchange securities issued by investment companies without "adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such [investment] companies and their management." Applicants also maintain that the legislative history of the 1940 Act indicates that Section 11(a) is designed to provide assurance that exchange offers are not being proposed "solely for the purpose of exacting additional selling charges and profits" from investors by inducing them to "switch" one security for another.

11. Applicants represent that, as soon as practicable following the receipt of necessary state insurance department approvals and other regulatory approvals: UNUM will transfer its liabilities under the UNUM Non-NY Contracts and the UNUM Coinsured Contracts to Lincoln Life pursuant to assumption reinsurance agreements and the UNUM Coinsurance Agreement; UNUM will transfer its liabilities under the UNUM NY Contracts to Lincoln Life of NY pursuant to an assumption reinsurance agreement; and First UNUM will transfer its liabilities under the First UNUM Contracts and the First UNUM Coinsured Contracts to Lincoln Life of NY pursuant to an assumption reinsurance agreement and the First UNUM Coinsurance Agreement.

12. Applicants state that for participants who opt-in or are deemed to have opted-in to the Reinsurance Transactions, assets held in the UNUM VA–1 Separate Account will be transferred to Account L or Account L–NY, as appropriate, and assets held in the First UNUM VA–1 Separate Account will be transferred to Account L–NY. Thus, Applicants submit, a participant under a UNUM Non-NY Contract or a UNUM Coinsured Contract who opts-in or is deemed to have opted-in to the Reinsurance Transactions, in effect, will be exchanging his or her interest in such

contracts for a Lincoln Life Contract, and a participant under a UNUM NY Contract who opts-in or is deemed to have opted-in to the Reinsurance Transactions, in effect, will be exchanging his or her interest in a UNUM NY Contract for a Lincoln Life of NY Contract. Likewise, Applicants submit, the participant under a First UNUM Contract or a First UNUM Coinsured Contract who opt-in or is deemed to have opted-in to the Reinsurance Transactions, in effect, will be exchanging his or her interest in a First UNUM Contract or a First UNUM Coinsured Contract for an interest in a Lincoln Life of NY Contract. Applicants state that the granting of a right to make an election to opt-in or opt-out of the Reinsurance Transactions may be considered an offer to exchange securities of one unit investment trust for another unit investment trust, for purposes of Section 11 of the 1940 Act.

13. Applicants represent that the terms of the exchange offers proposed herein do not involve any of the practices Section 11 of the 1940 Act was designed to prevent, and are fair to Contractholders and participants, because: (i) participants will be fully apprised of their rights in connection with the exchange offers and will receive definitive prospectuses for the relevant Lincoln Life Contract or Lincoln Life of NY Contract; (ii) no charges will be imposed in connection with effecting the exchanges and, therefore, the exchanges will be made on the basis of the relative net asset value; (iii) participants who opt-in to the Reinsurance Transactions will have their interests assumptively reinsured under a materially similar Lincoln Life Contract or Lincoln Life of NY Contract with an identical sales charge structure; (iv) when appropriate, participants under a UNUM Contract or First UNUM Contract will receive credit for the time invested in such contract for purposes of determining any applicable sales charge under the corresponding Lincoln Life Contract or Lincoln Life of NY Contract; (v) the same underlying funds will be available upon reinsurance and, thus, there will be no interruption in the underlying funds serving as an investment media for the contracts; and (vi) participants who do not wish to accept the assumption reinsurance by Lincoln Life or Lincoln Life of NY may elect to opt-out of the Reinsurance Transactions, and their existing contractual rights under the UNUM Contract or First UNUM Contract will remain unchanged. Applicants also assert that there will be no adverse tax consequences to Contractholders and participants as a result of the assumption reinsurance of their contracts or the exercise of any opt-out rights in connection with the proposed exchange offers.

14. Applicants submit that if, through common ownership, UNUM were affiliated with Lincoln Life and UNUM and First UNUM were affiliated with Lincoln Life of NY, Rule 11a–2 would permit the proposed exchange offers to be made without the prior approval of the Commission. Applicants submit that the proposed exchange offers between non-affiliates—which would be permitted under Rule 11a–2 if the companies were affiliated—should not be held to a more stringent standard than Rule 11a–2.

Conclusion

For the reasons set forth above, Applicants represent that the requested exemptions satisfy the standards of Section 17(b) of the 1940 Act, and that the terms of the proposed exchange offers satisfy the standards of Section 11 of the 1940 Act. Applicants, therefore, request that the Commission issue an order granting the requested exemptions and approving the proposed exchange offers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22626 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To be Published.

CHANGE IN THE MEETING: Cancellation.

The closed meeting scheduled for Thursday, September 5, 1996, at 10:00 a.m., has been cancelled.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: August 30, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22722 Filed 8–30–96; 4:25 pm]

BILLING CODE 8010–01–M

[Release No. 34–37621; File No. SR–CBOE–96–49]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Permitting Additional Submissions Following Respondent's Petition for Review

August 29, 1996.

On July 23, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change amends Exchange Fule 17.10 which governs the review of Business Conduct Committee ("BCC") decisions by the Exchange's Board of Directors ("Board"). Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release No. 37473, July 23, 1996) and by publication in the **Federal Register** (61 FR 39685, July 30, 1996).[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

The purpose of the proposed change to Exchange Rule 17.10 is to formalize the current practice whereby the Board has permitted one additional submission by both Exchange staff and Respondent following Respondent's petition for review. Presently, the Rule does not provide for any subsequent submissions following a Respondent's appeal of a BCC decision to the Board.

II. The Terms of Substance of the Proposed Rule Change

The proposed rule change provides that, after a Respondent appeals a BCC decision to the Board, Exchange staff may submit a written response to which the Respondent may submit a reply. The proposed rule change requires the

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was originally filed with the Commission on July 11, 1996. The CBOE subsequently submitted Amendment No. 1 to the filing. Letter from Michael L. Meyer, Schiff, Hardin & Waite, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated July 19, 1996.

Exchange staff's response to be filed within 15 days of the date the Respondent's request for review is filed with the Secretary of the Exchange and the Respondent's reply to be filed within 15 days of service of staff's response. In addition, the proposed rule change clarifies that the Respondent's petition for review and Respondent's reply should be filed with the Secretary of the Exchange and the Exchange's Office of Enforcement.

III. Discussion

The Commission believes the proposed rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(7) in particular in that it provides a fair procedure for the disciplining of members and persons associated with members. The Commission believes the proposed rule change will make the review process more fair and efficient by formalizing the current appeal practice to ensure that both parties have the opportunity to make an additional submission to the Board and by clarifying with which office of the Exchange the petition for review should be filed. The proposed rule change will ensure a more fair and thorough process because each party will have an opportunity to clarify its position to the Board on the specific issues of contention addressed in the petition for review. As is the case under the current rules, the proposed rule change will ensure that the Respondent ordinarily will have the opportunity to make the final submission to the Board. In addition, the proposed rule change will reduce the amount of time the Board spends on administrative matters by eliminating the need for the staff to request approval before the submission of each response.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–CBOE–96–49 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22629 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37617; File No. SR–DTC–96–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Permanent Approval of a Proposed Rule Change Relating to Procedures for Inter-Depository Deliveries

August 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 11, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–96–14) as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant permanent approval of the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of DTC's existing procedures for deliveries through the interface between DTC and the Philadelphia Depository Trust Company ("Philadep"). The Commission previously granted temporary approval to a proposed rule change establishing DTC's procedures for inter-depository deliveries as part of the conversion of DTC's money settlement system to an entirely same-day funds settlement system.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks permanent approval of the procedures for deliveries through the interface between DTC and Philadep. The Commission previously granted temporary approval of the inter-depository delivery procedures to allow DTC to implement the procedure so it could monitor and report to the Commission the number of inter-depository reversals of deliveries that caused a DTC participant's net debit cap to be exceeded.

When processing a participant's delivery to Philadep, DTC employs an immediate update technique whereby the delivering participant's security position, collateral, and settlement account are immediately updated if the delivering participant has sufficient securities and collateral to allow the delivery to be completed. The delivering participant's position is reduced by the quantity of securities delivered, its settlement account is credited for the settlement value of the transaction, and its collateral monitor is increased by the settlement credit incurred and is reduced by the collateral value of the securities delivered (provided the securities being delivered are part of the participant's collateral position).

Once the delivery satisfies risk management controls and completes at DTC (*i.e.*, the participant has sufficient securities to make the delivery and the participant's collateral monitor will not become negative because of the delivery), DTC sends the delivery to Philadep where it is subject to Philadep's internal risk management controls. In certain instances, Philadep's internal risk management controls will prevent a delivery from completing (*e.g.*, the receiving participant does not have sufficient collateral or the receipt would cause the participant to exceed its net debit cap) and will cause the delivery to pend in Philadep's system. At the end of each processing day, Philadep returns to DTC delivery orders that fail to complete in Philadep's system, and DTC reverses the deliveries to the original delivering participants.

Reversals from Philadep are processed at DTC until approximately 3:37 P.M. DTC's reversals are not subject to its Receiver-Authorized Delivery ("RAD") processing[4] or other risk management

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36861 (February 20, 1996), 61 FR 287 [File No. SR–DTC–95–21] (order granting temporary approval of a proposed rule change on a temporary basis through August 31, 1996).

[3] The Commission has modified the text of the summaries submitted by DTC.

[4] RAD allows a participant to review and either approve or cancel incoming deliveries before they are processed in DTC's system. For a further discussion of DTC's RAD procedures, refer to

Continued

controls (*i.e.*, net debit cap and collateral monitor).

As expected, the number of deliveries through the interface from DTC to Philadep have been low. Consequently, the number of reversals to such deliveries also have been low. During the five month period from March 1, 1996, through July 31, 1996, there were an average of 5,706 deliveries (both valued deliveries and free deliveries) each day from DTC to Philadep through the interface. During that five month period, DTC reversed a total of twenty-three deliveries back to its participants. Of those twenty-three reversals, the largest reversal had a settlement value of $5,640,372, and the remaining twenty-two reversals had an aggregate settlement value of $2,307,547. None of the twenty-three reversals caused a DTC participant to violate its net debit cap.

DTC believes the proposed rule change is consistent with Section 17A of the Act[5] and the rules and regulations thereunder because the proposed rule change will contribute to efficiencies in processing deliveries in the interface between DTC and Philadep. DTC also believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change has operated safely pursuant to the Commission's temporary approval on February 20, 1996.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

All participants were informed of the proposed rule change by a DTC Important Notice.[6] Written comments from DTC's participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that DTC's proposed procedures relating to inter-depository deliveries are consistent with DTC's obligations under Section 17A(b)(3)(F) because the proposed rule change establishes procedures for the processing of inter-depository deliveries between DTC and Philadep.

Under the proposed procedures, DTC will immediately update a participant's account for deliver orders and payment orders sent to a Philadep participant through the interface. In the event that the delivery fails to complete at Philadep by the end of the day, the procedures provide a mechanism by which DTC will reverse the transaction to the original delivering participant without subjecting that reversal to RAD or risk management controls.

Because the Commission was concerned that the inter-depository delivery procedures could create the situation where an inter-depository reversal arising from an uncompleted delivery at Philadep would cause a DTC participant to violate its net debit cap at DTC near the end of the day, the Commission previously approved the proposed rule change on a temporary basis in order that the procedures and their effects could be carefully monitored and modified if needed before they were permanently approved. During the temporary approval period, there were only twenty-three inter-depository deliveries reversed back to DTC participants, and none of those twenty-three reversals caused a DTC participant to violate its net debit cap. Therefore, the Commission is permanently approving DTC's inter-depository delivery procedures. However, the Commission continues to encourage DTC to examine and to consider future enhancements to the interface to provide a mechanism through which DTC participants can receive notification of transactions pending at Philadep.[8] In this regard, DTC must report to the Commission on a quarterly basis the number and extent of inter-depository reversals that caused DTC participants to violate their net debit caps by $1 million or more.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the Commission has previously noticed the procedures without receiving any comment letters and because accelerated approval will allow DTC to continue to utilize the procedures for deliveries between DTC and Philadep participants through the interface without any disruption when the current temporary approval expires on August 31, 1996.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–14 and should be submitted by September 26, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–96–14) be, and hereby is, permanently approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22630 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

Securities Exchange Act Release No. 25886 (July 6, 1988), [File No. SR–DTC–88–07] (notice of filing and immediate effectiveness of a proposed rule change implementing DTC's RAD procedures).

[5] 15 U.S.C. § 78q–1 (1988).

[6] DTC Important Notice (January 9, 1996).

[7] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[8] The Commission understands that such enhancements were considered but were not initiated because of the costs involved and because of the low number of inter-depository reversals that were expected. However, the Commission believes if the number of inter-depository reversals substantially increases, DTC should implement such enhancements or take other steps to control the risks created by inter-depository reversals.

[9] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37616; File Nos. SR–MBSCC–96–02; SR–GSCC–96–03, and SR–ISCC–96–04]

Self-Regulatory Organizations; MBS Clearing Corporation, Government Securities Clearing Corporation, and International Securities Clearing Corporation; Order Approving Proposed Rule Changes Seeking Authority to Enter Into Limited Cross-Guarantee Agreements

August 28, 1996.

On April 11, 1996, May 10, 1996, and May 16, 1996, the MBS Clearing Corporation ("MBSCC"), the Government Securities Clearing Corporation ("GSCC"), and the International Securities Clearing Corporation ("ISCC") (collectively referred to as the "clearing corporations"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On May 13, 1996, GSCC filed an amendment to the proposed rule change to a change the specific rule numbers used in the proposed rule change.[2] On July 2, 1996 and on July 8, 1996, ISCC and GSCC, respectively, filed amendments to their proposed rule changes to make certain technical corrections.[3] Notice of the proposed rule changes was published in the **Federal Register** on July 15, 1996.[4] The Commission received no comments. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposals

The purpose of the proposed rule change is to modify the clearing corporations' rules to enable them to enter into limited cross-guarantee agreements with other clearing agencies. Generally, limited cross-guarantee agreements contain a guarantee from one clearing agency to another clearing agency that can be invoked in the event of a default of a common member. The guarantee provides that resources of a defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy the obligations of the defaulting common member that remain unsatisfied at the other clearing agency. The guarantee is limited to the amount of a defaulting common member's resources remaining at the guaranteeing clearing agency.

Generally, limited cross-guarantee agreements should be beneficial to the clearing corporations because amounts available under limited cross-guarantee agreements may be applied to unpaid obligations of the defaulting participant. With regard to GSCC, these amounts may reduce possible pro rata allocations against original counterparties of the defaulting participant. Similarly, these amounts available to ISCC may reduce the possibility of pro rata charges against its clearing fund. Furthermore, even though MBSCC does not mutualize risk, these amounts may reduce allocations against and losses of the original contrasides of a defaulting participant.

The benefits generally accruing to the clearing corporations from a limited cross-guarantee agreement are illustrated by the following example:

Dealer A, a common participant of Clearing Agency X and Clearing Agency Y, declares bankruptcy. Upon insolvency, Dealer A owes Clearing Agency Y $10 million and Clearing Agency X owes A $7 million. In the absence of an interclearing agency limited cross-guarantee agreement, Clearing Agency X would be obligated to pay $7 million to Dealer A's bankruptcy estate and Clearing Agency Y would have a claim for $10 million against Dealer A's bankruptcy estate as a general creditor with no assurance as to the extent of recovery. However, an effective cross-guarantee arrangement would obligate Clearing Agency X to pay Clearing Agency Y an amount equal to Dealer A's $7 million receivable from Clearing Agency X thereby reducing Clearing Agency Y's net exposure from to $10 million to $3 million. This approach would enable Clearing Agency Y to secure earlier payment and would allow Clearing Agency X to fulfill its obligations without making an actual payment to Dealer A's bankruptcy estate.

The benefits specifically accruing to MBSCC from a limited cross-guarantee agreement are illustrated by the following example:

A sells to B who sells to C. A also sells to X who sells to Y; and A also sells to Q. B and X net out, leaving obligations of A owing to C, Y, and Q. A becomes insolvent. Under MBSCC's rules, if A's participants fund contribution is not adequate to cover the aggregate of C's and Y's losses, then B, X, and Q as original contrasides would be responsible for covering such losses. However, before allocating C's and Y's aggregate loss to B, X, and Q, MBSCC may obtain resources under a limited cross-guarantee agreement to reduce, if not eliminate, the amount of such allocations. If those resources are sufficient to satisfy C's and Y's losses, any remaining funds would also be available for the satisfaction of Q's losses.

The limited cross-guarantee agreements are designed to preserve substantial flexibility to the counterparty clearing corporation. The agreements will provide a list of all the limited cross-guarantee agreements to which the clearing agencies are a party, including the counterparties to those agreements. The agreements will set forth the clearing agency's priority structure with respect to the order in which it will make guarantee payments to its counterparty clearing agencies (if more than one exist) in the event of a defaulting common participant. GSCC intends to prioritize its counterparty clearing agencies in the following manner: (1) pro rata to those counterparty clearing agencies with a transactional nexus to GSCC; (2) the National Securities Clearing Corporation; and (3) pro rata to all other counterparty clearing agencies.[5]

An additional source of flexibility in a limited cross-guarantee agreement is the length of time within which a demand for payment must be made. This period is negotiated and agreed to by the counterparty clearing agencies. GSCC believes that an appropriated time period for this purpose is six months.[6] During this six month period, the limited cross-guarantee agreement would permit recalculations of each clearing agency's available resources and losses.

Accordingly, GSCC's proposed rule change modifies GSCC's rules to establish GSCC to enter into one or more limited cross-guarantee agreements. Proposed GSCC Rule 41 governing limited cross-guarantee agreements provides that a participant is obligated to GSCC for any guarantee payment that GSCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. GSCC's Rule 41 and the proposed modifications to Rule 4, Section 8 provide that amounts received by GSCC under any limited cross-guarantee agreement will be applied to the common participant's unpaid obligations to GSCC and will reduce assessments against original counterparties of the defaulting

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (May 13, 1996).

[3] Letter from Julie Beyers, ISCC, to Peter Geraghty, Special Counsel, Division, Commission (July 1, 1996) and letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Peter Geraghty, Special Counsel, Division, Commission (July 2, 1996).

[4] Securities Exchange Act Release No. 37413 (July 9, 1996), 61 FR 1199.

[5] At this time, MBSCC and ISCC have not determined the priority structures of their limited cross-guarantee agreements.

[6] At this time, MBSCC and ISCC have not determined a specific recovery period for their limited cross-guarantee agreements.

participant. The proposed rule change also modifies GSCC's Rule 1 to add definitions of the terms "common member," "cross-guarantee obligation," "cross-guarantee party," "defaulting common member," "defaulting member," and "limited cross-guarantee agreement." GSCC also is proposing to amend Rule 4, Section 6 to clarify that liabilities of GSCC include limited cross-guarantee payments made to a counterparty clearing agency pursuant to a limited cross-guarantee agreement.[7]

MBSCC's proposed rule change will add new Rule 4 to Article III of MBSCC's rules. The new rule will enable MBSCC to enter into one or more limited cross-guarantee agreements. The new rule provides that a former participant[8] is obligated to MBSCC for any guarantee payment MBSCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. The new rule also provides that amounts received by MBSCC under any limited cross-guarantee agreement will be applied to unpaid obligations of the former participant to MBSCC and to reduce assessments against and losses of original contraside participants. A technical modification will be made to renumber current Rule 4 of Article III as Rule 5. MBSCC's proposed rule change also modifies Rule 1 of Article I of MBSCC's rules to add definitions of the terms "limited cross-guarantee agreement," "cross-guarantee obligation," and "cross-guarantee party." MBSCC's proposed rule change also modifies Chapter VI of MBSCC's procedures relating to application of the participants fund to reflect that amounts received by MBSCC under any limited cross-guarantee agreement will be applied to unpaid obligations of a former participant of MBSCC and to reduce assessments against and losses of original contraside participants.[9]

ISCC's proposed rule change will add new Rule 13 to ISCC's rules. The new rule provides that an ISCC member is obligated to ISCC for any guarantee payment ISCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. ISCC's proposed rule change also modifies ISCC's rules to indicate that amounts available to satisfy aggregate losses will include amounts available under limited cross-guarantee agreements. ISCC's proposal also modifies ISCC's Rule 1 to add definitions of the terms "limited cross-guaranty agreement," "cross-guaranty obligation," and "cross-guaranty party."[10]

II. Discussion

Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes the proposals are consistent with each clearing corporation's obligation to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible because cross-guarantee agreements among clearing agencies are a method of reducing clearing agencies' risk of loss due to a common member's default. Furthermore, the Commission has encouraged the use of cross-guarantee agreements and other similar arrangements among clearing agencies.[12] Consequently, cross-guarantee agreements should assist clearing agencies in assuring the safeguarding of securities and funds in their custody or control.

The Commission also believes the proposals are consistent with each clearing corporation's obligation to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that by entering into such cross-guarantee agreements, clearing corporations can mitigate the systemic risks posed to an individual clearing corporation and to the national clearance and settlement system as a result of a defaulting common member.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22580 Filed 9–4–96; 8:45 am]

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[Release No. 34–37622; File No. SR–OCC–96–10]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Laptop Version of the Enhanced Clearing Member Interface Platform

August 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 18, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's rules and schedule of fees to provide a laptop version of the Enhanced Clearing Member Interface ("ECMI") platform.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these

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[7] The definitions of the terms described above as well as the specific changes to GSCC's rules and procedures are attached as Exhibit A to GSCC's proposed rule change which is available through GSCC or through the Commission's public reference room.

[8] Under Section 10 of Rule 3 of Article III of MBSCC's rules, the term "former participant" is defined as a participant for whom MBSCC has ceased to act pursuant to Sections 1 and 2 of Rule 3 of Article III.

[9] The definitions of the terms described above as well as the specific changes to MBSCC's rules and procedures are attached as Exhibit A to MBSCC's proposed rule change which is available through MBSCC or through the Commission's public reference room.

[10] The definitions of the terms described above as well as the specific changes to ISCC's rules and procedures are attached as Exhibit A to ISCC's proposed rule change which is available through ISCC or through the Commission's public reference room.

[11] 15 U.S.C. § 78q-1(b)(3)(F) (1988).

[12] *E.g.*, Securities Exchange Act Release Nos. 36431 (October 27, 1995), 60 FR 55749 [File No. SR–GSCC–95–03] and 36597 (December 15, 1995), 60 FR 66570 [File No. SR–MBSCC–95–05] (orders approving proposed rule changes authorizing the release of clearing data relating to participants).

[13] 17 CFR 200.30–3 (a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC currently leases ECMI equipment [3] to clearing members which is configured so that clearing members may interface with OCC via OCC's Clearing/Management and Control System ("C/MACS").[4] That equipment currently operates on a desktop platform, and OCC's rules require that the equipment used to enter information to OCC and to receive reports from OCC be located in a clearing member's office. Clearing members have now requested that they be permitted to interface with OCC via laptop computers, and OCC has determined to permit the use of laptop computers outside of a clearing member's office. Because expirations require clearing members' personnel to perform C/MACS entry and approval after normal business hours, the ability to sign on from home and to complete the entry and approval process would produce both cost savings and convenience for clearing members. OCC proposes to lease such equipment to clearing members for a monthly fee of $250 per laptop and $50 per month for an optional printer. These proposed fees are based on OCC's costs of obtaining the equipment. Accordingly, OCC would amend its schedule of fees to reflect these monthly fees.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [5] in that it creates the opportunity for more efficient means of communication between OCC and its clearing members, and it allocates reasonable fees in an equitable manner among OCC's clearing members in that the proposed fees reflect OCC's current costs of providing the ECMI configuration to its clearing members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and Rule 19b–4(e)(2) [7] thereunder in that the proposed rule change establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–96–10 and should be submitted by September 26, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22627 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37618; File No. SR–OCC–96–07]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Other Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to the Standards for Letters of Credit Deposited as Margin

August 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 21, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and other to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through June 30, 1997.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the Commission's previous temporary approval of the OCC's modifications that relate to OCC's standards for letters of credit deposited with OCC as margin. In general, OCC requires that letters of credit deposited by clearing members as margin with OCC be irrevocable and unless otherwise permitted by OCC expire on a quarterly basis. In addition, OCC may draw upon a letter of credit regardless of whether the clearing member has been suspended or has defaulted on any obligation to OCC if OCC determines that such action is advisable to protect OCC, other clearing members, or the general public.[2]

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[2] The Commission has modified such summaries.

[3] ECMI permits clearing members, among other things, to input post-trade transactions via OCC's Clearing Management and Control System, to retrieve clearing reports via OCC's on-line report inquiry service, and to review information memoranda and other notices via OCC's Option News Network service. Securities Exchange Act Release No. 32386 (May 25, 1993), 58 FR 31435 [File No. SR–OCC–93–11] (notice of filing and immediate effectiveness of proposed rule change).

[4] C/MACS is an on-line, menu-driven system that allows OCC member firms to access or input trade information directly from or to OCC's clearing systems.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19.b–4(e)(2) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a complete description of these modifications to the standards for letters of credit, refer to Securities Exchange Act Release No. 29641, (August 30, 1991), 56 FR 46027 [File No. SR–OCC–91–13] (order temporarily approving proposed rule change through February 28, 1992).

II. Self-Regulatory Organization's State of the Purpose, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In previous filings OCC has proposed and the Commission has approved on a temporary basis the modification of the rules governing letters of credit deposited with OCC as a form of margin.[4] Like the previous filings, this filing proposes several modifications to OCC Rule 604, Forms of Margin. First, in order to conform to the Uniform Commercial Code and to avoid any ambiguity as to the latest time for honoring demands upon letters of credit, letters of credit must state expressly that payment must be made prior to the close of business on the third banking day following demand. Second, letters of credit must be irrevocable. Third, letters of credit must expire on a quarterly basis. Fourth, OCC included language in its rules to make explicit its authority to draw upon letters of credit at any time, whether or not the clearing member that deposited the letter of credit has been suspended or is in default, if OCC determines that such draws are advisable to protect OCC, other clearing members, or the general public.[5]

OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act because the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[6] of the Act requires the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because the modified standards for letters of credit will enable OCC to draw upon a letter of credit at any time that OCC determines that such a draw is advisable to protect OCC, the clearing members, or the general public. This ability increases the liquidity of its margin deposits by enabling OCC to substitute cash collateral for a clearing member's letter of credit and consequently will permit OCC to rely more safely upon such letters of credit. In addition, by eliminating the issuer's right to revoke the letter of credit, an issuer will no longer be able to revoke a letter of credit at a time when the clearing member is experiencing financial difficulty and most needs credit facilities. Finally, requiring that the letters of credit expire quarterly rather than annually will result in the issuers conducting more frequent credit reviews of the clearing members for whom the letters of credit are issued. More frequently credit reviews will facilitate the discovery of any adverse developments in a more timely manner.

Although OCC has asked for permanent approval of the proposed rule change, the Commission believes that by approving the proposed rule change on a temporary basis through June 30, 1997, OCC, the Commission and other interested parties will be able to assess further, prior to permanent Commission approval, any effects the revised standards have on letter of credit issuance and on margin deposited at OCC.[5]

OCC has requested that the Commission find good cause for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow the changes that have been implemented pursuant to the previous temporary approval order to remain in place during the further assessment of any effects the revised standards have on the issuance of letters of credit and on margin deposited at OCC pending permanent approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for

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[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Securities Exchange Act Release Nos. 29641 (August 30, 1991), 56 FR 46027 [File No. SR–OCC–91–13] (order temporarily approving proposed rule change through February 28, 1992); 30424 (February 28, 1992), 57 FR 8160 [File No. SR–OCC–92–06] (order temporarily approving proposed rule change through May 31, 1992); 30763 (June 1, 1992); 57 FR 242884 [File No. SR–OCC–92–11] (order temporarily approving proposed rule change through August 31, 1992); 31126 (September 1, 1992), 57 FR 40925 [File No. SR–OCC–92–19] (order temporarily approving proposed rule change through December 31, 1992); 31614 (December 17, 1992), 57 FR 61142 [File No. SR–OCC–92–37] (order temporarily approving proposed rule change through June 30, 1993); 32532 (June 28, 1993) [File No. SR–OCC–93–14] (order temporarily approving proposed rule change through June 30, 1994), 34206 (June 13, 1994) [File No. SR–OCC–94–06] (order temporarily approving proposed rule change through June 30, 1995); and 36138 (August 23, 1995), 60 FR 44926 [File No. SR–OCC–95–9] (order temporarily approving proposed rule change through June 28, 1996).

[5] *Supra* note 2.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[5] The Commission and OCC continue to discuss concentration limits on letters of credit deposited as margin. The Commission believes that clearing agencies that accept letters of credit as margin deposits or clearing fund contributions should limit their exposure by imposing concentration limits on the use of letters of credit. Generally, clearing agencies impose limitations on the percentage of an individual member's required deposit or contribution that may be satisfied with letters of credit, limitations on the percentage of the total required deposits or contributions that may be satisfied with letters of credit by any one issuer, or some combination of both. OCC has no concentration limits on the use of letters of credit issued by U.S. institutions.

inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–96–07 and should be submitted by September 26, 1996.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–07) be, and hereby is, approved on a temporary basis through June 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22628 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37604; File No. SR–PSE–96–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Closing Time for Trading of Equity Options and Index Options

August 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 11, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or "Exchange") is proposing to amend its rules to change its closing time for options trading from 1:10 p.m. Pacific Time[2] to 1:05 p.m. for equity options, and from 1:15 p.m. to 1:10 p.m. for index options. The Exchange is also proposing to change certain related rules on closing rotations and the submission of exercise notices for index options. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PSE Rule 4.2, Commentary .01 currently provides that the Board of Governors has resolved that transactions may be effected on the Options Floor of the Exchange until 1:10 p.m. for equity options[3] and until 1:15 p.m. for index options[4] each business day at which time no further transactions may be made. The Exchange is proposing to change the 1:10 p.m. closing time for equity options to 1:05 p.m., and to change the 1:15 p.m. closing time for index options[5] to 1:10 p.m.

The Exchange is proposing this modification so that the closing time for options trading will be closer to the closing time in the securities underlying those options.[6] The extended trading session for options initially was intended to ensure that options traders would be able to respond to the tape "runoff" in the equity markets (i.e., prints of stock trades that occurred just before the closing bell, but that were not reported over the tape until several minutes after the close of trading.[7] If such a trade resulted in a closing price that was materially different from the price at which the stock had been trading previously, the extended trading session allowed options traders the opportunity to bring their options quotes into line with the closing price in the underlying security.[8] However, because of improvements to the processing of transactions at the equity markets, there is no longer any significant tape runoff.[9]

With regard to closing rotations,[10] PSE Rule 6.64, Commentary .01(b) currently provides that transactions may be effected in a class of options after 1:10 p.m. if they occur during a trading rotation. It states that such a trading rotation may be employed in connection with the opening or reopening of trading in the underlying security after 12:30 p.m. or due to the declaration of a "fast market" pursuant to Options Floor Procedure Advice G–9. It further provides that the decision to employ a trading rotation after 12:30 p.m. shall be publicly announced on the trading floor prior to the commencement of such rotation, and that no more than one trading rotation may be commenced after 1:10 p.m. Further, it states that if a trading rotation is in progress and Floor Officials determine that a final trading rotation is needed to assure a fair and orderly close, the rotation in progress shall be halted and a final rotation begun as promptly as possible after 1:10 p.m. Finally, it states that any

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[6] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. § 78s(b)(1).

[2] All times referred to in this filing are Pacific Time unless otherwise indicated.

[3] The extension of the trading hours for equity options by ten minutes until 4:10 p.m. Eastern Standard Time ("E.S.T.") by the American Stock Exchange ("Amex"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Midwest Stock Exchange, Incorporated ("MSE") (now known as the Chicago Stock Exchange, Inc. ("CHX")), Pacific Stock Exchange Incorporated ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (collectively referred to as the "options exchanges") was initially approved by the Commission on a trial basis for a four month period beginning in Oct. 23, 1978 and extending through Feb. 28, 1979. Securities Exchange Release No. 15241 (Oct. 18, 1978), 43 FR 49867 (Oct. 25, 1978) (order approving File Nos. SR–Amex–78–22, SR–CBOE–78–30, SR–MSE–78–26, SR–PSE–78–17, and SR–PHLX–78–18). The Commission approved the continued use by the options exchanges of the existing 4:10 p.m. (E.S.T.) closing time for standardized equity options trading through Apr. 28, 1979. Securities Exchange Act Release No. 15593 (Feb. 28, 1979), 44 FR 12525 (Mar. 7, 1979) (order approving File Nos. SR–Amex–79–3, SR–CBOE–79–1, SR–MSE–79–7, SR–PSE–79–1, and SR–PHLX–79–1). The Commission has since then approved on a permanent basis the closing of equity options trading on the options exchanges at 4:10 p.m. (E.S.T.). Securities Exchange Act Release No. 15765 (Apr. 27, 1979), 44 FR 26819 (May 7, 1979) (order approving File Nos. SR–Amex–79–6, SR–CBOE–79–4, SR–MSE–79–11, SRPSE–79–3, and SR–PHLX–79–4).

[4] Securities Exchange Act Release No. 23795 (Nov. 12, 1986), 51 FR 41884 (Nov. 19, 1986).

[5] The PSE currently trades options on two separate broad-based indexes, the PSE High Technology Index and the Wilshire Small Cap Index. *See* Securities Exchange Release Nos. 20423 (Nov. 29, 1996), 48 FR 54557 (Dec. 5, 1983) (order approving File No. SR–PSE–83–10) and 31043 (Aug. 14, 1992), 57 FR 38078 (Aug. 21, 1992) (order approving File No. SR–PSE–92–12).

[6] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to George A. Villasana, Attorney, SEC dated August 20, 1996.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] A closing rotation is a trading procedure used to determine appropriate closing prices or quotes for each series of options on an underlying stock.

trading rotation conducted after 1:10 p.m. may not begin until ten minutes after news of such rotation is disseminated. The Exchange is proposing to change all references to 1:10 p.m. in this Commentary to 1:05 p.m.

With regard to the exercise of index option contracts, PSE Rule 7.15 currently specifies a cut-off time of 1:20 p.m. or a time designated to be five minutes after the close, for preparing or submitting either a memorandum to exercise or an "exercise advice." The Exchange is proposing to eliminate the references to 1:20 p.m. in this rule, so that, under the amended rule, such memoranda and advices will have to be submitted no later than five minutes after the close of trading.[11]

Finally, the Exchange is proposing to change two references to "San Francisco time" in Rule 6.64, Commentary .01(b), to "Pacific Time" in order to make that rule consistent with other Exchange rules.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[11] The Exchange is not proposing to change the related rule on equity options, Rule 6.24, which provides for an exercise cut-off time of 2:30 p.m.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–96–24 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22581 Filed 9–4–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2890]

Michigan; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 23, 1996, which was for Public Assistance only, and an amendment thereto on August 15 adding Individual Assistance, I find that Bay, Lapeer, Midland, Saginaw, Sanilac, St. Clair, and Tuscola Counties in the State of Michigan constitute a disaster area due to damages caused by severe storms and flooding which occurred June 21–July 1, 1996. Applications for loans for physical damages may be filed until the close of business on October 14, 1996, and for loans for economic injury until the close of business on May 15, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Arenac, Clare, Clinton, Genesee, Gladwin, Gratiot, Huron, Isabella, Macomb, Oakland, and Shiawassee Counties in the State of Michigan.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.625
Homeowners Without Credit Available Elsewhere	3.875
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 289006 and for economic injury the number is 915900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 26, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–22584 Filed 9–4–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2444]

Office of Foreign Missions (M/OFM); Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. The purpose of this notice is to allow 60 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

SUMMARY: The DS–1504 is necessary to determine whether members of foreign diplomatic missions, consular offices, government organizations, or foreign military personnel (hereafter referred to as respondents) assigned to missions are entitled to certain duty-free importation privileges based on reciprocity, international law, the U.S. customs regulations, treaties and other agreements. This form is also used by the White House when it requests duty-free entry of items.

This information is required in connection with 19 CFR 148.81–148.85–148.89; Pub. L. 79–291, Pub. L. 82–4867, and Pub. L. 80–357 Congress; the 1982 Foreign Missions Act; the Harmonized Tariff Schedule of the United States, and the Vienna Conventions on Diplomatic and Consular Relations.

The following summarizes the information collection proposal submitted to OMB:

Type of request—New collection.

Originating office—Office of Foreign Mission (M/OFM).

Title of information collection—Custom Clearance of Merchandise.

Frequency—Each import.

Form No.—DS–1504.

Respondents—Members of foreign diplomatic missions, consulates, and government organizations, international organizations, and foreign military personnel assigned to the mission.

Estimated number of respondents—13,852.

Average hours per response—15 minutes.

Total estimated burden hours—3,463.

44 U.S.C. 3405(h) does not apply.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Victoria Wassmer (202) 395–5871.

Dated: August 28, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–22555 Filed 9–4–96; 8:45 am]

BILLING CODE 4710–44–M

[Delegation of Authority No. 217]

Delegation of Duties, Functions and Responsibilities Vested in the Under Secretary of State for Management

1. General Delegation

By virtue of the authority vested the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. § 2651a), I hereby delegate the duties, functions and responsibilities now or hereafter vested in the Under Secretary of State for Management to the following officials of the Department of State in the order listed: (1) Assistant Secretary for Administration; (2) Chief Financial Officer; (3) Director General of the Foreign Service and Director of Personnel; (4) Assistant Secretary for Consular Affairs; and (5) Assistant Secretary for Diplomatic Security.

2. Technical Provisions

(a) This delegation shall become effective on August 23, 1996.

(b) Notwithstanding any provision of this delegation, the Secretary of State or the Deputy Secretary of State at any time may exercise any function delegated by this delegation.

(c) This delegation shall not include the duties, functions and responsibilities vested in the Under Secretary of State for Management by Public Notice 802 (April 14, 1982), as amended (relating to the designated order of succession of the Secretary of State), nor duties, functions, and responsibilities required by law to be exercised by higher authority than the delegate.

(d) This delegation does not repeal previous delegations to the Under Secretary of State for Management.

(e) This delegation shall terminate and cease to be effective upon the appointment of an Under Secretary of State for Management that takes place after the effective date of this delegation.

Dated: August 23, 1996.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 96–22557 Filed 9–4–96; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 2433]

Director General of the Foreign Service and Director of Personnel; State Department Performance Review Board Members (At Large Board)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the State Department Performance Review Board (At Large Board) register.

James T.L. Dandridge, II, Senior Advisor, Bureau of International Narcotics and Law Enforcement Affairs, Detailee to the Department of State from the United States Information Agency

Joan E. Donoghue, Assistant Legal Adviser, Office of the Legal Adviser, Department of State

Christopher Flaggs, Associate Comptroller Domestic Financial Operations, Bureau of Finance and Management Policy, Department of State

Kenneth Hunter, Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State

Robert T. Spencer, Executive Director, Bureau of Diplomatic Security, Department of State

Dated: August 12, 1996.

Anthony C.E. Quainton,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 96–22556 Filed 9–4–96; 8:45 am]

BILLING CODE 4710–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Continued Airworthiness Assessments

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of Advisory Circular (AC), no. 33.78–1, Turbine Engine Power-Loss And Instability In Extreme Conditions Of Rain And Hail.

DATES: Comments must be received on or before November 7, 1996.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (617) 238–7117, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject to the AC, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

In 1988, the Aerospace Industries Association (AIA) initiated a study of airplane turbine engine power-loss and instability phenomena that were attributed to operating in inclement weather. AIA, working with the Association European des Constructeurs de Materiel Aerospatial (AECMA), concluded that a potential flight safety threat exists for turbine engines installed on airplanes when operating in an extreme rain or hail environment. AIA and AECMA further concluded that the rain and hail ingestion requirements contained in section 33.77 do not adequately address these threats. Consequently the Federal Aviation Administration has issued a notice of proposed rulemaking (61 FR 41688, dated August 9, 1996), proposing changes to the water and hail ingestion standards.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701, 44702, 44704, provides guidance for these proposed requirements.

Issued in Burlington, Massachusetts, on August 27, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–22689 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

Centers of Excellence in Airworthiness Assurance; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of information meeting for FAA Aviation Research Center of Excellence (COE) in Airworthiness Assurance.

SUMMARY: Notice is hereby given of an information meeting regarding technical proposals for the establishment of an FAA Aviation Research Center of Excellence in Airworthiness Assurance.

DATES: The meeting will be held October 23, 1996, from 9 am to 4 pm.

ADDRESSES: The meeting will be held in the Director's Conference Room, Fourth Floor, Technical and Administrative Building, at the William J. Hughes Technical Center, Atlantic City International Airport, NJ 08405.

FOR FURTHER INFORMATION CONTACT: The Office of Research and Technology Applications, AAR–201, FAA Aviation Research Centers of Excellence Program Office, Building 270, Atlantic City International Airport, NJ 08405, telephone (609) 485–5043, facsimile (609) 485–6509.

Note: The FAA will hold an information meeting on October 23, 1996, to explain further the FAA research needs, procedures, and criteria for the selection of the FAA Aviation Research Center of Excellence in Airworthiness Assurance. Questions and suggestions from attendees will be addressed at this meeting. Interested parties are encouraged, but not required, to attend the information meeting.

SUPPLEMENTARY INFORMATION: The FAA intends to award a 50–50 cost share cooperative agreement to establish a COE in Airworthiness Assurance at a qualified college or university. The cooperative agreement will be awarded in 3 year increments up to a maximum of 10 years. It is the FAA's intent to fund a minimum of $1.5 million over the first three years. It is also the intent of the FAA to award a single-source indefinite delivery indefinite quantity (IDIQ) contract to the winner of the competition, under which orders may be placed for developmental products.

The Center shall conduct research which includes the entire spectrum (i.e. basic research through engineering development, prototyping and testing) within the scope of Airworthiness Assurance. This scope includes but is not limited to: crashworthiness, advanced materials, maintenance, inspection, and repair.

The FAA intends to provide long-term funding to establish and operate a prestigious partnership with academia, industry and government. To this end the FAA encourages offerors to team with organizations that complement their expertise from academia, industry, state/local government and other government agencies. The successful offeror is required to match FAA grant funds with non-federal funding over the term of the cooperative agreement. Matching funds are not required for any orders placed under the IDIQ contract. Separate cost-sharing contracts may be awarded when deemed appropriate.

Selection Criteria

The COE will be selected primarily on technical merit and the ability of the team to meet the following criteria mandated by the enabling legislation, Public Law 101–508:

—The extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

—The demonstrated research and extension resources available to the applicant for carrying out the intent of the legislation.

—The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

—The extent to which the applicant has an established air transportation program.

—The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or region-wide continuing education program.

—The projects that the applicant proposes to carry out under the grant.

Those persons wishing to attend this informational meeting are requested to register by no later than October 21, 1996. To register for the meeting or to obtain more information about the meeting, contact Ms. Patricia Watts by facsimile (609) 485–6509 at the Office of Research and Technology Applications, at the William J. Hughes Technical Center, Building 270, Atlantic City International Airport, NJ 08405.

Issued in Washington, DC on August 29, 1996.

Patricia Watts,

Acting Director, Office of Aviation Research.

[FR Doc. 96–22690 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 185, Aeronautical Spectrum Planning Issues; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 185 meeting to be held on October 2–4, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Washington, DC 20036.

The agenda will be as follows: (1) Administrative Remarks; (2) General Introductions; (3) Review and Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review Draft Version 11 of Special Committee 185 Report; (6) Approve Version 11 with Final Corrections for Distribution for Ballot; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue,

N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 27, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–22541 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

National Highway Traffic Safety Administration

[NHTSA Docket No. 93–55, Notice 4]

RIN 2127–AF94

Pilot State Highway Safety Program

AGENCY: Federal Highway Administration and National Highway Traffic Safety Administration, DOT.

ACTION: Notice of waiver.

SUMMARY: The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) are announcing the extension of a pilot highway safety program for fiscal year 1997 State highway safety programs under 23 U.S.C. 402, and the waiver of certain procedures for States that have elected to participate in the pilot program.

EFFECTIVE DATE: September 5, 1996.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Marlene Markison, Office of State and Community Services, 202–366–2121; John Donaldson, Office of the Chief Counsel, 202–366–1834. In FHWA, Mila Plosky, Office of Highway Safety, 202–366–6902; Raymond Cuprill, Office of the Chief Counsel, 202–366–1377.

SUPPLEMENTARY INFORMATION:

Background

The Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*) established a formula grant program to improve highway safety in the States. As a condition of the grant, the States must meet certain requirements contained in 23 U.S.C. 402. Section 402(a) requires each State to have a highway safety program, approved by the Secretary of Transportation, which is designed to reduce traffic accidents and the deaths, injuries, and property damage resulting from those accidents. Section 402(b) sets forth the minimum requirements with which each State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year.

The enforcement of these and other requirements is entrusted to the Secretary and, by delegation, to FHWA and NHTSA (the agencies).

The agencies administer the program in accordance with an implementing regulation, *Uniform Procedures for State Highway Safety Programs* (23 CFR Part 1200) (the Uniform Procedures Rule), which contains procedures for the submission, content, and approval of each State's Highway Safety Plan and requirements for implementation, management, and closeout of each year's Highway Safety Plan. A number of other requirements apply to the Section 402 program, including those generally appearing in Chapter II of Title 23 CFR and such government-wide provisions as the *Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments* (49 CFR Part 18) and the various Office of Management and Budget (OMB) Circulars containing cost principles and audit requirements (e.g., OMB Circulars A–21, A–87, A–122, A–128, and A–133).

In the years since enactment of Section 402, States have developed and deployed the resources necessary to conduct mature and highly effective highway safety programs. The agencies have become aware of interest on the part of some States in assuming more responsibility for the planning and direction of their programs, with a decreased emphasis on detailed Federal oversight. In response to that interest, and consistent with efforts to relieve burdens to the States under the President's regulatory reform initiative, the agencies established a pilot program for fiscal year 1996 highway safety programs. The details of the pilot program were discussed at length with the States during the planning stages, and published in the **Federal Register** on September 12, 1995 (60 F.R. 47418). In brief outline, the pilot program replaced the requirement for State submission and Federal approval of a Highway Safety Plan with a benchmarking process by which the State sets its own performance goals.

The success of the fiscal year 1996 pilot program has brought about increased State interest in participation. Consequently, the agencies have decided to extend the pilot program through fiscal year 1997. The pilot program procedures remain unchanged for fiscal year 1997, and appear in the appendix to this notice.

The agencies have queried each Section 402 grantee about its interest in participating in the pilot program for the fiscal year 1997 highway safety program. This notice lists those States and territories that have chosen to become participants and waives existing procedures for these participants, to the extent that they are inconsistent with the pilot program, for the duration of fiscal year 1997. This waiver does not affect any provisions specifically imposed by statute or by publications of Government-wide applicability (e.g., 49 CFR Part 18, OMB Circulars). Based on the success of the pilot program, the agencies plan to revise the regulations governing the State highway safety program to permanently accommodate the pilot procedures.

States Participating in the Fiscal Year 1997 Pilot Program

The following States and territories have elected to participate in the pilot program for fiscal year 1997:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
New Mexico
New Jersey
New York
North Carolina
North Dakota
Northern Marianas
Ohio
Pennsylvania
Puerto Rico

South Carolina
South Dakota
Tennessee
Texas
Utah
Virgin Islands
Virginia
Washington
West Virginia
Wisconsin

Waiver

Any provisions of 23 CFR Chapter II which conflict with the procedures of the pilot program are waived for the States listed above for fiscal year 1997. Pilot States will instead follow the procedures appearing in the Appendix. For example, pilot States will not have to seek approval for changes involving transfers of funds between program areas or for continuing projects beyond three years. Instead, these States may unilaterally move funds between program areas and extend projects in accordance with their program needs. However, pilot States will still have to submit an updated HS Form 217 reflecting the change, in the former case, and follow the increased cost-sharing requirements for projects exceeding three years, in the latter case.

States following the pilot program procedures must continue to comply with all statutory requirements contained in 23 U.S.C. 402, and the Governor's Representative for Highway Safety shall sign a certification statement to that effect. In addition, Federal regulations having government-wide applicability will continue to apply, and are also referenced in the certification statement to be signed by the Governor's Representative for Highway Safety.

Authority: 23 U.S.C. 315 and 402; 49 CFR 1.48 and 1.50.

Issued on: August 30, 1996.

Ricardo Martinez,

National Highway Traffic Safety Administrator.

Rodney E. Slater,

Federal Highway Administrator.

Appendix—Fiscal Year 1997 Pilot State Highway Safety Program

A State participating in the pilot program must continue in that program through the completion of the highway safety program cycle, including submission of the annual report and final voucher.

Prior to August 1, 1996, the States were advised to prepare a *planning document* describing how the Federal highway safety funds will be used consistent with the guidelines, priority areas, and other requirements established under Section 402. The planning document shall be formally approved and adopted by the Governor's Representative for Highway Safety (GR). It serves as the basis for the State's development of the financial elements identified in the HS Form 217 discussed below. Unlike the Highway Safety Plan, there is no requirement that this planning document be approved by NHTSA and FHWA. Instead, by August 1, the State planning document is to be sent to the NHTSA Regional Administrator (RA) and the FHWA Division Administrator (DA) for information. If the RA and/or DA observe elements of the plan that are not authorized by section 402 or otherwise not in accordance with law, they will notify the State, which shall take appropriate corrective action.

As soon as practicable after August 1, 1996, and in any event prior to fund disbursement, the State shall submit (1) a *certification statement* and (2) a *benchmark report* to NHTSA/FHWA. (Note: At the State's option, the *planning document, certification statement,* and *benchmark report* may be combined into one document.)

The *certification statement,* signed by the GR, shall provide formal assurances regarding the State's compliance with applicable laws and financial and programmatic requirements pertaining to the Federal grant. (To assure that States are well informed of their responsibilities, NHTSA and FHWA will provide every State with an up-to-date manual (the Highway Safety Grant Management Manual) containing pertinent Federal requirements and policies.)

The *benchmark report* shall have three components:

1. *Process Description*—This component shall contain a brief description of the *process(es)* used by the State to: (1) identify its highway safety problems, (2) establish its proposed performance goals and (3) develop the programs/projects in its plan.

The description shall specify the participants in the three processes (such as State, local, and grassroots organizations, Highway Safety Committees or Task Forces, SMS group, private entities), the data and information sources used (including how recent and why utilized), and the criteria and/or strategies for program and project selections (such as locations or groups targeted due to special needs or problems, ongoing activities, training needs). The description should focus on links between identified problems, performance goals, and activities selected. This Process Description need not be lengthy. An annotated flow chart may provide sufficient information.

2. *Performance goals*—The heart of the benchmark report is the State's description of its highway safety performance goals. Each State shall establish performance goals (including target dates) and identify the performance measures it will use to track progress toward each goal and its current (baseline) status with regard to these measures.

A State's selection of appropriate long and short-term goals should evolve from the problem identification process and be consistent with guidelines and priority areas established under Section 402. It will not be necessary to address *all* national priority areas in the new benchmarking system. While NHTSA is required by statute to identify those programs most effective in addressing national highway safety priority program areas for the use of Section 402 funds, States have latitude to determine their own highway safety problems, goals, and program emphasis.

A State might include goals as broad as "decreasing alcohol-related crashes in the State by x percent or x number by year 2010 from x percent or x number (baseline)." On the other hand, the State goal might be as specific as "reducing alcohol-related deaths/injuries of youth ages 16–20 in the State by X percent of all State youth." When long-term goals are identified, the State should consider setting interim targets.

Moving from a process to an outcome approach requires that a set of outcome measures be established that represent the status of key traffic safety programs at the State level, including those programs that are National Priority Program Areas which the State has chosen to address. There are many sources for these measures. The Fatal Accident Reporting System (FARS), restraint usage surveys, State emergency medical services and police enforcement systems, and Crash Outcome Data Evaluation System (CODES) are examples of databases from which States may select appropriate performance measures. The types of data available will vary from State to State. In all cases, the measures used must be ones that are reliable, readily available, and reasonable in measuring the outcome of an effective highway safety program.

Not all items in a State's planning document will directly correlate to one specific goal. Certain programs and countermeasures have an impact on several goals or on an overall program area. For example, Standardized Field Sobriety Testing (SFST) training may affect all of a State's alcohol goals. Examples of performance measures are included in the final section of this appendix.

3. *HS Form 217, the "Highway Safety Program Cost Summary"*

This form reflects the State's proposed allocation of funds, including carry-forward funds, by program area. The allocations shall be based on the State's identified performance goals and its planning document. The funding level used shall be an estimate of available funding in the upcoming fiscal year. After the exact amount of annual Federal funding has been determined, the State shall submit the revised or "initial obligating" HS Form 217. The amount of Federal funds reflected on the revised HS Form 217 shall not exceed the obligation limitation.

A subsequent revised HS Form 217 shall be submitted for any changes made by the State to those data elements appearing on the form (i.e., program area, P&A limitation, 40% local funding, matches).

Federal approval of each State's highway safety program will be in the form of a letter from NHTSA and FHWA to the Governor and GR *acknowledging the State's submission of a certification statement, benchmark report, and planning document that comply with all requirements described above.*

Annual Report

Within 90 days after the end of the fiscal year, each State shall submit an *Annual Report.* This report shall address:

1. State progress toward performance goals, using performance measures identified in the initial fiscal year benchmark report.

2. Steps taken toward meeting the State goals identified in the benchmark report, which may include administrative measures such as the number of training courses given and people trained, and the number of citations issued for not using child safety seats or safety belts; and

3. Descriptions of State and community projects funded during the year.

States are strongly encouraged to set ambitious goals and implement programs to achieve those goals. States will not be penalized or sanctioned for not meeting identified performance goals. However, where little or no progress toward goals is perceived, as described in the annual report or discussed in periodic meetings, NHTSA and FHWA staff will recommend changes in strategies, countermeasures, or goals.

As under the current procedures, there can be no extensions for the annual report due date evan though a State can request an extension of up to 90 days for submission of the final voucher.

Moving from a Process-Dominated to an Outcome-Based Approach

Implementation of this new approach will establish new roles and relationships for both Federal and State participants. The involvement of the NHTSA and FHWA field staff in the operational aspects of a State highway safety program will entail a minimum of two formal strategic planning meetings per year to discuss implementation issues and needs that NHTSA/FHWA can meet. During these sessions, the regional, division and State representatives will review each State's progress toward identifying and meeting its goals and will discuss and negotiate strategies being used.

The degree and level of technical assistance in functional matters provided by NHTSA and FHWA will be determined at these meetings. National and regional NHTSA and FHWA staff have special expertise and can provide a national perspective on outcome approaches (best practices, newest countermeasures), marketing, training, data analysis, evaluation, financial management, and program development. (Of course, these same regional services will be available to States choosing to continue working under the existing HSP procedures.)

Examples of Performance Measures

This section contains examples of highway safety performance measures to assist States in formulating their goals. In addition to those identified below, other measures might include societal costs, CODES data, hospital head injury and similar injury data, etc. Measures must be reliable, readily available, and reasonable as representing the outcome of an effective highway safety program. (The national FARS average or norm for each measure, if available, appears in parentheses.)

Overall Highway Safety Indices

State fatality rate per 100M vehicle miles (1.7)
% motor vehicle collisions with non-motor vehicle (17%)
Number of pedestrians or bicyclists injured or killed

Alcohol

Number of drivers in fatal crashes with BACs > .00, .08, .10 (State limit)
Number of drivers in fatal crashes, ages 15–20, with BACs> .00, .08, .10 (State limit)
Number of alcohol-related fatal crashes
% alcohol-related fatal crashes (42%)
% alcohol-related fatalities
% alcohol-related injuries Conviction rates for DUI/DWI Occupant Protection
% motor vehicle occupants (MVO) restrained (National State Survey 67%)
% MVO fatalities restrained (35%)
% MVO injuries restrained
% MVO youth fatalities (ages 15–20) restrained (35%)

Child Safety

% MVO fatalities age 0–4 restrained (70%)
% MVO injuries age 0–4 restrained
% MVO fatalities age 0–4 unrestrained

Emergency Medical Services

Time of crash to hospital treatment (60 min or less)
Time of crash to response time (arrival at crash site)

Motorcycle Safety

% motorcyclists helmeted (restraint survey)
% motorcycle fatalities helmeted (60%)
% motorcycle injuries helmeted
% motorcycle fatalities with properly licensed drivers (41%)
% motorcycle fatalities alcohol-involved (51%)
% motorcycle injuries alcohol-involved
Number of fatal or serious head injuries

Pedestrian Safety

Number/% urban pedestrian fatalities at intersections or crossings (35%)
Number/% alcohol-impaired pedestrian fatalities 16 yrs and older (36%)
Number/% total fatalities or serious injuries that are pedestrian in given jurisdiction
Number/% urban pedestrian injuries
Number/% rural pedestrian injuries

Bicycle Safety

% pedacycle fatalities helmeted (no national norm)
% pedacycle fatalities ages 26–39 alcohol-impaired (26%)

Speed

% fatal crashes with speed as a contributing factor (31%)
Number of speed-related fatalities / fatal crashes
Monitoring changes in average speeds overall and on specific types of roadways (interstate, other 55–60 mph roads)

Youth

(National performance measures from above plus:)
% drivers ages 15–20 in fatal crashes with BACs >.01 (40%)
% drivers ages 15–20 injured in crashes with BACs >.01
Total fatalities per 100K involving registered drivers, ages 15–20
Total fatalities per 100 million VMT for youth, ages 15–20
Total injuries per 100K registered drivers, ages 15–20
Total injuries per 100 million VMT for youth, ages 15–20
% MVO fatalities, ages 15–20, restrained (35%)

Police Traffic Services

(See subject categories)

Roadway Safety

Work zone fatalities
Work zone injuries (included M.V. occupants, peds, & work personnel)
Number of Highway-railroad grade crossing crashes - number of injuries or fatalities
Number of flaggers injured or killed
Number of workers injured or killed

Traffic Records

Number of personnel trained in record collection, data input, and data analysis
Number of high accident locations identified and improved
Unknown % for occupant protection fatalities (10%)
Unknown/untested % for fatal driver BAC (30%)
Unknown % of time of crash to hospital arrival (50%)
Entering data within a specific time
Linking data systems

Injury Prevention Goals

(See subject categories)

[FR Doc. 96–22691 Filed 9–4–96; 8:45 am]
BILLING CODE 4910–59–P; 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 96–091; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1984 Rolls Royce Silver Spur Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1984 Rolls Royce Silver Spur passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1984 Rolls Royce Silver Spur that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United

States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 7, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1984 Rolls Royce Silver Spur passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1984 Rolls Royce Silver Spur that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Rolls Royce Motors, Ltd., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non- U.S. certified 1984 Rolls Royce Silver Spur to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1984 Rolls Royce Silver Spur, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified 1984 Rolls Royce Silver Spur is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and *302 Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) inscription of the word "Brake" on the brake failure indicator lamp lens; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.—model headlamp assemblies; (b) installation of U.S.—model front and rear sidemarker/reflector assemblies; (c) installation of U.S.—model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a U.S.- model seat belt in the driver's seating position, or a belt webbing actuated microswitch inside the driver's seat belt retractor. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button in both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1984 Rolls Royce Silver Spur must be reinforced, or U.S.-model bumper components must be installed, to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 29, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–22537 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–048; Notice 2]

Decision That Certain Nonconforming Mitsubishi Pajero Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming 1984 Mitsubishi Pajero multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1984 Mitsubishi Pajero MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards, are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1984 Mitsubishi Montero), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective September 5, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer No. R–90–009) petitioned NHTSA to decide whether 1984 Mitsubishi Pajero MPVs are eligible for importation into the United States. NHTSA published notice of the petition on May 20, 1996 (61 FR 25269) to afford an opportunity for public comment. As stated in the notice of petition, the vehicle which Champagne believes is substantially similar is the 1984 Mitsubishi Montero that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner contended that it carefully compared the 1984 Mitsubishi Pajero to the 1984 Mitsubishi Montero, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1984 Mitsubishi Pajero, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1984 Mitsubishi Montero that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claimed that the 1984 Mitsubishi Pajero is identical to the certified 1984 Mitsubishi Montero with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contended that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate headlamps with DOT markings; (b) installation of front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirrors:* replacement of the convex passenger side rear view mirror.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner stated that the vehicle is equipped at each front designated seating position with a

combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button. The petitioner further states that the vehicle is equipped with a combination lap and shoulder restraint that releases by means of a single push button at each rear outboard seating position, and with a lap belt at the rear center seating position.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line.

One comment was received in response to the notice of petition, from Mitsubishi Motors R&D of America, Inc. ("Mitsubishi"), the United States representative of Mitsubishi Motors Corporation, the vehicle's manufacturer. In its comment, Mitsubishi stated that based upon a review of the petition and a partial evaluation of the 1984 Mitsubishi Pajero, it believes that the vehicle may not be capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Mitsubishi noted that in addition to the nonconformities identified in the petition, the components on the 1984 Mitsubishi Pajero that are subject to Standard No. 203, *Impact Protection for the Driver from the Steering Control System,* are not identical to those found on the 1984 Mitsubishi Montero. As a result, Mitsubishi contended that the 1984 Mitsubishi Pajero would have to be modified to conform to the standard, and then tested in accordance with the standard to ensure that conformity. Mitsubishi also contended that the 1984 Mitsubishi Pajero does not conform to Standard No. 204, *Steering Control Rearward Displacement,* because it is not equipped with the same energy-absorbing steering shaft as that found on the 1984 Mitsubishi Montero. As a result, Mitsubishi contended that the steering shaft would have to be modified and tested in accordance with the standard.

NHTSA accorded Champagne an opportunity to respond to Mitsubishi's comments. In its response, Champagne observed that Mitsubishi did not furnish specifics to support its stated belief that the 1984 Mitsubishi Pajero may not be capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Champagne expressed complete confidence that the vehicle is capable of being so altered. To address the concern that Mitsubishi raised regarding the vehicle's compliance with Standard Nos. 203 and 204, Champagne stated that it will replace the steering wheel and steering shaft on the 1984 Mitsubishi Pajero with U.S.-model components.

NHTSA has reviewed each of the issues that Mitsubishi has raised regarding Champagne's petition. NHTSA believes that Champagne's responses adequately address each of those issues. NHTSA further notes that the modifications described by Champagne have been performed with relative ease on thousands of nonconforming vehicles imported over the years, and would not preclude the 1984 Mitsubishi Pajero from being found "capable of being readily altered to comply with applicable motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–170 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1984 Mitsubishi Pajero that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a 1984 Mitsubishi Montero that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 29, 1996.

Marilynne Jacobs,

Dire[illegible], Office of Vehicle Safety Compliance.

[FR Doc. 96–22538 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–094; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Audi S6 Avant Quattro Wagons Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Audi S6 Avant Quattro Wagons are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Audi S6 Avant Quattro Wagon that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is October 7, 1996.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then

publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995 Audi S6 Avant Quattro Wagons are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1995 Audi S6 Avant Quattro Wagon that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Audi S6 Avant Quattro Wagon to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Audi S6 Avant Quattro Wagon, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Audi S6 Avant Quattro Wagon is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) inscription of the word "Brake" on the brake failure indicator lamp lens; (b) installation of a seat belt warning lamp displaying the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.- model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's seating position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters if they are not U.S.-model components. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1995 Audi S6 Avant Quattro must be reinforced or replaced with U.S.-model components to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that it will replace the vehicle's ignition switch assembly, which has been determined to contain a safety-related defect and is the subject of a recall campaign (NHTSA Recall No. 96V017000) being conducted by the vehicle's manufacturer.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 30, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–22688 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[STB Finance Docket No. 32955]

Fort Worth & Western Railroad Company, Inc.—Lease Exemption—St. Louis Southwestern Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10902 the lease [2] by Fort Worth & Western

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] FWWR seeks an exemption both to lease and to operate, and its petition is styled accordingly. While an exemption from the requirements of 49 U.S.C. 10902 for FWWR's lease is consistent with the standards of 49 U.S.C. 10502, we note that FWWR requires neither separate authority nor an exemption to operate the line under the lease. When a rail carrier petitioned for an exemption to purchase or lease a rail line from another rail carrier

Continued

Railroad Company, Inc. (FWWR), of St. Louis Southwestern Railway Company's (SSW) Hodge Yard, located between North Fort Worth and Carrollton, TX, at milepost 630.20.[3]

DATES: This exemption is effective on October 5, 1996. Petitions to stay must be filed by September 20, 1996. Petitions to reopen must be filed by September 30, 1996.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 32955, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Kevin M. Sheys, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036–6105.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC Data & News, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 27, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22636 Filed 9–4–96; 8:45 am]

BILLING CODE 4915–00–P

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under former 49 U.S.C. 11343 of the Interstate Commerce Act, the ICC normally also exempted the operation of the line, if requested, but the exemption to operate was not necessary. The status of the purchaser or lessor, as a carrier, coupled with the purchase agreement or lease, constituted sufficient authority to conduct operations. Similarly, authority or an exemption for a carrier to purchase or lease a line under 49 U.S.C. 10902 of the ICCTA provides the necessary authority to conduct operations.

[3] FWWR plans to operate on track owned by Dallas Area Rapid Transit Property Acquisition Company (DARTPAC). In *Fort Worth and Western Railroad Company, Inc.—Trackage Rights Exemption—St. Louis Southwestern Railway Company*, STB Finance Docket No. 32956 (STB served June 6, 1996), SSW assigned its local and overhead trackage rights over DARTPAC's 28.77-mile rail line, between milepost 632.27 at North Fort Worth and milepost 603.5 at Carrollton, to FWWR.

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of Program Test: General Aviation Telephonic Entry (GATE)

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a general test to evaluate the effectiveness of a new operations procedure regarding the telephonic entry of certain pre-registered, passenger-carrying, general aviation aircraft flights entering the United States directly from Canada. This notice invites public comments concerning any aspect of the test, informs interested members of the public of the eligibility requirements for voluntary participation in the test, and describes the basis on which Customs will select participants for the test.

EFFECTIVE DATES: Applications will be available and accepted at local Customs offices beginning September 5, 1996. The test will commence no earlier than November 4, 1996, and will be evaluated after 1 year. Comments must be received on or before September 30, 1996. Anyone interested in participating in the test should contact the nearest Customs office.

ADDRESSES: Written comments regarding this notice and information submitted to be considered for voluntary participation in the test should be addressed to the Process Owner, Passenger Operations Division, Room 4413, Washington, DC 20229–0001.

FOR FURTHER INFORMATION CONTACT: Robert Jacksta (202) 927–0530.

SUPPLEMENTARY INFORMATION:

Background

At the February 24, 1995, Summit in Ottawa, Canada, President Clinton and Canadian Prime Minister Chretien announced the signing of the United States/Canada Accord on our Shared Border for enhancing the management of the U.S.-Canada border. 31 Weekly Comp.Pres.Doc. 305. The Shared Border Accord sets out initiatives to promote trade, tourism, and travel between the two countries by reducing barriers for legitimate importers, exporters, and travelers, while strengthening enforcement capabilities to stop the flow of illegal or irregular movement of goods and people and reducing costs for both governments and users. One of the specific initiatives in the Shared Border Accord is a frequent traveler program known as General Aviation Telephonic Entry (GATE), which is intended to facilitate the entry of certain pre-registered, passenger-carrying, general aviation aircraft flights entering the United States directly from Canada, while still preserving security by maintaining random checks of incoming private aircraft.

Customs is ready to begin testing the GATE program. For programs designed to evaluate the effectiveness of new technology or operations procedures regarding the processing of passengers, vessels, or merchandise, § 101.9(a) of the Customs Regulations (19 CFR 101.9(a)), implements the general testing procedures. This test is established pursuant to that regulation.

I. Description of Proposed Test

The Concept of Telephonic Entry

Any aircraft arriving in the United States from a foreign airport or place is required to (1) give advance notification of its arrival, (2) immediately report its arrival to Customs, and (3) land at the airport designated by Customs for entry. *See*, 19 U.S.C. 1433(c) and implementing Customs Regulations at 19 CFR Part 122, subparts C and D. Individual passengers are also required to report their arrival to Customs. *See*, 19 U.S.C. 1459 and implementing Customs Regulations at 19 CFR 123.1. Because historical data on certain general aviation aircraft (aircraft comprising private and corporate aircraft, and air ambulances that have a seating capacity of fifteen or fewer passengers) indicates a high degree of compliance with Customs and other federal agency reporting laws, Customs has developed the GATE program to allow certain pre-registered, passenger-carrying, flights of such aircraft to report their entry telephonically when entering the United States directly from Canada. To provide a means for measuring the effectiveness of GATE, random inspections will be built into the program. Thus, the GATE program would combine the proven benefits of facilitation and selectivity, thereby freeing valuable Customs resources for use in other areas.

The test will be implemented at designated airports of entry located nation-wide. During the test period, pilots will give advance notice of their arrival—from a minimum of 3 hours up to a maximum of 72 hours in advance—to Customs by calling 1–800–98–CLEAR, and may receive advance clearance to land at airports that are not staffed by Customs, but which have been designated by a port director for program use, provided that they receive a telephonic entry number.

Regulatory Provisions Affected

During the GATE test, participants will be provided with a telephonic entry number in lieu of normal inspection requirements. Accordingly, the normal arrival reporting and landing requirements of Part 122 of the Customs Regulations (19 CFR Part 122) will not be followed. However, participants will still be subject to civil and criminal penalties and sanctions for any violations of U.S. Customs laws.

II. Eligibility Criteria

A. Aircraft and Airports of Entry

Only U.S.- and Canadian-registered general aviation aircraft that will arrive in the United States directly from Canada are eligible to participate in the GATE test. For purposes of this test, the term "general aviation aircraft" means aircraft comprising private and corporate aircraft, and air ambulances returning to the U.S. with crew members only, that have a seating capacity of fifteen or fewer passengers.

Aircraft transiting Canada are not eligible for this test. Further, aircraft that will carry cargo, merchandise requiring the payment of Customs duties, restricted or prohibited food products or other articles, or monetary instruments in excess of $10,000, will not qualify for this test.

Qualified flights selected to participate in the GATE test will be allowed to land at most airports of entry located within a reasonable commuting distance of a port serviced by Customs, provided that the approving port director has designated the airport for GATE test use. Most municipally-owned airports and other airports located outside a particular port's limits may be selected for landing under the GATE test. The port director approving the application for GATE participation will designate, on a case-by-case basis, which airports of entry may be used for landing. Factors that will be considered include:

—Willingness of an airport operator to participate in the GATE test;
—The distance to the airport from the nearest Customs port, commuting time required for Customs officers, and Customs officer safety;
—Whether a secure place to work is provided at the airport; and
—Whether communications equipment is accessible.

B. Persons

Participation in the GATE test is voluntary. Only U.S. citizens, permanent resident aliens of the United States, Canadian citizens, or landed immigrants in Canada from Commonwealth countries, and who are regular passengers or flight crews of pre-registered flights, will be considered for this test. Each applicant should have had (during the past year) a "face to face" inspection by either a U.S. Immigration or Customs officer, which clearly demonstrates the person's right to legally enter the United States, and must agree to carry all necessary personal identification and immigration documents. Persons who have not had a "face to face" inspection during the past year may, nonetheless, meet this requirement by reporting to the nearest Customs office with proof of citizenship.

Persons with evidence of a pending or past investigation which establishes illegal or dishonest conduct, persons involved in a violation of Customs laws (civil, narcotic violations, smuggling), and persons found to be inadmissible under the Immigration laws of the United States are not eligible for this test.

Participation in this test will not constitute confidential information, and lists of participants will be made available to the public upon written request.

III. Test Application Procedure

General aviation aircraft owners, operators, and pilots who wish to have their passenger-carrying flights considered for participation in the GATE test should contact the Customs office nearest the airport where they normally land for Customs inspection after the effective date for this notice specified above, to request an application for General Aviation Telephonic Entry Program form (Customs Form 442). Applications must be filed with Customs 45 days prior to the date of the scheduled flight in order to be considered for participation in the GATE test.

Selection Standards

Flights will be approved/denied for the GATE test based on whether the personnel/aircraft information provided on the CF 442 by an applicant meets all the above eligibility criteria. The local port office will determine the qualifications of all passengers/pilots/aircraft, and a letter approving or denying the test application will be sent to the applicant. Aircraft owners/operators must agree not to allow their general aviation aircraft to carry passengers who are not listed and approved on the application. (To allow for the proper accounting of last-minute personnel changes to an application already on file with Customs, an Application Addendum form must be completed and sent to the port where the original application was submitted). Further, aircraft owners/operators must agree not to allow persons to carry dutiable/commercial merchandise, restricted or prohibited food products or other articles, or monetary instruments of $10,000 or more on test flights.

If an application is denied for any reason other than by reason of a request by the applicant to land at a particular airport (for example, a denial based on information concerning passengers, pilots, or the aircraft), the applicant may appeal the decision to the port director within 10 working days from receipt of the denial letter. If the appeal to the port director results in another denial, then the applicant may appeal directly to the Passenger Process Owner at Customs' Headquarters within 10 working days from receipt of the second denial letter.

IV. Test Evaluation Criteria

Customs will review all public comments received concerning any aspect of the test program or procedures, finalize procedures in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria. Approximately 120 days after conclusion of the test, evaluations of the test will be conducted and final results will be made available to the public upon request.

Dated: August 29, 1996.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 96–22576 Filed 9–4–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Department of Veterans Affairs' Advisory Committee on Prosthetics and Special-Disabilities Programs has been renewed for a 2-year period beginning August 16, 1996, through August 16, 1998.

Dated: August 22, 1996.

By direction of the Secretary.

Eugene A. Brickhouse,

Committee Management Officer.

[FR Doc. 96–22589 Filed 9–4–96; 8:45 am]

BILLING CODE 8320–01–M

Persian Gulf Expert Scientific Committee, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with P.L. 92–463, gives notice that a meeting of the VA Persian Gulf Expert Scientific Committee will be held on:

Monday, November 18, 1996, at 8:30 a.m.–5:00 p.m.

Tuesday, November 19, 1996, at 8:30 a.m.–3:30 p.m.

The location of the meeting will be 801 I Street, N.W., Washington, D.C., Room 1105.

The Committee's objectives are to advise the Under Secretary for Health about medical findings affecting Persian Gulf era veterans.

At this meeting the Committee will review all aspects of patient care and medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development, veterans benefits and/or training aspects for patients and staff.

All portions of the meeting will be open to the public except from 4:00 p.m. until 5:00 p.m. on November 18 and from 2:30 p.m. to 3:30 p.m. on November 19, 1996. During these executive sessions, discussions and recommendations will deal with medical records of specific patients and individually identifiable patient medical histories. The disclosure of this information would constitute a clearly unwarranted invasion of personal privacy. Closure of this portion of the meeting is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(6).

The agenda for November 18 will begin with an update on recent events, followed by responses from Committee members. The first day's agenda will also cover reports on activities of the Persian Gulf Spouses and Children Exam, Persian Gulf Programs/Surveys, and Veterans Benefits Applications from Persian Gulf Veterans, as well as a follow-up on VA Referral Centers.

On November 19 the Committee will hear reports on the Syntax of Immune-Neuroendocrine Communications/PTSD as well as an updates on Research Centers findings and DoD Investigative Team Operations.

Additional information concerning these meetings may be obtained from the Executive Secretary, Office of Public Health & Environmental Hazards, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: August 22, 1996.

By Direction of the Secretary.

Eugene A. Brickhouse,

Committee Management Officer.

[FR Doc. 96–22590 Filed 9–4–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
September 5, 1996

Part II

Environmental Protection Agency

40 CFR Part 63
National Emissions Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5543–1]

RIN 2060–AE37

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) from existing and new plant sites that emit organic hazardous air pollutants (HAP) identified on the EPA's list of 189 HAP. The organic HAP are emitted during the manufacture of one or more elastomers.

In the production of elastomers, a variety of organic HAP are used as monomers or process solvents. Available emissions data gathered in conjunction with the development of the elastomer standards show that the following organic HAP are those which have the potential for reduction by implementation of the standard: Styrene, n-hexane, 1,3-butadiene, acrylonitrile, methyl chloride, hydrogen chloride, carbon tetrachloride, chloroprene, and toluene. Some of these pollutants are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation; liver and kidney toxicity, and neurotoxicity. These effects can range from mild to severe. The rule is estimated to reduce organic HAP emissions from existing affected sources by over 6,300 megagrams per year (Mg/yr). The majority of the organic HAP regulated by these standards are also volatile organic compounds (VOC). In reducing emissions of organic HAP, VOC are also reduced.

The rule implements section 112(d) of the Act, which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The intended effect of this rule is to protect the public by requiring the maximum degree of reduction in emissions of organic HAP from new and existing major sources that the Administrator determines is achievable, taking into consideration the cost of achieving such emission reduction, and any nonair quality, health and environmental impacts, and energy requirements.

EFFECTIVE DATE: September 5, 1996. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–92–44, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following address in room M–1500, Waterside Mall (ground floor): U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For questions concerning applicability and other rule determinations, inquiries should be directed to the appropriate regional office contact listed below:

Greg Roscoe, Air Programs Compliance, Branch Chief, U.S. EPA Region I, 5EA, JFK Federal Building, Boston, MA 02203, (617) 565–3221.

Kenneth Eng, Air Compliance Branch Chief, U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000.

Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA Region III (3AT10), 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–3989.

Jewell A. Harper, Air Enforcement Branch, U.S. EPA Region IV, 3345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–2904.

George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA Region V (5AE–26), 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088.

John R. Hepola, Air Enforcement Branch Chief, U.S. EPA Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220.

Donald Toensing, Chief, Air Permitting and Compliance Branch, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7446.

Douglas M. Skie, Air and Technical Operations, Branch Chief, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6432.

Colleen W. McKaughan, Air Compliance Branch Chief, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1198.

Christopher Hall, Air Toxics Program Manager, U.S. EPA Region X, 1200 Sixth Avenue, OAQ–107, Seattle, WA 98101–9797, (206) 553–1949.

For information concerning the technical analysis for this rule, contact Mr. Robert Rosensteel at (919) 541–5608, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: *Regulated entities.* Entities potentially regulated by this action are elastomer product process units (EPPUs) manufacturing the same primary product and located at a plant site that is a major source of HAP. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.480 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Response to Comment Document. The response to comment document for the promulgated standards contains: (1) A summary of the public comments made on the proposed standards and the Administrator's response to the comments; and (2) A summary of the changes made to the standards since proposal. The document may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 487–4650. Please refer to "Hazardous Air Pollutant Emissions from Process Units in the Elastomers Manufacturing Industry—Basis and Purpose Document for Final Standards, Summary of Public Comments and

Responses" (EPA–453/R–96–006b; May 1996). This document is also located in the docket (Docket Item No. V–C–1) and is available for downloading from the Technology Transfer Network. The Technology Transfer Network is one of the EPA's electronic bulletin boards. The Technology Transfer Network provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on the Technology Transfer Network is needed, call the HELP line at (919) 541–5384.

Previous Background Documents. The following is a listing of background documents pertaining to this rulemaking. The complete title, EPA publication number, publication date, and docket number are included. Where appropriate, the abbreviated descriptive title is used to refer to the document throughout this notice.

(1) Hazardous Air Pollutant Emissions from Process Units in the Elastomer Manufacturing Industry—Supplementary Information Document for Proposed Standards. EPA–453/R–95–005a, May 1995; Docket number A–92–44, item number III–B–2.

(2) Hazardous Air Pollutant Emissions from Process Units in the Elastomer Manufacturing Industry—Basis and Purpose Document for Proposed Standards. EPA–453/R–95–006a, May 1995; Docket number A–92–44, item number III–B–1.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Summary of Considerations Made in Developing This Standard
A. Background and Purpose of the Regulation
B. Source of Authority
C. Technical Basis of Regulation
D. Stakeholder and Public Participation
II. Summary of Promulgated Standards
A. Storage Vessel Provisions
B. Front-End Process Vent Provisions
C. Back-end Process Provisions
D. Wastewater Provisions
E. Equipment Leak Provisions
F. Emissions Averaging Provisions
G. Compliance and Performance Test Provisions and Monitoring Requirements
H. Recordkeeping and Reporting Provisions
III. Summary of Impacts
A. Facilities Affected by these NESHAP
B. Primary Air Impacts
C. Other Environmental Impacts
D. Energy Impacts
E. Cost Impacts
F. Economic Impacts
IV. Significant Comments and Changes to the Proposed Standards
A. Applicability Provisions and Definitions
B. Storage Vessel Provisions
C. Continuous Front-end Process Vent Provisions
D. Batch Front-end Process Vent Provisions
E. Back-end Process Operation Provisions
F. Wastewater Operations Provisions
G. Equipment Leak Provisions
H. Emissions Averaging Provisions
I. Monitoring
J. Recordkeeping and Reporting
V. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)
F. Unfunded Mandates

I. Summary of Considerations Made in Developing This Standard

A. Background and Purpose of Regulation

The Clean Air Act was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" (CAA, section 101(b)(1)). Section 112(b) lists 189 HAP believed to cause adverse health or environmental effects. Section 112(d) requires that emission standards be promulgated for all categories and subcategories of major sources of these HAP and for many smaller "area" sources listed for regulation, pursuant to section 112(c). Major sources are defined as those that emit or have the potential to emit at least 10 tons per year of any single HAP or 25 tons per year of any combination of HAP.

On July 16, 1992 (57 FR 31576), the EPA published a list of categories of sources slated for regulation. This list included all nine of the source categories regulated by the standards being promulgated today. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On December 3, 1993, the EPA published a schedule for promulgating these standards (58 FR 83841). Standards for the nine source categories covered by today's rule were proposed on June 12, 1995 (60 FR 30801).

For the purpose of this rule, the EPA has separated the 9 Group 1 polymers into 12 elastomer products (i.e., subcategories). These products are butyl rubber (BR), halobutyl rubber (HBR), epichlorohydrin elastomers (EPI), ethylene propylene rubber (EPR), Hypalon™ (HYP), neoprene (NEO), nitrile butadiene rubber (NBR), nitrile butadiene latex (NBL), polysulfide rubber (PSR), polybutadiene rubber/styrene butadiene rubber by solution (PBR/SBRS), styrene butadiene latex (SBL), and styrene butadiene rubber by emulsion (SBRE).

In the 1990 Amendments to the Clean Air Act, Congress specified that each standard for major sources must require the maximum reduction in emissions of HAP that the EPA determines is achievable, considering cost, non-air quality health and environmental impacts, and energy requirements. In essence, these Maximum Achievable Control Technology (MACT) standards would ensure that all major sources of air toxics achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to employ good control measures to limit its emissions.

Available emission data, collected during the development of this rule, shows that pollutants that are listed in section 112(b)(1) and are emitted by Group I Polymer and Resins sources include n-hexane, styrene, 1,3-butadiene, acrylonitrile, methyl chloride, carbon tetrachloride, chloroprene, and toluene. Some of these pollutants are considered to be probable human carcinogens when inhaled, and all can cause reversible and irreversible toxic effects following exposure. These effects include respiratory and skin irritation, effects upon the eye, various systemic effects including effects upon the liver, kidney, heart and circulatory systems, neurotoxic effects, and in extreme cases, death.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon (1) the ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of the exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the

population, and (4) pollutant specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

Due to the volatility and relatively low potential for bioaccumulation of these pollutants, air emissions are not expected to deposit on land or water and cause subsequent adverse health or ecosystem effects.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing elastomer sources, are based on process and emissions data received from every existing elastomer facility known to be in operation at the time of the initial data collection. During the development of today's rule, the EPA met with industry several times to discuss this data. In addition, facilities and State regulatory authorities had the opportunity to comment on draft versions of the proposed regulation and to provide additional information. The EPA published the proposed rule for comment on June 12, 1995 (60 FR 30801). The public comments that were received on the proposed rule are summarized in the Basis and Purpose Document for Final Standards, Summary of Public Comments and Responses (Docket Item No. V–C–1). These comments were considered, and in some cases, today's standards reflect these comments. Of major concern to commenters were the reporting and recordkeeping burden and the requirements for back-end process operations and wastewater control.

The final standards give existing sources 3 years from the date of promulgation to comply. Subject to certain limited exceptions, this is the maximum amount of time allowed under the Clean Air Act. New sources are required to comply with the standard upon startup. The EPA believes these standards to be achievable for affected sources within the timeframes provided. The number of existing sources affected by this rule is less than 50; therefore, the EPA does not believe that required retrofits or other actions cannot be achieved in the time frame allotted.

Included in the final rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The Agency has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the applicable sections, depending on which method would be least confusing for a given situation.

As described in the "Basis and Purpose Document for Proposed Standards" (EPA–453/R–95–006a), regulatory alternatives were considered that included a combination of requirements equal to, and above, the MACT floor. Cost-effectiveness was a factor considered in evaluating options above the floor; in cases where options more stringent than the floor were selected, they were judged to have a reasonable cost effectiveness. For epichlorohydrin rubber (EPR), polybutadiene rubber (PBR)/styrene butadiene rubber (SBR) (by solution), and SBR (by emulsion) the estimated cost effectiveness was found to be relatively high at the MACT floor level due to the requirements for process back-end operations. However, the back-end provisions of the regulation contain several options for compliance that will allow facilities to select the most cost-effective option based on facility-specific considerations.

Representatives from other interested EPA offices and programs are included in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and must review and concur with the regulation before proposal and promulgation. Therefore, the EPA believes that the implications to other EPA offices and programs have been adequately considered during the development of these standards.

B. Source of Authority

National emission standards for new and existing sources of HAP established under section 112(d) reflect MACT or

> * * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * * (42 U.S.C. 7412(d)(2)).

For new sources, section 112(d)(3) provides that the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator." Section 112(d)(3) provides further that for existing sources the standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for source categories or subcategories with fewer than 30 sources. These two minimum levels of control define the MACT floor for new and existing sources.

The regulatory alternatives considered in the development of this regulation, including those regulatory alternatives selected as standards for new and existing affected sources, are based on process and emissions data received from the existing plant sites known by the EPA to be in operation.

As stated above, the MACT floor represents the least stringent standard permitted by law for new and existing sources. The EPA may establish standards more stringent than the MACT floor when it determines that such standards are achievable, "taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts, and energy requirements" (42 U.S.C. 7412(d)(2)). In a few instances, the standards in today's rule are more stringent than the MACT floor. In each case, the EPA determined, based on available data, that such standards were achievable within the meaning of section 112(d). Table 1 shows the subcategory-specific instances where an option was selected that was more stringent than the MACT floor, along with the corresponding incremental cost-effectiveness from the MACT floor.

TABLE 1.—INCREMENTAL COST EFFECTIVENESS VALUES OF REGULATORY OPTIONS MORE STRINGENT THAN THE MACT FLOOR[a]

Subcategory	Incremental cost effectiveness[b] ($/Mg)				
	Storage	Front-end process vents	Back-end process	Wastewater	Equipment leaks
Butyl	floor	$3,100	floor	$1,600	$1,700

TABLE 1.—INCREMENTAL COST EFFECTIVENESS VALUES OF REGULATORY OPTIONS MORE STRINGENT THAN THE MACT FLOOR[a]—Continued

Subcategory	Incremental cost effectiveness[b] ($/Mg)				
	Storage	Front-end process vents	Back-end process	Wastewater	Equipment leaks
Epichlorohydrin	floor	floor	floor	floor	$2,000
Ethylene propylene	floor	floor	floor	floor	$2,000
Halobutyl	$300	$1,400	floor	floor	$1,100
Hypalon®	floor	floor	floor	floor	floor
Neoprene	floor	$2,900	floor	floor	[c] $1,600
Nitrile butadiene latex	floor	floor	floor	floor	[c] $2,600
Nitrile butadiene rubber	floor	floor	floor	floor	[c] $1,200
Polybutadiene/styrene butadiene rubber by solution.	floor	floor	floor	floor	[c] $2,600
Polysulfide	floor	floor	floor	floor	floor
Styrene butadiene latex	floor	floor	floor	floor	floor
Styrene butadiene rubber by emulsion	floor	floor	floor	floor	floor

[a] In the table, "floor" indicates that the level of the promulgated standard is equivalent to the MACT floor.
[b] The incremental cost effectiveness reflects the cost and emission reduction from the MACT floor to the level of the promulgated standard.
[c] Equipment leak control programs at elastomer production facilities consisted of a complex combination of controls for the numerous components that can leak and cause HAP emissions. This complexity made it impractical to define a MACT floor "program" for which impacts could be assessed for multiple-plant subcategories. Therefore, the cost effectiveness values shown in the table represent the incremental cost effectiveness values from baseline.

C. Technical Basis of Regulation

Potential regulatory alternatives were developed based on the Hazardous Organic NESHAP (HON) (subparts F, G, and H of 40 CFR part 63), and the Batch Processes Alternative Control Techniques (ACT) document (EPA 453/R–93–017; November 1993). The HON was selected as a basis for regulatory alternatives because: (1) The characteristics of the emissions from storage vessels, continuous front-end process vents, equipment leaks, and wastewater at Group I elastomer facilities are similar or identical to those addressed by the HON; and (2) the levels of control required under the HON were already determined through extensive analyses to be reasonable from a cost and impact perspective.

Finally, the Batch Processes ACT was selected to identify regulatory alternatives for batch process vents, which are not addressed by the HON. The Batch Processes ACT addresses the control of VOC emissions, and all of the organic HAP identified for the Group I elastomers facilities are also VOC. Unlike the HON, the Batch Processes ACT is not a regulation and, therefore, does not specify a level of control that must be met. Instead, the Batch Processes ACT provides information on potential levels of control, their costs, etc. Based on the review of the Batch Processes ACT, the EPA selected a level of control equivalent to 90 percent reduction for batch front-end process vents. This level of control was selected for regulatory analysis purposes because it represents a reasonable level of control considering costs and other impacts.

D. Stakeholder and Public Participation

In the development of this standard, numerous representatives of the elastomers industry were consulted. Industry representatives have included trade associations and elastomer producers responding to section 114 questionnaires and information collection requests (ICR's). The EPA also received input from representatives from State and Regional environmental agencies. Representatives from other interested EPA offices and programs participated in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and is given opportunities to review and comment on the standards before proposal and promulgation. Therefore, the EPA believes that the impact on other EPA offices and programs has been adequately considered during the development of these standards. In addition, the EPA has met with members of industry concerning these standards. Finally, industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed standards and to provide additional information during the public comment period that followed proposal.

The standards were proposed in the **Federal Register** on June 12, 1995 (60 FR 30801). The preamble to the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one was not held. The public comment period was from June 12, 1995 to August 11, 1995. A total of twenty-nine comment letters were received. Commenters included industry representatives and State agencies. The comments were carefully considered, and changes were made in the proposed standards when determined by the EPA to be appropriate. A detailed discussion of these comments and responses can be found in the Basis and Purpose Document for Final Standards, which is referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses in the Basis and Purpose Document for the Final Standards serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Section IV of this preamble discusses some of the major changes made to the standards.

II. Summary of Promulgated Standards

Emissions of specific organic HAP from the following types of emission points (i.e., emission source types) are being covered by the final standard: Storage vessels, continuous front-end process vents, batch front-end process vents, back-end processes operations, equipment leaks, and wastewater operations. The organic HAP emitted and required to be controlled by these standards vary by subcategory. Each of the twelve elastomer products constitutes a separate subcategory, each of which belongs to one of the nine

source categories regulated by these standards.

The existing affected source is defined as each group of one or more EPPUs that manufacture the same elastomer product as their primary product, and (1) are located at a major source plant site, (2) are not exempt, and (3) are not part of a new affected source. This means that each plant site will have only one existing affected source in any given subcategory.

If a plant site with an existing affected source producing elastomer A as its primary product constructs a new EPPU also producing elastomer A as its primary product, the new EPPU is a new affected source if the new EPPU has the potential to emit more than 10 tons per year of a single HAP, or 25 tons per year of all HAP. In this situation, the plant site would have an existing affected source producing elastomer A, and a new affected source producing elastomer A. Each subsequent new EPPU with potential HAP emissions above the levels cited above would be a separate new affected source.

New affected sources are also created when an EPPU is constructed at a major source plant site where the elastomer product was not previously produced, with no regard to the potential HAP emissions from the EPPU. Another instance where a new affected source is created is if a new EPPU is constructed at a new plant site (i.e., green field site) that will be a major source. The final manner in which a new affected source is created is when an existing affected source undergoes reconstruction, thus making the previously existing source subject to new source standards.

With relatively few exceptions, the final standards for storage vessels, continuous front-end process vents, equipment leaks, and wastewater streams are the same as those promulgated for the corresponding types of emission points at facilities subject to the HON. As shown in Tables 2 and 3, some subcategories have requirements that differ from the HON; these cases are designated by "MACT Floor." These different requirements are specified in the final standards.

As in the HON, if an emission point within an affected source meets the applicability criteria and is required to be controlled under the standard, it is referred to as a Group 1 emission point. If an emission point within the affected source is not required to apply controls, it is referred to as a Group 2 emission point.

A. Storage Vessel Provisions

For all subcategories, the storage vessel requirements are identical to the HON storage vessel requirements in subpart G. A storage vessel means a tank or other vessel that is associated with an elastomer product process unit and that stores a liquid containing one or more organic HAP. The rule specifies assignment procedures for determining whether a storage vessel is associated with an elastomer product process unit. The storage vessel provisions do not apply to the following: (1) Vessels permanently attached to motor vehicles, (2) pressure vessels designed to operate in excess of 204.9 kpa (29.7 psia) and without emissions to the atmosphere, (3) vessels with capacities smaller than 38 m^3 (10,000 gal), (4) vessels and equipment storing and/or handling material that contains no detectable organic HAP, and/or organic HAP as impurities only, (5) surge control vessels and bottoms receiver tanks, and (6) wastewater storage tanks. An impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

In addition to those vessels that do not meet the definition of storage vessels, the standards exempt certain storage vessels containing latex. Specifically, storage vessels containing a latex, located downstream of the stripping operations, all storage vessels containing styrene butadiene latex, and storage vessels containing styrene, acrylamide, and epichlorohydrin, are exempt from the storage vessel requirements of the final rule.

The owner or operator must determine whether a storage vessel is Group 1 or Group 2; Group 1 storage vessels require control. The criteria for determining whether a storage vessel is Group 1 or Group 2 are the same as the HON criteria.

TABLE 2.—SUMMARY OF FINAL STANDARDS FOR EXISTING AFFECTED SOURCES

Subcategory	Level of final standard[a]				
	Storage	Front-end process vents	Back-end process emissions	Wastewater	Equipment leaks
BR, HBR	HON	HON/ACT, exempting halogenated vent streams controlled by flare or boiler before June 12, 1995.	no control	HON	HON.
EPI, HYP, NEO, NBL, NBR, PSR, SBL	HON	HON/ACT	no control	HON	HON.
EPR	HON	HON/ACT, exempting halogenated vent streams controlled by flare or boiler before June 12, 1995.	MACT floor residual HAP limit.	HON	HON.
PBR/SBRS, SBRE	HON	HON/ACT	MACT floor residual HAP limit.	HON	HON.

[a] HON=the level of the standard is equivalent to existing source provisions of subpart G of 40 CFR 63 for storage and wastewater, and subpart H of 40 CFR 63 for equipment leaks.

HON/ACT=the level of the standard for continuous front-end process vents is equal to the existing source process vent provisions in subpart G of 40 CFR 63, and the level of the standard for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT.

TABLE 3.—SUMMARY OF FINAL STANDARDS FOR NEW AFFECTED SOURCES

Subcategory	Level of standard*				
	Storage	Front-end process vents	Back-end process emissions	Wastewater	Equipment leaks
BR, EPI, HBR, HYP, NEO, NBL, NBR, SBL.	New source HON ...	New source HON/ ACT.	No control	Existing source HON.	New source HON
EPR, PBR/SBRS, SBRE	New source HON ...	New source HON/ ACT.	New source floor residual HAP limit.	Existing source HON.	New source HON

*HON=the level of the standard is equivalent to the provisions of subpart G of 40 CFR 63 for storage and wastewater, and subpart H of 40 CFR 63 for equipment leaks.

HON/ACT=the level of the standard for continuous front-end process vents is equal to the new source process vent provisions in subpart G of 40 CFR 63, and the level of the standard for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT.

The storage provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) An internal floating roof with proper seals and fittings; (2) an external floating roof with proper seals and fittings; (3) an external floating roof converted to an internal floating roof with proper seals and fittings; or (4) a closed vent system with a 95-percent efficient control device. The storage provisions give details on the types of seals and fittings required. Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a closed vent system and control device is used, the owner or operator must establish appropriate monitoring procedures. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the storage provisions. No controls are required for Group 2 storage vessels.

B. Front-End Process Vent Provisions

There are separate provisions in the rule for front-end process vents that originate from unit operations operated in a continuous mode, and those from unit operations operated in a batch mode. An affected source could be subject to both the continuous and batch front-end process vent provisions if front-end operations at an elastomer production process unit consist of a combination of continuous and batch unit operations. The continuous provisions would be applied to those vents from continuous unit operations, and the batch provisions to vents from batch unit operations.

1. Continuous Front-End Process Vent Provisions

The provisions in the final rule for continuous front-end process vents are the same as the HON process vent provisions in subpart G. Continuous front-end process vents are gas streams that originate from continuously operated units in the front-end of an elastomer process, and include gas streams discharged directly to the atmosphere and gas streams discharged to the atmosphere after diversion through a product recovery device. The continuous front-end process vent provisions apply only to vents that emit gas streams containing more than 0.005 weight-percent HAP.

A Group 1 continuous front-end process vent is defined as a continuous front-end process vent with a flow rate greater than or equal to 0.005 scmm, an organic HAP concentration greater than or equal to 50 ppmv, and a total resource effectiveness (TRE) index value less than or equal to 1.0. The continuous front-end process vent provisions require the owner or operator of a Group 1 continuous front-end process vent stream to: (1) Reduce the emissions of organic HAP using a flare; (2) reduce emissions of organic HAP by 98 weight-percent or to a concentration of 20 ppmv or less; or (3) achieve and maintain a TRE index above 1. Performance test provisions are included for Group 1 continuous front-end process vents to verify that the control device achieves the required performance.

The organic HAP reduction is based on the level of control achieved by the reference control technology. Group 2 continuous front-end process vent streams with TRE index values between 1.0 and 4.0 are required to monitor those process vent streams to ensure those streams do not become Group 1, which require control.

The owner or operator can calculate a TRE index value to determine whether each process vent is a Group 1 or Group 2 continuous front-end process vent, or the owner or operator can elect to comply directly with the control requirements without calculating the TRE index. The TRE index value is determined after the final recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in § 63.115 of subpart G.

The rule encourages pollution prevention through product recovery because an owner or operator of a Group 1 continuous front-end process vent may add recovery devices or otherwise reduce emissions to the extent that the TRE becomes greater than 1.0 and the Group 1 continuous front-end process vent becomes a Group 2 continuous front-end process vent.

Group 1 halogenated streams controlled using a combustion device must vent the emissions from the combustor to an acid gas scrubber or other device to limit emissions of halogens prior to venting to the atmosphere. The control device must reduce the overall emissions of hydrogen halides and halogens by 99 percent or reduce the outlet mass emission rate of total hydrogen halides and halogens to less than 0.45 kg/hr.

The rule exempts certain halogenated process vent streams from the requirement to control the halogens at the exit from a combustion device. Specifically, halogenated continuous front-end process vents at existing affected sources producing butyl rubber, halobutyl rubber, or ethylene-propylene rubber are exempt from the requirements to control hydrogen halides and halogens from the outlet of combustion devices. However, the rule requires that these vent streams be controlled in accordance with the other Group 1 requirements for continuous front-end process vents.

Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the continuous front-end process vent provisions. Compliance with the monitoring provisions is based on a comparison of daily average monitored values to enforceable parameter "levels" established by the owner or operator.

2. Batch Front—End Process Vent Provisions

Process vents that include gas streams originating from batch unit operations in the front-end of an elastomer product process unit are subject to the batch front-end process vent provisions of the rule. Consistent with provisions in the rule for other emission source types, batch front-end process vents are classified as Group 1 or Group 2, with control being required for Group 1 batch front-end process vents.

An important aspect of the batch front-end process vent provisions is that applicability is on an individual vent basis. All batch emission episodes that are emitted to the atmosphere through the vent are to be considered in the group determination. The rule does not require that emissions from similar batch unit operations emitted from different vents be combined for applicability determinations. In other words, if a process included four batch reactors, and each reactor had a dedicated vent to the atmosphere, applicability would be determined for each reactor.

The applicability criteria of the batch front-end process vent provisions are from the Batch Processes ACT, and are based on annual emissions of the HAP emitted from the vent, and the average flow rate of the vent stream. The vent stream characteristics are determined at the exit from the batch unit operation before any emission control or recovery device. The rule specifies that reflux condensers, condensers recovering monomer or solvent from a batch stripping operation, and condensers recovering monomer or solvent from a batch distillation operation are considered part of the unit operation. Therefore, the batch front-end process vent applicability criteria would be applied after these condensers.

The first step in the applicability determination is to calculate the annual HAP emissions. Annual HAP emissions may be calculated using equations contained in the regulation (which are from the Batch Processes ACT). Testing or engineering assessment may also be used if the equations are not appropriate. Batch front-end process vents with annual HAP emissions less than 225 kilograms per year are exempt from all batch front-end process vent requirements, other than the requirement to estimate annual HAP emissions.

There are two tiers of Group 2 batch front-end process vents. First, if the annual HAP emissions of a vent are below specified cutoff levels, the batch front-end process vent is classified as a Group 2 vent, and a batch cycle limitation must be established (discussed below). The cutoff emission level is 11,800 kilograms HAP per year.

If annual HAP emissions are greater than the cutoff emission level specified above, the owner must determine the annual average flow rate of the batch front-end process vent, and the "cutoff flow rate" using the equation in § 63.488(f). The Group 1/Group 2 classification is then based on a comparison between the actual annual average flow rate, and the cutoff flow rate. If the actual flow rate is less than the calculated cutoff flow rate, then the batch process vent is a Group 1 vent, and control is required. If the actual flow rate is greater than the calculated cutoff flow rate, then the batch process vent is a Group 2 batch front-end process vent, and the owner or operator must establish a batch cycle limitation.

Owners and operators of Group 2 batch front-end process vents must establish a batch cycle limitation that ensures that HAP emissions from the vent do not increase to a level that would make the batch front-end process vent Group 1. The batch cycle limitation is an enforceable restriction on the number of batch cycles that can be performed in a year. An owner or operator has two choices regarding the level of the batch cycle limitation. The limitation may be set to maintain emissions below the annual emission cutoff level listed above, or the limitation may be set to ensure that annual emissions do not increase to a level that makes the calculated cutoff flow rate increase beyond the actual annual average flow rate. The advantage to the first option is that the owner or operator would not be required to determine the annual average flow rate of the vent. A batch cycle limitation does not limit production to any previous production level, but is based on the number of cycles necessary to exceed one of the two batch front-end process vent applicability criteria discussed above.

The batch front-end process vent provisions require the owner or operator of a Group 1 batch front-end process vent stream to: (1) Reduce the emissions of organic HAP using a flare or (2) reduce emissions of organic HAP by 90 weight-percent over each batch cycle using a control or recovery device. If a halogenated batch vent stream (defined as a vent that has a mass emission rate of halogen atoms in organic compounds of 3,750 kilograms per year or greater) is sent to a combustion device, the outlet stream must be controlled to reduce emissions of hydrogen halides and halogens by 99 percent. Control could be achieved at varying levels for different emission episodes as long as the required level of control for the batch cycle was achieved. The owner or operator could even elect to control some emission episodes and by-pass control for others. Performance test provisions are included for Group 1 batch front-end process vents to verify that the control device achieves the required performance.

Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the batch front-end process vent provisions. These provisions are modeled after the analogous continuous process vent provisions in the HON. Compliance with the monitoring provisions is based on a comparison of batch cycle daily average monitored values to enforceable parameter monitoring levels established by the owner or operator.

The provisions for batch front-end process vents contain three conditions that can greatly simplify compliance. First, an owner or operator can control a batch front-end process vent in accordance with the Group 1 batch front-end process vent requirements and bypass the applicability determination. Second, if a batch front-end process vent is combined with a continuous vent stream before a recovery or control device, the owner or operator is exempt from all batch front-end process vent requirements. However, applicability determinations and performance tests for the continuous vent must be conducted at conditions when the addition of the batch vent streams makes the HAP concentration in the combined stream greatest. Finally, if batch front-end process vents combine to create a "continuous" flow to a control or recovery device, the less complicated continuous process vent monitoring requirements are used.

C. Back-End Process Provisions

Back-end process operations include all operations at an EPPU that occur after the stripping operations. These operations include, but are not limited to, filtering, drying, separating, and other finishing operations, as well as product storage.

The back-end process provisions contain residual HAP limitations for three subcategories: EPR, PBR/SBRS, and SBRE. The limitations for EPR and PBR/SBRS are in units of kilograms HAP per megagram of crumb rubber dry weight (crumb rubber dry weight means the weight of the polymer, minus the weight of water and residual organics), and the limitation for SBRE is in units of kilogram HAP per megagram latex.

The limitation is a monthly average weighted based on the weight of rubber or latex processed in the stripper. Two methods of compliance are available: (1) Stripping the polymer to remove the residual HAP to the levels in the standards, on a monthly weighted average basis, or (2) reducing emissions using add-on control to a level equivalent to the level that would be achieved if stripping was used.

1. Compliance Using Stripping Technology

If stripping is the method of compliance selected, the rule allows two options for demonstrating compliance: by sampling and by monitoring stripper operating parameters. If compliance is demonstrated by sampling, samples of the stripped wet crumb or stripped latex must be taken as soon as safe and feasible after the stripping operation, but no later than the entry point for the first unit operation following the stripper (e.g., the watering screen), and analyzed to determine the residual HAP content. For styrene-butadiene rubber produced by the emulsion process, the sample of latex shall be taken just prior to entering the coagulation operations.

A sample must be taken once per day for continuous processes, or once per batch for batch processes. The sample must be analyzed to determine the residual HAP content, and the corresponding weight of rubber or latex processed in the stripper must be recorded. This information is then used to calculate a monthly weighted average. A monthly weighted average that is above the limitation is a violation of the standard, as is a failure to sample and analyze at least 75 percent of the samples required during the month. The EPA is in the process of approving test methods that will be used to determine compliance with the standard. These methods are being promulgated separately by the EPA. Records of each test result would be required, along with the corresponding weight of the polymer processed in the stripper. Records of the monthly weighted averages must also be maintained.

An owner or operator complying using stripping can also demonstrate compliance by continuously monitoring stripper operating parameters. If using this approach, the owner or operator must establish stripper operating parameters for each grade of polymer processed in the stripper, along with the corresponding residual HAP content of that grade. The parameters that must be monitored include, at a minimum, temperature, pressure, steaming rates (for steam strippers), and some parameter that is indicative of residence time. The HAP content of the grade must be determined initially using the residual HAP test methods discussed above. The owner or operator can elect to establish a single set of stripper operating parameters for multiple grades.

The EPA believes that computer predictive modeling may be an attractive alternative to the periodic sampling and stripper parametric monitoring options in the rule, but did not specifically include provisions for these options, because the use of computer predictive modeling is so site-specific that it was not possible to include general requirements for its use in subpart U. However, the rule does allow the opportunity for site-specific approval of the use of computer predictive modeling, stack test monitoring, or other alternative means of compliance through the submittal of an alternative compliance plan.

The difference in the demonstration of compliance by sampling, and the demonstration of compliance by monitoring stripping parameters, is that the monitoring option is entirely based on a grade or batch. To further explain, if a particular grade of polymer is processed in the stripper continuously for 32 hours, a sample of that grade is required to be taken each operating day, if the sampling compliance demonstration option is selected. However, if the stripping parameter monitoring option is selected, the entire length of time the grade is being processed in the stripper is treated as a single unit.

During the operation of the stripper, the parameters must be continuously monitored, with a reading of each parameter taken at least once every 15 minutes. If, during the processing of a grade, all hourly average parameter values are in accordance with the established levels, the owner or operator can use the HAP content determined initially in the calculation of the monthly weighted average, and sampling is not required. However, if one hourly average value for any parameter is not in accordance with the established operating parameter, a sample must be taken and the HAP content determined using specified test methods.

Records of the initial residual HAP content results, along with the corresponding stripper parameter monitoring results for the sample, must be maintained. The hourly average monitoring results are required to be maintained, along with the results of any HAP content tests conducted due to exceedance of the established parameter monitoring levels. Records must also be kept of the weight of polymer processed in each grade, and the monthly weighted average values.

If complying with the residual HAP limitations using stripping technology, and demonstrating compliance by monitoring stripper parameters, there are three ways a facility can be in violation of the standard. First, a monthly weighted average that is above the limitation is a violation of the standard, as is a failure to sample and analyze a sample for a grade with an hourly average parameter value not in accordance with the established monitoring parameter levels. The third way for a facility to be out of compliance is if the stripper monitoring data are not sufficient for at least 75 percent of the grades produced during the month. Stripper data are considered insufficient if monitoring parameters are obtained for less than 75 percent of the 15-minute periods during the processing of a grade.

2. Compliance Using Add-On Control

If add-on control is the method of compliance selected, there are two levels of compliance. Initial compliance is based on a source test, and continuous compliance is based on the daily average of parameter monitoring results for the control or recovery device.

The initial performance test must consist of three 1-hour runs or three complete batch cycles, if the duration of the batch cycle is less than 1 hour. The test runs must be conducted during processing of "worst-case" grade, which means the grade with the highest residual HAP content leaving the stripper. The "uncontrolled" residual HAP content in the latex or wet crumb rubber must be determined, using the test methods, after the stripper. Then, when the crumb for which the uncontrolled residual HAP was determined is being processed in the back-end unit operation being controlled, the inlet and outlet emissions for the control or recovery device must be determined using Method 18 or Method 25A. The uncontrolled HAP content is then adjusted to account for the reduction in emissions by the control or recovery device, and compared to the levels in the standard. For initial compliance, the adjusted residual HAP content level for each test run must be less than the level in today's standards.

During the initial test, the appropriate parameter must be monitored, and an enforceable "level" established as a maximum or minimum operating parameter based on this monitoring. As

with continuous front-end process vents, the level is established as the average of the maximum (or minimum) point values for the three test runs.

Continuous monitoring must be conducted on the control or recovery device, and compliance is based on the daily average of the monitoring results. The monitoring, recordkeeping, and reporting provisions are the same as the process vent provisions in the HON, which are required for continuous front-end process vents in today's final standard.

3. Carbon Disulfide Limitations For Styrene Butadiene Rubber By Emulsion Producers

Today's regulation would reduce carbon disulfide (CS_2) emissions from styrene butadiene rubber producers using an emulsion process by limiting the concentration of CS_2 in the dryer vent stacks to 45 ppmv. Sulfur-containing shortstopping agents used to produce certain grades of rubber have been determined to be the source of CS_2 in the dryer stacks. Owners or operators would be required to develop standard operating procedures for each grade that uses a sulfur-containing shortstopping agent. These standard operating procedures would specify the type and amount of agent added, and the point in the process where the agent is added. One standard operating procedure can be used for more than one grade if possible.

The owner or operator is required to validate each standard operating procedure through either a performance test or a demonstration using engineering assessment. The facility would be in compliance with this the regulation if the appropriate standard operating procedure is followed whenever a sulfur-containing shortstopping agent is used. Facilities that route dryer vents to a combustion device would be exempt from § 63.500 of the regulation.

D. Wastewater Provisions

Except for back-end wastewater streams originating from equipment that only produces latex products and back-end wastewater streams at affected sources that are subject to the residual organic HAP limitation, the standards require owners and operators to comply with the wastewater provisions in the HON. Owners and operators of new and existing sources are required to make a group determination for each wastewater stream based on the existing source applicability criteria in the HON: Flow rate and organic HAP concentration. The level of control required for Group 1 wastewater streams is dependent upon the organic HAP constituents in the wastewater stream.

The standards also require owners and operators to comply with the maintenance wastewater requirements in § 63.105 of subpart F. These provisions require owners and operators to include a description of procedures for managing wastewaters generated during maintenance in their startup, shutdown, and malfunction plan.

E. Equipment Leak Provisions

For all subcategories, both existing and new affected sources are required to comply with the equipment leak standards specified in subpart H of 40 CFR part 63. In general, subpart H requires owners and operators to implement a leak detection and repair (LDAR) program, including various work practice and equipment standards. The subpart H standards are applicable to equipment in volatile HAP service for 300 or more hours per year (hr/yr). The standards define "in volatile organic HAP service" as being in contact with or containing process fluid that contains a total of 5 percent or more total HAP. Equipment subject to the standards are: Valves, pumps, compressors, connectors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, agitators, surge control vessels, bottoms receivers, and closed-vent systems and control devices.

A few differences to the subpart H standards are contained in this final rule. These differences include not requiring the submittal of an Initial Notification or Implementation Plan and allowing 150 days (rather than 90 days) to submit the Notification of Compliance Status. In addition, the exemptions discussed earlier for storage vessels are also applicable for surge control vessels and bottoms receivers.

Affected sources subject to today's final rule and currently complying with the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I) are required to continue to comply with subpart I until the compliance date of this final rule, at which point in time they must comply with today's rule and are no longer subject to subpart I. Further, affected sources complying with subpart I through a quality improvement program are allowed to continue these programs without interruption as part of complying with today's rule. In other words, becoming subject to today's standards does not restart or reset the "compliance clock" as it relates to reduced burden earned through a quality improvement program.

F. Emissions Averaging Provisions

The EPA is allowing emissions averaging among continuous front-end process vents, batch front-end process vents, aggregate batch vents, back-end process operations, storage vessels, and wastewater streams within an existing affected source. New affected sources are not allowed to use emissions averaging. Emissions averaging is not allowed between subcategories; it is only allowed between emission points within the same affected source. Under emissions averaging, a system of "credits" and "debits" is used to determine whether an affected source is achieving the required emission reductions. Twenty emission points per plant site are allowed in the set of emissions averaging plans submitted for the plant site, with an additional 5 emission points allowed if pollution prevention measures are used.

G. Compliance and Performance Test Provisions and Monitoring Requirements

Compliance and performance test provisions and monitoring requirements contained in the final standards are very similar to those found in the HON. Each type of emission point included in the standards is discussed briefly in the following paragraphs. Also, significant differences from the parameter monitoring requirements found in the HON are discussed.

1. Storage Vessels

Monitoring and compliance provisions for storage vessel improvements include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a control device is used, the owner or operator must identify the appropriate monitoring procedures to be followed in order to demonstrate compliance. Monitoring parameters and procedures for many of the control devices likely to be used are identified in the final standards. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the final standards.

2. Continuous Front-end Process Vents

The final standards for continuous front-end process vents require the owner or operator to either calculate a TRE index value to determine the group status of each continuous front-end process vent or to comply with the control requirements. The TRE index value is determined after the last recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or

engineering assessment and use of the TRE equations specified in the final standards.

Performance test provisions are included for Group 1 continuous front-end process vents to verify that control devices or recovery achieve the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the standards.

3. Batch Front-End Process Vents

Similar to the provisions for continuous front-end process vents, there is a procedure for determining the group status of batch front-end process vents. This procedure is based on annual emissions and annual average flow rate of the batch front-end process vent. Equations for estimating and procedures for measuring annual emissions and annual average flow rates are provided in the final standards. The use of engineering assessment for the group determination is also allowed.

Performance test provisions are included for Group 1 batch front-end process vents to verify that control devices achieve the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the final standard.

For Group 2 batch front-end process vents, the standard requires owners and operators to establish a batch cycle limitation. The batch cycle limitation restricts the number of batch cycles that can be accomplished per year. This enforceable limitation ensures that a Group 2 batch front-end process vent does not become a Group 1 batch front-end process vent as a result of running more batch cycles than anticipated when the group determination was made. The determination of the batch cycle limitation is not tied to any previous production amounts. An affected source may set the batch cycle limitation at any level it desires as long as the batch front-end process vent remains a Group 2 batch front-end process vent. Alternatively the standards would allow owners or operators to declare any Group 2 batch front-end process vent to be a Group 1 batch front-end process vent. In such cases, control of the batch process front-end vent is required.

4. Back-End Process Vents

The final rule specifies the performance tests, test methods (with the exception of residual HAP reference test methods), and monitoring requirements necessary to determine that the allowed back-end emission limitations are achieved. The following paragraphs discuss each of these.

Performance tests and test methods for residual HAP limitations. Initial performance tests, in the traditional sense, are required for facilities complying with the back-end operations provisions using add-on control. Testing is required for all control and recovery devices, other than flares and certain boilers and process heaters. The back-end process provisions require the use of approved test methods.

Initial tests are required for facilities complying by using stripper parameter monitoring. The purpose of this initial testing is to establish correlations between residual HAP contents and stripper operating parameters. Within a few months of the promulgation of this regulation, the EPA will promulgate test methods for determining the residual HAP content in crumb and latex.

If an owner or operator complies with the back-end standards by sampling, periodic sampling and testing is required. The residual HAP test methods would also be used for these analyses.

Performance tests and test methods for carbon disulfide emission limitations for SBRE facilities. Initial performance tests are one option for "verifying" each standard operating procedure as an acceptable procedure that results in carbon disulfide concentrations of 45 ppmv or less in the dryer stacks at SBRE facilities. Standard operating procedures may also be verified through engineering assessments. If the performance testing option is selected, one performance test is required for each standard operating procedure. Method 18 or 25A is specified to measure the carbon disulfide concentration. Additional verifications are not required unless a new standard operating procedure is added, or an existing standard operating procedure is revised.

Monitoring requirements. Control and recovery devices and strippers used to comply with the final rule need to be maintained and operated properly if the required level of control is to be achieved on a continuing basis. Monitoring of control and recovery device and stripper parameters can be used to ensure that such proper operation and maintenance are occurring.

For control and recovery devices, the back-end process operation standard uses the same list of parameters discussed above for continuous front-end process vents. For strippers, the regulation requires the monitoring of temperature, pressure, steaming rates, and a parameter indicative of residence time.

5. Wastewater

For demonstrating compliance with the various requirements, the final standard allows the owners or operators to either conduct performance tests or to document compliance using engineering calculations. Appropriate compliance and monitoring provisions are included in the final standard.

6. Equipment Leaks

The final standard retains the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A "leak" is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (the calibration gas) in the air. The observed screening value may require adjustment for the response factor relative to methane if the weighted response factor of the stream exceeds a specified multiplier. The final rule requires the use of Method 18 or Method 25A to determine the organic content of a process stream. To test for leaks in a batch system, test procedures using either a gas or a liquid for pressure testing the batch system are specified to test for leaks.

7. Continuous Parameter Monitoring

The final standards require owners or operators to establish parameter monitoring levels. The standards provide the owner or operator the flexibility to establish the levels based on site-specific information. Site-specific levels can best accommodate variation in emission point characteristics and control device designs. Three procedures for establishing these levels are provided in the final standards. They are based on performance tests; engineering assessments, performance tests, and/or manufacturer's recommendations; and engineering assessments and/or manufacturer's recommendations. While the establishment of a level based solely on performance tests is preapproved by the Administrator, values determined using the last two procedures, which may or may not use the results of performance tests, must be approved by the Administrator for each individual case.

The final standards require the availability of at least 75 percent of monitoring data to constitute a valid day's worth of data for continuous and batch front-end process vents. Failure to have a valid day's worth of monitoring data is considered an excursion. The criteria for determining a valid day's or

hour's worth of data are provided in the final standards. A certain number of excused excursions have been allowed for in the final standards; these provisions are the same as the provisions in the HON. The standards allow a maximum of 6 excused excursions for the first semiannual reporting period, decreasing by 1 excursion each semiannual reporting period. Starting with the sixth semiannual reporting period (i.e., the end of the third year of compliance) and thereafter, affected sources are allowed one excused excursion per semiannual reporting period. As is always the case, a State has the discretion to impose more stringent requirements than the requirements of NESHAP and other federal requirements and could choose not to allow the excused excursion provisions contained in these final standards.

H. Recordkeeping and Reporting Provisions

The final standards require owners or operators of affected sources to maintain required records for a period of at least 5 years. The final standards require that the following reports be submitted, as applicable: (1) Precompliance Report, (2) Emissions Averaging Plan, (3) Notification of Compliance Status report, (4) Periodic Reports, and (5) other reports (e.g., notifications of storage vessel internal inspections).

Specific recordkeeping and reporting requirements are specified in each section that addresses an individual emission point (e.g., § 63.486 for batch front-end process vents). The recordkeeping and reporting provisions related to the affected source as a whole (e.g., types of reports, such as the Notification of Compliance Status) are found in § 63.506. For example, § 63.491 requires an owner or operator to record the batch cycle limitation for each Group 2 batch front-end process vent. Section 63.492 goes on to require the owner or operator to submit this information in the Notification of Compliance Status as specified in § 63.506. Finally, § 63.506 requires submittal of the information specified in § 63.492.

III. Summary of Impacts

This section presents a summary of the air, non-air environmental (waste and solid waste), energy, cost, and economic impacts resulting from the control of HAP emissions under this final rule.

A. Facilities Affected by These NESHAP

The promulgated rule would affect BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR facilities that are major sources in themselves, or that are located at a major source. Based on available information, all of the facilities at which these elastomers are produced were judged to be major sources for the purpose of developing these standards. (Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source.)

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood, because emissions and control data were collected on each facility included in the analysis. The impacts for existing sources were estimated by bringing each facility's control level up to today's standards.

Impacts are not assessed for new sources because it was projected that no new sources are expected to begin operation through 1999. For more information on this projection, see the New Source Memo in the SID.

B. Primary Air Impacts

Today's standards are estimated to reduce HAP emissions from all existing sources of listed elastomers by 6,400 Mg/yr. This represents a 48 percent reduction from baseline. Table 4 summarizes the HAP emission reductions for each individual subcategory.

C. Other Environmental Impacts

The total criteria air pollutant emissions resulting from process vent and wastewater control of today's standards are estimated to be around 178 Mg/yr, with NO_X emissions from incinerators and boilers accounting for around 155 Mg/yr. Minimal wastewater or solid and hazardous waste impacts are projected.

D. Energy Impacts

The total nationwide energy demands that would result from implementing the process vent and wastewater controls are around 1.10×10^{12} Btu annually.

TABLE 4. HAP EMISSION REDUCTION BY SUBCATEGORY

Subcategory	HAP emission reduction (Mg/yr)						Percentage reduction from baseline
	Storage	Front-end process vents	Back-end process operations	Wastewater operations	Equipment leaks	Total	
Butyl rubber	0	211	0	102	293	606	64
Epichlorohydrin elastomer	4	0	0	0	120	124	77
Ethylene propylene rubber	2	85	979	0	1,020	2,012	62
Halobutyl rubber	62	38	0	0	233	335	26
Hypalon™	0	0	0	0	0	0	0
Neoprene	0	258	0	0	96	354	48
Nitrile butadiene latex	0	0	0	94	41	135	85
Nitrile butadiene rubber	1	0	0	0	364	365	62
Polybutadiene rubber/styrene butadiene rubber by solution	0	0	882	0	637	1,519	44
Polysulfide rubber	0	0	0	0	0	0	0
Styrene butadiene latex	0	22	0	272	332	627	44
Styrene butadiene rubber by emulsion	0	0	195	48	0	243	23
Total—(percent of total reduction)	69, (1)	615, (10)	2,056, (32)	516, (8)	3,136, (49)	6,392	48

E. Cost Impacts

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with today's standards. Average cost

effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction. Table 5 summarizes the estimated capital and annual costs and average cost effectiveness by subcategory.

Under the promulgated rule, it is estimated that total capital costs for existing sources would be $26 million (1989 dollars), and total annual costs would by $18.4 million (1989 dollars) per year. It is expected that the actual compliance cost impacts of the rule would be less than presented because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

TABLE 5. SUMMARY OF REGULATORY COSTS

	TCI[a] (1000$)	TAC[b] (1000$/yr)	AER[c] (Mg/yr)	CE[d] ($/Mg)
Butyl	691	1,316	606	2,200
Epichlorohydrin	491	241	124	1,900
Ethylene Propylene	5,854	3,506	2,012	1,700
Halobutyl	328	322	335	1,000
Hypalon®	0	0	0	N/A
Neoprene	560	897	354	2,500
Nitrile butadiene latex	465	243	135	1,800
Nitrile butadiene rubber	397	444	365	1,200
Polybutadine/styrene butadiene rubber by solution	11,780	8,335	1,519	[e]5,500
Polysulfide	0	0	0	N/A
Styrene butadiene latex	1,480	1,028	627	1,600
Styrene butadiene rubber by emulsion	3,942	2,112	243	[e]8,700

[a] "TCI" represents Total Capital Investment.
[b] "TAC" represents Total Annualized Cost, including the monitoring, recordkeeping, and reporting cost.
[c] "AER" represents the Annual Emission Reduction.
[d] "CE" represents Cost-Effectiveness.
[e] This cost-effectiveness is primarily due to the high costs estimated to control back-end process emissions to the MACT floor level. The costs developed are costs for incineration devices to sufficient back-end vents so that emissions will be reduced to a level equivalent to the level achieved by meeting the residual HAP limit by stripping. Extrapolation of industry estimates of the cost of enhanced stripping place the cost of enhanced stripping as low as 10 percent of the cost of incineration.

F. Economic Impacts

Economic impacts for the regulatory alternatives analyzed at proposal show that the estimated price increases for the affected chemicals range from 0.2 percent for nitrile butadiene latex (NBL) to 2.5 percent for BR. Estimated decreases in production range from 0.7 percent for NBL to 5.0 percent for BR. With the reduced estimate in costs from proposal, the economic impacts of the final rule should be lower than those estimated at proposal. No closures of facilities are expected as a result of the standard.

Three aspects of the analysis are likely to lead to an overestimate of the impacts. First, the economic analysis model assumes that all affected firms compete in a national market, though in reality some firms may be protected from competitors by regional or local trade barriers. Second, facilities with the highest control cost per unit of production are assumed to also have the highest baseline production costs per unit. This assumption may not always be true, because the baseline production costs per unit are not known, and thus, the estimated impacts, particularly for the smaller firms, may be too high. Finally, economic impacts may be overstated, because the alternative for halobutyl rubber and butyl rubber that was used in this analysis is more stringent and more costly than the selected regulatory alternative.

For more information regarding the impacts of the final standards, consult the Basis and Purpose Document (see the **SUPPLEMENTARY INFORMATION** section near the beginning of the preamble).

IV. Significant Comments and Changes to the Proposed Standards

In response to comments received on the proposed standards, changes have been made to the final standards. While several of these changes are clarifications designed to make the EPA's intent clearer, a number of them are significant changes to the requirements of the proposed standards. A summary of the substantive comments and/or changes made since the proposal are described in the following sections. The rationale for these changes and detailed responses to public comments are included in the Basis and Purpose Document for the final standards. Additional information is contained in the docket for these final standards (see **ADDRESSES** section of this preamble).

National Emission Standards for Hazardous Air Pollutant Emissions from the Production of Acrylonitrile Butadiene Styrene (ABS) Resin, Styrene Acrylonitrile (SAN) Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene (MABS) Resin, Methyl Methacrylate Butadiene Styrene (MBS) Resin, Polystyrene Resin, Poly(ethylene terephthalate) (PET) Resin, and Nitrile Resin (Group IV Polymers and Resins) (40 CFR part 63, subpart JJJ), were developed concurrently with subpart U. Many of the basic requirements of the two rules are alike, and in some cases they are identical. Subpart V was proposed on March 29, 1995, and comments from the public were received. In many instances, similar comments were received on analogous sections of subparts U and V. In these instances, the responses to comments and appropriate rule changes were coordinated. However, in some instances, comments were received on subpart V, and not on subpart U, that were applicable to provisions of subpart U. A summary of these comments can be found in the "Hazardous Air Pollutant Emissions from Process Units in the Thermoplastics Manufacturing Industry—Basis and Purpose Document for Final Standards, Summary of Public Comments and Responses" (EPA–453/R–96–001b, May 1996; Docket Number

A–92–45, Item Number V–C–1). In a few cases, the EPA decided that a change to subpart U based on these comments was appropriate. These changes did not result in a change in the stringency of the subpart U provisions, but were typically changes to improve the clarity of the rule. The one area where a subpart V comment resulted in a tangible change to subpart U was in the batch vent applicability determination; that is, an affected source is allowed to determine the group status of a batch front-end process vent based on its primary product.

A. Applicability Provisions and Definitions

1. Designation of Affected Source and the Definition of EPPU

Commenters expressed confusion about the definitions of affected source and EPPU in the proposed rule. The EPA reviewed both definitions and agreed the definitions needed clarification. Therefore, the EPA has revised the language describing affected source and EPPU in the final rule. The definition of affected source has been clarified, as discussed in section II and paragraph A.3 of this section.•

The definition of EPPU was revised and now includes a list of the equipment that comprises an EPPU. Because wastewater operations are ancillary equipment and are often used by more than one EPPU and may be used by more than one affected source, they are not included as part of the EPPU.

2. Definition of Organic HAP

Numerous commenters recommended that the EPA restrict the list of organic HAP in the final rule to those that are used or are present in significant quantities at EPPUs or those that are listed in the HON, subpart F, table 2. The EPA agreed with the commenters that a table providing a listing of the specific organic HAP expected to be regulated for each subcategory covered by the rule should be included in the final rule. Therefore, the definition of organic HAP was revised to specify those organic HAP known to be used or present in significant quantities for each subcategory. This list is provided in table 7 of the final rule.

This revised definition of organic HAP was developed using available process description information received from industry and gathered from available literature. Because there may be additional organic HAP present at an affected source, the final rule requires owners or operators to notify the EPA of the presence of any additional organic HAP based on the following criteria: (1) Organic HAP is knowingly introduced into the manufacturing process, or has been or will be reported under any Federal or State program, such as TRIS or Title V; and (2) Organic HAP is presented in Table 2 of subpart F.

3. Determining New Source Status

The EPA received comments regarding the process for determining if new or existing source requirements would apply to a particular EPPU. In response to those comments, the EPA has revised the provisions in the final standards. Under the final standards, new affected sources are created under each of the following four situations: (1) If a plant site with an existing affected source producing an elastomer product as its primary product constructs a new EPPU also producing the same elastomer product as it primary product, the new EPPU is a new affected source if the new EPPU has the potential to emit more than 10 tons per year of a single HAP, or 25 tons per year of all HAP; (2) when an EPPU is constructed at a major source plant site where the elastomer product was not previously produced; (3) if a new EPPU is constructed at a new plant site (i.e., green field site) that will be a major source; and (4) when an existing affected source undergoes reconstruction, thus making the previously existing source subject to new source standards.

This approach to defining a new affected source was selected in order to make subpart U more consistent with the HON. This standard differs from the HON, however, in that it applies to multiple source categories. Thus, unlike the HON, a newly added EPPU at a facility is covered by this rule even if that EPPU is in a different source category from the existing EPPUs at the facility. It is the EPA's position that the addition of a process unit in a different source category is a new source and must meet the requirements for new sources even though the EPPU may have the potential to emit less than 10 tons per year of a single HAP or 25 tons per year of all HAP. Indeed, if a source covered by another MACT standard (i.e., a different source category) were built at a HON facility, that source would be subject to the new source requirements under that MACT standard.

4. Flexible Operation Units

The final rule has retained the HON concept of flexible operation units, but the language in the final rule has been significantly modified to more adequately address polymer production facilities. The final provisions require flexible operation units with an elastomer as the primary product to commit to complying with the elastomers rule at all times, regardless of what product they are producing at any particular time. The primary product for a flexible operation unit is determined based on projected production for the next 5 years.

B. Storage Vessel Provisions

In comments received on the storage tank provisions, the EPA noted a common misinterpretation of the proposed regulation related to the distinction between a "storage vessel" and a "surge control vessel". The EPA determined that many of the comments received on "storage vessels" were in fact referring to vessels that fall under the definition of surge control vessel. The EPA suggests that owners and operators of facilities subject to subpart U pay careful attention to these definitions.

1. Applicability Requirements

Several comments were received requesting that the EPA consider the exemption of vessels storing specific HAP or products. In fact, one commenter indicated that the EPA should conduct a full floor analysis for new and existing storage vessels, considering each chemical separately and the various sizes of tanks for each subcategory. Other commenters supported the exemption of stripped latex storage tanks from control requirements, but also declared that high conversion SBR or polybutadiene latex storage tanks should also be exempt. Another commenter stated that tanks downstream of EPR stripping operations should be exempt from storage vessel requirements, just as those containing latex downstream of stripping operations are exempt.

The EPA does not believe that the floor analyses for each HAP stored at elastomer production facilities are required to be conducted under the Act, nor should they be conducted. The Act requires the EPA to set emission standards for HAP on a source category (or subcategory) basis; it does not compel the EPA to establish separate control measures for each HAP emitted by a source in the category. As suggested by the commenter, this approach could result in an incomplete standard, since it would not include a standard for a listed HAP that may be used in the future by elastomer facilities. Further, consideration of individual HAP storage vessel controls would not be representative of facility-wide storage vessel control levels.

However, the EPA believes that it is reasonable to exempt a storage vessel from the final regulation when it is clear that the vessel would never be a Group 1 storage vessel. The EPA determined that the following HAP used in the elastomer industry have low enough vapor pressures that vessels storing these HAP would never be Group 1: acrylamide, epichlorohydrin, and styrene. Therefore, the final rule exempts storage vessels containing these HAP at existing sources. This exemption is also extended to surge control vessels and bottoms receivers at existing sources.

In addition, the EPA is convinced that an SBL storage vessel (high conversion or otherwise) would never contain sufficient HAP to exceed the vapor pressure cutoff for Group 1 storage vessels. This is primarily due to the low vapor pressure of styrene. Therefore, the final rule exempts all SBL storage vessels, surge control vessels, and bottoms receivers from the requirements of §§ 63.484 and 63.502.

Finally, the EPA agrees that storage vessels, surge control vessels, and bottoms receivers downstream of stripping operations at ethylene-propylene rubber facilities that are in compliance with the provisions of § 63.494 through the use of stripping technology should be exempt from the storage vessel, surge control vessel, and bottoms receiver requirements. Further, the EPA believes that these exemptions should also extend to the other subcategories required to comply with the residual organic HAP limitations in § 63.494(a)(1)–(3). However, since the residual organic HAP content of rubber leaving the stripping operations at ethylene propylene rubber and polybutadiene/ styrene-butadiene rubber by solution facilities complying with these provisions through the use of add-on control is not restricted, these exemptions are not available to these facilities.

2. Emission Limits

Commenters requested that the regulation allow the use of alternative storage vessel/surge control vessel control techniques. Two commenters described specific control systems present at their facilities, and asked that the EPA include allowances for these systems in the rule. They stressed that such allowances should consider the overall effectiveness of the control system, and not just the efficiency of the control or recovery device.

The EPA agrees that it is reasonable to consider the overall effectiveness of a control "system" in determining compliance with the rule, and that such systems that have been demonstrated to be equivalent to the reference control technology should be allowed. While the EPA believes the system described by the commenter could be demonstrated to be equivalent to the reference control technology for surge control vessels, the commenter did not provide sufficient documentation to allow a complete evaluation of equivalence.

However, the EPA maintains that subpart U, as proposed, already provides the opportunity for the commenter, as well as other elastomer production facilities, to demonstrate equivalency of alternative control techniques. For storage vessels, § 63.121 of subpart G addresses the procedures to obtain approval of alternative means of emission limitations. For surge control vessels and bottoms receivers, these procedures are contained in § 63.177 of subpart H. In summary, these sections specify that the owner or operator must submit documentation of the equivalency determination to the Administrator.

C. Continuous Front-end Process Vent Provisions

1. Applicability Requirements

Several commenters stated that the exemption from halide controls for butyl/halobutyl production should be extended to all rubber manufacturers, since halogen-containing compounds or by-products have historically been routed to flares. Another commenter agreed with the exemptions for butyl and halobutyl production facilities, but pointed out that this exemption should only be applicable to existing sources.

Only one existing facility was identified in each the halobutyl and the butyl rubber subcategories. At both of these facilities, halogenated vent streams were vented to a flare and/or boiler. Since both of these subcategories were single-facility subcategories, the MACT floor was determined to be the existing level of control. The EPA examined the impacts of requiring halogenated vent streams at the halobutyl and butyl rubber facilities to comply with the proposed requirements for all other elastomer subcategories (i.e, the HON-level of control). The EPA concluded that the costs associated with this level of control were not reasonable, given the associated emission reduction. Therefore, the proposed regulation allowed halogenated streams at halobutyl and butyl rubber facilities that were routed to a flare or boiler prior to proposal to continue to be controlled with these combustion devices, without additional control for the resulting halides.

Prior to proposal, the EPA was aware of one EPR facility that also routed a halogenated vent stream to a boiler. However, since only one of five EPR facilities reported this situation, the EPA concluded that this level of control was not the MACT floor for EPR. Other EPR producers claimed that they also had halogenated streams at their facilities, but none offered any information to quantify the amount of halogens in the stream to determine if the streams could be classified as halogenated.

After proposal, the EPA learned that chlorinated organic compounds are present in streams at all of the EPR facilities. These compounds are a by-product of the polymerization reaction, resulting from a chlorinated catalyst. At all four of the facilities contacted, the streams containing the chlorinated compounds are routed to either a flare or boiler. Due to the widely varying concentration in the stream, all facilities indicated that it was difficult, if not impossible, to accurately determine the halogen atom concentration in the vent stream. However, all expressed confidence that at times, the halide threshold in the incoming stream was exceeded.

Therefore, the EPA concluded that four of the five EPR facilities have halogenated streams that are routed to either a boiler or flare. For this reason, the EPA has determined that the floor for EPR is the existing level of control for these halogenated vent streams. In addition, as with halobutyl and butyl rubber, the EPA does not believe that it would be cost-effective to require new incinerators and scrubbers to be installed at these facilities, when the only net emission reduction would be the reduction of the hydrochloric acid, since the reduction of the halogenated organic compound in the incinerator would be the same as was already being achieved in the boiler or flare. However, as noted above, sufficient stream-specific information was not available to conduct this analysis. Therefore, the final rule has been changed to extend the exemption for existing halogenated streams routed to a boiler or flare to EPR producers. Further, the final rule specifies that this exemption does not apply to new sources.

2. Emission Limits

Based on a commenter's request, the final rule exempts a vent stream routed to an internal combustion engine as primary fuel from source testing requirements. The final rule also requires that the on/off status of internal

combustion be monitored as a means of demonstrating compliance with these control requirements.

D. Batch Front-End Process Vent Provisions

Commenters believed that batch front-end process vent provisions were inappropriate and unnecessarily burdensome. Several commenters disagreed with the EPA's reliance on the Batch Processes ACT document in the development of the batch vent provisions, claiming that it was not appropriate to the elastomer manufacturing industry.

The EPA believes that the potential for HAP emissions from batch operations at elastomer production facilities warrant control. While the EPA disagrees with the statement that the provisions are inappropriate, the EPA agrees with comments regarding the complexity of the proposed batch vent provisions. Therefore, in the final rule these provisions were simplified. Many of these changes are discussed below.

In response to comments on the batch front-end process vent applicability provisions, the volatility class concept has been eliminated. The Batch Processes ACT developed an annual threshold emission level for each of three volatility classes. The EPA initially judged that selection of a single annual threshold emission level would not be appropriate and included all three levels in the proposed standards. However, upon further review, the EPA found no adverse impact would result from the use of a single annual threshold emission level and, indeed, the final standards have been significantly simplified. Besides removing the requirement to determine the volatility class, the final standards contain only one equation for determining the cutoff flow rate (§ 63.488(f)) which is the last step in the group determination process.

A commenter on the proposed Polymers and Resins IV (40 CFR part 63, subpart V) regulation suggested changing the batch vent group determination provisions to only utilize emissions data from an EPPU's primary product. The EPA agreed that to base the group determination on a single product could, if appropriately applied, provide acceptable results from an environmental perspective, while simplifying the compliance requirements for and improving the enforceability of the batch front-end process vent standards. Therefore, the final standards contain provisions allowing the owner or operator of an affected source to perform the group determination for batch front-end process vents based on annualized production of a single batch product. However, the EPA does not consider it to be appropriate from an environmental perspective to allow anything other than the worst-case HAP emitting batch product to be considered when basing applicability on a single product. Therefore, the final standards specify that the worst-case HAP emitting batch product be used when an owner or operator chooses to annualize a single product for purposes of determining applicability. The final standards define the worst-case HAP emitting product and describe how emissions are to be annualized to represent full-time production, where full-time production does not necessarily mean operating at maximum production rate. Since the proposed batch vent provisions were similar between subparts U and V, the EPA decided that this change was also appropriate for subpart U.

Several commenters stated that the proposed provisions for the methods allowed for the calculation of batch front-end process vent emissions were overly restrictive. The proposed rule required that emissions be calculated using either the emission estimation equations or source testing. If the owner or operator could demonstrate that both the equations and source testing were inappropriate, then they were allowed to use engineering assessment to calculate HAP emissions. The commenters believed that an affected source should be allowed to use engineering assessments without having to demonstrate that source testing was inappropriate.

The EPA maintains that it is imperative that a consistent technique for the estimation of batch front-end process vent emissions be used, which is provided through the emission estimation equations. The EPA believes the data required to use the batch front-end process vent emissions estimation equations should be obtainable with reasonable effort. The final standards continue to require use of the emissions estimation equations, unless the owner or operator can demonstrate that these equations are inappropriate.

However, the EPA has concluded that direct measurement of emissions through testing may prove to be difficult and may or may not provide an increased assurance of accuracy over the use of engineering assessment. Therefore, if an owner or operator can demonstrate that the emissions estimation equations are not appropriate, the final standards allow the selection of either direct measurement or engineering assessment. Further, criteria for demonstrating that the emissions estimation equations are not appropriate to a specific batch emissions episode have been added to the final standards. These criteria require either: (1) The availability of test data that demonstrate a greater than 20 percent discrepancy between the test value and the estimated value, or (2) that the owner or operator demonstrate to the Administrator that the emissions estimation equations are not appropriate for a given batch emissions episode.

E. Back-End Process Operation Provisions

The back-end process operation provisions received the majority of the comments on the proposed rule. Significant comments were received on practically every aspect of these provisions. Following is a summary of the comments that resulted in notable changes to the back-end process operation requirements.

1. Averaging Period

Several commenters declared that compliance based on a weekly average HAP limitation was unreasonable, and that compliance should be demonstrated on the basis of a monthly (or 30-day) rolling average instead. These commenters claimed that requiring compliance based on a weekly average fails to provide adequate operational flexibility for manufacturers to produce different grades of polymers in accordance with customer demands.

Upon investigation of this issue, the EPA concluded that a monthly averaging period for the residual HAP limitations was more appropriate. Changing to a monthly averaging period would provide more operational flexibility to elastomer producers, while maintaining the same annual emission reduction.

2. Residual Organic HAP Limitations

Commenters objected to numerous aspects of the residual organic HAP limitations. Most of these comments were directed towards the methods used to determine the back-end MACT floors. Discussed below are comments on definitions, test methods, and other areas that affect the determination of the residual organic HAP limitations. The EPA addressed these comments and re-assessed the MACT floors.

Definition of crumb rubber dry weight. Comments stated that, for solution processes, the definition of "crumb rubber dry weight" should not exclude extender oils and carbon black for compliance purposes, because these are an integral part of the polymer. The EPA agrees with these comments, and has

revised the definition of crumb rubber dry weight to reflect this decision.

Residual organic HAP test methods. Concurrent with the proposal of subpart U, the EPA proposed three residual HAP test methods—one each for SBRE, PBR/SBRS, and EPR. Several commenters stated that no single analytical method would produce consistent results for all polymers, and consequently, each company should be allowed to demonstrate compliance using a company-specific method that is comparable to the EPA test method.

After careful review and consideration of this issue, the EPA agreed with the commenters and has undergone an extensive effort to rectify this situation. The EPA concluded that it was appropriate to allow every interested company to validate their own test method using a modified version of 40 CFR part 63, appendix A, Method 301.

A total of nine test methods were submitted (three for EPR, three for SBRE, and three for PBR/SBRS). The modified Method 301 analysis performed allows each company to validate their own test method, and seven of the ten affected companies have done so. Therefore, each source has a compliance method available for determining residual HAP. The EPA believes that it would be helpful if the industry had access to all validated test methods, and is in the process of reviewing the methods and validation data that were submitted, and has preliminarily indicated that approval of all nine methods is anticipated. The EPA intends to promulgate these methods as appendix A Methods 310 a, b, and c for EPR, Methods 312 a, b, and c for SBRE, and Methods 313 a, b, and c for PBR/SBRS. However, since the approval and subsequent promulgation of the methods has not yet occurred, this final rule does not stipulate the methods to be used to determine residual organic HAP. Upon promulgation of these methods, the Agency will propose modifications to subpart U to specify that these methods be used to determine residual organic HAP.

Furthermore, the affected industry has been intimately involved with all activity associated with the EPA's promulgation of the residual organic HAP test methods. The EPA held meetings with industry representatives to discuss their comments on the proposed methods, and to discuss procedures for validating company test methods. Every company that was expected to be subject to the back-end residual organic HAP limitations was invited to these meetings. As noted above, a total of nine test methods were submitted. These methods were from seven companies, leaving only three affected companies that decided not to submit methods. Representatives of each of those three companies which did not submit test methods were in attendance at one or more of the meetings and are therefore knowledgeable about the test methods. Since industry's submittal of the test methods, the EPA has worked closely with industry representatives to finalize the methods. Therefore, the EPA contends that all affected companies should be well aware of the methods that will be promulgated.

As noted earlier, the final approval of these test methods is upcoming. It is anticipated that these methods will be promulgated in the autumn of 1996. The EPA does not believe that the interval between the promulgation of subpart U and the promulgation of these residual organic HAP test methods impairs the ability of any source to comply with the requirements by the specified compliance date. This is the case because affected sources are not required to be in compliance until three years after promulgation of the rule.

MACT floor determination. Commenters indicated that the selection of a MACT floor "somewhere between the mean, median, and mode" did not represent central tendency. They maintained that a mean is the correct approach for establishing the MACT floor. The EPA agreed that one measure of central tendency should be used to establish the average and decided that the mean was the most appropriate measure for the residual organic HAP limitations floor determinations. In some situations, the use of the mean can result in a floor level of control that is not represented by any available control technology. However, this did not apply to this situation, where the emissions used to determine the floor were a result of process-specific stripping techniques, and not specific add-on control technologies.

For EPR and PBR/SBRS, commenters stated that combining data received from different companies using different sampling and analytical methods, without establishing whether the methods achieve comparable results, was not an appropriate way to establish residual HAP limits. The commenters stated that if production figures and dryer stack testing results were used to establish these limits, these results cannot be equated to those from crumb sampling at the EPA's designated sampling point, because there are numerous potential emission sources between the proposed sampling point and the stack testing locations. In addition, commenters indicated that the proposed limitation did not recognize the fact that residual HAP may remain in the polymer after finishing. Finally, the commenters also stated that using annual emissions and limited weekly data to establish weekly limits is inherently uncertain, and may have resulted in an inappropriate standard.

In the original MACT floor analyses, the EPA presumed that the back-end emission factor calculated from the reported emissions and production was equivalent to the residual HAP levels in the crumb leaving the stripping operations. Inherent in this analysis was the assumption that the companies reported total HAP emissions from all back-end emission sources, rather than only a portion of these sources.

Upon receipt of these comments, the EPA again contacted each EPR and PBR/SBRS production facility to (1) verify the emissions numbers used to determine the back-end emission factor, (2) discuss the correlation of the methods used to estimate the original emission estimates and the residual organic HAP test methods undergoing validation, (3) determine the appropriate production, including oil extender weight, to use in determining the emission factor, (4) obtain information related to residual HAP remaining in the product after finishing, and (5) obtain short-term residual HAP information to be used in the adjustment of annual emissions to monthly.

After obtaining this information, the EPA recalculated the MACT floors for each subcategory. It should be noted that only one facility indicated that the original emission estimates were calculated in a manner that was inconsistent with the residual organic HAP test methods. Two PBR/SBRS companies and one EPR company provided detailed short-term residual HAP data to allow the conversion of the annual data to a monthly limit. The resulting monthly limits were 8 kg/Mg for EPR and 10 kg/Mg for PBR/SBRS.

While no comments were received criticizing the MACT floor analysis for SBRE, the change to a monthly average limit resulted in a change in the SBRE limit. In the determination of the original SBRE back-end MACT floor, residual HAP data were used from three of the four facilities. The fourth facility provided residual HAP data, but it was in a monthly average format and could not be used in the determination of a weekly limit. However, the change to a monthly limit meant that the data from this facility could also be used, resulting in a monthly limit of 0.4 kg styrene per

Mg latex leaving the stripping operation for existing SBRE sources.

3. Monitoring Requirements

Several comments were received regarding the proposed crumb and latex sampling requirements. In both instances, the EPA decided that the changes suggested by the commenters were technically appropriate, and they did not result in any detrimental environmental impact.

Specifically, commenters found the requirement to sample "before any opportunity for emissions to the atmosphere" to be either infeasible or unsafe for PBR/SBRS and EPR and suggested modifications to the proposed sampling provisions. In response to these comments, the final rule states that PBR/SBRS or EPR crumb samples must be taken "as soon as safe and feasible after the stripping operation, but no later than the entry point for the first unit operation following the stripper (e.g., the dewatering screen)."

For SBRE, commenters pointed out that a more logical sampling location for determining the initial HAP concentration in the SBL is the mixed latex in the storage tank feeding the coagulator (rather than directly after the stripper). The EPA agreed with these comments, and the final rule has revised the SBL sampling location to be "prior to any coagulation operations."

Comments were also received opposing the proposed crumb or latex sampling frequency provisions. Commenters believed that it is impractical to take a rubber sample each operating day for every grade of elastomer produced, because of the time required to reach representative operating conditions and to run an accurate analytical test. Suggested alternatives included one test per day, one test per "campaign," daily sampling that is reduced to weekly sampling upon demonstration of daily compliance, and daily sampling with the exception of grades produced for less than 4 hours in a day. Since the variability of the residual HAP contents between elastomer grades is relatively small, and since production schedules typically produce very similar grades of polymer for extended periods of time, the EPA concluded that reducing the sampling frequency to once per day for continuous processes would greatly simplify the rule, while still ensuring that practically all grades of elastomer are represented by such sampling. This change is reflected in the final rule.

Some commenters were concerned that compliance would be based on one sample per day, and requested that an owner or operator be allowed to sample crumb or latex more frequently, and include the residual organic HAP results of these samples in the average. While the EPA believes that the proposed rule did not preclude a company from using more than one sample per day in determining the (weekly) average, the EPA has revised the language in the final rule to make this opportunity clearer.

Several commenters stated that the rule should provide an allowance for missed or invalid crumb or latex samples. The proposed rule designated the failure to collect any single sample as an excursion. These commenters suggested that the EPA should require 75 percent of samples to be collected.

The EPA recognizes that a number of circumstances could occur that cause a sample not to be analyzed in accordance with the rule. These may be in the form of sampling system malfunctions, mis-analysis, or other problems. The EPA realizes that there are unique challenges associated with the sampling of solid polymer, and agrees that problems could occur that would cause a sample to be missed. The EPA also recognizes that some of the test methods being validated to analyze the residual organic HAP in the crumb take long periods of time to perform, meaning that the opportunity to obtain a second sample may not be available if a mis-analysis in the laboratory occurs. While the EPA expects that sound company procedures could eliminate most of these and other problems, the EPA agrees that it is unreasonable to expect that no problems would ever occur that result in a missed sample. Therefore, an excursion for back-end process operations is defined in the final rule as when either (1) the monthly weighted average is above the applicable limit, or (2) when less than 75 percent of the required samples are taken, analyzed, and included in the monthly average.

At proposal, the EPA specifically requested comments on the feasibility of the use of computer predictive modeling as an alternative to the daily crumb or latex sampling, or the stripper parametric monitoring compliance alternatives. Numerous commenters supported the allowance of such systems, while other expressed reservations. While the EPA believes that computer predictive modeling may be an attractive alternative to the periodic sampling and stripper parametric monitoring compliance options, the EPA is convinced that the use of computer predictive modeling is so site-specific that it is not possible to include general requirements for the use of such a system in subpart U. Nevertheless, the EPA believes that facilities should have the opportunity to utilize techniques that are equivalent to the two options of compliance provided in the proposed rule for facilities using stripping technology. Therefore, the EPA has included a third option that provides the opportunity for the site-specific approval of alternative means of compliance through the submittal of an alternative compliance plan.

F. Wastewater Operations Provisions

Several commenters pointed out that the wastewater provisions of subpart G that are referenced in § 63.501 of subpart U are the subject of litigation brought by the Chemical Manufacturers' Association against the EPA. Consequently, sources subject to these provisions cannot know what the final wastewater provisions, proposed to be incorporated into subpart U, will be. These commenters believed that the EPA should "reserve" the provisions of § 63.501 pending the outcome of the litigation.

As part of the HON litigation proposal, the EPA will request comments specific to the elastomers rule. If comments specific to the elastomers rule are received they will be addressed as part of the HON rulemaking actions or in actions specific to the elastomers rule, depending on the comments. Therefore, the comment period for this rule will not be reopened.

The EPA believes that the wastewater provisions and the other HON provisions should be referenced in the elastomers rule so that final resolutions of the HON litigation will be automatically included in the elastomers rule. However, changes made to the HON will be evaluated by the EPA for applicability to this rule. The "automatic" part refers to the fact that text changes will not need to be made to this rule once the EPA, following notice and an opportunity for comment, finds the HON changes to be applicable. If the EPA determines that any changes to the HON are not applicable to this rule, the elastomers rule will be revised accordingly.

Comments were received that the VOHAP threshold for regulation of new source wastewater streams (10 ppmw) was too restrictive, and that the EPA has not provided an economic justification regarding the achievability of the limit. Another comment was received stating that many elastomer product process wastewater streams will have VOHAP concentrations less than 50 ppmw, and monitoring and recordkeeping requirements are not needed for these streams. This comment recommended that the EPA exempt from regulation

"any process stream at an affected source with an average flow rate of less than 0.02 liters per minute or an average VOHAP concentration of less than 50 ppmw."

The EPA evaluated the new source MACT floor determinations for wastewater, and determined that no facility in any subcategory reported wastewater controls equivalent to the new source levels. In fact, no facility-wide wastewater controls greater than the existing source HON limitations were reported. Therefore, the EPA believes that this comment is valid, and has changed the final rule so that the new sources are subject to the same wastewater requirements as existing sources.

In the proposed rule, the definition of "wastewater" stated that a stream must contain at least 5 ppmw of VOHAP and have a flow rate of 0.02 liter per minute. Given the change in the definition of a Group 1 wastewater stream for new sources, the EPA believes that it is reasonable to revise the definition of wastewater in accordance with the commenter's suggestion and therefore the wastewater definition has been revised in the final rule.

G. Equipment Leak Provisions

One commenter requested that the proposed rule include an exclusion for reciprocating pumps that must leak small quantities of product to lubricate and cool the shaft and seal areas. The EPA agrees that an exemption for the situation described by the commenter is reasonable. The EPA reached a similar conclusion in the proposed Polymers and Resins IV regulation (subpart V). Therefore, § 63.502(d) has been added to the final rule that exempts these reciprocating pump systems.

Several commenters stated that 3 years should be allowed for compliance with equipment leak provisions for compressors (instead of 6 months) under certain circumstances. The EPA agrees with the commenters, and has amended the compliance schedule for compressors in the following situations: (1) Existing reciprocating compressors which would require design modifications to connect to a closed-vent or recovery system; and (2) systems where existing compressors would be replaced.

H. Emissions Averaging Provisions

Several commenters requested that batch front-end process vents be eligible to average emissions. The EPA had not allowed emissions averaging of batch front-end process vents at proposal because the EPA considered the accuracy and consistency needed for emissions averaging to be greater than that needed for applicability determinations. However, upon reconsideration, the EPA determined that the accuracy and consistency needs of emissions averaging could be met by applying a "discount" factor (10 percent) to calculated emissions or by requiring direct measurement of emissions. Therefore, the final rule allows emissions averaging of existing batch front-end process vents.

I. Monitoring

Many commenters requested that the proposed rule allow excused excursions in the same way that the HON rule allows excused excursions. In the final rule, the EPA decided to excuse a certain number of excursions for each reporting period. This decision was based on data and information presented during public comment on the HON and reiterated in public comments received on this rule, and during industry meetings held subsequent to proposal that indicated that a certain number of excursions could be expected even with properly operated pollution control devices. The EPA also concluded that not allowing excused excursions would impose significant additional capital and operating costs on the affected source for only negligible corresponding reductions in air emissions. As is always the case, a State has the discretion to impose more stringent requirements than the requirements of NESHAP and other Federal requirements and could choose not to allow the excused excursion provisions of this rule.

The EPA considered the number of excused excursions that would be most appropriate for this standard and determined that the number of excursions allowed in the HON would be reasonable. Therefore, the final provisions allow a maximum of 6 excused excursions for the first semiannual reporting period, decreasing by 1 excursion each semiannual reporting period. Starting with the sixth semiannual reporting period (i.e., the end of the third year of compliance) and thereafter, affected sources are allowed one excused excursion per semiannual reporting period.

J. Recordkeeping and Reporting

Several commenters stated that the recordkeeping and reporting requirements of the proposed rule were extremely burdensome and requested that the EPA reduce the burden. The EPA reexamined the recordkeeping and reporting requirements of the rule after proposal and determined that burden reductions were warranted. The EPA considers the recordkeeping and reporting requirements of the final rule the minimum necessary to ensure compliance with the final standards. The following changes were made to reduce the recordkeeping and reporting burden:

(1) The requirement to submit an Initial Notification has been eliminated;

(2) The requirement to submit an Implementation Plan has been eliminated;

(3) The requirement to record monitored parameters every 15 minutes has been removed. The final rule requires hourly recording of monitored parameters in place of the 15 minute records required in the proposed rule.

Although the above changes will reduce the burden on industry, the level of this reduction was not quantified.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of the final standards. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials as provided for in section 307(d)(7)(A)).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 5173 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

C. Paperwork Reduction Act

The information collection requirements for this NESHAP have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1746.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

The public recordkeeping and reporting burden for this collection of information is estimated to average approximately 587 hours per respondent for each of the first 3 years following promulgation of the rule. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the recordkeeping and reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2137), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant adverse economic impact on a substantial number of small businesses. Consistent with Small Business Administration (SBA) size standards, an elastomer producing firm is classified as a small entity if it has less than 750 employees and is unaffiliated with a larger domestic entity. Based upon this standard, three of the eighteen elastomer producing firms are classified as small entities (i.e., having fewer than 750 employees). The EPA determined that annual compliance costs as a percentage of sales are less than one percent for all of the small entities affected by this regulation. This does not qualify as a significant economic impact on a substantial number of small businesses.

E. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Pursuant to Subtitle E of SBREFA, this rule, which is nonmajor, was submitted to Congress before publication in the **Federal Register**.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments, or to the private sector, of, in the aggregate, $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the standard and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the standards.

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local, or tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 15, 1996.

Fred Hansen,

Acting Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 63 is amended by adding subpart U to read as follows:

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

Sec.

63.480 Applicability and designation of affected sources.
63.481 Compliance schedule and relationship to existing applicable rules.
63.482 Definitions.
63.483 Emission standards.
63.484 Storage vessel provisions.
63.485 Continuous front-end process vent provisions.
63.486 Batch front-end process vent provisions.
63.487 Batch front-end process vents—reference control technology.
63.488 Methods and procedures for batch front-end process vent group determination.
63.489 Batch front-end process vents—monitoring requirements
63.490 Batch front-end process vents—performance test methods and procedures to determine compliance.
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Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

§ 63.480 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(1) of this section, and new affected source is defined in paragraph (a)(2) of this section. The affected source also includes all wastewater streams and wastewater operations associated with the elastomer product process unit(s) (EPPUs) included in the affected source.

(1) Except as specified in paragraphs (b) through (d) of this section, an existing affected source is defined as each group of one or more EPPUs that is not part of a new affected source, as defined in paragraph (a)(2) of this section, and that is manufacturing the same primary product and located at a plant site that is a major source.

(2) Except as specified in paragraphs (b) through (d) of this section, a new affected source is defined as a source meeting the criteria of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section.

(i) At a plant site previously without HAP emission points, each group of one or more EPPUs manufacturing the same primary product that is part of a major source on which construction commenced after June 12, 1995,

(ii) An EPPU meeting the criteria in paragraph (i)(1)(i) of this section, or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(b) *EPPUs exempted from the affected source.* EPPUs that do not use any organic HAP may be excluded from the affected source, provided that the owner or operator complies with the requirements of paragraphs (b)(1) and (b)(2) of this section, if requested to do so by the Administrator.

(1) Retain information, data, and analyses used to document the basis for the determination that the EPPU does not use any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, or engineering calculations.

(2) When requested by the Administrator, demonstrate that the EPPU does not use any organic HAP.

(c) *Emission points exempted from the affected source.* The affected source does not include the emission points listed in paragraphs (c)(1) through (c)(6) of this section:

(1) Stormwater from segregated sewers;

(2) Water from fire-fighting and deluge systems in segregated sewers;

(3) Spills;

(4) Water from safety showers;

(5) Vessels and equipment storing and/or handling material that contains no organic HAP or organic HAP as impurities only; and

(6) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(d) *Processes exempted from the affected source.* The processes specified in paragraphs (d)(1) through (d)(3) of this section are not part of the affected source.

(1) Research and development facilities;

(2) Equipment that is located within an EPPU that is subject to this subpart but does not contain organic HAP; and

(3) Solvent reclamation, recovery, or recycling operations at hazardous waste treatment, storage, and disposal facilities (TSDF) requiring a permit under 40 CFR part 270 that are separate entities and not part of an EPPU to which this subpart applies.

(e) *Applicability determination of elastomer equipment included in a process unit producing a non-elastomer product.* If an elastomer product that is subject to this subpart is produced within a process unit that is subject to subpart V of this part, and at least 50 percent of the elastomer is used in the production of the product manufactured by the subpart V process unit, the unit operations involved in the production of the elastomer are considered part of the process unit that is subject to subpart V, and not this subpart.

(f) *Primary product determination and applicability.* The primary product of a process unit shall be determined according to the procedures specified in paragraphs (f)(1) and (f)(2) of this section. Paragraphs (f)(3) through (f)(4) of this section describe whether or not a process unit is subject to this subpart. Paragraphs (f)(5) through (f)(7) of this section discuss compliance for those EPPUs operated as flexible operation units, as specified in paragraph (f)(2) of this section.

(1) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(2) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(2)(i) or (f)(2)(ii) of this section based on the anticipated operations for the 5 years following September 5, 1996 for existing affected sources and for the first 5 years after initial startup for new affected sources.

(i) If the flexible operation unit will manufacture one product for the greatest operating time over the five-year period, then that product shall represent the primary product of the flexible operation unit.

(ii) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest production on a mass basis over the five-year period shall represent the primary product of the flexible operation unit.

(3) If the primary product of a process unit is an elastomer product, then that process unit is considered an EPPU. If that EPPU meets all the criteria of paragraph (a) of this section, it is either an affected source or is part of an affected source comprised of other EPPU subject to this rule at the same plant site with the same primary product. The status of a process unit as an EPPU, and as an affected source or part of an affected source shall not change regardless of what products are produced in the future by the EPPU, with the exception noted in paragraph (f)(3)(i) of this section.

(i) If a process unit terminates the production of all elastomer products and does not anticipate the production of any elastomer product in the future, the process unit is no longer an EPPU and is not subject to the provisions of this subpart after notification is made as specified in paragraph (f)(3)(ii) of this section.

(ii) The owner or operator of a process unit that wishes to remove the EPPU designation from the process unit, as specified in paragraph (f)(3)(i) of this section, shall notify the Administrator. This notification shall be accompanied by rationale for why it is anticipated that no elastomer products will be produced in the process unit in the future.

(iii) If a process unit meeting the criteria of paragraph (f)(3)(i) of this section begins the production of an elastomer product in the future, the owner or operator shall use the procedures in paragraph (f)(4)(i) of this section to determine if the process unit is re-designated as an EPPU.

(4) If the primary product of a process unit is not an elastomer product, then that process unit is not an affected source, nor is it part of any affected source subject to this rule. The process unit is not subject to this rule at any time, regardless of what product is being produced. The status of the process unit

as not being an EPPU, and therefore not being an affected source or part of an affected source subject to this subpart, shall not change regardless of what products are produced in the future by the EPPU, with the exception noted in paragraph (f)(4)(i) of this section.

(i) If, at any time beginning September 5, 2001, the owner or operator determines that an elastomer product is the primary product for the process unit based on actual production data for any preceding consecutive five-year period, then the process unit shall be classified as an EPPU. If an EPPU meets all the criteria in paragraph (a) of this section, it is either an affected source or part of an affected source and shall be subject to this rule.

(ii) If a process unit meets the criteria of paragraph (f)(4)(i) of this section, the owner or operator shall notify the Administrator within 6 months of making this determination. The EPPU, as the entire affected source or part of an affected source, shall be in compliance with the provisions of this rule within 3 years from the date of such notification.

(iii) If a process unit is re-designated as an EPPU but does not meet all the criteria of paragraph (a) of this section, the owner or operator shall notify the Administrator within 6 months of making this determination. This notification shall include documentation justifying the EPPU's status as not being an affected source or not being part of an affected source.

(5) Once the primary product of a process unit has been determined to be an elastomer product and it has been determined that all the criteria of paragraph (a) of this section are met for the EPPU, the owner or operator of the affected source shall comply with the standards for the primary product. Owners or operators of flexible operation units shall comply with the standards for the primary product as specified in either paragraph (f)(5)(i) or (f)(5)(ii) of this section, except as specified in paragraph (f)(5)(iii) of this section.

(i) Each owner or operator shall determine the group status of each emission point that is part of that flexible operation unit based on emission point characteristics when the primary product is being manufactured. Based on this finding, the owner or operator shall comply with the applicable standards for the primary product for each emission point, as appropriate, at all times, regardless of what product is being produced.

(ii) Alternatively, each owner or operator shall determine the group status of each emission point that is part of the flexible operation unit based on the emission point characteristics when each product produced by the flexible operation unit is manufactured, regardless of whether the product is an elastomer product or not. Based on these findings, the owner or operator shall comply with the applicable standards, as appropriate, regardless of what product is being produced.

Note: Under this scenario, it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being manufactured.]

(iii) Whenever a flexible operation unit manufactures a product that meets the criteria of paragraph (b) of this section (i.e., does not use or produce any organic HAP), all activities associated with the manufacture of the product, including the operation and monitoring of control or recovery devices, shall be exempt from the requirements of this rule.

(6) The determination of the primary product for a process unit, to include the determination of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status required by § 63.506(e)(5) when the primary product is determined to be an elastomer product. The Notification of Compliance Status shall include the information specified in either paragraph (e)(6)(i) or (e)(6)(ii) of this section. If the primary product is determined to be something other than an elastomer product, the owner or operator shall retain information, data, and analysis used to document the basis for the determination that the primary product is not an elastomer product.

(i) If the EPPU manufactures only one elastomer product, identification of that elastomer product.

(ii) If the EPPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(6)(ii)(A) through (f)(6)(ii)(C) of this section, as appropriate.

(A) Identification of the primary product.

(B) Information concerning operating time and/or production mass for each product that was used to make the determination of the primary product under paragraph (f)(2)(i) or (f)(2)(ii) of this section.

(C) Identification of which compliance option, either paragraph (f)(5)(i) or (f)(5)(ii) of this section, has been selected by the owner or operator.

(7) To demonstrate compliance with the rule during those periods when a flexible operation unit that is subject to this subpart is producing a product other than an elastomer product or is producing an elastomer product that is not the primary product, the owner or operator shall comply with either paragraphs (f)(7)(i) and (f)(7)(ii) or paragraph (f)(7)(iii) of this section.

(i) Establish parameter monitoring levels as specified in § 63.505, for those emission points designated as Group 1, as appropriate.

(ii) Submit the parameter monitoring levels developed under paragraph (f)(7)(i) of this section and the basis for them in the Notification of Compliance Status report, as specified in § 63.506(e)(5).

(iii) Demonstrate that the parameter monitoring levels established for the primary product are also appropriate for those periods when products other than the primary product are being produced. Material demonstrating this finding shall be submitted in the Notification of Compliance Status report as specified in § 63.506(e)(5).

(g) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(8) of this section to determine to which process unit a storage vessel shall belong.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on September 5, 1996, that storage vessel shall belong to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall belong to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall belong to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., the process unit has the predominant use of the storage vessel).

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is an EPPU subject to this subpart, the storage vessel shall belong to that EPPU.

(5) If predominant use cannot be determined for a storage vessel that is shared among process units and if more than one of the process units are EPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the storage vessel to any one of the EPPUs sharing the storage vessel.

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 5, 1996 or based on the expected

utilization for the 5 years following September 5, 1996 for existing affected sources, whichever is more representative of the expected operations for that storage vessel, and based on the expected utilization for the 5 years after initial startup for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status required by § 63.506(e)(5)(vii). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If the storage vessel begins receiving material from (or sending material to) another process unit; ceases to receive material from (or send material to) a process unit; or if the applicability of this subpart to a storage vessel has been determined according to the provisions of paragraphs (g)(1) through (g)(6) of this section and there is a significant change in the use of the storage vessel that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(8) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm, the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(8)(i) through (g)(8)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw materials, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit. Applicability of this subpart to the storage vessel shall then be determined according to the provisions of paragraph (a) of this section.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraph (g)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (g)(8)(i) of this section.

(h) *Recovery operation equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (h)(1) through (h)(7) of this section to determine to which process unit recovery operation equipment shall belong.

(1) If recovery operation equipment is already subject to another subpart of 40 CFR part 63 on September 5, 1996, that recovery operation equipment shall belong to the process unit subject to the other subpart.

(2) If recovery operation equipment is used exclusively by a single process unit, the recovery operation shall belong to that process unit.

(3) If recovery operation equipment is shared among process units, then the recovery operation equipment shall belong to that process unit located on the same plant site as the recovery operation equipment that has the greatest input into or output from the recovery operation equipment (i.e., that process unit has the predominant use of the recovery operation equipment).

(4) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if one of those process units is an EPPU subject to this subpart, the recovery operation equipment shall belong to the EPPU subject to this subpart.

(5) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if more than one of the process units are EPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the recovery operation equipment to any one of those EPPUs.

(6) If the predominant use of recovery operation equipment varies from year to year, then the predominant use shall be determined based on the utilization that occurred during the year preceding September 5, 1996 or based on the expected utilization for the 5 years following September 5, 1996 for existing affected sources, whichever is the more representative of the expected operations for the recovery operations equipment, and based on the expected utilization for the first 5 years after initial startup for new affected sources. This determination shall be reported in the Notification of Compliance Status required by § 63.506(e)(5)(viii). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If there is an unexpected change in the utilization of recovery operation equipment that could reasonably change the predominant use, the owner or operator shall redetermine to which process unit the recovery operation belongs by reperforming the procedures specified in paragraphs (h)(2) through (h)(6) of this section.

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(4) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(5) provides examples of what are and are not considered process changes for purposes of paragraph (i) of this section.

(1) *Adding an EPPU to a plant site.* The provisions of paragraphs (i)(1)(i) through (i)(1)(ii) of this section apply to owners or operators that add EPPUs to a plant site.

(i) If an EPPU is added to a plant site, the addition shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial startup or by September 5, 1996, whichever is later, if the addition meets the criteria specified in paragraphs (i)(1)(i)(A) through (i)(1)(i)(B) and either (i)(1)(i)(C) or (i)(1)(i)(D) of this section:

(A) It is an addition that meets the definition of construction in § 63.2 of subpart A;

(B) Such construction commenced after June 12, 1995; and

(C) The addition has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and the primary product of the addition is currently produced at the plant site as the primary product of an affected source; or

(D) The primary product of the addition is not currently produced at the plant site as the primary product of an affected source, and the plant site meets, or after the addition is constructed will meet, the definition of a major source in § 63.2 of subpart A.

(ii) If an EPPU is added to a plant site, the addition shall be subject to the requirements for an existing affected source in this subpart upon initial startup or by 3 years after September 5, 1996, whichever is later, if the addition does not meet the criteria specified in

paragraph (i)(1)(i) of this section and the plant site meets, or after the addition is completed will meet, the definition of major source.

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (i)(2)(i) through (i)(2)(ii) of this section apply to owners or operators that add emission points or make process changes to an existing affected source.

(i) If any process change is made or emission point is added to an existing affected source, or if a process change creating one or more additional Group 1 emission point(s) is made to an existing affected source, the entire affected source shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial startup or by September 5, 1996, whichever is later, if the process change or addition meets the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section:

(A) It is a process change or addition that meets the definition of reconstruction in § 63.2 of subpart A; and

(B) Such reconstruction commenced after June 12, 1995.

(ii) If any process change is made or emission point is added to an existing affected source, or if a process change creating one or more additional Group 1 emission point(s) is made to an existing affected source and the process change or addition does not meet the criteria specified in paragraphs (i)(2)(i)(A) and (i)(2)(i)(B) of this section, the resulting emission point(s) shall be subject to the requirements for an existing affected source in this subpart. The resulting emission point(s) shall be in compliance upon initial startup or by 3 years after September 5, 1996, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the process change or addition. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section to establish a compliance date.

(iii) To establish a compliance date for an emission point or points specified in paragraph (i)(2)(ii) of this section, the procedures specified in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section shall be followed.

(A) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(B) The compliance schedule shall be submitted within 180 days after the process change or addition is made or the information regarding the change or addition is known to the owner or operator, unless the compliance schedule has been previously submitted to the permitting authority. The compliance schedule may be submitted in the next Periodic Report if the process change or addition is made after the date the Notification of Compliance Status report is due.

(C) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(3) *Existing source requirements for Group 2 emission points that become Group 1 emission points.* If a process change or addition that does not meet the criteria in paragraph (i)(1) or (i)(2) of this section is made to an existing plant site or existing affected source, and the change causes a Group 2 emission point to become a Group 1 emission point, for that emission point the owner or operator shall comply with the requirements of this subpart for existing Group 1 emission points. Compliance shall be achieved as expeditiously as practicable, but in no event later than 3 years after the emission point becomes a Group 1 emission point.

(4) *Existing source requirements for some emission points that become subject to subpart H requirements.* If a surge control vessel or bottoms receiver becomes subject to § 63.170 of subpart H, or if a compressor becomes subject to § 63.164 of subpart H, the owner or operator shall be in compliance upon initial startup or by 3 years after September 5, 1996, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section to establish a compliance date.

(5) *Determining what are and are not process changes.* For purposes of paragraph (i) of this section, examples of process changes include, but are not limited to, changes in production capacity, feedstock type, or catalyst type, or whenever there is a replacement, removal, or addition of recovery equipment. For purposes of paragraph (i) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.506(e)(5).

(j) *Applicability of this subpart except during periods of startup, shutdown, and malfunction.* Each provision set forth in this subpart or referred to in this subpart shall apply at all times except during periods of startup, shutdown, and malfunction if the startup, shutdown, or malfunction precludes the ability of a particular emission point at an affected source to comply with one or more specific provisions to which it is subject.

§ 63.481 Compliance schedule and relationship to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (i) of this section discuss the relationship of this subpart to subpart A and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (j) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after June 12, 1995 shall be in compliance with this subpart upon initial startup or September 5, 1996, whichever is later, as provided in § 63.6(b) of subpart A.

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.502 for which compliance is covered by paragraph (d) of this section) no later than 3 years after September 5, 1996, as provided in § 63.6(c) of subpart A, unless an extension has been granted as specified in paragraph (e) of this section.

(d) Except as provided for in paragraphs (d)(1) through (d)(4) of this section, existing affected sources shall be in compliance with § 63.502 no later than March 5, 1997 unless a request for a compliance extension is granted pursuant to section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6) of subpart H.

(1) Compliance with the compressor provisions of § 63.164 of subpart H shall occur no later than September 5, 1997 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iii) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161 of subpart H.

(i) The seal system will be replaced;

(ii) A barrier fluid system will be installed; or

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system.

(2) Compliance with the compressor provisions of § 63.164 of subpart H shall occur no later than March 5, 1998, for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161 of subpart H;

(iii) The additional time is actually necessary, due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits the request for a compliance extension to the U.S. Environmental Protection Agency (EPA) Regional Office at the addresses listed in § 63.13 of subpart A no later than 45 days before March 5, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D) of subpart A. Unless the EPA Regional Office objects to the request for a compliance extension within 30 calendar days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 of subpart H cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161 of subpart H, the owner or operator shall achieve compliance no later than September 8, 1998. The owner or operator who elects to use this provision shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(4) Compliance with the compressor provisions of § 63.164 of subpart H shall occur not later than September 6, 1999 for any compressor meeting one or more of the criteria in paragraphs (d)(4)(i) through (d)(4)(iii) of this section. The owner or operator who elects to use these provisions shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(i) Compliance cannot be achieved without replacing the compressor;

(ii) Compliance cannot be achieved without recasting the distance piece; or

(iii) Design modifications are required to connect to a closed-vent or recovery system.

(5) Compliance with the surge control vessel and bottoms receiver provisions of § 63.170 of subpart H shall occur no later than September 6, 1999.

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the operating permit authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than the date on which the Precompliance Report is required to be submitted in § 63.506(e)(3)(i). The dates specified in § 63.6(i) of subpart A for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i) (A), (B), and (D) of subpart A.

(2) The requirements in § 63.6(i)(8) through § 63.6(i)(14) of subpart A shall govern the review and approval of requests for extensions of compliance with this subpart.

(f) Table 1 of this subpart specifies the provisions of subpart A that apply and those that do not apply to owners and operators of affected sources subject to this subpart. For the purposes of this subpart, Table 3 of subpart F is not applicable.

(g) Table 2 of this subpart summarizes the provisions of subparts F, G, and H that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(h)(1) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 63, subpart I, is required to comply only with the provisions of this subpart.

(2) Sources subject to 40 CFR part 63, subpart I that have elected to comply through a quality improvement program, as specified in § 63.175 or § 63.176 or both of subpart H, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the "compliance clock" as it relates to reduced burden earned through a quality improvement program.

(i) After the compliance dates specified in this section, a storage vessel that belongs to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart Kb is required to comply only with the provisions of this subpart. After the compliance dates specified in paragraph (d) of this section, that storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(j) All terms in this subpart that define a period of time for completion of required tasks (e.g., monthly, quarterly, annual), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (j)(2)(i) or (j)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each multiple successive period, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 63.482 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in subparts A (§ 63.2), F (§ 63.101), G (§ 63.111), and H (§ 63.161) as specified after each term:

Act (subpart A)
Administrator (subpart A)
Automated monitoring and recording system (subpart G)
Average concentration (subpart G)
Boiler (subpart G)
Bottoms receiver (subpart H)

By compound (subpart G)
By-product (subpart F)
Car-seal (subpart G)
Chemical manufacturing process unit (subpart F)
Closed-vent system (subpart G)
Co-product (subpart F)
Combustion device (subpart G)
Commenced (subpart A)
Compliance date (subpart A)
Compliance schedule (subpart A)
Connector (subpart H)
Construction (subpart A)
Continuous monitoring system (subpart A)
Continuous record (subpart G)
Continuous recorder (subpart G)
Cover (subpart G)
Distillation unit (subpart G)
Emission standard (subpart A)
Emissions averaging (subpart A)
EPA (subpart A)
Equipment (subpart H)
Equipment leak (subpart F)
Existing source (subpart A)
External floating roof (subpart G)
Fill (subpart G)
Fixed roof (subpart G)
Flame zone (subpart G)
Flexible operation unit (subpart F)
Floating roof (subpart G)
Flow indicator (subpart G)
Halogens and hydrogen halides (subpart G)
Hazardous air pollutant (subpart A)
Heat exchange system (subpart F)
Impurity (subpart F)
Incinerator (subpart G)
In organic hazardous air pollutant service (subpart H)
Instrumentation system (subpart H)
Internal floating roof (subpart G)
Lesser quantity (subpart A)
Maintenance wastewater (subpart F)
Major source (subpart A)
Malfunction (subpart A)
Mass flow rate (subpart G)
Maximum true vapor pressure (subpart G)
New source (subpart A)
Open-ended valve or line (subpart H)
Operating permit (subpart F)
Organic HAP service (subpart H)
Organic monitoring device (subpart G)
Owner or operator (subpart A)
Performance evaluation (subpart A)
Performance test (subpart A)
Permitting authority (subpart A)
Plant site (subpart F)
Point of generation (subpart G)
Potential to emit (subpart A)
Primary fuel (subpart G)
Process heater (subpart G)
Process unit shutdown (subpart H)
Process wastewater (subpart F)
Process wastewater stream (subpart G)
Product separator (subpart F)
Reactor (subpart G)
Reconstruction (subpart A)
Recovery device (subpart G)
Reference control technology for process vents (subpart G)
Reference control technology for storage vessels (subpart G)
Reference control technology for wastewater (subpart G)
Relief valve (subpart G)
Research and development facility (subpart F)
Residual (subpart G)
Run (subpart A)
Secondary fuel (subpart G)
Sensor (subpart H)
Shutdown (subpart A)
Specific gravity monitoring device (subpart G)
Startup (subpart A)
Startup, shutdown, and malfunction plan (subpart F)
State (subpart A)
Surge control vessel (subpart H)
Temperature monitoring device (subpart G)
Test method (subpart A)
Total resource effectiveness index value (subpart G)
Treatment process (subpart G)
Unit operation (subpart F)
Vent stream (subpart G)
Visible emission (subpart A)
Waste management unit (subpart G)
Wastewater (subpart F)
Wastewater stream (subpart G)

(b) All other terms used in this subpart shall have the meaning given them in this section. If a term is defined in a subpart referenced above and in this section, it shall have the meaning given in this section for purposes of this subpart.

Affected source is defined in § 63.480(a).

Aggregate batch vent stream means a gaseous emission stream containing only the exhausts from two or more batch front-end process vents that are ducted together before being routed to a control device that is in continuous operation.

Average flow rate, as used in conjunction with wastewater provisions, is defined in and determined by the specifications in § 63.144(c) of subpart G; or, as used in conjunction with the batch front-end process vent provisions, is defined in and determined by the specifications in § 63.488(e).

Back-end refers to the unit operations in an EPPU following the stripping operations. Back-end process operations include, but are not limited to, filtering, coagulation, blending, concentration, drying, separating, and other finishing operations, as well as latex and crumb storage.

Batch cycle means the operational step or steps, from start to finish, that occur as part of a batch unit operation.

Batch cycle limitation means an enforceable restriction on the number of batch cycles that can be performed in a year for an individual batch front-end process vent.

Batch emission episode means a discrete emission venting episode associated with a single batch unit operation. Multiple batch emission episodes may occur from a single batch unit operation.

Batch front-end process vent means a point of emission from a batch unit operation having a gaseous emission stream with annual organic HAP emissions greater than 225 kilograms per year and located in the front-end of a process unit. Batch front-end process vents exclude relief valve discharges and leaks from equipment regulated under § 63.502.

Batch process means a discontinuous process involving the bulk movement of material through sequential manufacturing steps. Mass, temperature, concentration, and other properties of the process vary with time. Addition of raw material and withdrawal of product do not typically occur simultaneously in a batch process. For the purposes of this subpart, a process producing polymers is characterized as continuous or batch based on the operation of the polymerization reactors.

Batch unit operation means a unit operation operated in a batch process mode.

Butyl rubber means a copolymer of isobutylene and other monomers. Typical other monomers include isoprene and methylstyrenes. A typical composition of butyl rubber is approximately 85 to 99 percent isobutylene and one to fifteen percent other monomers. Most butyl rubber is produced by precipitation polymerization, although other methods may be used.

Compounding unit means a unit of operation which blends, melts, and resolidifies solid polymers for the purpose of incorporating additives, colorants, or stabilizers into the final elastomer product. A unit operation whose primary purpose is to remove residual monomers from polymers is not a compounding unit.

Continuous front-end process vent means a point of emission from a continuous process unit operation within an affected source having a gaseous emission stream with a flow rate greater than or equal to 0.005 standard cubic meter per minute and with a total organic HAP concentration greater than or equal to 50 parts per million by volume. Continuous front-end process vents exclude relief valve

discharges and leaks from equipment regulated under § 63.502.

Continuous process means a process where the inputs and outputs flow continuously through sequential manufacturing steps throughout the duration of the process. Continuous processes typically approach steady-state conditions. Continuous processes typically involve the simultaneous addition of raw material and withdrawal of product. For the purposes of this subpart, a process producing polymers is characterized as continuous or batch based on the operation of the polymerization reactors.

Continuous unit operation means a unit operation operated in a continuous process mode.

Control device is defined in § 63.111 of subpart G, except that the term "process vent" shall be replaced with the term "continuous front-end process vent" for the purpose of this subpart.

Crumb rubber dry weight means the weight of the polymer, minus the weight of water and residual organics.

Drawing unit means a unit operation which converts polymer into a different shape by melting or mixing the polymer and then pulling it through an orifice to create a continuously extruded product.

Elastomer means any polymer having a glass transition temperature lower than −10°C, or a glass transition temperature between −10°C and 25°C that is capable of undergoing deformation (stretching) of several hundred percent and recovering essentially when the stress is removed. For the purposes of this subpart, resins are not considered to be elastomers.

Elastomer product means one of the following 12 types of products, as they are defined in this section:

(1) Butyl Rubber,
(2) Halobutyl Rubber,
(3) Epichlorohydrin Elastomers,
(4) Ethylene Propylene Rubber,
(5) Hypalon™,
(6) Neoprene,
(7) Nitrile Butadiene Rubber,
(8) Nitrile Butadiene Latex,
(9) Polybutadiene Rubber/Styrene Butadiene Rubber by Solution,
(10) Polysulfide Rubber,
(11) Styrene Butadiene Rubber by Emulsion, and
(12) Styrene Butadiene Latex.

Elastomer product process unit (EPPU) means a collection of equipment assembled and connected by pipes or ducts used to process raw materials and to manufacture an elastomer product as its primary product. This collection of equipment includes process vents; storage vessels, as determined in § 63.480(g); and the equipment (i.e., pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers that are associated with the elastomer product process unit) that are subject to the equipment leak provisions as specified in § 63.502. Compounding units, spinning units, drawing units, extruding units, and other finishing steps are not part of an EPPU. In addition, a solid state polymerization unit is not part of an EPPU.

Elastomer type means one of the elastomers defined under "elastomer product" in this section. Each elastomer identified in that definition represents a different elastomer type.

Emission point means an individual continuous front-end process vent, batch front-end process vent, back-end process vent, storage vessel, wastewater stream, or equipment leak.

Emulsion process means a process carried out with the reactants in an emulsified form (e.g., polymerization reaction).

Epichlorohydrin elastomer means an elastomer formed from the polymerization or copolymerization of epichlorohydrin (EPI). The main epichlorohydrin elastomers are polyepichlorohydrin, epi-ethylene oxide (EO) copolymer, epi-allyl glycidyl ether (AGE) copolymer, and epi-EO-AGE terpolymer. Epoxy resins produced by the copolymerization of EPI and bisphenol A are not epichlorohydrin elastomers.

Ethylene-propylene rubber means an ethylene-propylene copolymer or an ethylene-propylene terpolymer. Ethylene-propylene copolymers (EPM) result from the polymerization of ethylene and propylene and contain a saturated chain of the polymethylene type. Ethylene-propylene terpolymers (EPDM) are produced in a similar manner as EPM, except that a moderate amount of the third monomer is added to the reaction sequence. Typical third monomers include ethylidene norbornene, 1,4-hexadiene, or dicyclopentadiene. Ethylidene norbornene is the most commonly used. The production process includes, but is not limited to, polymerization, recycle, recovery, and packaging operations. The polymerization reaction may occur in either a solution process or a suspension process.

Extruding unit means a unit operation which converts polymer into a different shape by melting or mixing the polymer and then forcing it through an orifice to create a continuously extruded product.

Front-end refers to the unit operations in an EPPU prior to, and including, the stripping operations. The process front-end includes all activity from raw material storage through the stripping operation, including pre-polymerization blending, reactions, etc. For all gas-phased reaction processes, all unit operations are considered to be front-end.

Gas-phased reaction process means an elastomer production process where the reaction occurs in a gas phase, fluidized bed.

Grade means the subdivision of an elastomer product type by different characteristics such as molecular weight, monomer composition, significant mooney values, and the presence or absence of extender oil and/or carbon black.

Group 1 batch front-end process vent means a batch front-end process vent releasing annual organic HAP emissions greater than or equal to 11,800 kg/yr and with a cutoff flow rate, calculated in accordance with § 63.488(f), greater than or equal to the annual average flow rate.

Group 2 batch front-end process vent means a batch front-end process vent that does not fall within the definition of a Group 1 batch front-end process vent.

Group 1 continuous front-end process vent means a continuous front-end process vent releasing a gaseous emission stream that has a total resource effectiveness index value, calculated according to § 63.115 of subpart G, less than or equal to 1.0.

Group 2 continuous front-end process vent means a continuous front-end process vent that does not fall within the definition of a Group 1 continuous front-end process vent.

Group 1 storage vessel means a storage vessel at an existing affected source that meets the applicability criteria specified in Table 3 of this subpart, or a storage vessel at a new affected source that meets the applicability criteria specified in Table 4 of this subpart.

Group 2 storage vessel means a storage vessel that does not fall within the definition of a Group 1 storage vessel.

Group 1 wastewater stream means a process wastewater stream from an elastomer product process unit at an existing or new source with a total volatile organic hazardous air pollutant average concentration greater than or equal to 10,000 parts per million by weight of compounds listed in table 9 of subpart G at any flowrate; or a process wastewater stream from a process unit at an existing or new source that has an average flow rate greater than or equal to 10 liters per minute and a total volatile organic hazardous air pollutant

concentration greater than 1,000 parts per million by weight of compounds listed in table 9 of subpart G.

Group 2 wastewater stream means any process wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Halobutyl rubber means a butyl rubber elastomer produced using halogenated copolymers.

Halogenated aggregate batch vent stream means an aggregate batch vent stream determined to have a total mass emission rate of halogen atoms contained in organic compounds of 3,750 kg/yr or greater determined by the Procedures presented in § 63.488(h).

Halogenated batch front-end process vent means a batch front-end process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 3,750 kg/yr or greater determined by the procedures presented in § 63.488(h).

Halogenated continuous front-end process vent means a continuous front-end process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 0.45 kg/hr or greater determined by the procedures presented in § 63.115(d)(2)(v) of subpart G.

High conversion latex means a latex where all monomers are reacted to at least 95 percent conversion.

Hypalon™ means a chlorosulfonated polyethylene that is a synthetic rubber produced for uses such as wire and cable insulation, shoe soles and heels, automotive components, and building products.

Latex means a colloidal aqueous emulsion of elastomer. A latex may be further processed into finished products by direct use as a coating or as a foam, or it may be precipitated to separate the rubber particles, which are then used in dry state to prepare finished products.

Latex weight includes the weight of the polymer and the weight of the water solution.

Mass process means a process carried out through the use of thermal energy (e.g., polymerization reaction). Mass processes do not utilize emulsifying or suspending agents, but can utilize catalysts or other additives.

Material recovery section means the equipment that recovers unreacted or by-product materials from any process section for return to the EPPU, off-site purification or treatment, or sale. Equipment designed to separate unreacted or by-product material from the polymer product is to be included in this process section, provided that at the time of initial compliance some of the material is recovered for reuse in the process, off-site purification or treatment, or sale. Otherwise, such equipment is to be assigned to one of the other process sections, as appropriate. If equipment is used to recover unreacted or by-product material and return it directly to the same piece of process equipment from which it was emitted, then the recovery equipment is considered to be part of the process section that contains the process equipment. On the other hand, if equipment is used to recover unreacted or by-product material and return it to a different piece of process equipment in the same process section, the recovery equipment is considered to be part of a material recovery section. Equipment that treats recovered materials is to be included in this process section, but equipment that also treats raw materials is not to be included in this process section. The latter equipment is to be included in the raw materials preparation section.

Month means either a calendar month or a repeating 30-day period. For the purposes of compliance with the back-end limitations in § 63.506, a month can begin on any day of the month (i.e., starting on the 15th and ending on the 14th of the following month), as long as the month never contains more than 31 calendar days.

Neoprene means a polymer of chloroprene (2-chloro-1,3-butadiene). The free radical emulsion process is generally used to produce neoprene, although other methods may be used.

Nitrile butadiene latex means a polymer consisting primarily of unsaturated nitriles and dienes, usually acrylonitrile and 1,3-butadiene, that is sold as a latex.

Nitrile butadiene rubber means a polymer consisting primarily of unsaturated nitriles and dienes, usually acrylonitrile and 1,3-butadiene, not including those facilities that produce nitrile butadiene latex.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 5 of this subpart or any other chemical which:

(1) Is knowingly introduced into the manufacturing process other than as an impurity, or has been or will be reported under any Federal or State program, such as EPCRA section 311, 312, or 313 or Title V; and

(2) Is listed in Table 2 of subpart F of this part.

Polybutadiene rubber/styrene butadiene rubber by solution means a polymer of 1,3-butadiene produced using a solution process, and/or a polymer that consists primarily of styrene and butadiene monomer units and is produced using a solution process.

Polymerization reaction section means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer chains (e.g., oligomers or low polymers), but not including equipment designed to prepare raw materials for polymerization (e.g., esterification vessels). For the purposes of this subpart, the polymerization reaction section begins with the equipment used to transfer the materials from the raw materials preparation section and ends with the last vessel in which polymerization occurs.

Polysulfide rubber means a polymer produced by reacting sodium polysulfide and chloroethyl formal. Polysulfide rubber may be produced as latexes or solid product.

Primary product is defined in and determined by the procedures specified in § 63.480(f).

Process section means the equipment designed to accomplish a general but well-defined task in polymers production. Process sections include raw materials preparation, polymerization reaction, and material recovery. A process section may be dedicated to a single EPPU or may be common to more than one EPPU.

Process unit means a collection of equipment assembled and connected by pipes or ducts to process raw materials and to manufacture a product.

Process vent means a point of emission from a unit operation having a gaseous emission stream. Typical process vents include condenser vents, dryer vents, vacuum pumps, steam ejectors, and atmospheric vents from reactors and other process vessels, but do not include pressure relief valves.

Product means a compound or material which is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Raw materials preparation section means the equipment at a polymer manufacturing plant designed to prepare raw materials, such as monomers and solvents, for polymerization. For the purposes of this standard, this process section begins with the equipment used to transfer raw materials from storage and/or the equipment used to transfer recovered material from the material recovery process sections, and ends with the last piece of equipment that prepares the material for polymerization. The raw materials preparation section may include equipment that is used to purify, dry, or otherwise treat raw materials or raw and recovered

materials together; to activate catalysts; and to promote esterification including the formation of some short polymer chains (oligomers). The raw materials preparation section does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw materials.

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation units, condensers, etc. Equipment used for wastewater treatment shall not be considered recovery operations equipment.

Resin means a polymer that is not an elastomer. The following are characteristics of resins and the production of resins:

(1) The polymer is a block polymer;

(2) The manufactured polymer does not require vulcanization to make useful products;

(3) The polymer production process is operated to achieve at least 99 percent monomer conversion; and

(4) The polymer process unit does not recycle unreacted monomer back to the process.

Solid state polymerization unit means a unit operation which, through the application of heat, furthers the polymerization (i.e., increases the intrinsic viscosity) of polymer chips.

Solution process means a process where both the monomers and the resulting polymers are dissolved in an organic solvent.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values can occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP and that has been assigned, according to the procedures in § 63.480(g), to an EPPU that is subject to this subpart. Storage vessels do not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels and equipment storing and/or handling material that contains no organic HAP, or organic HAP as impurities only;

(5) Surge control vessels and bottoms receiver tanks; and

(6) Wastewater storage tanks.

Stripping technology means the removal of organic compounds from a raw elastomer product by the use of heat and/or vacuum. Stripping technology includes steam stripping, direct volatilization, chemical stripping, and other methods of devolatilization.

Styrene butadiene latex means a polymer consisting primarily of styrene and butadiene monomer units produced using an emulsion process and sold as a latex.

Styrene butadiene rubber by emulsion means a polymer consisting primarily of styrene and butadiene monomer units produced using an emulsion process. Styrene butadiene rubber by emulsion does not include styrene butadiene latex.

Suspension process means a process carried out with the reactants in a state of suspension, typically achieved through the use of water and/or suspending agents (e.g., polymerization reaction).

Total organic compounds (TOC) means those compounds, excluding methane and ethane, measured according to the procedures of Method 18 or Method 25A of 40 CFR part 60, appendix A.

Year means any consecutive 12-month period or 365 rolling days. For the purposes of emissions averaging, the term year applies to any 12-month period selected by the facility and defined in its Emissions Averaging Plan. For the purposes of batch cycle limitations, the term year applies to the 12-month period defined by the facility in its Notification of Compliance Status.

§ 63.483 Emission standards.

(a) Except as allowed under paragraphs (b) and (c) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

(1) Section 63.484 for storage vessels;

(2) Section 63.485 for continuous front-end process vents;

(3) Sections 63.486 through 63.492 for batch front-end process vents;

(4) Sections 63.493 through 63.500 for back-end process operations;

(5) Section 63.501 for wastewater;

(6) Section 63.502 for equipment leaks;

(7) Section 63.504 for additional test methods and procedures;

(8) Section 63.505 for monitoring levels and excursions; and

(9) Section 63.506 for general reporting and recordkeeping requirements.

(b) Instead of complying with §§ 63.484, 63.485, 63.493, and 63.501, the owner or operator of an existing affected source may elect to control any or all of the storage vessels, continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, and back-end process emissions within the affected source, plus any or all process wastewater streams associated with the affected source, to different levels using an emissions averaging compliance approach that uses the procedures specified in § 63.503. An owner or operator electing to use emissions averaging must still comply with the provisions of §§ 63.484, 63.485, 63.486, 63.493, and 63.501 for affected source emission points not included in the emissions average.

(c) A State may decide not to allow the use of the emissions averaging compliance approach specified in paragraph (b) of this section as a compliance option for an existing affected source.

§ 63.484 Storage vessel provisions.

(a) For each storage vessel located at an affected source, except for those storage vessels exempted by paragraph (b) of this section, the owner or operator shall comply with the requirements of §§ 63.119 through 63.123 and § 63.148 of subpart G, with the differences noted in paragraphs (c) through (q) of this section.

(b) Storage vessels described in paragraphs (b)(1) through (b)(7) of this section are exempt from the storage vessel requirements of this section.

(1) Storage vessels containing styrene-butadiene latex;

(2) Storage vessels containing other latex products and located downstream of the stripping operations;

(3) Storage vessels containing high conversion latex products;

(4) Storage vessels located downstream of the stripping operations at affected sources subject to the back-end residual organic HAP limitation located in § 63.494, that are complying through the use of stripping technology, as specified in § 63.495;

(5) Storage vessels containing styrene;

(6) Storage vessels containing acrylamide; and

(7) Storage vessels containing epichlorohydrin.

(c) When the term "storage vessel" is used in §§ 63.119 through 63.123 and 63.148 of subpart G, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(d) When the term "Group 1 storage vessel" is used in §§ 63.119 through 63.123 and § 63.148 of subpart G, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(e) When the term "Group 2 storage vessel" is used in §§ 63.119 through

63.123 and § 63.148 of subpart G, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(f) When the emissions averaging provisions of § 63.150 of subpart G are referred to in § 63.119 and § 63.123 of subpart G, the emissions averaging provisions contained in § 63.503 shall apply for the purposes of this subpart.

(g) When December 31, 1992 is referred to in § 63.119 of subpart G, it shall be replaced with June 12, 1995 for the purposes of this subpart.

(h) When April 22, 1994 is referred to in § 63.119 of subpart G, it shall be replaced with September 5, 1996 for the purposes of this subpart.

(i) Each owner or operator shall comply with this paragraph instead of § 63.120(d)(1)(ii) of subpart G for the purposes of this subpart. If the control device used to comply with this section is also used to comply with §§ 63.485 through § 63.501, the performance test required for these sections is acceptable for demonstrating compliance with § 63.119(e) of subpart G for the purposes of this subpart. The owner or operator will not be required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i) of subpart G, if the performance test meets the criteria specified in paragraphs (i)(1) and (i)(2) of this section.

(1) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 63.119(e)(1) or § 63.119(e)(2) of subpart G, as applicable; and

(2) The performance test is submitted as part of the Notification of Compliance Status required by § 63.506(e)(5).

(j) When the term "operating range" is used in § 63.120(d)(3)(i) of subpart G, it shall be replaced with the term "level," for the purposes of this subpart. This level shall be established using the procedures specified in § 63.505.

(k) When the Notification of Compliance Status requirements contained in § 63.152(b) of subpart G are referred to in §§ 63.120, 63.122, and 63.123 of subpart G, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart.

(l) When the Periodic Report requirements contained in § 63.152(c) of subpart G are referred to in §§ 63.120, 63.122, and 63.123 of subpart G, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart.

(m) When other reports as required in § 63.152(d) of subpart G are referred to in § 63.122 of subpart G, the reporting requirements contained in § 63.506(e)(7) shall apply for the purposes of this subpart.

(n) When the Implementation Plan requirements contained in § 63.151(c) of subpart G are referred to in § 63.119 through § 63.123 of subpart G, for the purposes of this subpart the owner or operator of an affected source need not comply.

(o) When the Initial Notification Plan requirements contained in § 63.151(b) of subpart G are referred to in § 63.119 through § 63.123 of subpart G, for the purposes of this subpart the owner or operator of an affected source need not comply.

(p) When the determination of equivalence criteria in § 63.102(b) of subpart F are referred to in § 63.121(a) of subpart G, the provisions in § 63.6(g) of subpart A shall apply for the purposes of this subpart.

(q) The compliance date for storage vessels at affected sources subject to the provisions of this section is specified in § 63.481.

§ 63.485 Continuous front-end process vent provisions.

(a) For each continuous front-end process vent located at an affected source, the owner or operator shall comply with the requirements of §§ 63.113 through 63.118 of subpart G, except as provided for in paragraphs (b) through (s) of this section. Continuous front-end process vents that are combined with one or more batch front-end process vents shall comply with paragraph (m) or (n) of this section.

(b) When the term "process vent" is used in §§ 63.113 through 63.118 of subpart G, it shall be replaced with the term "continuous front-end process vent," and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(c) When the term "halogenated process vent" is used in §§ 63.113 through 63.118 of subpart G, it shall be replaced with the term "halogenated continuous front-end process vent," and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(d) When the term "Group 1 process vent" is used in §§ 63.113 through 63.118 of subpart G, it shall be replaced with the term "Group 1 continuous front-end process vent," and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(e) When the term "Group 2 process vent" is used in §§ 63.113 through 63.118 of subpart G, it shall be replaced with the term "Group 2 continuous front-end process vent," and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(f) When December 31, 1992 is referred to in § 63.113 of subpart G, it shall be replaced with June 12, 1995 for the purposes of this subpart.

(g) When §§ 63.151(f), alternative monitoring parameters, and 63.152(e), submission of an operating permit, of subpart G are referred to in §§ 63.114(c) and 63.117(e) of subpart G, § 63.506(f), alternative monitoring parameters, and § 63.506(e)(8), submission of an operating permit, respectively, shall apply for the purposes of this subpart.

(h) When the Notification of Compliance Status requirements contained in § 63.152(b) of subpart G are referred to in §§ 63.114, 63.117, and 63.118 of subpart G, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart.

(i) When the Periodic Report requirements contained in § 63.152(c) of subpart G are referred to in §§ 63.117 and 63.118 of subpart G, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart.

(j) When the definition of excursion in § 63.152(c)(2)(ii)(A) of subpart G is referred to in § 63.118(f)(2) of subpart G, the definition of excursion in § 63.505(g) and (h) shall apply for the purposes of this subpart.

(k) For the purposes of this subpart, owners and operators shall comply with § 63.505, parameter monitoring levels and excursions, instead of § 63.114(e) of subpart G. When the term "range" is used in § 63.117(f), § 63.118(a)(2)(iv), (b)(2)(iv), (f)(1), and (f)(6) of subpart G, it shall be replaced with the term "level." This level is determined in accordance with § 63.505.

(l) When reports of process changes are required under § 63.118 (g), (h), (i), and (j) of subpart G, paragraphs (l)(1) through (l)(4) of this section shall apply for the purposes of this subpart.

(1) Whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 continuous front-end process vent to become a Group 1 continuous front-end process vent, the owner or operator shall submit the following information in the first periodic report following the process change, as specified in § 63.506(e)(6)(iii)(D)(*2*):

(i) A description of the process change; and

(ii) A schedule for compliance with § 63.113(a) of subpart G, as required under § 63.506(e)(6)(iii)(D)(*2*).

(2) Whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 continuous front-end process vent with a TRE greater than 4.0 to become a Group 2

continuous front-end process vent with a TRE less than 4.0, the owner or operator shall submit the following information in the first periodic report following the process change, as specified in § 63.506(e)(6)(iii)(D)(*2*):

(i) A description of the process change; and

(ii) A schedule for compliance with the provisions of § 63.113(d) of subpart G, as required under § 63.506(e)(6)(iii)(D)(*2*).

(3) Whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 continuous front-end process vent with a flow rate less than 0.005 standard cubic meter per minute (scmm) to become a Group 2 continuous front-end process vent with a flow rate of 0.005 scmm or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit the following information in the first periodic report following the process change, as specified in § 63.506(e)(6)(iii)(D)(*2*):

(i) A description of the process change; and

(ii) A schedule for compliance with two provisions of § 63.113(d) of subpart G, as required under § 63.506(e)(6)(iii)(D)(*2*).

(4) Whenever a process change, as defined in § 63.115(e) of subpart G, is made that causes a Group 2 continuous front-end process vent with an organic HAP concentration less than 50 parts per million by volume (ppmv) to become a Group 2 continuous front-end process vent with an organic HAP concentration of 50 ppmv or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit the following information in the first periodic report following the process change, as specified in § 63.506(e)(6)(iii)(D)(*2*):

(i) A description of the process change; and

(ii) A schedule for compliance with the provisions of § 63.113(d) of subpart G, as required under § 63.506(e)(6)(iii)(D)(*2*).

(m) If a batch front-end process vent is combined with a continuous front-end process vent prior to being routed to a control device, the combined vent stream shall comply with either paragraph (m)(1) or (m)(2) of this section, as appropriate.

(1) If the continuous front-end process vent is a Group 1 continuous front-end process vent, the combined vent stream shall comply with all requirements for a Group 1 continuous process vent stream in §§ 63.113 through 63.118 of subpart G, with the differences noted in paragraphs (b) through (l) of this section.

(2) If the continuous front-end process vent is a Group 2 continuous front-end process vent, the TRE index value shall be calculated during maximum representative operating conditions. For combined streams containing continuous front-end and batch front-end process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the control device resulting in the highest concentration of organic HAP in the combined vent stream.

(n) If a batch front-end process vent is combined with a continuous front-end process vent prior to being routed to a recovery device, the TRE index value shall be calculated at the exit of the recovery device at maximum representative operating conditions. For combined vent streams containing continuous front-end and batch front-end process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the recovery device resulting in the highest concentration of organic HAP in the combined vent stream.

(o) Group 1 halogenated continuous front-end process vents at affected existing sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber are exempt from the requirements to control hydrogen halides and halogens from the outlet of combustion devices contained in § 63.113(c) of subpart G, if the conditions in paragraphs (o)(1) and (o)(2) of this section are met. Affected new sources are not exempt from these provisions.

(1)(i) For affected sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber using a solution process, if the halogenated continuous front-end process vent stream was controlled by a combustion device prior to June 12, 1995, or

(ii) For affected sources producing ethylene propylene rubber using a gas-phased reaction process, if the halogenated continuous front-end process vent stream was controlled by a combustion device since startup.

(2) The combustion device meets the requirements of § 63.113(a)(1)(i), § 63.113(a)(2), § 63.113(a)(3), or § 63.113(b) of subpart G.

(p) The compliance date for continuous front-end process vents subject to the provisions of this section is specified in § 63.481. This replaces the reference to § 63.100 of subpart F in § 63.115(e)(2) of subpart G.

(q) *Internal combustion engines.* In addition to the three options for the control of a Group 1 continuous front-end process vent listed in § 63.113(a)(1)–(3) of subpart G, an owner or operator can route emissions of organic HAP to an internal combustion engine, provided the conditions listed in paragraphs (q)(1) through (q)(3) of this section are met.

(1) The vent stream routed to the internal combustion engine shall not be a halogenated continuous front-end process vent stream.

(2) The organic HAP is introduced with the primary fuel.

(3) The owner or operator continuously monitors the on/off status of the internal combustion engine.

(4) If an internal combustion engine meeting the requirements of paragraphs (q) (1) through (3) of this section is used to comply with the provisions of § 63.113(a) of subpart G, the internal combustion engine is exempt from the source testing requirements of § 63.116 of subpart G.

(r) When the provisions of § 63.116 (c)(3) and (c)(4) of subpart G specify that Method 18 shall be used, Method 18 or Method 25A may be used for the purposes of this subpart. The use of Method 25A shall comply with paragraphs (r)(1) and (r)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A shall be the single organic HAP representing the largest percent by volume of the emissions.

(2) The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(s) When the provisions of § 63.116(b) identify conditions under which a performance test is not required, for purposes of this subpart, the exemption in paragraph (s)(1) of this section shall also apply. Further, if a performance test meeting the conditions specified in paragraph (s)(2) of this section has been conducted by the owner or operator, the results of that performance test shall suffice, for the purposes of this section.

(1) An incinerator burning hazardous waste for which the owner or operator complies with the requirements of 40 CFR part 264, subpart O.

(2) Performance tests done for other subparts in part 60 or part 63 where total organic HAP or TOC was measured, provided that the owner or operator can demonstrate that operating conditions for the process and control or recovery device during the performance test are representative of current operating conditions.

§ 63.486 Batch front-end process vent provisions.

(a) *Batch front-end process vents.* Except as specified in paragraph (b) of this section, owners and operators of new and existing affected sources with batch front-end process vents shall comply with the requirements in §§ 63.487 through 63.492. The batch front-end process vent group status shall be determined in accordance with § 63.488. Batch front-end process vents classified as Group 1 shall comply with the reference control technology requirements for Group 1 batch front-end process vents in § 63.487, the monitoring requirements in § 63.489, the performance test methods and procedures to determine compliance requirements in § 63.490, the recordkeeping requirements in § 63.491, and the reporting requirements in § 63.492. All Group 2 batch front-end process vents shall comply with the applicable reference control technology requirements in § 63.487, the recordkeeping requirements in § 63.491, and the reporting requirements in § 63.492.

(b) *Aggregate batch vent streams.* Aggregate batch vent streams, as defined in § 63.482, are subject to the control requirements for individual batch front-end process vents, as specified in § 63.487(b), as well as the monitoring, testing, recordkeeping, and reporting requirements specified in § 63.489 through § 63.492.

§ 63.487 Batch front-end process vents—reference control technology.

(a) *Batch front-end process vents.* The owner or operator of a Group 1 batch front-end process vent, as determined using the procedures in § 63.488, shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section. Compliance can be based on either organic HAP or TOC.

(1) For each batch front-end process vent, reduce organic HAP emissions using a flare.

(i) The flare shall comply with the requirements of § 63.11(b) of subpart A.

(ii) Halogenated batch front-end process vents, as defined in § 63.482, shall not be vented to a flare.

(2) For each batch front-end process vent, reduce organic HAP emissions for the batch cycle by 90 weight percent using a control device. Owners or operators may achieve compliance with this paragraph through the control of selected batch emission episodes or the control of portions of selected batch emission episodes. Documentation demonstrating how the 90 weight percent emission reduction is achieved is required by § 63.490(c)(2).

(b) *Aggregate batch vent streams.* The owner or operator of an aggregate batch vent stream that contains one or more Group 1 batch front-end process vents shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Compliance can be based on either organic HAP or TOC.

(1) For each aggregate batch vent stream, reduce organic HAP emissions using a flare.

(i) The flare shall comply with the requirements of § 63.11(b) of subpart A.

(ii) Halogenated aggregate batch vent streams, as defined in § 63.482, shall not be vented to a flare.

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent on a continuous basis using a control device.

(c) *Halogenated emissions.* Halogenated Group 1 batch front-end process vents, halogenated aggregate batch vent streams, and halogenated continuous front-end process vents that are combusted as part of complying with paragraph (a)(2) or (b)(2) of this section, shall be controlled according to either paragraph (c)(1) or (c)(2) of this section.

(1) If a combustion device is used to comply with paragraph (a)(2) or (b)(2) of this section for a halogenated batch front-end process vent or halogenated aggregate batch vent stream, the emissions shall be ducted from the combustion device to an additional control device that reduces overall emissions of hydrogen halides and halogens by 99 percent before those emissions are discharged to the atmosphere.

(2) A control device may be used to reduce the halogen atom mass emission rate to less than 3,750 kg/yr for batch front-end process vents or aggregate batch vent streams and thus make the batch front-end process vent or aggregate batch vent stream nonhalogenated. The nonhalogenated batch front-end process vent or aggregate batch vent stream must then comply with the requirements of either paragraph (a) or (b) of this section, as appropriate.

(d) If a boiler or process heater is used to comply with the percent reduction requirement specified in paragraph (a)(2) or (b)(2) of this section, the batch front-end process vent or aggregate batch vent stream shall be introduced into the flame zone of such a device.

(e) *Combination of batch front-end process vents or aggregate batch vent streams with continuous front-end process vents.* A batch front-end process vent or aggregate batch vent stream combined with a continuous front-end process vent stream is not subject to the provisions of §§ 63.488 through 63.492, providing the requirements of paragraphs (e)(1), (e)(2), and either (e)(3) or (e)(4) of this section are met.

(1) The batch front-end process vent is combined with a continuous front-end process vent prior to routing the continuous front-end process vent to a control or recovery device. In this paragraph, the definitions of control device and recovery device as they relate to continuous front-end process vents shall be used.

(2) The only emissions to the atmosphere from the batch front-end process vent or aggregate batch vent stream prior to being combined with the continuous front-end process vent are from equipment subject to and in compliance with § 63.502.

(3) If the batch front-end vent stream or aggregate batch vent stream is combined with a continuous front-end process vent stream prior to being routed to a control device, the combined vent stream shall comply with the requirements in § 63.485(m). In this paragraph, the definition of control device as it relates to continuous front-end process vents shall be used.

(4) If the batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent stream prior to being routed to a recovery device, the combined vent stream shall comply with the requirements in § 63.485(n). In this paragraph, the definition of recovery device as it relates to continuous front-end process vents shall be used.

(f) *Group 2 batch front-end process vents with annual emissions greater than or equal to the level specified in § 63.488(d).* The owner or operator of a Group 2 batch front-end process vent with annual emissions greater than or equal to the level specified in § 63.488(d) shall comply with the provisions of paragraphs (f)(1) and (f)(2) of this section.

(1) Establish a batch cycle limitation that ensures that the Group 2 batch front-end process vent does not become a Group 1 batch front-end process vent, and

(2) Comply with the recordkeeping requirements in § 63.491(d)(2), and the reporting requirements in § 63.492(a)(3) and (b).

(g) *Group 2 batch front-end process vents with annual emissions less than the level specified in § 63.488(d).* The owner or operator of a Group 2 batch front-end process vent with annual organic HAP emissions less than the level specified in § 63.488(d), shall comply with either paragraphs (g)(1) and (g)(2) of this section or with

paragraphs (f)(1) and (f)(2) of this section.

(1) Establish a batch cycle limitation that ensures emissions do not exceed the appropriate level specified in § 63.488(d), and

(2) Comply with the recordkeeping requirements in § 63.491(d)(1), and the reporting requirements in § 63.492(a)(2), (b), and (c).

§ 63.488 Methods and procedures for batch front-end process vent group determination.

(a) *General requirements.* Except as provided in paragraph (a)(3) of this section, the owner or operator of batch front-end process vents at affected sources shall determine the group status of each batch front-end process vent in accordance with the provisions of this section. This determination may be based on either organic HAP or TOC emissions.

(1) The procedures specified in paragraphs (b) through (i) shall be followed for the expected mix of products for a given batch front-end process vent, as specified in paragraph (a)(1)(i) of this section, or for the worst-case HAP emitting batch unit operation, as specified in paragraphs (a)(1)(ii) through (a)(1)(iv) of this section. "Worst-case HAP emitting product" is defined in paragraph (a)(1)(iii) of this section.

(i) If an owner or operator chooses to follow the procedures specified in paragraphs (b) through (i) of this section for the expected mix of products, an identification of the different products and the number of batch cycles accomplished for each is required as part of the group determination documentation.

(ii) If an owner or operator chooses to follow the procedures specified in paragraphs (b) through (i) of this section for the worst-case HAP emitting product, documentation identifying the worst-case HAP emitting product is required as part of the group determination documentation.

(iii) Except as specified in paragraph (a)(1)(iii)(B) of this section, the worst-case HAP emitting product is as defined in paragraph (a)(1)(iii)(A) of this section.

(A) The worst-case HAP emitting product is the one with the highest mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle.

(B) Alternatively, when one product is produced more than 75 percent of the time, accounts for more than 75 percent of the annual mass of product, and the owner or operator can show that the mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle can reasonably be expected to be similar to the mass emission rate for other products having emissions from the same batch front-end process vent, that product may be considered the worst-case HAP emitting product.

(C) An owner or operator shall determine the worst-case HAP emitting product for a batch front-end process vent as specified in paragraphs (a)(1)(iii)(C)(*1*) through (a)(1)(iii)(C)(*3*) of this section.

(*1*) The emissions per batch emission episode shall be determined using any of the procedures specified in paragraph (b) of this section. The mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle shall be determined by summing the emissions for each batch emission episode making up a complete batch cycle and dividing by the total duration in hours of the batch cycle.

(*2*) To determine the worst-case HAP emitting product as specified under paragraph (a)(1)(iii)(A) of this section, the mass emission rate for each product shall be determined and compared.

(*3*) To determine the worst-case HAP emitting product as specified under paragraph (a)(1)(iii)(B) of this section, the mass emission rate for the product meeting the time and mass criteria of paragraph (a)(1)(iii)(B) of this section shall be determined, and the owner or operator shall provide adequate information to demonstrate that the mass emission rate for said product is similar to the mass emission rates for the other products having emissions from the same batch process vent. In addition, the owner or operator shall provide information demonstrating that the selected product meets the time and mass criteria of paragraph (a)(1)(iii)(B) of this section.

(iv) The annual production of the worst-case HAP emitting product shall be determined by ratioing the production time of the worst-case product up to a 12 month period of actual production. It is not necessary to ratio up to a maximum production rate (i.e., 8,760 hours per year at maximum design production).

(2) The annual uncontrolled organic HAP or TOC emissions and average flow rate shall be determined at the exit from the batch unit operation. For the purposes of these determinations, the primary condenser operating as a reflux condenser on a distillation column, the primary condenser recovering monomer or solvent from a batch stripping operation, and the primary condenser recovering monomer or solvent from a batch distillation operation shall be considered part of the batch unit operation. All other devices that recover or oxidize organic HAP or TOC vapors shall be considered control devices as defined in § 63.482.

(3) The owner or operator of a batch front-end process vent complying with the flare provisions in § 63.487(a)(1) or § 63.487(b)(1) or routing the batch front-end process vent to a control device to comply with the requirements in § 63.487(a)(2) or § 63.487(b)(2) is not required to perform the batch front-end process vent group determination described in this section, but shall comply with all requirements applicable to Group 1 batch front-end process vents.

(b) *Determination of annual emissions.* The owner or operator shall calculate annual uncontrolled TOC or organic HAP emissions for each batch front-end process vent using the methods described in paragraphs (b)(1) through (b)(8) of this section. Paragraphs (b)(1) through (b)(4) of this section present procedures that can be used to calculate the emissions from individual batch emission episodes. Emissions from batch front-end processes involving multicomponent systems are to be calculated using the procedures in paragraphs (b)(1) through (b)(4) of this section. Individual HAP partial pressures in multicomponent systems shall be determined by the following methods: If the components are miscible in one another, use Raoult's law to calculate the partial pressures; if the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures; if Raoult's law or Henry's law are not appropriate or available, use experimentally obtained activity coefficients, Henry's law constants, or solubility data; if Raoult's law or Henry's law are not appropriate, use models, such as the group-contribution models, to predict activity coefficients; and if Raoult's law or Henry's law are not appropriate, assume the components of the system behave independently and use the summation of all vapor pressures from the HAP's as the total HAP partial pressure. Chemical property data can be obtained from standard reference texts. Paragraph (b)(5) of this section describes how direct measurement can be used to estimate emissions. If the owner or operator can demonstrate that the procedures in paragraphs (b)(1) through (b)(4) of this section are not appropriate to estimate emissions from a batch front-end process emission episode, emissions may be estimated using engineering assessment, as described in paragraph (b)(6) of this section. Owners or operators are not required to demonstrate that direct measurement is

not appropriate before utilizing engineering assessment. Paragraph (b)(6)(ii) of this section describes how an owner or operator shall demonstrate that the procedures in paragraphs (b)(1) through (b)(4) of this section are not appropriate. Emissions from a batch cycle shall be calculated in accordance with paragraph (b)(7) of this section, and annual emissions from the batch front-end process vent shall be calculated in accordance with paragraph (b)(8) of this section.

(1) TOC or organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 1. This equation does not take into account evaporation of any residual liquid in the vessel.

$$E_{episode} = \frac{(V_{ves})(P)(MW_{WAVG})}{RT}\left(1-0.37^{m}\right) \quad \text{[Eq. 1]}$$

where:

$E_{episode}$=Emissions, kg/episode.
V_{ves}=Volume of vessel, m^3.
P=TOC or total organic HAP partial pressure, kPa.
MW_{WAVG}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section, kg/kmol.
R=Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot °K$.
T=Temperature of vessel vapor space, °K.
m=Number of volumes of purge gas used.

(2) TOC or organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 2.

$$E_{episode} = \frac{(y)(V_{dr})(P)^2(MW_{WAVG})}{RT\left(P-\sum_{i=1}^{n} P_i x_i\right)}(T_m) \quad \text{[Eq. 2]}$$

where:

$E_{episode}$=Emissions, kg/episode.
y=Saturated mole fraction of all TOC or organic HAP in vapor phase.
V_{dr}=Volumetric gas displacement rate, m^3/min.
P=Pressure in vessel vapor space, kPa.
MW_{WAVG}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section, kg/kmol.
R=Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot °K$.
T=Temperature of vessel vapor space, °K.
P_i=Vapor pressure of TOC or individual organic HAP i, kPa.
x_i=Mole fraction of TOC or organic HAP i in the liquid.
n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated.

T_m=Minutes/episode.

(3) Emissions from vapor displacement due to transfer of material into or out of a vessel shall be calculated using Equation 3.

$$E_{episode} = \frac{(y)(V)(P)(MW_{WAVG})}{RT} \quad \text{[Eq. 3]}$$

where:

$E_{episode}$=Emissions, kg/episode.
y=Saturated mole fraction of all TOC or organic HAP in vapor phase.
V=Volume of gas displaced from the vessel, m^3.
P=Pressure of vessel vapor space, kPa.
MW_{WAVG}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section, kg/kmol.
R=Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot °K$.
T=Temperature of vessel vapor space, °K.

(4) Emissions caused by the heating of a vessel shall be calculated using the procedures in either paragraph (b)(4)(i), (b)(4)(ii), or (b)(4)(iii) of this section, as appropriate.

(i) If the final temperature to which the vessel contents is heated is lower than 50 K below the boiling point of the HAP in the vessel, then emissions shall be calculated using the equations in paragraphs (b)(4)(i)(A) through (b)(4)(i)(D) of this section.

(A) Emissions caused by heating of a vessel shall be calculated using Equation 4. The assumptions made for this calculation are atmospheric pressure of 760 mm Hg and the displaced gas is always saturated with VOC vapor in equilibrium with the liquid mixture.

$$E_{episode} = \left[\frac{\sum_{i=1}^{n}(P_i)T1}{101.325 - \sum_{i=1}^{n}(P_i)T1} + \frac{\sum_{i=1}^{n}(P_i)T2}{101.325 - \sum_{i=1}^{n}(P_i)T2} \right] \Big/ 2 \quad \text{[Eq. 4]}$$

$$* (\Delta\eta) \left[\frac{(MW_{WAVG,T1}) + (MW_{WAVG,T2})}{2} \right]$$

where:

$E_{episode}$=Emissions, kg/episode.

$(P_i)T1$, $(P_i)T2$=Partial pressure (kPa) TOC or each organic HAP in the vessel headspace at initial (T1) and final (T2) temperature.

n=Number of organic HAP in stream. Note: Summation not required if TOC emissions are being estimated.

$\Delta\eta$=Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (b)(4)(i)(B) of this section.

101.325=Constant, kPa.

$(MW_{WAVG,T1})$, $(MW_{WAVG,T2})$=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section.

(B) The moles of gas displaced, $\Delta\eta$, is calculated using equation 5.

$$\Delta\eta = \frac{V_{fs}}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \quad \text{[Eq. 5]}$$

where:

$\Delta\eta$=Number of kg-moles of gas displaced.

V_{fs}=Volume of free space in the vessel, m^3.

R=Ideal gas constant, 8.314 $m^3 \bullet kPa/kmol \bullet K$.

Pa_1=Initial noncondensible gas pressure in the vessel, kPa.

Pa_2=Final noncondensible gas pressure, kPa.

T_1=Initial temperature of vessel, K.

T_2=Final temperature of vessel, K.

(C) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using equation 6.

$$Pa = 101.325 - \sum_{i=1}^{n}(P_i)T \quad \text{[Eq. 6]}$$

where:

Pa=Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325=Constant, kPa.

$(P_i)T$=Partial pressure of TOC or each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T_1 or T_2).

n=Number of organic HAP in stream. Note: Summation not required if TOC emissions are being estimated.

(D) The weighted average molecular weight of organic HAP in the displaced gas, MW_{HAP}, shall be calculated using equation 7:

$$MW_{WAVG} = \frac{\sum_{i=1}^{n}(\text{mass of C})_i (\text{molecular weight of C})_i}{\sum_{i=1}^{n}(\text{mass of C})_i} \quad \text{[Eq. 7]}$$

where:

c=TOC or organic HAP component

n=Number of TOC or organic HAP components in stream.

(ii) If the vessel contents are heated to a temperature greater than 50 K below the boiling point, then emissions from the heating of a vessel shall be calculated as the sum of the emissions calculated in accordance with paragraphs (b)(4)(ii)(A) and (b)(4)(ii)(B) of this section.

(A) For the interval from the initial temperature to the temperature 50 K below the boiling point, emissions shall be calculated using Equation 4, where T_2 is the temperature 50 K below the boiling point.

(B) For the interval from the temperature 50 K below the boiling point to the final temperature, emissions shall be calculated as the summation of emissions for each 5 K increment, where the emissions for each increment shall be calculated using Equation 4.

(*1*) If the final temperature of the heatup is lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

(*2*) If the final temperature of the heatup is higher than 5 K below the boiling point, the final temperature for the last increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(*3*) If the vessel contents are heated to the boiling point and the vessel is not operating with a condenser, the final temperature for the final increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(iii) If the vessel is operating with a condenser, and the vessel contents are heated to the boiling point, the primary condenser is considered part of the process, as described in § 63.488(a)(2). Emissions shall be calculated as the sum of Equation 4, which calculates emissions due to heating the vessel contents to the temperature of the gas

exiting the condenser, and Equation 3, which calculates emissions due to the displacement of the remaining saturated noncondensible gas in the vessel. The final temperature in Equation 4 shall be set equal to the exit gas temperature of the condenser. Equation 3 shall be used as written below in Equation 3a, using free space volume, and T_2 is set equal to the condenser exit gas temperature.

$$E_{episode} = \frac{(y_i)(V_{fs})(P_T)(MW_{HAP})}{(R)(T)} \quad \text{[Eq. 3a]}$$

where:

$E_{episode}$=Organic HAP emissions, kg/episode.

y_i=Saturated mole fraction of organic HAP in the vapor phase.

V_{fs}=Volume of the free space in the vessel, m^3.

P_T=Pressure of the vessel vapor space, kPa.

MW_{HAP}=Weighted average molecular weight of organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T=Temperature of condenser exit stream K.

n=Number of organic HAP in stream.

(5) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. If direct measurement is used, the owner or operator shall either perform a test for the duration of a representative batch emission episode or perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options must develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions. Performance tests shall follow the procedures specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section. The procedures in either paragraph (b)(5)(iv) or (b)(5)(v) of this section shall be used to calculate the emissions per batch emission episode.

(i) Method 1 or 1A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D is used to determine gas stream volumetric flow rate.

(ii) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in paragraph (e) of this section.

(iii) Method 18 or Method 25A, of 40 CFR part 60, appendix A, shall be used to determine the concentration of TOC or organic HAP, as appropriate. The use of Method 25A shall comply with paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B) of this section.

(A) The organic HAP used as the calibration gas for Method 25A shall be the single organic HAP representing the largest percent by volume of the emissions.

(B) The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) If an integrated sample is taken over the entire batch emission episode to determine TOC or average total organic HAP concentration, emissions shall be calculated using Equation 8.

$$E_{episode} = K\left[\sum_{j=1}^{n}(C_j)(M_j)\right]AFR(T_h) \quad \text{[Eq. 8]}$$

where:

$E_{episode}$=Emissions, kg/episode

K=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j=Average concentration of TOC or sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j=Molecular weight of TOC or sample component j of the gas stream, dry basis, gm/gm-mole.

AFR=Average flow rate of gas stream, dry basis, scmm.

T_h=Hours/episode

n=Number of organic HAP in stream. Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A.

(v) If grab samples are taken to determine TOC or average total organic HAP concentration, emissions shall be calculated according to paragraphs (b)(5)(v)(A) and (b)(5)(v)(B) of this section.

(A) For each measurement point, the emission rate shall be calculated using Equation 9.

$$E_{point} = K\left[\sum_{j=1}^{n}C_jM_j\right]FR \quad \text{[Eq. 9]}$$

where:

E_{point}=Emission rate for individual measurement point, kg/hr.

K=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j=Concentration of TOC or sample component j of the gas stream, dry basis, ppmv.

M_j=Molecular weight of TOC or sample component j of the gas stream, gm/gm-mole.

FR=Flow rate of gas stream for the measurement point, dry basis, scmm.

n=Number of organic HAP in stream. Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A.

(B) The emissions per batch emission episode shall be calculated using Equation 10.

$$E_{episode} = (DUR)\left[\sum_{i=1}^{n}\frac{E_i}{n}\right] \quad \text{[Eq. 10]}$$

where:

$E_{episode}$=Emissions, kg/episode.

DUR=Duration of the batch emission episode, hr/episode.

E_i=Emissions for measurement point i, kg/hr.

n=Number of measurements.

(6) If the owner or operator can demonstrate that the methods in paragraphs (b)(1) through (b)(4) of this section are not appropriate to estimate emissions for a batch emissions episode, the owner or operator may use engineering assessment to estimate emissions as specified in paragraphs (b)(6)(i) and (b)(6)(ii) of this section. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(i) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the tests are representative of current operating practices.

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(C) Flow rate, TOC emission rate, or organic HAP emission rate specified or implied within a permit limit applicable to the batch front-end process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(1) Use of material balances,

(2) Estimation of flow rate based on physical equipment design, such as pump or blower capacities, and

(3) Estimation of TOC or organic HAP concentrations based on saturation conditions.

(ii) The emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section shall be considered inappropriate for estimating emissions for a given batch emissions episode if one or more of the criteria in paragraphs (b)(6)(ii)(A) through (b)(6)(ii)(B) of this section are met.

(A) Previous test data are available that show a greater than 20 percent discrepancy between the test value and the estimated value.

(B) The owner or operator can demonstrate to the Administrator through any other means that the emissions estimation equations are not appropriate for a given batch emissions episode.

(C) Data or other information supporting a finding that the emissions estimation equations are inappropriate as specified under paragraph (b)(6)(ii)(A) of this section shall be reported in the Notification of Compliance Status, as required in § 63.506(e)(5).

(D) Data or other information supporting a finding that the emissions estimation equations are inappropriate as specified under paragraph (b)(6)(ii)(B) of this section shall be reported in the Precompliance Report, as required in § 63.506(e)(3).

(7) For each batch front-end process vent, the TOC or organic HAP emissions associated with a single batch cycle shall be calculated using Equation 11.

$$E_{cycle} = \sum_{i=1}^{n} E_{episode_i} \qquad \text{[Eq. 11]}$$

where:

E_{cycle}=Emissions for an individual batch cycle, kg/batch cycle.

$E_{episode,i}$=Emissions from a batch emission episode i, kg/episode.

n=Number of batch emission episodes for the batch cycle.

(8) Annual TOC or organic HAP emissions from a batch front-end process vent shall be calculated using Equation 12.

$$AE = \sum_{i=1}^{n} (N_i)(E_{cycle_i}) \qquad \text{[Eq. 12]}$$

where:

AE=Annual emissions from a batch front-end process vent, kg/yr.

N_i=Number of type i batch cycles performed annually, cycles/year.

$E_{cycle,i}$=Emissions from the batch front-end process vent associated with single type i batch cycle, as determined in paragraph (b)(7) of this section, kg/batch cycle.

n=Number of different types of batch cycles that cause the emission of TOC or organic HAP from the batch front-end process vent.

(c) [Reserved]

(d) *Minimum emission level exemption.* A batch front-end process vent with annual emissions less than 11,800 kg/yr is considered a Group 2 batch front-end process vent and the owner or operator of that batch front-end process vent shall comply with the requirements in § 63.487 (f) or (g). The owner or operator of that batch front-end process vent is not required to comply with the provisions in paragraphs (e) through (g) of this section.

(e) *Determination of average flow rate.* The owner or operator shall determine the average flow rate for each batch emission episode in accordance with one of the procedures provided in paragraphs (e)(1) through (e)(2) of this section. The annual average flow rate for a batch front-end process vent shall be calculated as specified in paragraph (e)(3) of this section.

(1) Determination of the average flow rate for a batch emission episode by direct measurement shall be made using the procedures specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The vent stream volumetric flow rate (Q_s) for a batch emission episode, in scmm at 20 °C, shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(ii) The volumetric flow rate of a representative batch emission episode shall be measured every 15 minutes.

(iii) The average flow rate for a batch emission episode shall be calculated using Equation 13.

$$AFR_{episode} = \frac{\sum_{i=1}^{n} FR_i}{n} \qquad \text{[Eq. 13]}$$

where:

$AFR_{episode}$=Average flow rate for the batch emission episode, scmm.

FR_i=Flow rate for individual measurement i, scmm.

n=Number of flow rate measurements taken during the batch emission episode.

(2) The average flow rate for a batch emission episode may be determined by engineering assessment, as defined in paragraph (b)(6)(i) of this section. All data, assumptions, and procedures used shall be documented.

(3) The annual average flow rate for a batch front-end process vent shall be calculated using Equation 14.

$$AFR = \frac{\sum_{i=1}^{n} (DUR_i)(AFR_{episode,i})}{\sum_{i=1}^{n} (DUR_i)} \qquad \text{[Eq. 14]}$$

where:

AFR=Annual average flow rate for the batch front-end process vent, scmm.

DUR_i=Duration of type i batch emission episodes annually, hr/yr.

$AFR_{episode,i}$=Average flow rate for type i batch emission episode, scmm.

n=Number of types of batch emission episodes venting from the batch front-end process vent.

(f) *Determination of cutoff flow rate.* For each batch front-end process vent, the owner or operator shall calculate the cutoff flow rate using Equation 15.

$$CFR = (0.00437)(AE) - 51.6 \qquad \text{[Eq. 15]}$$

where:

CFR=Cutoff flow rate, scmm.

AE=Annual TOC or organic HAP emissions, as determined in paragraph (b)(8) of this section, kg/yr.

(g) *Group 1/Group 2 status determination.* The owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (f) of this section, with the annual average flow rate, determined in accordance with paragraph (e)(3) of this section. The group determination status for each batch front-end process vent shall be made using the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average flow rate of the stream, the batch front-end process vent is classified as a Group 1 batch front-end process vent.

(2) If the cutoff flow rate is less than the annual average flow rate of the stream, the batch front-end process vent is classified as a Group 2 batch front-end process vent.

(h) *Determination of halogenation status.* To determine whether a batch front-end process vent or an aggregate batch vent stream is halogenated, the annual mass emission rate of halogen atoms contained in organic compounds shall be calculated using the procedures specified in paragraphs (h)(1) through (h)(3) of this section.

(1) The concentration of each organic compound containing halogen atoms (ppmv, by compound) for each batch emission episode shall be determined based on the following procedures:

(i) Process knowledge that no halogens or hydrogen halides are present in the process may be used to demonstrate that a batch emission episode is nonhalogenated. Halogens or hydrogen halides that are unintentionally introduced into the process shall not be considered in making a finding that a batch emission episode is nonhalogenated.

(ii) Engineering assessment as discussed in paragraph (b)(6)(i) of this section.

(iii) Concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A of 40 CFR part 60, appendix A.

(iv) Any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part.

(2) The annual mass emissions of halogen atoms for a batch front-end process vent shall be calculated using Equation 16.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}\left(C_{avg_j}\right)\left(L_{j,i}\right)\left(M_{j,i}\right)\right]AFR \qquad \text{[Eq. 16]}$$

where:

$E_{halogen}$=Mass of halogen atoms, dry basis, kg/yr.

K=Constant, 0.022 (ppmv)$^{-1}$ (kg-mole per scm) (min/yr), where standard temperature is 20°C.

AFR=Annual average flow rate of the batch front-end process vent, determined according to paragraph (e) of this section, scmm.

$M_{j,i}$=Molecular weight of halogen atom i in compound j, kg/kg-mole.

$L_{j,i}$=Number of atoms of halogen i in compound j.

n=Number of halogenated compounds j in the batch front-end process vent.

m=Number of different halogens i in each compound j of the batch front-end process vent.

C_{avg_j}=Average annual concentration of halogenated compound j in the batch front-end process vent, as determined by using Equation 17, dry basis, ppmv.

$$C_{avg_j} = \frac{\sum_{i=1}^{n}\left(DUR_i\right)\left(C_i\right)}{\sum_{i=1}^{n}\left(DUR_i\right)} \qquad \text{[Eq. 17]}$$

where:

DUR_i=Duration of type i batch emission episodes annually, hr/yr.

C_i=Average concentration of halogenated compound j in type i batch emission episode, ppmv.

n=Number of types of batch emission episodes venting from the batch front-end process vent.

(3) The annual mass emissions of halogen atoms for an aggregate batch vent stream shall be the sum of the annual mass emissions of halogen atoms for all batch front-end process vents included in the aggregate batch vent stream.

(i) *Process changes affecting Group 2 batch front-end process vents.* Whenever process changes, as described in paragraph (i)(1) of this section, are made that affect one or more Group 2 batch front-end process vents, the owner or operator shall comply with paragraphs (i)(2) and (i)(3) of this section.

(1) Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation as specified in paragraph (a)(2) of this section. An increase in the annual number of batch cycles beyond the batch cycle limitation constitutes a process change. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(2) For each batch front-end process vent affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (g) of this section, as applicable. Alternatively, engineering assessment, as described in paragraph (b)(6)(i) of this section, can be used to determine the effects of the process change.

(3) Based on the results of paragraph (i)(2) of this section, owners or operators shall comply with either paragraph (i)(3)(i), (ii), or (iii) of this section.

(i) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch front-end process vent has become a Group 1 batch front-end process vent as a result of the process change, the owner or operator shall submit a report as specified in § 63.492(b) and shall comply with the Group 1 provisions in § 63.487 through § 63.492 in accordance with the compliance schedule described in § 63.506(e)(6)(iii)(D)(*2*).

(ii) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch front-end process vent with annual emissions less than the applicable level specified in paragraph (d) of this section, and that is in compliance with § 63.487(g), now has annual emissions greater than or equal to the applicable level specified by paragraph (d) of this section but remains a Group 2 batch front-end process vent, the owner or operator shall submit a report as specified in § 63.492(c) and shall comply with § 63.487(f) in accordance with the compliance schedule required by § 63.506(e)(6)(iii)(D)(*2*).

(iii) If the redetermination described in paragraph (i)(2) of this section indicates no change in group status or no change in the relation of annual emissions to the levels specified in paragraph (d) of this section, the owner or operator is not required to submit a report, as described in § 63.492(d).

§ 63.489 Batch front-end process vents—monitoring requirements.

(a) *General requirements.* Each owner or operator of a batch front-end process vent or aggregate batch vent stream that uses a control device to comply with the

requirements in § 63.487(a)(2) or § 63.487(b)(2) shall install the monitoring equipment specified in paragraph (b) of this section.

(1) This monitoring equipment shall be in operation at all times when batch emission episodes, or portions thereof, that the owner or operator has selected to control are vented to the control device, or at all times when an aggregate batch vent stream is vented to the control device.

(2) The owner or operator shall operate control devices such that monitored parameters remain above the minimum level or below the maximum level, as appropriate, established as specified in paragraph (e) of this section.

(b) *Batch front-end process vent and aggregate batch vent stream monitoring parameters.* The monitoring equipment specified in paragraphs (b)(1) through (b)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 6 of this subpart.

(1) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, the temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, a device (including, but not limited to, a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting the presence of a pilot flame is required.

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, a temperature monitoring device in the firebox equipped with a continuous recorder is required. Any boiler or process heater in which all batch front-end process vents or aggregate batch vent streams are introduced with the primary fuel or are used as the primary fuel is exempt from this requirement.

(4) Where a scrubber is used with an incinerator, boiler, or process heater in concert with the combustion of halogenated batch front-end process vents, the following monitoring equipment is required for the scrubber:

(i) A pH monitoring device equipped with a continuous recorder to monitor the pH of the scrubber effluent; and

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent to monitor the scrubber liquid flow rate.

(5) Where an absorber is used, a scrubbing liquid temperature monitoring device and a specific gravity monitoring device are required, each equipped with a continuous recorder.

(6) Where a condenser is used, a condenser exit temperature (product side) monitoring device equipped with a continuous recorder is required.

(7) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

(8) As an alternate to paragraphs (b)(5) through (b)(7) of this section, the owner or operator may install an organic monitoring device equipped with a continuous recorder.

(c) *Alternative monitoring parameters.* An owner or operator of a batch front-end process vent or aggregate batch vent stream may request approval to monitor parameters other than those required by paragraph (b) of this section. The request shall be submitted according to the procedures specified in § 63.506(f). Approval shall be requested if the owner or operator:

(1) Uses a control device other than those included in paragraph (b) of this section; or

(2) Uses one of the control devices included in paragraph (b) of this section, but seeks to monitor a parameter other than those specified in Table 6 of this subpart and paragraph (b) of this section.

(d) *Monitoring of bypass lines.* The owner or operator of a batch front-end process vent or aggregate batch vent stream using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with § 63.487(a) or § 63.487(b) shall comply with either paragraph (d)(1), (d)(2), or (d)(3) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph.

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.491(e)(3). The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the control device and to the atmosphere; or

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 63.491(e)(4).

(3) Continuously monitor the bypass line damper or valve position using computer monitoring and record any periods when the position of the bypass line damper or valve has changed as specified in § 63.491(e)(4).

(e) *Establishment of parameter monitoring levels.* Parameter monitoring levels for batch front-end process vents and aggregate batch vent streams shall be established as specified in paragraphs (e)(1) through (e)(3) of this section.

(1) For each parameter monitored under paragraph (b) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 7 of this subpart, that indicates proper operation of the control device. The level shall be established in accordance with the procedures specified in § 63.505.

(i) For batch front-end process vents using a control device to comply with § 63.487(a)(2), the established level shall reflect the control efficiency established as part of the initial compliance demonstration specified in § 63.490(c)(2).

(ii) For aggregate batch vent streams using a control device to comply with § 63.487(b)(2), the established level shall reflect the control efficiency requirement specified in § 63.487(b)(2).

(2) The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application as required in § 63.506(e)(5) or § 63.506(e)(8), respectively.

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (e)(2) of this section. The definition of operating day shall specify the times at which an operating day begins and ends. The operating day shall not exceed 24 hours.

§ 63.490 Batch front-end process vents—performance test methods and procedures to determine compliance.

(a) *Use of a flare.* When a flare is used to comply with § 63.487(a)(1) or § 63.487(b)(1), the owner or operator shall comply with the flare provisions in § 63.11(b) of subpart A.

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (b)(1) through (b)(4) of this section is used to comply with § 63.487(a)(2).

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater where the vent stream is introduced with the primary fuel or is used as the primary fuel.

(3) A control device for which a performance test was conducted for determining compliance with a new source performance standard (NSPS) and the test was conducted using the same procedures specified in this section and no process changes have been made since the test.

(4) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(5) An incinerator burning hazardous waste for which the owner or operator complies with the requirements of 40 CFR part 264, subpart O.

(6) Performance tests done for other subparts in part 60 or part 63 where total organic HAP or TOC was measured, provided that the owner or operator can demonstrate that operating conditions for the process and control device during the performance test are representative of current operating conditions.

(c) *Batch front-end process vent testing and procedures for compliance with § 63.487(a)(2).* Except as provided in paragraph (b) of this section, an owner or operator using a control device to comply with § 63.487(a)(2) shall conduct a performance test using the procedures specified in paragraph (c)(1) of this section in order to determine the control efficiency of the control device. An owner or operator shall determine the percent reduction for the batch cycle using the control efficiency of the control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and the procedures specified in paragraph (c)(2) of this section. Compliance may be based on either total organic HAP or TOC. For purposes of this paragraph and all paragraphs that are part of paragraph (c) of this section, the term "batch emission episode" shall have the meaning "period of the batch emission episode selected for control," which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(1) Performance tests shall be conducted as specified in paragraphs (c)(1)(i) through (c)(1)(v) of this section.

(i) Except as specified in paragraph (c)(1)(i)(A) of this section, a test shall be performed for the entire period of each batch emission episode in the batch cycle that the owner or operator selects to control as part of achieving the required 90 percent emission reduction for the batch cycle specified in § 63.487(a)(2). Only one test is required for each batch emission episode selected by the owner or operator for control. The owner or operator shall follow the procedures listed in paragraphs (c)(1)(i)(B) through (c)(1)(i)(D) of this section.

(A) Alternatively, an owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options must develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used, provided the results are still relevant to the current batch front-end process vent conditions.

(B) Method 1 or 1A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D is used to determine gas stream volumetric flow rate. Inlet sampling sites shall be located as specified in paragraphs (c)(1)(i)(B)(*1*) and (c)(1)(i)(B)(*2*) of this section. Outlet sampling sites shall be located at the outlet of the final control device prior to release to the atmosphere.

(*1*) The control device inlet sampling site shall be located at the exit from the batch unit operation before any control device. Section 63.488(a)(2) describes those recovery devices considered part of the unit operation. Inlet sampling sites would be after these specified recovery devices.

(*2*) If a batch process vent is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all batch front-end process vents and primary and secondary fuels introduced into the boiler or process heater.

(C) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in § 63.488(e).

(D) Method 18 or Method 25A of 40 CFR part 60, Appendix A, shall be used to determine the concentration of organic HAP or TOC, as appropriate. The use of Method 25A shall comply with paragraphs (c)(1)(i)(D)(*1*) and (c)(1)(i)(D)(*2*) of this section.

(*1*) The organic HAP used as the calibration gas for Method 25A shall be the single organic HAP representing the largest percent by volume of the emissions.

(*2*) The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(ii) If an integrated sample is taken over the entire batch emission episode to determine TOC or average total organic HAP concentration, emissions per batch emission episode shall be calculated using Equations 18 and 19.

$$E_{episode,inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \qquad \text{[Eq. 18]}$$

$$E_{episode,outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \quad \text{[Eq. 19]}$$

where:

$E_{episode}$=Inlet or outlet emissions, kg/episode.

K=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j=Average inlet or outlet concentration of TOC or sample component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j=Molecular weight of TOC or sample component j of the gas stream, gm/gm-mole.

AFR=Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h=Hours/episode.

n=Number of organic HAP in stream. Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A.

(iii) If grab samples are taken to determine TOC or total organic HAP concentration, emissions shall be calculated according to paragraphs (c)(1)(iii)(A) and (c)(1)(iii)(B) of this section.

(A) For each measurement point, the emission rates shall be calculated using Equations 20 and 21.

$$E_{point,inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \quad \text{[Eq. 20]}$$

$$E_{point,outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \quad \text{[Eq. 21]}$$

where:

E_{point}=Inlet or outlet emission rate for the measurement point, kg/hr.

K=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j=Inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j=Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR=Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A.

(B) The emissions per batch emission episode shall be calculated using Equations 22 and 23.

$$E_{episode,inlet} = (DUR)\left[\sum_{i=1}^{n} \frac{E_{point,inlet,i}}{n}\right] \quad \text{[Eq. 22]}$$

$$E_{episode,outlet} = (DUR)\left[\sum_{i=1}^{n} \frac{E_{point,outlet,i}}{n}\right] \quad \text{[Eq. 23]}$$

where:

$E_{episode}$=Inlet or outlet emissions, kg/episode.

DUR=Duration of the batch emission episode, hr/episode.

$E_{point,i}$=Inlet or outlet emissions for measurement point i, kg/hr.

n=Number of measurements.

(iv) The control efficiency for the control device shall be calculated using Equation 24.

$$R = \frac{\sum_{i=1}^{n} E_{inlet,i} - \sum_{i=1}^{n} E_{outlet,i}}{\sum_{i=1}^{n} E_{inlet,i}}(100) \quad \text{[Eq. 24]}$$

Where:

R=Control efficiency of control device, percent.

$E_{inlet,i}$=Mass rate of TOC or total organic HAP for batch emission episode i at the inlet to the control device as calculated under paragraph (c)(1)(ii) or (c)(1)(iii) of this section, kg/hr.

$E_{outlet,i}$=Mass rate of TOC or total organic HAP for batch emission episode i at the outlet of the control device, as calculated under paragraph (c)(1)(ii) or (c)(1)(iii) of this section, kg/hr.

n=Number of batch emission episodes in the batch cycle selected to be controlled.

(v) If the batch front-end process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC across the device shall be determined by comparing the TOC or total organic HAP in all combusted batch front-end process vents and primary and secondary fuels with the TOC or total organic HAP exiting the combustion device, respectively.

(2) The percent reduction for the batch cycle shall be determined using Equation 25 and the control device efficiencies specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section. All information used to calculate the batch cycle percent reduction, including a definition of the batch cycle identifying all batch emission episodes, must be recorded as specified in § 63.491(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control.

$$\text{Percent Reduction} = \frac{\sum_{i=1}^{n} E_{uncc} + \sum_{i=1}^{n} E_{inlet,con} - \sum_{i=1}^{n} (1-R)(E_{inlet,con})}{\sum_{i=1}^{n} E_{uncc} + \sum_{i=1}^{n} E_{inlet,con}} 100 \quad \text{[Eq. 25]}$$

where:

E_{uncc}=Mass rate of TOC or total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet,con}$=Mass rate of TOC or total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R=Control efficiency of control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

n=Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

(i) If a performance test is required by paragraph (c) of this section, the control efficiency of the control device shall be as determined in paragraph (c)(1)(iv) of this section.

(ii) If a performance test is not required by paragraph (c) of this section for a combustion control device, as specified in paragraph (b) of this section, the control efficiency of the control device shall be 98 percent. The control efficiency for a flare shall be 98 percent.

(iii) If a performance test is not required by paragraph (c) of this section for a noncombustion control device, the control efficiency shall be determined by the owner or operator based on engineering assessment.

(d) *Batch process vent and aggregate batch vent stream testing for compliance with § 63.487(c) [halogenated emission streams].* An owner or operator controlling halogenated emissions in compliance with § 63.487(c) shall conduct a performance test to determine compliance with the control efficiency specified in § 63.487(c)(1) or the emission limit specified in § 63.487(c)(2) for hydrogen halides and halogens.

(1) Sampling sites shall be located at the inlet and outlet of the scrubber or other control device used to reduce halogen emissions in complying with § 63.487(c)(1) or at the outlet of the control device used to reduce halogen emissions in complying with § 63.487(c)(2).

(2) The mass emissions of each hydrogen halide and halogen compound for the batch cycle or aggregate batch vent stream shall be calculated from the measured concentrations and the gas stream flow rate(s) determined by the procedures specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, except as specified in paragraph (d)(5) of this section.

(i) Method 26 or Method 26A of 40 CFR part 60, appendix A, shall be used to determine the concentration, in Mg per dry scm, of total hydrogen halides and halogens present in the emissions stream.

(ii) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in § 63.488(e).

(3) To determine compliance with the percent reduction specified in § 63.487(c)(1), the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other control device shall be summed together. The mass emissions of any hydrogen halides or halogens present at the outlet of the scrubber or other control device shall be summed together. Percent reduction shall be determined by subtracting the outlet mass emissions from the inlet mass emissions and then dividing the result by the inlet mass emissions.

(4) To determine compliance with the emission limit specified in § 63.487(c)(2), the annual mass emissions for any hydrogen halides and halogens present at the outlet of the control device and prior to any combustion device shall be summed together and compared to the emission limit specified in § 63.487(c)(2).

(5) The owner or operator may use any other method to demonstrate compliance if the method or data has been validated according to the applicable procedures of Method 301 of appendix A.

(e) *Aggregate batch vent stream testing for compliance with § 63.487(b)(2).* Owners or operators of aggregate batch vent streams complying with § 63.487(b)(2) shall conduct a performance test using the performance testing procedures for continuous front-end process vents in § 63.116(c) of subpart G. For the purposes of this subpart, when the provisions of § 63.116(c) specify that Method 18 shall be used, Method 18 or Method 25A may be used. The use of Method 25A shall comply with paragraphs (e)(1) and (e)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A shall be the single organic HAP representing the largest percent by volume of the emissions.

(2) The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(f) *Batch cycle limitation.* The batch cycle limitation required by § 63.487(f)(1) and § 63.487(g)(1) shall be established as specified in paragraph (f)(1) of this section and shall include the elements specified in paragraph (f)(2) of this section.

(1) The batch cycle limitation shall be determined by the owner or operator such that annual emissions for the batch front-end process vent remain less than the level specified in § 63.488(d) when complying with § 63.487(g). Alternatively, when complying with § 63.487(f), the batch cycle limitation shall ensure that annual emissions remain at a level such that the batch front-end process vent remains a Group 2 batch front-end process vent, given the actual annual flow rate for that batch front-end process vent determined according to § 63.488(e)(3). The batch cycle limitation shall be determined using the same basis, as described in § 63.488(a)(1), used to make the group determination (i.e., expected mix of products or worst-case HAP emitting product). The establishment of the batch cycle limitation is not dependent upon any past production or activity level.

(i) If the expected mix of products serves as the basis for the batch cycle limitation, the batch cycle limitation shall be determined such that any foreseeable combination of products which the owner or operator desires the flexibility to manufacture shall be allowed. Combinations of products not accounted for in the documentation required by paragraph (f)(2)(iv) of this section shall not be allowed within the restrictions of the batch cycle limitation.

(ii) If, for a batch front-end process vent with more than one product, a single worst-case HAP emitting product serves as the basis for the batch cycle limitation, the batch cycle limitation shall be determined such that the maximum number of batch cycles the owner or operator desires the flexibility to accomplish, using the worst-case

HAP emitting product and ensuring that the batch front-end process vent remains a Group 2 batch front-end process vent or that emissions remain less than the level specified in § 63.488(d), shall be allowed. This value shall be the total number of batch cycles allowed within the restrictions of the batch cycle limitation regardless of which products are manufactured.

(2) Documentation supporting the establishment of the batch cycle limitation shall include the information specified in paragraphs (f)(2)(i) through (f)(2)(v) of this section, as appropriate.

(i) Identification that the purpose of the batch cycle limitation is to comply with § 63.487(f)(1) or (g)(1).

(ii) Identification that the batch cycle limitation is based on a single worst-case HAP emitting product or on the expected mix of products for the batch front-end process vent as allowed under § 63.488(a)(1).

(iii) Definition of the operating year, for the purposes of determining compliance with the batch cycle limitation.

(iv) If the batch cycle limitation is based on a single worst-case HAP emitting product, documentation specified in § 63.488(a)(1)(ii) describing how the single product meets the requirements for worst-case HAP emitting product, as specified in § 63.488(a)(1) and the number of batch cycles allowed under the batch cycle limitation for each product associated with the batch front-end process vent are required.

(v) If the batch cycle limitation is based on the expected mix of products, the owner or operator shall provide documentation that describes as many scenarios for differing mixes of products (i.e., how many of each type of product) that the owner or operator desires the flexibility to accomplish. Alternatively, the owner or operator shall provide a description of the relationship among the mix of products that will allow a determination of compliance with the batch cycle limitation under an infinite number of scenarios. For example, if a batch process vent has two products, each product has the same flow rate and emits for the same amount of time, and product No. 1 has twice the emissions as product No. 2, the relationship describing an infinite number of scenarios would be that the owner or operator can accomplish two batch cycles of product No. 2 for each batch cycle of product No. 1 within the restriction of the batch cycle limitation.

§ 63.491 Batch front-end process vents—recordkeeping requirements.

(a) *Group determination records for batch front-end process vents.* Except as provided in paragraphs (a)(7) through (a)(9) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (a)(1) through (a)(6) of this section for each batch front-end process vent subject to the group determination procedures of § 63.488. Except for paragraph (a)(1) of this section, the records required to be maintained by this paragraph are limited to the information developed and used to make the group determination under § 63.488(b) through § 63.488(g), as appropriate. The information required by paragraph (a)(1) of this section is required for all batch front-end process vents subject to the group determination procedures of § 63.488. If an owner or operator did not need to develop certain information (e.g., annual average flow rate) to determine the group status, this paragraph does not require that additional information be developed.

(1) An identification of each unique product that has emissions from one or more batch emission episodes venting from the batch front-end process vent.

(2) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle for each unique product identified in paragraph (a)(1) of this section that was considered in making the group determination under § 63.488.

(3) Total annual uncontrolled TOC or organic HAP emissions, determined at the exit from the batch unit operation before any emission control, as determined in accordance with § 63.488(b).

(i) For Group 2 batch front-end process vents, emissions shall be determined at the batch cycle limitation.

(ii) For Group 1 batch front-end process vents, emissions shall be those used to determine the group status of the batch front-end process vent.

(4) The annual average flow rate for the batch front-end process vent as determined in accordance with § 63.488(e).

(5) The cutoff flow rate, determined in accordance with § 63.488(f).

(6) The results of the batch front-end process vent group determination, conducted in accordance with § 63.488(g).

(7) If a batch front-end process vent is in compliance with § 63.487(a) or § 63.487(b), and the control device is operating at all times when batch emission episodes are venting from the batch front-end process vent, none of the records in paragraphs (a)(1) through (a)(6) of this section are required.

(8) If a batch front-end process vent is in compliance with § 63.487(a) or § 63.487(b), but the control device is operated only during selected batch emission episodes, only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(9) If the total annual emissions from the batch front-end process vent are less than the appropriate level specified in § 63.488(d), only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(b) *Compliance demonstration records.* Each owner or operator of a batch front-end process vent or aggregate batch vent stream complying with § 63.487(a) or (b), shall keep the following records, as applicable, up-to-date and readily accessible:

(1) The annual mass emissions of halogen atoms in the batch front-end process vent or aggregate batch vent stream determined according to the procedures specified in § 63.488(h)(2).

(2) If a batch front-end process vent is in compliance with § 63.487(a)(2), records documenting the batch cycle percent reduction as specified in § 62.486–4(c)(2).

(3) When using a flare to comply with § 63.487(a)(1):

(i) The flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.11(b) of subpart A; and

(iii) All periods during the compliance determination required by § 63.11(b) of subpart A when the pilot flame is absent.

(4) The following information when using a control device to achieve compliance with § 63.487(a)(2) or (b)(2):

(i) For an incinerator or non-combustion control device, the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.490(c) for batch front-end process vents and § 63.490(e) for aggregate batch vent streams;

(ii) For a boiler or process heater, a description of the location at which the vent stream is introduced into the boiler or process heater;

(iii) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the process vent stream is introduced with combustion air or is used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP or TOC achieved, as determined

using the procedures specified in § 63.490(c) for batch front-end process vents and § 63.490(e) for aggregate batch vent streams; and

(iv) For a scrubber or other control device following a combustion device to control a halogenated batch front-end process vent or halogenated aggregate batch vent stream, the percent reduction of total hydrogen halides and halogens, as determined under § 63.490(d)(3) or the emission limit determined under § 63.490(d)(4).

(c) *Establishment of parameter monitoring level records.* For each parameter monitored according to § 63.489(b) and Table 6 of this subpart, or for alternate parameters and/or parameters for alternate control devices monitored according to § 63.492(e) as allowed under § 63.489(c), maintain documentation showing the establishment of the level that indicates proper operation of the control device as required by § 63.489(e) for parameters specified in § 63.489(b) and as required by § 63.506(f) for alternate parameters. This documentation shall include the parameter monitoring data used to establish the level.

(d) *Group 2 batch front-end process vent continuous compliance records.* The owner or operator of a Group 2 batch front-end process vent shall comply with either paragraph (d)(1) or (d)(2) of this section, as appropriate.

(1) The owner or operator of a Group 2 batch front-end process vent complying with § 63.487(g) shall keep the following records up-to-date and readily accessible:

(i) Records designating the established batch cycle limitation required by § 63.487(g)(1) and specified in § 63.490(f).

(ii) Records specifying the number and type of batch cycles accomplished.

(2) The owner or operator of a Group 2 batch front-end process vent complying with § 63.487(f) shall keep the following records up-to-date and readily accessible:

(i) Records designating the established batch cycle limitation required by § 63.487(f)(1) and specified in § 63.490(f).

(ii) Records specifying the number and type of batch cycles accomplished for each three month period.

(e) *Controlled batch front-end process vent continuous compliance records.* Each owner or operator of a batch front-end process vent that uses a control device to comply with § 63.487(a) shall keep the following records up-to-date and readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.489(b) as applicable, and listed in Table 6 of this subpart, or specified by the Administrator in accordance with § 63.492(e) as allowed under § 63.489(c). These records shall be kept as specified under § 63.506(d), except as specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) For flares, the records specified in Table 6 of this subpart shall be kept rather than averages.

(ii) For carbon adsorbers, the records specified in Table 6 of this subpart shall be kept rather than averages.

(2) Records of the batch cycle daily average value of each continuously monitored parameter, except as provided in paragraphs (e)(2)(iii) of this section, as calculated using the procedures specified in paragraphs (e)(2)(i) through (e)(2)(ii) of this section.

(i) The batch cycle daily average shall be calculated as the average of all parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has selected to control.

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages.

(iii) If all recorded values for a monitored parameter during an operating day are above the minimum or below the maximum level established in accordance with § 63.489(e), the owner or operator may record that all values were above the minimum or below the maximum level established, rather than calculating and recording a batch cycle daily average for that operating day.

(3) Hourly records of whether the flow indicator for bypass lines specified under § 63.489(d)(1) was operating and whether flow was detected at any time during the hour. Also, records of the times and durations of all periods when the vent is diverted from the control device, or the flow indicator specified in § 63.489(d)(1) is not operating.

(4) Where a seal or closure mechanism is used to comply with § 63.489(d)(2) or where computer monitoring of the position of the bypass damper or valve is used to comply with § 63.489(d)(3), hourly records of flow are not required.

(i) For compliance with § 63.489(d)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanism has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has been broken.

(ii) For compliance with § 63.489(d)(3), the owner or operator shall record the times of all periods when the bypass line valve position has changed.

(5) Records specifying the times and duration of periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high level adjustments. In addition, records specifying any other periods of process or control device operation when monitors are not operating.

(f) *Aggregate batch vent stream continuous compliance records.* In addition to the records specified in paragraphs (b) and (c) of this section, each owner or operator of an aggregate batch vent stream using a control device to comply with § 63.487(b) shall keep records in accordance with the requirements for continuous process vents in § 63.118(a) and § 63.118(b) of subpart G, as applicable and appropriate, except that when complying with § 63.118(b), owners or operators shall disregard statements concerning TRE index values for the purposes of this subpart.

§ 63.492 Batch front-end process vents—reporting requirements.

(a) The owner or operator of a batch front-end process vent at an affected source shall submit the information specified in paragraphs (a)(1) through (a)(4) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.506(e)(5).

(1) For each batch front-end process vent complying with § 63.487(a) and each aggregate batch vent stream complying with § 63.487(b), the information specified in § 63.491(b) and § 63.491(c), as applicable.

(2) For each Group 2 batch front-end process vent with annual emissions less than the level specified in § 63.488(d), the information specified in § 63.491(d)(1)(i).

(3) For each Group 2 batch front-end process vent with annual emissions greater than or equal to the level specified in § 63.488(d), the information specified in § 63.491(d)(2)(i).

(4) For each batch process vent subject to the group determination procedures, the information specified in § 63.491(a), as appropriate.

(b) Whenever a process change, as defined in § 63.488(i)(1), is made that causes a Group 2 batch front-end process vent to become a Group 1 batch front-end process vent, the owner or operator shall submit a report within 180 operating days after the process

change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.506(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change; and

(2) A schedule for compliance with the provisions of § 63.487(a) or § 63.487(b), as appropriate, as required under § 63.506(e)(6)(iii)(D)(*2*).

(c) Whenever a process change, as defined in § 63.488(i)(1), is made that causes a Group 2 batch front-end process vent with annual emissions less than the level specified in § 63.488(d) that is in compliance with § 63.487(g) to have annual emissions greater than or equal to the levels specified in § 63.488(d) but remains a Group 2 batch front-end process vent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.506(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change;

(2) The results of the redetermination of the annual emissions, average flow rate, and cutoff flow rate required under § 63.488(f) and recorded under § 63.491 (a)(3) through (a)(5); and

(3) The batch cycle limitation determined in accordance with § 63.487(f)(1).

(d) The owner or operator is not required to submit a report of a process change if one of the conditions specified in paragraphs (d)(1) and (d)(2) of this section is met.

(1) The process change does not meet the description of a process change in § 63.488(i).

(2) The redetermined group status remains Group 2 for an individual batch front-end process vent with annual emissions greater than or equal to the level specified in § 63.488(d), or a Group 2 batch front-end process vent with annual emissions less than the level specified in § 63.488(d) complying with § 63.487(g) continues to have emissions less than the level specified in § 63.488(d).

(e) If an owner or operator uses a control device other than those specified in § 63.489(b) and listed in Table 6 of this subpart or requests approval to monitor a parameter other than those specified in § 63.489(c) and listed in Table 6 of this subpart, the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.506(f), as part of the Precompliance Report as required under § 63.506(e)(3). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

(f) Owners or operators complying with § 63.489(d), shall comply with paragraph (f)(1) or (f)(2) of this section, as appropriate.

(1) Reports of the times of all periods recorded under § 63.491(e)(3) when the batch front-end process vent is diverted away from the control device through a bypass line.

(2) Reports of all occurrences recorded under § 63.491(e)(4) in which the seal mechanism is broken, the bypass line valve position has changed, or the key to unlock the bypass line valve was checked out.

§ 63.493 Back-end process provisions.

Owners and operators of new and existing affected sources shall comply with the requirements in § 63.494 through § 63.500. Owners and operators of affected sources that produce only latex products, liquid rubber products, or products in a gas-phased polymerization reaction are not subject to the provisions of these sections. Section 63.494 contains residual organic HAP limitations. Compliance with these residual organic HAP limitations may be achieved by using either stripping technology, or by using control or recovery devices. If compliance with these limitations is achieved using stripping technology, the procedures to determine compliance are specified in § 63.495. If compliance with these limitations is achieved using control or recovery devices, the procedures to determine compliance are specified in § 63.496, and associated monitoring requirements are specified in § 63.497. Recordkeeping requirements are contained in § 63.498, and reporting requirements in § 63.499. Section 63.500 contains a limitation on carbon disulfide emissions from affected sources that produce styrene butadiene rubber using an emulsion process. Table 8 contains a summary of compliance alternative requirements for these sections.

§ 63.494 Back-end process provisions—residual organic HAP limitations.

(a) The monthly weighted average residual organic HAP content of all grades of elastomer processed, measured immediately after the stripping operation [or the reactor(s) if the plant has no stripper(s)] is completed, shall not exceed the limits provided in paragraphs (a)(1) through (a)(4) of this section, as applicable. Owners or operators shall comply with the requirements of this paragraph using either stripping technology or control/recovery devices.

(1) For styrene butadiene rubber produced by the emulsion process:

(i) A monthly weighted average of 0.40 kg styrene per megagram (Mg) latex for existing sources; and

(ii) A monthly weighted average of 0.23 kg styrene per Mg latex for new sources;

(2) For polybutadiene rubber and styrene butadiene rubber produced by the solution process:

(i) A monthly weighted average of 10 kg total organic HAP per Mg crumb rubber (dry weight) for existing sources; and

(ii) A monthly weighted average of 6 kg total organic HAP per Mg crumb rubber (dry weight) for new sources.

(3) For ethylene-propylene rubber produced by the solution process:

(i) A monthly weighted average of 8 kg total organic HAP per Mg crumb rubber (dry weight) for existing sources; and

(ii) A monthly weighted average of 5 kg total organic HAP per Mg crumb rubber (dry weight) for new sources.

(4) There are no back-end process operation residual organic HAP limitations for neoprene, Hypalon ™, nitrile butadiene rubber, butyl rubber, halobutyl rubber, epichlorohydrin elastomer, and polysulfide rubber.

(5) For EPPU that produce both an elastomer product with a residual organic HAP limitation listed in this section, and a product listed in paragraphs (a)(5) (i) through (iv) of this section, only the residual HAP content of the elastomer product with a residual organic HAP limitation shall be used in determining the monthly average residual organic HAP content.

(i) Resins;

(ii) Liquid rubber products;

(iii) Latexes from which crumb rubber is not coagulated; or

(iii) Elastomer products listed in paragraph (a)(4) of this section.

(b) If an owner or operator complies with the residual organic HAP limitations in paragraph (a) of this section using stripping technology, compliance shall be demonstrated in accordance with § 63.495. The owner or operator shall also comply with the recordkeeping provisions in § 63.498, and the reporting provisions in § 63.499.

(c) If an owner or operator complies with the residual organic HAP limitations in paragraph (a) of this section using control or recovery devices, compliance shall be

demonstrated using the procedures in § 63.496. The owner or operator shall also comply with the monitoring provisions in § 63.497, the recordkeeping provisions in § 63.498, and the reporting provisions in § 63.499.

§ 63.495 Back-end process provisions—procedures to determine compliance using stripping technology.

(a) If an owner or operator complies with the residual organic HAP limitations in § 63.494(a) using stripping technology, compliance shall be demonstrated using the periodic sampling procedures in paragraph (b) of this section, or using the stripper parameter monitoring procedures in paragraph (c) of this section. The owner or operator shall determine the monthly weighted average residual organic HAP content for each month in which any portion of the back-end of an elastomer production process is in operation. A single monthly weighted average shall be determined for all back-end process operations at the affected source.

(b) If the owner or operator is demonstrating compliance using periodic sampling, this demonstration shall be in accordance with paragraphs (b)(1) through (b)(5) of this section,

(1) The location of the sampling shall be in accordance with paragraph (d) of this section.

(2) The frequency of the sampling shall be in accordance with paragraphs (b)(2)(i) or (b)(2)(ii) of this section.

(i) If batch stripping is used, at least one representative sample is to be taken from every batch of elastomer produced, at the location specified in paragraph (d) of this section, and identified by elastomer type and by the date and time the batch is completed.

(ii) If continuous stripping is used, at least one representative sample is to be taken each operating day. The sample is to be taken at the location specified in paragraph (d) of this section, and identified by elastomer type and by the date and time the sample was taken.

(3) The residual organic HAP content in each sample is to be determined using specified methods.

(4) The quantity of material (weight of latex or dry crumb rubber) represented by each sample shall be recorded. Acceptable methods of determining this quantity are production records, measurement of stream characteristics, and engineering calculations.

(5) The monthly weighted average shall be determined using the equation in paragraph (f) of this section. All samples taken and analyzed during the month shall be used in the determination of the monthly weighted average.

(c) If the owner or operator is demonstrating compliance using stripper parameter monitoring, this demonstration shall be in accordance with paragraphs (c)(1) through (c)(4) of this section.

(1) The owner or operator shall establish stripper operating parameter levels for each grade in accordance with § 63.505(e).

(2) The owner or operator shall monitor the stripper operating parameters at all times the stripper is in operation. Readings of each parameter shall be made at intervals no greater than 15 minutes.

(3) The residual organic HAP content for each grade shall be determined in accordance with either paragraph (c)(3)(i) or (c)(3)(ii) of this section.

(i) If during the processing of a grade in the stripper, all hourly average parameter values are in accordance with operating parameter levels established in paragraph (c)(1) of this section, the owner or operator shall use the residual organic HAP content determined in accordance with § 63.505(e)(1).

(ii) If during the processing of a grade in the stripper, the hourly average of any stripper monitoring parameter is not in accordance with an established operating parameter level, the residual organic HAP content shall be determined using the procedures in paragraphs (b)(1) and (b)(3) of this section.

(4) The monthly weighted average shall be determined using the equation in paragraph (f) of this section.

(d) The location of the sampling shall be in accordance with paragraph (d)(1) or (d)(2) of this section.

(1) For styrene butadiene rubber produced by the emulsion process, the sample shall be a sample of the latex taken at the location specified in either paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this section.

(i) When the latex is not blended with other materials or latexes, the sample shall be taken at a location meeting all of the following criteria:

(A) After the stripping operation;

(B) Prior to entering the coagulation operations, and

(C) Before the addition of carbon black or oil extenders.

(ii) When two or more latexes subject to this subpart are blended, samples may be taken in accordance with either paragraph (d)(1)(ii) (A) or (B) of this section, at a location meeting the requirements of paragraphs (d)(1)(i) (A) through (C) of this section.

(A) Individual samples may be taken of each latex prior to blending, or

(B) A sample of the blended latex may be taken.

(iii) When a latex subject to this subpart is blended with a latex or material not subject to this subpart, a sample shall be taken of the latex prior to blending at a location meeting the requirements of paragraphs (d)(1)(i) (A) through (C) of this section.

(2) For styrene butadiene rubber produced by the solution process, polybutadiene rubber produced by the solution process, and ethylene-propylene rubber produced by the solution process, the sample shall be a sample of crumb rubber taken as soon as safe and feasible after the stripping operation, but no later than the entry point for the first unit operation following the stripper (e.g., the dewatering screen).

(e) Reserved.

(f) The monthly weighted average residual organic HAP content shall be calculated using Equation 26.

$$HAPCONT_{avg,wk} = \frac{\sum_{i=1}^{n}(C_i)(P_i)}{P_{wk}} \quad \text{[Eq. 26]}$$

where:

$HAPCONT_{avg,wk}$ = Monthly weighted average organic HAP content for all rubber processed at the affected source, kg organic HAP per Mg latex or dry crumb rubber.

n = Number of samples in the month.

C_i = Residual organic HAP content of sample i, determined in accordance with (b)(3) or (c)(3) of this section, kg organic HAP per Mg latex or dry crumb rubber.

P_i = Weight of latex or dry crumb rubber represented by sample i.

P_{wk} = Weight of latex or dry crumb rubber (Mg) processed in the month.

§ 63.496 Back-end process provisions—procedures to determine compliance using control or recovery devices.

(a) If an owner or operator complies with the residual organic HAP limitations in § 63.494(a) using control or recovery devices, compliance shall be demonstrated using the procedures in paragraphs (b) and (c) of this section. Previous test results conducted in accordance with paragraphs (b)(1) through (b)(6) of this section may be used to determine compliance in accordance with paragraph (c) of this section.

(b) Compliance shall be demonstrated using the provisions in paragraphs (b)(1) through (b)(10) of this section, as applicable.

(1) A test shall be conducted, the duration of which shall be in accordance with either paragraph

(b)(1)(i) or (b)(1)(ii) of this section, as appropriate.

(i) If the back-end process operations are continuous, the test shall consist of three separate one hour runs.

(ii) If the back-end process operations are batch, the test shall consist of three separate one-hour runs, unless the duration of the batch cycle is less than one-hour, in which case the run length shall equal the complete duration of the back-end process batch cycle.

(2) The test shall be conducted when the grade of elastomer product with the highest residual organic HAP content leaving the stripper is processed in the back-end operations.

(3) The uncontrolled residual organic HAP content in the latex or dry crumb rubber shall be determined in accordance with § 63.495(b)(1) and (b)(3). A separate sample shall be taken and analyzed for each test run. The sample shall be representative of the material being processed in the back-end operation during the test, and does not need to be taken during the test.

(4) The quantity of material (weight of latex or dry crumb rubber) processed during the test run shall be recorded. Acceptable methods of determining this quantity are production records, measurement of stream characteristics, and engineering calculations.

(5) The inlet and outlet emissions from the control or recovery device shall be determined using the procedures in paragraphs (b)(5)(i) through (b)(5)(v) of this section, with the exceptions noted in paragraphs (b)(6) and (b)(7) of this section. The inlet and outlet emissions shall be determined when the material for which the uncontrolled residual organic HAP content is determined in accordance with paragraph (b)(3) of this section, is being processed in the equipment controlled by the control or recovery device.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites. Sampling sites shall be located at the inlet of the control or recovery device as specified in paragraphs (b)(5)(i)(A) or (b)(5)(i)(B) of this section, and at the outlet of the control or recovery device.

(A) The inlet sampling site shall be located at the exit of the back-end process unit operation before any opportunity for emission to the atmosphere, and before any control or recovery device.

(B) If back-end process vent streams are combined prior to being routed to control or recovery devices, the inlet sampling site may be for the combined stream, as long as there is no opportunity for emission to the atmosphere from any of the streams prior to being combined.

(ii) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(iii) To determine the inlet and outlet total organic HAP concentrations, the owner or operator shall use Method 18 or Method 25A of 40 CFR part 60, appendix A. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A may be used. The minimum sampling time for each run shall be in accordance with paragraph (b)(1) of this section, during which either an integrated sample or grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals during the run, with the time between samples no greater than 15 minutes.

(iv) The mass rate of total organic HAP shall be computed using Equations 27 and 28.

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{[Eq. 27]}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{[Eq. 28]}$$

where:

C_{ij}, C_{oj}=Concentration of sample component j of the gas stream at the inlet and outlet of the control or recovery device, respectively, dry basis, ppmv.

E_i, E_o=Mass rate of total organic HAP at the inlet and outlet of the control or recovery device, respectively, dry basis, kg per hour (kg/hr).

M_{ij}, M_{oj}=Molecular weight of sample component j of the gas stream at the inlet and outlet of the control or recovery device, respectively, gm/gm-mole.

Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control or recovery device, respectively, dry standard m^3/min.

K_2=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

(v) Inlet and outlet organic HAP emissions for the run shall be calculated by multiplying the mass rate total inlet and outlet emissions determined in accordance with paragraph (b)(5)(iv) of this section by the duration of the run (in hours).

(6) If a back-end process vent stream is introduced with the combustion air, or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, the inlet and outlet emissions shall be determined in accordance with paragraphs (b)(6)(i) through (b)(6)(iv) of this section.

(i) The inlet organic HAP emissions for the back-end process unit operation shall be determined in accordance with paragraph (b)(5) of this section.

(ii) The owner or operator shall also measure total organic HAP (or TOC, minus methane and ethane) emissions in all process vent streams and primary and secondary fuels introduced into the boiler or process heater, using the procedures in paragraph (b)(5) of this section, with the exceptions noted in paragraphs (b)(6)(ii)(A) through (b)(6)(ii)(C) of this section.

(A) Selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP concentrations in all process vent streams and primary and secondary fuels introduced into the boiler or process heater.

(B) Paragraph (b)(5)(iii) of this section is applicable, except that TOC (minus methane and ethane) may be measured instead of total organic HAP.

(C) The mass rates shall be calculated in accordance with paragraph (b)(5)(iv) of this section, except that C_j at the inlet and outlet of the control device shall be the sum of all total organic HAP (or TOC, minus methane and ethane) concentrations for all process vent streams and primary and secondary fuels introduced into the boiler or process heater.

(iii) The control efficiency of the boiler or process heater shall be calculated using Equation 29.

$$R = \frac{\sum_{i=1}^{n} E_{inlet_i} - \sum_{i=1}^{n} E_{outlet_i}}{\sum_{i=1}^{n} E_{inlet_i}}(100) \qquad \text{(Eq. 29)}$$

where:

R=Control efficiency of boiler or process heater, percent.

E_{inlet}=Mass rate of total organic HAP or TOC (minus methane and ethane) for all process vent streams and primary and secondary fuels at the inlet to the boiler or process heater, kg organic HAP/hr or kg TOC/hr.

E_{outlet}=Mass rate of total organic HAP or TOC (minus methane and ethane) for all process vent streams and primary and secondary fuels at the outlet to the boiler or process heater, kg organic HAP/hr or kg TOC/hr.

(iv) The outlet total organic HAP emissions associated with the back-end process unit operation shall be calculated using the equation in paragraph (b)(8) of this section.

(7) An owner or operator is not required to conduct a source test to determine the outlet organic HAP emissions if any control device specified in paragraphs (b)(7)(i) through (b)(7)(v) of this section is used. For these devices, the inlet emissions associated with the back-end process unit operation shall be determined in accordance with paragraph (b)(5) of this section, and the outlet emissions shall be calculated using the equation in paragraph (b)(8) of this section.

(i) A flare, provided the owner or operator complies with the flare provisions in § 63.11(b) of subpart A. The compliance determination required by § 63.6(h) of subpart A shall be conducted using Method 22 of 40 CFR part 60, appendix A, to determine visible emissions. Compliance determinations are not necessary for flares already deemed to be in compliance with the flare provisions in § 63.11(b) of subpart A.

(ii) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(iii) A boiler or process heater into which the process vent stream is introduced with the primary fuel or is used as the primary fuel.

(iv) A control device for which a performance test was conducted for determining compliance with an NSPS and the test was conducted using the same procedures specified in this section and no process changes have been made since the test.

(v) A boiler or process heater burning hazardous waste for which the owner or operator:

(A) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(8) If one of the control devices listed in paragraph (b)(6) or (b)(7) of this section is used, the outlet emissions shall be calculated using Equation 30.

$$E_o = E_i(1-R) \qquad \text{[Eq. 30]}$$

where:

E_o=Mass rate of total organic HAP at the outlet of the control or recovery device, respectively, dry basis, kg/hr.

E_i=Mass rate of total organic HAP at the inlet of the control or recovery device, respectively, dry basis, kg/hr, determined using the procedures in paragraph (b)(5)(iv) of this section.

R=Control efficiency of control device, as specified in paragraph (b)(8) (i), (ii), or (iii) of this section.

(i) If a back-end process vent stream is introduced with the combustion air, or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, the control efficiency of the boiler or process heater shall be determined using the procedures in paragraph (b)(6)(iii) of this section.

(ii) If a back-end process vent is controlled using a control device specified in paragraph (b)(7) (i), (ii), (iii), or (v) of this section, the control device efficiency shall be assumed to be 98 percent.

(iii) If a back-end process vent is controlled using a control device specified in paragraph (b)(7)(iv) of this section, the control device efficiency shall be the efficiency determined in the previous performance test.

(c) Compliance shall be determined using the procedures in this paragraph.

(1) For each test run, the residual organic HAP content, adjusted for the control or recovery device emission reduction, shall be calculated using Equation 31.

Where:

$$HAPCONT_{run} = \frac{(C)(P) - (E_{i,run}) + (E_{o,run})}{(P)} \qquad \text{[Eq. 31]}$$

$HAPCONT_{run}$=Factor, kg organic HAP per kg elastomer (latex or dry crumb rubber).

C=Total uncontrolled organic HAP content, determined in accordance with paragraph (b)(3) of this section, kg organic HAP per kg latex or dry crumb rubber.

P=Weight of latex or dry crumb rubber processed during test run.

$E_{i,run}$=Mass rate of total organic HAP at the inlet of the control or recovery device, respectively, dry basis, kg per test run.

$E_{o,run}$=Mass rate of total organic HAP at the outlet of the control or recovery device, respectively, dry basis, kg per test run.

(2) A facility is in compliance if the average of the organic HAP contents calculated for all three test runs is below the residual organic HAP limitations in § 63.494(a).

(d) An owner or operator complying with the residual organic HAP limitations in § 63.494(a) using a control or recovery device, shall redetermine the compliance status through the requirements described in paragraph (b) of this section whenever process changes are made. The owner or operator shall report the results of the redetermination in accordance with § 63.499(d). For the purposes of this section, a process change is any action that would reasonably be expected to impair the performance of the control or recovery device. For the purposes of this section, the production of an elastomer with a residual organic HAP content greater than the residual organic HAP content of the elastomer used in the compliance demonstration constitutes a process change, unless the overall effect of the change is to reduce organic HAP emissions from the source as a whole. Other examples of process changes may include changes in production capacity or production rate, or removal or addition of equipment. For the purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; or changes that reduce the residual organic HAP content of the elastomer.

§ 63.497 Back-end process provisions—monitoring provisions for control and recovery devices.

(a) An owner or operator complying with the residual organic HAP limitations in § 63.494(a) using control

or recovery devices, or a combination of stripper technology and control or recovery devices, shall install the monitoring equipment specified in paragraphs (a)(1) through (a)(6) of this section, as appropriate.

(1) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, the temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, the temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, a device (including, but not limited to, a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting the presence of a pilot flame is required.

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, a temperature monitoring device in the firebox equipped with a continuous recorder is required. Any boiler or process heater in which all vent streams are introduced with primary fuel or are used as the primary fuel is exempt from this requirement.

(4) For an absorber, a scrubbing liquid temperature monitoring device and a specific gravity monitoring device are required, each equipped with a continuous recorder.

(5) For a condenser, a condenser exit (product side) temperature monitoring device equipped with a continuous recorder is required.

(6) For a carbon adsorber, an integrating regeneration stream flow monitoring device having an accuracy of at least ±10 percent, capable of recording the total regeneration stream flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

(b) An owner or operator may request approval to monitor parameters other than those required by paragraph (a) of this section. The request shall be submitted according to the procedures specified in § 63.506(f) or (g). Approval shall be requested if the owner or operator:

(1) Uses a control or recovery device other than those listed in paragraph (a) of this section; or

(2) Uses one of the control or recovery devices listed in paragraph (a) of this section, but seeks to monitor a parameter other than those specified in paragraph (a) of this section.

(c) The owner or operator shall establish a level, defined as either a maximum or minimum operating parameter, that indicates proper operation of the control or recovery device for each parameter monitored under paragraphs (a)(1) through (a)(6) of this section. This level is determined in accordance with § 63.505. The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application, as required in § 63.506 (e)(5) or (e)(8), respectively. The owner or operator shall operate control and recovery devices above or below the established level, as required, to ensure continued compliance with the standard.

(d) The owner or operator of a controlled back-end process vent using a vent system that contains bypass lines that could divert a vent stream away from the control or recovery device used to comply with § 63.494(a) shall comply with paragraph (d)(1), (d)(2), or (d)(3) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph.

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.498(d)(5)(iii). The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line.

(3) Continuously monitor the bypass line damper or valve position using computer monitoring and record any periods when the position of the bypass line valve has changes as specified in § 63.498(d)(5)(iv).

§ 63.498 Back-end process provisions—recordkeeping.

(a) Each owner or operator shall maintain the records specified in paragraphs (a)(1) through (a)(3) of this section for each back-end process operation at an affected source.

(1) The type of elastomer product processed in the back-end operation.

(2) The type of process (solution process, emulsion process, etc.)

(3) If the back-end process operation is subject to an emission limitation in § 63.494(a), whether compliance will be achieved by stripping technology, or by control or recovery devices.

(b) Each owner or operator of a back-end process operation using stripping technology to comply with an emission limitation in § 63.494(a), and demonstrating compliance using the periodic sampling procedures in § 63.495(b), shall maintain the records specified in paragraph (b)(1), and in paragraph (b)(2) or (b)(3) of this section, as appropriate.

(1) Records associated with each sample taken in accordance with § 63.495(b). These records shall include the following for each sample:

(i) Elastomer type,

(ii) The date and time the sample was collected,

(iii) The corresponding quantity of elastomer processed over the time period represented by the sample. Acceptable methods of determining this quantity are production records, measurement of stream characteristics, and engineering calculations.

(A) For emulsion processes, this quantity shall be the weight of the latex leaving the stripper.

(B) For solution processes, this quantity shall be the crumb rubber dry weight of the rubber leaving the stripper.

(iv) The organic HAP content of each sample.

(2) The monthly weighted average organic HAP content, calculated in accordance with § 63.495(f).

(3) If the organic HAP contents for all samples analyzed during a month are below the appropriate level in § 63.494(a), the owner or operator may record that all samples were in accordance with the residual organic HAP limitations in § 63.494(a), rather than calculating and recording a monthly weighted average.

(c) Each owner or operator of a back-end process operation using stripping technology to comply with an emission limitation in § 63.494(a), and demonstrating compliance using the stripper parameter monitoring procedures in § 63.495(c), shall maintain the records specified in paragraphs (c)(1) through (c)(3) of this section.

(1) Records associated with the initial, and subsequent, determinations of the organic HAP content of each grade of elastomer produced. These records shall include the following:

(i) An identification of the elastomer type and grade;

(ii) The results of the residual organic HAP analyses, conducted in accordance with § 63.505(e)(1);

(iii) The stripper monitoring parameters required to be established in § 63.495(c)(1).

(iv) If re-determinations are made of the organic HAP content, and re-establishment of the stripper monitoring parameters, records of the initial determination are no longer required to be maintained.

(2) Records associated with each grade or batch. These records shall include the following for each grade or batch:

(i) Elastomer type and grade;

(ii) The quantity of elastomer processed;

(A) For emulsion processes, this quantity shall be the weight of the latex leaving the stripper.

(B) For solution processes, this quantity shall be the crumb rubber dry weight of the crumb rubber leaving the stripper.

(iii) The hourly average of all stripper parameter results;

(iv) If one or more hourly average stripper monitoring parameters is not in accordance with the established levels, the results of the residual organic HAP analysis.

(3) The monthly weighted average organic HAP content, calculated in accordance with § 63.495(f).

(d) Each owner or operator of a back-end process operation using control or recovery devices to comply with an organic HAP emission limitation in § 63.494(a) shall maintain the records specified in paragraphs (d)(1) through (d)(5) of this section.

(1) Results of the testing required by § 63.496(b). These results shall include the following, for each of the three required test runs:

(i) The uncontrolled residual organic HAP content in the latex or dry crumb rubber, as required to be determined by § 63.496(b)(3), including the test results of the analysis;

(ii) The total quantity of material (weight of latex or dry crumb rubber) processed during the test run, recorded in accordance with § 63.496(b)(4),

(iii) The organic HAP emissions at the inlet and outlet of the control or recovery device, determined in accordance with § 63.496 (b)(5) through (b)(8), including all test results and calculations,

(iv) The residual organic HAP content, adjusted for the control or recovery device emission reduction, determined in accordance with § 63.496(c)(1).

(2) The operating parameter level established in accordance with § 63.497(c), along with supporting documentation.

(3) The following information when using a flare:

(i) The flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination; and

(iii) All periods during the compliance determination when the pilot flame is absent.

(4) When using a boiler or process heater, a description of the location at which the vent stream is introduced into the boiler or process heater.

(5) Each owner or operator using a control or recovery device shall keep the following records up-to-date and readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.497(a) or specified by the Administrator in accordance with § 63.497(b). For flares, the hourly records and records of pilot flame outages shall be maintained in place of continuous records.

(ii) Records of the daily average value of each continuously monitored parameter for each operating day, except as provided in paragraphs (d)(5)(ii)(D) and (d)(5)(ii)(E) of this section.

(A) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day, except as provided in paragraph (d)(5)(ii)(B) of this section. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(B) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the hourly or daily averages. Records shall be kept of the times and durations of all such periods and any other periods of process or control device operation when monitors are not operating.

(C) The operating day shall be the period defined in the operating permit or the Notification of Compliance Status in § 63.506(e)(8) or (e)(5). It may be from midnight to midnight or another 24-hour period.

(D) If all recorded values for a monitored parameter during an operating day are below the maximum, or above the minimum, level established in the Notification of Compliance Status in § 63.506(e)(5) or in the operating permit, the owner or operator may record that all values were below the maximum or above the minimum level, rather than calculating and recording a daily average for that operating day.

(E) For flares, records of the times and duration of all periods during which the pilot flame is absent shall be kept rather than daily averages. The records specified in this paragraph are not required during periods when emissions are not routed to the flare, or during startups, shutdowns, or malfunctions when the owner or operator complies with the applicable requirements of subpart A of this part, as directed by § 63.506(b)(1).

(iii) Hourly records of whether the flow indicator specified under § 63.497(d)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(iv) Where a seal mechanism is used to comply with § 63.497(d)(2), or where computer monitoring of the position of the bypass damper or valve is used to comply with § 63.497(d)(3), hourly records of flow are not required.

(A) For compliance with § 63.497(d)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record instances when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(B) For compliance with § 63.497(d)(3), the owner or operator shall record the times of all periods when the bypass line damper or valve position has changed.

§ 63.499 Back-end process provisions—reporting.

(a) The owner or operator of an affected source with back-end process operations shall submit the information required in § 63.498(a) as part of the Notification of Compliance Status specified in § 63.506(e)(5).

(b) Each owner or operator of a back-end process operation using stripping to comply with an emission limitation in § 63.494(a), and demonstrating compliance by stripper parameter monitoring, shall submit reports as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) As part of the Notification of Compliance Status specified in

§ 63.506(e)(5), the owner or operator shall submit the information specified in § 63.498(c)(1).

(2) For organic HAP content/stripping monitoring parameter re-determinations, and the addition of new grades, the information specified in § 63.498(c)(1) shall be submitted in the next periodic report specified in § 63.506(e)(6).

(c) Each owner or operator of a back-end process operation control or recovery devices that must comply with an emission limitation in § 63.494(a) shall submit the information specified in paragraphs (c)(1) through (c)(3) of this section as part of the Notification of Compliance Status specified in § 63.506(e)(5).

(1) The residual organic HAP content, adjusted for the control or recovery device emission reduction, determined in accordance with § 63.496(c)(1), for each test run in the compliance determination.

(2) The operating parameter level established in accordance with § 63.497(c), along with supporting documentation.

(3) The information specified in § 63.498(d)(3) regarding flares and § 63.498(d)(4) regarding boilers and process heaters, if applicable.

(d) Whenever a process change, as defined in § 63.496(d), is made that causes the redetermination of the compliance status for the back-end process operations, the owner or operator shall submit a report within 180 calendar days after the process change as specified in § 63.506(e)(7)(iii). The report shall include:

(1) A description of the process change;

(2) The results of the redetermination of the compliance status, determined in accordance with § 63.496(b), and recorded in accordance with § 63.498(d)(1), and

(3) Documentation of the re-establishment of a parameter level for the control or recovery device, defined as either a maximum or minimum operating parameter, that indicates proper operation of the control or recovery device, in accordance with § 63.497(c) and recorded in accordance with § 63.498(d)(2).

(e) If an owner or operator uses a control or recovery device other than those listed in § 63.497(a) or requests approval to monitor a parameter other than those specified in § 63.497(a), the owner or operator shall submit a description of planned reporting and recordkeeping procedures as required under § 63.506(e)(3) or (e)(8). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report or Operating Permit application.

§ 63.500 Back-end process provisions—carbon disulfide limitations for styrene butadiene rubber by emulsion processes.

(a) Owners or operators of sources subject to this subpart producing styrene butadiene rubber using an emulsion process shall operate the process such that the carbon disulfide concentration in each crumb dryer exhausts shall not exceed 45 ppmv.

(1) The owner or operator shall develop standard operating procedures for the addition of sulfur containing shortstop agents to ensure that the limitation in paragraph (a) of this section is maintained. There shall be a standard operating procedure representing the production of every grade of styrene butadiene rubber produced at the affected source using a sulfur containing shortstop agent.

(2) A validation of each standard operating procedure shall be conducted in accordance with paragraph (c) of this section, except as provided in paragraph (b) of this section, to demonstrate compliance with the limitation in paragraph (a) of this section.

(3) The owner or operator shall operate the process in accordance with a validated standard operating procedure at all times when styrene butadiene rubber is being produced using a sulfur containing shortstop agent. If a standard operating procedure is changed, it must be re-validated.

(4) Records specified in paragraph (d) of this section shall be maintained.

(5) Reports shall be submitted in accordance with paragraph (e) of this section.

(b) Crumb dryers that are vented to a combustion device are not subject to the provisions in this section.

(c) The owner or operator shall validate each standard operating procedure to determine compliance with the limitation in paragraph (a) of this section using the testing procedures in paragraph (c)(1) of this section or engineering assessment, as described in paragraph (c)(2) of this section.

(1) The owner or operator shall conduct a performance test using the procedures in paragraphs (c)(1)(i) through (c)(1)(iii) of this section to demonstrate compliance with the carbon disulfide concentration limitation in paragraph (a) of this section. One test shall be conducted for each standard operating procedure.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as required, shall be used for selection of the sampling sites.

(ii) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as required.

(iii) To determine compliance with the carbon disulfide concentration limit in paragraph (a) of this section, the owner or operator shall use Method 18 or Method 25A of 40 CFR part 60, appendix A, to measure carbon disulfide. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The following procedures shall be used to calculate carbon disulfide concentration:

(A) The minimum sampling time for each run shall be 1 hour, in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(B) The concentration of carbon disulfide shall be calculated using Equation 32.

$$C_{CS2} = \frac{\sum_{i=1}^{n}(C_{CS2i})}{n} \qquad \text{[Eq. 32]}$$

where:

C_{CS2}=Concentration of carbon disulfide, dry basis, ppmv.

C_{CS2i}=Concentration of carbon disulfide of sample i, dry basis, ppmv.

n=Number of samples in the sample run.

(2) The owner or operator shall use engineering assessment to demonstrate compliance with the carbon disulfide concentration limitation in paragraph (a) of this section. Engineering assessment includes, but is not limited to, the following:

(i) Previous test results, provided the tests are representative of current operating practices at the process unit.

(ii) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(iii) Flow rate and/or carbon disulfide emission rate specified or implied within an applicable permit limit.

(iv) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(A) Use of material balances,

(B) Estimation of flow rate based on physical equipment design such as pump or blower capacities, and

(C) Estimation of carbon disulfide concentrations based on saturation conditions.

(v) All data, assumptions, and procedures used in the engineering assessment shall be documented.

(d) Owners and operators of sources subject to this section shall maintain the records specified in paragraphs (d)(1) and (d)(2) of this section.

(1) Documentation of the results of the testing required by paragraph (c) of this section.

(2) A description of the standard operating procedure used during the testing. This description shall include, at a minimum, an identification of the sulfur containing shortstop added to the styrene butadiene rubber prior to the dryers, an identification of the point and time in the process where the sulfur containing shortstop is added, and an identification of the amount of sulfur containing shortstop added per unit of latex.

(e) Owners and operators shall submit the reports as specified in paragraphs (e)(1) and (e)(2) of this section.

(1) As part of the Notification of Compliance Status specified in § 63.506(e)(5), documentation of the results of the testing required by paragraph (c) of this section.

(2) If changes are made in the standard operating procedure used during the compliance test and recorded in accordance with paragraph (d)(2) of this section, and if those changes have the potential for increasing the concentration of carbon disulfide in the crumb dryer exhaust to above the 45 ppmv limit, the owner or operator shall:

(i) Redetermine compliance using the test procedures in paragraph (c) of this section, and

(ii) Submit documentation of the testing results in the next periodic report required by § 63.506(e)(6).

§ 63.501 Wastewater provisions.

(a) For each process wastewater stream originating at an affected source, except those wastewater streams exempted by paragraph (c) of this section, the owner or operator shall comply with the requirements of §§ 63.131 through 63.148 of subpart G, with the differences noted in paragraphs (a)(1) through (a)(11) of this section, for the purposes of this subpart.

(1) When the determination of equivalence criteria in § 63.102(b) of subpart F is referred to in §§ 63.132, 63.133, and 63.137 of subpart G, the provisions in § 63.6(g) of subpart A shall apply for the purposes of this subpart.

(2) When the storage tank requirements contained in §§ 63.119 through 63.123 of subpart G are referred to in §§ 63.132 through 63.148 of subpart G, §§ 63.119 through 63.123 of subpart G are applicable, with the exception of the differences referred to in § 63.484, for the purposes of this subpart.

(3) When the Implementation Plan requirements contained in § 63.151 in subpart G are referred to in § 63.146 of subpart G, the owner or operator of an affected source subject to this subpart need not comply.

(4) When the Initial Notification Plan requirements in § 63.151(b) of subpart G are referred to in § 63.146 of subpart G, the owner or operator of an affected source subject to this subpart need not comply.

(5) When the owner or operator requests to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions referred to in § 63.151(g) of subpart G, or the owner or operator submits an operating permit application instead of an Implementation Plan as specified in § 63.152(e) of subpart G, as referred to in § 63.146(a)(3) of subpart G, § 63.506(f) and § 63.506(e)(8), respectively, shall apply for the purposes of this subpart.

(6) When the Notification of Compliance Status requirements contained in § 63.152(b) of subpart G are referred to in §§ 63.146 and 63.147 of subpart G, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart.

(7) When the Periodic Report requirements contained in § 63.152(c) of subpart G are referred to in §§ 63.146 and 63.147 of subpart G, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart.

(8) When the term "range" is used in § 63.143(f) of subpart G, the term "level" shall be used instead, for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.505.

(9) For the purposes of this subpart, owners or operators are not required to comply with the provisions of § 63.138(e)(2) of subpart G which specify that owners or operators shall demonstrate that 95 percent of the mass of HAP, as listed in Table 9 of subpart G, is removed from the wastewater stream or combination of wastewater streams by the procedure specified in § 63.145(i) of subpart G for a biological treatment unit.

(10) For the purposes of this subpart, owners or operators are not required to comply with the provisions of § 63.138(j)(3) of subpart G which specify that owners or operators shall use the procedures specified in Appendix C of subpart G to demonstrate compliance when using a biological treatment unit.

(11) When the provisions of § 63.139(c)(1)(ii) of subpart G or the provisions of § 63.145(e)(2)(ii)(B) specify that Method 18 shall be used, Method 18 or Method 25A may be used for the purposes of this subpart. The use of Method 25A shall comply with paragraphs (a)(11)(i) and (a)(11)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(b) Except for those streams exempted by paragraph (c) of this section, the owner or operator of each affected source shall comply with the requirements for maintenance wastewater in § 63.105 of subpart F, except that when § 63.105(a) refers to "organic HAPs," the definition of organic HAP in § 63.482 shall apply for the purposes of this subpart.

(c) The following wastewater streams are exempt from the requirements of paragraphs (a) and (b) of this section:

(1) Back-end wastewater streams originating from equipment that only produces latex products.

(2) Back-end wastewater streams at affected sources that are subject to a residual organic HAP limitation in § 63.494(a), and that are complying with these limitations through the use of stripping technology.

(d) The compliance date for the affected source subject to the provisions of this section is specified in § 63.481.

§ 63.502 Equipment leak provisions.

(a) The owner or operator of each affected source, shall comply with the requirements of subpart H of this part for all equipment in organic HAP service, with the exception noted in paragraphs (b) through (h) of this section.

(b) Surge control vessels and bottoms receivers described in paragraphs (b)(1) through (b)(6) of this section are exempt from the requirements contained in § 63.170 of subpart H.

(1) Surge control vessels and bottoms receivers containing styrene-butadiene latex;

(2) Surge control vessels and bottoms receivers containing other latex products and located downstream of the stripping operations;

(3) Surge control vessels and bottoms receivers containing high conversion latex products;

(4) Surge control vessels and bottoms receivers located downstream of the stripping operations at affected sources subject to the back-end residual organic HAP limitation located in § 63.494, that are complying through the use of stripping technology, as specified in § 63.495;

(5) Surge control vessels and bottoms receivers containing styrene;

(6) Surge control vessels and bottoms receivers containing acrylamide; and

(7) Surge control vessels and bottoms receivers containing epichlorohydrin.

(c) The compliance date for the equipment leak provisions in this section is provided in § 63.481.

(d) For an affected source producing polybutadiene rubber and styrene butadiene rubber by solution, the indications of liquids dripping, as defined in subpart H of this part, from bleed ports in pumps and agitator seals in light liquid service, shall not be considered a leak. For the purposes of this subpart, a "bleed port" is a technologically-required feature of the pump or seal whereby polymer fluid used to provide lubrication and/or cooling of the pump or agitator shaft exits the pump, thereby resulting in a visible dripping of fluid.

(e) Affected sources subject to subpart I of this part shall continue to comply with subpart I until the compliance date specified in § 63.481. After the compliance date for this section, the source shall be subject to subpart H of this part and shall no longer be subject to subpart I.

(f) The owner or operator of each affected source shall comply with the requirements of § 63.104 of subpart F for heat exchange systems.

(g) Owners and operators of an affected source subject to this subpart are not required to submit the Initial Notification required by § 63.182(a)(1) and § 63.182(b) of subpart H.

(h) The Notification of Compliance Status required by § 63.182(a)(2) and § 63.182(c) of subpart H shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.481 for the equipment leak provisions. The notification can be submitted as part of the Notification of Compliance Status required by § 63.506(e)(5).

(i) The Periodic Reports required by § 63.182(a)(3) and § 63.182(d) of subpart H shall be submitted as part of the Periodic Reports required by § 63.506(e)(6).

§ 63.503 Emissions averaging provisions.

(a) This section applies to owners or operators of existing affected sources who seek to comply with § 63.483(b) by using emissions averaging rather than following the provisions of §§ 63.484, 63.485, 63.486, 63.494, and 64.488.

(1) The following emission point limitations apply to the use of these provisions:

(i) All emission points included in an emissions average shall be from the same affected source. There may be an emissions average for each individual affected source located at a plant site.

(ii)(A) If a plant site has only one affected source for which emissions averaging is being used to demonstrate compliance, the number of emission points allowed to be included in the emission average is limited to twenty. This number may be increased by up to five additional points if pollution prevention measures are used to control five or more of the emission points included in the emissions average.

(B) If a plant site has two or more affected sources for which emissions averaging is being used to demonstrate compliance, the number of emission points allowed in the emissions average for those affected sources is limited to twenty. This number may be increased by up to five additional emission points if pollution prevention measures are used to control five or more of the emission points included in the emissions averages.

(2) Compliance with the provisions of this section can be based on either organic HAP or TOC.

(3) For the purposes of these provisions, whenever Method 18 is specified within the paragraphs of this section or is specified by reference through provisions outside this section, Method 18 or Method 25A may be used. The use of Method 25A shall comply with paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(b) Unless an operating permit application has been submitted, the owner or operator shall develop and submit for approval an Emissions Averaging Plan containing all of the information required in § 63.506(e)(4) for all emission points to be included in an emissions average.

(c) Paragraphs (c)(1) through (c)(4) of this section describe the emission points that can be used to generate emissions averaging credits if control was applied after November 15, 1990 and if sufficient information is available to determine the appropriate value of credits for the emission point. Paragraph (c)(5) of this section discusses the use of pollution prevention in generating emissions averaging credits.

(1) Storage vessels, batch front-end process vents, aggregate batch vent streams, continuous front-end process vents, and process wastewater streams that are determined to be Group 2 emission points.

(2) Storage vessels, continuous front-end process vents, and process wastewater steams that are determined to be Group 1 emission points and that are controlled by a technology that the Administrator or permitting authority agrees has a higher nominal efficiency than the reference control technology. Information on the nominal efficiencies for such technologies must be submitted and approved as provided in paragraph (i) of this section.

(3) Batch front-end process vents and aggregate batch vent streams that are determined to be Group 1 emission points and that are controlled to a level more stringent than the applicable standard.

(4) Back-end process operations that are controlled such that organic HAP emissions from the back-end process operation are less than would be achieved by meeting the residual organic HAP limits in § 63.494. For the purposes of the emission averaging provisions in this section, all back-end process operations at an affected facility shall be considered a single emission point.

(5) The percent reduction for any storage vessel, batch front-end process vent, aggregate batch vent stream, continuous front-end process vent, and process wastewater stream shall be determined using the procedures specified in paragraph (j) of this section.

(i) For a Group 1 storage vessel, batch front-end process vent, aggregate batch vent stream, continuous front-end process vent, or process wastewater stream, the pollution prevention measure must reduce emissions more than if the reference control technology or standard had been applied to the emission point instead of the pollution prevention measure, except as provided in paragraph (c)(5)(ii) of this section.

(ii) If a pollution prevention measure is used in conjunction with other controls for a Group 1 storage vessel,

batch front-end process vent, aggregate batch vent stream, continuous front-end process vent, or process wastewater stream, the pollution prevention measure alone does not have to reduce emissions more than the reference control technology or standard, but the combination of the pollution prevention measure and other controls must reduce emissions more than if the applicable reference control technology or standard had been applied instead of the pollution prevention measure.

(d) The following emission points cannot be used to generate emissions averaging credits:

(1) Emission points already controlled on or before November 15, 1990 cannot be used to generate credits unless the level of control was increased after November 15, 1990. In this case, credit will be allowed only for the increase in control after November 15, 1990.

(2) Group 1 emission points, identified in paragraph (c)(2) of this section, that are controlled by a reference control technology cannot be used to generate credits unless the reference control technology has been approved for use in a different manner and a higher nominal efficiency has been assigned according to the procedures in paragraph (i) of this section.

(3) Emission points on nonoperating EPPU cannot be used to generate credits. EPPU that are shutdown cannot be used to generate credits or debits.

(4) Maintenance wastewater cannot be used to generate credits. Wastewater streams treated in biological treatment units cannot be used to generate credits. These two types of wastewater cannot be used to generate credits or debits. For the purposes of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

(5) Emission points controlled to comply with a State or Federal rule other than this subpart cannot be used to generate credits, unless the level of control has been increased after November 15, 1990 to a level above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the emission point is subsequently made subject to a State or Federal rule other than this subpart, the emission point can continue to generate emissions averaging credit for the purpose of complying with the previously approved emissions average.

(e) For all emission points included in an emissions average, the owner or operator shall perform the following tasks:

(1) Calculate and record monthly debits for all Group 1 emission points that are controlled to a level less stringent than the reference control technology or standard for those emission points. The Group 1 emission points are identified in paragraphs (c)(2) through (c)(4) of this section. Equations in paragraph (g) of this section shall be used to calculate debits.

(2) Calculate and record monthly credits for all Group 1 and Group 2 emission points that are overcontrolled to compensate for the debits. Equations in paragraph (h) of this section shall be used to calculate credits. Emission points and controls that meet the criteria of paragraph (c) of this section may be included in the credit calculation, whereas those described in paragraph (d) of this section shall not be included.

(3) Demonstrate that annual credits calculated according to paragraph (h) of this section are greater than or equal to debits calculated for the same annual compliance period according to paragraph (g) of this section.

(i) The owner or operator may choose to include more than the required number of credit-generating emission points in an emissions average in order to increase the likelihood of being in compliance.

(ii) The initial demonstration in the Emissions Averaging Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debits from the debit-generating emission points must be made under representative operating conditions. After the compliance date, actual operating data will be used for all debit and credit calculations.

(4) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (g) of this section are not more than 1.30 times the credits for the same period calculated according to paragraph (h) of this section. Compliance for the quarter shall be determined based on the ratio of credits and debits from that quarter, with 30 percent more debits than credits allowed on a quarterly basis.

(5) Record and report quarterly and annual credits and debits in the Periodic Reports as specified in § 63.506(e)(6). Every fourth Periodic Report shall include a certification of compliance with the emissions averaging provisions as required by § 63.506(e)(6)(vi)(D)(*2*).

(f) Debits and credits shall be calculated in accordance with the methods and procedures specified in paragraphs (g) and (h) of this section, respectively, and shall not include emissions during the following periods:

(1) Emissions during periods of startup, shutdown, and malfunction as described in the Startup, Shutdown, and Malfunction Plan.

(2) Emissions during periods of monitoring excursions, as defined in § 63.505 (g) or (h). For these periods, the calculation of monthly credits and debits shall be adjusted as specified in paragraphs (f)(2)(i) through (f)(2)(iii) of this section.

(i) No credits would be assigned to the credit-generating emission point.

(ii) Maximum debits would be assigned to the debit-generating emission point.

(iii) The owner or operator may demonstrate to the Administrator that full or partial credits or debits should be assigned using the procedures in paragraph (l) of this section.

(g) Debits are generated by the difference between the actual emissions from a Group 1 emission point that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard and the emissions allowed for the Group 1 emission point. Debits shall be calculated as follows:

(1) Source-wide debits shall be calculated using Equation 33. Debits and all terms of the equation are in units of megagrams per month (Mg/month).

$$\text{Debits} = \sum_{i=1}^{n}\left(\text{ECFEPV}_{i\text{ACTUAL}} - (0.02)\text{ECFEPV}_{iu}\right) + \sum_{i=1}^{n}\left(\text{ES}_{i\text{ACTUAL}} - (0.05)\text{ES}_{iu}\right) + \left(\text{EBEP}_{\text{ACTUAL}} - \text{EBEP}_{c}\right) + \sum_{i=1}^{n}\left(\text{EWW}_{i\text{ACTUAL}} - \text{EWW}_{ic}\right) + \sum_{i=1}^{n}\left(\text{EBFEPV}_{i\text{ACTUAL}} - (0.1)\text{EBFEPV}_{iu}\right) + \sum_{i=1}^{n}\left(\text{EABV}_{i\text{ACTUAL}} - (0.1)\text{EABV}_{iu}\right) \quad \text{[Eq. 33]}$$

where:

$ECFEPV_{iACTUAL}$=Emissions from each Group 1 continuous front-end process vent i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $ECFEPV_{iACTUAL}$ is calculated according to paragraph (g)(2)(iii) of this section.

$(0.02)ECFEPV_{iu}$=Emissions from each Group 1 continuous front-end process vent i if the applicable reference control technology had been applied to the uncontrolled emissions. $ECFEPV_{iu}$ is calculated according to paragraph (g)(2)(ii) of this section.

$ES_{iACTUAL}$=Emissions from each Group 1 storage vessel i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard. $ES_{iACTUAL}$ is calculated according to paragraph (g)(3) of this section.

$(0.05)ES_{iu}$=Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. ES_{iu} is calculated according to paragraph (g)(3) of this section.

$EBEP_{ACTUAL}$=Emissions from back-end process operations that do not meet the residual organic HAP limits in § 63.494. $EBEP_{ACTUAL}$ is calculated according to paragraph (g)(4)(i) of this section.

$EBEP_c$=Emissions from back-end process operations if the residual organic HAP limits in § 63.494(a) were met. $EBEP_c$ is calculated according to paragraph (g)(4)(ii) of this section.

$EWW_{iACTUAL}$=Emissions from each Group 1 wastewater stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $EWW_{2iACTUAL}$ is calculated according to paragraph (g)(5) of this section.

EWW_{ic}=Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. EWW_{ic} is calculated according to paragraph (g)(5) of this section.

$EBFEPV_{iACTUAL}$=Emissions from each Group 1 batch front-end process vent stream i that is uncontrolled or is controlled to a level less stringent than the reference control technology. $EBFEPV_{iACTUAL}$ is calculated according to paragraph (g)(6)(ii) of this section.

$(0.1)EBFEPV_{iu}$=Emissions from each Group 1 batch front-end process vent i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. $EBFEPV_{iu}$ is calculated according to paragraph (g)(6)(i) of this section.

$EABV_{iACTUAL}$=Emissions from each Group 1 aggregate batch vent stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $EABV_{iACTUAL}$ is calculated according to paragraph (g)(7)(iii) of this section.

$(0.1)EABV_{iu}$=Emissions from each Group 1 aggregate batch vent stream i if the applicable reference control technology had been applied to the uncontrolled emissions. $EABV_{iu}$ is calculated according to paragraph (g)(7)(ii) of this section.

n=The number of emission points being included in the emissions average.

(2) Emissions from continuous front-end process vents shall be calculated as follows:

(i) For purposes of determining continuous front-end process vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be after the final product recovery device, if any recovery devices are present; before any control device (for continuous front-end process vents, recovery devices shall not be considered control devices); and before discharge to the atmosphere. Method 1 or 1A of 40 CFR part 60, appendix A, shall be used for selection of the sampling site.

(ii) $ECFEPV_{iu}$ for each continuous front-end process vent i shall be calculated using Equation 34.

$$\text{ECFEPV}_{iu} = \left(2.494\times10^{-9}\right)Qh\left(\sum_{j=1}^{n}C_jM_j\right) \quad \text{[Eq. 34]}$$

where:

$ECFEPV_{iu}$=Uncontrolled continuous front-end process vent emission rate from continuous front-end process vent i, Mg/month.

Q=Vent stream flow rate, dry standard m^3/min, measured using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present in the continuous front-end process vent, hr/month.

C_j=Concentration, ppmv, dry basis, of organic HAP j as measured by Method 18 or Method 25A of 40 CFR part 60, appendix A.

M_j=Molecular weight of organic HAP j, gram per gram-mole.
n=Number of organic HAP in stream.

(A) The values of Q and C_j shall be determined during a performance test conducted under representative operating conditions. The values of Q and C_j shall be established in the Notification of Compliance Status and must be updated as provided in paragraph (g)(2)(ii)(B) of this section.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q and C_j are no longer representative, a new performance test shall be conducted to determine new representative values of Q and C_j. These new values shall be used to calculate debits and credits from the time of the change forward, and the new values shall be reported in the next Periodic Report.

(iii) The following procedures and equations shall be used to calculate $ECFEPV_{iACTUAL}$:

(A) If the continuous front-end process vent is not controlled by a control device or pollution prevention measure, $ECFEPV_{iACTUAL} = ECFEPV_{iu}$, where $ECFEPV_{iu}$ is calculated according to the procedures contained in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(B) If the continuous front-end process vent is controlled using a control device or a pollution prevention measure achieving less than 98-percent reduction, $ECFEPV_{iACTUAL}$ is calculated using Equation 35.

$$ECFEPV_{iACTUAL} = ECFEPV_{iu} \times \left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [\text{Eq. 35}]$$

Where:

$ECFEPV_{iACTUAL}$ = Emissions from each Group 1 continuous front-end process vent i that is uncontrolled or is controlled to a level less stringent than the reference control technology.

$ECFEPV_{iu}$ = Uncontrolled continuous front-end process vent emission rate from continuous front-end process vent i, Mg/month.

(1) The percent reduction shall be measured according to the procedures in § 63.116 of subpart G if a combustion control device is used. For a flare meeting the criteria in § 63.116(a) of subpart G, or a boiler or process heater meeting the criteria in § 63.116(b) of subpart G, the percent reduction shall be 98 percent. If a noncombustion control device is used, percent reduction shall be demonstrated by a performance test at the inlet and outlet of the device, or, if testing is not feasible, by a control design evaluation and documented engineering calculations.

(2) For determining debits from Group 1 continuous front-end process vents, product recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating $ECFEPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final product recovery device. However, as provided in § 63.113(a)(3) of subpart G, a Group 1 continuous front-end process vent may add sufficient product recovery to raise the TRE index value above 1.0, thereby becoming a Group 2 continuous front-end process vent. Such a continuous front-end process vent would not be a Group 1 continuous front-end process vent and would, therefore, not be included in determining debits under this paragraph.

(3) Procedures for calculating the percent reduction of pollution prevention measures are specified in paragraph (j) of this section.

(3) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(g)(3) of subpart G.

(4) Emissions from back-end process operations shall be calculated as follows:

(i) Equation 36 shall be used to calculate $EBEP_{ACTUAL}$:

$$EBEP_{ACTUAL} = (1{,}000)\sum_{i=1}^{n}(C_i)(P_i) \quad [\text{Eq. 36}]$$

where:

$EBEP_{ACTUAL}$ = Actual emissions from back-end process operations, Mg/month.

C_i = Residual organic HAP content of sample i, kg organic HAP per Mg latex or dry crumb rubber.

P_i = Weight of latex or dry crumb rubber leaving the stripper represented by sample i, Mg.

(ii) Equation 37 shall be used to calculate $EBEP_c$:

$$EBEP_C = (1{,}000)(HAP_{limit})(P_{month}) \quad [\text{Eq. 37}]$$

where:

$EBEP_c$ = Emissions from back-end process operations if the residual organic HAP limits in § 63.494(a) were met, Mg/month.

HAP_{limit} = Residual organic HAP limits in § 63.494 of this subpart, kg organic HAP per Mg latex or dry crumb rubber.

P_{month}=Weight of latex or dry crumb rubber leaving the stripper in the month, Mg.

(5) Emissions from wastewater shall be calculated using the procedures specified in § 63.150(g)(5) of subpart G.

(6) Emissions from batch front-end process vents shall be calculated as follows:

(i) $EBFEPV_{iu}$ for each batch front-end process vent i shall be calculated using the procedures specified in § 63.488(b).

(ii) The following procedures and equations shall be used to determine $EBFEPV_{iACTUAL}$:

(A) If the batch front-end process vent is not controlled by a control device or pollution prevention measure,

$EBFEPV_{iACTUAL}$=$EBFEPV_{iu}$, where $EBFEPV_{iu}$ is calculated according to the procedures in § 63.488(b).

(B) If the batch front-end process vent is controlled using a control device or a pollution prevention measure achieving less than 90 percent reduction for the batch cycle, calculate $EBFEPV_{iACTUAL}$ using Equation 38, where percent reduction is for the batch cycle.

$$EBFEPV_{iACTUAL} = EBFEPV_{iu} \times \left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 38]}$$

(*1*) The percent reduction for the batch cycle shall be measured according to the procedures in § 63.490(c)(2).

(*2*) The percent reduction for control devices shall be calculated according to the procedures in § 63.490 (c)(2)(i) through (c)(2)(iii).

(*3*) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(*7*) Emissions from aggregate batch vents shall be calculated as follows:

(i) For purposes of determining aggregate batch vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be before any control device and before discharge to the atmosphere. Method 1 or 1A of 40 CFR part 60, appendix A, shall be used for selection of the sampling site.

(ii) $EABV_{iu}$ for each aggregate batch vent i shall be calculated using Equation 39.

$$EABV_{iu} = \left(2.494 \times 10^{-9}\right) Qh \left(\sum_{j=1}^{n} C_j M_j\right) \quad \text{[Eq. 39]}$$

where:

$EABV_{iu}$=Uncontrolled aggregate batch vent emission rate from aggregate batch vent i, Mg/month.

Q=Vent stream flow rate, dry standard cubic meters per minute, measured using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present from the aggregate batch vent stream, hr/month.

C_j=Concentration, ppmv, dry basis, of organic HAP j as measured by Method 18 of 40 CFR part 60, appendix A.

M_j=Molecular weight of organic HAP j, gram per gram-mole.

n=Number of organic HAP in the stream.

(A) The values of Q and C_j shall be determined during a performance test conducted under representative operating conditions. The values of Q and C_j shall be established in the Notification of Compliance Status and must be updated as provided in paragraph (g)(7)(ii)(B) of this section.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q and C_j are no longer representative, a new performance test shall be conducted to determine new representative values of Q and C_j. These new values shall be used to calculate debits and credits from the time of the change forward, and the new values shall be reported in the next Periodic Report.

(iii) The following procedures and equations shall be used to calculate $EABV_{iACTUAL}$:

(A) If the aggregate batch vent is not controlled by a control device or pollution prevention measure, $EABV_{iACTUAL}$ = $EABV_{iu}$, where $EABV_{iu}$ is calculated according to the procedures in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(B) If the aggregate batch vent stream is controlled using a control device or a pollution prevention measure achieving less than 90 percent reduction, calculate $EABV_{iACTUAL}$ using Equation 40.

$$EABV_{iACTUAL} = EABV_{iu} \times \left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 40]}$$

(*1*) The percent reduction for control devices shall be determined according to the procedures in § 63.490(e).

(*2*) The percent reduction of pollution prevention measures shall be calculated according to the procedures specified in paragraph (j) of this section.

(h) Credits are generated by the difference between emissions that are allowed for each Group 1 and Group 2 emission point and the actual emissions from that Group 1 or Group 2 emission point that has been controlled after November 15, 1990 to a level more stringent than what is required by this subpart or any other State or Federal rule or statute. Credits shall be calculated as follows:

(1) Source-wide credits shall be calculated using Equation 41. Credits and all terms of the equation are in units of Mg/month, and the baseline date is November 15, 1990.

$$\text{Credits} = D\sum_{i=1}^{n}\left((0.02)ECFEPV1_{iu} - ECFEPV1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ECFEPV2_{iBASE} - ECFEPV2_{iACTUAL}\right)$$

$$+D\sum_{i=1}^{n}\left((0.05)ES1_{iu} - ES1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ES2_{iBASE} - ES2_{iACTUAL}\right) + D\left(EBEP_{c} - EBEP_{ACTUAL}\right)$$

$$+D\sum_{i=1}^{n}\left(EWW1_{ic} - EWW1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EWW2_{iBASE} - EWW2_{iACTUAL}\right) \qquad \text{[Eq. 41]}$$

$$+D\sum_{i=1}^{n}\left((0.1)EBFEPV1_{iu} - EBFEPV1_{iACTUAL}\right) + D\sum_{i=1}^{n}\left((0.1)EABV1_{iu} - EABV1_{iACTUAL}\right)$$

$$+D\sum_{i=1}^{m}\left(EBFEPV2_{iBASE} - EBFEPV2_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EABV2_{iBASE} - EABV2_{iACTUAL}\right)$$

where:

D = Discount factor = 0.9 for all credit generating emission points, except those controlled by a pollution prevention measure; discount factor = 1.0 for each credit generating emission point controlled by a pollution prevention measure (i.e., no discount provided).

$ECFEPV1_{iACTUAL}$ = Emissions for each Group 1 continuous front-end process vent i that is controlled to a level more stringent than the reference control technology. $ECFEPV1_{iACTUAL}$ is calculated according to paragraph (h)(2)(ii) of this section.

$(0.02)ECFEPV1_{iu}$ = Emissions from each Group 1 continuous front-end process vent i if the reference control technology had been applied to the uncontrolled emissions. $ECFEPV1_{iu}$ is calculated according to paragraph (h)(2)(i) of this section.

$ECFEPV2_{iACTUAL}$ = Emissions from each Group 2 continuous front-end process vent i that is controlled. $ECFEPV2_{iACTUAL}$ is calculated according to paragraph (h)(2)(iii) of this section.

$ECFEPV2_{iBASE}$ = Emissions from each Group 2 continuous front-end process vent i at the baseline date. $ECFEPV1_{iBASE}$ is calculated in paragraph (h)(2)(iv) of this section.

$ES1_{iACTUAL}$ = Emissions from each Group 1 storage vessel i that is controlled to a level more stringent than the reference control technology or standard. $ES1_{iACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$(0.05)\ ES1_{iu}$ = Emissions from each Group 1 storage vessel i if the reference control technology had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (h)(3) of this section.

$ES2_{iACTUAL}$ = Emissions from each Group 2 storage vessel i that is controlled. $ES2_{iACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ES2_{iBASE}$ = Emissions from each Group 2 storage vessel i at the baseline date. $ES2_{iBASE}$ is calculated in paragraph (h)(3) of this section.

$EBEP_{ACTUAL}$ = Actual emissions from back-end process operations, Mg/month. $EBEP_{ACTUAL}$ is calculated in paragraph (h)(4)(i) of this section.

$EBEP_{c}$ = Emissions from back-end process operations if the residual organic HAP limits in § 63.494(a) were met, Mg/month. $EBEP_{c}$ is calculated in paragraph (h)(4)(ii) of this section.

$EWW1_{iACTUAL}$ = Emissions from each Group 1 wastewater stream i that is controlled to a level more stringent than the reference control technology. $EWW1_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW1_{ic}$ = Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. $EWW1_{ic}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iACTUAL}$ = Emissions from each Group 2 wastewater stream i that is controlled. $EWW2_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iBASE}$ = Emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iBASE}$ is calculated according to paragraph (h)(5) of this section.

$(0.1)\ EBFEPV1_{iu}$ = Emissions from each Group 1 batch front-end process vent i if the applicable reference control technology had been applied to the uncontrolled emissions. $EBFEPV_{iu}$ is calculated according to paragraph (h)(6)(i) of this section.

$EBFEPV1_{iACTUAL}$ = Emissions from each Group 1 batch front-end process vent i that is controlled to a level more stringent than the reference control technology. $EBFEPV1_{iACTUAL}$ is calculated according to paragraph (h)(6)(ii) of this section.

$(0.1)EABV1_{iu}$ = Emissions from each Group 1 aggregate batch vent stream i if the applicable reference control technology had been applied to the uncontrolled emissions. $EABV1_{iu}$ is calculated according to paragraph (h)(7)(i) of this section.

$EABV1_{iACTUAL}$ = Emissions from each Group 1 aggregate batch vent stream i that is controlled to a level more stringent than the reference control technology or standard. $EABV1_{iACTUAL}$ is calculated according to paragraph (h)(7)(ii) of this section.

$EBFEPV2_{iBASE}$ = Emissions from each Group 2 batch front-end process vent i at the baseline date. $EBFEPV2_{iBASE}$ is calculated according to paragraph (h)(6)(iv) of this section.

$EBFEPV2_{iACTUAL}$ = Emissions from each Group 2 batch front-end process vent i that is controlled. $EBFEPV2_{iACTUAL}$ is calculated according to paragraph (h)(6)(iii) of this section.

$EABV2_{iBASE}$ = Emissions from each Group 2 aggregate batch vent stream i at the baseline date. $EABV2_{iBASE}$ is calculated according to paragraph (g)(7)(iv) of this section.

$EABV2_{iACTUAL}$ = Emissions from each Group 2 aggregate batch vent stream i that is controlled. $EABV2_{iACTUAL}$ is calculated according to paragraph (g)(7)(iii) of this section.

n = Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

m = Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

(i) Except as specified in paragraph (h)(1)(iv) of this section, for an emission point controlled using a reference control technology, the percent reduction for calculating credits shall be no greater than the nominal efficiency associated with the reference control technology, unless a higher nominal efficiency is assigned as specified in paragraph (h)(1)(ii) of this section.

(ii) For an emission point controlled to a level more stringent than the reference control technology, the nominal efficiency for calculating credits shall be assigned as described in paragraph (i) of this section. A reference control technology may be approved for use in a different manner and assigned a higher nominal efficiency according to the procedures in paragraph (i) of this section. A reference control technology may be approved for use in a different manner and assigned a higher nominal efficiency according to the procedure in paragraph (i) of this section.

(iii) For an emission point controlled using a pollution prevention measure, except for back-end process operation emissions, the nominal efficiency for calculating credits shall be as determined as described in paragraph (j) of this section. Emissions for back-end process operations shall be determined as described in paragraph (h)(4) of this section.

(iv) For Group 1 and Group 2 batch front-end process vents and Group 1 and Group 2 aggregate batch vent streams, the percent reduction for calculating credits shall be the percent reduction determined according to the procedures in paragraphs (h)(6)(ii) and (h)(6)(iii) of this section for batch front-end process vents and paragraphs (h)(7)(ii) and (h)(7)(iii) of this section for aggregate batch vent streams.

(2) Emissions from continuous front-end process vents shall be determined as follows:

(i) Uncontrolled emissions from Group 1 continuous front-end process vents, $ECFEPV1_{iu}$, shall be calculated according to the procedures and equation for $ECFEPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(ii) Actual emissions from Group 1 continuous front-end process vents controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction, $ECFEPV1_{iACTUAL}$, shall be calculated using Equation 42.

$$ECFEPV1_{iACTUAL} = ECFEPV1_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right) \quad [Eq. 42]$$

Where:

$ECFEPV1_{iACTUAL}$ = Emissions for each Group 1 continuous front-end process vent i that is controlled to a level more stringent than the reference control technology.

$ECFEPV1_{iu}$ = Emissions from each Group 1 continuous front-end process vent i if the reference control technology had been applied to the uncontrolled emissions.

(iii) The following procedures shall be used to calculate actual emissions from Group 2 continuous front-end process vents, $ECFEPV2_{iACTUAL}$:

(A) For a Group 2 continuous front-end process vent controlled by a control device, a recovery device applied as a pollution prevention project, or a pollution prevention measure, where the control achieves a percent reduction less than or equal to 98 percent reduction, Equation 43 shall be used.

$$ECFEPV2_{iACTUAL} = ECFEPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [Eq. 43]$$

Where:

$ECFEPV2_{iACTUAL}$=Emissions from each Group 2 continuous front-end process vent i that is controlled.

$ECFEPV2_{iu}$=Emissions from each Group 2 continuous front-end process vent i if the reference control technology had been applied to the uncontrolled emissions.

(*1*) $ECFEPV2_{iu}$ shall be calculated according to the equations and procedures for $ECFEPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section, except as provided in paragraph (h)(2)(iii)(A)(*3*) of this section.

(*2*) The percent reduction shall be calculated according to the procedures in paragraphs (g)(2)(iii)(B)(*1*) through (g)(2)(iii)(B)(*3*) of this section, except as provided in paragraph (h)(2)(iii)(A)(*4*) of this section.

(*3*) If a recovery device was added as part of a pollution prevention project, $ECFEPV2_{iu}$ shall be calculated prior to that recovery device. The equation for $ECFEPV_{iu}$ in paragraph (g)(2)(ii) of this section shall be used to calculate $ECFEPV2_{iu}$; however, the sampling site for measurement of vent stream flow rate and organic HAP concentration shall be at the inlet of the recovery device.

(*4*) If a recovery device was added as part of a pollution prevention project, the percent reduction shall be demonstrated by conducting a performance test at the inlet and outlet of that recovery device.

(B) For a Group 2 continuous front-end process vent controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent reduction, Equation 44 shall be used.

$$ECFEPV2_{iACTUAL} = ECFEPV2_{iu}\left(1-\frac{\text{Nominal efficiency \%}}{100\%}\right) \quad [Eq.\ 44]$$

Where:

$ECFEPV2_{iACTUAL}$=Emissions from each Group 2 continuous front-end process vent i that is controlled.

$ECFEPV2_{iu}$=Emissions from each Group 2 continuous front-end process vent i if the reference control technology had been applied to the uncontrolled emissions.

(iv) Emissions from Group 2 continuous front-end process vents at baseline, $ECFEPV2_{iBASE}$, shall be calculated as follows:

(A) If the continuous front-end process vent was uncontrolled on November 15, 1990, $ECFEPV2_{iBASE}$=$ECFEPV2_{iu}$ and shall be calculated according to the procedures and equation for $ECFEPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(B) If the continuous front-end process vent was controlled on November 15, 1990, Equation 45 shall be used.

$$ECFEPV2_{iBASE} = ECFEPV2_{iu}\left(1-\frac{\text{Percent reduction}}{100\%}\right) \quad [Eq.\ 45]$$

(*1*) $ECFEPV2_{iu}$ is calculated according to the procedures and equation for $ECFEPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(*2*) The percent reduction shall be calculated according to the procedures specified in paragraphs (g)(2)(iii)(B)(*1*) through (g)(2)(iii)(B)(*3*) of this section.

(C) If a recovery device was added as part of a pollution prevention project initiated after November 15, 1990, $ECFEPV2_{iBASE}$=$ECFEPV2_{iu}$, where $ECFEPV2_{iu}$ is calculated according to paragraph (h)(2)(iii)(A)(*3*) of this section.

(3) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(h)(3) of subpart G.

(4) Emissions from back-end process operations shall be calculated as follows:

(i) $EBEP_{ACTUAL}$ shall be calculated according to the equation for $EBEP_{ACTUAL}$ contained in paragraph (g)(4)(i) of this section.

(ii) $EBEP_c$ shall be calculated according to the equation for $EBEP_c$ contained in paragraph (g)(4)(ii) of this section.

(5) Emissions from wastewater streams shall be calculated using the procedures specified in § 63.150(h)(5) of subpart G.

(6) Emissions from batch front-end process vents shall be determined as follows:

(i) Uncontrolled emissions from Group 1 batch front-end process vents ($EBFEPV1_{iu}$) shall be calculated according using the procedures specified in § 63.488(b).

(ii) Actual emissions from Group 1 batch front-end process vents controlled to a level more stringent than the reference control technology ($EBFEPV1_{iACTUAL}$) shall be calculated using Equation 46, where percent reduction is for the batch cycle.

$$EBFEPV1_{iACTUAL} = EBFEPV1_{iu}\left(1-\frac{\text{Percent reduction}}{100\%}\right) \quad [Eq.\ 46]$$

(A) The percent reduction for the batch cycle shall be calculated according to the procedures in § 63.490(c)(2).

(B) The percent reduction for control devices shall be determined according to the procedures in § 63.490(c)(2)(i) through (c)(2)(iii).

(C) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(iii) Actual emissions from Group 2 batch front-end process vents ($EBFEPV2_{iACTUAL}$) shall be calculated using Equation 47 and the procedures in paragraphs (h)(6)(ii)(A) through (h)(6)(ii)(C) of this section. $EBFEPV2_{iu}$ shall be calculated using the procedures specified in § 63.488(b).

$$EBFEPV2_{iACTUAL} = EBFEPV2_{iu} \times \left(1-\frac{\text{Percent reduction}}{100\%}\right) \quad [Eq.\ 47]$$

(iv) Emissions from Group 2 batch front-end process vents at baseline shall be calculated as follows:

(A) If the batch front-end process vent was uncontrolled on November 15, 1990, $EBFEPV2_{iBASE}$=$EBFEPV2_{iu}$ and shall be calculated according to the procedures using the procedures specified in § 63.488(b).

(B) If the batch front-end process vent was controlled on November 15, 1990, use Equation 48 and the procedures in paragraphs (h)(6)(ii)(A) through (h)(6)(ii)(C) of this section. $EBFEPV2_{iu}$ shall be calculated using the procedures specified in § 63.488(b).

$$EBFEPV2_{iBASE} = EBFEPV2_{iu}\left(1-\frac{\text{Percent reduction}}{100\%}\right) \quad [Eq.\ 48]$$

(7) Emissions from aggregate batch vent streams shall be determined as follows:

(i) Uncontrolled emissions from Group 1 aggregate batch vent streams ($EABV1_{iu}$) shall be calculated according to the procedures and equation for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(ii) Actual emissions from Group 1 aggregate batch vent streams controlled to a level more stringent than the reference control technology ($EABV1_{iACTUAL}$) shall be calculated using Equation 49.

$$EABV1_{iACTUAL} = EABV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [Eq. 49]$$

(A) The percent reduction for control devices shall be determined according to the procedures in § 63.490(e).

(B) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(iii) Actual emissions from Group 2 aggregate batch vents streams ($EABV2_{iACTUAL}$) shall be calculated using Equation 50 and the procedures in paragraphs (h)(7)(ii)(A) through (h)(7)(ii)(B) of this section. $EABV2_{iu}$ shall be calculated according to the equations and procedures for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

$$EABV2_{iACTUAL} = EABV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [Eq. 50]$$

(iv) Emissions from Group 2 aggregate batch vent streams at baseline shall be calculated as follows:

(A) If the aggregate batch vent stream was uncontrolled on November 15, 1990, $EABV2_{iBASE}$=$EABV2_{iu}$ and shall be calculated according to the procedures and equation for $EABV_{iu}$ in paragraph (g)(7)(i) and (g)(7)(ii) of this section.

(B) If the aggregate batch vent stream was controlled on November 15, 1990, use Equation 51 and the procedures in paragraphs (h)(7)(ii)(A) through (h)(7)(ii)(B) of this section. $EABV2_{iu}$ shall be calculated according to the equations and procedures for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

$$EABV2_{iBASE} = EABV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [Eq. 51]$$

(i) The following procedures shall be followed to establish nominal efficiencies for emission controls for storage vessels, continuous front-end process vents, and process wastewater streams. The procedures in paragraphs (i)(1) through (i)(6) of this section shall be followed for control technologies that are different in use or design from the reference control technologies and achieve greater percent reductions than the percent efficiencies assigned to the reference control technologies in § 63.111 of subpart G.

(1) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology, and the different control technology will be used in more than three applications at a single plant-site, the owner or operator shall submit the information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this section to the Director of the EPA Office of Air Quality Planning and Standards, in writing.

(i) Emission stream characteristics of each emission point to which the control technology is or will be applied, including the kind of emission point, flow, organic HAP concentration, and all other stream characteristics necessary to design the control technology or determine its performance.

(ii) Description of the control technology, including design specifications.

(iii) Documentation demonstrating to the Administrator's satisfaction the control efficiency of the control technology. This may include performance test data collected using an appropriate EPA Method or any other method validated according to Method 301 of appendix A. If it is infeasible to obtain test data, documentation may include a design evaluation and calculations. The engineering basis of the calculation procedures and all inputs and assumptions made in the calculations shall be documented.

(iv) A description of the parameter or parameters to be monitored to ensure that the control technology will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) The Administrator shall determine within 120 operating days whether an application presents sufficient information to determine nominal efficiency. The Administrator reserves the right to request specific data in addition to the items listed in paragraph (i)(1) of this section.

(3) The Administrator shall determine within 120 operating days of the submittal of sufficient data whether a control technology shall have a nominal efficiency and the level of that nominal efficiency. If, in the Administrator's judgment, the control technology achieves a level of emission reduction greater than the reference control technology for a particular kind of emission point, the Administrator will publish a **Federal Register** notice establishing a nominal efficiency for the control technology.

(4) The Administrator may grant permission to take emission credits for use of the control technology. The Administrator may also impose requirements that may be necessary to ensure operation and maintenance to achieve the specified nominal efficiency.

(5) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology and the different control technology will be used in no more than three applications at a single plant site, the information listed in paragraph (i)(1)(i) can be submitted to the permitting authority for the affected source for approval instead of the Administrator.

(i) In these instances, use and conditions for use of the control technology can be approved by the permitting authority as part of an operating permit application or modification. The permitting authority shall follow the procedures specified in paragraphs (i)(2) through (i)(4) of this section except that, in these instances, a **Federal Register** notice is not required to establish the nominal efficiency for the different technology.

(ii) If, in reviewing the application, the permitting authority believes the control technology has broad applicability for use by other sources, the permitting authority shall submit the information provided in the application to the Director of the EPA Office of Air Quality Planning and Standards. The Administrator shall review the technology for broad applicability and may publish a **Federal Register** notice; however, this review shall not affect the permitting authority's approval of the nominal efficiency of the control technology for the specific application.

(6) If, in reviewing an application for a control technology for an emission point, the Administrator or permitting authority determines that the control technology is not different in use or design from the reference control technology, the Administrator or permitting authority shall deny the application.

(j) The following procedures shall be used for calculating the efficiency (percent reduction) of pollution prevention measures for storage vessels, continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, and wastewater streams:

(1) A pollution prevention measure is any practice which meets the criteria of paragraphs (j)(1)(i) and (j)(1)(ii) of this section.

(i) A pollution prevention measure is any practice that results in a lesser quantity of organic HAP emissions per unit of product released to the atmosphere prior to out-of-process recycling, treatment, or control of emissions, while the same product is produced.

(ii) Pollution prevention measures may include substitution of feedstocks that reduce organic HAP emissions; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; housekeeping measures; and in-process recycling that returns waste materials directly to production as raw materials. Production cutbacks do not qualify as pollution prevention.

(2) The emission reduction efficiency of pollution prevention measures implemented after November 15, 1990, can be used in calculating the actual emissions from an emission point in the debit and credit equations in paragraphs (g) and (h) of this section.

(i) For pollution prevention measures, the percent reduction is used in the equations in paragraphs (g)(2) through (g)(7) of this section and paragraphs (h)(2) through (h)(7) of this section is the percent difference between the monthly organic HAP emissions for each emission point after the pollution prevention measure for the most recent month versus monthly emissions from the same emission point before the pollution prevention measure, adjusted by the volume of product produced during the two monthly periods.

(ii) Equation 52 shall be used to calculate the percent reduction of a pollution prevention measure for each emission point.

$$\text{Percent reduction} = E_B - \frac{\left(E_{pp} \times P_B\right)}{P_{pp}} \times 100 \qquad \text{[Eq. 52]}$$

where:

Percent reduction=Efficiency of pollution prevention measure (percent organic HAP reduction).

E_B=Monthly emissions before the pollution prevention measure, Mg/month, determined as specified in paragraphs (j)(2)(ii)(A), (j)(2)(ii)(B), and (j)(2)(ii)(C) of this section.

E_{pp}=Monthly emissions after the pollution prevention measure, Mg/month, as determined for the most recent month, determined as specified in either paragraphs (j)(2)(ii)(D) or (j)(2)(ii)(E) of this section.

P_B=Monthly production before the pollution prevention measure, Mg/month, during the same period over which E_B is calculated.

P_{pp}=Monthly production after the pollution prevention measure, Mg/month, as determined for the most recent month.

(A) The monthly emissions before the pollution prevention measure, E_B, shall be determined in a manner consistent with the equations and procedures in paragraph (g)(2) of this section for continuous front-end process vents, paragraph (g)(3) of this section for storage vessels, paragraph (g)(6) of this section for batch front-end process vents, and paragraph (g)(7) of this section for aggregate batch vent streams.

(B) For wastewater, E_B shall be calculated according to § 63.150(j)(2)(ii)(B) of subpart G.

(C) If the pollution prevention measure was implemented prior to September 5, 1996, records may be used to determine E_B.

(D) The monthly emissions after the pollution prevention measure, E_{pp}, may be determined during a performance test or by a design evaluation and documented engineering calculations. Once an emissions-to-production ratio has been established, the ratio can be used to estimate monthly emissions from monthly production records.

(E) For wastewater, E_{pp} shall be calculated according to § 63.150(j)(2)(ii)(E) of subpart G.

(iii) All equations, calculations, test procedures, test results, and other information used to determine the percent reduction achieved by a pollution prevention measure for each emission point shall be fully documented.

(iv) The same pollution prevention measure may reduce emissions from multiple emission points. In such cases, the percent reduction in emissions for each emission point must be calculated.

(v) For the purposes of the equations in paragraphs (h)(2) through (h)(7) of this section, used to calculate credits for emission points controlled more stringently than the reference control technology, the nominal efficiency of a pollution prevention measure is equivalent to the percent reduction of the pollution prevention measure. When a pollution prevention measure is used, the owner or operator of an affected source is not required to apply to the Administrator for a nominal efficiency and is not subject to paragraph (i) of this section.

(k) The owner or operator must demonstrate that the emissions from the emission points proposed to be included in the emissions average will not result in greater hazard, or at the option of the Administrator, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.484, 63.485, 63.486, 63.493, and 63.501.

(1) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the Administrator.

(i) The Administrator may require owners and operators to use specific methodologies and procedures for making a hazard or risk determination.

(ii) The demonstration and approval of hazard or risk equivalency shall be made according to any guidance that the Administrator makes available for use.

(2) Owners and operators shall provide documentation demonstrating the hazard or risk equivalency of their proposed emissions average in their operating permit application or in their Emissions Averaging Plan if an operating permit application has not yet been submitted.

(3) An Emissions Averaging Plan that does not demonstrate hazard or risk equivalency to the satisfaction of the Administrator shall not be approved. The Administrator may require such adjustments to the Emissions Averaging Plan as are necessary in order to ensure that the emissions average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled according to §§ 63.484, 63.485, 63.486, 63.493, and 63.501.

(4) A hazard or risk equivalency demonstration must:

(i) Be a quantitative, bona fide chemical hazard or risk assessment;

(ii) Account for differences in chemical hazard or risk to human health or the environment; and

(iii) Meet any requirements set by the Administrator for such demonstrations.

(l) For periods of monitoring excursions, an owner or operator may request that the provisions of paragraphs (l)(1) through (l)(4) of this section be followed instead of the procedures in paragraphs (f)(2)(i) and (f)(2)(ii) of this section.

(1) The owner or operator shall notify the Administrator of monitoring excursions in the Periodic Reports as required in § 63.506(e)(6).

(2) The owner or operator shall demonstrate that other types of monitoring data or engineering calculations are appropriate to establish that the control device for the emission point was operating in such a fashion to warrant assigning full or partial credits and debits. This demonstration shall be made to the Administrator's satisfaction, and the Administrator may establish procedures for demonstrating compliance that are acceptable.

(3) The owner or operator shall provide documentation of the excursion and the other types of monitoring data or engineering calculations to be used to demonstrate that the control device for the emission point was operating in such a fashion to warrant assigning full or partial credits and debits.

(4) The Administrator may assign full or partial credit and debits upon review of the information provided.

(m) For each emission point included in an emissions average, the owner or operator shall perform testing, monitoring, recordkeeping, and reporting equivalent to that required for Group 1 emission points complying with §§ 63.484, 63.485, 63.486, 63.493, and 63.501, as applicable. If back-end process operations are included in an emissions average, the owner or operator shall perform testing, monitoring, recordkeeping, and reporting equivalent to that required for back-end process operations complying with § 63.493. The specific requirements for continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, back-end process operations, and wastewater are identified in paragraphs (m)(1) through (m)(6) of this section.

(1) For each continuous front-end process vent equipped with a flare, incinerator, boiler, or process heater, as appropriate to the control technique:

(i) Determine whether the continuous front-end process vent is Group 1 or Group 2 according to the procedures specified in § 63.115 of subpart G and as required by § 63.485;

(ii) Conduct initial performance tests to determine percent reduction as specified in § 63.116 of subpart G and as required by § 63.485; and

(iii) Monitor the operating parameters, keep records, and submit reports as specified in § 63.114, § 63.117(a), and § 63.118(a), (f), and (g) of subpart G, as required, for the specific control device as required by § 63.485.

(2) For each continuous front-end process vent equipped with a carbon adsorber, absorber, or condenser but not equipped with a control device, as appropriate to the control technique:

(i) Determine the flow rate, organic HAP concentration, and TRE index value according to the procedures specified in § 63.115 of subpart G; and

(ii) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in § 63.114, § 63.117(a), and § 63.118 (b), (f), and (g) of subpart G, as required, for the specific recovery device, and as required by § 63.485.

(3) For each storage vessel controlled with an internal floating roof, external roof, or a closed vent system with a control device, as appropriate to the control technique:

(i) Perform the monitoring or inspection procedures according to the procedures specified in § 63.120 of subpart G, and as required by § 63.484;

(ii) Perform the reporting and recordkeeping procedures according to the procedures specified in §§ 63.122 and 63.123 of subpart G, and as required by § 63.484; and

(iii) For closed vent systems with control devices, conduct an initial design evaluation and submit an operating plan according to the procedures specified in § 63.120(d) and § 63.122(a)(2) and (b) of subpart G, and as required by § 63.484.

(4) For back-end process operations included in an emissions average:

(i) If stripping technology, and no control or recovery device, is used to reduce back-end process operation emissions, the owner or operator shall implement the following portions of this subpart:

(A) Paragraphs (b)(1), (b)(2), and (b)(3) of § 63.495, paragraph (b) of § 63.498, and the applicable provisions of § 63.499, or

(B) Paragraphs (c) (1), (2), and (3) of § 63.495, paragraph (c) of § 63.498, and the applicable provisions of § 63.499;

(ii) If a control or recovery device is used to reduce back-end process operation emissions, the owner or operator shall comply with §§ 63.496, 63.497, 63.498(d), and the applicable provisions of 63.499, and shall

implement the provisions of these sections.

(5) For wastewater emission points, as appropriate to the control techniques:

(i) For wastewater treatment processes, conduct tests according to the procedures specified in § 63.138(i) and (j) of subpart G, and as required by § 63.501;

(ii) Conduct inspections and monitoring according to the procedures specified in § 63.143 of subpart G, and as required by § 63.501;

(iii) Implement a recordkeeping program according to the procedures specified in § 63.147 of subpart G, and as required by § 63.501; and

(iv) Implement a reporting program according to the procedures specified in § 63.146 of subpart G, and as required by § 63.501.

(6) For each batch front-end process vent and aggregate batch vent stream equipped with a control device, as appropriate to the control technique:

(i) Determine whether the batch front-end process vent or aggregate batch vent stream is Group 1 or Group 2 according to the procedures specified in § 63.488;

(ii) Conduct performance tests according to the procedures specified in § 63.490;

(iii) Conduct monitoring according to the procedures specified in § 63.489; and

(iv) Perform the recordkeeping and reporting procedures according to the procedures specified in §§ 63.491 and 63.492.

(7) If an emission point in an emissions average is controlled using a pollution prevention measure or a device or technique for which no monitoring parameters or inspection procedures are required by §§ 63.484, 63.485, 63.486, 63.493, or § 63.501, the owner or operator shall submit the information specified in § 63.506(f) for alternate monitoring parameters or inspection procedures in the Emissions Averaging Plan or operating permit application.

(n) Records of all information required to calculate emission debits and credits shall be retained for 5 years.

(o) Precompliance Reports, Emission Averaging Plans, Notifications of Compliance Status, Periodic Reports, and other reports shall be submitted as required by § 63.506.

§ 63.504 Additional test methods and procedures.

(a) Performance testing shall be conducted in accordance with § 63.7 (a)(3), (d), (e), (g), and (h) of subpart A, with the exceptions specified in paragraphs (a)(1) through (a)(4) of this section and the additions specified in paragraph (b) of this section. Sections 63.484 through 63.501 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e) of subpart A, except that performance tests shall be conducted at maximum representative operating conditions for the process.

(2) References in § 63.7(g) of subpart A to the Notification of Compliance Status requirements in § 63.9(h) shall refer to the requirements in § 63.506(e)(5).

(3) Because the site-specific test plans in § 63.7(c)(3) of subpart A are not required, § 63.7(h)(4)(ii) is not applicable.

(4) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled, to allow the Administrator the opportunity to have an observer present during the test.

(b) Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301 of appendix A of this part.

§ 63.505 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each measured parameter using the procedures specified in paragraph (b), (c), or (d) of this section. The procedures specified in paragraph (b) have been approved by the Administrator. The procedures in paragraphs (c) and (d) of this section have not been approved by the Administrator, and determination of the parameter monitoring level using the procedures in paragraphs (c) or (d) of this section and is subject to review and approval by the Administrator. The determination and supporting documentation shall be included in the Precompliance Report.

(1) The owner or operator shall operate control and recovery devices such that monitored parameters remain above the minimum established level or below the maximum established level.

(2) As specified in § 63.506(e)(5) and § 63.506(e)(8), all established levels, along with their supporting documentation and the definition of an operating day, shall be approved as part of and incorporated into the Notification of Compliance Status or operating permit, respectively.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subparts A, F, or G of this part.

(b) *Establishment of parameter monitoring levels based on performance tests.* The procedures specified in paragraphs (b)(1) through (b)(3) of this section shall be used, as applicable, in establishing parameter monitoring levels. Level(s) established under this paragraph shall be based on the parameter values measured during the performance test.

(1) *Storage tanks and wastewater.* The maximum and/or minimum monitoring levels shall be based on the parameter values measured during the performance test, supplemented, if desired, by engineering assessments and/or manufacturer's recommendations.

(2) *Continuous front-end process vents and back-end process operations complying using control or recovery devices.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour runs. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(3) *Batch front-end process vents.* The monitoring level(s) shall be established using the procedures specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section, as appropriate. The procedures specified in this paragraph may only be used if the batch emission episodes, or portions thereof, selected to be controlled were tested, and monitoring data were collected, during the entire period in which emissions were vented to the control device, as specified in § 63.490(c)(1)(i). If the owner or operator chose to test only a portion of the batch emission episode, or portion thereof, selected to be controlled, as specified in § 63.490(c)(1)(i)(A), the procedures in paragraph (c) of this section must be used.

(i) If more than one batch emission episode or more than one portion of a batch emission episode has been selected to be controlled, a single level for the batch cycle shall be calculated as follows:

(A) During initial compliance testing, the appropriate parameter shall be

monitored continuously at all times when batch emission episodes, or portions thereof, selected to be controlled are vented to the control device.

(B) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(C) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled.

(D) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled.

(E) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values measured during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (b)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section.

(iii) The batch cycle shall be defined in the Notification of Compliance Status, as specified in § 63.506(e)(5). The definition shall include an identification of each batch emission episode and the information required to determine parameter monitoring compliance for partial batch cycles (i.e., when part of a batch cycle is accomplished during two different operating days).

(4) *Aggregate batch vent streams.* For aggregate batch vent streams, the monitoring level shall be established in accordance with paragraph (b)(2) of this section.

(c) *Establishment of parameter monitoring levels based on performance tests, engineering assessments, and/or manufacturer's recommendations.* As required in paragraph (a) of this section, the information specified in paragraphs (c)(2) and (c)(3) of this section shall be provided in the Precompliance Report.

(1) Parameter monitoring levels established under this paragraph shall be based on the parameter values measured during the performance test supplemented by engineering assessments and manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(2) The specific level of the monitored parameter(s) for each emission point.

(3) The rationale for the specific level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control or recovery device.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* If a performance test is not required by this subpart for a control or recovery device, the maximum or minimum level may be based solely on engineering assessments and/or manufacturer's recommendations. As required in paragraph (a) of this section, the determined level and all supporting documentation shall be provided in the Precompliance Report.

(e) *Demonstration of compliance with back-end process provisions using stripper parameter monitoring.* If the owner or operator is demonstrating compliance with § 63.495 using stripper parameter monitoring, stripper parameter levels shall be established for each grade in accordance with paragraphs (e)(1) and (e)(2) of this section. A single set of stripper parameter levels can be representative of multiple grades.

(1) For each grade, the owner or operator shall calculate the residual organic HAP content using the procedures in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) The location of the sampling shall be in accordance with § 63.495(d).

(ii) The residual organic HAP content in each sample is to be determined using specified methods.

(2) For each grade, the owner or operator shall establish stripper operating parameter levels that represent stripper operation during the residual organic HAP content determination in paragraph (e)(1) of this section. The stripper operating parameters shall include, at a minimum, temperature, pressure, steaming rates (for steam strippers), and some parameter that is indicative of residence time.

(3) After the initial determinations, an owner or operator can add a grade, with corresponding stripper parameter levels, using the procedures in paragraphs (e)(1) and (e)(2) of this section. The results of this determination shall be submitted in the next periodic report.

(4) An owner or operator complying with the residual organic HAP limitations in paragraph (a) of § 63.494 using stripping, and demonstrating compliance by stripper parameter monitoring, shall redetermine the residual organic HAP content for all affected grades whenever process changes are made. For the purposes of this section, a process change is any action that would reasonably be expected to impair the performance of the stripping operation. For the purposes of this section, examples of process changes may include changes in production capacity or production rate, or removal or addition of equipment. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; or changes that reduce the residual organic HAP content of the elastomer.

(f) *Compliance determinations.* The provisions of this paragraph apply only to emission points and control or recovery devices for which continuous monitoring is required under this subpart.

(1) The parameter monitoring data for storage vessels, front-end process vents, back-end process operations complying through the use of control or recovery devices, process wastewater streams, and emission points included in emissions averages that are required to perform continuous monitoring shall be used to determine compliance for the monitored control or recovery devices.

(2) Except as provided in paragraph (f)(3) and (i) of this section, for each excursion, as defined in paragraphs (g) and (h) of this section, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

(3) If the daily average value of a monitored parameter is above the maximum level or below the minimum level established, or if monitoring data cannot be collected during monitoring device calibration check or monitoring device malfunction, but the affected source is operated during the periods of startup, shutdown, or malfunction in accordance with the affected source's Startup, Shutdown, and Malfunction Plan, then the event shall not be considered a monitoring parameter excursion.

(g) *Parameter monitoring excursion definitions.* (1) For storage vessels, continuous front-end process vents, aggregate batch vent streams, back-end process operations complying through the use of control or recovery devices, and wastewater streams, an excursion

means any of the three cases listed in paragraphs (g)(1)(i) through (g)(1)(iii) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (g)(1)(i) through (g)(1)(iii) of this section, this is considered a single excursion for the control or recovery device.

(i) When the daily average value of one or more monitored parameters is above the maximum level or below the minimum level established for the given parameters.

(ii) When the period of control or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient, as defined in paragraph (g)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (g)(1)(iv) of this section.

(iv) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under §63.506(g)(3), monitoring data are insufficient to calculate a valid hour of data if there are less than four data measurements made during the hour.

(2) For batch front-end process vents, an excursion means one of the two cases listed in paragraphs (g)(2)(i) and (g)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in either paragraph (g)(2)(i) or (g)(2)(ii) of this section, this is considered a single excursion for the control device.

(i) When the batch cycle daily average value of one or more monitored parameters is above the maximum or below the minimum established level for the given parameters.

(ii) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the 15-minute periods when batch emission episodes, or portions thereof, selected to be controlled are being vented to the control device during the operating day.

(h) *Excursion definitions for back-end operations complying through stripping.* (1) For back-end process operations complying through the use of stripping technology, and demonstrating compliance by sampling, an excursion means one of the two cases listed in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(i) When the monthly weighted average residual organic HAP content is above the applicable residual organic HAP limitation in §63.494; or

(ii) When less than 75 percent of the samples required in 1 month are taken and analyzed in accordance with the provisions of §63.495(b).

(2) For back-end process operations complying through the use of stripping technology, and demonstrating compliance by stripper parameter monitoring, an excursion means one of the three cases listed in paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section.

(i) When the monthly weighted average residual organic HAP content is above the applicable residual organic HAP limitation in §63.494;

(ii) When an owner or operator fails to sample and analyze the organic HAP content of a sample for a grade with an hourly average stripper operating parameter value not in accordance with the established monitoring parameter levels for that parameter; or

(iii) When an owner or operator does not collect sufficient monitoring data for at least 75 percent of the grades or batches processed during a month. Stripper monitoring data are considered insufficient if monitoring parameters are obtained for less than 75 percent of the 15-minute periods during the processing of a grade, and a sample of that grade or batch is not taken and analyzed to determine the residual organic HAP content.

(i) *Excused excursions.* A number of excused excursions shall be allowed for each control or recovery device for each semiannual period. The number of excused excursions for each semiannual period is specified in paragraphs (i)(1) through (i)(6) of this section. This paragraph applies to affected sources required to submit Periodic Reports semiannually or quarterly. The first semiannual period is the 6-month period starting the date the Notification of Compliance Status is due.

(1) For the first semiannual period—six excused excursions.

(2) For the second semiannual period—five excused excursions.

(3) For the third semiannual period—four excused excursions.

(4) For the fourth semiannual period—three excused excursions.

(5) For the fifth semiannual period—two excused excursions.

(6) For the sixth and all subsequent semiannual periods—one excused excursion.

§63.506 General recordkeeping and reporting provisions.

(a) *Data retention.* Each owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, unless otherwise specified in this subpart.

(b) *Subpart A requirements.* The owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in 40 CFR part 63, subpart A as specified in Table 1 of this subpart. These requirements include, but are not limited to, the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Startup, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan as specified in §63.6(e)(3) of subpart A. This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. The affected source shall keep this plan onsite and shall incorporate it by reference into their operating permit. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section. Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of startup, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section.

(A) Records of the occurrence and duration of each malfunction of air pollution control equipment or continuous monitoring systems used to comply with this subpart.

(B) For each startup, shutdown, or malfunction, a statement that the procedures specified in the affected source's startup, shutdown, and malfunction plan were followed; alternatively, documentation of any actions taken that are not consistent with the plan.

(C) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks and maintenance of continuous monitoring

systems that are specified in the manufacturer's instructions.

(D) Records specified in paragraphs (b)(1)(i)(B) and (b)(1)(i)(C) of this section are not required if they pertain solely to Group 2 emission points that are not included in an emissions average.

(ii) *Reports of startup, shutdown, and malfunction.* For the purposes of this subpart, the semiannual startup, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of the schedule specified in § 63.10(d)(5)(i) of subpart A. The reports shall include the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 of subpart A regarding construction and reconstruction, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii) of subpart A.

(c) *Subpart H requirements.* Owners or operators of affected sources shall comply with the reporting and recordkeeping requirements in subpart H, except as specified in § 63.502(g) through § 63.502(i).

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(8) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (f), (g), or (h) of this section. Documentation requirements are specified in paragraphs (d)(9) and (d)(10) of this section.

(1) The monitoring system shall measure data values at least once every 15 minutes.

(2) The owner or operator shall record either:

(i) Each measured data value; or

(ii) Block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values; or

(iii) For batch front-end process vents, each batch cycle average or batch emission episode average, as appropriate, in addition to each measured data value recorded as required in paragraph (d)(2)(i) of this section.

(3) Daily average (or batch cycle daily average) values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraph (d)(6) of this section.

(i) The daily average value or batch cycle daily average shall be calculated as the average of all parameter values recorded during the operating day. As specified in § 63.491(e)(2)(i), only parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period that the owner or operator specifies in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another 24-hour period.

(4) *Records required when out of compliance.* If the daily average (or batch cycle daily average) value of a monitored parameter for a given operating day is below the minimum level or above the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall retain the data recorded that operating day under paragraph (d)(2) of this section.

(5) *Records required when in compliance for daily average value or batch cycle daily average value.* If the daily average (or batch cycle daily average) value of a monitored parameter for a given operating day is above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall either:

(i) Retain block average values for 1 hour or shorter periods for that operating day; or

(ii) Retain the data recorded in paragraphs (d)(2)(i) and (d)(2)(iii) of this section.

(6) *Records required when all recorded values are in compliance.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average (or batch cycle daily average) for that operating day. For these operating days, the records required in paragraph (d)(5) of this section are required.

(7) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods.

(8) In addition to the periods specified in paragraph (d)(7) of this section, records shall be kept of the times and durations of any other periods during process operation or control device operation when monitors are not operating. For batch front-end process vents, this paragraph only applies during batch emission episodes, or portions thereof, that the owner or operator has selected for control.

(9) For each EPPU that is not part of the affected source because it does not use any organic HAP, the owner or operator shall maintain the documentation specified in § 63.480(b)(1).

(10) For each flexible operation unit in which the primary product is determined to be something other than an elastomer product, the owner or operator shall maintain the documentation specified in § 63.480(f)(6).

(e) *Reporting and notification.* (1) In addition to the reports and notifications required by subparts A and H, as specified in this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable.

(2) All reports required under this subpart shall be sent to the Administrator at the addresses listed in § 63.13 of subpart A of this part. If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Affected sources requesting an extension for compliance, or requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls, shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(vi) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later

than 12 months prior to the compliance date. For new sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section.

(ii) A request for an extension for compliance must be submitted in the Precompliance Report, if it has not been submitted to the operating permit authority as part of the operating permit application. The request for a compliance extension will include the data outlined in § 63.6(i)(6)(i)(A), (B), and (D) of subpart A, as required in § 63.481(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part, or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the information requested in paragraph (e)(3)(iv)(A) or (e)(3)(iv)(B) of this section must be submitted in the Precompliance Report.

(A) The owner or operator must submit notification of the intent to use the provisions specified in paragraph (h) of this section; or

(B) The owner or operator must submit a request for approval to use alternative continuous monitoring and recordkeeping provisions as specified in paragraph (g) of this section.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart. Alternative controls must be deemed by the Administrator to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g) of subpart A.

(4) *Emissions Averaging Plan.* For all existing affected sources using emissions averaging, an Emissions Averaging Plan shall be submitted for approval according to the schedule and procedures described in paragraph (e)(4)(i) of this section. The Emissions Averaging Plan shall contain the information specified in paragraph (e)(4)(ii) of this section, unless the information required in paragraph (e)(4)(ii) of this section is submitted with an operating permit application. An owner or operator of an affected source who submits an operating permit application instead of an Emissions Averaging Plan shall submit the information specified in paragraph (e)(8) of this section. In addition, a supplement to the Emissions Averaging Plan, as required under paragraph (e)(4)(iii) of this section, is to be submitted whenever alternative controls or operating scenarios may be used to comply with this subpart. Updates to the Emissions Averaging Plan shall be submitted in accordance with paragraph (e)(4)(iv) of this section.

(i) *Submittal and approval.* The Emissions Averaging Plan shall be submitted no later than 18 months prior to the compliance date, and is subject to Administrator approval. The Administrator shall determine within 120 operating days whether the Emissions Averaging Plan submitted presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 operating days.

(ii) *Information required.* The Emissions Averaging Plan shall contain the information listed in paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(M) of this section for all emission points included in an emissions average.

(A) The required information shall include the identification of all emission points and process back-end operations in the planned emissions average and, where applicable, notation of whether each storage vessel, continuous front-end process vent, batch front-end process vent, aggregate batch vents stream, and process wastewater stream is a Group 1 or Group 2 emission point, as defined in § 63.482 or as designated under § 63.503(c)(2).

(B) The required information shall include the projected emission debits and credits for each emission point and the sum for the emission points involved in the average calculated according to § 63.503. The projected credits must be greater than or equal to the projected debits, as required under § 63.503(e)(3).

(C) The required information shall include the specific control technology or pollution prevention measure that will be used for each emission point included in the average and date of application or expected date of application.

(D) The required information shall include the specific identification of each emission point affected by a pollution prevention measure. To be considered a pollution prevention measure, the criteria in § 63.503(j)(1) must be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator must identify each of these emission points.

(E) The required information shall include a statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in § 63.503(m), (n), and (o) that are applicable to each emission point in the emissions average will be implemented beginning on or before the date of compliance.

(F) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(F)(*1*) through (e)(4)(ii)(F)(*5*) of this section for each storage vessel and continuous front-end process vent included in the average.

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2. Where a TRE index value is used for continuous front-end process vent group determination, the estimated or measured values of the parameters used in the TRE equation in § 63.115(d) of subpart G and the resulting TRE index value shall be submitted.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported in an update to the Emissions Averaging Plan, as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

(*3*) The required documentation shall include the estimated percent reduction if a control technology achieving a lower percent reduction than the efficiency of the applicable reference control technology or standard is or will be applied to the emission point.

(*4*) The required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.503(i) shall be followed to apply for a nominal efficiency.

(*5*) The required documentation shall include the information specified in § 63.120(d)(2)(i) and in either

§ 63.120(d)(2)(ii) or (d)(2)(iii) of subpart G for each storage vessel controlled with a closed-vent system using a control device other than a flare.

(G) The information specified in paragraph (f) of this section shall be included in the Emissions Averaging Plan for:

(*1*) Each continuous front-end process vent controlled by a pollution prevention measure or control technique for which monitoring parameters or inspection procedures are not specified in § 63.114 of subpart G, and

(*2*) Each storage vessel controlled by pollution prevention or a control technique other than an internal or external floating roof or a closed vent system with a control device.

(H) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(H)(*1*) through (e)(4)(ii)(H)(*4*) of this section for each process wastewater stream included in the average.

(*1*) The required documentation shall include the data used to determine whether the wastewater stream is a Group 1 or Group 2 wastewater stream and the information specified in table 14b of subpart G of this part for wastewater streams at new and existing sources.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.503(g)(5) and (h)(5). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

(*3*) The required documentation shall include the estimated percent reduction if:

(*i*) A control technology that achieves an emission reduction less than or equal to the emission reduction that would otherwise have been achieved by a steam stripper designed to the specifications found in § 63.138(g) of subpart G is or will be applied to the wastewater stream, or external floating roof or a closed vent system with a control device.

(*ii*) A control technology achieving less than or equal to 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes, or

(*iii*) A pollution prevention measure is or will be applied.

(*4*) The required documentation shall include the anticipated nominal efficiency if the owner or operator plans to apply for a nominal efficiency under § 63.503(i). A nominal efficiency shall be applied for if:

(*i*) A control technology that achieves an emission reduction greater than the emission reduction that would have been achieved by a steam stripper designed to the specifications found in § 63.138(g) of subpart G, is or will be applied to the wastewater stream; or

(*ii*) A control technology achieving greater than 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes.

(I) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.143 of subpart G, the information specified in paragraph (f) of this section (Alternative Monitoring Parameters) shall be included in the Emissions Averaging Plan.

(J) The required information shall include documentation of the data required by estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503 (g) and (h) for each process back-end operation included in an emissions average. These values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

(K) The required information shall include documentation of the information required by § 63.503(k). The documentation must demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(L) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(L)(*1*) through (e)(4)(ii)(L)(*3*) of this section for each batch front-end process vent and aggregate batch vent stream included in the average.

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2.

(*2*) The required information shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) For batch front-end process vents, the required documentation shall include the estimated percent reduction for the batch cycle. For aggregate batch vent streams, the required documentation shall include the estimated percent reduction achieved on a continuous basis.

(M) For each pollution prevention measure or control device used to reduce air emissions of organic HAP from batch front-end process vents or batch vent streams and for which no monitoring parameters or inspection procedures are specified in § 63.489, the information specified in paragraph (f) of this section, Alternative Monitoring Parameters, shall be included in the Emissions Averaging Plan.

(iii) *Supplement to Emissions Averaging Plan.* The owner or operator required to prepare an Emissions Averaging Plan under paragraph (e)(4) of this section shall also prepare a supplement to the Emissions Averaging Plan for any alternative controls or operating scenarios that may be used to achieve compliance.

(iv) *Updates to Emissions Averaging Plan.* The owner or operator of an affected source required to submit an Emissions Averaging Plan under paragraph (e)(4) of this section shall also submit written updates of the Emissions Averaging Plan to the Administrator for approval under the circumstances described in paragraphs (e)(4)(iv)(A) and (e)(4)(iv)(B) of this section unless the relevant information has been included and submitted in an operating permit application or amendment.

(A) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 operating days prior to making the change.

(*1*) An Emissions Averaging Plan update shall be submitted whenever an owner or operator elects to achieve compliance with the emissions averaging provisions in § 63.503 by using a control technique other than that specified in the Emissions Averaging Plan, or plans to monitor a different parameter or operate a control device in a manner other than that specified in the Emissions Averaging Plan.

(*2*) An Emissions Averaging Plan update shall be submitted whenever an emission point or an EPPU is added to an existing affected source and is

planned to be included in an emissions average, or whenever an emission point not included in the emissions average described in the Emissions Averaging Plan is to be added to an emissions average. The information in paragraph (e)(4) of this section shall be updated to include the additional emission point.

(B) The owner or operator who has made a change as defined in paragraph (e)(4)(iv)(B)(*1*) or (e)(4)(iv)(B)(*2*) of this section shall submit an Emissions Averaging Plan update within 90 operating days after the information regarding the change is known to the affected source. The update may be submitted in the next quarterly periodic report if the change is made after the date the Notification of Compliance Status is due.

(*1*) An Emissions Averaging Plan update shall be submitted whenever a process change is made such that the group status of any emission point in an emissions average changes.

(*2*) An Emissions Averaging Plan update shall be submitted whenever a value of a parameter in the emission credit or debit equations in § 63.503(g) or (h) changes such that it is below the minimum or above the maximum established level specified in the Emissions Averaging Plan and causes a decrease in the projected credits or an increase in the projected debits.

(C) The Administrator shall approve or request changes to the Emissions Averaging Plan update within 120 operating days of receipt of sufficient information regarding the change for emission points included in emissions averages.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted within 150 operating days after the compliance dates specified in § 63.481. The notification shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(vii) of this section.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under § 63.122 of subpart G for storage vessels, § 63.117 of subpart G for continuous front-end process vents, § 63.492 for batch front-end process vents, § 63.499 for back-end process operations, § 63.146 of subpart G for process wastewater, and § 63.503 for emission points included in an emissions average. In addition, each owner or operator shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, and group determinations, and process section applicability determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other required information shall be submitted, but a complete test report is not required.

(B) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.120(d)(3) of subpart G for storage vessels, § 63.485(k) for continuous front-end process vents, § 63.489 for batch front-end process vents and aggregate batch vent streams, § 63.497 for back-end process operations, § 63.143(f) of subpart G for process wastewater, § 63.503(m) for emission points in emissions averages, paragraph (e)(8) of this section, or paragraph (f) of this section, the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(E) of this section, unless this information has been established and provided in the operating permit.

(A) The required information shall include the specific maximum or minimum level of the monitored parameter(s) for each emission point.

(B) The required information shall include the rationale for the specific maximum or minimum level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control device.

(C) The required information shall include a definition of the affected source's operating day, as specified in paragraph (d)(3)(ii) of this section, for purposes of determining daily average values of monitored parameters.

(D) For batch front-end process vents, the required information shall include a definition of each batch cycle that requires the control of one or more batch emission episodes during the cycle, as specified in § 63.490(c)(2) and 63.505(b)(3)(ii).

(E) The required information shall include a definition of the affected source's operating month for the purposes of determining monthly average values of residual organic HAP.

(iii) For emission points included in an emissions average, the values of all parameters needed for input to the emission credit and debit equations in § 63.503 (g) and (h), calculated or measured according to the procedures in § 63.503 (g) and (h), and the resulting calculation of credits and debits for the first quarter of the year. The first quarter begins on the compliance date specified.

(iv) For batch front-end process vents required to establish a batch cycle limitation under § 63.490(f), the owner or operator must define the 12-month period over which that source's "year" will be said to occur, as required by the definition of "year" in § 63.482.

(v) The determination of applicability for flexible operation units as specified in § 63.480(f)(6).

(vi) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.480(f)(7).

(vii) The results for each predominant use determination for storage vessels belonging to an affected source subject to this subpart that is made under § 63.480(g)(6).

(viii) The results for each predominant use determination for recovery operation equipment belonging to an affected source subject to this subpart that is made under § 63.480(h)(6).

(ix) For owners and operators of Group 2 batch front-end process vents establishing a batch cycle limitation, as specified in § 63.490(f), the affected source's operating year for purposes of determining compliance with the batch cycle limitation.

(6) *Periodic Reports.* For existing and new affected sources, each owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (e)(6)(xi) of this section.

(i) Except as specified in paragraphs (e)(6)(x) and (e)(6)(xi) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or paragraphs (e)(6)(iii) through (e)(6)(ix) of this section, as appropriate, shall be

submitted semiannually no later than 60 operating days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due. Subsequent reports shall cover each preceding 6-month period.

(ii) If none of the compliance exceptions in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that the affected source was in compliance for the preceding 6-month period and that none of the activities specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred.

(iii) For an owner or operator of an affected source complying with the provisions of §§ 63.484 through 63.501 for any emission point, Periodic Reports shall include:

(A) All information specified in § 63.122(a)(4) of subpart G for storage vessels, §§ 63.117(a)(3) and 63.118(f) of subpart G for continuous front-end process vents, § 63.492 for batch front-end process vents and aggregate batch vent streams, § 63.499 for back-end process operations, § 63.104(b)(4) of subpart F for heat exchange systems, and § 63.146(c) through § 63.146(f) of subpart G for process wastewater.

(B) The daily average values or batch cycle daily average values of monitored parameters for all excursions, as defined in § 63.505(g) and § 63.505(h).

(C) The periods when monitoring data were not collected shall be specified; and

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*3*) of this section, as applicable:

(*1*) Any supplements to the Emissions Averaging Plan, as required in paragraph (e)(4)(iii) of this section;

(*2*) Notification if a process change is made such that the group status of any emission point changes. The information submitted shall include a compliance schedule, as specified in paragraphs (e)(6)(iii)(D)(*2*)(*i*) and (e)(6)(iii)(D)(*2*)(*ii*) of this section, for emission points that change from Group 2 to Group 1, or for continuous front-end process vents under the conditions listed in § 63.485(l)(1) through § 63.485(l)(4), or for batch front-end process vents under the conditions listed in § 63.492 (b) or (c).

(*i*) The owner of operator shall submit to the Administrator for approval a compliance schedule and a justification for the schedule.

(*ii*) The Administrator shall approve the compliance schedule or request changes within 120 operating days of receipt of the compliance schedule and justification.

(*3*) Notification if one or more emission points or one or more EPPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*iii*) of this section.

(*i*) A description of the addition to the affected source;

(*ii*) Notification of the group status of the additional emission point or all emission points in the EPPU;

(*iii*) A compliance schedule, as required under paragraph (e)(6)(iii)(D)(*2*) of this section.

(*4*) Notification if a standard operating procedure, as defined in § 63.500(l), is changed. This shall also include test results of the carbon disulfide concentration resulting from the new standard operating procedure.

(E) The information in paragraph (b)(1)(ii) of this section for reports of startup, shutdown, and malfunction.

(iv) For each batch front-end process vent with a batch cycle limitation, the owner or operator shall include the number of batch cycles accomplished during the preceding 12-month period once per year in a Periodic Report.

(v) If any performance tests are reported in a Periodic Report, the following information shall be included:

(A) One complete test report shall be submitted for each test method used for a particular kind of emission point tested. A complete test report shall contain the information specified in paragraph (e)(5)(i)(B) of this section.

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information required shall be submitted, but a complete test report is not required.

(vi) The results for each change made to a primary product determination for an elastomer product made under § 63.480(f)(6).

(vii) The results for each change made to a predominant use determination for a storage vessel belonging to an affected source subject to this subpart that is made under § 63.480(g)(6).

(viii) The results for each change made to a predominant use determination for recovery operation equipment belonging to an affected source subject to this subpart that is made under § 63.480(h)(6).

(ix) The Periodic Report required by § 63.502(i) shall be submitted as part of the Periodic Report required by paragraph (e)(6) of this section.

(x) The owner or operator of an affected source shall submit quarterly reports for all emission points included in an emissions average.

(A) The quarterly reports shall be submitted no later than 60 operating days after the end of each quarter. The first report shall be submitted with the Notification of Compliance Status no later than 150 days after the compliance date.

(B) The quarterly reports shall include the information specified in paragraphs (e)(6)(x)(B)(*1*) through (e)(6)(x)(B)(*7*) of this section for all emission points included in an emissions average.

(*1*) The credits and debits calculated each month during the quarter;

(*2*) A demonstration that debits calculated for the quarter are not more than 1.30 times the credits calculated for the quarter, as required under § 63.503(e)(4);

(*3*) The values of any inputs to the debit and credit equations in § 63.503(g) and (h) that change from month to month during the quarter or that have changed since the previous quarter;

(*4*) Results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point as described in paragraph (e)(6)(v) of this section;

(*5*) Reports of daily average values or batch cycle daily averages of monitored parameters for excursions as defined in § 63.505(g) or (h);

(*6*) For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified; and

(*7*) Any other information the affected source is required to report under the operating permit or Emissions Averaging Plan for the affected source.

(C) § 63.505 shall govern the use of monitoring data to determine compliance for Group 1 and Group 2 emission points included in emissions averages.

(D) Every fourth quarterly report shall include the following:

(*1*) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.503(e)(3); and

(*2*) A certification of compliance with all the emissions averaging provisions in § 63.503.

(xi) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections not included in an emissions average as specified in paragraphs (e)(6)(xi)(A) through (e)(6)(xi)(E) of this section.

(A) If requested by the Administrator, the owner or operator of an affected

source shall submit quarterly reports for a period of 1 year for an emission point or process section that is not included in an emissions average if either the conditions in paragraph (e)(6)(xi)(A)(*1*) or (e)(6)(xi)(A)(*2*) of this section are met.

(*1*) An emission point has any excursions, as defined in § 63.505(g) or § 63.505(h) for a semiannual reporting period.

(*2*) The process section is out of compliance with its applicable standard.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) and (e)(6)(ix) of this section, as applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(ix)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 operating days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year, the owner or operator may return to semiannual reporting for the emission point or process section unless the Administrator requests the owner or operator to continue to submit quarterly reports.

(E) § 63.505 shall govern the use of monitoring data to determine compliance for Group 1 emission points.

(7) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) and (e)(7)(ii) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.484 shall be submitted, as specified in § 63.122(h)(1) and (h)(2) of subpart G.

(ii) For owners or operators of affected sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.503(i) shall be submitted.

(iii) For back-end process operations complying using control or recovery devices, the recompliance determination report required by § 63.499(d) shall be submitted within 180 days after the process change.

(8) *Operating Permit.* An owner or operator who submits an operating permit application instead of an Emissions Averaging Plan or a Precompliance Report shall submit the following information with the operating permit application:

(i) The information specified in paragraph (e)(4) of this section for points included in an emissions average; and

(ii) The information specified in paragraph (e)(3) of this section, Precompliance Report, as applicable.

(f) *Alternative monitoring parameters.* The owner or operator who has been directed by any section of this subpart to set unique monitoring parameters, or who requests approval to monitor a different parameter than those listed in § 63.484 for storage vessels, § 63.114 of subpart G for continuous front-end process vents, § 63.489 for batch front-end process vents and aggregate batch vent streams, § 63.497 for back-end process operations, or § 63.143 of subpart G for process wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

(1) The required information shall include a description of the parameter(s) to be monitored to ensure the recovery device, control device, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) The required information shall include a description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation, the schedule for this demonstration, and a statement that the owner or operator will establish a level for the monitored parameter as part of the Notification of Compliance Status report required in paragraph (e)(5) of this section, unless this information has already been included in the operating permit application.

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and recording system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section are met:

(i) If monitoring and recordkeeping is not continuous, or

(ii) If reports of daily average values will not be included in Periodic Reports when the monitored parameter value is above the maximum level or below the minimum level as established in the operating permit or the Notification of Compliance Status.

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the continuous parameter operating and recordkeeping provisions listed in § 63.485 for continuous front-end process vents, § 63.486 for batch front-end process vents and aggregate batch vent streams, § 63.493 for back-end process operations, and § 63.501 for wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3)(iv) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in § 63.8(f)(5)(i) of subpart A shall govern the review and approval of requests.

(2) An owner or operator of an affected source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and that does not generate continuous records may request approval to use a nonautomated system with less frequent monitoring, in accordance with paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average or batch cycle daily average values shall be calculated from these hourly values and recorded.

(ii) The request shall contain:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected source does not have an automated monitoring and recording system;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control device operating conditions, considering typical variability of the specific process and control device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes), but that records all values that meet set criteria for variation from previously

recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) The requested system shall be designed to:

(A) Measure the operating parameter value at least once every 15 minutes;

(B) Except for the monitoring of batch front-end process vents, record at least four values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident;

(E) Calculate daily average or batch cycle daily average values of the monitored operating parameter based on all measured data; and

(F) If the daily average is not an excursion, as defined in § 63.505 (g) or (h), the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain:

(A) A description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained;

(B) The method for calculating daily averages and batch cycle daily averages; and

(C) A demonstration that the system meets all criteria in paragraph (g)(3)(i) of this section.

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f)(4) of subpart A.

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (h)(1) or (h)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in § 63.484 for storage vessels, § 63.485 for continuous front-end process vents, § 63.486 for batch front-end process vents and aggregate batch vent streams, § 63.493 for back-end processes, and § 63.501 for wastewater. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section.

(1) The owner or operator may retain only the daily average or the batch cycle daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(iv) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than startups, shutdowns or malfunctions (e.g., a temperature reading of −200°C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) through (h)(1)(ii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six one-hour periods; and

(C) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than startups, shutdowns or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (h)(1) of this section, at the times specified in paragraphs (h)(1)(v)(A) through (h)(1)(v)(C) of this section. The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(C) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (h) of this section.

(B) A description of the applicable monitoring system(s), and how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (h)(1) of this section.

(2) If an owner or operator has elected to implement the requirements of paragraph (h)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator is no longer required to record the daily average or batch cycle daily average value, for any operating day when the daily average or batch cycle daily average value is less than the maximum, or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average or batch cycle

daily average values, the owner or operator shall notify the Administrator in the next Periodic Report. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily average or batch cycle daily average values as provided in paragraph (h)(2) of this section, there is an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average or batch cycle daily average value for each operating day and shall notify the Administrator in the next Periodic Report. The owner or operator shall continue to retain each daily average or batch cycle daily average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i), (h)(1)(ii), and (h)(1)(iv) of this section, for the duration specified in paragraph (h) of this section. For any calendar month, if compliance with paragraphs (h)(1)(i) through (h)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(iv) For the purposes of paragraph (h) of this section, an excursion means that the daily average or batch cycle daily average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section.

(A) The daily average or batch cycle daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the startup, shutdown, and malfunction plan required by § 63.6(e)(3) of subpart A.

(B) An excused excursion, as described in § 63.505(i), shall not be considered an excursion for the purposes of paragraph (h)(2) of this section.

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Comment
63.1(a)(1)	Yes	§ 63.482 of Subpart U specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)–63.1(a)(3)	Yes	
63.1(a)(4)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
63.1(a)(5)	No	Reserved.
63.1(a)(6)–63.1(a)(8)	Yes	
63.1(a)(9)	No	Reserved.
63.1(a)(10)	No	Subpart U and other cross-referenced subparts specify calendar or operating day.
63.1(a)(11)	Yes	
63.1(a)(12)–63.1(a)(14)	Yes	
63.1(b)(1)	Yes	§ 63.480(a) contains specific applicability criteria.
63.1(b)(2)	Yes	
63.1(b)(3)	No	§ 63.480(b) of subpart U provides documentation requirements for EPPUs not considered affected sources.
63.1(c)(1)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
63.1(c)(2)	No	Area sources are not subject to subpart U.
63.1(c)(3)	No	Reserved.
63.1(c)(4)	Yes	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications overridden by this table.
63.1(d)	No	Reserved.
63.1(e)	Yes	
63.2	Yes	§ 63.482 of subpart U specifies those subpart A definitions that apply to subpart U.
63.3	Yes	
63.4(a)(1)–63.4(a)(3)	Yes	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes	
63.4(b)	Yes	
63.4(c)	Yes	
63.5(a)	Yes	
63.5(b)(1)	Yes	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes	
63.5(b)(4)	Yes	
63.5(b)(5)	Yes	
63.5(b)(6)	No	§ 63.480(i) of subpart U specifies requirements.
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes	
63.5(d)(1)(ii)	Yes	Except that for affected sources subject to subpart U, emission estimates specified in § 63.5(d)(1)(ii)(H) are not required.
63.5(d)(1)(iii)	No	§ 63.506(e)(5) of subpart U specifies Notification of Compliance Status requirements.
63.5(d)(2)	xlNo.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply.
63.5(d)(4)	Yes	
63.5(e)	Yes	
63.5(f)(1)	Yes	
63.5(f)(2)	Yes	Except that where § 63.5(d)(1) is referred to, § 63.5(d)(1)(i) does not apply.
63.6(a)	Yes	
63.6(b)(1)	Yes	

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Comment
63.6(b)(2)	Yes	
63.6(b)(3)	Yes	
63.6(b)(4)	Yes	
63.6(b)(5)	Yes	
63.6(b)(6)	No	Reserved.
63.6(b)(7)	Yes	
63.6(c)(1)	Yes	§ 63.481 of subpart U specifies the compliance date.
63.6(c)(2)	Yes	
63.6(c)(3)	No	Reserved.
63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes	
63.6(d)	No	Reserved.
63.6(e)	Yes	Except the plan, and any records or reports of startup, shutdown and malfunction do not apply to Group 2 emission points, unless they are included in an emissions average.
63.6(f)(1)	Yes	
63.6(f)(2)	Yes	Except that in § 63.6(f)(2)(iii)(D), paragraph 63.7(c) does not apply.
63.6(f)(3)	Yes	Except that § 63.6(f)(2)(iii)(D) is not applicable.
63.6(g)	Yes	
63.6(h)	No	Subpart U does not require opacity and visible emission standards.
63.6(i)	Yes	Except for § 63.6(i)(15), which is reserved, and except that the requests for extension shall be submitted no later than the date on which the Precompliance Report is required to be submitted in § 63.506(e)(3)(i).
63.6(j)	Yes	
63.7(a)(1)	Yes	
63.7(a)(2)	No	§ 63.506(e)(5) of subpart U specifies submittal dates.
63.7(a)(3)	Yes	
63.7(b)	No	§ 63.504(a)(4) of subpart U specifies notification requirements.
63.7(c)	No	Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g).
63.7(d)	Yes	
63.7(e)	Yes	Except that performance tests must be conducted at maximum representative operating conditions. In addition, some of the testing requirements specified in subpart U are not consistent with § 63.7(e)(3).
63.7(f)	No	Subpart U specifies applicable test methods and provides alternatives.
63.7(g)	Yes	Except that references to the Notification of Compliance Status report in 63.9(h) of subpart A are replaced with the requirements in § 63.506(e)(5) of subpart U.
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(3) are not required.
63.8(a)(1)	Yes	
63.8(a)(2)	No	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes	
63.8(b)(1)	Yes	
63.8(b)(2)	No	Subpart U specifies locations to conduct monitoring.
63.8(b)(3)		
63.8(c)(1)(i)	Yes	
63.8(c)(1)(ii)	No	
63.8(c)(1)(iii)	Yes	
63.8(c)(2)	Yes	
63.8(c)(3)	Yes	
63.8(c)(4)	No	§ 63.505 of subpart U specifies monitoring frequency.
63.8(c)(5)–63.8(c)(8)	No	
63.8(d)	No	
63.8(e)	No	
63.8(f)(1)–63.8(f)(3)	Yes	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.506(f) of subpart U.
63.8(f)(4)(ii)	No	
63.8(f)(4)(iii)	No	
63.8(f)(5)(i)	Yes	
63.8(f)(5)(ii)	No	
63.8(f)(5)(iii)	Yes	
63.8(f)(6)	No	Subpart U does not require CEM's.
63.8(g)	No	Data reduction procedures specified in § 63.506(d) of subpart U.
63.9(a)	Yes	
63.9(b)	No	Subpart U does not require an initial notification.
63.9(c)	Yes	
63.9(d)	Yes	
63.9(e)	No	
63.9(f)	No	Subpart U does not require opacity and visible emission standards.
63.9(g)	No	
63.9(h)	No	§ 63.506(e)(5) of subpart U specifies Notification of Compliance Status requirements.

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Comment
63.9(i)	Yes	
63.9(j)	No	
63.10(a)	Yes	
63.10(b)(1)	Yes	
63.10(b)(2)	Yes	
63.10(b)(3)	No	§63.480(b) of subpart U requires documentation of sources that are not affected sources.
63.10(c)	No	§63.506 of subpart U specifies recordkeeping requirements.
63.10(d)(1)	Yes	
63.10(d)(2)	No	
63.10(d)(3)	No	Subpart U does not require opacity and visible emission standards.
63.10(d)(4)	Yes	
63.10(d)(5)	Yes	Except that reports required by §63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in §63.506(e)(6) of subpart U. The startup, shutdown, and malfunction plan, and any records or reports of startup, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
63.10(e)	No	
63.10(f)	Yes	
63.10(d)(4)	Yes	
63.11	Yes	
63.12	Yes	
63.13	Yes	
63.14	Yes	
63.15	Yes	

TABLE 2. APPLICABILITY OF SUBPARTS F, G, & H TO SUBPART U AFFECTED SOURCES

Reference	Applies To subpart U	Comment	Applicable section of subpart U
Subpart F			
63.100	No		
63.101	Yes	Several definitions from 63.101 are incorporated by reference into 63.482	63.482
63.102–63.109	No		
Subpart G			
63.110	No		
63.111	Yes	Several definitions from 63.111 are incorporated by reference into 63.482	63.482
63.112	No		
63.113–63.118	Yes	With the differences noted in 63.485(b) through 63.485(k)	63.485
63.119–63.123	Yes	With the differences noted in 63.484(c) through 63.484(q)	63.484
63.124–63.125	No	Reserved	
63.126–63.130	No		
63.131–63.147	Yes	With the differences noted in 63.501(a)(1) through 63.501(a)(8)	63.501
63.148	Yes	With the differences noted in 63.484(c) through 63.484(q) and 63.501(a)(1) through 63.501(a)(8).	63.484 and 63.501
63.149	No	Reserved	
63.150(a) through 63.150(f).	No		
63.150(g)(1) and 63.150(g)(2).	No		
63.150(g)(3)	Yes		63.503(g)(3)
63.150(g)(4)	No		
63.150(g)(5)	Yes		63.503(g)(5)
63.150(h)(1) and 63.150(h)(2).	No		
63.150(h)(3)	Yes		63.503(h)(3)
63.150(h)(4)	No		
63.150(h)(5)	Yes		63.503(h)(5)
63.150(i) through 63.150(o).	No		
63.151–63.152	No		
Subpart H			
63.160–63.193	Yes	Subpart U affected sources must comply with all requirements of subpart H	63.502

TABLE 3.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor pressure[a] (kilopascals)
75 ≤ capacity < 151	≥13.1
151 ≤ capacity	≥5.2

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 4.—GROUP 1 STORAGE VESSELS AT NEW SOURCES

Vessel capacity (cubic meters)	Vapor Pressure[a] (kilopascals)
38 ≤ capacity < 151	≥ 13.1
151 ≤ capacity	≥ 0.7

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 5.—KNOWN ORGANIC HAP FROM ELASTOMER PRODUCTS

Organic HAP/chemical name (CAS No.)	Elastomer Product/Subcategory											
	BR	EPI	EPR	HBR	HYP	NEO	NBL	NBR	PBR/SBRS	PSR	SBL	SBRE
Acrylonitrile (107131)							✔	✔				
1,3 Butadiene (106990)							✔	✔	✔		✔	✔
Carbon Tetrachloride (56235)					✔							
Chlorobenzene (108907)					✔							
Chloroform (67663)					✔							
Chloroprene (126998)						✔						
Epichlorohydrin (106898)		✔										
Ethylbenzene (100414)	✔										✔	
Ethylene Dichloride (75343)												
Ethylene Oxide (75218)		✔								✔		
Formaldehyde (50000)										✔		
Hexane (100543)	✔		✔						✔		✔	✔
Methanol (67561)	✔								✔			
Methyl Chloride (74873)	✔				✔							
Propylene Oxide (75569)		✔										
Styrene (100425)									✔		✔	✔
Toluene (108883)		✔	✔			✔			✔		✔	✔
Xylenes (1330207)	✔										✔	

AAAACAS No. = Chemical Abstract Service Number.
BR = Butyl Rubber.
EPI = Epichlorohydrin Rubber.
EPR = Ethylene Propylene Rubber.
HBR = Halobutyl Rubber.
HYP = Hypalon™.
NEO = Neoprene.
NBL = Nitrile Butadiene Latex.
NBR = Nitrile Butadiene Rubber.
PBR/SBRS = Polybutadiene and Styrene Butadiene Rubber by Solution.
PSR = Polysulfide Rubber.
SBL = Styrene Butadiene Latex.
SBR = Styrene Butadiene Rubber by Emulsion or Solution.
[a] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R-(OCH_2CH_2)_n-OR'$ where:
n=1,2, or 3;
R=alkyl or aryl groups; and
R'=R, H, or groups which, when removed, yield glycol ethers with the structure:
$R-(OCH_2CH_2)_n-OH$

TABLE 6.—GROUP 1 BATCH FRONT-END PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature[a]	1. Continuous records as specified in §63.491(e)(1)[b]. 2. Record and report the average firebox temperature measured during the performance test—NCS.[c]

TABLE 6.—GROUP 1 BATCH FRONT-END PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		3. Record the batch cycle daily average firebox temperature as specified in § 63.491(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.491(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream temperature established in the NCS or operating permit—PR.[d,e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d,e] 6. Report all instances when monitoring data are not collected.[e]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch front-end process vents or aggregate batch vent streams are *not* introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.491(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]
Flare	Presence of a flame at the pilot light	1. Hourly records of whether the monitor was continuously operating during batch emission episodes selected for control and whether the pilot flame was continuously present during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes when a pilot flame is absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes selected for control when all pilot flames of a flare are absent—PR.[d]

TABLE 6.—GROUP 1 BATCH FRONT-END PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Scrubber for halogenated batch front-end process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent, and	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in §63.491(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating pH established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
	Scrubber liquid flow rate	1: Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the scrubber liquid flow rate measured during the performance test—NCS.[c] 3. Record the batch cycle daily average scrubber liquid flow rate as specified in §63.491(e)(2). 4. Report all batch cycle daily average scrubber liquid flow rates that are below the minimum flow rate established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
Absorber[s]	Exit temperature of the absorbing liquid, and	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in §63.491(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Absorber[f]	Exit specific gravity for the absorbing liquid	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS. 3. Record the batch cycle daily average exit specific gravity as specified in §63.491(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit temperature measured during the performance test—NCS. 3. Record the batch cycle daily average exit temperature as specified in §63.491(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]

TABLE 6.—GROUP 1 BATCH FRONT-END PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Carbon Adsorber[f]	Total regeneration stream mass flow during carbon bed regeneration cycle(s), and.	1. Record of total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is above the maximum mass flow rate established in the NCS or operating permit—PR.[d,e]
Carbon Adsorber[a]	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum temperature established in the NCS or operating permit—PR.[d,e]
All Control Devices	Presence of flow diverted to the atmosphere from the control device *or*.	1. Hourly records of whether the flow indicator was operating during batch emission episodes selected for control and whether flow was detected at any time during the hour, as specified in § 63.491(e)(3). 2. Record and report the times and durations of all periods during batch emission episodes selected for control when emissions are diverted through a bypass line or the flow indicator is not operating—PD.[d]
All Control Devices	Monthly inspections of sealed valves	1. Records that monthly inspections were performed as specified in § 63.491(e)(4)(i). 2. Record and report all monthly inspections that show the valves are not closed or the seal has been changed—PR.[d]
Absorber, Condenser, and Carbon Adsorber (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average concentration level or reading measured during the performance test—NCS. 3. Record the batch cycle daily average concentration level or reading as specified in § 63.491(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum concentration or reading established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111 of subpart G.
[c] NCS = Notification of Compliance Status described in § 63.506(e)(5).
[d] PR = Periodic Reports described in § 63.506(e)(6) of this subpart.
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.506(e)(6)(iii)(C) of this subpart.
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 7.—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS

Control/Recovery device	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.

TABLE 7.—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—Continued

Control/Recovery device	Parameters to be monitored	Established operating parameter(s)
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Scrubber for halogenated vents	Ph of scrubber effluent; and scrubber liquid flow rate.	Minimum pH; and minimum flow rate.
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Minimum temperature; and minimum specific gravity.
Condenser	Exit temperature	Maximum temperature.
Carbon absorber	Total regeneration stream mass flow during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum mass flow; and maximum temperature.
Other devices (or as an alternate to the above)[a].	HAP concentration level or reading at outlet of device.	Maximum HAP concentration or reading.

[a] Concentration is measured instead of an operating parameter.

TABLE 8.—SUMMARY OF COMPLIANCE ALTERNATIVE REQUIREMENTS FOR THE BACK-END PROCESS PROVISIONS

Compliance alternative	Parameter to be monitored	Requirements
Compliance Using Stripping Technology, Demonstrated through Periodic Sampling [§ 63.495(b)].	Residual organic HAP content in each sample of crumb or latex.	(1) If batch stripping is used, at least one representative sample is to be taken from every batch. (2) If continuous stripping is used, at least one representative sample is to be taken each operating day.
	Quantity of Material (weight of latex or dry crumb rubber) represented by each sample.	(1) Acceptable methods of determining this quantity are production records, measurement of stream characteristics, and engineering calculations.
Compliance Using Stripping Technology, Demonstrated through Stripper Parameter Monitoring [§ 63.495(c)].	At a minimum, temperature, pressure, steaming rates (for steam strippers), and some parameter that is indicative of residence time..	(1) Establish stripper operating parameter levels for each grade in accordance with § 63.505(e). (2) Continuously monitor stripper operating parameters. (3) If hourly average parameters are outside of the established operating parameter levels, a crumb or latex sample shall be taken in accordance with § 63.495(c)(3)(ii).
Determining Compliance Using Control or Recovery Devices [§ 63.496].	Parameters to be monitored are described in Table 3 of subpart G..	Comply with requirements listed in Table 3 of subpart G, except for the requirements for halogenated vent stream scrubbers.

[FR Doc. 96–21941 Filed 9–4–96; 8:45 am]
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Part III

Department of Labor

Employment and Training Administration
20 CFR Part 655
Wage and Hour Division
29 CFR Part 506

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB03

Wage and Hour Division

29 CFR Part 506

RIN 1215–AA90

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCIES: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations to implement amendments to existing regulations governing the filing and enforcement of attestations by employers seeking to use alien crewmembers to perform longshore work in the U.S. The amendments relate to employers' use of alien crewmembers to perform longshore work at locations in the State of Alaska. Under the Immigration and Nationality Act, employers, in certain circumstances, are required to submit attestations to DOL in order to be allowed by the Immigration and Naturalization Service (INS) to use alien crewmembers to perform specified longshore activities at locations in the State of Alaska. The attestation process is administered by ETA, while complaints and investigations regarding the attestations are handled by ESA.

DATES: *Effective Date:* The final rule promulgated in this document is effective on October 7, 1996.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact Flora T. Richardson, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact R. Thomas Shierling, Immigration Team, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 501–3884 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements of the Form ETA 9033–A under the Alaska exception and contained in this rule have been submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205–0352. The information collection requirements of the Form ETA 9033 under the prevailing practice exception, assigned OMB Control No. 1205–0309, remain unchanged by this rulemaking. The Form ETA 9033–A was published in the **Federal Register** with the interim final rule to implement the Alaska exception on January 19, 1995 (60 FR 3950). The Form ETA 9033 was published in the **Federal Register** with the final rule to implement the prevailing practice exception on September 8, 1992 (57 FR 40966).

The Employment and Training Administration estimates that employers will be submitting up to 350 attestations per year under the Alaska exception. The public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the attestation. It is likely that the burden will be considerably less in the second and subsequent years in which an employer submits an attestation.

II. Background

The Coast Guard Authorization Act of 1993, Pub. L. 103–206, 107 Stat. 2419 (Coast Guard Act), was enacted on December 20, 1993. Among other things, the Coast Guard Act amended section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) which places limitations on the performance of longshore work by alien crewmembers in U.S. ports.

The loading and unloading of vessels in U.S. ports had traditionally been performed by U.S. longshore workers. However, until passage of the Immigration Act of 1990 (IMMACT '90), Pub. L. 101–649, 104 Stat. 4978, alien crewmembers had also been allowed by Immigration and Naturalization Service (INS) regulation to do this kind of work in U.S. ports because longshore work was considered to be within the scope of permitted employment for alien crewmembers. The IMMACT '90 limited this practice in order to provide greater protection to U.S. longshore workers.

Prior to the Coast Guard Act's enactment, section 258 of the INA permitted alien crewmembers admitted with D-visas to perform longshore work only in four specific instances: (a) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel; (b) where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least thirty percent of the longshore workers at a particular port and each permitting the activity to be performed by alien crewmembers; (c) where there is no collective bargaining agreement covering at least thirty percent of the longshore workers and an attestation has been filed with the Department which states that the use of alien crewmembers to perform longshore work is permitted under the prevailing practice of the port, that the use of alien crewmembers is not during a strike or lockout, that such use is not intended or designed to influence the election of a collective bargaining representative, and that notice has been provided to longshore workers at the port; and (d) where the activity is performed with the use of automated self-unloading conveyor belts or vacuum-actuated systems; *provided that*, the Secretary of Labor (Secretary) has not found that an attestation is required because it was not the prevailing practice to utilize alien crewmembers to perform the activity or because the activity was performed during a strike or lockout or in order to influence the election of a collective bargaining representative. For this purpose, the term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection and no attestations were or are necessary for the loading and unloading of such cargo.

The Department published final regulations in the **Federal Register** on September 8, 1992 (57 FR 40966), to implement the prevailing practice exception under IMMACT '90. The fishing industry and the carriers worked together to comply with the law by

filing the necessary attestations to qualify under the prevailing practice exception. The International Longshore and Warehousemen's Union responded to protect the jurisdiction of U.S. longshore workers by filing complaints pursuant to the attestations and seeking cease and desist orders to halt the performance of longshore work by the carrier's alien crewmembers.

The basic problem was that the prevailing practice exception was apparently designed for established port areas. A lack of flexibility in the remote areas of Alaska where the longshore work needed to be performed, in some cases, prevented carriers from complying with Departmental regulations. As a result, even where there were no U.S. longshore workers available for the particular employment, employers in some of these remote areas were prohibited from performing the necessary longshore work, resulting in potential adverse impacts on the Alaskan fishing industry including the loss of American jobs. In order to remedy the situation, Congress consulted with representatives of the longshoremen's unions and the carriers and enacted special provisions recognizing the unique character of Alaskan ports.

The Coast Guard Act amended the INA by establishing a new Alaska exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. The Alaska exception provides that the prohibition does not apply where the longshore work is to be performed at a particular location in the State of Alaska and an attestation with accompanying documentation has been filed by the employer with the Department of Labor. The INA provides, however, that longshore work consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel shall continue to be governed by section 258(c) of the INA (8 U.S.C. 1288(c)), even at locations in the State of Alaska. If, however, it is determined that an attestation is required for longshore work at locations in the State of Alaska consisting of the use of automated equipment, *i.e.*, because the Administrator has determined, pursuant to a complaint, that it is not the prevailing practice to use alien crewmembers to perform the longshore activity(ies) through the use of the automated equipment, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation, the required attestation shall be filed by the employer under the Alaska exception and not under the prevailing practice exception. The amended INA provides that the prevailing practice exception no longer applies in case of longshore work to be performed at a particular location in the State of Alaska. As a result, U.S. ports in the State of Alaska which were previously listed in Appendix A, "U.S. Seaports," were removed from the Appendix in the interim final rule.

The Alaska exception is intended to provide a preference for hiring United States longshoremen over the employer's alien crewmembers. The employer must attest that, before using alien crewmen to perform the activity specified in the attestation, the employer will make a bona fide request for and employ United States longshore workers who are qualified and available in sufficient numbers from contract stevedoring companies and private dock operators. The employer must also provide notice of filing the attestation to such contract stevedoring companies and private dock operators, and to labor organizations recognized as exclusive bargaining representatives of United States longshore workers. Finally, the employer must attest that the use of alien crewmembers to perform longshore work is not intended or designed to influence the election of a bargaining representative for workers in the State of Alaska.

III. Analysis of Comments on the Interim Final Rule

Comments regarding the January 19, 1995, interim final rule were received from 3 entities; a member of the general public through a U.S. Senator; a law firm; and a Federal government agency. None of the 3 comments received concerned the same issue so each will be discussed in turn.

A law firm submitted a comment on behalf of certain foreign carriers involved in longshore operations in Alaska. The firm's comment concerned the reporting and recordkeeping burden of the Department's Attestation by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska (Form ETA 9033–A).

The firm proposed that the Form ETA 9033–A be amended to allow employers to file attestations with multiple validity periods and to further amend the attestation to add a new box "(e)" to Item 8, to be entitled "Supplemental Attestation." If adopted, in the event of a change in circumstances, an existing attestation would be photocopied, box "(e)" checked, and a narrative description of the changed circumstances attached, rather than the employer having to file a new attestation.

With regard to the first suggestion, section 258(d)(4) of the INA (8 U.S.C. 1288) provides that "attestations filed under [the Alaska exception] shall expire at the end of the 1-year period beginning on the date the employer anticipates the longshore work to begin, as specified in the attestations filed with the Secretary of Labor." We believe that this statutory provision would preclude the Department from incorporating the suggested change. Further, ETA, the agency which will process such attestations, indicates that allowing multiple validity periods to apply to a single attestation would be extremely burdensome to administer. In the interim final rule, and continued here in the final rule, the regulations provided that an employer may file a single attestation for multiple locations in the State of Alaska, unlike attestations under the prevailing practice exception which are filed for a particular port. The Department believes this provision is a reasonable accommodation to employers of alien crewmembers and feels the suggested change would render this accommodation unpalatable.

The Department also opposes the second proposed change. First, it is not clear what a "change in circumstances" means. The Department believes that the example provided by the commenter, which concerned the opening of a new dock or facility in a new location, should necessitate filing of a new attestation by the employer. The fourth attestation element under the INA, provision of notice, is based upon actions taken by an employer to comply with the terms of the attestation on or before the date the attestation is filed. Therefore, if a new private dock opened in a new location, an employer should be required to submit a new attestation, attesting that notice of filing has been provided to the operator of the new private dock. The requirement that an employer provide notice of filing and request confirmation of coverage under the Longshore and Harbor Workers' Compensation Act is the only pre-filing requirement contained in the regulation, the other three attestation elements being prospective in nature. Since an employer must provide the required notice to the operator of the new private dock, whether the suggestion is adopted or not, we believe that the burden incurred by filing a new attestation, as compared to filing an amendment to an existing attestation with a narrative description of the change, is a nominal one. It should be noted that, as a matter of enforcement policy, an employer will

not be required to submit a new attestation in the event that a new private dock opened in a previously disclosed location. In that event, an employer will be considered to be in compliance as long as the required notice is provided to the operator of the new private dock and such is properly documented by the employer.

The second comment, filed by a member of the general public through the office of U.S. Senator Ted Stevens (R–AK), concerned longshore work performed by Greek and Russian vessels operating in the Aleutian Islands off Alaska under the reciprocity exception. See 8 U.S.C. 1288(e). The Department has no role in administering the reciprocity exception, which allows employers to use alien crewmembers to perform longshore activities in U.S. ports if the vessel is registered in a country which by law, regulation, or in practice does not prohibit such activity by crewmembers aboard U.S. vessels, and nationals of such a country own a majority of the ownership interest in the vessel.

The final comment received was from the Chief Counsel for Advocacy, Small Business Administration, who expressed concern that the regulations governing the Alaska exception may indeed have a significant economic impact on a substantial number of small businesses, contrary to the Department's certification under 5 U.S.C. 605(b). Further, the Chief Counsel questioned the Department's authority to publish the regulation as an interim final rule without a prior notice of proposed rulemaking.

As described above, due to a lack of flexibility in the remote areas of Alaska under the pre-existing "prevailing practice exception" to the general prohibition, representatives of the longshoremen's unions and the carriers, working in concert with the Alaskan Congressional delegation, enacted special provisions recognizing the unique character of Alaskan sea ports. The statute was a direct result of these negotiations between the affected parties. Departmental officials worked closely with all relevant parties in drafting the rule, both union and carrier representatives, including meeting on two separate occasions to discuss implementation of the statutory provisions.

Specific language in the statute prohibited employers from filing attestations for locations in the State of Alaska under the pre-existing prevailing practice exception, resulting in an adverse impact on the Alaskan fishing industry and potential loss of jobs and revenue for both U.S. workers and employers. Further, some employers may have been encouraged by economic exigencies to utilize foreign crewmembers in longshore work illegally or to reflag their vessels to qualify for the "reciprocity exception." Either of these actions by shippers would have diminished employment opportunities for Alaskan workers seeking longshore work, contrary to the purposes of the Coast Guard Act. The Department received evidence from union representatives that delay in implementing the Alaska exception would indeed have had an adverse impact on the employment opportunities of Alaskan workers seeking longshore work. Consequently, at the time, the Department, for good cause, determined that the potential harm made it impracticable and contrary to the public interest to delay implementation by publishing the rule as a proposed rule.

The Department believes the program and the regulations will in fact have a positive economic impact on small businesses such as contract stevedoring companies. These firms will benefit from an increase in their business opportunities which would not occur but for the Department's regulations to implement the Alaska exception. The purpose of the Alaska exception is to insure that, to the extent possible, U.S. contract stevedoring companies and private dock operators, some of which may be small businesses, are given a chance to compete for jobs which would otherwise go to foreign nationals. The only burden imposed by the regulations will fall upon foreign shippers who seek to employ alien workers in longshore work on foreign-flagged vessels which are registered in countries that do not afford similar work opportunities for U.S. longshoremen.

Finally, it is noted that other than the Chief Counsel's letter and despite the fact that the Department notified all relevant parties of the publication of the interim final rule in the **Federal Register**, the two comments described above were the only others received, neither of which concerned the economic impact of the rule on small businesses.

This is a new program and we believe that the paperwork burden will be reduced in subsequent years due to increased familiarity with the provisions contained in the regulations. The Department is very concerned about the reporting and record keeping burden on the regulated community, including small businesses, and is fully committed to reducing this burden where appropriate. In the instant case, however, we believe that the reporting and record keeping requirements under the Alaska exception and contained herein are required to maintain the program's integrity and to effectively carry out the Secretary's responsibilities in protecting the wages and working conditions of U.S. workers under the INA.

The regulations for the attestation program for employers using alien crewmembers for longshore work in the United States are published at 20 CFR part 655, subparts F and G, and 29 CFR part 506, subparts F and G, 60 FR 3950 (January 19, 1995).

Regulatory Impact and Administrative Procedure

E.O. 12866

In accordance with Executive Order 12866, the Department of Labor has determined that this is not a significant regulatory action as defined in section 3(f) of the Order.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance Number

This program is not listed in the *Catalog of Federal Domestic Assistance.*

List Of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Fashion Models, Forest and Forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 506

Administrative practice and procedures, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties, Reporting and recordkeeping requirements.

Adoption of the Joint Final Rule

Accordingly, the interim final rule amending 20 CFR part 655, subparts F and G, and 29 CFR part 506, subparts F and G, which was published at 60 FR 3950 on January 19, 1995, is adopted as a final rule without change.

Authority: 8 U.S.C. 1288(c) and (d).

Signed at Washington, DC, this 23rd day of August, 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–22510 Filed 9–4–96; 8:45 am]

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Part IV

Department of Health and Human Services

Administration for Children and Families

Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612-972]

Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense (DOD) Activities

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of competitive financial assistance to assist eligible applicants address environmental problems and impacts from DOD activities to Indian lands.

DEFINITION: For purposes of this program announcement, Indian land is defined as all lands used by American Indian tribes and Alaska Native Villages.

SUMMARY: The Congress has recognized that DOD activities may have caused environmental problems for Indian tribes and Alaska Natives. These environmental hazards can negatively impact the health and safety as well as the social and economic welfare of Indian tribes and Alaska Natives. Accordingly, the Congress has taken steps to help those affected begin to mitigate environmental impacts from DOD activities by assisting them in the planning, development and implementation of programs for such mitigation.

This environmental mitigation program was begun through a program announcement published on December 29, 1993 as a response to the Department of Defense Appropriations Act, Pub.L. 103–139, which was enacted on November 11, 1993. This program continues under Pub.L. 103–335 (the Act), enacted on September 30, 1994. Section 8094A of the Act states, "Of the funds appropriated to the Department of Defense (DOD) for Operations and Maintenace Defense-Wide, not less than $8,000,000 shall be made available until expended to the Administration for Native Americans within 90 days of enactment of this Act: Provided That such funds shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritizing of mitigation, on Indian lands resulting from Department of Defense activities: Provided further, That the Department of Defense shall provide to the Committees on Appropriations of the Senate and House of Representatives by September 30, 1995, a summary report of all environmental damage that has occurred on Indian land as a result of DOD activities, to include, to the extent feasible, a list of all documents and records known to the Department that describe the activity or action causing or relating to such environmental damage." The Administration for Native Americans (ANA) and the Department of Defense (DOD) announce the availability of remaining FY 95 funds for eligible applicants to begin or continue the process of addressing the environmental problems and damage caused from DOD activities.

FOR FURTHER INFORMATION CONTACT: Sharon McCully—(202) 690–5780 or John Bushman—(202) 690–6234 at the Administration for Native Americans, Department of Health and Human Services, 200 Independence Avenue, S.W., Rm 348F, Washington, D.C. 20201–0001.

DATES: The closing dates for submission of applications is November 8, 1996 and November 7, 1997.

A. Introduction and Purpose

The program announcement states the availability of unobligated FY 1995 funds to provide financial assistance to eligible applicants for the purpose of mitigating environmental impacts on Indian lands related to DOD activities.

Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria contained in this announcement.

The Federal government recognizes that substantial environmental problems, resultant from defense activities, exist on Indian lands and will geographically range from border to border and from coast to coast. The nature and magnitude of the problems will most likely be better defined when affected Indian tribes and Alaska Natives have completed environmental assessments called for in Phase I of this four-phase program.

The Federal government has also recognized that Indian tribes, Alaska Natives and their tribal organizations must have the opportunity to develop their own plans and technical capabilities and access the necessary financial and technical resources in order to assess, plan, develop and implement programs to mitigate any impacts caused by DOD activities.

The ANA and the DOD recognize the potential environmental problems created by DOD activities that may affect air, water, soil and human and natural resources (i.e., forests, fish, plants). It is also recognized that potential applicants may have specialized knowledge and capabilities to address specific concerns at various levels within the four phase program. Under this announcement proposals will be accepted for *any and all of the four phases* or one specific phase. These phases are: Phase I—assessment of Indian lands to develop as complete an inventory as possible of environmental impacts caused by DOD activities; Phase II—identification and exploration of alternative means for mitigation of these impacts and determination of the technical merit, feasibility and expected costs and benefits of each approach in order to select one approach; Phase III—development of a detailed mitigation plan, and costing and scheduling for implementation of the design, including strategies for meeting statutory or regulatory requirements and for dealing with other appropriate Federal agencies; and, Phase IV—implementation of the mitigation plan.

The following are some known areas of concern. It is expected that applicants may identify additional areas of concern in their applications:

- Damage to treaty protected spawning habitats caused by artillery practice or other defense activities;
- Damage to Indian lands and improvements (e.g. wells, fences) and facilities caused by bombing practice;
- Damage caused to range and forest lands by gunnery range activities;
- Low-level flights over sacred sites and religious ceremonies which disrupt spiritual activities;
- Movement of soil covering the remains of buried Indian people and artifacts requiring, by tradition, their reburial in traditional rituals;
- Operation of dams by the Army Corps of Engineers which has had adverse impacts on spawning beds and treaty fishing rights and water quality due to problems of siltation; reduced stream flows; increased water temperatures; and, dredge and fill problems;
- Leaking of underground storage tanks on lands taken from Indians for temporary war-time use by the DOD;
- Unexploded ordnance from gunnery and bombing practice on Indian lands resulting in significant damage to rangelands, wildlife habitat, stock water wells, etc.;
- Disposal activities related to removal of unexploded ordnance, nuclear waste materials, toxic materials,

and biological warfare materials from Indian lands;

• Transportation of live ordnance, nuclear waste, chemical and biological warfare materials from and across Indian lands;

• Seepage of fluids suspected of containing toxic materials onto Indian lands;

• Chlorofluorocarbons (CFC's) resulting from abandoned containers and/or dumping onto Indian lands;

• Polychlorinated biphenyls (PCB's) from transformers which have been abandoned and/or dumped onto Indian lands;

• Public health concerns regarding electromagnetic fields surrounding Defense-related transmission facilities which cross Indian lands; and

• Reclamation activities required to mitigate any or all of the above stated conditions and other activities as they become known.

B. Proposed Projects To Be Funded With Unobligated FY 1995 Funds

The purpose of this announcement is to invite single year (up to seventeen months in duration) or up to thirty-six month proposals from eligible applicants to undertake any or all of the Phases. Applicants may apply for projects of up to 36 months duration. A multi-year project, requiring more than 12 months to develop and complete, affords applicants the opportunity to develop more complex and in-depth projects. Funding after the first 12 month budget period of an approved multi-year project is non-competitive and subject to availability of funds. (see Part E for further information)

Phase I: The purpose of Phase I is to conduct the research and planning needed to identify environmental impacts to Indian lands caused by DOD activities on or near Indian lands and to plan for remedial investigations to determine and carry out a preliminary assessment of these problems. These activities may include, but not be limited to, the following:

• Conduct site inspections to identify problems and causes related to DOD activities;

• Identify and develop approaches to handle raw data that will assist in performing comprehensive environmental assessments of problems and causes related to DOD activities;

• Identify approaches and develop methodologies which will be used to develop the activities to be undertaken in Phases II and III;

• Identify other Federal agency programs, if any, that must be involved in mitigation activities and their requirements;

• Identify potential technical assistance and expertise required to address the activities to be undertaken in Phases II and III; and

• Identify other Federal environmental restoration programs that could be accessed to cooperatively coordinate and mobilize resources in addressing short and long-term activities developed under Phase III.

Phase I should result in adequately detailed documentation of the problems and sources of help in solving them to provide a useful basis for examining alternative mitigation approaches in Phase II.

Phase II: The purpose of Phase II activities is to examine alternative approaches for mitigation of the impacts identified in Phase I and to lead toward the mitigation design to be developed in Phase III. Phase II activities may include, but need not be limited to the following:

• Conduct remedial investigation and/or feasibility studies as necessary;

• Plan for the design of a comprehensive mitigation strategy to address problems identified during Phase I which address areas such as land use restoration, clean-up processes, contracting and liability concerns; regulatory responsibilities; and resources necessary to implement clean up actions;

• Design strategies that coordinate with or are complementary to existing DOD cleanup programs such as the Defense Environmental Restoration Program which promotes and coordinates efforts for the evaluation and cleanup of contamination at DOD installations;

• Review possible interim remedial strategies that address immediate potential hazards to the public health and environment in order to provide alternative measures i.e., providing alternate water supplies, removing concentrated sources of contaminants, or constructing structures to prevent the spread of contamination;

• Identify specific types of technical assistance and management expertise required to assist in developing specific protocols for environmental assessments, remedial investigations, feasibility studies, interim remedial actions and strategic planning for existing and future mitigation activities;

• Review other types of assessments that need to be considered, reviewed and incorporated into the conduct and/or design process such as:

—Estimates of clean-up cost;
—Estimate of impacts of short-term approach;
—Estimate of impacts of long-term approach;
—Cultural impacts;
—Economic impacts;
—Human health-risk impacts; and

• Document approaches and procedures which have been developed in order to negotiate with appropriate Federal agencies for necessary cleanup action and to keep the public informed.

In establishing the basis for a design process, particularly when there are multiple problems, the applicants may want to consider a prioritization process as follows:

• Emergency situations that require immediate clean-up;

• Time-critical sites, i.e. sites where the situation will deteriorate if action is not taken soon;

• Projects with minimum funding requirements;

• Projects with intermediate-level funding requirements;

• Projects with maximum funding requirements.

Achieving compliance with Federal environmental protection legislation is the driving force behind all Federal clean-up activities. The following is a list of major Federal environmental legislation that should be recognized in a regulatory review as all Federal, state and local regulatory requirements which could have major impacts in the design of mitigation strategies:

• Indian Environmental General Assistance Program Act of 1992;

• Clean Air Act (CAA);

• Clean Water Act (CWA);

• Safe Drinking Water Act (SDWA);

• Surface Mining Control and Reclamation Act of 1977 (SMCRA);

• Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA);

• Toxic Substances Control Act (TSCA);

• Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

• Nuclear Waste Policy Act of 1982 (NWPA);

• Comprehensive Environmental Resource Conservation and Liability Act (CERCLA or Superfund);

• Resource Conservation and Recovery Act of 1976 (RCRA);

• Hazardous and Solid Waste Amendments of 1984 (HSWA);

• National Environmental Policy Act of 1969 (NEPA); Other Federal legislation that should be included in the regulatory review and that should be of assistance are the tribal specific legislative acts, such as:

• American Indian Religious Freedom Act;

• National Historic Preservation Act of 1991;

• Indian Environmental Regulatory Enhancement Act of 1990;

Other regulatory considerations could involve applicable tribal, village, state

and local laws, codes, ordinances, standards, etc. which should also be reviewed to assist in planning, the mitigation design, and development of the comprehensive mitigation strategy.

Phase II should result in a carefully documented examination of alternative approaches and the selection of an approach to be used in the Phase III design process.

Phase III: The purpose of Phase III is the completion of activities initiated under Phase II, the initiation of new activities required to implement programs, and the design of on-site actions required to mitigate environmental damage from DOD activities.

The Phase III activities may include but need not be limited to:

- Development and implementation of a detailed management plan to: guide corrective action; resolve issues rising from overlapping or conflicting jurisdictions; guide a cooperative and collaborative effort among all parties to ensure there are no duplicative or conflicting regulatory requirements governing the cleanup actions; and, establish a tribal or village framework and/or parameter(s) that will guide the negotiations process for one or multiple cleanup actions;
- Establishment of priorities for mitigation programs when there are multiple clean-up sites; consider at a minimum the nature of the hazard involved: such as its physical and chemical characteristics, including concentrations and mobility of contaminants; the pathway indicating potential for contaminant transport via surface water, ground water and air/soil, and any other indicators that are identified during the environmental assessment, including the prioritization process identified under Phase II;
- Program design and implementation of information dissemination strategies prior to start up of on-site implementation of mitigation program activities;
- Development of a legal and jurisdictional strategy that addresses DOD/contractor liability issues to ensure quality, cost-effective mitigation services, and to evaluate any measures providing equitable risk between the DOD and the remediation contractor, as well as to incorporate Tribal Employment Rights Office (TERO) and other policies and procedures, if required;
- Design of an approval process and other processes necessary for the implementation of tribal and village codes and regulations for current and future compliance enforcement of all mitigation actions;
- Development/design of a documentation strategy to ensure all DOD and contractor cleanup activities are conducted and completed in a environmentally clean and safe manner for the social and economic welfare, as well as public health of Indian and Alaska Native people and the surrounding environment;
- Development and conduct of certified training programs that will enable a local work force to become technically capable to participate in the mitigation activities, if they so choose; and
- Conduct of any other activities deemed necessary to carry out Phases I, II and III activities.

Phase III should result in a comprehensive plan for conducting all aspects of mitigation action contemplated.

Phase IV: *The Phase IV activities are the implementation of mitigation plans specified in the detailed plan completed in Phase III.*

C. Eligible Applicants

The following organizations are eligible to apply:

- Federally recognized Indian tribes;
- Incorporated Non-Federally and State recognized Indian tribes;
- Alaska Native villages, tribes or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs;
- Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects;
- Nonprofit Native Organizations in Alaska with village specific projects;
- Other tribal or village organizations or consortia of Indian tribes.

In addition, current ANA grantees who meet the above eligibility criteria, but do not have a mitigation grant under Program Announcement 93612–952 are also eligible to apply for a grant award under this program announcement.

D. Available Funds

Subject to availability of funds, approximately $7 million of financial assistance is available under this program announcement for eligible applicants. All remaining unobligated FY 95 funds will be available for this purpose. It is expected that about 25 awards will be made, ranging from $100,000 to $1 million. Each eligible applicant described above (Part C) can receive only one grant award under this announcement.

E. Multi-Year Projects

This announcement is soliciting applications for project periods up to 36 months. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be as long as 36 months. Funding after the 12 month budget period of an approved multi-year project is non-competitive. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, compliance with the applicable statutory, regulatory and grant requirements, and determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project

Grantees must provide at least five (5) percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. The funds for the match must be from a private source, or state source where the funds were not obtained from the Federal government by the state, or a Federal source where legislation or regulation authorizes the use of these funds for matching purposes. Therefore, a project requesting $300,000 in Federal funds (based on an award of $100,000 per budget period), must include a match of at least $15,789 (5% total project cost). Applicants may request a waiver of the requirement for a 5% non-Federal matching share. Since the matching requirement is very low it is not expected that waivers will be requested, However, the procedure for requesting a waiver can be found in 45 CFR 1336, Subpart E- Financial Assistance Provisions.

It is the policy of ANA to apply the waiver of the non-Federal matching share requirement for the purposes of this particular program announcement.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. Application Process

(1) Availability of Application Forms: In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied, including Form–424, and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services,Administration for

Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201–0001, (202) 690–7776.

(2) Application Submission: Each application should include one signed original and two (2) copies of the grant application, including all attachments. Assurances and certifications must be completed. Submission of the application constitutes certification by the applicant that it is in compliance with Drug-Free Workplace and Debarment and these forms do not have to be submitted. The application must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Rm 348–F, 200 Independence Avenue, S.W., Washington, D.C. 20201–0001, Attn: 93612–972.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at the Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, S.W. Washington, D.C. 20201–0001.

The application must be signed by an individual authorized: 1) to act for the applicant tribe, village or organization, and 2) to assume the applicant's obligations under the terms and conditions of the grant award.

(3) Application Consideration: The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement. The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with environmental problems of Indian tribes and Alaska Native villages will evaluate each application against the published criteria in this announcement. The results of this review will assist the Commissioner in making final funding decisions.
- The Commissioner's decision will also take into account the comments of ANA staff, state and Federal agencies having performance related information, and other interested parties.
- As a matter of policy the Commissioner will make grant awards consistent with the stated purpose of this announcement and all relevant statutory and regulatory requirements *under 45 CFR Parts 74 and 92 applicable to grants under this announcement.*
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, *and the amount of the non-Federal matching share requirement.*

I. Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark date under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- The application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation (All required materials and forms are listed in the Grant Application Checklist.)

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

3. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

J. Review Criteria

A proposed project should reflect the purposes stated and described in the *Introduction and Program Purpose* (Section A) of this announcement. No additional weight or preference is given to applications because of an increased number of phases proposed. Also, competition is not based on proposals of the same phase or phases but on the merit of the application independent of phase consideration. The evaluation criteria are:

(1) Goals and Available Resources (15 points):

(a) The application presents specific mitigation goals related to the proposed project. It explains how the tribe or village intends to achieve those goals identified in the application and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The above requirement may be met by submission of a resolution by a tribe or tribal organization stating that community involvement has occured in the project planning and will occur in the implementation of the project.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources may be personnel, facilities, vehicles or financial and may include other Federal and non-Federal resources.

(2) Organizational Capabilities and Qualifications (10 points).

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of prior or current projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project activities. Either the position descriptions or the resumes present the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities (45 points). The Objective Work Plan in the application includes

project objectives and activities related to the long term goals for each budget period proposed and demonstrates that these objectives and activities:

- Are measurable and/or quantifiable;
- Are based on a fully described and locally determined balanced strategy for mitigation of impacts to the environment;
- Clearly relate to the tribe or village long-range goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 points). The proposed project will result in specific measurable outcomes for each objective that will clearly contribute to the completion of the project and will help the tribe or village meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget (10 points).

There is a detailed budget provided for each budget period requested. (This is especially necessary for multi-year applications.) The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

K. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) *Program Guidance:*

- The Administration for Native Americans will fund projects that present the strongest prospects for meeting the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the problems being addressed in the application, relevant historical data should be included so that the appropriateness and potential benefits of the proposed project will be better understood by the reviewers and decision-maker.
- Supporting documentation, if available, should be included to provide the reviewers and decision-maker with other relevant data to better understand the scope and magnitude of the project.
- The applicant should provide documentation showing support for the proposed project from authorized officials, board of directors and/or officers through a letter of support or resolution. It would be helpful, particularly for organizations, to delineate the membership, make-up of the board of directors, and its elective procedures to assist reviewers in determining authorized support.

(2) *Technical Guidance.*

- Applicants are strongly encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of its quality and potential competitiveness in the review process.
- ANA will accept only one application under this program announcement from any one applicant. If an eligible applicant sends two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from an Indian tribe, Alaska Native Village or other eligible organization must be submitted by the governing body of the applicant.
- The application's Form 424 must be signed by the applicant's representative (tribal official or designate) who can act with full authority on behalf of the applicant.
- The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page and that a table of contents be provided. The page numbering, along with simple tabbing of the sections, would be helpful and allows easy reference during the review process.
- Two (2) copies of the application plus the original are required.
- The Cover Page should be the first page of an application, followed by the one-page abstract.
- Section B of the Program Narrative should be of sufficient detail as to become a guide in determining and tracking project goals and objectives.
- The applicant should specify the entire length of the project period on the first page of the Form 424, Block 13, not the length of the first budget period. ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the Form 424 should specify the Federal funds requested for the first *Budget period*, not the entire project period.
- Applicants proposing multi-year projects need to describe and submit project objective workplans and activities for each budget period. (Separate itemized budgets for the Federal and non-Federal costs should be included).
- Applicants for multi-year projects must justify the entire time-frame of the project and also project the expected results to be achieved in each budget period and for the total project period.

(3) *Projects or activities that generally will not meet the purposes of this announcement.*

- Proposals from consortia of tribes or villages that are not specific with regard to support from, and roles of member tribes.
- The purchase of real estate or construction.

L. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

M. Due Date for Receipt of Applications

The closing date for applications submitted in response to this program announcement are November 8, 1996 and November 7, 1997.

N. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted electronically nor via facsimile (FAX) equipment.

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at the place specified in the program announcement, or

2. Sent on or before the deadline date and received by the granting agency in the time for the independent review under DHHS GAM Chapter 1–62 (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated

receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications. Applications which do not meet the criteria above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines. The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: August 27, 1996.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

BILLING CODE 4184-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
c. State	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .0	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ .00	☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column heading on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duty authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers,

or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

[FR Doc. 96–22604 Filed 9–4–96; 8:45 am]

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federal register

Thursday
September 5, 1996

Part V

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5556–5]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of Acceptability.

SUMMARY: This notice expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. In addition, this Notice clarifies information on refrigerant blends R–410A, R–410B, and R–407C that EPA previously added to the acceptable substitute list.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, S.W., Washington, D.C. 20460. Telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Nancy Smagin at (202) 233–9126 or fax (202) 233–9577, U.S. EPA, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460; EPA Stratospheric Ozone Protection Hotline at (800) 296–1996; EPA World Wide Web Site at http://www.epa.gov/ozone/title6/snap/snap.html.

SUPPLEMENTARY INFORMATION:

I. Section 612 Program
A. Statutory Requirements
B. Regulatory History
II. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning: Substitutes for Class I Substances
B. Refrigeration and Air Conditioning: Substitutes for Class II Substances
C. Foam Blowing
D. Fire Suppression and Explosion Protection
E. Solvent Cleaning
F. Aerosols
G. Adhesives, Coatings and Inks
III. Additional Information
Appendix A—Summary of Acceptable and Pending Decisions

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program. At the same time, EPA also issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in the final rule for the SNAP program (59 FR 13044), EPA does not believe that rulemaking is required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, EPA is adding substances to the list of acceptable alternatives by this notice.

EPA does, however, believe that Notice-and-Comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

EPA published lists of acceptable alternatives on August 26, 1994 (59 FR 44240), January 13, 1995 (60 FR 3318), July 28, 1995 (60 FR 38729), February 8, 1996 (61 FR 4736) and published Final Rulemakings restricting the use of certain substitutes on June 13, 1995 (60 FR 31092), and May 22, 1996 (61 FR 25585). EPA also published a Notice of Proposed Rulemaking restricting the use of certain substitutes on May 22, 1996 (61 FR 25604).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes for class I and class II substances in the following industrial sectors: refrigeration and air conditioning, foam blowing, and fire

suppression and explosion protection. In this Notice, EPA has split the refrigeration and air conditioning sector into two parts: substitutes for class I substances and substitutes for class II substances. For copies of the full list, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

Parts A through G below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing today's listing decisions are in Appendix A. The comments contained in Appendix A provide additional information on a substitute, but for listings of acceptable substitutes, they are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments is not mandatory for use as a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning: Class I

1. Secondary Loop Systems

In this Notice, EPA requests information about fluids used in secondary loop systems. Unlike most other end-uses, secondary loop systems do not circulate refrigerant through heat exchangers that are in direct contact with the refrigerated or air conditioned space. Rather, the primary refrigerant exchanges heat only with a second fluid, which in turn carries heat away from the cooled space.

A good example of such a system is a large building chiller. The primary loop chills water, which then circulates throughout the building, where fans blow air over the cold pipes to air condition occupied spaces. Another example is an ammonia-based supermarket refrigeration system. The ammonia-containing primary loop is isolated from the occupied area of the store, while a secondary loop fluid carries the chill to the refrigerated cases.

Secondary loop systems are gaining market share in many areas because they offer potential safety improvements, particularly when the primary refrigerant is flammable or toxic. The primary system generally has a relatively small charge, and it can be placed in an external building, thereby removing the risk to occupants. In addition, a smaller charge means that less refrigerant can escape during a leak. Given even the lower ozone depletion potential (ODP) of HCFCs, and global warming potential (GWP) of some HCFCs and HFCS, this reduced leakage yields direct benefits to the environment. Because of the potential environmental and safety benefits of secondary loop systems, EPA is investigating whether it would be appropriate to list secondary fluids formally under the SNAP program.

Such systems would use an already EPA-acceptable refrigerant in the primary loop and a different fluid in the secondary loop. Therefore, such a system could be listed as a not-in-kind replacement for CFC-based refrigeration and air conditioning equipment. EPA is aware that water, ethylene glycol, propylene glycol, ice slurries, CO_2, ethyl alcohol, calcium chloride, Flo-ice, HCFC–123, and certain hydrofluoroethers are either used today or are being considered for use as secondary fluids. While studying whether this end-use would be appropriate for listing, EPA invites companies interested in listing other secondary loop fluids to contact the SNAP coordinator at 202–233–9126, fax 202–233–9577.

2. Acceptable Substitutes for Other End-Uses

Note that EPA acceptability does not mean that a given substitute will work in a specific type of equipment within an end-use. Engineering expertise must be used to determine the appropriate use of these and any other substitutes. In addition, although some alternatives are listed for multiple refrigerants, they may not be appropriate for use in all equipment or under all conditions.

a. Hot Shot and GHG–X4

Hot Shot and GHG–X4, both of which consist of HCFC–22, HCFC–124, HCFC–142b, and isobutane, are acceptable as substitutes for CFC–12 and R–500 in the following retrofitted and new end-uses:

- Centrifugal and Reciprocating Chillers
- Industrial Process Refrigeration
- Ice Skating Rinks
- Cold Storage Warehouses
- Refrigerated Transport
- Retail Food Refrigeration
- Vending Machines
- Water Coolers
- Commercial Ice Machines
- Household Refrigerators
- Household Freezers
- Residential Dehumidifiers
- Non-Automotive Motor Vehicle Air Conditioners

Because HCFC–22 and HCFC–142b contribute to ozone depletion, they will be phased out of production. Therefore, these blends will be used primarily as retrofit refrigerants. However, these blends are acceptable for use in new systems. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to these blends. HCFC–142b has one of the highest ODPs among the HCFCs. The GWPs of HCFC–22 and HCFC–142b are 1700 and 2000, respectively, which are somewhat high. However, this concern is mitigated by the scheduled phaseout of these refrigerants. Although HCFC–142b and isobutane are flammable, these blends are not. In addition, testing on these blends has shown that they do not become flammable after leaks. GHG–X4 is being sold under the trade names "Autofrost" and "Chill-It."

b. R–401C

R–401C, which consists of HCFC–22, HFC–152a, and HCFC–124, is acceptable as a substitute for CFC–12 in retrofitted and new non-automotive motor vehicle air conditioners. Because HCFC–22 and HCFC–124 contribute to ozone depletion, they will be phased out of production. Therefore, these blends will be used primarily as retrofit refrigerants. However, these blends are acceptable for use in new systems. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to these blends. HCFC–142b has one of the highest ODPS among the HCFCs. The GWP of HCFC–22 is 1700, which is somewhat high. However, this concern is mitigated by the scheduled phaseout of this refrigerant. Although HCFC–142b and isobutane are flammable, these blends are not. In addition, testing on these blends has shown that they do not become flammable after leaks. GHG–X4 is being sold under the trade names "Autofrost" and "Chill-It."

c. NARM–502

NARM–502, which consists of HCFC–22, HFC–23, and HFC–152a, is acceptable as a substitute for R–503 and CFC–13 in new and retrofitted very low temperature refrigeration and industrial process refrigeration. Because HCFC–22 contributes to ozone depletion, it will be phased out of production. Therefore, this blend will be used primarily as a retrofit refrigerant. However, NARM–502 is acceptable for use in new systems. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to this blend. The GWP of HCFC–22 is 1700,

which is somewhat high, and the GWP of HFC–23 is 12,100, which is extremely high. However, other acceptable refrigerants in this end-use also contain either HFC–23 or perfluorocarbons (PFCs), with higher GWPs. In addition, the percentage of HFC–23 is quite small, so this blend poses much lower global warming risk than other substitutes for this end-use. Although HFC–152a is flammable, NARM–502 as blended is not, and testing has shown that it does not become flammable after leaks.

d. Freezone (Formerly Listed as HCFC Blend Delta) and FREEZE 12

Freezone, which consists of HFC–134a, HCFC–142b, and a lubricant, and FREEZE 12, which consists of HFC–134a and HCFC–142b, are acceptable as substitutes for CFC–12 in the following retrofitted and new end-uses:

- Centrifugal and Reciprocating Chillers
- Industrial Process Refrigeration
- Ice Skating Rinks
- Cold Storage Warehouses
- Refrigerated Transport
- Retail Food Refrigeration
- Vending Machines
- Water Coolers
- Commercial Ice Machines
- Household Refrigerators
- Household Freezers
- Residential Dehumidifiers
- Non-Automotive Motor Vehicle Air Conditioners

Because HCFC–142b contributes to ozone depletion, it will be phased out of production. Therefore, these blends will be used primarily as retrofit refrigerants. However, they are acceptable for use in new systems. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to these blends. HCFC–142b has one of the highest ODPs among the HCFCs. In addition, the GWP of HCFC–142b is 2000, which is somewhat high. However, this concern is mitigated by the scheduled phaseout of this refrigerant. Although HCFC–142b is flammable, Freezone and FREEZE 12 as blended are not, and testing has shown that they do not become flammable after leaks.

e. G2018C

G2018C, which consists of HCFC–22, HFC–152a, and propylene, is acceptable as a substitute for CFC–12 in the following retrofitted and new end-uses:

- Centrifugal and Reciprocating Chillers
- Industrial Process Refrigeration
- Ice Skating Rinks
- Cold Storage Warehouses
- Refrigerated Transport
- Retail Food Refrigeration
- Vending Machines
- Water Coolers
- Commercial Ice Machines

Because HCFC–22 contributes to ozone depletion, it will be phased out of production. Therefore, this blend will be used primarily as a retrofit refrigerant. However, it is acceptable for use in new systems. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to G2018C. The GWP of HCFC–22 is 1700, which is somewhat high. However, this concern is mitigated by the scheduled phaseout of this refrigerant. Although HFC–152a is flammable, G2018C as blended is not, and testing has shown that it does not become flammable after leaks.

B. Refrigeration and Air Conditioning: Class II

1. Clarification of Previous Notice (61 FR 4736)

Please refer to the March 18, 1994 SNAP rule (59 FR 13044) for detailed information pertaining to the designation of end-uses, additional requirements imposed under sections 608 and 609, and other information related to the use of alternative refrigerants.

This Notice marks the second time EPA has listed acceptable substitutes for HCFC–22 in the refrigeration and air conditioning sector. Although the substitutes listed below were intended specifically to replace HCFC–22, HCFC–22 is itself frequently used as a substitute for class I refrigerants (e.g, CFC–11 and CFC–12). Therefore, the listings below also describe these HCFC–22 substitutes as acceptable alternatives for class I refrigerants in new equipment. The underlying reasoning is that if, for instance, HCFC–22 poses lower overall risk than CFC–12, and R–410A poses lower overall risk than HCFC–22, then R–410A must also pose lower overall risk than CFC–12. Therefore, even though R–410A is not designed to be a direct replacement for CFC–12, in new equipment it may be appropriate to design for R–410A rather than for another CFC–12 substitute. As with all listings, however, engineering expertise is required to determine the best match between a given class I refrigerant and an alternative.

The February 8, 1996 Notice of Acceptability (61 FR 4736) inadvertently described R–410A, R–410B, and R–407C as not containing any components regulated as volatile organic compounds (VOC) under Title I of the Clean Air Act . In fact, all three blends contain HFC–32, which is a VOC-regulated compound.

2. Acceptable Substitutes

a. R–507

R–507, which consists of HFC–143a and HFC–125, is acceptable as a substitute for HCFC–22, and by extension, class I refrigerants, in equipment in the following new and retrofit end-uses:

- Commercial comfort air conditioning
- Industrial process refrigeration systems
- Industrial process air conditioning
- Refrigerated transport
- Retail food refrigeration
- Cold storage warehouses
- Vending machines
- Commercial ice machines
- Household and light commercial air conditioning

R–507 contains HFC–125 and HFC–143a. HFC–125 and HFC–143a exhibit a fairly high global warming potential (3,200 and 4,400 respectively at 100 year integrated time horizon) compared to other HFCs and HCFC–22. However, their potential for contributing to global warming will be mitigated in the listed end uses through the implementation of the venting prohibition under Section 608(c)(2) of the Clean Air Act. Note that the prohibition on venting, which applies to all substitute refrigerants, was mandated in section 608(c)(2) and took effect through regulations on November 15, 1995. While the current rule issued under section 608 of the CAA (58 FR 28660) does not specify recycling or leak repair requirements, it is illegal to vent this refrigerant at any time. In addition, EPA anticipates proposing new recycling regulations for non-ozone-depleting refrigerants in the near future. A fact sheet on the proposal is available from the EPA Ozone Hotline at (800) 296–1996. R–507 does not contain ozone-depleting substances and is low in toxicity. Although HFC–143a is flammable, the blend is not. It is a near azeotrope, so it will not fractionate during operation. Leak testing has demonstrated that its composition never becomes flammable.

b. Ammonia

Ammonia, either in vapor compression or absorption systems, is acceptable as a substitute for HCFC–22, and by extension, class I refrigerants, in equipment in the following new end-uses:

- Industrial process air conditioning
- Industrial process refrigeration
- Ice skating rinks
- Cold storage warehouses
- Commercial ice machines
- Commercial comfort air conditioning (absorption chillers or vapor compression with a secondary loop)

- Retail food refrigeration (with a secondary loop)
- Household refrigerators (absorption systems only)
- Household and light commercial air conditioning (absorption systems only)

Ammonia applications that do not fall under any of the above-listed end uses and for which ammonia has traditionally been used as the refrigerant fluid, whether in vapor compression or absorption systems, are not covered under the SNAP program. Therefore, does not require notification or listing under the SNAP program.

Ammonia has been used as a medium to low temperature refrigerant in vapor compression cycles for more than 100 years. Ammonia has excellent refrigerant properties, a characteristic pungent odor, no long-term atmospheric risks, and low cost. It is, however, moderately flammable and toxic, although it is not a cumulative poison. Ammonia may be used safely if existing OSHA and ASHRAE standards are followed. Users should check local building codes related to the use of ammonia. Ammonia does not deplete the ozone or contribute to global warming.

c. Alternative Technologies

Several technologies already exist as alternatives to equipment using class I substances. As a result of the CFC phaseout, they are gaining prominence in the transition away from CFCs. Examples of these technologies include evaporative cooling, desiccant cooling, and absorption refrigeration and air conditioning. In addition, several technologies are currently under development. Significant progress has expanded the applicability of these alternatives, and their environmental benefits generally include zero ODP and low direct GWP. In addition, evaporative cooling offers significant energy savings, which results in reduced indirect GWP.

(1) Evaporative Cooling

Evaporative Cooling is acceptable as a substitute for HCFC–22, and by extension, class I refrigerants, in equipment in the following new end-uses:

- Industrial process air conditioning
- Commercial comfort air conditioning
- Household and light commercial air conditioning

Evaporative cooling does not contribute to ozone depletion or global warming and has the potential to be more energy efficient than current refrigeration and air conditioning systems. Evaporative cooling uses no chemicals, but relies instead on water evaporation as a means of cooling. It is in widespread use in office buildings in the western U.S. Recent design improvements have greatly expanded its applicability to other regions.

(2) Desiccant Cooling

Desiccant cooling is acceptable as a substitute for HCFC–22, and by extension, class I refrigerants, in equipment in the following new end-uses:

- Industrial process air conditioning
- Commercial comfort air conditioning
- Residential air conditioning

Desiccant cooling is an alternate technology to the vapor compression cycle. Desiccant cooling systems do not contribute to ozone depletion or global warming. These systems offer potential energy savings over conventional HCFC–22 vapor compression systems.

(3) Water/Lithium Bromide Absorption

Water/lithium bromide absorption is acceptable as an alternative technology to centrifugal chillers using HCFC–22. Some absorption systems use water as the refrigerant and lithium bromide as the absorber. Lithium bromide has zero ODP and GWP. It is low in toxicity and is nonflammable.

C. Foam Blowing

1. Acceptable Substitutes

a. Rigid polyurethane and polyisocyanurate laminated boardstock; Rigid polyurethane appliance; Rigid polyurethane slabstock and other; and Rigid polyurethane spray and commercial refrigeration, and sandwich panels.

Proprietary Blowing Agent 1 (PBA 1) is an acceptable substitute for CFCs and HCFCs in rigid polyurethane and polyisocyanurate laminated boardstock foam; rigid polyurethane appliance; rigid polyurethane slabstock and other; and rigid polyurethane spray and commercial refrigeration, and sandwich panels. This blowing agent was submitted as a proprietary formulation by a foam system manufacturer. PBA 1 does not contain ozone depleting chemicals and has very low or zero global warming potential. This blend is not flammable. No other significant health or environmental risks are anticipated from the use of this substitute as long as other existing relevant health, environmental and safety requirements are met. Exposure assessments indicate worker exposure is unlikely to exceed the OSHA permissible exposure level.

D. Fire Suppression and Explosion Protection

1. Acceptable Substitutes

a. Total Flooding Agents

(1) Foam A—formerly [Water Mist/Surfactant Blend] A

Foam A is acceptable as a Halon 1301 substitute. This agent was previously identified as [Water Mist/Surfactant Blend] A in the July 28, 1995 Notice (60 FR 38729), and was listed as acceptable for use in normally unoccupied areas only. Since that time, the manufacturer has clarified to EPA that this agent is not a water mist system, nor is it a wetting agent, but instead is a low density, short duration foam. This agent is dispensed as bubbles which physically interfere with the mixture of fuel and air, and provide some cooling of the flame front, both of which contribute to control of the fire.

In the event that the manufacturer develops a misting system based on this agent, EPA requires the manufacturer to submit a separate SNAP application for assessment of exposure to fine water mist particles containing additives.

E. Solvent Cleaning

1. Acceptable Substitutes

a. Metals Cleaning

Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 and methyl chloroform (MCF) in metals cleaning. This HFE is a new chemical that completed review in May 1996 under EPA's Premanufacture Notice Program under the Toxic Substances Control Act. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a GWP of 150 over a 500-year time horizon and 480 over a 100-year time horizon.

This HFE exhibits only moderate toxicity in tests reviewed by EPA, and the 600 ppm 8-hr Time Weighted Average workplace standard set by the company was deemed sufficiently protective. Based on the combination of the feasibility of meeting the exposure standard and the moderate toxicity exhibited by this chemical, EPA is listing this substance as acceptable without restrictions. As with workplace exposure standards for other CFC alternatives, this standard for this substance, too, will be examined by the Workplace Environmental Exposure Limit subcommittee of the American Industrial Hygiene Association.

b. Electronics Cleaning

Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 and methyl chloroform (MCF) in electronics cleaning. This HFE is a new chemical that completed review in May 1996 under EPA's Premanufacture Notice Program under the Toxic Substances Control Act. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. It has a atmospheric 4.1-year lifetime and a GWP of 150 over a 500-year time horizon and 480 over a 100-year time horizon. The GWP and lifetime for this HFE are both lower than the GWP and lifetime for CFC–113 and for PFCs.

This HFE exhibits only moderate toxicity in tests reviewed by EPA, and the 600 ppm 8-hr Time Weighted Average workplace standard set by the company was deemed sufficiently protective. Based on the combination of the feasibility of meeting the exposure standard and the moderate toxicity exhibited by this chemical, EPA is listing this substance as acceptable without restrictions. As with workplace exposure standards for other CFC alternatives, this standard for this substance, too, will be examined by the Workplace Environmental Exposure Limit subcommittee of the American Industrial Hygiene Association.

c. Precision Cleaning

Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 and methyl chloroform (MCF) in precision cleaning. This HFE is a new chemical that completed review this past May under EPA's Premanufacture Notice Program under the Toxic Substances Control Act. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a GWP of 150 over a 500-year time horizon and 480 over a 100-year time horizon. The GWP and lifetime for this HFE are both lower than the GWP and lifetime for CFC–113 and PFCs.

This HFE exhibits only moderate toxicity in tests reviewed by EPA, and the 600 ppm 8-hr Time Weighted Average workplace standard set by the company was deemed sufficiently protective. Based on the combination of the feasibility of meeting the exposure standard and the moderate toxicity exhibited by this chemical, EPA is listing this substance as acceptable without restrictions. As with workplace exposure standards for other CFC alternatives, this standard for this substance, too, will be examined by the Workplace Environmental Exposure Limit subcommittee of the American Industrial Hygiene Association.

F. Aerosols

1. Acceptable Substitutes

a. Solvents

Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal) is an acceptable substitute for CFC–113 and methyl chloroform (MCF) as a solvent in aerosol products. This HFE is a new chemical that completed review this past May under EPA's Premanufacture Notice Program under the Toxic Substances Control Act. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. It has a 4.1-year atmospheric lifetime and a GWP of 150 over a 500-year time horizon and 480 over a 100-year time horizon. The GWP and lifetime for this HFE are both lower than the GWP and lifetime for CFC–113 and for PFCs.

This HFE exhibits only moderate toxicity in tests reviewed by EPA, and the 600 ppm 8-hr Time Weighted Average workplace standard set by the company was deemed sufficiently protective. Based on the combination of the feasibility of meeting the exposure standard and the moderate toxicity exhibited by this chemical, EPA is listing this substance as acceptable without restrictions. As with workplace exposure standards for other CFC alternatives, this standard for this substance, too, will be examined by the Workplace Environmental Exposure Limit subcommittee of the American Industrial Hygiene Association.

G. Adhesives, Coatings and Inks

1. Acceptable Substitutes

a. *Trans-1,2-dichloroethylene*

Trans-1,2-dichloroethylene is acceptable as an alternative to MCF and CFC–113 in adhesives. The OSHA set exposure limit (PEL) is 200 ppm.

III. Additional Information

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Standard Time) weekdays.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice may also be obtained on the World Wide Web at http://www.epa.gov/ozone/title6/snap/snap.html.

Dated: August 13, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

Note: The following Appendix will not appear in the Code of Federal Regulations.

APPENDIX A.—SUMMARY OF ACCEPTABLE AND PENDING DECISIONS

End-Use	Substitute	Decision	Comments
CFC–12 and R–500 Centrifugal and Reciprocating Chillers; CFC–12 Industrial Process Refrigeration, Ice Skating Rinks, Cold Storage Warehouses, Refrigerated Transport, Retail Food Refrigeration, Vending Machines, Water Coolers, Commercial Ice Machines (Retrofitted and New).	Hot Shot	Acceptable	
	GHG–X4	Acceptable	
	Freezone	Acceptable	
	FREEZE 12	Acceptable	
	G2018C	Acceptable	
CFC–12 Household Refrigerators, Household Freezers, and Residential Dehumidifiers (Retrofitted and New).	Hot Shot	Acceptable	
	GHG–X4	Acceptable	
	Freezone	Acceptable	
	FREEZE 12	Acceptable	
CFC–13, R–13B1, and R–503 Very Low Temperature Refrigeration and Industrial Process Refrigeration (Retrofitted and New).	NARM–502	Acceptable	

APPENDIX A.—SUMMARY OF ACCEPTABLE AND PENDING DECISIONS—Continued

End-Use	Substitute	Decision	Comments
Non-Automotive Motor Vehicle Air Conditioning, e.g., buses, trains, planes (Retrofitted and New).	R–401C	Acceptable	
	Hot Shot	Acceptable	
	GHG–X4	Acceptable	
	Freezone	Acceptable	
	FREEZE 12	Acceptable	
Refrigeration and Air Conditioning Acceptable Substitutes for Class II Substances			
Household and Light Commercial Air Conditioning.	R–507, Ammonia, Evaporative and Desiccant Cooling.	Acceptable	Ammonia includes absorption systems only. EPA urges recycling of R–507.
Commercial Comfort Air Conditioning	R–507, Ammonia, Evaporative and Desiccant Cooling, Water/Lithium Bromide.	Acceptable	Includes ammonia absorption chillers and vapor compression with a secondary loop. EPA urges recycling of R–507.
Industrial Process Refrigeration	R–507, Ammonia	Acceptable	Includes ammonia vapor compression and absorption systems. EPA urges recycling of R–507.
Industrial Process Air Conditioners	R–507, Ammonia, Evaporative and Desiccant Cooling.	Acceptable	Includes ammonia vapor compression and absorption systems. EPA urges recycling of R–507.
Ice Skating Rinks	Ammonia	Acceptable	Includes ammonia vapor compression and absorption systems.
Refrigerated Transport	R–507	Acceptable	EPA urges recycling.
Retail Food Refrigeration	R–507, Ammonia	Acceptable	Ammonia includes vapor compression with secondary loop systems only. EPA urges recycling of R–507.
Ice Machines	R–507, Ammonia	Acceptable	Includes ammonia vapor compression and absorption systems. EPA urges recycling of R–507.
Household and Other Refrigerated Appliances.	Ammonia	Acceptable	Includes absorption systems only.
Foam Blowing Acceptable Substitutes			
Rigid polyurethane and polyisocyanurate laminated boardstock; Rigid Polyurethane Appliance; Rigid Polyurethane Slabstock and Other; and Rigid Polyurethane Spray and Commercial Refrigeration; and Sandwich Panels CFCs and HCFCs.	Proprietary Blowing Agent 1 (PBA 1)	Acceptable	Proprietary formulation. PBA 1 has zero-ODP and has very low or zero GWP. Not flammable, and no other significant health environmental risks are anticipated from the use of this substitute as long as other exisiting relevant health, environmental and safety requirements are met.
Fire Suppression and Explosion Protection Acceptable Substitutes			
Total Flooding with Halon 1301	Foam A	Acceptable	Previously identified as [Water Mist/ Surfactant Blend] A (60 FR 38729).
Acceptable Substitutes Solvent Cleaning			
Metals cleaning with CFC–113, MCF and HCFC–141b.	Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal).	Acceptable	
Electronics cleaning with CFC–113, MCF and HCFC–141b.	Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal).	Acceptable	
Precision cleaning with CFC–113, MCF and HCFC–141b.	Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal).	Acceptable	

APPENDIX A.—SUMMARY OF ACCEPTABLE AND PENDING DECISIONS—Continued

End-Use	Substitute	Decision	Comments
Acceptable Substitutes Aerosols			
CFC–11, CFC–113, MCF and HCFC–141b as aerosol solvents.	Hydrofluoroether (HFE): C4F9OCH3 (methoxynonafluorobutane, iso and normal).	Acceptable	
Acceptable Substitutes Adhesives, Coatings, and Inks			
MCF and CFC–113 as solvents in adhesives.	Trans-1,2-dichloroethylene	Acceptable	The OSHA set exposure limit (PEL) is 200 ppm.

End-Use	Substitute	Comments
Solvent Cleaning Pending Substitutes		
Metals Cleaning w/CFC–113 and MCF	n-propylbromide	EPA awaiting results from ODP study. EPA also examining new toxicity data reported under the Toxic Substances Control Act.
Electronics Cleaning w/CFC–113 and MCF.	n-propylbromide	EPA awaiting results from ODP study. EPA also examining new toxicity data reported under the Toxic Substances Control Act.
Precision Cleaning w/CFC–113 and MCF	n-propylbromide	EPA awaiting results from ODP study. EPA also examining new toxicity data reported under the Toxic Substances Control Act.
Aerosols Pending Substitutes		
CFC–113, MCF, and HCFC–141b as aerosol solvents.	HFC–4310	EPA awaiting results on occupational exposure study.

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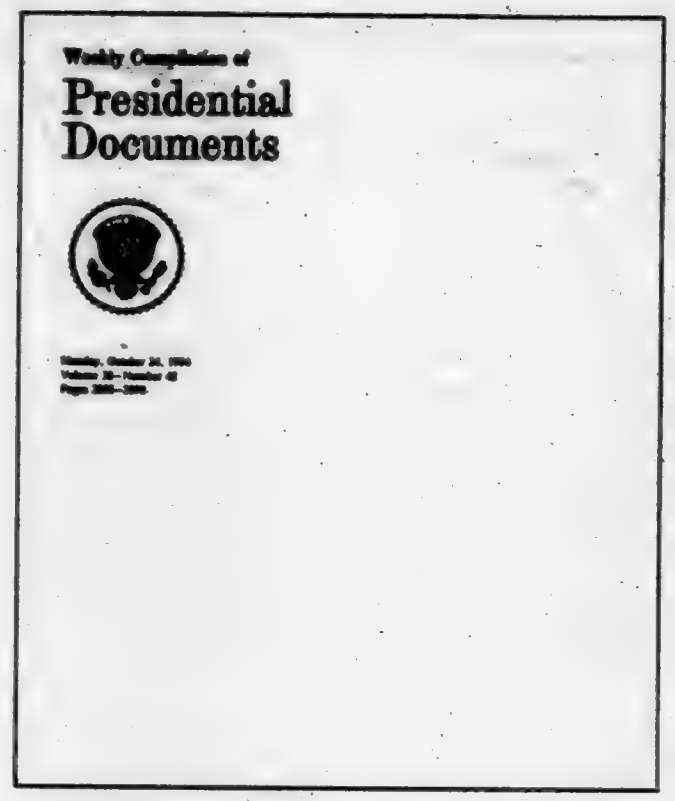

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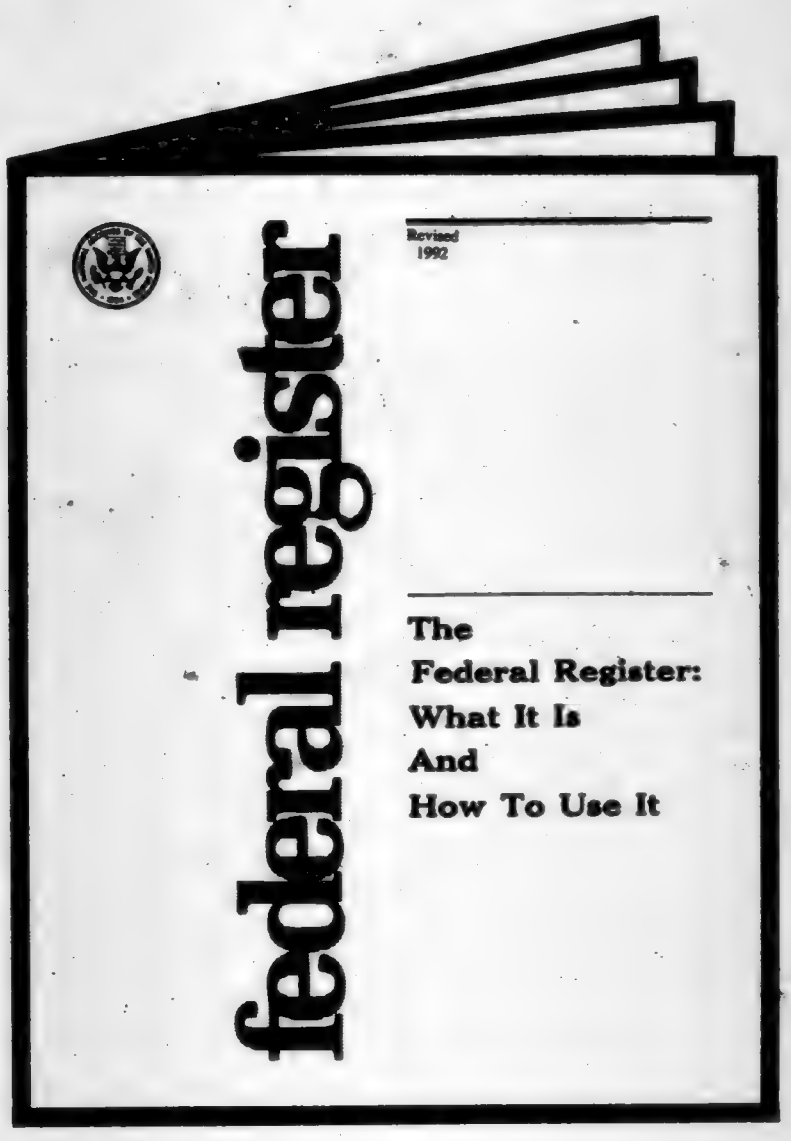

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Rules and Regulations

Federal Register
Vol. 61, No. 174
Friday, September 6, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

RIN 0578–AA17

Highly Erodible Land and Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The United States Department of Agriculture (USDA) is issuing an interim final rule for the Highly Erodible Land and Wetland Conservation provisions of the Food Security Act of 1985, as amended. This interim final rule incorporates specific changes required by the Federal Agriculture Improvement and Reform Act of 1996 and makes other changes to improve the administration of these provisions. USDA is seeking comments from the public which will be considered prior to issuing a final rule.

DATES: *Effective Dates:* September 6, 1996.

Comments must be received by November 5, 1996.

ADDRESSES: All comments concerning this interim final rule should be addressed to Lloyd E. Wright, Director, Conservation Ecosystems Assistance Division, Natural Resources Conservation service, P.O. Box 2890, Washington, D.C. 20013–2890. Attention: HELWC. Fax: 202–720–1838. This rule may also be accessed, and comments submitted, via Internet. Users can access the NRCS Federal Register homepage and submit comments at http:/astro.itc.nrcs.usda.gov:6500.

FOR FURTHER INFORMATION CONTACT: Sandra N. Penn, Conservation Ecosystems Assistance Division, Natural Resources Conservation Service, 202–720–1845.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to § 6(a)(3) of Executive Order 12866, CCC and NRCS have conducted an economic analysis of the potential impacts associated with this interim final rule. The economic analysis concluded that the past ten years of experience in implementing these provisions demonstrates that the provisions are an effective incentive to implementing conservation practices. Changes in the 1985 Act and the implementing regulations will help to increase that incentive by making compliance achievable by more producers, providing more liberal technical assistance, and increasing flexibility in farm operations that deterred some producers from participation in USDA programs in the past. A copy of this cost-benefit analysis is available upon request from Sandra N. Penn, Conservation Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 1890, Washington, D.C. 20013–1890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 533 or any other provisions of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined through an environmental assessment that the issuance of this interim final rule will not have a significant impact upon the human environment. Copies of the environmental assessment may be obtained from Sandra N. Penn, Conservation Ecosystems Assistance Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890.

Paperwork Reduction Act

No substantive changes have been made in this interim final rule that affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0004.

Executive Order 12788

This interim final rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim final rule are not retroactive except for § 12.5(b)(4)–(8) in relation to certain actions or determinations that occurred after December 23, 1985, relative to the conversion of wetlands or the production of an agricultural commodity upon a converted wetland. Furthermore, the provisions of this final interim rule preempt State and local laws to the extent such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at CFR parts 11,614,780 and 1900 Subpart B of this title, as appropriate, must be exercised and exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the unfunded Mandates Reform Act of 1995, Pub. L. 104–4, the effects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under § 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Provisions

Title XII of the Food Security Act of 1985, as amended (the 1985 Act), encourages participants in United States Department of Agriculture (USDA) programs to adopt land management measures by linking eligibility for USDA program benefits to farming practices on highly erodible land and converted wetlands. In particular, the highly erodible land provisions (HEL) of the 1985 Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a field in which highly erodible land is predominant. Additionally, the wetland conservation (WC) provisions of the 1985 Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted

wetland, or after November 28, 1990, for the conversion of a wetland that makes the production of an agriculture commodity possible. The 1985 Act, however, affords relief to program participants who meet certain conditions identified under the 1985 Act by exempting such actions from the ineligibility provisions.

The USDA issued a final rule implementing the HEL and WC provisions of the 1985 Act on September 17, 1987. These regulations, found at 7 CFR part 12, provided the terms of program ineligibility, described the several exemptions from ineligibility, outlined the responsibilities of the several USDA agencies involved in implementing the provisions, and generally established the framework for administration of the provisions.

The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), amended the 1985 Act and made some significant modifications to the HEL and WC conservation provisions. These statutory changes were incorporated into part 12 through amendments issued April 23, 1991, and May 23, 1991.

The implementing regulations mirror the 1985 Act's structure by listing the activities that will cause a person to lose program benefits, the program benefits that are at risk, and the conditions under which these activities can occur without losing program eligibility. The current regulations are divided into three subparts. Subpart A describes the terms of ineligibility, USDA programs encompassed by its terms, the list of exemptions from ineligibility, the agency responsibilities, and the appeal provisions for persons adversely affected by an agency determination. Subpart B describes in greater detail the technical aspects of the highly erodible land provisions, including the criteria for identification of highly erodible lands, criteria for highly erodible field determinations, and requirements for the development of conservation plans and conservation systems. Subpart C describes in greater detail the technical aspects of the wetland conservation provisions, including the criteria for determining a wetland, the criteria for determining a converted wetland, and the uses of wetlands and converted wetlands that can be made without losing program eligibility.

Since December 23, 1985, program participants have farmed in a more sustainable manner, resulting in more soil remaining on the field and more wetlands remaining available to wildlife and migratory fowl. Meeting the objectives of the HEL and WC provisions, however, has been difficult for some producers. Wherever possible, USDA helps individual program participants address their unique resources concerns in a manner that meets the requirements of the HEL and WC provisions. The Federal Agriculture Improvement and Reform Act (the 1996 Act), enacted April 4, 1996, made several modifications to the HEL and WC provisions which will increase USDA's ability to meet these individual situations in a more flexible manner.

The Federal Agriculture Improvement and Reform Act

The 1996 Act amendments to the HEL and WC provisions became effective 90 days after the date of enactment, *i.e.*, July 3, 1996. Accordingly, delaying implementation of this rule would be contrary to the public interest and it has been determined that this rule should, therefore, be effective when issued but subject to further review based on comments submitted in response to this interim final rule.

The 1996 Act made the following changes to the implementation of the HEL and WC provisions:

- Adds new programs to the list of USDA program benefits covered.
- Deletes some programs from the list of USDA program benefits covered.
- Under certain conditions, allows a person who is determined to be ineligible for USDA program benefits because of failure to apply a conservation system up to 1 year to implement the necessary practices without loss of benefits.
- Provides for expedited variances related to weather, pest, and disease problems and establishes a time period to render a decision on whether to grant those variances.
- Requires a measurement of soil erosion on a highly erodible field prior to the implementation of a conservation system, based on estimated average annual soil erosion rates.
- Provides for self-certification of compliance for HEL and authorizes the Natural Resources Conservation Service (NRCS) to exclude that person from status review on the basis of that certification of compliance.
- Provides for revision or modification of a conservation plan by a person if the same level of treatment is maintained.
- Permits a person to use, on a field-trial basis, conservation practices other than those currently approved if NRCS determines in advance that the practices have a reasonable likelihood of success.
- Provides for a review, and relief to a person, by the local county committee if applying a conservation system would cause the person undue economic hardship.
- Requires that an employee of USDA who notices a conservation compliance deficiency on a person's farm while providing technical assistance on other land inform the person of the deficiency and actions necessary to come into compliance, and allow up to 1 year for the person to fully implement corrective action before reporting the observation as a compliance violation.
- Requires that highly erodible land exiting the Conservation Reserve Program not be held to a higher conservation compliance standard than similar cropland in the same area.
- Permits a person to cease using farmed wetlands, or farmed-wetland pastures, as identified by NRCS, for cropping or forage production, and allows the lands to return to wetland conditions, and subsequently bring these lands back into agricultural production after any length of time without loss of eligibility for USDA program benefits, given certain conditions.
- Allows flexibility in determining the programs for which a person who violates wetland conservation provisions will become ineligible.
- Ensures that persons the right to request and appeal a certified wetland determination.
- Provides that a certified wetland delineation will remain in effect until the person requests a new determination and certification.
- Ensures that wetlands that were certified as prior-converted cropland will continue to be considered prior-converted cropland even if wetland characteristics return as a result of lack of maintenance of the land or other circumstances beyond the person's control provided the prior-converted cropland continues to be used for agricultural purposes.
- Requires USDA to identify on a regional basis which categories of activities constitute a minimal effect on wetland functions and values.
- Provides persons who convert a wetland greater flexibility to mitigate the loss of wetland functions and values through restoration, enhancement, or creation of wetlands.
- Allows the Farm Service Agency (FSA) to waive a person's ineligibility for benefits if FSA believes the person acted in good faith and without intent to violate the wetland provisions.
- Provides for a pilot program for wetland mitigation banking.
- Repeals the requirements for consultation with the Fish and Wildlife Service (FWS).

- Provides that benefits of affiliates of a business enterprise who violate HEL or WC provisions will be reduced in proportion to the interest held by the affiliate in the business enterprise.
- Defines "agricultural lands" for the purpose of implementing the January 6, 1994, interagency memorandum of agreement on Federal wetland delineations on agricultural lands.

Public Listing Forums

In April 1996, USDA held nine forums to provide opportunities for public comment in advance of this rulemaking action. These forums were held at Sacramento, California; Longmont, Colorado; Columbus, Georgia; Springfield, Illinois; Wyomissing, Pennsylvania; Sioux Falls, South Dakota; Abilene, Texas, Spokane, Washington; and, Washington, D.C. More than 850 people, including 206 speakers, attended these forums. In addition, USDA accepted written comments. The USDA considered the public comments provided at these forums in the preparation of this interim final rule. The documents relating to these forums are available for public inspection at Room 6029 South Building, USDA, 14th and Independence Ave. SW, Washington, D.C. The following discussion is a brief 3summary of how USDA responded to the issues generated by the comments:

USDA received seven comments related to the granting of variance for persons who fail to meet the highly erodible land conservation requirements. Section 12.5(a)(6)(ii) addresses procedures for granting variances for weather, pest, and disease problems, and the factors that NRCS will consider in granting those variances.

USDA received three comments related to procedures for determining whether a conservation system results in a substantial reduction in erosion. Section 12.23 addresses procedures for evaluating conservation systems for land with and without cropping history.

USDA received 25 comments related to policies regarding when a violation is in good faith. Sections 12.5(a)(5) and (b)(5) address procedures for determining when a violation is in good faith.

USDA received 16 comments related to procedures for conducting status reviews. Although procedures for conducting status reviews are not addressed in the rule, the NRCS will consider these comments in preparing its internal operating procedures.

USDA received 46 comments related to procedures on wetland mitigation; these included the suggestion that mitigation always be in the same watershed; that mitigation should place priority on restoration or enhancement rather than creation of wetlands; that mitigation should be flexible; and, that mitigation should meet the requirements of the WC provision. Section 12.5(b)(4) sets forth procedures to be used for wetland mitigation, and adds that the State Conservationist may determine that mitigation for certain types or classes of wetlands will not be considered because it is not possible to achieve equivalent replacement of wetland functions and values within a reasonable time frame. USDA received another 28 comments related to mitigation banking.

USDA received 68 comments related to certification of wetland determinations. Some commenters favored reviewing all wetland determinations and correcting errors; other commenters favored not reviewing existing wetland determinations. Some commenters suggested that landowners should be formally notified of the certification of wetland determinations. Some commenters suggested that NRCS should be the lead agency for wetland determinations. Section 12.30(c) describes the proposed approach to certification of wetland determinations. It also specifies that a certified wetland determination will remain valid and in effect until the person affected by the certification requests review of the certification by NRCS.

USDA received 17 comments related to the role of FWS in carrying out the wetland conservation provisions. Of these, four commenters expressed support for FWS involvement and eight commenters favored decreasing the role of the FWS. Five commenters made no specific recommendation. The 1996 Act removed the requirement for consultation with FWS, and that requirement has been removed from the rule. In addition, § 12.30 defines the role of the FWS in carrying out the wetland conservation provisions.

USDA received 36 comments related to prior-converted cropland issues and abandonment of wetlands. Of these, 19 commenters expressed support for the "once a PC, always a PC" change made by the 1996 Act; three commenters expressed concern over that change. Section 12.33 incorporates changes made by the 1996 Act amendments.

USDA received four comments stating that NRCS should withdraw from the Interagency Memorandum of Agreement on Wetlands (MOA) with FWS, Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (Corps). This comment is outside the scope of this rule, but as discussed in greater detail below, NRCS is dedicated to continued coordination with the other Federal agencies with wetland responsibilities. Currently, the MOA provides a useful and available framework for this coordination.

Description of Amendments

As the summary of the forum comments indicates, the statutory changes affect provisions throughout 7 CFR part 12. Because of these numerous changes, USDA will republish part 12 in its entirety to help the public form opinions and offer comments. When USDA reviews the comments received from the public, those comments concerning new regulatory provisions will receive greater consideration.

In addition to revisions necessary to accommodate changes in the Act, USDA makes several changes to interpret, clarify, or specify procedures followed in the implementation for the HEL and WC provisions. USDA invites public comment on these changes.

Amendments to the HEL Provisions

USDA finds that the following regulatory changes will improve the quality of implementation of the HEL provisions of the 1985 Act:

- Section 12.5(a)(6)(ii) is amended to list factors that NRCS will consider when a landowner requests a variance related to weather, pest, or disease problems.
- Section 12.22(c) is added to clarify that when fields are combined, the part of the new field that was previously a highly erodible field shall continue to be subject to the highly erodible land requirements.
- Section 12.23(a) is amended to clarify that the adequacy of a conservation system will be evaluated according to whether it conforms to the NRCS field office technical guide in use at the time that the plan or system is developed or revised.
- Section 12.23(b) is added to clarify procedures to be used to evaluate the adequacy of conservation systems for achieving substantial reduction in soil erosion on land with and without cropping history.
- Section 12.23(c) is added to specify that conservation field trials included in a person's conservation plan must have prior approval by NRCS and must be documented in the person's conservation plan specifying the limited time period during which the field trial is in effect.
- Section 12.23(j) sets forth the factors to be considered by the FSA State Committee in determining whether to grant a person's request for relief based on undue economic

hardship in implementing a conservation system.

Amendments to the WC Provisions

USDA finds that the following changes will improve the implementation of the WC provisions of the 1985 Act (WC provisions):

Identification of wetland types: The WC provisions clearly limit the conversion of wetlands and the planting of an agricultural commodity on a converted wetland, yet the technical identification of when these provisions are triggered can prove complex. Even though the 1985 Act implicitly identifies three distinct land types (wetlands, converted wetlands, and non-wetlands), the inherent complexity of natural systems and the diversity of land management methods available to an agricultural producer require that greater sophistication be used in application of broad national standards to local conditions. Some areas of land have been planted to an agricultural commodity but still exhibit the characteristic of a natural wetland if cropping ceases for even a short period of time. Likewise, areas managed for hay or pasture can exhibit the characteristics of a natural wetland if the management of the area ceases. Some activities can permanently remove most of the water from an area without making the production of an agricultural commodity possible while natural events can make the production of an agricultural commodity possible without permanently removing water from an area.

Since 1987, USDA has identified in policy the threshold characteristics that define when: a wetland has been manipulated sufficiently to make the production of an agricultural commodity possible; a wetland is "converted;" conditions meet a particular exemption identified under the 1985 Act; and a producer has expanded the drainage system beyond what existed prior to December 23, 1985. The USDA is adding definitions to § 12.2 to state more precisely the variety of wetland types found in the agricultural landscape. Section 12.5 and §§ 12.30–12.33 are amended to describe how these wetland types relate to particular exemptions from ineligibility. In this manner, agricultural producers are provided the maximum flexibility to manage their lands in a manner that will not trigger the ineligibility provisions of the 1985 Act.

Coordination with other Federal agencies: Consistent with the intent expressed in the Manager's Report accompanying the 1996 Act amendments, the changes made in this rule "do not supersede the wetland protection authorities and responsibilities of the Environmental Protection Agency [EPA] or the Corps of Engineers [the Corps] under Section 404 of the Clean Water Act." This rule is promulgated under the authority of the 1985 Act, as amended, and therefore does not affect the obligations of any person under other Federal statutes, or the legal authorities of any other Federal agency including, for example, EPA's authority to determine the geographic scope of Clean Water Act jurisdiction. Nonetheless, NRCS, the Corps, and EPA place a high priority on adopting procedures and policies that minimize duplication and inconsistencies between the wetland conservation provisions of the 1985 Act and the Clean Water Act section 404 programs. To help achieve these important policy objectives, on January 6, 1994, four Federal agencies with wetland responsibilities (USDA, EPA, the Department of the Interior, the Department of the Army) entered into a Memorandum of Agreement (MOA), regarding the delineation of wetlands for purposes of section 404 of the Clean Water Act and the WC provisions. This MOA provides a framework for continuing coordination between the Federal agencies regarding the administration of Federal wetland laws. Consistent with the objectives of the MOA, the NRCS will continue to coordinate with the other Federal agencies in the development of its policies and procedures related to the implementation of these regulations.

More specifically, the agencies will coordinate to develop policies and procedures for evaluating the accuracy of existing non-certified wetland determinations made by NRCS. The necessary first step in these procedures will be to make an assessment of the quality of previous determinations. After completing the quality assessment, in order to provide certainty for the agricultural community, the Federal agencies will complete the process of validating prior determinations in an expeditious manner.

It is also the goal of the agencies to minimize duplication and inconsistencies between the WC provisions and the Clean Water Act. The agencies will coordinate to develop policies and procedures to minimize duplication and inconsistencies between the WC provisions and the Clean Water Act programs regarding other issues; in particular, conversion for non-agricultural use, minimal effects determinations (including categorical minimal effects exemptions), mitigation determination, or other written agreements between persons and NRCS, the re-establishment of agriculture use on abandoned farmed wetlands and farmed-wetland pasture, conversions due to NRCS wetland determination errors, and drainage maintenance. As part of this effort, the Corps intends to develop a new Clean Water Act nationwide permit that addresses NRCS minimal effects determinations, NRCS mitigation requirements, and modify the existing nationwide permit that addresses voluntary wetland restoration (See 61 FR part VII (June 17, 1996)).

In the MOA, the agencies agreed to follow certain guidelines for delineating wetlands. The MOA agencies currently use the 1987 Corps of Engineers Wetland Delineation Manual (1987 Corps Manual) for delineating wetlands on areas where the native vegetation is intact (*i.e.*, non-agricultural lands) and use the National Food Security Act Manual, Third ed. (NFSAM), for delineating wetlands on areas where the native vegetation has been removed due to ongoing agricultural activities (*i.e.*, agricultural lands).

Copies of the NFSAM and the MOA are available from the NRCS, P.O. Box 2890, Washington, D.C., 20013. Copies of the 1987 Corps Manual are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Attn: Order Department, Springfield, Virginia, 22171. Copies of the Supplemental guidance issued by the Corps concerning use of the 1987 Manual (*i.e.*, the October 7, 1991, Questions and Answers, and the March 6, 1992, Clarification and Interpretation Memorandum) may be obtained by contacting the Regulatory Branch of the local Corps district, the EPA Wetlands Hotline at (800) 832–7828, or the Regulatory Branch of Corps headquarters (Office of the Chief of Engineers) at (202) 272–0199. NRCS will publish notice in the **Federal Register** concerning a change in the Federal wetland delineation criteria that may be used in implementation of the WC provisions.

This interim final rule, however, only applies to administration of Title XII of the 1985 Act. As discussed earlier, the four agencies have identified a need to expand and revise the MOA to assure consistency and fairness in the implementation of these acts. The current MOA will remain in effect until it is amended or rescinded by the four agencies.

A goal of the Administration's 1993 Wetlands Plan is to harmonize the WC provisions and the Clean Water Act to the extent practicable. These regulations are modified in several ways to further the President's Wetlands Plan. In

particular, § 12.5(b)(5) provides that when a person requests relief on the basis that an action was conducted in good faith, USDA may consider whether the person has a record of violating the wetland provisions of these regulations or other Federal, State, or local wetland provisions.

Additionally, § 12.6(e) is added to state that NRCS may accept the assistance of other Federal agencies to carry out the wetland responsibilities of these regulations. Sections 12.30(a) and (b) provide that NRCS will consult with FWS at the State level to develop a process for implementation of the WC provisions.

Section 12.30(c) describes the procedure for certification of wetland determinations and specifies that certified wetland determinations will meet current Federal mapping conventions.

A certified wetland determination will remain in effect unless the person affected by the certification requests a review under certain circumstances or the wetland characteristics are changed as a result of human activities.

Section 12.31(b)(3) is amended to provide that the determination of prevalence of hydrophytic vegetation will be made in accordance with the current Federal wetland delineation methodology in use at the time of the determination. This change assures that the four agencies will utilize consistent and up-to-date technical standards and criteria.

Summary of Rule Modifications

Based on the changes in the 1996 Act and the other considerations set forth above, the changes to 7 CFR part 12 adopted in this notice are as follows:

Subpart A

This interim final rule adds several new definitions to § 12.2. The Department of Agriculture Reorganization Act of 1994 abolished several agencies and established new agencies to assume Department responsibilities. Therefore, § 12.2 is amended to reflect the new agencies with responsibilities for implementation of these regulations.

Section 12.2: This interim final rule adds new definitions for "conservation plan," "conservation system," and "field" as stated in the statute. It also adds several new definitions related to types of wetlands and management actions related to wetlands that have previously only been identified in policy. Definitions for "prior-converted cropland," "farmed wetland," "farmed-wetland pasture," and "commenced-conversion wetland" have been added. Other provisions of the rule have been amended, including § 12.5 and §§ 12.31–.33, to incorporate these new definitions where applicable.

The 1996 Act amendments provide that a person who converts a wetland may remain eligible for USDA program benefits if the loss of wetland functions and values are mitigated through the restoration, enhancement, or creation of a wetland. Therefore, definitions for "creation", "enhancement", and "restoration", have been added to clarify this new flexibility.

Section 12.3: This interim final rule applies to all actions taken after July 3, 1996, and to determinations made after, or pending on, July 3, 1996, the date on which the HEL and WC statutory amendments become effective. This section is amended to reflect the passage of the 1996 Act and the scope of these new provisions.

Section 12.4: Section 12.4 describes the actions that will cause a person to lose eligibility for USDA program benefits and the program benefits that are subject to reduction or loss. The 1996 Act treats HEL and WC differently regarding the programs encompassed by each provision and the extent of the sanctions if the provisions are violated. Section 12.4 deletes applicability to some programs, such as crop insurance and obsolete programs. A person who violates the WC provisions may lose all or only a portion of certain USDA benefits, but a person who violates HEL could lose all of of these same benefits and additional program benefits. Sections 12.4(c) is amended to include an interpretation of which crop year's benefits are affected by a violation decision, and sets forth the factors that FSA will consider in determining the extent of benefits to be lost based on the seriousness of the violation.

Section 12.5: The 1996 Act amendments modify the provisions of § 12.5 regarding the exemptions from ineligibility for USDA program benefits. Section 12.5(a) addresses the exemptions that apply to HEL and § 12.5(b) addresses the exemptions that apply to WC.

Section 12.5(a)(5) specifies that HEL violations that are determined to have been made in good-faith are eligible for graduated sanctions if they were on land that was converted from native vegetation, *i.e.*, rangeland or woodland, to crop production after December 23, 1985. For good faith violations on land that was converted from native vegetation, *i.e.*, rangeland or woodland, to crop production before December 23, 1985, the person will be allowed up to one year to correct the problem before being found ineligible. After one year, if the problem is not corrected, the ineligibility provisions of § 12.4 will apply. Section 12.5(a)(6) grants an automatic variance if within 30 days NRCS fails to respond to a persons request for a variance because of weather, pest, or disease. It describes criteria that NRCS will consider when determining whether to grant a variance for a natural disaster such as weather, pest, or disease. NRCS is especially soliciting comments on how these criteria may be specified to ensure that variances are granted where appropriate.

Under § 12.5(b), the exemptions from ineligibility relative to wetland conservation, there exists a new exemption for land that was certified as having been converted prior to December 23, 1985, (prior-converted croplands), but had returned to wetland characteristics after that date. This exemption provides that if certain requirements are met, a prior-converted cropland will not be considered abandoned for purposes of implementation of these regulations. Likewise, there exists another new exemption for areas that NRCS determined were manipulated but were not completely converted prior to December 23, 1985, (farmed wetlands and farmed-wetland pastures), but may revert to wetland status through a voluntary restoration, enhancement, or creation action. This exemption provides that if certain requirements are met, the area will not be considered abandoned for purposes of implementation of these regulations.

These exemptions do not address how the Corps may treat these wetland types for purposes of section 404 of the Clean Water Act. The Corps has a notice in 61 FR part VII (June 17, 1996) to issue, reissue, and modify the nationwide permits for section 404 of the Clean Water Act that addresses these issues.

The 1996 Act provides that certain wetland conversion activities that were conducted pursuant to a permit issued under section 404 of the Clean Water Act may be exempt from ineligibility under the WC provisions, if the conversion activity was adequately mitigated for purposes of these provisions. This rule provides that a person who received an individual permit under section 404 of the Clean Water Act after December 23, 1985, and met certain sequencing requirements, is exempt from the ineligibility provisions of these regulations.

This rule, however, provides that a person whose conversion activity is encompassed by a nationwide or regional general permit issued pursuant to section 404 of the Clean Water Act

may not be exempt under these regulations. USDA will evaluate whether any mitigation was required, and whether the wetland functions and values lost by the conversion activity were adequately replaced before USDA decides whether the conversion activity is exempt from ineligibility under these regulations.

The regulations that existed prior to this interim final rule described a detailed procedure by which a person could receive a commenced conversion determination from FSA. Persons who believed that they qualified for such a determination had to request one from FSA by September 19, 1988. The purpose of the determination was to minimize any unnecessary economic hardship to someone who had incurred substantial financial obligations related to the conversion of a wetland prior to December 23, 1985, but had not actually converted the wetland by that date. Any person who received a commenced-conversion wetland determination had to complete the conversion activity by January 1, 1995, to retain the exemption status. Because the commenced conversion determination had to be received by 1988 and the conversion had to be completed by the end of 1994, the references in the rule related to the process to obtain a determination have been removed. If a person completed conversion activity by January 1, 1995, the land will qualify for the same exemptions from ineligibility as prior-converted cropland. If, however, a person did not complete the conversion activity by that date, the land will be subject to the same requirements under this rule as farmed wetlands.

The 1996 Act provides that a person may remain eligible for an action resulting in the conversion of a wetland if the wetland functions and values are adequately mitigated through the restoration of a converted wetland, the enhancement of an existing wetland, or the creation of a new wetland. Section 12.5(b)(4) provides that this exemption applies if the mitigation is completed in accordance with several requirements, including that the person implement a mitigation plan approved by NRCS. The mitigation plan may be a single document or it may be a component of a larger conservation plan created voluntarily by the program participant. The requirements for this exemption are similar to the requirements for restoration of a converted wetland: under the current regulations, such as the granting of an easement to USDA, recording an easement on the public land records, and that such mitigation not be at the expense of the Federal government.

The 1996 Act provides that USDA may expend Federal funds for the establishment of a pilot program for mitigation banking. USDA has not yet decided whether it will establish such a pilot program or what the particulars of such a program would be. During the public comment period, USDA is especially soliciting comments from the public regarding this subject.

The 1996 Act removes the requirement for graduated sanctions if the FSA determines that a wetland violation was committed in good faith. Central to the determination about whether a person acted in good faith is the knowledge available to the person concerning the existence of a wetland on the subject land. This knowledge can either be direct, such as information received from NRCS in the form of a wetland determination, or can be inferred from a person's past experience with violating wetland laws or regulations. This interim final rule provides that if a person is considered to have acted in good faith and the person agrees to implement a mitigation plan, then USDA may waive applying the ineligibility provisions of § 12.4.

Section 12.6: Section 12.6 concerns the respective responsibilities of USDA agencies; the new responsibilities created by the 1996 Act have been added. Section 12.6(b) is amended to specify that FSA is responsible for determining the extent of reduction in benefits for wetland violations based on the seriousness of the violation, and for determining whether a person should receive relief because application of a conservation system would result in undue economic hardship. Section 12.6(c) is amended to reflect that NRCS is responsible for providing information to FSA relating to the seriousness of a violation.

In response to the need to coordinate with the MOA agencies regarding wetland determinations, a new paragraph has been added to § 12.6 New paragraph (f) provides that NRCS may accept the assistance of the MOA agencies in implementing these regulations. This paragraph also confirms that NRCS will continue to seek the coordination of the other agencies on wetland matters to increase the public's understanding of the importance of wetland functions and values and the objectives of the WC provisions and the Clean Water Act.

Section 12.7: Section 12.7 addresses certification by a program participant that such participant is in compliance with the HEL and WC provisions. Section 12.7 is amended to allow a person to certify application of practices in a plan or measurement of residue required by a plan.

Section 12.8: Section 12.8 is amended to revise the definition of affiliated persons for the purpose of determining whose benefits may be affected by a decision and to what extent. In particular, § 12.8(b) is amended to provide that spouses who provide sufficient evidence of separate operations shall not be considered affiliates, and partnerships, trusts, and joint ventures are not considered affiliates if the interest is held indirectly through another business enterprise. Section 12.8(d) limits the reduction in payments for partnerships, joint ventures, trust, or other enterprises to the extent of interest held by the person responsible for the violation. Section 12.8(e) states that limitations on affiliations if action has been taken to avoid payment reductions for partnerships, joint ventures, trusts, or the application of the sanctions provided for in the regulations.

Subpart B

Section 12.21: Section 12.21 is amended to include a reference to publication of soil loss equations at 7 CFR part 610.

Section 12.22: Section 12.22 is amended to allow combining HEL and non-HEL fields, but the requirements of these regulations continue to apply to the previous HEL portion only.

Section 12.23: Section 12.23 is amended to specify that: conservation systems shall be technically and economically feasible (based on local resource conditions and available technology), cost effective, and shall not cause undue economic hardship; the standard for determining whether a plan provides a substantial reduction in erosion is the estimated annual level of erosion compared to the level before the system is applied; for new land brought into production, in no case will the required conservation system permit a substantial increase in erosion; procedures for conducting field trials as on-farm reseach; and procedures and criteria used by FSA when a person requests relief based on undue economic hardship.

Subpart C

Subpart C addresses the technical responsibilities of NRCS and the technical criteria used to make the necessary determinations for wetland conservation under these regulations.

Section 12.30: Section 12.30 is amended to reflect that NRCS will continue to work with the Corps, EPA, and FWS to improve the quality of wetland determinations and other

processes that affect the implementation of the WC provisions.

The 1996 Act repealed the requirement for consultation with FWS, thus allowing the Secretary to determine under what circumstances FWS should be utilized in the implementation of the WC provisions. Section 12.30 is amended to reflect that NRCS will develop a process at the State level, in coordination with FWS, for implementing the WC provisions and review such implementation on an annual basis. The technical expertise of FWS may be utilized whenever NRCS determines that such expertise is needed to address adequately the requirements of the WC provisions or to enhance the quality of implementation.

Under the new mitigation flexibility provided by the 1996 Act, the expertise of FWS will be valuable for conducting wetland functional assessments associated with minimal effects determinations and formulation of mitigation plans. The State-level process is intended, in part, to identify any geographic or programmatic areas where NRCS may need additional technical expertise to assess biological impacts of proposed wetland conversions.

Section 12.30 is also amended to address the process for certification of wetland determinations for the implementation of the WC provisions of the 1985 Act. If NRCS certified a wetland determination prior to July 3, 1996, the certification will remain valid. Upon request, a person may obtain certification of a wetland determination. A certified wetland determination means that the determination is of sufficient quality to make a determination of ineligibility for program benefits under these regulations. As indicated above, NRCS will continue to work with the other MOA agencies to coordinate the identification and certification of wetlands for the purposes of these regulations and for the Clean Water Act. The agencies recognize the importance of providing certainty for the agricultural community as to the status of their wetland determinations which have not been certified. The Federal agencies are therefore considering establishing a specific time frame for completing the evaluation of existing wetland determinations. During this time frame, an evaluation would be made as to the accuracy of wetland determinations within a given geographic area or of a specific type of wetland. Based on the evaluation, landowners would be notified whether their current wetland determinations are acceptable for both the WC provisions and the Clean Water Act. USDA is especially seeking comments regarding implementation of this process.

Section 12.31; Section 12.31 is amended to reflect that NRCS will utilize the 1987 Corps Manual for determining the prevalence of hydrophytic vegetation. Section 12.31 is also amended to add the criteria for determining "categorical minimal effect exemptions." If NRCS identifies any categories of conversion activities and conditions which would only have a minimal effect on wetland functions and values, then such activities and conditions will be placed on a list of "categorical minimal effect exemptions" and such conversion activities and conditions will be considered exempt from the ineligibility provisions of these regulations. NRCS will incorporate such activities and conditions in the provisions of these regulations USDA is especially seeking comments regarding implementation of this new exemption. For purposes of the Clean Water Act, the Corps intends to address this provision as part of its reissuance of the Clean Water Act section 404 nationwide permits (See 61 FR part VII (June 17, 1996)).

Sections 12.32 and 12.33: Sections 12.32 and 12.33 have been amended to incorporate the definitions for farmed wetland, farmed-wetland pasture, commenced-conversion wetland, and prior-converted cropland, where appropriate.

Section 12.33: Section 12.33 has also been amended to modify the conditions under which NRCS will consider a particular site to be abandoned for purposes of these regulations. A person who wishes to allow a particular site to revert to wetland conditions should contact NRCS to ascertain what documentation is necessary to prevent such land from being considered abandoned for purposes of the WC provisions of these regulations. For purposes of the Clean Water Act, the Corps intends to address this provision as part of its re-issuance of the Clean Water Act section 404 nationwide permits (See 61 FR part VII (June 17, 1996)).

The amendments to part 12 do not affect the recordkeeping requirements and estimated burdens previously reviewed and approved under Office of Management and Budget control number 0560–0004.

List of Subjects in 7 CFR Part 12

Administrative practices and procedures, Soil Conservation, Wetlands.

Accordingly, Title 7 of the Code of Federal Regulations is amended by revising Part 12 as follows:

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

Subpart A—General Provisions

Sec.

12.1 General.
12.2 Definitions.
12.3 Applicability.
12.4 Determination of ineligibility.
12.5 Exemptions.
12.6 Administration.
12.7 Certification of compliance.
12.8 Affiliated persons.
12.9 Landlords and tenants.
12.10 Scheme or device.
12.11 Action based upon advice or action of USDA.
12.12 Appeals.

Subpart B—Highly Erodible Land Conservation

12.20 NRCS responsibilities regarding highly erodible land.
12.21 Identification of highly erodible lands criteria.
12.22 Highly erodible field determination criteria.
12.23 Conservation plans and conservation systems.

Subpart C—Wetland Conservation

12.30 NRCS responsibilities regarding wetlands.
12.31 Onn-site wetland identification criteria.
12.32 Converted wetland identification criteria.
12.33 Use of wetland and converted wetland.
12.34 Paperwork Reduction Act assigned number.

Authority: 16 U.S.C. 3801 *et seq.*

Subpart A—General Provisions

§ 12.1 General.

(a) *Scope.* This part sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture (USDA) and agencies and instrumentalities of USDA.

(b) *Purpose.* The purpose of the provisions of this part are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

(1) Reduce soil loss due to wind and water erosion;

(2) Protect the Nation's long-term capability to produce food and fiber;

(3) Reduce sedimentation and improve water quality; and

(4) Assist in preserving the functions and values of the Nation's wetlands.

§ 12.2 Definitions.

(a) *General.* The following definitions shall be applicable for the purposes of this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

CCC means the Commodity Credit Corporation, wholly-owned government corporation within USDA organized under the provisions of 15 U.S.C. 714 *et seq.*

Conservation District (CD) means a subdivision of a State or local government organized pursuant to the applicable law to develop and implement soil and water conservation activities or programs.

Conservation plan means the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules; and

(3) Is approved by the local soil conservation district in consultation with the local committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Natural Resources Conservation Service (NRCS) for purposes of compliance with this part.

Conservation system means a combination of one or more conservation measures or management practices that are—

(1) Based on local resource conditions, available conservation technology, and the standards and guidelines contained in the NRCS field office technical guides (available from NRCS State offices); and

(2) Designed for purposes of this part to achieve, in a cost-effective and technically practicable manner, a substantial reduction in soil erosion or a substantial improvement in soil conditions on a field or group of fields containing highly erodible cropland when compared to the level of erosion or soil conditions that existed before the application of the conservation measures and management practices.

Conservation use or set aside means cropland that is designated as conservation-use acreage, set aside, or other similar designation for the purpose of fulfilling provisions under any acreage-limitation or land-diversion program administered by the Secretary of Agriculture requiring that the producer devote a specified acreage to conservation or other non-crop production uses.

Creation of a wetland means the development of the hydrologic, geochemical, and biological components necessary to support and maintain a wetland where a wetland did not previously exist. Any wetland established on a non-hydric soil will be considered a created wetland.

CSREES means the Cooperative State Research, Education, and Extension Service, an agency of USDA which is generally responsible for coordinating the information and educational programs of USDA.

Department means the United States Department of Agriculture (USDA).

Enhancement of a wetland means the alteration of an existing wetland to increase its specific functions and values. Enhancement actions include new capabilities, management options, structures, or other actions to influence one or several functions and values.

Erodibility index means a numerical value that expresses the potential erodibility of a soil in relation to its soil loss tolerance value without consideration of applied conservation practices or management.

FSA means the Farm Service Agency, an agency of USDA which is generally responsible for administering commodity production adjustment and certain conservation programs of USDA.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, or other similar features. At the option of the owner or operator of the farm, croplines may also be used to delineate a field if farming practices make it probable that the croplines are not subject to change. Any highly erodible land on which an agricultural commodity is produced after December 23, 1985, and is not exempt under § 12.5(a), shall be considered part of the field in which the land was included on December 23, 1985, unless, to carry out this title, the owner and FSA agree to modify the boundaries of the field.

Highly erodible land means land that has an erodibility index of 8 or more.

Hydric soils means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

Hydrophytic vegetation means plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

Landlord means a person who rents or leases farmland to another person.

Local FSA office means the county office of the Farm Service Agency serving the county or a combination of counties in the area in which a person's land is located for administrative purposes.

NRCS means the Natural Resources Conservation Service, an agency within USDA which is generally responsible for providing technical assistance in matters of natural resources conservation and for administering certain conservation programs of USDA.

Operator means the person who is in general control of the farming operations on the farm during the crop year.

Owner means a person who is determined to have legal ownership of farmland and shall include a person who is purchasing farmland under contract.

Person means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof, and such person's affiliates as provided in § 12.8 of this part.

Restoration of a wetland means the re-establishment of wetland conditions, including hydrologic condition or native hydrophytic vegetation, to an area where a wetland had previously existed.

Secretary means the Secretary of USDA.

Sharecropper means a person who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for such labor.

Soil map unit means an area of the landscape shown on a soil map which consists of one or more soils.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Tenant means a person usually called a "cash tenant", "fixed-rent tenant", or "standing rent tenant" who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or a person (other than a sharecropper) usually called a "share tenant" who rents land from another person and pays as rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator unless the tenant is determined

to be the operator pursuant to this part and 7 CFR part 718.

Wetland, except when such term is a part of the term "converted wetland", means land that—

(1) Has predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Under normal circumstances does not support a prevalence of such vegetation, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

Wetland determination means a decision regarding whether or not an area is a wetland, including identification of wetland type and size. A wetland determination may include identification of an area as one of the following types of wetland—

(1) *Artificial wetland* is an area that was formerly non-wetland, but now meets wetland criteria due to human activities, such as:

(i) An artificial lake or pond created by excavating or diking land that is not a wetland to collect and retain water that is used primarily for livestock, fish production, irrigation, wildlife, fire control, flood control, cranberry growing, or rice production, or as a settling pond; or

(ii) A wetland that is temporarily or incidentally created as a result of adjacent development activity;

(2) *Commenced-conversion wetland* is a wetland, farmed wetland, farmed-wetland pasture, or a converted wetland on which conversion began, but was not completed, prior to December 23, 1985.

(3) *Converted wetland* is a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) for the purpose of or to have the effect of making possible the production of an agricultural commodity without further application of the manipulations described herein if:

(i) Such production would not have been possible but for such action, and

(ii) Before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland;

(4) *Farmed wetland* is a wetland that prior to December 23, 1985, was manipulated and used to produce an agricultural commodity, and on December 23, 1985, did not support woody vegetation and met the following hydrologic criteria:

(i) Is inundated for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more), or

(ii) If a pothole, playa, or pocosion, is ponded for 7 or more consecutive days during the growing season in most years (50 percent chance of more) or is saturated for 14 or more consecutive days during the growing season in most years (50 percent chance or more);

(5) *Farmed-wetland pasture* is wetland that was manipulated and managed for pasture or hayland prior to December 23, 1985, and on December 23, 1985, met the following hydrologic criteria:

(i) Inundated or ponded for 7 or more consecutive days during the growing season in most years (5) percent chance or more), or

(ii) Saturated for 14 or more consecutive days during the growing season in most years (50 percent chance or more);

(6) *Not-inventoried land*, is an area for which no evaluation of soils, vegetation, or hydrology has been conducted to determine if wetland criteria are met;

(7) *Non-wetland* is;

(i) Land that under natural conditions does not meet wetland criteria, or

(ii) Is converted wetland the conversion of which occurred prior to December 23, 1985, and on that date, the land did not meet wetland criteria but and agricultural commodity was not produced and the area was not managed for pasture or hay;

(8) *Prior-converted cropland* is a converted wetland where the conversion occurred prior to December 23, 1985, an agricultural commodity had been produced at least once before December 23, 1985, and as of December 23, 1985, the converted wetland did not support woody vegetation and met the following hydrologic criteria:

(i) Inundation was less than 15 consecutive days during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more); and

(ii) If a pothole, playa or pocosin, ponding was less than 7 consecutive days during the growing season in most years (50 percent chance or more) and saturation was less than 14 consecutive days during the growing season most years (50 percent chance or more); or

(9) *Wetland*, as defined above in this section.

Wetland delineation means outlining the boundaries of a wetland determination on aerial photography, digital imagery, other graphic representation of the area, or on the land.

(b) *Terms for FSA operations*. In the regulations in this part, and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to FSA operations shall, unless required by the subject matter or the specific provisions of this part, have the meanings assigned to them in the regulations at part 718 of this title that govern reconstitutions of farms, allotments, and bases and any subsequent amendment thereto.

§ 12.3 Applicability.

(a) *Geographic scope*. The provisions of this part shall apply to all land, including Indian tribal land, in the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Island of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands.

(b) *Effective date*. The provisions of this part apply to all actions taken after July 3, 1996, and to determinations made after or pending on July 3, 1996, except to the extent that § 12.5(a)(5) and 12.5 (b)(4) through (b)(8) specify retroactive application on December 23, 1985, and November 28, 1990, for certain actions and determinations regarding wetlands and converted wetlands. Actions taken and determinations made prior to July 3, 1996, are subject to regulations set forth in this part as of July 2, 1996, except as otherwise provided in this part. Further, to the extent that a person may be eligible for an exemption for an action taken before July 3, 1996, the action is subject to the provisions of this part.

§ 12.4 Determination of ineligibility.

(a) *Actions*. Except as provided in § 12.5, a person shall be ineligible for all or a portion of USDA program benefits listed in this section if:

(1) The person produces an agricultural commodity on a field in which highly erodible land is predominant, or designates such a field for conservation use;

(2) The person produces an agricultural commodity on wetland that was converted after December 23, 1995; or

(3) After November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

(b) *Highly erodible land.* A person determined to be ineligible under paragraph (a)(1) of this section may be ineligible for all program benefits listed in (d) and (e) of this section.

(c) *Wetland conservation.* A person determined to be ineligible under paragraph (a)(2) of this section shall be ineligible for all or a portion of the USDA program benefits listed in paragraph (d) of this section for which the person otherwise would have been eligible during the crop year of the commodity that was planted on the converted wetland. A person determined to be ineligible under paragraph (a)(3) of this section for the conversion of a wetland shall be ineligible for all or a portion of the USDA program benefits listed in paragraph (d) of this section for which the person otherwise would have been eligible during the crop year which is equal to the calendar year during which the violation occurred and each subsequent crop year until the converted wetland is restored or the loss of wetland functions and values have been mitigated prior to the beginning of such calendar year in accordance with § 12.5(b)(4)(i) (A) and (C) through (F) of this part. Ineligibility under paragraph (a)(2) or (a)(3) of this section may be reduced, in lieu of the loss of all benefits specified under paragraph (d) of this section for such crop year, based on the seriousness of the violation, as determined by the FSA Deputy Administrator for Farm Programs or designee upon recommendation by the FSA County Committee. Factors such as the information that was available to the affected person prior to the violation, previous land use patterns, the existence of previous wetland violations under this part or under other Federal, State, or local wetland provisions, the wetland functions and values affected, the recovery time for full mitigation of the wetland functions and values, and the impact that a reduction in payments would have on the person's ability to repay a USDA farm loan shall be considered to making this determination.

(d) *Programs subject to either highly erodible land or wetland conservation.* USDA program benefits covered by a determination of ineligibility under this rule are:

(1) Contract payments under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(2) A farm credit program loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) or any other provision of law administered by FSA if the Secretary determines that the proceeds of such loan will be used for a purpose that contributes to the conversion of wetlands that would make production of an agricultural commodity possible or for a purpose that contributes to excessive erosion of highly erodible land (*i.e.*, production of an agricultural commodity or highly erodible land without a conservation plan or conservation system as required by this part);

(3) A payment made pursuant to a contract entered into under the Environmental Quality Incentives Program under chapter 4 of subtitle D of the Food Security Act of 1985, as amended; or a payment under any other provision of Subtitle D of that Act;

(4) A payment made under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 or 2202);

(5) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 or 1006a).

(e) *Programs subject to highly erodible land only.* In addition to programs listed in paragraph (d) of this section, a person determined to be ineligible under paragraph (a)(1) of this section shall be ineligible as determined by FSA for the following USDA program benefits for which the person otherwise would have been eligible during the crop year for which the determination applies:

(1) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(2) A disaster payment made under the Federal Agricultural Improvement and Reform Act, Pub. L. 104–127, or any other act; and

(3) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

(f) *Prior loans.* The provisions of paragraphs (a), (b), and (c) of this section do not apply to any loan described in paragraphs (d) or (e) of this section that was made prior to December 23, 1985.

(g) *Determination of ineligibility.* For the purpose of paragraph (a) of this section, a person shall be determined to have produced an agricultural commodity on a field in which highly erodible land is predominant or to have designated such a field for conservation use, to have produced an agricultural commodity on converted wetland, or to have converted a wetland if:

(1) NRCS has determined that—

(i) Highly erodible land is predominant in such field, or

(ii) All or a portion of the field is converted wetland; and

(2) FSA has determined that the person is or was the owner or operator of the land, or entitled to share in the crops available from the land, or in the proceeds thereof; and

(3) With regard to the provisions of paragraph (a)(1) and (a)(2) of this section, FSA has determined that the land is or was planted to an agricultural commodity or was designated as conversation use during the year for which the person is requesting benefits.

(h) *Intent to participate in USDA programs.* Persons who wish to participate in any of the USDA programs described in paragraph (d) or (e) of this section are responsible for contacting the appropriate agency of USDA well in advance of the intended participated date so that Form AD–1026 can be completed. This contact will help assure that the appropriate determinations regarding highly erodible land or wetland, and conversation plans or conversation systems are scheduled in a timely manner. A late contact may not allow sufficient time for USDA to service the request and could result in a substantial delay in receiving a USDA determination of eligibility or ineligibility.

§ 12.5 Exemption.

(a) *Exemptions regarding highly erodible land.*

(1) *Highly erodible cropland in production or in USDA programs during 1981 through 1985 crop years.* During the period beginning on December 23, 1985, and ending on the later of January 1, 1990, or the date that is two years after the date the cropland on which an agricultural commodity is produced was surveyed by NRCS to determine if such land is highly erodible, no person shall be determined to be ineligible for benefits as provided in § 12.4 as the result of the production of an agricultural commodity on any highly erodible land:

(i) That was planted to an agricultural commodity in any year 1081 through 1985; or

(ii) That was set aside, diverted, or otherwise not cultivated in any such crop years under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(2) *Compliance with a conservation plan or conservation system.* as further specified in this part, no person shall be ineligible for the program benefits described in § 12.4 as the result of production of an agricultural commodity on highly erodible land or the designation of such land for conservation use if such production or designation is in compliance with a conservation plan or conservation system approved under paragraph (a)(2)(i) or (a)(2)(ii) of this section. A person shall not be ineligible for program benefits under § 12.4 as the result of the production of an agricultural commodity on highly erodible land or as the result of designation of such land as conservation use if the production or designation is:

(i) In an area within a CD, under a conservation system that has been approved by the CD after the CD determines that the conservation system is in conformity with technical standards set forth in the NRCS field office technical guide for such district; or

(ii) In an area not within a CD, under a conservation system that has been approved by NRCS to be adequate for the production of such agricultural commodity on highly erodible land or for the designation of such land as conservation use.

(3) *Reliance upon NRCS determination for highly erodible land.* A person may be relieved from ineligibility for program benefits as the result of the production of an agricultural commodity which was produced on highly erodible land or for the designation of such land as conservation use in reliance on a determination by NRCS that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted on highly erodible land, or for the designation of highly erodible land as conservation use after NRCS determines that such land is highly erodible land, and the person is notified of such determinations.

(4) *Areas of 2 acres or less.* No person shall be determined to be ineligible under § 12.4 for noncommercial production of agricultural commodities on highly erodible land on an area of 2 acres or less if it is determined by FSA that such production is not intended to circumvent the conservation requirements otherwise applicable under this part.

(5) *Good faith.*

(i) No person shall become ineligible under § 12.4 as a result of the failure of such person to apply a conservation system on highly erodible land that was converted from native vegetation, i.e. rangeland or woodland, to crop production before December 23, 1985, if FSA determines such person has acted in good faith and without the intent to violate the provisions of this part and if NRCS determines that the person complies with paragraph (a)(5)(ii) of this section.

(ii) A person is who determined to meet the requirements of paragraph (a)(5)(i) of this section shall be allowed a reasonable period of time, as determined by NRCS, but not to exceed one year, during which to implement the measures and practices necessary to be considered applying the person's conservation plan. If a person does not take the required corrective actions, the person may be determined to be ineligible for the crop year during which such actions were to be taken as well as any subsequent crop years. Notwithstanding the good-faith requirements of paragraph (a)(5)(i) of this section, if NRCS observes a possible compliance deficiency while providing on-site technical assistance, NRCS shall provide to the responsible person, not later than 45 days after observing the possible violation, information regarding actions needed to comply with the plan and this subtitle. NRCS shall provide this information in lieu of reporting the observation as a violation, if the responsible person attempts to correct the deficiencies as soon as practicable, as determined by NRCS, after receiving the information, and if the person takes corrective action as directed by NRCS not later than one year after receiving the information. If a person does not take the required corrective actions, the person may be determined to be ineligible for the crop year during which the compliance deficiencies occurred as well as any subsequent crop years.

(iii) No person shall become ineligible under § 12.4 as a result of failure to apply a conservation system with respect to highly erodible cropland that was converted from native vegetation, i.e., rangeland or woodland, to crop production after December 23, 1985, if such person has acted in good faith and without an intent to violate the provisions of this part. The person shall, in lieu of the loss of all benefits specified under § 12.4 (d) and (e) for such crop year, be subject to a reduction in benefits of not less than $500 nor more than $5,000 depending upon the seriousness of the violation, as determined by FSA. The dollar amount of the reduction will be determined by FSA and may be based on the number of acres and the degree of erosion hazard for the area in violation, as determined by NRCS, or upon such other factors as FSA deems appropriate.

(iv) Any person whose benefits are reduced in a crop year under paragraph (a)(5) of this section may be eligible for all of the benefits specified under § 12.4 (d) and (e) for any subsequent crop year if NRCS determines that such person is applying a conservation plan according to the schedule set forth in the plan on all highly erodible land planted to an agricultural commodity or designated as conservation use.

(6) *Allowable variances.*

(i) Notwithstanding any other provisions of this part, no person shall be determined to be ineligible for benefits as a result of the failure of such person to apply a conservation system if NRCS determines that—

(A) The failure is technical and minor in nature and that such violation has little effect on the erosion control purposes of the conservation plan applicable to the land on which the violation has occurred; or

(B) The failure is due to circumstances beyond the control of the person; or

(C) NRCS grants a temporary variance from the practices specified in the plan for the purpose of handling a specific problem, including weather, pest, and disease problems, which NRCS determines cannot reasonably be addressed except through such variance.

(ii) If the person's request for a temporary variance involves the use of practices or measures to address weather, pest, or disease problems, NRCS shall make a decision on whether to grant the variance during the 30-day period beginning on the date of receipt of the request. If NRCS fails to render a decision during the period, the temporary variance shall be considered granted unless the person seeking the variance had reason to know that the variance would not be granted. In determining whether to grant a variance for natural disasters such as weather, pest, or disease problems, NRCS will consider such factors as:

(A) The percent of a stand damaged or destroyed by the event;

(B) The percent of expected crop production compared to normal production for that crop;

(C) The documented invasion of non-native insects, weeds, or diseases for which no recognized treatment exists;

(D) Whether an event is severe or unusual based on historical weather records; and

(E) Other specific circumstances caused by a natural event that prevented the implementation of conservation practices or systems, installation of structures, or planting of cover crops.

(b) *Exemptions for wetlands and converted wetlands.*

(1) *General exemptions.* A person shall not be determined to be ineligible for program benefits under § 12.4 as the result of the production of an agricultural commodity on converted wetland or the conversion of wetland if:

(i) The land is a prior-converted cropland and meets the definition of a prior-converted cropland as of the date of a wetland determination by NRCS;

(ii) The land has been determined by NRCS to be a prior-converted cropland and such determination has been certified, and NRCS determines that the wetland characteristics returned after the date of the wetland certification as a result of—

(A) The lack of maintenance of drainage, dikes, levees, or similar structures,

(B) The lack of management of the lands containing the wetland, or

(C) Circumstances beyond the control of the person;

(iii) The land was determined by NRCS to be a farmed wetland or a farmed-wetland pasture and—

(A) Such land meets wetland criteria through a voluntary restoration, enhancement, or creation action after that determination,

(B) The technical determinations regarding the baseline site conditions and the restoration, enhancement, or creation action have been adequately documented by NRCS,

(C) The proposed conversion action is documented by the NRCS prior to implementation, and

(D) The extent of the proposed conversion is limited so that the conditions will be at least equivalent to the wetland functions and values that existed at the time of implementation of the voluntary wetland restoration, enhancement, or creation action;

(iv) NRCS has determined that the conversion if for a purpose that does not make the production of an agricultural commodity possible, such as conversions for fish production, trees, vineyards, shrubs, cranberries, agricultural waste management structures, livestock ponds, fire control, or building and road construction and no agricultural commodity is produced on such land;

(v) NRCS has determined that the actions of the person with respect to the conversion of the wetland or the combined effect of the production of an agricultural commodity on a wetland converted by the person or by someone else, individually and in connection with all other similar actions authorized by NRCS in the area, would have only a minimal effect on the wetland functions and values of wetlands in the area;

(vi) (A) After December 23, 1985, the Army Corps of Engineers issued an individual permit pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1344, authorizing such action and the permit required mitigation that adequately replaced the functions and values of the wetlands converted, as determined by NRCS, or

(B) After December 23, 1985, the action is encompassed under section 404 of the Clean Water Act, 33 U.S.C. 1344, by an Army Corps of Engineers nationwide or regional general permit and the wetland functions and values were adequately mitigated, as determined by NRCS; or

(vii) The land is determined by NRCS to be—

(A) An artificial wetland,

(B) A wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation,

(C) A nontidal drainage or irrigation ditch excavated in non-wetland, or

(D) A wetland converted by actions of persons other than the person applying for USDA program benefits or any of the person's predecessors in interest after December 23, 1985, if such conversion was not the result of a scheme or device to avoid compliance with this part. Further drainage improvement on such land is not permitted without loss of eligibility for USDA program benefits, unless NRCS determines under paragraph (b)(1)(v) of this section that further drainage activities applied to such land would have minimal effect on the wetland functions and values in the area. In applying this paragraph, a converted wetland shall be presumed to have been converted by the person applying for USDA program benefits unless the person can show that the conversion was caused by a third party with whom the person was not associated through a scheme or device as described under § 12.10 of this part. In this regard, activities of a water resource district, drainage district, or similar entity will be attributed to all persons within the jurisdiction of the district or other entity who are assessed for the activities of the district or entity. Accordingly, where a person's wetland is converted due to the actions of the district or entity, the person shall be considered to have caused or permitted the drainage. Notwithstanding the provisions of the preceding sentences and as determined by FSA to be consistent with the purposes of this part, the activities of a drainage district or other similar entity will not be attributed to a person to the extent that the activities of the district or entity were beyond the control of the person and the wetland converted is not used by the person for the production of an agricultural commodity or a forage crop for harvest by mechanical means or mitigation for the converted wetland occurs in accordance with this part.

(2) *Commenced conversion wetlands.*

(i) The purpose of a determination of a commenced conversion made under this paragraph is to implement the legislative intent that those persons who had actually started conversion of a wetland or obligated funds for conversion prior to December 23, 1985, would be allowed to complete the conversion so as to avoid unnecessary economic hardship.

(ii) All persons who believed they had a wetland or converted wetland for which conversion began but was not completed prior to December 23, 1985, must have requested by September 19, 1988, FSA to make a determination of commencement in order to be considered exempt under this section.

(iii) Any conversion activity considered by FSA to be commenced under this section lost its exempt status if such activity as not completed on or before January 1, 1995. For purposes of this part, land on which such conversion activities were completed by January 1, 1995, shall be evaluated by the same standards and qualify for the same exemptions as prior-converted croplands. For purposes of this part, land on which such conversion activities were not completed by January 1, 1995, shall be evaluated by the same standards and qualify for the same exemptions as wetlands or famed wetlands, as applicable.

(iv) Only those wetlands for which the construction had begun, or to which the contract or purchased supplies and materials related, qualified for a determination of commencement. However, in those circumstances where the conversion of wetland did not meet the specific requirements of this paragraph, the person could have requested a commencement of conversion determination from the FSA Deputy Administrator for Farm Programs, upon a showing that undue economic hardship would have resulted because of substantial financial obligations incurred prior to December 23, 1985, for the primary and direct purpose of converting the wetland.

(3) *Wetlands farmed under natural conditions.* A person shall not be determined to be ineligible for program benefits under § 12.4 of this part as a result of the production of an agricultural commodity on a wetland on which the owner or operator of a farm

or ranch uses normal cropping or ranching practices to produce agricultural commodities in a manner that is consistent for the area, where such production is possible as a result of natural conditions, such as drought, and is without action by the producer that alters the hydrology or removes woody vegetation.

(4) *Mitigation.*

(i) No person shall be determined to be ineligible under § 12.4 for any action associated with the conversion of a wetland if the wetland functions and values are adequately mitigated, as determined by NRCS, through the restoration of a converted wetland, the enhancement of an existing wetland, or the creation of a new wetland, if the mitigation—

(A) Is in accordance with a mitigation plan approved by NRCS;

(B) Is in advance of, or concurrent with, the wetland conversion or the production of an agricultural commodity, as applicable;

(C) Is not at the expense of the federal government in either supporting the direct or indirect costs of the restoration activity or costs associated with acquiring or securing mitigation sites, except if conducted under a mitigation banking pilot program established by USDA;

(D) Occurs on lands in the same general area of the local watershed as the converted wetlands, provided that for purposes of this paragraph, lands in the same general area of the local watershed may include regional mitigation banks;

(E) Is on lands for which the owner has granted an easement to USDA, recorded the easement on public land records, and has agreed to the maintenance of the restored, created, or enhanced wetland for as long as the converted wetland for which the mitigation occurred remains in agricultural use or is not returned to its original wetland classification with equivalent functions and values; and

(F) Provides the equivalent functions and values that will be lost as a result of the wetland conversion.

(ii) A mitigation plan is a record of decisions that document the actions necessary to compensate for the loss of wetland functions and values that result from converting a wetland. The mitigation plan may be a component of a larger natural resources conservation plan.

(iii) The State Conservationist, in consultation with the State Technical Committee, may name certain types or classes of wetland not eligible for exemption under paragraph (b)(4)(i) of this section where the State Conservationist determines that mitigation will not achieve equivalent replacement of wetland functions and values within a reasonable time frame or for other reasons identified by the State Conservationist. Any type or class of wetland that a State Conservationist identifies as not eligible for exemption under paragraph (b)(4)(i) of this section will be published in the **Federal Register** for inclusion in this part.

(5) *Good Faith Violations.*

(i) A person who is determined under § 12.4 to be ineligible for benefits as the result of the production of an agricultural commodity on a wetland converted after December 23, 1985, or as the result of the conversion of a wetland after November 28, 1990, may regain eligibility for benefits if—

(A) FSA determines that such person acted in good faith and without the intent to violate the wetland provisions of this part, and

(B) NRCS determines that the person within an agreed to period, not to exceed 1 year, is implementing all practices in a mitigation plan.

(ii) In determining whether a person acted in good faith under paragraph (b)(5)(i)(A) of this section, the FSA shall consider such factors as whether—

(A) The characteristics of the site were such that the person should have been aware that a wetland existed on the subject land,

(B) NRCS had informed the person about the existence of a wetland on the subject land,

(C) The person did not convert the wetland, but planted an agricultural commodity on converted wetland when the person should have known that a wetland previously existed on the subject land,

(D) The person has a record of violating the wetland provisions of this part or other Federal, State, or local wetland provisions, or

(E) There exists other information that demonstrates that the person acted with the intent to violate the wetland provisions of this part.

(iii) After the requirements of paragraph (b)(5)(i) of this section are met, USDA may waive applying the ineligibility provisions of § 12.4.

(6) *Reliance upon NRCS wetland determination.* (i) A person shall not be ineligible for program benefits as a result of taking an action in reliance on a previous certified wetland determination by NRCS.

(ii) A person who may be ineligible for program benefits as the result of the production of an agricultural commodity on converted wetland or for the conversion of a wetland may seek relief under § 12.11 of this part if such action was taken in reliance on an incorrect technical determination by NRCS as to the status of such land. If the error caused the person to make a substantial financial investment, as determined by the NRCS, for the conversion of a wetland, the person may be relieved of ineligibility for actions related to that portion of the converted wetland for which the substantial financial investment was expended in conversion activities. The relief available under this paragraph shall not apply to situations in which the person knew or reasonably should have known that the determination was in error because the characteristics of the site were such that the person should have been aware that a wetland existed on the subject land, or for other reasons.

(7) *Responsibliity to provide evidence.* It is the responsibility of the person seeking an exemption related to converted wetlands under this section to provide evidence, such as receipts, crop-history data, drawings, plans or similar information, for purposes of determining whether the conversion or other action is exempt in accordance with this section.

§ 12.6 Administration.

(a) *General.* A determination of ineligibility for benefits in accordance with the provisions of this part shall be made by the agency of USDA to which the person has applied for benefits. All determinations required to be made under the provisions of this part shall be made by the agency responsible for making such determinations, as provided in this section.

(b) *Administration by FSA.*

(1) The provisions of this part which are applicable to FSA will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field in part by State FSA committees and county FSA committees (COC).

(2) The FSA Deputy Administrator for Farm Programs may determine any question arising under the provisions of this part which are applicable to FSA and may reverse or modify any determination of eligibility with respect to programs administered by FSA made by a State FSA committee or COC or any other FSA office or FSA official (except the Administrator) in connection with the provisions of this part.

(3) FSA shall make the following determinations which are required to be made in accordance with this part:

(i) Whether a person produced an agricultural commodity on a particular field as determined under § 12.5(a)(1);

(ii) The establishment of field boundaries;

(iii) Whether land was planted to an agricultural commodity in any of the years, 1981 through 1985, for the purposes of § 12.5(a)(1);

(iv) Whether land was set aside, diverted, or otherwise not cultivated under a program administered by the Secretary for any crop to reduce production of an agricultural commodity under § 12.4(g) and § 12.5(a)(1);

(v) Whether for the purposes of § 12.9, the production of an agricultural commodity on highly erodible land or converted wetland by a landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper;

(vi) Whether the conversion of a particular wetland was commenced before December 23, 1985, for the purposes of § 12.5(b)(3);

(vii) Whether the conversion of a wetland was caused by a third party under § 12.5(b)(1)(vii)(D);

(viii) Whether certain violations were made in good faith under §§ 12.5(a)(5) or 12.5(b)(5);

(ix) The determination of the amount of reduction in benefits based on the seriousness of the violation, based on technical information provided by NRCS;

(x) The determination of whether the application of the producer's conservation system would impose an undue economic hardship on the producer; and

(xi) Whether the proceeds of a farm loan made, insured, or guaranteed by FSA will be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland.

(4) A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of FSA to determine compliance with any requirement specified in this part as a prerequisite for obtaining program benefits.

(5) FSA may consult with U.S. Fish and Wildlife Service on third-party determinations.

(c) *Administraiton by NRCS.*

(1) The provisions of this part that are applicable to NRCS shall be administered under the general supervision of the Deputy Chief for Natural Resources Conservation Programs, and shall be carried out in the field by the regional conservationist, state conservationist, area conservationist, and district conservationist or other NRCS representative.

(2) An NRCS representative shall make the following determinations which are required to be made in accordance with this part:

(i) Whether land is highly erodible or has a wetland type or a converted wetland identified in accordance with the provisions of this part;

(ii) Whether highly erodible land is predominant on a particular field under § 12.22;

(iii) Whether the conservation plan that a person is applying is based on the local NRCS field office technical guide and is approved by—

(A) The CD and NRCS, or

(B) By NRCS;

(iv) Whether the conservation system that a person is using has been approved by the CD under § 12.5(a)(2) or, in an area not within a CD, a conservation system approved by NRCS to be adequate for the production of an agricultural commodity on highly erodible land;

(v) Whether the actions of a person(s) with respect to the conversion of a wetland or production of an agricultural commodity on converted wetland would have only a minimal effect on the functions and values of wetlands in the area;

(vi) Whether an approved conservation plan is being applied on highly erodible fields in accordance with the schedule specified therein or whether a failure to apply the plan is technical and minor in nature, due to circumstances beyond the control of the person, or whether a temporary variance form the requirements of the plan should be granted;

(vii) Whether an approved conservation system is being used on a highly erodible field;

(viii) Whether the conversion of a wetland is for the purpose or has the effect of making the production of an agricultural commodity possible;

(ix) Whether a farmed wetland or farmed-wetland pasture is abandoned;

(x) Whether the planting of an agricultural commodity on a wetland is possible under natural conditions;

(xi) Whether maintenance of existing drainage of a wetland described in § 12.33 exceeds the scope and effect of the original drainage;

(xii) Whether a plan for the mitigation of a converted wetland will be approved and whether the mitigation of a converted wetland is accomplished according to the approved mitigation plan;

(xiii) Whether all technical information relating to the determination of a violation and severity of a violation has been provided to FSA for making payment-reduction determinations; and

(xiv) Whether or not a commenced-conversion activity was completed by January 1, 1995.

(3) NRCS may provide such other technical assistance for implementation of the provisions of this part as is determined to be necessary.

(4) A person may obtain a highly erodible land or a wetland scope-and-effect determination by making a written request on Form AD–1026. The determination will be made in writing, and a copy will be provided to the person.

(5) A determination of whether or not an area meets the highly erodible land criteria or whether wetland criteria, identified in accordance with the current Federal wetland delineation methodology in use at the time of the determination and that are consistent with current mapping conventions, may be made by the NRCS representative based upon existing records or other information and without the need for an on-site determination. This determination will be made by the NRCS representative as soon as possible following a request for such a determination.

(6) An on-site determination as to whether an area meets the applicable criteria shall be made by an NRCS representative if the person has disagreed with the determination made under paragraph (c)(5) of this section, or if adequate information is not otherwise available to an NRCS representative on which to make an off-site determination.

(7) An on-site determination, where applicable, will be made by the NRCS representative as soon as possible following a request for such a determination, but only when site conditions are favorable for the evaluation of soils, hydrology, or vegetation.

(8) With regard to wetland determinations, if an area is continuously inundated or saturated for long periods of time during the growing season to such an extent that access by foot to make a determination of predominance of hydric soils or prevalence of hydrophytic vegetation is not feasible, the area will be determined to be a wetland.

(9) Persons who are adversely affected by a determination made under this section and believe that the requirements of this part were improperly applied may appeal, under § 12.12 of this part, any determination by NRCS.

(d) *Administration by CSREES.* The CSREES shall coordinate the related information and education program for

USDA concerning implementation of this rule.

(e) *Assistance of other Federal agencies.* If NRCS determines, through agreement or otherwise, that the purposes of this part would be furthered by the assistance of other Federal agencies with wetland responsibilities, NRCS may accept such assistance and adopt any or all such actions by these agencies as an action by an NRCS representative under this part.

§ 12.7 Certification of compliance.

(a) *Self-certification.* In order for a person to be determined to be eligible for any of the benefits specified in § 12.4:

(1) It must be determined by USDA whether any field in which the person applying for the benefits has an interest and intends to produce an agricultural commodity contains highly erodible land;

(2) The person applying for or receiving the benefits must certify in writing on Form AD–1026 that such person will not produce an agricultural commodity on highly erodible land, or designate such land for conservation use; or plant an agricultural commodity on a converted wetland; or convert a wetland to make possible the production of an agricultural commodity during the crop year in which the person is seeking such benefits, unless such actions are exempt, under § 12.5, from the provisions of § 12.4 of this part;

(3) A person may certify application of practices required by the person's conservation plan. NRCS shall permit a person who makes such a certification with respect to a conservation plan to revise the conservation plan in any manner, if the same level of conservation treatment provided for by the conservation system under the person's conservation plan is maintained. NRCS may not revise the person's conservation plan without the concurrence of the person;

(4) The person applying for a FSA direct or guaranteed farm credit program loan must certify that such person shall not use the proceeds of the loan for a purpose that will contribute to excessive erosion on highly erodible land or to conversion of wetlands for the purpose, or to have the effect, of making the production of an agricultural commodity possible; and

(5) The person applying for the benefits must authorize and provide representatives of USDA access to all land in which such person has an interest for the purpose of verifying any such certification.

(b) *Availability to other agencies.* Each agency of USDA shall make all certifications of compliance received by such agency and the results of investigations concerning such certifications of compliance available to other agencies.

(c) *Compliance.* A certification made in accordance with this section does not relieve any person from compliance with provisions of this part.

§ 12.8 Affiliated persons.

(a) *Ineligibility of affiliated persons.* Ineligibility of an individual or entity under this part for benefits shall also be an ineligibility for benefits for "affiliated persons" as defined in this section.

(b) *Affiliated persons of an individual.* If the person requesting benefits is an individual, the affiliated persons are:

(1) The spouse and minor child of such person or guardian of such child; except that spouses who establish to the satisfaction of the COC that operations of the husband and wife are maintained separately and independently shall not be considered affiliates;

(2) Any partnership, joint venture, or other enterprise in which the person or any person listed in paragraphs (b)(1) has an ownership interest or financial interest; unless such interest is held indirectly through another business enterprise; or

(3) Any trust in which the individual, business enterprise, or any person listed in paragraph (b)(1) is a beneficiary or has a financial interest, unless such interest is held indirectly through another business enterprise.

(c) *Affiliated persons of an entity.* If the person who has requested benefits from USDA is a corporation, partnership, or other joint venture, the affiliated persons are any participant or stockholder therein of the corporation, partnership, or other joint venture, except for persons who have an indirect interest through another business enterprise in such corporation, partnership, or other joint venture or persons with a 20 percent or less share in a corporation.

(d) *Limitation.* Any reduction in payments which results only from the application of the affiliation provisions of this section to a partnership, joint venture, trust, or other enterprise shall be limited to the extent of interest held in such partnership, joint venture, trust, or other enterprise by the person or business enterprise that committed the violation. However, for violations for which the business enterprise is considered directly responsible under the provisions of this part, the business enterprise shall be subject to a full loss of benefits, including those instances in which the business enterprise has an interest in the land where the violation occurred or where the business enterprise had an interest in the crops produced on the land.

(e) *Avoidance of this part.* Limitations on affiliation shall not apply as needed to correct for any action that would otherwise tend to defeat the purposes of this part.

§ 12.9 Landlords and tenants.

(a) *Landlord eligibility.*

(1) Except as provided in paragraph (a)(2) of this section, the ineligibility of a tenant or sharecropper for benefits (as determined under § 12.4) shall not cause a landlord to be ineligible for USDA program benefits accruing with respect to land other than those in which the tenant or sharecropper has an interest.

(2) The provisions of paragraph (a)(1) of this section shall not be applicable to a landlord if the production of an agricultural commodity on highly erodible land or converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after December 23, 1985, or if the landlord has acquiesced in such activities by the tenant or sharecropper.

(b) *Tenant or renter eligibility.*

(1) The ineligibility of a tenant or renter may be limited to the program benefits listed in § 12.4(c) accruing with respect to only the farm on which the violation occurred if:

(i) The tenant or renter shows that a good-faith effort was made to comply by developing an approved conservation plan for the highly erodible land in a timely manner and prior to any violation of the provisions of this part; and

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or renter from implementing certain practices that are a part of the approved conservation plan; and

(iii) FSA determines that the lack of compliance is not a part of a scheme or device as described in § 12.10.

(2) If relief is granted under paragraph (b)(1) of this section, the tenant or renter must actively apply those conservation treatment measures that are determined to be within the control of the tenant or renter.

§ 12.10 Scheme or device.

All or any part of the benefits listed in § 12.4 otherwise due a person from USDA may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or

device designed to evade, or which has the effect of evading, the provisions of this part. Such acts shall include, but are not limited to, concealing from USDA any information having a bearing on the application of the provisions of this part or submitting false information to USDA or creating entities for the purpose of concealing the interest of a person in a farming operation or to otherwise avoid compliance with the provisions of this part. Such acts shall also include acquiescence in, approval of, or assistance to acts which have the effect of, or the purpose of, circumventing these regulations.

§ 12.11 Action based upon advice or action of USDA.

The provisions of part 718 of this Title, as amended, relating to performance based upon the action or advice of a County Committee (COC) or State FSA Committee shall be applicable to the provisions of this part. In addition, if it is determined by the appropriate USDA agency that the action of a person which would form the basis of any ineligibility under this part was taken by such person in good-faith reliance on erroneous advice, information, or action of any other authorized representative of USDA, the appropriate agency may make such benefits available to the extent that similar relief would be allowed under 7 CFR part 718.

§ 12.12 Appeals.

Any person who has been or who would be denied program benefits in accordance with § 12.4 as the result of any determination made in accordance with the provisions of this part may obtain a review of such determination in accordance with the administrative appeals procedures of the agency which rendered such determination. Agency appeal procedures are contained in the Code of Federal Regulations as follows: FSA, part 780 of this title; NRCS, part 614 of this title; Rural Utilities Service, part 1900, subpart B of this title.

Subpart B—Highly Erodible Land Conservation

§ 12.20 NRCS responsibilities regarding highly erodible land.

In implementing the provisions of this part, NRCS shall, to the extent practicable:

(a) Develop and maintain criteria for identifying highly erodible lands;

(b) Prepare and make available to the public lists of highly erodible soil map units;

(c) Make soil surveys for purposes of identifying highly erodible land; and

(d) Provide technical guidance to conservation districts which approve conservation plans and systems, in consultation with local county FSA committees, for the purposes of this part.

§ 12.21 Identification of highly erodible lands criteria.

(A) *Basis for identification as highly erodible.* Soil map units and an erodibility index will be used as the basis for identifying highly erodible land. The erodibility index for a soil is determined by dividing the potential average annual rate of erosion for each soil by its predetermined soil loss tolerance (T) value. The T value represents the maximum annual rate of soil erosion that could occur without causing a decline in long-term productivity. The equation for measuring erosion is described below.

(1) The potential average annual rate of sheet and rill erosion is estimated by multiplying the following factors of the Universal Soil Loss Equation (USLE):

(i) Rainfall and runoff (R);

(ii) The degree to which the soil resists water erosion (K); and

(iii) The function (LS), which includes the effects of slope length (L) and steepness (S).

(2) The potential average annual rate of wind erosion is estimated by multiplying the following factors of the Wind Erosion Equation (WEQ): Climatic characterization of windspeed and surface soil moisture (C) and the degree to which soil resists wind erosion (I).

(3) The USLE is explained in the U.S. Department of Agriculture Handbook 537, "Predicting Rainfall Erosion Losses." The WEQ is explained in the paper by Woodruff, N.P., and F. H. Siddaway, 1965, "A Wind Erosion Equation," Soil Science Society of America Proceedings, Vol. 29. No. 5, pages 602–608. Values for all the factors used in these equations are contained in the NRCS field office technical guide and the references which are a part of the guide. The Universal Soil Loss Equation, the Revised Universal Soil Loss Equation, and the Wind Erosion Equation and the rules under which NRCS uses the equations are published at §§ 610.11 through 610.15 of this title.

(b) *Highly erodible.* A soil map unit shall be determined to be highly erodible if either the RKLS/T or the CI/T value for the map unit equals or exceeds 8.

(c) *Potentially highly erodible.* Whenever a soil map unit description contains a range of a slope length and steepness characteristics that produce a range of LS values which result in RKLS/T quotients both above and below 8, the soil map unit will be entered on the list of highly erodible soil map units as "potentially highly erodible." The final determination of erodibility for an individual field containing these soil map unit delineations will be made by an on-site investigation.

§ 12.22 Highly erodible field determination criteria.

(a) *Predominance.* Highly erodible land shall be considered to be predominant on a field if either:

(1) 33.33 percent or more of the total field acreage is identified as soil map units which are highly erodible; or

(2) 50 or more acres in such field are identified as soil map units which are highly erodible.

(b) *Modification of field boundaries.* A person may request the modification of field boundaries for the purpose of excluding highly erodible land from a field. Such a request must be submitted to, and is subject to the approval of, FSA. FSA shall use the technical determination of NRCS in approving this request.

(C) *Impact of changing field boundaries.* When field boundaries are changed to include areas of land that were included in a field that was previously determined to be predominately highly erodible according to paragraph (a) of this section, such areas shall continue to be subject to the requirements for predominately highly erodible fields, except as provided in paragraph (b) of this section.

(d) *Small area of noncropland.* Small areas of noncropland within or adjacent to the boundaries of existing highly erodible crop fields such as abandoned farmsteads, areas around filled or capped wells, rock piles, trees, or brush which are converted to cropland are considered to meet the requirement of § 12.5(a)(2) if they are included in an approved conservation plan for the entire highly erodible field.

§ 12.23 Conservation plans and conservation systems.

(a) *Use of field office technical guide.* A conservation plan or conservation system developed for the purposes of § 12.5(a) must be based on, and to the extent practicable conform with, the NRCS field office technical guide in use at the time the plan is developed or revised. For highly erodible croplands which were used to produce agricultural commodities prior to December 23, 1985, the applicable conservation systems in the field office technical guide are designed to achieve substantial reductions in soil erosion. Conservation systems shall be

technically and economically feasible; based on local resource conditions and available conservation technology; cost-effective; and shall not cause undue economic hardship on the person applying the conservation system. Any conservation plans or systems that were approved prior to July 3, 1996, are deemed to be in compliance with this paragraph.

(b) *Substantial reduction in soil erosion.* For the purpose of determining whether there is a substantial reduction in soil erosion on a field containing highly erodible cropland which was used to produce an agricultural commodity prior to December 23, 1985, the measurement of erosion reduction achieved by applying a conservation plan or system shall be based on a comparison of the estimated annual level of erosion that is expected to occur on that portion of the field for which a conservation plan or system was developed and is being applied, to the estimated annual level of erosion that existed on that same portion of the field before the application of a conservation plan or system. On a field that is converted from native vegetation after July 3, 1996, and where any crop production will result in increased erosion, in no case will the required conservation plan or system permit a substantial increase in erosion.

(c) *Field trials.* NRCS may allow a person to include in the person's conservation plan or a conservation system under the plan, on a field-trial basis, practices that are not currently approved but that NRCS considers have a reasonable likelihood of success. These trials must have prior approval by NRCS, and must be documented in the person's conservation plan specifying the limited time period during which the field trial is in effect. If, at the end of the conservation field trial period, NRCS finds that the practice does not meet conservation compliance requirements, the person will not be ineligible for USDA program benefits during the period of the field trial.

(d) *Highly erodible land previously under a Conservation Reserve Program contract.* Any person who owns or operates highly erodible land that was under a Conservation Reserve Program contract as authorized by section 1231 of the Food Security Act of 1985, as amended, shall have 2 years after the expiration of termination of the contract to fully apply a conservation system if the conservation plan for such land requires the installation of structural measures for the production of an agricultural commodity. NRCS officials may extend this period one additional year for circumstances beyond the control of the person. The person shall not be required to meet a higher conservation standard than the standard applied to other highly erodible cropland located within the area served by the field office technical guide for the area in which the field is located.

(e) *Information regarding conservation options.* NRCS, in providing assistance to a person for the preparation or revision of a conservation plan under this part, will provide such person with information concerning cost-effective and applicable erosion control alternatives, crop flexibility, or other conservation assistance options that may be available.

(f) *Timely request for assistance.* Persons who require NRCS assistance for the development of a conservation plan or the installation of a conservation system are encouraged to request this assistance well in advance of deadline dates for compliance; otherwise the person may not be able to comply with these provisions and maintain eligibility for USDA program benefits.

(g) *Action by conservation districts.* Conservation districts approve or disapprove conservation plans or conservation systems after NRCS determines that the plans or systems conform to the NRCS field office technical guide. If a conservation district fails, without due cause, to act on a request for conservation plan or conservation system approval within 45 days, or if no conservation district exists, NRCS will approve or disapprove, as appropriate, the conservation plan or system in question.

(h) *Application of a conservation plan or system.* A person is considered to be applying a conservation plan for purposes of § 12.5(a) if the conservation system or plan being applied achieves or exceeds the substantial reduction in soil erosion as described in paragraph (b) which the conservation system or plan was designed to achieve. It is the responsibility of the person to:

(1) Certify that the conservation plan or system is being applied; and

(2) Arrange for a revision of the conservation plan with NRCS, if changes are made in land use, crop rotation or management, conservation practices, or in the original schedule of practice installation that would affect the achievement of substantial reduction in soil erosion in a given crop year.

(i) *Appeal to FSA.* Persons who are adversely affected by the determinations made under this subpart and believe that the requirements of this subpart were improperly applied may appeal the decision to FSA under § 12.12.

(j) *Undue economic hardship.* After a technical determination has been made, the FSA county committee shall, if a person asserts that the application of the person's conservation system would impose an undue economic hardship on the person, make a recommendation to the State FSA Committee as to whether or not the application of the conservation system would impose an undue economic hardship. The State FSA Committee may provide the person with a variance on the basis of the hardship. Under this variance, and any conditions that may be required in the variance, the person will be considered to be in compliance with the applicable provisions of this part. The State FSA Committee will consider relevant factors, such as the cost of installation of required conservation practices and benefits earned through programs subject to compliance with this part, and the person's general economic situation.

Subpart C—Wetland Conservation

§ 12.30 NRCS responsibilities regarding wetlands.

(a) *Technical and coordination responsibilities.* In carrying out the provisions of this part, NRCS shall:

(1) Oversee the development and application of criteria to identify hydric soils in consultation with the National Technical Committee for Hydric Soils and make available to the public an approved county list of hydric soil map units, which is based upon the National List of Hydric Soils;

(2) Coordinate with the U.S. Fish and Wildlife Service and others in updating the National List of Plant Species that Occur in Wetlands;

(3) Make or approve wetland determinations, delineations and certifications, functional assessments, mitigation plans, categorical minimal effects, and other technical determinations relative to the implementation of the wetland conservation provisions of this part;

(4) Develop and utilize off-site and on-site wetland identification procedures;

(5) Assure quality of service and determinations through procedures developed by NRCS in consultation with other Federal agencies that have wetland responsibilities;

(6) Investigate complaints and make technical determinations regarding potential violations;

(7) Develop a process at the state level, in coordination with the U.S. Fish and Wildlife Service, to ensure that these provisions are carried out in a technically defensible and timely

manner, seek assistance as appropriate, and annually review the progress being made on implementation; and

(8) Conduct reviews of implementation and provide the Army Corps of Engineers, Environmental Protection Agency, and the U.S. Fish and Wildlife Service an opportunity to participate in this review.

(b) *Technical assistance from others* In carrying out the provisions of this part, NRCS may request technical assistance from the U.S. Fish and Wildlife Service, State or local agencies conservation districts, or qualified private entities when NRCS determines that additional staff resources or technical expertise are needed to address adequately the requirements of this part or to enhance the quality of implementation of this part.

(c) *Certification of wetland determinations and wetland delineations.*

(1) Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for program benefits under § 12.4 of this part. Certification of a wetland determination shall be completed according to delineation procedures agreed to by the Army Corps of Engineers, the Environmental Protection Agency, the U.S. Fish and Wildlife Service and NRCS. NRCS may certify a wetland determination without making a field investigation. NRCS will notify the person affected by the certification and provide an opportunity to appeal the certification prior to the certification becoming final. All wetland determinations made after July 3, 1996, will be done on a tract basis and will be considered certified wetland determinations. A not-inventoried designation within a certified wetland is subject to change when the soil, hydrology, and vegetation evaluation is completed and identified as to type of wetland or as a non-wetland. This change from a not-inventoried designation to an approved wetland designation will be done at the request of the landowner or during a formal investigation of a potential violation.

(2) The wetland determination and wetland delineation shall be certified as final by the NRCS official 30 days after providing the person notice of certification or, if an appeal is filed with USDA, after the administrative appeal procedures are exhausted.

(3) In the case of an appeal, NRCS will review and certify the accuracy of the determination of all lands subject to the appeal to ensure that the subject lands have been accurately delineated. Prior to a decision being rendered on the appeal, NRCS will conduct an on-site investigation of the subject land.

(4) Before any benefits are withheld, an on-site investigation of a potential wetland violation will be made by NRCS. The affected person will be provided an opportunity to appeal the on-site determination to USDA if the on-site determination differs from the original determination. Such action by NRCS shall be considered a review of the prior determination and certification of the delineation. If the prior determination was a certified wetland determination, an appeal of the NRCS on-site determination shall be limited to the determination that the wetland was converted in violation of this part.

(5) A copy of the information from the final certified wetland determination and the wetland delineation shall be recorded on official USDA aerial photography, digital imagery, or other graphic representation of the area.

(6) As long as the affected person is in compliance with the wetland conservation provision of this part, and as long as the area is devoted to the use and management of the land for production of food, fiber, horticultural crops, a certification made under this section will remain valid and in effect until such time as the person affected by the certification requests review of the certification by NRCS. A person may request review of a certification only if a natural event alters the topography or hydrology of the subject land to the extent that the final certification is no longer a reliable indication of site conditions, or if NRCS concurs with an affected person that an error exists in the current wetland determination

§ 12.31 On-site wetland identification criteria.

(a) *Hydric soils.*

(1) NRCS shall identify hydric soils through the use of published soil maps which reflect soil surveys completed by NRCS or through the use of on-site reviews. If a published soil map is unavailable for a given area, NRCS may use unpublished soil maps which were made according to the specifications of the National Cooperative Soil Survey or may conduct an on-site evaluation of the land.

(2) NRCS shall determine whether an area of a field or other parcel of land has a predominance of hydric soils that are inundated or saturated as follows:

(i) If a soil map unit has hydric soil as all or part of its name, that soil map unit or portion of the map unit related to the hydric soil shall be determined to have a predominance of hydric soils;

(ii) If a soil map unit is named for a miscellaneous area that meets the criteria for hydric soils (i.e., riverwash, playas, beaches, or water) the soil map unit shall be determined to have a predominance of hydric soils; or

(iii) If a soil map unit contains inclusions of hydric soils, that portion of the soil map unit identified as hydric soil shall be determined to have a predominance of hydric soils.

(3) *List of hydric soils.*

(i) Hydric soils are those soils which meet criteria set forth in the publication "Hydric Soils of the United States 1985" which was developed by the National Technical Committee for Hydric Soils and which is incorporated by reference. This publication may be obtained upon request by writing NRCS at U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, and is available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street NW., Suite 700, Washington, DC 20408. Incorporation of this publication by reference was approved by the Director of the Federal Register on June 24, 1986. The materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(ii) An official list of hydric soil map units shall be maintained at the local NRCS office and shall include—

(A) All soils from the National List of Hydric Soils that can be found in that field office area, and

(B) Any soil map units or areas which the state conservationist determines to meet such hydric soil criteria.

(iii) Any deletions of a hydric soil unit from the hydric soil map unit list must be made according to the established procedure contained in the publication "Hydric Soils of the United States 1985" for adding or deleting soils from the National List of Hydric Soils.

(b) *Hydrophytic vegetation.* Hydrophytic vegetation consists of plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(1) A plant shall be considered to be a plant species that occurs in wetland if such plant is listed in the National List of Plant Species that Occur in Wetlands. The publication may be obtained upon request from the U.S. Fish and Wildlife Service at National Wetland Inventory, Monroe Bldg. Suite 101, 9720 Executive Center Drive, St. Petersburg, Florida 33702.

(2) For the purposes of the definition of "wetland" in § 12.2 of this part, land shall be determined to have a prevalence of hydrophytic vegetation if:

(i) NRCS determines through the criteria specified in paragraph (b)(3) of

this section that under normal circumstances such land supports a prevalence of hydrophytic vegetation. The term "normal circumstances" refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed; or

(ii) In the event the vegetation on such land has been altered or removed, NRCS will determine if a prevalence of hydrophytic vegetation typically exists in the local area on the same hydric soil map unit under non-altered hydrologic conditions.

(3) The determination of prevalence of hydrophytic vegetation will be made in accordance with the current Federal wetland delineation methodology in use by NRCS at the time of the determination.

(c) *Mitigation wetlands.* Notwithstanding the provisions of this section, wetlands which are created in order to mitigate the loss of other wetlands as a result of irrigation, recreation, municipal water, flood control, or other similar projects shall not be considered to be artificial wetland for the purposes of § 12.5(b)(1)(vii)(A) of this part.

(d) *Minimal effect determination.* For the purposes of § 12.5(b)(1)(v) of this part, NRCS shall determine whether the effect of any action of a person associated with the conversion of a wetland, the conversion of wetland and the production of an agricultural commodity on converted wetland, or the combined effect of the production of an agricultural commodity on a wetland converted by someone else has a minimal effect on the functions and values of wetlands in the area. Such determination shall be based upon a functional assessment of functions and values of the wetland under consideration and other related wetlands in the area, and will be made through an on-site evaluation. A request for such determination will be made prior to the beginning of activities that would convert the wetland. If a person has converted a wetland and then seeks a determination that the effect of such conversion on wetland was minimal, the burden will be upon the person to demonstrate to the satisfaction of NRCS that the effect was minimal.

The production of an agricultural commodity on any portion of a converted wetland in conformance with a minimal-effect determination by NRCS is exempt under § 12.5(b)(1)(v) of this part. However, any additional action of a person that will change the functions and values of a wetland for which a minimal-effect determination has been made shall be reported to NRCS for a determination of whether the effect continues to be minimal. The loss of a minimal effect determination will cause a person who produces an agricultural commodity on the converted wetland after such change in status to be ineligible, under § 12.4, for certain program benefits. In situations where the wetland functions and values are replaced by the restoration, enhancement or creation of a wetland in accordance with a mitigation plan approved by NRCS, the exemption provided by the determination will be effective after NRCS determines that all practices in a mitigation plan are being implemented.

(e) *Categorical Minimal Effect Exemptions.*

(1) The state conservationist, in consultation with the state technical committee established under 16 U.S.C. 3861, shall identify any categories of conversion activities and conditions which are routinely determined by NRCS to have minimal effect on wetland functions and values, as described in paragraph (d) of this section, and recommend to the Chief, NRCS, or a designee, inclusion on a list of categorical minimal effect exemptions.

(2) The Chief, or designee, shall evaluate the conversion practices recommended by the state conservationists in the region to ensure consistency across State and regional lines, and to determine whether any categories of conversion activities identified pursuant to paragraph (e)(1) of this section, if such activities were exempt from the ineligibility provisions of § 12.4, would only have a minimal effect on wetland functions and values in a wetland system within the region.

(3) Any categories of conversion activities which meet the criteria of paragraph (e)(2) of this section will be published in the **Federal register** for inclusion in this part and shall be exempt under § 12.5(b)(1)(v) of this part.

(4) The NRCS local field office shall maintain a list of any activities and conditions which are determined by the Chief, or designee, exempt pursuant to this section and will provide the list to a person upon request.

§ 12.32 Converted wetland identification criteria.

(a) Converted wetland shall be identified by determining whether the wetland was altered so as to meet the definition of converted wetland. In making this determination, the following factors are to be considered:

(1) Where hydric soils have been used for production of an agricultural commodity and the effect of the drainage or other altering activity is not clearly discernible, NRCS will compare the site with other sites containing the same hydric soils in a natural condition to determine if the hydric soils can or cannot be used to produce an agricultural commodity under natural conditions. If the soil on the comparison site could not produce an agricultural commodity under natural conditions, the subject wetland will be considered to be converted wetland.

(2) Where woody hydrophytic vegetation has been removed from hydric soils for the purpose of or permitting the production of an agricultural commodity, the area will be considered to be converted wetland.

(b) A wetland shall not be considered to be converted if:

(1) Production of an agricultural commodity on such land is possible as a result of a natural condition, such as drought, and it is determined that the actions of the person producing such agricultural commodity does not permanently alter or destroy natural wetland characteristics. Destruction of herbaceous hydrophytic vegetation (i.e., plants other than woody shrubs or trees) as a result of the production of an agricultural commodity shall not be considered as altering or destroying natural wetland characteristic if such vegetation could return following cessation of the natural condition which made production of the agricultural commodity possible; or

(2) Such land is correctly identified as farmed wetland or farmed-wetland pasture.

§ 12.33 Use of wetland and converted wetland.

(a) The provisions of § 12.32(b)(2) are intended to protect remaining functions and values of the wetlands described therein. Persons may continue to farm such wetlands under natural conditions or as they did prior to December 23, 1985. However, no action can be taken to increase effects on the water regime beyond that which existed on such lands on or before December 23, 1985, unless NRCS determines the effect on losing remaining wetland values would be minimal under § 12.5(b)(1)(v). If, after December 23, 1985, changes due to human activity occurred in the watershed and resulted in an increase in the water regime on a person's land, the person may be allowed to adjust the existing drainage system to accommodate the increased water regime on the condition that the person affected by this additional water provides NRCS with appropriate documentation of the increased water regime, the causes thereof, and the

planned changes in the existing drainage system. In order to maintain program eligibility, a person must provide sufficient documentation and receive approval from NRCS prior to making any changes that will have the effect of increasing the capacity of the existing drainage systems.

(b) Unless otherwise provided in this part, the production of an agricultural commodity on land determined by NRCS to be prior-converted cropland is exempted by law from these regulations for the area which was converted. Maintenance or improvement of drainage systems on prior-converted croplands are not subject to this rule so long as the prior-converted croplands are used for the production of food, forage, or fiber and as long as such actions do not alter the hydrology of nearby wetlands or do not make possible the production of an agricultural commodity on these other wetlands. Other wetlands under this section means any natural wetland, farmed wetland, farmed-wetland pasture, or any converted wetland that is not exempt under § 12.5 of this part.

(c) Abandonment is the cessation for five consecutive years of management or maintenance operations related to the use of a farmed wetland or a farmed-wetland pasture. Unless the criteria for receiving an exemption under § 12.5(b)(1)(iii) are met, such land is considered to be abandoned when the land meets the wetland criteria of § 12.31. In order for documentation of site conditions to be considered adequate under § 12.5(b)(1)(iii), the affected person must provide to NRCS available information concerning the extent of hydrological manipulation, the extent of woody vegetation, and the history of use. In accordance with § 12.5(b)(1)(iii), participation in a USDA approved wetland restoration, set-aside, diverted acres, or similar programs shall not be deemed to constitute abandonment.

(d) The maintenance of the drainage capacity or any alteration or manipulation, including the maintenance of a natural waterway operated and maintained as a drainage outlet, that affects the circulation and flow of water made to a farmed wetland or farmed-wetland pasture would not cause a person to be determined to be ineligible under this part, provided that the maintenance does not exceed the scope and effect of the original alteration or manipulation, as determined by NRCS, and provided that the area is not abandoned. Any resultant conversion of wetlands is to be at the minimum extent practicable, as determined by NRCS.

§ 12.34 Paperwork Reduction Act assigned number.

The information collection requirements contained in this regulation (7 CFR part 12) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560–0004.

Signed at Washington, D.C. on August 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22784 Filed 9–5–96; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 1075

[DA–96–12]

Milk in the Black Hills, South Dakota, Marketing Area; Termination of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This document terminates all but certain administrative sections of the order regulating the handling of milk in the Black Hills, South Dakota, marketing area. Termination of this order was requested by Black Hills Milk Producers, a cooperative association that represents all of the producers whose milk is pooled under the order. Thus, termination of the order is required under the Agricultural Marketing Agreement Act of 1937, as amended.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

This termination order has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Black Hills, South Dakota, marketing area.

Small Business Consideration

During June 1996, the representative period determined for this action, 58 producers (all members of the Black Hills Milk Producers cooperative association) had their milk pooled under the Black Hills order. The Small Business Administration (SBA) criterion of $500,000 in annual receipts, adjusted to reflect the information for one month ($500,000 divided by 12, divided by the 1995 average order blend price of $13.95 per hundredweight) was used to determine that dairy farmers marketing less than 300,000 pounds of milk meet the description of a small dairy farm. On the basis of the pounds of milk marketed during the representative period, 54 of the 58 dairy farmers would be small businesses. Of these, 27 marketed less than 100,000 pounds during June, 20 marketed between 100,000 and 200,000 pounds, and 7 marketed between 200,000 and 300,000 pounds.

In addition to the cooperative, there is one other milk handler regulated under the Black Hills order in South Dakota. Under SBA criterion, this handler would be considered a small business. Consequently, nearly all of the parties affected by the Black Hills milk order would be classified as small entities.

The current reporting, recordkeeping and other compliance requirements of the rule would cease with termination of the order. None of the currently-affected entities would be subject to any additional reporting or recordkeeping requirements for purposes of the Federal milk order program as a result of the

order's termination. However, a handler would continue to be required to maintain records of milk receipts and sales into another Federal order marketing area and report them to the market administrator of the other marketing area. In addition, if a handler's sales into another Federal order marketing area become a large enough percentage of a handler's milk receipts, a handler would be pooled under another order and incur the same reporting, recordkeeping and payment obligations it currently has under the Black Hills order.

Termination of the order will remove government enforcement of minimum prices to handlers and to producers that are determined by supply and demand conditions. It will also remove other stabilizing features of the regulatory program such as: an impartial audit of handler records to insure payment to dairy farmers and to verify the reported uses of milk; the assurance to farmers of accurate weighing, testing, classification and accounting for milk; and the existence of marketing information to evaluate market performance. Thus, it is likely that market conditions would tend to become less orderly or stable. However, it must be assumed that the consequences of the removal of the regulatory program have been considered by the cooperative association that has requested the action, and that possibly other approaches have or will be made to replace the stabilizing influence of the order.

Regardless of the possible economic effects of the order termination on the small entities involved, a termination is required by the Agricultural Marketing Agreement Act of 1937, as amended, whenever a termination is requested by a majority of the producers engaged in the production of milk for sale in the marketing area in a representative period determined by the Secretary. Black Hills Milk Producers, as the cooperative association representing all of the producers whose milk is pooled under the Black Hills milk order, has requested that the order be terminated.

Determination

It is hereby determined that termination of the Black Hills, South Dakota, order, Part 1075, is favored by a majority of the producers engaged in the production of milk for sale in the marketing area in the representative period, determined to be June 1996, and that such producers produced more than 50 percent of the milk produced for sale in the Black Hills, South Dakota, milk marketing area in such representative period.

It is also determined that notice of proposed rule making and public procedure thereon is impracticable, unnecessary and contrary to the public interest. Section 608(c)(16)(B) of the Agricultural Marketing Agreement Act of 1937, as amended, requires that if a majority of the producers engaged in the production of milk for sale in the marketing area in a representative period determined by the Secretary favor termination of the order, and such producers produced more than 50 percent of the milk produced for sale in the marketing area in the representative period, that such order shall be terminated. It is therefore necessary that the provisions of the order, as amended, subject to specific exceptions, be terminated effective October 1, 1996.

List of Subjects in 7 CFR Part 1075

Milk marketing orders.

Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) it is hereby ordered that all provisions of the order, as amended, regulating the handling of milk in the Black Hills, South Dakota, marketing area (7 CFR Part 1075) except § 1075.1, which incorporates the General Provisions in Part 1000, are hereby terminated effective October 1, 1996.

Milk marketing orders.

For the reason set forth in the preamble, 7 CFR Part 1075 is amended as follows:

PART 1075—MILK IN THE BLACK HILLS, SOUTH DAKOTA, MARKETING AREA

1. The authority citation for 7 CFR Part 1075 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

§§ 1075.2 through 1075.85 [Removed]

2. In part 1075 §§ 1075.2 through 1075.85 and their undesignated center headings are removed effective October 1, 1996.

Dated: August 30, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–22786 Filed 9–5–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[AG Order No. 2054–96; INS No. 1792–96]

RIN 1115–AE51

Definition of the Term Lawfully Present in the United States for Purposes of Applying for Title II Benefits Under Section 401(b)(2) of Public Law 104–193

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations to define the term "an alien who is lawfully present in the United States" so that the Social Security Administration may determine which aliens in the United States are eligible for benefits under title II of the Social Security Act. Aliens who are considered "lawfully present in the United States," however, must otherwise satisfy the requirements for benefits under title II of the Social Security Act in order to receive social security benefits.

DATES: This rule is effective September 6, 1996. Written comments must be received on or before November 5, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1792–96 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Derek C. Smith, Assistant General Counsel, Office of the General Counsel; or Sophia Cox, Adjudications Officers, Adjudications Division; Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–2895 or (202) 514–5014.

SUPPLEMENTARY INFORMATION: On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), Pub. L. 104–193. Section 401(a) of the Personal Responsibility Act provides that, subject to limited exceptions, only "qualified aliens," as defined under section 431, may receive Federal public benefits,

including retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, and unemployment benefits, among others.

Section 431(b) of the Personal Responsibility Act defines the term "qualified alien" to mean the following six groups of aliens:

(1) Aliens who are lawfully admitted for permanent residence under the Immigration and Nationality Act (Act);

(2) Aliens who are granted asylum under section 208 of the Act;

(3) Refugees admitted into the United States under section 207 of the Act;

(4) Aliens who are paroled into the United States under section 212(d)(5) of the Act for a period of at least 1 year;

(5) Aliens whose deportation is being withheld under section 243(h) of the Act; and

(6) Aliens who are granted conditional entry pursuant to section 203(a)(7) of the Act as in effect prior to April 1, 1980.

Section 401(b)(2) of the Personal Responsibility Act, however, provides an exception, which allows aliens who are "lawfully present in the United States," as determined by the Attorney General, to receive benefits under title II of the Social Security Act. (Title II benefits include, for example, retirement benefits.) The purpose of this regulation, therefore, is to define the term "an alien who is lawfully present in the United States," as required under section 401(b)(2) of the Personal Responsibility Act, thereby enabling the Social Security Administration to determine whether aliens who are not "qualified aliens" are eligible to receive title II benefits, if they are lawfully present in this country. This definition is made solely for the purpose of determining an alien's eligibility for payment of title II social security benefits, as required under section 401(b)(2) of the Personal Responsibility Act, and is not intended to confer any immigration status or benefit under the Immigration and Nationality Act.

In determining which aliens are lawfully present for the purposes of section 401(b)(2) of Public Law 104–193, the Service had to distinguish among many classes of aliens in the United States. The characteristic common to all the classes of aliens defined as "lawfully present in the United States" is that their presence in the United States has been sanctioned by a policy determination that a particular class of aliens should be allowed to remain in the United States, and that policy determination has almost always been implemented by an official act having the force of law. Each of the five categories defined as lawfully present fits within this rationale. First, the Service has concluded that Congress intended for qualified aliens, as defined in section 431(b) of the Personal Responsibility Act, to be included in the definition of lawfully present. Second, aliens who have been inspected and admitted to the United States and have not violated their status are lawfully present under the terms of the Immigration and Nationality Act. Third, an alien who has been paroled into the United States is lawfully present pursuant to section 212(d)(5) of the Act. However, persons who are paroled in order to determine whether or not they must be excluded under the Act are not lawfully present because no determination has been made as to the lawfulness of their presence, and they are allowed into the United States to avoid having to keep them in detention while they wait proceedings. Fourth, aliens who belong to one of the seven classes of aliens listed in section 103.12(a)(4) of this rule have been permitted to remain in the United States either by an act of Congress or through some other policy determination affecting that class of aliens. Aliens in temporary resident status pursuant to section 210 or 245A of the Act, aliens under Temporary Protected Status (TPS) pursuant to section 244A of the Act, and Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649 are all in lawful status under the Act. Cuban-Haitian entrants, aliens in deferred action status, aliens under Deferred Enforced Departure, and aliens who are the spouses and children of a United States citizen with an approved visa petition all remain in the United States under a Presidential or administrative policy that permits them to do so. Finally, applicants for asylum and withholding of deportation are permitted to remain in the United States because section 208(a) of the Act requires the Attorney General to create a procedure for adjudicating claims for asylum made by aliens physically present in the United States. Section 208(a) of the Act was passed to implement the obligations of the United States under the Convention Relating to the Status of Refugees, of July 28, 1951, as incorporated into the Protocol Relating to the Status of Refugees, of January 31, 1967.

Good Cause Exception

This interim rule is effective upon publication in the **Federal Register** although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b). Section 401(b)(2) of Pub. L. 104–193 requires the Attorney General to define the term "an alien lawfully present in the United States" so that the Social Security Administration can determine which aliens are eligible for payment of title II social security benefits under the terms of the Social Security Act. Absent a definition of "an alien lawfully present in the United States," section 401(a) of Pub. L. 104–193 requires the Social Security Administration to suspend payments under title II for aliens who are not "qualified aliens" (as defined under section 431(b)) and who file applications on or after September 1, 1996. It is therefore impracticable to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities, because this regulation affects individuals, not small entities.

Executive Order 12866

This interim rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under E.O. 12866, section 3(f), Regulatory Planning Review, and it has been submitted to the Office of Management and Budget for review under E.O. 12866.

Executive Order 12988

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Executive Order 12612

This regulation will not have a substantial direct effect on the States, on the relationships between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations

(Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; L.E.O. 12356; 47 FR 14874, 15557; 3 CFR 1982 Comp., p. 166; 8 CFR part 2.

2. A new § 103.12 is added to read as follows:

§ 103.12 Definition of the term "lawfully present" aliens for purposes of applying for Title II social security benefits under Public Law 104–193.

(a) *Definition of the term an "alien who is lawfully present in the United States."* For the purposes of section 401(b)(2) of Pub. L. 104–193 only, an "alien who is lawfully present in the United States" means:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104–193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(a)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244A of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of deportation under section 243(h) of the Act who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) *Non-issuance of an Order to Show Cause and non-enforcement of deportation and exclusion orders.* An alien may not be deemed to be lawfully present solely on the basis of the Service's decision not to, or failure to, issue an Order to Show Cause or solely on the basis of the Service's decision not to, or failure to, enforce an outstanding order of deportation or exclusion.

Dated: September 4, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22963 Filed 9–4–96; 3:10 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–08–AD; Amendment 39–9740; AD 96–18–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Ltd. Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) 96–01–08, which superseded Priority Letter AD 95–23–02, both of which were applicable to certain serial-numbered Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHT) Model 222, 222B, 222U, and 230 helicopters, that currently requires an initial check of both surfaces of each tail rotor blade (blade) for cracks; an inspection of the blade skin if a crack of a specified size or location is found in the paint; and replacement of the blade if a crack is found in the blade skin. This AD requires the same actions as required by the existing AD, but expands the applicability to include additional blade part numbers (P/N). This amendment is prompted by three incidents in which a crack developed in the stainless steel blade skins due to sanding marks on the blades that occurred during the manufacturing process on BHT Model 230 helicopters, which are similar in design to the Model 222, 222B and 222U helicopters. The actions specified by this AD are intended to prevent failure of a blade due to a fatigue crack, loss of the tail rotor and tail rotor gear box, and subsequent loss of control of the helicopter.

DATES: Effective September 23, 1996.

Comments for inclusion in the Rules Docket must be received on or before November 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: On November 3, 1995, the FAA issued priority letter AD 95–23–02, applicable to certain serial-numbered BHT Model 222, 222B, 222U, and 230 helicopters, to require an initial check of both surfaces of each blade for cracks; an inspection of the blade skin if a crack of a specified size or location was found in the paint; and replacement of the blade if a crack was found in the blade skin. That action was prompted by two incidents in which a crack developed in the stainless steel blade skins on BHT Model 230 helicopters. In one of these incidents, the blade failed during flight. Subsequent investigation revealed fatigue cracks originating from sanding marks on the blade skin. The cracks were located just outboard of the stainless steel blade doubler. That condition, if not corrected, could result in failure of a blade due to a fatigue crack, loss of the tail rotor and tail rotor gear box, and subsequent loss of control of the helicopter. Subsequent to the issuance of the priority letter AD, the FAA issued AD 96–01–08 to publish the

priority letter in the **Federal Register** and to correct an error in the applicability paragraph of the priority letter AD, which incorrectly stated the serial number (S/N) of one of the affected models. The Model 230 helicopters affected by the AD include S/N 23001 through 23038. The priority letter AD incorrectly stated S/N 23001 through 23034.

Since the issuance of AD 96–01–06, a crack has been discovered in the tail rotor blade of another serial-numbered Model 230 helicopter, that originated from a small indentation that occurred during the manufacturing process. As a result of this discovery, additional part-numbered blades have been determined to be affected.

Since the unsafe condition described is likely to exist or develop on other BHT Model 222, 222B, 222U, and 230 helicopters of the same type design, this AD supersedes AD 96–01–06 to require, before further flight, an initial visual check of both painted surfaces of each blade for cracks. If a crack of a specified size and location is found in the paint, removal of the paint and a visual inspection using a 10-power or higher magnifying glass is required before further flight. If this closer inspection reveals a crack in the blade skin, replacement of the blade with an airworthy blade is required. If no crack is found in the blade skin, the area from which the paint was removed is coated with a light-weight oil or an equivalent corrosion preventive compound, and then repetitive visual checks are required at intervals not to exceed 3 hours time-in-service (TIS). The initial visual check that is required before further flight and the repetitive checks may be performed by a pilot, but must be entered into the aircraft records showing compliance with paragraph (a) of this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417 (a)(2)(v)). This AD allows a pilot to perform this check because it involves only a visual check for cracking in the painted surface of the blade skin, and can be performed equally well by a pilot or a mechanic.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–SW08–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD), Amendment 39–9740, to read as follows:

AD 96–18–13 Bell Helicopter Textron, a Division of Textron Canada Ltd.: Amendment 39–9740. Docket No. 96–SW08–AD. Supersedes AD 96–01–06, issued December 21, 1995, Docket No. 95–SW–33–AD.

Applicability: Model 222 helicopters, serial numbers (S/N) 47006 through 47089, and Model 222B helicopters, S/N 47131 through 47156, with tail rotor blades, part numbers (P/N) 222–016–001–101, –107, –111, –113, –115, and –119; Model 222U helicopters, S/N 47501 through 47574, with tail rotor blades, P/N 222–016–001–107, –111, and –115; and Model 230 helicopters, S/N 23001 through 23038, with tail rotor blades, P/N 222–016–001–111 and –115, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously. To prevent failure of a tail rotor blade (blade) due to a fatigue crack (see Figure 1), loss of the tail rotor and tail rotor gear box, and subsequent

loss of control of the helicopter, accomplish the following:

(a) Clean the painted surfaces of the blades in an area approximately 6 inches spanwise on either side of the doubler tip. Visually check both surfaces of each blade for cracks by pushing the blade tip away from the surface being checked until it contacts the flapping stop and then holding the blade firmly against the stop. Pay particular attention to the area reaching from the doubler tip to 1 inch outboard, centering on an area 2 inches aft of the blade leading edge (see Figure 2).

(b) The visual check required by paragraph (a) may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with paragraph (a) of this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417(a)(2)(v)).

(c) If the visual check described in paragraph (a) reveals any crack outboard of the doubler tip (Station 14.250), or any chordwise crack inboard of the doubler tip that is longer than 1 inch (see Figure 3), accomplish the following:

(1) Remove the paint from the skin in the cracked area using the following procedures (see Figure 4):

Note 2: Paint cracking that follows the contour of the doubler is common and requires no action.

(2) Using a 180 or 220 grit abrasion paper, sand by hand with spanwise strokes until greenish- or yellow-colored primer or bare metal begins to be exposed.

(3) Using spanwise or circular sanding motions, continue hand-sanding the remaining greenish- or yellow-colored primer in the cracked area using a 320 or 400 grit paper until sufficient metal has been exposed to allow inspection (see area indicated in Figure 4).

(d) Inspect the blade skin for cracks in the area that was exposed in accordance with paragraph (c) using a 10-power or higher magnifying glass.

(1) If no crack is found in the blade skin, coat the bare metal area with a light-weight oil or an equivalent corrosion preventive compound.

(2) If any crack is discovered, remove the blade and replace it with an airworthy blade.

(e) Perform the requirements of this AD upon installation of a replacement blade.

(f) Perform the visual checks of paragraph (a) of this AD and the subsequent inspections, if appropriate, at intervals not to exceed 3 hours TIS.

Note 3: A light-weight oil or equivalent corrosion preventive compound may be applied after accomplishing the repetitive requirements of paragraph (f) of this AD.

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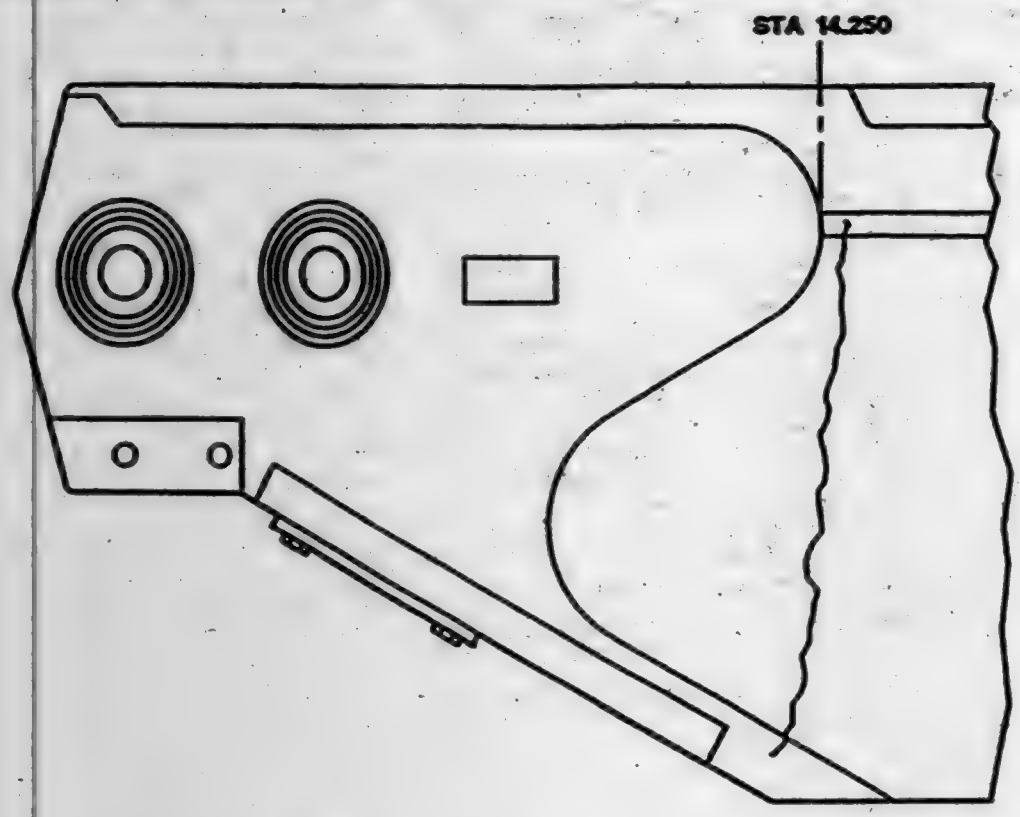

FIGURE 1. SKIN CRACK IN TAIL ROTOR BLADE

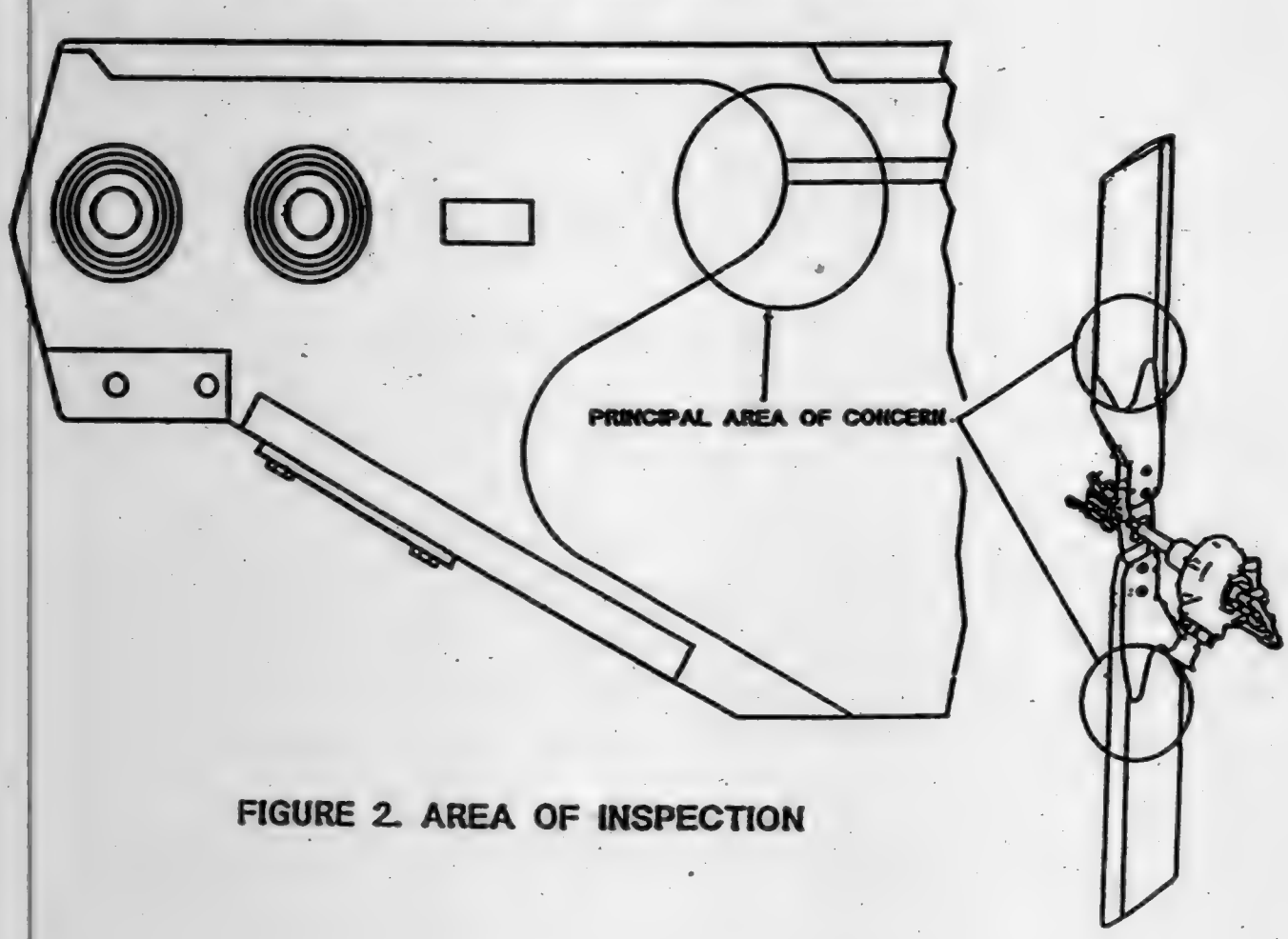

FIGURE 2. AREA OF INSPECTION

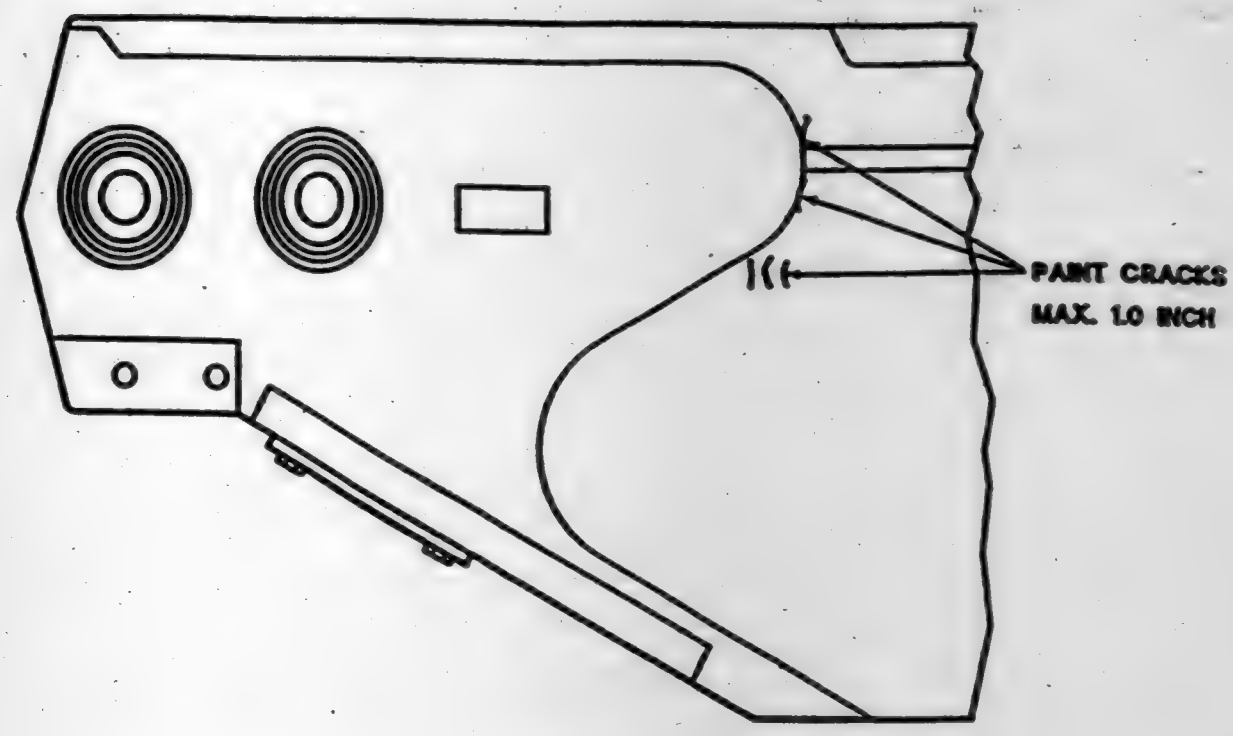

FIGURE 3.

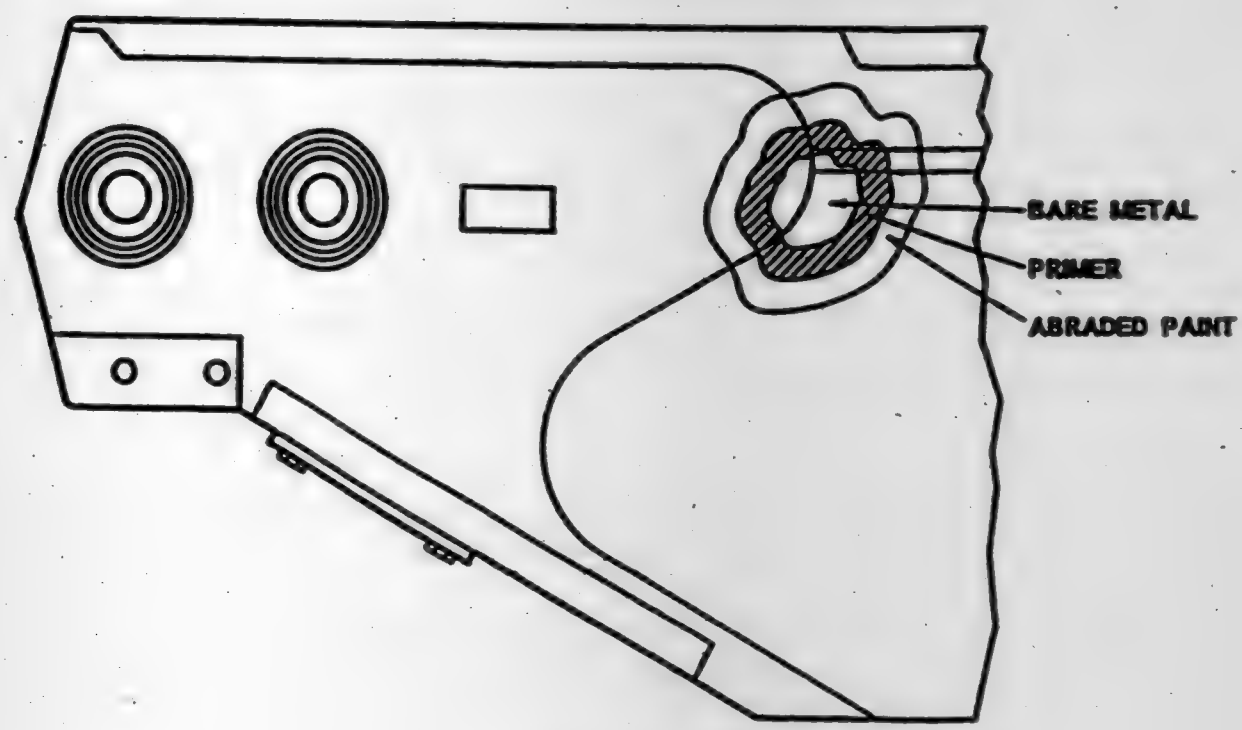

FIGURE 4.

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(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(h) Special flight permits to accomplish the requirements of this AD will not be issued.

(i) This amendment becomes effective on September 23, 1996.

Issued in Fort Worth, Texas, on August 26, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96-22575 Filed 9-5-96; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 96-SW-07-AD; Amendment 39-9739; AD 96-12-25]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) AD 96-12-25 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 204B helicopters by individual letters. This AD requires a visual inspection of each tail rotor (T/R) blade (blade) for peeling, flaking, or bubbling paint that may indicate corrosion; an inspection for corrosion, if necessary; and replacement of the T/R blade with an airworthy blade if corrosion is discovered. This amendment is prompted by an FAA determination, based on the manufacturer's data, that certain serial-numbered T/R blades were manufactured with internal leading edge doublers fabricated from clad aluminum instead of bare aluminum material. The actions specified by this AD are intended to prevent debonding of the main spar internal leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter.

DATES: Effective September 23, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96-12-25 issued on June 5, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-SW-07-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5447, fax (817) 222-5960.

SUPPLEMENTARY INFORMATION: On June 5, 1996, the FAA issued priority letter AD 96-12-25, applicable to BHTI Model 204B helicopters, serial numbers (S/N) 2001 through 2070 and S/N 2196 through 2199, which requires a visual inspection of each T/R blade for peeling, flaking, or bubbling paint that may indicate corrosion; an inspection for corrosion, if necessary; and, replacement of the T/R blade with an airworthy blade if corrosion is discovered. That action was prompted by an FAA determination, based on the manufacturer's data, that certain serial-numbered T/R blades were manufactured with internal leading edge doublers fabricated from clad aluminum instead of bare aluminum material. This condition, if not corrected, could result in debonding of the main spar internal leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI Model 204B helicopters of the same type design, the FAA issued priority letter AD 96-12-25, to prevent debonding of the main spar internal leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter. The AD requires, within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals of not more than 7 calendar days, a visual inspection of each T/R blade for peeling, flaking, or bubbling paint, or corrosion along the bond lines viewed from the root and tip ends of the blade, and at the abrasion strip bond line on both sides of the blade from the root to the tip. If peeling, flaking, or bubbling paint is discovered, the paint in the affected area must be removed and the blade must be inspected for corrosion. If corrosion is discovered in the affected areas, the blade must be removed and replaced with an airworthy blade.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 5, 1996 to all known U.S. owners and operators of BHTI Model 204B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket No. 96SW–07–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12966. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 96–12–25 Bell Helicopter Textron, Inc.: Amendment 39–9739. Docket No. 96–SW–07–AD.

Applicability: Model 204B helicopters, serial numbers (S/N) 2001 through 2070 and S/N 2196 through 2199, with tail rotor (T/R) blade (blade), part number (P/N) 204–011–702–015 or –121, S/N A–20262 through A–20268, A–20270 through A20282, A–20284 through A–20287, A–20289 through A–20422, A20424 through A–20428, A–20430 through A–20433, A–20435 through A–20464, A–20466 through A–20497, A–20499 through A21019, A–21027 through A–21031, A–21041, A–21047, A–21049 and A–21059, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent debonding of the main spar internal leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals of not more than 7 calendar days, clean each T/R blade using a mild detergent and water to remove soot and grime.

(b) Visually inspect each T/R blade for peeling, flaking, or bubbling paint, or corrosion along the bond lines viewed from the root and tip ends of the blade, and at the abrasion strip bond line on both sides of the blade from the root to the tip.

(c) If the visual inspection indicates peeling, flaking, or bubbling paint, remove the paint from the affected area and perform a visual inspection for corrosion.

(1) If no corrosion is noted, refinish the blade.

(2) If corrosion is noted in the bond lines of the affected areas, remove the blade and replace it with an airworthy blade. Replacement with an airworthy blade that has a serial number not listed in the Applicability section of this AD constitutes a terminating action for this AD.

Note 2: Bell Helicopter Textron, Inc. ASB No. 204–96–48, Revision A, dated February 12, 1996, pertains to this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on September 23, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–12–25, issued June 5, 1996, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on August 26, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22574 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–SW–11–AD; Amendment 39–9741; AD 96–12–26]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Manufactured Model AH–1, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) AD 96–12–26 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) manufactured Model AH–1, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters by individual letters. This AD requires a visual inspection of each tail rotor (T/R) blade (blade) for peeling, flaking, or bubbling paint that may indicate corrosion; an inspection for corrosion, if necessary; and replacement of the T/R blade with an airworthy blade if corrosion is discovered. This amendment is prompted by an FAA determination, based on the manufacturer's data, that certain serial-numbered T/R blades were manufactured with internal leading edge doublers fabricated from clad aluminum instead of bare aluminum material. The actions specified by this AD are intended to prevent debonding of the main spar internal leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter.

DATES: Effective September 23, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–12–26 issued on June 5, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Harrison, Aerospace Engineer, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5447, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: On June 5, 1996, the FAA issued priority letter AD 96–12–26, applicable to BHTI-manufactured Model AH–1, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, which requires a visual inspection of each T/R blade for peeling, flaking, or bubbling paint that may indicate corrosion; an inspection for corrosion, if necessary; and, replacement of the T/R blade with an airworthy blade if corrosion is discovered. That action was prompted by an FAA determination, based on the manufacturer's data, that certain serial-numbered T/R blades were manufactured with internal leading edge doublers fabricated from clad aluminum instead of bare aluminum material. This condition, if not corrected, could result in debonding of the main spar leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other BHTI-manufactured Model AH–1, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters of the same type design, the FAA issued priority letter AD 96–12–26, to inspect for debonding of the main spar internal leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter. The AD requires, within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals of not more than 7 calendar days, a visual inspection of the each T/R blade for peeling, flaking, or bubbling paint that may indicate corrosion, or corrosion along the bond lines viewed from the root and tip ends of the blade, and at the abrasion strip bond line on both sides of the blade from the root to the tip. If peeling, flaking, or bubbling paint is discovered, the paint in the affected area must be removed and the blade must be inspected for corrosion. If corrosion is discovered in the affected areas, the blade must be removed and replaced with an airworthy blade.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 5, 1996 to all known U.S. owners and operators of BHTI-manufactured Model AH–1, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96SW–11–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 96–12–26 California Department of Forestry; Erickson Air Crane Co.; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, inc.; Smith Helicopters; Southwest Florida Aviation; West Coast Fabrications; Western International Aviation, Inc.; Williams Helicopter Technology, Inc.; and UNC Helicopters: Amendment 39–9741. Docket No. 96–SW–11–AD.

Applicability: Bell Helicopter Textron, Inc.manufactured Model AH–1, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, with tail rotor (T/R) blade (blade), part number (P/N) 204–011–702–015 or –121, serial numbers (S/N) A–20262 through A–20268, A–20270 through A–20282, A–20284 through A–20287, A–20289 through A–20422, A–20424 through A–20428, A–20430 through A–20433, A–20435 through A–20464, A–20466 through A–20497, A–20499 through A–21019, A–21027 through A–21031, A–21041, A–21047, A–21049 and A–21059, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent debonding of the main spar internal leading edge doubler, which could lead to failure of a T/R blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals of not more than 7 calendar days, clean each T/R blade using a mild detergent and water to remove soot and grime.

(b) Visually inspect each T/R blade for peeling, flaking, or bubbling paint, or corrosion along the bond lines viewed from the root and tip ends of the blade, and at the abrasion strip bond line on both sides of the blade from the root to the tip.

(c) If the visual inspection indicates peeling, flaking, or bubbling paint, remove the paint from the affected area and perform a visual inspection for corrosion.

(1) If no corrosion is noted, refinish the blade.

(2) If corrosion is noted in the bond lines of the affected areas, remove the blade and replace it with an airworthy blade. Replacement with an airworthy blade that has a serial number not listed in the Applicability section of this AD constitutes a terminating action for this AD.

Note 2: Bell Helicopter Textron, Inc. ASB No. 204–9648, Revision A, dated February 12, 1996, which pertains to Model 204B helicopters, also pertains to this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on September 23, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–12–26, issued June 5, 1996, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on August 26, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–22573 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–16–AD; Amendment 39–9748; AD 96–18–21]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. (formerly Britten-Norman) BN–2A and BN2A MK. 111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 75–26–15, which currently requires repetitively inspecting the aileron mass balance clamp unit attachment for looseness on Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A and BN2A MK. 111 series airplanes, and modifying the aileron and mass balance clamp unit if any looseness is found. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This action retains the repetitive inspections required by AD 75–26–15, and requires modifying the aileron and mass balance unit (at a certain time) as terminating action for the repetitive inspection requirement. The actions specified in this AD are intended to prevent failure of the aileron mass balance attachment, which could result in loss of control of the airplane.

DATES: Effective October 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2717; facsimile (32 2) 230.6899; or Mr. Jeffrey Morfitt, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Britten-Norman BN–2A and BN2A MK. 111 series airplanes was published in the **Federal Register** on May 9, 1996 (61 FR 21146). The action proposed to supersede AD 75–26–15 with a new AD that would (1) retain the requirements of repetitively inspecting the aileron mass balance clamp unit

attachment for looseness and modifying any aileron and mass balance unit immediately where looseness is found; and (2) require modifying the aileron and mass balance unit (at a certain time) if not previously required. The modification would terminate the need for the repetitive inspections of the aileron and mass balance unit attachment. Accomplishment of the proposed actions would continue to be in accordance with Britten-Norman Service Bulletin No. BN–2/SB.67, Issue 1, dated October 24, 1973.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 109 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10 workhours (inspection: 1 workhour; modification: 9 workhours) per airplane to accomplish the action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $160 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $82,840. This figure only takes into account the cost of the initial inspection and inspection-terminating modification and does not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each of the owners/operators will incur over the life of the affected airplanes.

This figure is also based on the assumption that no affected airplane owner/operator has accomplished the required modification. This action eliminates the repetitive inspections required by AD 75–26–15. The FAA has no way of determining the operational levels of each individual operator of the affected airplanes, and subsequently cannot determine the repetitive inspection costs that would be eliminated by this action. The FAA estimates these costs to be substantial over the long term.

Pilatus Britten-Norman does not know the number of parts distributed to the affected airplane owners/operators. Numerous sets of parts were sent out to the owners/operators of the affected airplanes, but over the years Pilatus Britten-Norman has not retained these records. The company believes that most of the affected airplanes already have the required inspection-terminating modification incorporated.

The FAA's Aging Commuter Class Aircraft Policy

This AD is part of the FAA's aging commuter airplane policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of airplanes that are in commercial service without adversely impacting private operators. Of the approximately 109 airplanes in the U.S. registry that would be affected by this AD, the FAA has determined that approximately 25 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 75 percent are operated in other forms of air transportation such as air cargo and air taxi.

This action allows 1,000 hours time-in-service (TIS) after the effective date of the AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of airplanes involved in commercial operation will have to accomplish the modification within 5 to 10 months after this AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this allows 5 to 10 years before the required modification becomes mandatory. The time it would take those in air cargo/air taxi operations before this action becomes mandatory is unknown because of the wide variation between each airplane used in this service. The exact numbers would fall somewhere between the average for commuter operators and private operators.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 75–26–15, Amendment 39–2464, and by adding a new AD to read as follows:

96–18–21 Pilatus Britten-Norman: Amendment 39–9748; Docket No. 96–CE–16–AD. Supersedes AD 75–26–15, Amendment 39- 2464. Applicability: Models BN–2, BN–2A, BN–2A–6, BN–2A–8, BN–2A–2, BN–2A–9, BN–2A–3, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN2A MK. 111, BN2A MK. 111–2, and BN2A MK. 111–3 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the aileron mass balance attachment, which could result in loss of control of the airplane, accomplish the following:

(a) Prior to the first flight of each day after the effective date of this AD (see NOTE 2 of this AD), inspect the attachment of the aileron mass balance clamp unit for looseness in accordance with the *"Inspection"* section of Britten-Norman Service Bulletin (SB) No. BN–2/SB.67, Issue 1, dated October 24, 1973.

Note 2: The "prior to first flight of each day after the effective date of this AD" compliance time required by paragraph (a) of this AD is exactly the same as required by AD 75–26–15 (superseded by this AD).

(b) If a loose attachment of the aileron mass balance clamp unit is found during any of the inspections required by this AD, prior to further flight, modify the aileron and mass balance clamp unit in accordance with the "b. Sequence of Operations" section of Britten-Norman SB No. BN–2/SB.67, Issue 1, dated October 24, 1973.

(c) Within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished as specified and required by paragraph (b) of this AD, modify the aileron and mass balance clamp unit in accordance with the "b. Sequence of Operations" section of Britten-Norman SB No. BN–2/SB.67, Issue 1, dated October 24, 1973.

(d) Accomplishing the modification required by paragraph (b) or (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division. Alternative methods of compliance approved in accordance with AD 75–26–15 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(g) The inspections and modification required by this AD shall be done in accordance with Britten-Norman Service Bulletin No. BN–2/SB.67, Issue 1, dated October 24, 1973. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9748) supersedes AD 75–26–15, Amendment 39–2464.

(i) This amendment (39–9748) becomes effective on October 25, 1996.

Issued in Kansas City, Missouri, on August 29,1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22687 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91–ANE–29; Amendment 39–9470; AD 91–21–01 R1]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Model TIO–540–S1AD Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 91–21–01 R1 applicable to Textron Lycoming Model TIO–540–S1AD reciprocating engines that was published in the **Federal Register** on June 7, 1996 (61 FR 29003). The reference to the New York Aircraft Certification Office in Note 3 following the paragraph describing the procedure for obtaining an alternative method of compliance was omitted. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., 3rd Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7504, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Textron Lycoming Model TIO–540–S1AD reciprocating engines, was published in the **Federal Register** on June 7, 1996 (61 FR 29003). The following correction is needed:

§ 39.13 [Corrected]

On page 29005, in the first column, in the Compliance Section, in Note 3 of paragraph (c), in the fourth line, "obtained from." is corrected to read "obtained from the New York Aircraft Certification Office".

Issued in Burlington, MA, on August 28, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–22773 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–ASO–12]

Amendment to Class E Airspace; Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Tampa, FL, to accommodate a GPS RWY 18 Standard Instrument Approach Procedure (SIAP) for the Vandenberg Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On June 24, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Tampa, FL (61 FR 32374). This action would provide adequate Class E airspace for IFR operations at the Vandenberg Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Tampa, FL, to accommodate a GPS RWY 18 SIAP and for IFR operations at the Vandenberg Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Tampa, FL [Revised]

Tampa International Airport, FL
(Lat. 27°5 8'32"N, long. 82°31'59"W)
St. Petersburg-Clearwater International Airport
(Lat. 27°54'39"N, long. 82°41'14"W)
MacDill AFB
(Lat. 27°50'57"N, long. 82°31'17"W)
Peter O Knight Airport
(Lat. 27°54'56"N, long. 82°26'57"W)
Albert-Whitted Airport
(Lat. 27°45'54"N, long. 82°37'38"W)
Vandenberg Airport
(Lat. 28°00'33"N, long. 82°20'59"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tampa International Airport, St. Petersburg-Clearwater International Airport, MacDill AFB and Peter O Knight Airport and within a 6.3-mile radius of Albert-Whitted Airport and Vandenberg Airport, excluding that airspace within the Lakeland, FL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on August 27, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–22837 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–11]

Amendment to Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Smithfield, NC, as a result of an airspace review conducted to accommodate an amendment to the LOC/DME RWY 3 Standard Instrument Approach Procedure (SIAP) for the Smithfield/Johnston County Airport. Less controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On July 10, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Smithfield, NC (61 FR 36314). This action would provide adequate Class E airspace for IFR operations at the Smithfield/Johnston County Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Smithfield, NC, as a result of an airspace review conducted to accommodate a LOC/DME RWY 3 SIAP. Less controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO NC E5 Smithfield, NC [Revised]

Smithfield/Johnston Airport, NC
(Lat. 35°32′27″ N, long. 78°23′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Smithfield/Johnston County Airport. ASO NC E5 Smithfield, NC [Revised]

* * * * *

Issued in College Park, Georgia, on August 27, 1996.

Benny L. McGlamery

Acting Manager, Air Traffic Manager Southern Region.

[FR Doc. 96–22828 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–1]

Amendment to Class E Airspace; Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Rochester, MN. Additional controlled airspace is required for the Copter GPS 326 degrees approach to St. Mary's Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, May 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Rochester, MN (61 FR 26855). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Rochester, MN to accommodate IFR, operators executing the Copter GPS 326 degrees approach procedure to St. Mary's Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Rochester, MN [Revised]

Rochester International Airport, MN
(Lat. 43°54′32″ N, long. 92°29′53″ W)
St. Mary's Hospital Heliport, MN
(Lat. 44°01′11″ N, long. 92°28′59″ W)
Rochester VOR/DME
(Lat. 43°46′56′ N, long. 92°35′49″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Rochester International Airport and within 3.2 miles each side of the Rochester VOR/DME 028 radial extending from the 6.7-mile radius to 7.9 miles southwest of the airport, within 5.3 miles southwest and 4 miles northeast of the Rochester northwest localizer course extending from the 6.7-mile radius to 20 miles northwest of the airport, within 5.3 miles northeast and 4 miles southwest of the Rochester southeast localizer course extending from the 6.7-mile radius to 17.3 miles southeast of the airport and within a 6.4-mile radius of the St. Mary's Hospital Heliport.

* * * * *

Issued in Des Plaines, Illinois on August 20, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–22833 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 165

[CGD01–96–109]

RIN 2115–AA97

Safety Zone: Grande Fiesta Italiana Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Grande Fiesta Italiana fireworks display located in Hempstead Harbor, New York. The safety zone is in effect from 9 p.m. until 10:30 p.m. on Saturday, September 7, 1996. The safety zone temporarily closes all waters, shore to shore, within a 300 yard radius of a fireworks barge anchored approximately 300 yards north of Bar Beach, Port Washington, in Hempstead Harbor New York.

EFFECTIVE DATE: This rule is effective from 9 p.m. until 10:30 p.m. on Saturday, September 7, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) D. D. Gefell, Waterways Oversight Branch, Waterways Management Division, Coast Guard Activities New York, (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date on which complete information regarding this event was received, there was insufficient time to draft and publish a NPRM. The delay that would be required to provide a 30 day delay effective date would cause the event to be cancelled. Cancellation of this event is contrary to public interest because the event is intended for public entertainment.

Background and Purpose

Bay Fireworks Company, Inc., submitted an Application for Approval of Marine Event to hold a fireworks display on the waters of Hempstead Harbor. The fireworks program is being sponsored by the Sons of Italy of Port Washington, NY. This regulation establishes a temporary safety zone in all waters of Hempstead Harbor within a 300 yard radius of the fireworks barge anchored approximately 300 yards north of Bar Beach, Port Washington, NY, at or near 40°49′52″N latitude, 73°39′10″W longitude (NAD 1983). The safety zone is in effect from 9 p.m. until 10:30 p.m. on Saturday, September 7, 1996. The safety zone prevents vessels from transiting this portion of Hempstead Harbor, and is needed to protect mariners from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation closes a portion of Hempstead Harbor, north of Bar Beach to vessel traffic from 9 p.m. until 10:30 p.m. on Saturday, September 7, 1996. This portion of Hempstead Harbor has limited commercial traffic and is used primarily by recreational vessels. Although the regulation prevents traffic from transiting this area, the effect of the regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; the amount of commercial traffic in the area is minimal; and the extensive, advance advisories which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are not independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For reasons set forth in the Regulatory Evaluation, the limited duration and commercial traffic, Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e.(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–109, is added to read as follows:

§ 165.T01–109 Safety Zone: Grande Fiesta Italiana Fireworks Display, Hempstead Harbor, New York.

(a) *Location.* The waters of Hempstead Harbor, shore to shore, within a 300 yard radius of a fireworks barge anchored approximately 300 yards north of Bar Beach, Port Washington, New York, at or near 40°49′52″N latitude 73°39′10″W longitude (NAD 1983).

(b) *Effective date.* This section is effective from 9 p.m. until 10:30 p.m. on Saturday, September 7, 1996.

(c) *Regulations.*

(1) The general regulations contained in 33 C.F.R. 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the

Coast Guard Captain of the Port or the designated on-scence patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 27, 1996.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 96–22639 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA43–7116; FRL–5605–8]

State Implementation Plan: Washington; Withdrawal

AGENCY: Environmental Protection Agency.

ACTION: Final rule; withdrawal.

SUMMARY: Due to an adverse comment, EPA is withdrawing the effective date for the approval of the Inspection and Maintenance (I/M) State Implementation Plan (SIP) for Washington State, submitted by the Washington Department of Ecology to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the Clean Air Act as amended and Federal I/M rule 40 CFR part 51, subpart S. The original action was published in the **Federal Register** on July 23, 1996, as a direct final rule, 61 FR 38086. As stated in the **Federal Register** document, if adverse or critical comments were received by August 22, 1996, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving an adverse comment within the comment period, EPA is withdrawing the final rule and will address the comments received in a subsequent final rule based on the proposed rule also published on July 23, 1996, 61 FR 38129. EPA will not institute a second comment period on this document.

EFFECTIVE DATE: This withdrawal is effective on September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the July 23, 1996 **Federal Register**, and in the short informational document located in the proposed rule section of the July 23, 1996 **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 27, 1996.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 96–22655 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA47–7120; FRL–5605–7]

State Implementation Plan: Washington; Withdrawal

AGENCY: Environmental Protection Agency.

ACTION: Final rule; withdrawal.

SUMMARY: Due to an adverse comment, EPA is withdrawing the effective date for the approval of the attainment demonstration portion of the Puget Sound carbon monoxide (CO) State Implementation Plan (SIP) for Washington State, submitted by the Washington Department of Ecology for the purpose of documenting attainment of the national ambient air quality standards (NAAQS) for CO to satisfy certain federal requirements for an approvable nonattainment area CO SIP for the Puget Sound nonattainment area. The original action was published in the **Federal Register** on July 25, 1996, as a direct final rule, 61 FR 38597. As stated in the **Federal Register** document, if adverse or critical comments were received by August 26, 1996, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving an adverse comment within the comment period, EPA is withdrawing the final rule and will address the comments received in a subsequent final rule based on the proposed rule also published on July 25, 1996, 61 FR 38683. EPA will not institute a second comment period on this document.

EFFECTIVE DATE: This withdrawal is effective on September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the July 25, 1996 **Federal Register**, and in the short informational document located in the proposed rule section of the July 25, 1996 **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 27, 1996.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 96–22656 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TN–148–2–9606a; FRL–5554–6]

Approval and Promulgation of Air Quality Implementation Plans, Tennessee; Approval of Revisions To Permit Requirements, Definitions and Administrative Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the permit requirements, definitions, and administrative requirements for the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP). On November 16, 1994, the State submitted revisions to the Nashville/Davidson portion of the Tennessee SIP on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, permit requirements, the Board's powers and duties, the variances and hearings procedures, the measurement and reporting of emissions, and the testing procedures. At this time, EPA is acting on revisions submitted on November 16, 1994. EPA is approving all of the submitted revisions except those which were submitted to meet the requirements for enhanced monitoring. These will not be acted on at this time.

DATES: This final rule is effective November 5, 1996 unless adverse or critical comments are received by October 7, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Karen C. Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The

interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311—23rd Avenue, North, Nashville, Tennessee 37203

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365.The telephone number is 404/347–3555 x4197. Reference file TN–146–2–9608a.

SUPPLEMENTARY INFORMATION: The State of Tennessee submitted revisions to the Nashville/Davidson County portion of the Tennessee SIP to EPA on November 16, 1994. EPA found these submittals to be complete on December 21, 1994. EPA approved several portions of this submittal on July 28, 1995 (60 FR 38712), which were required for Nashville/Davidson County's Federally enforceable local operating permit (FELOP) program. At that time, EPA also approved Nashville/Davidson County's FELOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA).

A. SIP Revisions

The Nashville/Davidson County Board of Health, officially adopted proposed amendments to the Chapter 10.56, "Air Pollution Control" of the Metropolitan Code of Laws on October 6, 1994. These regulatory revisions to their Chapter 10.56 make changes to some definitions, to their requirements for public hearings, and to some testing procedure requirements. These revisions are the remainder of their plan to bring the SIP into accordance with title I requirements and to support their title V program. EPA is approving all of the following revisions except where it is specifically noted that the proposed revisions are not receiving action.

Section 10.56.010—Definitions

Definitions of "Legally Enforceable" and "Uniform Administrative Procedures Act" were added. The definition of legally enforceable states that "all limitations and conditions which are enforceable by the Director or the Administrator * * *" in accordance with the requirements of the CAA. The Uniform Administrative Procedures Act is defined as the Tennessee Code Annotated Title 4, Chapter 5.

Section 10.56.020—Construction Permits

Paragraph (A)(2) was revised to require that all hearings now be conducted in accordance with the Uniform Administrative Procedures Act. This formerly stated that the hearing would simply be conducted before the Nashville/Davidson County Metropolitan Board of Health.

Paragraph (N) was added to this section. This paragraph adds the requirement for monthly notification of the public, through newspaper advertisements, of the applicants seeking to obtain construction or modification permits of air pollution sources.

Section 10.56.090.C.4—Board—Powers and Duties

This paragraph has been revised to change the appeal process for civil penalties. This process was formerly conducted in accordance with the provisions of another section in the SIP (10.56.020). This will now be done according to the Uniform Administrative Procedures Act.

Section 10.56.110—Rules and Regulations—Hearing Procedures

Paragraph (A) has been revised to allow the Board to conduct a hearing in accordance with the Uniform Administrative Procedures Act.

In paragraphs (B) and (B)(2), references to "by the Board" have been deleted. This was done because of the new requirements to do hearings in accordance with the Uniform Administrative Procedures Act, as were previously discussed in the above paragraphs.

Section 10.56.120.B—Complaint Notice—Hearings Procedure

These hearings will now be conducted in accordance with the contested cases provisions in the Uniform Administrative Procedures Act, as previously defined. The specific requirements for conducting a complaint hearing, as defined in subparagraphs (1) through (7) have been deleted. These are now defined in the Uniform Administrative Procedures Act.

Section 10.56.130.D.2—Variances—Hearings Procedure

These public hearings will now be conducted in accordance with the Uniform Administrative Procedures Act.

Section 10.56.290.D and E—Measurement and Reporting of Emissions

The revisions to Section 10.56.290 for enhanced monitoring are in response to a May 21, 1994, SIP call from EPA Region 4 which was based on a proposed rule. However, the EPA is taking no action on revisions to Section 10.56.290 of the Nashville/Davidson County SIP at this time because the federal requirement to which the revision pertains is not yet final.

Section 10.56.300.B—Testing Procedures

This paragraph addresses the requirements for demonstrating compliance with emission standards. The phrase "The determination of" has been deleted and replaced with "Source testing conducted for the purpose of demonstrating."

Final Action

EPA is fully approving the submitted revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) with the exception of the enhanced monitoring provisions in Section 10.56.290, which are not being acted on in this rulemaking.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on November 5, 1996 unless, by October 7, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 5, 1996.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).]

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 165 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has determined that the rules being approved by this action will impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—[Amended]

2. Section 52.2220 is amended by adding paragraph (c)(141) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(141) On November 16, 1994, the State submitted revisions to the Nashville/Davidson portion of the Tennessee State Implementation Plan (SIP) on behalf of Nashville/Davidson County. These were revisions to the permit requirements for major sources of air pollution, including revisions to the general definitions, permit requirements, the Board's powers and duties, the variances and hearings procedures, the measurement and reporting of emissions, and the testing procedures. These revisions incorporate changes to Nashville's Chapter 10.56 which are required in the Clean Air Act as amended in 1990 and 40 CFR part 51, subpart I.

(i) Incorporation by reference.

(A) Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee, Chapter 10.56, except Section 10.56.290, Air Pollution Control, approved on October 6, 1994, except Section 10.56.010, definition of "Regulated Pollutant"; Section 10.56.050, paragraphs (C), (D), and (E); Section 10.56.080.

(ii) Other material. None.

[FR Doc. 96–22807 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN 167–1–9627a; FRL–5605–9]

Control Strategy: Ozone (O_3); Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal.

SUMMARY: Due to adverse comments, EPA is withdrawing the approval of an exemption request from the oxides of nitrogen (NO_X) reasonably available control technology (RACT) and conformity requirements of the Clean Air Act as amended in 1990 (CAA) for the five county Middle Tennessee (Nashville) moderate ozone (O_3) nonattainment area. The original action was published in the **Federal Register** on July 11, 1996, as a direct final rule. As stated in the **Federal Register** document, if adverse or critical comments were received by August 12, 1996, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving adverse comments within the comment period, EPA is withdrawing the final rule and will address all public comments received in a subsequent final rule based on the proposed rule also

published on July 11, 1996. EPA will not institute a second comment period on this document.

EFFECTIVE DATE: This withdrawal is effective September 6, 1996.

FOR FURTHER INFORMATION CONTACT: William C. Denman, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, SW, Atlanta, Georgia 30303–3104, (404) 562–9030.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the July 11, 1996 **Federal Register** at (61 FR 36502), and in the document located in the proposed rule section of the July 11, 1996 **Federal Register** at (61 FR 36534).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: August 29, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–22809 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–60–P

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40 CFR Parts 52 and 81

[FRL–5560–4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Wyoming; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: EPA is promulgating corrections to the State Implementation Plan (SIP) for the State of Wyoming regarding the State's ambient standards for fluorides and hydrogen sulfide and the State's odor control regulation. EPA has determined that these rules were erroneously incorporated into the SIP. EPA is removing these rules from the approved Wyoming SIP because the rules do not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 ("the Act"), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

In addition, EPA is amending the boundary description for the "Powder River Basin" PM–10 unclassifiable area in 40 CFR 81.351. EPA promulgated revisions to 40 CFR 81.351 in a November 3, 1995 rulemaking, and EPA erroneously published an incorrect boundary description for the Powder River Basin area. This document corrects that error.

DATES: This action will become effective on November 5, 1996, unless adverse comments are received within 30 days of publication. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relative to this action are available for inspection during normal business hours at the following location: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Corrections to SIP

The Act was first amended in 1970. At this time, a large number of SIPs were submitted to EPA to fulfill the new Federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the Act. Due to resource constraints at that time, EPA's review of these submittals focused primarily on the required technical, legal, and enforcement elements of the submittals. At the time, EPA did not perform a detailed review of the numerous provisions submitted, to determine if each provision was related to protection of the NAAQS. Provisions approved as part of states' SIPs should generally be related to attainment and maintenance of the NAAQS, consistent with the authority in section 110 of the Act under which these plans are approved by EPA.

During a recent review of the contents of the Wyoming SIP, EPA determined that three provisions of the State's rules were approved as part of the SIP which did not have a reasonable connection to the NAAQS-related air quality goals of the Act. These State rules include the ambient standard for hydrogen sulfide in Section 7 of the Wyoming Air Quality Standards and Regulations (WAQSR), the 1972 version of the ambient standard for fluorides in Section 11 of the WAQSR,[1] and the odor control rules in Section 16 of the WAQSR. In addition, documents included in the State's November 19, 1993 title V operating permit program submittal indicated that the State did not consider these three rules part of the federally-approved SIP. EPA consequently notified the State of this discrepancy in a June 26, 1995 letter and offered to correct the SIP pursuant to section 110(k)(6) of the Act by removing these three rules from the SIP, since they are not reasonably connected to the NAAQS-related air quality goals of the Act. The State responded in a letter dated September 19, 1995 requesting that EPA remove these three provisions from the approved SIP.

Section 110(k)(6) of the amended Act provides: Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Since the State of Wyoming's rules for hydrogen sulfide ambient standards, fluoride ambient standards, and odor control have no reasonable connection to the NAAQS-related air quality goals of the Act and since the State has requested that EPA remove these rules from the approved SIP, EPA has found that approval of these State rules was in error. Consequently, EPA is removing Sections 7, 11, and 16 of the WAQSR from the approved Wyoming SIP pursuant to section 110(k)(6) of the Act.

II. Correction of Boundary Description for the Powder River Basin Area

On November 3, 1995, EPA promulgated revisions to the State of Wyoming's PM–10 area designation table in 40 CFR 81.351 pursuant to the State's adoption and EPA's approval of prevention of significant deterioration (PSD) increments for PM–10 (see 60 FR 55800). In that notice, EPA cited an earlier and incorrect boundary description for the area designated as the "Powder River Basin" in Campbell and Converse counties. EPA promulgated a revised boundary description for the Powder River Basin area on September 12, 1995 (60 FR 47299), and that revised boundary

[1] Section 11 of the WAQSR was amended by the State in 1986, but that version was never submitted to, or approved by, EPA as part of the SIP for Wyoming.

should have been reflected in the November 3, 1995 rulemaking. Therefore, this notice corrects the boundary description for the Powder River Basin area to reflect the September 12, 1995 rulemaking.

III. Final Action

EPA is removing Sections 7, 11, and 16 of the WAQSR from the approved Wyoming SIP pursuant to section 110(k)(6) of the Act. In addition, EPA is correcting the boundary description for the Powder River Basin PM–10 unclassifiable area in 40 CFR 81.351 to reflect the boundary description promulgated for the area on September 12, 1995 (60 FR 47299).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to correct the SIP should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective November 5, 1996, unless, by October 7, 1996, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 5, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This action does not impose any new requirements. Therefore, the Administrator certifies that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this correction action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action corrects this state implementation plan, pursuant to section 110(k)(6) of the Act, by removing three State rules that were erroneously incorporated into the SIP. Thus, this action will impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 14, 1996.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart ZZ—Wyoming

2. A new § 52.2634 is added to read as follows:

§ 52.2634 Correction of approved plan.

The following rules of the Wyoming Air Quality Standards and Regulations have been removed from the approved plan pursuant to section 110(k)(6) of the Clean Air Act (as amended in 1990): Section 7, Hydrogen Sulfide; Section 11, Fluorides; and Section 16, Odors.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.351, the Wyoming PM–10 table is amended by revising the entry for "Powder River Basin" to read as follows:

§ 81.351 Wyoming.

* * * * *

WYOMING—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*		*
Campbell County (part)	11/15/90	Unclassifiable		
Converse County (part).				
That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the areas defined as the Pacific Power and Light Area, the Hampshire Energy Area, and the Kennecott/Puron PSD Baseline Area.—Powder River Basin.				
* * * *	*	*		*

* * * * *

[FR Doc. 96–22645 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5604–6]

40 CFR Part 300

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Whiteford Sales & Service, Inc., site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 announces the deletion of the Whiteford Sales & Service, Inc., (WSS) site from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Indiana because it has been determined that all appropriate Fund-financed responses at the WSS site under CERCLA have been implemented, that the WSS site poses no significant threat to public health or the environment, and that no further clean-up action at the site is appropriate.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Tierney, U.S. EPA Region 5 (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604; (312) 886–4785. Information on the site is available at the local information repository located at: The St. Joseph County Public Library, Main Branch, 122 W. Wayne St., South Bend, Indiana. Requests for copies of documents should be directed in writing to the Regional Docket Office. The contact for the Regional Docket Office is E. Levy, U.S. EPA Region 5 (MRI–13J), 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Whiteford Sales & Service, Inc. (WSS) site located within the city limits of South Bend, St. Joseph County, IN, approximately 1 and ½ miles southwest of downtown. A Notice of Intent to Delete for the site was published on May 3, 1996 in the **Federal Register** (61 FR 19889). The closing date for public comments on the Notice of Intent to Delete was June 3, 1996. EPA received no comments and, therefore, no Responsiveness Summary was prepared.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental potection, Air pollution control, chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 13, 1996.

David A. Ullrich,

Acting Regional Administrator.

40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site "Whiteford Sales & Service/ Nationalease, South Bend, Indiana".

[FR Doc. 96–22650 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 94–029]

RIN 2115–AE94

Modernization of Examination Methods

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: By this final rule, the Coast Guard amends the rules that require examinations for merchant-marine licenses and for unlicensed ratings to be written and to be administered by it: This rule removes references to writing and broadens the scope of those authorized to administer the examinations. These two changes reflect the efforts of the Coast Guard to develop testing by alternative media and, with that testing, the use of private-sector and public-sector testing services. The development of more effective and modern examination of applicants for merchant-marine licenses and unlicensed ratings will enhance the safety of the maritime environment.

DATES: This final rule is effective on October 7, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA–2, 3406), [CGD 94–029], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 9:30 a.m. and 2:00 p.m. Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Mark C. Gould, Project Manager, Marine Personnel Qualifications Branch (G–MOS–1), (202) 267–6890.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Currently, Coast Guard rules require that applicants for merchant-marine licenses and unlicensed ratings pass written examinations administered by it. During the latter part of 1993, the Coast Guard conducted meetings and discussions of a focus group, which addressed the future of Coast Guard licensing. Specifically, the group looked at ways to improve and modernize merchant-mariner examinations.

The report of the focus group, "Licensing 2000 and Beyond" (November, 1993), a copy of which is available in the public docket for this rulemaking [CGD 94–029] where indicated under **ADDRESSES** above, recommends that the Coast Guard's Marine Licensing Program adopt new methods of verifying competency, including practical demonstrations and the use of simulators. Practical demonstrations and simulators would provide more effective means of testing the skills of the applicants by requiring proper actions and reactions during real-time, real-world scenarios. Electronic methods of examination are employed by private sector and public-sector organizations. There is increasing user of Third-Party or Fourth-Party testing systems that maximize the significant benefits new technology offers. The report of the focus group defined a "Third Party" as one who trains or teaches the mariner, and a "Fourth Party" as someone, other than the Coast Guard or a Third Party, who administers a test or makes a subjective judgment about the competency of the mariner. The Coast Guard is exploring the possibility or implementing electronic methods and the use of Third-Party or Fourth-Party testing services.

However, 46 CFR 10.205, 10.207, 10.901, 12.05–9, 12.10–5, 12.15–9, and 12.20–5 specify that applicants need pass written (or oral) examinations administered by the Coast Guard. Because the Coast Guard is considering the use of other, proved methods of proficiency testing, which could significantly improve a very critical aspect of the Coast Guard's qualification system, this final rule removes the terms "written" and "in writing" from the rules governing merchant-marine examinations and makes minor revisions to authorize testing other than by the Coast Guard.

Regulatory History

On February 23, 1995, acting on the delegated authority, among others, of Chapters 71 (for 46 CFR Part 10) and 73 (for 46 CFR Part 12) of Title 46 of the United States Code, the Coast Guard published in the **Federal Register** [60 FR 10053] a notice of proposed rulemaking (NPRM), entitled Modernization of Examination Methods. The Coast Guard received eight letters commenting on the proposal. It held no public hearing.

Discussion of Comments

The Coast Guard received eight comments from various companies and individuals. Most supported the rulemaking. One flatly opposed it, and several expressed concern about its impact on mariners, maritime employers, and marine educational institutions. These concerns are addressed below.

One commentor stated that the Coast Guard does not solicit the ideas and comments of small businesses or other small organizations to examine the impact of proposed rules. Another insisted that it would have an adverse economic impact on independently owned and operated small businesses. The Coast Guard disagrees. As required by the Administrative Procedure Act (5 U.S.C. 553) and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard solicited comments from the public in the NPRM [60 FR 10053], and it considered all comments received during the comment period. In addition, it receives advice and recommendations from the Merchant Marine Personnel Advisory Committee (MERPAC) on a variety of matters pertaining to U.S. merchant mariners, including standards of training and qualification. The 19-member committee includes representatives from shipping companies both large and small, maritime academies, proprietary marine educators, and active mariners.

One commentor stated that this rulemaking is significant under section 3(f) of Executive Order 12866. The Coast Guard and OMB disagree. Because this final rule simply broadens the available methods of administering examinations, and because it changes the rules to allow the use of fourth-party testing in the future (beyond the existing authorization for third-party and Coast Guard testing), it should not harm any organization, large or small.

The specter of simulators disturbed several commentors, who adduced five main criticisms: (1) The Coast Guard is using this rulemaking to mandate the use of simulators as a stand-alone method to demonstrate proficiency. (2) Simulation will be used where a student's performance would be better ascertained by written examination. (3) Such radical changes in the examination process should be made slowly. (4) Simulators cannot adequately present the conditions encountered by towboats on rivers or inland waters. (5) There are insufficient simulators presently available for this program. These criticisms are mistaken.

(1) This rulemaking was undertaken to permit, rather than mandate, the use of simulators as an option to demonstrate proficiency. There is no intention to mandate the use of simulators as a sole means of demonstrating proficiency.

(2) Some subjects (meeting and passing, navigation involving traffic, and the like) are ideally suited to simulation because the evaluator can guage the timeliness and adequacy of the student's response. Others (tides and currents, employment of navigational equipment, and the like) are indeed better suited for a multiple-choice examination and use of reference materials. The use of simulators will be allowed only where it affords a clear advantage over written examinations.

(3) Because the Coast Guard is permitting, rather than mandating, the use of simulators and practical demonstration in addition to written examinations, changes can be introduced gradually. The Coast Guard

intends to retain written examinations for the foreseeable future.

(4) There is, in fact, one third-party training course approved by the Coast Guard for towboats that uses simulators for part of its curriculum, and uses them to good effect. This is simply another option available to the license candidate.

(5) Because the use of simulators as one part of testing is merely one option available to the license candidate, the number of courses approved by the Coast Guard and now available to the public that use simulators is irrelevant.

A related matter, the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), will affect virtually all phases of the system used in the United States to train, test, evaluate, license, certify and document merchant mariners for service on seagoing vessels. The Amendments will require both written examinations and practical demonstrations of skills and will promote the use of simulators. They are the subject of a separate rulemaking [CGD 95–062], an NPRM which appears at 61 FR 13284 (March 26, 1996).

One commentor opposed the Coast Guard's accepting successful completion of a course, approved by the Coast Guard and offered by a third-party company, that combines the use of simulators and written examinations, instead of an examination administered by the Coast Guard. The commentor felt that the written examination would be compromised. The Coast Guard disagrees. It will conduct independent visits and audits, under the authority of 46 CFR 10.303(f), to ensure that the conditions for Coast Guard approval are maintained. It may also administer partial examinations to applicants who have already successfully completed these courses so it can monitor whether training facilities are meeting their training objectives. Under the current rules (46 CFR 10.301) applicants who successfully complete certain approved courses offered by third-party trainers throughout the country, including administration of final examinations, are exempt from the requirement to pass examinations administered by the Coast Guard. There is no reason to amend or limit application of these rules, as long as adequate oversight is maintained.

One commentor stated that the Coast Guard should expand the role of the third-party training companies so that completion of their approved courses would satisfy major portions of licensing and documentation examinations. The Coast Guard agrees. Experience gained in recent years has convinced the Coast Guard that, under the right conditions and guidelines, a Coast Guard examination is unnecessary, if the candidate is subject to a rigorous program of evaluation by competent assessors.

Five commentors expressed support for the concept of fourth-party testing, but felt that Coast Guard testing should remain in place as a check against cost increases in private-sector testing. The Coast Guard agrees that this is a valid concern. The Coast Guard is maintaining its testing system.

One commentor stated that no third-party or fourth-party testing should be allowed unless proctored by professional mariners. In addition, the commentor cautioned the Coast Guard about third-party and fourth-party training or testing organizations' selling their services. The Coast Guard does not believe that these concerns warrant changes to the NPRM. There are currently more than 100 third-party training organizations that offer courses approved by the Coast Guard and that teach and examine applicants for licenses or merchant mariners' documents. In most instances, the applicants then must pass examinations administered by the Coast Guard. The operations of these organizations are overseen on a regular basis by Coast Guard personnel of local Regional Examination Centers (RECs). At least some of the personnel in each REC have military sea time, and several are former professional merchant mariners. Coast Guard personnel of Marine Safety Offices, reservists, and auxiliarists with river or seagoing experience may oversee these operations as well. For fourth-party testing, professional expertise in maritime matters is not relevant. Fourth-party testing organizations merely proctor and grade multiple-choice examinations for their employers. Any fourth-party testing organization involved in direct assessment of candidates will be subject to Coast Guard approval, including confirmation of the professional credentials of the staff involved in assessment.

One commentor had several questions concerning fourth-party testing. Although the Coast Guard is not implementing such testing in the immediate future, changes made by this final rule do enable the Coast Guard to implement the use or partial use of such testing in the future. Fourth-party testing may serve as a second alternative to traditional examinations administered by the Coast Guard, the first being third-party training with testing. The Coast Guard could, for example, submit a data bank of questions to the fourth-party examiner, who would randomly generate examinations. The only contact that fourth-party testers would then have with the course or student would be to administer and grade the examinations. Other approaches to fourth-party testing may emerge from increased use of simulators.

One commentor asked whether Coast Guard would dictate objectives of learning and methods of determining competency to the training companies, and whether it would dictate the curriculum. It currently has course-approval guidelines for most courses required by its rules. These guidelines, authorized by 46 CFR 10.302, describe the desired learning objectives but not the methods of determining competency. Although the Coast Guard does not dictate the curriculum, it will not approve it unless the information contained in the guidelines is imparted to the student. Although it does not anticipate imposing rigid requirements for the assessment of competency, it will take into account methods and criteria of assessment in its approval of courses permitted by this final rule.

One commentor expressed concern about organizations and courses which exist solely to assist the applicant in memorizing the answers to the questions in the bank of Coast Guard examinations and actually teach the applicant nothing. The use of simulators and practical demonstration of proficiency in certain topics will tend to eliminate this questionable method of examination preparation.

A maritime educational institution suggested that the Coast Guard issue each original license and each raise in grade or increase in scope as a nonrenewable temporary document, which would expire in five years unless replaced by a permanent license based on compliance with STCW. In contrast, a maritime educator suggested that each eligible student, upon graduation from a Federal or State maritime academy, automatically receive a license as a third mate or third assistant engineer. Whatever their merits, both comments lie well beyond the scope of this final rule, which merely removes the requirement that licensing examinations be written and allows other entities to administer them.

One commentor stated that this final rule should require the functional use of the English language. The Coast Guard agrees. Title 46 CFR 10.201(c) requires that "an applicant for a license must demonstrate an ability to speak and understand English as found in the navigation rules, aids to navigation publications, emergency equipment

instructions, machinery instructions, and radiotelephone communications instructions." That rule remains unchanged by this. Likewise, the current rules regarding examinations for able seamen [46 CFR 12.05–9(b)], lifeboatmen [46 CFR 12.10–5(b)], and qualified members of the engine department [46 CFR 12.15–9(a)] all require that the examinations be conducted in the English language. These rules continue to be necessary to ensure that personnel in these critical positions will sufficiently understand orders that may come down under the stress of an emergency. The ability to understand such orders can make the critical difference in life-threatening situations. Therefore, these rules, too, remain unchanged by this.

In sum: The NPRM proposed to remove the terms "written" and "in writing" from the rules governing examinations administered by the Coast Guard for merchant mariners seeking licenses and raises of grade [46 CFR 10.205(i)(1), 10.207(d)(1), 10.217(a) (1) and (2), and 10.901(a)], and for applicants seeking to fill unlicensed ratings [46 CFR 12.05–9 (a) and (b), 12.10–5 (a) and (b), 12.15–9 (a) and (c), and 12.20–5]. (The last of these, 46 CFR 12.20–5, along with the rest of the subpart, 12.20, to which it belonged, was removed by a supervening Interim Rule on Tankermen [60 FR 17134 (April 4, 1995)].) The NPRM also proposed to let the Coast Guard Officer in Charge, Marine Inspection (OCMI), authorize the examination of applicants by private-sector and public-sector testing services. These two changes reflect the Coast Guard's efforts to develop more modern, efficient, and effective methods of examination.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact from this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule will impose no costs on industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which an NPRM is required. "Small entities" may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. As the Discussion of Comments makes clear, this final rule will place no additional costs on the public. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection-of-information requirements under the Paper Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to develop and administer examinations for merchant mariners' licenses and other documents has been committed to the Coast Guard by Federal statutes. If State or local governments ever did purport to regulate these examinations, the Coast Guard would move to pre-empt their acts for the sake of uniformity under the Commerce Clause of the Constitution; but the issue promises to remain hypothetical.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2.e(34)(c) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule clearly has no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Reporting and recordkeeping requirements, schools, seamen.

46 CFR Part 12

Reporting and recordkeeping requirements, seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 is revised to read as follows:

Authority: 31 U.S.C. 9701, 46 U.S.C. 2103, 2110; 46 U.S.C. Chapter 71; 49 CFR 1.45, 1.46; § 10.107 also issued under the authority of 44 U.S.C. 3507.

2. In § 10.205, paragraph (i)(1) is revised to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

* * * * *

(i) *Professional Examination.* (1) When the OCMI finds the applicant's experience and training to be satisfactory and the applicant is eligible in all other respects, the OCMI will authorize the examination in accordance with the following requirements:

(i) Any applicant for a deck or engineer license limited to vessels not exceeding 500 gross tons, or a license limited to uninspected fishing-industry vessels, may request an oral-assisted examination in lieu of any written or other textual examination. If there are textual questions that the applicant has difficulty reading and understanding, the OCMI will offer the oral-assisted examination. Each license based on an oral-assisted examination is limited to the specific route and type of vessel upon which the applicant obtained the majority of service.

(ii) The general instructions for administration of examinations and the lists of subjects for all licenses appear in Subpart I of this part. The OCMI will place in the applicant's file a record indicating the subjects covered.

* * * * *

3. In § 10.207, paragraph (d)(1) is revised to read as follows:

§ 10.207 Requirements for raise of grade of license.

* * * * *

(d) *Professional Examination.* (1)(i) When the OCMI finds an applicant's experience and training for raise of grade to be satisfactory and the applicant is eligible in all other respects, the OCMI will authorize the examination. Oral-assisted examinations may be administered in accordance with § 10.205(i)(1). The OCMI will place in the applicant's file a record indicating the subjects covered.

(ii) The general instructions for administration of examinations and the lists of subjects for all licenses appear in Subpart I of this part.

* * * * *

4. In § 10.217, the second sentences of paragraphs (a) (1) and (2) are revised to read as follows:

§ 10.217 Examination procedures and denial of licenses.

(a)(1) * * * The examination fee set out in § 10.109 must be paid before the applicant may take the first examination section. * * *

* * * * *

(2) * * * The examination fee set out in § 10.109 must be paid before the applicant may take the first examination section. * * *

* * * * *

5. In § 10.901, paragraph (a) is revised to read as follows:

§ 10.901 General provisions.

(a) Each applicant for any license listed in this part shall pass examinations on the appropriate subjects listed in this subpart, except as noted in § 10.903(b).

* * * * *

PART 12—CERTIFICATION OF SEAMEN

6. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 7301, 7701; 49 CFR 1.46.

7. In § 12.05–9, paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

§ 12.05–9 Examination and demonstration of ability.

(a) Before an applicant is certified as an able seaman, he or she shall prove to the satisfaction of the Coast Guard by oral or other means of examination, and by actual demonstration, his or her knowledge of seamanship and the ability to carry out effectively all the duties that may be required of an able seaman, including those of a lifeboatman. The applicant shall demonstrate that he or she:

(1) Has been trained in all the operations connected with the launching of lifeboats and liferafts, and in the use of oars;

(2) Is acquainted with the practical handling of boats; and

(3) Is capable of taking command of the boat's crew.

(b) The examination, whether administered orally or by other means, must be conducted only in the English language and must consist of questions regarding:

* * * * *

8. In § 12.10–5, paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

§ 12.10–5 Examination and demonstration of ability.

(a) Before an applicant is certified as a lifeboatman, he or she shall prove to the satisfaction of the Coast Guard by oral or other means of examination, and by actual demonstration, his or her knowledge of seamanship and the ability to carry out effectively all the duties that may be required of a lifeboatman. The applicant shall demonstrate that he or she:

(1) Has been trained in all the operations connected with the launching of lifeboats and liferafts, and in the use of oars;

(2) Is acquainted with the practical handling of boats; and

(3) Is capable of taking command of the boat's crew.

(b) The examination, whether administered orally or by other means, must be conducted only in the English language and must consist of questions regarding:

* * * * *

9. In § 12.15–9, the first sentence of paragraph (a), and paragraph (c), are revised to read as follows:

§ 12.15–9 Examination requirements.

(a) Each applicant for certification as a qualified member of the engine department in the rating of oiler, watertender, fireman, deck engineer, refrigeration engineer, junior engineer, electrician, or machinist shall be examined orally or by other means and only in the English language on the subjects listed in paragraph (b) of this section. * * *

* * * * *

(c) Each applicant for certification as a qualified member of the engine department in the rating of pumpman shall, by oral or other examination, demonstrate sufficient knowledge of the subjects peculiar to that rating to satisfy the Officer in Charge, Marine Inspection, that he or she is qualified to perform the duties of that rating.

* * * * *

Dated: August 15, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–22746 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5602–4]

48 CFR Parts 1506, 1534, 1536, 1542, 1545, and 1552

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing from the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) its coverage for conduct of surveys; implementing OMB Circular A–109, Major Systems Acquisitions; special aspects of sealed bidding in construction contracting; additive or deductive items; indirect cost rates; and management of Government property in the possession of contractors.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule eliminates from the EPAAR coverage on conduct of market surveys, implementation of OMB Circular A–109 on Major Systems Acquisitions, special aspects of sealed bidding in construction contracting, additive or deductive items, indirect cost rates, and management of Government property in the possession of contractors. The coverage is obsolete, for which new FAR coverage is available; the coverage is duplicative of OMB Circular A–109; or the coverage includes procedures internal to EPA, unnecessary for inclusion in the EPAAR. Codification of the Agency's internal procedures is unnecessary, since they have no significant cost or administrative impact on contractors or offerors. Consequently, EPA will retain any implementing guidance and internal procedures in an internal directive, where necessary.

B. Executive Order 12866

The final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

D. Regulatory Flexibility Act

The EPA certifies that this final rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the final rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

This final rule will not impose unfunded mandates on state or local entities, or others.

List of Subjects in 48 CFR Parts 1506, 1534, 1536, 1542, 1545, and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c),63 Stat. 390, as amended, 40 U.S.C. 486(c).

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority for Parts 1506, 1536, 1542, 1545, and 1552, continue to read as follows:

Authority: Sec. 205(c), 63 stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1506.371—[Removed]

2. Subpart 1506.371 is removed in its entirety.

PART 1534—[REMOVED]

3. Part 1534 is Removed in its entirety.

Subpart 1536.3—[Removed]

4. Subpart 1536.3 (§§ 1536.303 and 1536.303–70) is removed in its entirety.

1536.570 [Removed]

5. Section 1536.570 is removed in its entirety.

1542.705–1 [Removed]

6. Section 1542.705–1 is removed in its entirety.

Subpart 1545.5–[Removed]

7. Subpart 1545.5 (§ 1545.502) is removed in its entirety.

1552.236–71 [Removed]

8. Section 1552.236–71 is removed in its entirety.

Dated: August 19, 1996.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 96–22654 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–60–P

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48 CFR Parts 1515 and 1552

[FRL–5602–5]

Acquisition Regulation; Coverage of Source Selection Process

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document amends the Environmental Protection Agency (EPA) acquisition regulation (48 CFR Chapter 15) coverage on the source selection process. EPA is aware that Part 15 of the Federal Acquisition Regulation is currently undergoing revision. The Agency believes that its changes will not conflict with any subsequent revisions to Part 15. Additionally, the Agency believes that the changes to its acquisition regulation are needed now as an interim measure to streamline the process and empower Contracting Officers at EPA. This rule is also necessary to implement portions of the Federal Acquisition Streamlining Act of 1994.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW, Washington, D.C. 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule was published in the **Federal Register** (61 CFR 25440) on May 21, 1996, providing for a comment period until July 22, 1996.

Interested persons have been afforded an opportunity to participate in the making of this rule. No public comments were received.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review was required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act did not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the proposed rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

This rule will not impose unfunded mandates on state or local entities, or others.

F. Regulated Entities

EPA contractors are entities potentially affected by this action. Specifically, those entities competing under solicitations for negotiated procurements will be affected.

Category	Regulated entity
Industry	EPA contractors.

List of Subjects in 48 CFR Part 1515 and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Therefore, 48 CFR Chapter 15 is amended as set forth below: 1. The authority citations for parts 1515 and 1552 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

1515.407 [Amended]

2. Section 1515.407 is amended by removing paragraph (a)(1), and by redesignating paragraphs (a)(2) and (3) as (a)(1) and (2).

3. Section 1515.604 is amended by revising paragraphs (a), (c), and (d) to read as follows:

1515.604 Responsibilities and Duties.

* * * * *

(a) *Source Selection Official.* The Source Selection Official (SSO) is the official responsible for overall management of the source selection process. Duties of the SSO include, but are not limited to, appointing members and chairpersons of the Source Evaluation Board, the Technical Evaluation Panel (TEP), and the Business Evaluation Panel (BEP); and approving solicitation related documents. However, the Contracting Officer is responsible for approving amendments to solicitation documents. The SSO may waive in writing the requirement in 1515.612(a)(1)(v) for at least one member of the TEP to be an individual not involved in managing the

current contract. The SSO also approves the competitive range determination and makes the source selection decision.

* * * * *

(c) *Technical Evaluation Panel (TEP).* The Program Office has the responsibility for developing the technical evaluation criteria and statement of work for the solicitation. The TEP has the responsibility for evaluating the technical aspects of the offerors' technical proposals. Based on the recommendation of the Program Office, the SSO has the discretion of assigning this evaluation responsibility to the Project Officer, if appropriate, or to the TEP. When offerors' past performance is evaluated as part of the technical proposal evaluation process, the past performance evaluation shall be conducted by the TEP, or by the Contracting Officer and the Project Officer. Based on input from the Project Officer, the Contracting Officer has the discretion of assigning this responsibility to the TEP or to the Contracting Officer and Project Officer.

(d) *Business Evaluation Panel (BEP).* (1) Outside of the technical review, the Contracts Office has the lead for reviewing solicitation evaluation criteria and the Statement of Work from a business perspective; evaluating the business, pricing, and contractual aspects of the offerors' business and technical proposals; and examining other factors such as the responsibility of the offerors. Based on the recommendation of the Contracting Officer, the SSO has the discretion to designate these responsibilities to the Contracting Officer or designating a BEP. Sections 1515.612(a)(1) (vi) and (vii) are applicable only when the SSO has designated a BEP.

(2) When no BEP is convened, the Contracting Officer shall perform a preliminary cost evaluation of each offeror's cost/price proposal to identify any cost elements that appear unreasonable or questionable. When cost analysis is employed, the Contracting Officer shall perform a detailed cost analysis of the business proposal which includes an evaluation of the offeror's subcontracting program, management structure, and any other relevant factors which may prevent award to an offeror. This analysis may be included in a separate report, in the competitive range determination, or in the pre/post-negotiation memorandum.

4. Section 1515.604–70 is amended by adding paragraph (c) to read as follows:

1515.604–70 Personal conflicts of interest.

* * * * *

(c) Each EPA employee (including special employees (as defined by 1503.600–71 (b)) involved in source evaluation and selection is required to comply with the Office of Government Ethics ethics provisions at 5 CFR Part 2635.

5. Section 1515.605 is amended by revising paragraphs (a), (b), and adding (c) to read as follows:

1515.605 Evaluation Factors.

* * * * *

(a) The Contracting Officer shall insert the provisions at 1552.215–70, "EPA Source Evaluation and Selection Procedures—Negotiated Procurement" and either: the provision in 1552.215–71, "Evaluation Factors for Award," where all evaluation factors other than cost or price when combined are significantly more important than cost or price; or the provision in Alternate I to 1552.215–71, where all evaluation factors other than cost or price when combined are significantly less important than cost or price; or the provision in Alternate II to 1552.215–71, where award will be made to the offeror with the lowest-evaluated cost or price whose technical proposal meets the minimum needs of the Government; or the provision in Alternate III where all evaluation factors other than cost or price when combined are approximately equal to cost or price. The Contracting Officer may use provisions substantially the same as 1552.215–71, Alternate I to 1552.215–71, Alternate II to 1552.215–71, or Alternate III to 1552.215–71 without requesting a deviation to the EPAAR.

(b) Technical evaluation criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b) of the provision at 1552.215–71, Alternate I, and Alternate III. If technical evaluation criteria are used in Alternate II, the criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b). When past performance is to be used as an evaluation factor, the Contracting Officer must develop criteria for evaluating past performance and include such criteria in section M of the solicitation.

(c) *Evaluation Methodologies.* Evaluation criteria may be developed using methodologies other than numerical scoring, e.g., adjectival ratings or color scoring. The relative importance of the evaluation criteria must be clearly identified in the solicitation. The Contracting Officer should identify and prepare evaluation criteria consistent with FAR 15.605.

* * * * *

6. Section 1515.608 is amended by revising paragraphs (a)(1); adding paragraph (a)(3); by revising paragraphs (b)(1)(ii) and (b)(2)(i); by adding paragraph (b)(3); by removing paragraph (c) and by redesignating paragraphs (d) and (e) as (c) and (d), to read as follows:

1515.608 Proposal evaluation.

(a) * * *

(1) Technical proposals shall be evaluated *solely* on the factors specified in the solicitation and in accordance with FAR 15.608. Additionally, the evaluation of technical proposals (including past performance factors) shall be accomplished using the scoring plan shown below or one specifically developed for the solicitation. Contracting Officers may request that the TEP also indicate whether proposals are acceptable or unacceptable, and/or whether the offerors' response to individual criteria are acceptable or unacceptable.

SCORING PLAN

Value	Descriptive statement
0	The factor is not addressed, or is totally deficient and without merit.
1	The factor is addressed, but contains deficiencies and/or weaknesses that can be corrected only by major or significant changes to relevant portions of the proposal, or the factor is addressed so minimally or vaguely that there are widespread information gaps. In addition, because of the deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the TEP about the offeror's ability to perform the required work.
2	Information related to the factor is incomplete, unclear, or indicates an inadequate approach to, or understanding of the factor. The TEP believes there is question as to whether the offeror would be able to perform satisfactorily.
3	The response to the factor is adequate. Overall, it meets the specifications and requirements, such that the TEP believes that the offeror could perform to meet the Government's minimum requirements.
4	The response to the factor is good with some superior features. Information provided is generally clear, and the approach is acceptable with the possibility of more than adequate performance.
5	The response to the factor is superior in most features.

* * * * *

(3) The goal of the technical evaluation is to understand each offeror's proposal and to assess each

proposal relative to the specified evaluation factors. The TEP report(s) should address any perceived strengths, as well as any perceived weaknesses or deficiencies, and risks associated with the offerors' performance. Scores may or may not change from the initial evaluation to the supplemental evaluation, depending on the offerors' response to interrogatories. The supplemental TEP report must explain the rationale for no change in score, as well as any decrease or increase in score as a result of the offerors' response to interrogatories.

(b) * * *

(1) * * *

(ii) Any interrogatories the Contracting Officer should submit to offerors to clarify their technical proposals to address any weaknesses, deficiencies, or questions associated with their technical proposals. The Contracting Officer may review the technical proposals and TEP evaluation, and submit any additional interrogatories deemed appropriate.

(2)(i) A statement that the respective technical evaluation panel members are free from actual or potential personal conflicts of interest, and are in compliance with the Office of Government Ethics ethics provisions at 5 CFR Part 2635.

* * * * *

(3) The Contracting Officer may release the cost/price proposals to the entire TEP or solely to the TEP Chairperson, after the TEP has completed its evaluation of initial proposals. The TEP or Chairperson should evaluate cost/price proposals to determine whether the offerors' cost/price proposals adequately reflect their technical proposals and the requirements of the solicitation, and demonstrate that the proposed price or cost provides an adequate understanding of the requirements of the solicitation. Any inconsistencies between the proposals and the solicitation requirements should be identified. Any inconsistencies between the cost and technical proposals should also be identified.

7. Section 1515.609 is amended by revising paragraph (c) to read as follows:

1515.609 Competitive Range.

* * * * *

(c)(1) When a single proposal is the only proposal in the competitive range, as part of the required discussion in the competitive range determination, Contracting Officers shall address at a minimum the following factors: Whether the requirement could have been broken up into smaller components; whether the solicitation provided adequate response time; whether the requirement could have been satisfied with reduced staffing levels (discussion may be combined with the first factor); and if applicable, whether the work required on-site could otherwise be performed at a contractor's facility, avoiding the cost and logistical implications of relocating employees.

(2) In cases where only a single proposal has been received and a competitive range determination has not been prepared, the discussion of the reasons for receipt of the single proposal which otherwise would be contained in the competitive range determination shall be included in the source selection document. The discussion in the source selection document at a minimum shall address the factors referenced in paragraph (c)(1) of this section.

(3) The Contracting Officer shall provide a copy of the competitive range determination or source selection document to the Competition Advocate after approval of the determination or document by the designated Source Selection Official.

8. Section 1515.611 is revised to read as follows:

1515.611 Best and final offers.

The Contracting Officer shall establish a common cut-off date for receipt of revised proposals and/or confirmations of negotiations (best and final offers) upon completion of negotiations.

9. Section 1515.612 is amended by revising paragraphs (a)(1)(iii), (iv) and (v); and by adding paragraph (c) to read as follows:

1515.612 Formal source selection.

(a) * * *

(1) * * *

(iii) SEB Membership—The SSO will determine the organizational levels of the individuals to serve on the SEB.

(iv) TEP Chairperson—The SSO will determine, based on the recommendation of the requesting program office, the Chairperson of the TEP. For recompetes or follow-on contracts, the Chairperson should normally not be the incumbent contract's Project Officer.

(v) TEP Membership—At least two members, in addition to the Project Officer, who are knowledgeable of the procurement's technical aspects. If the procurement is a follow-on to an existing contract, at least one of the TEP members should be someone who is not involved in managing the current contract, preferably from outside of the program division which originated the requirement. See 1515.604(a) for waiver of this requirement.

* * * * *

(c) *Source Selection Plan.* No separate source selection plan is required. The Contracting Officer may include the information required by FAR 15.612(c) in the individual acquisition plan.

10. Section 1552.215–70 is revised to read as follows:

1552.215–70 EPA Source Selection and Selection Procedures—Negotiated Procurements (SEP 1996)

As prescribed in 1515.605, insert the following provision.

EPA SOURCE SELECTION AND SELECTION PROCEDURES—NEGOTIATED PROCUREMENTS (SEP 1996)

(a) The Government will perform source selection in accordance with FAR Part 15 and the EPA Source Evaluation and Selection Procedures in EPAAR Part 1515 (48 CFR Part 1515). The significant features of this procedure are:

(1) The Government will perform either cost analysis or price analysis of the offeror's cost/business proposal in accordance with FAR Parts 15 and 31, as appropriate. In addition, the Government will also evaluate proposals to determine contract cost or price realism.

Cost or price realism relates to an offeror's demonstrating that the proposed cost or price provides an adequate reflection of the offeror's understanding of the requirements of this solicitation, i.e., that the cost or price is not unrealistically low or unreasonably high.

(2) The Government will evaluate technical proposals as specified in 1552.215–71, Evaluation Factors for Award.

(b) In addition to evaluation of the previously discussed elements, the Government will consider in any award decision the responsibility factors set forth in FAR Part 9.

(End of Provision)

11. Section 1552.215–71 is revised as follows:

1552.215–71 Evaluation Factors for Award.

As prescribed in 1515.605, insert one of the following provisions.

EVALUATION FACTORS FOR AWARD (SEP 1996)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly more important than cost or price.

(b) Technical Evaluation Criteria:

_____

_____

(End of Provision)

EVALUATION FACTORS FOR AWARD (SEP 1996)

ALTERNATE I (SEP 96)

(a) The Government will make award to the responsible offeror(s) whose offer conforms

to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

(b) Technical Evaluation Criteria:

_____

_____

(End of Provision)

EVALUATION FACTORS FOR AWARD—PROPOSAL MEETS THE MINIMUM NEEDS OF THE GOVERNMENT WITH THE LOWEST EVALUATED COST/PRICE

ALTERNATE II (SEP 1996)

(a) The Government will make award to the lowest-evaluated cost or price, technically acceptable, responsible offeror whose offer meets the minimum needs of the Government. In the event that there are two or more technically acceptable, equal price (cost) offers, the Government will consider other factors, as listed below in descending order of importance:

_____

_____

(b) Technical Evaluation Criteria:

_____

_____

(End of Provision)

EVALUATION FACTORS FOR AWARD (SEP 1996)

ALTERNATE III (SEP 96)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) Technical Evaluation Criteria:

_____

_____

(End of Provision)

§ 1552.215–72 [Removed]

12. Section 1552.215–72 is removed.

Dated: August 21, 1996.

John C. Gherardini III,

Acting Director, Office of Acquisition Management.

[FR Doc. 96–22642 Filed 9–5–96; 8:45 am]

BILLING CODE 6340–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1808, 1809, 1810, 1811, 1812, 1814, 1828, 1835, 1842, 1852, 1871

Rewrite of the NASA FAR Supplement (NFS)

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Parts 1807 through 1814 (except 1813), and clauses affected by these parts, are revised in their entirety. Part 1810 is removed in its entirety; a new Part 1811 is added; and Parts 1828, 1835, 1842, and 1871 are revised as a result of the rewritten parts. The numbering of NFS sections has been changed to indicate the exact section of the FAR being implemented or supplemented.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358–0478; Mr. Bruce King, (202) 358–0461.

SUPPLEMENTARY INFORMATION:

Background

The National Performance Review urged agencies to streamline and clarify their regulations. The NFS rewrite initiative was established to pursue these goals by conducting a section by section review of the NFS to verify its accuracy, relevancy, and validity.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1808, 1809, 1810, 1811, 1812, 1814, 1828, 1835, 1842, 1852, and 1871

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1808, 1809, 1810, 1811, 1812, 1814, 1828, 1835, 1842, 1852, and 1871 are amended as follows:

2. Part 1807 is revised to read as follows:

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

Sec.
1807.103 Agency-head responsibilities.
1807.105 Contents of written acquisition plans.
1807.170 Acquisition Strategy Meeting (ASM)

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

Subpart 1807.3—Contractor Versus Government Performance

1807.307 Appeals.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy.

Subpart 1807.70—Reserved

Subpart 1807.71—Master Buy Plan

1807.7100 General.
1807.7101 Applicability.
1807.7102 Submission, selection, and notification procedures.
1807.7102–1 Submission of Master Buy Plan.
1807.7102–2 Submission of amendments to the Master Buy Plan.
1807.7102–3 Selection and notification procedures.
1807.7103 Format of Master Buy Plan.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Scope of subpart.
1807.7201 Definitions.
1807.7202 Policy.
1807.7203 Responsibilities.
1807.7204 Forecast data.
1807.7205 Public availability.

Authority: 42 U.S.C. 2473(c)(1)

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

1807.103 Agency-head responsibilities.

(NASA supplements paragraphs (d) and (e))

(d)(i) Except as provided in paragraph (d)(iii) of this section, acquisition plans shall be prepared according to the following:

(A) For acquisitions requiring Headquarters approval, by an Acquisition Strategy Meeting (ASM) (see 1807.170);

(B) For acquisitions not requiring Headquarters approval and expected to exceed $5 million, by installation-approved ASMs or written acquisition plans; and,

(C) For acquisitions not expected to exceed $5 million, in accordance with installation procedures.

(ii) The estimated dollar amounts shall include all options and later phases of the same program or project.

(iii) Acquisition plans are not required for the following acquisitions:

(A) Architect-engineering services;

(B) Broad agency announcements (see 1835.016) or unsolicited proposals;

(C) Basic research from nonprofit organizations;

(D) Utility services available from only one source;

(E) From or through other Government agencies;

(F) Industrial facilities required in support of related contracts; or

(G) MidRange procedure awards (see part 1871). However, acquisition plans are required for commercial item acquisitions that exceed the MidRange dollar thresholds for noncommercial items.

(iv) Acquisition plans shall be approved before soliciting proposals.

(v) Approval of an acquisition plan does not constitute approval of any special conditions, or special clauses that may be required unless the plan so specifies, and the individual having approval authority is a signatory of the plan. All required deviations shall be approved through the procedures described in FAR 1.4 and 1801.4.

(vi) A single acquisition plan may be used for all phases of a phased acquisition provided the plan fully addresses each phase, and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes do occur, the plan shall be amended and approved at the same level as the original plan.

(e) Acquisition plans should be prepared on a program or system basis when practical. In such cases, the plan should fully address all component acquisitions of the program or system.

1807.105 Contents of written acquisition plans.

(NASA supplements paragraphs (a) and (b))

Acquisition plans shall address each applicable topic listed in FAR 7.105, as supplemented by this section. Plans shall be structured by subject heading using each italicized topic heading in the same sequence as presented in the FAR. Subheadings should be used when appropriate (e.g., the separate items under contracting considerations at 7.105(b)(4)). Topics not applicable to a given acquisition (e.g., design-to-cost and should-cost are not compatible with service acquisitions), should be marked N/A.

(a)(1) Describe in nontechnical terms the supplies or services to be acquired. Include quantities.

(3) Identify the estimated cost and describe the estimating methodology.

(5) Specify the delivery or performance period requirements separately by the basic contract, each option, and the total.

(8) Streamlining applies to all NASA acquisitions. Describe all planned streamlining procedures.

(b)(3) Address how cost realism will be evaluated.

(4)(A) If an incentive contract is planned, describe the planned incentive(s) and the anticipated effects.

(B) Describe subcontracting issues, including all applicable subcontracting goals. (See FAR part 19 and part 1819).

(5)(A) Identify the estimated cost separately by the basic contract, each option and total amount.

(B) Identify the funding by fiscal year and unique project number (UPN).

(C) Discuss planned approaches to eliminate funding shortfalls (vs. the estimated cost).

(6) Identify the type of work statement/specification planned. Specifically address the applicability of performance-based requirement descriptions and the availability of commercial sources for the supplies/services.

(10) Address contract management issues, including planned delegations of administrative functions.

(19) If the period between release of solicitation to contract award is more than 120 calendar days (180 days for formal SEB competitions), explain why that goal cannot be met.

1807.170 Acquisition Strategy Meeting (ASM).

(a) The ASM is an acquisition plan conducted through a meeting attended by all interested NASA offices. At the meeting, the acquisition plan topics and structure specified in 1807.105 are presented in briefing format, and formal written minutes prepared to summarize the decision, actions, and conclusions of the ASM members. The approved minutes, along with the briefing charts, shall be included in the contract file to document completion of the acquisition plan required by 1807.103.

(b) The ASM is not a requirements definition meeting. It is a meeting to seek approval for the proposed acquisition approach for requirements that were previously defined and agreed to by the cognizant offices.

(c) Headquarters ASMs will be chaired by the Associate Administrator for Procurement or designee. The Headquarters Office of Procurement (Code HS) will prepare the minutes of Headquarters ASMs and distribute them to all attendees for review prior to approval by the ASM chairperson.

(d) For field installation ASMs, the minutes shall be approved in accordance with installation procedures.

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

(NASA supplements paragraph (a))

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. The transmittal should be made within five working days after the closing date for receipt of offers; however, if a response indicates the potential for a significant savings, it should be transmitted immediately.

Subpart 1807.3—Contractor Versus Government Performance

1807.307 Appeals.

(NASA supplements paragraph (a))

(a) Installations shall establish appeals procedures in accordance with NMI 7410.3, Delegation of Authority for Acquisition of Commercial Activities for NASA's Use.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy.

(NASA supplements paragraph (e))

(e) The field installation requirements office shall provide the contracting officer the written determination that none of the statement of work tasks are inherently governmental. Disagreements regarding the determination shall be resolved in accordance with installation procedures.

Subpart 1807.70—[Reserved]

Subpart 1807.71—Master Buy Plan

1807.7100 General.

The Master Buy Plan provides information on planned acquisitions to enable management to focus its attention on a representative selection of high-dollar-value and otherwise sensitive acquisitions.

1807.7101 Applicability.

(a) The Master Buy Plan applies to each negotiated acquisition, including supplemental agreements, where the dollar value, including the aggregate amount of options, follow-on acquisitions, or later phases of multi-phase acquisitions, is expected to equal or exceed $50,000,000.

(b) For initial annual Master Buy Plan submission only, each installation shall submit its three largest acquisitions regardless of dollar value and all acquisitions over $50,000,000.

(c) The procedure also applies to:

(1) Any supplemental agreement that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof), if the absolute value of the actions equals or exceeds $50,000,000 (e.g., the absolute value of a supplemental agreement adding $30,000,000 of new work and deleting $30,000,000 of work is $60,000,000, and is therefore subject to the Master Buy Plan).

(2) Any supplement agreement that contains one or more elements (new work and/or individual change orders)

of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan, even though the value does not equal or exceed $50,000,000.

(d) The Master Buy Plan does not apply to incremental funding actions or termination settlement agreements.

1807.7102 Submission, selection, and notification procedures.

1807.7102–1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation shall submit to the Headquarters Office of Procurement (Code HS) a Master Buy Plan (electronically or original and eight copies) for the next fiscal year, listing every known acquisition that

(1) Meets the criteria in 1807.7101,

(2) Is expected to be initiated in that fiscal year, and

(3) Has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

(b) The fiscal year Master Buy Plan shall list all uncompleted acquisitions selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans. These acquisitions should be listed by the appropriate fiscal year Master Buy Plan and individual item numbers, and should indicate the current status of the individual acquisition documents previously selected for Headquarters review and approval.

(c) Plans shall be prepared in accordance with 1807.7103 and shall identify the individual acquisition documents involved for every acquisition listed. Acquisition documents that may require Headquarters approval will be held in abeyance until receipt of the notification required by 1807.7102–3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

1807.7102–2 Submission of amendments to the Master Buy Plan.

(a) Acquisitions identified by installations after submission of their Master Buy Plan and meeting the criteria in 1807.7102–1(a) shall be submitted to Headquarters in accordance with 1807.7103 and identified as an amendment to the fiscal year Master Buy Plan submission.

(b) Master Buy Plan submissions should not be accomplished after the fact. Amendments shall be submitted sufficiently in advance of contract award date to allow Headquarters to select those acquisition documents that will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement.

(c) When timely submittal is not possible, the installation shall provide with the amendment a narrative explaining the circumstances leading to the late submittal. A Master Buy Plan submission for a contract change order expected to meet the criteria in 1807.7101 shall be submitted to Headquarters immediately upon issuance of the change order.

1807.7102–3 Selection and notification procedures.

(a) The Headquarters Office of Procurement (Code HS) shall select acquisition documents from the Master Buy Plan and amendments to Master Buy Plans to receive Headquarters review and approval and shall designate source selection officials.

(b) When, subsequent to document selection or delegation, an acquisition is changed (for example, increase or decrease in dollar amount, change in requirement), canceled, superseded, deferred, or becomes no longer subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7101, the installation shall immediately notify Code HS, giving the reasons. Code HS shall notify the installation's procurement office in writing of any further action that may be required.

(c) Acquisition documents not selected for Headquarters review will be subject to after-the-fact reviews by Headquarters during normal procurement management surveys or other special reviews. Acquisition delegations may subsequently be rescinded if a Headquarters review is deemed appropriate.

1807.7103 Format of Master Buy Plan.

In accordance with the requirements of 1807.7102–1 and 1807.7102–2, Master Buy Plans and amendments to Master Buy Plans shall be prepared in accordance with the format illustrated in Table 1807–1.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Scope of subpart.

This subpart prescribes the acquisition forecasting procedure required to comply with the Business Opportunity Development Reform Act of 1988.

1807.7201 Definitions.

Class of contracts means a grouping of acquisitions, either by dollar value or by the nature of supplies and services to be acquired.

Contract opportunity means planned new contract awards exceeding $25,000.

1807.7202 Policy.

As required by statute, it is NASA policy to

(a) Prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year;

(b) Include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and

(c) Make available such forecasts to the public.

1807.7203 Responsibilities.

(a) NASA procurement officers shall furnish the Headquarters Office of Procurement (Code HS) with the data required in 1807.7204 on September 1 for the annual forecast and March 15 for the semiannual update.

(b) Code HS will prepare and distribute the consolidated annual forecast and the semiannual update.

1807.7204 Forecast data.

(a) The annual forecast shall contain—

(1) Summary historical data (based on information provided by the Headquarters Office of Procurement (Codes HC and HS)) on the class of contract opportunities below the simplified acquisition threshold;

(2) Identification of all known contract opportunities in excess of the simplified acquisition threshold. Each such action should be identified as one of the three broad categories of acquisition—Research and Development, Services, or Supplies and Equipment and shall include the following information:

(i) A brief description not to exceed ten typed lines;

(ii) Approximate dollar value within the following dollar ranges: $100,000 to $1,000,000; $1,000,000 to $5,000,000; and over $5,000,000;

(iii) Anticipated time (by fiscal year quarter) for the issuance of the solicitation;

(iv) Identification if it is reserved for performance by small business concerns including those owned and controlled by socially and economically disadvantaged individuals;

(v) Identification as competitive or noncompetitive; and

(vi) Identification and telephone number of a center point of contact.

(b) The semiannual report shall be an update of the data provided by the annual forecast. This update should

provide information on new requirements not previously reported and on changes in data related to actions previously identified.

1807.7205 Public availability.

(a) The annual forecast and semiannual update are available via the NASA Acquisition Internet Service (NAIS) (http://procurement.nasa.gov.).

(b) The forecasts may also be obtained from the Headquarters Office of Procurement (Code HS) and the Office of Small and Disadvantaged Business Utilization (Code K).

BILLING CODE 7510-01-M

TABLE 1807–1

FORMAT
MASTER BUY PLAN PROCEDURES

Line Item No: _____ FY _____ Page No.: _____

Installation: _____ Date: _____

(1) Cognizant Headquarters Office	(2) Descriptive Title of Procurement	(3) Estimated Dollar Value	(4) Acquisition Plan	(5) JOFOC	(6) RFP	(7) SEB	(8) Pre-Neg	(9) Contract Review

(10) Current Status

(11) Remarks

INSTRUCTIONS

General

1. Prepare on 8-1/2" x 11" paper or electronically.
2. List only one procurement on each page and number each page. Sequentially number each procurement action with a two digit "Line Item Number" beginning with "01" for each annual submission and subsequent amendments.
3. For the initial submission only, list procurements and their current status from prior fiscal year(s) Master Buy Plans and amendments to MBPs that have not been completed.
4. Do not reproduce these instructions on the submission.

Supplementary instructions by heading number

(1) Include letter code and Headquarters contact, if known.

(2) Include an "N" to indicate new procurement or "FO" to indicate follow-on procurement.

(3) A range of dollar values may be used, if the exact value is unavailable. Express the range as $120M to $25M, $25M to $50M, and so forth in $25M increments. Include all phases of the procurement. All dollar values must be in real year dollars, i.e., adjusted to include anticipated inflation.

(4) Installation recommendation ("Y" or "N") that an Acquisition Strategy Meeting be held. (The final decision will be made by Headquarters upon review of the MBP submission.)

(5)-(9) Use "X" to indicate applicable documents. If column (8) contains and "X", include your recommendation in that column for the Source Selection Official (SSO). The recommendation should be either the Center SSO or Headquarters SSO (HSSO).

(10) Status should include scheduled date for next event. (Complete horizontally.)

(11) Include data considered pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, identify the firm(s) to which the procurement is being limited, and indicate the current status of the justification document. Include the names and telephone numbers of the cognizant installation procurement person and technical representative.

REPRODUCED AT GOVT. EXPENSE

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3. Part 1808 is revised to read as follows:

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

1808.002 Use of other Government supply sources.
1808.002–70 Acquisition of radioisotopes.
1808.002–71 Acquisition of liquid hydrogen.
1808.002–72 Acquisition of propellants.
1808.002–75 Acquisition of mercury.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

Subpart 1808.4—Federal Supply Schedules

1808.404 Using schedules.
1808.404–3 Requests for waivers.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

Subpart 1808.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

1808.705 Procedures.
1808.705–1 General.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.
1808.870 Contract clause.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

Authority: 42 U.S.C. 2473(c)(1)

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.002 Use of other Government supply sources.

1808.002–70 Acquisition of radioisotopes.

(a) DOE Form 5400.3, U.S. Department of Energy Isotope Order Blank, and NRC Form 313, U.S. Nuclear Regulatory Commission Application for Material License, shall be used to acquire radioisotopes, as stated on the back of DOE Form 5400.3. No other type of order blank, purchase order, or contract may be used in lieu of these forms.

(b) NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, the Radioisotopes Licensing Branch, Nuclear Regulatory Commission, will issue a license to the applicant. After receipt of the license, a completed DOE Form 5400.3 (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) NRC Form 313 and DOE Form 5400.3 shall be requisitioned directly from United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

1808.002–71 Acquisition of liquid hydrogen.

Rquests for liquid hydrogen shall be submitted to the John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899, Attn: Director of Logistics Operations.

1808.002–72 Acquisition of propellants.

(a) General. NASA (and its contractors when authorized in accordance with 1851.1) may acquire the items listed in paragraph (j) of this section (except for liquid hydrogen; see 1808.002–71) on a reimbursable basis from the San Antonio Air Logistics Center (SA–ALC), Kelly Air Force Base, Texas, under the Air Force Missile Procurement Fund (MPF). The Air Force MPF shall be used as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the MPF shall comply with the reporting requirements of paragraph (f) of this section.

(b) Requests for acquisition. To obtain the materials listed in paragraph (j) of this section from the Air Force MPF, NASA contracting offices will execute a NASA-Defense Purchase Request (NASA Form 523) (see 1853.303–523) and forward it to Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: SFS. The following additional information should be provided on the form:

(1) Contract number (when material is required for use by a NASA contractor).

(2) Delivery address.

(3) Mode of transportation (rail, trailer, barge, etc.). When the procurement request covers requirements for materials not previously forecasted or covers significant changes to previously reported requirements, SA–ALC should be notified immediately of such requirements.

(c) Delivery requests.

(1) A delivery request is a call on the Air Force, made against a NASA-Defense Purchase Request (NASA Form 523), specifying the time and place of delivery. On the basis of the estimated requirements, the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed in writing within 24 hours. The delivery request, whether oral or written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(i) Nomenclature and National Stock Number.

(ii) Quantity.

(iii) Program, project, and task.

(iv) Contract number (when material is required for use by a NASA contractor).

(v) Delivery address.

(vi) Dates of delivery.

(vii) Mode of transportation.

(viii) Location of weighting stations and scales (if weighing of the products before delivery is required).

(2) Each delivery request shall be numbered as follows to simplify identification and control: the last two digits of the calendar year; a dash; and a consecutive number beginning with 1 to run through the year (e.g., 89–5, for the fifth request made in 1989). Changes to a request are identified by adding an alphabetical designator beginning with (A) to the number.

(d) Receiving procedures.

(1) Receiving documents. Receipt of materials shall be evidenced on the receiving document received with the shipment by the signature of an individual authorized by NASA to receive materials from the Air Force. Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document before signing.

(2) Weighing facilities. Local weighing facilities (NASA-owned, contractor-owned, commercial, or State-operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received—

(i) A certified weighing ticket evidencing actual weight at destination shall be obtained; and

(ii) A copy of the receiving document (AF Form 857 or DD Form 250) and the original weighting ticket shall be forwarded to Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: ACFOM, identifying the discrepancy.

(3) Distribution of receipts. Copies of all receiving documents except the AF Form 857 shall be transmitted to the Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

(e) Billing. The costs of materials obtained through the MPF are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, SA–ALC to the NASA installation designated in the NASA Form 523.

(f) Reporting requirements.

(1) Field installations shall submit periodic estimates of requirements for materials listed in paragraph (j) of this section for all programs under their cognizance, including in-house contractor requirements. Reports shall be submitted in duplicate on AF Form 858, Forecast of Propellant Requirements.

(2) The reports shall be forwarded no later than June 1 and December 1 to reach Headquarters, SA–ALC, Kelly AFB, TX 78241, Attn: SFS. Supplemental reports advising of additions to or significant changes in previous reports may be submitted at any time. The reports, covering all materials listed in paragraph (j) of this section, due in June and December, shall begin with requirements as of the following July 1 and January 1, respectively, and shall cover a 3-year period. Requirements shall be shown by month for the first 6 months, and by quarters for the remaining 2½-year period.

(3) Estimated requirements and other pertinent data required from contractors shall be obtained on Air Force Form 858.

(g) Report content. Reports shall be made using a separate report form for each material and shall provide, for each item of material, the—

(1) Contract number;

(2) Program and/or project;

(3) Specific task within the project;

(4) End use when not associated with the named program or project;

(5) Contractor's name;

(6) Specific location of use (shipping destination); and

(7) Planned source of supply.

(h) Basis for developing materials requirements. In computing requirements, consideration shall be given to such elements as lead time, waste factors, transfer, and storage losses so that phased requirements reflect the total gross quantities required to be delivered to the use or storage site. Since the requirements estimates are being used by other Government agencies acting as supply sources to contract for materials, estimates must be as accurate as possible.

(i) NASA coordination. The Kennedy Space Center shall coordinate the review of all data and establish NASA policy and procedures. The data shall be used as the basis for NASA requirements reports to various Government agencies for planning and supply support.

(j) Table of reportable materials.

Ammonia, Technical (Anhydrous) (Low Oil Content) 99.97 percent purity, Spec 0–A–445
Argon Gas, 6000 PSI, AFPID 6830–5
Propellant, Ammonia, Liquid, Anhydrous 99.5 percent purity, Spec MIL–P–27406
Propellant, Chlorine Trifluoride, Spec MIL–P–81399
Propellant, Deuterium, Gaseous, AFPID 9135–20
Propellant, Fluorine, Gaseous, Spec MIL–P–27405
Propellant, Fluorine, Liquid, Spec MIL–P–27405
Helium, Technical Grade A, Spec BB–H–1168
Propellant, Isopropyl Alcohol, AFPID 9135–18
Propellant, Hydrazine, Standard Grade, Spec MIL–P–26536
Propellant, Hydrazine, Monopropellant Grade, Spec MIL–P–26536
Propellant, Hydrazine/Unsymmetrical Dimethylhydrazine, Spec MIL–P–27402
Propellant, Hydrogen, Gaseous, Type I, Spec MIL–P–27201
Propellant, Hydrogen, Liquid, Type II, Spec MIL–P–27201
Propellant, Hydrogen Peroxide, Spec MIL–P–16005
Propellant, Hydrogen Peroxide, Electrolytic Process, Spec MIL–P–16005
Propellant, Jet Fuel, Grade RJ–1, Spec MIL–F–25558
Propellant, JPX, 50% UDMH–50% JP–4, Spec MIL–P–26694
Propellant, JPX, 17% UDMH–83% JP–4, Spec MIL–P–26694
Propellant, Kerosene, Grade RP–1, Spec MIL–P–25576
Propellant, Monomethyl Hydrazine, Spec MIL–P–27404
Propellant, Neon, Liquid, AFPID 9135–16
Propellant, Nitric Acid, Type IIIB, Spec MIL–P–7254
Propellant, Nitric Acid, Type III LS, Spec MIL–P–7254
Propellant, Nitric Acid, Type IV (High Density Acid), Spec MIL–P–7254
Propellant, Nitrogen Tetroxide (NTO) (MON–1) (MON–3), Spec MIL–P–26539
Propellant, Nitrogen Tetroxide (NTO), MIL–P–26539
Propellant, Nitrogen Tetroxide (MON–1), Spec MIL–P–26539
Propellant, Nitrogen Tetroxide (MON–3), Spec MIL–P–26539
Propellant, Oxygen, Grade B, Spec MIL–P–25508
Propellant, Oxygen, Grade A, Spec MIL–P–25508
Propellant, Oxygen, Grade F, Spec MIL–P–25508
Propellant Pressurizing Agent, Helium, Spec MIL–P–27407, 99.995 pct min assay
Propellant Pressurizing Agent, Nitrogen, Type II, Liquid Grade C, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type I, Gaseous Grade A, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL–P–27401
Propellant, Unsymmetrical Dimethylhydrazine, Spec MIL–P–25604
Propellant, Nitrogen Trifluoride Spec MIL–P–87896
Propellant, Pressurizing Agent, Argon, Liquid, AFPID 9135–19

1808.002–75 Acquisition of mercury.

(a) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Mercury Contract Specialist, Directorate of Stockpile Contracts, DLA, Defense National Stockpile Center, 8725 John J. Kingman Rd., #3339, Ft. Belvoir, VA 22060–6223. DLA will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(b) Requests for clearance to purchase quantities of 76 pounds or more from sources other than DLA shall be submitted to the office in paragraph (a) of this section and must be accompanied by a statement of reasons why the available excess mercury is unsuitable for use by the requesting field installation.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, information on availability of NASA excess property is maintained by the Installation Property Disposal Officer and the NASA

Equipment Management System (NEMS) Coordinator.

Subpart 1808.4—Federal Supply Schedules

1808.404 Using schedules.

1808.404–3 Requests for waivers.

(NASA supplements paragraphs (a) and (b)).

(a) The head of the NASA office initiating the procurement request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased and explaining why similar items listed in the applicable schedule will not meet the requirement.

(b) If a waiver is not granted, the case shall be referred to the Associate Administrator for Procurement (Code HS) for a final decision as to whether the non-schedule item will be purchased. The Associate Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

(NASA supplements paragraphs (a) and (c)).

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes occur, the contracting officer shall refer the matter to the Associate Administrator for Procurement (Code HS) for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

Subpart 1808.7—Acquisition From Nonprofit Agencies Employing People Who are Blind or Severely Disabled

1808.705 Procedures.

1808.705–1 General.

The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101–26.2) shall be used to obtain nonprofit agency-produced supplies from GSA supply distribution facilities.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.

(NASA supplements (paragraph (b)).

(b) (i) The Headquarters Information Resources Management Division (Code JT) is the NASA central printing authority.

(ii) Requests for approval to contract for printing supplies or services shall be addressed to Code JT. Approval to contract for such supplies or services is restricted to those requirements meeting the following conditions:

(A) An individual order is under $1,000;

(B) The order is not of a continuing or repetitive nature; and,

(C) The Public Printer certifies it cannot be provided more economically through the GPO.

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208–81, Restrictions on Printing and Duplicating, in solicitations and contracts where there is a requirement for any printing, and/or any duplicating/copying in excess of that described in paragraph (c) of the clause.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NMI 6000.5, Transportation Management.

4. Part 1809 is revised to read as follows:

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

Sec.

1809.104–4 Subcontract responsibility.
1809.106 Preaward surveys.
1809.106–1 Conditions for preaward surveys.
1809.106–2 Requests for preaward surveys.
1809.106–3 Interagency preaward surveys.
1809.106–70 Preaward surveys performed by NASA installations.

Subpart 1809.2—Qualifications Requirements

1809.200 Scope of subpart.
1809.202 Policy.
1809.203 QPL's, QML's, and QBL's.
1809.203–70 General.
1809.203–71 Waiver of qualification requirements.
1809.206 Acquisitions subject to qualification requirements.
1809.206–1 General.
1809.206–70 Small businesses.
1809.206–71 Contract clause.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.
1809.404 List of Parties Excluded from Federal Procurement and Nonprocurement programs.
1809.405 Effect of listing.
1809.405–1 Continuation of current contracts.
1809.405–2 Restrictions on subcontracting.
1809.406 Debarment.
1809.406–3 Procedures.
1809.407 Suspension.
1809.407–3 Procedures.
1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.
1809.470–1 Situations requiring reports.
1809.470–2 Contents of reports.
1809.470–3 Addresses and copies of reports.

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.
1809.503 Waiver.
1809.506 Procedures.
1809.507 Solicitation provisions and contract clause.
1809.507–2 Contract clause.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

Authority: 42 U.S.C. 2473(c)(1)

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

1809.104–4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting office, the contracting officer shall request from the CCC and any other sources whatever information is necessary to make the responsibility determination.

Upon request, CCC shall be furnished the rationale for any subsequent determination of nonresponsibility.

1809.106 Preaward surveys.

1809.106–1 Conditions for preaward surveys.

(NASA supplements paragraph (a)).

(a) (i) Preaward surveys are used only to assist the contracting officer to make determinations of responsibility under FAR 9.104. They are not to be used to obtain information useful to proposal evaluation that does not directly relate

to the responsibility determination. Accordingly, preaward surveys shall not be used except in rare circumstances when determination of responsibility cannot be made without the specific information that can be provided only in a preaward survey report and only after all other means of obtaining the required information have been explored.

(ii) Surveys shall not be performed for companies of any size performing study or research contracts.

(iii) The procurement officer shall approve all preaward survey requests.

1809.106–2 Requests for preaward surveys.

(NASA supplements paragraph (a)).

(a) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of Section III.

1809.106–3 Interagency preaward surveys.

(NASA supplements paragraph (a)).

(a) If the survey will be performed for NASA by a DOD agency, the SF 1403 request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DLAH 4105.4, Attn: Preaward Survey Monitor. DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

1809.106–70 Preaward surveys performed by NASA installations.

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

Subpart 1809.2—Qualifications Requirements

1809.200 Scope of subpart.

This subpart prescribes policies and procedures to be followed in the use of qualified products lists for acquisition of parts as authorized by NMI 5320.5, Basic Policy for NASA Space Flight Program Electrical, Electronic, and Electromechanical (EEE) Parts.

1809.202 Policy.

(NASA supplements paragraphs (a) and (e)).

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's and QBL's.

1809.203–70 General.

(NASA supplements paragraph (a)).

(a) The Deputy Associate Administrator for the Office of Safety and Mission Assurance (Code Q), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA EEE Parts and Advanced Interconnect Program.

1809.203–71 Waiver of qualification requirements.

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see FAR subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206–1 General.

(NASA supplements paragraph (b) and (c)).

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a nonemergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance (Code Q).

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

1809.206–70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (Mil–Bul–103) or the Qualified Manufacturers List (QML–38510) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR subpart 19.6 are applicable.

1809.206–71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209–70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.

For purposes of FAR subpart 9.4 and this subpart, the Associate Administrator for Procurement is the "debarring official," the "suspending official," and the agency head's "designee."

1809.404 List of parties excluded from federal procurement and nonprocurement programs.

(NASA supplements paragraphs (c) and (d)).

(c) The Office of Procurement (Code HS) is responsible for taking the actions listed in FAR 9.404(c).

(d)(1) Installation procurement offices shall notify Code HS of how many copies of the List they want and provide a single mailing address at the installation. Code HS will place the order for the copies which will be mailed directly to the installation. Electronic access is also available as described in the List.

1809.405 Effect of listing

If it is believed that a new contract or subcontract must be awarded to a firm on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the procurement officer shall prepare a request for a determination with all necessary supporting information and forward it to the Associate Administrator for Procurement (Code HS) for approval.

1809.405–1 Continuation of current contracts. (NASA supplements paragraph (c)).

(c) Approval of contract renewals or extensions shall be requested in accordance with 1809.405.

1809.405–2 Restrictions on subcontracting. NASA supplements paragraph (a)).

(a) Approval of consent to subcontract shall be requested in accordance with 1809.405.

1809.406 Debarment.

1809.406–3 Procedures.

(NASA supplements paragraph (a)).

(a) The report required by FAR 9.406–3(a) shall be prepared in accordance with 1809.470.

1809.407 Suspension.

1809.407–3 Procedures.

(NASA supplements paragraph (a)).

(a) Reports shall be prepared in accordance with 1809.470.

1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(NASA supplements paragraph (a)).

(a)(2) (A) If the offeror indicates that it has been indicted, charged, convicted, or had a civil judgment rendered against it, the contracting officer shall immediately notify the Associate Administrator for Procurement (Code HS), providing details as known, and shall await a response before awarding the contract.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Associate Administrator for Procurement (Code HS) in accordance with 1809.470.

1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.

1809.470–1 Situations requiring reports.

A report incorporating the information required by 1809.470–2 of this subpart shall be forwarded by the procurement officer to the Associate Administrator for Procurement (Code HS) when a contractor:

(a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2; or

(b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR by changes of address, multiple addresses, formation of new companies, or other devices.

1809.470–2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

(a) Name and address of the contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(j) Recommendation as to

(1) Whether the contractor should be suspended or debarred,

(2) Whether any limitations should be applied to such action,

(3) Whether current contracts should be terminated, and

(4) The period of any debarment.

(k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470–3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted to the Office of Procurement (Code HS), with an additional copy to the Headquarters Office of General Counsel (Code G).

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.

The Associate Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Associate Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Associate Administrator for Procurement (Code HS) for action.

1809.506 Procedures.

(NASA supplements paragraph (b)).

(b) The approving official is the procurement officer when the installation has source selection authority and the Associate Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

1809.507 Solicitation provisions and contract clause.

1809.507–2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209–71, Limitation of Future Contracting, in solicitations and contracts.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209–72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

PART 1810—[REMOVED]

(5) Under the authority of 10 U.S.C. chapter 137, Part 1810 is removed.

(6) Part 1811 is added to read as follows:

PART 1811—DESCRIBING AGENCY NEEDS

Sec.
1811.002 Policy.

Subpart 1811.1—Selecting and Developing Requirements Documents

1811.104 Items peculiar to one manufacturer.
1811.104–70 Brand name or equal purchase descriptions.
1811.104–71 NASA solicitation provision.

Subpart 1811.4—Delivery or Performance Schedules

1811.403 Supplies or services.
1811.404 Contract clauses.

Subpart 1811.5—Liquidated Damages

1811.502 Policy.

Subpart 1811.6 Priorities and Allocations

1811.602 General.
1811.603 Procedures.

Authority: 42 U.S.C. 2473(c)(1)

PART 1811—DESCRIBING AGENCY NEEDS

1811.002 Policy.

(NASA supplements paragraph (b))

(b) Implementation of the Metric Conversion Act of 1975, as amended, shall be in accordance with NPD 8010.2B, Use of the Metric System of Measurements in NASA Programs.

Subpart 1811.1—Selecting and Developing Requirements Documents

1811.104 Items peculiar to one manufacturer.

1811.104–70 Brand name or equal purchase descriptions.

(a) Use of brand-name purchase descriptions is the least preferred method for describing Agency requirements. Purchase descriptions containing references to one or more brand-name products, or components of a product, followed by "or equal" may be used only in accordance with this part 1811.

(b) The term "or equal" should not be added if it is determined under FAR 11.104 that only a particular product meets the essential requirements of the Government.

(c) To the extent feasible, all acceptable brand-name products should be referenced. If "brand-name-or-equal" is used, offerors must be given the opportunity to offer products other than those referenced by brand-name if those products will meet the needs of the Government in essentially the same manner.

(d) "Brand-name-or-equal" purchase descriptions should set forth the salient physical, functional, or other characteristics essential to the needs of the Government. Purchase descriptions should include the following items and any other information necessary to describe the item:

(1) Complete common generic identification of the item.

(2) Model, make, or catalog number for each brand name product, and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if company is not well known).

(e) When it is needed to describe the item required, a commercial catalog description, or pertinent extracts, may be used if the description is identified in the solicitation as being that of the manufacturer, producer, or distributor. The contracting officer shall ensure that a copy of any catalog referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) Offerors offering brand-name products shall not be required to furnish samples; however, solicitations may require the submission of samples from offerors proposing "or equal" products.

(g) Proposals offering products differing from brand-name products referenced in a "brand-name-or-equal" purchase description shall be considered for award if the contracting officer determines that the offered products meet the salient characteristics required by the solicitation. Offers shall not be rejected because of minor differences in design, construction, or features that do not affect the suitability of the products for their intended use.

(h) Except as provided in paragraph (i)(1) of this section, when a "brand-name-or-equal" purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the offeror:

Offering:
Manufacturer's Name _____
Brand _____
No. _____

(i) If the contracting officer determines that the provision at 1852.211–70 should apply only to certain components, the requirements of paragraph (h) of this section shall apply to them, and a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal applies to the following components:
(List the components to which the provision applies.)

(j) Award documents for brand-name-or-equal acquisitions shall identify the specific products or components the contractor is to furnish. This identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the solicitation.

1811.104–71 NASA solicitation provision.

When a "brand-name-or-equal" purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.211–70, Brand Name or Equal.

Subpart 1811.4—Delivery or Performance Schedules

1811.403 Supplies or services.

(NASA supplements paragraph (a))

(a)(3) Contract delivery or performance schedules shall not be expressed in terms of a notice of award. A notice of award as a specific document, separate from the award document itself, is not a contractual document and shall not be used as a reference point for contract performance. See 1814.408 for additional information on notices of award.

1811.404 Contract clauses.

(NASA supplements paragraph (a))

(a)(2) FAR 52.211–8, Time of Delivery, Alternates II and III, shall not be used in NASA contracts.

(3) FAR 52.211–9, Desired and Required Time of Delivery, Alternates II and III, shall not be used in NASA contracts.

Subpart 1811.5—Liquidated Damages

1811.502 Policy.

(NASA supplements paragraph (d))

(d) The procurement officer shall forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement (Code HS).

Subpart 1811.6—Priorities and Allocations

1811.602 General.

(NASA supplements paragraph (c))

(c) The Department of Defense is the "Delegate Agency" for NASA. The Headquarters Office of Procurement (Code HS) shall coordinate with DOD, as necessary, to ensure that any DOD requirements are met.

1811.603 Procedures.

(NASA supplements paragraphs (e) and (g))

(e)(i) The use of priority ratings on NASA contracts and purchase orders is mandatory except as noted in paragraph (e)(ii) of this section. Priority ratings are

assigned on individual contracts and purchase orders by the contracting officer.

(ii) Priority ratings will not be issued for the following:

(A) Items ordered or requisitioned from the GSA Federal Supply Service.

(B) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order, or unless NASA has obtained specific priority rating authority.

(C) Production or construction equipment or items to be used for the manufacture of production equipment, unless NASA has obtained specific priority rating authority.

(D) Items falling under the jurisdiction of agencies other than NASA's Delegate Agency. These are: petroleum, gas, solid fuel, electric power, and all other forms of energy; food; civil transportation and the movement of persons and property by all modes; minerals; water; housing facilities; health facilities; radio-isotopes, stable isotopes, source material and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy; communication services; copper raw materials; crushed stone; gravel; sand; scrap; slag; central steam heat; and waste paper.

(iii) All other NASA orders shall be assigned a DO rating, unless NASA has obtained a DX rating from the Delegate Agency.

(iv) The program identification numbers (DPAS, 15 CFR part 700, SCH L.) to be used by NASA are as follows:

A1 Aircraft
A2 Missiles
A3 Ships
A5 Weapons
A6 Ammunition
A7 Electronic and Communications Equipment
B1 Military Building Supplies
B8 Production Equipment (for Contractor's Account)
B9 Production Equipment (Government-Owned)
C2 Construction
C3 Maintenance, Repair, and Operating Supplies for Facilities
C9 Miscellaneous/Other

(g) Installation requests for assistance shall be directed to the Headquarters Office of Procurement (Code HS).

7. Part 1812 is revised to read as follows:

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1812.1—Acquisition of Commercial Items—General

Sec.
1812.102 Applicability.

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
1812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 1812.4—Unique Requirements Regarding Terms and Conditions for Commerical Items

1812.404 Warranties.

Authority: 42 U.S.C. 2473(c)(1).

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1812.1—Acquisition of Commercial Items—General

1812.102 Applicability.

(NASA supplements paragraph (c))

(c) For the acquisition of commercial items of any value, the MidRange procedures described in part 1871 may be used to the extent they are consistent and compliant with FAR part 12 and part 1812. Unless specifically stated, in any conflict between these parts the descending order of precedence is FAR part 12, part 1812, and part 1871.

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(NASA supplements paragraph (f))

(f)(i) The following clauses may be used in acquisitions of commercial items:

(A) 1852.214–71, Grouping for Aggregate Award.

(B) 1852.214–72, Full Quantities.

(C) 1852.215–84, Ombudsman.

(D) 1852.219–75, Small Business and Small Disadvantaged Business Subcontracting Reporting.

(E) 1852.219–76, NASA Small Disadvantaged Business Goal.

(F) 1852.228–72, Cross-Waiver of Liability for Space Shuttle Services.

(G) 1852.228–76, Cross-Waiver of Liability for Space Station Activities.

(H) 1852.228–78, Cross-Waiver of Liability for NASA Expendable Launch Vehicles.

(I) 1852.232–70, NASA Progress Payment Rates.

(ii) No other provisions and clauses prescribed in the NFS or center documents shall be used in acquisitions of commercial items, except as permitted by FAR 12.302.

1812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(NASA supplements paragraph (c))

(c) The Associate Administrator for Procurement (Code HS) is the approval authority for waivers. Requests shall be prepared and submitted in accordance with 1801.471.

Subpart 1812.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

1812.404 Warranties.

(b) In acquisitions under the Simplified Acquisition Threshold specified in FAR part 13, no express warranty should be required other than the offeror's commercial warranty.

8. Part 1814 is revised to read as follows:

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201— Preparation of invitations for bids.
1814.201–5— Part IV—Representations and instructions.
1814.201–6— Solicitation provisions.
1814.201–670— NASA solicitation provisions.

Subpart 1814.3—Submission of Bids

1814.302— Bid submission

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404— Rejection of bids.
1814.404–1 Cancellation of invitations after opening.
1814.407— Mistakes in bids.
1814.407–3— Other mistakes disclosed before award.
1814.407–4— Mistakes after award.
1814.408— Award.
1814.408–1— General.

Authority: 42 U.S.C. 2473(c)(1)

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201–5 Part IV—Representations and instructions.

(NASA supplements paragraph (c)).

(c) Section M, Evaluation factors for award.

(i) The contracting officer shall state if award is to be made in the aggregate (all-or-non basis) or by specified groups of items.

(ii) if bidders are required to have special technical qualifications because of the complexity of the equipment being purchased or for some other reason, the contracting officer shall state those qualifications.

1814.201–6 Solicitation provisions.

1814.201–670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214–70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214–21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of certain items. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214–72, Full Quantities, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than the full quantities solicited.

(d) If a pre-bid conference is planned, the contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference. See 1815.407–70(d).

Subpart 1814.3—Submission of Bids

1814.302 Bid submission.

(NASA supplements paragraph (b))

(b) NASA contracting officers shall not consider telegraphic bids communicated by the telephone.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.

1814.404–1 Cancellation of invitations after opening.

(NASA supplements paragraphs (c) and (e)).

(c) The authority to make the determination at FAR 14.404–1(c) is delegated to the contracting officer, except as provided in paragraph (e)(1) of this subsection.

(e)(1) A determination that includes an authorization to complete the acquisition through negotiation shall be made by the procurement officer, in consultation with the chief counsel.

1814.407 Mistakes in bids.

1814.407–3 Other mistakes disclosed before award.

(NASA supplements paragraph (e))

(e) Procurement officers are authorized to make the determinations under 14.407–3 (a), (b), (c) and (d).

1814.407–4 Mistakes after award.

(NASA supplements paragraph (d))

(d) Determinations shall be made by the procurement officer.

1814.408 Award.

1814.408–1 General.

(1) A notice of award as a specific document is used when the contracting officer needs to inform a responsible bidder that its offer was determined to be the most advantageous to the Government (considering only price and price-related factors) and that the formal award will be made upon satisfaction of specified pre-performance conditions.

(2) The notice of award is not a contractual instrument. It does not authorize the successful bidder to perform and, in itself, does not obligate the Government to award a contractual document. Its limited purpose is to provide: evidence of the Government's selection of the successful bidder; instruction to that bidder to satisfy specified pre-performance conditions; and a statement that the Government intends to award the contract to the successful bidder upon satisfaction of these conditions if a contract is awarded as a result of the invitation for bids.

(3) Use of a notice of award is optional. The contracting officer may issue the award document itself without first issuing a notice of award. However, there are instances when a notice of award should be considered, for example, in construction contracts where performance or payment bonds are required. In such cases, the most cost effective technique is to require only the successful bidder to provide the necessary bonds. The notice of award advises the successful bidder to provide the bonds, and it also serves as formal evidence from the Government of the impending award if such evidence is required to secure the bonds.

(4) The notice of award shall not be issued unless bids have been evaluated and a selection made, and a definitive contract document is ready for execution upon satisfaction of the conditions specified in the notice. Upon satisfaction of these conditions, the approved and executed contract instrument shall be provided to the successful bidder.

(5) Since the notice of award is not a contractual document authorizing performance, the period of performance of the resultant contract shall not be based on the date of issuance or receipt of the notice of award. The period of performance specified in the contract shall be based on some other reference point, such as the date the contract is provided to the successful bidder, a mutually agreeable effective date of a later authorization to proceed date.

(6) The notice of award can be issued by any formal written means such as a letter, telegram or electronic means. The notice should be substantially the same as the following format.

Format

Subject: Notice of Award—Invitation for Bids (IFB) (a). This notice is to advise you that your bid (b) in response to the subject IFB has been determined to be the most advantageous to the Government (considering only price and price-related factors). It is the Government's intention to award you a contract in the amount of (c) for this effort pending satisfaction of the following pre-performance conditions: (d)

Evidence (e) of satisfaction of these conditions must be provided to the contracting officer by (f). In the event these conditions are not satisfied by this date, the Government reserves the right to award the contract to the bidder who submitted the next most advantageous bid.

Please note that this notice of award is not a contractual document. It does not obligate the Government to award you, or any other bidder, a contract relative to the subject IFB, and it does not authorize you to proceed with contract performance or incur costs pursuant to such performance. Any costs incurred for contract performance prior to your receipt of a fully executed contract document are at your own risk and are not recoverable under any Government contract should the Government fail, for whatever reason, to award you a contract in response to the subject IFB.

If a contract is awarded after evidence of satisfaction of the pre-performance conditions listed above is provided to the contracting officer by the specified due date, the date of commencement of work will be provided with the formal award. This date will be based on (g).

Notes.—The contracting officer shall insert, where shown, the following information:

(a) Identification of the IFB by number and title.

(b) Identification of the contractor's bid.

(c) The award price.

(d) The preperformance conditions (e.g., any required payment and performance bonds).

(e) The evidence required to satisfy the pre-performance conditions (e.g., the actual payment and performance bonds).

(f) The date by which the evidence must be provided to the contracting officer.

(g) Identification of the date for commencement of performance. The period of performance of the contract shall not be based on the date of issuance or receipt of the notice of award. It shall be based on the date the contract is provided to the successful bidder, a mutually agreeable effective date, or a later authorization to proceed date.

PART 1828—BONDS AND INSURANCE

1828.202 [Added]

9. Section 1828.202 is revised to read as follows:

1828.202 Acceptability of corporate sureties.

(NASA supplements paragraph (a)).

(a) Contracting officers may obtain access to the Department of Treasury Circular 570 through the *Circular 570 Bulletin Board*, telephone (202) 874–7214. Use the following communications software specifications:

Baud rate	2400
Parity	None
No. of Data Bits	8
No. of Stop Bits	1
Duplex	Full

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.004 [Added]

10. Section 1835.004 is added to read as follows:

1835.004 Publicizing requirements and expanding research and development sources.

(NASA supplements paragraph (a))

(a) In R&D acquisitions over $100,000, when only three or fewer sources are known, the contracting officer shall have the requirements office query the Defense Technical Information Center (DTIC) IR&D Database to identify additional sources conducting IR&D in the area of the acquisition, in addition to using other market survey techniques. If needed, specific information on access to and use of the DTIC IR&D Database by a particular NASA installation may be obtained from that installation's designated IR&D focal point.

PART 1842—CONTRACT ADMINISTRATION

Subpart 1842.13—[Added]

11. Subpart 1842.13 is added to read as follows:

1842.13—Suspension of work, stop-work orders, and Government delay of work

1842.1305 Contract clauses.

(NASA supplements paragraph (b))

(b) FAR 52.242–15, Stop-Work Order, shall not be used in solicitations or contracts for research performed by educational or other nonprofit institutions.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES.

1852.207–70 [Removed]

12.–13. Section 1852.207–70 is removed.

1852.210–70 [Redesignated]

1852.210–71, 1852.210–72, 1852.210–75 [Removed]

14.–15. Sections 1852.210–40, 1852.210–71, 1852.210–72 and 1852.210–75 are removed.

1852.211–70, 1852.211–72, 1852.211–74 [Added]

16. Sections 1852.211–70, 1852.211–72 and 1852.211–74 are added to read as follows:

1852.211–70 Brand name or equal.

As prescribed in 1811.104–71, insert the following provision:

Brand Name or Equal

(DECEMBER 1988)

(a) As used in this provision, "brand name" means identification of products by make and model. The term "bid" means "offer" if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a "brand name or equal" description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products, including products of the brand name manufacturer other than the one described by model designation, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d) (1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

1852.211–72 Period of Performance.

As prescribed in 1811.403(a)(3), insert the following clause:

Period of Performance

(DECEMBER 1988)

The period of performance of this contract shall be [Insert period of performance dates].

(End of clause)

1852.211–74 Notice of Delay.

As prescribed at 1811.404–70(a), insert the following clause:

Notice of Delay

(DECEMBER 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable.

(End of clause)

1852.212–70 [Redesignated]

1852.212–72, 1852.212–73 [Removed]

17.–18. Sections 1852.212–72 and 1852.212–73 are removed.

1852.212–74 [Redesignated]

1852.214–70, 1852–214–71, 1852.214–72 [Amended]

19.–20. Sections 1852.214–70, 1852.214–71, and 1852–214.72 are revised to read as follows:

1852.214–70 Caution to Offerors Furnishing Descriptive Literature.

As prescribed in 1814.201–670(a), insert the following provision:

Caution to Offerors Furnishing

Descriptive Literature

(DECEMBER 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that "Data are subject to change without notice," "Prices subject to change without notice," or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202–5.]

(End of provision)

1852.214–71 Grouping for Aggregate Award.

As prescribed in 1814.201–670(c), insert the following provision:

Grouping for Aggregate Award

(MARCH 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items

Insert the item numbers and/or descriptions].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

1852.214–72 Full Quantities.

As prescribed in 1814.201–670(b), insert the following provision:

FULL QUANTITIES

(DECEMBER 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.103 [Amended]

21. Paragraph (b) to section 1871.103 is revised to read as follows:

1871.103 Applicability.

(a) * * *

(b) This part applies to all contract actions the aggregate amount of which is greater than the simplified acquisition threshold (SAT) (FAR part 13) and not more than $1,000,000 in basic value and for commercial items regardless of dollar value to the extent consistent and compliant with FAR part 12 and part 1812 (see 1812.102(c)). For service contracts, up to four annual options of not more than $1,000,000 each are permitted where the option requirements are substantially the same as the basic requirement. For R&D contracts, options are permitted not to exceed $1,000,000 in total value (basic contract plus options). For supply contracts, four options of not more than $1,000,000 each are permitted when not more than $1,000,000 in funding is to be required in any fiscal year. The total amount of the basic award plus options may not exceed $5,000,000 in either the case of supplies or services except as provided in paragraph (c) of this section. For commercial item contracts, options are permitted regardless of dollar value.

* * * * *

1871.401–6 [Amended]

22. In section 1871.401–6, paragraph (a)(2) is revised to read as follows:

1871.206–1 Commercial Items.

(a) Policy.

(1) * * *

(2) MidRange Procedures may be used for commercial item procurements to the extent consistent and compliant with FAR part 12 and part 1812 (see 1812.102(c)).

* * * * *

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48 CFR Parts 1845, 1852 and 1853

Revision to NASA FAR Supplement Coverage on Government Property

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement to incorporate changes pertaining to government property reporting by contractors. The intent of this rule is to improve the completeness, accuracy and timeliness of the reporting process.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Larry G. Pendleton, (202) 358–0487.

SUPPLEMENTARY INFORMATION:

Background

Recent experience at NASA in preparing and auditing annual financial statements as required by the Chief Financial Officer's (CFO) Act has led to the need for changes in the contract property reporting process to improve the completeness, accuracy and timeliness of information received. NASA does not maintain detailed records of government property in the possession of contractors. Pursuant to the Federal Acquisition regulation (FAR) 45.505 the contractor's property control records constitute the Government's official property records. All NASA contracts, under which the contractor is accountable for government property, are required to contain a provision that specifies the annual submission of a report containing summary financial and property information on the property in the contractor's custody. Therefore, when agency requirements for financial/property management information change, they must be implemented by NASA contractors in possession of government property. In formulating the rule, NASA objectives have been to streamline the report to obtain only information necessary to report on and conduct oversight of contractor held property, and to generally minimize the impact on reporting entities.

Summary of Substantive Comments

One comment objected to the inclusion of data on costs for construction-in-progress and work-in-process on the grounds that such requirements are inappropriate in a property reporting system, and that the information is not currently available from contractor property records. This data is necessary for NASA to comply with Office of Management and Budget (OMB) guidance on the form and content of federal agency financial statements, and with the forthcoming accounting standard on property, plant, and equipment to be issued by the Federal Accounting Standards Advisory Board (FASAB). NASA Form (NF) 1018 is a financial report about government property in the possession of contractors. Therefore, contractors may be required to extract financial information from other contractor record systems instead of exclusive reliance on existing property systems for needed information. The commenter acknowledged that the required information is available from other contractor records. In addition, contractors are required by FAR 45.505(b) to provide financial accounts

in their property control systems for government-owned property in their possession or control. The order of property classification accounts on NF 1018 has been changed as suggested by public comment to group real property accounts together.

Another comment objected to NF 1018 Item 19, Type of Deletion as requiring major property record system changes in order to furnish this level of detail. This category is new in name only, currently being categorized as Disposals on the present form. Detailed lists of information about these disposals are now required to be maintained by contractors in the event they are needed by NASA organizations. Replacing Disposals with Type of Deletion will generate no new information requirements for contractors, and will make reporting more complete, accurate, and comparable among contractors by standardizing the way in which deletion types are provided to the government. However, as recommended by the commenter, the types of deletions have been rearranged, two types have been combined, and three have been deleted since they are part of the plant clearance process.

There was objection in one comment to a proposed requirement that property shipped to others remain on the shipping contractor's accountable records until evidence of receipt is obtained from the consignee. The comment pointed out that receiving contractors do not normally acknowledge receipt, and that issues of liability, taxable location, and new suspense systems were raised by the proposed requirement. While NASA does not agree that all of the issues raised by the comment are valid, there are acknowledged difficulties in tracking items assigned to a carrier for shipment. The objective sought by the proposed arrangement is clear and consistent accountability for government property at all times. Based upon the concerns expressed in the comment, the final rule will be changed to provide that property in transit during the month of September of each year shall be reported by the shipping contractor, unless confirmation of receipt at destination has been obtained.

Objection was made in another comment to the revised contract clause that provides for possible withholding of payment on invoices when required property reports are not submitted when due. Prompt receipt of these reports is critical to NASA's ability to prepare annual financial reports, obtain audit review, and publish them when due as required by law. Submission of property reports when required is a contractual obligation resulting from a specific provision in each affected contract with which contractors have agreed by executing the contract. However, in response to the concerns expressed in the comment, the final rule limits possible withholding to a total of $25,000 or 5 percent of the amount of the contract, whichever is less. In addition, explanatory language has been added to the prescription for the clause making clear the importance of timely report submission and encouraging efforts to obtain reports by the due date rather than using the withholding authority.

Another comment noted that there is an effort underway to develop a standard, government-wide property report and recommends that NASA delay consideration of this rule pending the results of that effort. Alternatively, the commenter recommends a public hearing to address its comments. NASA is represented on the interagency group that is rewriting FAR Part 45, and the subgroup considering a government standard form. It is not known when these groups will complete their work and revise the relevant regulations. The revisions contained in the proposed rule must be made without further delay to allow NASA to fulfill its financial management obligations. Public comment on the proposed rule was received from only one organization. Due to this low level of expressed interest, a public hearing will not be scheduled.

Procedural Requirements

Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980. The rule revises the former regulation by simplifying and reducing reporting requirements, the costs of which are in any case reimbursed by the Government. NASA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

Under 5 CFR 1320.5(b)(2)(i), NASA is required to inform potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Under 5 CFR 1320.5(b)(2)(ii)(C), this paragraph meets that display requirement by providing the following statement: Information collection associated with this rule has been approved under OMB Control Number(s) 2700–0017 with an expiration date of 12/31/98. This information collection, as revised, represents a reduction in the estimated paperwork burden to respondents from the present reporting requirements. The reporting format has been reduced from 4 pages to 2, and has been streamlined to facilitate preparation and to clarify reporting requirements. Completion of the information collection merely requires contractors to transcribe data from existing contractor records onto the report.

List of Subjects in 48 CFR Parts 1845, 1852 and 1853

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1845, 1852, and 1853 are amended as follows:

1. The authority citation for 48 CFR Parts 1845, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1845—GOVERNMENT PROPERTY

2. Section 1845.102–70(a)(3) is revised to read as follows:

1845.102–70 Procedures.

(a) * * *

(3) Requirement that additional facilities that the offeror requests to be provided by the Government be described and identified by classification such as "Land", "Buildings", and "Equipment" (see subpart 1845.71); and

* * * * *

1845.106–70 [Amended]

3. In section 1845.106–70, paragraph (d) is revised to read as follows, paragraph (i) is removed and paragraphs (j) and (k) are redesignated as paragraphs (i) and (j):

1845.106–70 NASA contract clauses and solicitation provision.

* * * * *

(d)(1) The contracting officer shall insert the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, in all cost reimbursement contracts. It shall be included in all other types of contracts when it is known at the time of award that property will be provided to the contractor or that the contractor will acquire property, title to which will vest in the Government prior to delivery of the contract products. Where all

property to be provided is subject to the clause at 1852.245–71, Installation-Provided Government Property (see paragraph (b) of this section), the clause at 1852.245–73 is not required. Where the clause is not included in contracts at the time of award, if Government property is subsequently provided to a contractor, or the contractor is authorized to acquire property to which the Government takes title, the clause shall be included in the contract at that time.

(2) Paragraph (c) of the clause at 1852.245–73 permits the contracting officer to withhold payments, up to a specified dollar limit, in the event a contractor fails to submit the annual NF 1018 by the due date. This provision reflects the importance to NASA of receiving this financial data on time. Upon receipt, the information is entered into the NASA accounting system and is used in the preparation of agency annual financial statements. Therefore, timely receipt of contractor held property financial data is essential to the process. A concerted effort should be made to obtain NF 1018 reports by the due date before resorting to the payment withholding alternative.

* * * * *

1845.301 [Amended]

4. In section 1845.301, the definition heading "Space property" is revised to read "Agency-peculiar property".

1845.407 [Amended]

5. In section 1845.407, the section heading "Non-Government use of plant equipment" is revised to read "Non-Government use of equipment".

6. In the introductory text to section 1845.407, the phrase "plant equipment" is revised to read "equipment".

7. In paragraphs (a) (1) and (b) to section 1845.407, the phrase "plant equipment" is revised to read "equipment".

1845.501 [Amended]

8. In section 1845.501, in the definition of "Space property", the heading "Space property" is revised to read "Agency-peculiar property", the phrase "property peculiar to NASA" is revised to read "property unique to NASA", and the last sentence is removed.

9. In section 1845.501, in the definition "Centrally reportable equipment (CRE)", the phrase "space property" is revised to read "agency-peculiar property"

1845.502–1 [Amended]

10. In section 1845.502–1, the title of the NASA Form 1018 "Report of Government-Owned/Contractor-Held Property" is revised to read "NASA Property in the Custody of Contractors".

1845.502–71 [Amended]

11. In paragraph (e) to section 1845.502–71, the heading "Space Property" is revised to read "Agency-peculiar property".

12. Section 1845.505–14 is revised to read as follows:

1845.505–14 Reports of Government property.

When required by the contract, the contractor shall submit a report of NASA Property in the Custody of Contractors, NASA Form 1018, in accordance with the instructions on the form, in subpart 1845.71, and the contract clause at 1852.245–73. Contractor property control systems shall distinguish between Government furnished and contractor acquired property classification shown in FAR 45.505–14(a) (1) through (5).

1845.7101 [Amended]

13. In 1845.7101 the last sentence is removed and the following three sentences are added to read as follows:

* * * This report provides information for NASA financial statements and property management; accuracy and timeliness of the report are, therefore, very important. Contractors shall retain documents which support the data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported, and reporting requirements are set forth in this subpart.

14. Sections 1845.7101–1, 1845.7101–2, 1845.7101–3, 1845.7101–4 and 1845.7101–5 are revised to read as follows:

1845.7101–1 Property classification.

(a) Contractors shall report costs in the classifications required on NF 1018, as described in this section. For Land, Buildings, Other Structures and Facilities, and Leasehold Improvements, contractors shall report the amount for all items with a unit cost of $5,000 or more and useful life of 2 years or more. For Plant Equipment, Special Tooling, Special Test Equipment and Agency-Peculiar Property, Contractors shall separately report—

(1) The amount for all items with a unit cost of $5,000 or more and a useful life of 2 years or more, and

(2) All times under $5,000, regardless of useful life.

(b) Contractors shall report the amount for all Materials, regardless of unit cost.

(c) Land. Includes costs of land, improvements to land, and associated costs incidental to acquiring and preparing land for use, for example; appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of a land purchase, removal or destruction of structures or facilities purchased but not used, and legal expenses.

(d) Buildings. Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for the functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(e) Other structures and facilities. Includes costs of acquisitions and improvements of structures and facilities other than buildings; for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements, such as sidewalks, parking areas, and fences.

(f) Leasehold improvements. Includes costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract.

(g) Equipment. Includes costs of commercially available personal property for use in manufacturing supplies, performing services, or any general or administrative purpose; for example, machine tools, furniture, vehicles, computers, accessory or auxiliary items, and test equipment.

(h) Construction in progress. Includes costs for work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title.

(i) Special tooling. Includes costs of equipment and manufacturing aids (and components and replacements of these items) that are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts, or to the performance of particular services. Examples include jigs, dies,

fixtures, molds, patterns, taps and gauges.

(j) Special test equipment. Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment.

(k) Material. Includes costs of NASA owned property held in inventory that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, parts, assemblies, small tools and supplies. Does not include material that is part of work in process.

(l) Agency-peculiar property. Includes actual or estimated costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include aircraft, engines, satellites, instruments, rockets, prototypes and mock-ups. The amount of property, title to which vests in the Government as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property.

(m) Contract work-in-process. Includes the costs of all work-in-process and excludes the costs of completed items reported in other categories.

1845.7101–2 Transfers of property.

The procedures in this section apply to all types of transfers. Only Government installations may furnish Government property to a contractor. Therefore, procurement, property, and financial organizations at NASA Centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. Such transfers include shipments between contractors of the same installation, contractors of different installations, a contractor of one installation to another installation, an installation to a contractor of another installation, and a contractor to another Government agency or its contractor. So that NASA may properly control and account for transfers, they shall be adequately documented. The procedures described in this section shall be followed in all cases, to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received. Property provided under fixed price repair contracts remains accountable to the cognizant NASA Center and is not reportable on NF 1018; property provided for repair under a cost-reimbursement contract, however, is accountable to the contractor and reportable on NF 1018.

(a) Approval and notification. The contractor must obtain the approval of the contracting officer or designee for transfers of property before shipment. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded, unit prices, and any other appropriate identifying or descriptive data. Unit prices shall be obtained from records maintained pursuant to FAR part 45 and part 1845 of this chapter. Shipping contractors shall furnish a copy of the shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly notify the financial management office of the NASA Center responsible for their respective contracts when accountability for Government property is transferred to, or received from, other contracts, contractors, NASA Centers or Government agencies. Copies of shipping or receiving documents will suffice as notification in most instances.

(b) Reclassification. If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intends to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) Incomplete documentation. If contractors receive transfer documents having insufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505–2.

1845.7101–3 Computing costs of fabricated special tooling, special test equipment, agency-peculiar property and contract work in process.

(a) Costs shall be computed in accordance with accepted accounting principles, be reasonably accurate, and be the product of any one or a combination of, the following:

(1) Abstracts of cost data from contractor property or financial records.

(2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures (e.g., using a 50 percent factor for work in process items, on the basis of updated Standard Form 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(b) Contractors shall report costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and shall include all direct and indirect costs of fabricating Government property.

(c) The contractor shall redetermine the costs of items returned for modification or rehabilitation.

(d) The computation of work in process shall include the costs of associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials that have been issued from inventory.

1845.7101–4 Type of deletion.

Contractors shall report the types of deletions from contract property records as described in this section.

(a) Adjusted. Changes in the deletion amounts, if any, that result from mathematical errors in the previous report.

(b) Lost, damaged or destroyed. Deletion amounts as a result of relief from responsibility under FAR 45.503 granted during the reporting period.

(c) Transferred in place. Deletion amounts that result from a transfer of property to a follow-on contract with the same contractor.

(d) Transferred to center accountability. Deletion amounts that result from transfer of accountability to the NASA Center responsible for the contract, whether or not the items are physically moved.

(e) Transferred to another NASA Center. Deletion amounts caused by transfer of accountability to NASA Center other than the one responsible for the contract, whether or not the items are physically moved.

(f) Transferred to another Government agency. Deletion amounts that result from transfer of property to another Government agency.

(g) Purchased at cost/returned for credit. Deletion amounts due to contractor purchase or retention of contractor acquired property as provided in FAR 45.605–1; or to contractor returns to suppliers under FAR 45.605–2.

(h) Disposal through plant clearance process. Deletions other than transfers; i.e., donations to eligible recipients, sold at less than cost, or abandoned/directed destruction.

1845.7101–5 Contractor's privileged financial and business information.

If a transfer of property between contractors will involve disclosing costs of a proprietary nature, the contractor shall furnish unit prices only on those copies of the shipping documents that are sent to the shipping and receiving NASA installations. Transfer of the property to the receiving contractor shall be on a no-cost basis.

1845.7101–6 [Redesignated]

1845.7101–7, 1845.7101–8, 1845.7101–9 [Removed]

15.–16. Sections 1845.7101–7, 1845.7101–8, and 1845.7101–9 are removed.

1845.7101–10 [Redesignated]

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17.–18. Section 1852.245–73 is revised to read as follows:

1852.245–73 Financial reporting of NASA property in the custody of contractors.

As prescribed in 1845.106–70(d), insert the following clause:

Financial Reporting of NASA Property in the Custody of Contractors

Sept. 1996

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with 1845.505–14, the instructions on the form, and subpart 1845.71. Subcontractor use of NF 1018 is not required by this clause; however, the contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(b) If administration of this contract has been delegated to the Department of Defense, the original of NASA Form 1018 shall be submitted to the NASA installation Financial Management Officer and three copies shall be sent concurrently through the DOD Property Administrator to the NASA office identified below. If the contract is administered to NASA, the original of NF 1018 shall be submitted to the installation Financial Management Officer, and three copies shall be sent concurrently to the following NASA office:

(Insert the address and office code of the organization within the cognizant NASA installation.)

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports when due. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by the Government. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report is required within 30 days after disposition of all property subject to reporting when the contract performance period is complete.

(End of clause)

1852.245–78 [Removed]

19. Section 1852.245–78 is removed.

PART 1853—FORMS

20. Section 1853.245(a) is revised to read as follows:

1853.245 Property (NASA Form 1018, Department of Defense Form 1342, and Department of Defense Form 1419).

(a) NASA Form 1018, NASA Property in the Custody of Contractors. NASA Form 1018, prescribed at 1845.505–14, shall be used by contractors for reporting Government-owned property.

* * * * *

[FR Doc. 96–22372 Filed 9–5–96; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–02; Notice 14]

RIN 2127–AF14

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Container Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule, petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration, this document amends certain labeling requirements in Standard No. 304, *Compressed Natural Gas Fuel Container Integrity.* Specifically, this document modifies the labeling requirements with respect to the inspection interval and deletes reference to certain pamphlets. The amendments harmonize Standard No. 304 with voluntary industry and international standards, without any detriment to safety.

DATES: *Effective date:* The amendment in this document becomes effective December 2, 1996. Prior to December 2, 1996, a manufacturer is not required to comply with S7.4(g), which specifies a labeling requirement regarding container inspections and the appropriate interval between them.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than October 21, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above mentioned docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non legal issues: Mr. Charles Hott, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Telephone 202–366–0247).

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

On September 26, 1994, NHTSA published a final rule establishing Standard No. 304, *Compressed Natural Gas Fuel Container Integrity.* (59 FR 49021) In addition to container performance requirements, the Standard also specifies labeling requirements. Each CNG container manufacturer must permanently label each of its containers with the following information: (1) The statement that "If there is a question about the proper use, installation, or maintenance of this container, contact [*CNG fuel container manufacturer's name, address, and telephone number*]"; (2) the month and year in which the container was manufactured;

(3) the maximum service pressure; and
(4) the symbol "DOT," which represents the manufacturer's certification that the container complies with all the standard's requirements. Manufacturers have been required to label each CNG container manufactured on and after March 26, 1995, with this information.

On November 24, 1995, NHTSA published a final rule that amended S7.4 of Standard No. 304 to require CNG containers to be labeled with the following additional information:

(1) The container designation (Type 1, 2, 3, or 4),

(2) The statement "CNG ONLY,"

(3) The statement: "This container should be visually inspected after a motor vehicle accident or fire and at least every 12 months for damage and deterioration in accordance with the Compressed Gas Association (CGA) guidelines C–6 and C–6.1 for Type 1 containers and C–6.2 for Types 2, 3, and 4 containers."

(4) The statement: "Do Not Use After _____," inserting the year that is the 15th year beginning after the year in which the container is manufactured. (60 FR 57943)

In that final rule, NHTSA also amended the bonfire test requirements that evaluate pressure release and announced its decision to terminate rulemaking about additional performance requirements for CNG containers that the agency had proposed.

NHTSA received petitions for reconsideration from the American Automobile Manufacturers Association (AAMA), Ford, Consumers Gas, Powertech (a research and development laboratory), and CNG container manufacturers, including NGV Systems, Pressed Steel Tank (PST), and Lincoln Composites (Lincoln).

The petitioners requested changes to the labeling requirements and the bonfire test requirements in Standard No. 304. In today's final rule, the agency responds to issues associated with the labeling of CNG containers. The agency will respond to the petitions addressing the bonfire test at a later date. The agency believes that it is appropriate to respond to the petitions in two separate notices, given the need to provide guidance to manufacturers attempting to comply with the September 1, 1996 effective date for the labeling of new CNG containers.

II. Agency Decision on Container Labeling

A. Inspection Interval

NHTSA stated that a one-year interval for visual inspection of a container's exterior reduces the possibility that damage caused by external factors would go undetected, a situation that could lead to container failure. Among the external factors that can damage a container are scratches and gouges and exposure to caustic substances and fluids such as acid, road salt, and gasoline. The agency based this earlier decision on a NGVC document recommending a one year inspection interval.[1]

NHTSA received several petitions for reconsideration requesting that the container inspection interval be every 36 months instead of every 12 months. Lincoln, Powertech, PST, AAMA, Consumers Gas, and Ford believed that a 12-month inspection period was inappropriate. Lincoln, Powertech, PST, and AAMA stated that the soon-to-be-issued updated NGV standard recommended a 36-month inspection interval. These petitioners further stated that a 36-month inspection interval is specified in the Canadian standard and the draft ISO standard.

Consumers Gas stated that it has been operating natural gas powered vehicles for over ten years and have not had a problem with the integrity of vehicle containers. It visually inspects its containers every three years. The company believes that more frequent inspection would increase the possibility of damaging a container because the container must be removed from the vehicle for a thorough inspection. It also believed that an annual inspection would increase the risk of reducing the environmental coating on the outside of the container. Consumers Gas was also concerned about the costs associated with inspecting CNG fuel containers annually.

Powertech stated that all international inspection standards specify a 36-month interval between inspections. Based on its review of in-service ruptures of CNG containers since 1974, that company stated these failures would not have been prevented had a one year visual inspection been used.

Lincoln stated that its recently completed 12-month inspection program on 96 CNG vehicles in the Atlanta area showed no indication of unexpected damage[2] to the CNG fuel containers. Based on this field experience, Lincoln concluded that a 12-month inspection interval would provide little safety benefit. Lincoln favored the adoption of a 36-month, 36,000 mile inspection requirement which would harmonize the U.S. requirement with the requirements of other standard-setting countries and organizations. Lincoln stated that a 12-month inspection requirement would not have prevented the two publicized container failures involving two different GM trucks because, in each case, the truck's container had sustained damage prior to installation.

AAMA stated that the 12-month interval for visual inspection requirement is inconsistent with other CNG container inspection requirements. That organization requested that the interval be revised to every 36 months or after an accident or fire for external damage and deterioration.

PST stated that the inspection interval should be 36-months with the manufacturer having the option of specifying shorter intervals based on the design and construction of the container.

Based on the available information, NHTSA has decided to amend S7.4 to require that each CNG container be visually inspected for damage or deterioration after a motor vehicle accident or fire and at least every 36 months or 36,000 miles, whichever comes first. Among the factors that can damage a container are scratches and gouges and exposure to caustic substances and fluids such as acid, road salt, and gasoline. The agency notes that the new inspection schedule is consistent with international and industry standards. Based on the comments, the agency believes that a 12-month, 12,000 mile inspection interval would provide little safety benefit to the vehicle owners. While visual inspection of a CNG container may detect some conditions that indicate a potential failure, the agency agrees with the petitioners that a 12 month, 12,000 mile inspection interval would be excessive. The agency notes that a 12-month inspection interval would not have prevented the two publicized GM container failures because they were caused by stress corrosion cracking which is internal to the container and therefore would not have been identifiable during a visual inspection of the container's exterior.

B. Inspection Pamphlets

In the November 1995 final rule, NHTSA stated that the regulation must reference inspection information about the in-use safety of CNG containers. The agency further stated that the current CGA pamphlets provide valuable inspection information to help assure

[1] NGVC is currently redrafting the voluntary industry standard to specify a 36 month inspection interval.

[2] Lincoln did not explain what it meant by the phrase "unexpected damage."

fuel container safety for Type 1, 2, and 3 containers.

PST and AAMA stated that referencing the CNG pamphlets on the container label is confusing and not beneficial. PST stated that a container's label should refer only to those CGA pamphlets that are relevant to that specific container. For example, a reference to pamphlet C–6.1 on a steel container could be confusing since that pamphlet is for aluminum containers. AAMA stated that the inspection procedures referenced in the pamphlets include inspections, such as interior and hydrostatic testing, that necessitate the removal of the CNG containers from the vehicle, and the use of specialized test equipment and personnel. AAMA stated that such testing is not needed to conduct a visual inspection, like the one specified by the CNG container label.

After further analyzing the available information, NHTSA has decided that it is inappropriate at this time to require reference to any of the CGA pamphlets on the container's label. As AAMA stated, it would be difficult for users to comply with the requirements in these pamphlets which direct an inspector to remove a CNG container. The agency further agrees with AAMA that the inspection procedures referenced in the CGA pamphlets may be confusing to a mechanic because it specifies that the CNG container be inspected by a container tester registered with the U.S. Department of Transportation or Canadian Transport Commission. NHTSA notes that the CNG container industry is in the process of revising the inspection pamphlets to clarify the reinspection interval for CNG containers used as vehicle fuel tanks.

C. Other Issues

PST stated that the minimum character size for the label should be reduced to 1/32 inch because the added wording regarding the recommended periodic inspection of fuel containers would increase the label's size. PST stated that there is no functional need for the label to be legible for distances greater than a few feet. PST stated that larger labels are more costly and more difficult to apply on a CNG container, and that a smaller label can more easily conform to the surface for adhesion.

Lincoln does not agree that the cost of this rulemaking is solely the cost of the label. That manufacturer stated that the rulemaking's true cost should reflect the costs of implementing the change from a 36-month to 12-month inspection interval and that this would make this rulemaking significant.

NHTSA notes that the letter height requirements were addressed in the final rule published July 24, 1995. In that rulemaking, the agency changed the letter height requirement from 12.7 mm (0.50 inch) to 6.35 mm (0.25 inch) which was consistent with the comments from Chrysler and Structural Composite Industries. The agency stated in that rulemaking that it would be inappropriate to reduce the letter height even more because the lettering would be too small to be visible at various locations on CNG vehicles. The agency notes that these issues have already been addressed in both the July 24, 1995 final rule and in the November 24, 1995 final rule. Since PST did not provide any new information on label content or the letter height requirement to justify a change, NHTSA is not making any change.

NHTSA notes that today's amendment of Standard No. 304 with respect to the labeling requirement render moot Lincoln's concerns about the added costs associated with an annual inspection interval.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, this action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. The agency has not prepared a Final Regulatory Evaluation (FRE) because the impacts of these amendments are so minimal as not to warrant preparation of a full regulatory evaluation. The amendments made in today's final rule are requirements related to the labeling of CNG vehicles and containers, and as such do not result in significant increases in cost. In the FRE for Standard No. 304, the agency stated "The consumer cost for a label on each CNG fuel container certifying that the container meets the proposed equipment requirements is estimated to be in the range of $0.06 to $0.11 per label. This includes the cost of the label plus labor costs for attachment." The changes made by this final rule do not change that estimate.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the amendments will result in only a very nominal cost increase resulting from adding the additional labeling information. Further, information available to the agency indicates that businesses manufacturing CNG fuel containers are not small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will have no adverse impact on the quality of the human environment.

E. Civil Justice Reform

This rulemaking does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 304; *Compressed Natural Gas Fuel Container Integrity*, part 571 at Title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.304 is amended by revising S7.4(g) to read as follows:

§ 571.304 Standard No. 304, Compressed Natural Gas Fuel Container Integrity.

* * * * *

S7.4 * * *

(g) The statement: "This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months or 36,000 miles, whichever comes first, for damage and deterioration.

* * * * *

Issued on: August 30, 1996.

Donald C. Bischoff,

Executive Director.

[FR Doc. 96–22762 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 951227306–5306–01; I.D. 082996C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Reductions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces further restrictions to the Pacific Coast groundfish fisheries for widow rockfish and yellowtail rockfish. These actions are authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. These restrictions are intended to keep landings as close as possible to the 1996 harvest guidelines for these species.

DATES: Effective from 0001 hours (local time) September 1, 1996, until the effective date of the 1997 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through September 23, 1996.

ADDRESSES: Submit comments to William Stelle, Jr., Director, Northwest Region (Regional Director), National Marine Fisheries Service, 7600 Sand Point Way NE., BIN–C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The following changes to routine management measures for widow and yellowtail rockfishes were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its August 21–23, 1996, meeting in Portland, OR.

Widow rockfish. Widow rockfish currently are managed under a 2-month cumulative trip limit of 70,000 lb (31,752 kg). The best available information at the August 1996 Council meeting indicated that 3,426 mt of widow rockfish had been taken through July 31, 1996, and that the 6,500–mt harvest guideline would be reached by mid-November 1996, if the rate of landings is not slowed. The Council recommended that the 2-month cumulative trip limit for widow rockfish be reduced in September-October 1996 from 70,000 lb (31,752 kg) to 50,000 lb (22,680 kg) coastwide to keep landings within the harvest guideline in 1996. The Council also recommended reverting to 1-month cumulative trip limits of 25,000 lb (11,340 kg) during November and December 1996 to provide greater flexibility managing this species at the end of the year. If landings are not sufficiently curtailed, trip limits may be reduced further, or landings prohibited, in November and/or December 1996.

Yellowtail rockfish. Yellowtail rockfish is one component of the *Sebastes* complex, and is managed with different harvest guidelines and trip limits north and south of Cape Lookout, OR (45°20'15" N. lat.). South of Cape Mendocino, CA (40°30' N. lat.) there is no specific harvest guideline or trip limit for yellowtail rockfish, other than the overall limit for the *Sebastes* complex. The northern harvest guideline for yellowtail rockfish (which includes the U.S. portion of the Vancouver area plus the Columbia area north of Cape Lookout) is 3,590 mt, and the southern harvest guideline (for the Columbia area south of Cape Lookout plus the Eureka area) is 2,580 mt.

The best available information at the August 1996 Council meeting indicated that 2,139 mt of yellowtail rockfish had been taken north of Cape Lookout through July 31, 1996, and that the 3,590–mt harvest guideline for this area would be reached by late October or early November if the rate of landings is not slowed. The Council recommended an immediate reduction in the 2-month cumulative trip limit, from 32,000 lb (14,515 kg) to 20,000 lb (9,072 kg) for yellowtail rockfish north of Cape Lookout in September-October 1996. In addition, as for widow rockfish, the Council recommended reverting to 1-month cumulative trip limits, that are half the 2-month cumulative trip limits, during November and December 1996 to provide greater flexibility managing this species at the end of the year. The 1-month cumulative trip limits also apply to the *Sebastes* complex and canary rockfish, another major component of the complex, north of Cape Mendocino, for consistency with the limits for yellowtail rockfish. Consistency is necessary to accommodate special provisions implemented by the States of Oregon and Washington that enable fishers to operate on both sides of Cape Lookout and keep the larger, southern limit for yellowtail rockfish and the *Sebastes* complex. These provisions would be impossible to implement if a 1-month limit applied north of the line and a 2-month limit applied south. If landings are not sufficiently curtailed, trip limits may be reduced further, or landings prohibited, in November and/or December 1996.

At its October 1996 meeting, the Council will review the progress of these and other groundfish fisheries and may recommend changes to the limits announced herein. Any changes approved by NMFS will be announced in the **Federal Register**.

NMFS action. NMFS concurs with the Council's recommendations, which are intended to keep landings of widow rockfish and yellowtaii rockfish within their 1996 harvest guidelines.

The 60–percent monthly limits in the limited entry fishery apply only in conjunction with 2-month cumulative trip limits, and therefore are not a part of the 1-month cumulative trip limits established for November and December 1996.

The trip limit changes apply to both the limited entry and open access fisheries, including exempt trawl gear used to harvest pink shrimp and prawns. In addition, as stated in the annual management measures at 61 FR 279 (January 4, 1996), "A vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery; or for the same gear and/or subarea in the limited entry fishery; or, in any calendar month, 50

percent of any 2-month cumulative trip limit for the same gear and/or subarea in the limited entry fishery, called the '50–percent monthly limit.'"

The annual management measures published at 61 FR 279, January 4, 1996, as amended, are modified as follows:

1. Paragraphs IV.B.(1) and (2) of the annual management measures for widow rockfish are revised to read as follows:

B.(1) *Limited entry fishery.*

(a) *September-October 1996.* The cumulative trip limit for widow rockfish is 50,000 lb (22,680 kg) per vessel for the 2-month period. The 60–percent monthly limit is 30,000 lb (13,608 kg).

(b) *November-December 1996.* The cumulative trip limit for widow rockfish is 25,000 lb (11,340 kg) per vessel per 1-month period.

(2) *Open access fishery.* Within the limits at paragraph IV.I. for the open access fishery, the cumulative monthly trip limit for widow rockfish during September-December 1996 is 25,000 lb (11,340 kg) per vessel per 1-month period.

2. Paragraphs IV.C.(2)(a)(i) and (ii) of the annual management measures for yellowtail rockfish and the *Sebastes* complex are revised to read as follows:

C.(2)(a) *Cumulative trip limits.*

(i) *North of Cape Lookout.*

(*A*) *September-October 1996.* The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Lookout is 70,000 lb (31,752 kg) per vessel for the 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 20,000 lb (9,072 kg) may be yellowtail rockfish taken and retained north of Cape Lookout, and no more than 18,000 lb (8,165 kg) may be canary rockfish.

(*B*) *November-December 1996.* The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Lookout is 35,000 lb (15,876 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 10,000 lb (4,536 kg) may be yellowtail rockfish taken and retained north of Cape Lookout, and no more than 9,000 lb (4,082 kg) may be canary rockfish.

(ii) *Cape Lookout to Cape Mendocino.*

(*A*) *September-October 1996.* The cumulative trip limit for the *Sebastes* complex taken and retained between Cape Lookout and Cape Mendocino remains at 100,000 lb (45,359 kg) per vessel for the 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 70,000 lb (31,752 kg) may be yellowtail rockfish taken and retained between Cape Lookout and Cape Mendocino, and no more than 18,000 lb (8,165 kg) may be canary rockfish.

(*B*) *November-December 1996.* The cumulative trip limit for the *Sebastes* complex taken and retained between Cape Lookout and Cape Mendocino is 50,000 lb (22,680 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 35,000 lb (15,876 kg) may be yellowtail rockfish taken and retained between Cape Lookout and Cape Mendocino, and no more than 9,000 lb (4,082 kg) may be canary rockfish.

3. Paragraph IV.C.(2)(a)(iv) of the annual management measures for yellowtail rockfish and the *Sebastes* complex is revised to read as follows:

(iv) The 60–percent monthly limits for September-October 1996 are: For the *Sebastes* complex, 42,000 lb (19,051 kg) north of Cape Lookout, 60,000 lb (27,216 kg) between Cape Lookout and Cape Mendocino, and 120,000 lb (54,431 kg) south of Cape Mendocino; for yellowtail rockfish, 12,000 lb (5,443 kg) north of Cape Lookout, and 42,000 lb (19,051 kg) between Cape Lookout and Cape Mendocino; for bocaccio, 36,000 lb (16,329 kg) south of Cape Mendocino; and, for canary rockfish, 10,800 lb (4,899 kg) coastwide.

4. Paragraph IV.C.(3)(b) of the annual management measures for yellowtail rockfish and the *Sebastes* complex is revised to read as follows:

C.(3)(b) *Open access fishery.* If smaller than the limits at paragraph IV.I. of the annual management measures, the following cumulative monthly trip limits apply (within the limits at paragraph IV.I.) during September-December 1996: For the *Sebastes* complex, 35,000 lb (15,876 kg) north of Cape Lookout, 50,000 lb (22,680 kg) between Cape Lookout and Cape Mendocino, and 100,000 lb (45,359 kg) south of Cape Mendocino; for yellowtail rockfish, 10,000 lb (4,536 kg) north of Cape Lookout, and 35,000 lb (15,876 kg) between Cape Lookout and Cape Mendocino; for bocaccio, 30,000 lb (13,608 kg) south of Cape Mendocino; and, for canary rockfish, 9,000 lb (4,082 kg) coastwide.

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Director, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because of the need for immediate action to slow the rate of harvest of widow and yellowtail rockfishes, and because the public had an opportunity to comment on the action at the August 1996 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1)(i), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 30, 1996.

Donald J. Leedy

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22748 Filed 8–30–96; 5:03 pm]

BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 083096D]

Fisheries of the Exclusive Economic Zone off Alaska; Scallop Fishery; Closure in Registration Area D

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in all districts of Scallop Registration Area D (Yakutat) other than District 16. This action is necessary to prevent exceeding the scallop total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 4, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at 50 CFR parts 600 and 679.

In accordance with §679.62(b) the 1996 scallop TAC for all districts of Scallop Registration Area D other than District 16 was established by the Final 1996 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) as 195,000 lb (88,451 kg) shucked meat.

The Director, Alaska Region, NMFS, has determined, in accordance with 679.62(c), that the scallop TAC for all districts of Scallop Registration Area D

other than District 16 has been reached. Therefore, NMFS is prohibiting the taking and retention of scallops in all districts of Scallop Registration Area D other than District 16 from September 4, 1996, through 2400 hrs, A.l.t., December 31, 1996.

Classification

This action is taken under § 679.62 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 30, 1996.

Donald J. Leedy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22760 Filed 9–3–96; 2:35pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 174
Friday, September 6, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–96–13]

Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspensions of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend certain performance standards of the Eastern Colorado Federal milk order. The suspension was requested by Mid-America Dairymen Inc., a cooperative association that supplies milk forthe market's fluid needs. The suspension was requested to prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the order.

DATES: Comments are due no later than September 13, 1996.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformancewith Executive Order 12866.

This proposed revision of rules has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposedaction will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings mustbe exhausted before parties may file suit in court. Undersection 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed inconnection with the order is not in accordance with the law and request a modification of an order or to be exempted from theorder. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a billin equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, the following sections of the order regulating the handling of milk in the Eastern Colorado marketing area are being considered:

1. For the months of September 1, 1996, through February 28, 1997: In § 1137.7(b), the second sentence is amended by suspending the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1, 1996, through August 31, 1997: In § 1137.12(a)(1), the first sentence is amended by suspending the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing".

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The filing period is limited to seven days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Small Business Consideration

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this action would not have asignificant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of theorder on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Regulatory Flexibility Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a small business if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees. For the purpose of determining which dairy farms are small businesses, the $500,000 per year criterion was divided by 12, then by the uniform price, to arrive at a 300,000 pounds-per-month limit for "small" dairy farmers.

For the month of June 1996, 429 dairy farmers were producers under the Eastern Colorado milk order. Of these, all but 115 would be considered small businesses, having less than 300,000 pounds of marketings for the month. Of the dairy farmers in the small business category, 181 marketed less than 100,000 pounds of milk, 105 marketed between 100,000 and 200,000 pounds, and 28 marketed between 200,000 and 300,000 pounds of milk during June.

There were 10 handlers operating 11 plants for the month of June 1996, pooled, or regulated, under the Eastern Colorado order. The individual plants, for the most part, would meet the SBA definition of a small business, having

less than 500 employees. However, most of these plants are part of larger businesses that operate multiple plants and meet the definition of large entities on that basis.

The proposed rule would suspend certain portions of the pool plant and producer definitions of the Eastern Colorado order. The proposed suspension would make it easier for handlers to qualify milk for pooling under the order and tend to ensure that dairy farmers would continue to have their milk priced under theorder and thereby receive the benefits that accrue from such pricing.

Proposed Suspension—Eastern Colorado—DA–96–13

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small businesses. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Statement of Consideration

The proposed suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am has requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

Mid-Am requests for the months of September 1996 through February 1997 the removal of the restriction on the months when automatic pool plant status applies for supply plants. Mid-Am also proposes that, for the months of September 1996 through August 1997, the touch-base requirement not apply and the diversion allowance for cooperatives be raised.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am states that the marketing conditions that justified the prior suspensions continue to exist. Mid-Am asserts that they have made a commitment to meet the fluid requirements of fluid distributing plants if the suspension request is granted. Without the suspension, Mid-Am contends that it will be necessary to ship milk from distant farms to Denver-area bottling plants to qualify milk for pooling. The distant milk will displace locally-produced milk that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

In addition, Mid-Am maintains that ample supplies of locally produced milk that can be delivered directly to distributing plants will be available to meet the market's fluid needs without requiring shipments from supply plants. Mid-Am also claims that neither the elimination of the touch-base requirement for producers nor the increase in the amount of milk that a cooperative can divert to nonpool plants should jeopardize the needs of the market's fluid processors.

In view of the foregoing, it may be appropriate to suspend the aforesaid portion of the pool plant and producer definitions of the Eastern Colorado order for the time periods stated.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: §§ 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 30, 1996.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96–22787 Filed 9–5–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1160

[DA–96–09]

Fluid Milk Promotion Order; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on proposals to amend the Fluid Milk Promotion Order. The proposed amendments, requested by the National Fluid Milk Processor Promotion Board, which administers the order, would modify the term limits and membership status of Board members. The proposed rule would also amend certain order language in conformance with the 1996 Federal Agriculture Improvement and Reform Act. In addition, this proposed rule would revise or remove order language that has become obsolete and no longer effectuates the declared policy of the Fluid Milk Promotion Act of 1990, as amended.

DATES: Comments are due no later than October 7, 1996.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Promotion and Research Staff, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Eugene Krueger, Head, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

Small Business Consideration

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 250 fluid milk processors subject to the provisions of the Fluid Milk Promotion Order. Most of the parties subject to the Order are considered small entities.

This rule would modify the term of office and membership provisions of the Fluid Milk Promotion Order. The proposed amendments would allow a National Fluid Milk Processor Promotion Board member who changes fluid milk processor affiliations during his or her term to be eligible to serve on the Board in another capacity during that same term. The proposed amendments would also modify the term of Board members to allow any member elected during the initial period to serve a term of one or two years to be eligible for reappointment for two additional three-year terms. The proposed amendments should clarify the Order with respect to membership status and term limits of its members.

This rule would also amend order language in conformance with the 1996 Federal Agriculture Improvement and Reform Act; the definition of research would be changed to conform with the definition in the Act and the order would be revised to reflect changes in the 1996 Act concerning those fluid milk processors who may request a referendum to suspend or terminate the order and who may vote to suspend or terminate the order or adjust the assessment rate.

Further, the rule would also revise or remove obsolete or unnecessary order language in conformance with the President's Regulatory Reform Initiative. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved previously by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

Statement of Consideration

The proposed rule would amend certain provisions of the Fluid Milk Promotion Order. Certain proposed amendments would modify the term limits and the membership status provisions of the Order. The proposed amendments would allow a National Fluid Milk Processor Promotion Board member who changes fluid milk processor affiliations during his or her term to be eligible to serve on the Board in another capacity during that same term. Under current order provisions, a Board member who changes fluid milk processor affiliations during his or her term is ineligible to serve on the Board in any capacity.

The proposed amendments would also modify the term of Board members to allow any member elected during the initial period to serve a term of one or two years to be eligible for reappointment for two additional three-year terms. Currently, the Order states that a Board member appointed to serve during the initial period is eligible to be reappointed to serve only one additional three-year term. Under these order provisions, some Board members will serve an initial term of less than three years because of the staggering of terms. The Board contends that the proposed amendments will clarify the Order with respect to membership status and term limits of its members.

This document also proposes to amend the Fluid Milk Promotion Order to conform with legislated changes made by the recently enacted 1996 Federal Agriculture Improvement and Reform Act (P.L. 104–127). Section 146 of the Act amends sections 1999C(6), 1999N(b)(2), 1999O(c), and 1999O(a) of the Fluid Milk Promotion Act of 1990, as amended, thereby necessitating changes to the Fluid Milk Promotion Order. The following sections of the Order would be amended on this basis:

1. In § 1160.112, Research would be redefined in conformance with the Act.

2. In § 1160.501, paragraphs (a) and (b)(2) would be amended in conformance with the Act in order to specify those fluid milk processors who may request a referendum to suspend or terminate the Order.

3. In § 1160.605, paragraph (b)(2) would be amended in conformance with the Act in order to specify those fluid milk processors who, on the basis of a referendum, may vote to suspend or terminate the Order, or adjust the assessment rate.

The President's Regulatory Reform Initiative, among other things, directs agencies to remove obsolete and unnecessary language and to find less burdensome ways to achieve regulatory goals. Changes are proposed in conformance with the initiative. These amendments to the Order and regulations would revise or remove order language that was needed to implement the order but is no longer needed. This language is obsolete and unnecessary because it relates to the initial fiscal period and the previously conducted initial continuation referendum. Provisions of the following sections of the Order would be amended on this basis:

1. § 1160.108 Fluid milk processor.
2. § 1160.113 Fiscal period.
3. § 1160.116 Initial referendum.
4. § 1160.209 Duties of the Board.
5. § 1160.211 Assessments.
6. § 1160.501 Continuation referenda.
7. § 1160.605 Date of the referendum.

List of Subjects in 7 CFR Part 1160

Fluid milk products, Milk, Promotion.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1160 is amended as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. In § 1160.108, paragraph (a) is revised to read as follows:

§ 1160.108 Fluid milk processor.

(a) *Fluid milk processor* means any person who processes and markets commercially fluid milk products in consumer-type packages in the United States, except that the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 500,000 pounds of such fluid milk products during the representative month, which shall be the first month of the fiscal period; *Provided, however,* that for the fiscal period following the initial fiscal period, the representative month shall be September 1995.

* * * * *

3. Section 1160.112 is revised to read as follows:

§ 1160.112 Research.

Research means market research to support advertising and promotion efforts, including educational activities, research directed to product characteristics, and product development, including new products or improved technology in production, manufacturing or processing of milk and the products of milk.

4. Section 1160.113 is revised to read as follows:

§ 1160.113 Fiscal period.

Fiscal period means the initial period of up to 30 months that this subpart is effective. Thereafter, the fiscal period shall be such annual period as the Board may determine, except that the Board may provide for a lesser or greater period as it may find appropriate for the period immediately after the initial fiscal period to assure continuity of fiscal periods until the beginning of the first annual fiscal period.

§ 1160.116 [Removed and Reserved]

5. Section 1160.116 is removed and reserved.

§ 1160.200 [Amended]

6. In § 1160.200, paragraph (a) is amended by adding the words "in the position previously held by such

member" after the words "membership on the board".

7. In § 1160.201, paragraph (b) is revised to read as follows:

§ 1160.201 Term of office.

* * * * *

(b) No member shall serve more than two consecutive terms, except that any member who is appointed to serve for an initial term of one or two years shall be eligible to be reappointed for two three-year terms. Appointment to another position on the Board is considered a consecutive term.

§ 1160.209 Duties of the board.

8. In § 1160.209, paragraph (b) is revised to read as follows:

* * * * *

(b) To prepare and submit to the Secretary for approval a budget for each fiscal period of the anticipated expenses and disbursements in the administration of this subpart, including a description of and the probable costs of consumer education, promotion and research projects;

* * * * *

9. In § 1160.211, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1160.211 Assessments.

(a)(1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of $.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor. Producer-handlers required to pay assessments under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108, shall also pay the assessment under this subpart. No assessments are required on fluid milk products exported from the United States. The Secretary shall have the authority to receive assessments on behalf of the Board.

(2) The Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

* * * * *

10. Section 1160.501 is amended by removing paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (a) through (c), removing the the cross reference "1160.501(c)" in paragraph (c) and adding in its place "1160.501(b)", and revising newly designated paragraphs (a) and (b)(2) to read as follows:

§ 1160.501 Continuation referenda.

(a) The Secretary at any time may conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, on whether to suspend or terminate the order. The Secretary shall hold such a referendum at the request of the Board or of any group of such processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed in the United States by fluid milk processors voting in the preceding referendum.

(b) * * *

(1) * * *

(2) By fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed in the United States by fluid milk processors voting in the referendum.

11. In § 1160.605, paragraph (a) is removed, paragraphs (b) through (c) are redesignated as paragraphs (a) through (b), and newly designated paragraph (b)(2) is revised to read as follows:

§ 1160.605 Date of referendum.

* * * * *

(b) * * *

(1) * * *

(2) Upon request of the Board or upon request of any group of fluid milk processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the preceding referendum.

Dated: August 30, 1996.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96–22788 Filed 9–5–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 839]

RIN 1512–AB41

Definitions for the Categories of Persons Prohibited From Receiving Firearms (95R–051P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to provide definitions for the categories of persons prohibited from receiving or possessing firearms. The proposed definitions will facilitate the implementation of the national instant criminal background check system (NICS) required under the Brady Handgun Violence Prevention Act.

DATES: Written comments must be received on or before December 5, 1996.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 839.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Public Law 103–159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103–159, the "Brady Handgun Violence Prevention Act" (hereafter, "Brady" or "Brady law"), imposed a waiting period of 5 days before a licensed importer, licensed manufacturer, or licensed dealer may transfer a handgun to a nonlicensed individual (interim provision). Brady requires that the chief law enforcement officer within 5 business days make a reasonable effort to determine whether the nonlicensed individual (transferee) is prohibited by law from receiving or possessing the handgun sought to be purchased. The waiting period provisions of the law became effective on February 28, 1994, and will cease to apply on November 30, 1998.

Brady also provides for the establishment of a national instant criminal background check system (NICS) that a firearms licensee must contact before transferring any firearm to nonlicensed individuals (permanent provision). Brady requires that NICS be established not later than November 30, 1998.

Section 922(g) of the GCA prohibits certain persons from receiving, possessing, shipping, or transporting any firearm. These prohibitions apply to any person who—

(1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance;

(4) Has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the Armed Forces under dishonorable conditions;

(7) Having been a citizen of the United States, has renounced his citizenship; or

(8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner.

To implement NICS, Brady authorizes the development of hardware and software systems to link State criminal history check systems into the national system. It also authorizes the Attorney General to obtain official information from any U.S. department or agency on persons for whom receipt of a firearm would be in violation of the law.

In order to establish NICS in such a way that it incorporates the information needed for all the categories of prohibited persons mentioned above, records systems from both Federal and State agencies must be included in the national system. For example, records on fugitives are needed from State and Federal law enforcement agencies. Records on aliens who are illegally or unlawfully in the United States are needed from the Immigration and Naturalization Service, and records on citizenship renunciates are needed from the Department of State. To ensure that the information provided to the national system is accurate, the categories of prohibited persons must be clearly defined in the regulations.

The current regulations already provide a definition for "crime punishable by imprisonment for a term exceeding 1 year." In the following paragraphs ATF is proposing additional regulations for the various categories of persons who are prohibited from receiving or possessing firearms. In some instances, the proposed definition merely clarifies an existing regulation. In other cases, the proposed definitions are new.

Persons Who Are Under Indictment for a Crime Punishable by Imprisonment for a Term Exceeding 1 Year

The definition of "indictment" is based on 18 U.S.C. § 922(n) which makes it unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship, transport, or receive firearms in interstate commerce. The proposed definition includes any formal accusation of a crime made by a prosecuting attorney (e.g., information), as distinguished from an "indictment" issued by a grand jury. In addition, the proposed definition includes criminal charges referred to a court-martial.

Persons Who Are Fugitives From Justice

The definition of "fugitive from justice" in the GCA includes any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding. 18 U.S.C. § 921(a)(15). The legislative history of this provision indicates that the term includes both felonies and misdemeanors. The Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, Title IV, § 921(a)(14), 82 Stat. 226 (1968), limited the definition to crimes "punishable by imprisonment for a term exceeding one year." However, the GCA amended Title IV to include any crime. To be a fugitive from justice, it is not necessary that the person left a State with the intent of fleeing the charges. *See, e.g., United States* v. *Spillane,* 913 F.2d 1079 (4th Cir. 1990). Rather, a person is a fugitive from justice if the person, knowing that charges are pending, purposefully leaves the State of prosecution and does not appear before the prosecuting tribunal. On the other hand, the definition does not include persons who are charged with crimes and there is no evidence that they left the State. For example, a person is not a fugitive from justice merely because he or she has outstanding traffic citations.

Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance

With respect to the definition of "unlawful user of any controlled substance," Federal law, 18 U.S.C. § 802, defines a controlled substance as a drug or other substance, or immediate precursor, included in schedules I–V. For example, opium and cocaine are controlled substances, whereas alcoholic beverages and tobacco are specifically excluded from the definition.

Moreover, under the proposed definition, a person must be a current user of a controlled substance to be prohibited by the GCA from acquiring or possessing firearms. Although there is no statutory definition of current use, applicable case law indicates that a person need not have been using drugs at the precise moment that he or she acquired or possessed a firearm to be under firearms disabilities with respect to acquiring or possessing a firearm as an unlawful user of a controlled substance. In *United States* v. *Corona,* 849 F.2d 562 (11th Cir. 1988), a defendant purchased nine firearms from a dealer on six different occasions during a 3-year period. The Government proved unlawful use during the entire 3-year period with testimony of an acquaintance of the defendant who had used cocaine with the defendant, testimony of a psychiatrist that he treated the defendant for 2 years and that the defendant admitted drug use, and records of a rehabilitation center. The court noted that it was not necessary to show that the person was an illegal user or addict at the precise moment that the firearms were purchased. Furthermore, in *United States v. Ocequeda,* 564 F.2d 1363 (9th Cir. 1977), the Government proved the firearms disability by evidence of prolonged use of heroin before, during, and after the firearms purchases.

The proposed definition is also consistent with the definition of "current drug user" applied by the Department of Labor in its administration of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–12213. Regulations issued pursuant to the ADA indicate that the term "current user" is not intended to be limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use occurred recently enough to indicate that the individual is actively engaged in such conduct. 29 CFR Part 1630, Appendix.

Similarly, the definition of "addicted to any controlled substance" is based on Federal law, 21 U.S.C. § 802, and defines an "addict" as an individual who uses any narcotic drug and who has lost the power of self- control with respect to the use of the narcotic drug.

Persons Who Have Been Adjudicated as Mental Defectives or Been Committed to a Mental Institution

Under the GCA, it is unlawful for any person who has been adjudicated a mental defective or committed to a mental institution to ship, transport, receive, or possess firearms. The legislative history of the GCA makes it clear that a formal adjudication or commitment by a court, board, commission or similar legal authority is necessary before firearms disabilities are incurred. H.R. Rep. 1956, 90th Cong., 2d Sess. 30 (1968). The plain language of the statute makes it clear that a formal commitment, for any reason, e.g., drug use, gives rise to firearms disabilities. However, the mere presence of a person in a mental institution for observation or a voluntary commitment to a mental hospital does not result in firearms disabilities.

With respect to the term "adjudicated as a mental defective," ATF has examined the legislative history of the term, applicable case law, and the interpretation of the term by other Federal agencies. The legislative history makes it clear that Congress would broadly apply the prohibition against the ownership of firearms by "mentally unstable" or "irresponsible" persons. 114 Cong. Rec. 21780, 21791, 21832, and 22270 (1968).

The legislative history of the GCA is reviewed in detail in *Huddleston* v. *United States,* 415 U.S. 814 (1974). The Court stated that "the principal purposes of the federal gun control legislation * * * was to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them, because of age, criminal background, or incompetency.'" 415 U.S. at 824 (citation omitted). Citing remarks by Congressman Cellar, the Court added that "* * * no person can dispute the need to prevent persons with a history of mental disturbances from buying, owning or possessing firearms." *Huddleston,* 415 U.S. at 828. See also S. Rep. No. 1097, 90th Cong., 2d Sess. 2 (1968), U.S. Code Cong & Ad.News 1968, pp. 2113–2114.

The Supreme Court also addressed the disability in *Barrett v. United States,* 423 U.S. 212 (1976). As the Court observed, the GCA demonstrated that Congress sought to keep firearms away from those persons Congress classified as potentially irresponsible and dangerous. "These persons are comprehensively barred by the Act from acquiring firearms by any means." *Barrett* 413 U.S. at 218.

Another case held that the GCA is designed to prohibit the receipt and possession of firearms by individuals who are potentially dangerous, including those individuals who are mentally incompetent or are afflicted with mental illness. *U.S.* v. *Waters,* 23 F.3d 29, 35 (2d Cir. 1994), *cert. den.* 115 S. Ct. 185 (1994). In addition, the disability has been held to apply to persons in criminal cases who are found not guilty by reason of insanity. *See Buffaloe* v. *United States,* 449 F.2d 779 (4th Cir. 1971).

ATF has also examined the definition of "mental incompetent" used by the Department of Veterans Affairs. That definition covers persons who because of injury or disease lack the mental capacity to contract or manage their own affairs. 38 CFR § 3.353.

Based on the above, the proposed regulation will define "adjudicated as a mental defective" as a determination by lawful authority that persons are of marked subnormal intelligence, mentally ill, or mentally incompetent AND are found to be either a danger to themselves or to others as a result of mental disease or illness or because of injury or disease lack the mental capacity to contract or manage their own affairs. The term shall also include defendants in criminal cases who are determined by a verdict to be insane. It will not include persons who suffer from mental illness but have not been adjudicated by a lawful authority or committed to a mental institution. It would also not include persons who have been adjudicated to be suffering from a mental illness but who are not a danger to themselves or to others or do not lack the capacity to contract or manage their own affairs.

For purposes of this disability, the proposed regulations define "mental institution" to include mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Persons Who Are Aliens and Are Illegally or Unlawfully in the United States

Another category of prohibited persons under the GCA includes aliens who are illegally or unlawfully in the United States. Based on the statutory language and relevant case law, the proposed definition of "alien illegally or unlawfully in the United States" includes any alien: who has entered the country illegally; nonimmigrant whose authorized period of admission has expired; student who has failed to maintain status as a student; alien under order of deportation whether or not he or she has left the United States. The definition does not include aliens who are in "immigration parole" status in the United States pursuant to the Immigration and Naturalization Act. The proposed definition will provide that aliens who enter the country illegally and have not applied for legal status are subject to firearms disabilities. *United States* v. *Garcia,* 875 F.2d 257 (9th Cir. 1989). Further, students who enter the country legally but fail to maintain the student status required by their visas are illegal aliens subject to Federal firearms disabilities. *United States* v. *Bazargan,* 992 F.2d 844 (8th Cir. 1993).

Persons Who Have Been Discharged From the Armed Forces Under Dishonorable Conditions

The GCA makes it unlawful for persons who have been discharged from the Armed Forces under dishonorable conditions to receive or possess firearms. The legislative history of this provision shows that the prohibition originally applied to persons discharged under "other than honorable conditions." The Omnibus Crime and Safe Streets Act of 1968, Pub. L. 90–351, Title VII, § 1202(2), 82 Stat. 226 (1968). However, Title VII was amended by the GCA to limit the prohibition to persons discharged under "dishonorable conditions." Therefore, the proposed definition makes it clear that the prohibition applies only to persons discharged under dishonorable conditions but not to include persons separated from the Armed Forces as a result of other types of discharges, e.g., a bad conduct discharge.

Persons Who Have Renounced Their United States Citizenship

With respect to persons who have renounced their United States citizenship, Federal law provides that renunciation can only occur in a formal manner before a diplomatic or consular officer of the United States in a foreign state or before an officer designated by the Attorney General when the United States is in a state of war. 8 U.S.C. § 1481(a) (5) and (6).

Persons Who Are Subject to a Court Order Restraining Them From Committing Domestic Violence

ATF is proposing a definition of "actual notice" with respect to persons subject to court-issued restraining orders (§ 178.32). The Violent Crime Control and Law Enforcement Act of 1994 (the Act), Public Law 103–322, 108 Stat. 2014, September 13, 1994, amended the GCA to make it unlawful for persons subject to an order

restraining a person from harassing, stalking, or threatening an intimate partner of the person (e.g., spouse) to receive, ship, transport, or possess firearms. The Act provides that such restraining orders must have been issued after a hearing of which actual notice was given to the person and at which the person had an opportunity to participate. However, the Act does not define "actual notice." The proposed definition of actual notice conforms with the generally recognized legal definition of that term, i.e., notice that is either expressly and actually given or inferred from an examination of surrounding facts and circumstances. The definition would not include publication of notice in a newspaper.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this notice of proposed rulemaking. Accordingly, this proposal is not subject to the analysis required by this Executive order.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This notice proposes definitions for the categories of persons prohibited from receiving or possessing firearms. The proposed definitions are necessary to implement the national instant criminal background check system required under the Brady law. This notice does not propose any reporting or recordkeeping requirements on firearms licensees. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information. The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR Part 178—COMMERCE IN FIREARMS AND AMMUNITION is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.11 is amended by revising the definitions for "discharged under dishonorable conditions", "fugitive from justice", and "indictment", and by adding definitions for "addicted to any controlled substance", "adjudicated as a mental defective", "alien illegally or unlawfully in the United States", "committed to a mental institution", "controlled substance", "mental institution", "renounced U.S. citizenship", and "unlawful user of any controlled substance" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(1) Is a danger to himself or to others; or

(2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include a finding of insanity by a court in a criminal case.

Alien illegally or unlawfully in the United States. (a) Aliens who are unlawfully in the United States or are not in a valid nonimmigrant or immigrant status. The term includes any alien—

(1) Who has entered the country illegally;

(2) Nonimmigrant whose authorized period of admission has expired;

(3) Student who has failed to maintain status as a student; or

(4) Under an order of deportation, whether or not he or she has left the United States.

(b) The term does not include aliens who are in "immigration parole" status in the United States pursuant to the Immigration and Naturalization Act (INA).

* * * * *

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other legal authority. The term includes a commitment to a mental institution involuntarily. The term includes a commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Controlled substance. A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

* * * * *

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a Dishonorable Discharge. The term does not include separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge or a dismissal.

* * * * *

Fugitive from justice. Any person who has fled from any State to avoid

prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

* * * * *

Indictment. Includes an indictment or any formal accusation of a crime made by a prosecuting attorney, in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted or where a case has been referred to court-martial if the person is in the military.

* * * * *

Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

* * * * *

Renounced U.S. citizenship. A person has renounced his U.S. citizenship if the person, having been a citizen of the United States, has renounced citizenship either—

(a) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. § 1481(a)(5) and (6); or

(b) Before an officer designated by the Attorney General when the United States is in a state of war.

* * * * *

Unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year, or multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year.

* * * * *

Par. 3. Section 178.32(e) is added to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

* * * * *

(e) The actual notice required by paragraphs (a)(8)(i) and (d)(8)(i) of this section is notice expressly and actually given, and brought home to the party directly, including service of process personally served on the party and service by mail. Actual notice also includes proof of facts and circumstances that raise the inference that the party received notice including, but not limited to, proof that notice was left at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or proof that the party signed a return receipt for a hearing notice which had been mailed to the party. It does not include notice published in a newspaper.

Signed: May 29, 1996.

John W. Magaw,

Director.

Approved: June 6, 1996.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–22827 Filed 9–5–96; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–146–2–9608b; FRL–5554–5]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Approval of Revisions To Permit Requirements, Definitions and Administrative Requirements

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee for the purpose of revising the current regulations for the permit requirements for major sources of air pollution, including revisions to the general definitions, permit requirements, the Board's powers and duties, the variances and hearings procedures, the measurement and reporting of emissions, and the testing procedures. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 7, 1996.

ADDRESSES: Written comments on this action should be addressed to Karen Borel, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311–23rd Avenue, North, Nashville, Tennessee 37203.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Interested persons wanting to examine documents relative to this action should make an appointment with the Region 4 Air Programs Branch at least 24 hours before the visiting day. To schedule the appointment or to request additional information, contact Karen Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 EPA, 345 Courtland

Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4197. Reference file TN146–02–9608.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 18, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–22808 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[FRL–5560–5]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Wyoming; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing to correct the State Implementation Plan (SIP) for the State of Wyoming regarding the State's ambient standards for fluorides and hydrogen sulfide and the State's odor control regulation, pursuant to section 110(k)(6) of the Clean Air Act, as amended in 1990. In addition, EPA is correcting an error in the boundary description for the "Powder River Basin" PM–10 unclassifiable area in 40 CFR 81.351. In the final rules section of this **Federal Register**, the EPA is promulgating this action in a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by October 7, 1996.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8P2–A, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper at (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules Section of this **Federal Register**.

Dated: August 14, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–22644 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 215, and 252

Defense Federal Acquisition Regulation Supplement; Procurement Integrity

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the provisions of Section 4304 of the Federal Acquisition Reform Act of 1996, including the repeal of prohibitions on compensation to former Department of Defense employees in Sections 2397, 2397a, 2397b, and 2397c of Title 10, United States Code.

DATES: *Comment date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before November 5, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Michael Pelkey, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington D.C. 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D310 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4304 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104–106) amended the Procurement Integrity provision, Section 27 of the Office of Federal Procurement Policy Act, and repeal Sections 2397, 2397a, 2397b, and 2397c of Title 10, United States Code, which proscribed certain compensation to former Department of Defense (DoD) employees. This rule removes regulations implementing the repealed sections and conforms DFARS section 203.104 with the FAR revisions being proposed under FAR Case 96–314, Procurement Integrity.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to "major defense contractors," (i.e., contractors with DoD contracts exceeding $10 million per Government fiscal year), and affects only the ability of such contractors to provide compensation to certain former DoD employees. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96–D310 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule would eliminate the information collection and reporting requirements of DFARS 203.170–2 and the associated clause at 252.203–7000. The requirements which would be eliminated were approved by the Officer of Management and Budget (OMB) under OMB Clearance number 0704–0277.

List of Subjects in 48 CFR Parts 203, 215, and 252

Government Procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 203, 215, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 203, 215, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

203.104–4 [Removed]

2. Section 203.104–4 is removed.

203.104–5 [Amended]

3. Section 203.104–5 is amended by redesignating paragraph (e)(4) as (d)(4); and revising, in newly redesignated paragraph (d)(4), the reference "FAR 3.104–5(e)(4)" to read "FAR 3.104–5(d)(4)".

203.170 through 203.170–4 [Removed]

4. Sections 203.170 through 203.170–4 are removeds.

PART 215—CONTRACTING BY NEGOTIATION

5. Section 215.608 is amended by revising the last sentence of paragraph (b) to read as follows:

215.608 Proposal evaluation.

* * * * *

(b) * * * Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Removed and reserved]

6. Section 252.203–7000 is removed and reserved.

[FR Doc. 96–22617 Filed 9–5–96; 8:45 am]
BILLING CODE 5000–04–M

48 CFR Parts 212, 219, 225, 226, 227, 233, and 252

[DFARS Case 96–D306]

Defense Federal Acquisition Regulation Supplement; Elimination of Certifications

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove certification requirements for contractors and offerors that are not specifically imposed by statute.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before November 5, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Mutty, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D306 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr Michael Mutty, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS Parts 212, 219, 225, 226, 227, 233, and 252 to remove particular certification requirements. The proposed rule implements Section 4301(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106). Section 4301(b) requires the head of each executive agency, that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute, to issue for public comment a proposal to remove from the agency regulations those certification requirements that are not specifically imposed by statute. The head of the agency can omit such a certification from its proposal only if: (1) The senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (2) the head of the executive agency approves in writing the retention of such certification requirement.

The DFARS certifications for contractors and offerors proposed for elimination are summarized as follows:

DFARS citation	Title/subject
219.301	Representations by the offeror.
219.302–70	Protesting a small disadvantaged business representation.
225.603	Customs and Duties.
226.7005/7008	Eligibility as an HBCU or MI.
227.7004/7103/7104	Patents/Technical Data.
233.70/252.233–7000	Certification of Claims and Request for Adjustment or Relief.
252.216–7000	Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.
252.216–7001	Economic Price Adjustment—Nonstandard Steel Items.
252.217–7005	Inspection and Manner of Doing Work.
252.219–7000	Small Disadvantaged Business Concern Representation (DoD Contracts).
252.225–7000/7006	Buy American Act/Trade Agreements/Balance of Payments Program.
252.225–7007	Trade Agreements.
252.225–7009/7010/7037	Duty Free Entry.
252.225–7018	Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.
252.225–7027	Limitation on Sales Commissions and Fees.
252.225–7035/7036	Buy American Act/NAFTA/Balance of Payments Program.
252.226–7001	Historically Black College or University and Minority Institution Certification.
252.227–7036	Certification of Technical Data Conformity.
252.236–7003	Payment for Mobilization and Preparatory Work.
252.236–7006	Cost Limitation.
252.239–7007	Cancellation or Termination of Orders—Common Carriers.
252.247–7001	Price Adjustment.

The DFARS certifications for contractors and offerors specifically required by statute are summarized as follows:

DFARS citation	Title/subject	Statute
225.770/252.225–7031	Secondary Arab Boycott of Israel	10 U.S.C. 2410i.
232.970–1	Subcontractor Assertions of Nonpayment	31 U.S.C. 3903(b)(1)(B).
239.7406/252.239–7009	Cost or Pricing Data—Common Carriers	10 U.S.C. 2306a.
252.239–7010	Audit and Records—Common Carriers	10 U.S.C. 2306a.
252.243–7000	Engineering Change Proposals	10 U.S.C. 2306a.

B. Regulatory Flexibility Act

This proposed rule is expected to have a significant beneficial impact on a substantial number of small entities, because it reduces the number of certifications that offerors and contractors must provide to the Government. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. The IRFA is summarized as follows: This rule removes DFARS certification requirements for contractors and offerors that are not specifically imposed by statute. The objective and legal basis of the rule is Section 4301(b) of the Fiscal Year 1996 Defense Authorization Act (Public Law 104–106). The rule will apply to all entities, large and small, who are interested in receiving Government contracts. The rule imposes no reporting, recordkeeping, or other compliance requirements, but, rather, deletes existing certification requirements that are not required by statute. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will effectively implement Section 4301(b) of Public Law 104–106. The rule is expected to have a beneficial impact on the public and, therefore, applies equally to both large and small entities.

Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 96–D306 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any new recordkeeping, information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 212, 219, 225, 226, 227, 233, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 219, 225, 226, 227, 233, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 212, 219, 225, 226, 227, 233, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.301 is amended by revising paragraph (f)(ii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(ii) Use one of the following provisions as prescribed in Part 225:

(A) 252.225–7000, Buy American Act—Balance of Payments Program Provision.

(B) 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Provision.

(C) 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.301 is amended by revising paragraph (b) to read as follows:

219.301 Representation by the offeror.

* * * * *

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror represents that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or Subcontinent Asian American; unless the offeror represents that—

(A) It currently is in the Section 8(a) program; or

(B) Within the 6 months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

4. Section 219.302–70 is amended by revising paragraphs (d) and (e) to read as follows:

219.302–70 Protesting a small disadvantaged business representation.

* * * * *

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW.; Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness; and

(3) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest; or

(2) The offeror represents that, within the 6 months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

* * * * *

PART 225—FOREIGN ACQUISITION

5. Section 225.109 is amended by revising the first sentence of paragraph (a) to read as follows:

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Provision, instead of

the provisions at FAR 52.225–1, Buy American Provision, and FAR 52.225–6, Balance of Payments Program Provision.

* * *

* * * * *

6. Section 225.408 is amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

225.408 Solicitation provisions and contract clauses.

(a)(1) Use the provision at 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Provision, instead of the provision at FAR 52.225–8, Buy American Act—Trade Agreements—Balance of Payments Program Provision, in all solicitations that include the clause at 252.225–7007, Trade Agreements.

* * * * *

(3) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision, instead of the provision at FAR 52.225–20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision, in all solicitations that include the clause at 252.225–7036, North American Free Trade Agreement Implementation Act.

* * * * *

7. Section 225.603 is amended by revising paragraph (1)(iii)(C)*(2)* to read as follows:

225.603 Procedures.

(1) * * *

(iii) * * *

(C) * * *

(2) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to furnished to the Government, and the duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

8. Section 226.7005 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

226.7005 Eligibility as an HBCU or MI.

* * * * *

(b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at 252.226–7001, unless—

(1) Another offeror challenges the status; or

* * * * *

226.7006 [Amended]

9. Section 226.7008 is amended in paragraph (b) by removing the word "Certification" and inserting the word "Status" in its place.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7004 [Amended]

10. Section 227.7004 is amended in paragraph (a)(6) by removing the word "certification" and inserting the word "declaration" in its place.

227.7103–6 [Amended]

11. Section 227.7103–6 is amended in paragraph (e)(3) by removing the word "Certification" and inserting the word "Declaration" in its place.

227.7104 [Amended]

12. Section 227.7104 is amended in paragraph (e)(5) by removing the word "Certification" and inserting the word "Declaration" in its place.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Subpart 233.70—[Removed]

13. Subpart 233.70 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 252.216–7000 is amended by removing paragraph (c)(4) and by revising paragraph (e)(1) to read as follows:

252.216–7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

* * * * *

(e) * * *

(1) The Contractor may, after that time, deliver any items which were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

* * * * *

252.216–7001 [Amended]

15. Section 252.216–7001 is amended in the introductory text of paragraph (f)(2) by removing the words "and certifying"; and in the first sentence of paragraph (f)(4) by removing the word "certified".

16. Section 252.217–7005 is amended by revising paragraph (e)(6) to read as follows:

252.217–7005 Inspection and Manner of Doing Work.

* * * * *

(e) * * *

(6) Furnish the Contracting Officer or designated representative with a copy of the "gas-free" or "safe-for-hotwork" certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

* * * * *

17. Section 252.219–7000 is amended by revising the introductory text of paragraph (c) to read as follows:

252.219–7000 Small Disadvantaged Business Concern Representation (DoD Contracts).

* * * * *

(c) Complete the following—

* * * * *

18. Section 252.225–7000 is amended by revising the section title, clause title and date, and paragraph (c) to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Provision.

* * * * *

Buy American Act—Balance of Payments Program Provision (Date)

* * * * *

(c) *Origin of end products.*

(1) Each end product, except those listed in paragraphs (c) (2) or (3) of this clause, is a domestic end product. Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The following end products are qualifying country end products:

Qualifying Country End Products

_____

Line Item Number

_____

Country of Origin

(3) The following end products are nonqualifying country end products:

Nonqualifying Country End Products

_____

Line Item Number

_____

Country of Origin (If known)

(End of provision)

19. Section 252.225–7006 is amended by revising the section title, clause title and date, and paragraph (c) to read as follows:

252.225–7006 Buy American Act—Trade Agreements—Balance of Payments Program Provision.

* * * * *

Buy American Act—Trade Agreements—Balance of Payments Program Provision (Date)

* * * * *

(c) *Origin of end products.*

(1) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation). Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror must identify all end products that are not domestic end products.

(i) The following supplies qualify as "U.S. made end products" but do not meet the definition of "domestic end product":

_____

(insert line item number)

(ii) The following supplies are qualifying country end products:

_____

(insert line item number)

_____

(insert country of origin)

(iii) The following supplies qualify as designated country end products:

_____

(insert line item number)

_____

(insert country of origin)

(iv) The following supplies qualify as Caribbean Basin country end products:

_____

(insert line item number)

_____

(insert country of origin)

(v) The following supplies qualify as NAFTA country end products:

_____

(insert line item number)

_____

(insert country of origin)

(vi) The following supplies are other nondesignated country end products:

_____

(insert line item number)

_____

(insert country of origin)

(End of provision)

20. Section 252.225–7007 is amended by revising the introductory text of paragraph (c), paragraph (c)(2), and paragraph (d) to read as follows:

§ 252.225–7007 Trade Agreements.

* * * * *

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, designated country, NAFTA country, or nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Provision.

* * * * *

(2) An offer proposing that a qualifying country end product, a designated country end product, a NAFTA country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, a NAFTA country end product, or a Caribbean Basin country end product, whichever is proposed, or, at the Contractor's option, a U.S. made end product.

(d) The offered price of end products listed under paragraphs (c)(2)(i) and (vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Provision of the solicitation must include all applicable duty. The offered price of qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty.

(End of clause)

21. Section 252.225–7009 is amended by revising paragraph (i)(10) to read as follows:

§ 252.225–7009 Duty-Free Entry—Qualifying Country End Products and Supplies.

* * * * *

(i) * * *

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer;

* * * * *

22. Section 252.225–7010 is amended by revising paragraph (c)(10) to read as follows:

§ 252.225–7010 Duty-Free Entry—Additional Provisions.

* * * * *

(c) * * *

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmetnal use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

* * * * *

23. Section 252.225–7018 is amended by revising paragraph (e) to read as follows:

252.225.7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

* * * * *

(e) The offeror (____) is (____) is not a U.S. firm.

(End of provision)

24. Section 252.225–7027 is amended by revising paragraphs (a) and (b) to read as follows:

252.225–7027 Limitation on Sales Commissions and Fees.

* * * * *

(a) For firm-fixed-price contracts or fixed-price contracts with economic price adjustment, the contract price (including any subcontracts) shall not include any direct or indirect cost of sales commissions or fees for Contractor sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of

_____.

(b) For all other types of contracts, notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for Contractor (or subcontractor) sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of _____ shall be an unallowable item of cost under this contract.

(End of clause)

25. Section 252.225–7035 is amended by revising the section title, clause title and date, and paragraph (c) to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision.

* * * * *

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program Provision (Date)

* * * * *

(c) *Origin of end products.*

(1) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation). Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror must identify all end products that are not domestic end products.

(i) The following supplies qualify as "U.S. made end products" but do not meet the definition of "domestic end product":

_____

(insert line item number)

(ii) The following supplies are qualifying country (except Canada) end products:

_____

(insert line item number)

_____

(insert country of origin)

(iii) The following supplies qualify as NAFTA country end products:

_____

(insert line item number)

_____

(insert country of origin)

(iv) The following supplies are other non-NAFTA country end products:

_____

(insert line item number)

_____

(insert country of origin)

(End of provision)

26. Section 252.225–7036 is amended by revising paragraphs (c) and (d); and in Alternate I by revising the date and paragraph (c) to read as follows:

252.225–7036 North American Free Trade Agreement Implementation Act.

* * * * *

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision. An offer proposing that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is proposed, or, at the Contractor's option, a U.S. made end product.

(d) The offered price of end products listed under paragraphs (c)(2) (i) and (iv) of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program Provision of the solicitation must include all applicable duty. The offered price of qualifying country end products or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty.

(End of clause)

Alternate I (Date)

* * * * *

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Provision. An offer proposing that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is proposed, or, at the Contractor's option, a U.S. made end product.

27. Section 252.225–7037 is amended by revising paragraph (i)(10) to read as follows:

252.225–7037 Duty-Free Entry—NAFTA Country End Products and Supplies.

* * * * *

(i) * * *

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

* * * * *

28. Section 252.226–7001 is amended by revising the section title, clause title and date, and paragraph (b) to read as follows:

252.226–7001 Historically Black College or University and Minority Institution Status.

* * * * *

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION STATUS (DATE)

* * * * *

(b) *Status.*

If applicable, the offeror shall check the appropriate box below:

_____ A historically black college or university

_____ A minority institution

(End of provision)

29. Section 252.227–7036 is revised to read as follows:

252.227–7036 Declaration of Technical Data Conformity.

As prescribed at 227.7103–6(e)(3) or 227.7104(e)(5), use the following clause:

Declaration of Technical Data Conformity (Date)

All technical data delivered under this contract shall be accompanied by the following written declaration: The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Authorized Official _____

(End of clause)

252.233–7000 [Removed]

30. Section 252.233–7000 is removed.

31. Section 252.236–7003 is amended by revising paragraphs (c)(1) and (c)(2) and the introductory text of paragraph (c)(3) to read as follows:

252.236–7003 Payment for Mobilization and Preparatory Work.

* * * * *

(c) * * *

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation—

* * * * *

252.236–7006 [Amended]

32. Section 252.236–7006 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

252.239–7007 [Amended]

33. Section 252.239–7007 is amended in paragraph (d)(1) by removing the word "certified".

252.247–7001 [Amended]

34. Section 252.247–7001 is amended in paragraph (g) by removing the word "certification" and inserting the word "statement" in its place.

[FR Doc. 96–22618 Filed 9–5–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Endangered Status for Two San Francisco Bay California Tidal Marsh Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing and reopening of the comment period on the proposed endangered status for *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak). All parties are invited to comment on this proposal.

DATES: The public hearing will be held from 6:00 p.m. to 8:00 p.m. on Wednesday, October 2, 1996, in Fairfield, California. The public comment period now closes on October 15, 1996. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Holiday Inn, 1350 Holiday Lane, Fairfield, California. Written comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Field Office (see **ADDRESSES** section) at (916) 979–2710; facsimile (916) 979–2723.

SUPPLEMENTARY INFORMATION:

Background

Cirsium hydrophilum var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's beak) are restricted to salt or brackish tidal marshes within the San Francisco Bay area in northern California. Habitat conversion, changes in salinity of tidal marshes, water pollution, indirect effects of urbanization, habitat fragmentation, mosquito abatement activities such as off-road vehicle use and dredging, competition with non-native plants, insect predation, chance environmental events, inadequacy of existing laws, erosion, and other human-caused activities variously threaten these plants. Activities such as waterfowl hunting, bird watching, and fishing do not adversely affect the plants. A proposal to list these two plants was published in the **Federal Register** on June 12, 1995 (60 FR 31000).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 et seq.) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. A public hearing request was received within the allotted time period from Paul Campos, General Council for the Building Industry Association. Because a Congressional moratorium on the Service's activities associated with final listing actions was in effect from April 1995, to April 1996, scheduling of the hearing was delayed. The Service has now scheduled a public hearing to be held on Wednesday, October, 2, 1996, from 6:00 p.m. to 8:00 p.m. at the Holiday Inn, 1350 Holiday Lane, Fairfield, California.

Anyone wishing to make statements for the record should bring a written copy of their statement to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places no limits on the length of written comments or materials presented at the hearing or mailed to the Service.

The comment period on the proposal was to close on August 21, 1995. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until October 15, 1996, to the Service in the ADDRESSES section.

The primary author of this notice is Kirsten Tarp (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended: (16 U.S.C. 1531 *et seq.*)

Dated: August 30, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 96–22765 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960905216–6236–02; I.D. 081696D]

RIN 0648–AH06

Fisheries of the Northeastern United States; Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Resubmission of Disapproved Measure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to obtain public comments concerning a provision of Amendment 9 to the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries that was initially disapproved, but that has been revised and resubmitted by the Mid-Atlantic Fishery Management Council (Council). This measure would establish a quarterly coastwide commercial quota setting mechanism with trip limits for the coastal states from Maine through North Carolina. The intent of Amendment 9 is to reduce fishing mortality and to allow the stock to rebuild.

DATES: Public comments must be received on or before September 26, 1996.

ADDRESSES: Send comments on this proposed rule to Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Resubmitted Black Sea Bass Measure."

Copies of the resubmitted portion of Amendment 9 and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

The Council submitted Amendment 9 for Secretarial review on June 20, 1996. On July 19, 1996, NMFS, on behalf of the Secretary of Commerce, after a preliminary evaluation of Amendment 9, as authorized under section 304(a)(1)(A) of the Magnuson Fishery Management and Conservation Act (Magnuson Act), disapproved the provision that would have implemented a state-by-state quota for black sea bass in 1998. A proposed rule to implement the remainder of Amendment 9 was published on August 21, 1996 (61 FR 43217).

The Council revised the quota provision to address NMFS' concerns, which are summarized in the preamble to the proposed rule, and, under section 304(b)(3)(A) of the Magnuson Act, submitted for Secretarial review a proposed measure that would implement a quarterly coastwide quota with trip limits that would be allocated to the commercial black sea bass fishery from Maine through North Carolina.

Proposed Measures

The resubmitted measure would implement in 1998 a quarterly coastwide quota with trip limits that would be allocated to the commercial black sea bass fishery from Maine through North Carolina. The allocation and the associated percentages for the total quota would be: January–March (38.64 percent), April–June (29.26 percent), July–September (12.33 percent), and October–December (19.77 percent). Under the proposed measure, any black sea bass landed by a vessel possessing a black sea bass moratorium permit would count towards the quota, regardless of where the fish were harvested. Any black sea bass landed for sale by a vessel without a moratorium permit and fishing exclusively in state waters north of Cape Hatteras would be counted towards the quota by the state in which it is landed pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Atlantic States Marine Fisheries Commission. The Regional Director would close the exclusive economic zone (EEZ) to possession of black sea bass by commercial vessels with a

moratorium permit when any quarterly quota has been landed. States would have the responsibility for closure in their state to further landings.

A series of prohibitions and management measures have been proposed to address NMFS' original concerns with regard to monitoring and enforcement in the State of North Carolina. For example, because all landings of black sea bass by vessels with moratorium permits would count against the quota, landings of black sea bass in states south of North Carolina by these vessels would diminish the accuracy of the quota monitoring. The states of Maine through North Carolina have an investment in the administration of the quota system. In the event of a closure in the EEZ north of Cape Hatteras, vessels with moratorium permits could not possess black sea bass either north or south of Cape Hatteras in order to maintain the integrity of that closure, as it would be impossible to determine the harvest location of the black sea bass on board. As a consequence, owners of vessels that have both a moratorium permit and a snapper-grouper permit would be prevented from using their snapper-grouper permit to land black sea bass south of Cape Hatteras, unless they relinquish their moratorium permit. Therefore, to allow vessel owners with moratorium permits greater flexibility to fish for and land black sea bass south of Cape Hatteras, vessel owners could voluntarily relinquish their moratorium permit during a closure and fish the southern stock of black sea bass under their valid snapper-grouper permit. After a 6-month delay for administrative and enforcement purposes, they could reapply for a moratorium permit and again be subject to the provisions of that permit. It is anticipated that with these specific restrictions in place, implementation, monitoring, and enforcement of the quota would be possible.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined whether the measures that this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule issued under authority of section 304(a) of the Magnuson Fishery Conservation and Management Act will not have a significant economic impact on a substantial number of small entities during the 1997 fishing year. The proposed rule would implement a coastwide commercial quota setting mechanism with trip limits allocated to quarterly periods (quota) for the black sea bass fishery in coastal states from Maine through North Carolina.

Because the quota would not be initiated until 1998, there will be no immediate effects on small entities from this rulemaking. During the 1997 fishing year, the Black Sea Bass Monitoring Committee (Monitoring Committee) will recommend a coastwide commercial quota and trip limits for 1998. The Monitoring Committee will review commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; and other information, and recommend to the Mid-Atlantic Fishery Management Council (Council) the allowable levels of fishing and other restrictions necessary to achieve the specified target exploitation rates. Based on the Council's consideration of these factors and resulting recommendation, NMFS will issue the proposed specifications for the 1998 quota. If it is determined that the proposed specifications will not have a significant economic impact on a substantial number of small entities, it will be so certified. If not, an initial regulatory flexibility analysis will be prepared at that time.

The Council has determined that the revised measure has no impact on the previous determination that Amendment 9 is consistent to the maximum extent practicable with the approved coastal zone management programs of the Atlantic states. The Amendment 9 submission from the Council analyzed the impacts of a bimonthly coastwide quota and the change to a quarterly system is insignificant for the reasons outlined above. Therefore, the proposed modified measure falls within the scope of the Coastal Zone Management Act consistency review conducted for Amendment 9.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 30, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the proposed rule published at 61 FR 43217, August 21, 1996, proposing to amend 50 CFR part 648 is further proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4 paragraphs (a)(7)(i)(C), (a)(7)(i)(D), (a)(7)(i)(E), and (a)(7)(i)(F) are redesignated as (a)(7)(i)(D), (a)(7)(i)(E), (a)(7)(i)(F), and (a)(7)(i)(G), respectively, and paragraph (a)(7)(i)(C) is added to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a)(7) * * *

(i) * * *

(C) *Voluntary relinquishment of permit.* A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered to the Regional Director will be reissued at the vessel owner's request after a minimum period of 6 months from the date of cancellation.

* * * * *

3. In § 648.14 paragraph (t)(3) is revised, and paragraphs (t)(9) through (t)(11) are added, inclusively, to read as follows:

§ 648.14 Prohibitions.

(t) * * *

(3) Land black sea bass for sale in any state, or part thereof, north or south of 35°15.3′ N. lat. after the effective date of the notification published in the **Federal Register** stating that the commercial coastwide quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(9) Possess, retain or land black sea bass harvested in or from the EEZ in excess of the commercial trip limit established pursuant to § 648.140.

(10) Land black sea bass for sale in any state south of North Carolina.

(11) Possess black sea bass harvested in or from the EEZ north or south of 35°15.3′ N. lat. after the effective date of the notification published in the **Federal Register** stating that the commercial coastwide quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

4. In § 648.140 paragraphs (b)(1) through (b)(7) are redesignated as (b)(3) through (b)(9), respectively, paragraphs (b)(1) and (b)(2) are added, paragraph (c) is revised, and paragraph (d) is added to read as follows:

§ 648.140 Catch quotas and other restrictions.

(a) * * *

(b) * * *

(1) A commercial quota allocated to quarterly periods set from a range of (0) to the maximum allowed to achieve the specified target exploitation rate specified in paragraph (a) of this section. Implementation of this measure will begin in 1998.

(2) A commercial trip limit set from a range of (0) to the maximum allowed to assure that the quarterly quota is not exceeded.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section are not exceeded. The Council shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Director with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the **Federal Register** by October 15 to implement a quarterly coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. A proposed rule will be published in the **Federal Register** by February 15 to implement additional management measures for the recreational fishery, if the Regional Director determines that such measures are necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. After considering public comment, the Regional Director will publish a final rule in the **Federal Register** to implement the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded.

(d) *Distribution of annual quota.* (1) Beginning January 1, 1998, a coastwide commercial quota will be allocated by quarterly periods based upon the following percentages:

QUARTERLY COMMERCIAL QUOTA SHARES

Quarter	Share (percent)
January-March	38.64
April-June	29.26
July-September	12.33
October-December	19.77

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) of this part shall be applied against that quarter's coastwide commercial quota, regardless of where the black sea bass were harvested. All black sea bass landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters north of 35°15.3' N. lat. will be counted against the quota by the state in which it is landed pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Atlantic States Marine Fisheries Commission. The Regional Director will determine the date on which the quarterly quota will be harvested and the EEZ north of 35°15.3' N. lat. closed. The Regional Director will publish a notice in the **Federal Register** advising that, upon that date, no vessel may possess black sea bass in this area during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Any overages of the commercial coastwide quota landed will be deducted from that quarter's coastwide quota for the following year.

[FR Doc. 96–22752 Filed 9–5–96; 8:45 am]
BILLING CODE 3510–22–W

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50 CFR Part 679

[I.D. 082796A]

RIN 0648–AH28

Fisheries of the Exclusive Economic Z[illegible] Off Alaska; Protection of Red [illegible]ng Crab in Bristol Bay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of an Amendment to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 37 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) for Secretarial review. Amendment 37 would establish the Red King Crab Savings Area trawl closure and the Nearshore Bristol Bay trawl closure, require increased observer coverage on some vessels in the closure areas, and adjust the Zone 1 red king crab prohibited species catch limits based on Bristol Bay red king crab abundance and biomass.

DATES: Comments on the FMP amendment should be submitted on or before October 29, 1996.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802–1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 37 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the amendment are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving a fishery management plan or amendment, immediately publish a notice that the fishery management plan or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Bering Sea crab stocks are currently at relatively low levels based on 1995 NMFS bottom trawl survey data, which indicated that exploitable biomass of Bristol Bay red king crab is at about one-fifth record levels. The red king crab

stock is at its lowest level since the fishery was closed after the first stock collapse in 1983. In 1994 and 1995, Bristol Bay was closed to red king crab fishing because the female threshold of 8.4 million crab was not reached. In addition, the annual NMFS trawl surveys indicated little prospect for increased recruitment of mature males or females, and low female spawning biomass. Also, the area east of 163° W. long. was closed to Tanner crab fishing to minimize the bycatch of female red king crabs.

In view of the declining red king crab stock and the need to further protect and conserve red king crab in the Bristol Bay area of the Bering Sea, Amendment 37 would implement the following management measures:

1. A year round closure in a portion of Bristol Bay, the Red King Crab Savings Area (RKCSA), to directed fishing for groundfish by vessels using non-pelagic trawl gear;

2. A year round closure to all trawling in the nearshore waters of Bristol Bay, except that a portion would be left open during the period April 1 to June 15 each year; and

3. Adjustments to the Zone 1 PSC limit for red king crab taken in trawl fisheries.

Amendment 37 is intended to protect declining populations of red king crab and to further the goals and objectives of the FMP.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: August 30, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22724 Filed 8–30–96; 4:55 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 174
Friday, September 6, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 30, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer For Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Rural Business-Cooperative Service

Title: Survey—Cooperative Coordination of Production and Harvesting Decision.

Summary: The information will be collected from cooperatives involved in the production and marketing of fruits, vegetables and specialty crops for the purpose of determining to what extent these cooperatives manage and coordinate production practices and harvesting schedules with member growers.

Need and Use of the Information: The objectives of this research study are to determine the extent that fruit and vegetable cooperatives coordinate production and harvesting decisions, examine the effects these practices have on operating efficiency and competitiveness and to identify conditions and situations where implementation of coordination practices will have their greatest economic impact.

Description of Respondents: Business or other for-profit: Farms.

Number of Respondents: 210.

Frequency of Responses: Reporting: Other, one-time.

Total Burden Hours: 210.

Rural Housing Service

Title: CFR 1944–J, Section 504 Rural Housing Loans and Grants.

Summary: The objective of the Section 504 loan/grant program is to assist eligible, very low income, owner/occupants repair single family homes located in rural areas. Grants are only available for repairs that remove health or safety hazards.

Need and Use of the Information: The information is used to verify program eligibility requirements, to secure loan/grant assistance and to ensure that the program is administered in a manner consistent with legislative and administrative requirements.

Description of Respondents: Individuals or households.

Number of Respondents: 20,997.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,679.

Agricultural Marketing Service

Title: Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, Wisconsin, Marketing Order No. 930.

Summary: Marketing Order No. 930 authorizes the regulation of tart cherries for the purpose of providing orderly marketing conditions and to improve returns to growers.

Need and Use of the Information: The information is needed to establish a marketing order for tart cherries and will be used to determine voter eligibility and determine eligibility for nomination to serve as producer and handler members on the board.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 1,678

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 373.

Food and Consumer Service

Title: Summer Food Service Program Claim for Reimbursement

Summary: To fulfill requirements set forth in the summer food service program regulation issued by the Secretary of Agriculture, the meal and cost data must be collected on the FCS–143 claim form.

Need and use of the Information: The claim form is used to collect meal and cost data from sponsors in order to determine the reimbursement entitlement for meals served and to manage, plan, evaluate and account for government resources.

Description of Respondents: Not for-profit institutions.

Number of Respondents: 530.

Frequency of Responses: Recordkeeping; Reporting: Other, Summer.

Total Burden Hours: 1,193.

Food and Consumer Service

Title: Report of the Emergency Food Assistance Program (TEFAP) Administrative Costs

Summary: The common rule entitled "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local government" sets forth financial reporting requirements for State agencies administering nonentitlement programs such as TEFAP.

Need and Use of the Information: The information is used to ensure that States meet legislatively mandated requirements and that States match all Federal administrative funds that are not passed down to local agencies.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government

Number of Respondents: 55.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 963.

Foreign Agricultural Service

Title: Export Sales of U.S. Agricultural Commodities—Addendum

Summary: The Agricultural Trade Act of 1978 requires mandatory reporting by all export sellers of selected U.S. produced agricultural commodities. The published data is an "early warning" of sales activity and provides basis for more informed decisions by producers, exporters, futures market participants, consumers and government.

Need and Use of the Information: The export sales reporting system provides commodity market participants with information about commodity exports

and is one means by which USDA seeks to ensure fairness and soundness in commodity marketing.

Description of Respondents: Business or other for-profit.

Number of Respondents: 308.

Frequency of Responses: Recordkeeping; Reporting: Weekly.

Total Burden Hours: 22,245.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–22785 Filed 9–5–96; 8:45 am]

BILLING CODE 3410–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 7, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 26, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 FR 18571) of proposed addition to the Procurement List. Comments were received from the current contractor for this aircraft safety belt. The contractor indicated that its business is exclusively in military specification items, either as a contractor for the Department of Defense (DoD) or as a supplier to other DoD contractors. The contractor claimed that the Committee's actions in the past have generally served to injure or seriously impede the progress of small manufacturers like itself. The contractor also claimed that the Committee's practice of taking items from a family of similar products produced by small manufacturers frustrates the investment strategies which lead small businesses to offer families of products because they can use components interchangeably to provide cost-effective products at lower prices. The contractor stated that the Committee's actions in adding aircraft safety belts to the Procurement List in 1983 and 1987 have cost the contractor millions of dollars in sales volume. As a result, the contractor considers the Committee's program to be its most significant competitor and the most significant impediment the contractor faces in its attempt to grow from a small to a mid-size business.

It is true that there could be some cost savings realized by a contractor by purchasing larger quantities of components. However, there is no requirement for a contractor to pass these savings to the Government in the form of lower prices for the product being procured. Moreover, the contracting activity did not aggregate the proposed item with other family items in an effort to obtain lower prices. Consequently, the Committee must assume that the contracting activity didn't consider that purchasing the items as a family would result in lower prices. The nonprofit agency will be requested to solicit quotations from the commenter's firm for the components that the firm produces.

As the contractor noted in its comments, the Committee's primary measure of impact of a Procurement List addition on a current contractor is the percentage of the contractor's sales which the addition represents. This addition represents a very small percentage of the contractor's sales. In addition, the Committee does look at the impact of previous additions on a contractor. However, the Committee gives greater weight to the impact of recent additions, and less to earlier ones, particularly when the contractor's sales have increased since the addition occurred. The reason for this approach is that contractors usually recover from Committee impacts, so earlier impacts are not often a significant factor in the total impact on a contractor of a new addition to the Procurement List. In this case, the contractor's sales have increased since the 1983 and 1987 additions and a 1991 addition of another commodity where it was the current contractor. Accordingly, the Committee has determined that the current addition of an aircraft safety belt to the Procurement List will not have a severe adverse impact on the current contractor.

The Committee has interpreted the contractor's comments about the impact of the Committee's Javits-Wagner-O'Day (JWOD) Program on small business generally as a contention that the Committee should not add to its Procurement List commodities manufactured by small businesses. The Committee does not agree with this contention. The great majority of nonprofit agencies participating in the JWOD Program are small organizations, and their business capacities are similar to those of small businesses. The Committee would not be able to fulfill its statutory mandate of creating jobs for people who are blind or have other severe disabilities through nonprofit agencies if it could not add commodities manufactured by small businesses to its Procurement List. In addition, the JWOD Program's share of Federal contracts is only a very small percentage of the size of small businesses' share of Federal contracting. Consequently, small businesses, including the contractor, will not be significantly impeded by the JWOD Program from competing for DoD and other Federal contracts.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Belt, Aircraft Safety
1680–00–163–1570

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22776 Filed 9–5–96; 8:45 am]

BILLING CODE 6353–01–M

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATES: October 7, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 5, June 21, 28, July 26, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 15225, 31927, 33710 and 39118) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Tool Box and Kit
5140–01–424–9917 (box)
5180–01–423–6468 (kit)

Services

Grounds Maintenance, Scott Air Force Base, Illinois
Janitorial/Custodial, Federal Building and U.S. Courthouse, 46 E. Ohio Street, Indianapolis, Indiana
Janitorial/Grounds Maintenance, Calexico East Border Station, Calexico, California

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22777 Filed 9–5–96; 8:45 am]

BILLING CODE 6353–01–M

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 7, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 24, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 26266) of proposed addition to the Procurement List. Comments were received from the current contractor for the typewriter ribbon in response to a request for sales data. The contractor indicated that the Government contract for this ribbon represented a significant portion of the company's sales, and that loss of the contract would require personnel layoffs which would have adverse effects on the small community where the contractor is located. In order to mitigate this impact, the Committee decided to add only 40 percent of the Government requirement for the ribbon to the Procurement List rather than the 100 percent originally contemplated. The impact of this reduced addition on the contractor is below the percentage which the Committee considers to be severe adverse impact and should not result in the level of impact predicted by the contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Ribbon, Typewriter
7510–01–219–2309
(40% of the Government's requirement)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22778 Filed 9–5–96; 8:45 am]

BILLING CODE 6353–01–M

Proposed Addition and Deletions

AGENCY: Committe for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities; and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 7, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Disposal Support Services, Gunter Air Force Base and Fort Rucker, Alabama
NPA: Goodwill Industries of Central Alabama, Inc., Montgomery, Alabama

Deletions

The following commodities have been proposed for deletion from the Procurement List:

Bag, Urine Collection
6530–01–074–6600
Bandage, Gauze
6510–00–582–7992
6510–00–582–7993
Seat Cover
P.S. #054–B
Seat Assembly, Complete
P.S. #054–A
Splint, Wood
6515–00–372–1200
Hood, Extreme Cold Weather
8415–00–472–4695
Gown, Operating, Surgical
6532–00–083–6534
6532–00–083–6535
6532–00–083–6536
Chest, Lighting Equipment
6210–00–382–9173
Apron, Protective
6532–00–935–9765
Lacquer
8010–00–085–0559

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–22779 Filed 9–5–96; 8:45 am]

BILLING CODE 6353–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m. on Tuesday, September 24, 1996, at the Radisson Hotel City Centre, 37 W. Ohio Street, Indianapolis, Indiana. The purpose of the meeting is to hold a press conference to release the report, The Enforcement of Affirmative Action Compliance in Indiana Under Executive Order 11246, discuss civil rights issues, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Paul Chase, 317–920–3190, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 27, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–22711 Filed 9–5–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082996B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for modification 1 to scientific research permit 943 (P430A).

SUMMARY: Notice is hereby given that Thomas Savoy of Connecticut Department of Environmental Protection (P430A) has applied in due form for modification 1 to scientific research permit 943 to take listed shortnose sturgeon.

DATES: Written comments or requests for a public hearing on this modification request must be received on or before October 7, 1996.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Thomas Savoy (P430A) requests modification 1 under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant is currently authorized to collect, handle, and tag 800 shortnose sturgeon (*Acipenser brevirostrum*) per year in the Connecticut River, within the boundaries of the State of Connecticut. These sturgeon are captured using gillnets, trammel nets, and trawls; then measured, weighed, sexed when possible, and examined for condition, deformities, and previous tags. All fish that do not already have a PIT tag receive one in the musculature on the left side under the dorsal fin. Ten fish may receive a radio or sonic transmitter. The purpose of the research is to determine current numbers, locations, and movement patterns of shortnose sturgeon within the Connecticut River..

The purpose of the modification request is to test theories and gain information on spawning and migration. This permit expires March 31, 2000, and all numbers listed below are for take authorized annually. The applicant has requested three changes to the permit. First, he wishes to change his take authorization from 800 adult shortnose sturgeon to 400 adult shortnose sturgeon and 100 juvenile shortnose sturgeon. In addition, the applicant wishes to have the authorization to lethally take 150 shortnose sturgeon larvae and 150 shortnose sturgeon eggs. Second, the applicant wishes to increase the number of shortnose sturgeon to be tagged with a radio or sonic transmitter from 10 to 25. Third, the applicant wishes to expand the location of his study on the Connecticut River, to include southern Massachusetts south of the Holyoke Dam.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular modification request would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: August 29, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–22725 Filed 9–5–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency, DOD.

ACTION: Notice of membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314 (c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service Performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: August 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Manpower Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective 27 August 1996.

David J. Kelley, Major General, USA
Vice Director, DISA

John W. Meincke, Brig Gen, USAF
Commander, DISA WESTHEM

Diann McCoy
Deputy Director for C41 Programs Directorate

Robert Hutten
Deputy Director for Strategic Plans and Policy

Jack Penkoske,

Chief, Civilian Personnel Division.

[FR Doc. 96–22712 Filed 9–5–96; 8:45 am]

BILLING CODE 3610–65–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Research Opportunity Announcement (ROA) Applied Research and Development

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Amendment to the Research Opportunity Announcement (ROA) No. DE–RO21–96MC33204.

SUMMARY: The purpose of this notice is to amend the ROA previously published in the **Federal Register** at 61 FR 19917, May 3, 1996, in order to (1) correct measurements stated in the Characterization, Monitoring, and Sensor Technology needs area; (2) add the receipt date and return address for receipt of proposals; and (3) add the Certificate of ES&H Program document.

ADDRESSES/FOR FURTHER INFORMATION CONTACT: The ROA and an Information Package are available on the Internet at http://www.metc.doe.gov/business/solicita.html. Requests for information concerning the ROA should be submitted in writing to the following address: U.S. Department of Energy, ATTN: Crystal A. Sharp, M.S. I07, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV, 26507–0880, Phone Number (304) 285–4634, FAX (304) 285–4683, or Internet Address: CSHARP@METC.DOE.GOV.

SUPPLEMENTARY INFORMATION: The ROA DE–RO21–96MC33204 is amended accordingly;

1. Research Opportunity Announcement (ROA), Applied Research and Development, Description of Research Areas; Section 5, Characterization, Monitoring, and Sensor Technology; Paragraph A, High-Level Waste Tank; paragraph 2, sentence 6. The text of the sentence is deleted in its entirety and the following is substituted in lieu thereof:

"Devices and systems for in situ deployment must be capable of performing in a radiation field of 5,000 rad/hr for an accumulated dose of 10^7 rad."

2. Research Opportunity Announcement (ROA), Applied Research and Development, Description of Research Areas; Section 5, Characterization, Monitoring, and Sensor Technology; Paragraph D, Mixed Waste Characterization, Treatment, and Disposal; subparagraph 2, *Heavy Metal Monitoring* paragraph (c). The text of the paragraph is deleted in its entirety and the following is substituted in lieu thereof:

"Sensitivity at least 5 micro grams/m^3 except for beryllium (0.5 micro grams/m^3), lead (50 micro grams/m^3), and selenium (50 micro grams/m^3). The instrument would be more cost-effective, compact, require little maintenance, and generate no waste."

3. Research Opportunity Announcement (ROA), Applied Research and Development, Description of Research Areas; Section 5, Characterization, Monitoring, and Sensor Technology; Paragraph D, Mixed Waste Characterization, Treatment, and Disposal; subparagraph 2, *Mercury monitoring* paragraph (c). The text of the paragraph is deleted in its entirety and the following is substituted in lieu thereof:

"Sensitivity of at least 5 micro grams/m^3. It would operate continuously, providing real-time data for control. The instrument would be more cost-effective, compact, require little maintenance, and generate no waste."

4. Research Opportunity Announcement (ROA), Applied Research and Development, Description of Research Areas; Section 5, Characterization, Monitoring, and Sensor Technology; subparagraph 3(a);

paragraph 3. The text of the paragraph is deleted in its entirety and the following is substituted in lieu thereof:

"DOE facilities are also required to examine mixed waste to verify that the waste has been assigned to the proper matrix parameter category (MPC) and to verify compliance with treatment/disposal facilities waste acceptance criteria (WAC). For example, the WIPP-WAC requires that waste containers be examined to detect the presence of free liquids (residual liquid <1% volume of external container), pressurized containers, and particulates (waste materials shall be immobilized if >1% by weight is particulate material <10 microns in diameter, or if >15% by weight is particulate material <200 microns in diameter). Appropriate MPC assignment is made by determining if the waste material parameters (e.g., glass, metal, plastics) meet the criteria specified in DOE Waste Treatability Group Guidance, DOE/LLW–217, for the assigned MPC."

5. Date, Time, and Place Proposals are DUE.

Mail Proposals to: U. S. Department of Energy, Morgantown Energy Technology Center, ATTN: Crystal A. Sharp, P. O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880.

All proposals are due at 3610 Collins Ferry Road, Morgantown, West Virginia, no later than 2:00 P.M. local prevailing time on May 2, 1997.

6. Information Package, Overall Arrangement of Proposal, Volume I, Section C. Attachment A titled, "Certificate of ES&H Program" is hereby made a part of this amendment and incorporated into the Information Package.

Attachment A—Certificate of ES&H Program

(Note: Successful Offerors will be required to execute this certification prior to contract award.)

By signing below, the contractor certifies that they have an Environmental, Safety and Health (ES&H) program which, to the best of their knowledge, is consistent and in accordance with applicable local, State, and Federal laws and regulations, and will take all necessary precautions in the performance of the work under this contract to protect the safety and health of its employees and the public and to prevent damage to property, materials, supplies, equipment, and environmental resources.

Name of Organization: _____

Signature of the Officer: _____

Typed Name and Title of the Officer: _____

Date of Execution: _____

The above certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the contractor knowingly rendered an erroneous certification, the Contracting Officer may terminate the contract for default.

James J. Grabulis,

Director, Acquisition and Assistance Division.

[FR Doc. 96–22753 Filed 9–5–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. CW–005]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of General Electric Appliances From the DOE Clothes Washer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to General Electric Appliances (GEA) and publishes GEA's Petition for Waiver from the existing Department of Energy (DOE or Department) clothes washer test procedure regarding GEA's clothes washer models YLXR1020T, WLXR1020T and VLXR1020T.

GEA seeks a waiver because its clothes washer models YLXR1020T, WLXR1020T and VLXR1020T have only two temperature selections, a configuration which is not covered in the existing DOE clothes washer test procedure. GEA seeks to test the wash temperature selections by modifying the existing test procedure Temperature Use Factors (TUF's) for a three temperature machine (hot/cold, warm/cold and cold/cold).

DATES: DOE will accept comments, data, and information not later than October 7, 1996.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CW–005, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585–0121 (202) 586- 7140.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8423

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended, (EPCA) 42 USC 6291 *et seq.*, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including clothes washers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

DOE amended the test procedures rules to provide for a waiver process by adding § 430.27 to Title 10, CFR Part 430. (45 FR 64108, September 26, 1980). Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver from such prescribed test procedures. (51 FR 42823, November 26, 1986).

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for

public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On December 19, 1995, GEA filed a Petition for Waiver and an Application for Interim Waiver regarding its clothes washer models YLXR1020T, WLXR1020T and VLXR1020T. On February 8, 1996, GEA withdrew its Application for Interim Waiver and Petition for Waiver. On March 26, 1996, GEA resubmitted its Application for Interim Waiver and Petition for Waiver for the same model numbers. The GEA clothes washers have only two temperature selections (warm/cold and cold/cold). However, the DOE clothes washer test procedure does not have a provision to test a clothes washer with only two temperature selections.

GEA proposed a test method for its clothes washers which would modify the existing test procedure TUF's for a three temperature machine (hot/cold, warm/cold and cold/cold) found in the existing test procedure at Section 5.3 of Appendix J to Subpart B. GEA's proposal would combine the existing TUF's (proration values) for hot/cold (30 percent) and warm/cold (55 percent) for its warm/cold temperature selection. Furthermore, GEA's proposal would maintain the existing test procedure TUF for a cold/cold temperature selection (15 percent) for its machines. The existing test procedure TUF's are based on old (1970's) consumer usage habits. GEA believes that the TUF's for its two temperature machines should be consistent with the existing test procedure. Thus, the GEA clothes washers would be tested with TUF values of 85 percent for warm/cold and 15 percent for cold/cold.

Discussion of Comments

The Whirlpool Corporation (Whirlpool) provided comments relative to the GEA Interim Waiver Application and Petition for Waiver. Whirlpool stated that it supported the GEA request and indicated that both the Interim Waiver and Petition for Waiver should be granted.

The Speed Queen Company (Speed Queen) also commented on the GEA Interim Waiver Application and Petition for Waiver. Speed Queen stated that it supported the GEA proposed test methodology.

GEA provided justification for an Interim Waiver based on the likely approval of the Petition for Waiver. GEA stated that the Petition for Waiver is likely to be granted because the test procedure proposed is very conservative, and to the best of its knowledge is the current practice in the industry.

The Department agrees with GEA that the Petition for Waiver is likely to be granted. The GEA clothes washer should be tested on the same basis as other models on the market. The waiver should use TUF's that are consistent with the old consumer usage habits rather than reflecting current consumer habits. The test procedure has TUF's for three, four, five and six temperature machines which are used to prorate energy consumption among the various temperature selections. The current clothes washer test procedure specifies a TUF value of 15 percent for a cold wash/cold rinse temperature selection. This is consistent for all of the various multiple temperature selection clothes washers. Therefore, any remaining heated temperature selection should be tested with a TUF value of 85 percent. Furthermore, the Department has received comment supporting this test methodology.

Therefore, based on the likely approval of the Petition for Waiver, the Department grants GEA an Interim Waiver from the DOE test procedures for GEA's clothes washer models YLXR1020T, WLXR1020T and VLXR1020T. GEA shall be permitted to test its clothes washers on the basis of the test procedures specified in Title 10 CFR Part 430, Subpart B, Appendix J, with the following modifications:

(i) Add new section, 5.4 in Appendix J to read as follows:

5.4 Two temperature selection (n=2)

Wash/rinse temperature setting	Temperature use factor (TUF)
Heated/cold	0.85
Cold/cold	0.15

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by GEA. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver is effective on the date of issuance by the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy. This Interim Waiver shall remain in effect for a period of 180 days, or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Pursuant to paragraph (b) of Title 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE would appreciate comments, data and other information regarding the petition discussed above.

Issued in Washington, DC, August 29, 1996.

Robert L. SanMartin,

Director of Scientific Initiatives, Energy Efficiency and Renewable Energy.

March 26, 1996.

Assistant Secretary,

Conservation and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

RE: Application for Interim Waiver and Petition for Waiver, Appendix J, Subpart B CFR part 430, Test Method for Clothes Washers with Two Temperatures.

Dear Assistant Secretary:

This Application for Interim Waiver and Petition for Waiver is submitted pursuant to Title 10 CFR 430.27, which provides for modification of test method because of design characteristics preventing testing or producing data unrepresentative of a covered product's true energy consumption characteristics.

GE Appliances (GEA) is introducing a new model with two temperature selections. The model numbers are YLXR1020T, WLXR1020T, and VLXR1020T. The existing Appendix J test method does not provide a Temperature Usage Factor for a two temperature machine.

Other manufacturers who incorporate similar designs are Whirlpool (model #LBR2121D) and Frigidaire/White Westinghouse (models #MWX121RB/ #MWL111RBW). There is also a Kenmore model #15122 with two temperature settings.

GEA requests an Interim Waiver and Waiver to allow testing of the machine per Appendix J with the following modifications:

Add Section 5.4 Two temperature selection (n=2).

Wash/rinse temperature setting	TUF
Warm/cold	.85
Cold/cold	.15

The reasons why these TUF's are suggested are:

(1) The three temperature TUF is Hot/cold .30, Warm/cold .55, and Cold/cold .15. Adding the Hot/cold and Warm/cold TUF's together yields .85. One might assume, conservatively, that if only Warm were available, it would be used 85% of the time.

(2) The test procedures for Canada prescribe the TUF's above.

(3) The AHAM proposed test procedure, based on 1994 data, is less conservative. It uses TUF's of .64 for Warm/cold and .36 for Cold/cold.

GEA requests immediate relief by grant of the proposed Interim Waiver, justified by the following reason:

Likely Approval of Waiver—The Petition for Waiver is likely to be granted because the

test procedure proposed is very conservative, even more so than the new test procedure supported by AHAM, and to the best of our knowledge is the current practice in the industry. Thank you for considering this petition.

Jane Ransdell,

Energy Standards Engineer.

cc: Earl Jones

[FR Doc. 96–22754 Filed 9–5–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–349–000]

Colorado Interstate Gas Company; Notice of Section 4 Filing

August 30, 1996.

Take notice that on August 27, 1996, Colorado Interstate Gas Company (CIG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services which CIG currently provides on gathering facilities that the Commission has authorized to be transfer to its affiliate, CIG Field Service Company.[1] CIG states that the termination of service does not apply to gathering services provided by CIG using its Panhandle Field Gathering System in Potter, Moore, Hutchinson, Carson, Hartley, and Oldham Counties, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22735 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Pursuant to authorization issued in Docket No. CP96–41–000, *et al.*, 75 FERC ¶61,324 (1996), the Commission authorized CIG to transfer a substantial portion of its gathering facilities and operation to CIG Field Services Company.

[Docket No. CP96–749–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 30, 1996.

Take notice that on August 27, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–749–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new point of delivery in Southampton County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery. The new delivery point has been requested by Commonwealth Gas Services, Inc. for additional firm transportation service for commercial service. Columbia states that there will be no impact on its existing peak day obligation to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22732 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–23–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

August 30, 1996.

Take notice that on August 27, 1996, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. Such proposed tariff sheets are proposed to be effective October 1, 1996.

Eastern Shore states that the purpose of the filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Eastern Shore's sales and transportation rates. Pursuant to Order No. 472, the Commission has assessed Eastern Shore its ACA unit rate of $0.0020 per Mcf ($0.0019 per dt on Eastern Shore's system) for the annual period commencing October 1, 1996.

Eastern Shore states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22728 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–23–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

August 30, 1996.

Take notice that on August 27, 1996 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. Such proposed tariff sheets are proposed to be effective October 1, 1996.

Eastern Shore states that the purpose of the filing is to track the coast of storage service purchased from Columbia Gas Transmission Corporation under their Rate Schedules FSS and SST, the costs of which are included in the rates payable under Eastern Shore's Rate Schedules CWS and CFSS, respectively.

Eastern Shore states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22737 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–738–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

August 30, 1996.

Take notice that on August 22, 1996, Koch Gateway Pipeline Company (Koch), 600 Travis Street, Houston, Texas 77251–1478 filed in Docket No. CP96–738–000 a request pursuant to Sections 157.205, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval and permission to abandon by sale in place approximately 2,028 feet of two-inch pipeline and abandon by removal approximately 200 feet of two-inch pipeline and a meter station, under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that it proposes to abandon facilities that were originally certificated in Docket No. G–8230 for use to an end-user, Fernwood Industries (Fernwood) and are located within Pike County, Mississippi. Koch further states that Fernwood agrees to the proposed abandonment.

Any person or Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22729 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–747–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

August 30, 1996.

Take notice that on August 27, 1996, Northern Natural Gas Company (Applicant), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP96–747–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new delivery point, under blanket certificate issued in Docket No. CP82–401–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant proposes to construct a new delivery point to accommodate natural gas deliveries to Emmetsburg Municipal Gas Works (Emmetsburg), a local distribution company, for redelivery to AG Processing Inc. (AGP) at their new facility located in Palo Alto County, Iowa. Applicant states that the new delivery point will accommodate natural gas deliveries for industrial consumption under its existing transportation rate schedules and service agreements. Applicant holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–435–000.[2] The estimated total volume proposed to be delivered is expected to result in an increase in Applicant's peak day deliveries of 3,350 Mcf per day and 796,000 Mcf on an annual basis.

The estimated cost to install the delivery point is $74,000. Applicant states that Emmetsburg will reimburse Applicant for the cost of these facilities. Applicant states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the service proposed herein without determent or disadvantage to Applicant's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22731 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–014]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 30, 1996.

Take notice that on August 27, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets proposed to be effective September 1, 1996:

Fifth Revised Volume No. 1

24 Revised Sheet No. 50
24 Revised Sheet No. 51
Tenth Revised Sheet No. 52
1 Revised 30 Revised Sheet No. 53
Second Revised Sheet No. 54
Second Revised Sheet No. 55
Tenth Revised Sheet No. 59
Eleventh Revised Sheet No. 60
Second Revised Sheet No. 61
Second Revised Sheet No. 62
Second Revised Sheet No. 63
Second Revised Sheet No. 64
Second Revised Sheet No. 100
Third Revised Sheet No. 101
Second Revised Sheet No. 103
Second Revised Sheet No. 106

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[1] *See*, 20 FERC ¶ 62,410 (1982).

[2] *See*, 37 FERC ¶ 61,268 (1986).

Second Revised Sheet No. 114
Second Revised Sheet No. 115
Third Revised Sheet No. 206
Second Revised Sheet No. 255
Second Revised Sheet No. 265
Third Revised Sheet No. 401

Original Volume No. 2

150 Revised Sheet No. 1C
25 Revised Sheet No. 1C.a

Northern states that its filing contains Northern's proposal to implement, on an interim basis until a final Commission order on Northern's Settlement is issued, the Settlement rates in Docket No. RP95–185 effective September 1, 1996. Northern further states that its filing is contingent on final Commission approval of the filing without modification.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22734 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL96–70–000; QF84–329–001]

Pacific Gas & Electric Company v. Red Top Cogeneration, L.P.; Errata to Notice of Filing

August 30, 1996.

The Notice of Filing issued in the above-referenced dockets on August 20, 1996 (61 FR 43757, August 26, 1996), should be replaced in its entirety with the following language:

Take notice that on August 7, 1996, Pacific Gas & Electric Company (PG&E) tendered for filing a Motion for revocation of certification of Red Top Cogeneration, L.P. Facility, as a qualifying cogeneration facility. PG&E alleges that Red Top Cogeneration, L.P. has failed to meet the Commission's operating and efficiency standards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 20, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22727 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–740–000]

Pacific Gas Transmission Company; Notice of Request Under Blanket Authorization

August 30, 1996.

Take notice that on August 23, 1996, Pacific Gas Transmission Company (PGT), 2100 Southwest River Parkway, Portland, Oregon 97201, filed in Docket No. CP96–740–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a new tap and meter set near Bend, Oregon (the "South Bend Meter Station") for delivery of gas to Cascade Natural Gas Corporation, under PGT's blanket certificate issued in Docket No. CP82–530–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PGT proposes to construct a 2-inch tap and meter set and appurtenant facilities in order to provide Cascade with a supplemental source to serve Cascade's existing load in the south Bend area and anticipated future load growth.

PGT states that the new tap and meter set is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The new tap and meter set will not have an effect on PGT's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22730 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2984–025]

S.D. Warren Company; Notice of Settlement Offer

August 30, 1996.

On August 22, 1996, the State of Maine, Departments of Environmental Protection, Conservation, and Inland Fisheries & Wildlife (Maine) filed comments in the above-captioned proceeding, with an attached "compromise" water level management plan for Sebago Lake in lieu of that previously proposed by S.D. Warren Company, licensee of the Eel Weir Hydroelectric Project No. 2984. Maine states that the compromise plan was agreed to by all parties at a meeting in Augusta, Maine, on August 12, 1996. Although Maine is not an intervenor in this proceeding, it has been an active participant, and its filing will be treated as an offer of settlement under Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

Comments on the proposed settlement may be filed with the Commission by no later than September 18, 1996, and replies by no later than September 30, 1996. Copies of comments and replies by parties and intervenors must be served on all other parties and intervenors, as well as Maine. Under Rule 602(f)(3), a failure to file comments constitutes a waiver of all objections to the offer of settlement.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22733 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 30, 1996.

Take notice that on August 27, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A of the filing, to become effective October 1, 1996.

Texas Eastern states that the purpose of this filing is to permit the tracking of the ACA Unit Surcharge authorized by the Commission to be applied to rates in fiscal year 1997 for recovery of the Annual Charge for fiscal year 1996. The ACA Unit Surcharge authorized by the Commission for fiscal year 1997 is $0.0020 per MCF, $0.0020 per Dth converted to Texas Eastern's measurement basis.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern, interested state commissions, and all current interruptible customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22736 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2760–000, et al.]

Carolina Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

August 29, 1996.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER96–2760–000]

Take notice that on August 20, 1996, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements executed between CP&L and the following Eligible Transmission Customers: PECO Energy Company, Sonat Power Marketing, Inc., SCANA Energy Marketing, Inc., ENRON Power Marketing, Inc., and Virginia Electric and Power Company. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER96–2253–000]

Take notice that on August 20, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, filed an amendment to its filing in this proceeding. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER96–2761–000]

Take notice that on August 20, 1996, Carolina Power & Light Company (Carolina), tendered for filing separate Service Agreements executed between Carolina and the following Eligible Entities: PacifiCorp Power Marketing, Inc. and Vastar Power Marketing, Inc. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Lighting & Power Company

[Docket No. ER96–2762–000]

Take notice that on August 19, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with DuPont Power Marketing, Inc. (DuPont) for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of July 29, 1996.

Copies of the filing were served on DuPont and the Public Utility Commission of Texas.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER96–2763–000]

Take notice that on August 19, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *VTEC Energy Inc.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *VTEC Energy Inc.* pursuant to the tariff, and for the sale of capacity and energy by *VTEC Energy Inc.* to WestPlains Energy-Kansas pursuant to *VTEC Energy Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *VTEC Energy Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER96–2764–000]

Take notice that on August 19, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *VTEC Energy Inc.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *VTEC Energy Inc.* pursuant to the tariff, and for the sale of capacity and energy by *VTEC Energy Inc.* to Missouri Public Service pursuant to *VTEC Energy Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *VTEC Energy Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER96–2765–000]

Take notice that on August 19, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and PanEnergy Power Services, Inc.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER96–2766–000]

Take notice that on August 19, 1996, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and Duke/Louis Dreyfus L.L.C. under its TS Tariff and between KU and AIG Trading Corporation under its PS Tariff. KU requests effective dates of July 26, 1996 and July 31, 1996, respectively.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. South Carolina Electric & Gas Company

[Docket No. ER96–2768–000]

Take notice that on August 19, 1996, South Carolina Electric & Gas Company (SCE&G), tendered for filing proposed changes to its negotiated market sales tariff. SCE&G requests that the changes be placed into effect no later than 60 days after the date of tender.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER96–2769–000]

Take notice that on August 20, 1996, Public Service Company of Colorado (Public Service), tendered for filing revisions to Exhibits 1 and 19 to its Consolidated Facility Arrangements Contract No. 87–LAO–337, with the Western Area Power Administration. Specifically Public Service is submitting Revision No. 1 to Exhibit 1 and Revision No. 1 to Exhibit 19 to Contract No. 87–LAO–337 designated as Public Service Rate Schedule FERC No. 47.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Idaho Power Company

[Docket No. ER96–2771–000]

Take notice that on August 20, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between the City of Richland and Idaho Power Company.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER96–2772–000]

Take notice that on August 21, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its point-to-point transmission tariff with Missouri Public Service Company (MPS). The service agreement is for umbrella non-firm transmission service.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER96–2773–000]

Take notice that on August 21, 1996, Arizona Public Service Company (APS), tendered for filing the proposed Facilities Agreement between APS and Tohono O'odham Utility Authority (TOUA).

The agreement proposes that APS construct, upgrade, operate and maintain certain facilities necessary to serve TOUA's additional electric service requirements on the Reservation.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. IES Utilities Inc.

[Docket No. ER96–2774–000]

Take notice that on August 21, 1996, IES Utilities Inc. (IES), tendered for filing proposed changes to modify the IES and Central Iowa Power Cooperative (CIPCO) Operating and Transmission Agreement (Agreement) by the addition of Appendix 13.

Copies of the filing were served upon CIPCO and the Iowa State Utilities Board.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Northern Indiana Public Service Company

[Docket No. ER96–2775–000]

Take notice that on August 21, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and PanEnergy Power Services, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to PanEnergy Power Services, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and PanEnergy Power Services, Inc. request a waiver of the Commission's sixty-day notice requirement to permit an effective date of October 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER96–2776–000]

Take notice that on August 20, 1996, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd), tendered for filing revisions to ComEd's Open Access Transmission Service Tariff filed on July 9, 1996 (Tariff) in Docket No. OA96–166–000.

ComEd requests an effective date of July 9, 1996 and has therefore requested that the Commission waive the Commission's notice requirement. Copies of this filing have been served on all persons that have moved to intervene in Docket Nos. OA96–166–000 and OA96–84–000.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER96–2777–000]

Take notice that on August 22, 1996, New England Power Company, filed a Service Agreement with Cinergy Services Inc. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER96–2778–000]

Take notice that on August 22, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement dated August 13, 1996, between UE and Jacksonville Electric Authority. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for the types of power and energy to be exchanged.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER96–2779–000]

Take notice that on August 22, 1996, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service dated August 19, 1996 between Federal Energy Sales, Inc. (FES) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to FES pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50–000.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Union Electric Company

[Docket No. ER96–2780–000]

Take notice that on August 22, 1996, Union Electric Company (UE), tendered for filing an unexecuted Service Agreement for Non-Firm Point-to-Point Transmission Service between Commonwealth Edison Company (CE) and UE. UE asserts that the purpose of the Agreement is to permit UE, to provide transmission service to CE pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: September 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. UtiliCorp United Inc.

[Docket No. ES96–39–000]

Take notice that on August 28, 1996, UtiliCorp United Inc. (UtiliCorp) filed an application, under § 204 of the Federal Power Act, seeking authorization to enter into five-year corporate guarantees in an amount of not more than $270 million to replace existing corporate guarantees authorized in Docket No. ES96–5–000.[1]

Also, UtiliCorp requests an exemption from the Commission's competitive bidding or negotiated placement requirements.

[1] 73 FERC ¶62,175 (1995).

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22767 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2365–011]

Madison Paper Industries; Notice of Availability of Final Environmental Assessment

August 30, 1996.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to amend the Anson Hydroelectric Project. The application is to resurface the dam; reconfigure the permanent crest; raising the elevation from 241.67′ to 242.62′ (except for a 50-ft section which will be lowered to 242.62′) in order to accept an inflatable flashboard system; and install an inflatable flashboard system, raising the normal headpond elevation by 1.5 feet. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Anson Hydroelectric Project is located on the Kennebec River in Somerset County, Maine.

The FEA was written by staff in the Office of Hydroelectric Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below. For further information, please contact the project manager, Jean A. Potvin, at (202) 219–0022.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22766 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–720–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

August 29, 1996.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP96–720–000]

Take notice that on August 16, 1996, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed an application: (1) For authorization, pursuant to section 7(b) of the Natural Gas Act, to abandon (by removal) a compressor unit located at NGPL's Station No. 139 in Lea County, New Mexico; and (2) for a certificate of public convenience and necessity, pursuant to section 7(c) of the Natural Gas Act, authorizing NGPL to construct (i.e., relocate and upgrade) and operate the aforementioned compressor unit as part of NGPL's Station No. 346 facility in Cameron Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

NGPL states that the subject compressor is no longer needed at Station No. 139, and has not been utilized since January of 1993. NGPL proposes to abandon and remove the entire compressor unit (including the removal of all associated conduit, wiring, supports and piping), and have the compressor engine manufacturer upgrade it to the "Best Available Control Technology" (BACT) in order to reduce nitrous oxide (NOX) emissions. In addition to the BACT upgrade, NGPL proposes to increase the compressor unit to a 4,500 hp rating. NGPL proposes to relocate the upgraded compressor unit to its Station No. 346 facility on its Louisiana Line, in Cameron Parish, Louisiana, thereby increasing the Louisiana Line's capacity by 63 MMcfd. NGPL adds that it will perform certain non-jurisdictional activities as part of the Louisiana Line expansion project, including the re-wheeling of three existing compressors at its Station No. 346, and certain modifications to station piping at

NGPL's Station No. 342, in Cameron Parish, Louisiana.

NGPL states that its gas transmission system consists of two mainlines, its Amarillo Mainline, Gulf Coast Mainline, plus NGPL's A/G Line, which connects the two mainlines. NGPL adds that its Louisiana Line consists of 30-inch and 36-inch diameter pipelines which extend along the Gulf of Mexico from St. Mary Parish, Louisiana, to near Port Arthur, at the Texas/Louisiana border, and on to an interconnection with NGPL's Gulf Coast Mainline, in Montgomery County, Texas. NGPL states that the Louisiana Line section of its system serves east coast markets by delivering a total of 1,000 MMcfd of gas to other interstate pipeline companies, with approximately 414 MMcfd of this total being delivered to the eastern terminus of the Louisiana Line at the Henry Hub.

According to NGPL, MidCon Gas Service Corporation (MidCon), a marketing affiliate of NGPL, responded to an open season that NGPL held with respect to the possible expansion of capacity on its Louisiana Line, by signing a precedent agreement with NGPL for 50 MMcfd of the proposed 63 MMcfd capacity expansion for NGPL's Louisiana Line. NGPL states that the MidCon contract is for firm transportation service at a rate of $0.20, for seven years. NGPL also states that the revenues provided by the MidCon contract will cover the cost of the additional compression, and that NGPL will endeavor to market the remaining 13 MMcfd of uncommitted capacity.

NGPL further states that it will seek to roll-in the cost of the expansion facilities in its first rate case following the Commission's certification of the subject facilities. NGPL asserts that rolled-in rate treatment will reduce general system transportation rates, because the increased transportation revenues generated by the expansion facilities will exceed the incremental cost of such facilities.

Comment date: September 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP96–731–000]

Take notice that on August 20, 1996, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP96–731–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate new delivery point facilities located in Goodhue County, Minnesota, under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate a new delivery point to accommodate natural gas deliveries to Northern States Power Company (NSP) under Northern's currently effective throughput service agreement(s) for redelivery to the community of Goodhue, Minnesota. It is indicated that NSP requests authorization to install a new delivery point due to the expansion of its distribution system into new areas. It is stated that this community does not currently have natural gas service. Northern states that the estimated volumes proposed to be delivered to NSP to the proposed delivery point are 500 MMBtu equivalent of natural gas on a peak day and 34,100 MMBtu equivalent on an annual basis. Northern states that it will own, operate, and maintain the delivery point. Northern estimates the total costs to install this delivery point to be $66,000.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Comment date: October 15, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP96–736–000]

Take notice that on August 21, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP96–736–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authorization to construct and operate replacement pipeline and measurement facilities and to abandon existing pipeline and measurement facilities in LaPlata County, Colorado, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northwest proposes to relocate the facilities because they would be submerged by the Ridges Basin Dam and Reservoir which is being constructed 2 miles southwest of the town of Durango in LaPlata County. Specifically, Northwest proposes to construct and operate approximately 6 miles of 26-inch replacement pipeline and to install a new, relocated meter station in LaPlata County. Northwest proposes to abandon by removal 0.6 mile of 26-inch existing pipeline and to abandon in place 4.02 miles of existing 26-inch pipeline and the existing Durango delivery tap. Northwest estimates the cost of the abandonment and construction at $7.3 million, which would be reimbursed by the U.S. Bureau of Reclamation, which is building the dam and reservoir. It is stated that the proposed relocation is needed to assure the operational integrity of Northwest's mainline transmission system and to avoid significant reliability concerns associated with the inundation of the facilities by the dam and reservoir. It is asserted that the design capacity of Northwest's system would not be affected by the proposal.

Comment date: September 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Koch Gateway Pipeline Company

[Docket No. CP96–739–000]

Take notice that on August 22, 1996, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77521–1478, filed in Docket No. CP96–739–000, an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of compresson facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Koch Gateway requests authorization to construct and operate a 1,600 horsepower compression facility, to be known as the White Oak Compressor Station, in Gregg County, Texas. Koch Gateway states that the compression facilities are to be located on its existing 16-inch Latex-Fort Worth Main Line, designated as Index 1. Koch Gateway states that the gas requirements of its customers have changed, necessitating a directional change in the flow of natural gas, and that the proposed compression facilities will enhance its ability to move supplies through its system.

Comment date: September 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Florida Gas Transmission Company

[Docket No. CP96–742–000]

Take notice that on August 26, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–

742–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a sale for resale service for Transcontinental Gas Pipe Line Corporation (Transco) which was authorized in Docket No. CP68–111,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

FGT proposes to abandon the sale for resale service it once provided Transco under an agreement dated August 28, 1967 which is designated as Rate Schedule X–2 in FGT's FERC Gas Tariff, Original Volume No. 3. FGT states that the August 28, 1967 agreement expired under its own terms on April 30, 1970. FGT further states that the proposed abandonment will not result in the abandonment of facilities nor will it result in the abandonment of service to any other customer of FGT.

Comment date: September 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22768 Filed 9–5–96; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* 9 FERC ¶ 61,069 (1979).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5472–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed August 26, 1996 Through August 30, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960403, Draft EIS, NPS, MA, Cape Cod National Seashore General Management Plan, Implementation, Barnstable County, MA, Due: October 31, 1996, Contact: Maria Burks (508) 349–3785.

This EIS was inadvertently omitted from the 8–30–96 **Federal Register**. The official 45 day NEPA review period is calculated from 8–30–96.

EIS No. 960404, Final EIS, FRC, WI, Flambeau River Hydroelectric Projects, Big Falls (FERC No. 2930), Thornapple (FERC No. 2475), Upper (FERC No. 2640), Lower (FERC No. 2421), Pixley (FERC No. 2395) and Crowley (FERC No. 2473), Relicensing WI, Due: October 7, 1996, Contact: Frank Karwoski (202) 219–2782.

EIS No. 960405, Final EIS, FRC, ME, NH, Saco River Basin Hydropower Development, (FERC Project Nos. 2528, 2527, 2194, 2531, 2529, 2530, and 11365), Licenses and Relicenses, ME and NH, Due: October 7, 1996, Contact: Rich McGuire (202) 219–3084.

EIS No. 960406, Draft EIS, FHW, WV, WV–9 Transportation Corridor Improvements, from Martinsburg to Charles Town, Berkeley, Jefferson and Morgan Counties, WV, Due: November 1, 1996, Contact: David Leighow (304) 347–5329.

EIS No. 960407, Final EIS, FRC, VT, MA, Deerfield River Hydroelectric Project (FERC No. 2323), Bear Swamp Pumped Storage Project (FERC No. 2669) and Gardners Falls Project (FERC, No. 2334), New License/ Relicense Issuance, VT and MA, Due: October 7, 1996, Contact: R. Feller (202) 219–2796.

EIS No. 960408, Draft EIS, NOA, OH, Ohio Combined Coastal Management Program, Implementation, Special Management Areas (SMAs), Lake Erie, OH, Coastal Management Program, Implementation, Special Management Areas (SMAs), Lake Erie, OH, Due: November 15, 1996, Contact: Diana Olinger (301) 713–3113.

EIS No. 960409, Final EIS, AFS, OR, Upper Deschutes Wild and Scenic River and State Scenic Waterway, Management Plan, Implementation, Deschutes National Forest, Deschutes County, OR, Due: October 7, 1996, Contact: Mollie Chaudet (541) 383–4769.

EIS No. 960410, Final EIS, MMS, AL, CA, DE, LA, NJ, AK, CT, FL, MS, NY, NC, RI, VA, OR, TX, WA, Gulf of Mexico and Offshore Alaska Outer Continental Shelf (OCS) Oil and Gas Leasing Program 1997 to 2002 for 16 Lease Sales on Five-Year Leasing Program, Due: October 7, 1996, Contact: Richard Wilderman (703) 787–1674.

EIS No. 960411, Final EIS, NPS, NB, Niobrara National Scenic River, General Management Plan, Niobrara/ Missouri National Scenic Riverways, Implementation, Brown, Cherry, Keya Paha and Rock Counties, NB, Due: October 7, 1996, Contact: Warren Hill (402) 336–3970.

EIS No. 960412, Draft Supplement, EPA, CA, International Wastewater Treatment Plant and South Bay Ocean Outfall, Updated Information, Interim Operation, Tijuana River, San Diego, CA, Due: October 21, 1996, Contact: Elizabeth Borowiec (415) 744–1165.

EIS No. 960413, Draft EIS, USN, CA, Las Pulgas and San Mateo Basin, Cease and Desist Order, Sewage Effluent Compliance Project, NPDES Permit, Marine Corps Base, Camp Pendleton,

San Diego County, CA, Due: October 21, 1996, Contact: David Walls (703) 696/2138.

EIS No. 960414, Final EIS, USN, United States Navy Shipboard Solid Waste Disposal, Implementation, MARPOL Special Areas: Designated Baltic Sea, North Sea, Wilder Caribbean, Antarctic Ocean, Mediterranean Sea, Black Sea and Red Sea, Gulfs Region: Persian Gulf and Gulf of Oman, Due: October 7, 1996, Contact: Robert K. Ostermueller (610) 595–0759.

Amended Notices

EIS No. 960318, Draft EIS, FHW, CA, CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Funding and COE Section 404 Permit, San Diego County, CA, Due: September 16, 1996, Contact: Jeffery S. Lewis (916) 498–5035. Published FR 7–12–96—Review Period extended.

Dated: September 3, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–22823 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5472–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 19, 1996 through August 23, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Drafts EISs

ERP No. D–AFS–G61036–NM Rating LO, EL Cajete Pumice Mine Project, Implementation, Plan of Operation and COE Section 404 Permit, Jemez National Recreation Area, Santa Fe National Forest, Jemez Ranger District, Sandoval County, NM.

Summary: EPA expressed lack of objections to the selection of the Forest Service's preferred Alternative 1(a) as described in the draft EIS.

ERP No. D–AFS–J65250–CO Rating EC1, Routt National Forest Land and Resource Management Plan, Implementation, Grand, Routt, Rio Blanco, Jackson, Moffat and Garfield Counties, CO.

Summary: EPA expressed environmental concerns about water quality, fisheries and wildlife habitat and noxious weed control. EPA suggests that the FEIS add details or general plans to improve or maintain environmental conditions and include revised requirements for grazing allotment analysis.

ERP No. D–AFS–J65253–MT Rating EC2, Boulder and Wyman Gulch Vegetation Management Timber Sale and Prescribed Burning, Implementation, Beaverhead-Deerlodge National Forests, Philipsburg Ranger District, Granite County, MT.

Summary: EPA expressed environmental concerns regarding exiting degraded water quality and fisheries in the project area and choice of treatment method/units in alternatives. EPA recommends additional information be included in the final EIS to fully assess and mitigate for potential adverse impacts to fisheries cumulative watershed impact, timber supply and wildlife habitat.

ERP No. D–AFS–J65254–MT Rating EC2, Sheep Range and China Basin Salvage Project, Implementation, Kootenai National Forest, Libby Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about inadequate disclosure of environmental impacts and cumulative impacts to the threatened grizzly bear. EPA suggests that the final EIS include information to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. DS–AFS–J65153–MT Rating LO, Trail Creek Timber Sale, Implementation, New and Updated Information, Beaverhead National Forest, Wisdom Ranger District, Beaverhead County, MT.

Summary: EPA expressed lack of objections to the proposed action.

Final EISs

ERP No. F–AFS–E65047–MS, G. F. Erambert and Black Creek Seed Orchards Pest Management Plan, Implementation, Southern Region, National Forests in Mississippi, Forrest and Perry Counties, MS.

Summary: EPA expressed no objections; our comments in the draft EIS were adequately addressed in the final EIS.

ERP No. F–BLM–J02009–00, Express Crude Oil Pipeline Project, Construction, Operation and Maintenance, Issuance of Right-of-Way Grant, Hill, Chouteau, Fergus, Judith Basin, Wheatland, Golden Valley, Stillwater and Carbon Counties, MT and Bighorn, Washakies, Hot Springs, Freemont and Watrona Counties, WY.

Summary: EPA expressed environmental concerns regarding the proposed pipeline crossings of rivers, streams and wetlands, and requests that directional drilling be used for the pipeline crossing of the Yellowstone River, as well as be considered for other major river crossings with significant fisheries, wide channels, and late season flows. EPA recommended that a wetland mitigation plan be prepared and will continue to work closely with the Corps of Engineers on 404 permitting issues related to this project.

ERP No. F–BLM–J65229–MT, Sweet Grass Hills Resource Management Plan Amendment, Implementation, West HiLine Resource Management Plan, Toole and Liberty Counties, MT.

Summary: EPA continues to express environmental concerns regarding potential adverse impacts to cultural and water resource associated with reasonably foreseeable mining actions.

ERP No. F–BLM–J67019–MT, Zortman and Landusky Mines Reclamation Plan Modifications and Mine Life Extensions, Approval of Mine Operation, Mine Reclamation and COE Section 404 Permits, Little Rocky Mountains, Phillip County, MT.

Summary: EPA continues to express environmental objections regarding water quality and environmental justice. The FEIS responded to a number of the DEIS water quality objections in the expanded Water Quality Improvement Plan. Many of the remaining water quality objections would be addressed if the proposed operating permit incorporates requirements necessary to comply with the Clean Water Act. The proposed action potentially poses a significantly high adverse impact to cultural resources and religious practices of the tribal community. EPA recommends considering alternative dispute resolution to investigate additional opportunities for mitigating impacts to the Tribes.

ERP No. FS–BLM–J65203–MT, Big Dry Land and Resource Management Plan, Updated Information on Leaving the Calypso Trail Open or Closing the Trail to Motorized Vehicles, Implementation, Miles City District, MT.

Summary: EPA expressed environmental concerns about potential adverse impacts, i.e. erosion, to the trail from unlimited motorized access. EPA suggests analyzing additional options and alternatives that may better balance the multiple uses expected by the public. EPA suggests that the standards and criteria used by BLM to evaluate

and quantify trail erosion and impacts to Wilderness Study Areas be clearly outlined and be made publically available.

Dated: September 3, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–22824 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–U

[OPP–00449; FRL–5394–8]

FIFRA Scientific Advisory Panel, Open Meeting; Extension of Comment Period on Proposed Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting and extension of comment period.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the Agency Test Guidelines, Series 870, Health Effects for OPPTS. These Test Guidelines have been updated and harmonized, to the extent possible, with the OECD Guidelines for Testing of Chemicals, and other relevant international standards. Two specific risk assessment methodology issues will be addressed. The first concerns applying an extra 10-fold safety factor when using developmental effects and the second, in-utero exposure for carcinogenicity studies. The SAP also will review carcinogenicity assessments for the chemicals alachlor and vinclozolin as well as the developmental effects assessment for vinclozolin. EPA is also extending the comment period for a notice published in the **Federal Register** of June 20, 1996, announcing the availability of proposed testing guidelines for Series 870–Health Effects Test Guidelines.

DATES: The meeting will be held on Tuesday and Wednesday, October 29 and 30, 1996, from 8:30 a.m. to 5 p.m.

Comments on the proposed guidelines for Series 870 will be accepted until September 19, 1996.

ADDRESSES: The meeting will be held at: Holiday Inn at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203 (I-66 and Glebe Road), Telephone: (703) 243–9900. Submit written comments (one original and 20 copies) to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00449." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location: Rm. 815B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22203, Telephone: (703) 305–5369/7351, e-mail: dorsey.larry@epamail.epa.gov.

Copies of EPA documents may be obtained by contacting: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location: Rm. 1132 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22203, Telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION: On June 20, 1996 (61 FR 31522) (FRL–5367–7), the Agency issued a Notice of Availability and request for comments for the proposed Health Effects Testing Guidelines that are the subject of this meeting. In that Notice, the deadline for comments was cited as August 19, 1996. The Agency will continue to accept comments on these proposed guidelines until September 19, 1996. All comments received as per the June 20th Notice in addition to comments received as per this Notice will be used as background material for the upcoming SAP meeting.

Any member of the public wishing to submit written comments should contact Larry C. Dorsey at the address or the telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. As oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 20 copies of a summary no later than October 1, 1996, to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. All statements will be made part of the record and will be taken into consideration by the Panel.

A public record has been established for this notice under docket number "OPP–00449" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 Bay of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include

all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Copies of the Panel's report of their recommendations will be available 10 to 15 working days after the meeting and may be obtained by contacting the Public Response and Program Resources Branch, at the address or telephone number given above.

Dated: August 28, 1996.

Daniel Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–22780 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday 10, 1996, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Rescission of Part 3202 of the FDIC's rules and regulations entitled Supplemental Financial Disclosure Requirements for Employees.

Memorandum and resolution re: Rescission of a Statement of Policy on the Interest Rate Futures Contracts, Forward Contracts, and Standby Contracts.

Memorandum and resolution re: Revision of the Statement of Policy concerning Applicability on Foreclosure Consent and Redemption Rights and Update to Notice of Financial Institutions for Which the FDIC has been Appointed either Receiver, Liquidator, or Manager.

Discussion Agenda

Memorandum and resolution re: Proposed Amendments to Part 338—Fair Housing.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 3, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–22927 Filed 9–4–96; 12:17 pm]

BILLING CODE 6714–01–M

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, August 27, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), Mr. John Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: August 27, 1996.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–22928 Filed 9–4–96; 12:17 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 19, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Jackson T. Stephens, Little Rock, Arkansas; to acquire a total of 3.84 percent; W.R. Stephens Trust, Little Rock, Arkansas, to acquire an additional 3.59 percent, for a total of 3.63 percent; W.R. Stephens Revocable Trust, Little Rock, Arkansas, to acquire a total of 0.03 percent; Warren A. Stephens Trust, Little Rock, Arkansas, to acquire a total of 0.28 percent; Elizabeth Ann Stephens Campbell Trust, Little Rock, Arkansas, to acquire a total of 0.80 percent; Stephens Group, Inc., Little Rock, Arkansas, to acquire a total of 0.10 percent; and Bess C. Stephens Trust, Little Rock, Arkansas, to acquire an additional 2.72 percent, for a total of 6.75 percent, of the voting shares of First United Bancshares, Inc., El Dorado, Arkansas, and thereby indirectly acquire First National Bank of El Dorado, El Dorado, Arkansas; Bank of North Arkansas, Melbourne, Arkansas; City National Bank of Fort Smith, Fort Smith, Arkansas; Commercial Bank at Alma, Alma, Arkansas; First National Bank of Magnolia, Magnolia, Arkansas; First Stuttgart Bank & Trust Company.

Stuttgart, Arkansas; Merchants & Planters Bank, N.A., Camden, Arkansas, and FirstBank, Texarkana, Texas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Ned S. Holmes, Houston, Texas; to acquire an additional 3.24 percent, for a total of 17.65 percent, of the voting shares of Commercial Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Heritage Bank, Wharton, Texas.

2. Rayford Holley Reily, Groveton, Texas; to acquire an additional 5 percent, for a total of 28.82 percent, of the voting shares of Citizens State Financial Corporation, Corrigan, Texas, and thereby indirectly acquire Citizens State Bank, Corrigan, Texas, and First Bank, Groveton, Texas.

Board of Governors of the Federal Reserve System, August 30, 1996.

William W. Wiles

Secretary of the Board.

[FR Doc. 96–22743 Filed 9–5–96; 8:45 am]

BILLING CODE 6210–01–F

De Novo Corporation to do Business Under Section 25A of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under Section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. § 611 *et seq.* The Edge Corporation will operate as a subsidiary of the applicant, Bank One, Texas, National Association, Dallas, Texas. The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may be inspected at the Federal Reserve Bank of Cleveland or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be received by the Reserve Bank indicated or at the offices of the Board of Governors no later than September 20, 1996.

A. Federal Reserve Bank of Cleveland (Andrew C. Burkle, Jr., Vice President) 1455 East 6th, Cleveland, Ohio 44114:

1. Bank One, Texas, National Association, Dallas, Texas; to establish Banc One International Corporation, Dallas, Texas, a *de novo* Edge Corporation pursuant to Section 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, August 30, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–22740 Filed 9–5–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 30, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee, and Capital Bancoporation, Inc., Memphis, Tennessee; to acquire 100 percent of the voting shares of, and merge with Financial Bancshares, Inc., St. Louis, Missouri; and thereby indirectly acquire First Financial Bank of St. Louis, St. Louis, Missouri; First Financial Bank of Mississippi County, East Prairie, Missouri; First Financial Bank of Ste. Genevieve, Ste. Genevieve, Missouri; First Financial Bank of Southeast Missouri, Sikeston, Missouri; Citizens First Financial Bank, Dexter, Missouri.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Premier Bancorp, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bank, Denver, Colorado.

Board of Governors of the Federal Reserve System, August 30, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–22741 Filed 9–5–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the

BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. State Street Boston Corporation, Boston, Massachusetts; to engage *de novo* through its subsidiaries, Boston Financial Data Services, Inc., Quincy, Massachusetts, and National Financial Data Services, Inc., Kansas City, Missouri, in securities brokerage activities, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Summit Bancorp, Princeton, New Jersey; to acquire Central Jersey Financial Corp., East Brunswick, New Jersey, and thereby indirectly acquire Central Jersey Savings Bank, SLA, East Brunswick, New Jersey, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp., Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, CoreStates Securities Corp, Philadelphia, Pennsylvania, in underwriting and dealing in government obligations, pursuant to § 225.25(b)(16) of the Board's Regulation Y.

2. Fulton Financial Corporation, Lancaster, Pennsylvania; to engage *de novo* in community development activities through a limited partnership, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Caisse Nationale de Credit Agricole S.A., Paris, France; to retain through Banque Indosuez, Paris, France, Indosuez Carr Futures, Inc., Chicago, Illinois, Daniel Breen & Company, L.P., Houston, Texas, and thereby engage in acting as a futures commission merchant and providing related advisory services, and in investment advisory activities. In connection with this application, Caisse Nationale de Credit Agricole S.A., Paris, France, and Banque Indosuez, Paris, France, also have applied to engage through Daniel Breen & Company, L.P., Houston, Texas, and Breen Trust Company, Houston, Texas, in functions and activities permitted for trust companies. In addition, Applicants also have applied to engage *de novo* in acting as a futures commission merchant and providing related advisory services with respect to non-financial futures and, to provide execution-only and clearance-only services with respect to futures transactions. Applicant proposed to engage in these activities, pursuant to § 225.25 b)(18), and (b)(3) of the Board's Regulation Y and Board Order. 79 Fed. Res. Bull. 1049 (1993); 80 Fed. Res. Bull. 151 (1994); 80 Fed. Res. Bull. 649 (1994); and 80 Fed. Res. Bull. 552 (1994).

2. Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Nertherlands; Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands; ABN AMRO Holding N.V., Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam, The Netherlands; ABN AMRO North America, Inc., Chicago, Illinois, to acquire Heigle Mortgage and Financial Corporation, Bloomington, Minnesota, and thereby indirectly acquire LaSalle Home Mortgage Corporation, Chicago, Illinois, and thereby engage in the nonbanking activity of making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire Kenesaw Leasing Inc., Knoxville, Tennessee, and thereby engage in leasing personal or real property, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1996.

William W. Wiles

Secretary of the Board

[FR Doc. 96–22742 Filed 9–5–96; 8:45 am]

BILLING CODE 6210–01–F

Federal Open Market Committee; Domestic Policy Directive of July 2-3, 1996.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 2-3, 1996.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity advanced considerably further in the second quarter, but increases in final demand showed some signs of moderation. Nonfarm payroll employment was up substantially in April and May; the civilian unemployment rate rose to 5.6 percent in May. Industrial production increased appreciably further in May, reflecting gains across a wide range of industries. Real consumer spending rose substantially on balance over April and May. Single-family housing starts fell considerably in May from a relatively high level in April. Orders and contracts point to some deceleration in spending on business equipment and nonresidential structures after a very rapid expansion earlier in the year. The nominal deficit on U.S. trade in goods and services widened in April from its rate in the first quarter. Upward pressures on food and energy prices have led to somewhat larger increases in the consumer price index over recent months.

Most Market interest rates have edged higher since the Committee meeting on May 21. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has depreciated slightly over the intermeeting period.

M2 declined in May, though partial data for June pointed to a rebound. Growth of M3 was relatively sluggish in May but also appears to have turned up in June. For the year through June, both aggregates are estimated to have grown at rates around the upper bounds of

[1] Copies of the Minutes of the Federal Open Market Committee meeting of July 2-3, 1996, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

their respective ranges for the year. Expansion in total domestic nonfinancial debt has been moderate on balance over recent months and has remained in the middle portion of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in January for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The monitoring range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1997 the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1996 to the fourth quarter of 1997, of 1 to 5 percent for M2 and 2 to 6 percent for M3. The Committee provisionally set the associated monitoring range for growth of total domestic nonfinancial debt at 3 to 7 percent for 1997. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, August 28, 1996.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 96–22805 Filed 9–5–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System*

TIME AND DATE: 9:00 a.m., Wednesday, September 11, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to Federal Reserve System benefits.
2. Any items carried forward from a previously announced meeting.

* * * * * *

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 4, 1996

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–22900 Filed 9–4–96; 10:20 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting.

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, September 11, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulation Z (Truth in Lending) concerning lenders' liability for disclosure errors in real estate-secured loans and new disclosure rules for debt cancellation contracts (proposed earlier for public comment; Docket No. R–0927).
2. Any items carried forward from a previously announced meeting.

Discussion Agenda: PLEASE NOTE THAT NO DISCUSSION ITEMS ARE SCHEDULED FOR THIS MEETING.

Note: If the items are moved from the Summary Agenda to the Discussion Agenda, discussion of the items will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 4, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–22901 Filed 9–4–96; 10:20 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:15 a.m., Wednesday, September 11, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 4, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–22902 Filed 9–4–96; 10:20 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Federal Retirement Thrift Investment Board

TIME AND DATE: 8:00 a.m. (EDT) September 16, 1996.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 19, 1996, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.

3. Review of FY 1996 expenditures, approval of FY 1997 proposed budget, and review of FY 1996 estimates.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of Eternal Affairs, (202) 942–1640.

Date: September 3, 1996.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 96–22899 Filed 9–4–96; 9:48 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Addressing Immunization Information Systems Barriers Meeting

The National Immunization Program (NIP) of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Addressing Immunization Information Systems Barriers.

Time and Date: 9 a.m.-4 p.m., September 12, 1996.

Place: Office of the National Immunization Program, CDC, Corporate Square Office Park, Building 12, Third Floor Conference Room, Atlanta, Georgia 30329, telephone 404/639–8250.

Status: Open to the public for observation and comment, limited only by the space available. To reserve a seat, please pre-register by calling the contact person listed below.

Purpose: The purpose of this meeting is to identify barriers to the development and implementation of automated immunization information systems, and strategies to address these barriers. Agenda items will include discussion between information systems experts, public health officials, and other healthcare providers.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jim Harrison, Director, Data Management Division, NIP, CDC, Corporate Square Boulevard, M/S E–62, Atlanta, Georgia 30329, telephone 404/639–8250.

Dated: August 28, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–22763 Filed 9–5–96; 8:45 am]

BILLING CODE 4163–18–M

Health Care Financing Administration

[Document Identifier: HCFA–1964]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. HCFA–1964 *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Request for Review of Part B Medicare Claim and Supporting regulation 42 CFR 405.807; *Form No.:* HCFA–1964; *Use:* This form is completed by beneficiaries, representative, or assignees who wish to pursue their statutory appeal rights by requesting a review of an initial determination made by a Part B carrier on a claim for medical and other health services. 42 CFR 405.807 is the regulation supporting this collection of information; *Frequency:* On occasion; *Affected Public:* Individuals or households, not for profit institutions; *Number of Respondents:* 7,200,000; *Total Annual Responses:* 7,200,000; *Total Annual Hours:* 1,800,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 28, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–22718 Filed 9–5–96; 8:45 am]

BILLING CODE 4120–03–P

[(HCFA-R–13, 2567–A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations; *Form No.:* HCFA–R–13; *Use:* Organ procurement organizations are required to submit accurate data to HCFA concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs. Frequency: Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 66; *Total Annual Responses:* 66; *Total Annual Hours Requested:* 1.

2. *Type of Information Collection Request:* Extension of a currently

approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction; *Form No.:* HCFA–2567–A; *Use:* This Paperwork package provides information regarding deficiencies for Organ Procurement Organizations (OPO) as well as deficiencies noted during periodic facility and laboratory certification surveys. This information is used to make decisions concerning OPO redesignation, certification/recertification of health care facilities participating in the Medicare/Medicaid Programs, and laboratories regulated by CLIA. *Frequency:* Annually and Biennially; *Affected Public:* State, Local or Tribal Governments, Business or other for-profit, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 49,200; *Total Annual Responses:* 98,400; *Total Annual Hours Requested:* 196,800.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Date: August 28, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–22714 Filed 9–5–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Opportunity for a Cooperative Research and Development Agreement

National Heart, Lung and Blood Institute (NHLBI); Opportunity for a Cooperative Research and Development Agreement (CRADA) for the development of different therapeutic modalities to raise plasma concentrations of the enzyme lecithin cholesterol acyltransferase (LCAT) for the treatment of atherosclerosis and LCAT deficiency.

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice.

SUMMARY: In humans, the development of atherosclerosis is positively and inversely correlated with the plasma levels of low density lipoproteins (LDL) and high density lipoproteins (HDL) respectively. LCAT, the major enzyme involved in the esterification of free cholesterol present in circulating plasma lipoproteins, is a major determinant of plasma HDL concentrations. Recent studies have established that transgenic rabbits overexpressing human LCAT have 6–7 fold higher plasma HDL levels than control, non-transgenic siblings. In addition, LCAT transgenic rabbits have reduced plasma concentrations of the atherogenic LDL and apoB-containing lipoproteins. This lipoprotein phenotype characterized by elevated plasma HDL and reduced LDL levels leads to marked protection against the development of diet-induced atherosclerosis in LCAT transgenic rabbits compared to control animals.

The NHLBI of the NIH is seeking capability statements from parties interested in entering into a CRADA on the development of different therapeutic modalities to raise plasma concentrations of the enzyme lecithin cholesterol acyltransferase (LCAT) for the treatment of atherosclerosis and LCAT deficiency. This project is with the Molecular Disease Branch, National Heart Lung and Blood Institute, National Institutes of Health, Bethesda, Maryland. The goals are to use the respective strengths of both parties to achieve one or more of the following:

(1) Evaluate the feasibility of gene therapy utilizing the LCAT gene and suitable vectors as a treatment approach for the prevention of atherosclerosis in animal models as well as patients with premature cardiovascular disease; and,

(2) Evaluate the use of gene therapy to correct LCAT deficiency in LCAT knockout mice models systems and patients with LCAT deficiency; and,

(3) Develop and evaluate the anti-atherogenic properties of pharmacological agents that raise plasma concentrations of LCAT.

It is anticipated that the commercial collaborator(s) will participate in ongoing studies on one or both of the research projects involving (1) the transfer of the human LCAT gene in animal models and patients with atherosclerosis or LCAT deficiency and (2) the development of pharmacologic agents that will increase plasma concentrations of LCAT. It is highly desirable that the collaborator have the resources to provide new effective vectors for the long term *in vivo* expression of the LCAT gene. The collaborator may also be expected to contribute financial support under this CRADA for supplies and personnel to support these projects.

CRADA capability statements should be submitted to Ms. Lili Portilla, Technology Transfer Specialist, National Heart, Lung, and Blood Institute, Technology Transfer and Commercialization Team, 31 Center Drive MSC 2490, Bldg. 31/Room 1B32, Bethesda, Maryland 20892–2490, Phone: (301) 402–5579, Fax: (301) 594–3080. Capability statements must be received by the NHLBI on or before October 7, 1996.

The NHLBI has applied for patents claiming this core technology. Non-exclusive and/or exclusive licenses for these patents covering core aspects of this project are available to interested parties. Licensing inquiries regarding this technology should be referred to Ms. Carol Lavrich, Licensing Specialist, NIH Office of Technology Transfer, 6011 Executive Blvd., Suite 325, Rockville, Maryland, 20852–3804, Phone: (301) 496–7735, Ext. 287, Fax: (301) 402–0220.

Dated: August 29, 1996.

Sheila Merritt,

Executive Officer, NHLBI.

[FR Doc. 96–22758 Filed 9–5–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Regents, National Library of Medicine, September 24–25, 1996, Board Room of the National Library of Medicine, Building 38, which was published in the **Federal Register** on August 19, 1996. (61 FR 43066).

The meeting was to have been open to the public on September 24 from 9 a.m. to 4:30 p.m., but has been changed to be open from 9 a.m. to approximately 11:25 a.m. and 12 noon to approximately 4:15 p.m. The meeting was to have been closed to the public on September 24 from 4:30 to 5 p.m., but has been changed to be closed from 11:25 a.m. to 12 noon, and from 3:45 to 4:15 p.m.

As previously announced, the meeting will be open to the public on September 25 from 9 a.m. to adjournment.

Dated: August 30, 1996.

Margery G. Grubb,

Senior NIH Committee Management Specialist.

[FR Doc. 96–22757 Filed 9–5–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

[Docket No. FR–4124–N–02]

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Derrick Mitchell, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6083; (These are not toll-free numbers).

Dated: August 30, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 09/06/96

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 3702, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340183
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only

Bldg. 3703, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340184
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only

Bldg. 3704, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340185
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, most recent use—barracks, off-site use only

Bldg. 3705, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340186
Status: Unutilized
Comment: 2975 sq. ft., 1-story wood, needs rehab, most recent use—general purpose, off-site use only

Bldg. 3706, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340187
Status: Unutilized
Comment: 2975 sq. ft., 1-story wood, needs rehab, most recent use—barracks, general purpose, off-site use only

Bldg. 3707, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340188
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only

Bldg. 3708, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340189
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood, needs rehab, presence of asbestos, most recent use—barracks, off-site use only

Bldg. T274, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440389
Status: Unutilized

Comment: 3967 sq. ft., 1-story wood, most recent use—clinic, needs rehab, off-site use only

Bldg. T421, Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440393
Status: Unutilized
Comment: 1602 sq. ft., 1-story wood, most recent use—support activity, needs rehab, off-site use only

7 Bldgs.
Fort. McClellan
#829–831, 833, 835–836, 844
Ft. McClellan Co: Calhoun Al 36205–5000
Landholding Agency: Army
Property Number: 219440395
Status: Unutilized
Comment: 4425 sq. ft. each, 2-story, most recent use—barracks, off-site use only

Bldg. T00893
Fort. McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440396
Status: Unutilized
Comment: 3269 sq. ft., each, 1-story, most recent use—chapel, off-site use only

Bldgs. T903, T909
Fort. McClellan
Ft. McClellan Co: Calhoun Al 36205–5000
Landholding Agency: Army
Property Number: 219440397
Status: Unutilized
Comment: 1677 sq. ft. and 1166 sq. ft. bldgs., most recent use—classroom, off-site use only

Bldgs. T916–T917, T925
Fort McClellan
Ft. McClellan Co: Calhoun Al 36205–5000
Landholding Agency: Army
Property Number: 219440398
Status: Unutilized
Comment: 3075–4500 sq. ft., 1-story, most recent use—barracks, off-site use only

Bldg. 60101
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520152
Status: Unutilized
Comment: 6082 sq. ft., 1-story, most recent use—airfield fire station, off-site use only

Bldg. 60100
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520153
Status: Unutilized
Comment: 64 sq. ft., mental structure, most recent use—entry station, off-site use only

Bldg. 60103
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520154
Status: Unutilized
Comment: 12516 sq. ft., 2-story, most recent use—admin., off-site use only

Bldg. 60110
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520155
Status: Unutilized
Comment: 8319 sq. ft., 1-story, most recent use—admin., off-site use only

Bldg. 60113
Shell Army Heliport
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219520156
Status: Unutilized
Comment: 4000 sq. ft., 1-story, most recent use—admin., off-site use only

Bldgs. 832, 834
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219540010
Status: Unutilized
Comment: 4425 sq. ft. each, most recent use—barracks w/o mess, off-site use only

Bldgs. 2802, 2805, 3811
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219620662
Status: Unutilized
Comment: #2802=13,082 sq. ft., #2805=13,082 sq. ft., #3811=3000 sq. ft., most recent use—admin., needs repair, off-site use only

Alaska

Bldg. 400
Fort Richardson
Ft. Richardson AK 99505–
Landholding Agency: Army
Property Number: 219440400
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only

Bldg. 402
Fort Richardson
Ft. Richardson AK 99505–
Landholding Agency: Army
Property Number: 219440401
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood, presence of lead paint and asbestos, off-site use only

Bldg. 407
Fort Richardson
Ft. Richardson AK 99505–
Landholding Agency: Army
Property Number: 219440402
Status: Unutilized
Comment: 13056 sq. ft., 2-story wood frame, presence of lead paint and asbestos, off-site use only

Bldg. 1168
Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99703–
Landholding Agency: Army
Property Number: 219610636
Status: Underutilized
Comment: 6455 sq. ft., concrete, presence of asbestos, most recent use—warehouse

Bldg. 4057
Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99703–
Landholding Agency: Army
Property Number: 219610637
Status: Underutilized
Comment: 2604 sq. ft., presence of asbestos/POL, most recent use—sewage/waste water treatment

Arizona

Bldg. 70117—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120306
Status: Excess
Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional, off-site use only

Bldg. 70118—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120307
Status: Excess
Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional, off-site use only

Bldg. 70119—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120308
Status: Excess
Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—general instructional, off-site use only

Bldg. 70120—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120309
Status: Excess
Comment: 3434 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only

Bldg. 70225—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only

Bldg. 83006—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only

Bldg. 83007—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only

Bldg. 83008—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only

Bldg. 83015—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose, off-site use only

Bldg. 81001

Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240720
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only

Bldg. 81020
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240722
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only

Bldg. 67204
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240723
Status: Unutilized
Comment: 4332 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only

Bldg. 66151
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240728
Status: Unutilized
Comment: 4194 sq. ft., 2 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only

Bldg. 72219
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240729
Status: Unutilized
Comment: 2730 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only

Bldg. 72220
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240730
Status: Unutilized
Comment: 2879 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only

Bldg. 72221
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240731
Status: Unutilized
Comment: 3736 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only

Bldg. 67108
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240733
Status: Unutilized
Comment: 2403 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only

Bldg. 70226
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240734
Status: Unutilized
Comment: 1868 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only

Bldg. 71116
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240735
Status: Unutilized
Comment: 3470 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only

Bldg. 71215
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240736
Status: Unutilized
Comment: 4854 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only

Bldg. 70110
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240739
Status: Unutilized
Comment: 2675 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70111
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240740
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70113
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240741
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70114
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240742
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70115
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240743
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70123
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240744
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70124
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240745
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70126
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240746
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70210
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240747
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70211
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240748
Status: Unutilized
Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70221
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219240749
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 70222
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219240750
Status: Unutilized

Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 71214
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219240751
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 82013
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240752
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 90327
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219240753
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only

Bldg. 71213
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219240754
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only

Bldg. 82007
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219240755
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only

Bldg. 82009
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240756
Status: Unutilized
Comment: 2444 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only

Bldg. 70216
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219310287
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70215
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70214
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219310289
Status: Unutilized
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70212
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70220
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635—
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only

Bldg. 70218, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310292
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only

Bldg. 70217, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only

Bldg. 80010, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 84103, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. 67221
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330235
Status: Unutilized
Comment: 1068 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 83102
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330236
Status: Unutilized
Comment: 984 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 84010
U.S. Army Intelligence Center, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330237
Status: Unutilized
Comment: 2147 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 67116
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410243
Status: Unutilized
Comment: 1784 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 67205
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410244
Status: Unutilized
Comment: 2166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67207
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410245
Status: Unutilized
Comment: 2166 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 67213
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410246
Status: Unutilized
Comment: 2594 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 73913
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410247

Status: Unutilized
Comment: 910 sq. ft.; 1 story; wood; most recent use—admin.; off-site use only

Bldg. 80001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410248
Status: Unutilized
Comment: 1958 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 83027
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410249
Status: Unutilized
Comment: 1993 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 84007
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410250
Status: Unutilized
Comment: 2000 sq. ft.; 2 story; wood; most recent use—admin.; off-site use only

Bldg. 68320
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410251
Status: Unutilized
Comment: 1531 sq. ft.; 1 story; wood; most recent use—recreation center; off-site use only

Bldg. 30126
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410252
Status: Unutilized
Comment: 9324 sq. ft.; 1 story; wood; most recent use—maintenance; off-site use only

Bldg. 84014
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219410253
Status: Unutilized
Comment: 2260 sq. ft.; 1 story; wood; most recent use—maintenance; off-site use only

Bldg. S–106
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85635–9104
Landholding Agency: Army
Property Number: 219420345
Status: Unutilized
Comment: 1101 sq. ft., 1-story, cold storage bldg., needs repair

Bldgs. 67210, 67217
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219420347
Status: Unutilized
Comment: 1165 sq. ft., 1-story wood, presence of asbestos, most recent use—office, off-site use only

Bldg. 8005
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219430245
Status: Unutilized
Comment: 1718 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 80006
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219430246
Status: Unutilized
Comment: 1628 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 83023
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219430247
Status: Unutilized
Comment: 1648 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 81027
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219430248
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repair, off-site use only

Bldg. 81028
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219430249
Status: Unutilized
Comment: 2193 sq. ft., 2-story, wood frame, most recent use—admin., needs repair, off-site use only

Bldg. 80111
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219430250
Status: Unutilized
Comment: 2032 sq. ft., 1-story, wood frame, most recent use—instructional bldg., needs repair, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85635–9104
Landholding Agency: Army
Property Number: 219520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos

Bldg. 63001, 80112
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219520157
Status: Excess
Comment: 1898–2000 sq. ft., 1-story, presence of asbestos & lead base paint, off-site use only

9 Classroom Facilities
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: Bldgs. 67111, 67118, 67124, 67209, 81005, 81006, 81008, 83024, 84003
Landholding Agency: Army
Property Number: 219520158
Status: Excess
Comment: 1044–2602 sq. ft., 1–2 story, presence of asbestos and lead base paint, off-site use only

Bldg. 67214
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219520159
Status: Excess
Comment: 955 sq. ft., 1-story, most recent use—rec. bldg., presence of asbestos and lead base paint, off-site use only

2 Storage Facilities
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: Bldgs. 72320, 80017
Landholding Agency: Army
Property Number: 219520160
Status: Excess
Comment: 2340 sq. ft., 1–2 story, presence of asbestos and lead base paint, off-site use only

10 Admin. Facilities
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: Bldgs. 80025, 80027, 80028, 80102, 81002, 81009, 81102, 83025, 83026, 84008
Landholding Agency: Army
Property Number: 219520161
Status: Excess
Comment: 996–2193 sq. ft., 1–2 story, presence of asbestos and lead base paint, off-site use only

12 Admin. Facilities
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: Bldgs. 67110, 67114, 67115, 67121, 67122, 67226, 67228, 70122, 80008, 80009, 80013, 80024
Landholding Agency: Army
Property Number: 219520162
Status: Excess
Comment: 1041–3298 sq. ft., 1–2 story, presence of asbestos and lead base paint, off-site use only

10 Barracks
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: Bldgs. 67102–67106, 67125–67129
Landholding Agency: Army
Property Number: 219520163
Status: Excess
Comment: 1352-2291 sq. ft., 2-story, presence of asbestos and lead base paint, off-site use only

Bldg. 73902
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219610638
Status: Unutilized
Comment: 5355 sq. ft., presence of asbestos, most recent use—maintenance, off-site use only

9 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: Bldgs. 82002, 82027, 82028, 83021, 83022, 85008, 85009, 85027, 85028
Landholding Agency: Army
Property Number: 219610639
Status: Unutilized

Comment: various sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 85005
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219610640
Status: Unutilized
Comment: 3515 sq. ft., presence of asbestos, most recent use—dining, off-site use only

21 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 66057, 66152–66155, 66157–66159, 67201, 80020, 82105, 82106, 83013, 83017, 83020, 84002, 84017, 85015, 85017, 85102, 85105
Landholding Agency: Army
Property Number: 219610641
Status: Unutilized
Comment: various sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 66055
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219610642
Status: Unutilized
Comment: 1946 sq. ft., presence of asbestos, most recent use—recreation, off-site use only

7 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 30028, 66150, 67360, 71919, 73914, 74909, 82024
Landholding Agency: Army
Property Number: 219610643
Status: Unutilized
Comment: various sq. ft., presence of asbestos, most recent use—storage, off-site use only

7 Bldgs.
Fort Huachucu
Sierra Vista Co: Cochise AZ 85635–
Location: 71210, 71211, 80002, 80014, 82005, 82006, 85103
Landholding Agency: Army
Property Number: 219610644
Status: Unutilized
Comment: Various sq. ft., presence of asbestos, most recent use—classrooms, off-site use only

Bldgs. 13548, 72918
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219620663
Status: Unutilized
Comment: #13548=2048 sq. ft., most recent use—maint. shop, #72918=2822 sq. ft., most recent use—storage, possible asbestos/lead base paint, off-site use only

California

Bldg. T–26
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219620684
Status: Underutilized
Comment: 15,551 sq. ft., most recent use—guest house, needs repair, off-site use only.

Georgia

Bldg. 5390
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010137
Status: Unutilized
Comment: 2432 sq. ft., most recent use—dining room, needs rehab.

Bldg. 5362
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft., most recent use—service club, needs rehab.

Bldg. 5392
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010151
Status: Unutilized
Comment: 2432 sq. ft., most recent use—dining room, needs rehab.

Bldg. 5391
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219010152
Status: Unutilized
Comment: 2432 sq. ft., most recent use—dining room, needs rehab.

Bldg. 4487
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1868 sq. ft., most recent use—telephone exchange bldg., needs substantial rehabilitation, 1 floor.

Bldg. 4319
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft., most recent use—vehicle maintenance shop, needs substantial rehabilitation, 1 floor.

Bldg. 3400
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment: 2570 sq. ft., most recent use—fire station, needs substantial rehabilitation, 1 floor.

Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment: 4574 sq. ft., most recent use—clinic, needs substantial rehabilitation, 1 floor.

Bldg. 4092
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft., most recent use—inflamable materials storage, needs substantial rehabilitation, 1 floor.

Bldg. 4089
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft., most recent use—gas station, needs substantial rehabilitation, 1 floor.

Bldg. 1235
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014887
Status: Unutilized
Comment: 9367 sq. ft., 1-story building, needs rehab., most recent use—general storehouse.

Bldg. 1236
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014888
Status: Unutilized
Comment: 9367 sq. ft., 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014889
Status: Unutilized
Comment: 18385 sq. ft., 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft., 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4633
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft., 1 story building; needs rehab; most recent use—Training Building.

Bldg. 2150
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab; most recent use—general inst. bldg.

Bldg. 2409
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2590
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldg. 3086, Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220688
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks. Needs major rehab, off-site removal only.

Bldg. 3089, Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220689
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—barracks. Needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220698
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3083, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220699
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3085, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220715
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 5396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220734
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4978, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220737
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major repairs, off-site removal only.

Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., needs repairs, off-site removal only.

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220764
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4679, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized

Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 2513, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, need repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only.

Bldg. 4627, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1676 sq. ft., 1 story, most recent use—sentry station, needs major rehab, off-site removal only.

Bldg. 4114, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310407
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4117, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310408
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4118, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310409
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4125, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310410
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4126, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310411
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4129, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310412
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4130, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310413
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4137, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310414
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4138, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310415
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4140, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310416
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4004, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310418
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4106, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310425
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4115, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310426
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4116, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310427
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4127, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310428
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4128, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310429
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4139, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310430
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4149, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310431
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4150, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310432
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4112, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310436
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4119, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310437

Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4124, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310438
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4141, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310439
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4136, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310440
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4131, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310441
Status: Unutilized
Comment: 1144 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4108, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 1835, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4107, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 3072, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldg. 4103, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310449
Status: Unutilized
Comment: 1635 sq. ft., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4019, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310451
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4109, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4135, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310458
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4123, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310459
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4111, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310460
Status: Unutilized
Comment: 3755 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4067, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4025, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4110, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310467
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4122, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310468
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4134, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310469
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4113, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 10847, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized
Comment: 816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 4121, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310487
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 4133, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310488
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 4143, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310489

Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 4105, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219310490
Status: Unutilized
Comment: 1416 sq. ft., 1-story needs rehab, most recent use—arms bldg., off-site use only.

Bldg. 26306
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219320225
Status: Unutilized
Comment: 1272 sq. ft., 1-story wood frame, possible asbestos, needs repairs, off-site use only, most recent use—storage.

Bldg. 354, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330259
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 355, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330260
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, needs repairs, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 356, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330261
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repairs, most recent use—offices, off-site use only.

Bldg. 377, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330263
Status: Unutilized
Comment: 4768 sq. ft., 1-story wood, needs repairs, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19601, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330268
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19602, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330269
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 35503, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330277
Status: Unutilized
Comment: 2500 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 332, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330289
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 333, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330290
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 334, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330291
Status: Unutilized
Comment: 4279 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only.

Bldg. 335, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330292
Status: Unutilized
Comment: 4300 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 353, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330293
Status: Unutilized
Comment: 5157 sq. ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 352, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219330294
Status: Unutilized
Comment: 560 sq. ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only.

Bldg. 10501
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410264
Status: Unutilized
Comment: 2516 sq. ft., 1-story, wood, needs rehab., most recent use—office, off-site use only.

Bldg. 10601
Fort Gordon
Fort Gordon Co.: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410265
Status: Unutilized
Comment: 1334 sq. ft., 1-story, wood, most recent use—office, off-site use only.

Bldg. 20303
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410266
Status: Unutilized
Comment: 2376 sq. ft., 1 story, wood, needs rehab., most recent use—office, off-site use only.

Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410269
Status: Unutilized
Comment: 70 sq. ft., 1-story, metal, needs rehab., most recent use—storage, off-site use only.

Bldg. 21914
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410270
Status: Unutilized
Comment: 85 sq. ft., 1-story, needs rehab., most recent use—storage, off-site use only.

Bldg. 951
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410271
Status: Unutilized
Comment: 17,825 sq. ft., 1-story, wood, needs rehab., most recent use—workshop, off-site use only.

Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410272
Status: Unutilized
Comment: 2788 sq. ft., 1-story, wood, needs rehab., most recent use—maintenance shop, off-site use only.

Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219410273
Status: Unutilized
Comment: 195 sq. ft., 1-story, wood, most recent use—oil storage shed, off-site use only.

Bldg. P–8582
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420355
Status: Unutilized
Comment: 5892 sq. ft., 2-story, steel, needs major repairs, most recent use—radar tower, off-site use only.

Bldg. T–305, Fort Stewart
Hinesville Co: Liberty Ga 31314–
Landholding Agency: Army
Property Number: 219510103
Status: Excess
Comment: 2340 sq. ft., 1-story, most recent use—hosp. clinic, needs rehab, off-site use only.

Bldg. T–1414
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219510106
Status: Excess

Comment: 2000 sq. ft., 1-story, most recent use—office, needs rehab, off-site use only.

Bldg. 2813, Ft. Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520074
Status: Unutilized
Comment: 40536 sq. ft., 4-story, most recent use—admin., needs major repair, off-site use only.

Bldg. 401
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520076
Status: Unutilized
Comment: 5167 sq. ft., 1-story, needs major repair, most recent use—office, off-site use only.

Bldg. T–901
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520077
Status: Unutilized
Comment: 1828 sq. ft., 1-story, needs major repair, most recent use—admin., off-site use only.

Bldg. T–902
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520078
Status: Unutilized
Comment: 1828 sq. ft., 1-story, needs major repair, most recent use—admin., off-site use only.

Bldg. 51202, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219520080
Status: Unutilized
Comment: 1555 sq. ft., 1-story, needs repair, presence of lead paint, most recent use—office, off-site use only.

Bldgs. 61401 and 91501
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219520132
Status: Unutilized
Comment: 7036 sq. ft. each, 2-story, needs rehab, presence of asbestos & lead base paint, most recent use—barracks, off-site use only.

Bldg. 2814, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520133
Status: Unutilized
Comment: 40536 sq. ft., 4-story, most recent use—barracks w/dining, needs major repair, off-site use only.

Bldg. 90, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520165
Status: Unutilized
Comment: 25065 sq. ft., 1-story, needs rehab, most recent use—theater, off-site use only.

Bldg. 227, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520166
Status: Unutilized
Comment: 14019 sq. ft., 2-story, needs rehab, most recent use—NCO club, off-site use only.

Bldg. 1755, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520170
Status: Unutilized
Comment: 3142 sq. ft., needs rehab, most recent use—maint. shop, off-site use only.

Bldg. 3802, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520173
Status: Unutilized
Comment: 3362 sq. ft., 1-story, needs rehab, most recent use—chapel, off-site use only.

Bldg. 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. A1618, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219520184
Status: Unutilized
Comment: 2800 sq. ft., 1-story, needs rehab, most recent use—storage, presence of asbestos & lead base paint, off-site use only.

Bldg. 61404, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219520185
Status: Unutilized
Comment: 3428 sq. ft., 1-story, most recent use—maint. shop, needs rehab, presence of asbestos & lead base paint, off-site use only.

Bldg. T–959
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219610646
Status: Unutilized
Comment: 3108 ft., needs rehab, most recent use—motor pool, off-site use only.

Bldg. T–1119
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219610647
Status: Unutilized
Comment: 94 sq. ft., poor condition, most recent use—storage, off-site use only.

Bldg. P–4583
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219610648
Status: Unutilized
Comment: 40 sq ft., most recent use—fuel bldg., off-site use only.

Bldg. B1201
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610649
Status: Unutilized
Comment: 980 sq. ft., needs repair, most recent use—office, off-site use only.

Bldg. 2141
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219610655
Status: Unutilized
Comment: 2283 sq. ft., needs repair, most recent use—office, off-site use only.

Bldg. T–8224
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219610661
Status: Unutilized
Comment: 25 sq. ft., sentry station, needs repair, off-site use only.

Bldg. 34300
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219620684
Status: Unutilized
Comment: 2525 sq. ft., most recent use—auto svc store, possible asbestos, off-site use only.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations.

Bldg. S–823
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219520082
Status: Unutilized
Comment: 3150 sq. ft., 2-story wood frame, most recent use—office, off-site use only.

Bldg. P–125
Tripler Army Medical Center
Honolulu Co: Honolulu HI 96859–5000
Landholding Agency: Army
Property Number: 219540013
Status: Excess
Comment: 7987 sq. ft., need major repairs, most recent use—boiler plant, off-site use only.

Bldg. T–1191
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219610663
Status: Unutilized
Comment: 7186 gross sq. ft., termite damage, most recent use—range support, off-site use only.

Bldg. T–255A
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219610664
Status: Unutilized
Comment: 943 gross sq. ft., most recent use—boy scout hut, off-site use only.

Bldg. P–A3025

Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219610665
Status: Unutilized
Comment: 1093 gross sq. ft., termite damage, most recent use—storage, off-site use only.

Bldg. P–31
Mauna Kapu Communications Station Site
Makakilo Co: Ewa HI 96706–
Landholding Agency: Army
Property Number: 219610666
Status: Unutilized
Comment: 214 gross sq. ft., most recent use—generator bldg., off-site use only.

Bldg. S–571
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620654
Status: Unutilized
Comment: 10,053 sq. ft., most recent use—classroom, off-site use only.

Bldg. S–120
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620655
Status: Unutilized
Comment: 2750 sq. ft., most recent use—admin., off-site use only.

Bldg. S–570
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620656
Status: Unutilized
Comment: 60 sq. ft., most recent use—ticket booth, off-site use only.

Bldg. T–723
Fort Shafter
Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219620657
Status: Unutilized
Comment: 1751 sq. ft., most recent use—store house, off-site use only.

Bldg. T–1629
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620658
Status: Unutilized
Comment: 3287 sq. ft., most recent use—storage, possible termite infestation, off-site use only.

Bldg. T–489
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620659
Status: Unutilized
Comment: 6120 sq. ft., most recent use—storage, needs repair, off-site use only.

Bldg. T–310
Fort Shafter
Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219620660
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only.

Illinois

WARD Army Reserve Center
1420 Northmoor Road
Peoria Co: Peoria IL 61614–3498
Landholding Agency: Army
Property Number: 219430254
Status: Unutilized
Comment: 2 bldgs. on 3.15 acres, 36451 sq. ft., reserve center & warehouse, presence of asbestos, most recent use—office/storage/training.

Stenafich Army Reserve Center
1600 E. Willow Road
Kankakee Co: Kankakee IL 60901–2631
Landholding Agency: Army
Property Number: 219430255
Status: Unutilized
Comment: 2 bldgs.—reserve center & vehicle maint. shop on 3.66 acres, 5641 sq. ft., most recent use—office/storage/training, presence of asbestos.

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.

Indiana

Bldgs. 7215, 7216
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219330297
Status: Unutilized
Comment: roadside shelters, no utilities, located on Indiana State Highway Right of Way.

Bldg. 41, USARC Brann
Rushville Co: Rush IN 46173–
Landholding Agency: Army
Property Number: 219610667
Status: Unutilized
Comment: 10820 sq. ft., presence of asbestos, most recent use—office/storage/training.

Bldg. 42, USARC Brann
Rushville Co: Rush IN 46173–
Landholding Agency: Army
Property Number: 219610668
Status: Unutilized
Comment: 2464 sq. ft., presence of asbestos, most recent use—vehicle maintenance shop.

Bldg. 27, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 219610669
Status: Unutilized
Comment: 10379 sq. ft., presence of asbestos, most recent use—office/storage/training.

Bldg. 36, USARC Paulsen
North Judson Co: Starke IN 46366–
Landholding Agency: Army
Property Number: 219610670
Status: Unutilized
Comment: 1802 sq. ft., presence of asbestos, most recent use—vehicle maintenance.

Iowa

U.S. Army Reserve Center
705 E. Taylor Street
Creston Co: Adams IA 50801–4040
Landholding Agency: Army
Property Number: 219430253
Status: Unutilized
Comment: 6500 sq. ft., 1-story structure on 2 acres, most recent use—office/storage/training.

Kansas

Bldg. T–2549, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219310251
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. 166, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219410325
Status: Unutilized
Comment: 3803 sq. ft., 3-story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.

Bldg. 184, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219430146
Status: Unutilized
Comment: 1959 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—boiler plant, historic district.

Bldg. 1461
Fort Leavenworth
Ft. Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219440424
Status: Unutilized
Comment: 1075 sq. ft., 1-story wood frame, asbestos cement shingles, most recent use—office, off-site use only.

Bldgs. T–2018, T–2120, T–2338
Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219510099
Status: Unutilized
Comment: 3059–3278 sq. ft., 1-2 story, needs rehab, presence of asbestos, most recent use—office/storage.

Bldgs. S–403, S–401
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219510100
Status: Excess
Comment: 2978 sq. ft., 1-story, presence of asbestos, most recent use—hosp. clinic, off-site use only.

Bldg. P–157
Fort Leavenworth
Leavenworth Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219610677
Status: Unutilized
Comment: 2070 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. P–1042
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219610678
Status: Unutilized
Comment: 3 floors, needs repair, presence of lead paint, most recent use—maintenance shop, off-site use only.

Bldg. P–313, Fort Riley

Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219610668
Status: Unutilized
Comment: 6222 sq. ft., most recent use—admin. bldg., needs repair, possible asbestos.

Kentucky

Bldg. 2541
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610679
Status: Unutilized
Comment: 1850 sq. ft., needs repair, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2556
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610680
Status: Unutilized
Comment: 5400 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. 2634
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610681
Status: Unutilized
Comment: 5310 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. 2636
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610682
Status: Unutilized
Comment: 5310 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. 2711
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610683
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 2713
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610684
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 2742
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610685
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 2521
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610686
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 6550
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610687
Status: Unutilized
Comment: 25701 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldgs. 2306, 2307
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610688
Status: Unutilized
Comment: 2160 & 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2311
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610689
Status: Unutilized
Comment: 2500 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2313
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610690
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2315
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610691
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2317
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610692
Status: Unutilized
Comment: 2500 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2323
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610693
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2325
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610694
Status: Unutilized
Comment: 2625 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2327
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610695
Status: Unutilized
Comment: 2500 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2329
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610696
Status: Unutilized
Comment: 2250 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldgs. 2336, 2346, 2348, 2513
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610697
Status: Unutilized
Comment: 5310 sq. ft. each, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2527
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610698
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2537
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610699
Status: Unutilized
Comment: 5310 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2539
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610700
Status: Unutilized
Comment: 2500 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2642
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610701
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2730
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610702
Status: Unutilized
Comment: 3060 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2734
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610703

Status: Unutilized
Comment: 2950 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2744
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610704
Status: Unutilized
Comment: 5310 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2909
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610705
Status: Unutilized
Comment: 1198 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 3105
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610706
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 3106
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219610707
Status: Unutilized
Comment: 7538 sq. ft., needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 2632
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620669
Status: Unutilized
Comment: 5310 sq. ft., most recent use—admin., possible asbestos, off-site use only.

Bldg. 2436
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620670
Status: Unutilized
Comment: 1200 sq. ft., most recent use—admin., possible asbestos, off-site use only.

Bldg. 2264
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620671
Status: Unutilized
Comment: 2500 sq. ft., most recent use—admin., possible asbestos, off-site use only.

Bldg. 2344
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620672
Status: Unutilized
Comment: 5310 sq. ft., most recent use—admin., needs repair, possible asbestos, off-site use only.

Bldg. 02157
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620673
Status: Unutilized
Comment: 2500 sq. ft., most recent use—admin., off-site use only.

Bldg. 6111
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620674
Status: Unutilized
Comment: 2700 sq. ft., most recent use—admin., off-site use only.

Bldg. 02411
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620675
Status: Unutilized
Comment: 5310 sq. ft., most recent use—admin., off-site use only.

Louisiana

Bldg. 7316, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620676
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7315, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620677
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7314, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620678
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7313, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620679
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7312, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620680
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7311, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620681
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient.

Bldg. 7310, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620682
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient.

Bldg. 7309, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620683
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient, needs repair.

Maryland

Bldg. E5878
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012652
Status: Unutilized
Comment: 213 sq. ft.; structural deficiencies; possible abestos; and contamination.

Bldg. E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–55425
Landholding Agency: Army
Property Number: 219012653
Status: Unutilized
Comment: 213 sq. ft.; possible asbestos and contamination; no utilities; most recent use—igloo storage.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiencies most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 6687
Fort George G. Meade
Mapes and Zimbroski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only, sched. to be vacated 10/1/92.

Bldgs. 303–308, 323–328, 333–337
Forth George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320293
Status: Unutilized
Comment: 4720 sq. ft. each, 2-story wood frame, possible asbestos, most recent use—barracks/classrooms, fair to good condition, off-site use only.

Bldg. 309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320294
Status: Unutilized

Comment: 2324 sq. ft., 1-story wood frame, possible asbestos, fair to good condition, off-site use only.

Bldgs. 313–314, 317–318
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320296
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, possible asbestos, most recent use—storage, fair to good condition, off-site use only.

Bldgs. 2251, 2252
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219430180
Status: Unutilized
Comment: 648 & 3594 sq. ft., 1-story, concrete/metal structure, needs rehab, presence of asbestos, most recent use—heating plant & admin.

Bldg. E4144
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219540001
Status: Unutilized
Comment: 1632 sq. ft., concrete frame bath house, 1 story, presence of asbestos and lead paint.

Missouri

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1-story, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T427
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330299
Status: Underutilized
Comment: 10245 sq. ft., 1-story, presence of asbestos, most recent use—post office, off-site use only.

Bldg. T2368
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330306
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. T3005
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330307
Status: Underutilized
Comment: 2220 sq. ft., 1-story, presence of asbestos, most recent use—motor repair shop, off-site use only.

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only.

Bldg. T2312
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340217
Status: Underutilized
Comment: 1403 sq. ft., 1-story wood frame, most recent use—paint shop, no handicap fixtures, lead base paint, off-site use only.

Bldg. T6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340219
Status: Underutilized
Comment: 4000 sq. ft., 1-story wood frame, most recent use—storage, no handicap fixtures, off-site use only.

Bldg. T1363
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420392
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T1364
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420393
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T281
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420397
Status: Underutilized
Comment: 4230 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T282
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420398
Status: Underutilized
Comment: 15923 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T283
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420431
Status: Underutilized
Comment: 6163 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T407
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420432
Status: Underutilized
Comment: 2265 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T408
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420433
Status: Underutilized
Comment: 10296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T409
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420434
Status: Underutilized
Comment: 2450 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T410
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420435
Status: Underutilized
Comment: 2664 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T412
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420437
Status: Unutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T415
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420438
Status: Unutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T429

Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420439
Status: Unutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T1100
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420440
Status: Unutilized
Comment: 3236 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420441
Status: Unutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219420446
Status: Unutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks.

Bldg. T403
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510107
Status: Excess
Comment: 5818 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T460
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510108
Status: Excess
Comment: 5428 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T464
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510109
Status: Excess
Comment: 5310 sq. ft., 2-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T590
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510110
Status: Excess
Comment: 3263 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T1246
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510111
Status: Excess
Comment: 1144 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T3007
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510116
Status: Excess
Comment: 4687 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T3008
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510117
Status: Excess
Comment: 4687 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T3010
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510118
Status: Excess
Comment: 4687 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Bldg. T3011
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 219510119
Status: Excess
Comment: 4687 sq. ft. 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only.

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011946
Status: Unutilized
Comment: 1310–1640 sq ft., one floor residential, semi/wood construction, good condition.

New Mexico

Bldg. 149
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330333
Status: Unutilized
Comment: 3570 sq. ft., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 150
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330334
Status: Unutilized
Comment: 3750 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 357
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330335
Status: Unutilized
Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 1758
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330336
Status: Unutilized
Comment: 1620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 1768
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330337
Status: Unutilized
Comment: 15.333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 28281
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330338
Status: Unutilized
Comment: 1856 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 28282
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330339

Status: Unutilized
Comment: 1850 sq. ft., 3-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 32980
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330340
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 34252
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330341
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 418
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330342
Status: Unutilized
Comment: 3690 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 420
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330343
Status: Unutilized
Comment: 2407 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 1348
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330345
Status: Unutilized
Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 1765
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330347
Status: Unutilized
Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 21542
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330348
Status: Unutilized
Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 22118
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330349
Status: Unutilized
Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 22253
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330350
Status: Unutilized
Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 28267
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330351
Status: Unutilized
Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 29195
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330352
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 34219
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330353
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 34221
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330354
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 145
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330355
Status: Unutilized
Comment: 2954 sq. ft., 1-story, presence of asbestos, most recent use—chapel, off-site use only.

Bldg. 1754
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330356
Status: Unutilized
Comment: 6974 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 19242
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330357
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 34227
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330358
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 34244
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219330359
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 21105
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330360
Status: Unutilized
Comment: 239 sq. ft., presence of asbestos, most recent use—veterinarian facility, off-site only.

Bldg. 21106
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330361
Status: Unutilized
Comment: 405 sq. ft., 1-story, presence of asbestos, most recent use—veterinarian facility, off-site use only.

Bldg. 21310
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330362
Status: Unutilized
Comment: 1006 sq. ft., 1-story, presence of asbestos, most recent use—transmitter bldg., off-site use only.

Bldg. 29890
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330363
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—frequency monitoring station, off-site use only.

Bldg. 1868
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330364
Status: Unutilized
Comment: 41 sq. ft., 1-story presence of asbestos, most recent use—scale house, off-site use only.

Bldg. 528
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330365
Status: Unutilized
Comment: 225 sq. ft., 1-story, presence of asbestos, most recent use—decontamination shelter, off-site use only.

Bldg. 1834
White Sands Missile Range

White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330366
Status: Unutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only.

Bldg. 1300
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330367
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—indoor small arms range, off-site use only.

Bldg. 23100
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330368
Status: Unutilized
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only.

Bldg. 29196
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330369
Status: Unutilized
Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only.

Bldg. 30774
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330370
Status: Unutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. 33130
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number : 219330371
Status: Unutilized
Comment: 18 sq. ft., off-site use only.

New York

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number : 219012567
Status: Underutilized
Comment: 30000 sq. ft., 3 floors, most recent use—barracks & mess facility, needs major rehab.

Bldg. 304
Fort Totten
Shore Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Underutilized
Comment: 9610 sq. ft., 3 floors, most recent use–hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Underutilized
Comment: 6329 sq. ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected.

Bldg. 332
Fort Totten
Theater Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012578
Status: Underutilized
Comment: 6288 sq. ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Underutilized
Comment: 30000 sq. ft., 3 floors, most recent use—barracks, mess and administration, utilities disconnected, needs rehab.

Bldg. 326
Fort Totten
326 Pratt Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Underutilized
Comment: 6000 sq. ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.

Bldg. 100, Fort Hamilton
Bellmore Co: Nassau NY 11710–
Landholding Agency: Army
Property Number: 219340254
Status: Underutilized
Comment: 155 sq. ft., 1-story, most recent use—storage.

Bldg. 200, Fort Hamilton
Bellmore Co: Nassau NY 11710–
Landholding Agency: Army
Property Number: 219340255
Status: Underutilized
Comment: 12000 sq. ft., 1-story, most recent use—office.

Bldg. 300, Fort Hamilton
Bellmore Co: Nassau NY 11710–
Landholding Agency: Army
Property Number: 219340256
Status: Underutilized
Comment: 11000 sq. ft., 1-story, most recent use—reserve center.

Bldg. 900, Fort Hamilton
Bellmore Co: Nassau NY 11710–
Landholding Agency: Army
Property Number: 219430259
Status: Underutilized
Comment: 400 sq. ft., 1-story, needs rehab, most recent use—material storage.

Bldg. P–2012, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440429
Status: Unutilized
Comment: 450 sq. ft., most recent use—water distribution bldg., off-site use only.

Bldg. T–2420, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219440431
Status: Unutilized
Comment: 4340 sq. ft., 1-story, most recent use—warehouse, needs rehab, off-site use only.

Bldg. T–601, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219520193
Status: Unutilized
Comment: 2305 sq. ft., 1-story, needs rehab, most recent use—NCO club, off-site use only.

Bldgs. 2611, 2613, 2615, 2617
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219610721
Status: Unutilized
Comment: 4 detached garages with 2-vehicle parking per garage, off-site use only.

Bldg. 148
West Point
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219610722
Status: Unutilized
Comment: 1900 sq. ft., 2-story brick residence, possible lead base paint, off-site use only.

Bldg. 1342
West Point
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219610723
Status: Unutilized
Comment: 400 sq. ft. detached garage, possible lead base paint, off-site use only.

North Carolina

Bldg. 3–2331, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219610724
Status: Unutilized
Comment: 1027 sq. ft. needs repair, possible asbestos, most recent use—storage, off-site use only.

Bldg. N–3931, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219610725
Status: Unutilized
Comment: 3258 sq. ft., needs repair, possible asbestos, most recent use—admin., off-site use only.

Bldg. N–4921, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219610727
Status: Unutilized
Comment: 5676 sq. ft., needs repair, possible asbestos, most recent use—maintenance, off-site use only.

Bldg. O–9064
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620686
Status: Unutilized
Comment: 480 sq. ft., most recent use—storage bldg., possible asbestos, needs repair, off-site use only.

Bldg. O–9107
Fort Bragg

Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620687
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage shed, possible asbestos, off-site use only.

Ohio

15 Units
Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219230354
Status: Excess
Comment: 3 bedroom (7 units)—1,824 sq. ft. each, 4 bedroom (8 units)—2,430 sq. ft. each, 2-story wood frame, presence of asbestos, off-site use only.

7 Units
Military Family Housing Garages
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266-9297
Landholding Agency: Army
Property Number: 219230355
Status: Excess
Comment: 1 4-stall garage and 6 3-stall garages, presence of asbestos, off-site use only.

Bldg. P–3
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662–
Landholding Agency: Army
Property Number: 219320311
Status: Unutilized
Comment: 10752 sq. ft., 1-story brick, most recent use—office, possible asbestos.

Bldg. P–4
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662–
Landholding Agency: Army
Property Number: 219320312
Status: Unutilized
Comment: 2508 sq. ft., 1-story brick, most recent use—vehicle maint. shop.

Oklahoma

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, Fort Sill
1050 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240660
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–1051, Fort Sill
1051 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240661
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–2740, Fort Sill
2740 Miner Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240669
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2633, Fort Sill
2633 Miner Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240672
Status: Unutilized
Comment: 19455 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.

Bldg. T–4050, Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240676
Status: Unutilized
Comment: 3177 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. P–3032, Fort Sill
3032 Haskins Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240678
Status: Unutilized
Comment: 101 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—general storehouse.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240681
Status: Unutilized
Comment: 8832 sq. ft., 1-story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–260, Fort Sill
260 Corral Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240776
Status: Unutilized
Comment: 4838 sq. ft., 1-story wood frame, off-site use only, possible asbestos, most recent use—admin.

Bldg. T–5122, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219320334
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only.

Bldg. P–6220, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219320335
Status: Unutilized
Comment: 848 sq. ft., 1-story metal frame, possible asbestos, most recent use—construction bldg., off-site use only.

Bldg. S–6228, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219320336
Status: Unutilized
Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use—range house, off-site use only.

Bldg. P–2610, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330372
Status: Unutilized
Comment: 512 sq. ft., 1-story possible asbestos, most recent use—classroom, off-site use only.

Bldg. 4722, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330373
Status: Unutilized
Comment: 3375 sq. ft., 2-story, possible asbestos, most recent use—admin., off-site use only.

Bldg. T1652, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T1665, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330381
Status: Unutilized
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2034, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330383
Status: Unutilized
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2705, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330384
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2706, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330385
Status: Unutilized

Comment: 2156 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2709, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330388
Status: Unutilized
Comment: 2112 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2756, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330390
Status: Unutilized
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T2757, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330391
Status: Unutilized
Comment: 5172 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3026, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330392
Status: Unutilized
Comment: 2454 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T4035, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330401
Status: Unutilized
Comment: 867 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T4474, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330402
Status: Unutilized
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5628, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330418
Status: Unutilized
Comment: 2016 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T5637, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.
Bldg. T3750, Fort Sill
3750 Wilson Street
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440358
Status: Excess
Comment: 4525 sq. ft., 2 story wood frame, possible asbestos and lead paint, off-site removal only, most recent use—barracks.
Bldg. T5215
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440376
Status: Unutilized
Comment: 2797 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—admin., off-site use only.
Bldg. T–5219
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440381
Status: Unutilized
Comment: 2662 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—classroom, off-site use only.
Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.
Bldg. P–1815
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219440388
Status: Unutilized
Comment: 14392 sq. ft., 2-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only.
Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only.
Bldg. T–2405, Fort Sill
2405 Darby Loop
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540019
Status: Excess
Comment: 114 sq. ft., 1 story steel frame, possible asbestos/lead paint, off-site removal only, most recent use—flammable material storage.
Bldg. T–2645, Fort Sill
2645 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540020
Status: Excess
Comment: 3135 sq. ft., 1 story, wood frame, possible/asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.
Bldg. T–2646, Fort Sill
2646 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540021
Status: Excess
Comment: 3213 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.
Bldg. T–2648, Fort Sill
2648 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army.
Property Number: 219540022
Status: Excess
Comment: 9407 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general purpose warehouse.
Bldg. T–3150, Fort Sill
3150 Hoskins Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540023
Status: Excess
Comment: 9359 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—warehouse.
Bldg. T–2649, Fort Sill
2649 Tacy Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540024
Status: Excess
Comment: 9374 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general storehouse.
Bldg. T–3727, Fort Sill
3727 Webster Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540026
Status: Excess
Comment: 4524 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—enlisted barracks.
Bldg. T–2940, Fort Sill
2940 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540033
Status: Excess
Comment: 4397 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—recreation building.
Bldg. T–4036, Fort Sill
4036 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540034
Status: Excess
Comment: 4532 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—classroom.
Bldg. T–5043, Fort Sill
5043 Coune Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540035
Status: Excess
Comment: 1563 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—PX Branch.
Bldg. T–5050, Fort Sill
5050 Rumple Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219540036

Status: Excess
Comment: 2470 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—PX Branch.

Bldg. T–241, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610731
Status: Unutilized
Comment: 2400 sq. ft., possible asbestos, most recent use—barracks, off-site use only.

Bldg. T–297, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610732
Status: Unutilized
Comment: 2427 sq. ft., possible asbestos, most recent use—classroom, off-site use only.

Bldg. T–4008, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610733
Status: Unutilized
Comment: 2750 sq. ft., possible asbestos, most recent use—office, off-site use only.

Bldg. T–4467, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610734
Status: Unutilized
Comment: 3069 sq. ft., possible asbestos, most recent use—mess hall, off-site use only.

Bldg. T–4458, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610735
Status: Unutilized
Comment: 2964 sq. ft., needs repair, possible asbestos, most recent use—mess hall, off-site use only.

Bldg. T–367, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610736
Status: Unutilized
Comment: 9370 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. T–1955, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610737
Status: Unutilized
Comment: 12810 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. T–2179, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610738
Status: Unutilized
Comment: 18775 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. T–5604, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610739
Status: Unutilized
Comment: 9190 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. P–5237, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610741
Status: Unutilized
Comment: 87 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. P–2787, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610742
Status: Unutilized
Comment: 200 sq. ft., possible asbestos, most recent use—transformer bldg., off-site use only.

Bldg. P–2785, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610743
Status: Unutilized
Comment: 196 sq. ft., possible asbestos, most recent use—transformer bldg., off-site use only.

Bldg. P–1198, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219610744
Status: Unutilized
Comment: 256 sq. ft., possible asbestos, most recent use—water pumping station, off-site use only.

Bldg. T–4721
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620688
Status: Unutilized
Comment: 114 sq. ft., most recent use—storehouse, possible asbestos/lead paint, off-site use only.

Bldg. T–4430
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620689
Status: Unutilized
Comment: 2974 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only.

Bldg. T–4428
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620690
Status: Unutilized
Comment: 2974 sq. ft., most recent use—storage/dining, possible asbestos/lead paint, off-site use only.

Bldg. T–4400
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620691
Status: Unutilized
Comment: 2974 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–4115
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620692
Status: Unutilized
Comment: 96 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.

Bldg. T–3326
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620693
Status: Unutilized
Comment: 8892 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–3290
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620694
Status: Unutilized
Comment: 96 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.

Bldg. T–2955
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620695
Status: Unutilized
Comment: 3660 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.

Bldg. T–2917
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620696
Status: Unutilized
Comment: 3746 sq. ft., most recent use—exchange svc outlet, possible asbestos/lead paint, off-site use only.

Bldg. T–2450
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620697
Status: Unutilized
Comment: 1173 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–2438
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620698
Status: Unutilized
Comment: 9002 sq. ft., most recent use—storage/office, possible asbestos/lead paint, off-site use only.

Bldg. T–2425
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620699
Status: Unutilized
Comment: 9052 sq. ft., most recent use—storehouse, possible asbestos/lead paint, off-site use only.

Bldg. S–2242
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620700

Status: Unutilized
Comment: 348 sq. ft., most recent use—shower, possible asbestos/lead paint, off-site use only.
Bldg. P–2093
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620701
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer bldg., possible asbestos/lead paint, off-site use only.
Bldg. P–2092
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620702
Status: Unutilized
Comment: 131 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.
Bldg. P–2091
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620703
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer bldg, possible asbestos/lead paint, off-site use only.
Bldg. T–1951
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620704
Status: Unutilized
Comment: 402 sq. ft., most recent use—storage shed, possible asbestos/lead paint, off-site use only.
Bldg. T–1943
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620705
Status: Unutilized
Comment: 1439 sq. ft., most recent use—office/shop, possible asbestos/lead paint, off-site use only.
Bldg. T–1710
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620706
Status: Unutilized
Comment: 7668 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only.
Bldg. P–1700
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620707
Status: Unutilized
Comment: 7574 sq. ft., most recent use—maint. shop/office, possible asbestos/lead paint, off-site use only.
Bldg. T–1610
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620708
Status: Unutilized
Comment: 96 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.
Bldg. T–1002
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620709
Status: Unutilized
Comment: 264 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.
Bldg. P–594
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620710
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer bldg., possible asbestos/lead paint, off-site use only.
Bldg. P–586
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620711
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer bldg., possible asbestos/lead paint, off-site use only.
Bldg. T–299
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620712
Status: Unutilized
Comment: 2974 sq. ft., most recent use—classroom, possible asbestos/lead paint off-site use only.
Bldg. T–271
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620713
Status: Unutilized
Comment: 283 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.
Bldg. T–298
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620714
Status: Unutilized
Comment: 2432 sq. ft., most recent use—classroom, possible asbestos/lead paint, off-site use only.
P–0001
U.S. Army Reserve Center
Guymon Co: Texas OK 73942–0908
Landholding Agency: Army
Property Number: 219630008
Status: Unutilized
Comment: 13400 sq. ft. bldg. on 4 acres w/ parking, roads, and utility distribution systems, presence of lead, land reverts back to City.

South Carolina

Bldg. 5492
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410207
Status: Unutilized
Comment: 2379 sq. ft.; wood frame; 1 story; off-site use only; utilities upgrade; most recent use—information management office.
Bldg. 5412
Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510139
Status: Excess
Comment: 3900 sq. ft., 1-story, wood frame, needs rehab, most recent use—admin., off-site use only.
Bldg. 9606, Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510168
Status: Unutilized
Comment: 1144 sq. ft., 1-story, wood frame, needs rehab, most recent use—criminal investigation bldg., off-site use only.
Bldg. 10–740, Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510191
Status: Unutilized
Comment: 2257 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only.
Bldg. 10–766, Fort Jackson
Fort Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219510206
Status: Unutilized
Comment: 4800 sq. ft., 2-story, wood frame, needs rehab, most recent use—enlisted billets, off-site use only.
Bldg. 4510
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620715
Status: Unutilized
Comment: 10424 sq. ft., needs repair, most recent use—craft shop, off-site use only.
Bldg. 6528
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620716
Status: Unutilized
Comment: 3960 sq. ft., needs repair, most recent use—office, off-site use only.
Bldg. 6529
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620717
Status: Unutilized
Comment: 3960 sq. ft., needs repair, most recent use—office, off-site use only.
Bldg. 6530
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620718
Status: Unutilized
Comment: 3960 sq. ft., needs repair, most recent use—office, off-site use only.

Texas

Harlingen USARC
1920 East Washington
Harlingen Co: Cameron TX 78550–
Landholding Agency: Army

Property Number: 219120304
Status: Excess
Comment: 19440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center.

Bldg. P–3824, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. 440, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number:219320355
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use—education facility, off-site use only.

Bldg. P–377, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330444
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. T–1492
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330483
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330486
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.

Bldg. T–1874
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330488
Status: Unutilized
Comment: 3108 sq. ft., 1-story wood frame, needs rehab, off-site use only.

Bldg. 315, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410315
Status: Unutilized
Comment: 2400 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 316, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410316
Status: Unutilized
Comment: 1500 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 317, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410317
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 4480, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. 1165, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219420456
Status: Unutilized
Comment: 5263 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only.

Bldg. 4716, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219420459
Status: Unutilized
Comment: 890 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only.

Bldg. 4719, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219420460
Status: Unutilized
Comment: 519 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only.

Bldg. 4105, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219420463
Status: Unutilized
Comment: 2535 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 1, Fort Hood
Lubbock Co: Lubbock TX 79408–
Landholding Agency: Army
Property Number: 219440336
Status: Unutilized
Comment: 11440 sq. ft., 1-story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center.

Bldg. 2, Fort Hood
Lubbock Co: Lubbock TX 79408–
Landholding Agency: Army
Property Number: 219440337
Status: Unutilized
Comment: 2818 sq. ft., 1-story, fair condition, to be vacated 6/30/95, off-site removal only, most recent use—army reserve center maintenance shop.

Bldg. P–452
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219440449
Status: Excess
Comment: 600 sq. ft., 1 story stucco frame, lead paint, off-site removal only, most recent use—bath house.

Bldg. P–6615
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219440454
Status: Excess
Comment: 400 sq. ft., 1 story concrete frame, off-site removal only, most recent use—detached garage.

Bldg. T–300, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219520118
Status: Unutilized
Comment: 8352 gr. sq. ft., 1-story, presence of lead base paint and asbestos, most recent use—admin., off-site use only.

Bldg. P–1059, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219520121
Status: Unutilized
Comment: 700 gr. sq. ft., presence of lead base paint and asbestos, most recent use—admin., off-site use only.

Bldg. 307, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219520196
Status: Excess
Comment: 1600 sq. ft., 1-story, most recent use—med. clinic, off-site use only.

Bldg. 507, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219520199
Status: Unutilized
Comment: 1600 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. 831, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219520200
Status: Unutilized
Comment: 4780 sq. ft., 2-story, most recent use—training, needs rehab, off-site use only.

Bldg. 4201, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219520201
Status: Unutilized
Comment: 9000 sq. ft., 1-story, off-site use only.

Bldg. 4202, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219520202
Status: Unutilized
Comment: 5400 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. P–1030
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219520203
Status: Excess
Comment: 8212 sq. ft., 1-story, most recent use—storage, presence of asbestos & lead base paint, located in Historic District, off-site use only.

Bldg. T–2289
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219520207
Status: Excess
Comment: 4720 sq. ft., 2-story, most recent use—training facility, needs rehab, presence of asbestos & lead base paint.

located in Historic District, off-site use only.

Bldg. 832, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219540068
Status: Excess
Comment: 3983 sq. ft., 2-story, off-site removal only, most recent use—admin.

Land, Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219540069
Status: Excess
Comment: 4.808 acres of unimproved land, potential utilities.

Bldg. 56514
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610745
Status: Unutilized
Comment: 500 sq. ft., most recent use—dining, off-site use only.

Bldgs. 56642–56645
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610746
Status: Unutilized
Comment: 500 sq. ft., most recent use—dining, off-site use only.

Bldg. 56649
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610747
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.

Bldgs. 56722–56725
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610748
Status: Unutilized
Comment: 500 sq. ft. each, most recent use—dining, off-site use only.

Bldg. 56729
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610749
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.

Bldgs. 56732–56735
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610750
Status: Unutilized
Comment: 500 sq. ft. each, most recent use—dining, off-site use only.

Bldg. 56739
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610751
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site use only.

Bldgs. 56742–56745
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610752
Status: Unutilized
Comment: 500 sq. ft. each, most recent use—dining, off-site use only.

Bldg. 56749
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610753
Status: Unutilized
Comment: 506.7 sq. ft., most recent use—dining, off-site only.

Bldg. 439
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610754
Status: Unutilized
Comment: 3983 sq. ft., needs rehab, most recent use—admin., off-site use only.

Bldgs. 2028–2034, 2038
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610756
Status: Unutilized
Comment: 4508 sq. ft. each, needs rehab, most recent use—vehicle maint. shop, off-site use only.

Bldg. 2046
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610757
Status: Unutilized
Comment: 2700 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 4276A
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610758
Status: Unutilized
Comment: 40 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 57020
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610760
Status: Unutilized
Comment: 33792 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 4221
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610762
Status: Unutilized
Comment: 44096 sq. ft., needs rehab, most recent use—laundry, off-site use only.

Bldg. 4276
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610765
Status: Unutilized
Comment: 3772 sq. ft., most recent use—heat plant, off-site use only.

Bldg. 2035
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610766
Status: Unutilized
Comment: 336 sq. ft., needs rehab, most recent use—dispatch bldg., off-site use only.

Bldg. 2036
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610767
Status: Unutilized
Comment: 1350 sq. ft., needs rehab, most recent use—repair shop, off-site use only.

Bldgs. 56738, 56647
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219610768
Status: Unutilized
Comment: Needs rehab, off-site use only.

Bldg. P–8224B
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610783
Status: Underutilized
Comment: 1126 gross sq. ft., needs rehab, presence of lead base paint, most recent use—family housing.

5 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2126A/B, 2148A/B, 2218A/B, 2230A/B, 2245A/B
Landholding Agency: Army
Property Number: 219620233
Status: Unutilized
Comment: 769 sq. ft., needs rehab, possible asbestos/lead paint, off-site use only.

12 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2106A/B, 2144A/B, 2156A/B, 2164A/B, 2172A/B, 2194A/B, 2220A/B, 2228A/B, 2234A/B, 2239A/B, 2244A/B, 2244A/B
Landholding Agency: Army
Property Number: 219620234
Status: Unutilized
Comment: 916 sq. ft., needs rehab, possible asbestos/lead paint, off-site use only.

11 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2105A/B, 2127A/B, 2137A/B, 2191A/B, 2205A/B, 2206A/B, 2216A/B, 2219A/B, 2231A/B, 2241A/B, 2250A/B
Landholding Agency: Army
Property Number: 219620235
Status: Unutilized
Comment: 896 sq. ft., needs rehab, possible asbestos/lead paint, off-site use only.

17 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2129A/B, 2147A/B, 2150A/B, 2153A/B, 2158A/B, 2161A/B, 2167A/B, 2173A/B, 2179A/B, 2183A/B, 2186A/B, 2193A/B, 2209A/B, 2217A/B, 2227A/B, 2237A/B, 2249A/B
Landholding Agency: Army
Property Number: 219620236
Status: Unutilized
Comment: 911 sq. ft., needs rehab, possible asbestos/lead paint, off-site use only.

35 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2108, 2109, 2111, 2113, 2119, 2124, 2128, 2134, 2140, 2142, 2145, 2151, 2162, 2163, 2168, 2171, 2174, 2176, 2182, 2184, 2188, 2192, 2195, 2202, 2203, 2212, 2223, 2224, 2226, 2232, 2238, 2242, 2246, 2132, 2152
Landholding Agency: Army
Property Number: 219620237
Status: Unutilized
Comment: 913 sq. ft., needs rehab, possible asbestos/lead paint, off-site use only.

Bldg. P–1
Bay City Memorial Reserve Center
Bay City Co: Matagorda TX 77414–3813
Landholding Agency: Army
Property Number: 219620719
Status: Unutilized
Comment: 4408 sq. ft., possible asbestos/lead paint, possible lease restrictions, most recent use—reserve center.

Bldg. P–3
Bay City Memorial Reserve Center
Bay City Co: Matagorda TX 77414–3813
Landholding Agency: Army
Property Number: 219620720
Status: Unutilized
Comment: 1798 sq. ft., possible asbestos/lead paint, possible lease restrictions, most recent use—vehicle maint. shop.

Bldg. P–5
Bay City Memorial Reserve Center
Bay City Co: Matagorda TX 77414–3813
Landholding Agency: Army
Property Number: 219620721
Status: Unutilized
Comment: 56 sq. ft., possible asbestos/lead paint, possible lease restrictions, most recent use—shed.

Bldg. 57015
Fort Hood
Ft Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620722
Status: Unutilized
Comment: 7680 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 57016
Fort Hood
Ft Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620723
Status: Unutilized
Comment: 7680 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 53
Fort Hood
Ft Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620724
Status: Unutilized
Comment: 3746 sq. ft., most recent use—chapel, off-site use only.

Bldg. 2808
Fort Hood
Ft Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620725
Status: Unutilized
Comment: 3746 sq. ft., most recent use—chapel, off-site use only.

Bldg. S–655
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219620728
Status: Unutilized
Comment: 3296 sq. ft., presence of asbestos/lead paint, most recent use—storage, possible National Historic Pres. Act requirements.

Bldg. 2202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219620741
Status: Unutilized
Comment: 3525 sq. ft., needs rehab, most recent use—chapel.

9 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916—
Location: 2125A/B, 2135A/B, 2159A/B, 2175A/B, 2197A/B, 2201A/B, 2213A/B 2221A/B, 2243A/B
Landholding Agency: Army
Property Number: 219620742
Status: Unutilized
Comment: 903 sq. ft. each, needs rehab, most recent use—family quarters, presence of asbestos/lead paint, off-site use only.

14 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916—
Location: 2120A/B, 2121A/B, 2131A/B, 2157A/B, 2166A/B, 2177A/B, 2185A/B, 2200A/B, 2210A/B, 2211A/B, 2229A/B, 2235A/B, 2240A/B, 2247A/B
Landholding Agency: Army
Property Number: 219620743
Status: Unutilized
Comment: 899 sq. ft. each, needs rehab, most recent use—family quarters, presence of asbestos/lead paint, off-site use only.

35 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916—
Location: 2107, 2110, 2112, 2114, 2122, 2123, 2130, 2133, 2136, 2138, 2146, 2149, 2154, 2155, 2165, 2169, 2170, 2178, 2180, 2181, 2187, 2189, 2190, 2196, 2198, 2204, 2207, 2208, 2215, 2222, 2225, 2233, 2236, 2248, 2251—A/B
Landholding Agency: Army
Property Number: 219620744
Status: Unutilized
Comment: 776 sq. ft. each, needs rehab, most recent use—family quarters, presence of asbestos/lead paint, off-site use only.

Virginia

Bldg. T303
Fort Picket
W. 33rd Street
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219440446
Status: Underutilized
Comment: 1750 sq. ft., 1 story wood frame, most recent use—confinement facility, need repairs.

Bldg. T2800
Fort Picket
Off Armistead Road
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219440447
Status: Underutilized
Comment: 2056 sq. ft., 1 story wood frame, most recent use—clinic, need repairs.

Bldg. T2857
Fort Picket
Off Armistead Road
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219440448
Status: Underutilized
Comment: 2987 sq. ft., 1 story wood frame, most recent use—admin.

Bldg. TT0104
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–5000
Landholding Agency: Army
Property Number: 219520217
Status: Unutilized
Comment: 1464 sq. ft., 1-story most recent use—training, needs rehab, off-site use only.

Bldg. TT0105
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–5000
Landholding Agency: Army
Property Number: 219520218
Status: Unutilized
Comment: 2273 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. T00103
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–5000
Landholding Agency: Army
Property Number: 219610769
Status: Unutilized
Comment: 430 sq. ft., presence of asbestos, most recent use—barber shop, off-site use only.

Bldg. 602, Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 219620729
Status: Unutilized
Comment: 2368 sq. ft., 1-story brick, most recent use—storage, presence of asbestos, off-site use only.

Bldg. 74
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620730
Status: Unutilized
Comment: 284 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 75
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620731
Status: Unutilized
Comment: 171 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. T–99
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Propery Number: 219620732
Status: Unutilized
Comment: 7410 sq. ft. most recent use—storage, off-site use only.

Bldg. T–193
Fort Monroe
Ft. Monroe VA 13651
Landholding Agency: Army

Property Number: 219620733
Status: Unutilized
Comment: 2415 sq. ft., most recent use—training, off-site use only.

Bldg. T–194
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620734
Status: Unutilized
Comment: 1950 sq. ft., most recent use—office, off-site use only.

Bldg. T–195
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620735
Status: Unutilized
Comment: 1830 sq. ft., most recent use—office, off-site use only.

Bldg. T–196
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620736
Status: Unutilized
Comment: 1500 sq. ft., most recent use—office/storage, off-site use only.

Bldg. T–248
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620737
Status: Unutilized
Comment: 1894 sq. ft., most recent use—office, off-site use only.

Bldg. T–249
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620738
Status: Unutilized
Comment: 1909 sq. ft., most recent use—office, off-site use only.

Bldg. T–259
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620739
Status: Unutilized
Comment: 1983 sq. ft., most recent use—office, off-site use only.

Washington

Reserve Center, Longview
14 Port Way
Longview Co: Cowlitz WA 98632–
Landholding Agency: Army
Property Number: 219320368
Status: Unutilized
Comment: 17,034 sq. ft., 1-story training facility, scheduled to be vacated 9/93.

Wisconsin

Bldg. 7174, Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219320372
Status: Underutilized
Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 7176, Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219320373
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 7261, Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219320374
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 2321
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430225
Status: Unutilized
Comment: 682 sq. ft., 1-story, needs rehab, most recent use—heat plant.

Bldg. 2673
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430226
Status: Unutilized
Comment: 13,515 sq. ft., 1-story, needs rehab, most recent use—theater.

Bldg. 2110
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430232
Status: Unutilized
Comment: 18,270 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2320
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430233
Status: Unutilized
Comment: 33,345 sq. ft., 1-story, needs rehab, most recent use—vehicle maint.

Bldg. 2763
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430236
Status: Unutilized
Comment: 3250 sq. ft., 1-story, needs rehab, most recent use—admin.

Bldg. 2755
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430239
Status: Unutilized
Comment: 168 sq. ft., 1-story, needs rehab, most recent use—dispatch bldg.

Bldg. 850
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430243
Status: Unutilized
Comment: 2350 sq. ft., 1-story, needs rehab, most recent use—dining facility.

Bldg. 240, Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5162
Landholding Agency: Army
Property Number: 219520219
Status: Underutilized
Comment: 1750 sq. ft., 1-story, needs rehab, most recent use—admin.

U.S. Army Reserve Center
2310 Center Street
Racine Co: Racine WI 53403–3330
Landholding Agency: Army
Property Number: 219620740
Status: Unutilized
Comment: 3 bldgs. (14,137 sq. ft.) on 3 acres, needs repair, most recent use—office/storage/training.

Land (by State)

Alaska

Harding Lake Recreation Area
Fort Richardson
Anchorage AK
Landholding Agency: Army
Property Number: 219540009
Status: Underutilized
Comment: 25.5 acres, most recent use—recreation.

California

U.S. Army Reserve Center
Mountain Lakes Industrial Park
Redding Co: Shasta CA
Landholding Agency: Army
Property Number: 219610645
Status: Unutilized
Comment: 5.13 acres within a light industrial park.

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army

Property Number: 219012056
Status: Unutilized
Comment: 1920 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres, road & utility easements, no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres, road & utility easements, no utility hookup.

New York

Land—6.965 Acres
Dix Avenue
Queensbury Co: Warren NY 12801–
Landholding Agency: Army
Property Number: 219540018
Status: Unutilized
Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

Ohio

5 acres
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662–
Landholding Agency: Army
Property Number: 219320313
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.

Tennessee

Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Texas

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 244.47 acres, 85% located in floodplain, possibility of unexploded ordnance.

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219420461
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Camp Bullis, Tract 9
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219420462
Status: Unutilized
Comment: 1.07 acres of undeveloped land.

Castner Range
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219610788
Status: Unutilized
Comment: approx. 56.81 acres, portion in floodway, most recent use—recreation picnic park.

Suitable/Unavailable Properties

Buildings (by State)

Arizona

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 219420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, scheduled to be vacated on or about 2/95.

Colorado

Bldg. P–1388
Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219430134
Status: Unutilized
Comment: 240 sq. ft., 1-story steel structure, needs rehab, secure area with alternate access, off-site use only.

Georgia

Bldg. T201, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420357
Status: Unutilized
Comment: 2929 sq. ft., 1-story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. T–902, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420360
Status: Unutilized
Comment: 2990 sq. ft., 1-story wood frame, needs repair, most recent use—offices, off-siste use only.

Bldg. 704, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420364
Status: Unutilized
Comment: 2028 sq. ft., 1-story, needs major repair, most recent use—admin.

Bldg. TT0791
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440408
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only.

Bldg. TT0792
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440409
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only.

Bldg. TT0793
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219440410
Status: Unutilized
Comment: 1440 sq. ft., 1-story aluminum frame, needs rehab, most recent use—aces. facility, off-site use only.

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only.

Hawaii

Bldg. S–275
Fort DeRussy
Honolulu HI 96815–
Landholding Agency: Army
Property Number: 219540014
Status: Unutilized
Comment: 26047 gross sq. ft., some termite damage, most recent use—office/workshop, limitations on use (PL90–110, Sec. 809).

Kansas

Bldg. T–2014, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219520112
Status: Unutilized
Comment: 4856 sq. ft., 2-story wood frame, most recent use—admin., presence of asbestos, poor condition.

Bldg. T–2017, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219520113
Status: Unutilized
Comment: 3292 sq. ft., 2-story wood frame, most recent use—admin., presence of asbestos, poor condition.

Bldg. T–2019, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219520114
Status: Unutilized
Comment: 2353 sq. ft., 1-story wood frame, most recent use—admin., presence of asbestos, poor condition.

Bldg. 3210, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219520192
Status: Unutilized
Comment: 190 sq. ft., 1-story, needs rehab, presence of asbestos.

Kentucky

Bldg. 05713, Fort Campbell
Ft. Campbell Co: Christian KY 422213–
Landholding Agency: Army
Property Number: 219410341
Status: Unutilized

Comment: 10944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Louisiana

Bldg. 3322, Fort Polk
Texas Avenue
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219440441
Status: Underutilized
Comment: 480 sq. ft., 1 story, need repairs, most recent use—offices.

Maryland

Bldgs. TMA4, TMA5, TMA8, TMA9
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320292
Status: Unutilized
Comment: approx. 800 sq. ft. steel plate, gravel base ammunition storage area, fair condition.

Montana

USARC Bozeman Reserve Center
32 South Tracy Ave.
Bozeman Co: Gallatin MT
Landholding Agency: Army
Property Number: 219420391
Status: Unutilized
Comment: 15236 sq. ft., 3-story reserve center on .54 acres, bldg. on National Register of Historic Places, secured with alternate access
GSA Number: 7–D–MT–0605.

Nevada

U.S. Army Reserve Center
685 East Plumb Lane
Reno Co: Washoe NV 89502–
Landholding Agency: Army
Property Number: 219340180
Status: Unutilized
Comment: 11457 sq. ft. Reserve Center and 2611 sq. ft. vehicle repair shop on 4.29 acres, presence of asbestos, 1-story each, perpetual easement for road right of way 50 ft. from prop.

New Jersey

Bldg. 3305
Armament Research, Dev. and Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540002
Status: Underutilized
Comment: 12000 sq. ft., 1-story, most recent use—admin and R&D activities.

Bldg. 1104
Armament Research, Dev. and Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540003
Status: Unutilized
Comment: 1320 sq. ft., 2-story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1105
Armament Research, Dev. and Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540004
Status: Unutilized
Comment: 2806 sq. ft., 3-story, fire/electrical safety code violations, need repairs, most recent use—family housing.

Bldg. 1113
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540005
Status: Unutilized
Comment: 1580 sq. ft., 2 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1117
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540006
Status: Unutilized
Comment: 1784 sq. ft., 2 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1118
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540007
Status: Unutilized
Comment: 648 sq. ft., 1 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1392
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540008
Status: Unutilized
Comment: 1128 sq. ft., 1 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Texas

Bldg. P–2000, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220389
Status: Unutilized
Comment: 49,542 sq. ft., 3-story brick structure, within National Landmark Historic District.

Bldg. P–2001, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16,539 sq. ft., 4-story brick structure, within National Landmark Historic District.

Bldg. T–189, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11,949 sq. ft., 4-story brick structure, within National Landmark Historic District, possible lead contamination.

Bldg. P–8249
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219440455
Status: Excess
Comment: 2775 sq. ft., 1 story wood frame, lead paint, off-site removal only, most recent use—family housing.

Bldg. S–1461
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610772
Status: Unutilized
Comment: 11568 gross sq. ft., presence of asbestos/lead base paint, most recent use—admin., off-site use only.

Bldg. T–5114
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610777
Status: Unutilized
Comment: 3612 gross sq. ft., presence of asbestos/lead base paint, most recent use—dining hall, off-site use only.

Bldg. T–5124
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610778
Status: Unutilized
Comment: 3499 gross sq. ft., presence of asbestos/lead base paint, most recent use—dining facility, off-site use only.

Bldg. P–6088 thru P–6091
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610781
Status: Unutilized
Comment: 465 gross sq. ft., presence of lead base paint, needs repair, most recent use—storage, off-site use only.

Bldg. T–6101
Fort Sam Houston Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219610782
Status: Unutilized
Comment: 400 sq. ft., presence of lead base paint, most recent use—dispatch office, off-site use only.

Virginia

Bldg. T–3004, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic.

Bldg. T–3022, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310318
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3023, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310319
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3024, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310320
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3026, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Underutilized
Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3025, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310322
Status: Underutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3040, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310323
Status: Underutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3041, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310324
Status: Underutilized
Comment: 2950 sq. ft., 2-story wood frame, needs repair, most recent use—dining room.

Bldg. T3049, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310325
Status: Underutilized
Comment: 2950 sq. ft., 2-story wood frame, needs repair, most recent use—dining room.

Bldg. T3050, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310326
Status: Underutilized
Comment: 2950 sq. ft., 2-story wood frame, needs repair, most recent use—dining room.

Bldg. T3029, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310327
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3030, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310328
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3037, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310329
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3038, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310330
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3039, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310331
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3042, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310332
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3043, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310333
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3044, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310334
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3045, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310335
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3046, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310336
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3047, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310337
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3048, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310338
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3051, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310339
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3052, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310340
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3053, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310341
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3054, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310342
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3027, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310343
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3028, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310344
Status: Underutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3031, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310345
Status: Underutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3032, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310346
Status: Underutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3033, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310347
Status: Underutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3034, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310348
Status: Underutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3035, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310349
Status: Underutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3036, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310350
Status: Underutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3057, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310351
Status: Underutilized
Comment: 2987 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3055, Fort Pickett

Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310352
Status: Underutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. TT3001, Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 219310353
Status: Underutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel.

Bldg. T–179
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219630001
Status: Underutilized
Comment: 1798 sq. ft., most recent use—storage, off-site use only.

Bldg. T–181
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219630002
Status: Underutilized
Comment: 1835 sq. ft., most recent use—office, off-site use only.

Bldg. T–182
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219630003
Status: Underutilized
Comment: 1997 sq. ft., most recent use—office, off-site use only.

Bldg. T–183
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219630004
Status: Underutilized
Comment: 1760 sq. ft., most recent use—office, off-site use only.

Bldg. T–184
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219630005
Status: Underutilized
Comment: 1750 sq. ft., most recent use—office, off-site use only.

Bldg. T–185
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219630006
Status: Underutilized
Comment: 861 sq. ft., most recent use—office, off-site use only.

Land (by State)

Illinois

Bridge Ramp & Property
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219620665
Status: Unutilized
Comment: Bridge Ramp 24 ft. wide, 600 ft. long.

North Carolina

.92 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219610728
Status: Underutilized
Comment: municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone.

10 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone.

257 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone.

24.83 acres—Tract of Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219620685
Status: Underutilized
Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone.

Suitable/To Be Excessed

Buildings (by State)

New York

Bldg. P–1
Glen Falls Reserve Center
Glen Falls Co: Warren NY 12801–
Location: 67–73 Warren Street
Landholding Agency: Army
Property Number: 219540015
Status: Unutilized
Comment: 19613 sq. ft., 2 story w/basement, concrete block/brick frame on .475 acres.

Bldgs. P–1 & P–2
Elizabethtown Reserve Center
Corner of Water and Cross Streets
Elizabethtown Co: Essex NY 12932–
Landholding Agency: Army
Property Number: 219540016
Status: Unutilized
Comment: 4316 sq. ft. reserve center/1325 sq. ft. motor repair shop, 1 story each, concrete block/brick frame, on 5.05 acres.

Bldgs. P–1 & P–2
Olean Reserve Center
423 Riverside Drive
Olean Co: Cattaraugus NY 14760–
Landholding Agency: Army
Property Number: 219540017
Status: Unutilized
Comment: 4464 sq. ft. reserve center/1325 sq. ft. motor repair shop, 1 story each, concrete block/brick frame, on 3.9 acres.

Land (by State)

New York

Galeville Army Training Site
Shawangunk Co: Ulster NY 12589–
Landholding Agency: Army
Property Number: 219510128
Status: Underutilized
Comment: 621.05 acres, improved w/inactive runway, airfield & taxi-way, potential utilities, 234 acres is wetlands and habitat for threatened species.

Texas

Land Saginaw Army Aircraft Plt
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 43.08 acres; includes buildings/structures/parking and air strip.

Unsuitable Properties

Buildings (by State)

Alabama

130 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014009, 219014012, 219014015–219014051, 219014057, 219014060, 219014292, 219110109, 219120247–219120250, 219230190, 219330001–219330002, 219430266–219430290, 219440078–219440082, 219520032, 219530010–219530048, 219610272–219610280
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

61 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219220343–219220344, 219310016, 219320001, 219330003–219330010, 219340116, 219340118, 219340124–219340125, 219410021–219410023, 219430261–219430264, 219440083–219440084, 219440094–219440095, 219520057–219520058, 219530008, 219620371–219620374, 219620802
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 25203, 25205–25207, 25209, 25501, 25503, 25505, 25507, 25510, 29101, 29103–29109
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020–219410021, 219410024
Status: Unutilized
Reason: Secured area.

27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Extensive deterioration.

4 Bldgs., Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219440098–219440099, 219440102, 219610281
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 402–C
Alabama Army Ammunition Plant
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219420124
Status: Unutilized
Reason: Secured Area.

Alaska

17 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220320–219220332, 219520064
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1065, Fairbanks North Star
Ft. Wainwright AK 99703–
Landholding Agency: Army
Property Number: 219620369
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; Floodway.

Bldg. 1501, Fort Greely
Ft. Greely AK 99505–
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area.

Sullivan Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 45070, Fort Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 219620370
Status: Unutilized
Reason: Extensive deterioration.

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area.

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area.

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area.

Bldgs. 68054, 14470, 15405, 30022
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219430315, 219610286
Status: Excess
Reason: Extensive deterioration.

Bldgs. S–2085
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219330020
Status: Unutilized
Reason: Secured area.

Bldg. T–231
Yuma Proving Ground
Yuma Co: LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219510093
Status: Unutilized
Reason: Extensive deterioration.

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Army Reserve Center
Hwy 79 North
Camden Co: Calhoun AR 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs.
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138–219420142, 219440077
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

California

Bldgs. P–177, P–178, 325, S–306, S–308A, T–308B
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012414–219012415, 219012600, 219240284–219240285, 219240287
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; (Some are in a secured area.)

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; (Secured area.)

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured area.

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120051, 219340008–219340011
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

Bldgs. S–108, S–290
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219014290, 219230179
Status: Underutilized
Reason: Secured Area.

S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area.

12 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014713–219014717, 219014719–219014721, 219230181, 219320012
Status: Unutilized
Reason: Secured Area.

P–86
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Oil Storage Tank.

Bldgs. 173, 177
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014941
Status: Unutilized
Reason: Secured Area.

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area.

Bldg. S–521, Sharpe Site
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219240155
Status: Unutilized
Reason: Secured Area.

Bldgs. T–187, 403, 194 Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219240321, 219440184, 219610287
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 36, 257, Tracy Facility
Tracy Co: San Joaquin CA 95376–
Landholding Agency: Army
Property Number: 219330023, 219330025
Status: Unutilized

Reason: Secured Area.

10 Bldgs., Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 219330026–219330035
Status: Unutilized
Reason: Secured Area; Extensive Deterioration.

31 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219430017–219430039, 219430317, 219610289–219610296
Status: Unutilized
Reason: Secured Area.

US Army Reserve Center
Rio Vista Co: Sonoma CA 94571–
Landholding Agency: Army
Property Number: 219430316
Status: Unutilized
Reason: Floodway.

6 Buildings
Oakland Army Base
Oakland Co: Alameda CA 94626–
Location: Include: 90, 790, 792, 807, 829, 916
Landholding Agency: Army
Property Number: 219510097
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material.

Bldg. 43; Bunkers 41, 42, 45, 46, 47
Santa Rosa High Frequency Radio Station
Santa Rosa CA
Landholding Agency: Army
Property Number: 219520036
Status: Excess
Reason: Secured Area.

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 1103, 1131
Parks Reserve Forces Training Area
Dublin Co: Alameda CA 94568–5201
Landholding Agency: Army
Property Number: 219520056
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 144, 429–430
National Training Center, Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 219530066
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

19 Bldgs.
National Training Center, Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Location: #556, 558, 562, 564, 578, 581, 584, 586, 609, 474, 600, 410, 427, 485, 483, 579, 583, 570, 568
Landholding Agency: Army
Property Number: 219530067
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

20 Bldgs.
National Training Center, Fort Irwin
Ft. Irwin Co: San Bernardino CA 92311–5097
Location: 426, 428, 435–437, 439, 441, 462, 464, 466, 510, 527, 529, 537, 539, 544–545, 547, 549, 608
Landholding Agency: Army
Property Number: 219610288
Status: Unutilized
Reason: Secured Area.

Bldgs. 401, Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219620382
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

National Training Center, Fort Irwin
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 219620383
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

56 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219610297–219610318, 219620384–219620409
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment.

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Locations: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack.

82 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219220293, 219320026, 219410039–219410072, 219410089, 219410091–219410116, 219410120, 219410122, 219410125, 219410131, 219440199, 219520067, 219610330–219610340, 219610346
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 11726–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210138–219210139
Status: Unutilized
Reason: Secured Area.

4 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220334–219220337
Status: Unutilized
Reason: Detached lavatory.

18 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219520150, 219610319–219610324, 219620804–219620814
Status: Unutilized
Reason: Extensive deterioration.

23 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050–
Landholding Agency: Army
Property Number: 219310091, 219310093–219310094, 219310099, 219310107, 219320030, 219320033, 219620416–219620421, 219620815–219620824
Status: Unutilized
Reason: (Some are extensively deteriorated.); (Most are in a secured area.)

9 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420155, 219420162, 219420168, 219520045, 219610328–219610329, 219620410–219620412
Status: Unutilized
Reason: Extensive Deterioration.

11 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420152–219420153, 219430318–219430319, 219530070–219530071, 219610325–219610326, 219620413–219620415
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–8063, Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520027
Status: Excess
Reason: Latrine.

Bldgs. T–707, T–709, T–713, T–714, T–715, T–716, T–717, T–914, T–922
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219520041
Status: Excess
Reason: Extensive deterioration.

Bldg. 246, Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 219620803
Status: Underutilized
Reason: Secured Area.

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area.

P–3384
Schofield Barracks

Wahiawa Co: Wahiawa HI 96786–
Landholding Agency; Army
Property Number: 219030361
Status: Unutilized
Reason: Secured Area.

6 Bldgs., Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219320035, 219530072–219530073, 219610349–219610350, 219620426
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 754–C, P–1519 A/B, T–3002, T–1087A
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219320034, 219420154, 219520063, 219610347
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 572, S–822, T–1305, T–1425
Wheeler Army Airfield
Wahiawa HI 96857–
Landholding Agency: Army
Property Number: 219510088, 219520039, 219610348, 219620422
Status: Unutilized
Reason: Secured Area.

Bldgs. P–01506, S01507, P–01508
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219520003
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. P–33, P–30, T–136
Dillingham Military Reservation
Waialua HI 96791–
Landholding Agency: Army
Property Number: 219620423–219620425
Status: Unutilized
Reason: Extensive deterioration.

Illinois

609 Bldgs. and Groups
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010407, 219010409–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210146, 219240457–219240465, 219330062–219330094
Status: Unutilized
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area.

Bldgs. 133, 141 Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100, 219620428
Status: Unutilized
Reason: Extensive deterioration.

13 Bldgs. Savanna Army Depot Activity
Savanna Co: Carroll IL 61074–
Landholding Agency: Army
Property Number: 219230126–219230127, 219430326–219430335, 219420397
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 103, 114, 417, 110
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040–
Landholding Agency: Army
Property Number: 219420182–219420184, 219510008
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Indiana

328 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010920, 219010924–219010936, 219010952, 219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014608–219014653, 219014655–219014661, 219014663–219014683, 219030315, 219120168–219120171, 219140425–219140440, 219210152–219210155, 219230034–219230037, 219320036–219320111, 219420170–219420181, 219440159–219440163, 219610367–219610413, 219620435–219620452
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; (Most are within a secured area.)

172 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033, 219230336–2192430338, 219520033, 219520042, 219530075–219530097
Status: Unutilized
Reason: Secured Area; (Some are extensively deterioration.

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2635, Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219240322
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

22 Bldgs., Camp Atterbury
Edinburgh IN 46124–
Landholding Agency: Army
Property Number: 219610351–219610366, 219620429–219620434
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Iowa

96 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219510089, 219520002, 219520070, 219610414
Status: Unutilized
Reason: (Many are in a Secured Area); (Most are within 2000 ft. of flammable or explosive material.)

30 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219330061, 219340091, 219520053, 219520151
Status: Unutilized
Reason: Extensive deterioration.

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material.

244 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040039, 219040045, 219040048–219040051, 219040053, 219040055, 219040063–219040067, 219040072–219040080, 219040086–219040099, 219040102, 219040111–219040112, 219040118–219040119, 219040121–219040124, 219040126, 219040128–219040133, 219040136–219040137, 219040139–219040140, 219040143, 219040149–219040154, 219040156, 219040160–219040165, 219040168–219040170, 219040180, 219040182–219040185, 219040190–219040191, 219040202, 219040205–219040207, 219040208, 219040210–219040221, 219040234–219040239, 219040241–219040254, 219040256–219040257, 219040260, 219040262–219040267, 219040270–219040279, 219040282–219040319, 219040321–219040323, 219040325–219040327, 219040330–219040335, 219040349, 219040353, 219110073, 219140569–219140577, 219140580–219140591, 219140594, 219140599–219140601, 219140606–219140612, 219420185–219420187, 219610415–219610437

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area.

21 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040007–219040008, 219040010–219040012, 219040014–219040027, 219040030–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

88 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219240080, 219430040, 219440164–219440167, 219440181, 219440183, 219530100–219530125, 219610430–219610468, 219610613–219610631, 219620453–219620455, 219620825–219620826
Status: Unutilized
Reason: Extensive deterioration.

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Detached Latrine.

75 Bldgs., Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219240333–219240394, 219240402, 219240410–219240416, 219240420, 219240434–219240437
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration.

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area.

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area; Sewage treatment facility.

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

4 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219320113–219320115, 219410146
Status: Unutilized
Reason: Extensive deterioration.

5 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219430047, 219610632–219610634, 219620456–219620457
Status: Unutilized
Reason: Extensive deterioration; (Some are in a secured area.)

Louisiana

514 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011700, 219011714–219011716, 219011735–219011737, 219012112, 219013571–219013572, 219013863–219013869, 219110124, 219110127, 219110131, 219110135–219110136, 219120290, 219240137–219240150, 219420330–219420332, 219610049–219610263, 219620001–219620200, 219620745–219620801
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material.); (Some are extensively deteriorated.)

Staff Residences
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219120284–219120286
Status: Excess
Reason: Secured Area.

15 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219320282, 219340107–219340108, 219430339–219430340, 219520059, 219620458–219620466
Status: Unutilized
Reason: Extensive deterioration; (Some are in Floodway.)

Maryland

92 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140, 219240329, 219530128–219530131, 219610476–219610483, 219610485, 219610489–21910492, 219620467–219620471
Status: Unutilized
Reason: Most are in a secured area; (Some are within 2000 ft. of flammable or explosive material.); (Some are in a floodway) (Some are extensively deteriorated.)

Bldg. 1958
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014789
Status: Unutilized
Reason: Secured Area.

Bldg. 10401
Aberdeen Proving Ground
Harford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Sewage treatment plant.

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Sewage pumping station.

39 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219140458, 219140460–219140461, 219140465, 210140467, 219140510, 219210123, 219220142, 219220146–219220147, 219220153, 219220171–219220173, 219220190–219220192, 219220195–219220197, 219240121, 219310022, 219310026–219310027, 219310031–219310033, 219320144, 219330114–219330118, 219340013, 219420333–219420334, 219530167–219530168
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 132, 135 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 219330109–219330110
Status: Underutilized
Reason: Secured Area.

Bldg. T–116, Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219340012
Status: Unutilized
Reason: Extensive deterioration.

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown Co: Middlesex MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: 2000 ft. of flammable or explosive material; Floodway; Secured Area.

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized

Reason: Secured Area.

Michigan

Bldgs. 602, 604
US Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone; Floodway; Secured Area.

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area.

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area.

Minnesota

169 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145–219320156, 219330096–219330108, 219340015, 219410159–219410189, 219420195–219420284, 219430059–219430064
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material.); (Some are extensively deteriorated.)

Mississippi

Bldg. 8301
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Missouri

Lake City Army Ammo. Plant
59, 59A, 59C, 59B, 18, 94, 149, T201, 6A, 6C, 6D, 6E, 6F
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530138
Status: Unutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material.)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

10 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140422–219140423, 219430070–219430078
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Montana

Bldgs. T0033, T0451, T0452
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 219620473–219620475
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Extensive deterioration.

Nevada

7 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011953, 219011955, 219012061–219012062, 219012106, 219013614, 219230090
Status: Unutilized
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street-North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

51 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012009, 219012013, 219012021, 219012044, 219013615–219013651, 219013653–219013656, 219013658–219013661, 219013663, 219013655
Status: Underutilized
Reason: Secured Area; (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material.)

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area.

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area.

Facility No. 00A38
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219330119
Status: Unutilized
Reason: Extensive deterioration.

New Jersey

217 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 north
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012466, 219012469–219012472, 219012474–219012475, 219012756–219012760, 219012763–219012767, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140617, 219230118–219230125, 219240315, 219420001–219420008, 219510002–219510007, 219620476
Status: Excess
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material.); (Some are extensively deteriorated.); (Some are in a floodway.)

5 Bldgs.
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219420335, 219440206, 219530139–219530141
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.); (Some are in a floodway.)

13 Bldgs., Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Landholding Agency: Army
Property Number: 219013890–219013896, 219330141–219330143, 219430001, 219440200, 219520149
Status: Unutilized
Reason: Floodway; Secured Area.

Structure 403B
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219510001
Status: Unutilized
Reason: Drop Tower.

9 Bldgs.
Armament Rsch., Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530142–219530151
Status: Unutilized
Reason: Extensive deterioration; (Most are in a secured area.)

New Mexico

8 Bldgs.
White Sand Missile Range
White Sands Co: Dona Ana NM 88802
Landholding Agency: Army

Property Number: 219330144–219330147, 219430126–219430127, 219530153–219530154
Status: Unutilized
Reason: Extensive Deterioration.

New York

7 Bldgs. Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131, 219430082–219430086
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 110, 183, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 124, 1332
U.S. Military Academy
West Point Co: Orange NY 10996
Landholding Agency: Army
Property Number: 219330148, 219610494
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 3006, Stewart Gardens
Stewart Army Subpost
New Windsor Co: Orange NY 12553
Landholding Agency: Army
Property Number: 219420285
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–683, Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 219510016
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

North Carolina

48 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219440295, 219530156–219530165, 219610495–219610527, 219620477–219620480
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 12, 16
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219510015, 219530155
Status: Unutilized
Reason: Secured Area.

Bldgs. P–3437, 4–2402, A–AREA, P–2034
Simmons Army Airfield
Fort Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219620481–219620484
Status: Unutilized
Reason: Extensive deterioration.

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148
Status: Unutilized
Reason: Secured Area.

12 Bldgs., Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320399–219320410
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 116
Defense Supply Center, Columbus (DSCC)
Columbus Co: Franklin OH 43216
Landholding Agency: Army
Property Number: 219620491
Status: Unutilized
Reason: Secured Area Extensive deterioration

Oklahoma

546 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material).

13 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219140528–219140529, 219140545–219140548, 219140550–219140551, 219320337, 219440309, 219510023, 219610529
Status: Unutilized
Reason: Extensive deterioration.

28 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171, 219330149–219330160, 219430122–219430125, 219620485–219620490
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated).

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area.

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 219320201
Status: Unutilized
Reason: Secured Area.

Pennsylvania

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess
Reason: Secured Area.

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration.

16 Bldgs.
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201
Landholding Agency: Army
Property Number: 219420400, 219430098, 21961053–219610544
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. T–685, Carlisle Barracks
Carlisle Co: Cumberland PA 17013
Landholding Agency: Army
Property Number: 219610530
Status: Unutilized
Reason: Extensive deterioration.

South Carolina

64 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219510017, 219530175, 219620306, 219620308–219620312, 219620315–219620368
Status: Unutilized
Reason: Extensive deterioration.

Tennessee

48 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010475, 219010477, 219010479–219010500, 219240127–219240136, 219420304–219420307, 219430099–219430105, 219610545
Status: Unutilized/Underutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated).

32 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 21901236–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178,

219440212–219440216, 219510025–219510028
Status: Unutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material).

9 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177, 219520034
Status: Unutilized
Reason: Secured Area.

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: Easement to city of Saginaw for sewer pipeline ending 5/15/2023.

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

95 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548, 219610553–219610584, 219610635, 219620243–219620291, 219620827–219620837
Status: Unutilized
Reason: Secured Area; (Most are within 2000 ft. of flammable or explosive material).

33 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219120064, 219130002, 219140255, 219230109–219230115, 219320193–219320194, 219330163, 219420314–219420327, 219430093–219430097, 219440217
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated).

Bldg. T–5000
Camp Bullis
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Swimming Pools

Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Extensive deterioration.

23 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 219340238, 219520061, 219610546–219610547, 219610585
Status: Unutilized
Reason: Extensive deterioration.

7 Bldgs., Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330473, 219340095, 219530176–219530177, 219610549–219610551
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. T–2916, T–3180, T–3192, T–3398
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479
Status: Unutilized
Reason: Detached latrines.

Bldgs. 2027, 2443, Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219620238–219620239
Status: Unutilized
Reason: Extensive deterioration.

Utah

3 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366
Status: Unutilized
Reason: Secured area.

11 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012143–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012742, 219012751, 219240267
Status: Underutilized
Reason: Secured area.

7 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130011–219130012, 219130015–219130018
Status: Underutilized
Reason: Secured area.

7 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219330181–219330185, 219420328–219420329
Status: Unutilized
Reason: Secured area.

Bldg. 4520
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219240268
Status: Unutilized
Reason: Extensive deterioration.

Virginia

175 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219440219–219440225, 219510031–219510033, 219610607–219610608
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area.

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; Latrine, detached structure.

98 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219220314, 219240096, 21240107, 219330191–219330212, 219330219–219330228, 219520062, 219610589–219610598, 219620497–219620508, 219620838–219620877
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

16 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103, 219520037
Status: Unutilized
Reason: Secured Area.

2 Bldgs., Fort A.P. Hill
Bowling Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219240313–219240314
Status: Underutilized
Reason: Detached latrines.

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration.

Bldg. TT0868, Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army

Property Number: 219310143
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 171 Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219520051
Status: Unutilized
Reason: Extensive Deterioration.

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldgs. SS1238, TT806
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219510030, 219610588
Status: Underutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 2013–00, B2013–00, A1601–00
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219520052, 219530194
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 627, 822, Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 219610586–219610587
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 1426–1418, 1430–1431
Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 219610609–219610610
Status: Unutilized
Reason: Extensive deterioration.

Washington

56 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219440233–219440234, 219510036, 219510039, 219610001–219610031, 219610035, 219610039–219610048, 219610264, 219620509–219620517
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldgs. 524, 538, 539
Ft. Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 219430130
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area
Comment: Friable asbestos.

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area.
Comment: friable asbestos.

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area.

31 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219220295–219220311, 219510058–219510068
Status: Unutilized
Reason: Secured Area.

Bldgs. 6513–27, 6823–2, 6861–4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

79 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210115, 219240206–219240243, 219240256, 219240258–219240262, 219310208–219310225, 219610611–219610612, 219620292–219620305
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6513–3
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219510057
Status: Unutilized
Reason: Detached Latrine.

124 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219510069–219510077
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area.

3.152 Acres
Anniston Army Depot
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219530004
Status: Unutilized
Reason: Secured Area.

Alaska

Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchorage AK 99507–
Landholding Agency: Army
Property Number: 219230188
Status: Unutilized
Reason: Inaccessible.

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River Road.
Landholding Agency: Army
Property Number: 219012810
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway.

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067

Status: Underutilized
Reason: Secured Area.

38,000 sq. ft. & 4,000 sq. ft. of Land
Rock Island Arsenal
South Shore Moline Pool Miss. River
Moline Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219240317–219240318
Status: Unutilized
Reason: Floodway.

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Land—Plant 2
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630–219012632
Status: Underutilized
Reason: Floodway; Secured Area.

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Landlocked.

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area.

Spur Line/Right of Way
Armament Rsch., Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway.

Oklahoma

McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area.

Land—all of block 1800
Fort Sam Houston
Portions of 1900, 3100, 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219530184
Status: Excess
Reason: Floodway.

Virginia

Fort Belvoir Military Reservation–5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060–
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area.

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area.

[FR Doc. 96–22615 Filed 9–5–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–818775

Applicant: Ken Gordon, Mississippi Natural Heritage Program, Jackson, Mississippi.

The applicant requests a permit to take (survey and collect voucher specimens) the endangered plants, Louisiana quillwort, *Isoetes louisianensis,* and American chaffseed, *Schwalbea americana,* on Camp Shelby and adjacent DeSoto National Forest, Forrest, Perry, and Greene Counties, Mississippi for the purpose of enhancement of survival of the species.

PRT–818777

Applicant: Dr. Sam W. Rosso, The University of Southern Mississippi, Hattiesburg, Mississippi.

The applicant requests a permit to take (survey and collect specimens for study) the endangered plant, Louisiana quillwort, *Isoetes louisianensis,* on Camp Shelby and adjacent DeSoto National Forest, Forrest, Perry, and Greene Counties, Mississippi for the purpose of enhancement of survival of the species.

PRT–818715

Applicant: R. Timothy Davis, Environmental Services, Inc., Jacksonville, Florida.

The applicant requests a permit to take (capture, band, and translocate) red-cockaded woodpeckers, *Picoides borealis,* throughout the species range in North Carolina, South Carolina, Georgia, and Florida for the purpose of enhancement of survival of the species.

PRT–818721

Applicant: Susanne Shipper, Jamestown, South Carolina.

The applicant requests a permit to take (capture, band, and install artificial cavities and cavity restrictors) red-cockaded woodpeckers, *Picoides borealis,* at Shaw Air Force Base, Sumter, South Carolina for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: August 29, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–22810 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CO–010–06–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the next meeting of the Northwest Colorado Resource Advisory Council will be held on September 20, 1996.

DATES: The meeting is scheduled for Friday, September 20, 1996 in Rifle, Colorado.

ADDRESSES: For further information, contact Lynda Boody, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3000; TDD (970) 244–3011.

SUPPLEMENTARY INFORMATION: The meeting is scheduled to begin at 9:00 a.m.

This meeting will be held at the U.S. Forest Service Office, Rifle Ranger District, 0094 County Road 244, Rifle, CO 81650.

The agenda for this meeting will focus on general Council business, issues with which the Council would like to become involved, new business, and committee reports.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Public comment will be taken throughout the meeting. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Grand Junction/Craig District Manager.

Summary minutes for the Council meeting will be maintained in the Grand Junction and Craig District Offices and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 26, 1996.

Mark Morse,

Grand Junction/Craig District Manager.

[FR Doc. 96–22817 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–70–M

[MT–960–1990–00]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The Council will convene at 1:00 PM on Thursday, October 3 and continue through Friday, October 4, 1996 to discuss the Westslope Cutthroat Trout, Abandoned Mine Reclamation in western Montana, Land Exchanges, and the draft Standards and Guidelines EIS comments.

The meeting will be held at the Dillon Resource Area Office, 1005 Selway Drive, Dillon, Montana.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 PM on October 3. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting; or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (PO Box 3388), Butte, Montana 59702–3388; telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: August 27, 1996.

Michele D. Good,

Acting District Manager.

[FR Doc. 96–22819 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–DN–M

[MT–060–06–1020–00]

Montana Off-Road Vehicle Designation

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that beginning September 1, 1996, the use of off-road vehicles (OR) is limited on public lands within the Pike Creek Block Management Area in southern Petroleum County, Montana. This will be in effect during the bird and big game hunting seasons as established by the Montana Fish, Wildlife and Parks Commission in accordance with the authority and requirements of regulation 43 CAR 8364.1.

DATES: This designation will be in effect between September 1, and December 1.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Bureau of Land Management, P.O. Box 1160, Airport Road, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: This block management area includes 37,120 acres in three units (North, South and South Zimmerman). The public land is administered by the BLM, Judith Resource Area, Lewistown District. This designation is the result of analysis completed in the Judith, Valley, Phillips Resource Management Plan of 1994, and will be implemented as a cooperative effort among private landowners; Montana Fish, Wildlife and Parks; Montana Department of Natural Resources and Conservation; and the BLM. The purpose of this designation is to prevent damage to soil, vegetation and scenic resources; to open additional private and state lands for hunting; and to reduce landowner/recreationist conflicts so as to provide a higher quality hunt.

The off-road vehicle limitation area is located in southern Petroleum County, Montana.

Dated: August 26, 1996.

David L. Mari,

District Manager.

[FR Doc. 96–22818 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–DN–M

[WY–060–1050–00–P]

Filing of Plats Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 22 N., R. 101 W., accepted July 15, 1996
T. 16 N., R. 83 W., accepted August 8, 1996
T. 56 N., R. 95 W., accepted August 8, 1996
T. 49 N., R. 72 W., accepted August 16, 1996
T. 17 N., R. 93 W., accepted August 16, 1996
T. 27 N., R. 71 W., accepted August 26, 1996

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a

statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: August 27, 1996.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 96–22816 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection for Requests to Exceed Regulatory Allowance Limitation.

DATES: Written comments should be received on or before November 5, 1996.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165; courier address is: Building 85, Room A–212, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Procedures Staff, phone (303) 231–3046, FAX (303) 231–3194, e-Mail Dennis__Jones@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning collection of information in order to solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Minerals Management Service (MMS) Royalty Management Program (RMP) is requesting the continuation of a collection of information to be used by royalty payors on Federal or Indian mineral leases. The payors use the form when requesting MMS approval to exceed established transportation or processing allowance limits. Use of the form will not place any additional burden on payors.

Under certain circumstances lessees are authorized to deduct from royalty payments the reasonable actual costs of transporting the royalty portion of produced oil and gas from the lease to a processing or sales point not in the immediate lease area. When gas is processed for the recovery of gas plant products, lessees may claim a processing allowance. Transportation and processing allowances are a part of the product valuation process which MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

MMS performs the royalty management functions for the Secretary of the Interior, who is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Federal and Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The Secretary is authorized to prescribe rules and regulations in order to administer the provisions of laws pertaining to mineral leases on Federal and Indian land and the Outer Continental Shelf. Applicable citations include: 30 U.S.C. 189, pertaining to Public Lands; 30 U.S.C. 359, pertaining to Acquired Lands; 43 U.S.C. 1334, pertaining to Outer Continental Shelf Lands; 25 U.S.C. 396d, pertaining to Indian Lands; and 30 U.S.C. 1713, pertaining to oil and gas from Public and Indian Lands.

Regulations at 30 CFR 206 establish uniform product valuation and allowance policies for all Federal and Indian leases. These regulations require information in support of the product valuation or allowances being claimed. Without such information, MMS cannot evaluate the amount of royalties being paid or the amount of allowances being claimed.

Regulations at 30 CFR 206.104(b)(1) and 206.156 (c)(1) establish the limit on transportation allowance deductions for oil and gas at 50 percent of the value of the oil or gas at the point of sale. Regulations at 30 CFR 206.104(b)(2) and 206.156(c)(3) provide that MMS may approve a transportation allowance in excess of 50 percent upon proper application from the royalty payor.

Similar regulations at 30 CFR 206.158(c)(2) establish 66⅔ percent of the value of each gas plant product as the limit on the allowable gas processing deduction, while 30 CFR 206.158(c)(3) provides for the approval of a gas processing allowance in excess of 66⅔ percent when properly requested by the payor.

To request permission to exceed an allowance limit, royalty payors must write a letter to MMS providing the reasons why a higher allowance limit is necessary. Although the request to exceed an allowance limit is voluntary on the part of the payors and results in a benefit to them, many times payors have not provided all of the data needed by MMS to approve or deny a request. The followup necessary to obtain required information creates an additional burden for both the payor and the Government.

The use of form MMS–4393, included with the payor's request, ensures that MMS receives the lease data required to make a decision on the request by including the Accounting Identification Number (AID) identifying the lease, the product code identifying the product being transported or processed, and the selling arrangement used to identify the marketing outlet for the product. These are the necessary data that have been missing from many of the requests in the past. The use of Form MMS–4393 reduces the time required for most payors to clarify a request to exceed allowance rates, and reduces the time required by the Government to process the request.

Costs for performing this collection of information are based on time estimated for the payor to provide the information requested on Form MMS–4393. The form will be completed once a year, if necessary, for each of about 50 allowance requests. Completing the form is expected to average one half hour at a cost of $25 per hour.

Annual burden costs: 50 requests×½ hour×$25=$625.00

Annual burden hours: 50 requests×½ hour=25 hours.

Dated: August 29, 1996.
James W. Shaw,
Associate Director for Royalty Management.
[FR Doc. 96–22764 Filed 9–5–96; 8:45 am]
BILLING CODE 4310–MR–P

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Mineral Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved collection.

SUMMARY: The Department of the Interior has submitted a proposal for the collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act). The act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The act also provides that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by October 7, 1996.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0071), Washington, D.C. 20503.

Send a copy of your comments to the Chief, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the proposed collection of information by contacting MMS's Clearance Officer at (703) 787–1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 203, Relief or Reduction in Royalty Rates.

OMB Number: 1010–0071.

Abstract: The Outer Continental Shelf Lands Act (OCSLA) and the Deep Water Royalty Relief Act (DWRRA) give the Secretary of the Interior the authority to reduce or eliminate royalty or any net profit share set forth in Outer Continental Shelf (OCS) oil and gas leases to promote increased production. The MMS interim final rule established the terms and conditions for granting reductions in royalty rates under the OCSLA and royalty suspension volumes under the DWRRA for certain leases in existence before November 28, 1995. It also defines the information required for a complete application as required by 43 U.S.C. 1337(a)(3)(C). The interim final rule was published in the **Federal Register** on May 31, 1996 (61 FR 27263). The comment period has been extended to September 30, 1996 (61 FR 40734).

MMS will use the information to determine whether granting a royalty relief request will result in the production of resources that would not be produced without such relief. An application for royalty relief must contain sufficient financial, economic, reservoir, geologic and geophysical, production, and engineering data and information for MMS to determine whether relief should be granted according to applicable law. The Application also must be sufficient to determine whether the requested relief will result in an ultimate increase in resource recovery and receipts to the Federal Treasury and provide for reasonable returns on project investments. The applicant's requirement to respond is related only to a request to obtain royalty relief. The applicant has no obligation to make such a request.

Description of Respondents: Federal OCS oil and gas leases.

Frequency: On occasion.

Estimated Number of Respondents: 130 respondents making an estimated 52 applications per year.

Estimated Total Annual Burden on Respondents: 34,530 burden hours.

Estimate of Total Other Annual Costs to Respondents:

(a) Application processing cost: average $21,800 per application for an estimated burden of $1,133,600.

(b) Some applications will require a report prepared by an independent certified public accountant: average $87,500 per application for an estimated burden of $3,587,500.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Comments: The OMB is required to make a decision concerning the proposed collection of information between 30 and 60 days after publication of this notice in the **Federal Register.** Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it by no later than October 7, 1996.

Bureau Clearance Officer: Carole deWitt (703) 787–1242.

Dated: August 15, 1996.
E.P. Danenberger,
Acting Deputy Associate Director for Operations and Safety Management.
[FR Doc. 96–22820 Filed 9–5–96; 8:45 am]
BILLING CODE 4310–MR–M

National Park Service

Record of Decision, Pictured Rocks National Lakeshore; Final Environmental Impact Statement: Beaver Basin Rim Road

Introduction

Pursuant to regulations promulgated by the Council on Environmental Quality (40 CFR Section 1505.2) and the implementing procedures of the National Park Service for the National Environmental Policy Act of 1969 (40 USC 1501 *et seq.*), the National Park Service has prepared this *Record of Decision* with respect to the *Final Environmental Impact Statement: Beaver Basin Rim Road,* Pictured Rocks National Lakeshore, Michigan.

This Record of Decision describes the road provision alternatives that were considered, mitigating measures adopted to avoid or minimize environmental impacts, and the decision reached.

Decision

The National Park Service adopts the proposed (preferred) alternative (Alternative B), which is to construct a two-lane paved road of approximately 13 miles length within the shoreline zone of the Pictured Rocks National Lakeshore.

The road would run from the vicinity of Legion Lake near the intersection of the Little Beaver Campground entrance road with Alger County Road H–58 northeasterly to near the Twelvemile Beach Campground entrance road intersection with Alger County H–58. The road impact on the environment would be minimal.

In constructing the road as described under Alternative B, the National Park Service would be complying with the direction of the Congress as stipulated in Public Law 89–668 [80 Stat. 922 sec. 6(b)(1)] to provide a scenic drive within the shoreline zone of the national lakeshore. The adopted alternative is consistent with this congressional mandate and would implement the management directions of the *General Management Plan, Pictured Rocks National Lakeshore (NPS, USDI 1981).* The National Park Service takes the position that, in the absence of environmental impacts precluding construction of the road, it must comply

with this express congressional direction, and that it should implement the related provisions of the 1981 *General Management Plan.*

In issuing this decision, the National Park Service recognizes that there is considerable public opposition to this action despite the findings of the environmental impact analysis and the congressional direction to construct the scenic shoreline drive. In response to that opposition and efforts of members of the 104th Congress to eliminate by means of amendatory legislation the congressionally mandated scenic drive, the National Park Service will take no immediate action to implement this project. If legislation in the form of an amendment to P.L. 89–668 (section 6 (b)(1)) is enacted, the National Park Service will revise the general management plan for Pictured Rocks National Lakeshore to be consistent with the direction of such legislation.

Alternatives Considered

The environmental impact statement analyzed three road provision alternatives. Alternative A: No Action (Continuation of Existing Conditions), Alternative B: Shoreline Zone Corridor (Proposed Action), and Alternative C: Inland Buffer Zone Corridor.

The environmental impact statement considered and eliminated from further consideration three other alternatives for the location and design of the shoreline road. These three alternatives were offered during preparation of the environmental impact statement: (1) Upgrading County Road H–58, (2) Construct a Paved Trail, and (3) Construct a Gravel Road. The upgrading of County Road H–58 had been previously evaluated and rejected as alternative 3 in the environmental assessment prepared in 1981 for the *General Management Plan, Pictured Rocks National Lakeshore.*

Alternative B: Shoreline Zone Corridor (Proposed Action)

Construction activities associated with the adopted alternative would directly affect 82 acres of mixed northern hardwood and pinelands forest vegetation. Of the 82 acres, 47 would be replanted with grasses and forbs upon completion of the road. Another two acres would be cleared for two scenic overlooks of the Beaver Basin area of the park. The road corridor is entirely within the shoreline zone on lands owned by the National Park Service. No land acquisition would be required. Most of the road would be located 400 feet or more back (south and east) of the Beaver Basin Rim. Existing old road traces totaling about 5 percent of the entire road would be used wherever possible. Two spur roads would be constructed off the main road to two overlooks that would provide views of Beaver Basin, Beaver Lake, Grand Portal Point, Lake Superior, and the Sevenmile Creek area.

There are no threatened or endangered species affected. However, the National Park Service would undertake further section 7(c) of the Endangered Species Act consultation with the U.S. Fish and Wildlife Service with respect to potential impacts on the eastern timber wolf, in particular, and other species prior to the initiation of any construction activity.

Due to the road construction, there would be a temporary, minor effect on air quality and a temporary, major increase in noise levels. Also, there would be minor increases in pollutants from automobile and bus traffic and a minor to moderate increase in noise due to projected use of the new road. There would be a minor overall impact on park soils and vegetation resulting from construction of the main road, spur roads, parking areas, and overlooks. Impacts on wildlife populations, including recovery of the eastern timber wolf, would be relatively minor. There would be no impacts on cultural resources because there are no extant buildings, and an archeological survey found no significant sites. The anticipated increase in visitation would cause some components of the existing visitor experiences to be lost, but a new experience would be offered. Significant social impacts, particularly in the Grand Marais area, would be caused by increased traffic and decreased tranquility. There could be a significant increase in visitor expenditures in Munising and Grand Marais. An increase in seasonal NPS staff would be necessary to provide law enforcement and maintenance for the new section of road and its associated spur roads, parking areas, and overlooks.

Alternative C: Inland Buffer Zone Corridor

The road would be located generally parallel to the proposed alignment of alternative B about 800 feet south and east of the Beaver Basin Rim to a point east of the Sevenmile area where it would turn directly east across the Kingston Plains to intersect with Alger County H–58 north of Kingston Lake. It would be situated on largely non-NPS owned lands within the park inland buffer zone.

Construction activities associated with a road within the inland buffer zone of the park are similar to those of alternative B. The overlook locations would be the same as those for alternative B. and old road traces would be used wherever possible for the new road. Approximately 87 acres of forest vegetation (mixed northern hardwoods and pineland) would be effected with 38 acres permanently lost and 49 acres replanted to grasses and forbs. The length of this road would be 11.5 miles. The National Park Service would be required to acquire 2,560 acres of land (330 acres by donation from the State of Michigan).

Impacts for air quality, noise, soils, vegetation, wildlife, cultural resources, visitor use and experience, socioeconomic environment, and park operations would be similar to those of alternative B. As in the case of alternative B., the National Park Service would initiate further section 7(c) Endangered Species Act consultation with the U.S. Fish and Wildlife Service with respect to the eastern timber wolf and other threatened and endangered species prior to beginning any construction.

Alternative A: No Action (Continuation of Existing Conditions)

In alternative A (no-action alternative), the current management of Pictured Rocks National Lakeshore would continue. A new park road would not be built, and existing park roads would be maintained at current levels. Access into the park would not change. Visitors would continue to drive outside the park, primarily through the park's inland buffer zone on county road H–58 or on state highways 28 and 77, to get from one end of the park to the other. This alternative would not be consistent with the intent of Public Law 89–668, which directed NPS development of a scenic drive within the shoreline zone of the national lakeshore.

Overall impacts on air quality, noise, soils, vegetation, wildlife (including recovery of the eastern timber wolf), and visual resources/quality would be minor because no new road construction actions would be taken that affect these resources. There would be no impacts on cultural resources. If current visitation rates continue, there would be a significant increase in the number of visitors to the park by 2003, but the effect on the visitor experience should be negligible. If visitation increased, there would be a significant increase in visitor expenditures as well as a significant change in the lifestyle for residents of Grand Marais. In order to provide the appropriate level of services, the park would need to increase its seasonal staff.

Other Alternatives

(1) Upgrading County Road H–58

Analyzed and rejected as alternative 3 of the environmental assessment for the 1981 *General Management Plan, Pictured Rocks National Lakeshore*, the upgrade and paving of existing county road H–58 from Legion Lake to the Twelvemile Beach Campground was proposed by participants in the EIS preparation process. A spur road would be built to a proposed new overlook at Beaver Basin. Except for a small section of road near the Twelvemile Beach Campground and the overlook spur road, the proposed park road would be located either completely outside the park boundary or in the inland buffer zone. Under this alternative, H–58 would continue to be a county road and would be maintained by the county. The road would continue to be open to commercial traffic and groomed for snowmobile use.

This alternative was rejected from analysis for several reasons. First, H–58 existed prior to the park's enabling legislation (80 Stat. 922), and as such it could not qualify as the scenic shoreline drive authorized by the act. The legislative history of the enabling legislation specifically states that the shoreline drive is to be built within the park's shoreline zone. Designating this portion of H–58 as the shoreline drive would not be consistent with congressional intent. For these reasons, the Department of the Interior's regional solicitor concluded that H–58 could not qualify as the scenic shoreline drive authorized by Congress.

In addition to the above legislative requirements, most of H–58 between Legion Lake and Twelvemile Beach Campground is too far from the actual Lake Superior shoreline to reasonably be considered a shoreline drive. Also, H–58 is not owned or maintained by the National Park Service and portions are not within the park boundary. The park Service has no authority or funding source to upgrade a county (or state) owned roadway. The Park Service could not manage use of the road or the adjacent land. Using H–58 as the shoreline drive does not separate park visitor traffic from local or commercial traffic. Thus, a park experience is not provided to visitors by upgrading H–58. Finally, visitors still would have to drive outside the park and would not have access to the center of the park.

(2) Construct a Paved Trail

Several individuals and groups proposed that the National Park Service construct a paved trail for nonmotorized use instead of a new road. This new trail could be used by hikers, bikers, horses, and visitors in wheelchairs. Presumably, it would follow the same alignment as the proposed road. This alternative was rejected because it would be inconsistent with both the park's enabling legislation (which called for development of a shoreline drive) and the 1981 *General Management Plan* (which called for construction of a road along the rim of Beaver Basin). In addition, this trail would serve only a small segment of the public. Many more park visitors probably would drive a road than would walk or bike on a 13-mile-long trail through the woods.

(3) Construct a Gravel Road

An alternative was advanced to construct a new road with a gravel surface instead of pavement. This alternative would be inconsistent with the park's general management plan, which called for the main east-west road through the park (including the new road) to be paved. Constructing a gravel surface road would not eliminate environmental impacts. Although a gravel road would be partially permeable to precipitation and would be less expensive to construct, it would result in many of the same impacts as a paved road (e.g., increased noise, loss of vegetation, wildlife disturbance). In addition, a gravel road would result in increased dust and increased potential for erosion and vehicle damage, and would require more routine maintenance than a paved road.

Measures To Minimize Harm

This record of decision incorporates mitigation measures identified in the Final Environmental Impact Statement (*Mitigating Measures* pages 29–33) and in the section 7(c) Endangered Species Act consultation comments of the U.S. Fish and Wildlife Service.

Several design features of the road and management actions will help minimize natural resource impacts of the road. These include siting the road away from the escarpment, designing it as a two-lane roadway with a posted speed of 35 mph, prohibiting commercial vehicles (except tour buses), not plowing the road in winter, eliminating by reclaiming all "two tracks" and trails providing vehicle and pedestrian access into the Beaver Basin from the escarpment, and prohibiting parking along the road except at the two overlooks provided.

Specific actions to be taken to minimize harm are described in the Final Environmental Impact Statement under the following subject classifications: Road Design and Construction (pages 29–30), Air Quality and Noise (pages 30–31), Water Quality (page 31), Soils (pages 31–32), Vegetation (page 32), Wolves (page 32), Public Use of the Road (pages 32–33), and Federal Highway Administration Preconstruction Contract Requirements (page 33). Among the specific actions to be taken to minimize the road impacts would be the revegetation of disturbed areas with native plantings. The basis for this revegetation program would be preparation of a native plants revegetation plan and the subsequent propagation of plant materials to be used in the reclamation.

Comments on the Final EIS

The National Park Service received a total of 699 written responses regarding the draft Environmental Impact Statement. Additional responses were received regarding the Final Environmental Impact Statement. Two were responses from other federal agencies and six responses were from state, county, and local agencies. Twenty responses were from private groups or organizations. All comments received were reviewed in preparing this record of decision, and it was concluded that all issues relevant to the adequacy of the *Final Environmental Impact Statement: Beaver Basin Rim Road* have been addressed.

Conclusion

Following evaluation of the public review comments concerning the alternatives and environmental impacts presented in the draft environmental impact statement, and considering the legislative mandate to develop a scenic shoreline drive, the National Park Service believes that the selected alternative is the legally consistent course of action for development and management of Pictured Rocks National Lakeshore. However, in response to considerable public opposition to this proposed road, and the efforts of members of Congress to eliminate the legislative requirement for this development, the National Park Service will take no immediate action to implement the project.

Dated: July 31, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–22698 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–70–P

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Meeting

Notice is hereby given in accordance with the Federal Advisory Committee

Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, September 27, 1996.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will convene at Park Headquarters, Marconi Station, at 1:00 p.m., September 27, 1996 for the regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2 Approval of Minutes of Previous Meeting
3. Reports of Officers
4. Use & Occupancy Status Report
5. Superintendent's Report
   Lighthouses
   Draft General Management Plan
   Water Management Task Force Update
   Airport Improvements—Hatches Harbor
   News from Washington
6. Old Business
   Dune Shack Committee Report
7. New Business
   Plan for GMP Public Comment in October
8. Agenda for next meeting
9. Date for next meeting
10. Public comment
11. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: August 28, 1996.

Linda Canzanelli,

Acting Superintendent.

[FR Doc. 96–22699 Filed 9–05–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent To Repatriate a Cultural Item in the Possession of the Buffalo Bill Historical Center, Cody, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005(a)(2), of the intent to repatriate a cultural item in the possession of the Buffalo Bill Historical Center, Cody, WY which meets the definition of "sacred object" under Section 2 of the Act.

The Medicine Pipe Thunder Bundle consists of a calumet (eagle-feathered pipe stem) with red cloth cover; a secondary pipe consisting of a pipe bowl and wooden stem; two buffalo skin rattles; four stuffed intact bird skins with cloth wrappers consisting of a Canadian goose, hawk, duck and kingfisher; a Hudson's Bay cloth, and a wool blanket.

Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer and have concurred in the conclusion that the object is not covered due to its age.

Museum records indicate that the bundle was purchased by the Buffalo Bill Historical Center in 1968 from Jim Brubaker, a dealer in the Browning Montana area. Ethnohistorical documentation gathered from Lone Wolf (nephew of Boy Chief) together with evidence submitted by the representatives of the Blackfeet Nation indicates that the known history of the bundle can be traced to the 1870's when Eagle Plume was the traditional bundle holder. The bundle passed through several bundle holders including Lone Chief in the 1880's, Wolf Plume (ca. 1896–1910), Chief Crow (ca. 1910–1915), Boy Chief (ca. 1915–1921), Raven Chief (ca. 1921–1930), and Bull Plume (ca. 1930–1960's). Descendants of Boy Chief sold the bundle to Jim Brubaker.

During consultation with the Buffalo Bill Historical Center, authorized representatives of the Blackfeet Nation and the Pikuni Traditionalists Association identified this object as necessary for the practice of traditional Blackfeet religion. These representatives, including traditional religions leaders, have verified that this object is a Medicine Pipe Thunder Bundle of the Blackfeet Nation, known as Boy Chief's bundle.

Based on the above-mentioned information, officials of the Buffalo Bill Historical Center have determined that, pursuant to 25 U.S.C. 3001(3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Buffalo Bill Historical Center have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between this item and the Blackfeet Nation.

This notice has been sent to officials of the Blackfeet Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Emma I. Hansen, Buffalo Bill Historical Center, P.O. Box 1000, Cody, WY 82414, telephone (307) 587–4771 before October 7, 1996. Repatriation of these objects to the Blackfeet Nation may begin after that date if no additional claimants come forward.

Dated: August 29, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–22825 Filed 9–5–96; 8:45 am]

BILLING CODE 4310–70–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; September 17, 1996 Board of Directors Meeting

TIME AND DATE: Tuesday, September 17, 1996, 1:00 PM (OPEN Portion) 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM Closed portion will commence at 1:30 PM (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. New Appointment.
3. Approval of June 11, 1996 Minutes (Open Portion).
4. Meeting schedule through June 1997.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM).

1. Insurance Project in Brazil.
2. Finance Project in Brazil.
3. Insurance Project in Peru.
4. Finance Project in Argentina.
5. Insurance Project in Argentina.
6. Finance Project in Russia.
7. Finance Project in Nepal.
8. Finance Project in Morocco.
9. Insurance Project in Oman.
10. Insurance Project in India.
11. Insurance Project in Guatemala
12. Insurance Project in El Salvador.
13. Investment Fund—Global.
14. Investment Fund in Latin America.
15. Investment Fund in India.
16. Proposed FY 1998 Budget and Allocation of Retained Earnings.
17. Pending Major Projects.
18. Approval of June 11, 1996 Minutes (Closed Portion).

CONTACT PERSON FOR INFORMATION: Information on the meeting may be

obtained from Connie M. Downs at (202) 336–8438.

Dated: September 4, 1996.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 96–22960 Filed 9–4–96; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 30, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Carrier's or Self-Insurer's Report to the Deputy Commissioner.

OMB Number: 1215–0051.

Agency Number: LS 222.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 16.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 41.

Total Annualized capital/startup costs: $0.

Total annual (operating/maintenance) costs: $0.

Description: The Carrier's or Self-Insurer's Report to the Deputy Commissioner (LS–222) is used for the early identification of injured workers who may need vocational rehabilitation services to assist them in a swift return to employment. Information obtained from this report will assure that disabled workers will be assisted in obtaining the best rehabilitation services available.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping/Reporting: Construction.

OMB Number: 1215–0163.

Affected Public: Business or other for-profit; Not-for Profit.

Respondents	Average hours per response	Frequency	Total responses	Subtotal hours
Recordkeeping:				
100,000	48	Recdkpg	100,000	4,800,000
(2,061 of above, Affirmative Action Plan)	15.107	Recdkpg	2,061	31,136
Reporting:				
(1,283 of above, Compliance Reviews)	3	Annually	1,283	3,849
5 (Hometown Plans)	.42	Quarterly	20	8

Total Burden Hours: 4,834,993.

Total annualized capital/startup costs: $0.

Total annual (operating/maintenance) costs: $7,00.

Description: The Department of Labor seeks to revise this information collection to eliminate the routine submission of the Form CC–257. Form CC–257 (Employment Utilization Report) provided a monthly summary of total work hours by race and gender on construction employees, classified by trade. This revision will result in a net reduction of 419,316 burden hours.

Agency: Employment Standards Administration.

Title: Application of the Employee Polygraph Protection Act of 1988.

OMB Number: 1215–0170.

Frequency: On occasion.

Affected Public: Business or other for-profit; Individuals or households; Not for profit institutions.

Number of Respondents: 328,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Time per Response for Recordkeeping per Record: 1 to 5 minutes.

Total Burden Hours: 82,406.

Total annualized capital/startup costs: $0.

Total annual (operating/maintenance) costs: $0.

Description: This information is being collected to ensure that individuals subject to polygraph testing are afforded the rights and protections contained in the Employee Polygraph Protection Act (EPPA). Hours for third party notification not previously in the information collection are now included. Failure to collect this information would make it extremely difficult for the Wage and Hour Division to enforce the provision of the EPPA.

Agency: Employment Standards Administration.

Title: Representative Payee Report; Representative Payee-Short Form; Physician's/Medical Officer's Report.

OMB Number: 1215–0173.

Agency Number: CM 623, CM 623S; CM 787.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not for-profit institutions.

Form	Total respondents	Responses	Total response time	Burden hours
CM 623	1,335	1,335	1½ hrs.	2,003
CM 623S	890	890	10 mins.	148
CM 787	223	223	15 mins.	56
Totals	2,448	2,448		2,207

Total Burden Hours: 2,207.
Total annualized (capital/startup) costs: 0.
Total annual (operating/maintenance) costs: $779.
Description: The Representative Payee Report (CM–623) and the Representative Payee Report-Short Form (CM–623S) are used to ensure the benefits paid to a representative payee are being used for the beneficiary's well being. The Physician's/Medical Officer's Report (CM–787) is used to determine the beneficiary's capability to manage monthly Black Lung benefits. Without the requested information, it would not be possible to determine if a beneficiary is capable and/or competent to manage his/her benefits, and to assure that the representative payee is using the benefits to meet the beneficiary's needs.

Cheryl Ann Robinson,
Acting Departmental Clearance Officer.
[FR Doc. 96–22801 Filed 9–5–96; 8:45 am]
BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–32,355]

AVX Corporation, Myrtle Beach, SC; Amendment Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In according with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 13, 1996, applicable to all workers of AVX Corporation located in Myrtle Beach, South Carolina. The notice was published in the **Federal Register** on July 3, 1996 (61 FR 34875).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The affected workers were involved in the testing and packaging operations in the production of ceramic capacitors. New information provided by the company shows that workers are separately identifiable by product line. Accordingly, the Department is amending the certification to limit coverage to those workers of the subject firm in Myrtle Beach involved in testing and packaging operations related to production of ceramic capacitors.

The intent of the Department's certification is to include those workers of AVX Corporation who were adversely affected by imports.

The amended notice applicable to TA–W–32,355 is hereby issued as follows:

"All workers of AVX Corporation, Myrtle Beach, South Carolina involved in testing and packaging operations related to the production of ceramic capacitors, who became totally or partially separated from employment on or after May 7, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 26th day of August 1996.

Russell T. Kile,
Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.
[FR Doc. 96–22794 Filed 9–5–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,234 & 234C]

The Carborundum Company, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 30, 1996, applicable to all workers of The Carborundum Company, W.H. Wendel Technology Center, Niagara Falls, New York, and The Structure Ceramics Division, Niagara Falls, New York. The notice was published in the **Federal Register** on August 6, 1996 (61 FR 40854).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Carborundum Speciality Products, Incorporated, Gardner, Massachusetts location. The workers are engaged in the production of ceramic based products.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of ceramic based products. Accordingly, the Department is amending the certification to cover the workers of Carborundum Speciality Products, Incorporated, Gardner, Massachusetts.

The amended notice applicable to TA–W–32,234 is hereby issued as follows:

"All workers of The Carborundum Company, W.H. Wendel Technology Center, Niagara Falls, New York (TA–W–32,234) and Carborundum Speciality Products, Incorporated, Gardner, Massachusetts (TA–W–32,234C) who became totally or partially separated from employment on or after March 29, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 20th day of August 1996.

Russell T. Kile,
Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.
[FR Doc. 96–22795 Filed 9–5–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–31,635]

Distribution and Auto Service, Inc. Seattle, WA; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Teamsters, Local Union No. 117, International Brotherhood of Teamsters, AFL–CIO–CLC* v. *U.S. Department of Labor* (96–04–01047).

The Department's initial denial for the workers of Distribution and Auto Service, Inc. (herein after referred to as DAS), Seattle Washington, issued on December 5, 1995 and published in the **Federal Register** on January 26, 1996 (61 FR 2537), was based on the fact that the workers provided a service and did not produce an article.

The petitioners' request for reconsideration was dismissed on February 9, 1996 and published in the **Federal Register** on February 23, 1996 (61 FR 7021). The Department's dismissal was based on the fact that the application contained no new

substantial information which would bear importantly on the determination.

The workers at DAS are engaged in predelivery services for imported Nissan automobiles, including repair to damaged cars. Workers also install components including air conditioners, graphics decals and appliques, luggage racks, floor mats, arm rests, bed liners (for pickup trucks), running boards and steps, tire covers, cargo nets, fenders flares, air deflectors and security systems. None of these activities constitutes production of an article within the meaning of the Trade Act.

Local 117 claims that until these accessories are installed, the vehicles are "incomplete" and not ready for sale. Findings on remand show that the components installed on vehicles by workers by DAS are accessories which are optional according to buyer preference. All except air conditioners are exterior dress-up items. None of these items is essential to make a motor vehicle ready for retail sale, nor does any of them play any essential role in the operation of a motor vehicle. All of the accessories installed at the subject firm are frequently installed by the retail dealer's own service department if a customer wants them installed.

Other findings on remand show that the accessories are not manufactured at the subject facility but purchased from other domestic firms. (See AR pp. 33–41.)

Service workers may be certified eligible to apply for TAA only if the worker separation was caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under a certification for TAA. These conditions have not been met for Distribution and Auto Service, Inc.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Distribution and Auto Service, Inc., Seattle, Washington.

Signed at Washington, D.C. this 22nd day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22800 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,528]

Hickory Hills Industries, Inc., Clifton, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 8, 1996 in response to a worker petition which was filed June 18, 1996 on behalf of workers at Hickory Hills Industries, Inc. (TA–W–32,528).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–32,487A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 23rd day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22790 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,248]

J&W Garment Factory Scott's Hill, TN; Notice of Revised Determination on Reconsideration

On June 7, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of J&W Garment Manufacturing located in Scott's Hill, Tennessee. The notice was published in the **Federal Register** on June 20, 1996 (61 FR 31552).

By letter postmarked July 11, 1996, the petitioner requested administrative reconsideration of the Department's findings. The petitioners presented new evidence that was not considered in the original determination.

Findings on reconsideration show that the correct company name is J&W Garment Factory. The subject firm is a contractor that sews and inspects pants, shorts and other bottoms. The workers were denied TAA because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally determined through a survey of the workers' firm's major declining customers.

A secondary survey of J&W Garment customers was conducted. New investigation findings on reconsideration show that secondary customers increased their reliance on imports of jeans.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of J&W Garment Manufacturing, Scott's Hill, Tennessee were adversely affected by increased imports of articles like or directly competitive with pants, shorts and other bottoms produced at the subject firm.

"All workers of J&W Garment Manufacturing, Scott's Hill, Tennessee who became totally or partially separated from employment on or after April 3, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C., this 21st day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22797 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 971 & 971A]

J.E. Morgan Knitting, Inc., et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 26, 1996, applicable to all workers of J. E. Morgan Knitting, Inc., located in New Market, Virginia. The notice was published in the **Federal Register** on April 9, 1996 (61 FR 15832).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The company confirms that worker separations have occurred at Tamaqua, Pennsylvania. The workers at Tamaqua provide management support services to the subject firm's New Market, Virginia thermal underwear production facility.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of J. E. Morgan Knitting, Inc., Tamaqua, Pennsylvania.

The amended notice applicable to TA–W–31, 971 is hereby issued as follows:

All workers of J. E. Morgan Knitting, Inc., New Market, Virginia (TA–W–31,971) and Tamaqua, Pennsylvania (TA–W–31,971A), who became totally or partially separated from employment on or after February 13, 1995 are eligible to apply for adjustment

assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22792 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 178, 178C & 178D]

Kentucky Apparel LLP; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 1996, applicable to all workers of Kentucky Apparel LLP, located in Burkesville, Kentucky. The notice was published in the **Federal Register** on May 17, 1996 (61 FR 24960).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations will occur at other Kentucky Apparel plants, two in Scottsville and one in Holland, Kentucky. Each of these plants is scheduled to begin closing in September 18, 1996. The workers produce denim jeans.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of jeans. Accordingly, the Department is amending the certification to cover the workers of Kentucky Apparel LLP in Scottsville and Holland, Kentucky.

The amended notice applicable to TA–W–32,178 is hereby issued as follows:

All workers of Kentucky Apparel LLP, Located in Burkesville (TA–W–32,178), Scottsville (TA–W–32,178C) and Holland (TA–W–32,178D) Kentucky, who became totally or partially separated from employment on or after March 11, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22791 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,878, 878A, 878B]

Klear-Knit of Statesville, Inc., Statesville, NC, et al; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 1996, applicable to all workers of Klear-Knit of Statesville, Inc. located in Statesville, North Carolina. The notice will soon be published in the **Federal Register**.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers produce knit garments. Klear-Knit, Inc. reports that the Clover and Rock Hill, South Carolina plants will close by September 30, 1996, and November 1, 1996, respectively. All employees will be separated from employment. Based on these new findings, the Department is amending the certification to include all workers of Klear-Knit, Inc. located in Clover and Rock Hill, South Carolina.

The intent of the Department's certification is to include all workers of Klear-Knit, Inc. adversely affected by imports.

The amended notice applicable to TA–W–31,878 is hereby issued as follows:

"All workers of Klear-Knit of Statesville, Inc., Statesville, North Carolina (TA–W–31,878) and Klear-Knit, Inc., Clover, South Carolina (TA–W–31,878A) and Rock Hill, South Carolina (TA–W–31,878B), and Rock Hill, South Carolina (TA–W–31,878), who became totally or partially separated from employment on or after January 19, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 20th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22798 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TW–A–32,586]

Klear-Knit, Inc., Clover SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 29, 1996 in response to a worker petition which was filed July 17, 1996 on behalf of workers at Klear-Knit, Inc., Clover, South Carolina (TA–W–32,586).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–31,878A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 20th day of August 1996.

Russel T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22799 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,875 & 875A]

Rivera MFG., et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 20, 1996, applicable to all workers of Rivera Mfg., Pontotoc, Mississippi. The notice was published in the **Federal Register** on April 3, 1996 (61 FR 14820).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The company confirms that worker separations have occurred Marah Shirt Co., Inc., New York, New York. Marah Shirt Co., Inc. shares common ownership with Rivera Mfg. The workers at Marah Shirt Co., Inc. in New York provide support services to Rivera Mfg.'s men's and boy's shirt production facility in Pontotoc, Mississippi.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Marah Shirt Co., Inc., New York, New York.

The amended notice applicable to TA–W–31,875 is hereby issued as follows:

All workers of Rivera Mfg., Pontotoc, Mississippi (TA–W–31,875) and Marah Shirt Co., Inc., New York, New York (TA–W–31,875A), who became totally or partially separated from employment on or after April 27, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22793 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,487; TA–W–32,487A]

Savannah Manufacturing Corporation and Hickory Hills Industries, Inc., Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on July 3, 1996, applicable to all workers of Savannah Manufacturing Corporation located in Savannah, Tennessee. The notice was published in the Federal Register on August 2, 1996 (61 FR 40454).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at Hickory Hills Industries, Inc., Clifton, Tennessee, which is the headquarters of Savannah Manufacturing. The workers at Hickory Hills Industries provided administrative services supporting the production of children's sportswear at Savannah Manufacturing. Based on these new findings, the Department is amending the certification to cover workers of Hickory Hills Industries, Inc. in Clifton, Tennessee.

The intent of the Department's certification is to include all workers of Savannah Manufacturing who were adversely affected by increased imports.

The amended notice applicable to TA–W–32,487 is hereby issued as follows:

"All workers of Savannah Manufacturing Corporation, Savannah, Tennessee (TA–W–32,487) and Hickory Hills Industries, Inc., Clifton, Tennessee (TA–W–32,487A) who became totally or partially separated from employment on or after June 7, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 23rd day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22789 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

Office of Trade Adjustment Assistance; Proposed Information Collection Request Submitted for Public Comment and Recommendations; ETA 9018

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Trade Adjustment Assistance is soliciting comments concerning the proposed revised collection of the Business Confidential Data Request. A copy of the ICR is attached to this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 5, 1996. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Russell T. Kile, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C., 20210. (202) 219–5555 (This is not a toll free number), FAX (202) 219–5753.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Trade Adjustment Assistance is required under the Trade Act of 1974 to conduct investigations to determine whether increased imports have contributed importantly to actual or threatened decreases in employment at firms whose workers have petitioned for trade adjustment assistance benefits. The "Oil and Gas Drilling and Exploration Oilfield Services" Business Confidential Data Request is designed to provide information on which determinations are based.

II. Current Actions

The Office of Trade Adjustment Assistance has made no substantial revisions to its existing data collection requirements. Various changes in data gathering processes have occurred including increased use of computerized data bases and the use of simplified forms transmitted by fax.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Oil and Gas Drilling and Exploration Oilfield Services.

OMB Number: 1205–0272.

Agency Number: ETA 9018.

Recordkeeping: None.

Affected Public: Businesses.

Total Respondents: 75 per year.

Frequency: On occasion (as needed).

Average Time per Response: 3 hours.

Estimated Total Burden Hours: 225 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $4,021.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 29, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

Business Confidential

Department of Labor, Office of Trade Adjustment Assistance, Oil and Gas Industry

Exploration, Drilling, Oilfield Services

TA–W– _____

Subject Firm _____

Location _____

1. Organization

Describe the corporate structure of your firm, including the parent company, if any, and affiliates: _____

2. Operations

a. What percentage of your operations are directed primarily toward: Oil? ____ Gas? ____ Other? ____

b. Check the activities performed by your firm's workers:

____ Wireline logging
____ Laying pipe
____ Inspecting pipe
____ Tool fishing
____ Cementing
____ Acidizing
____ Penetrating
____ Seismic data analysis
____ Installing mud
____ Mixing mud
____ Installing chemicals
____ Fracturing
____ Testing
____ Workovers

c. If not listed in (b), describe other work performed by your firm's workers, such as pre-drilling or post-drilling activities:

_____
_____
_____

3. Revenues and Employment

Report revenues for the two full year periods identified below, and the most recent year-to-date period compared with the same period in the previous year.

Period	Revenues		Employment
	Crude oil	Natural gas	
1994			
1995			
January through June:			
1995			
1996			

Data reported above are for this operation ____ or corporate ____

Business Confidential

4. Customers

a. Please list your major customers:

Customer and address:

_____
_____
_____

Contact: _____
Phone: _____
FAX No.: _____

_____
_____
_____

Contact: _____
Phone: _____
FAX No.: _____

_____
_____
_____

Contact: _____
Phone: _____
FAX No.: _____

_____
_____
_____

Contact: _____
Phone: _____
FAX No.: _____

_____
_____
_____

Contact: _____
Phone: _____
FAX No.: _____

b. Is there any corporate affiliation between your firm and any of your customers?

Yes ____ No ____ If yes, please explain:

_____
_____
_____
_____

_____
Name of Company Official & Title

_____
Signature

_____
Telephone # FAX#

_____
Date

[FR Doc. 96–22802 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

Office of Trade Adjustment Assistance; Proposed Information Collection Request Submitted for Public Comment and Recommendations; ETA 8562

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Trade Adjustment Assistance is soliciting comments concerning the proposed revised collection of the Customer Survey form. A copy of the ICR is attached to this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 5, 1996. The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Russell T. Kile, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C., 20210, (202) 219–5555 (This is not a toll free number), FAX (202) 219–5753.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Trade Adjustment Assistance is required under the Trade Act of 1974 to conduct investigations to determine whether increased imports have contributed importantly to actual or threatened decreases in employment at firms whose workers have petitioned

for trade adjustment assistance benefits. The Customer Survey form is designed to provide information on which determinations are based.

II. Current Actions

The Office of Trade Adjustment Assistance has made no substantial revisions to its existing data collection requirements. Various changes in data gathering processes have occurred including increased use of computerized data bases and the use of simplified forms transmitted by fax.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Customer Survey.

OMB Number: 1205–0190.

Agency Number: ETA 8562.

Recordkeeping: None.

Affected Public: Businesses.

Total Respondents: 2,220 per year.

Frequency: On occasion.

Average Time per Response: 1.78 hours.

Estimated Total Burden Hours: 3,951 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $38,415.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 29, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

BILLING CODE 4510-30-M

OMB 1205-0190
Expiration Date: / /

TA-W-
SUBJECT FIRM:
CONTACT PERSON AT THE DEPT. OF LABOR: ((202) 219-); FAX (202) 219-5753.

1. Specify, for the product(s) below your total purchases from the subject firm, other domestic and foreign sources.

PRODUCT(S):

Period	Subject Firm		Other Domestic Firms		Foreign Firms	
	Quantity	Value	Quantity	Value	Quantity	Value
1994	_____	_____	_____	_____	_____	_____
1995	_____	_____	_____	_____	_____	_____
Jan. - 1995	_____	_____	_____	_____	_____	_____
Jan. - 1996	_____	_____	_____	_____	_____	_____

2. To the best of your knowledge, were any of the products purchased from other domestic firms wholly manufactured in a foreign country? YES or NO. If yes, indicate percentage for 1994 ____%, 1995 ____%, 1996 ____%

The data above should be your best estimate or tabulated from actual records:

Estimated____ Actual____

How many hours were required to complete this form? _____

PRINT NAME SIGNATURE TITLE

COMPANY NAME PHONE NUMBER FAX NUMBER

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of IRM Policy, U.S. Department of Labor, Room N-1301, 200 Constitution Avenue N.W., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0190), Washington, D.C. 20503. DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES.

ETA Form 8562

[FR Doc. 96–22803 Filed 9–5–96; 8:45 am]
BILLING CODE 4510–30–C

Office of Trade Adjustment Assistance; Proposed Information Collection Request Submitted for Public Comment and Recommendations; ETA 9014

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Trade Adjustment Assistance is soliciting comments concerning the proposed revised collection of the Business Confidential Data Request. A copy of the ICR is attached to this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 5, 1996. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Russell T. Kile, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219–5555 (This is not a toll free number), FAX (202) 219–5753.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Trade Adjustment Assistance is required under the Trade Act of 1974 to conduct investigations to determine whether increased imports have contributed importantly to actual or threatened decreases in employment at firms whose workers have petitioned for trade adjustment assistance benefits. The Business Confidential Data Request is designed to provide information on which determinations are based.

II. Current Actions

The Office of Trade Adjustment Assistance has made no substantial revisions to its existing data collection requirements. Various changes in data gathering processes have occurred including increased use of computerized data bases and the use of simplified forms transmitted by fax.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Business Confidential Data Request.

OMB Number: 1205–0197.

Agency Number: ETA 9014.

Recordkeeping: None.

Affected Public: Businesses.

Total Respondents: 1,500 per year.

Frequency: On occasion.

Average Time per Response: 3 hours.

Estimated Total Burden Hours: 4,500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $80,415.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 29, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

BILLING CODE 4510–30–M

BUSINESS CONFIDENTIAL DATA REQUEST U.S. DEPARTMENT OF LABOR

OFFICE OF TRADE ADJUSTMENT ASSISTANCE

OMB Approval No. 1205-0197
Expires:

TA-W-:_____
Subject firm:_____
Location:_____

1. Organization

Describe the organizational structure of the subject firm, including the parent company and affiliates if applicable. Include any subsidiaries, branches or affiliates that manufacture products similar to those made at the subject plant:

_____
_____
_____
_____

2. Sales, Production and Employment

Report the firm's sales, production, and employment for the last two full years, the most recent year to date, and the comparable period in the previous year.

List the product(s) manufactured at the subject firm:

_____

Period	Sales	Production	Employment
1994	_____	_____	_____
1995	_____	_____	_____

The sales reported above are subject firm [ ] corporate-wide [ ]

3. Company Imports (include 807.00)

A. If the subject firm or an affiliate imports products competitive with those made at the subject firm, report the import volume below:

Period	Product:_____	Product:_____
1994	_____	_____
1995	_____	_____

(If quantity is used, what is the unit of measurement?_____)

BUSINESS CONFIDENTIAL DATA REQUEST (Cont.)

B. Have the imports caused layoffs at the subject firm?
Yes [] No []

C. If the subject firm or parent does not import, and there are plans to start importing, when are the imports scheduled to arrive?

_____

4. Transfer Of Production

If layoffs were caused by a transfer to another facility, please indicate where.

_____

_____

5. Customers

Provide below a list of the subject firm's major declining customers. Include the address with zip code, name of the buyer or purchasing agent, telephone and FAX number.

A. Regular Customers

Product:_____

Customer and address

1._____
_____
_____
Contact:_____
Phone: _____
FAX No. _____

2._____
_____
_____
Contact:_____
Phone: _____
FAX No._____

3._____
_____
_____
Contact:_____
Phone: _____
FAX No. _____

4._____
_____
_____
Contact:_____
Phone: _____
FAX No._____

5._____
_____
_____
Contact:_____
Phone: _____
FAX No. _____

6._____
_____
_____
Contact:_____
Phone: _____
FAX No._____

3

BUSINESS CONFIDENTIAL DATA REQUEST (Cont.)

B. Competitive bidding

If the subject firm markets its products by a competitive bidding process, complete the following.

Firm or agency awarding bid, address and contact | Description of project

_____ _____
_____ _____
_____ _____
_____ _____
Contracting agent_____
Phone number_____
Fax No._____

Project I.D.number_____
Amount of subject firm's bid_____
Date of award_____
Awardee (if known)
_____

_____ _____
_____ _____
_____ _____
_____ _____
Contracting agent_____
Phone number_____
Fax No._____

Project I.D.number_____
Amount of subject firm's bid_____
Date of award_____
Awardee (if known)
_____

_____ _____
_____ _____
_____ _____
_____ _____
Contracting agent_____
Phone number_____
Fax No._____

Project I.D.number_____
Amount of subject firm's bid_____
Date of award_____
Awardee (if known)
_____

6. How many hours were required to complete this form?_____

_____ _____
Name of Company Official & Title | Telephone #

_____ _____
Signature | Date

Public reporting burden of this collection of information is estimated to vary from 1 to 10 hours per response, 10 hours for first time respondents, and 1 hour for firms involved in a previous investigation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Trade Adjustment Assistance, U.S. Department of Labor, Room C-4517, Washington, D.C. 20213 and/or the Office of IRM Policy, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Paperwork Reduction Project (1205-0197).

Do not send the completed forms to either of these offices.

ETA-9014
Apr 1995

[FR Doc. 96-22804 Filed 9-5-96; 8:45 am]
BILLING CODE 4510-30-C

[NAFTA-01049]

The Goodyear Tire and Rubber Company Air Springs Manufacturing Division, Green, Ohio; Notice of Revised Determination On Reopening

On July 19, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for NAFTA–Transitional Adjustment Assistance (NAFTA–TAA) applicable to all workers of The Goodyear Tire & Rubber Company, Air Springs Manufacturing Division located in Green, Ohio. The notice was published in the **Federal Register** on August 6, 1996 (FR 61 40853).

On its own motion, the Department reviewed the findings of the investigation. The workers produced air sleeves and air springs. The Department's original determination covered only those workers engaged in the production of air springs. New findings on reopening show that the Department failed to investigate workers who were engaged in the production of air sleeves. Findings show that the company transfer of production of air sleeves to a plant in Mexico started in 1994 and was completed in August 1995. Workers are separately identifiable by product line (air sleeves and air springs). New findings on reopening show that the workers engaged in the production of air sleeves were impacted by the transfer of production to Mexico.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that the shift in production of air sleeves to Mexico contributed to the total and partial separations of the workers engaged in the production of air sleeves by Goodyear Tire & Rubber Company, Green, Ohio. In accordance with the provisions of the Act, I make the following certification:

All workers of Goodyear Tire & Rubber Company, Green, Ohio engaged in the production of air sleeves who became totally or partially separated from employment on or after May 25, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

I further determine that all workers of Goodyear Tire & Rubber Company, Green, Ohio engaged in the production of air springs are denied eligibility to apply for NAFTA–TAA assistance under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of August 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–22796 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA960001 (March 15, 1996)
MA960002 (March 15, 1996)
MA960003 (March 15, 1996)
MA960005 (March 15, 1996)
MA960007 (March 15, 1996)
MA960009 (March 15, 1996)
MA960010 (March 15, 1996)
MA960013 (March 15, 1996)
MA960017 (March 15, 1996)
MA960018 (March 15, 1996)
MA960019 (March 15, 1996)
MA960020 (March 15, 1996)
MA960021 (March 15, 1996)

New Jersey
NJ960002 (March 15, 1996)

NJ960003 (March 15, 1996)
NJ960004 (March 15, 1996)
NJ960015 (March 15, 1996)
NY960034 (March 15, 1996)
NY960047 (March 15, 1996)

Volume II

District of Columbia
DC960001 (March 15, 1996)
DC960003 (March 15, 1996)
Maryland
MD960001 (March 15, 1996)
MD960002 (March 15, 1996)
MD960010 (March 15, 1996)
MD960013 (March 15, 1996)
MD960015 (March 15, 1996)
MD960017 (March 15, 1996)
MD960021 (March 15, 1996)
MD960025 (March 15, 1996)
MD960031 (March 15, 1996)
MD960034 (March 15, 1996)
MD960035 (March 15, 1996)
MD960036 (March 15, 1996)
MD960042 (March 15, 1996)
MD960043 (March 15, 1996)
MD960046 (March 15, 1996)
MD960047 (March 15, 1996)
MD960048 (March 15, 1996)
MD960050 (March 15, 1996)
MD960053 (March 15, 1996)
MD960055 (March 15, 1996)
MD960056 (March 15, 1996)
MD960057 (March 15, 1996)
MD960058 (March 15, 1996)
Virginia
VA960014 (March 15, 1996)
VA960022 (March 15, 1996)
VA960025 (March 15, 1996)
VA960036 (March 15, 1996)
VA960042 (March 15, 1996)
VA960048 (March 15, 1996)
VA960050 (March 15, 1996)
VA960052 (March 15, 1996)
VA960058 (March 15, 1996)
VA960067 (March 15, 1996)
VA960078 (March 15, 1996)
VA960079 (March 15, 1996)
VA960104 (March 15, 1996)
VA960105 (March 15, 1996)

Volume III

Alabama
AL960004 (March 15, 1996)
AL960006 (March 15, 1996)
AL960008 (March 15, 1996)
AL960034 (March 15, 1996)
AL960044 (March 15, 1996)
Florida
FL960009 (March 15, 1996)
FL960012 (March 15, 1996)
FL960017 (March 15, 1996)
FL960032 (March 15, 1996)
FL960034 (March 15, 1996)
FL960046 (March 15, 1996)
FL960100 (March 15, 1996)
Kentucky
KY960001 (March 15, 1996)
KY960029 (March 15, 1996)
North Carolina
NC960008 (March 15, 1996)

Volume IV

Illinois
IL960001 (March 15, 1996)
IL960004 (March 15, 1996)
IL960007 (March 15, 1996)
IL960008 (March 15, 1996)
IL960009 (March 15, 1996)
IL960011 (March 15, 1996)
IL960012 (March 15, 1996)
IL960013 (March 15, 1996)
IL960023 (March 15, 1996)
Indiana
IN960001 (May 15, 1996)
IN960002 (March 15, 1996)
IN960003 (March 15, 1996)
IN960004 (March 15, 1996)
IN960005 (March 15, 1996)
IN960006 (March 15, 1996)
IN960017 (March 15, 1996)
IN960020 (March 15, 1996)
Minnesota
MN960007 (March 15, 1996)
MN960008 (March 15, 1996)
MN960059 (March 15, 1996)
MN960061 (March 15, 1996)
Ohio
OH960001 (March 15, 1996)
OH960002 (March 15, 1996)
OH960003 (March 15, 1996)
OH960027 (March 15, 1996)
OH960028 (March 15, 1996)
OH960029 (March 15, 1996)

Volume V

Iowa
IA960016 (March 15, 1996)
IA960032 (March 15, 1996)
Kansas
KS960006 (March 15, 1996)
KS960007 (March 15, 1996)
KS960008 (March 15, 1996)
KS960009 (March 15, 1996)
KS960010 (March 15, 1996)
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KS960023 (March 15, 1996)
KS960025 (March 15, 1996)
KS960026 (March 15, 1996)
KS960028 (March 15, 1996)
KS960029 (March 15, 1996)
KS960035 (March 15, 1996)
KS960063 (March 15, 1996)
Louisiana
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any of all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 30th day of August 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–22596 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Old Ben Coal Company

[Docket No. M–96–72–C]

Old Ben Coal Company, 50 Jerome Lane, Fairview Heights, Illinois 62208 has filed a petition to modify the application of 30 CFR 75.382(a) (mechanical escape facilities) to its Spartan Mine (I.D. No. 11–00612) located in Randolph County, Illinois. The petitioner submits this modification to requests permission to continue using its existing escape facilities in both the material and belt slopes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Left Fork Mining, Inc.

[Docket No. M–96–73–C]

Left Fork Mining, Inc., P.O. Box 405, Arjay, Kentucky 40902 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device system; minimum requirements general) to its Straight Creek No. 1 Mine (I.D. No. 15–12564) located in Bell County, Kentucky. The petitioner requests a modification of the standard to allow the use of one carbon monoxide monitoring device for monitoring a belt head and tailpiece when located adjacent to each other. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Boone Resources, Inc.

[Docket No. M–96–74–C]

Boone Resources, Inc., P.O. Box 1005, Alabaster, Alabama 35007 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its No. 1 Mine (I.D. No. 01–02908) located in Shelby County, Alabama. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Cumberland Resources Corporation

[Docket No. M–96–75–C]

Cumberland Resources Corporation, 9100 East Mineral Circle, P.O. Box 3299, Englewood, Colorado 80155–3299 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation minimum requirements) to its Cumberland Mine (I.D. No. 36–05018) located in Greene County, Pennsylvania. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Franklin Collieries Inc.

[Docket No. M–96–76–C]

Franklin Collieries, Inc., Box 3875, Route 1498, Bevinsville, Kentucky 41606 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 1 Mine (I.D. No. 15–16667) located in Knott County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen detectors on battery powered scoops instead of machine mounted methane monitors. The petitioner states that this petition is based on the safety of the miners and not primarily an economic advantage or benefit.

6. Daves Branch, Inc.

[Docket No. M–96–77–C]

Daves Branch, Inc., P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 4 (I.D. No. 15–16218) located in Knott County, Kentucky. The petitioner proposes to use hand-held methane and oxygen detectors on battery powered scoops instead of machine-mounted methane monitors. The petitioner states that this petition is based on the safety of the miners and not primarily an economic advantage or benefit.

7. Daves Branch, Inc.

[Docket No. M–96–78–C]

Daves Branch, Inc., P.O. Box 249, Stanville, Kentucky 41659 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 5 Mine (I.D. No. 15–17637) located in Knott County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen detectors instead of machine-mounted methane monitors on battery powered scoops. The petitioner states that this petition is based on the safety of the miners and not primarily an economic advantage or benefit.

8. Utah Fuel Company

[Docket No. M–96–79–C]

Utah Fuel Company, P.O. Box 719, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Skyline Mine No. 1 (I.D. No. 42–01435) and its Skyline Mine No. 3 (I.D. No. 42–01566) both located in Carbon County, Utah. The petitioner requests a modification of the standard to permit use of a 15-foot extendable probe to measure for methane. The petitioner asserts that application of the mandatory safety standard would result in a diminution of safety to the miners.

9. Bledsoe Coal Corporation

[Docket No. M–96–80–C]

Bledsoe Coal Corporation, 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.360(b)(5) (preshift examination) to its Mine No. 4 (I.D. No. 15–11065) located in Leslie County, Kentucky. The petitioner requests a modification of the standards to allow the use of a Pyott-Boone mine monitor and control system for monitoring each seal along the intake air course, and to allow elimination of preshift examinations at seals along the intake air course. The petitioner proposes to have an atmospheric monitoring system sensor located at each seal along the intake air course that would be capable of testing for methane and oxygen deficiency; to visually examined the seals on a weekly basis; and to identify the sensor and visually examine the seal if a signal from the atmospheric monitoring system is activated. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Kiah Creek Mining Company

[Docket No. M–96–81–C]

Kiah Creek Mining Company, P.O. Box 1409, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its No. 8 Mine (I.D. No. 15–17190) located in Pike County, Kentucky. Due to deteriorating conditions in the No. 2 and 3 seals, the area cannot be traveled safely. The petitioner proposes to evaluate the area at the toe of the fall to determine the quantity and quality of air flowing across the fall and by the seals. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Drummond Company, Inc.

[Docket No. M–96–82–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35209 has filed a petition to modify the application of 30 CFR 75.313 (main mine fan stoppage with persons underground) to its Shoal Creek Mine (I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests a modification of the standard to permit an alternative plan when the main mine fans are operating at 80 percent of their normal air quantity and pressure in the event that a main mine fan stops and ventilation is at least 80 percent restored through the auxiliary diesel drive on the stopped fan, and a minimum of 40,000 cfm is maintained in the last open crosscut of each continuous miner section, and 50,000 cfm in the last open crosscut of each long wall section; to hang a curtain in each place where auxiliary ventilation was used and have a minimum of 5,000 cfm directed to any working face; to withdraw all persons from the mine except for those persons responsible for hanging curtains in places where auxiliary fans and fire bossing and pumping and, after ventilation is established, immediately withdraw those persons assigned to hang curtains; to deenergize underground electric power circuits except for those necessary to operate the elevator to withdraw persons from the mine and those who operate the main sump pumps and permissible submersible pumps; and to deenergize the circuits necessary to withdraw persons as they are withdrawn. The petitioner asserts that the proposed alternative method would provide higher level of safety for the workforce and provide a safer mine environment should a power failure occur to the main mine fans.

12. G & P Contractors, Inc.

[Docket No. M–96–83–C]

G & P Contractors, Inc., HC 81, Box 2446, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Engle Hollow No. 1 (I.D. No. 15–17777) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets. The petitioner states that this petition is based on the safety of the miners involved and not primarily an economic advantage or benefit.

13. G & P Contractors, Inc.

[Docket No. M–96–84–C]

G & P Contractors, Inc., HC 81, Box 2446, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Engle Hollow No. 2 mine (I.D. No. 15–17778) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets. The petitioner states that this petition is based on the safety of the miners involved and not primarily an economic advantage or benefit.

14. Murriel Don Coal, Inc.

[Docket No. M–96–85–C]

Murriel Don Coal, Inc., 134 Dixie Building, P.O. Box 3636, Pikeville, Kentucky 41852 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) (I.D. No. 15–17511) located in Knott County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane detectors instead of machine-mounted methane monitors on permissible DC-powered machines, S & S model 482 scoops. The petitioner states that this petition is submitted based not only from an economic point of view but also from a safety standpoint.

15. Utah Fuel Company

[Docket No. M–96–86–C]

Utah Fuel Company, P.O. Box 719, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.344(a)(2) (compressors) to its Skyline No. 1 Mine (I.D. No. 42–01435) and its Skyline No. 3 Mine (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the use of audible and visual alarms to be located at the surface office building where assigned persons can respond to the alarms instead of at unmanned locations underground. The petitioner asserts that the application of the mandatory safety standard would result in a diminution of safety to the miners.

16. Utah Fuel Company

[Docket No. M–96–87–C]

Utah Fuel Company, P.O. Box 719, Helper, Utah has filed a petition to modify the application of 30 CFR 75.340(a)(1)(iii) to its Skyline No. 1 Mine (I.D. No. 42–01435) and its Skyline No. 3 Mine (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the use of audible and visual alarms to be located at the surface office building where assigned persons can respond to the alarms instead of at unmanned locations underground. The petitioner asserts that application of the mandatory safety standard would result in a diminution of safety to the miners.

17. Stephen Shingara Jr. Coal Company

[Docket No. M–96–88–C]

Stephen Shingara Jr. Coal Company, R.D. #1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope Mine (I.D. No. 36–02280) located in Northumberland County, Pennsylvania. The petitioner proposes

to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices, but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Mountain Coal Company

[Docket No. M–96–89–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests a modification of the standard to allow the use of either two portable fire extinguishers or one fire extinguisher having at least twice the minimum capacity specified in 30 CFR 75.1100–1(e) at each temporary electrical installation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. Harlan Cumberland Coal Company

[Docket No. M–96–90–C]

Harlan Cumberland Coal Company, Grays Knob, Kentucky 40829 has filed a petition to modify the application of 30 CFR 75.310(a)(3) (installation of main mine fans) to its C–2 Mine (I.D. No. 15–07201) located in Harlan County, Kentucky. The petitioner proposes to have a person at a location other than at the mine where the fan signal can be seen or heard while anyone is underground instead of at a surface location at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. Roberts Bros. Coal Company, Inc.

[Docket No. M–96–91–C]

Roberts Bros. Coal Company, Inc., P.O. Box 397, Mortons Gap, Kentucky, 42440 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Cardinal No. 2 Mine (I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner proposes to examine electrical installations "on-shift" to insure that the electrical installations are examined throughout the shift instead of conducting the examinations three hours prior to the oncoming shift. The petitioner asserts that the proposed alternative method of on-shift examinations would not diminish the safety of the miners.

21. Eastern Mingo Coal Company

[Docket No. M–96–92–C]

Eastern Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.503 (18.41)(f) (permissible electric face equipment; maintenance) to its Big Branch Mine (I.D. No. 46–05978) located in Mingo County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidentally disengaging while under load. The petitioner states that application of the mandatory safety standard would result in diminution of safety to the miners. In addition, petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

22. Western Mingo Coal Company

[Docket No. M–96–93–C and M–96–94–C]

Western Mingo Coal Company, P.O. Box 119, Naugatuck, West Virginia 25685 has filed a petition to modify the application of 30 CFR 75.503(18.41)(f) to its Northern Mingo No. 1 Mine (I.D. No. 46–08147) and its Northern Mingo No. 2 Mine (I.D. No. 46–08369) both located in Mingo County, West Virginia. The petitioner proposes to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidentally disengaging while under load. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

23. Arch of Illinois

[Docket No. M–96–95–C]

Arch of Illinois, P.O. Box 308, Percy, Illinois 62272–0308 has filed a petition to modify the application of 30 CFR 75.362(d)(1) to its Conant Mine (I.D. No. 11–02886) located in Perry County, Illinois. The petitioner proposes to use an intrinsically safe atmospheric monitoring system (AMS), a Trolex Explosive Gas Sensor Model No. TX3266 or an equivalent AMS, to test for methane before the equipment is energized, and to continuously detect and test for methane at 20-minute intervals while the mining equipment is energized in the working face. This would eliminate personnel exposure to the potential hazards of the face area during the tests. The petitioner states that application of the mandatory safety standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

24. Arch of Illinois

[Docket No. M–96–96–C]

Arch of Illinois, P.O. Box 308, Percy, Illinois 62272–0308 has filed a petition to modify the application of 30 CFR 75.331(d)(1) to its Conant Mine (I.D. No. 11–02886) located in Perry County, Illinois. The petitioner proposes to use a "blowing" auxiliary permissible fan and tubing with the Archveyor™ System to ventilate the wing cut face area. The petitioner has outlined in this petition specific procedures to be followed when utilizing its alternative method. The petitioner states that application of the mandatory safety standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

25. Arch of Illinois

[Docket No. M–96–97–C]

Arch of Illinois, P. O. Box 308, Percy, Illinois 62272–0308 has filed a petition to modify the application of 30 CFR 75.1107–4(a)(1) to its Conant Mine (I.D. No. 11–02886) located in Percy County, Illinois. The petitioner proposes to use an operator/technician, the Archveyor™ mining system's Program Logic Controlled (PLC) computer, and the continuous monitoring of the Archveyor™ mining system while energized, as a fire suppression device, during secondary mining. The petitioner proposes to have an operator/technician continuously stationed at the system's control cab area while the system is in operation to continuously control and monitor the Archveyor™ mining system. The petitioner has outlined in this petition specific procedures to be followed when utilizing its alternative method. The petitioner states that application of the mandatory safety standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 7, 1996. Copies of these petitions are available for inspection at that address.

Dated: August 30, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 96–22759 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

Vermont State Standards; Notice of Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On October 16, 1973, notice was published in the **Federal Register** (38 FR 28658) of the approval of the Vermont State Plan and the adoption of Subpart U to Part 1952 containing the decision. The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. By letters dated July 26, 1995, August 7, 1995, and September 5, 1995, from Mary S. Hooper, Commissioner, Vermont Department of Labor and Industry, and by letters dated January 22, 1996, and June 4, 1996, from Paul Harrington, Deputy Commissioner, Vermont Department of Labor and Industry, to Mr. John T. Phillips, Regional Administrator, and incorporated as part of the plan, the State submitted an updated State standard standards identical to 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928, and subsequent amendments thereto, as described below:

(1) Addition to 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928, Retention of DOT Markings, Placards, and Labels, Final Rule, (59 FR 36695, July 19, 1994).

(2) Revision to 29 CFR parts 1910, 1915 and 1926, Occupational Exposure to Asbestos, Final Rule, (59 FR 41057, August 10, 1994, and 59 FR 9624, February 21, 1994).

(3) Revision to 29 CFR parts 1910 and 1926, Hazardous Waste Operations and Emergency Response; Final Rule, (59 FR 43268, August 22, 1994).

(4) Addition to 29 CFR parts 1915 and 1926, Standard for Cadmium in Shipyard Employment and in Construction Work; Reprint With Corrections and Technical Amendments; Final Rule, (59 FR 146, January 3, 1994).

(5) Revision to 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928, Hazard Communication; Final Rule, (59 FR 6169, February 9, 1994).

(6) Addition to 29 CFR parts 1910 and 1928, Logging Operations; Final Rule (59 FR 51741, October 12, 1994); and Corrections and Technical Amendments (59 FR 47022, September 8, 1995).

(7) Amendment to 29 CFR Parts 1910, 1915 and 1926, Occupational Exposure to Asbestos; Corrections; Final Rule (60 FR 33974, June 29, 1995).

These standards became effective on July 11, 1995, July 10, 1995, March 13, 1995, September 23, 1995, February 3, 1996, and February 19, 1996, respectively, pursuant to Section 224 of Vermont State Law.

2. Decision

Having reviewed the State's submissions in comparison with the Federal standards, it has been determined that the State's standards are identical to the Federal standards and, accordingly, are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, John F. Kennedy Federal Building, Room E–340, Boston, Massachusetts 02203; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont, 05602; and the Office of State Programs, 200 Constitution Avenue, NW., Room N–3700, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective September 6, 1996.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 19th day of July 1996.

John T. Phillips,

Regional Administrator.

[FR Doc. 96–22826 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–26–P

Pension and Welfare Benefits Administration

[Application No. D–10200, et al.]

Proposed Exemptions; Chase Manhattan Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security

Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Chase Manhattan Bank (National Association) Located in New York, New York

Exemption Application No. D–10200

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions, provided that the conditions set forth in Section II below are met:

(a) Any acquisition or sale of "emerging market" securities (the Securities), and any repurchase agreement involving such Securities, which occurs between The Chase Manhattan Bank, N.A. (Chase) or its Affiliates and the IBM Retirement Plan (the IBM Plan), to which Chase or an Affiliate is a party in interest under the Act at the time of the transaction; and

(b) Certain repurchase agreements involving the Securities which occurred between the IBM Plan and Chemical Bank, N.A. (Chemical) that were outstanding as of March 31, 1996, the date of the merger between Chemical and Chase (the Merger). (All references herein to Chase which refer to the period of time after March 31, 1996 shall include Chemical.)

Section II—Conditions

(a) The assets of the IBM Plan involved in the transactions described in Section I(a) and I(b) above are managed by Wasserstein Perella Emerging Markets Asset Management L.P. (W–P), as the independent qualified fiduciary for the IBM Plan;

(b) W–P, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, negotiates the terms of such transactions on behalf of the IBM Plan and makes the decision to have the IBM Plan enter into any such transactions with Chase;

(c) W–P, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, monitors the investments made by the IBM Plan in such Securities and takes whatever actions are necessary to protect the interests of the IBM Plan;

(d) Neither Chase nor an Affiliate has discretionary authority or control with respect to the investment of the IBM Plan's assets involved in the transactions or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(e) In any transaction where the IBM Plan acquires a Security from Chase, the IBM Plan pays a price which is no greater than the fair market value of such Security, as determined by W–P in accordance with either W–P's internal valuation process or independent third party sources (such as independent broker-dealers and market-makers dealing in such Securities);

(f) In any transaction where the IBM Plan sells a Security to Chase, the IBM Plan receives a price which is no less than the fair market value of such Security, as determined by W–P in accordance with either W–P's internal valuation process or independent third party sources (such as independent broker-dealers and market-makers dealing in such Securities);

(g) The repurchase agreements between the IBM Plan and Chase are entered into pursuant to a written agreement between the parties which describes all of the material terms and conditions for such transactions, including the rights and obligations of each party, and is consistent with the specific guidelines established by the IBM Plan's named fiduciary for transactions involving the Securities;

(h) All repurchase agreements between the IBM Plan and Chase, including those agreements which were in place at the time of the Merger with Chemical, have terms and conditions which are at least as favorable to the IBM Plan as terms and conditions which would exist in a similar transaction with an unrelated party;

(i) All other terms of each transaction described above in Section I(a) are not less favorable to the IBM Plan than the terms available in an arm's-length transaction between unrelated parties;

(j) W–P does not engage in, or commit to sell, any uncovered put or call options (including, but not exclusive to, "straddles" and "strangles") in transactions with Chase on behalf of the IBM Plan;

(k) Any transactions involving the use of leverage by W–P, on behalf of the IBM Plan, do not exceed the specific guidelines established by the IBM Plan's named fiduciary under its investment management agreement with W–P;

(l) No brokerage commission, sales commission, or similar compensation other than the particular dealer mark-up for the Security, is paid to Chase by the IBM Plan with regard to such transactions; and

(m) The amount of the IBM Plan's assets involved in the transactions described in Section I(a) and I(b) represents no more than two (2) percent of the total assets of the IBM Plan.

Section III—Definitions

(a) The term "Chase" refers to The Chase Manhattan Bank (National Association) and its Affiliates, as defined below, including Chemical Bank, N.A., effective as of March 31, 1996, pursuant to the terms of the Merger which occurred on such date.

(b) The term "Chemical" refers to Chemical Bank, N.A., as it existed as an independent entity prior to March 31, 1996;

(c) The term "Affiliate" refers to affiliates of Chase, including entities controlling, controlled by, or under common control with Chase as well as successors to such entities.

(d) The term "control" for purposes of the above definition of "Affiliate" means the power to exercise a controlling influence over the management or policies of an entity.

(e) The term "emerging market" or "emerging markets" refers to capital markets in developing or less developed countries that are, with the exception of Mexico, not member countries of the Organization for Economic Cooperation and Development.

(f) The term "Security" refers to certain "emerging market" securities and instruments issued in, or on behalf of, an "emerging market" (including both corporate and sovereign issuers of debt securities as well as corporate issuers of equity securities). For purposes of the proposed exemption, such "Securities" would include publicly traded or privately placed debt, equity, or convertible securities, certain put and call options (as described herein), collateralized bonds, Brady Bonds and Eurobonds.

(g) The term "IBM Plan" refers to the IBM Retirement Plan, a defined benefit pension plan covering employees of the International Business Machines Corporation and its affiliates (IBM), which is an employee benefit plan covered by the Act.

(h) The term "W–P" refers to Wasserstein Perella Emerging Markets Asset Management L.P. and its affiliates, including the Emerging Capital Markets Division of Wasserstein Perella Securities, Inc.

EFFECTIVE DATE: The exemption, if granted, will be effective as of the date that this notice of proposed exemption is published in the **Federal Register** for all transactions described in Section I(a), and as of March 31, 1996, for the transactions described in Section I(b).

Summary of Facts and Representations

1. The subject exemption request is made on behalf of Chase and its Affiliates (referred to hereafter as "the Applicant") for certain transactions with the IBM Plan involving securities and instruments issued in, or on behalf of, various emerging capital markets in developing or less developed countries throughout the world.

2. Chase is a national banking association and acts as a non-discretionary trustee of the IBM Retirement Plan Trust (the IBM Trust), a trust that holds the assets of the IBM Plan.[1] Chase's subsidiary, Chase Investment Bank Limited (CIBL) is an underwriter of, and a dealer and market-maker in, various securities and instruments, including securities of emerging market issuers (i.e. Securities). CIBL is hereafter not referred to separately but is one of Chase's Affiliates included within the definition of the term "Affiliate" in Section III(c) above.

3. The Applicant states that "emerging markets" are defined to include, for purposes of the proposed exemption, capital markets in developing or less developed countries that are, with the exception of Mexico, not member countries of the Organization for Economic Cooperation and Development (OECD). The Securities are securities and instruments issued in, or on behalf of, an "emerging market" (including both corporate and sovereign issuers of debt securities as well as corporate issuers of equity securities). These "Securities" would include publicly traded or privately placed debt, equity, or convertible securities, certain put and call options, collateralized bonds, Brady Bonds and Eurobonds (as described in greater detail below).

4. The Applicant states that as a major bank with branches in 58 countries, Chase has a physical presence in most of the principal emerging market countries and has access to local market information through such means as review of local press and access to local business and government officials. The Applicant represents that it engages in extensive corporate and sovereign research relevant to emerging markets. As a result the Applicant states that it is a major market-maker in the Securities and is a source of premier research and market reports to its customers that are interested in such markets.

The Applicant represents that it is also a major underwriter of new issues in emerging market securities and a prominent secondary market-maker for all issuers of emerging market securities and instruments. The Applicant states that because trading in these Securities is not done primarily on an exchange and there are few definitive industry reports, it is difficult to quantify the exact amount of the Applicant's share of various markets. However, the Applicant estimates that prior to the Merger between Chase and Chemical, it accounted for as much as 30 percent of the trading volume in the Eurobond market and as much as 15 to 20 percent of the trading volume in the sovereign debt market. The Applicant notes that according to figures made public by major sovereign bond dealers for 1994, Chase's trading volume of $268.4 billion ranked it second in that market. After the Merger, Chase became even more of a presence in emerging markets and an even larger dealer/underwriter of the Securities because Chemical had also been a major dealer/underwriter for such Securities.

5. Wasserstein Perella Emerging Markets Asset Management L.P. (i.e. W–P) is an investment advisor registered with the Securities and Exchange Commission (SEC) under the Investment Advisors Act of 1940 and provides discretionary asset management services for various institutional clients, including employee benefit plans. W–P is managed by the Emerging Capital Markets Division of Wasserstein Perella Securities, Inc. (WPS). WPS is a broker-dealer registered with the SEC. The Grantchester Securities Division of WPS

[1] With respect to all Securities acquired by the IBM Plan pursuant to this proposed exemption, the applicant represents that the requirements of section 404(b) of the Act and the regulations thereunder will be met (see 29 CFR 2550.404b-1). In this regard, section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor. The Department is providing no opinion herein as to whether such requirements will be met.

is one of the leading dealers in the high yield debt securities market. In addition, WPS, through its equities division, has been increasing its underwriting and market-making in emerging market equity securities as well as adding to its equity research and trading presence in this market. For example, W–P states that WPS's equities division has been a manager on a number of significant syndicate transactions involving emerging market securities. The WPS Emerging Capital Markets Division also has a presence in the sales and trading of pre-Brady loans, Brady Bonds, other debt instruments of less developed countries, local currency products and equities issued by businesses in such markets. W–P states that the principal officials of W–P have extensive experience in structuring transactions involving emerging market securities and in managing investments in, and trading, such securities.

6. W–P currently serves as an investment manager for certain assets of the IBM Plan. Pursuant to its reserved powers as named fiduciary under a trust indenture between IBM Plan and Chase, as trustee, the International Business Machines Corporation (IBM) has appointed W–P as an investment manager with respect to a portion of the IBM Trust (the W–P Account). The terms of the investment management agreement (the Agreement) governing the W–P Account provide W–P with full discretion to manage the IBM Plan's assets held in the Account, including the power to give investment directions to Chase as the trustee of such assets. The Agreement also requires W–P to manage the W–P Account in accordance with investment guidelines established by IBM, as the named fiduciary for the IBM Plan. These investment guidelines (the Guidelines) call for W–P to invest all of the assets in the W–P Account in emerging market securities of the type described herein (i.e. the Securities).[2]

The Guidelines also prescribe that no more than 10 percent of the W–P Account's assets may be invested in such Securities which are equity securities. Thus, W–P must invest at least 90 percent of the IBM Plan's assets managed in the W–P Account in Securities which are either corporate or sovereign debt securities.

The Guidelines state that the Securities that are debt securities may be either dollar-denominated or non dollar denominated, and equity securities may be either listed or unlisted. The Guidelines also contain geographic restrictions and restrictions requiring diversification of issuers with respect to such Securities held in the W–P Account's portfolio. The Guidelines have specific provisions regarding the use by the portfolio of, and exposure of the portfolio to, certain instruments known as "derivatives" (as discussed in greater detail below).[3]

In addition, the Guidelines expressly permit the use of leverage. Thus, when managing the IBM Plan's assets in the W–P Account, W–P may use portfolio Securities as collateral for a "loan" (i.e. repurchase agreement) the proceeds of which will be used to acquire more Securities. In this regard, the Guidelines require that borrowings against the portfolio may not exceed 150 percent of the portfolio's net asset value, but are usually only 75–80 percent of such value. Such transactions are entered into by the IBM Plan with large banks, such as Chase and Chemical. These "loans" are structured as repurchase agreements (REPOs). As discussed further below, W–P entered into certain REPOs relating to the Securities with Chemical, on behalf of the IBM Plan, which were outstanding as of March 31, 1996, the date of the Merger.

Finally, the Guidelines require that the investment performance of the W–P Account be measured by investment objectives which call for returns of the Account to exceed certain specified benchmarks, such as the Lehman Brothers Aggregate Bond Index and the Salomon Brothers Brady Bond Index, with lower than normal volatility of returns.[4]

7. The Applicant states that, as of December 1993, the IBM Plan had approximately 289,829 participants and beneficiaries. The total assets of the IBM Plan at that time were approximately $28.2 billion. The assets of the IBM Plan currently managed in the W–P Account are approximately $400 million, an amount which represents less than 1.5 percent of the IBM Plan's total assets. Thus, the amount of the IBM Plan's assets involved in the transactions described herein with Chase will not represent more than two (2) percent of the total assets of the IBM Plan.

The Applicant represents that the IBM Plan's assets under management by W–P exceed 20 percent of W–P's total assets under management. Therefore, W–P is unable to rely on Prohibited Transaction Exemption (PTE) 84–14 (49 FR 9494, March 13, 1984), a class exemption for certain "plan asset" transactions which are determined by an independent qualified professional asset manager ("QPAM").[5] W–P represents that it is a QPAM, as defined under Section V(a) of PTE 84–14, and would otherwise be able to use that

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[2] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of any of the Securities by the IBM Plan would violate the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Nor is the Department providing any views herein as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties. The Department also notes that in order to act prudently in making such investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

[3] The term "derivatives", as used in the Guidelines, includes: (i) Futures contracts; (ii) options on futures contracts; (iii) over-the-counter options on eligible Securities; (iv) interest rate caps, floors, and swaps; and (v) currency forwards, futures and options. However, as discussed herein, W–P's use of derivatives for assets of the IBM Plan is generally limited to the purchase of put and call options, and the sale of covered put and call options, and does not involve futures contracts, options on futures contracts, or swap transactions. Accordingly, the Department is providing no relief under this proposed exemption for transactions involving "derivatives" other than the purchase of put and call options and the sale of covered put and call options described herein.

[4] As a general rule, W–P states that its investment objectives are to target a 15 percent to 20 percent annualized rate of return for investors and to strive to produce steady returns with a focus on reduction of volatility.

[5] The Department is expressing no opinion in this proposed exemption as to whether the subject transactions between these parties would meet all of the conditions required for an exemption under either PTE 84–14 or any other class exemption, such as PTE 75–1 (40 FR 50845, October 31, 1975). The Department notes that the exemptive relief provided in PTE 84–14 for transactions engaged in on behalf of a plan by a QPAM, acting as the plan's fiduciary, is not available if the plan's assets (combined with any other assets of plans maintained by the same employer or employee organization which are managed by the QPAM) represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction (see Part I(e) of PTE 84–14).

class exemption for the transactions described herein involving Chase.

The Applicant maintains that W–P is entirely independent of Chase and its Affiliates. Specifically, the Applicant states that there is no ownership or management relationship between W–P and Chase or its Affiliates. The Applicant and W–P engage in arm's-length trading of emerging market securities involving accounts other than the W–P Account for the IBM Plan. However, the Applicant represents that they have no contractual or other arrangements that would cause them to be viewed other than as acting entirely independent of one another. In particular, the Applicant states that Chase, as a non-discretionary trustee of the IBM Trust, lacks any discretionary authority over investment or management of the IBM Plan's assets, including the assets in the W–P Account. Neither Chase nor an Affiliate has, or has exercised, any authority to appoint or terminate W–P as an investment manager for the IBM Plan.

8. The Applicant seeks an exemption to permit W–P, as an investment manager and independent fiduciary for the IBM Plan, to engage in transactions involving emerging market securities and instruments (i.e. the Securities) with Chase, a party in interest with respect to the IBM Plan as a result of being a non-discretionary trustee of the Plan's assets. Such transactions could include purchases, sales and exchanges of the Securities between Chase and the IBM Plan, as well as REPOs that may be entered into between the parties in connection with the IBM Plan's acquisition and holding of the Securities. In addition, the Applicant seeks a retroactive exemption for certain REPOs involving the Securities which occurred between the IBM Plan and Chemical that were not prohibited transactions at the time such transactions were entered into, but which became prohibited transactions as of March 31, 1996, the date of the Merger with Chase. As noted above, Chase was and continues to be a party in interest (i.e. a non-discretionary trustee) with respect to the IBM Plan and Chemical, as a result of the Merger, became a party in interest to the IBM Plan on March 31, 1996.

Retroactive Relief for Certain REPOs

9. With respect to the retroactive relief necessary as a result of the Merger, the Applicant states that the IBM Plan had engaged in several REPOs with Chemical whereby the Plan's acquisition of new Securities was being financed in part by a REPO with Chemical. The Applicant represents that a number of the REPOs were terminated prior to the Merger to avoid additional prohibited transactions with respect to the IBM Plan. However, as of March 31, 1996, there were five (5) open positions with Chemical involving the IBM Plan's acquisition of Securities.

These open positions involved the following Securities: (i) A $3.5 million issue of Bulgarian IABs (Interest Arrears Bonds), paying a floating interest rate based on LIBOR[6] with maturity scheduled for July 28, 2011, issued under the terms of Bulgaria's Brady Bond Plan (as discussed further below) completed in July 1994; (ii) a $4 million issue of Certificates of Deposit (CDs) issued by Argentina Banco de la Nacion, which matured on May 15, 1996; (iii) a $2.8 million issue of Brazil Bamerindus Eurobonds issued by a private Brazilian bank, which matured on July 15, 1996; (iv) a $605,000 issue of Brazil Bamerindus Euro Medium Term Notes, which matured on June 5, 1996; and (v) a $1.5 million issue of Morocco Tranche A Loans, which are bank loans made to the Kingdom of Morocco as part of a debt restructuring and are due to mature in January 2009. In this regard, the Securities described above in (ii)–(iv) have matured and were paid in full.

10. With respect to the terms of the REPOs with Chemical, the Applicant states that the REPO value[7] vis a vis the Face Amount of the Securities was determined based on the market value of the underlying Securities and the advance rate extended by the REPO counterparty (i.e. Chemical). For example, at the time that the terms of the REPO on the Bulgaria IAB Bonds were set (i.e. the Latest REPO Date),[8] the market value of the Bonds (including any accrued interest) was equal to approximately 48.3 percent of the Face Amount (i.e. $1,690,238 of the $3,500,000 Face Amount), and the advance rate given by Chemical was 80 percent (i.e. Chemical was willing to lend the IBM Trust 80 percent of the market value of the Bonds that were given to Chemical as collateral). Therefore, the REPO value of the Securities on this transaction was calculated as follows:

Advance Rate (80%) × Market Value ($1,690,238.17) = $1,352,190.97.

Thus, the IBM Trust was able to receive $1,352,190.97 in cash under this REPO in exchange for the Bonds for a stated period. The IBM Trust was committed to "repurchase" the Bonds at the end of the REPO's term (i.e. by paying Chemical back the money advanced plus interest at a certain agreed upon rate), unless the REPO was "rolled over". W–P states that the other REPOs with Chemical involving the Securities mentioned above operated under similar terms.

W–P represents that it attempts to obtain the cheapest REPO financing available consistent with the creditworthiness of the counterparty, since the cheaper the cost of borrowing through REPOs, the higher the returns will be to the IBM Trust. W–P states that it contacts potential counterparties to bid on REPOs and negotiates the best available terms with each counterparty. Because the credit-standing of the IBM Trust is excellent, W–P is able to negotiate very favorable terms for these REPOs, including low interest rates. W–P represents that all REPO interest rates negotiated with Chemical, as with other counterparties, were rates that were at least as favorable to the IBM Trust as rates available from other counterparties of similar credit standing.

The Mechanics and Concept Behind REPOs

11. With respect to W–P's philosophy and purpose for using leverage, W–P explains that assets purchased for the IBM Trust are often pledged to a creditworthy counterparty (typically a single A rated institution or better), who in turn provides financing against the asset they hold as collateral. W–P uses the standard Public Securities Association (PSA) REPO agreement, which is used not only for emerging market securities but for other securities. W–P generally utilizes leverage for the IBM Trust in order to increase the portfolio's exposure to low duration/low volatility assets (with maturities typically less than one (1) year and high credit quality—most often from sovereign issuers). W–P states that its long-term performance demonstrates that exposure to such low duration assets provides a cushion of stable returns. Thus, W–P states that while leverage is traditionally used as a means

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[6] "LIBOR" is a widely used interest rate index and refers to the London Interbank Offered Rate. LIBOR is derived from current market quotations offered by major European banks for short-term (i.e. one-month, six-month, etc.) Eurodollar deposits.

[7] The term "REPO value" refers to that amount of money, expressed as a percentage of the market value of the Securities involved, which a bank, as a REPO counterparty, would be willing to "loan" or "advance" to the owner of the Securities (i.e. a plan investor) under a particular REPO.

[8] The initial REPO date was the date that the repurchase contract was initially settled—i.e. the date on which Chemical received the Securities and, in exchange for the Securities, extended cash to the IBM Trust. The Applicant explains that REPOs are often set for a specified term, such as one month, three months, etc. At the end of that term, the REPO counterparty (Chemical) will often give the other party (IBM Plan) the option of renewing the REPO for another term (i.e. "rolling it over"). Thus, the "latest rollover date" refers to the last time a REPO transaction was rolled over.

of gaining access to a greater overall exposure (i.e. risk) for a portfolio via borrowed funds, W–P utilizes the leverage vehicle to mitigate, rather than magnify, the portfolio's volatility.[9]

With respect to the selection of assets for a REPO, W–P represents that it seeks leverage on assets on which it receives the most attractive terms—the lowest interest rates, highest advance rates and most flexible terms. W–P states that generally it is able to receive the best REPO terms on Brady Bonds (see discussion below), because they are the most liquid assets in the market for emerging market securities. However, W–P states that because it has a general strategy for building a portfolio with a foundation in low duration/low volatility assets, capital preservation is the main goal. In this regard, W–P targets a specific degree of leverage based on the cash needs of the portfolio at particular times.

With respect to choosing the counterparties, W–P states that REPO transactions are entered into only with high-quality institutions that actively trade in emerging market instruments. Selection of these REPO counterparties depends on a variety of factors, including the rates charged on financing, the percentage of leverage advanced, the flexibility of terms, and operational ease. After credit is determined to be suitable, pricing (i.e. the rate charged on the leverage) is generally the most important variable in selecting a REPO counterparty.

With respect to the mechanics of the REPO agreement, W–P states that the agreement: (i) Basically outlines the procedures for transferring Securities to and from the REPO counterparty; (ii) defines terms contained in the REPO confirmations, such as the interest rate charged; (iii) sets the maturity date for the REPO; (iv) covers the terms and conditions for margin calls and substitution of assets; and (v) covers each party's remedies under any events of default. W–P states that the only real risk to the IBM Trust that stems specifically from the REPO agreement is that the REPO counterparty, who holds the Securities as collateral, could renege on its obligations under the agreement (i.e. the counterparty could fail to return the collateral to the IBM Trust when the REPO matures). W–P notes that it is for this reason that it is careful in selecting the REPO counterparty and chooses only reliable, creditworthy counterparties for these transactions.

[9] The Department is providing no opinion or views herein on the use of such leveraging as a means to mitigate portfolio risk or volatility.

Types of Securities Involved in Transactions Between the IBM Plan and Chase

12. The Applicant has provided the following general descriptions of each type of Security or instrument involved in the emerging market transactions that would be covered by the proposed exemption.

(i) Brady Bonds. The most liquid asset class in fixed income emerging market securities, these Bonds were issued in exchange for outstanding sovereign bank loans in a number of developing countries as part of the debt reduction/restructuring plans named after former Treasury Secretary Nicholas Brady. Brady Bond plans have been implemented since 1989 in over a dozen countries in Latin America, Eastern Europe, Asia and Africa. The current outstanding market for Brady Bonds equals approximately $140 billion, and annual turnover exceeds $2 trillion, according to the Emerging Markets Trader's Association. Brady Bonds have maturities ranging from 6 years to 30 years, and many (including all par and discount bonds) carry principal and interest collateral guarantees in the form of U.S. Treasury securities. W–P states that a large secondary market exists for these Bonds, and financing can be obtained on virtually all Brady Bond assets.

(ii) Eurobonds/144A. Bonds denominated in U.S. dollars or other currencies issued by sovereign or corporate entities in many countries. These bonds usually mature within 2 to 5 years and are issued in sizes ranging from $50 million to $1 billion. The Eurobond market is an important source of capital for multinational corporations and foreign governments, particularly in emerging market countries. These bonds are Euroclearable—i.e. transferable to U.S. investors via the Depository Trust Company. Eurobonds are not registered with the SEC, but are available for purchase by U.S. persons that meet certain SEC requirements under SEC Rule 144A.[10] W–P states that leverage is available on larger issues and there is a growing REPO market.

(iii) Commercial Bank Loans. These assets are direct or syndicated bank loans, usually to governments or quasi-governmental entities, that are transferred between buyer and seller via assignment or participation agreements. Some loans (e.g. Jamaica, Morocco) are current, though most are in default on interest and principal payments (e.g. Russian Vnesh loans, Yugoslavia, Vietnam). Defaulted loans are purchased in the secondary market at a deep discount to the face value of the loan and are purchased with the expectation of a "Brady plan" type restructuring that will convert the loans into new, current securities. The loans are accounted for in the same way as other Securities in the portfolio and they are marked-to-market daily. Liquidity varies from loan to loan, but prices are quoted daily. W–P states that leverage is available on the more liquid loans (Morocco), so that they can be used in REPO transactions as described above.

(iv) Commercial Paper/Certificates of Deposit. Short-term (30–160 day) debt obligations of banks or corporations in emerging market countries with interest and principal typically paid in U.S. dollars. The interest rates on these debt obligations are usually pegged to LIBOR. W–P states that leverage is available at times from counterparties that sell the assets.

(v) Short-term Sovereign Debt.

(A) Local Currency: Local treasury debt issued on an ongoing basis by foreign governments with interest rates often based on LIBOR. Maturities generally range from 30 days to 2 years.

(B) Dollar-denominated or dollar-hedged: Some countries (e.g. Argentina) have outstanding debt denominated in U.S. dollars (issued in exchange for frozen US dollar bank deposits), with remaining maturities ranging from 2 months to 12 years. Other countries (e.g. Ecuador, Brazil) offer dollar-hedged structures that guarantee specific foreign exchange exit levels. These latter instruments are new issues, and have maturities ranging from 3 months to 1 year.

(vi) Equities. Exchange-traded stocks of companies in emerging market countries, denominated (for the most part) in that country's local currency.

(vii) Convertibles. Debt instruments issued by companies (usually with maturities of 3 to 10 years) that contain provisions whereby the bondholder can exchange their bonds for a set number of shares of the issuer's stock.

[10] SEC Rule 144A requires that investors have available to them offering memoranda. Transactions covered under a Rule 144A offering are limited to "qualified institutional buyers" (i.e. large institutional investors, such as pension plans) that are considered to be sophisticated investors capable of insisting that they be furnished with adequate disclosure.

In this regard, the Department notes that a plan fiduciary in meeting its obligations to act prudently, as required under section 404(a) of the Act, should seek to obtain any relevant information that it believes necessary in order to determine whether a particular investment in emerging market securities, such as Eurobonds, would be appropriate for and in the best interests of the plan.

Processes Used in Determining Which Securities To Acquire for the IBM Trust

13. W–P represents that in addition to following the Guidelines set forth for the IBM Trust, its overall goal as an investment manager for emerging market securities is to obtain superior absolute and risk-adjusted returns for the IBM Plan relative to certain key fixed income indices. As noted earlier, in addition to investing in directional assets, such as those included in the Salomon Brothers Brady Bond Index,[11] W–P builds a low duration portfolio (i.e. by investing in securities with short maturities issued by high-quality borrowers) upon which it adds moderate leverage.[12] This low duration portfolio insulates the overall portfolio from a portion of the volatility often experienced in emerging market securities. W–P's approach to managing risk is to focus primarily on the duration of the Securities in the portfolio. W–P states that in times of high volatility, it does not exit the market for the Securities but instead lowers the portfolio's average maturity profile because lower duration assets will generally exhibit lower volatility. Thus, W–P's strategies place particular emphasis on the liquidity needs of each portfolio.

14. With respect to the use of derivatives, W–P represents that it engages in the trading of certain instruments that would be considered derivatives when it determines that it is prudent to do so to achieve its goals. These derivatives include: (i) The sale of covered call options to enhance the return on portfolio Securities; (ii) the purchase of call options to obtain exposure to particular assets without the necessity of using large sums of money; and (iii) the purchase of put options to mitigate market value deterioration for portfolio Securities. W–P also engages in two strategies that provide incremental income while exposing the IBM Trust, as the option writer, to additional market exposure. These strategies involve: (i) The purchase and sale of "straddles"—the simultaneous purchase or sale of a put and call option with identical strike prices on the same Security); and (ii) the purchase and sale of "strangles"—the simultaneous purchase or sale of a put and call option with strike prices set at a specific amount which is "out-of-the-money".[13]

However, W–P represents that it rarely enters into trades of uncovered options (puts or calls) for any client accounts.[14] Therefore, as a condition of the proposed exemption, W–P has committed not to sell any uncovered put or call options, including (but not exclusive to) "straddles" and "strangles", in transactions with Chase for assets of the IBM Plan.

W–P represents that the use of derivatives in the W–P Account for the IBM Trust is generally limited to the purchase and sale of put and call options on Brady Bonds and Commercial Bank Loans. These are over-the-counter (OTC) options. W–P states that the counterparties involved are always large, creditworthy emerging markets' broker-dealers, similar to those used for REPO transactions. W–P typically uses such options for one of three purposes:

(i) To hedge long positions, through the sale of covered call options, or the purchase of put options;

(ii) To earn incremental income through the sale of covered calls and covered puts when W–P judges that the market will move little, or at least less than the premium available from the sale of such options; and

(iii) To obtain a leveraged exposure to an asset through the purchase of call options, without downside risk beyond the cost of the option.

15. With respect to the process for buying and selling Securities, W–P states that it has real time access through electronic media to data which provides pricing for assets traded in the emerging markets. W–P also deals routinely with other market-makers that provide bid/offer quotations on demand. When buying or selling a Security, W–P typically obtains prices from three different counterparties and chooses the best price. In instances where a less actively traded Security is purchased, W–P looks at assets of the same credit quality, size and duration to verify its relative value. W–P represents that its central mandate as an IBM Plan fiduciary is to secure the "best" price available on any trade. In this regard, W–P states that it is not compelled to deal with any particular party, including Chase, should that party not provide competitive pricing for the Securities involved. Under the conditions of the proposed exemption, when the IBM Plan acquires a Security from Chase, the IBM Plan must not pay a price which is greater than the fair market value of such Security, as determined by W–P in accordance with either W–P's internal valuation process or independent third party sources (such as independent broker-dealers and market- makers dealing in such Securities). In addition, in any transaction where the IBM Plan sells a Security to Chase, the IBM Plan must receive a price which is no less than the fair market value of such Security, as determined by W–P in accordance with such valuation processes or sources. W–P notes that no brokerage commission, sales commission, or similar compensation other than the particular dealer mark-up for the Security, will be paid to Chase by the IBM Plan with regard to such transactions. W–P will endeavor to achieve the best possible prices for the Securities involved in transactions with Chase and will use its expertise in emerging markets to ensure that the particular mark-ups paid to Chase are reasonable based on W–P's valuations of the Securities.

16. W–P acknowledges its duties, responsibilities and liabilities in acting as a fiduciary under the Act for the IBM Trust in connection with its investments and represents that it will ensure that the conditions of this exemption, if granted, are met.

W–P represents that it will ensure that the terms of each transaction with Chase are at least as favorable to the IBM Plan as the terms which would exist in a similar transaction with an unrelated party. W–P states that it will determine, prior to each transaction, that the acquisition and holding of the particular Securities is in the best interests of the IBM Plan, and will ensure that each transaction is consistent with the IBM Plan's investment guidelines, objectives, and liquidity needs. W–P states further that there will be proper diversification of the investments in the IBM Plan portfolio to prevent unnecessary exposure to the risks involved in a particular market sector. W–P notes that its use of leverage (i.e. REPOs) for the IBM Plan assets will be moderate and is usually about half of the maximum allowable under the Guidelines. As a condition of the proposed exemption, W–P represents that it will not exceed the maximum amount of leverage

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[11] Such Securities are generally Brady Bonds, Pre-Brady loans and some equities relating to companies in these emerging markets.

[12] The low duration Securities are generally short-term sovereign debt, Eurobonds, Bank CDs and Commercial Paper.

[13] For example, W–P states that if the market price of the underlying Security is 85 percent of a certain designated price, then a "2-point out-of-the-money strangle" on that asset would include a put option with a strike price of 83 percent and a call option with a strike price of 87 percent.

[14] To the extent that W–P chooses to enter into any uncovered options or other "derivatives" with the assets of the IBM Plan managed in the W–P Account with counterparties other than Chase, the Department is providing no opinion in this proposed exemption as to whether such transactions would be consistent with the prudence requirements of section 404(a) of the Act and the regulations thereunder. For a current statement of the Department's views on the use of "derivatives" by pension plans, see DOL Letter from Olena Berg, Assistant Secretary for Pension and Welfare Benefits, to The Honorable Eugene A. Ludwig, Comptroller of the Currency, dated March 21, 1996.

allowable under the Guidelines (i.e. 150 percent of the net asset value of the Securities involved in the particular REPO). Finally, W–P states that while it may utilize certain derivatives for the IBM Plan's account under the Guidelines, such use does not normally involve selling uncovered put or call options and will not involve any such transactions with Chase. W–P states that it does not use futures contracts or other derivatives, other than those previously discussed, to hedge risks as part of its investment management strategies.

W–P represents that it will monitor all of the investments made by the IBM Plan in the Securities or other instruments and will take whatever actions are necessary to protect the interests of the IBM Plan.

17. In summary, the Applicant represents that the transactions described herein have met and will continue to meet the statutory criteria under section 408(a) of the Act because, among other things: (a) The assets of the IBM Plan involved in the transactions are managed by W–P, an independent qualified fiduciary for the IBM Plan; (b) W–P, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, negotiates the terms of such transactions on behalf of the IBM Plan and makes the decision to have the IBM Plan enter into any such transactions with Chase; (c)W–P monitors the investments made by the IBM Plan in such Securities and takes whatever actions are necessary to protect the interests of the IBM Plan; (d) neither Chase nor an Affiliate has discretionary authority or control with respect to the investment of the IBM Plan's assets involved in the transactions or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; (e) all terms and conditions of the transactions between the parties on behalf of the IBM Plan, including the prices paid or received by the IBM Plan for any Securities and the interest rates paid by the IBM Plan for any REPOs, are at least as favorable to the IBM Plan as the terms and conditions that would exist in an arm's-length transaction between unrelated parties; (f) the REPOs between the IBM Plan and Chase are entered into pursuant to a written agreement between the parties which describes all of the material terms and conditions for such transactions, including the rights and obligations of each party, and is consistent with the specific guidelines established by the IBM Plan's named fiduciary for transactions involving the Securities; (g) W–P does not engage in, or commit to sell, any uncovered put or call options in transactions with Chase on behalf of the IBM Plan and adheres to all of the investment guidelines established for the IBM Plan by the Plan's named fiduciary; (h) no brokerage commission, sales commission, or similar compensation other than the particular dealer mark-up for the Security, is paid to Chase by the IBM Plan with regard to such transactions; and (i) the amount of the IBM Plan's assets involved in the transactions represents no more than two (2) percent of the total assets of the IBM Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng or Mr. E. F. Williams of the Department, telephone (202) 219–8881 or 219–8194, respectively. (These are not toll-free numbers.)

International Brotherhood of Electrical Workers Local Union 613 (IBEW), Local 613 Defined Contribution Pension Fund (the Fund), Located in Atlanta, Georgia

[Application No. D–10225]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (2) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) of a certain parcel of improved real property (the Property) from the Fund to Mr. Charles W. Eason, Sr., a party in interest with respect to the Fund provided that the following conditions are met: (1) The fair market value of the Property is established by an independent and qualified real estate appraiser; (2) Mr. Eason will pay the greater of: the fair market value of the Property at the time of the transaction or $123,000; (3) The Sale will be a one-time transaction for cash; and (4) The Fund will pay no fees or commissions associated with the Sale.

Summary of Facts and Representations

1. The Fund is a multi-employer defined contribution plan. As of December 31, 1994, the Fund had approximately 2,592 participants and assets of $72,773,801. The Fund is maintained pursuant to collective bargaining agreements between the IBEW and employers of members of the IBEW. The Fund trustees are comprised of a Board of Trustees consisting of three representatives of the employers. Mr. Eason is a member of the Board of Trustees of the Fund.

2. The Property is located at 1249 Jennie Lane, Lilburn, Georgia and consists of a single-family dwelling that has been converted to office use and a detached garage. The Fund acquired the Property from Bowman Electric, Inc. (Bowman). Bowman originally purchased the Property in 1986 from James and Alice Yancey subject to a promissory note issued to the Yanceys secured by a deed to secure debt dated February 4, 1986.

Bowman was required to pay benefit contributions to the Fund and other multi-employer funds (the Other Funds) and dues to the IBEW pursuant to a collective bargaining agreement. Bowman became delinquent with respect to the contributions and dues owed to the Fund, the Other Funds, and the IBEW. The Fund, the Other Funds and the IBEW took steps to collect the money owed by Bowman. Specifically, Bowman owed the Fund contributions in the amount of $5,529.07. As a result, Bowman executed a promissory note dated August 10, 1993 payable to the Fund, the Other Funds and the IBEW.[15] This promissory note was secured by a second-in-priority deed to secure debt and security agreement dated August 10, 1993 on the Property. Bowman defaulted on the promissory note increasing the money owed to the Fund by $3,987 (This amount reflects the contributions Bowman failed to pay from August 10, 1993, the date Bowman executed a promissory note and gave the Fund, the Other Funds and the IBEW a second mortgage as security for the debt through the date of foreclosure.) The Fund, the Other Funds and the IBEW began non-judicial foreclosure proceedings.

During these proceedings, the Fund, the Other Funds and the Union discovered that Bowman had also defaulted on the Yancey's promissory note, and that the Yancey's began foreclosure proceedings. The applicants represent that if the Yanceys were to foreclose on the first mortgage on the Property, the second mortgage held by the Fund, the Other Funds and the

[15] The applicant has not requested and the Department has not provided exemptive relief for the promissory note issued by Bowman to the Fund, the Other Funds and the IBEW. In this regard, the applicant represents that the actions taken to collect outstanding fringe benefit contributions, including the execution of the promissory note, are covered by Part A of Prohibited Transaction Exemption (PTE) 76–1 (41 FR 12740, March 26, 1976) which pertains to Delinquent Employer Contributions. However, the Department expresses no opinion herein on whether such transactions are covered by Part A of PTE 76–1.

Union would have been extinguished and they would have lost their interest in the Property. In order to protect their interest in the Property, the Fund, the Other Funds and the Union could have attempted to purchase the Property at the Yancey's foreclosure proceedings. However, to avoid the uncertainties of such a purchase, the Fund negotiated an agreement in which the Fund paid the Yanceys approximately $74,035 to acquire the Yancey's first-in-priority interest in the Property. The Fund, the Other Funds and the IBEW completed foreclosure proceedings on the second mortgage and acquired title to the Property subject to the first mortgage, owned by the Fund. Percentage ownership interests in the Property were assigned in accordance with the amounts Bowman owed to the respective entities. Upon the sale of the Property, once the Fund's first mortgage is paid off, the remaining sale proceeds will be divided among the Fund, the Other Funds and the IBEW in accordance with their respective percentage ownership interests in the Property. The Fund's ownership interest in the Property equals 31.8%.

3. The Property was appraised by Mr. Glenn Keaton, Jr., MIA of Keaton and Company, an independent real estate appraisal firm located in Atlanta, Georgia. Mr. Keaton determined that the market value of the Property as of December 1995 is $110,000. In his appraisal report, Mr. Keaton defined market value as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

4. The Fund has proposed to sell the Property to Mr. Eason for $123,000 in a one-time cash transactions. Assuming the Property is sold for that amount, the Fund will receive $74,035.38 (the amount paid by the Fund to acquire the first mortgage from the Yanceys) plus approximately $15,585.44 (this amount represents 31.8% of the remaining $48,964.62 sales proceeds and will provide the Fund with enough money to recover the delinquent contributions owed by Bowman which currently total $9,516.48 and the Fund's share of property taxes and assessments on the Property totaling $1,399.04.) The applicant represents that the Fund no longer wishes to be in the business of owning and/or managing rental income properties. Further, the applicant believes that the Sale will provide the Fund with the opportunity to divest itself of a non-liquid asset and to replace it with a liquid asset.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because: (a) The fair market value of the Property is established by an independent and qualified real estate appraiser; (b) Mr. Eason will pay the greater of the fair market value of the Property at the time of the transaction or $123,000; (c) The Sale will be a one-time transaction for cash; and (d) The Fund will pay no fees or commissions associated with the Sale.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Huggler & Silverang Profit Sharing Plan (the Plan) Located in Philadelphia, Pennsylvania

[Application No. D–10238]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of two 5 percent limited partnership interest interests (collectively, the Interests) in Rosemont Square Associates, L.P. (the Partnership), one to Mr. David H. Huggler and the second to Mr. Kevin J. Silverang, respectively, parties in interest with respect to the Plan; provided (1) the Sale is a one-time transaction for cash, (2) the Plan pays no commissions nor incurs any expenses in connection with the proposed transaction, and (3) the Plan receives as consideration for the Sale no less than the fair market value of the Interests as of the date of the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with individual accounts which are self-directed by the respective participants as to the investment of the assets. The sponsoring employer of the Plan is Huggler & Silverang, P.C., a Pennsylvania professional corporation, a law firm that discontinued operations effective April 30, 1995. After the sponsoring employer discontinued operations it disbanded, and the Plan distributed all assets of the Plan to terminated participants except for the Interests held in the individual accounts of Messrs. Huggler and Silverang, respectively. Each account of the two remaining participants in the Plan holds a 5 percent limited partnership interest in the Partnership that the applicants represent has a fair market value of $186,010, respectively.

2. The applicants, Messrs. Huggler and Silverang, represent that on October 17, 1991, each of their respective individual accounts in the Plan acquired a 5 percent Interest in the Partnership by each tendering to the Partnership as consideration a 40 percent limited partnership interest, each valued at $125,000, in another limited partnership, Saber Associates, a Pennsylvania limited partnership.

The applicants request an administrative exemption from the prohibited transaction provisions of the Act to enable each of them to purchase for $186,010 in cash the Interests from their respective individual accounts in the Plan. The applicants intend to terminate the Plan and roll over the cash assets remaining in their individual accounts in the Plan to Individual Retirement Accounts (IRAs). The applicants represent that they have not been able to find and engage a trustee-custodian willing to accept and hold their respective Interests for a reasonable annual fee.

The applicants represent that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because the Plan will be able to terminate and roll-over its remaining cash assets into IRAs for the last two participants. Also, they represent that their rights as participants will be protected by the objective determination of the fair market value of the Interests by the president of the general partner of the Partnership.

3. The Interests have been appraised, as of August 1, 1996, and determined to have a fair market value of $186,010, respectively. The appraisal was done by Mr. Stephen W. Bajus, who is the president of Rosemont Associates, Ltd., a Pennsylvania corporation and general partner of the Partnership.

Mr. Bajus represents that he is independent of the Plan and its sponsoring employer, and although he has been a client of the sponsor of the Plan and the current law firm of Messrs. Huggler and Silverang, his relationships never generated revenues that exceeded 2 percent of the total yearly revenues of either law firm. He further represents that his relationships never enabled the parties to control or influence his actions as an independent appraiser of the Interests. Mr. Bajus further

represents that there is no market for trading activity in the Interests and never has been since the initial establishment of the Partnership. Mr. Bajus represents that the actual value of the Interests should be determined by reference to the only asset possessed by the Partnership, which is the Rosemont Square Mall located in Lower Merion Township, Montgomery County, Pennsylvania.

The Rose Square Mall was appraised on September 28, 1994, by H. Bruce Thompson, Jr. and Associates, Inc. of Bryn Mawr, Pennsylvania and determined to have a fair market value of $10,300,000.

Mr. Bajus represents that the methodology that he employed in his appraisal of the fair market value of the Interests involved subtracting the mortgaged indebtedness of $6,579,798, as of July 31, 1996, from the fair market value of $10,300,000 of the Rosemont Square Mall to determine the total equity interests of $3,720,202 that the Partnership possessed on August 1, 1996. Mr. Bajus then represents that he determined that each 5 percent ownership in the Partnership has a fair market value equal to $186,010, respectively.

4. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Interests involves a one-time transaction for cash; (b) the Plan will not incur the payment of any commissions nor incur any expenses from the Sale; (c) the Plan will be able to terminate and roll-over its remaining cash assets into two IRAs for the benefit of the two remaining participants; (d) the Interests in the Partnership have been appraised by the president of the general partner of the Partnership; and (e) the Plan will receive as consideration for the Sale no less than the fair market value of the Interests as of the date of the Sale.

Notice to Interested Persons: Because Messrs. Huggler and Silverang, the applicants, are the sole participants of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Acme 401(k) Retirement Savings Plan (the Plan) Located in Scottsdale, Arizona

[Application No. D–10270]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of a 2.86% interest (the Interest) in the Arizona Equities V Real Estate Investment Trust (the REIT) to RSC Holdings, Inc. (RSC), sponsor of the Plan and a party in interest with respect to the Plan; provided the following conditions are satisfied: (1) The Sale is a one-time transaction for cash; (2) the Plan does not incur any expenses in connection with the Sale; and (3) the Plan receives as consideration from the Sale the greater of: (a) the fair market value of the REIT Interest as determined by a qualified independent appraiser at the time of the Sale or, (b) the Plan's total investment in the Interest in the amount of $50,572.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) plan, and has approximately 850 participants; 335 participant accounts contain a share of the REIT Interest. As of December 31, 1995 the fair market value of total assets in the Plan was $3,163,741. RSC is a Delaware corporation engaged in the business of rental services. U.S. Bank of Idaho currently serves as the Plan's trustee and has investment discretion over all the assets held in the Plan.

2. The Plan acquired the Interest in the REIT in October 1989, subsequent to a merger with the C & W Action Rentals, Inc. Profit Sharing Plan. The merger of the two plans occurred after RSC's predecessor, Acme Holdings, Inc. acquired the sponsor of the C & W Plan. The C & W Plan had originally purchased the Interest in the REIT in 1984, in the principal amount of $50,572; the Plan owns a 2.86% Interest in the REIT.

On November 6, 1984, the REIT made a $1,770,020 loan to an independent third party. The loan was secured by a deed of trust on real estate located in Tucson, Arizona (the Tucson Property). The Plan participated in the loan through the REIT. In March of 1989, the Plan was notified that the borrower was in default; subsequently the borrower never repaid the loan [16]. After the default, Citibank (Arizona), formerly known as United Bank of Arizona, as Trustee of the REIT, foreclosed on the Tucson Property securing the loan and took possession of it.

3. RSC, the applicant, represents that the Tucson Property is currently the REIT's sole asset and that because the Interest is a minority interest and it is not publicly traded, there is not an established market for the Interest.

4. The trustee of the Plan has attempted to sell the Plan's Interest in the REIT, but has not been successful. West One Bank, former Plan trustee, made arrangements with Pepper Viner Co., the REIT's successor trustee to Citibank (Arizona), in 1993, for Pepper Viner to circulate a letter from West One Bank, to the REIT's other unit holders to determine if any of them might have an interest in purchasing the Plan's Interest. However, no one responded. Subsequently West One Bank contacted several brokers and as a result, received one offer to purchase the REIT Interest, for a total price of $4,000. West One Bank declined the offer because they felt that the Plan's interest in the underlying property had a value much higher than the $4,000.

RSC, the sponsor, requests an exemption to permit the cash Sale by the Plan of the Interest to RSC. The Plan will receive the greater of: (1) The fair market value of the Interest as determined by an independent appraiser at the time of the Sale, or (2) the Plan's total investment in the Interest of $50,572. The applicant represents that this Sale is in the best interest of Plan participants and beneficiaries because the asset provides no income to the Plan, and is illiquid. The Sale will facilitate full implementation of participant-directed investing of accounts, which was adopted by the Plan in January, 1994. The Sale will allow the Plan to convert the Interest into cash, so that participants whose account balances are partially invested in the Interest may direct the investment of that portion of their accounts into assets generating greater returns.

[16] The Department notes that the decision to acquire and hold the Interest are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Interest by the Plan.

5. The Interest, the sole value of which is the Plan's undivided 2.86% interest in the Tucson Property, was appraised as of July 19, 1996 by Mr. Thomas A. Baker, MAI, SRA, a State of Arizona Certified General Real Estate Appraiser who is independent of the Plan and RSC. Mr. Baker applied the direct sales comparison approach to determine both the market value and fee simple interest of the total property and of the Plan's 2.86% interest in the subject property.

In addition, the appraiser used comparable sale information of partial interest sales in order to determine the fair market value of the Plan's 2.86% Interest in the REIT. Mr. Baker concluded that the fair market value of the Plan's 2.86% interest in the REIT, as of July 19, 1996 was $10,900.

6. RSC represents that the plan would incur no expenses ndr commissions with respect to the Sale. The applicant also represents that the proposed transaction is administratively feasible and protective of the Plan's participants and beneficiaries. Furthermore, the applicant represents that any amounts received by the Plan as a result of the Sale, which are in excess of the fair market value of the Interest, will be treated as contributions to the Plan, but that these contributions will not exceed limitations of section 415 of the Internal Revenue Code.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) The Sale will be a one-time transaction for cash; (2) no commissions or fees will be paid by the Plan as a result of the Sale; (3) the Sale will facilitate full implementation of participant-directed investing of accounts, which was adopted by the Plan in January, 1994; and (4) the Sale price will be the higher of: (a) The fair market value of the Interest on the date of the Sale, or (b) the Plan's total investment in the Interest, in the amount of $50,572.

FOR FURTHER INFORMATION CONTACT: Ms. Marianne H. Cole of the Department, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of August, 1996.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–22717 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–10011]

Notice of Proposed Individual Exemption to Make Permanent as Modified Prohibited Transaction Exemption (PTE) 91–8 Involving Equitable Life Assurance Society of the United States and Its Affiliates (Equitable) and Its Wholly-Owned Subsidiary, Equitable Real Estate Management, Inc. (ERE), Located in New York, New York

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to make permanent as modified PTE 91–8, which involves Equitable and ERE.

SUMMARY: This document contains a notice of pendency before the Department of Labor of a proposed individual exemption to make permanent as modified the temporary relief provided by PTE 91–8 (56 FR 1411/1419, January 14, 1991). PTE 91–8 is a temporary exemption which expired January 13, 1996. This proposed exemption, if granted, will make permanent as modified PTE 91–8 and will provide relief for the provision of property management and/or leasing services by ERE [1], Equitable's wholly-owned subsidiary to an Account (as defined in Section IV below), provided that the conditions set forth in Section II are met.

EFFECTIVE DATE: The Department has determined to extend the temporary exemptive relief provided under PTE 91–8 effective January 13, 1996, until the date the final grant for this proposed exemption is published in the **Federal Register**.

Also, if granted, this proposed exemption to make permanent PTE 91–8 will be effective on the date the final grant is published in the **Federal Register**. However, the modification in the annual reporting requirement whereby Equitable will furnish the annual report to each authorizing plan fiduciary and the Independent Fiduciary no later than 90 days following the end of the period to which the annual report relates, as set forth in Section II(4)(a) in this proposed exemption, will be effective, as of January 13, 1996.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor by no later than October 21, 1996.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. D–10011. The application for exemption

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[1] In this regard, ERE represents that during the course of PTE 91–8 ERE changed its acronym from EREIM. This was solely a matter of preference and does not reflect a change in ownership or management of ERE. The description of Equitable Real Estate Investment Management, Inc., as set forth in the original notice of proposed exemption published on February 28, 1990 at 55 FR 7057/7069 and in the exemption application for permanent exemption and modification of PTE 91–8, dated April 24, 1995, continues to accurately reflect the ownership and management of ERE.

and the comments received will be available for public inspection in the Public Disclosure Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, Office of Exemption Determinations, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption to make permanent as modified PTE 91–8. PTE 91–8 provides an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code.

The notice of proposed exemption to make permanent PTE 91–8 was requested in an exemption application by Equitable and ERE pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, the proposed exemption to make permanent PTE 91–8 is being issued solely by the Department.

PTE 91–8

PTE 91–8 is a temporary individual exemption which expired on January 13, 1996. A summary of the facts and representations pertaining to PTE 91–8 was contained in a notice of pendency of proposed exemption that was published in the **Federal Register** on February 28, 1990 at 55 FR 7057/7069. The grant of PTE 91–8 was published in the **Federal Register** on January 14, 1991 at 56 FR 1411/1419. PTE 91–8 permits the provision of certain real estate property management and, in some instances, leasing services by EREIM, an indirect wholly owned subsidiary of Equitable and the predecessor of ERE, affiliates of EREIM and Tishman Speyer Properties (TSP), a partnership in which Equitable has a 50 percent ownership interest, to various real estate separate accounts (the Accounts) in which employee benefit plans participate. The Accounts are managed by Equitable, EREIM or subsidiaries thereof. PTE 91–8 also permits the provision, by the law department of Equitable (the Law Department), of certain legal services to the Accounts required in connection with individual properties held by the Accounts.

Equitable is a mutual life insurance company organized under the laws of the State of New York. Among the variety of products and services, Equitable offers asset management and other services to numerous employee benefit plans, including investments in the Accounts. The Accounts hold investments in income-producing real estate such as office buildings, hotels, shopping centers and industrial and commercial properties. As the investment manager with respect to the Accounts, Equitable has investment discretion to acquire and dispose of properties on behalf of the Accounts, and the responsibility to manage Account properties. Equitable represented that its direct or indirect subsidiaries may act as the investment manager with respect to existing or new Accounts.

Furthermore, Equitable represented that the provision of property management and leasing services to the Accounts by ERE and certain of its other affiliates is of central importance in maximizing returns available to its investors, including employee benefit plans. In this regard, large real estate investment managers typically manage properties themselves or through property management firms they have acquired. This strategy enables them to use unified leasing strategy and other efficient management strategies, and is a superior alternative to retaining independent managers for property management. Equitable stated that often the best arrangements for the provision of property services to the Accounts, and the highest quality of services can be provided through the use of its in-house personnel or through firms in which Equitable has an interest. Such firms possess special expertise in the type of properties held by the Accounts and knowledge of the Accounts and their properties.

The services provided to the Accounts by ERE and certain other affiliates of Equitable included day to day property management and leasing responsibilities associated with the operation of income-producing properties. Specifically, these responsibilities included: (a) using best efforts to lease the property to desirable tenants and negotiating the terms and renewals of such leases; (b) receiving and collecting rents; (c) arranging for all necessary repairs and replacement and installation of equipment; (d) handling tenant complaints; (e) preparing and submitting to the owner proposed operating and capital budgets; and (f) performing marketing and promotional supervisory services.

To ensure that the transactions in PTE 91–8 operated in the interests of the Accounts and the participating plans therein, the exemption contained certain specified safeguards. These safeguards included: (1) the requirement that the arrangement under which the transactions were performed be subject to the prior authorization of an independent plan fiduciary for each plan invested in an Account; [2] (2) the requirement that not less than 45 days prior to the implementation of either the policy for property management and leasing services or the policy for legal services, Equitable or EREIM, as investment manager, furnish the authorizing plan fiduciary with reasonably available information; (3) a mechanism enabling the plans to terminate their investment in the Account; (4) an annual reporting requirement whereby Equitable furnished the annual report to each authorizing plan fiduciary and the Independent Fiduciary no later than 45 days following the end of the period to which the annual report related; (5) confirmation by the plans of the multiple services arrangement; (6) approval by the Independent Fiduciary of each transaction under the exemption, and a mechanism for the Independent Fiduciary's negotiation and approval of contracts for the provision of services by EREIM, TSP or the Law Department to the Accounts; (7) the requirement that the terms of a service provision arrangement must be reviewed by the Independent Fiduciary prior to implementation; (8) the requirement that Equitable and EREIM had to furnish certain information regarding transactions to the Independent Fiduciary for its periodic review of performance of EREIM, TSP, or the Law Department under the contracts; (9) a plan investor sophistication requirement; (10) percentage limitations on plan investment in the Accounts, including Equitable's in-house plans; (11) the requirement that the terms of the transactions must be as favorable to the Accounts as arm's length terms; and, (12) that the compensation paid to

[2] In this regard, under this proposed exemption to make permanent as modified PTE 91–8, Equitable represents that for plans which have previously authorized their participation in the Accounts under PTE 91–8, no reauthorization will be required.

EREIM, TSP or the Law Department shall not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act and the regulations thereunder. In addition to these conditions, PTE 91–8 and the notice relating to PTE 91–8 contained other protective conditions that had to be met by Equitable and its affiliates with respect to the Accounts and the transactions which were the subject of PTE 91–8. Also, representations contained in Paragraph IV of the notice of proposed exemption relating to PTE 91–8 placed certain limitations on the fees that EREIM or TSP were permitted to receive for property management and leasing services rendered to the Accounts pursuant to PTE 91–8.

Procedure for Requesting Permanent Relief for Transactions in PTE 91–8

This proposed exemption was requested by Equitable and ERE pursuant to Paragraphs IX and X of the notice of proposed exemption relating to PTE 91–8. As mentioned, PTE 91–8 is a temporary exemption which expired on January 13, 1996. Pursuant to Paragraphs IX and X, prior to the expiration of PTE 91–8, Equitable and ERE could apply for a permanent exemption provided that, among other things, the application for a permanent exemption describes whether and how compliance with PTE 91–8 has been achieved. In particular, the application for a permanent exemption should describe:

(a) the number of transactions engaged in under PTE 91–8;

(b) the decisions made by the independent fiduciaries for various services; and

(c) the fees that have been paid to the Law Department, EREIM or TSP for the property services and legal services that have been rendered under PTE 91–8.

Further, pursuant to Paragraphs IX and X of the notice of proposed exemption relating to PTE 91–8, the application for a permanent exemption should include a report from the Independent Fiduciary expressing such fiduciary views and rationales with respect to the extension of PTE 91–8 and whether the Independent Fiduciary believes that cost savings have been achieved for the Accounts. In paragraph X of the notice of proposed exemption relating to PTE 91–8, Equitable identified certain standards which may be applied by the Department in reviewing the fees charged by Equitable to determine whether cost savings have been achieved, and whether making PTE 91–8 permanent would be appropriate. Among other things, Equitable represented in Paragraph X, that property management and leasing fees charged by unaffiliated property management firms generally range from 4 to 5 percent of gross receipts (depending upon such factors as property type, geographic location and project complexity) and average approximately 4.5 percent of gross receipts. Therefore, Equitable proposed in Paragraph X, that the standard of review adopted by the Department in evaluating the operation of property related services, should require Equitable to demonstrate that the aggregate annual property management and leasing fees charged to each Account (including the allocable cost of the services of the independent fiduciary under the exemption) were less than 4.5 percent of the gross receipts earned by the Account during each year that ERE or TSP has provided property management and leasing services pursuant to the exemption.

Cost Savings Report of the Independent Fiduciary

Jackson Cross Company (Jackson Cross), as the independent fiduciary (the Independent Fiduciary) for property management and leasing services under PTE 91–8, prepared a report regarding cost savings achieved by the Accounts (the Report). In the Report, Charles F. Seymor, CRE, MAI, and chairman of Jackson Cross, made the following representations. Mr. Seymor stated that the provision by Compass Management and Leasing and Compass Retail (collectively, Compass), two wholly-owned subsidiaries of ERE[3], of property management and leasing services to the Accounts resulted in substantial savings to the Accounts. Mr. Seymor represented that in negotiating the final terms of the management or management and leasing contracts for each of the Accounts' properties, Jackson Cross reviewed market fee ranges in each market area and also the fees paid to the previous managers. In this regard, Jackson Cross required that a measurable economic benefit be evident before they approved a transaction and also quantified that benefit in their separate initial reports on each approved property. In the annual reports to ERE for the year 1994, Jackson Cross applied management fees and leasing fees[4] to actual 1994 gross collections and to the leases negotiated for the Accounts, and compared the results to what would have been charged if these fees were at the low end of the market range or the contractual fee for the previous managers.[5] In 1994, Jackson Cross visited over 40% of the Accounts' properties. Jackson Cross estimated that in 1994 alone, a savings of $1,650,000 was obtained to the benefit of the Accounts. Furthermore, 95 transactions were completed through December 31, 1994, and on an annual basis, the fees earned by Compass were less than 4.5 percent of the gross receipts earned by the properties in each Account managed by Compass. Accordingly, Jackson Cross concluded that the property management and leasing services rendered by Compass to the Accounts resulted in substantial savings for their benefit. In preparing the annual reports, Jackson Cross also reviewed several additional measures of quality management and leasing services to ensure that the services provided to the Accounts are the best available as compared to the services provided by other first rate property managers in the locality of a property. In this regard, Jackson Cross considered the following criteria: how each property performed against budget; how the value of each property has been affected during the year; whether the management and leasing professionals engaged in continuing education and training during the year, and what professional designations they have achieved; and whether these professionals have adopted an appropriate long-range view as stewards of these properties, with a goal of maximizing the Accounts' investments.

Permanent Exemption for Transactions Under PTE 91–8

Equitable and ERE request that the exemptive relief for transactions which were the subject of PTE 91–8 be made permanent because as explained in the Jackson Cross report above, PTE 91–8 benefitted the employee benefit plans that participate in the Accounts. Furthermore, Equitable and ERE

[3] The applicant represents that these two subsidiaries of ERE, which were formerly separate divisions of ERE are subject to the management and control of ERE, and their status as separate corporate entities rather than divisions of ERE was implemented solely for organizational reasons. ERE may in the future recognize one or both of the Compass entities as divisions within ERE.

[4] It is represented that most management fees and leasing commissions are typically calculated as a percentage of gross receipts during a given year and a percentage of new lease transactions, respectively.

[5] In this regard, Jackson Cross compared fee schedules charged by Compass to the fee schedules charged by previous unaffiliated property managers during the year preceding ERE's performance of such services under the exemption. Furthermore, Jackson Cross as the Independent Fiduciary is obligated to monitor property management fees currently charged by the unaffiliated managers and to assure that the fees charged by Equitable or ERE do not exceed those fees.

propose the following procedures to assure continued cost savings to the Accounts under a permanent exemption (the Cost Saving Procedures). The Cost Saving Procedures will be carried out as follows:

(a) After the fifth anniversary of the grant of this exemption, and after the beginning of each subsequent five-year period, ERE will prepare a survey of property management and leasing fees for the properties that have similar geographic location and property types to those held by the Accounts. The survey will include data regarding the fees that have been charged to the Accounts by several property management firms that are unaffiliated with Equitable or ERE for services that are contemplated by the exemption during the one year period prior to the beginning of the new five-year period. Also, the survey will include data as to the fees paid by Equitable or ERE for such services performed for the properties not held by the Accounts during the same period and other market data regarding the cost of property management and leasing services by geographic location and property types.

(b) The Independent Fiduciary will review ERE's internal survey referred to in (a) above, and will verify the accuracy of the data by independently reviewing a sampling of the properties to which such fees apply. Based upon its review of the survey and its own professional resources and expertise, the Independent Fiduciary will determine a typical range of annual fees for property management and leasing services for the Accounts. The average of the range, as determined from such survey, will serve as the basis of comparison for determining for the next five-year period whether continuation of the property management and leasing services policy (the Property Services Policy) has provided a cost savings to the Accounts.

(c) Equitable and ERE will demonstrate to the Independent Fiduciary at the end of the applicable five-year period that the aggregate property management and leasing fees charged to each Account pursuant to the Property Services Policy plus the cost of the services of the Independent Fiduciary under the exemption that are allocated to the Accounts, are less than the fees that would have been charged using the benchmark rate established at the beginning of the five year period.

(d) The Independent Fiduciary will review the data supplied by ERE and, to the extent considered necessary by the Independent Fiduciary, data collected from the Independent Fiduciary's own surveys, and will document its findings and analysis of such cost savings in a report to be delivered to each of the plans participating in the Accounts within 90 days after the end of the five-year period and each subsequent five-year period and prior to the implementation of the annual confirmation procedure described in paragraph (5) of Section II with respect to such period. In the event the Independent Fiduciary finds that cost savings have not been achieved for the Accounts, it will not approve any additional services arrangements pursuant to the Property Services Policy until Equitable and ERE have demonstrated to the satisfaction of the Independent Fiduciary that policies intended to assure cost savings to the Accounts have been implemented by Equitable and ERE. The survey, the Independent Fiduciary's report reviewing the survey, and the final report of the Independent Fiduciary analyzing whether cost savings had been achieved during the five-year period to which the survey relates, will be maintained by Equitable or ERE in accordance with the recordkeeping requirements of Section III of this exemption.

Accordingly, the Department proposes to modify PTE 91–8 by adopting the language of the Cost Saving Procedures as stated in (a)–(d) above into a new paragraph (12) in Section II of this proposed exemption.

Requested Modifications and Changes in Circumstances to PTE 91–8.

A. Tishman Speyer Properties

Equitable represents that Tishman Speyer Properties (TSP), an affiliate of Equitable at the time PTE 91–8 was issued, is no longer affiliated with Equitable and, thus, requests that this exemption, if granted, be inapplicable to TSP. The Department proposes to modify PTE 91–8 by eliminating any references to TSP in this proposed exemption.

B. Legal Services

Equitable represents that the exemption under PTE 91–8 for the provision of legal services to the Accounts by Equitable in-house Law Department was never implemented. Accordingly, Equitable requests that this exemption eliminate reference to the relief for the provision of such legal services by the Law Department to the Accounts. The Department proposes to modify PTE 91–8 by eliminating relief for the provision of legal services by the Law Department to the Accounts.

C. Modification of Acronym for EREIM

Equitable requests that for purposes of this proposed exemption, if granted, EREIM should be referred to as ERE. Equitable represents that the change in acronym from EREIM to ERE is a matter of preference and does not reflect a change in ownership or management of EREIM. The description of EREIM, as set forth in the original notice of proposed exemption and in this exemption application, continues to accurately reflect the ownership and management of EREIM. Accordingly, the Department proposes to modify PTE 91–8 by substituting the acronym "ERE" for the acronym "EREIM" in this proposed exemption.

D. Annual Reconfirmation Requirement

Section II(4) of PTE 91–8 provides that the continued retention of the Independent Fiduciary with respect to the property management and leasing services arrangement for an Account is subject to the annual reconfirmation by the holders of a majority of the units of beneficial interests in that Account.[6] An annual report regarding the Account, which is furnished by Equitable and ERE to the authorizing plan fiduciaries and the Independent Fiduciary (the Annual Report), contains a ballot for the annual reconfirmation of the Independent Fiduciary, which is to be returned to Equitable.

Equitable and ERE represent that while the plans that participate in the Accounts support the continued service of the Independent Fiduciary,[7] it is often difficult to implement the Independent Fiduciary reconfirmation requirement. In many cases, these ballots are not returned by the plans for several months and then only after repeated reminders. A plan's failure to respond to the reconfirmation request by returning the ballot in a timely fashion creates uncertainty as to whether the exemption will continue to be available for ERE and its affiliates to continue providing property management and leasing services to the Accounts.

Equitable requests that the procedure for annual client reconfirmation of the Independent Fiduciary be modified to allow Equitable to treat a plan's failure to return the ballot within 30 days after

[6] The Independent Fiduciary may also be removed with or without cause by the vote of the holders of a majority of the units of beneficial interests in an Account voting in favor of such removal.

[7] In this respect, Equitable notes that at least 99 percent of the contractholders that have voted in the context of an annual reconfirmation of the Independent Fiduciary have voted in favor of such reconfirmation.

receipt of a request for reconfirmation as an indication of such plan's vote in favor of continued retention of the Independent Fiduciary. Equitable represents that this procedure will be implemented on an annual basis. Equitable also states that this proposed modification will increase efficiency in ensuring the continued service of a qualified Independent Fiduciary without adversely affecting the oversight conditions of the exemption.

The Department proposes to modify PTE 91–8 by adding the following language to the new Section II(4)(a):

"The Annual Report will also contain a ballot regarding the reconfirmation of the Independent Fiduciary, which is to be returned to Equitable. In this respect, at the time of delivery of each Annual Report, Equitable will specifically indicate to each plan that the Independent Fiduciary may be terminated by a vote in favor of such termination by the holders of a majority of the units of beneficial interests in the Account and will request such plan to confirm the Independent Fiduciary's appointment. Following a plan's receipt of the Annual Report, Equitable may treat a plan's failure to return the ballot within thirty (30) days after receipt of a request for reconfirmation as a vote in favor of continued retention of the Independent Fiduciary."

In this regard, to ensure that the plans receive notification of the annual client reconfirmation procedure, the Department proposes to add the following language as a new paragraph (b) at the end of the new Section II(4):

"Equitable or ERE receives confirmation that the notice and the ballot sent to the authorizing plan fiduciary regarding the continued retention of the Independent Fiduciary has been received by the authorizing fiduciary and the Independent Fiduciary. The method used to confirm notice to the authorizing fiduciaries and the Independent Fiduciary must be sufficient to ensure that the authorizing fiduciaries and the Independent Fiduciary actually receive the notice. In all cases, return receipt for certified mail, printed confirmation of facsimile transmissions and manifest or computer data entries of independent courier services will be considered acceptable methods of confirming receipt."

The notice of proposed exemption relating to PTE 91–8 also indicated that Equitable will promptly designate a replacement Independent Fiduciary in the event of the removal or resignation of the Independent Fiduciary, but such appointment is also subject to the affirmative confirmation by the plans participating in the Accounts vis-a-vis a ballot contained in the Annual Report. Equitable represents that the need for such affirmative approval could cause delay in replacing the Independent Fiduciary with a qualified new Independent Fiduciary. The possibility of such delays requires that contingency plans be made for using unaffiliated property management and/or leasing firms (and whose services may not be as advantageous to the Accounts as those that could be provided by an Equitable affiliate). Therefore, Equitable represents that the appointment of the replacement Independent Fiduciary will also be handled in accordance with the procedure described in Section II(4)(a).

E. Annual Reporting Requirement

Section II(4) of PTE 91–8 requires Equitable or ERE to furnish each authorizing plan fiduciary and the Independent Fiduciary with the Annual Report identifying detailed information about the fees incurred and services provided to the Account pursuant to PTE 91–8.[8] The Annual Report is required to be provided not later than 45 days following the end of each reporting period. Equitable furnishes the Annual Report within 45 days after the end of each calendar year.

Equitable represents that providing the Annual Report within the 45 day requirement makes it impossible to include actual year-end data for the Accounts' properties because this data is not generally available to Equitable early enough within that time period to allow for necessary verification, submission to the Independent Fiduciary and compilation and production of the Annual Reports. In addition, Equitable must also substantially complete end-of-year financial statements for the Accounts and other accounts managed by Equitable during this period.

Equitable requests that the Annual Report requirement of PTE 91–8 be modified to allow Equitable to submit the Annual Report no later than 90 days following the end of the period to which the Annual Report relates, and that this modification be effective retroactively, as of January 13, 1996, the date PTE 91–8 had expired.

In this regard, the Department proposes to modify PTE 91–8 by substituting "90 days" for "45 days" in Section II(4)(a), such that the new Section II(4)(a) should read, in relevant part:

* * * with the Annual Report containing the information described in this paragraph, not less frequently than once a year and not later than 90 days following the end of the period to which the report relates.

This modification will be effective retroactively, as of January 13, 1996.

F. Modification of Investment Limitations of Section II(10)

1. 5 Percent Investment Limitation

Section II(10)(a) of PTE 91–8 limits the percentage of plan assets that can be invested in an Account by any plans covering employees of Equitable to 5 percent of the assets of the investing plan. Equitable believes that the 5 percent limitation unduly restricts the investments in the Accounts by Equitable's in-house plans and limits the investment by the trustees of Equitable's pension plan in real estate separate accounts, such as SA–8,[9] which they believe to be prudent investments that are appropriate for Equitable's plans. Fiduciaries of Equitable's plans should not be forced to look to competitors for real estate investment opportunities.

Therefore, Equitable is requesting that the percentage limitation applicable to in-house plans be modified to permit any plan in which employees of Equitable or an affiliate participate, to invest up to 10 percent of its assets in any Account covered by PTE 91–8. Equitable represents that a 10 percent limitation would give trustees of the in-house plans the flexibility necessary to deal with inadvertent fluctuations in the levels of participation in an Account, and to invest the assets of such Plans in what they determine are successful diversified real estate funds.

Accordingly, the Department proposes to modify PTE 91–8 by substituting "10 percent" for "5 percent" in Section II(10)(a), such that the new Section II(10)(a) should read, in relevant part:

Not more than 10 percent of the assets of a plan covering employees of Equitable will be invested in an Account. Notwithstanding the foregoing, this percentage requirement will continue to be satisfied by any plan that exceeds the 10 percent limitation of this subsection provided that no portion of any excess results from an increase in the assets transferred by such plan to the Accounts.

[8] Specifically, under Section II(4) of PTE 91–8 the Annual Report must include a description of the properties and the services that have been performed by ERE or its affiliates for an Account and an indication of the fees that were paid for the preceding reporting period and which are anticipated to be paid to ERE or its affiliates in the coming year for services provided by these entities in connection with the properties held by an Account. The Annual Report must also contain a description of the method for terminating the multiple services arrangement and the reconfirmation and/or removal of the Independent Fiduciary by the plans investing in the Account.

[9] Equitable represents that the primary means by which Equitable's in-house plans invest in real estate is through SA–8.

2. 20 Percent Investment Limitation

Section II(10)(c) of PTE 91–8 imposes a limitation on the percentage of total plan assets that can be invested in the Accounts by plans other than those covering Equitable employees.

This limitation has been set at 20 percent of the assets of the investing plan. PTE 91–8 states that this limitation will apply prospectively only and on an "acquisition" basis, i.e., the 20 percent limitation is tested only when additional investments in an Account are made by a plan. Equitable believes that it is unclear from the language of PTE 91–8, which uses the plural "Accounts" rather than "Account" to describe the limitation, whether the 20 percent limitation is intended to be applied on a single Account basis or on the basis of a plan's aggregate investment in all Accounts combined and accordingly, Equitable requests that the Department clarify the scope of this limitation.

The 20 percent limitation test of Section II(10)(c) of PTE 91–8 was intended to apply to Equitable Accounts on an aggregate basis. Accordingly, no modification of Section II(10)(c) is hereby necessary.

G. Modifications to Limitations on Fees

Paragraph IV (Fees for Property Services) of the notice of proposed exemption relating to PTE 91–8 places certain limitations on the fees that EREIM or TSP [10] are permitted to receive for property management and leasing services rendered to the Accounts pursuant to PTE 91–8.

Specifically, Paragraph IV of the notice of proposed exemption relating to PTE 91–8 provides, among other things, that the fee for leases in which outside brokers are involved generally does not exceed one percent (1%) of the lease amount. This fee is applicable to circumstances where ERE as property manager is separately compensated for leasing services where outside brokers are involved. In this regard, Equitable requests that the 1% limitation be modified to 2.75 percent (2.75%) of the lease amount. Equitable and ERE have determined that the 1% limitation is not consistent with the current practice of establishing leasing commissions for transactions involving outside brokers. Equitable and ERE represent that in most leasing markets such "co-broker" leasing fees for the project leasing broker are computed at fifty percent (50%) of the normal new or renewal lease commission fee, which is typically somewhere between four (4%) and seven (7%) percent of the total lease payments. Such a fee structure reflects the fact that the effort required of the exclusive project leasing broker is, in most instances, not reduced by the addition of a tenant's leasing broker, but can actually be more demanding. In this regard, Equitable and ERE have obtained an opinion from Jackson Cross, the independent fiduciary for property management and leasing, regarding modification of this fee limitation. Mr. Seymor from Jackson Cross, stated that based on their experience and studies, they found that leasing fees vary with building size and with the competitive situation in individual markets. In most markets, the project leasing broker received 50% of the normal new or releasing commission. The outside broker received the other 50%, but usually an "override" sufficient to pay a full market commission. Because the normal full leasing commission is typically in the range of 4% to 7% of the one year lease amount, the project leasing broker usually received 2% to 3.5% of the one year lease amount. In the opinion of Jackson Cross, restricting ERE to a maximum of 1% does not provide adequate compensation to cover the cost of appropriate professional leasing representation. In this regard, Jackson Cross suggests that this ceiling be raised to 2.75%, still subject to the market requirement that the Independent Fiduciary must certify an economic benefit to the Account on a case by case basis.

In this regard, the Department is proposing to modify PTE 91–8 by increasing the fee limitation to ERE for leases involving outside brokers to 2.75% of the lease amount. Additionally, the Department proposes to further modify PTE 91–8 by incorporating this fee limitation and other fee limitations as described in Paragraph IV of the notice of proposed exemption relating to PTE 91–8 into Section II as an additional condition. Accordingly, a new condition (13) is being added to Section II as follows:

"(13)(a) The fees paid to ERE and/or its affiliates for property management services provided in connection with a property held for an Account shall not exceed for any one year period: (1) In the case of property management services which include leasing services, 7 percent of the overall gross receipts of the property; and (2) in the case of property management services which do not include leasing services, 4 percent of the overall gross receipts of the property.

(b) Where a property manager is separately compensated for leasing services: (1) the fee for new leases will not exceed 7 percent of the lease amount; (2) the fee for renewal leases will not exceed 2 percent of the lease amount; and (3) the fee for leases in which outside brokers are involved will not exceed 2.75 percent of the lease amount."

The Department notes that this proposed exemption, if granted, is subject to the express condition that the summary of facts and representations set forth in the notice of proposed exemption relating to PTE 91–8, as amended by this notice to make permanent PTE 91–8 accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

After considering Equitable and ERE's application, the Department is proposing this exemption to make permanent PTE 91–8 pursuant to section 408(a) of the Act and section 4975 of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans which have invested or may invest in an Account. Because of the large number of plans which currently invest in the Accounts, the Department has determined that the only practical form of providing notice to interested persons is the distribution by Equitable, of a notice to the fiduciaries of all plans currently invested in any Account. Such notice will contain a copy of the notice of the proposed exemption published in the **Federal Register**, and a statement advising interested persons of their right to comment and to request a hearing on the proposed exemption. Such distribution will occur within two (2) weeks of the date of publication of the notice of the proposed exemption in the **Federal Register**. Accordingly, comments and hearing requests on the proposed exemption are due forty four (44) days after the date of publication of this proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary

[10] For purposes of this exemption, if granted, fee limitations described in Paragraph IV of the notice of proposed exemption relating to PTE 91–8 will apply to ERE and its affiliates.

or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply, and to the extent jurisdiction exists under Title I of the Act, the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code, e.g., the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This proposed exemption, if granted, is subject to the express condition that the summary of facts and representations set forth in the notice of proposed exemption relating to PTE 91–8, as amended by this notice to make permanent as modified PTE 91–8 accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments on the pending exemption to the address above, within forty four (44) days after the date of publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I—Covered Transactions

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the provision of property management and/or leasing services by ERE, Equitable's wholly-owned subsidiary to an Account (as defined in Section IV), provided that the conditions set forth in Section II are met.

Section II—Conditions

(1) The arrangement under which the covered transactions is performed is subject to the prior authorization of an independent plan fiduciary with respect to each plan whose assets are invested in an Account, following disclosure of information in the manner described in paragraph (2) below. For plans which have previously authorized their participation in the Accounts under PTE 91–8, no reauthorization will be required.[11] In the case of a plan whose assets are proposed to be invested in an Account subsequent to implementation of the property management and leasing services (the Property Services Policy), the plan's investment in the Account is subject to the prior written authorization of an independent plan fiduciary following disclosure of the information described in paragraph (2). The requirement that the authorizing fiduciary be independent of Equitable shall not apply in the case of plans maintained by Equitable on behalf of its employees.

(2) In the event Equitable proposes to implement the Property Services Policy for any additional Account, not less than 45 days prior to the implementation of the Property Services Policy, Equitable or ERE, as investment manager, shall furnish the authorizing plan fiduciary with any reasonably available information which Equitable or ERE believes to be necessary to determine whether such approval should be given, as well as such information which is reasonably requested by the authorizing plan fiduciary. Such information will include: a description of the services to be performed by ERE; identification of properties for which services will be required; an estimate of the fees that would be paid to ERE if it is selected to provide such services; an explanation of the potential conflicts of interest involved in selecting ERE; an explanation of the selection process; and a description of the terms upon which a plan may withdraw from an Account.

(3) In the event an authorizing plan fiduciary of any plan whose assets are invested in an Account submits a notice in writing to Equitable or ERE, as investment manager, at least 15 days prior to implementation of the Property Services Policy, objecting to the implementation of the Property Services Policy, the plan on whose behalf the objection was tendered will be given the opportunity to terminate its investment in the Account, without penalty. With the exception of a plan which has invested in a closed-end Account under which the rights of withdrawal from the Account may be limited as provided in the plan's written agreement to invest in the Account, if written objection to the Property Services Policy is submitted to Equitable or ERE any time after 15 days prior to implementation of the Property Services Policy (or after implementation), the plan must be able to withdraw without penalty, within such time as may be necessary to effect such withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. However, Equitable or ERE need not discontinue operating pursuant to the Property Services Policy, once implemented, by reason of a plan electing to withdraw after 15 days prior to the scheduled implementation date of the Property Services Policy. Any plan which has a discretionary asset management arrangement with Equitable may terminate such arrangement and withdraw from an Account at any time.

(4)(a) Equitable or ERE shall furnish the authorizing plan fiduciary and the Independent Fiduciary acting on behalf of the plans participating in the Account with the Annual Report containing the information described in this paragraph, not less frequently than once a year and not later than 90 days following the end

[11] However, during the notification of interested persons period, Equitable will provide to all interested parties, including the plans participating in the Accounts, a copy of the notice of this proposed exemption. Accordingly, the plans will have the opportunity to submit written comments on the pending exemption during the comment period.

of the period to which the report relates. Such Annual Report shall disclose the total of all fees incurred by the Account during the preceding year under contracts with ERE; include a description of the properties and the services that have been performed by ERE for an Account; and delineate the fees that are anticipated to be paid to ERE in the coming year for services provided by these entities in connection with properties held by an Account. The Annual Report will contain a description of a method for the termination of the multiple services arrangement (see Section II(5)), and for the confirmation and/or removal of the Independent Fiduciary by investing plans in the Accounts. The Annual Report will also contain a ballot regarding reconfirmation of the Independent Fiduciary, which is to be returned to Equitable. In this respect, at the time of delivery of each Annual Report, Equitable will specifically indicate to each plan that the Independent Fiduciary may be terminated by a vote in favor of such termination by the holders of a majority of the units of beneficial interests in the Account and will request such plan to confirm the Independent Fiduciary's appointment. Following a plan's receipt of the Annual Report, Equitable may treat a plan's failure to return the ballot within thirty (30) days after receipt of a request for reconfirmation as a vote in favor of continued retention of the Independent Fiduciary.

(b) Equitable or ERE receives confirmation that the notice and the ballot sent to the authorizing plan fiduciary regarding the continued retention of the Independent Fiduciary has been received by the authorizing fiduciary and the Independent Fiduciary. The method used to confirm notice to the authorizing fiduciaries and the Independent Fiduciary must be sufficient to ensure that the authorizing fiduciaries and the Independent Fiduciary actually receive the notice. In all cases, return receipt for certified mail, printed confirmation of facsimile transmissions and manifest or computer data entries of independent courier services will be considered acceptable methods of confirming receipt.

(5) The multiple services arrangement for an Account shall be subject to annual confirmation following receipt of the Annual Report, pursuant to which the arrangement shall be terminated by a vote in favor of such termination by the holders of a majority of the units of beneficial interests in the Account. In the event of a vote to terminate the arrangement, Equitable shall cease submitting to the Independent Fiduciary (as defined in Section IV) any new proposals to engage in covered transactions and Equitable will not renew or extend any covered transactions. Moreover, within 180 days after the vote of the contract holders, Equitable shall cease engaging in any existing covered transactions.

(6) (a) Each transaction shall be reviewed and approved by an Independent Fiduciary. However, prior to proposing a transaction to the Independent Fiduciary, Equitable or ERE shall first determine that such transaction is in the best interests of the Account.

(b) The Independent Fiduciary shall negotiate the contracts for the provision of services by ERE. The Independent Fiduciary shall also consider the cost to the Account of such fiduciary's involvement in connection with its consideration of whether to approve the particular transaction.

(c) The Independent Fiduciary shall review, as applicable, the performance of ERE under each of its contracts with the Accounts at least once each year and shall instruct Equitable and ERE of any action which should be taken by Equitable on behalf of the Accounts with respect to the continuation, termination or other exercise of rights available to the Account under the terms of the contracts. Equitable will carry out such instruction from the Independent Fiduciary to the extent it is legal and permitted by the terms of the service provision arrangement.

(7) (a) The terms of each such arrangement shall be in writing and must be reviewed by the Independent Fiduciary prior to implementation.

(b) If Equitable or ERE hold Account properties and general account properties in the same real estate market during a period when there is leasing competition between those properties, ERE will hire, during such period, a third party leasing agent for Account properties.

(c) In the case of any emergency circumstances, ERE may provide property services to an Account for a period not exceeding 90 days, but no compensation may be paid by an Account for such services without the prior approval of the Independent Fiduciary.

(8) (a) Equitable and ERE shall furnish the Independent Fiduciary with any reasonably available information which Equitable reasonably believes to be necessary or which the Independent Fiduciary shall reasonably request to determine whether such approval of the transactions described above should be given or to accomplish the Independent Fiduciary's periodic reviews of the performance of ERE under the contracts.

(b) With respect to ERE, such information will include: a description of the Property Services Policy for the Account and the plan clients investing therein; a description of the real estate services which are required; the qualifications of ERE to do the job; a statement, supported by appropriate factual representations, of the reasons for Equitable's belief that ERE is qualified to provide the services; a copy of the proposed arrangement for services and the terms on which ERE would provide the services; the reasons why Equitable believes the retention of ERE would be in the best interests of the Account; information demonstrating why the fees and other terms of the arrangement are reasonable and comparable to fees customarily charged by similar firms for similar services in comparable locales; the identities of non-affiliated service providers and the terms under which these service providers might perform the services; and in any case that it is determined that the property manager will also provide leasing services, Equitable will disclose whether any affiliated property manager under consideration by the Independent Fiduciary is a property manager to any properties that are in competition for tenants with the property for which ERE is under consideration.

(9) Seventy-five percent or more of the units of beneficial interests in an Account must be held by plans or other investors having total assets of at least $50 million. In addition, 50 percent or more of the plans investing in an Account must have assets of at least $50 million. For purposes of the 50 percent test above, a group of plans will be counted as a single plan if either the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than Equitable who exercises such discretion with respect to plan assets in excess of $50 million.

(10) (a) Not more than 10 percent of the assets of a plan covering employees of Equitable will be invested in an Account. Notwithstanding the foregoing, this percentage requirement will continue to be satisfied by any plan that exceeds the 10 percent limitation of this subsection provided that no portion of any excess results from an increase in the assets transferred by such plan to the Accounts.

(b) Not more than 10 percent of the assets of an Account will be represented by the plans covering employees of Equitable.

(c) For other plans, not more than 20 percent of the assets of each such plan can be invested in the Accounts. Notwithstanding the foregoing, this percentage requirement will continue to be satisfied by any plan that exceeds the 20 percent limitation of this subsection provided that no portion of any excess results from an increase in the assets transferred by such plan to the Accounts. Moreover, this 20 percent limitation shall not apply to any plan which, as of February 28, 1990, the date of the proposed exemption relating to PTE 91–8, had more than 20 percent of its assets invested in the Accounts provided that the plan makes no additional contribution to such Accounts subsequent to that date.

(11) At the time the transactions are entered into, the terms of the transactions must be at least as favorable to the Accounts as the terms generally available in arm's length transactions between unrelated parties. In addition, the compensation paid to ERE for services under its contracts with any Account must not exceed payments in an arm's length transaction between unrelated parties for comparable properties in similar locales, and shall not be in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act and regulation 29 CFR 2550.408b–2.

(12) (a) After the fifth anniversary of the grant of this exemption, and after the beginning of each subsequent five-year period, ERE will prepare a survey of property management and leasing fees for the properties that have similar geographic location and property types to those held by the Accounts. The survey will include data regarding the fees that have been charged to the Accounts by several property management firms that are unaffiliated with Equitable or ERE for services that are contemplated by the exemption during the one year period prior to the beginning of the new five-year period. Also, the survey will include data as to the fees paid by Equitable or ERE for such services performed for the properties not held by the Accounts during the same period and other market data regarding the cost of property management and leasing services by geographic location and property types.

(b) The Independent Fiduciary will review ERE's internal survey referred to in (a) above, and will verify the accuracy of the data by independently reviewing a sampling of the properties to which such fees apply. Based upon its review of the survey and its own professional resources and expertise, the Independent Fiduciary will determine a typical range of annual fees for property management and leasing services for the Accounts. The average of the range, as determined from such survey, will serve as the basis of comparison for determining for the next five-year period whether continuation of the property management and leasing services policy (the Property Services Policy) has provided cost savings to the Accounts.

(c) Equitable and ERE will demonstrate to the Independent Fiduciary at the end of the applicable five-year period that the aggregate property management and leasing fees charged to each Account pursuant to the Property Services Policy plus the cost of the services of the Independent Fiduciary under the exemption that are allocated to the Accounts, are less than the fees that would have been charged using the benchmark rate established at the beginning of the five year period.

(d) The Independent Fiduciary will review the data supplied by ERE and, to the extent considered necessary by the Independent Fiduciary, data collected from the Independent Fiduciary's own surveys, and will document its findings and analysis of such cost savings in a report to be delivered to each of the plans participating in the Accounts within 90 days after the end of the five year period and each subsequent five-year period and prior to the implementation of the annual confirmation procedure described in paragraph (5) of Section II with respect to such period. In the event the Independent Fiduciary finds that cost savings have not been achieved for the Accounts, it will not approve any additional services arrangements pursuant to the Property Services Policy until Equitable and ERE have demonstrated to the satisfaction of the Independent Fiduciary that policies intended to assure cost savings to the Accounts have been implemented by Equitable and ERE. The survey, the Independent Fiduciary's report reviewing the survey, and the final report of the Independent Fiduciary analyzing whether cost savings had been achieved during the five year period to which the survey relates, will be maintained by Equitable or ERE in accordance with the recordkeeping requirements of Section III.

(13) (a) The fees paid to ERE and/or its affiliates for property management services provided in connection with a property held for an Account shall not exceed for any one year period: (1) In the case of property management services which include leasing services, 7 percent of the overall gross receipts of the property; and (2) in the case of property management services which do not include leasing services, 4 percent of the overall gross receipts of the property.

(b) Where a property manager is separately compensated for leasing services; (1) the fee for new leases will not exceed 7 percent of the lease amount; (2) the fee for renewal leases will not exceed 2 percent of the lease amount; and (3) the fee for leases in which outside brokers are involved will not exceed 2.75 percent of the lease amount.

Section III—Recordkeeping

(1) Equitable or ERE will maintain for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met. Included in these records maintained by Equitable or ERE will be written records of the Independent Fiduciary which had been periodically furnished by the Independent Fiduciary to ERE or Equitable and the records described in paragraph (12) of Section II. Such records are described in Parts III and VI of the summary of facts and representations of the notice of proposed exemption relating to PTE 91–8 and in paragraph (12) of Section II. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond Equitable's or ERE's control, the records are lost or destroyed or the records of the Independent Fiduciary are not maintained or produced prior to the end of the six-year period.

(2) (a) Except as provided in subsection (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section are unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department and the Internal Revenue Service;

(2) Any fiduciary of a plan who has authority to acquire or dispose of the interests of the plan in the Accounts or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any plan that has an interest in the Accounts or any duly authorized employee or representative of such employer;

(4) Any participant or beneficiary of any plan participating in the Accounts, or any duly authorized employee or representative of such participant or beneficiary; and

(5) The Independent Fiduciary.

(b) None of the persons described in subparagraphs (2)–(5) of this paragraph shall be authorized to examine trade secrets of Equitable, ERE or commercial or financial information which is privileged or confidential.

Section IV—Definitions

(1) The Accounts—The Accounts are Equitable's Separate Account No. 8, Separate Account No. 16–I, Separate Account No. 16–II, Separate Account No. 16–III, Separate Account No. 16–IV, Separate Account No. 16–VII, Separate Accounts Nos. 136, 141, 149 and 174 for the IBM Retirement Plan, Investment Management Account No. 230 for the Westinghouse Electric Corporation Pension Plan; and such other pooled or single-customer accounts, joint ventures, general or limited partnerships or other real estate investment vehicles that may be established by Equitable for the investment of employee benefit plan assets in real estate related investments to the extent disposition of its assets is subject to the discretionary authority of Equitable.

(2) Equitable—For purposes of this exemption, the term Equitable includes Equitable and/or affiliates of Equitable as defined in paragraph (4) of this section which act as investment managers with respect to an Account.

(3) ERE—For purposes of this exemption, the term ERE includes ERE and/or affiliates of ERE as defined in paragraph (4) of this section, which provides services to an Account pursuant to this exemption.

(4) An affiliate of a person means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person.

(5) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(6) Independent Fiduciary—A person who:

(a) is not an affiliate [as defined in Section IV(4)] of Equitable or ERE;

(b) is not an officer, director, employee of, or partner in, Equitable or ERE [or affiliates thereof as defined in Section IV(4)];

(c) is not a corporation or partnership in which Equitable or ERE has an ownership interest or is a partner;

(d) does not have an ownership interest in Equitable or ERE, or its affiliates;

(e) is not a fiduciary with respect to any plan participating in an Account; and

(f) has acknowledged in writing acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of Independent Fiduciary, no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from Equitable or ERE, or their affiliates, (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of its or his annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or 10 percent or more partner or shareholder, may acquire any property from, sell any property to or borrow any funds from Equitable or ERE, their affiliates, or any Account maintained by Equitable or ERE, their affiliates, during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of 6 months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

This proposed exemption, if granted, is subject to the express condition that the summary of facts and representations set forth in the notice of proposed exemption relating to PTE 91–8, as amended by this notice to make permanent as modified PTE 91–8 accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of August 1996.

Ivan Strasfeld,

Director of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–22716 Filed 9–5–96; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Docket No. STN 50–456

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–72, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Braidwood Station, Unit 1, located in Will County, Illinois.

The proposed amendment would revise Technical Specification 3/4.4.5 to allow continued operation of Unit 1 for the remainder of Cycle 6, provided that the projected distributions of indications found in the top of the steam generators' roll transitions resulting from the reanalysis of previous non-destructive testing data results in a probability of burst less than $1 \times 10-2$ and predicted leakage less than the site allowable leak limit.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 7, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public library, 201 S. Kankakee Street, Wilmington, Illinois 60481. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 30, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wilmington Public library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Rockville, Maryland, this 4th day of September, 1996.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–22947 Filed 9–5–96; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps invites the general public and other federal agencies to take this opportunity to comment on the continued information collection below. A copy of the information collection may be obtained from Susan Gambino, Office of Medical Services, United States Peace Corps, 1990 K Street, NW, Washington, DC 20526. Ms. Gambino may be contacted by telephone at (202) 606–3481. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Medical History and Examination Forms.

Need For and Use of This Information: This collection of information is necessary to comply with the Peace Corps Act (Section 5(e)) which states that "applicants for enrollment shall receive such health examinations preparatory to their service * * * as the President may deem necessary or appropriate * * * to provide the information needed for clearance, and to serve as a reference for any future Volunteer medical clearance, and to serve as a reference for any future Volunteer disability claim." Peace Corps uses this information to determine the physical and mental suitability for service as a Peace Corps Volunteer.

Respondents: Peace Corps Applicants.

Respondents Obligation to Reply: Mandatory.

Burden on the Public:

Medical History Form (PC 1789)

a. Annual reporting burden: 1,625 hrs.

b. Annual recordkeeping burden: 0 hrs.
c. Estimated average burden per response: 15 minutes.
d. Frequency of response: One time.
e. Estimated number of likely respondents: 6,500.
f. Estimated cost to respondents: $3.04 per.

Medical History Form (PC 1789)
a. Annual reporting burden: 3,000 hrs.
b. Annual recordkeeping burden: 0 hrs.
c. Estimated average burden per response: 30 minutes.
d. Frequency of response: One time.
e. Estimated number of likely respondents: 6,000.
f. Estimated cost to respondents: $6.08 per.

• Responses will be returned by postage-paid reply mail.

This notice is issued in Washington, DC on August 30, 1996.

Ron Conner,

Acting Associate Director for Management.

[FR Doc. 96–22620 Filed 9–5–96; 8:45 am]

BILLING CODE 6051–01–M

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of the Returned Volunteer and Former Staff Database Card. A copy of the information collection may be obtained from Meredith McClanahan, Office of Domestic Programs, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Ms. McClanahan may be contacted by telephone at (202) 606–9373. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: RPCV and Former Staff Database Card.

Need For and Use of This Information: Peace Corps needs this information in order to help the agency regain and maintain contact with former Volunteers and Staff.

Respondents: Returned Peace Corps Volunteers and former staff.

Respondents Obligation to Reply: Voluntary.

Burden on the Public:
a. Annual reporting burden: 3630 hours.
b. Annual recordkeeping burden: 0 hours.
c. Estimated average burden per response: 3 minutes.
d. Frequency of response: Twice a year.
e. Estimated number of likely respondents: 110,000.
f. Estimated cost to respondent: $0.60.

This notice is issued in Washington, DC on August 30, 1996.

Ron Conner,

Acting Associate Director for Management.

[FR Doc. 96–22619 Filed 9–5–96; 8:45 am]

BILLING CODE 6051–01–M

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request to approve the continued use of Classroom Speaker Form to be used by the World Wise Schools program. A copy of the information collection may be obtained form Meredith McClanahan, Office of World Wise Schools, Peace Corps, 1990 K St. NW., Washington DC 20525. Ms. McClanahan may be called at (202) 606–9373. Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Officer of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Classroom Speaker Form.

Need for and use of the Information: This form is completed voluntarily by educators throughout the country. Once returned the form will provide information regarding the specific request of the educator. From this, speakers or information resources will be provided from a willing pool of former Peace Corps Volunteers. The effort to involve the returned Peace Corps Volunteer is an effort to fulfill the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program. Participation in the World Wise School program is voluntary.

Respondents: All parties who are interested being assisted by former Peach Corps Volunteers. These include educators and librarians throughout the public and private school systems.

Respondents obligation to reply: Voluntary.

Burden on the Public:
a. Annual reporting burden: 1,667 hrs.
b. Annual record keeping burden: 520 hrs.
c. Estimated average burden per response: 20 min.
d. Frequency of response: One time.
e. Estimated number of likely respondents: 5,000.
f. Estimated cost to respondents: $4.57.

This notice is issued in Washington, DC on August 30, 1996.

Ron Conner,

Acting, Associate Director for Management.

[FR Doc. 96–22621 Filed 9–5–96; 8:45 am]

BILLING CODE 6051–01–M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting concerning the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

DATES: October 9, 1995, 9:00 a.m.–4:30 p.m.

PLACE: Sheraton Inn Tampa and Conference Center, 7401 East Hillsborough Avenue, Tampa, FL 33610.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Wednesday, October 9, 1996

9:00 a.m. Call to order and opening remarks

9:05 a.m. Public comment

10:45 a.m. Break

11:05 a.m. Staff briefings and Committee discussion on charter and Final Report

12:15 p.m. Lunch

1:30 p.m. Staff briefings and Committee discussion on charter and Final Report (cont.)

3:00 p.m. Break

3:15 p.m. Staff briefings and Committee discussion on charter and Final Report (cont.)

4:15 p.m. Committee and staff discussion: Next steps

4:30 p.m. Meeting adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans and their families. The Advisory Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT:

Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: September 3, 1996.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–22806 Filed 9–5–96; 8:45 am]

BILLING CODE 3610–76–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22190; File No. 812–10178]

The Lincoln National Life Insurance Company, et al.

August 29, 1996.

AGENCY: U.S. Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Lincoln National Life Insurance Company ("Lincoln Life"), Lincoln National Variable Annuity Account L ("Account L"), Lincoln Life & Annuity Company of New York ("Lincoln Life of NY"), Lincoln Life & Annuity Variable Annuity Account L ("Account L–NY"), and LNC Equity Sales Corporation.

RELEVANT ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order pursuant to Section 6(c) of the Investment Company Act of 1940 (1940 Act) granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction of a mortality and expense risk charge of 1.20% from: the assets of Account L or Account L–NY (collectively, the "Accounts") in connection with the offer and sale of certain group variable annuity contracts ("Contracts") and any contracts ("Future Contracts") issued in the future by Lincoln Life or Lincoln Life of NY that are materially similar to the Contracts; the assets of other separate accounts "Future Accounts") established in the future by Lincoln Life or Lincoln Life of NY to fund Contracts and Future Contracts. Exemptive relief also is requested to the extend necessary to permit the offer and sale of Contracts and Future Contracts for which certain broker-dealers other than LNC Equity Sales Corporation serve as distributors and/or principal underwriters.

FILING DATE: The application was filed on June 3, 1996, and amended and restated on August 28, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, John L. Steinkamp, Esq., Vice President & Associate General Counsel, The Lincoln National Life Insurance Company, 1300 South Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Lincoln Life, a stock life insurance company incorporated under the laws of the State of Indiana in 1905, is principally engaged in the sale of life insurance and annuity policies. Lincoln Life is wholly-owned by Lincoln National Corporation, a publicly-held insurance and financial services holding company.

2. Account L was established by Lincoln Life as a separate account under the laws of the State of Indiana in 1996, pursuant to a continuing resolution of Lincoln Life's board of directors.

3. Lincoln Life of NY, a stock life insurance company incorporated under the laws of the State of New York, in 1996, is principally engaged in the sale of life insurance and annuity policies in the state of New York. Lincoln Life of NY is a wholly-owned subsidiary of Lincoln Life.

4. Account L–NY was established as a separate investment account under the laws of the State of New York on July 24, 1996, pursuant to a resolution of the board of directors of Lincoln Life of NY.

5. Lincoln Life and Lincoln Life of NY (collectively, the "Companies") each will offer three group variable annuity contracts—Group Variable Annuity I, Group Variable Annuity II, and Group Variable Annuity III. The Contracts issued by Lincoln Life of NY are identical in all relevant respects to the Contracts issued by Lincoln Life, but for the identity of the insurance company issuing the Contracts and the separate account supporting the Contracts and any differences relating to state law

requirements. The contracts may be purchased with an initial contribution in connection with retirement plans that qualify for favorable federal income tax treatment as well as in connection with retirement plans that do not qualify for such treatment.

6. Each of the Accounts consists of subaccounts ("Subaccounts"). Each Subaccount invests net contributions received under the Contracts in shares of one or more of the investment portfolios of the Dreyfus Stock Index Fund, the Dreyfus Variable Insurance Products Fund, the Fidelity Variable Insurance Products Fund, the Fidelity Variable Insurance Products Fund II, the Twentieth Century TCI Portfolios, Inc., the T. Rowe Price International Series, Inc., the Acacia Capital Corporation, and such other registered investment companies as the Companies may make available under their Contracts from time to time (each, a "Fund"), or any combination thereof. Each Fund is an open-end management investment company and, except for the Dreyfus Stock Index Fund, has a number of classes or series, in accordance with Rule 18f–2 under the 1940 Act.

7. The Contracts also permit premium payments to be deposited in a guaranteed interest division which is part of the general account of Lincoln Life or Lincoln Life of NY, and in one or more Subaccounts. During the accumulation period, each Company permits transfers of all or part of a Contract participant's account balance from the guaranteed interest division to a Subaccount, from any one Subaccount to another, or from any Subaccount to the guaranteed interest division.

8. LNC Equity Sales Corporation serves as the distributor and principal underwriter of the Contracts and also may serve as the distributor and principal underwriter of Future Contracts. LNC Equity Sales Corporation is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. LNC Equity Sales Corporation is an indirect wholly-owned subsidiary of Lincoln National Corporation.

9. Broker-dealers other than LNC Equity Sales also may serve as distributors and principal underwriters of the Contracts and Future Contracts. Any such other broker-dealer ("Future Broker-Dealer") will be registered under the Securities Exchange Act of 1934 as a broker-dealer and will be a member of the National Association of Securities Dealers, Inc.

10. Each Company deducts $25 (or the balance of a Contract participant's account, if less) per year from each Contract participant's account balance on the last business day of the month in which a participation anniversary occurs. The annual administration charge is deducted only during the accumulation period. Under prescribed circumstances, each Company may waive or reduce the annual administration charge under a Contract. In addition, a Contractowner may pay the annual administration charge on behalf of the participants under its Contract. Applicants represent that each Company deducts the annual administration charge in reliance on Rule 26a–1 under the 1940 Act, and does not anticipate any profit from this charge.

11. The Companies do not deduct a sales charge from premium payments made under Contracts, but do deduct a contingent deferred sales charge ("CDSC") on certain full and partial withdrawals of account balance by participants in Group Variable Annuity I and Group Variable Annuity II contracts. The CDSC is designed to cover expenses relating to the sale of Contracts, including commissions and other promotional expenses. During the first six Contract years, the CDSC under a Group Variable Annuity I Contract is 5% of the gross withdrawal amount; the CDSC declines 1% each year thereafter until the charge is 0% in the eleventh and subsequent years. The Companies may impose a CDSC of up to 6% of the gross withdrawal amount on certain total and partial withdrawals of the account balance of a Group Variable Annuity II Contract participant.

12. Each Company will waive the CDSC under its Group Variable Annuity I and Group Variable Annuity II contracts if, at the time of the withdrawal request, the Company receives proof necessary to verify that: (a) the participant has attained the age of 59½; (b) the participant has died; (c) the participant has incurred a disability as defined under the Contract; (d) the participant has terminated employment with the employer (under the Group Variable Annuity II contracts the participant also must be at least 55 years of age). Contractowners of Group Variable Annuity I or Group Variable Annuity II contracts may identify other circumstances under which a CDSC may be waived—e.g., in the event of "financial hardship." Contracts providing such additional benefits to participants may have a declared guaranteed interest rate in the guaranteed interest division which is lower than that for Contracts not providing such benefits.

13. Each Company also may reduce or eliminate the CDSC under any Group Variable Annuity I or Group Annuity II contract on any withdrawal to the extent the Company anticipates that it will incur lower sales expenses or perform fewer sales services because of economies arising from (i) the size of the group covered under a Contract, (ii) an existing relationship with the Contractowner, (iii) the utilization of mass enrollment procedures, or (iv) the performance of sales functions by the Contractowner which the Company would otherwise be required to perform. Death benefit payments and amounts subject to annuitization are not subject to a CDSC. In no event will a CDSC, when added to any CDSC previously imposed as a result of a prior withdrawal, exceed 8.5% of the cumulative contributions to a Contract participant's account.

14. Each Company imposes a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.20% of the value of the net assets in each Account, and it will not increase. Of that amount, approximately.95% is attributable to mortality risks, and approximately .25% is attributable to expense risks.

15. The mortality risk borne by each Company arises from its contractual obligation to make annuity payments regardless of how long all annuitants or any individual annuitant may live. The expense risk assumed by each Company is the risk that the Company's actual administrative costs will exceed the amount recovered through the annual administration charge. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on the Company. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to such Company. Each Company may realize a profit from the mortality and expense risk charges.

16. Each Company also deducts a charge for the premium taxes paid on contributions to a Contract. Various states levy a premium tax charge currently ranging from .5% to 4% of premium payments on variable annuity contracts.

17. If a Contract participant should die during the accumulation period, the Company will pay the greater of (a) net contributions or (b) the Contract participant's account balance less any outstanding loan. Although each Company incurs a risk in connection with this death benefit guarantee, there is no extra charge for this death benefit.

Applicants' Legal Analysis and Conditions

1. Section 6(c) of the 1940 Act authorizes the SEC to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to do so.

2. Sections 26(a)(2)(c) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and are held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the SEC may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a mortality and expenses risk charge from the assets of the Accounts and Future Accounts under the Contracts and Future Contracts. Applicants also seek exemptive relief for Future Broker-Dealers that may serve as distributors and/or principal underwriters for Contracts and Future Contracts.

4. Applicants state that the terms of the relief requested with respect to any Future Contracts funded by the Accounts and Future Accounts are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants represent that the Future Contracts will be materially similar to the Current Contracts. Applicants state that without the requested relief, each Company would have to request and obtain exemptive relief for the Accounts and Future Accounts to fund each Future Contract. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application, and the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the Applicants' need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources.

5. Applicants represent that the 1.20% mortality and expense risk charge under the Contracts is reasonable in relation to the risks assumed by each Company under the Contracts, and is within the range of industry practice for comparable annuity contracts, based on a review of the publicly available information regarding products of other companies. Each Company represents that it will maintain at its principal offices, and make available upon request to the Commission or its staff, a memorandum detailing the variable annuity products analyzed, the methodology used in, and the results of, the comparative review.

6. Each Company represents that, before issuing any Future Contracts, it will make the same determinations on the same basis as to the mortality and expense risk charges under such contracts, and will maintain at its principal offices, and will make available upon request to the Commission or its staff, a memorandum setting forth in detail the methodology used in making such determinations.

7. Applicants acknowledge that the CDSC may be insufficient to cover all distribution costs, and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC. Notwithstanding this, each Company has concluded that there is reasonable likelihood that the proposed distribution financing arrangement made with respect to the Contracts and Future Contracts will benefit the Accounts and Future Accounts, Contractowners and Future Contractowners, and Contract and Future Contract participants. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its home office and will be available to the Commission or its staff upon request.

8. Each Company represents that, before issuing Future Contracts, it will conclude that there is a reasonable likelihood that the distribution financing arrangements proposed for such contracts will benefit the Accounts and Future Accounts, Future Contractowners, and Future Contract participants. Each Company represents that it will maintain at its executive office, and will make available upon request to the Commission or its staff, a memorandum setting forth the basis for such conclusion.

9. The Company also represents that the Accounts and Future Accounts will invest only in underlying investment companies which have undertaken to have a board of directors or a board of trustees, as applicable, a majority of whom are not "interested persons" of such Accounts and Future Accounts—within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Conclusion

For the reasons set forth above, Applicants represent that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22720 Filed 9–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26567]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 30, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 23, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended,

may be granted and/or permitted to become effective.

Entergy Corp., et al. (70–8899)

Entergy Corp. ("Entergy"), a registered holding company located at 639 Loyola Avenue, New Orleans, Louisiana 70113, and its retail public utility subsidiary companies, Entergy Arkansas, Inc. ("Arkansas"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy Gulf States, Inc. ("Gulf States"), 350 Pine Street, Beaumont, Texas 77701, Entergy Mississippi, Inc. ("Mississippi"), 308 East Pearl Street, Jackson, Mississippi 39201, Entergy Louisiana, Inc. ("Louisiana"), and Entergy New Orleans, Inc. ("New Orleans"), both located at 639 Loyola Avenue, New Orleans, Louisiana 70113 (collectively, "Operating Companies"), as well as System Energy Resources, Inc. ("System Energy"), a generating public utility subsidiary company of Entergy, Entergy Operations, Inc. ("EOI"), a nuclear management public utility of Entergy, both of 1340 Echelon Parkway, Jackson, Mississippi 39213, System Fuels, Inc. ("SFI"), a nonutility subsidiary, 350 Pine Street, Beaumont, Texas 77701, and Entergy's service company subsidiary, Entergy Services, Inc. ("ESI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed jointly an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45 and 54 thereunder in connection with short-term debt financings.

The Operating Companies and System Energy propose, through November 30, 2001, to borrow through the Entergy System Money Pool [1] and to issue and sell unsecured short-term notes and commercial paper to commercial banks and dealers in such paper. The maximum amount of loans, notes, and commercial paper that each could issue would be limited as follows: Arkansas, $235 million; Gulf States, $340 million; Louisiana, $225 million; Mississippi, $103 million; New Orleans, $35 million; and System Energy, $140 million.

In addition, EOI, ESI, and SFI propose, through November 30, 2001, to borrow through the Money Pool, to borrow from Entergy,[2] and/or to borrow from commercial banks. Any loan agreements or commitments from banks would correspondingly reduce the amount of Entergy's commitment to EOI, ESI and SFI under their respective Loan Agreements. The aggregate principal amount of borrowings outstanding at any one time from the Money Pool, Entergy, and banks would be limited as follows: EOI, $20 million; ESI, $150 million; and SFI, $95 million.[3]

The Money Pool will continue to be administered on behalf of the Participants by ESI under the direction of its Treasurer. The Money Pool consists solely of available funds from the Participants (excluding Entergy) or otherwise invested. the Participants will not borrow funds to participate in the Money Pool. Entergy will invest available funds in, but under no circumstances will be permitted to borrow funds from, the Money Pool.

The Money Pool will be managed to match the available cash and borrowing requirements of the Participants to minimize the need for loans by the Participants from external sources. Notwithstanding the availability of Money Pool funds, the Participants might instead make short-term loans or issue commercial paper to maintain a market presence. The Operating Companies and System Energy will have priority on borrowing funds from the Money Pool; EOI, ESI and SFI will be permitted to borrow through the Money Pool only if, on any given day, funds remain available.

Certain credit agreements of System Energy require, absent a waiver, that its Money Pool borrowings be subordinated to the extent that, upon the occurrence of certain events (such as a default under the credit agreements, insolvency, bankruptcy, liquidation, or reorganization), System Energy would not be permitted to pay principal or interest on Money Pool borrowings, unless or until all obligations under the credit agreements have been met or otherwise provided for.

ESI will invest Money Pool funds not loaned to Participants and allocate returns on the investments to the Participants on a pro rata basis in accordance with their respective interests in such funds. ESI proposes to invest excess funds in securities exempt from section 9(a) of the Act pursuant to section 9(c) of the Act and rule 40 thereunder.

The Operating Companies and System Energy will be entitled to borrow, on any given day, an amount of an equal allocation of such funds among the Participants. Where such an allocation would provide Participants funds in excess of its or their requirements, the excess will be available for loans equally allocated among the remaining Participants. To the extent that EOI, ESI, and SFI are permitted to borrow, the funds available for lending will be allocated in the same manner. Participants that borrow will borrow pro rata from Participants that loan in the proportion that the total amount loaned by the Participant bears to the total amount then being loaned through the Money Pool.

Loans from the investments through the Money Pool will be evidenced on the books of each Participant. All loans will be payable on demand, prepayable without premium or penalty, and will bear interest equal to the daily weighted average investment rate.[4] If there are no excess Money Pool funds to invest, the rate of interest on loans from the Money Pool will be the Daily Federal Funds Effective Rate quoted by the Federal Reserve Bank of New York.

The Operating Companies and System Energy might establish lines of credit with commercial banks, either individually or on a consolidated basis with each other and with EOI, ESI and SFI (together with Operating Companies and System Energy, the "Borrowers"). The Borrowers will issue and sell unsecured short-term notes payable within one year. The interest on each note will be selected by the Borrower from among four options, but in each instance the interest rate will be comparable to rates generally prevailing tin the market for loans with similar terms for borrowers with comparable credit quality. The notes may, at the option of the Borrower or under certain circumstances with the consent of the lender, be prepayable without premium or penalty, except where interest rates are tied to bank certificate of deposits, the eurodollar market, or certain bid rates.

The Borrower might pay a commitment fee, which will be comparable to those prevailing in the market for loans to borrowers with

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[1] The Money Pool consists of available funds, invested by the participating Entergy system companies, which may be borrowed by the participants, excluding Entergy, to meet their respective interim capital needs.

[2] By orders dated June 5, 1990 (HCAR No. 25100), September 17, 1991 (HCAR No. 25376), and March 16, 1994 (HCAR No. 26006), EOI, ESI and SFI, respectively, were each authorized to enter a loan agreement with Entergy (hereinafter referred to for each subsidiary company as the "EOI Loan Agreement," the "ESI Loan Agreement," and the "SFI Loan Agreement;" collectively, "Loan Agreements").

[3] EOI and SFI currently can borrow up to $15 million and $30 million, respectively, under their respective Loan Agreements with Entergy. In addition to its Loan Agreement with Entergy, SFI has separately authorized credit agreements with Yasuda Trust & Banking Co., Ltd., and the Bank of American National Trust and Savings Association, for $45 million and $20 million, respectively.

[4] The "daily weighted average investment rate" is defined as the aggregate of the total interest payable on all investments in the Money Pool portfolio (made from funds not loaned to Participants) multiplied by 360 and then divided by the total amount invested in the Money Pool portfolio.

comparable credit quality. Entergy proposes, where required, to guarantee bank loans for EOI, ESI and SFA, up to the maximum amount each is authorized to borrow.

The Operating Companies and System Energy might issue commercial paper in the form of unsecured notes to mature within not more than 270 days, not prepayable, at a discount not in excess of the then-prevailing maximum discount rate for comparable paper. The commercial paper will be re-sold, with the customary discount, on a nonpublic basis to commercial banks, insurance companies, corporate pension funds, investment trusts, foundation, colleges and university funds, municipal and state funds and other financial and non-financial institutions that normally invest in commercial paper.

The Operating Companies and System Energy propose to use the proceeds from borrowings from the Money Pool and the issuance of short-term notes and commercial paper to provide interim financing for construction expenditures, to meet long-term debt maturities and satisfy sinking fund requirements, as well as for the refunding, redemption, purchase or other acquisition of all or a portion of certain outstanding debt for general corporate purposes. EOI proposes to use the proceeds to finance its interim capital needs. ESI proposes to use the proceeds for the repayment of other borrowings and to fund its service company activities. SFI proposes to use the proceeds to repay other borrowings and to finance its fuel supply activities, including acquiring, owning and financing nuclear materials, related services, and the acquisition and ownership of fuel oil inventory. None of the proceeds authorized herein will be used to invest directly or indirectly in an exempt wholesale generator or foreign utility company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22813 Filed 9–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22192; File No. 812–9958]

The Travelers Insurance Company, et al.

August 30, 1996.

AGENCY: The Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Travelers Insurance Company ("Travelers"), the Travelers Fund QP for Variable Annuities ("Account") and Tower Square Securities, Inc. ("Tower").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order under Section 6(c) of the 1940 Act granting exemptions from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction of a morality and expense risk charge from the assets of the Account or other separate accounts established by Travelers in the future ("Other Accounts") to support certain group variable annuity contracts ("Current Contracts") as well as other variable annuity contracts that are materially similar to the Current Contracts ("Future Contracts," together with the Current Contracts, "Contracts"). Applicants request that such exemptive relief extend to any broker-dealer other than Tower that is affiliated with travelers, is registered as a broker-dealer under the Securities Exchange Act of 1934, and may serve in the future as principal underwriter of the Contracts ("Future Underwriter").

FILING DATES: The application was filed on January 23, 1996. Amendments to the application were filed on July 31, 1996, August 15, 1996, and August 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Kathleen A. McGah, Counsel and Assistant Secretary, The Travelers Insurance Company, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Travelers, a stock life insurance company organized in Connecticut and an indirect wholly-owned subsidiary of Travelers Group Inc., is the sponsor and depositor of the Account and will be the sponsor and depositor of any Other Account. Travelers is licensed to conduct life insurance and annuity business in all states of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. and British Virgin Islands and the Bahamas.

2. The Account was established on December 25, 1995, as a separate account under Connecticut law to fund group flexible premium deferred variable annuity contracts and certificates. The Account is registered under the 1940 Act as a unit investment trust and will be used to fund the Contracts. The Account is divided into 27 subaccounts (the "Subaccounts"), each of which will invest solely in shares of a registered open-end management investment company or portfolio thereof.

3. Tower, an affiliate of Travelers and an indirect wholly-owned subsidiary of Travelers Group Inc., is the distributor of the Current Contracts. Tower is registered as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the National Association of Securities Dealers, Inc. Any Future Underwriter will be affiliated with Travelers and registered as a broker-dealer under the 1934 Act.

4. The Current Contracts are designed to provide retirement payments and other benefits for persons covered under certain retirement plans qualified for federal income tax advantages available under the Internal Revenue Code of 1986, as amended, and for persons covered under retirement plans that do not qualify for such tax advantages. The Current Contracts may be sold on an allocated or unallocated basis. Purchase payments under the Current Contracts may be made by or on behalf of a participant in a Current Contract ("Participant") who is covered under a retirement plan.

5. The Current Contracts provide for, among other things: (a) minimum purchase payments; (b) allocation of purchase payments to one or more of the Account's Subaccounts, or to the fixed account, or both; and (c) several

fixed and variable annuity payment options. In addition, a death benefit is available under allocated Current Contracts. A death benefit is not available under unallocated Current Contracts, although one may be added to the unallocated Current Contracts in the future.

6. Under the death benefit for allocated Current Contracts, if the annuitant or the Current Contract owner dies before age 75 and before the maturity date, Travelers will pay as a death benefit an amount equal to the greater of (a) or (b) below, less any applicable premium tax:

(a) The cash value of the Participant's individual account; or

(b) Total purchase payments made to the Participant's individual account, less any surrenders not previously deducted.

If the annuitant or the Current Contract owner dies on or after age 75 and before the maturity date, Travelers will pay as a death benefit the value of the Participant's individual account, less any applicable premium tax and any surrenders not previously deducted.

7. The fees and charges assessed under the Current Contracts are likely to vary from one Current Contract to the next depending on the size of the Current Contract, the possible involvement of a third party administrator ("TPA") and a competitive bidding process which may include negotiation. The Current Contract design allows Travelers maximum flexibility, within the limitations imposed by law to custom design a charge structure which is likely to be acceptable to a prospective Current Contract owner. The application sets forth the maximum levels for each of the types of sales charges, mortality and expense risk charges, administrative expense charges and any allocation and transfer fees.

8. In most cases, only one of two administrative charges will apply to allocated Current Contracts. These charges cannot be increased during the life of the Current Contracts. The charges represent reimbursement of only the actual administrative costs expected to be incurred over the life of the Current Contracts and are not designed to yield a profit. Applicants will rely on Rule 26a–1 in deducting these charges.

9. A maximum semiannual policy fee of $15 may be deducted from each Participant's individual account during the accumulation period. Travelers also may assess an annual administrative charge to compensate it for certain administrative and operating expenses of the underlying funds. The administrative charge, equal to a maximum of 0.10% annually, may be deducted on each valuation date from amounts held in the underlying funds. This charge will apply during both the accumulation and the annuity periods.

10. The level of the semiannual policy fee and of the administrative expense charge during the accumulation period (but not the annuity period) is subject to negotiation. In determining the level of the semiannual fee and the administrative charge during the accumulation period, Travelers considers the following factors: (a) the size and characteristics of the Current Contract and the group to which it is issued, including the total annual amount of the purchase payments per Participant, the expected turnover of employees, whether the Current Contract owner will remit purchase payment allocations electronically, and any other factors pertaining to the characteristics of the group or the plan which may enable Travelers to reduce the expense of administration; (b) determination of Travelers' anticipated expenses in administering the Current Contract, such as billing for purchase payments, producing periodic reports, providing for the direct payment of Current Contract charges rather than having them deducted from Current Contract values, and any other factors pertaining to the level and expense of administrative services which will be provided under the Current Contract; and (c) the involvement of a TPA and/or agent.

11. No sales charge is deducted at the time purchase payments are applied under the Current Contracts. A contingent deferred sales charge or a surrender charge, as negotiated, will be assessed upon certain full or partial surrenders. The amounts obtained from the contingent deferred sales charge or surrender charge will be used to defray expenses incurred in the sale and marketing of the Current Contracts.

12. A sales charge may apply if all or part of the Current Contract value is surrendered during the first eight years following a purchase payment. The maximum contingent deferred sales charge is 5% of each purchase payment for a period of five years from the date the purchase payment was made. The maximum surrender charge is 5% of the amount surrendered for the first two Current Contract years; up to 4% in years three and four; up to 3% in years five and six; up to 2% in years seven and eight and 0% in the ninth year. The surrender charge cannot be increased during the life of the Current Contracts. Travelers does not expect that the contingent deferred sales charge will cover sales and distribution expenses incurred in connection with the Current Contracts.

13. The contingent deferred sales charge and the surrender charge can be reduced or restructured if Travelers anticipates that it will incur decreased sales-related expenses because of the nature of the plan to which the Current Contract is issued or the involvement of a TPA. When considering a change in the sales charges, Travelers will take into account: (a) the expected level of initial agent or Travelers involvement during the establishment and maintenance of the Current Contract including the amount of enrollment activity required, and the amount of service required by the Current Contract owner; (b) Current Contract owner, TPA or agent involvement in conducting ongoing enrollment of subsequently eligible Participants; (c) the expected level of commission Travelers may pay to the TPA or agent for distribution expenses; and (d) any other factors which Travelers anticipates will increase or decrease the sales-related expenses associated with the sale of the Current Contract.

14. To compensate Travelers for assuming certain mortality and expense risks, Travelers will deduct a mortality and expense risk charge equal, on an annual basis, to 1.20% (approximately 0.90% for mortality risk and 0.30% for expense risk) of the average daily net assets allocated to each underlying fund.

15. The mortality and expense risk charge is subject to negotiation. In determining the level of the mortality and expense risk charge, Travelers will consider the size of the plan, the number of employees, plan participants, and the demographics of the participants which may reduce mortality and expense risks of the plan. Once established, this charge cannot be increased during the life of the Current Contract.

16. Travelers assumes certain mortality risks by its contractual obligation to continue to make annuity payments for the life of the annuitant under annuity obligations that involve life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under the Current Contracts. This relieves the annuitant from the risk of outliving the amounts accumulated for retirement. Applicants state that these amounts are guaranteed for the life of the Current Contracts. Travelers assumes additional mortality and certain expense risks under the Current

Contracts by its contractual obligation to pay a death benefit in a lump sum (or in the form of an annuity option) upon the death of the annuitant or Current Contract owner prior to the maturity of the Current Contract.

17. Travelers assumes an additional expense risk because the maximum administrative charges may be insufficient to cover actual administrative expenses. These include the costs and expenses of: (a) processing purchase payments, death claims, annuity payments, surrenders and transfers; (b) periodic and other reports; (c) providing on-line information about the Current Contracts; (d) calculating mortality and expense risk charges; (e) preparing voting materials and tax reports; (f) updating registration statements for the Current Contracts; and (g) actuarial and other expenses.

18. If the mortality and expense risk charge and the administrative expense charges are insufficient to cover the expenses and costs assumed, the loss will be borne by Travelers. Conversely, if the amount deducted for the mortality and expense risk proves more than sufficient, the excess will represent profit to Travelers. Travelers does not expect to profit from administrative expense charges deducted from the Account under the Current Contracts; Travelers does expect to profit from the mortality and expense risk charge. Any profit realized from this charge will be available to Travelers for any proper corporate purpose, including, among other things, payment of distribution expenses.

19. Certain state and local governments impose premium taxes. Such taxes currently range from 0.5% to 5.0% and depend on the state of the Current Contract owner's residence or the state in which the Current Contract was sold. A deduction for premium taxes may be made when a Current Contract is purchased, when a Current Contract is surrendered, when retirement payments begin, or upon payment of a death benefit.

20. Prior to the maturity date, all or any part of the Current Contract value may be reallocated among the underlying funds without fee, penalty or charge. Applicants state that there currently are no restrictions on the frequently of transfers, but Travelers reserves the right to limit transfers to one in any six-month period.

Applicant's Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales load, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants request an order under Section 6(c) exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Account or Other Account that issue the Contracts. Applicants also request that such relief extend to any Future Underwriter.

4. Applicants submit that the request for future relief is consistent with the standards set forth in Section 6(c) of the 1940 Act. Such future relief will promote competitiveness in the variable annuity market by eliminating the need for Travelers to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in repeatedly having to seek exemptive relief would impair Travelers' ability effectively to take advantage of business opportunities as these opportunities arise. If Travelers were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby. Rather, Applicants asserts, investors may be disadvantaged as a result of Travelers; increased overhead expenses.

5. Applicants represent that even the maximum level of the mortality and expense risk charge under the Contracts is reasonable in relation to the risks assumed by Travelers under the Contracts and is within the range of industry practice for comparable variable annuity contracts. Applicants state that Travelers has reviewed publicly-available information about other annuity products, taking into consideration such factors as: estimated costs, now and in the future; guaranteed minimum death benefits; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability of the Contract for use in connection with qualified and nonqualified plans. Applicants state that Travelers will maintain at its principal office, and make available on request of the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the; methodology used in, and the results of, its comparative review.

6. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of the profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the cost relating to distribution of the Contracts.

7. Notwithstanding the foregoing, Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements used in connection with the Contracts will benefit the Account, Other Accounts, and owners of the Contracts. The basis for such conclusion is set forth in a memorandum that will be maintained by Travelers at is principal officer and will be available to the Commission or its staff upon request.

8. Travelers represents that the Account and Other Accounts will invest only in underlying mutual funds which, in the event they should adopt any plan pursuant to Rule 12b–1 under the 1940 Act to finance distribution expenses, would have such a plan formulated and approved by a board of directors, a majority of the members of which are not "interested person" of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit that, for the reasons stated in the application, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22719 Filed 9–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37626; File No. SR–MSRB–96–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Telemarketing Rules

August 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 30, 1996, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change relating to telemarketing rules. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

Rule G–39, Telemarketing

No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall:

(a) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of municipal securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or

(b) make an outbound telephone call to any person for the purpose of soliciting the purchase of municipal securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

(i) the identity of the caller and the firm;

(ii) the telephone number or address at which the caller may be contacted; and

(iii) that the purpose of the call is to solicit the purchase of municipal securities or related services.

(c) The prohibitions of paragraphs (a) and (b) shall not apply to telephone calls by any person associated with a broker, dealer, or municipal securities dealer, or another associated person acting at the direction of such person for the purpose of maintaining and servicing the accounts of existing customers of the broker, dealer or municipal securities dealer under the control of or assigned to such associated person:

(i) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit, was under the control of or assigned to, such associated person;

(ii) to an existing customer who previously has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months, or

(iii) to a broker, dealer or municipal securities dealer.

For the purposes of paragraph (c), the term "existing customer" means a customer for who the broker, dealer or municipal securities dealer, or a clearing broker or dealer on behalf of such broker, dealer or municipal securities dealer, carries an account.

Rule G–21. Advertising

(a) Definition of "Advertisement." For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or designed for use in the public, *including electronic,* media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, *telemarketing script* or reprint or excerpt of the forgoing. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by [municipal securities] brokers, *dealers* or municipal securities dealers.

(b)–(e) No change.

Rule G–8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xviii) No change.

(xix) Telemarketing Requirements.

(A) Each broker, dealer and municipal securities dealer shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such broker, dealer or municipal securities dealer or its associated persons.

(B) No broker, dealer or municipal securities dealer or person associated with such broker, dealer or municipal securities dealer shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument.

(b)–(e) No change.

(f) Compliance with Rule 17a–3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a–3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); paragraph (a)(xi); paragraph (a)(xii); paragraph (a)(xiii); paragraph (a)(xiv); paragraph (a)(xv); paragraph (a)(xvi); [and] paragraph (a)(xviii); *and paragraph (a)(xix)* shall in any event be maintained.

Rule G–9. Preservation of Records

(a) No change.

(b) Records to be Preserved for Three Years. Every [municipal securities] broker, *dealer* and municipal securities dealer shall preserve the following records for a period of not less than three years:

(i)–(ix) No change.

(x) all records of deliveries of rule G–32 disclosures required to be retained as described in rule G–8(a)(xiii); [and]

(xi) the records to be maintained pursuant to rule G–8(a)(xv); *(xii) the authorization required by rule G–8(a)(xix)(B); and*

[1] 15 U.S.C. § 78s(b)(1).

(xiii) each advertisement from the date of each use.

(c)–(g) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction and Background

Under the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), which became law in August 1994, the Federal Trade Commission adopted detailed regulations ("FTC rules") to prohibit deceptive and abusive telemarketing acts and practices that became effective on December 31, 1995. The FTC rules, among other things, (i) require the maintenance of "do-not-call" lists and procedures, (ii) prohibit abusive, annoying, or harassing telemarketing calls, (iii) prohibit abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a telemarketer to identify himself, the company he works for, and the purpose of the call, and (v) require express written authorization or other verifiable authorization from the customer before use of negotiable instruments called "demand drafts." [2]

While the FCC rules are applicable to brokers, dealers and municipal securities dealers that engage in telephone solicitation to market their products and services, those regulations cannot be enforced by either the SEC or the securities self-regulatory organizations ("SROs"). The FTC rules expressly do not apply to brokers, dealers, and other securities industry professionals. Under the Telemarketing Act, the SEC is required either to promulgate or to require the SROs to promulgate rules substantially similar to the FTC rules, unless the SEC determines either that such rules are not necessary or appropriate for the protection of investors or the maintenance of fair and orderly markets or that existing federal securities laws or SEC rules already provide for such protection.[3] The staff of the SEC has advised the MSRB that it believes that additional rulemaking is necessary to satisfy the requirements of the Telemarketing Act. The Board intends to implement requirement (ii) referenced above by issuing an interpretation that such conduct is violative of existing rules and implement requirements (i) and (iii)–(v) by amending its rules.[4]

Description of Proposed Amendments

Do Not Call List

As noted above, the Commission is required by the Telemarketing Act to promulgate, or require the SROs to promulgate, rules substantially similar to the FTC rules, unless existing rules provide substantially similar protection in securities transactions, or such additional rules otherwise are not necessary or appropriate. Brokers, dealers and municipal securities dealers who engage in telephone solicitation to market their products and services are subject to the requirements of the rules of the FCC relating to telemarketing practices and the rights of telephone consumers and shall refer to FCC rules for specific restrictions on telephone solicitations. This includes, but is not limited to, the requirements to make and maintain a list of persons who do not want to receive telephone solicitations. The proposed rule change amends rule G–8, on books and records, so that each broker, dealer and municipal securities dealer that engages in telephone solicitation to market its products and services is required to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from a broker, dealer or municipal securities dealer or a person associated with a broker, dealer or municipal securities dealer.

Time Limitations and Disclosure

The proposed rule change adds proposed rule G–39, on telemarketing. Paragraph (a) prohibits a broker, dealer or municipal securities dealer or a person associated with a broker, dealer or municipal securities dealer from making outbound telephone calls to a member of the public's residence for the purpose of soliciting the purchase of municipal securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person. Paragraph (b) requires such broker, dealer or municipal securities dealer or a person associated with a broker, dealer or municipal securities dealer to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of municipal securities or related services.

Paragraph (c) to proposed rule G–39 creates exemptions from the time-of-day and disclosure requirements of paragraphs (a) and (b) for telephone calls by associated persons, or another

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[2] Pursuant to the Telephone Consumer Protection Act, the Federal Communications Commission ("FCC") adopted rules in December 1992 that, among other things, (1) prohibit cold-calls to residential telephone customers before 8 a.m. or after 9 p.m. (local time at the called party's location) and (2) require persons or entities engaging in cold-calling to institute procedures for maintaining a "do-not-call" list that includes, at a minimum, (a) a written policy for maintaining the do-not-call list, (b) training personnel in the existence and the use thereof, (c) recording a consumer's name and telephone number on the do-not-call list at the time the request not to receive calls is made, and retaining such information on the do-not-call list for a period of at least ten years, and (d) requiring telephone solicitors to provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made and a telephone number or address at which such person or entity may be contacted. 57 FR 48333 (codified at 47 CFR § 64.1200). With certain limited exceptions, the FCC rules apply to all residential telephone solicitations, including those relating to securities transactions. *Id.* The term "telephone solicitation" refers to the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, other than with the called person's express invitation or permission, or to a person with whom the caller has an established business relationship, or by tax-exempt non-profit organization. *Id.*

[3] Specifically, Section 3(d)(1)(B) of the Telemarketing Act provides that the Commission is not required to promulgate a rule under Section 3(d)(1)(A) if it determines that (i) federal securities laws or rules adopted by the Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in Section 3(d)(2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under Section 3(a) or (ii) a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets, 15 U.S.C. § 6102(d)(1)(B).

[4] The Board intends to implement the requirement in (ii) referenced above by issuing an interpretation that abusive telemarketing calls are inconsistent with just and equitable principles of trade. At its July 1996 meeting, the Board authorized an interpretive notice of rule G–17, on fair dealing, to clarify that the use of threats, intimidation, or profane or obscene language, and calling a person repeatedly or continuously, with intent to annoy, abuse, or harass the called party, is inconsistent with just and equitable principles of trade. The Board intends to publish this notice in the near future.

associated person acting at the direction of such associated persons, for purposes of maintaining and servicing existing customers assigned to or under the control of such associated persons, to certain categories of "existing customers." Paragraph (c) defines "existing customer" as a customer for whom the broker, dealer or municipal securities dealer, or a clearing broker or dealer on behalf of such broker, dealer or municipal securities dealer, carries an account. Proposed subparagraph (c)(i) exempts such calls to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account under the control of or assigned to such associated person at the time of the transaction or deposit. Proposed subparagraph (c)(ii) exempts such calls to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into an account that was under the control of or assigned to such associated person at the time of the transaction or deposit, as long as such customer's account has earned interest or dividend income during the preceding twelve months. Proposed subparagraph (c)(iii) exempts telephone calls to a broker, dealer or municipal securities dealer.

Subparagraphs (c) (i) and (ii) together exclude only some calls to existing customers from the time-of-day and disclosure requirements of the proposed rule. An associated person, or another associated person acting at the direction of such associated person, may contact a customer without complying with the requirements of the rule if the customer has effected a transaction or made a deposit during the past year into an account controlled by such associated person, or if the customer has effected a transaction or made a deposit at any time into an account controlled by such associated person and the customer's account has earned interest or dividend income during the past year. Therefore, calls to certain older or inactive accounts that fall outside these parameters would not be covered by the exemption.

The Telemarketing Act specifically requires the SEC to establish rules or require the SROs to promulgate telemarketing rules consistent with the legislation, unless the SEC determines that the federal securities laws or SEC rules provide protection from abusive telemarketing similar to the rules adopted by the FTC or that a rule by the SEC is not necessary in the public interest. The Board believes that it is both appropriate and necessary to create an exemption for calls to a class of customers for whom personal and timely contact with a dealer is important, particularly in the emerging environment of 24-hour trading and trading in multiple time zones across the United States where prompt contact with customers to respond to market developments may be necessary. Specifically, the Board believes that the failure to create such an exemption would be harmful for those securities customers for whom the need exists to be called in a timely manner on certain occasions, and thus inconsistent with the mandate of the Telemarketing Act. The Board, however, also believes that an exemption for existing customers should not extend to all customers, and should not cover calls to those customers whose accounts do not meet certain minimum levels of activity.

Demand Draft Authorization and Recordkeeping

The proposed rule change amends rule G–8, on books and records, to prohibit a member from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account ("demand draft") without that person's express written authorization, which may include the customer's signature on the instrument. The proposed rule change to rule G–9, on preservation of records, requires the retention of such authorization for a period of three years. A "demand draft" is a method for obtaining funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account identification information that permits the payee to create a piece of paper that will be processed like a check, including the words "signature on file" or "signature pre-approved" in the location where the customer's signature normally appears. Most potential payees obtain a written authorization for the use of such a demand draft, but the FTC found that in certain cases only oral authorization was provided by the customer. The new language in rule G–8(a)(xix) is drawn substantially from the FTC rule, with the difference that the proposed rule change required that the customer provide written authorization of a negotiable instrument, in comparison to the FTC rule which would permit both written and oral authorization.[5] The provision in the proposed rule for demand drafts is only intended to reflect and implement the same requirement as set forth in the FTC rule.

Telemarketing Scripts

The FTC rules contain a recordkeeping requirement that all substantially different telemarketing scripts be retained. The Board is amending its definition of "advertisement," in rule G–21, to include "telemarketing scripts" within that definition. Thus, the associated record retention requirement for advertisements contained in the proposed change to rule G–9(b)(xiii), on record retention, will require dealers to retain telemarketing scripts for three years.

The Board is also amending the definition of "advertisement" to include "electronic" messages sent via computer. The inclusion of the term "electronic" within the definition of "advertisement" is intended to apply to communication available to all network subscribers including items displayed over network bulletin boards, and it is intended to apply to messages sent directly to individuals or targeted groups.

2. Statutory Basis

The Board believes the proposed change is consistent with Section 15B(b)(2)(C) of Act,[6] which provides that the Board's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or

[5] § 310.3 of FTC Rules.

[6] 15 U.S.C. 78o–4.

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments particularly are requested as to whether the proposed rule change satisfies the requirements of the Telemarketing Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–06 and should be submitted by September 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22814 Filed 9–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37625; File Nos. SR–Philadep–96–14]

Self-Regulatory Organization; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Partial Permanent Approval and Accelerated Partial Temporary Approval of a Proposed Rule Change Seeking Permanent Approval of the Inter-Depository Delivery Procedures and the Participants Fund Formulas

August 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 26, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–Philadep–96–14) as described in Items I and II below, which items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated permanent approval of the portion of the proposed rule change relating to inter-depository delivery procedures and to grant accelerated temporary approval through December 31, 1996, of the portion of the proposed rule change relating to Philadep's participants fund formulas.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of Philadep's inter-depository delivery procedures and of Philadep's participants fund formulas. The Commission previously granted partial temporary approval to a proposed rule change establishing Philadep's procedures for inter-depository deliveries and Philadep's participants fund formulas as part of the conversion of Philadep's money settlement system from a next-day funds settlement ("NDFS") to a same-day funds settlement ("SDFS") system.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 22, 1996, Philadep converted its processing environment from an NDSF system to an SDFS system. In an effort to reduce risk in an SDFS settlement environment, the Stock Clearing Corporation of Philadelphia ("SCCP") and Philadep implemented a new system and new controls with enhanced processing capabilities. The Commission approved Philadep's SDFS system on a permanent basis for all aspects of the filing except the participants fund formulas and the inter-depository delivery procedures.[4]

1. Inter-Depository Delivery Procedures

When processing a participant's delivery to The Depository Trust Company ("DTC"), Philadep employs an immediate update technique whereby a delivering participant's security position, collateral, and settlement account are immediately updated if the delivering participant has sufficient securities and collateral to allow the delivery to be completed. The delivering participant's position is reduced by the quantity of securities delivered, its settlement account is credited for the settlement value of the transaction, and its collateral monitor is increased by the settlement credit received and reduced by the collateral value of the securities delivered (provided the securities being delivered are part of the participant's collateral position).

Once a delivery satisfies Philadep's risk management controls and completes at Philadep (*e.g.*, the participant has sufficient securities to make the delivery and the participant's collateral monitor will not become negative because of the delivery), Philadep send the delivery to DTC where it is subject to DTC's internal risk management controls. In certain instances, DTC's internal risk management controls will prevent a delivery from completing (*i.e.*, the receiving participant does not have sufficient collateral or the receipt would

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36876 (February 22, 1996), 61 FR 7841 [SR–Philadep–95–08] (order granting partial temporary approval and partial permanent approval of a proposed rule change).

[3] The Commission has modified the text of the summaries submitted by Philadep.

[4] *Supra* note 2.

cause the participant to exceed its net debit cap) and will cause the delivery to pend in DTC's system. At the end of each processing day, DTC returns to Philadep delivery orders and payment orders that fail to successfully complete in DTC's system, and Philadep reverses the deliveries to the original delivering participants. Philadep's reversals are not subject to Receiver-Authorized Delivery ("RAD") processing[5] or other risk management controls (*i.e.*, net debit cap and collateral monitor).

2. Participants Fund

Philadep Rule 4, governing the participants fund and the procedures regarding the participants fund formulas currently provide for an all cash participants fund. The all cash requirement applies to both the required deposit and any additional or voluntary deposits made by participants. Pursuant to Rule 4 and Philadep's procedures, Philadep calculates participants' required cash deposit pursuant to the following formulas.

(a) Inactive Accounts: $5,000.00[6]

(b) Specialized Services: (maximum $50,000 required with $100 or greater in average monthly billings for either Deposit or Transfer activity)

—Deposit Activity: $25,000.00 plus

—Transfer Activity: $25,000.00

(c) Participants not doing Specialized Service activity with service fees of $100 or greater in average monthly billings. The greater of either:

(1) $25,000, or;

(2) 1% of the average of the three highest net debits over the past three months (rounded to the next $5,000 increment).

Philadep recalculates each participant's deposit requirement at the end of each month based on a participant's activity over the previous three months. Philadep notifies its participants of any required deposit increases and the amount of such additional deposit within ten business days of the end of the month. Participants whose deposit requirements have decreased are notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund.

During the pendency of the temporary approval period, Philadep has more fully considered the risk profile of Philadep and its participants in an SDFS environment, including the adequacy of the participants fund formulas and the inter-depository delivery procedures. Philadep has provided material to the Commission to demonstrate the effectiveness of the risk management controls of the SDFS system in monitoring and reducing risk. The temporary approval period for the participants fund formulas and the inter-depository delivery procedures expires on August 31, 1996. Therefore, Philadep requests that the Commission permanently approve Philadep's SDFS program in its entirety.

Philadep believes the proposed rule change is consistent with Section 17A of the Act of the rules and regulations thereunder because the rule proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities and funds in its custody or control or for which Philadep is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that Philadep's proposed procedures relating to inter-depository deliveries are consistent with Philadep's obligations under Section 17A(b)(3)(F) to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions because the proposed rule change establishes procedures for the processing of inter-depository deliveries between Philadep and DTC.

Because the Commission was concerned that the inter-depository delivery procedures could create the situation where an inter-depository reversal arising from an uncompleted delivery at DTC would cause a Philadep participant to violate its net debit cap at Philadep near the end of the day, the Commission previously approved Philadep's inter-depository delivery procedures on a temporary basis in order that the procedures and their effects could be carefully monitored and modified if needed before they were permanently approved. Philadep has reported that during the temporary approval period it did not experience any inter-depository reversals from DTC that caused a Philadep participant to violate its net debit cap. Additionally, during the month of July, Philadep experienced only one end-of-day inter-depository reversal. Therefore, the Commission is permanently approving Philadep's inter-depository delivery procedures. However, the Commission continues to encourage Philadep to examine and to consider future enhancements to the interface to provide a mechanism through which Philadep participants can receive real-time notification of transactions pending at DTC.[8] In this regard, Philadep must report to the Commission on a quarterly basis the number and extent of inter-depository reversals that caused Philadep participants to violate their net debit caps by $1 million or more.

At this time, the Commission believes that Philadep's proposed rule change relating to Philadep's participants fund formulas is consistent with Philadep's obligations under Section 17A(b)(3)(F) to assure the safeguarding of securities and funds in its custody or control because Philadep's participants fund formulas, in conjunction with Philadep's other risk management procedures (*i.e.*, net debit caps and collateral monitors), provide certain protections for Philadep and its participants from financial loss associated with member defaults and insolvencies. However, the Commission continues to have concerns about the adequacy of Philadep's participants fund formulas in providing a sufficient source of cash liquidity and the formulas' conformity with the standards set forth by the Division.[9] The

[5] RAD allows a participant to review and either approve or cancel incoming deliveries before they are processed in Philadep's system.

[6] Securities Exchange Release No. 37554 (August 9, 1996), 61 FR 42929 [File No SR–Philadep–96–07] (order granting temporary approval of proposed rule change to establish a separate participant category for inactive accounts through December 31, 1996).

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] Currently, a Philadep clerk will monitor transactions that are pending at DTC during the day and will inform Philadep participants of such pending transactions.

[9] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order publishing standards to be used by the Division in reviewing the grant of full registration of clearing agencies).

Commission believes clearing agencies must establish an appropriate level of clearing fund contributions based on, among other things, its assessment of the risks to which it is subject. Under the proposed rule change, Philadep's participants fund formulas generally do not take into consideration to a participant's level of depositor activity. Instead, the formulas are based on the type of depository services used by the participant. As such, the Commission has concerns about whether the size of the participants fund will be sufficient. For these reasons, the Commission is temporarily approving the portion of the proposed rule change relating to the participants fund formulas through December 31, 1996. During the period of temporary approval, Philadep and the Commission will continue to monitor and to analyze the adequacy of Philadep's participants fund formulas.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposed rule change will allow Philadep participants to continue to utilize the interface between Philadep and DTC. Accelerated approval of the proposal also will allow Philadep to continue to apply its participants fund formulas through December 31, 1996.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–96–14 and should be submitted by September 27, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Philadep–96–14) be, and hereby is, permanently approved for those sections of the proposed rule change relating to the inter-depository delivery procedures and temporarily approved through December 31, 1996, for those sections of the proposed rule change relating to Philadep's participants fund formulas.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22721 Filed 9–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37623; File Nos. SR–SCCP–96–07]

Self-Regulatory Organization; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Seeking Permanent Approval of the Participants Fund Formulas

August 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 20, 1996, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–SCCP–96–07) as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through December 31, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of SCCP's participants fund formulas. The Commission previously granted partial temporary approval to a proposed rule change establishing SCCP's participants fund formulas as part of the conversion of SCCP's money settlement system from a next-day funds settlement ("NDFS") to a same-day funds settlement ("SDFS") system.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 22, 1996, SCCP converted its processing environment from an NDFS system to an SDFS system. In an effort to reduce risk in an SDFS settlement environment, SCCP and the Philadelphia Depository Trust Company ("Philadep") implemented a new system and new controls with enhanced processing capabilities. The Commission approved SCCP's SDFS system on a permanent basis for all aspects of the filling except the participants fund formulas.[4]

SCCP Rule 4, governing SCCP's participants fund, and the procedures regarding the participants fund formulas were amended to provide for an all cash participants fund. The all cash requirement applies to both the required deposit and any additional or voluntary deposits made by participants.

Particpants that choose to make voluntary deposits in most situations are able to increase their level of activity at SCCP and receive interest rebates from SCCP for deposits in excess of $50,000.

Pursuant to Rule 4 and SCCP's procedures, SCCP calculates participants' required cash deposits pursuant to the following formulas:

(a) Inactive Account: $5,000.[5]

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[10] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36875 (February 22, 1996), 61 FR 7846 (File No. SR–SCCP–95–06) (order granting partial temporary approval and partial permanent approval of a proposed rule change to convert the settlement system to a same-day funds settlement system).

[3] The Commission has modified the text of the summaries submitted by SCCP.

[4] *Supra* note 2.

[5] Securities Exchange Release No. 37554 (August 9, 1996), 61 FR 42929 (File No. SR–SCCP–96–03) (order granting temporary approval of a proposed rule change to establish a separate participant

Continued

(b) Full Service ("CNS") Account—The contribution of a CNS Participant is based upon the larger of: (1) the participant's monthly average of trading activity during the preceding three months, $1,000 for every twenty-five trading units of one hundred shares; or (2) the participant's aggregate dollar amount of all long trades at their execution price for the prior three months multiplied by two percent. The required contributions are rounded upward to $5,000 increments, and the average is a rolling average.

(c) Regional Interface Operations ("RIO") Account—The contribution of a RIO Participant is based on the participant's monthly average of trading activity during the preceding three months, $1,000 for every twenty-five trading units of one hundred shares (with a $10,000 minimum and a $75,000 maximum contribution). The required contributions are rounded upward to $5,000 increments. RIO is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP.

(d) Layoff Account—The contribution of a Layoff Participant is set at a uniform rate of $25,000. A Layoff Participant is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP for trades not executed on the Philadelphia Stock Exchange.

(e) Specialist Margin Account—The contributions of a Specialist Margin Participant is set at a uniform rate of $35,000.

(f) Non-Specialist Margin Account—The contribution of a Non-Specialist Margin Participant is set at a uniform rate of $35,000.

SCCP recalculates each participants's participants fund deposit requirement at the end of each month based on the previous three months prior to the most recent month. SCCP notifies its participants of any required deposit increases and the amount of such additional deposit within ten business days of the end of the month. Participants whose deposit requirements decreased are notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund.

During the pendency of the temporary approval period, SCCP has more fully considered the adequacy of the participants fund formulas and the risk profile of SCCP and its participants in an SDFS environment. SCCP has provided material to the Commission to demonstrate the effectiveness of the risk management controls of the SDFS system in monitoring and reducing risk. The temporary approval period for the participants fund formulas expires on August 31, 1996. Therefore, SCCP requests that the Commission permanently approve SCCP's SDFS program in its entirety.

category for inactive accounts through December 31, 1996).

SCCP believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the rule proposal assures the safeguarding of securities and funds in its custody or control or for which SCCP is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been received. SCCP will notify the Commission of any written comments received by SCCP

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17a(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. At this time, the Commission believes that SCCP's proposed rule change relating to the participants fund formulas is consistent with SCCP's obligations under Section 17A(b)(3)(F) to assure the safeguarding of securities and funds in its custody or control because SCCP's participants fund formulas, in conjunction with SCCP's other sources of liquidity (*i.e.*, lines of credit), provide certain protections for SCCP and its participants from financial loss associated with member defaults and insolvencies.

However, the Commission continues to have concerns about the adequacy of SCCP's participants fund formulas in providing a sufficient source of cash liquidity and the formulas' conformity with the standards set forth by the Division of Market Regulation ("Division").[7] The Commission believes that clearing agencies operating SDFS systems must have sufficient liquidity from a combination of cash and lines of credit to ensure that settlement occurs at the end of the business day even if a participant fails to settle with the clearing agency or if the clearing agency experiences a systems problem. The Commission further believes that a clearing agency must have immediate access to an amount of cash which will enable the clearing agency to fund settlement for most participant failures or systems problems without having to immediately draw on its lines of credit (*i.e.*, a clearing agency's lines of credit should be its secondary source of liquidity and not its primary source). The Commission is concerned with the level of cash provided by SCCP's formulas and whether that level of cash liquidity is sufficient given the demand for liquidity under an SDFS environment and SCCP's use of the participants fund to finance specialist purchases.[8] For these reasons, the Commission is approving the proposed rule change through December 31, 1996. During the period of temporary approval, the Commission and SCCP will continue to monitor and to analyze the adequacy of SCCP's participants fund formulas.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because the proposed rule change will allow SCCP to continue to apply its participants fund formulas when the current temporary approval expires on August 31, 1996.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order publishing standards to be used by the Division in reviewing the grant of full registration of clearing agencies).

[8] For a complete description of SCCP's financing program, refer to Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (order approving full registration of SCCP, *et al.*).

filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–96–07 and should be submitted by September 27, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–96–07) be, and hereby is, temporarily approved through December 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22723 Filed 9–5–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2436]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Friday, October 4, 1996 at 11:00 a.m. at the Blair House. The meeting will last until approximately 12:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting April 1996 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 1996–September 1, 1996. Public access to the Blair House is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Friday, September 27, 1996, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: August 24, 1996.

Gail F. Serfaty,

Vice Chairman, Fine Arts Committee.

[FR Doc. 96–22821 Filed 9–5–96; 8:45 am]

BILLING CODE 4710–38–M

[Public Notice No. 2435]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea Working Group on Dangerous Goods, Solid Cargoes and Containers; Notice of Meeting

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on September 17, 1996, in Room 6332, at the Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590–0001. The purpose of the meeting is to discuss the outcome of the First Session of the DSC Subcommittee of the International Maritime Organization (IMO) which was held February 5–9, 1996, at the IMO Headquarters in London. In addition, initial plans and preparations for the Second Session (DSC2) and other topics of interest, will be addressed.

The agenda items of particular interest are:

a. Harmonization of the International Maritime Dangerous Goods (IMDG) Code with the UN Recommendations on the Transport of Dangerous Goods.

b. Amendment 28–96 of the IMDG Code.

c. Implementation of the IMDG Code.

d. Development of new glossary and illustrations of packagings for Annex I to the IMDG Code.

e. Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods (EMS) and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

f. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended, and amendments to the IMDG Code to cover marine pollution aspects.

g. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

h. Evaluation of properties of solid bulk cargoes.

i. Amendments to the Code of Safe Practice for Solid for Solid Bulk Cargoes (BC Code).

j. Loading and unloading of bulk cargoes.

k. Development of measures complementary to the Irradiated Nuclear Fuel (INF) Code.

l. Stowage and securing of cargoes on offshore supply vessels.

m. Entry into enclosed spaces.

n. Amendments to SOLAS chapters VI and VII.

o. Guidelines for the development of shipboard emergency plans for marine pollutants.

p. Water level alarms in cargo holds.

q. Cargo securing manual.

r. Revision of the Recommendations on the Safe Use of Pesticides in Ships.

s. Offshore tank containers.

t. Ships' stores of a hazardous nature.

u. Review of open-top containership provisional requirements.

v. Risk analysis of on-deck stowage of dangerous goods and marine pollutants and recommendations for the revision of relevant IMDG Code stowage provisions.

w. Revision of the format of the IMDG Code.

x. Review of reporting requirements in IMO instruments.

y. Relations with other organizations.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, S.W., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: August 23, 1996.

Russell A. LaMantia,

Chairman Shipping Coordinating Committee.

[FR Doc. 96–22822 Filed 9–5–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Special Committee 182; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource (ACR)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 182 meeting to be held October 16–18, 1996, starting at 9:00, a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes from the Previous Meeting; (4) Reports from Related Industry meetings; (5) Review of MOPS Draft Version 0.3; (6) Discussion Paper, Level of Specification Detail in the ACR MOPS; (7) New Material for Draft Version 0.4 (Failure Modes and Hazard Analysis, Platform Scheduler Service, Classes of ACR Service); (8) Working Group Sessions (ACR Properties, ACR Services, ACR Capacity/Performance); (9) Working Group Reports; (10) Other Business; (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC,

[9] 17 CFR 200.30–3(a)(12) (1996).

20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 30, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–22834 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held November 12–14, 1996, starting at 9:00 a.m. on November 12. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: Tuesday, November 12: (1) Plenary Convenes at 9:00 a.m. for 30 minutes; (2) Introductory Remarks; (3) Review and Approval of the Agenda; (4) Working Group (WG)–2, VHF Data Radio Signal-in-Space MASPS; Report on ICAO Activity; and Continue Refinement of Upper Layers. Wednesday, November 13: (5) WG–2 Continues; (6) WG–3, Review of Activities in VHF Digital Radio MOPS Document Activities. Thursday, November 14: (7) Plenary Reconvenes at 9:00 a.m.; (8) Review and Approval of the Minutes of the Previous Meeting; (9) Reports From WG's 2 & 3 Activities; (10) Reports on CSMA and VDL Validation and FAA Vocoder Activity; (11) Review Issues List and Address Future Work; (12) Other Business; (13) Date and Place of Next Meeting.

Attendance is open to the interested public limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 29, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–22835 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#96–02–U–00–GCC) To Use the Revenue From a Passenger Facility Charge (PFC) at Gillette-Campbell County Airport, Submitted by the Gillette-Campbell County Airport, Gillette, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Gillette-Campbell County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations 914 CFR 158).

DATES: Comments must be received on or before October 7, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 5440 Roslyn, Suite 300, Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jay Lundell, Airport Manager, at the following address: Gillette-Campbell County Airport, 2000 Airport Road #28, Gillette, WY 82716.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Gillette-Campbell County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 286–5525, Denver Airports District Office, DEN–ADO; Federal Aviation Administration, 5440 Roslyn, Suite 300, Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–U–00–GCC) to use PFC revenue at Gillette-Campbell County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 28, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Gillette-Campbell County Airport, Gillette, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1996.

Proposed charge expiration date: April 1, 2002.

Total requested for use approval $369,132.00.

Brief description of proposed project: Terminal building; Airport layout plan update; Mandatory airport signage; Taxiway lighting system; and Snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Part 135 on demand air taxi operators. This exemption is consistent with the original Record of Decision issued June 23, 1993.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the appplication, notice and other documents germane to the application in person at the Gillette-Campbell County Airport.

Issued in Renton, Washington on August 28, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–22838 Filed 9–5–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Long Island MacArthur Airport, Islip, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Long Island MacArthur Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 7, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred E. Werner, Airport Manger for the Town of Islip at the following address: 100 Arrival, Ronkonkoma, New York 11779.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Town of Islip under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York, 11530 (Tel 516–227–3803). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Long Island MacArthur Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 20, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Town of Islip was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1996.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2006.

Proposed charge expiration date: September 1, 2006.

Total estimated PFC revenue: $20,818,823.

Brief description of proposed projects:

—Overlay and Repair Runway 33L
—Terminal Roadway Realignment
—Purchase Two Snow Blowers
—Reimbursement for the Purchase of One Snow Blower
—Feasibility Study for an ARFF Training Facility
—Expansion of the Snow Removal Storage Building
—Obstruction Removal
—Asphalt Transient Apron
—Maintenance Vehicle Storage Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator Filing FAA form 1800–31

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port Authority of New York & New Jersey.

Issued in Jamaica, New York state on August 30, 1996.

Thomas Felix,
Acting Manager, Planning & Programming Branch.

[FR Doc. 96–22832 Filed 9–5–96; 8:45 am]
BILLING CODE 4910–13–M

Surface Transportation Board[1]

[STB Finance Docket No. 33017]

Chicago Rail Link, L.L.C.—Corporate Family Transaction Exemption—Chicago, West Pullman & Southern Railroad, L.L.C.

Chicago Rail Link, L.L.C., (CRL), and Chicago, West Pullman & Southern Railroad, L.L.C. (CWP), both Class III railroads, have jointly filed a verified notice of exemption. The exempt transaction is a merger of CWP into CRL.[2]

The transaction was expected to be consummated on or after the August 15, 1996 effective date of the exemption.

The proposed merger will enhance operating economies, improve service, simplify the corporate structure, and improve the financial viability of the surviving corporation by eliminating costs associated with separate accounting, tax, bookkeeping and reporting functions.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33017, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Decided: August 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 96–22782 Filed 9–5–96; 8:45 am]
BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] CRL and CWP are wholly owned subsidiaries of OmniTRAX, Inc., a noncarrier holding company.

[STB Finance Docket No. 33043]

CSX Transportation, Inc.—Trackage Rights Exemption—Paducah & Louisville Railway, Inc.

Paducah & Louisville Railway, Inc. (P&L), a Class III railroad, has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), a Class I railroad, over its trackage beginning west of Madisonville, KY, at P&L milepost 146, and extending eastwardly to just east of Central City, KY, at P&L milepost 122, a total distance of approximately 24 miles of rail line in Hopkins and Muhlenberg Counties, KY.

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

The transaction is scheduled to be consummated on September 2, 1996.

The trackage rights will enable CSXT to rationalize excess facilities in its underutilized 18-mile line of railroad between Madisonville and Moorman, KY, which runs north of and parallel to the P&L line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33043, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Charles M. Rosenberger, Esq., CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Decided: August 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22783 Filed 9–5–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for 941 TeleFile

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning 941 TeleFile, Employer's Quarterly Federal Tax Return.

DATES: Written comments should be received on or before November 5, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Quarterly Federal Tax Return

OMB Number: To be assigned later.

Form Number: 941 TeleFile.

Abstract: 941 TeleFile is used by employers to report by telephone payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. It may be used instead of filing Form 941. In 1997, 941 TeleFile will be available on a test basis for a limited number of taxpayers.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 68,480.

Estimated Time Per Respondent: 17 hr., 22 min.

Estimated Total Annual Burden Hours: 1,188,813.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 3, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22829 Filed 9–5–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 4361

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4361, Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

DATES: Written comments should be received on or before November 5, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

OMB Number: 1545–0168.

Form Number: Form 4361.

Abstract: Form 4361 is used by ministers, members of religious orders, or Christian Science Practitioners to file for an exemption from self-employment tax on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 10,270.

Estimated Time Per Respondent: 59 min.

Estimated Total Annual Burden Hours: 10,065.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22830 Filed 9–5–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 8621

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

DATES: Written comments should be received on or before November 5, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

OMB Number: 1545–1002.

Form Number: Form 8621.

Abstract: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 19 hr., 43 min.

Estimated Total Annual Burden Hours: 39,420.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22831 Filed 9–5–96; 8:45 am]

BILLING CODE 4830–01–U

[Delegation Order No. 155 (Rev. 4)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order is revised to give authority to sign recommendation letters for nonsuit settlements to the Regional Counsel and District Counsel in the field and to the Deputy Associate Chief Counsel and Assistant Chief Counsel in the National Office. In addition, it has been expanded in scope to cover nonrefund matters. The text of the delegation order appears below.

EFFECTIVE DATE: August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Sara M. Coe, CC:DOM:FS:PROC, Room 4135,

1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–7940 (not a toll-free call).

Recommendation Letters to the Department of Justice Concerning Settlement Offers Covering Persons or Periods Not in Suit

Authority: For matters under their respective jurisdictions, to sign recommendation letters to the Department of Justice concerning Settlement Offers *related* to pending refund cases or any other cases or matters referred to the Department of Justice for prosecution or defense with respect to persons or periods not in suit.

Delegated to: Chief Counsel, Associate Chief Counsel, Deputy Associate Chief Counsel.

Authority: For matters under their respective jurisdictions, to sign recommendation letters concerning Settlement Offers *related* to pending refund cases or any other cases or matters referred to the Department of Justice for prosecution or defense with respect to: (a) periods not in suit ending prior to the date of the resulting settlement agreement; (b) tax consequences for periods not in suit ending after the date of the settlement agreement that necessarily result from the settlement of the periods in suit; (c) issues conceded in full by the taxpayer for periods not in suit ending after the date of the settlement agreement; (d) persons not in suit for the periods described in (a); and (e) persons not in suit for the items described in (b) and (c).

Delegated to: Regional Counsel, District Counsel, Assistant Chief Counsel.

In exercising both of the above authorities, the advice of the Chief of Appeals and/or District Director with jurisdiction over the nonsuit persons or periods should be obtained and considered.

Redelegation: The authority delegated herein may not be redelegated.

Sources of Authority: 26 CFR 301.7122–1, 26 CFR 301.7701–9. To the extent that authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified. This order supersedes Delegation Order No. 155 (Rev. 3), effective October 1, 1991.

Dated: August 15, 1996.

Michael P. Dolan,

Deputy Commissioner.

[FR Doc. 96–22774 Filed 9–5–96; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 29, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Number: 1550–0081.

Form Number: Not Applicable.

Type of Review: Extension of an approved collection.

Title: Release of Unpublished OTS Information.

Description: This rule provides an orderly mechanism for expeditious processing of requests from the public (including litigants in lawsuits where OTS is not a party) for non-public or confidential OTS information (documents and testimony), while preserving OTS' need to maintain the confidentiality of such information.

Respondents: For Profit and Not-for-Profit Organizations and Individuals,

Estimated Number of Respondents: 103.

Estimated Burden Hours Per Response: 5.

Frequency of Response: Once per lawsuit.

Estimated Total Reporting Burden: 2,500.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, N. W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–22715 Filed 9–5–96; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, September 19, 1996; 9:00 a.m.–5:30 p.m.

LOCATION: 1550 M Street, NW., M Street Lobby Conference Room, Washington, DC 20005.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: September Board Meeting; Approval of Minutes of the Seventy-sixth Meeting of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Review of Grants and Fellowships; FY 1997–1998 Budget Review; Other General Issues

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: September 3, 1996.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 96–22881 Filed 9–3–96; 4:25 pm]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on these information collections. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposals for the collection of information should be received by no later than November 5, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collections:

OMB Control Number: None assigned.

Title and Form Number: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

Type of Review: New collection.

Need and Uses: The information is requested under the authority of Title 38 U.S.C., 2303, which authorizes payment to a State of $150 as a plot or internment allowance for the burial of an eligible veteran in a cemetery owed by that State and used solely for the interment of persons eligible for burial in a national cemetery.

Current Actions: Title 38 U.S.C., 2304, requires that applications for payment must be made within 2 years of the burial of the veteran. The use of VA Form 21–530a will allow the State to consolidate applications for submission for payment. This information will reduce the processing time and ensure payment to the State in a more timely manner. VA Form 21–531a will be used to gather information from a State that is seeking payment of benefits for plot-interment allowances. This information is necessary for payment of the allowance.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

OMB Control Number: 2900–0104.

Title and Form Number: Report of Accidental Injury in Support of Claim for Compensation or Benefits, VA Form 21–4176.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used in support of claims for disability benefits based on disability which is the result of an accident. The information given by the veteran is used as a source to gather specific data regarding the accident and to afford the veteran an opportunity to provide information from his or her own knowledge regarding the accident.

Current Actions: The VA gathers the information to comply with Title 38 U.S.C., 105, 1110, 1131, and 1521a, which provide basic requirements for line of duty and misconduct determinations. Benefits may be paid if a disability is incurred in line of duty and is not the result of the veteran's own willful misconduct under 38 CFR 3.301.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,400.

OMB Control Number: 2900–0198.

Title and Form Number: Application for Annual Clothing Allowance, VA Form 21–8678.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to gather the necessary information to determine if the veteran has established entitlement to a clothing allowance payment.

Current Actions: The information is requested under the authority of Title 38 U.S.C., 1162, which provides a clothing allowance to a veteran who has service connected disability that causes him or her to wear or use a prosthetic or orthopedic appliance which tends to wear out or tear clothing. 38 CFR 3.810 grants entitlement to the clothing allowance upon application by the veteran.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,720.

OMB Control Number: 2900–0379.

Title and Form Number: Work-Study Time Record (Student Services), VA Form 22–8690.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information is used to ensure that the amount of benefits payable to the student who is pursuing work-study is correct. Without the information, the VBA would not have a basis upon which to make payment.

Current Actions: The VA has authority to pay work study allowance to veterans, reservists, and qualified dependents under Chapters 30, 32, and 25, Title 38 U.S.C., Chapter 1606, Title 10 U.S.C. Benefits are payable after completion of 50 hours of service after the initial advance payment is made (100 hours). VA Form 22–8690 serves as the report of hours completed.

Affected Public: State, Local or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Annual Burden: 12,975 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 51,900.

OMB Control Number: 2900–0399.

Title and Form Number: Student Beneficiary Report - REPS, VA Form 21–8938.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to verify that an individual who is receiving the REPS (Restored Entitlement Program for Survivors) benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The form is released each March and sent to all student beneficiaries. If the form were not used, payments would continue to be made to ineligible payees and substantial overpayments would result.

Current Actions: The program pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981, or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. Child beneficiaries must be enrolled full-time in an approved post-secondary school.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

OMB Control Number: 2900–0460.

Title and Form Number: Request for Verification of Employment, VA Form 26–8497.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. The VA, however, does not require the exclusive use of VA Form 26–8497 for verification purposes; any comprehensible form of independent verification would be acceptable, provided all information presently shown on VA Form 26–8497 is provided. VA Form 26–8497 is also used in processing direct loan cases, offers on acquired properties, and release of liability/substitution of entitlement cases when needed.

Current Actions: The VA collects data necessary for compliance with the requirements of Title 38 U.S.C. 3710(b)(2) and (3). These requirements prohibit the VA from guarantying or making any loan unless the contemplated terms of payment required in the mortgage, to be

given in part payment of the purchase price or the construction cost, bear a proper relation to the veteran's present and anticipated income and expenses and that the veteran is a satisfactory credit risk.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 58,750 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion

Estimated Number of Respondents: 235,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the formd should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: August 22, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–22749 Filed 9–5–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the National Cemetery System (NCS) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before November 5, 1996.

ADDRESSES: Direct all written comments to Frances Willis, National Cemetery System (402D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the NCS request for Office of Management and Budget (OMB) approval. In this document the NCS is soliciting comments concerning the following information collection:

OMB Control Number: None assigned.

Title: PMC (Presidential Memorial Certificate) Insert.

Type of Review: New collection.

Need and Uses: The PMC Insert will be used by the recipient to notify the NCS if the original certificate contains an error, or arrives in an unacceptable condition, or to request additional certificates for other family members. The information will be used by the NCS to promptly reissue or provide additional certificates.

Current Actions: The PMC Program was initiated in March 1962 by President John F. Kennedy to honor the memory of honorably discharged deceased veterans. The program has been continued by all subsequent Presidents. A PMC is mailed to relatives and friends to honor the deceased veteran's military service to the Nation. In most cases involving recent deaths, the local VA regional office originates the process without a request from the next-of-kin. With the automation of the program, the insert will accompany the issuance of the original certificate. The insert will provide a convenient method for the recipients of the original PMC to request additional certificates and/or replacement or corrected certificates.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,080 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 32,400.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: August 23, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–22750 Filed 9–5–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submissions for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0099.

Title and Form Number: Request for Change of Program or Place of Training—Survivors' and Dependents' Educational Assistance, VA Form 22–5495.

Type of Review: Extension of a currently approved collection.

Need and Uses: This form is completed by a veteran's spouse, surviving spouse, or child to indicate a change in program and/or place of training. The VBA uses the information to determine if the student is eligible for dependents' educational assistance for the new program and/or place of training.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,850 hours.

Estimated Average Burden Per Respondent: 30 minutes per application.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,700.

OMB Control Number: 2900–0171.

Title and Form Number: Application and Enrollment Certification for Individualized Tutorial Assistance, VA Form 22–1990t.

Type of Review: Extension of a currently approved collection.

Need and Uses: The VA uses the information collected to determine eligibility for tutorial assistance. The form is sent by the applicant to the school for certification and transmission to the VA. The school will transmit the form to the appropriate VA regional office (i.e., Atlanta, Buffalo, Muskogee, or St. Louis) with jurisdiction over the area where the school is located. Without the information on this form, the VA would be unable to determine the applicant's eligibility for tutorial assistance.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Average Number of Responses: 2 annually.

Estimated Number of Respondents: 2,000.

OMB Control Number: 2900–0383.

Title and Form Number: Application for Educational Assistance Test Program Benefits (Section 901, PL 96–342), VA Form 22–8889.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by individuals under the Educational Assistance Test Program (EATP) to apply for educational benefits. The VBA uses the information to determine eligibity for EATP benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 125 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 565–4412.

Dated: August 22, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–22751 Filed 9–5–96; 8:45 am]

BILLING CODE 8320–01–P

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veteran Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Monday and Tuesday, September 16–17, 1996, at VA Headquarters, 810 Vermont Avenue, N.W., Washington, D.C. The meeting will be held in Room 730. The September 16 session will convene at 8:00 a.m. and adjourn at 4 p.m. and the September 17 session will convene at 8:00 a.m. and adjourn at 12:00 noon. Both days will involve briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their activities over the last six months, pending change in eligibility reform, and the continued impact of the Veterans Health Administration's reorganization on the delivery of services for these special-disabilities programs.

The purpose of the Advisory Committee is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, prior to September 11, 1996.

Dated: August 29, 1996.

Eugene A. Brickhouse,

Committee Management Officer.

[FR Doc. 96–22747 Filed 9–5–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 174
Friday, September 6, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92-237-028]

Alabama-Tennessee Natural Gas Company; Notice of Motion to Amend Approved Settlement

Correction

In notice document 96–21379 appearing on page 43349 in the issue of Thursday, August 22, 1996, the docket line should read as set forth in the heading.

BILLING CODE 1505–01–D

GENERAL ACCOUNTING OFFICE

4 CFR Part 7

Personnel Relations and Services

Correction

In proposed rule document 96–21435 appearing on page 44187 in the issue of Wednesday, August 28, 1996, in the second column, under **DATES:**, in the second line, remove "30 days from".

BILLING CODE 1505–01–D

federal register

Friday
September 6, 1996

Part II

Federal Reserve System

12 CFR Part 225

Bank Holding Companies and Change in Bank Control (Regulation Y); Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0935]

Bank Holding Companies and Change in Bank Control (Regulation Y)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Board is proposing a comprehensive amendment of Regulation Y that is intended to improve the competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating restrictions, and by streamlining the application/notice process. Among other proposed revisions, the Board proposes to establish a streamlined and expedited review process for bank and nonbanking proposals by well-run bank holding companies. The Board also proposes to reorganize and expand the regulatory list of nonbanking activities and to remove a number of restrictions on those activities that are outmoded, have been superseded by Board order or do not apply to insured banks that conduct the same activity. In addition, the Board proposes several amendments to the tying restrictions, including removal of the regulatory extension of those restrictions to bank holding companies and their nonbank subsidiaries. A number of other changes have also been proposed to eliminate unnecessary regulatory burden and to streamline and modernize Regulation Y, including changes to the provisions implementing the Change in Bank Control Act and section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

DATES: Comments must be received by October 31, 1996.

ADDRESSES: Comments should refer to Docket No. R–0935, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, and to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays, except as provided in section 261.8(a) of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Gregory A. Baer, Managing Senior Counsel (202/452–3236), Diane A. Koonjy, Senior Attorney (202/452–3274), Lisa R. Chavarria, Attorney (202/452–3904), Satish M. Kini, Attorney (202/452–3818), Legal Division; Molly Wassom, Assistant Director (202/452–2305), Sid Sussan, Assistant Director (202/452–2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Outline: The discussion of proposed revisions to Regulation Y is divided into the following sections:

A. Summary of principles applied in reviewing and revising Regulation Y.
B. Summary of proposed revisions.
C. Explanation of proposed changes to the procedures governing bank acquisitions.
D. Explanation of proposed changes to the nonbanking provisions.
E. Explanation of restrictions removed from permissible nonbanking activities.
F. Explanation of changes to tying rules.
G. Explanation of other changes.

Discussion

A. Summary of the Principles Applied in Reviewing and Revising Regulation Y

Regulation Y is the regulation the Board has adopted to implement the requirements of the Bank Holding Company Act (the BHC Act), the Change in Bank Control Act and provisions of the Federal Deposit Insurance Act. As required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, the Board has conducted a comprehensive review of Regulation Y to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability while faithfully implementing statutory requirements. This review included discussions with staff of the other federal banking agencies regarding the implementation of common statutory provisions.

Based on this review, the Board proposes a comprehensive revision to Regulation Y that is intended to improve the competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating restrictions, and by streamlining and expediting the application/notice process. The revisions proposed by the Board to Regulation Y are summarized in the following sections and explained more fully in sections C through G.

The Board invites comment on all aspects of its proposed revisions. In addition, the Board invites other suggestions on revisions to Regulation Y that would eliminate unnecessary burden while adhering to applicable statutory requirements and maintaining safety and soundness.

Approval Process

Much of Regulation Y is comprised of procedures for evaluating applications and notices. A number of revisions are proposed to these procedures with the goal of eliminating, to the fullest extent permitted under current law, any unnecessary burden and paperwork.

Two important principles underlie the revisions that are proposed to the approval process for bank holding companies. First, the new regulation would establish objective and verifiable measures for each of the criteria set forth in the BHC Act and an expedited and nearly red-tape free approval process for those bank holding companies that meet these measures. Under this new procedure, a bank holding company that meets these objective measures should be able to expect little burden or delay from the approval process unless special circumstances demonstrate that a closer review is warranted. Second, the application/notice process should focus on an analysis of the effects of the specific proposal and should *not* normally become a vehicle for comprehensively evaluating and addressing supervisory and compliance issues at the applicant organization that can more effectively be addressed in the supervisory process.

Importantly, these principles reflect a change in approach to the application/notice process, both procedural and substantive. They recognize that the approval process is most effective as a gateway for identifying (and rejecting) organizations that do not have the resources or expertise to make an acquisition or conduct a particular activity; and that the on-site inspection and supervisory process is the most effective way to determine if a particular organization is in fact managing its subsidiaries or conducting an approved activity in a safe and sound manner and operating within its authority.

Based on these principles, a new streamlined approval procedure is proposed that would permit well-rated and well-run bank holding companies to acquire banks and nonbanking

companies and to engage in permissible nonbanking activities *de novo* with the filing of a simple, short letter and only 15 days advance notice. A qualifying bank holding company would be required to provide only minimal information in connection with a notice (basically a brief description of the proposal and certification that the financial and other criteria are met). Staff analysis of these proposals would be focused on verifying that the qualifying criteria are in fact met. As explained in more detail below, a qualifying bank holding company could make bank and nonbanking acquisitions using this streamlined procedure totaling up to 35 percent of the risk-weighted assets of the acquiring bank holding company during any 12 month period. This limitation on the size of acquisitions would not apply to the acquisition of banks by small qualifying bank holding companies so long as the *pro forma* consolidated assets of the holding company do not exceed $300 million. All bank acquisition proposals that exceed 35 percent of assets (or cause a small bank holding company to exceed $300 million in assets) or that involve bank holding companies that otherwise do not meet the qualifying criteria would be reviewed under the Board's current 30/60-day procedure.

Approximately 85 percent of the bank holding companies with consolidated assets in excess of $100 million would qualify generally for this expedited procedure and more than 50 percent of the applications/notices reviewed by the System during 1995 would have qualified for this new streamlined procedure. Adoption of this procedure would substantially reduce the paperwork that must be filed by a qualifying bank holding company, the staff analysis of proposals by these well-run organizations, and the time required to secure System action on these proposals. In addition to reducing burden on qualifying applicants, adoption of this new procedure should free up System resources to focus on cases raising more complex and difficult issues, thereby improving the processing time associated with these cases.

The new proposed procedure follows the approach taken in the regulatory relief bills currently pending before Congress but cannot reach the level of efficiency in the regulatory relief bills without a change in the terms of the BHC Act. For example, the BHC Act currently requires that a bank holding company obtain Board approval *prior* to acquiring an additional bank or commencing a nonbanking activity. Thus, the Board may not eliminate the prior approval process for bank or nonbanking proposals and may not adopt a post-consummation notification process in place of a pre-consummation approval process. However, the abbreviated prior notice procedure that is proposed here would satisfy the BHC Act by permitting consummation of a bank or nonbanking proposal at the expiration of a brief notice period. The proposed regulatory relief bill would eliminate the prior approval requirement altogether for certain classes of nonbanking proposals and permit post-consummation notice.[1]

As part of the review of the procedures governing bank acquisition proposals, the Board's policies governing public comment have been reviewed to assure that a meaningful opportunity for public comment is provided while at the same time providing for the efficient and timely processing of applications and notices. As discussed more fully below, the proposed revisions would retain the Board's self-imposed 30-day public comment period for bank acquisition proposals, with publication of these proposals required in the **Federal Register** and local newspapers. The proposal recommends, however, that the System limit the exercise of its discretion to consider untimely comments and adhere strictly to the Board's existing rule that only comments received during the public comment period be considered, absent a showing of extraordinary circumstances.

Other revisions have been proposed to the various procedures in Regulation Y to eliminate unnecessary burden and to make the application/notice procedure more focused and efficient. For example, the proposal would streamline the procedure for a bank holding company to obtain a waiver for transactions that are in substance a bank-to-bank merger subject to review by another federal banking agency, and would extend this waiver procedure to internal corporate reorganizations. In addition, the proposal would eliminate the 4-week pre-acceptance review period for bank acquisition proposals, thereby allowing prompt acceptance and review of bank acquisition proposals. These suggestions are outlined below and explained in detail in later sections of this document.

[1] The regulatory relief bills in both the House and the Senate would allow well-capitalized and well-managed banks, without any prior notice, to engage *de novo* in nonbanking activities that have been approved by the Board by regulation. These companies would also be permitted, after providing the Board with 12 to 15 business days' prior notice, to acquire any bank or any nonbanking company engaged in a permissible activity so long as the bank or nonbanking company represents less than 10 percent of the assets of the acquiring bank holding company.

Nonbanking Activities

Regulation Y also addresses the permissible nonbanking activities of bank holding companies. As noted above, a streamlined procedure is suggested for proposals by bank holding companies to acquire nonbanking companies and to engage *de novo* in permissible nonbanking activities. In addition, the "laundry list" of nonbanking activities that the Board has defined by regulation as "closely related to banking," and hence permissible, has been revised and reorganized, and a number of other changes suggested to improve the ability of bank holding companies to engage in nonbanking activities.

Several principles guided the suggested reforms in the nonbanking area. Most important is the premise that bank holding companies should be permitted to conduct nonbanking activities to the fullest extent permissible under the BHC Act and that the regulation should be sufficiently flexible to allow for industry changes in permissible activities without creating unnecessary additional filing burdens. Thus, definitions of permissible activities have been broadened and updated, and new procedures are proposed to make it easier for any interested person to obtain a Board decision regarding whether a new activity is permissible. The proposed revisions anticipate that the Board would be pro-active in authorizing new activities, especially as new activities are permitted for banks or as new financial activities develop, and recognize that, under the BHC Act, bank holding companies are authorized to conduct activities beyond the scope of activities that insured banks may conduct.

A comprehensive revision of the restrictions that govern the nonbanking activities of bank holding companies has also been conducted. This review drew on the experience that the System has developed over the past two decades in authorizing and supervising nonbanking activities and reflects removal of a significant number of restrictions that the System's experience has found are not necessary or are outdated. A basic tenet of the revisions proposed in this area is that a bank holding company should not be subject to supervisory restrictions on the conduct of a specific activity that would not apply to an insured depository institution conducting the same activity. Another precept guiding this review is that supervisory principles governing

the conduct of an activity should be clearly explained, adjusted to take account of market developments and the System's experience in supervising the activity, and, wherever appropriate, uniformly applied to insured depository institutions and their affiliates on an interagency basis.

Accordingly, the proposed revisions eliminate restrictions on the conduct of specific activities that would not apply to insured depository institutions that conduct the same activity. Also eliminated were any restrictions that are outmoded or that the Board has already superseded by order. It is anticipated that, unless the Board determines otherwise with regard to a specific activity or company, these restrictions would be removed at the time of final adoption of the proposed regulation for all bank holding companies with authority to conduct the relevant activity, without requiring that individual bank holding companies obtain specific relief or additional consent.

In addition, the revisions contemplate that the Board, in conjunction with the other banking agencies wherever appropriate, will develop supervisory policy statements that govern the conduct of certain activities. A supervisory policy statement has the advantage of being more easily adjusted to reflect market developments and provides a vehicle for more comprehensive guidance on the conduct of a specific activity than individual regulatory restrictions.

The Board and the other agencies have made effective use of supervisory policy statements in other areas, most notably in providing guidance on the sale of securities and other nondeposit investment products on bank premises. System experience has been that bank holding companies have taken these statements seriously. Accordingly, the revisions anticipate that several restrictions that currently are contained in Regulation Y would be moved to supervisory policy statements that would be developed at a later date.

The proposed regulation continues to anticipate that the marketplace for already approved activities will develop and evolve. Bank holding companies may continue to participate in these market developments in permissible activities without seeking additional Board approval. In the past, there has on occasion been uncertainty regarding whether a particular development or variation in an activity represents a fundamental change that redefines the activity into a new activity for which an additional approval would be required under the BHC Act. To address this, a new procedure has been proposed outside of the application/notice process through which a bank holding company may, on an expedited basis, obtain Board confirmation that a given development or variation in an activity is permissible. These interpretations of the scope of permissible activities would be published and would allow all bank holding companies to participate in the development or variation without additional approval. This procedure would eliminate a number of notices filed by bank holding companies that are uncertain of the scope of permissible nonbanking activities.

Tying Restrictions

A final principle underlying the proposal is that each restriction in Regulation Y should be reevaluated in light of developments in the marketplace in which nonbanking subsidiaries of bank holding companies operate. Application of this principle warrants significant changes to the Board's anti-tying regulation, which the Board already has revised substantially over the past two years. Section 106 of the Bank Holding Company Act Amendments of 1970 restricts tying arrangements by banks on the grounds that the unique role of banks in the economy, in particular their power to extend credit, would allow them to gain a competitive advantage in other markets. In 1971, the Board by regulation extended the coverage of these anti-tying rules to bank holding companies and their nonbank subsidiaries. However, the Board's experience has shown that these nonbanking companies generally operate in markets that are notable for their competitive vitality. Accordingly, the proposed revisions eliminate the Board's regulatory extension of the anti-tying statute, leaving restriction of anti-competitive behavior by bank holding companies and their nonbank subsidiaries to the same general antitrust laws that govern their competitors.

Other Changes

As explained in more detail below, these various principles have also led to a number of other suggested reforms to Regulation Y. In addition to proposing the suggestions discussed below, the Board invites suggestions on other revisions to Regulation Y that would further eliminate unnecessary regulatory burden and paperwork.

B. Summary of Proposed Revisions

The Board seeks public comment on proposals to amend Regulation Y to:

Bank Acquisition Proposals

- Establish a streamlined 15-day notice procedure for proposals by *well-capitalized* and *well-managed* bank holding companies with "satisfactory" or better CRA performance records to acquire banks, within limits (this procedure would currently be available to approximately 85 percent of the bank holding companies with assets over $100 million and would have applied to approximately 50 percent of the applications/notices submitted to the System last year);
- Eliminate the pre-acceptance period for *all* filings to acquire a bank (thereby expediting processing of bank acquisition proposals by as much as 28 days);
- Provide for publication of newspaper and **Federal Register** notices regarding bank acquisition proposals up to 30 days *before* a filing for approval of the transaction is made;
- Adhere strictly to the Board's policies governing acceptance of public comments to require all comments on bank acquisitions to be submitted during the public comment period;[2]
- Streamline the current waiver procedure for transactions that are in substance bank-to-bank mergers and expand the procedure to apply to internal corporate reorganizations by registered bank holding companies;

Proposals Involving Nonbanking Activities and Acquisitions

- Establish a streamlined 15-day notice procedure for proposals by *well-capitalized* and *well-managed* bank holding companies to engage *de novo* in permissible nonbanking activities and to acquire, within limits, nonbanking companies engaged in any activity permitted by regulation or permitted for that bank holding company by order;
- Revise and reorganize the laundry list of permissible nonbanking activities into fourteen categories of functionally related activities and permit bank holding companies to obtain approval at one time to engage in all activities on the list or within the same functional category;
- Broaden the scope and description of activities, including in particular, derivatives trading and investment activities, investment advisory activities, and management consulting activities;
- Expand data processing and management consulting activities to include, as an incidental activity, deriving up to 30 percent of total revenue from *nonfinancial* data processing and management consulting activities;
- Add to the regulatory laundry list of permissible nonbanking activities several nonbanking activities previously approved by the Board by order, including private placement of securities, acting as riskless principal in the sale of securities, acting as a futures commission merchant in the sale of nonfinancial futures and options on futures, providing career counseling services to employees in the financial industry, and providing asset management services;
- Remove from the regulation restrictions on the conduct of permissible nonbanking

[2] As part of its review of Regulation Y, the Board has delegated additional authority to the Reserve Banks to act on certain classes of protested bank acquisition proposals.

activities that have been superseded by Board order, are unnecessary or would not apply to the conduct by an insured bank of the same activity, including restrictions on the conduct of leasing activities, private placement and riskless principal activities, derivatives investment and advisory activities, futures clearing and execution activities, foreign exchange activities, the sale of payment instruments, tax planning and preparation activities, and consumer counseling activities;

• Eliminate the one year time limit on System approvals to engage *de novo* in permissible nonbanking activities for bank holding companies that maintain adequate capital and satisfactory examination ratings (this would allow a bank holding company to seek a single approval to engage in all permissible nonbanking activities);

• Establish a streamlined procedure outside the application process for bank holding companies and others to obtain an advisory opinion from the Board about the scope of permissible activities;

• Revise the Board's policy statement governing the investment advisory activities of bank holding companies to remove several restrictions that currently apply to bank holding companies that advise mutual funds;

• Provide for publication of **Federal Register** notices regarding nonbanking proposals up to 30 days *before* a filing for Board approval is made;

• Allow bank holding companies with approval to engage in any lending activity broader authority to acquire, in the ordinary course of business and without special Board approval, assets from third parties engaged in the same activity;

Revision of Tying Rules

• Remove Board-imposed tying restrictions that limit the ability of non-bank affiliates of a holding company to package their products, create exceptions from the statutory restriction on bank tying arrangements to allow banks greater flexibility to package products with their affiliates, and clarify that the tying restrictions do not apply abroad;

Bank Holding Company Formations

• Reduce the threshold qualifications and information requirements for the existing abbreviated procedure for bank holding company formations by current shareholders of a bank;

Change in Bank Control Act Filings

• Eliminate the current requirement that a person that has already received Board approval under the Change in Bank Control Act obtain additional approvals to acquire additional shares of the same bank or bank holding company;

• Add a definition of the term *acting in concert* and establish presumptions to resolve questions about when a group is *acting in concert*;

• Allow after-the-fact filings when a CIBC Act filing requirement is triggered by the action of an unrelated third party;

• Permit public notice of CIBC Act filings to be published 30 days in advance of filing notice with the System;

Other Changes

• Modify requirements for filing prior notice of changes in directors and senior executive officers of state member banks and bank holding companies and clarify the appeals process for rejected notices;

• Establish a regulatory presumption that exempts testamentary trusts from the definition of *company* in the BHC Act;

• Reduce from 30 to 15 the number of days notice required before a large stock redemption by a bank holding company, permit bank holding companies to take account of intervening new issues of stock in computing when a stock redemption notice must be filed, and allow small bank holding companies to make stock redemptions without notice if the holding company meets certain leverage and capital requirements applicable to small bank holding companies;

• Update and revise the Board's existing policy statement on small one-bank holding companies to reduce burden in the approval process for proposals to form small bank holding companies and by small bank holding companies to acquire additional banks; and

• Implement current Board decisions defining the terms *class of voting securities* and *immediate family*.

C. Explanation of Proposed Changes to the Procedures Governing Bank Acquisitions

1. Streamlined Procedure for Well-Run Bank Holding Companies

The proposed revision would establish a 15-day notice procedure for acting on bank acquisition proposals by well-run bank holding companies if the following criteria are met:

• *Well-capitalized.* Both before and immediately following the transaction, the bank holding company, its lead insured depository institution and insured depository institutions controlling at least 80 percent of the total depository institution assets of the bank holding company are *well-capitalized*;[3]

• *Well-managed.* At the time of the transaction, the bank holding company, its lead insured depository institution and insured depository institutions controlling at least 80 percent of the total depository institution assets of the bank holding company are *well-managed* (*i.e.*, have received one of the two highest composite ratings at the most recent examination, a "satisfactory" management rating and at least a "satisfactory" compliance rating);

• *Satisfactory CRA rating.* At the time of the transaction, the lead insured depository institution and insured depository institutions controlling at least 80 percent of the total insured depository institution assets of the acquiring bank holding company have a "satisfactory" or better performance rating at the most recent CRA examination;

• *Competition.* In every relevant banking market as defined by the Board, the market share for deposits controlled by the acquiring bank holding company following the transaction is below 35 percent and the proposal conforms with the Department of Justice Horizontal Merger Guidelines as applied to banking organizations, in both cases relying on thrift weighting at 50 percent and without reliance on divestitures;

• *Size of acquisition.* During any 12 month period, the book value of the aggregate assets acquired by the bank holding company, combining all acquisitions under the expedited procedure for bank acquisitions with acquisitions under the expedited procedure for nonbanking proposals, does not exceed 35 percent of the consolidated total risk-weighted assets of the acquiring bank holding company as measured at the beginning of the 12 month period. This limitation would not apply to bank acquisitions by qualifying bank holding companies that have assets of less than $300 million on a *pro forma* basis;

• *Interstate.* Approval of the proposal is not barred under the provisions governing interstate acquisitions (e.g., meets relevant deposit concentration limits, State age requirements, and other applicable requirements);

• *Consolidated Home Country Supervision.* The acquiring bank holding company meets the requirement for consolidated home country supervision contained in the BHC Act; and

• *No Supervisory Actions.* At the time of the transaction, no significant supervisory action is pending against the acquiring bank holding company.

As of March 31, 1996, approximately 85 percent of the bank holding companies with assets greater than $100 million would qualify for these procedures. More than 50 percent of the applications/notices submitted by bank holding companies during 1995 would have qualified for this streamlined procedure and reduced filing requirement.

A bank holding company that meets these qualifications would be able to acquire a bank or bank holding company by providing the appropriate Reserve Bank with 15-day prior written notice of the transaction. Under this procedure, a bank holding company would be required to provide only limited information. The information requirements are specified in the proposed regulation and have been reduced to providing certification that the bank holding company and the transaction meet the requirements for the procedure, a description of the transaction and the parties, and certain *pro forma* information regarding the financial and competitive effects of the transaction. The bank holding company must also provide evidence that public notice of the transaction has been given sufficiently in advance to permit interested members of the public 30

[3] A small bank holding company—defined as any bank holding company with assets under $150 million—would be required to meet certain debt-to-equity levels to qualify for this streamlined procedure.

days to submit their views regarding the proposal to the Board.

An identical expedited procedure is proposed for nonbanking proposals by *well-capitalized* and *well-managed* bank holding companies where the bank holding company proposes to engage *de novo* or to acquire a company engaged in a nonbanking activity that the Board has approved by regulation or, with limited exceptions designated by the Board, by order. The aggregate size limitation discussed above (*i.e.*, an aggregate limit of 35 percent of assets during any 12 month period for all acquisitions under the bank and nonbanking expedited procedures) would limit the total amount of banking and nonbanking acquisitions that a bank holding company could make during any 12 month period under the streamlined notice procedures. Finally, because the CRA, interstate banking, and home country supervision requirements do not apply to transactions under section 4 of the BHC Act, no criteria would be established in these areas for nonbanking proposals under the expedited procedure.[4]

The proposed procedure would permit the Board or the Reserve Bank to notify a bank holding company for any reason that this streamlined notice procedure is not available and that a full application—subject to the current application procedure—would be required. This provision provides a mechanism to address situations in which information obtained either in an examination or outside the examination process indicates that a more thorough review of the organization's ability to meet the statutory factors is warranted. For example, the Board could follow the normal 30/60-day procedure in cases that are subject to a substantive protest, that raise issues regarding the funding of a transaction or that raise concerns about the ability of the applicant adequately to manage the risks associated with a particular activity. It is anticipated that this mechanism would be used only sparingly and in extraordinary situations.

A company or proposal that does not qualify for the proposed streamlined procedure would follow the current application process, which provides for Reserve Bank action within 30 days of filing and Board action on more complex cases within 60 days of filing. As explained below, a number of steps are proposed to reduce the burden of the current application process. In the event that, during the review of a transaction under the expedited proposal, the Board determines that a bank holding company must follow the current approval procedure rather than the expedited procedure, the proposed regulation contemplates that the notice filed by the holding company under the expedited procedure would be accepted under the normal procedure and that the normal procedure will be deemed to have begun at the time that the expedited notice was filed.

In the case of the acquisition of a bank, the BHC Act requires that the primary supervisor for the bank to be acquired be given 30 calendar days in which to submit comments on the transaction. In practice, the primary supervisor generally allows the notice period to expire without filing comments. Moreover, financial, managerial, legal and safety and soundness concerns that are known to the primary bank supervisor are generally also known by the Board because of ongoing sharing of supervisory information. Accordingly, it usually serves no regulatory purpose to allow this 30-day notice period to serve as a constraint on the Board's action on a proposal.

Under the proposed procedure, the Reserve Bank would provide notice of a proposal to the primary supervisor. The proposed procedure contemplates that the System will act on any proposal within 15 days of receiving a filing regarding the proposal even though the period for obtaining comments from the primary supervisor has not expired. The new procedure provides, however, that the System's action is subject to revocation if the primary supervisor objects to a transaction within the relevant notice period. Because bank acquisition proposals may not be consummated for 15 days after System action—which is the post-approval waiting period established by statute to allow the Department of Justice to review a transaction—it is expected that the notice period for the primary supervisor will expire prior to consummation of a bank acquisition proposal.

The Board seeks comment on all aspects of this proposed procedure, including comment on whether the procedure is workable and likely to reduce burden and whether the proposed regulatory criteria are appropriate. The Board intends that the proposed expedited procedure apply to "well-run" bank holding companies, whether domestic or foreign, large or small. The Board seeks comment on whether the criteria proposed are appropriately defined to achieve this result. In this regard, the Board has already proposed an adjustment to the qualifying criteria for small bank holding companies (defined as bank holding companies with total assets under $300 million).

2. Elimination of the Pre-Acceptance Period for Bank Acquisition Proposals

Currently, Regulation Y provides a period prior to acceptance of a filing involving a bank acquisition proposal during which the appropriate Reserve Bank reviews the informational sufficiency of the filing and may ask for additional information. An application is accepted for processing once the information requested during this pre-acceptance period is provided. A similar pre-acceptance period for nonbanking proposals was eliminated by the Board in 1993 and the experience with nonbanking proposals since that time indicates that the pre-acceptance period is not necessary.

Accordingly, the proposed revision to Regulation Y would eliminate the pre-acceptance period for all bank acquisition proposals. This change would shorten by as much as 28 days the period that a proposal is within the System, and would begin the processing of all applications involving a bank acquisition—both under the streamlined and standard procedure—on the date of submission of the required filing. The proposed revision to Regulation Y would provide that, within 7 calendar days of receipt of a notice or application to acquire a bank, the appropriate Reserve Bank must either accept the filing as of the date of receipt or return the filing as informationally incomplete. It is expected that a filing that contains the information specified in the regulation or in the appropriate Federal Reserve form will, except in extraordinary circumstances, be accepted for action. The draft regulation would allow the Board or the Reserve Bank to request any additional information at any time during the period for review of the proposal, although one of the premises underlying the expedited procedure is that an analysis of transactions that qualify for expedited processing will be limited and information beyond the information stated in the regulation will only be requested for those proposals in special circumstances.

3. Timing of Publication

In the case of a bank expansion proposal, the Board's rules require that notice be published by the applicant in local newspapers and by the Board in the **Federal Register**. The Board initiated the newspaper publication

[4] Consistent with Board precedent, the CRA criterion *would* apply to proposals by bank holding companies to acquire savings associations under section 4.

requirement for bank acquisition proposals in order to solicit information from the local community regarding the effect of a proposal on the convenience and needs of the local community, and retained the requirement after the enactment of the Community Reinvestment Act. Public notice of nonbanking proposals is published only in the **Federal Register**.

Currently, the Board's rules require that newspaper notice of a proposed bank acquisition be published in a newspaper of general circulation no more than 7 days before or 7 days after the appropriate filing is made with the Reserve Bank. The Board publishes notice in the **Federal Register** of both bank acquisition proposals and nonbanking proposals upon receipt of a filing. In over 90 percent of the bank acquisition proposals filed with the System, no public comments are submitted. Consequently, the current publication schedule often results in substantial delay in action on a proposal in which no comments are submitted. For example, because the public comment period is typically 30 days, this publication schedule delays action on some proposals until up to 37 days after the proposal has been filed to allow for **Federal Register** publication.

Moreover, public announcement of a proposed bank acquisition usually well pre-dates the newspaper and **Federal Register** publication. This has led to confusion on the part of commenters about when a timely comment may be filed with the System.

To avoid this delay and confusion, the regulation would provide for newspaper publication of bank acquisition proposals up to 30 days prior to submission of a filing for System approval, which is closer to the time of the actual public announcement of the proposal. In addition, the applicant would be permitted to request that the Board publish notice of a proposal in the **Federal Register** up to 30 days before a filing is made with the System. This change would apply to all bank and nonbanking proposals, including cases that qualify for the new streamlined procedures outlined above, and would allow more efficient processing of applications/notices while permitting the public a full comment period. In the case of proposals that qualify for the new streamlined procedure, advance publication of notice is essential to permit System action within 15 days following the filing.

4. Revision of Public Comment Procedures for Bank Acquisitions

As just noted, since 1960, the Board has provided by regulation for the publication of bank acquisition proposals. The Board's rules currently provide that all comments from the public regarding a proposed transaction must be received prior to the close of the public comment period. However, the rules also provide that the Board may, in its discretion, consider any untimely comment.

Since adoption of its publication rule, the Board has liberally used its discretion to consider all comments, in particular, supplemental comments filed by a commenter that has filed an initial timely comment, to the fullest extent practicable without delaying action on a proposal beyond the self-imposed 60-day processing schedule. There has been growing concern that this practice of accepting and considering public comments submitted after the close of the public comment period has encouraged some commenters to file comments after the close of the comment period, and other commenters to file cursory comments during the public comment period while submitting numerous and voluminous comments after the close of the comment period, sometimes as late as the day of the Board's consideration of the case.

The Board proposes to retain its current practice of requiring public notice of bank acquisition proposals and of providing commenters at least 30 days in which to develop and submit comments on bank acquisitions under the BHC Act. Similarly, public notice would continue to be given of all nonbanking proposals, with the public provided at least 14 days to comment on nonbanking transactions.

The Board also proposes, however, to adhere more strictly to its current rules, and—for both bank and nonbanking proposals—no longer to consider any comments submitted after the close of the comment period, including supplemental comments filed after the close of the comment period by a commenter that had filed initial comments on a timely basis, except in extraordinary circumstances in which the commenter provides compelling evidence that it could not have submitted all of its comments in a timely fashion.[5]

[5] As part of its review of its policies and procedures governing applications/notices, the Board has delegated additional authority to the Reserve Banks to act on cases involving protests that raise individual consumer complaints (such as denial of an individual loan), allegations for which the commenter provides no substantiation, and cases involving an assertion of violation of a law where a court of the agency responsible for enforcing the specific law has not made a determination that the law was violated and the Board has determined the law is not within the Board's jurisdiction to interpret and enforce (such as State laws preserving the rights of minority shareholders and federal equal employment laws). In each of these areas, the Reserve Bank would be required to review the performance record of the applicant and could act only if the CRA, managerial and other statutory factors supported approval. The Board's Inspector General endorsed this change in procedure based on a review of the Board's application process.

5. Streamlined Waiver Process for Proposals Involving Bank Mergers

The Board's current regulation permits bank holding companies to seek a waiver of the application filing requirement under the BHC Act for transactions that involve the acquisition of stock of a bank for an instant in time as part of a bank-to-bank merger. All of these transactions are subject to review by a federal banking agency under the Bank Merger Act, which requires review of the financial, managerial, competitive, convenience and needs and CRA effects of the bank merger. The Board established this waiver process to eliminate redundant review of these transactions by multiple federal banking agencies. The Board retained jurisdiction over these transactions and a modest review process because some transactions have an effect on the financial and other resources of the parent bank holding company, which is not subject to an analysis under the Bank Merger Act.

Under the Board's current waiver process, a bank holding company must provide 30 days advance notice to the System and file supporting information. A waiver is automatically granted at the end of that period unless the Board notifies the bank holding company that a full application is required. The Board received approximately 110 waiver requests in 1995.

The Board proposes to streamline the waiver procedure in three ways. First, the length of the review process for waivers would be reduced to 10 days from 30 days. Thus, a bank holding company would receive a waiver for a qualifying transaction if the System does not notify the bank holding company prior to expiration of a 10-day waiver review process that a full application is required. Second, the regulation would be amended to specify the information that must be provided with a waiver request. That information would be limited to a copy of the Bank Merger Act filing made with the appropriate federal banking agency for the banks involved in the merger, and

a description of the transaction at the bank holding company level, including the purchase price and the source of funding for the purchase price.

Third, the proposed regulation would make the waiver process available to internal reorganizations of bank holding companies, such as the transfer of banks within a registered bank holding company, the formation of new intermediate-tier bank holding companies, and the merger of intermediate-tier bank holding companies. Some of these transactions are not subject to a review under the Bank Merger Act. However, all of these transactions involve corporate reorganizations by registered bank holding companies that have received Board approval to control and operate the banks involved in the transaction. The Board has granted waivers for internal reorganizations in previous cases, on a case-by-case basis.

In all cases in which a waiver is available, the Board would retain the right to require a full application in individual cases if the Board determines that circumstances warrant a full Board review and the Board notifies the bank holding company that a filing is required.

The Board seeks comment on these revisions to the waiver procedure, including whether the criteria identified in the proposal are adequate to assure Board review of transactions that involve significant issues under the standards set forth in the BHC Act.

6. Small Bank Holding Company Policy Statement

In 1984, the Board adopted a policy statement governing the formation of small *one* bank holding companies that recognized that there are public benefits to permitting small bank holding companies with well capitalized and well managed subsidiary banks to operate with levels of debt that are somewhat higher than ordinarily permitted for bank holding companies. The Board proposes to revise and update this policy statement to reduce the burden on small bank holding companies of the applications process, especially for less highly leveraged organizations, and to otherwise remove obsolete language. The revised language reflects that the policy statement has, for some time, been applied to small bank holding companies (regardless of the number of subsidiary banks) otherwise meeting the statement's criteria, and not just to small *one* bank holding companies. The statement would also be revised to clarify that it applies to expansion proposals by small bank holding companies as well as to small bank holding company formations.

In addition, the statement would be updated to replace outdated language defining applicable capital levels with the requirement that all subsidiary banks be *well-capitalized*. Notifications to form small bank holding companies over banks that are well managed and in satisfactory condition, and that present no other issues, will be eligible for the expedited applications processing procedures if the pro-forma debt to equity ratio is 1.0:1 or less. The criteria under which these organizations could pay reasonable corporate dividends have also been simplified.

Other proposals to form bank holding companies will be subject to a focused review of the parent-level debt servicing ability or any other issue presented. It is not expected that these organizations will pay dividends until their leverage has been reduced to a 1.0:1 level.

The Board requests comment on these proposed revisions and, in particular, the effect of these revisions on proposals to form small bank holding companies and by small bank holding companies to acquire additional banks.

D. Explanation of Proposed Changes to the Nonbanking Provisions

1. General Review and Updating of Nonbanking Activities

The principal authority for bank holding companies to engage in nonbanking activities is set forth in section 4(c)(8) of the BHC Act. That section generally provides that a bank holding company may seek Board approval to engage in, or acquire shares of a company engaged in, activities that the Board has determined, after notice and opportunity for hearing, "to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The statute provides that the Board may make this determination by order or by regulation. The Board has to date determined by regulation that 24 activities are "closely related to banking" and has determined by individual order that a number of additional activities are also "closely related to banking."

Once the Board has determined—either by regulation or by order—that an activity is "closely related to banking," the Board need not make that determination again in subsequent cases. Review of subsequent cases is limited to determining whether the conduct of the nonbanking activity by the applying bank holding company would result in public benefits that outweigh the potential adverse effects (the "proper incident" test).

The list of nonbanking activities contained in Regulation Y (the "laundry list") is intended to serve the purpose of providing a convenient and detailed list of most of the activities that the Board has found to be closely related to banking and therefore permissible for bank holding companies. The Regulation Y laundry list also designates the activities that may be approved by the Reserve Banks under delegated authority, although the Board has delegated authority for Reserve Banks to act on proposals involving a number of activities approved by order during intervals between modifications of Regulation Y.

As explained above, the Board proposes to establish an expedited procedure for "well-rated" and "well-run" bank holding companies to obtain System approval to make nonbanking acquisitions that fall within the size limit noted above and to engage *de novo* in permissible nonbanking activities. The Board also proposes to reorganize the list of permissible nonbanking activities into fourteen categories of functionally related activities. This reorganization should make the list easier to understand and make it easier for bank holding companies to obtain approval to engage in related activities. For example, the proposed revisions would permit a bank holding company to obtain approval at one time to engage in all of the activities on the laundry list or all activities listed in a functional category, or, at the holding company's choosing, to obtain approval to engage in any specific activity within a category.

As part of the reorganization of the laundry list, the proposal amends the list to include nonbanking activities that previously have been determined by order to be closely related to banking. Among the activities that would be included are: (1) Riskless principal transactions; (2) private placement services; (3) foreign exchange trading for a bank holding company's own account; (4) dealing and related activities in gold, silver, platinum and palladium; (5) employee benefits consulting; (6) career counseling services; (7) asset management, servicing and collection activities; (8) acquiring and resolving debt-in-default; (9) printing and selling checks; and (10) providing real-estate settlement services.

The Board also proposes to broaden the scope of permissible derivatives and foreign exchange activities to assure that bank holding companies may conduct these activities to the same degree as banks, and to remove several restrictions on these activities that apply to bank holding companies but do not

apply to banks that conduct these activities. In addition, the proposal eliminates restrictions on a number of activities that no longer appear to be warranted or that have been superseded.[6] In particular, the proposal revises and updates the description of derivatives activities and foreign exchange activities to reflect recent Board decisions, and eliminates any requirement that the Board specifically review and approve new derivatives instruments or trading on new exchanges.

2. Mechanism for Authorizing New Activities

The proposal would add two provisions to Regulation Y to ease the burden associated with the authorization of new activities. First, the proposed regulation would specifically reflect the fact that the Board may, on its own initiative, begin a proceeding to find that an activity is permissible for bank holding companies, as the Board did in the case of many of the earlier nonbanking activities and as it is proposing in the management consulting, data processing and other areas as part of this proposal. The Board could amend the laundry list, for example, as new activities are authorized for banks, as experience with a narrowly defined activity indicates that bank holding companies should be permitted to engage in a more broadly defined activity, or as developments occur in technology or the marketplace for financial products and services. As part of this proposal, the System would actively track market developments as well as decisions that authorize banks to conduct new activities and evaluate adding these activities to the laundry list even if an individual request has not yet been made to engage in these activities.

Second, the Board proposes to amend the regulation to establish a streamlined procedure outside the application process through which a bank holding company may request an advisory opinion from the Board that a particular variation on an activity is permissible under an existing authorization and is not deemed to be a new activity. This procedure would be particularly helpful in areas such as data processing, investment advisory, derivatives and foreign exchange activities where some bank holding companies have questioned whether the general authorization granted by the Board to conduct these activities permits the bank holding company to conduct variations that develop in response to market changes after the original authorization granted by the Board.

These two procedures, when combined with the proposals to broaden several of the definitions of permissible nonbanking activities, should make it easier for bank holding companies to participate in marketplace developments in permissible nonbanking activities and in new activities. For example, because most permissible nonbanking activities have been broadly defined, a bank holding company would not be required to seek additional Board approval to participate in market developments in permissible activities. As noted above, if a bank holding company is uncertain about the permissibility of a development, an expedited procedure outside the approval process is available to obtain Board guidance on the scope of the authorized activity. All bank holding companies would then be able to act on the basis of that guidance without additional approval. This procedure will eliminate a number of applications that are currently filed by bank holding companies that are uncertain about the scope of permissible activities.

As previously noted, the draft proposal would also establish a procedure that would allow bank holding companies and others to seek a Board determination, outside of the applications process, that a given new activity is permissible. The Board could then add this activity to the new functional categories or establish a new category, as appropriate. At the time the Board reviews this new activity, the Board would determine whether it is appropriate to permit bank holding companies to engage in this activity without additional approval (as, for example, a variation of one or more previously authorized activities) or to require bank holding companies to obtain approval prior to conducting the activity (because, for example, the activity does not fall within a previously approved activity or category). The Board has in the past followed these approaches at various times.

3. Nonbanking Activities That Are Incidental to a Permissible Activity

The Board proposes to expand its interpretation governing the scope of activities that are incidental to a permissible nonbanking activity. For example, the Board has permitted bank holding companies that conduct permissible data processing activities to use excess hardware capacity to conduct data processing involving nonfinancial data where the hardware has not been purchased solely to create excess capacity and the holding company does not provide software to process the nonfinancial data (other than making system software available). The Board also permits bank holding companies to sell general purpose data processing hardware where the hardware represents less than 30 percent of the total cost of the data processing services provided by the bank holding company. In addition, the Board permits companies engaged in securities underwriting activities to provide certain incidental services so long as the revenue from those services is counted as ineligible revenue for purposes of applying the Board's section 20 revenue test.

Over the past year, several industry members have recommended that the Board broaden this interpretation to permit bank holding companies greater flexibility in conducting data processing and management consulting activities. In particular, these members have recommended that the Board permit a bank holding company, as an incidental activity to the holding company's permissible financial data processing and management consulting activities, to receive a modest amount of revenue from providing nonfinancial data processing services and from providing management consulting services to nonbanking companies.

Bank holding companies argue that they are at a competitive disadvantage in providing data processing and management consulting services because of the strict limitations tying these services to financial data and financial consulting. Bank holding companies also claim that these limitations disadvantage bank holding companies in hiring the most competent employees, who often have interests and skills beyond financial areas.

The Board proposes to amend Regulation Y to permit bank holding companies engaged in data processing and management consulting activities, as an incidental activity, to derive up to 30 percent of their annual revenue from nonfinancial data processing or consulting services. This 30-percent level is based on the amount of general purpose hardware that a bank holding company is already permitted to provide in connection with permissible data processing activities.

[6] For example, many of the current restrictions that treat private placement activities as impermissible underwriting activities would be eliminated. The Board recently eliminated these restrictions as they applied to riskless principal transactions. Restrictions designed to distinguish riskless principal and private placement activities from securities underwriting activities would be retained.

4. Removal of Restrictions Governing Permissible Activities

As noted above, the proposal would remove restrictions currently contained in the regulation that are outmoded, have been superseded by Board order or do not apply to insured depository institutions that conduct the same activity. A detailed discussion of the restrictions that are proposed to be removed is contained in section E below.

In summary, restrictions in the current regulation on the conduct of individual activities, such as restrictions governing disclosures to customers, requiring compliance with anti-tying rules, limiting disclosure of customer information, and requiring divestiture of property within specific periods of time, have been deleted from the regulation with the expectation that existing and future Board policies and guidance would more fully address the manner in which individual activities should be conducted. This approach permits greater flexibility in developing and changing the guidance for individual activities in order to adapt to changes and developments in the marketplace. Supervisory statements also permit the opportunity for uniform interagency guidance, where such an approach is appropriate.

5. Elimination of Time Limit on System Approvals for Nonbanking Acquisitions

The proposed draft takes several other steps to ease the burden on bank holding companies that seek approval to engage in permissible activities. Currently, a bank holding company that seeks approval to engage in a nonbanking activity must commence the activity within one year of receiving System approval or the approval lapses. This requirement is not legally required and elimination of this requirement would allow a bank holding company to seek a single approval to engage *de novo* in all permissible nonbanking activities, thereby greatly reducing the filing burden on bank holding companies.

This change would significantly reduce burden by eliminating the filing of multiple applications to engage in permissible nonbanking activities and by permitting bank holding companies quickly to respond to a decision to compete in a permissible nonbanking activity. Moreover, this change would focus the filing requirement on *acquisitions* of nonbanking companies, which are the types of proposals that have the most significant effects on most organizations.

The Board originally imposed the time limit on its approvals in order to address concern that the financial and other resources of a bank holding company could change between the time that the System approved a proposal and commencement of the activity by the holding company. This concern would appear to be minimal in the case of proposals by a bank holding company to engage *de novo* in a permissible activity. To address this concern, the proposed revision would provide that an approval to engage *de novo* in an activity would not expire so long as the bank holding company continues to have adequate capital and at least satisfactory composite and management examination ratings.

6. Revision of Policy Statement Governing Investment Advisory Activities

In 1972, the Board permitted bank holding companies to provide investment advice to mutual funds and other investment companies. In connection with that determination, the Board adopted a policy statement outlining a number of restrictions that the Board believed were necessary to address the potential that the investment advisory activities of bank holding companies may result in the "subtle hazards" that the Glass-Steagall Act was designed to prevent. In 1992, the Board substantially revised the policy statement to remove many of the restrictions on investment advisory activities to conform with various court decisions and developments in the market that had occurred since the policy statement was adopted. On August 23, 1996, the Board also amended this policy statement to allow a bank holding company to purchase, as fiduciary, shares of a mutual fund advised by the holding company where the purchase of shares is permitted by the fiduciary agreement, relevant state law or court order. In addition, the Board rescinded a letter issued in 1986 (the "Sovran letter") that governs the manner in which a bank holding company may act as broker in the sale of mutual fund shares to bank customers.

The Board proposes to remove four restrictions that remain in the policy statement. These restrictions are:

- A prohibition on a bank holding company owning any shares of a mutual fund advised by the bank holding company;
- A prohibition on a bank holding company lending to a mutual fund advised by the bank holding company;
- A prohibition on a bank holding company accepting shares of a mutual fund that it advises as collateral for any loan to a customer that is for the purpose of purchasing such mutual fund shares; and
- A prohibition on a bank holding company serving as an investment adviser to an investment company or mutual fund that has a name that is similar to, or a variation of, the name of the bank holding company or any of its subsidiary banks.

None of these four restrictions is specifically required by the Glass-Steagall Act. The first restriction was intended to assure that a bank holding company does not, in violation of the Glass-Steagall Act, control a mutual fund that it advises. Removal of this prohibition would allow a bank holding company to acquire up to 5 percent of the shares of a mutual fund, which is the limit contained in the BHC Act for investments by bank holding companies in the voting shares of any company. This modest investment amount would not appear to enhance significantly the ability of a bank holding company to control a mutual fund it advises. The federal securities laws require, for example, that the board of directors of a mutual fund maintain at least a majority of directors that are independent of the investment adviser, and it is these directors that must review and approve the continued service of the investment adviser.

The second limitation governs loans by a bank holding company to an investment company advised by the bank holding company. In 1982, section 23A of the Federal Reserve Act, which establishes quantitative and qualitative limitations on the lending activities of banks, was amended to cover these types of lending transactions by banks. Section 23A would permit a bank to lend to a mutual fund advised by the bank or an affiliate within the overall limits that apply to loans by banks to affiliates. In light of section 23A, a complete prohibition on these lending activities by a bank holding company—which does not lend insured funds—does not appear necessary and the Board proposes to remove this restriction.

The third limitation prohibits a bank holding company from accepting as collateral for a loan shares of an investment company that the holding company advises where the purpose of the loan is to purchase the investment company shares. Section 23A limits the ability of banks to accept these shares as collateral for a loan from the bank. This restriction in section 23A was intended to address potential safety and soundness concerns that could result from allowing an insured institution to accept shares of a related mutual fund as collateral for a loan. A bank holding company, on the other hand, does not lend insured funds. Moreover, the collateral and other requirements in

section 23A do not apply to loans by bank holding companies. Accordingly, the Board seeks public comment on permitting bank holding companies and their nonbanking affiliates to extend credit that is collateralized by shares of investment companies that the bank holding company advises.

The fourth restriction raises an issue regarding the potential for customer confusion about whether shares of investment companies are federally insured. The Board's rule prohibits bank holding company from having a name that is "similar to, or a variation of" a mutual fund or investment company advised by the holding company or any of its subsidiary banks. This rule is stricter than the rule adopted by the Comptroller of the Currency for national banks, which permits a national bank to advise an investment company with a name that is similar to the name of the bank provided that the name is not identical to the bank's name. The Board's rule is also stricter than the position of the SEC, which permits an investment company to have a name similar to that of an insured depository institution provided that the investment company makes a number of disclosures that advise customers that the investment company is not federally insured or guaranteed by the insured depository institution.[7]

The Board seeks comment on amending its rule to permit similar names so long as: (1) The investment company name is not identical to that of the holding company or an affiliated insured depository institution, (2) the investment company name does not include the term *bank*, and (3) the holding company or investment company discloses to customers in writing that shares of the investment company are not federally insured and are not obligations of or guaranteed by any insured depository institution, and the role of the bank holding company as an adviser to the investment company. The Board seeks comment on whether these limitations would adequately address the potential for customer confusion that shares of an investment company advised by a bank holding company are not federally insured.

7. Revision to Exception for Acquisitions of Lending Assets in the Ordinary Course of Business

The Board also proposes to update the regulatory language permitting a bank holding company, without additional approval, to acquire lending assets from a third party in the ordinary course of business. The Board currently permits a bank holding company, without additional approval, to acquire assets of an office of another company related to making, acquiring or servicing loans so long as the bank holding company and the transaction meet certain qualifications. Among the qualifications are that the assets relate to consumer or mortgage lending, and that the acquired assets represent the lesser of $25 million or 25 percent of the consumer lending, mortgage banking or industrial banking assets of the acquiring bank holding company. The office must also be located in the geographic area served by the bank holding company.

The Board proposes to revise this provision in three ways. First, since the Board no longer limits the geographic scope of its approval to engage in nonbanking activities, this restriction would be removed. Second, the scope of the exception would be broadened from consumer and mortgage banking assets to permit the acquisition of assets related to any lending activity. Third, the threshold limits would be raised to permit the acquisition of assets representing up to the lesser of $100 million or 50 percent of the lending assets of the bank holding company.

The Board invites public comment on these revisions.

E. Explanation of the Restrictions Removed From Permissible Nonbanking Activities

As noted above, the Board proposes to remove restrictions contained in the current regulation that are outmoded, have been superseded by Board order or would not apply to an insured depository institution conducting the same activity. The limitations that remain are necessary to establish a definition of the permitted activity or to prevent circumvention of another statute, such as the Glass-Steagall Act. The following discussion explains, by functional group of activities, the restrictions that the Board proposes to eliminate as well as, the limitations that the Board proposes to retain.

The Board seeks comment on all aspects of its proposed changes to the Regulation Y laundry list. In particular, comment is invited on whether the activities are properly defined and whether, as defined, each activity is closely related to banking for purposes of section 4(c)(8) of the BHC Act. Comment is also invited on new activities that the Board should consider including on the regulatory laundry list. Comments regarding new activities should explain the basis for finding that the activity is closely related to banking for purposes of the BHC Act.

The Board invites comment on whether the restrictions on nonbanking activities that are proposed to be retained are adequate to address potential adverse effects from the conduct of the relevant activity, including potential conflicts of interests and customer confusion. In addition, the Board seeks comment on whether supervisory policy statements are adequate for addressing potential adverse effects that may be associated with certain activities, and the type of guidance that should be provided in such a policy statement.

1. Extending Credit and Servicing Loans

Lending activities are already broadly defined and contain no restrictions.

2. Activities Related to Extending Credit

A new category has been added authorizing activities that the Board determines to be usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit. Without limiting the scope of this activity, the category lists a number of activities that the Board has previously determined are related to credit extending activities, including, by way of example, credit bureau, collection agency, appraisal, asset management, check guarantee, and real-estate settlement activities. Restrictions governing disclosures, tying, preferential treatment of customers of affiliates, disclosure of confidential customer information without customer consent and similar restrictions have been removed from these activities. These restrictions do not apply to banks that conduct these activities and, to the extent these restrictions are appropriate, supervisory guidance on the conduct of the activity would be developed.

3. Leasing Personal or Real Property

The leasing provision of the regulation was streamlined by combining the two types of leasing activities permissible for bank holding companies: Full-payout leasing and high residual value leasing.[8] The

[7] Letter of May 13, 1993, (1993 Transfer Binder) Fed. Sec. L. Rep. (CCH) Paragraph 76,683.

[8] A full-payout lease is the functional equivalent of an extension of credit and relies primarily on rental payments and tax benefits to recover the cost of the leased property and related financing costs. High residual value leasing may involve significant reliance on the expected residual value of the leased property—on average, under 50 percent, but in some cases, up to the full original cost of leased property—to recoup the cost of the leased property and related financing costs. Under the Board's regulation, bank holding companies may provide full-payout leases for any type of personal property or real property, and may make high residual value leases only for personal property. Bank holding companies have not been permitted to engage in high residual value leasing for real property because

Continued

following restrictions have been removed—

- The lease must serve as the functional equivalent of an extension of credit (permissible high residual value leasing may *not* be the functional equivalent of an extension of credit);
- The property must be acquired only for a specific leasing transaction;
- Leased property must be re-leased or sold within 2 years of the end of each lease;
- The maximum lease term may not exceed 40 years; and
- No leased property may be held for more than 50 years.

These restrictions were removed from the regulation primarily to permit bank holding companies greater flexibility to acquire property in quantity in the expectation of leasing activities and to grant more flexibility in selling or releasing property at the expiration of a lease. It is expected that supervisory guidance would be developed to aid examiners in supervising the acquisition and retention of property for leasing.

The draft also removes the provision limiting to 100 percent of the initial acquisition cost the amount of reliance that may be placed on the residual value of leased personal property. No such limit applies to national bank leasing activities. The estimated residual value of real property continues to be limited to 25 percent of the value of the property at the time of the initial lease. This restriction is intended to distinguish real property leasing from real estate development and investment activities.

Two other requirements were retained: (1) That the lease be non-operating, and (2) that the initial lease term be at least 90 days. These requirements were developed in the course of litigation regarding the leasing activities of national banks, and were relied on by the courts in distinguishing bank leasing activities from general property rental and real estate development businesses. The requirement that a lease be non-operating is also a statutory requirement limiting the high residual value leasing activities of national banks.[9] In particular, the definition of nonoperating leases in the automobile rental context, which was developed in litigation and prevents a bank holding company from directly providing repair and similar services, has been retained. The draft would permit a bank holding company to arrange for a third party to provide repair and other services in connection with a lease.

4. Operating Nonbank Depository Institutions

This category permits ownership of a savings association and an industrial loan company. The proposed regulation retains the restrictions in the BHC Act that the institution not be operated as a "bank" for purposes of the BHC Act [10] and that the activities of the institution conform to the relevant statutory provisions of the BHC Act.

5. Trust Company Functions

The current regulation limits the deposit-taking and lending activities of trust companies. These limitations are already encompassed in the requirement in the BHC Act that the trust company not be a "bank" for purposes of the BHC Act, and have, therefore, been deleted from the regulation.

6. Financial and Investment Advisory Activities

The regulation has been reorganized to group together all investment and financial advisory activities. The proposed rule broadly authorizes acting as investment or financial adviser to any person, without restriction. The proposed definition of *investment* and *financial advisory activities* is very broad and would permit some types of advisory activities beyond the scope of advisory activities currently permitted by regulation. The Board invites comment on whether this activity has been properly defined and whether all investment and financial advisory activities are closely related to banking.

Without limiting the breadth of the advisory authority, the rule also lists as specific examples of permissible advisory activities certain types of investment or financial advice, counseling and related services that previously had been separately authorized. These examples are—

- Advising an investment company and sponsoring, organizing and managing a closed-end investment company;
- Furnishing general economic information and forecasts;
- Providing financial advice regarding mergers and similar corporate transactions;
- Providing consumer educational courses and providing tax-planning and tax-preparation; and
- Providing advice regarding derivatives transactions.

The few restrictions imposed by the Board on these activities would be removed. Specifically, the Board proposes to remove the current restriction that discretionary investment advice be provided only to institutional customers, thereby allowing bank holding companies to manage retail customer accounts outside of the trust department of an affiliated bank. This activity would continue to be governed by the fiduciary principles in relevant state law. Similarly, the requirement that investment advice regarding derivatives transactions be provided only to institutional investors would be removed, thereby allowing this advice to be provided to retail customers. These restrictions do not apply to banks that provide investment advisory services.

Restrictions also have been deleted in the areas of tax-planning and preparation services and consumer counseling services that prohibited bank holding companies from promoting specific products and services and from obtaining or disclosing confidential customer information without the customer's consent. These restrictions do not apply to banks that engage in these activities.

7. Agency Transactional Services for Customer Investments

The various transactional services that a bank holding company may provide as agent have been reorganized into a single functional category. This category includes securities brokerage activities, private placement activities, riskless principal activities, execution and clearance of derivatives contracts, foreign exchange execution services and other transactional services.

i. *Securities brokerage activities.*

The current regulation differentiates between securities brokerage services provided alone (*i.e.*, discount brokerage services) and securities brokerage services provided in combination with investment advisory services (*i.e.*, full-service brokerage activities). The proposed rule would authorize securities brokerage without distinguishing between discount and full-service brokerage activities.

Under the current regulation, bank holding companies providing full-service brokerage services must make certain disclosures to customers regarding the uninsured nature of securities and may not disclose confidential customer information without the customer's consent. These requirements have been deleted. The disclosure requirements—along with a number of other requirements that specifically address the potential for

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of concern that such leasing would be indistinguishable from real estate development and investment activities.

[9] As a general matter, the requirement that a lease be *non-operating* means that the bank holding company does not itself operate the equipment or property being leased or repair or service the property. This limitation was intended to help distinguish bank leasing activities from general commercial activities.

[10] The BHC Act contains an exception from the definition of "bank" for industrial loan companies and savings associations that meet requirements listed in the BHC Act.

customer confusion, training requirements, suitability requirements and other matters—are already contained in an interagency policy statement that governs the sale of securities and other non-deposit investment products on bank premises as well as in rules adopted by the SEC. In addition, similar disclosure requirements are required by the Board's policy statement governing the sale by bank holding companies of shares of mutual funds and other investment companies that the bank holding company advises. To the extent that disclosures to customers are appropriate in areas not covered by these policy statements, it is expected that the Board would develop supervisory guidance, on an interagency basis where appropriate.

The Board seeks comment on whether elimination of these restrictions from the regulation would lead to adverse effects, including customer confusion about the uninsured nature of non-deposit investment products sold through bank holding companies.

ii. *Riskless principal activities.*

The Board recently reduced the restrictions that govern riskless principal activities. The restrictions that were retained were designed to ensure that bank holding companies does not avoid the Glass-Steagall Act provisions by classifying underwriting and dealing activities as riskless principal activities. The provisions that are proposed to be retained prohibit:

- Selling bank-ineligible securities at the order of a customer who is the issuer or in a transaction in which the bank holding company has an agreement to place the securities of the issuer;
- Acting as riskless principal in any transaction involving a bank-ineligible security for which the bank holding company or an affiliate makes a market;
- Acting as riskless principal for any bank-ineligible security carried in the inventory of the bank holding company or any affiliate; and
- Acting as riskless principal on behalf of any U.S. affiliate that engages in bank-ineligible securities underwriting or dealing activities or any foreign affiliate that engages in securities underwriting or dealing activities outside the U.S.

The proposed regulation retains these four restrictions. The Board requests comment on whether these restrictions, and in particular the second and third restrictions, are necessary to assure compliance with the Glass-Steagall Act.

iii. *Private placement activities.*

In adding private placement activities to the laundry list, the regulation adopts the definition of private placement activities used by the SEC and the federal securities laws. All but one restriction that had been imposed by Board order on the conduct of this activity would be removed. That restriction prohibits a bank holding company from purchasing for its own account securities that it is placing and from holding in inventory unsold portions of securities it is attempting to place. This restriction prevents a bank holding company from classifying its securities underwriting activities, which are governed by the Glass-Steagall Act and the Board's section 20 decisions, as private placement activities.

Among the restrictions that would be removed from the conduct of private placement activities are prohibitions on:

- Extending credit that enhances the marketability of a security being placed;
- Lending to an issuer for the purpose of covering the funding lost through the unsold portion of securities being placed;
- Lending to the issuer for the purpose of repurchasing securities being placed;
- Acquiring securities through an account for which the bank holding company has fiduciary authority;
- Providing advice to any purchaser regarding a security the bank holding company is placing; and
- Placing securities with any non-institutional investors (the SEC rules allow sales to institutional investors and up to 35 non-institutional investors).

None of these restrictions have been applied to national banks that conduct private placement activities. The Board seeks comment on whether any of these restrictions must be retained to address potential adverse effects, including potential conflicts of interest or customer confusion, or to assure fulfillment of fiduciary duties.

iv. *Futures commission merchant activities.*

a. In general. The current regulation authorizes bank holding companies to execute and clear derivatives on certain financial instruments on major exchanges, subject to a number of restrictions.

The Board has, by order, broadened this authority in two key respects. First, the Board has by order permitted bank holding companies to execute and clear derivative contracts on a broad range of nonfinancial commodities. Second, the Board has permitted bank holding companies to clear derivative contracts without simultaneously providing execution services. The proposed regulation has been amended to incorporate these actions.

The proposal also deletes the restriction that a bank holding company not act as a futures commission merchant (FCM) on any exchange unless the rules of the exchange have been reviewed by the Board. All U.S. commodities exchanges are supervised by the CFTC. A review by the Federal Reserve System of the rules of an exchange, whether domestic or foreign, does not provide a reliable guide regarding the risk management systems of the exchange or the safety of conducting FCM activities on the exchange. A more effective method for addressing the risks of FCM activities—whether on domestic or foreign exchanges—is through the on-site inspection and supervision of the risk management systems of the bank holding company.

The proposed rule removes several other requirements, including that the FCM subsidiary—

- Time stamp all orders and execute them in chronological order;
- Not trade for its own account;
- Not extend margin credit to customers; and
- Maintain adequate capital.

As noted above, the Board is proposing to remove restrictions on subsidiary FCM trading for its own account, and conduct in the other areas listed above is addressed in rules of the CFTC or the relevant self-regulatory organization.

The proposed rule retains the requirements of the current regulation that a bank holding company conduct its FCM activities through a separately incorporated subsidiary (*i.e.*, not through the parent bank holding company) and that the subsidiary not become a member of an exchange that requires the parent bank holding company also to become a member of the exchange. The purpose of this restriction is to limit the bank holding company's exposure to contingent obligations under the loss sharing rules of exchange clearing houses in order to preserve the holding company's ability to serve as a source of strength to its subsidiary insured depository institutions.

The Board invites comment on all aspects of its proposed revision to FCM activities. In particular, the Board invites comment on whether the requirement limiting the parent bank holding company from becoming a member of an exchange is appropriate and on whether the Board's concern could be addressed more effectively by an alternative restriction, such as a requirement that the parent bank holding company not provide a guarantee of non-proprietary trades conducted by an FCM subsidiary. A restriction on the holding company providing such a guarantee has been imposed on bank holding companies through examination guidance and various Board orders to assure that the capital of the holding company is

available to support the insured depository institution subsidiaries of the holding company.

b. Proposed change in Board precedent regarding clearing-only activities. The Board has by order permitted bank holding companies to clear trades that the FCM has not executed itself. The proposed rule incorporates this activity in the laundry list, retaining two restrictions currently imposed by Board order. The first restriction prohibits the clearing subsidiary from serving as the primary or qualifying clearing firm for a customer. The second restriction is that the clearing subsidiary have a contractual right to decline to clear any trade that the subsidiary believes poses unacceptable risks.

These requirements were adopted to ensure that the clearing subsidiary of a bank holding company could limit its exposure to traders that execute trades themselves or through third parties. In particular, these requirements prevent a bank holding company from clearing trades executed by exchange locals or market makers. In 1991, the Board rejected a proposal by a bank holding company to engage in clearing trades for exchange locals and market makers because of concerns about the inability of the bank holding company to monitor and control its credit exposures during the trading day.[11] The Board found that the activity was closely related to banking, but believed that the potential adverse effects of conducting the activity outweighed the potential public benefits.

The Board seeks comment on whether these two restrictions on the conduct of clearing-only activities by bank holding companies should be retained or whether bank holding companies, as part of permissible FCM activities, should be permitted to engage in clearing without executing trades, including clearing trades for professional traders. In particular, the Board invites comment on whether and how bank holding companies are able to monitor and limit adequately the potential exposure from conducting this activity.

v. *Other transactional services.*

In addition to the transactional services described above, the proposed rule adds a provision allowing a bank holding company to provide transactional services for customers involving any derivative or foreign exchange transaction that a bank holding company is permitted to conduct for its own account.

The proposed rule also removes the restriction in the current regulation prohibiting a bank holding company from providing foreign exchange transactional services in the same subsidiary that provides advice regarding foreign exchange. Banks are not subject to this restriction. With this change, a bank holding company would be permitted to provide any transactional service to any customer in combination with a related advisory service, and may provide any advisory and transactional services as agent to both retail and institutional customers.

8. Investment Transactions as Principal

The proposal incorporates decisions by the Board that permit bank holding companies broadly to invest for the holding company's own account as principal in derivatives on financial and nonfinancial commodities. The proposal would allow a bank holding company to trade as principal for its own account any derivative contract on a financial or nonfinancial commodity or index of commodities, so long as any one of three conditions is met:

- The underlying asset is a permissible investment for State member banks;
- The derivative contract requires cash settlement; or
- The derivative contract allows for assignment, termination or offset prior to expiration and the bank holding company makes every reasonable effort to avoid delivery.

The proposal also includes authority that the Board has previously granted by order permitting bank holding companies to buy, sell and store gold, silver, platinum and palladium bullion, coins, bars and rounds. The regulation retains the current authority to trade in foreign exchange and bank-eligible securities. The proposal does not expand the current authority of bank holding companies to acquire as principal securities or physical commodities that a bank is not currently permitted to own for its own account.

In several areas, such as foreign exchange trading and certain derivatives trading, the Board has prohibited bank holding companies from engaging in the same subsidiary in trading activities as principal and providing advice to customers. This restriction does not apply to banks that conduct the same activities and has been removed. It is expected that supervisory guidance would be developed to address potential conflicts of interest that may arise in this area.

9. Management Consulting and Counseling Activities

The current regulation authorizes bank holding companies to provide management consulting services on any matter to any depository institution or affiliate of a depository institution. The rule has been expanded in two respects.

First, bank holding companies would be authorized to provide management consulting services regarding financial, economic, accounting or audit matters to any company. These activities are directly related to the activities and expertise of bank holding companies. The Board invites comment on whether this activity is closely related to banking for purposes of section 4(c)(8) of the BHC Act.

Second, a bank holding company would be permitted to derive up to 30 percent of its management consulting revenue from management consulting services provided to any customer on any matter.

Two restrictions have been retained—governing interlocks with and investments in client companies—to ensure that a bank holding company does not exercise control over a client company through a management consulting contract.

10. Support Services

This category includes courier services (other than armored car services) and printing checks and related documents. Both services are included in the laundry list as they were authorized by the Board, without change.

11. Insurance Agency and Underwriting Activities

The insurance provisions reflect the detailed restrictions on insurance activities of bank holding companies specified in the BHC Act. The current regulation has not been changed.

Community Development Activities

The current regulation permits bank holding companies to make equity and debt investments in corporations and projects designed primarily to promote community welfare. The proposal amends the description of this activity to clarify that this activity includes providing advisory and related services to community development programs. The Board has permitted these advisory services by order.

13. Money Orders, Savings Bonds and Traveler's Checks

The current regulation limits the sale and issuance of money orders and similar consumer payment instruments to instruments with a face value of less

[11] *Stichting Prioriteit ABN AMRO Holding*, 77 Federal Reserve Bulletin 189 (January 9, 1991).

than $1,000. The Board has by order authorized this activity for payment instruments of any face amount. Accordingly, the limitation on the face amount of these instruments has been removed.

14. Data Processing Activities

The current regulation broadly authorizes bank holding companies to provide data processing and data transmission services by any technological means so long as the data processed or furnished are financial, banking or economic. The proposed rule clarifies that a bank holding company may render advice to anyone on processing and transmitting banking, financial and economic data.

The following two restrictions on permissible data processing activities have been deleted:

- All data processing services must be provided pursuant to a written agreement with the third party that describes and limits the services; and
- Data processing facilities must be designed, marketed and operated for processing and transmitting financial, banking or economic data.

The data processing activity has also been revised to permit bank holding companies to derive up to 30 percent of their data processing revenues from processing and transmitting data that are *not* financial, banking or economic.

F. Explanation of Changes to Tying Rules

The Board is proposing amendments to its rules regarding tying arrangements. The amendments would allow bank holding companies significantly greater flexibility to package their products, and thereby provide more efficient and lower cost service to their consumers.

Tying arrangements, where a customer's ability to purchase or receive a discount on one product is tied to the customer's purchase of another product, are prohibited by section 106 of the Bank Holding Company Act Amendments of 1970. Although section 106 applies only when a *bank* offers the tying product, the Board in 1971 extended its special restrictions to bank holding companies and their nonbank subsidiaries. 36 FR 10,777 (June 3, 1971).

The Board has authority to grant exceptions to section 106 and, in the past few years, has used its exemptive authority to allow banks to offer products to their customers more efficiently and at lower cost, without risk of anti competitive effects. For example, the Board has allowed arrangements that included discounts on brokerage services and other products based on a customer's relationship with the bank or bank holding company. The proposed amendments set forth below would build on this recent history in attempting to identify broader categories of packaging arrangements that do not raise the concerns that section 106 was intended to address and should therefore be permitted.

Section 106 contains five restrictions intended to prohibit anti-competitive behavior by banks: two prohibit tying arrangements; Two prohibit reciprocity arrangements; and one prohibits exclusive dealing arrangements. The tying restrictions, which have the greatest effect on industry practices, prohibit a bank from restricting the availability or varying the consideration for one product or service (the "tying" product) on the condition that a customer purchase another product or service offered by the bank or by any of its affiliates (the "tied" product).[12]

Section 106 is a broader prohibition than those contained in the antitrust laws because, unlike the antitrust laws, a plaintiff in action under section 106 need not show that: (1) the seller has market power in the market for the tying product; (2) the tying arrangement has had an anti-competitive effect in the market for the tied product; or (3) the tying arrangement has had a substantial effect on interstate commerce. The broader reach of section 106 is most evident in that it prohibits a bank from varying the consideration for one of its products—that is, offering a discount on one of its products—for customers who purchase a second product from the bank or its affiliates. Such an arrangement generally would not be prohibited by the antitrust laws.

Section 106 was adopted in 1970 when Congress expanded the authority of the Board to approve bank holding companies to engage in nonbanking activities. Section 106 was based on Congressional concern that banks' unique role in the economy, in particular their power to extend credit, would allow them to gain a competitive advantage in the new, nonbanking markets that their affiliates were being allowed to enter. *See* S. Rep. No. 1084, 91st Cong., 2d Sess. (1970). Congress therefore imposed special limitations on tying by banks—restrictions beyond those imposed by the antitrust laws.

1. Rescind the Board's Regulatory Extension of the Statute

As noted above, the Board has by regulation extended the restrictions of section 106 to bank holding companies and their nonbank subsidiaries as if they were banks. This extension was adopted at the same time that the Board approved by regulation the first "laundry list" of nonbanking activities under section 4(c)(8) of the BHC Act, apparently as a prophylactic measure addressed at potential anti-competitive practices by companies engaging in nonbanking activities.

In the past 25 years, the Board has gained extensive experience with nonbank affiliates of bank holding companies and the markets in which they operate. Based on this experience, the Board does not believe that these nonbank companies possess the market power over credit or other unique competitive advantages that Congress was concerned that banks enjoyed in 1970. Bank holding companies may never have possessed such market power but, even if they once did, financial services markets have generally become much more competitive over time. Accordingly, the Board believes that applying the special bank anti-tying rules to such companies is no longer justified. Any competitive problems that might arise would be isolated cases, better addressed not through a special blanket prohibition but rather through the same general antitrust laws that bind their nonbank competitors.

In recognition of these facts, the Board has over the past several years relaxed the anti-tying restrictions on nonbanks within bank holding companies. In addition to adopting various exceptions that applied both to banks and nonbanks, the Board in 1994 permitted a bank holding company or its nonbank subsidiary to offer a discount on any of its products or services on the condition that a customer obtain any other product or service from that company or from any of its *nonbank* affiliates—that is, permitted discount arrangements that did not involve a bank. 12 CFR 225.7(b)(3). However, even with this exception, tying between a bank holding company or its nonbank subsidiary and an affiliated bank is still restricted, as is any inter-affiliate tying arrangement that does not involve the offering of a discount.

The Board proposes to rescind its regulatory extension of the anti-tying

[12] Violations of section 106 may be redressed through: (1) An enforcement action for civil money penalties brought by the appropriate Federal banking agency, (2) an action for injunctive relief brought by the Justice Department or any person who can show "danger of irreparable loss or damage," or (3) a civil suit brought by "any person who is injured in his business or property" by the prohibited arrangement, with the court directed to award treble damages and attorneys fees if the plaintiff prevails. *See* 12 U.S.C. 1972(2)(F), 1973, 1975.

rules to nonbanks. The Board notes that in doing so it would not be granting an "exception" to section 106—as section 106 never envisioned that non-banks would be covered in the first place. Rather, the Board would be lifting a restriction that it itself imposed, and one which it believes should be maintained only if there is clear evidence of its necessity.

Removal of these special restrictions on bank holding companies and their nonbank subsidiaries would eliminate a competitive disadvantage by allowing them the same freedom to package products that their competitors currently enjoy. The Sherman Act would continue to prohibit bank holding companies and their subsidiaries from engaging in any tying arrangement that had an anti-competitive effect. 15 U.S.C. 1. Furthermore, section 106 would continue to prohibit a bank from tying one of its products to a product offered by one of its affiliates, bank or nonbank.

The Board is seeking comment, however, on whether it should retain its regulatory extension of the statute for purposes of one type of tying arrangement. Section 825(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law on August 22, 1996, amended the Food Stamp Act of 1997 to prohibit tying the availability of electronic benefit transfer services to other point-of-sale services. Enforcement of the Act is assigned to the Secretary of Agriculture. 104 Pub. L. 193, 110 Stat. 2105; 7 U.S.C. 2016(i)(11). Banks, bank holding companies, and nonbank subsidiaries of bank holding companies were exempted from the statute, apparently because they were already restricted by section 106 (in the case of banks) and the Board's regulation (in the case of bank holding companies and their nonbank subsidiaries). Thus, unless the Board were to retain a restriction on bank holding companies and their nonbank subsidiaries, they would be the only companies not subject to a special restriction on tying of electronic benefit transfer services.

2. Treat Inter-Affiliate Tying Arrangements the Same as Intra-Bank Arrangements

The Board is also proposing to broaden a statutory exception designed to preserve traditional banking relationships. The statutory exception is limited to traditional banking relationships within one bank, and the proposed regulatory exception would extend the statutory exception to apply to relationships that involve more than one bank or other affiliate.

Section 106 contains an explicit exception (the "statutory traditional bank product exception") that permits a bank to tie any product or service to a loan, discount, deposit, or trust service offered by that bank. 12 U.S.C. § 1972(1)(A). For example, a bank could condition the use of its messenger service on a customer's maintaining a deposit account at the bank. Although the statutory traditional bank product exception appears to have been effective in preserving traditional relationships between customer and bank, the exception is limited in an important way: it does not extend to transactions involving products offered by affiliates. Thus, a bank could not condition the use of its messenger service on a customer's maintaining a deposit at an affiliated bank. As another example, the Board recently granted an exemption to allow a secured credit card program where a bank required that a customer maintain a deposit at an affiliated bank. Although a bank could have offered a secured credit card program conditioned on a customer's maintaining a deposit at that same bank, the inter-affiliate arrangement was otherwise prohibited by section 106 but for the exemption.

The Board has already adopted a "regulatory traditional bank product exception" that generally extends the statutory traditional bank product exception between affiliates—for example, allowing one bank to offer a *discount* on a loan based on a customer's deposit relationship with an affiliated bank. However, taking an incremental approach, the Board placed two restrictions on the regulatory exception. First, the Board required that both products involved in the tying arrangement be traditional bank products (thereby disqualifying the messenger service example above). Second, the Board required that the arrangement consist of discounting the tying product rather than restricting its availability (thereby disqualifying the secured credit card example above).

The Board believes that there remains a rationale for the latter restrictions—for example, secured credit cards aside, there are few examples where restricting the availability of one product on the purchase of another serves a valid economic purpose.[13] Nonetheless, Congress has already decided not to apply these restrictions to the statutory traditional bank product exception for intra-bank transactions, and it is difficult to argue that inter-affiliate transactions pose any greater risk of anti-competitive behavior than intra-bank transactions. Moreover, Congress has already extended the statutory traditional bank product exception between affiliates, without restriction, for savings associations and their affiliates. 12 U.S.C. 1464(q)(1)(A).

3. Extend the Expanded Regulatory Traditional Bank Product Exception to Reciprocity Arrangements

As noted above, section 106 prohibits not only tying arrangements (conditioning the availability of one product on the purchase of another) but also reciprocity arrangements (conditioning the availability of one product on the providing of another by the customer). 12 U.S.C. 1972(1) (C) and (D). Like the tying prohibition, the prohibition on reciprocity arrangements contains an exception intended to preserve traditional banking relationships. The exception provides that a bank may condition the availability of a loan, discount, deposit or trust service on the customer's providing some product or service "related to, and usually provided in connection with" such a loan, discount, deposit or trust service. 12 U.S.C. 1972(1)(C).

Also like the statutory traditional bank product exception to the tying prohibition, this exception to the reciprocity prohibition does not apply to inter-affiliate transactions. Although the Board has received only one request to extend the exception—probably because this exception is confusing and rarely invoked in the case law—the Board is proposing such an extension for comment, for the same reasons noted above.

4. Coverage of Foreign Banks Under Section 106

A petitioner has sought an interpretation or exemption from the statute to clarify that section 106 does not restrict "foreign transactions." Petitioner argues that statutes are generally presumed not to have an extra-territorial reach unless specified by Congress, and that no specification was made in section 106. Petitioner

[13] The Board has recently been presented with another case where restricting the availability of a product may be justifiable. A petitioner has sought an exemption from section 106 to allow a brokerage subsidiary of a bank holding company to require a customer to maintain a deposit at an affiliated bank in order to facilitate compliance with the time-for-payment requirements of Regulation T. Even if the Board were to rescind its regulatory extension of section 106 to bank holding companies and their nonbank subsidiaries, a brokerage department of a bank would still be prohibited from imposing this requirement, absent the proposed amendment to the traditional bank product exception.

notes that if section 106 did apply, U.S. firms would be at a competitive disadvantage, as there is no equivalent to section 106 in other nations.

The Board seeks comment on whether it should establish a "safe harbor" to provide certainty with respect to foreign transactions. In particular, the Board seeks comment on whether any safe harbor should define "foreign transactions" according to the location of the customer (as suggested by petitioner), the location of the market where any potential anti-competitive effects would occur (as appears to be the practice under the Sherman Act), or some other factor or factors.

G. Explanation of Other Proposed Changes

1. Bank Holding Company Formations

Regulation Y currently implements the provisions enacted in the Riegle Community Development Act that establish a streamlined 30-day notice procedure for proposals by existing shareholders of a bank to establish a bank holding company. To qualify for this procedure under current rules, the shareholders of the bank must acquire at least 80 percent of the shares of the new bank holding company in substantially the same proportion as the shareholders' bank ownership, must certify that the shareholders are not subject to any supervisory or administrative action, and must identify the shareholders of the new bank holding company.

The Board proposes several changes to these requirements. First, the Board proposes to reduce the percentage of the bank holding company that must be owned by shareholders of the bank from 80 to 67 percent. This level assures that the transaction is in fact a reorganization in which the bank shareholders continue to control the new bank holding company and minimizes the likelihood that a new controlling shareholder will be introduced without adequate review.

Next, the proposal would require that only the principal shareholders (*i.e.*, shareholders owning in excess of 10 percent of the bank holding company) certify that they are not subject to any supervisory or administrative action, rather than requiring that all shareholders make this certification. Finally, the proposal would eliminate any publication requirement for this category of bank holding company formations. The Riegle Act does not require publication of these proceedings and, because these transactions represent a corporate reorganization, little purpose is served by requiring public notice. The System would continue to consider all of the same statutory factors in reviewing these proposals, including considering the competitive effects, financial and managerial resources of the organization, effect on the convenience and needs of the community and the CRA performance record of the bank.

The Board invites comment on whether these changes are appropriate, would reduce unnecessary burden on the formation of new bank holding companies—particularly small bank holding companies—and are consistent with the provisions of the BHC Act permitting this expedited procedure.

2. Change in Bank Control Act Filings

The Board proposes to reorganize, clarify and simplify the portion of Regulation Y that implements the Change in Bank Control Act (CIBC Act). The proposal attempts to harmonize the scope and procedural requirements of the Board's regulation implementing the CIBC Act with those of the other federal banking agencies and to reduce any unnecessary regulatory burden. The proposal also incorporates various interpretations of this subpart made by the Board since the last revision of Regulation Y. These changes have been developed in consultation with the other federal banking agencies in an effort to develop a uniform regulatory approach to implementing the CIBC Act at all of the banking agencies.

Currently, the Board's rules generally require any person (other than a bank holding company) seeking to acquire shares of a state member bank or bank holding company to file a notice under the CIBC Act at two thresholds: when the person's ownership level exceeds 10 percent of the voting shares of the bank or bank holding company, and again when the ownership level exceeds 25 percent. This two-tiered approach allowed a review of the financial resources of an acquiror at two stages, with a lesser showing of financial resources required for transactions below the 25 percent threshold.

The Board proposes to reduce regulatory burden by eliminating the 25 percent threshold. This eliminates the requirement that persons who have received authorization to own in excess of 10 percent, but less than 25 percent, of the voting shares of a member bank or bank holding company file a second notice before owning 25 percent or more of the voting shares of the institution. Persons who initially acquire in excess of 25 percent of the shares of a bank or bank holding company would continue to be subject to only one review under the CIBC Act. The other federal banking agencies have already adopted this approach.

Under the proposal, persons who *currently* own 10 percent (but less than 25 percent) of the shares of a state member bank or bank holding company with Board approval under the CIBC Act would be exempt from further filing requirements under the CIBC Act, unless otherwise notified in writing by the System. In future cases in which a person appears to have sufficient financial resources to acquire more than 10 percent, but less than 100 percent of the shares of a bank, the System may limit the approval granted on a case-by-case basis to require further review of the financial resources of the person as appropriate.

The proposal also adds definitions of key terms to clarify the scope of the regulation. In particular, the Board proposes to add a definition of the term *acting in concert* and includes specific presumptions of concerted action to provide guidance to acquirors. In addition, the proposal incorporates current Board practice that the acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company is presumed to be an acquisition of the underlying securities.

The proposal also would reduce regulatory burden on persons whose ownership percentage increases as the result of a redemption of voting securities by the issuing bank or the action of a third party not within the acquiring person's control. In these situations, the proposal would permit the person affected by the bank or third party action to file a notice within 90 calendar days *after* the transaction occurs, provided that the acquiring person does not reasonably have advance knowledge of the triggering transaction. Currently, these persons must file notice under the CIBC Act *prior* to the action that increases the person's percentage ownership, and, because these persons cannot control the third party action that causes the increased percentage ownership, are often put in violation of the CIBC Act and the Board's Regulation Y.

The Board also proposes to provide more flexible timing for newspaper announcements of filings under the CIBC Act by permitting notificants to publish the announcement up to 30 calendar days before submitting the filing. In addition, the newspaper notice requirement would be modified to eliminate the requirement that the notice include a statement of the percentage of shares proposed to be acquired. Finally, the proposal would add a new section reflecting the stock

loan reporting requirements in section 205 of the Federal Deposit Insurance Corporation Improvement Act.

The Board invites comment on all of its proposed revisions to the CIBC Act implementing regulation. In particular, the Board requests comment on whether the revisions identifying when persons will be presumed to be acting in concert identify all relevant situations in which a bank may undergo a change in control. The Board also requests comment on other ways that its implementing rules under the CIBC Act may be modified to eliminate unnecessary burden and paperwork, consistent with the requirements of the CIBC Act.

3. Notice of Change of Directors and Senior Executive Officers

In addition to the BHC Act and CIBC Act, Regulation Y implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (section 914). Section 914 requires a state member bank and a bank holding company (together, "regulated institutions") to give prior notice to the System before changing directors or senior executive officers if the regulated institution is in financially troubled condition, has undergone a change in control within two years, or has been chartered for less than two years.

The proposed rule retains a number of the current regulation's substantive provisions. For example, the financial condition of regulated institutions remains the focus for defining when an institution's troubled condition would trigger the prior notice requirements of section 914. The proposed rule also continues to interpret a change in control for purposes of section 914 to mean a transaction that requires a filing under the CIBC Act. Accordingly, section 914 filings are not triggered by the acquisition of a state member bank by a bank holding company under section 3 of the BHC Act.

The current rule would be modified in several ways. The proposed rule would eliminate any filing requirement under section 914 for charter conversions and "phantom" bank mergers (chartering an insured depository institution to facilitate the acquisition of an existing insured depository institution) if the converting or acquired depository institution has been in operation for at least two years.

The proposed rule also would adopt the System's current practice of granting individuals who seek election to the board of directors of regulated institutions without the support of management an automatic waiver that allows these individuals to commence service immediately after election to the board and to make a post-election filing under section 914. In addition, the proposed rule would provide more guidance on appealing a disapproved notice. Other changes have been proposed in cooperation with the staffs of the other banking agencies in an attempt to develop uniform definitions, notice procedures and appeals procedures.

The Board invites public comment on these changes, as well as on other ways that the procedures for reviewing changes in officers and directors may be revised to reduce unnecessary burden consistent with the requirements of section 914.

4. Other Changes

The Board has also proposed several other modifications to the regulation to incorporate previous Board decisions and policies regarding the definitions of "class of voting securities" and "immediate family" and has modified references and several time periods for Reserve Bank action to accommodate the changes explained above. Public comment is welcome on these proposed revisions.

In addition, the Board invites public comment on other suggestions for revising Regulation Y to eliminate unnecessary burden and paperwork consistent with the Board's statutory mandates and safety and soundness.

Attached is a draft of Regulation Y that incorporates the proposed revisions. These revisions affect subparts A, B, C and E, appendix C and the Board's interpretation at 12 CFR 225.125. Changes to the Board's Rules of Procedure will be made as necessary to conform to changes to Regulation Y that are finally adopted. No changes are being proposed at this time to subparts D, F or G, which address, respectively, Control and Divestiture Proceedings, Limitations on Nonbank Banks and Appraisal Standards for Federally Related Transactions.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the Board is required to conduct an analysis of the effect, on small institutions, of the proposed revision to Regulation Y. As of December 31, 1995, the number of bank holding companies totalled 5,274.[14] The following chart provides a distribution, based on asset size, for those companies.

Asset size category (M=million)	Number of bank holding companies	Percent of bank holding company assets
Less than $150M	3,954	[15]5.5
$150M–$300M	655	3.2
Greater than $300M	665	91.3

[15] Bank holding companies with consolidated assets of less than $150 million are not required to file financial regulatory reports on a consolidated basis. Assets for this group are estimated based on reports filed by the parent companies and subsidiaries.

The proposed comprehensive revision to Regulation Y is intended to eliminate unnecessary burden for all bank holding companies, including smaller banking organizations. Included in the proposed revision are an expedited 15-day notice procedure with minimal information requirements for well-rated and well-run bank holding companies, a reorganization and streamlining of the regulatory laundry list of permissible nonbanking activities, the removal of unnecessary and outmoded regulatory restrictions, and an automatic waiver of filing requirements for bank acquisitions that are in-substance bank-to-bank mergers. These changes apply to all bank holding companies and will be particularly helpful to small bank holding companies.

The proposed revisions include a number of other changes applicable to smaller organizations in particular. These changes include a special exception for small bank holding companies with assets of less than $300 million from the aggregate size limit applying to the use of the expedited application procedures, an update of the small bank holding company policy statement that applies to bank holding companies with assets of less than $150 million and reduction of burden for qualifying small bank holding companies, reduction of the thresholds for qualification for streamlined formation of new bank holding companies, reduction in the filing requirements under the Change in Bank Control Act, and addition of a new exception for small bank holding companies from the prior approval requirements regarding stock redemption proposals. These and the other changes described above are explained in more detail in the Supplementary Information portion of this document.

The Board expects that the numerous changes proposed will result in a significant reduction in regulatory filings, in the paperwork burden and processing time associated with regulatory filings, and in the costs

[14] Financial top-tier domestic bank holding companies. Excludes middle-tier bank holding companies, and foreign bank holding companies that are not required to file a Y–9 report with the Federal Reserve System.

associated with complying with regulation, thereby improving the ability of all bank holding companies, including small organizations, to conduct business on a more cost-efficient basis. The Board invites public comment on this subject.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–00171, 7100–0121, 7100–0134, 7100–0131, 7100–0119, as applicable; see below), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR 225.11, 12 CFR 225.12, 12 CFR 225.14, 12 CFR 225.17, 12 CFR 225.23, 12 CFR 225.24, 12 USC 1817(j) and 1831(i), 12 CFR 225.73, 12 CFR 225.4, and 12 CFR 225.3(a). This information is required to evidence compliance with the requirements of the Bank Holding Company Act, the Change in Bank Control Act and provisions of the Federal Deposit Insurance Act. The respondents are for-profit financial institutions and other corporations, including small businesses, and individuals.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless it displays a currently valid OMB control number. The OMB control numbers are indicated below.

The proposed streamlining of applications to acquire banks and nonbanking companies by institutions that meet the qualifying criteria should result in a significant reduction in burden for respondents that file the Application for Prior Approval To Become a Bank Holding Company, or for a Bank Holding Company To Acquire an Additional Bank or Bank Holding Company (FR Y–3; OMB No. 7100–0171). Approximately 196 respondents file the FR Y–3 annually pursuant to section 3(a)(1) of the Bank Holding Company Act (Act) and 303 respondents file annually the FR Y–3 pursuant to section 3(a)(3) and 3(a)(5) of the Act. The current burden per response is 48.5 hours and 59.0 hours, respectively, for a total estimated annual burden of 27,383 hours. Under the proposed rule, it is estimated that 50 percent of these respondents, or a total of 249 respondents for both types of applications, would meet the criteria to qualify for the filing of a streamlined application. The average number of hours per response for proposed applications of each type is estimated to decrease to 2.5 hours. Therefore the total amount of annual burden is estimated to be 14,343.5 hours. Based on an hourly cost of $50, the annual cost to the public under the proposed revision is estimated to be $717,175, which represents an estimated cost reduction of $651,975 from the estimated annual cost to the public of $1,369,150 under the current rule.

The proposed streamlining of applications to engage de novo in permissible nonbanking activities and to acquire nonbanking companies and the proposal to permit bank holding companies to obtain approval at one time to engage in a preauthorized list of such activities should result in a significant reduction in burden for respondents that file the Application for Prior Approval To Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y–4; OMB No. 7100–0121). Approximately 362 respondents file the FR Y–4 annually to meet application requirements, and 114 respondents file to meet notification requirements. The current burden per response is 59.0 hours and 1.5 hours, respectively, for a total estimated annual burden of 21,529 hours. Under the proposed rule it is estimated that 50 percent of these respondents would meet the criteria to qualify for the filing of a streamlined application, representing an estimated 181 applications and 57 notifications. The average number of hours per response for proposed applications of this type is estimated to decrease to 1.5 hours. The estimated burden per response to meet the notification requirement remains unchanged at 1.5 hours. Therefore the total amount of annual burden is estimated to be 11,121.5 hours. Based on an hourly cost of $50, the annual cost to the public under the proposed revision is estimated to be $556,075, which represents an estimated cost reduction of $520,375 from the current estimated annual cost to the public of $1,076,450 under the current rule.

The proposed elimination of the requirement that a person who has already received Board approval under the Change in Bank Control Act obtain additional approvals to acquire additional shares of the same bank or bank holding company should result in a significant reduction in burden for respondents that file the Notice of Change in Bank Control (FR 2081; OMB No. 7100–0134). Approximately 300 respondents file the FR 2081 annually to meet the notification requirements of change in control, 280 respondents file to meet the requirements for notice of a change in director or senior executive officer, and 1000 respondents file to meet requirements to report certain biographical and financial information. The current burden per response for each requirement is 30.0 hours, 2.0 hours, and 4.0 hours, respectively, for a total estimated annual burden of 13,560 hours. Under the proposed rule it is estimated that 50 percent fewer notifications of change in control will be filed for an annual total of 150 responses. The estimated number of filings to meet the other two requirements and the estimated average hours per response for each requirement remains unchanged. Therefore the total amount of annual burden is estimated to be 9,060 hours. Based on an hourly cost of $20, the total annual cost to the public under the proposed revision is estimated to be $181,200, which represents an estimated cost reduction of $90,000 from the current estimated annual cost to the public of $271,200 under the current rule.

The proposed allowance for bank holding companies to take account of intervening new issues of stock in computing when a stock redemption notice must be filed and the exemption provided to small bank holding companies that meet certain leverage and capital requirements should result in a significant reduction in burden for respondents that file the Notice of Proposed Stock Redemption (FR 4008; OMB No. 7100–0131). Approximately 50 respondents file the FR 4008 annually. The current burden per response is 15.5 hours, for a total estimated annual burden of 775 hours. Under the proposed rule it is estimated that 50 percent fewer notifications will be filed for an annual total of 25 responses and the estimated average hours per response remains unchanged. Therefore the total amount of annual burden is estimated to be 387.5 hours. Based on an hourly cost of $30, the total annual cost to the public under the proposed revision is estimated to be $11,625, which represents a cost reduction of $11,625 from the current estimated cost to the public of $23,250 under the current rule.

The proposed streamlining of application requirements are not expected to change the ongoing annual

burden associated with the Application for a Foreign Organization to Become a Bank Holding Company (FR Y–1f; OMB No. 7100–0119). Approximately 2 respondents file the FR Y–1f annually. The current burden per response is 77 hours for a total estimated annual burden of 144 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,080.

All information contained in these collections of information are available to the public unless the respondent can substantiate that disclosure of certain information would result in substantial competitive harm or an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.

225.1 Authority, purpose, and scope.
225.2 Definitions.
225.3 Administration.
225.4 Corporate practices.
225.5 Registration, reports, and inspections.
225.6 Penalties for violations.
225.7 Exceptions to tying restrictions.

Subpart A—General Provisions

§ 225.1 Authority, purpose, and scope.

(a) *Authority.* This part [1] (Regulation Y) is issued by the Board of Governors of the Federal Reserve System (*Board*) under section 5(b) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(b)) (*BHC Act*); sections 8 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)) (*Bank Control Act*); section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)); section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1831i); and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX). The BHC Act is codified at 12 U.S.C. 1841, *et seq.*

(b) *Purpose.* The principal purposes of this part are to regulate the acquisition of control of banks by companies and individuals, to define and regulate the nonbanking activities in which bank holding companies and foreign banking organizations with United States operations may engage, and to set forth the procedures for securing approval for such transactions and activities.

(c) *Scope.* (1) Subpart A contains general provisions and definitions of terms used in this regulation.

(2) Subpart B governs acquisitions of bank or bank holding company securities and assets by bank holding companies or by any company that will become a bank holding company as a result of the acquisition.

(3) Subpart C defines and regulates the nonbanking activities in which bank holding companies and foreign banking organizations may engage directly or through a subsidiary. In addition, certain nonbanking activities conducted by foreign banking organizations and certain foreign activities conducted by bank holding companies are governed by the Board's Regulation K (12 CFR part 211, International Banking Operations).

(4) Subpart D specifies situations in which a company is presumed to control voting securities or to have the power to exercise a controlling influence over the management or policies of a bank or other company, sets forth the procedures for making a control determination, and provides rules governing the effectiveness of divestitures by bank holding companies.

(5) Subpart E governs changes in bank control resulting from the acquisition by individuals or companies (other than bank holding companies) of voting securities of a bank holding company or state member bank of the Federal Reserve System.

(6) Subpart F specifies the limitations that govern companies that control so-called nonbank banks and the activities of nonbank banks.

(7) Subpart G prescribes minimum standards that apply to the performance of real estate appraisals and identifies transactions that require state certified appraisers.

(8) Subpart H identifies the circumstances when written notice must be provided to the Board prior to the appointment of a director or senior officer of a bank holding company and establishes procedures for obtaining the required Board approval.

(9) Appendix A to the regulation contains the Board's Risk-Based Capital Adequacy Guidelines for bank holding companies and for state member banks.

(10) Appendix B to the regulation contains the Board's Capital Adequacy Guidelines for measuring leverage for bank holding companies and state member banks.

(11) Appendix C to the regulation contains the Board's policy statement governing small bank holding companies.

(12) Appendix D to the regulation contains the Board's capital adequacy guidelines for measuring tier 1 leverage for bank holding companies.

§ 225.2 Definitions.

Except as modified in this regulation or unless the context otherwise requires, the terms used in this regulation have the same meanings as set forth in the relevant statutes.

(a) *Affiliate. Affiliate* means any company that controls, is controlled by, or is under common control with, a bank or nonbank bank.

(b) *Bank.* (1) *Bank* means:

(i) An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); or

(ii) An institution organized under the laws of the United States which both:

(A) Accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and

(B) Is engaged in the business of making commercial loans.

(2) The term *bank* does not include those institutions qualifying under the exceptions listed in section 2(c)(2) of the BHC Act (12 U.S.C. 1841(c)(2)).

(c) *Bank holding company*—(1) *Bank holding company* means any company

[1] Code of Federal Regulations, title 12, chapter II, part 225.

(including a bank) that has direct or indirect control of a bank, other than control that results from the ownership or control of:

(i) Voting securities held in good faith in a fiduciary capacity (other than as provided in paragraphs (e)(2) (ii) and (iii) of this section) without sole discretionary voting authority, or as otherwise exempted under section 2(a)(5)(A) of the BHC Act;

(ii) Voting securities acquired and held only for a reasonable period of time in connection with the underwriting of securities, as provided in section 2(a)(5)(B) of the BHC Act;

(iii) Voting rights to voting securities acquired for the sole purpose and in the course of participating in a proxy solicitation, as provided in section 2(a)(5)(C) of the BHC Act;

(iv) Voting securities acquired in satisfaction of debts previously contracted in good faith, as provided in section 2(a)(5)(D) of the BHC Act, if the securities are divested within two years of acquisition (or such later period as the Board may permit by order); or

(v) Voting securities of certain institutions owned by a thrift institution or a trust company, as provided in sections 2(a)(5) (E) and (F) of the BHC Act.

(2) Except for the purposes of section 225.4(b) of this subpart and subpart E of this part or as otherwise provided in this regulation, the term *bank holding company* includes a foreign banking organization. For the purposes of subpart B of this part, the term *bank holding company* includes a foreign banking organization only if it owns or controls a bank in the United States.

(d) *Company*—(1) Company includes any bank, corporation, general or limited partnership, association or similar organization, business trust, or any other trust unless by its terms it must terminate either within 25 years, or within 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) *Company* does not include any organization, the majority of the voting securities of which are owned by the United States or any state.

(3) Testamentary Trusts Exempt. Unless the Board finds that the trust is being operated as a business trust, a trust is presumed not to be a company if the trust:

(i) Terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust;

(ii) Is a testamentary trust established by an individual or individuals for the benefit of natural persons (or trusts for the benefit of natural persons) who are related by blood, marriage or adoption;

(iii) Contains only assets previously owned by the individual or individuals who established the trust;

(iv) Is not a Massachusetts business trust; and

(v) Does not issue shares, certificates or any other evidence of ownership.

(e) *Control*—(1) *Control* of a bank or other company means (except for the purposes of subpart E of this part):

(i) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or other company, directly or indirectly or acting through one or more other persons;

(ii) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the bank or other company;

(iii) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the bank or other company, as determined by the Board after notice and opportunity for hearing in accordance with § 225.31 of subpart D of this part; or

(iv) Conditioning in any manner the transfer of 25 percent or more of the outstanding shares of any class of voting securities of a bank or other company upon the transfer of 25 percent or more of the outstanding shares of any class of voting securities of another bank or other company.

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By any subsidiary of the bank or other company;

(ii) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or of any of its subsidiaries; or

(iii) In a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries.

(f) *Foreign banking organization. Foreign banking organization* and *qualifying foreign banking organization* shall have the same meanings as provided in § 211.23 of the Board's Regulation K (12 CFR 211.23).

(g) *Management official. Management official* means any officer, director (including honorary or advisory directors), partner, or trustee of a bank or other company, or any employee of the bank or other company with policy-making functions.

(h) *Nonbank bank. Nonbank bank* means any institution that:

(1) Became a bank as a result of enactment of the Competitive Equality Amendments of 1987 (Pub. L. 100–86), on the date of such enactment (August 10, 1987); and

(2) Was not controlled by a bank holding company on the day before the enactment of the Competitive Equality Amendments of 1987 (August 9, 1987).

(i) *Outstanding shares. Outstanding shares* means any voting securities, but does not include securities owned by the United States or by a company wholly owned by the United States.

(j) *Person. Person* includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(k) *Savings association. Savings association* means:

(1) Any federal savings association or federal savings bank;

(2) Any building and loan association, savings and loan association, homestead association, or cooperative bank if such association or cooperative bank is a member of the Savings Association Insurance Fund; and

(3) Any savings bank or cooperative which is deemed by the director of the Office of Thrift Supervision to be a savings association under section 10(l) of the Home Owners Loan Act.

(l) *Shareholder*—(1) *Controlling shareholder* means a person that owns or controls, directly or indirectly, 25 percent or more of any class of voting securities of a bank or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a bank or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a bank or other company.

(m) *Subsidiary. Subsidiary* means a bank or other company that is controlled by another company, and refers to a direct or indirect subsidiary of a bank holding company. An indirect subsidiary is a bank or other company that is controlled by a subsidiary of the bank holding company.

(n) *United States. United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(o) *Voting securities*—(1) *In general. Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests,

or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares.* Preferred shares, limited partnership shares or interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

(3) *Class of voting shares.* Shares of stock issued by a single issuer are deemed to be the same class of voting shares, regardless of differences in dividend rights or liquidation preference, if the shares are voted together as a single class on all matters for which the shares have voting rights other than matters described in paragraph (o)(2)(i) of this section that affect solely the rights or preferences of the shares.

§ 225.3 Administration.

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation and in the Board's Rules Regarding Delegation of Authority (12 CFR part 265) and the Board's Rules of Procedure (12 CFR part 262).

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, unless a different Federal Reserve Bank is designated by the Board, the appropriate Federal Reserve Bank is as follows:

(1) For a bank holding company (or a company applying to become a bank holding company): The Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary banks on the date it became (or will become) a bank holding company;

(2) For a foreign banking organization that has no subsidiary bank and is not subject to paragraph (b)(1) of this section: The Reserve Bank of the Federal Reserve district in which the total assets of the organization's United States branches, agencies, and commercial lending companies are the largest as of the later of January 1, 1980, or the date it becomes a foreign banking organization;

(3) For an individual or company submitting a notice under subpart E of this part: the Reserve Bank of the Federal Reserve district in which the banking operations of the bank holding company or state member bank to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

§ 225.4 Corporate practices.

(a) *Bank holding company policy and operations.* (1) A bank holding company shall serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a bank holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a bank) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary bank of the bank holding company and is inconsistent with sound banking principles or the purposes of the BHC Act or the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*), the Board may require the bank holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 5(e) of the BHC Act.

(b) *Purchase or redemption by a bank holding company of its own securities.* (1) *Filing notice.* Except as provided in paragraph (b)(6) or paragraph (b)(7) of this section, a bank holding company shall give the Board prior written notice before purchasing or redeeming its equity securities if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth. For the purposes of this section, "net consideration" is the gross consideration paid by the company for all of its equity securities purchased or redeemed during the period minus the gross consideration received for all of its equity securities sold during the period.

(2) *Content of notice.* Any notice under this section shall be filed with the appropriate Reserve Bank and shall contain the following information:

(i) The purpose of the transaction, a description of the securities to be purchased or redeemed, the total number of each class outstanding, the gross consideration to be paid, and the terms of any debt incurred in connection with the transaction;

(ii) A description of all equity securities redeemed within the preceding 12 months, the net consideration paid, and the terms of any debt incurred in connection with those transactions; and

(iii) A current and *pro forma* consolidated balance sheet if the bank holding company has total assets of over $150 million, or a current and *pro forma* parent-company-only balance sheet if the bank holding company has total assets of $150 million or less.

(3) *Acting on notice.* Within 15 calendar days of receipt of a notice under this section, the appropriate Reserve Bank shall either approve the transaction proposed in the notice or refer the notice to the Board for decision. If the notice is referred to the Board for decision, the Board shall act on the notice within 30 calendar days after the Reserve Bank receives the notice.

(4) *Factors considered in acting on notice.* The Board may disapprove a proposed purchase or redemption if it finds that the proposal would constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a proposal constitutes an unsafe or unsound practice, the Board will consider whether the bank holding company's financial condition, after giving effect to the proposed purchase or redemption, meets the financial standards applied by the Board under section 3 of the BHC Act, including the Board's Capital Adequacy Guidelines (appendix A) and the Board's Policy Statement for Small Bank Holding Companies (appendix C).

(5) *Disapproval and hearing.* The Board shall notify the bank holding company in writing of the reasons for a decision to disapprove any proposed purchase or redemption. Within 10 calendar days of receipt of a notice of disapproval by the Board, the bank holding company may submit a written request for a hearing. The Board will

order a hearing within 10 calendar days of receipt of that request if it finds that material facts are in dispute or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall by order approve or disapprove the proposed purchase or redemption on the basis of the record of the hearing.

(6) *Exception for well-capitalized bank holding companies.* A bank holding company is not required to obtain prior Board approval for the redemption or purchase of its equity securities under this section provided:

(i) The total and tier 1 risk-based capital ratios and the leverage capital ratio for the bank holding company, both before and following the redemption, exceed the thresholds established for well-capitalized state member banks under 12 CFR 208.33(b)(1) as if the bank holding company (on a consolidated basis) were deemed to be a state member bank;

(ii) The bank holding company received a BOPEC composite 1–S or 2–S rating at its most recent inspection; and

(iii) The bank holding company is not the subject of any unresolved supervisory issues.

(7) *Exception for small bank holding companies.* A bank holding company that has less than $150 million in total assets and no public debt outstanding, and does not engage in any leveraged nonbanking activities, is not required to obtain prior Board approval for the redemption or purchase of its equity securities under this section provided:

(i) The bank holding company received a BOPEC composite 1–S or 2–S rating at its most recent inspection;

(ii) The bank holding company has a debt to equity ratio of not more than 1.0:1 on a *pro forma* basis;

(iii) Each bank controlled by the bank holding company is rated composite 1 or 2 as of its most recent examination;

(iv) The total and tier 1 risk-based capital ratios and the leverage capital ratio for each bank controlled by the bank holding company, both before and following the redemption, exceed the thresholds established for "well-capitalized" state member banks under 12 CFR 208.33(b)(1); and

(v) The bank holding company is not the subject of any unresolved supervisory issues.

(c) *Deposit insurance.* Every bank that is a bank holding company or a subsidiary of a bank holding company shall obtain Federal Deposit Insurance and shall remain an *insured bank* as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

(d) *Acting as transfer agent, municipal securities dealer, or clearing agent.* A bank holding company or any nonbanking subsidiary that is a "bank", as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)), and that is a transfer agent of securities, a municipal securities dealer, a clearing agency, or a participant in a clearing agency (as those terms are defined in section 3(a) of the Securities Exchange Act (12 U.S.C. 78c(a)), shall be subject to §§ 208.8 (f)–(j) of the Board's Regulation H (12 CFR 208.8 (f)–(j)) as if it were a state member bank.

(e) *Reporting requirement for credit secured by certain bank holding company stock.* Each executive officer or director of a bank holding company the shares of which are not publicly traded shall report annually to the board of directors of the bank holding company the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the bank holding company. For purposes of this paragraph, the terms "executive officer" and "director" shall have the meaning given in § 215.2 of Regulation O, 12 CFR 215.2.

(f) *Criminal referral report.* A bank holding company or any nonbank subsidiary thereof, or a foreign bank that is subject to the BHC Act or any nonbank subsidiary of such foreign bank operating in the United States, shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

§ 225.5 Registration, reports, and inspections.

(a) *Registration of bank holding companies.* Each company shall register within 180 days after becoming a bank holding company by furnishing information in the manner and form prescribed by the Board. A company that receives the Board's prior approval under subpart B of this part to become a bank holding company may complete this registration requirement through submission of its first annual report to the Board as required by paragraph (b) of this section.

(b) *Reports of bank holding companies.* Each bank holding company shall furnish, in the manner and form prescribed by the Board, an annual report of the company's operations for the fiscal year in which it becomes a bank holding company, and for each fiscal year during which it remains a bank holding company. Additional information and reports shall be furnished as the Board may require.

(c) *Examinations and inspections.* The Board may examine or inspect any bank holding company and each of its subsidiaries and prepare a report of their operations and activities. With respect to a foreign banking organization, the Board may also examine any branch or agency of a foreign bank in any state of the United States and may examine or inspect each of the organization's subsidiaries in the United States and prepare reports of their operations and activities. The Board will rely as far as possible on the reports of examination made by the primary federal or state supervisor of the subsidiary bank of a bank holding company or of the branch or agency of the foreign bank.

§ 225.6 Penalties for violations.

(a) *Criminal and civil penalties.* Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company. Civil money penalty assessments for violations of the BHC Act shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

§ 225.7 Exceptions to tying restrictions.

(a) *Purpose.* This section establishes exceptions to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). These exceptions are in addition to statutory exceptions in section 106. The section also restricts tying of electronic benefit transfer services by bank holding companies and their nonbank subsidiaries.

(b) Exceptions to statute. Subject to the limitations of paragraph (c) of this section, a bank may:

(1) *Traditional bank products.* Extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing,

on the condition or requirement that a customer:

(i) Obtain a traditional bank product from an affiliate of the bank; or

(ii) Provide some additional credit, property, or service to an affiliate of the bank that is related to and usually provided in connection with a traditional bank product.

(2) *Safe harbor for combined-balance discounts.* Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:

(i) The bank offers deposits, and all such deposits are eligible products; and

(ii) Balances in deposits count at least as much as nondeposit products toward the minimum balance.

(c) *Limitations on exceptions.* Any exception granted pursuant to this section shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices. The eligibility of a bank to operate under any exception granted pursuant to this section shall terminate upon a finding by the Board that its exercise of this authority is resulting in anticompetitive practices.

(d) *Electronic benefit transfer services.* A bank holding company or nonbank subsidiary of a bank holding company that provides electronic benefit transfer services shall be subject to the anti-tying restrictions applicable to such services set forth in section 7(i)(11) of the Food Stamp Act of 1977 (7 U.S.C. 2016(i)(11).

(e) *Definitions.* For purposes of this section:

(1) *Traditional bank product* means a loan, discount, deposit, or trust service.

(2) *Affiliate* has the meaning given such term in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)).

3. Subpart B is revised to read as follows:

Subpart B—Acquisition of Bank Securities or Assets

Sec.

225.11 Transactions requiring Board approval.
225.12 Transactions not requiring Board approval.
225.13 Factors considered in acting on bank acquisition proposals.
225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.
225.15 Procedures for other bank acquisition proposals.
225.16 Public notice, hearings and other provisions governing applications and notices.
225.17 Notice procedure for one-bank holding company formations.

Subpart B—Acquisition of Bank Securities or Assets

§ 225.11 Transactions requiring Board approval.

The following transactions require the Board's prior approval under section 3 of the Bank Holding Company Act except as exempted under § 225.12 or as otherwise covered by § 225.17 of this part:

(a) *Formation of bank holding company.* Any action that causes a bank or other company to become a bank holding company.

(b) *Acquisition of subsidiary bank.* Any action that causes a bank to become a subsidiary of a bank holding company.

(c) *Acquisition of control of bank or bank holding company securities.* The acquisition by a bank holding company of direct or indirect ownership or control of any voting securities of a bank or bank holding company, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the bank or bank holding company. An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the bank holding company's proportional share of any class of voting securities.

(d) *Acquisition of bank assets.* The acquisition by a bank holding company or by a subsidiary thereof (other than a bank) of all or substantially all of the assets of a bank.

(e) *Merger of bank holding companies.* The merger or consolidation of bank holding companies, including a merger through the purchase of assets and assumption of liabilities.

(f) *Transactions by foreign banking organization.* Any transaction described in paragraphs (a) through (e) of this section by a foreign banking organization (as defined in 12 CFR 211.21(n)) that involves the acquisition of an interest in a U.S. bank or in a bank holding company for which application would be required if the foreign banking organization were a bank holding company.

§ 225.12 Transactions not requiring Board approval.

The following transactions do not require the Board's approval under § 225.11 of this subpart:

(a) *Acquisition of securities in fiduciary capacity.* The acquisition by a bank or other company (other than a trust that is a company) of control of voting securities of a bank or bank holding company in good faith in a fiduciary capacity, unless:

(1) The acquiring bank or other company has sole discretionary authority to vote the securities and retains the authority for more than two years; or

(2) The acquisition is for the benefit of the acquiring bank or other company, or its shareholders, employees, or subsidiaries.

(b) *Acquisition of securities in satisfaction of debts previously contracted.* The acquisition by a bank or other company of control of voting securities of a bank or bank holding company in the regular course of securing or collecting a debt previously contracted in good faith, if the acquiring bank or other company divests the securities within two years of acquisition. The Board or Reserve Bank may grant requests for up to three one-year extensions.

(c) *Acquisition of securities by a bank holding company with majority control.* The acquisition by a bank holding company of additional voting securities of a bank or bank holding company if more than 50 percent of the outstanding voting securities of the bank or bank holding company is lawfully controlled by the acquiring bank holding company prior to the acquisition.

(d) *Acquisitions involving bank mergers—(1) Transactions subject to Bank Merger Act.* The merger or consolidation of a subsidiary bank of a bank holding company with another bank, or the purchase of assets by such a subsidiary bank, or a similar transaction involving subsidiary banks of a bank holding company, if the transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c)) and does not involve the acquisition of shares of a bank. This exception does not include:

(i) The merger of a nonsubsidiary bank and a nonoperating subsidiary bank formed by a company for the purpose of acquiring the nonsubsidiary bank; or

(ii) Any transaction requiring the Board's prior approval under § 225.11(e) of this subpart. The Board may require an application under this subpart if it determines that the merger or consolidation would have a significant adverse impact on the financial condition of the bank holding company or otherwise requires approval under section 3 of the BHC Act.

(2) *Certain acquisitions subject to the Bank Merger Act.* The acquisition by a bank holding company of shares of a bank or company controlling a bank, or the merger of a company controlling a bank with the bank holding company, as part of the merger or consolidation of

the bank with a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company or as part of the purchase of substantially all of the assets of the bank by a subsidiary bank (other than a nonoperating subsidiary bank) of the acquiring bank holding company, if:

(i) The bank merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the bank or bank holding company or the merger of holding companies, and the bank is not operated by the acquiring bank holding company as a separate entity other than as the survivor of the merger, consolidation or asset purchase;

(ii) The transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c));

(iii) The transaction does not involve the acquisition of any nonbank company that would require prior approval under section 4 of the BHC Act (12 U.S.C. 1843);

(iv) Both before and after the transaction, the acquiring bank holding company meets the Board's Capital Adequacy Guidelines (appendixes A, B and C of this part);

(v) At least 10 days prior to the transaction, the acquiring bank holding company has provided to the Reserve Bank written notice of the transaction that contains:

(A) A copy of the filing made to the appropriate federal banking agency under the Bank Merger Act, and

(B) A description of the holding company's involvement in the transaction, the purchase price and the source of funding for the purchase price; and

(vi) Prior to expiration of the period provided in paragraph (d)(2)(v) of this section, the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.

(3) *Internal corporate reorganizations.* (i) Subject to paragraph (d)(3)(ii) of this section, any of the following transactions performed by a bank holding company:

(A) The merger of subsidiary holding companies;

(B) The formation of a subsidiary holding company;

(C) The transfer of control or ownership of a subsidiary bank from one subsidiary holding company to another subsidiary holding company or to the parent holding company.

(ii) A transaction described in paragraph (d)(3)(i) of this section qualifies for this exception if:

(A) The transaction represents solely a corporate reorganization involving companies and insured depository institutions that, both preceding and following the transaction, are controlled and operated by the bank holding company;

(B) The transaction does not involve the acquisition of additional voting shares of an insured depository institution that, prior to the transaction, was less than majority owned by the bank holding company;

(C) Both before and after the transaction, the bank holding company meets the Board's capital adequacy guidelines (appendixes A, B and C of this part); and

(D) At least 10 days prior to the transaction, the bank holding company has provided to the Reserve Bank written notice of the transaction and the Reserve Bank has not informed the bank holding company that an application under § 225.11 is required.[1]

(e) *Holding securities in escrow.* The holding of any voting securities of a bank or bank holding company in an escrow arrangement for the benefit of an applicant pending the Board's action on an application for approval of the proposed acquisition, if title to the securities and the voting rights remain with the seller and payment for the securities has not been made to the seller.

(f) *Acquisition of foreign banking organization.* The acquisition of a foreign banking organization (as defined in 12 CFR 211.21(n)) where the foreign banking organization does not directly or indirectly own or control a bank in the United States, unless the acquisition is also by a foreign banking organization and otherwise subject to § 225.11(f) of this subpart.

§ 225.13 Factors considered in acting on bank acquisition proposals.

(a) *Factors requiring denial.* As specified in section 3(c) of the BHC Act, the Board may not approve any application under this subpart if:

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking in any part of the United States;

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anticompetitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) The applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with the BHC Act and other applicable federal banking statutes, and any regulations thereunder; or

(4) In the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in § 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the applicant, its subsidiaries, any banks related to the applicant through common ownership or management, and the bank or banks to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Managerial resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the applicant, its subsidiaries and the banks and bank holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of the community.* The convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) and regulations issued thereunder, including the Board's Regulation BB (12 CFR part 228).

(c) *Interstate transactions.* The Board may approve any application or notice under this subpart by a bank holding company to acquire control of or all or substantially all of the assets of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under the law of any state, if the transaction complies

[1] In the case of transactions that result in the formation or designation of a new bank holding company, the new bank holding company must also complete the registration requirements described in § 225.5.

with the requirements of section 3(d) of the BHC Act (12 U.S.C. 1842(d)).

§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.

(a) *Filing of notice*—(1) *Information required and public notice.* As an alternative to the procedure provided in § 225.15, a bank holding company that meets the requirements of paragraph (b) of this section may satisfy the prior approval requirements of § 225.11 in connection with the acquisition of shares or control of a bank, or a merger or consolidation between registered bank holding companies, by providing the appropriate Reserve Bank with a written notice containing the following:

(i) A certification that all of the criteria in paragraph (b) of this section are met;

(ii) A description of the transaction that includes identification of the companies and insured depository institutions involved in the transaction, identification of each banking market affected by the transaction, and a description of the funding for the transaction;

(iii) Evidence that notice of the proposal has been published in accordance with § 225.16(b); and

(iv) A balance sheet and capital ratios for the acquiring bank holding company and the market indexes for each relevant banking market reflecting the *pro forma* effect of the transaction.

(2) *Action on proposals under this section.* The Board or the appropriate Reserve Bank shall act on a proposal submitted under this section or notify the bank holding company that the transaction is subject to the procedure in § 225.15 before the later of:

(i) 15 calendar days following the filing of all of the information required in paragraph (a)(1)of this section; or

(ii) 3 business days following the close of the public comment period;

(3) *Acceptance of notice in event expedited procedure not available.* In the event that the Board or the Reserve Bank determines after the filing of a notice under this section that a bank holding company may not use the procedure in this section and must file a notice under § 225.15, the notice shall be deemed accepted for purposes of § 225.15 as of the date that the notice was filed under this section.

(b) *Criteria for use of expedited procedure.* The procedure in this section is available only if:

(1) *Well capitalized organization.*

(i) *Bank holding company.* Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized;[2]

(ii) *Insured depository institutions.* Both at the time of and immediately after the proposed transaction,

(A) The lead insured depository institution of the acquiring bank holding company is well capitalized;

(B) Well capitalized insured depository institutions control at least 80 percent of the total assets of insured depository institutions controlled by the acquiring bank holding company; and

(C) No insured depository institution controlled by the acquiring bank holding company is undercapitalized;

(2) *Well managed organization.* At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 80 percent of the total assets of insured depository institutions controlled by such holding company are well managed;

(3) *Established CRA performance record.* At the time of the transaction, the lead insured depository institution of the acquiring bank holding company, and insured depository institutions that control at least 80 percent of the total assets of insured depository institutions controlled by such holding company have received a 'satisfactory' or better composite rating and at least a satisfactory rating for consumer compliance at the most recent examination under the Community Reinvestment Act;

(4) *Competitive criteria*—(i) *Competitive screen.* Without regard to any divestitures proposed by the acquiring bank holding company, the acquisition does not cause:

(A) Insured depository institutions controlled by the acquiring bank holding company to control in excess of 35 percent of market deposits in any relevant banking market, or

(B) The Herfindahl-Hirschman index to increase by more than 200 points in any relevant banking market with a post-acquisition index of at least 1800;

(ii) *Department of Justice.* The Department of Justice has not indicated to the Board that consummation of the transaction is likely to have a significantly adverse effect on competition in any relevant banking market;

(5) *Size of acquisition.* Either:

(i) *In general.* The book value of the aggregate risk-weighted assets acquired by the acquiring bank holding company in all transactions approved during the previous 12 months under this section and § 225.23 does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company; or

(ii) *Small bank holding companies.* Immediately following consummation of the proposed transaction, the consolidated total assets of the acquiring bank holding company are less than $300 million;

(6) *Interstate acquisitions.* Board approval of the transaction is not prohibited under section 3(d) of the BHC Act;

(7) *Other supervisory considerations.* Board approval of the transaction is not prohibited under the informational sufficiency and comprehensive home country supervision standards set forth in section 3(c)(3) of the BHC Act; and

(8) *Notification.* The acquiring bank holding company has not been notified by the Board or Reserve Bank prior to the expiration of the period in paragraph (a)(2) of this section that an application under § 225.15 is required.

(c) *Comment by primary banking supervisor*—(1) *Notice.* Upon receipt of a notice under this section, the appropriate Reserve Bank shall promptly furnish notice of the proposal and a copy of the information filed pursuant to paragraph (a) of this section to the primary banking supervisor of the banks to be acquired.

(2) *Comment period.* The primary banking supervisor shall have 30 calendar days (or such shorter time as agreed to by the primary banking supervisor) from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(3) *Action subject to supervisor's comment.* Action by the Board or the Reserve Bank on a proposal under this section is subject to the condition that the primary banking supervisor not object to the proposal prior to the expiration of the comment period described in paragraph (c)(2) of this section. In the event that the primary banking supervisor provides written notice to the Board during the 30-day period described in paragraph (c)(2) of this section objecting to the proposal, any approval given under this section shall be revoked and the Board shall order a hearing on the proposal in accordance with section 3(b) of the Bank Holding Company Act;

(4) *Emergencies.* Notwithstanding paragraphs (c) (2) and (3) of this section, the Board may provide the primary banking supervisor with 10 calendar days notice of a proposal under this

[2] For purposes of this paragraph, a bank holding company with assets under $150 million will be deemed to have met the requirements of this paragraph if the parent bank holding company's ratio of *pro forma* debt to equity is 1.0:1 or less and the proposal in all other respects meets the requirements of appendix C of this part.

section if the Board finds that an emergency exists requiring expeditious action, and may act during the notice period or without providing notice to the primary banking supervisor if the Board finds that it must act immediately to prevent probable failure.

(d) *Definitions.* For purposes of this section—

(1) *Primary banking supervisor.* The *primary banking supervisor* for an institution is:

(i) The Office of the Comptroller of the Currency in the case of a national banking association or District bank; and

(ii) The appropriate supervisory authority for the State in which the bank is chartered in the case of a State bank.

(2) *Well managed.* A company or depository institution is *well managed* if, at its most recent inspection or examination or subsequent review, the company or institution received:

(i) One of the highest two composite ratings; and

(ii) At least a satisfactory rating for management, if such a rating is given.

§ 225.15 Procedures for other bank acquisition proposals.

(a) *Filing application.* Except as provided in § 225.14, an application for the Board's prior approval under this subpart shall be governed by the provisions of this section and shall be filed with the appropriate Reserve Bank on the designated form.

(b) *Notice to primary banking supervisor.* Upon receipt of an application under this subpart, the Reserve Bank shall promptly furnish notice and a copy of the application to the primary banking supervisor of each bank to be acquired. The primary supervisor shall have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(c) *Accepting application for processing.* Within 7 calendar days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing or return the application if it is substantially incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board. The Reserve Bank or the Board may request additional information necessary to complete the record of an application at any time after accepting the application for processing.

(d) *Action on applications*—(1) *Action under delegated authority.* The Reserve Bank shall approve an application under this section within 30 calendar days after it has accepted the application, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate.

(2) *Board action.* The Board shall act on an application under this subpart that is referred to it for decision within 60 calendar days after the Reserve Bank has accepted the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. In no event may the extension exceed the 91-day period provided in § 225.16(e). The Board may at any time request additional information that it believes is necessary for its decision.

§ 225.16 Public notice, hearings and other provisions governing applications and notices.

(a) *In general.* The provisions of this section shall apply to all notices and applications filed under §§ 225.14 and 225.15.

(b) *Public notice*—(1) *Newspaper publication*—(i) *Location of publication.* In the case of each notice or application submitted under §§ 225.14 or 225.15, the applicant shall cause a newspaper notice to be published in a newspaper of general circulation in the form and at the locations specified in § 262.3 of the Rules of Procedure (12 CFR 262.3);

(ii) *Content of notice.* A newspaper notice under this paragraph shall provide an opportunity for interested persons to comment on the proposal for a period of at least 30 calendar days; and

(iii) *Timing of publication.* Each newspaper notice published in connection with a proposal under this paragraph must be published no more than 30 calendar days before and no later than 7 calendar days following the date that a notice or application is filed with the appropriate Reserve Bank.

(2) **Federal Register** *notice*—(i) *Publication by Board.* Upon receipt of a notice or application under § 225.14 or § 225.15, the Board shall promptly publish notice of the proposal in the **Federal Register** and shall provide an opportunity for interested persons to comment on the proposal for a period of at least 15 calendar days;

(ii) *Request for advance publication.* At any time during the 30-day period prior to filing a notice or application under § 225.14 or § 225.15, a bank holding company may request that the Board publish notice of a proposal in the **Federal Register**. A request for advance **Federal Register** publication must be made in writing to the appropriate Reserve Bank and must contain the identifying information prescribed by the Board for **Federal Register** publication;

(3) *Waiver or shortening of notice.* The Board may waive or shorten the required notice periods under this section if the Board determines that an emergency exists requiring expeditious action on the proposal or the Board finds that immediate action is necessary to prevent the probable failure of an insured depository institution.

(c) *Notice to Attorney General.* The Board or Reserve Bank shall immediately notify the Attorney General of approval of any notice or application under § 225.14 or § 225.15.

(d) *Hearings.* As provided in section 3(b) of the BHC Act, the Board shall order a hearing on any application or notice under §§ 225.14 or 225.15 if the Board receives from the primary supervisor of the bank to be acquired, within the 30-day period specified in § 225.14(c) or § 225.15(b), a written recommendation of disapproval of an application. The Board may order a formal or informal hearing or other proceeding on the application or notice, as provided in § 262.3(i)(2) of the Board's Rules of Procedure. Any request for a hearing (other than from the primary supervisor) shall comply with section 262.3(e) of the Rules of Procedure (12 CFR 262.3(e)).

(e) *Approval through failure to act*—(1) *Ninety-one day rule.* An application or notice under § 225.14 or § 225.15 shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application or notice, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(2) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of:

(i) The date of receipt by the Board of an application or notice that has been accepted by the Reserve Bank;

(ii) The last day provided in any notice for receipt of comments and hearing requests on the application or notice;

(iii) The date of receipt by the Board of the last relevant material regarding the application or notice that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(iv) The date of completion of any hearing or other proceeding.

(f) *Exceptions to notice and hearing requirements*—(1) *Probable bank failure.* If the Board finds it must act immediately on an application or notice in order to prevent the probable failure of a bank or bank holding company, the Board may modify or dispense with the notice and hearing requirements provided in this section.

(2) *Emergency.* If the Board finds that, although immediate action on an application or notice is not necessary, an emergency exists requiring expeditious action, the Board shall provide the primary supervisor 10 days to submit its recommendation. The Board may act on such an application or notice without a hearing and may modify or dispense with the other notice and hearing requirements provided in this section.

(g) *Waiting period.* A transaction approved under § 225.14 or § 225.15 shall not be consummated until 30 days after the date of approval of the application, except that a transaction may be consummated:

(1) Immediately upon approval, in the event that the Board has determined under paragraph (f) of this section that the application or notice involves a probable bank failure;

(2) On or after the 5th calendar day following the date of approval, in the event that the Board has determined under paragraph (f) of this section that an emergency exists requiring expeditious action; or

(3) On or after the 15th calendar day following the date of approval, in the event that the Board has not received any adverse comments from the United States attorney general relating to the competitive factors and the attorney general has consented to such shorter waiting period.

§ 225.17 Notice procedure for one-bank holding company formations.

(a) *Transactions which qualify under this section.* An acquisition by a company of control of a bank may be consummated 30 days after providing notice to the appropriate Reserve Bank in accordance with paragraph (b) of this section, provided that all of the following conditions are met:

(1) The shareholder or shareholders who control at least 67 percent of the shares of the bank would control, immediately after the reorganization, at least 67 percent of the shares of the holding company in substantially the same proportion, except for changes in shareholders' interests resulting from the exercise of dissenting shareholders' rights under state or federal law; [3]

(2) No shareholder or group of shareholders acting in concert would, following the reorganization, own or control 10 percent or more of any class of voting shares of the bank holding company unless that shareholder or group of shareholders was authorized, after review under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)) by the appropriate federal banking agency for the bank, to own or control 10 percent or more of any class of voting shares of the bank; [4]

(3) The bank is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o));

(4) The bank has received at least a composite "satisfactory" rating at its most recent examination, in the event that the bank has been subject to an examination;

(5) At the time of the reorganization, neither the bank nor any of its officers, directors, or principal shareholders is involved in any unresolved supervisory or enforcement matters with any appropriate federal banking agency;

(6) The company demonstrates that any debt that it would incur at the time of the reorganization, and the proposed means of retiring this debt, would not place undue burden on the holding company or its subsidiary on a *pro forma* basis; [5]

(7) The holding company would not, as a result of the reorganization, acquire control of any additional bank or engage in any activities other than those of managing and controlling banks; and

(8) During this period, neither the appropriate Reserve Bank nor the Board has objected to the proposal or required the filing of an application under § 225.15 of this subpart.

(b) *Contents of notice.* A notice filed under this paragraph must include:

(1) Certification by the notificant's board of directors that the requirements of 12 U.S.C. 1842(a)(C) and this section are met by the proposal;

(2) A list identifying all principal shareholders of the bank prior to the reorganization and of the holding company following the reorganization, and specifying the percentage of shares held by each principal shareholder in the bank and proposed to be held in the new holding company;

(3) A description of the resulting management of the proposed bank holding company and its subsidiary bank, including:

(i) Biographical information regarding any senior officers and directors of the resulting bank holding company who were not senior officers or directors of the bank prior to the reorganization; and

(ii) A detailed history of the involvement of any officer, director, or principal shareholder of the resulting bank holding company in any administrative or criminal proceeding; and

(4) *Pro forma* financial statements for the holding company, and a description of the amount, source and terms of debt, if any, that the bank holding company proposes to incur, and information regarding the sources and timing for debt service and retirement.

(c) *Acknowledgment of notice.* Within 7 calendar days following receipt of a notice under this section, the Reserve Bank shall provide the notificant with a written acknowledgment of receipt of the notice. This written acknowledgment shall indicate that the transaction described in the notice may be consummated on the 30th calendar day after the date of receipt of the notice if the Reserve Bank or the Board has not objected to the proposal during that time.

(d) *Application required upon objection.* The Reserve Bank or the Board may object to a proposal during the notice period by providing the bank holding company with a written explanation of the reasons for the objection. In such case, the bank holding company may file an application for prior approval of the proposal pursuant to § 225.15 of this subpart.

4. Subpart C is revised to read as follows:

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

Sec.

225.21 Prohibited nonbanking activities and acquisitions; exempt bank holding companies.
225.22 Exempt nonbanking activities and acquisitions.
225.23 Expedited action for nonbanking proposals by well-run bank holding companies.

[3] A shareholder of a bank in reorganization will be considered to have the same proportional interest in the holding company if the shareholder interest increases, on a *pro rata* basis, as a result of either the redemption of shares from dissenting shareholders by the bank or bank holding company or the acquisition of shares of dissenting shareholders by the remaining shareholders.

[4] This procedure is not available in cases in which the exercise of dissenting shareholders' rights would cause a company that is not a bank holding company (other than the company in formation) to be required to register as a bank holding company. This procedure also is not available for the formation of a bank holding company organized in mutual form.

[5] For a banking organization with consolidated assets, on a *pro forma* basis, of less than $150 million (other than a banking organization that would control a *de novo* bank), this requirement would be satisfied if the proposal would comply with the Board's policy statement on small bank holding company formations (appendix C of this part).

225.24 Procedures for other nonbanking proposals.
225.25 Duration of approval, hearings, alteration of activities and other matters.
225.26 Factors considered in acting on nonbanking proposals.
225.27 Procedures for determining scope of nonbanking activities.
225.28 List of permissible nonbanking activities.

Subpart C—Nonbanking Activities and Acquisitions by Bank Holding Companies

§ 225.21 Prohibited nonbanking activities and acquisitions; exempt bank holding companies.

(a) *Prohibited nonbanking activities and acquisitions.* Except as provided in § 225.22 of this subpart, a bank holding company or a subsidiary may not engage in, or acquire or control, directly or indirectly, voting securities or assets of a company engaged in, any activity other than:

(1) Banking or managing or controlling banks and other subsidiaries authorized under the BHC Act; and

(2) An activity that the Board determines to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, including any incidental activities that are necessary to carry on such an activity, if the bank holding company has obtained the prior approval of the Board for that activity in accordance with and subject to the requirements of this regulation.

(b) *Exempt bank holding companies.* The following bank holding companies are exempt from the provisions of this subpart:

(1) *Family-owned companies.* Any company that is a "company covered in 1970," as defined in section 2(b) of the BHC Act, more than 85 percent of the voting securities of which was collectively owned on June 30, 1968, and continuously thereafter, by members of the same family (or their spouses) who are lineal descendants of common ancestors.

(2) *Labor, agricultural, and horticultural organizations.* Any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501(c)).

(3) *Companies granted hardship exemption.* Any bank holding company that has controlled only one bank since before July 1, 1968, and that has been granted an exemption by the Board under section 4(d) of the BHC Act, subject to any conditions imposed by the Board.

(4) *Companies granted exemption on other grounds.* Any company that acquired control of a bank before December 10, 1982, without the Board's prior approval under section 3 of the BHC Act, on the basis of a narrow interpretation of the term *demand* deposit or *commercial loan* if the Board has determined that:

(i) Coverage of the company as a bank holding company under this subpart would be unfair or represent an unreasonable hardship; and

(ii) Exclusion of the company from coverage under this regulation is consistent with the purposes of the BHC Act and section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). The provisions of § 225.4 of subpart A of this regulation are not applicable to a company exempt under this paragraph.

§ 225.22 Exempt nonbanking activities and acquisitions.

(a) *Servicing activities.* A bank holding company may, without the Board's prior approval under this subpart, furnish services to or perform services for, or establish or acquire a company that engages solely in furnishing services to or performing services for:

(1) The bank holding company or its subsidiaries in connection with their activities as authorized by law, including services that are necessary to fulfill commitments entered into by the subsidiaries with third parties, if the bank holding company or servicing company complies with the Board's published interpretations and does not act as principal in dealing with third parties; and

(2) The internal operations of the bank holding company or its subsidiaries. Services for the internal operations of the bank holding company or its subsidiaries include, but are not limited to:

(i) Accounting, auditing, and appraising;

(ii) Advertising and public relations;

(iii) Data processing and data transmission services, data bases or facilities;

(iv) Personnel services;

(v) Courier services;

(vi) Holding or operating property used wholly or substantially by a subsidiary in its operations or for its future use;

(vii) Liquidating property acquired from a subsidiary;

(viii) Liquidating property acquired from any sources either prior to May 9, 1956, or the date on which the company became a bank holding company, whichever is later; and

(ix) Selling, purchasing, or underwriting insurance such as blanket bond insurance, group insurance for employees, and property and casualty insurance.

(b) *Safe deposit business.* A bank holding company or nonbank subsidiary may, without the Board's prior approval, conduct a safe deposit business, or acquire voting securities of a company that conducts such a business.

(c) *Nonbanking acquisitions not requiring prior Board approval.* The Board's prior approval is not required under this subpart for the following acquisitions:

(1) *DPC acquisitions.* (i) Voting securities or assets, acquired by foreclosure or otherwise, in the ordinary course of collecting a debt previously contracted (DPC property) in good faith, if the DPC property is divested within two years of acquisition.

(ii) The Board may, upon request, extend this two-year period for up to three additional one-year periods. The Board may permit additional extensions for up to 5 years (for a total of 10 years), for real estate or other assets that are demonstrated by the bank holding company to have value and marketability characteristics similar to real estate.

(iii) Transfers of DPC property within the bank holding company system do not extend any period for divestiture of the property.

(2) *Securities or assets required to be divested by subsidiary.* Voting securities or assets required to be divested by a subsidiary at the request of an examining federal or state authority (except by the Board under the BHC Act or this regulation), if the bank holding company divests the securities or assets within two years from the date acquired from the subsidiary.

(3) *Fiduciary investments.* Voting securities or assets acquired by a bank or other company (other than a trust that is a company) in good faith in a fiduciary capacity, if the voting securities or assets are:

(i) Held in the ordinary course of business; and

(ii) Not acquired for the benefit of the company or its shareholders, employees, or subsidiaries.

(4) *Securities eligible for investment by a national bank.* Voting securities of the kinds and amounts explicitly eligible by federal statute (other than section 4 of the Bank Service Corporation Act, 12 U.S.C. 1864) for investment by a national bank, and voting securities acquired prior to June 30, 1971, in reliance on section 4(c)(5) of the BHC Act and interpretations of

the Comptroller of the Currency under section 5136 of the Revised Statutes (12 U.S.C. 24(7)).

(5) *Securities or property representing 5 percent or less of a company.* Voting securities of a company or property that, in the aggregate, represent 5 percent or less of the outstanding shares of any class of voting securities of a company or a 5 percent interest or less in the property, subject to the provisions of 12 CFR 225.137.

(6) *Securities of investment company.* Voting securities of an investment company that is solely engaged in investing in securities and that does not own or control more than 5 percent of the outstanding shares of any class of voting securities of any company.

(7) *Assets acquired in the ordinary course of business.* Assets of a company acquired in the ordinary course of business, subject to the provisions of 12 CFR 225.132, if the assets relate to activities in which the acquiring company has previously received Board approval under this regulation to engage.

(8) *Asset acquisitions by a lending company or industrial bank.* Assets of an office(s) of a company, all or substantially all of which relate to making, acquiring, or servicing loans if:

(i) The acquiring company has previously received Board approval under this regulation to engage in lending activities or industrial banking activities;

(ii) The assets acquired during any 12-month period do not represent more than 50 percent of the assets (on a consolidated basis) of the acquiring lending company or industrial bank, or more than $100 million, whichever amount is less;

(iii) The assets acquired do not represent more than 50 percent of the selling company's consolidated assets that are devoted to lending activities or industrial banking business;

(iv) The acquiring company notifies the Reserve Bank of the acquisition within 30 days after the acquisition; and

(v) The acquiring company, after giving effect to the transaction, meets the Board's capital adequacy guidelines (appendix A of this part) and the Board has not previously notified the acquiring company that it may not acquire assets under the exemption in this paragraph.

(d) *Acquisition of securities by subsidiary banks.*—(1) *National bank.* A national bank or its subsidiary may, without the Board's approval under this subpart, acquire or retain securities on the basis of section 4(c)(5) of the BHC Act in accordance with the regulations of the Comptroller of the Currency.

(2) *State bank.* A state-chartered bank or its subsidiary may, insofar as federal law is concerned and without the Board's prior approval under this subpart:

(i) Acquire or retain securities, on the basis of section 4(c)(5) of the BHC Act, of the kinds and amounts explicitly eligible by federal statute for investment by a national bank; or

(ii) Acquire or retain all (but, except for directors' qualifying shares, not less than all) of the securities of a company that engages solely in activities in which the parent bank may engage, at locations at which the bank may engage in the activity, and subject to the same limitations as if the bank were engaging in the activity directly.

(e) *Activities and securities of new bank holding companies.* A company that becomes a bank holding company may, for a period of two years, engage in nonbanking activities and control voting securities or assets of a nonbank subsidiary, if the bank holding company engaged in such activities or controlled such voting securities or assets on the date it became a bank holding company. The Board may grant requests for up to three one-year extensions of the two-year period.

(f) *Grandfathered activities and securities.* Unless the Board orders divestiture or termination under section 4(a)(2) of the BHC Act, a "company covered in 1970," as defined in section 2(b) of the BHC Act, may:

(1) Retain voting securities or assets and engage in activities that it has lawfully held or engaged in continuously since June 30, 1968; and

(2) Acquire voting securities of any newly formed company to engage in such activities.

(g) *Securities or activities exempt under Regulation K.* A bank holding company may acquire voting securities or assets and engage in activities as authorized in Regulation K (12 CFR part 211).

§ 225.23 Expedited action for nonbanking proposals by well-run bank holding companies.

(a) *Filing of notice.* A bank holding company that meets the requirements of paragraph (b) of this section may satisfy the notice requirement of this subpart in connection with the acquisition of voting securities or assets of a company engaged in nonbanking activities by providing the appropriate Reserve Bank with a written notice containing the following:

(1) A certification that all of the criteria in paragraph (b) of this section are met;

(2) A description of the transaction that includes identification of the companies involved in the transaction, the activities to be conducted, and a commitment to conduct the proposed activities in conformity with the Board's regulations and orders governing the conduct of the proposed activity;

(3) In the event the proposal involves an acquisition of a going concern, a description of the funding for the transaction, a balance sheet for the acquiring bank holding company reflecting the *pro forma* effect of the acquisition, and the market indexes for each relevant banking market reflecting the *pro forma* effect of the acquisition; and

(4) A request or evidence of a request that the Board publish notice of the proposal in the **Federal Register** as provided in § 225.24(c)(1).

(b) *Criteria for use of expedited procedure.* The procedure in this paragraph is available only if:

(1) *Well capitalized organization.—(i) Bank holding company.* Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized; [1]

(ii) *Insured depository institutions.* Both at the time of and immediately after the transaction;

(A) The lead insured depository institution of the acquiring bank holding company is well capitalized;

(B) Well capitalized insured depository institutions control at least 80 percent of the total assets of insured depository institutions controlled by the acquiring bank holding company; and

(C) No insured depository institution controlled by the acquiring bank holding company is undercapitalized;

(2) *Well managed organization.* At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 80 percent of the total assets of insured depository institutions controlled by such holding company are well managed;

(3) *Permissible activity.*

(i) The Board has determined by regulation or order that each activity proposed to be conducted is so closely related to banking or managing or controlling banks as to be a proper incident thereto; [2] and

[1] For purposes of this paragraph, a bank holding company with assets under $150 million will be deemed to have met the requirements of this paragraph if the parent bank holding company's ratio of *pro forma* debt to equity is 1.0:1 or less and the proposal in all other respects meets the requirements of appendix C of this part.

[2] In the case of the acquisition of a savings association, the bank holding company and its

(ii) The Board has not indicated that proposals to engage in the proposed activity are subject to the notice procedure provided in § 225.24.

(4) *Competitive criteria*—(i) *Competitive screen.* In the case of the acquisition of a going concern, the acquisition, without regard to any divestitures proposed by the acquiring bank holding company, does not cause:

(A) The acquiring bank holding company to control in excess of 35 percent of the market share in any relevant market, or

(B) The Herfindahl-Hirschman index to increase by more than 200 points in any relevant market with a post-acquisition index of at least 1800;

(ii) *Other competitive factors.* The Board has not indicated that the transaction is subject to close scrutiny on competitive grounds;

(5) *Size of acquisition.* In the case of an acquisition, the book value of the aggregate risk-weighted assets acquired by the acquiring bank holding company in all transactions approved during the previous 12 months under this section and § 225.14 does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company;

(6) *Notification.* The bank holding company has not been notified by the Board prior to the expiration of the period in subsection (d) that a notice under § 225.24 is required.

(c) *Action on notice.* The Board or the appropriate Reserve Bank shall act on a proposal submitted under this section or notify the bank holding company that the transaction is subject to the procedure in § 225.24 before the later of:

(1) 15 calendar days following the filing of all of the information required in paragraph (a) of this section; or

(2) 3 business days following the close of the public comment period;

(d) *Acceptance of notice in event expedited procedure not available.* In the event that the Board or the Reserve Bank determines after the filing of a notice under this section that a bank holding company may not use the procedure in this section and must file a notice under § 225.24, the notice shall be deemed accepted for purposes of § 225.24 as of the date that the notice was filed under this section.

§ 225.24 Procedures for other nonbanking proposals.

(a) *Notice required for nonbanking activities.* Except as provided in § 225.23, a notice for the Board's prior approval under § 225.21(a) to engage in or acquire a company engaged in a nonbanking activity shall be filed by a bank holding company (including a company seeking to become a bank holding company) with the appropriate Reserve Bank in accordance with this section and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in listed activities.* A bank holding company seeking to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity listed in § 225.28 shall file a notice containing the following:

(i) A description of the activities to be conducted;

(ii) The identity of the company that will conduct the activity; and

(iii) If the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary.

(2) *Acquiring company engaged in listed activities.* A bank holding company seeking to acquire or control voting securities or assets of a company engaged in a nonbanking activity listed in § 225.28 shall file a notice containing the following:

(i) A description of the proposal, including a description of each proposed activity, and the effect of the proposal on competition among entities engaging in each proposed activity;

(ii) The identity of any entity involved in the proposal, and if the notificant proposes to conduct the activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) A statement of the public benefits that can reasonably be expected to result from the proposal; and

(iv) A description of the terms and sources of funds for the transaction, a copy of any pertinent purchase agreement(s), balance-sheet and income statements for the most recent fiscal quarter and year-end for any company to be acquired, parent-company-only and consolidated *pro forma* balance sheets for the notificant as of the most recent fiscal quarter, and calculations of *pro forma* consolidated risk-based capital ratios and leverage ratio for the notificant as of the most recent fiscal quarter.

(3) *Engaging in or acquiring company to engage in unlisted activities.* A bank holding company seeking to commence or to engage *de novo*, or to acquire or control voting securities or assets of a company engaged in, any activity not listed in § 225.28 shall file a notice containing the following:

(i) Evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto, or, in the event that the Board has previously determined by order that the activity is permissible for a bank holding company to conduct, a commitment to comply with all conditions and limitations that have been established by the Board governing the activity; and

(ii) The information required in paragraphs (a)(1) or (a)(2), as appropriate.

(b) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (a)(2) or (a)(3) of this section.

(c) *Notice to public*—(1) *Listed activities and activities approved by order.*

(i) In a case involving an activity listed in § 225.28 or previously approved by the Board by order, the Reserve Bank shall notify the Board for publication in the **Federal Register** immediately upon receipt by the Reserve Bank of:

(A) A notice under this section; or

(B) A written request that notice of a proposal under this section or § 225.23 be published in the **Federal Register**. Such a request may be made up to 30 calendar days prior to submission of a notice under this subpart.

(ii) The **Federal Register** notice published under this paragraph shall invite public comment on the proposal, generally for a period of 15 days.

(2) *New activities*—(i) *In general.* In the case of a notice under this subpart involving an activity that is not listed in § 225.28 and that has not been previously approved by the Board by order, the Board shall send notice of the proposal to the **Federal Register** for publication, unless the Board determines that the notificant has not demonstrated that the activity is so closely related to banking or to managing or controlling banks as to be a proper incident thereto. The **Federal Register** notice shall invite public comment on the proposal for a reasonable period of time, generally for 30 days.

(ii) *Time for publication.* The Board shall send the notice required under this paragraph to the **Federal Register** within 10 business days of acceptance by the Reserve Bank. The Board may extend the 10-day period for an additional 30 calendar days upon notice to the notificant. In the event notice of a proposal is not published for comment, the Board shall inform the notificant of the reasons for the decision.

(d) *Action on notices*—(1) *Reserve Bank action*—(i) *In general.* Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant

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subsidiary depository institutions must also meet the CRA requirements of § 225.14(b)(3).

to paragraphs (a)(1) or (a)(2) of this section, the Reserve Banks shall—

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 7 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this subpart. The return of such a notice shall be deemed action on the notice.

(iii) *Notice of action.* The Reserve Bank shall promptly notify the bank holding company of any action, referral, or extention under this paragraph (d)(1) of this section.

(iv) *Close of public comment period.* The Reserve Bank shall not approve any notice under this paragraph (d)(1) of this section prior to the third business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action*—(i) *Internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board will notify the notificant and explain the reasons and the date by which the Board expects to act.

(ii) *Required time limit for Board action.* The Board shall act on any notice under this section that is referred to it for decision within 60 calendar days after the submission of a complete notice.

(iii) *Extension of required period for action*—(A) *In general.* The Board may extend the 60-day period required for Board action under paragraph (d)(2)(ii) of this section for an additional 30 days upon notice to the notificant.

(B) *Unlisted activities.* If a notice involves a proposal to engage in an activity that is not listed in § 225.28, the Board may extend the period required for Board action under paragraph (d)(2)(ii) of this section for an additional 90 days. This 90-day extension is in addition to the 30-day extension period provided in paragraph (d)(2)(iii)(A) of this section. The Board shall notify the notificant that the notice period has been extended and explain the reasons for the extension.

(3) *Requests for additional information.* The Board or the Reserve Bank may at any time request any additional information that either believes is needed for a decision on any notice under this subpart.

(4) *Tolling of period.* The Board or the Reserve Bank, as the case may be, may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

§ 225.25 Duration of approval, hearings, alteration of activities and other matters.

(a) *Duration of approval.* A bank holding company that receives approval pursuant to this subpart to engage *de novo* in a nonbanking activity may conduct that activity *de novo* at any time following the date approval is received so long as:

(1) At the time the activity is commenced, the bank holding company has one of the highest two composite inspection ratings and is adequately capitalized;

(2) Prior to commencing the activity, the Board has not informed the company that it may not commence the activity; and

(3) The order approving the activity does not specifically require that the activity be commenced within a given period.

(b) *Hearings.* (1) *Procedure to request hearing.* Any request for a hearing on a notice under this subpart shall comply with the provisions of 12 CFR 262.3(e).

(2) *Determination to hold hearing.* The Board may order a formal or informal hearing or other proceeding on a notice as provided in 12 CFR 262.3(i)(2). The Board shall order a hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(3) *Extension of period for hearing.* The Board may extend the time for action on any notice for such time as is reasonably necessary to conduct a hearing and evaluate the hearing record. Such extension shall not exceed 91 calendar days after the date of submission to the Board of the complete record on the notice. The procedures for computation of the 91-day rule as set forth in § 225.16(e) apply to notices under this subpart that involve hearings.

(c) *Approval through failure to act*—(1) Except as provided in paragraph (b) of this section or § 225.24(d)(4), a notice under this subpart shall be deemed to be approved at the conclusion of the period that begins on the date the complete notice is received by the Reserve Bank or the Board and that ends 60 calendar days plus any applicable extension and tolling period thereafter.

(2) *Complete notice.* For purposes of paragraph (c) of this section, a notice shall be deemed to be complete for purposes of this subpart at such time as it contains all information required by this subpart and all other information requested by the Board or the Reserve Bank in connection with the particular notice.

(d) *Notice to expand or alter nonbanking activities.*—(1) *De novo expansion.* A notice under this subpart is required to open a new office or to form a subsidiary to engage in, or to relocate an existing office engaged in, a nonbanking activity that the Board has previously approved for the bank holding company under this regulation, only if:

(i) The Board's prior approval was limited geographically;

(ii) The activity is to be conducted in a country outside of the United States and the bank holding company has not previously received prior Board approval under this regulation to engage in the activity in that country; or

(iii) The Board or appropriate Reserve Bank has notified the company that a notice under this subpart is required.

(2) *Activities outside United States.* With respect to activities to be engaged in outside the United States that require approval under this subpart, the procedures of this section apply only to activities to be engaged in directly by a bank holding company that is not a qualifying foreign banking organization or by a nonbank subsidiary of a bank holding company approved under this subpart. Regulation K (12 CFR part 211) governs other international operations of bank holding companies.

(3) *Alteration of nonbanking activity.* Unless otherwise permitted by the Board, a notice under this subpart is required to alter a nonbanking activity in any material respect from that considered by the Board in acting on the application or notice to engage in the activity.

(e) *Emergency thrift-institution acquisitions.* In the case of a notice to acquire a thrift institution, the Board may modify or dispense with the public-notice and hearing requirements of this subpart if the Board finds that an emergency exists that requires the Board to act immediately and the primary federal regulator of the institution concurs.

§ 225.26 Factors considered in acting on nonbanking proposals.

(a) *In general.* In evaluating a notice under § 225.23 or § 225.24, the Board shall consider whether the performance by the notificant of the activities can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices).

(b) *Financial and managerial resources.* Consideration of the factors in paragraph (a) of this section includes an evaluation of the financial and managerial resources of the notificant, including its subsidiaries and any company to be acquired, the effect of the proposed transaction on those resources, and the management expertise, internal control and risk management systems, and capital of the entity conducting the activity.

(c) *Competitive effect of de novo proposals.* Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity *de novo* is presumed to result in benefits to the public through increased competition.

(d) *Denial for lack of information.* The Board may deny any notice submitted under this subpart if the notificant neglects, fails, or refuses to furnish all information required by the Board.

§ 225.27 Procedures for determining scope of nonbanking activities.

(a) *Advisory opinions regarding the scope of permissible nonbanking activities.*—(1) *Requests for an advisory opinion.* Any person may submit a request to the Board for an advisory opinion regarding the scope any permissible nonbanking activity. The request must be submitted in writing to the Board and must identify the proposed parameters of the activity or a description of the service or product that is intended to be provided as well as an explanation supporting an interpretation regarding the scope of the permissible nonbanking activity.

(2) *Response to a request.* The Board shall provide an advisory opinion within 45 days of receiving a written request under this subsection.

(b) *Procedure for consideration of new activities.*—(1) *Initiation of proceeding.* The Board may at any time, on its own initiative or in response to a written request from any person, initiate a proceeding to determine whether any activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(2) *Requests for determination.* Any request that the Board consider that an activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto shall be submitted to the Board in writing and shall contain evidence that the proposed activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

(3) *Publication.* The Board shall publish in the **Federal Register** notice that it is considering the permissibility of a new activity and invite public comment for a period of at least 30 calendar days. In the case of a request submitted under paragraph (b) of this section, the Board may determine not to publish notice of the request if the Board determines that the requester has provided no reasonable basis for a determination that the activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto and notifies the requester of that determination.

(4) *Comments and hearing requests.* Any comment and any request for a hearing regarding a proposal under this section shall comply with the provisions of § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

§ 225.28 List of permissible nonbanking activities.

(a) *Closely related nonbanking activities.* The activities listed in paragraph (b) of this section are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b) *Activities determined by regulation to be permissible.*— (1) *Extending credit and servicing loans.* Making, acquiring, brokering or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others.

(2) *Activities related to extending credit.* Any activity usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit, as determined by the Board. The Board has determined that the following activities are usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit:

(i) *Real estate and personal property appraising.* Performing appraisals of real estate and tangible and intangible personal property, including securities.

(ii) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if the bank holding company and its affiliates do not have an interest in, or participate in managing or developing, a real estate project for which it arranges equity financing, and do not promote or sponsor the development of such property.

(iii) *Check-guaranty services.* Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services and purchasing from the merchant validly authorized checks that are subsequently dishonored.

(iv) *Collection agency services.* Collecting overdue accounts receivable, either retail or commercial.

(v) *Credit bureau services.* Maintaining information related to the credit history of consumers and providing that information to a credit grantor who is considering a borrower's application for credit or who has extended credit to the borrower.

(vi) *Asset management, servicing, and collection activities.* Engaging under contract with a third party in asset management, servicing, and collection [3] for assets of a type that an insured depository institution may originate and own, if the company does not engage in real property management or real estate brokerage services as part of these services.

(vii) *Acquiring debt in default.* Acquiring debt that is in default at the time of acquisition, if the company:

(A) Divests shares or assets securing debt in default that are not permissible investments for bank holding companies within the time period required for divestiture of property acquired in satisfaction of a debt previously contracted under § 225.12(b); [4]

(B) Stands only in the position of a creditor and does not purchase equity of obligors of debt in default (other than equity that may be collateral for such debt); and

(C) Does not acquire debt in default secured by shares of a bank or bank holding company.

(viii) *Real-estate settlement servicing.* Providing real-estate settlement services.[5]

(3) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if:

(i) The lease is on a nonoperating basis; [6]

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[3] Asset management services include acting as agent in the liquidation or sale of loans and collateral for loans, including real estate and other assets acquired through foreclosure or in satisfaction of debts previously contracted.

[4] For this purpose, the divestiture period for property begins on the date that the debt is acquired regardless of when legal title to the property is acquired.

[5] For purposes of this section, real-estate settlement services do not include providing title insurance as principal, agent or broker.

[6] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly: (1) Provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts

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(ii) The initial term of the lease is at least 90 days;

(iii) In the case of leases involving real property:

(A) At the inception of the initial lease the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease from rental payments, estimated tax benefits and the estimated residual value of the property at the expiration of the initial lease; and

(B) The estimated residual value of property for purposes of paragraph (b)(3)(iii)(A) of this section shall not exceed 25 percent of the acquisition cost of the property to the lessor.

(4) *Operating nonbank depository institutions*—(i) *Industrial banking.* Owning, controlling or operating an industrial bank, Morris Plan bank, or industrial loan company, so long as the institution is not a bank.

(ii) *Operating a savings association.* Owning, controlling or operating a savings association, if the savings association engages only in deposit-taking activities and lending and other activities that are permissible for bank holding companies under this subpart C.

(5) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the company is not a bank for purposes of section 2(c) of the Bank Holding Company Act.

(6) *Financial and investment advisory activities.* Acting as investment or financial advisor to any person, including (without in any way limiting the foregoing):

(i) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(ii) Furnishing general economic information and advice, general economic statistical forecasting services and industry studies;

(iii) Providing advice in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions, and conducting financial feasibility studies;[7]

(iv) Providing information, statistical forecasting and advice with respect to any transaction in foreign exchange, forward contracts, options, futures, swaps or similar transactions;

(v) Providing educational courses, and instructional materials to consumers on individual financial management matters; and

(vi) Providing tax-planning and tax-preparation services to any person.

(7) *Agency transactional services for customer investments*—(i) *Securities brokerage.* Providing securities brokerage services, whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing.

(ii) *Riskless principal transactions.* Buying and selling in the secondary market all types of securities on the order of customers as a "riskless principal" to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer. This does not include:

(A) Selling bank-ineligible securities[8] at the order of a customer that is the issuer of the securities or selling bank-ineligible securities in any transaction where the company has a contractual agreement to place the securities as agent of the issuer;

(B) Acting as a riskless principal in any transaction involving a bank-ineligible security for which the company or any of its affiliates makes a market;[9]

(C) Engaging in any riskless principal transaction involving any bank-ineligible security carried in the inventory of the company or any of its affiliates;

(D) Acting as riskless principal in any transaction on behalf of any U.S. or foreign affiliate that engages in bank-ineligible securities underwriting and dealing.

(iii) *Private placement services.* Acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 (1933 Act) and the rules of the Securities and Exchange Commission (SEC) if the company does not purchase or repurchase for its own account the securities being placed, or hold in inventory unsold portions of issues of these securities.

(iv) *Futures commission merchant.* Acting as a futures commission merchant (FCM) for unaffiliated persons in the execution, clearance, or execution and clearance of futures contracts and options on futures contracts traded on an exchange in the United States or abroad if—

(A) The activity is conducted through a separately incorporated subsidiary of the bank holding company, which may engage in activities other than FCM activities;

(B) The subsidiary does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association, unless a waiver of the requirement is obtained; and

(C) In connection with clearing activities in which the subsidiary does not also execute the transaction, the clearing subsidiary—

(*1*) Does not serve as a primary or qualifying clearing firm for the customer; and

(*2*) Clears trades pursuant to customer and other agreements that grant the subsidiary the right to decline to accept those trades that the subsidiary has determined present unacceptable risks.

(v) *Other transactional services.* Providing to customers as agent transactional services with respect to any transaction described in paragraph (b)(8) of this section, that the company may engage in for its own account.

(8) *Investment transactions as principal.*—(i) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United

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and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (3) provide for the loan of an automobile during servicing of the leased vehicle; (4) purchase insurance for the lessee; or (5) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor. The bank holding company may arrange for a third party to provide these services or products.

[7] Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

[8] A bank-ineligible security is any security that a State member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[9] A company or its affiliates may not enter quotes for specific bank-ineligible securities in any dealer quotation system in connection with the company's riskless principal transactions; except that the company or its affiliates may enter "bid" or "ask" quotations, or publish "offering wanted" or "bid wanted" notices on trading systems other than NASDAQ or an exchange, if company or its affiliate does not enter price quotations on different sides of the market for a particular security during any two day period.

States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including banker's acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

(ii) *Trading activities.* Engaging as principal for the account of the bank holding company or any of its affiliates in transactions in:

(A) Foreign exchange, or

(B) Forward contracts, options, futures, swaps, and similar contracts, whether traded on exchanges or not, on any financial asset (including gold, silver, platinum or palladium), nonfinancial asset, or group or index of value thereof, other than a bank ineligible security,[10] if:

(*1*) A state member bank is authorized to invest in the asset underlying the contract;

(*2*) The contract requires cash settlement; or

(*3*) The contract allows for assignment, termination or offset prior to delivery or expiration and the company makes every reasonable effort to avoid taking or making delivery.

(iii) *Buying and selling bullion and related activities.* Buying and selling gold, silver, platinum and palladium bars, rounds, bullion and coins for the company's own account and the account of others and providing incidental services such as arranging for the storage, safe custody, assaying and shipment of gold, silver, platinum and palladium.

(9) *Management consulting and counseling activities.*—(i) *Management consulting.* (A) Providing management consulting advice:[11]

(*1*) On any matter to unaffiliated depository institutions, including commercial banks, savings and loan associations, savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, industrial loan companies, trust companies and branches or agencies of foreign banks;

(*2*) On any financial, economic, accounting or audit matter to any other company.

(B) A company conducting management consulting activities under this subparagraph and any affiliate of such company may not—

(*1*) Own or control, directly or indirectly, more than 5 percent of the voting securities of the client institution; and

(*2*) Allow a management official, as defined in 12 CFR 212.2(h), of the company or any of its affiliates to serve as a management official of the client institution, except where such interlocking relationship is permitted pursuant to an exemption granted under 12 CFR 212.4(b) or otherwise permitted by the Board.

(C) A company conducting management consulting activities may provide management consulting services to customers not described in paragraph (b)(9)(i)(A)(*1*) of this section or regarding matters not described in paragraph (b)(9)(i)(A)(*2*) if the total annual revenue derived from those management consulting services does not exceed 30 percent of the company's total annual revenue derived from management consulting activities.

(ii) *Employee benefits consulting services.* Providing consulting services to employee benefit, compensation and insurance plans, including designing plans, assisting in the implementation of plans, providing administrative services to plans, and developing employee communication programs for plans.

(iii) *Career counseling services.* Providing career counseling services to:

(A) A financial organization[12] and individuals currently employed by, or recently displaced from, a financial organization;

(B) Individuals who are seeking employment at a financial organization; and

(C) Individuals who are currently employed in or who seek positions in the finance, accounting and audit departments of any company.

(10) *Support services.*—(i) *Courier services.* Providing courier services for—

(A) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(B) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[13]

(ii) *Printing and selling MICR-encoded items.* Printing and selling checks and related documents, including corporate image checks, cash tickets, voucher checks, deposit slips, savings withdrawal packages, and other forms that require Magnetic Ink Character Recognition (MICR) encoding.

(11) *Insurance agency and underwriting.*—(i) *Credit insurance.* Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is—

(A) directly related to an extension of credit by the bank holding company or any of its subsidiaries; and

(B) limited to ensuring the repayment of the outstanding balance due on the extension of credit[14] in the event of the death, disability, or involuntary unemployment of the debtor.

(ii) *Finance company subsidiary.* Acting as agent or broker for insurance directly related to an extension of credit by a finance company[15] that is a subsidiary of a bank holding company, if:

(A) The insurance is limited to ensuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(B) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home[16] and the credit is secured by the home; and

(C) The applicant commits to notify borrowers in writing that:

(1) They are not required to purchase such insurance from the applicant;

(2) Such insurance does not insure any interest of the borrower in the collateral; and

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[10] A bank-ineligible security is any security that a State member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[11] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131).

[12] The term *financial organization* refers to insured depository institution holding companies and their subsidiaries, other than nonbanking affiliates of diversified savings and loan holding companies that engage in activities not permissible under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(c)(8)).

[13] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

[14] "Extension of credit" includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full-payout leases that meet the requirements of paragraph (b)(5) of this section.

[15] "Finance company" includes all non-deposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual states as finance companies and that engage in a significant degree of consumer lending.

[16] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(3) The applicant will accept more comprehensive property insurance in place of such single-interest insurance.

(iii) *Insurance in small towns.* Engaging in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that:

(A) Has a population not exceeding 5,000 (as shown in the preceding decennial census); or

(B) Has inadequate insurance agency facilities, as determined by the Board, after notice and opportunity for hearing.

(iv) *Insurance-agency activities conducted on May 1, 1982.* Engaging in any specific insurance-agency activity [17] if the bank holding company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received Board approval to conduct such activity on or before May 1, 1982.[18] A bank holding company or subsidiary engaging in a specific insurance agency activity under this clause may:

(A) Engage in such specific insurance agency activity only at locations—

(*1*) In the state in which the bank holding company has its principal place of business (as defined in 12 U.S.C. 1842(d));

(*2*) In any state or states immediately adjacent to such state; and

(*3*) In any state in which the specific insurance-agency activity was conducted (or was approved to be conducted) by such bank holding company or subsidiary thereof or by any other subsidiary of such bank holding company on May 1, 1982; and

(B) Provide other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982, by such bank holding company or subsidiary.

(v) *Supervision of retail insurance agents.* Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell—

(A) Fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or its subsidiaries; and

(B) Group insurance that protects the employees of the bank holding company or its subsidiaries.

(vi) *Small bank holding companies.* Engaging in any insurance-agency activity if the bank holding company has total consolidated assets of $50 million or less. A bank holding company performing insurance-agency activities under this paragraph may not engage in the sale of life insurance or annuities except as provided in paragraphs (b)(11) (i) and (iii) of this section, and it may not continue to engage in insurance-agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the holding company and its subsidiaries exceed $50 million.

(vii) *Insurance-agency activities conducted before 1971.* Engaging in any insurance-agency activity performed at any location in the United States directly or indirectly by a bank holding company that was engaged in insurance-agency activities prior to January 1, 1971, as a consequence of approval by the Board prior to January 1, 1971.

(12) *Community development activities*—(i) *Financing and investment activities.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(ii) *Advisory activities.* Providing advisory and related services for programs designed primarily to promote community welfare.

(13) *Money orders, savings bonds, and traveler's checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(14) *Data processing.* (i) Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, advice and access to such services, facilities, or data bases by any technological means, if:

(A) The data to be processed or furnished are financial, banking, or economic; and

(B) The hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(ii) A company conducting data processing and data transmission activities may conduct data processing and data transmission activities not described in paragraph (b)(14)(i)(A) of this section if the total annual revenue derived from those data processing and data transmission activities does not exceed 30 percent of the company's total annual revenues derived from data processing and data transmission activities.

5. Subpart E is revised to read as follows:

Subpart E—Change in Bank Control

Sec.

225.41 Transactions requiring prior notice.
225.42 Transactions not requiring prior notice.
225.43 Procedures for filing, processing, publishing and acting on notices.
225.44 Reporting of stock loans.

Subpart E—Change in Bank Control

§ 225.41 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days written notice, as specified in § 225.43 of this subpart, before acquiring control of a state member bank or bank holding company, unless the acquisition is exempt under § 225.42.

(b) *Definitions.* For purposes of this subpart:

(1) *Acquisition* includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a state member bank or a bank holding company resulting from a redemption of voting securities.

(2) *Acting in concert* includes knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a state member bank or bank holding company whether or not pursuant to an express agreement.

(3) *Immediate family* includes a person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse.

(c) *Acquisitions requiring prior notice.*—(1) *Acquisition of control.* The

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[17] Nothing contained in this provision shall preclude a bank holding company subsidiary that is authorized to engage in a specific insurance-agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes and prior notice has been provided to the Board.

[18] For the purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board on May 1, 1982, and approved subsequently by the Board or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

acquisition of voting securities of a state member bank or bank holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 25 percent or more of any class of voting securities of the institution.

(2) *Rebuttable presumption of control.* The Board presumes that an acquisition of voting securities of a state member bank or bank holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if:

(i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.[1]

(d) *Rebuttable presumption of concerted action.* The following persons shall be presumed to be acting in concert for purposes of this subpart:

(1) A company and any controlling shareholder, partner, trustee, or management official of such company if both the company and the person own voting securities of the state member bank or bank holding company;

(2) An individual and the individual's immediate family;

(3) Companies under common control;

(4) Persons who are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a state member bank or bank holding company, other than through a revocable proxy as described in § 225.42(a)(5) of this subpart;

(5) Persons that have made, or propose to make, a joint filing under sections 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission; and

(6) A person and any trust for which such person serves as trustee.

(e) *Acquisitions of loans in default.* The Board presumes an acquisition of a loan in default that is secured by voting securities of a state member bank or bank holding company to be an acquisition of the underlying securities for purposes of this section.

(f) *Other transactions.* Transactions other than those set forth in paragraph (c) of this section resulting in a person's control of less than 25 percent of a class of voting securities of a state member bank or bank holding company are not deemed by the Board to constitute control for purposes of the Bank Control Act.

(g) *Rebuttal of presumptions.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption of control set forth in this section, if the Board finds that the acquisition will not result in control. The Board will afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

§ 225.42 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the Board under this subpart:

(1) *Existing control relationships.* The acquisition of additional voting securities of a state member bank or bank holding company by a person who:

(i) Continuously since March 9, 1979 (or since that institution commenced business, if later), held power to vote 25 percent or more of any class of voting securities of that institution; or

(ii) is presumed, under § 225.41(c)(2) of this subpart, to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities of the institution or, in other cases, where the Board determines that the person has controlled the bank continuously since March 9, 1979;

(2) *Increase of previously authorized acquisitions.* Unless the Board or the Reserve Bank otherwise provides in writing, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 225.41(c) of this subpart) after complying with the procedures and receiving approval to acquire voting securities of the institution under this subpart or in connection with an application approved under section 3 of the BHC Act (12 U.S.C. 1842; § 225.11 of subpart B of this part) or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(3) *Acquisitions subject to approval under BHC Act or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 3 of the BHC Act (12 U.S.C. 1842; § 225.11 of subpart B of this part), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)).

(4) *Transactions exempt under BHC Act.* Any transaction described in sections 2(a)(5), 3(a)(A), or 3(a)(B) of the BHC Act (12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B)), by a person described in those provisions;

(5) *Proxy solicitation.* The acquisition of the power to vote securities of a state member bank or bank holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting;

(6) *Stock dividends.* The receipt of voting securities of a state member bank or bank holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same; and

(7) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 U.S.C. 1817(j) (9), (10), and (12) and § 225.44 of this subpart.)

(b) *Prior notice exemption.* (1) The following acquisitions of voting securities of a state member bank or bank holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate Reserve Bank within 90 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank:

(i) The acquisition of voting securities through inheritance;

(ii) The acquisition of voting securities as a *bona fide* gift; and

(iii) The acquisition of voting securities in satisfaction of a debt previously contracted (DPC) in good faith.

[1] If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of the state member bank or bank holding company, each such person must file prior notice to the Board.

(2) The following acquisitions of voting securities of a state member bank or bank holding company which would otherwise require prior notice under this subpart are not subject to the prior notice requirements if the acquiring person does not reasonably have advance knowledge of the transaction, and provides the written notice required under § 225.43 to the appropriate Reserve Bank within 90 calendar days after the transaction occurs:

(i) The acquisition of voting securities resulting from a redemption of voting securities by the issuing bank or bank holding company; and

(ii) the acquisition of voting securities as a result of actions (including the sale of securities) by any third party that is not within the control of the acquiror.

(3) Nothing in paragraphs (b)(1) or (b)(2) of this section limits the authority of the Board to disapprove a notice pursuant to § 225.43(h) of this subpart.

§ 225.43 Procedures for filing, processing, publishing, and acting on notices.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain all the information required by paragraph 6 of the Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form.

(2) The Board may waive any of the informational requirements of the notice if the Board determines that it is in the public interest.

(3) A notificant must notify the appropriate Reserve Bank or the Board immediately of any material changes in a notice submitted to the Reserve Bank, including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated Board form, together with a statement of any material changes since the date of the statement or summary. The Reserve Bank or the Board, nevertheless, may request additional information if appropriate.

(b) *Acceptance of notice.* The 60-day notice period specified in § 225.41 of this subpart shall commence on the date of receipt of a complete notice. The Reserve Bank shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is or was complete and thereby accepted for processing. The Reserve Bank or the Board may request additional relevant information at any time after the date of acceptance.

(c) *Publication*—(1) *Newspaper announcement.* Any person(s) filing a notice under this subpart must publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement must be published no earlier than 30 calendar days prior to the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after the filing date, and the publisher's affidavit of a publication must be provided to the appropriate Reserve Bank.

(2) *Contents of newspaper announcement.* The newspaper announcement shall state:

(i) The name of each person identified in the notice as a proposed acquiror of the bank or bank holding company;

(ii) The name of the bank or bank holding company to be acquired, including, in the case of a bank holding company, the name of each of its subsidiary banks; and

(iii) A statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days or such shorter period as may be provided pursuant to paragraph (c)(5) of this section.

(3) **Federal Register** announcement. The Board will, upon filing of a notice under this subpart, publish announcement in the **Federal Register** of receipt of the notice. The **Federal Register** announcement will contain the information required under paragraphs (c)(2)(i) and (c)(2)(ii) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 calendar days or such shorter period as may be provided pursuant to paragraph (c)(5) of this section. The Board may waive publication in the **Federal Register** if the Board determines that such action is appropriate.

(4) *Delay of publication.* The Board may permit delay in the publication required under paragraphs (c)(1) and (c)(3) of this section if the Board determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(5) *Shortening or waiving notice.* The Board may shorten or waive the public comment requirements or this paragraph, waive the newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(6) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or **Federal Register** announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(7) *Standing.* No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

(d) *Time period for Board action*—(1) *Consummation of acquisition.* (i) The notificant(s) may consummate the proposed acquisition 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period as provided under paragraph (d)(2) of this section.

(ii) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the Board notifies the notificant(s) in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.*

(i) The Board may extend the 60-day period in paragraph (d)(1) of this section for an additional 30 days by notifying the acquiring person(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each if the Board determines that:

(A) Any acquiring person has not furnished all the information required under paragraph (a) of this section;

(B) Any material information submitted is substantially inaccurate;

(C) The Board is unable to complete the investigation of an acquiring person

because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefore and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(e) *Advice to bank supervisory agencies.* (1) Upon accepting a notice relating to acquisition of securities of a state member bank, the Reserve Bank shall send a copy of the notice to the appropriate state bank supervisor, which shall have 30 calendar days from the date the notice is sent in which to submit its views and recommendations to the Board. The Reserve Bank also shall send a copy of any notice to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(2) If the Board finds that it must act immediately in order to prevent the probable failure of the bank or bank holding company involved, the Board may dispense with or modify the requirements for notice to the state supervisor.

(f) *Investigation and report.* (1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(g) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice.

(h) *Disapproval and hearing.*—(1) *Disapproval of notice.* The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)) (*i.e.*, competitive, financial, managerial, banking or incompleteness of information).

(2) *Disapproval notification.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action.

(3) *Hearing.* Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

§ 225.44 Reporting of stock loans.

(a) *Requirements.* (1) Any financial institution and any affiliate of a financial institution that has credit outstanding to any person or group of persons, in the aggregate, which is secured, directly or indirectly, by 25 percent or more of any class of voting securities of a state member bank must file a consolidated report with the appropriate Reserve Bank for the state member bank.

(2) The financial institution also must file a copy of the report with its appropriate Federal banking agency.

(3) Any shares of the state member bank held by the financial institution or any of its affiliates as principal must be included in the calculation of the number of shares in which the financial institution or its affiliates has a security interest for purposes of paragraph (a) of this section.

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) *Financial institution* includes any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) and any foreign bank that is subject to the provisions of the BHC Act pursuant to section 8 of the International Banking Act (12 U.S.C. 3106).

(2) *Credit outstanding* includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to the person or group of persons.

(3) *Group of persons* includes any number of persons that the financial institution has reason to believe:

(i) Are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same depository institution at approximately the same time under substantially the same terms; or

(ii) Have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission regarding ownership of the shares of the same insured depository institution.

(c) *Exceptions.* Compliance with paragraph (a) of this section is not required if:

(1) The person or group of persons referred to in that paragraph has disclosed the amount borrowed and the security interest therein to the Board or appropriate Reserve Bank in connection with a notice filed under § 225.41 of this subpart or another application filed with the Board or Reserve Bank as a substitute for a notice under § 225.41 of this subpart, including an application filed under section 3 of the BHC Act (12 U.S.C. 1842) or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c)), or an application for membership in the Federal Reserve System; or

(2) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more; or, if the transaction involves stock issued by a newly chartered bank, before the bank is opened for business.

(d) *Report requirements.* (1) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the financial institution and any affiliate of the financial institution.

(2) Financial institutions must file the consolidated report in writing within 30 days of the date on which the financial institution or any affiliate first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a state member bank.

(e) *Other reporting requirements.* A state member bank that is required to report to another Federal banking agency credit outstanding that is

secured by the shares of an insured depository institution also must file a copy of the report with the appropriate Reserve Bank.

6. Subpart G is amended by revising the heading to read as follows:

Subpart G—Appraisal Standards for Federally Related Transactions

7. Subpart H is amended by revising §§ 225.71 through 225.73 to read as follows:

Subpart H—Notice of Addition or Change of Directors and Senior Executive Officers

§ 225.71 Definitions.

(a) *Senior executive officer* means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the Board or Reserve Bank, whether or not hired as an employee, with significant influence over major policymaking decisions of the state member bank or bank holding company.

(b) *Director* means a person who serves on the board of directors of a state member bank or bank holding company, except that this term does not include an advisory director who:

(1) Is not elected by the shareholders of the state member bank or bank holding company;

(2) Is not authorized to vote on any matters before the board of directors;

(3) Solely provides general policy advice to the board of directors and any committee thereof; and

(4) Has not been identified by the Board or Reserve Bank as a person who performs the functions of a director for purposes of this subpart.

(c) *Troubled condition* for a state member bank or bank holding company means an institution that:

(1) Has a composite rating, as determined in its most recent report of examination or inspection, of 4 or 5 under the commercial bank Uniform Interagency Bank Rating System or under the Federal Reserve Bank Holding Company Rating System;

(2) Is subject to a cease-and-desist order or formal written agreement that requires action to improve the financial condition of the institution, unless otherwise informed in writing by the Board or Reserve Bank; or

(3) Is informed in writing by the Board or Reserve Bank that it is in troubled condition for purposes of the requirements of this subpart on the basis of the institution's most recent report of condition or report of examination or inspection, or other information available to the Board or Reserve Bank.

§ 225.72 Director and officer appointments; prior notice requirement.

(a) *Prior notice by institution.* (1) A state member bank or bank holding company shall give the Board 30 days' written notice, as specified in § 225.73, before adding or replacing any member of its board of directors, employing any person as a senior executive officer of the state member bank or bank holding company, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if:

(i) The state member bank has operated under its charter for less than two years;

(ii) The state member bank or bank holding company has undergone a change in control within the preceding two years that required a notice to be filed pursuant to the Change in Bank Control Act or subpart E of this part;

(iii) The bank holding company became a registered bank holding company within the preceding two years, unless:

(A) The bank holding company is owned or controlled by a registered bank holding company; or

(B) The bank holding company was formed in a reorganization in which substantially all shareholders of the bank holding company were shareholders of its subsidiary bank prior to the bank holding company's formation; or

(iv) The state member bank or bank holding company is not in compliance with all minimum capital requirements applicable to the institution as determined on the basis of the institution's most recent report of condition or report of examination or inspection, or is otherwise in troubled condition.

(2) A state member bank will be considered to have operated under its charter for more than two years for purposes of § 225.72(a)(1)(i) if:

(i) In a charter conversion, the predecessor insured depository institution operated under its charter for at least two years; or

(ii) The state member bank was chartered solely to facilitate the acquisition of another insured depository institution that operated under its charter for at least two years.

(b) *Prior notice by an individual.* The prior notice required by paragraph (a) of this section may be provided by an individual seeking election to the board of directors of a state member bank or bank holding company who has not been proposed by management.

§ 225.73 Procedures for filing, processing, and acting on notices; standards for disapproval; waiver of notice.

(a) *Filing notice*—(1) *Content.* The notice required in § 225.72 shall be filed with the appropriate Reserve Bank and shall contain:

(i) The information required by paragraph 6(A) of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)(A)) as may be prescribed in the designated Board form;

(ii) Additional information consistent with the Federal Financial Institutions Examination Council's Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investigations as set forth in the designated Board form; and

(iii) Such other information as may be required by the Board or Reserve Bank.

(2) *Modification.* The Reserve Bank may modify or accept other information in place of the requirements of § 225.73(a)(1) for a notice filed under this subpart.

(3) *Acceptance of notice.* The 30-day notice period specified in § 225.72 shall begin on the date all information required to be submitted by the notificant pursuant to § 225.73(a)(1) is received by the appropriate Reserve Bank. The Reserve Bank shall notify the state member bank or bank holding company or individual submitting the notice of the date on which all required information is received and the notice is accepted for processing, and of the date on which the 30-day notice period will expire.

(b) *Commencement of service*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period which begins on the day that a complete notice under paragraph (a) of this section has been accepted by the Reserve Bank unless the Board or Reserve Bank issues a notice of disapproval of the proposed addition or employment before the end of the 30-day period.

(2) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the expiration of the 30-day period if the Board or the Reserve Bank notifies in writing the state member bank or bank holding company or individual submitting the notice of the Board's or Reserve Bank's intention not to disapprove the addition or employment.

(c) *Notice of disapproval.* The Board or Reserve Bank shall disapprove a

notice under § 225.72 if the Board or Reserve Bank finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of the depositors of the state member bank or in the best interests of the public to permit the individual to be employed by, or associated with, the state member bank or bank holding company. The notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the state member bank or bank holding company and the disapproved individual.

(d) *Appeal of a notice of disapproval.* (1) A disapproved individual or a state member bank or bank holding company that has submitted a notice that is disapproved under this section may appeal the disapproval to the Board within 15 days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal, and state whether the appealing party is requesting an informal hearing.

(2) Written notice of the final decision of the Board shall be sent to the appealing party within 60 days of the receipt of an appeal, unless the appealing party's request for an informal hearing is granted.

(3) The disapproved individual may not serve as a director or senior executive officer of the state member bank or bank holding company while the appeal is pending.

(e) *Informal hearing.* (1) An individual, state member bank or bank holding company whose notice under this section has been disapproved may request an informal hearing on the notice. A request for an informal hearing shall be in writing and shall be submitted within 15 days of a notice of disapproval. The Board may, in its sole discretion, order an informal hearing if the Board finds that oral argument is appropriate or necessary to resolve disputes regarding material issues of fact.

(2) An informal hearing shall be held within 30 days of a request, if granted, unless the requesting party agrees to a later date.

(3) Written notice of the final decision of the Board shall be given to the individual and the state member bank or bank holding company within 60 days of the conclusion of any informal hearing ordered by the Board unless the requesting party agrees to a later date.

(f) *Waiver of notice*—(1) *Waiver requests.* The Board or Reserve Bank may permit an individual to serve as a senior executive officer or director before the notice required under this subpart is provided, if the Board or Reserve Bank finds that:

(i) Delay would threaten the safety or soundness of the state member bank or bank holding company or any of its subsidiary banks;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) *Automatic waiver.* An individual who is not proposed by the management of a state member bank or bank holding company and who is elected as a new member of the board of directors at a meeting of the state member bank or bank holding company may serve as a director and may comply with the notice requirements of § 225.72(a) by providing to the appropriate Reserve Bank all the information required in § 225.73(a) within two (2) business days after the individual's election.

(3) *Effect on disapproval authority.* Any waiver granted under this section shall not affect the authority of the Board or Reserve Bank to issue a notice of disapproval within 30 days after such waiver.

8. Section 225.125 is amended by revising paragraphs (f) and (g) to read as follows:

§ 225.125 Investment adviser activities.

* * * * *

(f) In the Board's opinion, the Glass-Steagall Act provisions, as interpreted by the U.S. Supreme Court, forbid a bank holding company to sponsor, organize or control a mutual fund. However, the Board does not believe that such restrictions apply to closed-end investment companies as long as such companies are not primarily or frequently engaged in the issuance, sale and distribution of securities. A bank holding company should not act as investment adviser to an investment company which has a name that is similar to the name of the holding company or any of its subsidiary banks unless the prospectus of the investment company contains the disclosures required in paragraph (h) of this section. In no case should a bank holding company act as investment adviser to an investment company which has either a name that is the same as the name of the holding company or any of its subsidiary banks, or a name that contains the word "bank".

(g) In view of the potential conflicts of interests that may exist, a bank holding company and its bank and nonbank subsidiaries should not purchase in their sole discretion in a fiduciary capacity (including as managing agent) securities of any investment company for which the bank holding company acts as investment adviser unless the purchase is specifically authorized by the terms of the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.

* * * * *

9. Appendix C is revised to read as follows:

Appendix C to Part 225—Small Bank Holding Company Policy Statement

Policy Statement on Assessment of Financial Factors

In acting on applications filed under the Bank Holding Company Act, the Board has adopted, and continues to follow, the principle that bank holding companies should serve as a source of strength for their subsidiary banks. When bank holding companies incur debt and rely upon the earnings of their subsidiary banks as the means of repaying such debt, a question arises as to the probable effect upon the financial condition of the company and its subsidiary bank or banks.

The Board believes that a high level of debt at the parent holding company level impairs the ability of a bank holding company to provide financial assistance to its subsidiary bank(s) and in some cases the servicing requirements on such debt may be a significant drain on the resources of the bank(s). For these reasons the Board has not favored the use of acquisition debt in the formation of bank holding companies or in the acquisition of additional banks. Nevertheless, the Board has recognized that the transfer of ownership of small banks often requires the use of acquisition debt. The Board therefore has permitted the formation and expansion of small-bank holding companies with debt levels higher than would be permitted for larger holding companies. Approval of these applications has been given on the condition that the small-bank holding companies demonstrate the ability to service the acquisition debt without straining the capital of their subsidiary bank(s) and, further, that such companies restore their ability to serve as a source of strength for their subsidiary bank(s) within a relatively short period of time.

In the interest of furthering its policy of facilitating the transfer of ownership in banks without diluting bank safety and soundness, the Board has, as described below, adopted certain revisions to its procedures and standards for the formation and expansion of small bank holding companies.

A. *Size criterion and grandfathering:* This policy applies only to bank holding companies with pro forma consolidated assets of less than $150 million that: (1) Are *not* engaged in nonbank activity involving

significant leverage;[1] and (ii) do *not* have a significant amount of outstanding debt that is held by the general public. Small-bank holding companies formed before the effective date of this policy may switch to a plan that adheres to the intent of this policy provided they comply with the requirements set forth under paragraphs C., D.2, D.3, and D.4 below.

B. *The two categories of small bank holding company proposals:*

Category I (low leverage) proposal: A proposal in which the parent bank holding company has a pro-forma debt-equity ratio of 1.0:1 or less and meets all applicable requirements of this policy statement;

Category II (highly leveraged or other) proposal: A proposal in which the parent bank holding company has a pro-forma debt-equity ratio of greater than 1.0:1, or any proposal by a small bank holding company under Section 3 of the Bank Holding Company Act that does not meet one of the applicable requirements of this policy statement.

C. *Examination ratings and bank capitalization:* Generally, the Board expects that an applicant's existing and proposed subsidiary bank(s) will have satisfactory examination ratings and be well managed, and that all present and proposed bank subsidiaries will be designated well-capitalized. Although the Board recognizes that there may be instances in which proposals merit favorable consideration despite the failure to meet these and the other requirements of this policy statement, such proposals will be subject to more intense evaluation and will not be subject to the expedited procedures set forth in Regulation Y that apply to Category I (low leverage) proposals. Proposals involving *de novo* banks or those that otherwise have not been examined would be processed as Category II (highly leveraged) proposals.

D. *Other financial considerations:* In evaluating applications filed pursuant to section 3 of the Bank Holding Company Act, as amended, when an applicant intends to incur debt to finance the acquisition of a small bank or banks, the Board will continue to take into account a full range of financial and other information about the applicant, and its current and proposed subsidiary bank(s), including the recent trend and stability of earnings, past and prospective growth, asset quality, the ability to meet debt servicing requirements without placing an undue strain on the resources of the bank(s), and the record and competency of management. In addition, the Board will require applicants to meet the minimum requirements set forth below. As a general rule, failure to meet any of these requirements will result in denial of the application; however, the Board reserves the right to make exceptions if the circumstances warrant.

1. Minimum down payment: The amount of acquisition debt should not exceed 75 percent of the purchase price of the bank(s) to be acquired. When the owner(s) of the holding company incur debt to finance the purchase of the bank(s), such debt will be considered acquisition debt even though it does not represent an obligation of the bank holding company, unless the owner(s) can demonstrate that such debt can be serviced without reliance on the resources of the bank(s) or bank holding company.

2. Capital adequacy: Each subsidiary bank of a small bank holding company subject to this policy statement is expected to maintain a *well-capitalized* designation.

3. Reduction in parent company leverage: Small-bank holding companies subject to this policy statement are to reduce their parent company debt to equity ratios consistent with the statutory requirement that all debt be retired within 25 years of being incurred. The Board also generally expects that small bank holding companies reach a debt to equity level of 30 percent or less within 12 years of the incurrence of the debt. The holding company must also safely meet debt servicing and other requirements imposed by its creditors.[2]

4. Dividend restrictions: A small bank holding company with a Category II (highly leveraged) proposal as described above is not expected to pay corporate dividends on common stock until such time as it reduces its debt to equity ratio to 1.0:1 or less and otherwise qualifies as a Category I (low leverage) proposal.[3]

E. *Subsequent acquisitions:* Small bank holding companies may make acquisitions of additional banks after their formation if they continue to meet the requirements of this policy statement and other relevant statutory factors. It is expected that expanding small bank holding companies will be in satisfactory financial condition and well managed. Small bank holding companies whose expansion proposals otherwise qualify as Category I (low leverage) proposals must also be rated BOPEC composite 1–S or 2–S as of their most recent inspection in order to qualify for the expedited processing procedures. Proposals from unrated small bank holding companies will be subject to a more intense review and, therefore, will not be eligible for the expedited procedures.

By order of the Board of Governors of the Federal Reserve System, August 28, 1996.

William W. Wiles,

Secretary of the Board.

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[1] A bank holding company that is engaged in significant off balance sheet activities would generally be deemed to be engaged in activities that involve significant leverage.

[2] The term *debt*, as used in the ratio of debt to equity, means any borrowed funds (exclusive of short-term borrowings that arise out of current transactions, the proceeds of which are used for current transactions), and any securities issued by, or obligations of, the holding company that are the functional equivalent of borrowed funds.

The term *equity*, as used in the ratio of debt to equity, means the total stockholders' equity of the bank holding company adjusted to reflect the periodic amortization of "goodwill" (defined as the excess of cost of any acquired company over the sum of the amounts assigned to identifiable assets acquired, less liabilities assumed) in accordance with generally accepted accounting principles. In determining the total amount of stockholders' equity, the bank holding company should account for its investments in the common stock of subsidiaries by the equity method of accounting. Ordinarily the Board does not view redeemable preferred stock as a substitute for common stock in a small-bank holding company. Nevertheless, to a limited degree and under certain circumstances, the Board will consider redeemable preferred stock as equity in the capital accounts of the holding company if the following conditions are met: (1) The preferred stock is redeemable only at the option of the issuer and (2) the debt to equity ratio of the holding company would be at or remain below 30 percent following the redemption or retirement of any preferred stock. Preferred stock that is convertible into common stock of the holding company may be treated as equity.

[3] Dividends may be paid by small bank holding companies with debt to equity at or below 1.0:1 if the dividends are reasonable in amount, do not adversely affect the ability of the bank holding company to service its debt in an orderly manner, and do not adversely affect the ability of the subsidiary bank(s) to maintain well-capitalized designations. It is expected that dividends will be eliminated if the holding company is not meeting the projections, made at the time the application was filed, regarding the ability of the holding company to reduce the debt to equity ratio to 30 percent within 12 years of consummation of the proposal.

federal register

Friday
September 6, 1996

Part III

Federal Communications Commission

47 CFR Parts 51 and 52

Telecommunications Act of 1996: Implementation of Local Competition Provisions; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 52

[CC Docket No. 96–98, 95–185, 92–237, FCC 96–333]

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In enacting the Telecommunications Act of 1996 (1996 Act) Congress sought to establish a pro-competitive, deregulatory national policy framework for the telecommunications industry. In adding a new Section 251 to the Communications Act of 1934, Congress set forth a blueprint for ending monopolies in local telecommunications markets. In this Second Report and Order the Commission adopts rules implementing certain provisions of Section 251. Specifically, this order adopts rules requiring local exchange carriers to provide dialing parity and nondiscriminatory access to their competitors; and requiring incumbent local exchange carriers to give public notice of certain network changes. In addition, this order adopts rules regarding number administration and addresses various petitions concerning numbering issues. These actions will serve to implement the statute, eliminate operational barriers to competition, and provide for effective use of numbering resources.

EFFECTIVE DATE: October 7, 1996, except that the collection of information subject to approval by the Office of Management and Budget (OMB) that are contained in sections 51.211(c), 51.213, 51.217, 51.305(g), 51.307(e), 51.325, 51.327, 51.329, 51.331, 51.333, 51.335 and 52.19(b) which are effective November 15, 1996.

FOR FURTHER INFORMATION CONTACT: For information concerning Dialing Parity, Nondiscriminatory Access and Network Information Disclosure, contact Lisa Boehley, (202) 418–2320, Network Services Division, Common Carrier Bureau. For information concerning Numbering Administration contact Marian Gordon, (202) 418–2320, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This Second Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. This is a synopsis of the Commission's Second Report and Order and Memorandum Opinion and Order, (FCC 96–333) adopted on August 8, 1996 and released on August 8, 1996. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street N.W., Suite 140, Washington, D.C. 20037.

PAPERWORK REDUCTION ACT: This Second Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. OMB notification of action is due September 6, 1996. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996—Second Report and Order and Memorandum Opinion and Order, CC Dockets No. 96–98 and 95–185.

Form No.: N/A.

Type of Review: New Collections.

Respondents: Business or other for-profit, including small businesses, and state and local governments.

Section/title	No. of respondents	Est. time per response	Total annual burden
Dialing parity implementation plans	1,350	100	135,000
Justification for noncompliance	20	9	180
Sharing of directory listings	500	36	18,000
Provision of technical information	500	24	12,000
Public notice of network changes	500	72	36,000
Burden of proof	75	8	600
Submission of area code relief plans	30	40	1,200

Total Annual Burden: 202,980.

Estimated Costs Per Respondent: $0.

Needs and Uses: The new or modified information collections in this Second Report and Order will be used to ensure that affected telecommunications carriers fulfill their obligations under the Communications Act, as amended.

Synopsis of Second Report and Order

Adopted: August 8, 1996.

Released: August 8, 1996.

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I. Introduction and Overview

1. In February, 1996, Congress passed and the President signed into law, the Telecommunications Act of 1996 (1996 Act).[1] The 1996 Act erects a "procompetitive, de-regulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2] Section 101 of the 1996 Act adds new section 251 to the Communications Act of 1934. Congress intended that the provisions of this new section would help competition grow in the market for exchange and exchange access and related telecommunications services. It directed the Commission to adopt rules that would implement the requirements of this section no later than August 8, 1996.[3] We note, however, that, under section 251(f), certain rural or small local exchange carriers (LECs) are exempt or may seek relief from the rules we adopt herein.[4]

2. We began this rulemaking proceeding on April 19, 1996.[5] The *First Report and Order*, which addressed issues that were raised in this docket, decided that the Commission should establish national rules implementing section 251.[6] The *First Report and Order* interprets and implements, *inter alia*, sections 251 (a), (b)(1), (b)(4), (b)(5), (c)(1), (c)(2), (c)(3), (c)(4), and (c)(6). That order promulgates rules to open the local exchange and exchange access markets to competition by eliminating legal and technical barriers to such competition. This *Second Report and Order and Memorandum Opinion and Order (Order)* promulgates rules to implement the parts of section 251 that relate to the elimination of certain operational barriers to competition. Specifically, this *Order* addresses local exchange carriers' obligations to provide their competitors with dialing parity and nondiscriminatory access to certain services and functionalities;[7] incumbent local exchange carriers' duty to make network information disclosures;[8] and numbering administration.[9] In this *Order* we also deny the Petition for Expedited Declaratory Ruling on the area code relief plan for Dallas and Houston that the Texas Public Utility Commission (Texas Commission) filed with this Commission on May 9, 1996.[10] We also address petitions for clarification or reconsideration in the *Ameritech* and *NANP* proceedings.[11]

3. Dialing parity, nondiscriminatory access, network disclosure, and numbering administration issues are critical issues for the development of local competition. As stated in the *First Report and Order*, incumbent local exchange carriers have little incentive to

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[1] Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (1996 Act), to be codified at 47 U.S.C. 151 *et. seq.*

[2] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[3] 47 U.S.C. 251(d)(1).

[4] 47 U.S.C. 251(f) (1) and (f)(2). We note that the term "United States" means "the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone." 47 U.S.C. 153(50).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96–98, Notice of Proposed Rulemaking, FCC 96–182 (released April 19, 1996) (*NPRM*) 61 FR 18311 (April 25, 1996).

[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95–185, First Report and Order, FCC 96–235 (released August 8, 1996) (hereinafter *First Report and Order*) at section II.

[7] 47 U.S.C. 251(b)(3).

[8] 47 U.S.C. 251(c)(5).

[9] 47 U.S.C. 251(e)(1).

[10] *In the Matter of Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas*, Petition for Expedited Declaratory Ruling filed May 9, 1996.

[11] *See In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech—Illinois*, IAD File No. 94–102, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) (*Ameritech Order*) 60 FR 19255 (April 17, 1995) and *Administration of the North American Numbering Plan*, CC Docket No. 92–237, Report and Order, 11 FCC Rcd 2588, 2591 (1995) (*NANP Order*) 60 FR 38737 (July 28, 1995).

provide access to potential competitors to their networks. In other words, potential competitors in the local and long distance markets face numerous operational barriers to entry notwithstanding their legal right to enter such markets. The dialing parity, nondiscriminatory access, and network disclosure requirements should remove those barriers to entry. The rules we adopt herein will benefit consumers by making some of the strongest aspects of local exchange carrier incumbency—the local dialing, telephone numbers, operator services, directory assistance, and directory listing—available to all competitors on an equal basis.

A. Actions To Implement Section 251(b)(3)

1. Dialing Parity

4. Section 251(b)(3) of the 1996 Act directs each local exchange carrier (LEC) [12] to provide dialing parity to competing providers of telephone exchange and telephone toll service.[13] This requirement means that customers of these competitors should not have to dial extra digits to have their calls routed over that LEC's network. To implement this statutory requirement, we adopt broad guidelines and minimum federal standards that build upon the experiences and accomplishments of state commissions. Although the 1996 Act requires a LEC to provide dialing parity only to providers of telephone exchange and toll services, section 251(b)(3) does not limit the type of traffic or service for which dialing parity must be afforded to those providers. We conclude, therefore, that section 251(b)(3) requires LECs to provide dialing parity to providers of telephone exchange or toll service with respect to all telecommunications services that require dialing to route a call and encompasses international, interstate, intrastate, local and toll services.

(5) With respect to toll service, we further find that section 251(b)(3) requires, at a minimum, that customers be entitled to choose different presubscribed, or preselected, carriers for both their intraLATA and interLATA toll calls. In states, like Alaska and Hawaii, that have no LATAs,[14] customers must be able to choose different presubscribed carriers for both their intrastate and interstate toll calls. Based on this finding, we adopt a rule requiring all LECs to implement intraLATA and interLATA toll dialing parity, using the "full 2–PIC" presubscription method.[15] The toll dialing parity requirement we adopt is defined by LATA boundaries given that the Bell Operating Companies' (BOCs') operations are likely to be shaped by LATA boundary restrictions for a period of unforeseeable duration. Given that implementation of the 1996 Act over time may diminish the significance of LATA boundaries, however, we permit states to redefine the toll dialing parity requirement based on state, rather than LATA, boundaries where a state deems such a requirement to be pro-competitive and otherwise in the public interest.[16]

6. In order to facilitate the orderly implementation of toll dialing parity, we require each LEC, including a BOC, to submit a plan to the state regulatory commission for each state in which it provides telephone exchange service setting forth the LEC's plan for implementing toll dialing parity, including the methods it proposes to enable customers to select alternative providers. In the event that a state elects not to evaluate such a plan sufficiently in advance of the date on which a LEC is required to implement toll dialing parity, we require the LEC to file its plan with the Commission. The Commission will act upon such a plan within 90 days of the date on which it is filed with the Commission.

7. Under the toll dialing parity implementation schedule we adopt, we require each LEC, including a BOC, to implement toll dialing parity no later than February 8, 1999. In addition, we require a LEC, including a BOC, to provide toll dialing parity throughout a state coincident with its provision of in-region, interLATA or in-region, interstate toll services in that state. LECs, other than BOCs, that are either already offering or plan to begin to provide in-region, interLATA or in-region, interstate toll services before August 8, 1997, must implement toll dialing parity by August 8, 1997. We note that smaller LECs, for which this implementation schedule may be unduly burdensome, may petition their state commission for a suspension or modification of the application of this requirement.[17]

8. Those states desiring to impose more stringent presubscription methodologies, e.g., multi-PIC or smart-PIC,[18] will retain the flexibility to impose such additional requirements. We also announce our intention to issue a Further Notice of Proposed Rulemaking addressing the technical feasibility and nationwide availability of a separate presubscription choice for international calling based on the use of multi-PIC or smart-PIC technologies.

9. Pursuant to the local dialing parity requirements of section 251(b)(3), we require a LEC to permit telephone exchange service customers, within a defined local calling area, to dial the same number of digits to make a local telephone call, notwithstanding the identity of the customer's or the called party's local telephone service provider. We decline at this time to prescribe additional guidelines to address the methods that LECs may use to accomplish local dialing parity given our finding that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251, as well as

[12] The 1996 Act defines the term "local exchange carrier" as "any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c), except to the extent that the Commission finds that such provider should be included in the definition of such term." 47 U.S.C. 153(26). For purposes of the dialing parity and nondiscriminatory access obligations that we impose pursuant to section 251(b)(3), we find that commercial mobile radio service (CMRS) providers are not LECs. See *infra* para. 29.

[13] According to the 1996 Act, the term "dialing parity" means "that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)." 47 U.S.C. 153(15).

[14] 47 U.S.C. 153(25). According to the 1996 Act, a LATA is a "local access and transport area." It is a "contiguous geographic area—

(A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after such date of enactment and approved by the Commission."

[15] We note that the abbreviation "PIC" in the past has stood for the term "primary," or "preferred, interexchange carrier." While we retain the acronym "PIC," we define the term to include any toll carrier for purposes of the presubscription rules that we adopt in this *Order*. For a discussion of the full 2–PIC presubscription methodology, *see infra* section II.B(4).

[16] To illustrate, if the presubscription requirement were based on LATA boundaries, a customer would be entitled to choose a primary carrier for all intraLATA toll calls and a separate, or the same, primary carrier for all interLATA toll calls. If the presubscription requirement were based on state boundaries, a customer would be entitled to choose a primary carrier for all intrastate toll calls and a separate, or the same, primary carrier for all interstate toll calls.

[17] 47 U.S.C. 251(f)(2).

[18] The multi-PIC or smart-PIC presubscription method would enable subscribers to select multiple carriers for various categories of toll traffic. For a discussion of multi-PIC and smart-PIC presubscription methodologies, *see infra* section II.B(4).

the provisions requiring nondiscriminatory access to telephone numbers found in section 251(b)(3).

10. We also decline to adopt federal consumer education programs or procedures that would inform consumers of the existence of competitive telecommunications providers. Instead, we leave decisions regarding consumer education and carrier selection procedures to the states. We conclude that, in order to ensure that dialing parity is implemented in a pro-competitive manner, national rules are needed for the recovery of dialing parity implementation costs.

11. Section 271 of the 1996 Act requires BOCs to provide intraLATA toll dialing parity throughout a state coincident with the exercise of their authority to offer interLATA services originating within the state.[19] BOC entry into the interLATA market is conditioned upon their offering "nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3)."[20]

2. Nondiscriminatory Access

12. Section 251(b)(3) also requires all LECs to permit competing providers of telephone exchange service and toll service "nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings."[21] We conclude that "Nondiscriminatory access," as used in section 251(b)(3), encompasses both: (1) Nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC. This definition of "nondiscriminatory access" in section 251(b)(3) recognizes the more general application of that section to all LECs, whereas section 251(c) places more specific duties upon incumbent LECs in terms of nondiscriminatory access. We conclude that the term "nondiscriminatory access to telephone numbers" requires all LECs to permit competing providers access to telephone numbers that is identical to the access the LEC provides to itself.

13. We conclude that the term "operator services," for purposes of section 251(b)(3), means any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. Such a definition includes busy line verification, emergency assistance, operator-assisted directory assistance, and any other such services used to arrange for the billing and/or completion of telephone calls. We further conclude that any customer of a telephone service provider that provides operator services should be able to obtain these services by dialing "0" or "0-plus the desired telephone number." If a dispute arises regarding a competitor's access to operator services, the burden will be upon the providing LEC to demonstrate, with specificity, that it has permitted nondiscriminatory access and that any disparity is not caused by network elements within its control. To the extent that operator services use any information services and adjuncts that are not "telecommunications services," of which resale is required under 251(b)(1), LECs are required to make available such services to competing providers in their entirety as a requirement of nondiscriminatory access under 251(b)(3).[22] Finally, we find that the refusal of a LEC providing nondiscriminatory access to comply with reasonable requests of competing providers to "brand" resold operator services as those of the reseller, or to remove its brand, creates a presumption that the LEC is unlawfully restricting access to operator services.

14. We conclude that the requirement in section 251(b)(3) of nondiscriminatory access to directory assistance means that LECs that provide directory assistance must permit access to this service to competing providers that is at least equal in quality to the access that the LEC provides to itself. We impose obligations upon all LECs to satisfy the requirement of nondiscriminatory access to directory listings. If a LEC provides directory assistance, that LEC must permit competing providers to have access to its directory assistance, so that any customer of a competing provider can access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider. Further, we require LECs to share directory listings with competing service providers, in "readily accessible" tape or electronic formats, upon request, and in a timely manner. To the extent that all or part of directory assistance services are not "telecommunications services," of which resale is required under 251(b)(1), LECs must make available such services in their entirety as part of their obligation to permit nondiscriminatory access to competing providers.[23] This requirement thus extends to any information services and adjuncts used to provide directory assistance. Finally, as with the branding of resold operator services, we find that the refusal of a LEC providing nondiscriminatory access to directory assistance to "brand" resold directory assistance services as those of the reseller, or to remove its brand, creates a presumption that the LEC is unlawfully restricting access to directory assistance.

15. We also conclude that section 251(b)(3)'s requirement of nondiscriminatory access and its prohibition of unreasonable dialing delays applies to both the provision of local and toll dialing parity. We conclude that the dialing delay experienced by customers of a competing provider should not be greater than that experienced by customers of a LEC providing dialing parity or nondiscriminatory access, for identical calls or call types. Finally, we conclude that the statutory obligation to avoid unreasonable dialing delays places a duty on LECs that provide dialing parity, or nondiscriminatory access to operator services or directory assistance, to process all calls from competing providers on the same terms as calls from its own customers.

B. Actions To Implement Section 251(c)(5)

16. In addition to the duties imposed by section 251(b)(3) on all LECs, new section 251(c)(5) imposes upon incumbent LECs the duty to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks."[24] We adopt broad guidelines

[19] 47 U.S.C. 271(e)(2)(A).

[20] 47 U.S.C. 271(c)(2)(B)(xii). We decline to address section 271(c)(2)(B) issues in this *Order*. We will consider each BOC's application to enter in-region, interLATA services pursuant to section 271(c)(2)(B) on a case-by-case basis to determine whether the BOC has complied with section 271(c)(2)(B)(xii).

[21] 47 U.S.C. 251(b)(3).

[22] *Id.*

[23] *Id.*

[24] An incumbent LEC, with respect to an area, is defined under the 1996 Act as "the local exchange carrier that: (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 CFR 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment,

to implement section 251(c)(5). We also specify how public notice must be made whenever an upcoming change may affect the way in which a competing service provider transmits, routes, or otherwise provides its services.

17. We conclude that "information necessary for transmission and routing" in section 251(c)(5) means any information in the incumbent LEC's possession that affects a competing service provider's performance or ability to provide either information or telecommunications services. We define "interoperability" as the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

C. Actions Taken To Implement Section 251(e)

18. New section 251(e)(1) restates the Commission's authority over matters relating to the administration of numbering resources by giving the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[25] This section also requires the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[26] Finally, section 251(e)(2) provides that the cost of establishing telecommunications numbering administration arrangements "shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[27] In this *Order*, we address whether further action is required to create or designate an impartial entity to administer telecommunications numbering. We clarify the states' role in number administration, and provide direction to states wishing to use area code overlay plans. We also clarify how cost recovery for numbering administration will occur. We deny the petition for expedited declaratory ruling filed by the Texas Commission based on our finding that the Texas Commission's wireless-only area code overlay plan violates the guidelines set forth in our *Ameritech Order*. We authorize Bellcore and the incumbent LECs to perform number administration functions as they did prior to the enactment of the 1996 Act until such functions are transferred to the new North American Numbering Plan Administrator.

19. We conclude that we have taken appropriate action to designate an impartial number administrator pursuant to section 251(e)(1). We further conclude that the Commission should retain its authority to set policy with respect to all facets of numbering administration to ensure the creation of a nationwide, uniform system of numbering that is essential to the efficient delivery of interstate and international telecommunications services and to the development of a competitive telecommunications services market. While we retain this policy-making authority, we authorize the states to resolve matters involving implementation of new area codes subject to the guidelines set forth in this *Order*.

20. In this *Order*, we also prohibit the use of service-specific or technology-specific area code overlay plans. States may employ all-services overlays only if they also mandate 10-digit dialing for all local calls within the area affected by the area code change and ensure the availability of at least one central office code in the existing area code to every entity authorized to provide local exchange service in that area, including CMRS providers.

21. To fulfill the mandate of section 251(e)(2), we require that (1) only "telecommunications carriers," as defined in section 3(44) of the 1996 Act, shall contribute to the costs of numbering administration;[28] and (2) that such contributions shall be based on each contributor's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services and facilities that have been paid to other telecommunications carriers.

II. Dialing Parity Requirements

A. In General

22. With dialing parity a telephone customer can preselect any provider of telephone exchange service or telephone toll service without having to dial extra digits to route a call to that carrier's network. Until now, in most states, telephone customers wishing to have their intraLATA toll calls carried by a carrier other than their current provider of telephone exchange service had to dial a five- or seven-digit prefix or access code before dialing the called party's telephone number.[29] Presubscription to a carrier other than a customer's telephone exchange service provider has not been an option for *interstate*, intraLATA toll calls or in most states for *intrastate*, intraLATA toll calls.[30] In states where intrastate, intraLATA toll dialing parity is available, a customer may presubscribe to a carrier other than his or her provider of telephone exchange service and have all of that customer's intrastate, intraLATA toll calls carried by that selected carrier simply by dialing "1" plus the area code and telephone number of the called party.[31] The section 251(b)(3) dialing parity obligation will foster vigorous local exchange and long distance competition by ensuring that each customer has the freedom and flexibility to choose among different carriers for different services without the burden of dialing access codes.

The Need for Minimum Nationwide Dialing Parity Standards

a. Background and Comments

23. Section 251(b)(3) imposes on all LECs the "duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service."[32] In the *NPRM*, we sought comment on whether the Commission should adopt nationwide dialing parity standards and, if so, what those standards should be.[33]

24. A majority of commenters urge the Commission to adopt uniform nationwide dialing parity guidelines,

became a successor or assign of a member described in clause (i)." 47 U.S.C. 251(h)(1).

[25] 47 U.S.C. 251(e)(1).

[26] *Id.*

[27] 47 U.S.C. 251(e)(2).

[28] The term "telecommunications carrier" means "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage." 47 U.S.C. 153(44).

[29] Sometimes referred to as "10XXX" or "101XXXX" dialing, callers may reach a long distance carrier in states where such dialing arrangements are authorized by dialing a five-digit carrier access code ("10XXX," with "XXX" representing a three-digit carrier identification code) or a seven digit carrier access code ("101XXXX," with "XXXX" representing a carrier identification code).

[30] An "interstate, intraLATA toll call" is a call that: (1) Crosses a state boundary but does not cross a LATA boundary; and (2) is subject to a charge. A call from Philadelphia, Pennsylvania to Cherry Hill, New Jersey (currently handled by Bell Atlantic) is an example of such a call.

[31] It is our understanding that some form of intraLATA toll dialing parity is available or has been ordered in Alaska, Arizona, Connecticut, Florida, Georgia, Illinois, Kentucky, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, West Virginia, Wisconsin and Wyoming. *See Ex parte* letter from Charles D. Cosson, USTA, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96–98, July 10, 1996, at 2.

[32] 47 U.S.C. 251(b)(3).

[33] *NPRM* at paras. 206, 207, 209–213, 218, 219.

but commenters differ on how detailed such federal rules should be. For example, the Telecommunications Resellers Association maintains that specific national standards are needed to ensure that competing providers are able to utilize common network designs in multiple markets and to prevent incumbent LECs from "gaming" or "manipulating the processes" of the states.[34] Ameritech urges the Commission to adopt "broad rules that afford sufficient flexibility to accommodate local conditions."[35] Other commenters, such as Bell Atlantic, opposing the adoption of federal dialing parity standards, assert that the proponents of such standards have failed to demonstrate how they or consumers have been harmed by "locally tailored implementation" of dialing parity in the intraLATA toll markets.[36] Without such a demonstration, argues Bell Atlantic, the Commission should not interfere with states' activities.[37] Cincinnati Bell Telephone Company (CBT) likewise opposes federal standards, maintaining that so long as a state regulatory commission adopts a toll dialing parity arrangement that "offers consumers a choice from at least two carriers, one of which is the local exchange carrier, the requirements of the 1996 Act have been met."[38]

b. Discussion

25. We conclude that the purpose of the statutory dialing parity requirements—to facilitate the introduction of competition in the local and toll markets—is best served by the adoption of broad guidelines and minimum federal standards that build upon the states' experiences. We conclude that such minimum nationwide standards will facilitate competition to the extent that new entrants seeking to offer regional or national services will not be subjected to an array of differing state standards and timetables.[39] We note that our conclusion to adopt nationwide dialing parity standards is consistent with our conclusion in the *First Report and Order* that nationwide standards to implement other section 251 provisions are necessary to facilitate competition by serving as a backdrop against which interconnection negotiations and arbitration can occur.[40] We are persuaded that, contrary to the views of Bell Atlantic, the failure to adopt minimum federal standards would harm both new entrants and consumers by delaying the introduction of competition and imposing additional costs on competitors, including small entities, particularly when different network configurations are required in each market. We conclude that uniform standards—in some cases minimum, uniform standards—will speed competitive entry by more promptly opening the local and toll markets to competition.

2. Scope of the Dialing Parity Requirements

a. Background

26. Under section 251(b)(3) a LEC must provide dialing parity only to competing providers of telephone exchange service and telephone toll service.[41] The scope of the obligation to provide dialing parity, however, is not limited to a particular type of traffic or service. Section 251(b)(3) makes no distinction among international, interstate and intrastate traffic for purposes of the dialing parity provisions.[42] The statutory definition of "dialing parity" also contains no such distinctions and, instead, speaks generally in terms of the provision of "telecommunications services" by "a person that is not an affiliate of a local exchange carrier."[43] Based on the absence of any such distinctions in defining the scope of the dialing parity requirements, the *NPRM* tentatively concluded that section 251(b)(3) creates a duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services.[44]

b. Comments

27. Numerous parties express support for the Commission's tentative conclusion.[45] Several parties qualify their support for this conclusion, however, by asserting that the duty to provide dialing parity to competing providers of telephone toll service applies to international calls only to the extent that it entitles a customer to route automatically, without the use of an access code, all of the customer's international calls to his or her presubscribed interLATA long distance carrier.[46] These parties maintain that section 251(b)(3) does not require LECs to provide customers a separate presubscription choice for international calling.[47]

28. A broad range of parties also support the tentative conclusion that section 251(b)(3) imposes a duty on the LEC to provide both local and toll dialing parity.[48] Two parties reject this tentative conclusion, arguing that the dialing parity requirements apply only to local calling and do not extend to toll services.[49] Specifically, Lincoln Telephone and the Pennsylvania Commission contend that Congress addressed toll dialing parity only in section 271(e)(2) of the 1996 Act as it relates to the conditions under which a BOC may enter the in-region, interLATA toll business and question the Commission's authority to implement toll dialing parity requirements.[50] U S WEST similarly argues that section 251(b)(3) imposes only a duty to provide local dialing parity and suggests that the only affirmative obligation to provide toll dialing parity is contained in the equal access provisions of section 251(g) of the 1996 Act, which, U S WEST states, applies only to the BOCs and GTE.[51] Lincoln Telephone makes the additional argument that competitive providers wishing to enter the intraLATA toll market should be required to "share responsibility for serving the entire LATA, rather than simply selecting the lowest cost customers from the most profitable exchanges without regard to that practice's effect on other customers."[52] The imposition of such a requirement, according to Lincoln Telephone, would "reflect a commitment to affordable universal service."[53]

c. Discussion

29. We adopt our tentative conclusion that section 251(b)(3) creates a duty to provide dialing parity to competing

[34] Telecommunications Resellers Association reply at 8–9.

[35] Ameritech reply at *i*.

[36] Bell Atlantic reply at 2.

[37] *Id.*

[38] CBT comments at 5.

[39] We note that section 271(e)(2)(B) precludes most states from requiring a BOC to implement intraLATA toll dialing parity in a state before the BOC has received authority to provide in-region, interLATA services in such state or before three years after enactment of the 1996 Act, whichever is earlier. 47 U.S.C. 271(e)(2)(B).

[40] See *First Report and Order* at section II.

[41] 47 U.S.C. 251(b)(3).

[42] *Id.*

[43] 47 U.S.C. 153(15).

[44] *NPRM* at para. 206.

[45] *See, e.g.*, MFS comments at 2; California Commission comments at 3.

[46] *See, e.g.*, Sprint comments at 4–5; SBC comments at 5.

[47] *Id.*

[48] *See, e.g.*, Excel comments at 6; MCI comments at 2; BellSouth comments at 9.

[49] Lincoln Telephone comments at 2–3; Pennsylvania Commission comments at 1–2.

[50] *Id.*

[51] U S WEST comments at 4–5.

[52] Lincoln Telephone comments at 5.

[53] *Id.* at 6.

providers of telephone exchange service and telephone toll service with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services.[54] We note that section 251(b)(3) does not limit the types of traffic or services for which dialing parity must be provided to competing providers of telephone exchange and telephone toll service. The reference to these types of providers clearly shows that dialing parity must be provided for exchange service and toll service. Nothing in the statutory language limits the scope of the dialing parity obligation to exchange and toll services or distinguishes among the various types of telecommunications services in imposing the dialing parity obligations. This conclusion is further supported by the statutory definition of dialing parity insofar as it refers to the provision of "telecommunications services" generally without distinction among various types of telecommunications services.[55] In addition, we are not persuaded that section 251(g) relieves certain LECs of the duty to provide toll dialing parity. That section contains no reference or cross reference to dialing parity or to section 251(b)(3). Section 251(g) preserves the equal access obligations already imposed on the BOCs and GTE, but does not exempt them or other LECs from the toll dialing parity requirements. Finally, we note that CMRS providers are not required to provide dialing parity or nondiscriminatory access under section 251(b)(3) because the Commission has not determined that CMRS providers are LECs and section 332(c) of the Communications Act of 1934 provides that a "person engaged in the provision of commercial mobile services * * * shall not be required to provide equal access to common carriers for the provision of toll services."[56]

30. Finally, concerning Lincoln Telephone's proposal to require competitive providers of intraLATA toll service to serve an entire LATA, rather than merely certain low cost customers within a LATA, we note that Lincoln Telephone, in essence, is asking us to condition a carrier's receipt of dialing parity upon that carrier's assuming the obligation of an "eligible" telecommunications carrier.[57] We find neither the language of section 251(b)(3) nor its legislative history supports the conclusion that Congress intended to condition a carrier's right to receive the benefits of dialing parity upon its assuming the obligations of an eligible telecommunications carrier. The issue of encouraging carriers to provide universal service throughout a service territory is beyond the scope of this proceeding.[58] Also, for the Commission to make LATA-wide or state-wide service a precondition of entry into that LATA or state would be to erect a major legal barrier to entry, particularly for smaller telecommunications services providers, that is contrary to the basic thrust of the 1996 Act.

B. Implementation of the Toll Dialing Parity Requirements

1. Presubscription Method of Achieving Toll Dialing Parity

a. Background

31. The statutory definition of dialing parity provides that the customer must have the ability to choose "from among 2 or more telecommunications services providers (including such local exchange carrier)."[59] The definition also provides that customers must be able to exercise this choice by being able "to route automatically without the use of access codes, their telecommunications to the telecommunications services provider of the customer's designation."[60] Thus, LECs are precluded from relying on access codes as a means of providing dialing parity to competitive service providers.[61] The 1996 Act, however, does not specify what methods should be used to implement dialing parity. The *NPRM* tentatively concluded that presubscription represents the most feasible method of achieving dialing parity in long distance markets consistent with the statutory definition of dialing parity and sought comment as to this tentative conclusion.[62] In this context, the *NPRM* defined "presubscription" as the process by which a customer preselects a carrier to which all of a particular category or categories of calls on the customer's line will be routed automatically.[63]

32. As stated in the *NPRM*, presubscription to a carrier other than the customer's local exchange carrier has not been available for *interstate*, intraLATA toll calls nor has it been available in most states for *intrastate*, intraLATA toll calls.[64] Instead, LECs automatically carry these calls rather than routing them to a presubscribed carrier of the customer's choice. If the state from which the customer is calling has authorized competition, but has not ordered presubscription in the intraLATA toll market, a customer wishing to route an intraLATA toll call to an alternative carrier typically must dial the carrier access code of the alternative carrier.

b. Comments

33. Nearly all parties concur in the Commission's tentative conclusion that presubscription represents the most feasible method of achieving toll dialing parity consistent with the statutory definition of dialing parity.[65] PacTel and Lincoln Telephone suggest that presubscription is not required to achieve toll dialing parity so long as customers can reach competing toll carriers through the use of carrier access codes.[66] Finally, BellSouth argues that the toll dialing parity requirement is satisfied by "removing the intraLATA default to the incumbent LEC, thus assuring that no additional digits need to be dialed in order to reach carriers competing with the incumbent LEC for intraLATA toll service."[67] BellSouth further argues that the Commission should confirm that such arrangements are consistent with the statutory dialing parity requirements.[68]

c. Discussion

34. We adopt our tentative conclusion that the dialing parity requirement for toll calling can best be achieved through presubscription because that method would enable customers to route a

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[54] *NPRM* at para. 206.

[55] The issue of whether a separate presubscription choice is required for international, interstate, and intrastate toll calls is discussed more fully in section II.B(2) *infra*.

[56] 47 U.S.C. 332(c)(8).

[57] An eligible telecommunications carrier is a common carrier that offers all services that are supported by federal universal service support mechanisms under section 254(c) and that uses "media of general distribution" to advertise the availability of those services and its charges for them. 47 U.S.C. 214(e)(1). The issue of which services should receive support from universal service support mechanisms is being addressed by the Commission and the Federal-State Joint Board on universal service, as required by new section 254 of the Communications Act, as amended by the 1996 Act. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96–45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96–93, (released March 8, 1996) (*Universal Service NPRM*) (proposing rules to implement section 254 of the 1996 Act) 61 FR 10499 (March 14, 1996).

[58] *See Universal Service NPRM*.

[59] 47 U.S.C. 153(15).

[60] *Id.*

[61] *Id.*

[62] *NPRM* at para. 207.

[63] *Id.*

[64] *Id.* at para. 208.

[65] *See, e.g.*, Ohio Commission comments at 6; NEXTLINK comments at 9.

[66] *See, e.g.*, PacTel reply at 10 ("Toll dialing parity, on the other hand, should mean that customers can reach competing toll carriers on the same dialing basis, including through the use of carrier access codes, with an equal number of digits."); Lincoln Telephone comments at 2–3.

[67] BellSouth comments at 11 n.23.

[68] *Id.*

particular category of traffic to a preselected carrier without having to dial access codes. We note that the use of access codes to route calls among competing providers of telephone toll service is precluded under the statutory definition of dialing parity.[69] Accordingly, we disagree with those parties who contend that toll dialing parity can be achieved through the use of access codes in a manner that is consistent with the statutory definition of dialing parity.[70] We also cannot conclude that the toll dialing parity requirement is satisfied by removing the intraLATA default, as BellSouth maintains.[71] Removing the intraLATA default would not satisfy the toll dialing parity requirement unless the LEC also uses the full 2-PIC presubscription methodology discussed below.[72]

2. Categories of Domestic, Long Distance Traffic Subject to Presubscription

a. Background

35. In the *NPRM*, the Commission sought comment as to the categories of long distance traffic (*e.g.*, intrastate, interstate, and international traffic) for which a customer should be entitled to choose presubscribed carriers.[73] The *NPRM* also sought comment on specific alternative methods for implementing local and toll dialing parity, including various forms of presubscription, in the interstate and intrastate long distance and international markets, that are consistent with the statutory requirements set forth in the 1996 Act.[74]

b. Comments

36. Most parties appear to agree that customers should be entitled to presubscribe to two separate carriers for their toll calling.[75] There is a lack of consensus in the record, however, regarding how the Commission should define the presubscription requirement. USTA, for example, argues that "[a]ll telecommunications carriers, including LECs, should be permitted to define the scope of local service and toll service in response to market forces."[76] USTA further argues that the "relevant distinction, for the long term, will be between intrastate and interstate toll traffic."[77] Sprint, on the other hand, argues in favor of maintaining a presubscription requirement based on LATA boundaries and recommends that customers continue to be allowed to choose separate intraLATA and interLATA toll carriers.[78] Sprint urges us to maintain the LATA distinction, asserting that "competition over the past 12 years has developed around the LATA concept, and presubscription has for the most part already occurred along these lines."[79]

c. Discussion

37. With respect to toll service, we conclude that section 251(b)(3) requires, at a minimum, that customers be entitled to choose presubscribed carriers for their intraLATA and interLATA toll calls. Because of the variations that exist among LATA boundaries and toll traffic within, and among, the various states, we have also concluded that each state should have the opportunity to determine whether customers should be able to presubscribe to carriers for intrastate toll service and for interstate toll service in lieu of the intraLATA and interLATA toll presubscription dichotomy that we have established as a minimum nationwide standard at this time. Although toll dialing parity typically has been based on LATA boundaries in multi-LATA states where it has been implemented, we do not impose a requirement that toll dialing parity be based only on LATA boundaries given our expectation that implementation of the 1996 Act eventually will diminish the significance of LATA boundaries.[80] We are aware that BOCs remain subject to certain LATA boundary restrictions for at least the near-term and that some BOCs may find it technically infeasible, or otherwise undesirable, to implement toll dialing parity based on state boundaries.[81] We thus conclude that states should be able to take the relevance of those factors into account, where applicable, and have the flexibility to require that toll dialing parity implementation be based on state boundaries where they determine that implementing toll dialing parity on the basis of state boundaries would be pro-competitive and otherwise in the public interest. In Alaska and Hawaii, states with no LATAs, toll dialing parity will continue to be based on state boundaries.

38. We also direct each LEC to submit to the state regulatory commission for each state in which it provides telephone exchange service the LEC's plan for implementing toll dialing parity. That plan must contain detailed implementation information, including the proposed date for dialing parity implementation for that exchange that the LEC operates in each state, and the method it proposes for enabling customers to select alternative providers of telephone toll service. For a LEC, other than a BOC, the plan also must identify the LATA with which the LEC proposes to associate.[82]

39. We find that the states are best able to evaluate implementation plans in a way that will avoid service disruptions for subscribers and promote competition in the intrastate toll market. A LEC must first obtain state approval of its implementation plan before it implements toll dialing parity. If the LEC determines that a state commission elects not to evaluate the LEC's toll dialing parity implementation plan for

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[69] *See* 47 U.S.C. 153(15).

[70] Although the use of access codes to access competing providers of telephone toll service does not constitute dialing parity as defined in 47 U.S.C. 153(15), we do not intend to preclude their use where a customer wishes to route a call to a carrier other than his or her presubscribed intraLATA toll carrier.

[71] We understand BellSouth's reference to "removing the intraLATA default" to mean that BellSouth would modify its switches so they no longer automatically route all intraLATA toll calls to BellSouth and thus, would permit customers to choose an alternative intraLATA toll carrier.

[72] For a discussion of the full 2-PIC methodology, *see* section II.B(4) *infra*.

[73] *NPRM* at para. 210.

[74] *Id.* at para. 209.

[75] *See, e.g.*, Ohio Consumers' Counsel comments at 2; *see also* MCI comments at 3 (recommending that call types subject to presubscription should include: 1-plus/0-plus interexchange, 7-digit interexchange and 1+555–1212 calls); *cf.* GTE comments at 9 (maintaining that decisions regarding appropriate presubscription categories should be left to state regulatory agencies on theory that states are best positioned to balance value of additional carrier choices against higher administrative and network design costs associated with increased number of presubscription choices).

[76] *Ex parte* letter from Charles D. Cosson, USTA, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96–98, June 17, 1996, at 2.

[77] USTA comments at 3 n.2; *see also* MFS reply at 12–13 ("The Commission should recognize that rules for intraLATA presubscription are transitory. At some point, when the BOCs and GTE are authorized to provide both interLATA and intraLATA service, the distinctions between interLATA and intraLATA calls will no longer be meaningful, and the Commission should be prepared to revisit and eliminate these distinctions.").

[78] Sprint comments at 4.

[79] *Id.* At the same time, Sprint asks that we eliminate the intrastate intraLATA/interstate intraLATA distinction and make all intraLATA toll calls (both interstate and intrastate) subject to a single presubscription.

[80] USTA correctly notes that independent exchange carriers have not been subject to the interLATA line of business restrictions that were imposed on the BOCs pursuant to the AT&T Consent Decree. *See United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 226 (D.D.C. 1982). *See* USTA comments at 3 n.2.

[81] For example, where BOCs receive authority to provide in-region, interLATA services, they are required to provide such services through a separate affiliate for at least three years pursuant to section 272 of the 1996 Act. *See* 47 U.S.C. §§ 272 (a)(2), (f)(1). Accordingly, it appears that the LATA distinction will remain relevant insofar as it will continue to define the geographic areas in which a BOC must provide toll services through an affiliate and those in which it may provide toll services directly.

[82] States may require a LEC to provide other categories of information in its plan in addition to the information categories stated here.

that state sufficiently in advance of the date on which a LEC is required to implement toll dialing parity pursuant to the Commission's rules, we direct the LEC to file its plan with the Commission.[83] The Commission will release a public notice of any such LEC filings, in order to give interested parties an opportunity to comment. The LEC's plan will be deemed approved on the fifteenth day following release of the Commission's public notice unless, no later than the fourteenth day following the release of the Commission's public notice, either: (1) The Common Carrier Bureau notifies the LEC that its plan will not be deemed approved on the fifteenth day; or (2) an opposition to the plan is filed with the Commission and served on the LEC that filed the plan. The opposition must state specific reasons why the plan does not serve the public interest.

40. If one or more oppositions are filed, the LEC that filed the plan will have seven additional days (*i.e.*, until no later than the twenty-first day following the release of the Commission's public notice) within which to file a reply to the opposition(s) and serve it on all parties that filed oppositions. The response shall: (a) Include information responsive to the allegations and concerns identified by the opposing party; and (b) identify possible revisions to the plan that will address the opposing party's concerns. In the case of such contested toll dialing parity plans, the Common Carrier Bureau will act on the plan within ninety days of the date on which the Commission released its public notice.[84] In the event the Bureau fails to act within 90 days, the plan will not go into effect pending Bureau action. If the plan is not contested but did not go into effect on the fifteenth day after the Commission released its public notice, and the Common Carrier Bureau fails to act on the plan within ninety days of the date on which the Commission released its public notice, the plan will be deemed approved without further Commission action on the ninety-first day after the date on which the Commission released its public notice of the plan's filing.

41. A LEC's plan may not accomplish toll dialing parity by automatically assigning toll customers to itself, to a customer's currently presubscribed interLATA or interstate toll carrier, or to any other carrier except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same intraLATA and interLATA presubscribed carrier. Finally, when LATA boundaries encompass parts of two adjacent states, we permit the LEC to implement in each state the procedures that that state approved for implementing toll dialing parity within its borders. If a state commission elects not to evaluate the LEC's intrastate toll dialing parity plan, we direct the LEC to file both its intrastate toll dialing plan and its interstate toll dialing plan with the Commission. The plans will be acted on in accordance with the procedures outlined above.

42. We note that the minimum intraLATA/interLATA toll presubscription requirement that we adopt in this *Order* is necessarily an interim measure. Specifically, we expect that the development of the "multi-PIC" or "smart-PIC" presubscription methodology will enable customers to presubscribe to multiple carriers for various categories of long-distance calling.[85] Thus, in time, we anticipate that service markets, and the presubscription requirement in particular, will be defined by technological, economic and marketing considerations and that LATA or state boundary distinctions will diminish for purposes of the toll dialing parity requirements. As the record before us provides an inadequate basis for adopting more specific requirements now, we intend to monitor developments in this area and issue a Further Notice of Proposed Rulemaking to address these long range considerations so that end users will be able to preselect alternative providers for operator services, directory assistance, international and other services.

3. Separate Presubscription for International Calls

a. Background and Comments

43. The *NPRM* sought comment on whether customers should be entitled to choose a presubscribed carrier for international calls and on what Commission action, if any, is necessary to implement dialing parity for such calls.[86]

44. Most parties maintain that the 1996 Act does not require, and the Commission should not mandate, a separate presubscription choice for international calling.[87] Several parties take the position that the toll dialing parity requirement applies to international calling only to the extent that it entitles a customer to route automatically without the use of an access code the customer's international calls to the customer's presubscribed interLATA carrier.[88] A number of parties contend that the technology required to support a separate presubscription choice for international calling, the so-called multi-PIC or smart-PIC methodology, is not currently available.[89] USTA suggests that the cost of providing a separate presubscription choice for international calling should be weighed against the amount of customer demand for such an option, and the harm to consumers that may result from a potentially greater number of unauthorized carrier changes.[90] AT&T, Ameritech, Sprint and the Indiana Commission urge the Commission to revisit the issue of a separate presubscription choice for international calling only after it is demonstrated to be technically and economically feasible.[91]

b. Discussion

45. While we believe that a separate presubscription choice for international calling is consistent with the intent of the 1996 Act because it could foster additional carrier competition, we recognize that technical limitations preclude our imposing such a

[83] *See infra* para. 62 , which sets forth the dates by which a dialing parity implementation plan must be filed with the Commission in the event that a state will not be evaluating the plan.

[84] We delegate to the Chief, Common Carrier Bureau, the authority to approve, modify, or require the refiling of each plan that is filed with the Commission pursuant to this requirement.

[85] The terms "smart-PIC" and "multi-PIC" have been defined differently in various contexts. For example, GVNW states that the multi-PIC presubscription method would permit customers to choose up to three different toll carriers, which, GVNW suggests, might include an intraLATA toll, interLATA toll and an international service provider. *See* GVNW comments at 6. GVNW states that the smart-PIC presubscription method would allow customers more than three carrier choices, "as when a fourth PIC for interstate, intraLATA is needed." *Id.* In a recent state commission decision, the terms "multi-PIC" and "smart-PIC," deemed to be synonymous, were defined as the ability to "select multiple carriers for various subdivisions of their interLATA and intraLATA toll calls." *Local Exchange Competition and Other Competitive Issues*, Case No. 95–845–TP–COL, 164 P.U.R.4th 214 (Ohio Pub. Util. Comm'n Sept. 27, 1995).

[86] *NPRM* at para. 210.

[87] *See, e.g.*, SBC reply at 3 n.6; AT&T comments at 4 n.4.

[88] *See, e.g.*, SBC comments at 5.

[89] Ameritech comments at 18–19; Bell Atlantic reply at 3; CBT comments at 4–6; SBC comments at 5; U S WEST comments at 6; Sprint comments at 4–6; USTA reply at 2; *cf.* Sprint comments at 6 (noting implementation of multi-PIC system by GTE-Hawaiian Telephone Company that offers customers a separate international presubscription option).

[90] USTA comments at 3.

[91] Ameritech comments at 18–19; AT&T comments at 5 n.6; Sprint comments at 5; Indiana Commission Staff comments at 9.

nationwide requirement at this time.[92] To the extent that such a capability becomes technically feasible and is ordered in a particular state, we find that the deployment of a separate presubscription choice for international calling is consistent with the 1996 Act. We will address in a further notice at a future date the issue of how soon a separate presubscription choice for international calling will be technically feasible on a nationwide basis.[93]

4. Full 2-PIC Presubscription Method

a. Background

46. In the *NPRM*, the Commission sought comment as to whether the Commission should adopt a nationwide presubscription methodology for implementing the toll dialing parity requirements.[94] The *NPRM* also noted that states have adopted a variety of intraLATA toll dialing parity requirements and implementation methodologies.[95]

47. Among the presubscription methodologies that states have examined are the "modified 2-PIC," the "full 2-PIC," and the "multi-PIC" or "smart-PIC" methods.[96] The modified 2-PIC method generally allows a customer to presubscribe to a telecommunications carrier for all interLATA toll calls and to presubscribe to either the customer's presubscribed interLATA carrier or the customer's local exchange carrier for all intraLATA toll calls. The full 2-PIC method generally allows customers to presubscribe to a telecommunications carrier for all interLATA toll calls and to presubscribe to another telecommunications carrier (including, but not limited to, the customer's local exchange carrier) for all intraLATA toll calls. The multi-PIC or smart-PIC methods, as known today, would allow customers to presubscribe to multiple carriers, each one of which would be selected to transport a specified component of toll traffic.

b. Comments

48. Nearly all parties favor adoption of the full 2-PIC method.[97] Few parties favor deploying the modified 2-PIC method.[98] Likewise, few commenters favor immediate deployment of the multi-PIC method.[99] Several parties suggest that the multi-PIC or smart-PIC methodology and technology may warrant consideration in the future, but is currently unavailable.[100] Others maintain that the Commission should conclude that the 2–PIC approach is consistent with the 1996 Act based on the theory that the 1996 Act does not require more than a two-PIC capability to achieve toll dialing parity.[101]

c. Discussion

49. We adopt in this *Order* the full 2–PIC method as the minimum presubscription standard. Under our rules and pursuant to section 251(d)(3),[102] however, state commissions may impose more stringent presubscription requirements, such as multi-PIC or smart-PIC.

50. We adopt the full 2–PIC method as the minimum presubscription standard at this time for several reasons. We conclude that, as compared with the modified 2–PIC method, the full 2–PIC method will maximize choice for consumers and open the long-distance telecommunications markets to a greater number of competitive services providers, including smaller providers, and thus is more consistent with the congressional objectives underlying enactment of section 251(b)(3). Second, this method clearly is preferred by the majority of state regulators and telecommunications service providers.[103] Third, as compared with the multi-PIC method, the technology for the full 2–PIC method is widely available and well defined. By contrast, there is no evidence in the record to support a finding that the technical and economic feasibility of the multi-PIC method has been demonstrated on a nationwide basis. We conclude that this national standard should speed competitive entry into the intraLATA and intrastate toll markets while providing states that are considering a more stringent presubscription method, *i.e.*, multi-PIC or smart-PIC, flexibility to impose such additional requirements. Until the Commission considers the issue of multi-PIC or smart-PIC methods in a further notice, we believe that the states are best situated to evaluate the technical feasibility and economic impact of such methods on LECs, including smaller LECs, in their jurisdictions.

5. Deployment of Presubscription Software in Each End Office

a. Background

51. With end office equal access, presubscription software is installed at each end office switch within the LEC's service areas. Toll calls are then directly routed at each end office switch to the presubscribed provider of telephone toll service. With centralized equal access, presubscription software is installed at a central tandem switch location. With the latter, toll calls are routed from an end office to a tandem switch for presubscription information.[104] Providers of telephone toll service may connect at the tandem to receive this traffic rather than at each individual end office that is associated with the tandem.

b. Comments

52. MCI raises the issue of whether presubscription software should be deployed in each end office or at a single tandem location and proposes that the Commission require end office equal access rather than centralized equal access.[105] Specifically, MCI argues that end office equal access represents a superior form of access to the extent that

[92] Bell Atlantic reply at 3; CBT comments at 4–6; SBC comments at 5; U S WEST comments at 6; Sprint comments at 4–6; USTA reply at 2.

[93] Sprint comments at 6 (noting development of multi-PIC system by GTE-Hawaiian Telephone that offers customers a separate international presubscription option). It is our understanding that GTE Hawaiian Telephone Company has multi-primary interexchange carrier capability that enables customers in Hawaii to select three long-distance carriers, *i.e.*, an intrastate, interstate, and international carrier. *See ex parte* letter from Clarence Clay M. Nagao, Chief Counsel, State of Hawaii Public Utilities Commission, Department of Budget and Finance, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96–98, July 2, 1996. We note that the arrangement by which GTE Hawaiian Telephone Company provides a third carrier choice for international calling is a unique, interim solution that uses a combination of carrier identification codes and switch routing databases. This solution is not suitable for nationwide deployment because the switch database is too limited in size and the supply of CICs too small to support an adequate number of interLATA/international carrier combinations in many areas of the country. *Ex parte* letter from F.G. Maxson, GTE Service Corporation, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96–98, August 6, 1996.

[94] *NPRM* at para. 210.

[95] *Id.*

[96] *Id.*

[97] *See, e.g.*, Michigan Commission Staff comments at 4; MCI comments at 5–6, Pennsylvania Commission comments at 2; SBC reply at 2; PacTel reply at 10–11.

[98] *See, e.g.*, Sprint comments at 5; USTA comments at 3.

[99] GSA/DOD reply at 4 (In initial comments, "GSA favored a 'multi-PIC' arrangement. * * * Although there was conceptual support for eventual implementation of the 'multi-PIC' methodology, it is clear that the technical and economic feasibility of this approach has not yet been demonstrated."); GVNW comments at 6 ("[T]he FCC should not require [the smart-PIC method] on a nationwide basis or schedule, as this will result in uneconomic network upgrades, added costs for the incumbent LECs, and higher prices to customers and competitors").

[100] *See, e.g.*, Ameritech comments at 18–19; AT&T comments at 5 n.6; CBT comments at 4; GVNW comments at 3; Indiana Commission Staff comments at 9; Sprint comments at 5.

[101] SBC reply at 3; GTE reply at 12–13.

[102] 47 U.S.C. 251(d)(3).

[103] *See, e.g.*, Pennsylvania Commission comments at 2; SBC reply at 2; PacTel reply at 10–11.

[104] In this context, presubscription information refers to the information that is used by the switch to determine which interconnecting carrier carries and bills for the call.

[105] MCI comments at 5.

it enhances redundancy and reduces post dial delays.[106] Centralized equal access should not be permitted, MCI maintains, insofar as that approach requires that all end offices receive the equal access features from the tandem and any interruption in service from the tandem can affect a larger number of subscribers on the system.[107] In addition, because calls are routed from the end office to the tandem and back, MCI contends that centralized equal access would result in significant post-dial delay.[108] MCI does suggest, however, that in areas that "would not otherwise convert to interLATA or intraLATA equal access, centralized equal access provides consumers at least a limited form of carrier choice."[109]

53. Two commenters who are centralized equal access providers oppose MCI's position.[110] Specifically, Iowa Network Services and MIEAC counter that centralized equal access is not inferior to end office equal access and repeatedly has been found to serve the public interest by the Commission and numerous state regulatory commissions.[111] MIEAC takes issue with MCI's argument that centralized equal access is inferior to end office equal access, noting that recent technological advances, and the use of SS7 trunk signaling, in particular, have improved call set up times and reduced post dial delay.[112] Iowa Network Services calls the argument that centralized equal access provides less network redundancy a "red herring" and notes its recent installation of a redundant fiber ring facility to connect its participating exchanges, which will allow instant rerouting of traffic in the case of a facilities equipment failure.[113] Iowa Network Services also operates a "diversity access tandem" that provides switch redundancy should its primary tandem fail.[114] MIEAC argues that centralized equal access networks fully comply with the toll dialing parity requirement of section 251(b)(3) insofar as these networks support 2–PIC presubscription.[115] Finally, MIEAC and Iowa Network Services contend that centralized equal access represents an appropriate method of providing equal access in rural areas where it otherwise would not be technically or economically feasible.[116]

c. Discussion

54. The issue of presubscription software deployment was not raised in the *NPRM* and, as a result, few commenters address it. We conclude that the record is not sufficient for us to require LECs, pursuant to section 251(b)(3), to provide end office equal access rather than centralized equal access to competing providers of telephone toll service. No specific information is provided, let alone consensus reached in this record, on such threshold issues as the technical and economic feasibility of placing the software in one location over another. We note that while MCI and Iowa Network Services disagree generally on the benefits of deployment locations, neither addresses such important implementation issues as whether different switching equipment owned by various companies might provide obstacles to deployment, or the relevant costs associated with one deployment scheme over another. Iowa Network Services, we further note, does not address how its proposal would comport with the Commission's generally prescribed requirement under which most LECs are required to implement equal access at end offices.[117] Based on the reasons stated above, and based on our concern regarding the harm that could come to small telecommunications services providers if we adopt MCI's proposal, we decline to adopt at this time a requirement prescribing the location for deployment of presubscription software under section 251(b)(3).

C. Implementation Schedule for Toll Dialing Parity

1. Background and Comments

i. Timetable for BOCs

55. Section 271(e)(2)(A) requires a BOC to provide intraLATA toll dialing parity throughout a state "coincident with" its exercise of authority to provide in-region, interLATA services in that state.[118] Section 271(e)(2)(B) precludes most states from imposing intraLATA toll dialing parity requirements on a BOC before the earlier of the date on which a BOC is authorized to provide in-region, interLATA services in a state or three years from the date of enactment of the 1996 Act.[119] The *NPRM* sought comment on what implementation schedule should be adopted for all LECs.[120]

56. The BOCs generally argue that section 271(e)(2) establishes the relevant implementation schedule for all BOCs and, thereby, obviates the need for a nationwide implementation schedule for BOCs.[121] For example, Ameritech argues that, except in single-LATA states and where a state has previously ordered intraLATA presubscription, section 271(e)(2) requires a BOC to implement intraLATA toll dialing parity "coincident with its exercise of in-region, interLATA authority" or three years after enactment of the 1996 Act.[122] Other parties urge the Commission to require BOCs to implement toll dialing parity in advance of these dates on the theory that only the states, and not the Commission, are constrained by the limitations in section 271(e)(2)(B).[123] Frontier suggests that the Commission mandate that dialing parity be made available immediately for interstate, intraLATA toll calls.[124] AT&T asserts that "except as provided in section 271(e)(2)(B), the Commission should require all Tier 1 LECs to implement dialing parity, utilizing the Full 2–PIC method, by January 1, 1997."[125] NYNEX maintains that the Commission should recognize and give effect to state orders granting deferrals or waivers of the toll dialing parity requirements.[126]

ii. Timetable for All Other LECs

57. For all other LECs, other than BOCs, the 1996 Act provides no timetable for implementing toll dialing parity. The *NPRM* sought comment on what implementation schedule should be adopted for all LECs.[127]

58. USTA argues that there is no need for a uniform implementation schedule and suggests that the Commission permit states to adopt their own timetables.[128] PacTel similarly opposes our adoption of an implementation

[106] *Id.*

[107] *Id.*

[108] *Id.* MCI does not attempt to define or quantify the term "significant."

[109] *Id.* at 5 n.7.

[110] *See generally* Iowa Network Services joint reply; MIEAC reply.

[111] Iowa Network Services joint reply at 4–7; MIEAC reply at 2–4.

[112] MIEAC reply at 3.

[113] Iowa Network Services joint reply at 5.

[114] *Id.*

[115] MIEAC reply at 3–4.

[116] *Id.* at 5–7; Iowa Network Services joint reply at 2 (noting that centralized equal access fosters intraLATA and interLATA competition by making equal access technology available in exchanges where installation of end office equal access is economically or technically infeasible).

[117] *See generally MTS and WATS Market Structure*, CC Docket No. 78–72, Phase III, 100 F.C.C. 2d 860 (1985) 50 FR 52964 (December 27, 1985).

[118] 47 U.S.C. 271(e)(2)(A).

[119] 47 U.S.C. 271(e)(2)(B). Exceptions from this requirement are made for single-LATA states and states that issued an order by December 19, 1995, requiring intraLATA toll dialing parity. *Id.*

[120] *NPRM* at para. 212.

[121] *See, e.g.*, Ameritech comments at 19.

[122] *Id.*

[123] *See, e.g.*, Sprint comments at 6 n.3.

[124] Frontier comments at 2.

[125] AT&T comments at 5.

[126] NYNEX comments at 3 n.7.

[127] NPRM at para. 212.

[128] USTA reply at 3–4.

schedule and advocates that all LECs be permitted to design their own schedules based on "local conditions and state requirements." [129] In contrast, MCI urges the Commission to adopt an implementation schedule based on the concern that incumbent LECs, if permitted to design their own timetables, would delay implementation because they lack incentive to implement dialing parity quickly. TCC proposes that non-BOC incumbent LECs should be required to provide toll dialing parity by no later than January 1, 1997.[130] NECA argues that a LEC's obligation to provide dialing parity should be triggered only upon the receipt of a *bona fide* request from a competitive toll provider.[131] Finally, MFS suggests that incumbent LECs be required to implement intraLATA toll dialing parity within a year of the effective date of the rules, or by the date previously ordered by a state commission.[132] MFS also asks the Commission to adopt rules specifying that in any geographic area where a BOC is not required to provide intraLATA presubscription pursuant to section 271(e)(2)(A), no other LEC in that geographic area will be required to provide toll dialing parity until the BOC is required to provide it.[133]

2. Discussion

59. As discussed above, we require all LECs to provide intraLATA and interLATA toll dialing parity no later than February 8, 1999. In addition, we require a LEC, including a BOC, to provide toll dialing parity throughout a state based on LATA boundaries coincident with its provision of in-region, interLATA or in-region, interstate toll services in that state. As discussed below, for non-BOC LECs that currently are providing, or within a year of release of this *Order* begin to provide, in-region, interLATA or in-region, interstate toll service, we provide a grace period during which those LECs will be able to provide such toll service before having to provide toll dialing parity to their customers. Moreover, non-BOC LECs that implement intraLATA and interLATA toll dialing parity may choose whichever LATA within their state that they deem to be most appropriate to define the area within which they will offer intraLATA toll dialing parity. State commissions in ruling upon such a choice of LATA association shall determine whether the proposed LATA association is pro-competitive and otherwise in the public interest. We note, however, as discussed above, that states may redefine the toll dialing parity requirement based on state, rather than LATA, boundaries where a state deems such a requirement to be pro-competitive and otherwise in the public interest.

60. We decline to adopt the recommendations of parties that urge us to require BOCs to provide toll dialing parity in a state before the earlier of the date on which those BOCs receive authority to provide in-region, interLATA services in that state or February 8, 1999. Subject to the requirements of the 1996 Act, we do, however, authorize states to determine whether a more accelerated implementation schedule should be utilized for LECs operating within their jurisdictions.[134] Where a state issued an order by December 19, 1995 requiring a BOC to implement toll dialing parity in advance of the implementation deadlines we establish, we do not intend to extend the toll dialing parity implementation deadline for the BOC beyond the implementation deadline established by that state. In addition, where a state issued an order prior to the release of this *Order* requiring a LEC, other than a BOC, to implement toll dialing parity in advance of the implementation deadlines we establish, we do not intend to extend the toll dialing parity implementation deadline for the LEC beyond the implementation deadline established by that state.

61. We further conclude that LECs, other than BOCs, that begin providing in-region, interLATA or in-region, interstate toll services before August 8, 1997, including LECs that currently offer such services, are not required to implement toll dialing parity until August 8, 1997.[135] We do not mandate compliance with the toll dialing parity requirement by these LECs "coincident with" their provision of in-region, interLATA or in-region, interstate toll services because it would place certain carriers in violation of this order upon its release and would impose an unreasonably short timetable on others. To the extent that a LEC is unable to comply with the August 8, 1997 deadline, that LEC is required to notify the Commission's Common Carrier Bureau by May 8, 1997. The notification must state, in detail, the justification for the LEC's inability to comply by August 8, 1997 and set forth the date by which it will be able to implement toll dialing parity.[136] Finally, we have considered the arguments of LECs that seek to make their toll dialing parity obligation contingent upon the receipt of a *bona fide* request and conclude that special implementation schedules for smaller LECs are unnecessary because these LECs may petition their state commission, pursuant to section 251(f)(2), for a suspension or modification of the application of the dialing parity requirements.[137]

62. In summary, we establish the following toll dialing parity implementation schedule and filing deadlines for all LECs:

(a) Each LEC, including a BOC, must implement intraLATA and interLATA toll dialing parity based on LATA boundaries no later than February 8, 1999. If the state commission elects not to evaluate a LEC's toll dialing parity implementation plan,[138] the LEC must file that plan with the Commission not later than 180 days before February 8, 1999.

(b) Except as provided in subparagraph (c) below, a LEC, including a BOC, that begins to provide in-region, interLATA toll services or in-region, interstate toll services in a state before February 8, 1999, must implement intraLATA and interLATA toll dialing parity based on LATA boundaries coincident with its provision of in-region, interLATA or in-region, interstate toll services. If the state commission elects not to evaluate its toll dialing parity implementation

[129] PacTel reply at 12.

[130] TCC comments at 4.

[131] NECA reply at 3–4; *see also* Rural Tel. Coalition comments at 6–7; GVNW comments at 5.

[132] MFS comments at 6.

[133] *Id.*; *cf.* Ohio Commission comments at 9 (new entrant LECs should be required to implement intraLATA toll dialing parity coincident with their offering of local telephone service since new entrants can equip their network switches to provide dialing parity before installation).

[134] *See* 47 U.S.C. 271(e)(2)(b).

[135] We note that the 1996 Act distinguishes between in-region services, for which BOCs must receive Commission authority to provide under section 271(d)(1), 47 U.S.C. 271(d)(1), and out-of-region services, which BOCs are currently authorized to provide. *See* 47 U.S.C. 271(b)(1), (b)(2). We note that for non-BOC LECs, it is the provision of toll services outside of the LEC's study area or the provision of interstate toll services that triggers the duty to provide toll dialing parity. We use the term in-region, interLATA or in-region interstate toll services to include those toll services, the provision of which by a LEC triggers the LEC's duty to provide toll dialing parity.

[136] As recently noted in the context of waiver petitions for certain caller identification rules, the Commission will not hesitate to take enforcement action, including monetary fines and other remedial measures against carriers that are unable to provide a compelling justification for failing to comply with Commission rules, particularly when they have been given a reasonable period within which to comply. *See Rules and Policies Regarding Calling Number Identification Service—Caller ID*, CC Docket No. 91–281, Memorandum Opinion and Order, DA 96–875 (1996) 61 FR 20746 (May 8, 1996).

[137] 47 U.S.C. 251(f)(2).

[138] For a discussion of the content of and procedures relating to the toll dialing parity implementation plans, *see* section II.B(2) *supra*.

plan, the LEC must file such plan with the Commission not later than 180 days before the date on which it begins to provide in-region, interLATA toll services.

(c) A LEC, other than a BOC, that begins to provide in-region, interLATA or in-region, interstate toll services in a state before August 8, 1997, must implement intraLATA and interLATA toll dialing parity based on LATA boundaries by August 8, 1997. If the LEC is unable to comply with this August 8, 1997, implementation deadline, the LEC must notify the Commission's Common Carrier Bureau by May 8, 1997. At that time it must state its justification for noncompliance by August 8, 1997, and set forth the date by which it will be able to implement toll dialing parity. If the state commission elects not to evaluate the LEC's toll dialing parity implementation plan, the LEC must file such plan with the Commission not later than 90 days after publication of this *Order* in the **Federal Register**.

63. We further conclude that the 1996 Act does not authorize the Commission to give effect to a state order that purports to grant a BOC a deferral, waiver or suspension of the BOC's obligation to implement dialing parity. We note that section 251(f)(2) provides procedures for suspending or modifying application of the dialing parity requirements only for certain LECs, *i.e.*, those "with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide." [139] Given that section 251 contains no comparable procedures for larger LECs, we are persuaded that Congress intended the dialing parity requirements that we adopt pursuant to section 251(b)(3) to apply, without exception, to all LECs with 2 percent or more of the Nation's subscriber lines.

D. Implementation of the Local Dialing Parity Requirements

1. In General

a. Background

64. The *NPRM* tentatively concluded that, pursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider.[140] The *NPRM* sought comment on this tentative conclusion.[141]

[139] 47 U.S.C. 251(f)(2).

[140] *NPRM* at para. 211.

[141] *Id.*

b. Comments

65. Nearly all parties concur with the Commission's proposed interpretation of the local dialing parity requirements of section 251(b)(3).[142] Ameritech contends, however, that the 1996 Act requires only that local calls between competing LECs be dialed without the use of an access code.[143] Ameritech states that, while the Senate version of the dialing parity provision would have required LECs to provide customers with the ability "to dial the same number of digits" when using any carrier providing telephone exchange and exchange access service in the same area, Congress narrowed the dialing parity obligation in the final legislation to require only that calls between competing LECs be dialed without the use of an access code.[144] In response to Ameritech's proposed interpretation of the local dialing parity requirements, the Ohio Consumers' Counsel asserts that it does "not believe that consumers would see any real functional difference between having to dial extra digits and having to dial an access code" and, thus, urges that customers not be required to dial access codes or extra digits when using a competing provider's services.[145]

66. Ameritech also asks the Commission to clarify that "the dialing parity obligation applies only to competing carriers that provide both telephone exchange service *and* telephone toll service (*i.e.*, competing LECs)." [146] Finally, USTA urges the Commission to clarify that section 251(b)(3) does not include an obligation to provide dialing parity to CMRS providers.[147] USTA contends that the provision of dialing parity to CMRS providers by LECs would complicate implementation of "sender pays" arrangements that have been adopted in certain states if dialing parity were interpreted to preclude the use of extra digits and/or recorded announcements associated with a "sender pays" arrangement.[148] USTA expresses concern that customers may receive bills for calling CMRS customers without advance notice that they are going to be billed for such calls.[149]

[142] *See, e.g.*, ALTS comments at 4; GTE comments at 8; Ohio Commission comments at 8.

[143] Ameritech comments at 3–4. Notwithstanding its interpretation of the local dialing parity requirements, Ameritech notes that it has exceeded these requirements by establishing interconnection arrangements that allow customers of competing LECs to complete calls by dialing the same number of digits. *Id.* at 4.

[144] *Id.*

[145] Ohio Consumers' Counsel reply at 2.

[146] Ameritech comments at 3 n.6 (emphasis in original).

[147] USTA comments at 5.

[148] *Id.* In this context, the term "sender pays" refers to an arrangement under which a customer who originates a call to a CMRS customer pays the cost of airtime for terminating the call. Under a sender pays arrangement, the customer typically receives information regarding the price of the call before the call is placed. Once the customer receives this information, the customer then may decide whether or not to complete the call. Sender pays arrangements are atypical insofar as it is the CMRS customer who generally pays the cost of airtime for terminating calls.

[149] *Id.*

c. Discussion

67. We adopt our tentative conclusion that, pursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider. As we stated in the *NPRM*, we believe that this interpretation of the dialing parity requirement as applied to the provision of telephone exchange service would best facilitate the introduction of competition in local markets by ensuring that customers of competitive service providers are not required to dial additional access codes or personal identification numbers in order to make local telephone calls. We disagree with Ameritech's view that Congress intended only to preclude the use of access codes and did not intend to preclude the dialing of extra digits. The fact that Congress ultimately adopted a dialing parity definition that precludes "the use of any access code" [150] does not constrain the Commission from precluding the dialing of extra digits, including access codes. Given that the statute does not define the term "access code," we conclude that our interpretation of the local dialing parity requirement will avoid potential disputes concerning what is and what is not an "access code." We are also persuaded by the argument advanced by the Ohio Consumers' Counsel that consumers would not perceive a functional difference between having to dial extra digits and having to dial an access code when using a competing provider's services.

68. We conclude that Ameritech's additional argument that the dialing parity obligation applies only to competing carriers that provide both telephone exchange service *and* telephone toll service, represents an impermissibly narrow reading of the statute. We find that the phrase "providers of telephone exchange service and telephone toll service"

[150] 47 U.S.C. 153(15).

imposes an obligation on LECs to provide dialing parity to providers of solely telephone exchange service, to providers of solely telephone toll service, or to providers of both telephone toll and exchange service. We believe that this interpretation is consistent with both the language of the statute and Congress' intent to encourage the entry of new competitors in both the local and toll markets.[151] We reject USTA's argument that the section 251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers.[152] To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity. Regarding USTA's argument that applying section 251(b)(3) in a way that benefits CMRS providers could complicate implementation of sender pays arrangements in some states, we conclude that the record before us is insufficient to determine whether, or under what circumstances, sender pays arrangements, including those requiring the dialing of extra digits or recorded announcements, are consistent with the 1996 Act. Although we do not intend to preclude the states from lawfully enforcing legitimate consumer protection policies that do not have an anticompetitive impact, we cannot conclude on this record that the arrangements USTA describes would be permissible. Finally, given our expectation that local dialing parity will be achieved through LECs' compliance with other section 251 requirements, we do not adopt a timetable for implementing the local dialing parity requirements.

2. Local Dialing Parity Methodologies

a. Background and Comments

69. In the *NPRM*, we stated our expectation that the local dialing parity obligations would not be achieved through presubscription.[153] Rather, we anticipated that a customer's ability to select a telephone exchange service provider and make local telephone calls without dialing extra digits will be accomplished through the unbundling, number portability and interconnection requirements of section 251.[154] The *NPRM* sought information and comment as to how the local dialing parity requirement should be implemented.[155]

70. The parties generally agree that local dialing parity will be accomplished through implementation of the unbundling, number portability and interconnection requirements of section 251.[156] Parties add to this list the 1996 Act's equal access requirements.[157] A few parties contend that local dialing parity is assured once competing providers of telephone exchange service are permitted nondiscriminatory access to telephone numbers.[158]

b. Discussion

71. We anticipate that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251. We also concur with the view that the ability of competing local exchange service providers to receive telephone numbers on a nondiscriminatory basis is critical to the achievement of local dialing parity. We believe that the interconnection requirements that section 251(c)(2) imposes on incumbent local exchange carriers will reduce the likelihood that customers of a competing LEC will have to dial an access code to reach a customer of the incumbent LEC insofar as the two networks are connected. Number portability will ensure that customers switching local service providers will not need to dial additional digits to make local telephone calls. Likewise, allowing every telecommunications carrier authorized to provide local telephone service, exchange access, or paging service in an area code to have at least one NXX in an existing area code also reduces the potential local dialing disparity that may result if competing LECs can only give customers numbers from a new area code. We therefore decline to prescribe now any additional guidelines addressing the methods that LECs may use to accomplish local dialing parity. We also conclude that, contrary to the views expressed by some parties, the provision of nondiscriminatory access to telephone numbers, by itself, does not fulfill the local dialing parity mandate of section 251(b)(3). Given that acquisition of a central office code by a LEC would not necessarily ensure that the LEC's customers would be relieved of an obligation to dial extra digits, access codes or some other special dialing protocol, the provision of nondiscriminatory access to telephone numbers does not by itself ensure local dialing parity. Rather, we find that under section 251(b)(3) each LEC must ensure that its customers within a defined local calling area be able to dial the same number of digits to make a local telephone call notwithstanding the identity of the calling party's or called party's local telephone service provider.

3. Non-Uniform Local Calling Areas

a. Background

72. The *NPRM* tentatively concluded that, pursuant to section 251(b)(3), a LEC is required to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider.[159] The *NPRM* did not address the potential dialing parity implications of non-uniform local calling areas[160] nor did it address the potential impact of our proposed interpretation of the local dialing parity obligation on local calling area boundaries.[161]

b. Comments

73. A number of parties express concern about the potential interrelationship between our proposed interpretation of the local dialing parity requirements and local calling area boundaries.[162] For example, WinStar cautions the Commission that by requiring that customers "within a defined local calling area" be able to dial the same number of digits to make a local telephone call, certain parties may interpret this to require that a competing provider of local exchange service must define its local calling area

[151] As the U.S. Court of Appeals for the Fifth Circuit stated in *Peacock* v. *Lubbock Compress Company*, "the word 'and' is not a word with a single meaning, for chameleonlike, it takes its color from its surroundings." The court held that "[i]n the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, Courts are often compelled to construe 'or' as meaning 'and,' and again 'and' as meaning 'or'." *Peacock* v. *Lubbock Compress Company*, 252 F.2d 892, 893 (5th Cir. 1958) (*citing United States* v. *Fisk*, 70 U.S. 445, 448 (1865).

[152] *See* section X of the *First Report and Order* for a discussion of the applicability of section 251 to CMRS providers.

[153] *NPRM* at para. 207 n.284.

[154] *Id.*

[155] *NPRM* at paras. 209, 211.

[156] *See, e.g.*, SBC comments at 3 n.4; NEXTLINK comments at 8.

[157] *See, e.g.*, BellSouth comments at 9.

[158] *See, e.g.*, U S WEST comments at 6.

[159] *NPRM* at para. 211.

[160] We use the term "non-uniform local calling area" to refer to a situation in which a telephone exchange service provider's local calling area is either larger or smaller than that of another telephone exchange service provider that is providing telephone exchange service in the same geographic area.

[161] Insofar as parties contend that the section 251(b)(3) dialing parity requirements compel the use of a ten-digit dialing plan for local calls within an area code overlay (*see, e.g.*, MFS comments at 3–5), we note that these concerns are addressed more fully below in paragraphs 286 through 287.

[162] *See, e.g.*, WinStar comments at 10–11; GSA/DOD comments at 4–5; Florida Commission comments at 3.

to match the local calling area of the incumbent LEC.[163] GSA/DOD maintains that dialing is not truly at parity if different carriers have different definitions of the geographic areas in which calls can be made with seven-digit dialing.[164] To address the potential dialing parity issue that may arise when a new entrant's "network coverage" is more limited than the incumbent LEC's, GSA/DOD recommends that the Commission adopt rules that ensure that local calling areas are consistently defined for LEC wholesale and retail services.[165]

74. GTE contends that "[s]o long as new entrants have the technical ability to deploy equipment necessary to offer the same seven-digit dialing as the incumbent LEC, dialing parity should be deemed to exist even if one or more of the new entrants ultimately chooses to provide ten-digit dialing."[166] To illustrate its point that all local calls cannot be dialed using the same number of digits, NYNEX notes that in the New York City Metro LATA local calls span three different area codes, with seven-digit dialing within an area code and ten-digit dialing between area codes.[167] Finally, the Florida Commission expresses concern regarding the potential customer confusion that may result if customers in local calling areas are required to dial ten rather than the currently dialed seven digits to make local "Extended Calling Service" calls.[168]

c. Discussion

75. A telephone call requiring seven-digit dialing is not necessarily a local call[169] and a telephone call requiring ten-digit dialing is not necessarily a toll call.[170] Disparity in local dialing plans, by itself, does not contravene our interpretation of the local dialing parity requirements unless such plans are anti-competitive in effect.[171] By requiring that all customers "within a defined local calling area" be able to dial the same number of digits to make a local telephone call, we do not intend to require a competing provider of local exchange service to define its local calling area to match the local calling area of an incumbent LEC. We further do not intend to require a competing provider of telephone exchange service that voluntarily chooses to provide ten-digit as opposed to seven-digit dialing in a local calling area to modify its dialing plan in this instance in order to conform to the dialing plan of another LEC. No other commenter addressed GSA's proposal that the Commission adopt rules that ensure that local calling areas are consistently defined for LEC wholesale and retail services. Therefore, we conclude that the record is insufficient to permit us to take such action at this time.

E. Consumer Notification and Carrier Selection Procedures

a: Background

76. Section 251(b)(3) does not specifically require that procedures be established to permit consumers to choose among competitive telecommunications providers (*e.g.*, through balloting).[172] The *NPRM* sought comment as to whether the Commission should require LECs to notify consumers about carrier selection procedures or impose any additional consumer education requirements.[173] We also sought comment on an alternative proposal that would make competitive telecommunications providers responsible for notifying customers about carrier choices and selection procedures through their own marketing efforts.[174]

b. Comments

77. Several parties contend that the responsibility for consumer education should be borne, at least in part, by the incumbent LECs[175] and claim that incumbent LECs are uniquely situated to assist in this function.[176] Conversely, others maintain that responsibility for the notification and education of consumers should be imposed on the carriers seeking those customers' business, as part of those carriers' marketing efforts.[177] GSA/DOD favors letting carriers "fight it out among themselves," noting that carriers themselves will have every incentive to make sure that prospective customers are aware of their choices.[178] PacTel suggests that states are in the best position to assess the informational needs of their citizens.[179] Several commenters express concern that any customer notification requirement must recognize that the details of any such notification plan should reflect local circumstances, including local carrier selection options, rates and dialing plans.[180] Ameritech maintains that a "carrier-neutral customer notification of the toll dialing parity selection processes is in the public interest and should be a part of the implementation of any toll dialing parity plan."[181]

78. While several commenters urge the Commission to adopt rules for balloting,[182] the majority of parties urge us to reject this option.[183] Parties that oppose balloting argue that such decisions should be left to the individual states[184] and claim that balloting is confusing to customers,[185] costly,[186] and forces consumers to make selections before they might otherwise choose to do so.[187] Commenters also argue that competition for customers will ensure that carriers notify customers as to how their services can be obtained.[188] In stating its opposition to a balloting requirement, MFS observes that:

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[163] WinStar comments at 10–11 ("The Commission should proceed carefully to ensure that it does not inadvertently limit carriers from experimenting with local calling areas."); *see also*, U S WEST comments at 6 (where dialing parity disputes arise over fact that local calling areas of two competing LECs do not match, states should resolve such disputes since they are familiar with local calling areas and calling patterns in that state).

[164] GSA/DOD comments at 4.

[165] *Id.* at 5.

[166] GTE comments at 8 n.10.

[167] NYNEX comments at 3 n.6.

[168] Florida Commission comments at 3.

[169] We note that several states permit seven-digit dialing for toll calls. *North American Numbering Plan, Area Codes 1996 Update*, Bellcore (January 1996) at 14. For example, within the 518 area code a call from Clifton Park, New York to Hague, New York is a toll call that can be dialed with seven digits.

[170] Section 3(48) defines "telephone toll service" as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." 47 U.S.C. 153(48). By contrast, charges for calls within a local calling area generally are not assessed on a per call basis. Thus, the construct of local calling areas serves as the basis by which carriers price their services.

[171] *See, e.g.*, the discussion at paras. 281–291 regarding the discriminatory and anticompetitive nature of a service-specific or technology-specific overlay in connection with area code relief plans.

[172] 47 U.S.C. 251(b)(3).

[173] *NPRM* at para. 213.

[174] *Id.*

[175] *See, e.g.*, ACSI comments at 10; Ameritech comments at 20; California Commission comments at 4.

[176] *See, e.g.*, Illinois Commission comments at 67; ACSI comments at 10 (incumbent LECs should be required to provide bill inserts to customers alerting them to opportunity to select alternative service provider).

[177] *See, e.g.*, CBT comments at 5; Bell Atlantic comments at 5; Frontier comments at 4; BellSouth reply at 4; GTE reply at 15.

[178] GSA/DOD comments at 6.

[179] PacTel comments at 13.

[180] *See, e.g.*, Ameritech comments at 21; GTE comments at 12; PacTel reply at 13.

[181] Ameritech comments at 20.

[182] *See, e.g.*, NEXTLINK comments at 9; Excel comments at 7.

[183] *See, e.g.*, Ohio Consumers' Counsel comments at 3; SBC reply at 1; MFS reply at 12; CBT reply at 3–4.

[184] *See, e.g.*, Florida Commission comments at 2; PacTel reply at 13.

[185] *See, e.g.*, Ohio Commission comments at 7.

[186] *See, e.g.*, GTE comments at 13; Sprint comments at 4.

[187] Ameritech comments at 20.

[188] *See, e.g.*, GTE comments at 13; U S WEST comments at 8.

The long-distance market today differs markedly from the situation in the mid-1980's, when non-dominant carriers were virtually unknown to most consumers and balloting was mandated as a way of educating consumers to their ability to choose a carrier. No such education is needed today, because most consumers are well aware of their long-distance choices, and the carriers have readily available means of contacting those who are not.[189]

79. Commenters also raised a number of issues related to consumer notification and carrier selection methods. For example, PacTel asserts that "the default carrier for both existing and new customers who do not actively choose an intraLATA toll provider should be the dial-tone provider."[190] Sprint agrees that "existing customers who are currently obtaining intraLATA toll service from the dial tone provider, and do not indicate a desire to change carriers, should remain with that intraLATA toll provider."[191] Sprint rejects PacTel's proposal, however, "to default new customers who do not choose an intraLATA toll provider to the dial tone provider."[192] Concerning whether customers should be assessed a "PIC change charge" when they select an alternative provider of telephone toll or telephone exchange service, parties propose allowing customers a "grace period" during which they could switch carriers without charge.[193] The Ohio Consumers' Counsel supports a cap on the cost of initiating both local and toll service with a new carrier, noting that a "customer's old carrier should not be able to impose an 'exit fee' upon the customer who switches."[194] Finally, GVNW urges that the Commission's rules, complaint procedures and penalties for "slamming" be applied to any carrier selection procedures that the Commission adopts with respect to local exchange service providers.[195]

c. Discussion

80. We agree with those commenters who observe that competitive providers of telephone exchange and telephone toll service have an incentive to make consumers aware of the choices available, and we perceive no need to prescribe detailed consumer notification or carrier selection procedures at this time. We do believe, however, that states may adopt such procedures. The states are best positioned to determine the consumer education and carrier selection procedures that best meet the needs of consumers and telecommunications services providers in their states. Thus, states may adopt consumer education and carrier selection procedures that will enable consumers to select alternative carriers for their local and toll services. We further agree that a customer notification requirement should take into consideration local circumstances. The states may adopt balloting, consumer education and notification requirements for services originating within their states, that are not anti-competitive in effect. States also may adopt measures to prevent abuse of the customer notification and carrier selection processes. All such procedures, however, must be consistent with the guidelines set forth above with respect to the requisite categories of toll traffic for which consumers must be entitled to presubscribe and the toll presubscription method that we require carriers to implement. We note that the consumer notification requirements already imposed by states' intrastate, intraLATA toll dialing parity orders have required LECs to inform customers either once or twice of their opportunity to choose an alternative carrier.[196] We anticipate that any subsequently imposed consumer notification requirements would be no more be burdensome, and, in particular, would not require more than two notifications to consumers of their opportunity to choose alternative carriers to transport their intraLATA toll calls.

81. We conclude that "dial-tone providers" should not be permitted automatically to assign to themselves new customers who do not affirmatively choose a toll provider. New customers of a telephone exchange service provider who fail affirmatively to select a provider of telephone toll service, after being given a reasonable opportunity to do so, should not be assigned automatically to the customer's dial-tone provider or the customer's preselected interLATA toll or interstate toll carrier. Rather, we find that consistent with current practices in the interLATA toll market, such nonselecting customers should dial a carrier access code to route their intraLATA toll or intrastate toll calls to the carrier of their choice until they make a permanent, affirmative selection. This action eliminates the possibility that a LEC could designate itself automatically as a new customer's intraLATA or intrastate toll carrier without notifying the customer of the existence of alternative carrier choices. Finally, notwithstanding our decision to entrust the issues of consumer notification and carrier selection to the states, we emphasize that all telecommunications carriers remain subject to the requirements of section 258 as well as any verification or "anti-slamming"[197] procedures that the Commission may adopt to prevent unauthorized changes in a customer's selection of a provider of telephone exchange or telephone toll service.[198]

F. Cost Recovery

a. Background

82. In the *NPRM*, the Commission noted that the 1996 Act does not specify how LECs will recover the costs associated with providing dialing parity to competing providers.[199] The Commission therefore sought comment on: (1) What, if any, standard should be used for arbitration to determine the dialing parity implementation costs that LECs should be permitted to recover; and (2) how those costs should be recovered.[200]

b. Comments

83. At the outset, we note that there does not appear to be a consensus among commenters as to either of the

[189] MFS comments at 6.

[190] PacTel comments at 11.

[191] Sprint reply at 5–6 n.8.

[192] *Id.* On a related issue, AT&T urges the Commission to intercede where abuse of the customer notification process occurs, such as when a LEC uses its "provision of exchange service to influence toll PIC choices." AT&T comments at 6 n.9. AT&T adds that the Commission should prohibit LECs from extending interLATA PIC "freezes" to intraLATA traffic. *Id.*

[193] Ohio Commission comments at 7 (proposing 90 day grace period with a charge for subsequent changes); Citizens Utilities comments at 6–7 (proposing 6 month grace period).

[194] Ohio Consumers' Counsel reply at 2.

[195] GVNW comments at 7.

[196] *See, e.g., Adoption of rules relating to intra-Market Service Area presubscription and changes in dialing arrangements related to the implementation of such presubscription,* Interim Order (Ill. Comm. Comm'n. Apr. 7, 1995).

[197] The Commission has defined slamming as the unauthorized conversion of a customer's interexchange carrier by another interexchange carrier, an interexchange resale carrier, or a subcontractor telemarketer. *Cherry Communications, Inc. Consent Decree,* 9 FCC Rcd 2986, 2987 (1994).

[198] Section 258 makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. 258(a). The section further provides that:

[a]ny telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation.

47 U.S.C. 258(b). Section 258 extends the slamming prohibition to all telecommunications carriers, not just interexchange carriers, as is the case under the Commission's current Part 64 rules. *See* 47 CFR § 64.1100.

[199] *NPRM* at para. 219.

[200] *Id.*

two cost recovery issues raised in the *NPRM*. The parties are generally divided into two positions: (1) Interexchange carriers and competitive carriers prefer a Commission standard under which carriers could recover from competing providers only the specific incremental costs of providing intraLATA toll dialing parity; and (2) incumbent LECs and several states prefer that no national standards be developed, and that cost recovery issues be left either to the states or to intercarrier negotiations.

84. AT&T suggests that carriers only be entitled to recover incremental costs directly associated with the implementation of dialing parity, and states that the Commission should "explicitly exclude (a) recovery of costs intended to reimburse an incumbent carrier for revenues it expects to lose as a result of implementing dialing parity * * * as well as (b) costs associated with network upgrades that are not necessary to implement dialing parity."[201] AT&T further suggests that the Commission mandate an "Equal Access Recovery Charge" on all providers of toll service based on minutes of use subject to dialing parity, and that this charge be tariffed separately from any access charges, approved by the state commission, and amortized over a period not to exceed eight years.[202]

85. MCI appears to agree with AT&T's proposal, stating that "incremental costs incurred to implement dialing parity should be recovered from all carriers that carry intraLATA toll on a presubscribed basis in accordance with cost causative principles."[203] MCI also suggests that dialing parity costs be recovered on a minutes-of-use basis, as an addition to the local switching rate element, which would be separately identified in a tariff, and that Commission rules for cost recovery be "presumptively correct" (*i.e.*, states can depart from such rules if they can show their mechanism is more effective).[204] Several parties urge the Commission to draw upon its cost recovery paradigms for interLATA equal access, and apply the same basic principles to the intraLATA toll market.[205]

86. Many other competitive providers also advocate various forms of incremental cost recovery, on a per-minutes of use basis, to be assessed against all providers of presubscribed intraLATA toll services; such costs could include, for example, hardware costs, software costs, and consumer education costs.[206] GSA/DOD asks the Commission to "view LEC claims for large cost compensation with considerable skepticism," and suggests that the Commission "distribute any verifiable incremental costs associated with achieving dialing parity as a percentage surcharge on the bills of all carriers, including the incumbent LECs."[207]

87. Taking the opposite view, BOC commenters, together with GTE and USTA, argue that there is essentially no need for the Commission to adopt cost recovery measures for dialing parity, and that cost recovery issues are best left for the states to address.[208] Several state public utility commissions also argue that, given the state-specific nature of intraLATA cost recovery issues, and the omission of a specific cost-recovery standard from Congress in section 251(b)(3), the individual states are in the best position to address these issues.[209] In support of these arguments, some state commenters have provided the Commission with detailed descriptions of their current mechanisms for recovering intraLATA presubscription costs.[210]

88. Ameritech argues that dialing parity costs "should be recovered under normal regulatory principles from the cost-causer," and Bell Atlantic argues that "only carriers who will benefit from intraLATA presubscription should pay the costs. Unless interexchange carriers bear the full costs of implementing intraLATA presubscription, exchange carrier customers who do not switch intraLATA toll carriers and do not benefit from presubscription would ultimately be required to pay for it."[211] On the other extreme, the Telecommunications Resellers Association states that incumbent LECs should "shoulder the full financial burden of remedying this competitive imbalance [in the intraLATA toll market]."[212]

89. The reply comments reveal substantial disagreement among carriers from the two opposing positions. Interexchange carriers and competitive carriers reject the suggestion that they shoulder the full cost burden for intraLATA dialing parity, and urge that, at a minimum, costs be spread among all service providers that enjoy dialing parity.[213] AT&T states that "the proposal by Ameritech and Bell Atlantic to recover implementation costs exclusively from their competitors underscores the need for explicit national rules * * * [n]othing could be more * * * harmful to competition, than allowing incumbent LECs to charge a fee for new entrants for the "privilege" of competing with them."[214] GSA/DOD also urges the Commission to "reject" the proposals of Bell Atlantic and SBC.[215] MFS correctly notes that there was "little consensus" on this issue, and states "it is entirely inappropriate in a competitive environment that an individual carrier's costs be recovered from its competitors."[216] The Ohio Consumer's Counsel states that Ameritech's "cost-causer" proposal "ignores the fact that the benefits of dialing parity are network-wide."[217]

90. Incumbent LECs maintain that the Commission should not set national cost recovery standards, and that this matter remains the prerogative of the states.[218] GTE "strongly opposes" AT&T's suggestions, and PacTel states that "LECs cost recovery should not be limited by noncompensatory incremental methodologies or unreasonably long amortization requirements."[219] SBC asserts that the proposals of MCI and AT&T are "examples of regulatory micro-management, are inconsistent with Congressional intent, and would also * * * place the major burden of dialing parity cost recovery squarely on the backs of incumbent LECs."[220]

91. GCI states that "costs should be recovered in a competitively neutral manner because all LECs, not just incumbent LECs, must meet this obligation."[221] Western Alliance contends that "costs incurred to achieve dialing parity should be included in the investment recoverable through explicit

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[201] AT&T comments at 7.

[202] *Id.*

[203] MCI comments at 3.

[204] *Id.* at 7–8.

[205] *See*, e.g., GVNW comments at 8; MCI comments at 7.

[206] *See, e.g.*, Citizens Utilities comments at 6; GSA/DOD comments at 6–8.

[207] GSA/DOD comments at 6–7, 8.

[208] *See* Bell Atlantic comments at 5; GTE comments at 20–21; NYNEX comments at 10–11; PacTel comments at 17; SBC comments at 9; USTA comments at 4.

[209] *See* Illinois Commission comments at 72; Indiana Commission comments at 9; Ohio Consumers' Counsel comments at 4; and Ohio Commission comments at 11.

[210] *Id.*; *see also* Louisiana Commission comments at 7.

[211] Ameritech comments at 10; Bell Atlantic comments at 5.

[212] Telecommunications Resellers Association comments at 8.

[213] *See, e.g.*, Sprint reply at 12; Telecommunications Resellers Association reply at 7; WinStar reply at 12.

[214] AT&T reply at *iii.*

[215] GSA/DOD reply at 8.

[216] MFS reply at 14.

[217] Ohio Consumers' Counsel reply at 4.

[218] *See* Bell South reply at 4; Bell Atlantic reply at 5; NYNEX reply at 4; PacTel reply at 18; and USTA reply at 5.

[219] PacTel reply at *iii.*

[220] SBC reply at 8.

[221] GCI reply at 2.

universal (service) supports."[222] Finally, NECA argues that there is no need for the Commission to prescribe specific cost recovery mechanisms.[223]

c. Discussion

92. We conclude that, in order to ensure that dialing parity is implemented in a pro-competitive manner, national rules are needed for the recovery of dialing parity costs. We further conclude that these costs should be recovered in the same manner as the costs of interim number portability, as mandated in our recent *Number Portability Order*.[224] Our authority to promulgate national cost recovery rules derives from section 251(d) of the 1996 Act and section 4(i) of the 1934 Act. In section 251(d), Congress directed the Commission to take the necessary steps to implement section 251. Section 4(i) of the 1934 Act authorizes us to take any action we consider "necessary and proper" to further the public interest in the regulation of telecommunications. Because we determine that dialing parity is crucial to the development of local exchange competition, we conclude that we should establish pricing principles for the recovery of dialing parity costs. Accordingly, we reject the arguments of incumbent LECs and others who oppose national standards for cost recovery of the network upgrades required to achieve dialing parity.

93. Many of the network upgrades necessary to achieve dialing parity, such as switch software upgrades, are similar to those required for number portability. Moreover, with both dialing parity and number portability, customer inconvenience represents the barrier to effective competition Congress intends to eliminate, whether that inconvenience results from the dialing of extra digits in the case of dialing parity, or notification of family, friends and business contacts when a customer is forced to change his or her number. For these reasons, we determine that our recent *Number Portability Order* provides guidance regarding which costs incumbent LECs should be able to recover in implementing dialing parity, as well as how such costs should be recovered. The rules adopted in the *Number Portability Order* apply only to currently-available number portability mechanisms. We sought further comment on cost recovery for long-term number portability, because long-term number portability will involve a different kind of system than currently available solutions. We tentatively concluded that under section 251(e)(2), the same cost recovery principles should apply to long-term number portability. In the case of dialing parity, there is a similar distinction between currently-available solutions (*i.e.*, full 2-PIC presubscription), and long-term solutions (*i.e.*, multi-PIC or smart-PIC methodologies). Like number portability, we may need to revisit the issue of an appropriate cost recovery standard once other presubscription technologies become available on a nationwide basis.

94. In the *Number Portability Order*, we concluded that costs for number portability should be recovered on a competitively-neutral basis.[225] We also concluded that any recovery mechanism should: (1) Not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) not have a disparate effect on the ability of competing service providers to earn a normal return.[226] We therefore reject the arguments of those commenters that assert that only new entrants should bear the costs of implementing dialing parity, because such an approach would not be competitively neutral. We also concluded in the *Number Portability Order* that LECs could only recover the incremental costs of implementing number portability. Because we determine that number portability and dialing parity share significant technical similarities and overcome similar barriers to competition, we conclude that we should impose the same cost standard for dialing parity costs that we have adopted for number portability costs. We therefore agree with AT&T that LECs may not recover from other carriers under a dialing parity cost recovery mechanism any network upgrade costs not related to the provision of dialing parity.

95. In our *Number Portability Order*, we concluded that the costs of long-term number portability that could be recovered through a competitively-neutral mechanism included installation of number portability-specific switch software, implementation of SS7 and IN or AIN capability, and the construction of number portability databases.[227] We determined that states could use several allocators, including gross telecommunications revenues, number of lines, and number of active telephone numbers, to spread number portability costs across all telecommunications carriers.[228] Applying the same cost recovery principles to dialing parity, we conclude that LECs may recover the incremental costs of dialing parity-specific switch software, any necessary hardware and signalling system upgrades, and consumer education costs that are strictly necessary to implement dialing parity. These costs must be recovered from all providers of telephone exchange service and telephone toll service in the area served by a LEC, including that LEC, using a competitively-neutral allocator established by the state.[229] Although, under section 251(e)(2), number portability costs must be recovered from all telecommunications carriers, section 251(b)(3) only requires that dialing parity be provided to providers of telephone exchange service and telephone toll service. Therefore, we conclude that a competitively-neutral recovery mechanism for dialing parity should only allocate costs to this more limited class. States may use any of the allocators described in the *Number Portability Order*, or any other allocator that meets the criteria we have established. States should apply the principles we adopt today, and the other guidelines for recovering costs of currently available number portability measures, in establishing more specific cost recovery requirements for dialing parity.

G. Unreasonable Dialing Delays

96. For a discussion of the section 251(b)(3) prohibition on unreasonable dialing delays, as that section applies to the provision of local and toll dialing parity, see section III(E) below.

III. Nondiscriminatory Access Provisions

A. Definition of the Term "Nondiscriminatory Access"

1. Background

97. Section 251(b)(3) requires all LECs to permit "nondiscriminatory access" to

[222] Western Alliance reply at 2 n.6.

[223] NECA reply at 2.

[224] *Telephone Number Portability*, CC Docket No. 95–116, FCC 96–286 (July 2, 1996) (*Number Portability Order*) 61 FR 38605 (July 25, 1996).

[225] Section 251(e)(2) of the 1996 Act states that "the cost of establishing * * * number portability shall be born by all telecommunications carriers on a competitively neutral basis, as determined by the Commission." This statutory provision does not apply to the dialing parity requirement.

[226] *Number Portability Order* at paras. 121–140.

[227] *Id.* at para. 122.

[228] *Id.* at paras. 134–36.

[229] We recognize that, unlike the case for number portability costs, states would not be able to establish a cost allocator based on numbers of lines because such an allocator could not apportion costs on a competitively neutral basis where dialing parity is provided to a CMRS provider. We expect that states will establish a competitively neutral allocator that can be used to apportion costs among all providers.

telephone numbers, operator services, directory assistance, and directory listings to competing providers of telephone exchange service, and to competing providers of telephone toll service.[230] In the *NPRM*, we tentatively concluded that "nondiscriminatory access" requires each LEC to permit the same degree of access that the LEC itself receives for the services specified in section 251(b)(3).[231] The Commission also asked for specific comment on whether the nondiscriminatory access provisions of section 251(b)(3) also impose a duty on LECs to resell operator and directory assistance services to competing providers.[232]

2. Comments

98. A number of commenters concur that, as proposed in the *NPRM*, "nondiscriminatory access" should require each LEC to permit the same access to these services that the LEC itself receives.[233] Bell Atlantic argues, however, that access need not be strictly equal, but must "simply be of a type that will permit the other carrier to provide comparable services with no difference in quality perceptible to callers."[234] Bell Atlantic cites the Modification of Final Judgment (MFJ) for the proposition that "equal access" does not require "strict technical equality of services and facilities," but rather it requires that consumers should perceive no qualitative differences.[235] Sprint objects to Bell Atlantic's use of "customer perception" as the nondiscriminatory access standard, arguing that this standard would allow the incumbent LEC to "discriminate against its competitors in ways not visible to the end user."[236]

99. Ameritech requests a clarification that a LEC's duty under section 251(b)(3) is owed only to "providers of telephone exchange and telephone toll service."[237] Ameritech also argues that because Congress did not expressly impose a strict equality standard in section 251(b)(3), as it did in section 251(c)(2)(C) for incumbent LECs, "the only logical interpretation is that LECs are required to provide access * * * that is nondiscriminatory among carriers."[238] The Ohio Consumer's Counsel responds that "Ameritech is claiming that giving all other carriers an equal level of *degraded* access, i.e., inferior to that provided to itself, is 'non-discriminatory.' Surely Congress contemplated nothing of the sort, as is recognized even by other incumbent LECs."[239]

100. As for resale, a number of commenters agree that LECs should make operator and directory assistance services available for resale to competing providers under section 251(b)(3), in order to further nondiscriminatory access to such services.[240] On the other hand, several commenters contend that this provision does not imply any resale requirements.[241] AT&T argues that resale is not required under section 251(b)(3), because "to the extent that a local exchange carrier provides transmission with, or as part of, its operator services, the service must be made available for resale under sections 251(b)(1) and 251(c)(4) of the Act."[242] Bell Atlantic takes a similar approach, arguing that, to the extent that a LEC provides operator and directory assistance services that are "telecommunication services," the service must be made available for resale by LECs under section 251(b)(1), and, if the services are telecommunication services offered to retail customers, incumbent LECs must offer them for resale at wholesale prices under section 251(c)(4).[243]

3. Discussion

101. We conclude that the term "nondiscriminatory access" means that a LEC that provides telephone numbers, operator services, directory assistance, and/or directory listings ("providing LEC")[244] must permit competing providers to have access to those services that is at least equal in quality to the access that the LEC provides to itself. We conclude that "nondiscriminatory access," as used in section 251(b)(3), encompasses both: (1) Nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC.[245] LECs owe the duty to permit nondiscriminatory access to competing providers of telephone exchange service and to providers of telephone toll service, as the plain language of the statute requires. Such competing providers may include, for example, other LECs, small business entities entering the market as resellers, or CMRS providers.

102. Section 251(b)(3) requires that each LEC, to the extent that it provides telephone numbers, operator services, directory assistance, and/or directory listings for its customers, must permit competing providers *nondiscriminatory* access to these services.[246] Any standard that would allow a LEC to permit access that is inferior to the quality of access enjoyed by that LEC itself is not consistent with Congress' goal to establish a pro-competitive policy framework.

103. We are not persuaded by Bell Atlantic's statement that the standard for nondiscriminatory access should focus *only* upon "customer perceptions" of service quality. Such a standard overlooks the potential for a providing LEC to subject its competitors to discriminatory treatment in ways that are not visible to the customer, such as the imposition of disparate conditions between similarly-situated carriers on the pricing and ordering of services covered by section 251(b)(3). While invisible to the customer, such conditions can severely diminish a competitor's ability to provide exchange and/or toll service on the same terms as the LEC permitting the access.

104. The *MTS and WATS Order (III)* does not preclude us from requiring LECs to permit access that is at least equal in quality to the access the LEC itself receives.[247] In the *MTS and WATS Order (III)*, the Commission simply held that neither "absolute technical equality" nor an "overly quantitative and microscopic" definition of equal

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[230] 47 U.S.C. 251(b)(3).

[231] *See NPRM* at para. 214.

[232] *See NPRM* at paras. 216, 217.

[233] *See, e.g.*, AT&T reply at iii–iv; ACSI comments at 9; California Commission comments at 5; Excel comments at 8; Florida Commission comments at 5; MCI comments at 2; and Telecommunications Resellers Association comments at 5.

[234] *See* Bell Atlantic comments at n.11.

[235] *Id.* at 6, *citing United States v. Western Electric Co.*, 569 F. Supp. 1057, 1063 (D.D.C. 1983). Bell Atlantic also states that the Commission followed this approach in a 1985 "equal access" order. *Id.* at 11, *citing In the Matter of MTS and WATS Market Structure (Phase III)*, Report and Order, CC Docket No. 78–72, 100 F.C.C. 2d. 860, 877 (1985) (*MTS and WATS Order (III)*).

[236] Sprint reply at 9–10.

[237] Ameritech comments at 11.

[238] *Id.* at 12–13. Section 251(c)(2)(C) imposes a duty on incumbent LECs to provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." 47 U.S.C. 251(c)(2)(C).

[239] Ohio Consumers' Counsel reply at 3.

[240] *See, e.g.*, ALTS comments at n.4; MCI reply at 3; MFS reply at 10; and Telecommunications Resellers Association comments at *ii.*

[241] *See, e.g.*, GTE comments at 16; Ameritech comments at n.16; NYNEX comments at 6–7.

[242] AT&T comments at n.13.

[243] Bell Atlantic comments at 8.

[244] We use the term "providing LEC" throughout this section to refer to the LEC that is permitting nondiscriminatory access to its services pursuant to section 251(b)(3). The term "competing provider" refers to a provider of telephone exchange service or a provider of telephone toll service that seeks nondiscriminatory access from a providing LEC.

[245] *See also* corresponding definition of "nondiscriminatory" in the *First Report and Order* at section V for the purposes of section 251(c)(2).

[246] *See also First Report and Order* at section V.

[247] *MTS and WATS Order (III)*, 100 F.C.C. 2d at 860. *See also supra* n. 234.

access was desirable.[248] We find that the nondiscrimination standard established in this *Order* is consistent with those previous decisions. We do not set forth in this *Order* an overly technical definition of nondiscriminatory access.

105. We conclude that, to the extent all or part of any operator or directory assistance services, and features that are adjunct to such services, are not "telecommunications services" within the meaning of section 3(44)[249] of the Communications Act of 1934, LECs that provide such services must nonetheless make the services and features available under section 251(b)(3). We recognize that resale of operator services and directory assistance is a primary vehicle through which competing providers, especially new entrants and small business entities, can make operator services or directory assistance available to their customers and that providing LECs are a primary source from which competing providers can obtain these services.[250] Operator and directory assistance services, or the portions of such services, that are "telecommunications services" are already subject to resale requirements under: (1) Section 251(c)(4)(A), which requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers"; and (2) section 251(b)(1), which imposes a duty on all LECs not to prohibit the resale of their telecommunications services, nor to impose unreasonable or discriminatory conditions on the resale of such services.[251] Operator and directory assistance services, however, generally use various adjunct information features, *e.g.*, rating tables or customer information databases.[252] We recognize that without access to such information features, competing providers cannot make full use of such services. Thus, to ensure that competing providers can obtain nondiscriminatory access to operator services and directory assistance, we require LECs to make such services available to competing providers in *their entirety*.[253]

B. Nondiscriminatory Access to Telephone Numbers

1. Definition

106. Currently, the largest LEC in each area code serves as the Central Office (CO) code administrator for that area. In the *NPRM*, this Commission proposed that the term "nondiscriminatory access to telephone numbers" means that all LECs providing telephone numbers must permit access to telephone numbers to competing providers in the same manner that the LECs themselves receive such access.[254] The few commenters who addressed this issue support the extension of our general definition of nondiscriminatory access to cover access to telephone numbers.[255] We conclude, consistent with the general definition of nondiscriminatory access in para. 101, *supra*, that the term "nondiscriminatory access to telephone numbers" requires a LEC providing telephone numbers to permit competing providers access to these numbers that is identical to the access that the LEC provides to itself. In addition, as discussed in paras. 261–345, *infra*, the delegation of the administration of numbering resources to a neutral administrator will further the statutory objective that all competing providers receive nondiscriminatory access to telephone numbers.

2. Commission Action To Enforce Access to Telephone Numbers

107. In the *NPRM*, we sought comment on what, if any, Commission action is necessary or desirable to implement the requirement under section 251(b)(3) that LECs permit nondiscriminatory access to telephone numbers.[256] Many commenters state that no additional Commission actions, beyond those already required by section 251(e), are necessary.[257] We conclude that issues regarding access to telephone numbers will be addressed by our implementation of section 251(e) herein.[258]

C. Nondiscriminatory Access to Operator Services

1. Definition of "Operator Services"

a. Background and Comments

108. The 1996 Act does not define the term "operator services." In the *NPRM*, the Commission proposed to use the definition of "operator services" in the Telephone Operator Consumer Services Improvement Act (TOCSIA) of 1990.[259] Section 226(a)(7), which was added to the 1934 Act by TOCSIA, defines operator services as: "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call through a method other than: (1) Automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer."[260]

109. Bell Atlantic, BellSouth and MCI agree with the proposed definition of "operator services."[261] AT&T, however, expresses concern that this definition should not be used by incumbent LECs to claim that they are then not obligated to make operator services, including transmission of information, available for resale at wholesale rates, pursuant to section 251(c)(4).[262] AT&T thus suggests that the Commission adopt the definition as proposed in the *NPRM*, but explicitly state that the definition is applicable only in the context of section 251(b)(3).[263] AT&T asserts that the traditional functions of "emergency interrupt," "busy line verification," and "operator-assisted directory assistance"

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[248] *MTS and WATS Order (III)*, 100 F.C.C. 2d at 877.

[249] 47 U.S.C. 153(44).

[250] *See also infra* para. 118, for discussion of the unbundling of operator services and directory assistance under section 251(c)(3).

[251] 47 U.S.C. 251(b)(1), (c)(4)(A). Operator services and directory assistance are also unbundled network elements subject to section 251(c)(3). *See First Report and Order* at section V. The 1934 Act, as amended, defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. 153(46). "Telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. 153(43). "Information service" is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, via telecommunications * * *." 47 U.S.C. 153(20). *See also First Report and Order* at section V.

[252] "Rating tables" are databases that cross-reference area codes, numbers called, and time of day to determine the price to be charged for telephone calls. Directory assistance may use databases that contain customer names, numbers and addresses, and operator services may use databases that contain customer billing information (*e.g.*, whether a customer will accept collect calls or third party billing).

[253] *See infra* paras. 108–151, for further discussion of operator services and directory assistance.

[254] *See NPRM* at para. 215.

[255] *See, e.g.*, Telecommunications Resellers Association reply at 5. *See supra* para. 101, for the general definition of "nondiscriminatory access."

[256] *NPRM* at para. 215.

[257] *See, e.g.*, Bell Atlantic comments at 6; CBT comments at 6; and U S WEST comments at 8. *See generally infra* paras. 261–308, for a discussion of previous Commission actions in the area of number administration.

[258] *See generally infra* paras. 261–345.

[259] 47 U.S.C. 226(a)(7); *see NPRM* at para. 294.

[260] *NPRM* at para. 216.

[261] *See, e.g.*, Bell Atlantic comments at 8; BellSouth comments at n.24; and MCI comments at 8.

[262] *See* AT&T comments at 8. 47 U.S.C. 251(c)(4), *inter alia*, requires incumbent LECs to offer for resale, at wholesale rates, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

[263] *Id.*

are within the meaning of "operator services" in this context.[264]

b. Discussion

110. TOCSIA defines operator services to be "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call through a method other than: (1) Automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code by the consumer, with billing of an account previously established with the telecommunications service provider by the consumer."[265] Based on support in the record and the desirability of having a definition consistent with that in the preexisting statute, we conclude that we should adopt the definition of operator services as used in TOCSIA for purposes of section 251(b)(3), with modifications. For purposes of section 251(b)(3), we do not exempt (1) and (2), above, from the definition of operator services. Accordingly, the term operator services, for purposes of section 251(b)(3), means "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." Although commenters did not focus on this issue, nor suggest that the exemptions be deleted from the TOCSIA definition of "operator services," we conclude that we should adopt a modified definition of operator services for the purpose of implementing section 251(b)(3). When enacted, the TOCSIA definition was intended to address services from an aggregator location, rather than addressing the types of operator services in general that would be essential to competition in telecommunications markets. Operator services are becoming increasingly automated, and thus excluding access to automatic call completion from the obligations imposed by section 251(b)(3) could deny competitors access to a service that is essential to competition in the local exchange market. We conclude that, for the same reason, "completion by an access code by the consumer," a common means of completing calls made from payphones, should also be included in the definition of operator services for section 251(b)(3).

111. Adopting a national definition of "operator services" based on the TOCSIA definition, as modified above, will allow for consistency and ease of compliance with the statute, specifically with respect to services to which all LECs must permit nondiscriminatory access.[266] We further conclude that we should state explicitly that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. Thus, if a LEC provides these functions, the LEC must offer them on a nondiscriminatory basis to all providers of telephone exchange and/or toll service. To avoid confusion with the TOCSIA definition at section 226, we state here that this definition *only* applies for purposes of section 251. Finally, unlike the definition of operator services in TOCSIA, we point out that our definition of "operator services" under section 251(b)(3) is applicable to both *interstate* and *intrastate* operator services.[267]

2. Definition of "Nondiscriminatory Access to Operator Services"

a. Background

112. In the *NPRM*, we proposed that the phrase "nondiscriminatory access to operator services" should be interpreted to mean that a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing "0," or "0 plus" the desired telephone number.[268]

b. Comments

113. Several commenters agree with the Commission's interpretation of this phrase as proposed in the *NPRM*.[269] PacTel, however, requests that we clarify that the "0" or "0 plus" requirement does not mean "that a customer must be able to access *every* LEC's operator services or directory assistance using the same dialing scheme, but rather only the services of the carrier selected to provide local service."[270] AT&T requests that operator service connection methods continue to include dialing "00" in order to access the pre-selected long distance carrier operator.[271] CBT asks that we find that the nondiscriminatory access requirements only apply when a competing local service provider is using either a LEC's local exchange services on a resale basis or when the competing provider is using a LEC's unbundled switch ports.[272] GCI states that, in Alaska, LECs currently do not provide "0" or "0 plus" the telephone number; rather, interexchange carriers provide these services. GCI requests that arrangements such as those in Alaska not be precluded.[273] Bell Atlantic, USTA, and PacTel request that we state that, while LECs must offer their operator services to their competitors, there is no duty for a LEC to ensure that the competitors' customers have access to these services.[274] Finally, U S WEST states that "regulatory agencies should not mandate all carriers provide certain adjunct non-essential services, including "0" and "0+" services. Nor should regulatory agencies dictate the manner in which adjunct, non-essential services are accessed."[275]

c. Discussion

114. We adopt the interpretation of "nondiscriminatory access to operator services" that we proposed in the *NPRM*, with the following clarifications. First, LECs are required to permit nondiscriminatory access to operator services by competing providers, and have no duty, apart from factors within their own control, to ensure that a competing provider's customers can in fact access the services. We make this clarification because the statute does not refer to the *customers* of competing providers, and the record does not support such an interpretation of the statutory language. Second, there is no requirement that a LEC must provide call handling methods or different credit card or other alternate billing arrangements different from those it provides to itself or its affiliates. And finally, we find that the duty to permit nondiscriminatory access to operator services applies only to LECs that provide operator services to their own customers.

115. Once a LEC permits a competing provider to have access to operator services, this access may become degraded in the competing provider's network by factors outside the control of the providing LEC.[276] On the other hand, when a LEC unbundles network loop elements, the providing LEC may also retain maintenance and control responsibilities over such elements.[277]

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[264] *Id.* at n. 11.

[265] 47 U.S.C. 226(a)(7).

[266] *See also infra* para. 146.

[267] *See First Report and Order* at section V for discussion of application of section 251 to interstate and intrastate matters.

[268] *See NPRM* at para. 216.

[269] *See, e.g.*, AT&T comments at 9; MCI comments at 8; and Telecommunications Resellers Association comments at 6.

[270] *See* PacTel comments at 16.

[271] *See* AT&T comments at 9.

[272] *See* CBT comments at 6, 7.

[273] *See* GCI reply at 3 n.4.

[274] *See* Bell Atlantic comments at 7; USTA comments at *ii*; PacTel comments at 15.

[275] U S WEST comments at 8–9.

[276] For example, the customers of a competing provider may experience dialing delays or call blockage due to inadequate facilities or poor call management in the competing provider's network.

[277] We note that incumbent LECs have an obligation to offer operator services and directory

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We require that, if a dispute arises between a LEC providing access to operator services and a competing provider regarding the delivery of such access, the initial burden is upon the providing LEC to demonstrate with specificity: (1) That it has provided nondiscriminatory access, and (2) that the degradation of access is not caused by factors within the control of the providing LEC. Our use of the term "factors" is not limited to network facilities, but also includes human and non-facilities elements used in the provision of operator services. A providing LEC must also demonstrate with specificity that any degradation in access by competing providers is not caused by, *inter alia*, the providing LEC's inadequate staffing, poor maintenance or cumbersome ordering procedures.

116. We take into account PacTel's comments in concluding that the nondiscriminatory access requirement of section 251(b)(3) does not require that a customer be able to access *every* LEC's operator services, but only the operator services offered by that customer's chosen local service provider.[278] Furthermore, section 251(b)(3) neither specifically addresses nor precludes arrangements wherein operator services are provided by interexchange carriers, as described by GCI. Section 251(b)(3) requires all LECs, but not interexchange carriers or other service providers, to permit nondiscriminatory access to operator services. Thus, to the extent that an OSP is not within the statutory definition of "local exchange carrier," it is not required by section 251(b)(3) to permit nondiscriminatory access to its operator services.

117. The "00" access method currently allows an end user to connect to the operator services of his or her presubscribed long distance carrier. Consistent with our definition of nondiscriminatory access, we require that, if a LEC allows its customers access to operator services of their presubscribed long distance carriers by dialing "00," it must permit competing providers to have access to any features and functions that are necessary to enable the competing provider to allow its customers likewise to obtain access to such operator services by dialing "00." We find that CBT's proposal to limit a LEC's operator services obligations to only those competitors reselling a LEC's services, or using a LEC's unbundled switch ports, is inconsistent with the statute. The nondiscriminatory access provisions of section 251(b)(3) are not confined to situations in which a competing provider resells a LEC's services, or uses unbundled network elements of a LEC. We do not agree with U S WEST's statement that it would be inappropriate to mandate that all LECs who offer operator services must accommodate "0" and "0 plus" dialing. This service is not, as U S WEST states, an "adjunct, non-essential" service.

118. Finally, we note that in the *First Report and Order* we found that operator services as well as directory assistance are network elements that an incumbent LEC must make available to requesting telecommunications carriers. In the absence of an agreement between the parties, unbundled element rates for operator services and directory assistance are governed by section 252(d)(1) and our rules thereunder.[279] The obligation of incumbent LECs to provide operator services and directory assistance as unbundled elements is in addition to the duties of all LECs (including incumbent LECs) under section 251(b)(3) and the rules we adopt herein.[280]

3. Commission Action To Ensure Nondiscriminatory Access to Operator Services

a. Background and Comments

In the *NPRM*, the Commission sought comment on what, if any, Commission action is necessary or desirable to ensure nondiscriminatory access to operator services under section 251(b)(3).[281] Bell Atlantic, GTE and PacTel assert that there is no need for the Commission to adopt detailed rules in this area.[282] On the other hand, Sprint is "concerned that leaving access to these services to carrier negotiations will result in unreasonable delays and discriminatory terms and conditions as between the incumbent LEC and CLEC."[283] MFS and WinStar support an "unambiguous national policy" of requiring incumbent LECs to make services available to new entrants.[284] MFS justifies this position by noting "some incumbent LECs say they already provide access, some say they are not obligated to offer such offering for resale, some assert that they are included in various unbundled elements or that they should not be unbundled * * * incumbent LECs should not be allowed to unilaterally decide whether, or to what extent to offer access to operator services, directory assistance and directory listings."[285]

120. The Telecommunications Resellers Association states that "[p]rompt and strong Commission response to complaints alleging failures by LECs to provide nondiscriminatory access to operator services is required to ensure compliance with this requirement."[286] Finally, the Florida Commission asserts that "[s]tates should be allowed to ensure compliance with the Act as it relates to these services as defined in the *NPRM*."[287]

b. Discussion

121. We conclude that detailed Commission rules are not required to implement the requirement under section 251(b)(3) that LECs must permit competing providers nondiscriminatory access to operator services. We recognize the need for flexibility in order for maximum access to operator services when networks interconnect, as there may be a variety of technical interconnection methods through which such nondiscriminatory access to operator services can be achieved. We view the definition of "nondiscriminatory access to operator services" set forth in paras. 114–118, *supra*, as the overarching standard to which LECs must adhere under section 251(b)(3). As noted, in part III (C)(2), once a LEC permits nondiscriminatory access to operator services to its competitors, that LEC has no further duty to ensure that the competitor's customers can access those services. To the extent that a dispute arises regarding a competing provider's access to operator services, however, the burden is on the LEC permitting the access to demonstrate with specificity that it has provided nondiscriminatory access, and that any disparity is not caused by factors within its control.

122. Beyond placing the initial burden of proof on the providing LEC, we find that specific enforcement standards for nondiscriminatory access to operator services are not required at this time. Rather, disputes concerning nondiscriminatory access can be addressed under our general

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assistance on an unbundled basis under section 251(c)(3). 47 U.S.C. 251(c)(3). *See First Report and Order* section V.

[278] The operator services provided by a customer's local service provider, for example, could be that provider's own operator services, resold operator services of a LEC providing nondiscriminatory access, or operator services provided by an independent OSP.

[279] *See First Report and Order* at section V.

[280] *See First Report and Order* at section V.

[281] *See NPRM* at para. 216.

[282] *See* Bell Atlantic comments at 6; GTE reply at 18; and PacTel comments at 14.

[283] Sprint reply at 8.

[284] MFS reply at 10, WinStar reply at 13.

[285] MFS reply at 10.

[286] Telecommunications Resellers Association comments at 7.

[287] *See* Florida Commission comments at 5.

enforcement authority pursuant to Titles II and V of the Act.[288] The 1996 Act also directs the Commission to establish such procedures as are necessary for the review and resolution of complaints against the BOCs within the statutory deadlines.[289] This requirement will be addressed in a separate proceeding.

4. "Branding" Requirements for Operator Services

a. Background

123. Section 226(b)(1)(A) of the Act and Part 64 of the Commission's rules require an operator services provider (OSP) to identify itself audibly and distinctly to the consumer at the beginning of each interstate telephone call, before the consumer incurs any charge for that call.[290] This procedure is commonly referred to as "call branding." In a recent *Report and Order*, the Commission amended its rules to require "branding" to the parties on both ends of a collect call.[291]

124. In using the term "branding requirements" in this context, we do not refer to the section 226 requirements obligating OSPs to identify themselves to consumers; rather, we refer to the obligations beyond section 226, if any, of a LEC to a competing provider that is using the LEC's facilities to provide its own operator services, or is reselling the operator services of the LEC. In these situations, the issue is *whose brand* should be used.

125. The *NPRM* did not ask whether branding of operator services should be required under section 251(b)(3). This issue was raised by several parties, however, in the context of nondiscriminatory access to such services. Specifically, parties raised the question of whether competing providers have the right to have resold operator services of a LEC "branded" in the competing provider's name, in order to ensure nondiscriminatory access and consumer perceptions of seamless service.

b. Comments

126. AT&T states that the Commission should reject claims that LECs may refuse to comply with "reasonable requests to brand resold operator services as those of the reseller," and that the "continued use of the incumbent LEC's own brand with services that are resold to CLEC customers would stifle competition and confuse customers."[292] AT&T further recommends that "equal opportunities for branding" be made available, asserting that if a LEC brands its own operator services, it should ensure that other OSPs have the capability to do the same; and if branding is infeasible for the OSP, the LEC should not brand its service at all.[293] Bell Atlantic and SBC object to AT&T's proposal, because one possible outcome would be that branding would not be performed on interstate calls, which would violate current Federal and state statutes and regulations.[294]

127. USTA states that when there are no technical limitations to branding, each LEC should be responsible for branding its own services, and where multiple brands are infeasible, the branding announcement of the facilities-based carrier should be used by "default."[295] Bell Atlantic and CBT contend that the issue of branding operator services is best left to inter-carrier negotiations, where technical and cost issues can be resolved between the parties.[296] PacTel notes that "in a resale environment, we accommodate the CLEC by not branding our service at all. If a CLEC wants to brand its own operator services, it can establish a facilities-based arrangement and set up its own operator services."[297]

c. Discussion

128. Since these comments are a logical outgrowth of the language in our *NPRM*, we address them herein. We recognize that branding plays a significant role in markets where competing providers are reselling the operator services of the providing LEC. Continued use of the providing LEC's brand with a competing provider's customers clearly advantages the providing LEC. Consistent with the requirements that we imposed on incumbent LECs in the *First Report and Order*, we conclude that a providing LEC's failure to comply with the reasonable, technically feasible request of a competing provider for the providing LEC to rebrand operator services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers.[298] This presumption can be rebutted by the providing LEC if it demonstrates that it lacks the capability to comply with the competing provider's request. We note also that the Illinois Commission recently ordered rebranding of operator services as those of the reseller "[t]o the extent that it is technically feasible," and we do not preempt its intrastate branding requirements, nor any similar requirements that other states may have enacted.[299]

129. Any inter-carrier branding arrangements under which an interstate operator services call made from an aggregator location would not be branded would violate section 226 of the Act and part 64 of our rules. We therefore caution interconnecting carriers that, in negotiating branding arrangements for operator services, they must insure that such arrangements are consistent with Federal laws and regulations requiring interstate OSPs to identify themselves.

D. Nondiscriminatory Access to Directory Assistance and Directory Listings

1. Definition of "Nondiscriminatory Access to Directory Assistance and Directory Listings"

a. Background

130. In the *NPRM*, the Commission interpreted the phrase "nondiscriminatory access to directory assistance and directory listings" to mean that the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) The identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested.[300]

b. Comments

131. A number of commenters agree with our definition of "nondiscriminatory access to directory assistance and directory listings" as

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[288] *See, e.g.*, 47 U.S.C. 208 (common carrier complaint authority); *see generally* 47 U.S.C. 501–510. *See also, First Report and Order* at section II (authority to take enforcement action).

[289] *See* 47 U.S.C. 271(d)(6)(B).

[290] *See* 47 U.S.C. 226(b)(1)(A); *see also* 47 CFR 64.703(a)(1).

[291] *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94–158, Report and Order and Further Notice of Proposed Rulemaking, FCC 96–75 (1996) (*OSP Order*) 61 FR 15020 (April 4, 1996).

[292] AT&T reply at n.20.

[293] *See* AT&T comments at n.12.

[294] *See* Bell Atlantic reply at 5–6; SBC reply at 7.

[295] *See* USTA reply at 6.

[296] *See* Bell Atlantic reply at 5; CBT reply at 4–5.

[297] PacTel reply at 15.

[298] *See First Report and Order* at section VIII .

[299] *See* AT&T Communications of Illinois, and LDDS Communications, Inc. d/b/a LDDS Metromedia Communications, Petition for a Total Local Exchange Wholesale Service Tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to Section 13.505.5 of the Illinois Public Utilities Act, Illinois Commission, Dockets 95–0458 and 95–0531 (consol.), Hearing Examiner's Proposed Order, May 16, 1996, pp. 52–54.

[300] *See NPRM* at para. 217.

proposed in the *NPRM*.[301] Many commenters combine their discussions of what constitutes nondiscriminatory access for both operator services and directory assistance.[302] As with operator services, some commenters assert that a LEC is not obligated to ensure that a competing provider's customers have access to directory assistance and directory listings.[303] Bell Atlantic, for example, argues that "[t]he exchange carrier, naturally, can control only its part of the service, not what the other carrier provides."[304] CBT asks that we find that the nondiscriminatory access requirements only apply when a competing local service provider is using a LEC's local exchange services on a resale basis or when the competing provider is using a LEC's unbundled switch ports.[305]

132. Finally, certain interexchange carriers ask that we require that competing providers have access to the White Pages, Yellow Pages, and "customer guide" sections of directories, in order to satisfy the requirement of nondiscriminatory access to directory assistance and directory listings.[306] Sprint contends that "CLECs should be allowed to insert informational pages containing their business and repair numbers in the incumbent LEC's white and yellow pages directories at cost."[307] SBC strongly disagrees that section 251(b)(3) requires access to Yellow Pages, "customer guides," and informational pages, pointing out that the "competitive checklist" (section 271) provisions only require incumbent LECs to provide access to White Pages listings.[308]

c. Discussion

133. We conclude that we should adopt the definition of nondiscriminatory access to directory assistance services proposed in the *NPRM*, with the following modifications. Consistent with our conclusion in para. 101, *supra*, we have modified this definition to reflect that this duty is owed to competing providers of telephone exchange service and/or telephone toll service, and not to "all telecommunications carriers."[309] This duty does not apply if a LEC chooses not to offer directory assistance to its own customers.[310]

134. We agree that once a LEC permits a competitor nondiscriminatory access to directory assistance and directory listings, the LEC permitting the access is not responsible for ensuring that the competitor's customers are able to access these services. As with operator services, when a dispute arises as to the adequacy of the access received by the competitor's customers, the burden is on the LEC permitting access to the service to demonstrate with specificity: (1) That it is permitting nondiscriminatory access to directory assistance and directory listings; and (2) that the disparity in access is not caused by factors within its control. As in paragraph 114, *supra*, we conclude that the term "factors" is not confined to physical facilities, but also includes human and non-facilities elements such as staffing, maintenance and ordering.

135. The requirements for nondiscriminatory access to directory assistance and directory listings are intertwined. Requiring "nondiscriminatory access to directory listings" means that, if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested.[311] We conclude that the obligation to permit access to directory assistance and directory listings does not require LECs to permit access to unlisted telephone numbers, or other information that a LEC's customer has specifically asked the LEC not to make available.[312] In previous orders, such as those addressing nondiscriminatory access by interexchange carriers to Billing Name and Address (BNA) information, we have taken action to ensure that customer privacy is protected.[313] In this *Order*, we require that in permitting access to directory assistance, LECs bear the burden of ensuring that access is permitted only to the same information that is available to their own directory assistance customers, and that the inadvertent release of unlisted names or numbers does not occur.[314]

136. We find, as we did in paragraph 117, *supra*, that CBT's proposal to limit the application of section 251(b)(3) to competing providers of exchange and/or toll service who are providing services on a resale basis, or using an incumbent LEC's unbundled switch ports is unacceptable. We also take into account PacTel's comments in concluding that section 251(b)(3) does not require that a customer be able to access any LEC's directory assistance services, but only those services provided through its chosen service provider. When a customer contacts his or her provider's directory assistance services, the customer's provider can obtain access to the directory listings of other carriers; thus, the customer should be able to obtain any directory listing (other than listings that are protected or not available, such as unlisted numbers). We conclude, however, that a LEC that does not provide directory assistance to its own customers does not have to provide nondiscriminatory access to directory assistance to competing providers.

137. On the basis of the record before us, we conclude that there is no need for this Commission to state that the term "directory assistance and directory listings" includes the White Pages, Yellow Pages, "customer guides," and informational pages. As a minimum standard, we find that the term "directory listing" as used in section 251(b)(3) is synonymous with the definition of "subscriber list information" in section 222(f)(3).[315]

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[301] *See, e.g.*, AT&T comments at 9–10; SBC reply at 4; and Telecommunications Resellers Association comments at 7.

[302] *See, e.g.*, CBT comments at 6. *See, e.g.*, para. 113, *supra*.

[303] *See* Ameritech comments at 10, USTA comments at 6–7. *See also supra* para. 113.

[304] Bell Atlantic comments at 7.

[305] *See* CBT comments at 6, 7.

[306] *See, e.g.*, AT&T comments at n.14.

[307] Sprint comments at 9–10.

[308] *See* SBC reply at 6–7 (citing 47 U.S.C. § 271(c)(2)(B)(vii)).

[309] *See supra* para. 101.

[310] *But see infra* paras. 141–145, wherein we require all LECs, regardless of whether or not they provide directory assistance to their customers, to share subscriber listings, in readily accessible formats, as an element of nondiscriminatory access.

[311] *See infra* para. 141.

[312] *Cf.* U.S.C. 222(f)(3) (definition of "subscriber list information"), which is limited to *the listed names* of subscribers of a carrier.

[313] *See, e.g., Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91–115, Third Order on Reconsideration, 11 FCC Rcd 6835 (1996) 61 FR 08879 (March 6, 1996); *see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91–115, Second Report and Order, 8 FCC Rcd 4478 (1993) 58 FR 36143 (July 6, 1993).

[314] *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96–115, FCC 96–221 (1996) 61 FR 26483 (May 28, 1996).

[315] The term "subscriber list information" at section 222(f)(3) means any information: (A) Identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format. 47 U.S.C. 222(f)(3) (A), (B).

2. Commission Action To Implement Nondiscriminatory Access to Directory Assistance and Directory Listings

a. Background and Comments

138. In the *NPRM*, the Commission sought comment on what action, if any, is necessary or desirable to implement the nondiscriminatory access to directory assistance and directory listings requirements of section 251(b)(3).[316] Several parties assert that there is no need for the Commission to adopt detailed rules addressing this issue.[317] In its comments, NYNEX described its current arrangements for making its directory assistance and directory listing services available to facilities-based and non-facilities-based carriers.[318]

139. Sprint and MFS urge the Commission to establish national rules requiring nondiscriminatory access to directory assistance and directory listings for all local service providers.[319] Furthermore, MCI recommends that the Commission establish requirements that ensure that "each provider of local service has access to directory listings of other providers, and that these directory listings are made available in readily usable format," and that these listings be provided "via tape or other electronic means, as is frequently the practice today between incumbent LECs whose service areas join."[320] PacTel and GTE urge the Commission to refrain from mandating access to underlying directory assistance databases.[321] GTE cites "serious technical and security concerns," while PacTel argues that (1) the plain language of section 251(b)(3) does not require access to the underlying databases, and (2) LECs are prohibited from disseminating certain directory listing information without customers' permission in California and Nevada.[322] PacTel maintains that the intent of section 251(b)(3) is not to permit "unfettered access to all information on record."[323]

140. The Telecommunications Resellers Association states that "prompt and strong" Commission action is required to ensure compliance with nondiscriminatory access to directory assistance and directory listings.[324] The Florida Commission asserts that "[s]tates should be allowed to ensure compliance with the Act as it relates to these services as defined in the *NPRM*."[325]

b. Discussion

141. We conclude that section 251(b)(3) requires LECs to share subscriber listing information with their competitors, in "readily accessible" tape or electronic formats, and that such data be provided in a timely fashion upon request. The purpose of requiring "readily accessible" formats is to ensure that no LEC, either inadvertently or intentionally, provides subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems. We agree with MCI that "by requiring the exchange of directory listings, the Commission will foster competition in the directory services market and foster new and enhanced services in the voice and electronic directory services market."[326] Consistent with the definition of "subscriber list information" in section 222(f)(3), we do not require access to unlisted names or numbers.[327] Rather, we require the LEC providing the listing to share listings in a format that is consistent with what that LEC provides in its own directory.

142. We conclude that the fact that many LECs offer directory assistance and listings for purchase or resale to competitors, as NYNEX describes, does not obviate the need for any requirements in this area. Under the general definition of "nondiscriminatory access," competing providers must be able to obtain at least the same quality of access to these services that a LEC itself enjoys. Merely offering directory assistance and directory listing services for resale or purchase would not, in and of itself, satisfy this requirement, if the LEC, for example, only permits a "degraded" level of access to directory assistance and directory listings.[328]

143. We further find that a highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access. Access to such databases will promote seamless access to directory assistance in a competitive local exchange market. We note also that incumbent LECs must provide more robust access to databases as unbundled network elements under section 251(c)(3).[329]

144. We do not agree with PacTel's contention that certain state laws restricting the types of information that LECs can disseminate preclude us from requiring access to directory assistance databases. It is not possible to achieve seamless and nondiscriminatory access to directory assistance without requiring access to the underlying databases. Consistent with our definition of nondiscriminatory access, the providing LEC must offer its competitors access of at least equal quality to that it receives itself. Competitors who access such LEC databases will be held to the same standards as the database owner, in terms of the types of information that they can legally release to directory assistance callers. The LEC that owns the database can take the necessary safeguards to protect the integrity of its database and any proprietary information, or carriers can agree that such databases will be administered by a third party. We note also that our holding does not preclude states from continuing to limit how LECs can use accessed directory information, *e.g.*, prohibiting the sale of customer information to telemarketers.[330] Rather, we conclude only that section 251(b)(3) precludes states from discriminating among LECs by imposing different access restrictions on competing providers, thereby allowing certain LECs to enjoy greater access to information than others.[331] Accordingly, states may not impose rules that would

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[316] *See NPRM* at para. 217.

[317] *See, e.g.*, Bell Atlantic comments at 6; GTE reply at 18; PacTel comments at 16.

[318] *See* NYNEX comments at 7–8.

[319] *See, e.g.*, MFS reply at 10; Sprint reply at 8.

[320] *See* MCI comments at 3, 9; *see also* MCI reply at 3.

[321] *See* GTE reply at 19; PacTel reply at 15.

[322] *See* GTE reply at 19; PacTel reply at 15.

[323] PacTel reply at 15.

[324] *See* Telecommunications Resellers Association comments at 7.

[325] *See* Florida Commission comments at 5.

[326] MCI comments at 9.

[327] *See* 47 U.S.C. 222(f)(3) for the definition of "subscriber list information."

[328] *See supra* paras. 101–105.

[329] *See supra* para. 118, for a discussion of the relationship between section 251(b)(3) and the requirements adopted in the *First Report and Order* mandating unbundled access to operator and directory assistance services.

[330] *But see* section 222(d)(3), which permits customer information to be used for telemarketing to the customer "* * * for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service." 47 U.S.C. 222(d)(3). *See also* our proceeding to clarify the obligations of carriers with regard to section 222(c) and 222(d). *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information*, CC Docket, No. 96–115, FCC 96–221 (May 17, 1996) 61 FR 26483 (May 28, 1996).

[331] *Cf.* 47 U.S.C. 222(e), which requires telephone exchange service providers to "provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." *See* 47 U.S.C. 222(f)(3) for the definition of "subscriber list information."

allow a LEC to discriminate against competing providers.[332]

145. We are not adopting specific enforcement standards at this time. Disputes regarding nondiscriminatory access will be addressed under our Title II and Title V enforcement authority.[333]

3. Branding of Directory Assistance

a. Background and Comments

146. To the extent that interstate directory assistance services are within the definition of "operator services" in section 226(a)(7) of the Act,[334] the service provider is required to identify itself to consumers at the beginning of a call.[335] Parties raised the issue of whether the competing provider has the right to have resold directory assistance services of the LEC "branded" in its name, as an element of nondiscriminatory access under section 251(b)(3). Thus this issue is similar to that of branding of operator services in paras. 123–129, *supra*. The *NPRM* did not ask whether the branding of directory assistance should be required under 251(b)(3) but commenters raised this issue.

147. AT&T suggests adding a requirement that if an incumbent LEC brands its own directory services, the incumbent should ensure that other directory assistance service providers can also brand their services.[336] CBT argues that branding is impractical and should be left to intercarrier negotiations, stating that "call branding can be provided, though not without considerable added effort and expense, to facilities-based providers who route traffic from their networks to the incumbent LEC's network by trunk group. Providing branding for resold services at the line number level is extremely difficult within the limits of the public switched network. When dealing with multiple resellers, there is no simple method for the incumbent LEC to determine by individual line number which brand should be applied."[337] Bell Atlantic also suggests that this issue be left to carrier negotiations.[338]

b. Discussion

148. The record shows that this issue is a logical outgrowth of the issues related to nondiscriminatory access to directory assistance raised in the *NPRM* and thus should be addressed in this *Order*. As with operator services, we recognize the major role that branding can play in an environment where competing providers are reselling the directory assistance services of the providing LEC. Consistent with the requirements that we imposed on incumbent LECs in the *First Report and Order*, therefore, we conclude that a providing LEC's failure to comply with the reasonable, technically feasible request of a competing provider for the providing LEC to rebrand directory assistance services in the competing provider's name, or to remove the providing LEC's brand name, creates a presumption that the providing LEC is unlawfully restricting access to these services by competing providers.[339] This presumption can be rebutted by the providing LEC demonstrating that it lacks the capability to comply with the request of the competing provider.[340] Finally, as with operator services, we do not preempt any branding requirements that state commissions may have enacted for directory assistance services.

4. Alternative Dialing Arrangements for Directory Assistance

a. Background and Comments

149. In the *NPRM*, the Commission sought comment on whether the customers of competing providers of exchange and/or toll service would be able to access directory assistance by dialing '411' or '555–1212,' which are nationally-recognized numbers for directory assistance, or whether alternative dialing arrangements would be necessary.

150. No commenters recommended that we require different arrangements for dialing directory assistance. AT&T states that while alternative protocols may be permitted, no carrier should be required to use them.[341] Bell Atlantic states that "[n]o dialing arrangements for directory assistance other than 411 and 555–1212 are necessary. A facilities-based provider will be able to use these numbers and route its customers' calls in whatever way it chooses (to its own directory assistance, to that of the incumbent exchange carrier or to that or any other provider). When a non-facilities-based provider buys exchange service from the incumbent under section 251(c)(4), its customers get exactly what the incumbent's receive, 411 and 555–1212 access to directory assistance."[342]

b. Discussion

151. With respect to the ability of customers to reach directory assistance services through 411 or 555–1212 arrangements, we conclude that no Commission action is required now. No commenter has proposed that we require an alternative dialing arrangement. The record before us indicates that permitting nondiscriminatory access to 411 and 555–1212 dialing arrangements is technically feasible, and there is no evidence in the record that these dialing arrangements will cease.

E. Unreasonable Dialing Delay

1. Definition and Appropriate Measurement Methods

a. Background and Comments

152. Section 251(b)(3) prohibits unreasonable dialing delays.[343] The *NPRM* sought comment on what constitutes an unreasonable dialing delay for purposes of section 251(b)(3) and on appropriate methods for measuring and recording such delay.[344]

153. U S WEST contends that the phrase "unreasonable dialing delay," as it appears in section 251(b)(3), applies only to the provision of nondiscriminatory access to operator and directory assistance services.[345] GCI, on the other hand, asserts that the unreasonable dialing delay provision applies to both the dialing parity and nondiscriminatory access provisions of section 251(b)(3).[346] MFS, NYNEX and Sprint recommend that we define "dialing delay" to cover the period from when a user completes dialing to when the call is "handed off" to a connecting LEC, whenever multiple LECs are involved in call completion.[347] ALTS, however, suggests that we define "dialing delay" to cover the period from when the end user completes dialing to the point where a network response is first received.[348]

154. Several parties contend, however, that we should not adopt a

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[332] *See First Report and Order* at section II for a discussion of the applicability of our section 251 rules to intrastate and interstate services.

[333] *See supra* para. 122. *See also* 47 U.S.C. 208 (common carrier complaint authority) and 47 U.S.C. 501–510.

[334] 47 U.S.C. 226(a)(7).

[335] *See* 47 U.S.C. 226(a)(7), (b)(1). *See generally supra* paras. 123–129.

[336] *See* AT&T comments at n.12.

[337] CBT reply at 5.

[338] *See* Bell Atlantic reply at 5.

[339] As with operator services, *supra*, we note that carriers must comply with the branding requirements of section 226, to the extent that their services are within the section 226 definitions. *See* 47 U.S.C. 226.

[340] *See First Report and Order* at section VIII.

[341] *See* AT&T comments at 10.

[342] Bell Atlantic comments at 8–9.

[343] 47 U.S.C. § 251(b)(3).

[344] *See NPRM* at para. 218.

[345] U S WEST comments at 11.

[346] GCI reply at 2.

[347] *See* Sprint comments at 10; MFS reply at 8; NYNEX comments at 9.

[348] ALTS comments at 6.

definition of "dialing delay."[349] Bell Atlantic states that there is "no need to try to develop a definition of what constitutes 'unreasonable dialing delays.' To the extent that this ever becomes an issue, it is best handled with a specific factual record."[350]

155. Several parties recommend defining "unreasonable" as any delay that exceeds that of the providing LEC.[351] ACSI suggests that the Commission "declare a delay 'unreasonable' if the average access time for competing providers exceeds the average access time for the LEC itself," and that "* * * the LEC and competing providers should get equal priority in LEC call processing systems, which would result in identical dialing delays, on average, for LECs and competing providers."[352] Other parties argue that LECs should not be held responsible for unreasonable dialing delays that are not caused by their networks or are not within their control.[353]

b. Discussion

156. We conclude that section 251(b)(3) prohibits "unreasonable dialing delays" for local and toll dialing parity, and for nondiscriminatory access to operator services and directory assistance. The reference to "unreasonable dialing delay" is ambiguous because it is in a prepositional phrase at the end of section 251(b)(3), following references both to the duty to provide dialing parity and the duty to permit nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings. In light of this ambiguity, and the absence of legislative history, we look to the purpose of section 251 and to the record to interpret the "unreasonable dialing delay" provision. Examining the statutory language in light of the plainly pro-competitive thrust of these section 251 requirements, we conclude that Congress intended the dialing delay prohibition to apply to both the obligation to provide dialing parity and the obligation to permit nondiscriminatory access to operator services and directory assistance.[354] Further, commenters did not distinguish between dialing delay in dialing parity and nondiscriminatory access contexts.

157. We conclude that a "comparative" standard for identifying "unreasonable dialing delay" is necessary in order to ensure that, when competing providers obtain dialing parity and nondiscriminatory access to operator services and directory assistance, such access does not come with unreasonable dialing delays. We conclude, therefore, that the dialing delay experienced by the customers of a competing provider should not be greater than that experienced by customers of the LEC providing dialing parity, or nondiscriminatory access, for identical calls or call types. For the reasons stated below, we conclude that this "comparative standard" is more appropriate in this context than a specific technical standard.[355]

158. In our *Number Portability Order*,[356] we indicated that "at a minimum, when a customer switches carriers, that customer must not experience a greater dialing delay or call set up time * * * due to number portability, compared to when the customer was with the original carrier."[357] The standard that we are adopting for "unreasonable dialing delay" under section 251(b)(3) is consistent with the standard we adopted in the *Number Portability Order*.

159. We conclude that the statutory language on unreasonable dialing delays places a duty upon LECs providing dialing parity or nondiscriminatory access to operator services and directory assistance to process all calls from competing providers, including calls to the LEC's operator services and directory assistance, on an equal basis as calls originating from customers of the providing LEC. In other words, calls from a competing provider must receive treatment in the providing LEC's network that is equal in quality to the treatment the LEC provides to calls from its own customers. We recognize that LECs may have the technical ability to identify whether a call is originating from a competing provider (*e.g.*, by cross-referencing the Automatic Number Identification (ANI), or by identifying the connecting trunk group). Thus there may exist on the part of the providing LEC the ability to discriminate and to degrade service quality for a competing provider's customers by introducing unreasonable dialing delays.

160. For operator services and directory assistance calls, such dialing delay can be measured by identifying the time a call spends in queue until the providing LEC processes the call. We recognize that the time of arrival of a telephone call can be recorded (1) at the originating LEC's switch; (2) upon entering the operator services or directory assistance queue; and (3) at the time of answering by the providing LEC's operators for such services. We believe that it is possible to compare the treatment of calls placed by customers of the competing provider with those of calls originating from the providing LEC's customers, and thus determine if unreasonable dialing delays are occurring. Such a comparison would hold all LECs responsible only for delays within their control.

161. In the event that a dispute arises between a competing provider and a providing LEC as to dialing delay, we conclude that the burden is on the providing LEC to demonstrate with specificity that it has processed the call on terms equal to that of similar calls originating from its own customers. Such "terms" include the amount of time a providing LEC takes to process incoming calls, the priority a LEC assigns to calls, and might also take into account the number of calls abandoned by the caller of the competing provider. Furthermore, to the extent that states have adopted specific performance standards for dialing delay between competing providers, we do not preempt such standards, and states may enact more detailed standards.

162. We do not believe that measuring "unreasonable dialing delay" from the period beginning when a caller completes dialing a call and ending when the call is delivered (or "handed off") by the LEC to another service provider is practical with respect to dialing parity or nondiscriminatory access. While we understand that such a measurement can be made, and is fully within the control of one LEC, prohibiting a providing LEC from introducing dialing delay in the originating segment of calls under its control benefits only the customers of the providing LEC. The providing LEC already has sufficient motivation to provide efficient service to its own customers. Finally, we conclude that the proposal to measure dialing delay from the completion of dialing to a network response (*e.g.*, when a caller receives busy-tone signalling information from the called line) is unsatisfactory, because it fails to isolate the segments of a call within an individual LEC's control.

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[349] *See, e.g.*, Bell Atlantic comments at 9, U S WEST comments at 11.

[350] Bell Atlantic comments at 9.

[351] *See, e.g.*, Excel comments at 8; Sprint comments at 11.

[352] ACSI comments at 10.

[353] *See, e.g.*, GTE comments at 19; USTA reply at 6–7.

[354] 47 U.S.C. 251(b)(3).

[355] *See infra* paras. 163–164, for a discussion of specific technical standards for dialing delay.

[356] *In the Matter of Telephone Number Portability*, CC Docket No. 95–116, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96–286 (July 2, 1996) (*Number Portability Order*) 61 FR 38605 (July 25, 1996).

[357] *Id.* at para. 56.

2. Specific Technical Standard for Dialing Delay

a. Background and Comments

163. In the *NPRM*, the Commission asked commenters to identify a specific period of time that would constitute an "unreasonable dialing delay." NYNEX was the sole commenter proposing a quantitative measurement. In this regard, however, NYNEX recommends that the Commission should issue a *recommended* maximum period of delay rather than a mandatory standard.[358] NYNEX states that "an appropriate recommendation for this time period is that it should not exceed 5 seconds."[359] The majority of commenters urge the Commission not to impose a specific technical dialing delay standard at this time.[360] For example, GTE states that "[n]umber portability, dialing parity and other newly required actions will undoubtedly affect network performance, including dialing delay, at least during a transition period. Any current determination of an unreasonable delay will be based on network designs that will bear little resemblance to the network structures of tomorrow."[361] Finally, the Illinois Commission states that it is currently studying the same issue for number portability in Chicago, and suggests that the Commission may wish to adopt the Illinois Commission's standard upon completion of its study.[362]

b. Discussion

164. We conclude that the record does not provide an adequate basis for determining a specific technical standard for measuring unreasonable dialing delays. Commenters do not address separately the dialing delay prohibition as it applies to each of the services covered by section 251(b)(3): local and toll dialing parity, and nondiscriminatory access to operator services and directory assistance. We thus conclude that, until dialing delay can be reliably measured after dialing parity is a reality, the "comparative" standard adopted in paragraph 157, *supra*, will provide a workable national rule for the industry. We intend to revisit the issue at a future date if we should find that our "comparative" standard is inadequate to ensure fair competition.

[358] *See* NYNEX comments at 9–10.

[359] *Id.*

[360] *See, e.g.*, Bell Atlantic comments at 9; MFS reply at 8.

[361] GTE comments at 19.

[362] *See* Illinois Commission comments at 70.

IV. Network Disclosure

165. Section 251(c)(5) of the 1996 Act requires incumbent LECs to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks."

A. Scope of Public Notice

1. Definition of "Information Necessary for Transmission and Routing"

a. Background and Comments

166. In our *NPRM*, we tentatively concluded that "information necessary for transmission and routing" should be defined "as any information in the incumbent LEC's possession that affects interconnectors' performance or ability to provide services."[363]

167. Most commenters support the tentative conclusion in the *NPRM*.[364] For example, MFS asserts that our definition would "minimize the risk that an incumbent LEC could take actions inconsistent with (interconnection and interoperability)" and that the term "should be applied as broadly as possible."[365] MCI states that a broad definition is "necessary for new entrants to receive notice of technical changes."[366] Time Warner also asserts that "this broad-based definition * * * is critical to ensuring that (incumbent local exchange carriers) fulfill all of the obligations imposed upon them by Section 251(c)."[367]

168. Some, mostly smaller, incumbent LECs disagree with our proposed standard, stating that it is "too broad," "an onerous burden," "not necessary," and "may not be possible."[368] Other incumbent LECs claim that network disclosure requirements should be limited to "changes that affect the interconnection or interoperability of the network."[369] Their overarching concern is that the proposed definition's reference to "any information" would be interpreted so broadly that virtually any network-related information would fall within the ambit of the disclosure requirement.[370] Some incumbent LECs also express the fear that a broad interpretation of the statute "might expose (them) to unintended liability for giving information that the local exchange carrier is not qualified to provide" or that the (local exchange carrier) might be held liable for results of decisions that the interconnector made based upon this information."[371] These incumbent LECs claim that competing providers' informational needs would be fulfilled even if public disclosure were limited to "relevant interfaces or protocols."[372] USTA suggests an alternate definition: "all changes in information necessary for the transmission and routing of services using the local exchange carrier's facilities, or that affects interoperability."

169. According to some competing providers, narrowing the scope of information that must be publicly disclosed would preserve the information advantage that incumbent LECs possessed before the passage of the 1996 Act.[373] Also, AT&T notes that a narrowly constructed disclosure requirement would contradict the language of the statute that specifically identifies "changes that would affect the interoperability of those facilities or networks."[374] AT&T states that some information "is both necessary for proper transmission and routing and can affect the network's interoperability" although it is not directly relevant to the interconnection point.[375] AT&T presents five examples of technical changes that do not directly relate to the interconnection point but that nevertheless could have "profound" implications for competing service providers. These changes include those that (1) alter the timing of call processing; (2) require competing service providers to install new equipment, such as echo cancelers; (3) affect recognition of messages from translation nodes; (4) alter loop impedance levels, which could cause service disruptions; and (5) could disable a competing service provider's loop testing facilities.[376]

[363] *NPRM* at para. 189.

[364] *See, e.g.*, ACSI comments at 11; ALTS comments at 2; AT&T comments at 23; Bell Atlantic comments at 10; GCI comments at 4; Illinois Commission comments at 59; MCI comments at 15; MFS comments at 12–13; Ohio Commission comments at 4; Telecommunications Resellers Association comments at 11; Time Warner comments at 3; U S WEST comments at 12.

[365] MFS comments at 12–13.

[366] MCI comments at 15.

[367] Time Warner comments at 3.

[368] GVNW comments at 1; Ameritech comments at 26; Rural Tel. Coalition comments at 2.

[369] Bell Atlantic reply at 9.

[370] GVNW comments at 1; Ameritech comments at 26.

[371] GVNW comments at 1–2.

[372] Nortel states that the incumbent local exchange carrier should only "provide the interface information," and the competing service provider should then "perform its own 'reverse engineering' in developing its own products so as to be compatible with the interface." Nortel comments at 5.

[373] *See, e.g.*, Time Warner comments at 3–4.

[374] AT&T reply at 25–26.

[375] *Id.*

[376] AT&T reply at n.56.

170. Some incumbent LECs suggest that network disclosure requirements should also apply to competing service providers.[377] MCI and MFS contend, however, that the plain language of the statute requires imposition of public disclosure requirements only upon incumbent LECs. MFS states that the duty to disclose change information was imposed upon incumbent local exchange carriers because they have sufficient "control over network standards to harm competition" and the "requisite size and market power to change their networks in a manner that stymies competition."[378] MFS argues that imposing notification requirements on competing service providers would be an "empty exercise" because "new entrants * * * can do little, if anything, to change their networks in a manner that adversely impacts the (incumbent LECs)."[379] MFS also argues that competing service providers have "powerful economic incentives" for maintaining compatibility with incumbent local exchange networks.[380]

b. Discussion

171. Section 251(c)(5) requires that information about network changes must be disclosed if it affects competing service providers' performance or ability to provide service. Requiring disclosure about network changes promotes open and vigorous competition contemplated by the 1996 Act. We find that additional qualifiers that restrict the types of information that must be disclosed, such as "*relevant* information or protocols," would create uncertainty in application and appear inconsistent with the statutory language. Timely disclosure of changes reduces the possibility that incumbent LECs could make network changes in a manner that inhibits competition. In addition, notice of changes to ordering, billing and other secondary systems is required if such changes will have an effect on the operations of competing service providers, because the proper operation of such systems is essential to the provision of telecommunications services.

172. We agree with MCI and MFS that the plain language of the statute requires imposition of public disclosure requirements only upon incumbent LECs.[381] In addition, we conclude that imposing this requirement upon competing service providers would not enhance competition or network reliability. While competing service providers must respond to incumbent LEC network changes, competing service providers, in general, are not in a position to make unilateral changes to their networks because they must rely so heavily on their connection to the incumbent LEC's network in order to provide ubiquitous service. Accordingly, competing service providers already face sufficient incentives to ensure compatibility of their planned changes with the incumbent LEC's network. In addition, if an incumbent LEC were permitted to obtain such information from a competing service provider, the incumbent LEC might be able to obtain the competing service provider's business plans and thereby stifle competition.[382]

173. We conclude that our disclosure standard is consistent not only with section 251(c)(5), but also with the requirements of the "all carrier rule"[383] and the scope of the *Computer III*[384] disclosure requirement, both of which have been applied to incumbent LEC activities for some time. In light of these preexisting requirements, we find that the standard we proposed in the NPRM is not burdensome but reasonable, providing sufficient disclosure to insure against anti-competitive acts as well as to ensure certain and consistent disclosure requirements.

174. We have considered the impact of our rules in this section on small incumbent LECs, including Rural Tel. Coalition's and GVNW's requests for a less inclusive definition of "information necessary for transmission and routing."[385] We do not adopt these proposals because we are unable to grant such leniency to small businesses and simultaneously ensure adequate information disclosure to facilitate the development of a pro-competitive environment for every market participant, including other small businesses. We note, however, that under section 251(f)(1) certain small incumbent LECs are exempt from our rules until (1) they receive a *bona fide* request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions of section 254. In addition, certain small incumbent LECs may seek relief from our rules under section 251(f)(2).[386]

2. Definition of "Services"

a. Background and Comments

175. Commenters, including incumbent LECs, interexchange carriers, and industry organizations, unanimously support our tentative conclusion that the term "services," as used in section 251(c)(5), includes both telecommunications services and information services, as defined in sections 3(46) and 3(20), respectively.[387] Parties agree that it is reasonable to require that providers of both telecommunications and information services receive this information. ALTS points out that exclusion of information services or telecommunications services from our definition would be

[377] Ameritech comments at 29; BellSouth comments at 2; NYNEX comments at 15–16; Rural Tel. Coalition comments at n.4.

[378] MFS reply at 26.

[379] MFS reply at 26–27.

[380] *Id.*

[381] MCI reply at 7; MFS reply at 25, 26.

[382] NCTA asserts that incumbent LECs are "entirely capable of providing adequate notice of their network changes without 'full disclosure of competing service provider's operations and future plans.'" NCTA reply at 12.

[383] Unless clearly specified otherwise, in this *Order*, we use the term "all carrier rule" to refer to the Commission's network disclosure rule contained in 47 CFR 64.702, as interpreted in the *Second Computer Inquiry*. The all carrier rule obligates "all carriers owning basic transmission facilities [to release] all information relating to network design * * * to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected (customer-premises equipment) operates." *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Memorandum Opinion and Order on Reconsideration*, 84 F.C.C.2d 50, 82–83 (1980) 46 FR 19852 (April 1, 1981), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Indus. Ass'n* v. *FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). The all carrier rule also requires that "[w]hen such information is disclosed to the separate corporation it shall be disclosed and be available to any member of the public on the same terms and conditions." *See* 47 CFR 64.702; *Application of The Southern New England Tel. Co.*, 10 FCC Rcd 4558, 4559 n.23 (1995); *Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd 5880, 5911 n.270 (1991) (The all carrier rule obligates "all carriers to disclose, reasonably in advance of implementation, information regarding any new service or change in the network."); *Competition in the Interstate Interexchange Marketplace*, Report and Order, 6 FCC Rcd. 5880, 5911 n.270. (1991) 56 FR 55235 (October 25, 1991).

Another of the Commission's rules, 47 CFR 68.110(b), requires similar disclosure to customers of network changes "if such changes can be reasonably expected to render any customer's terminal equipment incompatible with telephone company communications facilities, or require modification or alteration of such terminal equipment, or otherwise materially affect its use or performance." We will refer to this rule specifically by number where necessary.

[384] *See infra* para. 204 and n.449.

[385] Rural Tel. Coalition comments at 2; GVNW comments at 1.

[386] For a discussion of the implications and operation of section 251(f), *see First Report and Order* at section XII.

[387] 47 U.S.C. § 153(20), (46). *See NPRM* at para. 189; ALTS comments at 2; Ameritech comments at 25; BellSouth comments at 3; District of Columbia Commission comments at 6–7; GCI comments at 4; Illinois Commission comments at 59; MCI comments at 15; MFS comments at 12; Telecommunications Resellers Association comments at 11; U S WEST comments at 12.

"needlessly restrictive."[388] BellSouth also notes that the inclusion of information services for public notice purposes should not vest information service providers with substantive rights under Section 251, except where they are also operating as a telecommunications carrier under the 1996 Act.[389]

b. Discussion

176. We conclude that the term "services" includes both telecommunications services and information services, as defined in sections 3(46) and 3(20) of the Act, respectively. Providers of both telecommunications services and information services may make significant use of the incumbent LEC's network in making these offerings. Accordingly, exclusion of either information services providers or telecommunications services providers would be needlessly restrictive. We also affirm that the inclusion of information services for public notice purposes does not vest information service providers with substantive rights under other provisions within section 251, except to the extent that they are also operating as telecommunications carriers.

3. Definition of "Interoperability"

a. Background and Comments

177. The Commission tentatively concluded that the term "interoperability," as used in section 251(c)(5), should be defined as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged."[390] This definition of "interoperability" was taken from the *IEEE Standard Dictionary of Electrical and Electronics Terms*.[391] Commenters, including incumbent LECs, interexchange carriers, state commissions, and industry associations, are unanimous in their support for our tentative conclusion.[392] The Ohio Commission also suggests that we expand our definition of "interoperability" to "recognize that the exchange of traffic between an (incumbent local exchange carrier) and an interconnector must be seamless and transparent to both parties' end users."[393] No alternative definitions for the term "interoperability" were proposed by commenting parties.

b. Discussion

178. We define the term "interoperability" as "the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged." As this definition of "interoperability" was taken from the *IEEE Standard Dictionary of Electrical and Electronics Terms*, we believe that this well established and widely accepted industry standard can be applied easily and consistently. We find that the concepts of seamlessness and transparency are already adequately incorporated into this definition's specific interoperability criteria, and that further exposition of these concepts is not necessary.

4. Changes That Trigger the Public Notice Requirement

a. Background and Comments

179. In the *NPRM*, we noted that "public notice is critical to the uniform implementation of network disclosure, particularly for entities operating networks in numerous locations across a variety of states."[394] We requested comment as to what changes should trigger the notice requirement.

180. Several commenters suggest that timely notice should be provided whenever an upcoming change in the incumbent LEC's network may affect the way in which a competing provider offers its service.[395] Examples of such changes include, but are not limited to, changes in transmission, signalling standards, call routing, network configuration and logical elements.[396] Also, commenters assert that public notice should be required when a change will affect the electronic interfaces, data elements, or transactions that support ordering, provisioning, maintenance and billing of the network facilities.[397] The Illinois Commission notes, however, that the types of changes that trigger public notice should not be "micro-defined" because overly specific trigger requirements could create situations in which carriers would not be required to provide public notice if a particular change has not been clearly identified.[398] ALTS also supports a broadly defined class of changes that trigger network disclosure requirements, asserting that some changes, such as those affecting provisioning and billing for a carrier's service, might not otherwise be reported adequately, resulting in service disruptions.[399]

181. Ameritech claims that disclosure obligations should only be triggered by a new or "substantially changed" network interface, or a change that "otherwise affects the routing or termination of traffic delivered to or from the incumbent LEC's network."[400] Ameritech also claims that changes "that do not impact interconnection and interoperability * * * do not need to be disclosed at all."[401] AT&T observes, however, that public notice requirements should also apply to some changes that do not directly relate to the interconnect point.[402]

b. Discussion

182. We conclude that an incumbent LEC must provide public notice in accordance with the rules and schedules we adopt in this proceeding, once the incumbent LEC makes a decision to implement a change that either (1) affects competing service providers' performance or ability to provide service; or (2) otherwise affects the ability of the incumbent LEC's and a competing service provider's facilities or network to connect, to exchange information, or to use the information exchanged. We believe that a broad standard is appropriate, to reduce the possibility that incumbent LECs may fail to disclose information a competing service provider may need in order to maintain adequate interconnectivity and interoperability in response to incumbent LEC network changes. Examples of network changes that would trigger public disclosure obligations include, but are not limited to, changes that affect: Transmission; signalling standards; call routing; network configuration; logical elements; electronic interfaces; data elements; and transactions that support ordering, provisioning, maintenance and billing. This list is not exclusive but exemplary; incumbent LECs are not exempted from public notice requirements for a particular change that is not included among these examples.

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[388] ALTS comments at 2.

[389] BellSouth comments at 3.

[390] *NPRM* at para. 189.

[391] *See IEEE Standard Dictionary of Electrical and Electronics Terms* 461 (J. Frank ed. 1984).

[392] ALTS comments at 2; Ameritech comments at 25; AT&T comments at 23; District of Columbia Commission comments at 6–7; GCI comments at 4; Illinois Commission comments at 4; MCI comments at 15; MFS comments at 12–13; Ohio Commission comments at 4; Telecommunications Resellers Association comments at 12; U S WEST comments at 12.

[393] Ohio Commission comments at 4.

[394] *NPRM* at para. 190.

[395] ACSI comments at 11; ALTS comments at 2–3; AT&T comments at 23; Cox comments at 9–10; GCI comments at 5; Ohio Commission comments at 4; and Time Warner comments at 4.

[396] ACSI comments at 11.

[397] *See, e.g.*, AT&T comments at 24; Time Warner comments at 4.

[398] Illinois Commission comments at 59.

[399] ALTS comments at 2, 3.

[400] Ameritech comments at 26, 27.

[401] *Id.*

[402] AT&T reply at 26 n.56.

5. Types of Information To Be Disclosed

a. Background

183. In the *NPRM*, we tentatively concluded that incumbent LECs should be required to "disclose all information relating to network design and technical standards, and information concerning changes to the network that affect interconnection." [403] We also tentatively concluded that incumbent LECs specifically must provide: (1) The date changes are to occur; (2) where changes are to be made or to occur; (3) the type of changes; and (4) the potential impact of changes; and that these four categories represented the "minimum information that a potential competitor would need in order to achieve and maintain efficient interconnection." [404]

b. Comments

184. A number of commenters agree with our tentative conclusions regarding the breadth of information that must be reported, as well as our minimum reporting requirements.[405] Ameritech, however, claims that our requirement is "too broad" and would "impose an onerous burden" on incumbent LECs, exceeding the statutory requirements of section 251(c)(5).[406] Ameritech asserts that "excessive exchange of information between competitors is inconsistent with * * * a competitive marketplace" and could spur "allegations of collusion and concerted action." [407] Cox and Time Warner, however, state that uniform public notice of sufficient information can attenuate anticompetitive behavior. ALTS, AT&T and MCI suggest that the information that must be disclosed should include, but should not be limited to, technical specifications and references to standards regarding transmission, signaling, routing and facility assignment as well as references to technical standards that are applicable to any new technologies or equipment, or which may otherwise affect interconnection.

185. A significant cross-section of commenters specifically advocates disclosure of the potential impact of changes.[408] For example, Cox notes that disclosure should, at a minimum, enable a competing service provider to understand: "(1) How its existing technical interconnection arrangements will be affected; and (2) how the form and content of the information passed between the interconnected networks will change." [409] ACSI clearly states that "the content of the notice should specifically identify * * * the impact of the change on current interconnection or access arrangements." [410]

186. Some incumbent LECs, however, take exception to our tentative conclusion to impose on them an obligation to make public disclosure of the potential impact of network changes.[411] They argue that this obligation would require incumbent LECs to become "experts on the operations of other carriers," or impose a "duty to know what (an) interconnector's service performance abilities are." [412] Specifically, USTA expresses concern that this requirement "could be misconstrued as a duty to predict what the precise impact might be, or to educate a competitor on how to re-engineer their network." [413] Ameritech claims that this requirement is "unfair," and "of little or no value," and implies that this requirement creates a "general duty for (incumbent LECs) to operate their competitor's businesses or help them market their services." [414] BellSouth asserts that "the better approach would be to (disclose) information from which an interconnecting carrier would be able to determine for itself whether its service performance or abilities might be affected." [415] NYNEX alleges that "(s)uch proposals are over-broad and unnecessary to ensure * * * network interconnection/interoperability." [416] NYNEX rejects responsibility for evaluating the effect that changes it would make might have upon competing service providers and asserts that "there is no basis for changing the traditional responsibility of each carrier to maintain its own network and respond to technological and market changes." [417] NYNEX also claims that while it has the ability to "make an assessment of the likely impact of a technical change at the interface with a competitor's network," it would require "detailed knowledge of a competitor's network architecture" in order to calculate the impact a change may have on a competing service provider's performance.[418]

187. MCI and TCC suggest that an incumbent LEC should also be required to designate a contact for additional information in its public notice. PacTel argues, in response, that such a requirement would be "impossible to fulfill" because it would require an incumbent LEC to designate a "single omniscient individual." [419] MFS states that the public notice should also include: "(a) The charges that the incumbent LEC anticipates will apply to the carrier for the change; (b) the specific number of circuits affected if the change occurs at the time of the notification; (c) the projected minimum, maximum, and average down times per affected circuit; (d) alternatives available to the interconnector; [420] and (e) any other information necessary to evaluate alternatives and effectuate necessary changes or challenges." [421] The Ohio Commission, in contrast, claims that information relating to network design should be excepted from public disclosure, and that incumbent LECs should only be obliged to disclose information regarding changes to existing interconnection arrangements.[422]

c. Discussion

188. We conclude that we should adopt a requirement of uniform public notice of sufficient information to deter anticompetitive behavior and that, at a minimum, incumbent LECs should give competing service providers complete information about network design, technical standards and planned changes to the network. Specifically, public notice of changes shall consist of: (1) The date changes are to occur; (2) the location at which changes are to occur; (3) types of changes; (4) the reasonably foreseeable impact of changes to be

[403] *NPRM* at para. 190. We referred, as an example, to the "All Carrier Rule," which requires public disclosure of "all information relating to network design and technical standards * * * [affecting] interconnection * * * prior to implementation and with reasonable advance notification." *See* note 383, *supra*.

[404] *NPRM* at para. 190.

[405] Illinois Commission comments at 60; ALTS comments at 3; AT&T comments at 23–24; District of Columbia Commission comments at 7; Excel comments at 10; GCI comments at 4–5; MCI comments at 15; MFS comments at 12–13; NCTA comments at 12; Telecommunications Resellers Association comments at 12.

[406] Ameritech comments at 26.

[407] *Id.*

[408] ACSI comments at 11; ALTS comments at 3; District of Columbia Commission comments at 7; Excel comments at 10; GCI comments at 5; MCI comments at 15; MFS comments at 12–13; Ohio Commission comments at 5; TCC reply at 23; Telecommunications Resellers Association comments at 12; Time Warner comments at 8.

[409] Cox reply at 13.

[410] ACSI comments at 11.

[411] Ameritech comments at 28; BellSouth comments at 3; GVNW comments at 3; NYNEX reply at 9; USTA reply at 11.

[412] BellSouth comments at 3. *See, e.g.*, Ameritech comments at 28; GVNW Comments at 3; NYNEX reply at 9.

[413] USTA reply at 11.

[414] Ameritech comments at 28.

[415] BellSouth comments at 3.

[416] NYNEX reply at 9.

[417] *Id.*

[418] NYNEX reply at 9 n.24.

[419] PacTel reply at 6–7.

[420] Although MFS does not elaborate on this requirement, we interpret this suggestion as a request that an incumbent LEC identify in its public notice a range of proposed competing service provider responses to the planned change that will maintain interconnectivity and interoperability of the carriers' networks.

[421] MFS comments at 14.

[422] Ohio Commission comments at 5.

implemented, and (5) a contact person who may supply additional information regarding the changes. Information provided in these categories must include, as applicable, but should not be limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection.

189. We find that making available a contact person will simplify the public notification process and reduce the risk that the notifications will be misunderstood or misconstrued. Commenters have requested that public notices include a variety of specific information categories, some of which may not be covered by the specific categories identified in the *NPRM*. Such specific information, however, may be inapplicable, unnecessary or proprietary in some circumstances and inadequate or confusing in others. Accordingly, we require instead that incumbent LECs identify a contact person. Such a contact need not be "omniscient," but rather should be able to serve as an initial contact point for the sharing of information regarding the planned network changes.

190. Providing notice of the reasonably foreseeable potential impact of changes does not require incumbent LECs to educate a competitor on how to re-engineer its network, or to be experts on the operations of other carriers, or impose a duty to know the competing service provider's service performance or abilities. Rather, we intend that incumbent LECs perform at least rudimentary analysis of the network changes sufficient to include in its notice (where appropriate) language reasonably intended to alert those likely to be affected by a change of anticipated effects. We find that such cautionary language will be a valuable, but not burdensome, element of reasonable public notice.

191. We do not limit network disclosure to information pertinent to those changes in incumbent LEC network design or technical standards that will affect existing interconnection arrangements, as requested by the Ohio Commission. Such a limitation is neither consistent with the obligations imposed by section 251(c)(5) nor consistent with the development of competition. In formulating interconnection and service plans, both actual and potential competing service providers need information concerning network changes that potentially could affect anticipated interconnection, not just those changes that actually affect existing interconnection arrangements.

B. How Public Notice Should Be Provided

1. Dissemination of Public Notice Through Industry Fora and Publications

a. Background

192. Section 251(c)(5) requires incumbent LECs to provide "reasonable public notice" of relevant network changes. In the *NPRM*, the Commission requested comment on how this notice should be provided. The Commission tentatively concluded that "full disclosure of the required technical information should be provided through industry fora or in industry publications."[423] The Commission stated that "this approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information."[424] The Commission sought comment on this tentative conclusion. The Commission also requested comment on whether a reference to information on network changes should be filed with the Commission and, if so, where that information should be located.

b. Comments

193. Most commenters agree with our tentative conclusion in the *NPRM* that existing industry fora and publications are appropriate vehicles for public notice of network changes.[425] Bell Atlantic notes that "industry participants with an interest in new interfaces routinely monitor publications and announcements for disclosures."[426] Some incumbent LECs support the use of industry fora and publications because they are well established, already in place, reach the targeted audience, have worked effectively for a number of years, or allow for widespread dissemination.[427] USTA states that "voluntary practices can serve as a platform from which to implement this act."[428]

194. Several commenters, however, caution that industry fora and publications should not be the only vehicles used for the public dissemination of network change information[429] and request flexible disclosure methods.[430] Although MCI does not object to utilizing industry fora and publications, MCI cautions against over reliance on these vehicles because it "do[es] not believe that * * * parties affected by technical changes [will] receive information in sufficient detail, objectivity, and timeliness."[431] Many commenters indicate that additional disclosure vehicles are required because not all carriers participate in these fora on a regular basis (partly as a result of limited resources)[432] or because the BOCs, in the past, have used industry fora to limit competitors' access to full and timely information in order to put them at a competitive disadvantage.[433] Several commenters have noted the potential of the Internet as a vehicle for providing public notice of network changes.[434] Others specifically suggest that incumbent LECs should be required to file technical change information with the Commission "in order to ensure a complete, reliable, and consistent body of information that all parties may utilize."[435] Some incumbent LECs, however, disagree, arguing that the Commission need not become a repository of disclosure notices because such Commission filings would be "redundant with existing industry functions and contrary to the Commission's current initiative to eliminate unnecessary filings."[436]

195. Bell Atlantic suggests that "direct disclosure to a mailing list of interconnectors should also be allowed."[437] MFS proposes extending direct mail notification to "any other

[423] The Commission gave as examples the Network Operations Forum (NOF) and the Interconnection Carrier Compatibility Forum (ICCF). *NPRM* at para. 191.

[424] *NPRM* at para. 191.

[425] ALTS comments at 3–4; Ameritech comments at 28–29, reply at 17–18; AT&T comments at 24; Bell Atlantic comments at 10; Cox reply at 13; GCI comments at 5; Illinois Commission comments at 62; MCI comments at 15; MFS reply at 25; NCTA reply at 11; NYNEX comments at 15, reply at 10; PacTel comments at 7, reply at 6; Teleport comments at 11; Telecommunications Resellers Association at 12. *See also NPRM* at para. 191.

[426] Bell Atlantic also states that exchange carriers should be able to satisfy their disclosure obligation by indicating their intention to deploy specifications at the time that they are published by a standards organization. Bell Atlantic comments at 10–11.

[427] Ameritech reply at 17–18; GTE comments at 7.

[428] USTA comments at 11–12.

[429] *E.g.*, Cox reply at 12; MCI comments at 17; GVNW comments at 4; Rural Tel. Coalition comments at 3.

[430] *E.g.*, Rural Tel. Coalition comments at 3,5.

[431] MCI comments at 17–18.

[432] *See, e.g.*, Cox comments at 11, reply at 13; MCI comments at 17; GVNW comments at 4; Rural Tel. Coalition comments at 3.

[433] MCI comments at 17–18, reply at 7. Bell Atlantic refutes this allegation. Bell Atlantic reply at 10.

[434] *See, e.g.*, ALTS comments at 3–4; U S WEST comments at 14; MCI comments at 17; Time Warner comments at 10 n.12; MFS reply at 25; TCC reply at 24.

[435] MCI comments at 19; MFS comments at 13. *See also* Time Warner comments at 10 (establishing the Commission as a "central point of reference" could be less burdensome on incumbent LECs than other means of providing public notice).

[436] BellSouth comments at 4 n.11. *See also* NYNEX reply at 10; PacTel reply at 6.

[437] Bell Atlantic comments at 10.

carrier * * * who specifically requests such notice."[438] PacTel, however, claims that imposing these sorts of requirements would "impose excessive and unnecessary costs on (incumbent) LECs."[439]

196. BellSouth argues that no Commission rule is necessary because current voluntary practices are "sufficient to ensure that this information is broadly available."[440] Similarly, GVNW suggests that information should only be passed to competing service providers "case by case * * * as required."[441] Several commenters, however, disagree. Time Warner, for example, contends that "the Commission must adopt a uniform * * * rule which prescribes a specific method by which notification and disclosure must be provided" and that will allow interested parties to gain ready access to the information they require.[442]

197. The District of Columbia Commission asserts that state commissions may also require information to be filed at the state level, and may need the same information in order to comply with section 252. As such, state commissions could also be used to make information available to small competing service providers. AT&T, however, argues that there are no specific differences among the various states that are "material" to our network disclosure requirements.[443]

c. Discussion

198. We conclude that incumbent LECs may fulfill their network disclosure obligations either (1) by providing public notice through industry fora, industry publications, or on their own publicly accessible Internet sites; or (2) by filing public notice with the Commission's Common Carrier Bureau, Network Services Division, in accordance with the format and method requirements of the rules we are adopting in this proceeding. In either case, the public notice must contain the minimum information categories identified in paragraph 188, above. Incumbent LECs using public notice methods other than Commission filings must file a certification with the Common Carrier Bureau, Network Services Division, identifying the proposed change(s), stating that public notice has been given in compliance with this Order, identifying the location of the information describing the change and stating how the information can be obtained by interested parties. This certification must also comply with the rules we adopt in this proceeding.

199. As discussed above, we conclude that industry fora, industry publications, and the Internet may be used to make public disclosure of network changes and required technical information. We affirm our belief that "this approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information."[444] Reliance solely on voluntary participation in industry fora and publications, however, may inhibit the ability of some small carriers to disseminate or receive this information. Because of their more limited resources, some smaller incumbent LECs and competing service providers do not participate in these fora on a regular basis; nevertheless, all carriers, competing service providers, and potential competitors must have equal opportunities to provide and to receive change information on a national scale. We believe that wide availability of pertinent network change information effectively removes potential barriers to entry, which could otherwise frustrate the efforts of new competitors. As a consequence, we conclude that the Commission should function as a "backstop" source of information for other interested parties. Accordingly, in lieu of disclosure in industry fora, publications, or the Internet, an incumbent LEC may file network change information directly with the Commission. In the alternative, if an incumbent LEC chooses to provide public notice through one or more industry fora or publications, or the Internet, we require that it also file a certification with the Commission containing the information outlined above. We are confident that even small incumbent LECs with limited resources will be able to use one of these alternatives to give public notice of network changes.

200. An incumbent LEC must maintain both the information disclosed in its public notice and any nondisclosed supporting information that is nevertheless relevant to the planned change, until the change is implemented. As discussed in paragraph 235, *infra*, once a change is implemented in the incumbent LEC's network, information on the change must be disclosed under the general interconnection obligations imposed by section 251(c)(2).

201. We find that information filed with the Commission under section 251(c)(5) should eventually be made available on the FCC Home Page or through other online access vehicles, such as "LISTSERV" subscription mailings or others, and we intend to explore this option fully for the future. In addition, we will explore vigorously the possibility that hypertext links from the Commission Home Page to incumbent LEC Internet sites could both facilitate public notice and centralize access to change information. We find that direct mail notification alone does not comport with our interpretation of "public notice" as used in this proceeding, because such direct mailings do not provide notice to the "public," but rather provide individual notice to a selected group of recipients. Such mailings could, however, supplement other methods of notification.

202. We also address the impact on small incumbent LECs. We agree with GVNW[445] and Rural Tel. Coalition[446] that we can mitigate the impact of our rules on small incumbent LECs by allowing public notice to be given at several alternative locations. Because many of these carriers lack the resources to participate in industry fora, we have also provided low cost alternatives, including Internet postings or Commission filings. We expect that our requirement that either public notice or certification be filed with the Commission will allow small entities, both incumbent LECs and new entrants, to locate network change information quickly and inexpensively. In any event, under section 251(f)(1), certain small incumbent LECs are exempt from our rules until (1) they receive a *bona fide* request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions of section 254. In addition, certain small incumbent LECs may seek relief from our rules under section 251(f)(2).[447]

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[438] MFS comments at 14, reply at 25.

[439] PacTel reply at 6.

[440] BellSouth comments at 4.

[441] GVNW comments at 4.

[442] Time Warner comments at 9. *See also* AT&T reply at 27 n.58. (arguing that the very existence of such broad disagreement on this issue itself bespeaks the need for a uniform national rule and that the absence of a uniform public disclosure requirement would lead to "disparate application of a uniform federal statutory duty, unduly narrow interpretations of that duty by [independent local exchange carriers] * * * and competitive harm to new entrants").

[443] AT&T reply at n.59.

[444] *NPRM* at para. 191.

[445] GVNW comments at 4.

[446] Rural Tel. Coalition comments at 3,5.

[447] For a discussion of the implications and operation of section 251(f), *see First Report and Order*, section XII.

2. When Should Public Notice of Changes be Provided?

a. Background

203. Section 251(c)(5) requires an incumbent LEC to provide "reasonable public notice" of certain changes to its network. In the *NPRM*, we tentatively concluded that this statutory language requires incumbent LECs: (1) To provide notice of these changes within a "reasonable" time in advance of implementation; and (2) to make the information available within a "reasonable" time if responding to an individual request.[448] We sought comment on what constitutes a reasonable time in each of these situations, and on whether the Commission should adopt a specific timetable for disclosure of technical information.

204. In the *NPRM*, we specifically sought comment on whether we should adopt a disclosure timetable similar to that adopted by the Commission in the *Computer III* proceeding.[449] In Phase II of that proceeding, the Commission required AT&T and the BOCs to disclose information about network changes or new network services that affect the interconnection of enhanced services with the network at two points in time.[450] First, these carriers were required to disclose such information at the "make/buy" point—that is, when the carrier decides to make itself, or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface.[451] Second, carriers were required to release publicly all technical information at least twelve months prior to the introduction of a new service or network change that would affect enhanced service interconnection with the network.[452] If a carrier could introduce a new service between six and twelve months of the make/buy point, public disclosure was permitted at the make/buy point, but in no event could the carrier introduce the service earlier than six months after the public disclosure.[453]

205. The disclosure obligations imposed by section 251(c)(5) are broader than those adopted in the *Computer III* proceeding. While *Computer III* applies only to the BOCs and to AT&T, section 251(c)(5) imposes disclosure requirements on all incumbent LECs. Furthermore, while the *Computer III* disclosure requirements apply only to technical information related to new or modified network services affecting the interconnection *of enhanced services* to the BOC networks, section 251(c)(5) mandates disclosure of a much broader spectrum of information.[454] Accordingly, we sought comment in the *NPRM* on whether the Commission should adopt a timetable comparable to that imposed in *Computer III* for section 251(c)(5) network disclosure purposes and, if so, how such a timetable should be implemented.

b. Comments

206. Most commenters express support for our tentative conclusion that section 251(c)(5) requires incumbent LECs to disclose publicly information on network changes within a reasonable time in advance of implementation.[455] No commenters suggest that the timing of disclosure is not governed by section 251(c)(5)'s "reasonableness" standard, although at least two commenters appear to indicate that it would be reasonable to implement network changes immediately upon disclosure.[456] Commenters also support our tentative conclusion that an incumbent LEC must make this information available within a "reasonable" time if responding to an individual request.[457] Time Warner requests a concrete standard in this area and suggests that the Commission should indicate that, once an incumbent LEC has released a public notice of change under section 251(c)(5), it must respond to individual requests for detailed, technical information concerning network changes under section 251(c)(5) within ten business days of receiving the request.[458]

207. Commenters were split on whether we should adopt a specific disclosure timetable for section 251(c)(5) purposes. Several commenters[459] oppose the adoption of a specific timetable, primarily arguing that: (1) Any regulations adopted under section 251(c)(5) should define only minimum guidelines, allowing the states flexibility under section 251(d)(3) to adopt more stringent disclosure requirements dictated by local conditions; (2) a fixed disclosure timetable will needlessly or arbitrarily delay the introduction of new services or technical advances; (3) overly long advance disclosure periods will put the incumbent LECs at a competitive disadvantage because competitors will be able to bring planned services to market more quickly; (4) the industry already has in place detailed disclosure guidelines that are widely followed on a voluntary basis and that obviate the need for independent Commission examination of this issue; and (5) the Commission's existing "all carrier" rule, which contains a flexible standard, adequately addresses the obligations imposed by section 251(c)(5).[460] GVNW warns that the interval from the make/buy decision to in-service for small LECs is often less than twelve months and states that the Commission should not require technology to be implemented at a slower pace than is technically feasible merely to satisfy a notice requirement.[461] Commenters also argue that carriers already face powerful incentives to ensure that their networks interconnect properly because the reputation of both the incumbent LEC and the interconnecting LEC are at stake if service fails.[462] In addition, BellSouth claims that section 251(c)(5) is "self-effectuating and needs no interpretive regulations."[463]

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[448] *NPRM* at para. 192.

[449] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Phase I*, 104 F.C.C.2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Recon. Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Recon. Order*); *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Recon.*), *Phase I Order and Phase I Recon. Order vacated, California* v. *FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); *Phase II*, 2 FCC Rcd 3072 (1987) (*Phase II Order*) 52 FR 20714 (1987), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Recon. Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Recon. Order*), *Phase II Order, vacated, California I*, 905 F.2d 1217 (9th Cir. 1990); *Computer III Remand Proceedings*, 5 FCC Rcd 7719 (1990) 56 FR 00965 (December 17, 1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), 57 FR 05391 (January 24, 1992), *pets. for review denied California* v. *FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), 57 FR 4373 (February 5, 1992); *BOC Safeguards Order, vacated in part and remanded, California* v. *FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 115 S.Ct. 1427 (1995).

[450] *Phase II Recon. Order*, 3 FCC Rcd at 1164. Although the Ninth Circuit vacated the *Phase II Recon. Order*, the Commission reimposed the network disclosure requirements on remand. *See BOC Safeguards Order*, 6 FCC Rcd at 7602–7604.

[451] *Phase II Recon. Order*, 3 FCC Rcd at 1164.

[452] *Id.* at 1164–65.

[453] *Id.* at 1165.

[454] *See* discussion of the definitions of "information necessary for the transmission and routing of services" and "interoperability," *supra*.

[455] *See, e.g.*, Ameritech comments at 29; GCI comments at 5; MCI comments at 15; Time Warner comments at 6; U S WEST reply at 1.

[456] BellSouth argues that "the Commission should permit the offering of the new interface immediately upon the disclosure of the requisite information." BellSouth comments at 5; *see also* Nortel comments at 4.

[457] *See, e.g.*, MCI comments at 15.

[458] Time Warner comments at 11.

[459] *See, e.g.*, Ameritech comments at 29; BellSouth comments at 2, 5; District of Columbia Commission comments at 6, 7–8; GVNW comments at 5; Bell Atlantic reply at 8–9.

[460] The requirements of the all carrier rule are discussed in note 383 *supra*.

[461] GVNW comments at 4.

[462] *See, e.g.*, Ameritech comments at 30.

[463] BellSouth comments at 1.

208. Several other commenters argue that, while a disclosure timetable may be necessary, the *Computer III* requirements are too rigid. The District of Columbia Commission notes that any eventual disclosure timetable must balance "the need to ensure the earliest possible disclosure of information needed by competitors (against) the need to impose the least administrative burden on" incumbent LECs.[464] Accordingly, the District of Columbia Commission maintains that state commissions should be afforded flexibility to set timetables that are appropriate in light of local conditions.[465] Several commenters note existing industry notification timing standards adopted and issued by the Industry Carriers Compatibility Forum ("ICCF")[466] and argue that widespread industry use of these standards has obviated the need for an additional Commission-imposed timetable.[467] MCI, however, cautions that these existing industry guidelines are inadequate because industry fora, in general, have historically been controlled by the RBOCs.[468] U S WEST supports disclosure at the "make/buy" point, but argues that additional notice should not be required for deployment of standard interfaces and services.[469] While MCI supports adoption of the *Computer III* timetable in this proceeding, it requests that, in addition: (1) We impose a mandatory 6-month disclosure period for network changes that can be implemented within 6 months of the "make/buy" point; and (2) we clarify that incumbent LECs must disclose relevant information they discover after services have been introduced, if such information would have been subject to prior disclosure.[470] AT&T also supports the general parameters of the *Computer III* timetable, but requests that we specifically impose a one year minimum advance disclosure obligation on changes to network elements or operations support system technology.[471] Similarly, while ACSI notes that the *Computer III* timetable is a "useful starting place," it argues for a minimum one-year notice period for modification of the physical form of interconnection, with an additional 6 month period in which use of the changes by a competing service provider is permissive only.[472]

209. Cox argues that disclosure should be made at the "earliest possible time" and, in particular, at the time the decision is made internally to implement a change, with the "make/buy" point being considered the "absolute latest date" on which disclosure is permitted.[473] In addition, Cox requests that we obligate incumbent LECs to disclose any unimplemented network changes that are subject to the section 251(c)(5) notice requirement at the outset of interconnection negotiations.[474]

210. MFS proposes a tripartite scheme, loosely based on the *Computer III* timetable, that classifies certain changes as "major," "location," or "minor."[475] "Major" changes, would be defined as those "introducing any change in network equipment, facilities, specifications, protocols, or interfaces that will require other parties to make any modification to hardware or software in order to maintain interoperability." Major changes would be subject to 18 months advance notice. "Location" changes would be defined as those "that require changes in the geographic location to which traffic is routed, or at which unbundled network elements can be obtained, but (that) do not otherwise change the manner of interconnection or of access"; such changes could be implemented on 12 months notice. "Minor" changes, including those in "numbering, routing instructions, signalling codes, or other information necessary for the exchange of traffic that do not require construction of new facilities or changes in hardware or software" could be made upon notice in accord with the time intervals prescribed by the ICCF.[476]

211. Many commenters recognize the need for a concrete disclosure timetable. AT&T argues that the broad disagreement among commenters itself is evidence that section 251(c)(5) is not self-effectuating.[477] AT&T opposes the state-by-state approach advocated by the District of Columbia Commission, as well as the case-by-case approach advocated by Rural Tel. Coalition, because these approaches could lead to the disparate application of the uniform statutory duty imposed by section 251(c)(5). AT&T notes that the record does not reflect any material conditions that vary among states or justify differing rules. In addition, AT&T disputes the applicability of the ICCF timetable, since that document sets forth only guidelines to be used by the independent LECs in notifying the BOCs of network changes.[478]

212. Of the commenters supporting concrete federal standards, most support the adoption of the Computer III disclosure timetable.[479] PacTel notes that existing Commission disclosure requirements are familiar to the industry and adequate to meet the requirements of section 251(c)(5); accordingly it supports the establishment of "safe harbor" rules based on *Computer III* and the disclosure requirements contained in our existing rules.[480] As discussed above, although it advocates certain revisions, U S WEST agrees that "disclosure pursuant to the Computer [III] Rules would seem to satisfy the requirements of the (1996) Act."[481] GTE notes that the "make/buy" point is an appropriate disclosure trigger because it ensures both the delivery of timely information to parties that use the networks and the promotion of carriers' development efforts to support network innovation.[482]

213. Several commenters urge us to adopt rules prohibiting an incumbent LEC from disclosing network changes to certain preferred entities, including long distance or equipment manufacturing affiliates, prior to public disclosure.[483]

c. Discussion

214. We find that it would be unreasonable to expect other telecommunications carriers or information services providers to be able to react immediately to network changes that the incumbent LEC may have spent months or more planning and implementing; accordingly we reject requests to permit incumbent LECs to implement changes immediately on disclosure. In order to clarify incumbent LECs' obligations to disclose these changes a "reasonable time in advance of implementation," we adopt a disclosure timetable based on that developed in the *Computer III* proceeding. Under this timetable,

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[464] District of Columbia Commission comments at 8.

[465] *Id.*

[466] Industry Carriers Compatibility Forum, *Recommended Notification Procedures to Industry for Changes in Access Network Architecture*, ICCF 92–0726–004, Rev. 2 (January 5, 1996).

[467] USTA comments at 13; NYNEX comments at 16–17; SBC comments at 14.

[468] MCI reply at 7.

[469] U S WEST comments at 13.

[470] MCI comments at 20–21.

[471] AT&T comments at 25.

[472] ACSI comments at 12.

[473] Cox comments at 10–11.

[474] *Id.* at 11.

[475] MFS comments at 15–16.

[476] These intervals are prescribed in the ICCF *Recommended Notification Procedures. See* note 466 *supra.*

[477] AT&T reply at 27.

[478] *Id.*

[479] *See, e.g.*, Teleport comments at 11; GCI comments at 5; AT&T reply at 27.

[480] PacTel comments at 5. *See* 47 CFR 64.702(d)(2), 68.110(b).

[481] U S WEST comments at 12–13.

[482] GTE reply at 7–8 and comments cited at 7 n.15.

[483] *See, e.g.*, Time Warner comments at 8; NCTA reply at 12; Ohio Consumer's Council reply at 5–6.

incumbent LECs will be required to disclose planned changes, subject to the section 251(c)(5) disclosure requirements, at the "make/buy" point,[484] but a minimum of twelve months before implementation. If the planned changes can be implemented within twelve months of the make/buy point, then public notice must be given at the make/buy point, but at least six months before implementation.

215. With respect to changes that can be implemented within six months of the make/buy point, incumbent LECs may wish to provide less than six months notice. In such a case, the incumbent LEC's certification or public notice filed with the Commission, as applicable, must also include a certificate of service: (1) Certifying that a copy of the incumbent LEC's public notice was served on each provider of telephone exchange service that interconnects directly with the incumbent LEC's network a minimum of five business days in advance of the filing; and (2) providing the name and address of all such providers of local exchange service upon which the notice was served. The Commission will issue public notice of such short-term filings. Such short term notices will be deemed final on the tenth business day after the release of the Commission's public notice unless a provider of information services or telecommunications services that directly interconnects with the incumbent LEC's network files an objection to the change with the Commission and serves it on the incumbent LEC no later than the ninth business day following the release of the Commission's public notice. If such an objection is filed, the incumbent LEC will have the opportunity to respond within an additional five business days and the Common Carrier Bureau, Network Services Division, will issue, if necessary, an order determining the reasonable public notice period.

i. The Section 251(c)(5) Timetable

216. Without adequate notice of changes to an incumbent LEC's network that affect the "information necessary for the transmission and routing" of traffic, a competing service provider may be unable to maintain an adequately high level of interoperability between its network and that of the incumbent LEC. This inability could degrade the quality of transmission between the two networks or, in a worse case, could interrupt service between the two service providers.[485] Under the rules we adopt today, incumbent LECs must disclose changes subject to section 251(c)(5) at the "make/buy" point, *i.e.*, the time at which the incumbent LEC decides to make for itself, or procure from another entity, any product the design of which affects or relies on a new or changed network interface,[486] but at least twelve months in advance of implementation of a network change. In *Computer III*, the Commission defined "product" in the enhanced services context to be "any hardware or software for use in the network that might affect the compatibility of enhanced services with the existing telephone network, or with any new basic services or capabilities."[487] We believe that this definition can be used to craft a definition of "product" for purposes of section 251(c)(5). Accordingly, for purposes of network disclosure under section 251(c)(5), we define "product" to be "any hardware or software for use in an incumbent LEC's network or in conjunction with an incumbent LEC's facilities that, when installed, could affect the compatibility of the network, facilities or services of an interconnected provider of telecommunications or information services with the incumbent LEC's network, facilities or services."

217. We recognize that some network changes that affect interconnection, e.g., some location changes, may not require an incumbent LEC to make or buy any products. Disclosure of such changes, however, may be required under section 251(c)(5). For purposes of section 251(c)(5), therefore, we clarify that the "make/buy" point includes the point at which the incumbent LEC makes a definite decision to implement a network change in order to begin offering a new service or change the way in which it provides an existing service. Such a "definite decision" requires the incumbent LEC to move beyond exploration of the costs and benefits of a change or the feasibility of a change. Instead, a "definite decision" is reached when the incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes the first step toward implementation of the change within its network.[488]

218. We recognize that many changes to an incumbent LEC's network that are subject to disclosure under section 251(c)(5) can be fully implemented less than twelve months after the make/buy point. Accordingly, if the service using the network changes can be initiated within twelve months after the make/buy date, public notice must be given on the make/buy date, but at least six months before implementation of the planned changes.

219. We agree with several commenters that competing service providers should not require a full six months to respond to some categories of relatively minor network changes and that we would needlessly slow the pace of technical advance were we to require a full six months notice in such a case. As evidence of this fact, several commenters have submitted or referred us to industry guidelines developed by ICCF, which detail recommended notice periods of 45 days to six months for certain network changes.[489] Based on the record before us, we agree that six months may be too long a minimum in some circumstances. We conclude, however, that neither the ICCF guidelines nor any other categorization scheme adequately encompasses every potential change affecting interconnection that an incumbent LEC may wish to make to its network. In addition, for changes that can be implemented in less than six months, the length of time required for notice to be considered "reasonable" may vary considerably based on advances in technology, the specific implementation plan developed by an incumbent LEC, the particular capabilities of interconnecting carriers to adapt, and the willingness of the incumbent LEC to be forthcoming with information. Based on these considerations, we find that a fixed timetable for such short-term notices would not be appropriate.

220. Accordingly, with respect to changes subject to section 251(c)(5) disclosure that the incumbent LEC wishes to implement on less than six months' notice, we require that the incumbent LEC's Commission filing, whether certification or public notice, also include a certificate of service: (1)

[484] The definition of the "make/buy" point for section 251(c)(5) purposes is discussed *infra* at paras. 216–217.

[485] Because the incumbent LECs control the vast majority of both facilities and customers in most markets, the impact of such difficulties, at least at present, would be felt most acutely by a competing service provider.

[486] *BOC Safeguards Order*, 6 FCC Rcd at 7603. The Commission has stated that, "make/buy applies not only to a carrier's decision to make or buy products to implement a change in the network, but also to any decision to make or buy products that would rely on such changes." Phase II Order, 2 FCC Rcd at 3087. The precise definition of the "make/buy" point has been clarified in some detail. *See, e.g., id.; Phase I Order*, 104 F.C.C.2d at 1080–86; *Computer and Business Equip. Mfrs. Assoc. Petition for Declaratory Ruling Regarding Section 64.702(d)(2) of the Commission's Rules and the Policies of the Second Computer Inquiry*, Report and Order ("*CBEMA Order*"), 93 F.C.C.2d 1226, 1243–44 (1983).

[487] *Phase I Order*, 104 F.C.C.2d at 1084.

[488] *Cf. Phase II Order*, 2 FCC Rcd at 3087.

[489] ICCF *Recommended Notification Procedures*. *See supra* note 466.

Certifying that a copy of the incumbent LEC's public notice was served on each provider of telephone exchange service that interconnects directly with the incumbent LEC's network a minimum of five business days in advance of the filing; and (2) providing the name and address of all such providers of local exchange service upon which the notice was served. Such filings must be clearly titled "Short Term Public Notice (or Certification of Short-Term Public Notice) Pursuant to Rule 51.333(a)."

221. The Commission will issue a public notice of such short-term filings separate from its public notice of other section 251(c)(5) filings. Unlike six-month or twelve-month notices, certain interested parties will have an opportunity to file objections to such short-term public notices. Specifically, short term notices will be deemed final on the tenth business day after the release of the Commission's public notice unless a provider of information services or telecommunications services that directly interconnects with the incumbent LEC's network files an objection to the change with the Commission and serves it on the incumbent LEC no later than the ninth business day following the release of the Commission's public notice. Such an objection must state: (1) Specific reasons why the objector is unable to implement adjustments to accommodate the incumbent LEC's changes by the date the incumbent LEC has specified, including specific technical information, questions, or other assistance required that would allow the objector to accommodate those changes; (2) specific steps the objector is taking to implement changes to accommodate the incumbent LEC's changes on an expedited basis; (3) the earliest possible date by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the assistance requested in item (1) (not to exceed six months from the date the incumbent LEC gave its original public notice); (4) the affidavit of the objector's president, chief executive officer, or other corporate officer or official with suitable authority to bind the corporation and knowledge of details of the objector's inability to adjust its network on a timely basis that he or she has read the objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay; and (5) any other information relevant to the objection. Because the power to interpose such objections could vest competing service providers with extensive power to delay implementation of changes, we caution competing service providers that we will not hesitate to intervene where necessary to ensure that objections are not posed merely to delay implementation of incumbent LEC network changes and that abuse of the Commission's processes for such a purpose would expose a competing service provider to sanctions.[490]

222. If one or more objections are filed, the incumbent LEC will have five additional business days (*i.e.*, until no later than the fourteenth business day following the release of the Commission's public notice) within which to file a response to the objection(s) and serve it on all objectors. Such a response shall: (1) Include information responsive to the allegations and concerns identified by objectors; (2) state whether the implementation date(s) proposed by the objector(s) would be acceptable; (3) indicate any specific technical assistance that the incumbent LEC is willing to give to the objector(s); and (4) state any other information relevant to the incumbent LEC's response. In the case of such contested short-term public notices, the Common Carrier Bureau will issue an Order fixing a reasonable public notice period. In the alternative, if the incumbent LEC does not file a response within the five-day time period allotted, or if the response accepts the latest date stated by an objector in response to item (3) of its objection, then the incumbent LEC's public notice shall be deemed amended to specify implementation on the latest date stated by an objector in item (3) of its objection without further Commission action.

223. At the make/buy point, incumbent LEC plans should be sufficiently developed that the incumbent LEC could provide adequate and useful information to competing service providers. At earlier stages of the planning process, options are still being explored and alternatives weighed. Disclosure at such an early stage could cause interconnecting carriers to waste resources in an effort to respond to network changes that may not occur or that occur ultimately in a significantly different way. As the process of implementing the planned changes into the network goes forward, specific information may also require revision. Accordingly, we require an incumbent LEC to keep its public notice information complete, accurate, and up-to-date in whatever forum it has chosen for disclosure.

[490] *See* 47 CFR 1.17, 1.52.

224. We agree with several commenters that incumbent LECs should not make preferential disclosure to selected entities prior to disclosure at the make/buy point. Accordingly, we prohibit disclosure to separate affiliates, separated affiliates,[491] or unaffiliated entities (including actual or potential competing service providers), until the time of public notice.

ii. Other Disclosure Proposals

225. We find that section 251(d)(3) does not require the Commission to preserve state authority over the timing of public notice of changes to the "information necessary for the transmission and routing" of traffic. Section 251(d)(3) prevents the Commission from "preclud[ing] the enforcement of any (state commission) regulation, order or policy," to the extent that such regulation, order or policy "establishes (LEC) access and interconnection obligations,"[492] is "consistent with the requirements of (section 251)"[493] and does not "substantially prevent implementation of this section and the purposes of this part."[494]

226. Public notice requirements that varied widely from state to state could subject both incumbent LECs and potential competing service providers to burdensome, duplicative, and potentially inconsistent obligations that would impermissibly hamper the achievement of the goals of section 251. Such varied filings requirements would obligate incumbent LECs to file in, and potential interconnecting carriers to canvass, a multitude of state-level fora in order to glean information concerning network changes. Incumbent LECs that operate in multiple states could be required to disclose a single network-wide change piecemeal in a variety of state filings; interconnecting carriers would then need to retrieve the information, also piecemeal, from many different locations. Neither section 251(c)(5) nor a fixed disclosure timetable limits the range of network changes an incumbent LEC might make; rather incumbent LECs remain free to make any otherwise permissible change upon appropriate notice. Accordingly, particularly with respect to entities whose operations span several states, clear, national rules are essential to the uniform implementation of network disclosure.[495]

[491] 47 U.S.C. 274.
[492] 47 U.S.C. 251(d)(3)(A).
[493] 47 U.S.C. 251(d)(3)(B).
[494] 47 U.S.C. 251(d)(3)(C).
[495] *See* NCTA comments at 12.

227. Several commenters argue that a fixed disclosure timetable will needlessly or arbitrarily delay the introduction of technical advances or new services. It is our intention in this proceeding, however, to develop disclosure rules that minimize unnecessary delay by providing competing service providers with adequate, but not excessive, time to respond to changes to an incumbent LEC's network that affect interconnection. The primary concern reflected in section 251(c)(5) is continued interconnection and interoperability. If proper planning occurs, however, the delay associated with this goal should be minimal.

228. At least one commenter argues that, because incumbent LECs and competing service providers have a common interest in ensuring that their networks function together properly—an interest that removes incentives to withhold vital interconnection information and obviates the need for fixed, enforceable advance disclosure obligations[496]—any fixed timetables for disclosure should be negotiated between carriers as part of individual interconnection agreements. We disagree. The mere fact that interconnection failures can adversely affect both an incumbent LEC and a competing service provider does not remove the incumbent LEC's incentives to delay release of information concerning network changes solely in order to inconvenience its competitors. The impact of such failures would fall disproportionately on the competing service provider because, at least in the near term, the incumbent LEC's network will connect most of the customers in its service area directly, without using any facilities of a competing service provider. Indeed, we believe that this is the reason that Congress chose to place this obligation on incumbent LECs only and not on all LECs. In addition, notice of network changes provided to an interconnecting carrier, pursuant to a privately negotiated agreement, will not necessarily be provided to members of the *public* who are not parties to the specific agreement.[497] Accordingly, while carriers may negotiate individual notice arrangements (consistent with the preferential disclosure prohibitions discussed in paragraph 224, above) as part of private interconnection agreements, we are unable to rely on such private notice to satisfy section 251(c)(5)'s duty to provide reasonable *public* notice.

229. Although advance disclosure periods will place competing service providers on notice of certain products and services the incumbent LECs intend to bring to market, we do not believe that this information will automatically translate into a competitive advantage for the competing service providers. The incumbent LEC's network disclosure obligations are intended to allow competing service providers to make required changes to their own networks in order to maintain interoperability and uninterrupted, high quality service to the public. These obligations are designed to prevent incumbent LECs from using their currently substantial percentages of subscribers and highly developed networks anticompetitively to prevent the entry of potential competitors.

230. Several commenters have argued that existing practices under industry issued, ICCF guidelines[498] or the Commission's "all carrier" rule,[499] satisfy the requirements of section 251(c)(5) and that no further Commission action is necessary. We disagree. The guidelines that commenters bring to our attention are neither compulsory nor enforceable at the Commission. We cannot rely on continued goodwill among carriers that soon may be locked in competition to assure timely disclosure of network changes. Similarly, we cannot trust in the "mutually satisfactory arrangements for timely information exchange" that GVNW alleges IXCs and small LECs reached to ease the conversion to equal access.[500] Our new rules, and the new market dynamics, may not produce such agreements.

231. While we are aware of no specific complaints concerning the functioning of the "all carrier rule," the advent of competition for basic telephone service in the local market will require rules that are specific, easily enforced and very clear. In this respect, we believe that the all carrier rule standard lacks adequate specificity to function efficiently in the section 251 context. Requiring carriers to litigate the meaning of "reasonable" notice through our complaint process on a case-by-case basis might slow the introduction and implementation of new technology and services, and burden both carriers and the Commission with potentially lengthy, fact-specific enforcement proceedings. A fixed timetable will create a clear, specific standard that will be more easily and quickly enforceable and that will better facilitate the development of competition and serve the public interest.

232. At least one commenter urges us to adopt the *Computer III* timetable merely as a "safe harbor" provision.[501] If we were to do so, however, we would open the notice process to many of the same risks that lead us to reject the all carrier rule. Under "safe harbor" rules, competing service providers' notice complaints could become bifurcated into an initial inquiry as to whether an incumbent LEC met the safe harbor provisions of the timetable. If the answer were in the negative, a second, fact-specific inquiry as to whether notice was nevertheless reasonable, would then follow. The delay in resolving such disputes would not serve the public interest. We believe the better course is to adopt a binding, fixed standard applicable to notice by all incumbent LECs.

233. MFS's proposed regulatory structure based on a tripartite scheme, classifying changes as "major," "location," or "minor," subject to advance disclosure of 18 months, 12 months, and according to industry standards, respectively, is flawed in several respects. Initially, section 251(c)(5) disclosure applies to a broad spectrum of potential network changes and we are not confident that MFS's definitions, or any similar definitions, could adequately capture and clarify every potential alteration affecting interconnection that an incumbent LEC could make to its network. Categorization debates would inevitably arise among carriers concerning the status of specific, planned changes. Reasonable public notice is a function of the length of time an incumbent LEC will take to implement a change and the length of time an interconnecting carrier will need to respond. Fixed 18-month and 12-month disclosure periods will not be flexible enough to take advantage of advances in technology that may permit increasingly rapid implementation of and reaction to network changes. Also, we find that the extended notice periods MFS proposes are too long. MFS provides no evidence or explanation to support its assertion that competing service providers will need a minimum of 18 months notice of major changes,[502] and the record

[496] Ameritech comments at 30, reply at 17.

[497] Although the contents of privately negotiated interconnection agreements themselves must be disclosed to the public through state level filings, *see* 47 U.S.C. 252(h), information exchanged pursuant to the terms of such an interconnection agreement might not be provided at all to this Commission, state commissions or the public.

[498] ICCF *Recommended Notification Procedures*. *See supra* note 466.

[499] *See supra* n.383.

[500] GVNW comments at 5.

[501] PacTel comments at 6.

[502] *Cf.* NYNEX reply at 10–11 (Such a long notice period would "hamstring technological progress

contains broad support for the 12 month notice period from Computer III.[503] While we intend that competing service providers have adequate notice of planned network changes, we acknowledge the valid concerns of some commenters that overextended advance notification intervals could needlessly delay the introduction of new services, provide the interconnecting carrier with an unfair competitive advantage, or slow the pace of technical innovation.[504]

iii. Application to Network Changes in Progress

On the effective date of the rules implementing incumbent LECs' network disclosure obligations under section 251(c)(5), some incumbent LECs may be implementing network changes that the new rules otherwise would have required them to disclose. With respect to these changes, we do not perceive a need to delay implementation, and no commenter has requested that we do so. We do require, however, that incumbent LECs give public notice of such changes as soon as it is practical, and that notice in accordance with the section 251(c)(5) network disclosure rules be given: (1) before the incumbent LEC begins offering service using the changes to its network; and (2) no later than 30 days after the effective date of the rules adopted in this Order.

235. We similarly find no need to adopt rules obligating incumbent LECs to make any formal, initial public disclosure of comprehensive information concerning their networks to provide background information against which connecting carriers could then evaluate changes. In the *First Report and Order*, we have concluded that, under section 251(c)(2), incumbent LECs are under an obligation to provide, interconnection for purposes of transmitting and routing telephone exchange traffic alone, exchange access traffic alone, or both.[505] Implicit in this obligation under section 251(c)(2) is the obligation to make available to requesting carriers information indicating the location and technical characteristics of incumbent LEC network facilities. Accordingly, actual or potential competing service providers needing this type of baseline information may request it from the incumbent LEC under section 251(c)(2); subsequent changes to this information will be addressed by the section 251(c)(5) rules we adopt today.

iv. Small Business Considerations

236. We have considered the impact of our rules on small incumbent LECs. We agree with GVNW that many network changes may not require twelve months advance disclosure. Accordingly, we have provided for six month, or shorter, notice periods, when such changes can be accomplished quickly. In addition, we note that, under section 251(f)(1), certain small incumbent LECs are exempt from our rules until (1) they receive a *bona fide* request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions of section 254. In addition, certain small incumbent LECs may seek relief from our rules under section 251(f)(2).[506]

C. Relationship With Other Public Notice Requirements and Practices.

1. Relationship of Sections 273(c)(1) and 273(c)(4) With Section 251(c)(5).

a. Background

237. Section 273(c)(1) requires each BOC to maintain and file with the Commission "full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange facilities," in accordance with Commission rules.[507] Section 273(c)(4) obligates the BOCs to provide timely information on the planned deployment of telecommunications equipment to interconnecting carriers providing telephone exchange service.[508] We sought comment in the *NPRM* on the relationship between these sections and the network disclosure obligations contained in section 251(c)(5).[509]

b. Comments

238. Ameritech states that the requirements of section 251(c)(5) "should be reconciled with [the] related obligations" set forth in section 273(c)(1) and 273(c)(4)."[510] Bell Atlantic suggests that sections 251(c)(5) and 273(c)(1) cover the same type of technical information.[511] Bell Atlantic further recommends that we find that "timely" release of the information covered by section 273(c)(4) means that the information should be made available "a sufficient time in advance that the competing service providers may make any necessary changes to their networks."[512] SBC comments that the disclosure obligations imposed by sections 251(c)(5), 273(c)(1), and 273(c)(4) are "substantially similar."[513] MCI argues that section 273(c)(1) imposes on the RBOCs substantially the same information disclosure obligations that 251(c)(5) imposes on the incumbent LECs in general, with the exception that 273(c)(1) explicitly obligates the RBOCs to file the information with the Commission.[514] MCI further argues that section 273(c)(4)'s "timely" disclosure requirement goes beyond that contained in section 251(c)(5).[515]

239. USTA suggests that "there is no basis to impose different requirements on the BOCs for purposes of compliance with section 273(c)(1) than those they are required to follow for section 251(c)(5). This is in fact one area in which uniformity would provide a benefit to the industry and would be administratively simple."[516] In contrast, the Rural Tel. Coalition argues that the requirements of section 273 apply only to the BOCs and "are not expected to correlate with the requirements of 251(c)(5) that apply to all incumbent LECs."[517] The Rural Tel. Coalition states that the Commission should fashion flexible notice requirements under these sections, recognizing differences in size, market power, and ability to impact competing service providers' operations that exist among the BOCs and independent LECs, and competing service providers.[518] AT&T also disagrees with USTA, arguing that the Commission filing contemplated by section 273(c)(1) is more detailed than

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and deny customer benefits"); U S WEST reply at 2–3.

[503] *See, e.g.*, AT&T comments at 24–25 (Noting that the time periods from *Computer III* are familiar to incumbent LECs and a one-year minimum for certain changes would be sufficient advance notice to alternative LECs); MCI comments at 16 (agreeing 12 months advance notice is sufficient); Cox comments at 11 ("The proposal in the [*NPRM*] represents the minimum possible standard for disclosure").

[504] *Cf. Phase II Order*, 2 FCC Rcd at 3087 ("[W]hile we believe enhanced service providers are entitled to receive network information on a timely basis, we are also concerned that premature disclosure of this information could impair carriers' development efforts and inhibit network innovation").

[505] *First Report and Order* at section IV.

[506] For a discussion of the implications and operation of section 251(f), *see First Report and Order*, section XII.

[507] 47 U.S.C. 273(c)(1). The Commission will address section 273 in a separate rulemaking proceeding.

[508] 47 U.S.C. 273(c)(4).

[509] *NPRM* at para. 193.

[510] Ameritech comments at 31.

[511] Bell Atlantic comments at 12.

[512] *Id.* Bell Atlantic advocates the same "reasonable advance notice" standard for use in connection with section 251(c)(5).

[513] SBC comments at 13–14.

[514] MCI comments at 19.

[515] *Id.*

[516] USTA comments at 13.

[517] Rural Tel. Coalition comments at 4.

[518] *Id.* at 4–5.

the disclosure mandated in section 251(c)(5).[519]

c. Discussion

240. Because the BOCs clearly meet the 1996 Act's definition of an "incumbent LEC," [520] the minimum disclosure requirements of section 251(c)(5) apply to the BOCs. We will address the specific implications of section 273, including the question whether section 273 imposes additional disclosure requirements on the BOCs, in a separate rulemaking proceeding.

2. Relationship of Sections 251(a) and 251(c)(5) With Section 256

a. Background

241. Section 251(a) sets forth general duties of telecommunications carriers, including the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, and the duty not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to section 255 [521] and 256.[522] Section 251(c)(5) sets forth the duty of all incumbent LECs to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using the incumbent LEC's network.[523] The goal of section 256, entitled "Coordination for Interconnectivity," is "to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service" and defines the Commission's role in achieving this goal.[524] In the *NPRM*, we sought comment on the relationship of sections 251(a) and 251(c)(5) with section 256.[525]

b. Comments

242. We received few comments on this issue. USTA states that, "in developing oversight procedures for public telecommunications network interconnectivity standards under Section 256, the Commission can assist in alerting the industry to general types of technology changes which may lead to specific upgrades or modifications by individual carriers." [526] In addition, USTA notes that all telecommunications carriers are obligated by section 251(a)(2) to comply with standards prescribed under sections 255 and 256 and, accordingly, cautions that the section 256 process should be conducted with carriers' section 251(a)(2) obligations in mind.[527] USTA therefore suggests the possibility that an industry group could develop a set of uniform guidelines for use by all carriers in providing notice of changes that could affect interconnection or interoperability.[528]

243. Ameritech comments that section 251(c)(5) is only one part of the overall regulatory structure for coordinating network planning by the industry and facilitating interconnection and interoperability.[529] Based on this analysis, Ameritech argues that the notification obligations section 251(c)(5) imposes should be extended to all LECs under section 256.[530]

c. Discussion

244. Section 251(a)(2) imposes a duty on all telecommunications carriers to act in ways that are not inconsistent with any guidelines and standards established under section 256. Section 251(c)(5) imposes network disclosure obligations on incumbent LECs that are related to the goals of section 256, inasmuch as section 251(c)(5) sets forth one specific procedure to promote interconnectivity. We do not decide here whether compliance with section 251(c)(5) is sufficient to satisfy section 256, however. The Network Reliability and Interoperability Council will develop recommendations to the Commission on the implementation of section 256.[531] We intend to address carrier and Commission obligations under section 256 in a future rulemaking proceeding.

D. Enforcement and Safeguards

1. Enforcement Mechanisms

a. Background and Comments

245. In the *NPRM*, we sought comment on what enforcement mechanism, if any, we should use to ensure compliance with the section 251(c)(5) public notice requirement.[532] Bell Atlantic, in conjunction with its advocacy of a flexible disclosure standard based on "reasonableness," suggests that the Commission review complaints of premature implementation on a case-by-case basis and, where necessary, issue cease-and-desist orders.[533] Ameritech and GTE argue that no specific, additional enforcement mechanisms are necessary, because there is no evidence that existing industry practices are producing network conflicts or hardships, or are otherwise not working.[534] U S WEST suggests that, if carriers fail to make timely disclosure, additional enforcement options can be considered in the future.[535] In contrast, NCTA states that we must adopt meaningful sanctions to enforce our new network disclosure rules, including significant monetary sanctions whenever a competitor's service is disrupted because of an incumbent LEC's failure to comply with the notice requirements.[536] Cox argues that any incumbent LEC found to violate section 251(c)(5)'s disclosure requirements should be required to inform all affected customers of interconnecting carriers that the incumbent LEC's actions caused any adverse effects attributable to the improperly disclosed network changes.[537]

246. MFS states that the Commission should adopt rules that would: (1) Require each incumbent LEC to respond to Commission questions regarding the information previously made available regarding any network changes within the scope of section 251(c)(5), and to supplement the information if requested by the Commission; (2) establish a procedure for temporarily blocking any proposed network change until the Commission has time to investigate any alleged violations, with respect to either provision of notice, or the nature of the network change; and (3) allow the Commission, for good cause, to issue an order, without prior notice or hearing, requiring an incumbent LEC to cease and desist from making any specified changes for a period of up to 60 days to permit Commission investigation of alleged violations.[538] Time Warner

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[519] AT&T comments at 24, reply at 28.

[520] 47 U.S.C. 251(h).

[521] Section 255, "Access by Persons with Disabilities," will be addressed in a separate rulemaking proceeding.

[522] 47 U.S.C. 251(a).

[523] 47 U.S.C. 251(c)(5).

[524] 47 U.S.C. 256.

[525] *NPRM* at para. 193.

[526] USTA comments at 13.

[527] *Id.* at 13–14.

[528] *Id.* at 14.

[529] Ameritech comments at 31.

[530] *Id.*

[531] At its meeting on July 15, 1996, the Network Reliability and Interoperability Council discussed (1) barriers to interconnectivity; (2) how the FCC most efficiently can oversee network planning to assure interoperability; (3) need for standards-setting; and (4) the overall reliability of networks. *See Communications Daily*, June 11, 1996 (announcing July 15 meeting); *Public Notice, NYNEX CEO Seidenberg to Head New Network Reliability and Interoperability Council*, 1996 WL 185795 (F.C.C. April 16, 1996).

[532] *NPRM* at para. 193.

[533] Bell Atlantic comments at 12.

[534] Ameritech comments at 29; GTE reply at 10.

[535] U S WEST reply at 3.

[536] NCTA comments at 12.

[537] Cox comments at 12.

[538] MFS comments at 16. MFS does not explain what type of network change might require Commission investigation or what type or level of

suggests that any failure to comply with the rules we establish should be addressed through our existing section 208 complaint process.[539]

b. Discussion

247. It is essential to the development of local competition that incumbent LECs comply with the network disclosure obligations of section 251(c)(5). Even if a competing provider of local exchange service had made significant inroads into the incumbent LEC's customer base, it would have to transmit a substantial number of its customers' calls to the incumbent LEC's network for termination. If these calls cannot be terminated reliably, customers will be more reluctant to use the competing provider's services.

248. We recognize the importance of compliance with our network disclosure rules, and note that many of the specific enforcement sanctions offered by commenters may have merit. The commenters' suggestions indicate a belief that the Commission should delay or prohibit the implementation of changes if we receive sufficiently credible allegations of notice violations. Our existing enforcement authority would permit us to impose such a sanction and we will not hesitate to do so in appropriate circumstances. The Commission, however, also has a range of other penalties it could impose to ensure incumbent LEC compliance with the network disclosure rules. The record currently before us does not reveal a need for us to mandate specific enforcement procedures in the section 251(c)(5) context. Rather, we will intervene in appropriate ways if necessary to ensure adequate disclosure of public notice information, should sanctions become necessary to encourage full compliance with our network disclosure rules.[540] In addition, we intend to explore how we can increase the efficiency of the current section 208 formal complaint process in a separate rulemaking proceeding.

2. Protection of Proprietary Information, Network and National Security

a. Background and Comments

249. In the *NPRM*, we sought comment on the extent to which safeguards may be necessary to ensure that information regarding network security, national security and the proprietary interests of manufacturers and others is not compromised by the section 251(c)(5) network disclosure process.[541]

250. BellSouth states that, to address these concerns, the Commission should permit disclosing incumbent LECs to require the recipient of such information to execute a confidentiality agreement, which could be drafted to include liquidated damages, indemnification, or other appropriate remedial provisions.[542] In addition, BellSouth requests that the Commission confirm that incumbent LECs are not obligated to disclose proprietary information of third parties, but may instead require competing service providers to negotiate directly with the third party for access.[543]

251. GVNW suggests that we limit incumbent LEC disclosure only to references to industry and manufacturers' specifications that are widely available, and to other information required to interconnect at the interface, which would reduce the amount of proprietary or sensitive information that would be subject to disclosure.[544] In addition, GVNW and the Rural Tel. Coalition state that an incumbent LEC should not be obligated to disclose the specific location of physical plant facilities except under strict nondisclosure agreements, in order to preserve the LEC's competitive position and protect against potential terrorist disruptions.[545]

252. Noting that the telecommunications equipment market is competitive, Nortel states that a manufacturer would be seriously disadvantaged if its proprietary information were disclosed to competitors.[546] In addition, Nortel argues that, in such a case, manufacturers would face substantially reduced incentives to develop advanced products.[547] Motorola, Inc., expresses its agreement with both BellSouth and Nortel [548] and comments that disclosure of proprietary information may undermine the competitive position of U.S. manufacturers in the global market.[549] Motorola, Inc., also asks us to clarify that no disclosure is required of technical information at "testing" or "trial" stages,[550] where typically a carrier is evaluating new technology in the field.[551]

253. Sprint, in *ex parte* comments, states that nondisclosure agreements related to the marketing of new services that will be available from both carriers may be appropriate.[552] Sprint also notes, however, that many routine network upgrades, such as establishment of new central offices, remote offices, or tandems, elimination of tandem locations, changes in the incumbent LEC's SS 7 network, and basic software upgrades, may not require the use of nondisclosure agreements.[553] While agreeing that network and national security issues deserve the highest attention, Teleport expresses concern that proprietary interest claims could be used to keep essential network interconnection information from potential competitors.[554]

b. Discussion

254. Having reviewed the record, we conclude that the judicious use of nondisclosure agreements will help protect incentives to develop innovative network improvements, and will also protect against potential threats to both national and network security by limiting the flow of detailed information concerning the operation of the national telecommunications network.[555] Accordingly, we will permit the use of nondisclosure agreements, subject to certain restrictions.

255. Incumbent LECs have a statutory obligation to provide "reasonable public notice of changes in the information necessary for the transmission and routing of services using that (incumbent LEC's) facilities or network, as well as of any other changes that would affect the interoperability of those facilities and networks," [556] as defined in this proceeding. Under another provision of the 1996 Act, however, the BOCs and any entities that they own or otherwise control must protect "the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information." [557] Thus a rule requiring a BOC to provide

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allegations we should considered sufficient in issuing cease and desist orders.

[539] Time Warner comments at 11.

[540] *See, e.g.*, 47 U.S.C. 154(i), 154(j), 206–209, 218; 47 CFR 0.91, 0.291.

[541] *NPRM* at para. 194.

[542] BellSouth comments at 5. *See* Illinois Commission comments at 63.

[543] *Id.* at 6.

[544] GVNW comments at 5. Ameritech advocates a similar narrowing of the disclosure obligation. Ameritech comments at 26 n.52.

[545] *Id.*; Rural Tel. Coalition comments at 4.

[546] Nortel comments at 3; Motorola, Inc. reply at 5. Citing similar concerns, GTE urges us to strike a balance between the information necessary to ensure seamless interconnection and the protection of proprietary information. GTE comments at 6.

[547] *Id.*

[548] Motorola, Inc. comments at n.4.

[549] Motorola, Inc. reply at n.5.

[550] *Id.* at 6.

[551] *Id.*

[552] *Ex parte* letter from Jay C. Keithley, Sprint, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96–98, June 26, 1996, at 2.

[553] *Id.*

[554] Teleport comments at 12.

[555] Should these agreements prove inadequate for this purpose, we would revisit this issue.

[556] 47 U.S.C. 251(c)(5).

[557] 47 U.S.C. 273(e)(5).

change information publicly, without any provision for the use of a nondisclosure agreement, could place a BOC in the position of having to choose between compliance with the Commission's rule and compliance with section 273(e)(5). We also find that requiring disclosure to the public of competitively sensitive, proprietary, or trade secret information without allowing for the possible use of nondisclosure agreements would be inconsistent with section 251(c)(5)'s requirement that incumbent LECs provide "*reasonable* public notice" (emphasis added). It would not be "reasonable" to require such disclosures because they have significant implications with respect to network and national security, as well as the development of competition and innovative network improvements. Accordingly, we find that section 251(c)(5) requires incumbent LECs to provide notice of planned changes to the public sufficient to allow an interested party to assess the possible ramifications of the change and evaluate whether it needs to seek disclosure of additional information. The five categories of information disclosure we mandate here will meet this standard.

256. We do not anticipate that the minimum public notice requirements we are adopting will obligate carriers to disclose competitively sensitive, proprietary, or trade secret information in the public arena. In addition, despite the concerns of Motorola, Inc., Nortel, and others, we do not anticipate that the level of information required by a competing service provider either to transmit and to route services, or to maintain interoperability will, in the ordinary case, include proprietary information. In the event that such information is required, however, an incumbent LEC's public notice must nevertheless identify the type of change planned in sufficient detail to place interested persons on notice that they may potentially be affected, and must state that the incumbent LEC will make further information available to persons signing a nondisclosure agreement. We believe that suitably fashioned nondisclosure agreements can appropriately balance the competing service provider's need for knowledge of network changes with the interests of the incumbent LEC and equipment manufacturers in retaining control of proprietary information.

257. Accordingly, to the extent that otherwise proprietary or confidential information of an incumbent LEC falls within the scope of the network disclosure obligation of section 251(c)(5), it must be provided by that incumbent LEC on a timely basis. If an interconnecting carrier or information service provider requires genuinely proprietary information belonging to a third party in order to maintain interconnection and interoperation with the incumbent LEC's network, the incumbent LEC is permitted to refer the competing service provider to the owner of the information to negotiate directly for its release. While the incumbent LEC might represent the most expedient source of the required information, third parties would be less able to protect themselves from misuse of their proprietary information and preserve potential remedies if the incumbent LEC were to disclose directly a third party's proprietary information directly in response to a request.

258. We are concerned that protracted negotiation periods over the terms of a suitable nondisclosure agreement, or the payment of fees or royalties, could consume a significant portion of a competing service provider's notice period. The rules we adopt today require that, except under short-term public notice procedures, an incumbent LEC must give public notice of network changes a minimum of either six months or twelve months in advance of implementation. We find that these periods will provide adequate notice to interconnecting carriers and information service providers, to ensure that a high level of interconnectivity and interoperability can be maintained between networks. These periods, however, are not excessive and will not allow excessive time for the negotiation of the terms of nondisclosure agreements. Because section 251(c)(5) places an affirmative obligation on the incumbent LEC to ensure reasonable public notice of changes to its network, we require that disclosure of information designated by the incumbent LEC as proprietary, whether owned by the incumbent LEC or a third party, be accomplished on appropriate terms as soon as possible after an actual or potential competing service provider makes a request to the information owner for disclosure. Specifically, upon receipt by the incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled to allow the interested parties to agree on suitable terms for a nondisclosure agreement. This tolling is consistent with the incumbent LEC's public notice obligations and will preserve the competing service provider's ability to implement required changes in its own network to accommodate those planned by the incumbent LEC. In accordance with its obligation to keep the public notice information complete, accurate, and up-to-date, the incumbent LEC must, if necessary, amend its public notice: (1) On the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and (2) on the date the nondisclosure agreement is finalized, to specify a new implementation date.

259. Given these incentives, we conclude that it is unnecessary either to adopt a precise definition of "competitively sensitive" or "proprietary" information, or to mandate the terms of nondisclosure agreements. The *Computer III* rules, upon which we have modeled the disclosure timetable for use in the section 251(c)(5) context, explicitly permit the use of nondisclosure agreements in connection with carrier disclosure of planned changes to the enhanced services industry at the "make/buy" point.[558] In that proceeding also, the Commission explicitly rejected requests to prescribe a specific type of agreement, instead holding that:

> we do not think it necessary or helpful for us to dictate the terms of these private agreements. Nondisclosure agreements are widely used in telecommunications, as well as in other fields. We believe it better to leave the exact specifications of the terms of such agreement to the parties. We would of course be prepared to intervene should parties bring to our attention evidence of noncompliance with the requirements established in this proceeding.[559]

Although we recognize that legitimate concerns exist regarding the security of proprietary information, the potential exists for some incumbent LECs to use such concerns as either a shield against the entry of competitors into their markets, or a sword to hamper the competitor's business operations. We emphasize that incumbent LECs are required to provide adequate access to even proprietary information if a competing service provider needs that information to make adjustments to its network to maintain interconnection and interoperation.

260. We agree with Motorola, Inc., that market and technical trials are not subject to disclosure under section 251(c)(5). Trials are not considered regular service and, because the validity of the incumbent LEC's trial results rests, in part, on successful interconnection, the incumbent LEC has sufficient incentives ensure that competing service providers receive

[558] *Phase II Order*, 2 FCC Rcd at 3092.

[559] *Id.* at 3092–93.

adequate information. Notice of trials may be given, as needed, on a private, contractual basis.

V. Numbering Administration

261. The Commission has repeatedly recognized that access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network.[560] In enacting the 1996 Act, Congress also recognized that ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive telecommunications market in the United States. Congress has required the Commission to designate an impartial administrator of telecommunications numbering and has conferred upon the Commission exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States.[561]

A. Designation of an Impartial Number Administrator

1. Background

262. Section 251(e)(1) requires the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[562] In the *NPRM*, we tentatively concluded that action taken by the Commission in its July 1995 *NANP Order* satisfied this requirement.[563] In that *Order*, the Commission directed that functions associated with NANP administration be transferred to a new administrator of the NANP, unaligned with any particular segment of the telecommunications industry. In the *NPRM*, we sought comment on whether this action satisfied the section 251(e)(1) requirement that we designate an impartial administrator.

2. Comments

263. There is nearly unanimous agreement that action taken by the Commission in the *NANP Order* satisfies the requirement of Section 251(e)(1).[564] GTE states that the *NANP Order* "will ensure that numbering mechanisms are applied in a carrier-neutral fashion, consistent with the objectives of the 1996 Act."[565] Parties, contending that number administration now performed by Bellcore potentially disadvantages non-BOC providers of telecommunications services by delay or denial of numbering resources to them, nevertheless urge the Commission to move quickly to implement the *NANP Order* fully.[566] Moreover, some argue that to give the *NANP Order* full effect, the North American Numbering Council (NANC) must be convened promptly.[567] CTIA states that until that time, "contentious numbering issues will either go unresolved, leading to additional pressure on already burdened numbering resources, or these issues will be resolved by the remnant of a monopoly era system."[568] One commenter, Beehive, argues that the *NANP Order* does not meet the requirements of section 251(e)(1) because it does not address toll free number administration.[569]

3. Discussion

264. We conclude that the action taken in the *NANP Order* satisfies the section 251(e)(1) requirement that the Commission create or designate an impartial numbering administrator. The *NANP Order* requires that functions associated with NANP administration be transferred to a new NANP administrator. In the *NANP Order*, the Commission articulated its intention to undertake the necessary procedural steps to create the NANC.[570] Additionally, it directed the NANC to select as NANP administrator an independent, nongovernment entity that is not closely associated with any particular industry segment.[571] These actions satisfy section 251(e)(1).

265. Commenters' arguments that we have not fulfilled our duty pursuant to section 251(e)(1) because the NANC has not been convened and has not selected a new NANP administrator are not persuasive. In the *NANP Order*, we required that there be a new, impartial number administrator and established the model for how that administrator will be chosen. We thus have taken "action necessary to establish regulations" leading to the designation of an impartial number administrator as required by section 251(e)(1).

266. We disagree with Beehive's contention that the *NANP Order* does not meet the requirements of section 251(e)(1) because it does not address toll free number administration. In the *NANP Order*, we directed the NANC to provide recommendations on the following question: "What number resources, beyond those currently administered by the NANP Administrator should the NANP Administrator administer?"[572] Our purpose in directing NANC to address this question was to develop a record with respect to commenters' suggestions that the new administrator assume additional responsibilities beyond those of the current NANP administrator, if necessary, to facilitate competition in telecommunications services. By asking this question and seeking recommendations from the NANC, we set into motion a process designed to foster competition in *all* telecommunications services, including toll free, through neutral numbering administration. While the *NANP Order* outlines broad objectives for number administration for all telecommunications services, the specific details of implementation for toll free services are addressed in the ongoing toll free proceeding, CC Docket No. 95–155.

B. Delegation of Numbering Administration Functions

267. In this section, we address the role of state public utility commissions in numbering administration. We authorize states to perform the task of implementing new area codes subject to our numbering administration guidelines contained in the *Ameritech Order* and further clarified in this *Order*. We also incorporate the petition for declaratory ruling, the application for review, and the record in that proceeding and address the Texas Commission's pleadings regarding its

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[560] *See Administration of the North American Numbering Plan*, CC Docket No. 92–237, Report and Order, 11 FCC Rcd 2588, 2591 (1995) (*NANP Order*) 60 FR 38737 (July 28, 1995).

[561] 47 U.S.C. 251(e)(1).

[562] *Id.*

[563] *See NANP Order.* The *NANP Order* was initiated in response to Bellcore's stated desire to relinquish its role as NANP administrator. *See* Letter from G. Heilmeier, President and CEO, Bellcore to the Commission (August 19, 1993). Bellcore, however, will continue performing its NANP Administration functions until those functions are transferred to a new NANP administrator pursuant to the *NANP Order*.

[564] *See, e.g.*, Ameritech comments at 22; District of Columbia Commission comments at 1; GCI comments at 5; NYNEX comments at 18; AT&T reply at 2–3.

[565] *See, e.g.*, GTE reply at 34.

[566] *See, e.g.*, CTIA comments at 4; MCI comments at 10.

[567] *See, e.g.*, AT&T comments at 11. The North American Numbering Council (NANC) is a Federal Advisory Committee created for the purpose of addressing and advising the Commission on policy matters relating to administration of the NANP. NANC will provide the Commission advice reached through consensus to foster efficient and impartial number administration.

[568] *See, e.g.*, CTIA comments at 4.

[569] Beehive comments at 2–4.

[570] *NANP Order*, 11 FCC Rcd at 2608.

[571] *Id.* at 2610, 2614, 2617.

[572] *Id.* at 2610.

plan for area code relief in Dallas and Houston which includes wireless overlays. We view prompt examination of the Texas Commission's plan as necessary because the area codes currently assigned to these cities have already reached exhaust.[573]

1. Delegation of Matters Related to Implementation of New Area Codes

a. Background

268. Section 251(e)(1) confers upon the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States," but states that "(n)othing in this paragraph shall preclude the Commission from delegating to state commissions or other entities all or any portion of such jurisdiction."[574] In response to this provision, the Commission tentatively concluded in the *NPRM* that it should authorize state commissions to address matters involving the implementation of new area codes so long as they act consistently with the Commission's numbering administration guidelines.[575]

b. Comments

269. Most parties contend that the Commission should "retain (its) plenary authority over all facets of (numbering) administration with delegation to states of only certain limited functions."[576] PageNet urges that any delegation "should be clearly defined as to scope, review standards, and decision time limits."[577] Similarly, Time Warner recommends that any such delegation be accomplished in conformity with the Commission's guidelines.[578] Bell Atlantic/NYNEX Mobile, while stating that states may be in the best position to implement area code relief tailored to the particular needs of their residents, warns that the Commission must intervene promptly when any state "departs from federal numbering policies prohibiting discrimination against any type of carrier."[579]

270. While some commenters argue that the *Ameritech Order* strikes a "proper jurisdictional balance," permitting state commissions to make initial determinations regarding area code administration, subject to Commission review," others request further clarification of the federal and state role in numbering.[580] The Texas Commission specifically requests that the "FCC clarify the states' roles in number administration by expanding on statements in the *Ameritech Order* and elsewhere regarding the balance of authority between the FCC and the states."[581]

c. Discussion

271. We retain our authority to set policy with respect to all facets of numbering administration in the United States. By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act. While we retain this authority, we note that the numbering administration model established in the *NANP Order* will allow interested parties to contribute to important policy recommendations.

272. We authorize the states to resolve matters involving the implementation of new area codes. State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. Each state's implementation method is, of course, subject to our guidelines for numbering administration, including the guidelines enumerated in the *Ameritech Order* and in this *Order* as detailed below. We note that this authorization for states to resolve matters involving implementation of new area codes is effective immediately. Because of the need to avoid disruption in numbering administration, there is good cause for this action pursuant to 5 U.S.C.553(d)(3). Some states have implemented new area codes prior to our release of this order. We ratify their actions insofar as they are consistent with these guidelines.

2. Area Code Implementation Guidelines

a. Background

273. When almost all of the central office (CO) codes in an area code are consumed, a new area code must be assigned to relieve the unmet demand for telephone numbers. Prior to the enactment of the 1996 Act, state commissions approved plans developed and proposed by the LECs, as CO code administrators, for implementing new area codes. New area codes can be implemented in three ways. Traditionally, states have preferred to implement new area codes through a geographic split, in which the geographic area using an existing area code is split into two parts, and roughly half of the telephone customers continue to be served through the existing area code and half must change to a new area code. States can, however, simply require a rearrangement of existing area code boundaries to accommodate local needs. The third method available to them is called an area code overlay, in which the new area code covers the same geographic area as an existing area code; customers in that area may thus be served through either code.

274. In the *Ameritech Order*, the Commission recognized the states' role in area code relief, attempted to clarify the balance of jurisdiction over numbering administration between the Commission and the states, and enumerated guidelines governing number administration. Additionally, the *Ameritech Order* declared that Ameritech's proposed wireless-only area code overlay would be unreasonably discriminatory and anti-competitive in violation of the Commission's guidelines and the Communications Act of 1934. The *NPRM* sought comment on whether the Commission should reassess the jurisdictional balance between the Commission and the states that was crafted in the *Ameritech Order* in light of Congress' grant to the Commission of exclusive jurisdiction over numbering administration, with permission to assign to the states any portion of that authority.[582] The *NPRM* also sought comment on what action the Commission should take when a state appears to be acting inconsistently with the Commission's numbering administration guidelines.[583]

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[573] Area code exhaust occurs when nearly all of the NXXs in a given numbering plan area (NPA) have been consumed. Area code exhaust is a subset of number exhaust, which describes the situation in which numbers used for any purpose to support telecommunications services are consumed. NPAs are known commonly as area codes. The second three digits of a telephone number are known as the NXX code or Central Office code (CO code). Typically there are 792 NXX codes available for assignment in an area code (every possible combination of three digits excluding numbers beginning with a 0 or 1 and numbers ending with 11).

[574] 47 U.S.C. 251(e)(1).

[575] *NPRM* at para. 256.

[576] ALTS comments at 8; *See also* Frontier comments at 5; GCI comments at 5; Indiana Commission Staff comments at 3; NYNEX comments at 18.

[577] PageNet comments at 6.

[578] Time Warner comments at 18.

[579] Bell Atlantic/NYNEX Mobile reply at 2.

[580] *See Ameritech Order*, 10 FCC Rcd 4596. 60 FR 19255 (January 23, 1995). *See, e.g.*, AT&T reply at 7; Bell Atlantic comments at 9; Pennsylvania Commission comments at 5; ACSI comments at 12.

[581] Texas Commission comments at 6.

[582] *See* 47 U.S.C. 251(e)(1).

[583] *NPRM* at para. 257.

b. Comments

275. Several commenters request that we clarify the *Ameritech Order* to prohibit service-specific overlays.[584] Others request clarification about all area code overlays, not just service-specific overlays. NCTA, for example, argues that all overlays deter the development of local competition. If competitors are relegated to new area codes, it says, potential customers will be forced to change their telephone numbers to obtain service from competitors.[585] NCTA adds that a customer is unlikely to trade a familiar code for a number that may appear to involve a toll charge, or to purchase additional lines from a competitor if those lines receive a different area code than other lines in their home or business.[586] Customers who do change to competing LECs, it claims, will have to dial ten or eleven digits to place local calls to incumbent LEC customers in the same local calling area. By contrast, NCTA maintains that incumbent LEC customers will be able to reach most other local customers through traditional seven-digit dialing.[587] Sprint agrees that all overlays are anti-competitive and argues that the industry should adopt a geographic split approach.[588]

276. MCI urges the Commission to allow an overlay only when it is the only practical alternative, and suggests that such circumstances might include: (a) Exhaust in a small metropolitan area; (b) multiple nearly-simultaneous area code exhausts; or (c) when exhaust is so imminent that a split cannot be implemented quickly enough.[589] Numerous commenters suggest that the Commission should clarify the *Ameritech Order* by imposing conditions on the adoption of area code overlays.[590] Suggested conditions include: (a) Mandatory ten-digit dialing for all calls within the overlay area;[591] (b) permanent service provider local number portability;[592] and (c) the reservation for each competing LEC authorized to operate within a numbering plan area (NPA) of at least one NXX code from the original area code.[593]

277. Cox asserts that area code overlays should be prohibited until the competitive concerns they raise are addressed by the implementation of number portability.[594] Similarly, PageNet asserts that number portability may render the concept of an area code meaningless; once location portability is feasible, numbers will be ported from one area code to another.[595] When this happens, it says, public preference for a particular area code will disappear.[596]

278. In the view of some, the *Ameritech Order* does not prohibit all area code overlays and they request clarification that overlays are an appropriate response to area code exhaust.[597] In Bell Atlantic/NYNEX Mobile's view, for example, the Commission should not prohibit overlays when they may be the best solution to area code exhaust.[598] PacTel agrees that overlays are valuable and, in some metropolitan areas, are preferable to geographic splits because: (1) Overlays do not require existing customers to change their numbers; (2) overlays maintain existing communities of interest in their existing geographical area code boundaries; (3) overlays do not change the boundaries of existing area codes; and (4) overlays take less time to implement than a split.[599] These are significant considerations for states facing number exhaust at an accelerated pace, it says.[600]

279. According to some commenters, issues pertaining to area code relief plans should be addressed in the first instance by state commissions, with the understanding that the Commission can intervene if necessary.[601] Similarly, the Texas Commission argues that the *Ameritech Order* can and should be interpreted to allow for "innovative" means of area code relief crafted to balance the interests, benefits, and burdens for all interested parties. Should the Commission determine that the *Ameritech Order* does not permit such an interpretation, the Texas Commission requests that the *Ameritech Order* be overruled.[602] By contrast, Vanguard warns against allowing states too much latitude in interpreting the *Ameritech Order*. It argues that, if the Commission does not set boundaries for state action, the Commission's procompetitive objectives will remain unrealized as state regulators deprive Commission initiatives of their effect.[603]

280. Bell Atlantic/NYNEX Mobile states that, if states act inconsistently with Commission guidance on numbering policies, the Commission should intervene promptly.[604] The District of Columbia Commission urges that "on a showing that a particular state is acting in violation of FCC guidelines, the FCC may revoke its delegation of jurisdiction to that state."[605] PageNet says the Commission should impose a strict time limit on state commission review of relief plans.[606] Sprint advises that any party "retains the right to appeal any detrimental state commission mandate to the FCC, and * * * the FCC will act promptly on such appeals."[607]

c. Discussion

281. In this *Order*, we are authorizing the states to continue the task of overseeing the introduction of new area codes subject to the Commission's numbering administration guidelines.[608] We are reiterating the guidelines enumerated in the *Ameritech Order* and clarifying the *Ameritech Order* to prohibit all service-specific or technology-specific overlays, and to impose conditions on the adoption of an all-services overlay. Existing Commission guidelines, which were originally enumerated in the *Ameritech Order*, state that numbering administration should: (1) Seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3)

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[584] *See, e.g.*, Cox comments at 6 n.11; PageNet comments at 23; SBC comments at 11; WinStar reply at 16; Vanguard reply at 5.

[585] NCTA comments at 9.

[586] *Id.*

[587] *Id. See also* MFS comments at 8–9.

[588] Sprint reply at 13. *See also* Cox reply at 3–5; MCI comments at 11; WinStar reply at 17.

[589] MCI comments at 12.

[590] *See, e.g.*, Cox comments at 5, 6 n.12; MFS comments at 8–9; California Commission comments at 8; MCI comments at 12–14; NCTA comments at 10; WinStar reply at 17.

[591] *See, e.g.*, MFS comments at 8–9; California Commission comments at 8; MCI comments at 12–13; WinStar reply at 17; PageNet comments at 8.

[592] *See, e.g.*, MFS comments at 8–9; Cox comments at 5; California Commission comments at 8; MCI comments at 12–14 (overlays should be conditioned upon the substantial mitigation of the cost of interim local number portability to competing LECs pending the implementation of permanent local number portability); NCTA comments at 10; WinStar reply at 17.

[593] *See, e.g.*, MFS comments at 8–9; MCI comments at 12–13 (*all* remaining NXXs in the old NPA should be assigned to competitors).

[594] Cox comments at 3–4.

[595] The term "port" means the transfer of a telephone number from one carrier's switch to another carrier's switch, which enables a customer to retain his or her number when transferring from one carrier to another. *See Number Portability Order* at n.32.

[596] PageNet reply at 4.

[597] See, *e.g.*, Bell Atlantic/NYNEX Mobile reply at 4–6; BellSouth comments at 20.

[598] Bell Atlantic/NYNEX Mobile reply at 4–6.

[599] PacTel reply at 31–32.

[600] Id.

[601] *See, e.g.*, NYNEX reply at 12; GTE reply at 34.

[602] Texas Commission comments at 5. See our discussion below at paras. 294–295 for the Texas Commission's proposed means of area code relief.

[603] Vanguard comments at 3–4.

[604] Bell Atlantic/NYNEX Mobile reply at 2.

[605] District of Columbia Commission comments at 2.

[606] PageNet comments at 7–8.

[607] Sprint comments at 15.

[608] *See* para. 272, *supra*.

not unduly favor one technology over another.[609] The Commission's conclusion in the *Ameritech Order* that Ameritech's proposed wireless-only overlay plan would be unreasonably discriminatory and anticompetitive in violation of sections 201(b) and 202(a) of the Communications Act of 1934 has also provided guidance to local central office code administrators and state commissions implementing area code relief.[610] We find that the guidelines and the reasoning enumerated in that decision should continue to guide the states and other entities participating in the administration of numbers because these guidelines are consistent with Congress' intent to encourage vigorous competition in the telecommunications marketplace. In addition, we codify in this *Order* the directives of the *NANP Order* that ensure fair and impartial numbering administration.[611]

282. We disagree with the suggestion of some parties that we prohibit or severely restrict the states' right to choose overlay plans. For example, PageNet urges the Commission to impose specific time constraints on states and to require default area code plans if states do not take action within those time constraints. Such restrictions would not be consistent with our dual objectives of encouraging competition through fair numbering administration while at the same time delegating to the states the right to implement area codes.

283. As we note above, states are uniquely situated to determine what type of area code relief is best suited to local circumstances. Certain localities may have circumstances that would support the use of area code overlays. Most significantly, area code overlays do not require any existing customers to change their telephone number, in contrast to geographic splits. Additionally, in some metropolitan areas continuously splitting area codes will result in area codes not covering even single neighborhoods, a situation that can only be avoided by implementing overlays. Finally, area code overlays can be implemented quickly. States may make decisions regarding the relative merits of area code splits and overlays so long as they act consistently with the Commission's guidelines. We emphasize that the burdens created by area code overlays will be greatest during the transition to a competitive marketplace. As competition in telecommunications services takes root, consumers will become more accustomed to ten-digit dialing and to area code overlays and the states will face less resistance in their efforts to implement new area codes than they will in the near term.

284. Nevertheless, we find that it is necessary to clarify the Commission's numbering administration guidelines as they apply to area code relief. Recent action taken by the Texas Commission has demonstrated that state commissions might interpret our existing guidelines in a manner that is inconsistent with those guidelines.[612] Thus, while we conclude that geographic area code splits and boundary realignments are presumptively consistent with the Commission's numbering administration guidelines, we clarify our guidelines with respect to how area code overlays can be lawfully implemented.

285. First, we conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology-specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code. Among other things, the implementation of a service or technology-specific overlay requires that only existing customers of, or customers changing to, that service or technology change their numbers. Exclusion and segregation were specific elements of Ameritech's proposed plan, each of which the Commission held violated the Communications Act of 1934.

286. To ensure that competitors, including small entities, do not suffer competitive disadvantages, we also conclude that, if a state commission chooses to implement an all-services area code overlay, it may do so subject to two conditions. Specifically, we will permit all-services overlay plans only when they include: (1) Mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and (2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay.[613] Clarifying the conditions that must exist in order to implement an area code overlay will reduce the likelihood that states will act inconsistently with the Commission's guidelines and the consequent need for the Commission to review area code relief plans.

287. We are requiring mandatory 10-digit dialing for all local calls in areas served by overlays to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code and dial 7 digits to call others with numbers in that area code, while new users with the overlay code would have to dial 10 digits to reach any customers in the old code. When a new overlay code is first assigned, there could be nearly 8 million numbers assigned in the old code, with just a few thousand customers using the new overlay code. If most telephone calls would be to customers in the original area code, but only those in the new code must dial ten-digits, there would exist a dialing disparity, which would increase customer confusion. Customers would find it less attractive to switch carriers because competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10 digits much more often than the incumbent's customers, and would require people calling the competing exchange service provider's customer to dial 10 digits when they would only have to dial 7 digits for most of their other calls. Requiring 10 digit dialing for all local calls avoids the potentially anti-competitive effect of all-services area code overlays.

288. Allowing every telecommunications carrier authorized

[609] *Ameritech Order*, 10 FCC Rcd at 4604.

[610] *Id.* at 4608, 4610–12.

[611] *See generally NANP Order*. Although we resolve specific issues relating to area code implementation in this *Order*, many other important numbering administration issues will be addressed in other proceedings. For example, the use of N11 codes, (*e.g.*, 211, 311, 411, 511, 611, 711, 811, 911) will be addressed in *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92–105.

[612] As discussed at paras. 304–308 *infra*, we find that the Texas Commission's Order addressing area code relief in Dallas and Houston is inconsistent with the *Ameritech Order*.

[613] One NXX will give each carrier the ability to give at least some of its customers numbers in a familiar area code. Guaranteeing more than one NXX in this situation is difficult because by the time the need for the overlay becomes imminent, few NXX codes remain unassigned in the familiar area code.

to provide telephone exchange service, exchange access, or paging service in an area code to have at least one NXX in the existing NPA will also reduce the potential anti-competitive effect of an area code overlay. This requirement would reduce the problems competitors face in giving their customers numbers drawn from only the new "undesirable" area codes while the incumbent carriers continue to assign numbers in the "desirable" old area code to their own customers.[614]

289. Incumbent LECs have an advantage over new entrants when a new code is about to be introduced, because they can warehouse NXXs in the old NPA.[615] Incumbents also have an advantage when telephone numbers within NXXs in the existing area code are returned to them as their customers move or change carriers. Thus, to advance competition, we require that, when an area code overlay is implemented, each provider of telephone exchange service, exchange access, and paging service must be assigned at least one NXX in the old NPA.

290. A number of commenters suggested that the Commission permit area code overlays only if permanent number portability has been implemented in the applicable NPA.[616] We decline to do so. We recognize that the implementation of permanent service provider number portability will reduce the anticompetitive impact of overlays by allowing end users to keep their telephone numbers when they change carriers. Requiring the existence of permanent service provider number portability in an area before an overlay area code may be implemented, however, would effectively deny state commissions the option of implementing any all-services overlays while many area codes are facing exhaust. While permanent number portability is being implemented, end users will be allowed to keep their telephone numbers when they change carriers, under the Commission's mandate of interim number portability.[617]

291. If a state acts inconsistently with federal numbering guidelines designed to ensure the fair and timely availability of numbering resources to all telecommunications carriers, parties wishing to dispute a proposed area code plan may file a petition for declaratory ruling, rulemaking, or other appropriate action with the Commission. Pursuant to section 5(c)(1) of the Communications Act of 1934, as amended,[618] authority is delegated to the Common Carrier Bureau to act on such petitions. We expect that with the clarifications we provide in this *Order*, there will be a reduced need for such petitions. Unless it becomes necessary to do so, we decline to follow the recommendations of parties urging that we enumerate more specific procedures to be invoked if states fail to follow our numbering guidelines. We expect that the need for our review of any state commissions' actions with respect to area code relief should diminish as states gain more experience with the area code relief process generally and with area code overlays in particular, particularly as states become more familiar with the Commission's guidelines in this area.

292. Finally, we address petitions for clarification or reconsideration that were filed in the *Ameritech* and *NANP* proceedings. On February 22, 1995, Comcast Corporation filed a Petition for Clarification or Reconsideration of the *Ameritech Order* regarding the Commission's jurisdiction over numbering administration.[619] In its petition, Comcast seeks clarification of the *Ameritech Order* to the extent that it implies the Commission does not have broad statutory authority over the assignment of numbering resources, and seeks reconsideration of any implication in the *Ameritech Order* that the Commission's authority is limited by or subordinate to state interests.[620] Because section 251(e)(1) gives the Commission exclusive jurisdiction over numbering matters in the United States, any uncertainty about the Commission's and the states' jurisdiction over numbering administration that may have existed prior to the 1996 Act has now been eliminated. In light of the enactment of section 251(e)(1), Comcast's request that the Commission reconsider its conclusion in the *Ameritech Order* that the Commission does not retain plenary jurisdiction over numbering issues in the United States is moot. Accordingly, we dismiss Comcast's petition.

293. In the *NANP Order* the Commission discussed the states' authority over area code changes and central office code administration. In response the National Association of Regulatory Utility Commissioners filed a Request for Clarification and the Pennsylvania Public Utility Commission filed a Petition for Limited Clarification and/or Reconsideration.[621] NARUC and the Pennsylvania Commission have asked the Commission to clarify that, while the Commission intended in the *NANP Order* to transfer the incumbent LEC functions associated with CO code assignment and area code exhaust to the new NANP Administrator, the Commission did not intend to alter the role of the States in overseeing those functions.[622] Because section 251(e)(1) gives the Commission exclusive jurisdiction over numbering matters in the United States, and because we clarify the role of the states in numbering administration in this *Order*,[623] we dismiss the petitions of NARUC and the Pennsylvania Commission as moot.

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[614] The new overlay area code may be considered less desirable by customers during the beginning of its life because it is less recognizable. For example, business users that have a telephone number in the overlay area code because they have switched carriers or obtained new telephone lines might be thought to be in a distant location due to the "unrecognized" area code. Thus, incumbent carriers would have a competitive advantage because most of their customers would remain in the old, more recognizable code. This effect would persist until customers become accustomed to the new overlay code.

[615] *See supra* n.573.

[616] Teleport Communications Group, Inc. (TCG) has raised this issue in a petition for declaratory ruling filed with the Commission on July 12, 1996. TCG's petition for declaratory ruling asks the Commission to: (1) Require that overlay area code plans may not be implemented unless permanent number portability and mandatory 10-digit dialing exist, and that geographic area code splits must be used absent these conditions; (2) require the implementation of TCG's "Number Crunch" proposal, which would permit NXX assignments across multiple rate centers in blocks of one thousand numbers; and (3) require as part of a BOC's application to provide in-region interLATA services pursuant to section 271 of the 1996 Act a demonstration that numbering resources are available to competing local carriers. We will address TCG's petition in a separate proceeding. *See Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for Numbering*

[617] *See Number Portability Order.*

[618] 47 U.S.C. 155(c)(1).

[619] *See Petition for Clarification or Reconsideration,* filed by Comcast Corporation (February 22, 1995). PageNet and Nextel Communications, Inc. ("Nextel") filed Comments in support of Comcast's petition.

[620] Comcast Petition at 1. According to Comcast, footnote 18 of the *Ameritech Order* explicitly overruled *dicta* in a prior Commission decision that stated that the Commission had plenary jurisdiction over CO code allocation. *Id.* at 3.

[621] *See Request for Clarification,* filed by the National Association of Regulatory Utility Commissioners (NARUC Petition) (August 28,1995); *Petition for Limited Clarification and/or Reconsideration,* filed by the Pennsylvania Commission (Pennsylvania Commission Petition) (August 28, 1995). Nextel filed Comments in response to the petitions.

[622] *See* NARUC Petition at 5; Pennsylvania Commission Petition at 3. The Pennsylvania Commission also seeks clarification or reconsideration of the Commission's *NANP Order* to the extent that it suggests the Commission would interfere with or preempt a state's ability to address local number portability. *Id.* at 3–4. We do not address the states' role with respect to number portability here because this issue has already been addressed by the Commission. *See Number Portability Order* at para. 5.

[623] *See supra* paras. 281–291, and *infra* paras. 309–322.

3. Texas Public Utility Commission's Area Code Relief Order for Dallas and Houston

a. Background

294. On May 9, 1996, the Texas Commission filed two substantively identical pleadings: (1) a petition for expedited declaratory ruling pursuant to 47 CFR 1.2; and (2) an application for expedited review pursuant to 47 CFR 1.115.[624] The Texas Commission states that in July 1995, MCI petitioned it for an investigation into numbering practices of Southwestern Bell Telephone Company (SWB)[625] related to exhaustion of telephone numbers in the 214 area code serving the Dallas metropolitan area.[626] SWB proposed to relieve numbering exhaustion by implementing all-services overlays, which would require ten-digit local dialing within Houston and Dallas metropolitan areas.[627] In October 1995, an administrative law judge heard evidence regarding numbering relief plans and issued a written proposal for decision in November 1995. In December 1995, the Texas Commission determined that public comment on the matter was necessary; in January 1996 it conducted public forums in both Dallas and Houston.[628] In March 1996, the Texas Commission issued an Order setting out an area code relief plan.[629] On May 17, 1996, we released a public notice establishing a pleading cycle for comments on the Texas Commission's pleadings.[630]

b. Petition and Comments

295. The Texas Commission ordered a plan that combines an immediate landline geographic split with a prospective wireless overlay in the Dallas and Houston metropolitan areas.[631] In its pleadings to the FCC, the Texas Commission alleges that it specifically considered the *Ameritech Order* in crafting its plan.[632] The Texas Commission's Order required SWB to request new area codes from the NANP administrator (Bellcore) for the prospective wireless overlays. Bellcore refused to supply the new area codes unless ordered to do so by the FCC.[633] According to the Texas Commission, Bellcore incorrectly relied on the *Ameritech Order* to support a position that wireless overlays are, *per se*, invalid and wasteful.[634]

296. On March 21, 1996, Bellcore sent a letter to the Network Services Division of the Common Carrier Bureau, FCC, explaining its view that the Texas Commission plan violated the *Ameritech Order*.[635] In that letter, Bellcore asserts that the *Ameritech Order* is controlling precedent because section 251(e)(1) confers exclusive jurisdiction over numbering administration on the Commission. Bellcore further opposes use of NPAs for service-specific overlays, because such assignments, it says, are inefficient, wasteful, and potentially discriminatory.[636] The Network Services Division responded to the letter on April 11, 1996, agreeing that the *Ameritech Order* forbids service-specific overlays such as those ordered by the Texas Commission and supporting Bellcore's decision, as acting NANP Administrator, not to make the requested NPA assignments for use in Dallas and Houston as a wireless-specific overlay.[637]

297. The Texas Commission acknowledges that the FCC has exclusive jurisdiction over numbering pursuant to section 251(e)(1) of the 1996 Act.[638] The Texas Commission states that the *NPRM* might provide additional clarification on these issues, but that, currently, it is uncertain whether the FCC intended to preempt the Texas Order, and asks that the Commission consider the specific facts of this matter.[639] It contends that it carefully deliberated the issues and made a balanced and equitable decision that is consistent with the *Ameritech Order*. Therefore, it insists, any preemption is unwarranted.[640]

298. According to the Texas Commission, the *Ameritech Order* does not, on its face, prohibit all service-specific overlays.[641] Instead, it says, the *Ameritech Order* requires a fact-specific examination of each situation to determine whether the proposed numbering plan violates the statutory prohibition of unreasonable and unjust discrimination.[642] Further, in the Texas Commission's view, its Order "strikes the optimal balance" and is "evenhanded" in its effect on carriers

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[624] The Texas Commission explains that it is filing both pleadings simultaneously, hoping that the Commission will find one or the other an appropriate vehicle by which to determine expeditiously whether a Texas Commission order (*PUCT Order*) pertaining to a proposed area code relief plan is acceptable. For ease of reference, all citations will be to the Texas Commission petition (PUCT petition) unless citations to both pleadings are needed for clarification. In this order, we are ruling on the PUCT petition. Therefore, action on the Texas Commission's application, a procedurally distinct but substantively identical pleading, is unnecessary.

[625] We note that, although SWB was the LEC proposing the originally disputed area code relief plan, SBC filed comments on the Texas Commission's proposed plan. SWB is a subsidiary of SBC.

[626] PUCT petition at 2. The Texas Office of Public Utility Council filed a similar petition in August 1995 regarding SWB's numbering practices related to the exhaustion of telephone numbers in the 713 area code in Houston. The Texas Commission consolidated the petitions into Texas Public Utilities Commission Docket No. 14447 because similar issues were presented.

[627] *Id.*

[628] *Id.*

[629] *Id.*

[630] *See Pleading Cycle Established for Comments on Public Utility Commission of Texas' Petition for Expedited Declaratory Ruling and Application for Expedited Review of Area Code Plan for Dallas and Houston*, Public Notice, DA 96–794 (released May 17, 1996). Comments were due June 6, 1996, and reply comments were due June 21, 1996. Nineteen parties filed comments, and twelve parties filed replies, in response to the Texas Commission's petitions.

[631] PUCT petition at 2–3.

[632] *Id.* at 3. In the *Ameritech Order*, the Commission held that three elements of a proposed wireless-only overlay each violated the prohibition in section 202(a) of the Communications Act of 1934 against unjust or unreasonable discrimination, and also represented unjust and unreasonable practices under section 201(b). Those objectionable elements were: (1) Ameritech's proposal to continue assigning NPA 708 codes (the old codes) to wireline carriers, while excluding paging and cellular carriers from such assignments (the "exclusion" proposal); (2) Ameritech's proposal to require only paging and cellular carriers to take back from their subscribers and return to Ameritech all 708 telephone numbers previously assigned to them, while wireline carriers would not be required to do so (the "take back" proposal); and (3) Ameritech's proposal to assign all numbers from the new NPA (630) to paging and cellular carriers exclusively (the "segregation" proposal). *See Ameritech Order*, 10 FCC Rcd at 4608, 4611.

[633] PUCT petition at 3.

[634] *Id.*

[635] PUCT petition, Attachment B.

[636] *Id.*

[637] PUCT petition at 3–4.

[638] *Id.* at 5.

[639] The Texas Commission argues that the April 11, 1996, letter did not rule directly on the validity of its Order. Moreover, noting that, in the *NPRM*, the Commission references the April 11 Common Carrier Bureau letter, Texas says that the *NPRM* states that the Commission (rather than the Network Services Division) agreed with Bellcore's decision not to make the area code assignments requested by SWB. *NPRM* at para. 257, n.358. Therefore, in Texas' view, the Common Carrier Bureau letter is an action taken pursuant to delegated authority that affirmatively adopts Bellcore's decision and preempts its order. The Texas Commission argues that this action should be reviewed by the Commission. PUCT petition at 4.

[640] PUCT petition at 5. In its petition for declaratory ruling, the Texas Commission requests that we declare: (1) That the refusal of the Chief, Network Services Division, Common Carrier Bureau, to direct the NANP administrator to assign area codes to SWB for use as wireless overlays in Dallas and Houston was erroneous; (2) that the NANP administrator is directed to assign such codes to SWB; and (3) that the Texas Commission's March 13, 1996 Order directing a combination wireline area code split and wireless overlay in Dallas and Houston is lawful. *Id.* at 10. In its application for expedited review, it requests that we: (1) Review and reverse the Network Services Division's action in its letter to the NANP administrator; (2) order the NANP administrator to assign the requested area codes for use as wireless overlays in Dallas and Houston; and (3) uphold the Texas Commission's Order pursuant to analysis of Commission precedent. PUCT application at 10.

[641] PUCT petition at 5–6.

[642] *Id.* at 6.

and customers.[643] The Texas Commission alleges that it weighed different proposals offered by several parties, and that, although a geographic split was found superior to an all-services overlay, neither plan alone was found to be the best solution.[644] For this reason, it chose a two-step, integrated relief plan involving a landline geographic split and a prospective wireless overlay.[645] The Texas Commission argues that its plan permits intra-NPA seven-digit dialing, unlike an all-services overlay, which would have required ten-digit intra-NPA dialing. Also, it says that its plan will reduce customer confusion and provide greater competitive fairness to service providers.[646]

299. Many parties contend that the Texas Commission's plan violates Commission policy as outlined in the *Ameritech Order* and request its clarification.[647] Still others argue that the plan violates section 201(b) or section 202(a),[648] as well as section 251(e)(1), which confers exclusive jurisdiction over numbering administration on the Commission that we have not assigned to any other entity.[649] Still others argue that the plan violates section 253, which provides that no state requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any telecommunications service.[650]

300. In Sprint Spectrum's view, for example, the proposed wireless overlays will undermine the ability of telecommunications carriers to provide service because they allow existing customers of wireless incumbents to retain 7-digit dialing for most calls if they do not switch to a new entrant. Similarly, it says, current customers of wireline incumbents will retain 7-digit dialing to businesses and residences in either the suburban or metropolitan area, unless they switch to a new wireless provider.[651] Sprint Spectrum maintains that, by creating a distinction between services offered by incumbent providers and those seeking entry into the market using wireless technology, the Texas Commission has created a disincentive for new wireless providers to seek entry into these telecommunications markets.[652] Similarly, PageNet argues that this interference with customer choice, and the inhibition of wireline/wireless competition, are contrary to the objectives stated in the *Ameritech Order*, and urges the Commission to expressly declare the Texas Commission's plan prohibited.[653]

301. Twelve reply comments were received. The Texas Commission contends that it had jurisdiction to issue its order containing its proposed area code relief plan, and the 1996 Act does not deprive the Texas Commission of that jurisdiction.[654] The Texas Commission argues that the exclusion, segregation, and take-back facets of the wireless-only overlay proposal should not be considered separate and independent grounds for finding an NPA relief plan unlawful.[655] The Texas Commission maintains that we should not order an alternative form of relief such as an all-services overlay,[656] and that we should not find unlawful the Texas Commission's proposed consideration of take-back of wireless numbers during the geographic split if the wireless overlays are deemed unlawful.[657]

302. The Texas Public Utility Counsel filed reply comments in support of the Texas Commission's proposed area code relief plan. The Texas Public Utility Counsel maintains that the proposed wireless-only overlay is neither discriminatory nor unreasonable under sections 202(a) and 201(b) of the Communications Act of 1934.[658] Further, the Texas Public Utility Counsel claims that the wireless carriers' interpretation of the *Ameritech Order* is unreasonably strict and would preclude all forms of area code relief.[659]

303. In reply, several parties continue to maintain that the Texas Commission's proposed prospective wireless-only overlay is unlawful.[660] Most of these commenters contend that an all-services overlay can be an appropriate method of area code relief.[661]

c. Discussion

304. We conclude that the Texas Commission's wireless-only overlay violates our *Ameritech Order* on its face. It is also inconsistent with our clarification of the *Ameritech Order* contained in this *Order*, wherein we specifically prohibit wireless-only overlays.

305. The Texas Commission itself admits to the presence of exclusion and segregation in its plan.[662] In the *Ameritech Order*, we clearly indicated that the presence of any one of the following elements including: (1) Exclusion; (2) segregation; or (3) take-back, renders a service-specific overlay plan unacceptable and violative of the Communications Act.[663] Texas' plan features all these elements. Like the plan proposed in the *Ameritech Order*, the Texas Commission's plan would unreasonably discriminate against wireless carriers. It is thus unreasonably

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[643] *Id.* at 6–9. In the *Ameritech Order*, we stated that any area code relief plan that becomes effective should strike an optimal balance among three objectives Ameritech had identified: (1) An optimal dialing plan for customers; (2) as minimal a burden as feasible; and (3) an uninterrupted supply of codes and numbers. We further found that the optimal balance must assure that any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible upon all carriers and customers affected by its introduction. *Ameritech Order*, 10 FCC Rcd at 4611.

[644] PUCT petition at 7.

[645] *Id.*

[646] *Id.*

[647] *See, e.g.*, AT&T comments at 5; Century Cellunet comments at 3–4; Cox comments at 3–4; GTE comments at 8–14; HCTC comments at 3–10; MCI comments at 3–4; Nextel comments at 3–6; PageNet comments at 6–10; PCIA comments at 4–6; ProNet comments at 7–14; Sprint comments at 4–5; Sprint Spectrum comments at 5–11; Teleport comments at 4–12; US West comments at 9–10; Vanguard comments at 2–3; SBC comments at 5–12.

[648] *See, e.g.*, AT&T comments at 5; HCTC comments at 3–10; PageNet comments at 9; ProNet comments at 1; Sprint comments at 4–5; Sprint Spectrum comments at 6–11.

[649] *See, e.g.*, Century Cellunet comments at 4; GTE comments at 7; PCIA comments at 6–7; U S WEST comments at 4–5. *See also* Teleport comments at 13.

[650] Sprint Spectrum comments at 4.

[651] Sprint Spectrum comments at 4–5 and 11–12.

[652] *Id.* at 12.

[653] PageNet comments at 6–10. *See also* SBC comments at 12–16.

[654] Texas Commission reply at 2–7.

[655] *Id.* at 7–8.

[656] *Id.* at 9–10.

[657] *Id.* at 10–11.

[658] Texas Public Utility Counsel reply at 9–11.

[659] *Id.* at 12–15.

[660] *See, e.g.*, CTIA reply at 2–3; Vanguard reply at 1–4; MCI reply at 3–5; ProNet reply at 1; Sprint reply at 1–2. SBC states that the Texas Commission overlays are unlawful, and argues that we should expressly state that service-specific overlays are *per se* unlawful. SBC reply at 1.

[661] ProNet reply at 2–4; BellSouth reply at 2–6; US WEST reply at 1–6; SBC reply at 2–4.

[662] The record also indicates that the plan also calls for some take-back of existing wireless numbers. The Texas Commission states that two groups of wireless customers will experience take-back due to the geographic split. Those with Type 1 cellular and Type 1-like paging connections will experience take-back for "technical and practical implementation-related reasons. *PUCT Order* at 12 n.9. In addition, the Texas Commission envisions that after the date on which NXX codes are activated for the prospective wireless overlay, wireless carriers holding NXX codes from the prior area codes will not be allowed to assign any additional numbers from those prior area codes, regardless of the fill factor of the NXX codes. Remaining unused numbers in those NXX codes will be returned to the NPA administrator. *PUCT Order* at 6.

[663] *See Ameritech Order*, 10 FCC Rcd at 4608. "[W]e find as a matter of law that *each* of these three Ameritech proposals violates the prohibition in the Act against unjust or unreasonable discrimination." (Emphasis added). *See also id.* at 4611. In discussing whether Ameritech's plan constituted an unjust or unreasonable practice and therefore violated section 201(b) of the Act, we stated that three facets of Ameritech's plan—its exclusion, segregation, and take-back proposals—would *each* impose significant competitive disadvantages on the wireless carriers, while giving certain advantages to wireline carriers.

discriminatory under section 202(a) and would constitute an unreasonable practice in violation of section 201(b) of the Communications Act of 1934. Moreover, in this *Order*, we have clarified the *Ameritech Order* by prohibiting all service-specific and technology-specific area code overlays. Service-specific and technology-specific overlays do not further the federal policy objectives of the NANP. They hinder entry into the telecommunications marketplace by failing to make numbering resources available on an efficient, timely basis to telecommunications services providers. As we describe in detail above, service-specific overlays would provide particular industry segments and groups of consumers an unfair advantage. We have also stated that administration of the NANP should be technology neutral; service-specific overlays that deny particular carriers access to numbering resources because of the technology they use to provide their services are not technology neutral.

306. We find the Texas Commission's arguments in support of its proposed wireless-only overlay unpersuasive. It argues, for example, that the wireless overlay will extend the life span for the area code relief plan. What extends the life span of a relief plan, however, is not so much the wireless overlay as the introduction of a new NPA with its 792 additional NXXs. This being the case, the Texas Commission provides no compelling reason for isolating a particular technology in the new NPA. The Texas Commission also states that there will be less confusion regarding NPA assignments, but a plan calling for overlay for one service and a split for another is likely to lead to increased customer confusion regarding NPA assignments, because parties making calls would have to be aware of what type of service the party being called has in order to know whether to dial the ten-digit number or just the last seven digits. The Texas Commission also argues that its plan allows for continued seven-digit dialing for intra-NPA calls, but we note that the same would be true if a geographic split for all services and technologies was imposed. Although an all-services overlay would have required ten-digit intra-NPA dialing, there would not be discrimination based on technology.

307. Several parties raise concerns about dialing disparity resulting from the implementation of the Texas Commission's plan. It is these concerns about dialing disparity in the context of an overlay that have led us to require mandatory ten-digit dialing as part of any all services overlay plan.

308. Some parties also advance concerns about the Texas Commission's statements that, if the proposed wireless-only overlay were found to be unlawful, it would consider a mandatory pro-rata take-back of wireless numbers under the geographic split plan in order to balance the remaining burdens of inconvenience and confusion caused by the number changes necessitated by a split. We do not take action here to prevent the Texas Commission from taking back some wireless numbers in the course of introducing a geographic split plan. In a geographic split, roughly half of the customers in the existing NPA, including wireless customers, will have to change their telephone numbers. We recognize that wireless customers may need to have their equipment reprogrammed to change their telephone number, and that this will inconvenience wireless customers to some extent. This illustrates the fact that geographic splits also have burdensome aspects. Our goal is to have technology-blind area code relief that does not burden or favor a particular technology. Requiring approximately half of the wireless customers and wireline customers to change telephone numbers in a geographic split is an equitable distribution of burdens. This is the kind of implementation detail that is best left to the states.

4. Delegation of Additional Numbering Administration Functions

a. Background

309. In the *NANP Order*, we transferred CO code administration to the new NANP administrator. We stated that a "requirement that CO code administration be centralized in the NANP administrator simply transfers the functions of developing and proposing NPA relief plans from the various LEC administrators to the new NANP Administrator" and that "[s]tate regulators will continue to hold hearings and adopt the final NPA relief plans as they see fit."[664]

310. In the *NPRM*, we tentatively concluded that, pursuant to section 251(e)(1), the Commission should authorize states to address matters related to implementation of new area codes, and we are doing so in this *Order*. In the *NPRM*, we also sought comment on whether the Commission should authorize states or other entities to address any additional number administration functions. We address this issue here.

[664] *NANP Order*, 11 FCC Rcd at 2622.

b. Comments

311. Some commenters raise issues about the proper role of the states in number administration both before and after transfer of number administration functions to the NANP. BellSouth, for example, argues that we should authorize states to address additional number administration functions until their transfer to the NANP. Specifically, BellSouth recommends that states should take active oversight in CO code implementation activities, including the power to allow for cost recovery.[665]

312. SBC expresses concern regarding the expeditious transfer and centralization of CO code administration into the new NANP. In SBC's view, such transfer is appropriate, but before it can take place, all relevant issues must first be fully addressed and resolved. SBC states that code administrators need local knowledge of authorized carriers, service areas, and toll and local calling areas for the transfer to be effective. SBC asserts that, because CO code administration has significant impacts on local areas in terms of relief plans and dialing plans, state regulatory commissions should be included in any decision.[666] In reply, MFS, stating that the Commission should not "be swayed" by SBC's singular concerns about the complexity of CO code assignments and the need for state involvement, argues against any potential delay in the transfer of numbering responsibilities.[667] Similarly, WinStar, stating that such delay would be contrary to the letter and spirit of the 1996 Act, argues against any delay in transferring numbering administration from the LECs to the NANP administrator.[668]

313. Some parties argue that, when the new NANP administrator is established, the Commission should allow state commissions to handle the current functions of the LEC, including development of area code relief plans and assignment of CO codes.[669] According to the Florida Commission, if the state commissions do not decide to handle these functions, the NANP administrator should be responsible for these processes.[670] Cox, however, does not support delegation of CO code assignment responsibility to the states and contends that if the Commission does authorize the states to perform this function, it should adopt specific

[665] BellSouth comments at 20.
[666] SBC comments at 11–13.
[667] MFS reply at 4.
[668] WinStar reply at 15–16.
[669] *See, e.g.*, Florida Commission comments at 6–7; Indiana Commission Staff comments at 6.
[670] Florida Commission comments at 6–7.

policies for CO code assignment requiring that such assignments be made on a non-discriminatory basis.[667] The Pennsylvania Commission states that, after the new NANP administrator assumes LEC administrative responsibilities, the Commission should allow states to continue their regulatory oversight role. Specifically, the Pennsylvania Commission asserts that the Commission should delegate to state commissions regulatory oversight of CO code assignment, including local number portability and local dialing parity measures.[672]

314. In the Indiana Commission Staff's view, we should authorize state commissions to make decisions regarding the implementation or changing of dialing patterns consistent with non-discriminatory and competitive guidelines, and changes in dialing patterns should be incorporated into the area code relief planning process. The Indiana Commission Staff asserts that states are in a better position to determine what impact changes in dialing will have on the local area.[673] Conversely, Vanguard argues the Commission should satisfy its Congressional mandate by establishing national numbering and dialing parity guidelines.[674]

c. Discussion

315. We conclude that the states may continue to implement or change local dialing patterns subject to any future decision by the Commission regarding whether to require uniform nationwide dialing patterns.[675] The Commission will retain broad policy-making jurisdiction over numbering. We further conclude that states that wish to be responsible for initiating area code relief planning, a function currently performed by the LECs as CO code administrators, may do so now and after transfer of CO code administration from the LECs to the new NANP administrator. Again, because of the need to avoid disruption in numbering administration, we find good cause to make this authorization effective immediately pursuant to 5 U.S.C. 553(d)(3). We decline, however, to delegate to the states on a permanent basis oversight of CO code administration. Finally, we decline to authorize states to handle CO code assignment functions.

316. Currently, state commissions are responsible for determining the number of digits that must be dialed for intra-NPA toll calls and inter-NPA local calls.[676] For example, while most states require 1 plus 10-digit dialing for all intra-NPA toll calls, California and New Jersey permit such toll calls to be completed with 7-digit dialing. Illinois requires 7-digit dialing for all intra-NPA calls, whether local or toll. Similarly, a number of states, including the District of Columbia, Maryland, and parts of Virginia require 10-digit dialing for all inter-NPA local calls and permit 10-digit or 1 plus 10-digit dialing for all intra-NPA local calls.

317. States are in the best position at this time to determine dialing patterns because of their familiarity with local circumstances and customs regarding telephone usage. For example, one state commission might want to allow its residents to dial 7-digits for all intra-NPA calls, whether toll or local, whereas another state commission might wish to require 10-digit dialing for intra-NPA calls to ensure that its residents recognize that they are making a toll call rather than a local call. Therefore, states may continue to implement appropriate local dialing patterns, subject to the Commission's numbering administration guidelines, including the Commission's requirement in this *Order* of 10-digit dialing for all calls within and between NPAs in any area where an area code overlay has been implemented.

318. Two state commissions specifically ask the Commission to authorize states to perform functions associated with initiating and planning area code relief, as distinct from adopting final area code relief plans.[677] We agree that states should be authorized to initiate and plan area code relief. Currently, when an incumbent LEC in its role as CO code administrator predicts that NPA exhaust is imminent, it initiates the NPA relief planning process by holding industry meetings, developing an appropriate area code relief plan or plans, and proposing that plan or several alternative plans for the state commission's consideration and adoption.[678] Thus, state commissions do not initiate and develop area code relief plans,[679] but states adopt, codify or reject the final plan.[680]

319. We conclude that states wishing to become responsible for initiating area code relief planning, a function currently performed by the LECs as CO code administrators, may do so, even after transfer of CO code administration from the LECs to the new NANP administrator. We find that enabling states to initiate and develop area code relief plans is generally consistent with our previous delegation of new area code implementation matters to the state commissions based on their unique familiarity with local circumstances. We

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[667] Cox states that the policies should state that carriers and states currently administering CO codes are not permitted to deny codes to new entrants, and are not permitted to levy "code opening" charges to avoid imposing barriers on the entry and expansion of new competitors. Cox comments 8–9. In its reply, Cox notes that incumbent LECs have argued that there is no need for Commission intervention in the assignment of CO codes. Cox argues that, in practice, despite the existence of "neutral" CO code assignment guidelines, significant potential for discriminating against new entrants remains. Until an impartial entity is responsible for assigning CO codes, Cox contends, there is a need for specific Commission rules preventing discrimination. Cox would prefer that CO codes be administered by a neutral administrator, and believes that the possibility that a neutral administrator will lack some local knowledge does not form an insurmountable barrier to a swift transition from the current regime. Cox reply at 10–11.

[672] Pennsylvania Commission comments at 7.

[673] Indiana Commission Staff comments at 7.

[674] Vanguard reply at 2–3.

[675] Uniform nationwide dialing, which would require uniform dialing patterns throughout the United States, was raised in the *NANP NPRM*, Docket No. 92–237, 9 FCC Rcd 2068, 2075 (1994), 59 FR 24103 (April 4, 1994), but was not addressed in the *NANP Order* and remains unaddressed by the Commission.

[676] In every state, intra-NPA local calls can be dialed using 7-digits, while all inter-NPA calls require 1 plus 10-digit dialing. For a list of standard and permissible dialing patterns in each state, see *North American Numbering Plan, Numbering Plan Area Codes 1996 Update*, Bellcore (January 1996) at 11–16.

[677] Indiana Commission Staff comments at 6–7; Florida Commission comments at 5.

[678] *See, e.g., Illinois Bell Telephone Company Petition for Approval of NPA Relief Plan for 708 Area Code by Establishing a 630 Area Code*, Order, No. 94–0315 (Ill. Comm. Comm'n March 20, 1995).

[679] The process of area code relief initiation and development varies by state. In most cases the incumbent LEC (as CO code administrator) declares that the supply of CO codes in a particular area code is about to exhaust, and invites all telecommunications entities with interests in the area code at issue to meet and attempt to reach consensus on a plan for area code relief. Issues before the industry include whether to propose an area code overlay or a geographic split. If the industry can agree on the proposal, it is submitted to the state commission for adoption. If the industry cannot agree, the incumbent LEC may submit a number of alternatives to the state commission from which to choose.

[680] State commissions have, however, recently begun to reject or significantly alter LEC proposals as area code relief has become more controversial. *See, e.g., Illinois Bell Telephone Company Petition for Approval of NPA Relief Plan for 708 Area Code by Establishing a 630 Area Code*, Order, No. 94–0315 (Ill. Comm. Comm'n March 20, 1995); *AirTouch V. Pacific Bell*, Case 94–09–058, *MCI V. Pacific Bell*, Case 95–01–001, Decision No. 95–08–052 (Cal. Pub. Util. Comm'n August 11, 1995); *Petition of MCI Telecommunications Corp. for an Investigation of the Practices of Southwestern Bell Telephone Co. Regarding the Exhaustion of Telephone Numbers in the 214 Numbering Plan Area and Request for a Cease and Desist Order Against Southwestern Bell Telephone Co., Petition of the Office of the Public Utility Counsel for an Investigation of the Practices of Southwestern Bell Telephone Co. Regarding the Exhaustion of Telephone Numbers in the 713 Numbering Plan Area and Request for a Cease and Desist Order Against Southwestern Bell Telephone Co.*, Order on Rehearing, Docket No. 14447 (Tex. Pub. Util. Comm'n. April 29, 1996).

make this delegation, however, only to those states wishing to perform area code relief initiation and development. We recognize that many state commissions may not wish to perform these functions because, *inter alia*, the initiation and development of area code relief can require specialized expertise and staff resources that some state commissions may not have. Those states that seek to perform any or all of these functions must notify the new NANP administrator within 120 days of the selection of the NANP administrator. Those states wishing to perform functions relating to initiation and development of area code relief prior to the transfer of such functions to the new NANP administrator must notify promptly the entity currently performing CO code administration. States should inform the entities of the specific functions upon which the state wishes to take action. Area code relief initiation and development functions will be transferred to and performed by the new NANP administrator for those states that do not seek to perform such functions. We emphasize that, pursuant to our decision to authorize the states to address matters related to the implementation of area code relief, all state commissions will continue to be responsible for making the final decision on how new area codes will be implemented, subject to this Commission's guidelines.

320. While we authorize states to resolve specific matters related to initiation and development of area code relief plans, we do not delegate the task of overall number allocation, whether for NPA codes or CO codes. To do so would vest in fifty-one separate commissions oversight of functions that we have already decided to centralize in the new NANPA. A nationwide, uniform system of numbering, necessarily including allocation of NPA and CO code resources, is essential to efficient delivery of telecommunications services in the United States.[681]

321. With specific regard to CO code allocation, two BOCs and one state commission have asked us to delegate oversight of this function to the states on a permanent basis. We decline. In addition to the problems noted in the preceding paragraph, we are concerned that such an arrangement could complicate and increase the NANP administrator's workload, and could also lead to inconsistent application of CO code assignment guidelines. The oversight and dispute resolution process established in the *NANP Order*, whereby for the U.S. portions of NANP administration the NANC will have initial oversight and dispute resolution duties, with the Commission as the final arbiter, provides an adequate process for overseeing CO code administration.[682] This process also guarantees state participation in the oversight process through their representation on the NANC.

322. Finally, we decline to authorize states to perform CO code assignment functions as suggested by the Florida Commission for two reasons set forth in the *NANP Order*.[683] First, centralizing CO code assignment in one neutral entity will increase the efficiency of CO code assignment because it will preclude varying interpretations of CO code assignment guidelines. Consistent application of assignment guidelines will also diminish the administrative burden, which can be a potential barrier to entry, facing those carriers seeking codes in various states that would otherwise have to associate with a number of separate code assignment bodies rather than one. Second, a centralized CO code administration mechanism would allow the Commission and regulators from other NANP member countries to keep abreast of CO code assignments and predict potential problem areas, such as exhaust, sooner than is possible under the current system.

5. Delegation of Existing Numbering Administration Functions Prior to Transfer

a. Background

323. Prior to the enactment of the 1996 Act, Bellcore, as the NANP Administrator, the incumbent LECs, as central office code administrators, and the states performed the majority of functions related to the administration of numbers.[684] In the *NPRM*, the Commission tentatively concluded that it should authorize Bellcore, the incumbent LECs and the states to continue performing each of their functions related to the administration of numbers as they existed prior to enactment of the 1996 Act until such functions are transferred to the new NANP administrator pursuant to the NANP Order.[685] We address this issue here.

b. Comments

324. Several commenters agree with our tentative conclusion to authorize Bellcore, the LECs, and states to continue performing the numbering administration functions they currently perform until such functions are transferred to the new NANP administrator.[686] Generally, these commenters contend that this is the most efficient and least disruptive solution, and that it should be implemented in the interest of numbering administration continuity. Using this approach, NYNEX says, the Commission can intervene and exercise its authority as specific future matters may warrant.[687] AT&T states that current functions should continue until transferred, provided that those functions are not expanded and that the Commission ensures prompt compliance with the NANP Order.[688] MFS supports interim delegation of current functions, but asserts that states should have the authority to implement interim changes in number administration as long as their actions are consistent with our numbering policy objectives.[689]

325. The California Commission states that it is considering serving as CO code administrator until the NANC has developed its policy on numbering administration. It urges the Commission to allow states with unique number administration problems to resolve these issues in the interim.[690] PacTel states that it has proposed a partial transfer of CO code administration to the California Commission or a third party. In the alternative, it says, the California Commission could serve as an interim CO code administrator until the NANC completes its work, or until the California Commission selects a permanent administrator. In PacTel's view, these options are consistent with our proposal to permit the LECs, Bellcore, and the states to continue performing each of their respective

[681] *Ameritech Order*, 10 FCC Rcd at 1602.

[682] *See NANP Order*, 11 FCC Rcd at 2605–2610.

[683] *Id.* at 2620–2623.

[684] For a discussion of NANP administration functions, *see NANP Order*, 11 FCC Rcd at 2595.

[685] *NPRM* at para. 258.

[686] *See, e.g.*, MFS comments at 9; ACSI comments at 13; Ameritech comments at 24; AT&T comments at 12; Bell Atlantic comments at 9; BellSouth comments at 20; District of Columbia Commission comments at 3; Florida Commission comments at 6; GTE comments at 30; NYNEX comments at 18–19; Pennsylvania Commission comments 6–7; PacTel comments at 25; Texas Commission comments at 6; SBC comments at 9.

[687] NYNEX comments at 18–19. NYNEX asserts that we should reject arguments in favor of implementation of an interim arrangement so that incumbent LECs no longer have responsibility for NXX code administration. Incumbent LECs currently assign the NXXs according to industry standards, and under Commission oversight, NYNEX notes. Therefore, there is no need for a short-lived transfer of the responsibilities to another party.

[688] AT&T comments at 12.

[689] By way of example, MFS notes that California is considering sharing CO code assignment with LECs until that function is transferred to the NANP administrator. MFS comments at 9.

[690] California Commission comments at 7–8.

functions related to number administration until those functions are transferred to the new entity.[691] PacTel asserts that California's plan to share code assignment functions between PacTel and the California Commission until the transfer to the new NANP administrator should be identified as a "safe harbor" under the Act.[692]

326. Other commenters oppose the Commission's proposal to authorize Bellcore, the incumbent LECs, and the states to continue performing those numbering administration functions they performed prior to enactment of section 251(e)(1) on an interim basis until such functions are transferred to the new NANP administrator.[693] They express concern about the appearance of incumbent LEC dominance and discrimination in the assignment and administration of scarce numbering resources. The Indiana Commission Staff recommends that area code planning and implementation be removed from the responsibility of the LECs in favor of state commissions. In its view, delegating the planning and implementation process to state commissions will foster a "more competitive spirit" among the industry. The Indiana Commission Staff envisions that state commissions could obtain periodic reports from the present incumbent LEC administrator as well as Bellcore on projected exhaust dates for area codes.[694] Sprint states that, as long as Bellcore and the LECs serve as NANP and CO code administrators, they should be required to apply identical standards and procedures for processing all numbering requests, irrespective of the identity of the party submitting the request.[695]

327. Cox recommends that, in the event the Commission authorizes the state commissions to handle CO assignment, such assignment must be made on a nondiscriminatory basis, and states or the carriers currently administering the CO codes should not be permitted to deny codes to new entrants or to levy "code opening" charges. In Cox's view, the Commission should adopt specific CO code guidelines because: (a) There is evidence of continued discrimination in CO code assignment; and (b) without Commission guidance, states will develop inconsistent regimes. Cox notes that Commission action is especially important here because CO code assignments have not been transferred to a neutral party.[696] Similarly, several commenters argue in CC Docket No. 95–185 that many incumbent LECs are charging paging carriers and other CMRS providers discriminatory fees for activating CO codes, as well as unreasonable and discriminatory recurring monthly charges for blocks of numbers.[697]

c. Discussion

328. Until such functions are transferred to the new NANP administrator, we authorize Bellcore and the incumbent LECs to continue performing the number administration functions they performed prior to the enactment of the 1996 Act. Again, because of the need to avoid disruption in numbering administration, we find that there is good cause to make these authorizations effective immediately pursuant to 5 U.S.C. 553(d)(3). We also conclude that any incumbent LEC charging competing carriers fees for assignment of CO codes may do so only if it charges the same fee to all carriers, including itself and its affiliates.

329. Numbering administration is a complex task that Bellcore, the incumbent LECs, and, to some extent, the states have been performing for over a decade. It is crucial that efficient and effective administration of numbers continues as the local market opens to competition. This delegation is the most practicable way that numbering administration can continue without disruption. During the transition period, those parties with experience should continue to perform the administrative functions that they have become uniquely equipped to handle. Thus, we authorize Bellcore to continue to perform its functions as the North American Numbering Plan Administrator in the same manner it did at the time of enactment of the 1996 Act. We also allow the incumbent LECs to continue to perform the CO code administration functions that they performed at the time of enactment of the 1996 Act. Finally, we allow the states, if they performed any number administration functions prior to enactment of the 1996 Act, to continue to do so until such functions are transferred to the new NANP administrator.

330. Some commenters argue that we should not authorize Bellcore and the incumbent LECs to perform numbering administration functions on a transitional basis because continued administration of numbers by these entities, which are not neutral administrators, will permit discriminatory treatment of the incumbents' competitors with respect to access to number resources. While we recognize these concerns, we see no alternative to the action we take here. Transfer of numbering administration functions will be a complex task, one that cannot be accomplished immediately even on transitional basis. The Commission, for example, does not have the resources to administer numbers on a day-to-day basis.

331. In this regard, we note that a proposal has been made to the California Commission to transfer CO code administration to the California Commission or a third party or, in the alternative, to have the California Commission serve as the interim CO code administrator until the NANC completes its work or until the California Commission selects a permanent administrator.[698] We conclude that the record does not support allowing states to change the way CO code administration is performed during the transition to the new NANP administrator. Uniform CO code administration is critical to efficient operation of the public switched network for proper delivery of telecommunications services. The transfer of CO code administration to the states pending the transition to the new NANP administrator would not foster that consistency because states wishing to assume such responsibilities would lack the necessary experience to perform them with speed and accuracy. The California Commission does not refute this persuasively. We therefore urge parties wishing to alter the administration of certain numbers or to change the assignment of responsibilities for administering numbers pending transfer of these functions to the new NANP administrator to raise these issues with the Commission on a case-by-case basis in separate proceedings. In their filings, these parties should state who would bear the cost of a temporary delegation and how such a delegation could be implemented without confusion to carriers and customers.

332. Some commenters have expressed concern that numbering

[691] PacTel comments at 25.

[692] PacTel reply at 28.

[693] *See, e.g.*, CTIA comments at 5; Indiana Commission Staff comments at 6; NCTA reply at 10; Teleport comments at 4.

[694] Indiana Commission Staff comments at 6.

[695] Sprint comments at 14.

[696] Cox comments at 7–9.

[697] With regard to the specific issue of paging carriers being charged recurring monthly fees for blocks of numbers, it is necessary to incorporate the record from CC Docket No. 95–185, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers. See, e.g.*, AirTouch Communications comments, CC Docket No. 95–185, at 22 n.22; Arch Communications Group comments, CC Docket No. 95–185, at 7–8, 15, 23–24; PageNet comments, CC Docket No. 95–185, at 22 and App. C.

[698] California Commission comments at 7–8.

administration will be performed in a discriminatory and anticompetitive manner as long as interested parties exercise these functions. For this reason, some commenters urge the Commission to adopt guidelines for CO code administration with which the incumbent LECs must comply prior to transfer of CO code administration to a new NANP administrator. Specifically, they ask the Commission to prohibit incumbent LECs from levying disparate "code opening" fees on different carriers. We conclude that charging different "code opening" fees for different providers or categories of providers of telephone exchange service constitutes discriminatory access to telephone numbers and therefore violates section 251(b)(3)'s requirement of nondiscrimination. Charging different "code opening" fees for different providers or categories of providers of any telecommunications service (not just telephone exchange service) also violates section 202(a)'s prohibition of unreasonable discrimination and also constitutes an "unjust practice" and "unjust charge" under section 201(b).[699] Further, it is inconsistent with the principle stated in section 251(e)(1), which states that numbers are to be available on an equitable basis. Incumbent LECs have control over CO codes, a crucial resource for any competitor attempting to enter the telecommunications market; incumbent LECs must therefore treat other carriers as the incumbent LECs would treat themselves. To ensure that numbering administration does not become a barrier to competition in the telecommunications marketplace prior to the transfer of NANP administration functions to a neutral number administrator, we conclude that any incumbent LEC charging competing carriers fees for assignment of CO codes may only do so if the incumbent LEC charges one uniform fee for all carriers, including itself or its affiliates.

333. We are explicitly extending this protection, pursuant to section 202, from discriminatory "code opening" fees to telecommunications carriers, such as paging carriers, that are not providers of telephone exchange service or telephone toll service, and therefore are not covered by Section 251(b)(3).[700] Paging carriers are increasingly competing with other CMRS providers, and they would be at an unfair competitive disadvantage if they alone could be charged discriminatory code activation fees. For the reasons stated above, we explicitly forbid incumbent LECs from assessing unjust, discriminatory, or unreasonable charges for activating CO codes on any carrier or group of carriers. To the extent that recurring per-number charges represent charges for interconnection, they are governed by the principles set out in the *First Report and Order* in this proceeding. Moreover, the Commission has already stated that telephone companies may not impose recurring charges solely for the use of numbers.[701]

334. We emphasize that incumbent LEC attempts to delay or deny CO code assignments for competing providers of telephone exchange service would violate section 251(b)(3), where applicable, section 202(a), and the Commission's numbering administration guidelines found, *inter alia*, in the *Ameritech Order*, the *NANP Order*, and this *Order*. The Commission expects the incumbent LECs to comply strictly with those guidelines and act in an evenhanded manner as long as they retain their number administration functions. Specifically, incumbent LECs should apply identical standards and procedures for processing all numbering requests, regardless of the identity of the party making the request.

335. Indeed, our delegation of matters related to numbering administration during the transition to a new NANP administrator is generally governed by the Commission's existing objectives and guidelines related to number administration as well as those enumerated in this proceeding. We will monitor closely the actions of Bellcore and the LECs with respect to numbering administration to ensure that they perform their tasks impartially and expeditiously until such tasks are transferred.

C. Cost Recovery for Numbering Administration

1. Background

336. In section 251(e)(2), Congress mandates that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[702] In the *NANP Order*, the Commission: (1) Directed that the costs of the new impartial numbering administrator be recovered through contributions by all communications providers; (2) concluded that the gross revenues of each communications provider will be used to compute each provider's contribution to the new numbering administrator; and (3) concluded that the NANC will address the details concerning recovery of the NANP administration costs.[703] In the *NPRM*, we found that we did not need to take further action because the Commission had already determined that cost recovery for numbering administration arrangements must be borne by all telecommunications carriers on a competitively neutral basis.[704]

2. Comments

337. Several parties believe that the Commission should take further action with regard to cost recovery for numbering administration.[705] BellSouth states that, states should have the power to authorize cost recovery in conjunction with oversight of central office code implementation activities, until transfer of numbering administration to the NANP.[706]

338. Telecommunications Resellers Association urges us to reconsider the assessment that the costs associated with the administration of telecommunications numbering should be borne by telecommunications carriers on a competitively neutral basis. It asserts that reliance upon gross revenues would result in a double or greater recovery from resale carriers and their customers.[707]

339. Similarly, NCTA urges us to require that companies providing telecommunications services in addition to other services fund NANP administration based on a percentage of their gross telecommunications revenues, and not their revenues from other services. Otherwise, NCTA argues, diversified companies that have relatively little need for NXXs but large gross revenues from other sources may have to fund a disproportionately large share of NANP administration expenses. Also, NCTA notes that the 1996 Act requires "telecommunications carriers" to contribute to cost recovery for number administration, but that the *NANP Order* requires recovery from all "communications providers." NCTA requests clarification that only

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[699] 47 U.S.C. 251(b)(3); 47 U.S.C. 202(a).

[700] Paging is not "telephone exchange service" within the meaning of the Act because it is neither "intercommunicating service of the character ordinarily furnished by a single exchange" nor "comparable" to such service. *See* 47 U.S.C. 153(47).

[701] *See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Memorandum Opinion and Order, 59 R.R.2d 1275, 1284 (1986).

[702] 47 U.S.C. 251(e)(2).

[703] *NANP Order*, 11 FCC Rcd at 2627–2629.

[704] *NPRM* at para. 259.

[705] *See, e.g.*, BellSouth comments 20; Telecommunications Resellers Association comments at 10; NCTA comments at 11.

[706] BellSouth comments at 20.

[707] Telecommunications Resellers Association comments at 10.

"telecommunications carriers" as defined by the 1996 Act must contribute to cost recovery for number administration.[708]

340. Other commenters do not believe that it is necessary for the Commission to take additional action with regard to cost recovery for numbering administration.[709] These parties generally agree that the cost recovery approach taken in the *NANP Order* satisfies the 1996 Act's requirements with respect to ensuring nondiscriminatory access to telephone numbers. Several reiterate that the costs of number administration must be borne by all carriers on a competitively neutral basis. GTE states that the *NANP Order* conclusions satisfy the cost recovery requirement of the 1996 Act, if we ensure that those conclusions are implemented in a manner that does not unduly favor or disadvantage any particular industry segment or technology.[710]

341. In its reply comments, PacTel rejects MCI's suggestion that costs of implementing number portability should be reduced or eliminated. In PacTel's view, interim number portability is an essential element of achieving equitable number administration and all parties that benefit from this process should contribute to full cost recovery.[711]

3. Discussion

342. Because of ambiguity between the language of the 1996 Act and language in the *NANP Order*, we are persuaded that further action is necessary to meet the 1996 Act's requirement that cost recovery for number administration be borne by all telecommunications carriers on a competitively neutral basis, and to conform the cost recovery requirements specified in the *NANP Order* to the 1996 Act. First, we require that: (1) Only "telecommunications carriers," as defined in section 3(44), be ordered to contribute to the costs of establishing numbering administration; and (2) such contributions shall be based only on each contributor's gross revenues from its provision of telecommunications services.[712] We note that we have considered the economic impact of our rules in this section on small incumbent LECs and other small entities. We conclude that by basing contributions only on each contributor's gross revenues from its provision of telecommunications services (instead of, for example, imposing a flat fee contribution on all telecommunications carriers), we more equitably apportion the burden of cost recovery for numbering administration.

343. Section 251(e)(2) requires that the costs of telecommunications numbering administration be borne by all telecommunications carriers on a competitively neutral basis. Contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers. Therefore, to avoid such an outcome, we require all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures for all telecommunications services and facilities that have been paid to other telecommunications carriers.[713] It should be noted that this requirement is solely for the purpose of determining a carrier's contribution to numbering administration costs and not for any other purpose, interpretation, or meaning of any other Commission rule such as those contained in parts 32, 36, 51, 64, 65, or 69 of the Commission's rules.

D. Section 271 Competitive Checklist Requirement That the BOCs Provide Non-Discriminatory Access to Numbers for Entry Into In-region InterLATA Services

1. Background and Comments

344. Section 271(c)(2)(B) contains a competitive checklist of requirements governing the access to functions, facilities and services or interconnection that BOCs must provide or generally offer to other competing telecommunications carriers if the BOC wants authority to provide in-region interLATA service. Pursuant to the competitive checklist, BOCs desiring to provide in-region interLATA telecommunications services must afford, "(u)ntil the date by which telecommunications numbering administration guidelines, plans or rules are established, non-discriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers * * * (and) (a)fter that date, (must) compl(y) with such guidelines, plan or rules."[714] In the *NPRM*, we stated that these measures foster competition by ensuring telecommunications numbering resources are administered in a fair, efficient, and orderly manner.[715] Ameritech asks us to clarify that, by complying with the *NANP Order*, a BOC satisfies the competitive checklist requirement of nondiscriminatory access to numbers.[716] MCI argues that we must ensure that the BOCs comply with section 271(c)(2)(B) and assign NXX codes in a competitively neutral manner.[717]

2. Discussion

345. We decline to address section 271(c)(2)(B) issues in this *Order*. We will consider each BOC's application to enter in-region interLATA services pursuant to section 271(c)(2)(B) on a case by case basis, and will look specifically at the circumstances and business practices governing CO code administration in each applicant's state to determine whether the BOC has complied with section 271(c)(2)(B)(ix).

VI. Final Regulatory Flexibility Analysis

346. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in this proceeding. The Commission sought written public comments on the proposals in the *NPRM*, including the IRFA. The

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[708] NCTA comments at 11.

[709] *See, e.g.*, ACSI comments at 13; ALTS comments at 8; CTIA comments at 8; Frontier comments at 5 n.14; GCI comments at 6; GTE comments at 31; Ohio Consumers' Council comments at 5; PacTel comments at 26.

[710] GTE comments at 31. *See also* PacTel comments at 26.

[711] PacTel reply at 33.

[712] 47 U.S.C. 251(e)(2) also requires that the cost of establishing telecommunications number portability shall be borne by all telecommunications carriers on a competitively neutral basis. We note that cost recovery for number portability was addressed in the *Number Portability Order*.

[713] See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 10 FCC Rcd 13512, at 13558–59 (1995) (*Regulatory Fees Order*). 61 FR 40155 (August 1, 1996). In the *Regulatory Fees Order*, we stated that, in order to avoid imposing a double payment burden on resellers, we would permit interexchange carriers to subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services. *Id.* Our action here is consistent with that taken in the *Regulatory Fees Order*. We note that the gross telecommunications services revenues referenced in this discussion are not limited to gross interstate revenues.

[714] 47 U.S.C. 271(c)(2)(B)(ix).

[715] *NPRM* at para. 251.

[716] Ameritech comments at 23. *See also* NYNEX comments at 18.

[717] MCI comments at 10. We also note that in its petition for declaratory ruling filed July 12, 1996, TCG has asked the Commission to require, as part of a BOC's application to provide in-region interLATA services pursuant to section 271, a demonstration that numbering resources are available to competing local carriers. *See supra* n.616.

Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996).[718]

A. Need for and Purpose of This Action

347. The Commission, in compliance with section 251(d)(1), promulgates the rules in this *Order* to ensure the prompt implementation of section 251, which is the local competition provision. Congress sought to establish through the 1996 Act "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[719] Three principal goals of the telecommunications provisions of the 1996 Act are: (1) Opening the local exchange and exchange access markets to competition; (2) promoting increased competition in telecommunications markets that already are open to competition, including, particularly, the long distance services market; and (3) reforming our system of universal service so that universal service is preserved and advanced as the local exchange and exchange access markets move from monopoly to competition.

348. The rules adopted in this *Order* implement the first of these goals—opening the local exchange and exchange access markets to competition by eliminating certain operational barriers to competition. The objective of the rules adopted in this *Order* is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the pro-competitive, deregulatory markets envisioned by Congress.[720] We are mindful of the balance that Congress struck between this goal and its concern for the impact of the 1996 Act on small local exchange carriers, particularly rural carriers. This balance is evidenced in section 251(f).

B. Summary of Issues Raised by Public Comments Made in Response to the Initial Regulatory Flexibility Analysis

349. *Summary of Initial Regulatory Flexibility Analysis (IRFA).* In the *NPRM*, the Commission performed an IRFA.[721] In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. The Commission stated that its regulatory flexibility analysis was inapplicable to incumbent LECs because such entities are dominant in their field of operation. The Commission noted, however, that it would take appropriate steps to ensure that special circumstances of smaller incumbent LECs are carefully considered in our rulemaking. Finally, the IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

1. Treatment of Small LECs

350. *Comments.* The Small Business Administration (SBA), Rural Tel. Coalition, and CompTel maintain that the Commission violated the RFA when it sought to exclude incumbent LECs from regulatory flexibility consideration without first consulting the SBA to establish a definition of "small business."[722] Rural Tel. Coalition and CompTel also argue that the Commission failed to explain its statement that "incumbent LECs are dominant in their field" or how that finding was reached.[723] Rural Tel. Coalition states that the lack of such analysis is inappropriate because incumbent LECs are now facing competition from a variety of sources, including wireline and wireless carriers. Rural Tel. Coalition recommends that the Commission abandon its determination that incumbent LECs are dominant, and perform the regulatory flexibility analysis for incumbent LECs having fewer than 1500 employees.[724]

351. *Discussion.* In essence, the SBA and the Rural Tel. Coalition argue that we exceeded our authority under the RFA by certifying all incumbent LECs as dominant in their field of operations, and therefore concluding on that basis that they are not small businesses under the RFA. They contend that the authority to make a size determination rests solely with the SBA, and that by excluding a group from the scope of regulatory flexibility analysis the Commission makes an unauthorized size determination.[725] Neither the SBA nor the Rural Tel. Coalition cite any specific authority for this latter proposition.

2. Other Issues

352. We have found incumbent LECs to be "dominant in their field of operations" since the early 1980's and consequently have consistently since that time certified under the RFA[726] that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses.[727] We have made similar determinations in other areas.[728] We recognize the SBA's special role and expertise with regard to the RFA, and intend to continue to consult with the SBA to ensure that the Commission is fully implementing the RFA. Although we are not fully persuaded on the basis of this record that our prior practice has been incorrect, in light of the special concerns raised by the SBA, the Rural Tel. Coalition, and CompTel in this proceeding, we will, nevertheless, include small incumbent LECs in this FRFA to remove any possible issue of RFA compliance. We, therefore, need not address directly the Rural Tel. Coalition's arguments that incumbent LECs are not dominant.[729]

353. *Comments.* Parties raised several other issues in response to the Commission's IRFA in the *NPRM*. The SBA and CompTel contend that commenters should not be required to separate their comments on the IRFA from their comments on the other issues raised in the *NPRM*.[730] SBA maintains that separating RFA comments and discussion from the rest of the comments "isolates" the regulatory flexibility analysis from the remainder of the discussion, thereby handicapping the Commission's analysis of the impact of the proposed rules on small businesses.[731] The SBA further suggests that our IRFA failed to: (1) Give an adequate description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rules, including an estimate of the classes of small entities which will be subject to the requirement and the professional skills necessary to prepare such reports or records;[732] and (2) describe significant alternatives that

[718] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et. seq.*

[719] S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 1 (1996).

[720] *Id.*

[721] *NPRM* at paras. 274–287.

[722] SBA RFA comments at 3–5; Rural Tel. Coalition reply at 38–39; CompTel reply at 46.

[723] Rural Tel. Coalition reply at 39.

[724] Rural Tel. Coalition reply at 40.

[725] SBA RFA comments at 4–5 (citing 15 U.S.C. 632(a)(2)); Rural Tel. Coalition reply at 38.

[726] *See* 5 U.S.C. 605(b).

[727] *See, e.g., Expanded Interconnection with Local Telephone Company Facilities*, 6 FCC Rcd 5809 (1991); *MTS and WATS Market Structure*, 2 FCC Rcd 2953, 2959 (1987) (citing *MTS and WATS Market Structure*, 93 F.C.C.2d 241, 338–39 (1983)).

[728] *See, e.g., Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation*, 10 FCC Rcd 7393, 7418 (1995). 60 FR 63492 (December 11, 1995).

[729] Rural Tel. Coalition reply at 39–40.

[730] SBA RFA comments at 2–3; CompTel reply at 46.

[731] *Id.*

[732] SBA RFA comments at 5–6, *citing* 5 U.S.C. 603(b)(4).

minimize the significant economic impact of the proposal on small entities, including exemption from coverage of the rule.[733] SBA also asserts that none of the alternatives in the *NPRM* are designed to minimize the impact of the proposed rules on small businesses.

354. The Idaho Public Utilities Commission argues that the Commission's rules will be devised for large carriers and therefore will be *"de facto"* burdensome to Idaho's incumbent LECs and probably to potential new entrants, which may be small companies.[734] Therefore, Idaho requests that state commissions retain flexibility to address the impact of our rules on smaller incumbent LECs.

355. The Small Cable Business Association (SCBA) contends that the Commission's IRFA is inadequate because it does not state that small cable companies are among the small entities affected by the proposed rules.[735] In its comments on the IRFA, SCBA refers to its proposal that the Commission establish the following national standards for small cable companies: (1) The definition of "good faith" negotiation; (2) the development of less burdensome arbitration procedures for interconnection and resale; and (3) the designation of a small company contact person at incumbent LECs and state commissions. The SCBA also asserts that the Commission must adopt national standards to guide state commissions in their implementation of section 251(f),[736] the rural telephone company exemption. The *First Report and Order* and its FRFA discusses issues raised by the SCBA regarding its proposal that the Commission establish national standards for certain provisions of the rules that affect small cable companies. Accordingly, we do not repeat those analyses in this FRFA.

356. *Discussion.* We disagree with the SBA's assessment of our IRFA. Although the IRFA referred only generally to the reporting and recordkeeping requirements imposed on incumbent LECs, our **Federal Register** notice set forth in detail the general reporting and recordkeeping requirements as part of our Paperwork Reduction Act statement.[737] The IRFA also sought comments on the many alternatives discussed in the body of the *NPRM*, including the statutory exemption for certain rural telephone companies.[738] The numerous general public comments concerning the impact of our proposal on small entities in response to our notice, including comments filed directly in response to the IRFA,[739] have enabled us to prepare this FRFA. Thus, we conclude that the IRFA was sufficiently detailed to enable parties to comment meaningfully on the proposed rules and, thus, for us to prepare this FRFA. We have been working with, and will continue to work with the SBA, to ensure that both our IRFAs and FRFAs fully meet the requirements of the RFA.

357. The SBA also objects to the *NPRM's* requirement that responses to the IRFA be filed under a separate and distinct heading, and proposes that we integrate RFA comments into the body of general comments on a rule.[740] Almost since the adoption of the RFA, we have requested that IRFA comments be submitted under a separate and distinct heading.[741] Neither the RFA nor the SBA's rules prescribe the manner in which comments may be submitted in response to an IRFA[742] and, in such circumstances, it is well established that an administrative agency can structure its proceedings in any manner that it concludes will enable it to fulfill its statutory duties.[743] Based on our past practice, we find that separation of comments responsive to the IRFA facilitates our preparation of a compulsory summary of such comments and our responses to them, as required by the RFA. Comments on the impact of our proposed rules on small entities have been integrated into our analysis and consideration of the final rules. We therefore reject SBA's argument that we improperly required commenters to include their comments on the IRFA in a separate section.

358. We also reject SBA's assertion that none of the alternatives in the *NPRM* were designed to minimize the impact of the proposed rules on small businesses and the Idaho Public Utilities Commission's assertion that our rules will be burdensome on new entrants. For example, we proposed that incumbent LECs be required to disclose all information relating to network design and technical standards and information concerning changes to the network that affect interconnection facilities.[744] This proposal allows a potential competitor, that may be a small entity, to collect the information necessary to achieve and maintain efficient interconnection. Thus, the competitor can enter the market by relying, in part or entirely, on the incumbent LEC's facilities. Reduced operational entry barriers are designed to provide reasonable opportunities for new entrants, particularly small entities, to enter the market by minimizing the initial investment needed to begin providing service.

359. In addition, we disagree with the Idaho Public Utilities Commission's contention that the rules devised by the Commission will be burdensome to the majority of Idaho's incumbent LECs. We believe section 251(f) and the rules we have crafted provide states with significant flexibility to "deal with the needs of individual companies in light of public interest concerns," as requested by the Idaho Commission. We note that, pursuant to section 251(f), smaller LECs may petition their state commissioners for suspension or modification of the implementation schedule for toll dialing parity established under section 251(b)(3). Although we have required incumbent LECs to continue performing their current functions related to the administration of numbers, this requirement will expire when numbering administration is transferred to the new North American Number Plan (NANP) Administrator, pursuant to Section 251(e). As incumbent LECs are currently performing these functions and we have received no comments from incumbent LECs objecting to this requirement, we do not consider it burdensome for them to continue to perform these tasks during the transition period.

360. In addition, we disagree with SCBA's assertion that the IRFA was deficient because it did not identify small cable operators as entities that would be affected by the proposed rules. The IRFA in the *NPRM* states: "Insofar as the proposals in this Notice apply to telecommunications carriers other than incumbent LECs (generally interexchange carriers and new LEC entrants), they may have a significant impact on a substantial number of small entities."[745] The phrase "new LEC entrants" clearly encompasses small cable operators that become providers of

[733] SBA RFA comments at 7–8, *citing* 5 U.S.C. 603(c).

[734] Idaho Commission comments at 15.

[735] SCBA RFA comments at 1.

[736] *Id.* at 1–2.

[737] NPRM, summarized at 61 FR 18311, 18312 (April 25, 1996).

[738] 47 U.S.C. 251(f).

[739] *See* SBA RFA comments; Rural Tel. Coalition reply at 38–41; Idaho Public Utilities Commission comments at 15; SCBA RFA comments; CompTel reply at 45–46.

[740] SBA RFA comments at 2.

[741] *See, e.g., Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites*, 86 F.C.C.2d 719, 755 (1981).

[742] *See* 5 U.S.C. 603 (IRFA requirements).

[743] *See Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524–25 (1978) (*citing FCC* v. *Schreiber*, 381 U.S. 279, 290 (1965) and *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940)).

[744] *NPRM* paras. 189–190.

[745] *NPRM* para. 277.

local exchange service. The *NPRM* even identifies cable operators as potential new entrants.[746] Thus, the record shows that we have identified small cable operators as entities that would be affected by the proposed rules.

C. Description and Estimate of the Small Entities Subject to the Rules

361. The RFA defines "small entity" to include the definition of "small business concern" under the Small Business Act, 15 U.S.C. 632.[747] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration.[748] The SBA has defined companies listed under Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications)[749] and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[750] The SBA has defined companies listed under the SIC category 7379 (Business Services, not otherwise classified) to be small entities when they have annual receipts of less than five million dollars.[751] These standards also apply in determining whether an entity is a small business for purposes of the RFA.

362. The rules we adopt today regarding dialing parity and nondiscriminatory access apply to all LECs. The rules regarding public disclosure of changes to local networks apply to all incumbent LECs. Finally, the rules regarding numbering administration impose financial obligations on all telecommunications carriers. These rules also affect IXCs, providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under § 90.629 of the Commission's rules,[752] which may be small business concerns. However, these rules will apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network. Additional business entities affected by this rulemaking include providers of telephone toll service, providers of telephone exchange service, independent operator service providers, independent directory assistance providers, independent directory listing providers, independent directory database managers, and resellers of these services. These entities could be small business concerns.

363. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."[753]

364. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies, SIC category 4813. For the purposes of revenue reporting, 1,347 companies reported doing business as LECs at the end of 1994.[754] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with any more particularity the number of LECs that would qualify as small business concerns. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this *Order*.

365. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities that would apply specifically to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies, SIC category 4813. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with Telecommunications Relay Service (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.[755] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXCs that may be affected by the decisions and rules adopted in this *Order*.

366. *Cellular Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data 789 companies reported that they were engaged in the provision of cellular services.[756] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decision and rules adopted in this *Order*.

367. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.[757] The

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[746] *NPRM* para. 6.

[747] *See* 5 U.S.C. 601(6) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

[748] *See* 15 U.S.C. 632(1)(a).

[749] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[750] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4813.

[751] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 7379.

[752] 47 CFR 90.629.

[753] *See* 13 CFR § 121.210 (SIC 4813).

[754] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (February 1996).

[755] *Id.*

[756] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[757] *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994) 59 FR 37566 (July 22, 1994).

Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this *Order* includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

368. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. A total of 1,479 licenses will be awarded, however, in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. We cannot estimate the number of these licenses that will be won by small entities, nor how many small entities will win D or E Block licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees[758] and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA. Broadband PCS licensees are affected by the decisions and rules adopted in this *Order* to the extent that they provide telephone exchange service.

369. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[759]

370. The rule adopted in this *Order* applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Since the RFA amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Order.*

371. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA definition will win these licenses. Because nearly all radiotelephone companies have fewer than 1,000 employees and no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as defined by the SBA. Those SMR licensees that provide telephone exchange service will be affected by the decisions in this *Order.*

372. *Providers of Telephone Toll Service, Providers of Telephone Exchange Service.* Neither the Commission nor the SBA has developed a definition of small entities applicable to providers of telephone toll service and telephone exchange service. According to the 1992 Census, there were approximately 3,497 firms engaged in providing telephone services, as defined therein, for at least a year.[760] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, providers of telephone toll service, providers of telephone exchange service, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small businesses because they are not "independently owned and operated."[761] It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are providers of telephone toll service or providers of telephone exchange service and are small entities that may be affected by this *Order.*

373. *Independent Operator Service Providers, Independent Directory Assistance Providers, Independent Directory Listing Providers, and Independent Directory Database Managers.* We were unable to obtain reliable data regarding the number of entities that provide these telecommunications services or how many of these are small entities. The Commission has not developed a definition of small entities applicable to telecommunications service providers. Therefore, the closest applicable definition of a small entity providing telecommunications services is the definition under SBA rules applicable to business services companies, SIC 7389, which defines a small entity to be a business services company with annual receipts of less than five million dollars. U.S. Census data provides that 46,289 firms providing business services had annual receipts of 5 million dollars or less.[762] Because it seems unlikely that all of the business services firms would meet the other criteria, it seems reasonable to conclude that fewer than 46,289 firms may be small entities that might be affected by our *Order.*

374. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest

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[758] *See* United States Department of Commerce, Bureau of the Census, *Standard Industrial Classification Manual* (1992) (*1992 Census*) SIC Code 4812.

[759] *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool,* PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693–702 (1995) 60 FR 48913 (September 21, 1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band,* PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995) 61 FR 6212 (February 16, 1996).

[760] *See* United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities; Establishment and Firm Size,* at Firm Size 1–123 (1995) (*1992 Census*).

[761] 15 U.S.C. 632(a)(1).

[762] *1992 Census,* Table 2D, SIC Code 7389.

applicable SBA definition for a reseller is a telephone communications company, SIC category 4813. However, the most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with TRS. For the purposes of revenue reporting, 206 companies reported doing business as resellers at the end of 1994.[763] Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small entities or small incumbent LEC concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this *Order*.

375. *Telephone Companies.* U.S. Census data provides that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least a year.[764] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service, carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, providers of telephone toll service, providers of telephone exchange service, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small businesses because they are not "independently owned and operated."[765] It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are telephone companies and small entities that may be affected by this *Order*.

376. *Cable System Operators.* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenues annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[766] The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation, which has been approved by SBA.[767] Under the Commission's rules, a "small cable company is one serving fewer than 400,000 subscribers nationwide." Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with the other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the decisions and rules adopted in this *Order*.

377. The Communications Act of 1934 also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[768] There were 63,196,310 basic cable subscribers at the end of 1995, and 1,450 cable system operators serving fewer than 1 percent (631,960) of subscribers.[769] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable systems operators that would qualify as small cable operators under the definition in the Communications Act of 1934.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements and Their Effect on Small Businesses and Steps Taken to Minimize the Significant Economic Impact on Small Entities and Alternatives Considered

378. *Structure of the Analysis.* In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this *Order*.[770] As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected.[771] Due to the size of this *Order*, we set forth our analysis separately for individual sections of the *Order*, using the same headings as were used above in the corresponding sections of the *Order*.

379. To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this *Order*, the rules and statements set forth in those preceding sections shall be controlling.

380. *Dialing Parity Requirements.* The dialing parity provisions of section 251(b)(3) entitle customers to choose different carriers for their local exchange, intraLATA toll, and interLATA toll services without the burden of dialing access codes. Each LEC is required to provide dialing parity to providers of telephone exchange and telephone toll service with respect to all telecommunications services that require dialing to route a call. This obligation encompasses international, interstate, intrastate, local and toll services.

381. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In order to comply with the guidelines and minimum federal standards established in this *Order*, each LEC must implement toll dialing parity utilizing the "full 2–PIC" presubscription method and following the mandated timetable for implementation of toll dialing parity. Although no timetable was adopted for implementing local dialing parity it is expected that it will be achieved through LECs' compliance with other section 251 requirements. LECs may recover the incremental costs of implementing local and toll dialing parity such as the costs of dialing parity-specific switch software, hardware, signalling system upgrades and necessary consumer education. These costs will be recovered from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including the LEC, through the use of a competitively-neutral allocator established by each state. Compliance with these

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[763] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (February 1996).

[764] *See* United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities; Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[765] 15 U.S.C. 632(a)(1).

[766] *1992 Census, supra*, at Firm Size 1–123.

[767] Small Bus. Admin., *13 CFR part 121—Small Business Size Regulations*, Proposed Rules, 60 FR 57982, 57988 (November 24, 1995).

[768] 47 U.S.C. § 543(m)(2).

[769] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for December 30, 1995).

[770] *See* 5 U.S.C. 604(a)(4).

[771] *See* 5 U.S.C. 604(a)(5).

requirements may entail the use of engineering, technical, operational, and accounting skills.

382. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* This *Order* adopts broad guidelines and minimum federal standards for toll dialing parity so that LECs and competing providers of telephone toll service, many of whom will be small business entities, will not be subject to an array of differing state standards and timetables requiring them to research and tailor their operations to the unique requirements of each state.

383. First, we required all LECs to implement toll dialing parity based on LATA boundaries.[772] Non-BOC LECs, including many smaller LECs, that implement intraLATA and interLATA toll dialing parity may choose whichever LATA within their state that they deem to be most appropriate to define the area within which they will offer intraLATA toll dialing parity. State commissions, in ruling upon such a choice of LATA association, shall determine whether the proposed LATA association is in the public interest. Because many smaller LECs have not been subject to LATA boundary distinctions, we also gave states the flexibility to take such factors into account and to require that toll dialing parity be based on state rather than LATA boundaries in their jurisdictions. Insofar as a state determines that presubscription should occur along state, rather than LATA, boundaries, we anticipate that such a determination will assist smaller LECs, in particular, by permitting those LECs to define their service markets based on a geographic distinction that is familiar to consumers.

384. In addition, we adopted the "full 2–PIC" nationwide presubscription method for implementing the toll dialing parity requirements.[773] In making this decision we considered a number of methodologies, including the "modified 2–PIC," "the multi-PIC" and the "smart-PIC" methods. We concluded that the "modified 2–PIC" would limit the number of competitive service providers that could participate in the market and that the "multi-PIC" method had not yet proven to be technically and economically feasible. As the "full 2–PIC" method is widely available and well defined, we noted that LECs, many of which are small entities, would not be forced to purchase and maintain an expensive, untested, and new technology. The *Order* provides that, until the Commission considers the use of the "multi-PIC" or "smart-PIC methods," states may impose such additional requirements only after evaluating the technical feasibility and economic impact of those requirements on smaller LECs in their jurisdictions.

385. We instituted a federal toll dialing parity implementation schedule rather than allowing states to implement their own schedules.[774] This federally-mandated plan will provide certainty for competitors, some of which may be small business entities, seeking to become telephone toll service providers. Both LECs and competing providers of telephone toll service will be able to develop business plans and advertising strategies based upon specific timelines. This ability to plan ahead is cost-efficient and levels the playing field for all seeking to participate in the marketplace.

386. We also concluded that a LEC may not accomplish toll dialing parity by automatically assigning toll customers to itself, to a customer's currently presubscribed interLATA or interstate toll carrier, or to any other carrier except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same interLATA and intraLATA, or interstate and intrastate, presubscribed carrier.[775] This requirement prevents a carrier from automatically designating itself as a toll carrier without notifying the customer of the opportunity to choose an alternative carrier, one or more of which may be a small business.

387. Lastly, we implemented national rules for the recovery of dialing parity costs.[776] Although it was suggested that these costs be borne only by new entrants, and not incumbent LECs, we determined that the network upgrades necessary to achieve dialing parity should be recovered on a competitively-neutral basis. A competitively neutral cost recovery mechanism prevents incumbent LECs from imposing excessive fees upon competing entrants, some of which may be small businesses. The imposition of excessive fees could constitute an impediment to entry into the intraLATA toll market by small entities that lack extensive financial resources and could reinforce the marketplace dominance of established LECs. A competitively-neutral cost recovery mechanism also benefits small LECs that might otherwise have been unduly burdened by a cost allocation plan requiring an equal payment from each entity.

388. *Nondiscriminatory Access Provisions.* Under section 251(b)(3), all LECs are required to allow competing providers of telephone exchange service and telephone toll service access to telephone numbers, operator services, directory assistance, and directory listings that is at least equal in quality to the access the LEC itself receives, without unreasonable dialing delays. LECs are required to make available to competing providers operator services and directory assistance and all adjunct features necessary for the use of these services.

389. *Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In order to comply with the nondiscriminatory access provisions all LECs must share subscriber listing information with their competitors in "readily accessible" tape or electronic formats. This information must be provided upon request and in a timely manner.[777] In addition, each LEC must process all calls from competing providers, including calls to the LEC's operator services and directory assistance, on an equal basis as calls originating from the providing LEC.[778] LECs that refuse to comply with reasonable, technically feasible requests from competing providers for "rebranding" of resold operator services or directory assistance are presumed to be unlawfully restricting access to these services.[779] Compliance with these requests may require the use of engineering, computer, accounting, and legal skills.

390. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* The entitlement to access, on a nondiscriminatory basis, to telephone numbers, operator services, directory assistance and directory listings will benefit providers competing with incumbent LECs. Many of these competitors will be small business entities. The requirement that LECs make their operator assistance and directory listing services available to competitors may allow those competitors to save the time and money it would take to build similar information resources. Additionally, these competing providers will benefit because they will be able to offer consumers at least the same quality of operator service and directory assistance that is provided by the established LEC.

[772] *See supra* para. 37.

[773] *See supra* paras. 49–50.

[774] *See supra* para. 62.

[775] *See supra* para. 81.

[776] *See supra* para. 92.

[777] *See supra* para. 141.

[778] *See supra* para. 159.

[779] *See supra* paras. 128, 148.

Small entities will be able to compete with established LECs more quickly and with less initial investment. Their services will have an opportunity to become equally valuable and equally marketable to consumers. We have declined to support alternatives that would have allowed LECs to degrade or limit access to these services, because such behavior would bar competitive entry into the telecommunications services market.

391. *Network Disclosure.* Pursuant to section 251(c)(5) incumbent LECs are required to provide "reasonable public notice" of changes in their network which would affect a competing service provider's performance or ability to provide service or otherwise affect carriers' interoperability. The types of changes that incumbent LECs must disclose include, but are not limited to, changes that affect transmission, signalling standards, call routing, network configuration, electronic interfaces or data elements.

392. *Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* To implement this disclosure requirement, this *Order* imposes a new filing requirement on incumbent LECs that plan to make changes to their networks. An incumbent LEC has a choice of filing certain information with the Commission or of filing a short certification with the Commission that the equivalent information has been disclosed elsewhere. In either case, the incumbent LEC is also responsible for maintaining the accuracy of the information. Compliance with this requirement may require the use of engineering, technical, computer, and legal skills.

393. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* This recordkeeping submission requirement should, in fact, ease the burden on smaller entities in their endeavor to remain abreast of changes to the incumbent LEC network with which they interconnect. In our *Order*, we authorize the use of industry forums, industry publications, and the Internet, to make public disclosure of network changes and required technical information by incumbent LECs. We believe that "this approach would build on a voluntary practice that now exists in the industry and would result in broad availability of the information."[780] By making information broadly available, we hope to facilitate the participation of entities, such as small businesses, that lack the resources to participate in industry forums. We originally postulated that public notice should be provided exclusively through industry fora or industry publications.[781] Upon further consideration, however, we broadened the means by which an incumbent LEC could satisfy our public notice requirement to include two alternative low-cost mechanisms—use of the Internet or filing with the Commission.[782] These additional options will be beneficial to small incumbent LECs because they will allow those small LECs to meet their network disclosure obligations without incurring the costs associated with attending industry conferences or publishing the information in an industry magazine or journal.

394. *Numbering Administration.* Section 251(e) confers upon the Commission exclusive authority over all matters relating to the administration of numbering resources that pertain to the United States. To implement section 251(e)(1) the Commission plans to designate a North American Numbering Plan (NANP) Administrator that will administer telecommunications numbering in the United States equitably and impartially. Pursuant to 251(e)(2) the cost of establishing and maintaining the NANP Administrator will be borne by all telecommunications carriers on a competitively neutral basis.

395. *Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The Commission has authorized state public utility commissions to perform the task of implementing new area codes subject to Commission guidelines. If a state commission chooses to initiate and plan area code relief, it must inform the NANP Administrator of the functions the commission will perform. All telecommunications carriers will be required to contribute to the costs of establishing numbering administration. Compliance with this requirement will require engineering, technical, operational, and accounting skills.

396. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* Although the Commission has authorized states to implement new area codes, it has stipulated that states may not implement them in a manner that will unduly favor or disadvantage any particular industry segment or group of consumers.[783] Accordingly, the Commission has prohibited service-specific or technology specific area code overlays, because they would exclude certain services or carriers, that may be small business entities, from the existing area code and would segregate their operations in a new area code.[784] If states choose to implement all-service overlays, the Commission has required that there be 10-digit dialing for all local calls in areas served by such overlays to ensure that competition will not be deterred as a result of dialing disparity.[785] Without mandatory 10-digit dialing, customers might find it less attractive to switch carriers because competing LECs, many of which may be new entrants to the market and may include small businesses, would have to assign their customers numbers in the new overlay area code. This would require those customers to dial 10 digits much more often than the incumbents' customers. Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-service area code overlays. In addition, to advance competition, the Commission has required that where an area code overlay is implemented, every entity authorized to provide local exchange service in the old area code, which may include small businesses, must be assigned at least one NXX in that area code.

397. Under the 1996 Act each telecommunications carrier must contribute to cover the cost of numbering administration. Many alternatives for allocating these costs were considered to ensure that each carrier would contribute to a fund to cover the cost of numbering administration on a competitively neutral basis. The contributions will be based on the carrier's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services or facilities that are paid to other telecommunications carriers. Such a competitively neutral cost allocation plan benefits small incumbent LECs that might have been unduly burdened by a cost apportionment plan requiring an equal payment from each entity.[786]

E. Report to Congress

398. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA will

[780] *NPRM* at para. 191.

[781] *See supra* para. 192.

[782] *See supra* para. 198.

[783] *See supra* para. 281.

[784] *See supra* para. 285.

[785] *See supra* para. 286.

[786] *See supra* para. 343.

also be published in the **Federal Register**.

VII. Ordering Clauses

Pursuant to sections 1–4, 201–209, 214, 218, 224, 251, 252, 303(r) and 332 of the Communications Act of 1934, as amended, and Section 601 of the Telecommunications Act of 1996, 47 U.S.C. 151–154, 201–209, 214, 218, 224, 251, 252, 303(r), and 332, parts 51 and 52 of the Commission's rules, 47 CFR parts 51, 52 are amended as set forth below.

400. It is further ordered that the policies, rules, and requirements set forth herein are adopted as set forth below.

401. It is further ordered, pursuant to sections 416(a) and 413 of the Communications Act of 1934, as amended, 47 U.S.C. 416(a) and 413, that the Secretary shall serve this *Second Report and Order and Memorandum Opinion and Order* on all local exchange carriers, as defined in section 3(26) of the Communications Act of 1934, as amended, 47 U.S.C. 153(26), that have designated in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and requirements of the Commission may be made for and on behalf of the local exchange carrier, as required by section 413 of the Communications Act of 1934, as amended, 47 U.S.C. 413.

402. It is further ordered that, pursuant to the authority contained in section 408 of the Communications Act, as amended, 47 U.S.C. 408, all authorizations for state commissions, Bellcore, and local administrators, including LECs, to perform certain numbering administration functions, consistent with the terms as defined in this *Order*, are effective August 8, 1996. Because of the need to avoid disruption in numbering administration, we find that there is good cause for this action pursuant to 5 U.S.C. 553(d)(3). All other policies, rules, and requirements set forth herein are effective October 7, 1996, except for collections of information subject to approval by the Office of Management and Budget ("OMB"), which are effective November 15, 1996.

403. It is further ordered that, pursuant to sections 4, 5, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 155, and 405, *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech—Illinois*, IAD File no. 94–102, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995) IS CLARIFIED to the extent indicated herein at paragraph numbers 281–293.

404. It is further ordered that, pursuant to the authority contained in sections 4(i), 251(e)(1), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 251(e)(1) and 405, Comcast Corporation's Petition for Clarification or Reconsideration of *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech—Illinois*, IAD File no. 94–102, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995), IS DISMISSED as moot.

405. It is further ordered that, pursuant to the authority contained in sections 4(i), 251(e)(1), and 405 of the Communications Act, as amended, 47 U.S.C. 154(i), 251(e)(1), and 405, the Petition for Limited Clarification and/or Reconsideration filed by the Pennsylvania Public Utilities Commission and the Request for Clarification filed by the National Association of Regulatory Utility Commissioners of *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 92–237, Report and Order, 11 FCC Rcd 2588 (1995) are hereby dismissed.

406. It is further ordered that the relief requested in the petition for declaratory ruling filed by the Texas Public Utilities Commission is denied.

407. It is further ordered that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), authority is delegated to the Chief, Common Carrier Bureau, to act on petitions filed by parties wishing to dispute proposed area code plans, to act on toll dialing parity implementation plans filed by LECs seeking to implement toll dialing parity, and to issue orders fixing reasonable public notice periods in the case of contested short term disclosure by incumbent local exchange carriers of network changes under 251(c)(5).

408. It is further ordered that, to the extent that issues from CC Docket No. 95–185, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers*, are resolved here, we incorporate the relevant portions of the record in that docket pertaining to paging carriers being charged fees for the opening of central office codes and for blocks of numbers.

List of Subjects

47 CFR Part 51

Collocation, Interconnection, Network elements, Pricing standard, Proxies, Reciprocal compensation, Resale, Transport and termination.

47 CFR Part 52

Area codes, Cost recovery, Database architecture and administration, Local exchange carrier, Local number portability, Long-term database methods, Numbering, Telecommunications, Transitional methods.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Note: This attachment will not be published in the Code of Federal Regulations.

Attachment—List of Parties

Comments: (Filed on or Before May 20, 1996)

American Communications Services, Inc. (ACSI)
Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T Corporation (AT&T)
Beehive Telephone Company, Inc. (Beehive)
Bell Atlantic Telephone Companies (Bell Atlantic)
BellSouth Corporation (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
Cincinnati Bell Telephone Company (CBT)
Citizens Utilities Company (Citizens Utilities)
Cox Communications, Inc. (Cox)
District of Columbia Public Service Commission (District of Columbia Commission)
Excel Telecommunications (Excel)
Florida Public Service Commission (Florida Commission)
Frontier Corporation (Frontier)
General Communication, Inc. (GCI)
General Services Administration/Department of Defense (GSA/DOD)
GTE Service Corporation (GTE)
GVNW Inc./Management (GVNW)
Illinois Commerce Commission (Illinois Commission)
Indiana Utility Regulatory Commission (Indiana Commission Staff)
Lincoln Telephone and Telegraph Company (Lincoln Telephone)
Louisiana Public Service Commission (LPSC)
MCI Telecommunications Corporation (MCI)
MFS Communications Company, Inc. (MFS)
Michigan Public Service Commission (Michigan Commission Staff)
National Cable Television Association, Inc. (NCTA)
New Jersey, Staff of Board of Public Utilities (New Jersey Commission)
NEXTLINK Communications, L.L.C. (NEXTLINK)
Northern Telecom inc. (Nortel)
NYNEX Telephone Companies (NYNEX)
Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel)
Omnipoint Communications, Inc. (Omnipoint)
Pacific Telesis Group (PacTel)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (Pennsylvania Commission)
People of the State of California and the Public Utility Commission of the State of California (California Commission)

Public Utilities Commission of Ohio (Ohio Commission)
Rural Telephone Coalition (Rural Tel. Coalition)
SBC Communications Inc. (SBC)
Small Cable Business Association (SCBA)
Sprint Corporation (Sprint)
Telecommunications Resellers Association
Telecommunications Carriers for Competition (TCC)
Teleport Communications Group Inc. (Teleport)
Texas Public Utilities Commission (Texas Commission)
The Western Alliance (Western Alliance)
Time Warner Communications Holdings, Inc. (Time Warner)
U S WEST, Inc. (U S WEST)
United States Telephone Association (USTA)
Vanguard Cellular Systems, Inc. (Vanguard)
WinStar Communications, Inc. (WinStar)

Replies: (Filed on or Before June 3, 1996)

A-Plus Network, Inc. (A-Plus)
ACSI
American Electric Power Service Corp.
Ameritech
AT&T
Bell Atlantic
Bell Atlantic/NYNEX Mobile
BellSouth
California Commission
Carolina Power and Light Co.
CBT
Citizens Utilities
Consolidated Edison Company of New York (Con Ed)
Cox
Delmarva Power and Light (Delmarva)
District of Columbia Commission
General Communication, Inc. (GCI)
GSA/DOD
GTE Service Corporation (GTE)
Iowa Network Services, Inc., SDN Inc., and KIN Network, Inc. (Iowa Network Services)
Joint Cable Companies
Koch
MCI
MFS
Minnesota Independant Equal Access Corporation (MIEAC)
Motorola, Inc.
Municipal Utilities
National Exchange Carriers Association (NECA)
NCTA
New England Electric Companies
New Mexico Public Service Corporation
NEXTLINK
NYNEX
Ohio Consumers' Counsel
Ohio Edison Company
PacTel
PageNet
Puerto Rico Telephone Company
Rural Tel. Coalition
SBC
Sprint
TCC
Telecommunications Resellers Association
Teleport
U S WEST
USTA
Vanguard
Western Alliance
WinStar

Parties Filing Comments in the Texas PUC Matter

Comments

AT&T
BellSouth
Century Cellunet, Inc. (Century Cellunet)
Competitive Telecommunications Association (Com. Tel)
Cox
GTE
Houston Cellular Telephone Company (HCTC)
Intelcom Group (U.S.A.), Inc. (Intelcom)
MCI
MFS
Nextel Communications, Inc. (Nextel)
PageNet
Personal Communications Industry Association (PCIA)
ProNet, Inc. (ProNet)
SBC
Sprint Spectrum
Sprint
Teleport
US West
Vanguard

Reply Comments

BellSouth
CTIA
MCI
Omnipoint Communications, Inc. (Omnipoint)
ProNet
SBC
Sprint
Teleport
Texas Commission
Texas Office of Public Utility Counsel (Texas Public Utility Counsel)
U S WEST
Vanguard

Parties Filing Comments in CC Docket No. 95–185

Arch Communications Group, Inc.
AirTouch Communications
PageNet

Rule Changes

Parts 51 and 52 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 51—INTERCONNECTION

1. The authority citation for part 51 is revised to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 271, 332, unless otherwise noted.

2. Section 51.5 is amended by adding the following definitions in alphabetical order to read as follows:

§ 51.5 Terms and definitions.

* * * * *

Dialing Parity. The term "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications service providers (including such local exchange carrier).

* * * * *

Information services. The term "information services" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

* * * * *

Local Access and Transport Area (LATA). A "Local Access and Transport Area" is a contiguous geographic area—

(1) Established before February 8, 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(2) Established or modified by a Bell operating company after February 8, 1996 and approved by the Commission.

* * * * *

Service provider. A "service provider" is a provider of telecommunications services or a provider of information services.

* * * * *

State. The term "state" includes the District of Columbia and the Territories and possessions.

* * * * *

Telecommunications service. The term "telecommunications service" refers to the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telephone exchange service. A "telephone exchange service" is:

(1) A service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or

(2) A comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by

which a subscriber can originate and terminate a telecommunications service.

Telephone toll service. The term "telephone toll service" refers to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

Unreasonable dialing delay. For the same type of calls, dialing delay is "unreasonable" when the dialing delay experienced by the customer of a competing provider is greater than that experienced by a customer of the LEC providing dialing parity, or nondiscriminatory access to operator services or directory assistance.

* * * * *

3. A new § 51.205 is added to subpart C to read as follows:

§ 51.205 Dialing parity: general.

A local exchange carrier (LEC) shall provide local and toll dialing parity to competing providers of telephone exchange service or telephone toll service, with no unreasonable dialing delays. Dialing parity shall be provided for all originating telecommunications services that require dialing to route a call.

4. A new § 51.207 is added to subpart C to read as follows:

§ 51.207 Local dialing parity.

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

5. A new § 51.209 is added to subpart C read as follows:

§ 51.209 Toll dialing parity.

(a) A LEC shall implement throughout each state in which it offers telephone exchange service intraLATA and interLATA toll dialing parity based on LATA boundaries. When a single LATA covers more than one state, the LEC shall use the implementation procedures that each state has approved for the LEC within that state's borders.

(b) A LEC shall implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically. LECs shall allow a customer to presubscribe, at a minimum, to one telecommunications carrier for all interLATA toll calls and to presubscribe to the same or to another telecommunications carrier for all intraLATA toll calls.

(c) A LEC may not assign automatically a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, to the customer's presubscribed interLATA or interstate toll carrier, or to any other carrier, except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same presubscribed carrier for both intraLATA and interLATA toll calls.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, states may require that toll dialing parity be based on state boundaries if it deems that the provision of intrastate and interstate toll dialing parity is procompetitive and otherwise in the public interest.

6. A new § 51.211 is added to subpart C to read as follows:

§ 51.211 Toll dialing parity implementation schedule.

(a) A LEC that does not begin providing in-region, interLATA or in-region, interstate toll services in a state before February 8, 1999, must implement intraLATA and interLATA toll dialing parity throughout that state on February 8, 1999 or an earlier date as the state may determine, consistent with section 271(e)(2)(B) of the Communications Act of 1934, as amended, to be in the public interest.

(b) A Bell Operating Company (BOC) that provides in-region, interLATA toll services in a state before February 8, 1999 shall provide intraLATA toll dialing parity throughout that state coincident with its provision of in-region, interLATA toll services.

(c) A LEC that is not a BOC that begins providing in-region, interLATA or in-region, interstate toll services in a state before August 8, 1997, shall implement intraLATA and interLATA toll dialing parity throughout that state by August 8, 1997. If the LEC is unable to comply with the August 8, 1997 implementation deadline, the LEC must notify the Commission's Common Carrier Bureau by May 8, 1997. In the notification, the LEC must state its justification for noncompliance and must set forth the date by which it proposes to implement intraLATA and interLATA toll dialing parity.

(d) A LEC that is not a BOC that begins providing in-region, interLATA or in-region, interstate toll services in a state on or after August 8, 1997, but before February 8, 1999 shall implement intraLATA and interLATA toll dialing parity throughout that state no later than the date on which it begins providing in-region, interLATA or in-region, interstate toll services.

(e) Notwithstanding the requirements of paragraphs (a) through (d) of this section, a LEC shall implement toll dialing parity under a state order as described below:

(1) If the state issued a dialing parity order by December 19, 1995 requiring a BOC to implement toll dialing parity in advance of the dates established by these rules, the BOC must implement toll dialing parity in accordance with the implementation dates established by the state order.

(2) If the state issued a dialing parity order by August 8, 1996 requiring a LEC that is not a BOC to implement toll dialing parity in advance of the dates established by these rules, the LEC must implement toll dialing parity in accordance with the implementation dates established by the state order.

(f) For LECs that are not Bell Operating Companies, the term *in-region, interLATA toll service*, as used in this section and § 51.213, includes the provision of toll services outside of the LEC's study area.

7. A new § 51.213 is added to subpart C to read as follows:

§ 51.213 Toll dialing parity implementation plans.

(a) A LEC must file a plan for providing intraLATA toll dialing parity throughout each state in which it offers telephone exchange service. A LEC cannot offer intraLATA toll dialing parity within a state until the implementation plan has been approved by the appropriate state commission or the Commission.

(b) A LEC's implementation plan must include:

(1) A proposal that explains how the LEC will offer intraLATA toll dialing parity for each exchange that the LEC operates in the state, in accordance with the provisions of this section, and a proposed time schedule for implementation; and

(2) A proposal for timely notification of its subscribers and the methods it proposes to use to enable subscribers to affirmatively select an intraLATA toll service provider.

(3) A LEC that is not a BOC also shall identify the LATA with which it will associate for the purposes of providing intraLATA and interLATA toll dialing parity under this subpart.

(c) A LEC must file its implementation plan with the state commission for each state in which the LEC provides telephone exchange service, except that if a LEC determines that a state commission has elected not to review the plan or will not complete its review in sufficient time for the LEC to meet the toll dialing parity

implementation deadlines in § 51.211, the LEC must file its plan with the Commission:

(1) No later than 180 days before the date on which the LEC will begin providing toll dialing parity in the state, or no later than 180 days before February 8, 1999, whichever occurs first; or

(2) For LECs that begin providing in-region, interLATA or in-region, interstate toll service (*see* § 51.211(f)) before August 8, 1997, no later than December 5, 1996.

(d) The Commission will release a public notice of any LEC implementation plan that is filed with the Commission under paragraph (c) of this section.

(1) The LEC's plan will be deemed approved on the fifteenth day following release of the Commission's public notice unless, no later than the fourteenth day following the release of the Commission's public notice; either

(i) The Common Carrier Bureau notifies the LEC that its plan will not be deemed approved on the fifteenth day; or

(ii) An opposition to the plan is filed with the Commission and served on the LEC that filed the plan. Such an opposition must state specific reasons why the LEC's plan does not serve the public interest.

(2) If one or more oppositions are filed, the LEC that filed the plan will have seven additional days (*i.e.*, until no later than the twenty-first day following the release of the Commission's public notice) within which to file a reply to the opposition(s) and serve it on all parties that filed an opposition. The response shall:

(i) Include information responsive to the allegations and concerns identified by the opposing party; and

(ii) Identify possible revisions to the plan that will address the opposing party's concerns.

(3) If a LEC's plan is opposed under paragraph (d)(1)(ii) of this section, the Common Carrier Bureau will act on the plan within ninety days of the date on which the Commission released its public notice. In the event the Bureau fails to act within ninety days, the plan will not go into effect pending Bureau action. If the plan is not opposed, but it did not go into effect on the fifteenth day following the release of the Commission's public notice (*see* paragraph (d)(1)(i) of this section), and the Common Carrier Bureau fails to act on the plan within ninety days of the date on which the Commission released its public notice, the plan will be deemed approved without further Commission action on the ninety-first day after the date on which the Commission released its public notice of the plan's filing.

8. A new § 51.215 is added to subpart C to read as follows:

§ 51.215 Dialing parity: cost recovery.

(a) A LEC may recover the incremental costs necessary for the implementation of toll dialing parity. The LEC must recover such costs from all providers of telephone exchange service and telephone toll service in the area served by the LEC, including that LEC. The LEC shall use a cost recovery mechanism established by the state.

(b) Any cost recovery mechanism for the provision of toll dialing parity pursuant to this section that a state adopts must not:

(1) Give one service provider an appreciable cost advantage over another service provider, when competing for a specific subscriber (*i.e.*, the recovery mechanism may not have a disparate effect on the incremental costs of competing service providers seeking to serve the same customer); or

(2) Have a disparate effect on the ability of competing service providers to earn a normal return on their investment.

9. A new § 51.217 is added to subpart C to read as follows:

§ 51.217 Nondiscriminatory access: Telephone numbers, operator services, directory assistance services, and directory listings.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Competing provider.* A "competing provider" is a provider of telephone exchange or telephone toll services that seeks nondiscriminatory access from a local exchange carrier (LEC) in that LEC's service area.

(2) *Nondiscriminatory access.* "Nondiscriminatory access" refers to access to telephone numbers, operator services, directory assistance and directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives. Nondiscriminatory access includes, but is not limited to:

(i) Nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided; and

(ii) The ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC.

(3) *Providing local exchange carrier* (LEC). A "providing local exchange carrier" is a local exchange carrier (LEC) that is required to permit nondiscriminatory access to a competing provider.

(b) *General rule.* A local exchange carrier (LEC) that provides operator services, directory assistance services or directory listings to its customers, or provides telephone numbers, shall permit competing providers of telephone exchange service or telephone toll service to have nondiscriminatory access to that service or feature, with no unreasonable dialing delays.

(c) *Specific requirements.* A LEC subject to paragraph (b) of this section must also comply with the following requirements:

(1) *Telephone numbers.* A LEC shall permit competing providers to have access to telephone numbers that is identical to the access that the LEC provides to itself.

(2) *Operator services.* A LEC must permit telephone service customers to connect to the operator services offered by that customer's chosen local service provider by dialing "0," or "0" plus the desired telephone number, regardless of the identity of the customer's local telephone service provider.

(3) *Directory assistance services and directory listings.*—(i) *Access to directory assistance.* A LEC shall permit competing providers to have access to its directory assistance services so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iii) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested.

(ii) *Access to directory listings.* A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion upon request. A LEC also must permit competing providers to have access to and read the information in the LEC's directory assistance databases.

(iii) *Unlisted numbers.* A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available. The LEC shall ensure that access is permitted only to the same directory information that is available to its own directory assistance customers.

(iv) *Adjuncts to services.* Operator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (*e.g.*, rating tables or customer information databases) necessary to allow competing providers full use of these services.

(d) *Branding of operator services and directory assistance services.* The refusal of a providing local exchange

carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request.

(e) *Disputes.*—(1) *Disputes involving nondiscriminatory access.* In disputes involving nondiscriminatory access to operator services, directory assistance services, or directory listings, a providing LEC shall bear the burden of demonstrating with specificity:

(i) That it is permitting nondiscriminatory access, and

(ii) That any disparity in access is not caused by factors within its control. "Factors within its control" include, but are not limited to, physical facilities, staffing, the ordering of supplies or equipment, and maintenance.

(2) *Disputes involving unreasonable dialing delay.* In disputes between providing local exchange carriers (LECs) and competing providers involving unreasonable dialing delay in the provision of access to operator services and directory assistance, the burden of proof is on the providing LEC to demonstrate with specificity that it is processing the calls of the competing provider's customers on terms equal to that of similar calls from the providing LEC's own customers.

10. Section 51.305 is amended by adding a new paragraph (g) to read as follows:

§ 51.305 Interconnection.

* * * * *

(g) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.

11. Section 51.307 is amended by adding a new paragraph (e) to read as follows:

§ 51.307 Duty to provide access on an unbundled basis to network elements.

* * * * *

(e) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section.

12. A new § 51.325 is added to subpart D to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) An incumbent local exchange carrier ("LEC") must provide public notice regarding any network change that:

(1) Will affect a competing service provider's performance or ability to provide service; or

(2) Will affect the incumbent LEC's interoperability with other service providers.

(b) For purposes of this section, *interoperability* means the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

(c) Until public notice has been given in accordance with §§ 51.325 through 51.335, an incumbent LEC may not disclose to separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors), information about planned network changes that are subject to this section.

(d) For the purposes of §§ 51.325 through 51.335, the term *services* means telecommunications services or information services.

13. A new § 51.327 is added to subpart D to read as follows:

§ 51.327 Notice of network changes: content of notice.

(a) Public notice of planned network changes must, at a minimum, include:

(1) The carrier's name and address;

(2) The name and telephone number of a contact person who can supply additional information regarding the planned changes;

(3) The implementation date of the planned changes;

(4) The location(s) at which the changes will occur;

(5) A description of the type of changes planned (Information provided to satisfy this requirement must include, as applicable, but is not limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and

(6) A description of the reasonably foreseeable impact of the planned changes.

(b) The incumbent LEC also shall follow, as necessary, procedures relating to confidential or proprietary information contained in § 51.335.

14. A new § 51.329 is added to subpart D read as follows:

§ 51.329 Notice of network changes: Methods for providing notice.

(a) In providing the required notice to the public of network changes, an incumbent LEC may use one of the following methods:

(1) Filing a public notice with the Commission; or

(2) Providing public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. If an incumbent LEC uses any of the methods specified in paragraph (a)(2) of this section, it also must file a certification with the Commission that includes:

(i) A statement that identifies the proposed changes;

(ii) A statement that public notice has been given in compliance with §§ 51.325 through 51.335; and

(iii) A statement identifying the location of the change information and describing how this information can be obtained.

(b) Until the planned change is implemented, an incumbent LEC must keep the notice available for public inspection, and amend the notice to keep the information complete, accurate and up-to-date.

(c) *Specific filing requirements.* Commission filings under this section must be made as follows:

(1) The public notice or certification must be labeled with one of the following titles, as appropriate: "Public Notice of Network Change Under Rule 51.329(a)," "Certification of Public Notice of Network Change Under Rule 51.329(a)," "Short Term Public Notice Under Rule 51.333(a)," or "Certification of Short Term Public Notice Under Rule 51.333(a)."

(2) Two paper copies of the incumbent LEC's public notice or certification, required under paragraph (a) of this section, must be sent to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which this filing is received by the Secretary is considered the official filing date.

(3) In addition, one paper copy and one diskette copy must be sent to the "Chief, Network Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554." The diskette copy must be on a standard 3½ inch diskette, formatted in IBM-compatible format to be readable by high-density floppy drives operating under MS DOS 5.X or later compatible versions, and shall be in a word-processing format designated, from time-to-time, in public

notices released by the Network Services Division. The diskette must be submitted in "read only" mode, and must be clearly labeled with the carrier's name, the filing date, and an identification of the diskette's contents.

15. A new § 51.331 is added to subpart D read as follows:

§ 51.331 Notice of network changes: timing of notice.

(a) An incumbent LEC shall give public notice of planned changes at the make/buy point, as defined in paragraph (b) of this section, but at least 12 months before implementation, except as provided below:

(1) If the changes can be implemented within twelve months of the make/buy point, public notice must be given at the make/buy point, but at least six months before implementation.

(2) If the changes can be implemented within six months of the make/buy point, public notice may be given pursuant to the short term notice procedures provided in § 51.333.

(b) For purposes of this section, the *make/buy point* is the time at which an incumbent LEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an incumbent LEC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.

(1) For purposes of this section, a *product* is any hardware or software for use in an incumbent LEC's network or in conjunction with its facilities that, when installed, could affect the compatibility of an interconnected service provider's network, facilities or services with an incumbent LEC's existing telephone network, facilities or services, or with any of an incumbent carrier's services or capabilities.

(2) For purposes of this section a *definite decision* is reached when an incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes any action toward implementation of the change within its network.

16. A new § 51.333 is added to subpart D to read as follows:

§ 51.333 Notice of network changes: short term notice.

(a) *Certificate of service.* If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by § 51.327(a) or § 51.329(a)(2), as applicable. The certificate of service shall include:

(1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(2) The name and address of each such telephone exchange service provider upon which the notice was served.

(b) *Implementation date.* The Commission will release a public notice of such short term notice filings. Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed, pursuant to paragraph (c) of this section.

(c) *Objection procedures.* An objection to an incumbent LEC's short term notice may be filed by an information service provider or telecommunication service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections to an incumbent LEC's short term notice must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

"I, (*name and title*), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (*objector*) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection."

(d) *Response to objections.* If an objection is filed, an incumbent LEC shall have until no later than the fourteenth business day following the release of the Commission's public notice to file with the Commission a response to the objection and to serve the response on all parties that filed objections. An incumbent LEC's response must:

(1) Provide information responsive to the allegations and concerns identified by the objectors;

(2) State whether the implementation date(s) proposed by the objector(s) are acceptable;

(3) Indicate any specific technical assistance that the incumbent LEC is willing to give to the objectors; and

(4) Provide any other relevant information.

(e) *Resolution.* If an objection is filed pursuant to paragraph (c) of this section, then the Chief, Network Services Division, Common Carrier Bureau, will issue an order determining a reasonable public notice period, *provided however,* that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to § 51.329(b).

17. A new § 51.335 is added to subpart D to read as follows:

§ 51.335 Notice of network changes: confidential or proprietary information.

(a) If an incumbent LEC claims that information otherwise required to be disclosed is confidential or proprietary, the incumbent LEC's public notice must include, in addition to the information identified in § 51.327(a), a statement that the incumbent LEC will make further information available to those signing a nondisclosure agreement.

(b) *Tolling the public notice period.* Upon receipt by an incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled until the parties agree on the terms of a nondisclosure agreement. An incumbent LEC receiving such a request must amend its public notice as follows:

(1) On the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and

(2) On the date the nondisclosure agreement is finalized, to specify a new implementation date.

PART 52—NUMBERING

18. The authority citation for part 52 is revised to read as follows:

Authority: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

19. Subpart B of part 52 is redesignated as subpart C and amended by redesignating §§ 52.1 through 52.99 as §§ 52.21 through 52.99; and a new subpart A and subpart B are added to part 52 to read as follows:

Subpart A—Scope and Authority

Sec.

52.1 Basis and purpose.
52.3 General.
52.5 Definitions.

Subpart B—Administration

52.7 Definitions.
52.9 General requirements.
52.11 North American Numbering Council.
52.13 North American Numbering Plan Administrator.
52.15 Central office code administration.
52.17 Costs of number administration.
52.19 Area code relief.

Subpart C—Number Portability

52.21 Definitions.
52.23 Deployment of long-term database methods for number portability by LECs.
52.25 Database architecture and administration.
52.27 Deployment of transitional measures for number portability.
52.29 Cost recovery for transitional measures for number portability.
52.31 Deployment of long-term database methods for number portability by CMRS providers.
52.32–52.99 [Reserved]

Subpart A—Scope and Authority

§ 52.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et. seq.*

(b) *Purpose.* The purpose of these rules is to establish, for the United States, requirements and conditions for the administration and use of telecommunications numbers for provision of telecommunications services.

§ 52.3 General.

The Commission shall have exclusive authority over those portions of the North American Numbering Plan (NANP) that pertain to the United States. The Commission may delegate to the States or other entities any portion of such jurisdiction.

§ 52.5 Definitions.

As used in this part:

(a) *Incumbent local exchange carrier.* With respect to an area, an "incumbent local exchange carrier" is a local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2) (i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this chapter (47 CFR 69.601(b)); or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (a)(2)(i) of this section.

(b) *North American Numbering Council* (NANC). The "North American Numbering Council" is an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C., App (1988), to advise the Commission and to make recommendations, reached through consensus, that foster efficient and impartial number administration.

(c) *North American Numbering Plan* (NANP). The "North American Numbering Plan" is the basic numbering scheme for the telecommunications networks located in Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands).

(d) *State.* The term "state" includes the District of Columbia and the Territories and possessions.

(e) *State commission.* The term "state commission" means the commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers.

(f) *Telecommunications.* "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(g) *Telecommunications carrier.* A "telecommunications carrier" is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

(h) *Telecommunications service.* The term "telecommunications service" refers to the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Subpart B—Administration

§ 52.7 Definitions.

As used in this subpart:

(a) *Area code or numbering plan area* (NPA). The term "area code or numbering plan area" refers to the first three digits (NXX) of a ten-digit telephone number in the form NXX–NXX–XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9.

(b) *Area code relief.* The term "area code relief" refers to the process by which central office codes are made available when there are few or no unassigned central office codes remaining in an existing area code and a new area code is introduced.

(c) *Central office (CO) code.* The term "central office code" refers to the second three digits (NXX) of a ten-digit telephone number in the form NXX–NXX–XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9.

(d) *Central office (CO) code administrator.* The term "central office code administrator" refers to the entity or entities responsible for managing central office codes in each area code.

(e) *North American Numbering Plan Administrator* (NANPA). The term "North American Numbering Plan Administrator" refers to the entity or entities responsible for managing the NANP.

§ 52.9 General requirements.

(a) To ensure that telecommunications numbers are made available on an equitable basis, the administration of telecommunications numbers shall, in addition to the specific requirements set forth in this subpart:

(1) Facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers;

(2) Not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and

(3) Not unduly favor one telecommunications technology over another.

(b) If the Commission delegates any telecommunications numbering administration functions to any State or other entity pursuant to 47 U.S.C. 251(e)(1), such State or entity shall perform these functions in a manner consistent with this part.

§ 52.11 North American Numbering Council.

The duties of the North American Numbering Council (NANC), may include, but are not limited to:

(a) Advising the Commission on policy matters relating to the administration of the NANP in the United States;

(b) Making recommendations, reached through consensus, that foster efficient and impartial number administration;

(c) Initially resolving disputes, through consensus, pertaining to number administration in the United States;

(d) Recommending to the Commission an appropriate entity to serve as the NANPA;

(e) Recommending to the Commission an appropriate mechanism for recovering the costs of NANP administration in the United States, consistent with § 52.17;

(f) Carrying out the duties described in § 52.25; and

(g) Carrying out this part as directed by the Commission.

§ 52.13 North American Numbering Plan Administrator.

(a) The North American Numbering Plan Administrator (NANPA) shall be an independent and impartial non-government entity.

(b) The duties of the NANPA shall include, but are not limited to:

(1) Ensuring that the interests of all NANP member countries are considered;

(2) Processing number assignment applications associated with, but not limited to: area codes, N11 codes, carrier identification codes (CICs), "500" central office codes, "900"central office codes, "456" central office codes, Signalling System 7 network codes, and Automatic Number Identification Integration Integers (ANI II);

(3) Assigning the numbers and codes described in paragraph (b)(2) of this section;

(4) Maintaining and monitoring administrative number databases;

(5) Assuming additional telecommunications number administration activities, as assigned; and

(6) Ensuring that any action taken with respect to number administration is consistent with this part.

§ 52.15 Central office code administration.

(a) Central Office Code Administration shall be performed by the NANPA, or another entity or entities, as designated by the Commission.

(b) Duties of the entity or entities performing central office code administration may include, but are not limited to:

(1) Processing central office code assignment applications and assigning such codes in a manner that is consistent with this part;

(2) Accessing and maintaining central office code assignment databases;

(3) Contributing to the CO Code Use Survey (COCUS), an annual survey that describes the present and projected use of CO codes for each NPA in the NANP;

(4) Monitoring the use of central office codes within each area code and forecasting the date by which all central office codes within that area code will be assigned; and

(5) Planning for and initiating area code relief, consistent with § 52.19.

(c) Any telecommunications carrier performing central office code administration:

(1) Shall not charge fees for the assignment or use of central office codes to other telecommunications carriers, including paging and CMRS providers, unless the telecommunications carrier assigning the central office code charges one uniform fee for all carriers, including itself and its affiliates; and

(2) Shall, consistent with this subpart, apply identical standards and procedures for processing all central office code assignment requests, and for assigning such codes, regardless of the identity of the telecommunications carrier making the request.

§ 52.17 Costs of number administration.

All telecommunications carriers in the United States shall contribute on a competitively neutral basis to meet the costs of establishing numbering administration.

(a) For each telecommunications carrier, such contributions shall be based on the gross revenues from the provision of its telecommunications services.

(b) The contributions in paragraph (a) of this section shall be based on each contributor's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services and facilities that have been paid to other telecommunications carriers.

§ 52.19 Area code relief.

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education and notification efforts regarding area code changes.

(b) State commissions may perform any or all functions related to initiation and development of area code relief plans, so long as they act consistently with the guidelines enumerated in this part, and subject to paragraph (b)(2) of this section. For the purposes of this paragraph, initiation and development of area code relief planning encompasses all functions related to the implementation of new area codes that were performed by central office code administrators prior to February 8, 1996. Such functions may include: declaring that the area code relief planning process should begin; convening and conducting meetings to which the telecommunications industry and the public are invited on area code relief for a particular area code; and developing the details of a proposed area code relief plan or plans.

(1) The entity or entities designated by the Commission to serve as central office code administrator(s) shall initiate and develop area code relief plans for each area code in each state that has not notified such entity or entities, pursuant to paragraph (b)(2) of this section, that the state will handle such functions.

(2) Pursuant to paragraph (b)(1) of this section, a state commission must notify the entity or entities designated by the Commission to serve as central office code administrator(s) for its state that such state commission intends to perform matters related to initiation and development of area code relief

planning efforts in its state. Notification shall be written and shall include a description of the specific functions the state commission intends to perform. Where the NANP Administrator serves as the central office code administrator, such notification must be made within 120 days of the selection of the NANP Administrator.

(c) New area codes may be introduced through the use of:

(1) A geographic area code split, which occurs when the geographic area served by an area code in which there are few or no central office codes left for assignment is split into two or more geographic parts;

(2) An area code boundary realignment, which occurs when the boundary lines between two adjacent area codes are shifted to allow the transfer of some central office codes from an area code for which central office codes remain unassigned to an area code for which few or no central office codes are left for assignment; or

(3) An area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code, subject to the following conditions:

(i) No area code overlay may be implemented unless all central office codes in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity. No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such codes only from the overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology;

(ii) No area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code; and

(iii) No area code overlay may be implemented unless every telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in that NPA 90 days before introduction of the new overlay area code, is assigned during that 90 day period at least one central office code in the existing area code.

§ 52.21 [Amended]

20. Newly redesignated section 52.21 is amended by removing paragraph (f) and redesignating paragraphs (g) through (k) as paragraphs (f) through (j); removing (l) and redesignating paragraphs (m) through (r) as paragraphs (k) through (p); and removing paragraphs (s), (t), and (u) and redesignating paragraph (v) as paragraph (q).

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Friday
September 6, 1996

Part IV

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Risk-Based Capital Standards: Market Risk; Joint Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 96–18]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0884]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB64

Risk-Based Capital Standards: Market Risk

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) are amending their respective risk-based capital standards to incorporate a measure for market risk to cover all positions located in an institution's trading account and foreign exchange and commodity positions wherever located. The final rule implements an amendment to the Basle Capital Accord that sets forth a supervisory framework for measuring market risk. The effect of the final rule is that any bank or bank holding company (institution) regulated by the OCC, the Board, or the FDIC, with significant exposure to market risk must measure that risk using its own internal value-at-risk model, subject to the parameters contained in this final rule, and must hold a commensurate amount of capital.

DATES: *Effective date:* January 1, 1997.

Compliance date: Mandatory compliance January 1, 1998.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Financial Analyst, Roger Tufts, Senior Economic Advisor, or Christina Benson, Capital Markets Specialist, Office of the Chief National Bank Examiner (202/874–5070). For legal issues, Andrew Gutierrez, Attorney, or Ron Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division (202/874–5090), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, D.C. 20219.

Board: Roger Cole, Deputy Associate Director (202/452–2618), James Houpt, Assistant Director (202/452–3358), Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation; or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the Hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Federal Reserve Board, 20th and C Streets, NW, Washington, D.C. 20551.

FDIC: William A. Stark, Assistant Director (202/898–6972), Miguel Browne, Deputy Assistant Director (202/898–6789), Kenton Fox, Senior Capital Markets Specialist (202/898–7119), Division of Supervision; Jamey Basham, Counsel (202/898–7265), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Agencies' risk-based capital standards are based upon principles contained in the July 1988 agreement entitled "International Convergence of Capital Measurement and Capital Standards" (Accord). The Accord, developed by the Basle Committee on Banking Supervision (Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries,[1] provides a framework for assessing an institution's capital adequacy by weighting its assets and off-balance-sheet exposures on the basis of counterparty credit risk. In April 1995, the Committee issued a consultative proposal to amend the Accord and require institutions to measure and hold capital to cover their exposure to market risk, specifically, market risk associated with foreign exchange and commodity positions, and with debt and equity positions located in the trading account.[2]

[1] The G–10 countries are Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. The Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries and Luxembourg. The Agencies each adopted risk-based capital standards implementing the Accord in 1989.

[2] Market risk consists of general market risk and specific risk. General market risk refers to changes in the market value of on-balance-sheet assets and liabilities and off-balance-sheet items resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, and commodity prices. Specific risk refers to changes in the market value of individual positions due to factors other than broad market movements and includes such risks as the credit risk of an instrument's issuer.

[3] The VAR measure represents an estimate of the amount by which an institution's positions in a risk category could decline due to general market movements during a given holding period, measured with a specified confidence level.

Market Risk Proposal

On July 25, 1995, the Agencies published a joint proposal to amend their respective risk-based capital standards in accordance with the Committee's consultative proposal (60 FR 38082) (market risk proposal). Under the market risk proposal, an institution with significant trading activity must calculate a capital charge for market risk using either its own internal risk measurement model (internal models approach) or a risk-weighting process developed by the Committee (standardized approach). The market risk proposal requires an institution to integrate the market risk capital charge into its risk-based capital ratios used for supervisory purposes no later than year-end 1997.

The proposed internal models approach requires an institution to employ an internal model to calculate daily value-at-risk (VAR) measures[3] for each of four risk categories: interest rates, equity prices, foreign exchange rates, and commodity prices, including related options in each category. For regulatory capital purposes, the market risk proposal requires an institution to calibrate VAR measures to a ten-day movement in rates and prices and a 99 percent confidence level. An institution must base its VAR measures upon rates and prices observed over a period of at least one year. In deriving the overall VAR measure, an institution could take into account historical correlations within a risk category (e.g., between interest rates), but not across risk categories (e.g., not between interest rates and equity prices); in other words, the overall VAR measure equals the sum of the VAR measures for each risk category. An institution's capital charge for general market risk equals the greater of (1) the previous day's overall VAR measure, or (2) the average of the preceding 60 days' overall VAR measures multiplied by a factor of three (the multiplication factor). Moreover, the market risk proposal requires an institution to hold additional capital for specific risk associated with debt and equity positions in the trading account to the extent that its internal model does not incorporate that risk.

Under the market risk proposal, an institution's supervisor evaluates its internal modeling and risk management process to ensure that the institution is,

in fact, using its internal model for risk management purposes, that the calculation of VAR for capital purposes conforms with the specified quantitative criteria, and that the risk management process meets certain qualitative criteria, such as requiring independent model validations [4] and having an independent risk management unit. The market risk proposal allows an institution's supervisor to increase its multiplication factor (which applies to the 60-day VAR average) if backtesting results suggest problems with the institution's internal model or risk management process.

The standardized approach, the market risk proposal's alternative to the internal models approach, requires an institution to apply certain uniform techniques to calculate a capital charge for the general market risk of positions in the four risk categories, as well as for the specific risk of debt and equity positions located in the trading account. The total capital charge is the sum of the capital charges for each risk category.

An institution supports its market risk capital charges using a combination of Tier 1 and Tier 2 capital instruments (as defined in the credit risk-based capital standards), as well as a proposed new type of capital (Tier 3). Generally, Tier 3 capital consists of short-term subordinated debt subject to certain criteria, including a lock-in provision that prevents the issuer from repaying the debt even at maturity if the issuer's risk-based capital ratio is less than 8.0 percent following the payment.

In December 1995, the G–10 Governors endorsed a final amendment to the Accord adopting, with some modification, the Committee's market risk consultative proposal. At that same time, the Committee issued supervisory guidance specifying the effect of backtesting results on an institution's multiplication factor.

Backtesting Proposal

On March 7, 1996, the Agencies published for public comment a joint proposal on backtesting (61 FR 9114) (backtesting proposal) that reflected the Committee's backtesting guidance. The backtesting proposal requires an institution to compare its daily net profits and losses for the most recent 250 business days to the corresponding daily VAR measures generated for internal risk management purposes, using a 99 percent confidence level and a one-day period of rate and price movement. Each day for which a net trading loss exceeds the corresponding VAR measure is counted as an exception. An institution with five or more exceptions is presumed to have an inaccurate internal model and must increase its multiplication factor from three up to a maximum of four, depending on the number of exceptions. The backtesting proposal requires an institution to begin backtesting one year after it begins to calculate market risk capital charges. The delayed effective date for backtesting provides an institution with sufficient time to accumulate the required data for 250 business days.

II. Comment Summary

Market Risk Proposal

Together, the Agencies received 33 public comments on the market risk proposal. Commenters strongly supported the proposed internal models approach.[5] Most commenters believed that approach provides greater accuracy in measuring market risk than the standardized approach and creates incentives for institutions to continue improving their risk modeling and management techniques. Nevertheless, most commenters stated that the proposed modeling constraints were unnecessarily rigid and, especially when combined with the multiplication factor of three, result in excessive capital charges. The following discussion summarizes the responses to the Agencies' specific questions about the proposal.

General Topics

The Agencies asked commenters about the proposed criteria for determining which institutions must calculate capital charges for market risk. As proposed, the rule applied to: (1) Any institution with total assets exceeding $5 billion and either trading activity totaling at least 3 percent of total assets or the notional amount of trading account derivative contracts in excess of $5 billion; and (2) any institution with total assets of $5 billion or less and trading activity representing at least 10 percent of total assets. Commenters generally agreed that an institution with significant exposure to market risk should hold capital against that exposure. However, some believed it inappropriate to use the notional amount of trading account derivative contracts as a criterion. Further, some objected to different criteria for institutions of different asset size.

The Agencies asked about the burden associated with applying the market risk measure to both banks and bank holding companies and, with regard to bank holding companies, the burden associated with applying the measure both with and without Section 20 subsidiaries. The Agencies received mixed comments on the bank and bank holding company issue. Some believed the measure should apply only at the bank holding company level, pointing out that market risk usually is managed on a consolidated basis at the bank holding company level. Some favored applying the measure at the bank level. Others believed that an institution should have a choice, depending on how it manages risk. Most commenters discussing the Section 20 subsidiary issue supported applying the rule on a fully consolidated basis (i.e., including Section 20 subsidiaries).

The Agencies also asked whether to allow an institution to choose either the standardized or internal models approaches, whether to allow an institution to combine the two approaches for different risk categories, and whether the two approaches result in similar capital charges. While some commenters supported the flexibility of choosing between the internal models and standardized approaches, those commenters who anticipated that they would be subject to the market risk capital requirements indicated that they intend to use only the internal models approach. Other commenters thought that a choice of approaches could be useful in certain situations, for example, when an institution suddenly meets the applicability criteria but does not have a completely developed internal model. Several commenters expressed concerns about the accuracy of the standardized approach and urged its elimination. The few commenters that addressed the question about combining the two approaches supported the flexibility that this could provide. A few commenters stated that capital charges would be higher under the internal models approach than under the standardized approach.[6]

[4] The proposed qualitative criteria identify backtesting and stress testing as two model validation techniques. Backtests provide information about the accuracy of an internal model by comparing an institution's daily VAR measures to its corresponding daily trading profits and losses. Stress tests provide information about the impact of adverse market events on an institution's positions.

[5] Early versions of the Basle Committee's market risk amendment did not allow for the use of internal models to determine capital charges.

[6] The summary does not include comments on particular issues that might arise in applying the standardized approach (other than comments on specific risk) because, as discussed below, the Agencies have decided not to adopt the standardized approach in the final rule. Public comments are available from the Board's and OCC's Freedom of Information Office and the FDIC's Reading Room.

The Internal Models Approach

The market risk proposal imposed several quantitative standards on VAR measures used for regulatory capital purposes. The Agencies asked about the potential burden associated with these standards and whether the resulting capital charge sufficiently covered market risk. Commenters overwhelmingly responded that the proposed modeling constraints were unnecessarily rigid and would result in an excessive capital charge. Many commenters suggested the Agencies allow an institution to use the same internal modeling parameters for regulatory capital purposes as for internal risk management.

Modeling Constraints. With regard to the proposed modeling constraints, a few commenters supported basing capital charges on a ten-day period of rate and price movements. Others indicated that the period was too long, with most suggesting a one-day period. Some commenters objected to any specified period. Several commenters opposed the proposed 99 percent confidence level, noting that many institutions use lower confidence levels. Others supported the proposed level and still others suggested that regulators should not specify a confidence level.

Many commenters strongly asserted that the proposed multiplication factor of three was too high and suggested, instead, a minimum factor of one. Most of these commenters believed that the proposal did not adequately explain the rationale for a multiplication factor greater than one. Several asked for clarification about how the Agencies will measure a model's accuracy and adjust an institution's multiplication factor. They advocated objective, well-defined criteria to ensure that the Agencies apply the rules consistently.

Commenters strongly opposed the proposal's requirement that an institution aggregate VAR measures by simple summation across the risk categories. They asserted that ignoring the effects of cross correlation among risk categories overstates exposure and understates the merits of diversified portfolios.

The Agencies asked whether to require an institution to calculate VARs using two observation periods. Specifically, the Agencies asked about the tradeoff between enhanced prudential coverage and additional burden associated with requiring an institution to make two VAR measures, one based on a short observation period and one based on a longer (over one year) period. Most commenters believed dual observation periods would result in unnecessary costs and operational burden. Commenters had varying opinions about the optimal length of time for an observation period. Some commenters suggested that the Agencies allow an institution to choose an appropriate observation period.

Backtesting. The Agencies asked for comments about the potential burden associated with backtesting to evaluate the accuracy of an institution's internal model. Commenters generally viewed backtesting as a useful tool for model validation purposes. Most believed that backtesting should compare an institution's VAR calculated for internal risk management purposes (rather than for regulatory capital purposes) with actual profits and losses. A few commenters, noting the developing nature of backtesting generally, urged regulators not to prescribe specific regulations, guidelines, or methodologies for backtesting.

The Agencies also asked for comment about the types of stress tests institutions should perform as part of their internal risk management process. Several commenters recognized generally the importance of stress testing. These and other commenters responded that the Agencies should allow an institution to choose its methodology. Other commenters questioned whether a stress testing requirement was necessary.

Specific Risk. The Agencies noted that the internal models approach requires an institution to add a specific risk capital charge calculated using the standardized approach if its internal model does not adequately capture specific risk, and asked what modeling techniques the Agencies should consider when evaluating an institution's model for specific risk. While commenters generally agreed that an institution should integrate specific risk into its internal model, several objected to using capital charges calculated under the standardized approach as the benchmark for specific risk under the internal models approach. A few commenters asked for clarification about what constitutes sufficient integration of specific risk into a model to avoid the add-on capital charge. Some commenters noted that internal models that incorporate specific risk elements are still in the development stage, and stated that the Agencies should not include a specific risk requirement in the internal models approach.

The Agencies asked whether they should specifically define the term "liquid and well-diversified," as applied to specific risk in equities, entitling an institution to a lower capital charge under the standardized approach. Commenters differed as to the appropriate degree of specificity. Some preferred a qualitative definition, as proposed, and others supported a more explicit and objective definition.

Other Issues

Some commenters raised issues not directly addressed in the Agencies' specific questions on the market risk proposal. One commenter suggested that an institution could determine internally whether to classify a debt instrument as qualifying or non-qualifying for purposes of determining the applicable specific risk weight factor (qualifying instruments receive a lower specific risk charge than non-qualifying instruments). Another commenter recommended a zero percent specific risk charge for debt instruments issued by local and regional governments. Another recommended a zero percent specific risk charge for instruments tracking an equity index.

Several commenters said that the proposed qualitative standards for an institution's risk management system were reasonable. One institution noted the qualitative standards provided a comprehensive set of guidelines. Some commenters questioned the marketability of short-term subordinated debt included as Tier 3 capital. A few commenters discussed the relationship between market risk and credit risk, with some arguing that when aggregating capital charges for credit and market risk the Agencies should permit an institution to recognize correlations between the two types of risk.

Backtesting Proposal

Together, the Agencies received 17 public comments on the backtesting proposal. Commenters to that proposal generally supported backtesting as a useful component of risk management. Several expressed concern that the proposal was unnecessarily rigid, noting that backtesting techniques are evolving, and suggested that the Agencies reexamine backtesting prior to implementation of the final rule. A few commenters questioned linking backtesting results to capital requirements. Some commenters expressed the view that the Agencies should take into account the severity of an exception, not just the number of exceptions. Other commenters believed that the Agencies should base capital requirements on an overall evaluation of an institution's risk management process and not merely on the number of exceptions. A few commenters suggested that the Agencies retain the

flexibility to adjust the multiplication factor below three if an institution's model exhibits superior performance.

Among other specific questions, the Agencies asked about the merits and problems associated with backtesting hypothetical trading outcomes (profits and losses) versus backtesting actual trading outcomes.[7] Almost all commenters supported using actual trading outcomes for backtesting purposes rather than hypothetical outcomes. One commenter supported giving an institution the option of what type of outcomes it will backtest. Commenters who supported using actual trading outcomes believed that these results appropriately included such factors as gains and losses from trading activity, fee income, net interest income, and management responses to changing portfolio conditions. Commenters who objected to using hypothetical results noted that costs associated with creating and operating a system for determining hypothetical results were significant. Other commenters discussed the potential burden of requiring an institution to calculate daily profits and losses with an unreasonable degree of exactness. They noted that global VARs are calculated by simulating changes in all market factors and calculating resulting changes in portfolio values. They suggested letting an institution estimate daily profit and losses using a consistent, reasonable methodology.

The Agencies asked for comment on what types of events or regime shifts (i.e., dramatic changes in market conditions that result in numerous exceptions in a short period of time for the same reason) might generate exceptions that do not warrant an increase in an institution's multiplication factor. Several commenters asserted that the Agencies should not list the types of regime shifts in advance. Two commenters suggested that the Agencies should treat any market-wide or asset-class event affecting a large number of institutions as a regime shift. Commenters suggested the following examples of regime shifts: sudden abnormal changes in interest or exchange rates, major political events, and natural disasters. Some commenters suggested that the Agencies should take into account an institution's reaction to unanticipated trading results, such as how it adapts its internal model to take into account changed conditions. A few commenters stated the Agencies should not penalize an institution for exceptions after it adjusts its model.

The Agencies asked about the proposed sample size of 250 independent observations. While several commenters on this question responded that the proposed sample size was appropriate, some believed that an institution should have flexibility to increase or decrease the sample size. A few commenters asserted that all institutions should use the same sample size.

Finally, the Agencies asked whether to require an institution to backtest against its VAR measures generated for internal risk management purposes, or against VAR measures calculated for market risk capital requirements. Most commenters supported the former approach.

III. Final Rule

The Agencies believe it is important for an institution with significant market risk to measure its exposure and hold commensurate amounts of capital. The Agencies support the market risk amendment to the Accord and are now issuing uniform market risk standards that will implement that amendment for institutions regulated by the Agencies. The final rule incorporates a measure for exposure to market risk into the Agencies' credit risk-based capital standards. By January 1, 1998, an institution that meets the applicability criteria must use its internal model to measure its exposure to market risk and hold capital in support of that exposure. The Agencies concur with commenters that an institution with significant exposure to market risk can most accurately measure that risk using detailed information available to the institution about its particular portfolio processed by its own risk measurement model. The final rule does not include the proposed standardized approach for measuring general market risk. The final rule does retain, however, the standardized approach methodologies for determining capital charges for specific risk, which an institution must use as the basis for its specific risk charge for debt and equity positions in its trading account.

The final rule supplements the existing credit risk-based capital standards by requiring an affected institution to adjust its risk-based capital ratio to reflect market risk. Specifically, an institution must adjust its risk-based capital ratio to take into account the general market risk of all positions located in its trading account and of foreign exchange and commodity positions, wherever located. Additionally, the institution must account for the specific risk of debt and equity positions located in its trading account. The positions covered by this final rule (except for foreign exchange positions outside the trading account and over-the-counter (OTC) derivatives) are excluded from the credit risk capital charge. Foreign exchange positions outside the trading account and OTC derivatives are subject to the market risk capital charge, as well as the credit risk capital charge.

Thus, the minimum capital charge for an institution that meets the applicability criteria is its credit risk capital charge as calculated under the Agencies' credit risk-based capital standards (excluding the positions previously noted) plus its measure for market risk as calculated under this final rule. The institution's risk-based capital ratio adjusted for market risk is its risk-based capital ratio for purposes of prompt corrective action and other statutory and regulatory purposes.

Subject to supervisory approval that its internal model and risk management processes meet the final rule's regulatory criteria, an institution may choose to comply with the final rule as early as January 1, 1997. Any institution that voluntarily complies with the final rule prior to January 1, 1998, must comply with all of its provisions, except for the backtesting provisions, which apply one year after the institution begins to comply with the other provisions of the final rule.

Institutions Subject to the Final Rule (Section 1(b))

The Agencies agree with commenters that all institutions with significant market risk, regardless of size, should measure their exposure and hold appropriate levels of capital. Thus, the Agencies have revised the applicability criteria to eliminate the differential criteria based on total asset size. The Agencies believe that the capital requirements are appropriate both for an institution whose trading activity is large relative to its total assets, and for an institution with a substantial volume of trading activity.

The final rule applies to any bank or bank holding company whose trading activity equals 10 percent or more of its total assets, or whose trading activity equals $1 billion or more.[8] For purposes

[7] Generally, hypothetical outcomes are trading outcomes that would result if the trading position as of the end of one business day went unchanged during the next business day. Hypothetical outcomes differ from actual outcomes because of the effects of such items as changes in portfolio composition over the holding period, fee income, commissions, and income from trading.

[8] The Federal Reserve agrees with commenters that since market risk usually is managed on a consolidated basis at the bank holding company level, market risk should be measured at that level for risk-based capital purposes. Thus, the final rule

Continued

of these criteria, an institution's trading activity is defined as the sum of its trading assets and trading liabilities as reported in its most recent Consolidated Report of Condition and Income (Call Report) for a bank, or its most recent Y–9C Report for a bank holding company. Total assets means quarter-end total assets as most recently reported by the institution.

In addition, on a case-by-case basis, an Agency may require an institution that does not meet the applicability criteria to comply with the final rule if the Agency deems it necessary for safety and soundness purposes, or may exclude an institution that meets the applicability criteria. For example, an Agency may require an institution with trading activity less than $1 billion and less than 10 percent of total assets, but with significant foreign exchange exposure outside of its trading account to comply with the provisions of the final rule. On the other hand, an Agency may exempt an institution with trading activity that exceeds 10 percent of its total assets as a result of accounting, operational, or similar considerations, provided this does not raise safety and soundness concerns.

An institution that does not meet the applicability criteria may, subject to supervisory approval, comply voluntarily with the market risk rule, but only if it complies with all of the final rule's provisions (e.g., the backtesting requirements, after accumulating sufficient trading outcomes).

Covered Positions (Section 2(a))

An institution subject to the final rule must hold capital to support its exposure to general market risk arising from fluctuations in interest rates, equity prices, foreign exchange rates, and commodity prices and its exposure to specific risk associated with certain debt and equity positions. Covered positions include all positions in an institution's trading account and foreign exchange and commodity positions throughout the institution (whether or not in the trading account).

For market risk capital purposes, an institution's trading account is defined in the instructions to the Call Report. For example, the trading account includes on- and off-balance-sheet positions in financial instruments acquired with the intent to resell in order to profit from short-term price or rate movements (or other price or rate variations). An institution may include in its measure for general market risk certain non-trading account instruments that it deliberately uses to hedge trading positions. Those instruments are not subject to a specific risk capital charge, but instead, remain subject to the credit risk capital requirements. An institution may not include items in, or exclude items from, its trading account to manipulate associated capital charges. All positions included in the trading account must be marked to market and reflected in an institution's earnings statement.

The market risk capital charge applies to all of an institution's foreign exchange and commodities positions. An institution's foreign exchange positions include, for each currency, such items as its net spot position (including ordinary assets and liabilities denominated in a foreign currency), forward positions, guarantees that are certain to be called and likely to be unrecoverable, and any other items that react primarily to changes in exchange rates. An institution may, subject to supervisory approval, exclude from the market risk measure any structural positions in foreign currencies. For this purpose, structural positions include transactions designed to hedge an institution's capital ratios against the effect of adverse exchange rate movements on (1) subordinated debt, equity, or minority interests in consolidated subsidiaries and capital assigned to foreign branches that are denominated in foreign currencies, and (2) any positions related to unconsolidated subsidiaries and other items that are deducted from an institution's capital when calculating its capital base. An institution's commodity positions include all positions that react primarily to changes in commodity prices.

Adjustment to the Risk-Based Capital Ratio Calculation (Section 3)

An institution subject to the final rule must measure its market risk and hold capital on a daily basis to maintain an overall minimum 8.0 percent ratio of total qualifying capital to risk-weighted assets adjusted for market risk.

Risk-Based Capital Ratio Denominator (Section 3(a))

An institution's risk-based capital ratio denominator equals its adjusted risk-weighted assets plus its market risk equivalent assets. Adjusted risk-weighted assets are risk-weighted assets, as determined under the credit risk-based capital standards, less the risk-weighted amounts of all covered positions other than foreign exchange positions outside the trading account and OTC derivatives. Covered positions (except for foreign exchange positions outside the trading account and OTC derivatives) are no longer subject to a credit risk capital charge. An institution's market risk equivalent assets equals the measure for market risk, as determined under this final rule, multiplied by 12.5 (the reciprocal of the minimum 8.0 percent capital ratio).

Measure for Market Risk (Section 3(a)(2))

The measure for market risk consists of an institution's VAR-based capital charge plus an add-on capital charge for specific risk.[9] The VAR-based capital charge is the larger of either (1) the average VAR measure for the last 60 business days, calculated under the regulatory criteria and increased by a multiplication factor of between three and four; or (2) the previous day's VAR, calculated under the regulatory criteria but without the multiplication factor. An institution's multiplication factor is three unless its backtesting results indicate that a higher factor is appropriate or unless the institution's supervisor determines that another action is appropriate.

The Agencies believe this comparative approach will result in an institution holding capital sufficient to cover peak levels of market volatility. While the Agencies acknowledge some commenters' concerns that a multiplication factor of three (or higher) imposes excessive capital charges, the Agencies believe that adjustments in the final rule to the internal models approach (e.g., requiring only a single observation period and recognizing cross correlations among risk categories) result in capital charges that are appropriate, given existing industry practices. As institutions implement the final rule, the Agencies will monitor resulting capital charges, will continue to evaluate the appropriateness of the multiplication factor, and may consider further refinements or adjustments to the final rule.

applies to bank holding companies on a fully consolidated basis. In addition, because the Accord applies to internationally active banks, the final rule applies to consolidated banks. The Agencies may monitor the market risk exposure of institutions on a non-consolidated basis to ensure that significant imbalances within an organization do not avoid supervision.

[9] The final rule also provides that, on a case-by-case basis, an Agency may permit an institution to measure de minimis exposures to market risk using other techniques, provided the exposure is truly de minimis, the associated risk is adequately measured, and integration of the exposure into the institution's internal model would impose an unnecessary regulatory burden.

Risk-Based Capital Ratio Numerator (Section 3(b))

An institution's risk-based capital ratio numerator consists of a combination of core (Tier 1) capital, supplemental (Tier 2) capital[10] and a third tier of capital (Tier 3), which consists of short-term subordinated debt that meets certain conditions. Specifically, Tier 3 capital must have an original maturity of at least two years; it must be unsecured and fully paid up; it must be subject to a lock-in clause that prevents the issuer from repaying the debt even at maturity if the issuer's capital ratio is, or with repayment would become, less than the minimum 8.0 percent risk-based capital ratio; it must not be redeemable before maturity without the prior approval of the institution's supervisor; and it must not contain or be covered by any covenants, terms, or restrictions that may be inconsistent with safe and sound banking practices. An institution may use Tier 3 capital only to meet market risk capital requirements.

To determine its risk-based capital ratio numerator, an institution should first allocate Tier 1 and Tier 2 capital equal to 8.0 percent of its risk-weighted assets (adjusted for the positions that are no longer subject to the credit risk rules). Next, the institution should allocate Tier 1, Tier 2, and Tier 3 capital to support its measure for market risk. The risk-based capital ratio numerator (i.e., total qualifying capital), is the sum of Tier 1 capital (whether or not allocated for credit risk or market risk), Tier 2 capital (whether or not allocated for credit risk or market risk and subject to certain limits), and Tier 3 capital (allocated for market risk and subject to certain limits).

The Agencies continue to believe that Tier 1 capital should constitute a substantial proportion of an institution's total capital. Thus, the final rule includes the existing credit risk-based capital constraints that at least 50 percent of an institution's total qualifying capital must be Tier 1 capital, and that term subordinated debt (and intermediate-term preferred stock and related surplus) may not exceed 50 percent of Tier 1 capital. In addition, the sum of Tier 2 and Tier 3 capital allocated for market risk must not exceed 250 percent of Tier 1 capital allocated for market risk. This requirement means that an institution must support at least 28.6 percent of its measure for market risk with Tier 1 capital.

Internal Models (Section 4)

The Agencies recognize that institutions can and will use different assumptions and modeling techniques and that such differences often reflect distinct business strategies and approaches to risk management. For example, an institution may calculate VAR using internal models based on variance-covariance matrices, historical simulations, Monte Carlo simulations, or other statistical approaches. In all cases, however, the model must cover the institution's material risks.[11] While the Agencies are not specifying modeling parameters for internal risk management purposes, the final rule does include minimum qualitative requirements for internal risk management processes, as well as certain quantitative requirements for the parameters and assumptions for internal models used to measure market risk exposure for regulatory capital purposes.

Qualitative Requirements (Section 4(b))

The qualitative requirements reiterate several basic components of sound risk management. For example, one of the final rule's qualitative requirements is that an institution must have a risk control unit that reports directly to senior management and that is independent from business trading functions. The Agencies expect that a risk control unit will conduct regular backtests to evaluate the model's accuracy and stress tests to identify the impact of adverse market events on the institution's portfolio.

The other qualitative requirements in the final rule are also elements of sound risk management practices. For example, an institution must have an internal model that is integrated into its daily management, must have policies and procedures for conducting appropriate stress tests and backtests and for responding to the results of those tests, and must conduct independent reviews of its risk measurement and management systems at least annually.

The Agencies agree with commenters that an institution should develop and use stress tests appropriate to its particular situation. Thus, the final rule does not require specific stress test methodologies. The Agencies expect an institution to conduct stress tests that are rigorous and comprehensive and that cover a range of factors that could create extraordinary losses in a trading portfolio, or make the control of risk in a portfolio difficult. The Agencies believe stress tests should be both qualitative and quantitative, should incorporate both market risk and liquidity aspects of market disturbances, and should reflect the impact of an event on positions with linear and non-linear price characteristics. Where stress tests reveal a particular vulnerability, the institution should take effective steps to appropriately manage those risks.

An institution's independent review of its risk management process should include both the activities of business trading units and the risk control unit. For example, the Agencies expect that an institution's review would include assessing whether its risk management system is fully integrated into the daily management process and whether its risk management system is adequately documented. The review should evaluate the organizational structure of the risk control unit and analyze the approval process for risk pricing models and valuation systems. The review should also consider the scope of market risks captured by the risk measurement model, the accuracy and completeness of position data, the verification of the consistency, timeliness, and reliability of data sources used to run the internal model, the accuracy and appropriateness of volatility and correlation assumptions, and the validity of valuation and risk transformation calculations.

Market Risk Factors (Section 4(c))

The final rule provides that an institution's internal model must use risk factors that address market risk associated with interest rates, equity prices, exchange rates, and commodity prices, including the market risk associated with options in each of these risk categories. Although an institution has discretion to use market risk factors that it has determined affect the value of its positions and the risks to which it is exposed, the Agencies expect an institution to use sufficient risk factors to cover the risks inherent in its portfolio.

[10] Tier 1 and Tier 2 capital components are discussed in the Agencies' credit risk capital standards. Generally, Tier 1 includes common stockholder's equity, noncumulative perpetual preferred stock, and minority equity interests in consolidated subsidiaries, less goodwill and other deductions. Bank holding companies may include certain amounts of cumulative perpetual preferred stock in Tier 1. Tier 2 includes the allowance for loan and lease losses, other preferred stock, and subordinated debt with an original average maturity of at least five years.

[11] For an institution using an externally developed or outsource risk measurement model, the model may be used for risk-based capital purposes provided it complies with the requirements of the final rule, management fully understands the model, the model is integrated into the institution's daily risk management, and the institution's overall risk management process is sound.

For example, the Agencies believe that interest rate risk factors should correspond to interest rates in each currency in which the institution has interest-rate-sensitive positions. The risk measurement system should model the yield curve using one of a number of generally accepted approaches, such as by estimating forward rates or zero coupon yields, and should incorporate risk factors to capture spread risk. The yield curve should be divided into various maturity segments to capture variation in the volatility of rates along the yield curve. For material exposures to interest rate movements in the major currencies and markets, modeling techniques should capture at least six segments of the yield curve.

The risk measurement system should incorporate risk factors corresponding to individual foreign currencies in which the institution's positions are denominated, to each of the equity markets in which the institution has significant positions (at a minimum, a risk factor should capture market-wide movements in equity prices), and to each of the commodity markets in which the institution has significant positions. Risk factors should measure the volatilities of rates and prices underlying option positions. An institution with a large or complex options portfolio should measure the volatilities of options positions by different maturities. The sophistication and nature of the modeling techniques should correspond to the level of the institution's exposure.

Quantitative Requirements (Section 4(d))

While an institution has flexibility in developing the precise nature of its model for internal risk management purposes, the Agencies continue to believe that when determining capital charges for exposure to market risk an institution's VAR measures should meet certain quantitative requirements. Such requirements are designed to ensure that an institution with significant market risk holds prudential levels of capital and that capital charges are sufficiently consistent across institutions with similar exposures. The Agencies have considered commenters' concerns that the proposed modeling constraints, when combined, would result in excessive capital charges. The Agencies believe that certain of the proposed constraints, such as a 99 percent (one-tailed) confidence level and a ten-day movement in rates and prices, are appropriate and therefore they have been retained in the final rule. However, the Agencies agree with commenters that other proposed or considered requirements are not necessary. For example, the Agencies have determined that a dual observation period would unnecessarily increase regulatory burden without providing a substantial benefit. Thus, the final rule employs a single observation period.

The Agencies also agree with commenters that, for regulatory capital purposes, an institution should be permitted to use models that recognize cross correlations among risk categories. The final rule permits an institution to recognize cross correlations. The Agencies believe this revision eliminates a significant source of rigidity in the market risk proposal and should result in internal modeling for capital purposes that is more consistent with observed industry practice. The Agencies also believe this revision will appropriately recognize and reward portfolio diversification. These adjustments to the quantitative requirements are consistent with the final amendment to the Accord.

The final rule contains the following quantitative requirements for an institution's VAR measures, upon which regulatory capital requirements are based:

(1) VAR measures must be computed each business day based on a 99 percent (one-tailed) confidence level of estimated maximum loss.

(2) VAR measures must be based on a price shock equivalent to a ten-day movement in rates or prices. An institution may adjust VAR measures (including VAR measures for options) based on shorter periods to a ten-day standard (e.g., by multiplying by the square root of time).[12] The Agencies do not believe that a price or rate movement period less than ten days is sufficient to reflect the risk associated with options positions (or other instruments with non-linear price characteristics), but recognize that it may be overly burdensome for an institution to apply a ten-day price or rate movement to such positions at this time. The Agencies expect an institution with concentrations of options to make substantive progress in developing a modeling system that measures the non-linear price characteristics of options positions (or other instruments with non-linear price characteristics), over a full ten-day period.

(3) Internal models must include the non-linear price characteristics of options positions and the sensitivity of the market value of those positions to changes in the volatility of the option's underlying rates and prices.

(4) VAR measures must be based on a minimum historical observation period of at least one year for estimating future price and rate changes. A model that uses a weighting scheme or other method for the historical observation period must use an effective observation period of at least one year. That is, the weighted average time lag of the individual observations must be at least six months, the figure that would prevail in an equally weighted one-year observation period.

(5) An institution must update its model data at least once every three months and more frequently if market conditions warrant.

(6) VAR measures may incorporate empirical correlations (calculated from historical data on rates and prices) both within broad risk categories and across broad risk categories, subject to agreement by the institution's supervisor that the model's system for measuring such correlation is sound. If an institution's model does not incorporate empirical correlations across risk categories, then the bank must calculate the VAR measures used for regulatory capital purposes by summing the separate VAR measures for the four broad risk categories (i.e., interest rates, equity prices, foreign exchange rates, and commodity prices).

The Agencies believe that, taken together, the modeling parameters are appropriate for regulatory capital purposes and also that they are compatible, as much as practicable, with existing modeling procedures. During the examination process, the Agencies will review an institution's risk management process and internal model to ensure that the model processes all relevant data and that modeling and risk management practices conform to the parameters and requirements of the final rule.[13]

Backtesting (Section 4(e))

The Agencies have considered commenters' responses to the backtesting proposal. The Agencies believe backtesting can be a useful tool for internal model validation, and have determined to include the backtesting provisions in the final rule, as proposed. An institution subject to the final rule must perform backtests of its VAR measures as calculated for internal risk management purposes. The backtests must compare daily VAR measures

[12] For example, under certain statistical assumptions, an institution can estimate the ten-day price volatility of an instrument by multiplying the volatility calculated on one-day changes by the square root of ten (approximately 3.16).

[13] When reviewing an institution's internal model for risk-based capital purposes, the Agencies may consider reports and opinions about the accuracy of the model that have been generated by external auditors or qualified consultants.

calibrated to a one-day movement in rates and prices and a 99 percent (one-tailed) confidence level against the institution's actual daily net trading profit or loss (trading outcome) for each of the preceding 250 business days. The backtests must be performed once each quarter.[14] Net trading outcomes include such items as fees and commissions associated with trading activities, as well as changes in market valuations associated with changing portfolio positions.

An institution must identify the number of occurrences when its net trading loss (if any) for a particular day exceeds the corresponding daily VAR measure. In general, an institution's multiplication factor increases incrementally beginning with five or more exceptions during the previous 250 business days, and rises to a multiplication factor of four for an institution with 10 or more exceptions during the period. While the number of exceptions creates a presumption as to an institution's multiplication factor, the institution's supervisor may make other adjustments to the multiplication factor or may take other appropriate actions. For example, the supervisor may exclude exceptions that result from regime shifts, such as sudden abnormal changes in interest rates or exchange rates, major political events, or natural disasters. The supervisor may also consider such other factors as the magnitude of an exception (that is, the extent of the difference between the VAR measure and the actual trading loss), and an institution's reaction in response to an exception.

The Agencies recognize that backtesting is evolving and acknowledge commenters' concerns that it may not be appropriate to penalize an institution by applying a higher multiplication factor if the institution has refined the accuracy of its model in response to an exception or has taken other action to improve its risk management processes. The Agencies emphasize that they will implement the backtesting requirements of the final rule with significant flexibility and examiner judgment. The Agencies will continue to monitor industry progress in developing backtesting methodologies and may consider adjusting the backtesting requirements in the near future.

[14] An institution's obligation to backtest for regulatory capital purposes does not arise until the institution has been subject to the final rule for 250 business days (approximately one year) and, thus, has accumulated the requisite number of observations to be used in backtesting.

Specific Risk (Section 5)

The Agencies agree with the provisions in the final amendment to the Accord that require an institution to hold capital in support of the specific risk associated with debt and equity positions in an institution's trading account. Thus, the final rule provides that an institution must measure and hold capital in support of specific risk associated with those positions. The capital charge for specific risk is determined either by an institution's internal model or by the standardized risk measurement techniques specified by the Agencies (the standardized approach).

Standardized Approach

Under the standardized approach, the specific risk charge for debt positions is calculated by multiplying the current market value of each net long or short position in a trading account debt instrument by the appropriate specific risk weighting factor as set forth in the final rule, based on the identity of the obligor, and in the case of some instruments such as corporate debt, on the credit rating and remaining maturity of the instrument. An institution must risk weight derivatives (e.g., swaps, futures, forwards, or options on certain debt instruments) according to the relevant underlying instrument. For example, for a forward contract, an institution must risk weight the market value of the effective notional amount of the underlying instrument (or index portfolio). An institution may net long and short positions in identical debt instruments with exactly the same issuer, coupon, currency, and maturity. An institution may also offset a matched position in a derivative instrument and its corresponding underlying instrument. The specific risk weighting factor for debt instruments of OECD [15] central governments is zero percent. Other debt instruments with qualifying ratings (essentially investment grade corporate securities) receive risk weights ranging from 0.25 percent to 1.6 percent, depending on remaining maturity. Nonqualifying debt instruments receive a risk weight of 8.0 percent.

The specific risk charge for equity positions is based on an institution's gross equity position for each national market. The gross equity position is defined as the sum of all long and short equity positions, including positions arising from derivatives such as equity swaps, forwards, futures, and options. An institution must risk weight the current market value of each gross equity position by the appropriate factor. An institution must risk weight derivatives according to the relevant underlying equity instrument. An institution may net long and short positions in identical equity issues or indices in each national market. An institution may also offset a matched position in a derivative instrument and its corresponding underlying instrument.

The specific risk charge is 8.0 percent of the gross equity position, unless the institution's portfolio is both liquid and well-diversified, in which case the capital charge is 4.0 percent. A portfolio is liquid and well-diversified if: (1) it is characterized by a limited sensitivity to price changes of any single equity or closely related group of equity issues held in a portfolio; (2) the volatility of the portfolio's value is not dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector; (3) it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value; and (4) it consists mainly of issues traded on organized exchanges or in well-established over-the-counter markets.

For positions in an index comprising a diversified portfolio of equities, the specific risk charge is 2.0 percent of the net long or short position in the index. In addition, a 2.0 percent specific risk charge applies to only one side (long or short) in the case of certain futures-related arbitrage strategies (for instance, long and short positions in the same index at different dates or different market centers, and long and short positions at the same date in different, but similar indices). Finally, under certain conditions, futures positions on a broadly-based index that are matched against positions in the equities comprising the index are subject to a specific risk charge of 2.0 percent against each side of the transaction.

Internal Models Approach

The final rule permits an institution to use its internal model to determine capital charges for specific risk if it can demonstrate to its supervisor that the modeling process adequately addresses elements of specific risk for debt and/or equity positions. In particular, an institution may use the model-based estimates of specific risk in place of the standardized capital charge. However, if the specific risk component of the institution's VAR measure (when multiplied by the backtesting multiplication factor, with respect to a

[15] The Organization for Economic Cooperation and Development (OECD) is defined in the credit risk-based capital standards.

60-day average VAR figure) is not equal to at least 50 percent of the specific risk charge resulting from the standardized calculation, then the institution has a specific risk add-on in the amount of the difference. For example, if the standardized approach indicates a specific risk charge of $100, but the institution's 60-day average VAR figure includes only $10 for specific risk, then the institution has a specific risk add-on of $20 (that is, 50 percent of $100 minus three times $10). However, if the 60-day average VAR figure includes $20 from specific risk, then the institution would have no specific risk add-on because the VAR-based charge (three times $20) exceeds 50 percent of $100.

An institution (in conjunction with its supervisor) must separately determine whether its model incorporates specific risk for debt positions and equity positions. For instance, if the model addresses the specific risk of debt positions but not equity positions, then the institution can use the model-based specific risk charge (subject to the limitations described earlier) for debt positions, but must use the full standard specific risk charge for equity positions. If, however, the model addresses the specific risk of both debt and equity positions, then the institution must make the comparison based on the total specific risk figure for debt and equity positions, taking into account any correlations between the specific risk of debt and equity positions that are built into the model.

This treatment provides an institution with an incentive to incorporate specific risk into its internal model, while maintaining an overall floor on the amount of capital it must hold against specific risk. The Agencies believe that a minimum requirement for specific risk is useful, at least for an initial period, since methods for incorporating specific risk into VAR models are still in a process of development at many institutions. The Agencies will continue to study these developments and likely will issue further guidance on these procedures as institutions implement this final rule in the coming months.

IV. Regulatory Flexibility Act Analysis

OCC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this final rule will not have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. The impact of this final rule on banks regardless of size is expected to be minimal. Further, the OCC's comparison of the applicability section of this final rule to Call Report data on all existing banks shows that application of the rule to small banks will be the rare exception.

Board Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board does not believe this final rule will have a significant impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board's comparison of the applicability section of this final rule to Call Report data on all existing banks shows that application of the rule to small entities will be the rare exception. Accordingly, a regulatory flexibility analysis is not required. In addition, because the risk-based capital standards generally do not apply to bank holding companies with consolidated assets of less than $150 million, this rule will not affect such companies.

FDIC Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the final rule will not have a significant impact on a substantial number of small entities. The FDIC's comparison of the applicability section of this final rule to Call Report data on all existing banks shows that application of the rule to small entities will be the rare exception.

V. Paperwork Reduction Act

OCC Paperwork Reduction Act

The OCC has determined that his final rule does not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Board Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

FDIC Paperwork Reduction Act

The FDIC has determined that this final rule does not contain any collections of information as defined by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

VI. OCC Executive Order 12866 Determination

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

VII. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. This final rule will apply only to a small number of national banks. Moreover, most (if not all) of those banks already have internal VAR models that measure market risk, thus reducing this final rule's implementation costs.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set out in the joint preamble, part 3 of title 12, chapter I of the Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. Section 3.6 is amended by revising paragraph (a) to read as follows:

§ 3.6 Minimum capital ratios.

(a) *Risk-based capital ratio.* All national banks must have and maintain the minimum risk-based capital ratio as set forth in appendix A (and, for certain banks, in appendix B).

* * * * *

3. A new appendix B is added to part 3 to read as follows:

Appendix B to Part 3—Risk-Based Capital Guidelines; Market Risk Adjustment

Section 1. Purpose, Applicability, Scope, and Effective Date

(a) *Purpose.* The purpose of this appendix is to ensure that banks with significant exposure to market risk maintain adequate capital to support that exposure.[1] This appendix supplements and adjusts the risk-based capital ratio calculations under appendix A of this part with respect to those banks.

(b) *Applicability.* (1) This appendix applies to any national bank whose trading activity[2] (on a worldwide consolidated basis) equals:

(i) 10 percent or more of total assets; [3] or

(ii) $1 billion or more.

(2) The OCC may apply this appendix to any national bank if the OCC deems it necessary or appropriate for safe and sound banking practices.

(3) The OCC may exclude a national bank otherwise meeting the criteria of paragraph (b)(1) of this section from coverage under this appendix if it determines the bank meets such criteria as a consequence of accounting, operational, or similar considerations, and the OCC deems it consistent with safe and sound banking practices.

(c) *Scope.* The capital requirements of this appendix support market risk associated with a bank's covered positions.

(d) *Effective date.* This appendix is effective as of January 1, 1997. Compliance is not mandatory until January 1, 1998. Subject to supervisory approval, a bank may opt to comply with this appendix as early as January 1, 1997.[4]

[1] This appendix is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision and endorsed by the Group of Ten Central Bank Governors. The framework is described in a Basle Committee paper entitled "Amendment to the Capital Accord to Incorporate Market Risk," January 1996.

[2] Trading activity means the gross sum of trading assets and liabilities as reported in the bank's most recent quarterly Consolidated Report of Condition and Income (Call Report).

[3] Total assets means quarter-end total assets as reported in the bank's most recent Call Report.

[4] A bank that voluntarily complies with the final rule prior to January 1, 1998, must comply with all of its provisions.

Section 2. Definitions

For purposes of this appendix, the following definitions apply:

(a) *Covered positions* means all positions in a bank's trading account, and all foreign exchange [5] and commodity positions, whether or not in the trading account.[6] Positions include on-balance-sheet assets and liabilities and off-balance-sheet items. Securities subject to repurchase and lending agreements are included as if they are still owned by the lender.

(b) *Market risk* means the risk of loss resulting from movements in market prices. Market risk consists of general market risk and specific risk components.

(1) *General market risk* means changes in the market value of covered positions resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, or commodity prices.

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes such risk as the credit risk of an instrument's issuer.

(c) *Tier 1* and *Tier 2* capital are the same as defined in appendix A of this part.

(d) *Tier 3 capital* is subordinated debt that is unsecured; is fully paid up; has an original maturity of at least two years; is not redeemable before maturity without prior approval by the OCC; includes a lock-in clause precluding payment of either interest or principal (even at maturity) if the payment would cause the issuing bank's risk-based capital ratio to fall or remain below the minimum required under appendix A of this part; and does not contain and is not covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

(e) *Value-at-risk (VAR)* means the estimate of the maximum amount that the value of covered positions could decline during a fixed holding period within a stated confidence level, measured in accordance with section 4 of this appendix.

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations

(a) *Risk-based capital ratio denominator.* A bank subject to this appendix shall calculate its risk-based capital ratio denominator as follows:

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions).[7]

(2) *Measure for market risk.* Calculate the measure for market risk, which equals the sum of the VAR-based capital charge, the specific risk add-on (if any), and the capital charge for de minimis exposure (if any).

(i) *VAR-based capital charge.* The VAR-based capital charge equals the higher of:

(A) The previous day's VAR measure; or

(B) The average of the daily VAR measures for each of the preceding 60 business days multiplied by three, except as provided in section 4(e) of this appendix;

(ii) *Specific risk add-on.* The specific risk add-on is calculated in accordance with section 5 of this appendix; and

(iii) *Capital charge for de minimis exposure.* The capital charge for de minimis exposure is calculated in accordance with section 4(a) of this appendix.

(3) *Market risk equivalent assets.* Calculate market risk equivalent assets by multiplying the measure for market risk (as calculated in paragraph (a)(2) of this section) by 12.5.

(4) *Denominator calculation.* Add market risk equivalent assets (as calculated in paragraph (a)(3) of this section) to adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section). The resulting sum is the bank's risk-based capital ratio denominator.

(b) *Risk-based capital ratio numerator.* A bank subject to this appendix shall calculate its risk-based capital ratio numerator by allocating capital as follows:

(1) *Credit risk allocation.* Allocate Tier 1 and Tier 2 capital equal to 8.0 percent of adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section).[8]

(2) *Market risk allocation.* Allocate Tier 1, Tier 2, and Tier 3 capital equal to the measure for market risk as calculated in paragraph (a)(2) of this section. The sum of Tier 2 and Tier 3 capital allocated for market risk must not exceed 250 percent of Tier 1 capital allocated for market risk. (This requirement means that Tier 1 capital allocated in this paragraph (b)(2) must equal at least 28.6 percent of the measure for market risk.)

(3) *Restrictions.* (i) The sum of Tier 2 capital (both allocated and excess) and Tier 3 capital (allocated in paragraph (b)(2) of this section) may not exceed 100 percent of Tier 1 capital (both allocated and excess).[9]

(ii) Term subordinated debt (and intermediate-term preferred stock and related surplus) included in Tier 2 capital (both allocated and excess) may not exceed 50 percent of Tier 1 capital (both allocated and excess).

(4) *Numerator calculation.* Add Tier 1 capital (both allocated and excess), Tier 2 capital (both allocated and excess), and Tier 3 capital (allocated under paragraph (b)(2) of this section). The resulting sum is the bank's risk-based capital ratio numerator.

Section 4. Internal Models

(a) *General.* For risk-based capital purposes, a bank subject to this appendix

[5] Subject to supervisory review, a bank may exclude structural positions in foreign currencies from its covered positions.

[6] The term trading account is defined in the instructions to the Call Report.

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in adjusted risk-weighted assets as determined in appendix A of this part.

[8] A bank may not allocate Tier 3 capital to support credit risk (as calculated under appendix A).

[9] Excess Tier 1 capital means Tier 1 capital that has not been allocated in paragraphs (b)(1) and (b)(2) of this section. Excess Tier 2 capital means Tier 2 capital that has not been allocated in paragraph (b)(1) and (b)(2) of this section, subject to the restrictions in paragraph (b)(3) of this section.

must use its internal model to measure its daily VAR, in accordance with the requirements of this section.[10] The OCC may permit a bank to use alternative techniques to measure the market risk of de minimis exposures so long as the techniques adequately measure associated market risk.

(b) *Qualitative requirements.* A bank subject to this appendix must have a risk management system that meets the following minimum qualitative requirements:

(1) The bank must have a risk control unit that reports directly to senior management and is independent from business trading units.

(2) The bank's internal risk measurement model must be integrated into the daily management process.

(3) The bank's policies and procedures must identify, and the bank must conduct, appropriate stress tests and backtests.[11] The bank's policies and procedures must identify the procedures to follow in response to the results of such tests.

(4) The bank must conduct independent reviews of its risk measurement and risk management systems at least annually.

(c) *Market risk factors.* The bank's internal model must use risk factors sufficient to measure the market risk inherent in all covered positions. The risk factors must address interest rate risk,[12] equity price risk, foreign exchange rate risk, and commodity price risk.

(d) *Quantitative requirements.* For regulatory capital purposes, VAR measures must meet the following quantitative requirements:

(1) The VAR measures must be calculated on a daily basis using a 99 percent, one-tailed confidence level with a price shock equivalent to a ten-business day movement in rates and prices. In order to calculate VAR measures based on a ten-day price shock, the bank may either calculate ten-day figures directly or convert VAR figures based on holding periods other than ten days to the equivalent of a ten-day holding period (for instance, by multiplying a one-day VAR measure by the square root of ten).

(2) The VAR measures must be based on an historical observation period (or effective observation period for a bank using a weighting scheme or other similar method) of at least one year. The bank must update data sets at least once every three months or more frequently as market conditions warrant.

(3) The VAR measures must include the risks arising from the non-linear price characteristics of options positions and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates or prices. A bank with a large or complex options portfolio must measure the volatility of options positions by different maturities.

(4) The VAR measures may incorporate empirical correlations within and across risk categories, provided that the bank's process for measuring correlations is sound. In the event that the VAR measures do not incorporate empirical correlations across risk categories, then the bank must add the separate VAR measures for the four major risk categories to determine its aggregate VAR measure.

(e) *Backtesting.* (1) Beginning one year after a bank starts to comply with this appendix, a bank must conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss[13] with the corresponding daily VAR measures generated for internal risk measurement purposes and calibrated to a one-day holding period and a 99 percent, one-tailed confidence level.

(2) Once each quarter, the bank must identify the number of exceptions, that is, the number of business days for which the magnitude of the actual daily net trading loss, if any, exceeds the corresponding daily VAR measure.

(3) A bank must use the multiplication factor indicated in Table 1 of this appendix in determining its capital charge for market risk under section 3(a)(2)(i)(B) of this appendix until it obtains the next quarter's backtesting results, unless the OCC determines that a different adjustment or other action is appropriate.

TABLE 1.—MULTIPLICATION FACTOR BASED ON RESULTS OF BACKTESTING

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

Section 5. Specific Risk

(a) *Specific risk add-on.* For purposes of section 3(a)(2)(ii) of this appendix, a bank's specific risk add-on equals the standard specific risk capital charge calculated under paragraph (c) of this section. If, however, a bank can demonstrate to the OCC that its internal model measures the specific risk of covered debt and/or equity positions and that those measures are included in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank may reduce or eliminate its specific risk add-on under this section. The determination as to whether a model incorporates specific risk must be made separately for covered debt and equity positions.

(1) If a model includes the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank can reduce its specific risk charge for the included positions under paragraph (b) of this section. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(2) If a model addresses the specific risk of both covered debt and equity positions, then the bank can reduce its specific risk charge for both covered debt and equity positions under paragraph (b) of this section. In this case, the comparison described in paragraph (b) of this section must be based on the total VAR-based figure for the specific risk of debt and equity positions, taking into account any correlations that are built into the model.

(b) *VAR-based specific risk capital charge.* In all cases where a bank measures specific risk in its internal model, the total capital charge for specific risk (i.e., the VAR-based specific risk capital charge plus the specific risk add-on) must equal at least 50 percent of the standard specific risk capital charge (this amount is the minimum specific risk charge).

(1) If the portion of a bank's VAR measure that is attributable to specific risk (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix) is greater than or equal to the minimum specific risk charge, then the bank has no specific risk add-on and its capital charge for specific risk is the portion included in the VAR measure.

(2) If the portion of a bank's VAR measure that is attributable to specific risk (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix) is less than the minimum specific risk charge, then the bank's specific risk add-on is the difference between the minimum specific risk charge and the specific risk portion of the VAR measure (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix).

(c) *Standard specific risk capital charge.* The standard specific risk capital charge equals the sum of the components for covered debt and equity positions as follows:

(1) Covered debt positions. (i) For purposes of this section 5, covered debt positions means fixed-rate or floating-rate debt instruments located in the trading account and instruments located in the trading account with values that react primarily to changes in interest rates, including certain non-convertible preferred stock, convertible bonds, and instruments subject to repurchase and lending agreements. Also included are derivatives (including written and purchased options) for which the underlying instrument is a covered debt instrument that is subject to a non-zero specific risk capital charge.

(A) For covered debt positions that are derivatives, a bank must risk-weight (as

[10] A bank's internal model may use any generally accepted measurement techniques, such as variance-covariance models, historical simulations, or Monte Carlo simulations. However, the level of sophistication and accuracy of a bank's internal model must be commensurate with the nature and size of its covered positions. A bank that modifies its existing modeling procedures to comply with the requirements of this appendix for risk-based capital purposes should, nonetheless, continue to use the internal model it considers most appropriate in evaluating risks for other purposes.

[11] Stress tests provide information about the impact of adverse market events on a bank's covered positions. Backtests provide information about the accuracy of an internal model by comparing a bank's daily VAR measures to its corresponding daily trading profits and losses.

[12] For material exposures in the major currencies and markets, modeling techniques must capture spread risk and must incorporate enough segments of the yield curve—at least six—to capture differences in volatility and less than perfect correlation of rates along the yield curve.

[13] Actual net trading profits and losses typically include such things as realized and unrealized gains and losses on portfolio positions as well as fee income and commissions associated with trading activities.

described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index portfolio. Swaps must be included as the notional position in the underlying debt instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered debt positions that are options, whether long or short, a bank must risk-weight (as described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index multiplied by the option's delta.

(ii) A bank may net long and short covered debt positions (including derivatives) in identical debt issues or indices.

(iii) A bank must multiply the absolute value of the current market value of each net long or short covered debt position by the appropriate specific risk weighting factor indicated in Table 2 of this appendix. The specific risk capital charge component for covered debt positions is the sum of the weighted values.

TABLE 2—SPECIFIC RISK WEIGHTING FACTORS FOR COVERED DEBT POSITIONS

Category	Remaining maturity (contractual)	Weighting factor (in percent)
Government[1]	N/A	0.00
Qualifying[2]	6 months or less	0.25
	Over 6 months to 24 months.	1.00
	Over 24 months	1.60
Other[3]	N/A	8.00

[1] The "government" category includes all debt instruments of central governments of OECD countries (as defined in appendix A of this part) including bonds, Treasury bills, and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent the bank has liabilities booked in that currency.

[2] The "qualifying" category includes debt instruments of U.S. government-sponsored agencies (as defined in appendix A of this part), general obligation debt instruments issued by states and other political subdivisions of OECD countries, multilateral development banks (as defined in appendix A of this part), and debt instruments issued by U.S. depository institutions or OECD-banks (as defined in appendix A of this part) that do not qualify as capital of the issuing institution. This category also includes other debt instruments, including corporate debt and revenue instruments issued by states and other political subdivisions of OECD countries, that are: (1) Rated investment grade by at least two nationally recognized credit rating services; (2) rated investment grade by one nationally recognized credit rating agency and not rated less than investment grade by any other credit rating agency; or (3) unrated, but deemed to be of comparable investment quality by the reporting bank and the issuer has instruments listed on a recognized stock exchange, subject to review by the OCC.

[3] The "other" category includes debt instruments that are not included in the government or qualifying categories.

(2) *Covered equity positions.* (i) For purposes of this section 5, covered equity positions means equity instruments located in the trading account and instruments located in the trading account with values that react primarily to changes in equity prices, including voting or non-voting common stock, certain convertible bonds, and commitments to buy or sell equity instruments. Also included are derivatives (including written and purchased options) for which the underlying is a covered equity position.

(A) For covered equity positions that are derivatives, a bank must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or equity portfolio. Swaps must be included as the notional position in the underlying equity instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered equity positions that are options, whether long or short, a bank must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or index multiplied by the option's delta.

(ii) A bank may net long and short covered equity positions (including derivatives) in identical equity issues or equity indices in the same market.[14]

(iii)(A) A bank must multiply the absolute value of the current market value of each net long or short covered equity position by a risk weighting factor of 8.0 percent, or by 4.0 percent if the equity is held in a portfolio that is both liquid and well-diversified.[15] For covered equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the net long or short position is multiplied by a risk weighting factor of 2.0 percent.

(B) For covered equity positions from the following futures-related arbitrage strategies, a bank may apply a 2.0 percent risk weighting factor to one side (long or short) of each position with the opposite side exempt from charge:

(1) Long and short positions in exactly the same index at different dates or in different market centers; or

(2) Long and short positions in index contracts at the same date in different but similar indices.

(C) For futures contracts on broadly-based indices that are matched by offsetting positions in a basket of stocks comprising the index, a bank may apply a 2.0 percent risk weighting factor to the futures and stock basket positions (long and short), provided that such trades are deliberately entered into and separately controlled, and that the basket of stocks comprises at least 90 percent of the capitalization of the index.

(iv) The specific risk capital charge component for covered equity positions is the sum of the weighted values.

Section 6. Reservation of Authority

The OCC reserves the authority to modify the application of any of the provisions in this appendix to any bank, upon reasonable justification.

Dated: August 6, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

For the reasons set out in the joint preamble, parts 208 and 225 of title 12 of chapter II of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 208.13 is revised to read as follows:

§ 208.13 Capital Adequacy.

The standards and guidelines by which the capital adequacy of state member banks will be evaluated by the Board are set forth in appendix A and appendix E for risk-based capital purposes, and, with respect to the ratios relating capital to total assets, in appendix B to part 208 and in appendix B to the Board's Regulation Y, 12 CFR part 225.

3. Appendix A is amended in the introductory text by adding a new paragraph after the second undesignated paragraph to read as follows:

[14] A bank may also net positions in depository receipts against an opposite position in the underlying equity or identical equity in different markets, provided that the bank includes the costs of conversion.

[15] A portfolio is liquid and well-diversified if: (1) It is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio; (2) the volatility of the portfolio's value is not dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector; (3) it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value; and (4) it consists mainly of issues traded on organized exchanges or in well-established over-the-counter markets.

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks; Risk Based Measure

* * * * *

In addition, when certain banks that engage in trading activities calculate their risk-based capital ratio under this appendix A, they must also refer to appendix E of this part, which incorporates capital charges for certain market risks into the risk-based capital ratio. When calculating their risk-based capital ratio under this appendix A, such banks are required to refer to appendix E of this part for supplemental rules to determine qualifying and excess capital, calculate risk-weighted assets, calculate market risk equivalent assets, and calculate risk-based capital ratios adjusted for market risk.

* * * * *

4. A new appendix E is added to read as follows:

Appendix E to Part 208—Capital Adequacy Guidelines for State Member Banks; Market Risk Measure

Section 1. Purpose, Applicability, Scope, and Effective Date

(a) *Purpose.* The purpose of this appendix is to ensure that banks with significant exposure to market risk maintain adequate capital to support that exposure.[1] This appendix supplements and adjusts the risk-based capital ratio calculations under appendix A of this part with respect to those banks.

(b) *Applicability.* (1) This appendix applies to any insured state member bank whose trading activity[2] (on a worldwide consolidated basis) equals:

(i) 10 percent or more of total assets;[3] or

(ii) $1 billion or more.

(2) The Federal Reserve may additionally apply this appendix to any insured state member bank if the Federal Reserve deems it necessary or appropriate for safe and sound banking practices.

(3) The Federal Reserve may exclude an insured state member bank otherwise meeting the criteria of paragraph (b)(1) of this section from coverage under this appendix if it determines the bank meets such criteria as a consequence of accounting, operational, or similar considerations, and the Federal Reserve deems it consistent with safe and sound banking practices.

(c) *Scope.* The capital requirements of this appendix support market risk associated with a bank's covered positions.

(d) *Effective date.* This appendix is effective as of January 1, 1997. Compliance is not mandatory until January 1, 1998. Subject to supervisory approval, a bank may opt to comply with this appendix as early as January 1, 1997.[4]

Section 2. Definitions

For purposes of this appendix, the following definitions apply:

(a) *Covered positions* means all positions in a bank's trading account, and all foreign exchange[5] and commodity positions, whether or not in the trading account.[6] Positions include on-balance-sheet assets and liabilities and off-balance-sheet items. Securities subject to repurchase and lending agreements are included as if they are still owned by the lender.

(b) *Market risk* means the risk of loss resulting from movements in market prices. Market risk consists of general market risk and specific risk components.

(1) *General market risk* means changes in the market value of covered positions resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, or commodity prices.

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes such risk as the credit risk of an instrument's issuer.

(c) *Tier 1* and *Tier 2 capital* are defined in appendix A of this part.

(d) *Tier 3 capital* is subordinated debt that is unsecured; is fully paid up; has an original maturity of at least two years; is not redeemable before maturity without prior approval by the Federal Reserve; includes a lock-in clause precluding payment of either interest or principal (even at maturity) if the payment would cause the issuing bank's risk-based capital ratio to fall or remain below the minimum required under appendix A of this part; and does not contain and is not covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

(e) *Value-at-risk (VAR)* means the estimate of the maximum amount that the value of covered positions could decline during a fixed holding period within a stated confidence level, measured in accordance with section 4 of this appendix.

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations

(a) *Risk-based capital ratio denominator.* A bank subject to this appendix shall calculate its risk-based capital ratio denominator as follows:

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions).[7]

(2) *Measure for market risk.* Calculate the measure for market risk, which equals the sum of the VAR-based capital charge, the specific risk add-on (if any), and the capital charge for de minimis exposures (if any).

(i) *VAR-based capital charge.* The VAR-based capital charge equals the higher of:

(A) The previous day's VAR measure; or

(B) The average of the daily VAR measures for each of the preceding 60 business days multiplied by three, except as provided in section 4(e) of this appendix;

(ii) *Specific risk add-on.* The specific risk add-on is calculated in accordance with section 5 of this appendix; and

(iii) *Capital charge for de minimis exposure.* The capital charge for de minimis exposure is calculated in accordance with section 4(a) of this appendix.

(3) *Market risk equivalent assets.* Calculate market risk equivalent assets by multiplying the measure for market risk (as calculated in paragraph (a)(2) of this section) by 12.5.

(4) *Denominator calculation.* Add market risk equivalent assets (as calculated in paragraph (a)(3) of this section) to adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section). The resulting sum is the bank's risk-based capital ratio denominator.

(b) *Risk-based capital ratio numerator.* A bank subject to this appendix shall calculate its risk-based capital ratio numerator by allocating capital as follows:

(1) *Credit risk allocation.* Allocate Tier 1 and Tier 2 capital equal to 8.0 percent of adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section).[8]

(2) *Market risk allocation.* Allocate Tier 1, Tier 2, and Tier 3 capital equal to the measure for market risk as calculated in paragraph (a)(2) of this section. The sum of Tier 2 and Tier 3 capital allocated for market risk must not exceed 250 percent of Tier 1 capital allocated for market risk. (This requirement means that Tier 1 capital allocated in this paragraph (b)(2) must equal at least 28.6 percent of the measure for market risk.)

(3) *Restrictions.* (i) The sum of Tier 2 capital (both allocated and excess) and Tier 3 capital (allocated in paragraph (b)(2) of this section) may not exceed 100 percent of Tier 1 capital (both allocated and excess).[9]

(ii) Term subordinated debt (and intermediate-term preferred stock and related

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[1] This appendix is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision and endorsed by the Group of Ten Central Bank Governors. The framework is described in a Basle Committee paper entitled "Amendment to the Capital Accord to Incorporate Market Risk," January 1996.

[2] Trading activity means the gross sum of trading assets and liabilities as reported in the bank's most recent quarterly Consolidated Report of Condition and Income (Call Report).

[3] Total assets means quarter-end total assets as reported in the bank's most recent Call Report.

[4] A bank that voluntarily complies with the final rule prior to January 1, 1998, must comply with all of its provisions.

[5] Subject to supervisory review, a bank may exclude structural positions in foreign currencies from its covered positions.

[6] The term trading account is defined in the instructions to the Call Report.

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in adjusted risk weighted assets as determined in appendix A of this part.

[8] A bank may not allocate Tier 3 capital to support credit risk (as calculated under appendix A of this part).

[9] Excess Tier 1 capital means Tier 1 capital that has not been allocated in paragraphs (b)(1) and (b)(2) of this section. Excess Tier 2 capital means Tier 2 capital that has not been allocated in paragraph (b)(1) and (b)(2) of this section, subject to the restrictions in paragraph (b)(3) of this section.

surplus) included in Tier 2 capital (both allocated and excess) may not exceed 50 percent of Tier 1 capital (both allocated and excess).

(4) *Numerator calculation.* Add Tier 1 capital (both allocated and excess), Tier 2 capital (both allocated and excess), and Tier 3 capital (allocated under paragraph (b)(2) of this section). The resulting sum is the bank's risk-based capital ratio numerator.

Section 4. Internal Models.

(a) *General.* For risk-based capital purposes, a bank subject to this appendix must use its internal model to measure its daily VAR, in accordance with the requirements of this section.[10] The Federal Reserve may permit a bank to use alternative techniques to measure the market risk of de minimis exposures so long as the techniques adequately measure associated market risk.

(b) *Qualitative requirements.* A bank subject to this appendix must have a risk management system that meets the following minimum qualitative requirements:

(1) The bank must have a risk control unit that reports directly to senior management and is independent from business trading units.

(2) The bank's internal risk measurement model must be integrated into the daily management process.

(3) The bank's policies and procedures must identify, and the bank must conduct, appropriate stress tests and backtests.[11] The bank's policies and procedures must identify the procedures to follow in response to the results of such tests.

(4) The bank must conduct independent reviews of its risk measurement and risk management systems at least annually.

(c) *Market risk factors.* The bank's internal model must use risk factors sufficient to measure the market risk inherent in all covered positions. The risk factors must address interest rate risk,[12] equity price risk, foreign exchange rate risk, and commodity price risk.

(d) *Quantitative requirements.* For regulatory capital purposes, VAR measures must meet the following quantitative requirements:

(1) The VAR measures must be calculated on a daily basis using a 99 percent, one-tailed confidence level with a price shock equivalent to a ten-business day movement in rates and prices. In order to calculate VAR measures based on a ten-day price shock, the bank may either calculate ten-day figures directly or convert VAR figures based on holding periods other than ten days to the equivalent of a ten-day holding period (for instance, by multiplying a one-day VAR measure by the square root of ten).

(2) The VAR measures must be based on an historical observation period (or effective observation period for a bank using a weighting scheme or other similar method) of at least one year. The bank must update data sets at least once every three months or more frequently as market conditions warrant.

(3) The VAR measures must include the risks arising from the non-linear price characteristics of options positions and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates or prices. A bank with a large or complex options portfolio must measure the volatility of options positions by different maturities.

(4) The VAR measures may incorporate empirical correlations within and across risk categories, provided that the bank's process for measuring correlations is sound. In the event that the VAR measures do not incorporate empirical correlations across risk categories, then the bank must add the separate VAR measures for the four major risk categories to determine its aggregate VAR measure.

(e) *Backtesting.* (1) Beginning one year after a bank starts to comply with this appendix, a bank must conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss[13] with the corresponding daily VAR measures generated for internal risk measurement purposes and calibrated to a one-day holding period and a 99 percent, one-tailed confidence level.

(2) Once each quarter, the bank must identify the number of exceptions, that is, the number of business days for which the magnitude of the actual daily net trading loss, if any, exceeds the corresponding daily VAR measure.

(3) A bank must use the multiplication factor indicated in Table 1 of this appendix in determining its capital charge for market risk under section 3(a)(2)(i)(B) of this appendix until it obtains the next quarter's backtesting results, unless the Federal Reserve determines that a different adjustment or other action is appropriate.

TABLE 1.—MULTIPLICATION FACTOR BASED ON RESULTS OF BACKTESTING

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50

TABLE 1.—MULTIPLICATION FACTOR BASED ON RESULTS OF BACKTESTING—Continued

Number of exceptions	Multiplication factor
7	3.65
8	3.75
9	3.85
10 or more	4.00

Section 5. Specific Risk

(a) *Specific risk add-on.* For purposes of section 3(a)(2)(ii) of this appendix, a bank's specific risk add-on equals the standard specific risk capital charge calculated under paragraph (c) of this section. If, however, a bank can demonstrate to the Federal Reserve that its internal model measures the specific risk of covered debt and/or equity positions and that those measures are included in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank may reduce or eliminate its specific risk add-on under this section. The determination as to whether a model incorporates specific risk must be made separately for covered debt and equity positions.

(1) If a model includes the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank can reduce its specific risk charge for the included positions under paragraph (b) of this section. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(2) If a model addresses the specific risk of both covered debt and equity positions, then the bank can reduce its specific risk charge for both covered debt and equity positions under paragraph (b) of this section. In this case, the comparison described in paragraph (b) of this section must be based on the total VAR-based figure for the specific risk of debt and equity positions, taking into account any correlations that are built into the model.

(b) *VAR-based specific risk capital charge.* In all cases where a bank measures specific risk in its internal model, the total capital charge for specific risk (i.e., the VAR-based specific risk capital charge plus the specific risk add-on) must equal at least 50 percent of the standard specific risk capital charge (this amount is the minimum specific risk charge).

(1) If the portion of a bank's VAR measure that is attributable to specific risk (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix) is greater than or equal to the minimum specific risk charge, then the bank has no specific risk add-on and its capital charge for specific risk is the portion included in the VAR measure.

(2) If the portion of a bank's VAR measure that is attributable to specific risk (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix) is less than the minimum specific risk charge, then the bank's specific risk add-on is the difference between the minimum specific risk charge and the specific risk portion of the VAR measure (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix).

[10] A bank's internal model may use any generally accepted measurement techniques, such as variance-covariance models, historical simulations, or Monte Carlo simulations. However, the level of sophistication and accuracy of a bank's internal model must be commensurate with the nature and size of its covered positions. A bank that modifies its existing modeling procedures to comply with the requirements of this appendix for risk-based capital purposes should, nonetheless, continue to use the internal model it considers most appropriate in evaluating risks for other purposes.

[11] Stress tests provide information about the impact of adverse market events on a bank's covered positions. Backtests provide information about the accuracy of an internal model by comparing a bank's daily VAR measures to its corresponding daily trading profits and losses.

[12] For material exposures in the major currencies and markets, modeling techniques must capture spread risk and must incorporate enough segments of the yield curve—at least six—to capture differences in volatility and less than perfect correlation of rates along the yield curve.

[13] Actual net trading profits and losses typically include such things as realized and unrealized gains and losses on portfolio positions as well as fee income and commissions associated with trading activities.

(c) *Standard specific risk capital charge.* The standard specific risk capital charge equa s the sum of the components for covered debt and equity positions as follows:

(1) *Covered debt positions.* (i) For purposes of this section 5, covered debt positions means fixed-rate or floating-rate debt instruments located in the trading account and instruments located in the trading account with values that react primarily to changes in interest rates, including certain non-convertible preferred stock, convertible bonds, and instruments subject to repurchase and lending agreements. Also included are derivatives (including written and purchased options) for which the underlying instrument is a covered debt instrument that is subject to a non-zero specific risk capital charge.

(A) For covered debt positions that are derivatives, a bank must risk-weight (as described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index portfolio. Swaps must be included as the notional position in the underlying debt instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered debt positions that are options, whether long or short, a bank must risk-weight (as described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index multiplied by the option's delta.

(ii) A bank may net long and short covered debt positions (including derivatives) in identical debt issues or indices.

(iii) A bank must multiply the absolute value of the current market value of each net long or short covered debt position by the appropriate specific risk weighting factor indicated in Table 2 of this appendix. The specific risk capital charge component for covered debt positions is the sum of the weighted values.

TABLE 2.—SPECIFIC RISK WEIGHTING FACTORS FOR COVERED DEBT POSITIONS

Category	Remaining maturity (contractual)	Weighting factor (in percent)
Government	N/A	0.00
Qualifying	6 months or less	0.25
	Over 6 months to 24 months.	1.00
	Over 24 months	1.60
Other	N/A	8.00

(A) The *government* category includes all debt instruments of central governments of OECD-based countries [14] including bonds, Treasury bills, and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent the bank has liabilities booked in that currency.

[14] Organization for Economic Cooperation and Development (OECD)-based countries is defined in appendix A of this part.

(B) The *qualifying* category includes debt instruments of U.S. government-sponsored agencies, general obligation debt instruments issued by states and other political subdivisions of OECD-based countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution.[15] This category also includes other debt instruments, including corporate debt and revenue instruments issued by states and other political subdivisions of OECD countries, that are:

(*1*) Rated investment-grade by at least two nationally recognized credit rating services;

(*2*) Rated investment-grade by one nationally recognized credit rating agency and not rated less than investment-grade by any other credit rating agency; or

(*3*) Unrated, but deemed to be of comparable investment quality by the reporting bank and the issuer has instruments listed on a recognized stock exchange, subject to review by the Federal Reserve.

(C) The *other* category includes debt instruments that are not included in the government or qualifying categories.

(2) *Covered equity positions.* (i) For purposes of this section 5, covered equity positions means equity instruments located in the trading account and instruments located in the trading account with values that react primarily to changes in equity prices, including voting or non-voting common stock, certain convertible bonds, and commitments to buy or sell equity instruments. Also included are derivatives (including written and purchased options) for which the underlying is a covered equity position.

(A) For covered equity positions that are derivatives, a bank must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or equity portfolio. Swaps must be included as the notional position in the underlying equity instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered equity positions that are options, whether long or short, a bank must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or index multiplied by the option's delta.

(ii) A bank may net long and short covered equity positions (including derivatives) in identical equity issues or equity indices in the same market.[16]

(iii)(A) A bank must multiply the absolute value of the current market value of each net long or short covered equity position by a risk weighting factor of 8.0 percent, or by 4.0 percent if the equity is held in a portfolio that is both liquid and well-diversified.[17] For covered equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the net long or short position is multiplied by a risk weighting factor of 2.0 percent.

(B) For covered equity positions from the following futures-related arbitrage strategies, a bank may apply a 2.0 percent risk weighting factor to one side (long or short) of each position with the opposite side exempt from charge, subject to review by the Federal Reserve:

(*1*) Long and short positions in exactly the same index at different dates or in different market centers; or

(*2*) Long and short positions in index contracts at the same date in different but similar indices.

(C) For futures contracts on broadly-based indices that are matched by offsetting positions in a basket of stocks comprising the index, a bank may apply a 2.0 percent risk weighting factor to the futures and stock basket positions (long and short), provided that such trades are deliberately entered into and separately controlled, and that the basket of stocks comprises at least 90 percent of the capitalization of the index.

(iv) The specific risk capital charge component for covered equity positions is the sum of the weighted values.

[15] U.S. government-sponsored agencies, multilateral development banks, and OECD banks are defined in appendix A of this part.

[16] A bank may also net positions in depository receipts against an opposite position in the underlying equity or identical equity in different markets, provided that the bank includes the costs of conversion.

[17] A portfolio is liquid and well-diversified if: (1) It is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio; (2) the volatility of the portfolio's value is not dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector; (3) it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value; and (4) it consists mainly of issues traded on organized exchanges or in well-established over-the-counter markets.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Appendix A is amended in the introductory text, by adding a new paragraph after the second undesignated paragraph to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

In addition, when certain organizations that engage in trading activities calculate their risk-based capital ratio under this appendix A, they must also refer to appendix E of this part, which incorporates capital charges for certain market risks into the risk-based capital ratio. When calculating their risk-based capital ratio under this appendix A, such organizations are required to refer to

appendix E of this part for supplemental rules to determine qualifying and excess capital, calculate risk-weighted assets, calculate market risk equivalent assets, and calculate risk-based capital ratios adjusted for market risk.

* * * * *

3. A new appendix E is added to read as follows:

Appendix E to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Market Risk Measure

Section 1. Purpose, Applicability, Scope, and Effective Date

(a) *Purpose.* The purpose of this appendix is to ensure that bank holding companies (organizations) with significant exposure to market risk maintain adequate capital to support that exposure.[1] This appendix supplements and adjusts the risk-based capital ratio calculations under appendix A of this part with respect to those organizations.

(b) *Applicability.* (1) This appendix applies to any bank holding company whose trading activity[2] (on a worldwide consolidated basis) equals:

(i) 10 percent or more of total assets;[3] or

(ii) $1 billion or more.

(2) The Federal Reserve may additionally apply this appendix to any bank holding company if the Federal Reserve deems it necessary or appropriate for safe and sound banking practices.

(3) The Federal Reserve may exclude a bank holding company otherwise meeting the criteria of paragraph (b)(1) of this section from coverage under this appendix if it determines the organization meets such criteria as a consequence of accounting, operational, or similar considerations, and the Federal Reserve deems it consistent with safe and sound banking practices.

(c) *Scope.* The capital requirements of this appendix support market risk associated with an organization's covered positions.

(d) *Effective date.* This appendix is effective as of January 1, 1997. Compliance is not mandatory until January 1, 1998. Subject to supervisory approval, a bank holding company may opt to comply with this appendix as early as January 1, 1997.[4]

Section 2. Definitions

For purposes of this appendix, the following definitions apply:

(a) *Covered positions* means all positions in an organization's trading account, and all foreign exchange[5] and commodity positions, whether or not in the trading account.[6] Positions include on-balance-sheet assets and liabilities and off-balance-sheet items. Securities subject to repurchase and lending agreements are included as if still owned by the lender.

(b) *Market risk* means the risk of loss resulting from movements in market prices. Market risk consists of general market risk and specific risk components.

(1) *General market risk* means changes in the market value of covered positions resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, or commodity prices.

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes such risk as the credit risk of an instrument's issuer.

(c) *Tier 1* and *Tier 2 capital* are defined in appendix A of this part.

(d) *Tier 3 capital* is subordinated debt that is unsecured; is fully paid up; has an original maturity of at least two years; is not redeemable before maturity without prior approval by the Federal Reserve; includes a lock-in clause precluding payment of either interest or principal (even at maturity) if the payment would cause the issuing organization's risk-based capital ratio to fall or remain below the minimum required under appendix A of this part; and does not contain and is not covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

(e) *Value-at-risk (VAR)* means the estimate of the maximum amount that the value of covered positions could decline due to market price or rate movements during a fixed holding period within a stated confidence level, measured in accordance with section 4 of this appendix.

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations

(a) *Risk-based capital ratio denominator.* An organization subject to this appendix shall calculate its risk-based capital ratio denominator as follows:

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part) excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions).[7]

(2) *Measure for market risk.* Calculate the measure for market risk, which equals the sum of the VAR-based capital charge, the specific risk add-on (if any), and the capital charge for de minimis exposures (if any).

(i) *VAR-based capital charge.* The VAR-based capital charge equals the higher of:

(A) The previous day's VAR measure; or

(B) The average of the daily VAR measures for each of the preceding 60 business days multiplied by three, except as provided in section 4(e) of this appendix;

(ii) *Specific risk add-on.* The specific risk add-on is calculated in accordance with section 5 of this appendix; and

(iii) *Capital charge for de minimis exposure.* The capital charge for de minimis exposure is calculated in accordance with section 4(a) of this appendix.

(3) *Market risk equivalent assets.* Calculate market risk equivalent assets by multiplying the measure for market risk (as calculated in paragraph (a)(2) of this section) by 12.5.

(4) *Denominator calculation.* Add market risk equivalent assets (as calculated in paragraph (a)(3) of this section) to adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section). The resulting sum is the organization's risk-based capital ratio denominator.

(b) *Risk-based capital ratio numerator.* An organization subject to this appendix shall calculate its risk-based capital ratio numerator by allocating capital as follows:

(1) *Credit risk allocation.* Allocate Tier 1 and Tier 2 capital equal to 8.0 percent of adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section).[8]

(2) *Market risk allocation.* Allocate Tier 1, Tier 2, and Tier 3 capital equal to the measure for market risk as calculated in paragraph (a)(2) of this section. The sum of Tier 2 and Tier 3 capital allocated for market risk must not exceed 250 percent of Tier 1 capital allocated for market risk. (This requirement means that Tier 1 capital allocated in this paragraph (b)(2) must equal at least 28.6 percent of the measure for market risk.)

(3) *Restrictions.* (i) The sum of Tier 2 capital (both allocated and excess) and Tier 3 capital (allocated in paragraph (b)(2) of this section) may not exceed 100 percent of Tier 1 capital (both allocated and excess).[9]

(ii) Term subordinated debt (and intermediate-term preferred stock and related surplus) included in Tier 2 capital (both allocated and excess) may not exceed 50 percent of Tier 1 capital (both allocated and excess).

(4) *Numerator calculation.* Add Tier 1 capital (both allocated and excess), Tier 2 capital (both allocated and excess), and Tier 3 capital (allocated under paragraph (b)(2) of this section). The resulting sum is the organization's risk-based capital ratio numerator.

Section 4. Internal Models

(a) *General.* For risk-based capital purposes, a bank holding company subject to this appendix must use its internal model to measure its daily VAR, in accordance with

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[1] This appendix is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision and endorsed by the Group of Ten Central Bank Governors. The framework is described in a Basle Committee paper entitled "Amendment to the Capital Accord to Incorporate Market Risk," January 1996.

[2] Trading activity means the gross sum of trading assets and liabilities as reported in the bank holding company's most recent quarterly Y–9C Report.

[3] Total assets means quarter-end total assets as reported in the bank holding company's most recent Y–9C Report.

[4] A bank holding company that voluntarily complies with the final rule prior to January 1, 1998, must comply with all of its provisions.

[5] Subject to supervisory review, a bank may exclude structural positions in foreign currencies from its covered positions.

[6] The term trading account is defined in the instructions to the Call Report.

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in adjusted risk weighted assets as determined in appendix A of this part.

[8] An institution may not allocate Tier 3 capital to support credit risk (as calculated under appendix A of this part).

[9] Excess Tier 1 capital means Tier 1 capital that has not been allocated in paragraphs (b)(1) and (b)(2) of this section. Excess Tier 2 capital means Tier 2 capital that has not been allocated in paragraph (b)(1) and (b)(2) of this section, subject to the restrictions in paragraph (b)(3) of this section.

the requirements of this section.[10] The Federal Reserve may permit an organization to use alternative techniques to measure the market risk of de minimis exposures so long as the techniques adequately measure associated market risk.

(b) *Qualitative requirements.* A bank holding company subject to this appendix must have a risk management system that meets the following minimum qualitative requirements:

(1) The organization must have a risk control unit that reports directly to senior management and is independent from business trading units.

(2) The organization's internal risk measurement model must be integrated into the daily management process.

(3) The organization's policies and procedures must identify, and the organization must conduct, appropriate stress tests and backtests.[11] The organization's policies and procedures must identify the procedures to follow in response to the results of such tests.

(4) The organization must conduct independent reviews of its risk measurement and risk management systems at least annually.

(c) *Market risk factors.* The organization's internal model must use risk factors sufficient to measure the market risk inherent in all covered positions. The risk factors must address interest rate risk,[12] equity price risk, foreign exchange rate risk, and commodity price risk.

(d) *Quantitative requirements.* For regulatory capital purposes, VAR measures must meet the following quantitative requirements:

(1) The VAR measures must be calculated on a daily basis using a 99 percent, one-tailed confidence level with a price shock equivalent to a ten-business day movement in rates and prices. In order to calculate VAR measures based on a ten-day price shock, the organization may either calculate ten-day figures directly or convert VAR figures based on holding periods other than ten days to the equivalent of a ten-day holding period (for instance, by multiplying a one-day VAR measure by the square root of ten).

(2) The VAR measures must be based on an historical observation period (or effective observation period for an organization using a weighting scheme or other similar method) of at least one year. The organization must update data sets at least once every three months or more frequently as market conditions warrant.

(3) The VAR measures must include the risks arising from the non-linear price characteristics of options positions and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates or prices. An organization with a large or complex options portfolio must measure the volatility of options positions by different maturities.

(4) The VAR measures may incorporate empirical correlations within and across risk categories, provided that the organization's process for measuring correlations is sound. In the event that the VAR measures do not incorporate empirical correlations across risk categories, then the organization must add the separate VAR measures for the four major risk categories to determine its aggregate VAR measure.

(e) *Backtesting.* (1) Beginning one year after a bank holding company starts to comply with this appendix, it must conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss[13] with the corresponding daily VAR measures generated for internal risk measurement purposes and calibrated to a one-day holding period and a 99th percentile, one-tailed confidence level.

(2) Once each quarter, the organization must identify the number of exceptions, that is, the number of business days for which the magnitude of the actual daily net trading loss, if any, exceeds the corresponding daily VAR measure.

(3) A bank holding company must use the multiplication factor indicated in Table 1 of this appendix in determining its capital charge for market risk under section 3(a)(2)(i)(B) of this appendix until it obtains the next quarter's backtesting results, unless the Federal Reserve determines that a different adjustment or other action is appropriate.

TABLE 1.—MULTIPLICATION FACTOR BASED ON RESULTS OF BACKTESTING

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

Section 5. Specific Risk

(a) *Specific risk add-on.* For purposes of section 3(a)(2)(ii) of this appendix, a bank holding company's specific risk add-on equals the standard specific risk capital charge calculated under paragraph (c) of this section. If, however, an organization can demonstrate to the Federal Reserve that its internal model measures the specific risk of covered debt and/or equity positions and that those measures are included in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then it may reduce or eliminate its specific risk add-on under this section. The determination as to whether a model incorporates specific risk must be made separately for covered debt and equity positions.

(1) If a model includes the specific risk of covered debt positions but not covered equity positions (or vice versa), then the organization can reduce its specific risk charge for the included positions under paragraph (b) of this section. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(2) If a model addresses the specific risk of both covered debt and equity positions, then the organization can reduce its specific risk charge for both covered debt and equity positions under paragraph (b) of this section. In this case, the comparison described in paragraph (b) of this section must be based on the total VAR-based figure for the specific risk of debt and equity positions, taking account of any correlations that are built into the model.

(b) *VAR-based specific risk capital charge.* In all cases where a bank holding company measures specific risk in its internal model, the total capital charge for specific risk (i.e., the VAR-based specific risk capital charge plus the specific risk add-on) must equal at least 50 percent of the standard specific risk capital charge (this amount is the minimum specific risk charge).

(1) If the portion of an organization's VAR measure that is attributable to specific risk (multiplied by the organization's multiplication factor if required in section 3(a)(2) of this appendix) is greater than or equal to the minimum specific risk charge, then the organization has no specific risk add-on and its capital charge for specific risk is the portion included in the VAR measure.

(2) If the portion of an organization's VAR measure that is attributable to specific risk (multiplied by the organization's multiplication factor if required in section 3(a)(2) of this appendix) is less than the minimum specific risk charge, then the organization's specific risk add-on is the difference between the minimum specific risk charge and the specific risk portion of the VAR measure (multiplied by the multiplication factor if required in section 3(a)(2) of this appendix).

(c) *Standard specific risk capital charge.* The standard specific risk capital charge equals the sum of the components for covered debt and equity positions as follows:

(1) *Covered debt positions.* (i) For purposes of this section 5, covered debt positions means fixed-rate or floating-rate debt instruments located in the trading account or instruments located in the trading account with values that react primarily to changes in interest rates, including certain non-

[10] An organization's internal model may use any generally accepted measurement techniques, such as variance-covariance models, historical simulations, or Monte Carlo simulations. However, the level of sophistication and accuracy of an organization's internal model must be commensurate with the nature and size of its covered positions. An organization that modifies its existing modeling procedures to comply with the requirements of this appendix for risk-based capital purposes should, nonetheless, continue to use the internal model it considers most appropriate in evaluating risks for other purposes.

[11] Stress tests provide information about the impact of adverse market events on a bank's covered positions. Backtests provide information about the accuracy of an internal model by comparing an organization's daily VAR measures to its corresponding daily trading profits and losses.

[12] For material exposures in the major currencies and markets, modeling techniques must capture spread risk and must incorporate enough segments of the yield curve—at least six—to capture differences in volatility and less than perfect correlation of rates along the yield curve.

[13] Actual net trading profits and losses typically include such things as realized and unrealized gains and losses on portfolio positions as well as fee income and commissions associated with trading activities.

convertible preferred stock, convertible bonds, and instruments subject to repurchase and lending agreements. Also included are derivatives (including written and purchased options) for which the underlying instrument is a covered debt instrument that is subject to a non-zero specific risk capital charge.

(A) For covered debt positions that are derivatives, an organization must risk-weight (as described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index portfolio. Swaps must be included as the notional position in the underlying debt instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered debt positions that are options, whether long or short, an organization must risk-weight (as described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index multiplied by the option's delta.

(ii) An organization may net long and short covered debt positions (including derivatives) in identical debt issues or indices.

(iii) An organization must multiply the absolute value of the current market value of each net long or short covered debt position by the appropriate specific risk weighting factor indicated in Table 2 of this appendix. The specific risk capital charge component for covered debt positions is the sum of the weighted values.

TABLE 2.—SPECIFIC RISK WEIGHTING FACTORS FOR COVERED DEBT POSITIONS

Category	Remaining maturity (contractual)	Weighting factor (in percent)
Government	N/A	0.00
Qualifying	6 months or less	0.25
	Over 6 months to 24 months.	1.00
	Over 24 months	1.60
Other	N/A	8.00

(A) The *government* category includes all debt instruments of central governments of OECD-based countries [14] including bonds, Treasury bills, and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent the organization has liabilities booked in that currency.

(B) The *qualifying* category includes debt instruments of U.S. government-sponsored agencies, general obligation debt instruments issued by states and other political subdivisions of OECD-based countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD banks that do not qualify as capital of the issuing institution.[15] This category also includes other debt instruments, including corporate debt and revenue instruments issued by states and other political subdivisions of OECD countries, that are:

(*1*) Rated investment-grade by at least two nationally recognized credit rating services;

(*2*) Rated investment grade by one nationally recognized credit rating agency and not rated less than investment grade by any other credit rating agency; or

(*3*) Unrated, but deemed to be of comparable investment quality by the reporting organization and the issuer has instruments listed on a recognized stock exchange, subject to review by the Federal Reserve.

(C) The *other* category includes debt instruments that are not included in the government or qualifying categories.

(2) *Covered equity positions.* (i) For purposes of this section 5, covered equity positions means equity instruments located in the trading account and instruments located in the trading account with values that react primarily to changes in equity prices, including voting or non-voting common stock, certain convertible bonds, and commitments to buy or sell equity instruments. Also included are derivatives (including written or purchased options) for which the underlying is a covered equity position.

(A) For covered equity positions that are derivatives, an organization must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or equity portfolio. Swaps must be included as the notional position in the underlying equity instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered equity positions that are options, whether long or short, an organization must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or index multiplied by the option's delta.

(ii) An organization may net long and short covered equity positions (including derivatives) in identical equity issues or equity indices in the same market.[16]

(iii)(A) An organization must multiply the absolute value of the current market value of each net long or short covered equity position by a risk weighting factor of 8.0 percent, or by 4.0 percent if the equity is held in a portfolio that is both liquid and well-diversified.[17] For covered equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the net long or short position is to be multiplied by a risk weighting factor of 2.0 percent.

(B) For covered equity positions from the following futures-related arbitrage strategies, an organization may apply a 2.0 percent risk weighting factor to one side (long or short) of each equity position with the opposite side exempt from charge, subject to review by the Federal Reserve:

(*1*) Long and short positions in exactly the same index at different dates or in different market centers; or

(*2*) Long and short positions in index contracts at the same date in different but similar indices.

(C) For futures contracts on broadly-based indices that are matched by offsetting positions in a basket of stocks comprising the index, an organization may apply a 2.0 percent risk weighting factor to the futures and stock basket positions (long and short), provided that such trades are deliberately entered into and separately controlled, and that the basket of stocks comprises at least 90 percent of the capitalization of the index.

(iv) The specific risk capital charge component for covered equity positions is the sum of the weighted values.

By order of the Board of Governors of the Federal Reserve System, August 29, 1996.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

For the reasons indicated in the preamble, the FDIC Board of Directors hereby amends part 325 of chapter III of title 12 of the Code of Federal Regulations as follows.

PART 325—[AMENDED]

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. Appendix A to part 325 is amended in the introductory text, by adding a new paragraph after the third undesignated paragraph to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

In addition, when certain banks that engage in trading activities calculate their risk-based capital ratio under this appendix A, they must also refer to appendix C of this

[14] Organization for Economic Cooperation and Development (OECD)–based countries is defined in appendix A of this part.

[15] U.S. government-sponsored agencies, multilateral development banks, and OECD banks are defined in appendix A of this part.

[16] An organization may also net positions in depository receipts against an opposite position in the underlying equity or identical equity in different markets, provided that the organization includes the costs of conversion.

[17] A portfolio is liquid and well-diversified if: (1) it is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio; (2) the volatility of the portfolio's value is not dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector; (3) it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value; and (4) it consists mainly of issues traded on organized exchanges or in well-established over-the-counter markets.

part, which incorporates capital charges for certain market risks into the risk-based capital ratio. When calculating their risk-based capital ratio under this appendix A, such banks are required to refer to appendix C of this part for supplemental rules to determine qualifying and excess capital, calculate risk-weighted assets, calculate market risk equivalent assets and add them to risk-weighted assets, and calculate risk-based capital ratios as adjusted for market risk.

* * * * *

3. A new appendix C is added to part 325 to read as follows:

Appendix C to Part 325—Risk-Based Capital for State Non-Member Banks; Market Risk

Section 1. Purpose, Applicability, Scope, and Effective Date

(a) *Purpose.* The purpose of this appendix is to ensure that banks with significant exposure to market risk maintain adequate capital to support that exposure.[1] This appendix supplements and adjusts the risk-based capital ratio calculations under appendix A of this part with respect to those banks.

(b) *Applicability.* (1) This appendix applies to any insured state nonmember bank whose trading activity[2] (on a worldwide consolidated basis) equals:

(i) 10 percent or more of total assets;[3] or

(ii) $1 billion or more.

(2) The FDIC may additionally apply this appendix to any insured state nonmember bank if the FDIC deems it necessary or appropriate for safe and sound banking practices.

(3) The FDIC may exclude an insured state nonmember bank otherwise meeting the criteria of paragraph (b)(1) of this section from coverage under this appendix if it determines the bank meets such criteria as a consequence of accounting, operational, or similar considerations, and the FDIC deems it consistent with safe and sound banking practices.

(c) *Scope.* The capital requirements of this appendix support market risk associated with a bank's covered positions.

(d) *Effective date.* This appendix is effective as of January 1, 1997. Compliance is not mandatory until January 1, 1998. Subject to supervisory approval, a bank may opt to comply with this appendix as early as January 1, 1997.[4]

Section 2. Definitions

For purposes of this appendix, the following definitions apply:

(a) *Covered positions* means all positions in a bank's trading account, and all foreign exchange[5] and commodity positions, whether or not in the trading account.[6] Positions include on-balance-sheet assets and liabilities and off-balance-sheet items. Securities subject to repurchase and lending agreements are included as if they are still owned by the lender.

(b) *Market risk* means the risk of loss resulting from movements in market prices. Market risk consists of general market risk and specific risk components.

(1) *General market risk* means changes in the market value of covered positions resulting from broad market movements, such as changes in the general level of interest rates, equity prices, foreign exchange rates, or commodity prices.

(2) *Specific risk* means changes in the market value of specific positions due to factors other than broad market movements and includes such risk as the credit risk of an instrument's issuer.

(c) *Tier 1* and *Tier 2 capital* are defined in appendix A of this part.

(d) *Tier 3 capital* is subordinated debt that is unsecured; is fully paid up; has an original maturity of at least two years; is not redeemable before maturity without prior approval by the FDIC; includes a lock-in clause precluding payment of either interest or principal (even at maturity) if the payment would cause the issuing bank's risk-based capital ratio to fall or remain below the minimum required under appendix A of this part; and does not contain and is not covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

(e) *Value-at-risk (VAR)* means the estimate of the maximum amount that the value of covered positions could decline during a fixed holding period within a stated confidence level, measured in accordance with section 4 of this appendix.

Section 3. Adjustments to the Risk-Based Capital Ratio Calculations.

(a) *Risk-based capital ratio denominator.* A bank subject to this appendix shall calculate its risk-based capital ratio denominator as follows:

(1) *Adjusted risk-weighted assets.* Calculate adjusted risk-weighted assets, which equals risk-weighted assets (as determined in accordance with appendix A of this part), excluding the risk-weighted amounts of all covered positions (except foreign exchange positions outside the trading account and over-the-counter derivative positions).[7]

(2) *Measure for market risk.* Calculate the measure for market risk, which equals the sum of the VAR-based capital charge, the specific risk add-on (if any), and the capital charge for de minimis exposures (if any).

(i) *VAR-based capital charge.* The VAR-based capital charge equals the higher of:

(A) The previous day's VAR measure; or

(B) The average of the daily VAR measures for each of the preceding 60 business days multiplied by three, except as provided in section 4(e) of this appendix;

(ii) *Specific risk add-on.* The specific risk add-on is calculated in accordance with section 5 of this appendix; and

(iii) *Capital charge for de minimis exposure.* The capital charge for de minimis exposure is calculated in accordance with section 4(a) of this appendix.

(3) *Market risk equivalent assets.* Calculate market risk equivalent assets by multiplying the measure for market risk (as calculated in paragraph (a)(2) of this section) by 12.5.

(4) *Denominator calculation.* Add market risk equivalent assets (as calculated in paragraph (a)(3) of this section) to adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section). The resulting sum is the bank's risk-based capital ratio denominator.

(b) *Risk-based capital ratio numerator.* A bank subject to this appendix shall calculate its risk-based capital ratio numerator by allocating capital as follows:

(1) *Credit risk allocation.* Allocate Tier 1 and Tier 2 capital equal to 8.0 percent of adjusted risk-weighted assets (as calculated in paragraph (a)(1) of this section).[8]

(2) *Market risk allocation.* Allocate Tier 1, Tier 2, and Tier 3 capital equal to the measure for market risk as calculated in paragraph (a)(2) of this section. The sum of Tier 2 and Tier 3 capital allocated for market risk must not exceed 250 percent of Tier 1 capital allocated for market risk. (This requirement means that Tier 1 capital allocated in this paragraph (b)(2) must equal at least 28.6 percent of the measure for market risk.)

(3) *Restrictions.* (i) The sum of Tier 2 capital (both allocated and excess) and Tier 3 capital (allocated in paragraph (b)(2) of this section) may not exceed 100 percent of Tier 1 capital (both allocated and excess).[9]

(ii) Term subordinated debt (and intermediate-term preferred stock and related surplus) included in Tier 2 capital (both allocated and excess) may not exceed 50 percent of Tier 1 capital (both allocated and excess).

(4) *Numerator calculation.* Add Tier 1 capital (both allocated and excess), Tier 2 capital (both allocated and excess), and Tier 3 capital (allocated under paragraph (b)(2) of this section). The resulting sum is the bank's risk-based capital ratio numerator.

Section 4. Internal Models

(a) *General.* For risk-based capital purposes, a bank subject to this appendix

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[1] This appendix is based on a framework developed jointly by supervisory authorities from the countries represented on the Basle Committee on Banking Supervision and endorsed by the Group of Ten Central Bank Governors. The framework is described in a Basle Committee paper entitled "Amendment to the Capital Accord to Incorporate Market Risk," January 1996.

[2] Trading activity means the gross sum of trading assets and liabilities as reported in the bank's most recent quarterly Consolidated Report of Condition and Income (Call Report).

[3] Total assets means quarter-end total assets as reported in the bank's most recent Call Report.

[4] A bank that voluntarily complies with the final rule prior to January 1, 1998, must comply with all of its provisions.

[5] Subject to FDIC review, a bank may exclude structural positions in foreign currencies from its covered positions.

[6] The term trading account is defined in the instructions to the Call Report.

[7] Foreign exchange positions outside the trading account and all over-the-counter derivative positions, whether or not in the trading account, must be included in adjusted risk weighted assets as determined in appendix A of this part.

[8] A bank may not allocate Tier 3 capital to support credit risk (as calculated under appendix A of this part).

[9] Excess Tier 1 capital means Tier 1 capital that has not been allocated in paragraphs (b)(1) and (b)(2) of this section. Excess Tier 2 capital means Tier 2 capital that has not been allocated in paragraph (b)(1) and (b)(2) of this section, subject to the restrictions in paragraph (b)(3) of this section.

must use its internal model to measure its daily VAR, in accordance with the requirements of this section.[10] The FDIC may permit a bank to use alternative techniques to measure the market risk of de minimis exposures so long as the techniques adequately measure associated market risk.

(b) *Qualitative requirements.* A bank subject to this appendix must have a risk management system that meets the following minimum qualitative requirements:

(1) The bank must have a risk control unit that reports directly to senior management and is independent from business trading units.

(2) The bank's internal risk measurement model must be integrated into the daily management process.

(3) The bank's policies and procedures must identify, and the bank must conduct, appropriate stress tests and backtests.[11] The bank's policies and procedures must identify the procedures to follow in response to the results of such tests.

(4) The bank must conduct independent reviews of its risk measurement and risk management systems at least annually.

(c) *Market risk factors.* The bank's internal model must use risk factors sufficient to measure the market risk inherent in all covered positions. The risk factors must address interest rate risk,[12] equity price risk, foreign exchange rate risk, and commodity price risk.

(d) *Quantitative requirements.* For regulatory capital purposes, VAR measures must meet the following quantitative requirements:

(1) The VAR measures must be calculated on a daily basis using a 99 percent, one-tailed confidence level with a price shock equivalent to a ten-business day movement in rates and prices. In order to calculate VAR measures based on a ten-day price shock, the bank may either calculate ten-day figures directly or convert VAR figures based on holding periods other than ten days to the equivalent of a ten-day holding period (for instance, by multiplying a one-day VAR measure by the square root of ten).

(2) The VAR measures must be based on an historical observation period (or effective observation period for a bank using a weighting scheme or other similar method) of at least one year. The bank must update data sets at least once every three months or more frequently as market conditions warrant.

(3) The VAR measures must include the risks arising from the non-linear price characteristics of options positions and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates or prices. A bank with a large or complex options portfolio must measure the volatility of options positions by different maturities.

(4) The VAR measures may incorporate empirical correlations within and across risk categories, provided that the bank's process for measuring correlations is sound. In the event that the VAR measures do not incorporate empirical correlations across risk categories, then the bank must add the separate VAR measures for the four major risk categories to determine its aggregate VAR measure.

(e) *Backtesting.* (1) Beginning one year after a bank starts to comply with this appendix, a bank must conduct backtesting by comparing each of its most recent 250 business days' actual net trading profit or loss[13] with the corresponding daily VAR measures generated for internal risk measurement purposes and calibrated to a one-day holding period and a 99 percent, one-tailed confidence level.

(2) Once each quarter, the bank must identify the number of exceptions, that is, the number of business days for which the magnitude of the actual daily net trading loss, if any, exceeds the corresponding daily VAR measure.

(3) A bank must use the multiplication factor indicated in Table 1 of this appendix in determining its capital charge for market risk under section 3(a)(2)(i)(B) of this appendix until it obtains the next quarter's backtesting results, unless the FDIC determines that a different adjustment or other action is appropriate.

TABLE 1.—MULTIPLICATION FACTOR BASED ON RESULTS OF BACKTESTING

Number of exceptions	Multiplication factor
4 or fewer	3.00
5	3.40
6	3.50
7	3.65
8	3.75
9	3.85
10 or more	4.00

Section 5. Specific Risk

(a) *Specific risk add-on.* For purposes of section 3(a)(2)(ii) of this appendix, a bank's specific risk add-on equals the standard specific risk capital charge calculated under paragraph (c) of this section. If, however, a bank can demonstrate to the FDIC that its internal model measures the specific risk of covered debt and/or equity positions and that those measures are included in the VAR-based capital charge in section 3(a)(2)(i) of this appendix, then the bank may reduce or eliminate its specific risk add-on under this section. The determination as to whether a model incorporates specific risk must be made separately for covered debt and equity positions.

(1) If a model includes the specific risk of covered debt positions but not covered equity positions (or vice versa), then the bank can reduce its specific risk charge for the included positions under paragraph (b) of this section. The specific risk charge for the positions not included equals the standard specific risk capital charge under paragraph (c) of this section.

(2) If a model addresses the specific risk of both covered debt and equity positions, then the bank can reduce its specific risk charge for both covered debt and equity positions under paragraph (b) of this section. In this case, the comparison described in paragraph (b) of this section must be based on the total VAR-based figure for the specific risk of debt and equity positions, taking into account any correlations that are built into the model.

(b) *VAR-based specific risk capital charge.* In all cases where a bank measures specific risk in its internal model, the total capital charge for specific risk (i.e., the VAR-based specific risk capital charge plus the specific risk add-on) must equal at least 50 percent of the standard specific risk capital charge (this amount is the minimum specific risk charge).

(1) If the portion of a bank's VAR measure that is attributable to specific risk (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix) is greater than or equal to the minimum specific risk charge, then the bank has no specific risk add-on and its capital charge for specific risk is the portion included in the VAR measure.

(2) If the portion of a bank's VAR measure that is attributable to specific risk (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix) is less than the minimum specific risk charge, then the bank's specific risk add-on is the difference between the minimum specific risk charge and the specific risk portion of the VAR measure (multiplied by the bank's multiplication factor if required in section 3(a)(2) of this appendix).

(c) *Standard specific risk capital charge.* The standard specific risk capital charge equals the sum of the components for covered debt and equity positions as follows:

(1) *Covered debt positions.* (i) For purposes of this section 5, covered debt positions means fixed-rate or floating-rate debt instruments located in the trading account and instruments located in the trading account with values that react primarily to changes in interest rates, including certain non-convertible preferred stock, convertible bonds, and instruments subject to repurchase and lending agreements. Also included are derivatives (including written and purchased options) for which the underlying instrument is a covered debt instrument that is subject to a non-zero specific risk capital charge.

(A) For covered debt positions that are derivatives, a bank must risk-weight (as

[10] A bank's internal model may use any generally accepted measurement techniques, such as variance-covariance models, historical simulations, or Monte Carlo simulations. However, the level of sophistication and accuracy of a bank's internal model must be commensurate with the nature and size of its covered positions. A bank that modifies its existing modeling procedures to comply with the requirements of this appendix for risk-based capital purposes should, nonetheless, continue to use the internal model it considers most appropriate in evaluating risks for other purposes.

[11] Stress tests provide information about the impact of adverse market events on a bank's covered positions. Backtests provide information about the accuracy of an internal model by comparing a bank's daily VAR measures to its corresponding daily trading profits and losses.

[12] For material exposures in the major currencies and markets, modeling techniques must capture spread risk and must incorporate enough segments of the yield curve—at least six—to capture differences in volatility and less than perfect correlation of rates along the yield curve.

[13] Actual net trading profits and losses typically include such things as realized and unrealized gains and losses on portfolio positions as well as fee income and commissions associated with trading activities.

described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index portfolio. Swaps must be included as the notional position in the underlying debt instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered debt positions that are options, whether long or short, a bank must risk-weight (as described in paragraph (c)(1)(iii) of this section) the market value of the effective notional amount of the underlying debt instrument or index multiplied by the option's delta.

(ii) A bank may net long and short covered debt positions (including derivatives) in identical debt issues or indices.

(iii) A bank must multiply the absolute value of the current market value of each net long or short covered debt position by the appropriate specific risk weighting factor indicated in Table 2 of this appendix. The specific risk capital charge component for covered debt positions is the sum of the weighted values.

TABLE 2.—SPECIFIC RISK WEIGHTING FACTORS FOR COVERED DEBT POSITIONS

Category	Remaining maturity (contractual)	Weighting factor (in percent)
Government	N/A	0.00
Qualifying	6 months or less.	0.25
	Over 6 months to 24 months.	1.00
	Over 24 months.	1.60
Other	N/A	8.00

(A) The *government* category includes all debt instruments of central governments of OECD-based countries [14] including bonds, Treasury bills, and other short-term instruments, as well as local currency instruments of non-OECD central governments to the extent the bank has liabilities booked in that currency.

(B) The *qualifying* category includes debt instruments of U.S. government-sponsored agencies, general obligation debt instruments issued by states and other political subdivisions of OECD-based countries, multilateral development banks, and debt instruments issued by U.S. depository institutions or OECD-banks that do not qualify as capital of the issuing institution.[15] This category also includes other debt instruments, including corporate debt and revenue instruments issued by states and other political subdivisions of OECD countries, that are:

(*1*) Rated investment-grade by at least two nationally recognized credit rating services;

(*2*) Rated investment-grade by one nationally recognized credit rating agency and not rated less than investment-grade by any other credit rating agency; or

(*3*) Unrated, but deemed to be of comparable investment quality by the reporting bank and the issuer has instruments listed on a recognized stock exchange, subject to review by the FDIC.

(C) The *other* category includes debt instruments that are not included in the government or qualifying categories.

(*2*) *Covered equity positions.* (i) For purposes of this section 5, covered equity positions means equity instruments located in the trading account and instruments located in the trading account with values that react primarily to changes in equity prices, including voting or non-voting common stock, certain convertible bonds, and commitments to buy or sell equity instruments. Also included are derivatives (including written and purchased options) for which the underlying is a covered equity position.

(A) For covered equity positions that are derivatives, a bank must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or equity portfolio. Swaps must be included as the notional position in the underlying equity instrument or index portfolio, with a receiving side treated as a long position and a paying side treated as a short position; and

(B) For covered equity positions that are options, whether long or short, a bank must risk weight (as described in paragraph (c)(2)(iii) of this section) the market value of the effective notional amount of the underlying equity instrument or index multiplied by the option's delta.

(ii) A bank may net long and short covered equity positions (including derivatives) in identical equity issues or equity indices in the same market.[16]

(iii)(A) A bank must multiply the absolute value of the current market value of each net long or short covered equity position by a risk weighting factor of 8.0 percent, or by 4.0 percent if the equity is held in a portfolio that is both liquid and well-diversified.[17] For covered equity positions that are index contracts comprising a well-diversified portfolio of equity instruments, the net long or short position is multiplied by a risk weighting factor of 2.0 percent.

(B) For covered equity positions from the following futures-related arbitrage strategies, a bank may apply a 2.0 percent risk weighting factor to one side (long or short) of each position with the opposite side exempt from charge, subject to review by the FDIC:

(*1*) Long and short positions in exactly the same index at different dates or in different market centers; or

(*2*) Long and short positions in index contracts at the same date in different but similar indices.

(C) For futures contracts on broadly-based indices that are matched by offsetting positions in a basket of stocks comprising the index, a bank may apply a 2.0 percent risk weighting factor to the futures and stock basket positions (long and short), provided that such trades are deliberately entered into and separately controlled, and that the basket of stocks comprises at least 90 percent of the capitalization of the index.

(iv) The specific risk capital charge component for covered equity positions is the sum of the weighted values.

By Order of the Board of Directors.

Dated at Washington, D.C., this *13th* day of *August*, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–22546 Filed 9–5–96; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

[14] Organization for Economic Cooperation and Development (OECD)-based countries is defined in appendix A of this part.

[15] U.S. government-sponsored agencies, multilateral development banks, and OECD banks are defined in appendix A of this part.

[16] A bank may also net positions in depository receipts against an opposite position in the underlying equity or identical equity in different markets, provided that the bank includes the costs of conversion.

[17] A portfolio is liquid and well-diversified if: (1) it is characterized by a limited sensitivity to price changes of any single equity issue or closely related group of equity issues held in the portfolio; (2) the volatility of the portfolio's value is not dominated by the volatility of any individual equity issue or by equity issues from any single industry or economic sector; (3) it contains a large number of individual equity positions, with no single position representing a substantial portion of the portfolio's total market value; and (4) it consists mainly of issues traded on organized exchanges or in well-established over-the-counter markets.

federal register

Friday
September 6, 1996

Part V

Department of Housing and Urban Development

24 CFR Parts 247, 880, and 884
Termination of Tenancy for Criminal Activity; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 247, 880, and 884

[Docket No. FR–3472–F–02]

RIN 2502–AG12

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Termination of Tenancy for Criminal Activity

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule provides that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Director, Program Management Division, Office of Multifamily Asset Management and Disposition, Room 6180, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000; telephone, (voice) (202) 708–3944; (TTY) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On February 3, 1994, the Department published in the **Federal Register** a proposed rule (59 FR 5155) that would provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control would be grounds for termination of tenancy.

The deadline for public comments on the proposed rule was April 4, 1994. By that date, the Department received 130 comments. Most of these comments (111 out of 130) came from individuals or entities responsible for managing subsidized housing. The Department also received comments from several housing authorities and housing finance agencies, as well as from several public interest and legal aid associations.

The majority of the public commenters (121 out of 130) supported the proposed rule. These commenters typically reported that criminal activity, particularly drug-related criminal activity, is the biggest problem faced by managers of subsidized housing. Many of these commenters stated that the provisions of the proposed rule will provide them legal strength in eviction proceedings; they asserted that judges often place more weight on Federal regulations than on the lease or other rules. Several commenters added that the provisions of the proposed rule would help them provide decent and safe housing to their tenants, and that such provisions are long overdue.

Several commenters suggested revisions to the proposed rule. For instance, several commenters suggested that the Department define phrases such as "on or near such premises," "criminal activity," and "any guest or other person under the tenant's control." These commenters asserted that these phrases are subject to differing interpretations, and they provide little guidance to a landlord trying to decide whether to pursue a termination of tenancy. Other commenters suggested that the Department broaden the provisions of the proposed rule to protect the health and safety of any on-site property management staff, because these individuals are often endangered by criminal activity.

Six commenters expressed serious legal and policy concerns with the proposed rule. These commenters argued that the Department would violate several State and Federal statutes and the U.S. Constitution if it permitted the eviction of a tenant who did not commit, had no knowledge of, nor had means to stop the criminal activity. While the proposed rule echoes statutory language (42 U.S.C. 1437f(d)(1)(B)(iii)), one commenter presented evidence that Congress intended to protect innocent tenants. These commenters argued further that the proposed rule should more closely track the public housing regulations, which provide that in the case of an eviction for criminal activity, the PHA shall have discretion to consider all the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity (24 CFR 966.4).

The Final Rule

In response to public comments, this final rule represents two changes to the provisions of the proposed rule. First, the Department decided to include in this final rule criminal activity against on-site property management staff as grounds for termination of tenancy. Second, this final rule provides a definition for "drug-related criminal activity."

While some of the commenters requested additional definitions, the Department has determined that such definitions would not, on balance, further the goals of this rule. Providing concrete definitions would be contrary to the recommendations of the national Occupancy Task Force. The Occupancy Task Force was convened under Congressional mandate, and it consisted of representatives of both housing providers and tenant advocacy/legal aid organizations. The Task Force was charged with issuing a final report to Congress and to HUD on occupancy and management recommendations in public and assisted housing. The members of the Occupancy Task Force observed in their Final Report, which was issued in April 1994, that they had considered defining related terms such as "criminal activity that threatens," but they "agreed that from a practical standpoint, it would be impossible to define this term since it turns on the facts in every given situation" (page 3–7). (Notice of the availability of the final report was published in the **Federal Register** on July 21, 1994, 59 FR 37255). Furthermore, in accordance with several of the commenters, the Department intended that the provisions of this rule would parallel the public housing regulations; none of the terms suggested by the commenters are defined in the comparable public housing regulations.

The Department has decided, however, to include the definition of "drug-related criminal activity" in this final rule, because this definition is provided in section 8(f)(5) of the United States Housing Act of 1937. Accordingly, this final rule provides that "drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

With regard to the concerns raised by several commenters that the proposed rule could result in the eviction of an innocent tenant, the Department would like to emphasize that an owner may not evict any tenant except by judicial action pursuant to State or local law, and in accordance with the Department's due process procedures. This final rule applies uniformly to all assisted housing tenants. Furthermore, the Department adopted similar termination language (excluding the reference to project management employees) for the HUD Model Form of Lease (used for all subsidized multifamily housing programs) by Handbook 4350.3, Change 22 of June 1992.

The Department believes that promulgation of this rule is consistent with sound program administration, is balanced and fair, and provides a valuable tool for fighting crime and drugs in assisted housing communities while maintaining requisite due process protections for the residents. Establishing criminal activity of a threatening nature and drug-related crime on or near the premises as clear grounds for termination of tenancy is supported by the recommendation (#58, page 3–7) of the Occupancy Task Force Final Report.

This final rule revises 24 CFR parts 247, 880, and 884 by adding a definition of "drug-related criminal activity" and by revising the management provisions. Since the Department removed the management provisions of parts 881 and 883 in a final rule published on March 27, 1996 (61 FR 13586), and replaced them with a cross-reference to the identical management provisions in part 880, it is unnecessary for the Department to amend parts 881 and 883 in this final rule.

For purposes of existing housing under the section 8 loan management and property disposition programs (24 CFR part 886, subparts A and C), this final rule implements section 8(d)(1)(B)(iii) of the United States Housing Act of 1937 (42 U.S.C. 1437f), as that section was amended by the Cranston-Gonzalez National Affordable Housing Act and the Housing and Community Development Act of 1992. These two programs rely upon part 247 for termination of tenancy provisions. In addition, this final rule covers the following subsidized projects subject to the regulations in 24 CFR part 247: multifamily housing projects that receive the benefit of subsidy in the form of below-market interest rates under sections 221(d) (3) and (5); interest reduction payments under section 236 of the National Housing Act, including Rental Assistance Payments (RAP); below-market interest rate direct loans under section 202 of the Housing Act of 1959; rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965; and section 8 in connection with section 202 Loans for Housing for the Elderly or Handicapped (24 CFR part 891); the Supportive Housing for the Elderly program and the Supportive Housing for Persons with Disabilities program (24 CFR part 891). (By final rule published on March 22, 1996 (61 FR 11948), the regulations governing (1) Loans for Housing for the Elderly or Handicapped, formerly found in 24 CFR part 885, (2) Supportive Housing for the Elderly, formerly found in 24 CFR part 889, and (3) Supportive Housing for Persons with Disabilities, formerly found in 24 CFR part 890, were consolidated into a new part 24 CFR part 891.) Finally, this rule also applies to evictions under the section 8 new construction and substantial rehabilitation programs.

Other Matters

Environmental Impact

A Finding of No significant Impact (FONSI) with respect to the environment was made at the time of the development of the proposed rule, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* That FONSI remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule prohibits any criminal activity or drug-related criminal activity on or near premises where law-abiding tenants live.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule has the potential for a significant impact on family formation, maintenance, and general well-being; this rule should increase the safety and security of families living in assisted housing. Since the impact of this rule on the family is beneficial, no further review is considered necessary.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not have significant federalism implications and thus, are not subject to review under the order. This final rule will not interfere with or preempt State or local government functions.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC.

List of Subjects

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 24 CFR parts 247, 880, and 884 are amended as follows:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

1. The authority citation for 24 CFR part 247 is revised to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715*l*, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

2. Section 247.2 is amended by removing the paragraph designation for each definition, and by adding a definition *"Drug-related criminal activity"* in alphabetical order, to read as follows:

§ 247.2 Definitions.

* * * * *

Drug-related criminal activity means the illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

* * * * *

3. Section 247.3 is amended by removing the word "or" from paragraph (a)(2); by redesignating paragraph (a)(3) as paragraph (a)(4); by amending paragraph (b) by removing the reference to "§ 247.3(a)(3)" and adding in its place "§ 247.3(a)(4)"; and by adding a new paragraph (a)(3); to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

(a) * * *

(3) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

* * * * *

§ 247.4 [Amended]

4. In § 247.4, paragraph (c) is amended by removing the reference to "§ 247.3(a)(3)" and by adding in its place "§ 247.3(a)(4)."

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

5. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d), and 13611–13619.

6. Section 880.201 is amended by adding the definition "*Drug-related criminal activity*" in alphabetical order, to read as follows:

§ 880.201 Definitions.

* * * * *

Drug-related criminal activity. The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

* * * * *

7. Section 880.607 is amended by removing the word "or" from paragraph (b)(1)(ii); by redesignating paragraph (b)(1)(iii) as (b)(1)(iv); by amending paragraphs (b)(2) and (c)(2) by removing the references to "(b)(1)(iii)" and by adding in their places "(b)(1)(iv)"; and by adding a new paragraph (b)(1)(iii); to read as follows:

§ 880.607 Termination of tenancy and modification of leases.

* * * * *

(b) * * *

(1) * * *

(iii) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

8. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d), and 13611–13619.

9. Section 884.102 is amended by adding, in alphabetical order, a definition of *"Drug-related criminal activity"*, to read as follows:

§ 884.102 Definitions.

* * * * *

Drug-related criminal activity. The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

* * * * *

10. Section 884.216 is amended by designating the current paragraph as paragraph (a), and by adding a new paragraph (b), to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(b) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

Dated: May 31, 1996.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–22775 Filed 9–5–96; 8:45 am]

BILLING CODE 4210–27–P

federal register

Friday
September 6, 1996

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, et al.
Federal Acquisition Regulation; Application of Special Simplified Procedures to Certain Commercial Items; and Procurement Integrity; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 11, 12, 13, and 52

[FAR Case 96–307]

RIN 9000–AH20

Federal Acquisition Regulation; Application of Special Simplified Procedures to Certain Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 4202 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104–106). Section 4202 requires revisions to the FAR to incorporate special simplified procedures for the acquisition of certain commercial items with a value greater than the simplified acquisition threshold ($100,000) but not greater than $5 million. The purpose of this revision is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before November 5, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR case 96–307 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–307.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the Federal Acquisition Regulation to implement section 4202 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104–106). Section 4202 authorizes special simplified procedures for acquisitions of commercial items at amounts greater than the simplified acquisition threshold ($100,000) but not greater than $5 million when the contracting officer reasonably expects, based on the nature of the commercial items sought and on market research, that offers will include only commercial items. The authority to use the special simplified procedures under this section expires on January 1, 2000. Section 4202 also amends 10 U.S.C. 2305, 41 U.S.C. 253a, and 41 U.S.C. 416 to permit issuance of solicitations for commercial items in fewer than 15 days after the synopsis notice is published.

Pursuant to section 4202 of Pub. L. 104–106, acquisitions of commercial items using special simplified procedures are exempt from many of the Competition in Contracting Act (CICA) requirements that otherwise apply to acquisitions over the simplified acquisition threshold. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors at all. Contracting officers have the flexibility to, among other things—

(1) Forego formal evaluation plans, scoring of quotes or offers, or a competitive range determination;

(2) Negotiate with one or more offerors, as appropriate, but not necessarily all offerors;

(3) Conduct comparative evaluations of offers; and

(4) Evaluate past performance based on such information as the contracting officer's knowledge and previous experience with the item or service being purchased, customer surveys, or other reasonable basis, without the existence of a formal database.

Synopsis requirements still apply, and all responsible sources must be permitted to submit a quote or offer which the contracting officer must consider. Sole-source acquisitions must be justified and approved consistent with existing CICA requirements. Otherwise, except for those procedures specifically limited to the simplified acquisition threshold or a lower threshold, this proposed rule authorizes use of procedures in FAR Part 13, Simplified Acquisition Procedures, for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding $5,000,000 (including options) if the conditions apply that permit use of the special simplified procedures (see new subpart 13.6).

The special simplified procedures for commercial items also include guidance at 13.604 that expressly gives contracting officers the flexibility to indicate to an offeror a price the contracting officer anticipates offerors will have to meet or better to remain competitive; and/or a consideration other than price (e.g., a contract term, a commercially-available feature) the offeror will have to meet or better, as appropriate, to remain competitive. These techniques are used in the commercial marketplace to increase and sustain competitive pressures throughout the negotiation process and are expected to help improve the efficiency of negotiations and reduce bid and proposal preparation costs by reducing the guesswork currently required to remain competitive.

The Federal Acquisition Streamlining Act (FASA) of 1994 (Pub. L. 103–355) amended the publicizing and response time requirements for acquisitions of commercial items to allow less than a 30-day response time for receipt of offers after the date of issuance of a solicitation, provided the contracting officer establishes a response time that will afford potential offerors a reasonable opportunity to respond. Section 4202 further increases the contracting officer's latitude when acquiring commercial items by permitting a period of less than 15 days between publication of a synopsis notice and issuance of a solicitation. To bring these changes into compliance with the minimum time frames established in the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA), this proposed rule adds new coverage at 5.203(h). For acquisitions subject to NAFTA or TAA, the period of time between synopsis and receipt of offers must be at least 40 days. However, the contracting officer can reduce this time period to as few as 10 days if the acquisition falls within a general category that is identified in an annual forecast, the availability of which is published in the *Commerce Business Daily*.

This proposed rule also includes additional changes that are intended to help further promote the Government's effective use of proven commercial buying practices. These changes include:

(1) Clarifying that an agency may identify its requirements in terms of

desired features or targets that do not have to be expressed as ranges;

(2) Changing the application of the Standard Form (SF) 1449, Solicitation/Contract/Order for Commercial Items (a form intended to emphasize the "cultural shift" to the use of commercial items and practices and which is currently mandatory for all paper solicitations or contracts for commercial items), so that, for acquisitions under the simplified acquisition threshold, use of the form is encouraged but is not mandatory; and

(3) Replacing references to "minimum needs" with "needs." (The term "minimum" has historically been misinterpreted, and its removal is consistent with 10 U.S.C. 2305(a)(1)(B), which states, "Each solicitation * * * shall include specifications which include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law." "Minimum needs" has inaccurately been considered to require that the Government describe its needs in terms of the lowest level of technical capabilities or features that will address the requirement. However, the Government actually has substantial latitude to describe its needs in the manner that reflects an optimum acquisition strategy, e.g., considering which item(s) represent the best value in terms of quality, expected life of item, vendor past performance; making use of capabilities in the marketplace, such as those for ensuring reliability and distributing products; requiring offerors to have a "track record" of previous production for a length of time appropriate to the item being acquired, when such a requirement can be shown to reasonably relate to helping ensure that the agency will acquire an item that meets its need.)

It is clear that the drafters of this legislation intended for commercial items to be purchased in as simplified a manner as possible. A report by the House Committee on Government Reform and Oversight (No. 104–222) on H.R. 1670 noted that, "The purchase of a commercial item logically lends itself to simplified procedures because there exists a yardstick in the commercial marketplace against which to measure price and product quality and to serve as a surrogate for Government-unique procedures." The intent of this proposed rule is to ensure the benefits of this new authority can be fully realized by giving contracting officers a clear understanding of the procedural discretion and flexibility they have, so that acquisitions of commercial items conducted under these regulations may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and its suppliers.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule implements the requirements of section 4202 of the Federal Acquisition Reform Act of 1996 and applies to all businesses, large or small, offering to sell commercial items to the Federal Government for amounts greater than the simplified acquisition threshold but not greater than $5,000,000. Statistics indicate that a majority of commercial sales to the Government come from small businesses. The rule imposes no new reporting or recordkeeping requirements, and it does not duplicate, overlap, or conflict with any other Federal rules. These new simplified procedures would enable small and large entities to conduct business with the Government in a simpler manner, similar to the business they conduct with their commercial counterparts. The rule is expected to have a beneficial impact on industry and, therefore, applies equally to both large and small entities. However, existing preferences for small businesses, in accordance with FAR Part 19, remain unchanged by this rule.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 96–307), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 11, 12, 13, and 52

Government procurement.

Dated: August 30, 1996.

Jeremy Olson,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Parts 5, 11, 12, 13, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 11, 12, 13, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 5–PUBLICIZING CONTRACT ACTIONS

2. Section 5.203 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

5.203 Publicizing and response time.

(a) A notice of contract action shall be published in the *Commerce Business Daily* at least 15 days before issuance of a solicitation except that for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined CBD synopsis/solicitation procedure (see 12.603).

* * * * *

(h) For acquisitions subject to NAFTA or the Trade Agreements Act (see Subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers shall be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD, the contracting officer may reduce this time period to as few as 10 days.

3. Section 5.207 is amended by revising paragraph (e)(3) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(e) * * *

(3) Except for contract actions equal to or less than the simplified acquisition threshold or acquisitions of commercial items, the synopsis shall refer to Numbered Note 22 for noncompetitive contract actions. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

* * * * *

PART 11–DESCRIBING AGENCY NEEDS

4. Section 11.002 is amended by revising paragraph (a)(1)(ii) and adding paragraph (e) to read as follows:

11.002 Policy.

(a) * * *

(1) * * *

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

* * * * *

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

5. Section 11.104 is amended by revising paragraph (a) to read as follows:

11.104 Items peculiar to one manufacturer.

* * * * *

(a) The particular brand-name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's minimum needs; and

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

6. Section 12.202 is amended by revising paragraph (b) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

* * * * *

7. Section 12.203 is amended by adding a sentence to the end of the paragraph to read as follows:

12.203 Procedures for solicitation, evaluation, and award.

* * * The contracting officer may use the simplified acquisition procedures in Part 13 for acquisitions of commercial items up to $5,000,000, including options, other than those procedures specifically limited to the simplified acquisition threshold or a lower threshold (see Subpart 13.6).

8. Section 12.204 is revised to read as follows:

12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if: (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

9. Section 12.205 is amended by revising paragraph (c) to read as follows:

12.205 Offers.

* * * * *

(c) Consistent with the requirements at 5.203 (b) and (h), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items.

10. Section 12.213 is revised to read as follows:

12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this Part 12 seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

11. Section 12.302(a) is revised to read as follows:

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items.

However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212–1, Instructions to Offerors—Commercial Items, and the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

* * * * *

12. Section 12.602 is amended by revising paragraph (a) to read as follows:

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212–2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106–2 if the acquisition is being made using the simplified acquisition procedures. When the provision at 52.212–2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, contracting officers are not required to describe the relative importance of evaluation factors when using the simplified acquisition procedures in Part 13.

* * * * *

13. Section 12.603 is amended by revising paragraph (c)(3)(ii) to read as follows:

12.603 Streamlined solicitation for commercial items.

(c) * * *

(3) * * *

(ii) When using the combined CBD synopsis/solicitation, contracting officers shall establish a response time in accordance with 5.203(b).

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

14. Section 13.000 is revised to read as follows:

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). (However, when the conditions in 13.602 are met, the contracting officer is authorized to use the procedures in this part, other than those specifically limited to the

simplified acquisition threshold or a lower threshold, for acquisitions of commercial items exceeding the simplified acquisition threshold but not greater than $5,000,000, including options.) See Part 12, Acquisition of Commercial Items, for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602–5 for simplified procedures to be used when acquiring architect-engineering services.

15. Section 13.103 is amended by revising paragraphs (b), (c) and (j) to read as follows:

13.103 Policy.

* * * * *

(b) The contracting office shall not use simplified acquisition procedures for contract actions exceeding $50,000 after December 31, 1999, unless the office's cognizant agency has certified full FACNET capability in accordance with 4.505–2. This limitation does not apply to acquisitions of commercial items conducted using Subpart 13.6.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold (or $5,000,000, including options, for acquisitions of commercial items using Subpart 13.6), even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold (or $5,000,000, including options, if using Subpart 13.6) or the micro-purchase threshold shall not be broken down into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures, or to avoid any requirements that apply to purchases exceeding the micro-purchase threshold.

* * * * *

(j) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For commercial items, contracting officers have the flexibility to use any combination of the procedures in Subpart 12.6 or Parts 13, 14, 15, 35, or 36, as applicable. For other than commercial items, the procedures in other FAR parts may be appropriate. Other FAR parts that may be used include, but are not limited to Parts 14, 15, 35, or 36, including the use of Standard Form (SF) 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

16. Section 13.104 is amended by revising paragraph (b) to read as follows:

13.104 Procedures.

* * * * *

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or none" or "multiple award" basis if suppliers are so advised when quotations or offers are requested.

* * * * *

17. Section 13.106–2 is amended by revising paragraphs (a)(1) through (a)(3) and the introductory text of paragraph (a)(4), (a) (5) and (6), (b)(1), (b)(3), (c) (1) and (2), (d)(3), and (d)(4)(ii) to read as follows:

13.106–2 Purchases exceeding the micro-purchase threshold.

(a) *Soliciting competition.* (1) Contracting officers shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance, quality) including the administrative cost of the purchase. Contracting officers are encouraged to use best value. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) For acquisitions not exceeding the simplified acquisition threshold where FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means (e.g., orally, or in writing). The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET. Sufficient information to permit vendors to develop quotations may be incorporated into the combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. For commercial item acquisitions, see 12.603.

(3) For acquisitions not exceeding $25,000, requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. Sufficient information to permit suppliers to develop quotations may be incorporated into a combined synopsis/solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. Paper solicitations for contract actions not expected to exceed $25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practicable. Written solicitations shall be issued for construction contracts over $2,000.

(4) If synopsizing is not required (e.g., the acquisition does not exceed $25,000 or an exemption to the synopsis requirement applies) and FACNET is not being used, solicitation of at least three sources generally may be considered to promote competition to the maximum practicable extent. In such circumstances, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations or offers. The following factors influence the number of quotations or offers required in connection with any particular purchase:

* * * * *

(5) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available. For acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to Subpart 13.6, the requirements at 13.603(a) apply.

(6) Contracting officers shall not limit competition to suppliers of well-known and widely distributed makes or brands (see 11.104), or solicit quotations on a personal preference basis.

* * * * *

(b) *Evaluation of quotations or offers.* (1) When evaluating quotations or offers, the evaluation must be performed based on any criteria established in the solicitation. All quotations or offers must be considered. However, the contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in Parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more but not necessarily all of the evaluation procedures in Parts 14 or 15 may be used.

* * * * *

(3) Contracting officers shall evaluate quotations or offers inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

* * * * *

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier whothat quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances,

the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) For acquisitions not exceeding the simplified acquisition threshold (other than those conducted through FACNET), Except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

* * * * *

(d) * * *

(3) If only one source is solicited and the acquisition does not exceed the simplified acquisition threshold, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source.

(4) * * *

(ii) *Written solicitations (see 2.101).* For acquisitions not exceeding the simplified acquisition threshold, wWritten records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

* * * * *

18. Section 13.107 is amended by revising paragraph (a) to read as follows:

13.107 Solicitation forms.

(a) For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204

* * * * *

19. Section 13.202 is amended by revising paragraph (b)(2) to read as follows:

13.202 Establishment of blanket purchase agreements (BPAs).

* * * * *

(b) * * *

(2) Consider suppliers whose past performance has shown them to be dependable, and who offer good quality supplies or services at consistently lower prices

* * * * *

20. Section 13.204 is amended by revising paragraphs (a) and (b) to read as follows:

13.204 Purchases under blanket purchase agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the BPA, being a method of simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold (or the $5,000,000 threshold, including options, on acquisitions using Subpart 13.6).

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those under BPAs established in accordance with 13.202(c)(3), shall not exceed $100,000 , or $5,000,000, including options, for acquisitions using Subpart 13.6).

* * * * *

21. Subpart 13.6, consisting of sections 13.601 through 13.604–4, is added to read as follows:

Subpart 13.6—Use of Simplified Acquisition Procedures for the Purchase of Commercial Items in Amounts Greater Than the Simplified Acquisition Threshold But Not Exceeding $5 Million

13.601 General.

This subpart authorizes, as a test program, use of the simplified acquisition procedures in Part 13 for the acquisition of commercial items in amounts greater than the simplified acquisition threshold but not exceeding $5,000,000, including options, if the condition in 13.602 is met. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (see section 4202 of Public Law 104–106). For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum practicable extent. The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.602 Condition for use.

(a) At the contracting officer's option, any procedure in Part 13, other than those whose use is specifically limited to the simplified acquisition threshold or a lower threshold, may be used for a commercial item acquisition in an amount greater than the simplified acquisition threshold but not exceeding $5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the commercial items sought and on market research, that offers will include only commercial items.

(b) Circumstances under which the contracting officer may reasonably expect that offers will include only commercial items include, but are not limited to, the following:

(1) No sources of items other than commercial items are known to exist;

(2) Sources of items other than commercial items are known to exist but are not expected to submit offers; or

(3) The agency has specified that only offers of commercial items will be considered. (This is likely to occur when the agency has determined that utilizing the capabilities of the commercial market is the optimum means of meeting its needs.)

(c) If the contracting officer reasonably expected that offers would only include commercial items but receives one or more offers of other than commercial items, the contracting officer may proceed with the acquisition under the procedures in Part 13.

(d) Contracts for commercial items awarded using the procedures of Part 13 remain subject to the requirements of Part 12 and other parts of the FAR pursuant to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses at Subpart 12.3.

13.603 Additional requirements.

(a) *Sole source acquisitions.* The acquisition may not be conducted on a sole source basis, unless the need to do so is justified in writing and approved at the levels as specified in subparagraphs (a)(1) and (a)(2) of this section. Full and open competition is not required; therefore, Part 6 does not apply; however, contracting officers shall prepare sole source justifications. When the types of conditions described at 6.302–2 occur (i.e., urgency), the justification may be made and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(1) For a proposed contract exceeding $100,000 but not exceeding $500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in agency procedures.

(2) For a proposed contract exceeding $500,000, the waiver must be approved by the competition advocate for the procuring activity designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4). This authority is not delegable; and

(b) *Documentation.* The contract file shall include—

(1) A brief written description of the procedures used in awarding the contract;

(2) The number of offers received; and

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.

13.604 Alternative negotiation techniques.

13.604–1 General.

In addition to other procedures authorized by this subpart, notwithstanding 15.610, the contracting officer may use the negotiation techniques described in this section.

13.604–2 Awards based on price and price-related factors only.

(a) The contracting officer may provide prospective offerors with a description of the Government's requirements and invite the submission of offers on a specified date, during a specified time period. During the specified time period, the amount of the lowest offer shall be posted electronically or otherwise on an auction board for viewing by interested parties. The identity of offerors shall not be disclosed during the period specified for receipt of offers. During the specified time period, offerors may revise offers at anytime. At the end of the specified period, the contracting officer awards the contract to the responsible offeror submitting the lowest priced acceptable offer.

(b) As an alternative to the approach outlined in paragraph (a) of this subsection, the contracting officer may indicate to offerors during negotiations a price that the offeror will have to meet or better in order to be considered further. The same price must be communicated to all offerors. The price established by the contracting officer may be based on offers received or information from other sources as they may relate to the total acquisition or to any contract line item(s). A reasonable response time shall be established for the submission of revised offers. The contracting officer may repeat the process as necessary to conduct negotiations that will result in the submission of lower priced acceptable offers that will satisfy the Government's requirements. Revising an offer to meet or better a price established by the contracting officer does not guarantee any offeror an award. Offerors eliminated from the competition shall be promptly notified that their offer is no longer being considered.

(c) Use of the technique described in paragraphs (a) and (b) of this subsection, may be appropriate when the contracting officer—

(1) Can provide prospective offerors with a purchase description that clearly defines the Government's requirements;

(2) Reasonably expects to receive more than one offer, and

(3) Does not expect discussions with offerors regarding non-price aspects of the offer will be necessary.

13.604–3 Awards based on price and other factors.

(a) When conducting negotiations, the contracting officer may indicate to all offerors a price, contract term or condition, commercially-available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that an offeror will have to improve upon or meet, as appropriate, in order to remain competitive.

(b) The price or other requirement identified to an offeror by the contracting officer as an area needing improvement or as a condition for further consideration for award—

(1) May be based on an evaluation of offers received or information from other sources;

(2) May relate to the total acquisition or to any contract line item(s);

(3) Shall be based on an evaluation of individual offers and need not be the same for all offerors; and

(4) Shall not disclose proprietary information.

(c) The contracting officer may consider alternative offers. A reasonable response time shall be established for the submission of revised offers. The contracting officer may repeat the process as necessary to conduct negotiations that will result in increasing the value of acceptable offers that will satisfy the Government's requirements.

(d) Revising an offer to meet or better a price or other consideration established by the contracting officer does not guarantee any offeror an award.

(e) Offerors eliminated from the competition shall be promptly notified that their offer is no longer being considered.

(f) When an offeror's price is used as the basis for negotiating with other offerors, the identify of that offeror shall not be disclosed during negotiations.

13.604–4 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.213–4, Alternative Evaluation—Commercial Items, in lieu of the provision at 52.212–2, Evaluation—Commercial Items, when the procedures described in 13.604–2(a) will be used.

(b) The contracting officer shall insert a provision in solicitations, substantially the same as the provision at 52.213–5, Alternative Negotiation Techniques, when either the technique described in 13.604–2(b) or in 13.604–3 may be used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

22. Sections 52.213–4 and 52.213–5 are added to read as follows:

52.213–4 Alternative Evaluation—Commercial Items.

As prescribed in 13.604–4(a), insert the following provision:

Alternative Evaluation—Commercial Items (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. Offers shall be submitted on [*Contracting Officer inserts the date*] beginning at [*Contracting Officer inserts the time*] and ending at [*Contracting Officer inserts the time or date and time*]. During the specified time frame, the amount of the lowest offer will be posted and may be viewed by [*Contracting Officer describes how the information may be viewed electronically or otherwise*]. Offerors may revise offers anytime during the specified period. At the end of the specified time period, the responsible Offeror submitting the lowest priced offer will be in line for award.

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the options(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer) unless a written notice of withdrawal is received before award.

(End of provision)

52.213–5 Alternative Negotiation Techniques.

As prescribed in 13.604–4(b), insert the following provision:

Alternative Negotiation Techniques (Date)

The Contracting Officer may elect to use the alternative negotiation techniques described in section 13.604–2(b) or 13.604–3 of the Federal Acquisition Regulation in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or by submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53

[FAR Case 96–314]

RIN 9000–AH19

Federal Acquisition Regulation; Procurement Integrity

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 27 of the Office of Federal Procurement Policy (OFPP) Act, as amended by Section 4304 of the Fiscal Year 1996 National Defense Authorization Act, also known as the Federal Acquisition Reform Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before November 5, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW, Room 4040, Washington, DC 20405.

Please cite FAR case 96–314 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4040, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–314.

SUPPLEMENTARY INFORMATION:

A. Background

On September 6, 1990, an interim rule with request for public comments was published in the **Federal Register** (55 FR 36782) under FAR case 89–023 to implement Section 27 of the OFPP Act. On November 30, 1990, as a result of amendments made by Section 815 of the FY 1991/1992 National Defense Authorization Act, Public Law 101–510, the interim rule was amended (55 FR 49852) and the time allowed for submission of public comments was extended. A total of 222 comments were received.

Section 4304 of the FY 1996 National Defense Authorization Act again amends Section 27 of the OFPP Act. As amended, Section 27 of the OFPP Act specifies restrictions in four areas: a prohibition on disclosing procurement information; a prohibition on obtaining procurement information; actions required of procurement officers when contacted by offerors regarding non-Federal employment; and a prohibition on former officials' acceptance of compensation from certain contractors.

The public comments received in response to the interim rule under FAR case 89–023 were considered in preparing this proposed rule, to the extent that the comments are relevant under the 1996 amendments to Section 27 of the OFPP Act.

B. Regulatory Flexibility Act

The proposed rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule eliminates the procurement integrity certifications and supporting information previously required to be submitted by every bidder and apparently successful offeror for a contract of over $100,000, and every contractor seeking a contract modification valued at over $100,000. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR parts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR case 96–314 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) may apply because the proposed rule eliminates existing recordkeeping and information collection requirements approved by the Office of Management and Budget under OMB Control Number 9000–0103. A paperwork burden of 43,333 hours would be eliminated.

List of Subjects in 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53

Government procurement.

Dated: August 30, 1996.

Jeremy Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 9, 12, 14, 15, 19, 33, 37, 43, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the table by removing entries 3.104–9, 3.104–12(a)(12), 52.203–8, 52.203–9, and their respective OMB Control Numbers.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Sections 3.104 through 3.104–9 are revised to read as set forth below and sections 3.104–10 through 3.104–12 are removed.

Sec.

3.104 Procurement integrity.
3.104–1 General.
3.104–2 Applicability.
3.104–3 Statutory and related prohibitions, restrictions, and requirements.
3.104–4 Definitions.
3.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
3.104–6 Disqualification.
3.104–7 Ethics advisory opinions regarding prohibitions on former official's acceptance of compensation from contractors.
3.104–8 Contract clause.
3.104–9 Violations or possible violations.

3.104 Procurement integrity.

3.104–1 General.

(a) Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Pub. L. 101–189, section 815 of the FY 91 National Defense Authorization Act, Pub. L. 101–510, and section 4304 of the FY 96 National Defense Authorization Act, Pub. L. 104–106 (hereinafter, section 27 is referred to as "the Act" or "the law

as amended"). Agency supplementation of 3.104 and any clauses required by 3.104 must be approved at a level not lower than the Senior Procurement Executive of the agency, unless a higher level of approval is required by law for that agency.

(b) Agency employees are reminded that there are other statutes and regulations that deal with prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201, 10 U.S.C. 2207, 5 U.S.C. 7353, and 5 CFR Part 2635;

(2) Employment discussions are covered by 18 U.S.C. 208, which precludes a Government employee from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is negotiating for employment;

(3) Post-employment restrictions are covered by 18 U.S.C. 207, which prohibits certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government; and

(4) FAR Parts 14 and 15, which place restrictions on the release of information related to procurements and other contractor information which must be protected under 18 U.S.C. 1905. In addition, 5 CFR Part 2635 protects non-public Government information.

3.104–2 Applicability.

(a) The restrictions at 3.104–3 (a) through (c) apply after [insert date 30 days after publication of final rule or January 1, 1997, whichever is earlier] to the conduct of every Federal agency procurement using competitive procedures for the acquisition of goods or services from non-Federal sources using appropriated funds.

(b) The post-employment restrictions at 3.104–3(d) apply to any former official of a Federal agency whose employment by a Federal agency ended on or after January 1, 1997. Former officials of a Federal agency whose employment by a Federal agency ended before January 1, 1997, are subject to the restrictions imposed by 41 U.S.C. 423 as it existed before Pub. L. 104–106.

3.104–3 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required of agency officials when contacted by offerors regarding non-Federal employment (subsection 27(c) of the Act).* (1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

(i) Promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(ii)(A) Reject the possibility of non-Federal employment; or

(B) Disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, either in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, or on the grounds that—

(*1*) The person is no longer a bidder or offeror in that Federal agency procurement; or

(*2*) All discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) The requirements in subsection 27(c)(1) of the Act do not apply to an agency official after the contract has been awarded or the procurement has been canceled.

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).* (1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency—

(A) A decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) A decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

(C) A decision to approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(D) A decision to pay or settle a claim in excess of $10,000,000 with that contractor.

(2) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104–4 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.201 and any other person, including deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104–7 has been delegated by the designated agency ethics official.

Contractor bid or proposal information means any of the following information submitted to a Federal agency as part of or in connection with

a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section).

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

Federal agency has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

Official means the following:

(1) An officer, as defined in 5 U.S.C. 2104.

(2) An employee, as defined in 5 U.S.C. 2105.

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3).

Participated personally and substantially means active and significant involvement of the individual in activities directly related to the procurement.

(1) To participate "personally" means to participate directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(2) To participate "substantially" means that the employee's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(3) Generally, an individual will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Federal advisory committees that are established and function in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, unless the Federal advisory committee is established or used for the purpose of, and the individual member participates personally and substantially in, any of the following functions:

(A) Drafting, reviewing, or approving the specification or statement of work for the procurement;

(B) Preparing or developing the procurement request, purchase request, or solicitation;

(C) Evaluating bids or proposals, or selecting a source;

(D) Negotiating price or terms and conditions of the contract; or

(E) Review and approval of the award of the contract.

(ii) Agency level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency level missions or objectives;

(iii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement;

(iv) Clerical functions supporting the conduct of a particular procurement; and

(v) For procurements to be conducted under the procedures of OMB Circular A–76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection information means any of the following information which is prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to a Federal agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as "SOURCE SELECTION INFORMATION—SEE FAR 3.104" based on a case-by-case determination by the head of the agency or designee, or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

3.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the head of the agency or designee, or the contracting officer, to receive such information.

(b) Contractor bid or proposal information and source selection information shall be protected from unauthorized disclosure in accordance with 14.401, 15.411, 15.413, applicable law, and agency regulations.

(c) In determining whether particular information is source selection information, see 3.104–4 and consult with agency officials as necessary. Individuals responsible for preparing material that may include information designated as source selection information in accordance with 3.104–4 shall mark the cover page and each page that contains source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." Although the material described

in 3.104–4 is considered to be source selection information whether or not marked, all reasonable efforts shall be made to mark such material with this legend.

(d) *Contested markings.* (1) Except as provided in subparagraph (d)(4) of this subsection, if the contracting officer believes that information marked as proprietary is not proprietary, or information otherwise marked as contractor bid or proposal information is not contractor bid or proposal information, the contractor that has affixed the marking shall be notified in writing and given an opportunity to justify the marking. If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and the information may be released.

(2) After reviewing any justification submitted by the contractor, if the contracting officer determines that the marking is not justified, the contracting officer shall so notify the contractor in writing.

(3) Information marked by the contractor as proprietary, or otherwise marked as contractor bid or proposal information, shall not be released until—

(i) The review of the contractor's justification has been completed; or

(ii) The period specified for the contractor's response has elapsed, whichever is earlier. Thereafter, the contracting officer may release the information.

(4) With respect to technical data that are marked proprietary by a contractor, the contracting officer shall generally follow the procedures in 27.404(h).

(e) Nothing in this section restricts or prohibits—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement; or

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur.

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) Nothing in this section shall be construed to authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any such release which contains contractor bid or proposal information or source selection information shall clearly notify the recipient that the information or portions thereof are contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement, the disclosure of which is restricted by section 27 of the Act; or

(2) The withholding of information from, or restricting its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract.

3.104–6 Disqualification.

(a) *Disqualification notice.* An agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, and who wishes to discuss possible non-Federal employment with a bidder or offeror in that Federal agency procurement, shall submit to the Head of the Contracting Activity (HCA) or designee, prior to initiating or engaging in such discussions, a written notice of disqualification from further participation in the procurement. This is in addition to the requirement at 3.104–3(c)(1)(i). Concurrent copies of the notice shall be submitted to the contracting officer, the Source Selection Authority if the contracting officer is not the Source Selection Authority, and the agency official's immediate supervisor. As a minimum, the notice shall—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the bidder or offeror and describe its interest in the procurement.

(b) *Suspension from and resumption of participation in a procurement.* (1) The contracting officer, or the Source Selection Authority if the contracting officer is not the Source Selection Authority, shall suspend the individual's participation in the procurement until such time as the agency has authorized the official to resume participation in such procurement in accordance with 3.104–3(c)(1)(ii)(B).

(2) Subsequent to a period of disqualification, if an agency wishes to reinstate the agency official to participation in the procurement, the HCA or designee may authorize immediate reinstatement or may authorize reinstatement following whatever additional period of disqualification the HCA determines is necessary to ensure the integrity of the procurement process. The agency cannot force an agency official to terminate employment discussions in order to reinstate the official. The agency may reinstate an agency official who is still conducting employment discussions if the agency, following 18 U.S.C. 208 procedures, determines that the interest is not so substantial as to be deemed likely to affect the integrity of the official's services. It is within the discretion of the HCA, or designee, to determine that the agency official shall not be reinstated to participation in the procurement. In determining that any additional period of disqualification is necessary, the HCA or designee shall consider any factors that might give rise to an appearance that the agency official acted without complete impartiality with respect to issues involved in the procurement.

3.104–7 Ethics advisory opinions regarding prohibitions on former official's acceptance of compensation from contractors.

(a) An official or former official of a Federal agency who does not know whether he is or would be precluded by subsection (d) of the Act (see 3.104–3(d)) from accepting compensation from a particular contractor may request advice from the appropriate designated agency ethics official (or designee) prior to accepting such compensation.

(b) The request for an advisory opinion shall be submitted in writing, shall be dated and signed, and shall include all information reasonably available to the official or former official that is relevant to the inquiry. As a minimum, the request shall include—

(1) Information about the procurement(s), or decision(s) on matters under 3.104–3(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, and a description of the goods or services procured or to be procured;

(2) Information about the individual's participation in the procurement or decision, including the dates or time periods of that participation, and the

nature of the individual's duties, responsibilities, or actions; and

(3) Information about the contractor who would be a party to the proposed conduct, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after the date a request containing complete information is received, or as soon thereafter as practicable, the agency ethics official shall issue an opinion as to whether proposed conduct is proper or would violate subsection 27(d) of the Act.

(d)(1) Where complete information is not included in the request, the agency ethics official may ask the requester to provide any information reasonably available to that person. Additional information may also be requested from other persons, including the Source Selection Authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(e) Where the requester engages in conduct in good faith reliance upon an ethics advisory opinion, or a contractor engages in conduct based upon good faith reliance on the requester's ethics advisory opinion, neither the requester nor the contractor shall be found to have knowingly violated the restriction in issue. Where the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104–8 Contract clause.

(a) The contracting officer shall insert the clause at 52.203–8, Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity, in solicitations and contracts with a value exceeding the simplified acquisition threshold (see Part 2).

(b) The contracting officer shall insert the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations and contracts with a value exceeding the simplified acquisition threshold (see Part 2).

3.104–9 Violations or possible violations.

(a) If the contracting officer receives or obtains information of a violation or possible violation of subsections 27 (a), (b), (c), or (d) of the Act (see 3.104–3), the contracting officer shall determine whether the reported violation or possible violation has any impact on the pending award or selection of the source therefor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer shall forward the information concerning the violation or possible violation, accompanied by appropriate documentation supporting that conclusion, to an individual designated in accordance with agency procedures. With the concurrence of that individual, the contracting officer shall, without further approval, proceed with the procurement.

(2) If the individual reviewing the contracting officer's conclusion does not agree with that conclusion, the individual shall advise the contracting officer to withhold award and shall promptly forward the information and documentation to the HCA or designee.

(3) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer shall promptly forward the information to the HCA or designee.

(b) The HCA or designee receiving any information describing an actual or possible violation of subsections 27 (a), (b), (c), or (d) of the Act, shall review all information available and take appropriate action in accordance with agency procedures, such as—

(1) Advising the contracting officer to continue with the procurement;

(2) Causing an investigation to be conducted;

(3) Referring the information disclosed to appropriate criminal investigative agencies;

(4) Concluding that a violation occurred; or

(5) Recommending an agency head determination that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Prior to concluding that a bidder, offeror, contractor, or person has violated the Act, the HCA or designee may request information from appropriate parties regarding the violation or possible violation when considered in the best interests of the Government.

(d) If the HCA or designee concludes that the prohibitions of section 27 of the Act have been violated, then the HCA or designee may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture as provided for in the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsections 27 (a) or (b) of the Act for the purpose of either—

(*1*) Exchanging the information covered by such subsections for anything of value; or

(*2*) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act]; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspension and debarment official.

(e) The HCA or designee shall recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA or designee receiving information concerning a violation or possible violation determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of the Government, the HCA may authorize the contracting officer to award the contract or execute the contract modification after notification to the Head of the Agency in accordance with agency procedures.

(g) The HCA may delegate his or her authority under this subsection 3.104–9 to an individual at least one organizational level above the contracting officer and of General Officer, Flag, SES or equivalent rank.

(h) Criminal and civil penalties, and administrative remedies, as set forth in subsection (e) of the Act, may apply to

conduct which violates the Act (see 3.104–3; see also 33.102(f) for special rules regarding bid protests).

4. Section 3.700 is amended by revising paragraph (a) to read as follows:

3.700 Scope of subpart.

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which—

(1) There has been a final conviction for bribery, conflict of interest, disclosing or obtaining contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) There has been an agency head determination that contractor bid or proposal information or source selection information has been disclosed or obtained in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract.

* * * * *

5. Section 3.701 is revised to read as follows:

3.701 Purpose.

This subpart provides—

(a) An administrative remedy with respect to contracts in relation to which there has been—

(1) A final conviction for bribery, conflict of interest, disclosing or obtaining contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or obtained in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A means to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

6. Section 3.703 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

3.703 Authority.

* * * * *

(b) Subsection 27(e)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) ("the OFPP Act"), as amended, requires a Federal agency, upon receiving information that a contractor or a person has engaged in conduct constituting a violation of subsection 27 (a) or (b) of the OFPP Act, to consider rescission of a contract with respect to which—

(1) The contractor or someone acting for the contractor has been convicted for an offense punishable under subsection 27(e)(1) of the OFPP Act; or

(2) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

7. Section 3.704 is amended in paragraph (b) by removing the acronym "FAR"; and adding paragraph (c) to read as follows:

3.704 Policy.

* * * * *

(c) If there is a final conviction for an offense punishable under subsection 27(e) of the OFPP Act (41 U.S.C. 423), or if the head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense, then the HCA shall consider, in addition to any other penalty prescribed by law or regulation—

(1) Declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts by using the procedures at 3.705 (see 3.104–9); and

(2) Recommending the initiation of suspension or debarment proceedings in accordance with Subpart 9.4.

3.705 [Amended]

8. Section 3.705 is amended in the second sentence of paragraph (c)(3) by removing the words "the conviction" and inserting "a conviction" in its place; in paragraph (d)(1) by removing the comma after the word "therefor"; and in paragraph (d)(3) by inserting the words "offense or" before the word "final".

PART 4—ADMINISTRATIVE MATTERS

4.803 [Amended]

9. Section 4.803 is amended by removing paragraph (a)(42) and redesignating (a)(43) as (a)(42).

PART 9—CONTRACTOR QUALIFICATIONS

9.105–3 [Amended]

10. Section 9.105–3 is amended in paragraph (c) by revising the parenthetical to read "(see 3.104–4)".

9.106–3 [Amended]

11. Section 9.106–3 is amended by removing the paragraph (a) designation and paragraph (b).

9.505 [Amended]

12. Section 9.505 is amended in paragraph (b)(1) by revising "3.104–4(j)" to read "3.104–4"; and in (b)(2) by revising "3.104–4(k)" to read "3.104–4".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

13. Section 12.503 is amended by removing paragraph (b)(4) and redesignating (b)(5) and (b)(6) as (b)(4) and (b)(5).

12.504 [Amended]

14. Section 12.504 is amended by removing paragraph (b)(3) and redesignating (b)(4) as (b)(3).

PART 14—SEALED BIDDING

14.404–2 [Amended]

15. Section 14.404–2 is amended by removing paragraph (m).

PART 15—CONTRACTING BY NEGOTIATION

15.413 [Amended]

16. Section 15.413 is amended by removing the word "proprietary" and inserting "contractor bid or proposal information" in its place.

15.413–2 [Amended]

17. Section 15.413–2 is amended by removing paragraph (f)(6).

15.509 [Amended]

18. Section 15.509 is amended in paragraph (f)(4) by removing ", and to complete the certification required by 3.104–9"; and by removing paragraph (h)(3).

15.805–5 [Amended]

19. Section 15.805–5 is amended in paragraph (j) by revising the parenthetical to read "(see 3.104–4)"; and removing paragraph (k).

PART 19—SMALL BUSINESS PROGRAMS

19.811–1 [Amended]

20. Section 19.811–1 is amended by removing paragraph (d).

19.811–2 [Amended]

21. Section 19.811–2 is amended by removing paragraph (b) and redesignating paragraph "(c)" as "(b)".

PART 33—PROTESTS, DISPUTES, AND APPEALS

22. Section 33.102 is amended by adding paragraph (f) to read as follows:

33.102 General.

* * * * *

(f) No person may file a protest for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation. This implements 41 U.S.C. 423(g).

PART 37—SERVICE CONTRACTING

37.103 [Amended]

23. Section 37.103 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

PART 43—CONTRACT MODIFICATIONS

43.106 [Reserved]

24. Section 43.106 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Section 52.203–8 is revised to read as follows:

52.203–8 Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity.

As prescribed in 3.104–8, insert the following clause in solicitations and contracts:

Cancellation, Rescission and Recovery of Funds for Illegal or Improper Activity (Date)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act (Pub. L. 104–106), the Government may:

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52.203–9 [Reserved]

26. Section 52.203–9 is removed and reserved.

27. Section 52.203–10 is amended by revising the heading and date of the clause and paragraphs (a) and (b)(5) to read as follows:

52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.

* * * * *

Price or Fee Adjustment for Illegal or Improper Activity (Date)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR.

* * * * *

(b) * * *

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

* * * * *

52.203–13 [Reserved]

28. Section 52.203–13 is removed and reserved.

52.212–3 [Amended]

29. Section 52.212–3 is amended by revising the date of the provision to read "(DATE)"; and removing paragraph (i).

PART 53—FORMS

53.203 [Reserved]

30. Section 53.203 is removed and reserved.

53.302–333 [Removed]

31. Section 53.302–333 is removed.

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Part VII

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC35

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL regulations govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan Program. The Secretary is proposing to make changes to the due diligence requirements for lenders and guaranty agencies participating in the FFEL Program.

DATES: Comments must be received on or before November 5, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, U.S. Department of Education, Post Office Box 23272, Washington, DC 20026–3272. Comments may also be sent through the internet to due_diligence@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Ron Streets, Program Specialist, Loans Branch, Policy Development Division, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W. (room 3053, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to amend 34 CFR Part 682 of the Department's regulations to improve the administration and the integrity of the FFEL Program. By improving program efficiency, these proposed regulations will reduce burden for lenders and improve the collection of outstanding FFEL loans and potential liabilities owed to the Secretary.

Proposed Regulatory Changes

The Secretary proposes to amend the following sections of the regulations to reflect changes needed to improve the due diligence provisions in the FFEL Program.

Section 682.401 Basic Program Agreement

The Secretary proposes to amend § 682.401(b)(27) by codifying the interpretation outlined in the Department's Dear Colleague Letter 95–G–286 dated November 1995, to permit guaranty agencies to retain collection costs totaling up to 18.5 percent of the outstanding principal and accrued interest of a defaulted FFEL loan that is repaid by a consolidation loan as long as their collection costs are included in the payoff amount certified by the guaranty agency.

Section 682.404 Federal Reinsurance Agreement

The Secretary proposes to amend § 682.404(a)(2)(ii) by requiring guaranty agencies to offer preclaims assistance to lenders no later than the 75th day of delinquency. Currently, the regulations do not include an explicit deadline by which the guaranty agencies must provide this service and some agencies have not provided preclaims assistance on a timely basis. This proposal would create uniformity in the treatment of delinquent borrowers and ensure that preclaims is initiated early enough to successfully avert default.

This section is also amended to require guaranty agencies, as part of their preclaims assistance to lenders, to provide counseling and written consumer information to the borrower by the 100th day of delinquency informing the borrower of the option to consolidate student loans under the FFEL Program or the Federal Direct Consolidation Loan Program to avoid default. The Secretary believes that providing this information to delinquent borrowers during the preclaims assistance process will help reduce defaults by ensuring that borrowers have information regarding consolidation when it is critically needed. Failure of the agency to provide this information would constitute a violation of due diligence in servicing a loan.

This section is further amended to require that payments made by a borrower on a defaulted loan to a guaranty agency must be first applied to the agency's collection costs attributable to that payment on the loan and then to reinsured interest and principal. This amendment will ensure that the borrower remains responsible for paying collection costs as required by section 484A(b) of the Higher Education Act of 1965, as amended. The Secretary also solicits particular comment on whether a guaranty agency should be allowed to apply the borrower's payment to incidental charges such as late charges first, after collection charges, rather than only after all principal and interest as is currently the case.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The Secretary proposes to amend § 682.410(b)(2) that governs the amount of collection charges guaranty agencies may charge the borrower. These regulations propose to require guaranty agencies to assess a defaulted borrower the same amount of collection charges assessed by the Department for loans held by the Department. The collection rate currently assessed by the Department is 25 percent. The Secretary believes that standardization of collection costs across the industry will both reduce confusion and ensure equitable treatment for borrowers whose FFEL loans are guaranteed by multiple guaranty agencies. The Secretary will inform guaranty agencies annually what the applicable rate is in sufficient time for agencies to make necessary system changes. However, the Secretary solicits additional comment on whether agencies should be provided with the flexibility to assess less than the Department's collection rate if the agency's actual costs of collection support this.

The Secretary also proposes to amend § 682.410(b)(6)(vii)(A) that currently provides guaranty agencies the option of either initiating wage garnishment or instituting a civil suit against the borrower whose loans have defaulted. These proposed regulations remove that option and instead require that guaranty agencies initiate wage garnishment proceedings if the borrower has sufficient income. If the agency determines that the borrower has insufficient income to satisfy the debt by garnishment, but has assets from

which the debt can be satisfied, the guaranty agency will be required to assign the debt to the Department so the Secretary can file a civil suit against the borrower. The Department intends to litigate assigned accounts through the Department of Justice in order to place a lien against the borrower's assets to satisfy the debt. The Secretary believes that this change will result in more effective collection of defaulted loans across the country because guaranty agencies have had varying success in collecting loans through litigation.

Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans

The Secretary proposes to amend § 682.411(c) to expand the length of time from 1–10 days delinquent to 1–15 days delinquent that lenders will have to send the first written notice or collection letter to a delinquent borrower. This change will afford the lender additional time to receive payments from a delinquent borrower before it has to send out the first warning of delinquency to that borrower. This reduces the lender's burden of beginning the due diligence process prematurely for delinquent borrowers whose payments are received within the maximum proposed 15-day period.

The Secretary also proposes to amend § 682.411(d)(2) to modify the requirements for the two collection letters that must be sent to a borrower during the period of 16–180 days delinquent (16–240 days delinquent for a loan repayable in installments less frequently than monthly) to include additional warnings to the borrower that the guaranty agency may: (1) Institute proceedings to offset other payments made by the federal government to the borrower; and (2) assign the loan to the federal government for litigation against the borrower.

Section 682.413 Remedial Actions

Section 682.413(b) is amended to expand the possible remedial action available to the Secretary if a guaranty agency fails to meet the requirements of § 682.410 to include mandatory assignment of FFEL loans to the Department at the Secretary's discretion. Currently the only penalty available to the Secretary is loss of reinsurance. The Secretary does not believe that this is always in the best interest of the program.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the Order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 682.413 Remedial action.) (4) Is the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the regulations? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue S.W. (Room 5100, FB–10), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

According to the U.S. Small Business Administration Size Standards, small entities affected by these regulations are lenders with assets below $100,000,000. Two provisions of these regulations affect small (and large) lenders. The first could provide a positive economic benefit to small (and large) lenders by providing additional flexibility for regulatory compliance. This provision does not impose a significant adverse economic impact. The second provision would impose minor economic costs on small (and large) lenders by requiring them to modify two letters sent to delinquent borrowers. These letters are required by existing regulations. These additional costs would not have a significant adverse economic impact. This activity would protect the Federal fiscal interest as well as the interests of the borrowers under the programs.

The Secretary particularly requests comments from small lenders on whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Section 682.411 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program

These regulations strengthen the collectibility of delinquent FFEL loans by participating lenders. Monies collected under these regulations enable new and continuing students to borrow to help defray the cost of education.

The public reporting and recordkeeping burden for this collection of information is estimated to be 3,398.31 hours in order to make the necessary system changes to: (1) add additional warnings to the existing collection letters sent to delinquent borrowers and (2) increasing the period

of time lenders will have to send the first written notice or collection letter to a delinquent borrower. This is a one-time activity.

The estimated burden for incorporating the additional warning paragraphs into the existing collection letters was calculated as follows:

Respondents		5,829
Responses	×	1
Hours per respondent	×	0.083 (5 minutes)
Annual reporting burden		483.81 hours

The estimated burden associated with expanding the window regarding when the first collection letter is sent to a delinquent borrower was calculated as follows:

Respondents		5,829
Responses	×	1
Hours per respondent	×	0.5 (30 Minutes)
Annual reporting burden		2,914.50 hours

Total annual burden hours=3,398.31

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3053, Regional Office Building 3, 7th and D Streets, S.W., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 31, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.401 is amended by revising paragraph (b)(27) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(27) *Collection Charges and Late Fees on Defaulted FFEL loans being Consolidated.* (i) A guaranty agency may add collection costs in an amount not to exceed 18.5 percent of the outstanding principal and interest to a defaulted FFEL Program loan that is included in a Federal Consolidation loan.

(ii) When returning the proceeds from the consolidation of a defaulted loan to the Secretary, a guaranty agency may only retain the amount added to the borrower's balance pursuant to paragraph (b)(27)(i) of this section.

* * * * *

3. Section 682.404 is amended by revising paragraph (a)(2)(ii) and paragraph (f) to read as follows:

§ 682.404 Federal reinsurance agreement.

* * * * *

(a) * * *

(2) * * *

(ii) *Preclaims assistance* means collection assistance made available to the lender by the guaranty agency no later than the 75th day of delinquency. This assistance must include collection activities that are at least as forceful as the level of preclaims assistance performed by the guaranty agency as of October 16, 1990, and involves the initiation by the guaranty agency of at least 3 collection activities, one of which is a letter designed to encourage the borrower to begin or resume repayment. As part of their preclaims assistance, guaranty agencies must provide counseling and written consumer information to the borrower by the 100*th* day of delinquency informing the borrower of the borrower's option to consolidate the defaulted loan under the FFEL Program or the Federal Direct Consolidation Loan Program to avoid default. Failure of the agency to provide this information constitutes a violation of the guaranty agency's obligation to perform due diligence in collecting a loan; and

* * * * *

(f) *Application of borrower payments.* A payment made to a guaranty agency by a borrower must be applied first to the collection costs due only for the amount collected in the particular payment month on the loan and then to reinsured interest and then to principal. The borrower's payments may be applied to other incidental charges, such as late charges, only after the repayment of all principal and interest.

* * * * *

4. Section 682.410 is amended by revising paragraphs (b)(2) and (b)(6)(vii)(A) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guaranty agency

shall charge a borrower an amount equal to reasonable costs incurred by the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorney's fees, collection agency charges, and court costs. The amount charged a borrower must equal the amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

* * * * *

(6) * * *

(vii) * * *

(A) Except as provided in paragraph (b)(6)(vii)(B) of this section, during this period but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall initiate proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower, and shall initiate wage garnishment proceedings against the borrower by the 225th day. If the agency determines that the borrower has insufficient income to satisfy the debt through wage garnishment, but has assets from which the debt can be satisfied, the agency shall assign the loan to the Department by the 545th day.

* * * * *

5. Section 682.411 is amended by revising paragraphs (c) and (d) to read as follows:

§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.

* * * * *

(c) *1–15 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, information for the borrower regarding loan consolidation, forbearance and other available options to avoid default.

(d) *16–180 days delinquent (16–240 days delinquent for a loan repayable in installments less frequent than monthly):* (1) Unless exempted under paragraph (d)(4) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by phone must occur before, and another one must occur after, the 90th day of delinquency.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's state and federal income tax refunds and other payments made by the federal government to a borrower or to garnish the borrower's wages, or assign the loan to the federal government for litigation against the borrower.

* * * * *

6. Section 682.413 is amended by redesignating paragraph (b) as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 682.413 Remedial actions.

* * * * *

(b)(1) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency fails to meet the requirements of § 682.406(a).

(2) The Secretary may require a guaranty agency to repay reinsurance payments received on a loan or to assign FFEL loans to the Department if the agency fails to meet the requirements of § 682.410.

* * * * *

[FR Doc. 96–22812 Filed 9–5–96; 8:45 am]
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September 6, 1996

Part VIII

Department of Housing and Urban Development

24 CFR Part 573

Loan Guarantee Recovery Fund; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 573

[Docket No. FR-4108-F-01]

RIN 2506-AB87

Office of the Assistant Secretary for Community Planning and Development; Loan Guarantee Recovery Fund

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The Church Arson Prevention Act of 1996 (the Act) authorizes certain Federal departments to implement procedures to address the destructive consequences of acts of arson and terrorism carried out against places of worship. Section 4 of the Act directs HUD to publish regulations governing the provision of loan guarantees to financial institutions that make loans to certain nonprofit organizations adversely affected by such acts. This final rule implements section 4 of the Act. Specifically, this rule establishes the procedures, terms, and conditions by which HUD will guarantee loans to assist nonprofit organizations in financing activities designed to rebuild and rehabilitate structures, to replace and restore personal property, and to finance other eligible activities as provided for in this final rule. In addition, HUD anticipates forming a cooperative venture and participating with other entities in the pooling of funds so as to better achieve the objectives of the Act and this final rule.

EFFECTIVE DATE: These regulations take effect on October 7, 1996, unless prior to this date HUD publishes a notice in the **Federal Register** announcing an earlier effective date. Affected parties do not have to comply with the information collection requirements in §§ 573.6, 573.7, 573.8, and 573.11 until HUD publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Tony Johnston, Deputy Director, Financial Management Division, Office of Block Grant Assistance, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–1871. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399. FAX inquiries may be sent to Mr. Johnston at (202) 708–1798. (Other than the "800" number, the telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 1996, President Clinton signed into law the "Church Arson Prevention Act of 1996" (Pub. L. 104–155) (the Act). In passing this legislation, the Congress made the following findings:

The Congress finds the following:

(1) The incidence of arson or other destruction of vandalism of places of religious worship, and the incidence of violent interference with an individual's lawful exercise or attempted exercise of the right of religious freedom at a place of religious worship pose a serious national problem.

(2) The incidence of arson of places of religious worship has recently increased, especially in the context of places of religious worship that serve predominantly African-American congregations.

(3) Changes in Federal law are necessary to deal properly with this problem.

(4) Although local jurisdictions have attempted to respond to the challenges posed by such acts of destruction or damage to religious property, the problem is sufficiently serious, widespread, and interstate in scope to warrant Federal intervention to assist State and local jurisdictions.

(5) Congress has authority, pursuant to the Commerce Clause of the Constitution, to make acts of destruction or damage to religious property a violation of Federal law.

(6) Congress has authority, pursuant to section 2 of the 13th amendment to the Constitution, to make actions of private citizens motivated by race, color, or ethnicity that interfere with the ability of citizens to hold or use religious property without fear of attack, violations of Federal criminal law.

The Act provides Federal, State and local law-enforcement agencies with the needed additional tools to address violent crimes against places of worship, strengthens the penalties for these crimes, and authorizes Federal assistance for rebuilding efforts. Section 4 of the Act, entitled "Loan Guarantee Recovery Fund," authorizes the Secretary of HUD to guarantee loans made by financial institutions to assist certain nonprofit organizations (organizations described in section 501(c)(3) of the Internal Revenue Code of 1986) that have been damaged as a result of acts of arson or terrorism. The Act provides that loans shall be guaranteed in accordance with procedures that the Secretary shall establish by regulation.

This final rule implements section 4 of the Act by establishing a new 24 CFR part 573. Part 573 describes the procedures, terms, and conditions by which HUD will guarantee loans to assist eligible nonprofit organizations. Under § 573.3 of this final rule, eligible borrowers may use guaranteed loan funds for a wide range of activities, including: (1) the acquisition of real or personal property; (2) the rehabilitation of real property; (3) the construction, reconstruction or replacement of real property improvement; (4) clearance, demolition, and removal of structures, fixtures, and improvements; (5) site preparation; (6) architectural, engineering, and security expenses; and (7) refinancing existing indebtedness. The term of a loan guaranteed by HUD under new 24 CFR part 573 may not exceed 20 years.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment.

The purpose of this rule is to implement the authority provided by the Congress for HUD to guarantee loans made by financial institutions to certain nonprofit organizations that suffer damage to their property as a result of acts of arson or terrorism. The Department of Justice has identified more than 40 eligible organizations that have had property damaged or destroyed through acts of arson or terrorism within the last few months. These organizations are in immediate need of assistance to rebuild and restore their properties. Financial institutions are willing to assist these organizations in their rebuilding efforts, provided a certain level of assurance exists with respect to the repayment of the loans to be made. The loan guarantee recovery fund established by this final rule provides the necessary assurance. Accordingly, HUD believes that it would be contrary to the public interest to delay the effectiveness of the rule to solicit comment.

Before issuance of this rule, HUD held meetings with representatives of 501(c)(3) organizations that have been damaged by arson or terrorism, as well

as with financial institutions, State and local organizations, and other public agencies. This rule incorporates many of the comments and suggestions offered by these organizations and entities. Although this rule is being issued in final form, additional public comments on this regulation are welcome on a continuing basis. These additional comments will be beneficial to any future loan guarantee authority provided to HUD. Interested persons are invited to submit comments regarding the final rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

III. Findings and Certifications.

Paperwork Reduction Act Statement. The information collection requirements contained in §§ 573.6, 573.7, 573.8, and 573.11 have been submitted to the Office of Management and Budget (OMB) for emergency review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.* The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Executive Order 12866, Regulatory Planning and Review. This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant under section (3)(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington Dc, 20410.

Unfunded Mandates Reform Act. The Secretary has reviewed this rule before publication and by approving it certified, in accordance with the Unfunded Mandates Reform Act of 199 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to assist certain nonprofit organizations that experience damage to their real and personal property as a result of acts of arson or terrorism. All qualified financial institution, are eligible to apply for loan guarantees under this rule.

Environmental Impact. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family*, has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to the family, will result from promulgation of this final rule.

List of Subjects in 24 CFR Part 573

Loan programs—housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

1. A new part 573 is added to read as follows:

PART 573—LOAN GUARANTEE RECOVERY FUND

Sec.

573.1 Authority and purpose.
573.2 Definitions.
573.3 Eligible activities.
573.4 Loan term.
573.5 Underwriting standards and availability of loan guarantee assistance.
573.6 Submission requirements.
573.7 Loan guarantee agreement.
573.8 Environmental procedures and standards.
573.9 Other requirements.
573.10 Fees for guaranteed loans.
573.11 Record access and recordkeeping.

Authority: Pub. L. 104–155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

§ 573.1 Authority and purpose.

Section 4 of the Church Arson Prevention Act of 1996 (Pub. L. 104–155, approved July 3, 1996) authorizes HUD to guarantee loans made by financial institutions to certain nonprofit organizations to finance activities designed to remedy the damage and destruction to real and personal property caused by acts of arson or terrorism. This part establishes the general procedures and requirements that apply to HUD's guarantee of these loans.

§ 573.2 Definitions.

The following definitions are only applicable to loan guarantees under this part, and are not criminal definitions.

Act means "The Church Arson Prevention Act of 1996" (Pub. L. 104–155, approved July 3, 1996).

Arson means a fire or explosion causing damage to (or destruction of) real or personal property that a Qualified Certification Official determines, or reasonably believes, to be deliberately set.

Borrower means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose property has been damaged or destroyed as a result of an act of arson or terrorism and that incurs a debt obligation to a financial institution for the purpose of carrying out activities eligible under his part.

Financial Institution means a lender which may be a bank, trust company, savings and loan association, credit union, mortgage company, or other issuer regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller

of the Currency. A Financial Institution may also be a Pension Fund.

Guarantee means an obligation of the United States Government guaranteeing payment of the outstanding principal loan amount, in whole or in part, plus interest thereon, on a debt obligation of the Borrower to a Financial Institution upon failure of the Borrower to repay the debt.

Guaranteed Loan Funds means funds received by the borrower from the Financial Institution to finance eligible activities under this part, the repayment of which is guaranteed by HUD.

Loan Guarantee Agreement means an agreement between a Financial Institution and the Secretary detailing the rights, responsibilities, procedures, terms, and conditions under which a loan provided by a Financial Institution to a Borrower may be guaranteed under section 4 of the Act.

Qualified Certification Official (QCO). (1) *For the purpose of certifying an act of arson.* A State or local official authorized to investigate possible acts of arson. For the purposes of this definition, such an official is authorized to execute an Official Incident Report or its equivalent and may be an official or employee of such agencies as the local fire department, the local police department, or the State Fire Marshall Office or its equivalent. The term "Qualified Certification Official" also includes HUD, which will consult with the Bureau of Alcohol, Tobacco, and Firearms of the Department of the Treasury in making its determinations.

(2) *For the purpose of certifying an act of terrorism.* The Secretary or his designee, in consultation with the Federal Bureau of Investigation, shall determine whether an act of violence is a terrorist act or is reasonably believed to be a terrorist act.

Section 4 Guaranteed Loan means a HUD guaranteed loan made by a Financial Institution to a Borrower for the purpose of carrying out eligible activities to address damage or destruction caused by acts of arson or terrorism.

Terrorism means an act of violence causing damage to (or destruction of) real or personal property that the Secretary or his designee, in consultation with the Federal Bureau of Investigation, determines to be, or reasonably believes to be, a terrorist act, as defined by applicable Federal law or guidelines.

§ 573.3 Eligible activities.

Guaranteed Loan Funds may be used by a Borrower for the following activities when it is certified in accordance with § 573.6(e) that the activity is necessary to address damage caused by an act or acts of arson or terrorism as certified in accordance with § 573.6(f):

(a) Acquisition of improved or unimproved real property in fee or under long term lease.

(b) Acquisition and installation of personal property.

(c) Rehabilitation of real property owner, acquired, or leased by the Borrower.

(d) Construction, reconstruction, or replacement of real property improvement.

(e) Clearance, demolition, and removal, including movement of structures to other sites, of buildings, fixtures and improvements on real property.

(f) Site preparation, including construction, reconstruction, or installation of site improvements, utilities, or facilities, which is related to the activities described in paragraphs (a), (c), or (d) of this section.

(g) Architectural, engineering, and similar services necessary to develop plans in connection with activities financed under paragraphs (a), (b), (c), or (d) of this section.

(h) Acquisition, installation and restoration of security systems.

(i) Loans for refinancing existing indebtedness secured by a property to be constructed, rehabilitated, or reconstructed, if such financing is determined to be appropriate to achieve the objectives of the Act and this part.

(j) Other necessary project costs such as insurance, bonding, legal fees, appraisals, surveys, relocation, closing costs, etc., paid or incurred by the Borrower in connection with the completion of the above activities.

§ 573.4 Loan term.

The term of the loan to be guaranteed by HUD under this part may not exceed 20 years.

§ 573.5 Underwriting standards and availability of loan guarantee assistance.

(a) HUD may, in its discretion, accept the underwriting standards of the Financial Institution making a loan to a Borrower.

(b) HUD will not make the loan guarantee unless it determines that the guaranteed loan is an acceptable financial risk under HUD's generally applicable loan underwriting standards based on the following:

(1) The Borrower's ability to pay debt service; and

(2) The value of the collateral assigned or pledged as security for the repayment of the loan.

(c) The provision of a loan guarantee to a Financial Institution and the amount of the guarantee do not depend in any way on the purpose, function, or identity of the organization to which the Financial Institution has made, or intends to make, a Section 4 Guaranteed Loan.

(d) HUD may disapprove a request for loan guarantee assistance based on the availability of funding.

(e) HUD may decline any Financial Institution's participation if its underwriting criteria are insufficient to make the guarantee an acceptable financial risk, or if the proposed interest rates or fees are unacceptable. HUD expects the proposed interest rates to take into account the value of the Federal guarantee.

(f) HUD may limit the availability of Guaranteed Loan Funds to geographic areas having the greatest need, as determined by a needs analysis of the most current available date conducted by HUD.

(g) Other requirements associated with the underwriting standards and guidelines shall be contained in the Loan Guarantee Agreement.

§ 573.6 Submission requirements.

A Financial Institution seeking a Section 4 Guaranteed Loan must submit to HUD the following documentation:

(a) A statement that the institution is a Financial Institution as defined at § 573.2.

(b) A statement that the Borrower is eligible as defined at §.573.2.

(c) A description of each eligible activity for which the loan is requested.

(d) A statement of other available funds to be used to finance the eligible activities (e.g., insurance proceeds).

(e) A certification by the Borrower that the activities to be assisted resulted from an act of arson or terrorism which is the subject of the certification described in paragraph (f) of this section.

(f) A certification by a QCO that the damage or destruction to be remedied by the use of the Guaranteed Loan Funds resulted from an act of arson or terrorism.

(g) The environmental documentation required by § 573.8.

(h) A narrative of the institution's underwriting standards used in reviewing the Borrower's loan request.

(i) The interest rate on the loan and fees the lender intends to use in connection with the loan; and

(j) The percentage of the loan for which a guarantee is requested.

§ 573.7 Loan guarantee agreement.

(a) The rights and responsibilities with respect to the guaranteed loan shall be substantially described in an

agreement entered into between the Financial Institution, as the lender, and the Secretary, as the guarantor, which agreement shall provide that:

(1) The lender has submitted or will submit a request for loan guarantee assistance that is accompanied by the Borrower's request for a loan to carry out eligible activities described in § 573.3;

(2) The lender will require the Borrower to execute a promissory note promising to repay the guaranteed loan in accordance with the terms thereof;

(3) The lender will require the Borrower to provide collateral security, to an extent and in a form, acceptable to HUD;

(4) HUD reserves the right to limit loan guarantees to loans financing the replacement of damaged property with comparable new property;

(5) The lender will follow certain claim procedures to be specified by HUD in connection with any defaults, including appropriate notification of default as required by HUD;

(6) The lender will follow procedures for payment under the guarantee whereby the lender will be paid (up to the amount of guarantee) the amount owed to the lender less any amount recovered from the underlying collateral security for the loan; and

(7) The lender will act as the fiscal agent for the loan, servicing the guaranteed loan, maintaining loan documents, and receiving the Borrower's payments of principal and interest. The Borrower and the lender may be required to execute a fiscal agency agreement.

(b) In addition, the agreement shall contain other requirements, terms, and conditions required or approved by HUD.

§ 573.8 Environmental procedures and standards.

The environmental review requirements at 24 CFR part 50 are applicable to this part.

(a) *Environmental procedures.* Before any lender's submission requesting a loan guarantee for the acquisition, rehabilitation, or construction of real property can be selected for a loan guarantee, HUD shall determine whether any environmental thresholds are exceeded in accordance with 24 CFR part 50, which implements the National Environmental Policy Act (NEPA) and the related Federal environmental laws and authorities listed under 24 CFR 50.4. To assist in complying with environmental requirements, Borrowers are encouraged to select sites that are free of environmental hazards and are to provide HUD with environmental data needed to make a determination of compliance. For successful Borrowers, the costs for preparing the environmental data are eligible as project costs.

(1) If HUD determines that one or more of the thresholds are exceeded, HUD shall conduct a compliance review of the issue and, if appropriate, establish mitigating measures that the applicant shall carry out for the property.

(2) The lender's submissions under § 573.6 shall provide HUD with:

(i) Documentation for environmental threshold review; and

(ii) Any previously issued environmental reviews prepared by local, State, or other Federal agencies for the proposed property.

(3) In providing the above information, the Borrower is encouraged to contact the local community development agency to obtain any previously issued environmental reviews for the proposed property as well as for other relevant information that can be used in the applicant documentation for the environmental threshold review.

(4) HUD reserves the right to disqualify any request where one or more environmental thresholds are exceeded if HUD determines that the compliance review cannot be satisfactorily completed.

(5) If Guaranteed Loan Funds are requested for acquisition, rehabilitation, or construction, Borrowers and Financial Institutions are prohibited from committing or expending State, local, or other funds to undertake property acquisition, rehabilitation or construction under this part until HUD issues a letter of commitment notifying the lender of HUD approval of the loan guarantee.

(b) *Environmental thresholds.* HUD shall determine whether a NEPA environmental assessment is required. Also, HUD shall determine whether the proposed property triggers thresholds for the applicable Federal environmental laws and authorities listed under 24 CFR 50.4 as follows:

(1) For minor rehabilitation of a building and acquisition of any property, Federal environmental laws and authorities may apply when the property is:

(i) Located within designated coastal barrier resources;

(ii) Contaminated by toxic chemicals or radioactive materials;

(iii) Located within a floodplain;

(iv) A building for which flood insurance protection is required;

(v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; or

(vi) Listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, an historic district, or is a property whose area of potential effects includes a historic district or property.

(2) For major rehabilitation of a building or for new construction or rebuilding, and environmental assessment under NEPA is required and, in addition to paragraph (b)(1) (i) through (vi) of this section, other Federal environmental laws and authorities may apply when the property:

(i) Affects coastal zone management;

(ii) Is located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature;

(iii) Affects a sole source aquifer;

(iv) Affects endangered species;

(v) Is located within a designated wetland; or

(vi) Is located in a high noise area.

(c) *Qualified data sources.* The environmental threshold information provided by applicants mut be from qualified data sources. A qualified data source means any Federal, State, or local agency with expertise or experience in environmental protection (e.g., the local community development agency; the local planning agency; the State environmental protection agency; or the State Historic Preservation Officer) or any other source qualified to provide reliable information on the particular property.

(d) *Definition.* Minor rehabilitation means proposed fixing and repairs:

(1) Whose estimated cost is less than 75 percent of the estimated cost of replacement after completion;

(2) That does not involve changes in land use from residential to nonresidential, or from nonresidential to residential; and

(3) In the case of residential properties, that does not increase density more than 20 percent.

(e) *Project consultants.* In achieving compliance with these procedures, Borrower's architectural and engineering consultants shall consider these environmental factors and provide information in their plan narratives as to how their construction plans conform with the above environmental factors. To facilitate HUD's compliance with party 50, the Borrower is required to submit the consultant's information and plan narrative discussing the pertinent environmental factors under this section.

§ 573.9 Other Requirements.

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements described in 24 CFR part 5, subpart A apply to this part.

(b) *24 CFR part 84.* The provisions of 24 CFR part 84 apply to guaranteed loans under this part.

(c) *Lead-Based Paint.* Housing assisted under this part is subject to the lead-based paint requirements described in 24 CFR part 35.

(d) *Labor Standards.* (1) *Davis-Bacon.* All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with Guaranteed Loan Funds under this part shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). This paragraph shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(2) *Volunteers.* The provisions of paragraph (d)(1) of this section shall not apply to volunteers under the conditions set forth in 24 CFR part 70. In applying part 70, loan guarantees under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(3) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (d)(1) of this section shall comply with all labor standards and provisions of 29 CFR parts 1, 3 and 5 that would be applicable to a loan guarantee program to which Davis-Bacon wage rates are made applicable by statute.

§ 573.10 Fees for guaranteed loans.

(a) No fees will be assessed by HUD for its guaranty of a loan under this part.

(b) The lender may assess the Borrower loan origination fees or other charges provided that such fees and charges are those charged by the lender to its other customers for similar transactions, and are no higher than those charged by the lender for similar transactions.

§ 573.11 Record Access and Recordkeeping.

Records pertaining to the loans made by the Financial Institution shall be held for the life of the loan. A lender with a Section 4 Guaranteed Loan shall allow HUD, the Comptroller General of the United States, and their authorized representatives access from time to time to any documents, papers or files which are pertinent to the guaranteed loan, and to inspect and make copies of such records which relate to any Section 4 Loan. Any inspection will be made during the lender's regular business hours or any other mutually convenient time.

Dated: September 5, 1996.

Howard Glaser,

Acting Assistant Secretary for Community Planning and Development.

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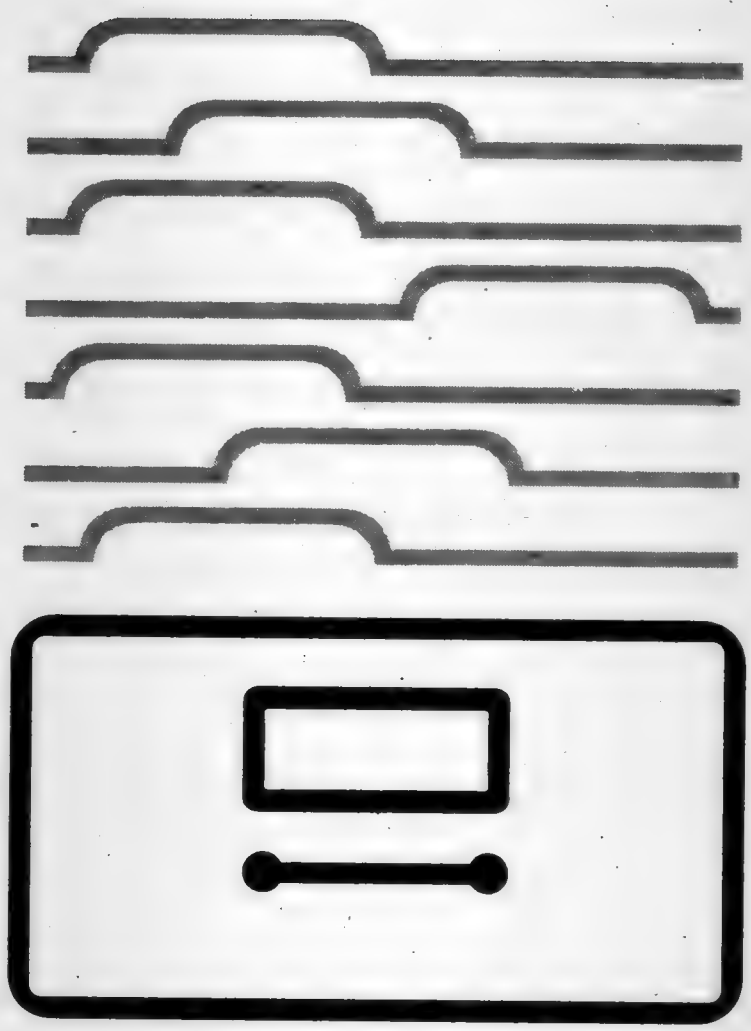

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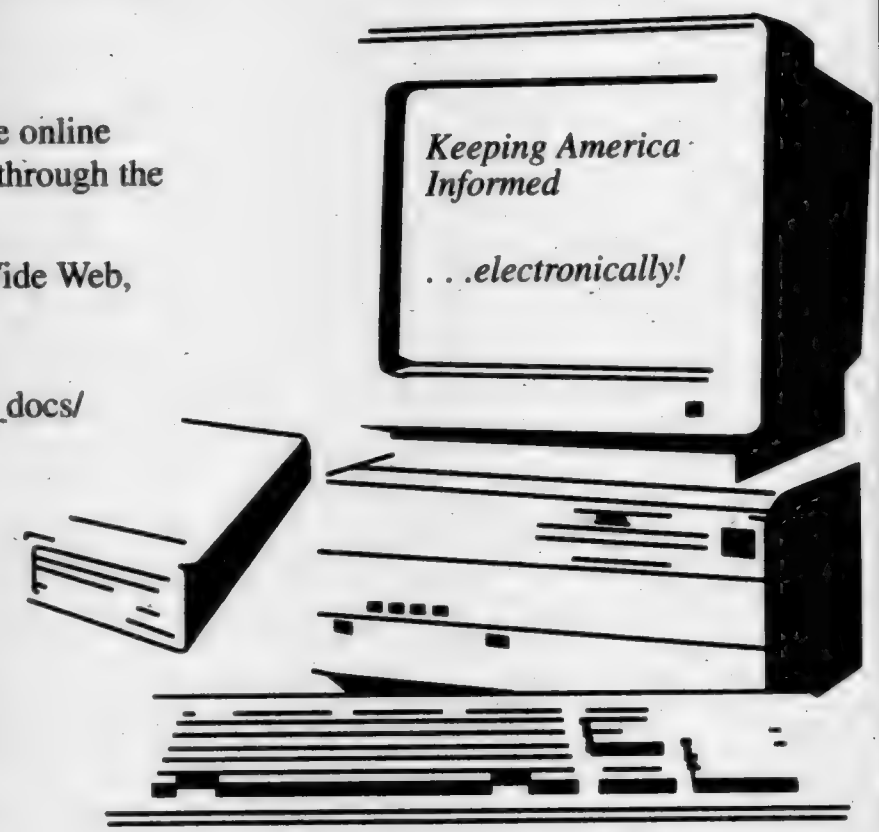

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1616 (2 documents) 47412, 47634

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Rules and Regulations

Federal Register
Vol. 61, No. 175
Monday, September 9, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–256–AD; Amendment 39–9747; AD 96–18–20]

RIN 2120–AA64

Airworthiness Directives; Piaggio Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Piaggio Model P–180 airplanes, that requires replacement of outflow/safety valves with serviceable valves. This amendment is prompted by a report of cracking and subsequent failure of outflow safety valves in the pressurization system. The actions specified by this AD are intended to prevent such cracking and subsequent failure of the outflow/safety valves, which could result in rapid decompression of the airplane.

DATES: Effective October 15, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Allied Signal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Piaggio Model P–180 airplanes was published in the **Federal Register** on March 13, 1996 (61 FR 10292). That action proposed to require replacement of certain discrepant outflow/safety valves with serviceable valves.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 Model P–180 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The parts manufacturer has advised that it will provide replacement parts at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,200, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–20 I.A.M. Rinaldo Piaggio S.P.A.: Amendment 39–9747. Docket 95–NM–256–AD.

Applicability: Model P–180 airplanes; equipped with Allied Signal outflow/safety valves, as specified in Allied Signal Aerospace Service Bulletins 103742–21–4059 and 103744–21–4060, both dated March 31, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and subsequent failure of the outflow/safety valves, which would result in rapid decompression of the airplanes, accomplish the following:

(a) Within 18 months after the effective date of this AD, replace the outflow/safety valve in accordance with Allied Signal Aerospace Service Bulletin 103742–21–4059 (for airplanes equipped with valves having part number 103742), or 103744–21–4060 (for airplanes equipped with valves having part number 103744), both dated March 31, 1995, as applicable.

(b) As of the effective date of this AD, no person shall install an outflow/safety valve having a part number and serial number identified in Allied Signal Aerospace Service Bulletin 103742–21–4059 (for airplanes equipped with valves having part number 103742) or 103744–21–4060 (for airplanes equipped with valves having part number 103744), both dated March 31, 1995, on any airplane unless that valve is considered to be serviceable in accordance with the applicable service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Allied Signal Aerospace Service Bulletin 103742–21–4059, dated March 31, 1995; or Allied Signal Aerospace Service Bulletin 103744–21–4060, dated March 31, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied Signal Aerospace, Technical Publications, Dept. 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 15, 1996.

Issued in Renton, Washington, on August 29, 1996.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22597 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–264–AD; Amendment 39–9746; AD 96–18–19]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–7 series airplanes, that requires repetitive non-destructive inspections to detect disbonding of fuselage skin panels, and repair, if necessary. This amendment is prompted by a report of disbonding on fuselage skin panels, which was attributed to a manufacturing process error. The actions specified by this AD are intended to prevent disbonding of the skin panels of the fuselage, which could result in degradation of the structural capability of the airplane fuselage.

DATES: Effective October 15, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7522; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes was published in the **Federal Register** on May 21, 1996 (61 FR 25417). That action proposed to require repetitive non-destructive inspections to detect disbonding of the fuselage skin panels, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 de Havilland Model DHC–7 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $54,000, or $1,080 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–19 De Havilland, Inc.: Amendment 39–9746. Docket 95–NM–264–AD.

Applicability: Model DHC–7 series airplanes, serial numbers 003 through 113 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent disbonding of the skin panels of the fuselage, which could result in degradation of the structural capability of the airplane fuselage, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a non-destructive inspection to detect disbonding of the fuselage skin panels, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin S.B. 7–51–1, Revision 'A', dated March 31, 1995.

(1) If no disbonding is detected, repeat the inspection thereafter at intervals not to exceed 3 years.

(2) If any disbonding is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with Bombardier Service Bulletin S.B. 7–51–1, Revision 'A', dated March 31, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 15, 1996.

Issued in Renton, Washington, on August 29, 1996.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22600 Filed 9–4–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AGL–3]

Revision of Class E Airspace; Delta County Airport Escanaba, MI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace to accommodate the addition of an Automatic Weather Observation System (AWOS–3) at Delta County Airport, Escanaba, MI, to operate turbo-jet charter service on a 24 hour basis. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On May 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Delta County Airport, Escanaba, MI (61 FR 26856). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for surface area are published in paragraph 6002 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises Class E airspace to accommodate the addition of an Automatic Weather Observation System (AWOS–3) at Delta County Airport, Escanaba, MI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporated by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 The Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(Lat. 45°43'18"N., long. 87°05'40"W.)
Escanaba VORTAC
(Lat. 45°43'21"N., long. 87°05'23"W.)

Within a 4.2-mile radius of the Escanaba VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 007 radial, extending from the 4.2-mile radius to 7.4 miles northeast, and within 2.6 miles each side of the Escanaba VORTAC 101 radial, extending from the 4.2-mile radius to 7.4 miles east, and within 2.6 miles each side of the Escanaba VORTAC 266 radial extending from the 4.2-mile radius to 7 miles west of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on August 26, 1996.

Peter H. Salmon,

Acting Manager, Air Traffic Division.

[FR Doc. 96–22945 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Stay of Enforcement

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of stay of enforcement.

SUMMARY: The Commission announces that it is extending the stay of enforcement of the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 in all cases involving garments currently used or likely to be used as sleepwear if those garments are skin-tight or nearly skin-tight, similar in design, material, and fit to underwear, and labeled as "underwear."

EFFECTIVE DATE: This stay of enforcement first published at 58 FR 4078, January 13, 1993, which became effective January 13, 1993, and was extended at 59 FR 53584, October 25, 1994, and will continue until March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Fairall, Office of Compliance, Consumer Product Safety Commission, Washington D.C. 20207; telephone: (301) 504–0400, extension 1369.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 13, 1993 (4078), the Commission published a notice to announce a stay of enforcement of the flammability standards for children's sleepwear. In that notice, the Commission announced that it would not enforce the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (16 CFR Part 1615) or the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (16 CFR Parts 1616) in cases involving garments used by children for sleeping which are: (1) skin-tight or nearly skin-tight; (2) manufactured from fabrics such as rib knit, interlock knit, or waffle knit; (3) relatively free of ornamentation; and (4) labeled and marketed as "underwear." On the same date, the Commission published an advance notice of proposed rulemaking to begin a proceeding to consider whether the children's sleepwear standards should be amended to exempt tight-fitting sleepwear garments, and garments in infant sizes. See 58 FR 4111.

In the **Federal Register** of October 25, 1994 (59 FR 53584), the Commission announced that it was extending the stay of enforcement of the children's sleepwear flammability standards until further notice. On the same date, the Commission published proposed amendments of the sleepwear flammability standards to exempt tight-fitting sleepwear garments and some infant garments from the requirements of those standards. See 59 FR 53616.

Elsewhere in this issue of the **Federal Register**, the Commission has issued final amendments to exempt certain tight-fitting garments and garments sized for children nine months of age or younger from the requirements of the children's sleepwear flammability standards. These amendments become effective January 1, 1997.

By publication of this notice, the Commission is also extending until March 9, 1998 the stay of enforcement issued on January 13, 1993, and continued on October 25, 1994. Garments covered by this stay must meet applicable requirements of the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611).

Dated: August 29, 1996.

Todd A. Stevenson,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 96–22713 Filed 9–6–96; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–37632; File No. S7–2–95]

RIN 3235–AG25

Form BD Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule: Suspension of compliance date for Form BD amendments.

SUMMARY: The Securities and Exchange Commission is suspending the compliance date for recent amendments to Form BD, the uniform broker-dealer registration form under the Securities Exchange Act of 1934, as it applies to filings made by all registered broker-dealers and broker-dealer applicants.

EFFECTIVE DATE: The effective date for amendments to Form BD adopted by the Securities and Exchange Commission on July 12, 1996 and published on July 18,

1996 (61 FR 37357) remains August 19, 1996. Effective September 9, 1996, the compliance date with respect to these amendments to Form BD is suspended. The Commission will publish in the **Federal Register** a document notifying the public of a new compliance date.

FOR FURTHER INFORMATION CONTACT: Glenn J. Jessee, Special Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–10, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On July 12, 1996, the Securities and Exchange Commission ("Commission") adopted amendments to Form BD,[1] the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934.[2] As discussed in the Adopting Release, the use of Form BD, as amended on July 12, 1996, is intended to coincide with the implementation of the redesigned Central Registration Depository ("CRD"), a computer system operated by the National Association of Securities Dealers, Inc. ("NASD") that maintains registration information regarding broker-dealers and their registered personnel. Among other things, the redesigned CRD system will allow broker-dealers to file Form BD electronically.

The implementation of the redesigned CRD is being accomplished in phases. On May 20, 1996, the NASD began a two-month test of the system with the voluntary participation of several NASD member firms and one service bureau. Following completion of the test, it was expected that on July 29, 1996, broker-dealers participating in the test would begin filing all of their registration and licensing information electronically with the redesigned CRD on a pilot basis. Then, on September 9, 1996, it was expected that the NASD would begin Phase I of the implementation of the redesigned CRD system, at which time registered broker-dealers and broker-dealer applicants would be required to begin using Form BD, as amended on July 12, 1996. The test of the redesigned CRD system that began on May 20, however, revealed that additional changes are needed in the software that will be used by broker-dealers to make electronic filings and that broker-dealers need more time to prepare their internal operations and infrastructure to support electronic filing. As a result, the NASD has determined to delay further implementation of the redesigned CRD system until early in 1997.

Because of this delay, the Commission is suspending the compliance date for Form BD, as amended on July 12, 1996, for all registered broker-dealers and broker-dealer applicants. Accordingly, broker-dealers and broker-dealer applicants should continue to use Form BD, as revised November 16, 1992. At such time as another date for the start of Phase I is determined, the Commission expects that it will set appropriate compliance dates for the amendments to Form BD and publish a document in the **Federal Register** notifying the public of such compliance dates.

Dated: September 4, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–22939 Filed 9–6–96; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.15b1–1; 17 CFR 249.501.

[2] Securities Exchange Act Release No. 37431 (Jul. 12, 1996), 61 FR 37357 (Jul. 18, 1996) ("Adopting Release").

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 610

[Docket No. 91N–0152]

RIN 0910–AA05

Current Good Manufacturing Practices for Blood and Blood Components: Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to require that blood establishments (including plasma establishments) prepare and follow written procedures for appropriate action when it is determined that Whole Blood, blood components (including recovered plasma), Source Plasma and Source Leukocytes at increased risk for transmitting human immunodeficiency virus (HIV) infection have been collected. This final rule requires that when a donor who previously donated blood is tested on a later donation in accordance with the regulations, and tests repeatedly reactive for antibody to HIV, the blood establishment shall perform more specific testing using a licensed test, if available, and notify consignees who received Whole Blood, blood components, Source Plasma or Source Leukocytes from prior collections so that appropriate action is taken. Blood establishments and consignees are required to quarantine previously collected Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors, and if appropriate, notify transfusion recipients.

The Health Care Financing Administration (HCFA) is also issuing a final rule, published elsewhere in this **Federal Register**, which requires all transfusion services subject to HCFA's conditions of Medicare participation for hospitals to notify transfusion recipients who have received Whole Blood or blood components from a donor whose subsequent donation test results are positive for antibody to HIV (hereinafter referred to as HCFA's final rule). FDA is requiring transfusion services that do not participate in Medicare and are, therefore, not subject to HCFA's final rule, to take steps to notify transfusion recipients.

FDA is taking this action to help ensure the continued safety of the blood supply, and to help ensure that information is provided to consignees of Whole Blood, blood components, Source Plasma and Source Leukocytes and to recipients of Whole Blood and blood components from a donor whose subsequent donation tests positive for antibody to HIV.

DATES: This regulation is effective November 8, 1996. Written comments on the information colelction requirements should be submitted by February 7, 1997.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA has implemented an extensive system of donor screening and testing procedures performed by blood establishments before, during, and after donation, to help prevent the transfusion of blood products that are at increased risk for transmitting HIV. HIV is the virus that causes acquired immune deficiency syndrome (AIDS), a

communicable disease that can be transmitted through transfusion.

As a result of the screening and testing procedures, the risk of transmitting HIV infection through blood transfusion is very low. Despite the best practices of blood establishments, however, a person may donate blood early in infection, during the period when the antibody to HIV is not detectable by a screening test, but HIV is present in the donor's blood (a so-called "window" period). If the donor attempts to donate blood at a later date, the test for antibody to HIV may, at that time, be repeatedly reactive. Therefore, FDA believes such circumstances require clarification of the donor's status through testing with a more specific antibody test and procedures to "lookback" at prior collections. Previously collected Whole Blood and blood components would be at increased risk for transmitting HIV and a recipient of a transfusion of Whole Blood and blood components collected during the "window" period would not know that he or she may have become infected with HIV through the transfusion unless notified.

In the **Federal Register** of June 30, 1993 (58 FR 34962), FDA issued a proposed rule to require appropriate action when it is later determined that blood and blood components might have been collected during the "window" period. FDA has reviewed comments submitted on the proposed rule and is now issuing this final rule to require facilities involved in the collection, processing, and administration of blood to quarantine Whole Blood, blood components, Source Plasma and Source Leukocytes which were collected from a donor who tested negative at the time of previous donations but subsequently tests repeatedly reactive for antibody to HIV. The final rule requires blood establishments to inform consignees (e.g., hospital transfusion services and manufacturers of plasma derivatives) of the collection and distribution of such previously donated Whole Blood, blood components, Source Plasma and Source Leukocytes.

In the **Federal Register** of June 30, 1993 (58 FR 34977), HCFA also issued a proposed rule which would require certain transfusion services to notify recipients of transfusions determined to be from a donor whose subsequent donation tests positive for antibody to HIV (hereinafter referred to as HCFA's proposed rule). The final rules issued by both FDA and HCFA require transfusion services to perform such notifications.

In a memorandum of understanding (MOU), FDA and HCFA agreed to coordinate the inspections of transfusion services in medicare participating hospitals to minimize duplication of effort and to reduce the burden on affected facilities. Blood establishments, including those hospital transfusion services not subject to HCFA's regulations on the conditions of Medicare participation for hospitals, such as Indian Health Service and Veteran's Administration Hospitals, are subject to FDA's final rule. Thus, all transfusion services are subject to the requirements for quarantine and transfusion recipient notification under either the FDA or HCFA rule.

II. Highlights of the Final Rule

Under the biologics licensing and quarantine provisions of the Public Health Service Act (42 U.S.C. 262–264) and the drug, device, and the general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351–353, 355–360, and 371–374), FDA has the authority to promulgate regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the transmission of communicable diseases into the United States or from one State to another.

Under these statutory authorities, FDA currently requires that each donation be tested and found negative for antibody to HIV under § 610.45 (21 CFR 610.45). Existing regulations already restrict the use, for transfusion or further manufacture, of a donation testing repeatedly reactive for antibody to HIV. Even though current licensed screening tests for antibody to HIV are very sensitive, testing may not identify all units capable of transmitting HIV infection. For this reason, many blood establishments have instituted special procedures when blood or plasma has been collected from a donor testing positive for antibody to HIV at a later date. These procedures, commonly referred to as "lookback" procedures, involve determining the suitability of prior collections of Whole Blood, blood components, Source Plasma and Source Leukocytes from such a donor. These existing procedures may also involve notifying consignees that have received prior collections from the donor so consignees can quarantine such products and, as appropriate, take steps to notify the transfusion recipients of such Whole Blood and blood components.

While many blood establishments have voluntarily developed written "lookback" procedures, these existing procedures vary significantly among blood establishments. As proposed in the **Federal Register** of June 30, 1993, FDA is amending the biologics regulations to require blood establishments to prepare and follow written standard operating procedures (SOP's), defining steps to be taken when "lookback" circumstances arise.

The final rule requires blood establishments to perform more specific testing of the donor's blood using a licensed test, and to notify consignees who received Whole Blood, blood components, Source Plasma and Source Leukocytes from prior collections so that appropriate action is taken. Blood establishments and consignees shall quarantine, as described later in this document, previously collected Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors until the donor's status is clarified through further testing. FDA is requiring that other informative test results, if available, be considered when determining the status of the donor and the suitability of prior collections.

Upon completion of more specific testing, the final rule also requires hospital transfusion services that do not participate in Medicare and are, therefore, not subject to HCFA's final rule, to take steps to notify transfusion recipients, as appropriate. Such transfusion recipients shall receive notification for the purpose of testing for evidence of HIV infection, early treatment, if indicated, and counseling to take appropriate precautions to prevent the further spread of the virus such as to sexual partners.

III. HCFA's Companion Rule

Under HCFA's proposed rule, transfusion services operated by hospitals participating in Medicare and inspected by HCFA that receive notification of previously collected Whole Blood and blood components at increased risk for transmitting HIV, would be required to quarantine such prior collections and notify the transfusion recipient's attending physician, the transfusion recipient, or other authorized person, as appropriate. HCFA's final rule requires the hospital transfusion service to have a written agreement with each blood supplier documenting these procedures.

As referenced in section I. of this document, FDA and HCFA coordinate the inspections of transfusion services in medicare participating hospitals to minimize duplication of effort and to reduce the burden on affected facilities. In the MOU, it was estimated that HCFA would be responsible for inspecting and surveying approximately 3,000 transfusion services. FDA continues to conduct the inspections of

establishments were activities include more than the performance of compatibility testing. (See 49 FR 34448, August 31, 1984, and 21 CFR 607.65.)

IV. Other Sources of Information

As FDA recognized in the preamble to the proposed rule, blood establishments may receive information from other sources which indicate that a donor may be infected with HIV. FDA encourages blood establishments to initiate "lookback" procedures whenever they have information that a donor has become infected with HIV. FDA recognizes the existence of diagnostic modalities for HIV infection, other than antibody testing, such as virus culture or direct viral assays. FDA encourages blood establishments to consider such test results, when available and reliable, and to voluntarily initiate the "lookback" process as described in this final rule. Additionally, the final rule requires that such results be considered prior to release of units quarantined in a "lookback" procedure.

In particular, FDA recommends that blood establishments voluntarily initiate "lookback" procedures based on HIV antigen testing, as indicated in the August 8, 1995, Memorandum to All Registered Blood Establishments, Regarding Recommendations for Donor Screening with a Licensed Test for HIV-1 Antigen. In the August 8, 1995, memorandum FDA provided recommendations for the implementation of donor screening tests for HIV type 1 (HIV–1) antigen(s) within 3 months of the commercial availability of the first test for HIV–1 antigen(s). The August 8, 1995, memorandum stated that the average infectious "window" period, when HIV antibody is not detectable by the screening test, is estimated to be approximately 22 to 25 days for screening with combination assays for antibodies to HIV–1 and HIV–2. The memorandum further stated that HIV antigen screening could reduce the "window" period by an estimated 6 days and could be expected to prevent up to 25 percent of the current "window" period donations or about 5 to 10 cases of transfusion associated HIV per year. Because HIV–1 antigen screening will reduce but not eliminate the residual risk for HIV–1 from transfusion, FDA regards such screening as an interim measure pending the availability of improved technology for this purpose. FDA encourages continued development of new methods no further reduce the risk of HIV transmission due to "window" period donations.

V. Responses to Letters of Comment

FDA provided interested individuals 60 days to submit written comments on the proposed rule. FDA received a total of 25 letters of comment, which included 10 from blood collection facilities or blood banks, 8 from pathologists or pathology associations, 6 from blood banking associations, and 1 from a parent of children with hemophilia.

Twenty-one comments agreed with the concept of "lookback". There were differences of opinion as to how the "lookback" process should be conducted and concerns regarding liability of various individuals involved in the process. Three comments indicated support for the strengthening of the "lookback" requirements, while eight comments suggested that the proposed rule's cost to industry would pose a significant burden with little benefit to public health.

After review and consideration of all comments, FDA continues to believe that the new requirements for the handling of prior collections of Whole Blood, blood components, Source Plasma and Source Leukocytes later found to be at increased risk for transmitting HIV infection are important public health measures. Below, FDA provides responses to the comments received.

A. General Comments

1. Terminology Used by FDA and HCFA

Two comments expressed some confusion over specific terminology and the differences in terminology used by FDA and HCFA. One comment suggested the use of "transfusion service" instead of "consignee." One comment suggested the use of a more specific term for "recipient."

FDA's use of the term consignee includes any facility to which the Whole Blood, blood components, Source Plasma and Source Leukocytes have been shipped (e.g., a transfusion service, a manufacturer of blood products, or another blood banking establishment). As written, when the rule uses the term consignee, it refers to more than a transfusion service. The FDA and HCFA rules refer to "transfusion services" when the rules are specific to transfusion services. To interchange these terms would cause more confusion and would not achieve the goals sought.

As suggested by one comment, FDA has amended the rule to use the terms transfusion recipient or transfused patient in a number of places to make it clear that FDA is referring to the recipient of the transfusion. Where the term "recipient" is used alone, FDA believes that the context makes it clear that the term refers to patients and not to consignees.

FDA believes that the terminology used in the rules is appropriate and understood by the entities subject to FDA regulation. FDA also believes that the terminology used by HCFA is understood by the entities regulated by HCFA.

2. Blood Donor Locator Service

Three comments stated an interest in using the Blood Donor Locator Service (BDLS) as a part of the "lookback" process. One request was to expand this service to locate recipients also.

The BDLS final rule which was published in the **Federal Register** of December 24, 1991 (56 FR 66561), addressed similar comments calling for the expanded use of the service. The statutory authority to conduct the BDLS, as defined by section 8008 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647), only authorizes the Social Security Administration to provide address information for blood donors whose test results for antibody to HIV show that they are, or may be, infected with HIV. The legislation authorizing the BDLS does not extend to transfusion recipients or to any other individual. Participation in the BDLS by State agencies and blood donation facilities is voluntary, but participants must agree to comply with the provisions of the statute and the regulations as defined in the BDLS final rule.

3. Organization of Information in the Final Rule

One comment suggested that the organization of information in the regulations was confusing, and asked for clarification of the intent of the regulations.

The rule is divided into subsections that provide specific direction on each aspect of the "lookback" process. Each subsection of the rule must be reviewed for a complete understanding of all aspects of this important information. The following description serves as a brief overview of the regulations. Section 606.100 (21 CFR 606.100) states the requirements for SOP's, and § 606.160 (21 CFR 606.160) states the requirements for recordkeeping. Section 610.45(d) identifies the circumstances under which the "lookback" process shall be initiated. Section 610.46(a) (21 CFR 610.46(a)) states the requirements for the initial steps of the "lookback" process. Section 610.46(a)(1) establishes the circumstances for quarantine and requires notification of consignees to

quarantine such products. Section 610.46(a)(2) discusses quarantine of products held by consignees.

Section 610.46(b) specifies the time limit for completion of the licensed, more specific test and the notification of the consignee of those test results. Section 610.46(c) addresses products that are exempt from quarantine and § 610.46(d) discusses requirements for release from quarantine. Section 610.46(e) makes clear that these actions are not considered to be product recalls. Section 610.47(a) (21 CFR 610.47(a)) covers those transfusion services not subject to HCFA's regulations. Section 610.47(b) contains requirements for notification of recipients and § 610.47(c) addresses the notification of a legal representative or relative acting on behalf of the recipient.

B. Comments on § 606.100

Four comments requested more specific direction regarding the content of SOP's.

It is intention of FDA to allow appropriate flexibility to blood establishments in the development of their procedures. For example, as mentioned in one comment, a blood establishment could identify by title or name the individuals authorized to provide and receive consignee notification in the "lookback" process. FDA further discusses the content of SOP's in the responses to comments on specific subsections of the rule.

C. Comments on § 610.45(d)

1. Use of Information from Other Sources to Initiate "Lookback" Process

One comment stated that there will be additional circumstances when a blood establishment can reliably and consistently receive information that should result in the initiation of a "lookback" process. The sources of this information may include the U.S. military, health departments or physicians of former donors now found to be HIV-infected or diagnosed as having AIDS.

FDA agrees that there will be circumstances when the initiation of "lookback" may be based on reliable information provided by the U.S. military, health departments, and other sources and recommends appropriate action in those instances. However, a blood establishment generally has no control over whether they will be appropriately contacted by these outside sources. In addition, the laws and procedures governing such notifications will vary from State to State. Therefore, FDA's final rule does not contain specific additional circumstances under which "lookback" is required because the ability for each establishment to meet the requirements will vary so widely, based upon varying State laws, local practices, and confidentiality issues.

2. Initiation of "Lookback" Process Based on Repeatedly Reactive Screening Results

Three comments objected to the initiation of the "lookback" process based on the repeatedly reactive antibody screening test results before the completion of the licensed, more specific test. One comment stated that any "lookback" action, beyond the quarantine of product, based on the antibody screening test results would be inappropriate because those tests have a high rate of false positive results and were not intended to be diagnostic without further confirmatory testing.

One comment stated that there is a very high cost associated with preventing the transfusion of very few infectious units based on: (1) The estimate that of all donations made each year, most blood and blood components will be transfused before a donor is permitted to donate again 56 days later; (2) the estimate that only one half of donors will return to donate again; and (3) the very low number of units expected to be infectious despite proper testing.

One comment in support of the rule stated that the rule did not place undue hardship on the blood banking industry. One comment objected to the more stringent requirements for notification due to the current burden of escalating demands and diminishing resources, including increased workload due to more complicated patient illnesses, vacant technical positions that cannot be filled due to the declining numbers of skilled, qualified medical technologists, and hospital costs rising faster than revenues. One comment stated concern that patient needs would not be met because the increased regulation would force hospital based donor centers to close as a result of economic pressures.

One comment cited a threefold increase in the rate of repeatedly reactive screening tests for antibody to HIV with none of those confirmed by Western Blot in the past year, which would result in much higher expected total annualized costs than projected by FDA. Two comments stated that the actual costs would be twice that estimated by FDA. Three comments stated that the goals of the proposed rule are laudable but also estimated that most HIV infections are spread through other modes of transmission and, therefore, our limited health care dollars are better spent in other ways.

FDA is charged with the responsibility of protecting the public from unsafe biological products and has the authority to promulgate regulations to accomplish its public health mission. Comments on the proposed rule indicate that SOP's for the "lookback" process are already in place in a large percentage of blood establishments. Based on comments received, FDA believes that the modification of existing SOP's to meet the requirements of this rule would not impose an unreasonable burden or expense to the large number of establishments with an existing system for handling "lookback" circumstances.

FDA believes the prevention of a small number of transmissions of HIV per year that will result from the initiation of the "lookback" process based on the repeatedly reactive antibody screening test results or other informative test results is a clear benefit. FDA believes that steps must be taken to avoid transfusion of potentially unsuitable Whole Blood and blood components while waiting for the completion of further testing, especially since the time limit for such testing has been extended to 30 days, as described later in this document. FDA recognizes that the requirement for the initiation of this process at the time of the repeatedly reactive HIV antibody test will result in some additional costs to blood establishments that currently do not begin the process at this point. However, FDA believes these steps are warranted to increase the safety of the nation's blood supply.

D. Comments on § 610.46(a)

1. Notification of Consignees

One comment stated concern regarding the notification of consignees of the results of the licensed, more specific test and the potential for confusion if the product in question had already been returned to the blood donor center.

The final rule requires that blood establishments notify consignees to quarantine Whole Blood, blood components, Source Plasma and Source Leukocytes that are at increased risk for transmitting HIV infection. Upon notification by the blood establishment, the consignee is to promptly, within 72 hours, quarantine the affected products until notified of the negative results of a licensed, more specific test. Return of such products to the blood establishment is not a requirement of this rule, and, therefore, should not create confusion. However, if the

consignee does return the blood or blood components to the blood establishment, no further consignee notification would be required. FDA has amended the final rule to clarify the requirement to promptly notify consignees, within 72 hours, for the purpose of identifying those products that remain in inventory and require quarantine.

2. Products for Further Manufacture

One comment concerned § 610.46(a)(2), which requires that unpooled products held by the consignee shall be quarantined. The comment stated that while it appears that the proposed rule is structured to exclude large pools of plasma from some requirements, the rule might be interpreted to have a different result when the collecting facility and the manufacturing facility hold the same license. The comment stated further that in this situation, both large and small pools would be quarantined since the products were not shipped to a consignee to be pooled.

The comment also asked that small pools of plasma intended for further manufacture into noninjectable products also be exempt from quarantine because they are sometimes pooled at the collection facility and may include plasma considered to be in short supply. The comment stated that small pools of plasma intended for the manufacture of noninjectable products should be exempt from quarantine because they are sufficiently safe as noninjectable products.

A collection facility would be required to quarantine all in-house or "on-site" Whole Blood, blood components, Source Plasma and Source Leukocytes. A manufacturing facility that shares an establishment license with the collecting facility is not required to quarantine pooled products. To avoid a shortage of injectable and noninjectable products the final rule exempts from quarantine pooled Source Plasma and Source Leukocytes intended for further manufacture into injectable and noninjectable products, as described in § 610.46(c). FDA believes this requirement will better identify those affected products to be quarantine while ensuring the availability of blood products for further manufacture.

Additionally, FDA agrees that pools intended for further manufacture into noninjectable products are sufficiently safe due to their intended use as noninjectable products and are, therefore, exempt from quarantine. The rule has been amended to clarify that Pooled Source Plasma and Pooled Source Leukocytes are exempt from quarantine. Appropriate safeguards must be used to prevent such products intended for further manufacture into non-injectable products from being used for further manufacture into injectable products.

E. Comments on § 610.46(b)

1. Two Week Limit for Completion of Licensed, More Specific Test

One comment supported proposed § 610.46(b) which requires the 2-week time limit for completion of the licensed, more specific test and consignee notification, while twenty-three comments expressed disagreement with the time limit. The 2-week time limit was cited as too short due to shipping of samples, batching of laboratory work, the additional number of tests run when the sample is not negative, dependence upon reference laboratories for this work, and unforeseen circumstances that are beyond the control of the blood establishment. The suggestions for a more appropriate timeframe ranged from 3 weeks to 8 weeks to "as soon as possible".

After consideration of the additional information provided in the comment letters, FDA believes that it is appropriate and reasonable to change the time limit for completion of the licensed, more specific test and consignee notification of the test results. FDA is amending § 610.46(b) by allowing a maximum of 30 calendar days for completion of the licensed, more specific test for antibody to HIV and consignee notification of the test results.

FDA's concern for the prompt notification of the transfusion recipient, without undue burden to industry, dictates that the time limit for completion of testing not exceed 30 days. FDA's extension of the time limit for the completion of these steps is intended to give blood establishments a reasonable time period to comply with the regulation. FDA expects that blood establishments will initiate and complete such testing expeditiously, but take no longer than 30 calendar days.

The written SOP's of the establishment required under § 606.100(b)(19) should be adequate to ensure that the required testing and consignee notification is routinely completed within 30 days. In rare circumstances, such as when there are testing problems, testing and notification may take longer than 30 days. In such cases the establishment should document in its records the reason for the failure to meet the requirement. If the establishment frequently fails to meet the required time limits, the establishment should review its procedures to determine how testing and consignee notification can be expedited.

2. Positive Test for Antibody to HIV-2

Two comments on § 610.46(b) requested clarification on further testing and notification of consignee and recipients when donors subsequently test positive for antibody to HIV-2.

In the Memorandum to All Registered Blood Establishments, Revised Recommendations for the Prevention of HIV Transmission by Blood and Blood Products, dated April 23, 1992, FDA provided guidance recommending that all blood establishments collecting Whole Blood, blood components, Source Plasma, or Source Leukocytes implement a licensed test for detection of antibody to HIV-2 by June 1, 1992. FDA modified existing recommendations for prevention of HIV transmission by blood and blood products to include HIV-2 testing at that time. The revised recommendations for donor testing, deferral, and reentry are found in section II. and the recommendations on "lookback" are found in section IV. of the April 23, 1992, memorandum.

This final rule is similar to the FDA guidance on supplemental tests recommended in the April 23, 1992, Memorandum. FDA has amended § 610.46(b) of the final rule to clarify requirements for HIV-2 testing. Currently, there is no "licensed, more specific" test for antibody to HIV-2. Thus, the final rule requires the following:

(1) When a donor's screening test for antibody to HIV is repeatedly reactive, a licensed, more specific test for antibody to HIV shall be performed.

(2) When the repeatedly reactive screening test is performed using a single virus test for antibody to HIV–2 or combination test for antibody to HIV–1/HIV–2, a second screening test for HIV–2, which is different from the original HIV–2 test, must also be performed. This second, different enzyme immuno-assay (EIA) test must be a licensed test and can be either a single virus test or a combination test.

Whole Blood, blood components, Source Plasma and Source Leukocytes from prior collections may be released from quarantine only if the donor is tested for antibody to HIV–1 by a licensed, more specific test and the result is negative; and if the screening test is repeated using a different EIA test for antibody to HIV–2, either single virus or combination test, and the result is negative, absent other informative test

results. Release from quarantine is not permitted under any other test results. Transfusion recipient notification is required when the licensed, more specific test for HIV–1 is positive or when the second, different EIA test for antibody to HIV–2 is repeatedly reactive.

Whole Blood, blood components, Source Plasma and Source Leukocytes are exempt from quarantine if the collection occurred more than 12 months prior to the donor's most recent negative screening test(s). If the most recent negative screening test for antibody to HIV was performed prior to the implementation of HIV–2 testing in June of 1992, then the negative screening test for HIV–1 is sufficient to establish the 12-month time period.

This final rule supersedes the existing recommendations for "lookback" procedures in section IV. of the April 23, 1992, Memorandum, Exclusion/Retrieval of Potentially Contaminated Units From Prior Collections and Notification of Consignees.

F. Comments on § 610.46 (c) and (d)

1. Release From Quarantine and Western Blot Indeterminate Results

Two comments indicated confusion regarding the disposition of components collected both greater than and less than the 12-month period prior to the most recent nonreactive test result. Additionally, two comments on the subject of Western blot indeterminate results asked for clarification and for exemption from the "lookback" process due to what the commentor believes is the unlikely occurrence that a unit with an indeterminate Western blot test result would be infectious.

FDA is requiring prompt quarantine for Whole blood, blood components, Source Plasma and Source Leukocytes collected from a donor at increased risk for transmitting HIV infection. Quarantine is required for units from such a donor collected within the 5years prior to the repeatedly reactive test for antibody to HIV, if intended for transfusion, or collected within 6 months prior to the repeatedly reactive test result, if intended for further manufacture. Section 610.46(c) describes the situation in which Whole Blood, blood components, Source Plasma and Source Leukocytes are exempt from quarantine because there is serological evidence that the donation(s) was not made during the "window" period.

In the preamble to the proposed rule, FDA stated that, based on experience, current estimates predict with approximately 95 percent confidence that in all cases of HIV infection, the person will test positive for antibody to HIV by a licensed test within 6 months from the date of infection. As stated in the preamble to the proposed rule, to provide an additional margin of safety, FDA has extended the period for quarantine to 12 months, to more closely approximate a 99 percent confidence interval. Accordingly, FDA's requirement to quarantine all Whole Blood, blood components, Source Plasma and Source Leukocytes collected within 12 months prior to the most recent negative screening test provides an added margin of safety during the months when an infected donor may not yet test positive for antibody to HIV. All donations made before this 12-month period would be outside the "window" period and would be exempt from quarantine.

The final rule is amended to clarify the requirements when other informative test results are available. Section 610.46(d) of the final rule states that a product may be released from quarantine if the donor's blood is tested for antibody to HIV by a licensed, more specific test and the test result is negative, absent other informative test results. FDA believes that release from quarantine is possible only if the more specific test is negative and there are no other informative test results that show evidence of HIV infection. This regulation does not allow the release from quarantine following and indeterminate Western blot test result.

Blood establishments may voluntarily perform other FDA approved informative tests for HIV and must consider those test results when determining the status of the donor and the suitability of prior collections. For example, FDA has recently recommended donor screening for HIV–1 antigen(s) using approved tests. Testing for HIV–1 antigen(s) using seroconversion samples has shown that donors with recent HIV infection test repeatedly reactive for antibody to HIV, yet test as negative or indeterminate by a more specific antibody test but positive for HIV–1 antigen(s). Prior collections from such a donor would not be exempt from quarantine unless collected more than 12 months prior to the donor's most recent negative screening test for HIV antibody.

Disposition of prior collections at increased risk for transmitting HIV infection should follow the establishment's SOP for appropriate disposal of blood products that are unsuitable for transfusion, in accordance with § 606.40. The Memorandum to All Registered Blood Establishments from the Director, Center for Biologics Evaluation and Research, Control of Unsuitable Blood and Blood Components, dated April 6, 1988, provides additional guidance for quarantine and disposition of products unsuitable for transfusion.

In situations where an establishment fails to comply within the 30-day limit for completion of further testing, and subsequently the test result is negative, the Whole Blood, blood components, Source Plasma and Source Leukocytes may be released from quarantine and consignees must be notified promptly upon availability of the test results. Destruction of quarantined units is not required merely because further testing was completed after the 30-day deadline. No release of quarantined Whole Blood, blood components, Source Plasma and Source Leukocytes is permitted before the results of the further testing are available.

2. Use of Test Results From Other Laboratories

Two comments asked that blood establishments be allowed to use the laboratory test results from other laboratories as evidence of the most recent negative screening test for antibody to HIV, thus allowing the quarantine and notification to be limited to units collected within 12 months prior to that negative result. One comment stated that evidence of such negative screening results could be provided by independent clinical laboratories, State health departments, military laboratories, other blood banks, etc.

FDA agrees that test results from the Clinical Laboratories Improvement Amendments of 1988 (42 U.S.C. 263a) certified laboratories or licensed blood establishments may be accepted as evidence of the most recent negative screening test for antibody to HIV, provided that the blood establishment has assurance that the laboratory is certified and is using a licensed test kit. The blood establishment should receive and retain testing records documenting the test results.

G. Comments on § 610.47(a)

1. Notification of Transfusion Recipient Prior to Completion of Licensed, More Specific Test

Two comments disagreed with the proposed requirement to notify recipients of potentially infectious units based upon screening results if the licensed, more specific test results are not available within 2 weeks. One comment stated that upon notification, the transfusion recipient would experience unnecessary worry since

more than 90 percent of repeatedly reactive screening results are not confirmed by Western Blot testing.

As previously discussed in this final rule, the time limit for the completion of the licensed, more specific test for HIV and the consignee notification of those test results has been extended from 2 weeks to a maximum of 30-calendar days. This change makes it highly unlikely that complete results will not be available prior to the deadline for notification. If a situation of noncompliance occurs, however, FDA has amended § 610.47(a) so that recipient notification prior to completion of the licensed, more specific test for HIV is not required. This change is consistent with FDA's proposal to notify recipients only if there are positive test results but not when the test results are indeterminate.

FDA agrees that notification of transfusion recipients that the transfused blood or blood component was at increased risk for transmitting HIV is very likely to cause the recipient, and possibly others, extreme anxiety and concern. Based on the rate of repeatedly reactive screening tests that are not confirmed by further testing, a significant percentage of recipients would be subjected to a tentative notification which would prove to be alarming, confusing, and unnecessary. Such recipients would be notified when the increased risk for transmitting HIV has been confirmed by further testing.

2. Establishments Subject to "Lookback" Regulations

One comment asked for clarification on § 610.47(a) which addresses those establishments subject to FDA's rule and those hospitals subject to HCFA's rule. Two comments asked if these regulations apply to all regulated blood establishments, including small, hospital-based transfusion services that also draw blood donors. Section 610.47(a) specifically states that transfusion services that are not subject to HCFA's regulations on the conditions of Medicare participation for hospitals (42 CFR part 482) are subject to this rule. FDA inspects establishments where activities include more than the performance of compatibility testing, e.g., blood collection, washing or freezing of red blood cells, and irradiating of blood components. Therefore, small, hospital-based transfusion services that also draw blood donors would be subject to this rule and inspection by FDA. Certain establishments that do not participate in Medicare, such as Indian Health Services and Veteran's Administration hospitals, are also subject to FDA regulations.

HCFA's regulations apply to hospital transfusion services where activities do not include more than the performance of compatibility testing and that participate in Medicare. Section III. of this document describes the division of responsibilities between FDA and HCFA for inspections of blood establishments. HCFA's final rule is published elsewhere in this issue of the **Federal Register.** This division of responsibilities between FDA and HCFA, consistent with the MOU, eliminates duplication of effort and reduces the burden on blood establishments and hospitals.

H. Comments on § 610.47(b)

1. Clarification of Responsibility for Transfusion Recipient Notification

Two comments asked for clarification as to which entity is responsible for notification of the transfusion recipient or his or her physician in situations where the transfusion services are provided to hospitals by community blood centers. One comment suggested more consistent requirements between FDA and HCFA because it appeared that the HCFA proposal makes the hospital responsible for the notification of the recipient's physician rather than the transfusion service, as is the case in the FDA proposed rule.

It is not the intention of FDA to designate the individual or the department that will contact the recipient but rather to designate that the transfusion service that issues the Whole blood or blood component for transfusion will be ultimately responsible for ensuring that the notification takes place. In a similar manner, HCFA holds the hospital responsible for ensuring the notification is completed.

2. Process and Documentation for Transfusion Recipient Notification

Twenty-five comments expressed concern over the process and timeframe for notification of the transfusion recipient. There were some questions as to where the ultimate responsibility falls for transfusion recipient notification and as to the documentation that is required. Three comments asked that attending physicians be required to comply with these regulations and asked for guidance in situations where the recipient's physician declines to notify the recipient due to conditions such as terminal illness, celibacy, or when the harmful effects may exceed the benefits of notification. Additionally, two comments expressed concern over respect for the doctor-patient relationship and the authority to interfere with that relationship.

As stated previously, FDA intends that each establishment have the flexibility to develop SOP's that describe the steps in this process and all appropriate documentation. The SOP should address documentation of person(s) contacted, by whom, when and whether the physician agreed to notify the recipient, and any additional, pertinent information. Some institutions may choose to designate a specific department or person within the hospital to conduct the notification and counseling for the recipient.

The SOP should be consistent with applicable local and State laws and shall specify both a well designed system for accomplishing notification and the required documentation of the outcome of these efforts.

FDA believes that because the attending physician has developed as relationship with the patient and is most familiar with that patient's history, the patient's interests are best served when the attending physician takes the responsibility for contact and counseling. In those instances when this does not prove to be appropriate or possible, the transfusion service is ultimately responsible for ensuring that the notification takes place. If the patient is competent, but the physician believes the information should not be given to the patient and State law permits a legal representative or relative to receive information on the patient's behalf, then the transfusion service or physician should notify the patient's legal representative or relative. Further, FDA believes that transfusion services should, upon learning of the death of the transfusion recipient, continue the notification process to inform the patient's family. Public health concerns would warrant the notification process continue and include the deceased patient's legal representative or relative. It would not be appropriate for a physician or transfusion service to determine that the patient or someone acting on his or her behalf need not be informed. The final rule has been amended to clarify the notification requirements in §§ 610.46(c) and 610.47(b).

FDA has no regulatory authority over physicians in their role as attending physicians, and for that reason, the agency is not able to require their participation. Upon accepting responsibility for recipient notification and counseling, it is reasonable to expect that the physician would, in good faith, determine the appropriate

content and completeness of information provided to the recipient.

FDA is relying on HCFA's expertise in the area of hospital practice in setting time limits for transfusion recipient notification. Consistent with HCFA's final rule, published elsewhere in this issue of the **Federal Register**, FDA believes that the hospital's notification effort should consist of, at the minimum, three attempts by telephone or in writing to reach the recipient, the recipient's legal representative or relative. The final rule has been amended to clarify that the transfusion service's notification effort should begin immediately after receiving results of further testing for HIV and should be completed 8 weeks later. The rule has also been amended to clarify that the transfusion service should notify the patient, the patient's legal representative or relative, as appropriate.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation in necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order, and has determined that this is not a significant regulatory action.

The purpose of the "lockback" requirement is to reduce the risk of transfusion transmitted HIV infection through the quarantine of blood and blood components that might have been collected during the "window" period, when the antibody to HIV is not yet detectable by a screening test. Notification of consignees to quarantine the affected products, until a more specific test for antibody to HIV is completed, will prevent any further transmission of the virus. Upon completion of more specific testing, all recipients of prior collections from a donor that subsequently tests positive for antibody to HIV will be notified by their attending physician, when possible, or by the transfusion service. Such transfusion recipients shall receive notification for the purpose of testing for evidence of HIV infection, early treatment, if indicated, and counseling to take appropriate precautions to prevent the further spread of the virus such as to sexual partners.

Most blood establishments already participate in a "lookback" program. Ninety-five percent of blood establishments, collecting 98 percent of the nation's blood supply, already participate in a "lookback" notification of their customers to quarantine previously shipped blood later determined to be at increased risk for transmitting HIV. Thus, requirements for written procedures, records of consignee notification, and records that relate the prior collections to the donor, later found to be repeatedly reactive for antibody to HIV, would affect at most about 5 percent of blood establishments; the remaining establishments may need to make minor changes to their existing procedures. Therefore, FDA believes this final rule should have a minimal impact. FDA expects the total annualized cost of the final rule to blood establishments to be $3,248,354. FDA anticipates only a small number of cases per year that will involve transfusion recipient notification. In conclusion, FDA has determined that the final rule is not a significant regulatory action as defined in Executive Order 12866.

At the time of the proposed rule, the agency certified that the proposed requirements would not have a significant impact on a substantial number of small entities. However, in response to industry comments and in light of amended requirements for analyzing impact on small entities (as enacted by Pub. L. 104–121), it was determined that a final regulatory flexibility analysis would be useful. Accordingly, the agency has assessed this final rule in accordance with the Regulatory Flexibility Act, with the following results:

Need for, and objective of, the rule. As described elsewhere in this preamble, FDA is taking this action to help ensure the continued safety of the blood supply, and to help ensure that information is provided to consignees of Whole Blood, blood components, Source Plasma and Source Leukocytes and to recipients of Whole Blood and blood components from a donor whose subsequent donation test positive for antibody to HIV.

Types and number of small entities affected. This rule will affect all of the 3,015 registered U.S. blood establishments. Of these registered establishments, approximately 400 are part of the American Red Cross, which supplies approximately 45 percent of blood products nationally. An additional 286 are Federal or State facilities. Many, or most, of the remaining 2,204 establishments may be small entities as defined by the Regulatory Flexibility Act.

The affect of this rule is greatest for those blood establishments that have not already voluntarily implemented "lookback" procedures similar to those required here. As stated in the proposed rule (58 FR 34962), FDA estimated that at least 95 percent of establishments, supplying 98 percent of the nation's blood, have such voluntary procedures and would need to make only minor changes to ensure that they are in compliance with this rule. The remaining up to 150 establishments would require more substantial changes in their procedures. FDA considers 150 to be an upper bound, since it is likely that liability concerns and advances in automated data technology have prompted most establishments that did not previously have "lookback" procedures to have them in place by now.

Projected reporting, recordkeeping, and other compliance requirements. To comply with this rule, all blood establishments subject to this rule, including small entities, must: (1) Review and, if necessary, modify their SOP's; (2) maintain the necessary records to carry out these procedures; and (3) notify consignees within 72 hours of repeatedly reactive test results. Blood establishments that provide transfusion services and that are not subject to HCFA regulations must also notify physicians of prior donation recipients, or the recipients themselves, of the need for HIV testing and counseling. The estimated time needed for establishments to comply with the reporting, disclosure, and recordkeeping requirements of this rule are described in detail in the reporting and recordkeeping tables in section VII. of this document.

FDA estimates that two types of skills will be necessary to meet these reporting and recordkeeping requirements. The skills of a medical technologist, or a person with equivalent training and experience, will be necessary to record donor, quarantine, testing, and disposition information, and to notify consignees of test results. Updating SOP's and notifying physicians and recipients of test results will require a person knowledgeable and experienced in medical laboratory practice.

Based on the reporting, disclosure, and recordkeeping burden described in section VII. of this document, FDA estimates that establishments that currently have "lookback" procedures will require approximately 27 hours per year to bring their procedures into compliance with this rule, while establishments without such procedures will require approximately 40 hours

annually to complete the required tasks. Establishments whose transfusion services are also covered by this rule will require an additional 8 hours per year to comply. Based on an estimated average hourly cost of $37.98 to perform the required tasks, FDA predicts that the average annual cost of these requirements for establishments that currently lack "lookback" procedures is $1,520 per facility for most establishments and $1,820 for facilities that transfuse as well as collect blood. Average annual costs for the great majority of establishments that already have "lookback" procedures are expected to be approximately $1,030 for most establishments and $1,340 for covered establishments that also provide transfusions.

In addition to these reporting and recordkeeping costs, all facilities will bear the additional cost of disposing of any affected units; conducting licensed, more specific tests for HIV; and replacing discarded units.

With the exception of the initial development of SOP's, all costs related to implementing the requirements of this rule are related to the number of units of blood collected from repeat donors who test positive for HIV, which in turn is related to total blood collections. The average number of units of blood drawn per establishment covered by this rule is approximately 8,000 units per year. Smaller establishments will have lower costs of compliance than the averages described above, while larger blood facilities will have higher costs, in proportion to the number of units of blood drawn per year.

Steps to minimize the economic impact on small entities. The significant issues raised by public comments on the costs of putting in place the required procedures, and the burdens imposed by the timeframes in the proposed rule, are described elsewhere in this preamble, FDA agrees with the numerous comments suggesting that 2 weeks is too short a time period to allow for completion of the licensed, more specific test and subsequent notification of consignees, and that 4 weeks is a more reasonable period. Accordingly, FDA has amended the rule to allow 30 calendar days for the completion of these tasks. This change should reduce the impact of the rule on small entities and reduce the chance that blood transfusion recipients will fail to receive notification that they had received blood or blood components that are at increased risk of transmitting HIV infection and or fail to receive appropriate counseling. In response to another comment, FDA amended the proposed rule to specify that certain pooled blood products intended for further manufacture into noninjectable products are exempt from quarantine. This change should also reduce the burden of the rule on some small entities. FDA rejected the option of excluding all small entities from the rule, because to do so would exempt a substantial proportion of establishments and defeat the objective of ensuring that all establishments have appropriate procedures in place to ensure the continued safety of the blood supply.

FDA's selection of the regulatory option described in this rule is based on its legal authority under sections 351 and 361 of the Public Health Service Act and section 501 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351). The need for regulatory action results from the fact that a small but significant number of new HIV infections each year continue to be transmitted through blood transfusions; the fact that a small minority of blood establishments still lack appropriate procedures for identification of blood products at increased risk for transmitting HIV infection and notification of recipients of such products; and the need to ensure that those establishments with voluntary "lookback" procedures in place have procedures that are adequate and vigorously followed. The primary policy consideration in the formulation of this rule is to protect the public health.

VII. Paperwork Reduction Act of 1995

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing procedures, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection.

Description: The final rule requires that blood establishments prepare and follow written procedures when the blood establishments have collected Whole Blood, blood components, Source Plasma and Source Leukocytes later determined to be at risk for transmitting HIV infections. This final rule requires that when a donor who previously donated blood is tested in accordance with § 610.45 on a later donation, and tests repeatedly reactive for antibody to HIV, the blood establishment shall perform more specific testing using a licensed test, and notify consignees who received Whole Blood, blood components, Source Plasma or Source Leukocytes from prior collections so that appropriate action is taken. Blood establishments and consignees are required to quarantine previously collected Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors, and if appropriate, notify transfusion recipients. The agency is issuing this final rule to help ensure the continued safety of the blood supply, to help ensure that information is provided to users of blood and blood components, and to help ensure that transfusion recipients of blood and blood components at risk for transmitting HIV will be notified as appropriate.

Description of Respondents: Blood establishments (Business and Not-for-Profit).

Individuals and organizations had an opportunity to comment on the information collection requirements in the proposed rule. FDA has revised these estimates based on current data. These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to FDA. There are no capital costs, or operating and maintenance costs associated with this information collection.

As required by the Paperwork Reduction Act of 1995, FDA will submit a copy of this rule to OMB for review and approval of these information requirements. Individuals and organizations may submit comments on the information collection requirements by November 8, 1996. FDA particularly invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the collection of information, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments

should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, make revisions as necessary to the information collection requirements, and submit the requirements to OMB for review and approval. Additional time will be allotted for public comment to OMB on the requirements and OMB review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

ESTIMATED ANNUAL REPORTING/DISCLOSURE BURDEN

21 CFR section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
610.46(a)	3,015	60	180,900	.17	30,753
610.46(b)	3,015	60	180,900	.17	30,753
610.47(b)	200	16	3,200	.5	1,600
Total					63,106

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR section	Number of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per recordkeeper	Total hours
606.100(b)(19)	3,015	1	3,015	2	6,300
606.160(b)(1)(vii)	150	160	24,000	12.8	1,920
606.160(b)(1)(viii)	3,015	60	180,900	4.8	14,472
Total					22,422

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 606 and 610 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 510, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 360 360j, 371, 374); secs. 215, 351, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263a, 264).

2. Section 606.100 is amended by adding new paragraph (b)(19) to read as follows:

§ 606.100 Standard operating procedures.

* * * * *

(b) * * *

(19) Procedures in accordance with § 610.46 of this chapter to look at prior donations of Whole Blood, blood components, Source Plasma and Source Leukocytes from a donor who has donated blood and subsequently tests repeatedly reactive for antibody to human immunodeficiency virus (HIV) or otherwise is determined to be unsuitable when tested in accordance with § 610.45 of this chapter. Procedures to quarantine in-house Whole Blood, blood components, Source Plasma and Source Leukocytes intended for further manufacture into injectable products that were obtained from such donors; procedures to notify consignees regarding the need to quarantine such products; procedures to determine the suitability for release of such products from quarantine; procedures to notify consignees of Whole Blood, blood components, Source Plasma and Source Leukocytes from such donors of the results of the antibody testing of such donors; and procedures in accordance with § 610.47 of this chapter to notify attending physicians so that transfusion recipients are informed that they may have received Whole Blood and, blood components at increased risk for transmitting human immunodeficiency virus.

* * * * *

3. Section 606.160 is amended by adding paragraphs (b)(1)(vii) and (b)(1)(viii) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(1) * * *

(vii) Records to relate the donor with the unit number of each previous donation from that donor.

(viii) Records of quarantine, notification, testing, and disposition performed pursuant to §§ 610.46 and 610.47 of this chapter.

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

4. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

5. Section 610.45 is amended by adding a new paragraph (d) to read as follows:

§ 610.45 Human immunodeficiency virus (HIV) requirements.

* * * * *

(d) For a donor whose test results for antibody to HIV are repeatedly reactive or otherwise determined to be unsuitable when tested in accordance with paragraph (a) of this section, the blood establishment shall comply, as applicable, with §§ 610.46 and 610.47.

6. New §§ 610.46 and 610.47 are added to subpart E to read as follows:

§ 610.46 "Lookback" requirements.

(a) *Quarantine and notification.* (1) All blood and plasma establishments are required to take appropriate action when a donor of Whole Blood, blood components, Source Plasma and Source Leukocytes tests repeatedly reactive for antibody to human immunodeficiency virus (HIV), or otherwise is determined to be unsuitable when tested in accordance with § 610.45. For Whole Blood, blood components, Source Plasma and Source Leukocytes collected from that donor within the 5 years prior to the repeatedly reactive test, if intended for transfusion, or collected within the 6 months prior to the repeatedly reactive test, if intended for further manufacture into injectable products, except those products exempt from quarantine in accordance with § 610.46(c), the blood establishment shall promptly, within 72 hours:

(i) Quarantine all such Whole Blood, blood components, Source Plasma and Source Leukocytes from previous collections held at that establishment; and

(ii) Notify consignees of the repeatedly reactive HIV screening test results so that all Whole Blood, blood components, Source Plasma and Source Leukocytes from previous collections they hold are quarantined.

(2) Consignees notified in accordance with paragraph (a)(1)(ii) of this section shall quarantine Whole Blood, blood components, Source Plasma and Source Leukocytes held at that establishment except as provided in paragraph (c) of this section.

(b) *Further testing and notification of consignees of results.* Blood establishments that have collected Whole Blood, blood components, Source Plasma or Source Leukocytes from a donor as described in paragraph (a) of this section shall perform a licensed, more specific test for HIV on the donor's blood, and in the case of distributed products, further shall notify the consignee(s) of the results of this test, within 30 calendar days after the donor's repeatedly reactive test. Pending the availability of a licensed, more specific test for HIV–2, a second, different screening test for antibody to HIV–2 shall be used along with a licensed, more specific test for HIV–1.

(c) *Exemption from quarantine.* Products intended for transfusion need not be held in quarantine if a determination has been made that the Whole Blood, blood components, Source Plasma or Source Leukocytes was collected more than 12 months prior to the donor's most recent negative antibody screening test when tested in accordance with § 610.45. Pooled Source Plasma and Source Leukocytes are exempt from quarantine.

(d) *Release from quarantine.* Whole Blood, blood components, Source Plasma and Source Leukocytes intended for transfusion or further manufacture which have been quarantined under paragraph (a) of this section may be released if the donor is subsequently tested for antibody to HIV as provided in paragraph (b) of this section and the test result is negative, absent other informative test results.

(e) Actions under this section do not constitute a product recall as defined in § 7.3(g) of this chapter.

§ 610.47 "Lookback" notification requirements for transfusion services.

(a) Transfusion services that are not subject to the Health Care Financing Administration's regulations on conditions of Medicare participation for hospitals (42 CFR part 482) are required to take appropriate action in accordance with paragraphs (b) and (c) of this section when a recipient has received Whole Blood or blood components from a donor determined to be unsuitable when tested for human immunodeficiency virus (HIV) infection in accordance with § 610.45 and the results of the additional tests as provided for in § 610.46(b) are positive.

(b) *Notification of recipients of prior transfusion.* If the transfusion service has administered Whole Blood or blood components as described in paragraph (a) of this section, the transfusion service shall notify the recipient's attending physician (physician of record) and ask him or her to inform the recipient of the need for HIV testing and counseling. If the physician is unavailable or declines to notify the recipient, the transfusion service shall notify the recipient and inform the recipient of the need for HIV testing and counseling. The notification process shall include a minimum of three attempts to notify the recipient and be completed within a maximum 8 weeks of receipt of the result of the licensed, more specific test for HIV. The transfusion service is responsible for notification, including basic explanations to the recipient and referral for counseling, and shall document the notification or attempts to notify the attending physician or the recipient, pursuant to § 606.160 of this chapter.

(c) *Notification to legal representative or relative.* If the transfusion recipient has been adjudged incompetent by a State court, the transfusion service or physician must notify a legal representative designated in accordance with State law. If the transfusion recipient is competent, but State law permits a legal representative or relative to receive the information on the recipient's behalf, the transfusion service or physician must notify the recipient or his or her legal representative or relative. If the transfusion recipient is deceased, the transfusion service or physician must continue the notification process and inform the deceased recipient's legal representative or relative. Reasons for notifying the recipient's relative or legal representative on his or her behalf shall be documented pursuant to § 606.160 of this chapter.

Dated: July 11, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96–22709 Filed 9–6–96; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

42 CFR Part 482

[BPD–633–F]

RIN 0938–AE40

Medicare and Medicaid Programs; Hospital Standard for Potentially HIV Infectious Blood and Blood Products

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule requires hospitals participating in the Medicare and Medicaid programs to take appropriate action when the hospitals learn that they have received whole blood, blood components (including recovered plasma), source plasma, and source leukocytes (hereafter referred to as blood or blood products) that are at increased risk of transmitting Human Immunodeficiency Virus (HIV)

infection. If the hospital learns that it has received blood or blood products collected from a donor recently exposed to HIV, before the donor has a sufficient level of antibody to be detected by the screening test for antibody to HIV, the hospital must quarantine any blood or blood products remaining in inventory pending confirmatory testing. If the presence of HIV is confirmed by more specific testing, the hospital must notify patients who received the blood or blood product.

This final rule is intended to ensure that proper health and safety steps are taken to minimize further spread of HIV infection. A final rule published elsewhere in this **Federal Register** by the Food and Drug Administration applies the same requirements to entities furnishing transfusion services that do not participate in the Medicare and Medicaid programs and clarifies the responsibilities of blood establishments to identify and notify the transfusion service that received affected blood and blood products.

EFFECTIVE DATES: This rule is effective on November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Samen, (410) 786–9161.

SUPPLEMENTARY INFORMATION:

I. Background

Hospitals must meet certain conditions in order to participate in the Medicare program. These conditions are intended to protect patient health and safety and ensure that high-quality care is provided. Hospitals receiving payment under Medicaid must meet the conditions for participation in Medicare.

Regulations containing the Medicare conditions of participation for hospitals are located in the Code of Federal Regulations at 42 CFR part 482, with the condition for hospital laboratory services at § 482.27. Section 482.27 contains general requirements for hospital laboratories. The more detailed requirements for laboratories appear in part 493, which sets forth requirements for all laboratories participating in the Medicare, Medicaid, and Clinical Laboratories Improvement Act (CLIA) programs.

In the Department of Health and Human Services, the Food and Drug Administration (FDA) and HCFA are responsible for different aspects of ensuring the safety of blood and blood products. Blood banks (referred to as blood establishments in FDA regulations) are subject to the FDA regulations for current good manufacturing practices and additional standards for the manufacture of blood and blood components under 21 CFR parts 211 and 600, 601, 606, 610, and 640. Laboratories that provide transfusion services are subject to CLIA requirements for quality control and health and safety standards (42 CFR part 493, subpart K) and laboratories in hospitals are also subject to the hospital conditions of participation for adequacy of laboratory services (§ 482.27). FDA and HCFA coordinate inspections of hospital-based blood banks to minimize duplication of effort and reduce the burden on affected facilities.

Human Immunodeficiency Virus (HIV) is a virus whose presence is associated with Acquired Immune Deficiency Syndrome (AIDS). In response to scientific data that show HIV is transmissible through infectious blood and blood products, FDA has implemented an extensive system of donor screening and testing procedures performed before, during, and after a donation takes place to help prevent the transfusion of blood and blood products that are infected with HIV.

Existing FDA regulations require each donation of blood to be tested and found negative for the antibody to HIV and restrict the use, for transfusion or further manufacture, of a donation testing repeatedly reactive for the antibody to HIV. Repeatedly reactive means that the initial HIV antibody screening test is reactive, retested in duplicate, and one or both of the duplicate tests are reactive. As a result of the FDA blood donor screening and testing procedures, the risk of transmitting HIV infection through blood transfusion is very low. However, despite the best practices of blood establishments, a person may donate blood early in infection when the antibody to HIV is not detectable by the screening test, but HIV is present in the donor's blood (a so-called "window" period). If the donor attempts to donate blood at a later date, the test for the antibody to HIV may at that time be repeatedly reactive. Under such circumstances, previously collected blood and blood products would be at increased risk for transmitting HIV and a recipient of a blood product collected during the "window" period would not know whether the donor was infected with HIV at the time of the previous donation. Steps taken to identify and quarantine remaining blood and blood products in storage and notify recipients of the blood are known as "lookback."

As a result of advances in identifying the presence of HIV, the "window" period continues to shrink. The FDA final rule published elsewhere in this **Federal Register** provides more information on the length of the window period and discusses various diagnostic modalities for HIV infection.

II. Proposed Regulations

FDA and HCFA published proposed regulations in the **Federal Register** on June 30, 1993 (58 FR 34962 and 58 FR 34977, respectively) to require lookback by blood establishments and transfusion services when it is later determined that potentially HIV infectious blood or blood products might have been collected and administered.

FDA proposed to require blood establishments (that is, facilities involved in the manufacture of blood and blood components) to quarantine previously collected blood and blood products collected from a donor who tested negative at the time of a previous donation but tests repeatedly reactive for the antibody to HIV on a later donation. A donor would be considered to be infected by HIV if the results of the FDA's licensed tests described at 21 CFR 610.45 show the presence of the antibody to HIV and if the screening results are confirmed positive by a licensed, more specific test. Blood establishments would be required to promptly notify the hospital transfusion service of the need to quarantine the potentially HIV infectious blood or blood products that were distributed.

In the HCFA regulation, we proposed to add a new paragraph (c) to § 482.27 ("Conditions of participation: Laboratory services.") to set forth the standard for potentially HIV infectious blood and blood products. Under the proposed rule, when the hospital learns that it has administered blood that may have been collected during the "window" period, the hospital would be required to make several attempts to notify the patient's attending physician (physician of record) and ask the physician to inform the patient of the need for HIV testing and counseling. If the physician is unavailable or declines to notify the patient, the hospital must make several attempts to inform the patient of the need for HIV testing and counseling. We proposed that the notification include basic explanations to the patient and referral for counseling and that the hospital document the notification or attempts to notify the attending physician and the patient.

In addition, we proposed to require that, when services are furnished to a hospital by an outside blood bank, there must be an agreement governing the procurement, transfer, and availability of blood and blood products specifying that the blood bank promptly notify the hospital if potentially HIV infectious blood or blood products have been made available to the hospital.

Notification would enable the hospital to take proper health and safety steps to minimize further spread of HIV infection.

III. Analysis of and Responses to Public Comments

In response to the June 1993 HCFA proposed rule, we received 28 timely items of correspondence from national organizations, nurses, hospital administrators, State offices, law firms, and various organizations representing infection control officers and blood banks. A summary of individual comments we received on the June 1993 proposed rule, our responses, and the changes we have made are discussed below.

Coordination of FDA and HCFA Efforts

When HCFA and FDA published the June 1993 proposed rules, we intended that all blood banks (that is, blood establishments involved in the manufacture of blood and blood components) and transfusion services (that is, consignees that receive blood and blood products from blood banks/blood establishments and perform compatibility testing) comply with the quarantine and patient notification requirements. However, based on public comments received by both agencies, it appears that there was public misunderstanding of the mission of each agency and the scope of the rulemaking, as discussed below.

Comment: One commenter indicated that terminology used by HCFA and FDA is not consistent. In the FDA regulation, the terms "consignees" and "transfusion services" are used while the HCFA regulations refer to "hospitals" and "blood banks." The commenter requested more consistent use of the terms. In addition, the commenter noted that the term "blood banks" may refer to a transfusion service or a freestanding community blood center. Finally, the commenter noted that the term "consignee" may mean the facility providing the transfusion service and that the term "recipient" may refer to the transfused patient. The commenter asked that "transfusion service" and "transfused patient" be the preferred terms.

Response: While we agree that the use of different terms can be confusing, we do not believe it would be appropriate to revise the terminology used in the HCFA regulation because it is consistent with that used elsewhere in title 42 of the Code of Federal Regulations, including the hospital conditions of participation and the CLIA regulations. Likewise, although the FDA terminology is different, it is understood by the entities regulated by FDA and described by FDA as follows.

- A transfusion service is a facility that is part of either a hospital or an independent clinical laboratory, that performs compatibility tests, stores and distributes blood components, but is not engaged in the routine collection or preparation of blood or plasma except for therapeutic collections or separation of recovered plasma or red blood cells.
- A blood establishment is an FDA registered facility or portion of a facility registered as such with FDA pursuant to 21 U.S.C. section 510 and 21 CFR part 607 that manufactures blood or blood products. These include hospital and non-hospital blood banks, plasmapheresis centers, donor centers, and the laboratories performing testing for these establishments.

To avoid confusion concerning whether FDA requirements regarding lookback and quarantine apply to hospital transfusion services, we are adding those requirements to the hospital conditions of participation. We have added a paragraph (c)(3) to § 482.27 to include the following requirements:

- Upon notification by the blood bank (blood establishment) that certain blood and blood products are at increased risk for transmitting HIV infection, the hospital (transfusion service) must determine the disposition of the blood or blood product and if it is holding any of the blood or blood product in inventory. If so, the hospital must quarantine the blood or blood products until notified by the blood bank of the results of an FDA-licensed, more specific test or other followup testing recommended or required by FDA.
- The hospital may release the blood or blood product from quarantine only after notification by the blood bank that the additional testing was negative for the HIV antibody, absent other informative test results. If the testing confirms the presence of the antibody for HIV, the hospital must dispose of the blood and blood products in accordance with FDA regulations at 21 CFR 606.40 and notify any patients who received the affected blood or blood products of the need for HIV testing and counseling. (The FDA final regulation requires the blood bank to complete the licensed, more specific test for the antibody to HIV within 30 days and promptly notify the hospital transfusion service of the test results.)

Comment: Several commenters suggested that any facility receiving and administering blood or blood products be required to comply with the same notification requirements as set forth in the proposed rule. Two commenters also suggested this standard for ambulatory surgical centers.

Response: When we published the proposed regulation, we specifically requested public comment regarding the need to develop similar requirements for other facilities that provide transfusion services. Although we did not receive specific suggestions, we have revised § 482.27(c)(4) to clarify that when a hospital (transfusion service) furnishes blood or blood products to another entity or appropriate individual, the hospital retains responsibility for patient notification.

We believe this approach is reasonable and consistent with the usual path followed by blood from donation to transfusion. As clarified in FDA regulations, blood establishments (defined in 21 CFR 607.3(c)) collect, screen, and test the blood, prepare blood components or process blood for further manufacture, and label blood components for distribution to a transfusion service. The transfusion service is the entity responsible for determining compatibility with the patient's sample and sending the blood to the patient's location (for example, the hospital, clinic, nursing facility, or home setting). In order to release the blood and blood products for transfusion, the hospital must crossmatch the blood for compatibility with the patient's sample. In doing so, the hospital would obtain enough information to enable them to notify the patient. Thus, the hospital has patient information and a notification system in place and is in the best position to perform patient notification.

We note that FDA is adopting the patient notification requirements for hospitals that do not participate in Medicare and Medicaid. Thus, all hospitals that administer blood and blood products or release the blood and blood products must comply with the same patient notification requirements.

Timeframe for Completing Notification

In the proposed rule, we did not require a specific timeframe for completion of the notification effort. Rather, we required the hospital to make several attempts to notify the patient's attending physician and, if the physician is unavailable or declines to notify, make several attempts to notify the patient. We indicated in the preamble that the hospital's notification effort should begin immediately after receiving the information from the blood bank and be completed within II weeks. Although we specifically invited public comment on the sufficiency of this level of effort, we did not receive enough information to draw any

conclusions about existing patient notification activities. In addition, the information we received indicated fundamental differences in the viewpoints of the commenters as described below.

Comment: Two commenters agreed with the approach contained in the proposed rule and did not want the hospital's search for the patient's physician or the patient to be bound by a specific timeframe. One commenter suggested that we only include the following requirements in the final rule: (1) Require that hospitals have written procedures for notifying patients; (2) provide for an appropriate, knowledgeable person to talk with the patient if the physician cannot be reached or chooses not to be involved; and (3) require that the notice be expeditious and confidential and include recommendations to seek HIV testing and counseling. Another commenter suggested that we require only that the hospital exercise due diligence and document its notification efforts.

Response: In order to respond to these commenters, we consulted with FDA on the best approach to the notification timeframe. We have decided to include a specific timeframe for completion of the notification effort in order to prevent hospitals from making sporadic efforts over a protracted period of time and to provide a reasonable minimum standard (§ 482.27(c)(5)). We believe requiring at least three attempts to notify the physician and, as necessary, three attempts to notify the patient within 8 weeks is reasonable. Since patient notification by the hospital rarely will be necessary, we do not believe that requiring as many as six notification attempts will be burdensome to hospitals.

Comment: One commenter asserted that the search could be performed in less than 8 weeks depending on a hospital's ability to locate records and contact the patient by mail. Still another commenter questioned whether we had considered the possible delay in starting treatment that may occur because of the 8-week period allowed for notification and expressed concern that an 8-week delay could contribute to individuals unknowingly transmitting HIV. One commenter indicated that four or five attempts over a 3- to 5-day period would be sufficient while another commenter suggested that we require a 12-week timeframe based on their concern that the physician might decline at the end of the 8 weeks and leave little time for the hospital to perform the notification.

Response: We believe that most, if not all, notifications would be accomplished with relatively little effort and that three attempts should be sufficient in most cases. On the other hand, if a hospital has made a good faith effort of at least three attempts but is not able to locate the patient within 8 weeks, we do not expect the hospital to continue its search. Of course, there is no limit on how much time a hospital may choose to expend on this effort.

We do not intend for the hospital to use the entire 8 weeks to attempt to locate a physician who, at the end of the 8-week period, may be determined to be unavailable. Rather, we intend that the majority of the 8 weeks be used to locate and notify the patient. We recommend that the hospital promptly make three attempts within one week to notify the physician. If the hospital is unable to locate the physician or the physician does not agree to notify the patient, the hospital should promptly start attempts to locate the patient.

In addition, it would be inappropriate for the physician to wait until the end of the 8-week period to inform the hospital that he or she is unwilling to notify the patient. In most cases, we believe that the hospital will contact the physician by telephone and the physician will make an immediate decision to agree or decline to notify the patient. However, if the physician is not able to make an immediate decision, the physician should indicate his or her decision within 1 week of the hospital's request. In this way, it is reasonable to expect the hospital to locate and notify the patient in the remaining 7 weeks.

We are aware that there may be instances where the hospital's notification efforts will extend beyond the 8-week period due to circumstances beyond the hospital's control. For example, a physician who agrees to notify the patient may later inform the hospital that he or she was unable to notify the patient or the patient may not respond timely to notification efforts because he or she is away from home. In these cases, the hospital must document in the patient's medical record the extenuating circumstances that prevented patient notification within the 8-week timeframe (§ 482.27(c)(5)).

Comment: One commenter questioned whether patient notification is necessary if several years have passed after receipt of a transfusion, or whether the hospital can establish timeframes after which patient notification need not be made.

Response: Section 610.46(a) of the FDA regulation published elsewhere in this **Federal Register** defines the quarantine and notification process to be followed by blood establishments supplying blood to hospitals. Under this rule, when a blood establishment learns of a change in the HIV status of a donor, the blood establishment must determine if any prior donations meet the quarantine and notification requirements set forth in 21 CFR 610.46(a) and, as appropriate, inform the hospital(s) that received any prior donations from the donor. Once the blood establishment notifies the hospital(s), we do not believe that there is ever a time that patient notification need not be attempted. It is only when the physician or the hospital cannot locate the patient that the process may come to an end.

Role of the Physician in the Notification Process

Comment: One commenter suggested that we require any physician who wishes to participate in the Medicare or Medicaid program to assume the responsibility for notifying the patient and providing or making available appropriate HIV counseling to the patient. Another commenter requested that we indicate the consequences for physicians who fail to notify the patient.

Response: Although we believe that it is appropriate for attending physicians to notify their patients, we do not have authority under current law to require that physicians do so. Thus, while it is true that there are no Federal penalties imposed on physicians who decline or do not take appropriate steps to notify the patient, we believe most physicians will choose to notify the patient and voluntarily inform the hospital whether notification occurred. Since we have an agreement with each Medicare and Medicaid participating hospital and the law authorizes us to include provisions such as these under the hospital conditions of participation, we have determined that if the physician does not agree to notify the patient, the hospital must assume responsibility for patient notification.

Comment: Several commenters wanted clarification regarding when a physician could decline to notify the patient. Many commenters disagreed with permitting the physician the option to decline notification. Four commenters stated that this policy contradicts principles of continuity of care and sound medical practice. One commenter asserted that no physician will notify patients if given the option and that the requirement for hospitals to notify patients when physicians decline removes any incentive for the physicians to participate in the notification process.

Response: In the interest of continuity of care and sound medical practice, we believe that most physicians will notify

their patients. However, we continue to believe there could be legitimate reasons why a physician might refuse to notify the patient; for example, the physician determines that the patient has moved to another State and it would be difficult for the physician to identify HIV counseling and testing programs in the patient's new location, or the physician has had very limited or no contact with the patient in several years.

Comment: Several commenters asked us to publish a definition of "attending physician" to clarify who should be responsible for patient notification.

Response: In § 482.27(c)(4), we have included the phrase "physician of record" in parentheses next to the term "attending physician." Although many physicians may have contact with a patient in the course of a hospital stay, the admitting physician is identified on the admission form. We believe that this physician is the "physician of record" and should be responsible for the notification. However, if the physician who orders the transfusion is not the same physician as the physician identified on the admitting form, the hospital may ask either physician to perform the notification.

Comment: One commenter questioned the role the hospital plays in determining whether a physician provided information and referred the patient for counseling. One commenter asked that we specify whether the hospital is obligated to complete any part of the notification that the physician fails to carry out. Additionally, the commenter questioned how the hospital would know what the physician had done.

Response: Under this regulation, when the physician accepts responsibility for the notification, the hospital is not required to follow up with the physician to determine whether patient notification occurred. Since the hospital may not be aware of the information the physician provides, we cannot require that the hospital complete the notification. In light of physicians' professional relationship with hospitals, we believe physicians will inform the hospital whether notification occurred. If the physician informs the hospital that he or she was unable to notify the patient, the hospital must proceed with patient notification.

Comment: One commenter wanted to know at what point the hospital resumes responsibility for notification if the physician is unable to contact the patient. Two commenters questioned whether the physician is required to inform the hospital of the results of notification, for example, whether the physician was unable to locate the patient, whether the patient was tested, and the results of the testing.

Response: Although we believe that the physician, as part of his or her professional responsibility, will inform the hospital of the results of notification, he or she is not required to do so. If the physician accepts responsibility for notification, and later informs the hospital that the patient was not notified, the hospital must attempt notification, regardless of the time that elapsed after the hospital first notified the physician.

Some State or local health groups may require further followup and other epidemiological information but release of information is dependent upon State and local laws, the medical practice, and the patient-physician relationship. Finally, having the physician notify the hospital of the results of testing of the referred patient is outside the scope of the notification requirements of this regulation.

Comment: One commenter noted that the laws in his State require the physician to provide information to the patient regarding blood products in advance of any non-emergency transfusion and, when the physician orders an HIV test, to obtain the patient's informed consent.

Response: While these precautions are indeed important to the risk management of blood and blood products, they do not remove the need for notification by the hospital or physician of possible contamination.

Comment: One commenter indicated that assigning patient notification responsibility to the hospital means that a clinician must be identified to handle the cases declined by the physician. Several commenters questioned whether the appropriate individual to notify the patient should be limited to someone with medical experience or whether the hospital may designate any nonmedical personnel to perform these notifications. One commenter indicated that the physician is the only individual who should notify the patient, while another commenter noted that the infection control representative in his facility is responsible for notification. Another commenter requested that we permit the hospital to bypass the doctor/patient relationship if the physician resists the hospital's request to notify the patient. One commenter suggested that when the physician declines to notify the patient, the hospital should use the mail system, rather than have a hospital employee unknown to the patient, to provide the notification.

Response: We continue to believe it is preferable that notification be made by a physician with whom the patient has a professional relationship, such as the attending physician who coordinated the care during the patient's hospitalization or the physician who ordered the blood or blood product. Nevertheless, the hospital may designate another physician or an appropriate hospital representative to inform the patient. We believe that the hospital in its policies and practices will designate an appropriate, competent individual to perform this type of notification such as an infection control officer, a nurse, a clinical laboratory scientist, an individual with medical expertise who is not a physician, or a social worker. We note that the hospital must review any voluntary notification procedures to ensure that they conform to the requirements of this regulation.

Comment: Several commenters indicated that hospitals should develop policies to identify the appropriate physician to assist in notification and counseling, in the event efforts to locate the attending physician are unsuccessful.

Response: We have revised the regulation to require hospitals to establish policies and procedures for notification (§ 482.27(c)(6)). The final regulation does not require a hospital to provide HIV testing or counseling, but merely to refer the patient for testing and counseling. We expect that the referral for testing and counseling will be made to a physician or organization that provides high quality HIV testing and has extensive experience in providing HIV counseling.

Notification Requirements

Comment: We invited comment on whether our proposed rule should be implemented as part of a Medicare hospital standard or as part of the FDA requirements applicable to blood establishments. While most commenters indicated that hospitals, not blood banks, should be responsible for assuring that patients are properly notified of the possibility that they have received infectious blood, some commenters recommended that blood banks should be required to make notification.

Response: Based on the comments we received, we have determined that the hospital could best perform the notifications since it has access to medical records. Blood banks that are not departments of hospitals do not routinely receive hospital patient information. If the blood bank were a department within the hospital or performed compatibility testing for the hospital, it would have access to patient information and could perform the

notification as designated by hospital policy. Under this final regulation, blood banks must notify the hospital of receipt of potentially HIV infectious blood and blood products and hospitals are responsible for patient notification.

Comment: Two commenters recommended that specific operational issues should be developed at the hospital level within general guidelines established by regulation. Another commenter suggested that the regulation describe what hospitals are expected to accomplish and let hospitals determine, based on their own experience and circumstances, how best to notify patients. However, two others requested that the mechanics of notification be spelled out for standardization.

Response: As noted previously, we added § 482.27 (c)(4) and (c)(5) to require three attempts to notify the physician, and, as necessary, three attempts to notify the patient with 8 weeks. We believe that, within these parameters, the hospital retains flexibility to develop its own policies and procedures in order to meet the notification requirements.

Comment: One commenter indicated that the language of proposed § 482.27(c)(2) is inconsistent with the preamble because it implies that the hospital is obligated to notify both the physician and the patient.

Response: We are clarifying in this final rule that the hospital must notify the patient only if the physician is unavailable, declines, or later informs the hospital that he or she was unable to notify the patient (§ 482.27(c)(4)).

Comment: One commenter indicated that a search should be terminated only after a review is conducted by a hospital-sponsored "lookback advisory committee" composed of relevant specialists and expert staff members.

Response: While we support the use of an advisory committee to determine when it is appropriate for patient notification efforts to cease, we have decided not to adopt this suggestion in the regulation. We would prefer to allow a hospital flexibility to develop responsible policies and procedures. Of course, a hospital may choose to incorporate the commenter's suggested approach into its policies and procedures.

Comment: Four commenters indicated that there are no requirements that identify the information to be released during patient notification. The commenters suggested that we establish uniform and standard minimum requirements for disclosing information to patients during the notification process.

Response: We agree and have added § 482.27(c)(6)(iii) to clarify that when a physician or hospital notifies a patient about the need for HIV testing and counseling, the patient will also be given the names of several programs or places in the area where the patient resides that provide these services. In addition, the patient will be told about any requirements or restrictions the programs may impose such as whether the program requires a fee, a physician request form, identification or public assistance cards, or a residency requirement. In some situations, the hospital, in conjunction with its advisory groups, will provide the materials for the physician to use or identify programs that provide the HIV testing and counseling. Some groups have developed packages of materials, brochures, and information about the risks of blood and blood products and how HIV infection is transmitted. The Centers for Disease Control and Prevention (CDC) National AIDS Hotline operates a toll-free number (1–800–342–2437) 24 hours a day that the hospital or physician can give to the patient for more assistance. (The Hotline offers anonymous, confidential AIDS information to the American public. Trained information specialists answer questions about HIV infection and AIDS. The physician or hospital can give the patient the Hotline number (1–800–342–AIDS/2437 (English); 1–800–344–7432 (Spanish) and 1–800–243–7889 (TDD/Deaf Access)). We encourage physicians and hospitals to make available to the patient any additional information that would be useful to the patient and consult with and obtain resource materials from programs that are funded by the Ryan White Comprehensive AIDS Resources Emergency Act, the CDC, county and State health departments, and AIDS awareness groups.

Privacy and Recordkeeping

Comment: One commenter expressed concern that the proposed regulation did not address the issue of privacy in recordkeeping, including access to the information from the Blood Donor Locator Service (BDLS) operated by the Social Security Administration (SSA), and blood bank and hospital records. The commenter suggested that, even though these issues may be addressed elsewhere, they needed to be restated in this regulation.

Response: Hospital requirements for confidentiality in recordkeeping are already in existing regulations at § 482.24. Documents related to notification become part of the patient's medical record and are subject to the normal safeguards for access, information release, patient consent, and other precautions for confidential information, whether in hard copies, films, or computer records. If there is any doubt about confidentiality or disclosure, a medical record administrator can be consulted to provide adequate instructions. In addition, the hospital must establish procedures that conform to all Federal, State and local laws regarding confidentiality.

Comment: One commenter suggested that the hospital send the physician a return postcard and ask that the postcard be sent back to the hospital indicating whether the patient was notified, and, if so, the date the physician notified the patient.

Response: As noted earlier, we have revised the regulation to require hospitals to establish policies and procedures for notification, including requirements for confidentiality (§ 482.27(c)(7)). We have concerns about maintaining patient confidentiality through use of postcards to convey information about potentially HIV infectious blood and blood products. Although this final rule affords the hospital the flexibility to establish policies and procedures for the notification process, the policies and procedures must protect patient confidentiality.

Comment: In addition to any State requirements or laws concerning HIV confidentiality, many commenters recommended that all written patient notifications be marked "confidential" and be sent only by certified mail. Two commenters asked for a "return receipt."

Response: While we would support efforts by hospitals to use certified mail when written patient notification is necessary, we have decided not to incorporate this requirement in the regulation. Similarly, although use of a return receipt would provide the hospital with confirmation that the individual received the information, incorporating this specific requirement may conflict with State laws that require "marking for confidentiality" and would limit the hospital's flexibility to develop a process based on its experience and circumstances.

Comment: One commenter did not want all patients notified based on a concern that once a patient's HIV status is known, the patient may be subjected to ostracism and discrimination in receiving care. Since many hospitals use universal precautions for infection control, the commenter believed that there is no need to know the HIV status of patients. However, information about

the HIV status could be retained by the patient's physician.

Response: We believe it is important for the patient to know of his or her potential exposure to HIV so that he or she will be informed of the need for testing and counseling in order to promote behavior changes that will reduce the risk for transmission of HIV and to detect HIV infection in persons so that their need for medical treatment and other services can be assessed.

Comment: One commenter recommended that we clarify the documentation needed to be filed by the attending physician and materials to be developed and retained by the hospital. Another commenter wanted to know which steps in the process should be documented, that is, the attempts to notify patients, counseling, patient referral, etc. One commenter questioned whether compliance can be evaluated by Medicare, the FDA, or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) without specific documentation requirements for notifying patients of potentially infectious blood or blood products.

Response: We are not looking for lengthy documentation, but sufficient recordkeeping that indicates when attempts were made to notify the patient and the results of those attempts. We are not prescribing forms that a hospital must use; however, a hospital may develop its own record forms. We do not believe that additional files or new systems of data should be kept on this matter. The surveyor, in determining compliance, must be able to determine satisfactorily that the manner in which the hospital performs notifications comports with the regulation.

Comment: One commenter requested that we clarify the type of information regarding the patient, for example, patient testing results, that can be shared between physician and hospital.

Response: The hospital and the physician may determine if any information should be shared. This rule does not require the sharing of information between the physician and the hospital. Patient testing results are outside the scope of this regulation.

Comment: One commenter asked for standardized recommendations for record retention by blood banks and by institutions accepting and administering blood and blood products. The commenter asserted that his facility requires that employee health records be kept for 30 years after terminating employment.

Response: Although a facility may require that employee health records be kept for 30 years after the employee leaves employment, this is not the current Federal standard for records involving blood and blood products. The hospital conditions of participation require that hospital medical records must be kept at least 5 years (§ 482.24(b)(1)). The notification records and blood bank records are subject to the same 5-year requirement. Additionally, the FDA regulations at 21 CFR 606.160(d) require that blood and blood product records be kept for at least 5 years after processing, or 6 months after the latest expiration date, whichever is later. Under CLIA, the laboratory regulations on quality control records for blood and blood products (§ 493.1221) reflect the FDA regulation. Any longer timeframe for retention of medical records is dependent upon hospital policies, State laws, computerization, storage space, and investigational studies.

Comment: Two commenters interpreted the proposed rule as requiring notification by the hospital when the patient is terminally ill, debilitated, or celibate, and is not (and has not been) an infection risk to others. The commenters expressed concern that these patients would be adversely affected by the notification. The commenter interpreted the proposed rule to require the hospital to inform the patient even if the physician caring for the patient, either alone or in consultation with relatives, believes the harmful effects of notification exceed the benefits of notification.

Response: We have revised the regulation at § 482.27(c)(8) to clarify that the physician or hospital may notify a legal representative designated in accordance with State law. Further, if the patient is competent, but the physician believes the information should not be given to the patient and State law permits a legal representative or relative to receive information on the patient's behalf (for example, when the patient is under age 18), then the physician must notify the patient's representative or relative. Upon learning of the death of a transfusion patient, the hospital must pursue the notification process to inform the patient's family. Public health concerns would warrant that the notification process continue and include the deceased patient's legal representative or relative. It would not be appropriate for a physician or hospital to determine that the patient or someone acting on his or her behalf need not be informed.

Comment: Three commenters wanted epidemiologic information, demographics, or other information to be provided to the State health department or other appropriate entity for patient followup. Another commenter requested that the blood bank notify the physician and the regional health departments about potentially HIV infectious blood and blood products being administered. The commenter referred to the health department's ability to track various diseases and to provide pre- and post-counseling of possible HIV-infected individuals.

Response: Disclosure of information to entities other than the hospital, the patient, and, as appropriate, the patient's legal representative or relative, is governed by State law and hospital policies and is outside the scope of this rulemaking.

Comment: One commenter suggested that the notification about a patient's HIV status be given to good samaritan bystanders. The commenter stated that there are circumstances when an individual injured in an accident or fire requires subsequent medical care. When that care is given and the patient is found to be HIV positive, the commenter stated that all those who have given the patient medical care should be informed of the patient's status. The commenter wants State and Federal regulations to protect health care workers, emergency medical technicians, and public safety officials.

Response: The comment, while addressing an important public health and safety issue, is beyond the scope of this regulation. However, the CDC published a final rule on March 21, 1994 to address this issue (59 FR 13418).

Comment: One commenter wanted the hospital to be informed promptly by outside blood sources if there is any doubt about its blood supplies possibly being infected by the HIV virus.

Response: The issue raised by the commenter is addressed in the FDA final regulation published elsewhere in this **Federal Register**.

Hospital Agreements With Blood Banks

Comment: One commenter indicated that government intrusion in mandating agreements between hospitals and blood banks would not permit the organizations to work out their own agreements. Another commenter stated that if hospitals are required by regulation to have an agreement for procurement, transfer, and availability of blood and blood products, the blood banks would be in a position to impose additional terms through the agreements that the hospital would not otherwise wish to accept, for example, an agreement under which a hospital would never seek indemnification from the blood bank for infectious blood or

blood products. Another commenter suggested that his facility occasionally obtains blood or blood products from a source other than the blood bank that regularly supplies it. The commenter questioned whether the hospital is required to have an agreement with all sources supplying blood to the hospital.

Response: The laboratory requirements at § 493.1277 already require that in the case of services regularly furnished by an outside blood bank, the hospital laboratory must have an agreement reviewed and approved by the director that governs the procurement, transfer, and availability of blood and blood products. We note that a blood bank that is part of a hospital is not required to have an agreement with the hospital administration, but the laboratory still would have policies of proper practice that meet the FDA regulations and requirements of other regulatory and accrediting bodies. We intend that the details of the agreements or practice policies that are worked out between the blood bank and the hospital be consistent with Federal, State and local laws. Finally, we recognize that, under certain circumstances, hospitals may receive blood from a source other than the blood bank that has an agreement with the hospital. For example, during a blood emergency, a hospital may receive blood from another blood bank that may have a surplus of a special blood type that is needed by the hospital's patient. In this situation, if the blood bank becomes aware that the blood it furnished the hospital is potentially infected with HIV, the FDA regulations require the blood bank to notify the hospital.

Comment: One commenter indicated that the blood bank obligations are better achieved through regulations by the FDA. Further, the commenter suggested that since requirements change from time to time, all agreements would need to be changed every time. The commenter also concluded that establishing requirements by regulation alone is more flexible and efficient than regulations and contractual agreements.

Response: As noted previously, FDA and HCFA are responsible for different aspects of ensuring the safety of blood and blood products. Blood banks are subject to FDA regulations for current good manufacturing practices and additional standards for the manufacture of blood and blood components under 21 CFR parts 211 and 600, 601, 606, 610, and 640. HCFA regulations cover quality control, health and safety issues, and adequacy of laboratory services. Since the hospital has access to medical records and it is preferable that the notification is made by an individual with whom the patient has a professional relationship, such as the attending physician who coordinated the care during the patient's hospitalization, we believe that the requirements of this regulation should be addressed through the hospital conditions of participation. Agreements can be written flexibly so that any changes in FDA or HCFA requirements can be incorporated into operating procedures rather than by constructing a new contractual agreement.

Comment: One commenter recommended that the SSA BDLS be expanded and adapted to provide assistance in mandated lookback programs to locate patients. Another commenter asked that the SSA BDLS program be available for locating the last address of known sexual partners of lookback patients if notifying them is determined to be necessary.

Response: The SSA BDLS was implemented to enable States and authorized blood donation facilities to notify blood donors whose donations indicate that they are or may be infected with HIV. Section 8008 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) provides for furnishing only to participating States and authorized blood donation facilities at their request the last known personal mailing address of blood donors whose blood donation shows that they are or may be infected with HIV, if the State or authorized blood donation facility has been unable to locate the donors. The SSA BDLS cannot be used for any other purpose. To expand the program to include obtaining information on the patient or known sexual partner would require a legislative amendment.

Comment: One commenter stated that the rule did not address requirements for hospitals that have their own blood banks.

Response: We have clarified in § 482.27(c)(4) that if the hospital has administered potentially HIV infectious blood and blood products directly through its own blood bank or under an agreement with an outside blood bank, the hospital must promptly notify the patient's physician. We note that a hospital transfusion service that also functions as a blood establishment, that is, collects and manufactures blood and blood products, is subject to HCFA's final rule as a transfusion service and FDA's final rule as a blood establishment.

Contracting for Notification

Comment: Four commenters recommended that we permit a hospital to formally contract with a blood center to supervise the notification of the patient, testing, and counseling procedures, if the physician is unavailable or declines to do so. One commenter mentioned that the departments of health in three States perform notification and tracing of HIV/AIDS patients and contacts. Another commenter suggested public health departments as an alternative for notification and counseling because of the expertise and mechanisms that are already in place.

Response: There is no barrier to a hospital contracting with another organization to perform the notification, testing, and counseling. However, under this rule, the hospital is responsible for the notification and referral. We are aware that a number of State departments of health provide notification and tracing of HIV/AIDS patients and contacts. Nonetheless, we continue to believe that the hospital and the physician are in a better position to perform the notification because of their prior involvement with the patient. A hospital that delegates notification must ensure that the notification and referral for counseling are performed in accordance with this regulation. If the blood center or organization fails to comply with the conditions of participation, the hospital would be subject to a noncompliance action.

Counseling

Comment: Two commenters stated that some State laws require specific counseling procedures and clinical information for those undergoing counseling for HIV testing.

Response: We believe individual State laws should be followed to provide information and counseling procedures following the notification process. The notification and referral requirements in the rule do not conflict with any such State laws.

Enforcement

Comment: One commenter urged us to recognize the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the American Osteopathic Association (AOA) standards to avoid a second survey by Medicare.

Response: We have been in contact with the JCAHO and AOA and have evaluated their standards to ensure comparability with the requirements in this final regulation. Both organizations plan to incorporate the new requirements into the 1996 update to their accreditation standards. Therefore, a hospital accredited by the JCAHO or the AOA would be deemed to meet the Medicare requirement for the standards

on potentially HIV infectious blood and blood products. A second survey by HCFA would not be routinely required. However, if a complaint was filed regarding a look-back situation and HCFA decided the situation warranted an investigation, HCFA may authorize a complaint investigation.

Burden on Hospitals

Comment: One commenter disputed the estimate in the proposed rule of 1 hour of public reporting burden (58 FR 34980) and suggested that notification takes more than 1 hour to complete.

Response: We estimated the 1-hour timeframe based on several assumptions: (1) The records on the patient had already been retrieved, (2) the physician of record was noted on the admission sheet, and (3) the hospital had the physician's correct phone number or address. We anticipated that the phone conversation between the hospital representative and physician would last approximately 10 minutes. We inflated this figure to 1 hour because we wanted to include any time necessary for recalls and wrong numbers. We also considered time necessary for preparation of written notices and delivery of notices to the mail room. We expect that a hospital will rarely need to notify a patient directly, although we recognize that it would take additional time. We did not receive any comments that cited examples of the time involved to notify a patient. Some hospitals have computer linkup between departments and can easily retrieve information. The time involved for each case also may differ depending upon whether it was a single unit of blood given to one patient versus a unit of blood that was separated into several blood products and given to several patients. If a single unit of blood is separated into several components or blood products, each individual affected by the donor represents a separate notification case.

Comment: Two commenters stated that the cost associated with an additional standard would add an unnecessary regulatory burden.

Response: We disagree that the cost of this standard would be burdensome. Although initial implementation of notification procedures will require some expenditure of time and effort, we believe most hospitals, blood banks, and physicians are currently voluntarily complying with the requirements of this final regulation. We estimate that the ongoing cost of complying with this regulation will be small because the risk of a person being transfused with potentially HIV infectious blood and blood products is small and declining.

IV. Provisions of the Final Regulations

After consideration of the public comments, we are adopting the June 1993 proposed rule with the following changes.

- We have clarified that when the blood bank notifies the hospital that certain blood and blood products are at increased risk for HIV infection, the hospital must determine if it is holding any of the blood or blood product in inventory. If so, the hospital must quarantine the blood or blood products until notified by the blood bank of the results of a licensed, more specific test or other followup testing recommended or required by FDA. The hospital may release the blood or blood product from quarantine only after notification by the blood bank that the licensed, more specific test was negative for HIV antibody, absent other informative test results. (§ 482.27(c)(3))
- We have clarified that when patient notification is necessary, hospitals are required to make three attempts to notify the patient's attending physician or the physician who ordered the blood or blood product and ask the physician to notify the patient. If the physician is unavailable, declines, or later informs the hospital that he or she was unable to notify the patient, the hospital must make three attempts to notify the patient. (§ 482.27(c)(4)
- We have clarified that when a hospital releases blood and blood products to another entity or appropriate individual for transfusion, the hospital is responsible for the patient notification process. (§ 482.27(c)(4))
- We have specified that notification to a legal representative or relative of the patient may be appropriate in those instances permitted by State law or where the patient is deceased. (§ 482.27(c)(8))
- We have clarified that we are not requiring the physician to make the actual counseling appointment for the patient and expanded the description of the content of notification. (§ 482.27(c)(6)(ii) and (iii))
- We have clarified that a hospital's steps to notify must be initiated promptly and completed within 8 weeks. (§§ 482.27(c)(4)(i) and (c)(5))
- We have required that hospitals establish policies and procedures for notification and documentation that conform to Federal, State, and local laws, including requirements for confidentiality and for medical records. (§ 482.27(c)(7))
- We clarified that, if the hospital uses the services of an outside blood bank, the agreement governing the procurement, transfer, and availability of blood and blood products must require the blood bank to promptly notify the hospital about potentially HIV infectious blood and blood products. (§ 482.27(c)(2))

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Since this final rule contains information collections that are subject to OMB review under the Paperwork Reduction Act of 1995, we are soliciting public comment on these information collections as discussed below.

As discussed in detail section III. of this preamble, we are requiring in § 482.27(c) that Medicare participating hospitals undertake certain activities when they learn that they have received blood or blood products that are at increased risk of transmitting HIV infection. These activities include the identification and quarantine of affected blood and blood products that remain in inventory pending confirmatory testing. If the testing confirms that blood or blood products the hospital received are potentially HIV infectious, the hospital must promptly make at least three attempts to notify the patient's attending physician and ask the physician to inform the patient of the need for HIV testing and counseling. If the physician is unavailable, declines, or later informs the hospital that he or she was unable to notify the patient, the hospital must promptly make at least three attempts to notify the patient, the patient's surviving relative, or other person designated in accordance with State law. The hospital must document in the patient's medical record the notification

or attempts to give the required notification. Hospitals must establish policies and procedures for patient notification and documentation that conform to Federal, State, and local laws, including requirements for confidentiality. Finally, if the hospital uses the services of an outside blood bank, the agreement governing procurement, transfer, and availability of blood and blood products must be revised to require the blood bank to promptly notify the hospital about potentially HIV-infectious blood or blood products. We note that the burden associated with these requirements involves the establishment of a system to facilitate information collection (that is, the notification and documentation of notification), but are not themselves information collections.

These changes would not increase significantly the paperwork and information collection burden on the approximately 6,400 Medicare-participating hospitals. We estimate that development of policies and procedures for handling potentially HIV-infectious blood and blood products and revision of agreements between hospitals and their blood banks will increase each hospital's recordkeeping burden by approximately 2 hours. Since this 2 hour burden is a one-time occurrence for each hospital, the total burden associated with this particular requirement is 12,800 hours.

We further estimate that notifying patients and documenting notification efforts in patients' medical records will take approximately 1 hour per occurrence. As indicated in section III. of this preamble, we based this estimate on several assumptions: (1) The records on the patient had already been retrieved; (2) the physician of record was noted on the admission sheet; and (3) the hospital had the physician's correct telephone number or address. The time involved for each lookback case also may differ depending upon whether it was a single unit of blood given to one patient versus a unit of blood that was separated into several blood products and given to several patients. We considered each individual affected by the donor to be a separate notification case. FDA has estimated that approximately 60 lookback cases occur annually, with 16 involving patient notification. These cases are spread over approximately 6,600 hospitals, including approximately 200 hospitals that do not participate in the Medicare program. If we assume that all 16 cases involving patient notification were to occur in Medicare-participating hospitals, this requirement would increase the recordkeeping burden on these hospitals by a total of 16 hours.

The total paperwork and reporting burden on Medicare participating hospitals as a result of the information collection requirements in this rule is, therefore, estimated to be 12,816 (12,800+16) hours.

Organizations and individuals were given an opportunity to comment on these information collection requirements at the time the June 30, 1993 rule was published. However, because of the new estimate of the two-hour recordkeeping burden on hospitals resulting from the need to establish policies and procedures and to amend agreements with blood banks, we are again soliciting public comment on these information collection requirements and providing the 60-day notice. As also stated in the June 30, 1993 rule, a document will be published in the **Federal Register** after Office of Management and Budget approval is obtained.

Organizations and individuals desiring to submit comments on these information collection and recordkeeping requirements should send them to HCFA, OFHR, MPAS, C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

VI. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider hospitals, blood banks, and physicians to be small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule expands the scope of the notification requirements to include hospitals that release blood and blood products to another entity or appropriate individual. Physicians will be asked to inform the recipient of a potentially HIV infectious blood or blood product of the need for HIV testing and counseling. If the physician is unavailable, declines, or informs the hospital that he or she was unable to notify the patient, the hospital is responsible for notification. It also requires hospitals to quarantine blood or blood products collected during the "window" period pending completion of more specific testing.

The most recent estimates of the current HIV risk per unit is 1 in 420,000. These estimates are a dramatic improvement over the 1 in 487 odds that prevailed before HIV testing of the blood supply began in 1985. Appropriate efforts to further reduce the risk have occurred by public education, improved tests, donor questionnaires, and revised criteria for donor self-referral. However, it remains possible, despite the best practices of a blood bank, that a person might donate blood and blood products early in infection during the "window" period, the time it takes a recently infected person to develop the antibodies that screening tests are designed to detect. That window period is estimated to range from a few weeks to 6 months. Section 482.24 ("Condition of participation: Medical record services.") currently requires hospitals to maintain records for a period of 5 years. We expect hospitals will identify recipients of blood and blood products and meet the requirements of this rule to the extent the hospitals have records that permit them to do so.

As for ongoing activities, we anticipate that only a small number of cases per year can be traced to potentially HIV infectious blood and blood products, and thus, we do not expect these final regulations will result in a substantial economic or resource burden on small entities. In addition, since most hospitals, blood banks, and physicians are currently voluntarily complying with the requirements of these final regulations, the ramifications of these final regulations are not expected to be substantial. Because of the small number of cases detected, individual hospitals will be required to quarantine blood and blood products and notify blood recipients in only a few, if any, cases. Nevertheless, the policies and procedures must be written and periodically updated to ensure that appropriate and timely quarantine and patient notification take place. Though not significant, there will be an additional burden of time and resources on hospitals not currently involved in the notification process.

We believe the ongoing cost of notification after implementation of this regulation will not be significant or burdensome because the risk of a person being transfused with potentially HIV infectious blood and blood products is declining. Even though this final rule will affect few people per year, it is

important that we ensure that potentially infected people are notified so they may seek appropriate medical care or consider behavior changes so as not to infect others.

Therefore, we are not preparing analyses for either the RFA or small rural hospitals since we have determined, and we certify, that this final rule will not likely have a significant economic impact on a substantial number of small entities or have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

Under the provisions of Public Law 104–121, we have determined that this final rule is not a major rule.

List of Subjects in 42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Basic Hospital Functions

2. Section 482.27 is amended by adding a new paragraph (c) to read as follows:

§ 482.27 Condition of participation: Laboratory services.

* * * * *

(c) *Standard: Potentially infectious blood and blood products*—(1) *Potentially HIV infectious blood and blood products* are prior collections from a donor who tested negative at the time of donation but tests repeatedly reactive for the antibody to the human immunodeficiency virus (HIV) on a later donation, and the FDA-licensed, more specific test or other followup testing recommended or required by FDA is positive and the timing of seroconversion cannot be precisely estimated.

(2) *Services furnished by an outside blood bank.* If a hospital regularly uses the services of an outside blood bank, it must have an agreement with the blood bank that governs the procurement, transfer, and availability of blood and blood products. The agreement must require that the blood bank promptly notify the hospital of the following:

(i) If it supplied blood and blood products collected from a donor who tested negative at the time of donation but tests repeatedly reactive for the antibody to HIV on a later donation; and

(ii) The results of the FDA-licensed, more specific test or other followup testing recommended or required by FDA completed within 30 calendar days after the donor's repeatedly reactive screening test. (FDA regulations concerning HIV testing and lookback procedures are set forth at 21 CFR 610.45-et seq.)

(3) *Quarantine of blood and blood products pending completion of testing.* If the blood bank notifies the hospital of the repeatedly reactive HIV screening test results as required by paragraph (c)(2)(i) of this section, the hospital must determine the disposition of the blood or blood product and quarantine all blood and blood products from previous donations in inventory.

(i) If the blood bank notifies the hospital that the result of the FDA-licensed, more specific test or other followup testing recommended or required by FDA is negative, absent other informative test results, the hospital may release the blood and blood products from quarantine.

(ii) If the blood bank notifies the hospital that the result of the FDA-licensed, more specific test or other followup testing recommended or required by FDA is positive, the hospital must dispose of the blood and blood products in accordance with 21 CFR 606.40 and notify patients in accordance with paragraph (c)(4) of this section.

(4) *Patient notification.* If the hospital has administered potentially HIV infectious blood or blood products (either directly through its own blood bank or under an agreement described in paragraph (c)(2) of this section) or released such blood or blood products to another entity or appropriate individual, the hospital must take the following actions:

(i) Promptly make at least three attempts to notify the patient's attending physician (that is, the physician of record) or the physician who ordered the blood or blood product that potentially HIV infectious blood or blood products were transfused to the patient.

(ii) Ask the physician to immediately notify the patient, or other individual as permitted under paragraph (c)(8) of this section, of the need for HIV testing and counseling.

(iii) If the physician is unavailable, declines to make the notification, or later informs the hospital that he or she was unable to notify the patient, promptly make at least three attempts to notify the patient, or other individual as permitted under paragraph (c)(8) of this section, of the need for HIV testing and counseling.

(iv) Document in the patient's medical record the notification or attempts to give the required notification.

(5) *Timeframe for notification.* The notification effort begins when the blood bank notifies the hospital that it received potentially HIV infectious blood and blood products and continues for 8 weeks unless—

(i) The patient is located and notified; or

(ii) The hospital is unable to locate the patient and documents in the patient's medical record the extenuating circumstances beyond the hospital's control that caused the notification timeframe to exceed 8 weeks.

(6) *Content of notification.* The notification given under paragraphs (c)(4) (ii) and (iii) of this section must include the following information:

(i) A basic explanation of the need for HIV testing and counseling.

(ii) Enough oral or written information so that the transfused patient can make an informed decision about whether to obtain HIV testing and counseling.

(iii) A list of programs or places where the patient can obtain HIV testing and counseling, including any requirements or restrictions the program may impose.

(7) *Policies and procedures.* The hospital must establish policies and procedures for notification and documentation that conform to Federal, State, and local laws, including requirements for confidentiality and medical records.

(8) *Notification to legal representative or relative.* If the patient has been adjudged incompetent by a State court, the physician or hospital must notify a legal representative designated in accordance with State law. If the patient is competent, but State law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or his or her legal representative or relative. If the patient is deceased, the physician or hospital must continue the notification process and inform the deceased patient's legal representative or relative.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance; and Program No. 93.778, Medical Assistance Program)

Dated: July 11, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 11, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–22708 Filed 9–6–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document eliminates redundant words in 43 CFR 4.1(a) addressing authority of Administrative Law Judges to hold hearings within the Department of the Interior.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: James P. Terry, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203 Telephone: (703) 235–3810.

SUPPLEMENTARY INFORMATION: Because this action reflects agency management in deleting non-substantive, redundant language relating to scope of actions for which Administrative Law Judges within the Department of the Interior have existing hearing responsibility, the Department has determined that the provisions of the Administrative Procedures Act, 5 U.S.C. 553 (b) and (d), allowing for public notice and comment and a 30-day delay in the effective date of a rule, are unnecessary and impracticable.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Scope of authority, Applicable regulations.

Therefore, under the authority of the Secretary of the Interior contained in 5 U.S.C. 301, section 4.1(a) in Subpart A in Part 4 of Title 43 of the Code of Federal Regulations, is amended as follows:

PART 4—[AMENDED]

Subpart A—General; Office of Hearings and Appeals

1. The authority citation for Part 4 continues to read:

Authority: R.S. 2478, as amended, 43 U.S.C. 1201, unless otherwise noted.

2. Section 4.1(a) is revised to read as follows:

§ 4.1 [AMENDED]

* * * * *

(a) A Hearings Division comprised of administrative law judges who are authorized to conduct hearings in cases required by law to be conducted pursuant to 5 U.S.C. 554, and hearings in other cases arising under statutes and regulations of the Department, including rule making hearings, and

* * * * *

Dated: August 28, 1996.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 96–22815 Filed 9–6–96; 8:45 am]

BILLING CODE 4310–79–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Connection of Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which related to the connection of terminal equipment to the telephone network.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: William von Alven, (202) 418–2342.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to the means of connection of data terminal equipment to the telephone network and to the on-hook impedance limitations for all types of terminal equipment.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 47 CFR Part 68

Communications equipment, Telephone.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Accordingly, 47 CFR Part 68 is corrected by making the following correcting amendments:

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs 4, 5, 201–5, 208, 15, 218, 226, 227, 303, 313, 314, 403, 410, 602 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 602.

§ 68.104 [Corrected]

2. In § 68.104, paragraph (b), in the first sentence, the reference to "§ 68.308(a)(4) (i) or (ii)" is revised to read "§ 68.308(b)(4) (i) or (ii)".

§ 68.312 [Corrected]

3. In § 68.312, paragraph (b)(2), the reference to "paragraph (a)(1)(v)" is revised to read "paragraph (b)(1)(v)".

4. In § 68.312, paragraph (c)(2), in the tenth sentence, the reference to "paragraph (a)(2)" is revised to read "paragraph (b)(2)".

5. In § 68.312, paragraph (d)(1)(iv), the reference to "paragraph (a)(1)(iv)" is revised to read "paragraph (b)(1)(iv)".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–22701 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–U

47 CFR Part 73

[MM Docket No. 95–14; RM–8552]

Radio Broadcasting Services; Leavenworth, Othello, and East Wenatchee, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ronald A. Murray, d/b/a Murray Broadcasting, substitutes Channel 266A for Channel 249A at Leavenworth, Washington, and modifies Station KLVH(FM)'s construction permit accordingly. To accommodate the substitution, we also downgrade Channel 248C1 to Channel 248C3 at Othello, Washington, and modify Station KZLN-FM's construction permit accordingly; and substitute Channel 249A for Channel 266A at East Wenatchee, Washington, and modify Station KYSN(FM)'s license accordingly. *See* 60 FR 6689, February 3, 1995. Channel 266A can be allotted at Leavenworth in compliance with the Commission's minimum distance

separation requirements without the imposition of a site restriction at petitioner's authorized site. The coordinates for Channel 266A at Leavenworth are North Latitude 47–35–32 and West Longitude 120–38–35. Channel 248C3 can be allotted to Othello without the imposition of a site restriction at Station KZLN-FM's authorized site. The coordinates for Channel 248C3 at Othello are North Latitude 46–45–55 and West Longitude 119–16–49. *See* Supplementary Information, *infra*.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–14 adopted August 23, 1996, and released August 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 249A can be allotted to East Wenatchee without the imposition of a site restriction at Station KYSN(FM)'s authorized site. The coordinates for Channel 249A at East Wenatchee are North Latitude 47–22–52 and West Longitude 120–17–16. Since Leavenworth, Othello, and East Wenatchee are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 249A and adding Channel 266A at Leavenworth; removing Channel 248C1 and adding Channel 248C3 at Othello; and by removing Channel 266A and adding Channel 249A at East Wenatchee.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22845 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–96; RM–8645]

Radio Broadcasting Services; Lakeview, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 228C3 to Lakeview, Arkansas, as that community's first local aural transmission service, in response to a petition for rule making filed by Dale Hendrix. *See* 60 FR 35372, July 7, 1995. With this action, the proceeding is terminated.

DATES: Effective October 7, 1996. The window period for filing applications will open on October 7, 1996, and close on November 7, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 228C3 at Lakeview, Arkansas, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–96, adopted August 16, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Lakeview, Channel 228C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22846 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–106; RM–8655, RM–8698]

Radio Broadcasting Services; Hayden and Meeker, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297A to Hayden, Colorado, as that community's second local FM transmission service, in response to a petition for rule making filed on behalf of Thomas Broadcasting. *See* 60 FR 36772, July 18, 1995. Additionally, Channel 251C is allotted to Meeker, Colorado, in response to a counterproposal filed on behalf of 1530, LLC (RM–8698). Coordinates used for Channel 297A at Hayden, Colorado, are 40–29–42 and 107–15–30. Coordinates used for Channel 251C at Meeker, Colorado, are 40–02–24 and 107–55–00. With this action, the proceeding is terminated.

DATES: Effective October 15, 1996. The window period for filing applications will open on October 15, 1996, and close on November 15, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 297A at Hayden, Colorado, and for Channel 251C at Meeker, Colorado, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–106, adopted August 23, 1996, and released August 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 297A at Hayden.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Meeker, Channel 251C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22847 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–32; RM–8719]

Radio Broadcasting Services; Canton, MO and Canton, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 265C2 for Channel 265C3 at Canton, Missouri, and modifies the license for Station KRRY to specify operation on Channel 265C2, in response to a proposal filed by Bick Broadcasting Co. *See* 61 FR 10300, March 13, 1996. The coordinates for Channel 265C2 at Canton, Missouri, are 40–07–33 and 91–31–42. To accommodate the upgrade at Canton, Missouri, we shall substitute Channel 266A for Channel 265A at Canton, Illinois, and provide cut-off protection to the applicant for Channel 266A (BPH–951011MA). The coordinates for Channel 266A at Canton, Illinois, are 40–36–49 and 89–56–22. With this action this proceeding is terminated.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 96–32, adopted August 16, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 265C3 and adding Channel 265C2 at Canton.

3. Section 73.202(b), the Table of FM Allotments under Illinois is amended by removing Channel 265A and adding Channel 266A at Canton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22851 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–166; RM–8717]

Radio Broadcasting Services; Chama, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KNXX, Inc., allots Channel 255A to Chama, New Mexico, as the community's first local aural service. *See* 60 FR 56553, November 9, 1995. Channel 255A can be allotted to Chama in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36–54–12 North Latitude and 106–34–42 West Longitude. With this action, this proceeding is terminated.

DATES: Effective October 15, 1996. The window period for filing applications will open on October 15, 1996, and close on November 5, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–166, adopted August 23, 1996, and released August 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Chama, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22850 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–93; RM–8788]

Radio Broadcasting Services; Oxford, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Angel Broadcasting, allots Channel 286A to Oxford, Mississippi, as the community's fourth local FM service. *See* 61 FR 20207, May 6, 1996. Channel 286A can be allotted to Oxford in compliance with the Commission's minimum distance separation requirements with a site restriction of

11.2 kilometers (6.9 miles) north in order to avoid short-spacing conflicts with the licensed site of Station WBKJ(FM), Channel 286C1, Kosciusko, Mississippi, and with a construction permit for Station WLPX(FM)[formerly WYCG(FM)], Channel 288A, Water Valley, Mississippi. The coordinates for Channel 286A are at Oxford 34–28–06 and 89–30–33. With this action, this proceeding is terminated.

DATES: Effective October 7, 1996. The window period for filing applications will open on October 7, 1996, and close on November 7, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 96–93, adopted August 16, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 286A at Oxford.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22843 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 94–30, Notice 06]

RIN 2127–AF17

Consumer Information Regulations: Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the Uniform Tire Quality Grading Standards to: Revise treadwear testing procedures to maintain the base course wear rate of course monitoring tires at its current value of 1.34. This revision is expected to eliminate treadwear grade inflation, reduce testing expenses, and reduce the environmental consequences of operating test convoys for the purpose of calculating the base course wear rate for each new batch of course monitoring tires; and add a top end traction grading category of "AA" to the current traction grading categories of A, B, and C. The new AA category will make possible the differentiation of tires with the very highest traction characteristics from those with lower traction characteristics.

DATES: This final rule is effective March 9, 1998.

Any petition for reconsideration of this rule must be received by NHTSA not later than October 24, 1996.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers noted above for this rule and be submitted to the Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street SW, Room 5109, Washington, DC 20590; telephone (202) 366–4949. Docket room hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Orron Kee, Chief, Consumer Programs Division, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW, Room 5307, Washington, DC 20590; telephone (202) 366–0846; FAX (202) 493–2739. For legal issues: Mr. Walter K. Myers, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW, Room 5219, Washington, DC 20590; telephone (202) 366–2992; FAX (202) 366–3820.

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I. Introduction

This final rule amends the Uniform Tire Quality Grading Standards (49 CFR 575.104) to fix the base course wear rate of course monitoring tires at a permanent value of 1.34, and establishes an AA traction grade. A proposal in the agency's Notice of Proposed Rulemaking of May 24, 1995 (60 FR 27472) to rescind the temperature resistance grade and substitute therefor a fuel economy grade based on low rolling resistance characteristics of tires is not addressed in this notice (see the discussion in paragraph II(d) below).

II. Background

(a) *Current Provisions.* Section 30123(e) of Title 49, United States Code requires the Secretary of Transportation to prescribe a uniform system for grading motor vehicle tires to assist consumers in making informed choices when purchasing tires. Pursuant to that congressional mandate, NHTSA promulgated the Uniform Tire Quality Grading Standards (UTQGS) in 49 CFR 575.104. The UTQGS apply to new pneumatic tires for use on passenger cars, except deep tread, winter-type snow tires, space-saver or temporary-use spare tires, tires with nominal rim diameters of 10 to 12 inches, and limited production tires as defined in § 575.104(c)(2).

The UTQGS require tire manufacturers and tire brand name owners to grade their tires with respect to their relative treadwear, traction, and

temperature resistance performance. Treadwear grades are shown by numbers, such as 100, 150, and 200, while traction and temperature resistance grades are indicated by the letters A, B, and C, with A representing the best performance and C indicating the minimum level of performance necessary to comply with Federal Motor Vehicle Safety Standard No. 109, *New pneumatic tires.*

(1) *Treadwear.* Treadwear is graded by first running the tires being graded, called "candidate tires," over a selected 400-mile segment of public highway near San Angelo, Texas. After an 800-mile "break-in" run, the candidate tires are driven over the test course for a total of 6,400 miles in test convoys composed of 4 passenger cars and/or light truck vehicles. Each driver remains in the same position within the convoy. The vehicles are rotated among the 4 positions in the convoy regularly as are the positions of the tires on the test vehicles so that the tires get equal time with each driver, each vehicle, and each wheel position.

"Course monitoring tires" (CMT) are used as the control standard in grading candidate tires. CMTs are specially designed and built to American Society for Testing and Materials (ASTM) standard E1136 to have narrow limits of variability. When NHTSA procures a new batch, or lot, of CMTs, the agency establishes a new base course wear rate (BCWR) for that lot. The BCWR, measured in miles per thousand miles (MPTM), is established by running tires from the new lot of CMTs over the 6,400-mile test course, in the same manner as candidate tires, with tires from the previous batch of CMTs. A course severity adjustment factor (CSAF) for the CMTs is determined by dividing the BCWR for the old CMTs by the average wear rate of the old CMTs in the test. The wear rate of the new CMTs is then multiplied by the CSAF to determine the adjusted wear rate (AWR) of the new CMTs, which then becomes the BCWR for the new CMTs.

Once the BCWR for the new CMTs is established, these CMTs are used to grade candidate tires. Upon completion of the 6,400-mile test, the BCWR is divided by the average wear rate of the CMTs to determine the CSAF for the candidate tires. That factor is then applied to the wear rates of the candidate tires to obtain the AWR of the candidate tires. That AWR is then extrapolated to the point of wearout (considered to be 1/16th inch of remaining tread depth), which is then converted to the treadwear rating of the tire.

The BCWR is intended to provide a common baseline by which to grade candidate tires by relating all new CMTs to the original lot of CMTs. However, NHTSA has noted that the BCWRs of successive new lots of CMTs have been steadily declining over the years. Specifically, the first lot of CMTs procured from Goodyear Tire and Rubber Company (Goodyear) in 1975 yielded a BCWR of 4.44. The latest batch, procured by the agency in 1995, produced a BCWR of 1.34.

The significance of the decrease in the BCWR rate is that as the BCWR decreases, the treadwear grade increases. Consequently, the newer treadwear grades have increased to the point that they have become a somewhat misleading indicator of actual tread life when compared to tires tested with higher BCWRs.

(2) *Traction.* Traction grades are established by locked-wheel braking tests of traction on wet asphalt and wet concrete surfaces at the Uniform Tire Quality Grading Test Facility (UTQGTF), located at Goodfellow Air Force Base near San Angelo, Texas. A test trailer is equipped first with two control tires manufactured in accordance with ASTM standard E501. The trailer is towed over the wet asphalt surface at a speed of 40 miles per hour (mph) and one wheel equipped with a control tire is locked. The traction coefficient of that tire is recorded continuously and averaged for a period of 0.5 to 1.5 seconds after lockup. The UTQGTF is arranged so that the test trailers traverse both the asphalt and the concrete test surfaces in a loop. The test is repeated for a total of 10 times on each surface for each tire and the measurements taken on a surface are averaged to determine the control tire's traction coefficient for that surface. The purpose of testing the control tires is to monitor the friction properties of the asphalt and concrete surfaces to account for daily fluctuation due to environmental factors and the polishing effects of sustained use.

The same procedure is used to measure the locked-wheel braking traction coefficients of candidate tires. The measured traction coefficients of candidate tires are adjusted by the difference between the nominal coefficients of the control tires on the test surfaces (0.50 for the asphalt surface and 0.35 for the concrete surface) and the actual coefficient of the control tire run simultaneously with the candidate tire. Using this procedure, the measured coefficients of all candidate tires are adjusted to a common pavement friction basis for each of the test surfaces.

The grades of the candidate tires are currently designated as "A", "B", and "C". A tire achieving a high level of traction performance on both the wet asphalt (above 0.47μ) and the wet concrete (above 0.35μ) surfaces is graded "A." A tire achieving medium traction performance (above 0.38μ on wet asphalt and above 0.26μ on wet concrete) is graded "B." A tire achieving a traction performance level of 0.38μ or less on the wet asphalt and 0.26μ or less on wet concrete is graded "C."

(b) *Request for Comments.* As a result of the White House Conference on Global Climate Change held on June 10 and 11, 1993, the White House issued a report announcing nearly 50 initiatives to reduce greenhouse gas emissions in the United States. The report, entitled "Climate Change Action Plan," was issued on October 19, 1993 and, among other things, calls for reduction of greenhouse gas emissions to 1990 levels by the year 2000. One such initiative called for DOT, through NHTSA, to issue new rules and test procedures requiring tire manufacturers to test and label tires relative to their fuel economy based on their rolling resistance. [1]

Pursuant to the Climate Change Action Plan, NHTSA published a Request for Comments on April 25, 1994 (59 FR 19686) seeking responses to a series of questions regarding available data on rolling resistance and testing procedures. The notice also posed questions concerning whether and how the treadwear testing procedures should be changed; and whether a traction grade of "AA" should be created to identify those tires with clearly superior traction characteristics. NHTSA also asked whether the UTQGS should include peak traction, how it should be measured and expressed, and the cost of measuring peak traction. [2] NHTSA noted that if peak traction performance of tires differed substantially from sliding traction, an alternative traction grading procedure might be necessary.

(c) *Notice of Proposed Rulemaking.* After consideration of the 34 timely comments received in response to the Request for Comments, NHTSA published a Notice of Proposed

[1] Action #22: "DOT, through the National Highway Traffic Safety Administration, will adopt test procedures and new DOT rules requiring tire manufacturers to test and label (for fuel economy based on rolling resistance). DOT will also create a consumer-focused publicity program and a monitoring-program in order to realize maximum benefits. The Administration is proposing to obligate $0.3 million in FY 1995 for this action and $2 million through 2000."

[2] Peak traction is the primary traction force in anti-lock braking systems in which maximum braking action is obtained while the tire is still rolling.

Rulemaking (NPRM) on May 24, 1995 (60 FR 27472), with a comment closing date of July 10, 1995.

(1) *Treadwear.* The agency proposed to freeze the BCWR of the CMTs used in treadwear grading at its then-current value of 1.47 MPTM in an attempt to reduce treadwear grade creep.

The agency explained in the NPRM that it had considered many possible explanations for the consistent decrease in the BCWR of the CMTs, such as differences in climatic variations, changes in course severity, non-uniformity of wear rates among tires in the same lot, effects of aging and storage of CMTs, and errors in the BCWR' calculation. To minimize the aging/storage factor, the agency now wraps CMTs in polyethylene bags for storage in a facility in which, although not temperature controlled, the temperature varies only between 50° and 90° Fahrenheit throughout the year. The agency then proposed fixing the BCWR at 1.47 MPTM to address the possibility of an error in the BCWR calculation. The agency believed that in addition to reducing, if not eliminating, the treadwear grade inflation, fixing the BCWR at a single figure would eliminate the time and expenditure of scarce resources required for operating test convoys for each new lot of CMTs, as well as eliminating the environmental impacts of operating those convoys.

(2) *Traction.* The agency further proposed to create a traction grade of "AA" to distinguish those tires with superior traction characteristics from those with lower traction performance characteristics.

NHTSA noted in the NPRM that analysis of traction data since 1989 revealed that traction performance has improved to the extent that the current grading system does not adequately differentiate between tires with varying levels of traction performance, particularly the tires showing the highest levels of traction performance. To address that situation, the agency solicited comments in the Request for Comments on whether the traction grading rules should be amended to differentiate more clearly between the highest performing tires. After considering the responses to the Request for Comments, NHTSA proposed to establish a new traction grading category of "AA" for tires achieving traction coefficients of more than 0.54μ on wet asphalt and more than 0.41μ on wet concrete [3]. NHTSA stated that since the "AA" category would be optional, manufacturers would incur no additional costs beyond modifying paper labels and sales brochures to reflect 4 traction grades instead of three. On the other hand, an "AA" category might provide an incentive to manufacturers to improve the traction performance of their tire lines.

With respect to the peak traction data solicited in the Request for Comments, NHTSA decided, based on the comments received, not to propose inclusion of peak traction in the traction ratings at this time. NHTSA noted that the majority of vehicles currently on the road are not equipped with ABS. The significance of that fact is that those vehicles continue to depend on sliding traction rather than peak traction for maximum stopping action. In addition, several tire manufacturers commented that peak traction performance is highly correlated with sliding traction performance.

(3) *Fuel Economy.* The agency proposed in the NPRM to rescind the temperature resistance grade and substitute therefor a fuel economy rating based on low rolling resistance characteristics of the tire.

(4) *Comments.* The NPRM generated 120 comments, all of which addressed the fuel economy proposal, while 10 commented on the traction proposal and 12 on the treadwear proposal. Commenters to the fuel economy proposals included several members of the U.S. Congress; the Secretary of Energy; tire manufacturers, wholesalers, and retail dealers, including their foreign plants and subsidiaries; environmental, safety, and consumer advocates; educators; and members of the public. Except for a certain few tire manufacturers, the majority of the tire industry and certain members of Congress strongly opposed the fuel economy proposal. The Secretary of Energy, on the other hand, along with most advocacy groups and most members of the public, supported it.

In response to a number of requests, the agency extended the NPRM comment period to August 14, 1995 (60 FR 34961, July 5, 1995) and hosted a public meeting on the UTQGS proposals on July 28, 1995. Twenty-five representatives of the groups enumerated above made oral presentations at the meeting while a number of others, including several members of Congress, filed written submissions. Nearly all the statements presented at the meeting, whether oral or written, addressed the fuel economy issue, expressing positions on both sides of the issue. Thereafter, in response to further requests, the agency again extended the NPRM comment period to September 1, 1995 to permit participants at the public meeting an opportunity to file written responses to matters presented at the public meeting (60 FR 42496, August 16, 1995).

Although the comment period closed on September 1, 1995, NHTSA continued to receive correspondence on both sides of the rolling resistance issue, including letters from various members of the Congress.

(d) *DOT Appropriations Act of 1996.* In early November, 1995, while NHTSA was still evaluating the comments and data from the NPRM and the public meeting, the Transportation Appropriations Act for Fiscal Year 1996 was enacted. Amendment number 66 to that Act prohibited the obligation or expenditure of any funds

> [T]o plan, finalize, or implement any rulemaking to add to section 575.104 of title 49 of the Code of Federal Regulations any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect.

NHTSA discontinued rulemaking activity on the fuel economy issue, but continued to assess the comments on the treadwear and traction proposals. Accordingly, this final rule addresses only the latter two proposals.

(e) *Public Comments on the NPRM.*

(1) *Treadwear.* Some commenters supported the proposal to fix the BCWR at the current figure, others supported the proposal as better than nothing, and still others opposed it. Regardless of their support for fixing the BCWR at a single figure, all commented that the present treadwear test procedure is inadequate and a new test procedure should be devised.

Michelin, The Cooper Tire Company (Cooper), Continental General Tire, Inc. (CGT), and the Rubber Manufacturers Association (RMA) supported the proposal to fix the BCWR at its current value so that further grade inflation will not occur. RMA and CGT agreed that the BCWR should be fixed immediately at 1.34 to prevent any further deterioration of the treadwear grades. Bridgestone/Firestone, Inc. (BF) supported fixing the BCWR, although it regards the BCWR itself as invalid in view of the consistency of the quality of modern tires. Similarly, Hercules Tire and Rubber Company (Hercules) supported freezing the BCWR at its current value "or simply scrapping the system and starting over." Goodyear commented that the treadwear grade itself should be removed from the UTQGS because as manufacturers' treadwear warranties continue to improve, the treadwear labels under the UTQGS become less

[3] The preamble in the NPRM erroneously discussed a traction coefficient value of 0.41μ for the wet concrete surface. The correct value should have been 0.38μ.

significant for tire consumers. If the grade is not eliminated, however, Goodyear supports freezing the BCWR at its current value. Nevertheless, the company, like some other commenters, believes the treadwear test to be unreliable, inaccurate, cumbersome, costly, and environmentally unfriendly.

The Kelly Springfield Tire Company (Kelly) and Multinational Business Services, Inc. (MBS) oppose fixing the BCWR at a single figure. The European Tyre and Rim Technical Organisation (ETRTO) stated that changing the BCWR would be misleading to consumers because too many factors have an influence on the test results. Kelly stated that the treadwear grade should be eliminated and that freezing the BCWR would not make the treadwear rating any less confusing to consumers. Advocates for Highway and Auto Safety (Advocates), MTS Systems Corporation (MTS), and Herzlich Consulting, Inc. (Herzlich) expressed no opinion on freezing the BCWR, but commented at length on the inadequacy of the treadwear test. Advocates stated that using CMTs to determine the treadlife of all candidate tires creates test conditions that are arguably much less demanding than actual operating conditions on the road. MTS stated that the treadwear test should be conducted in an indoor test lab under controlled, repeatable conditions.

(2) *Traction.* Ten commenters, including 8 tire manufacturers, submitted comments on the "AA" traction proposal. Two supported the proposal, while the rest opposed it.

In support of the proposal, Michelin stated that creation of an additional traction grade would provide more differentiation between tires with superior traction characteristics without having to redefine the current A, B, and C levels. ETRTO stated that the present traction grades are generally acceptable and should be maintained, but if NHTSA wants to add a grade to indicate higher traction characteristics, ETRTO would prefer to maintain the present grades as they are and add an "AA" grade.

In opposing the addition of an "AA" grade to the traction category, Goodyear, Cooper, Dunlop, and CGT all stated that the traction test procedures were flawed and should be revised to reflect more accurately the true traction characteristics of tires. Goodyear, Dunlop and Kelly stated that the test procedure does not allow tires designed for hydroplane resistance to demonstrate that feature. Goodyear asserted that the average water depth of 0.02 inches used in the UTQGS test procedure is less than half the industry standard depth of 0.05 inches. Thus, the water depth used in traction grading favors tires with less void area. Dunlop suggested that a hydroplaning test be conducted in water depths of up to 15 millimeters (0.6 inches). Finally, Goodyear repeated its assertion made in earlier comments that the new test pads used at the UTQGTF caused traction grades to go down, and adding an "AA" grade would only accentuate the flaws in the test procedure.

Cooper asserted that the current test procedure is not repeatable or sensitive enough to detect the real differences between tires. For example, the ASTM "standard" tire is a straight-ribbed bias tire designed to be specially sensitive to differences in road surfaces, while candidate tires are commercial radial tires designed to yield good traction performance over a wide range of road surfaces and weather conditions.

Dunlop stated that the traction test is an insufficient basis for a traction grade because it is only a straight-ahead test on a damp surface. Dunlop and CGT suggested that, to be more accurate, the test should include accelerating traction, cornering traction, and traction testing under varying ambient conditions. Dunlop also suggested that if the current traction test procedures were not eliminated, a wet lateral braking test should be conducted over 2 different friction surfaces where deceleration Gs are measured and stopping distances calculated. Finally, Dunlop suggested adding the word "wet" to traction labels because the current straight-ahead test renders the traction rating "inconclusive" as a benefit to consumers whose vehicles are equipped with ABS.

MBS stated that the traction rating, based solely on sliding traction, is not helpful because it indicates nothing about other traction characteristics. MBS asserted that the traction rating should include peak traction performance for consumers with vehicles equipped with ABS. Kelly, however, stated that although there is a correlation between peak and sliding traction and that both values can be considered for grading purposes, the results are dependent on the differences among the various types of ABS systems. Thus, since a significant majority of vehicles in service are not equipped with ABS, sliding traction values rather than peak traction values should be retained for the traction ratings.

MBS and Dunlop argued that adding an AA grade could confuse consumers and mislead them because straight-ahead, sliding traction may not be best for ABS-equipped vehicles. Kelly stated that consumers could be confused by the limited amount of differentiation within the AA category. MBS and Cooper stated that the traction test should be redesigned and improved to be repeatable, sensitive, and relevant, and that research and testing should be conducted to ascertain the correlations among the different tire traction characteristics.

Advocates strongly opposed adding an AA rating to the UTQGS. Rather, Advocates favored increasing the minimum requirements for the existing grades. Advocates argued that adding an AA grade would not be as much of an incentive for tire manufacturers to improve the traction characteristics of their tires as would increasing minimum grade requirements. Advocates further asserted that adding an AA grade would only give manufacturers an excuse to charge higher prices for more highly-rated tires, thereby providing them larger profits.

Finally, Kelly stated that although the cost of tire mold reworking would be minimal, the costs associated with the proposed change would not be insignificant. Kelly stated that the 6,750 paper labels used in the Kelly production scheme would have to be changed to reflect the 4-grade traction rating system when only a very small number of higher grade changes would occur. Kelly asserted that the cost of changing those labels would be significant due to the necessity for new artwork, production of new labels, and subsequent destruction or other disposal of obsolete labels. CGT estimated that adding an AA grade would incur costs of $48,000 for new labels and required point-of-sale information. Like Kelly, Dean Tire & Rubber Company argued that adding an AA rating to the UTQGS would increase costs with no commensurate benefit.

III. Agency Decision

(a) *Treadwear.* NHTSA does not disagree that the treadwear grading procedure could be further improved. NHTSA does disagree, however, with Goodyear and Kelly that the treadwear grade should be eliminated. As the agency noted in the NPRM, 74 percent of consumers are familiar with the treadwear rating and 29 percent consider it in purchasing tires. Thus, the solution is not to eliminate the treadwear rating, but to improve the grading procedure to make the rating as meaningful and helpful as possible to the tire-buying public.

As stated above, when the NPRM was published on May 24, 1995, the then-current BCWR was 1.47 MPTM. Since that time, a new lot of CMTs was

procured and calibrated with a BCWR of 1.34. Thus, the BCWR continues its steady decline. To control that decline, this final rule announces the freezing of the BCWR at 1.34. Nothing in the comments has dissuaded NHTSA from believing that freezing the BCWR at 1.34 will significantly reduce, if not eliminate altogether, any variation in the grading results between lots. The agency also believes that the use of ASTM-specification tires with strict quality control will also contribute to controlling any lot-to-lot variations. NHTSA notes that the changes in the BCWRs have been consistently in the downward direction. If tire performance were changing appreciably due to production variables, the BCWR could be expected to change randomly in either direction.

NHTSA also disagrees with the commenters that stated that manufacturers' treadwear warranties have progressed to the point that they can supplant the UTQGS treadwear ratings. One manufacturer acknowledged that manufacturers' treadwear warranties are not always based on test results. Further, not all tires carry manufacturers' warranties and the terms of such warranties are not uniform. Accordingly, NHTSA believes that the UTQGS treadwear ratings are more accurate, consistent, and meaningful to consumers than manufacturers' warranties because the UTQGS ratings are based on uniformly applicable criteria.

The commenters' suggestions for changing the treadwear grading procedure fall into 2 basic categories: Revising the road test and developing a laboratory test. The commenters favoring the revised road test stated that the San Angelo test course is too mild and that, with the great improvement in treadwear in recent years, a test of only 6,400 miles does not provide sufficient tread wear on which to base reliable projections to wearout. The commenters that favored the laboratory test argued that a lab test would eliminate the need for CMTs and test convoys and would provide consistent, repeatable test results. In neither case did commenters suggest any specific test procedures nor offer any data that could form the basis for development of revised tests. NHTSA believes that adoption of either of these alternatives could entail considerable expenditure of funds and resources. Expansion of the road test to more closely approximate full-life testing of treadwear would increase the test duration and significantly increase costs and environmental impact. NHTSA's experience has shown that laboratory test machines lose repeatability because the abrasive surfaces of the test wheels tend to fill up with rubber particles. Accordingly, NHTSA does not believe that either of these alternatives is practicable at this time. The agency has, however, requested the assistance of the ASTM F9 committee in devising a better treadwear test. In addition, the agency intends to request data on the effects of aging on treadwear performance and storage procedures to reduce aging in a future **Federal Register** notice.

NHTSA believes, therefore, that until a better treadwear grading procedure can be devised, the BCWR should be fixed at its present value of 1.34 MPTM. The establishment of a BCWR for a new lot of CMTs does not normally need to be promulgated by rulemaking action published in the **Federal Register**. In this case, however, since the agency solicited public comment on its proposal to change the procedure for calculating the BCWR by fixing it at a permanent value, the agency deems it appropriate to announce this decision in the **Federal Register**.

(b) *Traction.* As noted above, Goodyear again commented that the new skid pads at the UTQGTF are more severe than the old pads in traction rating. NHTSA notes that the skid pads were changed in December 1991, and acknowledges that there may be a statistical difference in test results between the new pads and the old pads. Since the old pads no longer exist, however, the agency is not able to make a comparison for the purpose of devising a possible correction factor. Nevertheless, the agency believes that any differences in the test results do not significantly affect the traction ratings of tire lines and in any case, new tire lines should by now, after nearly 5 years, have replaced those tested on the old skid pads. Thus, most tires should by now be graded on a common basis.

Several commenters proposed other types of traction testing, including the testing of hydroplaning, cornering, acceleration, and peak traction characteristics, and testing in various water depths, ambient conditions, and road surfaces. While the agency regards these suggestions as worthy of consideration, they go beyond the scope of the proposals in the NPRM. Those traction factors could, however, be the subject of future agency research.

While Dunlop's suggestion that the traction grade be labeled "wet traction" on the tire sidewall and on other required labels may be somewhat more informative to the public, such a change would require the modification of tire molds, tread labels, and point-of-sale brochures. NHTSA believes that the costs associated with such a subtle change could not be justified by any perceived benefit.

NHTSA does not agree with Advocates' suggestion for raising the cutoff values for the existing traction grades rather than establishing a new grading category. The agency believes that considerable public confusion could be generated during the transition to the higher cutoff values where tires bearing the same grade but with significantly different traction characteristics are available side-by-side on store shelves. Such a transition could be lengthy because changing tire molds could take as long as 2 to 3 years and some tires may remain in dealers' stocks for a year or more. Further, since the UTQGS are only consumer information and do not establish minimum traction performance levels, the agency believes that simply adding an "AA" grade to the UTQGS traction ratings is the simplest, least confusing, least burdensome, and most cost effective way of differentiating between those few tire lines with the highest traction performance characteristics and those tire lines with lower levels of performance.

Advocates expressed concern that manufacturers would increase their prices for AA rated tires to the detriment of consumers. NHTSA acknowledges that manufacturers may choose to increase the prices of their AA traction-rated tires. However, the agency regards that as the type of marketing decision that manufacturers, distributors, and dealers are free to make in response to any product rating program. NHTSA believes that a tire rated AA for traction identifies that tire as one with superior traction performance and even if it costs slightly more, the consumer is advised of the specific characteristics of the tire from which he or she can make an informed purchasing decision.

NHTSA believes that while there may be some costs associated with the preparation and printing of tread labels and point-of-sale brochures, such costs can be minimized with adequate lead time. Manufacturers typically revise their labels and brochures annually, presumably not printing them in unlimited quantities. Thus, a lead time of 18 months should permit new labels and brochures to be prepared and printed in accordance with the normal business cycle, without undue scrappage of obsolete material. With respect to changing tire molds, the agency notes that since an AA rating is optional, tire manufacturers have an unlimited time in which to change molds on qualifying tire lines, if they decide to rate their tires with a traction

grade of AA at all. Accordingly, NHTSA believes that the minor costs associated with this rulemaking are well justified by the value of this rulemaking to consumers (see detailed discussion of costs and benefits in Section IV, below).

The agency proposed the AA rating criteria in the NPRM based on the statistical distribution of traction test results of 254 tire lines tested on the new skid pads at the UTQGTF. The distribution of the traction coefficients of the tested tires showed a mean, or average, value of 0.516 on wet asphalt and 0.364 on wet concrete, with a standard deviation of 0.029 on the wet asphalt and 0.017 on the wet concrete. Since those calculations were made, NHTSA has tested 40 additional tire lines. The mean plus one standard deviation for the entire population of 294 tires is 0.548 for asphalt and 0.387 for concrete. This compares to the values of the mean minus one standard deviation of 0.484 for asphalt and 0.341 for concrete, which are close to the current threshold values for the A grade. The agency believes that the proposed AA traction grade threshold is statistically compatible with the ranges for the A grade and the combined ranges of the B and C grades since, of the 294 tires tested, only 34 (12 percent) would qualify for the AA traction grade while 213 (72 percent) would qualify for the A grade. Thus, there should be approximately the same number of tire lines graded AA as are graded B and C.

IV. Cost/Benefit Analysis

(a) *Treadwear.* The fixing of the BCWR at a permanent value of 1.34 MPTM will not cause the Federal government or tire manufacturers to incur any additional costs. Instead, it will substantially reduce the cost of CMTs to tire testers and remove the necessity for the government to contract for one test convoy each year.

Tire manufacturers routinely purchase CMTs from lots procured by the government for testing of their tire lines. Prior to September 1, 1995, NHTSA charged $304.50 per tire. A DOT Inspector General audit, however, concluded that NHTSA was not recovering the full cost of purchasing, storing, and testing the CMTs. By final rule published on August 2, 1995 (60 FR 39269) NHTSA started charging $379.00 per tire, effective September 1, 1995. That charge included the government's purchase price of $250.00, $45.00 in testing costs to establish the BCWR, $34.00 for storage costs, and $50.00 for general facility costs and related salaries.

NHTSA estimates that fixing the BCWR at a permanent value will eliminate the need to calibrate new lots of CMTs, perhaps even eliminating the need for the government to purchase and store CMTs for resale. The savings to the government realized by not having to procure and store CMTs for resale and by not having to operate at least one test convoy per year is difficult to quantify. However, manufacturers purchasing CMTs from the government, even though they would no longer need to, could realize savings of from $45.00 to $95.00 per tire. At least the $45.00 testing cost could be saved, as well as perhaps some or all of the storage and/or facility costs.

Although the specific benefits of this change are also difficult to quantify, it is expected to reduce or eliminate the treadwear grade inflation experienced in the past, thereby relieving manufacturers of the possible need to retest certain tire lines and providing consumers more consistent and reliable treadwear grade information.

(b) *Traction.* The addition of an AA traction grade will not require any additional testing by manufacturers. Further, as previously noted, the assessing of an AA traction grade is optional for manufacturers. Accordingly, any costs associated with changing tire molds to show an AA grade can be phased in at the manufacturers' convenience and during the regular course of reworking the molds for their tire lines. In any case, only a very few tire lines will be affected. Accordingly, NHTSA estimates that there should be no additional mold or testing costs to manufacturers as a result of this change.

The only additional costs required by this change will be to indicate the existence of a new traction grade on tread labels and point-of-sale brochures. CGT estimated this cost to be $48,000. Pirelli estimated the cost of new artwork for labels to be $12,000 and the cost of brochures and dealer price books at $104,000. Kelly stated that 6,750 label designs would need to be changed, but gave no cost figure. Goodyear estimated that it would cost $26,000 for new labels and $120,000 for new point-of-sale brochures. MBS estimated that the costs of new labels and brochures would be $15 million for the tire industry.

None of the commenters specified whether the costs they quoted were additional annual costs or whether those were one-time costs associated with adding a description of the AA grade for the first time. Tire manufacturers update and reissue their labels and brochures periodically, normally annually, to account for new tire lines and improvements or changes in existing tire lines. It follows, therefore, that once a description of the AA grade is printed on/in the labels and brochures, that description can be repeated without change on subsequent labels and brochures without adding any additional costs to those printings. Accordingly, the agency assumes the figures quoted above are one-time costs only.

The MBS estimate of $15 million appears to be very high, compared to the figures estimated by the manufacturers themselves. Even so, NHTSA regards $15 million as a maximum figure applicable to the entire tire industry that, as previously pointed out, would be a one-time expenditure only.

This change will substantially benefit consumers by allowing them to identify those tire lines with the highest traction performance characteristics, thereby providing them even greater tire selectivity and allowing them to make even more-informed choices. In addition, NHTSA believes that introduction of an AA traction rating will provide an incentive to tire manufacturers to improve the traction performance of new tire lines, thereby contributing to motor vehicle safety.

V. Rulemaking Analyses and Notices

(a) Executive Order No. 12866 and DOT Regulatory Policies and Procedures

This document was reviewed under Executive Order No. 12866, *Regulatory Planning and Review.* NHTSA has analyzed the impact of this rulemaking action and has determined that it is "significant" under the DOT's regulatory policies and procedures because the proposal which preceded it contained an issue of substantial public and congressional interest. That issue, the substitution of a fuel economy grade for the existing temperature resistance grade, is not addressed in this final rule.

The Preliminary Regulatory Evaluation prepared by this agency for the 1995 NPRM remains valid as to the amendments adopted in this final rule. See section IV, Cost/Benefit Analysis, above for a full discussion of cost savings, additional costs, and proposed anticipated benefits of this rulemaking.

(b) Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the amendments promulgated by this final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis has not been prepared.

The agency believes that few, if any, tire manufacturers qualify as small

businesses. Small businesses, small organizations, and small governmental units may be affected by this rulemaking action only to the extent that they could possibly pay slightly more for tires that are graded AA for traction performance characteristics.

(c) Executive Order 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

(d) National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action will not have any significant impact on the quality of the human environment.

(e) Paperwork Reduction Act

The provisions of this final rule requiring manufacturers to mold certain information into or onto the sidewalls of tires and to affix labels to tires explaining the tire quality grades for the benefit of consumers are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for 49 CFR 575.104 have been submitted to and approved by OMB pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. § 3501, *et seq.* This collection of information authority has been assigned OMB control number 2127–0519, *Uniform Tire Quality Grading Standards, 49 CFR Part 575.104*, and has been approved for use through September 30, 1998.

(f) Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, a state may prescribe a standard for a motor vehicle or equipment obtained for its own use that imposes a higher performance requirement than the Federal standard. 49 U.S.C. § 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

1. The authority citation for Part 575 continues to read as follows:

Authority: 49 U.S.C. §§ 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 575.104 is amended by revising paragraph (d)(1)(i)(B); (d)(1)(iii); (d)(2)(i); the introductory text of (d)(2)(ii); (e)(2)(ix)(C); Figure 1; Part I and the introductory text of Part II of Figure 2; and the paragraph entitled "Traction" in Part II of Figure 2; by adding paragaph (d)(2)(ii)(D); and by removing paragraphs (i), (j), (k), and (1), to read as follows:

§ 575.104 Uniform Tire Quality Grading Standards.

* * * * *

(d) *Requirements*—(1) *Information.*

(i) * * *

(A) * * *

(B) Each tire manufactured on and after the effective date of these amendments, other than a tire sold as original equipment on a new vehicle, shall have affixed to its tread surface so as not to be easily removable a label or labels containing its grades and other information in the form illustrated in Figure 2, Parts I and II. The treadwear grade attributed to the tire shall be either imprinted or indelibly stamped on the label containing the material in Part I of Figure 2, directly to the right of or below the word "TREADWEAR." The traction grade attributed to the tire shall be indelibly circled in an array of the potential grade letters AA, A, B, or C, directly to the right of or below the word "TRACTION" in Part I of Figure 2. The temperature resistance grade attributed to the tire shall be indelibly circled in an array of the potential grade letters A, B, or C, directly to the right of or below the word "TEMPERATURE" in Part I of Figure 2. The words "TREADWEAR," "TRACTION," AND "TEMPERATURE," in that order, may be laid out vertically or horizontally. The text of Part II of Figure 2 may be printed in capital letters. The text of Part I and the text of Part II of Figure 2 need not appear on the same label, but the edges of the two texts must be positioned on the tire tread so as to be separated by a distance of no more than one inch. If the text of Part I and the text of Part II of Figure 2 are placed on separate labels, the notation "See EXPLANATION OF DOT QUALITY GRADES" shall be added to the bottom of the Part I text, and the words "EXPLANATION OF DOT QUALITY GRADES" shall appear at the top of the Part II text. The text of Figure 2 shall be oriented on the tire tread surface with lines of type running perpendicular to the tread circumference. If a label bearing a tire size designation is attached to the tire tread surface and the tire size designation is oriented with lines type running perpendicular to the tread circumference, the text of Figure 2 shall read in the same direction as the tire size designation.

* * * * *

(iii) In the case of information required in accordance with § 575.6(a) to be furnished to the first purchaser of a new motor vehicle, each manufacturer of motor vehicles shall, as part of the required information, list all possible grades for traction and temperature resistance and restate verbatim the explanation for each performance area specified in Figure 2. The information need not be in the format of Figure 2, but it must contain a statement referring the reader to the tire sidewall for the specific tire grades for the tires with which the vehicle is equipped.

(2) *Performance.*—(i) *Treadwear.* Each tire shall be graded for treadwear performance with the word "TREADWEAR" followed by a number of two or three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. Treadwear grades shall be expressed in multiples of 20 (for example, 80, 120, 160).

(ii) *Traction.* Each tire shall be graded for traction performance with the word "TRACTION," followed by the symbols AA, A, B, or C, when the tire is tested in accordance with the conditions and procedures specified in paragraph (f) of this section.

* * * * *

(D) The tire may be graded AA only when its adjusted traction coefficient is both:

(*1*) More than 0.54μ when tested in accordance with paragraph (f)(2) of this section on the asphalt surface specified in paragraph (f)(1)(i) of this section; and

(*2*) More than 0.38μ when tested in accordance with paragraph (f)(2) of this

section on the concrete surface specified in paragraph (f)(1)(i) of this section.

* * * * *

(e) * * *

(2) * * *

(ix) * * *

(C) Determine the course severity adjustment factor by assigning a base course wear rate of 1.34 to the course monitoring tires and dividing that rate by the average wear rate for the four course monitoring tires.

* * * * *

(i) Removed.

(j) Removed.

(k) Removed.

(l) Removed.

* * * * *

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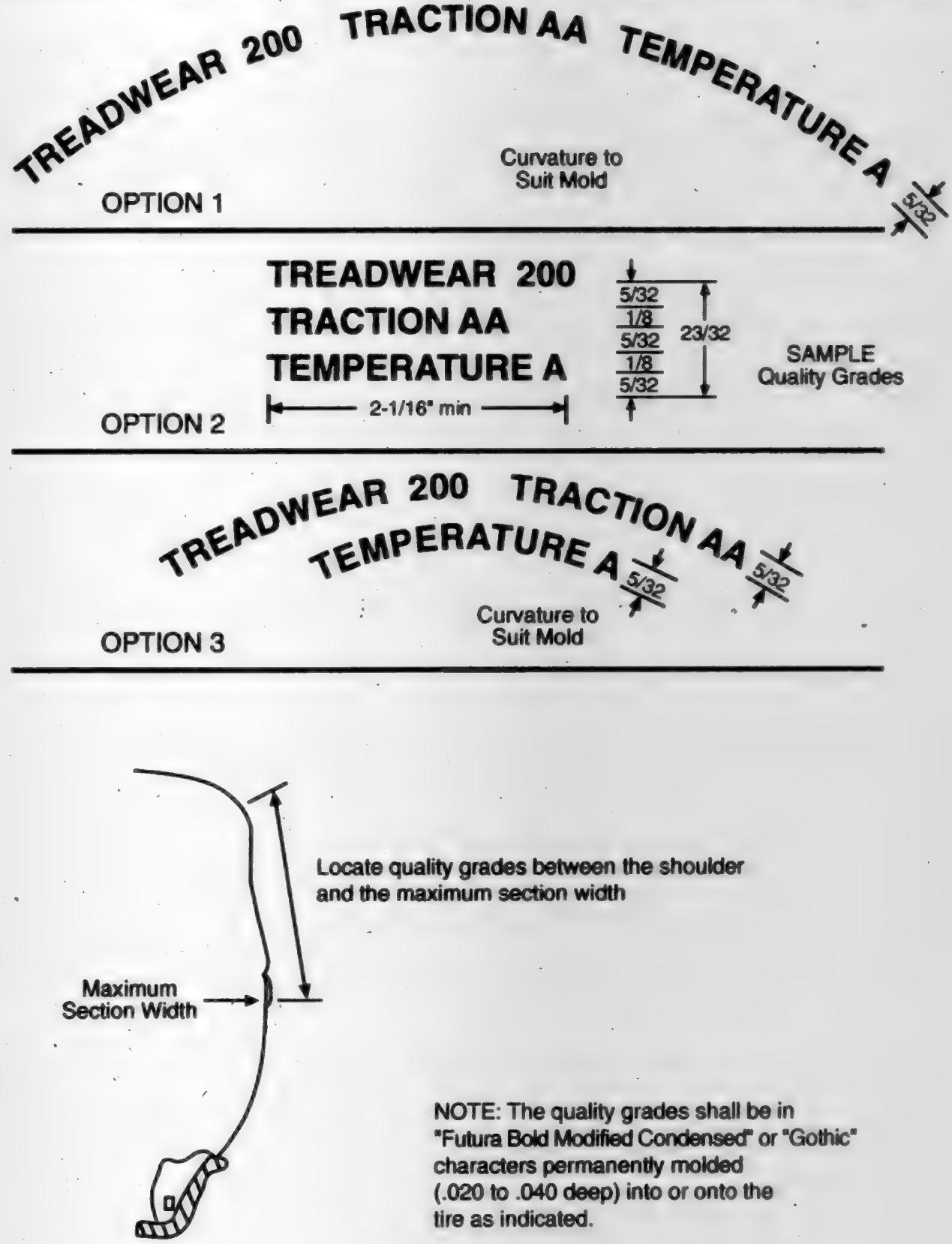

Figure 1

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Figure 2—[Part I]—DOT QUALITY GRADES

TREADWEAR
TRACTION AA A B C
TEMPERATURE A B C

(Part II) All Passenger Car Tires Must Conform to Federal Safety Requirements In Addition To These Grades

* * * * *

TRACTION

The traction grades, from highest to lowest, are AA, A, B, and C. Those grades represent the tire's ability to stop on wet pavement as measured under controlled conditions on specified government test surfaces of asphalt and concrete. A tire marked C may have poor traction performance. Warning: The traction grade assigned to this tire is based on straight-ahead braking traction tests, and does not include acceleration, cornering, hydroplaning, or peak traction characteristics.

* * * * *

Issued on August 30, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–22761 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 35)]

Rail General Exemption Authority—Exemption of Ferrous Recyclables

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under 49 U.S.C. 10502, the Surface Transportation Board is exempting from regulation the transportation by rail of blast furnace, open hearth, rolling mill or coke oven products, NEC (STCC Commodity Group No. 33–119). This commodity group is added to the list of exempt commodities, as set forth below, and is intended to eliminate unnecessary regulation.

EFFECTIVE DATE: October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Since the Interstate Commerce Commission's [1] decision of May 16, 1995 (60 FR 26839, May 19, 1995), in this proceeding, which refrained from exempting commodities in STCC Commodity Group No. 33–119 because it included certain recyclable materials deemed to be nonferrous, Congress has passed the ICCTA. The ICCTA repealed the special statutory protections for transportation of nonferrous recyclable commodities. As a consequence, because regulation of the rail transportation of commodities in STCC Commodity Group No. 33–119 is not necessary, rather than distinguishing between ferrous and nonferrous commodities within the commodity group, we will exempt the entire five-digit commodity group.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10701 *et seq.* Citations are to the current sections of the statute.

Regulatory Flexibility Act

The Board certifies that this exemption will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This exemption will reduce regulation; it imposes no new reporting or other requirements directly or indirectly on small entities.

Environment and Energy

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1039

Intramodal transportation, Manufactured commodities, Railroads.

Decided: August 27, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 13301.

2. Section 1039.11, paragraph (a), is amended by adding the following new entry to the end of table:

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
*	*	*
33 119	6001–X, eff. 1–11–96	Blast furnace, open hearth, rolling mill or coke oven products, NEC.
*	*	*

[FR Doc. 96–22916 Filed 9–6–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 960409106–6207–02; I.D. 031196A]

RIN 0648–AG26

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). This rule prohibits trawling for rock shrimp in an area off the Florida east coast; requires permits for dealers and vessels in the rock shrimp fishery off the southern Atlantic states; requires dealers to report information needed to monitor the fishery; and requires that the initial sale, trade, barter, or transfer of rock shrimp harvested from the exclusive economic zone (EEZ) off the southern Atlantic states occur only between permitted dealers and permitted vessels. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule. The intended effect is to protect critical habitat and conserve and manage the rock shrimp fishery.

EFFECTIVE DATES: October 9, 1996; except that the amendments to §§ 622.4, 622.5, and 622.45 are effective November 1, 1996.

ADDRESSES: Requests for copies of the final regulatory flexibility analysis (FRFA) should be sent to Peter J. Eldridge, Southeast Regional Office,

NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The background and rationale for the measures in Amendment 1, and the rationale for NMFS's disapproval, based on a preliminary evaluation of Amendment 1, of a measure that would have required vessel operator permits, were contained in the preamble to the proposed rule (61 FR 17866, April 23, 1996) and are not repeated here.

Comments and Responses

Comment: One fisherman commented that the area being closed to trawling is too large. He believes the outer or offshore edge of the closed area should be moved shoreward from the proposed 100–fathom (183–m) depth contour to the offshore edge of the Oculina Bank Habitat Area of Particular Concern (HAPC). He states that this will allow fishermen to continue their harvest of pink and rock shrimp in this area. In addition, he recommends delaying implementation of Amendment 1 until after the 1996 rock shrimp season (July through October).

Response: Amendment 1 specifically addresses the need to minimize impacts of the rock shrimp fishery on essential bottom habitat. Amendment 1 will extend protection of the valuable *Oculina* coral species and its existing habitat to the north and east of the existing HAPC. Amendment 1 recognizes and analyzes the adverse economic impacts of displacing fishermen from the area in which trawling would be prohibited. The Council concluded that the potential long-term economic benefits of the closed area would outweigh the short-term adverse effects. NMFS concurs with that conclusion. Thus, NMFS does not support moving the outer boundary of the proposed no-trawling area shoreward to the edge of the HAPC. Also, because of documented damage to *Oculina* habitat from trawling, to the detriment of the important species dependent on that habitat, it is not wise or prudent to delay implementation of approved Amendment 1.

Changes from the Proposed Rule

Since the proposed rule was published, NMFS has consolidated most of its fishery regulations for the Southeast Region into one set of regulations at 50 CFR part 622 (published on July 3, 1996, 61 FR 34930). Accordingly, the implementing regulations for Amendment 1 in this final rule are amendments to part 622 in lieu of amendments to the south Atlantic shrimp regulations, previously contained in part 659. Part 622 contains general provisions common to all federally managed fisheries (e.g., permit application procedures, vessel and gear identification requirements, and prohibitions). Therefore, such general provisions that appeared in the proposed rule are not included in this final rule. Minor changes in language have been made to conform to the standards in part 622. The proposed rule would have required the owner or operator of a permitted vessel or a permitted dealer to notify the Director, Southeast Region, NMFS (RD) within 15 days after any change in the information previously submitted on the permit application. To conform with the standard in other fisheries permitted by the RD, as it exists in part 622, the time frame for that notification is changed to 30 days.

Effective Dates

To allow time to publicize the requirements for vessel and dealer permits, distribute applications for such permits, receive and process applications, and issue permits, NMFS makes the provisions of this final rule that require permits, or that are dependent on the possession of a permit, effective November 1, 1996.

Classification

The RD determined that Amendment 1 is necessary for the conservation and management of the shrimp fishery off the southern Atlantic states and that it is consistent with the Magnuson Act and other applicable law, with the exception of the measure that was previously disapproved. See the proposed rule for a discussion of the disapproved measure.

This action has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) that indicates this final rule is necessary to minimize the impacts of rock shrimp trawling on important coral and coral reef resources and on live- and hard-bottom habitats within and adjacent to the HAPC off the east coast of Florida. Minimizing habitat damage will enhance survival of juvenile rock shrimp and snapper-grouper species dependent upon this habitat. Also this rule will allow NMFS to collect fishery and biological information necessary to improve the management program and to ensure attainment of optimum yield over the long-term. The one public comment received on the proposed rule indicated that the area closed to shrimp trawling is too large and should be reduced to minimize lost pink and rock shrimp harvest. The Council had already assessed this option in the initial regulatory flexibility analysis (IRFA) and related analyses of management options supporting its preferred measures in Amendment 1; it concluded that a smaller closed area would not offer sufficient habitat protection (see comments and responses above). Accordingly, this comment did not result in changes to the conclusions of the IRFA.

The FRFA indicates that this rule will result in significant economic impacts on between 65 and 108 vessels and 12 dealers; all of these vessels and dealers are considered small entities for purposes of the Regulatory Flexibility Act. The magnitude of the impacts per small entity were difficult to quantify because rock shrimp landings vary considerably from year to year and rock shrimp exhibit considerable geographic movement and could move from areas closed to trawling to open areas and, thus, be harvested. The principal adverse impacts will result from prohibiting shrimp trawling in the closed area. Assuming that the affected vessels cannot redirect their fishing effort to other areas, and assuming continuation of recent harvest rates, affected vessels may lose approximately $41,000 each the first year. It is likely, however, that most vessels will be able to shift their effort to other areas or to other fisheries and these losses are not projected for the long-term. The extent to which vessels are able to shift to open areas or to other fisheries will determine how well they can minimize reduced rock shrimp catches and revenues; this extent cannot be estimated at this time. It is possible that some vessels may not demonstrate reduced net revenues if, by switching to other fishing areas, they can harvest larger sized shrimp that bring a significantly higher price per pound.

This final rule contains new collection-of-information requirements including: Vessel permit applications; dealer permit applications; dealer

reports regarding rock shrimp receipts; and vessel identification requirements. These requirements will affect vessel owners or operators who choose to participate in the rock shrimp fishery and dealers who intend to purchase rock shrimp from permitted vessels. The professional skills necessary for complying with these information collection requirements are the same as required by the vessel owners/operators and dealers permitted in other federally managed fisheries of the south Atlantic area; these skills include the ability to understand, fill out, and submit to NMFS necessary application forms for vessel or dealer permits and for reporting landings and ex-vessel prices.

In trying to minimize significant economic impacts on small entities, the Council and NMFS considered numerous management alternatives in selecting the preferred management measures regarding addition of rock shrimp to the FMP management unit, habitat and shrimp resource protection, and permitting and reporting requirements. In general, some of the management options considered and rejected would have had less of a short-term impact on rock shrimp fishermen but the long-term damage to essential habitat and resource productivity would have been greater. Regarding the management unit measure, the FRFA indicates that a management unit with a smaller geographic range would not provide management authority for future, timely regulatory actions necessary to protect shrimp and habitat resources beyond the Oculina HAPC. Regarding the extent of the area closed to shrimp trawling, the area chosen was proposed by the industry as representing an acceptable balance between protecting critical shrimp and habitat resources and minimizing adverse, regulatory impacts. Rock shrimp fishing in the area to be closed has occurred only in recent years and the catch has consisted mainly of very small rock shrimp, which are intercepted before they reach traditional fishing grounds. The trawling closure area may result in higher fishery yields and revenues over the long-term, in part because small shrimp, otherwise harvested, will be allowed to reach a larger size and command a higher market price per pound. Regarding permitting and reporting and recordkeeping requirements, the Council deliberately chose an approach that would minimize burdens on reporting entities while still providing the information on actual landings and harvest locations necessary for management. While permits are required for vessels and dealers, only the dealers are required to submit reports on landings. The Council decided that this approach would minimize burdens on the individual fisherman (e.g., no mandatory log book system required). Also, the Council encouraged NMFS to use information from state fisheries agencies, particularly from Florida where most landings occur, to minimize additional reporting burdens on dealers. Refer to the FRFA for further details (see **ADDRESSES**). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains new collection-of-information requirements subject to the PRA for vessels and dealers in the rock shrimp fishery—namely, vessel permit applications, dealer permit applications, dealer reports regarding rock shrimp receipts, and vessel identification requirements. The existing vessel identification requirements contained in 50 CFR 622.6(a)(1)(i) and (a)(2) are made applicable to a vessel in the rock shrimp fishery by requiring such vessel to obtain a permit—each vessel for which a permit has been issued under 50 CFR 622.4 is required to comply with those requirements. These collections of information have been approved by OMB under OMB control numbers 0648–0205, 0648–0205, 0648–0013, and 0648–0306, respectively. The public reporting burdens for these collections are estimated to average 20, 5, 15, and 45 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding any of these reporting burden estimates, or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 3, 1996.

N. Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.2, the definition of "Dealer" is added, in alphabetical order, to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Dealer, in addition to the definition specified in § 600.15 of this chapter, means the person who first receives rock shrimp harvested from the EEZ upon transfer ashore.

* * * * *

3. In § 622.4, effective November 1, 1996, paragraph (a)(2)(viii) is added and the first sentence of paragraph (a)(4) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(viii) *South Atlantic rock shrimp.* For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board.

* * * * *

(4) * * * For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, rock shrimp harvested from the South Atlantic EEZ, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, rock shrimp, or wreckfish, respectively, must be issued to the dealer. * * *

* * * * *

4. In § 622.5, effective November 1, 1996, paragraph (c)(7) is added to read as follows:

§ 622.5 Recordkeeping and reporting.

(c) * * *

(7) *South Atlantic rock shrimp.* (i) A dealer who has been issued a permit for rock shrimp, as required under § 622.4(a)(4), and who is selected by the SRD must provide information on receipts of rock shrimp and prices paid on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals postmarked not later than 5 days after the end of each month. Reporting frequencies and reporting deadlines may be modified upon notification by the SRD.

(ii) On demand, a dealer who has been issued a dealer permit for rock

shrimp, as required under § 622.4(a)(4), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

* * * * *

5. In § 622.35, paragraph (g) is added to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(g) *Rock shrimp closed area.* No person may trawl for rock shrimp in the area east of 80°00′ W. long. between 27°30′ N. lat. and 28°30′ N. lat. shoreward of the 100–fathom (183–m) contour, as shown on the latest edition of NOAA chart 11460; and no person may possess rock shrimp in or from this area on board a fishing vessel.

6. In § 622.45, effective November 1, 1996, paragraph (g) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(g) *South Atlantic rock shrimp.* (1) Rock shrimp harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for rock shrimp, as required under § 622.4(a)(2)(viii), may not be transferred, received, sold, or purchased.

(2) Rock shrimp harvested on board a vessel that has a valid commercial permit for rock shrimp may be transferred or sold only to a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4).

(3) Rock shrimp harvested in the South Atlantic EEZ may be received or purchased by a dealer who has a valid permit for rock shrimp, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for rock shrimp.

[FR Doc. 96–22958 Filed 9–6–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 175
Monday, September 9, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206–AH47

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise regulations on nonpermanent employment as part of continuing efforts to streamline the appointing system. The proposal would eliminate the authority for temporary appointments pending the establishment of a register (TAPER) as well as the "outside-the-register authority" for term appointments. The proposal would give OPM authority to extend the length of term appointments when justified, clarify the crediting of prior service for the required trial period, and allow certain excepted service employees whose positions are brought into the competitive service to serve the full 4-year period allowed for term appointment. The proposal would also add four categories of individuals to the list of those eligible for noncompetitive temporary and term appointments on the basis that they are currently eligible for permanent appointment and would clarify the conditions for making nonpermanent appointments based on a veteran's eligibility for a veterans readjustment appointment (VRA). To help agencies control the costs of workers' compensation by returning more injured employees to duty, the proposal would permit the reappointment of injured temporaries to any position for which qualified. Finally, the proposal would eliminate references to the former Federal Personnel Manual.

DATES: Comments must be received on or before November 8, 1996.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ellen Russell or Karen Jacobs on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION:

Length of Term Appointments

Agencies were authorized in 1962 to use term appointments of up to 4 years for project work with prior approval of the Civil Service Commission. A few years later, the Commission delegated full authority to agencies. On January 13, 1995, OPM broadened the conditions under which agencies could make term appointments to include nonpermanent situations other than project work. See § 316.301.

Some agencies have questioned whether they could make a second term appointment of an individual to the same position when the need for the employee continued beyond the 4-year limit. The appropriate procedure would be for the agency to document the reasons for the continued need of the individual and seek OPM approval to extend the term appointment. Although the current regulations do not prohibit consecutive term appointments as long as the agency follows appropriate competitive hiring procedures, the need for more than one term appointment suggests that a permanent appointment may be more appropriate.

This proposal would allow OPM, where clearly justified, to authorize extensions beyond the 4-year limit, including extensions in advance. Currently, OPM permits agencies to extend term appointments under certain conditions by issuing a variation to the regulations under § 5.1. The proposed regulatory provision permitting OPM to authorize extensions would change the form, not the substance, of the procedure in order to reduce paperwork.

We also propose to clarify that agencies may make term appointments in any increments so long as the appointment is for more than 1 year and no more than 4 years. For example, when an agency makes a term appointment for 13 months, the agency may extend that appointment up to the 4-year limit in as many increments as the agency chooses. The vacancy announcement for a term appointment of less than 4 years should make clear the possibility of extension up to the 4-year limit.

Eliminating Outside-the-Register Mechanism for Term Appointments

The proposal would eliminate the outside-the-register hiring mechanism for term appointments. In the past when OPM (or agencies under delegated examining) maintained standing registers, it was appropriate for the register-holding office to authorize outside-the-register appointments when those registers did not have candidates available for certification. However, as delegation of examining increased, OPM authorized fewer outside-the-register authorities. At this point, totally eliminating term appointments outside-the-register would be consistent with the new face of competitive examining. Now that OPM has delegated full examining authority to agencies, the outside-the-register mechanism is not necessary for term appointments. Agencies are in full control of the examining process and can announce individual vacancies as they occur. Also, since term appointees may serve for long periods of time and since they have benefits similar to permanent employees, it is appropriate that term and permanent employees be appointed in the same manner.

Trial Period for Term Appointment

The proposal would require crediting prior service toward the trial period required for term appointment in the same way that prior service is credited for probation, i.e., same agency, same line of work, and no more than a single break in service not exceeding 30 days. See § 315.802.

Crediting Excepted Service Toward Time Limit for Term Appointment

The proposal would allow former excepted employees whose positions were brought into the competitive service when OPM revoked an excepted authority to serve up to the full 4-year period for term appointment rather than have the amount of their prior time-limited excepted service subtracted from the maximum time limit for term appointment. This change in § 316.702 would give agencies more flexibility without harming employees who are already eligible for benefits.

Categories Eligible for Noncompetitive Term and Temporary Appointments

The current regulations indicate the categories of individuals eligible for noncompetitive term and temporary appointments based on their eligibility for permanent appointment under various authorities. In this proposal, we would add that appointments under 5 U.S.C. 3304(c), commonly referred to as Ramspeck appointments, can no longer be made after December 18, 1997, as provided by Pub. L. 104–65, the Lobbying Disclosure Act of 1995. We would also clarify that noncompetitive term and temporary appointments based on an individual's eligibility for a veterans readjustment appointment (VRA) are permitted only at the grade levels authorized for VRA appointments but that the temporary or term appointments are not VRA appointments themselves and do not lead to conversion to career-conditional. (This longstanding policy was stated in the former Federal Personnel Manual.)

The proposal would also add four categories of individuals to the list of those eligible for noncompetitive temporary and term appointments on the basis that they are currently eligible for permanent appointment. The categories are: current and former General Accounting Office employees (31 U.S.C. 732[g]); current and former employees of the Administrative Office of the U.S. Courts (Pub. L. 101–474); disabled veterans who have completed training prescribed by the VA under title 38 (5 CFR 315.604); and readers, interpreters, and personal assistants whose employment under Schedule A is no longer necessary (5 CFR 315.711).

We did not include other categories of individuals eligible for noncompetitive appointment under authorities that specifically require no break in service, e.g. current Postal employees because in such situations, an employee who took a temporary or term appointment would lose his or her eligibility for a permanent appointment.

Selecting Term Employees for Permanent Positions

We have received questions about the current regulation § 315.703 that permits the conversion of term appointees to permanent appointment under very limited conditions. Conversion is possible only when all the conditions of § 315.703 are met including the requirement that the term employee must have been within reach for permanent appointment. In this context, within reach means that the term employee could have been selected for a permanent position that was actually announced and filled. It is not sufficient for the vacancy announcement to have stated that positions could be filled by term or permanent appointment or that an individual selected for a term appointment might later be converted to a permanent appointment without further competition.

Temporary Employees Injured on the Job

The proposal would permit agencies to reappoint noncompetitively former temporary employees who were injured on the job to any position for which they qualify if their injury disqualified them for reappointment to their original position or one with the same qualification requirements. Time under the initial appointment and reappointment must adhere to the limits for temporary appointments, but time spent on workers' compensation does not count toward any time limit. For example, a temporary employee who worked for 8 months before being injured on the job spent 3 years on workers' compensation. If the individual recovered to some degree, the agency could reappoint the individual for the remaining 4 months of the temporary appointment and then, if warranted, extend the temporary appointment for up to another year. Reappointments of other former temporary employees, i.e., those who were *not* injured on the job, may be reappointed only to the same position or one with the same qualification requirements.

Temporary Appointments of Persons With Disabilities

Agencies may appoint qualified eligibles on a time-limited basis under § 213.3102(t) or (u), or § 213.3202(k), as appropriate. The time-limited appointment gives the individuals the opportunity to demonstrate their potential for successful performance, with or without reasonable accommodation. After determining that the appointees have successfully demonstrated their abilities, the agency may remove the time limitation on the appointment. This is important because the requirements for conversion of employees under 213.3102(t) and (u) to career or career-conditional appointment under § 315.709 include 2 or more years of satisfactory service under *nontemporary* Schedule A appointment. There is no conversion authority for individuals under 213.3202(k).

Eliminating the TAPER Authority

Our proposal would eliminate the TAPER (temporary appointments pending establishment of a register) authority for the reasons already discussed in connection with our proposal to eliminate the outside-the-register mechanism for term appointments. When OPM publishes final regulations eliminating the TAPER authority, agencies will have to examine competitively for positions, most notably Worker-Trainee (GS–1 and WG–1 and –2), that have been filled under the TAPER authority since 1979. In commenting on a draft of this proposal, a few agencies requested continuation of the TAPER authority for Worker Trainees on the basis that a simpler and more flexible examining process was required for individuals with limited education and experience. Such a process can be devised by agencies under their delegated authority to examine. According to the FY 95 Central Personnel Data File, agencies made only 97 Worker Trainee appointments. Thus there no longer appears to be a justification to continue a process solely for filling this type of position.

Individuals serving on TAPER appointments on the date OPM publishes final regulations eliminating the TAPER authority will not be affected. However, as required by § 315.704, TAPER employees who complete 3 years of qualifying service must have their appointments converted to career appointments or separated. TAPER employees who complete 3 years of qualifying service but do not meet the other conditions and requirements for conversion, must be separated no later than 90 calendar days following the day on which they met the service requirement for conversion.

Editorial

The proposal would also delete a section relating to the eligibility of certain term employees for within-grade increases. The section duplicates material already in subpart D of 5 CFR part 531, and employees would continue to be eligible.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulation pertains only to Federal employees and agencies.

List of Subjects in 5 CFR Part 316

Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 316 of title 5, Code of Federal Regulations, as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C., 3301; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218.

Subpart B—[Removed]

2. Subpart B consisting of §§ 316.201 and 316.202 is removed and reserved.

3. In § 316.301, the existing text is designated as paragraph (a) and revised, and paragraph (b) is added, to read as follows:

§ 316.301 Purpose and duration of term appointments.

(a) An agency may make a term appointment for a period of more than 1 year but not more then 4 years to positions where the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work; extraordinary workload; scheduled abolishment, reorganization, or contracting out of the function; uncertainty of future funding; or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. Agencies may extend appointments made for more than 1 year but less than 4 years up to the 4-year limit in increments determined by the agency. The vacancy announcement should state that the agency has the option of extending a term appointment up to the 4-year limit.

(b) At the request of an agency head (or designee), OPM may approve an exception to the time limits for term appointment when the extension is clearly justified to enable the agency to address a need more effectively and is consistent with applicable statutory provisions. Send requests to the Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415.

4. Section 316.302 is revised to read as follows:

§ 316.302 Selection of term employees.

(a) Competitive term appointment. An agency may make a term appointment under 5 CFR part 332 competitive procedures.

(b) Noncompetitive term appointment. An agency may give a noncompetitive term appointment, without regard to the requirements of parts 332 and 333, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401;

(2) Veterans readjustment appointment (VRA) under § 307.103. Term appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointment are not VRA appointments and do not lead to conversion to career-conditional appointment.

(3) Career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.703, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months.

(5) Career appointment under 5 U.S.C. 3304(c) ("Ramspeck appointments") but appointments must be effective no later than December 18, 1997. A term appointment under this section does not provide competitive status and does not extend or terminate an individual's eligibility for career appointment under 5 U.S.C. 3304(c).

(6) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(7) Appointment under Pub. L. 101–474 for current and former employees of the Administrative Office of the U.S. Courts;

(8) Reappointment on the basis of having left a term appointment prior to serving the maximum amount of time allowed under the appointment. Reappointment must be to a position in the same agency appropriate for filling under term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the time limits in § 316.301.

(9) Conversion in the same agency from a current temporary appointment when the employee is or was within reach on a certificate of eligibles for term appointment *at any time during service in the temporary position.* Within reach means that the person could have been selected for the position under competitive hiring procedures, including veterans' preference. The certificate must have been actually used for term or permanent appointment. The person must have been continuously employed in the position from the date found within reach to the date converted to a term appointment.

(c) Term employees are eligible for an extension of their appointment in accordance with the time limits in § 316.301 even if their eligibility for noncompetitive appointment expires or is lost during the period they are serving under term employment.

5. In section 316.304 paragraph (a) is revised to read as follows:

§ 316.304 Trial period.

(a) The 1st year of service of a term employee is a trial period regardless of the method of appointment. Prior Federal civilian service is credited toward completion of the required trial period in the same manner as prescribed by § 315.802 of this chapter.

* * * * *

§ 316.305 [Removed]

6. Section 316.305 is removed.

7. Section 316.402 is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

(a) Competitive temporary appointments. In accordance with the time limits in § 316.401, an agency may make a temporary appointment under 5 CFR part 332 competitive procedures or under 5 CFR part 333 "outside-the register" procedures.

(b) Noncompetitive temporary appointments. In accordance with the time limits in § 316.401, an agency may give a noncompetitive temporary appointment, without regard to the requirements of parts 332 and 333, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401;

(2) Veterans readjustment appointment under § 307.103. Temporary limited appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are not VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315,609, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Career appointment under 5 U.S.C. 3304(c) ("Ramspeck appointments") but appointments must be effective no later than December 19, 1997. A temporary appointment under this section does not provide competitive status and does not extend or terminate an individual's eligibility for career appointment under 5 U.S.C. 3304(c);

(6) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(7) Appointment under Pub. L. 101–474 for current and former employees of the Administrative Office of the U.S. Courts;

(8) Reappointment on the basis of being a former temporary employee of the agency who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter. An agency may not reappoint a former temporary employee if the individual has already served the maximum time allowed in § 316.401 or if the position has been filled under temporary appointment for the maximum time allowed in § 316.401. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements;

(9) Reappointment on the basis of being a former temporary who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter and who sustained a compensable injury while serving on the temporary appointment. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements. If the compensable injury disqualifies the former individual from performing such a position, reappointment may be to any position for which the individual is qualified.

(c) An individual who receives a valid temporary appointment will be eligible for an extension in accordance with § 316.401 even if his or her eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

8. In § 316.702 paragraph (d) is revised to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The term appointment is subject to all conditions and time limits applicable to term appointments.

Subpart H—[Removed]

9. Subpart H consisting of § 316.801 is removed and reserved.

[FR Doc. 96–22904 Filed 9–6–96; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 95–051A]

RIN 0583–AC01

Meat and Poultry Standards of Identity and Composition

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reviewing the standards of identity and composition established over the years for meat and poultry food products. These standards define particular products or product categories in terms of specified meat or poultry contents or other characteristics. As part of its regulatory review initiatives, the Agency is considering whether to modify or eliminate specific standards, or to modify its overall regulatory approach to standardized meat and poultry products. Because of new technologies, changing lifestyles, changed consumer expectations, and the information now available to consumers through ingredient and nutrition labeling, the relevance and general usefulness of standards are in question.

FSIS recognizes that some of the current standards may impede innovation, or slow the introduction into the marketplace of products with reductions in certain constituents of health concern to some people. The Agency is soliciting information from the public on what direction further reform of food standards should take, including suggestions on whether to alter, or eliminate entirely, the regulations on standardized meat and poultry products. The Agency would like to know how product definitions and standards, if needed, can provide consumer protection, while at the same time granting the flexibility necessary for timely development and marketing of meat and poultry products that meet consumer needs. This review responds in part to President Clinton's memorandum to heads of departments and agencies, titled "Regulatory Reinvention Initiative," dated March 4, 1995.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Please send an original and two copies of written comments to Docket Clerk, Room 4352 South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Copies of reports and handbooks cited in this notice are available for review in the FSIS Docket Room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Post, Chief, Food Standards and Ingredients Branch, Product Assessment Division, Regulatory Programs, at (202) 254–2588.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) prohibit the preparation for, and the sale or transportation, in commerce, of meat and poultry products that are adulterated or misbranded (21 U.S.C. 610; 21 U.S.C. 458).

These prohibitions apply to interstate and foreign commerce. They also apply to commerce solely within designated states by establishments that operate solely within a designated state. A state is designated if it does not have or is not effectively enforcing requirements at least equal to Title I and IV of the FMIA, and specified provisions of the PPIA. Once a state is designated, the inspection requirements of the FMIA and PPIA apply to establishments that slaughter livestock and poultry and/or prepare or process meat and/or poultry products therefrom, solely for distribution within the state.

A meat or poultry product may be considered misbranded if it falsely purports to be or falsely represents itself to be a food for which a standard of identity or composition has been prescribed by regulation, or if its label fails to bear the name of the food specified in the standard and, if required, the common or usual names of optional ingredients, except for certain specified optional ingredients (21 U.S.C. 601(n)(7); 21 U.S.C. 453(h)(7)).

FSIS has prescribed by regulation 60 meat and poultry standards of identity and composition (9 CFR §§ 319 and 381, Subpart P, for meat and poultry products, respectively), under its statutory authorities set forth in 21 U.S.C. 607(c) and 457(b). These sections permit the Secretary of Agriculture, whenever the Secretary determines such action is necessary for the protection of the public, to prescribe definitions and

standards of identity or composition for meat and poultry products. The Agency enforces the regulations concerning the standards through prior labeling approval, in-plant inspection, and compliance monitoring of products in commercial channels. Further, numerous informal standards for meat and poultry products are contained in the FSIS Standards and Labeling Policy Book.

The standards have been established to prescribe: (1) Minimum meat or poultry contents; (2) maximum fat and water contents; (3) methods of processing, cooking, and preparation; (4) permitted safe and suitable ingredients; and/or (5) expected or characterizing ingredients. Generally speaking, a standard of identity is like a recipe, requiring the presence of certain expected ingredients in a food product and/or mandating the way the product is formulated and prepared. A standard of composition generally specifies the minimum or maximum amount of ingredients in a product.

Standards of Identity and Composition and Regulatory Reform

FSIS has begun a comprehensive review of its regulatory procedures and requirements, including those for standards of identity and composition, to determine whether any are still needed and, if so, which ought to be modified or streamlined. This review is an integral part of the FSIS initiative to improve the safety of meat and poultry products by modernizing the Agency's system of food safety regulation. This review expands upon the page-by-page review of FSIS's regulations carried out earlier this year under the President's Reinvention of Government Initiative. This initiative directed departments and agencies to conduct a page-by-page review of all of their regulations and to eliminate or revise those that were outdated or otherwise in need of reform. For ones that FSIS determines need simplification or modification, FSIS is examining how it can make these regulations easier to understand and use, while still maintaining the protection they provide for consumers.

History of the Standards

From its early years, USDA has been concerned with food purity and compositional integrity. Beginning in the 1880's, Departmental scientists undertook systematic studies of food adulteration with a view toward its prevention, and published their results in numerous bulletins. By 1906, when the Meat Inspection Act and the Food and Drugs Act were passed, the Department had published, in circulars, about 200 standards of purity for food products, including meat and meat products.

The 1906 Meat Inspection Act and regulations subsequently enacted thereunder, prohibited the marketing of meat products that were misbranded or adulterated. Early inspection program directives and regulations listed permissible ingredients and coloring agents for meat products that corresponded to lists prepared by the Department's Bureau of Chemistry (predecessor of the Food and Drug Administration [FDA]). To assure that labels were truthful and not misleading, the directives listed basic requirements for products that were to bear a certain name. Thus, "potted" or "deviled" ham could be so named only if the product were made of ham or ham trimmings; if other pork was used, the mixture was required to be called "pork meats" or "potted meats." A product called "pork sausage" could be made only from pork. "Leaf lard" had to be made only from the leaf fat of hogs.

The meat inspection regulations published in 1914 and 1922 prescribed product composition standards for products containing more than one ingredient. Thus, a pork sausage with beef added could be called a "pork sausage" only if it contained at least 50-percent pork and had to be labeled "pork sausage, beef added." The meat portion of veal loaf had to be 100-percent veal. A 20-percent limit was imposed on the use of meat byproducts in products bearing a species name, such as "beef," "pork," or "veal," along with the requirement that the presence of the byproducts be indicated in the product name. Percentage limitations on the use of "cereals" in sausage products were also prescribed.

The Department maintained such requirements for meat products in the meat regulations with minor modifications through the 1920's and 1930's. As the mandatory meat inspection program grew, more policies and standards were established for assuring accurate and consistent product identity. During the 1940's the Department developed policies and standards to prevent economic deception, that is, to protect consumers from receiving meat products that did not meet their expectations, such as debased food products in which fillers had been substituted for more valuable constituents.

Under the Agricultural Marketing Act of 1946, the Agency also promulgated poultry standards to ensure that poultry products would meet the expectations of consumers. During this period, the policies applied to poultry products were similar to those applied to meat products.

During the 1950's and 1960's, about a dozen prepared meat and poultry frozen dinners were marketed, all essentially similar and with simple formulations. Among the first regulatory standards of identity and composition for a "further-processed" poultry product, originating in the mid-1950's under the voluntary poultry inspection program, was the one specifying the minimum poultry meat content for poultry pies, such as "turkey pies."

Since standards for meat and poultry products have been developed over time in response to market trends, industry and consumer needs, and other developments, such as the advent of new methods of processing to yield traditional products, they are diverse in regard to their areas of coverage. Some standards define products or specify product characteristics and/or contents; others set forth methods of processing, preparation, and cooking. Not all of these elements are included in every standard.

Product Definitions, Contents, and Characteristics

Some standards define meat or poultry terms. For example, the standards for kinds and classes and cuts of raw poultry (§ 381.170) identify a Rock Cornish game hen or Cornish game hen as "a young immature chicken (usually 5 to 6 weeks of age) weighing not more than 2 pounds ready-to-cook weight, which was prepared from a Cornish chicken or the progeny of a Cornish chicken crossed with another breed of chicken."

Other standards require that certain products contain specific amounts and/or types of meat or poultry. For example, the standards for poultry dishes and specialty items in § 381.167 of the regulations require specific, minimum poultry content, calculated on a ready-to-eat basis, for certain products: "Turkey a la King," for example, must contain 20 percent turkey meat, "Chicken Tetrazzini" must contain 15 percent chicken meat, and "Chicken Stew" must contain 12 percent chicken meat. There are similar standards for some meat products. For example, the regulations in § 319.304 require that meat stews, such as "Beef Stew," contain no less than 25% meat of the species named on the label, computed on the weight of the fresh meat. Product identified as "Corned Beef" must, among other requirements, be prepared from beef briskets, navels, clods, middle ribs, rounds, rumps, or similar cuts (§ 319.100).

The use of safe and suitable ingredients, such as those additives specifically classified as extenders, binders, emulsifiers, coloring agents, antioxidants, flavoring agents, and tenderizing agents are frequently referenced in standards for meat or poultry products. The use of additives in meat and poultry products is essentially controlled by the regulations for standards, e.g., §§ 319 and 381 Subpart P, and those that directly address the use of safe and suitable ingredients, e.g., §§ 318.7 and 381.147.

Some meat and poultry standards specifically reference these safe and suitable ingredient regulations when identifying what can and cannot be included in a specific standardized product. For example, standards for cured meat or cured poultry products contain provisions for allowable curing ingredients that have been declared safe and suitable at restricted levels (§ 318.7 and 381.147). A product identified as "Breakfast Sausage" (§ 319.143) can only contain certain kinds of meat ingredients, and has limits on added water, fat content of the finished product, and binders or extenders that are to be added in accordance with § 318.7(c)(4). The kinds of binders and extenders allowed in meat and poultry products and their use restrictions can be found in the Tables of Approved Substances (§§ 318.7(c)(4) and 381.147(f)(4)) under "Class of Substance, Binders and Extenders." Many other standards also reference the Tables of Approved Substances in regard to use of certain ingredients in the standardized product.

When appropriate, characterizing ingredients are also included as part of a product standard. For example, the regulations in § 319.145 require that a product identified as "Italian Sausage" contain salt, pepper, and either fennel or anise, or a combination of fennel and anise. The standard also requires that "Italian Sausage" contain at least 85-percent meat, or a combination of meat and fat, with the total fat content constituting not more than 35-percent of the finished product, as well as optional ingredients.

Methods of Processing, Preparation, and Cookery

Some standards include processing, preparation, or cooking criteria, some of which are relevant to ensuring product safety. For instance, the standard for "Country Ham" and "Dry Cured Ham" products (§ 319.106) specifies not only the kind of anatomical pork cut that is to be used as the starting material, but also requires the dry application of salt or salt and optional curing agents. It also specifies the length of time required for the salt penetration, the finished product weight, and the internal salt content or water activity level that must be met. All of these requirements help ensure product safety and shelf-stability. The presence and quantity of curing agents and salt, for example, and limits on water activity, help inhibit microbial growth.

Other standards specify cooking or processing requirements that were developed to ensure that consumer expectations about the nature of a product are met. For example, "Barbecued Chicken" (§ 381.165) must be cooked in dry heat and basted with a seasoned sauce. The standard for "Barbecued Beef" (§ 319.80) requires dry heat cooking by burning hardwood or hot coals therefrom, and a finished product with a brown crust and a yield of not more than 70 percent of the weight of the fresh uncooked meat.

Mechanically Separated (Species)

Most meat product and poultry food product standards identify a finished product, such as a "Turkey Ham" or "Chili with Meat." However, the standard for mechanically separated species (MS(S)), such as that in § 319.6 for mechanically separated beef or pork, is somewhat different because it defines a meat ingredient that can be used with some restrictions in formulating other meat products. MS(S) is an ingredient that can be used in certain standardized meat food products, such as hot dogs, frankfurters, bologna (§ 319.180), meat stews (§ 319.304), spaghetti with meatballs (§ 319.306), pizza (§ 319.600), and tamales (§ 319.305). The level of its use, which is restricted, is specifically cited as part of its food product standard.

Current Concerns and Need for Review

The meat and poultry food product standards have provided a framework for identifying products and helping to ensure that products meet consumer expectations regarding product composition and characteristics. In certain instances, standards also have helped to ensure product safety. For example, the FSIS policy guide in the Standards and Labeling Policy Book for dry, fermented sausages prescribes moisture/protein ratios (MPR) that limit moisture content in these products, which, in turn, inhibits microbial growth.

Some manufacturers have complained that standards are too restrictive, stifle innovation, and prevent market acceptability of products, because they restrict the use of commonly understood product names familiar to consumers. Some manufacturers believe that the nutrition and ingredient information provided in labeling is adequate to enable consumers to distinguish among meat and poultry products and make informed choices.

Many proponents of standards reform contend that a product name has little relevance in today's market, which is becoming more and more diverse, with the increased manufacturing of new and nontraditional products. Because of changing market trends and public perceptions, some food manufacturers also believe that prescriptive standards of identity and composition impede the introduction of new, innovative, and possibly less expensive, products.

For example, food manufacturers have pointed out that restaurants market meatless pizzas consisting of a bread-type product topped with fruit or vegetables, olive oil, and seasonings. However, if an FSIS inspected establishment wants to prepare and market a nontraditional pizza that includes a meat topping of sausage but not cheese, it would be in conflict with FSIS's established standards for pizza products containing meat. The standard for "pizza with sausage" (§ 319.600(b)), for instance, requires that a product identified as "Sausage Pizza" be a bread-based meat food product with tomato sauce, cheese, and meat topping containing not less than 12 percent cooked sausage or 10 percent dry sausage (pepperoni).

Consumer expectations regarding the nutritional composition of foods have also changed in recent years. Health-conscious consumers looking for convenience and nutritional quality in their food purchases have come to play a decisive role in the marketplace. A growing body of scientific evidence that links dietary intake to health supports the concerns of these consumers, who demand products based upon traditional recipes which have been modified to have lower amounts of constituents with negative health implications, such as saturated fat and cholesterol. Meat and poultry food processors have striven to meet this demand by formulating products that resemble traditional products but that contain less fat and associated cholesterol.

In some circumstances, current standards inhibit the marketing of products lower in such constituents, because of limits on the types of ingredients permitted. FSIS has attempted to ease some of the restrictions posed by the existing standards by developing labeling approaches to identify the differences between traditional products and the

newer versions. Consequently, some products currently bear health-related nutrient content claims on their labels, such as, "low-fat" and "reduced fat."

Consumers' nutritional and health concerns indicate a need to review the basis for traditional standards of identity and composition, to question the justification for the establishment of new prescriptive standards, and to consider the elimination or modification of these standards. In fact, the public health rationale for doing so is underscored by a 1990 report by the Institute of Medicine, National Academy of Sciences (NAS). The report, "Nutrition Labeling: Issues and Directions for the 1990's," argues for reexamining and changing any system "that significantly impedes the marketing of reduced-, low-, and non- or no-fat substitutes."

To begin to address this concern, FSIS has proposed in a separate document, "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term (60 FR 67474)," to establish a general standard of identity for modified meat and poultry food products that would facilitate the development and marketing of, among other things, reduced fat substitutes for products currently subject to an FSIS standard of identity. The general standard of identity proposed would require that a modified meat or poultry product: (1) Not be nutritionally inferior to the traditional standardized food that it resembles and for which it substitutes, (2) possess performance characteristics that are generally similar to the traditional standardized food, (3) contain the same amount of any mandatory ingredient (i.e., meat or poultry) that is required to be in the traditional standardized food, and (4) not contain an ingredient that is prohibited in the traditional standardized food. The proposed standard (§§ 319.10 and 381.172, as proposed) also would allow safe and suitable ingredients, not specifically provided for in the standard or in excess of that provided for in the traditional food, in order that the product's makeup is consistent with the nutrient content claim made about the product.

In light of current budget constraints and the need to address high priority food safety concerns and redeploy Agency resources, FSIS is examining whether any of the Agency's approaches to regulating meat and poultry products for economic adulteration and mislabeling should be changed. Thus, FSIS is examining whether the current approach to promote fair competition and prevent misbranding and economic adulteration through developing and enforcing meat and poultry product standards continues to be appropriate.

Many of the standards are based on industry standards and were originally suggested by, and in many cases are still supported by, industry. Such standards not only reflect consumer expectations, but also serve to promote fair competition among manufacturers producing similar products. The FMIA, in fact, states that regulation of meat products is important, since "* * * mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally (21 U.S.C. 602)." The PPIA also contains a similar provision which recognizes that unwholesome, adulterated, or misbranded poultry products destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged poultry products (21 U.S.C. 451).

FSIS is undertaking this comprehensive review of all of its existing product standards to determine whether in their present form they continue to play a useful role in serving the needs of industry and consumers. FSIS is exploring whether alternative approaches could be more effective in ensuring that consumers are adequately informed about the products they are purchasing and receive what they believe they are paying for, while ensuring fair competition. Any alternative approach or combination of approaches chosen would of course have to comply with the statutory mandates of the FMIA and PPIA with respect to misbranding (false or misleading labeling) and economic adulteration, provide industry greater flexibility to innovate, and expand consumer choices in the marketplace.

Issues for Public Comment

As part of its comprehensive standards review, FSIS is soliciting comments on the following issues, as well as any other comments that would assist the Agency in fulfilling its mission to protect the interest of consumers by helping to ensure that meat and poultry products are correctly labeled and are not adulterated. FSIS requests comments from any interested parties such as food manufacturers and distributors, including importers and exporters, individuals and consumer groups, academia, State and local governments, and the international community.

1. Utility of the System

a. In general, how do consumers and the regulated industry view the Agency's role in developing food standards? How would major changes in standards of identity affect consumers, producers, and manufacturers?

b. As discussed above, there are different types of standards. Are some more meaningful or useful than others? Could the objectives of meat and poultry standards, designed to ensure that products are correctly labeled and not economically adulterated, as well as help ensure fair competition and market stability for wholesome, properly labeled products, be accomplished by other more effective means? If so, how could they be accomplished within the limits of current and anticipated FSIS resources?

c. Do standards of identity for meat and poultry products actually protect the integrity of the food supply? Are there any data that indicate consumers are aware of or rely upon the current standards? If so, do consumers find the current system of standards meaningful and understandable? Would alteration of the standards significantly affect consumers' ideas about the integrity of meat and poultry products?

d. Does the industry need compositional standards for the orderly marketing of foods? Are food standards needed to control the composition of fabricated foods such as hot dogs, bologna, pepperoni, and potted meats? Depending on the extent of any standards reform, what market impact would result if manufacturers were allowed to decrease the amounts of meat or poultry used in products?

e. As previously discussed, some standards contain processing and other requirements relevant to food safety. Could food safety objectives be achieved by other means?

f. Are food standards an effective means of ensuring that only safe and suitable additives and ingredients are used in the formulation of products?

2. Flexibility

If FSIS continues to maintain a system of standards of identity and composition, how could current and future standards be made more flexible, to accomodate the needs of industry in a changing market, without compromising the Agency's efforts to ensure that meat and poultry products are neither misbranded nor economically adulterated?

3. Product Identity

a. Food standards of identity are a means of defining the composition of a

food that is marketed under a designated common or usual name. What criteria should be used for determining when a food standard is appropriate? Should evidence of the existence of consumer confusion or dissatisfaction be required as a precondition before FSIS undertakes a standards setting process?

b. How should FSIS address differences between the standards of identity established for similar meat and poultry products, such as those established for ham and turkey ham products, which allow for different levels of moisture content? What purpose do such differences serve and how do they affect consumers, producers, and processors? Also, FSIS requires establishments to indicate through labeling the presence of meat byproducts in all processed meat products. Should FSIS require disclosure of the presence of detached skin, even in natural proportions, in the ingredients statement of processed poultry products?

c. Consumers desire both product consistency and variety among products. Given this, how would revision or elimination of the standards of identity affect consumers? For which products or characteristics is consistency, or standardization, most important to consumers?

d. If there were no meat or poultry product standards, what criteria could be used to define "imitation" products?

e. If there were no standards, how would consumers, industry, and FSIS judge when a product is identified, by labeling, in a misleading way?

4. Federal Preemption: Impact on State Jurisdiction

a. FSIS specifically requests comments on the preemption aspects of Federal standards of identity. If Federal standards of identity were discontinued and the preemptive provisions of the FMIA and the PPIA for labeling were amended, would the States establish their own compositional requirements in the absence of a Federal meat and poultry standards program? Would a diverse, multi-State food standards program be desirable? What would be the costs and benefits?

b. If it is not deemed to be in the interest of the public to retain Federal food standards for meat and poultry products, what changes should be considered in the FMIA and PPIA? Comments should be supported by data where possible relating to the economics of production and marketing of commodities currently covered by food standards, including the costs and benefits to consumers, industry, and international trade.

5. Impact on Domestic and International Trade

a. How are current FSIS standards related to international meat and poultry standards and what would be the economic impact of standards reform on product development in the United States and international markets?

b. Would there be significant costs for industry if Federal meat and poultry standards of identity were conformed to international standards for these products, where possible? Also, what would be the costs for industry if states were permitted to enforce any type of standard requirements that were different from Federal and international standards?

c. In recommending an alternative to the current system of standards of identity and common or usual name designation for food, commenters should take into account the impact of the alternative on FSIS's ability to participate in the development and harmonization of international standards.

The United States participates in the Codex Alimentarius Commission (Codex) and its food standards program. Codex is sponsored jointly by the United Nations' Food and Agriculture Organization (FAO) and World Health Organization (WHO). Its goal is to promote the health and economic interests of consumers, while encouraging fair international trade in food. All food standards adopted by Codex must be reviewed by the FDA (in consultation with FSIS when appropriate) and be accepted without change, accepted with change, or not accepted. Procedures regarding Codex standard adoption are codified in 21 CFR 130.6.

U.S. food standards provide an important point of reference when international standards are established. How effective would U.S. delegates be in debating the merits of specific provisions in Codex food standards if the Federal government had no comparable standards? How important is it to exporters and importers that the compositional provisions of the Federal meat and poultry standards be reflected in international standards such as those established by the Codex Alimentarius?

6. FSIS and FDA Uniformity and Standards Systems

The FMIA (section 7(c)(2))(21 U.S.C. 607(c)(2)) and the PPIA (section 8(b)(2))(21 U.S.C. 457(b)(2)) provide that the Secretary of Agriculture may prescribe definitions and standards of identity or composition; that they not be inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act; and that inconsistencies between Federal and State standards be avoided, insofar as feasible. To what extent should FSIS harmonize its approach to standards reform with FDA?

On December 29, 1995, FDA published an Advance Notice of Public Rulemaking, "Food Standards of Identity, Quality and Fill of Container; Common or Usual Name Regulations; Request for Comment on Existing Regulations" (60 FR 67490). FSIS encourages commenters to read the FDA document because it provides useful background information on similar FDA standards' issues. A thorough understanding of both agencies' food standards programs will help commenters in providing comments that will facilitate uniform food standards reform. Commenters should submit separate comments to each agency.

7. Agency Budget Constraints and Regulatory Compliance

Current and anticipated budget constraints compel FSIS to alter the way it allocates resources. The Agency must give priority to programs affecting food safety and public health, while seeking means to continue meeting its responsibilities concerning issues of economic adulteration and misbranding. Thus, comments supporting continuance of the existing food standards program should discuss possible sources of new or additional resources for the program. Further, in light of budget constraints, how should the Agency verify compliance with the standards in the future? What should be the FSIS inspector's role in a modified or streamlined system of standards?

8. Policy Guides

The Agency has developed policy guides for standards which are identified in the Standards and Labeling Policy Book. The Standards and Labeling Policy Book serves, in part, to guide industry regarding product names, composition, characterizing ingredients, methods of preparation related to product names, and such. Do the policy guides as embodied in the Standards and Labeling Policy Book, serve a useful purpose? If these policy guides serve a useful purpose, do they need revision? If so, what revisions are necessary and what data are available to support revision?

9. Standards and Substitute, Modified Meat and Poultry Products

a. To what extent do FSIS requirements for minimum meat and poultry content in the standards impede the development of reduced fat and other modified products that can assist consumers in meeting dietary needs?

b. Is there any point at which consumers would feel that "substitute, modified foods," (i.e., standardized foods with a reduction in constituents of concern to consumers) are no longer similar to the standardized foods they are intended to resemble and are merely imitations of these foods? For further information about "substitute, modified foods" see FSIS's proposed rule, "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" (60 FR 67474).

10. Grandfather or Sunset Provisions

Is there a need to "grandfather" or "sunset" current regulatory requirements or policy guides?

11. Cost and Benefits to Consumers and Industry

The Agency is particularly interested in the cost/benefit aspects of food standards. It would appreciate receiving comments in response to the following questions: Do the benefits of standards to consumers and to the regulated industry outweigh the costs of such regulations?; What factors affect the benefits and costs of food standards?; How can FSIS best estimate the benefits and costs of particular standards?; Which standards are particularly beneficial or costly, and why?; and If the existing programs need to be restructured, how should this be accomplished, and how would such a change affect the costs and benefits to consumers?

Alternatives Considered

FSIS is considering adopting one or more of the following alternative approaches, should it continue meat and poultry standards in any form. FSIS believes that these approaches increase the flexibility of the meat and poultry product standards, while ensuring that meat and poultry products are identified in a non-misleading manner, and contain only safe and suitable ingredients.

1. Use of Percentage Declaration of Meat and/or Poultry Content in Conjunction with Standardized Names

One approach the Agency is considering would provide greater flexibility than currently allowed in the formulation of standardized products required to contain a specified minimum amount of meat or poultry. FSIS could permit the use of a lesser amount of meat and/or poultry in these standardized products, provided the product's label contained a declaration of the percentage of the meat or poultry content in the product. For example, the standard of identity for meat stews, such as "Beef Stew" (§ 319.304), currently requires the product contain "not less than 25-percent of meat" of the species named on the label.

Under current FSIS regulations and policy guides, products containing less than the prescribed amount of meat or poultry for a standardized product may be marketed (1) under names that indicate that the product is an "imitation" of the standardized food; (2) under names that distinguish the product from the standardized product, e.g., using a descriptive name such as "gravy, vegetables, and beef," for a product that does not meet the "Beef Stew" standard; or (3) with labels that use a comparative, educational statement in addition to a standardized name to reflect the difference in meat or poultry contents, when the substitute product is nutritionally equivalent. For example, a pizza that contains only 5 percent sausage may be identified as "Pizza with Sausage" as long as a statement is included on the label that indicates the product "contains 5 percent sausage, whereas the standard for 'Pizza with Sausage' requires 12 percent sausage."

Under one alternative approach, a manufacturer might produce a "Beef Stew" containing a lesser amount of beef than prescribed in the standard, provided the principal display panel of the label bears, in conjunction with the name of the food, a declaration of the percentage of beef contained in the product, e.g., "Beef Stew, Contains 10% Beef." Another option would be to provide the percentage declaration in conjunction with the ingredient list on the label.

Key advantages of such alternatives are that they would expand the flexibility available to companies in formulating products bearing the standardized name while still providing the consumers with important information about the meat or poultry content of the product, that is both factual and non-misleading. Information about the percentage of meat or poultry in a product, in combination with the nutrition information and ingredient labeling provided on labels, would give consumers valuable information upon which they could rely in making a food choice.

In considering such alternatives, FSIS recognizes that there may be some products that contain such a small amount of meat or poultry that the use of a standardized name, even if used in conjunction with a statement that indicates the percentage of meat and poultry in the product, may not be justified. FSIS will be considering whether products that contain an insignificant amount of meat or poultry should be permitted to use as standardized name as part of its labeling. FSIS would like comments on this issue.

The Agency has reviewed numerous meat and poultry standards to identify categories that may be good candidates for this alternative declaration-of-percentage approach to product identity. Obviously, candidates include standards that contain a minimum meat, meat food product, meat byproduct, and/or poultry content requirement. Such standards, found in 9 CFR Part 319 and 381, Subpart P, include scrapple (§ 319.280); chili con carne (§ 319.300); chili con carne with beans (§ 319.301); hash (§ 319.302); corned beef hash (319.303); meat stews (319.304); tamales (§ 319.305); spaghetti with meatballs and sauce—spaghetti with meat and sauce, and similar products (§ 319.309); spaghetti sauce with meat (§ 319.307); beans with frankfurters in sauce, sauerkraut with wieners and juice, and similar products (§ 319.306); lima beans with ham in sauce, beans with ham in sauce, beans with bacon in sauce and similar products (§ 319.310) chow mein vegetables with meat, and chop suey vegetables with meat (§ 310.311); pork with barbecue sauce and beef with barbecue sauce (§ 319.312); tongue spread and similar products (§ 319.762); liver meat food products (§ 319.881); poultry dinners (frozen) and pies (§ 381.158); and "other poultry dishes and specialty items" (§ 381.167).

2. Develop a General Standard of Identity for All Meat and Poultry Food Products

The Agency could propose to establish a general standard of identity for the 60 meat and poultry products defined by standards in the current regulations. This general standard of identity approach would provide for deviations from current ingredient allowances and restrictions. The deviations would be highlighted in the ingredient statement of the product. This labeling requirement would inform consumers of the difference between the standardized products and the "modified" version of the product.

For example, the current standard for "Chili Con Carne" (§ 319.300) requires

this product to contain no less than 40-percent meat computed on the weight of the fresh meat; allows the use of MS(S) in accordance with § 319.6; restricts head meat, cheek meat, and heart meat exclusive of the heart cap to no more than 25 percent of the meat ingredients under specific declaration on the label; and allows binders and extenders as provided in § 318.7(c)(4). Under a general standard of identity, a new, "modified" "Chili con carne" product might contain 40 percent cheek meat, as long as the ingredients statement highlighted this deviation. If the meat component were reduced from 40 percent to 20 percent, or if the product contained 40 percent textured vegetable protein as well as meat, these deviations also would need to be highlighted in the ingredients statement.

FSIS would like to receive comments on whether this approach could provide the flexibility desired by manufacturers, while protecting the integrity of the food supply by ensuring that consumers receive meat and poultry products labeled in an truthful and non-misleading manner.

3. Recommended Meat and Poultry Contents

Another approach would be to establish categories of meat or poultry products, and corresponding recommendations for expected meat and poultry contents. For example, FSIS could recommend that "Beef Burgundy" contain 50-percent beef, that "Beef Stroganoff" contain 30 percent cooked beef, and so forth. Under this approach, establishments could deviate from the recommended meat and poultry content. It would be expected that the difference be conveyed to the consumer through labeling. Recommended amounts of meat and poultry content in products would reflect consumer expectations, and, therefore, would serve as guidance for food manufacturers.

FSIS requests public comment on this alternative approach to establishing content standards, and would welcome other suggestions for establishing product categories, or determining what the meat and/or poultry content should be for the various categories. FSIS also requests comments on how other requirements in the current standards, such as those concerning additives, non-meat ingredients, or processing, would be affected by meat and poultry content recommendations for the various meat and poultry categories?

4. Private Certification of Food Products

Provided that amendments are made to the FMIA and PPIA, it may be possible for private organizations to certify that meat and poultry products meet consumer expectations. These organizations would establish criteria for product content and characteristics associated with product names.

FSIS would like to receive comments on the issue of eliminating standards of identity and composition including comments in response to the following questions: Could national associations that promote or address marketing issues for specific products or commodities, such as the National Food Processors Association and the National Frozen Pizza Association, or other recognized authorities, such as culinary societies, schools, or institutes, establish meaningful meat or poultry product standards?; How would the fact that products met such standards be conveyed in labeling?; Would a labeling statement, such as "Meets standards established by the National Chili Society," have meaning in labeling?; How would the truthfulness or the accuracy for the statement be verified?; How would the credibility or authenticity of the certifying body be established?; Which characteristics of meat or poultry food products are most amenable to certification by private organizations rather than by local, State, or Federal government?; and Which factors render private certification impractical or inappropriate?

5. Elimination of the Standards of Identity and Composition

The FMIA and PPIA provide that USDA may promulgate definitions and standards of identity and composition for meat and poultry products whenever it determines such action is necessary for the protection of the public (21 U.S.C. 607(c), 457(b)). These Acts do not require, however, that USDA promulgate standards. Therefore, one option for the Agency is to eliminate regulations for standards of identity and composition and then to discontinue any programs related to the standards.

FSIS would like to receive comments on the issue of eliminating standards of identity and composition including comments in response to the following questions: In general, what would be the advantages and disadvantages to industry and consumers of eliminating the standards of identity and composition?; What would be the impact on domestic and foreign commerce, and food safety?; How would labeling requirements need to be revised if standards of identity were eliminated?; and In the absence of standards of identity, should labels specify percentages of ingredients?

Additionally, some standards include processing, preparation, or specific cooking requirements that are related to ensuring product safety and shelf-stability, such as the standard for "Country Ham" and "Dry Cured Ham" products (§ 319.106). FSIS would like comments on this issue including responses to the following questions: If such standards were eliminated, would remaining regulations be sufficient to assure the safety of these products?; and Should the safety provisions of these standards be included in other regulations?

Executive Order 12866

This advance notice of proposed rulemaking has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

FSIS is seeking the data necessary to assess how the regulatory changes discussed in this document might affect various sectors of the meat and poultry industries. Therefore, the Agency invites comment on potential effects, including economic costs or benefits.

Done, at Washington, D.C., on: September 3, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–22956 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to de Havilland Model DHC–8–100 and –300 series airplanes. That proposal would have superseded a previously-issued AD that currently requires repetitive inspections to detect cracks of the upper drag strut trunnion fittings of the nose landing gear and to verify tightness of the fitting attachment bolts. It also would have required the

installation of a modification to terminate the repetitive inspections. This new action revises the proposed rule by proposing to require a different terminating modification.

This action is prompted by data indicating that the previously proposed terminating modification is not effective.

The actions specified by the proposed AD are intended to prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

DATES: Comments must be received by September 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–194–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 and –300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 7, 1994 (59 FR 5554). That NPRM would have superseded AD 93–08–03, amendment 39–8550 (58 FR 25549, April 27, 1993), which currently requires repetitive inspections to detect cracks of the upper drag strut trunnion fittings of the nose landing gear and to verify tightness of the fitting attachment bolts. It also requires replacement of the fittings or fasteners, if necessary. AD 93–08–03 was prompted by reports of cracks detected in two trunnion fittings which retain and support the nose landing gear upper drag link. The requirements of AD 93–08–03 are intended to prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear.

The NPRM would have added a requirement to the AD to modify the upper drag strut trunnion fittings and fasteners of the nose landing gear. Once the modification was installed, the repetitive inspections could be terminated.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, Transport Canada Aviation, which is the airworthiness authority for Canada, has advised the FAA that the modification proposed as terminating action for AD 93–08–03 has been determined to be ineffective. Data indicate that installation of Modification 8/1880, which is described in de Havilland Service Bulletin S.B. 8–53–45, dated July 12, 1993, may recreate the original problem that the AD intends to correct.

Explanation of New Relevant Service Information

De Havilland has issued Service Bulletin S.B. 8–53–49, dated June 30, 1995, that describes procedures for installing Modification 8/2139. This modification entails the installation of strengthened drag link trunnion fittings and adjacent right-angled support fittings, both of which will reduce premature fatigue. Additionally, the modification involves the installation of fasteners with larger diameters to attach the fittings, and installation of a new sensor support bracket.

Transport Canada Aviation approved the technical content of this service bulletin and issued Revision 3 of Canadian airworthiness directive CF–92–18, dated August 2, 1995, in order to assure the continued airworthiness of these airplanes in Canada. That revised Canadian airworthiness directive specifies that Modification 8/2139 is an optional terminating action for the repetitive inspections required of the drag strut trunnion fittings (required by the original issue of CF–92–18).

Additionally, de Havilland has issued Revision "D" of Service Bulletin S.B. A8–53–40, dated June 30, 1995. This revision is essentially identical in its technical content to the previous revisions of the service bulletin, but contains updated effectivity information and new references to Modification 8/2139.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that similar AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the New Proposed Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this new proposed AD would

supersede AD 93–08–03 to continue to require inspection to detect cracks of the upper drag strut trunnion fittings of the nose landing gear, inspection to verify tightness of the fitting attachment bolts, and replacement of the fittings or fasteners, if necessary. Additionally, this new proposed AD would require the installation of Modification 8/2139. When accomplished, this modification would terminate the need for the currently required inspections. The modification would be required to be accomplished in accordance with de Havilland Service Bulletin S.B. 8–53–49, described previously.

The proposed AD also would limit the applicability of the rule to exclude those airplanes on which Modification 8/2139 has been installed previously. The manufacturer has installed Modification 8/2139 prior to delivery of airplanes having serial numbers 396 and subsequent. Airplanes so modified are not subject to the unsafe condition addressed by this proposed AD.

Paragraph (a) of the proposed AD has been revised to reference Revision "D" of de Havilland Service Bulletin S.B. A8 53–40, dated June 30, 1995, as an additional appropriate source of service information.

Differences Between the Proposed Rule and Related Canadian AD

Operators should note that, whereas the Canadian AD allows installation of Modification 8/2139 as an optional action, this proposed AD would mandate its installation as terminating action. The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Reopening of Period for Public Comment

Since the changes made to this proposal expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 146 airplanes of U.S. registry would be affected by this proposed AD.

Accomplishment of the currently required inspections takes approximately 1 work hour per airplane, at an average labor rate of $60 per hour. Based on these figures, the cost impact of the currently required inspection actions on U.S. operators is estimated to be $8,760, or $60 per airplane, per inspection.

The proposed modification action would take approximately 18 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,325 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $638,725, or $4,405 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, based on the effective date and compliance time of AD 93–08–03, it can be reasonably assumed that the majority of affected U.S. operators already have initiated and are currently conducting the inspections required by that AD.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 93–NM–194–AD. Supersedes AD 93–08–03, amendment 39–8550.

Applicability: Model DHC–8–102, –103, –301, –311, and –314 series airplanes; having serial numbers 003 through 395, inclusive, but excluding serial numbers 011, 362, and 391; on which Modification 8/2139 (as described in de Havilland Service Bulletin S.B. 8–53–49, dated June 30, 1995) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the upper drag strut trunnion fittings of the nose landing gear, which could lead to collapse of the nose landing gear, accomplish the following:

(a) Within 500 landings after May 27, 1993 (the effective date of AD 93–08–03, Amendment 39–8550), unless accomplished within the last 500 landings, conduct a visual inspection of both upper drag strut trunnion fittings of the nose landing gear to detect cracks; and conduct an inspection of the fitting attachment bolts to verify tightness; in accordance with de Havilland DHC–8 Alert Service Bulletin S.B. A8–53–40, Revision 'A', dated June 12, 1992; or Revision 'B', dated February 24, 1993; or Revision 'D', dated June 30, 1995.

(1) If no crack is detected in the upper drag strut trunnion fittings of the nose landing

gear, and no looseness is detected in the fitting attachment bolts, repeat the inspections at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack is detected on either fitting, prior to further flight, replace both fittings with confirmed crack-free fittings in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(3) If any fitting attachment bolt is found to be loose during the initial inspection, prior to further flight, replace the fasteners (nut, washer, and bolt) that secure the fitting, in accordance with the service bulletin. After such replacement, the inspections required by this paragraph must continue at intervals not to exceed 1,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(4) If any fastener is found to be loose during any repetitive inspection required by this AD, prior to further flight, tighten the bolt to the value specified in the service bulletin.

(b) Within 6 months after the effective date of this AD, install Modification 8/2139 in accordance with de Havilland Service Bulletin S.B. 8–53–49, dated June 30, 1995. Installation of this modification constitutes terminating action for the inspection requirements of this AD.

(c) Installation of Modification 8/2139, in accordance with de Havilland Service Bulletin S.B. 8–53–49, dated June 30, 1995, constitutes terminating action for the inspections required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 3, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22919 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. That proposal would have required repetitive inspections to detect corrosion in the wheel axles of the main landing gear (MLG) sliding members; and rework of any corroded areas, an inspection to detect cracks in the wheel axles, and replacement of any cracked sliding member. That proposal was prompted by a report of failure of a MLG wheel axle during push back of an in-service airplane from the terminal. This action revises the proposed rule by providing for interim actions that may be accomplished in lieu of the repetitive inspections. This action also revises the proposed rule by requiring eventual modifications of the main wheel brake units and the MLG sliding members; when accomplished, these modifications terminate the repetitive inspections and interim actions. The actions specified by this proposed AD are intended to prevent failure of the MLG wheel axle due to problems associated with corrosion and cracking.

DATES: Comments must be received by October 3, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–193–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–193–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 2, 1994 (59 FR 4875). That NPRM would have required repetitive inspections to detect corrosion in the wheel axles of the main landing gear (MLG) sliding members; and rework of any corroded areas, an inspection to detect cracks in the wheel axles, and replacement of any cracked sliding member. That NPRM was prompted by a report that a MLG wheel axle failed during push back of an in-

service airplane from the terminal. That condition, if not corrected, could result in failure of the MLG wheel axle due to the problems associated with corrosion and cracking.

Actions Since Issuance of Previous Proposal

Since the issuance of the NPRM, three new or revised service bulletins have been released. These service bulletins are described below.

1. Dowty Aerospace has issued Service Bulletin F100–32–64, Revision 1, dated February 18, 1994. The original issue of this service bulletin was cited in the NPRM as an appropriate source of service information for accomplishment of repetitive visual inspections to detect corrosion in the wheel axles of the MLG sliding members. Although Revision 1 is essentially the same as the original issue, it contains certain editorial changes; the technical content of the service bulletin has not been changed.

2. Fokker has issued Service Bulletin SBF100–32–083, dated March 23, 1994. This service bulletin describes procedures for interim actions that may be accomplished in lieu of the repetitive inspections described in Fokker Service Bulletin SBF100–32–080. Accomplishment of these interim actions would allow an operator to increase the repetitive inspection interval for its fleet from 3 months to one year until terminating modifications are accomplished. The interim actions include:

—Installation of main wheel brake units with chamfered and cadmium-plated inboard bushings;
—Restoration of the protection scheme of the sliding members; and
—Inspections (also referred to as a "sampling program") to detect corrosion in the wheel axles of the MLG sliding members.

This service bulletin recommends that if any sampling is unsatisfactory, the repetitive inspections described in Fokker Service Bulletin SBF100–32–080 should be resumed. (Additionally, this service bulletin references Part B of the Dowty service bulletin described previously as an additional source of service information for accomplishment of the interim actions.)

3. Fokker also has issued Service Bulletin SBF100–32–081, dated March 23, 1994, which describes procedures for modifications of the main wheel brake units and the MLG sliding members. These modifications entail installing the main wheel brake units with chamfered and cadmium-plated inboard bushings, and installing landing gears with chromium or nickel plating on the brake abutment flange of the sliding member and restored cadmium plating and paint in the radius of the sliding member. Accomplishment of these modifications will prevent the development of corrosion in the radii of the wheel axles of the MLG sliding members. Accomplishment of the modifications eliminates the need for the repetitive inspections and the interim actions. (Additionally, the Fokker service bulletin references Part C of the Dowty service bulletin described previously as an additional source of service information for accomplishment of the modifications.)

Related Action by the Netherlands Authorities

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has approved the Fokker service bulletins, and issued Netherlands airworthiness directive (BLA) 93–108/3 (A), dated April 29, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

The BLA requires the accomplishment of either the repetitive visual inspections for corrosion, or the interim actions (including the 'sampling program" inspections).

FAA's Findings; New Proposed Requirements

The FAA examined the findings of the RLD, and reviewed the latest service information. The FAA finds that the previously issued NPRM must be revised to provide for interim actions that may be accomplished in lieu of the repetitive inspections, and to require the accomplishment of the modifications of the main wheel brake units and the MLG sliding members specified in Fokker Service Bulletin SBF100–32–081, dated March 23, 1994. Two new paragraphs have been added to this supplemental NPRM to provide for these interim actions and to require the modifications that constitute terminating action for the inspections.

The FAA also has revised the NPRM to cite the latest service bulletin revisions as the appropriate sources of service information.

Differences Between Proposed Rule and Netherlands Directive

Although the Netherlands BLA does not mandate the accomplishment of the modifications, this proposed AD would require that those modifications be accomplished. The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The cost impact information specified in the NPRM indicated that 100 airplanes of U.S. registry would be affected by this proposed AD. The FAA has updated that information, below, to indicate that 125 airplanes would be affected.

In addition, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The cost impact information also has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 125 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed visual inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the initial visual inspection of this proposed AD on U.S. operators is estimated to be $105,000, or $840 per airplane.

The FAA estimates that it would take approximately 66 work hours per airplane to accomplished the proposed terminating modifications, at an average labor rate of $60 per work hour. The cost for required parts would be approximately $865 per airplane. Based on these figures, the cost impact of the proposed terminating action on U.S. operators is estimated to be $603,125, or $4,825 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD

action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the repetitive visual inspections that would be provided by this AD action, it would take approximately 14 work hours to accomplish each repetitive inspection, at an average labor rate of $60 per work hour. The FAA estimates that these inspections would be accomplished four times per year. Based on these figures, the cost impact of the repetitive inspections on U.S. operators is estimated to be $3,360 per airplane, per year.

Should an operator elect to accomplish the interim actions that would be provided by this AD action, it would take approximately 26 work hours for the rework, and 26 work hours per airplane for the brake unit replacement. It would take between 28–168 work hours per year for the sampling program, depending on the size of an operator's fleet. The average labor rate is $60 per work hour. The cost for required parts would be approximately $865 per airplane. Additionally, once these interim actions are accomplished, the cost impact of the terminating modifications discussed previously would be reduced by $2,400 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–193–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Dowty Aerospace main landing gear (MLG) part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG wheel axle due to problems associated with corrosion and cracking, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the MLG wheels and brakes and perform a visual inspection to detect corrosion and cracking in the wheel axles of the MLG sliding members in accordance with Fokker Service Bulletin F100–32–079, Revision 1, dated October 4, 1993, and paragraph 2.A. of the Accomplishment Instructions of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993.

(b) Following accomplishment of the inspection required by paragraph (a) of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3 months in accordance with Fokker Service Bulletin SBF100–32–080, dated October 4, 1993, and Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994, until the actions required by paragraph (e) of this AD are accomplished. Or

(2) Accomplish paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD at the times specified in those paragraphs in accordance with Fokker Service Bulletin SBF100–32–083, dated March 23, 1994.

(i) Within 3 months after the accomplishment of an inspection required by paragraph (a) or (b)(1) of this AD: Rework the axles in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Repeat this rework thereafter at intervals not to exceed 12 months or 2,200 landings, whichever occurs first. And

(ii) Prior to or concurrent with accomplishing the initial rework specified in paragraph (b)(2)(i) of this AD: Replace the main wheel brake units in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. And

(iii) Within 3 months after the first accomplishment of the rework required by paragraph (b)(2)(i) of this AD: Begin performing interim inspections ("sampling program") to detect corrosion and cracking in the wheel axles of the MLG sliding members, in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Perform these inspections at the intervals specified in the service bulletin until the actions required by paragraph (e) of this AD are accomplished.

(c) If any corrosion is found during any inspection required by this AD, prior to further flight, rework the affected area and perform a non-destructive testing (NDT) inspection to detect cracks in the MLG wheel axles, in accordance with Appendix A of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if corrosion is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994 (if corrosion is found during a repetitive inspection required by this AD); as applicable. After rework, perform repetitive inspections of the affected area in accordance with paragraph (b)(1) of this AD until the actions required by paragraph (e) of this AD are accomplished.

(d) If any crack is found during any inspection required by this AD, prior to further flight, replace the affected sliding member with a serviceable sliding member in accordance with Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if any crack is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994 (if any crack is found during a repetitive inspection required by this AD); as applicable. After replacement of the affected sliding member, perform the repetitive inspections in accordance with paragraph (b)(1) of this AD until the actions required by paragraph (e) of this AD are accomplished.

(e) At the next major gear overhaul, or within 4,400 landings after accomplishment of the initial inspection required by paragraph (a) of this AD, whichever occurs first: Rework the sliding member, and replace the main wheel brake units in accordance

with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–081, dated March 23, 1994. Accomplishment of these actions constitutes terminating action for the repetitive inspections and the interim actions specified in paragraph (b) of this AD.

Note 2: Fokker Service Bulletin SBF100–32–081 references Dowty Aerospace Service Bulletin F100–32–64, Revision 1, dated February 18, 1994, as an additional source of service information for accomplishment of the rework and replacement.

(f) As of the effective date of this AD, no person shall install a Dowty Aerospace MLG, part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016, on any airplane unless the requirements of this AD have been accomplished on that MLG. Following its installation, the repetitive inspections required by paragraph (b) of this AD shall be accomplished on that MLG.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 3, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22920 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–ANM–23]

Proposed Removal of Class D Airspace and Establishment of Class E Airspace; Coeur d'Alene, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove Class D Airspace and establish Class E Airspace at Coeur d'Alene, Idaho. This action is the result of decommissioning the air traffic control tower at Coeur d'Alene Air Terminal, Idaho. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operation Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–23, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–532.2, Federal Aviation Administration, Docket No. 96–ANM–23, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ANM–23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove Class D airspace and establish Class E airspace at Coeur d'Alene, Idaho. This action is the result of decommissioning the air traffic control tower at Coeur d'Alene Air Terminal, Idaho. The area would be depicted on aeronautical charts for pilot reference. Class D and Class E airspace areas are published in Paragraphs 5000 and 6002 respectively, of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 18, 1995, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM ID D Coeur d'Alene, ID [Removed]

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM ID E2 Coeur d'Alene, ID [New]

Coeur d'Alene Air Terminal, ID
(Lat. 47°46'28" N, long. 116°49'11" W)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 4.4 mile radius of the Coeur d'Alene Air Terminal.

* * * * *

Issued in Seattle, Washington, on August 21, 1996.

Glenn A. Adams,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96-22944 Filed 9-6-96; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 96-AGL-10]

Establishment of Class E Airspace; Hazen, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposing rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Mercer County Regional Airport, Hazen, ND, to accommodate a Non-Directional Radio Beacon (NDB) for Runway 32, Global Positioning System (GPS) Runway 32 and GPS Runway 14. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 18, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 96-AGL-10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayton, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96-AGL-10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Mercer County Regional Airport, Hazen, ND, to accommodate a Non-Directional Radio Beacon (NDB) for Runway 32, Global Positioning System (GPS) Runway 32 and GPS Runway 14. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Hazen, ND [New]

Mercer County Regional Airport, ND
(Lat. 47°17′23″ N., long. 101°34′50″ W.)
Dickinson VORTAC
(Lat. 46°51′36″ N., long. 102°46′25″ W.)
Minot Air Force Base
(Lat. 48°24′56″ N., long. 101°21′27″ W.)
Bismarck VOR/DME
(Lat. 46°45′43″ N., long. 100°39′55″ W.)

That airspace extending upward from 700 feet above the surface within a 5.8-mile radius of the Mercer County Regional Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the northwest by V–491, on the south by V–510, on the east V–15, on the southwest by the 25.2-mile arc of the Dickinson VORTAC, on the north by the 47-mile radius of the Minot AFB, and on the southeast by the 36-mile arc of the Bismarck VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on August 26, 1996.

Peter H. Salmon,

Acting Manager, Air Traffic Division.

[FR Doc. 96–22946 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Defense Special Weapons Agency

32 CFR Part 318

[DSWA Instruction 5400.11B]

Privacy Program

AGENCY: Defense Special Weapons Agency, DOD.

ACTION: Proposed rule.

SUMMARY: As of June 26, 1996, the Defense Nuclear Agency is known as the Defense Special Weapons Agency (DSWA). The Defense Special Weapons Agency (DSWA) is revising its procedural and exemptions rules for the DSWA Privacy Program. DSWA is updating the procedures for accessing information contained in DSWA systems of records, and for contesting contents and appealing initial agency determinations.

DATES: Comments must be received on or before November 8, 1996, to be considered by the agency.

ADDRESSES: Send comments regarding this proposed rule to the General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

FOR FURTHER INFORMATION CONTACT: Mrs. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

As of June 26, 1996, the Defense Nuclear Agency is known as the Defense Special Weapons Agency (DSWA). The Defense Special Weapons Agency is revising its procedural and exemptions rules for the DSWA Privacy Program. DSWA is updating the procedures for accessing information contained in DSWA systems of records, and for contesting contents and appealing initial agency determinations.

List of Subjects in 32 CFR Part 318

Privacy.

Accordingly, the Defense Special Weapons Agency amends 32 CFR part 318 as follows:

Part 318 is proposed to be revised to read as follows:

PART 318–DEFENSE SPECIAL WEAPONS AGENCY PRIVACY PROGRAM

Sec.

318.1 Purpose and scope.
318.2 Applicability.
318.3 Designations and responsibilities.
318.4 Procedures for requests pertaining to individual records in a record system.
318.5 Disclosure of requested information to individuals.
318.6 Request for correction or amendment to a record.
318.7 Agency review of request for correction or amendment of record.
318.8 Appeal of initial adverse Agency determination for access, correction or amendment.
318.9 Exemption rules.

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 318.1 Purpose and scope.

(a) This rule implements the provisions of the Privacy Act of 1974, as amended, and adopts the policies and procedures as set forth by the Department of Defense Privacy Program, 32 CFR part 310.

(b) This rule establishes procedures whereby individuals can:

(1) Request notification of whether Defense Special Weapons Agency (DSWA) maintains or has disclosed a record pertaining to them in any nonexempt system of records;

(2) Request a copy or other access to such a record or to an accounting of its disclosure;

(3) Request that the record be amended; and

(4) Appeal any initial adverse determination of any such request.

(c) Specifies those system of records which the Director, Headquarters, Defense Special Weapons Agency has determined to be exempt from the procedures established by this rule and by certain provisions of the Privacy Act.

(d) DSWA policy encompasses the safeguarding of individual privacy from any misuse of DSWA records and the

provides the fullest access practicable by individuals to DSWA records concerning them.

§ 318.2 Applicability.

The provisions of this rule apply to Headquarters, Defense Special Weapons Agency (HQ DSWA), and Field Command, Defense Special Weapons Agency (FC DSWA).

§ 318.3 Designations and responsibilities.

(a) The General Counsel, Headquarters, Defense Special Weapons Agency, is designated as the Agency Privacy Act Officer.

(1) The Privacy Act Officer is the principal point of contact for privacy matters and is the Agency Initial Denial Authority.

(2) The Privacy Act Officer is responsible for monitoring and ensuring Agency compliance with the DoD Privacy Program in accordance with 32 CFR part 310.

(b) The Director, DSWA, is the Agency Appellate Authority.

(c) The Director, DSWA is responsible for implementing the Agency Privacy Act Program in accordance with the specific requirements of 32 CFR part 310.

(d) Agency component and element responsibilities are set forth in DSWA Instruction 5400.11B,[1] January 12, 1995.

§ 318.4 Procedures for requests pertaining to individual records in a record system.

(a) An individual seeking notification of whether a system of records, maintained by the Defense Special Weapons Agency, contains a record pertaining to himself/herself and who desires to review, have copies made of such records, or to be provided an accounting of disclosures from such records, shall submit his or her request in writing. Requesters are encourage to review the systems of records notices published by the Agency so as to specifically identify the particular record system(s) of interest to be accessed.

(b) In addition to meeting the requirements set forth in section 318.4 of this part, the individual seeking notification, review or copies, and an accounting of disclosures will provide in writing his or her full name, address, Social Security Number, and a telephone number where the requester can be contacted should questions arise concerning the request. This information will be used only for the purpose of identifying relevant records in response to an individual's inquiry. It is further recommended that individuals indicate any present or past relationship or affiliations, if any, with the Agency and the appropriate dates in order to facilitate a more thorough search. A notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746 may also be required.

(c) An individual who wishes to be accompanied by another individual when reviewing his or her records, must provide the Agency with written consent authorizing the Agency to disclose or discuss such records in the presence of the accompanying individual.

(d) Individuals should mail their written request to the Office of General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398 or to the office designated in the system notice and indicate clearly on the outer envelope 'Privacy Act Request'.

§ 318.5 Disclosure of requested information to individuals.

(a) The Defense Special Weapons Agency, upon receiving a request for notification of the existence of a record or for access to a record, shall acknowledge receipt of the request within 10 working days.

(b) Determine whether or not such record exists.

(c) Determine whether or not such request for access is available under the Privacy Act.

(d) Notify requester of determinations within 30 working days after receipt of such request.

(e) Provide access to information pertaining to that person which has been determined to be available within 30 working days.

(f) Notify the individual if fees will be assessed for reproducing copies of the records. Fee schedule and rules for assessing fees are contained in section 318.11 of this part.

§ 318.6 Request for correction or amendment to a record.

(a) An individual may request that the Defense Special Weapons Agency correct, amend, or expunge any record, or portions thereof, pertaining to the requester that he/she believe to be inaccurate, irrelevant, untimely, or incomplete.

(b) Such requests shall specify the particular portions of the records in question, be in writing and should be mailed to the Office of General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

(c) The requester shall provide sufficient information to identify the record and furnish material to substantiate the reasons for requesting corrections, amendments, or expurgation.

§ 318.7 Agency review of request for correction or amendment of record.

(a) The Agency will acknowledge a request for correction or amendment within 10 working days of receipt. The acknowledgment will be in writing and will indicate the date by which the Agency expects to make its initial determination.

(b) The Agency shall complete its consideration of requests to correct or amend records within 30 working days, and inform the requester of its initial determination.

(c) If it is determined that records should be corrected or amended in whole or in part, the Agency shall advise the requester in writing of its determination; and correct or amend the records accordingly. The Agency shall then advise prior recipients of the records of the fact that a correction or amendment was made and provide the substance of the change.

(d) If the Agency determines that a record should not be corrected or amended, in whole or in part, as requested by the individual, the Agency shall advise the requester in writing of its refusal to correct or amend the records and the reasons therefor. The notification will inform the requester that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

§ 318.8 Appeal of initial adverse Agency determination for access, correction or amendment.

(a) An individual who disagrees with the denial or partial denial of his or her request for access, correction, or amendment of Agency records pertaining the himself/herself, may file a request for administrative review of such refusal within 30 days after the date of notification of the denial or partial denial.

(b) Such requests shall be made in writing and mailed to the Office of the General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

(c) The requester shall provide a brief written statement setting for the reasons for his or her disagreement with the initial determination and provide such additional supporting material as the individual feels necessary to justify the appeal.

[1] Copies may be obtained from Office of General Counsel, Headquarters, Defense Special Weapons Agency, Washington, DC 20305–1000.

(d) Within 30 working days of receipt of the request for review, the Agency shall advise the individual of the final disposition of the request.

(e) In those cases where the initial determination is reversed, the individual will be so informed and the Agency will take appropriate action.

(f) In those cases where the initial determination is sustained, the individual shall be advised:

(1) In the case of a request for access to a record, of the individual's right to seek judicial review of the Agency refusal for access.

(2) In the case of a request to correct or amend the record:

(i) Of the individual's right to file a concise statement of his or her reasons for disagreeing with the Agency's decision in the record,

(ii) Of the procedures for filing a statement of the disagreement, and

(iii) Of the individual's right to seek judicial review of the Agency's refusal to correct or amend a record.

§ 318.9 Exemption rules.

(a) *Exemption for classified material.* All systems of records maintained by the Defense Special Weapons Agency shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12598 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(b) *System identifier and name:* HDSWA 007, Security Operations.

(1) *Exemption.* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), (I), and (f).

(2) *Authority.* 5 U.S.C. 552a(k)(5).

(3) *Reasons.* (i) From subsection (c)(3) because it will enable DSWA to safeguard certain investigations and relay law enforcement information without compromise of the information, and protect the identities of confidential sources who might not otherwise come forward and who have furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of security investigations. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information; under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(d) *System identifier and name:* HDSWA 011, Inspector General Investigation Files.

(1) *Exemption.* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(2) *Authority:* 5 U.S.C. 552a (k)(2).

(3) *Reasons.* (i) From subsection (c)(3) because it will enable DSWA to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

Dated: August 30, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–22855 Filed 9–6–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 16

RIN 2900–AH68

Treatment of Research-Related Injuries to Human Subjects

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations to provide (or to pay for the provision of) necessary medical treatment to human subjects injured as a result of participation in VA research. All participants in research approved by a VA Research and Development Committee (regardless of source of funding) and conducted by a VA employee would be eligible for such treatment. Experience suggests the

incidence of research-related injury is low and, therefore, the additional costs of this policy will be minimal.

DATES: Comments must be received on or before November 8, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH68". All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Theodore W. Lorei, (202) 273–8285.

SUPPLEMENTARY INFORMATION: It is a commonly accepted ethical position that research subjects deserve to receive free medical treatment if their participation in the research results in unforeseen adverse health effects. Although current VA regulations are silent regarding this policy, the acceptance of this right in practice is suggested by the inclusion of the following statement on the research consent form (VA Form 10–1086): "If any medical problems occur in connection with this study, VA will provide emergency care". It is important to clarify this issue in regulation so that research participants can be confidently informed of their rights and research administrators can take appropriate action to provide such benefits when appropriate.

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

There is no Catalog of Federal Domestic Assistance Program Number.

List of Subjects in 38 CFR Part 16

Human research subjects, reporting and record keeping requirements.

Approved: May 28, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 16 is proposed to be amended as set forth below:

PART 16—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501, 7331,7334; 42 U.S.C. 300v–1(b).

2. Section 16.125 is added to read as follows:

§ 16.125 Treatment of research-related injuries to human subjects.

(a) VA medical facilities shall provide necessary medical treatment to research subjects who are injured as a result of participation in a research project approved by a VA Research and Development Committee and conducted by VA employees. This regulation does not apply to:

(1) Treatment for injuries due to noncompliance by a subject with study procedures, or

(2) Research conducted for VA under a contract with a non-VA institution.

Note: Veterans who are injured as a result of participation in such research may be eligible for care from VA under other provisions of this part.

(b) Except in the following situations, care for VA research subjects under this regulation shall be provided in VA medical facilities:

(1) If VA medical facilities are not capable of furnishing economical care or are not capable of furnishing the care or services required, VA medical facility directors shall contract for the needed care.

(2) If inpatient care must be provided to a non-veteran under this policy, VA medical facility directors may contract for such care.

(3) If a research subject needs treatment in a medical emergency for a condition covered by this policy, VA medical facility directors shall provide reasonable reimbursement for the emergency treatment in a non-VA facility.

(Authority: 38 U.S.C. 501)

[FR Doc. 96–22591 Filed 9–6–96; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–174, RM–8849]

Radio Broadcasting Services; Thomaston, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Andrea Reynolds, requesting the allotment of FM Channel 249A to Thomaston, Alabama, as that community's first local aural transmission service. Coordinates used for this proposal are 32–14–11 North Latitude and 87–40–46 West Longitude.

DATES: Comments must be filed on or before October 15, 1996, and reply comments on or before October 30, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Andrea Reynolds, 2501 - 15th Street E, #214, Tuscaloosa, AL 35404.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–174, adopted August 16, 1996, and released August 23, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22840 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–176, RM–8851]

Radio Broadcasting Services; Greensboro, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Autaugaville Radio, requesting the allotment of FM Channel 256A to Greensboro, Alabama, as that community's first local aural transmission service. Coordinates used for this proposal are 32–47–22 North Latitude and 87–34–39 West Longitude.

DATES: Comments must be filed on or before October 21, 1996, and reply comments on or before November 5, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Autaugaville Radio, Inc., Attn: Roscoe J. Miller, Manningham Road at I–65, P.O. Box 369, Greenville, AL 36037.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–176, adopted August 23, 1996, and released August 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22848 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–177, RM–8853]

Radio Broadcasting Services; Galena, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Acorn Broadcasting Company requesting the allotment of Channel 282A at Galena, Kansas, as the community's first local aural transmission service. Channel 282A can be allotted to Galena in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4.0 miles) west to avoid short-spacing conflicts with the licensed sites of Station KBCN(FM), Channel 282C, Marshall, Arkansas, Station KBEQ(FM), Channel 282C, Kansas City, Missouri, and with Station KQMO(FM)'s construction permit, Channel 281C3, Ash Grove, Missouri. The coordinates for Channel 282A at Galena are 37–03–24 and 94–42–11.

DATES: Comments must be filed on or before October 21, 1996, and reply comments on or before November 5, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Richard Guest, President, Acorn Broadcasting Company, 3001 West 13th Street, Joplin, Missouri 64801 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–177, adopted August 23, 1996 and released August 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22849 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–175; RM–8850]

Radio Broadcasting Services; Strasburg, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by J.P.I. Radio, Inc. requesting the allotment of FM Channel 249C3 to Strasburg, Colorado, as that community's second local aural transmission service, and its reservation for noncommercial educational use. Coordinates utilized for this proposal are 39–43–13 North Latitude and 104–11–58 West Longitude. See Supplementary Information, *infra*.

DATES: Comments must be filed on or before October 21, 1996, and reply comments on or before November 5, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: J.P.I. Radio, Inc., Attn: Jarel L. Pittman, 12104 Old Highway 169, Hibbing, MN 55746.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–175, adopted August 23, 1996, and released August 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 272A was allotted to Strasburg, Colorado, in MM Docket No. 89–61. *See Report and Order,* 4 FCC Rcd 7570 (1989), 54 FR 45735, October 31, 1989. However, Channel 272A at Strasburg, Colorado, does not appear in 47 CFR 73.202(b), the Table of Allotments. Therefore, as announced in the *Notice* in this proceeding, we will make an editorial amendment to the FM Table of Allotments to include Channel 272A at Strasburg, Colorado, at the conclusion of the instant rule making proceeding.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22842 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–53; RM–8767]

Radio Broadcasting Services; Marinette, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a *Notice of Proposed Rule Making* issued in response to a petition filed by Douglas A. Maszka d/b/a Tri-City Television Company requesting the allotment of Channel 25 to Marinette, Wisconsin. *See* 61 FR 14043, March 29, 1996. On August 7, 1996, Tri-City filed comments withdrawing its interest in the allotment at Marinette. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted, and absent such an expression of interest, it is the Commission's policy to refrain from allotting a channel. Due to a lack of interest in Channel 25 at Marinette, we shall dismiss the proposal. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 96–53, adopted August 23, 1996, and released August 30, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–22844 Filed 9–6–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 090396C]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a special 1-day meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting is scheduled for Monday, September 9, 1996, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA; telephone (508) 535–4600. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council (617) 231–0422.

SUPPLEMENTARY INFORMATION: The September 9, 1996, meeting is being convened specifically to consider final action on several pending framework adjustments to the Northeast Multispecies Fishery Management Plan (FMP).

The Council will consider final action on Framework Adjustments 18 and 19 to the FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. If approved, Framework Adjustment 18 would allow herring and mackerel fishing with pelagic mid-water trawls in areas of Georges Bank now closed to all gear capable of catching groundfish. Framework Adjustment 19, would replace the Gulf of Maine area closures now in place to enhance groundfish conservation with alternatives that may alleviate some of the economic burden to fishermen without compromising the objectives of the FMP.

The Council considers public comments at a minimum of two Council meetings prior to making final recommendations to the Director, Northeast Region, NMFS, (Regional Director) under the provisions for abbreviated rulemaking, cited above. If the Regional Director concurs with the measures proposed by the Council, he will publish them as a final rule in the **Federal Register**.

There will be a discussion of an experimental fishery to assess the selectivity of longline gear. The Regional Director is considering an experimental fishery for a vessel involved in a Saltonstall/Kennedy Grant awarded to the New England Aquarium and entitled "Selectivity and Survival of Atlantic Cod (*Gadus morhua*) and Haddock (*Melanogrammus aeglefinus*) in a Northwest Atlantic Longline Fishery." The Massachusetts Division of Marine Fisheries (MADMF) is assisting in the project and would assist in the completion of the experimental fishery. The objective of the project is to assess

the selectivity of bottom longlines currently in use in the fishing industry and to attempt to improve the selectivity of longline gear. The experimental fishery would involve the use of longline gear equivalent to current commercial longline gear as well as experimental hooks, bait, and other control gears to compare results. The New England Aquarium and the MADMF have received funding for and conducted similar selectivity and survival experimental fisheries in the past.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Christopher B. Kellogg at the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 4, 1996.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22957 Filed 9–4–96; 3:10 pm]

BILLING CODE 3510–22–F

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50 CFR Part 648

[Docket No. 960830238–6239–3802; I.D. 081496C]

RIN 0648–AJ07

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) is considering limiting future access to anyone not in possession of a current multispecies limited access multispecies permit who enters the fisheries for silver hake (*Merluccis bilinearis*), black-eye whiting (offshore hake) (*Merluccis albibus*), ocean pout (*Macrozoarces americanus*), and red hake (*Urophycis chuss*) after September 9, 1996 (control date). Consideration of a control date is intended to discourage new entry into the fishery based on economic speculation during the Council's deliberation on the issue.

DATES: Comments must be submitted by October 7, 1996.

ADDRESSES: Comments should be directed to: Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: The Council manages multispecies under the Northeast Multispecies Fishery Management Plan (FMP). Amendment 4 to the FMP, effective June 27, 1991, included fisheries for silver hake, red hake and ocean pout, but did not include any specific measures to manage these species. On March 1, 1994, Amendment 5 to the FMP established a limited access permit program for regulated multispecies and retained an open-access permit category for the nonregulated multispecies—whiting, red hake, and ocean pout.

A definition for "nonregulated species" pertaining to the Northeast multispecies fishery was established by a final rule published on July 31, 1996, at 61 FR 39909. That definition contains the following species: Whiting, red hake, and ocean pout. The term "nonregulated species" in this action refers to whiting, red hake, ocean pout, and black-eye whiting. Black-eye whiting has historically not been distinguished from whiting, but the Council has recently requested information regarding biology and fishery economics from NMFS, because it may be prudent to monitor and manage the species separately.

On February 5, 1996, the Council submitted Amendment 7 to the FMP to NMFS and, after a preliminary evaluation, three measures in the amendment were disapproved on February 14, 1996, including the establishment of a limited access category for qualified vessels that fished in the open access possession limit category under Amendment 5. Pursuant to section 304(b)(3)(A) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Council resubmitted the measure that would implement a possession limit permit category by revising it to allow any vessel of the United States to obtain the permit and fish for and possess nonregulated multispecies. NMFS approved this resubmitted measure on July 19, 1996, and implemented it by a final rule on July 31, 1996 (61 FR 39909). The rule established an open access permit category named the "open access nonregulated multispecies permit."

The Council currently manages fisheries for silver hake, ocean pout, and red hake under the FMP, and it is gathering information necessary to consider the inclusion of black-eye whiting in the FMP in a plan amendment now under development. One of the impacts of the regulated species effort reduction program under Amendments 5 and 7 is that vessels are seeking alternative fisheries, including nonregulated multispecies fisheries. As markets develop, additional participants may enter these fisheries with potentially negative impacts on the health of the resource. Of the nonregulated multispecies, NMFS scientists have indicated one of the two stocks of silver hake is probably overexploited and the other is fully exploited, ocean pout is fully exploited, and red hake is underexploited.

Future access to these resources (the nonregulated species) in the exclusive economic zone will not be assured beyond the control date if a management regime that limits the number of participants in the fishery is developed and implemented under the Magnuson Act. The Council has indicated its intent to qualify vessels that hold a valid limited access multispecies permit for any limited access system that may be implemented for these species. The potential eligibility criteria may be based on current eligibility for limited access multispecies permits, as well as on historical participation, defined as any number of trips having any documented amount of any of these species. This document, therefore, gives the public, particularly those not in possession of a limited access multispecies permit, notice that they should locate and preserve records that substantiate and verify their participation in the fisheries for these species.

The control date will help to distinguish currently established multispecies fishermen from speculative entrants to the fisheries while management measures are being developed. Fishermen not in possession of a current limited access multispecies permit are notified that entering the fisheries after the control date may not qualify as previous participation, should such a criterion be the basis for future access to the silver hake, red hake, ocean pout, or black-eye whiting resources. Furthermore, additional and/or other qualifying criteria also may be applied. The Council may choose different and variably weighted methods to qualify fishermen, based on the type and length of participation in the fishery or on the quantity of landings. The Council may also decide not to limit entry into these fisheries after a

consideration of all reasonable alternatives for their management.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 3, 1996.

N. Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–22953 Filed 9–6–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 175
Monday, September 9, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,370,449 kilograms (95,615,552 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1, effective July 22, 1996, and is set forth in subheading 9903.52.01, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of July 22, 1996, and applies to upland cotton purchased not later than October 19, 1996 (90 days from the date the quota was established), and entered into the United States not later than January 17, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended June 6, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1, effective July 22, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.01 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1, effective January 24, 1996, through July 21, 1996. Therefore, the special import quota described in this notice opens on July 22, 1996, the day after the previous special import quota 1 ends.

The quota amount, 43,370,449 kilograms (95,615,552 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—February 1996 through April 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on Agusut 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22885 Filed 9–06–96; 8:45 am]
BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,370,449 kilograms (95,615,552 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2, effective July 29, 1996, and is set forth in subheading 9903.52.02, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of July 29, 1996, and applies to upland cotton purchased not later than October 26, 1996 (90 days from the date the quota was established), and entered into the United States not later than January 24, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended June 13, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2, effective July 29, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice

cannot take effect until HTS subheading 9903.52.02 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2, effective January 31, 1996, through July 28, 1996. Therefore, the special import quota described in this notice opens on July 29, 1996, the day after the previous special import quota 2 ends.

The quota amount, 43,370,449 kilograms (95,615,552 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—February 1996 through April 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub. L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC, on August 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22886 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 3

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,370,449 kilograms (95,615,552 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 3, effective August 5, 1996, and is set forth in subheading 9903.52.03, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of August 5, 1996, and applies to upland cotton purchased not later than November 2, 1996 (90 days from the date the quota was established), and entered into the United States not later than January 31, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended June 20, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 3, effective August 5, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.03 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 3, effective February 7, 1996, through August 4, 1996. Therefore, the special import quota described in this notice opens on August 5, 1996, the day after the previous special import quota 3 ends.

The quota amount, 43,370,449 kilograms (95,615,552 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—February 1996 through April 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on August 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22887 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 4

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,827,535 kilograms (96,623,255 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 4, effective August 12, 1996, and is set forth in subheading 9903.52.04, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of August 12, 1996, and applies to upland cotton purchased not later than November 9, 1996 (90 days from the date the quota was established), and entered into the United States not later than February 7, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended June 27, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 4, effective August 12, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in

subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.04 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 4, effective February 14, 1996, through August 11, 1996. Therefore, the special import quota described in this notice opens on August 12, 1996, the day after the previous special import quota 4 ends.

The quota amount, 43,827,535 kilograms (96,623,255 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—March 1996 through May 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on August 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22888 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 5

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,827,535 kilograms (96,623,255 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 5, effective August 19, 1996, and is set forth in subheading 9903.52.05, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of August 19, 1996, and applies to upland cotton purchased not later than November 16, 1996 (90 days from the date the quota was established), and entered into the United States not later than February 14, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended July 4, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 5, effective August 19, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.05 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 5, effective February 21, 1996, through August 18, 1996. Therefore, the special import quota described in this notice opens on August 19, 1996, the day after the previous special import quota 5 ends.

The quota amount, 43,827,535 kilograms (96,623,255 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—March 1996 through May 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on Augsut 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22889 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 6

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,827,535 kilograms (96,623,255 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 6, effective August 26, 1996, and is set forth in subheading 9903.52.06, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of August 26, 1996, and applies to upland cotton purchased not later than November 23, 1996 (90 days from the date the quota was established), and entered into the United States not later than February 21, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern

Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended July 11, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 6, effective August 26, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.06 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 6, effective February 28, 1996, through August 25, 1996. Therefore, the special import quota described in this notice opens on August 26, 1996, the day after the previous special import quota 6 ends.

The quota amount, 43,827,535 kilograms (96,623,255 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—March 1996 through May 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on August 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22890 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 7

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 43,827,535 kilograms (96,623,255 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 7, effective September 2, 1996, and is set forth in subheading 9903.52.07, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of September 2, 1996, and applies to upland cotton purchased not later than November 30, 1996 (90 days from the date the quota was established), and entered into the United States not later than February 28, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1–3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended July 18, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 7, effective September 2, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.07 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 7, effective March 6, 1996, through September 1, 1996. Therefore, the special import quota described in this notice opens on September 2, 1996, the day after the previous special import quota 7 ends.

The quota amount, 43,827,535 kilograms (96,623,255 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—March 1996 through May 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on August 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22891 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 8

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,368,028 kilograms (97,814,838 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 8, effective September 9, 1996, and is set forth in subheading 9903.52.08, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of September 9, 1996, and applies to upland cotton purchased not later than December 7, 1996 (90 days from the date the quota was established), and entered into the United States not later than March 7, 1997 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended July 25, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 8, effective September 9, 1996, is hereby established.

Because there are only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only 20 such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.08 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 8, effective March 13, 1996, through September 8, 1996. Therefore, the special import quota described in this notice opens on September 9, 1996, the day after the previous special import quota 8 ends.

The quota amount, 44,368,028 kilograms (97,814,838 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—April 1996 through June 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, Pub. L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on August 23, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–22892 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–05–P

Rural Housing Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service and Farm Service Agency, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces the Rural Housing Service (RHS) and Farm Service Agency's (FSA) intention to request an extension for an information collection currently approved for the agencies account servicing policies for programs formerly administered by the United States Department of Agriculture, Farmers Home Administration. These regulations are published under the authority of the Consolidated Farm and Rural Development Act (CONACT), as amended.

DATES: Comments on this notice must be received on or before November 8, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: William D. Cobb, Senior Loan Officer, Loan Servicing and Property Management Division, Farm Service Agency, USDA/FSA/LSPMD/ Stop 0523, P.O. Box 2415, Washington, DC 20013–2415; Telephone (202) 720–1059.

SUPPLEMENTARY INFORMATION:

Title: Account Servicing Policies.

OMB Number: 0575–0075.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0575–0075, as identified above, is needed to enable RHS and FSA to effectively collect on loans made under programs formerly administered by the Farmers Home Administration (FmHA). Under the provisions of the Department of Agriculture Reorganization Act of 1994, FmHA loan programs where transferred to either Rural Development, which includes RHS, the Rural Business-Cooperative Service, and the Rural Utilities Service; or the Farm Service Agency. RHS provides supervised credit in the form of Single Family Housing loans and grants, Multi-Family Housing loans and grants, and Community Facility loans and grants. FSA's Farm Credit Program provides supervised credit in the form of loans to family farmers and ranchers to purchase farm land and finance agricultural production. This regulation sets forth the policies and procedures regarding the application of payments on loans made under the RHS and FSA mission areas.

When loans are paid in full, the agencies Finance Office will automatically refund an overpayment of $10.00 or more. It is not cost efficient for the agencies to process refunds of overpayments of less than $10.00; therefore, these will be credited to the borrower's account unless a written request for a refund is submitted by the borrower.

Promissory notes evidencing a debt which has been reduced to a judgment are a part of the court record and ordinarily cannot be withdrawn and returned to the debtor, even after satisfaction of the debt. Therefore, no effort will be made to return these notes unless a written request is received from the borrower or their legal representative.

Estimate of Burden: Pubic reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3 hours.

Copies of the information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Division, at (202) 720–9734.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 28, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–22884 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–07–M

Natural Resources Conservation Service

McKinney-Buzzard Creek Watershed, OK; Notice of Intent To Deauthorize Federal Funding

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the McKinney-Buzzard Creek Watershed project (McCurtain County, Oklahoma).

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, Natural Resources Conservation Service, 100 USDA, Suite 203, Stillwater, Oklahoma 74074–2655. Telephone: (405) 742–1204.

McKinney Buzzard Creek Watershed, Oklahoma

Notice of Intent To Deauthorize Federal Funding

SUPPLEMENTARY INFORMATION: A determination had been made by Ronnie L. Clark that the proposed works of improvement for the McKinney-Buzzard Creek project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Ronnie L. Clark, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

Dated: August 26, 1996.

Ronnie L. Clark,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 96–22858 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–16–M

Starkweather Watershed, ND; Notice of Deauthorization of Federal Funding

SUMMARY: Pursuant to the Watershed Protection Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the Starkweather Watershed project, Cavalier and Ramsey Counties, North Dakota, effective on August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Hoag, Jr., State Conservationist, Natural Resources Conservation Service, 220 E. Rosser Avenue, P.O. Box 1458, Bismarck, North Dakota, 58502–1458. Telephone number: 701–250–4441.

Dated: August 30, 1996.

Ronald D. Sando,

Acting State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 96–22857 Filed 9–6–96; 8:45 am]

BILLING CODE 3410–16–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., September 17, 1996.

PLACE: Board of Education, District Board Room H–160, 450 North Grand, Los Angeles, CA 90051.

STATUS: Public Hearing.

MATTERS TO BE CONSIDERED: Testimony on Assassination Records.

A list of witnesses will be available from the Review Board by September 12, 1996. Due to time constraints, the Board will not be able to accept unscheduled testimony. The record of this hearing will be kept open until October 11, 1996, for those who wish to submit written comments.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–23089 Filed 9–5–96; 2:48 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1996 Community Census – Integrated Coverage Measurement (ICM) Activities (CAPI Person Interview, CAPI Person QA Interview, Outmover Tracing, and Dual System Estimation Follow up).

Form Number(s): CAPI Person Interview, CAPI Person QA Interview, DT–1301, DT–1301A, DT–1340, DT–1309(L), DT–31.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 4,903 hours.

Number of Respondents: 12,000 housing units and 120 persons.

Avg Hours Per Response: 18 and ½ minutes.

Needs and Uses: The Census Bureau requests OMB approval of the activities and instruments associated with conducting the interviewing and follow up phases of ICM research in the 1996 Community Census. Prompted by the need to improve statistical methodology for estimating population coverage during the decennial census, the Bureau of the Census developed the ICM approach. In ICM, census blocks are separately enumerated to obtain an independent roster. The independent roster is then compared to the census results to measure coverage of housing units and of persons in missed housing units and coverage of persons in housing units included in the census. The ICM approach was first tested in the 1995 Census Test. ICM Research in the 1996 Community Census will expand

upon results from that earlier test. The activities and forms for the initial stages of ICM research during the 1996 Community Census (independent listing and reconciliation follow up) were approved previously by OMB.

Affected Public: Individuals or households.

Frequency: One–time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 141, 193, and 221.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 30, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–22893 Filed 9–6–96; 8:45 am]

BILLING CODE 3510–07–F

Economics and Statistics Administration

Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Lewis S. Alexander
Frederick T. Alt
Betty L. Barker
O. Bryant Benton
Cynthia Z.F. Clark
Gerald F. Donahoe
Nancy M. Gordon
Arnold A. Jackson
Frederick T. Knickerbocker
Hugh W. Knox
John S. Landefeld
Paul A. London
Robert W. Marx
Gerald A. Pollack
Nancy A. Potok
Marvin D. Raines
Martha Farnsworth Riche
Paula J. Schneider
Katherine K. Wallman
James K. White

James K. White,

Executive Director, Performance Review Board.

[FR Doc. 96–23083 Filed 9–6–96; 8:45 am]

BILLING CODE 3510–BS–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection Activity

AGENCY: Corporation for National and Community Service.

ACTION: Notice of 60-day review and comment on the proposed AmeriCorps Member Application and AmeriCorps Referral Card Information Collection Activity.

SUMMARY: The Office of Recruitment announces a 60-day review and comment period during which the public is encouraged to submit comments on suggested revisions to the AmeriCorps Member Application and AmeriCorps Referral Card.

DATES: The Corporation For National and Community Service, Recruitment Unit will consider written comments on the AmeriCorps Member Application and AmeriCorps Referral Card received on or before November 8, 1996.

ADDRESSES: Send comments to Margaret McLaughlin, Corporation for National and Community Service, 1201 New York Avenue, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Margaret McLaughlin, (202) 606–5000, ext. 269.

SUPPLEMENTARY INFORMATION: This notice proposes collection of information and solicit comments to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information, including validity of the methodology and assumption used:

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Dated: August 27, 1996.

Margaret McLaughlin,

Acting Director of Recruitment, Office of AmeriCorps Recruitment.

[FR Doc. 96–22862 Filed 9–6–96; 8:45 am]

BILLING CODE 6050–28–M

Revision of the National Senior Service Corps' Project Grant Application

AGENCY: Corporation for National and Community Service.

ACTION: Notice of 30-day OMB review of Project Grant Application.

SUMMARY: On July 1, the National Senior Service Corps (NSSC) announced a 60-day review and comment period, ending August 30, 1996, during which project sponsors and the public were encouraged to submit comments suggesting revisions to the NSSC Project Grant Application (424–NSSC). The Project Grant Application is submitted by prospective grantees to apply for or renew sponsorship of projects under the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP), collectively known as the National Senior Service Corps. Completion of the application is required to obtain or retain sponsorship.

In the July 1 announcement, comments were invited on (1) Whether the existing Grant Application collects appropriate information to allow agency decision-makers to fully assess applicant capabilities and plans for quality sponsorship; (2) ways to enhance the utility and clarity of the Project Grant Application; (3) accuracy of agency estimates of reporting burden; and (4) ways to further reduce burden on respondents.

NSSC is requesting extension of the authorization to use the Project Grant Application in its current form with grants funded in 1997. However, revising and phasing in of a new form in conjunction with planned implementation of the impact programming initiative is anticipated for grants funded in 1998 and beyond.

DATES: The National Senior Service Corps and the Office of Management and Budget will consider written comments on the Project Grant Application and recordkeeping requirements which are received on or before October 9, 1996.

Addresses to send comments to both:

Janice Forney Fisher, NSSC, Rm. 9403A, Corp. for National Service, 1201 New York Avenue, NW., Washington, DC 20525.

Deborah Bonds, Office of Info. & Regulatory Affairs, Office of

Management and Budget, Attn: Desk Officer for CNS, Washington, DC 20503.

Estimated Annual Reporting or Disclosure Burden: 19,398 hours (1,220 annual respondents at an average 15.9 hours burden per respondent).

FOR FURTHER INFORMATION CONTACT: Janice Forney Fisher (202) 606–5000 ext. 275.

* This document will be made available in alternate format upon request. TDD (202) 606–5000 ext. 164.

Regulatory Authority: National Service Trust Act of 1993.

Dated: September 4, 1996.

Thomas E. Endres,

Deputy Director, National Senior Service Corps.

[FR Doc. 96–22955 Filed 9–6–96; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Oceanic Sounding Report; DMS Form 8053–1; OMB Number 0704–0208.

Type of Request: Reinstatement, without change.

Number of Respondents: 30.

Responses Per Respondent: 1.

Annual Responses: 30.

Average Burden Per Response: 3 hours.

Annual Burden Hours: 90.

Needs and Uses: Respondents to this information collection are mariners and navigators of merchant ships and vessels. The information collected hereby, is used to improve maritime safety. The navigational data provided updates the Department of Defense Bathymetric Data Base, and is used in the construction and correction of safe nautical charts.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 30, 1996.

Patri[illegible] L. Toppings,

Alter[illegible]te OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–22859 Filed 9–6–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: DMA Port Information Report; DMA Form 8330–1; OMB Number 0704–0210.

Type of Request: Reinstatement, without change.

Number of Respondents: 100.

Responses Per Respondent: 2.

Annual Responses: 200.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 100.

Needs and Uses: Respondents to this information collection are mariners and navigators of merchant ships and vessels while the vessel is actually in the port. The information collected hereby, serves to prevent potential Maritime disasters, particularly in port areas. It is used by personnel of the Navigation Information and Services Department to update existing date and to provide better quality and more current charts, publications, and services pertaining to ports and port safety.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 30, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–22860 Filed 9–6–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Notice to Mariners Information and Suggestion Sheet; DMA 8260–3; OMB Number 0704–0211.

Type of Request: Reinstatement, without change.

Number of Respondents: 520.

Responses Per Respondent: 1.

Annual Responses: 520.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 130.

Needs and Uses: Respondents to this information collection are mariners and navigators of merchant ships and vessels. The information collected hereby, is used to improve maritime safety. The identification or inconsistencies, discrepancies, and inadequacies of present nautical products enables personnel of the Navigation Information and Services Department in constructing and correcting safe navigational charts, publications, and services.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Responent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

Dod Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 30, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–22861 Filed 9–6–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Professional Qualification, Medical and Peer Reviewers; CHAMPUS Form 780; OMB Number 0720–0005.

Type of Request: Reinstatement, without change.

Number of Respondents: 20.

Responses Per Respondent: 1.

Annual Responses: 20.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 10.

Needs and Uses: The information collected hereby, is used as evidence of the qualifications of the medical professionals who provide medical and peer review in the CHAMPUS appeal and hearing process. Respondents to this information collection are the reviewing medical professionals, and the information provided is maintained in the respective appeal or hearing case file.

Affected Public: Business of other for-profit; Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer to DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 3, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–22863 Filed 9–6–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend Record Systems.

SUMMARY: The Department of the Navy proposes to amend twenty systems of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on October 9, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend twenty systems of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The specific changes to the system of records are set forth below followed by the system of records notice published in its entirety, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: August 30, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–3

SYSTEM NAME:

Navy Personnel Records System *(September 29, 1994, 59 FR 49648).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

At end of entry add 'An exception is made for copies of officer fitness reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.'

* * * * *

N01070–3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Active duty records are located at the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; Naval Reserve Personnel Center, New Orleans, LA 70149–7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary systems are located at the Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are retained one year past retirement, removal, or resignation of the member and then transferred to the National Personnel Records Center (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5101 for permanent retention. An exception is made for copies of officer fitness reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons

having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01080–1

SYSTEM NAME:

Enlisted Master File Automated System *(February 22, 1993, 58 FR 10705).*

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001;

Enlisted Personnel Management Information Center, New Orleans, LA 70159–7800;

Naval Reserve Personnel Center, New Orleans, LA 70149–7800.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Permanent. Annually transferred to the National Archives under Group 24, Records of the Bureau of Naval Personnel.'

* * * * *

N01080–1

SYSTEM NAME:

Enlisted Master File Automated System.

SYSTEM LOCATION:

Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001;

Enlisted Personnel Management Information Center, New Orleans, LA 70159–7800;

Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy enlisted personnel: active and inactive.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains information related to enlisted assignment, planning, programming, accounting, promotions, career development, procurement, education, training, retirement, performance, security, personal data, qualifications, programming, and enlisted reserve drill data. The system also contains Activity Personnel Diaries, personnel accounting documents, Reserve Unit Drill reports, and other personnel transaction documents necessary to maintain file accuracy and currency; and, all computer extracts, microform, and printed reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To assist in the administration, management, and supervision of Navy enlisted personnel and the operation of personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, disks, and drums. Printed reports and other related documents supporting the system are stored in authorized areas only.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Within the computer center, controls have been established to disseminate computer output over the counter only to authorized users. Specific procedures are also in force for the disposal of computer output. Output material in the sensitive category, i.e., inadvertent or unauthorized disclosure that may result in harm, embarrassment, inconvenience or unfairness to the individual, will be shredded. Computer files are kept in a secure, continuously manned area and are accessible only to authorized computer operators, programmers, enlisted management, placement, and distributing personnel who are directed to respond to valid official requests for data. These accesses are controlled and monitored by the security system.

RETENTION AND DISPOSAL:

Permanent. Annually transferred to the National Archives under Group 24, Records of the Bureau of Naval Personnel.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel, Navy Department, Washington, DC 20370–5000.

NOTIFICATION PROCEDURE:

Active duty enlisted personnel seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), 2 Navy Annex, Washington, DC 20370–5001.

Inactive duty and reserve personnel seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), 2 Navy Annex, Washington, DC 20370–5001.

Inactive duty and reserve personnel seeking to determine whether this system of records contains information about themselves shall address written inquiries to the Commanding Officer, Naval Reserve Personnel Center (ATTN: Privacy Act Coordinator), New Orleans, LA 70149–7800.

Written request should contain full name, Social Security Number, rank, status, and signature of requester.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Official records, correspondence, and educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01531–1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records *(September 20, 1993, 58 FR 48855).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'U.S. Naval Academy, 117 Decatur Road, Annapolis, MD 21402–5017.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add new paragraph 'Midshipmen separation files; midshipmen military justice files; midshipmen JAGMAN investigations; midshipmen personnel claim files; and midshipmen honor records.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace second paragraph with 'Parents and legal guardians of midshipmen for the limited purpose of counseling midshipmen who encounter academic, performance and/or disciplinary difficulties, as well as health and welfare issues.

At the end of the fourth paragraph, add the following, 'and for the purpose of supporting its activities related to the mission of the Naval Academy.'

* * * * *

RETENTION AND DISPOSAL:

In paragraph three, line four, delete 'copy;', and replace with 'copy. A tape is sent to the National Archives two years after class graduates to be stored as a national disaster recovery measure.'

* * * * *

N01531–1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records.

SYSTEM LOCATION:

U.S. Naval Academy, 117 Decatur Road, Annapolis, MD 21402–5017.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and candidates for admission and Naval Academy Midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Admissions records contain pre-candidate questionnaires concerning educational background, personal data, physical data, extracurricular activities, and employment; personal data; personal statements; transcripts from previously attended academic institutions; admission tests results; physical aptitude exam results; recommendation letters from school officials and others; professional development tests; interest inventory; extracurricular activities reports; reports of officer interviews; records of prior military service; and, Privacy Act disclosure forms. Nomination and appointment records include all card files of congressional offices and the names of persons whom each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source of all candidates appointed, admitted, and graduated, or resigned prior to graduation. Similar files are separately kept on foreign candidates.

Performance jackets and academic records include performance aptitude evaluations, performance grades, personal history, autobiography, record of emergency data, aptitude history, review boards records, medical excuse from duty forms, conduct records and grades, professional development tests, counseling and guidance development tests, counseling and guidance interview sheets and data forms, academic grades, class rankings, letters of commendation, training records, Oath of Office, Agreement to Serve, Privacy Act disclosure forms and other such records and information relative to the midshipmen.

Midshipmen separation files; midshipmen military justice files; midshipmen JAGMAN investigations; midshipmen personnel claim files; and midshipmen honor records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6956, 6957, 6958, 6962, and 6963; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To establish an audit trail of files which contains information on individuals as they progress from the application stage, through the admissions process, to disenrollment or graduation from the Naval Academy. Applicant's files contain information which is used to evaluate and to determine competitive standing and eligibility for appointments to the Naval Academy. Successful applicants become candidates whose files contain information to evaluate further each candidate's eligibility. Candidates' files are also used to identify candidates profiles for initiation of formal officer accession programs in conjunction with the Naval Academy admission process. Successful candidates who accept appointments become midshipmen. Midshipmen records contain personal, academic, and professional background information and are used for the management, supervision, administration, counseling, and discipline of midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Parents and legal guardians of midshipmen for the limited purpose of counseling midshipmen who encounter academic, performance and/or disciplinary difficulties, as well as health and welfare issues.

The United States Naval Institute for the limited purpose of notifying midshipmen and their parents about benefits and opportunities provided by the United States Naval Institute.

The Naval Academy Athletic Association for the limited purpose of promoting and funding the Naval Academy Intercollegiate Athletic Program and for the purpose of supporting its activities related to the mission of the Naval Academy.

The United States Naval Academy Foundation for the limited purpose of sponsoring midshipmen candidates who were not admitted in previous years.

The United States Naval Academy Alumni Association for the limited purpose of supporting its activities related to the mission of the Naval Academy.

The Contract Tailor Shop for the limited purpose of scheduling appointments as required for uniform fittings.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All hard copy records are kept in file folders in secure rooms or in locked cabinets.

On-line storage is maintained on the Honeywell DPS8 mainframe in Computer Services, with line networking to VACs and interfacing with microcomputers and dial-up lines.

Off-line storage is kept on disks.

Records on magnetic tapes and hard copy data are kept in secured rooms or in locked cabinets for operator access and user pickup.

Backup magnetic tapes are kept in a vault.

RETRIEVABILITY:

Records are kept alphabetically by Company and Class. Records can be retrieved from data base by selection of any data element, i.e., name, address, alpha code, six digit candidate number, or Social Security Number, etc.

SAFEGUARDS:

Visitor control. Records are kept in locked cabinets or in secured rooms. Computer records are safeguarded through selective file access, signing of Privacy Act forms, passwords, RAM systems, program passwords, user controls, encoding and port controls. Disk and tape storage is in a secure room. Backup systems on magnetic tapes are secured in fire proof vault in Ward Hall.

RETENTION AND DISPOSAL:

On-line computer records are destroyed one year after the midshipman's class graduates or the midshipman is separated.

Performance records are retained by the Performance Officer for two years after the midshipman's class graduates, and then destroyed. Backup systems on magnetic tapes and disks are kept in secure storage and destroyed two years after the midshipman's class graduates. Files relative to midshipmen separated involuntarily, including by qualified resignation, are retained for two years after the midshipman's class graduates, or three years from the date of separation, whichever date is later, and then destroyed.

Official transcripts and records files are kept indefinitely by the Registrar on microfilm, computer files, magnetic tapes, and hard copy. A tape is sent to the National Archives two years after class graduates to be stored as a national disaster recovery measure. Admission records of unsuccessful candidates are properly destroyed after one year. Counseling and Guidance Research data are kept by the Professional Development Research Coordinator indefinitely. Nomination and appointment files are retained for varying lengths of time.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, midshipman, supervisors, Registrar, instructors, professors, officers, midshipman personal history/performance record, midshipman autobiography, Record of Emergency Data (NAVPERS 601–2), Statement of Personal History (DD Form 398), Aptitude History Record (Form 1610–105), Midshipman Summary Sheet, Certificate of Release or Discharge From Active Duty (DD Form 214), Military Performance Board Results, Letters of Probation, Midshipmen Performance Evaluation Reports (Form 54A), Medical Reports, Clinical Psychologist Reports, Excused Squad Chits (Form 6320/20), Conduct Card (Form 1690/91C), Letters of Commendation, Counseling and Guidance Interview and Data Records, Letters of Congressmen, parents, etc., and copies of replies thereto, transcripts from high school or prior college, Review Board Records, and Record of Disclosure (Privacy Act).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01710–1

SYSTEM NAME:

Special Membership Listing of the Organizational Recreation Association *(February 22, 1993, 58 FR 10721).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Recreation Association Membership Files.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Name, rank, Social Security Number, room and telephone number, membership card number and dates purchased.'

* * * * *

STORAGE:

Delete entry and replace with 'File folders, card files, magnetic tape, personal computer.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Password control system, file, and element access based on predefined need-to-know. Physical access is controlled by locked terminals and rooms, guards, personnel screening and visitor control.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed one year after individual terminates membership.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Chief of Naval Personnel (Pers-06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

System Manager: Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual.'

* * * * *

N01710–1

SYSTEM NAME:

Recreation Association Membership Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Name, rank, social security number, room and telephone number,

membership card number and dates purchased.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record lists the names, internal codes, room and telephone numbers of each membership card and dates purchased.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To indicate income from sale of membership cards; to provide an audit trial for the auditors; and to confirm memberships, upon request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, magnetic tape, personal computer.

RETRIEVABILITY:

Name, Social Security Number, Case number, organization.

SAFEGUARDS:

Password control system, file, and element access based on predefined need-to-know. Physical access is controlled by locked terminals and rooms, guards, personnel screening and visitor control.

RETENTION AND DISPOSAL:

Records are destroyed one year after individual terminates membership.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief of Naval Personnel (Pers-06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

System Manager: Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records *(September 20, 1993, 58 FR 48857).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with, 'Security Department and Public Works Department, U.S. Naval Academy, 257 Longshaw Road, Annapolis, MD 21402–5036.'

* * * * *

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records.

SYSTEM LOCATION:

Security Department and Public Works Department, U.S. Naval Academy, 257 Longshaw Road, Annapolis, MD 21402–5036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those eligible to reserve a lot for future burial in the Naval Academy Cemetery. Deceased individuals interred/inured in the Naval Academy Cemetery/Columbarium.

CATEGORIES OF RECORDS IN THE SYSTEM:

State Burial Transit Permit, Application for Reimbursement of Headstone or Marker Expenses (VA Form 21–8834), Application of Standard Government Headstone or Marker for Installation in a Private or Local Cemetery (VA Form 40–1330), Lot Marker (NDW–USNA–DMC–1170/08), Columbarium Niche Cover Inscription (NDW–USNA–DMC–5370/42), U.S. Naval Academy Internment/Inurement Record (NDW–USNA–DMC–5360/43), U.S. Naval Academy Cemetery Record (NDW–USNA–DMC–1170/46), Naval Academy Foundation Order (NDW–USNA–DMC–5360/09), and correspondence to and from individuals. Specifically, information contained on the forms or correspondence may be: Full name, home address, rank, service, Social Security Number, date and place of birth, date and place of death, marital status, name of father and mother, name of next of kin and their address, telephone number, date of birth and date of death (if applicable), date and place of burial, lot number and other information relating to burial arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1481–1488; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To maintain official records of individuals holding grave site reservations and/or individuals interred/inured in the Naval Academy Cemetery or Columbarium. Records are used to respond to general inquiries from individuals holding grave site reservations, to verify eligibility of spouses of an officer or enlisted person of the Navy or Marine Corps who is interred/inured in the Naval Academy Cemetery or Columbarium.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and microfiche.

RETRIEVABILITY:

Alphabetically by last name and numerically by lot number.

SAFEGUARDS:

Records are kept in a building not open to general visiting and are maintained in an area accessible only to authorized personnel. Building is under surveillance of security personnel during non-working hours. Microfiche records are kept in the Naval Academy Archives which is not open to general visiting and is locked during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent. They are retained after the individual is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000. Requests should contain name and Social Security Number of the individual concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, the next of kin, and from the Register of the Alumni.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01900–2

SYSTEM NAME:

Navy Individual Service Review Board (ISRB) Proceedings Application File *(November 10, 1993, 58 FR 59712).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders.'

* * * * *

SAFEGUARDS:

In lines three and six, delete the word 'Command' and replace with 'Bureau'.

RETENTION AND DISPOSAL:

Delete entry and replace with 'Applications which are approved will necessitate creation of a service record which is part of the Navy Personnel Records System. Remaining records are retained in the Bureau of Naval Personnel for two years and then destroyed.'

* * * * *

N01900–2

SYSTEM NAME:

Navy Individual Service Review Board (ISRB) Proceedings Application File.

SYSTEM LOCATION:

Bureau of Naval Personnel (Pers 324), 2 Navy Annex, Washington, DC 20370–3240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for military status and subsequent discharge from the United States Navy because they claim membership in a group which has been determined to have performed active military service with the United States Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for discharge, supporting documentation, copies of correspondence between the individual and the Navy ISRB and other correspondence concerning the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub.L. 95–202 and E.O. 9397.

PURPOSE(S):

To consider the individual's application for military status and discharge.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

The files are kept within the Bureau of Naval Personnel offices. Access during business hours is controlled by Bureau personnel. Records not in use are maintained in a room which is locked during non-duty hours. The Bureau is secured at the close of business and the building in which the command is located has limited access controlled by security guards.

RETENTION AND DISPOSAL:

Applications which are approved will necessitate creation of a service record which is part of the Navy Personnel Records System. Remaining records are retained in the Bureau of Naval Personnel for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the individual or those acting on the individual's behalf, from other military records and from the Department of Defense Civilian/Military Service Review Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04064–1

SYSTEM NAME:

USNA Laundry and Drycleaning Charge Account *(September 20, 1993, 58 FR 48861).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.'

* * * * *

N04064–1

SYSTEM NAME:

USNA Laundry and Drycleaning Charge Account.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for a charge account with the Naval Academy Laundry and Drycleaning Plant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW-USNA-DMH–4064/14 and includes applicant's name; Social Security Number; rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from and/or recorded on accounts receivable ledgers, journals, charge tickets and check listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To establish a charge account at the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing purposes by the officials and employees of the Plant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and magnetic minicassette tape form.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is routinely limited to the billing clerk processing the application and recording activity on the account. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Hard copy records are retained in the current file area as long as the charge account is active. These records are then retired and kept in secured storage for two years and then destroyed. Cassette tape records are of two types, daily and journal (monthly recapitulation). These tapes are erased on a daily or monthly basis, respectively, during the preparation of the following day's or month's activity record.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for the charge account, from daily laundry and drycleaning will-call tickets (charges for goods and services provided) and from records of payment by charge account holders (check listings).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record *(September 20, 1993, 58 FR 48861).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.'

* * * * *

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant and appropriation 17X4002 for cash or credit settlement for damaged or lost articles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW-USNA-DMH–4064/15 and includes claimant's name; Social Security Number; rank (if applicable); home and work addresses and telephone numbers; description, original cost and date of purchase of item(s) for which claim is filed, and circumstances of loss or extent of damage; claim number, disposition, and remarks by approving authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To investigate claims for cash or credit settlement for damaged or lost articles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy form.

RETRIEVABILITY:

Name of customer and date laundry was turned in for cleaning.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is limited to the official processing of the claim and the clerk who maintains the file and prepares the administrative paperwork. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Retained in the current file area for one calendar year after the close of the individual's claim. The record is then stored for one more year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 580 Kingwood Street, Annapolis, MD 21402–5052.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual who filed the claim and offices who are processing the claim.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04066–5

SYSTEM NAME:

NEXCOM Direct Mail List *(September 20, 1993, 58 FR 48866).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'NEXCOM Direct Mail List/Patron Profile.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All authorized customers of military resale systems.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'For each sponsor: Name, address, rank, branch of service, status (active, reserve, or retired), Social Security Number, pay grade, birth date, sex, race, names, birth dates, and Social Security Numbers of dependents, date of sign up, telephone number (if available), account number, rotation date (if available), mailings sent and responses (if available).

For all other authorized customers: Name, address, Social Security Number, birth date, sex, race, date of sign up, telephone number (if available), account number, mailings sent to customer and responses available, purchase history, preference and summary. Sponsor information (rank, branch of service, status (active, reserve or retired), Social Security Number, pay grade, birth date, sex, race, account number.)

PURPOSE(S):

In line 7, delete the words 'who sign up for the list in order'.

* * * * *

STORAGE:

Delete entry and replace with 'Electronic media.'

* * * * *

SAFEGUARDS:

At end of entry, add '/password protected.'

RETENTION AND DISPOSAL:

Delete lines 3 and 4 and replace with 'patron profiles are destroyed when no longer an authorized customer.'

SYSTEM MANAGER(S) AND ADDRESS:

In paragraph 2, delete 'Deputy Commander, Marketing Communications Division (MCD)' and replace with 'Director, Advertising,'.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'The individual authorized customer/sponsor, Department of Defense/Defense Enrollment Eligibility Reporting System and Defense Finance Accounting System.'

* * * * *

N04066–5

SYSTEM NAME:

NEXCOM Direct Mail List/Patron Profile.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All authorized customers of military resale systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

For each sponsor: Name, address, rank, branch of service, status (active, reserve, or retired), Social Security Number, pay grade, birth date, sex, race, names, birth dates, and Social Security Numbers of dependents, date of sign up, telephone number (if available), account number, rotation date (if available), mailings sent and responses (if available).

For all other authorized customers: Name, address, Social Security Number, birth date, sex, race, date of sign up, telephone number (if available), account number, mailings sent to customer and responses available, purchase history, preference and summary. Sponsor information (rank, branch of service, status (active, reserve or retired), Social Security Number, pay grade, birth date, sex, race, account number.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6011; and E.O. 9397.

PURPOSE(S):

To maintain a data base which will permit the Navy Exchange Program to mail sales promotional, informational and market research materials to those authorized customers who have requested receipt of materials. The data base will also be used to define target markets among the authorized customers to develop better merchandise assortments and services to meet the needs of the customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Name, Social Security Number, address and account number.

SAFEGUARDS:

Secured and supervised facility; access restricted/password protected.

RETENTION AND DISPOSAL:

The records are retained as long as the customer wishes to receive the materials, then the patron profiles are destroyed when no longer an authorized customer.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder Manager: Director, Advertising, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual authorized customer/sponsor, Department of Defense/Defense Enrollment Eligibility Reporting System and Defense Finance Accounting System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04650–1

SYSTEM NAME:

Personnel Transportation System *(March 24, 1994, 59 FR 13943).*

CHANGES:

* * * * *

PURPOSE(S):

At end of entry, add 'For audit or research purposes to obtain background information/data.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraph two and replace with 'To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the provision of transportation; diplomatic, official, and other no-cost passports; and visas to subject individuals.'

* * * * *

N04650–1

SYSTEM NAME:

Personnel Transportation System.

SYSTEM LOCATION:

All Personnel Support Activity Detachments and Navy Passenger Transportation Offices Worldwide and Administrative Support Unit, Bahrain. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy military personnel (active and retired), civilian employees of the Navy, dependents, Midshipmen, and other individuals authorized through Navy commands to travel at Government expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for travel and, where applicable, for passports and visas; requests for extension of time limit on travel by retired members to home of record; requests for exceptions of policies/procedures involving travel entitlements/eligibilities; supporting documents; correspondence, and approvals/disapprovals relating to the above records; travel arrangements in response to above applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 et seq Travel, Transportation and Subsistence; 10 U.S.C. 2631–2635 and Chapter 7; 37 U.S.C. 404, Travel and Transportation Allowances-General; and E.O. 9397.

PURPOSE(S):

To provide official travel services; determine eligibility for transportation; to authorize or deny transportation; and otherwise manage the Navy-wide passenger transportation system. For audit or research purposes to obtain background information/data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the provision of transportation; diplomatic, official, and other no-cost passports; and visas to subject individuals.

To Foreign embassies, legations, and consular offices--to determine eligibility for visas to respective countries, if visa is required.

To Commercial Carriers providing transportation to individuals whose applications are processed through this system of records.

When required by Federal statute, by Executive Order, or by treaty, personnel record information will be disclosed to the individual, organization, or governmental agency as necessary.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes/disks. Manual records in file folders or file-card boxes, and microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by Social Security Number and/or name. Manual records are normally filed alphabetically by name of applicant, month, and fiscal year; applications for dependents travel are filed under name of sponsor.

SAFEGUARDS:

Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Computer terminals are controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are retained for three years and then forwarded to the records center for retention for additional four years. After seven years, all records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Support Activity Detachments and Navy Passenger Transportation Offices Worldwide and Administrative Support Unit, Bahrain. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Policy Official: Chief of Naval Personnel, Bureau of Naval Personnel (Pers 332), 2 Navy Annex, Washington, DC 20370–3320.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local activity where the request for transportation was initiated, and/or to intermediate activities (if applicable), or to the Chief of Naval Personnel (ATTN: Privacy Act Coordinator), Navy Department, Washington, DC 20370. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The letter should contain full name, Social Security Number, address and signature of the requester. The individual may visit the activities and commands listed under LOCATION for assistance with the records maintained at the respective locations. Proof of identification will consist of Military Identification Card for persons having such cards. Others must present other positive personal identification, preferably picture-bearing.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local activity where the request for transportation was initiated, and/or to intermediate activities (if applicable), or to the Chief of Naval Personnel (ATTN: Privacy Act Coordinator), Navy Department, Washington, DC 20370. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The letter should contain full name, Social Security Number, address and signature of the requester. The individual may visit the activities and commands listed under LOCATION for assistance with the records maintained at the respective locations. Proof of identification will consist of Military Identification Card for persons having such cards. Others must present other positive personal identification, preferably picture-bearing.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records; and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; member's service record/civilian personnel file; officials and employees of the Department of the Navy, Department of Defense, State Department; and other agencies of the Executive Branch and components thereof; foreign embassies, legations, and consular offices reporting approval/disapproval of visas; and carriers reporting on provision of transportation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05101–1

SYSTEM NAME:

Safety Equipment Needs, Issues, Authorizations .

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05100–3'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'File areas are accessible only to authorized persons who are properly screened, cleared, and trained. Computer terminals/personal computers are password protected.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroy when equipment is returned or inventoried.'

* * * * *

N05100–3

SYSTEM NAME:

Safety Equipment Needs, Issues, Authorizations *(February 22, 1993, 58 FR 10747).*

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official

mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel whose work requires them to wear, or are issued, protective clothing or equipment, including prescription safety lenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listings, cards, and other records which list individuals requiring, authorized, or issued prescription or other safety equipment. Such listings may include name, Social Security Number, organization code, date equipment issued, date equipment returned, equipment I.D. number, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To determine who needs, is eligible, or has been authorized or issued prescription or other safety equipment for protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, or date equipment was issued.

SAFEGUARDS:

File areas are accessible only to authorized persons who are properly screened, cleared, and trained. Computer terminals/personal computers are password protected.

RETENTION AND DISPOSAL:

Destroy when equipment is returned or inventoried.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requests should contain full name, Social Security Number, and date equipment was assigned (if known), and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05210–1

SYSTEM NAME:

General Correspondence Files *(February 22, 1993, 58 FR 10748).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05000–1.'

* * * * *

SYSTEM LOCATION:

Add two addresses 'Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488 and Commander in Chief, U.S. Pacific Command, Building 1, Camp H. M. Smith, HI 96861–4028'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.'

* * * * *

N05000–1

SYSTEM NAME:

General Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, Building 1, Camp H. M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have initiated correspondence with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To maintain a record of correspondence received and responses made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, organization, and date of correspondence.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain full name and date individual wrote to the Navy or received a response. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned and records collected by the activity to respond to the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05330–1

SYSTEM NAME:

Manhour Accounting System *(May 22, 1996, 61 FR 25640).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N12610–1.'

SYSTEM NAME:

Delete entry and replace with 'Hours of Duty Records.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper and computerized records.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed when three years old.'

* * * * *

N12610–1

SYSTEM NAME:

Hours of Duty Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains such information as name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, hours assigned. Data base includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To effectively manage the work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computeruzed records.

RETRIEVABILITY:

Name, organization code, Social Security Number, and work center.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

CONTESTING RECORD PROCEDURE:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, correspondence, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05340–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society.

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05380–1'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'E.O.s 9397, 10927, and 12353.'

* * * * *

STORAGE:

Delete entry and replace with 'Manual and computerized records.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual; payroll files; personnel files.'

* * * * *

N05380–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society *(February 22, 1993, 58 FR 10754).*

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O.s 9397, 10927, and 12353.

PURPOSE(S):

To manage the Combined Federal Campaign and Navy Relief Society Fund drives and provide the respective campaign coordinator with necessary information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and computerized records.

RETRIEVABILITY:

Name, Social Security Number, and organization.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

CONTESTING RECORD PROCEDURE:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; payroll files; personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05350–1

SYSTEM NAME:

Navy Drug and Alcohol Program System *(February 22, 1993, 58 FR 10755).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In paragraph 2, lines 5 and 6, delete the words 'Navy Alcohol and Drug Safety Action Program Offices' and replace with Personal Responsibility and Values Education and Training Program Offices,'.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In line 3, after the word 'abusers,' add 'or who are out of Navy body fat standards and may be obese/compulsive overeaters,'. In line 9, delete the words 'Navy Alcohol and Drug Safety Action Program' and replace with 'Personal Responsibility and Values Education and Training Program.'

* * * * *

PURPOSE(S):

At end of paragraph one, add the following 'and programs for those members who are obese/compulsive overeaters.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In paragraph 3, line 6, after the word 'abuse' add the following ', or obesity/compulsive overeating'.

In paragraph 3, line 14, delete '290dd-3 and 290ee-3' and replace with 290dd-2.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Manual records are maintained for two years (Level I/II) or three years (Level III) and then retired to the nearest Federal Records Center. Automated records are maintained indefinitely.'

* * * * *

N05350–1

SYSTEM NAME:

Navy Drug and Alcohol Program System.

SYSTEM LOCATION:

Primary location: Bureau of Naval Personnel (Pers 63), 2 Navy Annex, Washington, DC 20370–5001.

Decentralized locations: Navy Alcohol Rehabilitation Centers, Navy Alcohol Rehabilitation Departments in Naval Hospitals, Counseling and Assistance Centers, Personal Responsibility and Values Education and Training Program Offices, Navy Drug Screening Laboratories, Bureau of Naval Personnel Detachment (Drug and Alcohol Program Management Activity), and local activities to which an individual is assigned. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy personnel (officers and enlisted) who have been identified as drug or alcohol abusers or who are out of Navy body fat standards and may be obese/compulsive overeaters, and who are subsequently screened or referred for remedial education, outpatient counseling, or residential rehabilitation; counselors, counselor interns, and counselor applicants; Navy personnel who attend the Personal Responsibility and Values Education and Training Program for preventive education; dependents and civilians, where authorized, who participate in preventive and remedial education programs, outpatient counseling, and residential rehabilitation; and officer, enlisted, and civilian staff members of facilities providing drug and alcohol education, screening, counseling, rehabilitation, and drug testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation containing demographic data, screening and assessment information, progress notes, medical and laboratory data, narrative summaries of treatment, aftercare plans, and other information pertaining to a member's participation in substance abuse education, counseling, and rehabilitation programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. para 1090; 42 U.S.C. 290dd–2; and E.O. 9397.

PURPOSE(S):

To train, educate, identify, screen, counsel, rehabilitate, and monitor the progress of individuals in drug and alcohol abuse programs and programs for those members who are obese/compulsive overeaters.

Information is used to screen and evaluate the certified counselors, counselor interns, and counselor applicants throughout the course of their duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with the provisions of 42 U.S.C. 290dd–2, the Navy's 'Blanket Routine Uses' do not apply to this system of records.

Specifically, records of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be client/patient, maintained in connection with the performance of any alcohol or drug abuse or obesity/compulsive overeating prevention, education, training, treatment, rehabilitation, or research which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records, except to the individual to whom the record pertains.

The content of any record may be disclosed in accordance with prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under such prescribed regulations.

Information from records may be released without the member's consent in the following situations:

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose patient identities in any manner.

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good case therefore. In accessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosures.

The above prohibitions do not apply to any interchange of records within the Armed Forces or within those components of the Department of Veterans Affairs furnishing health care to veterans or between such components and the Armed Forces.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Automated records may be stored on computer disks (both hard drive and floppy), magnetic tapes, and drums.

Manual records may be stored in paper file folders, computer printouts, microfiche, or microfilm.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Manual records are maintained for two years (Level I/II) or three years (Level III) and then retired to the nearest Federal Records Center. Automated records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 63), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

The letter should contain full name, Social Security Number, rank/rate, military status, and signature of the requester. The individual may visit the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Chief of Naval Personnel (Pers 63), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

The letter should contain full name, Social Security Number, rank/rate, military status, and signature of the requester. The individual may visit the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DOD/DON officials; notes and documents from Service Jackets and Medical Records; and general correspondence concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05801–2

SYSTEM NAME:

Legal Assistance Management Information System *(February 22, 1993, 58 FR 10772).*

CHANGES:

* * * * *

STORAGE:

At end of entry add 'Electronic records are stored on computer disks.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Cards, case files, and computer disks are maintained in metal filing cabinets or other storage devices under the control of authorized personnel during working hours. The office space in which the file cabinets and storage devices are located in locked outside normal working hours. The files are not accessible to the public or to persons within the command without an official need-to-know.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Most files are maintained for two years after the completion of the services and then destroyed. However, some files may be maintained indefinitely if a future legal dispute or inquiry about the matters addressed in the file is reasonably foreseeable.'

Files are maintained for two years after completion of the services and then destroyed.

* * * * *

N05801–2

SYSTEM NAME:

Legal Assistance Management Information System.

SYSTEM LOCATION:

Naval Legal Service Offices (NLSO) and NLSO detachments and other commands that provide legal assistance services under the auspices of the Navy's Legal Assistance Program through an assigned judge advocate or civilian attorney. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, retirees, dependents, and authorized civilians who have been provided legal assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal Assistance Card Files contain basic client identification information; e.g., name, address, duty station, telephone number(s), a brief description of the subject of the visit, name of the attorney assigned, and attorney time expended.

Legal Assistance Client Case Files contain personal and privileged information on the client and about the legal matter(s) for which the client is seeking assistance, including various documents related to the client's case, such as copies of client records provided to the attorney; memoranda of attorney-client interviews and attorney-client telephone conversations; memoranda of meetings and telephone conversations with relevant third parties; copies of statutes and case law relevant to the case; attorney research and notes; copies of all documents prepared, and of all correspondence sent or received, by the legal assistance provider; and a record of the results obtained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1044; and 32 CFR part 727, Legal Assistance.

PURPOSE(S):

Data from the records is compiled for the purpose of generating periodic workload productivity and statistical reports, for internal management of the office, and for counsel assignment. To provide an administrative record for use by attorneys and clerical personnel directly involved in rendering legal assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Navy's compilation do not apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper card and case files are stored in file cabinets. Electronic records are stored on computer disks.

RETRIEVABILITY:

Name of client.

SAFEGUARDS:

Cards, case files, and computer disks are maintained in metal filing cabinets or other storage devices under the control of authorized personnel during working hours. The office space in which the file cabinets and storage devices are located in locked outside normal working hours. The files are not accessible to the public or to persons within the command without an official need-to-know.

RETENTION AND DISPOSAL:

Most files are maintained for two years after the completion of the services and then destroyed. However, some files may be maintained indefinitely if a future legal dispute or inquiry about the matters addressed in the file is reasonably foreseeable.

Files are maintained for two years after completion of the services and then destroyed

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Legal Assistance), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the office providing the legal assistance or to the Deputy Assistant Judge Advocate General (Legal Assistance), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should include full name and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the office providing the legal assistance or to the Deputy Assistant Judge Advocate General (Legal Assistance), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should include full name, address, and telephone number of the requester and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Basic information is provided by the client. Additional information regarding the case, including actions taken and the ultimate disposition of the case, is provided by the attorney rendering the service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05810–1

SYSTEM NAME:

Article 138 Complaint of Wrongs *(February 22, 1993, 58 FR 10773).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05819–4'.

SYSTEM NAME:

Delete entry and replace with 'Complaints of Wrong Under Article 138/Article 1150.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: 'Active duty Navy and Marine Corps personnel who have submitted complaints of wrong pursuant to Article 138, Uniform Code of Military Justice, or Article 1150, U. S. Navy Regulations, 1990 which have been forwarded to the Secretary of the Navy for final review of the proceedings.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Files consist of complaint or report, the investigations into the complaint or report, the action of the general court-martial authority, and action of the Secretary of the Navy accumulated at the Office of the Judge Advocate General.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Article 138, Uniform Code of Military Justice and Article 1150, U.S. Navy Regulations, 1990.'

PURPOSE(S):

In line 3, after the words, 'Article 138' add the words, 'and Article 1150'.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Closed files are kept in alphabetical order according to the last name of the complainant. Active files are maintained chronologically by case number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Permanent. Retire to Washington National Records Center when 3 years old. Transfer to NARA when 20 years old.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Complainant; investigatory files; individuals interviewed.'

* * * * *

N05819–4

SYSTEM NAME:

Complaints of Wrong Under Article 138/Article 1150.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 32), Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400. Complaints, three years old or older, are stored at the Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel who have submitted complaints of wrong pursuant to Article 138, Uniform Code of Military Justice, or Article 1150 of the U. S. Navy Regulations (1990) which have been forwarded to the Secretary of the Navy for final review of the proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of complaint or report, the investigations into the complaint or report, the action of the general court-martial authority, and action of the Secretary of the Navy accumulated at the Office of the Judge Advocate General.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 138, Uniform Code of Military Justice and Article 1150 of the U.S. Navy Regulations (1990).

PURPOSE(S):

Used by JAG as a working file to review and make recommendations to the Secretary of the Navy on Article 138 and Article 1150 complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Closed files are kept in alphabetical order according to the last name of the complainant. Active files are maintained chronologically by case number.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located is locked outside office working hours.

RETENTION AND DISPOSAL:

Permanent. Retire to Washington National Records Center when 3 years old. Transfer to NARA when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Civil Affairs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Civil Affairs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should contain full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Civil Affairs Division, Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Civil Affairs), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

The written request should contain full name and the approximate date the complaint was submitted for review if known. Written requests must be signed by the requesting individual. Personal visits may be made to the Civil Affairs Division, Office of the Judge Advocate General, Room 9N11, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc. The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainant; investigatory files; individuals interviewed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06530–1

SYSTEM NAME:

Blood Donor Files *(February 22, 1993, 58 FR 10798).*

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete entry and replace with 'N06320–4'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed when three years old or discontinuance of function, whichever is earlier.'

SYSTEM MANAGER(S) AND ADDRESS:

In line 2, after the word 'Surgery' add ', 2300 E Street, NW'.

* * * * *

N06320–4

SYSTEM NAME:

Blood Donor Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel donating blood or seeking replacement of blood.

CATEGORIES OF RECORDS IN THE SYSTEM:

Blood donation and blood replacement requirement records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 21 U.S.C. 600–799; and E.O. 9397.

PURPOSE(S):

To record emergency blood requests by blood type, identify donors, replace blood provided to cover individuals, and to meet regulatory requirements imposed by the Food and Drug Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records

or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized and paper records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access provided on a need-to-know basis only. Computerized information is password protected and maintained is a locked and/or guarded office.

RETENTION AND DISPOSAL:

Records are destroyed when three years old or discontinuance of function, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372–5300.

System manager: Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records contained in this system of records should address written inquiries to the commanding officer of the activity where assigned.

The request should contain full name, Social Security Number, and must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, American Red Cross, blood donors, hospitals, persons seeking replacement of blood.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07320–1

SYSTEM NAME:

Property Accountability Records *(February 22, 1993, 58 FR 10808).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any individual who receives and signs for government property.'

* * * * *

STORAGE:

In line 4, after the word 'photographs' add ', computerized data base,'.

RETRIEVABILITY:

In line 2, after the word 'Name,' add 'Social Security Number'.

SAFEGUARDS:

Delete entry and replace with 'Access is limited and provided on a need-to-know basis only. Computerized data bases are password protected.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed.'

* * * * *

N07320–1

SYSTEM NAME:

Property Accountability Records.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who receives and signs for government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

The receipts maintained are any of the following: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, charge cards, or any other statement of individual accountability for receipt of government property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To identify individuals to whom government property has been issued.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The receipts may be maintained in any of the following formats: Logbooks, property passes, custody chits, charge tickets, sign out cards, tool tickets, sign out forms, photographs, computerized data base, charge out cards or any other statement of individual accountability for receipt of government property.

RETRIEVABILITY:

Retrievability may be by any of the following: Name, Social Security Number, badge number, tool number, property serial number, or any other locally determined method of property receipt accountability.

SAFEGUARDS:

Access is limited and provided on a need-to-know basis only. Computerized data bases are password protected.

RETENTION AND DISPOSAL:

Property accounting records are destroyed when two years old. Custody receipts are destroyed when material or equipment is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the commanding officer or officer in charge of the activity where the property accountability records are maintained.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether system records contain information pertaining to them may do so by making application to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have a Department of the Navy approved identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer or officer in charge of the activity where the receipts are located. Individuals making application must have a Department of the Navy approved identification card.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is collected directly from the subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MFD00003

SYSTEM NAME:

Joint Uniform Military Pay System/ Manpower Management System(JUMPS/MMS) *(February 22, 1993, 58 FR 10635).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Marine Corps Total Force System (MCTFS).'

SYSTEM LOCATION:

Delete entry and replace with 'Primary locations: Defense Mega-Center, St. Louis, MO 63120-1798.

Defense Finance and Accounting Service-Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001. The Financial Systems Activity-Kansas City, 1500 East Bannister Road, Kansas City, MO 64197–0001.

Manpower Information Systems Support Activity, 1500 East Bannister Road, Kansas City, MO 64197–0001.

Decentralized segments: Manpower Information System Support Office-02, Marine Corps Base, Camp LeJeune NC 28542–5000.

Manpower Information System Support Office-03, Marine Corps Base, Camp Pendleton, CA 92055–5000.

Manpower Information System Support Office-06, Marine Corps Base, Hawaii, Kaneohe Bay, HI 96863–5000.

Manpower Information System Support Office-09, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Manpower Information System Support Office-16 and 17, Marine Corps Support Activity, Kansas City, MO 64197–0001.

Manpower Information System Support Office-11, Headquarters, Washington, DC 20380–1775.

Manpower Information System Support Office-27, Marine Corps Base, Camp S.D. Butler, Okinawa, JA, FPO AP 98773–5001.'

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Delete entry and replace with 'Marine Corps Total Force System (MCTFS) contains the personnel records of all active, reserve and retired Marines. MCTFS also contains the pay records of active and reserve Marines.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File contains personnel and pay data which includes, but is not limited to Name, rank/grade, Social Security Number, date of birth, citizenship, marital status, home of record, dependents information including their Social Security Numbers, records of emergency data, enlistment contract or officer acceptance form identification, duty status, component code, population group, sex, ethnic group, duty information duty station/personnel assignment, unit information, security investigation date/ type, leave account information, separation document code, test scores/ information, language proficiency, military/civilian/off-duty education, training information to include marksmanship data, physical fitness data, swim qualifications, military occupational specialties, military skills and schools, awards, combat tour information, aviation/pilot/flying time data, reserve drill information, reserve unit information, lineal precedence number, limited duty officer/warrant officer footnote, TAD data, overseas deployment data, limited medical data, conduct and proficiency marks, years in service, promotional data, weight control and military appearance data, commanding officer assignment/relief data, joint MOS data, and related data. Pay data included leave and earnings statement which may include base pay, allowances, allotments, bond authorization, health care coverage, dental coverage (if applicable), special pay and bonus data, federal and state withholding/income tax data, FDIC contributions, Medicare, Social Security, SGLI deductions, leave account, wage and summaries, reserve drill pay, reserve AT pay, and other personnel/pay management data.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To maintain records of pay and personnel data on all active and reserve Marine Corps personnel, and to maintain personnel data from all retired Marine Corps personnel.'

* * * * *

STORAGE:

Delete entry and replace with 'Data is recorded on magnetic records and discs, computer printouts, microfilm, file folders, compact disc, electronic media and other documents.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Building management employs security guards; building is locked nights and holidays. Authorized persons may enter and leave the building during nonworking hours but must sign in and out. Records maintained in areas assessable only to authorized personnel have a specific and recorded need-to-know. On-line data sets (both type and disc) pertaining to personnel information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being processed.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'The Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775.

Director, Defense Finance and Accounting Service - Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Active Duty/Reserve Members seeking to determine whether pay information about themselves is contained in this system should address written inquiries to the member's local disbursing office.

Active Duty/Reserve Members seeking to determine whether pay information about themselves is contained in this system should address written inquiries

to the member's immediate commanding officer.

Retired Members seeking to determine whether personnel information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775.

Individual should provide their full name, Social Security Number, and the request must be signed.

In order to personally visit the above addresses and obtain information, individuals must present a military identification card, a driver's license, or other proof of identity.'

RECORDS ACCESS PROCEDURES:

Delete entry and replace with 'Active Duty/Reserve Members seeking to access pay information about themselves contained in this system should address written inquiries to the member's local disbursing office.

Active Duty/Reserve Members seeking access to pay information about themselves contained in this system should address written inquiries to the member's immediate commanding officer.

Retired Members seeking to access personnel information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775.

Individual should provide their full name, Social Security Number, and the request must be signed.

In order to personally visit the above addresses and obtain information, individuals must present a military identification card, a driver's license, or other proof of identity.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Recruiting offices, disbursing offices, active and reserve Marine Corps unit administration offices, and the individual are the principle source of the information contained in the MCTFS record for that person.'

* * * * *

MFD00003

SYSTEM NAME:

Marine Corps Total Force System (MCTFS).

SYSTEM LOCATION:

Primary locations: Defense Mega-Center, St. Louis, MO 63120-1798.

Defense Finance and Accounting Service-Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001. The Financial Systems Activity-Kansas City, 1500 East Bannister Road, Kansas City, MO 64197–0001.

Manpower Information Systems Support Activity, 1500 East Bannister Road, Kansas City, MO 64197–0001.

Decentralized segments:

Manpower Information System Support Office-02, Marine Corps Base, Camp LeJeune NC 28542–5000.

Manpower Information System Support Office-03, Marine Corps Base, Camp Pendleton, CA 92055–5000.

Manpower Information System Support Office-06, Marine Corps Base, Hawaii, Kaneohe Bay, HI 96863–5000.

Manpower Information System Support Office-09, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Manpower Information System Support Office-16 and 17, Marine Corps Support Activity, Kansas City, MO 64197–0001.

Manpower Information System Support Office-11, Headquarters, Washington, DC 20380–1775.

Manpower Information System Support Office-27, Marine Corps Base, Camp S.D. Butler, Okinawa, JA, FPO AP 98773–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps Total Force System (MCTFS) contains the personnel records of all active, reserve and retired Marines. MCTFS also contains the pay records of active and reserve Marines.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains personnel and pay data which includes, but is not limited to Name, rank/grade, Social Security Number, date of birth, citizenship, marital status, home of record, dependents information including their Social Security Numbers, records of emergency data, enlistment contract or officer acceptance form identification, duty status, component code, population group, sex, ethnic group, duty information duty station/personnel assignment, unit information, security investigation date/type, leave account information, separation document code, test scores/information, language proficiency, military/civilian/off-duty education, training information to include marksmanship data, physical fitness data, swim qualifications, military occupational specialties, military skills and schools, awards, combat tour information, aviation/pilot/flying time data, reserve drill information, reserve unit information, lineal precedence number, limited duty officer/warrant officer footnote, TAD data, overseas deployment data, limited medical data, conduct and proficiency marks, years in service, promotional data, weight control and military appearance data, commanding officer assignment/relief data, joint MOS data, and related data. Pay data included leave and earnings statement which may include base pay, allowances, allotments, bond authorization, health care coverage, dental coverage (if applicable), special pay and bonus data, federal and state withholding/income tax data, FDIC contributions, Medicare, Social Security, SGLI deductions, leave account, wage and summaries, reserve drill pay, reserve AT pay, and other personnel/pay management data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013 and 37 U.S.C. 5031 and 5201.

PURPOSE(S):

To maintain records of pay and personnel data on all active and reserve Marine Corps personnel, and to maintain personnel data from all retired Marine Corps personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Attorney General of the U.S. - By officials and employees of the Attorney General in connection with litigation, law enforcement or other matters under the legal representative of the Executive Branch agencies.

By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Federal, state and local government agencies - By officials and employees of federal, state and local government through Official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic records and discs, computer printouts, microfilm, file folders, compact disc, electronic media and other documents.

RETRIEVABILITY:

The data contained in magnetic records can be displayed on cathode-ray tubes, it can be computer printed on paper, and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records is retrieved manually. Computerized and conventional indices are required to retrieve individual records from the system. Normally, all types of records are retrieved by Social Security Number and name.

SAFEGUARDS:

Building management employs security guards; building is locked nights and holidays. Authorized persons may enter and leave the building during nonworking hours but must sign in and out. Records maintained in areas assessable only to authorized personnel have a specific and recorded need-to-know. On-line data sets (both type and disc) pertaining to personnel information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being processed.

RETENTION AND DISPOSAL:

Magnetic records are maintained on all military personnel and certain civilians while they are in service or employed by the service and for a period of 11 months after separation. Paper and film records are maintained for a period of 10 years after the final transaction, then they are destroyed. End calendar and fiscal year 'snapshots' of the MMS data base are maintained indefinitely in magnetic form at Headquarters, U.S. Marine Corps.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775.

Director, Defense Finance and Accounting Service - Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001

NOTIFICATION PROCEDURE:

Active Duty/Reserve Members seeking to determine whether pay information about themselves is contained in this system should address written inquiries to the member's local disbursing office.

Active Duty/Reserve Members seeking to determine whether pay information about themselves is contained in this system should address written inquiries to the member's immediate commanding officer.

Retired Members seeking to determine whether personnel information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775.

Individual should provide their full name, Social Security Number, and the request must be signed.

In order to personally visit the above addresses and obtain information, individuals must present a military identification card, a driver's license, or other proof of identity.

RECORDS ACCESS PROCEDURES:

Active Duty/Reserve Members seeking to access pay information about themselves contained in this system should address written inquiries to the member's local disbursing office.

Active Duty/Reserve Members seeking access to pay information about themselves contained in this system should address written inquiries to the member's immediate commanding officer.

Retired Members seeking to access personnel information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775.

Individual should provide their full name, Social Security Number, and the request must be signed.

In order to personally visit the above addresses and obtain information, individuals must present a military identification card, a driver's license, or other proof of identity.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Recruiting offices, disbursing offices, active and reserve Marine Corps unit administration offices, and the individual are the principle source of the information contained in the MCTFS record for that person.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–22856 Filed 9–6–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the

following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 3, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Early Childhood Longitudinal Survey.
Frequency: One or two times.
Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 8,170.
Burden Hours: 7,500.
Abstract: The National Center for Education Statistics requests a 3-year generic clearance from the Office of Management and Budget to conduct developmental and design activities (i.e., field test) that will culminate in instruments that measure cognitive outcomes as well as the factors that affect learning outcomes in young children and to conduct the base year survey and assessment activities. Kindergarten enrollee cohorts are involved.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Title VI Innovative Education Program Strategies.
Frequency: Biennially.
Affected Public: Federal Government, State, local or Tribal Gov't, SEAs and LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 16,052.
Burden Hours: 48,884.
Abstract: This form will be used by the Department as a means for collecting information on program effectiveness to report to Congress. This information will assure statutory mandates are followed.

[FR Doc. 96–22896 Filed 9–6–96; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Request for Financial Assistance Applications

AGENCY: U.S. Department of Energy, Morgantown Energy Technology Center.

ACTION: Notification of availability of a request for financial assistance applications.

SUMMARY: The Department of Energy is soliciting applications for the development of advanced drilling systems which will be capable of reducing overall systems costs, increasing rates of penetration, and that will allow economical development of remaining natural gas and oil resources in the United States.

DATES: The solicitation will be available on or about September 2, 1996, and applications will be accepted for a period of 30 days. The last date applications will be accepted will be noted in the solicitation.

FOR FURTHER INFORMATION CONTACT: The solicitation is available on the Internet at http://www.metc.doe.gov/business/solicita.html. Requests for information concerning the solicitation should be submitted in writing to the following address: U.S. Department of Energy, Attn: Thomas L. Martin, M.S. I07, Morgantown, WV 26507–0880. Requests may also be sent by FAX to (304) 285–4683, or by Internet to tmarti@metc.doe.gov.

SUPPLEMENTARY INFORMATION: Identification Number: DE-RP21–96MC33063.

Authority for Issuance: 10 CFR 600.

James J. Grabulis,

Director, Acquisition and Assistance Division.

[FR Doc. 96–22903 Filed 9–6–96; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–597]

Proposed Information Collection and Request for Comments

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before November 8, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4 888 First Street, N.E., Washington, D.C., 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 237–0873, and by email at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requests for FERC–597 "Customer Satisfaction Survey" (OMB No. 1902–0163) is used by the Commission's Public Reference and Files Maintenance Branch to evaluate the services performed in the Public Reference Room for the public. The survey is conducted on an annual basis and responses to the survey are voluntary.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
100	1	.15	15

Estimated cost burden to respondents: Because of the minimal amount of time necessary to conduct this survey (15 minutes), and the voluntary nature of response to this survey, the Commission estimates that the cost to respondents will be minimal.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information

including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology, (where applicable) and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information (if applicable); (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Generally, the estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22906 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[FERC Form No. 715]

Proposed Information Collection and Request for Comments

September 4, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before November 8, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street, N.E., Washington, D.C., 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by email at mmiller@.fercfed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements for FERC Form No. 715 "Annual Transmission Planning and Evaluation Report" (1902–0171) is used by the Commission to implement the statutory provisions of Section 213(b) of the Federal Power Act as created by the provisions of the Energy Policy Act of 1992. The information collected under FERC Form No. 715 is used to adequately inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and constraints. In addition, the Commission will use the information as part of its efforts to encourage the sharing of information and to use in resolving disputes between all stakeholders within Regional Transmission Groups as well as disputes brought before it on transmission conflicts. The Commission also will review the current requirements for this form after full implementation of the Commission's OASIS rule pursuant to Order 889. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.300.

Action: The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection of data.

Burden Statement: Public Reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
200	1	100	20,000

Estimated cost burden to respondents: 20,000 hours/2087 hours per year × $102,000 per year = $977,480.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology

e.g. permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22907 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[FERC Form No. 714]

Proposed Information Collection and Request for Comments

September 4, 1996.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted by no later than November 8, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements for FERC Form No. 714 "Annual Electric Control and Planning Area Report" (OMB No. 1902–0140) is used by the Commission to implement the statutory provisions of Sections 202, 207, 210, 211–213 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and particularly Sections 304, 309 and 311. The Commission implements Form 714's filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 141.51.

FERC Form No. 714 gathers basic utility operating and planning information, primarily on a control area basis, for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations are made to assess reliability, costs and other operating attributes.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
250	1	50	12,500

Estimated cost burden to respondents: 12,500 hours/2087 hours per year × $102,000 per year = $610,925. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22908 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–91–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, ANR Storage Company (ANR Storage) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Eighth Revised Sheet No. 1(a), with a proposed effective date of October 1, 1996.

ANR Storage states that Eighth Revised Sheet No. 1(a) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage will be effective October 1, 1996.

ANR Storage states that copies of the filing were served upon the company's Jurisdictional customers..

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22869 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–91–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, ANR Storage Company (ANR Storage) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 5, with a proposed effective date of October 1, 1996.

ANR Storage states that Fourth Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage will be effective October 1, 1996.

ANR Storage states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22870 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

Black Marlin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective October 1, 1996:

Seventh Revised Sheet No. 4

Black Marlin states that the above-referenced tariff sheet is being filed pursuant to Section 18 of the General Terms and Conditions of Black Marlin's tariff to reflect the decrease of the ACA charge to 0.19¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1996 and an average Btu content of 1.0436 MMBtu per Mcf.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22871 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–112–000]

Blue Lake Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, Blue Lake Gas Storage Company (Blue Lake) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 5, with a proposed effective date of October 1, 1996.

Blue Lake states that Fourth Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment Clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Blue Lake will be effective October 1, 1996.

Blue Lake states that copies of the filing were served upon the company's jurisdictional customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20462, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22866 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–97–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice on August 29, 1996, Chandeleur Pipe Line Company (Chandeleur) submits for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1996:

Fourth Revised Sheet No. 5

Chandeleur proposes to adjust its rates to reflect the Federal Energy Regulatory Commission's FY 1996 annual charge for natural gas pipeline companies of $0.0023 per MMBtu.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties of the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22868 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–34–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 1, 1996.

Substitute Sixteenth Revised Sheet No. 8A
Substitute Ninth Revised Sheet No. 8A.01
Substitute Eighth Revised Sheet No. 8A.02
Substitute Fourteenth Revised Sheet No. 8B
Substitute Seventh Revised Sheet No. 8B.01

FGT states that the above referenced tariff sheets are being filed pursuant to Section 22 of the General Terms and Conditions (GTC) of FGT's tariff to reflect a decrease of the ACA charge to 0.19 ¢ per MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1996. FGT states that it is requesting these sheets be made effective in place of the corresponding tariff sheets filed August 21, 1996 in Docket No. TM97–1–34–000 which reflected the calculation of the ACA Charge from the wrong Unit Charge Factor.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22877 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–65–000]

Jupiter Energy Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 28, 1996 Jupiter Energy Corporation (Jupiter Energy), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following sheets, with a proposed effective date of October 1, 1996:

Tenth Revised Sheet No. 4A
Tenth Revised Sheet No. 5A
Tenth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff sheets reflect, pursuant to Section 154.38(d)(6) of the Commission's regulations, the implementation of Jupiter Energy's Annual Charge Adjustment (ACA) surcharge. The proposed surcharge rate is 0.23¢ per Mcf.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22874 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–350–000]

K N Interstate Gas Transmission Co.; Notice of Waiver Request

September 3, 1996.

Take notice that on August 28, 1996 K N Interstate Gas Transmission Co. (K N Interstate) filed a request for a one-time waiver of certain timing requirements of Section 18 of its FERC GAS Tariff, Volume No. I–B, relating to the Right of First Refusal process. K N Interstate requests a shortened time frame for the iterative bidding process, if applicable, and for tendering and execution of new service agreements.

K N Interstate states that copies of the filing have been served upon mainline transportation and storage shippers and affected state regulatory bodies.

Any person desiring to be heard or to make any protest with reference to this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22878 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–47–000]

MIGC, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, MIGC, Inc. (MIGC) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 4. This tariff sheet is proposed to become effective October 1, 1996.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1996.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR sections 385.214 and 385.211). All such petitions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22875 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97-1-37-000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective October 1, 1996:

Third Revised Volume No. 1
Eighth Revised Sheet No. 5
Seventh Revised Sheet No. 8
Original Volume No. 2
Twenty-First Revised Sheet No. 2.2

Northwest states that the purpose of this filing is to update Northwest's tariff to reflect the Commission approved Annual Charge Adjustment (ACA) factor to be effective for the twelve-month period beginning October 1, 1996 pursuant to Section 154.402 of the Commission's regulations and Section 16 of the General Terms and Conditions of Northwest's tariff. Northwest states that its new ACA factor will be .20¢ per MMBtu, a reduction of .02¢ per MMBtu from its current ACA factor.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-22876 Filed 9-6-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER96-1663-000, EC96-19-000 and EL96-46-000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company; Notice of Speakers and Panels for Technical Conference

August 30, 1996.

As previously announced (61 FR 42878 (Aug. 19, 1996)), the Commission Staff will convene a two-day technical conference in the captioned proceedings to be held on Thursday, September 12 and Friday, September 13, 1996, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. The technical conference will commence at 10:00 a.m. on Thursday, September 12, 1996. The starting time for the second day of the technical conference, Friday September 13, 1996, has been changed to 9:00 a.m. The technical conference will be open to all interested persons.

More interested persons desired to speak at the technical conference than the time allotted would have allowed. Therefore, based on the requests to participate, the Commission Staff has assembled panels of speakers representing a broad spectrum of interests and views for each panel. A list of the speakers and panels for the technical conference is contained in the Attachment.

For Further Information Contact:

Stephen T. Greenleaf, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-0430

David E. Mead, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-0438

Lois D. Cashell,

Secretary.

Panels for Staff Conference on WEPEX

Each panelist should plan on a five minute presentation followed by questions from the Commission Staff.

Thursday, September 12, 1996 Agenda

Panel 1—Market Power

The panelists will discuss the market power analyses presented by the applicants, including related topics, such as the role of demand-side bidding; effect of any performance-based ratemaking; the role of the power exchange; the appropriate monitoring program; any mitigation measures that may be needed; and the effect of zones on market power; as well as other issues concerning market power that participants wish to address.

Joe D. Pace, for Pacific Gas & Electric Company

Paul Joskow, Elizabeth and James Killian, Professor of Economics and Management, Head, Department of Economics, Massachusetts Institute of Technology, for Southern California Edison Company

William Hieronymus, for San Diego Gas & Electric Company

Scott Hempling, Toward Utility Rate Normalization

Evelyn K. Elsesser, Energy Producers and Users Coalition

Dennis W. Carlton, for Sacramento Municipal Utility District

Sara D. Schotland, Electricity Consumers Resource Council

Lunch

Panel 2—Transmission Pricing

The panelists will discuss transmission pricing issues, including cost recovery and access charges; market efficiency, cost shifting; congestion management issues; ancillary services and losses issues; and the appropriate use of zones.

Stephen J. Metague, Manager of Grid Customer Services, Pacific Gas & Electric Company

Maureen Palmer, Bulk Power Special Projects, Los Angeles, Department of Water and Power

Barbara Barkovich, for California Large Energy Consumers' Association

Clifford B. Rochlin, Market Advisor, Southern California Gas Company

W. Kent Palmerton, Manager of Industry Restructuring Programs, Northern California Power Agency

Larry Klein, City and County of San Francisco, California

Friday, September 13, 1996 Agenda

Panel 3—Transmission Expansion and Transmission Rights/TCCs

The panelists will discuss transmission expansion issues, including who builds and pays for new facilities and the proper incentives to ensure that necessary new transmission facilities are constructed. The panelists will also discuss physical transmission rights and role of financial instruments, *i.e.*, Transmission Congestion Contracts (TCCs). The Commission staff is interested in comments addressing the interaction of proposed WEPEX transmission rights and TCCs with the Commission's pending CRT proposal.

Geoff Gaebe, Group Manager, San Diego Gas & Electric Company

Ron Nunnally, Manager of Grid Planning and Strategy, Southern California Edison Company

Jeffrey K. Hartman, Director, Wholesale, Cogeneration and UEG Segments, Southern California Gas Company

Robert A. Levin, Senior Vice-President of the New York Mercantile Exchange

Keith McCrea, California Manufacturers Association

W. Kent Palmerton, Manager of Industry Restructuring Programs, Northern California Power Agency

Panel 4—ISO Facilities and Operations

The panelists will discuss the transmission/distribution split; what control will be transferred from utilities to the ISO; the ISO's integration of national, regional and individual transmission owner operational criteria; and the incentives the ISO will have to achieve operational efficiency.

Dennis N. Benevides, Senior Transmission Planning Engineer, Pacific Gas & Electric Company

Sohrab A. Yari, Transmission Planning Supervisor, San Diego Gas & Electric Company

Armie Perez, Manager of Transmission Planning, Southern California Edison Company

Marcie Edwards, Director of Bulk Power, Los Angeles Department of Water and Power

Chris Kiriakou, Assistant General Manager of Energy Resources, Turlock Irrigation District

Jeffrey C. Miller, Supervisor of Transmission Planning for the Sacramento Municipal Utility District and Chairman of the Western Systems Coordinating Council (WSCC) Reliability Subcommittee

Lunch

Panel 5—Scheduling, Bidding, Settlements and the Role of Scheduling Coordinators

The panelists will discuss the integration of PX bidding and bilateral schedules; the types of information that should flow among the PX, ISO and scheduling coordinators; the advantages and disadvantages of ISO/PX separation; unit commitment decision making; ancillary services issues; must-run and overgeneration criteria.

John Ballance, Manager of Grid Dispatch, Southern California Edison Company

Susan J. Mara, Director of Transmission Policy and Pricing, Pacific Gas & Electric Company

Eric C. Woychik, Utility Consumers' Action Network

Jan Smutny-Jones, Executive Director, Independent Energy Producers Association

Thomas Beach, for Watson Cogeneration Company

Barbara Barkovich, for California Large Energy Consumers Association

[FR Doc. 96–22865 Filed 9–6–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM97–1–111–000]

Steuben Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 29, 1996, Stueben Gas Storage Company (Steuben) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Fourth Revised Sheet No. 1(A), with a proposed effective date of October 1, 1996.

Steuben states that Fourth Revised Sheet No. 1(A) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Steuben will be effective October 1, 1996.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22867 Filed 9–6–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER96–2524–000]

Symmetry Device Research, Inc.; Notice of Issuance of Order

September 4, 1996.

Symmetry Device Research, Inc. (SDRI) submitted for filing a rate schedule under which SDRI will engage in wholesale electric power and energy transactions as a marketer. SDRI also requested waiver of various Commission regulations. In particular, SDRI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by SDRI.

On August 22, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SDRI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SDRI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SDRI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 23, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22909 Filed 9–6–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM97–1–80–000]

Tarpon Transmission Company; Notice of Change in Annual Charge Adjustment

September 3, 1996.

Take notice that on August 29, 1996, Tarpon Transmission Company (Tarpon) tendered for filing to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1996:

Fourteenth Revised Sheet No. 2A
Fourth Revised Sheet No. 2E
Seventh Revised Sheet No. 86A
Ninth Revised Sheet No. 96A

Tarpon states that the purpose of this filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1996 fiscal year. Also note that Tarpon proposes to delete language related to certain surcharges which are no longer effective.

Tarpon states that copies of the filing have been mailed to its customers and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22873 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–82–000]

Viking Gas Transportation Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1996.

Take notice that on August 28, 1996, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 6, to be effective October 1, 1996.

Viking states that the purpose of this filing is to reduce Viking's Annual Charge Adjustment (ACA) surcharge from $0.0023 per dekatherm to $0.0020 per dekatherm, as permitted by Section 154.204 of the Commission's Regulations.

Viking states that copies of this filing have been mailed to all of its customers and to affected State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22872 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2798–000, et al.]

New England Power Pool, et al.; Electric Rate and Corporate Regulation Filings

September 3, 1996.

Take notice that the following filings have been made with the Commission:

1. New England Power Pool

[Docket No. ER96–2798–000]

Take notice that on August 23, 1996,, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Natural Resources Group, Inc. (Natural Resources). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Natural Resources to join the over 100 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Natural Resources a Participant in the Pool. NEPOOL requests an effective date of October 1, 1996, for commencement of participation in the Pool by Natural Resources.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER96–2799–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Purchase and Sales Agreement between LG&E and Entergy Power Marketing Corp. under Rate Schedule GSS—Generation Sales Service.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ER96–2800–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Koch Power Services, Inc. under Rate GSS.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company

[Docket No. ER96–2801–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Rainbow Energy Marketing Corp. under Rate GSS.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER96–2802–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and South Mississippi Electric Power Assoc. under Rate GSS.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2803–000]

Take notice that on August 26, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing a Supplement No. 1 (Supplement) to the Municipal Interconnection and Interchange Agreement (Agreement) dated February 6, 1996, between NSP and the City of Ada (City). NSP files this Supplement on behalf of City and itself.

The Supplement provides for a change in the language in Service Schedules A, B, and D of the Agreement to remove a reference to a specified billing date. NSP requests the Commission waive its Part 35 notice requirements and accept this Supplement for filing effective December 1, 1995.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER96–2805–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement

between Louisville Gas and Electric Company and Morgan Stanley Capital Group Services under Rate TS.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER96–2807–000]

Take notice that on August 26, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and VTEC Energy Inc. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC asks that the agreement becomes effective on the date of execution by WPSC.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER96–2808–000]

Take notice that on August 26, 1996, New England Power Company filed a Service Agreement and Certificate of Concurrence with Sonat Power Marketing Inc. for service under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER96–2809–000]

Take notice that on August 26, 1996, New England Power Company filed Service Agreements and Certificates of Concurrence with VTEC Energy Inc. for service under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER96–2810–000]

Take notice that on August 26, 1996, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Nebraska Public Power District under its CS–1 Coordination Sales Tariff.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–2811–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Entergy Power Marketing Corp. under Rate TS.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER96–2812–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Jacksonville Electric Company under Rate TS.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Baltimore Gas and Electric Company

[Docket No. ER96–2813–000]

Take notice that on August 26, 1996, Baltimore Gas and Electric Company (BGE), filed a Service Agreement dated July 2, 1996, with Duke/Louis Dreyfus L.L.C. under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Duke/Louis Dreyfus L.L.C. under the provisions of the Tariff. BGE requests an effective date of July 2, 1996 for the Service Agreement. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER96–2814–000]

Take notice that on August 26, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated August 1, 1996 between Cinergy, CG&E, PSI and Illinova Power Marketing, Inc. (Illinova).

The Interchange Agreement provides for the following service between Cinergy and Illinova:

1. Exhibit A—Power Sales by Illinova
2. Exhibit B—Power Sales by Cinergy

Cinergy and Illinova have requested an effective date of August 26, 1996.

Copies of the filing were served on Illinova Power Marketing, Inc., Public Service Commission of Utah, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ES96–40–000]

Take notice that on August 28, 1996, UtiliCorp United Inc., (UtiliCorp) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue and sell up to and including 2 million shares of Common Stock pursuant to the UtiliCorp amended and restated 1986 Stock Incentive Plan.

Comment date: September 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Upper Peninsula Power Company

[Docket No. ES96–42–000]

Take notice that on August 29, 1996, Upper Peninsula Power Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue not more than $18 million of unsecured promissory notes on or before October 1, 1998, with final maturities not later than October 1, 1999.

Comment date: September 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22910 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–30–000, et al.]

Western Resources, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 30, 1996.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc.

[Docket No. EC96–30–000]

Take notice that on August 22, 1996, Western Resources, Inc. filed an Application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations requesting authorization and approval of a merger between Western Resources and Kansas City Power and Light Co. (KCPL). KCPL will be merged with and into Western Resources, with Western Resources being the surviving corporation.

Western Resources has submitted testimony and other evidence in support of the request that the merger be approved. Western Resources has requested that the Commission issue its approval of the merger expeditiously without conducting an evidentiary hearing.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. EC96–31–000]

Take notice that on August 21, 1996, Niagara Mohawk Power Corporation filed an application under Section 203 of the Federal Power Act to transfer its interest in the jurisdictional interconnection facilities associated with the Medina power plant.

Copies of the application were served on the Medina Power Company and the New York Public Service Commission.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. North American Energy Conservation, Inc.

Docket No. EC96–32–000

On August 22, 1996, North American Energy Conservation, Inc., an authorized power marketer, filed an application seeking expedited approval pursuant to Section 203 of the Federal Power Act for the transfer of an ownership interest to York Research Corporation, an affiliated company.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket Nos. ER95–1542–001, ER95–188–002, and EL96–38–000]

Take notice that on July 9, 1996, MidAmerican Energy Company filed, pursuant to Rule 602 of the Commission's Regulations, an Offer of Settlement which would resolve all issues in Docket No. EL96–38–000. The Offer of Settlement, if accepted, would provide a lower point-to-point transmission rate cap during off-peak periods and reduce the need for further proceedings at the Commission.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas & Electric Company

[Docket No. ER96–2622–000]

Take notice that on August 5, 1996, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Koch Power Services, Inc. under Rate GSS.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER96–2661–000]

Take notice that on July 29, 1996, PECO Energy Company filed a summary of transactions made during the first quarter of calendar year 1996 under PECO's market based rate tariff for power service accepted by the Commission in Docket No. ER96–640–000.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER96–2781–000]

Take notice that on August 22, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which AES Power, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 15, 1996.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER96–2782–000]

Take notice that on August 22, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Letter Agreement dated April 26, 1996 between PacifiCorp and Black Hills Corporation (Black Hills).

Copies of this filing were supplied to Black Hills, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96–2783–000]

Take notice that on August 22, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Valero Power Services Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 6, 1996.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER96–2784–000]

Take notice that on August 22, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which The Cincinnati Gas & Electric Company (CG&E), an Ohio corporation, PSI Energy, Inc., (PSI), an Indiana corporation, (collectively Cinergy Operating Companies) and Cinergy Services, Inc. (Cinergy Services, a Delaware corporation, as agent for on behalf of the Cinergy Operating Companies) will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 5, 1996.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER96–2785–000]

Take notice that on August 22, 1996, Illinois Power Company (Illinois

Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Missouri Public Service, a Division of UtiliCorp United, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 6, 1996.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER96–2786–000]

Take notice that on August 22, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Energy Choice, L.L.C. (Energy Choice). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Energy Choice to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Energy Choice a Participant in the Pool. NEPOOL requests an effective date on or before October 1, 1996, or as soon as possible thereafter for commencement of participation in the Pool by Energy Choice.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER96–2787–000]

Take notice that on August 22, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company's FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Montana Power Company and Idaho Power Company.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER96–2788–000]

Take notice that on August 22, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by AIG Trading Corporation (AIG). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit AIG to join the over 100 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make AIG a Participant in the Pool. NEPOOL requests an effective date of October 1, 1996 for commencement of participation in the Pool by AIG.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Power & Light Company

[Docket No. ER96–2789–000]

Take notice that on August 22, 1996, Puget Sound Power & Light Company, tendered for filing the Northwest Power Pool Agreement dated December 22, 1995 (the Agreement).

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER96–2790–000]

Take notice that on August 23, 1996, Union Electric Company (UE), tendered for filing a First Amendment dated August 8, 1996, to the Wholesale Electric Service Agreement dated March 23, 1989, between the City of Perry, Missouri and UE. Said Amendment provides for extending terms of the agreement through December 31, 2005.

Also filed was a First Amendment dated August 8, 1996 to the Substitute Power Agreement dated September 5, 1989, which also extends the terms of the agreement through December 31, 2005.

UE requests that these filings be permitted to become effective November 1, 1996.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER96–2791–000]

Take notice that on August 23, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Vitol Gas and Electric L.L.C. under Rate TS.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER96–2792–000]

Take notice that on August 23, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Koch Power Services under Rate TS.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER96–2793–000]

Take notice that on August 23, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc., under Rate GSS.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER96–2794–000]

Take notice that on August 23, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and South Mississippi Electric Power Association under Rate GSS.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Superior Water, Light & Power Company

[Docket No. ER96–2796–000]

Take notice that on August 23, 1996, Superior Water, Light & Power Company, tendered for filing Amendment No. 1 to the Phase Angle Regulating Transformer Cost Sharing Agreement between Dairyland Power Cooperative, Minnesota Power & Light Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and Superior Water, Light & Power Company dated as of December 31, 1995.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Company

[Docket No. ER96–2797–000]

Take notice that on August 23, 1996, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with PECO Energy Power Team for Non-Firm transmission service

under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective September 1, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: September 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22912 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11585–000, et al.]

Hydroelectric Applications (Coon Rapids Energy Associates, et al.); Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11585–000.

c. *Date filed:* July 5, 1996.

d. *Applicant:* Coon Rapids Energy Associates.

e. *Name of Project:* Coon Rapids Dam Project.

f. *Location:* On the Mississippi River, near Brooklyn Park and Coon Rapids, Hennepin and Anoka Counties, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Mr. George Waldow, Coon Rapids Energy Associates, 1390 Kingsview Lane, Plymouth, Minnesota 55447, (612) 476–4440.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* October 7, 1996.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing concrete gravity, 450-foot-long dam which is integral with the powerhouse and a main concrete spillway that is approximately 1,000 feet long; (2) an existing reservoir extending approximately 6.5 miles with a surface area of 600 acres at a normal pool elevation of 830.1 feet NGVD; (3) a new powerhouse containing two to four turbine-generator units having a total capacity of 8 megawatts; (4) a new 600-foot- long, 4.16-kilovolt transmission line; and (5) appurtenant facilities. The dam is owned by the Surburban Hennepin Regional Park District. The average annual generation is estimated to be 45 gigawatthours. The cost of the studies under the permit will be approximately $30,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. George Waldow, 1390 Kingsview Lane, Plymouth, MN 55447 (612) 476–4440.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11590–000.

c. *Date filed:* July 29, 1996.

d. *Applicant:* Joint Ventures.

e. *Name of Project:* Burnside Hydro Project.

f. *Location:* On the Hockanum River in Hartford County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)—825(r).

h. *Applicant Contact:* Mr. Joseph P. Keegan, Keegan Construction, 530 Fish Rock Road, Southbury, CT 06488, (203) 264–7386.

i. *FERC Contact:* Edward Lee at (202) 219–2809.

j. *Comment Date:* October 25, 1996.

k. *Description of Project:* The proposed project would consist of: (1) An existing 12-foot-high, 160-foot-long concrete gravity dam; (2) an existing 21 acre-foot reservoir with a surface area of 3 acres; (3) a concrete intake structure; (4) a 62-foot-long masonry intake flume; (5) an existing concrete and brick powerhouse containing a 150-kW generating unit; (6) a 251-foot-long concrete tailrace; (7) an existing 150-foot-long transmission line; and (8) appurtenant facilities. The applicant estimates that the average annual generation would be 570,000 kWh. No new access roads will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $10,000. All project structures are owned by the applicant.

l. *Purpose of Project:* Project power would be sold to a local ultility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

3 a. *Type of Application:* Minor License.

b. *Project No.:* P–11566–000.

c. *Date Filed:* December 12, 1995.

d. *Applicant:* Consolidated Hydro Maine, Inc.

e. *Name of Project:* Damariscotta Mills Hydro Project.

f. *Location:* On the Damariscotta River, in Lincoln County, near Newcastle, Nobleboro, and Jefferson, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Wayne E. Nelson, Consolidated Hydro Maine, Inc., Director of Environmental Affairs, Andover Business Park, 200 Bulfinch Drive, Andover, MA 01810, (508) 681–1900.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* October 25, 1996.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project consists of the following: (1) An existing reservoir with a surface area of 4,625 acres and usable storage volume of 6,875 acre-feet at the normal surface elevation of 54.35 feet (ft), National Geodetic Vertical Datum (NGVD); (2) an existing concrete mass dam, referred to as the "Fishway Dam", about 124 ft long, containing three stoplog bays; (3) an existing concrete dike, about 40 ft long; (4) an existing concrete mass dam, referred to as the "Waste Gate Dam", about 57 ft long, containing two waste gates and a stoplog bay; (5) an existing concrete mass intake structure, referred to as the "intake Dam", consisting of: (a) Two stone masonry wing walls, extending 125 ft along the east bank and 50 ft along the west bank of the impoundment, (b) steel trashracks, and (c) a wooden gatehouse containing a manually operated wooden headgate; (6) an existing 5.6 ft diameter steel penstock, about 350 ft long, extending from the intake dam to the powerhouse;

(7) an existing two ft diameter surge tank, extending vertically from the penstock about 20 ft upstream of the powerhouse; (8) an existing powerhouse, constructed of brick and concrete, about 30 feet by 35 feet, containing: (a) a double runner Francis turbine, with minimum and maximum hydraulic capacities of 65 cubic feet per second (cfs) and 175 cfs, respectively, and (b) a synchronous generator, rated at 460 kW; and (9) existing appurtenant facilities.

m. *Purpose of Project:* Project generation would be sold to a local utility.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Consolidated Hydro Maine, Inc., Andover Business Park, 200 Bulfinch Drive, Andover, MA 01810, or by calling (508) 681–1900.

4 a. *Type of Application:* New License.

b. *Project No.:* 2612–005.

c. *Date Filed:* December 28, 1995.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Flagstaff Water Storage Project.

f. *Location:* On the Dead River in Somerset and Franklin Counties, near the towns of Eustis and Stratton, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* F. Allen Wiley, Managing Director of Generation, Central Maine Power Company, 41 Anthony Avenue, Augusta, ME 04330.

i. *FERC Contact:* Thomas Dean (202) 219–2778.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Flagstaff Project consists of: (1) The Long Falls dam about 1,339 feet long and 45 feet high, consisting of, from left to right (looking downstream), (a) a 450-foot-long concrete spillway section topped with 2-foot-high flashboards, (b) a 125-foot-long concrete section containing five, 20-foot-wide Taintor gates, (c) a 70-foot-long concrete section containing two Broome gates, a fishway, and a log sluice, and (d) a 694-foot-long earthen dike topped with a 2-foot-high wave barrier; (2) a reservoir having a length of about 23 miles, a width of about 6 miles at the widest point, a surface area of 17,950 acres, and a storage capacity of about 275,482 acre-feet at full pond elevation of 1,146.0 feet U.S. Geological Survey datum; and (3) appurtenant facilities.

m. *Purpose of Project:* The Flagstaff Project is a water storage facility and is operated to regulate and augment flows that are used by nine downstream mainstem Kennebec River hydropower projects and to control flooding.

n. *This notice also consists of the following standard paragraph(s):* A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Maine Power Company, 41 Anthony Avenue, Augusta, ME, 04330 or by calling Frank Dunlap (207) 621–4469.

5 a. *Type of Application:* Amendment of license.

b. *Project No:* 2736–019.

c. *Date Filed:* August 1, 1996.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* American Falls Project.

f. *Location:* Power County, American Falls, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Laurel Heacock, Idaho Power Company, P.O. Box 70, Boise, ID 83707, (208) 388–2918.

i. *FERC Contact:* Allyson Lichtenfels, (202) 219–3274.

j. *Comment Date:* October 11, 1996.

k. *Description of Project:* The licensee filed revised exhibit K, Sheets 1 and 2, drawings to indicate minor real estate and project boundary updates, an easement previously awarded to Power County, update the structural appearance of the dam, power plant, and spillway, and update the transmission line data shown.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application.

Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (October 21, 1996 for Project No. 2612–005). All reply comments must be filed with the Commission within 105 days from the date of this notice (December 4, 1996 for Project No. 2612–005).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 26, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22913 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–686–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al., Natural Gas Certificate Filings

September 3, 1996.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP96–686–000]

Take notice that on July 31, 1996, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application, as supplemented on August

22, 1996, with the Commission in Docket No. CP96–686–000 pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity, authorizing Transco to install and operate mobile compressors on a temporary basis while existing compressors are undergoing maintenance, and permission and approval to abandon the mobile compressors when the maintenance work is completed, all as more fully set forth in the application which is open to the public for inspection.

Transco states that it requires the blanket certificate in order to maintain throughput in the event of scheduled or unscheduled maintenance. Transco also states that it would attempt to achieve comparable horsepower and deliverability with the temporary compressors as that which is available with the permanent compressors. Transco asserts that the blanket certificate would enable Transco to install temporary compressors without a prior filing and to avoid interruptions of service to customers. Transco states that it does not own a compressor unit which could be used on an as-needed, temporary basis and that it would use rental units at a cost estimated to be no greater than $95,000 per unit per month.

Comment date: September 24, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP96–726–000]

Take notice that on August 19, 1996, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP96–726–000 a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to reclassify an existing delivery point, in Gibson County, Indiana by converting it from a rural farm tap facility to a specifically designated delivery point for Southern Indiana Gas and Electric Company (SIGECO). Texas Gas makes such request, under its blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas indicates that the reclassified delivery facility will be used to provide firm transportation service to SIGECO, which will allow SIGECO to continue serving the existing right-of-way grantors at this point and a new customer, Smith Greenhouse, which is not a right-of-way grantor. It is stated that the reclassified facility will be known as the Kirkville delivery point.

Texas Gas further states that the reclassification of this delivery point will not require any new facilities by Texas Gas; however, SIGECO will install, own, operate and maintain measurement, regulation, odorization and other related facilities necessary to provide service to its customers at this point. Texas Gas indicates that SIGECO will require 158 MMBtu per day, with an annual maximum quantity of 6,716 MMBtu at this point, for residential heating by the current customers and heating at Smith Greenhouse.

Comment date: October 18, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Eastern Shore Natural Gas Company

[Docket No. CP96–728–000]

Take notice that on August 20, 1996, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 1769, Dover, Delaware 19903, filed in Docket No. CP96–728–000, an application pursuant to Section 7(b) and (c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Eastern Shore to reduce, on a pro-rata basis, the firm storage service it provides to its customers under Rate Schedule GSS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Eastern Shore states that as a direct result of the authorization granted Transcontinental Gas Pipe Line Corporation in Docket No. CP96–226–000 [1] it is necessary for Eastern Shore to reduce, on a pro-rata basis, the firm storage service it provides to its customers under Rate Schedule GSS.

Comment date: September 24, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gulf Transmission Company

[Docket No. CP96–732–000]

Take notice that on August 21, 1996, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta STE 125, Houston, Texas 77057–5637, filed in Docket No. CP96–732–000 a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate in interstate commerce certain facilities in Vermilion Parish, Louisiana that were previously operated to effectuate transportation service pursuant to Section 311 of the Natural Gas Policy Act (NGPA). Columbia Gulf makes such request, under its blanket certificate issued in Docket No. CP83–496–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gulf states that the delivery point to Torch Operating Company (Torch) was originally installed as a receipt point from an independent producer, and that minor revisions were made to the station in order that the receipt point could be used as a delivery point from Columbia Gulf under Section 311 of the NGPA, to Torch on behalf of Illini Carrier, L.P., an intrastate pipeline. It is indicated that the existing point of interconnection allows Columbia Gulf to deliver natural gas to Torch for use in its gas lift operation. Columbia Gulf is now requesting authorization to convert the Section 311 facilities to 7(c) certification, in order that the point may be used to provide both Subpart B and G transportation service to Torch, under Part 284, on an interruptible basis.

Comment date: October 18, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Florida Gas Transmission Company

[Docket No. CP96–743–000]

Take notice that on August 26, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in the above docket, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new delivery point for West Florida Natural Gas Company WFNG) to accommodate natural gas deliveries to the State of Florida Liberty Prison under FGT's blanket authority issued in Docket No. CP82–553–000 pursuant to Section 7(c) of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, FGT proposes to construct, operate, and own a new delivery point at or near mile post 383 on its existing 30-inch mainline in Liberty County, Florida. FGT also proposes to add the subject delivery point to an existing firm gas transportation service agreement by and between FGT and the State of Florida, Department of Corrections dated October 1, 1993, and contracted under FGT's FERC Gas Tariff Rate Schedule FTS–1. FGT will transport gas to the new delivery point on a self-

[1] 75 FERC ¶ 61,285 (1996).

implementing basis under its blanket transportation certificate issued by the Commission in Docket No. CP89–555–000, pursuant to Subpart G of Part 284 of the Commission's Regulations.

FGT states that the subject delivery point will consist of a 4-inch tap, minor connecting pipe, electronic flow measurement equipment, and any related appurtenant facilities necessary for FGT to deliver gas up to 60 MMBtu per hour at line pressure. WFNG will reimburse FGT for the $57,000 estimated construction cost. FGT further states that WFNG will construct, own and operate the meter and regulation station.

Comment date: October 18, 1996, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP96–752–000]

Take notice that on August 28, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP96–752–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.211) for permission and approval to abandon certain facilities and operations at the Enumclaw Meter Station in King County, Washington. Northwest also request authorization to construct and operate upgraded replacement facilities at the Enumclaw Meter Station, in order to accommodate a request from the City of Enumclaw, Washington for an additional 3,000 Dth of firm natural gas per day. Northwest makes such request, under its blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Enumclaw Meter Station by replacing approximately 60 feet of 2-inch heater piping and appurtenances with approximately 60 feet of 4-inch heater piping and appurtenances, and by replacing the 50 percent trim plates in the existing 2-inch regulators with new 100 percent trim plates. As a result of the proposed upgrades, Northwest states that the maximum design capacity of the meter station will increase from approximately 6,863 Dth per day at 250 psig to approximately 10,924 Dth per day at 250 psig.

Northwest indicates that the estimated $28,078 cost to upgrade the facilities will be reimbursed by the City of Enumclaw.

Comment date: October 18, 1996, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company

[Docket No. CP96–754–000]

Take notice that on August 29, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–754–000 a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate the NNG/Sid Richardson, a new delivery point to be located in Lea County, New Mexico, to accommodate incremental interruptible natural gas deliveries to Sid Richardson Gasoline, Ltd. (Sid Richardson). Northern makes such request, under its blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that service will be provided to Sid Richardson pursuant to Northern's currently effective interruptible throughput service agreement(s) with Sid Richardson. Northern asserts that Sid Richardson has requested the installation of the new delivery point to provide fuel for their processing plant.

It is asserted that the proposed volumes to be delivered to Sid Richardson at the NNG/Sid Richardson delivery point are 5 MMBtu on a peak day and 1,825 MMBtu on an annual basis. Northern estimates a cost of $10,000 to install the new delivery point, and states that Sid Richardson will reimburse Northern for the total cost of constructing the proposed delivery point.

Comment date: October 18, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22911 Filed 9–6–96; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Assistant Secretary for Management and Budget

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the

Department of Health and Human Services, Office of Management and Budget, is amended. Chapter AMN, Office of Finance, as last amended at 57 FR 37820, 8/20/92 is deleted and replaced with a new Chapter AMS. The changes are as follows:

1. Delete in its entirety Chapter AMN and replace with the following:

Section AMS.00 Mission. The Office of Finance (AMS) provides financial management advice and leadership to the Secretary and the Assistant Secretary for Management and Budget/ Chief Financial Officer (ASMB/CFO), and the Operating Division CFOs, on (1) budget execution policies and standards for financial systems and financial reporting including audited financial statements in conformance with governmentwide accounting concepts and standards; (2) cash and credit management, debt management, payment management including disbursement activities and functions, and travel management; (3) the design, development, operation, and enhancement of Department-wide and component financial systems; (4) the preparation of the HHS Financial Management Status Report and Five Year Plan and the HHS Annual Report including financial statement and discussion and analysis and performance measures; (5) the development of outcome-based performance measures and performance plans through facilitation and training forums and best practices; (6) in coordination with other ASMB components, participates in the clearance/approval process for program information systems that provide financial and/or program performance data which are used in financial statements; (7) approval of the job descriptions and skill requirements for OPDIV CFOs, on the selection of OPDIV CFOs, and provides advice to the ASMB/CFO who participates with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO; and (9) on the qualifications recruitment, performance, training and retention of all financial management personnel.

Section AMS.10 Organization. The Office of Finance is headed by the Deputy Assistant Secretary, Finance, who is also the Deputy Chief Financial Officer and reports to the Assistant Secretary for Management and Budget/ Chief Financial Officer. The organization is composed of the following:

Immediate Office (AMS)
Office of Financial Policy (AMS1)
Division of Financial Management Policy (AMS11)
Division of Accounting and Fiscal Policy (AMS12)
Office of Financial Systems (AMS2)
Office of Budget Execution (AMS3)

Section AMS.20 Functions. The Office of Finance (AMS):

a. Manages and directs HHS' implementation of major financial management legislation including the Chief Financial Officers Act of 1990 as amended by the Government Management Reform Act of 1994 (GMRA), the Prompt Payment Act, Debt Collection Improvement Act of 1996 and the Cash Management Improvement Act (CMIA) among others.

b. Develops and executes, in coordination with the Office of the Budget, spending policies and procedures for continuing resolutions and appropriations.

c. Makes specific studies and appraisals of the financial aspects of program operations systems designs and data requirements to ensure compliance with objectives of the CFO Act and related legislation as assigned Assistant Secretary for Management and Budget/ Chief Financial Officer (ASMB/CFO).

d. Establishes a financial management planning process under the CFO Act for providing guidance and performance measurement indicators that enable the ASMB/CFO to evaluate the Operating Divisions.

e. Provides support and guidance to the Operating Divisions (OPDIVs) for strategic planning and for the development and implementation of performance measures under the Government Performance and Results Act (GPRA).

f. Develops and manages a Department-wide system for estimating and controlling outlays. Assists the Office of Budget in the presentation of budget outlay estimates to the Office of Management and Budget and the Congress.

g. Recommends and issues Department-wide policies and procedures relating to the expenditure and collection of funds administered by the Department.

h. Establishes uniform standards, policies, classifications, and terminologies to be used throughout the Department in budget execution, and financial and cost reporting.

i. Develops and maintains financial management data collection and reporting systems on programs, activities and operations of the Department.

j. Oversees, monitors, and evaluates the design, development, implementation, operation and enhancement of Department-wide and component accounting and financial management systems.

k. Provides Departmental policy guidance to the Payment Management System (PMS) operated by the Program Support Center to assure that a consistent Departmental policy is maintained.

l. Ensures that financial systems provide for timely and accurate reporting of grantee and/or contractor costs and performance data.

m. In coordination with other ASMB components, participates in the clearance/approval process for program information systems that provide financial and/or program performance data which are used in financial statements.

n. Develops and executes policies and procedures relating to the evaluation of accounting and related systems for conformance with Governmentwide principles and standards.

o: Develops and executes policies and procedure relating to cash management and financing of recipient organizations that receive funding from HHS.

p. Develops, coordinates and issues policy related to the development, implementation, and maintenance of Department-wide financial systems.

q. In its area of responsibility represents the Department in its relationship with the Office of Management and Budget, General Accounting Office, General Services Administration, Treasury, and other Federal Agencies. Oversees Departmental implementation of central agency directives on budget execution, fiscal and accounting policy, debt and credit management.

r. Provides advice to the ASMB/CFO on the approval of the job descriptions and skill requirements for OPDIV CFOs and on the approval of the selection of OPDIV CFOs. Provides advice to the ASMB/CFO who participates with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO.

s. Provides advice to the ASMB/CFO on the qualifications, recruitment, performance, training, and retention of all financial management personnel.

t. Prepares the HHS Annual Report including financial statement and program performance information as guided by the ASMB/CFO.

u. Serves as the Departmental liaison with GAO, OMB, Treasury, and other Federal agencies on financial matters.

v. Provides administrative services for the Office of Finance, including personnel, budget, travel, procurement, supplies and other general administrative functions.

2. Office of Financial Policy (AMS1). The Office of Financial Policy, is

comprised of the Division of Financial Management Policy (DFMP) and the Division of Accounting and Fiscal Policy (DAFP).

1. Division of Financial Management Policy (AMS11).

The Division (a) Develops Department-wide policies, procedures, and standards for financial management areas including cash management, credit management, debt management, travel management, payment and disbursement activities and functions, and promulgates these and related government-wide financial management requirements through the Departmental Staff Manual System; (b) Establishes a financial management planning process for the development of strategic and tactical plans and prepares the Department's annual Financial Management Status Report and 5 Year Plan under the CFO Act; (c) Provides support and guidance to Operating Division program and financial mangers for strategic planning and for the development and implementation of performance measures under the Government Performance and Results Act (GPRA); (d) Provides support to the Operating Division Chief Financial Officers for financial planning and improvement initiatives; (e) Serves as principal staff advisors on fiscal and accounting policy matters to the Office of Finance; (f) Reviews and drafts Departmental reports on Congressional bills affecting financial management of the Department's programs; (g) Maintains liaison with the Office of Management and Budget (OMB), the Treasury Department, the General Accounting Office (GAO), the General Services Administration (GSA) and other agencies on all financial management matters; (h) Recommends policy and maintains a system for tracking and improving cash and credit management and debt collection performance throughout the Department; (i) Develops and maintains travel voucher examination policies, payment, and disbursing policies and procedures for Department-Wide applications and publishes them through the Departmental Staff Manual System; (j) Performs studies and analyses in any of these subject areas singularly or with outside organizations. Maintains continuous contact with GAO, OMB, Treasury, GSA, and other agencies; (k) Establishes a financial management planning process for providing guidance and financial management indicators that enable the ASMB/CFO to evaluate the financial management programs and activities of the Department; (1) Makes specific studies and appraisals of the financial aspects of program operations to ensure compliance with CFO objectives in area assigned by the Deputy CFO.

2. The Division of Accounting and Fiscal Policy (AMS12).

The Division (a) Develops policies, procedures, and standards for Department-wide accounting and fiscal areas and financial operations including legislative or special accounting initiatives such as the Standard General Ledger (SGL), and promulgates these policies, procedures, and standards as well as other government-wide accounting and fiscal procedures through the Departmental Staff Manual System and maintains appropriate reference material; (b) Develops and maintains financial statement presentation policies, procedures, and standards consistent with governmentwide accounting concepts and standards developed by the Federal Accounting Standards Advisory Board and issued by OMB and oversees the preparation of audited financial statements under the Chief Financial Officers Act as amended by the Government Management Reform Act; (b) Provides advice and assistance to OPDIVs and STAFFDIVs on accounting and related fiscal matters; (d) Serves as principal advisor to the Office of Finance on accounting and related fiscal matters and provides advice and assistance to Operating Divisions and Staff Divisions on these matters; (e) Reviews and drafts Departmental reports on Congressional bills affecting accounting and fiscal matters. (f) Maintains liaison with the Office of Management and Budget (OMB), the General Accounting Office (GAO), Treasury Department, and other agencies on matters involving accounting and related fiscal matters; (g) Performs studies and analyses of any of these or related subjects independently or in conjunction with outside organizations and maintains continuous contact with OMB, GAO, Treasury, GSA and other agencies; (h) Makes specific studies and appraisals of the financial aspects of program operations to ensure compliance with CFO objectives in areas assigned by the Deputy CFO; (i) Prepares the annual HHS report on CFO activities as guided by the DASF/Deputy CFO.

3. Office of Financial Systems (AMS2).

The Office of Financial Systems (a) Develops departmentwide policies and standards for financial and mixed financial systems; (b) Provides advice and serves as the focal point with Federal control agencies on financial systems matters; (c) Provides for the establishment of Department-wide financial definitions and data structures; (d) Provides for the administration of a data integrity and quality control program to ensure compliance with applicable Federal directives, Departmental financial systems policy and automated financial data exchange requirements; (e) Oversees, monitors, evaluates, and recommends approval for the design, implementation, operation, and enhancement of Department-wide and component financial management systems; (f) Evaluates and recommends approval for the design, implementation, operation and enhancement of Department-wide and component accounting and financial management systems; (g) Establishes and maintains a Department-wide quality assurance program that ensures the auditability of financial data and functions as a data; (h) Develops financial systems requirements and policy regarding data structure and interface techniques necessary to communicate between HHS financial systems and with Departmental systems; (i) Makes specific studies and appraisals of the financial aspects of program operations including systems designs and data requirements to ensure compliance with CFO objectives in areas assigned by the Deputy CFO; (j) Provides Departmental policy guidance to the Payment Management System (PMS) operated by the program Support Center to assure that a consistent Departmental policy is maintained; (k) Serves as principal staff adviser to the Office of Finance on all financial systems related matters; (1) Maintains liaison with the Office of Management and Budget, the Treasury Department, the General Accounting Office, and other agencies on matters involving financial systems; (M) Develops and issues policies and procedures relating to the evaluation of accounting and related systems for conformance with OMB Circular A 127; (m) Maintains the Departmental financial systems inventory.

4. Office of Budget Execution (AMS3).

The Office of Budget Execution: (a) Provides leadership and direction in the Department-wide review, analysis and appraisal of financial elements of program execution and the development and execution of policies related to efficient allocation, expenditure and control of funds; (b) Coordinates and tracks outlay projections: (1) to assist OMB in the continuing effort to monitor spending and to thereby improve the management of the Government's overall cash and debt operations; and (2) in support of formulation of the budget, including the maintenance of DHHS ceiling controls and the development of

outlay estimates shown in the President's Budget for controllable programs; (c) Promulgates Departmental spending policies, especially in the event of Continuing Resolutions and possible suspension of operations due to the failure of the Congress to enact appropriations on time and works with agency budget officers and the Office of Budget in formulating agency funding plans; (d) Maintains a system of Department-wide budget execution, including the management and control of the apportionment of funds in accordance with the requirements of the Anti-Deficiency Act and OMB regulations; and requests and monitors the receipt of Treasury warrants; (e) Serves as principal staff advisor to the Office of Finance on all matters involving budget execution; (f) Liaises with the Office of Management and Budget, the Treasury Department, the Congressional Budget Office, and other agencies on matters involving budget execution; (g) Maintains the Catalog of Federal Domestic Assistance and develops State tables of projected obligations for selected programs; (f) Responsible for the development and maintenance of a system of financial information which involves the collection, organization, and maintenance of financial data in electronic form as well as the development of reporting mechanisms for making the financial information useful and available for decision making.

Dated: August 2, 1996.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 96–22933 Filed 9–6–96; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires ORR to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals in order to calculate the ORR social services formula allocation.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State-of-origin report	50	1	.434	217

Estimated Total Annual Burden Hours: 217.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendation for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: September 3, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–22853 Filed 9–6–96; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4065–N–04]

Office of the Assistant Secretary for Community Planning and Development; Notice of Funding Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI) Program; Amendment and Extension of Application Due Date

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Amendment and Extension of Application Due Date for Notice of Funding Availability (NOFA) for the Economic Development Initiative Grant Program.

SUMMARY: On July 16, 1996, the Department published a Notice of Funding Availability (NOFA) in the **Federal Register** announcing the availability of approximately $50,000,000 in Fiscal Year (FY) 1996 funding for the Economic Development Initiative (EDI) program. This notice amends that NOFA to establish set-asides of up to $30 million in EDI grant funds to fund proposals for Homeownership Zones, and of up to $20 million for proposals for Community and Individual Investment Corporations (CIICs) and all other eligible economic development projects. In order to provide applicants due notice of this amendment, this notice also extends the application due date.

DATES: Applications are due in HUD Headquarters at the address stated below under **ADDRESSES** by October 9, 1996. HUD will not accept applications that are submitted to HUD via facsimile (FAX) transmission. Applications that are mailed prior to October 9, 1996, and received within ten (10) days after that date will be deemed to have been received by that date if postmarked by the United States Postal Service by no

later than October 8, 1996. Overnight delivery items received within ten (10) days after October 9, 1996 will be deemed to have been received by that date upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than October 8, 1996.

ADDRESSES: On or prior to October 9, 1996, completed applications will be accepted at the following address: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Attention: EDI Grant. At close of business on the deadline date, completed applications will also be received in the south lobby of the Department of Housing and Urban Development at the above address (inquire at the security guard desk). However, any application received by the Office of Community Planning and Development in Headquarters, Washington, DC, by October 9, 1996 will be accepted.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Room 7178, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1871.

With respect to proposals for Homeownership Zones contact: Gordon McKay, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2685. (These are not toll-free numbers.)

Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 16, 1996 (61 FR 37132), the Department published a Notice of Funding Availability (NOFA) in the **Federal Register** announcing the availability of approximately $50,000,000 in Fiscal Year (FY) 1996 funding for the Economic Development Initiative (EDI) program. The FY 1996 EDI NOFA solicited a wide range of proposals for eligible economic development projects and activities under the EDI grant program. The NOFA particularly emphasized those proposals that would undertake large-scale projects to create Homeownership Zones—proposals designed to reclaim hard-pressed neighborhoods by creating homeownership opportunities for hardworking low- and moderate-income families, and serving as a catalyst for private investment, business creation, and neighborhood revitalization.

The NOFA also solicited proposals for Community and Individual Investment Corporations (CIICs)—a particular type of community development bank that provides residents with opportunities for equity participation—and proposals for more traditional economic development projects, such as site specific economic development projects and grants for economic development revolving loan funds.

The July 16, 1996, NOFA was structured so that the Department would rate all applications based upon the quality of an applicant's response to seven selection criteria. Upon the rating of the applications, the Department would give all proposals for Homeownership Zones and CIICs 10 bonus points. The Department would then rank all proposals regardless of whether the proposal was for a Homeownership Zone, a CIIC, or other economic development project.

Thus, under the procedures outlined in the July 16, 1996 NOFA, it is possible that the rating and ranking of applications could result in only one type of proposal being funded, i.e., all funded projects could potentially be either Homeownership Zone projects, CIIC projects, or the traditional economic development projects. Such an outcome would not reflect the Department's intention to fund a range of different proposals.

Accordingly, the Department is amending the July 16, 1996 EDI NOFA to establish set-asides of up to $30 million to fund proposals for Homeownership Zones, and of up to $20 million to fund proposals for Community and Individual Investment Corporations and all other proposals for economic development projects.

Authority. Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320); 24 CFR part 570.

Accordingly, FR Doc. 96–18012, the NOFA and Program Guidelines for the Economic Development Initiative (EDI), published in the **Federal Register** on July 16, 1996 (61 FR 37132), is amended as follows:

1. On page 37139, in column 3, section II.(D) under the heading "Selection Process" is amended to read as follows:

II. The Application Process

* * * * *

(D) *Selection Process*—Once all proposals are scored under the selection criteria above, applications for Homeownership Zones and CIICs will each have 10 additional points added to their total score. Applications will then be selected for funding in two groups as follows:

(1) All applications for Homeownership Zones will be separately ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. Homeownership Zone applications will be funded in rank order until the total aggregate amount of applications funded is equal to $30 million (subject to the Department's discretion described in section II.(D)(3), below);

(2) All applications for Community and Individual Investment Corporations and all other EDI grant applications for economic development projects and programs will be placed in a second group of applications and will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. These applications will be funded in rank order until the total aggregate amount of applications funded is equal to $20 million (subject to the Department's discretion described in section II.(D)(3), below);

(3) HUD, in its sole discretion, may choose to award EDI assistance to a lower rated approvable application over a higher rated application in the same group in order to increase the level of geographic diversity of grants approved under this NOFA. The parameters of any such diversity factors used in the selection process will be described in writing by the panel and/or selecting official, and consistently applied in the final selections. However, no application will be funded out of rank order for geographic diversity purposes that does not have a selection score of at least 80 points.

(4) As discussed in paragraph I.(F) above, HUD reserves the right to determine a minimum and a maximum amount of any EDI award or Section 108 commitment per applicant, application, or project, and to modify requests accordingly. In addition, if HUD determines that an application rated, ranked, and fundable could be funded at a lesser EDI grant amount than requested consistent with feasibility of the funded project or activities and the purposes of the Act, HUD reserves the right to reduce the amount of the EDI award and/or increase the Section 108 loan guarantee commitment, if necessary, in accordance with such determination.

HUD may decide not to award the full amount of EDI grant funds available

under this NOFA and may make any remaining amounts available under a future NOFA.

To review and rate applications, HUD may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies. HUD reserves the right to use two separate panels to review and rate applications in the two groups, and to announce the awards under the two groups at different times.

* * * * *

Dated: August 30, 1996.

Howard Glaser,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 96–22894 Filed 9–4–96; 4:03 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Two Record of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

Record of Decision for the Proposed Issuance of a Section 10(a)(1)(B) Permit for the Incidental Take of Stephens' Kangaroo Rat, Riverside County, California; and Record of Decision for the Proposed Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species to Plum Creek Timber Company, L.P., for Lands in the I–90 Corridor of King and Kittitas Counties, Washington.

SUMMARY: This notice advises the public that a decision on the applications for permits by the Riverside County Habitat Conservation Agency and Plum Creek Timber Company, L.P. (Plum Creek), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, have been made and that the Records of Decision are available.

FOR FURTHER INFORMATION CONTACT: For the Riverside County Habitat Conservation Agency: Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008, telephone (619) 431–9440, between the hours of 8:00 a.m. and 5:00 p.m. weekdays, and for Plum Creek: Supervisor, U.S. Fish and Wildlife Service, Western Washington Office, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501–2192, telephone (360–753–9440). Individuals wishing copies of the Records of Decision should contact the respective U.S. Fish and Wildlife Service Office.

Riverside County Habitat Conservation Agency Decision

The U.S. Fish and Wildlife Service's decision is to adopt the Preferred Alternative and issue a permit authorizing incidental take of Stephens' kangaroo rats to the Riverside County Habitat Conservation Agency based on the Long-Term Habitat Conservation Plan in western Riverside County, as described in the final Environmental Impact Statement/Report. This decision is based on a thorough review of the alternatives and their environmental consequences. By adopting the preferred alternative with its assurances that the mitigation program and enforcement measures be implemented, all practicable means to avoid or minimize harm have been adopted.

Rationale for Decision

Implementation of the Long-Term Habitat Conservation Plan has been selected as the Preferred Alternative based on consideration of a number of environmental and social factors. These factors include: (1) proposed mitigation and minimization measures in the Long-Term Habitat Conservation Plan that would benefit Stephens' kangaroo rats on a regional scale in the core habitat area for the species by establishing seven Core Reserves; (2) the incidental take would occur within western Riverside County, where a viable population of Stephens' kangaroo rats cannot be maintained over the long-term; and (3) the proposed permit would allow incidental take of Stephens' kangaroo rats in areas outside the Core Reserves providing the opportunity for more orderly development and minimizing impacts to the social environment within western Riverside County.

Plum Creek Decision

The U.S. Fish and Wildlife Service's decision is to adopt the Preferred Habitat Conservation Plan Alternative, issue a permit authorizing incidental take of listed species and enter into an unlisted species agreement as described in the final Environmental Impact Statement. This decision is based on a thorough review of the alternatives and their environmental consequences. By adopting the preferred alternative with its assurances that the mitigation program and enforcement measures be implemented, all practicable means to avoid or minimize harm have been adopted.

Rationale for Decision

The Proposed Habitat Conservation Plan Alternative, as described in the applicant's Habitat Conservation Plan and analyzed in the final Environmental Impact Statement, provides the most comprehensive package of conservation prescriptions and activities of all of the Alternatives. None of the other alternatives provide as integrated and comprehensive a package of habitat conservation as the Proposed Habitat Conservation Plan Alternative. The Proposed Habitat Conservation Plan Alternative specifically addresses four listed species, two listed species for which incidental take coverage is not currently sought, riparian habitat management which captures the majority of species that might inhabit the plan area, including anadromous salmonids which are the subject of Federal Tribal Trust responsibility. Furthermore, the Proposed Habitat Conservation Plan Alternative provides management goals for 16 Lifeforms and associated species, as well as special habitat management such as caves, talus slopes, wetlands and snags. Only the Proposed Habitat Conservation Plan Alternative addresses talus, caves, wetlands, riparian management, Old Growth and spotted owl nesting, roosting, and foraging habitat, murrelets, owls, grizzly bears, gray wolves, snags, roads and accelerated watershed analysis. No other alternative addresses all of these resource concerns, together, in an integrated way.

Dated: August 28, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–22921 Filed 9–06–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Indian Gaming; Bureau of Indian Affairs, Interior

ACTION: Notice of approved amendment to Tribal-State compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment III to the Gaming Compact Between the Confederated Tribes of the Umatilla Indian Reservation and the

State of Oregon, which was executed on June 21, 1996.

DATES: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: August 23, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–22950 Filed 9–6–96; 8:45 am]

BILLING CODE 4310–02–P

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Bay County, MI, in the Possession of the Michigan State University Museum, Michigan State University, East Lansing, MI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Michigan State University Museum, Michigan State University, East Lansing, MI.

A detailed assessment of the human remains was made by Michigan State University Museum professional staff in consultation with representatives of the Saginaw Chippewa Indian Tribe of Michigan.

During 1967–68 and 1970, human remains representing a minimum of 145 individuals were recovered during legally authorized excavations of the Fletcher site by the MSU Museum. Mr. Joseph Fletcher, the owner of the Fletcher site, donated these human remains and associated funerary objects to the MSU Museum during this time. No known individuals were identified. The 65,160 associated funerary objects include glass beads, wampum, silver jewelry, hair ornaments, armbands, animal bones, feathers, cooking utensils, muskets, knives, tomahawks, buttons, woven fabrics, scissors, awls, pipes, tools, tin cones, bells, wood/bark fragments, gorgets, keys, locks, lithics, bottles, leather, projectile points, and fishing spears.

The Fletcher site has been identified as a late 18th century occupation site based on the associated funerary objects and manner of the internments. Historic documents indicate Saginaw Chippewa settlements in close proximity to this cemetery area during the late 18th century. The location of this site compared to historically documented Saginaw Chippewa village locations, the presence of 18th century village debris in the area, and documented use of this area in the 19th century by the Saginaw Chippewa all indicate cultural affiliation of this cemetery to the Saginaw Chippewa Tribe of Michigan. Oral tradition presented by representatives of the Saginaw Chippewa Indian Tribe indicates this area was a cemetery area used by the band into the historic period.

Based on the above mentioned information, officials of the Michigan State University Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 145 individuals of Native American ancestry. Officials of the Michigan State University Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 65,160 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Michigan State University Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Saginaw Chippewa Indian Tribe of Michigan.

This notice has been sent to officials of the Saginaw Chippewa Indian Tribe of Michigan. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. William A. Lovis, Curator and Professor of Anthropology, MSU Museum, Michigan State University, East Lansing, MI; telephone: (517) 355–2370, before October 9, 1996. Repatriation of the human remains and associated funerary objects to the Saginaw Chippewa Indian Tribe of Michigan may begin after that date if no additional claimants come forward.

Dated: August 29, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 96–22852 Filed 9–6–96 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

Planning, Research and Activation Branch; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; public involvement procedures regarding proposals to produce new products or expand the production of existing products.

Office of Management and Budget (OMB) approval is being sought for the information collection listed above. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulations, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the United States Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW, Washington, D.C. 20530. Additionally, comments can be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Existing collection in use without an OMB control number.

(2) Title of the Form/Collection: Public Involvement Procedures Information Collection.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form=None. Planning, Research and Activation, Federal Prison Industries, Federal Bureau of Prisons, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Business or other for profit. Other: Federal Government. The information is collected in order to provide private industry the opportunity to comment on new product and expansion proposals. All comments received become part of the public record submitted to the Federal Prison Industries, Board of Directors. This record is the basis from which the Board of Directors makes its decision on the proposal.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 125 responses at 3 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 375 total annual burden hours.

Public comment on this proposed information collection is strongly encouraged. If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22932 Filed 9–6–96; 8:45 am]

BILLING CODE 4410–06–M

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Driver application (North American Trade Automation Prototype).

The proposed information collection is published to obtain comments from the public affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register.**

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan at 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice especially, regarding public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Title of the Form/Collection: Driver Application (North American Trade Automation Prototype).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I-859. Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households, Business or other for profit. This prototype program will allow drivers of commercial trucks who meet certain requirements to immediately apply for participation in a prototype program that will facilitate access to the United States from Canada and Mexico, while still safeguarding U.S. borders.

(5) An estimate of the total number of respondents and the amount or time estimated for an average respondent to respond: 500 respondents at 70 minutes (1.166) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 583 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22931 Filed 9–6–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Justice Programs

Office of Juvenile Justice Delinquency and Prevention; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; a survey of law enforcement, prosecutors, social service providers, and non-profit agencies to determine which communities have a multi-agency response to missing and exploited children.

The Office of Juvenile Justice Delinquency and Prevention, Office of Justice Programs, United States Department of Justice has submitted the following information collection request utilizing the emergency review procedures, to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by September 9, 1996. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comments.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. New data collection.

(2) The title of the form/collection. A Survey of Law Enforcement, Prosecutors, Social Service Providers, and Non-Profit Agencies to Determine Which Communities have a Multi-Agency Response to Missing and Exploited Children.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State or Local. Other: Not-for-profit institutions and Federal Government.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 750 respondents to complete a one-time 15 minute mail survey.

(6) An estimate of the total public burden (in hours) associated with the collection: 188 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: September 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22929 Filed 9–6–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice Delinquency and Prevention Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; a survey of law enforcement, prosecutors, social service providers, and non-profit agencies to determine which communities have a multi-agency response to missing and exploited children.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, § 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimate public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Office, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. New data collection.

(2) The title of the form/collection. A Survey of Law Enforcement, Prosecutors, Social Service Providers, and Non-Profit Agencies to Determine Which Communities have a Multi-Agency Response to Missing and Exploited Children.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State or Local. Other: Not-for-profit institutions and Federal Government.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 750 respondent to complete a one-time 15minute mail survey.

(6) An estimate of the total public burden (in hours) associated with the collection: 188 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: September 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–22930 Filed 9–6–96; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–387]

Susquehanna Steam Electric Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–14 issued to Pennsylvania Power and Light Company (the licensee) for operation of the Susquehanna Steam Electric Station, Unit 1, located in Luzerne County, Pennsylvania.

The proposed amendment would revise the Minimum Critical Power Ratio safety limit values, adding two references to reflect the use of the ANF–B Critical Power Ratio Correlation and to reflect the use of the ABB Combustion Engineering licensing methodology, with a modification to the associated Bases.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to the ANFB correlation and corresponding MCPR Safety Limits does not physically change the plant systems, structures, or components. Thus, the probability of occurrence of an event evaluated in the SAR [Safety Analysis Report] is not increased. The acceptance criterion for the MCPR Safety Limit (i.e., 99.9% of the fuel rods expected to avoid boiling transition) is not changed. Only the methodology used to demonstrate compliance is changed. Therefore, the consequences of anticipated operational occurrence (which must show the Safety Limit is not violated) are not changed.

Adding the reference of CENPD–300–P, "Reference Safety Report for Boiling Water Reactor Reload Fuel," to the list of references in Unit 1 Technical Specifications will allow the use of the ABB methodology to calculate the operating limits for the four Lead Use Assemblies which are of different mechanical design from the Siemens 9x9–2 fuel. The use of this ABB methodology will ensure that the applicable safety limits of the safety analysis are met for the four LUAs [Lead Use Assemblies]. Results of incorporating this change will not significantly increase the probability or the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, this methodology change does not impact the acceptance criterion for the MCPR Safety Limits and does not physically change the plant safety, structures, or components. Since no changes to the physical plant are being made, this change does not create the possibility of a new event not previously evaluated in the SAR.

The incorporation of this change will allow the use of the ABB methodology to be referenced as the methodology to show that all applicable limits of the safety analysis are met by the four ABB LUAs. Therefore, the incorporation of this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

A cycle specific MCPR Safety Limit analysis was performed by SPC [Siemens Power Corporation]. The analysis used NRC approved methods described in the SPC report: ANF–524(P)(A), Revision 2 and Supplement 1, Revision 2. The MCPR Safety Limit value is calculated such that at least 99.9% of the fuel rods are expect to avoid boiling transition during normal operation or anticipated operational occurrences. Both the existing analysis using XN–3 and the new analysis using ANFB utilize NRC approved methods to accomplish this same objective. Therefore, the change to ANFB based Safety Limit does not involve a significant reduction in a margin of safety.

The use of the ABB methodology will not result in a change in safety margin, but will ensure that the safety margin is maintained with the insertion of the four ABB LUAs in the Unit 1 Cycle 10 core. Therefore, the incorporation of these changes will have no impact on current safety margins, nor will they involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 9, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 28, 1996, as supplemented by letter dated July 25, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 3rd day of September 1996.

For the Nuclear Regulatory Commission.

Chester Poslusny,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–22924 Filed 9–6–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Medically Underserved Areas for 1997

AGENCY: Office of Personnel Management.

ACTION: Notice of medically underserved areas for 1997.

SUMMARY: The Office of Personnel Management (OPM) has completed its annual calculation of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for the calendar year 1997. This is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in states with critical shortages of primary care physicians. Accordingly, for calendar year 1997, OPM's calculations show that the following States are Medically Underserved Areas under the FEHB Program: Alabama, Louisiana, Mississippi, New Mexico, North Dakota, South Carolina, South Dakota, West Virginia, and Wyoming. Arkansas and

Idaho have been removed from the list, with no new additions for 1997.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Lease, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law [5 U.S.C. 8902(m)(2)] mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires payment to all qualified providers in the States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual calculation of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident population.

U.S. Office of Personnel Management.

James B. King,

Director.

BILLING CODE 6325–01–M

C:MEDUND97

FEHB MEDICALLY UNDERSERVED AREAS FOR CALENDAR YEAR 1997

STATE	HHS TOTAL POPULATION 1)	COMMERCE RESIDENT POPULATION 2)	FEHB PERCENTAGE 3)	NOTE
Alabama	1,377,168	4,253,000	32.381%	MUA
Alaska	94,707	604,000	15.680%	
Arizona	340,504	4,218,000	8.073%	
Arkansas	558,379	2,484,000	22.479%	
California	4,043,173	31,589,000	12.799%	
Colorado	405,815	3,747,000	10.830%	
Connecticut	346,839	3,275,000	10.591%	
Delaware	55,579	717,000	7.752%	
Florida	1,664,615	14,166,000	11.751%	
Georgia	1,649,301	7,201,000	22.904%	
Hawaii	43,435	1,187,000	3.659%	
Idaho	285,341	1,163,000	24.535%	
Illinois	1,690,746	11,830,000	14.292%	
Indiana	883,097	5,803,000	15.218%	
Iowa	362,073	2,842,000	12.740%	
Kansas	365,751	2,565,000	14.259%	
Kentucky	946,323	3,860,000	24.516%	
Louisiana	1,650,505	4,342,000	38.013%	MUA
Maine	165,835	1,241,000	13.363%	
Maryland	236,335	5,042,000	4.687%	
Massachusetts	777,007	6,074,000	12.792%	
Michigan	1,859,326	9,549,000	19.471%	
Minnesota	327,743	4,610,000	7.109%	
Mississippi	1,402,441	2,697,000	52.000%	MUA
Missouri	1,042,748	5,324,000	19.586%	
Montana	133,212	870,000	15.312%	
Nebraska	270,683	1,637,000	16.535%	
Nevada	293,865	1,530,000	19.207%	
New Hampshire	117,178	1,148,000	10.207%	
New Jersey	809,649	7,945,000	10.191%	
New Mexico	490,555	1,685,000	29.113%	MUA
New York	3,838,377	18,136,000	21.164%	
North Carolina	1,604,720	7,195,000	22.303%	
North Dakota	175,210	641,000	27.334%	MUA
Ohio	1,475,522	11,151,000	13.232%	
Oklahoma	651,771	3,278,000	19.883%	
Oregon	403,493	3,141,000	12.846%	
Pennsylvania	1,113,888	12,072,000	9.227%	
Rhode Island	171,220	990,000	17.295%	
South Carolina	1,268,513	3,673,000	34.536%	MUA
South Dakota	184,379	729,000	25.292%	MUA
Tennessee	1,060,501	5,256,000	20.177%	
Texas	3,492,491	18,724,000	18.652%	
Utah	291,827	1,951,000	14.958%	
Vermont	75,405	585,000	12.890%	
Virginia	795,155	6,618,000	12.015%	

Washington	940,677	5,431,000	17.321%	
West Virginia	574,864	1,828,000	31.448%	MUA
Wisconsin	1,048,788	5,123,000	20.472%	
Wyoming	120,295	480,000	25.061%	MUA

1) From the "Total Population" column of the Department of Health and Human Services report entitled "Table 3. Health Professional Shortage Areas, Designated HPSA Summary Listing, Primary Medical Care HPSAs, As of March 31, 1996."

HHS contact for copy of report: Lisa Steinbruckner, 301–594–0816

2) From the most recent year column of the Department of Commerce Report entitled "Table 3. Rankings of State Population Estimates and Components of Change: July 1, 1994 to July 1, 1995."

Commerce contact for report Karen Jones, 301–457–2435

3) Computation Formula for this column = the HHS number divided by the Commerce number.

Note: FEHB percentage equal to greater than 25% =MUA= medically underserved area.

[FR Doc. 96–22905 Filed 9–6–96; 8:45 am]
BILLING CODE 6325–01–C

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–2(c) SEC File No. 270–35; OMB Control No. 3235–0029
Rule 17f–2(d) SEC File No. 270–36; OMB Control No. 3235–0028
Rule 17f–2(e) SEC File No. 270–37; OMB Control No. 3235–0031

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rules:

Rule 17f–2(c) allows persons required to be fingerprinted, pursuant to Section 17(f)(2) of the Securities Exchange Act of 1934 (Exchange Act), to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. Plans have been approved for the American, Boston, Chicago, New York, Pacific, and Philadelphia stock exchanges and for the National Association of Securities Dealers and the Chicago Board Options Exchange.

It is estimated that 8,500 registered broker-dealers submit approximately 275,000 fingerprint cards to exchanges or a registered security association on an annual basis. It is approximated that it should take 15 minutes to comply with Rule 17f–2(c). The total reporting burden is estimated to be 68,750 hours.

Rule 17f–2(d), requires that records produced, pursuant to the fingerprinting requirements of Section 17(f)(2) of the Exchange Act, be maintained; permits the designated examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and to maintain records required to be kept by this rule; and permits the required records to be maintained on microfilm.

Approximately 10,025 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 32 new records per year, which take approximately 2 minutes per record for the respondent to maintain, for an annual burden of 64 minutes per respondent. All records subject to the rule must be retained for the term of employment plus 3 years.

Rule 17f–2(e) requires entities claiming an exemption from the fingerprinting requirements to prepare and maintain a notice supporting their claim for exemption and exempts certain small transfer agents from the requirement.

While the Commission no longer receives notices pursuant to Rule 17f–2(e), the covered entities are still required to prepare and retain such notice. Based on the indications of several covered entities, most notices require one-half hour to prepare. Approximately 75 respondents will prepare notices each year. The total average annual burden to covered entities is approximately 37.5 hours of preparation and maintenance time.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the securities and exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive

Office Building, Washington, D.C. 20503.

Dated: August 29, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22934 Filed 9–6–96; 8:45 am]

BILLING CODE 8010–01–M

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Schedule 13E–4; SEC File No. 270–190; OMB Control No. 3235–0203

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following:

Schedue 13E–4 is filed pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934 by issuers conducting a tender offer. this information is needed to provide full and fair disclosure to the investing public. Schedule 13E–4 takes approximately 232 hours to prepare and is filed by an estimate 121 respondents annually for a total of 28,072 burden hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 30, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22935 Filed 9–6–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37631; File No. SR–NSCC–96–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Modifying Rules and Procedures Relating to the New York Window System

September 3, 1996.

On April 3, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–96–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to modify its rules and procedures relating to the New York Window ("NYW") service. Notice of the proposal was published on June 27, 1996, in the **Federal Register** to solicit comments on the proposed rule change.[2] No comment letters were received. On August 30, 1996, NSCC amended the proposal.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's proposed rule change modifies NSCC's rules and procedures regarding the NYW service (i) to allow members to use the NYW through their individual systems, (ii) to modify the terms and conditions under which NYW services are provided with respect to the use of the NYW through NSCC's proprietary system, and (iii) to clarify that members may elect to use all or some of the services offered under the NYW service.[4]

NSCC's NYW service provides for the processing of receives and deliveries of physical securities and for related services. The NYW service also provides custodial services and custodial related services. When NSCC sought permanent approval of the NYW service, it anticipated that members accessing the NYW through their own systems eventually would migrate to using NSCC's proprietary system. However, because of the number of industry initiatives currently underway and the resulting demand on members' technological resources, a number of participants continue to access the NYW through their own systems. This proposed rule change clarifies NSCC's NYW rules to explicitly allow members to take advantage of the NYW through the use of their individual systems.[5]

Presently, reimbursement for losses related to the use of the NYW service is within the sole discretion of NSCC. In order to encourage members to use NSCC's proprietary system for the NYW service, NSCC will accept responsibility for certain categories of losses with respect to members who access the NYW service through NSCC's proprietary system. Under the proposed rule change, NSCC will be responsible for: (1) the replacement cost of certificates lost while in the care, custody, or control of NSCC employees or agents, (2) with respect to a lost security, the cost to carry the lost security from the date of the scheduled delivery or the redemption date until the date when replacement securities are delivered or presented,[6] and (3) the cost to carry the lost security for the number of days that NSCC is unable to complete a scheduled delivery if such failure is due to circumstances other than those set forth in clause (1) above. However, with respect to the NSCC's obligations under clauses (2) and (3) above, NSCC will have no obligations unless (a) instructions regarding delivery and the subject securities are delivered to NSCC within time parameters established by NSCC from time to time, (b) the final delivery destination is within the New York City downtown financial district, and (c) other NYW services operational criteria, as established by NSCC from time to time, are met. Notwithstanding clauses (1), (2), and (3) above, NSCC will not be liable for (a) special, incidental, or consequential damages or any direct or indirect damages other than the cost to carry or (b) the cost to carry resulitng from any failure or delay arising out of conditions beyond NSCC's reasonable control including, but not limited to, work stoppages, fire, civil disobedience, riots, rebellions, storms, electrical failures, acts of God, and similar occurrences. These revised terms will be offered to current users of NSCC's NYW services as well as prospective NYW service users that access the NYW service through NSCC's proprietary system.

NSCC is adding a section to Addendum K, Interpretation of the Board of Directors, Application of

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37347 (June 21, 1996), 61 FR 33565.

[3] Letter from Julie Beyers, Associate Counsel, NSCC, to Jerry Carpenter, Commission (August 30, 1996). The Commission is not noticing the amendment because the change is technical in nature.

[4] For a complete description of NYW services, refer to Securities Exchange Act Release No. 34629 (September 1, 1994), 59 FR 46680 [File No. SR–NSCC–94–12] (order granting permanent approval of the NYW service).

[5] NSCC Rule 31, Section 1.

[6] The cost to carry a security represents the interest costs associated with a participant's failure to receive timely payment.

Clearing Fund to Excess Losses and Losses Outside of a System, which will provide that if NSCC were to have an unsatisfied loss due to a member's use of the NYW service, the loss may be satisfied from the entire clearing fund.[7]

An additional purpose of the filing is to clarify that members may choose to use only some of the NYW services (*e.g.*, custodial and custodial related services). Members may enter into agreement(s) with NSCC limiting their access to specified NYW services which they desire to access.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Sections 17A(b)(3) (A) and (F).[8] Sections 17A(b)(3) (A) and (F) require that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

NSCC's rule change will provide participants with greater access to the NYW service by allowing participants to continue to access the service through their own systems which should facilitate the prompt and accurate clearance and settlement of securities transactions. Furthermore, when participants elect to access the NYW service via NSCC's proprietary system, NSCC will assume greater responsibility for certain losses resulting therefrom. In connection with assuming greater responsibility for certain losses, NSCC will apply its usual procedures to ensure the safeguarding of securities and funds processed through NSCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with Sections 17A(b)(3) (A) and (F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–08) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[7] Interpretation of the Board of Directors, Application of Clearing Fund, Addendum K, II, 2.

[8] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[9] 17 CFR 200.30–3(a)(12) (1996).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96–22938 Filed 9–6–96; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–37630; File No. SR–OCC–96–03]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Clearance and Settlement of Flexibly Structured Equity Options

September 3, 1996.

On April 30, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–96–03) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to enable OCC to clear and settle flexibly structured equity options. Notice of the proposal was published in the **Federal Register** on June 25, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

OCC is modifying its existing by-laws and rules to allow for the clearance and settlement of flexibly structured options on individual equity securities as proposed for trading by the American Stock Exchange, Inc. ("AMEX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Philadelphia Stock Exchange, Inc. ("PHLX"), and the Pacific Stock Exchange, Inc. ("PSE"— (collectively, "Exchange" or "Exchanges").[3] Flexibly structured equity options will allow the parties to each flexibly structured equity option trade to customize certain terms of the option within specified limits established by the Exchange. Specifically, for each flexibly structured equity option trade the parties may establish the exercise price, the exercise style (*i.e.*, American,[4] European[5] or capped)[6] the cap interval in the case of a capped-style option, the expiration date, and the option type (*i.e.*, put or call).[7] In addition to customization, flexibly structured equity option trades will require a minimum transaction size of 250 contracts in opening trades in currently unopened series and 100 contracts in the case of opening and most closing trades in currently open series. Flexibly structured equity options thus will differ from existing Exchanged-traded equity options both in terms of customization and size.

From a clearance and settlement prospective, flexibility structured equity options will be treated and processed in virtually all respects like any other equity option. While Exchange rules permit a Request for Quotes[8] to specify a quote either as a dollar amount or as a percentage of the underlying stock price, the option premium always will be expressed as a dollar amount when a trade is reported to OCC. Therefore, when a flexibly structured equity option trade is reported to OCC by one of the Exchanges, all of the terms of that option will have been established in the Exchange's report, and the terms will correspond to existing equity options term categories. As a result, on receipt of a matched trade report from an Exchange, OCC will establish long and short flexibility structured equity option positions in clearing member accounts in precisely the same way it does for existing equity options. Furthermore, flexibly structured equity option positions should exhibit virtually the

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 37318 (June 18, 1996), 61 FR 32873.

[3] For a complete description of flexibly structured equity options, refer to Securities Exchange Act Release Nos. 36841 (February 14, 1996), 61 FR 6666 [File Nos. SR–CBOE–95–43 and SR–PSE–95–24] (order approving the trading of flexibly structured equity options by the CBOE and PSE) and 37366 (June 19, 1996), 61 FR 33558 [File No. SR–AMEX–95–57] (order approving the trading of flexibly structured equity options by the AMEX). The PHLX filed and subsequently withdrew a proposed rule change regarding the trading of flexibly structured equity options. The Commission anticipates that the PHLX will refile in the near future.

[4] An American-style equity option may be exercised at any time prior to its expiration date.

[5] A European-style equity option may be exercised only during a specified period before the option expires.

[6] A capped-style equity option will be exercised automatically prior to expiration if the options market on which the option is trading determines that the value of the underlying interest at a specified time on a trading day "hits the cap price" for the option (*i.e.*, when the cap price is less than or equal to the closing price of the underlying security for calls or when the cap price is greater than or equal to the closing price of the underlying security for puts).

[7] Although the rules of the Exchanges provide for capped-style flexibly structured equity options, the Exchanges advised OCC that they do not intend to provide a market in capped-style equity options at the outset. Accordingly, this proposed rule change does not include the rules that would be required for the clearance and settlement of such options. The commencement of trading in capped-style flexibly structured equity options will require that OCC file and that the Commission approve another proposed rule change filed by OCC under Section 19(b)(1) of the Act.

[8] A Request for Quotes is the initial request by an exchange member to initiate flexibly structured option bidding and offering.

same characteristics as existing equity options.

Because of the similarities between existing equity options and flexibly structured equity options, only a few of OCC's by-laws and rules need adjustment to accommodate flexibly structured equity options.[9] OCC is amending Section 1 of Article I to add an all-purpose definition of "flexibly structured option." Thus, the definition of flexibly structured option set forth in Articles XV, XVII, and XXIII will be deleted. The definition of "expiration date" is being amended to make clear that flexibly structured equity options may expire on dates other than the Saturday following the third Friday of the expiration month. The expiration date of any such option will be the date reported to OCC by the Exchange, subject to such constraints on the range of possible expiration dates as set forth in the rules of the Exchanges.

Section 11 of Article VI regarding adjustments to equity and index options also will apply to the adjustment of flexibly structured equity and index options.[10] However, paragraph (j) has been amended to reserve to the Securities Committee [11] the power to make special exceptions for flexibly structured options whenever it determines that such exceptions are appropriate. This is intended to give the Securities Committee the flexibility to deal with situations where a different adjustment for flexibly structured options is warranted.

OCC also is adding Interpretation and Policy .08 to Section 11. The interpretation provides that when a flexibly structured option with a European style exercise is adjusted to require the delivery upon exercise of a fixed amount of cash, such as would ordinarily occur in a merger where the underlying security is converted into a right to receive a fixed amount of cash, the expiration date of the option will ordinarily be accelerated so that the option will expire on or shortly after the date when the underlying stock is converted into the right to receive cash. Without this adjustment, the option position would have to be maintained until it could be exercised at its regular expiration even though the amount to be received on exercise had already been fixed. This special adjustment is being made to accommodate flexibly structured equity options because, unlike existing equity options, flexibly structured equity options may have European-style exercise features.

The only change being made to OCC's rules is the addition of Interpretation and Policy .03 to Rule 805 which clarifies that OCC's exercise procedures as set forth in Rule 805 shall apply to the exercise of flexibly structured equity options. The new interpretation also gives OCC the flexibility, if necessary, to depart from regular expiration date procedures and deadlines in the case of flexibly structured options. Such departures are not currently anticipated and adequate notice will be given to all clearing members prior to such departures being made.

II. Discussion

Sections 17A(b)(3) (A) and (F) [12] of the Act require that a clearing agency be structured and its rules designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible. Because from a clearance and settlement perspective, OCC will process flexibly structured equity options like any other equity option, the Commission believes that OCC's proposed change is consistent with Sections 17A(b)(3) (A) and (F) of the Act because the proposed rule change establishes a framework in which existing, reliable OCC systems, rules, and procedures are extended to the processing of flexibly structured equity options. As a result, the proposed rule change should promote the prompt and accurate clearance and settlement of such options and should provide for the safeguarding of related securities and funds.

III. Conclusion

The Commission finds that OCC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22937 Filed 9–6–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37627; File No. SR–PSE–96–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange Incorporated

September 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 11, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby amends its Schedule of Rates for Exchange Services by reducing the current cap on transaction charges for equity block trades and by adopting a transaction fee cap per 100 shares for equity securities. The text of the proposed rule change is set forth below [new text is italicized; deleted text is bracketed]:

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[9] The specific changes to OCC's by-laws and rules are set forth in OCC's proposed rule change, which is available for review at the principal office of OCC and at the Commission's Public Reference Room.

[10] Adjustments may be made to the number of option contracts, the unit of trading, the exercise price, and the underlying security with respect to all outstanding option contracts open for trading on an underlying security which is the subject of a dividend, stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification or similar event, or the merger, consolidation, dissolution, or liquidation of the issuer of the underlying security.

[11] The Securities Committee consists of one designated representative of each exchange and the Chairman of OCC.

[12] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[13] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1).

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

	Cumulative billable trade value per month	Charge per $1,000 of trade value *
PSE EQUITIES: TRADE-RELATED CHARGES		
EXCHANGE TRANSACTIONS	No change.	No change
DISCOUNTS *AND CAPS* [ON AUTOMATED TRANSACTIONS]:		
AUTOMATED TRADE DISCOUNTS	No change.	
BLOCK TRADES (5,000 SHARES OR MORE)	Transaction charges for block trades of 5,000 shares or more are subject to a minimum charge of $15 per trade side and a maximum charge of *$75* [$100] per trade side.	
CAP ON TRANSACTION CHARGES	*Aggregate monthly transaction charges are subject to a cap of $.45 per 100 shares.*	

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its charges for equity transactions in two respects: First, the Exchange is proposing to reduce from $100 to $75 the current cap on transaction charges for block trades (i.e., trades involving 5,000 shares or more). Second, the Exchange proposes to establish a cap on aggregate monthly transaction charges equal to $.45 per 100 shares. These changes are intended to make the Exchange's equity transaction charges more competitive.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[2] in general and furthers the objectives of Section 6(b)(4)[3] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e) of Rule 19b–4 thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Pacific Stock Exchange. All submissions should refer to File No. SR–PSE–96–27 and should be submitted by September 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4.

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–37628; File No. SR–Phlx–96–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Rule 452, Limitations on Members' Trading Because of Customers' Orders

September 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on August 22, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 452, Limitations on Members' Trading Because of Customers' Orders, which prohibits members from trading along with their customers on the same side of the market. Specifically, Rule 452 is proposed to be amended and reorganized as follows: paragraph (a) restates the prohibitions and extends such to member organizations; paragraph (b) exempts certain consensual arrangements between firms and customers; and paragraph (c) exempts odd-lot orders, trades specifying delivery other than regular way, and certain market making activity.

Proposed paragraph (a) will continue to prohibit a member's proprietary trades while the member is holding a customer order executable at the same price, except that the prohibition will be extended to member organizations. Paragraph (b) provides that a member or member organization may enter a proprietary order if the customer has given express permission, agreeing and understanding the method of allocating executions, including the prices and sizes, with respect to three categories of trading activities. The first exempted activity relates to a member or member organization liquidating a position held in a proprietary facilitation account where the customer's order is for 10,000 shares or more. The term "proprietary facilitation account" is an account used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Thus, only those positions which are recorded in a proprietary facilitation account may be liquidated in accordance with this provision.

The second exempted activity relates to a member or member organization effecting one or more transactions for the purpose of facilitating or hedging the grant of a stop for 10,000 shares or more to the customer, or facilitating or hedging one or more principal transactions of 10,000 shares or more in the aggregate with the customer. The third exempted activity relates to a member or member organization trading for its own proprietary account and for the account(s) of one or more customers in an agreed-upon strategy or course of trading, such as bona fide arbitrage or risk arbitrage. A member organization that seeks to rely on the exclusion in paragraph (b)(3) may do so only if the member organization reasonably believes that the customer, alone or together with an investment representative, understands the nature of the transaction with respect to which he or she is giving consent. In addition, the reference to bona fide arbitrage and risk arbitrage in paragraph (b)(3) is intended to be illustrative and not exclusive.

Paragraph (c) provides an unqualified exemption for transactions by a member or member organization acting in the capacity of: (A) a market maker pursuant to Rule 19c–3 of the Commission in a security traded on the Exchange; or (B) a specialist or market maker on a national securities exchange. The Exchange notes that Phlx specialists and alternate specialists would be exempt from the prohibitions of the Rule pursuant to this provision.

Supplementary Material sections .01 and .02 are proposed to be adopted. Supplementary Material .01 states that a member or employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

Supplementary Material .02 provides that the Rule applies to a member on the Floor who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent that the member organization itself could do so under this Rule.

The Exchange notes that Supplementary Material .03 contains the current version of Supplementary Material .01, relating to a commitment to trade through the Intermarket Trading System ("ITS"), which is deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

The proposal will take effect upon notice to the membership. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Rule 452. (a) *Except as provided in this Rule,* n[N]o member *or member organization* shall *cause the entry of an order to buy (sell)* [(1) personally buy or initiate the purchase of] any security on the Exchange for *any account in which such member or member organization or approved person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.*

[His account or for any account in which he, or the firm of which he is partner or any partner of such firm, is directly or indirectly interested, while such member personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to sell such security in the unit of trading for a customer.]

(b) *A member or member organization may enter a proprietary order if the customer has given express permission, agreeing and understanding the method of allocating executions, including the prices and sizes, with respect to the following trading strategies:*

(1) The member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more.

The term "proprietary facilitation account" shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided herein;

(2) The member or member organization is effecting one or more transactions for the purpose of facilitating or hedging the grant of a stop for 10,000 shares or more to the customer or facilitating or hedging one or more principal transactions of 10,000 shares or more in the aggregate with the customer; or

(3) The member or member organization is trading for its own proprietary account and for the account(s) of one or more customers in an agreed-upon strategy or course of trading, such as bona fide arbitrage or risk arbitrage. A member organization that seeks to rely on this exemption may do so only if the member organization reasonably believes that the customer, alone or together with an investment representative, understands the nature of the transaction with respect to which he or she is giving consent. The reference to bona fide arbitrage and risk arbitrage is intended to be illustrative and not exclusive.

[No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has

knowledge that his firm or any partner thereof holds an unexecuted limited price order to sell such security in the unit of trading for a customer.]

[Exceptions]

(c) The provisions of this Rule shall not apply *to:*

(1) [To] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders of customers [, or];

(2) [To] any purchase or sale of any security, delivery which is to be upon a day other than the day of delivery provided in such unexecuted market or limited price order [.]; *or*

(3) transactions by a member or member organization acting in the capacity of:

(A) A market maker pursuant to Regulation 240.19c–3 of the Securities and Exchange Commission in a security traded on the Exchange; or

(B) A specialist or market maker on a national securities exchange.

Supplementary Material

.01 A member or employee of a member organization responsible for entering proprietary orders shall be presumed to have knowledge or a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.02 This Rule shall also apply to a member organization's member on the Floor who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent that the member organization itself could do so under this Rule.

.03 A member who issues a commitment to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1994, the NYSE filed a proposed rule change with the Commission to amend NYSE Rule 92 to: (1) extend the prohibition against trading along with customers to member organizations and NYSE member trading on other market centers; and (2) exempt the liquidation of block facilitation positions in NYSE securities, subject to specified conditions. Following publication of the proposal for notice and comment,[1] the Phlx, as well as other commenters, sought clarification of the reach of the proposal.[2] The Exchange commented that a significant burden on competition would result due to the impact on regional trading operations.[3]

Thereafter, the NYSE filed Amendment No. 2 to their proposal on July 13, 1995, specifically excluding: (1) securities not listed on the NYSE; (2) transactions by Rule 19c–3 market makers, and regional specialists if the principal trade is liquidated immediately at the same price to a customer on that exchange; and (3) certain bona fide or risk arbitrage transactions.[4] In response, the Exchange commented that the exemption for regional specialists should be unqualified, similar to the exemption for Rule 19c–3 market makers.[5] The Exchange further explained how the restrictions on specialist trades would be unduly disruptive to regional exchange market operations, and questioned the application of a NYSE rule to Phlx members affiliated with NYSE member organizations where there is no connection to NYSE floor trading.[6]

Recently, the NYSE filed Amendment No. 3 to the proposal, exempting without qualification regional exchange specialists and market makers from the provisions of the rule when acting as such on that exchange, deleting the limitation that the principal trade must be liquidated immediately at the same price to a customer on that exchange.[7] To date, the proposed amendments to NYSE Rule 92 continue to extend the rule to transactions on other market centers. The Phlx has commented adversely on this aspect of the amendments.[8]

At this time, the Exchange is adopting its own rule amendments governing the restricted activities and exempting certain transactions, which would otherwise have been governed by the NYSE rule, noting that the Rule 92 exemptions are limited to NYSE transactions. The Phlx's proposal at hand is conditioned upon the NYSE amending its proposal to delete application to other market centers. In this regard, the Phlx does not intend to take any disciplinary action against Phlx members or member organizations for violation of the Phlx rule for engaging in trading on another market center that is consistent with the rules of such market center. Moreover, although many Phlx member organizations also trade on other exchanges, the Exchange does not profess that its Rule 452 should extend to those transactions in view of Commission policy against the application of exchange rules to trading on another market center.[9]

In light of the conduct restricted and exemptions contained in the NYSE's proposal, the Exchange reviewed its own comparable rule, noting that currently, Phlx Rule 452 is divided into three paragraphs, with paragraph (a) prohibiting trading for a member's own account if the member's firm has an unexecuted market order on the same side of the market in that security; paragraph (b) containing the same prohibition for limit orders at that price or better; and paragraph (c) exempting odd-lot orders and transactions other than regular way.

In conjunction with the expected amendment to the NYSE's proposal limiting its application to NYSE members' and member organizations' transactions on the NYSE floor, the Phlx is proposing to amend its own rule to adopt similar exceptions to permit certain types of proprietary trading activity that the Phlx believes is consistent with the purposes of Phlx Rule 452 and the analogous NYSE Rule 92. Phlx Rule 452, as well as the

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[1] Securities Exchange Act Release No. 35139 (Dec. 22, 1994), 60 FR 156 (SR–NYSE–94–34).

[2] *See* letter from William W. Uchimoto, General Counsel, Phlx, to Margaret H. McFarland, Deputy Secretary, Commission, dated February 15, 1995.

[3] *See* letter from William W. Uchimoto, General Counsel, Phlx, to Margaret H. McFarland, Deputy Secretary, Commission, dated April 4, 1995.

[4] Securities Exchange Act Release No. 36015 (July 21, 1995), 60 FR 38875 (Notice of Filing of Amendment No. 2 to SR–NYSE–94–34).

[5] *See* letter from William W. Uchimoto, General Counsel, Phlx, to Margaret H. McFarland, Deputy Secretary, Commission, dated August 11, 1995.

[6] *See* letter from William W. Uchimoto, General Counsel, Phlx, to Margaret H. McFarland, Deputy Secretary, Commission, dated October 27, 1995.

[7] Securities Exchange Act Release No. 37428 (July 11, 1996) (notice of Filing of Amendment No. 3 to SR–NYSE–94–34).

[8] *See* letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Margaret H. McFarland, Deputy Secretary, Commission, dated August 8, 1996.

[9] Securities Exchange Act Release No. 12249 (Mar. 23, 1976).

comparable rules of other exchanges, was intended to prevent members from taking advantage of their customers. Although customer protection is of paramount importance in furthering the purposes of the Act, fulfilling the self-regulatory mission and promoting an auction marketplace, the Exchange recognizes that it should not impair the business of trading by drafting away a customer's ability to enter into voluntary and consensual agreements with a member or member organization.

At this time, the Exchange proposes to adopt three exemptions in paragraph (b) requiring customer disclosure and consent: (1) liquidating block facilitation positions, (2) facilitating or hedging the grant of a stop in connection with executing a customer block order, and (3) any other consensual transactions agreed upon with the customer, including bona fide and risk arbitrage. All three exemptions are predicated upon the customer giving express permission for the firm to trade along with that customer. The express permission must also include the method of allocating executions, such as the prices and sizes of execution reports. The Exchange believes that these three transactions reflect the reality of today's trading environment, balanced against the need to preserve agency principles and promote customer protection by requiring the consent of the customer. Moreover, the Exchange believes that its proposal recognizes that informed consent, which reflects the true objectives of the customer, should prevail over arbitrary prohibitions. The Exchange believes that the enumerated exemptions are crafted to be consistent with a member's fiduciary relationship with its customer. For the purposes of Rule 452, the Exchange does not believe that informed consent can only be given by certain types of customers, nor should the exemption be premised on sophistication or wealth. In fact, the exemptions involving block orders by virtue of their size create a wealth standard. The Exchange believes that consensual arrangements should be available for all informed investors.

The first two consent-based exemptions codify current block trade practices, which the Exchange has included, because they are a universally accepted and common type of trading activity involving trading along with a customer. Block facilitation business, where positioning firms facilitate their institutional customers, by definition, involve customer disclosure and consent. The exemption in paragraph (b)(2) is designed to apply where a member organization may need to effect certain proprietary transactions in advance of trading with or stopping a customer block-sized order, in anticipation of accepting such market risk. Thus, this exemption goes beyond mere liquidation, as contemplated by the paragraph (b)(1) exemption, by permitting proprietary transactions to, for example, hedge or facilitate the execution of the block order.

The third exemption covers other transactions agreed upon by the customer, predicated upon consent. Recognizing the importance of informed consent, this provision specifically requires that the member organization reasonably believe that the customer, alone or together with an investment representative, understands the nature of the transactions with respect to which consent is given. For example, a customer may consent to a transaction subject to Rule 452 to adjust the risk allocation with a member organization, thus achieving certain economic objectives without resorting to off-exchange or other venues.

Bona fide and risk arbitrage are examples of strategies covered by the third exemption, where customers desire to trade along with the member in a potentially lucrative trading strategy. These specific strategies, however, are listed as nonexclusive examples. Because arbitrage strategies are listed as an example, Rule 452 does not purport to define these strategies nor list all other strategies covered by this exemption. The Exchange anticipates that other strategies will fall under this exemption. The Exchange believes that it is inefficient and ineffective to list every possible type of trading strategy that could be exempt, because trading strategies are constantly evolving in response to market conditions, constantly honed to specific economic circumstances. Because the premise behind exempting any such strategy that may evolve is that customer consent to trade with the customer is given, the Exchange believes that its third exemption is appropriate and would facilitate other shared trading arrangements that customers may require in the future.

The strategies proposed to be exempted involve the allocation of risk between firms and their customers. Because of the shared risk and the informed consent involved, these types of transactions have historically been viewed as integrally related to the customers' own trading objectives, which need not be disclosed generally to the market. Nevertheless, in relying upon the exemptive provisions of Rule 452, members and member organizations must be mindful of potential front-running situations; if they take advantage of their knowledge of customer trading objectives outside of efforts to facilitate customer trading objectives outside of efforts to facilitate customer trades, such member or member organization trading may violate Phlx Rule 707, Just and Equitable Principles of Trade. Of course, in crafting the proposed exemptions to Rule 452, the Exchange does not endeavor to exempt certain activity from existing front-running proscriptions.

The Exchange also proposes to exempt two types of market making activity: specialists and market makers on a national securities exchange as well as upstairs market makers acting as such pursuant to SEC Rule 19c–3. These market makers are proposed to be exempted because they foster depth and liquidity in the marketplace, and, at least with respect to specialists and market makers on a national securities exchange, are extensively monitored and subject to affirmative and negative obligations imposed by the various exchanges. Thus, such market makers are integral to the auction market.

The burden of proof to demonstrate that customer consent was obtained and the conditions of each exemption were met falls upon the member or member organization relying on the respective exemptive provision. The Exchange expects that internal procedures be adopted to assure compliance with the exemptive provisions.

With respect to the prohibitions of Rule 452, the Exchange proposes to extend such to member organizations in order to capture trading within a Phlx member organization, without limitation to the floor members involved.[10] Thus, whenever a member organization is representing an agency order, its own proprietary trading could be restricted. In this regard, new Supplementary Material .01 acknowledges that the agency order could be held in a different organizational component than the proprietary order such that a reasonable system of internal policies and procedures to prevent the misuse of customer information operates to dispel the presumption of knowledge by all employees of the member organization. Where such a system is in place, if an employee did not in fact know of the customer's order, then no violation occurred. The Exchange notes that a member organization would implement

[10] The Exchange notes that adding "member organization" to Rule 452 does not suggest that other Phlx rules do not apply to Phlx member organizations, but that the Exchange is intending to parallel the language of NYSE Rule 92 to prevent confusion.

information barriers appropriate to its business activity in accordance with this provision, taking into account that organization's supervisory/staffing structure and business operations, as well as the scope and nature of its business. The Exchange also notes that the prohibitions of Rule 452 apply once customer "orders" exist, such that proprietary trading is not impacted until customer interest takes the form of an order.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by preserving the customer protection principle that members and member organizations should place a customer's interests ahead of the firm's, yet facilitating consensual arrangements with customers demanded by the evolving marketplace. Permitting certain proprietary trading coincident with customer trading, with a customer's consent, should contribute to the depth and liquidity of the marketplace, which should also be fostered by exempting specialist and market making activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–37 and should be submitted by September 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22936 Filed 9–6–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2893]

New York; Declaration of Disaster Loan Area

Queens County and the contiguous counties of Bronx, Kings, Nassau, and New York in the State of New York constitute a disaster area as a result of damages caused by flooding which occurred on July 31, 1996. Applications for loans for physical damages may be filed until the close of business on October 28, 1996 and for economic injury until the close of business on May 29, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, New York 14303, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 289306 and for economic injury the number is 917000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: August 29, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–22898 Filed 9–6–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2891]

Tennessee; (and Contiguous Counties in Georgia); Declaration of Disaster Loan Area

Hamilton County and the contiguous counties of Bledsoe, Bradley, Marion, Rhea, and Sequatchie in the State of Tennessee, and Catoosa, Dade, Walker, and Whitfield Counties in the State of Georgia constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on August 11, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 28, 1996 and for economic injury until the close of business on May 29, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125

	Percent
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 289106 for Tennessee and 289206 for Georgia.

For economic injury the numbers are 916800 for Tennessee and 916900 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: August 29, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–22897 Filed 9–6–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Research Plan For the Development of a Redesigned Method of Evaluating Disability In Social Security Claims

AGENCY: Social Security Administration (SSA).

ACTION: Notice and solicitation of comments.

SUMMARY: SSA has formulated a research plan for developing a new method of determining whether an individual is "disabled," as defined in the Social Security Act (the Act), for purposes of entitlement or eligibility to disability benefits under titles II and XVI of the Act. The goal of this research will be to devise a more efficient and more accurate method for making timely determinations of disability for Social Security claimants. This notice describes SSA's research plan for developing the new methodology.

DATES: To be considered, all comments must be received in writing on or before October 24, 1996.

ADDRESSES: Please submit comments on the research plan in one of the following manners:

- By E-mail, to David.Barnes@ssa.gov
- By telefax, to 410–966–0148
- By mail, to Disability Process Redesign Staff, Office of Disability, Social Security Administration, 6401 Security Boulevard, Room 560 Altmeyer, Baltimore MD 21235.

FOR FURTHER INFORMATION, CONTACT: David Barnes, 410–965–9121.

SUPPLEMENTARY INFORMATION:

Background

In late 1993, the Social Security Administration (SSA) began an initiative to improve its disability process through business reengineering, which involves redesigning the business process to improve efficiency and service to the customers. In September 1994, the Commissioner of Social Security issued a report on SSA's disability process redesign entitled *Plan for a New Disability Claim Process.* That report discussed the need for a structured approach to disability decisionmaking that takes into consideration the large number of claims (2.7 million initial disability decisions in fiscal year 1994) and still provides a basis for consistent, equitable decisionmaking by adjudicators at each level of review.

The Commissioner described a proposal for a new method for determining whether individuals are "disabled" under the Social Security Act (the Act) with a goal of focusing decisionmaking on the functional consequences of an individual's medically determined impairments. However, she also acknowledged that certain aspects of the proposed new disability methodology would require much study and deliberation.

A November 1994 follow-up report, *Disability Process Redesign: Next Steps in Implementation,* discussed effectuation of the new disability claim process. The report noted that long-term research, consultation, development, and refinement will be needed in order to decide on and implement a new disability decision methodology.

Integration of Disability Evaluation Study and Disability Redesign Research

In response to concerns about growth in the disability rolls, SSA began research in early 1993 to identify factors contributing to this growth. One major research question remains unanswered:

> How many adults in the U.S. are "disabled," based on SSA criteria? (Existing estimates of the number of disabled vary widely because they are based on small subgroups within the population, varying definitions of "disability," and less reliable self-reports.)

To provide reliable estimates of the number of disabled adults, SSA has developed plans for a national survey, the Disability Evaluation Study (DES), which would include not only survey questions, but also physical and/or mental examination(s) and current medical records.

The DES will be in the field as SSA develops a new disability decision methodology. By integrating the DES with these plans to develop a new disability decision methodology, SSA will be able to use DES data to estimate the number of adults with disabilities in the United States, and also to collect the data needed to test the new proposed disability decision methodology.

More comprehensively, the DES will attempt to answer four fundamental questions:

(1) Would the types of people found disabled be affected by any change in disability decision methodology?

(2) Why can some persons with disabling impairments work, while others cannot?

(3) How many adults who meet SSA's definition of disability (irrespective of work status) are in the population?

(4) How can SSA cost-effectively monitor, for program planning purposes, future changes in the U.S. population of people who meet SSA's definition of disability?

The DES will attempt to answer these questions by screening a nationally representative sample of adults aged 18 to 69 in order to identify those with either self-identified diagnoses or other positive indicators of physical or mental impairment(s). For those screened in, the DES will collect sufficient data for accurate predictions of whether they would be found disabled under both current SSA criteria and the proposed new disability decision methodology.

The disability methodology research and DES will feed into each other in a variety of ways. In general terms, the DES design will reflect input from the disability methodology research and, to the extent that it can be specified, the new disability methodology itself. During a planned Stage 1, the DES will gather a wide range of information on functioning of individuals with physical and mental impairments and will include functional assessment measures that appear to have potential for eventual use in a functionally-based decision process. In Stage 2, the DES can field-test proposed functional assessment measures and decision processes on a nationally representative sample, perhaps concurrently with planned methodology laboratory testing.

In effect, the results and findings from DES Stage 1 and several other research projects will assist in the development of a proposed decision methodology that can be tested in Stage 2 of the DES. Further, the initial work to develop and implement Stage 1, conducted by SSA in conjunction with the expert staff of the eventual DES contractor, will provide additional relevant information to complement the output of the methodology research. It is also likely that, even before the full DES sample has been evaluated, certain findings that emerge from the field work will provide useful input for decisions on the new methodology.

Critical elements of the integrated research process will be:

- The combined product of two research projects on (1) functional assessment tools and (2) occupational classification systems. This will provide a comprehensive review and analysis of existing tools and systems, and also provide a basis for further research, which will allow SSA to make informed judgments about an appropriate way(s) of assessing functional capacity and how an individual's functional capacities relate to capacity for work.

- Two additional comprehensive research programs addressing disability methodology issues other than functional capacity measurement. Information derived from these programs will be used to develop the new proposed disability decision methodology. These programs are:

1. A survey of existing systems and methods of identifying disabled individuals (such as foreign and other domestic disability programs using functionally based methodologies, existing methods of screening in or screening out clear-cut cases, comparable to the proposed steps for use in the SSA disability determinations). The survey will provide an overview of how other disability programs address similar methodology problems; and

2. An analysis of the relationship between vocational factors (age, education, and work experience) and an individual's ability to work, which will be considered in making policy decisions on how to incorporate the statutorily-required consideration of such vocational factors into the new methodology.

- A project management approach [see Organization, below] that provides senior executive oversight, multi-level involvement of outside consultants, and both internal and external stakeholder consultation.

- Methodology laboratories, which will allow testing, in a controlled setting, of proposed components of a new methodology (e.g., specific functional assessment tools, proposed screening mechanisms). The laboratory setting and testing procedures will vary depending on the issue under investigation. Data from this testing will help to narrow choices among possible policy options by developing empirical data on which to base policy decisions.

- DES Stage 1 and Stage 2 data, which can provide a focused analysis of a new disability methodology in a nationally representative sample.

Organization

The organizational structure supporting the disability decision methodology research will have seven components:

A. Steering Committee

A three-person Steering Committee consisting of executives from SSA's Office of Disability (OD), Office of Research, Evaluation and Statistics (ORES), and Disability Process Redesign Team (DPRT) will be charged with overall supervision of the project. The Steering Committee will be advised by an Expert Panel and will delegate day-to-day management and operation of the project to a Research Workgroup.

B. Independent Review and Oversight

SSA intends to enter a contractual relationship with the National Academy of Sciences (NAS). NAS will review the overall research design, as well as specific research plans and products, and will advise the Steering Committee on all aspects of the project.

C. Research Workgroup

The Research Workgroup will be composed of OD, ORES, and DPRT staff, possibly supplemented by one or more consultants from outside SSA (see section D below). The Workgroup will direct day-to-day operation of all aspects of the project. Subject to Steering Committee oversight and direction, the Research Workgroup will review research products, develop laboratory testing scenarios, oversee laboratory testing, review test results, and identify and address policy options.

The Research Workgroup will rely on four sources for advice and comment: Consultants, Internal Stakeholders, External Stakeholders, and the General Public. Any recommendations of the Research Workgroup are subject to review and approval of the Steering Committee.

D. Consultants

We will contract with experts in relevant fields including medicine, disability, rehabilitation, health research, and research methodology, to review and evaluate research plans and products, recommend additional research activities, consult on the design of testing laboratories, etc. They will be selected for their expertise in one of the preceding subject areas, and they will provide advice to the research workgroup on an individual basis.

E. Internal Stakeholders

Internal Stakeholders will be individual representatives from other interested or affected SSA components (e.g., State Disability Determination Services, Field Offices, Office of Program and Integrity Reviews, Office of Systems, Office of Hearings and Appeals). They will review and comment on specific aspects of the project. Internal Stakeholders will be identified by their respective components.

F. External Stakeholders

External Stakeholders will be individuals and organizations, many of whom already interact with SSA, with a special interest in SSA disability programs. They will not meet or operate as a single entity, but will individually review and comment on major activities and products mailed to them. Individuals or organizations interested in being considered External Stakeholders should submit their request to the contact point listed above.

G. General Public

The Research Workgroup will seek, receive, and consider comments from the general public through a series of notices published in the **Federal Register**. The notices will describe the Agency's research goals and plans, discuss major developments in the research process (e.g., results of research activities, Research Workgroup and Steering Committee decisions, laboratory test procedures and results), and invite public comment. If necessary, the Research Workgroup will consider organizing public hearings or asking contractors to convene groups or to hold public forums.

Process

SSA is committed to conducting this research in an inclusive environment. To that end, SSA is simultaneously publishing this notice in the **Federal Register** and sending the same notice to a comprehensive list of Internal and External Stakeholders.

At major milestones in the research and development process when consultant and/or stakeholder input is appropriate (e.g., receipt of a research product or laboratory test result, change in research plans, preliminary policy decision), SSA will publish a **Federal Register** notice, including a request for comments, and transmit the same notice to External Stakeholders.

SSA also will present the same issue(s) to the Consultants for advice and, as needed, to some or all of the Internal Stakeholders for comment.

Upon completion of all research actions, a report will be made to the Commissioner making final recommendations for the new disability methodology.

Time Line

Action	Date
Development of Research Plan	Completed.
Publication of Research Plan in **Federal Register**; Request for Internal and External Stakeholder Comments	8/96.
Completion of Initial Research on Functional Assessment Instruments	11/96.
Federal Register Notice Describing Initial Research Products; Request for Internal and External Stakeholder Comments	1/97.
Award of DES Contract	7/97.
Further Research (Other Disability Programs, Vocational Factors); Laboratory Testing; DES Stage 1 Field Work Begins	7/97–9/97.
Federal Register Notice Describing Further Research and Testing; Request for Internal and External Stakeholder Comments	9/97.
Supplemental Research (as needed) and Testing; DES Stage 1 Field Work	1/98–9/98.
Federal Register Notice Describing Supplemental Research and Testing Based on Results to Date; Request for Internal and External Stakeholder Comments.	9/98.
Review of All Research, Comments, and Testing in Conjunction with DES Stage 1 Data; DES Stage 2 Field Work	10/98–10/99
FEDERAL REGISTER Notice Describing DES Research Including Interim Results; Request for Internal and External Stakeholder Comments.	11/99
Final Review of All Research, Testing, Comments, and DES Data; Recommendation of Final Disability Decision Methodology	11/99–12/99

Dated: August 30, 1996.

John Dyer,

Acting, Principal Deputy Commissioner of Social Security.

[FR Doc. 96–22925 Filed 9–6–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–96–040]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of full committee meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will meet to discuss waterway improvements, aids to navigation, current meters, and various other navigation safety matters affecting the Houston/Galveston area. All meetings will be open to the public.

DATES: The meeting of HOGANSAC will be held on Thursday, October 3, 1996 from 9:30 a.m. to approximately 1 p.m. Members of the public may present written or oral statements at the meetings.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain K. Eldridge, Executive Director of HOGANSAC, telephone (713) 671–5101, or Commander P. Carroll, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of the Meeting

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Introductory remarks by the new sponsor (Rear Admiral T. W. Josiah) and Executive Director (Captain K. Eldridge).

(2) Approval of the May 23, 1996 minutes.

(3) Report from the Navigation Subcommittee.

(4) Report from the Waterways Subcommittee.

Procedural

All meetings are open to the public. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 23, 1996.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 96–22948 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on September 11, 1996, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESS: The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the fourteenth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on September 11, 1996. The meeting was announced on August 13, 1996 (61 FR 42083). For additional information about the meeting consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Air bag assessment research,
Status of ejection mitigation research,
Improved frontal crash protection—update on oblique moving barrier testing,
Preliminary estimates of safety benefits for ITS collision avoidance systems,
National Center for Statistics and Analysis information services,
National Accident Sampling System (NASS) status report,
Pedestrian special NASS study,
On-line tracking system for NHTSA's research projects.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received by August 22, 1996, in response to the announcement published August 13, 1996.

As announced on August 13, 1996, in the time remaining at the conclusion of

the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing by 4:15 p.m. on August 29, 1996, to William A. Boehly, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: September 4, 1996.

William A. Boehly,

Associate Administrator for Research and Development.

[FR Doc. 96–22943 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket Nos. 96–045; Notice 2, 96–058; Notice 2, 96–059; Notice 2, 96–060; Notice 2, 96–061; Notice 2, 96–062; Notice 2, 96–063; Notice 2, 96–064; Notice 2]

Decision That Nonconforming 1992 Jeep Cherokee Multi-Purpose Passenger Vehicles Manufactured for the Venezuelan Market, et al., are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Jeep Cherokee multi-purpose passenger vehicles manufactured for the Venezuelan market, 1983 Yamaha RD 350 motorcycles, 1993 Mercedes-Benz 420E passenger cars, 1994–1996 Mercedes-Benz E420 passenger cars, 1993 Mercedes-Benz 280E passenger cars, 1994–1996 Mercedes-Benz E280 passenger cars, 1992 Mercedes-Benz 250D passenger cars, 1993–1996 Mercedes-Benz 220TE station wagons, 1993 Mercedes-Benz 220E passenger cars, 1994–1996 Mercedes-Benz E220 passenger cars, and 1993, 1995, and 1996 Porsche Carrera 2-door passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Jeep Cherokee multi-purpose passenger vehicles manufactured for the Venezuelan market, 1983 Yamaha RD 350 motorcycles, 1993 Mercedes-Benz 420E passenger cars, 1994–1996 Mercedes-Benz E420 passenger cars, 1993 Mercedes-Benz 280E passenger cars, 1994–1996 Mercedes-Benz E280 passenger cars, 1992 Mercedes-Benz 250D passenger cars, 1993–1996 Mercedes-Benz 220TE station wagons, 1993 Mercedes-Benz 220E passenger cars, 1994–1996 Mercedes-Benz E220 passenger cars, and 1993, 1995, and 1996 Porsche Carrera 2-door passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of September 9, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether 1992 Jeep Cherokee multi-purpose passenger vehicles manufactured for the Venezuelan market, 1983 Yamaha RD 350 motorcycles, 1993 Mercedes-Benz 420E passenger cars, 1994–1996 Mercedes-Benz E420 passenger cars, 1993 Mercedes-Benz 280E passenger cars, 1994–1996 Mercedes-Benz E280 passenger cars, 1992 Mercedes-Benz 250D passenger cars, 1993–1996 Mercedes-Benz 220TE station wagons, 1993 Mercedes-Benz 220E passenger cars, 1994–1996 Mercedes-Benz E220 passenger cars, and 1993, 1995, and 1996 Porsche Carrera 2-Door passenger cars are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as follows:

Vehicle	Notice date and cite
1992 Jeep Cherokee	May 10, 1996 (61 FR 21530).
1983 Yamaha RD 350.	June 25, 1996 (61 FR 32891).
1993 Mercedes-Benz 420E.	June 19, 1996 (61 FR 31220).
1994–1996 Mercedes-Benz E420.	June 19, 1996 (61 FR 31220).
1993 Mercedes-Benz 280E.	June 12, 1996 (61 FR 29788).
1994–1996 Mercedes-Benz E280.	June 12, 1996 (61 FR 29788).
1992 Mercedes-Benz 250D.	June 25, 1996 (61 FR 32892).
1993–1996 Mercedes-Benz 220TE.	June 12, 1996 (61 FR 29793).
1993 Mercedes-Benz 220E.	June 12, 1996 (61 FR 29791).
1994–1996 Mercedes-Benz E220.	June 12, 1996 (61 FR 29791).
1993, 1995 and 1996 Porsche Carrera 2-door.	June 19, 1996 (61 FR 31216).

The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are as follows:

Vehicle	Vehicle eligibility number
1992 Jeep Cherokee (Venezuelan).	VSP–164.
1983 Yamaha RD 350	VSP–171.
1993 Mercedes-Benz 420E	VSP–169.
1994–96 Mercedes-Benz E420	VSP–169.
1993 Mercedes-Benz 280E	VSP–166.
1994–96 Mercedes-Benz E280	VSP–166.
1992 Mercedes-Benz 250D	VSP–172.

Vehicle	Vehicle eligibility number
1993–96 Mercedes-Benz 220TE	VSP–167.
1993 Mercedes-Benz 220E	VSP–168.
1994–96 Mercedes-Benz E220	VSP–168.
1993, 1995 and 1996 Porsche Carrera 2-door.	VSP–165.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that:

1. A 1992 Jeep Cherokee multi-purpose passenger vehicle manufactured for the Venezuelan market that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Jeep Cherokee multi-purpose passenger vehicle originally manufactured for sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

2. A 1983 Yamaha RD 350 motorcycle not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1983 Yamaha RZ 350 motorcycle originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

3. A 1993 Mercedes-Benz 420E passenger car not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1993 Mercedes-Benz 400E passenger car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

4. 1994–1996 Mercedes-Benz E420 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1994–1996 Mercedes-Benz E420 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

5. A 1993 Mercedes-Benz 280E passenger car not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1993 Mercedes-Benz 300E passenger car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

6. 1994–1996 Mercedes-Benz E280 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1994–1996 Mercedes-Benz E320 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

7. A 1992 Mercedes-Benz 250D passenger car not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1992 Mercedes-Benz 300E passenger car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

8. 1993–1996 Mercedes-Benz 220TE station wagons not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to the 1993 Mercedes-Benz 300TE and 1994–1996 Mercedes-Benz E320 station wagons originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

9. A 1993 Mercedes-Benz 220E passenger car not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1993 Mercedes-Benz 300E passenger car originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards;

10. 1994–1996 Mercedes-Benz E220 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1994–1996 Mercedes-Benz E320 passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards; and

11. 1993, 1995, and 1996 Porsche Carrera 2–Door passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1993, 1995, and 1996 Porsche Carrera 2–Door passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 3, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–22679 Filed 9–6–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Finance Docket No. 33021]

Atlantic & Western Railway, L.P.—Acquisition Exemption—Lines of Norfolk Southern Railway Company

Atlantic & Western Railway, L.P. (ATW),[1] a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire from Norfolk Southern Railway Company approximately 6.4 route miles of rail line between milepost CF–123.65, at Cumnock, NC, and milepost CF–130.04, at Sanford, NC. ATW will operate the property.

The exemption was effective on August 28, 1996. The parties indicate that consummation of the transaction will occur approximately 90 days after the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33021, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on: Donald G. Avery, Esq., Slover &

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036. Telephone: (202) 347–7170.

Decided: August 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22914 Filed 9–6–96; 8:45 am]

BILLING CODE 4915–00–P

[Docket No. AB–33 (Sub-No. 91X)]

Union Pacific Railroad Company—Abandonment Exemption—in Caribou County, ID

AGENCY: Surface Transportation Board.[1]

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Union Pacific Railroad Company of a 5.7-mile line of railroad, known as the Grace Industrial Lead, from milepost 0.1 near Alexander to the end of the line at milepost 5.8 near Grace, in Caribou County, ID, subject to standard labor protective conditions and an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 9, 1996. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[2] must be filed by September 19, 1996; petitions to stay must be filed by September 24, 1996; requests for a public use condition in conformity with 49 CFR 1152.28(a)(2) must be filed by September 30, 1996; and petitions to reopen must be filed by October 4, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–33 (Sub-No. 91X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) Petitioner's representative, Jeanna L. Regier, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from DC News and Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 27, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–22915 Filed 9–6–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed new system of records entitled Automated Information Analysis System—Treasury/IRS 46.050, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a. This proposed system has been developed to assist the Internal Revenue Service in accomplishing its mission of encouraging and achieving the highest possible degree of voluntary compliance with the Internal Revenue laws. It is further proposed to have the system exempt from meeting certain requirements of the Privacy Act of 1974.

DATES: Comments must be received no later than October 9, 1996. This new system of records will be effective October 21, 1996, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Wayne Loving, Director, Office of Policy and Information Division, Criminal Investigation, (202) 622–5676.

SUPPLEMENTARY INFORMATION:

The Internal Revenue Service's Criminal Investigation Division (CID) seeks to establish and maintain the proposed new system of records as a more efficient means of performing its responsibilities. Among Criminal Investigation's principal responsibilities are probing and referring for prosecution criminal cases centering largely on violations of tax laws, including income tax evasion, refund fraud, and other crimes contributing to the Federal tax gap. Criminal Investigation also investigates violations of certain money laundering laws. The Automated Information Analysis System will automatically identify potential leads to money laundering and income tax violations which might not otherwise surface through traditional information gathering efforts. The Automated Information Analysis System only relies upon internal data included in other Privacy Act systems of records. This action should encourage individuals and businesses to fully comply with the tax laws and other reporting requirements and aid Internal Revenue's Criminal Investigation Division in identifying potential violations.

The Automated Information Analysis System is designed to provide the Internal Revenue Service with high quality investigative leads to tax noncompliance at a substantial savings.

The Automated Information Analysis System produces an output record that identifies leads appropriate for further evaluation by field special agents. Once the output record is sent to the District Criminal Investigation office that will investigate the leads, it will be covered by system of records Treasury/IRS 46.009, Centralized Evaluation and Processing of Information Items (CEPIIs).

In a separate publication, the Internal Revenue Service is also giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2), and (k)(2) of the same section.

Treasury/IRS 46.050

SYSTEM NAME:

Automated Information Analysis System - Treasury/IRS.

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

SYSTEM LOCATION:

Detroit Computing Center, 1300 John C. Lodge Drive, Detroit, Michigan 48226 and Automated Criminal Investigation Office, 7940 Kentucky Drive, Boone County, Kentucky 41042.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Taxpayers and other individuals involved in financial transactions which require the filing of information reflected in the Categories of records below.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information included in the Automated Information Analysis System is from reported income and tax information on the Individual Master File (IMF)—Treasury/IRS 24.030; Individual Returns Files, Adjustments and Miscellaneous Documents File—Treasury/IRS 22.034. The Automated Information Analysis System also includes information from such sources as: Currency Transaction Reports (CTRs), Currency and Monetary Instrument Reports (CMIR's), Bank Secrecy Reports File, Foreign Bank Account Reports (FBARs), Forms 8300 (Currency Received in Trade or Business),—Treasury/CS .067; the Taxpayer Delinquent Account Files (TDA)—Treasury/IRS 26.019, which includes adjustments and payment tracer files and collateral files; Taxpayer Delinquency Investigation Files (TDI)—Treasury/IRS 26.020, which includes taxpayer information on delinquent returns; the Examination Administrative File—Treasury/IRS 42.001, and Casino Transaction Reports from the Detroit Computing Center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802.

PURPOSE(S):

The purpose is to maintain records which identify transaction patterns that are indicative of criminal and/or civil noncompliance with Federal income tax and money laundering laws and to simultaneously evaluate diverse data sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and Magnetic Media.

RETRIEVABILITY:

Records are retrievable by name, address, and social security number.

SAFEGUARDS:

All Criminal Investigation personnel accessing the system will have successfully passed a background investigation. Criminal Investigation will furnish information from the system of records to approved personnel only on a "need to know" basis using passwords and access controls. Access control will not be less than those provided by the Manager's Security Handbook, IRM 1(16)12. Procedural and physical safeguards to be utilized include the logging of all queries and periodic review of the query logs; compartmentalization of information to restrict access to authorized personnel; encryption of electronic communications; intruder alarms; and 24–hour building guards.

RETENTION AND DISPOSAL:

All records are disposed of after 4 years. Records will be disposed of by erasure of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Official prescribing policies and practices—Assistant Commissioner (Criminal Investigation), National Office. Officials maintaining the system—Detroit Computing Center, CI Representative, and the Automated Criminal Investigation Office Manager, 7940 Kentucky Drive, Boone County, Kentucky 41042.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORDS PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records may not be accessed for purposes of determining the source of the records. Records to be included all come from existing Treasury and Internal Revenue Service databases. The databases are comprised of records submitted by taxpayers, financial institutions, casinos and businesses pursuant to federal law.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4),(e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), and (k)(2).

Dated: August 21, 1996.

Alex Rodriguez,

Deputy Assistant Secretary (Administration)

[FR Doc.22895 Filed 9–6–96: 8:45am]

Billing Code: 4830–01–F

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee; Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Nephrology	September 19–20, 1996	Crowne Plaza Hotel.
Gastroenterology	September 26–27, 1996	Crowne Plaza Hotel.
Alcoholism and Drug Dependence	September 30–October 1, 1996	Crowne Plaza Hotel.
Hematology	October 3–4, 1996	Holiday Inn Central.
Infectious Diseases	October 3–4, 1996	Holiday Inn Central.
Neurobiology	October 7–9, 1996	Crowne Plaza Hotel.
Cardiovascular Studies	October 7–8, 1996	Holiday Inn Central.
Aging and Clinical Geriatrics	October 10, 1996	Holiday Inn Central.
Immunology	October 14–15, 1996	Washington Vista.
General Medical Science	October 17–18, 1996	Holiday Inn Central.
Mental Health and Behavioral Sciences	October 17–18, 1996	Double Tree Hotel.
Surgery	October 19, 1996	Crowne Plaza Hotel.
Endocrinology	October 21–22, 1996	Crowne Plaza Hotel.

Subcommittee for	Date	Location
Respiration	October 21, 1996	Holiday Inn Central.
Oncology	October 24–25, 1996	Holiday Inn Central.
Medical Research Service Merit Review Committee	December 3, 1996	Holiday Inn Central.

Crowne Plaza Hotel, 14th & K Streets, NW, Washington, DC 20005.
Double Tree Hotel, 1515 Rhode Island Avenue, NW, Washington, DC 20005.
Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005.
Washington Vista, 1400 M Street, NW, Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b (c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 565–5942, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittee may be obtained from this source.

Dated: August 29, 1996.

By Direction of the Secretary.

Eugene A. Brickhouse,

Committed Management Officer.

[FR Doc. 96–22882 Filed 9–6–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 175
Monday, September 9, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 77, 270, 271, 272, 607, 642, 648, 662, 663, and 664

48 CFR Chapter 34

Regulatory Reinvention

Correction

In proposed rule document 96–21568 beginning on page 43640 in the issue of Friday, August 23, 1996, make the following correction:

On page 43641, in the first column, in the second paragraph, under *Contact:*, in the sixth and seventh lines, "kathy—thomas@ed.gov" should read "kathy__thomas@ed.gov".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 804, 807, 820, and 897

[Docket No. 95N–0253]

RIN 0910–AA48

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents

Correction

In rule document 96–21900 beginning on page 44396 in the issue of Wednesday, August 28, 1996, make the following corrections:

1. On page 44396, in the second column, under "DATES: *Effective date.*", in the last line "February 28, 1998" should read "August 28, 1998".

2. On the same page, in the same column, under "DATES: *Compliance dates.*, in the last line "February 28, 1998" should read "August 28, 1998".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, and 242

[EOIR No. 114I; A.G. Order No. 2051–96]

RIN 1125–AA15

Fees for Motions to Reopen or Reconsider

Correction

In rule document 96–22335 beginning on page 46373 in the issue of Tuesday, September 3, 1996, make the following corrections:

PART 3 [CORRECTED]

1. On page 46374, in the first column, in the authority citation, in the third line, after "509," add "510,".

§103.7 [Corrected]

2. On the same page, in the second column, in §103.7(b)(1), in the second paragraph, in the 12th line, "on or" should read "or on".

PART 242 [CORRECTED]

3. On the same page, in the third column, in the authority citation, in the second line, "1524" should read "1254".

BILLING CODE 1505–01–D

federal register

Monday
September 9, 1996

Part II

Environmental Protection Agency

Proposed Guidelines for Ecological Risk Assessment; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5605–9]

Proposed Guidelines for Ecological Risk Assessment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Availability and Opportunity to Comment on Proposed Guidelines for Ecological Risk Assessment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today publishing a document entitled Proposed Guidelines for Ecological Risk Assessment (hereafter "Proposed Guidelines"). These Proposed Guidelines were developed as part of an interoffice Guidelines development program by a Technical Panel of the Risk Assessment Forum. The Proposed Guidelines expand upon the previously published EPA report Framework for Ecological Risk Assessment (EPA/630/R–92/001, February 1992), while retaining the report's broad scope. When final, these Proposed Guidelines will help improve the quality of ecological risk assessments at EPA while increasing the consistency of assessments among the Agency's program offices and regions.

DATES: The Proposed Guidelines are being made available for a 90-day public review and comment period. Comments must be in writing and must be postmarked by December 9, 1996. See Addresses section for guidance on submitting comments.

FOR FURTHER INFORMATION CONTACT: Bill van der Schalie, National Center for Environmental Assessment-Washington Office, telephone: 202–260–4191.

ADDRESSES: The Proposed Guidelines will be made available in the following ways:

(1) The electronic version will be accessible on EPA's Office of Research and Development home page on the Internet at http://www.epa.gov/ORD/WebPubs/fedreg.

(2) 3½" high-density computer diskettes in Wordperfect 5.1 format will be available from ORD Publications, Technology Transfer and Support Division, National Risk Management Research Laboratory, Cincinnati, OH; telephone: 513–569–7562; fax: 513–569–7566. Please provide the EPA No. (EPA/630/R–95/002B) when ordering.

(3) This notice contains the full proposed guideline. In addition, copies will be available for inspection at EPA headquarters and regional libraries, through the U.S. Government Depository Library program, and for purchase from the National Technical Information Service (NTIS), Springfield, VA; telephone: 703–487–4650, fax: 703–321–8547. Please provide the NTIS No. PB96–193198; Price Code A13: ($47.00) when ordering.

Submitting Comments

Comments on the Proposed Guidelines should be submitted to: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), Attn: File ORD–ERA–96–01, Waterside Mall, 401 M St. SW, Washington, DC 20460. Please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively, provide comment on how the attachments relate to the main comment(s), and submit an unbound original and three copies. Please identify all comments and attachments with the file number ORD–ERA–96–01. Mailed comments must be postmarked by the date indicated. Comments may also be submitted electronically by sending electronic mail (e-mail) to: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments in electronic form also must be identified by the file number ORD–ERA–96–01.

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Please note that all technical comments received in response to this notice will be placed in the public record. For that reason, commentors should not submit personal information such as medical data or home addresses, confidential business information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

SUPPLEMENTARY INFORMATION: These Proposed Guidelines are EPA's first Agency-wide ecological risk assessment guidelines. They are broad in scope, describing general principles and providing numerous examples to show how ecological risk assessment can be applied to a wide range of systems, stressors, and biological/spatial/temporal scales. This general approach provides sufficient flexibility to permit EPA's offices and regions to develop specific guidance suited to their particular needs. Because of their broad scope, the Proposed Guidelines do not provide detailed guidance in specific areas nor are they highly prescriptive. Frequently, rather than requiring that certain procedures always be followed, the Proposed Guidelines describe the strengths and limitations of alternate approaches. Agency preferences are expressed where possible, but because ecological risk assessment is a relatively new, rapidly evolving discipline, requirements for specific approaches could soon become outdated. EPA is working to expand the references in the Proposed Guidelines to include additional review articles or key publications that will help provide a "window to the literature" as recommended by peer reviewers. In the future, EPA intends to develop a series of shorter, more detailed guidance documents on specific ecological risk assessment topics after these Proposed Guidelines have been finalized.

These Proposed Guidelines were prepared during a time of increasing interest in the field of ecological risk assessment and reflect input from many sources outside as well as inside the Agency. Over the last few years, the National Research Council proposed an ecological risk paradigm (NRC, 1993), there has been a marked increase in discussion of ecological risk assessment issues at meetings of professional organizations, and numerous articles and books on the subject have been published. Agency work on the Proposed Guidelines has proceeded in a step-wise fashion during this time. Preliminary work began in 1989 and included a series of colloquia sponsored by EPA's Risk Assessment Forum to identify and discuss significant issues in ecological risk assessment (U.S. EPA, 1991). Based on this early work and on a consultation with EPA's Science Advisory Board (SAB), the Agency decided to produce ecological risk assessment guidance sequentially, beginning with basic terms and concepts and continuing with the development of source materials for these Proposed Guidelines. The first product of this effort was the Risk Assessment Forum report, Framework

for Ecological Risk Assessment (Framework Report; U.S. EPA, 1992a,b), which proposes principles and terminology for the ecological risk assessment process. Since then, the Agency has solicited suggestions for ecological risk assessment guidelines structuring (U.S. EPA, 1992c) and has sponsored the development of other peer-reviewed materials, including ecological assessment case studies (U.S. EPA, 1993a, 1994a), and a set of issue papers that highlight important principles and approaches that EPA scientists should consider in preparing these Proposed Guidelines (U.S. EPA, 1994b,c).

The nature and content of these Proposed Guidelines have been shaped by these documents as well as numerous meetings and discussions with individuals both within and outside of EPA. In late 1994 and early 1995, the Agency solicited responses to the planned nature and structure of these Proposed Guidelines at three colloquia with Agency program offices and regions, other Federal agencies, and the public. Draft Proposed Guidelines were discussed at an external peer review workshop in December, 1995 (U.S. EPA, In Press). Subsequent reviews have included the Agency's Risk Assessment Forum and the Regulatory and Policy Development Committee, and interagency comment by members of subcommittees of the Committee on the Environment and Natural Resources of the Office of Science and Technology Policy. The EPA appreciates the efforts of all participants in the process and has tried to address their recommendations in these Proposed Guidelines.

The EPA's Science Advisory Board will review these Proposed Guidelines at a future meeting. Following public and SAB reviews, Agency staff will prepare comment summaries. Appropriate comments will be incorporated, and the revised Guidelines will be submitted to EPA's Risk Assessment Forum for review. The Agency will consider comments from the public, the SAB, and the Risk Assessment Forum when finalizing these Proposed Guidelines.

The public is invited to provide comments to be considered in EPA decisions about the content of the final Guidelines. EPA asks those who respond to this notice to include their views on the following:

(1) Consistent with a recent National Research Council report (NRC, 1996), these Proposed Guidelines emphasize the importance of interactions between risk assessors and risk managers as well as the critical role of problem formulation to ensuring that the results of the risk assessment can be used for decision-making. Overall, how compatible are these Proposed Guidelines with the National Research Council concept of the risk assessment process and the interactions between risk assessors, risk managers, and other interested parties?

(2) The Proposed Guidelines are intended to provide a starting point for Agency program and regional offices that wish to prepare ecological risk assessment guidance suited to their needs. In addition, the Agency intends to sponsor development of more detailed guidance on certain ecological risk assessment topics. Examples might include identification and selection of assessment endpoints, selection of surrogate or indicator species, or the development and application of uncertainty factors. Considering the state of the science of ecological risk assessment and Agency needs and priorities, what topics most require additional guidance?

(3) Some reviewers have suggested that the Proposed Guidelines should provide more discussion of topics related to the use of field observational data in ecological risk assessments, such as selection of reference sites, interpretation of positive and negative field data, establishing causal linkages, identifying measures of ecological condition, the role and uses of monitoring, and resolving conflicting lines of evidence between field and laboratory data. Given the general scope of these Proposed Guidelines, what, if any, additional material should be added on these topics and, if so, what principles should be highlighted?

(4) The scope of the Proposed Guidelines is intentionally broad. However, while the intent is to cover the full range of stressors, ecosystem types, levels of biological organization, and spatial/temporal scales, the contents of the Proposed Guidelines are limited by the present state of the science and the relative lack of experience in applying risk assessment principles to some areas. In particular, given the Agency's present interest in evaluating risks at larger spatial scales, how could the principles of landscape ecology be more fully incorporated into the Proposed Guidelines?

(5) Assessing risks when multiple stressors are present is a challenging task. The problem may be how to aggregate risks attributable to individual stressors or to identify the principal stressors responsible for an observed effect. Although some approaches for evaluating risks associated with chemical mixtures are available, our ability to conduct risk assessments involving multiple chemical, physical, and biological stressors, especially at larger spatial scales, is limited. Consequently, the Proposed Guidelines primarily discuss predicting the effects of chemical mixtures and on general approaches for evaluating causality of an observed effect. What additional principles can be added?

(6) Ecological risk assessments are frequently conducted in tiers that proceed from simple evaluations of exposure and effects to more complex assessments. While the Proposed Guidelines acknowledge the importance of tiered assessments, the wide range of applications of tiered assessments make further generalizations difficult. Given the broad scope of the Proposed Guidelines, what additional principles for conducting tiered assessments can be discussed?

(7) Assessment endpoints are "explicit expression of the environmental value that is to be protected". As used in the Proposed Guidelines, assessment endpoints include both an ecological entity and a specific attributes of the entity (e.g., eagle reproduction or extent of wetlands). Some reviewers have recommended that assessment endpoints also include a decision criterion that is defined early in the risk assessment process (e.g., no more than a 20% reduction in reproduction, no more than a 10% loss of wetlands). While not precluding this possibility, the Proposed Guidelines suggest that such decisions are more appropriately made during discussions between risk assessors and managers in risk characterization at the end of the process. What are the relative merits of each approach?

Dated: August 21, 1996.

Carol M. Browner,

Administrator.

Proposed Guidelines for Ecological Risk Assessment

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Executive Summary

The ecological problems facing environmental scientists and decisionmakers are numerous and varied. Growing concern over potential global climate change, loss of biodiversity, acid precipitation, habitat destruction, and the effects of multiple chemicals on ecological systems has highlighted the need for flexible problem-solving approaches that can link ecological measurements and data with the decisionmaking needs of environmental managers. Increasingly, ecological risk assessment is being suggested as a way to address this wide array of ecological problems.

Ecological risk assessment "evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors" (U.S. EPA, 1992a). It is a process for organizing and analyzing data, information, assumptions, and uncertainties to evaluate the likelihood of adverse ecological effects. Ecological risk assessment provides a critical element for environmental decisionmaking by giving risk managers an approach for considering available scientific information along with the other factors they need to consider (e.g., social, legal, political, or economic) in selecting a course of action.

To help improve the quality and consistency of EPA's ecological risk assessments, EPA's Risk Assessment Forum initiated development of these guidelines. The primary audience for this document is risk assessors and risk managers at EPA, although these guidelines may be useful to others outside the Agency (e.g., Agency contractors, state agencies, and other interested parties). These guidelines are based on and replace the 1992 report, Framework for Ecological Risk Assessment (referred to as the Framework Report). They were written by a Forum work group and have been extensively revised based on comments from outside peer reviewers as well as Agency staff. The guidelines retain the Framework Report's broad scope, while expanding on some framework concepts and modifying others to reflect Agency experiences. EPA intends to follow these guidelines with a series of shorter, more detailed documents that address specific ecological risk assessment topics. This "bookshelf" approach provides the flexibility necessary to keep pace with developments in the rapidly evolving field of ecological risk assessment while allowing time to form consensus, where appropriate, on science policy inferences (default assumptions) to bridge gaps in knowledge.

Ecological risk assessment includes three primary phases (problem formulation, analysis, and risk characterization). Within problem formulation, important areas include identifying goals and assessment endpoints, preparing the conceptual model, and developing an analysis plan. The analysis phase involves evaluating exposure to stressors and the relationship between stressor levels and ecological effects. In risk characterization, key elements are estimating risk through integration of exposure and stressor-response profiles, describing risk by discussing lines of evidence and determining ecological adversity, and preparing a report. The interface between risk assessors and risk managers at the beginning and end of the risk assessment is critical for ensuring that the results of the assessment can be used to support a management decision.

Both risk assessors and risk managers bring valuable perspectives to the initial planning activities for an ecological risk assessment. Risk managers charged with protecting environmental values can ensure that the risk assessment will provide information relevant to a decision. Ecological risk assessors ensure that science is effectively used to address ecological concerns. Both evaluate the potential value of conducting a risk assessment to address identified problems. Further objectives of the initial planning process are to establish management goals that are agreed upon, clearly articulated, and contain a way to measure success; determine the purpose for the risk assessment by defining the decisions to be made within the context of the management goals; and agree upon the scope, complexity, and focus of the risk assessment, including the expected output and available resources.

Problem formulation, which follows these planning discussions, provides a foundation upon which the entire risk assessment depends. Successful completion of problem formulation depends on the quality of three products: assessment endpoints, conceptual models, and an analysis plan. Since problem formulation is inherently interactive and iterative, not linear, substantial reevaluation is expected to occur within and among all products of problem formulation.

Assessment endpoints are "explicit expressions of the actual environmental value that is to be protected" (U.S. EPA, 1992a) that link the risk assessment to management concerns. Assessment endpoints include both a valued ecological entity and an attribute of that entity that is important to protect and potentially at risk (e.g., nesting and feeding success of piping plovers or areal extent and patch size of eelgrass). For a risk assessment to have scientific validity, assessment endpoints must be ecologically relevant to the ecosystem they represent and susceptible to the stressors of concern. Assessment endpoints that represent societal values and management goals are more effective in that they increase the likelihood that the risk assessment will be used in management decisions. Assessment endpoints that fulfill all three criteria provide the best foundation for an effective risk assessment.

Potential interactions between assessment endpoints and stressors are explored by developing a conceptual model. Conceptual models link anthropogenic activities with stressors and evaluate interrelationships between exposure pathways, ecological effects, and ecological receptors. Conceptual models include two principal components: risk hypotheses and a conceptual model diagram.

Risk hypotheses describe predicted relationships between stressor, exposure, and assessment endpoint response. Risk hypotheses are hypotheses in the broad scientific sense; they do not necessarily involve statistical testing of null and alternative hypotheses or any particular analytical approach. Risk hypotheses may predict the effects of a stressor (e.g., a chemical release) or they may postulate what stressors may have caused observed ecological effects. Key risk hypotheses are identified for subsequent evaluation in the risk assessment.

A useful way to express the relationships described by the risk hypotheses is through a diagram of a conceptual model. Conceptual model diagrams are useful tools for communicating important pathways in a clear and concise way and for identifying major sources of uncertainty. Risk assessors can use these diagrams and risk hypotheses to identify the most important pathways and relationships that will be evaluated in the analysis phase. Risk assessors justify what will be done as well as what will not be done in the assessment in an analysis plan.

The analysis plan also describes the data and measures to be used in the risk assessment and how risks will be characterized.

The analysis phase, which follows problem formulation, includes two principal activities: characterization of exposure and characterization of ecological effects. The process is flexible, and interaction between the ecological effects and exposure evaluations is recommended. Both activities include an evaluation of available data for scientific credibility and relevance to assessment endpoints and the conceptual model. In exposure characterization, data analyses describe the source(s) of stressors, the distribution of stressors in the environment, and the contact or co-occurrence of stressors with ecological receptors. In ecological effects characterization, data analyses may evaluate stressor-response relationships or evidence that exposure to a stressor causes an observed response.

The products of analysis are summary profiles that describe exposure and the stressor-response relationships. Exposure and stressor-response profiles may be written documents or modules of a larger process model. Alternatively, documentation may be deferred until risk characterization. In any case, the objective is to ensure that the information needed for risk characterization has been collected and evaluated.

The exposure profile identifies receptors and exposure pathways and describes the intensity and spatial and temporal extent of exposure. The exposure profile also describes the impact of variability and uncertainty on exposure estimates and reaches a conclusion about the likelihood that exposure will occur.

The stressor-response profile may evaluate single species, populations, general trophic levels, communities, ecosystems, or landscapes—whatever is appropriate for the assessment endpoints. For example, if a single species is affected, effects should represent appropriate parameters such as effects on mortality, growth, and reproduction, while at the community level, effects may be summarized in terms of structure or function depending on the assessment endpoint. The stressor-response profile summarizes the nature and intensity of effect(s), the time scale for recovery (where appropriate), causal information linking the stressor with observed effects, and uncertainties associated with the analysis.

Risk characterization is the final phase of an ecological risk assessment. During risk characterization, risks are estimated and interpreted and the strengths, limitations, assumptions, and major uncertainties are summarized. Risks are estimated by integrating exposure and stressor-response profiles using a wide range of techniques such as comparisons of point estimates or distributions of exposure and effects data, process models, or empirical approaches such as field observational data.

Risk assessors describe risks by evaluating the evidence supporting or refuting the risk estimate(s) and interpreting the adverse effects on the assessment endpoint. Criteria for evaluating adversity include the nature and intensity of effects, spatial and temporal scales, and the potential for recovery. Agreement among different lines of evidence of risk increases confidence in the conclusions of a risk assessment.

When risk characterization is complete, a report describing the risk assessment can be prepared. The report may be relatively brief or extensive depending on the nature and the resources available for the assessment and the information required to support a risk management decision. Report elements may include:

- A description of risk assessor/risk manager planning results.
- A review of the conceptual model and the assessment endpoints.
- A discussion of the major data sources and analytical procedures used.
- A review of the stressor-response and exposure profiles.
- A description of risks to the assessment endpoints, including risk estimates and adversity evaluations.
- A summary of major areas of uncertainty and the approaches used to address them.
- A discussion of science policy judgments or default assumptions used to bridge information gaps, and the basis for these assumptions.

To facilitate understanding, risk assessors should characterize risks "in a manner that is clear, transparent, reasonable, and consistent with other risk characterizations of similar scope prepared across programs in the Agency" (U.S. EPA, 1995c).

After the risk assessment is completed, risk managers may consider whether additional follow-up activities are required. Depending on the importance of the assessment, confidence level in the assessment results, and available resources, it may be advisable to conduct another iteration of the risk assessment in order to facilitate a final management decision. Ecological risk assessments are frequently designed in sequential tiers that proceed from simple, relatively inexpensive evaluations to more costly and complex assessments. Initial tiers are based on conservative assumptions, such as maximum exposure and ecological sensitivity. When an early tier cannot sufficiently define risk to support a management decision, a higher assessment tier that may require either additional data or applying more refined analysis techniques to available data may be needed. Higher tiers provide more ecologically realistic assessments while making less conservative assumptions about exposure and effects.

Another option is to proceed with a management decision based on the risk assessment and develop a monitoring plan to evaluate the results of the decision. For example, if the decision was to mitigate risks through exposure reduction, monitoring could help determine whether the desired reduction in exposure (and effects) was achieved. Monitoring is also critical for determining the extent and nature of any ecological recovery that may be occurring. Experience obtained by using focused monitoring results to evaluate risk assessment predictions can help improve the risk assessment process and is encouraged.

Communicating ecological risks to the public is usually the responsibility of risk managers. Although the final risk assessment document (including its risk characterization sections) can be made available to the public, the risk communication process is best served by tailoring information to a particular audience. It is important to clearly describe the ecological resources at risk, their value, and the costs of protecting (and failing to protect) the resources (U.S. EPA, 1995c). The degree of confidence in the risk assessment and the rationale for risk management decisions and options for reducing risk are also important (U.S. EPA, 1995c).

1. Introduction

Ecological risk assessment is a process for organizing and analyzing data, information, assumptions, and uncertainties to evaluate the likelihood of adverse ecological effects. Ecological risk assessment provides a critical element for environmental decisionmaking. This document, which is structured by the stages of the ecological risk assessment process, provides Agency personnel with broad guidelines that can be adapted to their specific requirements.

The full definition of ecological risk assessment is:

"The process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors." (U.S. EPA, 1992a)

Several terms within this definition require further explanation:

• "* * * likelihood * * *" Descriptions of risk may range from qualitative judgments to quantitative probabilities. While risk assessments may include quantitative risk estimates, the present state of the science often may not support such quantitation. It is preferable to convey qualitatively the relative magnitude of uncertainties to a decision maker than to ignore them because they may not be easily understood or estimated.

• "* * * adverse ecological effects * * *" Ecological risk assessments deal with anthropogenic changes that are considered undesirable because they alter valued structural or functional characteristics of ecological systems. An evaluation of adversity may consider the type, intensity, and scale of the effect as well as the potential for recovery.

• "* * * may occur or are occurring * * *" Ecological risk assessments may be prospective or retrospective. Retrospective ecological risk assessments evaluate the likelihood that observed ecological effects are associated with previous or current exposures to stressors. Many of the same methods and approaches are used for both prospective and retrospective assessments, and in the best case, even retrospective assessments contain predictive elements linking sources, stressors and effects.

• "* * * one or more stressors * * *" Ecological risk assessments may address single or multiple chemical, physical, or biological stressors. (See Appendix A for definitions of stressor types.) Because risk assessments are conducted to provide input to management decisions, this document focuses on stressors generated or influenced by anthropogenic activity.

The overall ecological risk assessment process is shown in figure 1–1.[1] Problem formulation is the first phase of the process where the assessment purpose is stated, the problem defined, and the plan for analyzing and characterizing risk determined. In the analysis phase, data on potential effects of and exposures to stressor(s) identified during problem formulation are technically evaluated and summarized as exposure and stressor-response profiles. These profiles are integrated in risk characterization to estimate the likelihood of adverse ecological effects. Major uncertainties, assumptions, and strengths and limitations of the assessment are summarized during this phase. While discussions between risk assessors and risk managers are emphasized both at risk assessment initiation (planning) and completion (communicating results), these guidelines maintain a distinction between risk assessment and risk management. Risk assessment focuses on evaluating the likelihood of adverse effects, and risk management involves the selection of a course of action in response to an identified risk that is based on many factors (e.g., social, legal, political, or economic) in addition to the risk assessment results. Section 1.1 briefly discusses how risk assessments fit into a decisionmaking context.

[1] Changes in process and terminology from EPA's previous ecological risk assessment framework (U.S. EPA, 1992a) are summarized in Appendix A.

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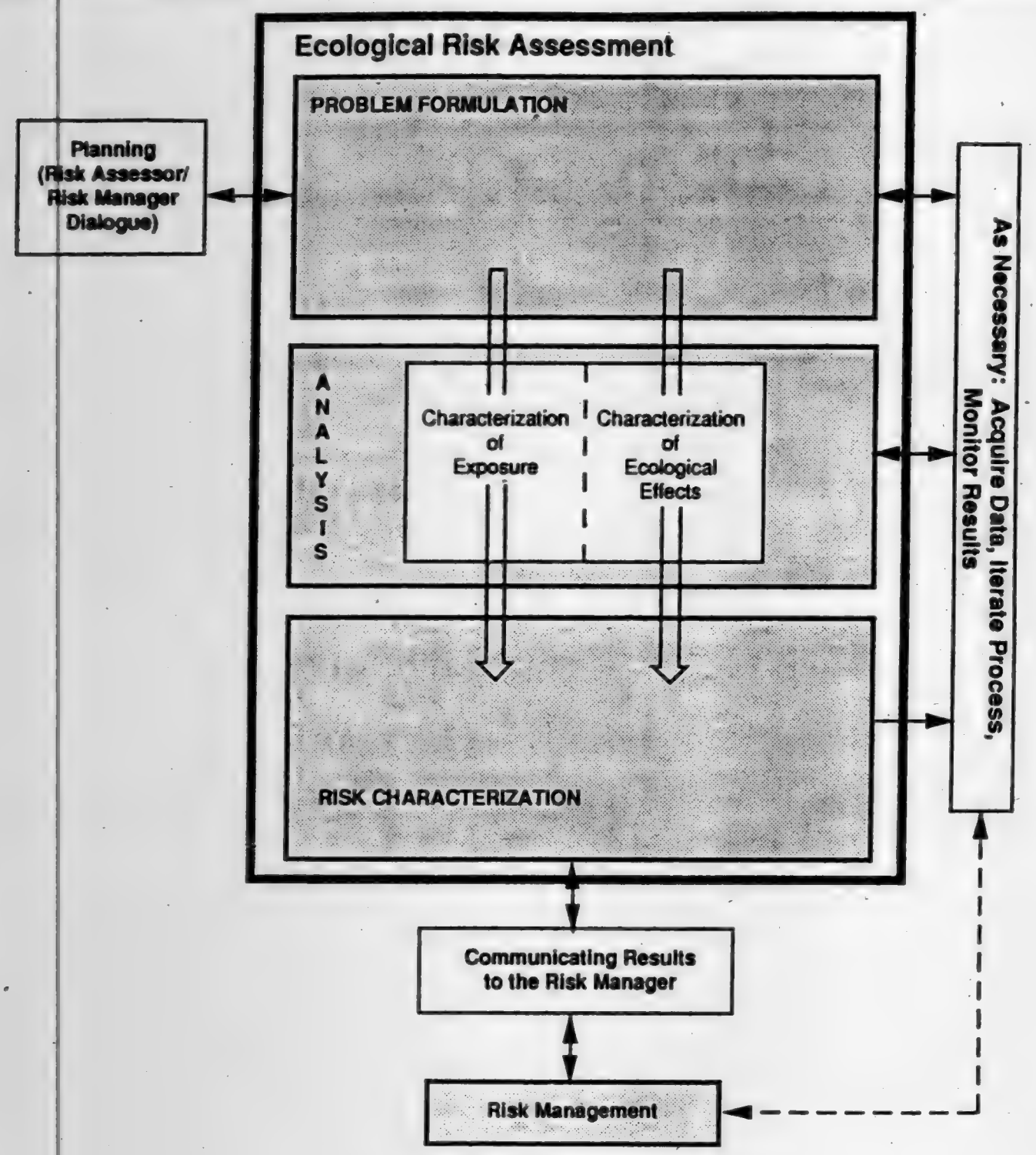

Figure 1-1. The framework for ecological risk assessment (U.S. EPA, 1992a). Ecological risk assessment is shown as a three-phase process including problem formulation, analysis, and risk characterization. Important activities associated with ecological risk assessment include discussions between risk assessors and risk managers and data acquisition and monitoring. Ecological risk assessments frequently follow an iterative or tiered approach.

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The bar along the right side of figure 1–1 shows several activities that are associated with risk assessments: data acquisition, iteration, and monitoring. While the risk assessment may focus on data analysis and interpretation, acquiring the appropriate quantity and quality of data for use in the process is critical. If such data are lacking, the risk assessment may stop until the necessary data are acquired. As discussed in text note 1–3, the process is more frequently iterative than linear, since the evaluation of new data or information may require revisiting a part of the process or conducting a new assessment.

Monitoring data can provide important input to all phases of the risk assessment process. For example, monitoring can provide the impetus for initiating a risk assessment by identifying changes in ecological condition. In addition, monitoring data can be used to evaluate the results predicted by the risk assessment. For example, follow-up studies could be used to determine whether techniques used to mitigate pesticide exposures in field situations in fact reduce exposure and effects as predicted by the risk assessment. Or, for a hazardous waste site, monitoring might help verify whether source reduction resulted in anticipated ecological changes. Monitoring is also critical for determining the extent and nature of any ecological recovery that may occur. The experience gained by comparing monitoring results to evaluate risk assessment predictions can help improve the risk assessment process and is encouraged.

1.1. Ecological Risk Assessment in a Management Context

Ecological risk assessment is important for environmental decisionmaking because of the high cost of eliminating environmental risks associated with human activities and the necessity of making regulatory decisions in the face of uncertainty (Ruckelshaus, 1983; Suter, 1993a). Even so, ecological risk assessment provides only a portion of the information required to make risk management decisions. This section describes how ecological risk assessments fit into a larger management framework.

1.1.1. Contributions of Ecological Risk Assessment to Environmental Decisionmaking

At EPA, ecological risk assessments provide input to a diverse set of environmental decisionmaking processes, such as the regulation of hazardous waste sites, industrial chemicals, and pesticides, or the management of watersheds affected by multiple nonchemical and chemical stressors. The ecological risk assessment process has several features that contribute to managing ecological risks:

- In a risk assessment, changes in ecological effects can be expressed as a function of changes in exposure to a stressor. This inherently predictive aspect of risk assessment may be particularly useful to the decision maker who must evaluate tradeoffs and examine different alternatives.
- Risk assessments include an explicit evaluation of uncertainties. Uncertainty analysis lends credibility and a degree of confidence to the assessment that can strengthen its use in decisionmaking and can help the risk manager focus research on those areas that will lead to the greatest reductions in uncertainty.
- Risk assessments can provide a basis for comparing, ranking, and prioritizing risks. The risk manager can use such information to help decide among several management alternatives.
- Risk assessments emphasize consistent use of well-defined and relevant endpoints. This is especially important for ensuring that the results of the risk assessment will be expressed in a way that the risk manager can use.

1.1.2. Risk Management Considerations

Although risk assessors and risk managers interact both at the initiation and completion of an ecological risk assessment (sections 2, 3, 5 and 6), risk managers decide how to use the results of an assessment and whether a risk assessment should be conducted. While a detailed review of management issues is beyond the scope of these guidelines, key areas are highlighted below.

- A risk assessment is not always required for management action. When faced with compelling ecological risks and an immediate need to make a decision, a risk manager might proceed without an assessment, depending on professional judgment and statutory requirements (U.S. EPA, 1992a).
- Because initial management decisions or statutory requirements significantly affect the scope of an assessment, it is important, where possible, for risk managers to consider a broader scope or alternative actions for a risk assessment. Sometimes a particular statute may require the risk assessment to focus on one type of stressor (e.g., chemicals) when there are other, perhaps more important, stressors in the system (e.g., habitat alteration). In other situations, however, it may be possible to evaluate a range of options. For example, before requesting an ecological risk assessment of alternative sites for the construction and operation of a dam for hydroelectric power, risk managers may consider larger issues such as the need for the additional power and the feasibility of using other power-generating options.
- Risk managers consider many factors in making regulatory decisions. Legal mandates may require the risk manager to take certain courses of action. Political and social considerations may lead the risk manager to make decisions that are either more or less ecologically protective. Economic factors may also be critical. For example, a course of action that has the least ecological risk may be too expensive or technologically infeasible. If cost-benefit analysis is applied, ecological risks may be translated into monetary terms to be compared against other monetary considerations. Thus, while ecological risk assessment provides critical information to risk managers, it is only part of the whole environmental decisionmaking process.

1.2. Scope and Intended Audience

These guidelines replace the EPA report, Framework for Ecological Risk Assessment (referred to as the Framework Report, U.S. EPA, 1992a). As a next step in developing Agency-wide guidance, the guidelines expand on and modify framework concepts to reflect Agency experience in the several years since the Framework Report was published (see Appendix A). Like the Framework Report, these guidelines are broad in scope, describing general principles and providing numerous examples to show how ecological risk assessment can be applied to a wide range of systems, stressors, and biological, spatial, and temporal scales. This approach provides flexibility to permit EPA's offices and regions to develop specific guidance suited to their particular needs.

The proposed policies set out in this document are intended as internal guidance for EPA. Risk assessors and risk managers at EPA are the primary audience for this document, although these guidelines may be useful to others outside the Agency (e.g., Agency contractors, state agencies, and other interested parties). These Proposed Guidelines are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. This document is not a regulation and is not intended for EPA regulations. These Proposed Guidelines set forth current scientific thinking and approaches for conducting and evaluating ecological risk

assessments. As with other EPA guidelines (developmental toxicity, 56 FR 63798–63826; exposure assessment, 57 FR 22888–22938; and carcinogenicity, 61 FR 17960–18011), EPA will revisit these guidelines as experience and scientific consensus evolves.

These guidelines do not provide detailed guidance in specific areas nor are they intended to be highly prescriptive. These guidelines describe the strengths and limitations of alternate approaches and may not apply to a particular situation based upon the circumstances. Agency preferences are expressed where possible, but because ecological risk assessment is a rapidly evolving discipline, requirements for specific approaches could soon become outdated. EPA intends to develop a series of shorter, more detailed guidance documents on specific ecological risk assessment topics after these guidelines have been finalized.

These guidelines emphasize processes and approaches for analyzing data rather than specific data collection techniques, methods, or models. Also, while these guidelines discuss the interface between the risk assessor and risk manager, a detailed discussion of the use of ecological risk assessment information in the risk management process (e.g., the economic, legal, political, or social implications of the risk assessment results) is beyond the scope of these guidelines. Other EPA publications discuss how ecological concerns have been addressed in decisionmaking at EPA (U.S. EPA, 1994g) and provide an introduction to ecological risk assessment for risk managers (U.S. EPA, 1995b).

1.3. Guidelines Organization

These guidelines are structured according to the ecological risk assessment process as shown in figure 1–2. Within problem formulation (section 3), important areas addressed include identifying goals and assessment endpoints, preparing the conceptual model, and developing an analysis plan. The analysis phase (section 4) involves evaluating exposure to stressors and the relationship between stressor levels and ecological effects. In risk characterization (section 5), key elements are estimating risk through integration of exposure and stressor-response profiles and describing risk by discussing lines of evidence, interpreting adversity, and summarizing uncertainty. In addition, discussions between the risk assessor and risk manager at the beginning (section 2) and end of the risk assessment (section 6) are highlighted.

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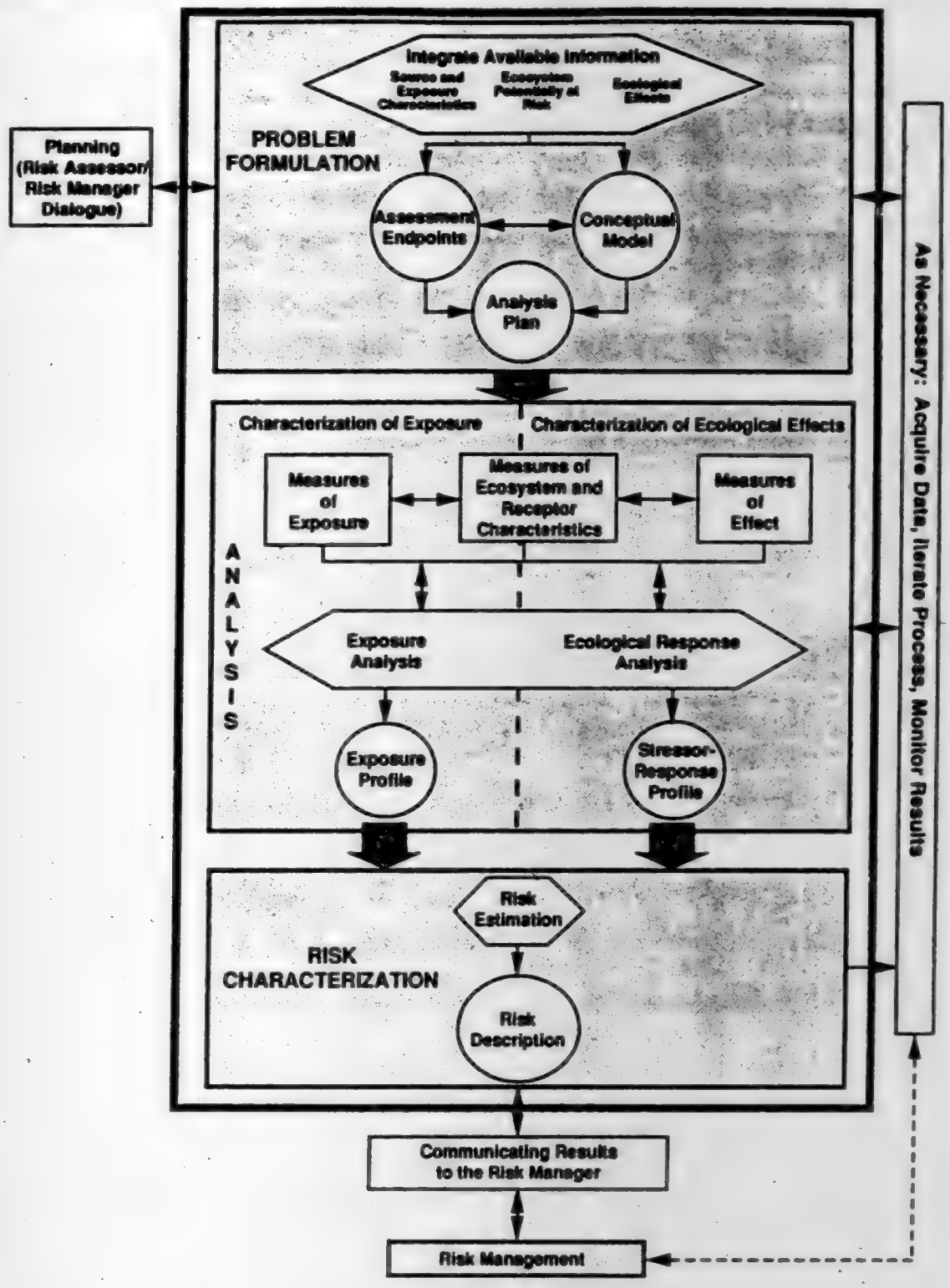

Figure 1-2. The ecological risk assessment framework, with an expanded view of each phase. Within each phase, rectangular boxes designate inputs, hexagon-shaped boxes indicate actions, and circular boxes represent outputs. Problem formulation, analysis, and risk characterization are discussed in sections 3, 4, and 5, respectively. Sections 2 and 6 describe interactions between risk assessors and risk managers.

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The reader may notice that cross-cutting topics are covered in several sections. These include uncertainty, models, evaluating data, causality, linking measures of effect to assessment endpoints, and identifying ecological effects. Considerations appropriate to the different phases of ecological risk assessment are discussed.

2. Planning The Risk Assessment: Dialogue Between Risk Managers and Risk Assessors

The purpose for an ecological risk assessment is to produce a scientific evaluation of ecological risk that enables managers to make informed environmental decisions. To ensure that ecological risk assessments meet risk managers' needs, a planning dialogue between risk managers and risk assessors (see text notes 2–1 and 2–2) is a critical first step toward initiating problem formulation and plays a continuing role during the conduct of the risk assessment. Planning is the beginning of a necessary interface between risk managers and risk assessors and is represented by a side box in the ecological risk assessment diagram (see figure 1–2). It is due to the importance of planning and the significant role it plays in ecological risk assessments that this section on planning is incorporated into guidelines on ecological risk assessment. However, it is imperative to remember that the planning process is distinct from the scientific conduct of an ecological risk assessment. This distinction helps ensure that political and social issues, while helping to define the objectives for the risk assessment, do not bias the scientific evaluation of risk.

During the planning dialogue, risk managers and risk assessors each bring important perspectives to the table. In general, risk managers are charged with protecting societal values (e.g., human health and the environment) and must ensure that the risk assessment will provide information relevant to a decision. To meet this charge, risk managers describe why the risk assessment is needed, what decisions it will support, and what they want to receive from the risk assessor. It is also helpful for managers to consider what problems they have encountered in the past when trying to use risk assessments for decisionmaking. In turn, it is the ecological risk assessors' role to ensure that science is effectively used to address ecological concerns. Risk assessors describe what they can provide to the risk manager, where problems are likely to occur, and where uncertainty may be problematic. Both evaluate the potential value of conducting a risk assessment to address identified problems.

Both risk managers and risk assessors are responsible for coming to agreement on the goals, scope, and timing of a risk assessment and the resources that are available and necessary to achieve the goals. Together they use information on the area's ecosystems, regulatory endpoints, and publicly perceived environmental values to interpret the goals for use in the ecological risk assessment. Examples of questions risk managers and risk assessors may address during planning are provided in text note 2–3.

The first step in planning may be to determine if a risk assessment is the best option for making the decision required. Questions concerning what is known about the degree of risk, what management options are available to mitigate or prevent it, and the value of conducting a risk assessment compared with other ways of learning about and addressing environmental concerns are asked during these discussions. In some cases, a risk assessment may add little value to the decision process. It is important for the risk manager and risk assessor to explore alternative options for addressing possible risk before continuing to the next planning stage (see section 1.1.2).

Once the decision is made to conduct a risk assessment, planning focuses on (1) establishing management goals that are agreed on, clearly articulated, and contain a way to measure success; (2) defining the decisions to be made within the context of the management goals; and (3) agreeing on the scope, complexity, and focus of the risk assessment, including the expected output and the technical and financial support available to complete it. To achieve these objectives, risk managers and risk assessors must each play an active role in planning the risk assessment.

2.1. Establishing Management Goals

Management goals for a risk assessment are established by risk managers but are derived in a variety of ways. Many Agency risk assessments are conducted based on legally established management goals (e.g., national regulatory programs generally have management goals written into the law governing the program). In this case, goal setting was previously completed through public debate in establishing the law. In most cases, legally established management goals do not provide sufficient guidance to the risk assessor. For example, the objectives under the Clean Water Act to "protect and maintain the chemical, physical and biological integrity of the nation's waters" are open to considerable interpretation. Agency managers and staff often interpret the law in regulations and guidance. Significant interaction between the risk assessor and risk manager may be needed to translate the law into management goals for a particular location or circumstance.

As the Agency increasingly emphasizes "place-based" or "community-based" management of ecological resources as recommended in the Edgewater Consensus (U.S. EPA, 1994e), management goals take on new significance for the ecological risk assessor. Management goals for "places" such as watersheds are formed as a consensus based on diverse values reflected in Federal, state, and local regulations; constituency group agendas; and public concerns. Significant interactions among a variety of interested parties are required to generate agreed-on management goals for the resource (see text note 2–4). Public meetings, constituency group meetings, evaluation of resource management organization charters, and other means of looking for management goals shared by these diverse groups may be necessary. Diverse risk management teams may elect to use social scientists trained in consensus-building methods to help establish management goals. While management goals derived in this way may require further definition (see text note 2–5), there is increased confidence that these goals are supported by the audience for the risk assessment.

Regardless of how management goals are established, goals that explicitly define which ecological values are to be protected are more easily used to design a risk assessment for decisionmaking than general management goals. Whenever goals are general, risk assessors must interpret those goals into ecological values that can be measured or estimated and ensure that the managers agree with their interpretation (see text note 2–6). Legally mandated goals generally are interpreted by Agency managers and staff. This interpretation may be performed once and then applied to the multiple similar assessments (e.g. evaluation of new chemicals). For other risk assessments, the interpretation is unique to the ecosystem being assessed and must be done on a case-by-case basis as part of the planning process.

2.2. Management Decisions

A risk assessment is shaped by the kind of decision it will support. When a management decision is explicitly

stated and closely aligned to management actions, the scope, focus, and conduct of the risk assessment are well defined by the specificity of the decision to be made. Some of these risk assessments are used to help establish national policy that will be applied consistently across the country (e.g., premanufacture notices for new chemicals, protection of endangered species). Other risk assessments are designed for a specific site (e.g., hazardous waste site clean-up level). When decision options (e.g., decision criteria in the data quality objectives process, U.S. EPA, 1994d; see section 3.5.2 for more details) are known prior to the risk assessment, a number of assumptions are inherent in those options that need to be explicitly stated during planning. This ensures that the decision criteria are not altering the scientific validity of the risk assessment by inappropriately applying assumptions or unnecessarily limiting the variables. For many risk assessments, there may be a range of possible management options for managing risk. When different management options have been identified (e.g., leave alone, clean up, or pave a contaminated site), risk assessment can be used to predict potential risk across the range of these management options.

Risk assessments may be designed to provide guidance for management initiatives for a region or watershed where multiple stressors, ecological values, and political factors influence decisionmaking. These risk assessments require great flexibility and breadth and may use national risk-based information and site-specific risk information in conjunction with regional evaluations of risk. As risk assessment is more frequently used to support landscape-scale management decisions, the diversity, breadth, and complexity of the risk assessments increase significantly and may include evaluations that focus on understanding ecological processes influenced by a diversity of human actions and management options. Risk assessments used in this application are often based on a general goal statement and require significant planning to establish the purpose, scope, and complexity of the assessment.

2.3. Scope and Complexity of the Risk Assessment

Although the purpose for the risk assessment determines whether it is national, regional, or local, the resources available for conducting the risk assessment determines how extensive and complex it can be within this framework and the level of uncertainty that can be expected. Each risk assessment is constrained by the availability of data, scientific understanding, expertise, and financial resources. Within these constraints there is much to consider when designing a risk assessment. Risk managers and risk assessors must discuss in detail the nature of the decision (e.g., national policy, local economic impact), available resources, opportunities for increasing the resource base (e.g., partnering, new data collection, alternative analytical tools), and the output that will provide the best information for decisions required (see text note 2–7).

Part of the agreement on scope and complexity is based on the maximum uncertainty that is acceptable in whatever decision the risk assessment supports. The lower the tolerance for uncertainty, the greater the scope and complexity needed in the risk assessment. Risk assessments completed in response to legal mandates and likely to be challenged in court often require rigorous attention to acceptable levels of uncertainty to ensure that the assessment will be used in a decision. A frank discussion is needed between the risk manager and risk assessor on sources of uncertainty in the risk assessment and ways uncertainty can be reduced (if necessary) through selective investment of resources. Where appropriate, planning could account for the iterative nature of risk assessment and include explicitly defined steps. These steps may take the form of "tiers" that represent increasing levels of complexity and investment, with each tier designed to reduce uncertainty. The plan may include an explicit definition of iterative steps with a description of levels of investment and decision criteria for each tier. Guidance on addressing the interplay of management decisions, study boundaries, data needs, uncertainty, and specifying limits on decision errors may be found in EPA's guidance on data quality objectives (U.S. EPA, 1994d).

2.4. Planning Outcome

The planning phase is complete when agreements are reached on the management goals, assessment objectives, the focus and scope of the risk assessment, resource availability, and the type of decisions the risk assessment is to support. Agreements may encompass the technical approach to be taken in a risk assessment as determined by the regulatory or management context and reason for initiating the risk assessment (see section 3.2), the spatial scale (e.g., local, regional, or national), and temporal scale (e.g., the time frame over which stressors or effects will be evaluated).

In mandated risk assessments, planning agreements are often codified in regulations, and little documentation of agreements is warranted. In risk assessments where planning decisions can be highly variable, a summary of planning agreements may be important for ensuring that the risk assessment remains consistent with early agreements. A summary can provide a point of reference for determining if early decisions may need to be changed in response to new information. There is no defined format, length, or complexity for a planning summary. It is a useful reference only and should be tailored to the complexity of the risk assessment it represents. However, a summary is recommended to help ensure quality communication between and among risk managers and risk assessors and to document the decisions that have been agreed upon.

Once planning is complete, the formal process of risk assessment begins through the initiation of problem formulation. During problem formulation, risk assessors should continue the dialogue with risk managers following assessment endpoint selection and once the analysis plan is completed. At these points, potential problems can be identified before the risk assessment proceeds.

3. Problem Formulation Phase

Problem formulation is a formal process for generating and evaluating preliminary hypotheses about why ecological effects have occurred, or may occur, from human activities. As the first stage of an ecological risk assessment, it provides the foundation on which the entire assessment depends. During problem formulation, management goals developed during planning are evaluated to establish objectives for the risk assessment, the problem is defined, and the plan for analyzing data and characterizing risk is determined. Any deficiencies in problem formulation will compromise all subsequent work on the risk assessment (see text note 3–1).

3.1. Products of Problem Formulation

Successful completion of problem formulation depends on the quality of three products: (1) assessment endpoints that adequately reflect management goals and the ecosystem they represent, (2) conceptual models that describe key relationships between a stressor and assessment endpoint or among several stressors and assessment

endpoints, and (3) an analysis plan. Essential to the development of these products are the effective integration and evaluation of available information.

The following discussion focuses on the products of problem formulation and the information that determines the nature of those products. The products are featured in the problem formulation diagram as circles (see figure 3–1). The types of information that must be evaluated to generate those products are shown in the hexagon.

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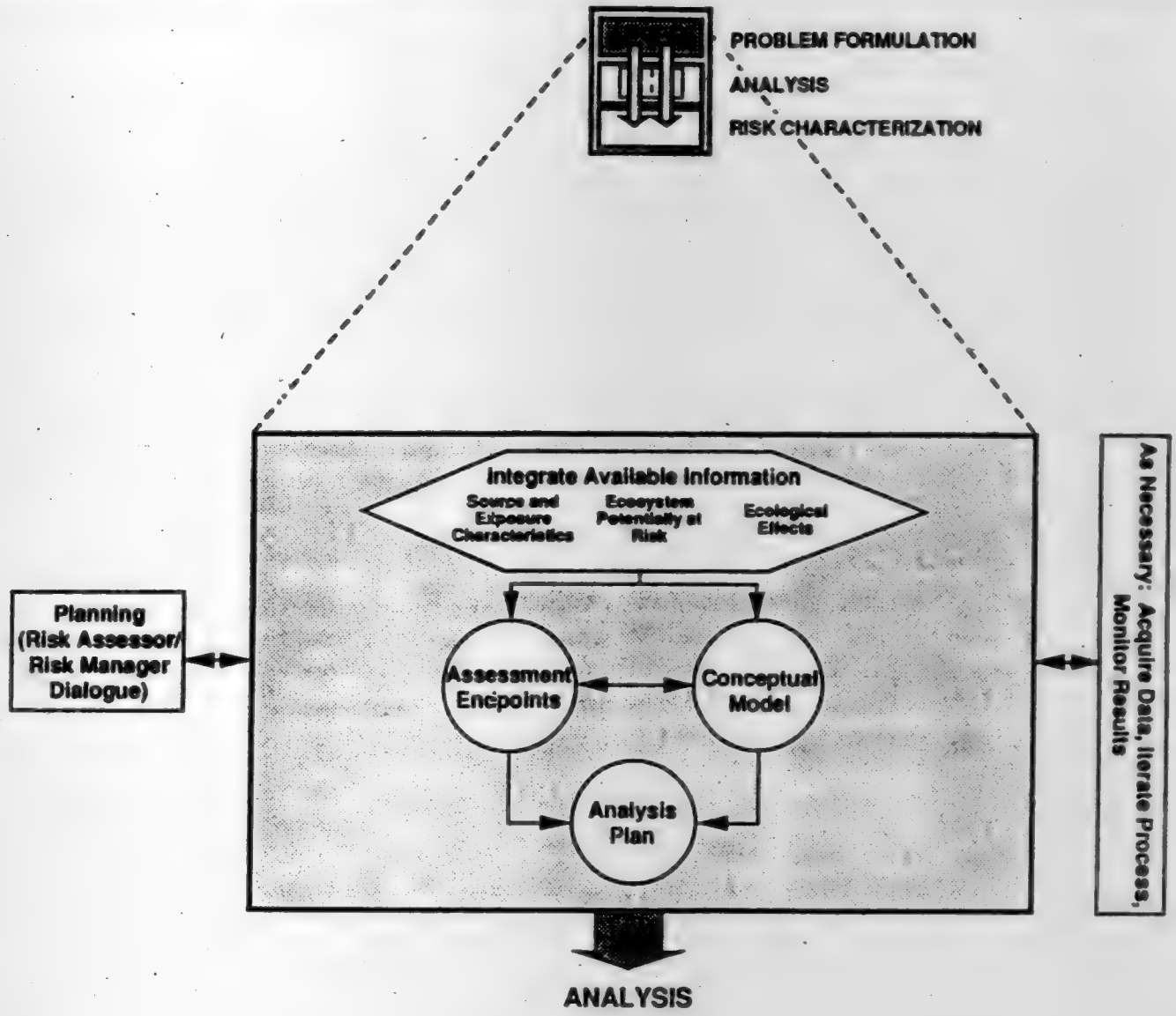

Figure 3-1. Problem formulation phase.

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To enhance clarity, the organization of the following discussion follows the above topics. However, problem formulation is not necessarily completed in the order presented here. First, the order in which products are produced is directly related to why the ecological risk assessment is initiated, as addressed in section 3.2. Second, problem formulation is inherently interactive and iterative, not linear. Substantial reevaluation is expected to occur within and among all products of problem formulation.

3.2. Integration of Available Information

The foundation for problem formulation is the integration of available information on the sources of stressors and stressor characteristics, exposure, the ecosystem(s) potentially at risk, and ecological effects (see figure 3–1). When key information is of the appropriate type and sufficient quality and quantity, problem formulation can proceed effectively. When key information is unavailable in one or more areas, the risk assessment may be temporarily suspended while new data are collected. If new data cannot be collected, then the risk assessment will depend on what is known and what can be extrapolated from that information. Complete information is not available at the beginning of many risk assessments. When this is the case, the process of problem formulation assists in identifying where key data are missing and provides the framework for further research where more data are needed. Where data are few, a clear articulation of the limitations of conclusions, or uncertainty, from the risk assessment becomes increasingly critical in risk characterization (see text note 3–2).

The reason why an ecological risk assessment is initiated directly influences what information is available at the outset, and what information must be found. A risk assessment can be initiated because a known or potential stressor may be released into the environment, an adverse effect or change in condition is observed, or better management of an important ecological value (e.g., valued ecological entities such as species, communities, ecosystems or places) is desired. Risk assessments are sometimes initiated for two or all three of these reasons.

Risk assessors beginning with information about the source or stressor will seek available information on the effects the stressor might be associated with and the ecosystems that it will likely be found in. Risk assessors beginning with information about an observed effect or change in condition will need to seek information about potential stressors and sources. Risk assessors starting with concern over a particular ecological value may need additional information on the specific condition or effect of interest, the ecosystems potentially at risk, and potential stressors and sources.

The initial use of available information is a scoping process similar to that used to develop environmental impact statements. During this process, data and information (i.e., actual, inferred, or estimated) are considered to ensure that nothing important is overlooked. A comprehensive evaluation of all information provides the framework for generating a large array of risk hypotheses to consider (see section 3.4.1). After the initial scoping process, information quality and applicability to the particular problem of concern are increasingly scrutinized as the risk assessor proceeds through problem formulation. When analysis plans are formed, data validity becomes a significant factor to consider. Issues relating to evaluating data quality are discussed in the analysis phase (see section 4.1).

As the complexity and spatial scale of a risk assessment increase, information needs escalate. Ecosystems characteristics directly influence when, how, and why particular ecological entities may become exposed and exhibit adverse effects due to particular stressors. Predicting risks from multiple chemical, physical, and biological stressors requires an understanding of their interactions. Risk assessments for a region or watershed, where multiple stressors are the rule, require consideration of ecological processes operating at larger spatial scales.

Despite limitations on what is known about ecosystems and the stressors influencing them, the process of problem formulation offers a valuable systematic approach for organizing and evaluating available information on all stressors and possible effects in a way that can be useful to risk assessors and decisionmakers. Text note 3–3 provides a series of questions that risk assessors should attempt to answer using available information, many of which were drawn from Barnthouse and Brown (1994). This exercise will help risk assessors identify known and unknown relationships, both of which are important in problem formulation.

Problem formulation proceeds with the identification of assessment endpoints, and the development of conceptual models and the analysis plan (discussed below). However, the order in which these task are done is influenced by the reason for initiating the assessment (text note 3–4). Early recognition that initiation effects the order of product generation will help facilitate the development of problem formulation.

3.3. Selecting Assessment Endpoints

Assessment endpoints are "explicit expressions of the actual environmental value that is to be protected" (U.S. EPA, 1992a). Assessment endpoints are critical to problem formulation because they link the risk assessment to management concerns and they are central to conceptual model development. Their relevance to ecological risk assessment is determined by how well they target susceptible ecological entities. Their ability to support risk management decisions depends on how well they represent measurable characteristics of the ecosystem that adequately represent management goals. The selection of ecological concerns and assessment endpoints in EPA has traditionally been done internally by individual Agency program offices (U.S. EPA, 1994g). More recently, Agency activities such as the watershed protection approach and community-based environmental protection have used contributions by interested parties in the selection of ecological concerns and assessment endpoints. This section describes criteria for selecting and defining assessment endpoints.

3.3.1. Selecting What To Protect

The ecological resources selected to represent management goals for environmental protection are reflected in the assessment endpoints that drive ecological risk assessments. Assessment endpoints often reflect environmental values that are protected by law, provide critical resources, or provide an ecological function that would be significantly impaired (or that society would perceive as having been impaired) if the resource were altered.

Although many potential assessment endpoints may be identified, considering the practicality of using particular assessment endpoints will help refine selections. For example, when the attributes of an assessment endpoint can be measured directly, extrapolation is unnecessary; therefore this uncertainty is not introduced into the results. Assessment endpoints that cannot be measured directly but can be represented by measures that are easily monitored and modeled still provide a good foundation for the risk assessment. Assessment endpoints that cannot be linked with measurable attributes are not appropriate for a risk assessment.

Three principal criteria are used when selecting assessment endpoints: (1) their

ecological relevance, (2) their susceptibility to the known or potential stressors, and (3) whether they represent management goals. Of these three criteria, ecological relevance and susceptibility are essential for selecting assessment endpoints that are scientifically valid. Rigorous selection based on these criteria must be maintained. However, to increase the likelihood that the risk assessment will be used in management decisions, assessment endpoints that represent societal values and management goals are more effective. Given the complex functioning of ecosystems and the interdependence of ecological entities, it is likely that assessment endpoints can be selected that are responsive to management goals while meeting scientific criteria. This provides a way to address changes that may occur over time in the public's perception of ecological value (e.g., wetlands viewed as infested swamps 30 years ago are considered prime wildlife habitat today; Suter, 1993a). Assessment endpoints that meet all three criteria provide the best foundation for an effective risk assessment (e.g., see text note 3–5).

3.3.1.1. Ecological Relevance

Ecologically relevant endpoints reflect important characteristics of the system and are functionally related to other endpoints (U.S. EPA, 1992a). These are endpoints that help sustain the natural structure, function, and biodiversity of an ecosystem. For example, ecologically relevant endpoints may contribute to the food base (e.g., primary production), provide habitat, promote regeneration of critical resources (e.g., decomposition or nutrient cycling), or reflect the structure of the community, ecosystem, or landscape (e.g., species diversity or habitat mosaic). Changes in ecologically relevant endpoints can result in unpredictable and widespread effects.

Ecological relevance becomes most important when risk assessors are identifying the potential cascade of adverse effects that could result from the loss or reduction of one or more species or a change in ecosystem function (see text note 3–6). Careful selection of assessment endpoints that address both specific organisms of concern and landscape-level ecosystem processes becomes increasingly important in landscape-level risk assessments. In some cases, it may be possible to select one or more species and an ecosystem process to represent larger functional community or ecosystem processes.

Determining ecological relevance in specific cases requires expert judgment based on site-specific information, preliminary site surveys, or other available information. The less information available, the more critical it is to have informed expert judgment to ensure appropriate selections. If assessment endpoints in a risk assessment are not ecologically relevant, the results of the risk assessment may predict risk to the assessment endpoints selected but seriously misrepresent risk to the ecosystem of concern, which could lead to misguided management.

3.3.1.2. Susceptibility to Known or Potential Stressors

Ecological resources are considered susceptible when they are sensitive to a human-induced stressor to which they are exposed. Sensitivity refers to how readily an ecological entity is affected by a particular stressor. Sensitivity is directly related to the mode of action of the stressors. For example, chemical sensitivity is influenced by individual physiology and metabolic pathways. Sensitivity also is influenced by individual and community life-history characteristics. For example, species with long life cycles and low reproductive rates will be more vulnerable to extinction from increases in mortality than those with short life cycles and high reproductive rates. Species with large home ranges may be more sensitive to habitat fragmentation when the fragment is smaller than their required home range compared to those with smaller home ranges within a fragment. However, habitat fragmentation may also affect species with small home ranges where migration is a necessary part of their life history and fragmentation prevents exchange among subpopulations.

Sensitivity may be related to the life stage of an organism when exposed to a stressor. Frequently, young animals are more sensitive to stressors than adults. For example, Pacific salmon eggs and fry are very sensitive to sedimentation from forest logging practices and road building because they can be smothered. Age-dependent sensitivity, however, is not only in the young. In many species, special events like migration (e.g., in birds) and molting (e.g., in harbor seals) represent significant energy investments that make these organisms more vulnerable to an array of possible stressors. Finally, sensitivity may be increased by the presence of other stressors or natural disturbances. For example, the presence of insect pests and disease may make plants more sensitive to damage from ozone (Heck, 1993).

Measures of sensitivity may include mortality or adverse reproductive effects from exposure to toxics, behavioral abnormalities, avoidance of significant food sources or nesting sites, or loss of offspring to predation because of the proximity of stressors such as noise, habitat alteration or loss, community structural changes, or other factors.

Exposure is the other key determinant in susceptibility. Exposure can mean co-occurrence, contact, or the absence of contact, depending on the stressor and assessment endpoint (see section 4 for more discussion). The amount and conditions of exposure directly influence how an ecological entity will respond to a stressor. Thus, to determine what entities are susceptible, it is important to consider information on the proximity of an ecological resource to the stressor, the timing of exposure (both in terms of frequency and duration), and the intensity of exposure occurring during sensitive life stages of the organisms.

Adverse effects of a particular stressor may be important during one part of an organism's life cycle, such as early development or reproduction. Adverse effects may result from exposure to a stressor or to the absence of a necessary resource during a critical life stage. For example, if fish are unable to find suitable nesting sites during their reproductive phase, risk is significant even when water quality is high and food sources abundant. The interplay between life stage and stressors can be very complex (e.g., see text note 3–7).

Exposure may occur in one place or time, and effects may not occur until another place or time. Both life history characteristics, as described under sensitivity, and the circumstances of exposure, influence susceptibility in this case. For example, the temperature of the incubation medium of marine turtle eggs affects the sex ratio of the offspring. But the population impacts of a change in incubation temperature may not be observable until years later when the cohort of affected turtles begins to reproduce. Delayed effects and multiple stressor exposures add complexity to evaluations of susceptibility. For example, although toxicity tests may determine receptor sensitivity to one stressor, the degree of susceptibility may depend on the co-occurrence of another stressor that significantly alters receptor response. Conceptual models (see section 3.4) need to reflect these factors. If a species is unlikely to be exposed to the stressor of concern, it is inappropriate as an assessment endpoint.

3.3.1.3. Representation of Management Goals

Ultimately, the value of a risk assessment depends on whether it can

support quality management decisions. Risk managers are more willing to use a risk assessment for making decisions when the assessment is based on values and organisms that people care about. These values, interpreted from management goals (see section 2) into assessment endpoints, provide a defined and measurable entity for the risk assessment. Candidates for assessment endpoints might include entities such as endangered species, commercially or recreationally important species, functional attributes that support food sources or flood control (wetland water sequestration, for example), or aesthetic values, such as clean air in national parks or the existence of charismatic species like eagles or whales.

Selection of assessment endpoints based on public perceptions alone could lead to management decisions that do not consider important ecological information. While being responsive to the public is important, it does not obviate the requirement for scientific validity as represented by the sections on ecological relevance and susceptibility. Many ecological entities and attributes meet the necessary scientific rigor as assessment endpoints; some will be recognized as valuable by risk managers and the public, and others will not. Midges, for example, can represent the base of a complex food web that supports a popular sports fishery. They may also be considered pests. While both midges and fish are important ecological entities in this ecosystem and represent key components of the aquatic community, selecting the fishery as the assessment endpoint and using midges as a critical ecological entity to measure allow both entities to be used in the risk assessment. This choice maintains the scientific validity of the risk assessment and is responsive to management concerns. In those cases where the risk assessor identifies a critical assessment endpoint that is unpopular with the public, the risk assessor may find it necessary to present a persuasive case in its favor based on scientific arguments.

3.3.2. Defining Assessment Endpoints

Assessment endpoints provide a transition between broad management goals and the specific measures used in an assessment. They help assessors identify measurable attributes to quantify and predict change. Assessment endpoints also help the risk assessor determine whether management goals have been or can be achieved (see text note 3–8).

Two elements are required to define an assessment endpoint. The first is the valued ecological entity. This can be a species (e.g., eelgrass, piping plover), a functional group of species (e.g., raptors), an ecosystem function or characteristic (e.g., nutrient cycling), a specific valued habitat (e.g., wet meadows) or a unique place (e.g., a remnant of native prairie). The second is the characteristic about the entity of concern that is important to protect and potentially at risk. For example, it is necessary to define what is important for piping plovers (e.g., nesting and feeding success), eelgrass (e.g., areal extent and patch size), and wetlands (e.g., endemic wet meadow community structure and function). For an assessment endpoint to provide a clear interpretation of the management goals and the basis for measurement in the risk assessment, both an entity and an attribute are required.

Assessment endpoints are distinct from management goals. They do not represent what the managers or risk assessors want to achieve. As such they do not contain words like "protect," "maintain," or "restore," or indicate a direction for change such as "loss" or "increase."

Defining assessment endpoints can be difficult. They may be too broad, vague, or narrow, or they may be inappropriate for the ecosystem requiring protection. "Ecological integrity" is a frequently cited, but vague, goal and an even more vague assessment endpoint. "Integrity" can only be used effectively when its meaning is explicitly characterized for a particular ecosystem, habitat, or entity. This may be done by selecting key entities and processes of an ecosystem and describing characteristics that best represent integrity for that system. For example, general goals for Waquoit Bay were translated into several assessment endpoints, including "estuarine eelgrass abundance and distribution" (see text note 2–6).

Expert judgment and an understanding of the characteristics and function of an ecosystem are important for translating general goals into usable assessment endpoints. Endpoints that are too narrowly defined, however, may not support effective risk management. For example, if an assessment is focused on protecting the habitat of an endangered species, the risk assessment may overlook important characteristics of the ecosystem and fail to include critical variables (see text note 3–7).

Assessment endpoints must be appropriate for the ecosystem of concern. Selecting a game fish that grows well in reservoirs may meet a "feasible" management goal, but would be inappropriate for evaluating risk from a new hydroelectric dam if the ecosystem of concern is a stream in which salmon spawn (see text note 3–5). Although the game fish will satisfy the fishable goal and may be highly desired by local fishermen, a reservoir species does not represent the ecosystem at risk. A vague "viable fish populations" assessment endpoint substituted by "reproducing populations of indigenous salmonids" could therefore prevent the development of an inappropriate risk assessment.

Clearly defined assessment endpoints provide direction and boundaries for the risk assessment and can minimize miscommunication and reduce uncertainty. Assessment endpoints directly influence the type, characteristics, and interpretation of data and information used for analyses and the scale and character of the assessment. For example, an assessment endpoint such as "egg production of pond invertebrates" defines local population characteristics and requires very different types of data and ecosystem characterization compared with "watershed aquatic community structure and function." If concerns are local, the assessment endpoints should not focus on landscape concerns. Where ecosystem processes and landscape mosaics are of concern, survival of a particular species would provide inadequate representation. Assessment endpoints that are poorly defined, inappropriate, or at the incorrect scale can be very problematic. Common problems encountered in selecting assessment endpoints are summarized in text note 3–9.

The presence of multiple stressors should influence the selection of assessment endpoints. When it is possible to select one assessment endpoint that is sensitive to many of the identified stressors, yet responds in different ways to different stressors, it is possible to consider the combined effects of multiple stressors while still discriminating among effects. For example, if recruitment of a fish population is the assessment endpoint, it is important to recognize that recruitment may be adversely affected at several life stages, in different habitats, through different ways, by different stressors. The measures of effect, exposure, and ecosystem and receptor characteristics chosen to evaluate recruitment provide a basis for discriminating among different stressors, individual effects, and their combined effect.

The assessment endpoint can provide a basis for comparing a range of stressors if carefully selected. For example, the National Crop Loss Assessment Network (Heck, 1993)

selected crop yields as the assessment endpoint to evaluate the cumulative effects of multiple stressors. Although the primary stressor was ozone, the crop-yield endpoint allowed them to consider the effects of sulfur dioxide and soil moisture. As Barnthouse et al. (1990) pointed out, an endpoint should be selected so that all the effects can be expressed in the same units (e.g., the abundance of 1-year-old fish to assess the effects from toxicity, fishing pressure, and habitat loss). These considerations are important when selecting assessment endpoints for addressing the combined effect of multiple stressors. However, in situations where multiple stressors act on the structure and function of aquatic and terrestrial communities in a watershed ecosystem, an array of assessment endpoints that represent the ecosystem community and processes is more effective than a single endpoint. When based on differing susceptibility to an array of stressors, the careful selection of assessment endpoints can help risk assessors distinguish among effects from diverse stressors. Exposure to multiple stressors may lead to effects at different levels of biological organization, for a cascade of adverse responses that should be considered.

Although assessment endpoints must be defined in terms of measurable attributes, selection does not depend on the ability to measure those attributes directly or on whether methods, models, and data are currently available. If the response of an assessment endpoint cannot be directly measured, it may be predicted from responses of surrogate or similar entities. Although for practical reasons it is helpful to use assessment endpoints that have well-developed test methods, field measurement techniques, and predictive models (see Suter, 1993a), it is not necessary for these methods to be established protocols. Measures that will be used to evaluate assessment endpoint response to exposures for the risk assessment are often identified during conceptual model development and specified in the analysis plan. See section 3.5 for issues surrounding the selection of measures.

It is important for risk assessors and risk managers to agree that selected assessment endpoints represent the management goals for the particular ecological value. The rationale for their selection should be clear. Assessment endpoint selection is an important risk manager-risk assessor checkpoint during problem formulation.

3.4. Conceptual Models

A conceptual model in problem formulation is a written description and visual representation of predicted responses by ecological entities to stressors to which they are exposed, and the model includes ecosystem processes that influence these responses. Conceptual models represent many relationships (e.g., exposure scenarios may qualitatively link land-use activities to sources and their stressors, may describe primary, secondary, and tertiary exposure pathways, and may describe co-occurrence between exposure pathways, ecological effects, and ecological receptors).

Conceptual models for ecological risk assessments are developed from information about stressors, potential exposure, and predicted effects on an ecological entity (the assessment endpoint). Depending on why a risk assessment is initiated, one or more of these categories of information is known at the outset. The process of creating conceptual models helps identify the unknown elements.

The complexity of the conceptual model depends on the complexity of the problem, number of stressors, number of assessment endpoints, nature of effects, and characteristics of the ecosystem. For single stressors and single assessment endpoints, conceptual models can be relatively simple relationships. In situations where conceptual models describe both the pathways of individual stressors and assessment endpoints and the interaction of multiple and diverse stressors and assessment endpoints (e.g., assessments initiated because of important values), several submodels normally will be required to describe individual pathways. Other models may then be used to explore how these individual pathways interact.

Conceptual models consist of two principal products:

- A set of risk hypotheses that describe predicted relationships between stressor, exposure, and assessment endpoint response, along with the rationale for their selection.
- A diagram that illustrates the relationships presented in the risk hypotheses.

3.4.1. Risk Hypotheses

Hypotheses are assumptions made in order to evaluate logical or empirical consequences (Merriam-Webster, 1972). Risk hypotheses are statements of assumptions about risk based on available information (see text note 3–10). They are formulated using a combination of expert judgment and information on the ecosystem at risk, potential sources of stressors, stressor characteristics, and observed or predicted ecological effects on selected or potential assessment endpoints. These hypotheses may predict the effects of a stressor event before it happens, or they may postulate why observed ecological effects occurred and ultimately what sources and stressors caused the effect. Depending on the scope of the risk assessment, the set of risk hypotheses may be very simple, predicting the potential effect of one stressor on one receptor, or extremely complex, as is typical in value-initiated risk assessments that often include prospective and retrospective hypotheses about the effects of multiple complexes of stressors on diverse ecological receptors.

Although risk hypotheses should be developed even when information is incomplete, the amount and quality of data will affect the specificity and level of uncertainty associated with risk hypotheses and the conceptual models they form. When preliminary information is conflicting, risk hypotheses can be constructed specifically to differentiate among competing predictions. The predictions can then be evaluated systematically either by using available data during the analysis phase or by collecting new data before proceeding with the risk assessment. Hypotheses and predictions set a framework for using data to evaluate functional relationships (e.g., stressor-response curves).

Early conceptual models are intended to be broad in scope, identifying as many potential relationships as possible. As more information is incorporated, the plausibility of specific risk hypotheses helps risk assessors sort through potentially large numbers of stressor-effect relationships and the ecosystem processes that influence them to identify those risk hypotheses most appropriate for the analysis phase. It is then that justifications for selecting and omitting selecting hypotheses are documented. Examples of risk hypotheses are provided in text note 3–11.

3.4.2. Conceptual Model Diagrams

Conceptual model diagrams may be based on theory and logic, empirical data, mathematical models, or probability models. They are useful tools for communicating important pathways in a clear and concise way and can be used to ask new questions about relationships that help generate plausible risk hypotheses. Some of the benefits gained by developing conceptual models are featured in text note 3–12.

Conceptual model diagrams frequently contain boxes and arrows to illustrate relationships (see figure 3–2

and Appendix C). When constructing these kinds of flow diagrams, it is helpful to use distinct and consistent shapes to distinguish stressors, assessment endpoints, responses, exposure routes, and ecosystem processes. Although flow diagrams are often used to illustrate conceptual models, there is no set configuration for conceptual model diagrams. Pictorial representations can be more effective (e.g., Bradley and Smith, 1989). Regardless of the configuration, a significant part of the usefulness of a diagram is linked to the detailed written descriptions and justifications for the pathways and relationships shown. Without this, diagrams can misrepresent the processes illustrated.

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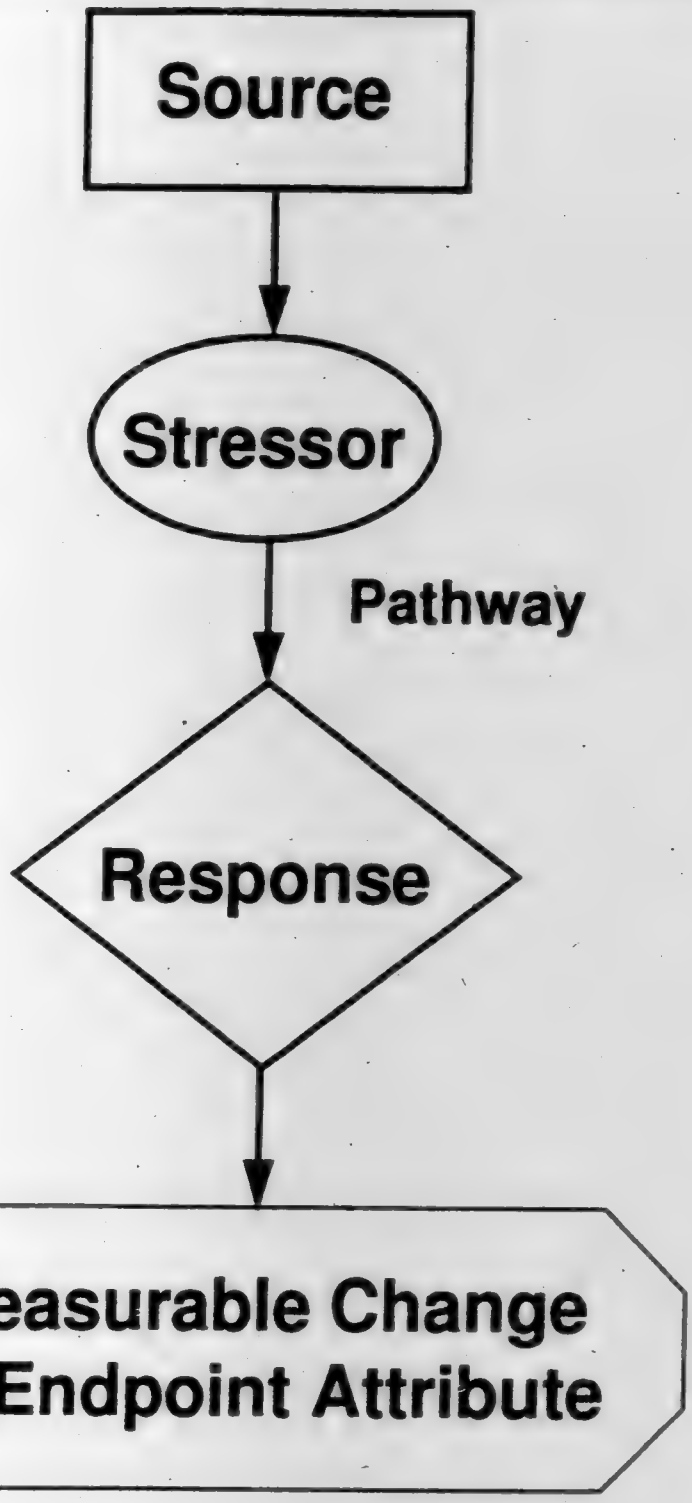

Figure 3-2. Elements of a conceptual model diagram. Illustrating the linkages between sources, stressors, and responses is an important function of the conceptual model diagram. However, the arrows in the diagram do not necessarily reflect the order in which this information is developed. See Appendix C for specific examples.

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When developing diagrams to represent a conceptual model, factors to consider include the number of relationships depicted, the comprehensiveness of the information, the certainty surrounding a pathway, and the potential for measurement. The number of relationships that can be depicted in one flow diagram depends on how comprehensive each relationship is. The more comprehensive, the fewer relationships that can be shown with clarity. Flow diagrams that highlight where data are abundant or scarce can provide insights on how the analyses should be approached and can be used to show the degree of confidence the risk assessor has in the relationship. Such flow diagrams can also help communicate why certain pathways were pursued and others were not.

Diagrams provide a working and dynamic representation of relationships. They should be used to explore different ways of looking at a problem before selecting one or several to guide analysis. Once the risk hypotheses are selected and flow diagrams drawn, they set the framework for final planning for the analysis phase.

3.4.3. Uncertainty in Conceptual Models

Conceptual model development may account for one of the most important sources of uncertainty in a risk assessment. If important relationships are missed or specified incorrectly, risks could be seriously under- or overestimated in the risk characterization phase. Uncertainty can arise from lack of knowledge on how the ecosystem functions, failing to identify and interrelate temporal and spatial parameters, not describing a stressor or suite of stressors, or not recognizing secondary effects. In some cases, little may be known about how a stressor moves through the environment or causes adverse effects. In most cases, multiple stressors are the norm and a source of confounding variables, particularly for conceptual models that focus on a single stressor. Opinions of experts on the appropriate conceptual model configuration may differ. While simplification and lack of knowledge may be unavoidable, risk assessors should document what is known, justify the model, and rank model components in terms of uncertainty (see Smith and Shugart, 1994).

Uncertainty associated with conceptual models can be reduced by developing alternative conceptual models for a particular assessment to explore possible relationships. In cases where more than one conceptual model is plausible, the risk assessor must decide whether it is feasible to follow separate models through the analysis phase or whether the models can be combined into a better conceptual model. It is important to revisit, and if necessary revise, conceptual models during risk assessments to incorporate new information and recheck the rationale. It is valuable to present conceptual models to risk managers to ensure the models communicate well and address key concerns the managers have. This check for completeness and clarity provides an opportunity to assess the need for changes before analysis begins.

Throughout the process of problem formulation, ambiguities, errors, and disagreements will occur, all of which contribute to uncertainty. Wherever possible, these sources of uncertainty should be eliminated through better planning. Because all uncertainty cannot be eliminated, a clear description of the nature of the uncertainties should be clearly summarized at the close of the problem formulation. Text note 3–13 provides recommendations for describing uncertainty in problem formulation.

The hypotheses considered most likely to contribute to risk are pursued in the analysis phase. As discussed previously, it is important to provide the rationale for selecting and omitting risk hypotheses and to acknowledge data gaps and uncertainties.

3.5. Analysis Plan

An analysis plan can be a usual final stage of problem formulation, particularly in the case of complex assessments. Here, risk hypotheses are evaluated to determine how they will be assessed using available and new data. The analysis plan can also delineate the assessment design, data needs, measures, and methods for conducting the analysis phase of the risk assessment. The analysis plan may be relatively brief or extensive depending on the nature of the assessment.

The analysis plan includes the most important pathways and relationships identified during problem formulation that will be pursued in the analysis phase. It is important for the risk assessor to describe what will be done and, in particular, what will not be done. It is important to address issues concerning the level of confidence needed for the management decision relative to the confidence that can be expected from an analysis in order to determine data needs and evaluate whether one analytical approach may be better than another. When new data are needed to conduct analyses, the feasibility of obtaining the data should be taken into account.

The selection of critical relationships in the conceptual model to pursue in analysis is based on several criteria, including:

- Availability of information.
- Strength of information about relationships between stressors and effects.
- The assessment endpoints and their relationship to ecosystem function.
- Relative importance or influence and mode of action of stressors.
- Completeness of known exposure pathways.

In situations where data are few and new data cannot be collected, it is possible to combine existing data with extrapolation models so that alternative data sources may be used. This allows the use of data from other locations or on other organisms where similar problems exist and data are available. For example, the relationship between nutrient availability and algal growth is well established. Although there will be differences in how the relationship is manifested based on the dynamics of a particular ecosystem, the relationship itself will tend to be consistent. When using data that require extrapolation, it is important to identify the source of the data, justify the extrapolation method and discuss major uncertainties apparent at this point.

Where data are not available, recommendations for new data collection should be part of problem formulation. An iterative, phased, or tiered approach (see text note 1–3) to the risk assessment may be selected to provide an opportunity for early management decisions on issues that can be addressed using available data. A decision to conduct a new iteration is based on the results of any previous iteration and proceeds using new data collected as specified in the analysis plan. When new data collection cannot be obtained, pathways that cannot be assessed are a source of uncertainty and should be described in the analysis plan.

3.5.1. Selecting Measures

It is in the analysis planning stage that measures are identified to evaluate the risk hypotheses. There are three categories of measures. Measures of effect are measures used to evaluate the response of the assessment endpoint when exposed to a stressor (formerly measurement endpoints). Measures of exposure are measures of how exposure may be occurring, including how a stressor moves through the environment and how it may co-occur with the assessment endpoint. Measures of

ecosystem and receptor characteristics include ecosystem characteristics that influence the behavior and location of assessment endpoints, the distribution of a stressor, and life history characteristics of the assessment endpoint that may affect exposure or response to the stressor. These diverse measures increase in importance as the complexity of the assessment increases and are particularly important for risk assessments initiated to protect ecological values (see text notes 3–14 and 3–15 for more information).

Text note 3–16, which describes water quality criteria, provides one example of how goals, endpoints, and measures are related. Although water quality criteria are often considered risk-based, they do not measure exposure. Instead, the water quality criteria provide an effects benchmark for decisionmaking. Within that benchmark there are a number of assumptions about significance (e.g., aquatic communities will be protected by achieving a benchmark derived from individual species' toxicological responses to a single chemical) and exposure (e.g., 1-hour and 4-day exposure averages). Assumptions embedded in decision rules should be articulated (see section 3.5.2).

The analysis plan provides a synopsis of measures that will be used to evaluate risk hypotheses. Potential extrapolations, model characteristics, types of data (including quality), and planned analyses (with specific tests for different types of data) are described. The plan should discuss how the results will be presented upon completion. The analysis plan provides the basis for making selections of data sets that will be used for the risk assessment.

The plan includes explanations of how data analyses will distinguish among hypotheses, an explicit expression of the approach to be used, and justifications for the elimination of some hypotheses and selection of others. It includes the measures selected, analytical methods planned, and the nature of the risk characterization options and considerations that will be generated (e.g., quotients, narrative discussion, stressor-response curve with probabilities). An analysis plan is enhanced if it contains explicit statements for how measures were selected, what they are intended to evaluate, and which analyses they support. During analysis planning, uncertainties associated with selected measures and analyses are articulated and, where possible, plans for addressing them are made.

3.5.2. Relating Analysis Plans to Decisions

The analysis plan is a risk manager-risk assessor checkpoint and an appropriate time for technical review. Discussions between the risk assessors and risk managers can help ensure that the analyses will provide the type and extent of information that the manager can use for decisionmaking. These discussions may also identify what can and cannot be done based on the preliminary evaluation of problem formulation, including which relationships to portray for the risk management decision. A reiteration of the planning discussion is important to ensure that the appropriate balance among the requirements for the decision, data availability, and resource constraints is established for the risk assessment.

The elements of an analysis plan share significant similarities with the data quality objectives (DQO) process (see text note 3–17), which emphasizes identifying the problem by establishing study boundaries and determining necessary data quality, quantity, and applicability to the problem being evaluated. The DQO guidance is a valuable reference for risk assessors (U.S. EPA, 1994d).

The most important difference between problem formulation and DQO is the presence of a decision rule that defines a benchmark for a management decision before the risk assessment is completed. The decision rule step specifies the statistical parameter that characterizes the population, specifies the action level for the study, and combines outputs from the previous DQO steps into an "if * * * then" decision rule that defines conditions under which the decision maker will choose alternative options. This approach provides the basis for establishing null and alternative hypotheses appropriate for statistical testing for significance. While this approach is appropriate for some risk assessments, many risk assessments are not based on benchmark decisions. Presentation of stressor-response curves with uncertainty bounds will be more appropriate than statistical testing of decision criteria where risk managers must evaluate the range of stressor effects to which they compare a range of possible management options.

The analysis plan is the final synthesis before the risk assessment proceeds. It summarizes what has been done during problem formulation, shows how the plan relates to management decisions that must be made, and indicates how data and analyses will be used to estimate risks. When it is determined that the problem is clearly defined and there are enough data to proceed, analysis begins.

4. Analysis Phase

The analysis phase consists of the technical evaluation of data to reach conclusions about ecological exposure and the relationships between the stressor and ecological effects. During analysis, risk assessors use measures of exposure, effects, and ecosystem and receptor attributes to evaluate questions and issues that were identified in problem formulation. The products of analysis are summary profiles that describe exposure and the stressor-response relationship. When combined, these profiles provide the basis for reaching conclusions about risk during the risk characterization phase.

The conceptual model and analysis plan developed during problem formulation provide the basis for the analysis phase. By the start of analysis, the assessor should know which stressors and ecological effects are the focus of investigation and whether secondary exposures or effects will be considered. In the analysis plan, the assessor identified the information needed to perform the analysis phase. By the start of analysis, these data should be available (text note 4–1).

The analysis phase is composed of two principal activities, the characterization of exposure and characterization of ecological effects (figure 4–1). Both activities begin by evaluating data (i.e., the measures of exposure, ecosystem and receptor characteristics, and effects) in terms of their scientific credibility and relevance to the assessment endpoint and conceptual model (discussed in section 4.1). In exposure characterization (section 4.2), these data are then analyzed to describe the source, the distribution of the stressor in the environment, and the contact or co-occurrence of the stressor with ecological receptors. In ecological effects characterization (section 4.3), data are analyzed to describe the relationship between the stressor and response and to evaluate the evidence that exposure to the stressor causes the response (i.e., stressor-response analyses). In many cases, extrapolation will be necessary to link the measures of effect with the assessment endpoint.

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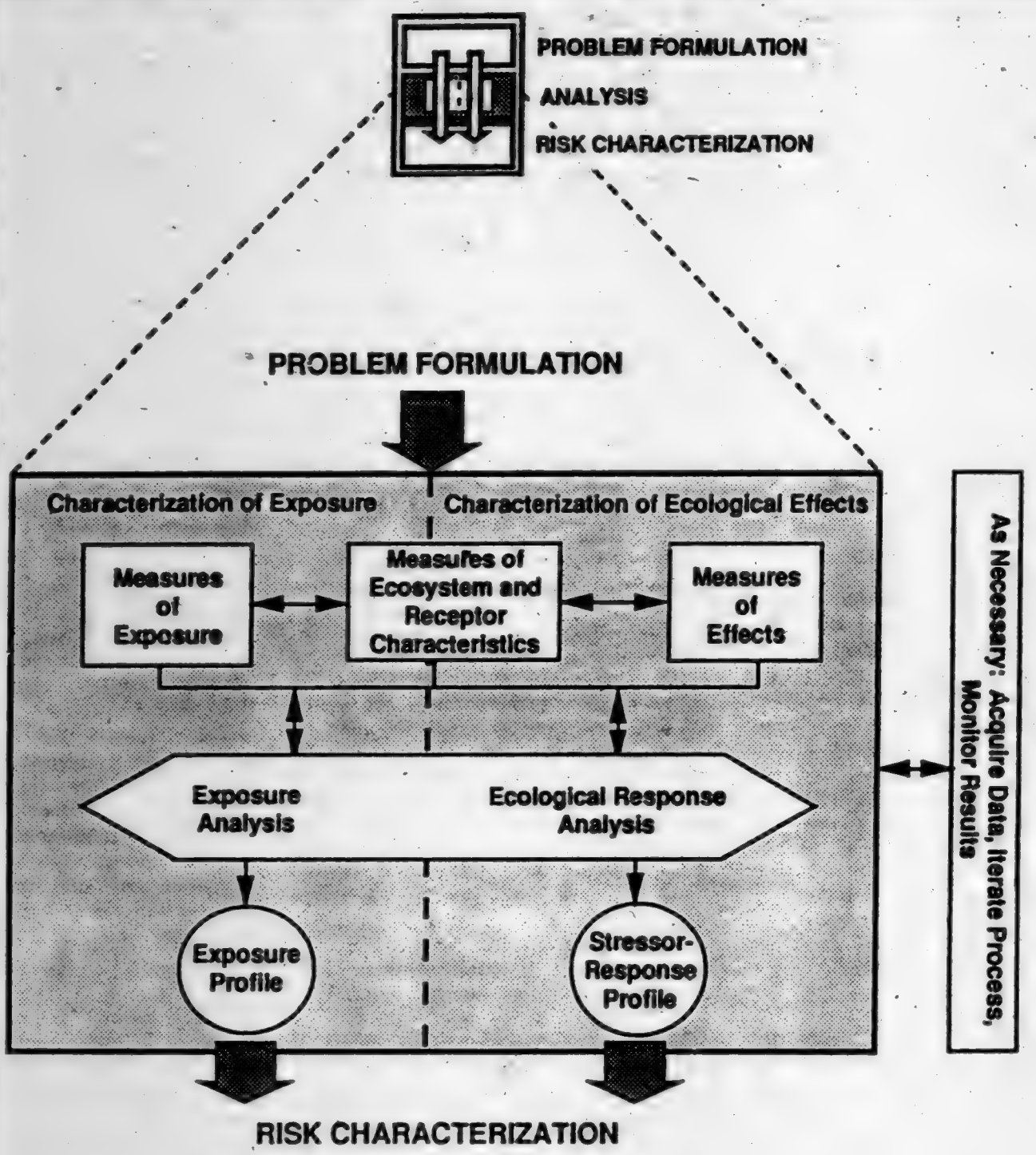

Figure 4-1. Analysis phase.

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Conclusions about exposure and the relationship between the stressor and response are summarized in profiles. The exposure and stressor-response profiles (sections 4.2.2 and 4.3.2, respectively) provide the opportunity to review what has been learned during the analysis phase and summarize this information in the most useful format for risk characterization. Depending on the risk assessment, these profiles may take the form of a written document or modules of a larger process model. Alternatively, documentation may be deferred until risk characterization. In any case, the purpose of these profiles is to ensure that the information needed for risk characterization has been collected and evaluated.

This process is intended to be flexible, and interaction between the ecological effects characterization and exposure characterization is recommended. When secondary stressors and effects are of concern, exposure and effects analyses are conducted iteratively for different ecological entities, and the analyses can become so intertwined that they are difficult to differentiate. The bottomland hardwoods example (Appendix D) illustrates this type of assessment. This assessment examined potential changes in the plant and animal communities under different flooding scenarios. The stressor-response and exposure analyses were combined within the FORFLO model for primary effects on the plant community and within the Habitat Suitability Index for secondary effects on the animal community.

In addition, the distinction between the analysis phase and risk estimation can become blurred. For example, the model results developed for the bottomland hardwoods example were used directly in risk characterization.

The nature of the stressor (that is, whether it is chemical, physical, or biological) will influence the types of analyses conducted and the details of implementation. Thus, the results of the analysis phase may range from highly quantitative to qualitative, depending on the stressor and the scope of the assessment. The estimation of exposure to chemicals emphasizes contact and uptake into the organism, and the estimation of effects often entails extrapolation from test organisms to the organism of interest. For physical stressors, the initial disturbance may be most closely related to the assessment endpoint (e.g., change of wetland to upland). In many cases, however, secondary effects (e.g., effects on wildlife that use the wetland) are the principal concern. The point of view taken during the analysis phase will depend on the assessment endpoints identified during problem formulation. Because adverse effects can occur even if receptors do not physically contact disturbed habitat, exposure analyses may emphasize co-occurrence with physical stressors rather than contact. For biological stressors, exposure analysis evaluates entry, dispersal, survival, and reproduction (Orr et al., 1993). Because biological stressors can reproduce, interact with other organisms, and evolve over time, exposure and effects cannot be quantified with confidence. Accordingly, exposure and effects are often assessed qualitatively by eliciting expert opinion (Simberloff and Alexander, 1994).

4.1. Evaluating Data and Models for Analysis

In problem formulation, the assessor identifies the information needed to perform the analysis phase and plans for collecting new data. The first step of the analysis phase is the critical evaluation of data and models to ensure that they can support the risk assessment. The sources and evaluation of data and models are discussed in sections 4.1.1 and 4.1.2, respectively. The evaluation of uncertainty, an important consideration when evaluating data and also throughout the analysis phase, is discussed in section 4.1.3.

4.1.1. Strengths and Limitations of Different Types of Data

The analysis phase relies on the measures identified in the analysis plan; these may come from laboratory or field studies or may be produced as output from a model. Data may have been developed for a specific risk assessment or for another purpose. A strategy that builds on the strengths of each type of data can improve confidence in the conclusions of a risk assessment.

Both laboratory and field studies (including field experiments and observational studies) can provide useful data for risk assessment. Because conditions can be controlled in laboratory studies, responses can be less variable and smaller differences easier to detect. However, the controls may limit the range of responses (for example, animals cannot seek alternate food sources), so they may not reflect responses in the environment. Field surveys are usually more representative of both exposures and effects (including secondary effects) found in natural systems than are estimates generated from laboratory studies or theoretical models. However, because conditions are not controlled, variability may be higher and it may be difficult to detect differences. Field studies are most useful for linking stressors with effects when stressor and effect levels are measured concurrently. In addition, the presence of confounding stressors can make it difficult to attribute observed effects to specific stressors. Preferred field studies use designs that minimize effects of potentially confounding factors. Intermediate between laboratory and field are studies that use environmental media collected from the field to conduct studies of response in the laboratory. Such studies may improve the power to detect differences and may be designed to provide evidence of causality.

Most data will be reported as measurements for single variables such as a chemical concentration or the number of dead organisms. In some cases, however, variables are combined into indices, and the index values are reported. Several indices are used to evaluate effects, for example, the rapid bioassessment protocols (U.S. EPA, 1989a) and the Index of Biotic Integrity, or IBI (Karr, 1981; Karr et al., 1986). These have several advantages (Barbour et al., 1995), including the ability to:

- Provide an overall indication of biological condition by incorporating many attributes of system structure and function, from individual to ecosystem levels.
- Evaluate responses from a broad range of anthropogenic stressors.
- Minimize the limitations of individual metrics for detecting specific types of responses.

Although indices are very useful, they have several drawbacks, many of which are associated with combining heterogeneous variables. For example, the final value may depend strongly on the function used to combine variables. Some indices (e.g., the IBI) combine only measures of effects. Differential sensitivity or other factors may make it difficult to attribute causality when many response variables are combined. Such indices may need to be separated into their components to investigate causality (Suter, 1993b; Ott, 1978). Interpretation becomes even more difficult when an index combines measures of exposure and effects because double-counting may occur or changes in one variable can mask changes in another. Exposure and effects measures may need to be separated in order to make appropriate conclusions. For these reasons, professional judgment plays a critical role in developing and applying indices.

Experience from similar situations is also an important data source that is particularly useful when predicting effects of stressors that have not yet

been released. For example, lessons learned from past experiences with related organisms are often critical in trying to predict whether an organism will survive, reproduce, and disperse in a new environment. Another example is the evaluation of toxicity of new chemicals through the use of structure-activity relationships, or SARs (Auer et al., 1994; Clements and Nabholz, 1994). The simplest application of SARs is to identify a suitable analog for which data are available to estimate the toxicity of the compound for which data are lacking. More advanced applications involve the use of quantitative structure-activity relationships (QSARs). QSARs describe the relationships between chemical structures and specific biological effects and are derived using information on sets of related chemicals (Lipnick, 1995; Cronin and Dearden, 1995). The use of analogous data without knowledge of the underlying processes may substantially increase the uncertainty in the risk assessment (e.g., Bradbury, 1994); however, these data may be the only option available.

While models are often developed and used as part of the risk assessment, sometimes the risk assessor relies on output of a previously developed model as input to the risk assessment. Models are particularly useful when measurements cannot be taken, for example when the assessment is predicting the effects of a chemical yet to be manufactured. Models can also provide estimates for times or locations that are impractical to measure and provide a basis for extrapolating beyond the range of observation. Starfield and Bleloch (1991) caution that "the quality of the model does not depend on how realistic it is, but on how well it performs in relation to the purpose for which it was built." Thus, the assessor must review the questions that need to be answered and then ensure that a model can answer those questions. Because models are simplifications of reality, they may not include important processes for a particular system and may not reflect every condition in the real world. In addition, a model's output is only as good as the quality of its input variables, so critical evaluation of input data is important, as is comparing model outputs with measurements in the system of interest whenever possible.

Data and models for risk assessment are often developed in a tiered fashion (also see text note 1–3). For example, simple models that err on the side of conservatism may be used first, followed by more elaborate models that provide more realistic estimates. Effects data may also be collected by using a tiered approach. Short-term tests designed to evaluate effects such as lethality and immobility may be conducted first. If the chemical exhibits high toxicity or a preliminary characterization indicates a risk, then more expensive, longer-term tests that measure sublethal effects such as changes to growth and reproduction can be conducted. Later tiers may employ multispecies tests or field experiments. It is important to evaluate tiered data in light of the decision they are intended to support; data collected for early tiers may not be able to support more sophisticated needs.

4.1.2. Evaluating Measurement or Modeling Studies

Much of the information used in the analysis phase is available through published or unpublished studies that describe the purpose of the study, the methods used to collect data, and the results. Evaluating the utility of these studies relies on careful comparison of the objectives of the studies with the objectives of the risk assessment. In addition, study methods are examined to ensure that the intended objectives were met and that the data are of sufficient quality to support the risk assessment. Confidence in the information and the implications of using different studies should be described during risk characterization, when the overall confidence in the assessment is discussed. In addition, the risk assessor should identify areas where existing data do not meet risk assessment needs. In these cases, we recommend collecting new data.

EPA is in the process of adopting the American Society for Quality Control's E–4 guidelines for assuring environmental data quality throughout the Agency (ASQC, 1994) (text note 4–2). These guidelines describe procedures for collecting new data and provide a valuable resource for evaluating existing studies. (Readers are also referred to Smith and Shugart, 1994; U.S. EPA, 1994f; and U.S. EPA, 1990, for more information on evaluating data and models.)

A study's documentation directly influences the ability to evaluate its utility for risk assessment. Studies should contain sufficient information so that results can be reproduced, or at least so the details of the author's work can be accessed and evaluated. An additional advantage is the ability to access findings in their entirety; this provides the opportunity to conduct additional analyses of the data, if needed. For models, a number of factors increase the accessibility of methods and results. These begin with model code and documentation availability. Reports describing model results should include all important equations, tables of all parameter values, a description of any parameter estimation techniques, and tables or graphs of results.

Papers or reports describing studies may not provide all of the information needed to evaluate a study's utility for risk assessment. Assessors are encouraged to communicate with the principal investigator or other study participants to gain information on study plans and their implementation. Questions useful for evaluating studies are shown in text note 4–3.

4.1.2.1. Evaluating the Purpose and Scope of the Study

The assessor must often evaluate the utility of a study that was designed for a purpose other than risk assessment. In these cases, it is important that the objectives and scope of the original study be examined to evaluate their compatibility with the objectives and needs of the current risk assessment.

An examination of objectives can identify important uncertainties and ensure that the information is used appropriately in the assessment. An example is the evaluation of studies that measure condition (e.g., stream surveys, population surveys). While the measurements used to evaluate condition may be the same as the effects measures identified in problem formulation, to support a causal argument, effects measures must be linked with stressors. In the best case, this means that the stressor should be measured at the same time and place as the effect.

Similarly, a model may have been developed for purposes other than risk assessment. The model description should include the intended application, theoretical framework, underlying assumptions, and limiting conditions. This information can help assessors identify important limitations in its application for risk assessment. For example, a model developed to evaluate chemical transport in the water column alone may have limited utility for a risk assessment of a chemical that partitions readily into sediments.

The variables and conditions examined by studies should also be compared with those variables and conditions identified during problem formulation. In addition, the range of variability explored in the study should be compared with the range of variability of interest for the risk assessment. For example, a study that examines habitat needs of an animal during the winter may miss important breeding-season requirements. In

general, studies that minimize the amount of extrapolation needed are preferred. These are the studies that are designed to represent:

- The measures identified in the analysis plan (i.e., measures of exposure, effects, and ecosystem and receptor characteristics).
- The time frame of interest, considering seasonality and intermittent events.
- The ecosystem and location of interest.
- The environmental conditions of interest.
- The exposure route of interest.

4.1.2.2. Evaluating the Design and Implementation of the Study

The design and implementation of the study are evaluated to ensure that the study objectives were met and that the information is of sufficient quality to support the purposes of the risk assessment. The study design provides insight into the sources and magnitude of uncertainty associated with the results (see section 4.1.3 for further discussion of uncertainty). Among the most important design issues for studies of effects is whether a study had sufficient power to detect important differences or changes. Because this information is rarely reported (Peterman, 1990), the assessor may need to calculate the magnitude of an effect that could be detected under the study conditions (Rotenberry and Wiens, 1985).

Risk assessors should evaluate evidence that the study was conducted properly. For laboratory studies, this may mean determining whether test conditions were properly controlled and control responses were within acceptable bounds. For field studies, issues include the identification and control of potentially confounding variables and the careful selection of reference sites. For models, issues include the program's structure and logic and the correct specification of algorithms in the model code (U.S. EPA, 1994f).

Study evaluation is easier if a standard method or standard quality assurance/quality control (QA/QC) protocols are available and followed by the study. However, the assessor still needs to consider whether the precision and accuracy goals identified in the standard method were achieved and whether these goals are appropriate for the purposes of the risk assessment. For example, detection limits identified for one environmental matrix may not be achievable for another and may be higher than concentrations of interest for the risk assessment. Study results can still be useful even if a standard method was not used. However, it does place an additional burden on both the authors and the assessors to provide and evaluate evidence that the study was conducted properly.

4.1.3. Evaluating Uncertainty

Uncertainty evaluation is an ongoing theme throughout the analysis phase. The objective is to describe, and, where possible, quantify what is known and not known about exposure and effects in the system of interest. Uncertainty analyses increase credibility by explicitly describing the magnitude and direction of uncertainties, and they provide the basis for efficient data collection of or application of refined methods.

U.S. EPA (1992d) discusses sources of uncertainty that arise during the evaluation of information and conceptual model development (combined under the subject of scenario uncertainty), when evaluating the value of a parameter (e.g., an environmental measurement or the results of a toxicity test), and during the development and application of models. Uncertainty in conceptual model development is discussed in section 3.4.3. Many of the sources of uncertainty discussed by EPA (U.S. EPA, 1992d) are relevant to characterizing both exposure and ecological effects; these sources and example strategies for the analysis phase are shown in table 4–1.

TABLE 4–1.—UNCERTAINTY EVALUATION IN THE ANALYSIS PHASE

Source of uncertainty	Example analysis phase strategies	Specific example
Unclear communication	Contact principal investigator or other study participants if objectives and methods of literature studies are unclear.	Clarify whether the study was designed to characterize local populations or regional populations.
	Document decisions made during the course of the assessment.	Discuss rationale for selecting the critical toxicity study.
Descriptive errors	Verify that data sources followed appropriate QA/QC procedures.	Double-check calculations and data entry.
Variability	Describe heterogeneity using point estimates (e.g., central tendency and high end) or by constructing probability or frequency distributions.	Display differences in species sensitivity using a cumulative distribution function.
	Differentiate from uncertainty due to lack of knowledge.	
Data gaps	Describe approaches used for bridging gaps and their rationales.	Discuss rationale for using a factor of 10 to extrapolate between a LOAEL and a NOAEL.
	Differentiate science-based judgments from policy-based judgments.	
Uncertainty about a quantity's true value	Use standard statistical methods to construct probability distributions or point estimates (e.g., confidence limits).	Present the upper confidence limit on the arithmetic mean soil concentration, in addition to the best estimate of the arithmetic mean.
	Evaluate power of designed experiments to detect differences.	Ground-truth remote sensing data.
	Consider taking additional data if sampling error is too large.	
	Verify location of samples or other spatial features	
Model structure uncertainty (process models)	Discuss key aggregations and model simplifications.	Discuss combining different species into a group based on similar feeding habits.
	Compare model predictions with data collected in the system of interest.	

TABLE 4–1.—UNCERTAINTY EVALUATION IN THE ANALYSIS PHASE—Continued

Source of uncertainty	Example analysis phase strategies	Specific example
Uncertainty about a model's form (empirical models).	Evaluate whether alternative models should be combined formally or treated separately. Compare model predictions with data collected in the system of interest.	Present results obtained using alternative models. Compare results of a plant uptake model with data collected in the field.

Sources of uncertainty that are factors primarily when evaluating information include unclear communication of the information to the assessor, unclear communication about how the assessor handled the information, and errors in the information itself (descriptive errors). These sources are usually characterized by critically examining sources of information and documenting the rationales for the decisions made when handling it. The discussion should allow the reader to make an independent judgment about the validity of the decisions reached by the assessor.

Sources of uncertainty that arise primarily when estimating the value of a parameter include variability, uncertainty about a quantity's true value, and data gaps. The term variability is used here to describe the true heterogeneity in a characteristic influencing exposure or effects. Examples include the variability in soil organic carbon, seasonal differences in animal diets, or differences in chemical sensitivity among different species. This heterogeneity is usually described during uncertainty analysis, although heterogeneity may not reflect a lack of knowledge and cannot usually be reduced by further measurement. Variability can be described by presenting a distribution or specific percentiles from it (e.g., mean and 95th percentile).

Uncertainty about a quantity's true value may include uncertainty about its magnitude, location, or time of occurrence. This uncertainty can usually be reduced by taking additional measurements. Uncertainty about a quantity's true magnitude is usually described by sampling error (or variance in experiments) or measurement error. When the quantity of interest is biological response. sampling error can greatly influence the ability of the study to detect effects. Properly designed studies will specify sample sizes that are sufficiently large to detect important signals. Unfortunately, many studies have sample sizes that are too small to detect anything but gross changes (Smith and Shugart, 1994; Peterman, 1990). The discussion should highlight situations where the power to detect difference is low. Meta-analysis has been suggested as a way to combine results from different studies to improve the ability to detect effects (Laird and Mosteller, 1990; Petitti, 1994). However, these approaches have been applied primarily in the arena of human epidemiology and are still controversial (Mann, 1990).

Interest in quantifying spatial uncertainty has increased with the increasing use of geographic information systems. Strategies include verifying the locations of remotely sensed features, ensuring that the spatial resolution of data or a method is commensurate with the needs of the assessment, and using methods to describe and use the spatial structure of data (e.g., Cressie, 1993).

Nearly every assessment encounters situations where data are unavailable or where information is available on parameters that are different from those of interest for the assessment. Examples include using laboratory animal data to estimate a wild animal's response or using a bioaccumulation measurement from an ecosystem other than the one interest. These data gaps are usually bridged based on a combination of scientific data or analyses, scientific judgement, and policy judgement. For example, in deriving an ambient water quality criterion (text note 3–16), data and analyses are used to construct distributions of species sensitivity for a particular chemical. Scientific judgment is used to infer that species selected for testing will adequately represent the range of sensitivity of species in the environment. Policy judgment is used to define the extent to which individual species should be protected (e.g., 90 vs 95 percent of the species). It is important to differentiate among these elements when key assumptions and the approach used are documented.

In some circumstances scientists may disagree on the best way to bridge data gaps. This lack of consensus can increase uncertainty. Confidence can be increased through consensus building techniques such as peer reviews, workshops, and other methods to elicit expert opinion. Data gaps can often be filled by completing additional studies on the unknown parameter. Opportunities for reducing this source of uncertainty should be noted and carried through to risk characterization. Data gaps that preclude the analysis of exposure or ecological effects should also be noted and discussed in risk characterization.

An important objective of characterizing uncertainty in the analysis phase is to distinguish variability from uncertainties arising from lack of knowledge (e.g., uncertainty about a quantity's true value) (U.S. EPA, 1995c). This distinction facilitates the interpretation and communication of results. For example, in their food web models of herons and mink, MacIntosh et al. (1994) separated variability expected among feeding habits of individual animals from the uncertainty in the mean concentration of chemical in prey species. In this way, the assessors could place error bounds on the distribution of exposure among the animals using the site and estimate the proportion of the animal population that might exceed a toxicity threshold.

Sources of uncertainty that arise primarily during the development and application of models include the structure of process models and the description of the relationship between two or more variables in empirical models. Process model description should include key assumptions, simplifications, and aggregations of variables (see text note 4–4). Empirical model descriptions should include the rationale for selection, and statistics on model performance (e.g., goodness of fit). Uncertainty in process or empirical models can be quantitively evaluated by comparing model results to measurements taken in the system of interest or by comparing the results obtained using different model alternatives.

Methods for analyzing and describing uncertainty can range from simple to complex. The calculation of one or more point estimates is one of the most common approaches to presenting analysis results; point estimates that reflect different aspects of uncertainty can have great value if appropriately developed and communicated. Classical statistical methods (e.g., confidence limits, percentiles) can be readily applied to describing uncertainty in parameters. When a modeling approach

is used, sensitivity analysis can be used to evaluate how model output changes with changes in input variables, and uncertainty propagation can be analyzed to examine how uncertainty in individual parameters can affect the overall uncertainty of the assessment. The availability of software for Monte-Carlo analysis has greatly increased the use of probabilistic methods; readers are encouraged to follow best practices that have been suggested (e.g., Burmaster and Anderson, 1994; Haimes et al. 1994). Other methods (e.g., fuzzy mathematics, Bayesian methodologies) are available, but have not yet been extensively applied to ecological risk assessment (Smith and Shugart, 1994). These guidelines do not endorse the use of any one method over others and note that the poor execution of any method can obscure rather than clarify the impact of uncertainty on an assessment's results. No matter what technique is used, the sources of uncertainty discussed above should be addressed.

4.2. Characterization of Exposure

Exposure characterization describes the contact or co-occurrence of stressors with ecological receptors. The characterization is based on measures of exposure and of ecosystem and receptor characteristics (the evaluation of this information is discussed in section 4.1). These measures are used to analyze stressor sources, their distribution in the environment, and the extent and pattern of contact or co-occurrence (discussed in section 4.2.1). The objective is to produce a summary exposure profile (section 4.2.2) that identifies the receptor (i.e., the exposed ecological entity), describes the course a stressor takes from the source to the receptor (i.e., the exposure pathway), and describes the intensity and spatial and temporal extent of co-occurrence or contact. The profile also describes the impact of variability and uncertainty on exposure estimates and reaches a conclusion about the likelihood that exposure will occur.

The exposure profile is combined with an effects profile (discussed in section 4.3.2) to estimate risks. For the results to be useful, they must be compatible with the stressor-response relationship generated in the effects characterization.

4.2.1. Exposure Analyses

Exposure is analyzed by describing the source and releases, the distribution of the stressor in the environment, and the extent and pattern of contact or co-occurrence. The order of discussion of these topics is not necessarily the order in which they are evaluated in a particular assessment. For example, the assessor may start with information about tissue residues, and attempt to link these residues with a source.

4.2.1.1. Describe the Source

A source description identifies where the stressor originates, describes what stressors are generated, and considers other sources of the stressor. Exposure analyses may start with the source when it is known, but some analyses may begin with known exposures and attempt to link them to sources, while other analyses may start with known stressors and attempt to identify sources and quantify contact. The source is the first component of the exposure pathway and significantly influences where and when stressors eventually will be found. In addition, many management alternatives focus on modifying the source. Text note 4–5 provides some useful questions.

A source can be defined in several ways—as the place where the stressor is released (e.g., a smoke stack, historically contaminated sediments) or the management practice or action (e.g., dredging) that produces stressors. In some assessments, the original source no longer exists and the source is defined as the current origin of the stressors. For example, the source may be defined as contaminated sediments because the industrial plant that produced the contaminants no longer operates.

In addition to identifying the source, the assessor describes the generation of stressors in terms of intensity, timing, and location. The location of the source and the environmental medium that first receives stressors are two attributes that deserve particular attention. In addition, the source characterization should consider whether other constituents emitted by the source influence transport, transformation, or bioavailability of the stressor of interest. For example, the presence of chloride in the feedstock of a coal-fired power plant influences whether mercury is emitted in divalent (e.g., as mercuric chloride) or elemental form (Meij, 1991). In the best case, stressor generation is measured or modeled quantitatively; however, sometimes it can only be qualitatively described.

Many stressors have natural counterparts or multiple sources, and the characterization of these other sources can be an important component of the analysis phase. For example, many chemicals occur naturally (e.g., most metals), are generally widespread due to other sources (e.g., polycyclic aromatic hydrocarbons in urban ecosystems), or may have significant sources outside the boundaries of the current assessment (e.g., atmospheric nitrogen deposited in Chesapeake Bay). Many physical stressors also have natural counterparts. For example, construction activities may add fine sediments to a stream in addition to those from a naturally undercut bank. In addition, human activities may change the magnitude or frequency of natural disturbance cycles. For example, development may decrease the frequency but increase the severity of fires or may increase the frequency and severity of flooding in a watershed.

The way multiple sources are evaluated during the analysis phase depends on the objectives of the assessment articulated during problem formulation. Options include (in order of increasing complexity):

- Focus only on the source under evaluation and calculate incremental risks attributable to that source (common for assessments initiated with an identified source or stressor).
- Consider all sources of a stressor and calculate total risks attributable to that stressor. Relative source attribution can be accomplished as a separate step (common for assessments initiated with an observed effect or an identified stressor).
- Consider all stressors influencing an assessment endpoint and calculate cumulative risks to that endpoint (common for assessments initiated because of concern for an ecological value).

Source characterization can be particularly important for new biological stressors, since many of the strategies for reducing risks focus on preventing entry in the first place. Once the source is identified, the likelihood of entry may be characterized qualitatively. For example, in their analysis of risks from importation of Chilean logs, the assessment team concluded that the beetle *Hylurgus ligniperda* had a high potential for entry into the United States. They based this conclusion on the fact that they are attracted to freshly cut logs and tend to burrow under the bark and thus would be protected during transport (USDA, 1993).

The description of the source can set the stage for the second objective of exposure analysis, which is describing the distribution of the stressor in the environment.

4.2.1.2. Describe the Distribution of the Stressor or Disturbed Environment

The second objective of exposure analyses is to describe the spatial and temporal distribution of the stressor in

the environment. For physical stressors that directly alter or eliminate portions of the environment, the assessor describes the temporal and spatial distribution of the disturbed environment. Because exposure occurs where receptors co-occur with or contact stressors in the environment, characterizing the spatial and temporal distribution of a stressor is a necessary precursor to estimating exposure. The stressor's distribution in the environment is described by evaluating the pathways that stressors take from the source as well as the formation and subsequent distribution of secondary stressors.

Evaluating Transport Pathways. There are many pathways by which stressors can be transported in the environment (see text note 4–7). An evaluation of transport pathways can help ensure that measurements are taken in the appropriate media and locations and that models include the most important processes.

For chemical stressors, the evaluation of pathways usually begins by determining into which media a chemical will partition. Key considerations include physicochemical properties such as solubility and vapor pressure. For example, lipophilic chemicals tend to be found in environmental compartments with higher proportions of organic carbon, such as soils, sediments, and biota. From there, the evaluation may examine the transport of the contaminated medium. Because constituents of chemical mixtures may have different properties, it is important to consider how the composition of a mixture may change over time or as it moves through the environment. Guidance on evaluating the fate and transport of chemicals is beyond the scope of these guidelines; readers are referred to the exposure assessment guidelines (U.S. EPA, 1992d) for additional information.

The attributes of physical stressors may also influence where the stressors will go. For example, the size of silt particles determines where they will eventually deposit in a stream. Physical stressors that eliminate ecosystems or portions of them (e.g., logging activity or the construction of dams or parking lots) may require no modeling of pathways—the wetland is filled, the fish are harvested, or the valley is flooded. For these direct disturbances, the challenge is usually to evaluate the formation of secondary stressors and the effects associated with the disturbance.

The dispersion of biological stressors has been described in two ways, as diffusion and jump-dispersal (Simberloff and Alexander, 1994). Diffusion involves a gradual spread from the establishment site and is a function primarily of reproductive rates and motility. The other movement pattern, jump-dispersal, involves erratic spreads over periods of time, usually by means of a vector. The gypsy moth and zebra mussel have spread this way; the gypsy moth via egg masses on vehicles and the zebra mussel via boat ballast water. Biological stressors can use both diffusion and jump-dispersal strategies, and often one or more mechanisms are important. This makes dispersal rates very difficult to predict. Key considerations include the availability of vectors, whether the organism has natural attributes that enhance dispersal (e.g., ability to fly, adhere to objects, disperse reproductive units), and the habitat or host needs of the organism.

For biological stressors, assessors must consider the additional factors of survival and reproduction. There is a wide range of strategies organisms use to survive in adverse conditions, for example, fungi form resting stages such as sclerotia and chlamydospores and some amphibians became dormant during drought. The survival of some organisms can be measured to some extent under laboratory conditions. However, it may be impossible to determine how long some resting stages (e.g., spores) can survive under adverse conditions; many can remain viable for years. Similarly, reproductive rates may vary substantially, depending on specific environmental conditions. Therefore, while life-history data such as temperature and substrate preferences, important predators, competitors or diseases, habitat needs, and reproductive rates are of great value, they must be interpreted with caution.

Ecosystem characteristics influence the transport of all types of stressors. The challenge is to determine the particular aspects of the ecosystem that are most important. In some cases, ecosystem characteristics that influence distribution are known. For example, fine sediments tend to accumulate in areas of low energy in streams such as pools and backwaters. In other cases, much more professional judgment is needed. For example, when evaluating the likelihood that an introduced organism will become established, it is useful to know whether the ecosystem is generally similar to or different from the one where the biological stressor originated. In this case, professional judgment is needed to determine which characteristics of the current and original ecosystems should be compared.

Evaluating Secondary Stressors. The creation of secondary stressors can greatly alter conclusions about risk. Secondary stressors can be formed through biotic or abiotic transformation processes and may be of greater or lesser concern than the primary stressor. Evaluating the formation of secondary stressors is usually done as part of exposure characterization; however, coordination with the ecological effects characterization is important to ensure that all potentially important secondary stressors are evaluated.

For chemicals, the evaluation of secondary stressors usually focuses on metabolites or degradation products or chemicals formed through abiotic processes. For example, microbial action increases the bioaccumulation of mercury by transforming it from inorganic form to organic forms. Many azo dyes are not toxic because of their large molecular size but, in an anaerobic environment, the polymer is hydrolyzed into more toxic water-soluble units. In addition, secondary stressors can be formed through ecosystem processes. For example, nutrient inputs into an estuary can decrease dissolved oxygen concentrations because they increase primary production and subsequent decomposition. While the possibility and rates of transformation can be investigated in the laboratory, rates in the field may differ substantially, and some processes may be difficult or impossible to replicate in a laboratory. When evaluating field information, though, it may be difficult to distinguish between transformation processes (e.g., degradation of oil constituents by microorganisms) and transport processes (e.g., loss of oil constituents through volatilization).

Disturbances can also generate secondary stressors, and identifying the specific consequences that will affect the assessment endpoint can be a difficult task. For example, the removal of riparian vegetation can generate many secondary stressors, including increased nutrients, stream temperature, sedimentation, and altered stream flow. However, it may be the resulting increase in stream temperature that is the primary cause of adult salmon mortality in a particular stream.

The distribution of stressors in the environment can be described using measurements, models, or a combination of the two. If stressors have already been released, direct measurements of environmental media or a combination of modeling and measurement is preferred. However, a modeling approach may be necessary if the assessment is intended to predict future scenarios or if measurements are

not possible or practicable. Considerations for evaluating data collection and modeling studies are discussed in section 4.1. For chemical stressors, we also refer readers to the exposure assessment guidelines (U.S. EPA, 1992d). For biological stressors, the distribution in the environment is difficult to predict quantitatively. If measurements in the environment cannot be taken, distribution can be evaluated qualitatively by considering the potential for transport, survival, and reproduction (see above).

By the end of this step, the environmental distribution of the stressor or the disturbed environment should be described. This description can be an important precursor to the next objective of exposure analysis—estimating the contact or co-occurrence of the stressor with ecological entities. In cases where the extent of contact is known, describing the environmental distribution of the stressor can help identify potential sources, and ensure that all important exposures have been addressed. In addition, by identifying the pathways a stressor takes from a source, the second component of an exposure pathway is described.

4.2.1.3. Describe Contact or Co-occurrence

The third objective of the exposure analysis is to describe the extent and pattern of co-occurrence or contact between a stressor and a receptor (i.e., exposure). The objective of this step is to describe the intensity and temporal and spatial extent of exposure in a form that can be compared with the stressor-response profile generated in the effects assessment. The description of exposure is a critical element of estimating risk—if there is no exposure, there can be no risk. Questions for describing contact or co-occurrence are shown in text note 4–8.

Exposure can be described in terms of co-occurrence of the stressor with receptors, of the actual contact of a stressor with receptors, or of the uptake of a stressor into a receptor. The terms by which exposure is described depend on how the stressor causes adverse effects. Co-occurrence is particularly useful for evaluating stressors that can cause effects without actually contacting ecological receptors. For example, whooping cranes use sandbars in rivers for their nesting areas, and they prefer sandbars with unobstructed views. Manmade obstructions, such as bridges, can interfere with nesting behavior without ever actually contacting the birds. Most stressors, however, must contact receptors to cause an effect. For example, flood waters must contact tree roots before their growth is impaired. Finally, some stressors must not only be contacted, but also must be internally absorbed. For example, a toxicant that causes liver tumors in fish must be absorbed through the gills and reach the target organ to cause the effect.

Co-occurrence is evaluated by comparing the distribution of the stressor with the distribution of the ecological receptor. For example, maps of the stressor may be overlaid with maps of ecological receptors (e.g., the placement of bridges overlaid on maps showing habitat historically used for crane nests). The increased availability of geographic information systems (GIS) has provided new tools for evaluating co-occurrence.

Contact is a function of the amount of a stressor in an environmental medium and activities or behavior that brings receptors into contact with the stressor. For biological stressors, this step relies extensively on professional judgment; contact is often assumed to occur in areas where the two overlap. For chemicals, contact is quantified as the amount of a chemical ingested, inhaled, or in material applied to the skin (i.e., the potential dose). In its simplest form, it is quantified as an environmental concentration, with the assumptions that the chemical is well mixed and that the organism contacts a representative concentration. This approach is commonly used for respired media (e.g., water for aquatic organisms, air for terrestrial organisms). For ingested media (e.g., food, soil), another common approach combines modeled or measured concentrations of the contaminant with assumptions or parameters describing the contact rate (U.S. EPA, 1993c) (see text note 4–9).

Uptake is evaluated by considering the amount of stressor that is internally absorbed into an organism. Uptake is a function of the stressor (e.g., a chemical's form or valence state), the medium (e.g., sorptive properties or presence of solvents), the biological membrane (e.g., integrity, permeability), and the organism (e.g., sickness, active uptake) (Suter et al., 1994). Because of interactions among these four factors, uptake will vary on a situation-specific basis. Uptake is usually assessed by modifying an estimate of contact with a factor indicating the proportion of the stressor that is available for uptake (i.e., the bioavailable fraction) or actually absorbed. Absorption factors and bioavailability measured for the chemical, ecosystem, and-organism of interest are preferred. Internal dose can also be evaluated by using a pharmacokinetic model or by measuring biomarkers or residues in receptors (see text note 4–10). Most stressor-response relationships express the amount of stressor in terms of media concentration or potential dose rather than internal dose; this limits the utility of using estimates of uptake for risk estimation. However, biomarkers and tissue residues can provide valuable confirmatory evidence that exposure has occurred, and tissue residues in prey organisms can be used for estimating risks to their predators.

The characteristics of the ecosystem and receptors must be considered to reach appropriate conclusions about exposure. Abiotic attributes may increase or decrease the amount of a stressor contacted by receptors. For example, the presence of naturally anoxic areas above contaminated sediments in an estuary may reduce the amount of time that bottom-feeding fish spend in contact with the contaminated sediments and thereby reduce exposure to the contamination. Biotic interactions can also influence exposure. For example, competition for high-quality resources may force some organisms to utilize disturbed areas. The interaction between exposure and receptor behavior can influence both the initial and subsequent exposures. For example, some chemicals reduce the prey's ability to escape predators and thereby may increase predator exposure to the chemical as well as the prey's risk of predation. Alternatively, organisms may avoid areas, food, or water with contamination they can detect. While avoidance can reduce exposure to chemicals, it may increase other risks by altering habitat usage or other behavior.

Three dimensions must be considered when estimating exposure: intensity, time, and space. Intensity is the most familiar dimension for chemical and biological stressors and may be expressed as the amount of chemical contacted per day or the number of pathogenic organisms per unit area.

The temporal dimension of exposure has aspects of duration, frequency, and timing. Duration can be expressed as the time over which exposure occurs, exceeds some threshold intensity, or over which intensity is integrated. If exposure occurs as repeated, discrete events of about the same duration (e.g., floods), frequency is the important temporal dimension of exposure. If the repeated events have significant and variable durations, both duration and frequency must be considered. In addition, the timing of exposure, including the order or sequence of events, can be an important factor to describe. For example, in the Northeast, lakes receive high concentrations of hydrogen ions and aluminum during

snow melt; this period also corresponds to the sensitive life stages of some aquatic organisms.

In chemical assessments, the dimensions of intensity and time are often combined by averaging intensity over time. The duration over which intensity is averaged is determined by considering both the ecological effects of concern and the likely pattern of exposure. For example, an assessment of bird kills associated with granular carbofuran focused on short-term exposures because the effect of concern was acute lethality (Houseknecht, 1993). Because toxicological tests are usually conducted using constant exposures, the most realistic comparisons between exposure and effects are made when exposure in the real world does not vary substantially. In these cases, the arithmetic average exposure over the time period of toxicological significance is the appropriate statistic to use (U.S. EPA, 1992d). However, as concentrations or contact rates become more episodic or variable, the arithmetic average may not reflect the toxicologically significant aspect of the exposure pattern. In extreme cases, averaging may not be appropriate at all, and assessors may need to use a toxic dynamic model to assess chronic effects.

Spatial extent is another dimension of exposure. It is most commonly expressed in terms of area (e.g., hectares of filled wetland, square meters that exceed a particular chemical threshold). At larger spatial scales, however, the shape or arrangement of exposure may be an important issue, and area alone may not be the appropriate descriptor of spatial extent for risk assessment. A general solution to the problem of incorporating pattern into ecological assessments has yet to be developed; however, the emerging field of landscape ecology and the increased availability of geographic information systems have greatly expanded the options for analyzing and presenting the spatial dimension of exposure.

This step completes exposure analysis. Exposure should be described in terms of intensity, space, and time, in units that can be combined with the effects assessment. In addition, the assessor should be able to trace the paths of stressors from the source to the receptors, completing the exposure pathway. The results of exposure analysis are summarized in the exposure profile, which is discussed in the next section.

4.2.2. Exposure Profile

The final product of exposure analysis is a summary profile of what has been learned. Depending on the risk assessment, the profile may be a written document, or a module of a larger process model. Alternatively, documentation may be deferred until risk characterization. In any case, the objective is to ensure that the information needed for risk characterization has been collected and evaluated. In addition, compiling the exposure profile provides an opportunity to verify that the important exposure pathways identified in the conceptual model were evaluated.

The exposure profile identifies the receptor and describes the exposure pathways and intensity and spatial and temporal extent of co-occurrence or contact. It also describes the impact of variability and uncertainty on exposure estimates and reaches a conclusion about the likelihood that exposure will occur (text note 4–11).

The profile should describe the relevant exposure pathways. If exposure can occur through many pathways, it may be useful to rank them, perhaps by contribution to total exposure. For example, consider an assessment of risks to grebes feeding on a mercury-contaminated lake. The grebes may be exposed to methyl mercury in fish that originated from historically contaminated sediments. They may also be exposed by drinking lake water, but comparing the two exposure pathways may show that the fish pathway contributes the vast majority of exposure to mercury.

The profile should describe the ecological entity that is exposed and represented by the exposure estimates described below. For example, the exposure profile may focus on the local population of grebes feeding on a specific lake during the summer months.

The assessor should state how each of the three general dimensions of exposure (intensity, time, and space) was treated and why that treatment is necessary or appropriate. Continuing with the grebe example, exposure might be expressed as the daily potential dose averaged over the summer months and over the extent of the lake.

The profile should also describe how variability in receptor attributes or stressor levels can change exposure. For example, variability in receptor attributes of the grebes may be addressed by using data on how the proportion of fish in the diet varies among individuals. If several lakes were the subject of the assessment and individual grebes tended to feed on the same lake throughout the season, variability in stressor levels could be addressed by comparing exposures among the lakes.

Variability can be described by using a distribution or by describing where a point estimate is expected to fall on a distribution. Cumulative-distribution functions (CDFs) and probability-density functions (PDFs) are two common presentation formats; (see Appendix B, figures B1 and B2). Figures 5–4 to 5–6 show examples of cumulative frequency plots of exposure data. The point estimate/descriptor approach is used when there is not enough information to describe a distribution. We recommend using the descriptors discussed in U.S. EPA, 1992d, including central tendency to refer to the mean or median of the distribution, high end to refer to exposure estimates that are expected to fall between the 90th and 99.9th percentile of the exposure distribution, and bounding estimates to refer to those higher than any actual exposure.

The exposure profile should summarize important uncertainties (i.e., lack of knowledge) (see section 4.1.3 for a discussion of the different sources of uncertainty). In particular, the assessor should:

- Identify key assumptions and describe how they were handled.
- Discuss (and quantify if possible) the magnitude of sampling and/or measurement error.
- Identify the most sensitive variables influencing exposure.
- Identify which uncertainties can be reduced through the collection of more data.

Uncertainty about a quantity's true value can be shown by calculating error bounds on a point estimate, as shown in figure 5–2.

All of the above information is synthesized to reach a conclusion about the likelihood that exposure will occur. The exposure profile is one of the products of the analysis phase. It is combined with the stressor-response profile (the product of the ecological effects characterization discussed in the next section) during risk characterization.

4.3. Characterization of Ecological Effects

Characterization of ecological effects describes the effects that are elicited by a stressor, links these effects with the assessment endpoints, and evaluates how the effects change with varying stressor levels. Ecological effects characterization begins by evaluating effects data (discussed generally in section 4.1) to further specify the effects that are elicited, confirm that the effects are consistent with the assessment endpoints, and confirm that the conditions under which they occur are

consistent with the conceptual model. Once the effects of interest are identified, then an ecological response analysis (section 4.3.1) is conducted to evaluate how the magnitude of the effects change with varying stressor levels, evaluate the evidence that the stressor causes the effect, and link the effects with the assessment endpoint. The conclusions of the ecological effects characterization are summarized in a stressor-response profile (section 4.3.2).

4.3.1. Ecological Response Analysis

Ecological response analysis has three primary elements: determining the relationship between stressor levels and ecological effects (section 4.3.1.1), evaluating the plausibility that effects may occur or are occurring as a result of exposure to stressors (section 4.3.1.2), and linking measurable ecological effects with the assessment endpoints when assessment endpoints cannot be directly measured (section 4.3.1.3).

4.3.1.1. Stressor-Response Analysis

Evaluating ecological risks requires an understanding of the relationships between stressor levels and resulting ecological responses. The stressor-response relationships used in a particular assessment depend on the scope and nature of the ecological risk assessment as defined in problem formulation and reflected in the analysis plan. For example, an assessor may need a point estimate of an effect (such as an LC_{50}) to compare with point estimates from other stressors. The shape of the stressor-response curve may be critical for determining the presence or absence of an effects threshold or for evaluating incremental risks, or stressor-response curves may be used as input for ecological effects models. If sufficient data are available, the risk assessor may construct cumulative distribution functions using multiple point estimates of effects. Or the assessor may use process models that already incorporate empirically derived stressor-response relationships (section 4.3.1.3). Some questions for stressor-response analysis are provided in text note 4–12.

This section describes a range of stressor-response approaches available to risk assessors following a theme of variations on the classical stressor-response relationship (e.g., figure 4–2). While quantifying this relationship is encouraged, qualitative stressor-response evaluations are also possible (text note 4–13). In addition, many stressor-response relationships are more complex than the simple curve shown in this figure. Ecological systems frequently show responses to stressors that may involve abrupt shifts to new community or system types (Holling, 1978).

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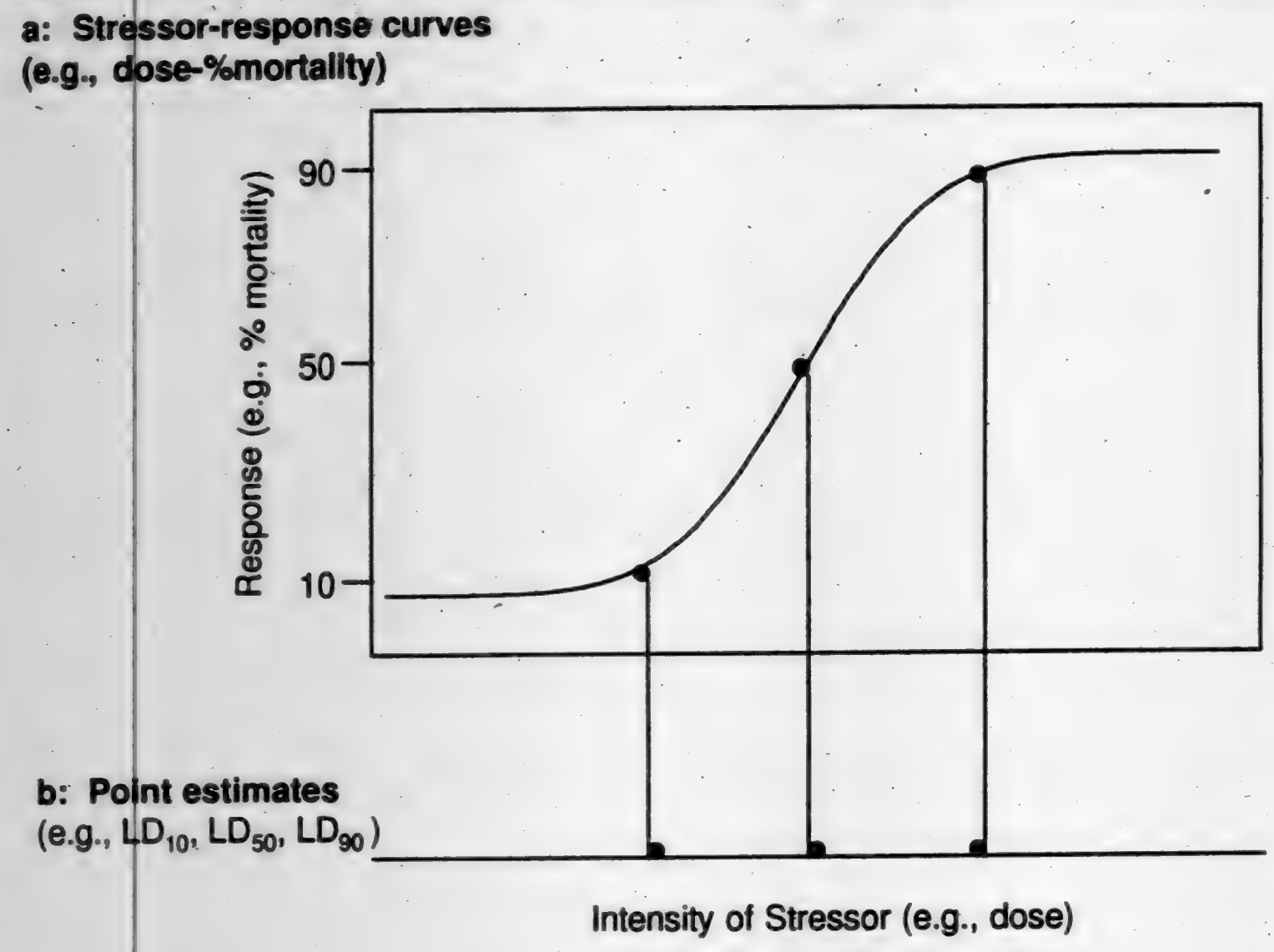

Figure 4-2. A simple example of a stressor-response relationship.

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In simple cases, the response will be one variable (e.g., mortality, incidence of abnormalities), and most quantitative techniques have been developed for univariate analysis. If the response of interest is composed of many individual variables (e.g., species abundances in an aquatic community), multivariate statistical techniques may be useful. These techniques have a long history of use in ecology (see texts by Gauch, 1982; Pielou, 1984; Ludwig and Reynolds, 1988) but have not yet been extensively applied in risk assessment.

Stressor-response relationships can be described using any of the dimensions of exposure (i.e., intensity, time, or space). Intensity is probably the most familiar dimension and is often used for chemicals (e.g., dose, concentration). The duration of exposure is also commonly used for chemical stressor-response relationships; for example, median acute effects levels are always associated with a time parameter (e.g., 24 hr, 48 hr, 96 hr). As noted in text note 4–13, the timing of exposure was the critical dimension in evaluating the relationship between seed germination and flooding (Pearlstine et al., 1985). The spatial dimension is often of concern for physical stressors. For example, the spatial extent of suitable habitat was related to the probability of sighting a spotted owl (Thomas et al., 1990), and water-table depth was related to the growth of tree species by Phipps (1979).

Single-point estimates and stressor-response curves can be generated for some biological stressors. For pathogens such as bacteria and fungi, inoculum levels (e.g., spores per ml; propagules per unit of substrate) may be related to the level of symptoms in a host (e.g., lesions per area of leaf surface, total number of plants infected) or actual signs of the pathogen (asexual or sexual fruiting bodies, sclerotia, etc.). For other biological stressors such as introduced species, developing simple stressor-response relationships may be inappropriate.

Data from individual experiments can be used to develop curves and point estimates both with and without associated uncertainty estimates (see figures 5–2 and 5–3). The advantages of curve-fitting approaches include using all of the available experimental data and the ability to interpolate to values other than the data points measured. If extrapolation outside the range of experimental data is required, risk assessors should justify that the observed experimental relationships remain valid. A disadvantage of curve fitting is that the number of data points required to complete an analysis may not always be available. For example, while standard toxicity tests with aquatic organisms frequently contain sufficient experimental treatments to permit regression analysis, frequently this is not the case for toxicity tests with wildlife species.

Risk assessors sometimes use curve-fitting analyses to determine particular levels of effect for evaluation. These point estimates are interpolated from the fitted line. Point estimates may be adequate for simple assessments or comparative studies of risk and are also useful if a decision rule for the assessment was identified during the planning phase (see section 2). Median effect levels (text note 4–14) are frequently selected because the level of uncertainty is minimized at the midpoint of the regression curve. While a 50% effect for an endpoint such as survival may not be appropriately protective for the assessment endpoint, median effect levels can be used for preliminary assessments or comparative purposes, especially when used in combination with uncertainty modifying factors (see text note 5–2). Selection of a different effect level (10%, 20%, etc.) can be arbitrary unless there is some clearly defined benchmark for the assessment endpoint. Thus, it is preferable to carry several levels of effect or the entire stressor-response curve forward to risk estimation.

When risk assessors are particularly interested in effects at lower stressor levels, they may seek to establish "no-effect" levels of a stressor based on comparisons between experimental treatments and controls. Statistical hypothesis testing is frequently used for this purpose. (Note that statistical hypotheses are different from the risk hypotheses discussed in problem formulation; see text note 3–10). An example of this approach for deriving chemical no-effect levels is provided in text note 4–15. An advantage of statistical hypothesis testing is that the risk assessor is not required to pick a particular effect level of concern. The no-effect level is determined instead by experimental conditions such as the number of replicates as well as the variability inherent in the data. Thus it is important to consider the level of effect detectable in the experiment (i.e., its power) in addition to reporting the no-effect level. Another drawback of this approach is that it is difficult to evaluate effects associated with stressor levels other than the actual treatments tested. Several investigators (Stephan and Rogers, 1985; Suter, 1993a) have proposed using regression analysis as an alternative to statistical hypothesis testing.

In observational field studies, statistical hypothesis testing is often used to compare site conditions with a reference site(s). The difficulties of drawing proper conclusions from these types of studies (which frequently cannot employ replication) have been discussed by many investigators, including Hurlbert (1984), Stewart-Oaten et al. (1986), Wiens and Parker (1995), and Eberhardt and Thomas (1991). Risk assessors should examine whether sites were carefully matched to minimize differences other than the stressor and consider whether potential covariates should be included in any analysis. An advantage of experimental field studies is that treatments can be replicated, increasing the confidence that observed differences are due to the treatment.

Data available from multiple experiments can be used to generate multiple point estimates that can be displayed as cumulative distribution functions. Figure 5–6 shows an example of a cumulative distribution function for species sensitivity derived from multiple point estimates (EC5s) for freshwater algae exposed to a herbicide. These distributions facilitate identification of stressor levels that affect a minority or majority of species. A limiting factor in the use of cumulative frequency distributions is the amount of data needed as input. Cumulative effects distribution functions can also be derived from models that use Monte Carlo or other methods to generate distributions based on measured or estimated variation in input parameters for the models.

When multiple stressors are present, stressor-response analysis is particularly challenging. Stressor-response relationships can be constructed for each stressor separately and then combined. Alternatively, the relationship between response and the suite of stressors can be combined in one analysis. It is preferable to directly evaluate complex chemical mixtures present in environmental media (e.g., wastewater effluents, contaminated soils; U.S. EPA, 1986b), but it is important to consider the relationship between the samples tested and the potential spatial and temporal variability in the mixture. The approach taken for multiple stressors depends on the feasibility of measuring the suite of stressors and whether an objective of the assessment is to project different stressor combinations.

In some cases, multiple regression analysis can be used to empirically relate multiple stressors and a response. Detenbeck (1994) used this approach to evaluate change in the water quality of

wetlands resulting from multiple physical stressors. Multiple regression analysis can be difficult to interpret if the explanatory variables (i.e., the stressors) are not independent. Principal components analysis can be used to extract independent explanatory variables formed from linear combinations of the original variables (Pielou, 1984).

4.3.1.2. Establishing Cause and Effect Relationships (Causality)

Causality is the relationship between cause (one or more stressors) and effect (assessment endpoint response to one or more stressors). Without a sound basis for linking cause and effect, uncertainty in the conclusions of an ecological risk assessment is likely to be high. Developing causal relationships is especially important for risk assessments driven by observed adverse ecological effects such as bird or fish kills or a shift in the species composition of an area. This section proposes considerations for evaluating causality based on criteria primarily for observational data developed by Fox (1991) and additional criteria for experimental evaluation of causality modified from Koch's postulates (e.g. see Woodman and Cowling, 1987).

Evidence of causality may be derived from observational evidence (e.g., bird kills are associated with field application of a pesticide) or experimental data (e.g., laboratory tests with the pesticides in question show bird kills at levels similar to those found in the field), and causal associations can be strengthened when both types of information are available. But since not all situations lend themselves to formal experimentation, scientists have looked for other criteria, based largely on observation rather than experiment, to support a plausible argument for cause and effect. Text note 4–16 provides criteria based on Fox (1991) that are very similar to others reviewed by Fox (U.S. Department of Health, Education, and Welfare, 1964; Hill, 1965; Susser, 1986a,b). While data to support some criteria may be incomplete or missing for any given assessment, these criteria offer a useful way of evaluating available information.

The strength of association between stressor and response is often the main reason that adverse effects (such as bird kills) are first noticed. A stronger response to a hypothesized cause is more likely to indicate true causation. Additional strong evidence of causation is when a response follows after a change in the hypothesized cause (predictive performance).

The presence of a biological gradient or stressor-response relationship is another important criterion for causality. The stressor-response relationship need not be linear. It can be a threshold, sigmoidal, or parabolic phenomenon, but in any case it is important that it can be demonstrated. Biological gradients, such as decreasing effects downstream of a toxic discharge, are frequently used as evidence of causality. To be credible, such relationships should be consistent with current biological or ecological knowledge (biological plausibility).

A cause-effect relationship that is demonstrated repeatedly (consistency of association) provides strong evidence of causality. Consistency may be shown by a greater number of instances of association between stressor and response, occurrences in diverse ecological systems, or associations demonstrated by diverse methods (Hill, 1965). Fox (1991) adds that in ecoepidemiology the occurrence of an association in more than one species and species population is very strong evidence for causation. An example would be the numerous species of birds that were killed as a result of carbofuran application (Houseknecht, 1993). Fox (1991) also believes that causality is supported if the same incident is observed by different persons under different circumstances and at different times.

Conversely, inconsistency in association between stressor and response is strong evidence against causality (e.g., the stressor is present without the expected effect, or the effect occurs but the stressor is not found). Temporal incompatibility (i.e., the presumed cause does not precede the effect) and incompatibility with experimental or observational evidence (factual implausibility) are also indications against a causal relationship.

Two other criteria may be of some help in defining causal relationships: specificity of an association and probability. The more specific the effect, the more likely it is to have a consistent cause. However, Fox (1991) argues that effect specificity does little to strengthen a causal claim. Disease can have multiple causes, a substance can behave differently in different environments or cause several different effects, and biochemical events may result in a diverse array of biological responses. But in general, the more specific or localized the effects, the easier it is to identify the cause. Sometimes, a stressor may have a distinctive mode of action that suggests its role. Yoder and Rankin (1995) found that patterns of change observed in fish and benthic invertebrate communities could serve as indicators for different types of anthropogenic impact (e.g., nutrient enrichment vs. toxicity).

For some pathogenic biological stressors, the causal evaluations proposed by Koch (text note 4–17) may be useful. For chemicals, ecotoxicologists have slightly modified Koch's postulates to provide evidence of causality (Adams, 1963; Woodman and Cowling, 1987). The modifications are:

- The injury, dysfunction, or other putative effect of the toxicant must be regularly associated with exposure to the toxicant and any contributory causal factors.
- Indicators of exposure to the toxicant must be found in the affected organisms.
- The toxic effects must be seen when normal organisms or communities are exposed to the toxicant under controlled conditions, and any contributory factors should be manifested in the same way during controlled exposures.
- The same indicators of exposure and effects must be identified in the controlled exposures as in the field.

These modifications are conceptually identical to Koch's postulates. While useful, this approach may not be practical if resources for experimentation are not available or if an adverse effect may be occurring over such a wide spatial extent that experimentation and correlation may prove difficult or yield equivocal results.

Experimental techniques are frequently used for evaluating causality in complex chemical mixtures. Options include evaluating separated components of the mixture, developing and testing a synthetic mixture, or determining how the toxicity of a mixture relates to the toxicity of individual components. The choice of method depends on the goal of the assessment and the resources and test data that are available.

Laboratory toxicity identification evaluations (TIEs) can be used to help determine which components of a chemical mixture are causing toxic effects. By using fractionation and other methods, the TIE approach can help identify chemicals responsible for toxicity and show the relative contributions to toxicity of different chemicals in aqueous effluents (U.S. EPA, 1988a, 1989b, c) and sediments (e.g., Ankley et al., 1990).

Risk assessors may utilize data from synthetic chemical mixtures if the individual chemical components are well characterized. This approach

allows for manipulation of the mixture and investigation of how varying the components that are present or their ratios may affect mixture toxicity but also requires additional assumptions about the relationship between effects of the synthetic mixture and those of the environmental mixture.

When the modes of action of chemicals in a mixture are known to be similar, an additive model has been successful in predicting combined effects (Könemann, 1981; Hermens et al., 1984a; McCarty and Mackay, 1993; Sawyer and Safe, 1985; Broderius et al., 1995). In this situation, the contribution of each chemical to the overall toxicity of the mixture can be evaluated. However, the situation is more complicated when the modes of action of the chemical constituents are unknown or partially known (see additional discussion in section 5.1.2).

4.3.1.3. Linking Measures of Effect to Assessment Endpoints

Assessment endpoints express the environmental values of concern for a risk assessment, but they cannot always be measured directly. When measures of effect differ from assessment endpoints, sound and explicit linkages between the two are needed. Risk assessors may make these linkages in the analysis phase or, especially when linkages rely on expert judgment, risk assessors may work with measures of effect through risk estimation (in risk characterization) and then make the connection with the assessment endpoints. Common extrapolations used to link measures of effect with assessment endpoints are shown in text note 4–18.

General Considerations. During the preparation of the analysis plan in problem formulation, risk assessors identify the extrapolations required between assessment endpoints and measures of effect. During the analysis phase, risk assessors should revisit the questions listed in text note 4–19 before proceeding with specific extrapolation approaches to use.

The scope and nature of the risk assessment and the environmental decision to be made help determine the degree of uncertainty (and type of extrapolation) that is acceptable. At an early stage of a tiered risk assessment, extrapolations from minimal data that involve large uncertainties are acceptable when the primary purpose is to determine whether a risk exists given worst-case exposure and effects scenarios. To define risk further at later stages of the assessment, additional data and more sophisticated extrapolation approaches are usually required.

The scope of the risk assessment also influences extrapolation through the nature of the assessment endpoint. Preliminary assessments that evaluate risks to general trophic levels, such as fish and birds, may extrapolate among different genera or families to obtain a range of sensitivity to the stressor. On the other hand, assessments concerned with management strategies for a particular species may employ population models.

Analysis phase activities may suggest additional extrapolation needs. Evaluation of exposure may indicate different spatial or temporal scales than originally anticipated. If spatial scales are broadened, additional receptors may need to be included in extrapolation models. If a stressor persists for an extended time in the environment, it may be necessary to extrapolate short-term responses over a longer period of exposure, and population level effects may become more important.

Whatever methods are employed to link assessment endpoints with measures of effect, it is important to apply the methods in a manner consistent with sound ecological principles and the availability of an appropriate database. For example, it is inappropriate to use structure-activity relationships to predict toxicity from chemical structure unless the chemical under consideration has a similar mode of toxic action to the reference chemicals (Bradbury, 1994). Similarly, extrapolations from upland avian species to waterfowl may be more credible if factors such as differences in food preferences, body mass, physiology, and seasonal behavior (e.g., mating and migration habits) are considered. Extrapolations made in a rote manner or that are biologically implausible will erode the overall credibility of the assessment.

Finally, many extrapolation methods are limited by the availability of suitable databases. Although these databases are generally largest for chemical stressors and aquatic species, data do not exist for all taxa or effects. Chemical effects databases for mammals, amphibians, or reptiles are extremely limited, and there is even less information on most biological and physical stressors. Risk assessors should be aware that extrapolations and models are only as useful as the data on which they are based and should recognize the great uncertainties associated with extrapolations that lack an adequate empirical or process-based rationale.

The rest of this section addresses the approaches used by risk assessors to link measures of effect to assessment endpoints, as noted below.

- Linkages based on expert judgment. This approach is not as desirable as empirical or process-based approaches, but is the only option when data are lacking.
- Linkages based on empirical or process models. Empirical extrapolations use experimental or observational data that may or may not be organized into a database. Process-based approaches are based on some level of understanding of the underlying operations of the system under consideration.

Judgment Approaches for Linking Measures of Effect to Assessment Endpoints. Expert judgment approaches rely on the professional expertise of risk assessors, expert panels, or others to relate changes in measures of effect to changes in the assessment endpoint. They are essential when databases are inadequate to support empirical models and process models are unavailable or inappropriate. Expert judgment linkages between measures of effect and assessment endpoints can be just as credible as empirical or process-based expressions, provided they have a sound scientific basis. This section highlights expert judgment extrapolations between species, from laboratory data to field effects, and between geographic areas.

Because of the uncertainties in predicting the effects of biological stressors such as introduced species, expert judgment approaches are commonly used. For example, there may be measures of effect data on a foreign pathogen that attacks a certain tree species not found in the United States, but the assessment endpoint concerns the survival of a commercially important tree found only in the United States. In this case, a careful evaluation and comparison of the life history and environmental requirements of both the pathogen and the two tree species may contribute toward a useful determination of potential effects, even though the uncertainty may be high. Expert panels are typically used for this kind of evaluation (USDA, 1993).

Risks to organisms in field situations are best estimated from studies at the site of interest. However, such data are not always available. Frequently, risk assessors must extrapolate from laboratory toxicity test data to field effects. Text note 4–20 summarizes some of the considerations for risk assessors when extrapolating from laboratory toxicity test results to field situations for chemical stressors. Factors altering exposure in the field are among the most important factors limiting extrapolations from laboratory test results, but indirect effects on exposed

organisms due to predation, competition, or other biotic or abiotic factors not evaluated in the laboratory may also be significant. Variations in direct chemical effects between laboratory tests and field situations may not contribute as much to the overall uncertainty of the extrapolation.

In addition to single-species tests, laboratory multiple species tests are sometimes used to predict field effects. While these tests have the advantage of evaluating some aspects of a real ecological system, they also have inherent scale limitations (e.g., lack of top trophic levels) and may not adequately represent features of the field system important to the assessment endpoint.

Extrapolations based on expert judgment are frequently required when assessors wish to use field data obtained from one geographic area and apply them to a different area of concern, or to extrapolate from the results of laboratory tests to more than one geographic region. In either case, risk assessors should consider variations between regions in environmental conditions, spatial scales and heterogeneities, and ecological forcing functions (see below).

Variations in environmental conditions in different geographic regions may alter stressor exposure and effects. If exposure to chemical stressors can be accurately estimated and are expected to be similar (e.g., see text note 4–20), the same species in different areas may respond similarly. For example, if the pesticide granular carbofuran were applied at comparable rates throughout the country, seed-eating birds could be expected to be similarly affected by the pesticide (Houseknecht, 1993). Nevertheless, the influence of environmental conditions on stressor exposure and effects can be substantial.

For biological stressors, environmental conditions such as climate, habitat, and suitable hosts play major roles in determining whether a biological stressor becomes established. For example, climate would prevent establishment of the Mediterranean fruit fly in the much colder northeastern United States. Thus, a thorough evaluation of environmental conditions in the area versus the natural habitat of the stressor is important. Even so, many biological stressors can adapt readily to varying environmental conditions, and the absence of natural predators or diseases may play an even more important role than abiotic environmental conditions.

For physical stressors that have natural counterparts, such as fire, flooding, or temperature variations, effects may depend on the natural variations in these parameters for a particular region. Thus, the comparability of two regions depends on both the pattern and range of natural disturbances.

Spatial scales and heterogeneities affect comparability between regions. Effects observed over a large scale may be difficult to extrapolate from one geographical location to another mainly because the spatial heterogeneity is likely to differ. Factors such as number and size of land-cover patches, distance between patches, connectivity and conductivity of patches (e.g., migration routes), and patch shape may be important. Extrapolations can be facilitated by using appropriate reference sites, such as sites in comparable ecoregions (Hughes, 1995).

Ecological forcing functions may differ between geographic regions. Forcing functions are critical abiotic variables that exert a major influence on the structure and function of ecological systems. Examples include temperature fluctuations, fire frequency, light intensity, and hydrologic regime. If these differ significantly between sites, it may be inappropriate to extrapolate stressor effects from one system to another.

The following references may be useful when assessing effects over different geographical areas: Bedford and Preston (1988), Detenbeck et al. (1992), Gibbs (1993), Gilbert (1987), Gosselink et al. (1990), Preston and Bedford (1988), and Risser (1988).

Empirical and Process-Based Approaches for Linking Measures of Effect to Assessment Endpoints. There are a variety of empirical and process-based approaches available to risk assessors depending on the scope of the assessment and the data and resources available. Empirical and process-based approaches include numerical extrapolations between effects measures and assessment endpoints. These linkages range in sophistication from applying an uncertainty factor to using a complex model requiring extensive measures of effects and measures of ecosystem and receptor characteristics as input. But even the most sophisticated quantitative models involve qualitative elements and assumptions and thus require professional judgment for evaluation. Individuals who use models and interpret their results should be familiar with the underlying assumptions and components contained in the model.

Empirical Approaches. Empirically based uncertainty factors or taxonomic extrapolations may be used when adequate effects databases are available but the understanding of underlying mechanisms of action or ecological principles is limited. When sufficient information on stressors and receptors is available, process-based approaches such as pharmacokinetic/pharmacodynamic models or population or ecosystem process models may be used. Regardless of the options used, risk assessors should justify and adequately document the approach selected.

Uncertainty factors are used to ensure that effects measures are sufficiently protective of assessment endpoints. Uncertainty factors are empirically derived numbers that are divided into measure of effects values to give an estimated stressor level that should not cause adverse effects to the assessment endpoint. Uncertainty factors have mostly been developed for chemicals because of the extensive ecotoxicologic databases available, especially for aquatic organisms. Uncertainty factors are useful when decisions must be made about stressors in a short time and with little information.

Uncertainty factors have been used to compensate for assessment endpoint/effect measures differences between endpoints (acute to chronic effects), between species, and between test situations (e.g., laboratory to field). Typically, uncertainty factors vary inversely with the quantity and type of effects measures data available (Zeeman, 1995). Uncertainty factors have been used in screening-level assessments of new chemicals (Nabholz, 1991), in assessing the risks of pesticides to aquatic and terrestrial organisms (Urban and Cook, 1986), and in developing benchmark dose levels for human health effects (U.S. EPA, 1995d).

In spite of their usefulness, uncertainty factors can also be misused, especially when used in an overly conservative fashion, as when chains of factors are multiplied together without sufficient justification. Like other approaches to bridging data gaps, uncertainty factors are often based on a combination of scientific analysis, scientific judgement and policy judgement (see section 4.1.3). It is important to differentiate among these three elements when documenting the basis for the uncertainty factors used.

Empirical data can be used to facilitate extrapolations between species to species, genera, families, or orders or functional groups (e.g., feeding guilds) (Suter, 1993a). Suter et al. (1983), Suter (1993a), and Barnthouse et al. (1987, 1990) developed methods to extrapolate toxicity among freshwater and marine fish and arthropods. As noted by Suter

(1993a), the uncertainties associated with extrapolating between orders, classes, and phyla tend to be very high. However, extrapolations can be made with fair certainty between aquatic species within genera and genera within families. Further applications of this approach (e.g., for chemical stressors and terrestrial organisms) are limited by a lack of suitable databases.

Dose-scaling or allometric regression has also been used to extrapolate the effects of a chemical stressor to another species. The method is used for human health risk assessment but has not been applied extensively to ecological effects (Suter, 1993a).

Allometric regression has been used with avian species (Kenaga, 1973) and to a limited extent for estimating effects to marine organisms based on their length. For chemical stressors, allometric relationships can enable an assessor to estimate toxic effects to species not commonly tested, such as native mammalian species. It is important that the assessor consider the taxonomic relationship between the known species and the species of interest. The closer the two are related, the more likely that the toxic response will be similar. Allometric approaches should not be applied to species that differ greatly in uptake, metabolism, or depuration of a chemical.

Process-Based Approaches. Process models for extrapolation are representations or abstractions of a system or process (Starfield and Bleloch, 1991) that incorporate causal relationships and provide a predictive capability that does not depend on the availability of existing stressor-response information as empirical models do (Wiegert and Bartell, 1994). Process models enable assessors to translate data on individual effects (e.g., mortality, growth, and reproduction) to potential alterations in specific populations, communities, or ecosystems. Such models can be used to evaluate risk hypotheses about the duration and severity of a stressor on an assessment endpoint that cannot be tested readily in the laboratory.

There are two major types of models: single-species population models and multispecies community and ecosystem models. Population models describe the dynamics of a finite group of individuals through time and have been used extensively in ecology and fisheries management and to assess the impacts of power plants and toxicants on specific fish populations (Barnthouse et al., 1987; Barnthouse et al., 1990). Population models are useful in answering questions related to short- or long-term changes of population size and structure and can be used to estimate the probability that a population will decline below or grow above a specified abundance (Ginzburg et al., 1982; Ferson et al., 1989). This latter application may be useful when assessing risks associated with biological stressors such as introduced or pest species. Excellent reviews of population models are presented by Barnthouse et al. (1986) and Wiegert and Bartell (1994). Emlen (1989) has reviewed population models that can be used for terrestrial risk assessment.

Proper use of the population models requires a thorough understanding of the natural history of the species under consideration, as well as knowledge of how the stressor influences its biology. Model input can include somatic growth rates, physiological rates, fecundity, survival rates of various classes within the population, and how these change when the population is exposed to the stressor and other environmental factors. In addition, the effects of population density on these parameters may be important (Hassell, 1986) and should be considered in the analysis of uncertainty.

Community and ecosystem models (e.g., Bartell et al., 1992; O'Neill et al., 1982) are particularly useful when the assessment endpoint involves structural (e.g., community composition) or functional (e.g., primary production) elements of the system potentially at risk. These models can also be useful when secondary effects are of concern. Changes in various community or ecosystem components such as populations, functional types, feeding guilds, or environmental processes can be estimated. By incorporating submodels describing the dynamics of individual system components, these models permit evaluation of risk to multiple assessment endpoints within the context of the larger environmental system.

Risk assessors should evaluate the degree of aggregation in population or multispecies model parameters that is appropriate based both on the input data available and on the desired output of the model. For example, if a decision is required about a particular species, a model that lumps species into trophic levels or feeding guilds will not be very useful. Assumptions concerning aggregation in model parameters should be included in the discussion of uncertainty.

4.3.2. Stressor-Response Profile

The final product of ecological response analysis is a summary profile of what has been learned. Depending on the risk assessment, the profile may be a written document, or a module of a larger process model. Alternatively, documentation may be deferred until risk characterization. In any case, the objective is to ensure that the information needed for risk characterization has been collected and evaluated. A useful approach in preparing the stressor-response profile is to imagine that it will be used by someone else to perform the risk characterization. Using this approach, the assessor may be better able to extract the information most important to the risk characterization phase. In addition, compiling the stressor-response profile provides an opportunity to verify that the assessment and measures of effect identified in the conceptual model were evaluated.

Risk assessors should address several questions in the stressor-response profile (text note 4–21). Depending on the type of risk assessment, affected ecological entities could include single species, populations, general trophic levels, communities, ecosystems, or landscapes. The nature of the effect(s) should be germane to the assessment endpoint(s). Thus if a single species is affected, the effects should represent parameters appropriate for that level of organization. Examples include effects on mortality, growth, and reproduction. Short- and long-term effects should be reported as appropriate. At the community level, effects could be summarized in terms of structure or function depending on the assessment endpoint. At the landscape level, there may be a suite of assessment endpoints and each should be addressed separately.

Examples of different approaches for displaying the intensity of effects as stressor-response curves or point estimates were provided in section 4.3.1.1. Other information such as the spatial area or time to recovery may be appropriate, depending on the scope of the assessment. Causal analyses are important, especially for assessments that include field observational data.

While ideally the stressor-response profile should express effects in terms of the assessment endpoint, this will not always be possible. Especially where it is necessary to use qualitative extrapolations between assessment endpoints and measures of effect, the stressor-response profile may only contain information on measures of effect. Under these circumstances, risk will be estimated using the measures of effects, and extrapolation to the assessment endpoints will occur during risk characterization.

Risk assessors need to be descriptive and candid about any uncertainties

associated with the ecological response analysis. If it was necessary to extrapolate from measures of effect to the assessment endpoint, describe both the extrapolation and its basis. Similarly, if a benchmark or similar reference dose or concentration was calculated, discuss the extrapolations and uncertainties associated with its development. For additional information on establishing reference concentrations, see Nabholz (1991), Urban and Cook (1986), Stephan et al. (1985), Van Leeuwen et al. (1992), Wagner and Løkke (1991), and Okkerman et al. (1993). Finally, the assessor should clearly indicate major assumptions and default values used in models.

At the end of the analysis phase, the stressor-response and exposure profiles are used to estimate risks. These profiles provide the opportunity to review what has been learned and to summarize this information in the most useful format for risk characterization. Whatever form the profiles take, they ensure that the necessary information is available for risk characterization.

5. Risk Characterization

Risk characterization (figure 5–1) is the final phase of ecological risk assessment. Its goals are to use the results of the analysis phase to estimate risk to the assessment endpoints identified in problem formulation (section 5.1), interpret the risk estimate (section 5.2), and report the results (section 5.3).

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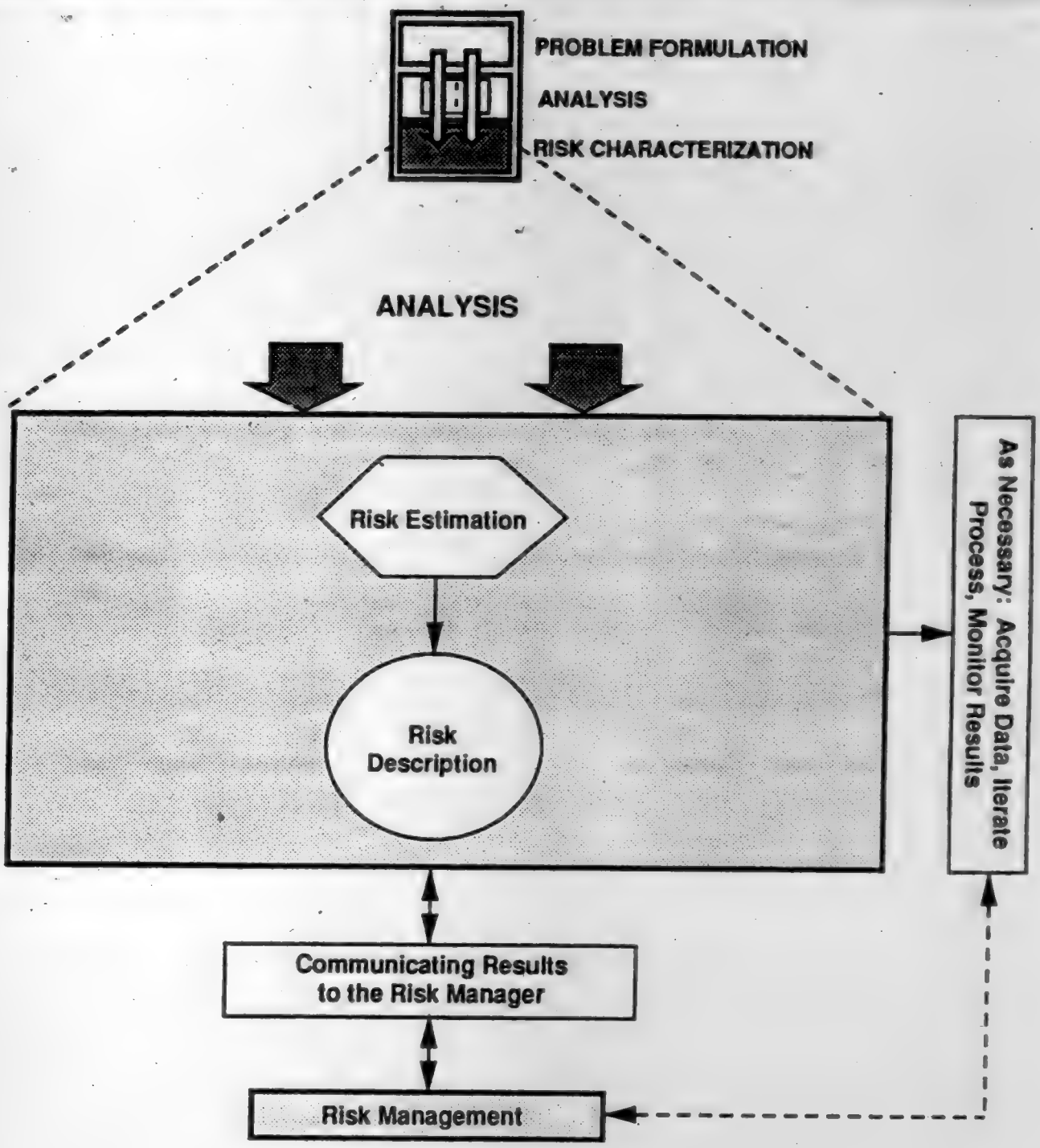

Figure 5-1. Risk characterization.

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Risk characterization is a major element of the risk assessment report. To be successful, it should provide clear information to the risk manager to use in environmental decision making (NRC, 1994; see section 6). If the risks are not sufficiently defined to support a management decision, the risk manager may elect to proceed with another iteration of the risk assessment process. Additional research or a monitoring program may improve the risk estimate or help to evaluate the consequences of a risk management decision.

5.1. Risk Estimation

Risk estimation determines the likelihood of adverse effects to assessment endpoints by integrating exposure and effects data and evaluating any associated uncertainties. The process uses exposure and stressor-response profiles which are developed according to the analysis plan (section 3.5). Risks can be estimated by one or more of the following approaches: (1) estimates expressed as qualitative categories, (2) estimates comparing single-point estimates of exposure and effects, (3) estimates incorporating the entire stressor-response relationship, (4) estimates incorporating variability in exposure and effects estimates, (5) estimates based on process models that rely partially or entirely on theoretical approximations of exposure and effects, and (6) estimates based on empirical approaches, including field observational data.

5.1.1. Risk Estimates Expressed as Qualitative Categories

In some cases, best professional judgment may be used to express risks qualitatively using categories such as low, medium, and high or yes and no. This approach is most frequently used when exposure and effects data are limited or not easily expressed in quantitative terms. A U.S. Forest Service assessment used qualitative categories because of limitations on both the exposure and effects data for the introduced species of concern as well as the resources available for the assessment. (text note 5–1)

5.1.2. Single-Point Estimates

When sufficient data are available to quantify exposure and effects estimates, the simplest approach for comparing the estimates is to use a ratio of two numbers (figure 5–2a). Typically, the ratio (or quotient) is expressed as an exposure concentration divided by an effects concentration. Quotients are commonly used for chemical stressors, where reference or benchmark toxicity values are widely available (text note 5–2).

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Figure 5-2. Risk estimation techniques. a. Comparison of exposure and stressor-response point estimates. b. Comparison of point estimates from the stressor-response relationship with uncertainty associated with an exposure point estimate.

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The principal advantages of the quotient method are that it is simple and quick to use and risk assessors and managers are familiar with its application. The quotient method provides an efficient, inexpensive means of identifying high or low risk situations that can allow risk management decisions to be made without the need for further information.

Quotients have also been used to integrate the risks of multiple chemical stressors. In this approach, quotients for the individual constituents in a mixture are generated by dividing each exposure level by a corresponding toxicity endpoint (e.g., an LC_{50}). Although the toxicity of a chemical mixture may be greater (synergism) or less (antagonism) than predicted from the toxicities of individual constituents of the mixture, a quotient addition approach assumes that toxicities are additive or close to additive, which may be true when the modes of action of chemicals in a mixture are similar (e.g., Könemann, 1981; Broderius et al., 1995; Hermens et al., 1984a,b; McCarty and Mackay, 1993; Sawyer and Safe, 1985).

For mixtures of chemicals having dissimilar modes of action, there is some evidence from fish acute toxicity tests with industrial organic chemicals that strict additivity or less-than-strict additivity is common, while antagonistic and synergistic responses are rare (Broderius, 1991). These experiences suggest that caution should be used when predicting that chemicals in a mixture will act independently of one another. However, these relationships observed with aquatic organisms may not be relevant for other endpoints, exposure scenarios, and species. When the mode of action for constituent chemicals are unknown, the assumptions and rationale concerning chemical interactions must be clearly stated.

The application of the quotient method is restricted by a number of limitations (see Smith and Cairns, 1993; Suter, 1993a). While a quotient can be useful in answering whether risks are high or low, it may not be helpful to a risk manager who needs to make a decision requiring a quantification of risks. For example, it is seldom useful to say that a risk mitigation approach will reduce a quotient value from 25 to 12, since this reduction cannot by itself be clearly interpreted in terms of effects on an assessment endpoint.

Another potential difficulty with the quotient method is that the point estimate of effect may not reflect the appropriate intensity of effect or exposure pattern for the assessment. For example, an LC_{50} derived from a 96-hour laboratory test using constant exposure levels may not be appropriate for an assessment of effects on reproduction resulting from short-term, pulsed exposures.

The quotient method cannot evaluate secondary effects. Interactions and effects beyond what is predicted from the simple quotient may be critical to characterizing the full extent of impacts from exposure to the stressors (e.g., bioaccumulation).

Finally, in most cases, the quotient method does not explicitly consider uncertainty (e.g., extrapolation from tested species to the species or community of concern). However, some uncertainties can be incorporated into single-point estimates to provide a statement of likelihood that the effects point estimate exceeds the exposure point estimate (figures 5–2b and 5–3). If exposure variability is quantified, then the point estimate of effects can be compared with a cumulative exposure distribution as described in text note 5–3. Further discussion of comparisons between point estimates of effects and distributions of exposure may be found in Suter et al., 1983.

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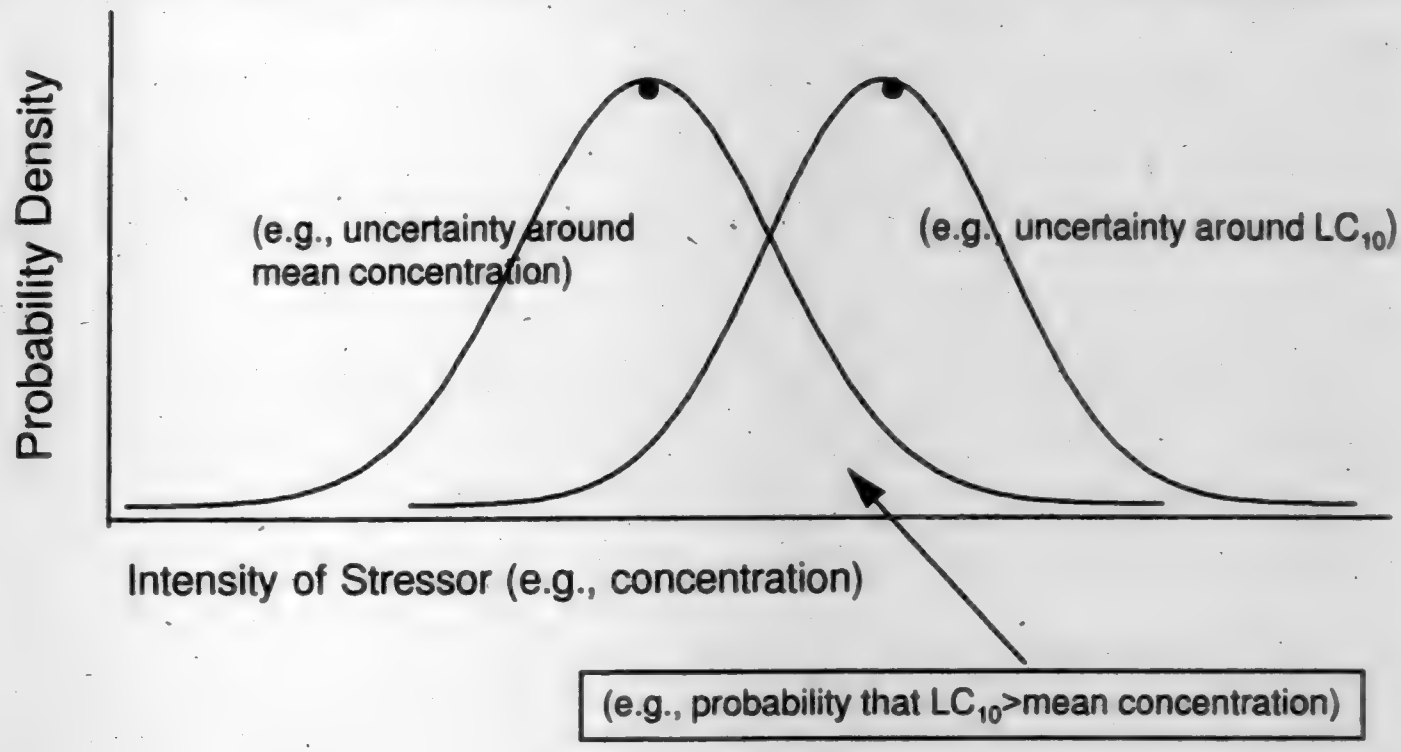

Figure 5-3. Risk estimation techniques: comparison of point estimates with associated uncertainties.

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In view of the advantages and limitations of the quotient method, it is important for risk assessors to consider the points listed below when evaluating quotient method estimates.

- How does the effect concentration relate to the assessment endpoint?
- What extrapolations are involved?
- How does the point estimate of exposure relate to potential spatial and temporal variability in exposure?
- Are data sufficient to provide confidence intervals on the endpoints?

5.1.3. Estimates Incorporating the Entire Stressor-Response Relationship

If the stressor-response profile described a curve relating the stressor level to the magnitude of response, then risk estimation can examine risks associated with many different levels of exposure (figure 5–4). These estimates are particularly useful when the risk assessment outcome is not based on exceedance of a predetermined decision rule such as a toxicity benchmark level.

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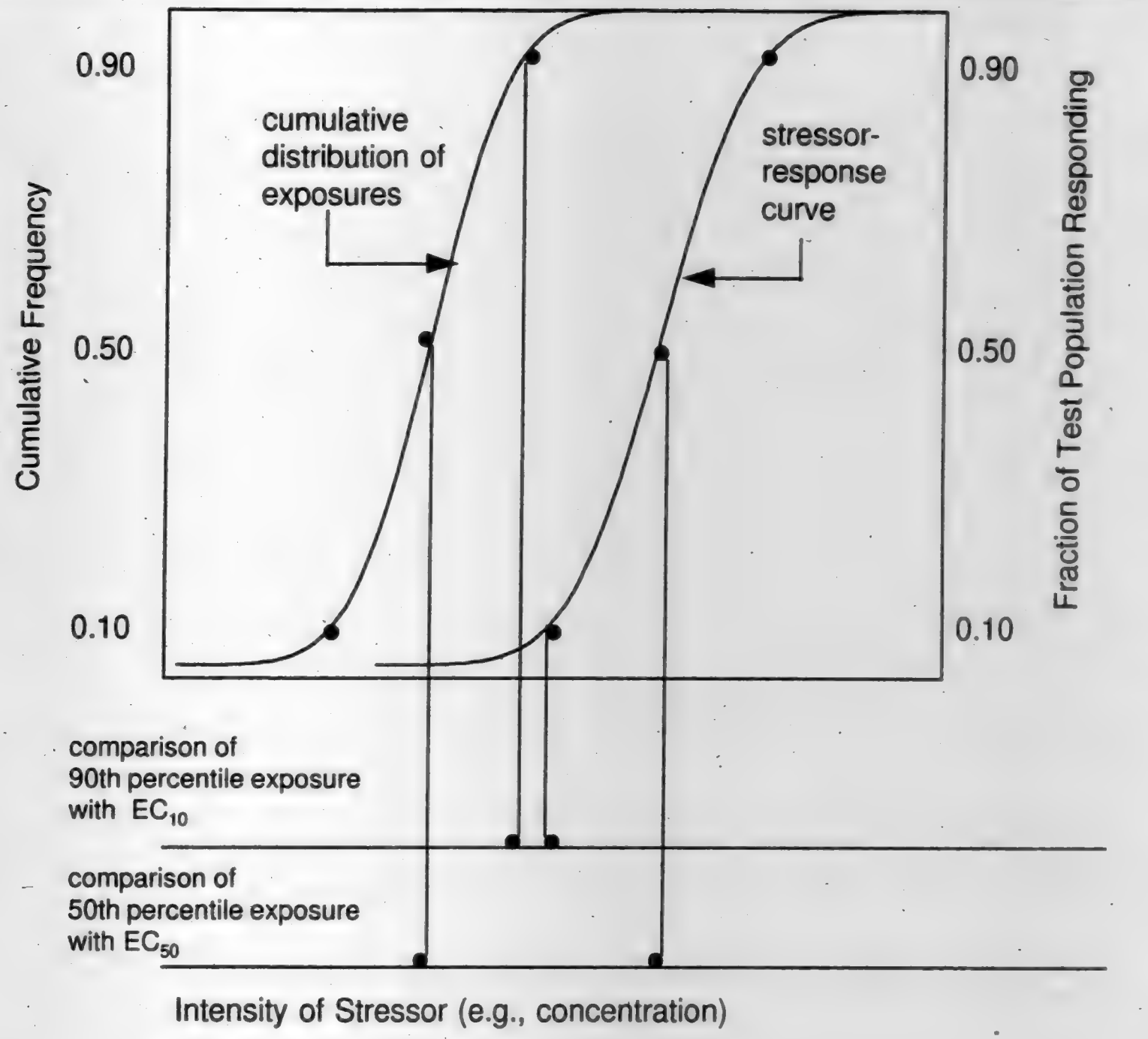

Figure 5-4. Risk estimation techniques: stressor-response curve versus a cumulative distribution of exposures.

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There are both advantages and limitations to comparing a stressor-response curve with an exposure distribution. The steepness of the effects curve shows the magnitude of change in effects associated with incremental changes in exposure, and the capability to predict changes in the magnitude and likelihood of effects for different exposure scenarios can be used to compare different risk management options. Also, uncertainty can be incorporated by calculating uncertainty bounds on the stressor-response or exposure estimates. While comparing exposure and stressor-response curves provides a predictive ability lacking in the quotient method, this approach shares the quotient method's limitations of not evaluating secondary effects, assuming that the exposure pattern used to derive the stressor-response curve is comparable to the environmental exposure pattern, and not explicitly considering uncertainties, such as extrapolations from tested species to the species or community of concern.

5.1.4. Estimates Incorporating Variability in Exposure or Effects

If the exposure or stressor-response profiles describe the variability in exposure or effects, then many different risk estimates can be calculated. Variability in exposure can be used to describe risks to moderately or highly exposed members of a population being investigated, while variability in effects can be used to describe risks to average or sensitive population members.

A major advantage of this approach is the capability to predict changes in the magnitude and likelihood of effects for different exposure scenarios, thus providing a means for comparing different risk management options. As noted above, comparing distributions also allows one to identify and quantify risks to different segments of the population. Limitations include the increased data requirements compared with previously described techniques and the implicit assumption that the full range of variability in the exposure and effects data is adequately represented. As with the quotient method, secondary effects are not readily evaluated with this technique. Thus, it is desirable to corroborate risks estimated by distributional comparisons with field studies or other lines of evidence. Text note 5–4 and figure 5–5 illustrate the use of cumulative exposure and effects distributions for estimating risk.

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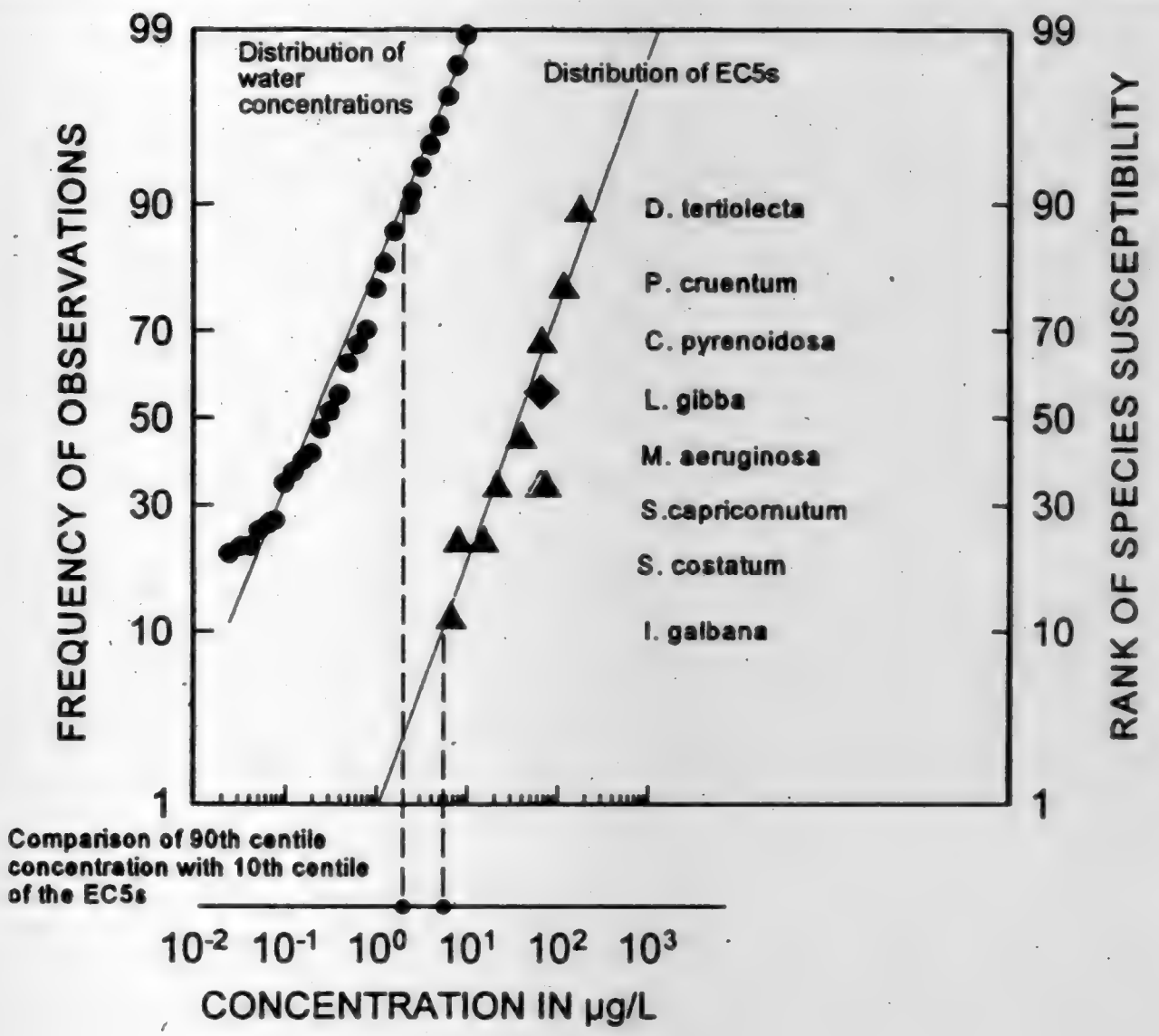

Figure 5-5. Risk estimation techniques: comparison of exposure distribution of an herbicide in surface waters with freshwater single-species toxicity data. See Text note 5-4 for further discussion. Redrawn from SETAC, 1994a.

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5.1.5. Estimates Based on Process Models

Process models are mathematical expressions that represent our understanding of the mechanistic operation of a system under evaluation. They can be useful tools both in the analysis phase (see section 4.1.2.) and the risk characterization phase of ecological risk assessment. For illustrative purposes, we distinguish between process models used for risk estimation that integrate exposure and effects information (text note 5–5) and process models used in the analysis phase that focus on either exposure or effects evaluations.

A major advantage of using process models for risk estimation is the ability to consider "what if" scenarios and to forecast beyond the limits of observed data that constrain risk estimation techniques based on empirical data. The process model can also consider secondary effects, unlike other risk estimation techniques such as the quotient method or comparisons of exposure and effect distributions. In addition, some process models may be capable of forecasting the combined effects of multiple stressors (e.g., Barnthouse et al., 1990).

Process model outputs may be point estimates or distributions. In either case, risk assessors should interpret these outputs with care. Process model outputs may imply a higher level of certainty than is appropriate and all too often are viewed without sufficient attention to underlying assumptions. The lack of knowledge on basic life histories for many species and incomplete knowledge on the structure and function of a particular ecosystem is often lost in the model output. Since process models are only as good as the assumptions on which they are based, they should be treated as hypothetical representations of reality until appropriately tested with empirical data. Comparing model results to field data provides a check on whether our understanding of the system was correct (Johnson, 1995) with respect to the risk hypotheses presented in problem formulation.

5.1.6. Field Observational Studies

Field observational studies (surveys) can serve as risk estimation techniques because they provide direct evidence linking exposure to stressors and effects. Field surveys measure biological changes in uncontrolled situations through collection of exposure and effects data at sites identified in problem formulation. A key issue with field surveys is establishing causal relationships between stressors and effects (section 4.3.1.2).

A major advantage of field surveys is that they provide a reality check on other risk estimates, since field surveys are usually more representative of both exposures and effects (including secondary effects) found in natural systems than are estimates generated from laboratory studies or theoretical models (text note 5–6). On the other hand, field data may not constitute reality if they are flawed due to poor experimental design, biased in sampling or analytical techniques, or fail to measure critical components of the system or random variations (Johnson, 1995). A lack of observed effects in a field survey may occur because the measurements are insufficiently sensitive to detect ecological effects, and, unless causal relationships are carefully examined, effects that are observed may be caused by factors unrelated to the stressor(s) of concern. Finally, field surveys taken at one point in time are usually not predictive; they describe effects associated with only one scenario (i.e., the one that exists).

5.2. Risk Description

After risks have been estimated, risk assessors need to integrate and interpret the available information into conclusions about risks to the assessment endpoints. In some cases, risk assessors may have quantified the relationship between assessment endpoints and measures of effect in the analysis stage (section 4.3.1.3). In other situations, qualitative links to assessment endpoints are part of the risk description. For example, if the assessment endpoints are survival of fish, aquatic invertebrates, and algae, risks may be estimated using a quotient method based on LC_{50}s. Regardless of the risk estimation technique, the technical narrative supporting the estimates is as important as the risk estimates themselves.

Risk descriptions include an evaluation of the lines of evidence supporting or refuting the risk estimate(s) and an interpretation of the adverse effects on the assessment endpoint.

5.2.1. Lines of Evidence

Confidence in the conclusions of a risk assessment may be increased by using several lines of evidence to interpret and compare risk estimates. These lines of evidence may be derived from different sources or by different techniques relevant to adverse effects on the assessment endpoints, such as quotient estimates, modeling results, field experiments, or field observations. (Note that the term "weight of evidence" is sometimes used in legal discussions or in other documents, e.g., Urban and Cook, 1986; Menzie et al., 1996. We use the phrase lines of evidence to emphasize that both qualitative evaluation and quantitative weightings may be used.)

Some of the factors that the risk assessor should consider when evaluating separate lines of evidence are:

- The relevance of evidence to the assessment endpoints
- The relevance of evidence to the conceptual model
- The sufficiency and quality of data and experimental designs used in key studies
- The strength of cause/effect relationships
- The relative uncertainties of each line of evidence and their direction.

This process involves more than just listing the factors that support or refute the risk. The risk assessor should carefully examine each factor and evaluate its contribution to the risk assessment.

For example, consider the two lines of evidence described for the carbofuran example (text notes 5–2 and 5–6): quotients and field studies. Both approaches are relevant to the assessment endpoint (survival of birds that forage in agricultural areas where carbofuran is applied), and both are relevant to the exposure scenarios described in the conceptual model (figure 3–2). However, the quotients are limited in their ability to express incremental risks (e.g., how much greater risk is expressed by a quotient of "2" versus a quotient of "4"), while the field studies had some design flaws (text note 5–6). Nevertheless, because of the great preponderance of the data, the strong evidence of causal relationships from the field studies, and the consistency between these two lines of evidence, confidence in a conclusion of high risk to the assessment endpoint is supported.

Sometimes lines of evidence do not point toward the same conclusion. When they disagree, it is important to distinguish between true inconsistencies and those related to differences in statistical powers of detection. For example, a model may predict adverse effects that were not observed in a field survey. The risk assessor should ask whether the experimental design of the field study had sufficient power to detect the predicted difference or whether the endpoints measured were comparable with those used in the model.

Conversely, the model may have been unrealistic in its predictions. While it may be possible to use numerical weighting techniques for evaluating various lines of evidence, in most cases qualitative evaluations based on professional judgment are appropriate for sorting through conflicting lines of evidence. While iteration of the risk assessment process and collection of additional data may help resolve uncertainties, this option is not always available.

5.2.2. Determining Ecological Adversity

At this point in risk characterization, the changes expected in the assessment endpoints have been estimated and described. The next step is to interpret whether these changes are considered adverse. Adverse changes are those of concern ecologically or socially (section 1). Determining adversity is not always an easy task and frequently depends on the best professional judgment of the risk assessor.

Five criteria are proposed for evaluating adverse changes in assessment endpoints:

- Nature of effects.
- Intensity of effects.
- Spatial scale.
- Temporal scale.
- Potential for recovery.

The extent to which the five criteria are evaluated depends on the scope and complexity of the ecological risk assessment. However, understanding the underlying assumptions and science policy judgments is important even in simple cases. For example, when exceedance of a previously established decision rule such as a benchmark stressor level is used as evidence of adversity (e.g., see Urban and Cook, 1986, or Nabholz, 1991), the reasons why exceedences of the benchmark are considered adverse should be clearly understood.

To distinguish ecological changes that are adverse from those ecological events that are within the normal pattern of ecosystem variability or result in little or no significant alteration of biota, it is important to consider the nature and intensity of effects. For example, for an assessment endpoint involving survival, growth, and reproduction of a species, do predicted effects involve survival and reproduction or only growth? If survival of offspring will be affected, by what percentage will it diminish?

It is important for risk assessors to consider both the ecological and statistical contexts of an effect when evaluating intensity. For example, a statistically significant 1% decrease in fish growth (text note 5–7) may not be relevant to an assessment endpoint of fish population viability, and a 10% decline in reproduction may be worse for a population of slowly reproducing trees than for rapidly reproducing planktonic algae.

Natural ecosystem variation can make it very difficult to observe (detect) stressor-related perturbations. For example, natural fluctuations in marine fish populations are often large, with intra- and interannual variability in population levels covering several orders of magnitude. Furthermore, cyclic events (e.g., bird migration, tides) are very important in natural systems. Predicting the effects of anthropogenic stressors against this background of variation can be very difficult. Thus, a lack of statistically significant effects in a field study does not automatically mean that adverse ecological effects are absent. Rather, risk assessors must consider factors such as statistical power to detect differences, natural variability, and other lines of evidence in reaching their conclusions.

Spatial and temporal scales need to be considered in assessing the adversity of the effects. The spatial dimension encompasses both the extent and pattern of effect as well as the context of the effect within the landscape. Factors to consider include the absolute area affected, the extent of critical habitats affected compared with a larger area of interest, and the role or use of the affected area within the landscape.

Adverse effects to assessment endpoints vary with the absolute area of the effect. A larger affected area may be (1) subject to a greater number of other stressors, increasing the complications from stressor interactions; (2) more likely to contain sensitive species or habitats; or (3) more susceptible to landscape-level changes because many ecosystems may be altered by the stressors.

Nevertheless, a smaller area of effect is not always associated with lower risk. The function of an area within the landscape may be more important than the absolute area. Destruction of small but unique areas, such as critical wetlands, may have important effects on local wildlife populations. Also, in river systems, both riffle and pool areas provide important microhabitats that maintain the structure and function of the total river ecosystem. Stressors acting on some of these microhabitats may present a significant risk to the entire system.

Spatial factors are important for many species because of the linkages between ecological landscapes and population dynamics. Linkages between one or more landscapes can provide refugia for affected populations, and species may require adequate corridors between habitat patches for successful migration.

The temporal scale for ecosystems can vary from seconds (photosynthesis, prokaryotic reproduction) to centuries (global climate change). Changes within a forest ecosystem can occur gradually over decades or centuries and may be affected by slowly changing external factors such as climate. When interpreting ecological adversity, risk assessors should recognize that the time scale of stressor-induced changes operates within the context of multiple natural time scales. In addition, temporal responses for ecosystems may involve intrinsic time lags, so that responses from a stressor may be delayed. Thus, it is important to distinguish the long-term impacts of a stressor from the immediately visible effects. For example, visible changes resulting from eutrophication of aquatic systems (turbidity, excessive macrophyte growth, population decline) may not become evident for many years after initial increases in nutrient levels.

Considering the temporal scale of adverse effects leads logically to a consideration of recovery. Recovery is the rate and extent of return of a population or community to a condition that existed before the introduction of a stressor. (While this discussion deals with recovery as a result of natural processes, risk mitigation options may include restoration activities to facilitate or speed up the recovery process.) Because ecosystems are dynamic and even under natural conditions are constantly changing in response to changes in the physical environment (weather, natural catastrophes, etc.) or other factors, it is unrealistic to expect that a system will remain static at some level or return to exactly the same state that it was before it was disturbed (Landis et al., 1993). Thus, the attributes of a "recovered" system must be carefully defined. Examples might include productivity declines in an eutrophic system, reestablishment of a species at a particular density, species recolonization of a damaged habitat, or the restoration of health of diseased organisms.

Recovery can be evaluated in spite of the difficulty in predicting events in ecological systems (e.g., Niemi et al., 1990). For example, it is possible to distinguish changes that are usually reversible (e.g., recovery of a stream from sewage effluent discharge), frequently irreversible (e.g., establishment of introduced species), and always irreversible (e.g., species extinction). It is important for risk assessors to consider whether significant structural or functional

changes have occurred in a system that might render changes irreversible. For example, physical alterations such as deforestation in the coastal hills of Venezuela in recent history and Britain in the Neolithic period changed soil structure and seed sources such that forests cannot easily grow again (Fisher and Woodmansee, 1994).

Risk assessors should note natural disturbance patterns when evaluating the likelihood of recovery from anthropogenic stressors. Ecosystems that have been subjected to repeated natural disturbances may be more vulnerable to anthropogenic stressors (e.g., overfishing, logging of old-growth forest). Alternatively, if an ecosystem has become adapted to a disturbance pattern, it may be affected when the disturbance is removed (fire-maintained grasslands). The lack of natural analogues make it difficult to predict recovery from novel anthropogenic stressors (e.g., synthetic chemicals).

The relative rate of recovery can also be estimated. For example, fish populations in a stream are likely to recover much faster from exposure to a degradable chemical than from habitat alterations resulting from stream channelization. Risk assessors can use knowledge of factors such as the temporal scales of organisms' life histories, the availability of adequate stock for recruitment, and the interspecific and trophic dynamics of the populations in evaluating the relative rates of recovery. A fisheries stock or forest might recover in several decades, a benthic infaunal community in years, and a planktonic community in weeks to months.

Appendix E illustrates how the criteria for ecological adversity (nature and intensity of effects, spatial and temporal scales, and recovery) might be used in evaluating two cleanup options for a marine oil spill. This example also shows that recovery of a system depends not only on how quickly a stressor is removed but also on how any cleanup efforts affect the recovery.

5.3. Reporting Risks

When risk characterization is complete, the risk assessors should be able to estimate ecological risks, indicate the overall degree of confidence in the risk estimates, cite lines of evidence supporting the risk estimates, and interpret the adversity of ecological effects. Usually this information is included in a risk assessment report (sometimes referred to as a risk characterization report because of the integrative nature of risk characterization). This section describes elements that risk assessors should consider when preparing a risk assessment report.

Like the risk assessment itself, a risk assessment report may be brief or extensive depending on the nature of and the resources available for the assessment. While it is important to address the elements described below, risk assessors must judge the appropriate level of detail required. The report need not be overly complex or lengthy, depending on the nature of the risk assessment and the information required to support a risk management decision. In fact, it is important that information be presented clearly and concisely.

While the breadth of ecological risk assessment precludes providing a detailed outline of reporting elements, the risk assessor should consider the elements listed in text note 5–8 when preparing a risk assessment report.

To facilitate mutual understanding, it is critical that the risk assessment results are properly presented. Agency policy requires that risk characterizations be prepared "in a manner that is clear, transparent, reasonable, and consistent with other risk characterizations of similar scope prepared across programs in the Agency" (U.S. EPA 1995c). Ways to achieve such characteristics are described in text note 5–9.

After the risk assessment report is prepared, the results are discussed with risk managers. Section 6 provides information on communication between risk assessors and risk managers, describes the use of the risk assessment in a risk management context, and briefly discusses communication of risk assessment results from risk managers to the public.

6. Relating Ecological Information to Risk Management Decisions

After characterizing risks and preparing a risk assessment report (section 5), risk assessors discuss the results with risk managers (figure 5–1). Risk managers use risk assessment results along with other factors (e.g., economic or legal concerns) in making environmental decisions. The results also provide a basis for communicating risks to the public.

Mutual understanding between risk assessors and risk managers can be facilitated if the questions listed in text note 6–1 are addressed. Risk managers need to know what the major risks (or potential risks) are with respect to assessment endpoints and have an idea of whether the conclusions are supported by a large body of data or if there are significant data gaps. When there is insufficient information to characterize risk at an appropriate level of detail due to a lack of resources, a lack of a consensus on how to interpret information, or other reasons, the issues, obstacles, and correctable deficiencies should be clearly articulated for the risk manager's consideration.

In making a decision regarding ecological risks, risk managers use risk assessment results along with other information that may include social, economic, political, or legal issues. For example, the risk assessment may be used as part of a risk/benefit analysis, which may require translating resources (identified through the assessment endpoints) into monetary values. One difficulty with this approach is that traditional economic considerations may not adequately address things that are not considered commodities, intergenerational resource values or issues of long-term or irreversible effects (U.S. EPA, 1995b). Risk managers may also consider risk mitigation options or alternative strategies for reducing risks. For example, risk mitigation techniques such as buffer strips or lower field application rates can be used to reduce the exposure (and risk) of a new pesticide. Further, risk managers may consider relative as well as absolute risk, for example, by comparing the risk of a new pesticide to other pesticides currently in use. Finally, risk managers consider public opinion and political demands in their decisions. Taken together, these other factors may render very high risks acceptable or very low risks unacceptable.

Risk characterization provides the basis for communicating ecological risks to the public. This task is usually the responsibility of risk managers. Although the final risk assessment document (including its risk characterization sections) can be made available to the public, the risk communication process is best served by tailoring information to a particular audience. It is important to clearly describe the ecological resources at risk, their value, and the monetary and other costs of protecting (and failing to protect) the resources (U.S. EPA, 1995b).

Managers should clearly describe the sources and causes of risks, the potential adversity of the risks (e.g., nature and intensity, spatial and temporal scale, and recovery potential). The degree of confidence in the risk assessment, the rationale for the risk management decision, and the options for reducing risk are also important (U.S. EPA, 1995b). Other risk communication considerations are provided in text note 6–2.

Along with the discussions of risk and communications with the public, it is

important for risk managers to consider whether additional follow-on activities are required. Depending on the importance of the assessment, confidence level in the assessment results, and available resources, it may be advisable to conduct another iteration of the risk assessment (starting with problem formulation or analysis) in order to facilitate a final management decision. Another option is to proceed with the decision and develop a monitoring plan to evaluate the results of the decision (see section 1). For example, if the decision was to mitigate risks through exposure reduction, monitoring could help determine whether the desired reduction in exposure (and effects) was achieved.

7. Text Notes

Text Note 1–1. Related Terminology

The following terms overlap to varying degrees with the broad concept of ecological risk assessment used in these guidelines (see Appendix B for definitions):

- Hazard assessment.
- Comparative risk assessment.
- Cumulative ecological risk assessment.
- Environmental impact statement.

Text Note 1–2. Flexibility of the Framework Diagram

The framework process (figure 1–1) is a general representation of a complex and varied group of assessments, but this diagram should not be viewed as rigid and prescriptive. Rather, as illustrated by the examples below, broad applicability of the framework requires a flexible interpretation of the process.

- In problem formulation, an assessment may begin with a consideration of endpoints, stressors, or ecological effects. Problem formulation is frequently interactive and iterative rather than linear.
- In the analysis phase, it may be difficult to maintain a clear distinction between exposure and effects analyses in all but the simplest systems. Exposure and effects frequently become intertwined, as when an initial exposure leads to a cascade of additional exposures and effects. It is important that a risk assessment is based on an understanding of these complex relationships.
- Analysis and risk characterization are shown as separate phases. However, some models may combine the analysis of exposure and effects data with the integration of these data that occurs in risk characterization.

Text Note 1–3. The Iterative Nature of Ecological Risk Assessment

The ecological risk assessment process is by nature iterative. For example, it may take more than one pass through problem formulation to complete planning for the risk assessment, or information gathered in the analysis phase may suggest further problem formulation activities such as modification of the endpoints selected.

To maximize efficient use of limited resources, ecological risk assessments are frequently designed in sequential tiers that proceed from simple, relatively inexpensive evaluations to more costly and complex assessments. Initial tiers are based on conservative assumptions, such as maximum exposure and ecological sensitivity. When an early tier cannot define risk to support a management decision, a higher assessment tier is used that may require either additional data or applying more refined analysis techniques to available data. Iterations proceed until sufficient information is available to support a sound management decision, within the constraints of available resources.

Because a tiered approach can incorporate standardized decision points and supporting analyses, it can be particularly useful for multiple assessments of similar stressors or situations. However, it is difficult to generalize further concerning tiered risk assessments because they are used to answer so many different questions. Examples of organizations that use, are considering, or have advocated using tiered ecological risk assessments include the Canadian government (proposed, Gaudet, 1994), the European Community (E.C., 1993), industry (Cowan et al., 1995), the Aquatic Dialogue Group (SETAC 1994a), and the U.S. EPA Offices of Pesticide Programs (Urban and Cook, 1986), Pollution Prevention and Toxics (Lynch et al., 1994), and Superfund (document in preparation).

Text Note 2–1. Who Are Risk Managers?

Risk managers are individuals and organizations that take responsibility for, or have the authority to take action or require action, to mitigate an identified risk. The expression "risk manager" is often used to represent a decisionmaker in agencies like EPA or state environmental offices who has the authority to protect or manage a resource. However, risk managers often represent a diverse group of interested parties that influence the outcome of resource protection efforts. Particularly as the scope of environmental management expands to communities, the meaning of risk manager significantly expands to include decision officials in Federal, state, and local governments, as well as private-sector leaders in commercial, industrial, and private organizations. Risk managers may also include constituency groups, other interested parties, and the public. In situations where a complex of ecosystem values (e.g., watershed resources) is at risk from multiple stressors, many of these groups may act together as risk management teams. For additional insights on risk management and manager roles, see text notes 2–3 and 2–4.

Text Note 2–2. Who Are Risk Assessors?

Risk assessors are a diverse group of professionals who bring a needed expertise to a risk assessment. When a specific risk assessment process is well defined through regulations and guidance, one trained individual may be able to complete a risk assessment if needed information is available (e.g., premanufacture notice of a chemical). However, as more complex risk assessments become common, it will be rare that one individual can provide the necessary breadth of expertise. Every risk assessment team should include at least one professional who is knowledgeable and experienced in using the risk assessment process. Other team members bring specific expertise relevant to the location, the stressors, the ecosystem, and the scientific issues and other expertise as determined by the type of assessment.

Text Note 2–3. Questions Addressed by Risk Managers and Risk Assessors

Questions Principally for Risk Managers:

What is the nature of the problem and the best scale for the assessment?

What are the management goals and decisions needed, and how will risk assessment help?

What are the ecological values of concern?

What are the policy considerations (law, corporate stewardship, societal concerns, environmental justice)?

What precedents are set by previous risk assessments and decisions?

What is the context of the assessment (e.g., industrial, national park)?

What resources (e.g., personnel, time, money) are available?

What level of uncertainty is acceptable?

Questions Principally for Risk Assessors

What is the scale of the risk assessment?

What are the critical ecological endpoints and ecosystem and receptor characteristics?

How likely is recovery and how long will it take?

What is the nature of the problem: past, present, future?

What is our state of knowledge on the problem?

What data and data analyses are available and appropriate?

What are the potential constraints (e.g., limits on expertise, time, availability of methods and data)?

Text Note 2–4. The Role of Interested Parties

The involvement of all interested and affected parties, which "stakeholder" is commonly used to represent, is important to the development of management goals for some risk assessments. The greater the involvement, the broader the base of consensus about those goals. With strong consensus on management goals, decisions are more likely to be supported by all community groups during implementation of management plans. However, the context of this involvement can vary widely, and the ability to achieve consensus often decreases as the size of the management team increases. Where large diverse groups need to come to consensus, social science professionals and methods for consensus building become increasingly important. Interested parties become risk managers when they influence risk reduction. See additional discussion in text note 2–1 and section 2.2.

Text Note 2–5. Sustainability as a Management Goal

Sustainability is used repeatedly as a management goal in a variety of settings (see U.S. EPA, 1995b). To sustain is to prolong, to hold up under, or endure (Merriam-Webster, 1972). Sustainability and other concepts such as biotic or community integrity are very useful as guiding principles for management goals. However, in each case these principles must be explicitly interpreted to support a risk assessment. To do this, key questions need to be addressed: What does sustainability or integrity mean for the particular ecosystem? What must be protected to meet sustainable goals or system integrity? Which ecological resources and processes are to be sustained and why? How will we know we have achieved it? Answers to these questions serve to clarify the goals for a particular ecosystem. Concepts like sustainability and integrity do not meet the criteria for an assessment endpoint (see section 3.3.2).

Text Note 2–6. Management Goals for Waquoit Bay

Waquoit Bay is a small estuary on Cape Cod showing signs of degradation, including loss of eelgrass, fish, and shellfish and increasing macroalgae mats and fish kills. The management goal for Waquoit Bay was established through public meetings, preexisting goals from local organizations, and state and Federal regulations:

Reestablish and maintain water quality and habitat conditions in Waquoit Bay and associated freshwater rivers and ponds to (1) support diverse self-sustaining commercial, recreational, and native fish and shell fish populations, and (2) reverse ongoing degradation of ecological resources in the watershed.

To define this goal, it was interpreted into 10 objectives, two of which are:

- Reestablish a self-sustaining scallop population in the bay that can support a viable sport fishery.
- Reduce or eliminate nuisance macroalgal growth.

From these objectives, specific ecological resources in the bay were identified to provide the basis for the risk assessment, one of which is:

Areal extent and patch size of eelgrass beds.

Eelgrass was selected because scallops are dependent directly on eelgrass beds for survival and eelgrass is highly sensitive to excess macroalgal growth.

Text Note 2–7. Questions to Ask About Scope and Complexity

Is this risk assessment legally mandated, addressing a court-ordered decision, or providing guidance to a community?

Are decisions more likely based on assessments of a small area evaluated in-depth or a large-scale area in less detail?

What are the spatial and temporal boundaries of the problem?

What kinds of information are already available compared to what is needed?

How much time can be taken and how many resources are available?

What practicalities constrain data collection?

Is a tiered approach an option?

Text Note 3–1. Avoiding Potential Shortcomings Through Problem Formulation

The importance of problem formulation has been shown repeatedly in the Agency's analysis of ecological risk assessment case studies and in interactions with senior EPA managers and regional risk assessors (U.S. EPA, 1993a, 1994a). Consistent shortcomings identified in the case studies include (1) absence of clearly defined goals, (2) endpoints that are ambiguous and difficult to define and measure, and (3) failure to identify important risks. These and other shortcomings can be avoided through rigorous development of the products of problem formulation as described in this section of the guidelines.

Text Note 3–2. Uncertainty in Problem Formulation

In each product of problem formulation there are elements of uncertainty, a consideration of what is known and not known about a problem and its setting. The explicit treatment of uncertainty during problem formulation is particularly important because it will have repercussions throughout the remainder of the assessment. Uncertainty is discussed in section 3.4, Conceptual Models, because uncertainty in problem formulation is articulated in these models.

Text Note 3–3. Assessing Available Information: Questions to Ask Concerning Source, Stressor, and Exposure Characteristics, Ecosystem Characteristics, and Effects

Source and Stressor Characteristics

- What is the source? Is it anthropogenic, natural, point source, or diffuse nonpoint?
- What type of stressor is it: chemical, physical, or biological?
- What is the intensity of the stressor (e.g., the dose or concentration of a chemical, the magnitude or extent of physical disruption, the density or population size of a biological stressor)?
- What is the mode of action? How does the stressor act on organisms or ecosystem functions?

Exposure Characteristics

- With what frequency does a stressor event occur (e.g., is it isolated, episodic, or continuous; is it subject to natural daily, seasonal, or annual periodicity)?
- What is its duration? How long does it persist in the environment (e.g., for chemical, what is its half-life, does it bioaccumulate; for physical, is habitat alteration sufficient to prevent recovery; for biological, will it reproduce and proliferate)?
- What is the timing of exposure? When does it occur in relation to critical organism life cycles or ecosystem events (e.g., reproduction, lake overturn)?
- What is the spatial scale of exposure? Is the extent or influence of the stressor local, regional, global, habitat-specific, or ecosystemwide?

• What is the distribution? How does the stressor move through the environment (e.g., for chemical, fate and transport; for physical, movement of physical structures; for biological, life history dispersal characteristics)?

Ecosystems Potentially at Risk

• What are the geographic boundaries? How do they relate to functional characteristics of the ecosystem?
• What are the key abiotic factors influencing the ecosystem (e.g., climatic factors, geology, hydrology, soil type, water quality)?
• Where and how are functional characteristics driving the ecosystem (e.g., energy source and processing, nutrient cycling)?
• What are the structural characteristics of the ecosystem (e.g., species number and abundance, trophic relationships)?
• What habitat types are present?
• How do these characteristics influence the susceptibility (sensitivity and likelihood of exposure) of the ecosystem to the stressor(s)?
• Are there unique features that are particularly valued (e.g., the last representative of an ecosystem type)?
• What is the landscape context within which the ecosystem occurs?

Ecological Effects

• What are the type and extent of available ecological effects information (e.g., field surveys, laboratory tests, or structure-activity relationships)?
• Given the nature of the stressor (if known), which effects are expected to be elicited by the stressor?
• Under what circumstances will effects occur?

Text Note 3–4. Initiating a Risk Assessment: What's Different When Stressors, Effects, or Values Drive the Process?

The reasons for initiating a risk assessment also influence how the risk assessor proceeds through the process of problem formulation. When the assessment is initiated due to concerns about stressors, risk assessors use what is known about the characteristics of the stressor and its source to focus the assessment. Goals are articulated based on how the stressor is likely to cause risk to possible receptors that may become exposed. This information forms the basis for developing conceptual models and selecting assessment endpoints. When an observed effect is the basis for initiating the assessment, endpoints are normally established first. Often these endpoints involve affected ecological entities and their response. Goals for protecting the assessment endpoints are then established, which support the development of conceptual models. The models aid in the identification of the most likely stressor(s). Value-initiated risk assessments are driven up front by goals for the ecological value of concern. These values might involve ecological entities such as species, communities, ecosystems, or places. Based on these goals, assessment endpoints are selected first to serve as an interpretation of the goals. Once selected, the endpoints provide the basis for identifying an array of stressors that may be influencing them, and describing the diversity of potential effects. This information is then captured in the conceptual model(s).

Text Note 3–5. Salmon and Hydropower: Salmon as the Basis for an Assessment Endpoint

A hydroelectric dam is to be built on a river in the Pacific Northwest where anadromous fish such as salmon spawn. Assessment endpoints must be selected to assess potential ecological risk. Of the anadromous fish, salmon that spawn in the river are an appropriate choice because they meet the criteria for good assessment endpoints. Salmon fry and adults are important food sources for a multitude of aquatic and terrestrial species and are major predators of aquatic invertebrates (ecological relevance). Salmon are sensitive to changes in sedimentation and substrate pebble size, require quality cold water habitats, and have difficulty climbing fish ladders. Hydroelectric dams represent significant and normally fatal habitat alteration and physical obstacles to successful salmon breeding and fry survival (susceptibility). Finally, salmon support a large commercial fishery, some species are endangered, and they have ceremonial importance and are key food sources for Native Americans (basis for management goals). "Salmon reproduction and population maintenance" is a good assessment endpoint for this risk assessment, and if salmon populations are protected, other anadromous fish populations are likely to be protected as well. However, one assessment endpoint can rarely provide the basis for a risk assessment of complex ecosystems. These are better represented by a set of assessment endpoints.

Text Note 3–6. Cascading Adverse Effects: Primary (Direct) and Secondary (Indirect)

The interrelationships among entities and processes in ecosystems result in the potential for cascading effects: as one population, species, process, or other entity in the ecosystem is altered, other entities are affected as well. Primary, or direct, effects occur when a stressor acts directly on the assessment endpoint and causes an adverse response. Secondary, or indirect, effects occur when the response of an ecological entity to a stressor becomes a stressor to another entity. Secondary effects are not limited in number. They often are a series of effects among a diversity of organisms and processes that cascade through the ecosystem. For example, application of an herbicide on a wet meadow results in direct toxicity to plants. Death of the wetland plants leads to secondary effects such as loss of feeding habitat for ducks, breeding habitat for red-winged black birds, alteration of wetland hydrology that changes spawning habitat for fish, and so forth.

Text Note 3–7. Sensitivity and Secondary Effects: The Mussel-Fish Connection

Native freshwater mussels are endangered in many streams. Management efforts have focused on maintaining suitable habitat for mussels because habitat loss has been considered the greatest threat to this group. However, larval unionid mussels must attach to the gills of a fish host for one month during development. Each species of mussel must attach to a particular host species of fish. In situations where the fish community has been changed, perhaps due to stressors to which mussels are insensitive, the host fish may no longer be available. Mussel larvae will die before reaching maturity as a result. Regardless of how well managers restore mussel habitat, mussels will be lost from this system unless the fish community is restored. In this case, exposure to the absence of a critical resource is the source of risk.

TEXT NOTE 3–8.—EXAMPLES OF MANAGEMENT GOALS AND ASSESSMENT ENDPOINTS

Case	Regulatory context/management goal	Assessment endpoint
Assessing Risks of New Chemical Under Toxic Substances Control Act (Lynch et al., 1994).	Protect "the environment" from "an unreasonable risk of injury" (TSCA §2[b] [1] and [2]); protect the aquatic environment. Goal was to exceed a concentration of concern by no more than 20 days a year.	Survival, growth, and reproduction of fish, aquatic invertebrates, and algae.
Special Review of Granular Carbofuran Based on Adverse Effects on Birds (Houseknecht, 1993).	Prevent * * * "unreasonable adverse effects on the environment" (FIFRA §§3[c][5] and 3[c][6]); using cost-benefit considerations. Goal was no regularly repeated bird kills.	Individual bird survival.
Modeling Future Losses of Bottomland Forest Wetlands (Brody et al., 1993).	National Environmental Policy Act may apply to environmental impact of new levee construction; also Clean Water Act §404.	(1) Forest community structure and habitat value to wildlife species. (2) Species composition of wildlife community.
Pest Risk Assessment on Importation of Logs From Chile (USDA, 1993).	This assessment was done to help provide a basis for any necessary regulation of the importation of timber and timber products into the United States.	Survival and growth of tree species in the western United States.
Baird and McGuire Superfund Site (terrestrial component); (Burmaster et al., 1991; Callahan et al., 1991; Menzie et al., 1992).	Protection of the environment (CERCLA/SARA)	(1) Survival of soil invertebrates. (2) Survival and reproduction of song birds.
Waquoit Bay Estuary Watershed Risk Assessment.	Clean Water Act—wetlands protection; water quality criteria—pesticides; endangered species. National Estuarine Research Reserve, Massachusetts, Area of Critical Environmental Concern. Goal was to reestablish and maintain water quality and habitat conditions to support diverse self-sustaining commercial, recreational, and native fish, water-dependent wildlife, and shellfish, and reverse ongoing degradation.	(1) Estuarine eelgrass habitat abundance and distribution. (2) Estuarine fish species diversity and abundance. (3) Freshwater pond benthic invertebrate species diversity and abundance.

Text Note 3–9. Common Problems in Selecting Assessment Endpoints

- Endpoint is a goal (e.g., maintain and restore endemic populations).
- Endpoint is vague (e.g., estuarine integrity instead of eelgrass abundance and distribution).
- Ecological entity is better as a measure (e.g., measure emergence of midges for endpoint on feeding of fish).
- Ecological entity may not be as sensitive to the stressor (e.g., catfish versus salmon for sedimentation).
- Ecological resource is not exposed to the stressor (e.g., using insectivorous birds for avian risk of pesticide application to seeds).
- Ecological resources are irrelevant to the assessment (e.g., lake fish in salmon stream).
- Value of a species or attributes of an ecosystem are not fully considered (e.g., mussel-fish connection, see text note 3–7).
- Attribute is not sufficiently sensitive for detecting important effects (e.g., survival compared with recruitment for endangered species).

Text Note 3–10. What Are Risk Hypotheses and Why Are They Important?

Risk hypotheses are proposed answers to questions risk assessors have about what responses assessment endpoints (and measures) will show when they are exposed to stressors and how exposure will occur. Risk hypotheses clarify and codify relationships that are posited through the consideration of available data, information from scientific literature, and the best professional judgment by risk assessors developing the conceptual models. This explicit process opens the risk assessment to peer review and evaluation to ensure the scientific validity of the work. Risk hypotheses are not equivalent to statistical testing of null and alternative hypotheses. However, predictions generated from risk hypotheses can be tested in a variety of ways, including standard statistical approaches.

Text Note 3–11. Examples of Risk Hypotheses

Hypotheses include known information that sets the problem in perspective and the proposed relationships that need evaluation.

Stressor-initiated: Chemicals with a high K_{ow} tend to bioaccumulate. Premanufacture notice (PMN) chemical A has a K_{ow} of 5.5 and similar molecular structure as known chemical stressor B. Hypotheses: Based on the K_{ow} of chemical A, the mode of action of chemical B, and the food web of the target ecosystem, when the PMN chemical is released at a specified rate, it will bioaccumulate sufficiently in 5 years to cause developmental problems in wildlife and fish.

Effects-initiated: Bird kills were repeatedly observed in golf courses following the application of the pesticide carbofuran, which is highly toxic. Hypotheses: Birds die when they consume recently applied granulated carbofuran; as the level of application increases, the number of dead birds increases. Exposure occurs when dead and dying birds are consumed by other animals. Birds of prey and scavenger species will die from eating contaminated birds.

Ecological value-initiated: Waquoit Bay, Massachusetts, supports recreational boating and commercial and recreational shellfishing and is a significant nursery for fish. Large mats of macroalgae clog the estuary, most of the eelgrass has died, and scallops are gone. Hypotheses: Nutrient loading from septic systems, air pollution, and lawn fertilizers cause eelgrass loss by shading from algal growth, and direct toxicity from nitrogen compounds. Fish and shellfish populations are decreasing because of loss of eelgrass habitat and periodic hypoxia.

Text Note 3–12. What Are the Benefits of Developing Conceptual Models?

- The process of creating a conceptual model is a powerful learning tool.
- Conceptual models can be improved as knowledge increases.

• Conceptual models highlight what we know and don't know and can be used to plan future work.
• Conceptual models can be a powerful communication tool. They provide an explicit expression of our assumptions and understanding of a system for others to evaluate.
• Conceptual models provide a framework for prediction and are the template for generating more risk hypotheses.

Text Note 3–13. Uncertainty in Problem Formulation

Uncertainties in problem formulation are manifested in the quality of conceptual models. To describe uncertainty:
• Be explicit in defining assessment endpoints; include both entity and measurable attributes.
• Reduce or define variability by carefully defining boundaries for the assessment.
• Be open and explicit about the strengths and limitations of pathways and relationships depicted in the conceptual model.
• Identify and describe rationale for key assumptions made because of lack of knowledge, model simplification, approximation, or extrapolation.
• Describe data limitations.

Text Note 3–14. Examples of Assessment Endpoints and Measures (see also section 3.5.1)

Assessment Endpoint: Coho salmon breeding success and fry survival.

Measures of Effects

• Egg and fry response to low dissolved oxygen.
• Adult behavior in response to obstacles.
• Spawning behavior and egg survival in response to sedimentation.

Measures of Ecosystem and Receptor Characteristics

• Water temperature, water velocity, and physical obstructions.
• Abundance and distribution of suitable breeding substrate.
• Abundance and distribution of suitable food sources for fry.
• Feeding, resting, and reproductive cycles.
• Natural population structure (proportion of different size and age classes).
• Laboratory evaluation of reproduction, growth, and mortality.

Measures of Exposure

• Number and height of hydroelectric dams.
• Toxic chemical concentrations in water, sediment, and fish tissue.
• Nutrient and dissolved oxygen levels in ambient waters.

Text Note 3–15: Selecting What To Measure

Direct measurement of assessment endpoint responses is often not possible. Under these circumstances, the selection of a surrogate response measure is necessary. The selection of what, where, and how to measure determines whether the risk assessment is still relevant to management decisions about an assessment endpoint. For example, a risk assessment may be conducted to evaluate the potential risk of a pesticide used on seeds. Birds and mammals may be selected as the entities for assessment endpoints. However, to ensure that the organisms selected are susceptible to the pesticide, only those that eat seeds should be chosen. While insectivorous birds may serve as a good surrogate measure for determining the sensitivity of birds to the pesticide, they do not address issues of exposure. To evaluate susceptibility, the appropriate assessment endpoints in this case would be seed-eating birds and mammals. Problem formulations based on assessment endpoints that are both sensitive and likely to be exposed to the stressor will be relevant to management concerns. If assessment endpoints are not susceptible, their use in assessing risk can lead to poor management decisions.

Text Note 3–16. How Do Water Quality Criteria Relate to Assessment Endpoints?

Water quality criteria (U.S. EPA, 1986a) have been developed for the protection of aquatic life from chemical stressors. This text note shows how the elements of a water quality criterion correspond to management goals, assessment endpoints, and measures.

Regulatory Goal

• Clean Water Act, § 101: Protection of the chemical, physical, and biological integrity of the Nation's waters.

Program Management Objective

• Protect 99% of individuals in 95% of the species in aquatic communities from acute and chronic effects resulting from exposure to a chemical stressor.

Assessment Endpoints

• Survival of fish, aquatic invertebrate, and algal species under acute exposure.
• Survival, growth, and reproduction of fish, aquatic invertebrate, and algal species under chronic exposure.

Measures of Effect

• Laboratory LC_{50}s for at least eight species meeting certain requirements.
• Chronic NOAELs for at least three species meeting certain requirements.

Measures of Ecosystem and Receptor Characteristics

• Water hardness (for some metals).
• pH.

The water quality criterion is a benchmark level derived from a distributional analysis of single-species toxicity data. It is assumed that the species tested adequately represent the composition and sensitivities of species in a natural community.

Text Note 3–17. Data Quality Objectives (DQO) Process

The DQO process combines elements of both planning and problem formulation in its seven-step format.

Step 1—State the problem. Review existing information to concisely describe the problem to be studied.

Step 2—Identify the decision. Determine what questions the study will try to resolve and what actions may result.

Step 3—Identify inputs to the decision. Identify information and measures needed to resolve the decision statement.

Step 4—Define study boundaries. Specify time and spatial parameters and where and when data should be collected.

Step 5—Develop decision rule. Define statistical parameter, action level, and logical basis for choosing alternatives.

Step 6—Specify tolerable limits on decision errors. Define limits based on the consequences of an incorrect decision.

Step 7—Optimize the design. Generate alternative data collection designs and choose most resource-effective design that meets all DQOs.

Text Note 4–1. Data Collection and the Analysis Phase

Data needs are identified during problem formulation (the analysis plan step), and data are collected before the start of the analysis phase. These data may be collected for the specific purpose of a particular risk assessment, or they may be available from previous studies. If additional data needs are identified as the assessment proceeds, the analysis phase may be temporarily halted while they are collected or the assessor may choose to iterate the problem formulation again. Data collection methods are not described in these guidelines. However, the evaluation of data for the purposes of

risk assessment is discussed in section 4.2.

Text Note 4–2. The American National Standard for Quality Assurance

The Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs (ASQC, 1994) recognizes several areas that are important to ensuring that environmental data will meet study objectives, including:

- Planning and scoping.
- Design of data collection operations.
- Implementation and monitoring of planned operations.
- Assessment and verification of data usability.

Text Note 4–3. Questions for Evaluating a Study's Utility for Risk Assessment

How do study objectives compare with those of the risk assessment?

Are the variables and conditions the study represents compared to those important to the risk assessment?

Was the study design adequate to meet its objectives?

Was the study conducted properly?

How were variability and uncertainty treated and reported?

Text Note 4–4. Considering the Degree of Aggregation in Models

Wiegert and Bartell (1994) suggest the following considerations for evaluating the proper degree of aggregation or disaggregation:

(1) Do not aggregate components with greatly disparate rates of fluxes;

(2) Do not greatly increase the disaggregation of the structural aspects of the model without a corresponding increase in the sophistication of the functional relationships and controls; and

(3) Disaggregate models only insofar as required by the goals of the model to facilitate testing.

Text Note 4–5. Questions for Source Description

Where does the stressor originate?

What environmental medium first receives stressors?

Does the source generate other constituents that will influence a stressor's eventual distribution in the environment?

Are there other sources of the same stressor?

Are there background sources?

Is the source still active?

Does the source produce a distinctive signature that can be seen in the environment, organisms or communities?

Additional Questions for Introduction of Biological Stressors

Is there an opportunity for repeated introduction or escape into the new environment?

Will the organism be present on a transportable item?

Are there mitigation requirements or conditions that would kill or impair the organism before entry, during transport, or at the port of entry?

Text Note 4–6. Questions To Ask in Evaluating Stressor Distribution

What are the important transport pathways?

What characteristics of the stressor influence transport?

What characteristics of the ecosystem will influence transport?

What secondary stressors will be formed?

Where will they be transported?

Text Note 4–7. General Mechanisms of Transport and Dispersal

Physical, Chemical and Biological Stressors

- By air current.
- In surface water (rivers, lakes, streams).
- Over and/or through the soil surface.
- Through ground water.

Primarily Chemical Stressors

- Through the food web.

Primarily Biological Stressors

- Splashing or raindrops.
- Human activity (boats, campers).
- Passive transmittal by other organisms.
- Biological vectors.

Text Note 4–8. Questions To Ask in Describing Contact or Co-Occurrence

Must the receptor actually contact the stressor for adverse effects to occur?

Must the stressor be taken up into a receptor for adverse effects to occur?

What characteristics of the receptors will influence the extent of contact or co-occurrence?

Will abiotic characteristics of the environment influence the extent of contact or co-occurrence?

Will ecosystem processes or community-level interactions influence the extent of contact or co-occurrence?

Text Note 4–9. Example of an Exposure Equation: Calculating a Potential Dose via Ingestion

$$ADD_{pot} = \sum_{k=1}^{m} \left(C_k \times FR_k \times NIR_k \right)$$

Where:

ADD_{pot}=Potential average daily dose (e.g., in mg/kg-day)

C_k=Average contaminant concentration in the k^{th} type of food (e.g., in mg/kg wet weight)

FR_k=Fraction of intake of the k^{th} food type that is from the contaminated area (unitless)

NIR_k=Normalized ingestion rate of the k^{th} food type on a wet-weight basis (e.g., in g food/g body-weight-day).

m=Number of contaminated food types

Source: U.S. EPA, 1993c

Text Note 4–10. Measuring Internal Dose Using Biomarkers and Tissue Residues

Biomarkers, tissue residues, or other bioassessment methods may be useful in estimating or confirming exposure in cases where bioavailability is expected to be a significant issue, but the factors influencing it are not known. They can also be very useful when the metabolism and accumulation kinetics are important factors (McCarty and Mackay, 1993). These methods are most useful when they can be quantitatively linked to the amount of stressor originally contacted by the organism. In addition, they are most useful when the stressor-response relationship expresses the amount of stressor in terms of the tissue residues or biomarkers. Additional information and some considerations for their development can be found in Huggett et al. (1992).

Text Note 4–11. Questions Addressed by the Exposure Profile

How does exposure occur?

What is exposed?

How much exposure occurs? When and where does it occur?

How does exposure vary?

How uncertain are the exposure estimates?

What is the likelihood that exposure will occur?

Text Note 4–12. Questions for Stressor-Response Analysis

Does the assessment require point estimates or stressor-response curves?

Does the assessment require the establishment of a "no-effect" level?

Would cumulative effects distributions be useful?

Text Note 4–13. Qualitative Stressor-Response Relationships

The relationship between stressor and response can be described qualitatively, for instance, using categories of high, medium, and low, to describe the intensity of response given exposure to a stressor. For example, Pearlstine et al. (1985) assumed that seeds would not

germinate if they were inundated with water at the critical time. This stressor-response relationship was described simply as a yes or no. In most cases, however, the objective is to describe quantitatively the intensity of response associated with exposure, and in the best case, to describe how intensity of response changes with incremental increases in exposure.

Text Note 4–14. Median Effect Levels

Median effects are those effects elicited in 50% of the test organisms exposed to a stressor, typically chemical stressors. Median effect concentrations can be expressed in terms of lethality or mortality and are known as LC_{50} or LD_{50}, depending on whether concentrations (in the diet or in water) or doses (mg/kg) were used. Median effects other than lethality (e.g., effects on growth) are expressed as EC_{50} or ED_{50}. The median effect level is always associated with a time parameter (e.g., 24 or 48 hr). Because these tests seldom exceed 96 hr, their main value lies in evaluating short-term effects of chemicals. Stephan (1977) discusses several statistical methods to estimate the median effect level.

Text Note 4–15. No-Effect Levels Derived From Statistical Hypothesis Testing

Statistical hypothesis tests have typically been used with chronic toxicity tests of chemical stressors that evaluate multiple endpoints. For each endpoint, the objective is to determine the highest test concentration for which effects are not statistically different from the controls (the no observed adverse effect concentration, NOAEC) and the lowest concentration at which effects were statistically significant from the control (the lowest observed adverse effect concentration, LOAEC). The range between the NOAEC and the LOAEC is sometimes called the maximum acceptable toxicant concentration, or MATC. The MATC, which can also be reported as the geometric mean of the NOAEC and the LOAEC, provides a useful reference with which to compare toxicities of various chemical stressors.

Reporting the results of chronic tests in terms of the MATC or GMATC has been widely used within the Agency for evaluating pesticides and industrial chemicals (e.g., Urban and Cook, 1986; Nabholz, 1991).

Text Note 4–16. General Criteria for Causality (Adapted From Fox, 1991)

Criteria strongly affirming causality:
- Strength of association.
- Predictive performance.
- Demonstration of a stressor-response relationship.
- Consistency of association.

Criteria providing a basis for rejecting causality:
- Inconsistency in association.
- Temporal incompatibility.
- Factual implausibility.

Other relevant criteria:
- Specificity of association.
- Theoretical and biological plausibility.

Text Note 4–17. Koch's Postulates (Pelczar and Reid, 1972)

- A pathogen must be consistently found in association with a given disease.
- The pathogen must be isolated from the host and grown in pure culture.
- When inoculated into test animals, the same disease symptoms must be expressed.
- The pathogen must again be isolated from the test organism.

Text Note 4–18. Examples of Extrapolations to Link Measures of Effect to Assessment Endpoints

Every risk assessment has data gaps that must be addressed, but it is not always possible to obtain more information. When there is a lack of time, monetary resources, or a practical means to acquire more data, extrapolations such as those listed below may be the only way to bridge gaps in available data. Extrapolations may be:
- Between taxa (e.g., bluegill to rainbow trout).
- Between responses (e.g., mortality to growth or reproduction).
- From laboratory to field.
- Between geographic areas.
- Between spatial scales.
- From data collected over a short timeframe to longer-term effects.

Text Note 4–19. Questions Related to Selecting Extrapolation Approaches

How specific is the assessment endpoint?

Does the spatial or temporal extent of exposure suggest the need for additional receptors or extrapolation models?

Are the quantity and quality of the data available sufficient for planned extrapolations and models?

Is the proposed extrapolation technique consistent with ecological information?

How much uncertainty is acceptable?

Text Note 4–20. Questions To Consider When Extrapolating From Effects Observed in the Laboratory to Field Effects of Chemicals

Exposure factors:

How will environmental fate and transformation of the chemical effect exposure in the field?

How comparable are exposure conditions and the timing of exposure?

How comparable are the routes of exposure?

How do abiotic factors influence bioavailability and exposure?

How likely are preference or avoidance behaviors?

Effects factors:

What is known about the biotic and abiotic factors controlling populations of the organisms of concern?

To what degree are critical life stage data available?

How may exposure to the same or other stressors in the field have altered organism sensitivity?

Text Note 4–21. Questions Addressed by the Stressor-Response Profile

What ecological entities are affected?

What is the nature of the effect(s)?

What is the intensity of the effect(s)?

Where appropriate, what is the time scale for recovery?

What causal information links the stressor with any observed effects?

How do changes in measures of effects relate to changes in assessment endpoints?

What is the uncertainty associated with the analysis?

Text Note 5–1. Using Qualitative Categories to Estimate Risks of an Introduced Species

The importation of logs from Chile required an assessment of the risks posed by the potential introduction of the bark beetle, Hylurgus ligniperda (USDA, 1993). Experts to judged the potential for colonization and spread of the species, and their opinions were expressed as high, medium, or low as to the likelihood of establishment (exposure) or consequential effects of the beetle. Uncertainties were similarly expressed. A ranking scheme was then used to sum the individual elements into an overall estimate of risk (high, medium, or low). Narrative explanations of risk accompanied the overall rankings.

Text Note 5–2. Applying the Quotient Method

When applying the quotient method to chemical stressors, the effects concentration or dose (e.g., an LC_{50}, LD_{50}, EC_{50}, ED_{50}, NOAEL, or LOAEL) is frequently adjusted by uncertainty modifying factors prior to division into the exposure number (U.S. EPA, 1984; Nabholz, 1991; Urban and Cook, 1986; see section 4.3.1.3), although EPA used a slightly different approach in

estimating the risks to the survival of birds that forage in agricultural areas where the pesticide granular carbofuran is applied (Houseknecht, 1993). In this case, EPA calculated the quotient by dividing the estimated exposure levels of carbofuran granules in surface soils (number/ft^2) by the granules/LD_{50} derived from single-dose avian toxicity tests. The calculation yields values with units of LD_{50}/ft^2. It was assumed that a higher quotient value corresponded to an increased likelihood that a bird would be exposed to lethal levels of granular carbofuran at the soil surface. Minimum and maximum values for LD_{50}/ft^2 were estimated for songbirds, upland game birds, and waterfowl that may forage within or near 10 different agricultural crops.

Text Note 5–3. Comparing an Exposure Distribution With a Point Estimate of Effects

The EPA Office of Pollution Prevention and Toxics uses a Probabilistic Dilution Model (PDM3) to generate a distribution of daily average chemical concentrations based on estimated variations in stream flow in a model system. The PDM3 model compares this exposure distribution with an aquatic toxicity test endpoint to estimate how many days in a 1-year period the endpoint concentration is exceeded (Nabholz et al., 1993; U.S. EPA, 1988b). The frequency of exceedance is based on the duration of the toxicity test used to derive the effects endpoint. Thus, if the endpoint was an acute toxicity level of concern, an exceedance would be identified if the level of concern was exceeded for 4 days or more (not necessarily consecutive). The exposure estimates are conservative in that they assume instantaneous mixing of the chemical in the water column and no losses due to physical, chemical, or biodegradation effects.

Text Note 5–4. Comparing Cumulative Exposure and Effects Distributions for Chemical Stressors

Exposure distributions for chemical stressors can be compared with effects distributions derived from point estimates of acute or chronic toxicity values derived from different species (e.g., HCN, 1993; Cardwell et al., 1993; SETAC, 1994a; Solomon et al., 1996). Figure 5–5 shows a distribution of exposure concentrations of an herbicide compared with single-species algal toxicity data for the same chemical. The degree of overlap of the curves indicates the likelihood that a certain percentage of species may be adversely affected. For example, figure 5–5 indicates that the 10th percentile of algal species' EC_5 values is exceeded less than 10% of the time.

The predictive value of this approach is evident. The degree of risk reduction that could be achieved by changes in exposure associated with proposed risk mitigation options can be readily determined by comparing modified exposure distributions with the effects distribution curve.

When using effects distributions derived from single-species toxicity data, risk assessors should consider the following questions:

- Does the subset of species for which toxicity test data are available represent the range of species present in the environment?
- Are particularly sensitive (or insensitive) groups of organisms represented in the distribution?
- If a criterion level is selected—e.g., protect 95% of species—does the 5% of potentially affected species include organisms of ecological, commercial, or recreational significance?

Text Note 5–5. Estimating Risk With Process Models

Models that integrate both exposure and effects information can be used to estimate risk. During risk estimation, it is important that both the strengths and limitations of a process model approach be highlighted. Brody et al. (1993; see Appendix D) linked two process models to integrate exposure and effects information and forecast spatial and temporal changes in forest communities and their wildlife habitat value. While the models were useful for projecting long-term effects based on an understanding of the underlying mechanisms of change in forest communities and wildlife habitat, they could not evaluate all possible stressors of concern and were limited in the plant and wildlife species they could consider. Understanding both the strengths and limitations of models is essential for accurately representing the overall confidence in the assessment.

Text Note 5–6. An Example of Field Methods Used for Risk Estimation

Along with quotients comparing field measures of exposure with laboratory acute toxicity data (text note 5–2), EPA evaluated the risks of granular carbofuran to birds based on incidents of bird kills following carbofuran applications. Over 40 incidents involving nearly 30 species of birds were documented. Although reviewers identified problems with individual field studies (e.g., lack of appropriate control sites, lack of data on carcass-search efficiencies, no examination of potential synergistic effects of other pesticides, and lack of consideration of other potential receptors such as small mammals), there was so much evidence of mortality associated with carbofuran application that the study deficiencies did not alter the conclusions of high risk found by the assessment (Houseknecht, 1993).

Text Note 5–7. What Are Statistically Significant Effects?

Statistical testing is the "statistical procedure or decision rule which leads to establishing the truth or falsity of a hypothesis. * * *" (Alder and Roessler, 1972). Statistical significance is based on the number of data points, the nature of their distribution, whether inter-treatment variance exceeds intra-treatment variance in the data, and the a priori significance level (α). The types of statistical tests and the appropriate protocols (e.g., power of test) for these tests should be established as part of the analysis plan during problem formulation.

Text Note 5–8. Possible Risk Assessment Report Elements

- Describe risk assessor/risk manager planning results.
- Review the conceptual model and the assessment endpoints.
- Discuss the major data sources and analytical procedures used.
- Review the stressor-response and exposure profiles.
- Describe risks to the assessment endpoints, including risk estimates and adversity evaluations.
- Review and summarize major areas of uncertainty (as well as their direction) and the approaches used to address them.
- ► Discuss the degree of scientific consensus in key areas of uncertainty.
- ► Identify major data gaps and, where appropriate, indicate whether gathering additional data would add significantly to the overall confidence in the assessment results.
- ► Discuss science policy judgments or default assumptions used to bridge information gaps, and the basis for these assumptions.

Text Note 5–9. Clear, Transparent, Reasonable, and Consistent Risk Characterizations

For clarity:

- Be brief; avoid jargon.
- Make language and organization understandable to risk managers and the informed lay person.
- Fully discuss and explain unusual issues specific to a particular risk assessment.

For transparency:

- Identify the scientific conclusions separately from policy judgments.
- Clearly articulate major differing viewpoints of scientific judgments.
- Define and explain the risk assessment purpose (e.g., regulatory purpose, policy analysis, priority setting).
- Fully explain assumptions and biases (scientific and policy).

For reasonableness:

- Integrate all components into an overall conclusion of risk that is complete, informative, and useful in decision making.
- Acknowledge uncertainties and assumptions in a forthright manner.
- Describe key data as experimental, state of the art, or generally accepted scientific knowledge.
- Identify reasonable alternatives and conclusions that can be derived from the data.
- Define the level of effort (e.g., quick screen, extensive characterization) along with the reason(s) for selecting this level of effort.
- Explain the status of peer review.

For consistency with other risk characterizations:

- Describe how the risks posed by one set of stressor(s) compare with the risks posed by a similar stressor(s) or similar environmental conditions.
- Indicate how the strengths and limitations of the assessment compare with past assessments.

Text Note 6–1. Questions Regarding Risk Assessment Results (Adapted From U.S. EPA, 1993d)

Questions principally for risk assessors to ask:

- Are the risks sufficiently well defined (and data gaps small enough) to support a risk management decision?
- Was the right problem analyzed?
- Was the problem adequately characterized?

Questions principally for risk managers to ask:

- What effects might occur?
- How adverse are the effects?
- How likely is it that effects will occur?
- When and where do the effects occur?
- How confident are you in the conclusions of the risk assessment?
- What are the critical data gaps, and will information be available in the near future to fill these gaps?
- Are more ecological risk assessment iterations required?
- How could monitoring help evaluate results of the risk management decision?

Text Note 6–2. Risk Communication Considerations for Risk Managers (U.S. EPA, 1995c)

- Plan carefully and evaluate the success of your communication efforts.
- Coordinate and collaborate with other credible sources.
- Accept and involve the public as a legitimate partner.
- Listen to the public's specific concerns.
- Be honest, frank, and open.
- Speak clearly and with compassion.
- Meet the needs of the media.

Text Note A–1. Stressor vs. Agent

Agent has been suggested as an alternative for the term stressor (Suter et al., 1994). Agent is thought to be a more neutral term than stressor, but agent is also associated with certain classes of chemicals (e.g., chemical warfare agents). In addition, agent has the connotation of the entity that is initially released from the source, whereas stressor has the connotation of the entity that causes the response. Agent is used in EPA's Guidelines for Exposure Assessment (U.S. EPA, 1992d) (i.e., with exposure defined as "contact of a chemical, physical, or biological agent"). These two terms are considered to be nearly synonymous, but stressor is used throughout these guidelines for internal consistency.

Appendix A—Changes From EPA'S Ecological Risk Assessment Framework

EPA has gained much experience with the ecological risk assessment process since the publication of the Framework Report (U.S. EPA, 1992a) and has received many suggestions for modifications of both the process and the terminology. While EPA is not recommending major changes in the overall ecological risk assessment process, proposed modifications are summarized here to assist those who may already be familiar with the Framework Report. Changes in the diagram are discussed first, followed by changes in terminology and definitions.

A.1. Changes in the Framework Diagram

The revised framework diagram is shown in figure 1–2. Within each phase, rectangular boxes are used to designate inputs, hexagon-shaped boxes indicate actions, and circular boxes represent outputs. There have been only minor changes in the wording for the boxes outside of the risk assessment process (planning and communications between risk assessors and risk managers; acquire data, iterate process, monitor results). "Iterate process" was added to emphasize the iterative (and frequently tiered) nature of risk assessment.

The new diagram of problem formulation contains several changes. The hexagon encloses information about stressors, sources, and exposures, ecological effects, and the ecosystem at risk to better reflect the importance of integrating this information before selecting assessment endpoints and building conceptual models. The three products of problem formulation are enclosed in circles. Assessment endpoints are shown as a key product that drives conceptual model development. The conceptual model remains a central product of problem formulation. The analysis plan has been added as an explicit product of problem formulation to emphasize the need to plan data evaluation and interpretation before analyses begin. It is in the analysis plan that measures of ecological effects (measurement endpoints) are identified.

In the analysis phase, the left-hand side of figure 1–2 shows the general process of characterization of exposure, and the right-hand side shows the characterization of ecological effects. These two aspects of analysis must closely interact to produce compatible output that can be integrated in risk characterization. The dotted line and hexagon that includes both the exposure and ecological response analyses emphasize this interaction. In addition, the first three boxes in analysis now include the measures of exposure, effects, and ecosystem and receptor characteristics that provide input to the exposure and ecological response analyses.

Experience with the application of risk characterization as outlined in the Framework Report suggests the need for several modifications in this process. Risk estimation entails the integration of exposure and effects estimates along with an analysis of uncertainties. The process of risk estimation outlined in the Framework Report separates integration and uncertainty. The original purpose for this separation was to emphasize the importance of estimating uncertainty. This separation is no longer needed since uncertainty analysis is now explicitly addressed in most risk integration methods.

The description of risk is similar to the process described in the Framework Report. Topics included in the risk description include the lines of evidence that support causality and a determination of the ecological adversity of observed or predicted effects. Considerations for reporting risk assessment results are also described.

A.2. Changes in Definitions and Terminology

Except as noted below, these guidelines retain definitions used in the Framework Report (see Appendix B). Some definitions have been revised, especially those related to endpoints and exposure. Some changes in the classification of uncertainty from the Framework Report are also described in this section. It is likely that these terms will continue to generate considerable discussion among risk assessors.

A.2.1. Endpoint Terminology

The Framework Report uses the assessment and measurement endpoint terminology of Suter (1990) but offers no specific terms for measurements of stressor levels or ecosystem attributes. Experience has shown that stressor measurements are sometimes inappropriately called measurement endpoints; measurement endpoints should be "* * * measurable responses to a stressor that are related to the valued characteristics chosen as assessment endpoints" (U.S. EPA, 1992a; Suter, 1990; emphasis added). These guidelines replace measurement endpoint with measure of effect, which is defined as a measurable ecological characteristic that is related to the valued characteristic chosen as the assessment endpoint (Suter, 1990; U.S. EPA, 1992a). (An assessment endpoint is "an explicit expression of the environmental value to be protected" [U.S. EPA, 1992a].) Since data other than those required to evaluate responses (i.e., measures of effects) are required for an ecological risk assessment, two additional types of measures are used. Measures of exposure include stressor and source measurements, while measures of ecosystem and receptor characteristics include, for example, habitat measures, soil parameters, water quality conditions, or life history parameters that may be necessary to better characterize exposure or effects. Any of the three types of measures may be actual data (e.g., mortality), summary statistics (e.g., an LC_{50}), or estimated values (e.g., an LC_{50} estimated from a structure-activity relationship).

A.2.2. Exposure Terminology

These guidelines define exposure in a manner that is relevant to any chemical, physical, or biological entity. While the broad concepts are the same, the language and approaches vary depending on whether a chemical, physical, or biological entity is the subject of assessment. Key exposure-related terms and their definitions are:

- Source. A source is an entity or action that releases to the environment or imposes on the environment a chemical, physical, or biological stressor or stressors. Sources may include a waste treatment plant, a pesticide application, a logging operation, introduction of exotic organisms, or a dredging project.
- Stressor. A stressor is any physical, chemical, or biological entity that can induce an adverse response. This term is used broadly to encompass entities that cause primary effects and those primary effects that can cause secondary (i.e., indirect) effects. Stressors may be chemical (e.g., toxics or nutrients), physical (e.g., dams, fishing nets, or suspended sediments), or biological (e.g., exotic or genetically engineered organisms). While risk assessment is concerned with the characterization of adverse responses, under some circumstances a stressor may be neutral or produce effects that are beneficial to certain ecological components (see text note A–1). Primary effects may also become stressors. For example, a change in a bottomland hardwood plant community affected by rising water levels can be thought of as a stressor influencing the wildlife community. Stressors may also be formed through abiotic interactions; for example, the increase in ultraviolet light reaching the earth's surface results from the interaction of the original stressors released (chlorofluorocarbons) with the ecosystem (stratospheric ozone).
- Exposure. As discussed above, these guidelines use the term exposure broadly after the common definition of expose: "to submit or subject to an action or influence" (Merriam-Webster, 1972). Used in this way, exposure applies to physical and biological stressors as well as to chemicals (organisms are commonly said to be exposed to radiation, pathogens, or heat). Exposure is also applicable to higher levels of biological organization, such as exposure of a benthic community to dredging, exposure of an owl population to habitat modification, or exposure of a wildlife population to hunting. Although the operational definition of exposure, particularly the units of measure, depends on the stressor and receptor (defined below), the following general definition is applicable: Exposure is the contact or co-occurrence of a stressor with a receptor.
- Receptor. The receptor is the ecological component exposed to the stressor. This term may refer to tissues, organisms, populations, communities, and ecosystems. While either "ecological component" (U.S. EPA, 1992a) or "biological system" (Cohrssen and Covello, 1989) are alternative terms, "receptor" is usually clearer in discussions of exposure where the emphasis is on the stressor-receptor relationship. As discussed below, both disturbance and stress regime have been suggested as alternative terms for exposure. Neither term is used in these guidelines, which instead use exposure as broadly defined above.
- Disturbance. A disturbance is any event or series of events that disrupts ecosystem, community, or population structure and changes resources, substrate availability, or the physical environment (modified slightly from White and Pickett, 1985). Defined in this way, disturbance is clearly a kind of exposure (i.e., an event that subjects a receptor, the disturbed system, to the actions of a stressor). Disturbance may be a useful alternative to stressor specifically for physical stressors that are deletions or modifications (e.g., logging, dredging, flooding).
- Stress Regime. The term stress regime has been used in at least three distinct ways: (1) To characterize exposure to multiple chemicals or to both chemical and nonchemical stressors (more clearly described as multiple exposure, complex exposure, or exposure to mixtures), (2) as a synonym for exposure that is intended to avoid overemphasis on chemical exposures, and (3) to describe the series of interactions of exposures and effects resulting in secondary exposures, secondary effects, and, finally, ultimate effects (also known as risk cascade [Lipton et al., 1993]) or causal chain, pathway, or network (Andrewartha and Birch, 1984). Because of the potential for confusion and the availability of other clearer terms, this term is not used in these guidelines.

A.2.3. Uncertainty Terminology

The Framework Report divided uncertainty into conceptual model formation, information and data, stochasticity, and error. These guidelines discuss uncertainty throughout the process, focusing on the conceptual model (section 3.4.3), the analysis phase (section 4.1.3), and the incorporation of uncertainty in risk estimates (section 5.1). The bulk of the discussion appears in section 4.1.3, where the discussion is organized according to the following sources of uncertainty:

- Unclear communication.
- Descriptive errors.
- Variability.
- Data gaps.
- Uncertainty about a quantity's true value.

- Model structure uncertainty (process models).
- Uncertainty about a model's form (empirical models).

Appendix B.—Key Terms (Adapted From U.S. EPA, 1992a)

Agent—Any physical, chemical, or biological entity that can induce an adverse response (synonymous with stressor).

Assessment endpoint—An explicit expression of the environmental value that is to be protected. An assessment endpoint includes both an ecological entity and specific attributes of that entity. For example, salmon are a valued ecological entity; reproduction and population maintenance of salmon form an assessment endpoint.

Characterization of ecological effects—A portion of the analysis phase of ecological risk assessment that evaluates the ability of a stressor to cause adverse effects under a particular set of circumstances.

Characterization of exposure—A portion of the analysis phase of ecological risk assessment that evaluates the interaction of the stressor with one or more ecological entities. Exposure can be expressed as co-occurrence or contact, depending on the stressor and ecological component involved.

Community—An assemblage of populations of different species within a specified location in space and time.

Comparative risk assessment—A process that generally uses an expert judgment approach to evaluate the relative magnitude of effects and set priorities among a wide range of environmental problems (e.g., U.S. EPA, 1993b). Some applications of this process are similar to the problem formulation portion of an ecological risk assessment in that the outcome may help select topics for further evaluation and help focus limited resources on areas having the greatest risk reduction potential. In other situations, a comparative risk assessment is conducted more like a preliminary risk assessment. For example, EPA's Science Advisory Board used expert judgment and an ecological risk assessment approach to analyze future ecological risk scenarios and risk management alternatives (U.S. EPA, 1995a).

Conceptual model—The conceptual model describes a series of working hypotheses of how the stressor might affect ecological entities. The conceptual model also describes the ecosystem potentially at risk, the relationship between measures of effect and assessment endpoints, and exposure scenarios.

Cumulative distribution function (CDF)—Cumulative distribution functions are particularly useful for describing the likelihood that a variable will fall within different ranges of x. F(x) (i.e., the value of y at x in a CDF plot) is the probability that a variable will have a value less than or equal to x (figure B–1).

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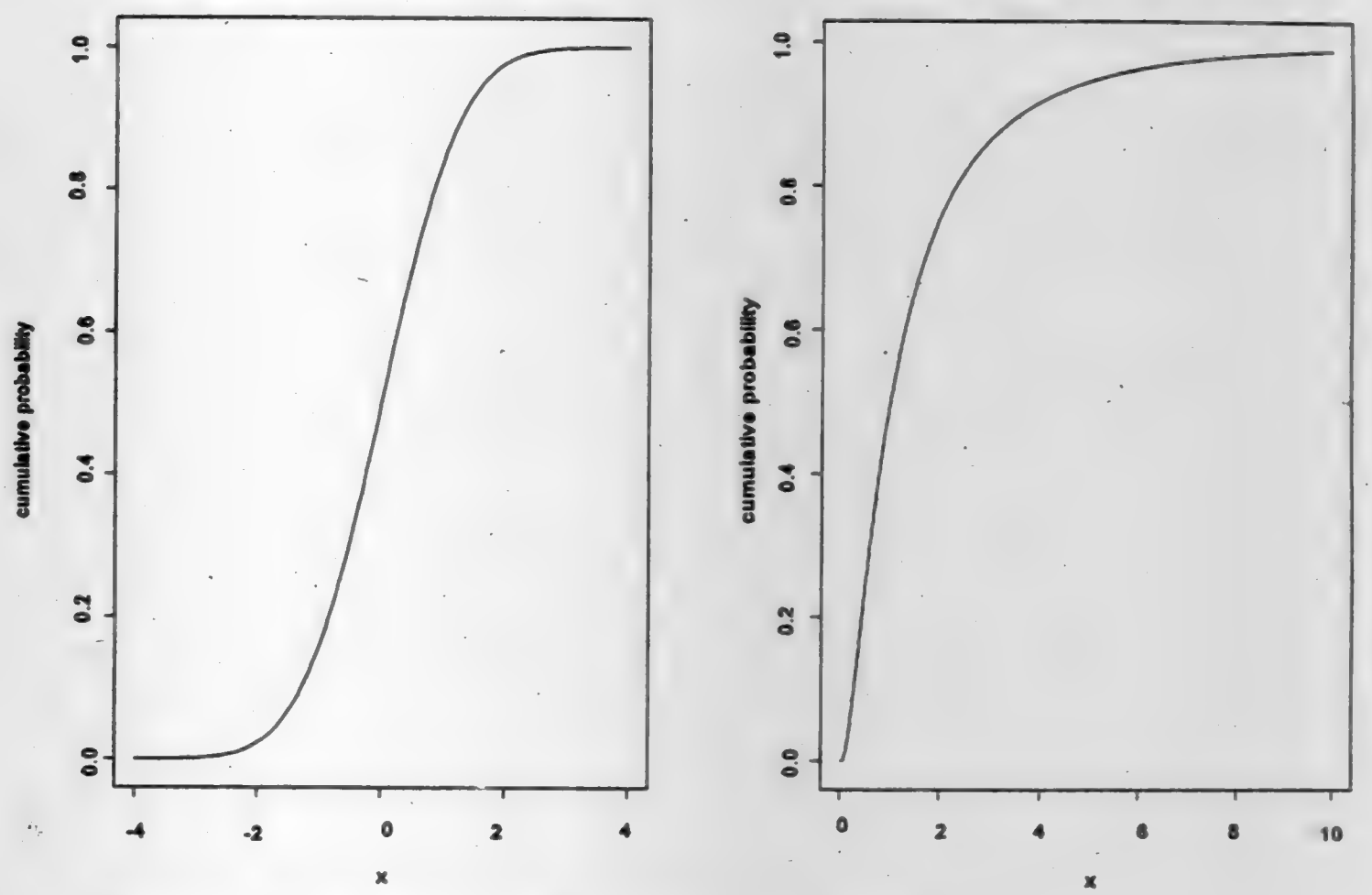

Figure B-1. Plots of Cumulative Distribution Function (CDF)

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Cumulative ecological risk assessment—A process that involves consideration of "the aggregate ecologic risk to the target entity caused by the accumulation of risk from multiple stressors" (Bender, 1996).

Disturbance—Any event or series of events that disrupts ecosystem, community, or population structure and changes resources, substrate availability, or the physical environment (modified from White and Pickett, 1985).

Ecological entity—A general term that may refer to a species, a group of species, an ecosystem function or characteristic, or a specific habitat. An ecological entity can be one component of an assessment endpoint.

Ecological risk assessment—The process that evaluates the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors.

Ecosystem—The biotic community and abiotic environment within a specified location in space and time.

Environmental impact statement—Assessments are required under the National Environmental Policy Act (NEPA) to fully evaluate environmental effects associated with proposed major Federal actions. Like ecological risk assessments, environmental impact statements (EIS) typically require a "scoping process" analogous to problem formulation, an analysis by multidisciplinary teams, and a presentation of uncertainties (CEQ, 1986, cited in Suter, 1993a). By virtue of special expertise, EPA may cooperate with other agencies by preparing EISs or otherwise participating in the NEPA process.

Exposure—The contact or co-occurrence of a stressor with a receptor.

Exposure profile—The product of characterization of exposure in the analysis phase of ecological risk assessment. The exposure profile summarizes the magnitude and spatial and temporal patterns of exposure for the scenarios described in the conceptual model.

Exposure scenario—A set of assumptions concerning how an exposure may take place, including assumptions about the exposure setting, stressor characteristics, and activities that may lead to exposure.

Hazard assessment—This term has been used to mean either (1) evaluating the intrinsic effects of a stressor (U.S. EPA, 1979) or (2) defining a margin of safety or quotient by comparing a toxicologic effects concentration with an exposure estimate (SETAC, 1987).

Lines of evidence—Information derived from different sources or by different techniques that can be used to interpret and compare risk estimates. While this term is similar to the term "weight of evidence," it does not necessarily imply assignment of quantitative weightings to information.

Lowest observed adverse effect level (LOAEL)—The lowest level of a stressor evaluated in a test that causes statistically significant differences from the controls.

Maximum acceptable toxic concentration (MATC)—For a particular ecological effects test, this term is used to mean either the range between the NOAEL and the LOAEL or the geometric mean of the NOAEL and the LOAEL for a particular test. The geometric mean is also known as the chronic value.

Measure of ecosystem and receptor characteristics—A measurable characteristic of the ecosystem or receptor that is used in support of exposure or effects analysis.

Measure of effect—A measurable ecological characteristic that is related to the valued characteristic chosen as the assessment endpoint.

Measure of exposure—A measurable stressor characteristic that is used to help quantify exposure.

Measurement endpoint—See "measure of effect."

Median lethal concentration (LC_{50})—A statistically or graphically estimated concentration that is expected to be lethal to 50% of a group of organisms under specified conditions (ASTM, 1990).

No observed adverse effect level (NOAEL)—The highest level of a stressor evaluated in a test that does not cause statistically significant differences from the controls.

Population—An aggregate of individuals of a species within a specified location in space and time.

Primary effect—An effect where the stressor acts on the ecological component of interest itself, not through effects on other components of the ecosystem (synonymous with direct effect; compare with definition for secondary effect).

Probability density function (PDF)—Probability density functions are particularly useful in describing the relative likelihood that a variable will have different particular values of x. The probability that a variable will have a value within a small interval around x can be approximated by multiplying f(x) (i.e., the value of y at x in a PDF plot) by the width of the interval (figure B–2).

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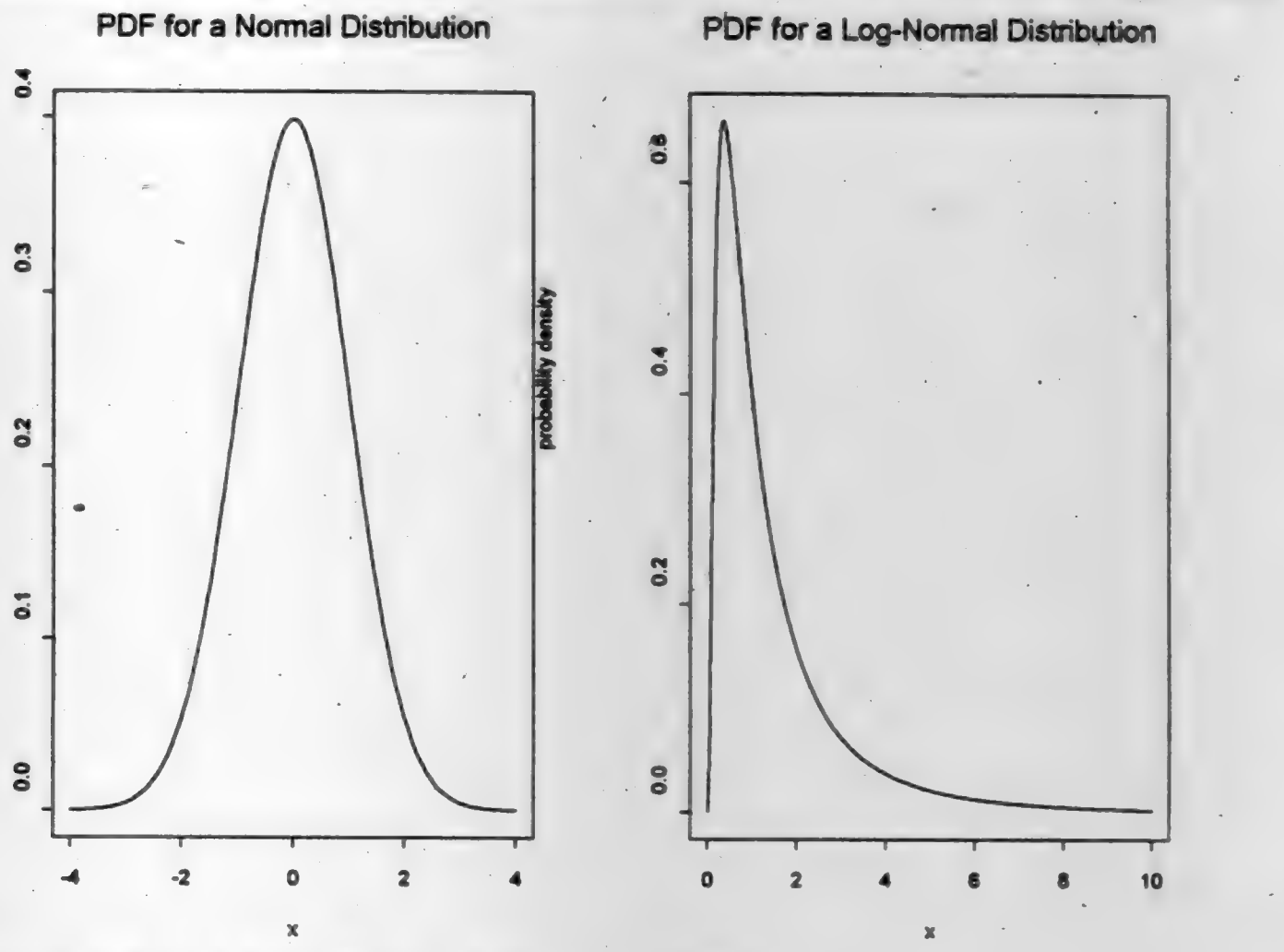

Figure B-2. Plots of Probability Density Functions (PDF)

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Receptor—The ecological entity exposed to the stressor.

Recovery—The rate and extent of return of a population or community to a condition that existed before the introduction of a stressor. Due to the dynamic nature of ecological systems, the attributes of a "recovered" system must be carefully defined.

Relative risk assessment—A process similar to comparative risk assessment. It involves estimating the risks associated with different stressors or management actions. To some, relative risk connotes the use of quantitative risk techniques, while comparative risk approaches more often rely on expert judgment. Others do not make this distinction.

Risk characterization—A phase of ecological risk assessment that integrates the exposure and stressor response profiles to evaluate the likelihood of adverse ecological effects associated with exposure to a stressor. The adversity of effects is discussed, including consideration of the nature and intensity of the effects, the spatial and temporal scales, and the potential for recovery.

Secondary effect—An effect where the stressor acts on supporting components of the ecosystem, which in turn have an effect on the ecological component of interest (synonymous with indirect effects; compare with definition for primary effect).

Source—An entity or action that releases to the environment or imposes on the environment a chemical, physical, or biological stressor or stressors.

Source term—As applied to chemical stressors, the type, magnitude, and patterns of chemical(s) released.

Stress regime—The term stress regime has been used in at least three distinct ways: (1) to characterize exposure to multiple chemicals or to both chemical and nonchemical stressors (more clearly described as multiple exposure, complex exposure, or exposure to mixtures), (2) as a synonym for exposure that is intended to avoid overemphasis on chemical exposures, and (3) to describe the series of interactions of exposures and effects resulting in secondary exposures, secondary effects, and, finally, ultimate effects (also known as risk cascade [Lipton et al., 1993]) or causal chain, pathway, or network (Andrewartha and Birch, 1984).

Stressor—Any physical, chemical, or biological entity that can induce an adverse response (synonymous with agent).

Stressor-response profile—The product of characterization of ecological effects in the analysis phase of ecological risk assessment. The stressor-response profile summarizes the data on the effects of a stressor and the relationship of the data to the assessment endpoint.

Trophic levels—A functional classification of taxa within a community that is based on feeding relationships (e.g., aquatic and terrestrial green plants comprise the first trophic level and herbivores comprise the second).

Appendix C.—Conceptual Model Examples

Conceptual model diagrams are visual representations of the conceptual

models. They may be based on theory and logic, empirical data, mathematical models, and probability models. These diagrams are useful tools for communicating important pathways in a clear and concise way. They can be used to ask new questions about relationships that help generate plausible risk hypotheses. Further discussion of conceptual models is found in section 3–4.

Flow diagrams like those shown in figures C–1 through C–3 are typical conceptual model diagrams. When constructing flow diagrams like these, it is helpful to use distinct and consistent shapes to distinguish among stressors, assessment endpoints, responses, exposure routes, and ecosystem processes. Although flow diagrams are often used to illustrate conceptual models, there is no set configuration for conceptual model diagrams. Pictorial representations of the processes of an ecosystem can be more effective (e.g., Bradley and Smith, 1989).

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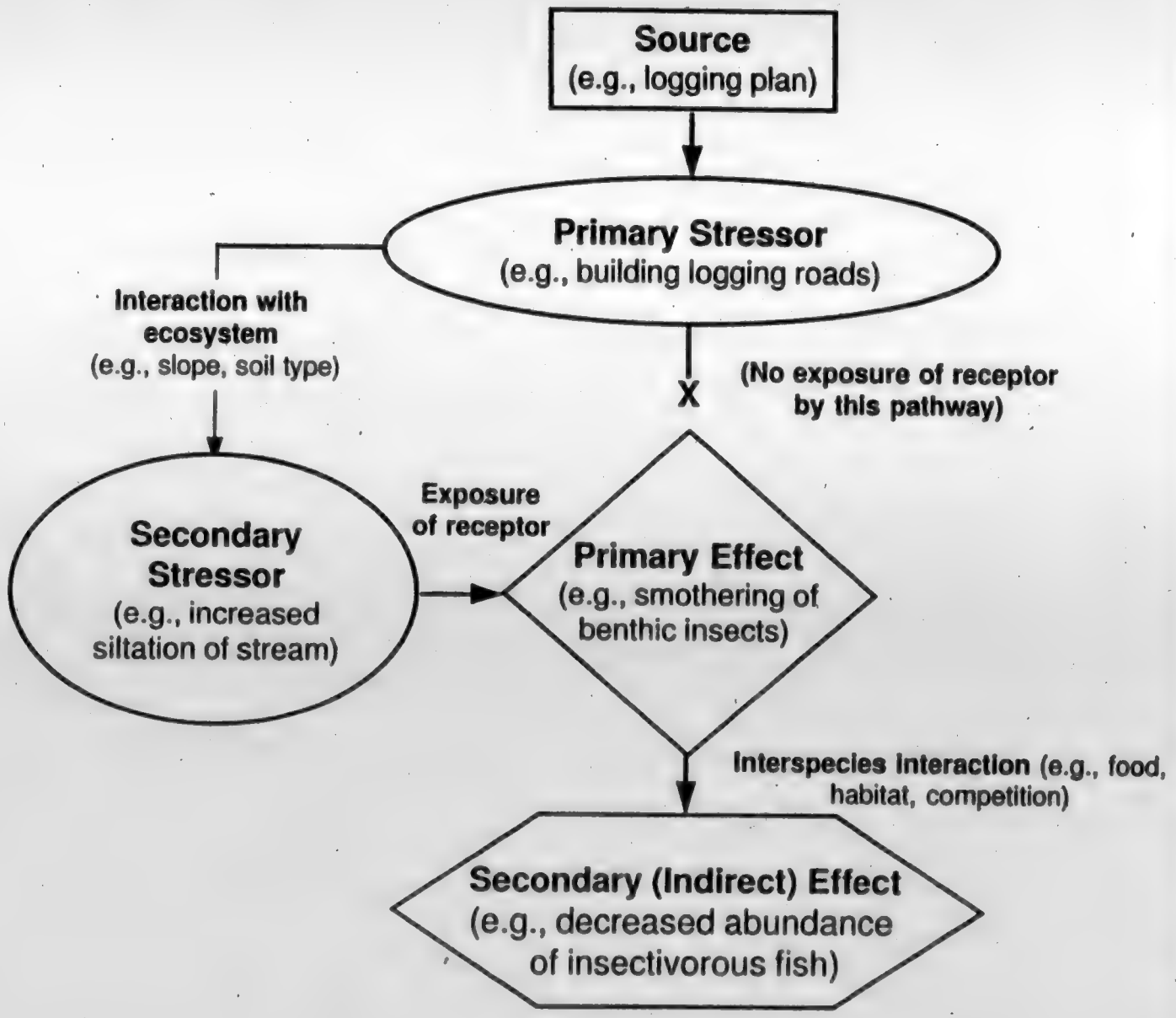

Figure C-1. Conceptual model for logging.

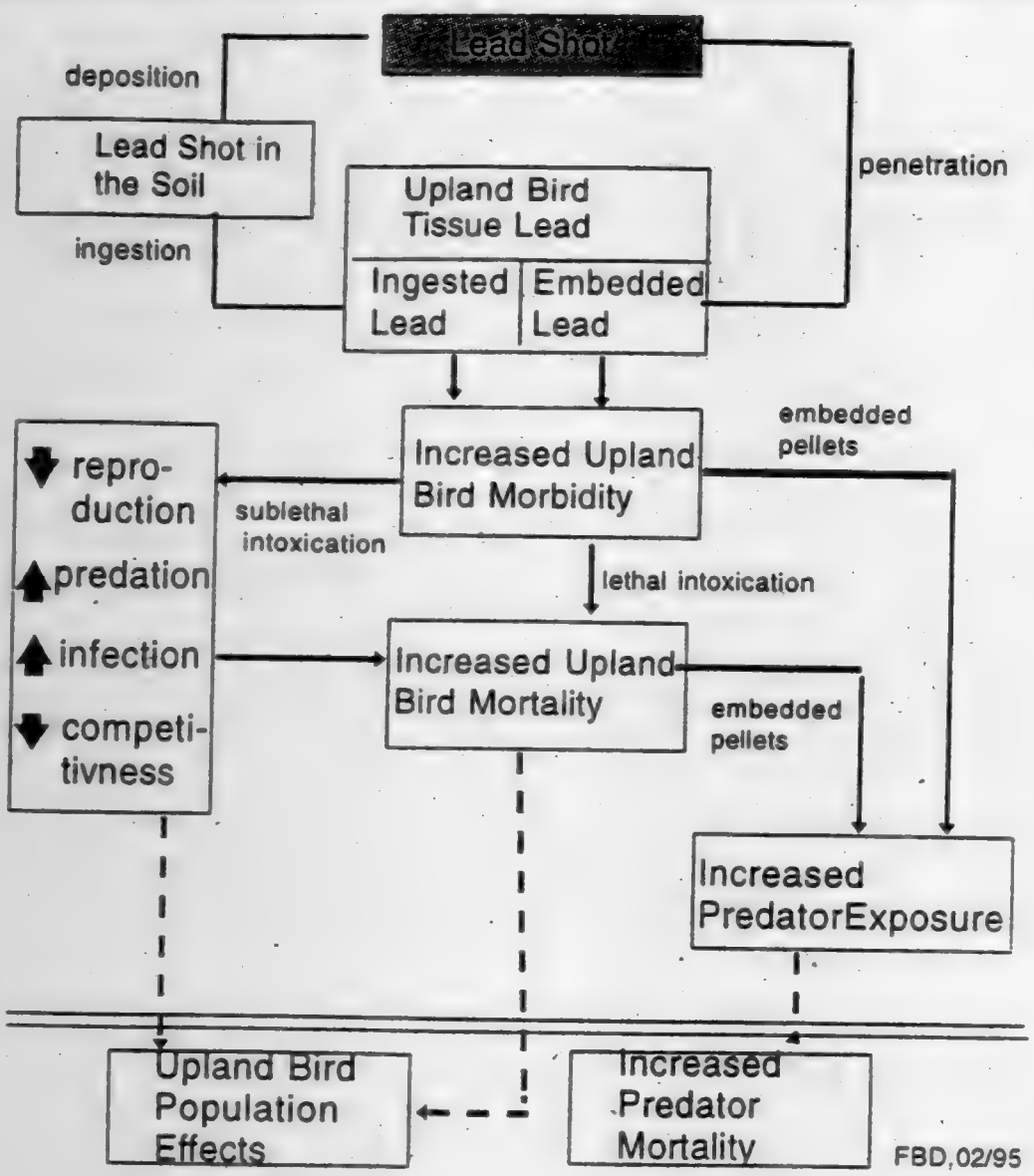

Figure C-2. Conceptual model for tracking stress associated with lead shot through upland ecosystems. Reprinted from *Environmental Toxicology and Chemistry* by Kendall et al. (1996) with permission of the Society of Environmental Toxicology and Chemistry (copyright 1996).

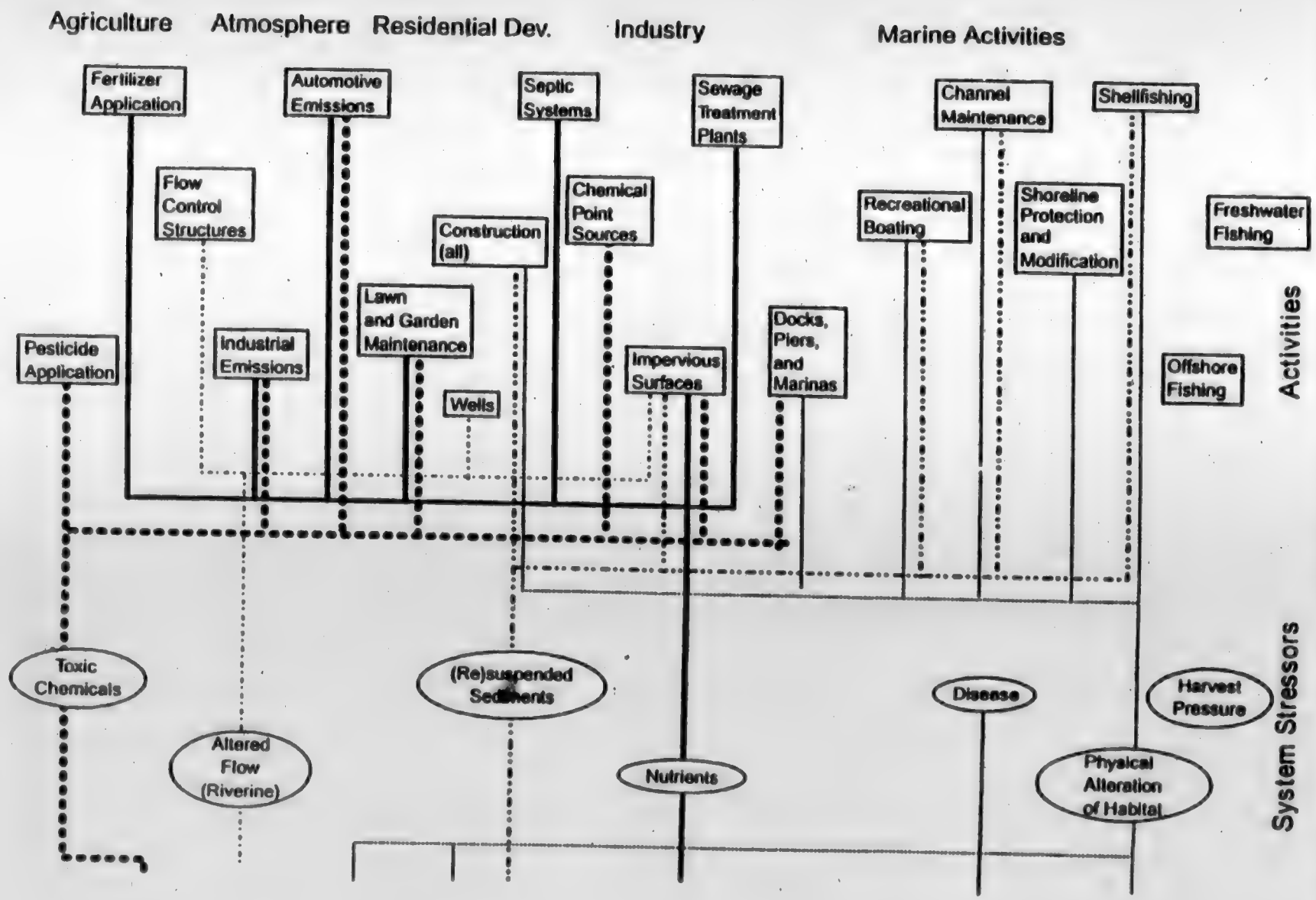

Figure C-3. Waquoit Bay watershed conceptual model.

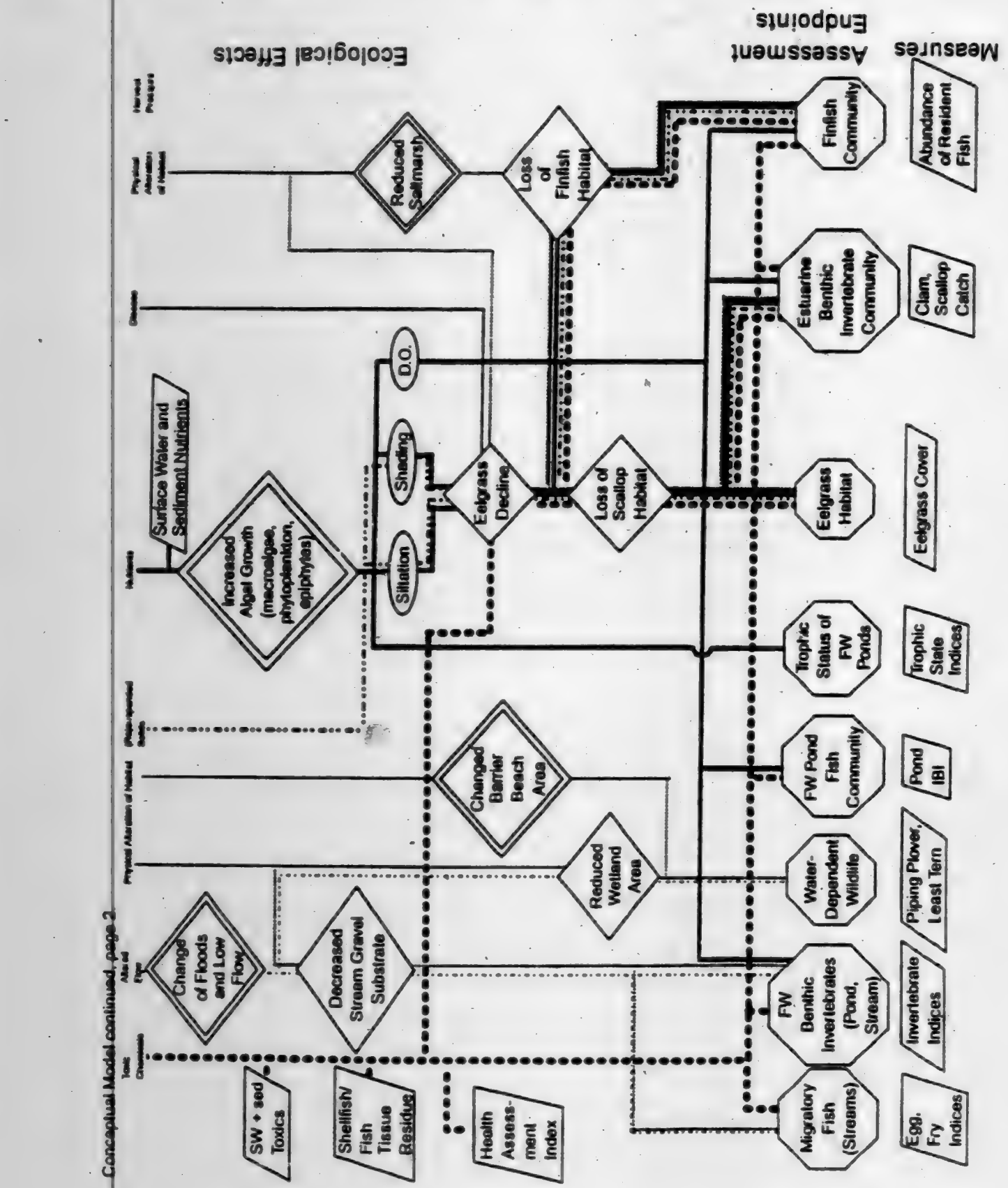

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Figure C–1 illustrates the relationship between a primary physical stressor (logging roads) and an effect on an assessment endpoint (fecundity in insectivorous fish). This simple diagram illustrates that building logging roads (which could be considered a stressor or a source) in ecosystems where slope, soil type, low riparian cover, and other ecosystem characteristics lead to the erosion of soil, which enters streams and smothers the benthic organisms (exposure pathway is not explicit in this diagram). Because of the dependence of insectivorous fish on benthic organisms, the fish are believed to be at risk from the building of logging roads. Each arrow in this diagram represents a hypothesis about the proposed relationship (e.g., human action and stressor, stressor and effect, primary effect to secondary effect). Each risk hypothesis provides insights into the kinds of data that will be needed to verify that the hypothesized relationships are valid.

Figure C–2 is a conceptual model used by Kendall et al. (1996) to track a contaminant through upland ecosystems. In this example, upland birds are exposed to lead shot when it becomes embedded in their tissue after being shot and by ingesting lead accidentally when feeding on the ground. Both are hypothesized to result in increased morbidity (e.g., lower reproduction and competitiveness and higher predation and infection) and mortality, either directly (lethal intoxication) or indirectly (effects of morbidity leading to mortality). These effects are believed to result in changes in upland bird populations and, due to hypothesized exposure of predators to lead, to increase predator mortality. This example shows multiple exposure pathways for effects on two assessment endpoints. Each arrow contains within it assumptions and hypotheses about the relationship depicted that provide the basis for identifying data needs and analyses.

Figure C–3 is a conceptual model adapted from the Waquoit Bay watershed risk assessment. At the top of the model, multiple human activities that occur in the watershed are shown in rectangles. Those sources of stressors are linked to stressor types depicted in ovals. Multiple sources are shown to contribute to an individual stressor, and each source may contribute to more than one stressor. The stressors then lead to multiple ecological effects depicted again in rectangles. Some rectangles are double-lined to indicate effects that can be directly measured for data analysis. Finally, the effects are linked to particular assessment endpoints. The connections show that one effect can result in changes in many assessment endpoints. To fully depict exposure pathways and types of effects, specific portions of this conceptual model would need to be expanded to illustrate those relationships.

Appendix D.—Analysis Phase Examples

The analysis phase process is illustrated here for a chemical, physical, and biological stressor. These examples do not represent all possible approaches but illustrate the analysis phase process using information from actual assessments.

D.1. Special Review of Granular Formulations of Carbofuran Based on Adverse Effects on Birds

Figure D–1 is based on an assessment of the risks of carbofuran to birds under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Houseknecht, 1993). Carbofuran is a broad-spectrum insecticide and nematicide applied primarily in granular form on 27 crops as well as forests and pineseed orchards. The assessment endpoint was survival of birds that forage in agricultural areas where carbofuran is applied.

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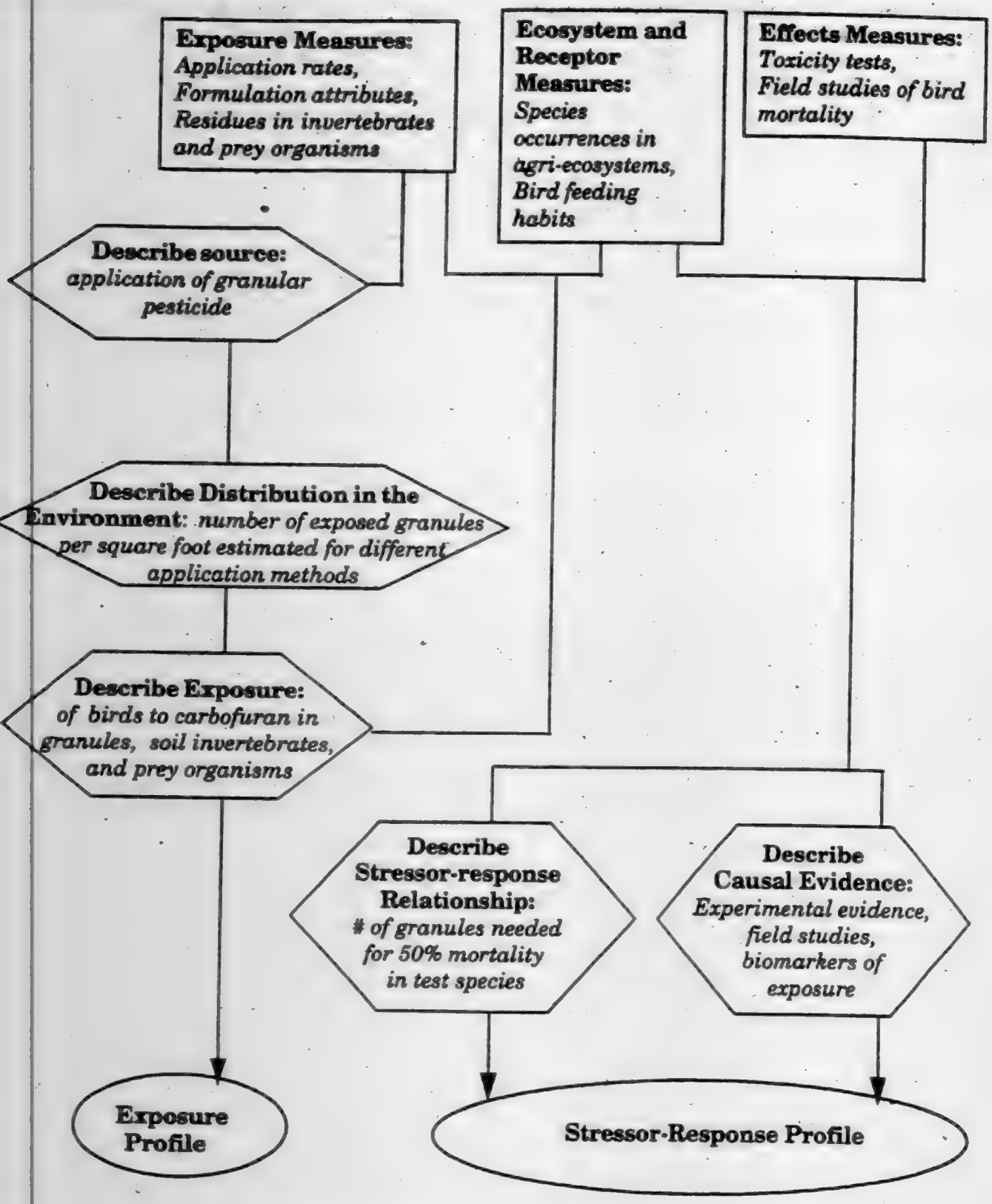

Figure D-1. Example of the analysis phase process: special review of carbofuran. Rectangular boxes indicate inputs, hexagon-shaped boxes indicate actions, and circular boxes indicate outputs.

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The analysis phase focused on birds that may incidentally ingest granules as they forage or that may eat other animals that contain granules or residues. Measures of exposure included application rates, attributes of the formulation (e.g., size of granules), and residues in prey organisms. Measures of the ecosystem and receptors included an inventory of bird species that may be exposed following applications for 10 crops. The birds' respective feeding behaviors were considered in developing routes of exposure. Measures of effect included laboratory toxicity studies and field investigations of bird mortality.

The source of the chemical was application of the pesticide in granular form. The distribution of the pesticide in agricultural fields was estimated based on the application rate. The number of exposed granules was estimated from literature data. Based on a review of avian feeding behavior, seed-eating birds were assumed to ingest any granules left uncovered in the field. The intensity of exposure was summarized as the number of exposed granules per square foot.

The stressor-response relationship was described using the results of toxicity tests. These data were used to construct a toxicity statistic expressed as the number of granules needed to kill 50% of the test birds (i.e., granules per LD_{50}), assuming 0.6 mg of active ingredient (AI) per granule and average body weights for the birds tested. Field studies were used to document the occurrence of bird deaths following applications and provide further causal evidence. Carbofuran residues and cholinesterase levels were used to confirm that exposure to carbofuran caused the deaths.

D.2. Modeling Losses of Bottomland-Forest Wetlands

Figure D–2 is based on an assessment of the ecological consequences (risks) of long-term changes in hydrologic conditions (water-level elevations) for three habitat types in the Lake Verret Basin of Louisiana (Brody et al., 1989, 1993; Connor and Brody, 1989). The project was intended to provide a habitat-based approach for assessing the environmental impacts of Federal water projects under the National Environmental Policy Act and Section 404 of the Clean Water Act. Output from the models provided risk managers with information on how changes in water elevation might alter the ecosystem. The primary anthropogenic stressor addressed in this assessment was artificial levee construction for flood control, which contributes to land subsidence by reducing sediment deposition in the floodplain. Assessment endpoints included forest community structure and habitat value to wildlife species and the species composition of the wildlife community.

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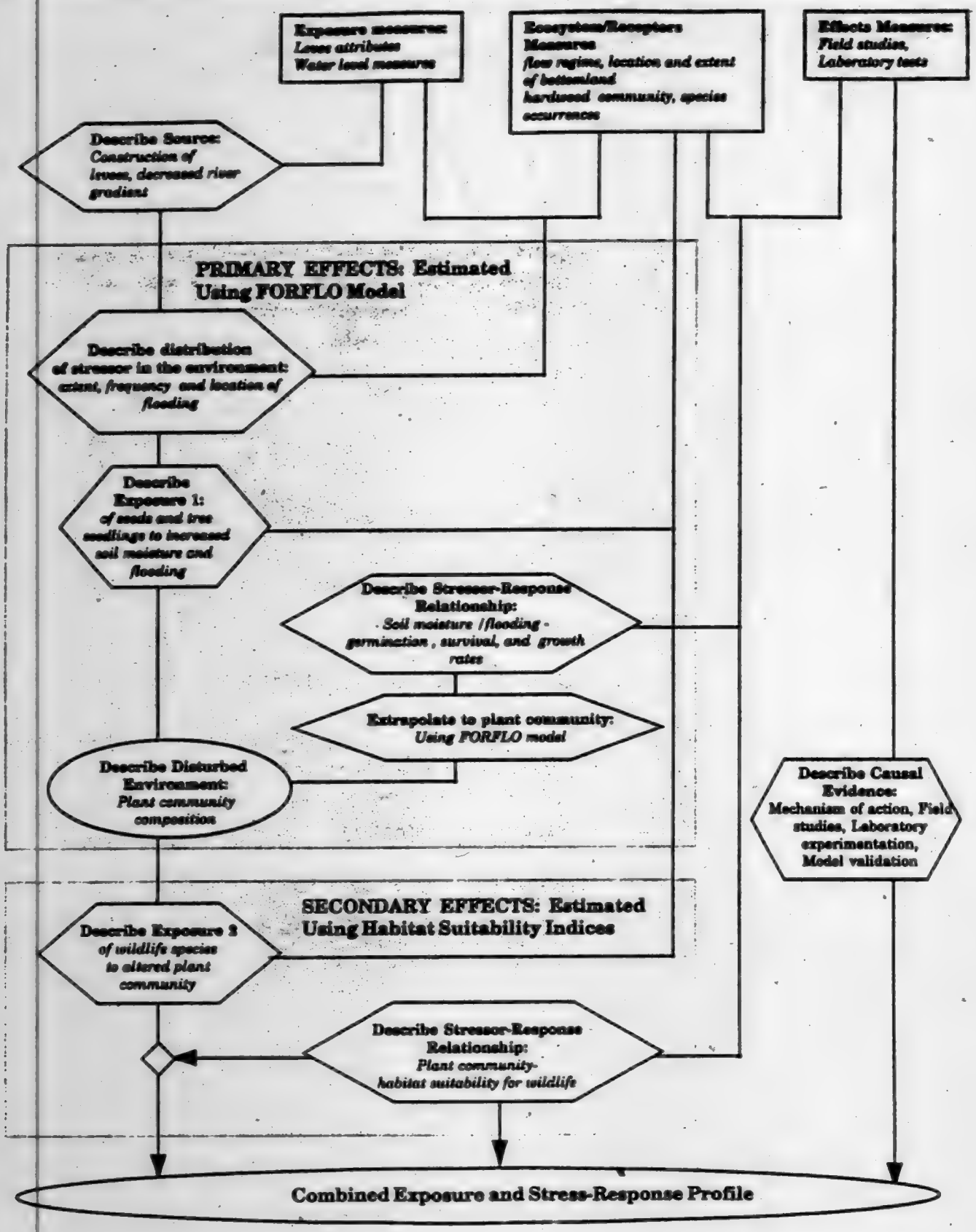

Figure D-2. Example of the analysis phase process: modeling losses of bottomland hardwoods. Rectangular boxes indicate inputs, hexagon-shaped boxes indicate actions, and circular boxes indicate outputs.

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The analysis phase began by considering primary (direct) effects of water-level changes on plant community composition and habitat characteristics. Measures of exposure included the attributes and placement of the levees and water-level measurements. Ecosystem and receptor measures included location and extent of bottomland-hardwood communities, plant species occurrences within these communities, and information on the historic flow regimes. Effects measures included laboratory studies of plant response to moisture and field measurements along moisture gradients.

While the principal stressor under evaluation was the construction of levees, the decreased gradient of the river due to sediment deposition at its mouth also contributed to increased water levels. The extent and frequency of flooding were simulated by the FORFLO model based on estimates of net subsidence rates from levee construction and decreased river gradient. Seeds and seedlings of the tree species were assumed to be exposed to the altered flooding regime. Stressor-response relationships describing plant response to moisture (e.g., seed germination, survival) were embedded within the FORFLO model. This information was used by the model to simulate changes in plant communities: The model tracks the species type, diameter, and age of each tree on simulated plots from the time the tree enters the plot as a seedling or sprout until it dies. The FORFLO model calculated changes in the plant community over time (from 50 to 280 years). The spatial extent of the three habitat types of interest—wet bottomland hardwoods, dry bottomland hardwoods, and cypress-tupelo swamp—was mapped onto a Geographic Information System (GIS) along with the hydrological information. Then the changes projected by FORFLO were manually linked to the GIS to show how the spatial distribution of different communities would change. Evidence that flooding would actually cause these changes included comparisons of model predictions with field measurements, the laboratory studies of plant response to moisture, and knowledge of the mechanisms by which flooding elicits changes in plant communities.

Secondary (indirect) effects on wildlife associated with changes in the habitat provided by the plant community formed the second part of the analysis phase. Important measures included life-history characteristics and habitat needs of the wildlife species. Effects on wildlife were inferred by evaluating the suitability of the plant community as habitat. Specific aspects of the community structures calculated by the FORFLO model provided the input to this part of the analysis. For example, the number of snags was used to evaluate habitat value for woodpeckers. Resident wildlife (represented by five species) were assumed to co-occur with the altered plant community. Habitat value was evaluated by calculating the Habitat Suitability Index (HSI) for each habitat type multiplied by the habitat type's area.

A combined exposure and stressor-response profile is shown in figure D–2; these two elements were combined with the models used for the analysis and then used directly in risk characterization.

D.3. Pest Risk Assessment of Importation of Logs From Chile

Figure D–3 is based on the assessment of potential risks to U.S. forests due to the incidental introduction of insects, fungi, and other pests inhabiting logs harvested in Chile and transported to U.S. ports (USDA, 1993). This risk assessment was used to determine whether actions to restrict or regulate the importation of Chilean logs were needed to protect U.S. forests and was conducted by a team of six experts under the auspices of the U.S. Department of Agriculture Forest Service. Stressors include insects, forest pathogens (e.g., fungi), and other pests. The assessment endpoint was the survival and growth of tree species (particularly conifers) in the western United States. Damage that would affect the commercial value of the trees as lumber was clearly of interest.

BILLING CODE 6560-50-P

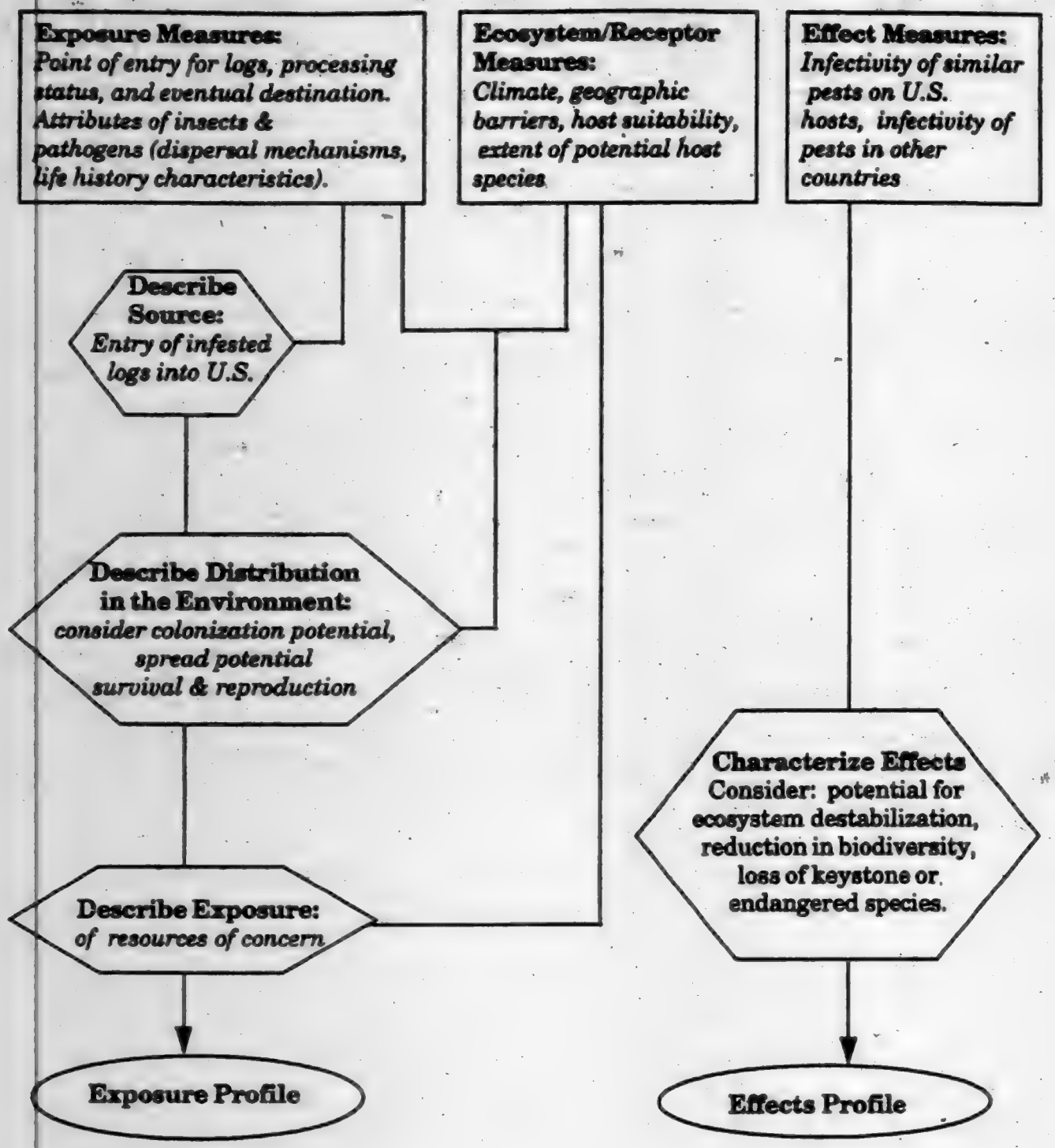

Figure D-3. Example of the analysis phase process: pest risk assessment of the importation of logs from Chile. Rectangular boxes indicate inputs, hexagon-shaped boxes indicate actions, and circular boxes indicate outputs.

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The analysis phase was carried out by eliciting professional opinions from a team of experts. Exposure measures used by the team included distribution information for the imported logs and attributes of the insects and pathogens such as dispersal mechanisms and life history characteristics. Ecosystem and receptor measures included the climate of the United States, location of geographic barriers, knowledge of host suitability, and ranges of potential host species. Effect measures included knowledge of the infectivity of these pests in other countries and the infectivity of similar pests on U.S. hosts.

This information was used by the risk assessment team to evaluate the potential for exposure. They began by evaluating the likelihood of entry of infested logs into the United States. The distribution of the organisms given entry was evaluated by considering the potential for colonization and spread beyond the point of entry as well as the likelihood of organisms surviving and reproducing. The potential for exposure was summarized by assigning each of the above elements a judgment-based value of high, medium, or low.

The evaluation of ecological effects was also conducted based on collective professional judgment. Of greatest relevance to this guidance was the consideration of environmental damage potential, defined as the likelihood of ecosystem destabilization, reduction in biodiversity, loss of keystone species, and reduction or elimination of endangered or threatened species. (The team also considered economic damage potential and social and political influences; however, these guidelines consider those factors to be part of the risk management process.) Again, each consideration was assigned a value of high, medium, or low to summarize the potential for ecological effects.

Appendix E.—Criteria for Determining Ecological Adversity: A Hypothetical Example (Adapted from Harwell et al., 1994)

As a result of a collision at sea, an oil tanker releases 15 million barrels of #2 fuel oil 3 km offshore. It is predicted that prevailing winds will carry the fuel onshore within 48 to 72 hours. The coastline has numerous small embayments that support an extensive shallow, sloping subtidal community and a rich intertidal community. A preliminary assessment determined that if no action were taken, significant risks to the communities would result. Additional risk assessments were conducted to determine which of two options should be used to clean up the oil spill.

Option 1 is to use a dispersant to break up the slick, which would reduce the likelihood of extensive onshore contamination but would cause extensive mortality to the phytoplankton, zooplankton, and ichthyoplankton, which are important for commercial fisheries. Option 2 is to try to contain and pump off as much oil as possible; this option anticipates that a shift in wind direction will move the spill away from shore and allow for natural dispersal at sea. If this does not happen, the oil will contaminate the extensive sub- and intertidal mud flats, rocky intertidal communities, and beaches and pose an additional hazard to avian and mammalian fauna. It is assumed there will be a demonstrable change beyond natural variability in the assessment endpoints (e.g., structure of planktonic, benthic, and intertidal communities). What is the adversity of each option?

- Nature and severity of the effect. For both options, the magnitude of change in the assessment endpoints is likely to be severe. Planktonic populations often are characterized by extensive spatial and temporal variability. Nevertheless, within the spatial boundaries of the spill, the use of dispersants is likely to produce complete mortality of all planktonic forms within the upper 3 m of water. For benthic and intertidal communities that generally are stable and have less spatial and temporal variability than planktonic forms, oil contamination will likely result in severe impacts on survival and chronic effects lasting for several years. Thus, under both options, changes in the assessment endpoints will probably exceed the natural variability for threatened communities in both space and time.
- Spatial scale. The areal extent of impacts is similar for each of the options. While extensive, the area of impact constitutes a small percentage of the landscape. This leaves considerable area available for replacement stocks and creates significant fragmentation of either the planktonic or inter- and subtidal habitats. Ecological adversity is reduced because the area is not a mammalian or avian migratory corridor.
- Temporal scale and recovery. Based on experience with other oil spills, it is assumed that the effects are reversible over some time period. The time needed for reversibility of changes in phytoplankton and zooplankton populations should be short (days to weeks) given their rapid generation times and easy immigration from adjacent water masses. Similarly, although ichthyoplankton do not reproduce, they typically experience extensive natural mortality, and immigration is readily available from surrounding water masses. On the other hand, the time needed for reversibility of changes in benthic and intertidal communities is likely to be long (years to decades). First, the stressor (oil) would be likely to persist in sediments and on rocks for several months to years. Second, the life histories of the species comprising these communities span 3 to 5 years. Third, the reestablishment of benthic intertidal community and ecosystem structure (hierarchical composition and function) often requires decades.

Both options result in (1) assessment endpoint effects that are of great severity, (2) exceedances of natural variability for those endpoints, and (3) similar estimates of areal impact. What distinguishes the two options is temporal scale and reversibility. In this regard, changes to the benthic and intertidal ecosystems are considerably more adverse than those to the plankton. On this basis, the option of choice would be to disperse the oil, effectively preventing it from reaching shore where it would contaminate the benthic and intertidal communities.

References

Adams, D.F. (1963) Recognition of the effects of fluorides on vegetation. J. Air Pollut. Control Assoc. 13: 360–362. Cited in: Suter, G.W., II. (1993) Ecological risk assessment. Boca Raton, FL: Lewis Publishers.

Alder, H.L.; Roessler, E.B. (1972) Introduction to probability and statistics. San Francisco, CA: W.H. Freeman and Co.

American Society for Testing and Materials (ASTM). (1990). Standard terminology relating to biological effects and environmental fate. E943–90. In: *ASTM; 1990 Annual Book of ASTM Standards*, Section 11, Water and Environmental Technology, ASTM, Philadelphia, PA.

American Society for Quality Control (ASQC) (1994) American National Standard: Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs. ANSI/ASQC E4–1994. Milwaukee, WI: American Society for Quality Control.

Andrewartha, H.G.; Birch, L.C. (1984) The ecological web. Chicago, IL: University of Chicago Press.

Ankley, G.T.; Katko, A.; Arthur, J.W. (1990) Identification of ammonia as an important sediment-associated toxicant in the Lower Fox River and Green Bay, Wisconsin. Environ. Toxicol. Chem. 9: 313–322.

Auer, C.M.; Zeeman, M.; Nabholz, J.V.; Clements, R.G. (1994) SAR—the U.S. regulatory perspective. SAR and QSAR Environ. Res. 2:29–38

Barbour, M.T.; Stribling, J.B.; Karr, J.R. (1995) Multimetric approach for establishing biocriteria and measuring biological condition. In: Davis, W.S.; Simon, T.P., eds. Biological assessment and criteria, tools for

water resource planning and decision making. Boca Raton, FL: Lewis Publishers; pp. 63–77.

Barnthouse, L.W.; Brown, J. (1994) Issue paper on conceptual model development. In: Ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 3–1 to 3–70. EPA/630/R–94/009.

Barnthouse, L.W.; O'Neill, R.V.; Bartell, S.M.; Suter, G.W., II. (1986) Population and ecosystem theory in ecological risk assessment. In: Poston, T.M.; Purdy, R., eds. Aquatic ecology and hazard assessment, 9th symposium. Philadelphia, PA: American Society for Testing and Materials; pp. 82–96.

Barnthouse, L.W.; Suter, G.W., II; Rosen, A.E.; Beauchamp, J.J. (1987) Estimating responses of fish populations to toxic contaminants. Environ. Toxicol. Chem. 6: 811–824.

Barnthouse, L.W.; Suter, G.W., II; Rosen, A.E. (1990) Risks of toxic contaminants to exploited fish populations: influence of life history, data uncertainty, and exploitation intensity. Environ. Toxicol. Chem. 9: 297–311.

Bartell, S.M.; Gardner, R.H.; O'Neill, R.V. (1992) Ecological risk estimation. Boca Raton, FL: Lewis Publishers.

Bedford, B.L.; Preston, E.M. (1988) Developing the scientific basis for assessing cumulative effects of wetland loss and degradation on landscape functions: status, perspectives, and prospects. Environ. Manag. 12: 751–772.

Bender, E. (1996) Personal communication. Science Policy Council, U.S. Environmental Protection Agency, Washington, DC.

Bradbury, S.P. (1994) Predicting modes of toxic action from chemical structure: an overview. SAR and QSAR Environ. Res. 2:29–38.

Bradley, C.E.; Smith, D.G. (1989) Plains cottonwood recruitment and survival on a prairie meandering river floodplain. Milk River, southern Alberta in Northern Canada. Can. J. Botany 64: 1433–1442.

Broderius, S.J. (1991) Modeling the joint toxicity of xenobiotics to aquatic organisms: basic concepts and approaches. In: Mayes, M.A.; Barron, M.G., eds. Aquatic toxicology and risk assessment: fourteenth volume. Philadelphia, Pa: American Society for Testing and Materials; pp. 107–127.ASTM STP 1124.

Broderius, S.J.; Kahl, M.D.; Hoglund, M.D. (1995) Use of joint toxic response to define the primary mode of toxic action for diverse industrial organic chemicals. Environ. Toxicol. Chem. 9: 1591–1605.

Brody, M.; Conner, W.; Pearlstine, L.; Kitchens, W. (1989) Modeling bottomland forest, and wildlife habitat changes in Louisiana's Atchafalaya Basin. In: Sharitz, R.R.; Gibbons, J.W., eds. Freshwater wetlands and wildlife. Oak Ridge, TN: Office of Science and Technical Information, U.S. Department of Energy, U.S. Department of Energy Symposium Series, No. 61. CONF–8603100.

Brody, M.S.; Troyer, M.E.; Valette, Y. (1993) Ecological risk assessment case study: modeling future losses of bottomland forest wetlands and changes in wildlife habitat within a Louisiana basin. In: A review of ecological assessment case studies from a risk assessment perspective. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 12–1 to 12–39. EPA/630/R–92/005.

Burmaster, D.E.; Anderson, P.D. (1994) Principles of good practice for the use of Monte Carlo techniques in human health and ecological risk assessments. Risk Anal. 14: 477–481.

Burmaster, D.E.; Menzie, C.A.; Freshman, J.S.; Burris, J.A.; Maxwell, N.I.; Drew, S.R. (1991) Assessment of methods for estimating aquatic hazards at Superfund-type sites: a cautionary tale. Environ. Toxicol. Chem. 10:827–842.

Callahan, C.A.; Menzie, C.A.; Burmaster, D.E.; Wilborn, D.C.; Ernst, T. (1991) On-site methods for assessing chemical impacts on the soil environment using earthworms: A case study at the Baird and McGuire Superfund site, Holbrook, Massachusetts. Environ. Toxicol. Chem. 10:817–826.

Cardwell, R.D.; Parkhurst, B.R.; Warren-Hicks, W.; Volosin, J.S. (1993) Aquatic ecological risk. Water Environ. Technol. 5: 47–51.

Clements, R.G.; Nabholz, J.V. (1994) ECOSAR: a computer program for estimating the ecotoxicity of industrial chemicals based on structure activity relationships, user's guide. Washington, DC: Environmental Effects Branch, Health and Environmental Review Division (7402), U.S. Environmental Protection Agency; EPA/748/R–93/002.

Cohrssen, J.; Covello, V.T. (1989) Risk analysis: a guide to principles and methods for analyzing health and ecological risks. Washington, DC: Council on Environmental Quality.

Conner, W.H.; Brody, M. (1989) Rising water levels and the future of southeastern Louisiana swamp forests. Estuaries 12(4):318–323.

Council on Environmental Quality (CEQ). (1986) Regulations for implementing the procedural provisions of the National Environmental Policy Act. 40 CFR Parts 1500–1508. Washington, DC: U.S. Government Printing Office. Cited in: Suter, G.W., II. (1993) Ecological risk assessment. Boca Raton, FL: Lewis Publishers.

Cowan, C.E.; Versteeg, D.J.; Larson, R.J.; Kloepper-Sams, P.J. (1995) Integrated approach for environmental assessment of new and existing substances. Regul. Toxicol. Pharmacol. 21: 3–31.

Cressie, N.A.C. (1993) Statistics for spatial data. New York, NY: John Wiley.

Cronin, M.T.D.; Dearden, J.C. (2995) QSAR in toxicology. 1. Prediction of Aquatic toxicity. Quant. Struct. Relat. 14:1–7.

Detenbeck, N. (1994) Ecological risk assessment case study: effects of physical disturbance on water quality status and water quality improvement function of urban wetlands. In: A review of ecological assessment case studies from a risk assessment perspective, v. II. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 4–1 to 4–58. EPA/630/R–94/003.

Detenbeck, N.E.; DeVore, P.W.; Niemi, G.J.; Lima, A. (1992) Recovery of temperate-stream fish communities from disturbance: a review of case studies and synthesis of theory. Environ. Manag. 16(1): 33–53.

Eberhardt, L.L.; Thomas, J.M. (1991) Designing environmental field studies. Ecol. Mono. 61(1): 53–73.

Emlen, J.M. (1989) Terrestrial population models for ecological risk assessment: a state-of-the-art review. Environ. Toxicol. Chem. 8: 831–842.

European Community. (1993) Technical guidance document in support of the risk assessment directive (93/67/EEC) for new substances notified in accordance with the requirements of council directive 67/548/EEC. Brussels, Belgium.

Ferson, S.; Ginzburg, L.; Silvers, A. (1989) Extreme event risk analysis for age-structured populations. Ecol. Model. 47: 175–187.

Fisher, S.G.; Woodmansee, R. (1994) Issue paper on ecological recovery. In: Ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 7–1 to 7–54. EPA/630/R–94/009.

Fox, G.A. (1991) Practical causal inference for ecoepidemiologists. J. Toxicol. Environ. Health 33: 359–373.

Gauch, H.G. (1982) Multivariate anlaysis in community ecology. Cambridge, MA: Cambridge University Press.

Gaudet, C. (1994) A framework for ecological risk assessment at contaminated sites in Canada: review and recommendations. Ottawa, Canada: Environment Canada.

Gibbs, J.P. (1993) Importance of small-wetlands for the persistence of local populations of wetland-associated animals. Wetlands 13(1): 25–31.

Gilbert, R.O. (1987) Statistical methods for environmental pollution monitoring. New York, NY: Van Nostrand Reinhold.

Ginzburg, L.R.; Slobodkin, L.B.; Johnson, K.; Bindman, A.G. (1982) Quasiextinction probabilities as a measure of impact on population growth. Risk Anal. 2: 171–182.

Gosselink, J.G.; Shaffer, G.P.; Lee, L.C.; Burdick, D.L.; Childer, N.C.; Leibowitz, N.C.; Hamilton, S.C.; Boumans, R.; Cushmam, D.; Fields, S.; Koch, M.; Visser, J.M. (1990) Landscape conservation in a forested wetland watershed: can we manage cumulative impacts? Bioscience 40(8): 588–600.

Haimes, Y.Y.; Barry, T.; Lambert, J.H., eds. (1994) Workshop proceedings: when and how can you specify a probability distribution when you don't know much. Risk Anal. 14: 661–706.

Harwell, M.J.; Norton, B.; Cooper, W.; Gentile, J. (1994) Issue paper on ecological significance. In: Ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 2–1 to 2–49. EPA/630/R–94/009.

Hassell, M.P. (1986) Detecting density dependence. Trends Ecol. Evol. 1: 90–93.

Health Council of the Netherlands (HCN). (1993) Ecotoxicological risk assessment and policy-making in the Netherlands—dealing with uncertainties. Network 6(3)/7(1): 8–11.

Heck, W.W. (1993) Ecological assessment case study: the National Crop Loss Assessment Network. In: A review of ecological assessment case studies from a risk assessment perspective. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 6–1 to 6–32. EPA/630/R–92/005.

Hermens, J.; Canton, H.; Janssen, P.; De Jong, R. (1984a) Quantitative structure-activity relationships and toxicity studies of mixtures of chemicals with anaesthetic potency: acute lethal and sublethal toxicity to Daphnia magna. Aquatic Toxicol. 5: 143–154.

Hermens, J.; Canton, H.; Steyger, N.; Wegman, R. (1984b) Joint effects of a mixture of 14 chemicals on mortality and inhibition of reproduction of Daphnia magna. Aquatic Toxicol. 5: 315–322.

Hill, A.B. (1965) The environment and disease: association or causation? Proc. Royal Soc. Med. 58: 295–300.

Holling, C.S., ed. (1978) Adaptive environmental assessment and management. Chichester, U.K.; John Wiley & Sons.

Houseknecht, C.R. (1993) Ecological risk assessment case study: special review of the granular formulations of carbofuran based on adverse effects on birds. In: A review of ecological assessment case studies from a risk assessment perspective. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 3–1 to 6–25. EPA/630/R–92/005.

Huggett, R.J.; Kimerle, R.A.; Merhle, P.M., Jr.; Bergman, H.L., eds. (1992) Biomarkers: biochemical, physiological, and histological markers of anthropogenic stress. Boca Raton, FL: Lewis Publishers.

Hughes, R.M. (1995) Defining acceptable biological status by comparing with reference conditions. In: Davis, W.S.; Simon, T.P., eds. Biological assessment and criteria: tools for water resource planning and decision making. Boca Raton, FL: Lewis Publishers; pp. 31–47.

Hurlbert, S.H. (1984) Pseudoreplication and the design of ecological field experiments. Ecol. Mono. 54: 187–211.

Johnson, B.L. (1995) Applying computer simulation models as learning tools in fishery management. N. Amer. J. Fisheries Manag. 15: 736–747.

Karr, J.R. (1981) Assessment of biotic integrity using fish communities. Fisheries 6: 21–27.

Karr, J.R.; Fausch, K.D.; Angermeier, P.L.; Yant, P.R.; Schlosser, I.J. (1986) Assessing biological integrity in running waters: a method and its rationale, Illinois Natural History Survey, Special Publication 5, Champaign, IL.

Kenaga, E.E. (1973) Factors to be considered in the evaluation of the toxicity of pesticides to birds in the environment. Environ. Qual. Saf. 2: 166–181.

Kendall, R.J.; Lacher, T.E.; Bunck, C.; Daniel, B.; Driver, C.; Grue, C.E.; Leighton, F.; Stansley, W.; Watanabe, P.G.; Whitworth, M. (1996) An ecological risk assessment of lead shot exposure in non-waterfowl avian species: upland game birds and raptors. Environ. Toxicol Chem. 15:4–20.

Könemann, H. (1981) Fish toxicity studies with mixtures of more than two chemicals: a proposal for a quantitative approach and experimental results. Aquatic Toxicol. 19: 229–238.

Laird, N.M.; Mosteller, R. (1990) Some statistical methods for combining experimental results. Int. J. Technol. Asses. Health Care 6: 5–30.

Landis, W.G.; Matthews, R.A.; Markiewicz, A.J.; Matthews, G.B. (1993) Multivariate analysis of the impacts of the turbine fuel JP–4 in a microcosm toxicity test with implications for the evaluation of ecosystem dynamics and risk assessment. Ecotoxicology 2: 271–300.

Lipnick, R.L. (1995) Structure-activity relationships. In: Rand, G.M.; Petrocelli, S.R., eds. Fundamentals of aquatic toxicology. London, UK: Taylor and Francis; pp. 609–655.

Lipton, J.; Galbraith, H.; Burger, J.; Wartenberg, D. (1993) A paradigm for ecological risk assessment. Environ. Manag. 17:1–5.

Ludwig, J.A.; Reynolds, J.F. (1988) Statistical ecology. New York, NY: Wiley-Interscience, 337 pp.

Lynch, D.G.; Macek, G.J.; Nabholz, J.V.; Sherlock, S.M.; Wright, R. (1994) Ecological risk assessment case study: assessing the ecological risks of a new chemical under the Toxic Substances Control Act. In: A review of ecological assessment case studies from a risk assessment perspective, v. II. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 1–1 to 1–35. EPA/630/R–94/003.

MacIntosh, D.L.; Suter G.W., II; Hoffman, F.O. (1994) Uses of probabilistic exposure models in ecological risk assessments of contaminated sites. Risk Anal. 14(4): 405–419.

Mann, C. (1990) Meta-analysis in the breech. Science 249: 476–480.

McCarty, L.S.; Mackay, D. (1993) Enhancing ecotoxicological modeling and assessment: body residues and modes of toxic action. Environ. Sci. Technol. 27: 1719–1728.

Meij, R. (1991) The fate of mercury in coal-fired power plants and the influence of wet flue-gas desulphurization. Water Air Soil Pollut. 56: 21–33.

Menzie, C.A.; Burmaster, D.E.; Freshman, J.S.; Callahan, C.A. (1992) Assessment of methods for estimating ecological risk in the terrestrial component: a case study at the Baird & McGuire Superfund Site in Holbrook, Massachusetts. Environ. Toxicol. Chem. 11:245–260.

Menzie, C.; Henning, M.H.; Cura, J.; Finkelstein, K.; Gentile, J.; Maughan J.; Mitchell, D.; Petron, S.; Potocki, B.; Svirsky, S.; Tyler, P. (1996) Special report of the Massachusetts weight-of-evidence workgroup: a weight of evidence approach for evaluating ecological risks. Human Ecol. Risk Assess. 2:277–304.

Merriam-Webster Dictionary. (1972) New York, NY: G. & C. Merriam Co., Simon & Schuster, Inc.

Nabholz, J.V. (1991) Environmental hazard and risk assessment under the United States Toxic Substances Control Act. Science Total Environ. 109/110: 649–665.

Nabholz, J.V.; Miller, P.; Zeeman, M. (1993) Environmental risk assessment of new chemicals under the Toxic Substances Control Act (TSCA) section five: In: Landis, W.G.; Hughes, S.G.; Lewis, M., eds. Environmental toxicology and risk assessment. Philadelphia, PA: American Society for Testing and Materials; pp. 40–55. ASTM STP 1179.

National Research Council. (1993) A paradigm for ecological risk assessment. In: Issues in risk assessment. Washington, DC: National Academy Press.

National Research Council. (1994) Science and judgment in risk assessment. Washington, DC: National Academy Press.

National Research Council. (1996) Understanding risk: Informing decisions in a democratic society. Washington, DC: National Academy Press.

Niemi, G.J.; DeVore, P.; Detenbeck, N.; Taylor, D.; Lima, A.; Pastor, J.; Yount, J.D.; Naiman, R.J. (1990) Overview of case studies on recovery of aquatic systems from disturbance. Environ. Mgmt. 14: 571–587.

O'Neill, R.V.; Gardner, R.H.; Barnthouse, L.W.; Suter, G.W.; Hildebrand, S.G.; Gehrs, C.W. (1982) Ecosystem risk analysis: a new methodology. Environ. Toxicol. Chem. 1: 167–177.

Okkerman, P.C.; Plassche, E.J.V.D.; Emans, H.J.B. (1993) Validation of some extrapolation methods with toxicity data derived from multispecies experiments. Ecotoxicol. Environ. Saf. 25: 341–359.

Orr, R.L.; Cohen, S.D.; Griffin, R.L. (1993) Generic non-indigenous pest risk assessment process. Beltsville, MD: USDA Animal and Plant Health Inspection Service.

Ott, W.R. (1978) Environmental indices—theory and practice. Ann Arbor, MI: Ann Arbor Science. Cited in: Suter, G.W., II. (1993) A critique of ecosystem health concepts and indexes. Environ. Toxicol. Chem. 12: 1533–1539.

Pearlstine, L.; McKellar, H.; Kitchens, W. (1985) Modelling the impacts of a river diversion on bottomland forest communities in the Santee River Floodplain, South Carolina. Ecol. Model. 29: 281–302.

Pelczar, M.J.; Reid, R.D. (1972) Microbiology. New York, NY: McGraw-Hill Company.

Peterman, R.M. (1990) The importance of reporting statistical power: the forest decline and acidic deposition example. Ecology 71: 2024–2027.

Petitti, D.B. (1994) Meta-analysis, decision analysis and cost-effectiveness analysis: methods for quantitative synthesis in medicine. Monographs in epidemiology and biostatistics, v. 24. New York, NY: Oxford University Press.

Phipps, R.L. (1979) Simulation of wetlands forest vegetation dynamics. Ecol. Model. 7: 257–288.

Pielou, E.C. (1984) The interpretation of ecological data. A primer on classification and ordination. New York, NY: Wiley-Interscience, 263 pp.

Preston, E.M.; Bedford, B.L. (1988) Evaluating cumulative effects on wetland functions: a conceptual overview and generic framework. Environ. Manag. 12(5): 565–584.

Risser, P.G. (1988) General concepts for measuring cumulative impacts on wetland ecosystems. Environ. Manag. 12(5): 585–590.

Rotenberry, J.T.; Wiens, J.A. (1985) Statistical power analysis and community-wide patterns. Am. Naturalist 125: 164–168.

Ruckelshaus, W.D. (1983) Science, risk, and public policy. Science 221: 1026–1028.

Sawyer, T.W.; Safe, S. (1985) In vitro AHH induction by polychlorinated biphenyl and dibenzofuran mixtures: additive effects. Chemosphere 14: 79–84.

Simberloff, D.; Alexander, M. (1994) Issue paper on biological stressors. In: Ecological

risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 6–1 to 6–59. EPA/630/R–94/009.

Smith, E.P.; Cairns J., Jr. (1993) Extrapolation methods for setting ecological standards for water quality: statistical and ecological concerns. Ecotoxicology 2: 203–219.

Smith, E.P.; Shugart, H.H. (1994) Issue paper on uncertainty in ecological risk assessment. In: Ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 8–1 to 8–53. EPA/630/R–94/009.

Society of Environmental Toxicology and Chemistry (SETAC). (1987) Research priorities in environmental risk assessment. Report of a workshop held in Breckenridge, CO, August 16–21, 1987. Washington, DC: Society of Environmental Toxicology and Chemistry.

Society of Environmental Toxicology and Chemistry (SETAC). (1994a) Aquatic risk assessment and mitigation dialogue group. Final report. Pensacola, FL: SETAC Foundation for Environmental Education.

Solomon, K.R.; Baker, D.B.; Richards, R.P.; Dixon, K.R.; Klaine, S.J.; La Point, T.W.; Kendall, R.J.; Weisskopf, C.P.; Giddings, J.M.; Geisy, J.P.; Hall, L.W.; Williams, W.M. (1996) Ecological risk assessment of atrazine in North American surface waters. Environ. Toxicol. Chem. 15(1): 31–76.

Starfield, A.M.; Bleloch, A.L. (1991) Building models for conservation and wildlife management. Edina, MN: Burgess International Group, Inc.

Stephan, C.E. (1977) Methods for calculating an LC_{50}. In: ASTM Special Technical Publication 634. Philadelphia, PA: American Society for Testing and Materials; pp. 65–88.

Stephan, C.E.; Rogers, J.R. (1985) Advantages of using regression analysis to calculate results of chronic toxicity tests. In: Bahner, R.C.; Hanse, D.J., eds. Aquatic toxicology and hazard assessment. Eighth symposium. Philadelphia, PA: American Society for Testing and Materials; pp. 328–339.

Stephan, C.E.; Mount, D.I.; Hansen, D.J.; Gentile, J.H.; Chapman, G.A.; Brungs, W.A. (1985) Guidelines for deriving numerical national water quality criteria for the protection of aquatic organisms and their uses. Duluth, MN: Office of Research and Development, U.S. Environmental Protection Agency. PB85–227049.

Stewart-Oaten, A.; Murdoch, W.W.; Parker, K.R. (1986) Environmental impact assessment: "pseudoreplication" in time? Ecol. 67(4): 929–940.

Susser, M. (1986a) Rules of inference in epidemiology. Reg. Toxicol. Pharmacol. 6: 116–128.

Susser, M. (1986b) The logic of Sir Carl Popper and the practice of epidemiology. Am. J. Epidemiol. 124: 711–718.

Suter, G.W., II. (1990) Endpoints for regional ecological risk assessments. Environ. Manag. 14: 19–23.

Suter, G.W., II. (1993a) Ecological risk assessment. Boca Raton, FL: Lewis Publishers.

Suter, G.W., II. (1993b) A critique of ecosystem health concepts and indexes. Environ. Toxicol. Chem. 12: 1533–1539.

Suter, G.W., II; Vaughan, D.S.; Gardner, R.H. (1983) Risk assessment by analysis of extrapolation error: A demonstration for effects of pollutants on fish. Environ. Toxicol. Chem. 1: 369–377.

Suter, G.W., II; Gillett, J.W.; Norton, S.B. (1994) Issue paper on characterization of exposure. In: Ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency; pp. 4–1 to 4–64. EPA/630/R–94/009.

Thomas, J.W.; Forsman, E.D.; Lint, J.B.; Meslow, E.C.; Noon, B.R.; Verner, J. (1990) A conservation strategy for the spotted owl. Interagency Scientific Committee to Address the Conservation of the Northern Spotted Owl. 1990–791/20026. Washington, DC: U.S. Government Printing Office.

Urban, D.J.; Cook, J.N. (1986) Ecological risk assessment. Hazard Evaluation Division standard procedure. Washington, DC: Office of Pesticide Programs, U.S. Environmental Protection Agency. EPA–54019–83–001.

U.S. Department of Agriculture (1993) Pest risk assessment of the importation of Pinus radiata, Nothofagus dombeyi, and Laurelia philippiana logs from Chile. Forest Service Miscellaneous Publication 1517.

U.S. Department of Health, Education, and Welfare. (1964) Smoking and health. Report of the Advisory Committee to the Surgeon General. Washington, DC: U.S. Department of Health, Education, and Welfare. Public Health Service Publication 1103.

U.S. Environmental Protection Agency. (1979) Toxic Substances Control Act. Discussion of premanufacture testing policies and technical issues: request for comment. FR 44: 16240–16292.

U.S. Environmental Protection Agency. (1984) Estimating concern levels for concentrations of chemical substances in the environment. Washington, DC: U.S. Environmental Protection Agency, Health and Environmental Review Division, Environmental Effects Branch.

U.S. Environmental Protection Agency. (1986a) Quality criteria for water. Washington, DC: Office of Water, U.S. Environmental Protection Agency. EPA/440/5–86/001.

U.S. Environmental Protection Agency. (1986b) Guidelines for the health risk assessment of chemical mixtures. FR 52: 34014–34025.

U.S. Environmental Protection Agency. (1988a) Methods for aquatic toxicity identification evaluations: phase I toxicity characterization procedures. Duluth, MN: Environmental Research Laboratory, U.S. Environmental Protection Agency. EPA/600/3–88/034.

U.S. Environmental Protection Agency. (1988b) User's guide to PDM3, final report; EPA Contract No. 68–02–4254, task no. 117. Exposure Assessment Branch, Exposure

U.S. Environmental Protection Agency. (1989a) Rapid bioassessment protocols for use in streams and rivers: benthic macroinvertebrates and fish. Washington, DC: Office of Water, U.S. Environmental Protection Agency. EPA/440/4–89/001.

U.S. Environmental Protection Agency. (1989b) Methods for aquatic toxicity identification evaluations: phase II toxicity identification procedures. Duluth, MN: Environmental Research Laboratory, U.S. Environmental Protection Agency. EPA/600/3–88/035.

U.S. Environmental Protection Agency. (1989c) Methods for aquatic toxicity identification evaluations: phase III toxicity confirmation procedures. Duluth, MN: Environmental Research Laboratory, U.S. Environmental Protection Agency. EPA/600/3–88/035.

U.S. Environmental Protection Agency. (1990) Guidance for data useability in risk assessment. Washington, DC: U.S. Environmental Protection Agency. EPA/540/G–90/008.

U.S. Environmental Protection Agency. (1991) Summary report on issues in ecological risk assessment. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/625/3–91/018.

U.S. Environmental Protection Agency. (1992a) Framework for ecological risk assessment. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–92/001.

U.S. Environmental Protection Agency. (1992b) Peer review workshop report on a framework for ecological risk assessment. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/625/3–91/022.

U.S. Environmental Protection Agency. (1992c) Ecological risk assessment guidelines strategic planning workshop. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–92/002.

U.S. Environmental Protection Agency. (1992d) Guidelines for exposure assessment: notice. FR 57: 22888–22938.

U.S. Environmental Protection Agency. (1993a) A review of ecological assessment case studies from a risk assessment perspective. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–92/005.

U.S. Environmental Protection Agency. (1993b) A guidebook to comparing risks and setting environmental priorities. Washington, DC: Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency. EPA/230/B–93/003.

U.S. Environmental Protection Agency. (1993c) Wildlife exposure factors handbook. Washington, DC: Office of Research and Development, U.S. Environmental Protection Agency. EPA/600/R–93/187a and 187b.

U.S. Environmental Protection Agency. (1993d) Communicating risk to senior EPA policy makers: a focus group study. Research Triangle Park, NC: Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency.

U.S. Environmental Protection Agency. (1994a) A review of ecological assessment case studies from a risk assessment perspective, volume II. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–94/003.

U.S. Environmental Protection Agency. (1994b) Ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–94/009.

U.S. Environmental Protection Agency. (1994c) Peer review workshop report on ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–94/008.

U.S. Environmental Protection Agency. (1994d) Guidance for the data quality objectives process. Washington, DC: Quality Assurance Management Staff. EPA QA/G–4.

U.S. Environmental Protection Agency. (1994e) Ecosystem protection. Memorandum from Robert Perciaspe, David Gardiner, and Johnathan Cannon to Carol Browner, March 1994.

U.S. Environmental Protection Agency. (1994f) Environmental Services Division guidelines. Hydrogeologic modeling. Seattle, WA: Region X, U.S. Environmental Protection Agency.

U.S. Environmental Protection Agency. (1994g) Managing ecological risks at EPA: issues and recommendations for progress. Washington, DC: Center for Environmental Research Information, U.S. Environmental Protection Agency. EPA/600/R–94/183.

U.S. Environmental Protection Agency. (1995a) An SAB report: ecosystem management—imperative for a dynamic world. Washington, DC: Science Advisory Board. EPA–SAB–EPEC–95–003.

U.S. Environmental Protection Agency. (1995b) Ecological risk: a primer for risk managers. Washington, DC: U.S. Environmental Protection Agency. EPA/734/R–95/001.

U.S. Environmental Protection Agency. (1995c) Memo to EPA managers from administrator Carol Browner, "EPA risk characterization program"; March 1995.

U.S. Environmental Protection Agency. (1995d) The use of the benchmark dose approach in health risk assessment. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–94/007.

U.S. Environmental Protection Agency. (In Press) Peer review workshop report on draft proposed guidelines for ecological risk assessment. Washington, DC: Risk Assessment Forum, U.S. Environmental Protection Agency. EPA/630/R–96/002.

Van Leeuwen, C.J.; Van der Zandt, P.T.J.; Aldenberg, T.; Verhar, H.J.M.; Hermens, J.L.M. (1992) Extrapolation and equilibrium partitioning in aquatic effects assessment. Environ. Toxicol. Chem. 11: 267–282.

Wagner, C.; Løkke, H. (1991) Estimation of ecotoxicological protection levels from NOEC toxicity data. Water Res. 25: 1237–1242.

White, P.S.; Pickett, S.T.A. (1985) Natural disturbance and patch dynamics: an introduction. In: Pickett, S.T.A.; White, P.S., eds. The ecology of natural disturbance and patch dynamics. Orlando, FL: Academic Press; pp. 3–13.

Wiegert, R.G.; Bartell, S.M. (1994) Issue paper on risk integration methods. In: U.S. Environmental Protection Agency. Ecological risk assessment issue papers. Washington, DC: Risk Assessment Forum, Environmental Protection Agency; pp. 9–1 to 9–66. EPA/630/R–94/009.

Wiens, J.A.; Parker, K.R. (1995) Analyzing the effects of accidental environmental impacts: approaches and assumptions. Ecol. Appl. 5(4): 1069–1083.

Woodman, J.N.; Cowling, E.B. (1987) Airborne chemicals and forest health. Environ. Sci. Technol. 21: 120–126.

Yoder, C.O.; Rankin, E.T. (1995) Biological response signatures and the area of degradation value: new tools for interpreting multi-metric data. In: Davis, W.S.; Simon, T.P., eds. Biological assessment and criteria: tools for water resource planning and decision making. Boca Raton, FL: Lewis Publishers.

Zeeman, M. (1995) EPA's framework for ecological effects assessment. In: Screening and testing chemicals in commerce. Washington, DC: Office of Technology Assessment, OTA–BP–ENV–166; pp. 69–78.

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Part III

Consumer Product Safety Commission

16 CFR Parts 1615 and 1616
Flammable Fabrics Act: Children's Sleepwear (Sizes 0–6x, 7–14) Flammability Standards; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission issues final amendments of the flammability standards for children's sleepwear in sizes 0 through 6X and sizes 7 through 14. The amendments issued below revise the definition of "children's sleepwear" in the standard for sizes 0 through 6X to exclude from the requirements of that standard: garments sized for infants nine months of age or younger; and tight-fitting sleepwear garments. The amendments also revise the definition of "children's sleepwear" in the standard for sizes 7 through 14 to exclude tight-fitting sleepwear garments.[1] The amendments define the term "tight-fitting garment" in terms of maximum dimensions at specified locations on garments in sizes for children older than 9 months through children's size 14.

The Commission issues these amendments because it finds that the existing children's sleepwear standards are not limited to those sleepwear garments which present an unreasonable risk of burn deaths and injuries. The Commission concludes that the amendments will afford consumers a wider selection of sleepwear garments for children without diminishing the protection provided by the children's sleepwear standards.

DATES: The amendments will become effective on January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia Fairall, Division of Regulatory Management, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1369.

SUPPLEMENTARY INFORMATION:

A. Provisions of Final Amendments

By publication of this notice of final rulemaking, the Commission amends the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR part 1615) and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR part 1616). The amendments issued below exempt sleepwear garments sized for children nine months of age and younger and "tight-fitting" sleepwear garments sized for children older than nine months to children's size 14 from all requirements of the children's sleepwear flammability standards. The term "tight-fitting garment" is defined by specifying maximum dimensions for the chest, waist, seat, upper arm, thigh, wrist, and ankle of the garment for each size from 9–12 months through children's size 14.

The amendments issued below are similar to proposed amendments published in the **Federal Register** of October 25, 1994 (59 FR 53616). The final amendments differ from the proposal by:

- Increasing the size of infant garments exempted from the current standard for sizes 0 through 6X;
- Changing some of the maximum dimensions specified for tight-fitting garments in children's sizes 6X through 14; and
- Eliminating the requirement for a permanent label on tight-fitting sleepwear garments to advise the purchaser that those garments are not flame-resistant.

The differences between the proposed and final amendment are discussed in detail under the heading G. Comments on the Proposed Amendments.

The amendments issued below become effective on January 1, 1997. The Commission's finding that this effective date is in the public interest and the reasons for that finding are set forth under the heading H. Effective Date. Elsewhere in this issue of the **Federal Register**, the Commission has published a notice to continue through March 9, 1998 a stay of enforcement for close-fitting garments which are labeled and promoted as underwear.

B. Background

The Flammable Fabrics Act (FFA) (15 U.S.C. 1191 *et seq.*) authorizes the issuance of flammability standards for products of wearing apparel made from fabric to protect the public from unreasonable risks of the occurrence of fire leading to death, injury, or significant property damage.

In 1971, the Secretary of Commerce issued a flammability standard for children's sleepwear in sizes 0 through 6X under the authority of section 4 of the FFA (15 U.S.C. 1193). The standard was issued to protect young children from death and serious burn injuries which had been associated with ignition of sleepwear garments, such as nightgowns and pajamas, by small open-flame sources. The standard for sleepwear in sizes 0 through 6X became effective in 1972 and is now codified at 16 CFR part 1615.

In 1973, authority to issue flammability standards under provisions of the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2079(b)). In 1974, the Commission issued a flammability standard for children's sleepwear in sizes 7 through 14. That standard became effective in 1975 and is now codified at 16 CFR part 1616.

The safety requirements of the two standards are nearly identical. They prescribe a test which requires that specimens of fabrics, seams, and trim of children's sleepwear garments must self-extinguish after exposure to a small open flame. Both standards require manufacturers of children's sleepwear subject to their provisions to test prototypes of sleepwear garments with acceptable results before beginning production. Both standards also require manufacturers to sample and test garments from regular production. Failure to comply with the sampling and testing requirements of the standards is a violation of section 3 of the FFA (15 U.S.C. 1192). The standards do not require or prohibit the use of any particular type of fabric or garment design as long as the manufacturer successfully completes the prescribed prototype and production testing.

C. Garments Subject to the Sleepwear Standards

Both standards define the term "children's sleepwear" to mean "any product of wearing apparel" in the sizes covered by the standard "such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping." As originally issued and as amended below, both standards exclude diapers and underwear from their coverage. See 16 CFR 1615.1(a) and 1616.2(a).

Under this definition, the coverage of the sleepwear standards is not limited to children's pajamas, nightgowns, and robes, but also includes other garments "intended primarily for sleeping or activities related to sleeping." 16 CFR 1615.1(a), 1616.2(a) During the time that the standards have been in effect, the Commission staff has responded to a large number of inquiries from manufacturers and importers of children's garments about whether particular products are "children's

[1] The Commission voted 2–1 to issue these amendments of the children's sleepwear flammability standards, Chairman Ann Brown dissenting.

sleepwear" subject to the standards; or "underwear," which is specifically excluded from the standards; or "daywear," "playwear," or other categories of non-sleepwear garments, each of which is outside the scope of the standards.

To provide guidance to the children's garment industry on the scope of the sleepwear standards, in 1984 the Commission issued policy statements which discuss the factors the Commission will consider when determining whether a garment is intended to be worn primarily for sleeping or related activities.(1)[2] These policy statements are codified at 16 CFR 1615.64 and 1616.65. Additionally, the staff developed a pamphlet describing and illustrating various styles of sleepwear and non-sleepwear garments. This pamphlet was revised from time to time, most recently in 1989.(2)

During the past several years, many consumers have expressed a desire to obtain children's garments made from 100 percent untreated cotton fabric for use as sleepwear. Although the standards do not prohibit any specific type of fabric in the production of children's sleepwear, 100 per cent cotton fabric cannot pass the flammability tests in the standards unless treated with a flame retardant. The Commission also received information indicating that many parents were dressing their children in underwear, large T-shirts, or other garments made of 100 percent untreated cotton rather than traditional sleepwear manufactured to comply with the sleepwear flammability standards.

These actions by manufacturers and consumers resulted in an increasing number of children sleeping in garments which did not comply with the children's sleepwear standards. In view of this trend, the Commission decided in 1991 to re-examine the scope of the children's sleepwear standards and to consider amending the definitions of the term "children's sleepwear" in the two standards. The Commission began this rulemaking proceeding in 1993.

D. Statutory Provisions

Section 4 of the FFA (15 U.S.C. 1193) authorizes the Commission to issue or amend a flammability standard for a product of wearing apparel if the Commission finds that a new or amended standard is needed to protect the public against the unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage.

Section 4(g) of the FFA (15 U.S.C. 1193(g)) requires publication in the **Federal Register** of an advance notice of proposed rulemaking (ANPR) to begin a proceeding for the issuance or amendment of a flammability standard. The ANPR must describe the product and the risk of injury under consideration; summarize the regulatory alternatives being considered; provide information about existing standards which may be relevant; invite interested parties to submit an existing standard to the Commission for publication as the proposed standard or a statement of intention to develop or modify a voluntary standard to address the risk of injury under consideration; and solicit written comments on the risk of injury and regulatory alternatives under consideration.

If the Commission decides to continue the proceeding after consideration of comments and submissions received in response to the ANPR, section 4(i) of the FFA (15 U.S.C. 1193(i)) requires publication in the **Federal Register** of a notice of proposed rulemaking (NPR). The NPR must set forth the text of the proposed standard or amendment and a preliminary regulatory analysis containing a discussion of the anticipated benefits and costs of the proposed rule and other regulatory alternatives considered by the Commission. Section 4(d) of the FFA (15 U.S. C. 1193(d)) specifies that the NPR must provide interested persons the opportunity to submit written comments and to request a public hearing for oral presentation of data and opinions concerning the proposal.

To issue a final standard or amendment, section 4(j) of the FFA (15 U.S.C. 1193(j)) requires the Commission to publish a notice of final rulemaking setting forth the text of the final rule and the Commission's final regulatory analysis of costs, benefits, and regulatory alternatives. Additionally, section 4(b) of the FFA (15 U.S.C. 1193(b)) requires the notice of final rulemaking to contain findings that the standard or amendment is needed to protect the public from the unreasonable risk of death, injury, or significant property damage from fires associated with the product under consideration; is reasonable, technologically practicable, and appropriate; and is limited to those fabrics or products which have been determined to present an unreasonable risk of death, injury, or significant property damage.

E. Publication of ANPR

The Commission began this proceeding by publication of an ANPR in the **Federal Register** of January 13, 1993 (58 FR 4111).(4) The ANPR identified the products under consideration as children's sleepwear garments in sizes 0 through 14, and the risk of injury as death or personal injury from fires resulting from ignition of children's sleepwear by small open-flame sources.

The ANPR also described the regulatory alternatives being considered by the Commission. Briefly summarized, the alternatives were:

(1) Amend the children's sleepwear standards to exempt tight-fitting sleepwear garments and sleepwear garments in infant sizes. Children's sleepwear garments exempted from the requirements of the sleepwear standard would be subject to the provisions of the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610). That standard prohibits the manufacture, importation, or sale of garments which are "dangerously flammable because of rapid and intense burning," but does not require garments to self-extinguish when exposed to a small open-flame ignition source.

(2) Issue an enforcement policy statement to announce that the Commission will not apply the requirements of the children's sleepwear standards to tight-fitting sleepwear garments and garments in infant sizes if those garments met the requirements of the clothing textiles flammability standard.

The ANPR also contained information about other flammability standards for children's sleepwear; solicited information about relevant voluntary standards and statements of intention to develop or modify a voluntary standard; and invited interested persons to submit written comments on the ANPR.

On the same date the Commission published the ANPR, the Commission announced that it would not enforce the children's sleepwear standards in cases involving garments currently being used as sleepwear if those garments are skin-tight or nearly skin-tight, relatively free of ornamentation, made from fabrics such as rib knit, interlock knit, or waffle knit, and labeled as "underwear." 58 FR 4078(5)

In response to the ANPR, the Commission received more than 2,100 written comments from individuals, firms, and organizations. (More than a third of the comments were identical form letters with space for the

[2] Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's Public Reading Room, 4330 East-West Highway, room 419, Bethesda Maryland 20814, or by calling the Office of the Secretary at (301) 504–0800.

commenter's name.) Comments were received from all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and from United States citizens living abroad.(3), (6), (7) Almost all of these comments favored modification of the standards to exempt some or all children's sleepwear garments from their requirements.

In addition to the information provided by commenters, the Commission also considered information developed or obtained by the Commission staff. That information included injury data(10); information about flammability characteristics of various fabrics and garments(8), (11); and a review of children's sleepwear flammability standards issued by Australia, Canada, New Zealand and the United Kingdom.(9), (11)

From its review of burn injury data, the Commission estimates that on average, about 1,150 children younger than 15 years of age were treated each year in hospital emergency rooms for burn injuries associated with clothing during the period from 1980 through 1993. Of that total, the Commission estimates that each year, about 90 burn injuries to children were associated with sleepwear, about 860 were associated with day wear, and about 200 were associated with other types of clothing or unspecified types of clothing.(10)

On average, each year about four children younger than fifteen years of age died from fires associated with clothing of all types.(10)

Available information also shows that most thermal burn injuries associated with sleepwear involved females, whereas most burn injuries associated with day wear involved males. Thermal burn injuries from nightwear were usually associated with nightgowns or pajamas that probably were not tight-fitting.(10)

In 1978, the Commission staff reviewed information about deaths and injuries associated with sleepwear to children younger than one year of age. Ten cases involved injuries associated with sleepwear. However, nine of these cases involved whole-house conflagrations, and the other involved a home-made garment.(11) Thus, none of these cases involved risks of injury which the sleepwear standards were intended to address.

F. Proposed Amendments

After consideration of comments received in response to the ANPR, information compiled by the staff, and information presented at an oral briefing by the staff, the Commission decided to propose amending the children's sleepwear standards.

The Commission published a notice to propose amending the children's sleepwear standards by exempting infant garments and tight-fitting garments from their requirements on October 25, 1994. (59 FR 53616)(20)

Section 4 of the FFA (15 U.S.C. 1193) authorizes the agency to issue or amend mandatory requirements for the flammability of wearing apparel only when such requirements are "*needed to adequately protect the public* against *unreasonable risk of the occurrence of fire* leading to death, injury, or significant property damage." (Emphasis added.) Section 4 of the FFA also requires that in order to issue or amend a standard, the Commission must find, among other things, that the standard or amendment is "limited" to include only those garments which have been determined to present an "unreasonable risk" of burn deaths or injuries, or significant property damage. Consequently, the Commission concluded that if the children's sleepwear standards currently apply to garments which do not present an unreasonable risk of fire leading to death, injury, or significant property damage, the scope of the standards could be narrowed to remove those garments from the coverage of the standards.

That notice proposed to amend the children's sleepwear flammability standards by exempting:

(1) Garments intended for children six months of age and younger from the standard for sizes 0 through 6X; and

(2) "Tight-fitting" sleepwear garments from the standard for sizes 0 through 6X and the standard for sizes 7 through 14.

The proposed exemption for infant garments was stated in terms of maximum dimensions for the chest and length of the garment. The maximum dimensions specified were selected by considering body sizes of children approximately six months old, as set forth in ASTM standard D 4910–89, "Standard Tables of Body Measurements for Infants, Ages 0 to 18 months," published by ASTM (formerly the American Society for Testing and Materials). (12)

The proposed amendments also required that an exempted infant garment must be labeled to indicate that the garment is intended for use by a child six months of age or younger.

In addition, the proposed amendments stated that garments in sizes for infants six months of age or younger must meet the applicable requirements of the flammability standards for clothing textiles and vinyl plastic film (16 CFR parts 1610 and 1611).

The proposed amendments defined the term "tight-fitting garment" by specifying maximum dimensions for the following parts of the garment: Chest, waist, seat, upper arm, thigh, wrist, and ankle. The proposed amendments also required that an exempted tight-fitting garment must be labeled to indicate its size. The maximum dimensions specified by the proposed amendments for tight-fitting garments in sizes for children six to 24 months old were selected by considering body sizes of children approximately six months old set forth in a proposed revision of ASTM standard D 4910. (12) The proposed maximum dimensions for tight-fitting garments in sizes 2 through 6X were based on dimensions specified in a draft ASTM standard tentatively designated "Standard Table of Body Measurements for Pre-School Children Sizes 2—6X/7."(12) Maximum dimensions specified by the proposed amendments for tight-fitting garments in sizes 7 through 14 were based on a report of an anthropometric study of children ranging in age from infancy to the age of 18 years, conducted in 1977 by the University of Michigan. (12)

To be eligible for the exemption from the requirements of the children's sleepwear standards, the proposal specified that a tight-fitting garment be labeled to indicate its size. The proposed amendments also required that when offered for sale to consumers, exempted garments in sizes for 6-to-9 months and larger must be clearly and conspicuously labeled with a statement to advise consumers that the garment is not flame-resistant and should be tight-fitting for the safety of the child.

Finally, the proposed amendments required that sleepwear garments exempted from the flammability requirements as "tight-fitting" garments must comply with applicable provisions of the flammability standards for clothing textiles and vinyl plastic film (16 CFR parts 1610 and 1611).

In a separate notice also published on October 25, 1994 (59 FR 53584), the Commission extended until further notice the stay of enforcement of the children's sleepwear standards published in 1993 for cases involving skin-tight or nearly skin-tight garments similar in design and manufacture to underwear, provided those garments were labeled and marketed as underwear. (21)

G. Comments on the Proposed Amendments

In response to the proposal to amend the sleepwear standards, the

Commission received 39 written comments. Some commenters submitted more than one comment.(22)–(61) Commenters included individual consumers, students, a physician, a retired Federal employee, manufacturers and importers of children's sleepwear and other children's garments, an association of manufacturers of children's sleepwear, the American Burn Association, the Coalition for American Trauma Care, Fire Prevention Canada, the International Association of Fire Chiefs, the National Cotton Council of America, and the Learn Not to Burn Foundation of the National Fire Protection Association.

Additionally, on April 25, 1995, members of the Commission staff conducted a public meeting with manufacturers and importers of children's sleepwear and other children's garments, consumers, and other interested persons to discuss the proposed amendments.(81)

The following is a summary of the principal issues raised by the written comments and at the public meeting, and the Commission's resolution of those issues.

1. Revocation of the Standards

A comment from one manufacturer of children's garments expresses the view that available injury information does not establish that any children's sleepwear garments present an unreasonable risk of burn deaths or injuries to children. This comment urges the Commission to revoke the standards in their entirety. (25)

When the Department of Commerce issued the flammability standard for sizes 0 through 6X, it considered injury data collected by the National Bureau of Standards (now the National Institute of Standards and Technology) through the Flammable Fabrics Accident Case and Testing System (FFACTS). From 1967 through January 1973, FFACTS obtained information about 434 cases involving burn injuries associated with sleepwear, 101 of which involved children younger than six years of age. Although FFACTS incidents do not constitute a probability sample, they document instances in which children were injured in fires involving sleepwear before issuance of the standard for sizes 0 through 6X. (70)

Unlike FFACTS, the National Electronic Injury Surveillance System (NEISS) gathers information about injuries by using a probability sample. For that reason, NEISS data can be reliably projected into national estimates of injuries associated with products. From burn injuries to children associated with children's sleepwear during the years 1980 through 1994 reported by NEISS, the Commission estimates that during that time period, on average, about 90 children younger than 15 years of age were treated in hospital emergency rooms each year for burns associated with children's sleepwear. (70)

The estimated number of burn injuries associated with children's sleepwear in the years following issuance of the sleepwear standards has been relatively low. This indicates that the sleepwear standards have been relatively successful. Therefore, the Commission does not believe that available injury information supports revocation of the children's sleepwear standards in their entirety.

A comment from one consumer questions whether use of children's sleepwear manufactured from man-made fabrics to comply with the sleepwear standards may increase the risk of sudden-infant-death syndrome (SIDS). (22) The Commission has reviewed medical publications concerning SIDS and has found no references which implicate a specific type of fabric or clothing as a contributing factor to SIDS. (73)

2. Exemption for Infant Garments

The proposed amendments contained provisions to exempt garments for infants six months of age and younger from the requirements of the sleepwear standard for sizes 0 through 6X. The proposed amendments limited the exemption for infant garments to those not exceeding specified dimensions for the chest and overall length of the garment. Those dimensions were selected using information about the body size of children approximately six months old.

Before proposing that exemption, the Commission reviewed information about burn deaths and injuries to children one year of age and younger associated with sleepwear. That information included a study completed in 1978 of 66 burn injuries to children younger than one year old associated with clothing. In ten cases, the clothing involved was specifically identified as sleepwear. Nine of those cases involved whole-house fires; the other involved a home-made garment. The Commission concluded that none of these cases involved risks of injury which the sleepwear standard was intended to address. (11)

The Commission also considered information about children's physical and mental development. That information shows that most children are not capable of moving themselves until they are about seven months old. For that reason, children six months of age and younger are not likely to come within range of small open-flame ignition sources when an adult is not present. (12)

A comment from the Children's Sleepwear Coalition (a group of children's sleepwear manufacturers and suppliers) objects to the proposal to exempt sleepwear garments for infants six months of age and younger. This comment states that infants are unable to defend themselves from risks of burn injury, and could be exposed to ignition sources by adults. Such exposure could occur if adults smoke in their presence, or place them near a kitchen range or other open flame source. (30) Comments from two individual manufacturers of children's sleepwear object to the proposed exemption for similar reasons. (45), (54)

Comments from two manufacturers of children's sleepwear, an importer of children's garments, and the National Cotton Council urge the Commission to expand the scope of the exemption to include garments for children one year of age and younger. (25), (28), (33), (47) In support of this position, the comments cite the absence of injuries associated with sleepwear to children younger than one year of age.

Comments from two manufacturers and one importer of children's garments state that the proposed amendment to exempt infant sleepwear garments was not consistent with industry practices for the sizing of infant clothing. (23), (35), (53) Two of these comments state that the maximum dimensions based on body measurements of children six months of age would have the effect of exempting some, but not all, infant garments. Garments in sizes 0 to three months (or infants "small" size) and three to six months (or infants "medium" size) would be exempted by the proposal, but not garments in sizes six to nine months (or infants "large" size). These comments recommend that the exemption apply to garments intended for infants nine months of age and younger, thereby exempting all sleepwear garments in infant sizes. (35), (53)

A comment from one manufacturer of children's garments observed that infants grow rapidly. This comment states that a garment having the maximum dimensions for exemption as an "infant garment" in the proposed amendment would fit a six-month-old child for only a short period of time. This comment states that most parents purchase children's garments with the expectation that their children will be able to wear them for a reasonable period of time. (23)

At the Commission's public meeting on April 25, 1995, several manufacturers of children's garments stated that parents typically buy garments one size larger than the age of their children.(81)

After consideration of all of these comments, the Commission concludes that the proposed exemption of "infant garments" should be included in the final amendments, with some modification. The amendment of the standard for sizes 0 through 6X issued below defines the term "infant garment" as one which is "sized for a child nine months of age or younger."

The Commission proposed to exempt garments for children six-months of age and younger because information about child development indicates that until they reach the age of seven months, most infants are not capable of moving by themselves.(12) Consequently, infants six months of age and younger are at minimal risk of exposing their clothing to an ignition source. And, available injury information reveals an absence of burn injuries associated with sleepwear to children younger than one year of age which might have been prevented or reduced by the sleepwear standard.(10), (11)

The Commission recognizes that many parents and other adults purchase infant garments one or two sizes larger than the age of the intended wearer, due in part to the rapid rate at which infants grow. By revising the definition of "infant garment" to include garments sized for children nine months of age and younger, the amendment issued below exempts garments in sizes frequently purchased for children approximately six months of age and younger. Exemption of garments sized for infants nine months of age and younger also makes allowance for those infants who are slightly larger than the average six-month old, and assures that a garment purchased for a six-month old will fit the infant for a reasonable length of time. Additionally, this modification of the proposed amendment makes the size of exempted "infant garments" more compatible with the range of sizes used by manufacturers of infant garments.

The amendments issued below specify that the maximum length for a one-piece infant garment shall not exceed 64.8 centimeters (25.75 inches). The maximum dimension for the length of either piece of a two-piece infant garment is 40 centimeters (15.75 inches). These dimensions were selected by considering body sizes of children approximately nine months old set forth in ASTM standard D 4910–95 "Standard Tables of Body Measurements for Infants, Sizes 0 to 24 months," published by ASTM (formerly the American Society for Testing and Materials). No maximum dimension is specified for the chest of an infant garment exempted by the final amendments because the safety of infant garments is not dependent on a tight fit.

Exempted garments must comply with the flammability standards for clothing textiles and vinyl plastic film (16 CFR parts 1610 and 1611), and bear a label stating the size of the garment in terms of months of age. If the label is not visible when the garment is offered for sale, the size of the garment, in months, must appear legibly on the package.

3. Exemption for Tight-Fitting Garments

Comments from the National Cotton Council (33), (40), (48), five firms which manufacture or import children's sleepwear or other children's garments (28), (31), (34), (35), (42), (53), and a student research group (29) generally support issuance of final amendments to exempt tight-fitting children's sleepwear garments from the requirements of the sleepwear flammability standards. (Some of these comments recommend changes to specific provisions of the proposal, which are discussed below.)

Comments supporting an exemption for tight-fitting garments made from fabrics which are not flame-resistant state that those garments provide protection to children from unreasonable risks of burn injuries for the following reasons:

(1) Incident data do not show burn injuries associated with tight-fitting sleepwear;

(2) If exposed to an ignition source, tight-fitting garments are not easily ignited because the body absorbs some of the heat from the ignition source;

(3) If these garments are ignited, the wearer becomes aware of ignition almost immediately; and

(4) If ignited, these garments burn slowly because oxygen to support combustion is available on only one side of the garment.

Comments supporting issuance of final amendments for tight-fitting garments also observe that flammability standards for children's sleepwear in effect in Canada, Australia, and New Zealand exempt tight-fitting pajamas.(33), (40), (48)

In addition, a study cited in the proposal shows that no burn deaths associated with children's sleepwear have been reported in Canada since 1987.(33), (63)

Comments from the Children's Sleepwear Coalition (30), (58), five individual manufacturers of children's sleepwear (45), (46), (54)–(56), (59), a student research group (27), the Learn Not to Burn Foundation of the National Fire Protection Association (32), (78), the International Association of Fire Fighters (36), Fire Prevention Canada (37), and the Coalition for American Trauma Care (60) assert that the current low rate of children's deaths associated with ignition of clothing is evidence that the children's sleepwear standards have been effective. These comments express concern that exempting tight-fitting sleepwear garments and thereby allowing them to be made from fabrics which are not flame-retardant will expose children to an increased risk of burn deaths and injuries.

Before proposing the amendments, the Commission considered available data which show a measurable reduction in burn deaths associated with all types of clothing, including children's sleepwear, during the past 20 years. (10), (11). Additionally, information about burn injuries associated with all types of children's clothing from 1980 through 1994 shows that children's sleepwear has been associated with a relatively small proportion of those injuries. From its evaluation of this injury information, the Commission concludes that the children's sleepwear standards have contributed to the relatively low level of reported burn injuries associated with sleepwear. However, existing injury information does not support the assertion that amendment of the standards to exempt tight-fitting garments made from fabrics which do not pass the flammability test in the children's sleepwear standards will expose children to a greater risk of burn injuries.

Flammability standards for children's sleepwear issued by Canada and three other countries exempt tight-fitting garments. In 1993, the government of Canada advised the Commission that a proposed five-year study of burn injuries to assess the effectiveness of the Canadian sleepwear standard was discontinued before the end of the five-year period because of a lack of reported burn cases.(63)

When the Commission began this proceeding in 1993, it also announced that it would not enforce the children's sleepwear standards in cases involving garments which are skin-tight or nearly skin-tight and are similar in fabric and design to underwear.(5) That stay was continued at the time the Commission published the proposed amendments of the standards.(21) The garments covered by the stay of enforcement have somewhat larger dimensions than the "tight-fitting" garments defined in the proposed amendments.

On the basis of injuries reported to the National Electronic Injury Surveillance System (NEISS), the Commission estimates that about 2,520 children were treated in hospital emergency rooms for burn injuries associated with clothing during the years 1993 and 1994. During the years 1991 and 1992, the Commission estimates that approximately 2,760 children were treated in hospital emergency rooms for burn injuries associated with clothing.(62) Thus, burn injuries associated with the general category of children's clothing have not increased since the Commission issued the stay of enforcement.

During the years 1993 and 1994, the Commission received no reports of any burn injury to a child younger than 15 years of age associated with a garment which was identified as one covered by the stay of enforcement. (62)

Additionally, a Canadian study of 174 burn injuries cases associated with clothing involving children nine years of age or younger found that closeness of fit and the presence or absence of an adult at the time of injury were significantly associated with the severity of the burn injury. Fiber content was not included as a variable in this study. Burns tended to be more severe in cases associated with loose-fitting clothing and the absence of an adult.(11)

Accordingly, the Commission concludes that amending the standards to exempt tight-fitting sleepwear garments made from fabrics which are not flame-resistant will not create an unreasonable risk of burn injuries to children.(8), (10), (11), (62), (65)

4. Definition of "Tight-Fitting Garment"

The proposed amendments defined the term "tight-fitting garment" as one which did not exceed specified dimensions in the chest, seat, upper arm, thigh, wrist, and ankle for each size ranging from 6-to-9 months through children's size 14.

A comment from one manufacturer of children's garments observes that the maximum dimensions specified for size 6 in the proposal were larger than the maximum dimensions specified for size 7.(28) The Commission agrees that the maximum dimensions for size 7 should be larger than the maximum dimensions for size 6. In the amendments issued below, maximum dimensions increase continuously from the smallest to the largest sizes of garments.

Other comments express the view that the maximum dimensions specified in the proposal for all sizes are too small. One manufacturer states that the amendments should exempt garments which fit "reasonably close to the body," such as children's polo pajamas, rather than define the exempted garments by maximum dimensions intended to result in a "skin-tight" fit.(25) An importer suggests that the maximum dimensions specified for chest, seat, and thigh in all sizes should be increased by one or two inches.(35)

Before proposing amendments to exempt tight-fitting garments, the Commission reviewed technical literature indicating that tight-fitting garments are less likely to contact an ignition source, and if ignited to burn less rapidly, than loose-fitting clothing.(8) The Commission also considered burn injury data indicating that injuries associated with close-fitting garments are generally less severe than those associated with loose-fitting garments.(11)

Research on the flammability of wearing apparel indicates that fit and fiber are both important factors affecting a garment's flammability. The existing provisions of the children's sleepwear standards address the risk of burn injury by specifying a test for flame-resistance. Garments made from fabrics which pass the flammability test of the children's sleepwear standards do not present an unreasonable risk of injury, regardless of their fit. Similarly, tight-fitting garments exempted by the amendments issued below do not present an unreasonable risk of burn injury, even if they are made from fabrics which do not pass the flammability test of the children's sleepwear standards.

Section 4(b) of the FFA requires that an amendment of a flammability standard must be "stated in objective terms." The term "tight-fitting garment" in the amendments issued below is defined by maximum dimensions at specified locations on the garment for each size. Although these dimensions include adjustments to provide a continuous increase in dimensions from the smallest to largest sizes, the dimensions and points of measurement are substantially similar to those in the notice of proposed rulemaking.

The final amendments also include language in the definition of "tight-fitting garment" to assure that the garment will conform closely to the contour of the body. Provisions of §§ 1615.1(o)(3) through (7) and 1616.2(m)(3) through (7) require that the torso of such garments must fit closely from chest to waist and from waist to seat; that the sleeves must taper from upper arm to wrist; and that the legs must taper from thigh to ankle.

Comments from three manufacturers of children's garments recommend adjustment of the maximum dimensions to allow for fabric shrinkage after laundering.(25), (28), (31) One of these comments states that if the maximum dimensions do not include an allowance for shrinkage, manufacturers may be required to wash garments before offering them for sale or to use other means to control shrinkage. This comment states that those measures would be "expensive," but does not provide quantitative information about the extent of the additional costs.(28) At the public meeting on April 25, 1995, one importer recommended that the Commission allow an additional 10 per cent to the maximum dimensions for shrinkage.(81)

The maximum dimensions for "tight-fitting garments" in the amendments issued below have not been increased to allow for shrinkage after laundering or to provide a margin of tolerance for manufacturing variation. Garment shrinkage depends on the type of fiber or fiber-blend, method of construction, and finishing process used in the production of the fabric, and the laundering conditions to which the garment is exposed after wearing. Increasing the maximum dimensions to allow for shrinkage could reduce the likelihood that garments will be tight-fitting when worn by children.(72)

Garments made from knit fabrics have the ability to stretch and adapt to the shape of the body. For this reason, they are suitable, although not necessarily required, for production of "tight-fitting garments" exempted from the children's sleepwear standards by the amendments issued below.(72) Additionally, as indicated by one comment, various means are available to manufacturers to control shrinkage, although they may result in higher production costs.(28)

5. Labeling

The proposed amendments included in the definition of "tight-fitting garment" a requirement that when displayed for sale to consumers, the garment must be clearly and conspicuously labeled with the statement: "Garment is not flame-resistant. For child's safety, garment should be tight fitting. Loose-fitting clothing is more likely to contact an ignition source and burn."

Comments from a manufacturer and an importer of children's garments stated that the proposed labeling statement was too lengthy.(25), (35) At the Commission's public meeting on April 25, 1995, manufacturers also expressed the view that the proposed labeling statement was too negative.(81)

A comment from the National Cotton Council states that children's garments currently bear labels stating size, information about the manufacturer,

fiber content, country of origin, and care instructions. This comment states that the addition of the language specified by the proposed amendments would require an unsuitably large label for tight-fitting sleepwear garments.(33)

The same comment suggests that an educational effort to provide safety information to consumers about tight-fitting sleepwear by use of hang tags on garments and signs at retail stores would be a less expensive way to convey safety information about tight-fitting sleepwear garments to consumers. At the public meeting in April 1995 and in a subsequent written comment, the National Cotton Council stated that it would work cooperatively with the Commission to develop an information and education campaign to inform consumers that garment design is an important factor in burn injuries associated with children's sleepwear, and that snug-fitting sleepwear that fits close to the body is a safer choice than loose-fitting garments.(48), (81) Individual manufacturers of children's garments have also indicated their willingness to participate in such an effort.

The amendments issued below do not include the proposed labeling statement for tight-fitting sleepwear garments exempted from the flammability requirements of the children's sleepwear standards. The Commission concludes that a well-designed and broadly disseminated information and education campaign, developed with guidance from the Commission, will be a better means to inform consumers about appropriate selection and use of the tight-fitting garments exempted from the sleepwear standards by the amendments issued below. Such a campaign can help consumers understand why sleepwear garments which are not flame-resistant are being offered for sale and the importance of a tight fit for those garments; that other children's sleepwear garments which are not tight-fitting but are manufactured to comply with the sleepwear standards remain available for purchase; and that loose-fitting garments which are not flame-resistant (such as those made from untreated cotton and cotton blends) should not be used for children's sleepwear.

The Commission expects that point-of-sale materials directed to consumers, including hang-tags on garments, labeling statements on packaging, and store signs, will be an important component of the sleepwear industry's information and education effort. The Commission also expects that another part of this effort will be directed at retailers to emphasize the necessity for separation of children's nonsleepwear garments such as underwear, daywear, and playwear from sleepwear garments manufactured to comply with the standards and tight-fitting sleepwear garments exempted from those standards by the amendments issued below. Separation of non-sleepwear garments from children's sleepwear is necessary to assure that consumers will not inadvertently purchase a loose-fitting, non-sleepwear garment which is not flame-resistant when shopping for children's sleepwear.

H. Effective Date

Section 4(b) of the FFA (15 U.S.C. 1293(b)) provides that an amendment of a flammability standard shall become effective twelve months after publication of the notice of final rulemaking unless the Commission makes a finding for good cause that an earlier or later effective date is in the public interest and publishes the reasons for that finding.

On May 23, 1996, members of the Commission staff met with representatives of manufacturers, importers, and retailers of children's garments, the National Cotton Council, and other interested parties to discuss technical issues related to the Commission's decision to amend the children's sleepwear standards. At this meeting, representatives of the National Cotton Council and some manufacturers claimed that the amendments should become effective upon publication. They observed that the amendments do not impose any additional requirements on firms, but instead exempt certain garments from the requirements of the children's sleepwear standards that do not present an unreasonable risk of burn injury. These proponents of an immediate effective date asserted that many firms are able to begin marketing the newly exempted sleepwear garments within a short time after issuance of the final amendments.

Representatives of several importers claimed that their businesses would need several months or more after publication of the final amendments to draft specifications, place orders, and receive merchandise from overseas suppliers. Similarly, representatives of some domestic manufacturers stated that they would need time to devise specifications for fabrics, place orders with fabric suppliers, and receive fabrics to be used in production of the sleepwear garments that will be exempted from the requirements of the sleepwear standards.

After considering all information concerning an appropriate effective date, the Commission concludes that the amendments issued below shall become effective on January 1, 1997. The Commission finds for good cause that a short delay in the effective date, less than the one year specified by the FFA, is in the public interest because it balances the need of some firms for a period of transition in which to make those adjustments necessary to market the sleepwear garments exempted by the amendments with the interest of other firms in marketing those products as soon as possible.

The Commission is aware that many of the firms favoring a delayed effective date are producers or importers of children's sleepwear manufactured to comply with the sleepwear flammability standards. The Commission recognizes the important role which complying sleepwear plays in preventing burn injuries. The regulations governing the flammability of material used to make children's sleepwear garments other than garments covered by these amendments will continue to apply to garments such as robes and nightgowns. However, a delay in the effective date of the amendments issued below beyond January 1, 1997, postpones the availability of tight-fitting cotton and cotton-blend sleepwear garments, and prolongs the period during which consumers seeking untreated cotton sleepwear for their children may purchase alternative garments which pose greater flammability risks. For these reasons, the Commission concludes that an effective date of January 1, 1997, is appropriate to: (1) Provide a transition period for manufacturers and importers of complying sleepwear garments who wish to sell garments permitted by these amendments; and (2) allow all companies to take advantage of the amendments within a reasonable period of time.

The Commission has also extended the stay of enforcement of the sleepwear standards for 18 months for close-fitting garments labeled and promoted as underwear. The Commission has taken this action to minimize costs to manufacturers, distributors, and retailers of children's sleepwear and other garments which may result from adjustments of inventories of both sleepwear and non-sleepwear garments which are subject to the stay of enforcement.(67)

I. Final Regulatory Analysis and Required Findings

Section 4(j) of the FFA (15 U.S.C. 1193(j)) requires that a notice of final rulemaking must include a final regulatory analysis containing:

- A discussion of potential benefits and costs of the final rule, including those which cannot be quantified, and an identification of those persons likely to receive its benefits and bear its costs;
- A description of any alternatives to the final rule which were considered by the Commission together with a summary description of their potential benefits and costs and a brief explanation of why these alternatives were not chosen; and
- A summary of significant issues raised by comments on the preliminary analysis, and the Commission's assessment of those issues.
- Additionally, section 4(j) requires that the final rule must include the Commission's findings that:
- The benefits expected from the rule bear a reasonable relationship to its costs;
- It imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which it is promulgated.

1. Potential Benefits of the Amendments

The amendments issued below will provide consumers a wider choice of children's sleepwear. Specifically, the amendments will allow garments intended for children younger than nine months of age and tight-fitting garments in sizes as large as children's size 14 to be made from untreated cotton and cotton blends, which may not currently be used in the production of children's sleepwear. Although a dollar value cannot be placed on this benefit, the Commission is aware that large numbers of consumers have expressed a desire for children's sleepwear made from cotton rather than the man-made fibers used to produce most sleepwear garments manufactured to comply with the children's sleepwear flammability standards.(6), (29), (34), (42), (66), (67)

The amendments will permit consumers to dress their children for sleeping in the tight-fitting sleepwear garments exempted from the requirements of the standards instead of loose-fitting underwear, playwear, or daywear garments. This, in turn, could reduce the risks of burn injuries and deaths to children because tight-fitting sleepwear garments present a lower fire risk to children than loose garments which are not flame-resistant and do not comply with the children's sleepwear standards. The extent to which such a substitution will occur is not known, and therefore any resulting benefit is not quantifiable.(67)

Manufacturers who elect to produce the garments in infant sizes and tight-fitting garments exempted from the children's sleepwear standards will benefit from a wider choice of fabrics and the elimination of requirements for sampling, testing, and recordkeeping under the sleepwear standards. The Commission is not able to predict the extent to which manufacturers will elect to produce sleepwear garments exempted by the amendments issued below. For that reason, the benefits to manufacturers from increased choice of fabric and elimination of sampling, testing, and recordkeeping costs cannot be quantified.(67)

2. Potential Costs of the Amendments

Potential costs of the amendments include those related to temporary disruptions in the production process as manufacturers make changes needed to produce garments exempted by the amendments. According to industry sources, those changes could include recalibration of cutting and sewing machines. Some costs may be associated with modification of packaging, but they are expected to be negligible. To minimize disruptions in the production process, the Commission has extended a stay of enforcement for close-fitting garments labeled and promoted for sale as underwear for 18 months to allow manufacturers, distributors, and retailers to dispose of existing inventories of those garments.(67)

Because the Commission cannot predict the extent to which manufacturers will elect to produce the sleepwear garments exempted from the requirements of the children's sleepwear standards, the Commission is unable to quantify the costs to manufacturers which may result.(67) However, the amendments do not require manufacturers to produce the exempted garments. Consequently, the Commission anticipates that only those firms which find it profitable to produce the exempted garments will incur the costs required to begin making them.

The amendments issued below permit the manufacture of certain children's sleepwear garments which will not pass the flammability test in the children's sleepwear standards. Consequently, the potential costs of the amendments include the possibility of increased societal costs resulting from any burn injuries which may be associated with the exempted garments.(67) However, during the three-year period in which the stay of enforcement for close-fitting garments has been in effect, the Commission has received no reports of burn injuries associated with ignition of those garments.(62) Additionally, Canada's experience with sleepwear standards which contain provisions similar to those in the amendments issued below indicates the risk of increased burn injuries is extremely low.(63) And if consumers dress their children for sleeping in the tight-fitting garments exempted by the amendments instead of loose-fitting T-shirts and other loose-fitting garments which are not flame-resistant and do not comply with the children's sleepwear standards, risks of burn injuries to children are expected to decrease.(67)

3. Alternatives to the Amendments

a. *Make no change to the standards.* The existing children's sleepwear flammability standards have contributed to the relatively low level of burn injuries to children associated with clothing.(10) Additionally, information is available to demonstrate that a number of burn injuries to children younger than six years of age were associated with sleepwear before the flammability standard for sizes 0 through 6X became effective.(70) If the Commission made no change to the standards, the level of protection against risks of burn injuries to children associated with children's sleepwear would not be altered.

However, if the Commission does not amend the standards, consumers will be unable to purchase children's sleepwear garments made from untreated cotton and cotton blends. Some consumers have expressed a strong desire to purchase such garments for their children to wear while sleeping.(6), (29), (34), (42), (66), (67) In addition, if the Commission does not make changes to the standards, problems related to their enforcement in cases where garments resemble children's sleepwear but are marketed and sold as underwear or playwear are expected to continue.(68) This has been a problem in the past which the changes to the standard are expected to alleviate. And, to satisfy their desire for cotton sleepwear for their children, more people may turn to looser-fitting substitutes which are not flame-resistant and present a greater risk of burn injury.

b. *Continue the stay of enforcement without amending the standards.* On January 13, 1993, the Commission announced that it would not enforce the children's sleepwear standards in cases involving close fitting garments which are similar in design and construction to underwear, relatively free of ornamentation, and are labeled and marketed as underwear. The Commission continued this stay of enforcement when it published the notice of proposed rulemaking on October 25, 1994. During the period that this stay of enforcement has been in effect, the Commission has not observed any burn injuries to children associated

with the garments covered by the stay of enforcement.(62)

However, the tight-fitting garments exempted by the amendments issued below fit more closely than the garments subject to the stay of enforcement. Additionally, those tight-fitting garments can be marketed as children's sleepwear. Consequently, the Commission anticipates the exempted tight-fitting garments would provide better protection against risks of burn injuries than the garments covered by the stay of enforcement.(67)

4. Issues Raised by Comments on the Preliminary Regulatory Analysis

a. *Potential benefits.* A comment from a manufacturer of children's garments asserts that issuance of final amendments to exempt garments in infant sizes and close-fitting garments from the children's sleepwear standards may result in a decrease, rather than an increase in consumers' choice of sleepwear garments. This comment states that retailers devote a limited amount of shelf space to children's sleepwear. If consumers demonstrate a significant preference for cotton sleepwear garments exempted from the requirements of the standards, this comment claims that retailers will stock fewer garments manufactured to comply with the sleepwear standards, and may eventually stop selling those garments.(59)

As stated above, in 1993 the Commission published a stay of enforcement of the sleepwear standards in cases involving skin-tight or nearly skin-tight garments which are similar in design to the tight-fitting garments exempted by the amendments issued below. Available marketing data shows that during 1992, the last year before the stay, sales of traditional children's sleepwear manufactured to comply with the flammability standards were approximately 123.6 million units. During 1994, the second year of the stay of enforcement, sales of traditional children's sleepwear were 123.5 million units.(66)

The Commission concludes that available information about sales of children's sleepwear does not support the assertion that the amendments issued below will result in reduced choice to consumers. Additionally, many parents and children may prefer the comfort of looser-fitting garments made from flame-resistant fabrics over the tight-fitting garments made from cotton or cotton blends. Certain styles of sleepwear, such as nightgowns, robes, and traditional pajamas will still be required to be made from fabrics which pass the tests of the sleepwear standards. The Commission does not expect consumers to cease purchasing these styles of sleepwear.

b. *Potential costs.* A comment from the American Burn Association states that the Commission's preliminary regulatory analysis underestimated the number of burn injuries which may result from the proposed amendments and consequently the costs to society for treatment of those injuries. This comment observes that in the notice proposing the amendments, the Commission estimated that each year about 1,150 children were treated in hospital emergency rooms for burn injuries associated with clothing of all types. The comment asserts that the true number of emergency room visits may be as high as 4,000 a year, citing a study published in the May-June 1995 issue of the Journal of Burn Care and Rehabilitation.(38)

The Commission observes that the study cited by this comment reviewed cases involving children referred to burn centers for burn injuries of all types, and was not limited to burns associated with ignition of clothing or sleepwear. Accordingly, the estimates of children's burn injuries treated in emergency rooms made in this comment are not comparable to those made by the Commission in the notice of proposed rulemaking.(10) Additionally, the study cited in this comment does not contain any information from which to predict the likely effect of the proposed amendments on the number of children's burn injuries associated with sleepwear.

A comment from The Learn Not to Burn Foundation of the National Fire Protection Association asserts that increased burn injuries to children are likely to result if the Commission issues final amendments of the children's sleepwear standards.(32) That comment sets forth the following rationale: At present, children's cotton garments suitable for use as sleepwear are "sufficiently expensive" that they are purchased primarily by consumers with higher incomes. Higher-income consumers are more likely to have behaviors that offset the increased risk of burn injury presented by sleepwear garments which do not comply with the flammability standards. The proposed amendments will reduce the cost of the exempted sleepwear garments, thereby making them available to lower-income consumers. According to this comment, "low income correlates negatively with all measures of fire risk."

However, recent marketing and injury information does not support the expectations expressed in this comment. As noted in the response to an earlier comment, since the stay of enforcement of the children's sleepwear standards was issued in 1993, sales of traditional sleepwear manufactured to comply with the standards has remained relatively constant. During the same period of time, sales of children's underwear garments increased from 476 million units in 1992 to 502.4 million units in 1994. One trade publication attributes this gain in sales of children's underwear to the use of some of these garments for sleeping.(66) Underwear and playwear garments subject to the stay of enforcement are sold by high-volume retailers and discounters at lower prices than sleepwear which complies with the children's sleepwear flammability standards.(87) Consequently, these garments have been available to both higher- and lower-income consumers. Again, during the time the stay has been in effect, the Commission has received no reports of burn injuries associated with the garments identified as subject to the stay.(62)

c. *Regulatory alternatives.* A comment from a retired Federal employee states that as an alternative to the exemption of infant garments from the standards, the Commission should consider elimination of requirements for testing seam and trim, but continue to require the fabric used in those garments to meet the flammability requirements of the standard for sizes 0 through 6X. The comment states that such a change would have a negligible effect on safety.(26)

The suggestion in this comment would relieve manufacturers of garments in infant sizes from some, but not all, of the requirements of the standard for sizes 0 through 6X. However, if fabric used in those garments remained subject to the flammability requirements of that standard, untreated cotton and cotton blends could not be used.

As noted above, one of the principal benefits of the amendments issued below is to provide consumers with a greater choice of sleepwear garments by permitting the use of those fabrics for production of certain types of children's sleepwear. The Commission concludes that the alternative suggested by this comment would significantly reduce the potential benefits of the amendments issued below, without a corresponding reduction in their potential costs.(10)

For these reasons, the Commission affirms the conclusion of its preliminary and final regulatory analysis that the amendments are not likely to increase societal costs resulting from burn injuries to children associated with sleepwear.

5. Findings

After considering all information concerning benefits and costs of the amendments, including comments on the preliminary regulatory analysis, the Commission finds the benefits of the amendments issued below bear a reasonable relationship to their costs. Although these benefits are not quantifiable, they include increased choice to consumers in children's sleepwear garments. To the extent that consumers choose the tight-fitting sleepwear garments permitted by the amendments rather than loose-fitting garments which are not flame-resistant, risks of burn injuries to children may be reduced.

The costs of the amendments include some disruption to the children's sleepwear industry, and the possibility of increased societal costs of treating burn injuries associated with the garments exempted by the amendments. By establishing an effective date of January 1, 1997, and extending the stay of enforcement for certain close-fitting children's underwear and playwear, the Commission has minimized costs associated with disruption of the children's sleepwear industry. For the reasons set forth in the discussion of potential costs of the amendments and comments on the preliminary regulatory analysis, the Commission concludes that the potential costs of the amendment, although unquantifiable, are minimal.

The Commission also finds that the amendments issued below impose the least burdensome requirements which adequately reduce the risks of burn injuries to children associated with sleepwear. The Commission has considered the possibilities of withdrawing the proposed amendment, with or without extending the stay of enforcement for certain close-fitting children's underwear and playwear. For the reasons set forth above in the discussion of regulatory alternatives, the Commission finds that none of the alternatives considered will provide the increased choice to consumers at as low a level of risk as the amendments issued below.

J. Other Statutory Findings

Section 4(b) of the FFA (15 U.S.C. 1193(b)) states that each flammability standard or amendment shall be based on findings that the standard or amendment is: Reasonably needed to protect the public against an unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage; reasonable, technologically appropriate, and practicable; and limited to those fabrics, related materials, or products of wearing apparel or interior furnishing which have been determined to present an unreasonable risk of fire leading to death, personal injury, or significant property damage.

After considering all of the information received during this rulemaking proceeding, the Commission finds that to the extent that the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (16 CFR part 1615) and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (16 CFR part 1616) are applicable to garments intended for children nine months of age or younger or to the tight-fitting garments described in the amendments issued below, those standards are not: (i) Reasonably necessary to protect the public from risks of fire leading to death, personal injury, or significant property damage; or (ii) limited to the garments which present that unreasonable risk. After considering the same information, the Commission also finds that the amendments issued below are reasonable, technologically practicable, and appropriate.

K. Future Activities

The Commission will continue to monitor closely and thoroughly information from all available sources concerning burn injuries to children from sleepwear and other garments. If at any time, the Commission detects an increase in burn deaths or injuries to children associated with any of the garments exempted by these amendments, it will take any appropriate action, including initiation of rulemaking to broaden the scope of the children's sleepwear flammability standards.

The Commission will also monitor the information and education campaign undertaken by manufacturers of children's sleepwear and other garments to assure that it accurately and effectively informs consumers about the children's sleepwear flammability standards, garments manufactured to comply with those standards, and the garments exempted from those standards by the amendments issued below.

L. Stay of Enforcement

The stay of enforcement which was issued on January 13, 1993, and continued on October 25, 1994, will end on March 9, 1998. A separate notice published elsewhere in this issue of the **Federal Register** provides additional details about the stay of enforcement and its termination date.

M. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission hereby certifies that the amendments to the children's sleepwear standards issued below will not have a significant economic impact on a substantial number of small entities, including small businesses.

At this time, about 65 firms manufacture or import traditional children's sleepwear garments, i.e., nightgowns, pajamas, and robes.(66). The number of firms in the children's sleepwear industry has not changed substantially in the past several years.(15) About 45 of these firms have fewer than 500 employees and are considered to be small businesses.(83) None of the firms which are small businesses market children's sleepwear exclusively. In addition to traditional children's sleepwear, these firms also manufacture or import other types of garments such as infantwear, children's underwear and playwear, and in some cases, adult underwear and lingerie.(83)

For many years, the market for traditional children's sleepwear has been relatively small but constant. In 1970, the year before promulgation of the first children's sleepwear standard, sales of all new children's sleepwear garments amounted to about 1.4 garments per child younger than 14 years of age.(83) From 1992 through 1994, sales volume has been about 124 million units, about two garments per child each year.(84) This sales information reflects a strong preference for traditional sleepwear by some consumers.

However, if one assumes that most children use several garments each year for sleeping, a logical inference is that children are using many garments other than traditional nightgowns and pajamas for sleeping.

The amendments issued below exempt sleepwear garments sized for children nine months of age and younger and certain tight-fitting sleepwear garments from the requirements of the children's sleepwear standards. The tight-fitting sleepwear garments exempted by the amendments are similar in fit and appearance to long underwear.

A decision to produce or import the exempted garments would entail minimal costs for any current manufacturer or importer of children's sleepwear, regardless of size, for several reasons. First, these firms have an existing customer base for the sleepwear and other garments which they currently distribute. Second, in the children's sleepwear industry, design

and fabric choices are under continuous reassessment; consumer demand and production costs are important considerations when deciding on the design and fabric to be used. Usually, only minor capital costs are involved in making changes to design or material used to produce these garments.(83)

Firms which decide to produce or import garments exempted from the sleepwear standards by the amendments issued below will be able to use untreated fabrics made from cotton and cotton blends which cannot pass the flammability test of the standards. Additionally, they will avoid costs of testing and recordkeeping imposed by the standards.

However, no firm is required to produce or import exempted garments. Firms which decide that demand for the garments exempted by the amendments does not justify the costs of producing or importing them will not be required to make any changes to their current practices.(67)

For these reasons, the Commission concludes that the final amendments will not likely have a significant economic impact on a substantial number of small entities, including small businesses.(83)

N. Environmental Considerations

The amendments issued below fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. The amendments are not expected to have a significant effect on production processes or on the types or amounts of materials used for construction or packaging of children's sleepwear. The amendments will not render existing inventories unsalable, or require destruction of existing goods. The Commission has no information indicating any special circumstances in which these amendments may affect the human environment. For that reason, neither an environmental assessment nor an environmental impact statement is required.(67)

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Records, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and section 4 of the Flammable Fabrics Act (15 U.S.C. 1193), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, parts 1615 and 1616 to read as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority for part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. In § 1615.1, Paragraphs (c) through (m) are redesignated paragraphs (d) through (n), respectively.

3. Section 1615.1 is amended by revising paragraph (a) and adding new paragraphs (c) and (o) to read as follows:

§ 1615.1 Definitions.

(a) *Children's Sleepwear* means any product of wearing apparel up to and including size 6X, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping, except:

(1) Diapers and underwear;

(2) "Infant garments," as defined by section 1615.1(c), below; and

(3) "Tight-fitting garments," as defined by section 1615.1(o), below.

* * * * *

(c) *Infant garment* means a garment which:

(1) Is sized for a child nine months of age or younger;

(2) If a one-piece garment, does not exceed 64.8 centimeters (25.75 inches) in length; if a two-piece garment, has no piece exceeding 40 centimeters (15.75 inches) in length;

(3) Complies with all applicable requirements of the Standard for the Flammability Clothing Textiles (16 CFR Part 1610) and the Standard for the Flammability Vinyl Plastic Film (16 CFR part 1611); and

(4) Bears a label stating the size of the garment, expressed in terms of months of age. For example, "0 to 3 mos." or "9 mos." If the label is not visible to the consumer when the garment is offered for sale at retail, the same information must appear legibly on the package of the garment.

* * * * *

(o) *Tight-fitting garment* means a garment which:

(1) In each of the sizes listed below does not exceed the maximum dimension specified below for the chest, waist, seat, upper arm, thigh, wrist, or ankle:

	Chest	Waist	Seat	Upper arm	Thigh	Wrist	Ankle
Size 9–12 mos							
Maximum dimension:							
Centimeters	48.3	48.3	48.3	14.3	26.7	10.5	13
(inches)	(19)	(19)	(19)	(5⅝)	(10½)	(4⅛)	(5⅛)
Size 12–18 mos							
Maximum dimension:							
Centimeters	49.5	49.5	50.8	14.9	28.3	10.5	13.1
(inches)	(19½)	(19½)	(20)	(5⅞)	(11⅛)	(4⅛)	(5⅛)
Size 18–24 mos							
Maximum dimension:							
Centimeters	52.1	50.8	53.3	15.6	29.5	11	13.6
(inches)	(20½)	(20)	(21)	(6⅛)	(11⅝)	(4¼)	(5⅜)

	Chest	Waist	Seat	Upper arm	Thigh	Wrist	Ankle
Size 2							
Maximum dimension:							
Centimeters	52.1	50.8	53.3	15.6	29.8	11.4	14
(inches)	(20½)	(20)	(21)	(6⅛)	(11¾)	(4½)	(5½)
Size 3							
Maximum dimension:							
Centimeters	53.3	52.1	56	16.2	31.4	11.7	14.9
(inches)	(21)	(20½)	(22)	(6⅜)	(12⅜)	(4⅝)	(5⅞)
Size 4							
Maximum dimension:							
Centimeters	56	53.3	58.4	16.8	33.0	12.1	15.9
(inches)	(22)	(21)	(23)	(6⅝)	(13)	(4¾)	(6¼)
Size 5							
Maximum dimension:							
Centimeters	58.4	54.6	61.0	17.5	34.6	12.4	16.8
(inches)	(23)	(21½)	(24)	(6⅞)	(13⅝)	(4⅞)	(6⅝)
Size 6							
Maximum dimension:							
Centimeters	61.0	55.9	63.5	18.1	36.2	12.7	17.8
(inches)	(24)	(22)	(25)	(7⅛)	(14¼)	(5)	(7)
Size 6X							
Maximum dimension:							
Centimeters	62.9	57.2	65.4	18.7	37.8	13.0	18.7
(inches)	(24¾)	(22½)	(25¾)	(7⅜)	(14⅞)	(5⅛)	(7⅜)

NOTE: Maximum dimensions are calculated by placing the garment on a horizontal, flat surface with the outer surface of the garment exposed, measuring the distances between the points specified below; and multiplying that value by two:

Chest—measure distance from arm pit to arm pit.

Waist—on one-piece garment, measure at the narrowest location between arm pits and crotch. On two-piece garment, measure width at the bottom of the upper piece, and the top of the lower piece.

Seat—on one-piece garment, measure at widest location between waist and crotch. On two-piece garment, take this measurement on lower piece only.

Upper arm—measure at a line perpendicular to the sleeve. Extending from the outer edge of the sleeve to the arm pit.

Thigh—measure at a line perpendicular to the leg extending from the outer edge of the leg to the crotch.

Wrist—measure the width of the end of the sleeve, if intended to extend to the wrist.

Ankle—measure the width of the end of the leg, if intended to extend to the ankle.

(2) Has no item of fabric, ornamentation or trim, such as lace, appliques, or ribbon, which extends more than 6 millimeters (¼ inch) from the point of attachment to the outer surface of the garment;

(3) Has sleeves which do not exceed the maximum dimension for the upper arm at any point between the upper arm and the wrist, and which diminish in width gradually from the upper arm to the wrist;

(4) Has legs which do not exceed the maximum dimension for the thigh at any point between the thigh and the ankle, and which diminish in width gradually from the thigh to the ankle;

(5) In the case of a one-piece garment, has a width which does not exceed the maximum dimension for the chest at any point between the chest and the waist and which diminishes gradually from the chest to the waist; and has a width which does not exceed the maximum dimension for the seat at any point between the seat and the waist and which diminishes gradually from the seat to the waist;

(6) In the case of a two-piece garment has an upper piece with a width which does not exceed the maximum dimension for the chest at any point between the chest and the bottom of that piece and which diminishes gradually from the chest to the bottom of that piece; in the case of an upper piece with fastenings, has the lowest fastening within 15 centimeters (6 inches) of the bottom of that piece;

(7) In the case of a two-piece garment, has a lower piece with a width which does not exceed the maximum dimension for the seat at any point between the seat and the top of the lower piece and which diminishes gradually from the seat to the top of that piece;

(8) Complies with all applicable requirements of the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611); and

(9) Bears a label stating the size of the garment in terms of age in months, or by child's size; for example: "Size 9 to 12 mos." or "Size 2." If the label is not visible to the consumer when the garment is offered for sale at retail, the same information must appear legibly on the package of the garment.

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority for part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1616.2 is amended by revising paragraph (a) and adding a new paragraph (m), to read as follows:

§ 1616.2 Definitions.

In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (sec. 2, 81 Stat. 586; 15 U.S.C. 1191), the following definitions apply for the purposes of this Standard:

(a) Children's sleepwear means any product of wearing apparel size 7 through 14, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping, except:

(1) Diapers and underwear; and

(2) "Tight-fitting garments" as defined by section 1616.2(m), below.

* * * * *

(m) *Tight-fitting garment* means a garment which:

(1) in each of the sizes listed below does not exceed the maximum dimension specified below for the chest, waist, seat, upper arm, thigh, wrist, or ankle:

	Chest	Waist	Seat	Upper arm	Thigh	Wrist	Ankle
Size 7 Boys[1]							
Maximum dimension:							
Centimeters	63.5	58.4	66	18.7	37.2	13.0	18.7
(inches)	(25)	(23)	(26)	(7⅜)	(14⅝)	(5⅛)	(7⅜)
Size 7 Girls							
Maximum dimension:							
Centimeters	63.5	58.4	67.3	18.7	38.7	13.0	18.7
(inches)	(25)	(23)	(26½)	(7⅜)	(15¼)	(5⅛)	(7⅜)
Size 8 Boys[1]							
Maximum dimension:							
Centimeters	66	59.7	67.3	19.4	38.4	13.3	19.1
(inches)	(26)	(23½)	(26½)	(7⅝)	(15⅛)	(5¼)	(7½)
Size 8 Girls							
Maximum dimension:							
Centimeters	66	59.7	71.1	19.4	41.3	13.3	19.1
(inches)	(26)	(23½)	(28)	(7⅝)	(16¼)	(5¼)	(7½)
Size 9 Boys[1]							
Maximum dimension:							
Centimeters	68.6	61.0	69.2	20	39.7	13.7	19.4
(inches)	(27)	(24)	(27¼)	(7⅞)	(15⅝)	(5⅜)	(7⅝)
Size 9 Girls							
Maximum dimension:							
Centimeters	68.6	61.0	73.7	20	42.6	13.7	19.4
(inches)	(27)	(24)	(29)	(7⅞)	(16¾)	(5⅜)	(7⅝)
Size 10[1] Boys							
Maximum dimension:							
Centimeters	71.1	62.2	71.1	20.6	41.0	14	19.7
(inches)	(28)	(24½)	(28)	(8⅛)	(16⅛)	(5½)	(7¾)
Size 10 Girls							
Maximum dimension:							
Centimeters	71.1	62.2	76.2	20.6	43.8	14	19.7
(inches)	(28)	(24½)	(30)	(8⅛)	(17¼)	(5½)	(7¾)
Size 11[1] Boys							
Maximum dimension:							
Centimeters	73.7	63.5	73.7	21	42.2	14.3	20
(inches)	(29)	(25)	(29)	(8¼)	(16⅝)	(5⅝)	(7⅞)

	Chest	Waist	Seat	Upper arm	Thigh	Wrist	Ankle
Size 11 Girls							
Maximum dimension:							
Centimeters	73.7	63.5	78.7	21	45.1	14.3	20
(inches)	(29)	(25)	(31)	(8¼)	(17¾)	(5⅝)	(7⅞)
Size 12 Boys [1]							
Maximum dimension:							
Centimeters	76.2	64.8	76.2	21.6	43.5	14.6	20.3
(inches)	(30)	(25½)	(30)	(8½)	(17⅛)	(5¾)	(8)
Size 12 Girls							
Maximum dimension:							
Centimeters	76.2	64.8	81.3	21.6	46.7	14.6	20.3
(inches)	(30)	(25½)	(32)	(8½)	(18½)	(5¾)	(8)
Size 13 Boys							
Maximum dimension:							
Centimeters	78.7	66	78.7	22.2	44.8	14.9	20.6
(inches)	(31)	(26)	(31)	(8¾)	(17⅝)	(5⅞)	(8⅛)
Size 13 Girls							
Maximum dimension:							
Centimeters	78.7	66	83.8	22.2	47.6	14.9	20.6
(inches)	(31)	(26)	(33)	(8¾)	(18¾)	(5⅞)	(8⅛)
Size 14 Boys [1]							
Maximum dimension:							
Centimeters	81.3	67.3	81.3	22.9	46	15.2	21
(inches)	(32)	(26½)	(32)	(9)	(18⅛)	(6)	(8¼)
Size 14 Girls							
Maximum dimension:							
Centimeters	81.3	67.3	86.4	22.9	49.5	15.2	21
(inches)	(32)	(26½)	(34)	(9)	(19½)	(6)	(8¼)

[1] Garments not explicitly labeled and promoted for wear by girls must not exceed these maximum dimensions.

NOTE: Maximum dimensions are calculated by placing the garment on a horizontal, flat surface, with the outer surface of the garment exposed; measuring the distances at the points specified below; and multiplying that value by two:

Chest—measure distance from arm pit to arm pit.

Waist—on one-piece garment, measure at narrowest location between arm pits and crotch; on two-piece garment, measure width at the bottom of the upper piece, and at the top of the lower piece.

Seat—on one-piece garment, measure at widest location between waist and crotch. On two-piece garment, take this measurement on the lower piece only.

Upper arm—measure at a line perpendicular to the sleeve extending from the outer edge of the sleeve to the arm pit.

Thigh—measure at a line perpendicular to the leg extending from the outer edge of the leg to the crotch.

Wrist—measure the width of the end of the sleeve, if intended to extend to the wrist.

Ankle—measure the width of the end of the leg, if intended to extend to the ankle.

(2) Has no item of fabric, ornamentation or trim, such as lace, appliques, or ribbon, which extends more than 6 millimeters (¼ inch) from the point of attachment to the outer surface of the garment;

(3) Has sleeves which do not exceed the maximum dimension for the upper arm at any point between the upper arm and the wrist and which diminish in width gradually from the upper arm to the wrist;

(4) Has legs which do not exceed the maximum dimension for the thigh at any point between the thigh and the ankle, and which diminish gradually in width between the thigh and the ankle;

(5) In the case of a one-piece garment, has a width which does not exceed the maximum dimension for the chest at any point between the chest and the waist and which diminishes gradually from the chest to the waist; and has a width which does not exceed the maximum dimension for the seat at any point between the seat and the waist and which diminishes gradually from the seat to the waist;

(6) In the case of a two-piece garment, has an upper piece with a width which does not exceed the maximum distance for the chest at any point between the chest and the bottom of that piece and which diminishes gradually from the chest to the bottom of that piece; in the case of an upper piece with fastenings, has the lowest fastening within 15 centimeters (6 inches) of the bottom of that piece;

(7) In the case of a two-piece garment, has a lower piece with a width which does not exceed the maximum

dimension for the seat at any point between the seat and the top of the lower piece and which diminishes gradually from the seat to the top of that piece;

(8) Complies with all applicable requirements of the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611); and

(9) Bears a label stating the size of the garment; for example "Size 7." If the label is not visible to the consumer when the garment is offered for sale at retail, the garment size must appear legibly on the package of the garment.

Effective date: These amendments shall become effective on January 1, 1997, and shall be applicable to garments which are introduced into commerce on or after that date.

Dated: August 29, 1996.

Todd A. Stevenson,

Deputy Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. **Federal Register** notice "Flammability Standards for Children's Sleepwear; Statements of Enforcement Policy" published by the Consumer Product Safety Commission; 4 pages; March 20, 1984 (49 FR 10249).

2. Supplemental CPSC Staff Guide to the Enforcement Policy Statements of the Flammability Standard for Children's Sleepwear—Garment Diagrams and Assessments, published by the Division of Regulatory Management, Consumer Product Safety Commission; 27 pages; 1989.

3. Memorandum from Terrance R. Karels, ECPA, to the Commission, entitled "Children's Sleepwear Project"; 12 pages; July 19, 1994.

4. **Federal Register** notice "Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Advance Notice of Proposed Rulemaking," published by the Consumer Product Safety Commission; 4 pages; January 13, 1993 (58 FR 4111).

5. **Federal Register** notice "Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Stay of Enforcement," published by the Consumer Product Safety Commission; 1 page; January 13, 1993 (58 FR 4078).

6. Tabular summaries of comments and staff responses to comments to the Advance Notice of Proposed Rulemaking; 50 pages; July 19, 1994.

7. "Statement by The Children's Sleepwear Coalition In Response to the Consumer Product Safety Commission's Advance Notice of Proposed Rulemaking"; 10 pages; March 25, 1993.

8. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Technical Rationale Supporting Tight-Fitting Children's Sleepwear Garments"; 11 pages; March 14, 1994.

9. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Recent Conversation Between Staff of Consumer and Corporate Affairs Canada and Commission Staff"; 4 pages; July 17, 1992.

10. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Injury Data Related to the Children's Sleepwear Standards"; 13 pages; February 8, 1994.

11. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Results of Review of Available Literature," and attachments; 21 pages; April 1, 1994.

12. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Human Factors Issues Regarding Sleepwear," and attachment; 8 pages; March 8, 1994.

13. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Garments Intended for Infants"; 4 pages; July 8, 1994.

14. "Preliminary Regulatory and Regulatory Flexibility Analyses for the Proposed Amendments to the Children's Flammability Standards," by Anthony C. Homan, Directorate for Economic Analysis; 7 pages; June, 1994.

15. "Market Sketch—Children's Sleepwear," by Anthony C. Homan, Directorate for Economic Analysis; 14 pages; March, 1992.

16. Memorandum from Eva S. Lehman, HSPS, to Terrance R. Karels, ECPA, entitled "Toxicological Evaluation of Fabrics Used in Children's Sleepwear"; 3 pages; June 7, 1994.

17. Memorandum from Patricia Fairall, CERM, to Terrance Karels, ECPA, entitled "Compliance History—Enforcement of Children's Sleepwear"; 6 pages; April 20, 1994.

18. Memorandum from James F. Hoebel, Acting Director, ESME, to Terrance R. Karels, ECPA, entitled "Amendments to Children's Sleepwear Standards"; 3 pages; July 7, 1994.

19. Memorandum from Dr. Terry L. Kissinger, EPHA, to Terrance R. Karels, ECPA, entitled "Proposed Amendment to Children's Sleepwear Standards"; 7 pages; July 15, 1994.

20. **Federal Register** notice "Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14; Proposed amendments" published by the Consumer Product Safety Commission; 11 pages; October 25, 1994 (59 FR 53616).

21. **Federal Register** notice "Continuation of Stay of Enforcement of Standards for the Flammability of Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14" published by the Consumer Product Safety Commission; 1 page; October 25, 1994 (59 FR 53584).

22. Comment on proposed amendments from Aline Farr; 1 page; September 14, 1994.

23. Comment on proposed amendments from Leonard Schwab, the Schwab Company; 7 pages; November 29, 1994.

24. Comment on proposed amendments from Kay M. Villa, American Textile Manufacturers Institute; 1 page; December 22, 1994.

25. Comment on proposed amendments from Carl Schlosser, Salant Children's Apparel Group; 5 pages; December 28, 1994.

26. Comment on proposed amendments from John F. Krasny; 2 pages; January 4, 1995.

27. Comment on proposed amendments from student research group, Florida International University; 2 pages; January 4, 1995.

28. Comment on proposed amendments from Steven E. Loftin, the William Carter Company; 2 pages; January 5, 1995.

29. Comment on proposed amendments from student research group; 2 pages; January 6, 1995.

30. Comment on proposed amendments from Gerald L. Colliers, the Children's Sleepwear Coalition; 6 pages; January 8, 1995.

31. Comment on proposed amendments from Mary-beth Boughton, Oneita Industries; 2 pages; January 9, 1995.

32. Comment on proposed amendments from James McMullen, Learn Not to Burn Foundation, National Fire Protection Association; 2 pages; January 13, 1995.

33. Comment on proposed amendments from Phillip J. Wakelyn, Ph.D., National Cotton Council of America; 7 pages; January 9, 1995.

34. Comment on proposed amendments from John Wigodsky, Fruit of the Loom; 1 page; January 5, 1995.

35. Comment on proposed amendments from Julie Goldscheider, Impact Imports International, Inc.; 3 pages; January 9, 1995.

36. Comment on proposed amendments from Alfred K. Whitehead, International Association of Fire Fighters; 1 page; July 31, 1995.

37. Comment on proposed amendments from Frank Albert, Fire Prevention Canada; 2 pages; August 1, 1995.

38. Comment on proposed amendments from Andrew M. Munster, M.D., American Burn Association; 2 pages; August 29, 1995.

39. Comment on proposed amendments from Ramsey J. Choucair, M.D., Shriners Hospitals for Crippled Children, Burns Institute; 2 pages; August 30, 1995.

40. Comment on proposed amendments from Phillip J. Wakelyn, Ph.D., National Cotton Council of America; 2 pages; September 8, 1995.

41. Comment on proposed amendments from Anthony R. O'Neill, National Fire Protection Association, with enclosures; 7 pages; October 23, 1995.

42. Comment on proposed amendments from Carl Schlosser, Salant Children's Apparel Group; 1 page; October 10, 1995.

43. Comment on proposed amendments from Mary Jane Murray; 1 page; undated.

44. Comment on proposed amendments from Tim Ackerman, T & G Associates, Inc., with enclosure; 3 pages; October 25, 1995.

45. Comment on proposed amendments from John McCarthy, Kid Duds, with enclosure; 3 pages; October 30, 1995.

46. Comment on proposed amendments from Leigh Ann Schwarzkopf, Kid Duds, with enclosure; 8 pages; January 5, 1996.

47. Comment on proposed amendments from Phillip J. Wakelyn, Ph.D., National Cotton Council of America; 2 pages; October 30, 1995.

48. Comment on proposed Amendments from Phillip. J. Wakelyn, Ph.D., National

Cotton Council of America, with enclosures; 5 pages; December 18, 1995.

49. Comment on proposed Amendments from Phillip. J. Wakelyn, Ph.D., National Cotton Council of America, with enclosure; 3 pages; December 21, 1995.

50. Comment on proposed amendments from Leonard S. Bernstein, Candlesticks, Inc.; 2 pages; October 31, 1995.

51. Comment on proposed amendments from Leonard S. Bernstein, Candlesticks, Inc., with enclosure; 3 pages; December 14, 1995.

52. Comment on proposed amendments from Leonard S. Bernstein, Candlesticks, Inc.; 1 page; January 10, 1996.

53. Comment on proposed amendments from Mary-beth Boughton, Oneita Industries; 2 pages; November 6, 1995.

54. Comment on proposed amendments from G. L. Collier, I–C Manufacturing Company, with enclosure; 5 pages; December 30, 1995.

55. Comment on proposed amendments from Hy Grubman, InnerWorld; 1 page; December 28, 1995.

56. Comment on proposed amendments from Jack Brownstein, Waterbury Garment Corporation, with enclosure; 2 pages; January 3, 1996.

57. Comment on proposed amendments from Craig V. Mayer, P.E.; 2 pages; January 5, 1996.

58. Comment on proposed amendments from Gerald L. Collier, Children's Sleepwear Coalition; 5 pages; January 24, 1996.

59. Comment on proposed amendments from Stephen Schnitzer and Marvin Sandberg, PCA Apparel; 5 pages; February 6, 1996.

60. Comment on proposed amendments from The Coalition for American Trauma Care; 2 pages; February 6, 1996.

61. Comment on proposed amendments from Cressie Goff, Sew Sweet Stitches, and Carol Grider, R.N., with enclosures; 3 pages; February 21, 1996.

62. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Injury Data Related to the Children's Sleepwear Standards"; 13 pages; July 12, 1995.

63. Letter from Carole LaCombe, Director, Product Safety Canada, to Eric C. Peterson, Executive Director, Consumer Product Safety Commission, concerning Canadian standards for the flammability of children's sleepwear; 3 pages; September 13, 1993.

64. Memorandum from Linda Fansler, ES, concerning telephone conversation between staff of the Consumer Product Safety Commission and staff of Consumer and Corporate Affairs Canada on June 18, 1992, concerning the Canadian standards for the flammability of children's sleepwear; 3 pages.

65. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Tight Fitting Children's Sleepwear"; 5 pages; July 14, 1995.

66. Memorandum from Terrance R. Karels, Project Manager, to Warren J. Prunella, Associate Executive Director for Economic Analysis, entitled "Sleepwear Market Update"; 2 pages; October 6, 1995.

67. Final Regulatory Analysis for amendments of the children's sleepwear standards by Terrance R. Karels; 8 pages; July 1995.

68. Memorandum from David Schmeltzer, Assistant Executive Director for Compliance, to Terrance Karels, Project Manager, entitled "Sleepwear Briefing Package"; 4 pages; August 24, 1995.

69. Memorandum from Patricia Fairall, Compliance Officer, to Terrance Karels, Project Manager, entitled "Compliance Discussion of the Proposed Amendments to the Children's Sleepwear Standards"; 2 pages; June 26, 1995.

70. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Response to Public Comments Received after Publication of the Notice of Proposed Rulemaking"; 8 pages; July 12, 1995.

71. Memorandum from George Sweet, EPHF, to Terrance R. Karels, ECPA, entitled "Human Factors Responses to Sleepwear NPR Comments"; 7 pages; May 5, 1995.

72. Memorandum from Linda Fansler, ESME, to Terrance R. Karels, ECPA, entitled "Response to Comments"; 3 pages; July 14, 1995.

73. Memorandum from Suad Nakamura, Ph.D., EHPS, to Terrance R. Karels, Project Manager, entitled "Children's Sleepwear—Response to Comments on the Notice of Proposed Rulemaking"; 2 pages; July 19, 1995.

74. Memorandum from Patricia Fairall, Compliance Officer, to Terrance R. Karels, Program Manager, entitled "Response to Comments from Proposed Amendments to the Children's Sleepwear Standards published in the **Federal Register** on October 25, 1994"; 5 pages; June 26, 1995.

75. Memorandum from Terry L. Kissinger, Ph.D., EHHA, to Terrance R. Karels, ECPA, entitled "Response to Letter from John Krasny to James Hoebel"; 5 pages; August 3, 1995.

76. Memorandum from George Sweet, ESHA, to Terrance R. Karels, ECPA, entitled "Issues involved in amendment the sleepwear flammability regulation: Sizing and Labeling"; 3 pages; September 20, 1995.

77. Memorandum from Karen G. Krushaar, OIPA, to Terrance R. Karels, ECPA, entitled "Children's Sleepwear Informational Campaign"; 2 pages; July 11, 1995.

78. Position statement of the National Fire Protection Association and the Learn Not to Burn Foundation in Opposition to the Proposed Amendment of the Children's Sleepwear Standards; 5 pages; July 1995.

79. Letter from John F. Krasny to J. F. Hoebel concerning paper by Vickers, Krasny, and Tovey entitled "Some Apparel Fire Hazard Parameters"; 2 pages; July 17, 1995.

80. Memorandum from Linda Fansler, ESME, concerning telephone conversation with John Krasny on September 20, 1995; 2 pages.

81. Log of public meeting conducted on April 25, 1995, concerning proposed amendments of the children's sleepwear flammability standards; 4 pages.

82. Memorandum from James F. Hoebel, Chief Engineer for Fire Hazards, to Terrance R. Karels, Project Manager, entitled "Children's Sleepwear"; 3 pages; October 10, 1995.

83. Memorandum from Warren J. Prunella, Associate Executive Director for Economic Analysis, to file concerning small business effects of proposed amendments to the children's sleepwear flammability standards; 3 pages; February 17, 1995.

84. Memorandum from Warren J. Prunella, Associate Executive Director for Economic Analysis, to Eric A. Rubel, General Counsel, concerning requirements for Congressional review of final amendments to the children's sleepwear standards; 3 pages; undated.

85. Vote sheet to accompany briefing package on children's sleepwear flammability standards; 2 pages; October 11, 1995.

86. Memorandum from Terrance R. Karels, Project Manager, and Ronald L. Medford, Assistant Executive Director for Hazard Identification and Reduction entitled "Questions Regarding Children's Sleepwear Amendments," with attachments; 21 pages; January 30, 1996.

[FR Doc. 96–22697 Filed 9–6–96; 8:45 am]

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federal register

Monday
September 9, 1996

Part IV

Department of Education

Federal Pell Grant Program; Notice

DEPARTMENT OF EDUCATION

Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice; deadline dates for receipt of applications, reports, and other documents for the 1996–97 award year.

SUMMARY: The Secretary announces the deadline dates for receiving documents from persons applying for grants under, and from institutions participating in, the Federal Pell Grant Program in the 1996–97 award year.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, Pell and State Grant Section, Grants Branch, Policy Development Division, Policy, Training, and Analysis Service, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W. (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–4607. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–730–8913 between 9 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Pell Grant Program, administered by the U.S. Department of Education (Department), provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. The program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. Authority for the Federal Pell Grant Program is contained in section 401 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070a.

Deadline Dates

The following tables provide the deadline dates for the Federal Pell Grant Program for the 1996–97 award year.

BILLING CODE 4000–01–P

A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date?
Student	A paper original Free Application for Federal Student Aid (FAFSA) or renewal application (Renewal FAFSA)	Multiple Data Entry (MDE) Servicer listed on the student's application	June 30, 1997
Student	FAFSA Express	Central Processing System (CPS)	June 30, 1997
Student thru institution	An electronic original or renewal application (EDExpress)	CPS	*June 30, 1997
Student	SAR corrections, confirmations, and duplicate requests	MDE Servicer listed on the student's SAR	August 15, 1997
Student thru institution	ISIR corrections, confirmations, and duplicate requests	CPS	*August 15, 1997
Student	Valid SAR	Institution	The earlier of: - the student's last date of enrollment; or - August 29, 1997
Student thru CPS to institution	Valid ISIR	Institution receives ISIR from the CPS	The earlier of: - the student's last date of enrollment; or - August 29, 1997
Student	Verification documents	Institution	The earlier of: - 60 days after the student's last date of enrollment; or - August 29, 1997

* The deadline for submitting electronic transactions is prior to midnight (Central Time) on the deadline date. Transmissions must be completed and the records must be accepted for processing before midnight to meet the deadline. Transmissions started but not completed until after midnight are not considered on time.

B. Deadline Dates for Reporting Federal Pell Grant Student Payment Data

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date?
Institution	At least one acceptable student Payment Data record must be submitted for each Federal Pell Grant recipient at the institution by: -Recipient Data Exchange (Tape); or -Floppy Disk Data Exchange; or -Electronic Data Exchange**	1. Institutions transmitting student Payment Data using Recipient Data Exchange or Floppy Disk Data Exchange submit through: Regular Mail: U.S. Department of Education Application & Pell Processing Systems Division, PSS P.O. Box 10800 Herndon, Virginia 20172-7009 or Commercial Courier: U.S. Department of Education Application & Pell Processing Systems Division, PSS c/o PRC Inc. G-T01 PGRFMS/DMS 12001 Sunrise Valley Drive Reston, Virginia 20191-3411	An institution is required to submit student Payment Data not later than 30 calendar days after the institution: -makes a payment; or -becomes aware of the need to make an adjustment to previously reported student Payment Data or expected student Payment Data. (Following this chart is a detailed discussion explaining an institution's responsibility for reporting student Payment Data.)
			After September 30, 1997 only if: -downward adjustment of previously reported award; or -initial audit or program review finding per 34 CFR part 690.83.
		2. Institutions transmitting student Payment Data using Electronic Data Exchange submit through: Title IV Wide Area Network	
		U.S. Department of Education Institutional Financial Management Division, AFMS P.O. Box 23791 Washington, DC 20026-0791	Administrative relief based on an administrative error by the Department or Departmental contractors: January 31, 1998

**Transmission of student Payment Data using Electronic Data Exchange must be started prior to midnight on the deadline date.

BILLING CODE 4000-01-C

Deadline for Reporting Federal Pell Grant Student Payment Data

In the 1995–96 award year, institutions were required to report student "Payment Data" to the Department by fixed reporting periods. (Student Payment Data include both the Federal Pell Grant payment that an institution makes to a student and the Federal Pell Grant payment it expects to make to that student for an award year.) Thus, for example, an institution was required to report student Payment Data to the Department by October 15, 1995 if it paid a Federal Pell Grant to a student at any time during the period of July 1, 1995 through October 15, 1995.

For the 1996–97 award year, the Secretary has changed the period for reporting student Payment Data to the Department. Reporting periods are not fixed but are based on the date an institution pays a Federal Pell Grant to a student. Under this reporting requirement, an institution must submit to the Department Payment Data for a student not later than 30 calendar days after the institution makes a payment to the student. In addition, if the institution becomes aware that previously reported payments or expected payments, *i.e.*, Payment Data, for a student are no longer accurate, the institution must submit accurate Payment Data for that student to the Department not later than 30 calendar days after becoming aware of the change.

The following two examples illustrate the new reporting requirement. As a first example, a student enrolls for the fall 1996 semester at an institution. The institution pays that student his Federal Pell Grant award for that semester on September 5, 1996. The institution must submit that student's Payment Data to the Department not later October 5, 1996.

As a second example, a student enrolls for the fall 1996 semester as a full-time student, and the institution expects the student to enroll as a full-time student for the spring 1997 semester. The institution pays that student his Federal Pell Grant award for the fall 1996 semester on September 5, 1996. The institution submits that student's Payment Data to the Department on October 1, 1996. On January 15, 1997 the student enrolls in the spring 1997 semester as a half-time student. The institution must submit to the Department revised Payment Data for that student not later February 14, 1997.

Because some institutions have not yet received computer software necessary to submit student Payment Data to the Department and this notice is being published after the beginning of the 1996–97 award year, the Secretary understands that not all institutions will initially report student Payment Data within the 30-day reporting period. Therefore, the Secretary will not take adverse actions against an institution that does not initially submit student Payment Data within the 30-day reporting period during the first three months of the 1996–97 award year.

Proof of Delivery

The Department accepts as proof, if the documents were submitted by mail or by non-U.S. Postal Service courier, one of the following:.

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts hand deliveries at the address stated in the previous chart between 8 a.m. and 4:30 p.m. Eastern Time on days other than Saturday, Sunday, or Federal holidays.

An institution that transmits its student Payment Data information via the EDE Electronic Payments service must ensure that its transmission is completed before midnight (local time at the institution's EDE destination point) on September 30, 1997.

Other Sources for Detailed Information on the Application and Automated Processes

A more detailed discussion of the student application process for the Federal Pell Grant Program is contained in the *1996–97 Student Guide, Funding Your Education*, the *1996–97 Counselor's Handbook for High Schools*, the *1996–97 Counselor's Handbook for Postsecondary Schools, A Guide to 1996–97 SARs and ISIRs* (Action Letter #8 March 1996), and the *1996–97 Federal Student Financial Aid Handbook*. A more detailed discussion of the institutional reporting requirement for student Payment Data for the Federal Pell Grant Program is contained in the *1996–97 Federal Student Financial Aid Handbook*.

Applicable Regulations

The regulations applicable to this program are the Federal Pell Grant Program regulations in 34 CFR part 690, the Student Assistance General Provisions regulations in 34 CFR part 668, and the Institutional Eligibility regulations in 34 CFR part 600.

(Catalog of Federal Domestic Assistance No. 84.063, Federal Pell Grant Program)

(Authority: 20 U.S.C. 1070a)

Dated: August 23, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–22811 Filed 9–6–96; 8:45 am]

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federal register

Monday
September 9, 1996

Part V

The President

Executive Order 13017—Advisory Commission on Consumer Protection and Quality in the Health Care Industry

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Federal Register
Vol. 61, No. 175
Monday, September 9, 1996

Presidential Documents

Title 3—

The President

Executive Order 13017 of September 5, 1996

Advisory Commission on Consumer Protection and Quality in the Health Care Industry

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Advisory Commission on Consumer Protection and Quality in the Health Care Industry (the "Commission"). The Commission shall be composed of not more than 20 members to be appointed by the President. The members will be consumers, institutional health care providers, health care professionals, other health care workers, health care insurers, health care purchasers, State and local government representatives, and experts in health care quality, financing, and administration.

(b) The Secretary of Health and Human Services and the Secretary of Labor shall serve as Co-Chairs of the Commission. The Co-Chairs shall report through the Vice President to the President.

Sec. 2. *Functions.* (a) The Commission shall advise the President on changes occurring in the health care system and recommend such measures as may be necessary to promote and assure health care quality and value, and protect consumers and workers in the health care system. In particular, the Commission shall:

(1) Review the available data in the area of consumer information and protections for those enrolled in health care plans and make such recommendations as may be necessary for improvements;

(2) Review existing and planned work that defines, measures, and promotes quality of health care, and help build further consensus on approaches to assure and promote quality of care in a changing delivery system; and

(3) Collect and evaluate data on changes in availability of treatment and services, and make such recommendations as may be necessary for improvements.

(b) For the purpose of carrying out its functions, the Commission may hold hearings, establish subcommittees, and convene and act at such times and places as the Commission may find advisable.

Sec. 3. *Reports.* The Commission shall make a preliminary report to the President by September 30, 1997. A final report shall be submitted to the President 18 months after the Commission's first meeting.

Sec. 4. *Administration.* (a) To the extent permitted by law, the heads of executive departments and agencies, and independent agencies (collectively "agencies") shall provide the Commission, upon request, with such information as it may require for the purposes of carrying out its functions.

(b) Members of the Commission may receive compensation for their work on the Commission not to exceed the daily rate specified for Level IV of the Executive Schedule (5 U.S.C. 5315). While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707) to the extent funds are available for such purposes.

(c) To the extent permitted by law and subject to the availability of appropriations, the Department of Health and Human Services shall provide the Commission with administrative services, funds, facilities, staff, and other support services necessary for the performance of the Commission's functions. The Secretary of Health and Human Services shall perform the administrative functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Commission.

Sec. 5. *General Provision.* The Commission shall terminate 30 days after submitting its final report, but not later than 2 years from the date of this order, unless extended by the President.

William J. Clinton

THE WHITE HOUSE,
September 5, 1996.

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Filed 9-6-96; 10:28 am]
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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
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1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
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11	(869–028–00032–1)	15.00	Jan. 1, 1996
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200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
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600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
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60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
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220–499	(869–028–00079–7)	13.00	May 1, 1996
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200-End	(869-028-00105-0)	13.00	Apr. 1, 1996
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500-899	(869-026-00112-0)	36.00	July 1, 1995
900-1899	(869-026-00113-8)	17.00	July 1, 1995
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
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1926	(869-026-00117-1)	35.00	July 1, 1995
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30 Parts:			
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300-399	(869-026-00134-1)	21.00	July 1, 1995
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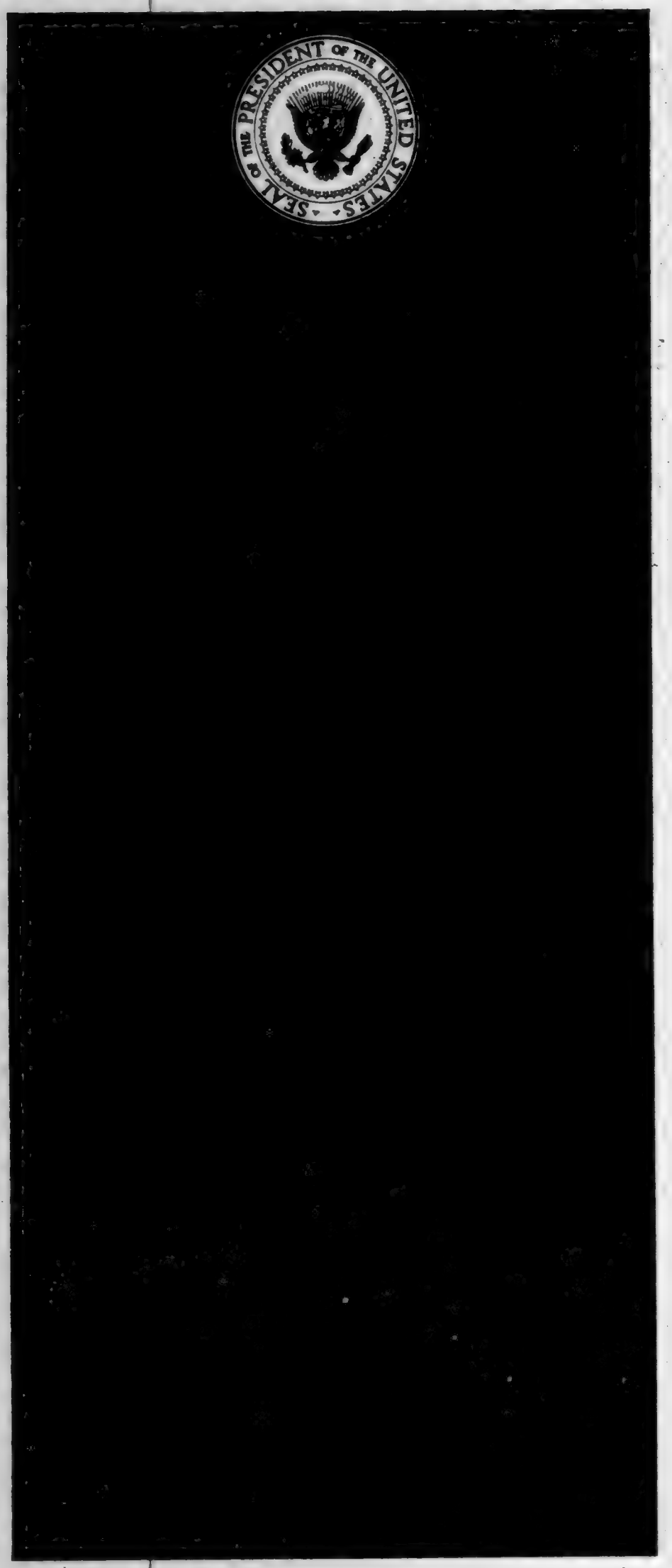

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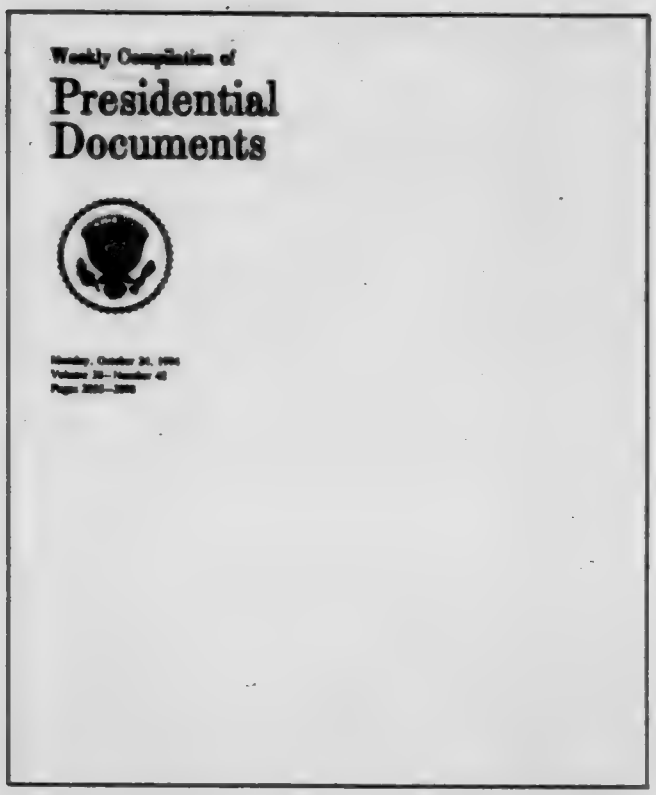

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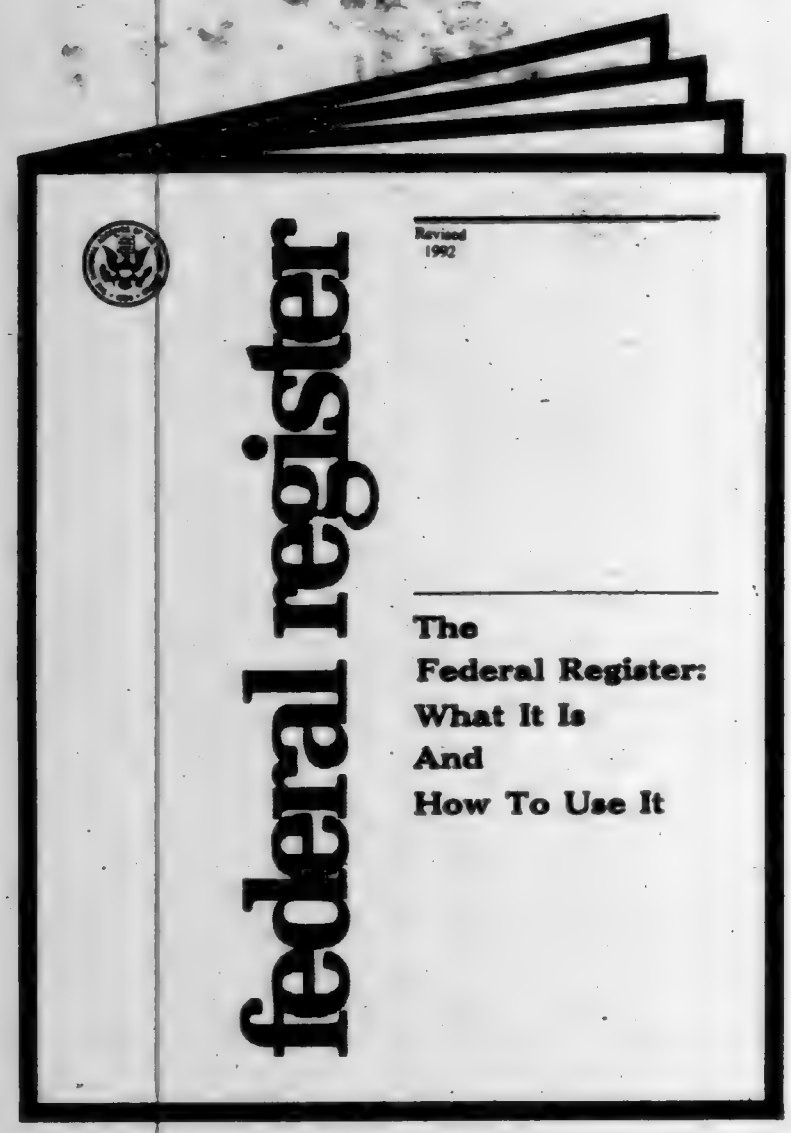

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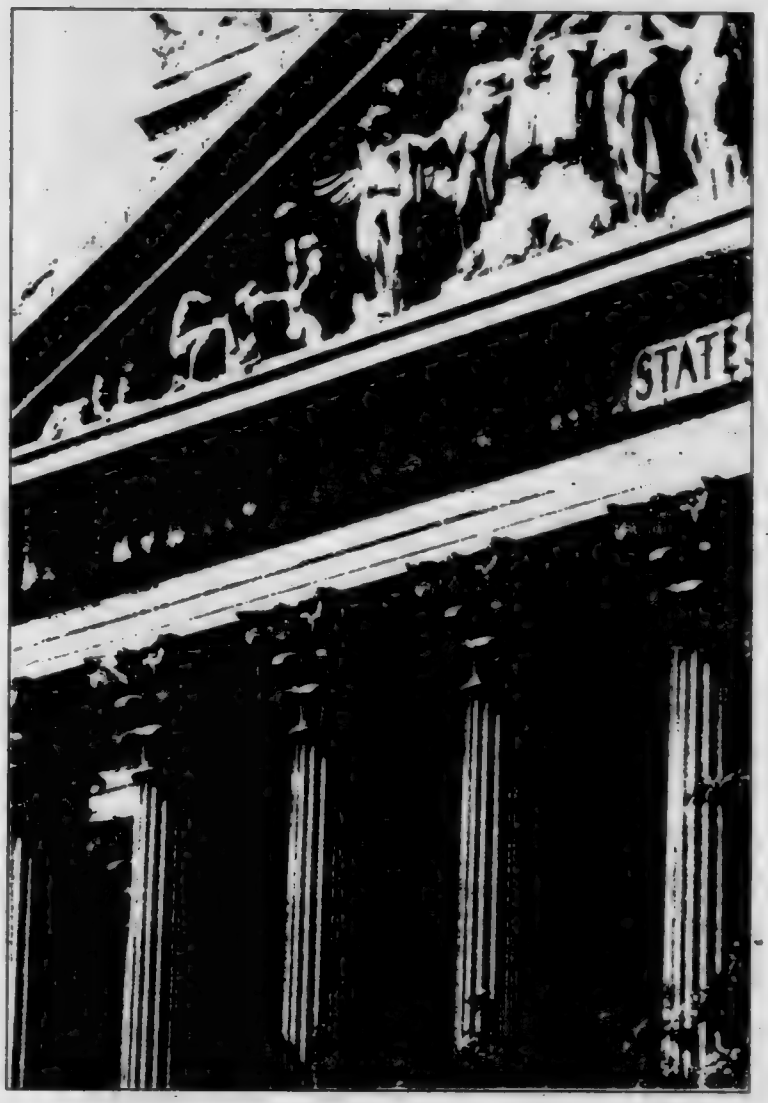

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 61, No. 176
Tuesday, September 10, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH60

Prevailing Rate Systems; Abolishment of Marion, IN, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to abolish the Marion, IN, nonappropraited fund (NAF) Federal Wage System (FWS) wage area and redefine the six counties having continuing FWS employment as areas of application to nearby NAF wage areas for pay-setting purposes.

DATES: This interim rule becomes effective on September 10, 1996. Comments must be received by October 10, 1996. Employees currently paid rates from the Marion, IN, NAF wage schedule will continue to be paid from that schedule until their conversion to the schedules of the wage areas to which their counties of employment are being redefined by this rule on December 13, 1996, the date that the next Marion, IN, wage schedule would have been effective.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to OPM that the Marion, IN, FWS NAF wage area be abolished and that the six counties having continuing FWS employment be redefined as areas of application to nearby NAF wage areas. Marion County, Grant County, Miami County and Allen County, IN, are being redefined to the Greene-Montgomery, OH, wage area. Martin County, IN, is being redefined to the Hardin-Jefferson, KY, wage area, and Vermilion County, IL, is being redefined to the Lake, IL, wage area. This change is necessary because the pending closure of Ft. Benjamin Harrison leaves the Marion, IN, wage area without an activity having the capability to conduct a wage survey.

As required in regulation, 5 CFR 532.219, the following criteria were considered in redefining these wage areas:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by majority vote recommended approval. The Committee defeated the labor members' motion that the original management recommendation be amended to redefine Allen, Grant, and Miami Counties to the Lake, IL, wage area and thereby avoid placing an estimated two employees on pay retention. Allen, Grant, and Miami Counties have greater similarities to the Lake, IL, wage area in an overall population and employment comparison. However, the degree to which those factors favor Lake, IL, is not strong enough to be determinative given the significant distance of Allen and Grant Counties from Lake, IL, as well as the general homogeneity of the counties in their relationship to the Greene-Montgomery, OH, wage area.

Differences in commuting patterns were found to be insignificant for all county redefinitions. The remaining factors favored the redefinition of Vermilion County to the Lake, IL, wage area. Martin County is far closer to the Hardin-Jefferson, KY, wage area than to the very distant Lake, IL, wage area, which offsets the greater similarities to the latter in employment and population. Similarly, Marion County is significantly closer to the Green-Montgomery, OH, wage area than to the Hardin-Jefferson, KY, wage area, which, on balance, offsets the employment and population numbers that favored the latter.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days so that preparations otherwise required for the October 1996 Marion, IN, NAF wage area survey may be canceled.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532 [Amended]

2. In appendix B to subpart B, the listing for the State of Indiana is amended by removing the entry for Marion.

Appendix D to Subpart B of Part 532 [Amended]

3. Appendix D to subpart B is amended by removing the wage area listing for Marion, IN, and by revising the listings for Greene-Montgomery, OH; Hardin-Jefferson, KY; and Lake, IL, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Illinois Lake Survey Area

Illinois:
Lake

Area of application. Survey area plus:

Illinois:
Cook
Vermilion (Effective date December 13, 1996)
Michigan:
Dickinson
Marquette
Wisconsin:
Dane
Milwaukee

* * * * *

Kentucky

* * * * *

Hardin-Jefferson Survey Area

Kentucky:
Hardin
Jefferson

Area of application. Survey area plus:

Indiana:
Jefferson
Martin (Effective date December 13, 1996)
Kentucky:
Fayette
Madison
Warren

* * * * *

Ohio

* * * * *

Greene-Montgomery Survey Area

Ohio:
Greene
Montgomery

Area of application. Survey area plus:

Indiana:
Allen (Effective date December 13, 1996)
Grant (Effective date December 13, 1996)
Marion (Effective date December 13, 1996)
Miami (Effective date December 13, 1996)
Ohio:
Clinton
Franklin
Hamilton
Licking
Ross
West Virginia:
Raleigh
Wayne

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[FR Doc. 96–23041 Filed 9–9–96; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–001–2]

Corn Cyst Nematode

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the regulations that quarantine certain areas of the United States because of the corn cyst nematode and that restrict the interstate movement of certain articles, such as soil, from the quarantined areas. This action is warranted because this pest is present in only five counties in two States and appears to be adequately contained by the two States affected. This action will relieve restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne O'Hern, Assistant Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1228, (301) 734–8247; or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Corn cyst nematode (*Heterodera zeae*) is a cyst-forming nematode that attacks the roots of host plants such as corn, barley, oats, and sorghum. The nematode bores into the roots of the plants and feeds on the plant juices, resulting in poor root development and poor plant growth and potentially causing severe crop losses. The corn cyst nematode is spread through the movement of infested soil and equipment carrying infested soil.

The regulations in 7 CFR 301.90 through 301.90–10 designate areas that are quarantined because of the presence of corn cyst nematode. These regulations also restrict the interstate movement of soil and other articles from the quarantined areas to prevent the spread of corn cyst nematode.

On July 16, 1996, we published in the **Federal Register** (61 FR 37018–37019, Docket No. 96–001–1) a proposal to remove the regulations that quarantine certain areas of the United States because of the corn cyst nematode and that restrict the interstate movement of certain articles, such as soil, from the quarantined areas.

We solicited comments concerning our proposal for 30 days ending August 15, 1996. We received one comment by that date. It was from a State Department of Agriculture. The response was in favor of the provisions outlined in the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule change is not expected to have an effect on any small entities. This is because the States of Maryland and Virginia have restrictions in place to prevent the movement of potentially infested articles from the infested areas in Cecil, Harford, Kent and Queen Anne's Counties, MD, and Cumberland County, VA.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. With the adoption of this rule: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—[AMENDED]

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Subpart—Corn Cyst Nematode [Removed and Reserved]

2. Subpart—Corn Cyst Nematode, consisting of §§ 301.90 and 301.90–1 through 301.90–10, is removed and reserved.

Done in Washington, DC, this 3rd day of September 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22942 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

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7 CFR Part 301

[Docket No. 91–155–20]

Mediterranean Fruit Fly; Removal of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mediterranean fruit fly regulations by removing the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from these areas and that restrictions on the interstate movement of regulated articles from these areas are no longer necessary. As a result of the interim rule, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

EFFECTIVE DATE: Interim rule was effective on June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 14, 1996, and published in the **Federal Register** on June 19, 1996 (61 FR 31003–31004, Docket No. 91–155–19), we amended the Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10) by removing the quarantined areas in Los Angeles, Orange, and San Bernardino Counties, CA, from the list of quarantined areas in § 301.78–3(c). That action relieved unnecessary restrictions on the interstate movement of regulated articles from these areas. Also, as a result of that action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

Comments on the interim rule were required to be received on or before August 19, 1996. We did not receive any comments by that date. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 61 FR 31003–31004 on June 19, 1996.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 3rd day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22940 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

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7 CFR Part 319

[Docket No. 95–068–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing, under certain conditions, the cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS. We have determined that there are biological barriers at these ports that, along with certain safeguards, prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruit before undergoing cold treatment. We are also requiring that cold treatment facilities at the port of Wilmington, NC, remain locked during non-working hours. These actions will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236, (301) 734–8891.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations"), prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits to be imported into the United States if they undergo sustained refrigeration (cold treatment) sufficient to kill certain insect pests. Cold treatment temperature and time requirements vary according to the type of fruit and the pests involved. Detailed cold treatment procedures may be found in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the regulations at 7 CFR 300.1.

On April 29, 1996, we published in the **Federal Register** (61 FR 18690–18695, Docket No. 95–068–1) a proposal

to amend the regulations by allowing cold treatment of imported fruit upon arrival at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS.

We solicited comments concerning our proposal for 60 days ending June 28, 1996. We received 10 comments by that date. They were from customs brokers, industry representatives, and representatives of State governments. Six commenters supported the proposed rule in its entirety. The remaining four commenters had concerns about portions of the proposed rule. Their concerns are discussed below by topic.

The Maritime Port of Seattle, WA

Two commenters recommended that, in addition to the special conditions outlined for the maritime port of Seattle, WA, in the proposed rule, we also require contingency plans and trap monitoring at this port, as we proposed to require for the airports of Atlanta, GA, and Seattle, WA, and for the port of Gulfport, MS, to reduce further the slight possibility that a fruit fly could escape from the cold treatment facility and could, particularly during summer months, find a suitable microhabitat for colonization. We agree that contingency plans and trap monitoring at the maritime port of Seattle, WA, will help prevent the introduction and establishment of fruit flies near the port, as they will at the other ports. Therefore, we are adding the following special conditions to cold treatment at the maritime port of Seattle, WA:

1. Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

This condition will act as a general safeguard. We are requiring this condition as an extra layer of defense that will trap any fruit flies within the facility or within the facility's environs, in the unlikely event that a fruit fly manages to survive past the stage of pupation in the cold treatment facility.

2. The cold treatment facility must have contingency plans, approved by the Deputy Administrator of Plant Protection and Quarantine (PPQ), for handling fruit, including the ability to destroy or dispose of fruit safely.

This condition will ensure that, in the event that a shipment cannot be cold treated promptly or properly, the contents of the shipment can be safely treated by alternative means, destroyed, or disposed of so that fruit flies and other insect pests will not have the opportunity to escape. Examples of adequate contingency plans include the ability to incinerate fruit, to bury fruit, or to re-export fruit.

These additional special conditions, along with the conditions outlined in the proposed rule for the maritime port of Seattle, WA, will help prevent the introduction and establishment of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruit before undergoing cold treatment at the maritime port of Seattle, WA.

The Airport of Atlanta, GA, and the Maritime Port of Gulfport, MS

One commenter expressed concern about the temperate climates in which the airport of Atlanta, GA, and the maritime port of Gulfport, MS, are located. We recognize that these ports are located in areas that experience warmer winter temperatures than the other areas where cold treatment is conducted. However, these ports are not located near commercial citrus-growing areas or other substantial sources of fruit fly host material. We believe that the safeguards outlined in the proposed rule are sufficient to prevent the introduction and establishment of fruit flies and other insect pests from shipments of fruit and vegetables intended for cold treatment. Therefore, we are making no changes to the proposed rule in response to this comment.

Bulk Shipments

One commenter suggested that we prohibit bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit and vegetables intended for cold treatment into the maritime port of Seattle, WA, and the airports of Seattle, WA, and Atlanta, GA. The commenter recommended that we instead require that all shipments entering these ports for cold treatment be packed in containers in order to keep the fruit chilled, limit any exposure to the outdoors, prevent leakage, and serve as a physical barrier to fruit fly escape.

Based on our experience enforcing the regulations, it is extremely rare, particularly at an airport, for shipments of fruit to wait for extended periods of time for cold treatment. Shipments normally move very quickly from the vessel or airplane into the cold treatment facility for treatment. To help ensure prompt treatment of shipments, we require that at all ports approved as locations for cold treatment, advance reservations for cold treatment space be made prior to the departure of a shipment from its port of origin. This condition ensures the expeditious cold treatment of the fruit, limits the shipment's exposure to the outdoors, reduces the likelihood of leakage from a shipment, and minimizes the risk of fruit flies maturing in deteriorating fruit. In addition, though we are allowing bulk shipments of fruit intended for cold treatment to enter the maritime port of Seattle, WA, and the airports of Seattle, WA, and Atlanta, GA, we are requiring these bulk shipments to arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies. We believe that this condition, and the other special conditions for these ports, are sufficient to ensure that shipments that arrive at these ports in cases or bins will not be exposed in such a manner as to allow fruit flies or other insect pests to escape from a shipment. Therefore, we are making no changes to the proposed rule in response to this comment.

Security Measures

One commenter recommended that our proposed security measures for all of the ports be expanded. The commenter suggested that each cold treatment facility have security cameras, that each shipment of fruit be accompanied by APHIS personnel, and that each person living within a 4-mile radius of the cold treatment facility be notified that the facility is holding fruit that may contain exotic plant pests.

We developed special conditions for cold treatment at each port proposed as an approved location for cold treatment so that there would be a multi-layered defense against the escape of fruit flies or other insect pests from shipments of fruit intended for cold treatment. These special conditions are reinforced by the standard requirements for cold treatment, located at § 319.56–2d of the regulations, at all ports that are approved locations for cold treatment. The standard requirements, among other things, require that shipments of fruit intended for cold treatment in the United States must arrive in the United States at a temperature sufficiently low to prevent insect activity and then must be promptly precooled and refrigerated in the approved cold storage warehouse where cold treatment will occur. In addition, the standard requirements provide that fruit intended for cold treatment in the United States be delivered under the supervision of an inspector of PPQ, APHIS, to the approved cold storage warehouse where cold treatment will occur. APHIS officials monitor shipments of fruit intended for cold treatment in the United States through inspections of the shipments at the port of entry and through inspections of the automatic, continuous temperature records

required for each refrigeration. At ports where special conditions apply to cold treatment, APHIS officials monitor adherence to required safeguards as well. Consequently, we feel that we have the necessary security measures in place to prevent the introduction of exotic plant pests into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Cold Treatment

One commenter stated that the United States should not allow the cold treatment of foreign fruits and vegetables within its borders because of the pest risk to American crops. The same commenter expressed concern that allowing additional ports to be locations for cold treatment would require extra APHIS resources that may not be available. The commenter suggested that we require the costs of cold treatment, including the staffing and operation of the cold treatment facility, to be borne by the exporting party.

Based on our experience enforcing the regulations, we believe that we have the necessary safeguards in place to conduct cold treatment in the United States without presenting an unnecessary risk of the introduction or establishment of exotic plant pests.

Further, we have adequate personnel and other resources at the ports proposed as approved locations for cold treatment to conduct careful monitoring of cold treatment operations and to ensure that the provisions of the regulations are upheld. Regarding the costs of cold treatment, it is routine for importers of fresh fruit to bear the expense of cold treatment. Therefore, we are making no changes to the proposed rule in response to these comments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this final rule on small entities.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This rule amends the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the cold treatment of imported fruits upon arrival at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. Modern cold treatment facilities have been or are in the process of being constructed at each of these ports. This action will facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments on the Initial Regulatory Flexibility Analysis contained in the proposed rule.

Approximately 585.4 million kilograms of fresh fruits and vegetables were imported into the United States through the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA, during fiscal year 1994. The port of Gulfport, MS, handled about 98 percent of the total fresh fruit and vegetable imports for these ports. The ports of Atlanta, GA, and Seattle, WA, handled 0.25 and 1.75 percent, respectively, of the total fresh fruit and vegetable imports for these three ports. During fiscal year 1994, approximately 550,330 kilograms (less than one-tenth of one percent) of the total fresh fruit imports for these ports were cold treated in the country of origin or in transit to the United States and will be eligible for cold treatment upon arrival in the United States. We expect that an additional 20 million kilograms of new and rerouted fresh fruits will be imported through and cold treated at these ports each year.

According to the Small Business Administration, a "small" entity involved in the wholesale trade of fresh fruits is one that employs no more than 100 people. Currently, there are 4,388 "small" wholesale importers of fresh fruits in the United States. Use of on-site cold treatment facilities at the ports of Seattle, WA, Atlanta, GA, and Gulfport, MS, may slightly reduce transportation costs for foreign fruit exporters, which, in turn, may slightly reduce transportation costs for domestic importers and, ultimately, may slightly reduce the cost of certain fruits for U.S. consumers. We expect, however, that these reductions in costs will be insignificant.

The alternative to this rule was to make no changes in the regulations. After consideration, we rejected this alternative because it appears that, with the safeguards contained in this rule, the cold treatment of fruit may be conducted at any of the listed ports without significant risk of introducing fruit flies or other injurious plant pests.

Executive Order 12988

This rule allows cold treatment of certain imported fruits to be conducted at the ports of Gulfport, MS, Atlanta, GA, and Seattle, WA. State and local laws and regulations regarding the importation of fruits under this rule will be preempted while the fruits are in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56–2d is amended as follows:

a. In paragraph (b)(1), by revising the second sentence to read as set forth below.

b. By revising paragraph (b)(5)(iv) to read as set forth below.

c. By adding new paragraphs (b)(5)(v), (b)(5)(vi), and (b)(5)(vii) to read as set forth below.

§ 319.56–2d Administrative instructions for cold treatments of certain imported fruits.

* * * * *

(b) * * *

(1) * * * If not so refrigerated, the fruit must be both precooled and refrigerated after arrival only in cold storage warehouses approved by the Deputy Administrator and located at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

* * * * * *

(5) * * *

(iv) *Special requirements for the maritime port of Wilmington, NC.* Shipments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(v) *Special requirements for the maritime port of Seattle, WA.* Shipments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk shipments (those shipments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit must be cold-treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(D) The cold treatment facility must remain locked during non-working hours.

(E) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(F) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vi) *Special requirements for the airports of Atlanta, GA, and Seattle, WA.* Shipments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) Bulk and containerized shipments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(B) Bulk and containerized shipments of fruit arriving for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(C) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of shipments from aircraft to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(D) Advance reservations for cold treatment space must be made prior to the departure of a shipment from its port of origin.

(E) The cold treatment facility must remain locked during non-working hours.

(F) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(G) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

(vii) *Special requirements for the port of Gulfport, MS.* Shipments of fruit arriving at the port of Gulfport, MS, for cold treatment, in addition to meeting all of the requirements in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, must meet the following special conditions:

(A) All fruit entering the port for cold treatment must move in maritime containers. No bulk shipments (those shipments which are stowed and unloaded by the case or bin) are permitted at the port of Gulfport, MS.

(B) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(C) All shipments of fruit arriving at the port for cold treatment must be cold treated within the area over which the Bureau of Customs is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(D) The cold treatment facility and Plant Protection and Quarantine must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of shipments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) Advance reservations for cold treatment space at the port must be made prior to the departure of a shipment from its port of origin.

(F) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(*1*) All containers must be unloaded within the cold treatment facility; and

(*2*) Untreated fruit may not be exposed to the outdoors under any circumstances.

(G) The cold treatment facility must remain locked during non-working hours.

(H) Blacklight or sticky paper must be used within the cold treatment facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the cold treatment facility.

(I) During cold treatment, a backup system must be available to cold treat the shipments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(J) The cold treatment facility must have the ability to conduct methyl bromide fumigations on-site.

(K) The cold treatment facility must have contingency plans, approved by the Deputy Administrator, for safely destroying or disposing of fruit.

* * * * *

3. In § 319.56–2x(b), the first sentence is revised to read as follows:

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

(b) If treatment has not been completed before the fruits and vegetables arrive in the United States, fruits and vegetables listed above and requiring treatment for fruit flies may arrive in the United States only at the following ports: Atlantic ports north of, and including, Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; the maritime ports of Wilmington, NC, Seattle, WA, and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; Hartsfield-Atlanta International Airport, Atlanta, GA; and Baltimore-Washington International and Dulles International airports, Washington, DC. * * *

Done in Washington, DC, this 3rd day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–22941 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 240

[INS No. 1612–93]

RIN 1115–AE43

Removal of Obsolete Sections of the Regulation Concerning Temporary Protected Status for Salvadorans

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations by removing those sections relating to Temporary Protected Status (TPS) for Salvadorans under section 303 of the Immigration Act of 1990 (IMMACT). Since the TPS program for Salvadorans expired on June 30, 1992, this action is necessary to remove obsolete language from the Service's regulations.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Chirlin, Adjudications Officer, Residence and Status Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington DC, 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Section 302 of the Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, added section 244A of the Immigration and Nationality Act (Act), establishing Temporary Protected Status (TPS) relief. Upon designation of a foreign state by the Attorney General, TPS affords temporary protection and work authorization in the United States to eligible individuals from a designated foreign state that is experiencing ongoing armed conflict, environmental disaster, or other harmful conditions that would prevent such individuals from returning to that state in safety.

In addition to the general procedures governing TPS under section 244A of the Act, section 303 of IMMACT afforded such protection specifically to nationals of El Salvador for an 18-month period ending on June 30, 1992. The special TPS program for Salvadorans included some special limitations and requirements which were implemented in 8 CFR 240.40 through 240.47. These special procedures for Salvadorans included additions or exceptions to the general TPS procedures in 8 CFR 240.1 through 240.20. The Service published both the general and the specific Salvadoran TPS regulations in the **Federal Register** as an interim rule on January 7, 1991, at 56 FR 618 and as a final rule on May 22, 1991, at 56 FR 23491.

Under section 303 of IMMACT, TPS designation for El Salvador was to expire on June 30, 1992, unless the Attorney General extended the designation. On June 26, 1992, the Commissioner of the Service announced in the **Federal Register** at 57 FR 28700 that Salvadoran TPS designation would not be extended.

Although Salvadoran TPS expired, many of the Salvadoran TPS registrants became eligible to apply for a 1-year program of deferred enforced departure (DED) established by presidential order through the June 26, 1992, **Federal Register** notice. By a **Federal Register** notice published June 8, 1993, at 58 FR 32157, the Service further extended DED until December 31, 1994, as directed by President Clinton. The Service subsequently extended until April 30, 1996, the DED-related work authorization of Salvadorans whose DED registration expired on December 31, 1994, by a series of **Federal Register** notices concluding on January 30, 1996, at 61 FR 3053.

Under a court-approved settlement in a lawsuit captioned *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (*ABC*), eligible TPS and DED Salvadorans are entitled to a *de novo* asylum adjudication. The Sevice will begin to schedule *ABC* class members for asylum interviews on a routine basis.

The Salvadoran TPS program expired on June 30, 1992. The Service therefore finds it appropriate to remove the obsolete regulations concerning the expired Temporary Protected Status program for Salvadorans.

Impact of Removal of Obsolete Sections of the Regulation

The removal of obsolete sections of the regulation will streamline the regulations and decrease confusion. The Service will continue to inform all former Salvadoran TPS registrants who inquire that the program has expired and that they are not eligible for further registration or work authorization under that program.

Basis for Removal of Obsolete Sections of the Regulation Without Advance Notice or Provision for Public Comments

The Service's implementation of this rule as a final rule without advance notice or provision for public comment procedures is based upon the "good

cause" exception found at 5 U.S.C. 553 (b) and (d). The reasons for immediate final publication of this rule without provision for public comment are as follows:

The Service is removing language in the regulations which relates only to the specific statutory Salvadoran TPS program which expired on June 30, 1992. As the Salvadoran TPS reregistration period and TPS program both expired on that date, all such applications have been adjudicated and any further applications are inappropriate. The continued presence of this obsolete language serves no function and advance notice and public comment procedures are therefore unnecessary.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because it merely removes language which implemented an expired statutory provision.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 240

Administrative practice and procedure, Immigration.

Accordingly, part 240 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

1. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note.

2. Part 240 is amended by removing the heading for Subpart A.

3. Part 240 is amended by removing Subpart B.

Dated: July 11, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–23034 Filed 9–9–96; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 264

[INS No. 1606–94; AG ORDER No. 2053–96]

RIN 1115–AC83

Addition of Provision for the Registration and Fingerprinting of Nonimmigrants Designated by the Attorney General; Removal of the Requirement for the Registration and Fingerprinting of Certain Nonimmigrants Bearing Iraqi and Kuwaiti Travel Documents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change an interim rule published by the Immigration and Naturalization Service (Service) in the **Federal Register** on December 23, 1993, which added the provision for the registration and fingerprinting of certain nonimmigrants of specific countries designated by the Attorney General. The interim rule also removed the requirement for the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents who applied for admission to the United States, which was promulgated in response to a specific political situation. This action will continue to afford the Attorney General with the flexibility to facilitate implementation of the fingerprinting requirement when future political situations arise which threaten the national security of the United States.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jake Achterberg, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW, Room 7228, Washington, DC, 20536, telephone (202) 514–3019.

SUPPLEMENTARY INFORMATION: On January 16, 1991, a final rule was published in the **Federal Register**, at 56 FR 1566, adding a new § 264.3 of Title 8 of the Code of Federal Regulations, requiring the registration and fingerprinting of certain nonimmigrants bearing Iraqi and Kuwaiti travel documents. The requirement was promulgated in response to the United States condemnation of Iraq's invasion of Kuwait, United States sanctions against Iraq, and the theft of thousands of Kuwaiti passports during Iraq's occupation of Kuwait, all of which heightened the potential for domestic anti-United States terrorist activities. Due to the withdrawal of Iraqi forces from Kuwait, and the Government of Kuwait's requirement that all old Kuwaiti passports be replaced with a new version, this requirement was no longer necessary and was removed by an interim rule which was published in the **Federal Register** on December 23, 1993, at 58 FR 68024.

To address future political situations which elevate concern for United States' security and would require the registration and fingerprinting of certain nonimmigrants, the interim rule also added a provision allowing the Attorney General to designate, by public notice published in the **Federal Register**, certain nonimmigrants of specific countries to be registered and fingerprinted upon arrival in the United States, pursuant to section 263(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1303(a)(5).

The provision was necessary to afford the Attorney General with the flexibility to facilitate implementation of the fingerprinting requirement when responding to specific political situations that threatened the security of the United States. Elsewhere in the same issue of the December 23, 1993, **Federal Register**, the Service published a notice requiring certain nonimmigrants from Iraq and the Sudan to be registered and fingerprinted upon arrival in the United States. This action was taken in response to increased concern for national security resulting from terrorist attacks and uncovered plots directed by nationals of Iraq and Sudan.

The interim rule requested that comments concerning the new provisions be submitted to the Service by January 24, 1994. The Service did not receive any comments and is therefore adopting the interim rule as final without change.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule merely affects a limited number of individuals.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 264, which was published in the **Federal Register** on December 23, 1993, at 58 FR 68024–68025, is adopted as a final rule without change.

Dated: September 3, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–22964 Filed 9–9–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 54

[Docket No. 96–042–1]

Scrapie Indemnification Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the scrapie regulations by removing provisions describing the scrapie indemnification program. The scrapie indemnification program provided financial compensation to flock owners for certain animals destroyed because of scrapie. As provided in the regulations, this indemnity program was available for only a limited time, and has now been discontinued. This action will remove provisions that are no longer in effect from the regulations.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Harpster, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4913; or e-mail: dharpster@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 54 (referred to below as the regulations) include provisions for the payment of Federal indemnity to owners of certain sheep and goats destroyed because of scrapie. The scrapie indemnification program was established in a final rule published on December 9, 1992 (57 FR 58130–58133) and effective on January 8, 1993. As explained in the regulations, the program was offered for a limited time only; applications were required to be received on or before July 7, 1993.

Because this program has ended, we are amending the regulations to remove the provisions concerning the scrapie indemnification program. These provisions are contained in subpart A, §§ 54.2 through 54.6.

This action is not a substantive change to the regulations. It simply removes provisions related to a program that has been terminated. Therefore, pursuant to the administrative provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**. Further, this action is not a rule or regulatory action as defined by either Executive Order 12866 or the Regulatory Flexibility Act, and is, therefore, exempt from those provisions. This action contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Scrapie, Sheep.

Accordingly, 9 CFR part 54 is amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, and 134a–134h; 7 CFR 2.22, 2.80, and 371.2(d).

2. Subpart A of part 54, consisting of §§ 54.2 through 54.6, is removed and reserved.

Done in Washington, DC, this 4th day of September 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–23053 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Parts 71 and 75

[Docket No. 96–040–1]

CEM; Remove Interstate Movement Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are removing the regulations governing the interstate movement of horses affected with or exposed to contagious equine metritis. The last areas of the United States quarantined for contagious equine metritis were removed from quarantine in 1987. The disease has not been known to exist in this country since that time, and the regulations are no longer in use. We are also adding contagious equine metritis to a list of diseases not known to exist in the United States.

DATES: This rule will be effective on November 12, 1996 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before October 10, 1996.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 96–040–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 96–040–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Tim Cordes, Senior Staff Veterinarian,

National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–3279.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR subchapter C (parts 70 through 89) govern the interstate movement of animals, including poultry, and animal products. Part 71 includes general provisions related to the interstate movement of animals and poultry. Part 75 pertains to the interstate movement of animals affected with communicable diseases of horses, asses, ponies, mules, and zebras. Sections 75.5 through 75.7 and 75.10 (referred to below as the regulations) pertain to contagious equine metritis (CEM), a highly contagious acute venereal disease that affects breeding and fertility.

When first promulgated, the CEM regulations quarantined certain areas of the United States and restricted the interstate movement of horses and other Equidae from those areas. However, in an interim rule of March 11, 1987 (52 FR 7403–7405), we removed the provisions that quarantined the last areas of the United States because of CEM. The interim rule was affirmed on July 29, 1987 (52 FR 28239–28240). CEM has not been known to exist in the United States since that time, and the regulations are no longer in use. Because the quarantine and accompanying restrictions on interstate movement are no longer necessary, we are removing the regulations in §§ 75.5 through 75.7 and § 75.10.

We are also adding a reference to CEM to part 71. Section 71.3 generally prohibits the interstate movement of diseased animals. Section 71.3(b) lists diseases not known to exist in the United States and prohibits the interstate movement of animals affected with any of the listed diseases. Because CEM is not known to exist in the United States, we are adding this disease to the list in § 71.3(b). Therefore, in the event CEM is again found to exist in the United States, spread of the disease could immediately be curtailed because interstate movement of affected animals would be prohibited.

Effective Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes regulations governing the interstate movement of horses affected with or exposed to CEM. The last areas of the United States quarantined because of this disease were removed from quarantine in 1987, and the disease has not been known to exist in this country since that time. As a result, none of the regulatory provisions regarding CEM have been imposed upon any entities large or small for at least 9 years.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 71 and 75 are amended as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 71.3 [Amended]

2. In § 71.3, paragraph (b) is amended by adding the words "contagious equine metritis," after the word "dourine,".

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

3. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, and 134–134h; 7 CFR 2.22, 2.80, and 371.2(d).

§§ 75.5, 75.6, 75.7, and 75.10 [Removed and Reserved]

4. Sections 75.5 through 75.7 and 75.10 are removed and reserved.

Done in Washington, DC, this 4th day of September 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–23052 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Replacement and Modification Parts: "Standard" Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: The FAA has traditionally interpreted the term "standard parts," as used in regulations concerning the production of replacement and modification parts for sale for installation of type certificated (TC) products, to include a basic structural or mechanical part the specification for which has been published by a standard setting organization or by the U.S. government. This document solicits public comment on including other kinds of parts, for example discrete electrical or electronic component parts.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Comments must be mailed or delivered in duplicate to: Federal Aviation Administration, Aircraft Engineering Division, AIR–100 Rm. 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. AIR–100–9601. Comments may be inspected on weekdays except Federal holidays, between 9 a.m. and 4 p.m. in room 815.

FOR FURTHER INFORMATION CONTACT: Bruce Kaplan, Aerospace Engineer, Aircraft Engineering Division, AIR–100, FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9588.

SUPPLEMENTARY INFORMATION: Section 21.303(a) of Title 14 of the Code of Federal Regulations (CFR) (§ 21.303(a)), Replacement and Modification Parts, prohibits a person from producing a part for sale for installation on a type certificated product unless that person produces the part pursuant to an FAA Parts Manufacturer Approval (PMA). Section 21.303(b) provides four exceptions to the requirement in §21,303(a). One of these exceptions is for "Standard parts (such as bolts and nuts) conforming to established industry or U.S. specifications." (14 CFR § 21.303(b)(4).)

"Standard part" is not otherwise defined in Title 14. Section 21.303(b)(4) has come to be understood by the aviation and manufacturing public as meaning a part, the specification for which has been published by a standard setting organization or by the U.S. government, and the FAA has traditionally regulated parts production with that understanding. Examples of such "traditional" standard part specifications include National Aerospace Standards (NAS), Air Force-Navy Aeronautical Standard (AN), Society of Automotive Engineers (SAE), SAE Aerospace Standard (AS), and Military Standard (MS). The FAA will continue to consider parts conforming to these specifications as standard parts.

Traditionally, for any specification to be acceptable it must include information on the design, materials, manufacture, and uniform identification requirements. The specification must include all the information necessary to produce the part and ensure its conformity to the specification. Furthermore, the specification must be publicly available, so that any party is capable of manufacturing the part. The above examples of accepted specifications fulfill those criteria.

In the past the FAA has applied § 21.303(b)(4) to parts that have specifications where a determination of physical conformity to a design could be made. This application largely excluded classes of parts where the parts are conformed not on the basis of their physical configuration but by meeting the specified performance criteria. These types of parts are best exemplified by discrete electrical and electronic parts.

Much of the componentry used in electronic devices are manufactured under standard industry practices, often to published specifications developed by standards organizations such as the Society of Automotive Engineers (SAE), the American Electronics Association, Semitec, Joint Electron Device Engineering Council, Joint Electron Tube Engineering Council, and the American National Standards Institute (ANSI). Such standards development by these bodies is overseen by the Institute of Electrical and Electronics Engineers (IEEE), the IEEE Standards Committee, as well as the electrical and electronics industry, at large, who depends upon characteristic design standards for consistency in operation and performance.

The FAA is aware of certain kinds of parts that may fit within the limits of the § 21.303(b)(4) exception; these might include resistors, capacitors, diodes, transistors, and non-programmable integrated circuits (e.g. amplifiers, bridges, switches, gates, etc.). Conversely, large scale, application-specific, or programmable integrated circuits, hybrids, gate arrays, memories, CPU's, or other programmable logic devices would not be considered standard parts. Such components are not "discretes" since they require programming that controls their timing, functionality, performance, and overall operating parameters.

It is important to remember that 14 CFR Part 21 § 21.303 deals with the production of parts for sale for installation on type certificated products. The installation of an owner- or operator-produced, technical standard order, and standard parts must be shown to comply with part 43 of Title 14 of the CFR (Part 43). Installation eligibility for a PMA or a type or production certificated (PC) part is established at the time of issuing the production approval, nevertheless, a person may install a PMA, TC, or PC part on another TC product if that installation is shown to comply with Part 43. Generally, a standard part may be replaced with an identical standard part without a further demonstration of compliance with the airworthiness regulations. Substitution of a standard part with another would require a demonstration of acceptability in accordance with Part 43.

The FAA invites comments on the ability of producers to conform discrete electrical and electronic parts, and other kinds of parts, to specified performance criteria. It also invites comments on the ability of producers to distinctly identify such parts.

After comments are reviewed, the FAA anticipates taking the following actions:

(1) Compile a list of standard setting bodies and U.S. government entities that establish specifications for standard parts, and

(2) Publish these listings in an Advisory Circular which will be available on the Aircraft Certification Home Page on the World Wide Web.

Issued in Washington, DC, of August 29, 1996.

Elizabeth Yoest,

Deputy Director, Aircraft Certification Service, AIR–2.

[FR Doc. 96–23092 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–28]

Amendment to Class E Airspace; Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace at Lebanon, NH (LEB) by removing the Class E airspace extending upward from the surface, effective during the times when the Airport Traffic Control Tower (ATCT) is not operating. This action results from the elimination of continuous weather reporting at Lebanon Municipal Airport.

DATES: Effective 0901 UTC, November 7, 1996.

Comments for inclusion in the Rules Docket must be received on or before October 10, 1996.

ADDRESSES: Send comments on the proposal to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–28, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596. Comments may also be submitted electronically to the following Internet address: "neairspace-comment@mail.hq.faa.gov". Comments must indicate Docket No. 96–ANE–28 in the subject line.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: On May 16, 1994, the FAA published a modification to the Class D airspace at Lebanon Municipal Airport, Lebanon, NH (59 FR 25299, effective June 23, 1994) to reflect a change in the operating hours for the Airport Traffic Control Tower (ATCT) at Lebanon. Although the ATCT no longer operates continuously, 24-hour weather reporting remained, thus the FAA also established a Class E airspace area extending upward from the surface at Lebanon. That Class E airspace, effective during the hours when the ATCT did not operate, provides controlled airspace from the surface upward based on the availability of continuous weather reporting from Lebanon.

The FAA has been advised that continuous surface weather observations are no longer provided at Lebanon. Recently, officials from the FAA, the National Weather Service (NWS), and the aviation industry concluded a comprehensive reassessment of the requirements for surface weather observations at the nation's airports, from completely automated to sites with automated equipment augmented by various levels of observer support. In addition, the FAA has started the process to assume responsibility for aviation surface weather observations as the NWS automates field offices and reallocates its observers. Under this program, the FAA has selected Lebanon, NH as a site for fully automated weather observations using the Automated Surface Observing System (ASOS).

The commissioning the Lebanon ASOS is not expected, however, until late 1997, and continuous observer support has already ended. Accordingly, the FAA must remove the Class E airspace area that extended upward from the surface during the times when the ATCT does not operate. This action does not affect the Class E airspace area that extends upward from 700 feet above the surface, which remains in place to provide adequate controlled airspace for those aircraft using the standard instrument approach procedures at Lebanon when the ATCT is closed.

Class E airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from this Order.

The Direct Final Rule Procedures

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will published a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–ANE–28." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ANE ME E2 Lebannon, NH [Removed]

* * * * *

Issued in Burlington, MA, on August 26, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–23091 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Cooperation With User Organizations

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: On June 22, 1951, the Forest Service published rules authorizing organizations that use National Forest System lands to form permittee associations or advisory boards for cooperating with the Forest Service. In subsequent years, these rules have been superceded by other laws and procedures that have been established to address how the agency works cooperatively with user organizations. The agency identified the need to remove this obsolete regulation during a review of regulations undertaken as part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: This rule is effective September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Anderson, Directives and Regulations, telephone: (703) 235–2994.

SUPPLEMENTARY INFORMATION: Under the authority of the Organic Administrative Act of June 4, 1897 (16 U.S.C. 551), the Secretary of Agriculture promulgated regulations at 36 CFR 211.1 on June 22, 1951 (16 FR 5952), establishing procedures for user organizations to work with the Forest Service in the "systematic betterment of conditions and facilities controlling their use of the national forest lands." In subsequent years, new laws have been passed which govern how the agency works with user organizations, such as the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 2) and the National Forest Management Act of 1976 (16 U.S.C. 1604).

Following a review of Forest Service regulations under the President's Regulatory Reinvention Initiative, the agency identified this regulation as no longer needed, and accordingly, by this amendment, is removing the rule from the Code of Federal Regulations. Because of the narrow scope and limited effect of this action, the agency has determined that this amendment is a technical amendment for which notice and comment pursuant to the Administrative Procedures Act (5 U.S.C. 553) is not necessary.

Regulatory Impact

This rule is a technical amendment to remove an obsolete regulation and, as such, has no substantive effect nor is it subject to review under USDA procedures or Executive Order 12866 on Regulatory Planning and Review. This rule also does not meet the definition of a rule subject to Congressional notice and review pursuant to 5 U.S.C., sections 801–804.

Moreover, because good cause exists to exempt this rule from notice and comment pursuant to 5 U.S.C. 553, this rule is exempt from further analysis under the Unfunded Mandates Reform Act at 1995; Executive Order 12778, Civil Justice Reform; Executive Order 12630, Takings Implications; and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), and National forest.

Therefore, for the reasons set forth in the preamble, part 211 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 is revised to read as follows:

Authority: 16 U.S.C. 551, 472.

§ 211.1 [Removed]

2. Remove § 211.1.

Dated: September 4, 1996.

Joan M. Comanor,

Acting Chief.

[FR Doc. 96–23061 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–11–M

Proposed Rules

Federal Register
Vol. 61, No. 176
Tuesday, September 10, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV96–351]

RIN 0581–AB41

Amendments to the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Department of Agriculture (USDA) invites comments on proposed revisions to the PACA Regulations that are required in order to implement legislative changes signed by President Clinton on November 15, 1995 (Pub. L. 104–48). Specifically, the legislative changes phase retailers and grocery wholesalers out of license fee payments over a 3-year period; establish a one-time administrative fee for new retailers and grocery wholesalers entering the program after the 3-year phase-out period; increase license fees from $400 to $550 annually for all other licensees; grant USDA authority to adjust future license fees through "notice and comment" rulemaking; eliminate the requirement of filing notice of intent to preserve trust benefits with USDA in the PACA trust; require USDA to receive a written complaint before initiating an investigation; require additional USDA investigation notification procedures; increase administrative penalties; establish civil penalties as an alternative to revocation or suspension of license; continue current filing fees for formal and informal reparation complaints; explicit address the status of collateral fees and expenses; clarify misbranding prohibitions; and amend the provisions of PACA regarding the determination of responsibly connected individuals.

DATES: Comments must be received by November 12, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to James R. Frazier, Chief, Fruit and Vegetable Division, PACA Branch, Room 2095–So. Bldg., P.O. Box 96456, Washington, D.C. 20090–6456. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Frazier, Chief, PACA Branch, Room 2095–So. Bldg., Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 720–4180.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

The license fee increase was signed into law by President Clinton on November 15, 1995, as part of the PACA Amendments of 1995 (Pub. L. 104–48). Public Law 104–48 mandated an immediate increase in the license fees. As a result of this mandate, license renewals and new applications received after November 15, 1995, are subject to the $550 fee. Notice of the fee increase was published in the **Federal Register** on December 27, 1995.

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The PACA requires commission merchants, dealers, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce who meet certain threshold requirements to be licensed. There are approximately 15,300 PACA licensees. Separating licensees by the nature of business, there are approximately 6,000 wholesalers, 4,750 retailers, 2,100 brokers, 1,200 processors, 550 commission merchants, 450 food service businesses, 150 grocery wholesalers, and 50 truckers licensed under PACA. The license is effective for 1 year unless suspended or revoked by USDA for valid reasons [46.9 (a)-(h)], and must be renewed annually by the licensee. Many of the licensees may be classified as small entities.

Wholesalers, processors, food service companies, grocery wholesalers, and truckers are considered to be dealers and subject to a license when they buy or sell more than 2,000 pounds of fresh and/or frozen fruits and vegetables in any given day. Dealers whose fruit and vegetable purchases or sales do not exceed the 2,000 pound threshold are exempt from the license requirement. A retailer is considered to be a dealer and subject to license when the invoice cost of its perishable agricultural commodities exceeds $230,000 in a calendar year. Brokers, negotiating the sale of frozen fruits and vegetables on behalf of the seller, are exempt from licensing when the invoice value of the transactions are below $230,000 in any calendar year.

Pursuant to Public Law 104–48, the base license fee for all licensees, as set forth in these proposed regulations, was raised on November 15, 1995, from $400 to $550 for all licensees, except for retailers and grocery wholesalers. As reflected in the proposed regulations, retailers and grocery wholesalers will no longer have to pay license fees at the end of the 3-year phase-out period which began on November 15, 1995. This change affects approximately 30 percent, or about 4,900, of the firms licensed under PACA. During the first year, after enactment of P.L. 104–48, from November 15, 1995, through November 14, 1996, retailers and grocery wholesalers will have to pay $400 for a new license, or for the

renewal of an existing license. For the second year of the phase-out period from November 15, 1996, through November 14, 1997, they will pay 75 percent of that fee, or $300, for a license. During the last year of the phase-out period, November 15, 1997, through November 14, 1998, retailers and grocery wholesalers will pay 50 percent of the fee, or $200 for a PACA license. After November 14, 1998, retailers and grocery wholesalers will no longer be required to pay an annual license fee, but they will be required to maintain a PACA license. At the time of application for a new license, retailers and grocery wholesalers will pay a one-time administrative fee of $100.

The increase of $150 in the base annual license fee, from $400 to $550, for commission merchants, brokers and dealers (other than retailers and grocery wholesalers) is considered nominal when averaged over a 12-month period. The fee increase, where applicable, affects all licensees regardless of size. Again, this proposed rule is needed solely for the purpose of conforming the current regulations to P.L. 104–48; license fee changes were required by statute and implemented on November 15, 1995. Projected annual income, based on the revised license fees, will approximate $9,028,000 in fiscal year 1996, $8,683,000 in fiscal year 1997, and $8,288,000 in fiscal year 1998.

Public Law 104–48 removed the previously existing statutory cap on license fees other than those of retailers and grocery wholesalers, and altered the previous legislated ceiling on operating reserves of the PACA fund. After November 14, 1998, USDA has the authority to increase fees through rulemaking, provided operating reserves fall below 25 percent of the projected annual program costs. USDA projects that the initial increase in receipts from fees collected following enactment of P.L. 104–48 will allow the PACA fund to build up operating reserves so that no fee increase will be needed until fiscal year 2001, when PACA operating reserves are expected to fall below that level.

The proposed rule, again pursuant to Public Law 104–48, increases the penalty for late renewal of a license, and the penalty for operating without a license. These penalties, which are applicable to all entities operating subject to the PACA, are necessary to deter licensees from operating in violation of the PACA. Any penalties for violations of the PACA would be applied equitably.

A compliance guide which highlights the 1995 PACA legislation, and a general compliance guide entitled "PACA Fact Finder" which explains the rights and responsibilities of firms operating subject to the provisions of the PACA, are available to all licensees, including small businesses.

Accordingly, based on the information discussed above and in the following discussion, it is determined that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The amendments to Public Law 104–48 set forth in this proposed rule involves a change in the existing information collection and record keeping requirements which were previously approved by OMB under the provisions of 44 U.S.C. Chapter 35. In accordance with the Paperwork Reduction Act of 1995, this notice announces AMS' intention to request revisions to a currently approved information collection in support of the Reporting and Record keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

Title: Reporting and Record keeping Requirements Under Regulations (Other Than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Control Number: 0581–0031.

Expiration Date of Approval: May 31, 1999.

Type of Request: Revision of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing a forum for resolving contract disputes, and for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA impresses a statutory trust on licensees for perishable agricultural commodities received, products derived from them, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid. An amendment to the PACA, enacted into law on November 15, 1995, reduced the record keeping and reporting burden imposed under the trust provision by removing the requirement that trust claimants file notices of intent to preserve trust benefits with the Department of Agriculture. The burden is, therefore, being revised to remove the record keeping and time requirements that were necessary for the filing of trust claims. This action will decrease the time requirement by 43,091 total hours and the paperwork burden by 124,445 total annual responses.

The PACA is enforced through a licensing system and is user-fee financed through a license fee. All commission merchant, dealers, and brokers engaged in business subject to the PACA must be licensed. The license is effective for one (1) year unless withdrawn by USDA for valid reasons, and must be renewed annually. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected from respondents is used to administer licensing provisions under the PACA. The records maintained are used to adjudicate reparation and administrative complaints filed against licensees to determine the imposition of sanctions on firms and responsibly connected individuals who have engaged in unfair trading practices. We estimate the paperwork and time burden as follows:

Form FV–211, Application for License: average of 15 minutes per application per response.

Form FV–231, Application for Renewal of License: Average of 5 minutes per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of 5 minutes per notice per response.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 1,000 record keepers.

Regulations Section 46.46(d)(2)—Waiver of Rights to Trust Protection: Average of 15 minutes per notice with approximately 100 principals.

Regulations Sections 46.46(f) and 46.2(aa)(11)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,000 record keepers.

Estimate of Burden: The total public reporting burden for this collection of information is estimated to average 8 hours per response.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 15,550.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 118,476 hours.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michael A. Clancy, Head, License and Program Review Section, PACA Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2715–South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Background

The PACA, enacted in 1930, establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. The law provides a forum to adjudicate private disputes alleging violations of the PACA and awards damages against anyone who fails to meet contractual obligations subject to the PACA. The law also imposes a statutory trust on perishable agricultural commodities received but not yet paid for, products derived from those commodities, and any receivables or proceeds due from the sale of those commodities for the benefit of unpaid suppliers or sellers.

Under the PACA, anyone buying and selling commercial quantities of fruits and vegetables in interstate or foreign commerce must be licensed. The cost of administering the PACA is defrayed primarily through the license fees paid by those engaging in business subject to the law. The law also imposes complaint filing fees which help finance the program. Amendments to the PACA in 1988 permitted the Secretary to assess a base annual license fee of $400, plus $200 for each branch operation in excess of nine. The maximum aggregate annual license fee for any firm could not exceed $4,000. Public Law 104–48 increased the base license fee to $550 while retaining the branch fee and the maximum aggregate for all applicants except retailers and grocery wholesalers who are phased out of paying a fee over a 3-year period.

Public Law 104–48 added two new definitions to the law for types of dealers: "retailer" and "grocery wholesaler". Accordingly, a change would be made in section 46.2 in the definition of "retailer" as it appears in the current regulations, and a new definition would be added to the regulations for the term "grocery wholesaler". The definition of "retailer" in the proposed regulations would be the same as that adopted in Public Law 104–48, but would include a provision to make it clear that occasional wholesale sales, defined as not more than 5 percent of the gross annual sales, would not remove a dealer from the category of "retailer". The intent was that occasional wholesale transactions should not remove an entity from the category of "retailer". The definition of "grocery wholesaler" would be the same as that adopted by Public Law 104–48, but would include objective criteria for determining the meaning of "primarily engaged" as that term is used in the definition. This will enable an entity to more readily determine whether it falls within the "grocery wholesaler" category.

The proposed definition of "good faith" would also be added to the regulations since that term is used in Section 2 of Public Law 104–48 in reference to collateral fees. The proposed definition is taken from the Uniform Commercial Code article on Sales, section 2–103(b). Public Law 104–48 provides that the good faith offer, solicitation, payment or receipt of collateral fees is not, in and of itself, a violation of the PACA. The proposed regulation points out that where collateral fees would affect a material term of the agreement, disclosure of the fees is required by the principle good faith.

Section 46.6 would be revised to conform with the fee structure mandated by Public Law 104–48. Under the new fee structure, retailers and grocery wholesalers, described earlier, are phased out of the responsibility for annual license fee payments over a 3-year period. A one-time administrative fee was established by Public Law 104–48 for new retailers and grocery wholesalers entering the program after the 3-year phase-out period. License fees for all other licensees are increased from $400 to $550 annually. After the expiration of the 3-year period, USDA is authorized to adjust future license fees through notice and comment rulemaking.

Conforming changes are proposed for sections 46.9 and 46.10 as a result of the increased penalties for late license renewals provided Public Law 104–48. Sections 46.9 and 46.10 would also be revised to make these sections applicable to entities subject to license which no longer have to pay an annual license fee. As mandated by Public Law 104–48, the payment of renewal fees or accrued license fees is not required of such entities after the phase-out period, but they are subject to the $50 late application fee, and when they have violated the PACA by operating without a license, they will have to submit the required license application and pay the applicable fine. The proposed regulation would implement these changes.

The House Agriculture Committee, in its Report (House Reports No. 104–207), directed USDA to review and revise the PACA regulations relating to brokers in order to "accurately reflect an increased role as a purchasers agent". The role of brokers has changed over the years and increasingly the broker is engaged by the buyer. To address this issue, we propose to revise sections 46.27 and 46.28, which describe and establish the duties of a broker, to more accurately describe the relationship of a broker to buyers and sellers, and to require that the broker disclose on its confirmation or memorandum of sale the party that engaged the broker to act in the negotiations. A broker is "engaged" by, and thus may have a closer relationship with, one of the parties to the contract than with the other. The changes in these sections are intended to recognize that the broker may not be a neutral party and would make the broker's position relative to the parties clear.

Section 46.45 is being modified to reflect the amendment to the misbranding provisions requiring that only the first licensed handler be held

responsible for the violation unless subsequent handlers had knowledge of the misbranding and failed to correct it.

The Amendments also eliminate from the law the need for unpaid produce suppliers to file trust notices with USDA in order to preserve their rights to trust protection under the statutory trust provision of the PACA. Therefore, paragraphs (d) and (e) of § 46.46 of the regulations would be revised to eliminate references to filing with USDA. Paragraph (a) would be removed since it is unnecessary. Accordingly, paragraphs (b) through (g) would be redesignated paragraphs (a) through (f).

Redesignated paragraph (f) of section 46.46 has been reworded to remove the referenced requirement for the filing of the notice with USDA and to clarify the two methods available to preserve trust rights and their filing requirements.

Redesignated paragraphs (f)(1)(ii) and (3)(ii) conform with the statutory requirement that the notice of preservation of trust benefits contain the terms of payment when the parties have agreed to terms different from those established by the Secretary.

Redesignated paragraph (c)(2) would be reworded to make it clear that there is no general duty resting upon all brokers to preserve the trust benefits of their principals by filing trust notices. Rather the duty attaches only to brokers, or others operating in a fiduciary capacity, who have undertaken an obligation to "collect and remit". The paragraph also reminds those who employ collect and remit agents that they must preserve their right to trust benefits against such agents by filing appropriate notices with such agents. The citation in paragraph (e)(2) to paragraph (b)(1) would be conformed to the new paragraph designation for this section.

The Amendments outline new requirements for USDA when pursuing a disciplinary investigation of an alleged violation. USDA must have a written notification of the alleged violation before initiating an investigation. After receiving such a complaint, USDA would initiate an investigation if warranted. The subject of the investigation would be notified of the existence of the investigation and the nature of the alleged violations. Section 46.17, which establishes the requirements for inspection of records, would be revised to clarify that PACA representatives are permitted access to licensee's records to investigate petitions or complaints under section 6(a) of the PACA, and written notifications under section 6(b) of the PACA.

New section 46.49 would be added to the proposed regulations to describe what constitutes a written notification. In conformity with the text of amended section 6(b) of the PACA, official USDA certificates and trust notices are deemed written notifications, as are written statements reporting or complaining of a PACA violation filed by any officer or agency of any State or Territory having jurisdiction over licensees or persons subject to license or any other interested person who has knowledge of or information regarding a possible violation other than an employee of an agency of USDA administering the PACA. In conformity with the language used by Report 104–207 of the House Committee on Agriculture, written notifications are equated with complaints as that term is used in the PACA. The proposed regulation also outlines investigative procedures relating to such complaints.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

2. In § 46.2, paragraph (j) is revised and two new paragraphs (hh) and (ii) are added to read as follows:

§ 46.2 Definitions

* * * * *

(j) *Retailer* means a person that is a dealer engaged in the business of selling any perishable agricultural commodity at retail; *Provided*, That occasional sales at wholesale shall not be deemed to remove a dealer from the category of retailer if less than 5 percent of annual gross sales is derived from wholesale transactions.

* * * * *

(hh) *Good faith* means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. The principle of good faith requires that a party to a transaction disclose the existence of any collateral fees and expenses to all other parties to the transaction where the collateral fees and expenses affect a material term of the agreement.

(ii) The term *grocery wholesaler* means a person that is a dealer primarily engaged in the full-line wholesale distribution and resale of grocery and related nonfood items (such as perishable agricultural commodities, dry groceries, general merchandise, meat, poultry, and seafood, and health and beauty care items) to retailers. However, such term does not include a person described in the preceding sentence if the person is primarily engaged in the wholesale distribution and resale of perishable agricultural commodities rather than other grocery and related nonfood items. This definition states two criteria in order for an entity to be considered a grocery wholesaler:

(1) The entity must be primarily engaged, that is, have 50 percent or greater of its annual gross sales, in the full-line distribution and resale of grocery and related nonfood items. "Full-line" means that the entity must be supplying the retailer with a wide range of products such as the items specified. If the entity meets this condition, then the entity will be considered a grocery wholesaler unless;

(2) The entity has more than 50 percent of its annual gross sales in perishable agricultural commodities.

3. § 46.6 is revised to read as follows:

§ 46.6 License fees.

(a) For retailers and grocery wholesalers making an initial or a renewal application for license, the annual license fee is as follows:

(1) During the period November 15, 1995 through November 14, 1996, the license fee is $400 plus $200 dollars for each branch or additional business facility operated by the applicant in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed $4,000.

(2) The annual license fee during the period November 15, 1996 through November 14, 1997, is $300 plus $150 for each branch or additional business facility operated by the retailer or grocery wholesaler in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed $3,000.

(3) The annual license fee during the period November 15, 1997 through November 14, 1998, is $200 plus $100 for each branch or additional business facility operated by any retailer or grocery wholesaler in excess of nine. In no case shall the aggregate annual fees paid by any retailer or grocery wholesaler during such period exceed $2,000.

(4) No annual license fee will be required after November 14, 1998 for renewal of a license. However, a retailer or grocery wholesaler making an initial

application for a license after November 14, 1998, shall pay a $100 administrative processing fee.

(b) For commission merchants, brokers, and dealers (other than grocery wholesalers and retailers) the annual license fee is $550 plus $200 dollars for each branch or additional business facility in excess of nine. In no case shall the aggregate annual fees paid by any such applicant exceed $4,000.

(c) The Director may require that fees be paid in the form of a money order, bank draft, cashier's check, or certified check made payable to "USDA–AMS". Authorized representatives of the Division may accept fees and issue receipts.

4. In § 46.9, paragraph (i) is revised to read as follows:

§ 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.

* * * * *

(i) Under section 4(a) of the Act, at least 30 days prior to the anniversary date of a valid and effective license, the Director shall mail a notice to the licensee at the last known address advising that the license will automatically terminate on its anniversary date unless an application for renewal is filed supplying all information requested on a form to be supplied by the Division, and unless the renewal fee (if any is applicable) is paid on or before such date. If the renewal application is not filed and/or the renewal fee (if required) is not paid by the anniversary date, the licensee may obtain a renewal of that license at any time within 30 days by submitting the required renewal application and/or paying the renewal fee (if required), plus $50. Within 60 days after the termination date of a valid and effective license, the former licensee shall be notified of such termination, unless a new license has been obtained in the meantime.

5. § 46.10 is revised to read as follows:

§ 46.10 Nonlicensed person; liability; penalty.

Any commission merchant, dealer, or broker who violates the Act by engaging in business subject to the Act without a license may settle its liability, if such violation is found by the Director not to have been willful but due to inadvertence, by submitting the required application and paying the amount of fees that it would have paid had it obtained and maintained a license during the period that it engaged in business subject to the Act, plus an additional sum not in excess of two hundred and fifty dollars ($250) as may be determined by the Director.

6. § 46.17 is revised to read as follows:

§ 46.17 Inspection of records.

(a) Each licensee shall, during ordinary business hours, promptly upon request, permit any duly authorized representative of USDA to enter its place of business and inspect such accounts, records, and memoranda as may be material:

(1) in the investigation of complaints under the Act including any petition, written notification, or complaint under section 6 of the Act,

(2) to the determination of ownership, control, packer, or State, country, or region of origin in connection with commodity inspections,

(3) to ascertain whether there is compliance with section 9 of the Act,

(4) in administering the licensing and bonding provisions of the Act,

(5) if the licensee has been determined in a formal disciplinary proceeding to have violated the prompt payment provision of section 2(4) of the Act, to determine whether, at the time of the inspection, there is compliance with that section.

(b) Any necessary facilities for such inspection shall be extended to such representative by the licensee, its agents, and employees.

7. In § 46.27, paragraph (a) is revised to read as follows:

§ 46.27 Types of broker operations.

(a) Brokers carry on their business operations in several different ways and are generally classified by their method of operation. The following are some of the broad groupings by method of operation. The usual operation of brokers consists of the negotiation of the purchase and sale of produce either of one commodity or of several commodities. A broker is usually engaged by only one of the parties, but in negotiating a contract the broker acts as a special agent of first one and then the other party in conveying offers, counter offers, and acceptances between the parties. Once the contract is formed, and the confirmation issued, the broker's duties are usually ended, and the broker is not the proper party to whom notice of breach or of rejection should be directed. However, a broker receiving notice has a duty to promptly convey the notice to the proper party. Frequently, brokers never see the produce they are quoting for sale or negotiating for purchase by the buyer, and they carry out their duties by conveying information received from the parties between the buyer and seller until a contract is effected. Generally, the seller of the produce invoices the buyer, however, when there is a specific agreement between the broker and its principal, the seller invoices the broker who, in turn, invoices the buyer, collects, and remits to the seller. Under other types of agreements, the seller ships the produce to pool buyers, and the broker as an accommodation to the seller invoices the buyers, collects, and remits to the seller. Also, there are times when the broker is authorized by the seller to act much like a commission merchant, being given blanket authority to dispose of the produce for the seller's account either by negotiation of sales to buyers not known to the seller or by placing the produce for sale on consignment with receivers in the terminal markets.

* * * * *

8. In section 46.28, paragraph (a) is revised to read as follows:

§ 46.28 Duties of brokers.

(a) General. The function of a broker is to facilitate good faith negotiations between parties which lead to valid and binding contracts. A broker who fails to perform any specification or duty, express or implied, in connection with any transaction is in violation of the Act, is subject to the penalties specified in the Act, and may be held liable for damages which accrue as a result thereof. It shall be the duty of the broker to fully inform the parties concerning all proposed terms and conditions of the proposed contract. After all parties agree on the terms and the contract is effected, the broker shall prepare in writing and deliver promptly to all parties a properly executed confirmation or memorandum of sale setting forth truly and correctly all of the essential details of the agreement between the parties, including any express agreement as to the time when payment is due. The confirmation or memorandum of sale shall also identify the party who engaged the broker to act in the negotiations. If the confirmation or memorandum of sale does not contain such information, the broker shall be presumed to have been engaged by the buyer. Brokers do not normally act as general agents of either party, and will not be presumed to have so acted. Unless otherwise agreed and confirmed, the broker will be entitled to payment of brokerage fees from the party by whom it was engaged to act as broker. The broker shall retain a copy of such confirmations or memoranda as part of its accounts and records. The broker who does not prepare these documents and retain copies in its files is failing to prepare and maintain complete and correct records as required by the Act. The broker who does not deliver copies of these documents to all parties

involved in the transaction is failing to perform its duties as a broker. A broker who issues a confirmation or memorandum of sale containing false or misleading statements shall be deemed to have committed a violation of section 2 of the Act. If the broker's records do not support its contentions that a binding contract was made with proper notice to the parties, the broker may be held liable for any loss or damage resulting from such negligence, or for other penalties provided by the Act for failing to perform its express or implied duties. The broker shall take into consideration the time of delivery of the shipment involved in the contract, and all other circumstances of the transaction, in selecting the proper method for transmitting the written confirmation or memorandum of sale to the parties. A buying broker is required to truly and correctly account to its principal in accordance with section 46.2(y)(3). The broker should advise the appropriate party promptly when any notice of rejection or breach is received, or of any other unforeseen development of which it is informed.

* * * * *

9. In § 46.45, the introductory text is revised to read as follows:

§ 46.45 Procedures in administering section 2(5) of the Act.

It is a violation of section 2(5) for a commission merchant, dealer, or broker to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condition, degree, or maturity, or State, country, region of origin of any perishable agricultural commodity received, shipped, sold, or offered to be sold in interstate or foreign commerce. However, a person other than the first licensee handling misbranded perishable agricultural commodities shall not be held liable for a violation of the Act by reason of the conduct of another if the person did not have knowledge of the violation or lacked the ability to correct the violation.

* * * * *

10. In § 46.46, paragraph (a) is removed, paragraphs (b) through (g) are redesignated as paragraphs (a) through (f), and newly redesignated paragraphs (c), (e)(2), and (f) are revised to read as follows:

§ 46.46 Statutory trust.

* * * * *

(c) *Trust benefits.* (1) When a seller, supplier or agent who has met the eligibility requirements of paragraphs (e) (1) and (2) of this section, transfers ownership, possession, or control of goods to a commission merchant, dealer, or broker, it automatically becomes eligible to participate in the trust. Participants who preserve their rights to benefits in accordance with paragraph (f) of this section, remain beneficiaries until they are paid in full.

(2) Any licensee, or person subject to license, who has a fiduciary duty to collect funds resulting from the sale or consignment of produce, and remit such funds to its principal, also has the duty to preserve its principal's rights to trust benefits in accordance with paragraph (f) of this section. The responsibility for filing the notice to preserve the principal's rights is obligatory and cannot be avoided by the agent by means of a contract provision. Persons acting as agents also have the responsibility to negotiate contracts which entitle their principals to the protection of the trust provisions: Provided, That a principal may elect to waive its right to trust protection. To be effective, the waiver must be in writing and separate and distinct from any agency contract, must be signed by the principal prior to the time affected transactions occur, must clearly state the principal's intent to waive its right to become a trust beneficiary on a given transaction, or a series of transactions, and must include the date the agent's authority to act on the principal's behalf expires. In the event an agent having a fiduciary duty to collect funds resulting from the sale or consignment of produce and remit such funds to its principal, fails to perform the duty of preserving its principal's rights to trust benefits, it may be held liable to the principal for damages. A principal employing a collect and remit agent must preserve its rights to trust benefits against such agent by filing appropriate notices with the agent.

(e) *Prompt payment and eligibility for trust benefits.*

* * * * *

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (a)(1) of this section.

* * * * *

(f) *Filing notice of intent to preserve trust benefits.* (1) Notice of intent to preserve benefits under the trust must be in writing, must include the statement that it is a notice of intent to preserve trust benefits and must include information which establishes for each shipment:

(i) The names and addresses of the trust beneficiary, seller-supplier, commission merchant, or agent and the debtor, as applicable,

(ii) The date of the transaction, commodity, invoice price, and terms of payment (if appropriate),

(iii) The date of receipt of notice that a payment instrument has been dishonored (if appropriate), and

(iv) The amount past due and unpaid.

(2) Timely filing of a notice of intent to preserve benefits under the trust will be considered to have been made if written notice is given to the debtor within 30 calendar days:

(i) After expiration of the time prescribed by which payment must be made pursuant to regulation,

(ii) After expiration of such other time by which payment must be made as the parties have expressly agreed to in writing before entering into the transaction, but not longer than the time prescribed in paragraph (e)(2) of this section, or

(iii) After the time the supplier, seller or agent has received notice that a payment instrument promptly presented for payment has been dishonored. Failures to pay within the time periods set forth in paragraphs (f)(2)(i) and (ii) of this section constitute defaults.

(3) Licensees may chose an alternate method of preserving trust benefits from the requirements described in paragraphs (f)(1) and (2) of this section. Licensees may use their invoice or other billing statement to preserve trust benefits. The alternative method requires that the licensee's invoice or other billing statement, given to the debtor, contain:

(i) The statement: "The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."; and

(ii) The terms of payment if they differ from prompt payment set out in section 46.2(z) and (aa) of this part, and the parties have expressly agreed to such terms in writing before the affected transactions occur.

* * * * *

11. A new § 46.49 is added to read as follows:

§ 46.49 Written notifications and complaints

(a) The term *written notification*, as used in section 6(b) of the Act, means:

(1) any written statement reporting or complaining of a PACA violation(s) filed by any officer or agency of any State or Territory having jurisdiction over licensees or persons subject to license, or any other interested person who has knowledge of or information regarding a possible violation, other than an employee of an agency of USDA administering this Act or a person filing a complaint under Section 6(c);

(2) any written notice of intent to preserve the benefits of the trust established under section 5 of this Act; or

(3) any official certificate(s) of the United States Government or States or Territories of the United States.

(b) Any written notification may be filed by delivering it to any office of USDA or any official thereof responsible for administering the Act. A written notification which is so filed, or any expansion of an investigation resulting from any indication of additional further violations of the Act found as a consequence of an investigation based on written notification or complaint, shall also be deemed to constitute a complaint under section 13(a) of this Act.

(c) Upon becoming aware of a complaint under Section 6(a) or 6(b) of this Act, the Secretary will determine if reasonable grounds exist for an investigation of such complaint for disciplinary action. If the investigation substantiates the existence of violations, a formal disciplinary complaint may be filed by the Secretary as described under Section 6(c)(2) of the Act.

(d) Whenever an investigation, initiated as a result of a written notification or complaint under Section 6(b) of the Act, is commenced, or expanded to include new violations, notice shall be given by the Secretary to the subject of the investigation within thirty (30) days of the commencement or expansion of the investigation. Within one hundred and eighty (180) days after giving initial notice, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under Section 6(c)(2) of this Act, terminate the investigation, or continue or expand the investigation. Thereafter, the subject of the investigation may request in writing, no more frequently than every ninety (90) days, a status report from the Chief of the PACA Branch who shall respond thereto within fourteen (14) days of receiving the request. When an investigation is terminated, the Secretary shall, within fourteen (14) days, notify the subject of the investigation of the termination. In every case in which notice or response is required under this subsection such notice or response shall be accomplished by personal service or by posting the notice or response by certified mail to the last known address of the subject of the investigation.

Dated: September 4, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–23020 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–02–P

Food and Consumer Service

7 CFR Parts 271 and 275

[Amdt No. 373]

RIN 0584–AB38

Food Stamp Program: 1995 Quality Control Technical Amendments

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Consumer Service is proposing technical changes to the Food Stamp Program's Quality Control System which will reduce the workload on State agencies and improve the efficiency of the quality control system.

DATES: Comments must be received by November 12, 1996, in order to be assured of consideration.

ADDRESSES: Please address all comments to John H. Knaus, Branch Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at Room 904, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: John H. Knaus, at the above address, or by telephone at (703) 305–2472.

SUPPLEMENTARY INFORMATION:

Executive Order 12866.

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. It has been determined that the following cost-benefits would result from adoption of the provisions of this rule:

1. State agency sample size. The provision reducing the minimum sample size for active and negative case reviews will benefit those State agencies who will be required to review fewer cases. These are States choosing the "smaller range" in their sample plans with current minimum active or negative case sample sizes above the minimum sample size. In Fiscal Year 1992, before the waiver was available, States reviewed nearly 52,000 active and over 30,000 negative cases. Assuming a 15 percent reduction in cases, under this provision, States will be required to review nearly 8,000 fewer active cases and about 4,500 fewer negative cases. Assuming that each active case review costs $180 and each negative case review costs $40 (taken from studies of active and negative case reviews and adjusted to account for wage inflation), total potential savings for States and FCS combined is an estimated $1.6 million. Savings for States are estimated at $800,000.

2. Home visits. It is estimated that minimal savings in quality control expenditures will result from this provision as it is expected that State agencies will channel the resources into other aspects of quality control operations.

3. Error dollar tolerance level. The provision to modify the tolerance level from $5.00 to $10.00 for excluding small errors will benefit those State agencies which qualify for enhanced funding. Based on Fiscal Year 1995 data, State agencies would qualify for an additional $562,811.

The Department has examined the impact on potential State agency liability calculations from the combined effect of changing the error dollar tolerance level and the case completion standard. Data from two fiscal years has been analyzed to determine how these changes would effect liability amounts. The data shows that in one year the potential liability would have been higher, and in another year it would have been lower. In both situations the amount of the change was under one million dollars.

It is not anticipated that any other provisions of this rule will have any significant impact on the costs or benefits to either the State agencies or FCS.

Executive Order 12372.

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control liabilities) or Part 283 (for rules related to quality control liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program.

Paperwork Reduction Act

Agency Information Collection Activities: Proposed Collection; Comment Request; FCS–380, Integrated Quality Control Review Worksheet

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposal to extend approval for information collection used on form FCS–380, the Integrated Quality Control Review Worksheet. The provisions of this rule do not impact on the approved information collection burden.

Written comments must be submitted on or before November 12, 1996.

Send comments and requests for copies of this information collection to: John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, U.S. Department of Agriculture, Room 904, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For further information contact: John H. Knaus, (703) 305–2474.

Title: Integrated Quality Control Review Worksheet.

OMB Number: 0584–0074.

Form Number: FCS–380.

Expiration Date: 03/31/97.

Type of Request: Extension of a currently approved information collection.

Abstract: Quality Control monitors and reduces the rate of error in determining basic eligibility and benefit levels for the Food Stamp Program. The form FCS–380 serves as the source document from which other reports are compiled by State officials to be sent to the federal office in Washington, DC.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 61,840.

Estimated Time per Response: 9 Hours.

Estimated Total Annual Burden: 558,019 Hours.

Background

Since 1988, the Food and Consumer Service ("FCS") has published a number of proposed and final rules, all of which implemented changes in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011, *et seq.*, (the "Act"). These changes, required by the Hunger Prevention Act of 1988, Pub. L. 100–435 (the "HPA") and/or the Mickey Leland Childhood Hunger Relief Act of 1993, Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (the "Leland Act") affected the way FCS calculates liabilities and enhanced funding, and the way State agencies may appeal those liabilities.

During this time, certain operational issues have arisen in quality control ("QC"). This action proposes to resolve these issues. FCS' intentions are to reduce the workload on both the State agencies and on itself and to arrive at final review findings, error rates, liabilities, and enhanced funding amounts more efficiently. The proposed changes would: (1) Clarify the process for conducting a quality control review of negative cases and add suspended cases, which are cases that are certified for the Food Stamp Program ("Program") but do not receive benefits, to the sample universe of negative cases; (2) permit State agencies to reduce their sample sizes; (3) clarify the minimum size of the Federal subsample; (4) clarify State sampling procedures; (5) change the formulas for calculating Federal subsample sizes; (6) increase the current tolerance level for excluding small errors; (7) modify the current requirement that requires that most quality control interviews be conducted in the recipient's home; (8) adjust the standard for the completion of quality control reviews from the current standard of 100 percent to a 98 percent completion requirement; and (9) clarify the circumstances under which the Federal findings of subsampled reviews will be changed.

Negative Case Reviews

This action proposes to clarify issues surrounding the review of negative cases and to expand the universe of cases to be reviewed. These proposals are the culmination of an FCS look at the quality control review process for negative cases, including an examination of that process in response to Congress' request contained in the HPA, 7 U.S.C. 2025(d). As a result of that request, FCS entered into a research contract with Abt Associates to develop and pilot test alternative approaches to measuring the extent of nonpayments to eligible households. In addition, prior to the study conducted by Abt Associates, the General Accounting Office (GAO) was asked by the Chairman, Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, House Committee on Agriculture, to review the accuracy of State reported error rates for improper denials and terminations. As a result of its review, GAO made three recommendations: (1) That FCS annually review a sample of each State's quality control reviews of denials or terminations and adjust States' reported denial or termination error rates accordingly; (2) that FCS examine alternatives to encourage States

to reduce improper denial or termination error rates, including seeking authority to hold States financially liable for their improper denials or terminations; (3) that FCS monitor States' quality control review practices to ensure that the appropriate cases are reviewed and the required number of reviews are completed on time. Based on the results of the study, FCS determined to strengthen monitoring of the negative action review process, renew emphasis on corrective action to reduce improper negative actions, and hold States accountable within existing statutory and regulatory authorities.

With this background information in mind, FCS determined that certain changes to the regulations governing negative case reviews are warranted.

1. Federal Monitoring of State Agency Error Rates for Negative Case Reviews

FCS is proposing to clarify the requirements and procedures for Federal monitoring of the negative case reviews conducted by State agencies. Currently under regulations at 7 CFR 275.3(c) FCS is required to validate a State agency's negative case error rate only when the State agency's payment and underissuance rate appear to entitle it to enhanced funding and its reported negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year.

The regulation at 7 CFR 275.3(c) only provides the minimum level at which case review and validation are required. In practice, as circumstances warranted, review activity has been expanded. For example, review activities were expanded in response to the GAO audit. In addition, regional offices periodically review the quality of State agencies' negative case review processes. Unlike the results of the validation reviews, the results of these periodic reviews are not used to determine eligibility for enhanced funding, but rather to ensure the accuracy of States' procedures in conducting reviews. FCS is proposing changes to clarify that FCS retains its authority to conduct these periodic reviews, independent of the minimum validation activity required by regulation. The proposal is to require validation when both: (1) A State agency's reported negative case error rate is below or within two percentage points above the national weighted mean negative case error rate for the prior fiscal year; and (2) its payment error rate appears to entitle it to enhanced funding. It is anticipated that this increased validation activity will have a minimal impact on a State agency's workload. It will increase the number of cases reviewed by some FCS Regional offices. The proposed regulation clarifies that FCS may review a portion or all of a State agency's cases as FCS deems appropriate.

2. Inclusion of Suspended Cases in the Negative Sample Universe

The quality control system has two sampling universes: the active case universe and the negative case universe. The universe for active cases includes households which have been certified eligible for food stamp benefits and which have received benefits for the sample month. The negative case universe includes households whose applications for food stamp benefits were denied or whose certification for participation in the Program has been terminated.

In certain cases, State agencies are allowed or required to suspend a food stamp household instead of denying its application or terminating its participation in the Program. Suspended households are certified for the Program, but do not receive any benefits. Households under monthly reporting systems may be suspended for one month rather than terminated if they become temporarily ineligible due to a periodic increase in recurring income, such as receipt of a fifth weekly paycheck during a month (7 CFR 273.21(n)(1)). Non-categorically eligible households of three or more persons which are eligible but entitled to zero benefits because of excess income may be certified and suspended rather than denied, and categorically eligible households who are entitled to zero benefits due to excess income must be suspended, since they cannot be denied under the provisions of the Act 7 U.S.C. 2014(a) and regulations (7 CFR 273.10(e)(2)(iii)(B); 7 CFR 273.2(j)(2)(vii)(F); 7 CFR 273.2(j)(4)(iii)(C)).

Under current regulations, suspended cases are excluded from both the active and negative case universes of the Program quality control system. FCS believes that these cases should be reviewed because of the potential for underissuances, and that it is more logical to review these cases with denied and terminated cases (negative cases) rather than with cases that received benefits (active cases). With this rule, FCS is proposing to include suspended cases in the negative case universe.

3. Use of the Action Date To Determine the Month in Which Negative Cases Are Included in the Sample Universe; Clarification of Meaning of "Break in Participation" for Suspended and Terminated Cases

In order to have an accurate measure of the correctness of negative actions, consistency in application of quality control procedures is necessary. FCS is concerned that problems State agencies have experienced in constructing the sample frame for negative cases may have resulted in failure to include certain cases in the negative sample universe. For example, in some cases when a household is denied and subsequently reapplies and is certified, the initial denial or denials have not been considered to be subject to review as negative actions. FCS is also concerned that there be consistency in the procedures used to determine whether an action to suspend or terminate a household has actually resulted in a suspension or termination.

Current regulations include a negative case in the sample universe for the month for which the denial or termination is effective. The regulations exclude from the negative universe any negative actions which were taken against a household which did not result in the household actually being denied or terminated. Sampling problems occur if States cannot sample the months for which the action is effective. This occurs because the actions themselves may occur after, during, or before the month for which the action is effective. FCS proposes to allow State agencies to sample the action date rather than the effective date to make sampling easier.

As a result of our review of these issues, FCS is proposing to revise the regulations to include denied, suspended, and terminated cases in the negative case universe in the month in which the action to deny, suspend, or terminate food stamp benefits was taken, and clarify that an action to terminate or suspend a household has actually resulted in a suspension or termination if the household experiences a break in participation in the program as a result of deliberate State agency action. The intent of these changes is to allow State agencies to construct consistent and reliable sampling plans for negative actions, and to ensure that negative actions which have the result of denying benefits to clients are subject to review, even if the actions are subsequently reversed, unless the reversal occurs under specified conditions and within specified timeframes.

FCS will allow State agencies to specify in their sampling plans the date on which the negative action would be considered to have taken place, and which would be considered the review date. Depending on the characteristics of individual State systems, this could be the date on which the eligibility worker makes the decision to suspend, deny, or terminate the case, the date on which the decision is entered into the data processing system, the date of the notice to the client, or the date the negative action becomes effective. A State may choose to use different dates as the date of the action for denials and suspensions/terminations. For example, it may choose to sample denials based on the date of the eligibility worker's decision, but sample suspensions and terminations based on the date the action goes into effect, to avoid sampling cases which are not subject to review because the negative action was never implemented. FCS' concern is not with the particular date which the State agency considers to be the action date, but rather the identification of a specific date associated with each negative action which can be applied consistently across all negative cases of a given type, and which will allow the State agency to ensure that all negative actions which are subject to review are included in the negative sample frame. Thus, if the State agency elects to use a date other than the decision date to construct its sample frame for negative cases, it is possible that the review date for these cases may fall outside the sample month. Negative cases shall not be dropped from the sample frame because the review date falls outside the sample month.

4. FCS Will Not Establish a Dollar Loss Rate for Negative Cases

One aspect of negative case reviews that was of interest to Congress was the establishment of a dollar loss rate. During its study, Abt Associates looked at the possibility of developing a reliable dollar loss figure. In its recommendations, Abt stated a partial measure of loss could be determined by the frequency and amount of benefits restored to improperly denied or terminated households. While FCS recognizes the possibility of establishing a partial measure, it does not believe that an effort to obtain such limited information is warranted in light of the increased workload and reporting burdens that would fall to the State agencies. In addition, FCS does not believe that the use of restored benefit information translates directly to a dollar loss figure for these cases. We have not proposed the establishment of a dollar loss rate in this rulemaking.

State Agency Minimum Sample Sizes for Active and Negative Case Reviews

FCS now requires each State agency to choose one of two ranges for calculating its minimum sample size for active case reviews. One is a range of 300 to 2400 reviews per year. The other, the "smaller range", is a range of 300 to 1200 reviews per year. The exact size of each State agency's minimum sample size for each range is determined by formulas that base sample size on the size of State Program caseloads (7 CFR 275.11(b)(1)).

If a State agency wants to choose the "smaller range" it must include in its sampling plan a statement that it "will not use the size of the sample chosen as a basis for challenging the resulting error rates" (currently at 7 CFR 275.11(a)(2)(iv)). If a State agency does not include that statement in its sampling plan, it must calculate its minimum sample size for active case reviews using the 300 to 2400 review range.

The regulations now offer State agencies only one range for determining minimum sample size for negative case reviews. That is a range of 150 to 800 reviews (7 CFR 275.11(b)(2)).

There are no maximum sample sizes; a State agency may select and review any number of cases above its minimum.

FCS has granted waivers of the regulations on minimum sample sizes for active case reviews, in order to improve the efficiency of the quality control system without significantly affecting the reliability of quality control information. In order to make these temporary reductions permanent and to determine the appropriate conditions for these reductions, FCS is proposing to include the terms of these waivers in the Food Stamp Program regulations. FCS is also proposing to offer State agencies a choice of ranges to use in determining minimum sample sizes for negative case reviews that is similar to the choice of ranges for determining minimum sample sizes for active case reviews.

FCS is proposing to reduce the size of the "smaller range" for minimum sample sizes for active case reviews. The proposed range would be 300 to 1020 reviews, a 15 percent reduction at the top from the current range.

In order to use the minimum sample size calculated from the 300 to 1020 case range, a State agency would still have to include in its sampling plan the statement from current 7 CFR 275.11(a)(2)(iv) quoted above. The purpose of the statement, as described in the February 17, 1984 preamble to the rule that established the requirement for the statement, was to serve as "a means of assuring that State agencies consider what degree of reliability they need." (49 FR 6295).

There would be no other conditions on a State agency's use of the revised "smaller range". It would be up to the State agency to determine the most effective use of available resources.

FCS is not proposing to reduce the lower bound of the minimum sample size ranges for active case reviews. For those State agencies whose sample size is at the lower bound of the ranges, a reduction in sample size would mean a reduction in reliability of quality control information which would be unacceptable to FCS.

FCS is likewise also proposing the creation of a "smaller range" for minimum sample sizes for negative case reviews. The "smaller range", representing a 15 percent reduction at the top from current requirements, would be 150 to 680 reviews per year. The current required range of 150 to 800 reviews per year would be retained as the larger range for minimum sample sizes for negative case reviews.

If a State agency chose to use the "smaller range" to calculate its minimum sample size for negative case reviews, it would be required to include in its sampling plan the statement in proposed new § 275.11(a)(2)(iv) that it "will not use the size of the sample chosen as a basis for challenging the resulting error rates." If a State agency did not include that statement, it would be required to calculate its minimum sample size for negative case reviews according to the larger range. As with active case reviews, the ranges would define minimum sample sizes; State agencies could always select more.

FCS is not proposing to reduce the lower bound of the minimum sample size ranges for negative case reviews. For those State agencies whose sample size is at the lower bound of the ranges, a reduction in sample size would mean a reduction in reliability of quality control information which would be unacceptable to FCS.

Federal Sample Sizes

On November 27, 1991, FCS published a final rule entitled "Miscellaneous Quality Control Provisions of the Hunger Prevention Act of 1988" (56 FR 60045). This rule permits FCS to select and to review samples smaller than those indicated by the tables if the State agency fails to complete its required sample.

FCS is proposing to change the headings to the tables which set out the

formulas for calculation of the Federal subsample size. These tables appear at 7 CFR 275.3(c)(1)(i) and 7 CFR 275.2(c)(3)(i) in current regulations; they appear in paragraphs 275.3(c)(1)(i)(A) and (B) and 275.3(c)(3)(i) in the proposed rule. The phrase "Federal subsample target" would appear, rather than the current phrase "Federal annual sample size". This change *would not permit* FCS to select and to review a smaller subsample for any reason other than a State agency's failure to complete the minimum number of reviews in its required sample size.

State Sampling Procedures

FCS is proposing four sets of technical clarifications to the sampling regulations so that the regulations will match the way State agencies design and implement their sampling plans.

1. Selection of One-Twelfth of the Sample Each Month

Current regulations require State agencies to explain the basis of each month's sample if it is "other than one twelfth of the active and negative sample sizes." Some State agencies have expressed concern that the regulations require that the agency select *exactly* one-twelfth of its sample in each month. This was never FCS' intent. It is inevitable that caseloads will fluctuate, and that the number of sampled households will rise and fall slightly each month. FCS' concern is not with these variations, but rather with the accuracy and integrity of the error rate estimate generated from the quality control samples. FCS has reviewed this provision in conjunction with the other regulatory provisions governing State sampling plans, and has determined that provisions requiring that sampling procedures conform to the standard principles of probability sampling and that state samples produce estimates with an acceptable, mandated level of reliability are sufficient to ensure that deviations, minor or otherwise, from equal monthly sample sizes will not jeopardize the validity nor the precision of those error rate estimates. Therefore, in § 275.11, FCS proposes to delete paragraph (a)(2)(iii) and renumber paragraph (a)(2)(iv) as (a)(2)(iii). We are also making technical corrections to regulatory references appearing in § 275.11(b)(1)(ii) and (b)(1)(iii). Each of these paragraphs currently contains an erroneous reference to § 275.11(a)(2)(viii), which should be to current § 275.11(a)(2)(iv). Since paragraph § 275.11(a)(2)(iv) will now be renumbered, the reference will be corrected to refer to (a)(2)(iii).

2. Sampling Plans Must Conform to Accepted Statistical Theory

FCS is proposing to amend the regulations at 7 CFR 275.11(a)(3) to require that all sample designs conform to commonly acceptable statistical theory and application.

3. Basis for Final Sample Size

A State agency must calculate its required sample sizes at least twice for each review period. The first calculation occurs before the review period begins, when the State agency *anticipates* what its average monthly caseload will be. The second calculation occurs after the review period ends, when the State agency *knows* exactly what its average monthly caseload was. FCS is proposing to delete the word "anticipated" from paragraph 275.11(b)(1)(iv) and current (b)(2)(ii) (revised (b)(2)(iv)), to clarify that the final sample size depends upon the State agency's actual average monthly caseload.

Current regulations at 7 CFR 275.11(b)(3) provide that FCS will not penalize a State agency if its caseload increases by less than 20 percent from the estimated caseload number that the State agency used to determine the size of its sample. FCS is proposing to clarify that this estimated caseload number is the one *initially* used to determine the sample size. Sample sizes will be found to be adequate if at least the minimum required sample size for the estimated caseload is chosen, and the actual caseload is no larger than 120% of the estimated caseload.

4. Number of Households Subject to Review is the Basis for the Sample Size

Currently, the tables that describe the State agency's required sample sizes use the phrase "average monthly active households" and "average monthly negative households". However, the actual practice is to use the "average monthly reviewable caseload" as the basis for calculating minimum sample sizes for both active and negative case reviews. Therefore, FCS is proposing to clarify the wording in the headings in the tables in proposed 7 CFR 275.3(c)(1)(i) (A) and (B), and in current 7 CFR 275.3 (c)(3)(i), 7 CFR 275.11 (b)(1)(ii) and (iii), and proposed 7 CFR 275.11 (b)(2) (i) and (ii). Please see FNS Handbook 311, section 3121.

Federal Subsample Size Formulas

For both active and negative case reviews, FCS reviews a subsample of the State agency's completed reviews. The minimum Federal subsample sizes are determined by formulas that are based on the number of reviews that a State agency has completed. For example, if a State agency completed 1000 active case reviews, FCS would select a minimum subsample of 344 active case reviews. The range of the minimum subsample size for active case reviews is 150 to 400. The range of the minimum subsample size for negative case reviews is 75 to 160.

Because FCS is proposing a change in the number of cases that a State agency is required to complete, use of the current formulas for calculating subsample sizes would result in a decrease in the size of the minimum Federal subsample for a State agency that chooses the "smaller ranges" which FCS has proposed. However, FCS does not intend to reduce the size of the Federal subsample. Without a regulatory change, the formula for determining FCS' minimum subsample sizes would not accurately indicate the number of reviews that FCS would actually select for the subsample.

So that the public is aware of FCS' actual minimum subsample sizes, FCS is proposing revised formulas for the minimum active and negative Federal subsamples. These proposed formulas, when applied to the new proposed "smaller ranges" for State samples, would yield the current ranges for the Federal subsample. Under FCS' proposal, Federal reviewers could still select and review more cases than the minimum subsample.

Error Dollar Tolerance Level

Current regulations at 7 CFR 275.12(f)(2), first published August 3, 1979 (44 FR 45887) provide that only overissuances or underissuances to eligible households in an amount greater than $5.00 shall be coded and reported in completing the quality control review of a sampled case. In the proposed regulations published April 10, 1979 (44 FR 21517) the Department cited as one of the primary reasons for the proposed $5.00 tolerance the intention to "obviate the need to expend funds to correct minor variations between the reviewer's and the eligibility worker's allotment figures." Since its inception 15 years ago the $5.00 tolerance figure has not been adjusted to take into account either increases in the Thrifty Food Plan, upon which food stamp allotments are based, or inflation in general. The Department has determined that because of the inflation to food stamp allotments which has occurred over the past 15 years an adjustment must be made to the tolerance level figure, in order to insure that minor variations between the reviewer's and eligibility worker's allotment figures continue to be

excluded from the error determination process.

The Department proposes to raise the $5.00 tolerance level to $10.00, in order to compensate for the inflation which has occurred since the $5.00 tolerance was first established. Only those overissuances to eligible households, or underissuances to eligible households which exceeded the $10.00 tolerance figure would be reported and coded in the completion of quality control reviews. Based on an analysis of Fiscal Year 1993 quality control case review figures, an increase of the tolerance level to $10.00 would have the overall effect of decreasing the quality control National Average Payment Error Rate by .17 percent, and an increase in total liability amounts of $650,000. The slight increase in total liability amounts is due to the fact that liability figures are based, in part, on the percentage that an individual State agency's Payment Error Rate exceeds the National Average Payment Error Rate.

Home Visit Requirement

Current regulations at 7 CFR 275.12(c)(1), first published August 3, 1979, (44 FR 45895) specify that a face-to-face, personal interview, between the quality control reviewer and a responsible member of the household under review, is a required component of all active quality control reviews conducted. The regulations specify that most of these personal interviews shall take place in the participant's home, what is commonly referred to as a "home visit". The Department believes that the need for the personal interview to take place in the participant's home is no longer as great as it was when these provisions were first implemented. This is due, in part, to the greater variety of information sources, including computer data bases, which have been developed over the years to aid the reviewer in verifying the circumstances of the food stamp household under quality control review.

The Department is proposing to amend the requirement for personal interviews to simply require a face-to-face personal interview. It is expected that the personal interview would take place at an appropriate State agency certification office, in the participant's home, or at a mutually agreed upon alternative location. The State agency would determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at 7 CFR 273.2(e)(2). These regulations provide that an office interview shall be waived under certain hardship conditions (for example, if all household members are disabled or elderly). Under such hardship conditions the quality control reviewer would conduct the personal interview either with an authorized representative (if one has been appointed by the household) or conduct the personal interview in the participant's home.

Conducting Quality Control Reviews Against Federal Regulations

Current regulations at 7 CFR 275.3(c) for Federal validation reviews, published February 4, 1987 (52 FR 3402) and 7 CFR 275.10(a) for quality control reviews conducted by the State agencies, published February 17, 1984, (49 FR 6294) specify that all active and negative quality control reviews shall be conducted by "reviewing against the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers to deviate from specific regulatory provisions." This provision was made because the Department no longer had authority to require approval of State agency manuals prior to their use. It was the intent of the Department to eliminate the use of the State agency manuals in the quality control review process. In the preamble to the February 17, 1984, final rulemaking it is stated that although the Department no longer had the authority to require approval of manuals prior to their use, the rule did not prohibit their use for quality control review purposes. The Department expected that most State agencies would continue to use their manuals as the basis for quality control reviews. Commenters pointed out that this would result in Federal quality control reviewers finding errors in manuals before State agencies were otherwise notified of them, and that these errors would affect the regressed error rates. The commenters objected to this use of quality control reviews and requested that State agencies be given time to correct manuals before an error is counted. These comments were not adopted because the Department believed that if State agencies were not liable for certification errors resulting from manual materials from the date those materials were in effect, there would have been less of an incentive to implement regulations on time and in conformance with the regulations.

The Department believes that changes over the years in other areas of the regulations, including the provisions at 7 CFR 275.12(d)(2)(vii) published November 23, 1990, (55 FR 48831) which provide a variance exclusion for the timely implementation of new regulations, provide the incentive to the State agencies to implement regulatory changes in a timely manner. Therefore, the Department is considering amending regulations in order to provide a variance exclusion for any erroneous payments which result from the State agency having followed State agency policies or directives, provided that these policies or directives were provided to FCS prior to implementation and FCS had not notified the State agency that these policies were contrary to Federal law or regulations. This would not encompass situations where a State agency might knowingly violate Federal law or regulations. This variance exclusion could include changes in the computer programming of any State agency automated certification system. Providing a variance exclusion in this area, whether cited by State agency or Federal quality control reviewers, would have the effect of holding the State agency harmless from any errors resulting from inaccurate instructions appearing in State manuals. At the same time, maintaining the current practice of conducting quality control reviews against the Food Stamp Act and regulations would assist the State agencies and FCS in identifying, for corrective action, any erroneous instructions contained in State agency manuals, policies, or directives.

The Department wishes to solicit comments from all interested parties on the appropriateness and potential consequences such a variance exclusion would have on the administration of the Program.

Quality Control Review Case Completion Standard

Current regulations at 7 CFR 275.23(e)(7)(iii), first published February 17, 1984 (49 FR 6292) provide that an adjustment be made to a State agency's regressed error rates any time that the State agency fails to complete 100 percent of its required sample size by assigning two standard errors of the estimated error rates added to the regressed error rates, to those cases not completed. (This was "two standard deviations" in prior regulations and has been changed to use the correct terminology for the adjustment that is done. Standard deviation refers to the true error rate, while the standard error refers to the estimate of the error rate.) Prior to the publication of the February 17, 1984 rule the completion standard had been 95 percent. It was the belief of the Department that the 100 percent completion standard was the only standard which would minimize any bias which incomplete cases could cause. In addition, because of changes which reduced the types of cases which would be considered incomplete, it was

believed that many State agencies would complete such a high percentage of their minimum sample size that the impact from the 100 percent completion standard would be minimal. However, experience has shown that there remain categories of cases which State agencies are unable to complete despite all efforts to do so on the part of the quality control reviewers. These cases include those in which the household under review refuses to cooperate with the quality control reviewer despite repeated attempts on the part of the State agency, including disqualification of the household from the Food Stamp Program, to gain the household's cooperation. An additional category is cases in which the reviewer is unable to verify the actual circumstances of the household for the time period under review, despite repeated attempts to do so.

The Department proposes to amend the current requirement that a State agency complete 100 percent of its minimum required sample size. The new standard for State agency completion will be 98 percent of its minimum required sample size. In the event that a State agency fails to complete 98 percent of its minimum required sample size, error rates would be adjusted using the current regulatory formula which is based on a 100 percent completion requirement.

Changing Federal Case Findings and Disposition

In active reviews, a *finding* is the determination of the accuracy of the State agency's authorized allotment for the household for the sample month. If the allotment was erroneous, the finding includes the amount of the error. In negative reviews, a *finding* is the determination of the validity of the State agency's decision to deny or terminate participation in the Food Stamp Program. For both active and negative reviews the *disposition* is the determination of whether the circumstances of the review meet the standards to be considered completed, not completed, or not subject to review.

Current regulations, FNS Handbook 315, and current administrative practices describe the following as a typical (although not mandatory) way to handle a subsampled case that the Federal reviewer has completed. (1) FCS informs the State agency of the Federal findings and disposition for the case. This is done within seven days of the completion of the Federal review. (2) The State agency requests arbitration if it disagrees with some aspect of the FCS findings or disposition of the review. Under current regulations the State agency has 28 days to request arbitration. (3) During the same 28 day period the State agency may request that FCS reconsider the Federal findings or disposition in the case. (4) If FCS changes the Federal findings or disposition during the 28 day period because of the reconsideration, the new Federal findings/disposition are transmitted to the State agency, and a new 28 day period to request arbitration is provided for.

There are circumstances under which FCS will currently change Federal findings/disposition after the 28 day deadline for requesting arbitration. Generally the reason for any changes are to arrive at correct Federal findings.

The Department is proposing to codify into regulations the policies and practices which dictate when, and under what circumstances, FCS will change the Federal findings or disposition for a specific case. The Department has two goals in this proposal. First, the Department wishes to clarify the circumstances under which FCS will change Federal findings/disposition in order to promote clear, consistent application of its policies. The second goal in proposing these changes is to ensure the accurate determination of the error rates for all State agencies. The proposed changes are as follows:

1. Informal Resolution

FCS *would* change the Federal findings or disposition if, as a result of the informal resolution process, both the State agency and FCS agreed on a new finding or disposition. The informal resolution process should begin in the period prior to the 28 day deadline which a State agency has for requesting arbitration. The informal resolution process may also take place after the 28 day deadline, but prior to any formal decision by an arbitrator, provided that the State agency has timely requested arbitration of the case. It should be noted that the 28 day timeframe specified in this proposal is based on current regulations which provide State agencies with 28 days to request arbitration. Program changes mandated by the Leland Act regarding the timeframes for completing all review work and resolving all differences in review findings may require a modification of the timeframes for State agencies to request arbitration. If such a modification of the timeframes for requesting arbitration is made, it will be necessary in the final rule to adjust the timeframes for informal resolution.

2. Ruling by an Arbitrator

FCS *would* change the Federal findings or disposition whenever an arbitrator's decision requires that a change be made.

3. Implementation of a Regulation, Law, or Waiver

Whenever a change in Federal findings or dispositions is the only way to implement a change in regulations, an amendment to the Food Stamp Act, or retroactive provisions to a waiver, FCS *would* make the change.

4. Correct any Application of Incorrect Written Policy

Current regulations at 7 CFR 275.12(d)(2)(viii) exclude "any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies." The regulations go on to describe written policy as that in regulations, notices, handbooks, category three and four policy memoranda, and regional policy memoranda. The exclusion of these variances is required by section 16(c)(3)(B) of the Food Stamp Act (7 U.S.C. 2025).

The Department *would* change a Federal finding/disposition whenever it became aware that a variance which had been cited was the result of correct State application of an incorrect written policy provided by a Departmental employee authorized to issue FSP policy. It is likely that the State agency and FCS will not become aware of the problem until well after the State agency's deadline for requesting arbitration. This is because almost all parties involved, State agency quality control and certification policy staff, as well as FCS's regional office staff, will think that the written policy that they are following is correct. Therefore, in order to ensure that the State agency is not harmed by the Department's incorrect policy, the Department is proposing that the variance exclusion at 7 CFR 275.12(d)(2)(viii) may be made in the Federal findings at any time that the problem is discovered.

FCS would not make a change based upon new factual information. The Department is taking this position for three reasons. First, it is the responsibility of the State agency to obtain all necessary information at the time the State quality control reviewer conducts the review. Even if the Federal reviewer obtains conflicting information, the State reviewer has two more opportunities to resolve

conflicting information- when the State agency requests regional arbitration, and again if the dispute moves to national arbitration.

Second, if the household's circumstances were not reasonably certain at the time of the State agency's review, the case should have been disposed of as not completed. It does not seem likely that reasonably verified information would be contradicted at a later time.

Third, the Department recognizes the need for final closure at some point in the resolution process. Section 13951 of the Leland Act specifies that "no later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed." The Department believes that without providing some limits on the resolution process this mandated deadline cannot be achieved.

5. Conflict in a Federal Finding/ Disposition

If, for any reason, the Federal findings or disposition in the Integrated Quality Control System's (IQCS) data base conflicted with the finding letter which had been transmitted to the State agency, FCS *would* ensure the IQCS data base was correct. If the IQCS coding was incorrect, it *would* be corrected. If the finding letter was incorrect, it *would* be corrected. Either way, FCS *would* transmit a new finding letter to the State agency explaining what had occurred. There would be a new finding letter because the State agency would be entitled to know that a change in official error rates would be taking place.

If, in any of the five circumstances which have been specified, FCS were to make changes to the findings and dispositions of a case these changes would be made regardless of the effect on the amount of error in the case. A State agency would be notified of the change and entitled to arbitration of the new Federal findings or disposition, with one exception. If FCS changed the Federal findings or disposition to comply with the decision of a national arbitrator, the State agency would have no further right to arbitration. This is because the national arbitrator's decisions are final, with two exceptions. The first would be to implement a change in law or regulations. The other would be if FCS learned that it had not properly implemented the decision of the arbitrator.

Miscellaneous Technical Correction

FCS is taking advantage of the publication of this proposed rule to eliminate redundant regulatory language at 7 CFR 275.12(g)(2). Six of the 10 subparagraphs in this paragraph, which lists active cases which are eliminated from the sample universe during the review process, also appear at 7 CFR 275.11(f)(1). Therefore, FCS is proposing to (1) revise paragraph 275.12(g)(2) to reference § 275.11(f); (2) remove subparagraphs 275.12(g)(2) (i) through (iv), (vi) and (viii), and (3) renumber the remaining subparagraphs in 275.12(g)(2). These revisions parallel the proposed revisions to § 275.13(e), which lists negative cases which are eliminated from the sample universe during the review process. In addition, FCS is taking advantage of the publication of this proposed rule to eliminate obsolete regulatory language at 7 CFR 275.23(e)(5)(i). Section 13951(c)(4) of the Leland Act provides that Administrative Law Judges, in considering a State agency's appeal of quality control liability consider all grounds for denying the claim, including the contention of a State agency that the claim should be waived, in whole or in part, for good cause. This provision was included in a final rulemaking published July 6, 1994 (59 FR 34553), and supersedes the regulatory language contained in 7 CFR 275.23(e)(5)(i) dealing with good cause requests and the timing of the issuance of billings. The Department is also proposing to move, without change, the regulatory language in 7 CFR 275.23(e)(5)(i) dealing with the methods of claim collection employed by FCS to 7 CFR 275.23(e)(8). With the removal of the language dealing with billings from 7 CFR 275.23(e)(5)(i), paragraph (e)(8) becomes the proper location for the provisions regarding the methods of bill collection to be employed by FCS.

Implementation

FCS proposes all provisions would be effective with the 1998 fiscal year, which begins with the October, 1997 sample month.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

For the reasons set out in the preamble, parts 271 and 275 of Chapter II of Title 7 Code of Federal Regulations are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for Part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 271.2, the definitions of "Error", "Negative case", "Negative case error rate", "Quality control review", and "Review date" are revised to read as follows:

§ 271.2 Definitions.

* * * * *

Error for active cases results when a determination is made by a quality control reviewer that a household which received food coupons during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an "error" means that the reviewer determines that the decision to deny, suspend, or terminate a household was incorrect.

* * * * *

Negative case means a household whose application for food stamp benefits was denied or whose food stamp benefits were suspended or terminated by an action in the sample month.

Negative case error rate means an estimate of the proportion of denied, suspended, or terminated cases where the household was incorrectly denied, suspended, or terminated. This estimate will be expressed as a percentage of completed negative quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FCS as having certification rules that are significantly different from standard requirements.

* * * * *

Quality control review means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

* * * * *

Review date for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day the household was certified, whichever is later. The "review date" for negative cases is the date of the agency's decision to deny, suspend, or terminate program benefits. For no case is the "review

date" the day the quality control review is conducted.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

4. In § 275.3:

a. the introductory text of paragraph (c) is amended by revising the third sentence and adding a new sentence between the third and fourth sentences;

b. paragraph (c)(1)(i) introductory text is revised, and the table following the introductory text is removed;

c. paragraphs (c)(1)(i)(A), (c)(1)(i)(B), and (c)(1)(i)(C) are redesignated as paragraphs (c)(1)(i)(C), (c)(1)(i)(D), and (c)(1)(i)(E), respectively, and new paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) are added;

d. newly redesignated paragraph (c)(1)(i)(C) is amended by removing the words "n is the" and adding in their place the words "n' is the";

e. paragraph (c)(3)(i) introductory text is revised, and the table following the introductory text is revised;

f. paragraph (c)(3)(i)(A), introductory text, is amended by removing the words "n is the" and adding in their place the words "n' is the";

g. paragraph (c)(3)(ii) is amended by adding the word ", suspend," between the words "deny" and "or";

h. a new paragraph (c)(6) is added.

The revisions and additions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * * FCS must validate the State agency's negative case error rate, as described in § 275.23(d), when the State agency's payment error rate for an annual review period appears to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2) of this chapter, and its reported negative case error rate for that period is less than two percentage points above the national weighted mean negative case error rate for the prior fiscal year. However, this requirement will not preclude the federal review of any negative case for other reasons as determined appropriate by FCS. * * *

(1) *Payment error rate.* * * *

(i) FCS will select a subsample of a State agency's completed active cases, as follows:

(A) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(ii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')
31,489 and over	n'=400.
10,001 to 31,488	n'=.011634 N+33.66.
10,000 and under	n'=150.

(B) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(iii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n')
60,000 and over	n'=400.
10,001 to 59,999	n'=.005 N+100.
10,000 and under	n'=150.

* * * * *

(3) *Negative case error rate.* * * *

FCS will select a subsample of a State agency's completed negative cases, as follows:

Average monthly reviewable negative caseload (N)	Federal subsample target (n')
5,000 and over	n'=160.
501 to 4,999	n'=.0188 N+65.7.
Under 500	n'=75.

* * * * *

(6) *Changing Federal Findings.* Once FCS has notified a State agency of a Federal finding, FCS shall change that Federal finding only according to the following procedures:

(i) FCS shall change a Federal finding only if:

(A) FCS informally resolves with a State agency the differences between the State agency and Federal findings, and both parties agree on a single Federal finding. The informal resolution process should begin prior to the deadline for the State agency to request arbitration of a case, and may continue after the arbitration deadline, provided that arbitration of the case has been timely requested by the State agency; or

(B) An arbitrator's decision necessitates a change; or

(C) A change is the only way to implement a regulation or an amendment to the Food Stamp Act; or

(D) The change is solely attributable to the variance exclusion for incorrect written policy, as described at § 275.12(d)(2)(viii).

(ii) FCS shall notify the State agency that the Federal finding has changed.

(iii) The State agency shall be entitled to arbitration in accordance with paragraph (c)(4) of this section. However, if FCS changed the Federal finding or disposition based on a national arbitrator's decision, the State agency shall not be entitled to further arbitration.

(iv) If FCS enters a Federal finding into the data base at the National Computer Center but notifies the State agency of a different Federal finding for the same case, FCS shall ensure the IQCS data base contains the correct finding, notify the State agency of the discrepancy in the IQCS data base and the finding letter, and inform the State agency that it is entitled to arbitration in accordance with paragraph (c)(4) of this section.

* * * * *

§ 275.10 [Amended]

5. In § 275.10(a):

a. the second sentence is amended by adding the word ", suspended," between the words "denied" and "or";

b. the fifth sentence is amended by adding the word ", suspend," between the words "deny" and "or".

6. In § 275.11:

a. paragraph (a)(2)(iii) is removed, paragraph (a)(2)(iv) is redesignated as (a)(2)(iii) and a new paragraph (a)(2)(iv) is added;

b. paragraph (a)(3) is revised;

c. in paragraph (b)(1)(ii), the table is revised, and the text is amended by removing the reference to "(a)(2)(viii)" and adding in its place the reference to "(a)(2)(iii)";

d. in paragraph (b)(1)(iii), the table is revised, and the text is amended by removing the reference to "(a)(2)(viii)" and adding in its place the reference to "(a)(2)(iii)";

e. in paragraph (b)(1)(iv) the third sentence is amended by removing the word "anticipated";

f. paragraph (b)(2) is revised;

g. paragraph (b)(3) is revised;

h. the last sentence in paragraph (c)(1) is amended by adding the word ", suspension," between the words "denial" and "or";

i. paragraph (e)(2) is revised;

j. the introductory text of paragraph (f)(2) is revised;

k. paragraph (f)(2)(iv) is revised and paragraphs (f)(2)(v) through (f)(2)(ix) are added.

The additions and revisions read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* * * *

(2) *Criteria.* * * *

(iv) If the State agency has chosen a negative sample size as specified in paragraph (b)(2)(ii) of this section, include a statement that, whether or not the sample size is increased to reflect an

increase in negative actions as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FCS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation. Whatever the design, it must conform to commonly acceptable statistical theory and application (see paragraph (b)(4) of this section).

* * * * *

(b) *Sample size.* * * *

(1) *Active cases.* * * *

(ii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=2400.
10,000 to 59,999	n=300+[0.042 (N–10,000)].
Under 10,000	n=300.

(iii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=1020.
12,942 to 59,999	n=300+[0.0153(N–12,941)].
Under 12,942	n=300.

* * * * *

(2) *Negative cases.*

(i) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(2)(ii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(iv) of this section, the minimum number of negative cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=800.
500 to 4,999	n=150+[0.144 (N–500)].
Under 500	n=150.

(ii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(iv) of this section may determine the minimum number of negative cases to be selected and reviewed during each annual review period as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=680.
684 to 4,999	n=150+[0.1224 (N–683)].
Under 684	n=150.

(iii) In the above formulas, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(iv) In the above formulas, N is the average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. FCS shall not penalize a State agency that does not adjust its sample size if the actual caseload during a review period is less than 20 percent larger than the estimated caseload initially used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

* * * * *

(e) *Sample frame.* * * *

(2) *Negative cases.* The frame for negative cases shall list:

(i) all households whose applications for food stamps benefits were denied by an action in the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month, each action shall be listed separately in the sample frame; and

(ii) all households whose food stamp benefits were suspended or terminated by an action in the sample month except those excluded from the universe in paragraph (f)(2) of this section.

* * * * *

(f) *Sample universe.* * * *

(2) *Negative cases.* The universe for negative cases shall include all households whose applications for food stamps were denied or whose food stamp benefits were suspended or terminated by an action in the sample month except for the following:

* * * * *

(iv) A household which is under active investigation for Intentional Program Violation;

(v) A household which was denied, but subsequently certified within the normal 30 day processing standard, using the same application form;

(vi) A household which was suspended or terminated but the suspension or termination did not result in a break in participation that is the result of deliberate State agency action. There would be no break in participation if the household is authorized to receive its full allotment in the month for which the suspension or termination was effective other than continuation of benefits pending a fair hearing. Pro rated benefits are not considered to be a full allotment;

(vii) A household which has been sent a notice of pending status but which was not actually denied participation;

(viii) A household which was terminated for failure to file a complete monthly report by the extended filing date, but reinstated when it subsequently filed the complete report before the end of the issuance month.

(ix) Other households excluded from the negative case universe during the review process as identified in § 275.13(e).

* * * * *

7. In § 275.12:

a. paragraph (c)(1) introductory text is revised;

b. the first sentence of paragraph (f)(2) is amended by removing the reference to "$5.00" and adding in its place a reference to "$10.00";

c. paragraph (g)(2) introductory text is revised.

The revisions and additions read as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation.* * * *

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to conducting the personal interview, the reviewer shall notify the household that it has been selected, as part of an

ongoing review process, for review by quality control, and that a personal face-to-face interview will be conducted in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. The personal interview may take place at an appropriate State agency certification office, at the participant's home, or at a mutually agreed upon alternative location. The State agency shall determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at 7 CFR 273.2(e)(2). These regulations provide that an office interview shall be waived under certain hardship conditions. Under such hardship conditions the quality control reviewer shall either conduct the personal interview with the participant's authorized representative, if one has been appointed by the household, or with the participant in the participant's home. Except in Alaska, when an exception to the field investigation is made in accordance with this section, the interview with the participant may not be conducted by phone. During the personal interview with the participant, the reviewer shall:

* * * * *

(g) *Disposition of case reviews.* * * *

(2) *Cases not subject to review.* Active cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in 275.11(f)(1), these shall include:

* * * * *

8. In § 275.13:

a. paragraph (a) is revised;

b. the first sentence of paragraph (b) is revised;

c. the third sentence of paragraph (b) is amended to add the word ", suspension," between the words "denial" and "or";

d. the first sentence of paragraph (c)(1) is amended by adding the word ", suspended," between the words "denied" and "or";

e. the second sentence of paragraph (c)(1) is amended by adding the word ", suspend," between the words "deny" and "or";

f. the first sentence of paragraph (c)(2) is amended by adding the word ", suspended," between the words "denied" and "or";

g. paragraph (e)(1) is amended by adding a heading to the paragraph;

h. paragraph (e)(2) is revised;

i. the first sentence of paragraph (f) is amended by adding the words "suspended or" between the words "been" and "terminated".

The addition and revisions read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of households whose applications for food stamps benefits were denied or whose food stamp benefits were suspended or terminated by an action in the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. For negative cases, the review date shall be the date of the agency's decision to deny, suspend, or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct or whether the denial, suspension, or termination is correct for any other reason documented in the casefile. * * *

* * * * *

(e) *Disposition of case review.* * * *

(1) *Cases reported as not complete.*

* * *

(2) *Cases not subject to review.* Negative cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(2), these shall include:

(i) A household which was dropped as a result of a correction for oversampling;

(ii) A household which was listed incorrectly in the negative frame.

* * * * *

9. In § 275.23:

a. paragraph (c)(4) is amended by adding the word ", suspension," between the words "denial" and "or";

b. paragraph (e)(5)(i) is amended by removing everything but the first sentence;

c. the introductory text of paragraph (e)(7)(iii) is amended by removing the word "all" and adding in its place the words "98 percent".

d. paragraph (e)(8) is revised.

The revision reads as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(8) *FCS Timeframes.* FCS shall notify State agencies of their payment error rates and payment error rate liabilities, if any, within nine months following the end of each fiscal year reporting period to which they pertain. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include arbitration cases, requests for good cause waivers, and administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FCS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability. FCS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FCS and FCS determines that, as a result, it is unable to calculate a State's payment error rate and payment error rate liability within the prescribed timeframe.

* * * * *

Dated: August 28, 1996.

Ellen Haas,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 96–22883 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 322

[INS No. 1712–95]

RIN 1115–AE07

Children Born Outside the United States; Application for Certificate of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service (the Service) is proposing to amend its regulations relating to the naturalization of children born to or adopted by United States citizens abroad. This rulemaking is necessary to incorporate changes to the citizenship transmission requirements

under section 322 of the Immigration and Nationality Act.

DATES: Written comments must be submitted on or before November 12, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1712–95 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Jane Barker or Pearl B. Chang, Senior Adjudications Officers, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Prior to October 25, 1994, a child born outside the United States to a United States citizen parent was not eligible for naturalization unless the child was residing permanently in the United States pursuant to a lawful admission, and was in the physical and legal custody of a United States citizen parent, who had fulfilled the residence and physical presence requirements necessary to transmit citizenship. As a result, a child could not become a United States citizen if his or her parents resided abroad or failed to meet the physical presence requirements.

Congress, through the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Public Law 103–416, October 25, 1994, section 102, established new criteria for expeditious naturalization of children born abroad. The revised conditions of eligibility are as follows:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization;

(2) The child is physically present in the United States pursuant to a lawful admission;

(3) The child is under the age of 18 years and in the legal custody of the citizen parent;

(4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1) of the Act;

(5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years, then:

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent resident, or

(B) A citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

If these requirements are met, then the child is eligible for expedited naturalization. An eligible child shall be considered a United States citizen upon approval of the application and administration of the oath of allegiance, unless the oath is waived in accordance with section 337(a) of the Act.

On July 7, 1995, and December 22, 1995, the Service issued wires to all field offices providing instructions for processing applications under section 322 filed by a United States citizen for a child born outside the United States. The Service also provided instructions for issuance of Certificates of Citizenship to children who qualified for expedited naturalization under this section.

For expedited naturalization, a United States citizen parent, not a citizen grandparent, must file Form N–600, Application for Certificate of Citizenship, or, in the case of an adopted child, Form N–643, Application for Certificate of Citizenship for an Adopted Child. A separate application is required for each child. The application must be filed with the required fee, currently $100 for Form N–600 and $80 for Form N–643, as specified in 8 CFR 103.7(b)(1) and accompanied by a Form N–600/N–643 Supplement A, Physical Presence of Grandparent. The application should be completed in accordance with the instructions and accompanied by the initial evidence described on the forms. For applications based on a United States citizen grandparent's physical presence in the United States, the grandparent may be living or deceased when the application is filed.

If the applicant and child reside outside the United States, the applicant should include a request with the N–600 form noting preferred interview dates. The applicant should allow sufficient time to enable the Service office to preliminarily adjudicate the application, schedule the interview, and send the appointment notice to the foreign address. A stateside interview will be scheduled and the applicant will be instructed in the procedures to apply for a visitor's visa, unless eligible under the Visa Waiver Pilot Program. In keeping with congressional intent, field offices will make every effort to expedite the interview process.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule establishes procedures for United States citizen parents to apply for the expeditious naturalization of their children born outside the United States. The affected parties are not small entities, and the impact of the regulation is not an economic one.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers. The information collection requirement (Form N–600/N–643 Supplement A, Physical Presence of Grandparent) contained in this rule is being developed by the Immigration and Naturalization Service. In accordance with the Paperwork Reduction Act, the Service will publish a notice in the Federal Register notifying the public of the new information collection (Form NN–600/N–643 Supplement A).

List of Subjects in 8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

Accordingly, part 322 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; APPLICATION FOR CERTIFICATE OF CITIZENSHIP REQUIREMENTS

1. The title of part 322 is revised as set forth above.

2. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1433, 1443, 1448.

3. Section 322.2 is amended by removing paragraph (c) and revising paragraph (a) to read as follows:

§ 322.2 Eligibility.

(a) *General.* To be eligible for naturalization under section 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

(1) Comply with the requirements as provided in section 322 of the Act;

(2) Be readopted in the United States, in the case of an adopted child, if the foreign adoption was not full and final, or if the unmarried parent or United States citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings; readoption requirements may be waived if the state of the United States citizen parent(s) residence does not allow readoption and recognizes the foreign adoption as full and final under that state's adoption laws;

(3) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; a child under the age of 14 will generally be presumed to satisfy this requirement; and

(4) Comply with all other requirements for naturalization as provided in the Act and in part 316 of this chapter, including the disqualifications contained in sections 313, 314, 315, and 318 of the Act, except:

(i) The child is not required to satisfy the residence requirements under 8 CFR 316.2(a)(3), (a)(4), (a)(5), or (a)(6); and

(ii) The child is exempt from the literacy and knowledge requirements under section 312 of the Act.

* * * * *

4. Section 322.3 is revised to read as follows:

§ 322.3 Jurisdiction for filing application.

The Forms N–600 and N–643, applications for naturalization under section 322(a) of the Act, must be filed with the appropriate office of the Service as provided in the instructions on the application.

5. Section 322.4 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 322.4 Application and examination on the application.

(a) An application for naturalization under this section on behalf of a child shall be submitted on Form N–600 by the citizen parent or, in the case of an adoptive citizen parent, Form N–643. The application must be filed with the filing fee required in § 103.7(b)(1), Form N–600/N–643 Supplement A, Physical Presence of Grandparent, Form FD–258, Fingerprint Chart (for children over the age of 14), and the initial evidence required by the instructions on the forms.

(b) An application for naturalization under this section in behalf of a child should be handled expeditiously by the Service and, in the case of an application filed from abroad, a stateside interview shall be scheduled after a preliminary adjudication of the application has been made.

(c) The child and the citizen parent must both appear at the stateside interview.

* * * * *

Dated: July 1, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–23033 Filed 9–9–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

RIN 2105–AB78

[Docket No. OST–95–950, Notice No. 96–23]

Passenger Manifest Information

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight segments to or from the United States. U.S. carriers would collect the information from all passengers and foreign air carriers would collect the information for U.S. citizens and lawful permanent residents of the United States. The information would include the passenger's full name and passport number and issuing country code, if a passport is required for travel. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of emergency. Airlines would be required to make a record of passengers who decline to provide an emergency contact. The information would be provided to the Department of Transportation and the Department of State in case of an aviation disaster. The Department proposes to allow each airline to develop its own collection system, a description of which would be filed with the Department. Alternatively, the rule would provide that DOT may waive compliance with certain requirements of the part if an air carrier or foreign carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad.

DATES: Comments must be received November 12, 1996.

ADDRESSES: Comments on this notice of proposed rulemaking should be filed with: Docket Clerk, U.S. Department of Transportation, Room PL–401, Docket No. OST–95–950, 400 7th Street, SW, Washington, DC 20590. Five copies are requested, but not required.

FOR FURTHER INFORMATION CONTACT: Dennis Marvich, Office of International Transportation and Trade, DOT, (202) 366–4398; or, for legal questions, Joanne Petrie, Office of the General Counsel, DOT, (202) 366–9306.

SUPPLEMENTARY INFORMATION:

Background

During the immediate aftermath of the tragic bombing of Pan American Flight 103 over Lockerbie, Scotland on December 21, 1988, the Department of State experienced difficulties in securing complete and accurate passenger manifest information and in notifying the families of the Pan American 103 victims. The Department of State did not receive the information for "more than seven hours after the tragedy" (Report of the President's Commission on Aviation Security and Terrorism, p. 100). When the Department of State did acquire the passenger manifest information from Pan American, in accordance with current airline practice, it included only

the passengers' surnames and first initials, which was insufficient information to permit notification of the victims' families in a timely manner.

Statutory Requirements

In response to the Report of the President's Commission on Aviation Security and Terrorism, Congress and the Administration acted swiftly to amend Section 410 of the Federal Aviation Act (now 49 USC 44909). PL 101–604, which was signed by President Bush on November 16, 1990, mandates that,

> the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State (1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or (2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification.

The statute requires that the passenger manifest information include the full name of each passenger, the passport number of each passenger, if a passport is required for travel, and the name and telephone number of an emergency contact for each passenger. The statute further notes that the Secretary of Transportation shall consider the necessity and feasibility of requiring United States carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to the passenger manifest requirements. Finally, the statute provides that the Secretary of Transportation shall consider a requirement for foreign air carriers comparable to that imposed on U.S. air carriers. The statute provided 120 days after the date of enactment for the Secretary of Transportation to require all United States air carriers to provide the passenger manifest information to the Department of State.

The ANPRM

In order to implement the statutory requirements, the Department of Transportation published an advance notice of proposed rulemaking (ANPRM) on January 31, 1991 (56 FR 3810). The ANPRM requested comments on how best to implement the statutory requirements. Among possible approaches, the ANPRM noted that the Department might require airlines to collect the data at the time of reservation and maintain it in computer reservations systems. Alternatively, the ANPRM noted that the Department might require each airline to develop its own data collection system, which would be approved by the Department. The ANPRM posed a series of questions concerning privacy concerns, current practices in the industry and potential impacts on day-to-day operations.

Comments to the ANPRM

Twenty-six comments were filed in response to the ANPRM. Commenters included the Air Transport Association (ATA), the National Air Carrier Association (NACA), the Regional Airline Association (RAA), Alaska Airlines, American Trans Air, the American Society of Travel Agents (ASTA), the "Victims of Pan Am Flight 103", the Asociacion Internacional de Transporte Aereo Latinoamericano (AITAL), a combined comment (filed by Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association), Aerocancun, Air-India, British Airways, Japan Airlines, Lineas Aereas Paraguayas, Nigeria Airways, Royal Air Maroc, Swissair, the Embassy of Switzerland, the Embassy of the Philippines, the United States Department of State (Assistant Secretary for Consular Affairs), the U.S. Department of the Treasury (U.S. Customs Service), the Commissioner of Customs, the United States Government Interagency Border Inspection System (IBIS), System One Corporation, and two individuals, Ms. Edwina M. Caldwell and Ms. Kathleen R. Flynn. In addition, the views of Meetings and Incentives in Latin America, an Illinois travel and tour company, are included in the docket because of a communication to a Department official after the ANPRM was issued.

The U.S. carriers shared similar concerns. They argued that the requirements should be imposed equally upon U.S. and foreign airlines in order to maintain a "level playing field." To the extent collecting the information causes passenger delays, it will degrade the service of U.S. airlines and result in loss of business to foreign competitors. Second, they argued that the information collection requirements must be designed to minimize additional passenger processing time. Those with automated reservations systems recognized that additional passenger processing time would be minimized if passenger manifest information is given at the time a reservation is booked. ATA, for example, stated that it believed that airlines cannot effectively collect this information at airport check-in because to do so would require at least an extra 60 seconds per passenger. Thus, if 200 people on a given flight arrived at the airport without previously having given passenger manifest information, such a requirement could prolong processing by 3.3 person-hours.

ATA stated that to implement a passenger manifest information requirement, airlines would need to augment personnel, reservation systems, equipment and counter space. The last requirement, augmenting counter space, is not possible at all airports, and is especially difficult at foreign airports. In addition, ATA noted that intercarrier information exchange procedures would have to be developed. ATA stated that it is currently working on these procedures and asked that they not be addressed by regulation. Further, ATA noted that the passenger manifest requirement would mean that computer reservation systems, carrier reservation and customer service/check-in, and travel agency personnel would need training in new procedures. Finally, it stated that it was unrealistic to expect airlines to produce a complete manifest within one to three hours.

ATA also noted that three-quarters of international journeys are booked through travel agents and stated that any rule issued by the Department should assign travel agents responsibility for collecting manifest information from the passengers who book through them. It believed that some passengers will refuse to provide emergency contact information and airlines, therefore, should only be required to solicit the information rather than collect it. It stated that the Department of State should treat the information as confidential and that the information in the manifest should only be provided to family members. ATA vigorously defended the airlines' historic role in having primary responsibility for informing victims' families and argued that nothing should be done to usurp that role.

ATA also provided detailed comments on specific issues raised in the ANPRM. It stated that the definition of an aviation disaster was both too narrow and too broad. It suggested that although carriers should be responsible for obtaining the manifest information, they should not be responsible for verifying its accuracy, and that if a passenger declines to provide an emergency contact, the passenger should not be refused transportation. It noted that charter and tour operators, air taxi operators and commuter airlines should also be required to collect information to the extent they are providing foreign air transportation. ATA further argued that the information should be required only for U.S. citizens based on the legislative history of the

law and the need to minimize burdens on the carriers. ATA expressed concern that the provision of manifest information by foreign air carriers and foreign travel agents to U.S. air carriers could become a very serious issue for U.S. air carrier operations at foreign locations. If the information were not provided in advance, carriers would have to collect it at check-in, which would seriously degrade the competitiveness of U.S. carriers. It urged the U.S. Government to negotiate with foreign governments assurances that such information would be provided by foreign air carriers and foreign travel agents. ATA also argued that, to the extent that foreign law prohibits collection of this information, carriers should not be required to collect it. ATA believed that the information collection requirement should be applicable to all international flight segments (including flights between two foreign points), except for flights between the U.S. and Canada, Mexico, or the Caribbean. It argued that an exemption for these latter flights is justified because of the proximity of these nations, the lack of a passport requirement for travel to and from them, the communities of interest between the countries, and the great volume of transborder and Caribbean traffic.

Finally, ATA argued that in order to ameliorate delays, the State Department should purchase, and distribute to carriers, automated passport readers. It argued that any rule should be compatible with the Advance Passenger Information System (APIS) program and that the Department of State should create and maintain a data base of the statutorily-required information.

The Regional Airline Association, whose members carry approximately 1.5 million passengers internationally per year, was concerned about the potential costs associated with its members' inclusion in a rule. It favored a system whereby carriers could adopt whatever data collection system would work best. It questioned whether requiring travel agents to collect the information would be practical. It believed that foreign air carriers should be subject to the rule to alleviate any possible competitive impact.

The comments of the National Air Carrier Association focused on modifications to computer reservation system software. It proposed that inclusion of passenger contact, passport number, etc. be a mandatory element required to exit from a computerized passenger reservation record. Second, it suggested that the "passenger name list manifest" should automatically access this information from the passenger name record in case of an emergency. NACA also stated that the information should be obtained on a "best efforts" basis, and that the U.S. carriers should not be legally responsible for collecting or verifying the information. It believed this caveat to be important particularly for travel to countries not requiring passports and travel to countries where applicable foreign law prohibits collection of personal information. NACA further argued that tour operators should collect the data for charter flights. Finally, it suggested that the data be collected by both U.S. and foreign carriers for all passengers, regardless of citizenship.

American Trans Air argued that the information collection request should be applicable to all passengers traveling internationally, and that if a passenger refused to provide the required information, the carrier should have the option of refusing transportation or requiring the passenger to sign a waiver. It noted concern over the high cost of the rule relative to the benefit to U.S. carriers, and the potential competitive impacts if foreign carriers were not required to collect the information. In an attached letter, American Trans Air indicated that for the 13 percent of its business for which it processed its own reservations (American Trans Air is primarily engaged in charter operations), it would not be that difficult a task to maintain passenger manifest information in its reservations system, although additional computer storage space would be required. It was concerned, however, about the potential impacts of any regulation on its other operations in which it does not directly handle reservations. These operations include wholesale charters, wetleases/subservice, military passengers, and incentive passenger charters.

Alaska Airlines was concerned that the rule might be applied to domestic flights that traverse foreign or international airspace enroute. It noted many practical difficulties in determining which flights might be covered and the need to restructure domestic travel in order to collect this information. Finally, like ATA, it argued that the rules should only apply to international flights that require a passport.

The foreign air carriers were unanimous in their opposition to having the rule apply to them. Most noted the legislative history of P.L 101–604 and the specific language in the statute directing the Secretary to consider, not mandate, application to foreign air carriers. Most discussed the principle of comity and argued that application of the rule to foreign carriers, foreign citizens and flights between two foreign points would be inappropriate and contrary to international law. Several of the foreign carriers (Japan Airlines, Royal Air Maroc, and Swissair) stated that collection of the information would violate the law of their home country or at least be restricted under foreign law. Others focused on practical difficulties relating to lack of automation (which would mean that passenger manifest information could only be collected at check-in), limited telecommunication facilities, language barriers, and the excessive cost and administrative burden that would result.

Japan Airlines also believed that its passengers would be reluctant to provide personal information that might be turned over to the U.S. Department of State, and which might be available to a range of other persons. It noted that travel agents would likely not wish information revealing the names of their clients placed in a computer reservation system accessible to their competitors. Royal Air Maroc was concerned that collection of the information would generally be by telephone conversations between their reservations staff or travel agents and individual passengers, and would be prone to error. Royal Air Maroc asserted that this would impose an unacceptable burden because the carrier would be forced to verify the information at check-in.

The Embassy of Switzerland stated that if the regulation were extended to foreign air carriers, it would be contrary to Article 23 of the Convention on International Civil Aviation and to Chapter 2 of Annex 9 of the Convention. It further stated that Swiss law makes unlawful, and subjects to criminal sanctions, the performance in Switzerland of an act for a foreign state which by its nature is an act performed by a public authority or a public officer. It stated that this law would apply to any data collection performed in Switzerland by Swissair pursuant to a Department of Transportation requirement under consideration in this rulemaking. The comments of Swissair reiterated these concerns and went on to argue that comity dictates that the regulation not be applied to foreign air carriers. To the extent that the Department is exploring foreign air carrier application, Swissair believed such consideration should take place within the context of bilateral negotiations or through the International Civil Aviation Organization.

British Airways objected to the application of passenger manifest requirements to foreign carriers, and argued that they were unnecessary to achieve the objective of ensuring that a

foreign carrier is able to identify all affected passengers in the event of an aviation disaster. It stated that it would even more strongly object to the extent that passenger manifest requirements were applied to foreign flight segments operated by foreign carriers.

British Airways believed that passenger manifest requirements would result in immense administrative and operational burdens and would increase passenger delay and inconvenience at already overtaxed international airports. While it recognized that, under optimal circumstances, the passenger manifest information would be provided at the time the reservation is made, it said that, in practice, some or all of the required information would need to be obtained during check-in, thereby significantly increasing the required check-in time for flights to and from the United States. It estimated the increased check-in time needed to collect passenger manifest information for its flights to and from the United States to be a minimum of 40 seconds per passenger. Using scenarios of one-half of all passengers and all passengers arriving at check-in without having provided passenger manifest information, British Airways calculated that this would translate into 2 to 4 hours of additional check-in processing time for a 360 seat airplane.

British Airways also believed that passenger manifest requirements, such as those set out in the ANPRM, would impose excessive and unnecessary financial costs. It estimated its minimum costs for any passenger manifest requirement to be: (1) Onetime costs of about $100,000 for reprogramming of its Departure Control System; (2) onetime costs of about $1 million for changes to its computer reservations system; and (3) annual charges of (conservatively) about $500,000 for additional reservations and check-in staff in the United States and the United Kingdom.

The joint comment representing eighteen foreign carriers (Air Canada, Air Jamaica, Balair, Condor Flugdienst GmbH, and the Orient Airlines Association, which includes, Air New Zealand, Air Niugini, All Nippon Airways, Cathay Pacific Airways, China Airlines, Garuda Indonesia, Japan Airlines, Korean Air, Malaysia Airlines, Philippine Airlines, Qantas Airways, Royal Brunei Airlines, Singapore Airlines, and Thai Airways International) objected to application of the rule to foreign air carriers and made three main arguments. First, the joint commenters argued that application to foreign carriers would not result in competitive balance, but instead would tip the scales further in favor of U.S. carriers because foreign carriers are excluded from the U.S. cabotage market. Second, the joint commenters argued that unilateral regulation of foreign carriers by the Department would conflict with the intent of other provisions of P.L. 101–604 that committed the United States to pursue its aviation security objectives through accepted multilateral and bilateral channels. In addition, they argued that unilateral regulation of foreign air carriers conflicts with the Chicago Convention and with the principles of comity and reciprocity. Finally, the joint commenters perceived little or no relationship between the collection of the specified passenger information and enhanced aviation security. They argued that compliance with the regulation would divert airline resources from enhanced aviation security and improvements to facilitate efficient air transportation, and would, at best, only marginally improve the State Department's ability to quickly notify victims' families in the very infrequent event of an air disaster. They argued that compliance would involve significant costs in the areas of automation and additional personnel, equipment, and airport counter space. In addition, they stated that foreign carriers would have higher compliance costs than U.S. airlines because foreign airlines are less automated, and because conforming interline ticketing procedures to accommodate passenger manifest information would be more expensive than conforming computer reservations systems to do the same. They concluded that the excessive costs of foreign carrier compliance are unreasonable.

AITAL, which represents 25 Latin American airlines, noted the heavy workload that might be required by this rule, particularly since many Latin American agencies and airport check-in counters are not automated. In addition, it noted potential difficulties in communicating this information promptly to the State Department in the event of a disaster.

Aerocancun and Lineas Aereas Paraguay questioned whether many, if any, concerned relatives would expect the U.S. State Department to have immediate passenger information in the event of an aviation disaster involving a foreign carrier. Aerocancun, which operates only charter service, also noted that it has little or no contact with passengers prior to their arrival at the departure airport. All of its sales and solicitation activities are performed by travel agents (who are the primary point of contact with the traveling public) and/or tour operators. It stated that, as is customary in the charter market, it is not given a copy of the passenger manifest until 48 hours before flight departure and does not know of last-minute passengers until just prior to departure. Moreover, Aerocancun does not have a computerized reservation system. Both Aerocancun and Lineas Aereas Paraguay stated that the passenger manifest requirements would lead to delays and crowding at international airports.

The Embassy of the Philippines commented that Philippines Airlines was concerned that a passenger manifest requirement would force it to conduct tedious airport check-in procedures. Philippines Airlines also anticipated that gathering of additional information from passengers would require costly modifications to its computerized Departure Control System.

ASTA, which represents approximately 15,000 travel agents, argued that the Department should not require travel agents to collect and report passport numbers and emergency contact information. ASTA suggested that passengers complete a form similar to the Custom Declaration at the time of departure and that the stack of forms should constitute the manifest for a particular flight. If DOT did require travel agents to collect information, it argued that the agent should not be required to refuse to write a ticket if a passenger could not or would not provide the requisite information. It noted that as a practical matter, this information generally would need to be processed through computer reservations systems, which not all agents can access. It suggested that agents who do not have computer reservations systems should be exempt from the rules. Failing that, it argued that these agents should be permitted to satisfy the statute by delivering whatever information is available to the airline by telephone when the booking is made. In all cases, ASTA said that the compilation of an actual "manifest" for each flight must be accomplished by the airlines.

The Customs Service and the Interagency Border Inspection System (which is comprised of the U.S. Customs Service, the Immigration and Naturalization Service and the Departments of State and Agriculture) urged the Department to design the passenger manifest requirements to support the Advance Passenger Information System (APIS). APIS is an existing, voluntary program that allows airlines to transmit the full name, passport number, country of issuance, and date of birth for each passenger

prior to arrival in the U.S. APIS data are used to identify high-risk passengers and to facilitate the processing of low-risk passengers. The facilitation benefits of APIS accrue to passengers, airlines, airport operators, and government agencies. The U.S. Customs Service asked that DOT require the collection of passengers' dates of birth, and said that if this was done, airlines would possess all the necessary data to participate in APIS. The Interagency Border Inspection System (IBIS) suggested using the APIS system to fulfill DOT's passenger manifest requirement and specified a comprehensive list of data elements that should be included. At a minimum, IBIS would like the following information for each passenger: last name, first name, date of birth, nationality, travel document number, issuing country code for travel document, passenger's travel origination point (country code), contact name, and contact telephone number. Some of the agencies involved in IBIS would also like to collect additional passenger information consisting of visa issuing post, date of visa issuance and intended destination (U.S. address or "in transit").

The Assistant Secretary of State for Consular Affairs suggested that the rule cover U.S. citizens flying on U.S. or foreign air carriers. The Assistant Secretary noted that the Department of State has the responsibility to inform the families of U.S. citizens who are victims of aviation disasters regardless of the nationality of the airline. In addition, the Assistant Secretary noted that inclusion of foreign air carriers would satisfy the concerns of certain U.S. carriers that believe that application of such a regulation only to them would imply that U.S. carriers are less safe than foreign carriers. Finally, the Assistant Secretary noted that possible foreign government objections to passenger manifest requirements on the basis of their extraterritorial application would be lessened if the information collection were limited to U.S. citizens on flights to and from the United States.

The group, "Victims of Pan Am Flight 103" proposed a specific method to collect passenger manifest information. It suggested that boarding passes be redesigned to have a detachable stub that could be filled out by passengers and dropped in a box just before boarding a flight. It argued that such a method would require little work for the airlines; would not violate privacy laws in foreign countries; would allow medical personnel to obtain medical histories for survivors; would give an accurate count of passengers so that rescuers would know when to stop searching; and would allow airlines to deliver a correct manifest to the State Department within one hour using a scanner on the stubs.

Meetings and Incentives in Latin America stated that passport numbers should be collected for all passengers, that collection of a work or home telephone number for each passenger should be mandatory, and that the party that makes the first contact with the passengers should be the one responsible for collecting the information.

Of the two individuals who provided comments, Ms. Caldwell, a former travel consultant, suggested that, to the extent possible, the travel agent or airline reservation agent should collect the required information. She suggested that the airport agent should check the record to ensure that the information is in the record. She further suggested that if a passenger refused to provide an emergency contact, the passenger should sign or initial some document prior to boarding. Finally, Ms. Caldwell stated that the rule should apply to all passengers on both U.S. and foreign air carriers for all international flights. Ms. Flynn, the mother of a passenger killed on Pan Am Flight 103, noted the hardships endured by the families and her belief that the traveling public would prefer to have passenger manifest information available in spite of some of the difficulties in implementing P.L. 101–604. She stated her belief that this additional information would deter certain terrorist activities.

System One, a computer reservations system provider, stated that although most of the issues related to the collection of passenger manifest data are airline issues, as a computer reservations systems provider, it would have no problem complying with any proposed regulations requiring data collection. It stated its willingness to participate in any industry effort to automate the transmission and collection of desired passenger data once agreed to by the Department and the airlines. Finally, it stated that automated handling of this type of information would improve compliance and facilitate the participation of U.S. and foreign airlines.

Subsequent DOT Activity

In January 1992, President Bush announced a "Regulatory Moratorium and Review" during which federal agencies were instructed to issue only rules that addressed a pressing health or public safety concern. During the course of the moratorium, the Department asked for comments on its regulatory program. Comments that addressed the passenger manifest information statutory requirement were filed by ATA, Northwest, American, Air Canada, and Japan Airlines. ATA included passenger manifest among ten DOT and FAA regulatory initiatives that, if implemented, would be the most onerous for the airline industry. ATA recommended that if additional passenger manifest information was to be required, it should be limited to the information that is required by the U.S. Custom Service's APIS program. Northwest supported the ATA proposals and said they were part of an industry-wide effort to identify significant regulatory impediments. American Airlines listed the passenger manifest rulemaking in its top five (out of over 100) pending aviation rulemakings that should be eliminated/substantially revised. Air Canada said that if air carriers were required to adopt the APIS standard advocated by ATA, its costs (and those of other foreign air carriers) would be unnecessarily raised. Japan Airlines said that any requirement to collect personal data from air passengers would conflict with the Constitution of Japan, would be costly, and, to the extent that it was anticipated that such data would be shared with the APIS program, should be the subject of prior public discussion.

In the FY 1993 DOT Appropriations Act, Congress provided that none of the FY 1993 appropriation could be used for a passenger manifest requirement that only applies to U.S.-flag carriers. This provision was repeated in subsequent DOT Appropriations. For the current year, section 319 of the DOT FY 1996 Appropriation Act states:

> None of the funds provided in this Act shall be made available for planning and executing a passenger manifest program by the Department of Transportation that only applies to United States flag carriers.

In light of the totality of comments and the fact that aviation disasters occur so rarely, DOT continued to examine whether there was a low-cost way to implement a passenger manifest requirement. In 1995, DOT considered seeking legislative repeal or modification of the statutory requirements. In the November 28, 1995, Unified Agenda of Federal Regulations, the passenger manifest entry stated that DOT "is recommending legislation to repeal the requirement [of passenger manifests] because of the high costs and small benefits that would result."

Cali Crash

On December 20, 1995, American Airlines Flight 965, which was flying from Miami to Cali, Colombia, crashed near Cali. There were significant delays in providing the State Department with a complete passenger manifest. Even when it was provided, the manifest was of limited utility to State because it lacked the passport numbers of the passengers. (The State Department did successfully carry out its other post-crash responsibilities.) Department of Transportation staff met with American Airlines to explore the logistical, practical and legal problems that they encountered in the aftermath of the crash, and ways these problems could be ameliorated in the future. We also met with high level representatives of the State Department to discuss State's needs and concerns on this matter.

Public Meeting

On March 29, 1996, DOT held a public meeting on implementing a passenger manifest requirement. The notice announcing the public meeting (61 FR 10706, March 15, 1996) noted that a long period of time had passed since the 1991 advance notice of proposed rulemaking, and that a public meeting during which stakeholders could exchange views and update knowledge on implementing such a requirement was necessary as a prelude to DOT proposing a passenger manifest information requirement. The notice enumerated ten questions concerning information availability and current notification practices, privacy considerations, similar information requirements, information collection techniques, and costs of collecting passenger manifest information.

The meeting was attended by approximately 80 people. To facilitate discussion, representatives of three family survivor groups (The American Association for Families of KAL 007 Victims, Families of Pan Am 103/ Lockerbie, and Justice for Pan Am 103), the Air Transport Association, the Regional Air Transport Association, the National Air Carrier Association, the International Air Transport Association, the American Society of Travel Agents, U.S. Department of State, U.S. Customs Service, and DOT formed a panel. Members of the audience, who included representatives of foreign governments, were invited to participate in the discussion and did. The discussion lasted nearly 5 hours and covered a wide variety of topics. At the end of the meeting, it was the consensus that one or more working groups headed by the Air Transport Association would be formed to further explore some of the issues raised.

Memorandum of Understanding

ATA convened a first working group that consisted of representatives of two family groups (Families of Pan Am 103/ Lockerbie and American Association for Families of KAL 007 Victims), the National Air Disaster Alliance, the Department of State, and several U.S. airlines, with IATA in attendance. DOT was not a participant in the group. The working group is negotiating a voluntary Memorandum of Understanding (MOU) to be signed by individual airlines and the Department of State. The MOU is expected to set forth a series of procedures to facilitate smooth communication and prompt and accurate notification of family members, including designation of points of contact, information sharing, exchange of liaison officers, specification of duties of liaison officers, cross-training and prompt transmittal of accurate and useful passenger manifest information.

ATA also plans to integrate data issues into the work of this first working group by expanding it. (Alternatively, a second working group on data issues could be convened.) The expanded group is expected to include, in addition to the first working group participants, additional industry representatives and, perhaps, others who have data bases that might provide quick access to information that might help in the notification process.

TWA Flight 800

On July 17, 1996, TWA Flight 800, which was flying from New York to Paris, went down off Long Island, New York. Local government officials publicly commented on difficulties in determining exactly who was on board the flight and in compiling a complete, verified manifest. (TWA caregivers were generally praised for their efforts in the crash aftermath.) Although this was an international flight, the crash occurred in U.S. territorial waters and, therefore, the Department of State had no specific role in family notification and facilitation for U.S. citizens. The Department of State received inquiries from foreign governments regarding the fates of their citizens, however, and DOT also received such inquiries. In general, the TWA Flight 800 accident dramatized the problems related to prompt notification.

The Notice of Proposed Rulemaking

This notice proposes to require that each air carrier and foreign air carrier collect basic information from specified passengers traveling on flight segments to or from the United States ("covered flights"). U.S. carriers would collect the information from all passengers and foreign air carriers would only be required to collect the information for U.S. citizens and lawful permanent residents of the United States. The information would include the passenger's full name and passport number and issuing country code, if a passport is required for travel. Carriers would be required to deny boarding to passengers who do not provide this information. In addition, airlines would be required to solicit the name and telephone number of a person or entity to be contacted in case of an aviation disaster. Airlines would be required to make a record of passengers who decline to provide an emergency contact. Passengers who decline to provide emergency contact information would not, however, be denied boarding. In the event of an aviation disaster, the information would be provided to DOT and the Department of State to be used for notification. DOT proposes to allow each airline to develop its own procedures for soliciting, collecting, maintaining and transmitting the information. The notice requests comment on whether passenger date of birth should be collected, either as additional information or as a substitute for required information (e.g. passport number).

Section-by-Section Analysis

The authority for the rule would primarily be based on P.L. 101–604, which was codified as 49 USC 44909. In addition, the Department has broad authority under Subtitle XII (Transportation) of Title 49 of the U.S. Code ("Transportation Code") for rulemaking, security, information collection and assessment of civil and criminal penalties.

Section 243.1 of the proposed rule notes that the purpose of the part is to ensure that the U.S. Department of Transportation and the U.S. Department of State have prompt and adequate information in case of an aviation disaster on specified international flights. In addition, it notes that the regulation is mandated by 49 USC 44909.

The definition section, Sec. 243.3, incorporates a number of statutory definitions for the reader's convenience and clarifies the use of various important terms used in the substantive requirements of the proposed rule. In response to a number of comments on this issue, the definition of aviation disaster has been tightened to follow more closely the statutory requirements. "Aviation Disaster" would be defined as

1) an occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage, and in which the death, injury or damage was caused by a crash, fire, collision, sabotage, or accident; 2) a missing aircraft; or 3) an act of air piracy. We tentatively conclude the first part of this definition is vital because it relates to an objective occurrence that serves as the basis for determining the timing of the actions subsequently required. We request comments on whether the carrier should have the duty to present the manifest when "any" passenger has boarded the plane, or only when "all" passengers have boarded. The proposed definition would require that carriers have information on each passenger by the time each boards the airplane, rather than waiting until all passengers have boarded. Although ATA objected to this timeframe, it takes into account the possibility of an emergency in which all passengers might not have boarded the aircraft.

The term "U.S. citizen" includes U.S. nationals as defined in 8 USC 1101(a). "Lawful permanent resident" includes those defined in 8 USC 1101(a)(20). In simpler terms, U.S. citizen means a person holding a U.S. passport and a lawful permanent resident is a holder of a so-called "Green Card."

In order to clarify which flight segments are subject to the rule, the NPRM includes a definition for "covered flight." In the NPRM, covered flight means a flight segment operating to or from the United States. It does not include any flight segment in which both the origin and destination point are in the United States, even though some portion of the flight may be over territory not belonging to the United States. The definition also excludes any flight in which both the origin and destination point are outside of the United States. There would be many practical difficulties in getting foreign travel agents to collect this information in foreign countries. Some countries would certainly object to such a proposal on the grounds of extraterritoriality. We tentatively find that the costs and legal questions raised would far outweigh by the marginal benefit and, therefore, are not proposing to extend the rule to these flights. We request comments, however, on whether these flights should be covered.

A number of commenters raised privacy concerns related to providing an emergency contact. In order to encourage passengers to provide the information, the NPRM proposes to allow the emergency contact to be either a person or an entity. The contact need not have any particular relationship to a passenger. We tentatively believe that this flexible approach will meet the needs of the State Department with the least possible intrusion into the private lives of passengers. Passengers that are uncomfortable, for whatever reason, with providing the name of a particular person can provide the name of an entity such as a business or other organization that should be contacted.

The term "passenger" is defined to include any person on board a covered flight with the exception of the flight crew assigned to that flight. In the past, there has been some confusion concerning the number and identity of certain categories of passengers, particularly non-revenue passengers, standbys and infants. The flight crew is excluded from the definition because the carrier knows their identity and has ready access to emergency information. Airline personnel who are on board but not working on that particular flight segment (e.g. "deadheads" and spare crews for onward flight segments) would be considered passengers for the purpose of this rule in order to ensure their accountability. Standby passengers, by definition, board at the last minute, when there is pressure on the airline to move the flight away from the gate. In the past, there have been problems with identifying standby passengers. Similarly, many airlines have not kept records of infants under two years old who are traveling for free on the lap of a passenger. In the case of an aviation disaster, we believe it is important to have a complete manifest, even if this requires a change of current airline practice.

Section 243.5, *Applicability*, states that this part applies to covered flights operated by air carriers and foreign air carriers. Under the Transportation Code, "air carrier" includes any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation. For example, air carriers include air taxis, commuter carriers, and charter operators. Similarly, "foreign air carrier" is defined in the statute to include any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation. In some instances, there may be two or more air carriers or foreign air carriers involved (e.g., a charter operator, which is an indirect air carrier, selling transportation on a flight actually flown by an unaffiliated direct air carrier or a carrier operating under a code share agreement in which the service is held out under the name of one carrier but actually provided by another carrier). In each example, the two entities would have the legal responsibility for meeting the requirements of this part. As a practical matter, we would anticipate that the involved carriers would agree, by contract, which one would collect, maintain and transmit the data. So long as the information is collected, we would not require duplication of effort. The parties to the contract would have to be vigilant, however, because they would be jointly and individually responsible for compliance. A likely scenario is that carriers will delegate some of the responsibility for soliciting and collecting the information to travel agents. The same admonition concerning ultimate responsibility would apply in that case.

In the comments, there was vigorous disagreement as to whether foreign air carriers should be covered by the regulation. The Department proposes to include foreign air carrier flight segments to or from the United States. The State Department's responsibilities in case of an aviation disaster apply to all U.S. citizens regardless of the nationality of the carrier on which the citizen flies. Indeed, since approximately one-half of all U.S. citizens who travel outside the U.S. choose foreign carriers, failure to include foreign airlines would severely hamper the ability of the State Department to carry out its duties under 49 USC 44909. The failure to include foreign air carriers could lead to disparate treatment of U.S. citizen passengers. Finally, the language in the DOT Appropriations Act precludes the Department from adopting a rule applicable only to U.S. carriers.

In order to ameliorate potential costs and other burdens, the Department is proposing to limit the impact of the proposed rule in four important ways. First, foreign air carriers would only be required to collect information on U.S. citizens and lawful permanent residents of the United States. Foreign air carriers would, of course, be free to solicit the information from all its passengers if it chose to do so and was not prohibited by applicable foreign law. Second, the rule would only apply to flight segments to or from the U.S. Third, as discussed below, we are proposing that carriers need not comply with the regulation in places where solicitation or collection of the information would be contrary to applicable foreign law, and carriers (or the foreign government) notify DOT of

that fact. Finally, in order to provide even greater flexibility, we are proposing that DOT may waive compliance with certain requirements of this part if a carrier has in effect a signed Memorandum of Understanding with the State Department.

The heart of the proposal, Sec. 243.7, *Information Collection Requirements,* has two data collection requirements. The first requires U.S. air carriers to collect the full name and passport number and issuing country code for each passenger. U.S. air carriers are being required to collect information for each passenger because the statute speaks in terms of passengers. The two letter passport issuing country code is being required, as an additional element beyond the information specified in the statute, because having it broadens and enhances the usefulness of having passport number alone. In the instance of an aviation disaster that occurs on a U.S. air carrier on a covered flight, collecting passport issuing country, in addition to passport number for non-U.S. citizens and lawful permanent residents, will allow the Department of State to respond more rapidly than has been possible in the past to inquiries from foreign governments regarding their citizens. It will also allow the response to be targeted to the specific government, a desirable alternative to providing several foreign governments each with an entire passenger manifest. Finally, collecting issuing country code would eliminate possible confusion in the aftermath of an aviation disaster that could result from two passengers having the same passport number. It would only require foreign air carriers to collect the full name and passport number for each passenger who is a U.S. citizen or lawful permanent resident of the United States. As collection of a passport number/passport number and issuing country code is not required if the passenger is not required to present his or her passport for travel to or from the foreign point involved, we request comment as to whether U.S. airlines should be required to collect country of citizenship from all passengers on flights when a passport is not required for travel. The second part of the rule would require each air carrier and foreign air carrier to solicit from each covered passenger the name and telephone number of a person or entity that should be contacted in the event of an aviation disaster.

We request comment on whether we should require solicitation of date of birth, either as a voluntary or required data element, and whether this data element could substitute for the passport number/passport number and issuing country code. Passenger first and last name and date of birth, taken together, constitute the minimal passenger information needed for participation in the Advance Passenger Information System (APIS) of the U.S. Custom Service, and U.S. government commenters raised the possibility that, once modified to accommodate passenger emergency contact information, APIS could itself fulfill all requirements of 49 USC 44909. Having the date of birth would allow U.S. Customs to expedite clearance of low risk passengers entering the United States and would facilitate the operations of air carriers, airports and other government agencies. We request comment generally regarding how APIS information can best be used to satisfy, within the bounds of the statute, the information requirements in this proposed rule. For those destinations where passports are not required, collecting the date of birth would aid identification. Finally, in the event of an aviation disaster, knowing the ages of passengers could aid local jurisdictions in their emergency responses.

The carrier's duty is to solicit the information concerning emergency contacts, and maintain it, if it is provided, for 24 hours after completion or cancellation of the flight. To be sure that every passenger is accounted for, the NPRM proposes that each carrier shall maintain a record for each passenger who declines to provide this information. No specific format for the record is proposed in order to give carriers' maximum flexibility.

Although the proposed rule does not specify that the information must be verified by the carrier, we would anticipate using a "reasonable person" standard before bringing enforcement action for information that is inaccurate. We would not envision having carriers check that the emergency contact is an actual person or entity or that the phone number is accurate. The passenger's name should, however, match that on the passport, if the passenger is required to present a passport for travel or the photo identification presented for security for travel where a passport is not required. 49 USC 44909 requires the Secretary of Transportation to consider whether the collection of this information should be a condition for boarding a flight. Because this information is necessary for the Department of State to carry out its responsibilities in notifying the families of victims of aviation disasters overseas, we propose that the collection of the name and passport number/passport number and issuing country code, if required for travel, for each covered passenger be mandatory for boarding the flight.

Another important provision of the proposal concerns the procedures for collecting and maintaining the information. In response to the nearly unanimous comments on this point, the Department is proposing to allow carriers to use any method or procedure to collect, store and transmit the required information, subject to three conditions. First, information on individual passengers shall be collected before each passenger boards the airplane. Some carriers might enlist travel agents in collecting the information, others might use airport check-in, while others might have passengers complete a form prior to boarding. Other, equally acceptable, methods are certainly possible. Proposing a performance-oriented standard rather than mandating exactly how the information should be solicited, collected, maintained, and transmitted should allow for innovation, efficiency, convenience, and cost-consciousness.

Second, the information shall be kept for at least 24 hours after the completion or cancellation of the covered flight in case there is some problem that is not immediately discoverable. A collateral benefit of this approach is that the information would be available for many connecting flights between two foreign points. We request comments, however, on what, if any, time should we require this information to be retained. Carriers would not be required to destroy the information after 24 hours, but could purge their files in their normal course of business. It is our understanding that, as a practical matter, most air carriers would probably keep the information in their computers until passengers completed their itineraries. Information would, therefore, be accessible for some international flight segments between two foreign points on multi-leg journeys to or from the United States. We request comments if our understanding is incorrect.

Third, to the extent that the information is otherwise confidential, the information shall be kept confidential and shall be released only to the U.S. Department of State or U.S. Department of Transportation in the event of an aviation disaster or pursuant to U.S. Department of Transportation oversight of this part. The only exception to this requirement is that the information may be provided for use in the Advance Passenger Information System, and to other U.S. or foreign governmental entities as may be authorized by the Department of

Transportation. We envision that airline employees who have access to passenger records would have access to this information, and that no special handling would be required. Carriers currently have access to potentially sensitive information, such as credit card numbers, special medical needs, and religious dietary restrictions. If the information is collected and maintained in the professional manner we have experienced from airlines in the past, we do not anticipate serious concerns regarding invasion of passenger privacy. We would, however, deal strictly with unauthorized release of this information to any third party, including the press.

The airline involved would be required to inform the U.S. Departments of Transportation and State as soon as it learned of an aviation disaster. Pursuant to the statutory mandate, the regulation proposes that carriers shall transmit a complete and accurate compilation of information to DOT and the Department of State within 1 hour. If it is not technologically feasible or reasonable to fulfill the 1-hour requirement, then the information must be transmitted as expeditiously as possible, but not later than 3 hours after the carrier learns of the disaster. We are aware that some carriers believe that this time frame is ambitious, if not impossible. The statute is very clear on this point, however.

The NPRM would also require each air carrier to file with DOT a statement summarizing how it will transmit and collect the passenger manifest data. The purpose of the requirement is to provide important information to the Departments of Transportation and State for planning and response in case of an aviation disaster. The purpose is, as well, to allow basic DOT oversight of the regulation. Given these purposes, it is envisioned that the summary statements would include a complete description of how the data will be transmitted, which we anticipate could be accommodated in one typewritten page or less, and a very brief description of how the data would be collected, which we anticipate could be accommodated in most cases in one typewritten paragraph. Carriers would be required to file their summary statements on or before the date they begin collection of passenger manifest information. The summary statements should also include a 24-hour contact at the carrier to which a request from the Departments of State or Transportation could be directed. Changes in how the information would be transmitted and collected would also be required to be filed on or before the date those changes were implemented. The responsibility remains with the carrier to ensure that its procedures meet the statutory and regulatory requirements.

The NPRM proposes that carriers not be required to solicit or collect information in countries where such solicitation or collection would violate applicable foreign law. Carriers that can support such a claim are asked to inform the Department on or before the effective date of this rule, or on or before beginning service to the United States. The Department intends to maintain an up-to-date listing of countries where adherence to all or a portion of this part would not be required because of conflict with applicable foreign law. We are hopeful that in the rare instances where this regulation may violate applicable foreign law, the Department, the Department of State, and carriers can work with the jurisdiction involved and agree to other methods to achieve the same results. In some countries, it may be illegal to require passengers to provide the information, but not illegal to simply request it. In such instances, carriers might ask for the information while making clear that it is up to the passenger whether to provide it. We will work with foreign governments to address any concerns.

Section 243.17 makes clear that the Department may exercise its enforcement authority by requesting a carrier to produce a manifest for a specified flight to ascertain the effectiveness of the carrier's system. In addition, it may request further information about collection, storage and transmission procedures at any time. If the Department finds the carrier's system to be deficient, it may order appropriate modifications. Section 243.19 notes that violations of the provisions of this part are subject to civil and/or criminal penalties for each violation as provided by 49 U.S.C. 46301, 46310 and 46316.

Section 243.21 provides that the Department may waive compliance with certain requirements of this part if an air carrier or foreign air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad. Carriers that have signed such a Memorandum and that wish to take advantage of this shall submit two copies of the signed Memorandum to the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation. The carrier will be informed by the Assistant Secretary for Aviation and International Affairs, or his or her designee, of the provisions of this part, if any, that are waived by the Department based on the Memorandum. Such determination will be made in writing to the carrier. It is the Department's expectation that each carrier would still be required to file a summary description of its collection and transmission process and 24-hour contact number as required in § 243.13, and would be subject to the enforcement and penalty provisions of §§ 243.17 and 243.19.

Implementation Date

The Department proposes to make the final rule effective 90 days after publication in the **Federal Register**. Carriers, particularly U.S. airlines, have been on notice of the requirements in 49 U.S.C. 44909 since November 16, 1990. Because of the disproportionate burden that this rule may place on small air carriers, we will consider delaying the effective date for those carriers for a reasonable amount of time.

Economic Considerations

(**Note:** this section relies heavily on the Preliminary Regulatory Evaluation that accompanies this NPRM; a copy of the Preliminary Regulatory Evaluation is available in the Docket)

The Department is most interested in how it can fashion a final rule so that U.S. and foreign carriers alike can achieve the most effective transmission of information after an aviation disaster at least cost. This proposal, if adopted as a final rule, would be significant under E.O. 12866 and the Department of Transportation's regulatory policies and procedures because of the public and Congressional interest associated with the proposed rulemaking action. The Department will make every effort to make the final rule as cost-effective as possible, consistent with the clear-cut statutory requirements (e.g., a phase-in period for small air carriers). The proposed rule has been reviewed by the Office of Management and Budget.

As currently proposed, the total costs of implementing 49 U.S.C. 44909 are potentially large. Based on ANPRM comments (especially those of British Airways, which provided the most detailed cost information regarding implementing a passenger manifest requirement along the lines of the statute), reasonable assumptions about the economics of implementing a passenger manifest information requirement, and other generally available information, the Department estimates that the annual recurring costs of the proposed rule (which would be borne by air carriers, travel agents, and covered passengers, who forego time while being asked for and providing the information) would range between about $27.6 and $44.8 million per year.

These costs would break out as follows: air carriers $6.2 million (U.S. air carriers $4.4 million and foreign air carriers $1.8 million); travel agents $4.3 million; and covered passengers $17.2 million to $34.3 million. The one-time cost of the proposed rule (which would be borne by air carriers) is estimated to be about $30.5 million and includes the costs of modifying air carriers' departure control systems, computer reservations systems, and interfaces with other computer reservation systems to accommodate passenger manifest information. The present value of the total costs of the proposed rule over ten years is estimated to range between about $208.9 and $319.6 million.

There are two direct notification benefits of the proposed rule: 1) More prompt and accurate initial notification to the families of U.S.-citizen victims of an aviation disaster that occurs on a flight to or from the United States (on a U.S. or foreign air carrier) and outside the United States, and 2) more prompt and accurate initial notification of the host governments of foreign-citizen passenger victims of an aviation disaster that occurs on a flight to or from the United States (on a U.S. air carrier) either outside or within the territory of the United States. The Department estimates that were the proposed rule in effect over ten years a total of 595 families and host governments would have received such direct notification benefits. That is, the Department estimates that over ten years there have been a total of 595 victims of aviation disasters in the two circumstances described above. Compared to the present value of the total costs of the proposed rule over ten years, the cost of the more prompt and accurate initial notification to these direct beneficiaries, on a per victim basis, ranges between about $350,000 and $540,000.

No accounting is made in the calculations above for more prompt and accurate initial notification of families of U.S.-citizen victims of aviation disasters that occur on flights to and from the United States, and for which the disaster occurs within the United States (e.g., TWA flight 800). None was made because the Department of State has no responsibilities regarding the notification of families of U.S.-citizen victims of an aviation disaster that occurs within the United States, even if the flight involved is an international flight. And, the primary focus of the statute is to provide information to the Department of State. However, since, under the proposed rule, passenger manifest information would have to be collected for all flights to and from the United States for transmission to the Department of State in the event of an aviation disaster that occurred outside of the United States, it is quite possible that having it on-hand would also lead to more prompt and accurate initial notification of the families of U.S.-citizen victims of an aviation disaster on such a flight that occurs within the territory of the United States. Such families are considered to receive indirect notification benefits from the proposed rule. If such families are accounted for, in addition to the families and host governments counted above, then, were the rule in effect for a ten-year period, the Department estimates that more prompt and accurate notification of the families and host governments of 877 victims of aviation disasters would have taken place. The cost of the more prompt and accurate initial notification to these direct and indirect beneficiaries, on a per victim basis, now ranges between about $238,000 and $364,500.

A different perspective on the cost of the proposed rule can be gained from assuming that all recurring annual costs of the proposed rule are paid by the passengers that provide passenger manifest information. Employing this line of reasoning (this is an "as if" analysis since the Preliminary Regulatory Evaluation that accompanies the NPRM in the docket does not calculate who will be able, or not able, to pass along the costs of imposing a passenger manifest information requirement), were the proposed rule in effect in 1994 when about 71.5 million passenger (one-way) trips to and from the United States would have been covered, the estimated cost per passenger per one-way trip would have ranged between about $0.39 and $0.63. The estimated cost per passenger per round-trip would have been double these amounts, and would have ranged between about $0.77 and $1.25. (Numbers may not add exactly due to rounding.)

To summarize the above, direct and indirect benefits of the proposed rule accrue regarding more prompt and accurate *initial* notification of the families of U.S.-citizen victims of an aviation disaster on a flight to and from the United States that occurs outside the United States (direct) and within the territory of the United States (indirect). Direct notification benefits also accrue to the host governments of foreign citizens of aviation disasters that occur anywhere (outside or within the territory of the United States) on U.S. air carriers, since the Department of State is able to respond to the inquiries of these governments more quickly.

An idea of the magnitude of the reduction in initial notification time of families of U.S.-citizen victims of aviation disasters that occur outside the United States that might occur under the proposed rule may be gained from examining the notification experience in the Pan Am Flight 103 aviation disaster. There, according to the *Report of the President's Commission on Aviation Security and Terrorism*, some families of victims were notified by Pan American within about nine hours or less after the disaster was learned of, and all families were notified by Pan American within about 43 hours or less after the disaster was learned of. Compliance with the proposed rule in the case of Pan Am Flight 103 should have reduced notification times (to the extent that passengers chose to provide emergency contact information) by a maximum of about six to eight hours for the first group of families of victims, and by a maximum of about 40 to 42 hours for the remainder of the families of victims.

A third direct benefit of the proposed rule lies outside the realm of notification benefits and was not mentioned above. This third direct benefit of the proposed rule is an expected general increase in the disaster response capability of the Department of State following an aviation disaster. According to the *Report of the President's Commission on Aviation Security and Terrorism:*

> Failure to secure the [passenger] manifest quickly had a negative ripple effect on the State Department's image in subsequent activities. Thereafter, the Department appeared to lack control over who should notify next of kin, an accurate list of next of kin, and communications with the families. (p. 101)

Some idea of how much more quickly the Department of State might, under the proposed rule, receive passenger manifest information following an aviation disaster may be gained from examining the Pan Am Flight 103 aviation disaster experience. There, the Department of State was given by Pan American an initial passenger manifest, consisting of surnames and first initials, about 7 hours after the disaster was learned of. A passenger manifest containing more complete passenger information together with contact information was provided to the Department of State about 43 hours after the disaster was learned of, and, at that time, Pan American also notified the Department of State that all families of victims had been notified. The results of compliance with the proposed rule in the case of Pan Am Flight 103 should have resulted in the provision of a

passenger manifest together with emergency contact information (to the extent that passengers chose to provide emergency contact information) to the Department of State in one to three hours after the disaster was learned of.

The Department seeks, within present authority, to achieve more prompt provision of manifest information and initial notification of families of victims in the most cost effective way that is possible. How to achieve this result is open to a good deal of uncertainty and potential controversy. In order to reduce the potential costs of the proposed rule, the Department could reduce passenger manifest requirements to the absolute minimums required by 49 USC 44909. The Department could, for example, not cover foreign carriers. However, elimination of the coverage of foreign carriers from the proposed rule would mean that about one half (40 percent) of all U.S. citizens traveling between the United States and foreign countries would be exempt from providing the passenger manifest information that is required by 49 USC 44909. Omission of this large a portion of U.S. citizens traveling between the United States and foreign countries would severely limit the ability of the Department of State to comply with the notification responsibilities that it is assigned by P.L. 101–604.

In requesting comment on requiring carriers to collect passenger date of birth (DOB) as an element of passenger manifest information, either in addition to those required by 49 USC 44909, or as a substitute for passport number/passport number and issuing country code, the Department is exploring what are the best types of information that are available to be collected in order to insure more prompt and accurate initial notification. Collecting DOB may encourage wider participation in the U.S. Customs Service's Advance Passenger Information System (APIS), which has offsetting benefits to air carriers and passengers in the form of better passenger facilitation. Moreover, as is explained more fully in the Preliminary Regulatory Evaluation, the incremental burden of a rule based on the statutorily-required information could be reduced by as much as 50 percent for any APIS-covered flight, since the information requirements of APIS and the proposed rule overlap. Since DOB is recorded for more APIS-covered passengers than is passport number, and DOB is known by passengers, whereas passengers do not usually know their passport number, collecting DOB may be, as well, less burdensome overall than collecting passport number/passport number and issuing country code. This may even be the case if DOB is collected for *all* locations, whereas passport number/passport number and issuing country code is only envisioned to be collected for countries that require a passport for travel to them.

As is mentioned in the proposed rule, the Department seeks to the extent possible within statutory constraints to not unduly burden smaller air carriers. Our decision to allow all air carriers to choose the method of meeting the requirements of the proposed rule should benefit small air carriers who may wish to use low-technology methods, such as the approach suggested in ANPRM comments by the group, "Victims of Pan Am Flight 103," which proposed that boarding passes be redesigned to have a detachable stub that could be filled out by passengers and dropped in a box just before boarding a flight. In these comments, it was argued that such a method would require little work for the airlines and, among other things, would allow an air carrier to deliver a correct manifest to the State Department quickly by using a scanner on the stubs.

Moreover, as was stated above, the Department will consider delaying the effective date of the proposed rule for small air carriers for a reasonable amount of time.

The actual costs of a passenger manifest requirement will depend on a number of critical implementation and cost assumptions. With regard to carrier participation in the APIS program, for example, it is a goal of the U.S. Customs Service to have APIS cover 55 percent of all U.S.-arriving passengers by the end of FY 1996, and we assume that for these passengers the incremental costs of the manifest requirement could be relatively low. As is mentioned in the Preliminary Regulatory Evaluation, two U.S. air carriers have gone to the collection of APIS information for outbound passengers ("Outbound API"). The information is collected for the outbound passenger and then stored for input into the APIS system when the passenger returns to the United States. These carriers should have available for many passengers' round trips, information that duplicates some of the information that is required in the proposed rule. More air carriers may collect Outbound API once DOT implements a passenger manifest requirement. Nevertheless, subject to how air carriers participating in the APIS program choose generally to implement the overlapping passenger manifest requirement, participation in the APIS program may not influence the incremental costs of a passenger manifest requirement on U.S. departing passengers. Thus, even if a carrier participates in APIS, passenger manifest information requirements applied to its outbound flights may still create potentially high incremental costs.

The Department is also somewhat uncertain as to the final choice of technique that carriers will choose in fulfilling their statutory obligation to collect passenger manifest information. The choice could affect our calculation of the actual economic impact of a passenger manifest requirement. Smaller carriers could have more flexibility in their choice of technique. As is explained in the Preliminary Regulatory Evaluation, air carriers that use smaller aircraft, and whose smaller passenger loads would be less likely to cause congestion at the airport, would seem to be most able to take advantage of lower technology or manual methods of collecting passenger manifest information that might take place at the airport. Doing so could result in small costs to the carriers and virtually no time forgone on the part of the passengers from whom the information was collected, if the collection was structured to occupy already available time. One such method was mentioned above and would require passengers to submit passenger manifest information on a portion of the boarding pass that is collected by air carriers prior to boarding. However, we believe that only a small portion of U.S.-citizen trips between the United States and foreign countries take place on air carriers using smaller aircraft. And, moreover, most ANPRM commenters indicated that passenger manifest information would be collected using Computer Reservation Systems (CRSs). Nonetheless, if further comment suggests that a substantial number of carriers would use low technology methods of collecting passenger manifest information, some downward adjustment of the cost estimates of proposed rule could be warranted.

Finally, the Department is concerned about the reasonableness of some of the analytical underpinnings of the comments that were submitted in response to the ANPRM and the President's Regulatory Moratorium and Review. In developing estimates of the cost of the proposed rule, the Department has relied upon these comments generally but has made adjustments to them. While the passenger manifest information collection time estimates that appear in comments seem to be plausible, the Department is very concerned about the accuracy of the (implied) cost estimates for air carrier reservation and check-in

personnel compensation. As is gone into in detail in the Preliminary Regulatory Evaluation, wages imputed from the cost estimates submitted in response to the ANPRM work out to be far higher than would have been expected. In the most extreme case, they work out to be about $44.00 per hour or $91,500.00 per annum. Such wage rates are difficult to reconcile and have been adjusted downward in the DOT estimates of the cost of the proposed rule. In place of them the Department has used a yearly total compensation (salary plus fringe benefits) figure based on a Bureau of Labor Statistics (BLS) proxy occupational category. This figure, in 1994 dollars, is about $30,500.00.

However, as was shown at the beginning of this section, even using the BLS total compensation figures, Departmental estimates of the cost of the proposed rule continue to indicate a large cost of implementing the passenger manifest information requirement in 49 USC 44909. Moreover, the Departmental estimates are based on the 40 second estimate given in the ANPRM comments of British Airways for the additional time it would take to solicit and collect, at the time of airport check-in, the passenger manifest information specified in the statute. It was also assumed in the Departmental estimates that it would take this same amount of time to solicit and collect passenger manifest information at the time of reservation.

Adding seconds to or subtracting seconds from the 40 second estimate has substantial implications for the estimates of the cost of the proposed rule. For example, a one-second increase in the amount of time that it is expected to take to solicit/collect all passenger manifest information increases the estimated overall annual recurring costs of the proposed rule by between about $691,000 to $1.1 million, broken down by: U.S. air carriers $109,900; foreign air carriers $44,900; travel agents $107,200; and passengers time forgone between about $429,000 and $858,000. A sensitivity analysis of the economic model that is used to estimate the costs of the proposed rule using values of 40, 45, 50, 55, and 60 seconds (that is, the case presented at the beginning of this section and then adding 5, 10, 15, and 20 additional seconds) as the amount of overall additional time that it is assumed to take to solicit and collect passenger manifest information yields the following results:

Type of cost	Number of seconds to solicit and collect passenger manifest information				
	40 sec.	45 sec.	50 sec.	55 sec.	60 sec.
Annual Recurring (low)	$27.6 mil	$31.1 mil	$34.6 mil	$38.0 mil	$41.5 mil.
Annual Recurring (high)	$44.8 mil	$50.4 mil	$56.0 mil	$61.6 mil	$67.2 mil.
—U.S. Carriers	$4.4 mil	$4.9 mil	$5.5 mil	$6.0 mil	$6.6 mil.
—Foreign Carriers	$1.8 mil	$2.0 mil	$2.2 mil	$2.5 mil	$2.7 mil.
—Travel Agents	$4.3 mil	$4.8 mil	$5.4 mil	$5.9 mil	$6.4 mil.
—Passeng. time (low)	$17.2 mil	$19.3 mil	$21.5 mil	$23.6 mil	$25.7 mil.
—Passeng. time (high)	$34.3 mil	$38.6 mil	$42.9 mil	$47.2 mil	$51.5 mil.
Per enhanced notification (low)	$238,200	$263,600	$289,000	$314,500	$339,900.
Per enhanced notification (high)	$364,400	$405,700	$446,900	$488,100	$529,300.
Per one-way trip (low)	$0.39	$0.43	$0.48	$0.53	$0.58.
Per one-way trip (high)	$0.63	$0.71	$0.78	$0.86	$0.94.

The Department seeks to derive final estimates of the cost of the proposed rule that are as accurate as possible. Toward this end, the Department invites general comments on any and all aspects of the methods used to estimate the costs of the proposed rule that are contained in the Preliminary Regulatory Evaluation. In addition, the Department invites comments on the following six questions:

1. On average, what is the dollar amount for hourly total compensation for air carrier reservations personnel, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?

2. On average, what is the dollar amount for hourly total compensation for air carrier check-in personnel, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?

3. On average, what is the dollar amount for hourly total compensation for travel agents, who would be collecting passenger manifest information? What portion of the total compensation figure is for salary and for fringe benefits?

4. What percentage of reservations for a flight are subsequently canceled and then the same seat is resold to someone who actually boards the flight? That is, on average, for every 100 persons that eventually board an aircraft, from the time that the flight was available to be booked how many persons have made reservations?

5. Comments received by the Department in response to the ANPRM and otherwise have indicated that, were a passenger manifest information requirement to be implemented, at many airports it would not be possible for air carriers to expand counter space and employ more check-in personnel in order to maintain existing check-in times. All other things being equal, if this is the case, and other methods can not be found for collecting additional passenger manifest information more quickly at check-in or beforehand, congestion could result at airports. Such congestion could cause an individual passenger to suffer delays as he or she waits for other passengers to provide information, in addition to the amount of time it takes for the individual passenger to provide information. The comments received, however, offered no guidance on how to quantify these congestion costs. The Department solicits comment on how, were they to occur, such congestion costs could be integrated into the economic model in the Preliminary Regulatory Evaluation that underlies the Departmental estimates of the costs of the proposed rule. How could sensitivity analyses be performed on the congestion aspects of the resulting model?

6. The Department requests comments on the amount of fixed, one-time costs associated with the rule. From ANPRM comments, these costs would include primarily the cost of programmers' time (salaries and benefits). We ask that commenters provide information in as much detail as possible on the one-time costs associated with the proposed rule, as well as all supporting explanations of the source and derivation of the data. We specifically invite comments regarding the possible use of computer

reservations systems or other current data systems to meet the goals of the proposed rule and the estimated cost of changes to these systems.

Regulatory Flexibility Act

The Regulatory Flexibility Act was enacted by the United States Congress to ensure that small businesses are not disproportionately burdened by rules and regulations promulgated by the Government. At the same time, 49 USC 44909 mandates that "the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State." In its efforts both to comply with 49 USC 44909 and not to disproportionately burden the smaller air carriers and travel agents, the Department proposes to allow the carriers to develop their own passenger manifest data collection systems. Smaller air carriers will be free to adopt a system that minimizes the burden on them, so long as that system is capable of meeting the requirements set out in the statute. If adopted, the rule would affect air taxi operators, commuter carriers, charter operators, and possibly travel agents. Some of these entities may be "small entities" within the meaning of the Regulatory Flexibility Act. Although the rule might affect a substantial number of small entities if it is adopted as proposed, we do not believe that there would be a significant economic impact because of the flexibility provided by the proposal. We specifically request comments on whether there are significant economic impacts on small entities that we have not identified or that we should consider differently. In addition, we request comments on whether this rule would have any disproportionate impact on travel agents. Based on the information available at this time, I certify that this rule would not, if adopted as proposed, have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

This regulation would apply to all air carriers and foreign air carriers that choose to serve the United States. The rule should not affect either a U.S. air carrier's ability to compete in international markets or a foreign air carrier's efforts to compete in the United States. Neither should the overall level of travel to and from the United States be affected.

Paperwork Reduction Act

This NPRM contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (P.L 104–13). The title, description, and respondent description of the information collections are show below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Passenger Manifest Information.

Need for Information: The information is required by 49 USC 44909 for use by the State Department;

Proposed Use of Information: The State Department would use the information to inform passenger-designated emergency contacts about aviation disasters and to answer inquiries from foreign governments regarding aviation disasters. The information may be input into the U.S. Customs Service's Advance Passenger Information System (APIS) where it would be used to facilitate the processing of low-risk passengers, identify high-risk passengers, and facilitate the operations of air carriers, airports, and other government agencies.

Frequency: The manifests would be collected and maintained for each covered flight;

Burden Estimate: Between $27.6 and 44.8 million per annum for air carriers, foreign air carriers, travel agents, and passengers;

Respondents: About 71.5 million passengers per year at a rate of between one or two collections per passenger; at least 1,074 U.S. air carriers, and 493 foreign air carriers. We are unable to quantify the number of travel agents that will be affected by this rule at this time;

Form(s): No particular format or form would be required;

Average burden hours per respondent; An average of about 36 seconds per collection.

Individuals and organizations may submit comments on the information collection requirements by [insert date 60 days after publication in the **Federal Register**] and should direct them to the docket for this proceeding and the Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, Attention: Desk Officer for DOT/OST. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism Implications

The regulation proposed herein has no direct impact on the individual states, on the balance of power in their respective governments, or on the burden of responsibilities assigned them by the national government. In accordance with Executive Order 12612, preparation of a Federalism Assessment is, therefore, not required.

List of Subjects in 14 CFR Part 243

Air carriers, Aircraft, Air taxis, Air transportation, Charter flights, Foreign air carriers, Foreign relations, Reporting and recordkeeping requirements, Security.

Accordingly, the Department proposes to add a new part 243, in chapter II of title 14 of the Code of Federal Regulations that would read as follows:

PART 243—PASSENGER MANIFEST INFORMATION

Secs.

243.1 Purpose.
243.3 Definitions.
243.5 Applicability.
243.7 Information collection requirements.
243.9 Procedures for collecting and maintaining the information.
243.11 Transmission of information after an aviation disaster.
243.13 Filing requirements.
243.15 Conflicts with foreign law.
243.17 Enforcement.
243.19 Civil and criminal penalties.
243.21 Waivers.

Authority: 49 U.S.C. 40101, 40105, 40113, 40114, 41708, 41709, 41711 , 41501, 41702, 41712, 44909, 46301, 46310, 46316.

§ 243.1 Purpose.

The purpose of this part is to ensure that the U.S. Department of Transportation and the U.S. Department of State have prompt and adequate information in case of an aviation disaster on specified international flights. This part is mandated by 49 U.S.C. 44909.

§ 243.3 Definitions.

Air piracy means any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft.

Aviation disaster means:

(1) An occurrence associated with the operation of an aircraft that takes place between the time any passengers have boarded the aircraft with the intention of flight and the time all such persons have disembarked or have been removed from the aircraft, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage, and in which the death, injury or damage was caused by a crash, fire, collision, sabotage or accident;

(2) A missing aircraft; or

(3) An act of air piracy.

Covered flight means a flight segment operating to or from the United States (i.e., the flight segment where the last point of departure or the first point of arrival is in the United States.) A covered flight does not include a flight in which both the origin and destination points are in the United States, nor does it include segments between U.S. cities of flights originating or terminating in a foreign country, even though some portion of the flight segment is over territory not belonging to the United States.

Emergency contact means a person or entity that should be contacted in case of an aviation disaster. The contact need not have any particular relationship to a passenger.

Full name means given name, middle name or initial, if any, and family name or surname.

Passenger means every person aboard a covered flight segment regardless of whether he or she paid for the transportation, had a reservation, or occupied a seat, except the crew operating the flight. For the purposes of this part, passenger includes, but is not limited to, a revenue and non-revenue passenger, a person holding a confirmed reservation, a standby or walkup, a person rerouted from another flight or airline, an infant held upon a person's lap and any other person not occupying a seat. Airline personnel who are on board but not working on that particular flight segment would be considered passengers for the purpose of this part.

Passport Issuing Country Code means the standard two-letter designation for the country that issued the passport.

United States means the States comprising the United States of America, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

U.S. citizen includes United States nationals as defined in 8 U.S.C. 1101(a)(22) and lawful permanent residents of the United States.

U.S. lawful permanent resident includes those defined in 8 U.S.C. 1101(a)(20).

§ 243.5 Applicability.

This part applies to covered flights operated by air carriers and foreign air carriers.

§ 243.7 Information collection requirements.

(a) For covered flights, each U.S. air carrier shall:

(1) collect the full name and passport number and issuing country code for each passenger. Collection of a passport number and issuing country code is not required if the passenger is not required to present his or her passport for travel to the foreign point involved. Passengers for whom this information is not obtained shall not be boarded;

(2) solicit a name and telephone number of an emergency contact from each passenger; and

(3) maintain a record of the information collected pursuant to this section as well as a record of each passenger who declines to provide an emergency contact.

(b) For covered flights, each foreign air carrier shall:

(1) collect the full name and passport number for each passenger who is a U.S. citizen or a U.S. lawful permanent resident. Collection of a passport number is not required if the passenger is not required to present his or her passport for travel to the foreign point involved. U.S.-citizen passengers or U.S. lawful permanent residents for whom this information is not obtained shall not be boarded;

(2) solicit a name and telephone number of an emergency contact from each passenger who is a U.S. citizen or a U.S. lawful permanent resident; and

(3) maintain a record of the information collected pursuant to this section as well as a record of each passenger who declines to provide an emergency contact.

§ 243.9 Procedures for collecting and maintaining the information.

Air carriers and foreign air carriers may use any method or procedure to collect, store and transmit the required information, subject to the following conditions:

(a) Information on individual passengers shall be collected before each passenger boards the aircraft on a covered flight segment.

(b) The information shall be kept for at least 24 hours after the completion or cancellation of the covered flight.

(c) To the extent that such information would otherwise be confidential, the information shall be kept confidential and shall be released only to the U.S. Department of State or U.S. Department of Transportation in the event of an aviation disaster or pursuant to U.S. Department of Transportation oversight of this part. The only exception to this requirement is that the information may be provided for use in the Advance Passenger Information System, and to other U.S. or foreign governmental entities as may be authorized by the Department of Transportation.

§ 243.11 Transmission of information after an aviation disaster.

(a) Each air carrier and foreign air carrier shall inform the Director, Office of Intelligence and Security, U.S. Department of Transportation, and the Director of American Citizen Services, Bureau of Consular Affairs, U.S. Department of State immediately upon learning of an aviation disaster involving a covered flight segment operated by that carrier.

(b) Each air carrier and foreign air carrier shall transmit a complete and accurate compilation of the information collected pursuant § 243.7 of this part to the U.S. Department of Transportation and the U.S. Department of State within 1 hour after the carrier learns of the disaster. If it is not technologically feasible or reasonable to fulfill the 1-hour requirement, then the information shall be transmitted as expeditiously as possible, but not later than 3 hours after the carrier learns of the disaster.

§ 243.13 Filing requirements.

(a) Each air carrier and foreign air carrier that operates one or more covered flights shall file with the U.S. Department of Transportation a statement summarizing how it will transmit and collect the passenger manifest information required by this part on or before the date it begins collection. This description shall include a 24-hour contact at the carrier who can be consulted concerning information to be provided to the U.S. Department of State or U.S. Department of Transportation and shall include sufficient detail to permit these Departments to develop appropriate methods of receiving the information.

(b) Each air carrier and foreign air carrier shall notify the DOT of any contact change and shall file a description of any significant change in its means of transmitting or collecting manifest information on or before the date the change is made.

(c) All filings under this section should be submitted to the Office of Intelligence and Security (S–60), Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

§ 243.15 Conflict with foreign laws.

(a) Air carriers and foreign air carriers are not required to solicit or collect information under this part in countries where such solicitation or collection would violate applicable foreign law, but only to the extent that such solicitation or collection would violate applicable foreign law.

(b) Air carriers and foreign air carriers that claim that such a solicitation or

collection would violate applicable foreign law in certain foreign countries shall inform the Office of Intelligence and Security (S–60), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 of that claim on or before the effective date of this rule, or on or before beginning service between that country and United States. Such notification shall include copies of the pertinent foreign law as well as a certified translation. Notifications will also be accepted directly from foreign governments.

(c) The U.S. Department of Transportation shall maintain an up-to-date listing of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require an air carrier or foreign air carrier to produce a passenger manifest for a specified flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any air carrier or foreign air carrier further information about collection, storage and transmission procedures at any time. If the Department finds an air carrier's or foreign air carrier's system to be deficient, it will require appropriate modifications, which must be implemented within a specified period. In addition, the offending air carrier or foreign air carrier may be subject to enforcement action.

§ 243.19 Civil and criminal penalties.

Each air carrier or foreign air carrier that violates the provisions of this part is subject to civil and/or criminal penalties for each violation as provided by 49 U.S.C. 46301, 46310 and 46316.

§ 243.21 Waivers.

The Department may waive compliance with certain requirements of this part if an air carrier or foreign air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad. Carriers that have signed such a Memorandum and that wish to take advantage of this shall submit two copies of the signed Memorandum to the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation. The carrier will be informed by the Assistant Secretary for Aviation and International Affairs, or his or her designee, of the provisions of this part, if any, that are waived by the Department based on the Memorandum. Such determination will be confirmed in writing to the carrier.

Issued in Washington, DC, on September 4, 1996.

Federico Peña,

Secretary.

[FR Doc. 96–23072 Filed 9–9–96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240 and 249

[Release Nos. 33–7326 and 34–37624; File No. S7–23–96]

RIN 3235–AG82

Expansion of Short-Form Registration To Include Companies With Non-voting Common Equity

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today proposes amendments to rules and Forms S–3 and F–3 under the Securities Act of 1933 ("Securities Act") to include non-voting as well as voting common equity in the computation of the required $75 million aggregate market value of common equity held by non-affiliates of the registrant.

In addition, the Commission is proposing conforming amendments to Form F–2 under the Securities Act, Forms 10–K and 10–KSB under the Securities Exchange Act of 1934 ("Exchange Act") and the definition of "Small Business Issuer" in Rule 405 and in Item 10 of Regulation S–B under the Securities Act and in Rule 12b–2 under the Exchange Act. Under the proposed revisions, the aggregate market value of voting and non-voting common equity would be included in the calculation of the amount of the required public float for issuers to qualify to use Form F–2 and to be small business issuers and in stating the amount of the public float on Forms 10–K and 10–KSB.

DATES: Comments should be received on or before October 10, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–23–96. Include this file number on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Public Reference Room at the same address. Electronically submitted comment letters will be on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Mary J. Kosterlitz, Special Counsel, (202) 942–2900, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–3, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Forms S–3 [1] and F–3 [2] under the Securities Act [3] to include non-voting common equity in the computation of the required public float. Conforming changes are also proposed to be made to Forms, F–2, [4] 10–K, [5] and 10–KSB [6] and to the definition of "small business issuer" in Rule 405 [7] and in Item 10 of Regulation S–B [8] under the Securities Act and in Rule 12b–2 [9] under the Exchange Act. [10]

I. Introduction and Background

The Commission's short-form registration statements, Forms S–3 and F–3, require as one condition to eligibility for registration of a primary offering of non-investment grade securities (such as common stock) that the company have at least $75 million of voting stock held by non-affiliates (referred to as the "public float"). [11] Some companies, both domestic and foreign, that have significant amounts of non-voting common stock held by non-affiliates (but not significant amounts of voting stock) are not eligible to use these forms for such an offering because non-voting stock is not included in the calculation of the required public float. The revisions proposed today would make Forms S–3 and F–3 available to these issuers provided they otherwise qualify for these forms. These changes are proposed to provide additional flexibility for registered capital raising transactions by extending the availability of the short form registration statements. The proposed revisions are

[1] 17 CFR 239.13.

[2] 17 CFR 239.33.

[3] 15 USC 77a *et seq.*

[4] 17 CFR 239.32.

[5] 17 CFR 249.310.

[6] 17 CFR 249.310b.

[7] 17 CFR 230.405.

[8] 17 CFR 228.10.

[9] 17 CFR 240.12b–2.

[10] 15 U.S.C. 78a *et seq.*

[11] *See* General Instruction I.B.1 of Forms S–3 and F–3. General registrant requirements for Forms S–3 and F–3 eligibility are outlined in General Instruction I.A to these forms.

consistent with the spirit of the recommendations of the Commission's Task Force on Disclosure Simplification ("Task Force Report")[12] and with requirements included in S. 1815, the Securities Investment Promotion Act of 1996.[13]

Under the integrated disclosure system, there are three basic Securities Act registration forms: Forms S–1, S–2 and S–3.[14] These forms establish three categories of registrants. Although the information required for each of these forms is the same, the method of delivering the information varies depending on the category of registrant. These methods of delivering information are: (1) Provision of information physically in the prospectus; (2) delivery with the prospectus; or (3) incorporation by reference into the prospectus from Exchange Act reports. Form S–3 permits maximum reliance on Exchange Act reports, allowing eligible issuers to use this form to incorporate information into the prospectus by reference from Exchange Act filings.[15] Form F–3, the corollary to Form S–3 for foreign private issuers,[16] also allows eligible registrants to incorporate information by reference from Exchange Act reports.

The Commission's rules have always conditioned the availability of short form registration for primary offerings of non-investment grade securities (such as common stock) on the issuer's having a minimum amount of voting stock held by non-affiliates. The rationale for the float condition has been to assure that physical delivery of the detailed information required by longer registration forms would not be necessary because complete and current information about the issuer was already "disseminated and accounted for by the market place."[17] Float consistently has been viewed as an indicator of analyst or market following (which in turn assures a sufficient dissemination of information to allow use of short form registration).[18]

Throughout the development of short form registration, the Commission has not fully articulated a reason for excluding non-voting common stock from the calculation of public float.[19] Because it is not clear that analyst or market following would be affected by whether or not a company's securities carry voting rights as long as the securities are common equity securities, and in light of questions raised by issuers and others that believe non-voting common stock should be included, the Commission has decided to reexamine the basis for excluding non-voting stock in calculating public float. Consequently, the Commission is proposing today to eliminate the distinction, thus making short form registration available to a broader class of issuers.

II. Discussion of Proposals

A. Changes to Forms S–3 and F–3

The proposed amendments relating to the use of Forms S–3 and F–3 for primary offerings of non-investment grade securities would change the transaction requirements outlined in the General Instructions to the Forms to provide that non-voting common equity would be included in the calculation of the $75 million float requirement.[20] These changes would be accomplished by removing the term "voting stock" as it appears in these sections and substituting the phrase "shares of voting and non-voting common equity." The meaning of the term "common equity" would be as defined in Rule 405 under the Securities Act.[21]

Comment is requested concerning whether the proposed change to include non-voting shares of common equity in calculating public float is appropriate. Specifically, the Commission solicits comment as to whether the distinction between voting and non-voting common equity affects market following of companies. Does it matter if a significant amount of the securities necessary to qualify are not voting equity securities? In addition, the Commission seeks comment as to whether it is appropriate to provide short form eligibility if the only publicly held equity securities are non-voting.

The term "common equity" as used in the proposed changes to Forms S–3 and F–3 would not include either convertible securities or preferred shares, because it is not clear that such securities, standing alone, would give rise to a market following. Comment is requested, however, as to whether there are types of preferred or convertible securities that have sufficient market following that would justify their inclusion in the calculation of public float for purposes of Forms S–3 and F–3 eligibility. Commenters urging inclusion of other securities are requested to identify the characteristics of the securities and provide information about market following of issuers with such securities.

B. Conforming Changes to Other Commission Rules and Forms Referencing Public Float

The Commission also is proposing conforming changes to Forms F–2, 10–K and 10–KSB, as well as to the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S–B under the Securities Act and to Rule 12b–2 under the Exchange Act, to provide that the public float requirement is to be computed by including the aggregate market value of both voting and non-voting common equity.

Form F–2 is used by certain foreign private issuers to register securities offerings under the Securities Act.[22] One Form F–2 eligibility requirement is that, in certain cases, the foreign private issuer must have an aggregate worldwide market value of voting stock held by non-affiliates of the equivalent

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[12] The Task Force Report in part seeks to eliminate rules that no longer may be necessary or appropriate for investor protection and to streamline, simplify, and modernize the overall regulatory scheme without compromising or diminishing important investor protections. *See* March 5, 1996, Letter from Arthur Levitt printed in Report on Task Force Simplification, March 1996. *See* Release No. 33–7271 (March 5, 1996) [61 FR 9848]. The report is available for inspection and copying in the Commission's Public Reference Room and is posted on the Commission's Internet Web Site (http://www.sec.gov).

[13] *See* S. 1815, 2d Sess. § 314 (1996).

[14] These three classes of forms apply to domestic issuers. Foreign private issuers have three parallel Securities Act registration forms: Forms F–1, F–2 and F–3. 17 CFR 239.0–1.

[15] *See* Release No. 33–6383 (March 3, 1982) [47 FR 11380]. Form S–3 also allows issuers to update the issuer prospectus information through incorporation by reference of future Exchange Act filings, instead of filing post-effective amendments to the registration statement. *Id.*

[16] The term "foreign private issuer" is defined in Rule 405.

[17] *See* Release No. 33–6331 (August 6, 1981) [47 FR 41902, 41904].

[18] Release No. 33–6943 (July 22, 1992)[57 FR 32461]; Release No. 33–6331 (August 6, 1981)[46 FR 41902]; Release No. 33–5923 (April 11, 1978)[43 FR 16677].

[19] In connection with expansion of a predecessor short form, Form S–16, the Commission analyzed the distinction between voting equity securities and non-voting debt securities. In that context, the Commission agreed that information about companies with publicly held non-voting securities may be widely available but noted that while a $50 million float requirement (which was the amount being adopted at the time) is appropriate for voting securities, it is not necessarily indicative of general market interest in debt securities. *See* Release No 5923 (April 11, 1978)[43 FR 16677].

[20] The amendments proposed would not alter any other requirements of Forms S–3 or F–3, including the amount of the public float.

[21] Rule 405 defines "common equity" as "any class of common stock, or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest."

[22] *See* General Instruction I.A and I.B of Form F–2 for the eligibility requirements of Form F–2. This form allows certain foreign private issuers to provide some of the required prospectus information by supplying a copy of the issuer's most recent annual report on Form 20–F. Form F–2 is generally available for foreign private issuers with a 36 month reporting history; for issuers with less than 36 months of reporting, a $75 million float requirement applies.

of $75 million.[23] The proposed amendments would change the eligibility requirement outlined in the General Instruction to Form F–2 to indicate that non-voting common equity as well as voting common equity would be included in the calculation of the $75 million float requirement.

Forms 10–K and 10–KSB each require registrants to state on the cover page the aggregate market value of voting stock held by non-affiliates. The information serves a number of purposes, including use by the Commission staff in considering form eligibility. As proposed to be amended, the forms would instead require a statement of the aggregate market value of voting and non-voting common equity held by non-affiliates.

The proposed amendments also would change the definition of "small business issuer" in Rule 405 and in Item 10 to Regulation S–B under the Securities Act and Rule 12b–2 under the Exchange Act. The current definition of "small business issuer" states that "an entity is not a small business issuer if it has a public float (the aggregate market value of the outstanding securities held by non-affiliates) of $25,000,000 or more."[24] This definition does not specify what is meant by the term "outstanding securities." However, in the adopting release for the Small Business Initiatives, the Commission described public float as "the aggregate market value of the issuer's voting stock held by non-affiliates,"[25] and the staff of the Division of Corporation Finance has interpreted the float test for small business issuers in that manner. Consistent with the proposed changes to Forms S–3 and F–3, the proposed amendments to the small business issuer eligibility criteria would replace "securities" with "shares of voting and non-voting common equity."

Comment is requested as to whether these conforming changes to Forms F–2, 10–K and 10–KSB, Rule 405, Item 10 of Regulation S–B, and Rule 12b–2 are necessary or appropriate. Specifically, the Commission solicits comment as to whether the proposed changes regarding the use of non-voting as well as voting shares of common equity to calculate the public float for Forms F–2, 10–K, 10–KSB and for small business issuers are appropriate, and whether there is a basis for excluding non-voting common equity from the definition of public float in these contexts. The proposed changes to the definition of small business issuer could cause some issuers that have non-voting common equity to become ineligible for the small business issuer disclosure system.[26] Notwithstanding this potential impact, the Commission believes that public float should be measured consistently for both larger and smaller issuers. Comment is requested, however, as to whether these proposed amendments would result in significant new burdens for small business issuers and, if so, whether the burden justifies a different public float test for small business issuer eligibility.

[23] *See* General Instruction I.B.2 of Form F–2.

[24] *See* Rule 405 and Item 10(a)(1) of Regulation S–B.

[25] *See* Release No. 33–6949 (July 30, 1992) [57 FR 36442].

III. Request for Comment

Any interested person wishing to submit comment on the proposed amendments, as well as other matters that might have an impact on the proposed changes to rules and forms, is requested to do so. Comment is requested on the impact of the proposals from the point of view of the investing public, as well as the entities or persons making filings with the Commission. The Commission also requests comment on whether the proposed amendments, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibility under Section 23(a) of the Exchange Act.[27]

IV. Cost-Benefit Analysis

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid the Commission in its evaluation of the costs and benefits that may result from the changes proposed in this release. It is anticipated that these proposals will have a benefit to issuers with filing obligations that would become eligible to use short form registration, by decreasing their costs. It is also possible that a small number of issuers currently able to use the small business issuer disclosure system may have increased costs due to their inability to use this system. No detrimental effects to investors are expected.

V. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments would revise forms and rules, which may increase the availability of Forms S–3, F–2 and F–3 and possibly decrease the availability of the small business disclosure system (Forms SB–1, SB–2, 10–SB, 10–KSB and 10–QSB) for some issuers.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined in the Commission's rules, because the proposed changes to the definition of small business issuer could cause some issuers that have non-voting common equity held by non-affiliates to become ineligible to use the small business disclosure system. The Commission estimates that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule proposals.[28] These estimates were not the product of a formal study, but were solely the result of estimates provided by the staff of the Division of Corporation Finance based on its expertise from the review of corporate filings. These estimates were thought by the Corporation Finance Division staff to reflect the maximum percent of companies that would no longer be eligible to use the small business issuer disclosure system. Instead, they would be required to file Forms S–1 or S–2 for registered securities offerings, Form 10 to register a class of securities under the Exchange Act, and Forms 10–Q and 10–K for periodic reporting under the Exchange Act. The Commission's Office of Economic Analysis is currently conducting a study to estimate the number of companies that would lose their small business status. The result of this study will be incorporated into the final Regulatory Flexibility Analysis. The Commission does not expect that the number of companies that would become ineligible to meet the definition of small business issuer would be significant. The Commission solicits comment on its preliminary estimates of the number of small entities that would be impacted by the proposed rules. The Commission also does not expect that

[26] Under the small business issuer disclosure system, eligible companies may use Forms SB–1 and SB–2 for registration under the Securities Act, Form 10–SB for registration under the Exchange Act, and Forms 10–KSB and 10–QSB for periodic reporting under the Exchange Act. These forms generally allow more streamlined disclosure than the Securities Act and Exchange Act forms for issuers that are not small business issuers. In addition, some Commission forms that are not limited to small business issuers permit specified streamlined disclosures. *See, e.g.* General Instruction D.3. to Form S–4, General Instruction C.3. to Form 8–K and Note G to Schedule 14A.

[27] 15 U.S.C. 78w(a).

[28] *See* estimates in Section VI, "Paperwork Reduction Act," *infra*.

materially increased reporting, recordkeeping and compliance burdens would result from the changes. The Commission, however, also seeks comment as to whether these proposed amendments would result in significant new burdens for small entities, and, if so, whether the burden justifies a different public float test for small business eligibility. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, the nature of these amendments do not lend themselves to separate treatment, nor would they impose significant additional burdens on small entities.

Written comments are encouraged on any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Mary J. Kosterlitz, Office of Chief Counsel, Division of Corporation Finance, Mail Stop 3–2, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Paperwork Reduction Act

Certain provisions of the proposed amendments to Forms S–3, F–2 and F–3, Rule 405 and Item 10 of Regulation S–B under the Securities Act and Rule 12b–2 under the Exchange Act contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (the "Act") (44 U.S.C. 3501 *et seq.*). The Commission has submitted its proposed revisions to the information collections required by these provisions to the Office of Management of Budget ("OMB") for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. The titles of the affected information collections are "Form S–1," "Form S–2," "Form S–3," "Form F–1," "Form F–2," "Form F–3," "Form SB–1," "Form SB–2," "Form 10–K," "Form 10–Q," "Form 10–KSB," "Form 10–QSB," "Form 10," and "Form 10–SB."

The collections of information contained in the fourteen forms at issue are required for the registration of various securities for sale to the public under the Securities Act and periodic reporting obligations under the Exchange Act. The likely respondents to each form are, respectively: (i) For Form S–1, generally all issuers registering offerings of securities under the Securities Act that are not eligible to use other forms; (ii) for Form S–2, generally issuers that have been reporting companies for three years and that have filed Exchange Act reports timely for the past 12 calendar months; (iii) for Form S–3, issuers that have been Exchange Act reporting companies for 12 months, have timely filed Exchange Act reports for 12 months, and if making primary offerings of non-investment grade securities, generally have a public float of at least $75 million; (iv) for Form F–1, generally all foreign private issuers (as defined in Rule 405 under the Securities Act) registering securities under the Securities Act that are not eligible to use other forms; (v) for Form F–2, generally foreign private issuers that have filed Exchange Act reports for 36 months or, in some instances, that have a public float of at least $75 million; (vi) for Form F–3, generally foreign private issuers that have been Exchange Act reporting companies for 12 months (and have filed at least one annual report on the appropriate form), have timely filed Exchange Act reports for 12 months, and if making primary offerings of non-investment grade securities, have a public float of at least $75 million; (vii) for Form SB–1, generally small business issuers (as defined in Rule 405 under the Securities Act) registering up to $10 million of securities under the Securities Act in a continuous 12 month period to be sold for cash; (viii) for Form SB–2, generally small business issuers registering securities offerings under the Securities Act; (ix) for Form 10–K, generally all issuers reporting under the Exchange Act filing annual reports that are not foreign private issuers or small business issuers; (x) for Form 10–Q, generally all issuers reporting under the Exchange Act filing quarterly reports that are not foreign private issuers or small business issuers; (xi) Form 10, generally all issuers registering under the Exchange Act that are not foreign private issuers or small business issuers; (xii) for Form 10–KSB, generally small business issuers reporting under the Exchange Act filing annual reports; (xiii) for Form 10–QSBs, generally small business issuers reporting under the Exchange Act filing quarterly reports; and (xiv) Form 10–SB, generally small business issuers registering under the Exchange Act. The estimated burden for responding to the collections of information in each form is not expected to change. Those estimates per respondent are as follows: (i) For Form S–1: 1,267 burden hours; (ii) for Form S–2: 470 burden hours; (3) for Form S–3: 398 burden hours; (iv) for Form F–1: 1,868 burden hours; (v) for Form F–2: 559 burden hours; (vi) for Form F–3: 166 burden hours; (vii) for Form SB–1: 710 burden hours; (viii) for Form SB–2: 876 burden hours; (ix) for Form 10–K: 1,723 burden hours; (x) for Form 10–Q: 144 burden hours; (xi) for Form 10–KSB: 1,216 burden hours; (xii) for Form 10–QSB: 131 burden hours; (xiii) for Form 10: 95 burden hours; and (xiv) for Form 10 SB: 90 burden hours.

It is expected that the Commission's proposal to include non-voting as well as voting common equity in computing the required public float for use of Forms S–3, F–2, and F–3 would increase the number of issuers able to use these forms, and proportionately decrease the number of issuers that use Forms S–1, S–2 and F–1. The result would be a net overall reduction in reporting or recordkeeping burden, since Forms S–3 and F–3 provide for short form registration. The Commission's proposal to amend the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S–B under the Securities Act and in Rule 12b–2 under the Exchange Act so that the $25 million public float maximum includes the aggregate market value of non-voting as well as voting common equity could reduce the number of issuers that would qualify as small business issuers. The result would be a commensurate decrease in the number of issuers filing Form SB–1 and SB–2. Such issuers instead would use Form S–1 or S–2. The proposal to change the definition of small business issuer in Rule 12b–2 under the Exchange Act would also result in a decrease in the number of issuers filing Forms 10–KSB, 10–QSB, and 10–SB. Such issuers would instead use Forms 10–K, 10–Q and 10, respectively.

It is estimated for the purposes of the Act that approximately 1,164 Form S–1s, 111 Form S–2s, 2,059 Form S–3s, 178 Form F–1s, 4 Form F–2s, 143 Form F–3s, 17 Form SB–1s, and 393 Form SB–2s, 6,019 Form 10–Ks, 28,934 Form 10–Qs, 887 Form 10–KSBs, 5,443 Form 10–QSBs, 82 Form 10s, and 88 Form 10–SBs are filed each year.[29] If the proposed amendments to Forms S–3, F–2 and F–3 were adopted it is estimated that: (1) The number of Form S–3s filed per year will increase by approximately 103 with an estimated per year increase burden of 40,994 hours in the aggregate; (2) the number of F–2s filed per year

[29] These estimates are based on the number of such filings made in fiscal year 1995 and assume that there are no increases or decreases each year.

will increase by 1 with an estimated increase burden of 559 hours; (3) the number of F–3s filed per year will increase by 7 with an estimated increase burden of 1,162 hours in the aggregate; (4) the number of S–1s filed per year will decrease by 92 with an estimated decrease burden of 116,564 hours in the aggregate; (5) the number of S–2s filed per year will decrease by 11 with an estimated decrease burden of 7,370 hours in the aggregate; and (6) the number of F–1s filed per year will decrease by 8 with an estimated decrease burden of 14,944 hours in the aggregate.[30] The total net decrease in burden is estimated at 96,162 hours.

If the proposed amendments to Rule 405 and Item 10 of Regulation S–B were adopted it is estimated that: (1) The number of Form SB–1s filed per year would decrease by approximately 1 with an estimated decrease in burden of 710 hours; (2) the number of Form SB–2s filed per year would decrease by approximately 12 with an estimated decrease in burden of 10,512 hours in the aggregate; the number of Form S–1s filed per year would increase by 12 with an estimated increase in burden of 15,204 hours in the aggregate; and the number of Form S–2s filed per year would increase by 1 with an estimated increase in burden of 470 hours. The total net increase in burden would be 4,452 hours.

If the proposed amendment to Rule 12b–2 under the Exchange Act is adopted it is estimated that: (1) The number of Form 10–KSBs filed per year would decrease by approximately 27 with an estimated per year decrease burden of 32,832 hours in the aggregate; (2) the number of Form 10–QSBs filed per year would decrease by approximately 163 with an estimated per year decrease burden of 21,353 hours in the aggregate; (3) the number of Form 10–SBs filed per year would decrease by approximately 3 with an estimated per year decrease burden of 270 hours in the aggregate; (4) the number of Form 10–Ks filed per year would increase by approximately 27 with an estimated per year increase burden of 46,521 hours in the aggregate; (5) the number of Form 10–Qs would increase by approximately 163 with an estimated per year increase burden of 23,472 hours in the aggregate; and (6) the number of Form 10s filed per year would increase by approximately 3 with an estimated per year increase burden of 285 hours in the aggregate. The total net increase in burden is estimated at 15,823 hours.

Thus, it is anticipated that the adoption of the proposed amendments to Form S–3, F–2 and F–3 will decrease burden by an estimated 96,162 hours and the adoption of the proposed amendments to Rule 405 and Item 10 of Regulation S–B will increase burden by an estimated 4,552 hours. It is anticipated that the adoption of the proposed amendments to Rule 12b–2 under the Exchange Act will increase burden by an estimated 15,823 burden hours. Consequently, it is estimated that the adoption of all of the proposed amendments will result in a total decrease in burden of 75,787 hours.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments on the following: whether the proposed changes in the collections of information are necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; on the accuracy of the Commission's estimate of the burden of each collection of information as well as the proposed changes to the collections of information; on the quality, utility and clarity of the information to be collected; and whether the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget Attention: Desk Officer for the Securities and Exchange Commission, Office of the Information and Regulatory Affairs, Washington, D.C. 20503, with reference to File No. S7–23–96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis For the Proposals

The amendments to the Commission's rules and forms are proposed pursuant to Sections 6, 7, 8, 10, 19(a), and 27A of the Securities Act and Sections 12, 13, 14, 15(d), 21E, 23(a) and 35A of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

§ 228.10 [Amended]

2. By amending § 228.10(a)(1) by removing the word "securities" in the *Provided however* sentence immediately following § 228.10(a)(1)(iv) and adding the words "shares of voting and non-voting common equity" in its place.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

§ 230.405 [Amended]

* * * * *

4. By amending § 230.405 the definition of "*Small Business Issuer*" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

§§ 239.13, 239.32, 239.33 [Amended]

* * * * *

6. 17 CFR part 239 is amended by removing the words "voting stock" and adding, in their place, the words "shares of voting and non-voting common equity" in the following sections:

(a) 17 CFR 239.13(b)(1)
(b) 17 CFR 239.32(b)(2)(i)
(c) 17 CFR 239.33(b)(1)

7. By revising the Instruction to § 239.13(b)(1) to read as follows:

[30] The Commission estimates that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule proposals. *See* Section V, "Summary of Initial Regulatory Flexibility Analysis," *supra*.

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) Transaction requirements. * * *

(1) Primary and secondary offerings by certain registrants. * * *

Instruction to Paragraph (b)(1)

For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

8. By amending Form S–3 (referenced in § 239.13) by revising the Instruction to General Instruction I.B.1 to read as follows:

(Note: The text of Form S–3 does not and the amendments will not appear in the Code of Federal Regulations.)

Form S–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

B. Transaction Requirements * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

9. By revising Instruction 1 to § 239.32(b)(2) to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(b) * * *

(2) * * *

Instructions to Paragraph (b)

1. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

10. By amending Form F–2 (referenced in § 239.32) by revising the Instruction to General Instruction I.B.2.1. to read as follows:

(Note: The text of Form F–2 does not and the amendments will not appear in the Code of Federal Regulations.)

Form F–2

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F–2

* * * * *

B. * * *

2. * * *

Instructions. 1. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding common equity shall be computed by use of the price at which the voting and non-voting common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

11. By revising the Instruction to paragraph (b)(1) of § 239.33 to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(b) Transaction requirements. * * *

(1) Primary offerings by certain registrants. * * *

Instruction to Paragraph (b)(1)

For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

12. By amending Form F–3 (referenced in § 239.13) by revising the General Instruction I.B.1 to read as follows:

(Note: The text of Form F–3 does not appear in the Code of Federal Regulations.)

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F–3

* * * * *

B. Transaction Requirements

* * * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.12b–2 [Amended]

14. By amending § 240.12b–2 the definition of "Small Business Issuer" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

15. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

16. By amending the front page of Form 10–K (referenced in § 249.310) by

revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10–K does not and the amendments will not appear in the Code of Federal Regulations.)

Form 10–K

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the common equity was sold, or the average bid and asked prices of such common equity, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405.)

* * * * *

17. By amending the front page of Form 10–KSB (referenced in § 249.310b) by revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10–KSB does not, and the amendments will not appear in the Code of Federal Regulations.)

Form 10–KSB

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was sold, or the average bid and asked price of such common equity, as of a specified date within the past 60 days. (See definition of affiliate in Rule 12b–2 of the Exchange Act.)

* * * * *

By the Commission.

Dated: August 30, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22726 Filed 9–9–96; 8:45 am]

BILLING CODE 6010–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–052]

RIN 1218–AB55

Exit Routes (Means of Egress)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed Rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise Subpart E of Part 1910, Means of Egress. The purpose of this revision is to rewrite the existing requirements of Subpart E in plain English so they will be more understandable to employers, employees, and others who use them. This revision does not in any way change the regulatory obligations of employers or the safety and health protections provided to employees. To further the plain English goal, OSHA is also proposing to change the name of Subpart E from "Means of Egress" to "Exit Routes."

OSHA is proposing two alternative plain English versions of this revision to Subpart E. The first version is organized in the traditional OSHA regulatory format. The second version uses a question and answer format. OSHA invites interested parties to comment on the content and effectiveness of the proposed changes and on the plain English version of Subpart E that they prefer.

DATES: Comments and requests for hearings must be postmarked no later than November 12, 1996.

ADDRESSES: Comments and requests for hearings must be submitted in quadruplicate to the OSHA Docket Office, Docket No. S–052, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. (Telephone: 202–219–7894). Comments of 10 pages or less may be faxed to the Docket Office, if followed by hard copy mailed within two days. The OSHA Docket Office fax number is (202)–219–5046.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, OSHA Office of Information and Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone (202)–219–8148.

SUPPLEMENTARY INFORMATION:

I. Background

In 1971, acting under section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. § 655(a), OSHA adopted hundreds of national consensus standards as occupational safety and health standards. Over the ensuing twenty-five years, OSHA has become aware that these standards may be overly wordy, difficult to understand, repetitive, and internally inconsistent. Complaints about OSHA's technical, "nitpicky" standards have been repeated too many times to recount.

To make OSHA standards more "user-friendly," President Clinton, as part of the Administration's Reinventing Government initiative, together with Secretary of Labor Robert Reich and Assistant Secretary Joe Dear, has committed the Agency to reviewing OSHA's standards "to determine which should be rewritten in plain English." OSHA's first "plain English" initiative is a proposed revision of Subpart E of Part 1910, which addresses means of egress (exit routes). In revising Subpart E, the goal of OSHA is to make its standards more understandable to those who use them. Toward this goal, the proposed revisions to Subpart E reorganize the text, remove internal inconsistencies among sections, and eliminate duplicate requirements.

In addition, the requirements of Subpart E have been rewritten using simple, straightforward, easy to understand, terms. The proposed rules are performance-oriented and shorter than the existing standards. They reduce the number of subparagraphs, and contain fewer cross-references to other OSHA standards. Each of the two proposed versions of Subpart E includes a detailed table of contents, which is intended to make the standards easier to use.

Both proposed versions leave unchanged the regulatory obligations placed on employers by Subpart E and the safety and health protections that it provides to employees. OSHA believes, however, that the revised Subpart E, which is more performance oriented than the existing Subpart, will make more compliance options available to employers.

Since OSHA is not proposing to change the substantive requirements of Subpart E, the Agency believes that the significant risk test described by the Supreme Court in *American Petroleum Institute* v. *Industrial Union Department* [448 U.S. 607(1980)] does not apply to this rulemaking. Further, OSHA has concluded that this rulemaking neither requires technological changes nor imposes increased costs. In fact, the proposed rule may decrease compliance costs by providing employers with more flexible compliance options. Accordingly, OSHA has determined that an analysis of the technological and economic feasibility of the standard is not necessary.

Finally, although OSHA recognizes that some portions of Subpart E may warrant updating, the Agency is not proposing to update the requirements of Subpart E at this time. Instead, the proposal addresses only one aspect of Subpart E: the overly technical language of the existing requirements. At a later date, the Agency will consider whether substantive revisions to these requirements are warranted.

II. Why Redraft OSHA Regulations in Plain English?

Since OSHA's adoption in 1971 of national consensus and established Federal standards under Section 6(a) of the Act, many of these "start-up standards" have been criticized for being written in a manner that can easily be misunderstood by employers and employees. For example, Robert Moran, former Chairman of the Occupational Safety and Health Review Commission, was an early critic of these standards, noting that they:

- Were not written in terms amenable to enforcement
- Were not exclusively concerned with worker safety (that is, requirements directed at the safety of equipment, buildings, consumers, the general public, and workers were intermingled)
- Were not specific enough so that an ordinary business person or employee could understand them
- Included "conflicts and inconsistencies."

[Moran, Cite OSHA for Violations, Occupational Safety and Health, Mar.—Apr. 1976 at 19–20].

Members of Congress, including those who had supported the Act, repeated similar criticisms of OSHA's 6(a) standards. For example, Congressman Steiger, quoting a constituent [117 Cong. Rec. 10839 (daily ed. March 29, 1971)], commented: "Perhaps large corporations have engineers who have the savvy to comprehend the 744 columns (of standards published in the **Federal Register**). Few businesses have."

He also complained [120 Cong. Rec. 21654 (daily ed. June 27, 1974)]:

> For the small businessman without an attorney on retainer, or safety and health professional on their staff, the standards published in the **Federal Register** might as well be written in a foreign language.

Another Member of Congress, Mr. McKinney, noted that an employer needs "an interpreter to decipher the OSHA regulations" [120 Cong. Rec. 21654 (daily ed. June 27, 1974)]. Congressman Hungate complained that OSHA's regulations are voluminous, technical and complex, and that small businesses do not have the resources to daily monitor the **Federal Register** or hire engineers to interpret the technical language contained in the regulations [Id. P. 21658].

Additionally, Congressman Anderson [121 Cong. Rec. 36908 (daily ed. Nov. 17, 1975] stated:

> If OSHA can be faulted for anything, it is that it tends to be too bureaucratic and gets carried away with drawing up regulations that are so laden with gobbledy-gook that even an FBI cryptographer would have difficulty decoding them. Pity then the poor small businessman who had not been tutored in reading gobbledy-gook and who cannot afford to hire a translator or special consultant to assist him in interpreting and implementing these standards.

The Clinton Administration's initiative to reinvent government, spearheaded by Vice President Gore, has focused renewed attention on the difficulty many employers and employees have in understanding OSHA requirements. Responding to President Clinton and Vice President Gore's challenge, in June 1995, the Department of Labor developed a complete regulatory reform strategy to "emphasize plain language to make rules more user-friendly."

This proposal begins the implementation of OSHA's goal of identifying at least three standards that can be rewritten in plain English. *Means of Egress* (Exit Routes) which is codified as Subpart E of OSHA's General Industry Standards (29 CFR 1910), was selected as the first plain English project because these rules were not technologically complex and their purpose—to protect employees in case of fire or other emergencies—was familiar.

Two alternate approaches to plain English rule writing are presented in this proposal. In redrafting other Section 6(a) standards, many of which are technologically more complex or more detailed than Subpart E, it may not be possible for OSHA to achieve the simplicity and user-friendliness of the proposed revisions to Subpart E.

III. What are OSHA's Goals in Revising Subpart E?

OSHA hopes to achieve three goals in this proposal:

- To maintain the safety and health protections provided to employees by Subpart E without increasing the regulatory burden on employers
- To create a regulation that is easily understood
- To state employers obligations in performance-oriented language to the extent possible.

Below, OSHA describes how each of these goals is served by the proposed revisions to Subpart E.

This project is a language revision project, not an effort to substantively revise OSHA's means of egress standards. Therefore, the Agency has been careful to ensure that the protections afforded to employees by Subpart E are not weakened in the revision process. Employers who were in compliance with Subpart E prior to this proposal will continue to be in compliance with the new regulation after it becomes effective. Likewise, employees who are accustomed to relying on these OSHA requirements to ensure safe exit from the workplace during an emergency can continue to rely on those requirements with confidence.

OSHA's effort to redraft Subpart E in plain English has included a thorough, comprehensive review of the existing regulation. The Agency has reviewed all relevant OSHA interpretations of Subpart E and decisions of the Federal courts and the Occupational Safety and Health Review Commission to determine what each provision of Subpart E has meant in practice. OSHA has also reviewed comparable State regulations, existing training materials on means of egress, and current consensus standards, including the National Fire Protection Association (NFPA) Life Safety Code. This comprehensive analysis of Subpart E has enabled OSHA to reorganize Subpart E, and eliminate duplicate provisions and have confidence that the revisions will not diminish the safety and health protections provided by the existing rules.

During the revision process, OSHA has become aware that some provisions of Subpart E are outdated. Indeed, the current NFPA Life Safety Code and other consensus standards provide employers with contemporary fire safety compliance options that are not permitted by the existing rules. Where it was possible to revise the proposed language of Subpart E to allow employers the flexibility of relying on these more contemporary compliance approaches without decreasing the protectiveness of the requirements or increasing employers' obligations, OSHA has proposed to do so. For example, OSHA's existing rules require that exits lead directly outside, while recent revisions to NFPA's code permit exit routes that lead to a refuge area, particularly in high-rise buildings. The proposed revisions would recognize refuge areas as a permissible means of exit; OSHA is specifically asking for comment on this change. Another example of the increased flexibility of the of the proposed revisions relates to exit signs. Self-luminous or electroluminescent signs are now a commonplace method of alerting occupants to the location of exits in the workplace and are recognized by consensus organizations as appropriate for that purpose. Existing Subpart E, however, does not yet permit reliance on self-luminous or electroluminescent signs. The proposed revisions, however,

would permit employers to utilize such signs as an added option; current compliance methods would also continue to be permitted. In this way, OSHA has increased the flexibility of compliance for employers without reducing the safety and health protections provided to employees.

Another of OSHA's aims in revising Subpart E is to continue to rely on performance-oriented language to the extent that doing so is consistent with the maintenance of safety and health protections and does not increase the obligations of employers.

For example, the specification that exit signs use letters that are not less than six inches high and 3/4 inches wide was intended to ensure that any sign used to direct employees out of the building would be visible. In the proposed revision, OSHA has eliminated the size specification in favor of a requirement that simply states that exit signs must be clearly visible to all building occupants.

In addition, the proposed revisions to Subpart E increase the performance orientation and compliance flexibility of the standards where national consensus standards have led the way (without, of course, reducing employee protections). For example, § 1910.37(c) contains detailed specifications for the number of persons per unit of exit width required for each means of egress. These specifications are extremely difficult for users to understand. The NFPA no longer relies on the number of persons per unit of exit width to determine adequate exit capacity. Instead, the NFPA's Life Safety Code incorporates the concept of exit geometry. Exit capacity, according to the NFPA, is determined not by width alone, but by considering the distance to be traveled to the exit and other factors affecting the flow of people out of the workplace. The performance-oriented language of the proposed regulations allows employers to consider the newer NFPA approach.

However, OSHA has *not* used performance-oriented language in revising Subpart E where the effect of doing so would:

- Eliminate a requirement that protects employee safety and health without substituting an equally effective requirement; or
- Expand an employer's compliance obligations.

For example, § 1910.37 now requires that a means of egress be at least 28 inches wide. Substituting a performance-oriented criterion, such as a requirement that a means of egress be "of adequate width to support building occupants", would eliminate the minimum width but might also reduce the protection provided to those seeking to leave the workplace. For this reason, OSHA decided not to revise the minimum clearance requirement.

For some employers, reliance on performance-oriented regulations may create confusion as to the specific precautions necessary in a variety of situations. In the past, OSHA has used the NFPA Life Safety Code as an aid in interpreting Subpart E. OSHA intends to continue to rely on the NFPA Life Safety Code and other consensus standards as guidance in implementing performance-oriented requirements of revised Subpart E.

III. What Are the Results of OSHA's Revision to Subpart E?

The proposed revision to Subpart E has resulted in changes to the paragraph designations of existing requirements. The following table compares the proposed rule paragraph designations with the paragraph designations of the current Subpart E requirements.

COMPARISON OF PROPOSED RULE ON EXIT ROUTES WITH CURRENT SUBPART E STANDARD

Proposed rule on exit routes	Comparable Subpart E section
1910.35. What is covered by these regulations?	1910.36(a).
(b) Exits and Exits Routes Are Covered	1910.35(c).
(1) Definition Of An Exit.	
(2) Definition Of An Exit Route	1910.35(a).
1910.36. What are the design requirements for exit routes?	1910.37(a), 1910.37(g)(4).
(a) An Exit Must Be Permanent.	
(b) The Number Of Exit Routes Must Be Adequate	1910.36(b)(1)
(1) Two exit routes, remote from one another, must be available to provide alternate means for employees to leave the workplace safely during an emergency.	1910.36(b)(3)
(2) A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace indicate that a single exit will allow all employees to exit safely during an emergency. Other means of escape, such as fire exits or accessible windows, should be available where fewer than two exit routes are provided.	1910.36(b)(8).
(3) More than two exit routes must be available to allow employees to leave the workplace safely during an emergency where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace reasonably suggest that reliance on two exit routes could endanger employees.	1910.37(e).
(c) An Exit Has Limited Openings	1910.37(a), 1910.37(b)(3), 1910.37(b)(4).
(d) An Exit Must Be Separated By Fire Resistant Materials	1910.37(b)(1)–(b)(2).
(e) Exit Route Access Must Be Unobstructed	1910.36(b)(4), 1910.36(d)(1).
(1) Free and unobstructed access to each exit route must be provided to ensure safe exit during an emergency.	1910.37(f)(1), 1910.37(k)(2).
(2) The exit route must be free of material or equipment	1910.36(d)(1), 1910.37(f)(1).
(3) Employees must not be required to travel through a room which can be locked, such as a bathroom, or toward a dead end to reach an exit.	1910.37(f)(3).
(4) Stairs or a ramp must be used if the exit route is not substantially level	1910.37(j).
(f) An Exit Must Lead Outside	1910.37(h)(1).
(1) An exit must lead directly outside or to a street, walkway, refuge area, or to an open space with access to the outside.	New Compliance Option Included.

COMPARISON OF PROPOSED RULE ON EXIT ROUTES WITH CURRENT SUBPART E STANDARD—Continued

Proposed rule on exit routes	Comparable Subpart E section
(2) The street, walkway, refuge area, or open space to which an exit leads must be large enough to accommodate all building occupants likely to use that exit.	
(3) A refuge area must be:	
(i) a space along an exit route protected from the effects of fire either by separation from other spaces within the building or by its location; or	
(ii) a floor with at least two spaces separated by smoke-resistant partitions in a building where each floor is protected by an automatic sprinkler system. An automatic sprinkler system must comply with 29 CFR § 1910.159.	
(4) Exit stairs that continue beyond the floor of exit discharge must be interrupted by doors, partitions, or other effective means.	1910.37(h)(2).
(g) An Exit Door Must Be Unlocked	1910.36(b)(4), 1910.37(k)(3).
(h) A Side-hinged Exit Door Must Be Used	1910.37(f)(2).
(i) The Capacity Of An Exit Route Must Be Adequate	1910.37(c), 1910.37(d).
(j) An Exit Must Meet Minimum Height And Width Requirements	1910.37(f)(6), 1910.37(i).
(k) An Outdoor Exit Route Is Permitted	1910.37(g)(1)–(g)(5).
1910.37. What are the operation and maintenance requirements for exit routes?	
(a) The Danger To Employees Must Be Minimized.	
(1) The exit route must be maintained to minimize danger to employees during an emergency.	
(2) The exit route must be free of explosive or highly flammable furnishings or decorations	1910.36(b)(2).
(3) An exit route must not require employees to travel toward materials which burn very quickly, emit poisonous fumes, or are explosive, unless those materials are effectively shielded from the exit route.	1910.37(l)(2), 1910.37(f)(5).
(b) Lighting Must Be Adequate	1910.36(b)(6).
(c) An Exit Must Be Marked Appropriately	1910.37(f)(4).
(1) Each exit must be clearly visible and must be marked by a distinctive sign reading "Exit"	1910.36(b)(5), 1910.37(q)(1); (q)(3); (q)(4); (q)(8).
(2) An exit door must be free of signs or decorations that obscure its visibility	1910.37(f)(4).
(3) Signs must be posted along the exit route indicating the direction of travel to the nearest exit	1910.36(b)(5); 1910.37(q)(5).
(4) The line-of-sight to an exit sign must be uninterrupted.	
(5) Any doorway or passage that might be mistaken for an exit must be marked "Not an Exit" or with an indication of its actual use.	1910.37(f)(4); 1910.37(q)(3).
(6) An exit sign must be illuminated to a surface value of at least 5 foot candles by a reliable light source and must show a designated color. Self-luminous or electroluminescent signs have a minimum luminance surface value of .06 footlamberts.	1910.36(b)(5); 1910.37(q)(2), 1910.37(q)(6)–(q)(7).
(d) The Fire Retardant Properties Of Paints Or Other Coatings Must Be Maintained	New Compliance Option Included.
(e) Each Emergency Safeguard Must Be Maintained	1910.37(o).
(f) Exits Must Be Maintained During Construction And Repair	1910.37(m)–(n), 1910.38(b)(5).
(g) An Employee Alarm System Must Be Operable	1910.36(c)(1)–(c)(3).
1910.38. What are the requirements for an Emergency Action Plan?	1910.36(b)(7), 1910.37(n).
(a) An Emergency Action Plan Must Be Available for Employee Review.	1910.38(a)(1), 1910.38(a)(5)(iii).
(b) Minimum Elements Of An Emergency Action Plan	1910.38(a)(2), 1910.38(a)(4).
(c) Employee Alarm System	1910.38(a)(3).
(d) Training	1910.38(a)(5)(i).
(e) Employee Review	1910.38(a)(5)(ii), 1910.38(a)(5)(iii).
1910.39. What are the requirements for a Fire Prevention Plan?	
(a) A Fire Prevention Plan Must Be Available For Employee Review	1910.38(b)(1), 1910.38(b)(4).
(b) Minimum Elements Of A Fire Prevention Plan	1910.38(b)(2).
(c) Employee Information	1910.38(b)(4).

In revising the means of egress standards, OSHA has attempted to organize their requirements in a logical and understandable manner. OSHA has drafted this revision with the following general principles in mind:

- General provisions should appear before specific provisions or exceptions
- Important provisions should appear before less important provisions
- Frequently used provisions should appear before less frequently used provisions
- Substantive requirements should appear before procedural requirements
- Permanent provisions should appear before temporary, transitional, or "grandfather" provisions
- "Housekeeping" provisions and appendices should be placed at the end of the requirements.

OSHA has grouped the requirements around three common themes: (1) design and construction requirements for exit routes; (2) operation and maintenance requirements for exit routes; and (3) requirements for warning employees of the need to escape. For example, the design requirements for exit routes formerly were scattered both in § 1910.36 and § 1910.37. Previously, the requirement that exits discharge directly to a public street or to an open space was a general requirement found in § 1910.37(h)(1). Because the placement or location of exits is a requirement employers must address during workplace design, that requirement has been moved to paragraph (f) of § 1910.36, which covers design of exit routes.

Reorganizing Subpart E in this manner has enabled OSHA to eliminate many duplicate provisions. In the prior version, both § 1910.36(b)(8) and § 1910.37(e) contained the design requirement that workplaces with more than one exit have two means of egress remote from one another. Now, however, § 1910.36(b) contains all requirements for the location of exit routes.

Throughout this revision, OSHA has placed the general provisions of each paragraph first, followed by any specific applications or exceptions. For example,

there is a proposed general design requirement (§ 1910.36(b)(1)) that requires employers to have two exit routes, remote from one another. Two specific exceptions follow that general requirement: single exit routes are permitted in certain circumstances if safe employee exit is possible; and more than two exit routes are required where workplace conditions suggest that reliance on only two exit routes will endanger employees (§ 1910.36(b)(2)–(3)).

Since OSHA regulates employment and places of employment, the Agency's standards are intended to impose those duties on employers that are necessary to protect employee safety and health. In the revised standards, the mandatory duty of employers to comply with the regulatory obligations set forth in Subpart E is retained. However, existing Subpart E too often addresses obligations that are not related to employee protection but pertain instead to protection of the general public or the occupants of buildings. The proposed revision limits the regulatory obligations to those relevant to workplace health and safety; buildings that are not workplaces are clearly outside the scope of the revised standards. There is an exception to this principle where the protection of employee safety and health requires an employer to assure that *all* building occupants, including employees, can evacuate a building safely. In such situations, revised Subpart E imposes a duty on employers to protect all building occupants. However, where the safety of building occupants is independent of employee safety, the revised language refers only to the protection of employees.

OSHA has revised Subpart E to state clearly that employers must comply with its requirements and indicate how compliance must be achieved. OSHA has continued the use of command words, such as "must," when the intent is to impose clear obligations on employers to take affirmative employee-protective steps. Thus, OSHA has avoided the use of such words as "should", which recommend but do not require a given action, or "may" which give the employer discretion to act unless the Agency is recommending or permitting the associated action.

The Agency believes that the proposed revisions make Subpart E more "user-friendly" and less easy to misinterpret. OSHA has reduced the level of subunits (subparagraphs or sub-subparagraphs) to make the requirements easier to locate and follow.

The proposed Question and Answer version of Subpart E is very different from the approach taken in current OSHA standards. Each provision is written in the form in which a typical employer might ask a question about the rule, and this question is then followed by an answer that tells the employer about the applicable requirements. For example, employers frequently ask, "What are the requirements for Emergency Action Plans?" This question, now posed in § 1910.38, is followed by the answer, which consists of a description of the specific requirements for emergency action plans an employer must follow to comply with Subpart E.

Each provision of the proposed revision is preceded by a section heading that tells the reader what information can be found in that section. For example, the section heading for exterior exit routes is "An Outdoor Exit Route is Permitted." These descriptive headings help the user to locate relevant regulatory requirements. Using these section headings, OSHA has created a table of contents that precedes the proposed revisions. Focus groups evaluating the format of OSHA standards strongly recommended the addition of a table of contents as a guide to OSHA standards.

In keeping with OSHA's new "user-friendly" approach to drafting standards, the number of definitions also has been reduced from ten to two; all unused terms have been removed from the existing definitions. Because employers do not need definitions for ordinary words that are employed in a manner consistent with common usage, OSHA believes this revision will streamline the requirements and eliminate confusion. OSHA also has eliminated many cross-references to other standards so that most requirements for exit routes in general industry will now be found in Subpart E.

OSHA has incorporated plain English principles in this revision. Generally, OSHA has tried to use short, focused, sentences to keep the requirements simple. OSHA believes that a readable sentence is affirmative, declarative, and limited to a single idea or thought. Accordingly, qualifying phrases longer than a few words have been moved to separate sentences. OSHA also believes that paragraphs should be brief and be devoted to a single, unified topic.

Unnecessary technical language obscures meaning and impairs understanding. In this revision, OSHA has tried to use common words in ways that are consistent with their ordinary or accepted meaning. For example, Subpart E regulates "means of egress," a term understood by professionals but not used in everyday conversation. Substituting the phrase "exit route" for "means of egress" will make it easier for most employers and employees to understand the requirements at first reading.

OSHA has used the active rather than the passive voice in this revision. In an active sentence, the subject performs an action. In a passive sentence, the subject is acted upon. Writers frequently use passive construction to emphasize the action instead of the actor, e.g., "The regulation was drafted," instead of "He drafted the regulation." Passive construction is less immediate and can be less compelling to the reader, as well as more ambiguous. For example, instead of "it is required that an employer * * *", OSHA now generally uses "The employer must * * *".

A positive sentence is preferred when an idea can be expressed either positively or negatively, although a negative sentence is an obvious choice when the subject of a standard is a prohibition, e.g., "No employee is permitted * * *" Consistent with the goals of this revision, OSHA has stated requirements affirmatively, rather than negatively. For example, instead of stating "no furnishing, decorations, or other objects shall be so placed as to obstruct exits, access hereto, egress therefrom, or visibility thereof," the revised language would read, "the escape route be free of material and equipment."

In drafting simpler sentences, OSHA has paired the actor (employer) with the action (conduct required or prohibited). Concise declarative sentences answer the question, "Who must do what?" In most situations covered by OSHA standards, the actor will be the employer. The proposed traditional version of Subpart E includes an introductory requirement that the employer comply with each of the requirements imposed by that section. Each section of the regulation then clearly identifies the conduct required or prohibited.

In the proposed question and answer revision of Subpart E, the actor and action are paired more closely. Since confusion might occur if conditions pertaining to the requirement or prohibition were inserted between the actor and the action, OSHA has placed the actor, action, and object close together in the sentence. For example, § 1910.37 of the proposed standard now requires that an employer comply with each duty described in that section, and paragraph (b) describes the required conduct. This proposed requirement now states, "Each exit route must be illuminated adequately." Thus, the employer's obligation is clearly

identified. Previously, the same requirement (§ 1910.37(b)(6)) stated, "In every building or structure equipped for artificial illumination, adequate and reliable illumination shall be provided for all exit facilities."

Finally, OSHA has paid careful attention to parallel structure and to the rules of grammar and punctuation in revising Subpart E.

IV. What Procedures Govern OSHA's Plain English Revision?

This proceeding to revise Subpart E differs from other OSHA rulemaking efforts because the Agency is proposing to modify only the language of the Means of Egress rule and not its substance. In the past, OSHA has waived public notice and comment when a rule contains "minor and non-controversial" changes. However, OSHA has decided against that approach in this rulemaking process in order to give public notice, and receive comments, about the Agency's revision of its standards into plain English.

The Agency expects to receive three types of public comments:

- Comments from interested parties on whether they perceive the two revised, plain English versions of Subpart E as providing levels of safety and health protection that are as effective as those currently in force. Where interested parties identify provisions of the proposed plain English rules that do not meet this criterion, OSHA expects to make changes to ensure that the final rule meets the Agency's goal of imposing no new burdens on employers and maintaining safety and health protections for employees.
- Comments by interested parties on their preference for the "traditional" plain English version of Subpart E or the "question and answer" version of Subpart E.
- Comments from interested parties identifying sections of Subpart E that are out-of-date and explaining why OSHA should substantively modify these provisions. OSHA will take such comments into consideration in setting its standard-setting priorities.

Because of the limited scope and purpose of this rulemaking, OSHA hopes to expedite the issuance of a final standard.

If the Agency receives significant objections to its proposal or, in the unlikely event that issues are raised that have not been fully considered in developing the proposed revision, OSHA will provide public notice of this fact and proceed with further rulemaking under section 6(b) of the Act.

V. What Legal Considerations Govern OSHA's Plain English Revisions?

OSHA does not believe that the significant risk analysis that the Agency usually performs prior to proposing a safety standard is necessary here. In *Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980), the Supreme Court ruled that section 3(8) of the Act, which defines an occupational safety and health standard, requires the Agency, as a threshold matter, to determine whether the hazard it proposes to regulate poses a significant risk in the workplace and that a new, lower standard is "reasonably necessary and appropriate" to reduce the risk posed to workers. OSHA believes that an analysis of significant risk is not required here and, indeed, would not be helpful because the Agency is proposing no substantive revisions to the requirements of Subpart E. Because this proposal neither imposes new regulatory burdens nor impacts safety and health protection, any effort to measure the "benefits" of this effort would not be productive.

This does not mean that the Agency believes that this effort will not yield substantial benefits. To the contrary, rules written in plain English are easier for employers and employees to follow and understand. Ease of understanding should facilitate compliance by employers. With OSHA's limited resources, any effort that can substantially increase opportunities for compliance without sacrificing employee safety and health protection will have long-term benefits.

OSHA also believes that this proceeding neither requires technological changes nor imposes increased compliance costs on employers. Indeed, employers may save money. Therefore, OSHA does not believe an analysis of the economic or technological feasibility of the proposal is necessary. See *American Textile Mfrs. Inst.* v. *Donovan*, 452 U.S. 490 (1981). Likewise, Executive Order 12866 does not require that OSHA prepare an Economic Analysis for this rulemaking.

Finally, OSHA does not believe that section 6(b)(8) applies to this proceeding. Section 6(b)(8) requires OSHA to provide an explanation when a rule differs substantially from an existing national consensus standard. OSHA does not view the revisions to Subpart E as differing from the provisions of the national consensus standard, because the agency is modifying the wording of Subpart E and not its substance. Therefore, the requirements imposed by Subpart E will remain comparable to those imposed by the national consensus standard upon which Subpart E was based. Furthermore, OSHA has evaluated current consensus standards addressing means of egress and has concluded that the requirements of Subpart E are consistent with those of these national consensus standards.

The current requirements contained in § 1910.38 address both employee action plans (§ 1910.38(a)) and fire prevention plans (§ 1910.38(b)). OSHA is proposing that § 1910.38 continue to contain requirements for emergency action plans, but that a new section, § 1910.39 contain requirements for fire prevention plans. Therefore, OSHA is proposing that the appendix to Subpart E be revised to reflect the new section designation for fire prevention plans. The Agency, however, is not proposing any changes to the text of the Subpart E appendix.

Summary of Economic Impact Analysis and Certification of No Significant Impact

Because the proposed rule for Means of Egress (proposed to be renamed "Exit Routes") will impose no obligations on employers beyond those imposed by the existing rule, which has been in effect since 1971, OSHA has not conducted a preliminary economic analysis to accompany the proposed rule. Because the proposed rule will have no economic impacts, the Agency certifies that it will have no significant impacts on a substantial number of small entities. This certification is necessitated by the Regulatory Flexibility Act (as amended, 1996).

Public Participation

Interested parties are invited to submit written data, views, and comments with respect to this proposed revision. These comments must be postmarked on or before November 12, 1996. Comments are to be submitted in quadruplicate, or in 1 original (hard copy) and 1 disk (3½″ or 5¼″) in WordPerfect 5.0, 5.1, or 6.0, or ASCII, to the Docket Office, Docket No. S–052, Room N2625, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, DC. 20210.

All written comments, views, data, and arguments received within the specified comment period will be made part of the record and will be available for public inspection and copying at the above Docket Office address.

Requests for an informal public hearing on objections to the proposed rule, pursuant to § 6(b)(3) of the Occupational Safety and Health Act (29 U.S.C. 655(b)(3)), must be submitted to

the Docket Office at the above address, and postmarked no later than November 12, 1996. Hearing requests must comply with the following requirements: they must include the name and address of the objector; they must specify with particularity the provision of the proposed rule to which the objection is taken, and must state the grounds therefore; and they must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

State Plan States

The 25 States and Territories with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

List of Subjects in 29 CFR Part 1910

Means of egress, Exit, Exit route, Emergency action plan, Fire prevention plan, Occupational safety and health.

Authority

This document was prepared under the authority of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657,), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR Part 1911, it is hereby proposed to amend 29 CFR Part 1910 as set forth below.

Signed at Washington, D.C., this 4th day of September 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

29 CFR Part 1910 would be amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The Authority citation for Subpart E of 29 CFR Part 1910 would continue to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

2. Subpart E—Means of Egress would be amended by revising §§ 1910.35 through 1910.39 as follows [traditional text version]:

Subpart E—Exit Routes

§ 1910.35. Coverage.

(a) *Every Employer Is Covered.* This subpart requires a general industry employer to provide exit routes for employees to leave the workplace safely during emergencies. This subpart does not apply to mobile workplaces, such as vehicles or vessels.

(b) *Exits and Exit Routes Are Covered.* (1) *Definition Of An Exit.* The term "exit" refers to that portion of the exit route that generally is separated from other areas to provide a protected way of travel out of the workplace.

(2) *Definition Of An Exit Route.* The term "exit route" means a continuous and unobstructed path of exit travel from any point within a workplace to safety outside. An exit route generally consists of three parts: access to the exit; the exit, which provides a way of travel out of the workplace; and the way from the exit to the outside. An exit route includes all vertical and horizontal areas.

§ 1910.36. Design requirements for exit routes.

(a) *An Exit Must Be Permanent.* Each exit must be a permanent part of the workplace.

(b) *The Number Of Exit Routes Must Be Adequate.* (1) At least two exit routes, remote from one another, must be available to provide alternate means for employees to leave the workplace safely during an emergency.

(2) A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace indicates that a single exit will allow all employees to exit safely during an emergency. Other means of escape, such as fire escapes or accessible windows, should be available where only one exit route is provided.

(3) More than two exit routes must be available to allow employees to leave the workplace safely during an emergency where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace reasonably suggests that reliance on two exit routes could endanger employees.

(c) *Openings Into An Exit Must Be Limited.* An exit must have only those openings necessary to permit access to, or exit from, occupied areas of the workplace. An opening into an exit must be protected by a self-closing fire door that remains closed. Each fire door, its frame, and its hardware must be listed or approved by a nationally recognized testing laboratory.

Note to paragraph (c): 29 CFR 1910.155(c)(3)(iv)(A) defines "listed", 29 CFR § 1910.7 defines a "nationally recognized testing laboratory.", and 29 CFR § 1910.155 (c)(3) defines "approved."

(d) *An Exit Must Be Separated By Fire Resistant Materials.* Construction materials used to separate an exit must have at least a 1-hour fire resistance rating if the exit connects three stories or less. Construction materials used to separate an exit must have at least a 2-hour fire resistance rating if the exit connects 4 stories or more.

(e) *Exit Route Access Must Be Unobstructed.* (1) Free and unobstructed access to each exit route must be provided to ensure safe exit during an emergency.

(2) The exit route must be free of material or equipment.

(3) Employees must not be required to travel through a room that can be locked, such as a bathroom, or toward a dead end to reach an exit.

(4) Stairs or a ramp must be used if the exit route is not substantially level.

(f) *An Exit Must Lead Outside.* (1) An exit must lead directly outside or to a street, walkway, refuge area, or to an open space with access to the outside.

(2) The street, walkway, refuge area, or open space to which an exit leads must be large enough to accommodate all building occupants likely to use that exit.

(3) A refuge area must be:

(i) a space along an exit route protected from the effects of fire either by separation from other spaces within the building or by its location; or

(ii) a floor with at least two spaces separated by smoke-resistant partitions, in a building where each floor is protected by an automatic sprinkler system. Automatic sprinkler systems must comply with 29 CFR 1910.159.

(4) Exit stairs that continue beyond the floor of exit discharge must be interrupted by doors, partitions, or other effective means at the floor of exit discharge to assure that the direction of exit travel is clear to employees.

(g) *An Exit Door Must Be Unlocked.* An exit door must be able to be readily opened from the inside without keys, tools, or special knowledge. A device that locks only from the outside, such as

a panic bar, is permitted. An exit door must be free of any device or alarm, which, if it fails, could restrict emergency use of an exit.

Note to paragraph (g): An exit door may be locked or blocked from the inside in a mental, penal, or correctional institution, if supervisory personnel are continuously on duty and a plan exists to remove occupants during an emergency.

(h) *A Side-Hinged Exit Door Must Be Used.* A side-hinged exit door must be used to connect any room to an exit route. A door that connects any room to an exit route must swing out if the room may be occupied by more than 50 persons or highly flammable or explosive materials may be located inside.

(i) *The Capacity Of An Exit Route Must Be Adequate.* Each exit route must support the maximum-permitted occupant load for each floor served by the exit route. The capacity of an exit must not decrease with the direction of exit travel.

(j) *An Exit Must Meet Minimum Height And Width Requirements.*

(1) The exit route must be at least 6 feet, 8 inches high at all points.

(2) An exit route must be at least 28 inches wide at all points between handrails. An exit route must be wider than 28 inches if necessary to accommodate the expected occupant load.

(3) Objects that project into the exit route must not reduce the minimum height and width of the exit route.

(k) *An Outdoor Exit Route Is Permitted.* (1) An outdoor exit route is permitted if it meets the requirements for an indoor exit route and the following additional requirements:

(i) the exit route must have guardrails to protect unenclosed sides;

(ii) the exit route must be covered if accumulation of snow or ice is likely and is not removed regularly;

(iii) the exit route must be reasonably straight with smooth, solid, substantially level floors; and

(iv) the exit route must have no dead ends longer than 20 feet.

§ 1910.37. Operation And Maintenance Requirements For Exit Routes.

(a) *The Danger To Employees Must Be Minimized.*

(1) Each exit route must be maintained to minimize danger to employees during an emergency.

(2) Each exit route must be free of explosive or highly flammable furnishings and decorations.

(3) An exit route must not require employees to travel toward materials that burn very quickly, emit poisonous fumes, or are explosive, unless those materials are effectively shielded from the exit route.

(b) *Lighting Must Be Adequate.* Each exit route must be illuminated adequately.

(c) *An Exit Must Be Marked Appropriately.* (1) Each exit must be clearly visible and must be marked by a distinctive sign reading "Exit."

(2) An exit door must be free of signs or decorations that obscure its visibility.

(3) Signs must be posted along the exit route indicating the direction of travel to the nearest exit.

(4) The line-of-sight to an exit sign must be uninterrupted.

(5) Any doorway or passage that might be mistaken for an exit must be marked "Not an Exit" or with an indication of its actual use.

(6) An exit sign must be illuminated to a surface value of at least 5 foot candles by a reliable light source and must show a designated color. Self-luminous or electroluminescent signs must have a minimum luminance surface value of .06 footlamberts.

(d) *The Fire Retardant Properties Of Paints Or Other Coatings Must Be Maintained.* The fire retardant properties of paints or other coatings used in the workplace must be maintained.

(e) *Each Emergency Safeguard Must Be Maintained.* Each safeguard to protect employees during an emergency (e.g., sprinkler systems, alarm systems, fire doors, exit lighting) must be maintained in proper working order.

(f) *Exits Must Be Maintained During Construction And Repair.*

(1) Employees must not occupy a workplace under construction until an adequate number of exit routes that complies with these rules is available for the portion of the workplace to be occupied.

(2) Employees must not occupy a workplace during repair or alteration unless all exits and existing fire protection are maintained *or* alternate fire protection is provided that ensures an equivalent level of safety.

(3) Flammable or explosive materials used during construction or repair must not expose employees to hazards not otherwise present in the workplace or impede emergency escape from the workplace.

(g) *An Employee Alarm System Must Be Operable.* An operable employee alarm system with a distinctive signal to warn employees of fire or other emergencies must be installed and maintained, unless employees can see or smell a fire or other hazard so that it would provide adequate warning to them. The employee alarm system must comply with the requirements of 29 CFR § 1910.165.

§ 1910.38. Requirements for an Emergency Action Plan.

(a) *Development of An Emergency Action Plan.*

(1) Whenever another OSHA standard requires an employer to develop an emergency action plan, the plan must comply with this section and cover each part of the workplace.

(2) The plan must be in writing, be kept in the workplace, and be made available to employees on request, except that

(3) An employer with 10 or fewer employees in a workplace may communicate the plan orally to employees rather than develop a written plan.

(b) *Minimum Elements Of An Emergency Action Plan.* An emergency action plan must include:

(1) Procedures for emergency evacuation, including type of evacuation and exit route assignments;

(2) Procedures to account for all employees after evacuation;

(3) Procedures for reporting a fire or other emergency;

(4) Procedures to follow for emergency operation or shut down of critical equipment before evacuation;

(5) Procedures to follow for rescue and medical duties; and,

(6) Names or job titles of employees to be contacted to get more information about the duties of employees under the plan.

(c) *Employee Alarm System.* The employer must install and maintain an employee alarm system. The alarm system must use a distinctive signal for each purpose and comply with 29 CFR § 1910.165.

(d) *Training.* An employer must designate employees to assist in the safe emergency evacuation of other employees. An employer must ensure that the designated employees receive training in emergency evacuation procedures.

(e) *Employee Review.* An employer must review the emergency action plan with each employee covered by the plan:

(1) When the plan is developed or the employee is assigned initially to the job;

(2) When the employee's responsibilities under the plan change; and,

(3) When the plan is changed.

§ 1910.39. Requirements for a fire prevention plan.

(a) *Development of A Fire Prevention Plan.* (1) Whenever another OSHA standard requires an employer to

develop a fire prevention plan, the plan must comply with this section and cover each part of the workplace.

(2) The plan must be in writing, be kept in the workplace, and be made available to employees on request; except that

(3) An employer with 10 or fewer employees in the workplace may communicate the plan orally to employees rather than develop a written plan.

(b) *Minimum Elements Of A Fire Prevention Plan.* A fire prevention plan must include:

(1) A list of all major fire hazards, including proper handling and storage procedures for hazardous materials, potential ignition sources and their control, and the type of fire protection equipment necessary to control each major hazard;

(2) Procedures to control accumulations of flammable and combustible waste materials;

(3) Procedures for regular maintenance of safeguards installed on heat producing equipment to prevent accidental ignition of combustible materials;

(4) Names or job titles of employees responsible for maintaining equipment to prevent or control sources of ignition or fires; and,

(5) Names or job titles of employees responsible for control of fuel source hazards.

(c) *Employee Information:* The employer must:

(1) inform employees of the fire hazards to which they are exposed; and

(2) review with each employee those parts of the fire prevention plan necessary for self-protection upon initial assignment to a job.

3. Subpart E—Means of Egress would be amended by revising §§ 1910.35 through 1910.39 as follows [Question and Answer version]:

SUBPART E—EXIT ROUTES

§ 1910.35. Coverage.

(a) *What is covered by these regulations?* These regulations require every general industry employer to provide exit routes that allow employees to leave the workplace safely during an emergency. These regulations do not apply to mobile workplaces, such as vehicles or vessels.

(b) *What is an exit?* The term "exit" refers to the portion of an exit route that is generally separated from other areas to provide a protected way of travel out of the workplace.

(c) *What is an exit route?* The term "exit route" means a continuous and unobstructed path of exit travel from any point within a workplace to safety outside. An "exit route" generally consists of three parts: access to the exit; the exit, which provides a way of travel out of the workplace; and the way from the exit to the outside. An "exit route" includes all vertical and horizontal areas along the route.

§ 1910.36. The Design of Exit Routes.

(a) *Must exits be a permanent part of the workplace?* Yes, an employer must ensure that each exit is a permanent part of the workplace.

(b) *How many exit routes must be available in the workplace?* An employer must ensure that at least two exit routes are available to permit prompt escape during an emergency of all employees and other building occupants. The exit routes must be as far away from one another as is practicable so that if the route to one exit is blocked by fire or smoke, employees may escape safely using the alternate exit route. In many instances, more than two exit routes are necessary where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace suggests that reliance on two exit routes may endanger employees. A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace indicates that a single exit will allow all employees to exit safely during an emergency. Other means of escape, such as fire exits or accessible windows, should be available where only one exit route is provided.

(c) *What openings are permitted into an exit?* An employer must ensure that an exit has only those openings necessary to permit access to, or exit from, occupied areas of the workplace. An opening into an exit must be protected by a self-closing fire door that remains closed. Each fire door, its frame, and its hardware must be listed or approved by a nationally recognized testing laboratory.

Note to paragraph (c): 29 CFR § 1910.155(c)(3)(iv)(A) defines "listed", 29 CFR § 1910.7 defines a "nationally recognized testing laboratory.", and 29 CFR § 1910.155(c)(3) defines "approved."

(d) *What types of material may be used in exit construction?* An employer must ensure that construction materials used to separate an exit have at least a one-hour fire resistance rating if the exit connects three stories or less. If the exit connects four stories or more, the employer must ensure that construction materials used to separate the exit have at least a two-hour fire resistance rating.

(e) *What is required to ensure that employees have access to exit routes during an emergency?* An employer must ensure that there is free and unobstructed access to each exit route to ensure safe exit from the workplace during an emergency. No materials or equipment may be placed, either permanently or temporarily, along the exit route. The employer must ensure that, to reach an exit, no employee is required to travel through a room which can be locked, such as a bathroom, or to a dead end. Stairs or a ramp must be used if the exit route is not substantially level.

(f) *Where must exits discharge?* An employer must ensure that each exit leads directly outside to a street, walkway, refuge area, or open space with access to the outside. The street, walkway, refuge area, or open space to which an exit leads must be large enough to accommodate all building occupants likely to use the exit. Exit stairs that continue beyond the floor of exit discharge must be interrupted by doors, partitions, or other effective means at the floor of exit discharge to assure that the direction of exit travel is clear to employees. For the purposes of this section, a refuge area is:

(1) a space along an exit route that is protected from the effects of fire either by means of separation from other spaces within the building or by its location; or

(2) a floor with at least two spaces separated from each other by smoke-resistant partitions, in a building protected throughout by an automatic sprinkler system that complies with 29 CFR 1910.159.

(g) *Can exit doors be locked?* An employer must ensure that an exit door can be readily opened from the inside without keys, tools, or special knowledge. A device that locks only from the outside, such as a panic bar, is permitted. An employer must ensure that the exit door is free of any device or alarm which, if it fails, could restrict emergency use of an exit. An exit door may be locked from the inside in mental, penal, or correction facilities only if supervisory personnel are continuously on duty and a plan exists to remove occupants from the facility during an emergency.

(h) *What are the requirements for exit doors?* An employer must ensure that a side-hinged door is used to connect any room to an exit route. A door to an exit should swing out from a room.

A door that connects any room to an exit route must swing out if the room is likely to be occupied by more than 50 people or if highly flammable or explosive materials may be located inside.

(i) *What is the required capacity for exit routes?* An employer must ensure that each exit route supports the maximum-permitted occupant load for each floor served by the exit route. The capacity of an exit may not decrease with the direction of exit travel.

(j) *What are the height and width requirements for exit routes?* An employer must ensure that the exit route must is at least 6 feet, 8 inches high at all points. An employer must ensure that the exit route is at least 28 inches wide at all points between handrails. An exit route must be wider than 28 inches if necessary to accommodate the expected occupant load. Objects that project into the exit route must not reduce the minimum height and width of an exit route.

(k) *Are there additional requirements for exit routes that are outside the building?* An outdoor exit route is permitted if it meets the requirements for an indoor exit route and the following additional requirements:

(1) the exit route has guardrails to protect unenclosed sides;

(2) the exit route is covered if accumulation of snow or ice is likely and is not removed regularly;

(3) the exit route is reasonably straight with smooth, solid, substantially level floors; and

(4) the exit route has no dead ends longer than 20 feet.

§ 1910.37. Operation and Maintenance of an Exit Route.

(a) *How must an employer maintain the workplace to protect employees during an emergency?* An employer must maintain the workplace to minimize the dangers to employees during an emergency. An employer must keep the workplace free of explosive or highly flammable furnishings and other decorations. An exit route must not require employees to travel toward materials that burn very quickly, emit poisonous fumes, or are explosive, unless those materials are effectively shielded from the exit route.

(b) *Must exit routes be lit?* Yes, an employer must ensure that each exit route is illuminated adequately.

(c) *Must exit routes be marked?* Yes, an employer must ensure that each exit clearly is visible and is marked by a distinctive sign reading "Exit." The employer must ensure that an exit door is free of decorations or signs that obscure its visibility. Signs must be posted along the exit route indicating the direction of travel to the nearest exit. The employer must ensure that the line-of-sight to an exit sign is uninterrupted. Any doorway or passage that might be mistaken for an exit must be marked "Not an Exit" or with an indication of its actual use. The employer must ensure that an exit sign is illuminated to a surface value of at least 5 foot candles by a reliable light source and shows a designated color. Self-luminous or electroluminescent signs that have a minimum luminance surface value of .06 footlamberts are permitted.

(d) *What are the requirements for maintaining fire retardant paints?* An employer must maintain the fire retardant properties of paints or other coatings used in the workplace.

(e) *Must fire safeguards be maintained?* Yes, an employer must ensure that each safeguard to protect employees during an emergency is maintained in proper working order.

(f) *Are there additional requirements for maintaining exit routes during construction and repair?* Yes, three special rules apply to exit routes during construction and repair. During new construction, an employer must ensure that employees do not occupy a workplace until an adequate number of exit routes that comply with these rules is available for the portion of the workplace employees will occupy. During repair and alterations, an employer must ensure that employees do not occupy an existing workplace unless all exits and existing fire protection are maintained *or* alternate fire protection is provided that ensures an equivalent level of safety. An employer also must ensure that flammable or explosive materials used during construction or repair do not expose employees to hazards not otherwise present in the workplace or impede emergency escape from the workplace.

(g) *Are employee alarm systems required?* An employer must ensure that an operable employee alarm system with a distinctive signal to warn employees of fire or other emergencies is installed and maintained, unless employees can see or smell a fire or other hazard so that it would provide adequate warning to them. The employee alarm system must comply with 29 CFR § 1910.165.

§ 1910.38. Emergency Action Plans.

(a) *When is an employer required to develop an emergency action plan?* An employer must develop an emergency action plan whenever another OSHA standard requires one. This rule governs what the employer must include in the plan.

(b) *Must the emergency action plan be in writing?* An employer must keep a written emergency action plan in the workplace and make it available to employees at their request, except that an employer with 10 or fewer employees in the workplace may communicate the plan orally to employees rather than develop a written plan.

(c) *What is required to be included in an emergency action plan?* An emergency action plan must include at a minimum:

(1) procedures for emergency evacuation, including type of evacuation and exit route assignments;

(2) procedures to account for all employees after evacuation;

(3) procedures for reporting a fire or other emergency;

(4) procedures to follow for emergency operation or shut down of critical equipment before evacuation;

(5) procedures to follow for rescue and medical duties; and,

(6) names or job titles of employees to be contacted to get more information about the duties of employees under the plan.

(d) *Must an emergency plan include an employee alarm system?* Yes, an employer must install and maintain an employee alarm system. The alarm system must use a distinctive signal for each purpose and comply with 29 CFR 1910.165.

(e) *Does an employer have to designate employees to assist others in evacuation?* An employer must designate employees to assist in the safe emergency evacuation of other employees. The employer must ensure that these designated employees receive training in emergency evacuation procedures.

(f) *How often must an employer inform employees of their duties under an emergency action plan?* An employer must review the emergency action plan with each employee covered by the plan;

(1) when the plan is developed or the employee is assigned initially to the job;

(2) when the employee's responsibilities under the plan change; and

(3) when the plan is changed.

§ 1910.39. Fire Prevention Plans.

(a) *When is an employer required to have a fire prevention plan?* An employer is required to have a fire prevention plan when another OSHA standard requires it. This section governs what the employer must include in the plan.

(b) *Must the fire prevention plan be in writing?* Employers must keep a written fire prevention plan in the workplace and make it available to employees at their request. However, an employer with 10 or fewer employees in the workplace may communicate the plan

orally to employees rather than develop a written plan.

(c) *What is required to be included in a fire prevention plan?* A fire prevention plan must include at a minimum:

(1) a list of all major fire hazards, including proper handling and storage procedures for hazardous materials, potential ignition sources and their control, and the type of fire protection equipment necessary to control each major hazard;

(2) procedures to control accumulations of flammable and combustible waste materials;

(3) procedures for regular maintenance of safeguards installed on heat producing equipment to prevent accidental ignition of combustible materials;

(4) names or job titles of employees responsible for maintaining equipment to prevent or control sources of ignition or fires; and,

(5) names or job titles of employees responsible for control of fuel source hazards.

(d) *Must employers inform employees of the fire hazards at the workplace?* Yes, an employer must inform employees of the fire hazards to which they are exposed. The employer must review with each employee those parts of the fire prevention plan necessary for self-protection upon initial assignment to a job.

Appendix to Subpart E—[Amended]

4. The appendix to Subpart E would be amended by inserting the heading: "§ 1910.39 Fire prevention plans" before the paragraph designated as "4. Fire prevention housekeeping."

5. The appendix to subpart E would be amended by redesignating the paragraph: "Fire prevention housekeeping" from "4." to "1."

6. The appendix to Subpart E would be amended by redesignating the paragraph: "Maintenance of equipment under the fire prevention plan" from "5" to "2."

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–030–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Colorado's statutory provisions pertaining to (1) definitions, (2) development of rules no more stringent than SMCRA, (3) requirements for permit applications, (4) material damage resulting from subsidence caused by underground coal mining operations, (5) improvidently issued permits, (6) release of performance bonds, (7) entities and operations which are or are not subject to the requirements of the act, (8) authority to apply for funds the administration and fulfillment of the requirements of an abandoned mine reclamation program, and (9) creation of a Colorado coal mine subsidence protection program. to clarify ambiguities and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., M.D.T., October 10, 1996. If requested, a public hearing on the proposed amendment will be held on October 7, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., M.D.T., on September 25, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below. Copies of the Colorado program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733

Michael B. Long, Director, Division of Minerals and Geology, Department of Natural Resources, 1313 Sherman St., Room 215, Denver, Colorado 80203, Telephone: (303) 866–3567

FOR FURTHER INFORMATION CONTACT:

James F. Fulton, Telephone: (303) 844–1424.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.11, 906.15, and 906.16.

II. Proposed Amendment

By letters dated August 13 and 27, 1996, Colorado submitted a proposed amendment (administrative record No. CO–680) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative. Colorado proposed to revise the following provisions of the Colorado Surface Coal Mining Reclamation Act, Colorado Revised Statutes (C.R.S.):

C.R.S. 34–33–103(1), definition of "Administrator," to mean the head of the Office of Mined Land Reclamation in the Division of Minerals and Geology in the Department of Natural Resources;

C.R.S. 34–33–103(7), definition of "Division," to mean the Division of Minerals and Geology in the Department of Natural Resources;

C.R.S. 34–33–103(13.5), definition of "Office," to mean the Office of Mined Land Reclamation;

C.R.S. 34–33–103(14), the definition of "Operator," to include any person who intends to remove more than two hundred and fifty tons of coal from coal mine waste disposal facilities;

C.R.S. 34–33–103(21), the definition of "Person," to include (1) an Indian Tribe conducting surface coal mining and reclamation operations outside Indian lands, and (2) any agency, unit, or instrumentality of Federal, State or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government;

C.R.S. 34–33–103(26)(a), the definition of "Surface coal mining operations," to (1) include removal of coal from coal mine waste disposal facilities, and (2) delete the exemption for the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale;

C.R.S. 34–33–108 (1) and (2), concerning the authority of the Mined Land Reclamation Board (MLRB) to promulgate rules and regulations, to (1) state that Colorado rules and regulations shall be no more stringent than required to be as effective as the counterpart Federal regulations, unless MLRB makes a specific finding that either protection of the public safety or the environment requires a more stringent, and (2) provide ninety days prior to automatic repeal of a State rule after its counterpart Federal regulation has been repealed and allow, upon request, prior to repeal of the State rule, a rule-making hearing;

C.R.S. 34–33–110(4), concerning the requirement that an applicant file a copy of a permit application with the county clerk and recorder of the county where the operations are proposed to occur, to authorize MLRB to specify by rule any other public office;

C.R.S. 34–33–115(1)(c), to allow an application for extension of the area covered by a permit, except incidental boundary revisions, to be made by an application for either a permit revision or a new permit;

C.R.S. 34–33–121(2)(a) (II) and (III), by (1) adding the requirement for an operator, if there is material damage resulting from subsidence caused by underground coal mining operations, to either promptly repair the damage by rehabilitating, restoring, or replacing the damaged occupied residential dwelling and related structures or non-commercial building, or compensate the owner in the full amount of the diminution in value; and (2) stating that nothing in this section shall be construed to prohibit or interrupt underground coal mining operations (rather than the standard method of room and pillar mining);

C.R.S. 34–33–123(13) (a) and (b), by adding language (1) that authorizes Colorado, when it determines that a permit has been improvidently issued, to implement remedial measures, including development of a cooperative plan with the permittee, imposition of a condition on the permit, or issuance of an order to the permittee to show cause why the permit should not be suspended or revoked; and, (2) that requires a show cause order to include the reasons for the finding that the permit was improvidently issued and to provide an opportunity for a public hearing;

C.R.S. 34–33–125 (4) and (8), concerning bond release, to require that Colorado (1) provide written notification to the permittee of its proposed decision within sixty days from the date of the required bond release and evaluation, and (2) hold an informal conference to resolve written comments or objections on the request for bond release if the conference concludes by the sixtieth day following the required bond release inspection and evaluation;

C.R.S. 34–33–127 and 34–33–129 (a) and (b), concerning entities or operations which must comply with Colorado's act, to (1) include any publicly owned corporation of the Federal government, (2) exempt the extraction of coal by a landowner for his own use from land owned or leased by such landowner, and (3) delete the exemption from the act for extraction of coal that effects 2-acres or less;

C.R.S. 34–33–133(2)(a), concerning abandoned mine land reclamation, to provide full authority for Colorado to apply for money or other funds for the development, administration, and fulfillment of the requirements of an abandoned mine reclamation program; and

C.R.S. 34–33–133.5 (1) and (2), by adding language that authorizes MLRB to issue rules and regulations to develop a Colorado mine subsidence protection program, assess and expend fees collected from participants who are insured under the program, and expend interest earned on such fee as necessary to defray administrative costs of the program.

In addition, Colorado proposes editorial revisions throughout C.R.S. 34–33–104 through 126 to (1) replace the term "division" with the term "office" and (2) replace the terms "he" and "his" with gender neutral terms.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Denver Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., M.D.T., on September 25, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and

promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counter part Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 3, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–22967 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Part 2560

RIN 1004–AC90

Alaska Occupancy and Use; Alaska Homestead Settlement

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule removes regulations on Alaska occupancy and use concerning homestead settlements. BLM takes this action because the Federal Government has closed homesteading in Alaska, making the current regulations obsolete.

EFFECTIVE DATE: This rule takes effect October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Bruno, Regulatory Management Team, Bureau of Land Management, 202–452–0352

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Discussion of Final Rule
III. Procedural Matters

I. Public Comment Procedures

The existing regulations which this rule would eliminate, 43 CFR subpart 2567, are obsolete and without purpose. The BLM has determined for good cause that notice and public procedure on this rule are unnecessary and contrary to the public interest, because the regulation that this rule removes contains only obsolete regulatory substance or guidance, as explained below.

II. Background and Discussion of Final Rule

43 CFR subpart 2567 has no substantive purpose. This subpart was written to implement the extension of homestead laws to Alaska by the Act of May 14, 1898 (30 Stat. 409, 43 U.S.C. 270). This Act was repealed by section 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.*, effective in 1986. At this time there are no pending homesteads in Alaska, nor will the Bureau open lands for homesteading in the future. In addition, no appeals from the granting or denying of homestead applications are presently pending. Therefore, 43 CFR subpart 2567 has no continued legal relevance or other effect on the public at large.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that because this final rule only eliminates provisions that have no impact on the public and no continued legal relevance, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Department Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, the final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

The rule does not contain information collection requirements which the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Unfunded Mandates Reform Act

Removal of 43 CFR subpart 2567 will not result in any unfunded mandate to

state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

Executive Order 12612

The final rule would not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment (FA).

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this final rule is Frank Bruno, Regulatory Management Team, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone 202/452–0352.

List of Subjects for 43 CFR Part 2560

Alaska, Homesteads, Indians—Lands, Public Lands—Sale, Reporting and Recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 2560, group 2500, subchapter B, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 2560—ALASKA OCCUPANCY AND USE

1. The authority citation for part 2560 is added to read as follows:

Authority: 43 U.S.C. 1201, 1740.

2. Part 2560 is amended by removing subpart 2567 in its entirety.

- Dated: August 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–22704 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Part 2610

[WO–350–1430–00–24 1A]

RIN 1004–AC80

Carey Act Grants

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Bureau of Land Management proposes to remove the regulations concerning Carey Act Grants, because the provisions are obsolete. Since 1980 when regulations were issued, only one public land State has applied for a grant of desert lands under the Carey Act.

DATES: Submit comments by October 10, 1996. BLM may, but need not, consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: If your wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You also may transmit comments electronically via the Internet to WOComment@WO0033wp.wo.blm.gov. Please include "attn: RIN 1004–AC80" in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly. You will be able to review comments at BLM's Regulatory Management Team office, Room 401, 1620 L St., NW., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Bureau of Land Management, Realty Use Group, at 202–452–7779.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
III. Procedural Matters.

I. Public Comment Procedures

Written comments on the proposed rule should be specific, focus on issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal being addressed. BLM may, but need not consider or include in the Administrative Record for the final rule comments received or postmarked after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (see **ADDRESSES**).

II. Discussion of Proposed Rule

Part 2610 of 43 CFR implements Section 4 of the Carey Act, 43 U.S.C. 641 *et seq.* The Act authorizes the Secretary of the Interior, through BLM State Directors, to grant and patent up to one million acres of desert lands to individual States and to grant and patent additional acreage to certain States, to aid these public land States in the reclamation of desert lands, and the settlement, cultivation, and sale of such lands, by small tracts, to actual settlers.

These regulations were issued in 1980 when several of the arid western States indicated a desire to use the provisions of the Act to encourage reclamation of lands that had potential for agricultural production. However, the conditions in the west are such that although some public lands are available with the capability for agricultural production, there is limited or no water that can be allocated for the large projects envisioned by the Act. As a result, to BLM's knowledge there has been only one application since 1980 for a Carey Act grant of desert lands.

III. Procedural Matters

National Environmental Policy Act of 1969

The BLM has prepared a draft environmental assessment (EA), and has made a tentative finding that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the BLM's procedures under NEPA. The BLM has placed the EA on file in the BLM Administrative Record at the address specified previously. The BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that

the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

BLM has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act of 1995

Pursuant to the requirements of section 205 of the Unfunded Mandates Reform Act of 1995 (UMRA), BLM has selected the most cost-effective and least burdensome alternative that achieves the objectives of the rule. Removal of 43 CFR part 2610 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

Executive Order 12612

The proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Author

The principal author of this rule is Jeff Holdren, Realty Use Group, (202) 452–7779, assisted by Frances Watson, Regulatory Management Team, (202) 452–5006.

List of Subjects in 43 CFR Part 2610

Homesteads, Intergovernmental relations, Irrigation, Public lands—grants, Reclamation.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, BLM proposes to remove part 2610 of group 2600, subchapter B, chapter II of title 43 of the Code of Federal Regulations.

Dated: August 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–22705 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–84–M

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43 CFR Parts 6400 and 8350

RIN 1004–AC87

Wild and Scenic Rivers

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Bureau of Land Management (BLM) proposes to write the regulation on wild and scenic rivers in a straightforward "Plain English" style. This regulation would establish uniform standards and procedures by which BLM will consider Federal licensing of, or assistance to, water resource projects on components affecting Wild and Scenic Rivers or Study Rivers administered by the Secretary of the Interior, through the Director, BLM. The regulation would harmonize BLM's procedures and definitions with those of the U.S. Forest Service to streamline and improve the administration of the Wild and Scenic Rivers System.

DATES: Submit comments by October 10, 1996. BLM may, but need not, consider comments received or postmarked after this date in preparing the final rule.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. Commenters may transmit comments electronically via the Internet to: WOComment@WO0033wp.wo.blm.gov. [For Internet, please include "Attn: AC87", your name and address in your message.]

Comments will be available for public review at the L Street address during regular business hours, from 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary Marsh, Special Areas and Land Tenure Team, (202) 452–7795.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written comments on the proposed rule should be specific, focus on issues pertinent to the proposed rule, and explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal being addressed. If comments are received or postmarked after the close of the comment period (see **DATES**) or delivered to an address other than the one listed above (See **ADDRESSES**), BLM will not necessarily consider or include them in the Administrative Record for the final rule.

II. Discussion of Proposed Rule

This proposed rule follows up an Advance Notice of Proposed Rulemaking that the BLM published in the June 5, 1996, **Federal Register** (61 FR 28546). That advance notice notified the public of the restructuring of 43 CFR Parts 6000–9000, and of BLM's plans to publish proposed rules for those parts in the near future. BLM now proposes to renumber and revise present Part 8350 of 43 CFR under the authority of Section 7 of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1278). That Act directs Federal agencies to protect the free-flowing condition and other values of designated rivers and congressionally-authorized study rivers from the harmful effects of proposed water resources projects.

The proposed rule sets forth applicable procedures that the Director, BLM, uses in administering Federal assistance for proposed water resources projects affecting Wild and Scenic Rivers or Study Rivers. This regulation is consistent with that of the Forest Service, U.S. Department of Agriculture, at 36 CFR Part 297.

III. Procedural Matters

National Environmental Policy Act of 1969

The BLM has prepared a draft environmental assessment (EA), and has made a tentative finding that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. 4332(2)(C). The BLM anticipates making a Finding of No Significant Impact (FONSI) for the final rule in accordance with the BLM's procedures under NEPA. The BLM has placed the EA on file in the BLM Administrative Record at the address specified previously. The BLM will complete an EA on the final rule and make a finding on the significance of any resulting impacts prior to promulgation of the final rule.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 et seq.

The Regulatory Flexibility Act

BLM has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in expenditures of $100 million or more in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a Section 202 statement under the Unfunded Mandates Reform Act is not required.

Executive Order 12612

BLM has analyzed this rule under the principles and criteria in Executive Order 12612 and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12630

BLM certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12866

The proposed rule does not meet the criteria for significant regulatory action requiring review by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review.

Executive Order 12988

The Department has determined that this rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Author

The principal author of this rule is Frances Watson, Regulatory Management Team, (202) 452–5006.

List of Subjects

43 CFR Part 6400

National Wild and Scenic Rivers System.

43 CFR Part 8350

National Trails System, National Wild and Scenic Rivers System, Penalties, Public lands.

For the reasons discussed in the preamble and under the authority of 43 U.S.C. 1740, BLM proposes to amend chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 8350 is removed.

2. A new part 6400 is added to read as follows:

PART 6400—WILD AND SCENIC RIVERS

Subpart A—Introduction

Sec.

6400.1 What is the purpose of part 6400?
6400.2 How are key terms in this part defined?

Subpart B—Proposed Water Resources Projects

6400.10 What procedures must a Federal department or agency follow to receive consideration from BLM before providing assistance to, or authorization of, a water resources project?
6400.11 Under what conditions will the Director approve Federal assistance to, or authorization of, a water resources project?
6400.12 What is the time limit for the Director to approve Federal assistance to, or authorization of, a water resources project?

Authority: 16 U.S.C. 1271–1288.

Subpart A—Introduction

§ 6400.1 What is the purpose of part 6400?

Part 6400 specifies BLM policies and procedures for administering Federal assistance or licensing of water resources projects affecting Wild and Scenic Rivers or Study Rivers.

§ 6400.2 How are key terms in this part defined?

As used in part 6400:

Act means the Wild and Scenic Rivers Act (82 Stat. 906, as amended; 16 U.S.C. 1271–1288).

Construction means any action carried on with Federal assistance affecting the free-flowing characteristics or the outstandingly remarkable values of a Wild and Scenic River or Study River.

Federal assistance means any assistance by an authorizing agency before, during, or after construction. Such assistance may include, among other examples, a license, permit, preliminary permit, or other authorization granted by the Federal Energy Regulatory Commission (FERC) under sections 4 (e) and (f) of the Federal Power Act (16 U.S.C. 797); a license, permit or other authorization granted by the Corps of Engineer, Department of the Army, under the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*) and section 404 of the Clean Water Act (33 U.S.C. 1344); or any other license, permit, assistance, or authorization required by a Federal department or agency.

Free-flowing means existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway, as defined by section 16(b) of the Act (16 U.S.C. 1286(b)).

Study period means the time during which the BLM will study an eligible river as a potential component of the Wild and Scenic Rivers System. The study period may last up to 3 additional years for Congressional consideration of a report recommending designation, *or* such additional time as may be provided by statute.

Study river means a river and the adjacent area within one quarter mile on each side of the river from the ordinary high water mark (or other width as identified by the Congress), which is designated for study as a potential addition to the National Wild and Scenic Rivers System under section 5(a) of the Act.

Water resources project means any project under the Federal Power Act (41 Stat. 1063, 16 U.S.C. 791a) as amended, or other construction of developments which may affect the free-flowing characteristics of a Wild and Scenic River or Study River. Examples could include, among others, dams, water conduits, reservoirs, powerhouses, transmission lines, water diversion projects; dredge and fill operations, fisheries habitat and watershed restoration/enhancement projects; bridge and other roadway construction/reconstruction projects; bank stabilization projects; channelization projects; recreation facilities such as boat ramps and fishing piers; and activities such as suction dredging associated with mining.

Wild and scenic river means a river and the adjacent area within the boundaries of a component of the National Wild and Scenic Rivers System.

Subpart B—Proposed Water Resources Projects

§ 6400.10 What procedures must a Federal department agency follow to receive consideration from BLM before providing assistance to, or authorization of, a water resources project?

(a) *Advance notice.* (1) Federal department sand agencies must notify the Director, BLM, as soon as possible of their intention to issue a license, permit, or other authorization for a federally-assisted water resources project on any portion of a Wild and Scenic River or Study River administered by the BLM.

(2) Agencies must send advance notice at least 60 days before the date of the proposed action.

(3) Agencies should send the notice to the Director, Bureau of Land Management, 1620 L Street NW., WO–420, Mail stop 204LS, Washington, DC 20240–9998.

(b) *Contents of notice.* Include the following information in the notice:

(1) Name and location of affected river;

(2) Location of the project;

(3) Nature of the permit or other authorization proposed to be issued;

(4) Description of the proposed activity; and

(5) Any relevant information, such as plans, maps, environmental studies, assessments, or impact statements, alternatives, and mitigating measures.

§ 6400.111 Under what conditions will the Director approve Federal assistance to, or authorization of, a water resources project?

(a) The Director will approve Federal assistance to, or authorization of, a water resources project if he or she determines that:

(1) The water resources project will not have a direct and adverse effect on the values for which a Wild and Scenic River was designated or Study River was authorized, when any portion of the project is within the boundaries of such river; or

(2) The effects of the water resources project will neither invade nor unreasonably diminish the scenic, recreational, and fish and wildlife values of a Wild and Scenic River, when any portion of the project is located above, below, or outside the Wild and Scenic River; or

(3) The effects of the water resources project will neither invade nor diminish the scenic, recreational, and fish and wildlife values of Study River when the project is located above, below, or outside the Study River during the study periods; and

(4) The water resources project is in compliance with the National Environmental Policy Act (NEPA).

(b) If the proposed assistance or authorization fails to meet the above conditions, the Director will disapprove an authorization for a water resources project.

§ 6400.12 What is the time limit for the Director to approve Federal assistance to, or authorization of, a water resources project?

The Director must approve or disapprove an authorization for a water resources project within 60 calendar days of receiving the advance notice. The Director, to the extent possible, will expedite consideration of a notice of intent for a project it is needed to address an emergency.

Dated: August 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–22706 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–095, Notice 01]

RIN 2127–AG50

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public workshop; request for comments.

SUMMARY: This document announces that NHTSA will be holding a public workshop to explore issues relating to improving child safety by establishing requirements for universal child restraint anchorage systems. The purpose of the workshop is to—

- Assess and discuss the relative merits, based on safety, cost, public acceptance and other factors, of various competing solutions to the problems associated with improving the compatibility between child restraint systems and vehicle seating positions and belt systems, increasing child restraint effectiveness, and increasing child restraint usage rates;
- Assess the prospects for the adoption in this country and elsewhere of a single regulatory solution or at least compatible regulatory solutions; and
- Promote the convergence of those solutions.

DATES: *Public workshop:* The public workshop will be held in Washington DC on October 9 and 10, 1996, from 9:00 a.m. to 5:00 p.m.

Those wishing to participate in the workshop should contact Dr. George Mouchahoir, at the address or telephone number listed below, by October 4, 1996.

Written comments: Written comments may be submitted to the agency and must be received by October 25, 1996.

ADDRESSES: *Public workshop:* The public workshop will be held in room 2230 of the Nassif Building, 400 Seventh St. SW, Washington DC 20590.

Written comments: All written comments must refer to the docket and notice number of this notice and be submitted (preferable 10 copies) to the Docket Section, National Highway Traffic Safety Administration (NHTSA), Room 5109, 400 Seventh St., S.W., Washington, D.C. 20590. Docket hours are from 9:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION:

I. Safety Problem

A child restraint system that is properly installed in a motor vehicle and used correctly can reduce the chance of serious injury in a crash by 67 percent and fatal injury by an estimated 71 percent. However, the safety benefits of a child restraint system can be reduced considerably or even negated altogether when the child restraint is not properly installed and used. A four-state study done for the National Highway Traffic Safety Administration (NHTSA) in 1996 examined people who use child restraint systems and found that approximately 80 percent of the persons made at least one error in using the systems.[1] The rates of incorrect usage for specific components were 72 percent for the clip designed to lock the vehicle lap belt used to secure the child restraint system, 59 percent for the harness retainer chest clip, 46 percent for the harness strap, and 17 percent for the vehicle safety belt. The study did not address the potential risk of injury for each mode of incorrect usage.

A major source of difficulty in properly installing child restraints is incompatibility between child restraints and vehicle seating positions and safety

[1] A copy of this study will be placed in the docket prior to the public workshop.

belt systems. Incompatibility can occur as the result of:

- The seat belt anchorages being positioned too far forward of the seat bight.[2] Some vehicle manufacturers have moved the anchorages farther forward of the seat bight to improve the path of the lap belt across the lap of adults.
- The bottom cushion of some vehicle seats are too deeply contoured. As a result, there is no surface on the seats which can be used to mount a child restraint stably.
- The seat belt may not be long enough to permit it to be fastened around child restraints, or special child restraints. In addition, the seat belt hardware may not be suitable for use with these restraints. In these cases, the seat belt may not properly hold the child restraint.
- The vehicle seat is not wide enough or long enough to properly accommodate the child restraint.

II. Past Efforts to Develop Solutions

One of NHTSA's highest priorities is improving the proper installation and use of child restraints. NHTSA Administrator Ricardo Martinez, M.D. has appeared on national television to make the public more aware of the need for increasing the correct use of child restraints. The agency has also worked with newspapers, magazines and other journals across the country to alert the public to the causes and consequences of incorrect use. In February 1995, Administrator Martinez announced the formation of a "Blue Ribbon Panel" of experts to recommend ways that child restraints can be made easier to install and use. Panel members included child safety advocates and representatives of the motor vehicle, child safety seat and seat belt industries. Both domestic and foreign manufacturers were represented.

On April 2, 1995, NHTSA held a public meeting to obtain public comment on the causes of incorrect child restraint use and incompatibility with motor vehicles. Among other things, participants provided information about compatibility problems between vehicle seat and belt assemblies and child restraints. NHTSA expressed concern that child restraints and the vehicles in which they are used are not always readily compatible, thereby making it difficult for parents to install and use the restraint systems to ensure that their child receives the best protection.

On May 30, 1995, the "Blue Ribbon Panel on Child Restraint and Vehicle Compatibility" issued its report recommending ways to improve the correct and convenient use of child restraints and to seek solutions to improve the compatibility between child restraints and vehicle seating positions. The panel addressed child restraint compatibility issues in three time frames—(1) existing products currently being used by consumers, (2) products currently for sale in the marketplace or available in the near future, and (3) new technologies for future products.

With respect to long term solutions, the Blue Ribbon Panel recommended an entirely new and separate anchorage system for child restraint installation, given the complex variables affecting the proper installation of child restraints using existing vehicle safety belts. The panel noted that the International Standards Organization (ISO), Technical Committee 22, Subcommittee 12, Working Group 1, Child Restraint Systems, was developing a system known as ISOFIX that uses four rigid uniform attachment points for child restraints and vehicle seating positions. The panel further recommended that

> NHTSA should expeditiously complete a comprehensive evaluation of ISOFIX, including appropriate crash modes and child comfort issues, and should initiate rulemaking that, if NHTSA's evaluation is found acceptable, will permit ISOFIX or a uniform attachment points system that is functionally compatible with ISOFIX under Federal Motor Vehicle Safety Standard 213.

In the Fall of 1995, NHTSA initiated a research program to support rulemaking about a universal[3] child restraint anchorage system such as the ISOFIX. The research program consisted of five major elements:

- Evaluation of safety performance issues,
- Assessment of benefits,
- A tear down cost study,
- Evaluation of consumer acceptance, and
- Harmonization and cooperative work over the development of a universal system.

On January 23, 1996, the Blue Ribbon Panel met to discuss ISOFIX and other universal attachment systems. At this meeting, most of the domestic child restraint manufacturers and most of the domestic and foreign vehicle and safety belt manufacturers that were present stated their opposition to ISOFIX without further evaluation of that system and other universal attachment systems. The panel as a whole expressed concern that ISOFIX might be too rigid, too susceptible to false latching, unreasonably expensive, and too heavy.

To encourage NHTSA to evaluate other universal anchorage systems in addition to ISOFIX, the Blue Ribbon Panel adopted two statements to clarify its initial recommendation:

> ★ At this time, the panel does not endorse ISOFIX as the singular uniform attachment points system for future use in the United States. However, the panel continues to strongly endorse uniform attachment points for child restraints.
>
> ★ Other child restraint anchorage concepts, in addition to ISOFIX, should be evaluated by interested parties (e.g., child restraint and vehicle manufacturers, regulators, etc.) prior to initiating regulatory proposals or requiring any specific design concept.

In June 1996, the Blue Ribbon Panel issued a report titled a "Progress Report on 1995 Recommendations." That report stated that NHTSA had conducted tests of ISOFIX child restraint systems and will continue to conduct testing. The tests included dynamic sled tests using rear-facing and forward-facing child restraints on a Standard No. 213 test fixture fitted with matching rigid attachment points hardware, as specified by ISO.

In the same month, NHTSA completed its ISOFIX research program. It is now in the process of documenting the findings of this program. As part of this program, the agency has conducted a tear down cost analysis of alternative universal child restraint anchorage systems. The agency has also conducted sled testing of the ISOFIX at its Vehicle Research Test Center. The agency anticipates that the cost analysis and the sled testing results will be available at the public workshop. The agency will put in the docket an analysis entitled, "Target Population Assessment, Clinic and Test Results for Universal Attachment Points for Child Restraints," which provides much of the data collected by the agency on this issue and some analyses of those data.

III. Solutions Currently Under Consideration

This section briefly describes the ISOFIX four-point rigid system. It then discusses other anchorage systems that were developed by interested parties, including ISO, the governments of other countries, and vehicle and child restraint manufacturers, as alternatives to ISOFIX in response to the problems associated with that system.

[2] The intersection of the vehicle seat back and its seat cushion.

[3] In today's notice, NHTSA refers to these anchorages as "*universal* child restraint anchorage systems." This term should not be confused with the term, "*uniform* child restraint anchorage systems," used by GM and the other manufacturers in their petition for rulemaking.

A. ISOFIX Four-Point Rigid System

The ISOFIX four-point rigid attachment system consists of two rear anchorage points hidden in the area where the vehicle seat cushion and seat back intersect. These anchorages are specified by the ISO Working Group as short steel bars with a diameter of 6 mm. A four-point system presents certain advantages over a two-point system (discussed below). Its greater number of attachment points provides a degree of fail-safe backup protection. Further, it provides firm anchorage independent of a vehicle's seat cushion and lap belt, thus eliminating use problems associated with those vehicle components.

B. CANFIX Two-Point Rigid System Plus Tether

Transport Canada has developed the CANFIX system which consists of two rigid rear attachments like ISOFIX at the bight of the seat plus an upper tether. This system requires all vehicles to be equipped with upper tether anchorage locations. Transport Canada developed the CANFIX as an alternative to the four-point ISOFIX based on its interest in a tether as a third attachment point and on its concerns about the acceptability to vehicle manufacturers of the front attachment points on vehicle seats.

CANFIX is supported by Australia which refers to the system as CAUSFIX. Australia selected CAUSFIX after testing CAUSFIX, the four-point ISOFIX, and current systems. CAUSFIX was preferred because it was thought to provide the best potential for side impact protection and because upper tethers have strong support in Australia. As of July 1996, Australia had not tested a system like that described in the next section, i.e., a two-point soft system plus tether.

C. US and Japanese Industry Petition For Two-Point Soft System Plus Tether

On June 28, 1996, NHTSA received a petition for rulemaking from the American Automobile Manufacturers Association (AAMA) which includes General Motors, Chrysler, and Ford; certain members (Honda, Isuzu, Nissan, Subaru, and Toyota) of the Association of International Automobile Manufacturers (AIAM); and the Juvenile Products Manufacturer's Association (JPMA) which includes Century, Evenflo, Fisher-Price, Gerry, Kolcraft, and Indiana Mills and Manufacturing.[4]

In the joint U.S./Japanese industry petition, the petitioners requested that the agency conduct a rulemaking proceeding to require vehicle manufacturers to provide uniform child restraint anchorages (UCRA) for add-on child restraint systems at (1) the two outermost, forward-facing second row positions, and (2) at least one front position in vehicles that either lack second row seats or have second row seats incapable of accommodating a rear facing infant seat and that have a switch for deactivating the front passenger air bag. In addition, a top tether anchorage would be required at each rear seating position.

A child restraint placed in the rear center seating position would be secured at the top by the top tether and at the bottom by the current center lap belt. The petitioners also requested that child restraint manufacturers be required to provide new child restraint system designs compatible with both (1) the petitioners' requested UCRA system (used alone), and (2) existing vehicle seat belt systems (used alone).

To achieve these ends, the joint U.S./Japanese industry petitioners recommended a UCRA system that consists of two lower anchorages near the bight line and an upper tether anchorage. The lower anchorages would utilize a standard non-proprietary "anchorage latch plate" geometry compatible with a small, easy-to-use buckle as well as existing tether hooks, and the upper tether anchorage would be compatible with tether hooks.

The joint U.S./Japanese industry petitioners believed that the combination of three specific factory installed anchorages at two designated seating positions, along with compatible child restraint systems would: (1) provide additional protection for add-on child restraint system occupants when compared to child restraint systems secured with existing vehicle belts, and (2) promote higher child restraint use rates by enhancing the confidence of the person installing a child restraint system that the system is securely fastened.

D. European Industry Hybrid System

As a refinement of the ISOFIX four-point rigid system, several European ISO manufacturer members are currently developing a hybrid system. The system consists of two lower attachment points located in the seat bight and an upper attachment point located behind the vehicle seat back. A child restraint system could be attached to the two lower attachment points by means of either a buckle or the ISOFIX connector. The object of this option is to achieve worldwide compatibility between the UCRA and ISOFIX types of connectors. The upper anchorage for the tether anchorage on the vehicle and the tether hook on the child restraint would be optional depending on national regulations. The specification of the tether on the child restraint and anchorage on the vehicle are the same as the UCRA system.

E. Cosco Petition For Additional Vehicle Lap Belt

On July 1, 1996, COSCO submitted a petition for rulemaking. COSCO acknowledged that both rigid and soft systems are technically feasible and produce good results in simulated crashes. However, it expressed concern that the adoption of any universal anchorage systems would significantly increase the average retail price of a convertible child restraint system from 40 percent to 300 percent. The petitioner believed that such a price increase would severely limit the availability and use of child restraint systems. COSCO further stated that child restraints secured with universal anchorage systems perform only marginally better in dynamic tests compared to current child restraint systems. The petitioner noted also that most consumers would not realize benefits from these improvements until a majority of vehicles were equipped with a universal attachment.

Based on these concerns, COSCO recommended that vehicle manufacturers be required to install a separate lap belt at or near of the bight of the rear center position and one rear outboard position in each vehicle having a second row of seats, and at least one in the front seat of vehicles lacking a rear seat. It believed such a requirement would be more cost effective, simpler and more quickly implemented. COSCO further requested that vehicle manufacturers be required to install a tether anchorage at each designated seating position equipped with the anticipated UCRA.

F. Summary of Solutions

The following table compares the various competing solutions to the problem of providing universal child restraint anchorages based on several attributes, including effectiveness, relative cost, and weight. The table also identifies notable advantages of each solution.

[4] Today's notice refers to this petition as the "joint U.S./Japanese industry petition."

UNIVERSAL CHILD RESTRAINT ANCHORAGE SYSTEMS

	ISOFIX 4-point rigid	CANFIX 2-point rigid & tether	UCRA 2-point soft & tether	HYBRID 2-point rigid/soft lower & tether	COSCO lap belt
Effectiveness—Crash Tests	High	High	High	Assumed to be similar to CANFIX & UCRA.	Assumed to be as good as or better than existing vehicle safety belts.
Incremental Child Restraint Cost Increase to Consumers[5].	$90–100	$50–$60	$20	$20 or $50–60	None.
Incremental Vehicle Cost Increase to Consumers.	$9	$8	$12	Unknown	$10.
Incremental Child Restraint Weight Increase[6].	5 to 8 pounds	3 to 5 pounds	4 to 5 pounds	3 to 5	None.
Other Advantages	Firm anchorage independent of vehicle seat/belt.	Tether provides added protection.	Familiar belt hardware.	Versatile & harmonization.	Simplicity & familiar belt hardware.

G. Consumer Surveys

Various surveys have been conducted to determine consumer acceptance and preference of alternative ISOFIX-type child restraint systems. User trials in Sweden, Germany and the United Kingdom found that the largest majority of parents preferred the four-point rigid ISOFIX system compared to current child restraint systems. The trials also found that the majority of parents correctly fitted the ISOFIX. In contrast, less than half of the parents surveyed correctly fitted the current child restraint systems. It should be noted that these user trials did not include the UCRA system which the joint U.S./Japanese industry petitioners have asked the agency to adopt. At the time of those trials, the UCRA system was not available.

In early 1996, General Motors and other manufacturers conducted two consumer clinics, one in the U.S. and a second in Japan. The surveys sought to determine consumer preference on alternative universal child restraint anchorage systems, including the four-point ISOFIX and variations of the UCRA system. As stated in the joint U.S./Japanese industry petition, the results of the clinics indicate that most participants preferred the UCRA system over the current child restraints and ISOFIX systems.

An ad hoc group of the ISO Working Group on child restraint systems is currently gathering information on the performance, cost, and public acceptance of the ISOFIX, CANFIX, UCRA and the Hybrid system.

Currently, the Insurance Corporation of British Columbia in Canada is sponsoring independent user trials to determine consumer preference regarding alternative universal child restraint anchorage systems. The trials will cover all options being considered by ISO, including the Hybrid system, if available.

[5] These costs are in addition to the costs associated with existing child restraints. Child restraints currently cost between $40 and $80.

[6] Child restraints currently weigh 10 to 15 pounds.

IV. Public Workshop

A. Purposes

In an effort to narrow the array of competing solutions, NHTSA is holding a public workshop. The agency is holding a workshop instead of its typical, legislative type public meeting in order to facilitate the interactive exchange and development of ideas among the attending interested parties. NHTSA expects that those parties will include consumer and safety advocacy groups as well as vehicle and child restraint system manufacturers.

The specific purposes of the workshop are to—

- *Compare solutions.* Assess and discuss the relative merits, based on safety, cost, public acceptance and other factors, of various competing solutions to the problems associated with improving the compatibility between child restraint systems and vehicle seating positions and belt systems, increasing child restraint effectiveness, and increasing child restraint usage rates;
- *Assess prospects for single or compatible solutions.* Assess the prospects for the adoption in this country and elsewhere of a single regulatory solution or at least compatible regulatory solutions; and
- *Promote convergence.* Promote the convergence of those solutions.

NHTSA notes that in selecting the best solution, tradeoffs may have to be made among the various criteria in the matrix. For instance, the solution that performs best in safety tests might not be the solution with the highest level of consumer acceptance. If so, the solution that performs best in safety tests may not be the solution that offers, as a practical matter, the most safety benefits. The agency will examine the need to make such tradeoffs in developing its proposal.

NHTSA plans to rely on the information presented at the workshop to assist in developing a notice of proposed rulemaking (NPRM) that would propose requiring a universal child restraint anchorage system. The agency believes that any proposal to require a universal child restraint anchorage system should advance the following goals:

- Improve the compatibility between child restraint systems and vehicle seats and belt systems, thereby decreasing the potential that a child restraint is improperly installed;
- Ensure an adequate level of protection during crashes;
- Ensure correct child restraint system use by ensuring that the child restraint systems are convenient to install and use;
- Ensure that the child restraint systems and anchorages are cost effective; and
- Achieve international compatibility of child restraint performance requirements for uniform attachment points.

B. Procedural matters

October 9; morning. The morning of the first day will be devoted primarily to technical presentations. The rationale for each of the five solutions will be discussed by a representative or representatives of the parties which developed that solution. Those presentations should include, if possible, prototypes and other visual displays. Then there will be technical

presentations by a representative or representatives of the experts who conducted the consumer acceptance studies mentioned in this document. The agency will contact the parties responsible for the alternative solutions and consumer acceptance studies to arrange these presentations.

Finally, procedures for encouraging an exchange of ideas during the interactive phase of the workshop will be discussed.

October 9; afternoon. The afternoon of the first day will be devoted to an interactive discussion among interested persons. Those persons interested in actively participating in this phase of the workshop should contact Dr. Mouchahoir not later than October 4. The agency will make available an agenda setting forth the sequence of issues to be discussed during the interactive phase. Persons wishing to make closing remarks on the afternoon of October 10 should contact Dr. Mouchahoir not later than the end of the session on October 9.

October 10; morning and beginning of afternoon. The interactive phase will continue.

October 10; latter part of afternoon. Beginning about mid-afternoon, any participant who wishes to do so may make closing remarks for a period not to exceed 10 minutes. If time permits, persons who have not requested time, but would like to make remarks, will be afforded the opportunity to do so.

To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the workshop. Any person desiring assistance of auxiliary aids should contact Ms. Bernadette Millings, NHTSA Office of Crashworthiness Standards, telephone (202) 366–1740, no later than 10 days before the workshop. For any presentation that will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the workshop so that NHTSA can readily include the material in the public record.

NHTSA will place a copy of any written statement in the docket for this notice. In addition, the agency will make a verbatim record of the public workshop and place a copy in the docket.

Participation in the workshop is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: September 4, 1996.

L. Robert Shelton,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–23071 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 176
Tuesday, September 10, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV96–911–5 NC]

Proposed Information Collection; Comment Request

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Limes Grown in Florida, Marketing Order No. 911, and Avocados Grown in South Florida, Marketing Order No. 915.

DATES: Comments on this notice must be received by November 12, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone: 202–720–5127; or Aleck J. Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax (941) 299–5169.

SUPPLEMENTARY INFORMATION:

Limes Grown in Florida

Title: Limes Grown in Florida, Marketing Order No. 911.

OMB Number: 0581–0091.

Expiration Date of Approval: January 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Avocados Grown in South Florida

Title: Avocados Grown in South Florida, Marketing Order No. 915.

OMB Number: 0581–0078.

Expiration Date of Approval: September 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. The marketing orders' regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the marketing order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Florida lime and avocado marketing order programs, which have been operating since 1955 and 1954, respectively.

The lime order authorizes the issuance of grade, size, quality, container, pack, and flow-to-market regulations. The avocado order authorizes the issuance of grade, size, quality, maturity, container, and pack regulations. Both orders authorize production research, and market research and development. Regulatory provisions apply to limes and avocados shipped both within and out of the production area to any market, except those specifically exempt.

The orders, and rules and regulations issued thereunder, authorize the Florida Lime Administrative Committee and the Avocado Administrative Committee as the agencies responsible for local administration of the orders. The orders require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committees have developed forms as a means for persons to file required information with the committees relating to lime and avocado supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and the marketing order programs. Florida limes and avocados are shipped throughout the year, and these forms are utilized accordingly. A Department form is used to allow producers to vote on amendments to or continuance of the marketing orders. In addition, lime and avocado producers and handlers who are nominated by their peers to serve as representatives on the committees must file nomination forms with the Secretary.

Formal rulemaking amendments to the orders must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the orders. Such referenda ballots are included in this request.

These forms require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders.

The information collected is used only by authorized representatives of the Department, including AMS, Fruit and Vegetable Division regional and headquarters staff, and authorized employees of the respective committees. AMS is the primary user of the information and authorized committee employees are the secondary users.

Limes Grown in Florida

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.13 hours per response.

Respondents: Lime producers and for-profit businesses handling fresh limes produced in Florida.

Estimated Number of Respondents: 55.

Estimated Number of Responses per Respondent: 14.1.

Estimated Total Annual Burden on Respondents: 101 hours.

Avocados Grown in South Florida

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.11 hours per response.

Respondents: Avocado producers and for-profit businesses handling fresh avocados produced in Florida.

Estimated Number of Respondents: 208.

Estimated Number of Responses per Respondent: 4.48.

Estimated Total Annual Burden on Respondents: 103 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the marketing orders and the Department's oversight of those programs, including whether the information will have practical utility; (b) the accuracy of the AMS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

Comments should reference either or both the OMB No. 0581–0091 (the Florida Lime Marketing Order No. 911), and OMB No. 0581–0078 (the Florida Avocado Marketing Order No. 915), and be sent to USDA in the care of Caroline C. Thorpe or Aleck J. Jonas at the addresses above.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 3, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23017 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–02–P

[No. LS–96–006]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) request for comments from the livestock and meat industry to improve or change the procedures for collecting information used to compile and generate new and expand existing livestock and meat reports to assist the trade in making production and marketing decisions.

DATES: Comments must be submitted on or before November 12, 1996.

ADDRESSES: Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Division, AMS–USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Jimmy A. Beard, (202) 720–1050.

SUPPLEMENTARY INFORMATION:

Title: Livestock and Meat Market News.

OMB Number: 0581–0154.

Expiration Date of Approval: 11–30–96.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: Collection and dissemination of information for livestock, meat, and meat production facilities trading by providing a price base used by packers, wholesalers, and retailers to market products.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The livestock and market news reports are used by academia, but are primarily used by the livestock and meat trade, which includes packers, processors, brokers, retailers, and producers. The livestock and meat industry requested that the Department of Agriculture issue livestock and meat trade market reports for livestock, beef carcasses, boxed beef cuts, pork cuts, calf, lamb, and meat byproducts in order to assist them in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel.

Many government agencies use the reports to make their market outlook projections. Data from these reports is included in the information forwarded to the Secretary's Office as well as his staff to keep them appraised of the current market conditions and movement of livestock and meat in the United States. Economists at most major agricultural colleges and universities use the reports to make both short and long term market productions. The data is used extensively by consulting firms and private economists to aid them in determining available supplies and current pricing.

The industry could not collect the information themselves as they would not want to divulge their information to competitors, and exchange of such information between competitors would violate antitrust laws. Consequently, the information must be collected, compiled, and disseminated by an impartial third party, in a manner which protects the confidentiality of the reporter. Also, since the Government is a large purchaser of meat, a system to monitor the collection and reporting of data is needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .03 hours per response.

Respondents: Livestock and meat industry, or other for profit businesses, individuals or households, farms, or Federal Government.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: 520.

Estimated Total Annual Burden on Respondents: 7,020 hours.

Copies of this information collection can be obtained from Jimmy A. Beard, Livestock and Grain Market News Branch, at (202) 720–1050.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Jimmy A. Beard, Assistant to the Chief, Livestock and Grain Market News Branch, Livestock and Seed Division, AMS–USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record, and will be made available at the address above, during regular business hours.

Dated: September 3, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–23018 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–02–M

[Docket No. FV–96–303]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables.

DATES: Comments on this notice must be received by November 12, 1996, to be assured of consideration.

ADDITIONAL INFORMATION: Contact Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090–6456, (202) 720–2185.

SUPPLEMENTARY INFORMATION:

Title: U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables.

OMB Number: 0581–0166.

Expiration Date of Approval: December 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables provide a common trading language to growers, packers/shippers, processors, wholesalers, retailers, and other financially interested parties which will promote a better product and create more uniformity throughout the industry.

The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

The AMA also directs and authorizes the Secretary of Agriculture to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. There is a total of 314 U.S. Standards for Grades of Fresh and Processed Fruits, Vegetables, and Other Miscellaneous Products.

The information and collection process is used by the Fruit and Vegetable Division prior to developing a proposal, which is a formal version of a new or revised standard. This gives the Division the opportunity to gather and discuss information from all parts of the industry and other interested parties as to the likely impacts of the suggested changes or additions to the standard. If this process was not possible, the USDA would incur additional costs by rewriting and modifying the standards, or even worse, develop a standard that would be of no use.

The information and collection requirements in this request are necessary to carry out the intent of the AMA, to provide the respondents the type of service they request, and to create and revise U.S. Standards for Fresh and Processed Fruits and Vegetables that are consistent with current cultural and marketing practices.

The information collected is used only by authorized representatives of the USDA (AMS, Fruit and Vegetable Division's national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and to conduct and carry out the grading services requested by the respondents and for the purpose of developing and maintaining U.S. grade standards. The Agency is the primary user of the information, and the secondary user is each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one hour per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 930.

Estimated Number of Responses per Respondent: one.

Estimated Total Annual Burden on Respondents: 930 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the function of the Fresh and Processed Fruit and Vegetable industries in regard to uniform trading language and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and, (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments should reference OMB No. 0581–0166 and be sent to USDA in care of Frank O'Sullivan at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 4, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–23019 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409), we are giving notice of a meeting of the 2000 Census Advisory Committee. The meeting will be held on Thursday, September 26, 1996, from 8:30 a.m.–5:00 p.m., at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

The Advisory Committee is composed of a Chair, Vice Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of Census 2000 and user needs for information provided by that census, and provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the 2000 census of population and housing, and shall make recommendations for improving that census.

DATES: On Thursday, September 26, 1996, the meeting will begin at 8:30 a.m. and adjourn at 5:00 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to

submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Office Building 3, Washington, D.C. 10133, telephone: 301–457–2308.

SUPPLEMENTARY INFORMATION: A brief period will be set aside for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–457–2308.

Dated: August 30, 1996.

Everett M. Ehrlich,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 96–23023 Filed 9–9–96; 8:45 am]

BILLING CODE 3510–BP–M

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Information Systems Technical Advisory Committee (ISTAC) will be held October 2 & 3, 1996, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Pennsylvania Avenue and Constitution Avenue, N.W., Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 10, 1995, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: September 4, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–22965 Filed 9–9–96; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration (NOAA)

Small Business Innovation Research (SBIR)

AGENCY: Office of Research and Technology Applications, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Proposals are sought from high tech small businesses to respond to agency research needs in ocean science. The "Small Business Research and Development Enhancement Act of 1992" requires the Department of Commerce (DOC), to establish a three-phase SBIR program by reserving a percentage of its extramural R&D budget to be awarded to small business concerns for innovation research. DOC has the unilateral right to select SBIR research topics and awardees, and to award several or no grants under a given topic. Phase I is to determine the technical feasibility of ideas submitted for consideration and the quality of performance of the small business concern receiving an award. Therefore, the proposal should concentrate on research that will significantly contribute to proving the feasibility of the approach, a prerequisite to further support in Phase 2. Only firms that are awarded Phase 1 contracts or grants under this solicitation will be given the opportunity of submitting a Phase 2 proposal immediately following completion of Phase 1. Phase 2 is the R&D or prototype development phase. It will require a comprehensive proposal, outlining the effort in detail. Further information regarding Phase 2 proposal requirements will be provided to all firms receiving Phase 1 grants. In Phase 3, it is intended that non-SBIR capital be used by small business to pursue commercial applications of Phase 2.

DATES: Strict deadlines for submission to the FY 1997 program are: Opening Date: October 1, 1996, Closing Date: January 15, 1997. Awards will be announced in July 1997.

ADDRESSES: Proposals are to be submitted to: U.S. Department of Commerce, NOAA, Procurement Operations Branch, Code OA313, 1325 East-West Highway, SSMC2, Station 4301 Silver Spring, Maryland 20910, ATTN: SBIR Proposals, Telephone: (301) 713–0829.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Bishop, Telephone: (301) 713–3585, Fax: (301) 713–4100.

SUPPLEMENTARY INFORMATION:

Funding Availability

Because of ongoing debates concerning the Federal budget, it is uncertain how much money will be available through this announcement. Funding levels will depend on final FY 1997 budget appropriations. During FY 1996, total funding was $600,000. This included 4 Phase 1 awards of $50,000, and 2 Phase 2 awards of $200,000.

Program Authority

Authority: The Small Business Research and Development Enhancement Act of 1992, P.L. 102–564

(CFDA NO. 11.476)—Small Business Innovation Research

Program Objectives

SBIR invites small businesses to submit research proposals on ocean science topics described in the annual solicitation. Objectives of this solicitation include stimulating technological innovation in the private sector, strengthening the rule of small business in meeting Federal research and development needs, increasing the commercial application of innovations derived from Federal research, and improving the return on investment from Federally-funded research for the economic benefit of the Nation.

Program Priorities

In FY 1997, SBIR will give priority attention to individual proposals in the areas listed below.

- Underwater Visual Imaging System
- Aquaculture: Water Reuses and Effluent Treatment Systems
- Aquaculture: Developing and Improving Marine Species Culture
- Molecular and Immunological Probes
- Mapping Sonar for Small Underwater Vehicles
- Electronic Still Camera for Small Underwater Vehicles

- Sampling and Remediation of Contaminated Sediments
- Recreational Boat Charting

Matching Requirements: None.
Type of Funding Instrument: Grant.

Eligibility

For-profit small businesses of less than 500 people, including affiliates, at least 51% owned by U.S. citizens or permanent resident aliens. All work must be done in the United States. The principal investigator must be employed full-time with the small business.

Award Period: For Phase 1, 6 months; for Phase 2, 24 months.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit: See "For further Information Contact" section for where to obtain a copy of the solicitation, which contains forms and complete details.

Project Funding Priorities: None.

Evaluation Criteria: Phase 1 proposals will be rated by DOC scientists or engineers with equal consideration given to the following criteria, except for item (a), which will receive twice the value of any of the other items:

(a) The scientific and technical merit of the Phase 1 research plan and its relevance to the objectives, with special emphasis on its innovativeness and originality.

(b) Importance of the problem or opportunity and anticipated benefits of the proposed research to DOC, and the commercial potential, if successful.

(c) How well do the research objectives, if achieved, establish the feasibility of the proposed concept and justify a Phase 2 effort?

(d) Qualifications of the principal investigator(s), other key staff, and consultants, and the probable adequacy of available or obtainable instrumentation and facilities.

Selection Procedures: After review by technical specialists, a selection committee will choose proposals for award based on funds available and agency needs.

Other Requirements:

(1) *Federal Policies and Procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) *Preaward Activities*—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

(4) *No Obligation for Future Funding*—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(5) *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to DOC are made.

(6) *Name Check Review*—All for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honestly or financial integrity.

(7) *Primary Applicant Certifications*—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

ii. Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

iii. Anti-lobbying—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applied to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(8) *Lower Tier Certifications*—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(9) *False Statements*—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 28 U.S.C. 1001.

Intergovernmental Reviews: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Purchase of American-Made Equipment and Products: When purchasing either equipment or a product with funds provided through the grant, purchase only American-made equipment and products, to the extent possible in keeping with the overall research needs of the project.

Kurt J. Schnebele,

Executive Director of the Office of Oceanic and Atmospheric Research.

[FR Doc. 96–22971 Filed 9–9–96; 8:45 am]

BILLING CODE 3510–08–M

U.S. COMMISSION ON IMMIGRATION REFORM

Public Hearing on the Effects of Immigration in the Washington, DC, Metropolitan Area

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of Commission Public Hearing.

This notice announces a public hearing to be held by the U.S. Commission on Immigration Reform in Arlington, Virginia on September 17, 1996. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. Interim reports, U.S. Immigration Policy: Restoring Credibility, and U.S. Immigration Policy: Setting Priorities, were issued on September 30, 1994 and August 25, 1995 respectively; the Commission's final report is due at the end of fiscal 1997.

The public hearing participants will include the Commissioners, researchers, government officials, representatives of local organizations, and other experts. The public hearing will focus on the impact, adaption and integration of immigrants in the metropolitan Washington community. Participants are asked to make recommendations to the Commission on how to improve the impacts and integration of immigrants and how any negative impacts may be mitigated.

Tuesday, September 17, 1996

9:00 a.m.–12:30 p.m.—Public Hearing on the Effects of Immigration in the Washington, DC, Metropolitan Area, Arlington County Board Office, Room 300, Courthouse Plaza Number 1, 2100 Clarendon Boulevard, Arlington, Virginia

FOR FURTHER INFORMATION CONTACT: Paul Donnelly (202) 776–8642.

Dated: September 3, 1996.

Susan Martin,

Executive Director.

[FR Doc. 96–22993 Filed 9–9–96; 8:45 am]

BILLING CODE 8820–97–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

September 4, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for Group I and Categories 338/339 are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62398, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 4, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman of CITA. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Bahrain and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 9, 1996, you are directed to increase the limits for the following categories, as provided for in the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group I 237, 239, 330–336, 338, 339, 340–342, 345, 347, 348–354, 359, 431–436, 438–440, 442–448, 459, 630–636, 638, 639, 640–647, 648, 649, 650–654, 659, 831–836, 838, 839, 840, 842–847, 850–852, 858, and 859, as a group.	40,791,251 square meters equivalent.
Sublevel in Group I 338/339	565,856 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–23025 Filed 9–09–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

September 4, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 336/636 is being increased by application of swing, reducing the limit for Category 341 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62410, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 4, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman of CITA. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 9, 1996, you are directed to adjust the limits for the following categories, as provided for in the agreement dated December 2, 1993 and July 22, 1994, as amended and extended, between the Governments of the United States and the Kingdom of Nepal:

Category	Twelve-month limit [1]
336/636	233,638 dozen.
341	832,587 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–23024 Filed 9–9–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Draft Hanford Remedial Action; Environmental Impact Statement and Comprehensive Land-Use Plan, Richland, WA

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of availability (NOA).

SUMMARY: DOE announces the availability of the Draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land-Use Plan (HRA–EIS). The Draft EIS addresses DOE's proposed alternatives for establishing future land-use objectives for the Hanford Site. Decisions resulting from the assessment of the environmental impacts associated with these alternatives, in consultation with stakeholders and regulators, will establish a desired future land use for a given area. The scope of the HRA–EIS is based on the Hanford Future Site Uses Working Group (Working Group) recommendations which were developed by stakeholders representing a diverse combination of interests that worked for a number of years to identify future use options for the Hanford Site. The HRA–EIS addresses potential remediation impacts for four of the six Hanford geographic areas identified by the Working Group; (1) The Columbia River (Hanford Reach), (2) Reactors on the River (100 Areas), (3) the Central Plateau (200 Areas), and (4) All Other Areas (300, 400, 600, 1100, and 3000 Areas). Remediation of all Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) operable units and Resource Conservation and Recovery Act (RCRA) past-practice waste site as defined under the Tri-Party Agreement located within these geographic areas are included in the scope of this EIS. Decommissioning of selected surplus facilities is also addressed, along with RCRA waste treatment, storage, and disposal (TSD) units located in or near past-practice waste units. The Fitzner-Eberhardt Arid Lands Ecology Reserve and the area north of the Columbia River (North Slope) have been remediated and are considered available for unrestricted uses, and therefore have not been analyzed as part of this EIS. However, potential future land uses for these two areas are addressed in the Comprehensive Land-Use Plan portion of the Draft HRA–EIS. The alternatives presented in this EIS were developed by applying different levels-of-access scenarios (i.e., restricted use, unrestricted use, and exclusive use) to the different geographic areas identified by the Working Group.

DATES: DOE invites all interested parties to submit written comments concerning the Draft EIS during the comment period ending November 1, 1996. Comments postmarked after that date will be considered to the extent practicable. A public hearing will be conducted on October 17, 1996.

ADDRESSES: Requests for copies of the Draft EIS, further information on the Draft EIS, and/or written comments on the Draft EIS should be directed to Mr. Thomas W. Ferns, DOE National Environmental Policy Act (NEPA) Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, MSIN HO–12, Richland, Washington 99352–0550. Requests for copies of the Draft EIS or comments on the Draft EIS can also be made through (1) the Internet at Thomas_W_Ferns@rl.gov, (2) by calling 1–800–786–2018, or (3) by FAX at (509) 376–4360. Locations of Public Reading Rooms and information repositories where the Draft EIS will be available for review are listed in this notice under "**SUPPLEMENTARY INFORMATION.**" The Draft EIS is also available on the DOE Hanford Internet Home Page at http://www.hanford.gov/eis/hraeis/hraeis.htm.

Information on the DOE NEPA process may be obtained from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue SW, MSIN EH–42, Washington, D.C. 20585. Ms. Borgstrom may be contacted by telephone at (202) 586–4600 or by leaving a message at 1–800–472–2756.

The public is also invited to attend a hearing in which oral and written comments will be received on the Draft EIS. Oral and written comments will be considered equally in preparation of the Final EIS. The public hearing will be held on the date and at the location listed below:

Dates: October 17, 1996.
Time: 6:30 p.m.
Location: Shilo Inn.
Addresses: 50 Comstock Street, Ballroom # 1, Richland, WA 99352.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1992, DOE published a Notice of Intent (NOI) to prepare the HRA–EIS in the **Federal Register** (57 FR 37959). The scoping period for the HRA–EIS was scheduled to run from August 21, 1992, to November 25, 1992, but was extended, at the public's request, to January 15, 1993. A notice of this extension was printed on November 25, 1992 (57 FR 55517). During the public scoping period, four scoping meetings were held in the Northwest: Spokane, Washington, on September 29, 1992; Pasco, Washington, on October 1, 1992; Seattle, Washington, on October 5, 1992; and Portland, Oregon, on October 8, 1992. Public comments received during the scoping period were considered by DOE in developing the Draft HRA–EIS. Some comments resulted in modifications of the scope and content of the EIS as set forth in the original NOI. Comments from the public scoping process and the DOE responses to those comments can be found in the Implementation Plan for the HRA–EIS, issued in June 1995 (DOE/RL–93–66).

Recently, DOE issued a policy requiring land and facility-use planning at large multi-function DOE sites (this policy has been incorporated into DOE Order 430.1, "Life-Cycle Asset Management"). To satisfy the requirements of this Order, DOE began development of the Hanford Site Comprehensive Land-Use Plan (Comprehensive Plan). The purpose of the Comprehensive Plan is to guide land and facility-use decisions through the integration of natural, cultural, and socioeconomic factors and to designate existing and future land uses that are appropriate for the Hanford Site, including an evaluation of DOE's responsibilities, authorities, and applicable requirements. In addition, the land-use analysis considers values expressed by other federal agencies; state and local governments; the Tribal Nations; businesses, labor, environmental, and other groups and organizations; and members of the public concerned with or affected by the Hanford Site. These values, taken in conjunction with specific characteristics of the natural and built landscape within the Hanford Site, are used to identify areas of the Hanford Site which could be designated for various future uses.

Copies of the Draft HRA–EIS have been distributed to federal, state, and local officials; Tribal Nations; and agencies, organizations, and individuals who may be interested or affected by the proposed action. The document number for this EIS is DOE/EIS–0222D. This EIS has been prepared in accordance with NEPA; the Council on Environmental Quality's NEPA regulations, 40 CFR Parts 1500–1508; and the DOE NEPA Implementing Procedures, 10 CFR Part 1021. DOE plans to issue the Final EIS in February of 1996, with a Record of Decision issued no sooner than 30 days after issuance of the Final EIS. The Draft EIS and key supporting technical documentation can be found in the DOE reading rooms and designated information repositories identified at the end of this notice.

Alternatives Considered

Future land-use alternatives discussed in detail in the HRA–EIS are:

- "No-Action"—conduct a long-term monitoring and maintenance program instead of continuing the current program of TSD unit closures, past-practice waste site remedial actions, and surplus facility decommissioning actions (the No-Action Alternative is common to all of the geographic areas, but the specific monitoring and maintenance activities would vary depending on the types of waste sites and facilities found in each area);
- "Columbia River Unrestricted Future Land-Use Alternative"—unrestricted use of the Columbia River geographic area would be achieved through excavation and removal of contaminated riverbank, riverbottom, and island sediments, in conjunction with removal of the river discharge pipelines. This alternative would result in residual contamination levels that would not preclude any human uses within the Columbia River geographic area;
- "Columbia River Restricted Future Land-Use Alternative"—restricted use would be achieved through the removal of physical hazards and contaminants combined with engineering and/or institutional controls. This alternative would result in residual contaminant levels that require some continuing restrictions on human use of the Columbia River geographic area;
- "Reactors on the River Unrestricted Future Land-Use Alternative"—unrestricted use of the Reactors on the River geographic area would be achieved through excavation of contaminated soil and remediation of past-practice waste sites and ground water in conjunction with closure of TSD units and decommissioning of surplus contaminated and uncontaminated facilities associated with the reactors. This alternative would include ground-water remediation to address existing contaminant plumes located in, or potentially entering into, the Reactors on the River geographic area. Under this alternative, the Reactors on the River geographic area would be remediated to levels that do not preclude any human use. However, access or certain uses might continue to be controlled for other reasons (i.e., the presence of physical hazards or to protect cultural resources and/or sensitive wildlife habitat);
- "Reactors on the River Restricted Future Land-Use Alternative"—restricted future land use for the Reactors on the River geographic area would be achieved through a combination of remedial activities, including excavation and disposal of contaminated soil, remediation of past-practice waste sites, closure of TSD units, site reclamation, decommissioning of surplus facilities, and/or use of engineering and institutional controls. In addition to these potential remediation activities, a ground-water remediation strategy would be employed for the Reactors on the River geographic area. The EIS assesses two primary options for achieving a Restricted Future Land-Use for the Reactors on the River geographic area. The first option (R1) would emphasize removal and disposal of waste and contaminated materials, ground-water remediation, and continuing access restrictions. The second option (R2) would emphasize the placement of engineered caps, or barriers, over waste sites, in addition to ground-water remediation;
- "Central Plateau Exclusive Future Land-Use Alternative"—exclusive future land use of the Central Plateau geographic area would be achieved primarily through engineering and institutional controls, ground-water remediation, and capping of past-practice waste sites and TSD units. Potential health risks due to residual contamination would require strict controls on access. Use of the area would be limited to management of radioactive and hazardous waste, and similar compatible uses;
- " All Other Areas Restricted Future Land-Use Alternative"—restricted future land use in the All Other Areas geographic area could be achieved through a variety of remediation activities, including excavation and disposal of contaminated soil, remediation of past-practice waste sites, closure of TSD units, site reclamation, decommissioning of surplus facilities, and/or use of engineering and institutional controls. In addition to these potential remediation activities, a ground-water remediation strategy would be developed and employed for

the All Other Areas geographic area. The EIS assesses two primary options for achieving a restricted future land use for the All Other Areas geographic area. The first option (R1) would emphasize removal and disposal of waste and contaminated materials, ground-water remediation, and continuing access restrictions. The second option (R2) would emphasize the placement of engineered caps, or barriers, over waste sites, in addition to ground-water remediation.

Preferred Alternative

DOE has not selected a preferred alternative at this time. Following public comment on the Draft EIS, DOE will develop a preferred alternative to be presented in the Final EIS.

Invitation to Comment

DOE has completed the general distribution of the EIS and has filed the document with the U.S. Environmental Protection Agency, which will publish a separate Notice of Availability elsewhere in the **Federal Register**. The Draft EIS also is available to the public in the DOE reading rooms and designated information repository locations identified in this notice.

Persons interested in speaking at the hearing (see address at the beginning of this notice) may register at the hearing and will be called on to speak on a first-come, first-served basis. Written comments will also be accepted at the hearing, and speakers are encouraged to provide written versions of their oral comments for the record. Oral and written comments will be considered equally in preparing the Final EIS.

The Summary of the HRA-EIS is available for review for those who do not wish to receive the entire Draft EIS. When requesting copies of the HRA-EIS, please specify whether you wish to receive only the Summary (38 pages) or the entire Draft EIS including associated appendices (4 volumes).

DOE Public Reading Rooms and Information Repositories

Suzzallo Library, University of Washington, Government Publications Room, Seattle, Washington 98159, (206) 543–4664
Foley Center, Gonzaga University, E. 502 Boone, Spokane, Washington 99258, (509) 328–4220, Ext. 3125
DOE Public Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130, Richland, Washington 99352, (509) 376–8583
Branford Price Millar Library, Science and Engineering Floor, Portland State University, SW Harrison and Park, Portland, Oregon 97207, (503) 725–3690
DOE Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5955

Issued this 3rd day of September 1996.

James M. Owendoff,

Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 96–23046 Filed 9–9–96; 8:45 am]

BILLING CODE 6450–01–P

Oak Ridge Operations Office; Notice of Program Interest—Diesel Engine Technologies for Light Trucks

AGENCY: Transportation Technologies, DOE.

ACTION: Amendment to extend the application due date to September 30, 1996 for Notice of Program Interest—Diesel Engine Technologies for Light Trucks.

SUMMARY: The Department of Energy is extending the due date for receipt of applications in response to the Notice of Program Interest for support of the cooperative development of technologies for a high efficiency, very low emission, diesel engine for light trucks, specifically pickups and sport utility vehicles to September 30, 1996. All other information publicized in the original Notice of Program Interest on August 5, 1996, (61 FR 40629) is unchanged.

Issued in Oak Ridge, Tennessee on September 3, 1996.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 96–23047 Filed 9–9–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Vermont Castings, Inc. From the DOE Vented Home Heating Equipment Test Procedure (Case No. DH–006)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to Vermont Castings, Inc. (Vermont Castings) from the existing Department of Energy (DOE or Department) test procedure regarding pilot light energy consumption and weighted average steady-state efficiency for its manually controlled vented heater, model DV40 (Gas Fired Built In Direct Vent Fireplace).

Today's notice also publishes a "Petition for Waiver" from Vermont Castings. Vermont Castings' Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment test procedure relating to the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE) and the calculation of weighted average steady state efficiency of its model DV20 vented heater. Vermont Castings seeks to delete the required pilot light measurement (Qp) in the calculation of AFUE when the pilot is off, and to test at a minimum fuel input rate of two-thirds instead of the specified ± 5 percent of 50 percent of the maximum fuel input rate in the calculation of AFUE. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 10, 1996.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. DH–006, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0121, (202) 586–9145.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making informed purchasing

decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding § 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. Title 10 CFR Part 430, § 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver, Title 10 CFR Part 430, § 430.27(g). An Interim Waiver remains in effect for a period of 180 days, or until DOE issues a determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 12, 1996, Vermont Castings filed an Application for Interim Waiver and a Petition for Waiver regarding (a) pilot light energy consumption and (b) weighted average steady state efficiency.

Vermont Castings seeks an Interim Waiver from the DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O, that requires measurement of energy input rate of the pilot light (Q_P), and the use of this data in section 4.2.6 for the calculation of AFUE, where:

$$AFUE=(4400\eta_{ss}\eta_u Q_{in\text{-}max})/(4400\eta_{ss}Q_{in\text{-}max}+2.5(4600)\eta_u Q_P)$$

Instead, Vermont Castings requests that it be allowed to delete Q_P and accordingly, the $(2.5(4600)\eta_u Q_P)$ term in the calculation of AFUE. Vermont Castings states that instructions to turn off the transient pilot by the user when the heater is not in use are in the User Instruction Manual and on a label adjacent to the gas control valve. Therefore, the additional energy savings that result when the pilot is turned off ($Q_P = 0$) should be credited. Since the current DOE test procedure does not address pilot light energy savings, Vermont Castings asks that the Interim Waiver be granted.

Vermont Castings also seeks an Interim Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O, which requires steady state efficiency of manually controlled vented heaters with various input rates to be determined at a fuel input rate that is within ± 5 percent of 50 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency needed in the calculation of AFUE. Instead, Vermont Castings requests that it be allowed to determine steady state efficiency, weighted average steady state efficiency, and AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate for its manually controlled vented heaters which do not adjust to an input rate as low as 50 percent. Since the current DOE test procedure does not address steady state testing for manually controlled vented heaters with various input rates at fuel input rates other than within ± 5 percent of 50 percent of the maximum fuel input rate, Vermont Castings asks that the waiver be granted.

Previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for home heating equipment with a manual transient pilot control and allowance to determine weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of 65.3 percent of the maximum fuel input rate instead of the specified ± 5 percent of 50 percent of the maximum fuel input rate have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Incorporated, 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; and Superior Fireplace Company, 61 FR 17885, April 23, 1996.

Thus, it appears likely that Vermont Castings' Petition for Waiver for pilot light and weighted average steady state efficiency for home heating equipment will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Vermont Castings an Interim Waiver for its model DV40 vented heater. Vermont Castings shall be permitted to test its model DV40 vented heater on the basis of the test procedures specified in Title 10 CFR Part 430, Subpart B, Appendix O, with the modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency ($\eta_{ss\text{-}wt}$) is:

(1) At ± 5 percent of 50 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually-controlled oil vented heaters if the design of the heater is such that ± 5 percent of 50 percent of the maximum fuel input rate can not be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heater with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iii) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

where:

η_u = as defined in section 4.2.5 of this appendix.

(iv) With the exception of the modification set forth above, Vermont Castings shall comply in all respects with the procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company.

This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver is effective on the date of issuance by the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy. The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Vermont Castings' Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment relating to the pilot light and weighted average steady state efficiency. Vermont Castings seeks (a) to exclude the pilot light energy consumption in the calculation of AFUE, and (b) to determine the weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of two-thirds of the maximum fuel input rate instead of the specified ± 5 percent of 50 percent of the maximum fuel input rate.

Pursuant to paragraph (b) of Title 10 CFR Part 430.27, the Department is hereby publishing the "Petition for Waiver."

The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, September 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–23048 Filed 9–9–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–362–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective September 1, 1996:

Thirteenth Revised Sheet No. 8
Fifteenth Revised Sheet No. 9
Fifteenth Revised Sheet No. 13
Fifteenth Revised Sheet No. 16
Nineteenth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $6.2 million of costs that are associated with its obligations to Dakota Gasification Company ("Dakota"). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2 so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would increase current quarterly Dakota Above-Market cost recoveries from $6.0 million to $6.2 million, based upon costs incurred from May 1996 through July 1996.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22992 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–351–000]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 29, 1996, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 4, to become effective September 1, 1996.

AWP states the proposed changes would decrease revenues from jurisdictional service by $77.3 thousand based on the 12-month period ending June 30, 1996, as adjusted.

AWP states that the purpose of this filing is to comply with the Commission's Order in Docket No. CP92–570–000 whereby AWP is required to file a general rate change within three years of the in-service date of the proposed facility.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission. in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22986 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–364–000]

Colorado Interstate Gas Company; Notice of Filing

September 4, 1996.

Take notice that on August 30, 1996, Colorado Interstate Gas company (CIG), tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, First Revised Sheet Nos. 228A, 228B and 228C, with a proposed effective date of October 1, 1996.

CIG avers that the filing was made to update the General Terms and Conditions portion of the tariff as it relates to storage. CIG states that based upon data from prior years and particularly the 1995/1996 heating season, the changes are requested to more accurately portray the performance capability of the storage fields.

CIG states that copies of the filing were served upon all holders to CIG's Volume No. 1 tariff.

Any person desiring to be heard or to protest said filing should file with a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this fling are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22980 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–363–000]

Colorado Interstate Gas Company; Notice of Filing

September 4, 1996.

Take notice that on August 30, 1996, Colorado Interstate Gas Company (CIG) tendered for filing a notice of termination of gathering services for the North Wamsutter and Echo Springs Gathering Areas located in Sweetwater and Carbon Counties, Wyoming.

CIG avers that CIG and Williams Gas Processing-Wamsutter Company (Williams-Wamsutter) have a facilities sales agreement dated December 30, 1993, as amended, that relates to these facilities. CIG states that these facilities will be abandoned by transfer to Williams-Wamsutter. CIG requests that the effective date of the termination of service be September 30, 1996.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22991 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–357–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective as indicated:

Effective September 1, 1996

Fourteenth Revised Sheet No. 25
Fourteenth Revised Sheet No. 26
Fourteenth Revised Sheet No. 27
Fifteenth Revised Sheet No. 28
Ninth Revised Sheet No. 29
Ninth Revised Sheet No. 30

Effective October 1, 1996

Fifteenth Revised Sheet No. 25
Fifteenth Revised Sheet No. 26
Fifteenth Revised Sheet No. 27
Sixteenth Revised Sheet No. 28

Columbia states that this filing constitutes its Mid-Cycle filing pursuant to Section 36.2 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Second Revised Volume No. 1. GTC Section 36, "Transportation Costs Rate Adjustment (TCRA)", enables Columbia to adjust its TCRA rates prospectively to reflect estimated current costs. In this filing, Columbia proposes to adjust its current Operational TCRA and current Stranded TCRA rates.

Columbia states that its filing includes projected costs in the amount of $15,051,499 for the Operational Account No. 858 contracts, which represents a decrease of $265,584 from the projected levels established in Docket No. RP96–165, and which are based upon the rates of the applicable pipeline companies at October 1, 1996, and the respective determinants associated with those contracts.

Columbia, states that by this filing, it is also proposing to make an out-of-cycle adjustment so as to eliminate the current stranded demand rates effective September 1, 1996, since it will have fully recovered the stranded TCRA demand costs provided for under its Customer Settlement approved in Docket No. GP94–2, et al., as of August 31, 1996. Elimination of the current stranded demand rate effective September 1, 1996, will allow Columbia's customers to avoid a deferral of over-recoveries of stranded costs.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Louis D. Cashell,

Secretary.

[FR Doc. 96–22988 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–34–001]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 29, 1996, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective October 1, 1996, the following tariff sheets:

Substitute Seventeenth Revised Sheet No. 8A
Substitute Tenth Revised Sheet No. 8A.01
Substitute Ninth Revised Sheet No. 8A.02
Substitute Fifteenth Revised Sheet No. 8B
Substitute Eighth Revised Sheet No. 8B.01

FGT states that on August 22, 1996, FGT made a filing in Docket No. TM97–2–34–000 (August 22 Filing) to make changes to the Fuel Reimbursement Charge Percentage (FRCP) and the Unit Fuel Surcharge (UFS) pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff. FGT states that the tariff sheets filed with the August 22 Filing were to supersede the tariff sheets filed on August 21, 1996 in Docket No. TM97–1–34–000 (August 21 Filing) which proposed changes to the ACA Charge pursuant to the Annual Charges Billing for Fiscal Year 1996. The ACA charge reflected in the August 21 Filing, and carried forward to the August 22 Filing in the instant docket, was inadvertently calculated from the wrong Unit Charge Factor in the Commission's Annual Charge Billing. FGT is filing herein substitute tariff sheets to reflect the correct ACA charge on the above referenced tariff sheets. No information regarding the FRCP on the UFS has been changed from that filed in the August 22 Filing in Docket No. TM94–2–34–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22972 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–366–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 3, the tariff sheets listed on Appendix A to the filing, proposed to become effective on October 1, 1996.

FGT states that the proposed changes would increase revenues from jurisdictional service by approximately $27.4 million for the pre-expansion system, and by approximately $8.2 million for the Phase III system over the first twelve months, both based on the twelve-month period ended April 30, 1996, as adjusted.

FGT states that this rate filing is made to effectuate changes in the rates and terms applicable to FGT's services under Rate Schedules FTS–1, FTS–2, SFTS, NNTS, and ITS–1, the forms of service agreements thereunder, and the General Terms and Conditions. FGT states that the changes reflected in the tariff sheets, FGT asserts, are also required to make certain operational and administrative changes to FGT's Tariff, including provisions regarding shipper balancing.

Further, FGT states it is eliminating Rate Schedules PTS–1 and PRS and the related forms of service agreements pursuant to the terms of the Settlement dated June 16, 1993 in Docket No. RS92–16–000, et al. In addition, FGT states it is transferring the rate provisions and other terms and conditions of Western Division transportation service, currently included in Rate Schedules FTS–1 and ITS–1, to new Rate Schedules FTS–WD and ITS–WD.

FGT's proposed rates are based on a cost of service of $159.5 million for the pre-expansion system and $159.2 million for the Phase III system. FGT states that its filing with respect to the Phase III system reflects the adjustment to common equity and the $18.75 million reduction to Account No. 101, Gas Plant in Service, provided by the Stipulation and Agreement of Settlement filed on July 30, 1996 in Docket No. FA94–15–000, which is pending Commission approval.

FGT states that the overall return for the pre-expansion system is 12.19% (reflecting a 9.70% cost of debt and a 14.50% return on common equity) and, for the Phase III system, is 10.50% (reflecting an 8.53% cost of debt and a 14.00% return on common equity). The depreciation component of FGT's cost of service computations for the pre-expansion system reflects an increase in the depreciation rate applicable to FGT's Onshore Transmission Plant from 2.5% to 3.56%. FGT states that, although it is proposing no change in the twenty-five year depreciable life of the Phase III system, FGT has adjusted the depreciation schedule utilizing a levelized rate methodology as provided for by the Phase III Settlement. Such adjusted depreciation schedule reflects the overall higher depreciation expense resulting from the fact that the actual construction costs of the Phase III system were greater than estimated.

In addition, FGT is requesting authorization herein to secure third party storage from Bay Gas Storage Company, Ltd. (Bay Gas) to be utilized to provide No Notice service, including the expanded availability and flexibility of such service as proposed (including customer-requested increased winter quantities). FGT respectfully requests that the Commission grant whatever authorization is deemed necessary by December 1, 1996, so that FGT may proceed with the acquisition of such storage under the terms of its letter of intent with Bay Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22979 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1494–120]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

September 4, 1996.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to upgrade six of the project's generating units for the Pensacola Hydroelectric Project, Project No. 1494–120. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Pensacola Hydroelectric Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below. For further information, please contact the project manager, Robert J. Fletcher, at (202) 219–1206.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22983 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–51–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective October 1, 1996.

Sixth Revised Sheet No. 7

Great Lakes states that the above-referenced tariff sheet is being filed to reflect the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes was established by FERC notice given on July 29, 1996 and is to be effective October 1, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section

385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22976 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–11–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

(September 4, 1996).

Take notice that on August 30, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

Thirteenth Revised Sheet No. 20
Twelfth Revised Sheet No. 21
Thirteenth Revised Sheet No. 22
Eighth Revised Sheet No. 23
Thirteenth Revised Sheet No. 24

Koch Gateway Pipeline states that the above listed tariff sheets are being filed to reflect the decrease in the Annual Charge Adjustment (ACA) reflected in Koch's FERC Gas Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22978 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–361–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

Title Page
Fourth Revised Sheet No. 1412
Second Revised Sheet No. 1704
Second Revised Sheet No. 1705
Third Revised Sheet No. 1706
Second Revised Sheet No. 1709
Third Revised Sheet No. 1710
Third Revised Sheet No. 1907
Fifth Revised Sheet No. 2705
Fifth Revised Sheet No. 2706
Third Revised Sheet No. 2707
Second Revised Sheet No. 3300

Koch is submitting the referenced tariff sheets to comply with Order No. 582. The Tariff revisions include Koch's discount policy, required reports, and miscellaneous compliance changes, all as more fully described below.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22990 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–114–000]

Mobile Bay Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

Fourth Revised Sheet No. 4

Mobile Bay states that the above listed tariff sheet is being filed to reflect the decrease in the Annual Charge Adjustment (ACA) reflected in Mobil Bay's FERC Gas Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rule and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22973 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–358–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 4, 1996.

Take notice that on August 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventeenth Revised Sheet No. 5, with a proposed effective date of October 1, 1996.

National states that this filing reflects the quarterly adjustment to the reservation component of the EFT rate pursuant to the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.11 or 385.14). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22981 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–59–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, proposed to be effective October 1, 1996:

Fifth Revised Volume No. 1

Twenty-Sixth Revised Sheet No. 50
Twenty-Sixth Revised Sheet No. 51
Eleventh Revised Sheet No. 52
3 Revised 30 Revised Sheet No. 53
Eleventh Revised Sheet No. 59
Twelfth Revised Sheet No. 60

Original Volume No. 2

151 Revised Sheet No. 1C
Twenty-Sixth Revised Sheet No. 1C.a

Northern states that the filing establishes the revised Annual Charge Adjustment (ACA) rate effective October 1, 1996, for Northern's transportation rates. The ACA rate is designed to recover the charge assessed by the Commission pursuant to Part 382 of the Commission's Regulations.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E. Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22975 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–354–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4 1996.

Take notice that on August 30, 1996, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858—Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Twenty Fifth Revised Sheet Nos. 50 and 51 and Thirty First Revised Sheet No. 53 to be effective October 1, 1996.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22987 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–64–000]

Pacific Interstate Offshore Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Pacific Interstate Offshore Company (PIOC) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1996:

Third Revised Sheet No. 6

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge of .20 cents per MMBtu, effective October 1, 1996.

PIOC states that a copy of this filing has been served on PIOC's sole customer, the Southern California Gas Company and the Public Utilities Commission of the State of California and other interested parties.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22974 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–239–001 and RP96–168–001]

Questar Pipeline Company; Notice of Tariff Filing

September 4, 1996.

Take notice that on August 29, 1996, Questar Pipeline Company, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 3, the following tariff sheets to become effective as shown:

First Revised Volume No. 1

Third Revised Sheet No. 92—effective June 19, 1996
Fourth Revised Sheet No. 172—effective June 19, 1996
Original Volume No. 3
Substitute Sixteenth Revised Sheet No. 8—effective March 1, 1996

Questar states that the proposed tariff sheets (1) correct the pagination of Sheet Nos. 92 and 172 and (2) incorporate into Sheet No. 8 base tariff rates as accepted by the Commission in Docket No. RP95–407. Questar has requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective as proposed.

Questar states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22985 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–64–003]

South Georgia Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 29, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, effective January 1, 1996.

First Substitute Fourth Revised Sheet No. 6

South Georgia states that this tariff sheet is being filed to correct an inadvertent error contained on fourth Revised Sheet No. 6 submitted by South Georgia as part of its filing in the captioned docket on August 22, 1996.

South Georgia states that copies of this filing have been served on all shippers and interested state commissions.

Any person desiring to protest this filing should file protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's rules of Practice and Procedures (18 CFR Section 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22984 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–757–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

September 4, 1996.

Take notice that on August 29, 1996, Transportation Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP96–757–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between Transco and Chevron U.S.A., Inc. (Chevron), formerly Gulf Oil Corporation, under Rate Schedule X–182, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that pursuant to an April 5, 1978, exchange agreement, Transco receives up to 20,000 Mcf per day of gas from Chevron's reserves in the High Island Area Block 111, Offshore Texas and Chevron receives equivalent quantities of gas purchased by Transco in the South Timbalier Block 148, Offshore Louisiana. It is stated that the High Island 111 volumes are delivered into Transco's existing North High Island System and the South Timbalier 148 volumes are delivered into Chevron's existing Offshore Gathering System. Transco states that the primary term of the agreement is for 15 years from the date of initial delivery and from year to year thereafter until terminated by either party upon one year's notice.

Transco states that by letter dated August 15, 1996, Transco and Chevron have mutually agreed to the termination of the exchange service to be effective the date of the order approving such termination.

Transco also states that upon abandonment of the exchange service, Transco will abandon in place, pursuant to blanket certificate authorization, the C&K South Timbalier Block 148 platform "A" meter station and 70 feet of platform piping located in Offshore Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22982 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–359–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

September 4, 1996.

Take notice that on August 30, 1996 Transcontinental Ges Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its

FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A to the filing. The proposed effective date of the tariff sheets is October 1, 1996.

Transco states that the purpose of the filing is to establish the flexibility under Transco's tariff to negotiate rates in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, issued January 31, 1996 in Docket No. RM95–6–000, and applicable precedent.

Transco states that copies of the filing are being mailed to each of its customers, interested State Commissions and other interested parties.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions on protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22989 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–49–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1996.

Take notice that on August 30, 1996, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, to become effective October 1, 1996:

Second Revised Volume No. 1

Twentieth Revised Sheet No. 15
Twenty-third Revised Sheet No. 16
Twentieth Revised Sheet No. 18
Seventeenth Revised Sheet No. 21

Original Volume No. 2

Sixty-fourth Revised Sheet No. 11B

Williston Basin states that the instant-filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges under 18 CFR Part 382 and Section 41 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1. The filing incorporates the Commission approved ACA surcharge of .231 cents per Mcf (.215 cents per dkt on the Williston Basin system), a decrease of .0020 cents per Mcf from the current amount.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426, in accordance with Rules 211 and 215 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–22977 Filed 9–9–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

September 4, 1996.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: September 11, 1996 10:00 A.M.

Place: Room 2C, 888 First Street, N.E. Washington, D.C. 20426.

Status: Open.

Matters to be Considered Agenda: Note—Items Listed on the Agenda May Be Deleted Without Further Notice.

Contact Person for More information: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro

658th Meeting—September 11, 1996, Regular Meeting (10:00 A.M.)

CAH–1.
DOCKET# P–3494 036 ALLEGHENY NO. 6 HYDRO PARTNERS
OTHER#S P–3671 034 ALLEGHENY HYDRO PARTNERS

CAH–2.
DOCKET# P–10934 004 WILLIAM B. RUGER, JR.

CAH–3.
DOCKET# P–2413 026 GEORGIA POWER COMPANY

CAH–4.
DOCKET# P–10536 001 PUBLIC UTILITY DISTRICT NO. 1 OF OKANOGAN COUNTY, WASHINGTON

CAH–5.
DOCKET# P–11575 000 AKRON HYDROELECTRIC COMPANY

Consent Agenco—Electric

CAE–1.
DOCKET# ER96–2408 000 WWP RESOURCE SERVICES, INC.

CAE–2.
DOCKET# ER96–2463 000 ALLEGHENY POWER SYSTEM

CAE–3.
DOCKET# ER96–2466 000 NEW YORK STATE ELECTRIC & GAS CORPORATION

CAE–4. OMITTED

CAE–5.
DOCKET# ER96–2467 000 WASHINGTON WATER POWER COMPANY, IDAHO POWER COMPANY AND MONTANA POWER COMPANY, ET AL.

CAE–6.
DOCKET# ER96–1447 000 MID-CONTINENT AREA POWER POOL

CAE–7.
DOCKET# ER96–350 000 IDAHO POWER COMPANY

CAE–8.
DOCKET# ER94–734 000 NEW CHARLESTON POWER, L.P.

CAE–9.
DOCKET# TX96–6 000 MONTANA POWER COMPANY

CAE–10.
DOCKET# ER96–495 000 FLORIDA POWER & LIGHT COMPANY
OTHER#S ER96–1001 000 FLORIDA POWER & LIGHT COMPANY

CAE–11.
DOCKET# ER96–1211 000 OCEAN STATE POWER
OTHER#S ER96–1212 000 OCEAN STATE POWER II

CAE–12. OMITTED

CAE–13.
DOCKET# ER93–150 009 BOSTON EDISON COMPANY
OTHER#S EL93–10 006 BOSTON EDISON COMPANY
EL94–73 001 COMMONWEALTH ELECTRIC COMPANY V. BOSTON EDISON COMPANY

CAE–14.
DOCKET# TX95–4 000 AMERICAN MUNICIPAL POWER-OHIO, INC. V. OHIO EDISON COMPANY

CAE–15.

DOCKET# OA96–6 000 NORTHERN STATES POWER COMPANY (WISCONSIN) AND NORTHERN STATES POWER COMPANY (MINNESOTA)
OTHER#S OA96–8 000 UPPER PENINSULA POWER COMPANY
OA96–23 000 VERMONT ELECTRIC POWER COMPANY, INC. AND VERMONT ELECTRIC TRANSMISSION COMPANY, INC.
OA96–25 000 BLACK CREEK HYDRO, INC.
OA96–26 000 NEWCORP RESOURCES, INC.
OA96–45 000 ELECTRIC ENERGY, INC.
OA96–58 000 GRAHAM COUNTY ELECTRIC COOPERATIVE, INC.
OA96–59 000 OREGON TRAIL ELECTRIC CONSUMERS COOPERATIVE
OA96–65 000 BARRON ELECTRIC COOPERATIVE
OA96–71 000 MADISON GAS & ELECTRIC COMPANY
OA96–81 000 INDIANAPOLIS POWER & LIGHT COMPANY
OA96–103 000 EXETER & HAMPTON ELECTRIC COMPANY
OA96–104 000 UNITIL POWER CORPORATION
OA96–105 000 CONCORD ELECTRIC COMPANY
OA96–107 000 FITCHBURG GAS & ELECTRIC LIGHT COMPANY
OA96–143 000 GOLDEN SPREAD ELECTRIC COOPERATIVE
OA96–148 000 RAYBURN COUNTY ELECTRIC COOPERATIVE, INC.
OA96–149 000 ANOKA ELECTRIC COOPERATIVE
OA96–150 000 OLD DOMINION ELECTRIC COOPERATIVE, INC.
OA96–160 000 NEW ENGLAND ELECTRIC TRANSMISSION CORPORATION AND NEW ENGLAND HYDRO TRANSMISSION ELECTRIC CO., ET AL.
OA96–173 000 EDISON SAULT ELECTRIC COMPANY
OA96–180 000 INTERMOUNTAIN RURAL ELECTRIC ASSOCIATION
OA96–181 000 PEOPLE'S ELECTRIC COOPERATIVE
OA96–211 000 NORTHWESTERN WISCONSIN ELECTRIC COMPANY
OA96–216 000 CITIZENS UTILITIES COMPANY
OA96–217 000 CONSOLIDATED WATER POWER COMPANY
OA96–219 000 VERMONT MARBLE POWER DIVISION OF OMYA, INC.
CAE–16.
DOCKET# EL93–45 001 METROPOLITAN DADE COUNTY, FLORIDA V. ENERGY SYSTEMS DIVISION OF THERMO ELECTRON CORPORATION, ET AL.
OTHER#S ER94–783 000 SOUTH FLORIDA COGENERATION ASSOCIATES
QF83–248 003 ENERGY SYSTEMS DIVISION OF THERMO ELECTRON CORPORATION, ET AL.
CAE–17.
DOCKET# ER96–1088 002 WISCONSIN PUBLIC SERVICE CORPORATION, WPS ENERGY SERVICES, INC. AND WPS POWER DEVELOPMENT, INC.
OTHER#S ER95–1528 003 WISCONSIN PUBLIC SERVICE CORPORATION
CAE–18A. OMITTED
CAE–18B. OMITTED
CAE–19.
DOCKET# ER95–1453 001 COMMONWEALTH ELECTRIC COMPANY
CAE–20.
DOCKET# EL91–13 003 NORTHERN STATES POWER COMPANY (MINNESOTA) V. SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY
CAE–21.
DOCKET# ER95–791 002 JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY
CAE–22. OMITTED
CAE–23. OMITTED
CAE–24.
DOCKET# EL96–56 000 COMUNIDADES UNIDAS CONTRA LA CONTAMINACION V. AES PUERTO RICO, L.P.
OTHER#S QF96–28 001 AES PUERTO RICO, L.P.
CAE–25.
DOCKET# EL94–81 002 OGLETHORPE POWER CORPORATION V. GEORGIA POWER COMPANY
CAE–26.
DOCKET# RM95–9 000 OPEN ACCESS SAME-TIME INFORMATION SYSTEM (FORMERLY REAL-TIME INFORMATION NETWORKS) AND STANDARDS OF CONDUCT
CAE–27.
DOCKET# EL95–59 000 SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–28.
DOCKET# RM96–17 000 CHANGES IN FORM NO. 1 INSTRUCTIONS
CAE–29.
DOCKET# EL95–38 000 SITHE/ INDEPENDENCE POWER PARTNERS, L.P. V. NIAGARA MOHAWK POWER CORPORATION
CAE–30.
DOCKET# ER96–1794 000 SOUTHERN COMPANIES
CAE–31. OMITTED

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP96–317 000 GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–2.
DOCKET# RP96–338 000 TEXAS EASTERN TRANSMISSION CORPORATION
CAG–3.
DOCKET# RP96–337 000 PACIFIC GAS TRANSMISSION COMPANY
CAG–4.
DOCKET# RP96–340 000 QUESTAR PIPELINE COMPANY
CAG–5.
DOCKET# PR95–16 001 OLYMPIC PIPELINE COMPANY
OTHER#S PR95–17 001 OLYMPIC PIPELINE COMPANY
CAG–6. OMITTED
CAG–7. OMITTED
CAG–8.
DOCKET# RP96–211 000 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–9.
DOCKET# RP96–238 001 TEXAS GAS TRANSMISSION CORPORATION
CAG–10.
DOCKET# RP88–262 031 PANHANDLE EASTERN PIPE LINE COMPANY
CAG–11.
DOCKET# RP93–36 014 NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–12.
DOCKET# RP96–128 001 NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP95–326 008 NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–13.
DOCKET# RP96–180 000 STINGRAY PIPELINE COMPANY
CAG–14.
DOCKET# RP96–209 001 KOCH GATEWAY PIPELINE COMPANY
CAG–15.
DOCKET# RP96–339 000 PACIFIC GAS TRANSMISSION COMPANY
CAG–16.
DOCKET# RP96–342 000 MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–17.
DOCKET# RP94–149 000 PACIFIC GAS TRANSMISSION COMPANY
OTHER#S RP94–145 000 PACIFIC GAS TRANSMISSION COMPANY
RP94–145 004 PACIFIC GAS TRANSMISSION COMPANY
RP94–149 005 PACIFIC GAS TRANSMISSION COMPANY
RP95–141 002 PACIFIC GAS TRANSMISSION COMPANY
CAG–18.
DOCKET# RP96–129 003 TRUNKLINE GAS COMPANY
CAG–19.
DOCKET# RP96–253 003 NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–20.
DOCKET# RP96–244 002 KOCH GATEWAY PIPELINE COMPANY
CAG–21.
DOCKET# RP96–110 002 CARNEGIE INTERSTATE PIPELINE COMPANY
CAG–22.
DOCKET# RP93–197 000 UNION PACIFIC FUELS, INC., ET AL. V. SOUTHERN CALIFORNIA GAS COMPANY
OTHER#S RP93–194 000 SOUTHERN CALIFORNIA UTILITY POWER POOL AND IMPERIAL IRRIGATION DISTRICT V. SOUTHERN CALIFORNIA GAS COMPANY
RP94–51 000 SHELL WESTERN E&P INC. V. SOUTHERN CALIFORNIA GAS COMPANY
CAG–23.
DOCKET# OR96–11 000 EXPRESS PIPELINE PARTNERSHIP
OTHER#S OR96–11 001 EXPRESS PIPELINE PARTNERSHIP
CAG–24. OMITTED
CAG–25.

DOCKET# MG96–15 000 KOCH GATEWAY PIPELINE COMPANY
CAG–26.
DOCKET# CP89–629 031 TENNESSEE GAS PIPELINE COMPANY
OTHER#S CP89–634 022 IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CP90–639 019 TENNESSEE GAS PIPELINE COMPANY
CP91–2677 006 IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–27.
DOCKET# CP96–583 000 MIDCON TEXAS PIPELINE CORPORATION
CAG–28.
DOCKET# CP94–762 000 COLORADO INTERSTATE GAS COMPANY
OTHER#S CP95–26 000 MIGC, INC.
CAG–29.
DOCKET# CP96–271 000 WILLIAMS NATURAL GAS COMPANY
CAG–30.
DOCKET# CP96–288 000 WYOMING INTERSTATE COMPANY, LTD.
OTHER#S CP96–335 000 COLORADO INTERSTATE GAS COMPANY
CAG–31.
DOCKET# CP96–289 000 COLORADO INTERSTATE GAS COMPANY
CAG–32.
DOCKET# CP96–506 000 TRAILBLAZER PIPELINE COMPANY
CAG–33.
DOCKET# CP87–39 004 GRANITE STATE GAS TRANSMISSION, INC
CAG–34.
DOCKET# CP96–337 000 ANR PIPELINE COMPANY
CAG–35.
DOCKET# CP96–497 000 VALERO TRANSMISSION COMPANY AND WEST TEXAS GAS, INC.
CAG–36.
DOCKET# CP95–755 000 MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY V. PANHANDLE EASTERN PIPE LINE COMPANY
CAG–37.
OMITTED
CAG–38.
DOCKET# CP96–11 000 CITRUS ENERGY SERVICES, INC.
OTHER#S CP96–12 000 FLORIDA GAS TRANSMISSION COMPANY

Hydro Agenda

H–1.
RESERVED
Electric Agenda!
E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 96–23137 Filed 9–5–96; 4:23 pm]
BILLING CODE 6717–01–P.

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–5607–7]

RIN 2050–AD84

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Solvents and Petroleum Refining

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency is making available to the public two studies—one on certain petroleum refining wastes and another on the uses of certain chemicals as solvents.

ADDRESSES: The studies are available for viewing in the EPA RCRA Information Center, Docket Number F–96–SPSA–FFFFF. The address is U.S. EPA, Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline toll-free, at (800) 424–9346, or at (703) 920–9810 in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area. For technical information on the studies, contact Mr. Max Diaz, (703) 308–0439 (petroleum), or Mr. Ron Josephson, (703) 308–0442 (solvents), U.S. EPA Office of Solid Waste, Waste Identification Branch (5304W), 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Environmental Defense Fund (EDF) and EPA entered into a consent decree to resolve most of the issues raised in a civil action undertaken by the Environmental Defense Fund (*EDF* v. *Browner*, Civ. No. 89–0598 (D.D.C.)), under the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq., as amended (commonly referred to as RCRA). In that action, the Agency agreed, among other things, to a schedule for conducting studies on certain spent solvent and petroleum refining wastes. The consent decree was approved by the court on December 9, 1994. As modified, the consent decree provides that the final reports are scheduled to be issued on or before August 30, 1996.

The solvents study addresses wastes associated with the use of certain materials as solvents, the toxicity of the wastes, and a description of the management practices for the wastes. These materials are: diethylamine, aniline, ethylene oxide, allyl chloride, 1,4-dioxane, 1,1-dichloroethylene, and bromoform.

The petroleum study characterizes the following petroleum refining wastes and how they are managed: Desalting sludge from crude desalting, off-specification product and fines from residual upgrading, residual oil storage tank sludge, treating clay from clay filtering, treating clay from the extraction/isomerization process, catalyst from catalytic hydrocracking, process sludge from residual upgrading, off-specification product from sulfur complex and H_2S removal facilities, catalyst from extraction/isomerization process, treating clay from lube oil processing, off-specification treating solution from sulfur complex and H_2S removal facilities, catalyst from polymerization, treating clay from alkylation, acid soluble oil from HF alkylation, and catalyst from HF alkylation. The report includes a discussion of the concentration of toxic constituents in each waste, the volume of each waste generated, and the management practices for each waste (including plausible mismanagement practices).

Additional information pertaining to these studies is available in the RCRA Section 3007 Questionnaire data used in the development of EPA's petroleum listing determination proposal, 60 FR 57747 (November 20, 1995), and the solvent listing determination proposal, 61 FR 42318 (August 14, 1996). Please see docket numbers F–95–PRLP–FFFFF (petroleum) or F–96–SLDP–FFFFF (solvents).

Dated: August 30, 1996.

Loretta Marzetti,

Acting Director, Office of Solid Waste.

[FR Doc. 96–23065 Filed 9–9–96; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5607–4]

Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC–AMS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open public advisory meeting via conference call of the Common Sense Initiative Council, Automobile Manufacturing Sector Subcommittee (CSIC–AMS).

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council will hold an open meeting via conference call on September 26, 1996.

OPEN MEETING NOTICE: Notice is hereby given that the Environmental Protection Agency is holding an open meeting via conference call of the Automobile Manufacturing Sector Subcommittee of the Common Sense Initiative Council on September 26, 1996. The meeting will begin at 10:00 a.m. EDT and run until 2:00 p.m. EDT.

This meeting will be a follow-up to previous discussions regarding regulatory projects to be addressed by the CSIC–AMS. The CSIC–AMS is planning to decide whether or not there are regulatory issues they would like to address for the automobile manufacturing industry in this forum. The CSIC–AMS will also receive brief updates from the Life-Cycle Management/Supplier Partnership Project Team and Alternative Sector Regulatory System/Community Technical Assistance Project Team.

A limited number of lines have been reserved for public participation. Lines will be made available through reservations on a first come, first serve basis. Advance registration is required to obtain a reservation. Any person or organization interested in participating in the meeting should contact Keith Mason, Alternate Designated Federal Officer, no later than September 23, 1996, at (202) 260–1360. Each individual or group wishing to make oral presentations will be allowed a total of three minutes. For further information concerning this meeting, contact Keith Mason, Alternate DFO on (202) 260–1360, Julie Lynch, Alternate DFO on (202) 260–4000, or Carol Kemker, DFO, on (404) 347–3555, extension 4222.

INSPECTION OF CSIC DOCUMENTS: After the meeting, documents relating to this meeting, together with the official minutes, will be available for public inspection in Room 2821 Mall of EPA Headquarters. Common Sense Initiative Program Staff, 401 M Street, SW., Washington, DC 20460, phone (202) 260–7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherines@epamail.epa.gov.

Dated: September 4, 1996.

Robert English,

Acting Designated Federal Officer.

[FR Doc. 96–23064 Filed 9–9–96; 8:45 am]

BILLING CODE [illegible]

[OPPTS–44630; FRL–5382–4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on refractory ceramic fibers (RCFs) (CAS No. 142844–00–6), submitted pursuant to a Testing Consent Order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–541A, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; E-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with the procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for refractory ceramic fibers were submitted by three member companies of the Refractory Ceramic Fiber Coalition (Carborundum Company, Premier Refractories and Chemicals, Incorporated, and Thermal Ceramics, Incorporated) pursuant to a Testing Consent Order at 40 CFR 799.5000. They were received by EPA on June 23, 1996. The submission describes workplace exposure monitoring data from RCFC company facilities, as well as from their customers' facilities. The customers selected include those chosen at random and those who specifically requested monitoring. Air monitoring samples were collected from employees engaged in R[illegible] fiber production and processing, or [illegible] in functional categories such as forming, finishing, and installation.

RCFs are used as insulation for industrial insulation applications such as high temperature furnaces, heaters, and kilns. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44630). This record includes copies of all data reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: August 28, 1996.

Williams H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 96–22966 Filed 9–9–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5560–8]

Ocotillo-Coyote Wells Aquifer in Imperial County, California; Sole Source Aquifer Final Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hearby given that, pursuant to Section 1424(e) of the Safe Drinking Water Act, the Regional Administrator of the Environmental Protection Agency (EPA) has determined that the Ocotillo-Coyote Wells Aquifer, underlying portions of Imperial County, California, is the sole or principal source of drinking water for Ocotillo, Nomirage, Yuha Estates, and Coyote Wells and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Ocotillo-Coyote Wells area and its streamflow source zones will be subject to EPA review to ensure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 P.M. Eastern time on September 24, 1996.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S.

Environmental Protection Agency, Region 9, Ground Water Protection Section, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Wendy L. Melgin, Hydrogeologist, Ground Water Protection Section, U.S. EPA Region 9, at 415–744–1831.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h-3(e), P.L. 93–523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principle drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On May 2, 1994, EPA received a petition from "The Ocotillo Club", which petitioned EPA to designate the Ocotillo-Coyote Wells Aquifer as a sole source aquifer. A public hearing was conducted on September 21, 1995 in Ocotillo, California, and the public was permitted to submit comments and information on the petition until March 25, 1996.

II. Basis for Determination

The factors to be considered by the Administrator in connection with the designation of an area under Section 1424(e) are: (1) Whether the Ocotillo-Coyote Wells Aquifer is the area's sole or principle source of drinking water and (2) whether contamination of the aquifer would create a significant hazard to public health.

On the basis of technical information available to this Agency, the Administrator has made the following findings, which are the bases for the determination noted above:

1. The Ocotillo-Coyote Wells Aquifer currently serves as the "sole source" of drinking water for the residents of Ocotillo, Coyote Wells, Yuha Estates and Nomirage.

2. Contamination of the aquifer would create a significant hazard to public health. There is no economically feasible alternative drinking water source near the designated area.

3. The determination of the boundary of the Sole Source Aquifer is consistent with EPA's Sole Source Aquifer designation Decision Process: Petition Review Guidance (Office of Ground Water Protection, 1987).

III. Description of the Ocotillo-Coyote Wells Sole Source Aquifer

The Ocotillo-Coyote Wells Sole Source Aquifer underlies an 87-square mile area in the southwestern corner of Imperial County, near Ocotillo, California. Ocotillo is approximately 25 miles west of El Centro and 90 east of San Diego. Ground water is found primarily in the saturated Quaternary-age alluvial valley-fill deposits, which are derived from the surrounding mountains and consist of fine sand and gravel interspersed with silts and clays of varying thickness and extent.

The designated area includes the surface area above the alluvial unconfined aquifer and the surrounding recharge areas located in the Jacumba and Coyote Mountains. The boundaries of the sole source aquifer are largely topographically defined along major surface watershed boundaries in the Jacumba and Coyote Mountains, with the exception of the Elsinore Fault boundary and the boundary with the U.S.-Mexican border. The Elsinore fault was chosen as a boundary because it separates the sole source aquifer area, which contains high quality, potable water, from high saline, non-potable water to the east of the fault.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region IX, Ground Water Protection Section, 75 Hawthorne Street, San Francisco, California 94105.

V. Project Review

EPA Region IX will work with the Federal agencies that may in the future provide financial assistance to projects within the boundaries of the Ocotillo-Coyote Wells Sole Source Aquifer. EPA will seek to develop agreements with other Federal Agencies whereby EPA will be notified of proposed commitments of Federal financial assistance for projects which could contaminate the aquifer. In the event that a Federal financially assisted project could contaminate the Ocotillo-Coyote Wells Sole Source Aquifer through its recharge zone so as to create a hazard to public health, no commitment of Federal financial assistance will be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to insure it will not contaminate the aquifer.

Although the project review process cannot be delegated, EPA will consider, to the maximum extent possible, any existing or future state, tribal, and local control mechanisms in protecting the ground water quality of the aquifer.

VI. Summary of Public Comments

The public hearing, held in Ocotillo, California on September 21, 1995, was attended by 28 people, with 9 people speaking. Of those who expressed an opinion, four supported the designation of a Sole Source Aquifer. Of those who submitted comments, fifteen opposed the designation and 29 supported the designation. The public's written and oral comments are fully addressed in EPA's Responsiveness Summary which is available to the public during normal business hours at the U.S. Environmental Protection Agency, Region IX, Ground Water Protection Section, 75 Hawthorne Street, San Francisco, California 94105.

Dated: August 14, 1996.

Alexis Strauss,

Acting Regional Administrator.

[FR Doc. 96–23066 Filed 9–9–96; 8:45 am]

BILLING CODE 6560–60–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Sunshine Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 12, 1996, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Report

—Farm Credit System Building Association Quarterly Report

Dated: September 6, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–23239 Filed 9–6–96; 2:06 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

September 3, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 10, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain _t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: A **Federal Register** notice published on May 9, 1996 indicated that this collection was being reviewed under delegated authority. Since publication of that notice the collection has been slightly modified. Therefore, the Commission is submitting the collection to OMB for review and approval.

OMB Approval Number: 3060–0053.

Title: Application for Consent to Transfer of Control of Corporation Holding Station License.

Form No: 703.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit; Not for profit institutions.

Number of Respondents: 757.

Estimated Time Per Response: 36 minutes.

Total Annual Burden: 454 hours.

Estimated Respondent Costs: $34,000.

Needs and Uses: FCC Rules require that applicants in the Private Land Mobile, General Mobile, Marine, Aviation and Experimental Radio Services submit FCC Form 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station. This form is required by the Communications Act of 1934, as amended; International Radio Regulations, General Secretariat of International Telecommunications Union and FCC Rules—47 CFR Parts 1.922, 1.924, 5.55, 80.19, 87.21, 87.31, 90.119, and 95.111.

The form is being revised to delete reference to Part 94 applicants (as a result of Part 101, these applicants will no longer be required to file on FCC 703). A space has been added for the applicant to provide an Internet address. This will provide an additional contact media should the FCC have any questions concerning the filing. As a result of the Debt Collection Improvement Act of 1996, the FCC is required to collect the Taxpayer Identification Number. A space has been provided on the form for applicant's Employee Identification Number. This form is only filed by corporate applicants therefore, no reference is made to a Social Security Number. In addition, the drug certification question has been deleted and this certification requirement has been included with the certification text. The information will be used by the Commission to determine continued eligibility for licensees. Without this information, violations of ownership regulations could occur.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–23021 Filed 9–9–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, September 3, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street, N.W., Washington, D.C.

Dated: September 3, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–23227 Filed 9–6–96; 8:45 am]

BILLING CODE 6714–01–M

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, September 12, 1996, to conduct a public hearing, and to consider testimony, on types of proposed or existing stored value card systems, similar electronic payment systems, and the safety and soundness concerns raised by the emergence of these new technologies.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 5, 1996.

Federal Deposit Insurance Corporation,

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–23229 Filed 9–6–96; 1:36 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board; Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Tuesday, September 17, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule Governing Putable Advances.
- Proposed Rule Governing Advances to Nonmember Mortgagees.
- Second Round AHP Awards for the FHLBanks of Pittsburgh and Indianapolis.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–23256 Filed 9–6–96; 2:50 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Best Freight Forwarding Company, 2409 Steed Court, Lomita, CA 90717, Richard D. Kim, Sole Proprietor

FNS, Inc., 363 West Victoria Street, Gardena, CA 90248, Officer: Hyung Joon Ahn, President.

Dated: September 4, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–23022 Filed 9–9–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: State Plan for the Temporary Assistance for Needy Families (TANF).

OMB No.: New.

Description: This document consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. Its submittal triggers the State's family assistance grant funding, and it is used to provide the public with information about the program.

Respondents: State Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF State Plan	54	1	60	3,240

Estimated Total Annual Burden Hours: 3,240.

Additional Information: ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by September 9, 1996. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Larry Guerrero at (202) 401–6465.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, (202) 395–7316.

Dated: September 5, 1996.

Larry Guerrero,

Report Clearance Officer.

[FR Doc. 96–23068 Filed 9–9–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N-0222]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 10, 1996.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm. 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B-19, Rockville, MD 20857, 301-827-1686.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance: §§ 70.25 *Labeling requirements for color additives (other than hair dyes)* (21 CFR 70.25) and 71.1 *Petitions* (21 CFR 71.1) (OMB Control Number 0910-0185—Reinstatement).

Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or unless the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is approved already. Section 71.1 specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use.

FDA scientific personnel review color additive petitions to ensure that the intended use of the color additive in or on food, drugs, cosmetics, and medical devices is suitable and safe. Color additive petitions were specifically provided for by Congress when it enacted the Color Additive Amendments of 1960 (Pub. L. 94-295). If FDA stopped accepting color additive petitions or stopped requiring them to contain the information specified in § 71.1, the number of new color additives approved would decrease.

FDA's color additive labeling requirements in § 70.25 require that color additives that are to be used in foods, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

FDA estimates the burden of complying with the information collection provisions of the agency's color additive regulations as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
70.25	2	1	2			
71.1	2	1	2	1,700	3,415	$6,000
Total	2				3,415	$6,000

There are no capital costs associated with this collection.

This estimate is based on the number of new color additive petitions received in 1994. Although the burden varies with the type of petition submitted, a color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself. Because labeling requirements under § 70.25 for a particular color additive involve information required as part of the color additive petition safety review process, the estimate for number respondents is the same for § 70.25 as for § 71.1, and the burden hours for labeling are included in the estimate for § 71.1.

Dated: September 3, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96-23098 Filed 9-9-96; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Alternative Medicine Program Advisory Council; Notice of Meeting

Pursuant to sec. 10(d) of the Federal Advisory Committee Act (FACA), as amended (Title 5, U.S.C. Appendix 2), notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council on September 16, 1996 from 8:30 am to 5 pm and on September 17 from 8:30 am to 1 pm in the Versailles II Room of the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public. The purpose of the meeting will be to update the Council on the progress of the Office of Alternative Medicine and obtain Council's advice on strategic planning for complementary and alternative medicine research. There will also be a scientific presentation, "Shifting Paradigms in Growth Factor/Cytokine Biotechnology: The Science, the Paradigm, the Interface," by Barbara Brewitt, M.Div., Ph.D., Chief Scientist, Biomed Comm, Inc. and Leana Standish, N.D., Ph.D., Research Director, CAM Research Center, Bastyr University. Attendance by the public will be limited to space available.

Ms. Elizabeth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 9000 Rockville Pike, Building 31, Room 5B37, MSC 2182 Bethesda, MD 20892, phone (301) 594-1990, fax (301) 402-4741, E-Mail: bethclay@helix.nih.gov, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than September 11, 1996.

This notice is being published less than 15 days prior to the meeting due

to the urgent need to proceed with the meeting as scheduled in order to address these issues in a timely manner.

Dated: August 30, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–22996 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Genetic Testing Task Force; Notice of Meeting

Notice is hereby given of the fourth meeting of the Task Force on Genetic Testing of the National Institutes of Health-Department of Energy Joint Working Group on the Ethical, Legal, and Social Implications of Human Genome Research (ELSI Working Group) on Tuesday, September 24, 1996, 1:00 pm to recess; Wednesday, September 25, 1996, 7:30 am to adjournment, at the Clarion Hotel at Mount Vernon Square, 612 Cathedral Street, Baltimore, Maryland, (410) 727–7101.

CONTACT PERSON: Neil Holtzman, M.D., M.P.H., Genetics and Public Policy Studies, The Johns Hopkins Medical Institutions, 550 North Broadway, Suite 511, Baltimore, Maryland 21205, (410) 955–7894.

The Task Force has developed Interim Principles primarily regarding scientific validation of new tests; laboratory quality; and education, counseling, and delivery. At this meeting, the Task Force will continue its consideration of recommendations to implement the Interim Principles, as well as revisions to the Interim Principles. The Interim Principles are available on the World Wide Web at: http://infonet.welch.jhu.edu/policy/genetics/

Individuals who plan tq attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Holtzman in advance of the meeting.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23012 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting

Notice is hereby given of the open, public hearing of the National Institutes of Health-Department of Energy Joint Working Group on the Ethical, Legal, and Social Implications of Human Genome Research (ELSI Working Group) Evaluation Committee, on Wednesday, October 23, 1996, 9:00 am to noon at Hotel Sofitel Chicago, 5550 N. River Road, Rosemont, Illinois 60018–5194; TEL: (847) 678–4488.

Contact Person: Bettie Graham, Ph.D., NIH/NCHGR Bldg. 38A, Rm. 614, Bethesda, MD 20892; (301) 496–7531.

The ELSI Working Group Evaluation Committee has been charged with evaluation of the ELSO activities and role of external advisors in the ELSO program. The Committee will assess how, in the near term, it would be best to structure input on ELSI issues raised by and as a consequence of the Human Genome Project. The Committee will also assess how, in the longer term, it would be best to structure input on ELSI issues raised more generally by research involving human genetics. The Committee is seeking public comments on the following questions:

1. What role should external advisors (currently the ELSI Working Group) play in the ELSI program?
2. How should the external ELSI advisors relate to other government and private groups studying these issues?
3. How should the external ELSI advisors relate to other institutes, programs, and entities at the National Institutes of Health (NIH) and Department of Energy (DOE) with a shared research interest?
4. To whom at the NIH and the DOE should the external advisors report?
5. What procedures should be established for appointment of members, priority setting, budget, staffing, and policy development?
6. What changes, if any, will be necessary in the ELSI program as the focus of research shifts away from genomics?

Individuals or representatives of organizations wishing to make an oral presentation, of no more than five minutes, to the ELSI Working Group Evaluation Committee, on Wednesday, October 23, should submit their name, affiliation, address, telephone number, and summary of their remarks to Dr. Graham at the above address by October 14. Those making oral comments to the Committee will be accommodated to the extent possible during the time allotted for oral public comments. Written comments will be accepted up to October 14.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Graham two weeks in advance of the meeting.

Individuals who are unable to attend the public meeting, but who would like to submit comments may do so by writing to Mark A. Rothstein, Co-Chair, ELSI Working Group Evaluation Committee, Health Law and Policy Institute, University of Houston, Houston, TX 77204–6381 or to the Committee by e-mail at: elsiwg@net,bio.net.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialsit, NIH.

[FR Doc. 96–23008 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), this notice is hereby given to announce an open meeting of the National Bioethics Advisory Commission (NBAC). The purpose of the meeting is to address: (i) the protections of the rights and welfare of human research subjects and (ii) the management and use of genetic information.

DATES: October 4, 1996, 8:30 a.m.–4:30 p.m.

PLACE: Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975, October 3, 1995. The purpose of the NBAC is to provide advice and make recommendations to the National Science and Technology Council, and other appropriate entities on bioethical issues arising from research on human biology and behavior and the applications, including the clinical applications, of that research.

Tentative Agenda

Friday, October 4, 1995

8:30 a.m. Call to order, opening remarks, and introductions
8:45 a.m. Presentations by spokespersons for members of the U.S. Senate and U.S. House of Representatives and discussion with and among NBAC members
10:30 a.m. Break
10:50 a.m. Morning presentations and discussions continue
11:45 a.m. Lunch
1:00 p.m. Presentations by Administration spokespersons and discussion with and among NBAC members

2:30 p.m. Break
2:50 p.m. Afternoon presentations and discussions continue
3:20 p.m. Public comment
4:20 p.m. NBAC members and staff discussion
4:30 p.m. Adjourn

Public Participation

The meeting is open to the public with attendance limited to space available. Members of the public who wish to make oral statements should contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations by persons requesting an opportunity to speak. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations should also contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Persons who wish to file written statements with NBAC may do so at any time.

FOR FURTHER INFORMATION CONTACT: Patricia Norris, Communications Director, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax nos. 301–480–6900 or 301–402–2071.

Dated: September 3, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23006 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Prevention Program Working Group, September 17, 1996 at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

The meeting will be open to the public on September 17, 1996 from 8:00 a.m. to 8:30 a.m. for general introductory remarks and announcements relating to the Institute's Prevention Programs.

The meeting will be closed to the public on September 17, 1996 from 8:30 a.m. to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the NCI Prevention Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Jack Gruber, Executive Secretary, National Cancer Institute Prevention Program Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892, (301–496–9740). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. Jack Gruber in advance of the meeting.

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–23000 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Clinical Trials Working Group, September 16–17, 1996 at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland.

This meeting will be open to the public on September 16, 1996 from 8:00 am to 8:30 am for introductory remarks and discussion of the Institutes Clinical Trails Extramural Program and September 17, 1996 from 8:00 am to 2:00 pm to discuss priority setting in clinical trials.

The meeting will be closed to the public on September 16, 1996 from 8:30 am to recess and on September 17, 1996 from 2:00 pm to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Clinical Trials Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. John Cole, III, Executive Secretary, National Cancer Institute Clinical Trials Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892, (301–496–1718). Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Dr. John Cole, III in advance of the meeting.

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–23003 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the President's Cancer Panel.

This meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below.

This meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(9), Title 5, U.S.C. for discussion of future meetings and preparation of the annual report to the President. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630M, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405 (301/496–5708) will provide a summary of the meeting and the roster of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Dated: September 23–24, 1996.

Place: Henry B. Gonzalez Convention Center, 200 East Market, San Antonio, TX 78205.

Closed: September 23, 1996–7:00 p.m. to 9:00 p.m.

Agenda: Planning session to discuss future meetings and preparation of the mandatory annual report of the Chairman to the President.

Open: September 24, 1996–8:30 a.m. to 5:00 p.m.

Agenda: Managed Care's Role in the War on Cancer: Issues of Access in Today's Health Care System.

Contact Person: Dr. Maureen O. Wilson, Executive Secretary, National Cancer Institute, Building 31, Room 4A48, Bethesda, MD 20892, 301/496–1148.

This notice is being published less than 15 days prior to the meeting due to the urgent need to proceed with the meeting as scheduled to address these issues in a timely manner.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH Committee Management Officer, NIH.

[FR Doc. 96–23009 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: NCRR Minority Initiative; K–12 Teachers and High School Students.

Date: September 26–27, 1996.

Time: 8:30 a.m.

Place: Bethesda Holiday Inn, Connecticut Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652–2000.

Contact Person: Dr. John Lymangover, Dr. Sharon Moss, Scientific Review Administrators, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0820.

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.389, Research Centers in Minority Institutions, National Institutes of Health, HHS)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–22999 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Dates of Meeting: October 15, 1996.

Time: 8:00 a.m.—until adjournment.

Place of Meeting: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814, Tel: (301) 654–1000.

Scientific Review Administrator: Dr. Jill Carrington, National Institutes of Health, 1 Rockledge Center, Room 6018, 6705 Rockledge Drive, MSC 7965. Bethesda, MD 20892–7965, Telephone: (301) 435–0822.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.167 Research Facilities Improvement Program, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23014 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Review of Clinical Centers for Lung Volume Reduction Surgery for Emphysema: A Multi-center Assessment and Prospective Patient Registry.

Date: September 24–25, 1996.

Time: 7:00 p.m.

Place: Woodfin Suites, 1380 Piccard Drive, Rockville, Maryland 20850.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Review of Clinical Coordinating Center for Lung Volume Reduction Surgery for Emphysema: A Multi-center Assessment and Prospective Patient Registry.

Date: September 26, 1996.

Time: 7:00 a.m.

Place: Woodfin Suites, 1380 Piccard Drive, Rockville, Maryland 20850.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center,Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Review of the Institutional National Research Service Awards (T32s), the Independent Scientist Awards (K02s) and the Mentored Clinical Scientist Development Awards (KO8s).

Date: October 21–22, 1996.

Time: 8:00 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike; Rockville, Maryland 20852.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–22997 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Heart, Lung, and Blood Institute Special emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Tuberculosis/AIDS.

Dates of Meeting: September 25, 1996.

Time of Meeting: 8:00 a.m.

Place of Meeting: Prospect Associates, 1801 rockville Pike, Rockville, Maryland.

Agenda: Status of Tuberculosis and AIDS as it Relates to the Lung. Discussion of Future

Initiatives with Emphasis on Basic Mechanisms and Utilization of Animal Models.

Contact Person: Hannah H. Peavy, M.D., NHLBI/DLD, Two Rockledge Center, 6701 Rockledge Drive, Rm. 10018, MSC 7952, Bethesda, Maryland 20892, (301) 435–0222.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 3, 1996.

Margery G. Grubb,

Senior NIH Committee Management Specialist.

[FR Doc. 96–23007 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel on the Role of Infectious Agents in Atherosclerosis and Restenosis, September 19, 1996, 8:00 a.m., which was published in the **Federal Register** on August 15, 1996 (61 FR 24230).

The meeting was to have been held at the National Institutes of Health, Building 31, Room 5A16, Bethesda, Maryland, but has been changed to the Ramada Inn Rockville, 1775 Rockville Pike, Rockville, Maryland. As previously advertised, the meeting is open to the public.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23010 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Heart, Lung, and Blood Institute Special Emphasis Panel on Bone Marrow Transplantation in Sickle Cell Anemia, September 24, 1996, which was published in the **Federal Register** on August 16, 1996 (61 FR 42638).

The meeting is cancelled due to scheduling conflicts, and will be rescheduled at a later date.

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23015 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Pediatric AIDS Clinical Trails.

Date: September 30—October 3, 1996.

Time: 7:00 p.m.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007, (202) 338–4600.

Contact Person: Dr. Peter Jackson, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C10, Bethesda, MD 20892–7610, (301) 496–8426.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–22998 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 10, 1996, at the Holiday Inn Gaithersburg, Walker Room, 2 Montgomery Village Avenue, Gaithersburg, Maryland.

The meeting will be open to the public from 8 a.m. to 9 a.m. on October 10, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Gary Madonna, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, Room 4C21, Rockville, Maryland 20892, telephone 301–496–3528, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–23001 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Institute of Mental Health, which was published in the **Federal Register** on August 15, 1996 (61 FR 42430).

This committee was to have convened at 8:30 a.m. on September 19 in Room 1B07, Building 36, National Institute of Health in Bethesda, MD. The starting date has been changed to September 18.

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 96–23002 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, September 10, 1996, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland which was published in the **Federal Register** on August 23, (61 FR 43557).

This committee was to have convened at 1:00 p.m. on September 10, but has been changed to 12:00 p.m. on September 9. The location remains the same.

As previously announced, this meeting is closed to the public.

Dated: September 4, 1996.

Margery G. Grubb,

Senior NIH Committee Management Specialist.

[FR Doc. 96–23011 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting:

Name of SEP: National Library of Medicine Special Emphasis Panel.

Date: September 10, 1996.

Time: 8:30 a.m.

Place: National Library of Medicine Board Room, 8600 Rockville Pike, Building 38, Bethesda, Maryland.

Contact: Dr. Roger W. Dahlen, Chief, Biomedical Information Support Branch, EP, 8600 Rockville Pike, Building 38A, Rm. 5S–522, Bethesda, Maryland 20894, 301/496–4221.

Purpose/Agenda: To evaluate and review training grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: August 30, 1996.

Margery G. Grubb,

Senior NIH Committee Management Specialist.

[FR Doc. 96–22994 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on October 10–11, 1996, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 12:45 p.m. and from 1:45 to 4:45 p.m. on October 10 and from 9:00 a.m. to approximately 12 noon on October 11 for the review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jackie Duley at (301) 435–3138 in advance of the meeting.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on October 10, from approximately 12:45 p.m. to 1:45 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Harold M. Schoolman, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–23004 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: September 4, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4202, Telephone Conference.

Contact Person: Dr. Gene Zimmerman, Scientific Review Administrator, 6701, Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1220.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: August 30, 1996.

Margery Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–22995 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clincal Sciences.

Date: October 2–4, 1996.

Time: 8:00 a.m.

Place: Residence Inn, Bethesda, MD.

Contact Person: Dr. Jules Selden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435–1785.

Name of SEP: Clinical Sciences.

Date: October 16–18, 1996.

Time: 8:00 a.m.

Place: Residence Inn, Bethesda, MD.

Contact Person: Dr. Jules Selden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435–1785.

Name of SEP: Biological and Physiological Sciences.

Date: October 20–22, 1996.

Time: 7:00 a.m.

Place: San Francisco Marriott Hotel, San Francisco, CA.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

Name of SEP: Chemistry and Related Sciences.

Date: October 23, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435–1165.

Name of SEP: Multidisciplinary Sciences.

Date: October 28–30, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Bethesda, MD.

Contact Person: Dr. Dharam Dhindsa, Scientific Review Administrator, 6701 Rockledge Drive, Room 5206, Bethesda, Maryland 20892, (301) 435–1174.

Name of SEP: Biological and Physiological Sciences.

Date: October 30, 1996.

Time: 3:30 p.m.

Place: NIH, Rockledge 2, Room 4124, Telephone Conference.

Contact Person: Dr. Mushtaq A. Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435–1778.

Name of SEP: Chemistry and Related Sciences.

Date: October 31–November 1, 1996.

Time: 8:30 a.m.

Place: State Plaza Hotel, Washington, DC.

Contact Person: Dr. Marjam Behar, Scientific Review Administrator, 6701 Rockledge Drive, Room 5218, Bethesda, Maryland 20892 (301) 435–1180.

Name of SEP: Biological and Physiological Sciences.

Date: November 4–6, 1996.

Time: 7:30 a.m.

Place: Bethesda Marriott Hotel, Bethesda, MD.

Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 4212, Bethesda, Maryland 20892, (301) 435–1222.

Name of SEP: Chemistry and Related Sciences.

Date: November 7–8, 1996.

Time: 9:00 a.m.

Place: Holiday Inn, Silver Spring, MD.

Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 6701 Rockledge Drive, Room 4176, Bethesda, Maryland 20892, (301) 435–1728.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23005 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: to review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: October 14, 1996.

Time: 6:00 p.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Mushtaq Khan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4124, Bethesda, Maryland 20892, (301) 435–1778.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23013 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: October 14, 1996.

Time: 6:00 p.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Sooja Kim, Scientific Review Administrator, 6701 Rockledge Drive, Room 4120, Bethesda, Maryland 20892, (301) 435–1780.

Name of SEP: Chemistry and Related Sciences.

Date: October 23–25, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, Maryland.

Contact Person: Dr. Nancy Lamontagne, Scientific Review Administrator, 6701 Rockledge Drive, Room 4170, Bethesda, Maryland 20892, (301) 435–1726.

Name of SEP: Biological and Physiological Sciences.

Date: November 7–8, 1996.

Time: 8:30 a.m.

Place: Ramada Inn, Rockville, Maryland.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

Name of SEP: Multidisciplinary Sciences.

Date: November 18–19, 1996.

Time: 8:30 a.m.

Place: Doubletree Hotel, Rockville, Maryland.

Contact Person: Dr. Nadarajen Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 4, 1996.

Margery Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23016 Filed 9–9–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in September.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301)443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3),(4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Panel: Pilot Studies of State Performance and Outcome Measurement for Substance Abuse Treatment.

Meeting Date: September 16–19, 1996.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Closed: September 16–18, 1996—9:00 a.m.–5:00 p.m.; September 19, 1996—9:00 a.m.–Adjournment

Contact: Constance M. Burtoff, M.A., Room 17–89, Parklawn Building, Telephone: (301)443–2437 and FAX: (301)443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: September 5, 1996.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 96–23097 Filed 9–9–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Modoc Tribe of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161, as interpreted by the U.S. Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that Resolution No. 95–22, the Modoc Tribe of Oklahoma Liquor Control Ordinance, was duly adopted by the Elected Council of the Modoc Tribe of Oklahoma on September 7, 1995. The Ordinance provides for the regulation and control of the possession and sale of liquor on Modoc Tribe trust lands.

DATES: This Ordinance is effective as of September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street, NW, MS 4641–MIB, Washington, D.C., 20240–4091; telephone (202) 208 - 4400.

SUPPLEMENTARY INFORMATION: The Modoc Tribe of Oklahoma Liquor Control Ordinance is to read as follows:

Liquor Control Ordinance of the Modoc Tribe of Oklahoma

Chapter I—Introduction

Section 101. Title. This ordinance shall be known as the "Modoc Tribe Liquor Ordinance."

Section 102. Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. Section 1161, and by the authority of the Modoc Tribe Elected Council.

Section 103. Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Modoc Tribe Trust Land. The enactment of a tribal ordinance governing liquor possession and sale will increase the ability of the Tribal government to control the sale, distribution, and possession of liquor on the Modoc Tribe Trust Lands, and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 104. Effective Date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register**.

Article 1. Declaration of Public Policy and Purpose

(a) The introduction, possession, and sale of liquor on the Modoc Tribe Trust Land is a matter of special concern to the Modoc Tribe.

(b) Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. Section 1154), except as provided therein and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted, 18 U.S.C. Section 1161.

(c) The Modoc Tribe Elected Council finds that a complete ban on liquor within the Modoc Tribe Trust Land is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within the Modoc Tribe Trust Land, because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Modoc Tribe Elected Council finds that exclusive tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Modoc Tribe Trust Land.

(d) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the tribal lands and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Modoc Tribe Trust Land. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at tribally-owned enterprises and/or tribally-licensed establishments operating on land leased from or otherwise owned by the Tribe.

Article II. Definitions

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined in Article 11 (f) of this Chapter.

(c) "Bar" means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) "Elected Council" means the Modoc Tribe Elected Council.

(f) "Liquor" includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(g) "Liquor Store" means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to the sale of liquor or beer.

(h) "Malt Liquor" means beer, strong beer, ale, stout and porter.

(i) "Package" means any container or receptacle used for holding liquor.

(j) "Public Place" includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

(k) "Sale" and "Sell" include exchange, barter and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(l) "Spirits" means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(m) "Wine" means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk, or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

(n) "Modoc Tribe Council" means the general council of the Modoc Tribe which is composed of the voting membership of the Tribe.

(o) "Modoc Tribe Trust Land" means those lands which are held in trust by the United States for the Modoc Tribe and not for any individual Indian.

Article III. Powers of Enforcement

Section 1. The Elected Council. In furtherance of this ordinance, the Elected Council shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Elected Council governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Modoc Tribe Trust Land;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Elected Council to perform its functions. Such employees shall be tribal employees;

(c) To issue licenses permitting the sale or manufacture or distribution of liquor on Modoc Tribe Trust Land;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To determine and seek damages for violations of the ordinance;

(g) To make such reports as may be required by the Modoc Tribe Council;

(h) To collect taxes and fees levied or set by the Elected Council and to keep accurate records, books, and accounts.

Section 2. Limitations on Powers. In the exercise of its powers and duties under this ordinance, the Elected Council and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the immunity of the Modoc Tribe from suit without the express consent of the Elected Council.

Section 3. Inspection Rights. The premises on which liquor is sold or distributed shall be open for inspection by the Elected Council at all reasonable times for the purpose of ascertaining whether the rules and regulations of the Elected Council and this ordinance are being complied with.

Article IV. Sales of Liquor

Section 1. License Required. Sales of liquor and alcoholic beverages within the exterior boundaries at Modoc Tribe Trust Land may only be made at businesses which hold a Modoc Tribe Liquor License.

Section 2. Sales for Cash. All liquor sales within the Modoc Tribe Trust Land boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with the use of credit cards such as Visa, MasterCard, American Express, etc.

Section 3. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Modoc Tribe Trust Land is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Modoc Tribe Trust Land and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subject to paying damages to the Modoc Tribe as set forth herein.

Article V. Licensing

Section 1. Procedure. In order to control the proliferation of establishments on the Modoc Tribe Trust Land which sell or serve liquor by the bottle or by the drink, all persons or entities which desire to sell liquor within the exterior boundaries of the Modoc Tribe Trust Land must apply to the Modoc Tribe for a license to sell or serve liquor.

Section 2. Application. Any person or entity applying for a license to sell or serve liquor on the Modoc Tribe Trust Land must fill in the application provided for this purpose by the Modoc Tribe and pay such application fee as may be set from time to time by the Elected Council for this purpose. Said application must be filled out completely in order to be considered.

Section 3. Issuance of License. The Elected Council may issue a license if it believes that such issuance is in the best interests of the Modoc Tribe and its members.

Section 4. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5. Renewal of License. A licensee may renew its license if the licensee has complied in full with this ordinance provided however, that the Elected Council may refuse to renew a license if it finds that doing so would

not be in the best interests of the health and safety of the Modoc Tribe.

Section 6. Revocation of License. The Elected Council may revoke a license for reasonable cause upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 7. Transferability of License. A license issued by the Elected Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI. Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of liquor or alcoholic beverage on the Modoc Tribe Trust Land in the amount of three percent (3%) of the retail sales price. All taxes from the sale of liquor and alcoholic beverages on the Modoc Tribe Trust Land shall be paid over to the General Treasury of the Modoc Tribe.

Section 2. Taxes Due. All taxes for the sale of liquor and alcoholic beverages on the Modoc Tribe Trust Land are due on the 15th day of the following month.

Section 3. Delinquent Taxes. Past due taxes shall accrue interest at 2% per month.

Section 4. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit a monthly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of liquor and alcoholic beverages on the Modoc Tribe Trust Land. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Elected Council, such a review or audit is necessary to verify the accuracy of reports.

Article VII. Rules, Regulations, and Enforcement

Section 1. In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this ordinance, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this ordinance subjecting him or her to civil damages assessed by the Elected Council.

Section 3. Any person within the boundaries of the Modoc Tribe Trust Land who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

Section 4. Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

Section 5. Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance.

Section 6. Any person engaging wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 7. No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

Section 8. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each such sale or drink provided.

Section 9. Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the under age person shall be a requirement of finding a violation of this ordinance.

Section 10. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

Section 11. Any person guilty of a violation of this ordinance shall be liable to pay the Modoc Tribe the amount of $1,000 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

Section 12. When requested by the provider of liquor, any person shall be required to present official documentation of the bearers age, signature and photograph. Official documentation includes one of the following:

(1) Drivers license or identification card issued by any state department of motor vehicles;

(2) United States Active Duty Military;

(3) Passport

Section 13. Liquor which is possessed, including for sale, contrary to the terms of this ordinance is declared to be contraband. Any tribal agent, employee or officer who is authorized by the Elected Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

Section 14. Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Modoc Tribe.

Article VIII. Abatement

Section 1. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

Section 2. The Chief of the Elected Council or, if the Chief fails or refuses to do so, by a majority vote, the Elected Council shall institute and maintain an action in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to all other remedies at tribal law, the Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum not less than $25,000 payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other applicable tribal law and that he will pay all fines, costs and damages assessed against him for any violation of this ordinance or other tribal liquor laws. If any conditions of the bond be

violated, the bond may be recovered for the use of the Tribe.

Section 3. In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX. Revenue

Section 1. Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Elected Council for essential governmental and social services.

Article X. Severability and Effective Date

Section 1. If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Elected Council which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article XI. Amendment

This ordinance may only be amended by a majority vote of the Elected Council.

Dated: September 3, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–23042 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–02–P

Seneca-Cayuga Tribe of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that by Resolutions numbered 09–073196 and 14–120595, Liquor Control Ordinance, were duly adopted by the Seneca-Cayuga Tribe of Oklahoma on July 31, 1996. The Ordinances regulate the control of, the possession of, and the sale of liquor on Seneca-Cayuga trust lands, and is in conformity with the laws of Oklahoma.

DATES: This Ordinance is effective as of September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street N.W., MS 4603–MIB, Washington, D.C. 20240–4001; telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION: The Seneca-Cayuga Tribe of Oklahoma Liquor Control Ordinance, Resolutions numbered 09–073196 and 14–120595, is to read as follows:

Liquor Control Ordinance of The Seneca-Cayuga Tribe of Oklahoma

Chapter I—Introduction

Section 101. Title. This ordinance shall be known as the "Seneca-Cayuga Tribal Liquor Control Ordinance."

Section 102. Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. Section 1161, and by the authority of the Seneca-Cayuga Tribal Business Committee.

Section 103. Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Seneca-Cayuga Trust Land. The enactment of a tribal ordinance governing liquor possession and sale on the Seneca-Cayuga Trust Land will increase the ability of the tribal government to control the sale, distribution and possession of liquor on Seneca-Cayuga Trust Land and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal government services.

Section 104. Effective Date. This ordinance shall be effective on certification by the Secretary of the Interior and its publication in the **Federal Register.**

Article 1. Declaration of Public Policy and Purpose

(a) The introduction, possession, and sale of liquor on the Seneca-Cayuga Trust Land is a matter of special concern to the Seneca-Cayuga Tribe.

(b) Federal law currently prohibits the introduction of liquor into Indian Country (18 U.S.C. Section 1154), except as provided therein and expressly delegates to the tribes the decision regarding when and to what extent liquor transactions shall be permitted. (18 U.S.C. Section 1161).

(c) The Seneca-Cayuga Council finds that a complete ban on liquor within the Seneca-Cayuga Trust Land is ineffective and unrealistic. However, it recognizes that a need still exists for strict regulation and control over liquor transactions within the Seneca-Cayuga Trust Land, because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution, and consumption of liquor. The Seneca-Cayuga Council finds that tribal control and regulation of liquor is necessary to achieve maximum economic benefit to the Tribe, to protect the health and welfare of tribal members, and to address specific concerns relating to alcohol use on the Seneca-Cayuga Trust Land.

(d) It is in the best interests of the Tribe to enact a tribal ordinance governing liquor sales on the tribal lands and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the Seneca-Cayuga Tribe Trust Land. Further, the Tribe has determined that said purchase, distribution, and sale shall take place only at tribally-owned enterprises and/or tribally licensed establishments operating on land leased from or otherwise owned by the Tribe.

Article 11. Definitions.

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined in Article II(f) of this Chapter.

(c) "Bar" means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) "Business Committee" means the Seneca-Cayuga Business Committee.

(f) "Liquor" includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contains more than one half of one percent of alcohol.

(g) "Liquor Store" means any store at which liquor is sold and, for the purpose of this ordinance, including stores only a portion of which are devoted to the sale of liquor or beer.

(h) "Malt Liquor" means beer, strong beer, ale, stout and porter.

(i) "Package" means any container or receptacle used for holding liquor.

(j) "Public Place" includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes: public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public. For the purpose of this ordinance, "Public Place" shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

(k) "Sale" and "Sell" includes exchange, barter and traffic; and also includes the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(l) "Spirits" means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(m) "Tax Commission" this term refers to the Seneca-Cayuga Tax Commission, created pursuant to the General Revenue and Taxation Act of 1985.

(n) "Wine" means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk, or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

(o) "Seneca-Cayuga Council" means the general council of the Seneca-Cayuga Tribe of Oklahoma which is composed of the voting membership of the Tribe.

(p) "Seneca-Cayuga Trust Land" means those lands which are held in trust by the United States for the Seneca-Cayuga Tribe and not for any individual Indian.

Article III. Powers of Enforcement

Section 1. The Business Committee. In furtherance of this ordinance, the Business Committee shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Business Committee governing the sale, manufacture, distribution, and possession of alcoholic beverages on the Seneca-Cayuga Trust Land;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Business Committee to perform its functions. Such employees shall be tribal employees;

(c) To authorize the Tax Commission to issue licenses permitting the sale or manufacture or distribution of liquor on the Seneca-Cayuga Trust Land and to revoke such licenses as provided herein;

(d) To hold hearings on violations of this ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this ordinance as necessary;

(f) To make such reports as may be required by the Seneca-Cayuga Council;

(g) To authorize the Tax Commission to collect taxes and fees levied or set by the Business Committee and to keep accurate records, books, and accounts;

(h) To determine and seek damages for violation of the ordinance.

Section 2. Limitations on Powers. In the exercise of its powers and duties under this ordinance, the Business Committee and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the immunity of the Seneca-Cayuga Tribe from suit without the express consent of the Business Committee.

Section 3. Inspection Rights. The premises on which liquor is sold or distributed shall be open for inspection by the Business Committee at all reasonable times for the purpose of ascertaining whether the rules and regulations of the Business Committee and this ordinance are being complied with.

Article IV. Sales of Liquor

Section 1. License Required. Sales of liquor and alcoholic beverages within the exterior boundaries of Seneca-Cayuga Trust Land may only be made at businesses which hold a Seneca-Cayuga Tribal Liquor License.

Section 2. Sales for Cash. All liquor sales within the Seneca-Cayuga Trust Land boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with the use of credit cards such as Visa, MasterCard, American Express, etc.

Section 3. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Seneca-Cayuga Trust Land is prohibited. Any person who is not licensed pursuant to this ordinance who purchases an alcoholic beverage within the boundaries of the Seneca-Cayuga Tribal Trust Land and sells it, whether in the original container or not, shall be guilty of a violation of this ordinance and shall be subject to paying damages to the Seneca-Cayuga Tribe as set forth herein.

Article V. Licensing

Section 1. Procedure. In order to control the proliferation of establishments on the Seneca-Cayuga Trust Land which sell or serve liquor by the bottle or by the drink, all persons or entities which desire to sell liquor within the exterior boundaries of the Seneca-Cayuga Trust Land must apply to the Seneca-Cayuga Tribe for a license to sell or serve liquor.

Section 2. Application. Any person or entity applying for a license to sell or serve liquor on the Seneca-Cayuga Trust Land must fill in the application provided for this purpose by the Seneca-Cayuga Tribe and pay such application fee as may be set from time to time by the Tax Commission or, in the absence thereof the Business Committee, for this

purpose. Said application must be filled out completely in order to be considered.

Section 3. Issuance of License. The Tax Commission or, in the absence thereof, the Business Committee may issue a license if it believes that such issuance is in the best interests of the Seneca-Cayuga Tribe and its members.

Section 4. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5. Renewal of License. A licensee may renew its license if the licensee has complied in full with this ordinance provided however, that the Tax Commission or in the absence thereof the Business Committee may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Seneca-Cayuga Tribe.

Section 6. Revocation of License. The Tax Commission or, in the absence thereof, the Business Committee may revoke a license for reasonable cause upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 7. Transferability of License. Licenses issued by the Tax Commission or, in the absence thereof, the Business Committee shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI. Taxes

Section 1. Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of liquor or alcoholic beverage on the Seneca-Cayuga Trust Land in the amount of one percent (1%) of the retail sales price. All taxes from the sale of liquor and alcoholic beverages on the Seneca-Cayuga Trust Land shall be paid over to the General Treasury of the Seneca-Cayuga Tribe.

Section 2. Taxes Due. All taxes for the sale of liquor and alcoholic beverages on the Seneca-Cayuga Trust Land are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due.

Section 3. Delinquent Taxes. Past due taxes shall accrue interest at 2% per month.

Section 4. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

Section 5. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of liquor and alcoholic beverages on the Seneca-Cayuga Trust Land. Said review or audit may be done periodically by the Tribe through its agents or employees whenever, in the opinion of the Business Committee or Tax Commission, such a review or audit is necessary to verify the accuracy of reports.

Article VII. Rules, Regulations, and Enforcement

Section 1. In any proceeding under this ordinance, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this ordinance.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this ordinance, or who shall operate or shall have liquor for sale in his possession without a license, shall be guilty of a violation of this ordinance subjecting him or her to civil damages assessed by the Business Committee.

Section 3. Any person within the boundaries of the Seneca-Cayuga Trust Land who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this ordinance.

Section 4. Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this title, shall be guilty of a violation of this ordinance.

Section 5. Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this ordinance.

Section 6. Any person engaging wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this ordinance.

Section 7. No person under the age of 21 years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this ordinance for each and every drink so consumed.

Section 8. Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this ordinance for each such sale or drink provided.

Section 9. Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this ordinance.

Section 10. Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this ordinance.

Section 11. Any person guilty of a violation of this ordinance shall be liable to pay the Seneca-Cayuga Tribe the amount of $500 per violation as civil damages to defray the Tribe's cost of enforcement of this ordinance.

Section 12. When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(1) Driver's license or identification card issued by any state department of motor vehicles;

(2) United States Active Duty Military;

(3) Passport.

Section 13. Liquor which is possessed, including for sale, contrary to the terms of this ordinance are declared to be contraband. Any tribal agent, employee or officer who is authorized by the Business Committee to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property.

Section 14. Upon being found in violation of the ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Seneca-Cayuga Tribe.

Article VII. Abatement

Section 1. Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this ordinance or of any other tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept

in and used in maintaining such place, is hereby declared to be a nuisance.

Section 2. The Chairman of the Business Committee or, if the Chairman fails or refuses to do so, by a majority vote, the Business Committee shall institute and maintain an action in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this article. In addition to all other remedies at tribal law, the Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than $25,000 payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this ordinance or of any other applicable tribal law and that he will pay all fines, costs and damages assessed against him for any violation of this ordinance or other tribal liquor laws. If any conditions of the bond be violated, the bond may be recovered for the use of the Tribe.

Section 3. In all cases where any person has been found in violation of this ordinance relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the ordinance and violation of this ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX. Revenue

Revenue provided for under this ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this ordinance. Excess funds shall be subject to appropriation by the Business Committee for essential governmental and social services.

Article X. Severability and Effective Date

Section 1. If any provision or application of this ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this ordinance or to render such provisions inapplicable to other persons or circumstances.

Section 2. This ordinance shall be effective on such date as the Secretary of the Interior certifies this ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Business Committee which are inconsistent with the provisions of this ordinance are hereby rescinded.

Article XI. Amendment

This ordinance may only be amended by a vote of the Business Committee.

Dated: September 3, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–23043 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[MT–020–1430–01; MTM 84992]

Public Land Order No. 7211; Jurisdictional Transfer of Public Lands; Montana

AGENCY: Bureau of Land Management.

ACTION: Public land order.

SUMMARY: This order transfers jurisdiction of 1,036.91 acres of public lands located within the boundaries of the Custer National Forest from the Bureau of Land Management to the Department of Agriculture, Forest Service. The lands were acquired by exchange.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Jurisdiction of the surface and mineral estates of following described public lands administered by the Bureau of Land Management is hereby transferred to the Department of Agriculture, Forest Service, for inclusion in the National Forest System:

Principal Meridian, Montana

a. Surface Estate (no minerals)

T. 6 S., R. 48 E.,
Sec. 32, SE¼SW¼ and S½SE¼;
Sec. 33, SW¼SW¼.
The area described contains 160 acres.

b. Surface and Coal Estates

T. 7 S., R. 48 E.,
Sec. 4, HES #653;
Secs. 7, 8, and 17, HES #991 less 17.69 acres highway right-of-way conveyed by Deed recorded Book 27 Deeds page 363 public records Powder River County;
Sec. 9, SW¼NE¼NE¼NE¼, S½NW¼NE¼NE¼, SW¼NE¼NE¼, W½SE¼NE¼NE¼, SE¼NE¼NW¼NE¼, E½SW¼NW¼NE¼, SE¼NW¼NE¼, E½NE¼SW¼NE¼, SE¼NE¼, N½NE¼SE¼, NE¼SW¼NE¼SE¼, and NW¼SE¼NE¼SE¼;
Sec. 10, E½NW¼NW¼, and N½SW¼NW¼;
Secs. 14 and 15, HES #996 less 4.73 acres highway right-of-way conveyed by Deed recorded Book 27 Deeds page 365 public records Powder River County;
Secs. 15 and 16, HES #986 less 17.92 acres highway right-of-way conveyed by Deed recorded Book 27 Deeds page 361 public records Powder River County.
The areas described aggregate 718.58 acres.

c. Surface and Mineral Estates

T. 7 S., R. 48 E.,
Secs. 14 and 23, HES #995;
The area described contains 158.33 acres.
The total areas described aggregate 1,036.91 acres in Powder River County.

2. Subject to valid existing rights, the above described lands are hereby made a part of the Custer National Forest and shall hereafter be subject to all laws and regulations applicable thereto.

Dated: August 27, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–22970 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–DN–P

[OR–958–0777–54; GP6–0111; OR–19630 (WA), OR–19655 (WA)]

Public Land Order No. 7213; Revocation of Secretarial Orders Dated May 13, 1922, and November 20, 1928; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in their entirety two Secretarial orders which withdrew 4,518.57 acres of National Forest System land for use by the Bureau of Land Management in connection with Powersite Classification Nos. 35 and 209. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 796.97 acres to surface entry. The 3,721.60 acre balance remains closed to surface entry, mining, and mineral leasing by other overlapping withdrawals.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section

204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated May 13, 1922, which withdrew the following described lands for Powersite Classification No. 35, is hereby revoked in its entirety:

Willamette Meridian

Mt. Baker National Forest

T. 32 N., R. 11 E.,
Sec. 5, lots 2, 3, 4, 5, 7, and 8, NW¼SW¼, and SE¼SE¼;
Sec. 6, lot 1;
Sec. 8, lots 1, 2, 3, 5, 7, 8, and 9, SE¼NE¼, W½NW¼, and NW¼SW¼;
Sec. 9, lots 1 to 7, inclusive, and SW¼NW¼;
Sec. 10, lot 1, S½SW¼, and SW¼SE¼;
Sec. 11, lot 1, SE¼SW¼, and S½SE¼;
Sec. 13, lots 1 to 8, inclusive, N½NW¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 14, lots 1 to 9, inclusive, NE¼NE¼, SW¼NW¼, N½SW¼, and SW¼SE¼;
Sec. 15, lots 1 to 7, inclusive, and SE¼NE¼.
T. 32 N., R. 12 E.,
Sec. 18, lots 3 and 4, SE¼SW¼, and S½SE¼;
Sec. 19, lots 1 to 8, inclusive;
Sec. 20, lots 1 to 8, inclusive, N½SW¼, and SW¼SE¼;
Sec. 21, lots 2 to 7, inclusive, and NW¼SW¼.

The areas described aggregate 3,660.40 acres in Snohomish County.

2. The Secretarial Order dated November 20, 1928, which withdrew the following described lands for Powersite Classification No. 209, is hereby revoked in its entirety:

Willamette Meridian

Snoqualmie National Forest

T. 24 N., R. 11 E.,
Sec. 2, W½SW¼;
Sec. 10, lots 1 to 7, inclusive, and E½W½;
Sec. 14, lot 1, E½NW¼, and SW¼NW¼.
T. 28 N., R. 11 E.,
Sec. 2, lot 1, SE¼NE¼, and E½SE¼;
Sec. 12, lot 1, NW¼NE¼, and NW¼NW¼.

The areas described aggregate 848.17 acres in King and Snohomish Counties.

3. At 8:30 a.m. on October 10, 1996, the following described lands will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 10, 1996, shall be considered as simultaneously filed at that time:

Willamette Meridian

Mt. Baker National Forest

T. 32 N., R. 11 E.,
Sec. 5, those portions of lot 2 and the SE¼SE¼ lying outside the boundary of the Skagit Wild and Scenic River withdrawal;
Sec. 6, lot 1;
Sec. 8, NW¼SW¼ and those portions of lots 1 and 7 lying outside the boundary of the Skagit Wild and Scenic River withdrawal;
Sec. 9, those portions of lots 1 and 2, and the SW¼NW¼ lying outside the boundary of the Skagit Wild and Scenic River withdrawal;
Sec. 13, lot 1, NW¼NW¼, and NE¼SE¼;
Sec. 14, SW¼SE¼ and those portions of lots 5, 6, 7, and 9, and the N½SW¼ lying outside the boundary of the Skagit Wild and Scenic River withdrawal;
T. 32 N., R. 12 E.,
Sec. 19, lots 4 to 8, inclusive;
Sec. 20, lot 5, N½SW¼, SW¼SE¼, and those portions of lots 7 and 8 lying outside the boundary of the Skagit Wild and Scenic River withdrawal;
Sec. 21, NW¼SW¼ and those portions of lots 4, 5, 6, and 7 lying outside the boundary of the Skagit Wild and Scenic River withdrawal.

The areas described aggregate approximately 796.97 acres in Snohomish County.

4. The lands described in paragraph 2 are included in the Alpine Lakes and Henry M. Jackson Wilderness Area withdrawals and remain closed to surface entry, mining, and mineral leasing.

5. The lands described in paragraph 1, except as provided in paragraph 3, are included in the Skagit Wild and Scenic River withdrawal and will remain closed to surface entry.

Dated: August 27, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–22969 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–33–P

National Park Service

Canyonlands National Park, UT; Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award eighteen concession contracts authorizing continued operation of commercially guided, interpretive whitewater river tours and transportation services, for the public at Canyonlands National Park for a period of five (5) years from January 1, 1998 through December 31, 2002.

EFFECTIVE DATE: Offers will be accepted for ONE HUNDRED AND TWENTY (120) days under the terms described in the Prospectus. The one hundred and twenty (120) day application period will begin with the release of the Prospectus, which will occur on or before October 10, 1996.

ADDRESSES: Interested parties should contact the Superintendent, Canyonlands National Park, 2282 South West Resource Blvd., Moab, Utah 84532, to obtain a copy of the Prospectus describing the requirements of the proposed contacts.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expire by limitation of time on December 31, 1997. Therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), the concessioner is entitled to be given preference in the renewal of the contract and in the award of a new contract providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all offers received as a result of this notice. Any offer, including that of the existing concessioner, must be received by the Superintendent, Canyonlands National Park, 2282 South West Resource Blvd., Moab. Utah 84532, not later than one hundred and twenty (120) days following release of the prospectus to be considered and evaluated.

Dated: August 6, 1996.

James T. Reynolds,

Superintendent, Colorado Plateau System Support Office.

[FR Doc. 96–22961 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–70–M

Notice of Intention To Extend an Existing Concession Contract—North Cascades National Park

SUMMARY: Pursuant to the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 *et seq.*), notice is hereby given that the National Park Service intends to extend the concession contract of Lake Chelan Recreation, Inc., at North Cascades National Park for a period of three years. The current concessioner has performed its obligation to the satisfaction of the Secretary and retains its right of preference in renewal pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 *et seq.*) and 36 CFR 51.5, under this administrative action to extend the existing contract.

SUPPLEMENTARY INFORMATION: This extension is necessary to allow the continuation of public services and implementation of the General Management Plan for Lake Chelan National Recreation Area. The National Park Service will not renew the contract for an extended period. The park must have sufficient time to prepare necessary planning documents and obtain necessary funding for the required infrastructure (roads, power, water and sewer systems) and for the relocation and construction of new concession facilities. The concession contract at North Cascades National Park will expire on December 31, 1998. The park does not have sufficient time to complete the full design and funding packages in order to implement these General Management Plan requirements. This planning process will have a direct effect on the nature and character of future concession activities, as well as with the Stehekin Landing and visitor access, as it deals with complex issues associated with safety, visitor services, cultural and natural resources. The planning process may take as long as five years to complete. Until the planning process is completed, it will not be in the best interest of North Cascades National Park to enter into a long term concession contract. For these reasons, it is the intention of the National Park Service to extend the current contract for a period of three years. Information regarding this notice can be sought from: Chief, Division of Concession Management, North Cascades National Park, 2105 Highway 20 Sedro, Woolley, Washington 98284, or call: (360) 856–5700 Ext. 354. Attention: Ms. Margie D. Allen.

Dated: August 8, 1996.

Patricia L. Neubacher,

Acting Field Director, Pacific West Area.

[FR Doc. 96–22962 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 31, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 25, 1996.

Carol D. Shull,

Keeper of the National Register.

Alabama

Tuscaloosa County

Downtown Tuscaloosa Historic District (Boundary Increase II), 2500–2508, 2501–2519, 2516, 2521 7th St. and 2525 S. Lurleen Wallace Blvd., Tuscaloosa, 96001029

Arkansas

Carroll County

Mo-Ark Baptist Academy, S of western terminus of Park St., Blue Eye, 96001030

Greene County

Beisel-Mitchell House, 420 W. Court St., Paragould, 96001031

Florida

Dade County

Faust, Thomas, House (Homestead MPS) 69 N.W. 4th St., Homestead, 96001034

Lee County

Heitman, Gilmer, House (Lee County MPS) 2581 1st St., Fort Myers, 96001033

Georgia

Worth County

Sumner High School, 716 Walnut St., Sumner, 96001035

Maine

Cumberland County

Porteous, Mitchell and Braun Company Building, 522–528 Congress St., Portland, 96001039

Kennebec County

The Birches, Off E side of Foster Ln., .15 mi. S of jct. with ME 27, Belgrade Lakes, 96001036

Oxford County

Dreamhome, W side of Lake Christopher, .45 mi. N of Hill Rd., Bryant Pond vicinity, 96001037

Sagadahoc County

Harward Family House, W side of Pork Point Rd., .4 mi. S of jct. with ME 24, Richmond vicinity, 96001038

Massachusetts

Nantucket County

Diamond Historic District, Roughly bounded by Broad, Lewis, Ocean Sts., Swampscott Line, Lynn Shore Dr., and Wave and Nahant Sts., Lynn, 96001040

New Mexico

Dona Ana County

Dona Ana Village Historic District, Roughly bounded by the Dona Ana lateral irrigation ditch, I–25, NM 320, and Dona Ana School Rd., Dona Ana, 96001042

San Juan County

Aztec Ruins Administration Building-Museum, Approximately .75 mi. N of US 550 on outskirts of Aztec, Aztec Ruins National Monument, Aztec vicinity, 96001041

New York

Nassau County

Moore's Building, 1 E. Main St., Oyster Bay, 96001043

Oregon

Klamath County

Blackburn Sanitarium, 1842 Esplanade, Klamath Falls, 96001046

Lane County

Chambers, Fred E. House and Grounds (Architecture of Ellis F. Lawrence MPS), 1151 Irving Rd., Eugene vicinity, 96001047

Linn County

Chambers, Matthew C., Barn, .4 mi. N of jct. of Knox Butte Rd. and Scravel Hill Rd., Albany vicinity, 96001044

Maurer, Joseph and Barbar, House, 35168 Tennessee Rd., Lebanon vicinity, 96001045

Marion County

Bank of Woodburn, 199 N. Front St., Woodburn, 96001049

Victor Point School, 1175 Victor Point Rd., SE, Silverton vicinity, 96001050

Union County

Stange, August J., House, 1612 Walnut St., La Grande, 96001048

Virginia

King William County

West Point Historic District, Kirby, Main, and Lee Sts. from 1st through 13th Sts., West Point, 96001051

Lunenburg County

Jones Farm, VA 609, approximately .75 mi. N of jct. with VA 613, Kenbridge vicinity, 96001052

Wisconsin

Sauk County

Porter, Walworth D., Duplex Residence, 221–225 7th St., Baraboo, 96001053

[FR Doc. 96–23028 Filed 9–9–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 3, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Certificate of Medical Necessity.

OMB Number: 1215–0113.

Agency Number: CM–893.

Frequency: On occasion.

Affected Public: Business or other-for-profit; Not-for-profit institutions.

Number of Respondents: 7,000.

Estimated Time per Response: 40 minutes.

Total Burden Hours: 2,799.

Total Respondent Cost (capital/startup): 0.

Total Respondent Cost (operating and maintenance): 0.

Description: Form Cm–893, Certificate of Medical Necessity, is completed by the miner's doctor and is used by the Division of Coal Miners Workers' Compensation (DCMWC) to determine if the miner meets the specific impairment standard to quality for durable medical equipment, home nursing care and/or pulmonary rehabilitation. Without the information provided, the DCMWC could not carry out its responsibility to determine eligibility for black lung medical benefits.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–23051 Filed 9–9–96; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Hearing Conservation Plans

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondents' burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. § 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Hearing Conservation Plans for coal mines. MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who must respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the Addressee section of this notice.

DATES: Submit comments on or before November 12, 1996.

ADDRESSES: Written comments shall be mailed to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, U.S. Department of Labor, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice) or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 206 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 846, requires the Secretary of Labor to promulgate mandatory health standards establishing maximum noise exposure levels for underground coal mines. The Secretary, through the Mine Safety and Health Administration (MSHA), promulgated a regulation governing permissible noise exposure levels which may be found at 30 CFR § 70.510. Additionally, 30 CFR Part 70, Subpart F and Part 71, Subpart I, require that periodic noise surveys be taken by each mine operator every three to six months. The surveys must be taken by a certified person, and they must be taken where each miner in the active workings of the mine is exposed during the performance of duties to which he is normally assigned. If a mine operator is found to have violated the

permissible noise exposure levels, the operator is required to submit to MSHA for approval a continuing, effective hearing conservation plan that includes provisions for (i) reducing environmental noise levels; (ii) personal ear protective devices to be made available to the miners; and (iii) preemployment and periodic audiograms.

II. Current Actions

MSHA seeks to continue the requirement that mine operators submit hearing conservation plans when they are found to be in violation of the noise standard to ensure that permissible noise exposure levels are not exceeded and that miners are afforded the proper protection to conserve their hearing.

Type of Review: Reinstatement.

Agency: Mine Safety and Health Administration.

Title: Hearing Conservation Plan.

OMB Number: 1219–0017.

Affected Public: Business or other for-profit.

Total Respondents: 3,236.

Frequency: On occasion.

Total Responses: 280.

Average Time per Response: 5.82 hours.

Estimated Total Burden Hours: 1,630 hours.

Estimated Total Burden Cost: $242,354.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 30, 1996.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 96–23050 Filed 9–9–96; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–108]

NASA Advisory Council, Life & Microgravity Sciences & Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life & Microgravity Sciences & Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee.

DATES: September 25, 1996, 8:30 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., MIC 3 A & B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald White, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2530.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status: Office of Life & Microgravity Sciences and Applications, Life Sciences Division
—Program Management Changes
—International Approach to Science Recruitment, Review & Selection
—Status of Space Facility Development; Biological Research & Human Research
—General Discussion and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 3, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–23076 Filed 9–9–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–109]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: September 25, 1996, 9:15 a.m. to 5:00 p.m.

ADDRESSES: NASA Headquarters, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, code SD, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 713–483–7109.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Negotiations with the Russians Concerning Medical Operations Support of the Space Station
—Discussion of Medical Certification Procedures for Russian Cosmonauts and Other International Participants on Space Station
—Review of Medical Operations Protocols
—Status and Discussion of Lead Center Role for Life Sciences
—Status and Discussion of Space Station Medical Operations Requirements Document
—Status and Discussion of Development of Medical Selection and Retention Criteria for all Space Station International Partners
—Discussion of the Progress Towards the Establishment of a National Space biomedical Institute
—Review of Retention Rates for flight Surgeons
—Review of OLMSA Agencywide Strategic Planning for Telemedicine
—Presentation on the findings of the Occupational Health External Working Group
—Discussion of Action Items
—Summary of Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 3, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–23077 Filed 9–9–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–110]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: September 26, 1996, 8:00 a.m. to 7:00 p.m.; and September 27, 1996, 8:00 a.m. to 12:30 p.m.

ADDRESSES: NASA Headquarters, Room MIC 3A, 300 E Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Diana P. Hoyt, Code UP, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1893.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, September 26, 1996, from 5:15 p.m. to 7:00 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of the Office of Life and Microgravity Sciences and Applications
—Status of Space Station Utilization
—Radiation Program/Advanced Life Support and Extravehicular Activity
—Countermeasures Report
—Subcommittee/Task Force Reports
—Status of Longitudinal Health Studies
—Office of Space Science—Implication of Mars Meteorite Discovery
—Tutorial: Protein Crystal Growth
—Space Development and Commercialization
—Discussion of Committee Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 3, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–23078 Filed 9–9–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 9, 16, 23, and 30, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 9

There are no meeting scheduled for the Week of September 9.

Week of September 16—Tentative

There are no meeting scheduled for the Week of September 16.

Week of September 23—Tentative

There are no meeting scheduled for the Week of September 23.

Week of September 30—Tentative

Thursday, October 3

1:00 p.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary. Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

Dated: September 6, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–23249 Filed 9–6–96; 2:09 pm]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for a Collection of Information Under the Paperwork Reduction Act; Qualified Domestic Relations Order Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve a new collection of information under the Paperwork Reduction Act. The information collection relates to model forms contained in a PBGC booklet providing guidance on how to submit a proper qualified domestic relations order to the PBGC.

DATES: The PBGC has requested that OMB approve this request by September 10, 1996.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the OMB with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

The PBGC is a federal agency that insures the benefits of nearly 42 million working men and women in about 55,000 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified

domestic relations order ("QDRO"). The PBGC reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee.

The PBGC receives many inquiries on the requirements for QDROs. Many domestic relations orders, both in draft and final form, do not meet the applicable requirements. The PBGC works with practitioners on a case-by-case basis to ensure that their orders are amended to meet applicable requirements. This process is time-consuming for practitioners and for the PBGC.

To simplify the process, the PBGC has included model QDROs and accompanying guidance in a booklet, "Divorce Orders & PBGC," that attorneys and other professionals who are preparing QDROs for plans trusteed by the PBGC may submit to the PBGC after receiving court approval. These models and the guidance are intended to assist parties by making it easier to comply with ERISA's QDRO requirements in plans trusteed by the PBGC.

The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements and will result in a reduction of the statutory burden. The PBGC estimates that it will receive 333 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be ¼ hour of the alternate payee's time and $400 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 156 hours and $132,000.

The PBGC solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The PBGC has requested that OMB approve this collection on an emergency basis by September 10, 1996 so that model QDROs can be made available to practitioners immediately. Early availability will greatly assist practitioners in preparing proper QDROs for the PBGC, thereby saving parties both time and expense.

Issued at Washington, DC, this 5th day of September 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–23088 Filed 9–9–96; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37629; File No. SR–Phlx–96–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in Narrow-Based Index Option Position and Exercise Limits

September 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Phlx Rules 1001A(b)(1) and 1002A to increase the position and exercise limits for narrow-based index options from 6,000, 9,000, or 12,000 contracts to 9,000, 12,000, or 15,000 contracts.[3]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the prupose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Phlx, the purpose of the proposed rule change is to increase narrow-based index option position and exercise limits in order to attract additional trading interest and, thus, promote depth and liquidity and Phlx index options. The Exchange believes that the current limits constrain certain investors from trading index options.

Currently, Phlx Rules 1001A(b)(1) and 1002A establish the following position and exercise limits for narrow-based (industry) index options: (i) 6,000 contracts for an index where a single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of narrow-based index option position limits; (ii) 9,000 contracts for an index where a single component stock accounted, on average, for 20% or more of the index value or any five component stocks together accounted, on average, for more than 50% of the index value, but no single component stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of narrow-based index option position limits; and (iii) 12,000 contracts where the conditions required a limit of 6,000 contracts or 9,000 contracts have not occurred. For the reasons presented herein, the Phlx proposes to amend Phlx Rules 1001A(b)(1) and 1002A to increase the position and exercise limits for narrow-based index options from 6,000, 9,000, or 12,000 contracts to 9,000, 12,000, or 15,000 contracts.

The Exchange believes that the proposed increase is appropriate in light of the Exchange's more than ten years experience trading index options. In 1983, the Gold/Silver Index ("XAU") was the first narrow-based index option to be traded on the Phlx, listed with a position limit of 4,000 contracts.[4] Since that time, the Exchange has honed its experience in monitoring and surveilling index options trading by developing and implementing an increasingly sophisticated regulatory program. This program has benefited from technological advances and has matured alongside index options trading. Moreover, the market for index options has also evolved, as more investors are familiar with the product and its uses. This is reflected in the appreciable growth in index options volume not only since 1983 but in most recent years as well.[5]

The Exchange recognizes that the purposes of these limits are to prevent manipulation and to protect against disruption of the markets for both options as well as the underlying securities. The Exchange has considered the effects of increased position limits on the marketplace and believes that concerns regarding manipulation and disruption are adequately addressed by the Phlx's regulatory program. The Phlx continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits and the new limits will not diminish the surveillance function in this regard.

Since 1983 and the advent of the XAU, the Exchange has listed several index options. Currently, the Phlx trades options on the following seven narrow-based indexes, with their current position limits noted:

1. Gold/Silver Index ("XAU") 6,000 contracts.
2. Utility Index ("UTY") 12,000 contracts.
3. Phlx/KBW Bank Index ("BKX") 12,000 contracts.
4. Phone Index ("PNX") 6,000 contracts.
5. Semiconductor Index ("SOX") 12,000 contracts.
6. Airline Sector Index ("PLN") 12,000 contracts.
7. Forest/Paper Products ("FPP") 12,000 contracts.

The current levels for narrow-based index options have been in place since September 1995.[6] Since that time, however, index options have continued to experience heavy and steady volume, with a concomitant increase in open interest. In this light, the Exchange believes that the proposed limits of 9,000, 12,000, or 15,000 contracts should further increase the depth and liquidity of the markets for index options by attracting additional investor interest. The Phlx also believes that higher position limits would further accommodate the hedging needs of Exchange market makers and specialists, who are restricted by current levels.

Further, the Exchange believes that the proposed increases are reasonable. The Phlx states that in prior releases approving increased position limits, the Commission has acknowledged that a gradual, evolutionary approach has been adopted in increasing position and exercise limits. Accordingly, the Phlx proposes a 25% increase in the highest tier (from 12,000 to 15,000 contracts); a 33% increase in the middle tier (from 9,000 to 12,000 contracts); and a 50% increase in the lowest tier (from 6,000 to 9,000 contracts). The Exchange believes that these proposed increases are consistent with the gradual evolution cited by the Commission, as the proposed levels represent reasonable increases which are in line with prior changes.[7]

The Exchange believes that the 1995 changes were so modest (20% or less) that position limit increases are once again needed. Since the 1995 changes were implemented, the Exchange has been requested by its members and customers to again propose an increase in position limits, arguing that these limits hamper their ability to execute investment strategies. In light of the large portfolios common to institutional trading and the large-sized transactions that are required to execute complicated, cross-market strategies, such requests emphasize that institutional hedging needs and trading objectives may exceed current limits. Floor members have also expressed the resulting deleterious effect on index options trading in an exchange environment. Based on such member and customer requests, the Exchange has also realized that the current position limit levels continue to discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, this proposal aims to accommodate the liquidity and hedging needs of large investors as well as the facilitators of hose investors.

In proposing these position and exercise limit increases, the Exchange considered whether alternatives were available to accommodate both members and investors. For instance, an index option hedge exemption was recently implemented by the Exchange. However, the specific requirements of this exemption, including the definition of a hedge, may not be useful for all investors. In addition, the Exchange considered whether flexible index options ("FLEX options"), which are subject to separate, higher position limits, address the needs expressed to the Phlx. In this regard, the Exchange realized that because of certain attributes of FLEX options, such as lack of continuous quoting, this product's utility may be limited to a discrete group of investors. Likewise, the Exchange does not believe that FLEX options trading should foreclose the Exchange's responsibility to embellish upon its listed index options program by revisiting and addressing regulatory restrictions such as position limits.

Concurrent with the proposed increase in position limits, the Exchange is also proposing a corresponding increase to narrow-based index option exercise limits. The Exchange believes that this increase is necessary and appropriate for the same reasons as the rationale cited above for the proposed position limit increases. Furthermore, exercise limits constrict trading strategies by preventing investors from exercising positions larger than the limit within five consecutive business days. The Exchange also notes that most of its index options currently are or will become European-style, exercisable only during a specified period at expiration, such that the manipulation and market disruption concerns associated with large exercises will be limited.[8]

2. Statutory Basis

The Exchange believes that its proposal to increase narrow-based index option position and exercise limits is

[4] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1993) (File No. SR–Phlx–83–17).

[5] According to the Phlx, index options volume increased 48% (from 998,780 contracts to 1,483,585 contracts) from the period January–June 1995 to January–June 1996.

[6] *See* Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (September 13, 1995) (File No. SR–Phlx–95–16) (increasing position and exercise limits for narrow-based index options to 6,000, 9,000, or 12,000 contracts) ("Securities Exchange Act Release No. 36194").

[7] *See, e.g.*, Securities Exchange Act Release No. 36194, *supra* note 6, where the Phlx's narrow-based position limit changes represented a 9% increase in the lowest tier (from 5,500 to 6,000 contracts); a 20% increase in the middle tier (from 7,500 to 9,000 contracts); and a 14% increase in the highest tier (from 10,500 to 12,000 contracts).

[8] *See, e.g.*, Securities Exchange Act Release No. 37575 (August 15, 1996), 61 FR 43289 (August 21, 1996), (File No. SR–Phlx–96–18) (order approving change in exercise style of Phlx's National Over-the-Counter Index from American-style to European-style).

consistent with Section 6 of the Act in general, and with Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The Exchange also believes that the proposal should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels. The Phlx believes that by stimulating market participation, and thereby increasing option market depth and liquidity, the proposed rule change should promote just and equitable principles of trade. At the same time, the Phlx believes that the proposed position limits should continue to prevent fraudulent and manipulative acts and practices as well as protect investors and the public interest by limiting the ability to disrupt and manipulate the markets for options as well as the underlying securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–33 and should be submitted by October 1, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23038 Filed 9–9–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 3, 1996 [FR 61, page 34920].

DATES: Comments must be submitted on or before October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard

Title: Application for Tonnage Measurement of Vessels.

OMB No. 2115–0086.

Affected Public: Vessel owners.

Abstract: The collection of information requires vessel owners to submit application for tonnage measurement to the Coast Guard or an organization delegated by the Coast Guard. Additional information may be required if an owner requests certain tonnage treatment.

Need: 46. U.S.C. 14104 requires that before a vessel is documented or recorded under laws of the United States, or where the application of law of the United States to a vessel is determined by its tonnage, the vessel must be measured for tonnage.

Burden Estimate: The estimated burden is 44,000 hours annually.

Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalent/Alternatives and Exemptions.

OMB No. 2115–0096.

Affected Public: Operators of vessels and owners of waterfront facilities.

Abstract: The collection of information requires the inspection of discharge removal equipment on vessels and requires monitoring, reporting and recordkeeping regarding discharges of oil or hazardous materials by facilities and vessels. The regulated industry has the option of requesting, in writing, either equivalent or alternative procedures, methods or equipment standards in lieu of any requirement or a full or partial exemption of any requirement.

Need: Under the Federal Water Pollution Control Act and Executive Order 12777, Coast Guard has the authority to issue regulations to prevent the discharge of oil or hazardous materials from waterfront facilities and vessels.

Burden Estimate: The estimated burden is 1,840 hours annually.

Title: Records Relation to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.

OMB No.: 2115–0143.

Affected Public: Employers of persons engaged in Outer Continental Shelf activities.

Abstract: The collection of information requires employers of vessels and units engaged in exploration and exploitation of offshore resources on the OCS such as gas and oil to ascertain the citizenship of their employees and to maintain records of same.

Need: 43 U.S.C. 1356 authorizes the Coast Guard to issue regulations to man

[9] 17 CFR 200.30–3(a)(12).

or crew outer continental shelf (OCS) facilities with U.S. citizens or permanent resident aliens.

Burden Estimate: The estimated burden is 1,510 hours annually.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention OST Desk Officer.

Issued in Washington, DC, on September 5, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23074 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–62–P

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 20, 1996 [FR 61, page 25265].

DATES: Comments must be submitted on or before October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Supplementary Training Course Application.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0030.

Affected Public: U.S. merchant seamen, both officers and unlicensed personnel. U.S. citizens employed in other areas of waterborne commerce also may receive this training on a space available basis.

Abstract: Section 1305(a) of the Maritime Education and Training Act of 1980 states that the Secretary may provide additional training on maritime subjects and may make such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States. Also, the U.S. Coast Guard (USCG) requires a fire fighting certificate for U.S. merchant marine officers, effective December 1989, pursuant to the 46 CFR 10.205(g) and 10.207(f).

Need and Use of the Information: Information is needed for eligibility assessment, enrollment, attendance verification and recordation. Without this information the courses would not be documented for future reference by the program or individual student.

This application form is the only document of record and is used to verify that students have attended the course.

Annual Burden: 100 hours.

Issued in Washington, DC, on September 5, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23075 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 30, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1674.

Date filed: August 30, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1996.

Description: Application of Mountain Air Express, Inc. d/b/a MAX pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Department's Rules of Practice, applies for a certificate of public convenience and necessity to engage in scheduled and charter interstate air transportation of persons, property and mail.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–23070 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Availability of Draft FAA ASR–11 Programmatic Environmental Assessment and Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and comment period.

SUMMARY: The FAA announces the availability of the Draft Programmatic Environmental Assessment (PEA) for the ASR–11 Radar which assesses the potential environmental impacts of the FAA ASR–11 Radar program. The FAA and the Department of Defense (DOD) are both planning to upgrade air traffic control infrastructure by systematically replacing analog systems with state-of-the-art digital technology. The FAA plans to install up to 120 digital systems nationwide. The Draft PEA is subdivided into five main sections, including: NEPA requirements and FAA's ASR–11 program; Purpose and Need for Action; Implementation; and Cumulative Impacts. In accordance with the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2)(C), the FAA has prepared a Draft PEA to determine whether the deployment and operation of the ASR–11 will have a significant impact on environmental quality. The FAA plans to prepare a Final PEA after a 45 day comment period during which time the FAA will collect and review comments and incorporate appropriate changes for the Final PEA. Comments regarding the Draft PEA should be mailed to Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Surveillance Integrated Product Team, AND–400, 800 Independence Avenue, SW, Washington, DC 20591.

DATES: Comments must be received on or before October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Jerome D. Schwartz, Environmental Specialist, Federal Aviation Administration, Surveillance Integrated Product Team, AND–400, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 358–4946.

Issued in Washington, DC on September 4, 1996.

Gerald J. Taylor,

Product Lead, Terminal Products Team, AND–410.

[FR Doc. 96–23093 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 16, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28673, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Marisa Mullen (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 5, 1996.

Joseph A. Conte,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28673.

Petitioner: EAA Aviation Foundation, Inc., Experimental Aircraft Association, Inc.,

Sections of the FAR Affected: 14 CFR 91.315

Description of Relief Sought: To permit the EAA Aviation Foundation to use its B–17 aircraft, which is certified as a limited category aircraft, to provide flight experiences to members of EAA who have also become members of the B–17 Historical Society through a donation to the Foundation.

[FR Doc. 96–23095 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 1996, there were six applications approved. Additionally, five approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Charter County of Wayne, Michigan, Detroit, Michigan.

Application Number: 96–02–U–00–DTW.

Application Type: Use PFC reveneus.

PFC Level: $3.00.

Total Net PFC Revenue Approved For Use: $3,137,000.

Charge Effective Date: December 1, 1992.

Estimated Charge Expiration Date: June 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved For Use of PFC Revenue at Detroit Metropolitan Wayne County Airport: Land acquisition and preliminary design for fourth parallel runway.

Brief Description of Project Approved For Use of PFC Revenue at Willow Run Airport: Perimeter property fencing and removal of airport hazard.

Decision Date: August 2, 1996.

For Further Information Contact: Leonard Mizerowski, Detroit Airports District Office, (313) 487–7277.

Public Agency: Natrona County International Airport Board of Trustees, Casper, Wyoming.

Application Number: 96–02–C–00–CPR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue in This Application: $427,704.

Estimated Charge Effective Date: March 1, 1997.

Estimated Charge Expiration Date: November 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use of PFC Revenue: Aircraft rescue and firefighting (ARFF) improvements, Acquire snow removal equipment, Construct wildlife control fencing, Rehabilitate airfield lighting system, Rehabilitate taxiway C, Relocate road out of runway safety area.

Decision Date: August 2, 1996.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 286–5525.

Public Agency: City of San Angelo, Texas.

Application Number: 96–02–U–00–SJT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved For Use in This Decision: $414,667.

Charge Effective Date: May 1, 1993.

Estimated Charge Expiration Date: March 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved For Use of PFC Revenue: Perimeter road, Extend runway 36 and taxiway P (phase 1), Replace/relocate approach light system runway 3, Security upgrade.

Decision Date: August 5, 1996.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Palm Beach County Department of Airports, West Palm Beach, Florida.

Application Number: 96–02–C–00–PBI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue in This Decision: $21,997,000.

Estimated Charge Effective Date: May 1, 1999.

Estimated Charge Expiration Date: April 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Palm Beach International Airport (PBI).

Brief Description of Projects Approved For Use of PFC Revenue at PBI: 95–B acquire land in Part 150 noise compatibility plan, 96–B acquire land in Part 150 noise compatibility plan, ARFF vehicle replacement.

Brief Description of Project Approved For Use of PFC Revenue at North County General Aviation Airport: Install instrument landing system and distance measuring equipment.

Brief Description of Projects Approved For Collection and Use of PFC Revenue at PBI: 95A—revised—west enplane roadway baggage improvements, land acquisition (development), Construct outer perimeter road south phase 2, Reconstruct aprons B–D–E, Intermodal transportation study.

Decision Date: August 29, 1996.

For Further Information Contact: Bart Vernace, Orlando Airports District Office, (407) 648–6583.

Public Agency: Dade County Aviation Department, Miami, Florida.

Application Number: 96–02–U–00–MIA.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved For Use in This Decision: $42,034,000.

Charge Effective Date: November 1, 1994.

Estimated Charge Expiration Date: May 1, 1998.

Classes of Air Carriers Not Required to Collect PFC'S: No change from previous decision.

Brief Description of Projects Approved For Use of PFC Revenue: Concourse A expansion phase II, Concourse A phase II apron and utilities.

Decision Date: August 30, 1996.

For Further Information Contact: Bart Vernance, Orlando Airports District Office, (407) 648–6586.

Public Agency: City of Bemidji and County of Beltrami, Bemidji, Minnesota.

Application Number: 96–01–C–00–BJI.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $368,221.

Estimated Charge Effective Date: November 1, 1996.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bemidji/Beltrami County Airport.

Brief Description of Projects Approved For Collection and Use of PFC Revenue: Airfield signing, automatic entry doors, and snow retention devices, Upgrade master plan and airport layout plan, Runway 7/25 and taxiway pavement rehabilitation, PFC application, Taxiway A pavement rehabilitation, Safety area upgrade.

Brief Description of Projects Approved in Part For Collection and Use of PFC Revenue: Terminal building expansion and [remodeling], installation of lighted runway guidance signs, acquisition of avigation easements, revision of the radio control system, and other minor projects.

Determination: Approved in part. The project element to install airfield guidance and hold signs was begun prior to November 5, 1990, and the costs have been determined not allowable for the PFC program. Any "other minor projects" not included in the project description or project justification contained in the application are not described sufficiently, nor was sufficient justification provided, to allow the FAA to make a determination as to eligibility. Therefore, these "other minor projects" are not approved. The remainder of the project is approved. Runway 13/31 pavement rehabilitation.

Determination: Approved in part. The approved amount was reduced from that contained in the Attachment B for this project in the application. Subsequent to the application being submitted, construction bids where submitted which were lower than had been estimated and additional Airport Improvement Program funds were received which reduced the amount of PFC revenue required to finance the project.

Decision Date: August 30, 1996.

For Further Information Contact: Gordon Nelson, Minneapolis Airports District Office, (612) 725–4358.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–CBI, West Palm Beach, FL	05/09/96	$34,817,091	$38,801,096	04/01/99	05/01/99
93–01–C–01–ASE, Aspen, CO	08/15/96	1,614,986	1,533,541	02/01/98	12/01/98
93–01–I–01–GCC, Gillette, WY	08/15/96	369,132	331,540	09/01/99	02/01/01
96–01–C–01–LAR, Laramie, WY	08/15/96	126,457	126,457	10/01/00	10/01/00
94–01–C–01–MIA, Miami, FL	08/29/96	112,519,000	64,770,000	11/01/96	05/01/98

Issued in Washington, D.C. on September 7, 1996.

Kendall L. Ball,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 96–23096 Filed 9–9–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 32986]

Missouri Pacific Railroad Company—Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Elgin, Joliet and Eastern Railway Company (EJ&E) has agreed to grant overhead trackage rights to Missouri Pacific Railroad Company (MP) over approximately 130 miles of rail lines extending from milepost 0 in South Chicago, IL, through Gary, IN (milepost 12 and milepost 45, including Kirk Yard), including EJ&E's City Track Line between Gary and Goff, IN, and EJ&E's Whiting Line from Cavanaugh, IN, to Calumet Tower, IN, through milepost 25 at Chicago Heights, IL, milepost 0 at Joliet, IL, and milepost 29 at West Chicago, IL, to Waukegan, IL, to the end of EJ&E's ownership near milepost 74.[2] The trackage rights were scheduled to become effective on the date of final agreement of the parties but not sooner than August 28, 1996, the effective date of the exemption.[3]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32986, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 4, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23118 Filed 9–9–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32985]

Union Pacific Railroad Company—Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Elgin, Joliet and Eastern Railway Company (EJ&E) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over approximately 130 miles of rail lines extending from Waukegan, IL, on the north at the beginning of EJ&E's ownership near milepost 74, through milepost 29 at West Chicago, milepost 0 at Joliet, and milepost 25 at Chicago Heights, IL, and Gary, IN (milepost 12 and milepost 45, including Kirk Yard), to milepost 0 at South Chicago, IL, including EJ&E's City Track Line between Gary and Goff, IN, and EJ&E's Whiting Line from Cavanaugh, IN, to Calumet Tower, IN.[2] The trackage rights were scheduled to become effective on the date of final agreement of the parties but not sooner than August 28, 1996, the effective date of the exemption.[3]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32985, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: September 4, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23119 Filed 9–9–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–290 (Sub-No. 185X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Des Moines, Polk County, IA

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 1.1 mile of its line of railroad between milepost SD–339.7 and SD–340.8 in Des Moines, Polk County, IA.

NS has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] In addition to describing the proposed trackage rights, MP has recited that operation of those rights may require construction of some connecting track between the EJ&E and either the MP or another railroad. MP states that the construction would not require Board authorization and "none is sought by this notice." Publication of this notice should not be deemed to be acquiescence by the Board in MP's characterization of the Board's jurisdiction over any such construction.

[3] A Petition to Reject, to Revoke, And/Or to Stay was filed in this proceeding (and also relates to STB Finance Docket No. 32985) on August 27, 1996, by Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL). The City of West Chicago and the Brotherhood of Locomotive Engineers join with UTU-IL in separate petitions filed on August 27, 1996, and August 29, 1996, respectively. The petitions will be addressed in a separate decision or decisions.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] In addition to describing the proposed trackage rights, UP has recited that operation of those rights may require construction of some connecting track between the EJ&E and either the UP or another railroad. UP states that the construction would not require Board authorization and "none is sought by this notice." Publication of this notice should not be deemed to be acquiescence by the Board in UP's characterization of the Board's jurisdiction over any such construction.

[3] A Petition to Reject, to Revoke, And/Or to Stay was filed in this proceeding (and also relates to STB Finance Docket No. 32986) on August 27, 1996, by Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL). The City of West Chicago and the Brotherhood of Locomotive Engineers join with UTU-IL in separate petitions filed on August 27, 1996, and August 29, 1996, respectively. The petitions will be addressed in a separate decision or decisions.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

the line has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 10, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by September 20, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 30, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 13, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 4, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23073 Filed 9–9–96; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of National Customs Automation Program Test Regarding Presentation of Electronic Cargo Declarations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces a Customs plan to conduct a test program to allow the electronic submission of certain inward vessel manifest information. This notice invites public comments concerning any aspect of the test, informs interested members of the public of the eligibility requirements for voluntary participation in the test, and describes the requirements required to be met in order to participate in the test.

EFFECTIVE DATE: The test will commence no sooner than December 9, 1996, and will run for approximately one year. Comments concerning the eligibility standards, selection criteria, or information submission requirements must be received on or before October 10, 1996. To participate in the test, the necessary information as outlined in this notice must be filed with Customs on or before October 10, 1996.

ADDRESSES: Written comments regarding this notice and letters requesting participation in the test program should be addressed to Cargo Control and Entry, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 1328, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

For operational or policy matters: William Scopa (202) 927–3112.

For systems or automation matters: Kim Santos (202) 927- 0651.

For legal matters: Larry L. Burton (202) 482–7040.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions which pertain to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 of the Act created sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411 through 1414), which define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for the remote location filing of entries (section 414). Actual testing procedures for both existing and planned components were established by the publication of Treasury Decision 95–21 in the **Federal Register** of March 16, 1995 (60 FR 14211), which appear as section 101.9, Customs Regulations (19 CFR 101.9).

I. Description of Proposed Test

The Concept of Electronically Filing the Cargo Declaration

The filing of the Customs Form 1302 Cargo Declaration electronically allows an importing carrier to transmit one cargo declaration to all Customs ports for review and for enforcement purposes. It also allows for the electronic release of cargo to carriers and other participating parties, as well as facilitating the process of many other Customs regulatory requirements related to the control and processing of cargo. For many years now, Customs has been accepting electronic cargo data from importing carriers, while simultaneously requiring the same information to be submitted on the Customs Form 1302 (Cargo Declaration). This test program will eliminate the requirement for participating Automated Manifest System (AMS) vessel carriers who qualify for the test to submit a Customs Form 1302 Cargo Declaration to Customs, so long as they

remain proficient in meeting the electronic standards established by Customs.

Since August of 1995, Customs has been working in partnership with the trade through the Customs Electronic Systems Advisory Committee (CESAC) and other parties in developing the standards for this test program as well as identifying necessary enhancements to the AMS. Although electronic cargo data has been received by Customs from importing carriers for many years, there were many technical omissions in the AMS system which made the paper collection of cargo information more useful for enforcement and control purposes. Customs is now confident that the standards developed and enhancements being made to the AMS will make it possible to eliminate the need to submit the Customs Form 1302 simultaneously with the transmission of the cargo data electronically, and hopes to verify this through the test program. Since many importing carriers have been transmitting the cargo data to Customs nationally for many years now, the test will run nationally.

Description of the Test

Customs objectives are: (1) To work with the trade community, other agencies, and other parties impacted by this program in the design, implementation and evaluation of the test; and,

(2) To use the experience gained by the test in designing operational procedures, automated systems, and regulations that are supportive of and compatible with the Customs Reorganization, the ongoing effort to improve the Trade Compliance Process, and the Automated Commercial System Redesign (ACE).

All procedures and processes will be closely coordinated with all participating and affected parties. The intent of this program is to test such operational issues as communication, cargo movement and release, as well as whether participants can meet the requirements of transmitting timely, complete and accurate cargo data.

Regulatory Provisions Suspended

Provisions in sections 4.7 and 4.7a of the Customs Regulations (19 CFR 4.7 and 4.7a), relating to the presentation of a cargo declaration with a vessel manifest, will be suspended during this test. Participants will not be required to submit a Customs Form 1302 to Customs or have a copy on board a vessel, including the "dock copy" or the "traveler", but must be able to download or otherwise produce required information for Customs, or Coast Guard officers who may board. Participants will not be required by Customs to provide a paper Customs Form 1302 as an additional copy. There is no suspension of the requirements contained in the cited regulatory provisions to submit the other forms to be presented with a vessel manifest, such as the Customs Forms 1300 and 1301.

II. Eligibility Criteria

Participation in this testing will not be considered confidential information, and the identity of participants will be made available to the public upon written request. In order to qualify for participation in the test program it will be necessary that a party either be a qualified Automated Manifest System (AMS) carrier, or that a qualified AMS Service Center(s) be designated to submit required information to Customs. In order to be considered AMS-qualified, vessel operators and other entities must have been tested by Customs and determined to possess full technical capability to transmit and receive all types of AMS data. Customs authorizes Automated Manifest System (AMS) service centers to assist carriers in the submission of required electronic information. Such AMS centers may include Port Authorities and other interested parties who act on behalf of carriers who either cannot or choose not to develop the required electronic capabilities for direct participation. Service centers are selected by Customs only if they demonstrate that they possess the full technical capacity and necessary facilities to receive and transmit data for requesting carriers. If these conditions are met, such entities are officially recognized as "Designated Service Centers." Any participating carrier that is using a Designated Service Center is reminded that the carrier is responsible for all electronic submission requirements incorporated in the test. User requirements for qualifying carriers will be governed by those published in the handbook entitled "Customs Automated Manifest Interface Requirements-Intermodal" (CAMIR). A list of Designated Service Centers can be obtained from the U.S. Customs Service, Office of Information Technology, 1301 Constitution Avenue, NW., Washington DC 20229. All test participants, whether participating directly or through the services of a Designated Service Center or Centers, must submit required information electronically in all ports in which business is conducted. Electronic submissions will be required for all cargo and/or vessel types, including containerized, bulk, and break-bulk.

In order to qualify for participation in the program, an applicant is subject to and must have the electronic capabilities to meet additional requirements and conditions as follows:

1. Except as further specified in this paragraph, any carrier participating in this test program must electronically transmit complete cargo declaration information to Customs no less than 48 hours prior to actual arrival of a vessel in a port of the United States. Such transmissions will be considered certified for manifesting purposes at 48 hours prior to actual vessel arrival. For voyages from the last foreign port of departure of less than 48 hours duration, the complete cargo declaration must be transmitted no later than the actual time of vessel arrival in a United States port. Such transmissions will be considered certified for manifesting purposes at time of vessel arrival. The presentation of complete and accurate cargo information is essential to Customs enforcement mission. Therefore, each time a participating carrier fails to transmit complete and accurate cargo declaration information in a timely manner, the port director may require the presentation of the paper Customs Form 1302 for the relevant voyage. All test participants are required to transmit into AMS the actual time and date of vessel arrival in a United States port.

In any instance where a participant whose vessel is on a voyage of longer than 48 hours duration fails to transmit the necessary electronic cargo data at or before 48 hours before a vessel arrival, the port director retains the discretion to delay the unlading of the vessel. Unlading may also be delayed with respect to those voyages of less than 48 hours in duration if the port director requires additional time to review the data transmitted. Alternatively, with respect to all participants, the port director may allow the unlading to proceed but require the cargoes to be maintained and controlled by the test participant at the place of unlading in a manner as directed. In no instance, unless otherwise notified by the port director, shall cargo be removed from the place of unlading until the cargo declaration transmission has been received by Customs, an entry has been filed, and the carrier receives electronic releases for the cargo or electronic authorizations from Customs to transfer the cargo.

2. The electronic cargo declaration information submitted under this program at the first port of arrival in the United States must list all foreign cargo on board the vessel, regardless of the intended port of discharge. In addition

to the current inventory of AMS data elements, participants using CAMIR and ANSI ASCX12 standards will be required to transmit the five following new data elements:

- Place of Receipt of Cargo;
- Container Dimensional Data: Height, Width, Length, equipment type;
- Container Seal Number;
- Type of Container Movement (e.g., House-to-House, Container Station-to-Container Station, etc.);
- Remaining on Board Indicator.

For AMS participants using the CAMIR format, the above data elements must be provided as follows:

Place of Receipt: B02 record, columns 16–32;

Remaining on Board: B01 record, column 48;

Container Information: C01 record, Length (columns 50–54), Height (columns 55–62), Width (columns 63–70), Type (columns 71–74 ISO Code);

Container Seal Number: C01 record, columns 18–32 (Seal 1), columns 33–47 (Seal 2);

Type of Container Move: C01 record, columns 76–77.

System participants should refer to the CAMIR handbook issued in August of 1995 for detailed record layouts and additional instructions:

For participants using the American National Standards Institute, Accredited Standards Committee X12 (ANSI, ASC X12) formats, the data should be sent as follows:

Place of Receipt: M11 segment, data element M1110;

Remain on Board: M11 segment, data element M1109;

Container Information: VID segment, Length = DE VID06, Height = DE VID07, Width = DE VID08, Type = DE VID09 ISO Code;

Container Seal Numbers: VID segment, Seal 1 = DE VID04, Seal 2 = DE VID05;

Type of Cont. Service Code: VID segment, DE = VID11.

Also, it is required that the following data elements be included in electronic transmissions under this test:

- Foreign port of lading;
- Place of receipt by the carrier of all cargoes. This means the first place the participating carrier took possession of the cargo, whether it be a port city or other location;
- Container number (s), length, height, width, and equipment type;
- Container seal number;
- Type of container movement (e.g., House-to-House, Container Station-to-Container Station, etc.);
- Bill of Lading number(s);
- Total quantity and unit type of merchandise in a shipment (quantity of pallets or cargo containers is not sufficient; smallest external packaging unit must be used);
- Complete shipper, consignee, and notify party names and addresses. If both notify party and consignee information is available to the participant, both shall be transmitted, including such information as "to order" or similar language if that is all that is supplied to the participant by the shipper;
- Indications of presence of hazardous materials;
- Marks and numbers, including in that data field when available:
- Country and/or other place of origin information;
- Consignee or other name listed;
- Other conveyance information, such as identification of feeder vessels;
- Purchase order, style and other identifying numbers;
- Description of merchandise. In the case of consolidated shipments, merchandise descriptions must be distinguished by quantity, weight and identifying characteristics for each shipment within a consolidated batch.

3. When a vessel is being operated under the terms of a vessel sharing or slot charter arrangement, each test participant carrier with cargo aboard the vessel is responsible for filing required information with Customs regarding their particular electronic cargo declaration . Test participant parties who provide required data to Customs electronically must do so for their portion of the cargo within the time limits established in this document.

Test participant carriers operating under a vessel sharing or slot charter arrangement shall transmit an identical vessel name and the true, accurate, and identical date and time of vessel arrival. The vessel name shall be identified with the Lloyd's Register of Ships vessel code, as submitted by the vessel owner/operator. The owner/operator of a vessel operating under a vessel sharing or slot charter arrangement shall be responsible for noting on the Customs Form 3171 (Application-Permit-Special License-Unlading-Lading-Overtime Services), each of the carriers sharing or chartering space aboard the vessel. The Customs Form 3171 shall be submitted at least 48 hours prior to a vessel's arrival. If the participant has been granted a term permit (CF 3171), the participant shall always notify the port director at least 48 hours prior to arrival of a vessel, of any changes in parties or slot charterers as well as any other changes made after the granting of the term permit. This should be accomplished by submitting an amended copy of the original term permit.

4. Beginning with records created as of the date of first participation by a carrier and continuing for a period of 6 months after the actual date of arrival of a particular shipment, participants must maintain for immediate examination by Customs upon demand, all electronic or paper records kept in the normal course of business which relate to any particular bill of lading. After 6 months from the date of arrival, unless in an unreconciled status, any such records must be produced for examination by Customs within 5 business days following any demand for their production. Records of any bill of lading which remains in an unreconciled status must always be available for immediate examination by Customs.

Electronically maintained records may be furnished to Customs either in the form of a computer-generated report, or in screen prints of relevant electronic data. Regardless of presentation form, submissions must clearly identify, for each shipment, the vessel name and voyage number, date of arrival, port of discharge, bill of lading and container number(s), total quantity of goods, full identity of shipper and consignee, and all bill of lading transactions posted against a bill during the period when the party was responsible for the proper safekeeping and delivery of the merchandise.

5. Test participants shall not remove merchandise from Customs custody until the cargo declaration transmission has been received by Customs, an entry has been filed, and an electronic release notice has been received from Customs. Removing merchandise without proper electronic notice from Customs will subject a participant to full penalty liability and no such penalty will be mitigated to less than $500. This mitigation limitation does not apply in the case of any bill of lading which is in an unreconciled status at the time of the effective date of this test program.

6. Electronically reported cargo may not be transferred on a Permit-to-Transfer (PTT) unless the participating carrier has received an electronic authorization from Customs.

7. If for any reason the electronic system becomes inoperative or Customs is unable to receive electronic Customs Form 1302 information transmitted by test participants, it will be required that parties submit the paper Customs Form 1302 to Customs. The port director may require up to three copies.

If for any reason the Automated Manifest System, cargo selectivity, or other entry-related automated system is inoperative and electronic cargo release and selectivity is not possible, a Customs port director will, after a 2-

hour waiting period, implement procedures to allow for the non-electronic release of all cargo until such time as electronic systems are again operative. The port director will ensure that any of the appropriate information on entries released under these manual procedures is properly entered into the electronic system as soon as possible.

8. All empty containers aboard a vessel will be manifested for discharge at the first United States port of arrival, indicating the foreign port of loading of each container. If the vessel is proceeding coastwise, within 24 hours after time of arrival and at least two hours prior to time of arrival at the next United States port, the test participant will retransmit the empty container list indicating the empty containers remaining on board and any containers which were loaded at preceding ports which are to be discharged domestically.

All empty containers discharged are to be held at the place of unlading until the carrier transmits, in AMS, the actual list of containers discharged at the place of unlading. Upon such transmission, all empty containers shall be considered automatically released from Customs custody unless it is otherwise indicated by Customs that any or all are to be held. Since the AMS Empty Container Module does not allow electronic holds to be placed, any necessary holds will be placed through physical means. These requirements apply equally to domestic and foreign carriers.

9. In the case of Foreign Freight Remaining On Board (FROB) a vessel entering the United States and not intended for discharge in this country, test participants are required to transmit all bill of lading cargo data pertaining to such shipments at the first U.S. port of arrival. Such bills of lading shall be automatically released in AMS upon transmission of the data unless placed on hold with the test participant by Customs through electronic or other means. FROB bill of lading cargo data is subject to all of the same requirements and standards set forth in this document which apply to other bill of lading cargo data.

10. The penalties provided in law and regulations with respect to any discrepancy between the cargo described and identified to Customs and the cargo actually found to be aboard a vessel continue to remain in full force and effect during the test program.

11. The enormous reliance placed upon the vessel cargo declaration by Customs in its mission to interdict the flow of illegal narcotics into the United States cannot be overstated. Therefore, if the Director, Trade Compliance, Customs Headquarters, determines that a test participant's electronic transmissions of the cargo declaration are deficient to the extent that they compromise that mission in any manner, he may require that participant to submit a Customs Form 1302 Cargo Declaration for all or a portion of that party's vessel arrivals during the pendency of the test period. Such participant must submit the paper Customs Form 1302 in accordance with the requirements of Part 4 of the Customs Regulations (19 CFR Part 4).

Application Process

Parties desiring to participate in this test program must submit a written statement to the United States Customs Service, Cargo Control & Entry, 1301 Constitution Avenue, NW., Room 1328, Washington, D.C. 20229–0002, on or before 30 days from publication in the **Federal Register**. The document, signed by an authorized official of the carrier, must state that the carrier meets all qualifications as outlined in this document and wishes to voluntarily participate in the test. The statement must acknowledge that all submissions made to Customs as part of the test are required to be accomplished electronically. The document must also designate a national point of contact and telephone number, and shall also identify local contacts and telephone numbers for the use of Customs personnel at individual ports.

Bases for Participant Selection

Eligible importing carriers will be considered for participation in this test. Customs is looking for a variety of circumstances and participants in this test. We stress that those not selected for participation will be invited to comment on the test and to participate in its evaluation. Selection will be based on the depth of an applicant's electronic interface capabilities and the ability to meet all the user requirements in the CAMIR and in this notice. Participants selected will be notified by means of the Customs Electronic Bulletin Board.

III. Test Evaluation Criteria

Once participants are selected, Customs will meet to review all public comments received concerning any aspect of the test program or procedures, amend procedures as necessary in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria. Six months after implementation of the program, evaluations of the program will be commenced with the final results published in the **Federal Register** and Customs Bulletin as required by section 101.9(b), Customs Regulations (19 CFR 101.9(b)). The following evaluation methods and criteria have been suggested:

1. Establish baseline measurements through questionnaires to the trade and Customs port officials.

2. Use the results obtained through various Compliance Measurement programs related to vessel manifesting to determine the efficiency of electronic transmissions of the cargo data.

Preliminary choices of evaluation criteria for Customs and other government agencies include workload impact (workload shifts, cycle time, etc. * * *), policy and procedural accommodation, and trade compliance impact. Possible criteria for the trade participants are cost benefits, system efficiency, operational efficiency, and other items identified by the group.

In conclusion, it is emphasized that if a company is interested in participating in the test program, it must first be tested by Customs and become a qualified AMS carrier, or it may use a qualified AMS service center. It is also emphasized that a participant must transmit the electronic cargo declaration for all of its arrivals in all Customs ports, for all types of cargo. Upon arrival of a vessel at its first U.S. port, an electronic cargo declaration for all cargo aboard the vessel must be transmitted, regardless of the intended port of discharge.

Dated: September 5, 1996.

Samuel H. Banks,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 96–23084 Filed 9–9–96; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 61, No. 176
Tuesday, September 10, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV96-998-3 PR]

Domestically Produced Peanuts Handled by Persons Subject to Peanut Marketing Agreement No. 146; Changes in Terms and Conditions of Indemnification

Correction

In proposed rule document 96–21959, beginning on page 44192, in the issue of Wednesday, August 28, 1996, make the following correction:

On page 44192, in the **SUMMARY:** section, in the 2d column, on the 18th line, "$23000,000" should read "$300,000."

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AD41

Migratory Bird Hunting; Proposal for Approval of Bismuth-Tin Shot as a Nontoxic

Co ction

The correction to proposed rule document 96-20726 in the issue of Tuesday, August 27, 1996, is corrected as follows:

On page 44119, in the second column, in the fourth line, "effective date" should read "comment date".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94-055]

Licensing and Manning for Officers of Towing Vessels

Correction

In proposed rule document 96–21734, beginning on page 43720, in the issue of Monday, August 26, 1996, make the following correction:

On page 43720, in the **DATES:** section, on the second line, "September 25" should read "September 24".

BILLING CODE 1505–01–D

federal register

Tuesday
September 10, 1996

Part II

Department of Health and Human Services

Indian Health Service

Department of Housing and Urban Development

Department of the Interior

Bureau of Indian Affairs

Interdepartmental Agreement on Indian Housing Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3763–N–02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Interdepartmental Agreement on Indian Housing Program

AGENCIES: Offices of the Indian Health Service (HHS); the Assistant Secretary for Public and Indian Housing, (HUD); and the Bureau of Indian Affairs, (Interior).

ACTION: Notice of Interdepartmental Agreement.

SUMMARY: This notice announces an Interdepartmental Agreement which sets forth the guidelines by which HUD, the Bureau of Indian Affairs, and the Indian Health Service will coordinate their efforts in the delivery of services and financial assistance to Tribes and Indian Housing Authorities.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 755–0032. Hearing- or speech-impaired individuals may access this number by calling the Federal Relay Service TTY at 1–800–877–8339. (With the exception of the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. September 2, 1994 Notice of Proposed Interdepartmental Agreement

On September 2, 1994 (59 FR 45702) HUD published a notice which proposed to set forth the working relationship among HUD, the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with the planning and construction of new housing developed with financial assistance of HUD's Indian housing program.

The Interdepartmental Agreement (IA) establishes a general foundation for this cooperative effort and guidelines by which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision makers and the specific Federal agencies assisting in the development of the housing.

The BIA Housing Improvement Program (HIP) was eliminated from this IA to streamline the agreement among all signatory agencies in the development of HUD Indian housing programs. It is anticipated that the IHS and the BIA will be addressing the BIA–HIP separately. Other sections pertaining to program procedures are more appropriately covered in the program handbook or program NOFA and have been deleted from the IA.

HUD solicited public comments on the proposed IA. Eight comments were received. The following section of the preamble presents a summary of the comments raised by the commenters, and HUD's responses to these comments.

II. Comments on the September 2, 1994 Notice of Proposed Interdepartmental Agreement

Comment. Two commenters wrote that proposed section 5.2.1 of the IA, which concerns the construction of access roads, should be revised to clarify that the BIA "has responsibility for access roads which provide public access to cluster sites only and not private access to individual sites which the BIA is prohibited from constructing."

Response. HUD has adopted the comment by revising section 5.2.1 to exclude individual homesites from the access road construction requirements.

Comment. One commenter wrote that the language in proposed section 5.2.1 granting the BIA a lead time of 2½ years in the construction of access roads should be revised. The commenter believed that "in the 2½ year interim, the 'temporary' access road built by the IHA becomes unacceptable as there is a void of responsibility for constructing a permanent access road. The BIA should be required to pick up these roads immediately after the IHA has completed the project."

Response. HUD has not revised the IA as a result of this comment. Due to budgetary prioritization, the 2½ year time-frame is necessary for BIA to complete its part of the project.

Comment. Two of the commenters urged that the IA provide for greater coordination in National Environmental Policy Act (NEPA) compliance efforts. One of the commenters recommended that section 7.0 be revised to specify that each signatory agency will follow procedures in a manner which will avoid or minimize delays and that timelines for compliance will be included in time schedules worked out at the project coordination meeting. The other commenter suggested that the IA permit the designation of a lead agency "in performing NEPA compliance where the project encompasses the functions of all [three] agencies." The commenter believed this would expedite the development of a project by eliminating "multiple comment periods, multiple opportunities for litigation, and multiple FONSIs or EISs."

Response. Based upon the IHS's recommendation, HUD has revised the IA as a result of these comments. Section 7.0 now provides that in order to minimize delays, HUD, or the Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of all required environmental statements.

Comment. One commenter wrote that the IA should address land acquisitions since, according to the commenter, "acquisitions require as much coordination between the BIA and HUD as does development." Specifically, the commenter believes the BIA should delegate authority to area offices to approve land acquisitions. Alternatively, the commenter proposed that the BIA designate a person to exclusively review and approve HUD financed land acquisitions. Moreover, the commenter suggested that the IA require NEPA review of these acquisitions.

The commenter also suggested that HUD and the BIA coordinate their acquisition related time requirements. The commenter believed that, due to the time needed by the BIA to take land in trust, some IHAs may not be able to meet HUD's requirement that construction commence within 30 months of a program reservation date. The commenter urged that HUD and the BIA "negotiate time lines and procedures to avoid these conflicts."

Response. HUD and the BIA will work more closely in coordinating time requirements.

Comment. One commenter wrote to suggest that proposed section 2.2 of the IA be revised to specify that the BIA will review and approve all Tribal trust, restricted fee and allotted land housing leases in accordance with 25 CFR part 162. Furthermore, the commenter suggested additional language stating that BIA will review and approve all easements to housing sites in accordance with 25 CFR part 169. Lastly, the commenter recommended that proposed section 2.3 be revised to

require that all housing sites have approved easements and leases before the start of construction.

Response. HUD has adopted the first two elements of this comment. In reference to requiring the IHAs to complete all easements and leases prior to construction, this is a requirement that is inappropriate for this IA since the IA does not encompass the Indian Housing Authorities. This is a requirement that would more appropriately be added to the local Memorandum of Understanding (MOU).

Comment. One commenter objected to the fact that proposed section 2.2 of the IA "does not specifically state that the BIA is responsible for funding access road construction in HUD assisted housing projects." According to the commenter, "this weakens the BIA's responsibility of supporting HUD-assisted housing projects."

Response. HUD has not adopted this comment. The IA does not have the force of law, but merely sets forth the coordination efforts of HUD, the BIA, and the IHS. Accordingly, the comment is inappropriate for inclusion in the IA.

Comment. Two commenters objected to the language in proposed section 6.3, *IHS PARTICIPATION IN HUD FUNDED SANITATION FACILITIES CONSTRUCTION*, which states that the IHS "may participate" in the construction of sanitation facilities. According to the commenters "this statement does not adequately commit the IHS to execute their responsibility for sanitation system development which servers [sic] Native Americans."

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.3 to require that the IHS endeavor to participate in the construction of sanitation facilities.

Comment. One commenter wrote that because the IA's scope is limited to Indian mutual help and low rent programs, it does not go far enough in achieving coordination between the signatory Federal agencies. The commenter recommended that other programs, such as Indian HOME and the BIA Housing Improvement Program (HIP) be included in the IA.

Response. HUD has not revised the IA as a result of this comment. The HOME and HIP programs have different requirements and agency responsibilities. If the coordination of efforts becomes a problem for these programs, separate agreements can be negotiated.

Comment. One of the commenters recommended that language be inserted in section 5.0, *DEVELOPMENT OF ON-SITE AND OFF-SITE ROADS*, which includes the "standards of road design and construction that would be required to assure States, cities, counties, townships, etc. assume responsibility for the maintenance and up-keep of roads and streets within the on-site construction area." These standards would be in effect when the State and local government have construction and design requirements that exceed ASHTO requirements.

Response. HUD has not revised the IA as a result of this comment. Under 24 CFR 905.250, the IHAs are already required to comply with appropriate local road design standards.

Comment. One of the commenters recommended that the IA specify which agencies are responsible for the costs of complying with Federal, State, or local statutory requirements. Among other examples, the commenter pointed to the costs associated with meeting EPA environmental requirements.

Response. HUD has not revised the IA as a result of this comment. The question of financial responsibility for complying with the various statutory requirements is more properly addressed in the individual MOAs.

Comment. One commenter wrote that the IA was vague concerning IHS duties. The commenter urged that the IA be revised to specify that the IHS has the responsibility of providing water, waste water and solid waste facilities, and O&M infrastructure.

Response. Based on the IHS's recommendation, HUD has adopted this comment by revising section 6.2. This section now details the IHS's statutory authority and responsibility for utilizing HUD funds to provide sanitation facilities for HUD financed Indian homes.

The text of the Interdepartmental Agreement follows:

Interdepartmental Agreement on the Indian Housing Program

The Department of Housing and Urban Development—Office of Native American Programs

The Department of Interior—Bureau of Indian Affairs

The Department of Health and Human Services—Indian Health Service

1.0 Statement of Purpose

The purpose of the Interdepartmental Agreement (IA) is to set forth the working relationship among the Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA), and the Indian Health Service (IHS) in the delivery of services to Tribes and Indian Housing Authorities (IHAs) in conjunction with the planning and construction of new Indian housing developments. The above agencies share a common goal to assist Tribes in improving their living environment through the delivery of quality housing and infrastructure. This goal can be more readily achieved with an efficient and integrated utilization of available resources.

This Interdepartmental Agreement establishes a general foundation for this cooperative effort and the guidelines by which each of the three agencies will interact with Tribal governments and IHAs. The IA will be supplemented, as necessary, by individual Memorandums of Agreement (MOA) developed between local decision-makers and the specific federal agencies assisting in the development of the housing.

2.0 General Agency Responsibilities

2.1 *HUD Responsibilities.* HUD will provide financial and technical assistance for the development and management of low income housing and community developments in Indian and Alaska Native areas through the mutual help/low rent Indian Housing Development Program.

2.2 *BIA Responsibilities.* BIA will provide real estate and transportation assistance to IHAs pursuant to 25 CFR parts 162, 169, and 170. These services may include (i) assistance in preparing appropriate lease documents for housing sites and required easements; (ii) review, approval and recordation of all required trust or restricted fee land lease and easement documents; where resources are available, providing assistance in obtaining real estate appraisals; (iii) development of access roads to housing sites in accordance with the Tribe's road priorities; (iv) providing maintenance services to those IHA constructed roads and streets accepted into the BIA road systems in accordance with 25 CFR part 170; and (v) provision of other support, when available, necessary for the timely development of housing.

2.3 *IHS Responsibilities.* The IHS provides a comprehensive primary and preventive health services delivery system for American Indians and Alaska Natives. The environmental health component of IHS assists Tribes in the development of Tribal sanitation facilities [water, waste water, and solid waste facilities and operation & maintenance (O&M) infrastructure]. IHS has the primary responsibility and authority to provide Native American homes and communities with the necessary sanitation facilities and related services.

3.0 Agency Coordination

3.1 *Processing Procedures.* The signatories of the IA agree to maintain timely and relevant processing of regulations, handbooks, notices and other administrative guidance for use by Tribes and IHAs. All signatory agencies will be given an opportunity to comment on such documents before they are made effective.

3.2 *Program Administration.* The signatories of the IA agree to enforce the provisions of current program guidelines with their respective area/regional offices. Disputes between or among the signatory agencies may be made in writing to the head of the appropriate area or field office involved, with a copy to the other agencies. Unresolved disputes extending more than 90 days beyond the date of submission shall be referred, in writing, to the Headquarters Working Group for resolution. This group is composed of the Director, Office of Native American Programs in HUD; Director, Office of Trust Responsibilities in BIA; and the Director, Division of Environmental Health in IHS.

3.3 *Information Sharing.* Whenever possible, the signatory agencies will provide, or cause to be provided, copies of housing and supporting infrastructure planning documents, to include utility master plans, transportation plans, and IHA comprehensive housing plans, to the appropriate area/regional offices of other signatory agencies.

HUD Field Offices of Native American Programs will provide quarterly reports on the progress of HUD's assisted housing projects to BIA and IHS. These reports will indicate the method of construction, project number, and number of units. Scheduled and actual completion dates for applicable project review points will be provided, where available.

3.4 *Grant Award.* Signatory agencies will provide copies of applicable housing and supporting infrastructure grant/project award notices to the other signatory agencies as soon as practicable after notification to Tribes.

4.0 Development of Housing Units

4.1 *HUD Responsibilities.*

4.1.1 Applications. HUD will advise IHAs to use BIA and IHS information on existing infrastructure and new construction recommendations to support proposed housing project applications for funding.

4.1.2 Project Coordination. HUD will advise IHAs to use handbooks concerning procedures the IHA may use to determine what assistance they need from the BIA and IHS. At the request of a Tribe through the IHA, the BIA (including Area Road Engineers and Realty Officers) and IHS will provide, to the extent feasible, technical reviews and recommendations on project planning, design and construction documents involving supporting infrastructure, and related requirements at appropriate project review points. Appropriate project review points will be determined on a project by project basis and may include: project coordination schedule review, housing site feasibility review, project plan review, project final inspection, and record drawings review. Schedules or commitments made as a result of project coordination require the approval of the appropriate IHS and/or BIA official.

4.1.3 Standard vs Assisted Housing Development Method. The Standard Method of development refers to all procedures, guidelines and requirements associated with the normal development of an Indian housing project by an administratively capable IHA. The Assisted Method contains all of the procedures, guidelines and requirements associated with the development of an Indian housing development by an IHA which has requested additional HUD assistance due to its inexperience or lack of staff resources, or by an IHA which has been deemed by HUD to need additional assistance, monitoring and supervision during the development process. The Standard Method will require less technical assistance by the signatory agencies as compared to the Assisted Method.

4.2 *BIA Responsibilities.*

Leases, Easements and Real Estate Appraisals on Trust or Restricted Fee Property. Where resources are available, the BIA will provide real estate appraisals at the request of the IHA. All leases and easements shall be approved by the BIA.

5.0 Development of On-site and Off-site Roads

5.1 *HUD Responsibilities.*

On-Site Street Construction. HUD will provide sufficient funds for the construction of on-site streets, in accordance with the American Association of State Highway and Transportation Officials (AASHTO) standards. The IHA will have the overall responsibility for construction of on-site streets. The Tribal government must determine the type of streets to be constructed in conjunction with housing projects, and whether the streets will be included in the BIA Roads System for maintenance by the BIA. HUD will advise each IHA and Tribe which receives a HUD Housing Grant that the on-site streets must be designed and constructed to AASHTO standards to be eligible for inclusion on the BIA Roads System.

5.2 *BIA Responsibilities.*

5.2.1 Access Road Construction. When requested by the Tribal government, and when resources are available, the BIA will plan and construct access roads to housing developments, excluding individual homesites. Sufficient lead time is required to develop access roads. This lead time may be as much as 2½ years. The BIA will coordinate access road construction with the IHA and make every effort to complete such roads prior to the completion of the housing project.

5.2.2 Road/Street Maintenance. IHA-developed streets may be added to the BIA Roads System only when the street(s) and related curb, gutters and drainage features have been built to acceptable AASHTO specifications and standards as well as to the requirements of section 504 of the Americans with Disabilities Act, and the right-of-way is transferred to the BIA. When requested by the Tribal government, and when resources are available, the BIA Area Office will accept IHA developed streets on the BIA Roads System and will provide ongoing maintenance for those streets that meet the above specifications and standards.

6.0 Development of Sanitation Facilities

6.1 *HUD Responsibility.* To the extent that funds are appropriated by Congress, HUD will provide funding to IHAs to develop water, waste water, solid waste facilities, and O&M infrastructure necessary to support individual low-rent or mutual help housing projects financed by HUD. O&M infrastructure includes the plant, equipment, tools and training needed by utility authorities to provide continuing sanitation service to the residents of HUD-financed homes, as well as the long range planning necessary to identify and implement those requirements.

6.2 *IHS Authority.* Under section 302(b)(3) of the Indian Health Care Improvement Act. the IHS has the authority to receive HUD funds to provide sanitation facilities for Indian homes financed by HUD.

6.3 *IHS Participation in HUD Funded Sanitation Facilities Construction.* When requested by the Tribe and the IHA, IHS will endeavor to participate in the construction of sanitation facilities funded by HUD under the mutual help/low rent HUD-assisted housing development program. IHS participation will be on a project by

project basis, pursuant to an approved MOA duly executed by the IHA, Tribe, IHS, and if necessary, HUD.

6.4 *Individual and Community Sanitation Systems.* Where it is determined that sanitation facilities are feasible and necessary, the following conditions will apply:

6.4.1 HUD will finance the installation of all dwelling plumbing facilities.

6.4.2 Where facilities serve only HUD-assisted housing project homes, HUD will fund the total cost of the sanitation facilities necessary to serve the project. Where HUD-assisted housing project homes are interspersed with existing homes also served by a sanitation facility, HUD shall fund a prorated share of sanitation facilities costs. All community sanitation system construction, improvement, or expansion will be designed on the basis of a total community concept, such that the proposed sanitation facilities are (a) safe and adequate to meet the environmental health needs of residents, (b) compatible with Tribal infrastructure development, (c) economically feasible to construct and operate, and (d) in compliance with applicable codes, ordinances, and industry standards.

7.0 Environmental Compliance

Each signatory agency (HUD, BIA, and IHS) shall be responsible for following its own applicable procedures addressing the requirements of the National Environmental Policy Act (NEPA), and related and/or similar environmental legislation and/or Executive Orders. A Memorandum of Understanding (MOU), dated June 21, 1991, signed by BIA, HUD, IHS, and the Environmental Protection Agency, clarifies each agency's role in environmental protection.

In the implementation of the roles and responsibilities identified in the MOU and herein, signatory agencies will, to the extent feasible, adopt and/or combine environmental documents which are provided by the other signatory agencies. Joint use of environmental documents that comply with NEPA and related regulations will reduce duplication and paperwork. Copies of one signatory agency's environmental determination documentation (e.g., archeological review) may be required by another signatory agency prior to granting approvals; however, the approving agency shall not require the applying agency to change procedures, format, etc., during the review process and prior to granting its approval.

Unless otherwise provided for in a duly executed MOA, HUD, or a Tribal government which has assumed HUD's NEPA responsibility, shall be the lead agency for the preparation of environmental review, assessments and impact statements in compliance with NEPA for all HUD-assisted housing and related infrastructure projects. When BIA and IHS participate directly in these projects, they shall be cooperating agencies for the purposes of NEPA compliance.

Dated: April 30, 1996.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

Dated: August 19, 1996.

Bruce Babbitt,

Secretary, Department of the Interior.

Dated: May 6, 1996.

Henry G. Cisneros,

Secretary, Department of Housing and Urban Development.

[FR Doc. 96–22923 Filed 9–9–96; 8:45 am]

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Tuesday
September 10, 1996

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 524, et al.
Editorial Amendments for Classification and Program Review, and Education Tests; Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 524, 541, 544, and 571

[BOP–1057–F]

RIN 1120–AA58

Editorial Amendments for Classification and Program Review; Inmate Discipline; Education, Training, and Leisure Time Program Standards; and Release Gratuities

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending four of its regulations to remove obsolete provisions, update cross-references, or to clarify procedures. More specifically, the regulations for classification and program review are amended by removing procedures for the preparation of a now obsolete form (the staff summary report) and to include a cross reference to regulations for pretrial inmates; the regulations on inmate discipline are amended by substituting control unit programs for references to United States Penitentiary, Marion; the regulations on education, training, and leisure time program standards are amended to update the reference to the release preparation program; and the regulations for release gratuities are amended to minimize confusion regarding statutory limits on maximum amounts. These amendments are intended to maintain the efficient operation of the institution and the Bureau.

EFFECTIVE DATE: September 10, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on classification and program review; inmate discipline and special housing units; education, training, and leisure-time program standards; and on release gratuities, transportation, and clothing. A final rule on classification and program review (28 CFR part 524, subpart B) was published in the **Federal Register** on July 3, 1991 (56 FR 30676) and was amended on August 5, 1992 (57 FR 34662) and on June 27, 1995 (60 FR 33320). A final rule on inmate discipline and special housing units (28 CFR part 541, subpart B) was published on January 5, 1988 (53 FR 197) and was amended on October 17, 1988 (53 FR 40686), September 22, 1989 (54 FR 38987 and 39095), February 1, 1991 (56 FR 4159), July 10, 1991 (56 FR 31530), June 2, 1992 (57 FR 23260), and July 21, 1993 (58 FR 39095). A final rule on education, training, and leisure time program standards was published on December 16, 1993 (58 FR 65852). A final rule on release gratuities, transportation, and clothing (28 CFR part 571, subpart C) was published on May 21, 1991 (56 FR 23480).

The regulations on classification and program review (§ 524.12(f)) require Bureau staff to prepare a summary for inmates applying for a transfer under the treaty transfer program, for study and observation cases, and for inmates for whom no presentence investigation is available. This information need no longer be required under regulations for classification and program review because equivalent information is obtained either as part of the court-ordered study and observation, by revised regulations issued for treaty transfer cases (see 28 CFR 527, subpart E), or is provided by the Probation Office in lieu of a Presentence Investigation Report. The Bureau is therefore removing paragraph (f) and that portion of the text in § 524.16 which had been pertinent to study and observation cases ("except for the preparation of a staff summary as noted in § 524.12(f) of this part"). A new § 524.17 has been added to refer to existing regulations pertinent to pretrial inmates. Additional editorial changes include the correction of a typographical error in § 524.12(c) and an updated reference in § 524.15 to the recently retitled Administrative Remedy Program.

The regulations on inmate discipline and special housing required that staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention shall return the inmate (with the exception of inmates in the United States Penitentiary, Marion, or pretrial inmates) to the general inmate population or request transfer to a more suitable institution (§ 541.22(a)(6)(i)). Further provisions covered review of the status of such inmates (§ 541.22(a)(6)(ii) and (iii)). Because of a mission change for the United States Penitentiary, Marion, (which had served as a control unit) this requirement is no longer technically correct, and the Bureau is therefore replacing the reference to that specific institution with a generic reference to control unit programs. This revision obviates the need to make future adjustments to these regulations based upon changes in the location of a control unit program. Regulations for the operation of control unit programs are contained in 28 CFR part 541, subpart D.

The regulations for education, training, and leisure-time program standards are amended to update the reference in § 544.81(g) to the retitled release preparation program.

The regulations for release gratuities had noted that the maximum for a discretionary gratuity was $500 and referenced 18 U.S.C. 3624(d) as the authorizing statute (§ 571.20). This statute pertains to offenders sentenced under the provisions of the Sentencing Reform Act (18 U.S.C. Chapter 227). Inmates sentenced under the former provisions of that Chapter continue to be subject to the statutory limitation of $100 authorized by 18 U.S.C. 4281. In order to eliminate false expectations in those inmates governed by 18 U.S.C. 4281 as to the amount of a possible gratuity, the Bureau has reworded the provision to state that a discretionary gratuity may be granted up to the amount permitted by statute.

Because these amendments are administrative in nature and impose no additional restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Parts 524, 541, 544, 571

Prisoners.

Peter M. Carlson,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 524, 541, 544, and 571 in subchapters B, C, and D respectively, of 28 CFR, chapter V are amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 524.12 [Amended]

2. In § 524.12, paragraph (c) is amended by revising the phrase "at attend" in the third sentence to read "to attend", and paragraph (f) is removed.

§ 524.15 [Amended]

3. Section 524.15 is amended by revising the phrase "Administrative Remedy Procedure" to read "Administrative Remedy Program".

4. Section 524.16 is revised to read as follows:

§ 524.16 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

5. A new § 524.17 is added to subpart B to read as follows:

§ 524.17 Pretrial inmates.

Additional provisions pertinent to pretrial inmates are contained in § 551.107 of this chapter.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

6. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

7. In § 541.22, paragraph (a)(6) (i), (iii), and (iv) are revised to read as follows:

§ 541.22 Administrative detention.

* * * * *

(a) * * *

(6) * * *

(i) Except for pretrial inmates or inmates in a control unit program, staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention shall either return the inmate to the general inmate population or request regional level assistance to effect a transfer to a more suitable institution.

* * * * *

(iii) Staff in a control unit will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a control unit program may not be available outside of post-discipline detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review (for purpose of making a disposition) the case of an inmate in a control unit program not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (a)(6)(iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

* * * * *

PART 544—EDUCATION

8. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

9. In § 544.81, paragraph (g) is revised to read as follows:

§ 544.81 Program goals.

* * * * *

(g) Participate in a Release Preparation program; and

* * * * *

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

10. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

11. Section 571.20 is revised to read as follows:

§ 571.20 Purpose and scope.

It is the policy of the Bureau of Prisons that an inmate being released to the community will have suitable clothing, transportation to the inmate's release destination, and some funds to use until he or she begins to receive income. Based on the inmate's need and financial resources, a discretionary gratuity up to the amount permitted by statute may be granted.

[FR Doc. 96–23045 Filed 9–9–96; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1031–F]

RIN 1120–AA44

Education Tests: Minimum Standards for Administration, Interpretation, and Use

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is rescinding its regulations on Minimum Standards for Administration, Interpretation, and Use of Education Tests. Guidelines established by test publishers are adequate for the administrative processing of education tests. Because correctional management issues pertinent to specific education programs are covered by separate Bureau regulations, there is no need to maintain duplicative regulatory provisions for education test standards.

EFFECTIVE DATE: September 10, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320

First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is rescinding its regulations on minimum standards for the administration, interpretation, and use of education tests (28 CFR part 544, subpart B). A final rule on this subject was last published in the **Federal Register** February 21, 1990 (55 FR 6178).

In accordance with E.O. 12866, the Bureau is reviewing its regulations for the purpose of ensuring that it promulgates only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need. The Bureau has determined that separately stated regulations on minimum standards for the administration, interpretation, and use of education tests are no longer necessary. Applicability provisions contained in § 544.11 are duplicated in the regulations for specific education programs such as the literacy program (28 CFR part 544, subpart H) or English-as-a-Second Language program (28 CFR part 544, subpart E). Test procedures specified in § 544.12 either are covered by guidelines established by the test providers themselves or may be handled by staff as strictly administrative matters. Revisions to the regulations for the literacy program have made obsolete the provisions in § 544.13 on the consequences of a refusal to take the Adult Basic Level Examination or other standardized test.

Because this rescission imposes no new restrictions on inmates and provides the Bureau with the flexibility to implement administrative procedures related to education tests, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 544

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR part 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 544.10—544.13 (Subpart B)—[Removed and Reserved]

2. Subpart B consisting of §§ 544.10 through 544.13 is removed and reserved.

[FR Doc. 96–23044 Filed 9–9–96; 8:45 am]

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federal register

Tuesday
September 10, 1996

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation; Performance-Based Payments; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 96–005]

RIN 9000–AH22

Federal Acquisition Regulation; Performance-Based Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address residual material and certain liability provisions at 52.232–32, Performance-Based Payments. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before November 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 96–005 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–005.

SUPPLEMENTARY INFORMATION:

A. Background

The current FAR clause 52.232–32, Performance-Based Payments, addresses a method of contract financing, and was implemented in Federal Acquisition Circular 90–33, dated September 26, 1995, effective as of October 1, 1995. Paragraph (f), *Title*, of the clause was intended to be functionally equivalent to paragraph (d) of 52.232–16, Progress Payments, which is another type of contract financing. However, the topics of title to residual material and liability for government-furnished property acquired under the contract, addressed in 52.232–16(d)(6) and (7) of the Progress Payments clause, were inadvertently omitted from the Performance-Based Payments clause. This rule proposes to amend FAR 52.232–32 by adding paragraphs (f)(6) and (7) to address these topics.

B. Regulatory Flexibility Act

The proposed changes are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and performance based payments are rare. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR section will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96–005) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: September 4, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.232–32 is amended by revising the clause date; redesignating the heading of paragraph (f)(1) as the heading of paragraph (f), and adding new paragraphs (f)(6) and (7) to read as follows:

52.232–32 Performance-Based Payments.

* * * * *

PERFORMANCE-BASED PAYMENTS (DATE)

* * * * *

(f) *Title.* (1) * * *

* * * * *

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

* * * * *

[FR Doc. 96–23030 Filed 9–9–96; 8:45 am]

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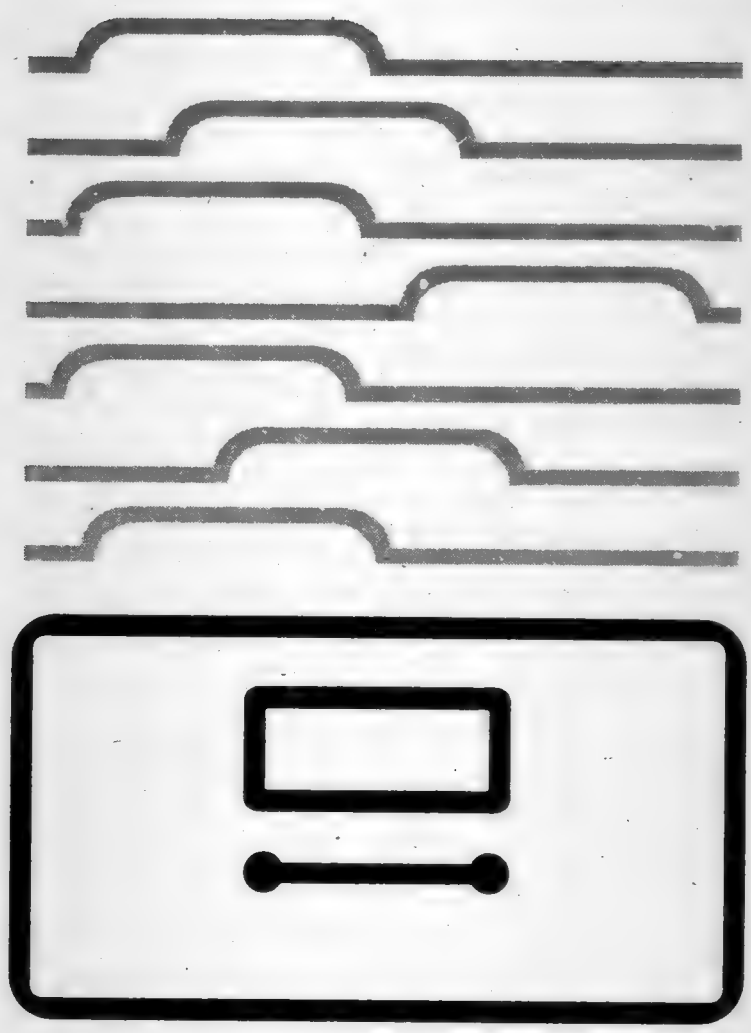

NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 282, 299 and 499

[INS No. 1638–95]

RIN 1115–AD58

Immigration and Nationality Forms

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service's (Service) regulations by updating the listing of forms currently in use by the Service. This revision is necessary to ensure that only current editions of forms listed in the regulations are used and the public has access to correct information concerning public use forms that have been approved for use by the Office of Management and Budget, and forms available for purchase from the Superintendent of Documents. This rule also provides approved Service standards which, when followed, will allow the public to electronically generate Service forms.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, Telephone: (202) 514–3291.

SUPPLEMENTARY INFORMATION: On May 17, 1994, the Service published an interim rule with request for comments in the **Federal Register** at 58 FR 25555–25561. The interim rule:

(1) Revised §§ 299.1 and 499.1 by updating the listing of the prescribed forms to be used in compliance with the provisions of Title 8 of the Code of Federal Regulations;

(2) Revised § 299.3 by updating the listing of forms that could be purchased from the Superintendent of Documents, their stock numbers, and prices;

(3) Provided standards in § 299.4 which, when followed, would allow the public to take advantage of the automated technology available in the marketplace to electronically generate Service forms that would be deemed acceptable for processing; and

(4) Revised § 299.5 to reflect current public use forms and their respective Office of Management and Budget (OMB) control numbers.

The comment period for the interim rule ended on July 18, 1994. The Service received comments from five commenters. The following is a discussion of those comments along with the Service's response.

Acceptance of Computer-Generated Form I–20

A majority of the commenters expressed enthusiastic appreciation for the opportunity to utilize laser printed I–20 Forms. One commenter stated that, during peak periods, the computerized forms saved 15 staff hours of processing time per week, and another commenter stated that the productivity of school office staff increased dramatically.

Still another commenter offered congratulations to the Service for addressing the needs and desires of those using our forms and could find nothing to change in the interim rule.

The Service is encouraged by these comments and will continue to try to accommodate the needs of the public while still maintaining our proposed standards.

Non-Acceptance of Computer-Generated Form I–20

One commenter urged the Service to reconsider its utilization of computer-generated Form I–20. The commenter opined that the use of such documents encouraged fraud and suspicion.

The Service appreciates these comments and feels it necessary to reassure this commenter that the computer-generated Form I–20 will be processed by officers of the Service, who are highly trained in detecting fraudulent documents. However, to alleviate these fears, the Service has issued policy guidance to the field which states that those private entities that electronically generate Form I–20 in single page format rather than double sided format, will be required to include the student's name, school, and date of birth in a shaded box on the top of page 4, using the same type size and font style as the body of the form. This policy has been included in § 299.4(b)(1) of this final rule and will continue to allow the private sector to electronically produce the Form I–20 while providing the latest safeguards against fraudulent Form I–20's being submitted.

Other Topics Addressed

Another commenter was very complimentary about the entire change in policy concerning the acceptance of electronically generated forms and suggested that the Service revise the language contained in § 299.4(d) concerning the use of laser printers or near-letter-quality printers. Specifically, this commenter felt that the Service needed to address future changes in printer technologies. The Service concurs with this suggestion and is revising the language in § 299.4(d) to allow for the use of electronic printers that provide near-letter-quality documents to generate electronic forms.

Final Rule

In addition to the changes being incorporated into § 299.4 (b)(1) and (d) of this final rule, the Service is also:

(1) Removing 8 CFR part 282 which includes certain language that is already contained in section 282 of the Immigration and Nationality Act and which will be included in 8 CFR 299.3;

(2) Amending § 299.3 by updating the listing of forms that could be purchased from the Superintendent of Documents, the related stock numbers, and prices;

(3) Amending §§ 299.1 and 299.4 by updating the listing of the prescribed forms to be used in compliance with the provisions of Title 8 of the Code of Federal Regulations;

(4) Amending § 299.4(b)(3) and (e) to remove the office title "Records Systems Division"; and by

(5) Amending § 299.5 to reflect current public use forms and their respective OMB control numbers.

The new actions to remove 8 CFR part 282 and amending § 299.4(b)(3) and (e) as described above are based on the "good cause" exception found at 5 U.S.C. 553(d)(3). These actions will not affect the public and are being done purely for administrative purposes.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is primarily administrative in nature and merely updates the existing forms listings currently contained in Title 8 of the Code of Federal Regulations. In addition, this rule is intended to benefit small entities by providing them with specific standards which, if followed, will enable them to take advantage of existing computer technology available in the marketplace to electronically reproduce Service forms.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 282

Forms, Immigration.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 499

Citizenship and naturalization, Nationality forms.

Accordingly, the interim rule amending 8 CFR parts 299 and 499 which was published at 59 FR 25555–25561 on May 17, 1994, is adopted as a final rule with the following changes:

PART 282—FORMS FOR SALE TO PUBLIC

1. Part 282 is removed.

PART 299—IMMIGRATION FORMS

2. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

3. Section 299.1 is amended by: a. Removing the entries for Forms "I–328" and "I–591"; and by b. Revising the entries for Forms "FD–258", "G–639", "I–102", "I–104", "I–246", "I–551", "I–586", "I–589", "I–602", "I–607", "I–688", "I–688B", "I–765", and "I–775" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
FD–258	12–29–82	Applicant Fingerprint Card.
*	*	*
G–639	03–21–94	Freedom of Information Act/Privacy Act Request.
*	*	*
I–102	06–13–95	Application for Replacement/Initial Nonimmigrant Arrival/Departure Document.
I–104	11–01–84	Alien Address Report Card.
*	*	*
I–246	01–15–86	Application for Stay of Deportation.
*	*	*
I–551	01–31–77	Alien Registration Receipt Card.
*	*	*
I–586	04–30–77	Nonresident Alien Border Crossing Card.
I–589	11–16–94	Application for Asylum and for Withholding of Deportation.
*	*	*
I–602	10–01–85	Application by Refugee for Waiver on Grounds of Excludability.
I–607	02–01–72	Order Re Waiver of Excludability Pursuant to Section 212(h), (i) and Permission to Reapply.
*	*	*
I–688	01–01–89	Temporary Resident Card.
*	*	*
I–688B	08–07–93	Employment Authorization Card.
*	*	*
I–765	04–25–95	Application for Employment Authorization.
I–775	05–12–94	Visa Waiver Pilot Program Agreement.
*	*	*

4. The introductory text for § 299.3 is revised to read as follows:

§ 299.3 Forms available from Superintendent of Documents.

The Immigration and Naturalization Service forms listed in this section may be obtained, upon prepayment, from the Superintendent of Documents, who is authorized to print these forms for sale to the public. Prices are set by the Superintendent of Documents, Government Printing Office, and are subject to change without notice. A small supply of these forms shall be set aside by immigration officers for free distribution and official use.

* * * * *

§ 299.3 [Amended]

5. Section 299.3 is amended by removing the entries for Forms "I–102", "I–526", "I–600" and "I–600A".

6. Section 299.3 is amended by adding the entries for Forms "I–765" and "I–817" in proper numerical sequence, to the listing of forms, to read as follows:

§ 299.3 Forms available from the Superintendent of Documents.

* * * * *

Form No.	GPO stock No. (S/N)	Price per 100/pd
*	*	*
I–765	027–002–00441–8	49.00
I–817	027–002–00415–9	36.00
*	*	*

7. Section 299.3 is amended by revising the entries for forms "I–20MN", "I–94 (English)", "I–129F", and "I–693", to read as follows:

§ 299.3 Forms available from Superintendent of Documents.

* * * * *

Form No.	GPO stock No. (S/N)	Price per 100/pd
* * * * *		
I–20MN	027–002–00403–5	26.00
* * * * *		
I–94(English)	027–002–00318–7	11.00
* * * * *		
I–129F	027–002–00389–6	26.00
* * * * *		
I–693	027–002–00355–1	43.00
* * * * *		

* * * * *

8. Section 299.4 is amended by:

a. Revising the introductory text in paragraph (b);

b. Revising paragraph (b)(1);

c. Revising paragraph (b)(3);

d. Revising paragraph (d); and by

e. Revising paragraph (e), to read as follows:

§ 299.4 Reproduction of Public Use Forms by public and private entities.

* * * * *

(b) *Requirements for electronic generation.* Public or private entities may electronically generate forms required for applying for a specific benefit, in compliance with the immigration and naturalization regulations, at their own expense. This includes forms that have been made available for purchase by the Superintendent of Documents, as listed in § 299.3 provided that each form satisfies the following requirements:

(1) An electronic reproduction must be complete, containing all questions which appear on the official form. The wording and punctuation of all data elements and identifying information must match exactly. No data elements may be added or deleted. The sequence and format for each item on the form must be replicated to mirror the authorized agency form. Each item must be printed on the same page in the same location. Likewise, multiple-part sets may be printed as single sheets provided that the destination of the carbon copy is clearly identified on the bottom of the form. Private entities must reproduce forms on the same colored paper that is used on the official form. In the case of the Form I–20 A–B/I–20ID, Certificate of Eligibility for Nonimmigrant (F–1) Student Status—For Academic and Language Students, private entities may generate this form in single-page format rather than double-sided format, provided that the student's name, school, and date of birth is printed in a shaded box on the top of page 4 of the form, using the same type size and font style as the body of the form.

* * * * *

(3) The final form must be approved for use by the Director, Policy Directives and Instructions Branch. The form should be mailed to the address listed in paragraph (e) of this section for approval.

* * * * *

(d) Electronic printers that provide for near-letter-quality documents should be used to generate electronic forms. Dot matrix printers that are only capable of producing draft quality documents should not be used for form generation, but may be used for the entry of data in a preprinted form where appropriate.

(e) Any form with poor print quality or other defect which renders it illegible, difficult to read, or displays added or missing data elements, will be rejected by the Service. Any problems regarding the acceptability of a specific electronic version of a particular Service form may be brought to the attention of the Director, Policy Directives and Instructions Branch, 425 "I" Street, NW., Room 5307, Washington, DC 20536, telephone number (202) 514–3048.

§ 299.5 [Amended]

9. Section 299.5 is amended by removing the entries for Forms "I–591" and "G–897".

10. Section 299.5 is amended by:

a. Adding the entries for Forms "I–847" and "I–855", to the listing of forms, in proper numerical sequence; and by

b. Adding the entries for the "Telephone Verification System (TVS) Pilot Phase II" and the "Generic Clearance of Customer Service Surveys" immediately after the last entry in the second column, "INS form title" to read as follows:

§ 229.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* * * * *		
I–847	Report of Complaint.	1115–0191
* * * * *		
I–855	ABC Change of Address Form.	1115–0197
* * * * *		
	Telephone Verification System (TVS) Pilot Phase II.	1115–0192
	Generic Clearance of Customer Service Surveys.	1115–0195

PART 499—NATIONALITY FORMS

11. The authority citation for part 499 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

12. Section 499.1 is amended by revising the entries for Forms "M–288", "M–289", "M–290", "M–291", "N–4", "N–565", and "N–643" to read as follows:

§ 499.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title and description
M–288	12–30–87	United States History 1600–1987, Level II.
M–289	12–31–87	United States History 1600–1987, Level I.
M–290	01–01–90	U.S. Government Structure, Level II.
M–291	12–31–87	U.S. Government Structure, Level I.
* * * * *		
N–4	12–14–93	Monthly Report—Naturalization Papers Forwarded.
* * * * *		
N–565	11–18–93	Application for Replacement Naturalization/Citizenship Document.
* * * * *		
N–643	05–10–93	Application for Certificate of Citizenship on Behalf of an Adopted Child.
* * * * *		

Dated: August 7, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–23035 Filed 9–10–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-ANE-72; Amendment 39-9749; AD 96-19-01]

RIN 2120-AA64

Airworthiness Directives; Allison 250 Series Turbine Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison 250 series turbine engines. This action requires initial and repetitive visual inspections of all engine filters for metal particles resulting from premature wear of two bearings produced under Parts Manufacture Approval (PMA) by Superior Air Parts, Inc. In addition, this AD requires replacement of those bearings with bearings that incorporate improved retainers, which constitutes terminating action to the inspection requirements of this AD. This amendment is prompted by a report of a failure during a ground test of an engine with bearings manufactured by Superior Air Parts, Inc. The actions specified in this AD are intended to prevent bearing failure due to bearing separator instability, which can result in subsequent turbine and engine failure.

DATES: Effective September 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 26, 1996.

Comments for inclusion in the Rules Docket must be received on or before November 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-ANE-72, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "epd-adcomments@mail.hq.faa.gov". All comments must contain the Docket No. in the subject line of the comment.

The service information referenced in this AD may be obtained from Superior Air Parts, Inc., 14280 Gillis Rd., Dallas, TX 75244-3792; telephone (800) 487-4884, fax (214) 490-8471. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard D. Karanian, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137-4298; telephone (817) 222-5195, fax (817) 222-5136.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report of a chip detector light on an Allison 250 turboshaft engine during a helicopter flight. The pilot returned to base and the ground crew commenced with an inspection to determine the cause. Metal particles, including silver flakes, were discovered on the chip detector; however, a preliminary inspection failed to determine where the metal particles originated. In accordance with the applicable service instruction, an engine ground run was initiated. Approximately two hours into the ground run, the engine began to vibrate. The ground run was discontinued and the engine was disassembled. An inspection revealed that the No. 5 bearing, part number (P/N) A6871505, produced under Parts Manufacture Approval (PMA) by Superior Air Parts, Inc., had failed. In addition, the FAA has received reports of 5 more incidents where metal particles were found, resulting in the removal of four No. 5 bearings, P/N A6871505, and one No. 8 bearing, P/N A23007152. This condition, if not corrected, could result in bearing failure due to bearing separator instability, which can result in subsequent turbine and engine failure.

The FAA has reviewed and approved the technical contents of Superior Turbine Service Bulletin (SB) No. T95-SB001, Revision A, dated September 29, 1995, and SB No. T95-SB002, Revision A, dated September 29, 1995, that describe procedures for initial and repetitive visual inspections of all engine filters for metal particles resulting from wear of bearing ball retainer.

Since an unsafe condition has been identified that is likely to exist or develop on other Allison 250 series turbine engines of the same type design, this AD is being issued to prevent bearing failure. This AD requires an initial visual inspection within 20 days after the effective date of this AD, followed by repetitive inspections at intervals not to exceed 25 hours time in service (TIS) since last inspection for the first 300 hours TIS of engine operation. After accumulating greater than 300 hours TIS of engine operation, the inspections must be accomplished at intervals not to exceed 100 hours TIS since last inspection. The repetitive inspections must be performed until engine overhaul, or repair or maintenance when disassembly permits replacement of the bearing, whichever occurs first. At that time, remove the No. 5 bearing, Superior P/N A6871505, and replace with a serviceable No. 5 bearing, Allison P/N 6871505; and remove the No. 8 bearing, Superior P/N A23007152, and replace with a serviceable No. 8 bearing, Allison P/N 23031478. The Allison bearings incorporate improved retainers, and Superior Air Parts, Inc. no longer manufactures replacement bearings. Replacement with these serviceable bearings constitutes terminating action to the inspection requirements of this AD. The actions are required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that

summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–72." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–01 Allison: Amendment 39–9749. Docket 95–ANE–72.

Applicability: Allison Model 250–B15G,–B17F, –B17F/1, –B17F/2, –C20, –C20B, –C20F, –C20J, –C20S, –C20W, –R, –C20R/1, –C20R/2, –C20R/4, –C28B, –C28C, –C30, –C30P, –C30M, and –C30G turbine engines, with Superior Air Parts, Inc. Parts Manufacture Approval (PMA) bearings, Part Number (P/N) A6871505 and P/N A23007152, installed. These engines are installed on but not limited to the following aircraft: Aerospace Technologies of Australia PTY Ltd. N–22 and N–24; Agusta S.p.A A109 series, SF600 series; Beech Aircraft Corp. A36 and T34 (Tradewind Turbines conversion); Bell Helicopter Textron Model 47 (Soloy Conversion), OH58 series, 206 series, 230, 430; Cessna 206 and 207 (Soloy Conversions); Enstrom Helicopter Corp. TH28, 480; Eurocopter Deutschland GmbH BO105 series; Eurocopter France AS355 series; Flugzeugwerke Altenrheim AG (FFA) AS202 series; Hiller Aviation UH12 series (Soloy Conversions); Maule Aerospace Technology Corp. MX–7 series; McDonnell Douglas Helicopter Co. OH6 series, 500 series, MD500 series, MD520N series, MD530 series; Partenavia Costruzioni Aeronautiche S.p.A P68 series; Pilatus Britten-Norman Ltd. BN–2T; and Sikorsky Aircraft Division S76 series.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent bearing failure due to bearing separator instability, which can result in subsequent turbine and engine failure, accomplish the following:

(a) For engines with No. 5 bearings, Superior P/N A6871505, installed, accomplish the following:

(1) Within 20 days after the effective date of this AD, perform an initial visual inspection of all engine filters for metal particles in accordance with Superior Turbine Service Bulletin (SB) No. T95–SB001, Revision A, dated September 29, 1995. If any engine filter contains metal particles that exceed the return to service criteria described in that SB, prior to further flight, remove the No. 5 bearing, Superior P/N A6871505, and replace with a serviceable No. 5 bearing, Allison P/N 6871505.

(2) Thereafter, for engines with No. 5 bearing, Superior P/N A6871505, installed, perform visual inspections of all engine filters for metal particles in accordance with Superior Turbine SB No. T95–SB002, dated September 29, 1995, and, if necessary, replace with serviceable parts, at intervals not to exceed the following:

(i) For engines with 300 hours or less TIS since overhaul, or TSN if never overhauled, perform inspections at intervals not to exceed 25 hours TIS since last inspection.

(ii) For engines with more than 300 hours TIS since new or overhaul, whichever is lesser, perform inspections at intervals not to exceed 100 hours TIS since last inspection.

(b) For engines with No. 8 bearings, Superior P/N A23007152, installed, accomplish the following:

(1) Within 20 days after the effective date of this AD, perform an initial visual inspection of all engine filters for metal particles in accordance with Superior Turbine SB No. T95–SB002, Revision A, dated September 29, 1995. If any engine filter contains metal particles that exceed the return to service criteria described in that SB, prior to further flight, remove the No. 8 bearing, Superior P/N A23007152, and replace with a serviceable No. 8 bearing, Allison P/N 23031478.

(2) Thereafter, for engines with No. 8 bearing, Superior P/N A23007152, installed, perform visual inspections of all engine filters for metal particles in accordance with Superior Turbine SB No. T95–SB002, dated September 29, 1995, and, if necessary, replace with serviceable parts, at intervals not to exceed the following:

(i) For engines with 300 hours or less TIS since overhaul, or TSN if never overhauled, perform inspections at intervals not to exceed 25 hours TIS since last inspection.

(ii) For engines with more than 300 hours TIS since new or overhaul, whichever is lesser, perform inspections at intervals not to exceed 100 hours TIS since last inspection.

(c) At the next engine overhaul, or repair or maintenance when disassembly permits replacement of the bearing, after the effective date of this AD, whichever occurs first, remove the No. 5 bearing, Superior P/N A6871505, and replace with a serviceable No. 5 bearing, Allison P/N 6871505; and remove the No. 8 bearing, Superior P/N A23007152, and replace with a serviceable No. 8 bearing, Allison P/N 23031478.

(d) Installation of serviceable bearings in accordance with paragraph (c) of this AD, constitutes terminating action to the inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Special Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Special Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Special Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be done in accordance with the following Superior Turbine service documents:

Document No.	Pages	Revision	Date
SB No. T95–SB001	1–2	A	Sept. 29, 1995.
Total pages: 2.			
SB No. T95–SB002	1–2	A	Sept. 29, 1995.
Total pages: 2.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Superior Air Parts, Inc., 14280 Gillis Rd., Dallas, TX 75244–3792; telephone (800) 487–4864, fax (214) 490–8471. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 26, 1996.

Issued in Burlington, Massachusetts, on August 30, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–22922 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–212–AD; Amendment 39–9751; AD 96–19–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 and MD–11 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 and MD–11 series airplanes and KC–10A (military) airplanes, that requires repetitive inspections to detect corrosion or failure of the steel Hi-Lok fasteners at the inboard flap inboard track, and replacement of corroded/failed steel Hi-Lok fasteners with inconel Hi-Lok fasteners. This amendment also provides for termination of the repetitive inspections by replacing all of the steel Hi-Lok fasteners with inconel Hi-Lok fasteners. This amendment is prompted by reports of failed and/or corroded steel fasteners found in the inboard flap inboard track due to stress corrosion. The actions specified by this AD are intended to prevent such stress corrosion, which could result in binding of the flap and inability of the flap to extend or retract; this situation may lead to asymmetric flap deployment and subsequent reduced controllability of the airplane during flight.

DATES: Effective October 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 and MD–11 series airplanes and KC–10A (military) airplanes was published in the **Federal Register** on April 19, 1996 (61 FR 17261). That action proposed to require repetitive visual inspections to detect corrosion or failure of the steel Hi-Lok fasteners at the inboard flap inboard track. That action also proposed to require replacement of corroded/failed steel Hi-Lok fasteners with inconel Hi-Lok fasteners. In addition, that action proposed to provide for an optional terminating action for the repetitive inspection requirements by replacing all the steel Hi-Lok fasteners with Hi-Lok fasteners made of inconel.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Allow Installation of Steel Hi-Lok Fasteners

One commenter requests that the proposal be revised to allow the replacement of corroded or damaged steel fasteners with the same part-numbered steel Hi-Lok fasteners, instead of inconel Hi-Lok fasteners. This commenter raises concerns about the timely availability of replacement fasteners. The commenter points out that procuring inconel Hi-Lok fasteners may entail a lead time of several months, but steel Hi-Lok fasteners are readily available. Mandating the use of only inconel fasteners as replacement parts could result in many aircraft being grounded unnecessarily due to the unavailability of parts.

The FAA concurs with this commenter's request. The FAA finds that an acceptable level of safety will be maintained if failed or corroded steel Hi-Lok fasteners are replaced with like steel fasteners and repetitively inspected. (Additionally, the McDonnell Douglas service bulletins referenced in the AD contain a statement indicating: "If inconel Hi-Loks are unavailable, operators may use same material steel Hi-Loks as removed.") This finding, however, does not affect the terminating action provided in this AD, which, if accomplished, requires the replacement of all fasteners with ones made of inconel.

Paragraphs (a)(2)(i) and (b)(2)(i) of the final rule have been revised to allow fasteners to be replaced with either steel or inconel Hi-Lok fasteners (and

repetitively inspected until terminating action is accomplished).

Request To Extend Initial Compliance Time for Model MD–11's

One commenter requests that paragraph (b) of the proposal be revised to extend the compliance time for the initial inspection of Model MD–11 series airplanes from the proposed 18 months to 72 months. As justification for this request, the commenter points out that there have been no reports of failed fasteners on any Model MD–11 airplane; the only reports of failures have occurred on Model DC–10 series airplanes that had accumulated more than 18,000 total flight cycles. In light of this record, the commenter considers an 18-month compliance time unwarranted for the Model MD–11.

The FAA does not concur with the commenter's request. The flap inboard tracks of both the Model MD–11 and Model DC–10 series airplanes are similar in design; they also operate at similar stresses and in similar environments. In light of this, the flaps of the Model MD–11 may experience the same corrosion problems as the Model DC–10 airplanes have experienced. Additionally, stress corrosion is unpredictable; neither the FAA nor McDonnell Douglas can predict the onset of this phenomenon. Therefore, the FAA has determined that it is necessary to begin inspections as early as is reasonably possible.

In developing an appropriate compliance time for the inspections, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of inspecting the fleet at intervals of time that closely parallel normally scheduled maintenance for the majority of affected operators. In consideration of all of these factors, the FAA has determined that the compliance time, as proposed, is not only appropriate, but warranted.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 276 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $33,120, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–19–03 McDonnell Douglas: Amendment 39–9751. Docket 95–NM–212–AD.

Applicability: All Model DC–10 and MD–11 series airplanes, and KC–10A (military) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking in the fasteners in the inboard flap inboard track, which could result in binding of the flap and inability of the flap to extend or retract, accomplish the following:

(a) For Model DC–10 series airplanes and KC–10A (military) airplanes: Within 18 months after the effective date of this AD, perform a visual inspection to detect corrosion or failure of the steel Hi-Lok fasteners at the inboard flap inboard track in accordance with McDonnell Douglas Service Bulletin DC–10–57–134, dated August 15, 1995.

(1) If no corrosion or failure is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months until paragraph (a)(1)(ii) of this AD is accomplished.

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with McDonnell Douglas Service Bulletin DC–10–57–134, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(2) If any corrosion or failure is detected, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, in accordance with McDonnell Douglas Service Bulletin DC–10–57–134, dated August 15, 1995.

(i) Replace all corroded/failed steel Hi-Lok fasteners with either like steel Hi-Lok fasteners or inconel Hi-Lok fasteners, in accordance with the service bulletin. Thereafter, repeat the visual inspection required by paragraph (a) of this AD at intervals not to exceed 18 months until paragraph (a)(2)(ii) of this AD is accomplished.

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners, in accordance with

McDonnell Douglas Service Bulletin DC-10-57-134, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2)(i) of this AD.

(b) For Model MD-11 series airplanes: Within 18 months after the effective date of this AD, perform a visual inspection to detect corrosion or failures of the steel Hi-Lok fasteners at the inboard flap inboard track in accordance with McDonnell Douglas Service Bulletin MD11-57-031, dated August 15, 1995.

(1) If no corrosion or failures are detected, accomplish either paragraph (b)(1)(i) or (b)(2)(ii) of this AD.

(i) Repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 18 months until paragraph (b)(1)(ii) of this AD is accomplished.

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with McDonnell Douglas Service Bulletin MD11-57-031, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(1)(i) of this AD.

(2) If any corrosion or failure is detected during the inspection required by paragraph (b) of this AD, prior to further flight, accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, in accordance with McDonnell Douglas Service Bulletin MD11-57-031, dated August 15, 1995.

(i) Replace all corroded/failed steel Hi-Lok fasteners with either like steel Hi-Lok fasteners or inconel Hi-Lok fasteners, in accordance with the service bulletin. Thereafter, repeat the visual inspection required by paragraph (b) of this AD at intervals not to exceed 18 months until paragraph (b)(2)(ii) of this AD is accomplished.

(ii) Replace all steel Hi-Lok fasteners with inconel Hi-Lok fasteners in accordance with McDonnell Douglas Service Bulletin MD11-57-031, dated August 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(2)(i) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement shall be done in accordance with McDonnell Douglas Service Bulletin DC-10-57-134, dated August 15, 1995 (for Model DC-10 series airplanes); and McDonnell Douglas Service Bulletin MD11-57-031, dated August 15, 1995 (for Model MD-11 series airplanes). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 16, 1996.

Issued in Renton, Washington, on September 3, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-22916 Filed 9-10-96; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 95-ANE-55; Amendment 39-9737; AD 96-18-13]

RIN 2120-AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Garrett Engine Division) TFE731 series turbofan engines, that requires removing certain fan rotor disks from service in accordance with a drawdown schedule, and would establish new fan rotor disk life limits. This amendment is prompted after additional analyses revealed that stress levels in the fan rotor disk dovetail slots for the applicable engine models are higher than initially calculated. The actions specified by this AD are intended to prevent uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine.

DATES: Effective November 12, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64-3/2101-201, P.O. Box 29003, Phoenix, AZ 85038-9003; telephone (602) 365-2493, fax (602) 365-5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; telephone (310) 627-5246; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Garrett Engine Division) TFE731 series turbofan engines was published in the **Federal Register** on March 22, 1996 (61 FR 11790). That action proposed to require removing certain fan rotor disks from service in accordance with a drawdown schedule and would establish new fan rotor disk life limits in accordance with AlliedSignal Engines Alert Service Bulletin (ASB) No. TFE731-A72-3569, dated May 31, 1995, and ASB No. TFE731-A72-3570, dated May 31, 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 5,000 engines of the affected design in the worldwide fleet. The FAA estimates that 2,500 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,400,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–13 AlliedSignal Inc.: Amendment 39–9737. Docket 95–ANE–55.

Applicability: AlliedSignal Inc. (formerly Garrett Engine Division) Models TFE731–2, –2A, –3, –3A, –3AR, –3B, –3BR, –3C, –3CR, –3D, –3DR, –3R, and –4R turbofan engines, installed on, but not limited to the following aircraft: Avions Marcel Dassault Falcon 10, 50, 100 series; Learjet 31, 35, 36, and 55 series; Lockheed-Georgia 1329–23 and –25 series; Israel Aircraft Industries 1124 series and 1125 Westwind series; Cessna Model 650, Citations III, VI, and VII; Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontained failure of the fan rotor disk due to fatigue cracking in the dovetail slots, which can result in inflight engine shutdowns, severe secondary damage, and fan rotor assembly separation from the engine, accomplish the following:

(a) For engines equipped with fan rotor disks, part numbers (P/N's) 3072162–5, 3073436–5, 3073539-(All), and 3074529-(All), where (All) denotes any dash number, remove fan rotor disks from service and install a serviceable disk in accordance with the Accomplishment Instructions of AlliedSignal Engines Alert Service Bulletin (ASB) No. TFE731–A72–3569, dated May 31, 1995, as required by the following schedule:

Fan rotor disk cycles since new (CSN) on the effective date of this AD	Required fan rotor disk retirement (remove from service)
3,600 or less	Not to exceed the new life limit of 4,100 CSN.
3,601 to 5,500	Within the next 500 cycles after the effective date of this AD or prior to reaching 5,700 CSN, whichever occurs first.
5,501 or greater.	Within the next 200 cycles after the effective date of this AD, not to exceed 7,100 CSN.

(b) For engines equipped with fan rotor disks, P/N 3072816-(All), where (All) denotes any dash number, remove fan rotor disks from service and install a serviceable disk in accordance with Accomplishment Instructions of AlliedSignal Engines ASB No. TFE731–A72–3570, dated May 31, 1995, as required by the following schedule:

Fan rotor disk CSN on the effective date of this AD	Required fan rotor disk retirement (remove from service)
3,850 or less	Not to exceed the new life limit of 4,600 CSN.
3,851 to 6,000	Within the next 750 cycles after the effective date of this AD, or prior to reaching 6,500 CSN, whichever occurs first.
6,001 or greater.	Within the next 500 cycles after the effective date of this AD, not to exceed 10,000 CSN.

(c) A serviceable part is one that has not exceeded the life limits established by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following AlliedSignal Engines ASBs:

Document No.	Pages	Revision	Date
TFE731–A72–3569	1–8	Original	May 31, 1995.
Total Pages: 8.			
TFE731–A72–3570	1–8	Original	May 31, 1995.
Total Pages: 8.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box

29003, Phoenix, AZ 85038–0003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 12, 1996.

Issued in Burlington, Massachusetts, on August 26, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–22772 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–10–AD; Amendment 39–9744; AD 96–18–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, that requires inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair, if necessary. This amendment is prompted by results of full-scale fatigue testing, which revealed cracking in the upper radius of frame 47. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of frame 47 of the fuselage.

DATES: Effective October 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes was published in the **Federal Register** on July 1, 1996 (61 FR 33874). That action proposed to require repetitive eddy current inspections to detect cracking of the upper radius of the left and right forward fitting of frame 47, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 35 Airbus Model A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,400, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–18 Airbus Industrie: Amendment 39–9744. Docket 96–NM–10–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of frame 47 of the fuselage, accomplish the following:

(a) Prior to the accumulation of 17,300 total landings, or within one year after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the upper radius of the left and right forward fitting of frame 47, in accordance with Airbus Service Bulletin A300–53–6029, Revision 2, dated November 7, 1994.

(1) If no cracking is found during an eddy current inspection: Repeat the inspection thereafter at intervals not to exceed 6,800 landings.

(2) If any cracking is found during an eddy current inspection: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection shall be done in accordance with Airbus Service Bulletin A300–53–6029, Revision 2, dated November 7, 1994, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3	2	Nov. 7, 1994.
4–6	1	Feb. 23, 1994.
7–22	Original	Aug. 23, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 16, 1996.

Issued in Renton, Washington, on August 29, 1996.

Bill Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22599 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–30; Amendment 39–9738; AD 96–18–14]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. HC–A3V, HC–B3M, HC–B3T, HC–B4M, HC–B4T, and HC–B5M Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Hartzell Propeller Inc. (Hartzell) HC–A3V, HC–B3M, HC–B3T, HC–B4M, HC–B4T, and HC–B5M series propellers, that requires hub replacement over a 10-year time period with a concurrent blade and blade clamp inspection. This amendment is prompted by reports of two propeller hub failures and one crack indication that occurred on Mitsubishi MU–2B–60 aircraft, the similarity of construction and load transfer paths between the Hartzell propeller models installed on the Mitsubishi MU–2 aircraft and Hartzell's 3, 4, and 5-bladed steel hub propeller models, several blade shank failures, and reports of cracks in blade clamps. The actions specified by this AD are intended to prevent propeller hub, blade, or blade clamp failure, which can result in loss of aircraft control.

DATES: Effective October 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 16, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (513) 778–4388, fax (513) 778–4321. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. (Hartzell) HC–A3V, HC–B3M, HC–B3T, HC–B4M, HC–B4T, and HC–B5M series propellers was published in the **Federal Register** on April 26, 1996 (61 FR 18520). That action proposed to require over a 10-year time period, propeller hub replacement with a concurrent blade and blade clamp inspection for Hartzell Propeller Inc. Models HC–A3VF–7(), HC–B3TF–7(), HC–B3MN–3(), HC–B3TN–2(), HC–B3TN–3(), HC–B3TN–5(), HC–B4MN–5(), HC–B4MP–3(), HC–B4TN–3(), HC–B4TN–5(), HC–B5MA–3(), HC–B5MP–3(), HC–B5MP–5(), HC–B3MN–5(), HC–B3TN–4(), HC–B4MP–4(), and HC–B5MN–3() propellers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Commenters state that the AD should be modified to limit the affected propellers to those installed on engine types similar to those in Mitsubishi MU–2 aircraft. The commenters also state that their service history has shown that this engine type has more problems and that the NPRM documents that only propellers on the Mitsubishi MU–2 aircraft have been found with cracked hubs. The FAA does not concur. Regardless of engine types, the 3, 4, and 5-bladed hubs have similar loading and load paths to the failed propellers and, in addition, could contain characteristics that the FAA has determined can cause a reduction in hub fatigue strength. The NTSB has also recommended addressing the same hub fatigue strength characteristics for the 3, 4, and 5-bladed hubs. This hub replacement program will provide the following hub fatigue strength improvements: (1) Improved hub metallurgy; (2) Elimination of any surface decarburization in the pilot tube bore; (3) Introduction of compressive residual stress in the pilot tube bore; (4) Improved corrosion protection in the pilot tube bore; and (5) Improved surface finish in the pilot tube bore.

Additionally, the commenters state that the cost of complying with the proposed AD is severely understated and will increase overhaul costs. Therefore, they imply that the proposed AD should be withdrawn or limited in scope. The FAA does not concur. The costs documented in the AD are weighted average costs. For example, individual operators with five-bladed propellers will have costs that run higher than the weighted average costs. Therefore, the costs stated in the AD

should not be construed as understated. Concerning the increase in overhaul costs comment, the FAA has determined that the required actions are necessary to address an unsafe condition. While those required actions may increase maintenance costs, those increased costs are balanced by achieving a level of safety that protects against further failures. However, if the operator complies with the proposed AD at overhaul, the cost is lower than accomplishing the AD action by itself.

Since issuance of the NPRM, the FAA has determined that relief can be given to the compliance schedule. Therefore, the dates for hub replacement and inspections are shifted three months for all affected propellers. Table 1 now reflects the denoted three month calendar shift.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 24,320 propellers of the affected design in the worldwide fleet. The FAA estimates that 50% of the subject propellers are installed on aircraft of U.S. registry and that 75% will have the work done during normally scheduled propeller maintenance. For those who accomplish the AD action during normal propeller maintenance, the parts cost will average $1,955 with no additional labor. For those who accomplish the AD action by itself, the parts cost will average $2,174, plus approximately 27 work hours per propeller at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $29,363,360. The cost will vary between the 3, 4, and 5-bladed propeller configurations and the above data represents an average cost.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–18–14 Hartzell Propeller Inc.: Amendment 39–9738. Docket 95–ANE–30.

Applicability: Hartzell Propeller Inc. (Hartzell) Models HC–A3VF–7( ), HC–B3TF–7( ), HC–B3MN–3( ), HC–B3TN–2( ), HC–B3TN–3( ), HC–B3TN–5 ( ), HC–B4MN–5( ), HC–B4MP–3( ), HC–B4TN–3( ), HC–B4TN–5( ), HC–B5MA–3( ), HC–B5MP–3( ), HC–B5MP–5( ), HC–B3MN–5( ), HC–B3TN–4( ), HC–B4MP–4( ), and HC–B5MN–3( ) propellers. These propellers are installed on but not limited to the following aircraft:

Aerospace Technologies of Australia PTY LTD N22B, N24A, N22S;
Air Tractor, Inc. AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–502, AT–503, AT–802;
Agusta S.p.A. SF600, F.260;
Ayres Corporation S–2R, S2R–T11, S2R–T15, S2R–T34, S2R–T56, S2RHG–T65;
Beech A36, 65–90, 65–90A, C90, B90, E90, C90A, F90, 100, 200, 200C, A200C, B200, B200C, 200T, 200CT, A200CT, B200T, B200CT, 65–80, 65–A90–1, 65–A90–2, 65–A90–4, 99, 99A, A99A, B99, A200, C99, H90, 300, 300LW, B300, B300C, 1900, 1900C, T34C, T34C–1;
Cessna 208, 208A, 208B, 421, 425, 441, 402, P210N;
Construcciones Aeronauticas, S.A. (CASA) C–212–CB, –CC, –CE, –CF;
deHavilland Aircraft Co., Ltd. D.H.114;
deHavilland Inc. DHC–2, DHC–3, DHC–4; DHC–6, 1, 100, 200, 300;
Empresa Brasileira de Aeronautica S/A Embraer EMB–110P1, EMB–110P2;
Fairchild Aircraft, Inc. SA26–AT, –T; SA226–AT, –TB;
Frakes Aviation (Gulfstream American) G–73;
Great Lakes Aircraft Co. 2T–1A;
Helio HST–550, HST–550A;
Industrie Aeronautiche e Meccaniche Piaggio P.166DL3;
Israel Aircraft Industries, Ltd. Arava 101, 101B;
McDonnell Douglas DC–3 series;
McKinnon Enterprises, Inc. (Grumman) G–21E, G21–G;
Mitsubishi MU–2B series;
Pacific Aerospace Corporation, Ltd. FU24–954, FU2A–954;
Partenavia Costruzioni Aeronautiche S.p.A. AP68TP 300, AP68TP 600;
Pilatus Aircraft Ltd. PC–6/A–H2, /B1–H2, /B–H2, /B2–H2, /B2–H4, PC–7;
Piper Aircraft Corporation PA31–T1, –T2, –T3; PA31P; PA42, –42–720, –42–720R;
Prop-Jets, Inc., Interceptor (Aero Commander) (Meyers) 400;
Schweizer Aircraft Corp. (Grumman) G–164A, G–164B, G–164B–34T, –15T, G–164D;
Short Bros. Limited & Harland Ltd. SC–7 series, SD3 series;
Twin Commander Aircraft Corp. 680T, V, 681, 690A, 690B, 690C, 695, 695A;
Weatherly Aviation Company 620TP.

Note 1: The parenthesis that appear in the propeller models indicate the presence or absence of additional letter(s) which vary the basic propeller hub model designation. This airworthiness directive (AD) is applicable regardless of whether these letters are present or absent on the propeller hub model designation.

Note 2: The above is not a complete list of aircraft which may contain the affected Hartzell Propeller Inc. Models HC–A3VF–7( ), HC–B3TF–7( ), HC–B3MN–3( ), HC–B3TN–2( ), HC–B3TN–3( ), HC–B3TN–5( ), HC–B4MN–5( ), HC–B4MP–3( ), HC–B4TN–3( ), HC–B4TN–5( ), HC–B5MA–3( ), HC–B5MP–3( ), HC–B5MP–5( ), HC–B3MN–5( ), HC–B3TN–4( ), HC–B4MP–4( ), and HC–B5MN–3( ) propellers because of installation approvals made by, for example, Supplemental Type Certificate or field approval under FAA Form 337 "Major Repair and Alteration." It is the responsibility of the owner, operator, and person returning the aircraft to service to determine if an aircraft has an affected propeller.

Note 3: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition

described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller hub, blade, or blade clamp failure, which can result in loss of aircraft control, accomplish the following:

(a) This AD requires no action for operators with Hartzell propeller models HC–B4TN–5(D,G,J)L/LT10282(B,K)–5.3R, HC–B4TN–5(D,G,J)L/LT10282N(B,K)–5.3R, and HC–B4TN–5(D,G,J)L/LT10282NS(B,K)–5.3R installed on Mitsubishi MU–2B–26A, –36A, –40, –60; MU–2B–30 modified by Supplemental Type Certificate (STC) SA336GL–D & SA339GL–D; MU–2B–36 Modified by STC SA2413SW and any other MU–2 Series aircraft which have the referenced propeller models installed. These operators must, however, comply with AD 95–01–02.

(b) This AD requires no action for operators with Hartzell propeller models HC–B4TN–3/T10173F(N)(B,K)–12.5 and HC–B4TN–3A/T10173F(N)(B,K)–12.5 installed on Beech A100 and A100A aircraft. These operators must, however, comply with AD 95–03–03.

(c) Disassemble the propeller in accordance with Hartzell Propeller Inc. Service Manual 118F, Revision 2, dated May 1992, pages 15 to 19, for 3- and 4-bladed hub models, and Service Manual 132A, Revision 2, dated June 1992, pages IV–5 to IV–11, for 5-bladed hub models, remove the hub from service, and replace the hub with a serviceable hub in accordance with the compliance schedule in Table 1 of this AD.

(1) Utilize Table 1 of this AD in accordance with the following example: Model HC–B3TN–3( ) series propellers, starting with serial numbers (S/N's) BU1 through BU377, require replacement before the end of March of calendar year 1997. Serial numbers BU378 through BU754 require hub replacement before the end of September of calendar year 1997, and so forth.

(2) The affected hubs can only be replaced with serviceable hubs having a S/N not listed in Table 1 of this AD for that propeller model, or serviceable hubs having a S/N for which replacement is not yet required in accordance with Table 1 of this AD.

(3) Some existing propeller hub S/N's include a suffix letter, such as an "A." The presence or absence of this letter has no significance in determining compliance.

(4) Since a hub may be used in various propeller models, the S/N and the model number shown in Table 1 of this AD may not coincide. Precedence is given to the hub S/N in determining compliance requirements. The hub model is only given as a reference.

(5) Hub replacement must be accomplished by the end of the calendar month indicated at the top of the appropriate column in Table 1 of this AD. The S/N ranges in this table identify the propeller hubs that require replacement by the end of that month.

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Table 1

	Replacement is due by end of:	March 1997	Sept. 1997	March 1998	Sept. 1998	March 1999	Sept. 1999	March 2000	Sept. 2000	March 2001
Hub Model Number	S/N Series									
HC-B3TN-3	BU	1-377	378-754	755-1881	1882-3008	3009-3840	3841-4673	4674-5707	5708-6742	6743-7864
HC-B3MN-3	GB									
HC-B3MN-5	FZ									
HC-B3TN-5	BV	1-86	87-172	173-529	530-885	886-1622	1623-2359	2360-2689	2690-3020	3021-3410
HC-B3TN-4	FK									1
HC-B3TN-2	AG	1-59	60-118	119-174	175-231	232-238				
HC-B3TF-7	EX					1-3	4-7	8-47	48-87	88-112
HC-A3VF-7	DS				1	2-20	21-39	40-109	110-179	180-230
HC-B4TN-5	CD	1-94	95-187	188-663	664-1139	1140-1399	1400-1660	1661-1848	1849-2036	2037-2133
HC-B4TN-3	EA	1-169	170-338	339-437	438-537	538-758	759-979	980-1003	1004-1028	1029-1036
HC-B4MN-5	FL			1-35	36-70	71-238	239-406	407-411	412-416	417-423
HC-B4MP-3	FW					1-15	16-31	32-371	372-711	712-1024
HC-B4MP-4	FU					1-3	4-7		8	
HC-B5MP-5	EZ		1					2	3-4	
HC-B5MA-3	HB							1	2-3	4-28
HC-B5MN-3	ES		1					2-7	8-13	
HC-B5MP-3	EV	1-51	52-101	102-223	224-345	346-478	479-612	613-720	721-826	827-894
HC-B5MP-3	FT			1-3	4-6			7		

	Replacement is due by end of:	Sept. 2001	March 2002	Sept. 2002	March 2003	Sept. 2003	March 2004	Sept. 2004	March 2005	Sept. 2005
Hub Model Number	S/N Series									
HC-B3TN-3	BU	7865-8987	8988-10409	10410-11832	11833-13487	13488-15141	15142-16299	16300-17457	17458-18308	18309-19160
HC-B3MN-3	GB						1-162	163-324	325-361	362-438
HC-B3MN-5	FZ						1-23	24-45	46	
HC-B3TN-5	BV	3411-3600	3601-4035	4036-4270	4271-4523	4524-4776	4777-4809	4810-4843	4844-4945	4946-6022
HC-B3TN-4	FK	2-3								4
HC-B3TN-2	AG	239-244	245-295	296-351	352-447	448-543	544-682	683-821	822-886	887-950
HC-B3TF-7	EX	113-136	137-138	139-140	141-208	209-275	276-330	331-386	387-472	473-558
HC-A3VF-7	DS	231-280	281-313	314-345	346-396	397-446	447-454	455-482	483-496	497-511
HC-B4TN-5	CD	2134-2230	2231-3134	3135-3342						
HC-B4TN-3	EA	1037-1043	1044-1092	1093-1142						
HC-B4MN-5	FL	424-429	430-436	437-1002						
HC-B4MP-3	FW	1025-1338	1339-1393	1394-3033						
HC-B4MP-4	FU									
HC-B5MP-5	EZ		5-6	7-8						
HC-B5MA-3	HB	29-52	53-78	79-1018						
HC-B5MN-3	ES									
HC-B5MP-3	EV	895-961	962-1002	1003-2030						
HC-B5MP-3	FT	8								

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(d) Perform a fluorescent penetrant inspection of blades for cracks in accordance with Hartzell Propeller Inc. Service Bulletin 136H, dated March 12, 1993, prior to installing a serviceable hub.

(e) Perform magnetic particle inspection of blade clamps for cracks in accordance with Hartzell Service Manual 202A, dated March 1993, pages 201 to 215, prior to installing a serviceable hub.

(f) If cracks are found in either the blade or the blade clamps, prior to further flight replace with serviceable blade or blade clamps.

(g) Reassemble the propeller in accordance with Hartzell Propeller Inc. Service Manual 118F, Revision 2, dated May 1992, pages 57 to 96, for 3- and 4-bladed hub models, and Service Manual 132A, Revision 2, dated June 1992, pages VII–1 to VII–46, for 5-blade hub models.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(j) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Date
Hartzell Propeller Inc., SB No. 136H	1–18	March 12, 1993.
Total Pages: 18.		
Hartzell Propeller Inc., Service Manual No. 202A	201–215	March 1993.
Total Pages: 15.		
TRW Hartzell Propeller Overhaul Manual, No. 118–E	57, 58	April 1985.
Hartzell Propeller Inc., Manual No. 118F, Revision 2	59, 60	May 1992.
TRW Hartzell Propeller Overhaul Manual No. 119–E	61–83	April 1985.
Hartzell Propeller Inc., Manual No. 118F, Revision 2	84, 84a, 84b	May 1992.
TRW Hartzell Propeller Overhaul Manual No. 118–E	85, 86	April 1985.
Hartzell Propeller Inc., Manual No. 118F, Revision 2	87, 88, 88a, 88b	April 1985, May 1992.
TRW Hartzell Propeller, Overhaul Manual No. 118–E	89–96	April 1985.
Total Pages: 44.		
Hartzell Propeller, Products Division, Instruction Manual No. 132–A	VII–1–VII–30	Sept. 1, 1985.
Hartzell Propeller Inc., Instruction Manual No. 132–A	VII–31	Sept. 1, 1985.
Hartzell Propeller Inc., Manual No. 132A	VII–32	No Date.
Hartzell Propeller, Products Division, Instruction Manual No. 132–A	VII–33–VII–40	Sept. 1, 1985.
Hartzell Propeller Inc., Instruction Manual No. 132–A	VII–41	Sept. 1, 1985.
Hartzell Propeller Inc., Manual No. 132A, Revision #1	VII–42, VII–43	April 1990.
Hartzell Propeller Inc., Instruction Manual No. 132–A	VII–44	Sept. 1, 1985.
Hartzell Propeller Inc., Manual No. 132A, Revision #1	VII–45, VII–46	April 1990.
Total Pages: 46.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (513) 778–4388, fax (513) 778–4321. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(k) This amendment becomes effective on October 16, 1996.

Issued in Burlington, Massachusetts, on August 26, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–22770 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–224–AD; Amendment 39–9752; AD 96–19–04]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes. This action requires a one-time inspection to detect cracks of the dimpled lap joints in the fuselage skin, and repair of cracked lap joints. This amendment is prompted by a report indicating that cracks were found at various locations in the outer skin of the dimpled longitudinal lap joints of the fuselage skin. The actions specified in this AD are intended to prevent such cracking, which could result in reduced structural integrity of the fuselage and/or rapid decompression of the airplane.

DATES: Effective September 26, 1996. The incorporation by reference of Fokker Service Bulletin F28/53–144, dated July 15, 1996, as listed in the regulations is approved by the Director of the Federal Register as of September 26, 1996.

The incorporation by reference of Fokker Service Bulletin F28/53–121, Revision 1, dated December 13, 1991, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 8, 1992 (57 FR 40311, September 3, 1992).

Comments for inclusion in the Rules Docket must be received on or before November 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–224–AD, 1601 Lind Avenue SW., Renton, WA 98055–4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, VA 22314. This

information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes. The RLD advises that it recently received a report indicating that, during a walk-around inspection of a Model F28 Mark 4000 series airplane, two cracks were found in the outer skin of the left- and right-hand dimpled longitudinal lap joints of the fuselage skin between stations 15263 and 15733, stringers 16 and 17, and stringers 58 and 59. These cracks were approximately 20 inches long. The exact cause of such cracking is unknown at this time.

Currently, AD 93–13–04, amendment 39–8617 (58 FR 38513, July 19, 1993) requires inspection of these airplanes in the area where the recent cracking was found. The inspection is required to be accomplished in accordance with Item 53–30–08 of the Fokker Structural Integrity Program (SIP) Document 28438. AD 93–13–04 requires that the inspection be accomplished by the time that the airplane has accumulated 32,000 total flight cycles, and that it be repeated thereafter at intervals not to exceed 2,700 flight cycles. However, the subject cracking was found on the affected airplane some 3,520 flight cycles before the airplane had reached inspection threshold of 32,000 flight cycles.

In addition, AD 92–19–02, amendment 39–8359 (57 FR 40311, September 3, 1992), requires modification of the subject area in accordance with Fokker Service Bulletin F28/53–121, prior to the accumulation of 32,000 flight cycles. However, the affected airplane had accumulated only 28,480 total flight cycles; therefore, it had not been modified in accordance with that AD at the time cracking was detected.

Cracking in the outer skin of the left- and right-hand dimpled longitudinal lap joints of the fuselage skin between stations 15263 and 15733, stringers 16 and 17, and stringers 58 and 59, if not corrected, could result in reduced structural integrity of this area of the fuselage and/or rapid decompression of the airplane.

The configuration of the subject area on Fokker Model Mark 1000, 2000, and 3000 series airplanes is identical to that on the affected Model Mark 4000 series airplane. Therefore, all of these models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F28/53–144, dated July 15, 1996. This service bulletin describes procedures for a one-time low frequency eddy current inspection to detect cracks of the dimpled lap joints in the fuselage skin between stringers 16 and 17, stringers 58 and 59, and frames 13345 and 14285. It also describes procedures for submitting a report of the inspection results to Fokker.

Fokker also has issued Service Bulletin F28/53–121, Revision 1, dated December 13, 1991, which describes procedures for repair of cracked dimpled lap joints. The repair consists of cutting out the lap joint and installing a repair plate and shim on the outside of the fuselage. The repair will minimize the possibility of cracks developing in the subject area of the fuselage.

The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 1996–081 (A), dated July 24, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent cracking in the subject area of the fuselage skin, which could result in reduced structural integrity of the fuselage and/or rapid decompression of the airplane. This AD requires a one-time low frequency eddy current inspection to detect cracks of the dimpled lap joints in the fuselage skin between stringers 16 and 17, stringers 58 and 59, and frames 13345 and 14285; and repair, if necessary. After accomplishing the inspection, the AD also requires operators to submit a report of the inspection results to Fokker. The actions are required to be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of cracking; and eventually to determine if additional corrective action is necessary to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–224–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–19–04 Fokker: Amendment 39–9752. Docket 96–NM–224–AD.

Applicability: Model F28 Mark 1000, 2000, 3000, and 4000 series airplanes, serial numbers 11017 through 11241 inclusive; on which Fokker Service Bulletin F28/53–121, Revision 1, dated December 13, 1991, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the fuselage skin, which could result in reduced structural integrity of the fuselage and/or rapid decompression of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time low frequency eddy current inspection to detect cracks of the dimpled lap joints in the fuselage skin between stringers 16 and 17, stringers 58 and 59, and frames 13345 and 14285, in accordance with Fokker Service Bulletin F28/53–144, dated July 15, 1996.

(1) If no crack is detected, no further action is required by this paragraph.

(2) If any crack is detected, prior to further flight, repair the affected lap joint in accordance with Fokker Service Bulletin F28/53–121, Revision 1, dated December 13, 1991. Accomplishment of the repair is considered acceptable for compliance with AD 92–19–02, amendment 39–8359 (57 FR 40311, September 3, 1992), and constitutes terminating action for the inspection identified as item 53–30–06 of the Fokker structural integrity program, which is required by AD 93–13–04, amendment 39–8617 (58 FR 38513, July 17, 1993).

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to Fokker Services, ATTN: Manager Service Engineering Jet Aircraft, P.O. Box 75047, 1117 ZN, Schiphol, The Netherlands. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection shall be done in accordance with Fokker Service Bulletin F28/53–144, dated July 15, 1996. The replacement shall be done in accordance with Fokker Service Bulletin F28/53–121, Revision 1, dated December 13, 1991. The incorporation by reference of Fokker Service Bulletin F28/53–144, dated July 15, 1996, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Fokker Service Bulletin F28/53–121, Revision 1, dated July 15, 1996, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 8, 1992 (57 FR 40311, September 3, 1992. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 26, 1996.

Issued in Renton, Washington, on September 3, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96– 22917 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AWA–2]

RIN 2120–AA66

Modification of the Dallas-Fort Worth Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Dallas-Forth Worth (DFW) Class B airspace area. Specifically, this rule raises the upper limit of the DFW Class

B airspace area from 10,000 feet mean sea level (MSL) to 11,000 feet MSL, except in the reconfigured northern and southern sections, and redefines several existing subareas. The FAA is taking this action to improve the flow of aviation traffic and enhance safety in the DFW Class B airspace area while accommodating the concerns of airspace users.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–6783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the FAA published the Airspace Reclassification Final rule (56 FR 65655). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this final rule.

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service; thereby minimizing the mix of controlled and uncontrolled aircraft. On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points final rule (35 FR 7782). This rule provided for the establishment of Class B airspace areas. To date, the FAA has established a total of 29 Class B airspace areas.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limits of the Class B airspace area normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be subsequently published in the Order.

Related Rulemaking Actions

On June 21, 1988, the FAA published the Transponder with Automatic Altitude Reporting Capability Requirement final rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles of any designated Class B primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine driven electrical system, balloons, and gliders.

On October 14, 1988, the FAA published the Class B Airspace Classification and Class B Airspace Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, removed the different classifications of Class B airspace areas, and requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

Public Input

In June, 1992, an ad hoc committee representing a cross section of the aviation community was formed to analyze the DFW Class B airspace area and to develop recommendations for modifying the existing design. The ad hoc committee met regularly at various locations throughout the DFW area for approximately one year, and submitted written comments on modifying the DFW Class B airspace area.

As announced in the **Federal Register** on October 20, 1993, (58 FR 54073) and on January 31, 1994, (59 FR 4310), pre-NPRM airspace meetings were held on December 8, 1993, in Mesquite, TX, December 13, 1993, in North Richland Hills, TX, April 5, 1994, in North Richland Hills, TX, and April 7, 1994, in Mesquite, TX. These meetings provided local airspace users with an opportunity to present input on the design of the proposed modifications of the DFW Class B airspace area.

On May 10, 1996, the FAA published a notice of proposed rulemaking (NPRM) (61 FR 21910) that proposed modifications to the DFW Class B airspace area. In response to this notice the FAA received four written comments. Recommendations and suggestions from the ad hoc committee, and other comments received in response to the NPRM were considered before making any determination on this final rule. These comments are analyzed below.

Analysis of Comments

One commenter, representing the Texas Soaring Association, believes that the description in the NPRM of Area F did not reflect the FAA's proposal to amend the Class B airspace south of V16/94 to Class E airspace.

The FAA agrees that the description in the NPRM erroneously described Area F. The correct description of Area F will be reflected in this final rule and on the attached graphic.

American Airlines, Air Line Pilots Association (ALPA) and the Aircraft Owner's and Pilots Association support the modification of the DFW Class B airspace area.

The Rule

This amendment to 14 CFR part 71 modifies the DFW Class B airspace area. The modifications are depicted on the attached chart. Specifically, this rule raises the upper limit of the DFW Class B airspace area from 10,000 feet MSL to 11,000 feet MSL, except in the reconfigured northern and southern sections, and redefines several existing subareas. Raising the ceiling to 11,000 feet MSL accommodates arriving traffic using standard instrument arrival routes and departing traffic utilizing standard instrument departure routes into and out of the DFW Metroplex area.

In addition, the FAA amends the airspace south of V16/94 from Class B to Class E airspace. This modification allows GA and other users to traverse along V–16/94 east or westbound while remaining outside the DFW Class B airspace area. This rule realigns the boundaries of the DFW Class B airspace

area to follow Interstate 30 (I–30) and State Highway 303 (SH–303) south of DFW airport that lie north and south of Grand Prairie Municipal Airport, and the Naval Air Station (NAS) Dallas airports. This realignment will assist GA aircraft pilots in identifying the boundaries of the DFW Class B airspace in this area. Additionally, this action raises the floor of the DFW Class B airspace area to 2,000 feet MSL in the vicinity of NAS Dallas, south of Lyndon Baines Johnson Freeway to Forest Lane, and west of Addison Airport to Marsh Lane, and 3,000 feet MSL north of Redbird Airport. Modifying the floors in these areas provides more operational airspace into and out of the Redbird, Grand Prairie Municipal, and NAS Dallas airports.

Further, the FAA is lowering the floor of the DFW Class B airspace area from 5,000 feet MSL to 4,000 feet MSL between 20 and 23 NM west, and raising the floor of the Class B airspace area from 5,000 feet MSL to 6,000 feet MSL between 26 and 30 NM west of DFW. Modifying this Class B airspace will enhance safety and improve the flow of aviation traffic within the DFW Class B area.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 specifies that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Final Rule: (1) will generate benefits that justify its minimal costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not "significant" as defined in the Department of Transportation Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not impose a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Costs-Benefit Analysis

The FAA has determined that this rule will generate additional benefits in the form of enhanced aviation safety and operational efficiency. The modification of the DFW Class B airspace area will enhance operational efficiency through the promotion of additional operational procedures and aviation safety in the form of the reduced risk of midair collisions in the modified Class B airspace area. This rule is expected to impose little or no costs on the FAA for administrative functions and aircraft operators for additional avionics equipment and circumnavigation. Cost and benefits are discussed below.

Costs

Cost Impact on Aircraft Operators

The modification of the DFW Class B airspace area will not require operators to purchase additional aircraft avionics equipment. Aircraft operators that currently use the airspace area already have Mode C transponders and two-way radio communications equipment; therefore, there will be no additional cost incurred for aircraft avionics equipment. Additionally, the density of air traffic in the DFW airspace area makes it highly unlikely that VFR traffic will transit this airspace without two-way radio equipment.

The final rule also will result in a small increase in cost for pilots who wish to remain clear of the expanded DFW Class B airspace area. As the result of this rule, the potentially impacted pilots are expected to make a small deviation from their current flight paths to avoid the expanded Class B airspace area. This assessment is based on the belief that the impacted pilots will only have to climb an additional 1,000 feet MSL. This deviation will require an additional 5 to 10 minutes of flight time. This modification does not change the 30 mile circumference of the DFW Class B airspace area.

Cost Impact on the FAA

The final rule will not impose any additional administrative costs on the FAA for either personnel or equipment. Projected increases in traffic volume will be absorbed by current personnel and equipment resources through more efficient operational procedures (for example, sequencing and separation of aircraft services). Revising aeronautical charts to reflect the change in the Class B airspace area will not add to the cost of the routine and periodic updating of the charts.

Benefits

Enhanced Aviation Safety

The FAA has determined the modification of the DFW Class B airspace area is in the best interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in the terminal area. A reduction in probability of midair collisions will stem from increased control in those areas where Class B airspace will be modified. Based on the FAA's Terminal Area Forecast, total aircraft operations at the DFW International Airport were about 870,000 in 1995 up from 550,000 in 1985 and are projected to increase to about 1,000,000 by the year 2000. Also, passenger enplanements were estimated to be 27 million in 1995 up from 18 million in 1985 and are projected to increase to about 35 million by the year 2000. In lieu of the projected increase for total operations and passenger enplanements, the FAA has determined this final rule will enhance safety by lowering the potential risk of midair collisions.

Enhanced Operational Efficiency

The FAA has determined the final rule will enhance aircraft operational efficiency. The final rule will raise the airspace ceiling to meet the increasing air traffic requirements flowing in and out of DFW via standard instrument arrival and departure routes, or alternative Air Traffic Control (ATC) instructions. This assessment of the enhancement in operational efficiency is based on the FAA's assumption that improvements in traffic flow will occur because air traffic controllers will be better able to handle the increasing number of operations at the DFW International Airport. Further, the FAA contends that this enhancement will stem from an increase in airspace area capacity. This modification will enable ATC to have the capability of providing additional spacing and sequencing of aircraft. The final rule's configuration increases the airspace area for high performance aircraft, while allowing non-participating aircraft to access certain airways above 11,000 feet MSL. Additionally, this modification of Class B airspace identifies additional airspace for large turbojet aircraft operations in the DFW airspace area.

International Trade Impact Assessment

The final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States. This modification will not impose any additional costs on aircraft operators or aircraft manufacturers in the United States or foreign countries. The modification of the Class B airspace area will only affect U.S. terminal airspace operating procedures at and in

the vicinity of DFW. The modification will not have international trade ramifications because it is a domestic airspace matter that will not impose additional costs or requirements on affected entities.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA.

The small entities that potentially maybe affected by this final rule are unscheduled air taxi operators for hire that own nine or fewer aircraft operating in the vicinity of the DFW Class B airspace area. Only unscheduled aircraft operators without the capability to operate under IFR conditions will be potentially impacted by the final rule. The FAA contends that the unscheduled air taxi operators that the final rule may potentially affect are already equipped to operate under IFR conditions. The FAA has concluded that the potentially impacted operators regularly fly to airports where radar approach control services have already been established such as the DFW Class B airspace area; therefore, there will be no additional cost to these entities. The FAA does not anticipate any adverse impacts to occur as a result of the final rule. The FAA has concluded that the final rule will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandate Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to extent permitted by law, to prepare a written assessment of effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice for potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Federalism Implications

This rule will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41695; October 30,1987), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis and Review of Regulations. A final regulatory evaluation, including a final Regulatory Flexibility Determination and International Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Amendment

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASW TX B Dallas-Fort Worth, TX [Revised]

Dallas-Fort Worth International Airport
(Primary Airport)
(lat. 32°53′49″ N., long. 97°02′33″ W.)
Dallas-Fort Worth VORTAC
(lat. 32°51′57′ N., long. 97°01′41″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 11,000 feet MSL beginning at the intersection of the DFW VORTAC 10-mile arc and Josey Lane, thence southbound on Josey Lane to Forest Lane, thence eastbound on Forest Lane until I–635 (that also coincides with the DFW VORTAC 15-mile arc), extending clockwise on the DFW VORTAC 15-mile arc until the DFW VORTAC 129° radial 15-mile DME fix, thence northwest on the DFW VORTAC 129° radial until I–30, extending west on I–30 until the DFW VORTAC 7-mile arc, thence clockwise on the DFW VORTAC 7-mile arc until the DFW VORTAC 310° radial 7-mile DME fix, extending northwest on the DFW VORTAC 310° radial until the DFW VORTAC 310° radial 10-mile DME fix, and extending clockwise on the DFW VORTAC 10-mile arc to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 11,000 feet MSL beginning at the DFW VORTAC 310° radial 10-mile DME fix, thence southeast on the DFW VORTAC 310° radial until the DFW VORTAC 310° radial 7-mile DME fix, extending counterclockwise on the DFW VORTAC 7-mile arc until I–30, thence eastbound on I–30 to the DFW VORTAC 129° radial, thence southeast on the DFW VORTAC 129° radial until the DFW VORTAC 129° radial 10-mile DME fix, extending clockwise on the DFW VORTAC 10-mile arc until SH–303, thence west on SH–303 until the DFW VORTAC 10-mile DME arc, and extending clockwise on the DFW VORTAC

10-mile arc to the DFW VORTAC 300° radial 10-mile DME fix, thence northwest on the 300° radial until the DFW VORTAC 300° 13-mile DME fix, extending clockwise on the DFW VORTAC 13-mile arc until the DFW VORTAC 023° radial 13-mile DME fix, thence southeast on the DFW VORTAC 023° radial until the DFW VORTAC 023° radial 10-mile DME fix, extending counterclockwise on the DFW VORTAC 10-mile arc to the DFW VORTAC 310° 10-mile DME fix; and that airspace extending upward from 2,000 feet MSL to and including 11,000 feet MSL beginning at the intersection of the DFW VORTAC 10-mile arc and Josey Lane, thence southbound on Josey Lane to Forest Lane, thence eastbound on Forest Lane to I–635, thence westbound on I–635 to the DFW VORTAC 10-mile arc, and extending counterclockwise on the DFW VORTAC 10-mile arc to the point of beginning.

Area C. That airspace extending upward from 2,500 feet MSL to and including 11,000 feet MSL beginning at the intersection of the DFW VORTAC 15-mile arc and I–635, extending clockwise on the DFW VORTAC 15-mile arc until the DFW VORTAC 129° radial 15-mile DME fix, thence southeast on the DFW VORTAC 129° radial until the DFW VORTAC 129° radial 20-mile DME fix, extending counterclockwise on the DFW VORTAC 20-mile arc until I–635, and extending northwest along I–635 to the point of beginning.

Area D. That airspace extending upward from 3,000 feet MSL to and including 11,000 feet MSL beginning at the DFW VORTAC 300° radial 10-mile DME fix, extending counterclockwise on the DFW VORTAC 10-mile arc to SH–303, thence eastbound on SH–303 until the DFW VORTAC 10-mile arc, extending counterclockwise on the DFW VORTAC 10-mile arc to the DFW VORTAC 129° radial, thence southeast along the DFW VORTAC 129° radial until the DFW VORTAC 129° radial 20-mile DME fix, extending clockwise on the DFW VORTAC 20-mile arc until the DFW VORTAC 217° radial, thence northeast on the DFW VORTAC 217° radial until the DFW VORTAC 217° radial 13-mile DME fix, extending clockwise along the DFW VORTAC 13-mile arc to the DFW VORTAC 300° radial 13-mile DME fix, and thence southeast on the DFW VORTAC 300° radial to the point of beginning; and that airspace extending upward from 3,000 feet MSL to and including 11,000 feet MSL beginning at the DFW VORTAC 300° radial 13-mile DME fix, thence northwest on the DFW VORTAC 300° radial until the DFW VORTAC 300° radial 20-mile DME fix, extending clockwise on the DFW VORTAC 20-mile arc until I–635, extending northwest along I–635 until the DFW VORTAC 10-mile arc, extending counterclockwise on the DFW VORTAC 10-mile arc until the DFW VORTAC 023° radial 10-mile DME fix, thence northeast on the DFW VORTAC 023° radial until the DFW VORTAC 023° radial 13-mile DME fix, and extending counterclockwise on the DFW VORTAC 13-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to and including 11,000 feet MSL beginning at the DFW VORTAC 217° radial 20-mile DME fix, extending counterclockwise on the DFW VORTAC 20-mile arc until the DFW VORTAC 300° radial 20-mile DME fix, thence southeast on the DFW VORTAC 300° radial until the DFW VORTAC 300° radial 13-mile DME fix, extending counterclockwise on the DFW VORTAC 13-mile arc until the DFW VORTAC 217° radial 13-mile DME fix, thence southwest on the DFW VORTAC 217° radial until the DFW VORTAC 217° radial 20-mile fix, extending clockwise on the DFW VORTAC 20-mile arc until I–820, thence west and north on I–820 until the DFW VORTAC 23-mile arc, extending clockwise on the DFW VORTAC 23-mile arc until SH–156, thence northeast on SH–156 until the DFW VORTAC 329° radial, thence northwest on the DFW-VORTAC 329° radial until intercepting a line defined by the DFW VORTAC 041° radial 30 DME fix and the DFW VORTAC 315° radial 30 DME fix, thence east along that line defined by the DFW VORTAC 041° radial 30 DME fix and the DFW VORTAC 315° radial 30 DME fix until the DFW VORTAC-30-mile arc, extending clockwise on the DFW VORTAC 30-mile arc until the DFW VORTAC 138° radial 30-mile DME fix, thence west until the DFW VORTAC 217° radial 28.3 mile DME fix, and thence northeast on the DFW VORTAC 217° radial until the point of beginning.

Area F. That airspace extending upward from 4,000 feet MSL, to and including 10,000 feet MSL beginning at the DFW VORTAC 138° 30-mile DME fix, extending clockwise on the DFW VORTAC 30-mile DME arc until the DFW VORTAC 149° radial 30-mile DME fix, thence west to the DFW VORTAC 210° radial 30-mile DME fix, extending clockwise on the DFW VORTAC 30-mile DME arc until the DFW VORTAC 217° radial 30-mile DME fix, thence northeast on the DFW VORTAC 217° radial to the 28.3-mile DME fix and then east on a line to the point of the beginning, and that airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at the DFW VORTAC 315° radial 30-mile DME fix, extending clockwise on the DFW VORTAC 30-mile arc until the DFW 336° radial 30-mile DME fix, thence east until the DFW VORTAC 020° radial 30-mile DME fix, extending clockwise on the DFW VORTAC 30-mile arc until the DFW VORTAC 041° radial 30-mile DME fix, and thence west on a line until the point of beginning.

Area G. That airspace extending upward from 5,000 feet MSL, up to and including 11,000 feet MSL beginning at the DFW VORTAC 315° radial 30-mile DME fix, extending counterclockwise on the DFW VORTAC 30-mile arc until the DFW VORTAC 293° radial, thence southeast on the DFW VORTAC 293° radial until the DFW VORTAC 26-mile DME fix, extending counterclockwise on the DFW VORTAC 26-mile arc until SH–377, thence southwest on SH–377 until the DFW VORTAC 30-mile arc, and counterclockwise to the DFW VORTAC 217° radial 30-mile DME fix, thence northeast on the DFW VORTAC 217° radial until the DFW VORTAC 20-mile arc, extending clockwise on the 20-mile arc until I–820, thence west and north on I–820 until the DFW VORTAC 23-mile arc, thence clockwise on the DFW VORTAC 23-mile arc until SH–156, extending northeast on SH–156 to the DFW VORTAC 329° radial, thence northeast on the DFW VORTAC 329° radial, until intercepting a line defined by the DFW VORTAC 041° radial 30-mile DME fix and the DFW VORTAC 315° radial 30-mile DME fix, thence west along that line until the point of beginning.

Area H. That airspace extending upward from 6,000 feet MSL to and including 11,000 feet MSL beginning at the DFW VORTAC 293° radial 30-mile DME fix, thence southeast on the DFW VORTAC 293° radial until the DFW VORTAC 293° radial 26-mile DME fix, extending counterclockwise on the DFW VORTAC 26-mile arc until SH–377, thence southwest on SH–377 until the DFW VORTAC 30-mile arc, and extending clockwise on the DFW VORTAC 30-mile arc until the point of the beginning.

* * * * *

Issued in Washington, DC, on September 3, 1996.

Jeff Griffith,

Program Director for Air Traffic Airspace Management, ATA–1.

Note: This appendix will not appear in the Code of Federal Regulations. Appendix—Dallas-Fort Worth International Airport Class B Airspace Area.

BILLING CODE 4910–13–P

DALLAS/FORT WORTH INTERNATIONAL AIRPORT

CLASS B AIRSPACE AREA

(NOT TO BE USED FOR NAVIGATION)

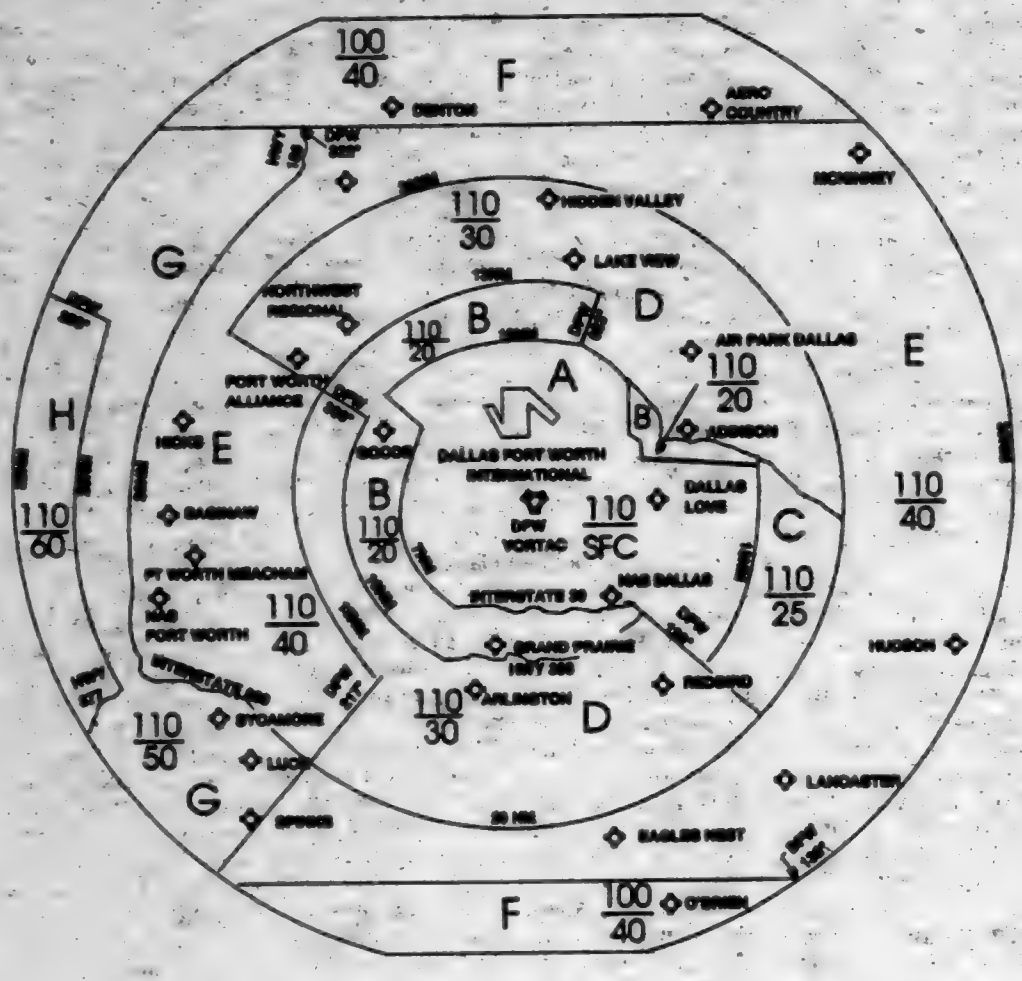

Prepared by the

FEDERAL AVIATION ADMINISTRATION

Air Traffic Publications

ATX-420

BILLING CODE 4910-13-C

[FR Doc. 96-23247 Filed 9-10-96; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 960313071–6237–03; I.D. 050996D]

RIN 0648–AI20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Consolidation of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS adopts as final with one correction an interim final rule published July 3, 1996, which consolidated 11 CFR parts into one new CFR part and amended references to the Paperwork Reduction Act (PRA) information-collection requirements. The new part contains regulations implementing management measures contained in the fishery management plans (FMPs) for the following domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic; Caribbean coral, Caribbean reef fish, Caribbean spiny lobster, Gulf red drum, Gulf reef fish, Gulf shrimp, Gulf and South Atlantic coastal migratory pelagics, Gulf and South Atlantic corals, South Atlantic red drum, South Atlantic snapper-grouper, and South Atlantic shrimp. The intended effect of this final rule is to make the regulations more concise, better organized, more uniform among fisheries, and thereby easier for the public to use.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Perry Allen, 813–570–5326.

SUPPLEMENTARY INFORMATION: Domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic are managed under FMPs prepared by the Caribbean, Gulf of Mexico, and/or South Atlantic Fishery Management Councils under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). As part of the President's Regulatory Reinvention Initiative, the interim final rule (61 FR 34930, July 3, 1996) consolidated 11 sets of regulations into one new CFR part, 50 CFR part 622 and made concomitant amendments to the references for PRA requirements. The background and rationale for this action and explanations of changes that were made to improve uniformity among the regulations were included in the interim final rule and are not repeated here.

The interim final rule provided a 30-day comment period for the public to identify any significant, unforeseen regulatory effects. No comments were received. Accordingly, that part of the interim final rule that adds part 622 to 50 CFR Chapter VI is adopted as final without change. That part of the interim final rule that amends the references to the PRA information-collection requirements is adopted as final with one correction. Specifically, the control number for the OMB-approved dealer recordkeeping and reporting requirements, 0648–0013, was omitted in the listing of OMB control numbers where it applies to 50 CFR 622.15. This final rule corrects that omission.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 4, 1996.

N. Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the interim final rule amending 15 CFR part 902 and 50 CRF part 622 that was published at 61 FR 34930 on July 3, 1996, is adopted as final with the following change.

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 [Corrected]

2. In § 902.1, paragraph (b) table, in the entries for 50 CFR, in the right column, corresponding to entry 622.15 in the left column, the entry "–0262." is corrected to read "–0013 and –0262.".

[FR Doc. 96–23040 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8677]

RIN 1545–AU35

Consolidated Returns—Limitations on the Use of Certain Losses and Deductions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the final and temporary regulations.

SUMMARY: This document contains corrections to the final and temporary regulations (TD 8677) which were published in the **Federal Register** on Thursday, June 27, 1996 (61 FR 33321). The final and temporary regulations relate to the deductions and losses of members and also to the carryover and carryback of losses to consolidated and separate return years and to the built-in deduction rules.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: David Friedel (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 8677) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 8677) which are the subject of FR Doc. 96–15823 is corrected as follows:

PART 1—[CORRECTED]

1. On page 33322, column 3, under the authority citation for Part 1, the entry "Section 1.1502–1T also issued under 26 U.S.C. 1502" is corrected to read "Section 1.1502–1 also issued under 26 U.S.C. 1502".

2. On page 33322, column 3, under the authority citation for Part 1, the

entry "Section 1.1502–79T also issued under 26 U.S.C. 1502" is corrected to read "Section 1.1502–79 also issued under 26 U.S.C. 1502".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–23087 Filed 9–10–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[TD 8675]

RIN 1545–AR04

Modifications of Debt Instruments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 8675) which were published in the **Federal Register** on Wednesday, June 26, 1996 (61 FR 32926). The final regulations relate to the modification of debt instruments.

EFFECTIVE DATE: September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. Kelly, (202) 622–3930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1001 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8675) contain an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8675) which are the subject of FR Doc. 96–15830 is corrected as follows:

§ 1.1001–3 [Corrected]

On page 32935, column 3, § 1.1001–3(g), paragraph (iv) of *Example 5.*, line 8, the language "(e)(4)(i)(E) of this section and is a significant" is corrected to read "(e)(4)(i)(C) of this section and is a significant".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–23085 Filed 9–10–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–96–051]

RIN 2115–AE46

Special Local Regulations; Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the U.S. Offshore World Championship Power Boat Races. The event will be held from 11 a.m. to 4 p.m. EST (Eastern Standard Time) on October 30–November 2, 1996 on the Atlantic Ocean at Hilton Head Island, SC. These regulations are necessary to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATES: This rule is effective from 10 a.m. to 5 p.m. EST, daily, on October 30 to November 2, 1996.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for copying and inspection at U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401–1817, between 8 a.m. and 3 p.m. EST, except federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS M. DaPonte, U.S. Coast Guard Group Charleston, SC at (803) 724–7621.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations. Following normal rulemaking procedures would have been impracticable, since there is not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Discussion of Regulations

Temporary special local regulations are being adopted for the U.S. Offshore World Championship Power Boat Races. The event will be held from 11 a.m. to 4 p.m. EST on October 30–November 2, 1996 on the Atlantic Ocean at Hilton Head Island, SC. There will be approximately between 60–90 event participants racing high performance power boats on a fixed course. The event will take place on the portion of the Atlantic Ocean at Hilton Head Island, SC, between Forest Beach and Port Royal Plantation, approximately 2 miles off shore on a ¼ mile wide oval race course. This rule is required to provide for the safety of life on the navigable waters during the running of the U.S. Offshore World Championship Power Boat Races.

A regulated area is established on that portion of the Atlantic Ocean, at Hilton Head Island, SC, starting at Port Royal Plantation at 32°12.9′ N, 080°40.2′ W, 1 thence east to 32°12.9′ N, 080°39.7′ W, thence southeast to 32°10.2′ N, 080°36.8′ W, thence southwest to 32°03.3′ N, 080°42.5′ W northwest to Forest Beach at 32°07.0′ N, 080°46.9′ W. All coordinates referenced use Datum: NAD 1983.

A spectator viewing area is also established on that portion of the Atlantic Ocean, at Hilton Head Island, SC, between the regulated area described above, and the following points, commencing at Port Royal Plantation at 32°13.5′ N, 080°40.3′ W, thence east to 32°13.5′ N, 080°38.3′ W, thence southeast to 32°10.2′ N, 080°36.4′ W, thence southwest to 32°02.5′ N, 080°42.4′ W, thence northwest to Forest Beach at 32°06.8′ N, 080°48.5′ W. All coordinates referenced use Datum: NAD 1983.

Entry into the regulated area by other than authorized event participants or official patrol vessels is prohibited, unless otherwise authorized by the Patrol Commander. Spectator vessels may anchor or transit the spectator viewing area at a slow, no wake speed during the event.

Regulatory Evaluation

This event is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6 (a) and (f) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than 54 square nautical miles on the Atlantic Ocean between Forest Beach and Port Royal Plantation, out to approximately 6 nautical miles tc sea, which movement into the regulated area will be controlled for only seven hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small

entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2. of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has determined the event to be categorically excluded from further environmental documentation. An environmental checklist and a Categorical Exclusion Determination has been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, the Coast Guard amends as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T96–051 is added to read as follows:

§ 100.35–T96–051 Special Local Regulations; Atlantic Ocean at Hilton Head Island, SC.

(a) *Definitions:*

(1) Regulated Area. A regulated area is established on that portion of the Atlantic Ocean, at Hilton Head Island, SC, starting at Port Royal Plantation at 32°12.9′N, 080°40.2′W, thence east to 32°12.9′N, 080°39.7′W, thence southeast to 32°10.2′N, 080°36.8′W, thence southwest to 32°03.3′N, 080°42.5′W northwest to Forest Beach at 32°07.0′N, 080°46.9′W. All coordinates referenced use Datum: NAD 1983.

(2) Spectator Viewing Area. A spectator viewing area is also established on that portion of the Atlantic Ocean, at Hilton Head Island, SC, between the regulated area described above, and the following points, commencing at Port Royal Plantation at 32°13.5′N, 080°40.3′W, thence east to 32°13.5′N, 080°38.3′W, thence southeast to 32°10.2′N, 080°36.4′W, thence southwest to 32°02.5′N, 080°42.4′W, thence northwest to Forest Beach at 32°06.8′N, 080°48.5′W. All coordinates referenced use Datum: NAD 1983.

(3) Coast Guard Patrol Commander. The Coast Guard Patrol Commander is a commissioned, warrant or petty officer of the Coast Guard who has been designated in writing by the Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.*

(1) Entry into the regulated area by other than authorized event participants or official patrol vessels is prohibited, unless otherwise authorized by the Patrol Commander.

(2) Spectator vessels may anchor or transit the spectator viewing area at a slow, no wake speed during the event.

(3) At the conclusion of the U.S. World Championship power boat races each day, at the discretion of the Coast Guard Patrol Commander, all vessels may enter the regulated area.

(c) *Effective Dates.* These regulations become effective at 10 a.m. to 5 p.m., daily, on October 30 to November 2, 1996, unless otherwise specified in the Seventh Coast Guard District Local Notice to Mariners.

Dated: August 28, 1996.

J.D. Hull,

Captain. U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 96–23244 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–96–028]

RIN 2115–AA97

Safety Zone Regulations; Bellingham Bay, Bellingham, WA

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is permanently amending a safety zone regulation for the annual Fourth of July Blast Over Bellingham Fireworks Display in Bellingham Bay, Bellingham, Washington. Changes made to this regulation will revise the boundaries of the safety zone. This change is intended to better inform the boating public and to improve the level of safety at this event.

EFFECTIVE DATE: This rule is effective on December 10, 1996, unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before November 12, 1996.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Marine Safety Office Puget Sound 1519 Alaskan Way South, Seattle, WA 98134 (Telephone: (206) 217–6237). The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building 1. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) J. B. Roberts, Port Services Department, U.S. Coast Guard MSO Puget Sound Seattle, WA (Telephone: (206) 217–6237).

SUPPLEMENTARY INFORMATION:

Request for Comments

Any comments must identify the name and address of the person submitting the comment, specify the rulemaking docket (CGD13–96–028) and the specific section of this rule to which each comment applies, and give the reason for each specific comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no

adverse comments are anticipated. If no adverse comments or any written notice of intent to submit adverse comment are received within the specified comment period, this rule will become effective as stated in the **EFFECTIVE DATE** section. In that case, approximately 30 days prior to the effective date, the Coast Guard will publish a notice in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish a notice in the final rule section of the **Federal Register** to announce withdrawal of all or part of this direct final rule. If adverse comments apply to only part of this rule, and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comments were received. The part of this rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published and a new opportunity for comment provided.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

The annual Fourth of July Blast Over Bellingham is held on the waters of Bellingham Bay each year from 9:30 p.m. (PST) to 11 p.m. (PST) on July fourth and is sponsored by the Whatcom County Chamber of Commerce. Under current Coast Guard regulations, 33 CFR § 165.1304, a safety zone regulation is established each year during the event to provide for public safety by keeping spectators away from the fireworks launching site during the fireworks display.

The current regulations do not accurately reflect the current location of the fireworks launching site and the area surrounding this site.This direct final rule will amend the description of the safety zone created by 33 CFR 165.1304 to accurately reflect the current fireworks launching site and better provide for the safety of spectators and property in the immediate vicinity of the event.

Discussion of Rules

This direct final rule will amend the description of the safety zone in 33 CFR § 165.1304 to include all waters of Bellingham Bay, Washington, bounded by a circle with a radius of 1000 yards centered on the fireworks launching site located on the Georgia Pacific Lagoon Seawall at position latitude 48°44'56" N, longitude 122°29'40" W, including the entrances to the I & J Street Waterway and the Whatcom Creek Waterway.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that only minor changes are being made to the regulations and that the changes made reduce the area affected by approximately one-half mile.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The safety zone created by this section is being moved to reflect the current launch site, and will not take place during more than a few hours each year on the Fourth of July. For these reasons, the Coast Guard certifies under 5 U.S.C. 605(b) that this change will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.34(h) of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documents. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 33 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Section 165.1304 is amended by revising paragraph (a) as follows:

§ 165.1304 Safety Zone Regulations; Bellingham Bay, Bellingham, Washington.

(a) Location. The following area is a safety zone: All waters of Bellingham Bay, Washington, bounded by a circle with a radius of 1000 yards centered on the fireworks launching site located on the Georgia Pacific Lagoon Seawall at position latitude 48°44'56" N, longitude 122°29'40" W, including the entrances to the I & J Street Waterway and the Whatcom Creek Waterway.

[Datum: NAD 83]

* * * * *

Dated: August 19, 1996.

Myles S. Boothe,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 96–23245 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5608–4]

National Oil and Hazardous Substances Pollution Contingency Plan: National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Liquid Gold Oil Corporation Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 9, announces the deletion of the Liquid Gold Oil Corporation site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew Lincoff, U.S. EPA Region 9, 75 Hawthorne Street, Mail Code H–6–3, San Francisco, California 94105 (510) 412–2330, OR Ben Hargrove, Cal/EPA DTSC Region 2, 700 Heinz Avenue, Suite 200, Berkeley, California 94710, (510) 540–3845.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Liquid Gold Oil Corporation site, Richmond, California.

A Notice of Intent to Delete for this site was published on April 12, 1996 (XX FR 16234). The closing date for comments on the Notice of Intent to Delete was May 12, 1996. EPA received no comments.

EPA identifies sites which appear to present a significant risk to human health, welfare or the environment, and it maintains the NPL as the list of those sites. Sites on the NPL may be subject of Hazardous Substances Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, penalties, reporting and record keeping, requirements, Superfund, Water pollution control, Water supply.

Dated: September 3, 1996.

John Wise,

Acting Regional Administrator, Region 9.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[AMENDED]

2. Table 1 of Appendix B to part 300 is amended by removing the Liquid Gold Oil Corporation Site, Richmond, California.

[FR Doc. 96–23222 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 96–88; Notice 1]

RIN 2127–AG54

Consumer Information Regulations; Fees for Course Monitoring Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends NHTSA's consumer information regulations on uniform tire quality grading by reducing the fee for the purchase of treadwear course monitoring tires that are sold by the agency at its Uniform Tire Quality Grading Test Facility in San Angelo, Texas. The purchase fee has been reduced to eliminate charges for testing the tires to establish their base course wear rate. This testing will no longer be performed by NHTSA in view of the agency's decision to fix the base course wear rate at its current value for all course monitoring tires that are sold in the future.

DATES: The amendment established by this final rule will become effective on October 11, 1996.

Any petitions for reconsideration must be received by NHTSA not later than October 28, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202–366–2830).

SUPPLEMENTARY INFORMATION: In a final rule published on August 2, 1995 at 60 FR 39269, NHTSA established fees for the purchase of treadwear course monitoring tires and for the use of the traction skid pads at the agency's Uniform Tire Quality Grading Test Facility in San Angelo, Texas. The rule noted that under uniform tire quality grading (UTQG) standards at 49 CFR 575.104, tires must be labeled with information indicating their relative performance in the areas of treadwear, traction, and temperature resistance. For the purpose of evaluating treadwear performance, NHTSA established a 400 mile roadway course near San Angelo, Texas, which is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. Under the UTQG standards, the projected mileage obtained for tested tires must be corrected to account for environmental and other variations that occur during testing on the course. This is done by comparing the performance of the tested tires to that of course monitoring tires run in the same convoy. The course monitoring tires are specially manufactured under controlled conditions so that they can be used as a grading standard, and are made available by NHTSA for purchase at the San Angelo test facility.

The rule further noted that an audit conducted by the Department of Transportation's Office of Inspector General (OIG) concluded that NHTSA was not recovering the full cost of the course monitoring tires that it sells at San Angelo, contrary to the

requirements of Office of Management and Budget (OMB) Circular A–25, which establishes Federal policy regarding fees assessed for Government services and for the sale or use of Government goods or resources. To address these deficiencies, the rule established $379.00 as the fee for each course monitoring tire that NHTSA sells at San Angelo. This amount was the minimum necessary for NHTSA to recover the direct and indirect costs that it incurs in furnishing these tires. It was derived by performing the following calculation for the 700 course monitoring tires that are purchased annually by NHTSA:

Purchase price of course monitoring tires	$175,000
General facility costs relating to tires	3,400
Warehouse storage fees	24,000
Salaries relating to tires	29,825
Testing fees to establish base course wear rate for tires	32,800
Total	$265,025

Number of tires purchased annually=700
$265,025÷700=$378.61 cost per tire.

Through a final rule published elsewhere in this issue of the **Federal Register**, NHTSA has amended the UTQG Standards to revise treadwear test procedures so that the base course wear rate of course monitoring tires is fixed at its current value of 1.34 mils per thousand miles. As a result of this amendment, NHTSA will no longer perform testing to establish a base course wear rate for newly procured batches of course monitoring tires.

So that the government recovers no more than the costs that it actually incurs in providing these tires, testing expenses are being eliminated from the formula used to calculate the tires' purchase price. As shown in the above calculation, testing expenses to establish a base course wear rate amount to $32,800 for the 700 tires that are purchased annually by NHTSA. By eliminating these expenses, the price that is charged for each tire may be reduced by $47.00 ($32,800÷700=$46.85). NHTSA is adding one dollar to the purchase price of each tire to cover shipping expenses it incurs for the delivery of these tires to the San Angelo test facility. These expenses amount to $880.00 for each lot of 700 tires that the agency receives ($880.00÷700=$1.26). With these adjustments, the purchase price for each course monitoring tire that NHTSA sells at San Angelo has now been set at $333.00 ($379.00 − $47.00+$1.00=$333.00).

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under E.O. 12866. NHTSA has analyzed this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The agency believes that motor vehicle and tire manufacturers and tire brand owners typically do not qualify as small entities. This amendment may affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles and tires.

However, because this amendment is reducing the fee that NHTSA charges for course monitoring tires, it can only have a beneficial effect on these entities.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

6. Civil Justice Reform

This rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30111), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (49 U.S.C. 30161) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

7. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because affected members of the public can only benefit from the fee reduction that is accomplished by this amendment.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, § 575.104, *Uniform tire quality grading standards*, in Title 49 of the Code of Federal Regulations at Part 575, is amended as follows:

PART 575—[AMENDED]

1. The authority citation for Part 575 will continue to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30123; delegation of authority at 49 CFR 1.50

2. Appendix D to § 575.104 is amended by revising paragraph 1 to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

Appendix D—User Fees

1. *Course Monitoring Tires:* A fee of $333.00 will be assessed for each course monitoring tire purchased from NHTSA at Goodfellow Air Force Base, San Angelo, Texas. This fee is based upon the direct and indirect costs attributable to: (a) the purchase of course monitoring tires by NHTSA, (b) a pro rata allocation of salaries and general facility costs associated with maintenance of the tires, and (c) warehouse storage fees for the tires.

* * * * *

Issued on: August 6, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–22949 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960830239–6238–01; I.D. 062096B]

RIN 0648–AJ07

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 15

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 15 to the Northeast Multispecies Fishery Management Plan (FMP). This rule extends the timing of the Mid-coast Closure Area for vessels fishing with sink gillnet gear from the current November through December period to September 15 through December 31. The intent of this action is to reduce further the incidental mortality of harbor porpoise in the Gulf of Maine sink gillnet fishery to meet porpoise bycatch reduction goals. This rule also makes several corrections to the regulatory text.

EFFECTIVE DATE: September 6, 1996.

ADDRESSES: Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 15 documents are available upon request from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, NMFS, Fishery Policy Analyst, 508-281-9272.

SUPPLEMENTARY INFORMATION:

Background

In 1993, at the request of NMFS, the Council agreed to develop a strategy to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by integrating a mitigation plan with fishery management measures. Subsequently, one of Amendment 5's (59 FR 9872, March 1, 1994) principal objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of year 4 of the plan's implementation to a level not to exceed 2 percent of the population, based on the best available estimates of abundance and bycatch. Amendment 7 to the FMP (61 FR 27710, May 31, 1996), implemented in July 1996 included an objective for harbor porpoise that was revised to be consistent with the 1994 amendments to the Marine Mammal Protection Act (MMPA). The Council's new provision requires reductions in the incidental mortality and serious injury of harbor porpoise in the Gulf of Maine sink gillnet fishery to the potential biological removal (PBR) level identified for this stock through the process described in section 117 of the MMPA by April 1, 1997, the date required for compliance with section 118(f)(5)(A) of the MMPA. Based on current population and life history information, the PBR level is 403 animals for Gulf of Maine harbor porpoise.

In view of the Council's revised objective, which is to reduce the harbor porpoise bycatch to the PBR level by April 1, 1997, coupled with the most recent bycatch estimate (2,000 harbor porpoise in 1994) and the fact that the Mid-coast Closure Area in the fall accounts for more than 50 percent of the harbor porpoise bycatch in the Gulf of Maine, management action is necessary in order to make further progress toward the Council's bycatch reduction goals. The 1995 bycatch estimate is not yet available but is expected to be somewhat lower than the most recent figure (2,000 animals in 1994). In addition, analysis of recent survey data have resulted in a larger population estimate that will revise the PBR level to 490 animals (pending approval by the Atlantic Scientific Review Group). However, there is no preliminary information that indicates that the current bycatch approaches even the newly projected PBR level of 490 animals.

There are currently four time/area closures in place to protect harbor porpoise. This action extends the existing Mid-coast Closure Area in time to sink gillnet gear based on information collected for the fall period, 1990-95. During the September through December period analyzed, bycatch was highest in October and November. September and December were months with more variability but, in some years, accounted for a significant percentage of the fall bycatch. Framework Adjustment 15 will close the Mid-coast Closure Area to gillnet gear from September 15 through October 31. This will precede the November 1 through December 31 closure to all gear capable of catching multispecies and will result in a total closure period for gillnet gear in this area of September 15 through December 31.

The Council, in consideration of recommendations by the Harbor Porpoise Review Team (HPRT) and Marine Mammal Committee, proposed this September 15 through October 31 additional Mid-coast Closure Area period and also requested the Director, Northeast Region, NMFS (Regional Director), to investigate the possibility of the use of acoustic deterrents as a condition or requirement to fish with sink gillnets in the area to mitigate harbor porpoise bycatch. The Regional Director agreed to investigate the feasibility of further use of the devices in a concurrent action.

The Council is making this adjustment to the regulations under the abbreviated framework rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Director that the measures be published as a final rule if certain conditions are met. The Regional Director may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

This final rule implements an additional closure period from September 15 through October 31 and results in an expanded period for the Mid-coast Closure Area for vessels using gillnet gear. This area will thus be closed to gillnet gear from September 15 through December 31 of each fishing year.

This issue was discussed at a Marine Mammal Committee meeting held on May 21, 1996, and at two Council meetings, the minimum required under the Northeast Multispecies FMP framework adjustment process. Both Council meetings were held in Danvers, MA, the first on June 5, 1996, and the second on July 17, 1996. Documents summarizing the Council's proposed action, the biological analyses upon which this decision was based, and potential economic impacts were available for public review 5 days prior to the second meeting required under the framework adjustment process. Written comments were accepted through July 16, 1996. Comments on the Council's proposal were received at

meetings from individuals and representatives of the International Wildlife Coalition, Cape Ann Gillnetters Association and the Mass Netters Association.

Finally, this rule contains corrections to § 648.87. Specifically, incorrect paragraph references are corrected in § 648.87, paragraphs (b)(1) and (b)(2), and, in paragraph (b)(2), an inconsistent reference to the "Cape Cod South Closure Area" is corrected, an incorrect closure date is corrected, and the word "map" is changed to "chart".

Comments and Responses

Comment: Several individuals addressed the need to continue to reduce harbor porpoise bycatch in the fall months.

Response: The Council concurred based on biological analyses provided by the Northeast Fisheries Science Center (NEFSC) and the recommendation of the HPRT. Information collected during 1990-95 indicates a pattern of high takes of harbor porpoise in the sink gillnet fishery throughout the fall months. The bycatch is highest, however, in October and November. The Mid-coast Closure Area is already closed to most gear to protect multispecies finfish during the months of November and December under Amendment 7 to the FMP. The September 15 to December 31 closure period would remain in effect for the sink gillnet fishery to protect harbor porpoise even if changes occur to the closures implemented for multispecies conservation.

Comment: Several fishermen commented that the MMPA and Council goal of reaching the PBR level by April 1997 is neither realistic nor warranted.

Response: The PBR level goal and the process for determining the PBR level have a strong biological basis and were developed to meet requirements of other applicable law. This includes the MMPA, which was reauthorized in 1994 to include the PBR level stipulations.

Adherence to Framework Procedure Requirements

The Council considered the public comments received prior to making its recommendation to the Regional Director under the provisions for abbreviated rulemaking in this FMP. The Council requested publication of these management measures as a final rule after considering the required factors stipulated under the framework measures in the FMP, 50 CFR 648.90, and has provided supporting analyses for each factor considered. NMFS concurs.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and an opportunity for public comment to be heard and considered. The AA finds that under 5 U.S.C. 553(d), the need to have this regulation in place by September 15, 1996, is good cause to waive the 30-day delay in effectiveness of this regulation. Delay of implementation of this regulation beyond September 15, 1996, would likely impede the achievement of harbor porpoise mortality reduction goals.

Because this regulation is not being published as a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 5, 1996.

N. Foster,

Deputy Assistant Administrator for Fisheries, National marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.87, paragraph (b)(1) and the heading and first sentence of paragraph (b)(2) are revised to read as follows:

§ 648.87 Sink gillnet requirements to reduce harbor porpoise takes.

* * * * *

(b) * * *

(1) *Mid-coast Closure Area.* From March 25 through April 25 and from September 15 through October 31 of each fishing year, the restrictions and requirements specified in paragraph (b) of this section apply to the Mid-coast Closure Area, as defined under § 648.81(g)(1).

(2) *Cape Cod South Closure Area.* From March 1 through March 30 of each fishing year, the restrictions and requirements specified in paragraph (b) of this section apply to the Cape Cod South Closure Area (copies of a chart depicting this area are available from the Regional Director upon request), which is the area bounded by straight lines connecting the following points in the order stated. * * *

* * * * *

[FR Doc. 96–23190 Filed 9–6–96; 11:37 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 61, No. 177
Wednesday, September 11, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB68

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Foreign Denominated Debt

AGENCY: Farm Credit Administration.

ACTION: Resolution of advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA) Board gives notice that no amendments to FCA regulations are planned as a result of the Advance Notice of Proposed Rulemaking (ANPRM) concerning the proposed issuance of Farm Credit securities denominated in foreign currencies by the Federal Farm Credit Banks Funding Corporation (Funding Corporation), on behalf of the Farm Credit banks.

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Senior Financial Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The FCA requested public comment through an ANPRM on November 24, 1995 (60 FR 57963) to assist it in determining whether the risks relating to the issuance of Farm Credit debt securities denominated in foreign currencies pose any unique safety and soundness concerns that needed to be addressed through amendments to FCA regulations. The comment period closed on January 31, 1996.

The FCA received one comment letter on the ANPRM, in which the Funding Corporation observed that the risks of issuing foreign currency denominated debt (FCDD) could be managed with standards and procedures similar to those now used by the System in interest rate swaps. After careful consideration, the FCA has determined that issuance of FCDD will not raise any safety and soundness concerns that cannot effectively be managed through the FCA funding approval process and other FCA guidance, such as the bookletter entitled "Guidelines for Utilizing Derivative Products."

The FCA noted in the ANPRM that current § 615.5450(b) under subpart O, which specifies that System securities shall be issued in denominations of $1000, $5000 or multiples thereof, could be interpreted to apply to System issuance of FCDD. However, the FCA interprets subpart O to apply only to the Federal Reserve Banks' book-entry procedures for issuance of domestic debt securities and not to the issuance of FCDD. Thus, no changes to § 615.5450 of subpart O are necessary.

On November 17, 1995, the FCA adopted an interim rule establishing a new subpart P that differentiates Systemwide debt securities distributed outside the United States from those issued through the Federal Reserve Banks under existing Funding Corporation programs.[1] Issuances of FCDD by the Funding Corporation, on behalf of the banks, under the Farm Credit System's Global Debt Program shall be guided by subpart P and will be subject to the FCA funding approval process. Accordingly, the FCA does not plan any further rulemaking at this time in connection with the issuance of Systemwide debt securities denominated in foreign currencies.

Dated: August 29, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–23240 Filed 9–10–96; 8:45 am]

BILLING CODE 6705–01–P

[1] *See* 60 FR 57916 (November 24, 1995). The rule also clarified the Funding Corporation's statutory authority to: (1) use more than one fiscal agent for issuance of Systemwide debt securities; and (2) employ fiscal agents other than Federal Reserve Banks for issuance of Systemwide debt securities in foreign capital markets. The FCA adopted the interim rule as final on March 1, 1996 (61 FR 12015).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires repetitive visual inspections and end-float checks of the ram air turbine (RAT), and replacement of the RAT, if necessary. This new action would require installation of a modified RAT, which would constitute terminating action for the currently required inspections. This proposal is prompted by the development of a modification of the RAT that positively addresses the unsafe condition. The actions specified by the proposed AD are intended to prevent the RAT from breaking away from it support leg, which could damage the airplane structure and systems, and could injure ground personnel.

DATES: Comments must be received by October 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Chuck Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–164–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 4, 1994, the FAA issued AD 94–01–11, amendment 39–8793 (59 FR 5462, February 1, 1994), applicable to Airbus Model A320 series airplanes equipped with certain ram air turbines (RAT). That AD requires repetitive detailed visual inspections and end-float checks of the RAT to detect various discrepancies, and replacement of the RAT with a new RAT, if necessary. That action was prompted by at least two reports indicating that, during on-ground functional testing of the RAT installed on these airplanes, the RAT propeller assembly separated from the support leg. In one case, the turbine was fully detached from the leg and traveled 4 meters forwards. In the other case, the turbine had moved 18 mm from the leg, but was not detached. Investigation of these failures revealed that the detachment was due to the failure of the ball bearings associated with the propeller assembly; the ball bearings failed as a result of excessive overloading and overtemperature. The requirements of AD 94–01–11 are intended to prevent the RAT from breaking away from its support leg, which could damage the airplane structure and systems, and could injure ground personnel.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which the airworthiness authority for France, has advised the FAA that manufacturer has developed a modified RAT assembly that positively addresses the previous problems experienced with the RAT on the Airbus Model A320 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–29–1065, dated February 28, 1995, which describes procedures for installing a new modified RAT, identified as Modification 24701. The modified RAT includes an improved ball bearing that is not susceptible to the overloading and overtemperature problems experienced previously. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 93–057–041(B)R1, dated June 7, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–01–11. It would continue to require repetitive visual inspections and end-float checks of the RAT, and replacement of the RAT, if necessary. It also would require the installation of the new modified RAT (Modification 24701) as terminating action for the repetitive inspections. The modification would be required to be accomplished in accordance with the service bulletin described previously.

This proposed action also would limit the applicability of the AD to only airplanes on which Modification 24701 has not been installed. This modification was installed prior to delivery on airplanes having manufacturer's serial number (MSN) 455, 471, 531, and subsequent.

Cost Impact

There are approximately 94 Airbus Model A320 series airplanes of U.S. registry that would be affected by this proposed AD.

The inspections/checks that are currently required by AD 94–01–11 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the current inspection/check requirement is estimated to be $5,640, or $60 per airplane, per inspection/check.

The terminating modification that is proposed in this AD action would take approximately 74 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of the proposed modification requirement of this AD is estimated to be $417,360, or $4,440 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8793 (59 FR 4562, February 1, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 96–NM–164–AD. Supersedes AD 94–01–11, amendment 39–8793.

Applicability: Model A320–111, –211, –212, –214, –231, and –232 series airplanes; on which Airbus Industrie Modification 24701 (as described in Airbus Service Bulletin A320–29–1065, dated February 28, 1995) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the RAT from breaking away from its support leg, which could damage the airplane structure and systems, and could injure ground personnel, accomplish the following:

(a) Perform a detailed visual inspection and an end-float check of the RAT between turbine and leg, in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, at the earliest of the times specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD:

(1) Within the next 450 flight hours after March 3, 1994 (the effective date of AD 94–01–11, amendment 39–8793); or

(2) Before and after the first functional ground check of the RAT that is performed after March 3, 1994; or

(3) After the first in-flight deployment of the RAT that occurs after March 3, 1994.

(b) If no discrepancy is detected, repeat the detailed visual inspection and the end-float check after each functional ground check of the RAT, and after each in-flight deployment of the RAT.

Note 2: Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993, references Dowty Aerospace Service Bulletin 600–29–171, dated January 4, 1993, which provides specific descriptions of the discrepancies in paragraph 2 of that service bulletin.

Note 3: The discrepancies that are addressed in this AD can only occur during use of the RAT, and not during stowage of the RAT; therefore, it is not necessary to perform the repetitive inspections and end-float checks before each functional ground check of the RAT if the RAT has not been used since the preceding inspection.

(c) If any discrepancy is detected as a result of any detailed visual inspection required by this AD, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the RAT in accordance with Airbus Industrie Service Bulletin A320–29–1061, dated April 13, 1993; and after replacement, repeat the detailed visual inspection and the end-float check required by paragraph (a) of this AD. Thereafter, repeat the detailed visual inspection and the end-float check after each functional ground check of the RAT, and after each in-flight deployment of the RAT. Or

(2) Install a new modified RAT (Modification 24701) in accordance with Airbus Service Bulletin A320–29–1065, dated February 28, 1995. Installation of this modification constitutes terminating action for the repetitive visual inspections and end-float checks required by this AD.

(d) Within 2 years after the effective date of this AD, install a new modified RAT (Modification 24701) in accordance with Airbus Service Bulletin A320–29–1065, dated February 28, 1995. Installation of this modification constitutes terminating action for the repetitive visual inspections and end-float checks required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 4, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23102 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–201–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38; an inspection to verify that the sizes of the holes of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. This proposal is prompted by a report of jamming of a flap due to incorrect tolerances of the flap-hinge installation, which caused high bearing stress on the bushings in the flap fittings. The actions specified by the proposed AD are intended to prevent such high bearing stress, which could result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs; these conditions could result in jamming of the flaps and consequent reduced controllability of the airplane.

DATES: Comments must be received by October 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–201–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it received a report indicating that one of the flaps on one airplane jammed because the rear lug of one of the flap fittings at wing station (WS) 123.38 was broken and the bushing in the lug was worn. Investigation revealed that the bushings in the flap fittings were subjected to high bearing stress due to incorrect tolerances in the initial design of the flap-hinge installation. This condition can result in wear on the bushings, cracking of the flap fittings, and breakage of the lugs on the flap fittings. These conditions, if not corrected, could result in jamming of the flaps and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995, which describes procedures for repetitive visual inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at WS 123.38.

For airplanes on which any cracking or damage is found during the visual inspection, the service bulletin describes procedures for installation of new improved flap fittings and installation of improved bushings (Modification 2628—Part 3). This modification involves replacing the flap fittings and installing the flap hinge to the flap fittings.

The service bulletin also describes procedures for an eventual inspection to verify that the sizes of the inboard and outboard holes (swaged bushings) of the flap fittings are within specified limits, and to ensure that the swaged bushings are not loose.

For airplanes on which the sizes of the inboard and outboard holes are within specified limits and on which no loose swaged bushings are found, the service bulletin describes procedures for installation of improved bushings (Modification 2628—Part 1). This modification involves attaching the flap hinge to the flap fittings, torquing the nuts, and installing new cotter pins.

For airplanes on which the size of any hole is outside specified limits or on which any loose swaged bushing is found, the service bulletin describes procedures for installation of oversize bushings in the flap fittings, and installation of improved bushings (Modification 2628—Part 2). This modification entails removing and replacing the swaged bushings: increasing the hole for the floating bushings to oversize dimensions; and performing an eddy current inspection to detect cracking of the holes.

Installation of improved bushings (with a flange) will prevent damage and cracking as a result of high bearing stress on the bushings.

The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–072, dated April 21, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive visual inspections to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at WS 123.38; an eventual inspection to verify that the sizes of the inboard and outboard holes (swaged bushings) of the flap fittings are within specified limits and to ensure that the swaged bushings are not loose; and modification of the flap fittings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, and that the average labor rate is $60 per work hour. Based on

these figures, the cost impact of the proposed visual inspections on U.S. operators is estimated to be $13,440, or $60 per airplane.

For operators required to accomplish proposed Modification 2628—Part 1, the FAA estimates that it would take approximately 30 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts would cost $100 per airplane. Based on these figures, the cost impact of proposed Modification 2628—Part 1 on U.S. operators is estimated to be $1,900 per airplane.

For operators required to accomplish proposed Modification 2628—Part 2, the FAA estimates that it would take approximately 60 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts would cost $100 per airplane. Based on these figures, the cost impact of proposed Modification—Part 2 on U.S. operators is estimated to be $3,700 per airplane.

For operators required to accomplish proposed Modification 2628—Part 3, the FAA estimates that it would take approximately 96 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts would cost $1,400 per airplane. Based on these figures, the cost impact of proposed Modification—Part 3 on U.S. operators is estimated to be $7,160 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 95–NM–201–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 379 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high bearing stress on the bushings in the flap fittings, which could result in jamming of the flaps and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 800 hours time-in-service after the effective date of this AD: Perform a visual inspection to detect damage or cracking of the forward and aft attachment lugs of the flap fittings at wing station (WS) 123.38, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If no cracking or damage is found, and the flap fittings have not been modified or replaced, repeat the visual inspection thereafter at intervals not to exceed 800 hours time-in-service.

(2) If any cracking is found, prior to further flight, replace the flap fittings with new improved flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628 - Part 3) of the service bulletin. After this modification is accomplished, no further action is required by this paragraph.

(b) Within 4,500 hours time-in-service after the effective date of this AD, perform an inspection to determine the size of the inboard and outboard holes (swaged bushings) of the flap fittings, and to detect loose swaged bushings, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If the sizes of the holes are within the limits specified in the service bulletin, and if no loose swaged bushings are found, prior to further flight, install improved bushings in accordance with the Accomplishment Instructions (Modification 2628—Part 1) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(2) If the size of any hole is outside the limits specified in the service bulletin, or if any loose swaged bushing is found, prior to further flight, install oversize bushings in the flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 2) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 4, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23101 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–257–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes. This proposal would require modification of the power control relay installation of the emergency lights. The proposed AD also would require revising the FAA-approved Airplane Flight Manual to include procedures for turning off and on the emergency lights switch in certain conditions. This proposal is prompted by a report that the emergency lights do not automatically illuminate when all generated electrical power on the airplane is lost and the power to the left essential bus is maintained from the aircraft batteries. The actions specified by the proposed AD are intended to ensure that the emergency lights illuminate when needed in an emergency situation.

DATES: Comments must be received by October 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–257–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–257–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–257–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–7 series airplanes. Transport Canada Aviation advises that the emergency lights do not automatically illuminate when all generated electrical power on the airplane is lost and the power to the left essential bus is maintained from the aircraft batteries. This condition, if not corrected, could result in the failure of the emergency lights to illuminate when needed in an emergency situation.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 7–33–23, Revision 'A', dated October 20, 1995 (Modification 7/2622), which describes procedures for modification of the power control relay installation of the emergency lights. The modification involves installation of a new relay assembly and connection of the wires to the terminal block. The modification will provide direct monitoring of each generator control unit, and upon loss of all DC generators, the emergency lights will be activated by the emergency light batteries. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–95–03, dated March 9, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

Bombardier also has issued Dash 7 Flight Manual PSM 1–71A–1A, Revision 39, dated August 22, 1994, which describes procedures for turning off the emergency lights switch following accomplishment of Modification 7/2622. The flight manual also describes procedures turning on the emergency lights switch, if the emergency lights are required.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require modification of the power control relay installation of the emergency lights. Following accomplishment of the proposed modification, the proposed AD also would require revising the Limitations Section of the FAA-approved Airplane Flight Manual to include procedures for turning off and on the emergency lights switch. The actions would be required to be accomplished in accordance with the service bulletin and flight manual described previously.

Cost Impact

The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,713 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $138,791, or $2,953 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $2,820, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 95–NM–257–AD.

Applicability: Model DHC–7 series airplanes, serial numbers 003 through 113 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the emergency lights illuminate when needed in an emergency situation, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the power control relay installation of the emergency lights, in accordance with de Havilland Service Bulletin S.B. 7–33–23, Revision 'A', dated October 20, 1995.

(b) Following accomplishment of paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of de Havilland Dash 7 Flight Manual PSM 1–71A–1A, Revision 39, dated August 22, 1994, into the AFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 4, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23100 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires inspections to detect chafing of the wire looms (bundles) in the wing and the horizontal stabilizer; and repair or replacement, protection, and realignment, if necessary. This proposal would require that those actions also be accomplished in certain areas of the main landing gear (MLG) bays. This proposal also would require installation of protective sleeves around the wire bundles, and realignment of bundles that are not guided centrally into the conduit end fittings, which constitutes terminating action for the repetitive inspections. This proposal is prompted by a report that electrical short circuiting could occur in the wire bundles in the MLG bays. The actions specified by the proposed AD are intended to prevent such electrical short circuiting due to chafing of the wire bundles in the wing, horizontal stabilizer, or MLG bays.

DATES: Comments must be received by October 21, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at

the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–176–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 30, 1992, the FAA issued AD 92–22–02, amendment 39–8388 (57 FR 48957, October 29, 1992), applicable to certain Airbus Model A320 series airplanes, to require inspections to detect chafing of the wire looms (bundles) in the wing and the horizontal stabilizer; and repair or replacement, protection, and realignment, if necessary. That action was prompted by an incident in which short circuiting of a wire bundle caused fire extinguishant to discharge and pop the circuit breaker for a brake fan. The requirements of that AD are intended to prevent electrical short circuiting due to chafing of the wire bundles in the wing and the horizontal stabilizer.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that chafing of the wire bundles and subsequent electrical short circuiting also could occur in the main landing gear (MLG) bays. This condition presents the same unsafe condition that was addressed by AD92–22–02.

Additionally, the DGAC has advised that protection of the wire bundle is necessary following any repair or replacement of a wire to prevent further wire damage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993. Although Revision 3 of the service bulletin is essentially the same as Revision 2, it adds procedures for repetitive visual inspections of the wire bundles to detect damage, contact with the end fittings of the protective conduit, and misalignment with conduit end fittings in the MLG bays. The service bulletin recommends that any damaged wire be repaired or replaced in accordance with procedures described in the Aircraft Wiring Manual or the Aircraft Maintenance Manual.

Airbus also has issued Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993. Among other things, this service bulletin describes procedures for installation of protective sleeves around the wire bundles, and realignment of bundles that are not guided centrally into the conduit end fittings. Revision 3 of the service bulletin adds procedures for accomplishment of these actions in the MLG bays. Accomplishment of the protection and realignment in accordance with Revision 3 of the service bulletin eliminates the need for the repetitive visual inspections.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 91–182–020(B)R2, dated December 7, 1994, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–22–02 to continue to require inspections to detect chafing of the wire bundles in the wing and the horizontal stabilizer; and repair or replacement, protection, and realignment, if necessary. The proposed AD also would require that these actions be accomplished in certain areas of the MLG bays. Additionally, the proposed AD would require installation of protective sleeves around the wire bundles, and realignment of bundles that are not guided centrally into the conduit end fittings, which constitutes terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Explanation of Requirement for Terminating Action

While the French AD and service bulletins allow flight to continue as long as the wire bundles are inspected repetitively, this proposed AD would require that protection and, if necessary, realignment of the wire bundles be accomplished as terminating action for the repetitive inspections, The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and

more emphasis on design improvements. The proposed requirement for realignment and protection of the wire bundles is in consonance with these considerations.

In developing an appropriate compliance time for the proposed requirement to protect the wire bundles, the FAA's intent is that these actions be accomplished during a regularly scheduled maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. The FAA finds that 7,000 hours time-in-service corresponds closely to the interval representative of most of the affected operators' normal maintenance schedules. The FAA considers that this interval will provide an acceptable level of safety.

Cost Impact

There are approximately 30 Model A320 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are required currently by AD 92–22–02 take approximately 31 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $55,800, or $1,860 per airplane.

The inspections that are proposed in this AD action would take approximately 31 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed inspection is estimated to be $55,800, or $1,860 per airplane.

The installation that is proposed in this AD action would take approximately 59 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost for required parts would be negligible. Based on these figures, the cost impact on U.S. operators of the proposed installation is estimated to be $106,200, or $3,540 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8388 (57 FR 48957, October 29, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 95–NM–176–AD. Supersedes AD 92–22–02, Amendment 39–8388.

Applicability: Model A320 series airplanes on which Airbus Modification No. 22109 (Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical short circuiting due to chafing of the wire bundles in the wing, horizontal stabilizer, or main landing gear (MLG) bay, accomplish the following:

Restatement of Requirements of AD 92–22–02

(a) For airplanes having manufacturer's serial numbers through 169 inclusive: Prior to the accumulation of 450 hours time-in-service after December 3, 1992 (the effective date of AD 92–22–02, amendment 39–8388), inspect the wire bundles in wing zones 574 and 674 through panels 574AB and 674AB to detect chafing or contact with the end fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 450 hours time-in-service until the inspection required by paragraph (c) of this AD is accomplished.

(1) If any chafed or damaged wire is found, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(2)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(b) For airplanes having manufacturer's serial numbers through 169 inclusive: Prior to the accumulation of 1,500 hours time-in-service after December 3, 1992, inspect the wire bundles in the wing and horizontal stabilizer, excluding wing zones 574 and 674 through panels 574AB and 674AB, to detect chafing or contact with the ending fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 3,500 hours time-in-service until the inspection required by paragraph (d) of this AD is accomplished.

(1) If any chafed or damaged wire is found, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2,

dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

New Requirements of This AD

(c) For all airplanes: Prior to the accumulation of 450 hours time-in-service after the effective date of this AD, inspect the wire bundles in wing zones 574 and 674 through panels 574AB and 674AB to detect damage, contact chafing, or contact with the end fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 450 hours time-in-service. Accomplishment of this inspection terminates the inspections required by paragraph (a) of this AD.

(1) If any chafed or damaged wire is found, prior to further flight, accomplish the requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repair or replace the wire in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual. And

(ii) Protect the wire bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(2)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(2)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(d) For all airplanes: Prior to the accumulation of 1,500 hours time-in-service after the effective date of this AD, inspect the wire bundles in the wing and horizontal stabilizer, excluding wing zones 574 and 674 through panels 574AB and 674AB, to detect chafing or contact with the ending fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 3,500 hours time-in-service. Accomplishment of this paragraph terminates the inspections required by paragraph (b) of this AD.

(1) If any chafed or damaged wire is found, prior to further flight, accomplish the requirements of paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Repair or replace the wire in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual. And

(ii) Protect the wire bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, or Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 2, dated March 3, 1992, or Revision 3, dated March 12, 1993.

(e) For all airplanes: Prior to the accumulation of 1,500 hours time-in-service after the effective date of this AD, inspect the wire bundles in the MLG bays to detect chafing or contact with the end fittings of the protective conduit, in accordance with Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993. Thereafter, repeat this inspection at intervals not to exceed 3,500 hours time-in-service.

(1) If any chafed or damaged wire is found, prior to further flight, accomplish the requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this AD.

(i) Repair or replace the wire in accordance with the Airplane Maintenance Manual or the Aircraft Wiring Manual. And

(ii) Protect the wire bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993.

(2) If any wire bundle is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the bundle in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320–24–1044, Revision 3, dated March 12, 1993.

(f) If a temporary repair over a damaged length of wire bundle is accomplished in accordance with paragraph (a)(2), (b)(2), (c)(2), (d)(2), or (e)(2) of this AD: Prior to the accumulation of 450 hours time-in-service, replace the temporary repair with a protective sleeve around the wire bundle, and realign the bundle if it is not guided centrally into the conduit end fittings. Accomplish these actions in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993. Accomplishment of these actions terminates the repetitive inspections required by paragraph (c), (d), or (e) of this AD, as applicable.

Note 2: Accomplishment of the actions in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, is acceptable for compliance with the requirements of paragraph (f) of this AD for the areas specified in paragraphs (c) and (d) of this AD.

(g) For all airplanes: Prior to the accumulation of 7,000 hours time-in-service after the effective date of this AD, install protective sleeves around the wire bundles, and realign any bundle that is not guided centrally into the conduit end fittings, in wing zones 574 and 674 through panels 574AB and 674AB, in the wing and horizontal stabilizer, excluding wing zones 574 and 674 through panels 574AB and 674AB, and in the MLG bays, in accordance with Airbus Service Bulletin A320–24–1045, Revision 3, dated June 10, 1993. Accomplishment of these actions constitutes terminating action for the repetitive inspections required by this AD.

Note 3: Accomplishment of the actions in accordance with Airbus Service Bulletin A320–24–1045, Revision 2, dated April 12, 1992, is acceptable for compliance with the requirements of paragraph (g) of this AD for the areas specified in paragraphs (c) and (d) of this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 5, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23241 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–24–96]

RIN 1545–AU31

Consolidated Returns—Limitations on the Use of Certain Losses and Deductions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the notice of public hearing.

SUMMARY: This document contains a correction to the notice of public

hearing (CO–24–96) which was published in the **Federal Register** on Thursday, June 27, 1996 (61 FR 33393). The notice of public hearing generally relates to the carryover and carryback of losses to consolidated and separate return years.

FOR FURTHER INFORMATION CONTACT: David Friedel (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing that is the subject of this correction is under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of public hearing (CO–24–96) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing (CO–24–96) which is the subject of FR Doc. 96–15826 is corrected as follows:

On page 33394, column 2, in the preamble, under the heading "Comments and Public Hearing", in the second paragraph, line 2, the language "for Monday, September 16, 1996, at 10" is corrected to read "for Thursday, October 17, 1996, at 10".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–23086 Filed 9–10–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

Environmental Analysis of Army Actions

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws from consideration a proposed rule published in the **Federal Register** on July 22, 1996 (Vol. 61, No. 141 FR 37865). The document is being withdrawn to allow for further review.

ADDRESSES: Headquarters, Department of the Army, ATTN: DAIM–ED (Mr. Timothy Julius, Environmental Protection Specialist), 600 Army Pentagon, Washington, DC 20310–0600.

FOR FURTHER INFORMATION CONTACT: Timothy P. Julius, (703) 693–0543.

SUPPLEMENTARY INFORMATION: Written comments already received from the public will be considered when promulgating a new proposed rule.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–23175 Filed 9–10–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 165

Coast Guard

[COTP Charleston 96–034]

RIN 2115–AA97

Safety Security Zone Regulations; Charleston Harbor and Cooper River, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a moving safety security zone around vessels transporting nuclear materials in Charleston Harbor and the Cooper River. Each zone would extend 200 yards ahead and astern, and 100 yards to each side of vessels carrying the nuclear materials, during transit from the Charleston Harbor Entrance to the Charleston Naval Weapons Station on the Cooper River. The zone would remain in effect during cargo operations while the vessel is moored at the Naval Weapons Station. This safety security zone is needed to protect the transport vessels from potential protests and demonstrations by organizations that may attempt to disrupt shipments, while transiting Charleston Harbor and the Cooper River.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Comments should be mailed to Commanding Officer, Marine Safety Office Charleston, 196 Tradd Street, Charleston, South Carolina 29401–1899. Comments will be available for inspection and copying at this address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address. The telephone number is (803) 720–7701.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeffrey T. Carter, Project Officer, Coast Guard Marine Safety Office Charleston, at (803) 720–7701.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identifying this notice [COTP CHARLESTON 96–034] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposed rule may be changed in light of comments received.

No public hearing is planned, but one may be held if written requests for a hearing are received and determined that the opportunity to make oral presentations will aid the rulemaking process.

Discussion of Proposed Regulations

The Coast Guard proposes to establish a moving safety security zone around vessels transporting certain nuclear materials in Charleston Harbor and the Cooper River. As part of a major national security objective to prevent the spread of nuclear weapons worldwide, the U.S. Department of Energy will be receiving shipments of foreign research reactor spent nuclear fuel rods through the Charleston Naval Weapons Station. These shipments will take place over a 13 year period. Protests and demonstrations during shipments through U.S. ports of nuclear materials, such as spent fuel rods, would place the safe navigation of the transport vessels at risk. This moving safety security zone is needed to protect the transport vessels from the risk associated with protests and demonstrations while transiting Charleston Harbor and Cooper River.

The safety security zone would extend 200 yards ahead and astern and 100 yards to each side of the vessel carrying the nuclear materials during its transit from Charleston Harbor Entrance Buoy "C" (LLNR 1885) to the Charleston Naval Weapons Station on the Cooper River. The zone would remain in effect during cargo operations while the vessel is moored at the Naval Weapons Station. Entry into the zone would be prohibited during vessel transit (which includes any emergency anchorage or mooring) and cargo transfer operations, unless authorized by Captain of the Port of Charleston.

The actual dates this safety security zone would be in effect are not known at this time. The Captain of the Port will announce the activation of this zone through a Broadcast Notice to Mariners whenever Captain of the Port Charleston

receives a firm arrival time. Maritime traffic will not be significantly impacted because of the expected small number of vessels needing this safety security zone, and the limited duration of the zone during transit and cargo operations.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Maritime traffic will not be significantly impacted because of the expected small number of vessels needing this safety security zone, and the limited duration of the zone during transit and cargo operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. Because of the small number of vessels needing the safety zone and the minimal impact on navigation and commerce the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Section 2.B.2e.34(g) of Commandant Instruction M16475.1B that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Subpart D of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.708 is added to read as follows:

§ 165.708 Safety/Security Zone; Charleston Harbor and Cooper River, Charleston, SC.

(a) Regulated area. The following boundaries are established as a safety zone during specified conditions:

(1) All waters 200 yards ahead and astern and 100 yards to each side of a vessel transporting nuclear materials while the vessel transits from Charleston Harbor Entrance Buoy "C" (LLNR 1885, position 32–29.6N, 079–40.9W) to the Charleston Naval Weapons Station (position 32–55.4N, 079–56.0W) on the Cooper River. All coordinates referenced use datum: NAD 1983.

(2) All waters within 100 yards of the vessel described in paragraph (a)(1) of this section while the vessel is conducting cargo operations at the Charleston Naval Weapons Station.

(b) Captain of the Port Charleston will announce the activation of the safety zone described in paragraph (a) of this section by Broadcast Notice to Mariners. The general regulations governing safety zones contained in § 165.23 and § 165.33 apply.

Dated: August 26, 1996.

M.J. Pontiff,

Commander, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 96–23246 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 61, and 63

[AD–FRL–5560–9]

RIN 2060–AG30

Recordkeeping and Reporting Burden Reduction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revisions to rules and notice of public hearing.

SUMMARY: The proposed revisions result from a thorough review of the regulations implementing the Clean Air Act. This review was part of a Government-wide initiative as directed by the President on March 4, 1995. The EPA's goal in this review was to identify and eliminate unnecessary recordkeeping and reporting burdens. As a result of this review, the proposed revisions to existing standards would reduce recordkeeping and reporting burdens by approximately 1 million hours per year. This burden reduction is the equivalent of returning 25,000 workweeks back to the private sector to boost productivity and profits.

DATES: *Comments.* Comments must be received on or before October 11, 1996, unless a hearing is requested by September 23, 1996. If a hearing is requested, written comments must be received by October 28, 1996.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than September 23, 1996. If a hearing is held, it will take place on September 26, 1996, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (LE–131), Attention, Docket No. A–95–50, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail. epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [A–95–50]. No Confidential Business Information (CBI) should be submitted

through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Public Hearing. If a public hearing is held, it will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons interested in requesting a hearing, verifying that a hearing will be held, or wishing to present oral testimony should contact Ms. Yvonne Chandler, Policy, Planning and Standards Group (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5627 by the date specified above.

Docket. Docket No. A–95–50, containing supporting information used in developing the proposed amendments to standards, is available for public inspection and copying from 8 a.m. to 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street, SW., Washington, DC 20460. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards or technical aspects, contact Mr. David Markwordt at (919) 541–0837, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the rules they administer to identify those rules that are obsolete or unduly burdensome. Based on this review, EPA is today amending various rules to reduce unnecessary recordkeeping and reporting burdens. Today's action is part of an ongoing effort by the EPA to reduce unnecessary burdens associated with existing rules. EPA estimates that approximately 1 million hours of recordkeeping and reporting will be eliminated with these proposed changes.

II. Rules to be Amended

Table I contains a summary of the rules to be amended, the changes to the rules, and an estimate of the burden reduction associated with the proposed changes. The burden reductions are provided as an estimate of the savings to industries complying with these rules.

Table II contains a summary of existing rules which will be affected by changes made to the General Provisions (see Table I).

TABLE I.—BURDEN REDUCTION: ACTION PLAN FOR THE OFFICE OF AIR AND RADIATION

Title	CFR Cite	Description of burden reduction	Estimate of burden reduction
General Provisions—Part 60 and 61.	60.7(a), 60.19(b), 61.04(b).	Change provisions to allow for electronic notifications/reports	(1)
General Provisions—Part 60 and 63.	60.7(a)(2), 63.9(b)(2)(iv).	Delete notification of anticipated date of initial startup	
General Provisions—Part 60 and 63.	60.7(c) and 63.10(e)(3).	Change quarterly exception reporting to semi-annual	
General Provisions—Part 60	60.8(d)	Allow 7 days prior notice of any rescheduled performance test	
General Provisions—Part 60 and 63.	60.7(f) and 63.10(b)(2).	Allow reduction in retention of raw data (15 minute recordings) for continuous emission monitoring, where 95% data availability is achieved (retain hourly averages).	
NESHAP for Coke By-Product Recovery Plants.	61.130 (subpart L)	Change frequency of quarterly reports to semiannual reports. For carbon absorbers and incinerators, remove the requirement to develop and record a plan for proper operation and maintenance of the control device [61.139(i)(l)(ii)].	(2)
NESHAP for Asbestos	61.140 (subpart M)	Change quarterly reporting for exceedances to semiannual reporting for exceedances for milling, manufacturing and fabricating processes at all asbestos processing facilities.	(2)
Standards of Performance for the Phosphate Rock Plants.	60.400 (subpart NN)	Change quarterly reporting of scrubber exceedances to semi-annual.	(2)
NSPS for Magnetic Tape Coating Facilities.	60.714 and 60.717 (subpart SSS).	1) Change frequency of quarterly reports to semiannual. 2) For determining compliance with the cutoff applicability for controls, delete semiannual estimate of projected annual solvent use. Rely upon already required records of actual solvent usage. 3) Also delete requirement to report the first semiannual estimate in which annual use would exceed cutoff.	(2)
NSPS for Bulk Gasoline Terminals.	60.502(e)(3) and (4) (subpart XX).	Terminals may check tank truck vapor-tightness documentation less frequently (than within 2 weeks of loading now required) so that if: (1) less than 1 truck per month over 26 weeks is loaded without documentation, cross check is quarterly, or (2) less than 1 truck per month over 52 weeks is loaded without documentation, cross check is semi-annually.	(2)
MACT for Gasoline Distribution	63.420 (subpart R)	Subpart R requires compliance with Subpart XX 60.502(e)(3) and (4) (see above). Changes in Subpart XX result in a burden reduction in Subpart R.	19,000

TABLE I.—BURDEN REDUCTION: ACTION PLAN FOR THE OFFICE OF AIR AND RADIATION—Continued

Title	CFR Cite	Description of burden reduction	Estimate of burden reduction
NSPS for Glass Manufacturing Plants.	60.290 (subpart CC)	Change monitoring to: install and operate continuous opacity monitors or approved alternative continuous parametric monitors that represent 99% confidence level of average opacity valued determined during performance testing. (This reflects a change in confidence level from 97.5% to 99%.) 2) Change reporting to: For the purpose of 60.7 report all periods during which the average opacity exceeds the 99% confidence level. (This reflects a change in confidence level from 97.5% to 99%).	[2]
NESHAP for Arsenic from Glass Manufacturing Plants.	61.160 (subpart N)	Change monitoring to: determine the opacity value corresponding to the 99% confidence level and calculate the 15 minute averages of gas temperature entering control device. (This reflects a change in confidence level from 97.5% to 99%.).	[2]
NSPS for Municipal Waste Combustors.	60.50a (subpart Ea)	This action would revise the CEMS reporting requirements under the 1991 NSPS (Subpart Ea) to be consistent with the 1995 NSPS (Subpart Eb) and Guideline (Subpart Cb). The CEMS reporting requirements for SO2, NOx, and CO would be revised from quarterly reporting to annual with semiannual exception reporting.	2,300
NSPS for Fossil-Fuel Fired Steam Generators for which construction is commenced after 8/17/71 and before 9/19/78.	60.40–60.47 (subpart D).	Change quarterly excess emission reports to semiannual	1,300
NSPS for Fossil-Fuel Fired Steam Generators for which construction is commenced after 8/17/71 and before 9/19/78.	60.40a–60.49a (subpart Da).	Change quarterly excess emission reports for opacity and quarterly compliance reports for SO2 and NOx to semiannual.	1,300
NSPS for Fuel Gas Combustion Devices.	60.100–60.109 (subpart J).	Change catalytic cracking units quarterly compliance reports for opacity, CO, and SO2 to semiannual. Change fuel gas combustion devices quarterly compliance reports for SO_2 and H2S to semiannual. Change quarterly claus sulfur recovery units compliance reports for SO_2 and reduced sulfur compounds and H2S to semiannual.	1,500
NSPS for Industrial-Commercial Institutional Steam Generating Units.	60.40b–60.49b (subpart Db).	Change all quarterly reporting requirements to semiannual	35,000
NSPS for Industrial-Commercial Institutional Steam Generating Units.	60.40c-60.48c (subpart Dc).	Change all quarterly reporting requirements to semiannual	1,700
Reports Source Emissions and State Action Reporting.	51.322 (subpart Q)	Reduce the number of sources that are required to report due to the amount of emissions they currently emit: raise the reporting threshold for SO2, NOx, PM10, and VOC from 100 tons/year to 200 tons/year and for CO from 1000 tons/year to 2000 tons/year.	1,700
NSPS for New Residential Wood Heaters.	60.531 60.536(f)(3) 60.538 (subpart AAA).	Correction to 60.531 reduces resources needed to determine whether a given woodburning appliance is covered by the regulation. Clarification of 60.536(f)(3) eliminates the requirement that a manufacturer of a coal-only heater perform an emissions test. Removal of 60.538 eliminates confusion as to how regulation should be applied.	[2]

[1] 780,000 (total for all GP revisions).
[2] Negligible.

TABLE II.—EXISTING REGULATIONS IMPACTED BY CHANGES TO GENERAL PROVISIONS

TITLE	SUBPART	ICR NO.	OMB NO.
NSPS SECONDARY BRASS & BRONZE PROD. PLANTS	M	1604.04	2060.0110
NESHAP: BENZENE WASTE OPERATIONS	FF	1541.04	2060.0183
NSPS: PORTLAND CEMENT PLANTS	F	1051	2060–0025
NESHAP: CHROM. EMIS. FROM HARD & DECORATIVE CHROM. ELECTRO. & CHROM ANODIZING TANKS.	N	1161.02	2060–0327
NITRITIC ACID PLANTS	G	1056.05	2060–0019

TABLE II.—EXISTING REGULATIONS IMPACTED BY CHANGES TO GENERAL PROVISIONS—Continued

TITLE	SUBPART	ICR NO.	OMB NO.
STD. FOR PERFORMANCE FOR NEW STATIONARY SOURCES, SULFURIC ACID PLANTS.	H	1057.06	2060–0041
ELECTRIC ARC FURNACES & ARGON-OXYGEN DECARBURIZATION VESS. INFO. REQUIREMENTS.	AA & AAA	1060.07	2060–0038
NSPS FOR PHOSPHATE FERTILLIZER IND.	T,U,V,W, & X	1061.06	2060–0037
NAPA: COAL PREPARATION PLANTS	B ?	1062	2060–0122
NSPS FOR SEWAGE TREATMENT PLANT INCIN.	O	1063.06	2060–0035
STD. OF PERF. FOR IRON & STEEL PLANTS (BASIC PROC. FURNACES)	N, NA	1069.04	2060–0029
NSPS FOR AUTOMOBILE & LIGHT DUTY TRUCK SURFACE COAT. OPRS.	MM	1064.06	2060–0034
NSPA FOR STATIONARY GAS TURBINES INF. REQ.	GG	1071.05	2060–0028
NSPS RECORDKEEPING & REPORTING REQ. FOR LEAD-ACID BATTERY MFG..	KK	1072.04	2060–0061
NSPS: NON-METALLIC MINERAL PROCES. PLANT	OOO	1084	2060–0050
(NSPS) FOR ONSHORE NATURAL GAS PROCESS. PLANT/EQUIP. LEAKS OF VOC & EMISS. OF SC2—REPORTING/ RECORDKEEPING.	KKK/LLL	1086.03	2060–0120
NESHAP—BERYLLIUM	C	193	2060–0092
NSPS FOR METAL FURN. SURFACE COATING	EE	0649.05	2060–0106
NSPS: GRAPHIC ARTS INDUSTRY		657	2060–0105
NSPS FOR PRESSURE SENS TAPE & LABEL SURFACE COATING INF. REQUIR..	RR	0658.05	2060–0004
NSPS FOR SURFACE COAT. OF LARGE APPLIANCES, INF. & REQUIREMENTS.	SS	0659.06	2060–0108
NSPS FOR METAL COIL SURFACE COATING INFORMATION & REQUIREMENTS.	TT	0660.05	2060–0107
NSPS: ASPHALT PROCESS. & ASPHALT ROOF MFG.		661	2060–0002
NSPS FOR BEVERAGE CAN SURFACE COATING, INFORMATION REQUIREMENTS.	WW	0663.05	2060–0001
NSPS FOR CALCINERS & DRYERS IN MINERAL INDS. REPORT/RECORDKEEPING.		0746.02	2060–0251
STDS. OF PERF. FOR NEW STATIONARY SOURCES METALLIC MIN. PROCESSING PLANTS.	LL	0982.04	2060–0016
NSPS FOR EQUIP. LEAKS OF VOC IN PETROLEUM REFIN. INF. REQUIREMENTS.	GGG	0983.04	2060–0067
NSPS FOR PETROLEUM DRY CLEANERS, INF. & REQUIREMENTS	JJJ	0997.04	2060–0079
STORAGE VESSELS FOR PETROLEUM LIQUIDS—STDS OF PERF. FOR NEW STATIONARY SOURCES.	KA	1050.05	2060–0121
NESHAP FOR ETHYLENE OXIDE COMMERCIAL STERILIZATION & FUMIGATION OPERATIONS.	O	1666.02	2060–0283
NESHAP FOR CHROMIUM EMISSIONS FROM IND. PROCESS COOLING TOWERS.		1625.02	2060–0268
NEW RESIDENTIAL WOOD HEATERS, RPT & RECORDKEEPING REQUIREMENTS.	AAA	1176.04	2060–0161
NSPS: POLYMERIC COATING OF SUPPORTING SUBSTRATES FACILITIES		1284	2060–0181
COKE OVEN BATTERY NATIONAL EMISSION STANDARDS		1362.02	2060–0253
NESHAP FOR DRY CLEANING FACILITIES/ PERCHLORO-ETHYLENE (PCE)		1415.02	2060–234
PROHIBITION OF HEXAVALENT CHROMIUM CHEMICALS IN COMFORT COOLING TOWERS, INF. REQ..		1420.03	2060–0193
NSPS FOR STARCH PROD PLANTS	XXX	1706.01	2060–0310
NSPS FOR WOOL FIBERGLASS INSULATION MFG.	PPP	1160.04	2060–0114
NSPS LIME MFG. IND. INF. REQUIREMENT	HH	1167.04	2060–0063
NESHAP FOR BENZENE EMISSIONS FROM BULK OPRS.	BB	1154.03	2060–0182
NSPS SYNTHETIC FIBER PROD. FACIL. INFOR. REQUEST	HHH	1156.06	2060–0059
NSPS FLEXIBLE VINYL & URETHANE COATING & PRINTING INF. REQUIREMENT.	FFF	1157.04	2060–0073
TIRE MFG. INDUSTRY	BBB	1158	2060–0156
FED. STDS. FOR MARINE TANK VESSEL LOADING & UNLOAD. OPRS. & NESHAP/ MARINE VESSEL LOADING.		1679.01	2060–0289
NESHAP: EPOXY RESIN & NON-NYLON POLYAMIDE RESIN PRODUCTION		1681	2060–0290
NESHAP SHIPBLDG. & SHIP REPAIR SURF. COATING	II	1712.01	2060–0330
NESHAP FOR WOOD FURN. MFG. OPRS.	JJ	1716.01	2060–0324
NESHAP FOR OFF-SITE WASTE OPRS.	DD	1717.01	2060–0313
NSPS FOR SURFACE COATING OF PLASTIC PARTS FOR BUSINESS MACHINES.	TTT	1093.04	2060–0162
INF. COLLECT. REQUIREMENT FOR HOT MIX ASPHALT FACILITIES (NSPS)	I	1127.04	2060–0083
SECONDARY LEAD SMELTERS	L	1128.04	2060–0080
GRAIN ELEVATORS (NSPS)	DD	1130.04	2060–0082
NSPS FOR VOLATILE ORGANIC STORAGE VESSELS	KB	1132.04	2060–0074
NSPS POLYMER MFG. IND. RECORDKEEPING & RPT REQUIREMENT	DDD	1150.03	2060–0145
NESHAP: HALOGENATED SOLVENT CLEANERS/ HALOGENATED (HAP)	T	1652	2060–0273
NES SOURCE PERFORMANCE STDS. (NSPS) FOR KRAFT PULP MILLS	BB	1055.04	2060–0021
NES FOR MAGNETIC TAPE MFG. OPRS	EE	1055.04	2060–0326

TABLE II.—EXISTING REGULATIONS IMPACTED BY CHANGES TO GENERAL PROVISIONS—Continued

TITLE	SUBPART	ICR NO.	OMB NO.
NSPS FOR VOLATILE VOC EMISSIONS FROM SYNTHETIC ORGANIC CHEM. IND. WASTEWATER.		1697.01	2060–0311
NESHAP FOR BENZENE EQUIPMENT LEAKS, INF. REQUIR.	V	1153.05	2060–0068
NESHAP: RADIONUCLIDES		1100.07	2060–0191
NESHAP: RADIOUNCLIDES		1100.06	2060–0191

III. Rationale

Changes to General Provisions

In the General Provisions for new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) rules, 40 CFR Parts 60, 61, and 63, EPA is proposing to change any requirement for quarterly reporting to a semiannual reporting requirement. These changes would conform the reporting requirements in the General Provisions to the reporting requirements of recently promulgated NSPS and NESHAP rules. If these revisions to the General Provisions were promulgated, reporting frequencies in specific NSPS and NESHAP rules could be more or less frequent than semiannual as deemed appropriate for those particular rules under the Clean Air Act.

In 1985, EPA published in the **Federal Register** a general policy regarding NSPS and NESHAP reporting frequencies (50 FR 46464 (Nov. 8, 1985)). The policy recommended quarterly reporting of all direct compliance information [1] showing exceedances, and allowed reporting of this information on a semiannual basis where no exceedance occurred. Further, the policy generally suggested semiannual reporting of all other information required in NSPS rules and quarterly reporting of all other information required in NESHAP rules.

The Agency now believes that the semiannual reporting frequencies contained in recently promulgated NSPS and NESHAP regulations and proposed in this rulemaking for all types of information are generally appropriate. EPA's experience over the past ten years with a variety of NSPS and NESHAP rulemakings covering industries of all types suggests that semiannual reporting provides sufficiently timely information to both ensure compliance and enable adequate enforcement of applicable requirements, while imposing less burden on the affected industry than would quarterly reporting. Recent NSPS and NESHAP rulemakings have moved almost exclusively to semiannual reporting as a standard approach. See, e.g., NSPS—40 CFR Part 60 Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries and NESHAP—40 CFR Part 63 Subpart O—Ethylene Oxide Emissions Standards for Sterilization Facilities.

EPA sees no reason to retain different reporting frequencies in the NSPS and NESHAP General Provisions compared to the reporting frequencies contained in recently promulgated rules. Accordingly, EPA is proposing changes to the General Provisions to conform to recently promulgated NSPS and NESHAP regulations. For a typical rule, the change from quarterly to semiannual reporting results in a 20 percent reduction in reporting burden or 6 percent of the overall burden. For the approximately 3.6 million burden hours resulting from the 60 rules affected by this provision, this will result in a reduction of approximately 215,000 hours.

EPA is proposing to allow the use of electronic data submission of notifications and reports within the General Provisions of 40 CFR Part 60, Part 61, and Part 63 as soon as a system is developed. The use of electronic means by EPA for receiving notifications and reports would greatly reduce the volume of paperwork and increase the efficiency in receiving notifications and reports. For a typical rule, the burden associated with notifications is approximately 7.0 percent; it is assumed allowing electronic data submission will reduce notification burden by 10 percent. For the approximately 3.6 million burden hours resulting from the 60 rules affected by this provision, this will result in a reduction of approximately 25,000 hours.

The agency is also proposing that a source may reduce the amount of records required to be maintained by the source based on the completeness of the records that ensure all exceedances are recorded and representative compliance measurements (a subset of total measurements) are recorded. This is a performance based scheme that would allow sources with data availability greater than 95% to reduce the amount of records required under the General Provisions. For example, 40 CFR § 63.8(b)(4)(ii) requires sources with CEMS to complete a minimum of one cycle of operation for each successive 15-minute period, and 40 CFR § 63.8(g)(2) requires the CEMS data to be reduced to 1-hour averages. The source currently must keep all required CEMS measurements. If a source achieved 95% data availability for all 1-hour averages within a day, the Agency is proposing to allow the source to discard the records of the 15-minute periods and retain the 1-hour averages at the end of each day. The Agency believes that this type of an approach would encourage sources to achieve a high data availability. The Agency is also exploring what level of data availability is appropriate for other types of continuous monitoring systems such as continuous parameter monitoring systems (CPMS) (e.g. temperature monitors), and is taking comment on expanding this proposal to other CMS requirements. The Agency is also exploring how the source's compliance status and how the need to verify correct calculation of valid hours should affect the extent or application of this proposal. For a typical rule that requires CMS, the recordkeeping burden for CMS data is approximately 47 percent of the overall recordkeeping burden or 20 percent of the overall burden. Approximately 75 percent of the rules require CMSs. For the approximately 3.6 million burden hours, this will result in a reduction of approximately 540,000 hours.

The General Provisions [Part 60 section 60.8(d)] require 30 days prior notice of any performance test, ". . . except as specified under other subparts. . . ." In cases where a performance test must be rescheduled, due to operational problems, etc., it is not always reasonable or necessary to provide 30 days prior notice to EPA or the State of the new date of the performance test. Based on conversations with personnel who are affected by the notification of the new date of the performance test (i.e., personnel at EPA Regional Offices and

[1] The 1985 **Federal Register** notice described "direct compliance information" as data which may be used by an enforcement agency as the sole evidence of a violation of the standard (see 50 FR 46467).

State agencies), the EPA has determined that after the initial 30-day notification, then notice provided 7 days prior to a rescheduled test is sufficient time to provide the Regional, State or Local agencies the opportunity to have an observer present. Therefore, section 60.8(d) has been revised to reflect this allowance.

The General Provisions [Part 60 section 60.7(a)(2) and Part 63 section 63.9(b)(2)(iv)] also require a notification of the anticipated date of initial startup for new affected facilities. After reviewing this requirement, the EPA has determined that this notification can be waived for owners and operators of affected facilities without affecting the enforcement of this regulation. The deletion of this reporting requirement is being made for purposes of streamlining and further reduction of the reporting burden on both large and small plant owners or operators.

Reduction in Reporting Frequencies

40 CFR Part 60 Subparts D, Da, Db, Dc, J, NN, and SSS

40 CFR Part 61 Subparts L and M

EPA is proposing to make the reporting frequency in these listed NSPS and NESHAP subparts semiannual. As explained above in reference to proposed revisions to the General Provisions, EPA now believes that semiannual reporting is generally appropriate for NSPS and NESHAP rules. The Agency's experience over the past ten years suggests that semiannual reporting provides sufficiently timely information to both ensure compliance and enable adequate enforcement of applicable requirements, while imposing less burden on the affected industry than would more frequent reporting. EPA sees no reason not to revise these existing NSPS and NESHAP regulations to conform to the semiannual reporting frequency proposed for the General Provisions.

Approximately 1,400 facilities will save about 30 hours per year per facility resulting in an annual savings of approximately 42,000 hours per year.

40 CFR Part 61 Subpart L

The standard includes particular provisions for benzene emission sources controlled with a carbon adsorber or vapor incinerator, although these are not the typical control measures found at coke by-product recovery plants. The rule requires the owner or operator to develop and record a plan for proper operation, maintenance and corrective action of the carbon adsorber or vapor incinerator to achieve 98 percent control [40 CFR 61.139(i)(1)(ii)]. The EPA proposes to delete this requirement because the monitoring and work practice standards that are also required are sufficient to ensure the desired control efficiency.

The monitoring required for the incinerator is temperature. For the carbon adsorber, concentration levels of emissions are required to be monitored. Furthermore, work practice standards specify when a fresh carbon bed is required, based on the results of the monitoring. Deviations from the requirements are to be recorded and reported. The Agency believes these requirements alone are sufficient to assure proper operation and maintenance, without the required development of a plan. However, facilities with these controls may still choose to have a plan for internal planning purposes.

40 CFR Part 60 Subpart SSS

The NSPS for magnetic tape manufacturing facilities has a solvent usage cutoff for the applicability of controls. A facility using less solvent than the cutoff has certain recordkeeping and reporting requirements, but is not required to meet the emission limitations.

The rule currently requires owners or operators to which the cutoff applies to make and record semiannual estimates of the projected annual amount of solvent to be used in magnetic tape manufacturing for the calendar year [40 CFR 60.714(a)(1)], as well as record the actual amount solvent used in a year [40 CFR 60.714(a)(2)]. The owner or operator is also required to report the first semiannual estimate in which the annual solvent use as well as the exceedances based on the actual solvent used [60.717(c)(1)] would exceed the solvent usage cutoff [40 CFR 60.717(c)(1)]. The EPA proposes to delete the requirements for estimating and reporting the projected annual solvent use. Since there are already recordkeeping and reporting requirements related to the actual solvent use, the EPA believes it is unnecessary to require semiannual estimates of projected use. These records related to actual solvent use would be sufficient for identifying facilities that are potentially subject to the control requirements because of exceeding the cutoff. Further, the requirement at 40 CFR 60.710(b) that sources exceeding the applicability threshold remain subject to the emission controls and related requirements, effectively prevents circumvention of the control requirements, and is a more effective means of assuring timely application of emission controls than the projected semiannual estimates. Even if these estimates were not required to be recorded and reported, it may be in the best interest of the owner or operator to develop such estimates for planning purposes, to ensure compliance with standards.

40 CFR Part 60 Subpart XX and Part 63 Subpart R

Loading of gasoline into gasoline tank trucks and cargo tanks at bulk gasoline terminals under the NSPS (40 CFR 60.502(e) and 60.505) and MACT (40 CFR 63.420), respectively, is limited to vapor tight tanks which have been annually tested for vapor-tightness. Documentation of the test must be on file at the terminal. To implement this requirement, terminal owners and operators must cross check the gasoline tanks loaded against the test documentation on file within two weeks of loading of the tank. If proper documentation is lacking, terminal operators must take steps to assure that any tank will not be reloaded until test documentation is obtained. The change proposed in this action will reduce the frequency of cross checks if facilities have and continue to have a low number of cargo tanks or gasoline tank trucks without test documentation. Two reduced levels of monitoring frequency are proposed for terminals which exhibit very high compliance rates with the tank testing requirements. For terminals with less than an average of one gasoline tank per month over the past 26 weeks without documentation, the documentation cross check can be reduced from biweekly to quarterly. Terminals with even higher compliance rates, such that less than an average of one gasoline tank per month is loaded over the past 52 weeks without documentation need only cross check the vapor tightness documentation semiannually. The proposed revision does not change the level of the standard and EPA believes this action allows for reduced cross-checking without significant increased risk of excess emissions occurring, because this proposal would limit reductions in cross-checking frequency only for sources with high compliance rates. If these proposed conditions are not maintained by the terminal as determined by the next quarterly or semiannual cross-check, then the original cross-check monitoring frequency (every two weeks) is then required. Only changes in the regulatory text in the NSPS are required because the MACT cross-references the provisions in the NSPS.

Approximately 100 facilities will save about 190 hours per year resulting in a

total reduction in burden of approximately 19,000 hours per year.

40 CFR Part 60 Subpart CC and Part 61 Subpart N

Currently, 40 CFR Part 60 Subpart CC section 60.293(c) and Part 61 Subpart N section 61.263 require the installation of a CEM to measure opacity from the affected facility. During initial performance testing for PM emissions, 6-minute opacity averages are calculated. Based on the 6-minute averages, the corresponding 97.5 upper percentile is determined. After that, for the purpose of reporting excess emissions, all 6-minute periods with an average opacity greater than the 97.5 upper percentile are reported as excess emissions.

The recommended revision is to change the upper percentile determination from 97.5 percent to 99.0 percent. Since even the opacity levels corresponding to the 99th percentile were recorded when compliance with the particulate standard was achieved, this revision focuses the excess emission reports on the opacity levels more likely to be associated with exceedance of the particulate standard. The rule would then read, for the purpose of reporting excess emissions, all 6-minute periods with an average opacity greater than the 99.0 upper percentile are reported as excess emissions. The revision does not change the particulate emission limits in either rule, but would simply reduce the probability of reporting opacity levels which do not correspond to excess particulate emissions, and would therefore decrease reporting burden.

Although the level of reporting is slightly reduced, if a significant problem occurred the excess emissions report would still be triggered. Therefore, an adequate level of control is still maintained.

40 CFR Part 60 Subpart Ea

Today's action also proposes to change the reporting requirements included in the NSPS for Municipal Waste Combustors (MWCs) Subpart Ea from quarterly to annual with semiannual exception reporting. This revision will make the reporting frequencies and deadlines consistent throughout the NSPS and Emission Guidelines that apply to municipal waste combusters. MWCs are also covered by NSPS Subpart Eb and the Emission Guidelines (EGs) (i.e., Subpart Cb) for MWCs, which were promulgated in the **Federal Register** on December 19, 1995. The reporting requirements under the EGs and under NSPS Subpart Eb for MWCs require annual compliance reporting with semiannual exception reporting. This change to the reporting requirements in Subpart Ea, therefore, makes these reporting requirements consistent for all MWCs.

The EPA believes that semiannual reporting will be sufficiently timely for sources which have exceeded any emission limits or operating parameters. Further, EPA believes annual reporting of complying information from MWCs will provide adequate information for complying plants and is appropriate given the cost associated with reporting requirements. The EPA notes, however, that once an MWC is required to obtain a Title V operating permit, the semiannual Title V reporting requirements set forth in Section 504(a) of the Act will supersede the annual reporting requirements proposed here. See 42 U.S.C. 7661c(a)

Approximately 10 facilities will save about 230 per hours per year resulting in a total burden reduction of approximately 2,300 hours per year.

240 CFR Part 51 Subpart Q

The number of facilities currently required to report emission data will be reduced. The minimum emissions necessary to trigger a report will be raised from 100 to 200 tons per year of particulate matter, PM, sulfur oxides, VOC and nitrogen oxides. The minimum emissions necessary to trigger a report will be raised from 1000 to 2000 tons per year of carbon monoxide. Since Subpart Q does not require emission reductions but only reports to track emissions, this action does not have any adverse effect on the environment i.e., result in an increase of emissions to the atmosphere.

Approximately 54 facilites will save about 30 hours per year resulting in a total burden reduction of approximately 1,700 hours per year.

40 CFR Part 60 Subpart AAA

Correction to 40 C.F.R. Section 60.531

This proposed rulemaking clarifies the definition of "wood heater" under the New Source Performance Standards for Residential Wood Heaters, 40 CFR 60.530, et seq. The final rule, published February 26, 1988 (53 FR 5860), defines a wood heater as "an enclosed, woodburning appliance capable of and intended for space heating and domestic water heating" that meets certain specified criteria. The EPA, and the regulatory negotiating committee, which worked together to develop the definition of wood heater, intended the conjunction "or" rather than "and" be used after the words "space heating", thereby including in the definition all woodburning appliances capable of and intended for space heating or domestic water heating that met the specified criteria. This intent is evident in the definition of a wood heater in the proposed rule published February 18, 1987 (52 FR 4995, 52 FR 5015 and the Method 28 test protocol); and also in the preamble to the final rule (53 FR 5860) and at 40 C.F.R. 60, Subpart AAA, Method 28, section 2.12, where woodburning appliances are defined and specified as those "capable of and intended for space heating or domestic water heating . . ." Therefore, today's action is intended to correct an earlier typographical error.

Modification of § 60.536(f)(3)

The language for permanent labeling under § 60.536(f)(3) is amended to eliminate need for coal-only heaters to be emission tested before the rule can be applied. The rule previously applied only to affected facilities. In order for an appliance to be an affected facility, its emission rate must first be determined using the procedures specified in Method 28—Certification and Auditing of Wood Heaters. The Agency did not intend to require emission testing of coal-only heaters. The rule language is, therefore, modified to eliminate this unintended burden.

Removal of § 60.538

Section 60.538, Prohibitions, is removed from the rule. The purpose of this section was to aid in enforcing the preceding rule requirements; however, it also included several unintended dependencies, limitations and requirements. For instance, the prohibitions section does not allow a claim of violation of the removable label requirement unless the wood heater in question also has a permanent label. An unintentional dependence. Also, the prohibitions sections does not make failure to comply with the quality assurance requirements unlawful. Obviously, the Agency did not first promulgate quality assurance rules and then intentionally limit its ability to enforce those rules. Other such unintended linkages exist in the prohibitions section. Since each of the regulatory provisions in the rule can be enforced without the prohibitions language, this section is removed.

Burden Reduction

Correction of § 60.531 to clarify the definition of a wood heater, reduces the burden on both the manufacturer and the Agency by reducing the amount of resources needed to determine whether or not a given woodburning appliance is covered by the regulation.

Clarification of § 60.536(f)(3) to eliminate the requirement that the manufacturer of a coal-only heater perform an emissions test, reduces the burden on both the manufacturer and the Agency. This clarification reduces confusion as to how this regulation was meant to be applied, and eliminates the possibility that a coal-only heater would ever have to perform a Method 28 emissions test.

Removal of § 60.538, Prohibitions, also eliminates confusion as to how the regulations should be applied and reduces enforcement burden for both the manufacturer and Agency.

Solicitation of Comments

40 CFR Part 61 Subpart F

On October 21, 1976, EPA promulgated a national emission standard under the authority of Section 112 for vinyl chloride emissions from vinyl chloride, ethylene dichloride, and polyvinyl chloride plants. One critical component of that standard is Section 61.65(b) which contains specific provisions to address several types of fugitive emission sources. Among these were requirements for two separate programs for detecting equipment leaks: (1) a continuously operating fixed-point area monitoring system and (2) a program to periodically survey each potential leak source with a portable monitoring instrument. After the promulgation of the vinyl chloride standard, EPA conducted field studies to obtain information on various leak detection and repair programs at petroleum refineries and chemical plants. Subsequent standards for other pollutants and other source categories contained only the requirement for the portable monitoring system, not the fixed-point system. The first of these subsequent standards was a new source performance standard for volatile organic compound (VOC) fugitive emission sources in the Synthetic Organic Chemicals Manufacturing Industry, proposed January 5, 1981. As explained in the preamble to that proposed rule, fixed point monitoring systems were considered for that rule, but were not required (Vol. 46, No. 2 of **Federal Register**, page 1151). According to the Background Information Document for that proposed standard [VOC Fugitive Emissions in Synthetic Organic Chemicals Manufacturing Industry—Background Information for Proposed Standards (EPA–450/3–80–033a, November 1980, pages 4–3, 4–4)], the efficiency of a fixed-point system is limited to providing only a general area indication that leaks may be present. In addition, the document stated that leaks from adjacent units and meteorological conditions may affect the results obtained with a fixed-point system. The sensors for the fixed-point monitoring system are not as close to the leak interface as is required for the portable monitors. Further, a portable monitor is required even if a fixed monitor is used in order to identify the leaking source once a high reading is obtained on the fixed-point monitor. For these reasons, the fixed-point monitoring system was not required.

In response to President Clinton's initiative to reduce record-keeping and reporting burdens, EPA is requesting comment on the concept of removing the requirement for the fixed-point monitoring system and the associated record keeping from the vinyl chloride standard [Sections 61.65(b)(8)(i) and 61.71(a)(1)]. The requirement for fixed-point monitoring duplicates the purpose of the portable instrument leak detection and repair program and was decided for other standards to be the less efficient of the two programs. In addition, removing this requirement from the vinyl chloride standard would make that standard more consistent with other standards published subsequently for finding and fixing leaks.

On the other hand, plants affected by the vinyl chloride standard already have a fixed-point monitoring system in place. To the extent these systems detect equipment leaks, they have more of an opportunity to detect them sooner than the portable program so that repairs can be completed sooner. In addition, the fixed-point monitoring systems have an opportunity to alert owners and operators to other sources of fugitive emissions such as spills.

In order to consider removing the requirement for fixed-point monitors and the associated record keeping, EPA needs more data on the costs and emission reductions associated with the program. What cost savings would plants experience if the fixed-point monitoring system were removed? To what extent are equipment leaks being identified sooner with the fixed-point monitoring system than they would be with the portable monitoring program? To what extent are leaks being detected with the portable monitor that were not identified by the fixed-point monitor? What is the nature and frequency of identifying other sources of fugitive emissions (e.g., spills) with the fixed-point monitoring system? Any comments submitted should provide examples from experience and specific data to the extent possible.

Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the regulatory changes proposed in this notice. Persons wishing to make oral presentation on the proposed regulations should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket and Information Center address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–95–50.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Analysis Under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996

Because the regulatory revisions proposed here would reduce the regulatory burden, this action is not a "significant" regulatory action within the meaning of Executive Order 12866, and does not impose any Federal mandate on State, local and tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. Further, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act of 1996. The regulatory changes proposed here are expected to reduce regulatory burdens on small businesses, and are not expected to have any adverse effect on small businesses. Therefore, EPA certifies that this rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The proposed revisions to existing standards are intended to reduce existing recordkeeping and reporting requirements. In this notice EPA has explained the changes, identified who would be affected by the changes, and estimated the reductions associated with each change. EPA is interested in comments from the public on any and

all aspects of the paperwork burden reductions, including the number of affected entities and estimate of burden reduction.

Statutory Authority: The statutory authority for this proposal is provided by sections 101, 112, 114, 116 and 301 of the Clean Air Act, as amended; 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

List of Subjects

40 CFR Part 51

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 60

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: August 5, 1996.

Carol Browner,

Administrator, Environmental Protection Agency.

For the reasons set out in the preamble title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S. C. 7401–7671q.

Subpart Q—[Amended]

2. Section 51.322 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 51.322 Sources subject to emissions reporting.

(a) * * *

(1) For particulate matter, PM sulfur oxides, VOC and nitrogen oxides, any facility that actually emits a total of 181.4 metric tons (200 tons) per year or more of any one pollutant. For particulate matter emissions, the reporting requirement ends with the reporting of calendar year 1987 emissions. For PM_{10} emissions, the reporting requirement begins with the reporting of calendar year 1988 emissions.

(2) For carbon monoxide, any facility that actually emits a total of 1814 metric tons (2000 tons) per year or more.

* * * * *

PART 60—[AMENDED]

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart A—[Amended]

2. Section 60.7 is amended by removing and reserving paragraph (a)(2) and revising paragraphs (a) introductory text, (c) introductory text, and (f) to read as follows:

§ 60.7 Notification and recordkeeping.

(a) Any owner or operator subject to the provisions of this part shall furnish the Administrator written notification or, if acceptable to both the Administrator and the owner or operator of a source, electronic notification, as follows:

* * * * *

(c) Each owner or operator required to install a continuous monitoring device shall submit excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and-or summary report form (see paragraph (d) of this section) to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the Administrator, on a case-by-case basis, determines that more frequent reporting in necessary to accurately assess the compliance status of the source. All reports shall be postmarked by the 30th day following the end of each calendar half. Written reports of excess emissions shall include the following information:

* * * * *

(f) Any owner or operator subject to the provisions of this part shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this part recorded in a permanent form suitable for inspection. The file shall be retained for at least two years following the date of such measurements, maintenance, reports, and records, except as follows. If the owner or operator, required to install a CEMS, achieves and maintains 95% valid hourly averages for the operating day, the owner or operator may retain block hourly average values for that operating day and discard, at or after the end of that operating day, the 15-minute or more frequent average values and readings recorded by the applicable CEMS.

* * * * *

3. Section 60.8 is amended by revising paragraph (d) to read as follows:

§ 60.8 Performance tests.

* * * * *

(d) The owner or operator of an affected facility shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator by mutual agreement.

* * * * *

4. Section 60.19 is amended by revising paragraph (b) to read as follows:

§ 60.19 General notification and reporting requirements.

* * * * *

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery, including the use of electronic media, agreed to by the permitting authority, is acceptable.

* * * * *

Subpart D—[Amended]

5. Section 60.45 is amended by revising paragraph (g) introductory text to read as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(g) Excess emission and monitoring system performance reports shall be submitted to the Administrator semiannually for each six-month period in the calendar year. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period. Each excess emission and MSP report shall include the information required in § 60.7(c). Periods of excess emissions and monitoring systems (MS) downtime that shall be reported are defined as follows:

* * * * *

Subpart Da—[Amended]

6. Section 60.49a is amended by revising paragraph (i) to read as follows:

§ 60.49a Reporting requirements.

* * * * *

(i) The owner or operator of an affected facility shall submit the written reports required under this section and subpart A to the Administrator semiannually for each six-month period. All semiannual reports shall be postmarked by the 30th day following the end of each six-month period.

* * * * *

Subpart Db—[Amended]

7. Section 60.49b is amended by revising paragraphs (d), (e), (h) introductory text, (i), (j), (k)(2), (k)(3), (m) introductory text, (n)(1), (n)(2), (q) introductory text, (q)(2), (q)(3) (r), and paragraph(s) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(d) The owner or operator of an affected facility shall record and maintain records of the amounts of each fuel combusted during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for the reporting period. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of each calendar month.

(e) For an affected facility that combust residual oil and meets the criteria under §§ 60.46b(e)(4), 60.44b (j), or (k), the owner or operator shall maintain records of the nitrogen content of the residual oil combusted in the affected facility and calculate the average fuel nitrogen content for the reporting period. The nitrogen content shall be determined using ASTM Method D3431–80, Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons (IBR-see § 60.17), or fuel suppliers. If residual oil blends are being combusted, fuel nitrogen specifications may be prorated based on the ratio of residual oils of different nitrogen content in the fuel blend.

* * * * *

(h) The owner or operator of any affected facility in any category listed in paragraphs (h) (1) or (2) of this section is required to submit excess emission reports for any excess emissions which occurred during the reporting period.

* * * * *

(i) The owner or operator of any affected facility subject to the continuous monitoring requirements for nitrogen oxides under § 60.48(b) shall submit a report containing the information recorded under paragraph (g) of this section.

(j) The owner or operator of any affected facility subject to the sulfur dioxide standards under § 60.42b shall submit a report.

(k) * * *

(2) Each 30-day average sulfur dioxide emission rate (ng/J or 1b/million Btu heat input) measured during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent reduction in sulfur dioxide emissions calculated during the reporting period, ending with the last 30-day period; reasons for noncompliance with the emission standards; and a description of corrective actions taken.

* * * * *

(m) For each affected facility subject to the sulfur dioxide standards under § 60.42(b) for which the minimum amount of data required under § 60.47b(f) were not obtained during the reporting period, the following information is reported to the Administrator in addition to that required under paragraph (k) of this section:

* * * * *

(n) * * *

(1) Indicating what removal efficiency by fuel pretreatment (i.e., % R_f) was credited during the reporting period;

(2) Listing the quantity, heat content, and date each pretreated fuel shipment was received during the reporting period, the name and location of the fuel pretreatment facility; and the total quantity and total heat content of all fuels received at the affected facility during the reporting period.

* * * * *

(q) The owner or operator of an affected facility described in § 60.44b(j) or § 60.44b(k) shall submit to the Administrator a report containing:

* * * * *

(2) The average fuel nitrogen content during the reporting period, if residual oil was fired; and

(3) If the affected facility meets the criteria described in § 60.44b(j), the results of any nitrogen oxides emission tests required during the reporting period, the hours of operation during the reporting period, and the hours of operation since the last nitrogen oxides emission test.

(r) The owner or operator of an affected facility who elects to demonstrate that the affected facility combusts only very low sulfur oil under § 60.42b(j)(2) shall obtain and maintain at the affected facility fuel receipts from the fuel supplier which certify that the oil meets the definition of distillate oil as defined in § 60.41b. For the purposes of this section, the oil need not meet the fuel nitrogen content specification in the definition of distillate oil. Reports shall be submitted to the Administrator certifying that only very low sulfur oil meeting this definition was combusted in the affected facility during the reporting period.

(s) The reporting period for the reports required under this subpart is each six-month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

Subpart Dc—[Amended]

8. Section 60.48c is amended by revising paragraphs (c), (d), (e) introductory text, and (e)(11); and by adding paragraph (j) to read as follows:

§ 60.48c Reporting and recordkeeping requirements.

* * * * *

(c) The owner or operator of each coal-fired, residual oil-fired, or wood-fired affected facility subject to the opacity limits under § 60.43c(c) shall submit excess emission reports for any excess emissions from the affected facility which occur during the reporting period.

(d) The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall submit reports to the Administrator.

(e) The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.43c shall keep records and submit reports as required under paragraph (d) of this section, including the following information, as application.

* * * * *

(11) If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), or (3) of this section, as applicable. In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

* * * * *

(j) The reporting period for the reports required under this subpart is each six-month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

Subpart Ea—[Amended]

9. Section 60.59a is amended by revising paragraphs (e), (f) and (g) to read as follows:

§ 60.59a Reporting and recordkeeping requirements.

* * * * *

(e)(1) The owner or operator of an affected facility located within a large MWC plant shall submit annual compliance reports for sulfur dioxide, nitrogen oxide (if applicable), carbon monoxide, load level, and particulate matter control device temperature to the Administrator containing the information recorded under paragraphs (b)(1), (2)(ii), (4), (5), and (6) of this section for each pollutant or parameter. The hourly average values recorded under paragraph (b)(2)(i) of this section are not required to be included in the annual reports. Combustors firing a mixture of medical waste and other MSW shall also provide the information under paragraph (b)(15) of this section, as applicable, in each annual report. Once the unit is subject to permitting requirements under Title V of the Act, the owner or operator of an affected facility must submit these reports semiannually.

(2) The owner or operator shall submit a semiannual report for any pollutant or parameter that does not comply with the pollutant or parameter limits specified in this subpart. Such report shall include the information recorded under paragraph (b)(3) of this section. For each of the dates reported, include the sulfur dioxide, nitrogen oxide, carbon monoxide, load level, and particulate matter control device temperature data, as applicable, recorded under paragraphs (b)(2)(ii)(A) through (D) of this section.

(3) Reports shall be postmarked no later than the 30th day following the end of the annual or semiannual period, as applicable.

(f)(1) The owner or operator of an affected facility located within a large MWC plant shall submit annual compliance reports, as applicable, for opacity. The annual report shall also list the percent of the affected facility operating time for the calendar half that the opacity CEMS was operating and collecting valid data. Once the unit is subject to permitting requirements under Title V of the Act, the owner or operator of an affected facility must submit these reports semiannually.

(2) The owner or operator shall submit a semiannual report for all periods when the 6-minute average levels exceeded the opacity limit under § 60.52a. The semiannual report shall include all information recorded under paragraph (b)(3) of this section which pertains to opacity, and a listing of the 6-minute average opacity levels recorded under paragraph (b)(2)(i)(A) of this section.

(3) Reports shall be postmarked no later than the 30th day following the end of the annual of semiannual period, as applicable.

(g)(1) The owner or operator of an affected facility located within a large MWC plant shall submit reports to the Administrator of all annual performance tests for particulate matter, dioxin/furan, and hydrogen chloride as recorded under paragraph (b)(7) of this section, as applicable, from the affected facility. For each annual dioxin/furan compliance test, the maximum demonstrated MWC unit load and maximum demonstrated particulate matter control device temperature shall be reported. Such reports shall be submitted when available and in no case later than the date of required submittal of the annual report specified under paragraph (e) of this section. Once the unit is subject to permitting requirements under Title V of the Act, the owner or operator of an affected facility must submit these reports semiannual.

(2) The owner or operator shall submit a report of test results which document any particulate matter, dioxin/furan, and hydrogen chloride levels that were above the applicable pollutant limit. The report shall include a copy of the test report documenting the emission levels and shall include the corrective action taken. Such reports shall be submitted when available and in no case later than the date required for submittal of any semiannual report required in paragraphs (e) or (f) of this section, or within six months of the date the test was conducted, whichever is earlier.

* * * * *

Subpart J—[Amended]

10. Section 60.107 is amended by revising paragraphs (a), (c) introductory text, (d), and (e) to read as follows:

§ 60.107 Reporting and recordkeeping requirements.

* * * * *

(a) Each owner or operator subject to § 60.104(b) shall notify the Administrator of the specific provisions of § 60.104(b) with which the owner or operator seeks to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3). If an owner or operator elects at a later date to comply with an alternative provision of § 60.104(b), then the Administrator shall be notified by the owner or operator in the report described in paragraph (c) of this section.

* * * * *

(c) Each owner or operator subject to § 60.104(b) shall submit a report except as provided by paragraph (d) of this section. The following information shall be contained in the report:

* * * * *

(d) For any periods for which sulfur dioxide or oxides emissions data are not available, the owner or operator of the affected facility shall submit a signed statement indicating if any changes were made in operation of the emission control system during the period of data unavailability which could affect the ability of the system to meet the applicable emission limit. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability.

* * * * *

(e) The owner or operator of an affected facility shall submit the reports required under this subpart to the Administrator semiannually for each six-month period. All semiannual reports shall be postmarked by the 30th

day following the end of each six-month period.

* * * * * *

11. Section 60.108 is amended by revising paragraph (e) to read as follows:

§ 60.108 Performance test and compliance provisions.

* * * * *

(e) Each owner or operator subject to § 60.104(b) who has demonstrated compliance with one of the provisions of § 60.104(b) but a later date seeks to comply with another of the provisions of § 60.104(b) shall begin conducting daily performance tests as specified under paragraph (d) of this section immediately upon electing to become subject to one of the other provisions of § 60.104(b). The owner or operator shall furnish the Administrator with a written notification of the change in the semiannual report required by § 60.107(e).

Subpart CC—[Amended]

12. Section 60.293 is amended by revising paragraphs (c)(4), (c)(5), (d)(3) introductory text and (d)(3)(iii) to read as follows:

§ 60.293 Standards for particulate matter from glass melting furnace with modified-processes.

* * * * *

(c) * * *

(4) Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 99 percent upper confidence level of a normal distribution of average opacity values.

(5) For the purposes of § 60.7, report to the Administrator as excess emissions all of the 6-minute periods during which the average opacity, as measured by the continuous monitoring system installed under paragraph (c)(1) of this section, exceeds the opacity value corresponding to the 99 percent upper confidence level determined under paragraph (c)(4) of this section.

(d) * * *

(3) An owner or operator may redetermine the opacity value corresponding to the 99 percent upper confidence level as described in paragraph (c)(4) of this section if the owner or operator:

* * * * *

(iii) Uses the redetermined opacity value corresponding to the 99 percent upper confidence level for the purposes of paragraph (c)(5) of this section.

* * * * *

Subpart NN—[Amended]

13. Section 60.403 is amended by revising paragraph (f) to read as follows:

§ 60.403 Monitoring of emissions and operations.

* * * * *

(f) Any owner or operator subject to the requirements under paragraph (c) of this section shall report on a frequency specified in § 60.7(c) all measurement results that are less than 90 percent of the average levels maintained during the most recent performance test conducted under § 60.8 in which the affected facility demonstrated compliance with the standard under § 60.402.

* * * * *

Subpart XX—[Amended]

14. Section 60.502 is amended by revising (e)(3) and (e)(4) to read as follows:

§ 60.502 Standards for Volatile Organic Compound (VOC) emissions from bulk gasoline terminals.

* * * * *

(e) * * *

(3)(i) The owner or operator shall cross-check each tank identification number obtained in paragraph (e)(2) of this section with the file of tank vapor tightness documentation within 2 weeks after the corresponding tank is loaded, unless either of the following conditions is maintained:

(A) If less than an average of one gasoline tank truck per month over the last 26 weeks is loaded without vapor tightness documentation then the documentation cross-check shall be performed each quarter; or

(B) If less than an average of one gasoline tank truck per month over the last 52 weeks is loaded without vapor tightness documentation then the documentation cross-check shall be performed semiannually.

(ii) If either the quarterly or semiannual cross-check provided in paragraphs (e)(3)(i) (A) through (B) of this section reveals that these conditions were not maintained, the source must return to biweekly monitoring until such time as these conditions are again met

(4) The terminal owner or operator shall notify the owner or operator of each nonvapor-tight gasoline tank truck loaded at the affected facility within 1 week of the documentation cross-check in paragraph (e)(3) of this section.

* * * * *

Subpart AAA—[Amended]

15. Section 60.531 is amended by revising the definition for "wood heater" to read as follows:

§ 60.531 Definitions.

* * * * *

Wood heater means an enclosed, woodburning appliance capable of and intended for space heating or domestic water heating that meets all of the following criteria:

(1) An air-to-fuel ratio in the combustion camber averaging less than 35-to-1 as determined by the test procedure prescribed in § 60.534 performed at an accredited laboratory;

(2) A usable firebox volume of less than 20 cubic feet;

(3) A minimum burn rate of less than 5 kg/hr as determined by the test procedure prescribed in § 60.534 performed at an accredited laboratory; and

(4) A maximum weight of 800 kg. In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.

16. Section 60.536 is amended by revising paragraph (f)(3) to read as follows:

§ 60.536 Permanent label, temporary label, and owner's manual.

* * * * *

(f) * * *

(3) If an enclosed appliance capable of space heating, or domestic water heating is a coal-only heater as defined in § 60.530, the following statement shall appear on the permanent label:

U.S. Environment Protection Agency

This heater is only for burning coal. Use of any other solid fuel except for coal ignition purposes is a violation of Federal law.

* * * * *

§ 60.538 [Removed]

17. Section 60.538 is removed and reserved.

Subpart SSS—[Amended]

18. Section 60.714 is amended by revising paragraph (a) to read as follows:

§ 60.714 Installation of monitoring devices and recordkeeping.

* * * * *

(a) Each owner or operator of an affected coating operation that utilizes less solvent annually than the applicable cutoff provided in § 60.710(b) and that is not subject to § 60.712 (standards for coating operations) shall maintain records of actual solvent use.

* * * * *

19. Section 60.717 is amended by revising paragraphs (c) and (d) introductory text, to read as follows:

§ 60.717 Reporting and monitoring requirements.

* * * * *

(c) Each owner or operator of an affected coating operation initially utilizing less than the applicable volume of solvent specified in § 60.710(b) per calendar year shall report the first calendar year in which actual annual solvent use exceeds the applicable volume.

(d) Each owner or operator of an affected coating operation, or affected coating mix preparation equipment subject to § 60.712(c), shall submit semiannual reports to the Administrator documenting the following:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

Subpart A—[Amended]

§ 61.04 [Amended]

2. Section 61.04 is amended by revising paragraph (b) introductory text to read as follows:

* * * * *

(b) Section 112(d) directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources located in such State. If the authority to implement and enforce a standard under this part has been delegated to a State, all information required to be submitted to EPA under paragraph (a) of this section shall also be submitted to the appropriate State agency (provided, that each specific delegation may exempt sources from a certain Federal or State reporting requirement). The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to EPA and the State agency. If acceptable to both the Administrator and the owner or operator of a source, notifications and reports may be submitted on electronic media. The appropriate mailing address for those States whose delegation request has been approved is as follows:

* * * * *

Subpart L—[Amended]

3. Section 61.139 is amended by removing paragraphs (i)(1)(ii) and (j)(3); redesignating paragraphs (i)(1)(iii) and (i)(1)(v) as paragraphs (i)(1)(ii) and (i)(1)(iv), respectively; and revising the newly redesignated paragraph (i)(1)(iii), paragraph (j)(2) introductory text, and paragraph (j)(2)(iv) to read as follows:

§ 61.139 Provisions for alternative means for process vessels, storage tanks, and tar-intercepting sumps.

* * * * *

(i) * * *

(1) * * *

(iii) For each carbon adsorber, a plan for the method for handling captured benzene and removed carbon to comply with paragraphs (b) (1) and (2) of this section.

* * * * *

(j) * * *

(2) The following information shall be reported as part of the semiannual reports required in § 61.138(f).

* * * * *

(iv) For each vapor incinerator, the owner or operator shall specify the method of monitoring chosen under paragraph (f)(2) of this section in the first semiannual report. Any time the owner or operator change that choice, he shall specify the change in the first semiannual report following the change.

Subpart M—[Amended]

4. Section 61.142 is amended by revising paragraph (b)(6) to read as follows:

§ 61.142 Standard for asbestos mills.

* * * * *

(b) * * *

(6) Submit semiannually a copy of visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Semiannual reports shall be postmarked by the 30th day following the end of the six-month period.

* * * * *

5. Section 61.144 is amended by revising paragraph (b)(8) to read as follows:

§ 61.144 Standard for manufacturing.

* * * * *

(b) * * *

(8) Submit semiannually a copy of the visible emission monitoring records to the Administrator if visible emission occurred during the report period. Semiannual reports shall be postmarked by the 30th day following the end of the six-month period.

6. Section 61.147 is amended by revising paragraph (b)(8) to read as follows:

§ 61.147 Standard for fabricating.

* * * * *

(b) * * *

(8) Submit semiannually a copy of the visible emission monitoring records to the Administrator if visible emission occurred during the report period. Semiannual reports shall be postmarked by the 30th day following the end of the six-month period.

Subpart N—[Amended]

7. Section 61.163 is amended by revising paragraph (c)(3) to read as follows:

§ 61.253 Emission monitoring.

* * * * *

(c) * * *

(3) Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 99 percent upper confidence level of a normal or log-normal (whichever the owner or operator determines is more representative) distribution of the average opacity values.

* * * * *

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A—[Amended]

2. Section 63.9 is amended by removing and reserving paragraph (b)(2)(iv).

3. Section 63.10 is amended by adding paragraphs (b)(2)(vii)(A) and (6)(2)(vii)(B) reserved and removing paragraph (e)(3)(i)(C) to read as follows:

§ 63.10 Recordkeeping and reporting requirements

* * * * *

(b) * * *

(2) * * *

(vii) * * *

(A) If the owner or operator of an affected source required to install a CEMS achieves and maintains 95% valid hourly averages for the operating day, the owner or operator may retain block hourly average values for that operating day and discard, at or after the end of that operating day, the 15-minute or more frequent average values and readings recorded by the applicable CEMS.

* * * * *

[FR Doc. 96–21672 Filed 9–10–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 799

[OPPTS-42187A; FRL-5395-9]

RIN 2070-AC78

Proposed Test Rule for Hazardous Air Pollutants; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA is holding a public meeting to give interested persons the opportunity for the oral presentation of data, views, or arguments and to make written submissions concerning the test rule which EPA has proposed under section 4(a) of the Toxic Substances Control Act (TSCA) to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. This proposed rule was published in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL-4869-1). A transcript will be made of the meeting and placed in the rulemaking record. This notice announces the date, time, and location of the meeting, and sets forth tentative topics for discussion. The meeting will be facilitated by by SiComm, an EPA contractor.

DATES: The public meeting will be held on October 1, 1996, from 9 a.m. to 5 p.m. Prospective attendees and those wishing to present oral comments at the meeting should notify EPA by no later than September 24, 1996. Written statements to be presented at the meeting should be received by EPA by no later than September 24, 1996. Written requests for additional meeting topics and requests for the agenda must be received by EPA by no later than September 24, 1996.

ADDRESSES: The meeting will be held in Washington, DC, at the Holiday Inn Capitol at Smithsonian, 550 C St., SW (telephone number: 202-479-4000). The Holiday Inn Capitol is one block east of the L'Enfant Plaza Metro station (Department of Transportation exit).

The address and telephone number of the meeting facilitator is: Anne Bowen, SiComm, 4401 East West Highway, Suite 308, Bethesda, MD 20814, telephone: (301) 718-9820; fax: (301) 652-7001.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554-1404; TDD: (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

For general meeting information contact Anne Bowen at the address specified under "ADDRESSES."

For technical information contact: Robert A. Reiley, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260-1105; fax: (202) 260-1096; e-mail: reiley.robert@epamail.epa.gov; or Gary E. Timm, Senior Technical Advisor, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260-1859; fax: (202) 260-8168; e-mail: timm.gary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The HAPs rule proposed testing of biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols [3 isomers], diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride for certain specified health effects (61 FR 33178, June 26, 1996). EPA would use the data generated under the rule, proposed under section 4(a) of TSCA, to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In addition, in the HAPs proposal EPA solicited proposals for enforceable consent agreements regarding the performance of pharmacokinetics studies which would permit extrapolation from oral data to predict effects from inhalation exposure. The proposed rule and supporting documents can be obtained on the internet: http://www.epa.gov or gopher.epa.gov. Search under "Rules, Regulations, Legislation," "Federal Register Environmental Subset," "Federal Register--Toxics," "June 26."

In the preamble to the proposed rule, EPA announced that it would hold a public meeting in Washington, DC prior to the close of the comment period. The purpose of this meeting is to facilitate an exchange of views, a discussion of issues, and meaningful comment on the HAPs proposal. The meeting will be open to the public. Persons who wish to attend or present oral comments at the meeting should notify Anne Bowen at the address specified under "ADDRESSES" by no later than September 24, 1996. Persons who wish to submit written statements at the meeting are requested to submit copies of such statements to Anne Bowen at the address listed under "ADDRESSES." These statements should be received by no later than September 24, 1996, so that the statements can be made available to the public at the meeting. For statements not received by September 24, 1996, commenters are requested to bring at least 50 copies to the meeting so that they can be made available to the meeting attendees. A transcript will be made of the meeting. The transcript and the written statements will be placed in the rulemaking record.

The following topics will be discussed at the meeting:

1. Emissions and exposure measurements.
2. Residual risk assessments.
3. Pharmacokinetics studies.
4. Acute data needs.
5. Low-vapor pressure hazardous air pollutants.

Similar topics will be grouped together. Other items may be added if requested. Such requests must be made in writing to Robert Reiley at the address specified under "ADDRESSES" and received by no later than September 24, 1996. Upon request to Anne Bowen, a copy of the agenda will be faxed to those requesting it on or after September 26, 1996, but prior to the meeting date. The agenda will also be posted on the internet.

List of Subjects in Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 6, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96-23217 Filed 9-10-96; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090, 2110, and 2130

[WO-420-1050-00-24 1A]

RIN 1004-AC98

Gifts; Acquisition of Lands or Interest in Lands by Purchase or Condemnation

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to remove

the regulations that explain the procedures for donating land to the Department of the Interior, and those that describe the Department's authority to acquire land by purchase or condemnation under the King Range National Conservation Area Act. These regulations are either statements of policy, internal procedures, or restatements of statutory provisions. BLM believes, therefore, that they can be deleted without having any substantive impact on the public.

DATES: Any comments must be received by BLM on or before October 11, 1996. Comments received after the above date will not necessarily be considered in the decisionmaking process on the final rule.

ADDRESSES: If you wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You also may transmit comments electronically via the Internet to WOCommentWO0033wp.wo.blm.gov. Please include "attn:[D. Beaver, RIN 1004–AC ___]" in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly. You will be able to review comments at BLM's Regulatory Management Team office, Room 401, 1620 L St., NW, Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Beaver, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone: 202–452–7788.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment addresses. BLM will not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

This rule is part of an initiative that BLM is undertaking to make its regulations more understandable and relevant. We are doing this by limiting our regulatory material as much as possible to requirements affecting the public in order to carry out our programs under the law. Regulations that do not meet this test are removed and, if necessary, placed in other more appropriate publications, such as manuals and brochures. The regulations to be removed by this rule are repetitive of statutory language, informational, or obsolete. BLM does not require that these procedures any longer exist in the Code of Federal Regulations.

III. Discussion of Proposed Rule

The provisions of 43 CFR part 2110, with the exception of Section 2111.4-Status of Lands, and 43 CFR part 2130 have no substantive purpose and can be placed in the BLM manual or in other publications readily available to the public. Subpart 2110 merely restates statutory provisions found in various sections of the U.S. Code, including two statutory sections that have been repealed. The only exception is the purpose statement of subsection 2110.0–1, which provides statements of policy concerning the Secretary's discretion to accept gifts of land. Since its non-binding terms do not materially affect the public at large, this provision will be removed in order to enhance flexible decision-making. Subsection 2111.4 will be retained in 43 CFR subpart 2091; the remainder of 43 CFR subpart 2111 largely exists already in the BLM Manual/Handbook (H–2101–1), and any aspect not already found in the Manual/Handbook can be incorporated therein.

The provisions of 43 CFR part 2130 are unnecessary because they either merely restate statutory language, or contain policy directives which should be relocated to the BLM Manual/Handbook. Subpart 2130 consists entirely of restatements of the King Range National Conservation Area Act, 16 U.S.C. 460y, concerning the authority of the Secretary to purchase and condemn lands. Subpart 2137 contains two policy statements that should be relocated to the BLM Manual/Handbook: subsection 2137.0–7 concerns BLM's policy of appraising acquired property, an internal procedure derived from 16 U.S.C. § 460y–4(4); and subsection 2137.0–9 concerns the BLM policy of resorting to eminent domain as a last option. With the exception of 43 CFR 2111.4, which this rule will relocate to part 2091, no portion of either part 2110 or part 2130 contains any necessary substance which guides the public in any meaningful way; rather, the regulations to be removed serve only to guide BLM decisions, or no purpose at all. Therefore, removing and relocating these sections as described above will streamline the Code of Federal Regulations and enhance BLM's efficiency without materially affecting the public.

IV. Procedural Matters

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA), and has found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. The BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the *Written Comments* section above, or contact us directly.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements which the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory

action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Unfunded Mandates Reform Act

This rule will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

Executive Order 12612

The proposed rule would not have sufficient federalism implications to warrant BLM preparation of a Federalism Assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the proposed rule is to abolish unnecessary regulations, it does not raise takings implications, or require further discussion under this Executive Order.

Executive order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author. The principal author of this rule is David Beaver, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone: 202–452–7788 (Commercial of FTS).

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians-lands, Public lands, Public lands-classification, Public lands-mineral resources, Public lands-withdrawal, Seashores.

43 CFR Part 2110

Government Property, Public lands.

43 CFR Part 2130

Public lands.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, subchapter B, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

PART 2090—[AMENDED]

1. The authority for part 2090 is revised to read as follows:

Authority: 16 U.S.C. 3124; 30 U.S.C. 189; 43 U.S.C. 322, 641, 1201, 1624, 1740.

2. Newly redesignated 2091.8 is revised to read as follows:

§ 2091.8 Status of gift lands.

Upon acceptance by the United States, through the Secretary of the Interior, of a deed of conveyance as a gift, the lands or interests so conveyed will become property of the United States but will not become subject to applicable land and mineral laws of this title unless and until an order to that effect is issued by BLM.

PART 2110—GIFTS

§ 2111.4 [Redesignated § 2091.8]

3. Section 2111.4 is redesignated as § 2091.8 in subpart 2091.

PART 2110—[REMOVED]

4. Part 2110 is removed in its entirety.

PART 2130—[REMOVED]

5. Part 2130 is removed in its entirety.

Dated: August 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–22702 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–84–M

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43 CFR Part 2200

[WO–420–1050–00–24 1A]

RIN 1004–AC97

National Forest Exchanges

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule deletes the regulations which address National Forest Exchanges. This section is no longer needed because it duplicates material contained in BLM's general exchange regulations as well as in the Forest Service's land exchange regulations. BLM proposes to extend the general exchange regulations to include National Forest System lands.

DATES: Any comments must be received by BLM on or before October 11, 1996. Comments received after the above date will not necessarily be considered in the decisionmaking process on the final rule.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, DC, or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. Commenters may transmit comments electronically via the Internet to: WOComment@WO0033wp.wo.blm.gov. [For internet, please include "Attn.: AC##", your name, and return address in your message.]

Comments will be available for public review at the L Street address during regular business hours from 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ted Milesnick, Special Areas and Land Tenure Team, Bureau of Land Management, at (202) 452–7727.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the comment addresses. BLM may not necessarily consider or include in the Administrative Record for the rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background and Discussion of Proposed Rule

BLM is deleting 43 CFR Subpart 2202 because it virtually duplicates sections contained elsewhere in BLM's regulations at 43 CFR 2201.1–2. Subpart 2202 requires that exchange proposals for the consolidation or extension of national forests be filed with the appropriate officer of the Forest Service. It further says that a request may be made to BLM to segregate the National Forest System lands involved in the exchange from appropriation under the public land laws and the mineral laws and also that any interests of the United States in the non-Federal lands to be acquired may be segregated from the mineral laws. The period of these segregations would not exceed 5 years from the date of notation.

Similar language can be found at section 2201.1–2 (as well as in the

Forest Service regulations at 36 CFR Part 254, Subpart A) with only two differences. First, section 2201.1–2 does not include the authorities cited at section 2202.1(a) for the exchange of National Forest System lands, or the statement that proposals for exchange of such lands must be filed with the Forest Service in accordance with 36 CFR Part 254. Secondly, section 2201.1–2 currently applies to "Federal lands," i.e., lands administered by BLM, and not to National Forest System lands. However, BLM proposes to amend this section to apply its provisions to National Forest System lands as well (in harmony with Forest Service regulations at 36 CFR 254.6.) This will insure that the removal of 43 CFR 2202 does not alter any existing rights or obligations. This proposed rule accomplishes that amendment, renders subpart 2202 completely redundant and unnecessary, and removes subpart 2202 from the Code of Federal Regulations.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that this proposed rule makes no substantive changes to the Code of Federal Regulations, because it is limited to removing provisions which are found in their entirety elsewhere in Title 43 of the CFR and are therefore wholly unnecessary. Therefore, this change is purely technical in nature and is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. Furthermore, the rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Removal of 43 CFR part 2202 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

Executive Order 12612

The proposed rule would not have sufficient federalism implications to warrant BLM's preparation of a Federalism Assessment.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3 (f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this rule is Ted Milesnick, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone: 202–452–7727 (Commercial or FTS).

List of Subjects in 43 CFR Part 2200

National forests; Public lands.

For the reasons stated in the preamble, part 2200, group 2200, subchapter B, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

PART 2200—[Amended]

1. The authority citation for part 2200 continues to read as follows:

Authority: 43 U.S.C. 1716, 1740.

2. Section 2201.1–2 is amended to add paragraph (e) to read as follows:

§ 2201.1–2 Segregative effect.

* * * * *

(e) The provisions of this section apply equally to proposals to exchange National Forest System lands under the authority and provisions of the Act of March 20, 1922, 42 Stat. 465, as amended, 16 U.S.C. 485, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, except that if a proposal is made to exchange National Forest System lands, which proposal shall be filed in compliance with 36 CFR part 254, the authorized officer may request that the appropriate BLM State Office segregate such lands by a notation on the public land records.

2. Subpart 2202 is removed in its entirety.

Dated: August 27, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary of the Interior.

[FR Doc. 96–22703 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Public Comment Period on Proposed Endangered Status for Nine Plants From the Grasslands or Mesic Areas of the Central Coast of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing and reopening of the comment period on the proposed endangered status for *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Astragalus clarianus* (Clara Hunt's milkvetch), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Plagiobothrys strictus* (Calistoga allocarya), *Poa napensis* (Napa bluegrass), *Sidalcea oregana* ssp. *valida* (Kenwood Marsh checkermallow), and *Trifolium amoenum* (showy Indian clover). All parties are invited to comment on this proposal.

DATES: The public hearing will be held from 6 p.m. to 8 p.m. on Thursday, October 3, 1996, in Novato, California. The public comment period, which closed on October 9, 1995, is now reopened upon publication of this document, and will close on October 15, 1996. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Novato Oaks Inn, 215 Alameda del Prado, Novato, California. Written comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller, Sacramento Field Office (see **ADDRESSES** section) at (916) 979–2120; facsimile (916) 979–2128.

SUPPLEMENTARY INFORMATION:

Background

Alopecurus aequalis var. *sonomensis*, *Astragalus clarianus*, *Carex albida*, *Clarkia imbricata*, *Lilium pardalinum* ssp. *pitkinense*, *Plagiobothrys strictus*, *Poa napensis*, *Sidalcea oregana* ssp. *valida*, and *Trifolium amoenum* are plant species in a variety of habitats, including valley grasslands, meadows, freshwater marshes, seeps, and broad-leaf upland forests in Marin, Napa, and Sonoma Counties on the central coast of California. Habitat loss and degradation, competition from aggressive plant species, elimination through plant community succession, grazing, collection for horticultural use, and hydrological modifications to wetland areas threaten the continued existence of these plants.

On August 2, 1995, the Service published a proposed rule to list *Alopecurus aequalis* var. *sonomensis* (Sonoma alopecurus), *Astragalus clarianus* (Clara Hunt's milkvetch), *Carex albida* (white sedge), *Clarkia imbricata* (Vine Hill clarkia), *Lilium pardalinum* ssp. *pitkinense* (Pitkin Marsh lily), *Plagiobothrys strictus* (Calistoga allocarya), *Poa napensis* (Napa bluegrass), *Sidalcea oregana* ssp. *valida* (Kenwood Marsh checkermallow), and *Trifolium amoenum* (showy Indian clover). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 et seq.) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. A public hearing request dated August 28, 1995, was received from John Bucher, President of the Sonoma County Farm Bureau, Sonoma, California. Because a Congressional moratorium on the Service's activities associated with final listing actions was in effect from April 1995 to April 1996, scheduling of the hearing was delayed. The Service has now scheduled a public hearing to be held on Thursday, October 3, 1996, from 6 p.m. to 8 p.m. at the Novato Oaks Inn, 215 Alameda del Prado, Novato, California.

Anyone wishing to make statements for the record should bring a written copy of their statements to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places no limits on the length of written comments or materials presented at the hearing or mailed to the Service.

The comment period on the proposal was initially closed on October 9, 1995. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until October 15, 1996, to the Service office in the **ADDRESSES** section.

Author

The primary authors of this notice are Elizabeth Warne and Ken Fuller (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 3, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 96–23027 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 61, No. 177
Wednesday, September 11, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

Summary: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, September 13, 1996. The meeting will be held in Room M09 at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C., beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American or Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II Swearing in of New Member
III. Report of the Task Force on the Council's Future
IV. Report of the Task Force on the 30th Anniversary of the NHPA
V. Report of the Task Force on Regulations
VI. Presidential Historic Preservation Directives
VII. Council Policy Statement on Empowerment Zones/Enterprise Communities
VII. Executive Director's Report
IX. New Business
X. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C., 202–606–8503, at least seven (7) days prior to the meeting.

For further information contact: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., 809, Washington, DC 20004.

Dated: September 5, 1996.

Robert D. Bush,

Executive Director.

[FR Doc. 96–23029 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Water Rights Task Force

AGENCY: Forest Service, USDA.

ACTION: Notice; establishment of task force and initial meeting.

SUMMARY: This notice announces the establishment and initial meeting of the Water Rights Task Force established on August 20, 1996, by Congress and the Secretary of Agriculture in accordance with the provisions of the Federal Advisory Committee Act and the Federal Agricultural Improvement and Reform Act of 1996, as amended by the Fiscal Year 1997 Agricultural Appropriations Act. The Congress and the Secretary have determined that the Water Rights Task Force is necessary and in the public interest and, accordingly, the Forest Service has scheduled the first meeting of the Task Force in Denver, Colorado, on September 23 from 1:00 p.m. to 4:30 p.m. and on September 24 from 8:00 a.m. to noon.

DATES: The initial meeting will be held September 23–24, 1996.

ADDRESSES: The meeting will be held at the Forest Service's Rocky Mountain Regional Office, 740 Simms Street, Golden, CO 80401. Send written comments to Eleanor Towns, FACA Liaison, Water Rights Task Force, c/o USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090. Telephone: (202) 205–1248; Fax: (202) 205–1604.

FOR FURTHER INFORMATION CONTACT: Steve Classer, Watershed & Air Management Staff, Telephone: (202) 205–1172; Fax: (202) 205–1096.

SUPPLEMENTARY INFORMATION: The Water Rights Task Force (Task Force) is composed of seven members appointed by Congress and the Secretary of Agriculture. The purpose of the Task Force is to study and make recommendations on: (a) whether Federal water rights should be acquired for environmental protection on National Forest System lands; (b) measures necessary to protect the free exercise of non-Federal water rights requiring easements and permits from the Forest Service; (c) the protection of minimum instream flows for environmental and watershed management purposes through purchases or exchanges from willing sellers in accordance with State law; (d) the effects of any of the recommendations upon State laws, regulations, and customs of water usage; and (e) measures that would be useful in avoiding or resolving conflicts between the Forest Service's responsibilities for environmental stewardship, the public interest, and property rights and interests of water holders with special use authorizations for water facilities, including the study of the Federal acquisition of water rights, dispute resolution, mitigation, and compensation.

Copies of the Task Force's charter are being filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act.

The objectives of the initial meeting are for the Task Force to elect a chairperson and develop a plan for carrying out its assigned responsibilities. The meeting is open to the public and will be chaired by the Forest Service liaison to the Task Force. Time will be provided each day for public input at times to be scheduled by the chairperson. However, Task Force discussion is limited to Forest Service personnel and Task Force members. Persons who wish to bring water rights matters to the attention of the Task Force may file written statements with the Forest Service liaison before or after the meeting.

The Task Force shall terminate either in August 1997 or upon the submission of a final report.

Dated: September 4, 1996.

Jack Ward Thomas,

Chief.

[FR Doc. 96–23062 Filed 9–10–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

Interior Columbia Basin Ecosystem Management Project

AGENCIES: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Revised notice of intent to prepare environmental impact statements.

SUMMARY: Interior Columbia Basin Ecosystem Management Project (ICBEMP). The primary purpose for this revised notice of intent is to provide public notice of the updated completion schedule for the ICBEMP's environmental impact statements (EIS). The Bureau of Land Management and Forest Service will continue the interim management strategies pending completion of the ICBEMP EISs. Due to differences between Bureau of Land Management (Bureau of Land Management NEPA Handbook 1790–1) and Forest Services (Forest Service Handbook 1909.15, at 18.1) NEPA policies, the Bureau of Land Management is preparing a supplemental environmental assessment for the continuation of the PACFISH (see below in Supplementary Information), while the Forest Service has provided information in this notice, in compliance with Forest Service policies, to address the continuation of the PACFISH interim direction.

Due to the complexity of an analysis of this scope, and the government shutdown in the first part of FY96, the timeframe for completing the environmental impact statements (EISs) has changed. The new schedule for release of the draft EISs is Fall 1996, for the public comment period; the public comment period will be 120 days. The adjusted schedule for the release of the final EISs and Records of Decision is Fall 1997.

In February, 1994, the Bureau of Land Management and Forest Service proposed to develop and adopt a coordinated ecosystem management strategy for national forests and public lands east of the Cascade Mountains in Oregon and Washington (59 FR 4680, February 1, 1994). The strategy later became known as the Interior Columbia Basin Ecosystem Management Project. The ICBEMP strategy will include direction which will protect and enhance aquatic ecosystems for anadromous fish and inland native trout and terrestrial ecosystems. It will also address the social and economic interactions with these biological variables. The purpose is to carry out President Clinton's mandate of July 1993 to develop a scientifically sound and ecosystem-based strategy for management of these lands. The selected alternative may result in amendment to the Forest Service Regional Guides and/or amendment or revision of applicable national forest land management plans and Bureau of Land Management resource management plans.

The original Notice of Intent for the ICBEMP effort was revised on May 23, 1994, to address changes in the scope of the area to be considered in the analysis and to establish a public meeting schedule (59 FR 26624). A third **Federal Register** notice was published on December 7, 1994, announcing the preparation of an EIS for the Upper Columbia River Basin (UCRB) (59 FR 63071). A fourth notice was published on August 7, 1994, changing the scope of the UCRB planning area. (60 FR 40153). On August 25, 1994, a fifth **Federal Register** notice was published revising the completion date for the Eastside EIS (60 FR 44298). The Bureau of Land Management and Forest Service will now produce two EISs, one for eastern Oregon and Washington (Eastside EIS) and one for Idaho, western Montana, and small portions of Nevada, Wyoming, and Utah (UCRB).

FOR INFORMATION CONTACT:

Steve Mealey, Project Management Team, Interior Columbia Basin Ecosystem Management Project, 304 North 8th Street, Room 246, Boise, Idaho 83702, phone 208–334–1770. Gordon Haugen, Columbia River Basin Fish Coordinator (PACFISH), 333 SW First Street, Portland, Oregon 97208, phone 503–326–4929.

SUPPLEMENTARY INFORMATION:

Summary of Public Involvement for the Long-Term Management Strategy

Formal scoping periods, under National Environmental Policy Act (NEPA), opened with publication of the Notice of Intent in the **Federal Register** to prepare an EIS and conduct planning activity for the Eastside Ecosystem Management Project on February 1, 1994 and for the Upper Columbia River Basin on December 7, 1994.

Public meetings, open houses, symposiums, briefings, workshops, Internet access, toll-free numbers, information centers, teleconferences, brochures and newsletters provide opportunities for the public to be involved. Over 350 public meetings and briefings were held throughout the project area from February 1994 through July 1996.

The teleconference scoping meeting for the UCRB was held simultaneously in 27 planned locations on January 28, 1995 via satellite. Local Bureau of Land Management and Forest Service staff were on hand to facilitate discussions, part of which was devoted to sharing and responding to comments and concerns from the 27 sites. The scoping meeting was also broadcast over three public access television stations. In addition, anyone with access to a satellite dish within the continental United States was able to view the program and respond via fax.

Many levels of government participated throughout the planning process including Federal and State agencies, Counties, Resource Advisory Councils, Province Advisory Committees, and Tribes. This has developed into effective partnerships and increased coordination and understanding between the groups.

Mailing lists for the EISs were compiled from Bureau of Land Management and Forest Service offices within the ICBEMP area and from the PACFISH mailing list. As other interested parties requested to be added to the mailing list the total number of persons on the list rose to 4,800.

Public involvement has been a vital and continuing aspect of the Eastside and UCRB planning process. NEPA requirements have been exceeded by involving people early and often, sharing information as it became available even if it was in draft form, and using non-traditional public involvement methods.

This type of public involvement will continue with the release of the draft EISs and through the Records of Decision. Teleconference, meetings, and workshops are planned as ways to continue to provide opportunities for the public to understand and shape the final management strategy.

The Notices of Intent for Eastside EIS and the UCRB EIS, and the Charter for the ICBEMP include objectives for the EISs and Scientific Assessment to develop the basis for management direction to modify and implement Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (PACFISH).

A May 1995 mailer sent to the public by the Project, solicited comments on goals for the development of alternatives. There were seven primary goals including provisions for long-term direction that would replace PACFISH and the Inland Native Fish Strategy. Based on public responses and input from the ICBEMP Interdisciplinary Team, the seven goals were refined into five. Development of long-term aquatic conservation strategy became part of Goal 1, which is to sustain and where necessary restore the health of forest, rangeland, aquatic and riparian ecosystems.

In September 1995, a mailer outlining seven alternatives was sent to the public. Several of the alternatives under consideration would adopt PACFISH as a long-term strategy either as currently described, or with minor refinements.

Comments and responses on all alternatives, including those alternatives which adopt PACFISH and INFISH for the long term, plus alternatives which refine those strategies, will be accepted through the comment period on the draft EISs.

Summary of Public Involvement for the Interim Strategies

Due to concerns over the possible effects to aquatic and terrestrial species and their habitats during the development of a long-term strategy, three sets of interim measures were put in place. *First* on August 18, 1993 the Forest Service Region Six adopted the Eastside Screens as interim direction in Oregon and Washington establishing riparian, ecosystem, and wildlife standards for timber sales. On May 24, 1994, this interim direction, with some modification, was continued through an environmental assessment. *Second*, on February 24, 1995, direction was adopted to assure protection of habitat for anadromous fish species within the Columbia River Basin and portions of California (PACFISH). *Third*, on July 28, 1995, INFISH was adopted by the Forest Service to protect habitats for native inland fish. PACFISH and INFISH direction supersede the direction contained in the Eastside Screens for riparian area and aquatic management. Eastside Screens for riparian areas were modified by PACFISH and INFISH for two primary reasons, first, the Eastside Screens only applied to timber management, whereas PACFISH and INFISH included other resource management considerations; second, the Eastside Screens were too restrictive in that they did not allow for silvicultural practices that may be needed to benefit riparian plant and animal communities.

As a general rule, all of the Eastside forests (eastern Oregon and Washington), not covered by the Northwest Forest Plan, are covered by either the PACFISH or the INFISH standards. However, some forests such as the Wallowa-Whitman National Forest in Oregon have a portion of the forest covered by the PACFISH, due to the presence of anadromous fish watersheds, and the remaining portion of the forest is covered by the INFISH.

PACFISH. Document Title: Decision Notice/Decision Record, Finding Of No Significant Impact for the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California, February 24, 1995.

A Notice of Availability for the PACFISH environmental assessment and proposed finding of no significant impact was published in the **Federal Register** (March 25, 1994, 58 FR 14356), with a 45 day public comment period. This comment period was extended for two weeks, until May 23, 1994 (85 FR 23049). The Bureau of Land Management and Forest Service received over 500 written comments; of which over 90 percent were from within the geographic range of the proposed action.

EASTSIDE SCREENS. Document Title: Decision Notice for the Continuation of Interim Management Direction Establishing Riparian, Ecosystem and Wildlife Standards for Timber Sales, USDA Forest Service, Region 6, Colville, Deschutes, Fremont, Malheur, Ochoco, Okanogan, Umatilla, Wallowa-Whitman, and Winema National Forests in Oregon and Washington, May 20, 1994.

This Decision Notice identified that the Interim Direction of August 18, 1993, as modified in the Regional Forester's Plan Amendment #1, was continued pending completion of the Eastside Ecosystem Management Strategy, now known as the ICBEMP. The ecosystem management strategy will be displayed in the ICBEMP Eastside EIS. This interim direction applied to the design of timber sales in certain riparian areas (now replaced by the PACFISH and INFISH direction), and applies to late and old structural forest stands. On December 28, 1993, a Notice of opportunity to comment was published in every paper of record in Eastern Oregon and Washington. The Forest Service received 19 comment letters and one citizen petition, bearing about 150 signatures. These submissions included nearly 270 discrete comments, reflecting a variety of support for and criticisms of the interim direction.

INFISH. Document Title: Decision Notice and Finding Of No Significant Impact for the Inland Native Fish Strategy, USDA Forest Service, July 28, 1995.

In response to growing concerns over the status of inland native fish communities and their habitats throughout the inland west, the Forest Service, working with the US Fish and Wildlife Service, developed an interim conservation strategy referred to as INFISH. The purpose of INFISH is to provide interim direction, similar to PACFISH, that applies to those areas not covered by PACFISH or the Northwest Forest Plan. This interim direction was developed to maintain management options for inland native fish habitat while the Bureau of Land Management and Forest Service developed long-term management strategies. Another purpose of the interim direction was to take prudent measures to arrest the degradation, and begin the restoration, of riparian and aquatic ecosystems in watersheds where inland native fish habitat is present.

Initital outreach for the INFISH project was sent to over 5000 people, of which approximately 1700 desired to remain on the mailing list. A scoping period was established from March 14 to April 26, 1995. This was followed by mailing the environmental assessment and draft FONSI in June and several public hearings. Overall, 29 people testified, and 91 written comments were received.

Supplemental information for the Environmental Assessment (EA)

DOCUMENT TITLE: Implementation of Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (PACFISH)

CONTINUATION OF PACFISH. When the Decision Notice/Decision Record for PACFISH was signed it was the intent of the Bureau of Land Management and Forest Service that long-term direction would be provided by the ICBEMP within 18 months, and the effects analysis in the EA was based on this assumption. The Bureau of Land Management and Forest Service designed PACFISH as an interim measure to preserve options until the ICBEMP is put in place. Because the ICBEMP has taken longer than expected to develop, the Bureau of Land Management and Forest Service have decided to keep the PACFISH interim direction in place for the same extended period.

This scheduling notice does not address in detail the other interim

measures, INFISH and Eastside Screens, because of important differences between these interim strategies and PACFISH. INFISH was implemented for an approximately 18 month period beginning in August 1995. (60 FR 33927, August 4, 1995). Accordingly, the revised schedule for the implementation of the ICBEMP does not extend INFISH appreciably beyond the approximate time-period originally anticipated. Meanwhile, the Decision Notice for the Eastside Screens expressly implemented the interim direction until the Eastside EIS is completed, May 20, 1994 Decision Notice (pg. 4).

In February 1995, the Director of the Bureau of Land Management, and the Chief of the Forest Service jointly approved the PACFISH aquatic conservation strategy which amended specific Forest Service land management plans in portions of California, Idaho, Oregon, and Washington states. This strategy is found in the above titled environmental assessment. This aquatic conservation strategy was applied to those federal lands supporting anadromous salmonids not included under the guidance of the Northwest Forest Plan. As stated in the Decision Notice/ Decision Record, for the Forest Service, the PACFISH forest plan and regional guide amendments remain in place until superseded by further plan amendment or revision which was projected to occur in September, 1996.

The purpose of the interim direction is to maintain management options for anadromous fish habitat while the Bureau of Land Management and Forest Service developed long-term management strategies. Another purpose of the interim direction is to take prudent measures to arrest the degradation and begin the restoration of riparian and aquatic ecosystems in watersheds where anadromous fish habitat is present or easily could be reestablished (EA, pp. 6–8).

The responsible officials considered the ability of the selected alternative (alternative 4 of the EA) to meet the stated purpose and needs for the action (EA pp. 6–9); to comply with applicable laws, regulations, executive orders, and policies; and to respond to issues and public comments about the alternative strategies. A critical factor relevant to this decision was the ability of the selected alternative to respond to the issues identified in the EA (pp. 21–22); issues still relevant today.

The PACFISH standards and guidelines (EA Appendix C, Alternative 4) serve to provide adequate environmental safeguards for proposed and ongoing projects and activities that pose an unacceptable risk within riparian habitat conservation areas or that degrade riparian habitat conservation areas. There are no new types of ongoing projects or activities, not already addressed in the PACFISH EA, to consider. With respect to the Forest Service, the selected alternative did not constitute a significant amendment under current planning regulations for the following reasons: (1) Its application is for a limited time; (2) it resulted in only minor modifications to standards and guidelines in existing plans; (3) it did not modify the goals and objectives of existing plans; and (4) it did not alter long-term levels of goods and services projected in existing plans. For the several Bureau of Land Management Districts, Resource Areas or planning areas, the interim PACFISH strategy was found consistent with approved plans and did not require or constitute a plan amendment.

The Bureau of Land Management and Forest Service received a biological opinion, through the Endangered Species Act (ESA), Section 7 consultation process, from the National Marine Fisheries Service dated January 23, 1995, supporting implementation of the PACFISH strategy. The National Marine Fisheries Service, through its PACFISH biological opinion, found that the proposed action was not likely to jeopardize the continued existence of listed Snake River salmon under its jurisdiction nor result in the destruction or adverse modification of critical habitat.

The interim strategy provides direction to ensure land management actions will not lead to jeopardy of listed anadromous fish stocks, or limit options while long-term management strategies are being developed through geographically specific analyses conducted by the ICBEMP.

With respect to those National Forest System lands, covered by PACFISH in California, PACFISH will remain in place until replaced by long-term strategies on affected watersheds of the Lassen and Los Padres National Forests. As indicated in Appendix 1 of the PACFISH EA, this will be accomplished through (1) Minor adjustments of the Los Padres National Forest Plan/ Riparian Conservation Strategy, and (2) direction for managing anadromous fish-producing watersheds of the Lassen National Forest contained in the California Spotted Owl EIS.

With respect to the Bureau of Land Management's lands covered by PACFISH in California, an analysis was made comparing the interim management goals, standards and guidelines, to the Redding Resource Area's management plan. Bureau of Land Management is actively participating with the State, National Marine Fisheries Service and others in developing a Coastal Salmon Initiative, which will include conservation guidelines and protection measures. It is expected the Initiative will be ready for the National Marine Fisheries Service to use in preparing an ESA Section 4(d) rule in early 1997. The Resource Area's management plan goals meet or exceed those established by PACFISH. In the Carmel Creek watershed of the Hollister Resource Area, management of Bureau of Land Management lands is also consistent with PACFISH. The extremely small portion of public land anadromous salmonid streams in that Resource Area are in very good condition and no management changes were necessary. Public comments on the adequacy of current Bureau of Land Management management and long-term management needs for anadromous fisheries were solicited in two public forums held jointly with the Forest Service in 1995. No comments critical of either Resource Area's management direction were received.

With respect to Bureau of Land Management administered lands in Oregon and Washington, an analysis was made comparing the interim Pacfish management goals, standards and guidelines to the four approved Resource Management Plans for the Pacfish area in the Prineville, Vale and Spokane Districts. These plans included the Prineville Direct's Two Rivers and John Day Resource Management Plans, the Vale District's Baker Resource Management Plan and the Spokane District's Spokane Resource Management Plan. Bureau of Land Management staff in these areas are actively participating with the States of Oregon and Washington as well as the National Marine Fisheries Service whenever any new projects are proposed or existing use permits, leases or agreements are revised in areas with known or potential andromous fish habitat. Individual Bureau of Land Management or non-Bureau of Land Management proposed actions have been modified or deferred to allow review and approval by National Marine Fisheries Service under the ESA. The four Resource Management Plans management goals, objectives and management standards or standard operating procedures meet or exceed those established by Pacfish and/or were not inconsistent with Pacfish so that full implementation over the last 18 months did not require any Resource

Management Plan amendments. In many portions of the Pacfish area there are only very small portions of public lands adjacent to Pacfish streams and they are generally in good condition and no management changes were necessary. Public comments on the adequacy of current Bureau of Land Management management and comments on ongoing project environmental analyses indicate Pacfish and related concerns are being adequately addressed and resolved.

With respect to Bureau of Land Management administered lands in Idaho, an analysis was made comparing interim PACFISH management goals, standards and guidelines to the four approved Management Framework Plans and one Resource Management Plan (Resource Management Plan) in effect for the PACFISH areas in the Challis, Lemhi, and Cottonwood Resource Areas of the Upper Columbia-Salmon Clearwater District Management Framework Plan, Ellis-Pahsemeroi Management Framework Plan and Mackay Management Framework Plan; Lemhi Resource Area: Lemhi Resource Management Plan/EIS; and the Cottonwood Resource Area: Chief Joseph Management Framework Plan. Bureau of Land Management staffs in these areas actively participate with the State of Idaho, as well as the National Marine Fisheries Service and US Fish and Wildlife Service whenever any new actions are proposed or ongoing actions are revised in areas with designated critical salmon habitat. All Bureau of Land Management or applicant-proposed actions are reviewed for PACFISH compliance and either found to be in compliance or modified, mitigated or deferred. All actions carried forward that are not in compliance must be considered may effect for listed salmon and/or their designated critical habitats. These actions are evaluated by a team of Bureau of Land Management, National Marine Fisheries Service, and Fish and Wildlife Service biologists, and if appropriate, consulted with National Marine Fisheries Service under section 7 of the ESA. Existing Land Use Plan management goals, objectives and management actions comply with those established by the PACFISH or were consistent with PACFISH over the interim period. Public comments on the adequacy of interim period Bureau of Land Management management and comments on ongoing environmental analysis indicate the PACFISH and related concerns are being adequately addressed and resolved.

Public comments on the adequacy of interim period Bureau of Land Management and comments on ongoing environmental analysis indicate PACFISH and related concerns are being adequately addressed and resolved. Based upon the data the Bureau of Land Management has at this time, the Bureau of Land Management anticipates that it will make a decision to extend PACFISH, and will notify the public of its decision and its implementation strategy.

Analysis Process

The Forest Service has applied the criteria set out in the implementing regulations for the NEPA from the Federal Code of Federal Regulations (CFR) at 40 CFR 1502.9(c)(1) and the Forest Service Handbook at 1909.15 FSH 18.1 for determining the need to provide additional documentation of environmental impacts pursuant to NEPA. The question here is whether there are new circumstances or information that are significant or, in other words, would cause a substantial difference in the analysis of environmental effects documented in the EA for the PACFISH. Also considered was whether the interim direction is still adequate to meet the identified resource needs. The long-term continuation of PACFISH, or an aquatic conservation strategy which replaces it, is being considered in the ICBEMP.

In the case of PACFISH, this evaluation was initiated to determine if there have been any significant changed circumstances or significant new information over the past 18 months relevant to the estimation of effects described in the EA. This analysis focuses on the premise that PACFISH interim direction is intended to maintain management options in the near future and not preclude implementation of options which may be considered as part of the ICBEMP and its associated EISs while permitting certain management activities to continue.

For the analysis, the Forest Service addressed four questions (listed below), as well as the information stated in the PACFISH EA for the selected alternative (Alternative 4), and by comparing that information to information gathered over the past 18 months from the implementation of the PACFISH interim direction; this information included: (a) Inter-agency (Forest Service, Bureau of Land Management, National Marine Fisheries Service, Fish and Wildlife Service) PACFISH Field Reviews, (Jan. 1996, Forest Service CRB files); (b) Bureau of Land Management and Forest Service Field implementation reports (A[illegible]15, 1996, Forest Service CRB files); and (c) Analysis of ICBEMP science team and economic data.

1. Are the circumstances, information, and/or the assumptions upon which the EA is based, still valid and germane? If not, are the changed circumstances, information, and/or the assumptions sufficiently minor as not to warrant a change in the interim programmatic direction in order to maintain options which may be considered as part of the Interior Columbia Basin Ecosystem Management Project?

Environmental Assessment. The PACFISH strategy was developed in response to new information which documented broad declines in naturally reproducing anadromous fish, and widespread degradation of the habitat upon which these anadromous fish are dependent.

To protect quality anadromous fish habitats, arrest habitat degradation, and begin restoration of anadromous fish habitat, as well as respond to a wide array of new scientific information on the status of various other anadromous fish stocks and the condition of aquatic and riparian habitat, the Bureau of Land Management and Forest Service re-evaluated all management projects and activities in anadromous watersheds not covered by the Northwest Forest Plan. Such action was needed to ensure that management actions implemented before completion of the ICBEMP EISs would not have adverse environmental effects that would result in jeopardizing the continued existence of anadromous fish stocks or otherwise limit the range or number of reasonable alternatives evaluated in the geographically-specific environmental analyses. This interim strategy was designed to bridge the time gap between existing land management plans and the adoption of a long-term strategy.

Response. Information obtained, to date, through the ICBEMP science reports verifies that the circumstances, information, and assumptions documented in the PACFISH EA are still valid and germane. The ICBEMP information also supports the need, on a broad-scale, for the continuation of interim direction to address the serious condition of anadromous fish within the Columbia River Basin. While the ICBEMP broad-scale information is not specific enough for analysis at the local level (i.e. site-specific project or watershed level) it does provide a basis for analysis of the interim PACFISH direction. This information (documents in publication) indicates the continuation of the PACFISH interim direction would continue to meet the original purpose and need of protecting critical habitats and maintaining options

during development of a long-term management strategy. In addition, all field units have completed an evaluation of ongoing activities.

Discussions with the ICBEMP Aquatic Science Team affirmed that PACFISH is still a technically sound fish habitat conservation strategy from which to operate until the ICBEMP decision-making process is concluded.

2. Is the methodology and analytical approach used in the EA still reasonable?

The PACFISH interim direction was developed for short-term use at the site-specific project level. Bureau of Land Management and Forest Service personnel have reviewed the methodology and analytical approaches used in the analysis for the PACFISH EA, and have determined that they are still valid and appropriate. These same methodologies and analytical approaches would be used again if needed.

3. Are the environmental effects which actually occurred essentially the same as those identified in the EA? If there have been unanticipated effects, are the unanticipated effects sufficiently minor as to warrant neither reopening the NEPA process nor changes in the interim programmatic direction?

Environmental Assessment. Environmental consequences were evaluated for the physical, biological, and human environments. Analyses of environmental consequences were based on estimates of the effects of predicted changes in federal actions as a result of implementation.The following rationale, summarized from the nine assumptions used by the PACFISH Interdisciplinary Team, described on pages 37–38 of the EA, was used for determining the effects.

—The mitigation measures may result in the delay or modification of projects and activities. New project decisions will be preceded, as appropriate, by site-specific NEPA analysis.

—The affected environment is the present environment. Analyses in the EA considered trends and changes associated primarily with ongoing and proposed timber harvesting, livestock grazing, and recreation uses during the interim period.

—Environmental effects were based solely on the implementation of direction within the geographic scope of PACFISH. Management direction applied only to lands within anadromous watersheds that are administered by the Bureau of Land Management and the Forest Service.

—The effects of implementing the PACFISH direction were considered only for the interim period. Because recovery processes within riparian and aquatic habitats are gradual, short-term adjustments in management practices would not result in dramatic habitat improvement during the interim period.

—The effect of modifications in management practices were analyzed based on the size, number, and distribution of riparian habitat conservation areas; as well as in the breadth of standards and guidelines, the scope of projects and activities covered, and the degree to which watershed analysis would be conducted.

—Projects and activities within the range of listed anadromous fish, and for which ESA consultation with the National Marine Fisheries Service has been completed were considered to be in compliance with any interim direction alternative.

Modifications resulting from PACFISH were predicted to account for reductions in recreation visitor days, timber harvest, and permitted grazing within certain streamside areas. Where grazing and timber harvest have caused impacts, adoption of alternative 4 would provide improved soil stability, additional stream shading, and continuing supplies of large woody debris to affected streams. Where grazing has contributed to unstable stream banks, loss of vegetative cover and shade, and increased sedimentation, the trend of such habitat degradation would be reversed.

Protection measures prescribed for timber, road management, minerals management, recreation, and grazing related activities, as well as other activities, would be applied throughout the area of the proposed action. Where such measures are applied, risks to riparian and aquatic resources would be reduced. Where site-specific analysis or watershed analysis indicate other protection measures are necessary they would still be designed to achieve riparian management objectives.

The potential cumulative effects of the PACFISH interim direction were limited by the nature of the interim direction itself. No ground-disturbing actions were authorized, funded, or carried-out by the PACFISH decision. The interim programmatic nature of PACFISH does not constitute any irreversible or irretrievable commitment of resources. Such commitment of resources can only be made through long-term permanent amendments to land management plans, or through site-specific project decisions. In the programmatic environmental assessment for PACFISH, the Bureau of Land Management and the Forest Service merely considered the impacts of various interim strategies for protecting anadromous fish habitat. The intended effect of the interim direction was to maintain the environmental status quo while long-term management strategies are being developed.

The standards and guidelines presented in PACFISH were intended to limit or mitigate the effects of human activity on anadromous fish habitat on Bureau of Land Management and Forest Service administered lands. The interim direction is not the sole or final direction for anadromous fish habitat protection for Bureau of Land Management and Forest Service administered lands. Cumulative effects are also being assessed through specific project and activity analysis efforts. At the programmatic level of this interim direction, detailed analysis of specific cumulative effects was not possible. Such analysis would require speculation as to the scope, character, and environmental consequences of future project and activity decisions.

Response. The implementation monitoring summaries from each of the administrative units were received in January of 1996. These summaries identified the following: (1) That approximately 1200 projects were either completed, planned or in the process of being completed; (2) that PACFISH default riparian habitat conservations areas (EA at Appendix C, pp. C–6 and C–7) were applied to over 600 of these projects; (3) that riparian habitat conservations areas were either modified through watershed analysis or site specific analysis on the remaining projects; and (4) that watershed analysis was conducted for less than 10 percent of the projects and effectiveness monitoring was either conducted or planned on approximately 300 projects.

Implementation monitoring to date has not identified management actions that would lead to noncompliance with PACFISH direction. The direct and indirect effects of implementing the PACFISH interim direction have been essentially the same as those described in the PACFISH EA, and therefore, are assumed to continue as previously projected. Projects which could reasonably be deferred or re-designed to avoid or mitigate impacts were treated accordingly.

The programmatic cumulative effects are consistent with, or less than, those estimated in the EA. The cumulative effects of interim PACFISH direction were reviewed and considered in relation to projects, reasonably

foreseeable policies of other agencies, and possible effects of long-term management. The short term nature of PACFISH makes it difficult to determine measurable changes in cumulative effects. However, the cumulative effects of project level implementation of PACFISH standards and guidelines have resulted in benefits to fish habitat, a condition expected to remain with continuation of PACFISH. Activities anticipated during continuation of PACFISH are similar to those which have occurred during implementation and are not expected to have different effects.

The following provides additional analysis based on recent information about environmental consequences.

Watershed Resources. The EA, page 45, states although improvements to watersheds and water resources would be noticeable at a few sites, measurable improvement in habitat condition during the interim period would not likely to substantial because recovery processes are gradual. As discussed above, implementation monitoring of projects shows that there is good compliance with the PACFISH management direction. As stated in the EA, basin-wide effectiveness monitoring has not been conducted for a sufficient time to show marked improvement. Given the long timeframes required for improvement, the projected environmental consequences for the physical environment are not expected to change through the continuation of the PACFISH direction.

Non-Forested Vegetation. The EA projected most effects to be caused by grazing with some localized areas affected by recreation. The EA stated that application of the proposed management direction would improve ecological conditions but for upland areas this might take 5–10 years before it is measurable, although recovery within riparian areas may be faster. Range allotments identified as posing an unacceptable risk have been subjected to PACFISH management direction. Initial implementation monitoring results show that riparian conditions are improving but that it will take more time to show definitive results on a broad scale for PACFISH. The continuation of PACFISH would not change the effects to the range management program from that described in the PACFISH EA.

Forested Vegetation. Forested vegetation changes slowly except when catastrophic fire, insect or disease events cause rapid change. This was discussed on pages 50–51 of the EA. For the preferred alternative, the EA anticipated harvesting would not generally be allowed within the riparian habitat conservation areas except as allowed for in TM–1 standard which provided for salvage after catastrophic events. The EA disclosed that this would result in higher risks for tree mortality but the inherent risk would not change over such a short timeframe.

During the time period since the approval of the PACFISH EA there have been numerous salvage sale projects. While these projects did not require PACFISH standards and guidelines be applied, Forests were directed to apply management prescriptions that would not cause adverse effect on anadromous fish habitat. An interagency review has been conducted, the results of which will be useful for determining effects to the environmental baseline. These projects have been designed and conducted either using the default PACFISH direction or under direction developed with site specific analysis and Section 7 consultation procedures in drainages with listed stocks. As projected, the completed sales did not salvage as much material as might have occurred prior to PACFISH, though the PACFISH interim direction does allow for salvage after appropriate analysis has been completed. The original projection that the inherent risk would not change is still correct and is applicable to the continuation of the PACFISH direction.

Fishery Resources. The EA projected that because alternative 4 would broaden the application of management direction by including new standards and guidelines to all proposed projects and activities, and some ongoing projects and activities within riparian habitat conservation areas or that degrade riparian habitat conservation areas, and because large riparian habitat conservation areas would be established in all key watersheds, increased protection of riparian and aquatic habitat would occur. Although there would be no permanent cessation of activities in riparian habitat conservation areas, some actions would be modified or deferred during the interim period, resulting in a reduction of adverse effects on riparian and aquatic habitats within riparian habitat conservation areas.

The application of the interim management direction has provided the protection anticipated. Effects on fisheries populations and habitat improvement will take a prolonged time of monitoring to show measurable results. This also applies for the continuation of PACFISH.

Threatened, Endangered, and Sensitive Species/Wildlife Resources. Since the signing of the PACFISH EA, steelhead trout populations in the Snake River Basin and the upper Columbia River Basin have been proposed for federal listing under the ESA (61 FR 41541, August 9, 1996). Steelhead trout populations in the middle Columbia River Basin were not included as proposed species, but will be monitored for possible inclusion. This species of anadromous fish is located throughout the PACFISH area. Steelhead trout were addressed by the EA as one of the anadromous fish PACFISH was designed to benefit. The EA projected that effects on threatened, endangered, and sensitive species and wildlife resources from implementing more constraining standards and guidelines would be minor but mostly positive. Results from the inter-agency field reviews and field implementation reports show this to be true. A similar trend is expected for the continuation of PACFISH.

Social. The EA projected that the social effects of the preferred alternative would be relatively small for small isolated communities (EA, page 60). This has been confirmed by the social analysis developed for the ICBEMP effort. The effects on cultural resources, wild and scenic rivers, Indian tribes, and social effects are as predicted by the EA and are projected to be similar for the continuation of PACFISH direction.

Economic. The focus of the economic effects discussion in the EA was to identify the additional or incremental effects that might be expected as a result of interim direction. Because of ESA requirements and the presence of listed anadromous fish stocks, both Bureau of Land Management and Forest Service field units in the Snake River Basin generally were already operating under more stringent management requirements than were called for under current plans. These units had already experienced reductions in many activities and output levels as a result of consultation and other ESA provisions. Estimated effects of implementing alternative 4 were reductions in timber harvesting, livestock grazing, and recreation visitor day use.

In general the economic impacts are more modest than forecasted in 1994. The continuing low prices for timber and beef have resulted in lesser impacts from the PACFISH decision for those industries than stated in the PACFISH EA; the low prices for timber and beef affected the outputs of all forests. For various reasons, timber harvest fell slightly between 1994 and 1995 by an average of 9 percent. The major difference in total impacts is the lack of recreation impacts observed over the past 2 years. The original economic analysis (late 1994 and early 1995)

assumed seasonal or permanent closures of both developed and dispersed sites in areas affected by the PACFISH strategy. Such closures did not occur, although some National Forests closed roads and implicitly limited access. Another difference is that some of the projected range impacts have not occurred. The original analysis assumed that as allotment management plans were completed, there would be a drop in the number of animal unit months. The completion of allotment management plans has been a slow process with few changes to numbers of animal unit months, although there have been changes to season of use and grazing patterns. The costs of various programs have increased for the Forest Service. A sample from the majority of National Forests involved in PACFISH suggest cost increases on the order of 12, 8, and 4 percent for administration of the timber, range, and recreation programs respectively.

The ICBEMP information indicates that the assumptions used for the economic effects determinations in the PACFISH EA are still correct. The estimates for effects for cut and sold timber volumes, and the estimated effects to the livestock grazing program are within those projected in the PACFISH EA. These effects would remain the same under the continuation of PACFISH.

4. Is the range of alternatives for interim direction still reasonable for meeting the purpose and need (i.e., changes in information, circumstances, and or assumptions do not lead to issues that would warrant development of an alternative not already considered in the EA but which would meet the purpose and need)?

Although the range of alternatives in the ICBEMP DEISs are greater and more diverse than the PACFISH EA alternative range, the former documents are intended to consider long-term strategies which could involve major changes in federal land use allocations and management direction. In contrast, the PACFISH EA and associated decisions were intended to consider a more limited range of interim actions that could be readily implemented while preserving future management options. The long-term management strategy would clearly consider actions which would be major federal actions (as defined by the CEQ guidelines for implementing NEPA), while the PACFISH EA provides more modest interim actions designed to preserve options with minimal effects on the other federal land uses and resource allocations during the time needed to complete the ICBEMP decision-making process. The range of PACFISH EA alternatives are still reasonable and appropriate for continuing interim policies, standards, and guidelines.

Endangered Species Act Consultation

On August 29, 1996, the Bureau of Land Management and the Forest Service re-initiated consultation, under section 7 of the Endangered Species Act, with the National Marine Fisheries Service per the terms of the January 23, 1995, Biological Opinion for PACFISH. The Biological Opinion states at page 33, consultation shall be re-initiated in the event that consultation on the geographically-specific EISs in eastern Oregon, Washington, and Idaho is not completed by 18 months from the effective date of the [record of decision] for PACFISH.

Conclusion

The Forest Service reviewed the interagency information from the area covered by PACFISH, and information from field reviews indicating that it is still a technically sound fish habitat conservation strategy from which to operate until the ICBEMP decision-making process is completed. Through this review the Forest Service concluded that: (1) the data and/or assumptions upon which the EA was based are still valid and germane; (2) the methodology and analytical approach used in the EA are still reasonable; (3) the effects experienced are within those identified in the EA, and reasonably foreseeable future effects are consistent with those estimated in the EA, and are not significant; and (4) the range of alternatives in the EA is still reasonable.

The available evidence indicates that the direction provided by PACFISH is sufficient to provide resource protection until long-term direction is in place, that the analysis contained in the EA is still valid, and that the factors leading to a finding of no significant impact are still correct and appropriate. Consequently, the PACFISH interim direction will continue until implementation of the ICBEMP decisions.

NEPA Findings. Under the Forest Service Handbook, 1909.15 at 18.1, the Forest Service may conduct interdisciplinary reviews and consideration of new information in the context of the overall program or project to determine whether or not the new information warrants reopening the NEPA process. The analysis, documented above, fulfills that review and consideration. The analysis indicates there is not significant new information or changed conditions that would warrant reopening the NEPA decision-making process for PACFISH. The range of alternatives, estimation of effects, and the finding of no significant impact are still valid. The science used to develop the PACFISH strategy is still valid.

PACFISH & NFMA Significance. The PACFISH Decision Notice contains a finding that the PACFISH amendments were not NFMA significant amendments (36 CFR 219.(10)(f); Decision Notice, pp 8–11). The Decision Notice reviewed the significance factors and concluded:

Timing: Because PACFISH will be in place only until the current analysis of a longer-term strategy is completed they do not constitute significant amendments of the Regional Guides and forest plans.

Location and Size: The area in the planning unit affected by the interim standards and guidelines is not so large in size as to mandate a significant amendment.

Goals, Objectives, Outputs: PACFISH does not significantly alter the long-term relationships between levels of goods and services projected by the forest plans. Any short term temporary reductions in outputs do not foreclose opportunities to achieve such outputs in later years.

Management Proscriptions: The desired future conditions and long-term levels of goods and services projected in current plans would not be substantially changed by the interim strategy.

Other Factors: Other factors include the ability of the Forest Service to adapt to changing conditions and protect anadromous salmonid species for a short period of time until a longer-term strategy can be analyzed and adopted.

Furthermore, the situation with regard to the NFMA significance of the PACFISH amendments remains largely the same. *First,* the original analysis contemplated that PACFISH would remain in place until the EISs were completed to provide protection for anadromous salmonid species. The only difference is that the interim direction is being continued while the Bureau of Land Management and Forest Service complete the EISs for the long-term strategy and consider and respond to public comments on the draft proposals. *Second,* the area potentially impacted remains the same. *Third,* the potential impact of the amendments upon levels of goods and services and desired future conditions projected in the forest plans also remains unchanged. The original analysis contemplated that short term changes from estimated levels of possible outputs of goods and services would not foreclose opportunities to achieve such outputs in later years. This is still true. Likewise, the desired future

conditions projected in the forest plans would not be substantially changed by continuation of PACFISH until the EISs area completed. *Finally,* we note that the certain salmon and other ESA listed species remain imperiled. PACFISH was undertaken to ensure the Bureau of Land and Forest Service would do no harm to the salmon while continuing to manage the national forests for multiple use resources. This objective remains unchanged. Thus, the situation with regard to the NFMA significance remains largely the same as it was at the time of the original analysis and decision.

PACFISH amended Regional Guides and forest plans to provide interim protection for anadromous salmonid species pending the completion of a EISs for longer-term direction. As an interim measure PACFISH will continue to ensure that the Bureau of Land Management and Forest Service do not foreclose multiple use management options while the longer-term strategy is being developed. The significance of these measures to sustain multiple use management were thoroughly analyzed in the original PACFISH EA and Decision Notice/Decision Record. The continuation of PACFISH as direction intended to remain in place pending completion of the longer-term strategy does not alter the conclusions reached in the original analysis of NFMA significance.

Dated: September 4, 1996.

Robert W. Williams,

Regional Forester.

Dated: September 5, 1996.

Elaine Y. Zielinski,

State Director.

[FR Doc. 96–23178 Filed 9–10–96; 8:45 am]

BILLING CODE 3410–11–M; 4310–84–M

Rocky Mountain Region; Environmental Impact Statement for Sheep Flats Diversity Unit Timber Sales, Grand Mesa, Uncompahgre and Gunnison National Forests, Mesa County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Revison of a Notice of Intent to prepare an environmental impact statement.

RESPONSIBLE OFFICIAL: The responsible official for this environmental impact statement is Mr. Robert Storch, Forest Supervisor of the Grand Mesa, Uncompahgre, and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

SUMMARY: The Forest Service will prepare an environmental impact statement about four (4) proposed timber sales: Valley View, Sheep Flats, Grove Creek, and Leon. These sales are located in the Sheep Flats Diversity Unit on the Grand Mesa National Forest, Collbran Ranger District.

DATES: Publication of Draft EIS: November 1996; Final EIS: August 1997.

ADDRESSES: Send written comments to Pam Bode, Team Leader, USDA Forest Service, 216 North Colorado Street, Gunnison, CO, 81230. Contact Pam Bode also for further information. Phone: 970–641–0471. FAX: 970–641–1928.

SUPPLEMENTARY INFORMATION: The Forest Supervisor will use this Environmental Impact Statement to decide how to manage the timber resource within the Sheep Flats Diversity Unit. The Forest Service is proposing to harvest four timber sales on this National Forest system land. Even-aged and uneven-aged silvicultural systems are being planned in Engelmann spruce, sub-alpine fir, and aspen stands. These sales are scheduled to be offered within a five to ten year period after this analysis.

Initial scoping of interested parties identified three preliminary issues. These are: (1) Constructing roads and harvesting timber within an area that was identified as the Salt Creek Roadless Area during the 1979 RARE II process, (2) harvesting old growth timber, and (3) cumulative impacts on ecosystems from logging operations in and around the sale areas.

Five alternatives will be studied in this analysis. Alternative 1 is no action. Alternatives 2 and 4 harvest suitable timber but do not enter the Salt Creek Roadless Area. Alternative 2 creates a balance of structural stages and accommodates wildlife travel corridors. Alternative 4 maximizes the amount of wood fiber removed. Alternatives 3 and 5 harvest suitable timber throughout the Diversity Unit, including within the Salt Creek Roadless Area. Alternative 3 creates a balance of structural stages and accommodates wildlife travel corridors. Alternative 5 maximizes the amount of wood fiber removed. The proposed action is Alternative 3.

Alternative	Acres planned for harvest		Volume in board feet	Number of sales
	Total acres	RARE II acres		
1	0	0	0	0
2	707	0	2,456,000	1
3	2,666	1959	11,505,000	4
4	914	0	3,387,000	1
5	3,647	2733	15,630,000	4

This notice is a renotification of the Forest Service's intent to study these timber sales within the Sheep Flats Diversity Unit. A previous notice of intent was published in the **Federal Register** Volume 57, #31, on 2/14/92. A previous notice of availability of the draft EIS was published in Volume 59, #5, on 1/7/94. This notice provides new dates for completions of the revised draft and the final Environmental Impact Statements. The alternatives that are being studied have changed substantially from the previous document.

Since this is a renotification, news releases have already been issued and a public meeting has already taken place in March, 1992. Field tours to the proposed area have already been conducted with concerned parties. Additional news releases have been issued explaining the new timeline for this analysis. Parties that expressed interest previously have been informed individually by mail that this analysis is continuing. No additional public meetings are planned, however, the Forest Service is willing to consider any party's request for additional field tours or public meetings.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the

environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1980) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 8, 1996.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 96–23207 Filed 9–10–96; 8:45 am]

BILLING CODE 3410–11–M

Eastern Washington Cascades Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades PIEC Advisory Committee will meet on September 26, 1996 in the Wenatchee National Forest Headquarters office, Wenatchee Conference Room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered will include agency updates, Northwest Forest Plan implementation, and management of streamside riparian areas under the Northwest Forest Plan. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington. 98807, 509–662–4335.

Dated: September 4, 1996.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 96–23103 Filed 9–10–96; 8:45 am]

BILLING CODE 3410–11–P

Boundary Extension, Ouachita National Forest, Arkansas

AGENCY: Forest Service, USDA.

ACTION: Notice of boundary extension.

SUMMARY: The Secretary of Agriculture has extended the boundary of the Ouachita National Forest to include 425.54 acres, more or less, in Le Flore County, Oklahoma, which were recently acquired through exchange. A copy of the Secretary's establishment document which includes the legal description of the lands within the extension appears at the end of this notice.

DATES: The effective date of this boundary extension was August 22, 1996.

ADDRESSES: A copy of the map showing the boundary extension is on file and available for public inspection in the Office of the Director of Lands, Auditor's Building, 201 14th Street, SW, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, telephone: (202) 205–1248.

SUPPLEMENTARY INFORMATION: Pursuant to the authority under Section 20(d), Winding Stair Mountain National Recreation and Wilderness Act of October 18, 1988 (16 U.S.C. 460), the Secretary of Agriculture has extended the boundary of the Ouachita National Forest. The Act provided authority to the Secretary of Agriculture to acquire by purchase, exchange, donation, or otherwise, any right, title, and interest in lands in Le Flore County, Oklahoma, which are outside the boundaries of the Ouachita National Forest. This Act also provided that the Secretary would extend the boundaries of the Ouachita National Forest to include such lands.

Dated: September 3, 1996.

Larry O. Gadt,

Acting Associate Deputy Chief.

Ouachita National Forest boundary Extension

Pursuant to the Secretary of Agriculture's authority under Section 20(d), P.L. 100–499 (102 Stat. 2491) the Ouachita National Forest boundary is hereby extended to include the following lands.

Le Flore County, Oklahoma, Indian Meridian

T.4 N., R. 27 E.
Section 5: NW¼SW¼, S½SW¼
Section 7: The East Twenty Acres and the Southwest Eight and 49/100 acres of Lot One, Lot Two, E½NW¼, NE¼

The areas described an aggregate 425.54 acres more or less.

As provided by P.L. 100–499, the lands described shall be administered by the Secretary of Agriculture in accordance with the Act of March 1, 1911 (36 Stat. 961) and in accordance with the laws, rules, and regulations generally applicable to umits of the National Forest System.

Dated: August 22, 1996.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 96–23225 Filed 9–10–96; 8:45 am]

BILLING CODE 3410–11–M

Addition of Lands to the White Mountain Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of Addition of Lands to White Mountain Purchase Unit.

SUMMARY: On March 17, 1996, the Deputy Under Secretary, Natural Resources and Environment added lands to the White Mountain Purchase Unit. These additional lands comprise 455.3 acres, more or less, within Coos County, New Hampshire. A copy of the establishment document which includes the legal description of the lands within the addition appears at the end of this notice.

EFFECTIVE DATE: The effective date of this addition was March 17, 1996.

ADDRESSES: A copy of the map showing the addition is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Myers, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, telephone: (202) 205–1248.

Dated: September 5, 1996.

Janice McDougle,

Associate Deputy Chief.

Proposed Addition to White Mountain Purchase Unit; Crawford's Purchase, Coos County, New Hampshire

Pursuant to the Secretary of Agriculture's authority under Section 17, P.L. 94–588 (90 Stat. 2949), the lands as described hereto are being added to the White Mountain Purchase Unit:

All that tract of land located in Crawford's Purchase, Coos County, New Hampshire, and being more particularly described as follows:

Beginning at Corner 26 of U.S. Tract #981, which is in the road centerline of the Mount Washington Turnpike (Also known as the Base Station Road) and on the Carroll/Crawford's Purchase townline; Thence with said Tract #981 the following 3 courses:

1. Northeasterly and southeasterly, with the centerline of the Mt. Washington Turnpike, approximately 20,259 feet (3.8 miles) to Corner 25 of said Tract 981;

2. Northwesterly, 539.98 feet to Corner 24 of said Tract #981 on the southerly sideline of Stickney Road;

3. Northwesterly, along the southerly side of the Stickney road, approximately 6,770 feet to Corner 23 of said Tract #981, which is common to lands of G.S. Phoenix L.L.C.; Thence with said lands of G.S. Phoenix L.L.C.; the following 12 courses:

1. S 73°49′15″ W, 454.75 feet to the Carroll/Crawford's Purchase town line;
2. With the Carroll/Crawford's Purchase town line, N 27°01′05″ W, 222.86 feet to a point;
3. N 23°13′09″ E, 106.05 feet;
4. N 12°11′14″ W, 654.24 feet;
5. N 77°48′46″ E, 153.55 feet;
6. S 65°43′07″ E, 299.56 feet;
7. N 30°27′05″ E, 1038.71 feet;
8. N 60°24′30″ W, 712.42 feet;
9. S 36°22′51″ W, 619.45 feet;
10. N 46°55′17″ W, 188.05 feet;
11. S 35°26′45″ W, 267.62 feet;
12. S 70°57′07″ W, 222.69 feet to the Carroll/Crawford's Purchase town line;

Thence N 21°43′46″ W, 897.30 feet to the southerly side of the Mount Washington Turnpike;

Thence northwesterly, 97.2 feet to the Point of Beginning on the Carroll/Crawford's Purchase townline.

Containing 455.3 acres, more or less. These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: March 17, 1996.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and the Environment.

[FR Doc. 96–23226 Filed 9–10–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Business-Cooperative Service

Notice of Request for Clearance of Information Collection Within Existing Regulation

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department's intention to reinstate information collection for the Rural Economic Development Loan and Grant Program.

DATES: Written comments must be received on or before November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Wyatt, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250, telephone (202) 720–0410.

SUPPLEMENTARY INFORMATION:

Title: Rural Economic Development Loan and Grant Program.

OMB Number: 0572–0086.

Expiration Date of Approval: December 31, 1994.

Type of Request: Reinstate information collection for the Rural Economic Development Loan and Grant Program.

Abstract: The Rural Economic Development Loan and Grant Program provides zero interest loans and grants to Rural Utilities Service (RUS) borrowers for the purpose of promoting rural economic development and job creation projects. The loans and grants under this program may be provided to approximately 1,700 electric and telephone utilities across the country that have borrowed funds from RUS. Under this program, the RUS borrowers may receive the loan funds and pass them on to businesses or other organizations. The RUS borrower is responsible for the loan even if it does not receive payments from the ultimate recipient. Grants may be provided to establish revolving loan funds.

Rural Business-Cooperative Service needs to receive the information contained in this collection of information to select the projects it believes will provide the most long term economic benefit to rural areas. The selection process is competitive and the Agency has consistently received more applications than it could fund. The Agency also needs to make sure the funds are used for the intended purpose and, in the case of the loan, that the funds will be repaid. The Agency must determine that loans made from revolving loan funds established with grants were used for eligible purposes. RUS borrowers that wish to apply for zero interest loans and grants must submit an application package. RUS borrowers apply at their own discretion; no RUS borrower is required to apply under this program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.4 hours per response.

Respondents: Almost all RUS electric and telecommunications borrowers are eligible for funds under this program. However, RUS borrowers apply at their own discretion. No RUS borrower is required to apply under this program.

Estimated number of Respondents: 180.

Estimated Number of Responses per Respondent: 21.

Estimated Total Annual Burden on Respondents: 7,240 hours.

Copies of this information collection can be obtained from Sam Spencer, Rural Business Team, Information Collection Coordinator, at (202) 720–9588.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Sam Spencer, Rural Business Team, Information Collection Coordinator, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, Washington, D.C. 20250. All responses to this will be summarized and included in the request for OMB

approval. All comments will become a matter of public record.

Dated: August 30, 1996.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 96–23212 Filed 9–10–96; 8:45 am]

BILLING CODE 3410–32–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the U.S. Commission will hold a meeting on September 26, 1996, from 5:30 p.m. to 7:30 p.m. at the Camp Dodge #1, Starc Armory, 6100 N.W. 78th Avenue, Johnston, Iowa 50131. The purpose of the meeting is to provide information to persons on "How to file civil rights complaints with various Federal, State, and local civil rights agencies." Through interactive video the meeting will be telecast to 13 additional sites in the State (see sites below). Persons interested in learning about filing civil rights complaints should go to the site nearest to their location. There persons will be able to view the telecast and through interactive video will be able to ask questions and interact with the presenters.

Boone National Guard Armory, 700 Snedden Drive, Boone, IA 50036–5411

Burlington High School, 1421 Terrace Drive, Burlington, IA 52601

Cedar Rapids National Guard Armory, 10400 18th Street SW, Cedar Rapids, IA 52404

Charles City National Guard Armory, 2003 Clark Street, Charles City, IA 50616–4002

Council Bluffs National Guard Armory, 2415 East Kanesville Boulevard, Council Bluffs, IA 51503

Dubuque National Guard Armory, R.R. #6, 195 Radford Road, Dubuque, IA 52002–9319

Marshalltown National Guard Armory, 9th and Summit, Marshalltown, IA 50158

Storm Lake National Guard Armory, 1601 Park Street, Storm Lake, IA 50588–2662

University of Iowa Hospitals & Clinics, 8786 JPP, 8th Floor, 200 Hawkins Drive, Iowa City, IA 52242–1009

Waterloo National Guard Armory, 3306 Airport Boulevard, Waterloo, IA 50703

Webster City High School, 1001 Lynx Avenue, Room 19, Webster City, IA 50595

Western Hills Area Education Agency 12, 1520 Morningside Avenue, Room 209A, Sioux City, IA 51106

Mount Joy AASF, 9650 Harrison Street, Davenport, IA 52804.

Persons desiring additional information should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 30, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–23208 Filed 9–10–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1997 Economic Census Refile Classification Survey.

Form Number(s): NC–9922.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 20,750 hours.

Number of Respondents: 250,000.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. The 1987 Standard Industrial Classification (SIC) system, currently used to classify businesses by kind-of-business, is being replaced by the new 1997 North American Industry Classification System (NAICS), an international agreement between Canada, Mexico and the United States. The Census Bureau is implementing the new NAICS for the 1997 Economic Censuses. The change to NAICS will require contacting businesses of sectors most affected by the change to collect NAICS based classification information. The Census Bureau will use this survey to collect classification information from the non-goods producing sectors which include Retail Trade; Wholesale Trade; Transportation, Communication, Electric, and Sanitary Services; and other business services. The Census Bureau will use the classification information collected from businesses to update the Standard Statistical Establishment List (SSEL), the basic sampling frame for many of our current surveys and the 1997 economic census mailing lists. The information collection will ensure respondents receive the correct census form. The collection of this new NAICS information will greatly reduce processing costs and ease reporting burden for the 1997 Economic Censuses data collection and will benefit our current business surveys when they convert to the NAICS classification system, currently planned for FY 2000.

Affected Public: Businesses or other for-profit, Individuals or households, Not-for-profit institutions, State, local or tribal government.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 131 and 224.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 5, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–23080 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket 67–96]

Foreign-Trade Zone 29—Louisville, KY; Application for Subzone Status: Ascent Power Technology Corporation, Inc., Facilities (Electric Power Supplies/Electronic Fluorescent Lighting Ballasts) Campton, Kentucky

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, requesting special-purpose subzone status for the manufacturing facilities (electric power supplies and electronic fluorescent lighting ballasts) of Ascent Power Technology Corporation, Inc. (APTCI), located in Campton, Kentucky. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 27, 1996.

The proposed subzone would consist of APTCI's manufacturing/warehousing facilities located on four parcels in the Campton (Wolfe County) area, some 50 miles southeast of Lexington, Kentucky: Parcel 1 (32,000 sq.ft. on 4 acres)—manufacturing facility, 760 South Kentucky Route 15, one-half mile south of downtown Campton; Parcel 2 (7,000 sq.ft.)—administrative facility, 780 South Kentucky Route 15, adjacent to Parcel 1; Parcel 3 (8,000 sq.ft.)—warehouse, 85 Elkins Road, adjacent to Kentucky Route 15; and Parcel 4 (5,800 sq.ft.)—warehouse, 430 South Washington Street (at G Road) in Campton. The facilities (300 employees) are used to produce electric switch mode power supplies (HTS# 8471.80.40, 8504.40.60) and electronic fluorescent lighting ballasts (HTS# 8504.10) for export and the domestic market. The power supplies are sold to manufacturers of electronic office products (e.g., computer printers, typewriters) and medical, aerospace, military, and industrial equipment. The ballasts are sold to fluorescent lighting equipment manufacturers. The production process involves assembly, testing, and warehousing. Components purchased from abroad (about 90% of total, by value) include: copper wire, capacitors, resistors, diodes, semiconductors, printed and integrated circuits, switches, fuses, insulators, voltage limiters, surge suppressors, transformers, rectifiers, inductors, thermostats, flux, solder bars, other articles of iron and steel (HTS# 7326) and labels (duty rate range: free—14.3%, 7¢/kg).

Zone procedures would exempt APTCI from Customs duty payments on the foreign components used in the export production. On its domestic sales, the company would be able to choose the duty rates that apply to finished power supplies (duty free) and electronic lighting ballasts (3.0%) for the foreign inputs noted above. The application indicates that subzone status would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 25, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, Room 634B, 601 W. Broadway, Louisville, KY 40202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230–0002.

Dated: August 28, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–23112 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 66–96]

Foreign-Trade Zone 61—San Juan, PR; Application for Subzone Status: PepsiCo of Puerto Rico, Inc. (Soft Drink Concentrates) Cidra, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Commercial and Farm Credit and Development Corporation for Puerto Rico, grantee of FTZ 61, requesting special-purpose subzone status for the soft drink flavoring concentrate manufacturing plant of PepsiCo of Puerto Rico, Inc. (PPR) (subsidiary of PepsiCo, Inc.), located in Cidra, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 22, 1996.

The PPR plant (35,000 sq.ft.) is located at Streets A and B (Lots 9 and 10) within the Cidra Industrial Area of the City of Cidra, about 25 miles south of San Juan. The facility (160 employees) is used to produce PepsiCo, Inc., branded soft drink flavoring concentrates for products such as "Pepsi", "Diet Pepsi", and "Mountain Dew", that are sold to licensed bottling companies in the U.S. and abroad. The application indicates that ingredients purchased from foreign sources include: sodium benzoate, sodium citrate dihydrate, citric acid, erythoribic acid, caffeine, gum arabic, FD&C yellow #5, citrus pectin, aspartame, liquid invert sugar, orange juice solids, and potassium citrate (duty rate range: free-18.6%; 8.4¢/kg).

Zone procedures would exempt PPR from Customs duty payments on the foreign ingredients used in production for export. On domestic sales, PPR would be able to choose the duty rate that applies to finished soft drink concentrates (10%) for the foreign ingredients noted above. The ethanol used in the production process is domestically-sourced, and FTZ procedures would provide an alternative means of exempting the ethanol from federal excise taxes based on its use in the manufacture of soft drink concentrates. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 25, 1996).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, Federal Building, Room G–55, Chardon Avenue, Hato Rey, PR 00918

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 28, 1996.
John J. De Pente, Jr.,
Executive Secretary.
[FR Doc. 96–23111 Filed 9–10–96; 8:45 am]
BILLING CODE 3510–DS–P

International Trade Administration

[A–421–803]

Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has prepared this amended final determination pursuant to the Order from the Court of International Trade (CIT), 93–09–000616.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger at (202) 482–4136, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: On June 14, 1996, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands* (58 FR 37199, July 9, 1993), as amended by the *Antidumping Duty Order* (58 FR 44172, August 19, 1993). *National Steel Corp. v. United States* (*"National Steel"*), Slip. Op. 96–97, (CIT, June 14, 1996).

In affirming the Department's remand, the CIT accepted the Department's revised methodology for selecting the highest non-aberrant margin to be applied to certain unreported exporter's sales price (ESP) sales of respondent Hoogovens Groep B.V. The CIT also accepted the Department's revised value-added tax adjustment methodology, which is in accordance with *Federal-Mogul Corp. v. United States*, 63 F.3d 1572, 1580 (Fed. Cir. 1995).

Results of Amended Final

The recalculated weighted-average dumping margins are:

Company	Margin percentage
Hoogovens Groep, B.V.	19.32
All Others	19.32

This amended final determination is in accordance with *National Steel*, Slip Op. 96–97.

Dated: August 27, 1996.
Robert S. LaRussa,
Acting Assistant Secretary for Import Administration.
[FR Doc. 96–23107 Filed 9–10–96; 8:45 am]
BILLING CODE 3510–DS–P

[A–588–047]

Polychloroprene Rubber From Japan; Preliminary Results and Partial Termination of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Termination of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce is partially terminating the administrative review of the antidumping finding on polychloroprene rubber from Japan with respect to Denki Kaguku Kogyo K.K. (Denki), Tosoh Corporation (Tosoh), and Mitsui Bussan K.K. (Mitsui Bussan) This review covers shipments of this merchandise to the United States during the period December 1, 1994, through November 30, 1995, for five other manufacturers/exporters.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr. or Thomas F. Futtner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–0651 or 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Department of the Treasury published in the **Federal Register** (38 FR 35393) the antidumping finding on polychloroprene rubber (rubber) from Japan. On December 6, 1995, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (60 FR 62071). On January 11, 1996, the petitioner, E. I. Du Pont de Nemours & Company, Inc. (Du Pont), requested that we conduct an administrative review for the period December 1, 1994, through November 30, 1995, covering eight producers and/or exporters: Denki, Denki/Hoei Sangyo Co., Ltd. (Denki/Hoei Sangyo), Mitsui Bussan, Showa Neoprene K.K. (Showa), Showa/ Hoei Sangyo Co., Ltd. (Showa/ Hoei Sangyo), Suzugo Corporation (Suzugo), Tosoh (formerly Toyo Soda), and Tosoh/Hoei Sangyo Co., Ltd. (Tosoh/Hoei Sangyo).

We published a notice of initiation of the antidumping administrative review on these companies on February 1, 1996 (61 FR 3670).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by the review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00. HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

Preliminary Results and Partial Termination of Administrative Review

Denki, Tosoh, and Mitsui Bussan responded that they had no shipments of the subject merchandise during the period of review (POR), and we confirmed this with the United States Customs Service. Therefore, in accordance with our practice, we are treating these firms as non-shippers for purposes of this review, and are terminating this review with respect to these companies. The cash deposit rates for these firms will continue to be the rates established in the most recently completed final review.

We were unable to locate the remaining companies, Showa, Suzugo, Denki/Hoei Sangyo, Showa/Hoei Sangyo, and Tosoh/Hoei Sangyo in spite of requests for assistance from various sources including the American Embassy in Tokyo, the Japanese Embassy in Washington, D.C., and the U.S. Customs Service. Therefore, we were unable to conduct administrative

reviews for these firms, and we will instruct the U.S. Customs Service to continue to assess any entries by these firms at the rate determined by the last completed administrative review on November 26, 1984 (49 FR 46454) (*See Certain Fresh Cut Flowers from Colombia; Preliminary Results of Antidumping Duty Administrative Review, Partial Termination of Administrative Reviews, and Notice of Intent to Revoke Order (In Part)* (*"Flowers from Colombia"*), 60 FR 30271 (June 8, 1995)).

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for all firms covered in this review will be those rates established in the last completed final results of review; (2) the cash deposit rate for subject merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or in the original less-than-fair-value (LTFV) investigation, will be based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate; and (3) the cash deposit rate for subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final results or determination, will be based upon the most recently published company-specific rate for that manufacturer.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council v. United States*, Slip Op. 93–79, and Federal-Mogul Corporation and the Torrington Company v. United States, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to apply the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purpose of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for purposes of this review will be 55.00 percent, a rate established in the final results of administrative review published by the Department on April 6, 1982 (47 FR 14746).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including its results of its analysis of issues raised in any such written comments.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 3, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23109 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–401]

Red Raspberries From Canada; Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper administrative review of the antidumping duty order on red raspberries from Canada, which has a June anniversary date. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 353.22(h)(1995), we are initiating this new shipper administrative review.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 353.22(h) of the Department's Interim Regulations (60 FR 25130, 25134 (May 11, 1995)) (Interim Regulations), for a new shipper review of the antidumping duty order on red raspberries from Canada, which has a June anniversary date. Antidumping Duty Order; Red Raspberries from Canada, 50 FR 26019, (June 24, 1985).

Initiation of Review

In accordance with section 751(a)(2)(B)(iii) of the Act, and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on red raspberries from Canada. We will issue the preliminary results of this review not later than 180 days from the date of publication of this notice and the final results within 90 days after issuance of the preliminary results, unless these time limits are extended in accordance with section 751(a)(2)(B)(iv) of the Act.

Antidumping duty proceeding	Period to be reviewed	Company
Canada: Red Raspberries, A–122–401	06/01/95–05/31/96	Berryhill Foods, Inc.

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 353.22(h)(4)(1995).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with Section 353.34(b) of the Department's regulations (19 CFR 353.34(b) (1995)).

This initiation and this notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and section 353.22(h) of the Interim Regulations.

Dated: September 5, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–23232 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–601]

Certain Stainless Steel Cooking Ware From the Republic of Korea; Termination of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) is terminating the administrative reviews of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea covering the following periods: January 1, 1991 through December 31, 1991; January 1, 1992 through December 31, 1992; January 1, 1993 through December 31, 1993; and January 1, 1994 through December 31, 1994.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or Zev Primor, Office of AD/CVD Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Applicable Regulations

Unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On January 31, 1992, Farberware, Inc. (petitioner) requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea, covering the period January 1, 1991 through December 31, 1991. We initiated the 1991 review on February 24, 1992 (57 FR 6314). On January 27, 1993, petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea, covering the period January 1, 1992 through December 31, 1992. We initiated the 1992 review on March 8, 1993 (58 FR 12931). On January 31, 1994, petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea, covering the period January 1, 1993 through December 31, 1993. We initiated the 1993 review on February 17, 1994 (59 FR 7979). On January 30, 1995, petitioner requested that the Department conduct an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea, covering the period January 1, 1994 through December 31, 1994.

We initiated the 1994 review on February 15, 1995 (60 FR 8629). On August 20, 1996, Syratech Corporation (Syratech), by letter, apprised the Department that it had acquired Farberware's stainless steel cooking ware production machinery and "certain other assets," including intellectual property. Syratech thereafter licensed the Farberware name to another firm for use in conjunction with the production, marketing, and sale of stainless steel cooking ware. On August 26, 1996, Syratech submitted a letter seeking withdrawal of the requests for reviews.

Section 353.22(a)(5) of the Department's regulations provides that the Department may permit a party that requests a review to withdraw its request not later than 90 days after the date of publication of the notice of initiation of the review. This regulation also permits the Department to extend the time limit for withdrawal of a request for review if it is reasonable to do so.

In light of the totality of circumstances, the Department has determined Syratech to be the successor in interest to Farberware for the purpose of these reviews. *See* Decision Memorandum from Holly A. Kuga to Jeffrey P. Bialos, August 28, 1996. Because Syratech, as the successor in interest to Farberware, the party requesting the reviews, has withdrawn its requests for reviews and has requested that the Department terminate the pending reviews, the Department has determined to terminate these reviews. While the withdrawal request was made more than 90 days after the publication of the initiation notice, the Department nevertheless finds it reasonable to extend the time period for withdrawal in the circumstances of this case. Therefore, in accordance with 19 CFR 353.22(a)(5), we have decided to grant the withdrawal at this time. Accordingly, we are terminating these reviews.

The Department will instruct the U.S. Customs Service (Customs) to liquidate all unliquidated entries of certain stainless steel cooking ware from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after January 1, 1991, at the cash deposit rates. We will further instruct Customs to collect a cash deposit for imports from Namil Metal Company at 1.06 percent, the rate determined in the final results of the 1990 review (59 FR 10788, March 8, 1994), and for imports from Daelim Trading Company, Ltd. at 8.10 percent, the "all others" rate established in the less than fair value (LTFV) investigation (52 FR 2139, January 20, 1987). The cash deposit rate for exporters or manufacturers not covered in this or any previous review will continue to be 8.10 percent, the "all others" rate established in the LTFV investigation.

This notice is published in accordance with 19 CFR 353.22(a)(5).

Dated: September 3, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–23110 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–811]

Certain Stainless Wire Rods From France: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers Imphy S.A., and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is August 5, 1993, through December 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jean Kemp, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3434 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On March 6, 1996, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France (61 FR 8915, March 6, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or picklet rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and picklet. The most common size is 5.5 millimeters in diameter.

The SSWR subjet to this review is currently classified under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by the respondent by using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Imphy S.A. and Ugine-Savoie, manufacturers/exporters of the subject merchandise (respondents), and from Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., United Steelworkers of America, AFL–CIO/CLC (petitioners). At the request of petitioners, the Department held a hearing on May 13, 1996.

Comment 1: Petitioners contend that the Department's decision to depart from its practice of examining constructed export price (CEP) sales during the POR because respondents were able to link-suspension of liquidation entries with sales should be changed for the final results. Petitioners urge the Department to revise its preliminary results to analyze all constructed export price (CEP) sales during the POR for the purpose of calculating antidumping assessment and cash deposit rates. Petitioners claim that there is nothing in the new statute that requires the Department to depart from its longstanding practice of focusing on CEP sales rather than entries in a review. Petitioners contend that the Department can analyze entries made prior to the suspension of liquidation so long as assessment is applied only to entries in the review period.

Petitioners claim that the only legal justification the Department has offered for its position that sales of merchandise entered prior to the POR should be excluded from the agency's analysis is that "[m]erchandise proven to have entered to U.S. prior to the suspension of liquidation . . . is not subject within the meaning of section 771(25) of the Act" (61 FR 8915). Petitioners contend that section 771(25) of the Act is merely a general provision defining "subject merchandise" as "the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this title or section 303, or a finding under the Antidumping Act of 1921," and that this provision did not change prior law. Petitioners further note that nothing prevents the Department from examining CEP sales to derive antidumping rates in the Agreement on Implementation of Article VI of GATT 1994 (WTO Antidumping Agreement). In addition, petitioners claim that neither U.S. law (see 19 U.S.C. 1673e) nor the WTO Antidumping Agreement discusses the manner in which those antidumping duties are to be calculated or whether sales or entries should serve as the basis of that calculation.

Petitioners also contend that the Court of International Trade (CIT) held that it is perfectly lawful for the agency to analyze entries made prior to the suspension of liquidation so long as the assessment is applied only to POR entries (see *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement v. United States*, 18 CIT_____, 914 F. Supp. 535 (1995)).

Petitioners note that the CIT stated "the consideration of all sales, rather than entries, made during the period of review may result in the consideration of entries made prior to the suspension of liquidation * * *" Petitioners claim that the respondents' ability to link sales

with entries in this review does not mean that the CIT's holding in *Ad Hoc Committee* would not apply to this situation. Petitioners state that in the review which was the subject of *Ad Hoc Committee*, duties were only assessed on entries which occurred during the POR. Petitioners allege that so long as duties are only assessed on POR entries, the CIT's decision is valid in this proceeding and that the definition of "subject merchandise," referring to merchandise on which duties will be assessed, consistent with the CIT's holding.

Petitioners claim that the Department's proposed regulations also recognize the continued need to focus on CEP sales rather than entries to calculate margins. Petitioners cite the preamble to paragraph (b)(1) of section 351.212 in which "the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. In all cases, this will result in the assessment of duties on merchandise entered during the review period." *Antidumping Duties; Countervailing Duties; Proposed Rule, 1(Proposed Regulations)* 61 FR 7308, 7316 Feb. 27, 1996). Consequently, petitioners argue that the Department should maintain its practice of focusing on CEP sales for dumping analysis purposes but only assessing duties on entries in the POR.

Respondents argue that in the preliminary results of review, the Department correctly determined that respondents' merchandise sold during the POR, but proven to have entered the United States prior to suspension of liquidation should be excluded from the agency's analysis. Respondents note that petitioners do not contest that the merchandise excluded from review by the Department is non-subject merchandise, but that petitioners claim that the Department can legally review sales of merchandise entered prior to the suspension of liquidation provided that duties are only assessed on entries during the POR. Respondents claim that petitioners inappropriately cite *Ad Hoc Committee* and *NSK*, which respondents claim deal with different factual situations and are not applicable to this review.

Respondents argue that the statute, consistent with the WTO Antidumping Agreement, excludes merchandise entered prior to the publication of notice of suspension of liquidation. They claim that section 736(b)(1) of the Tariff Act of 1930, as amended, provides for the imposition of duties on "entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2)". Respondents also note that section 751 of the antidumping law directs the Department to determine the "normal value and export price (or constructed export price) of each entry of the subject merchandise" and calculate the "dumping margin for such entry" which is to serve as the basis for assessing duties on the entries. Therefore, respondents argue that the statute is clear that reviewing sales of merchandise that are shown to involve non-subject merchandise via linkage of sales to entries would exceed the mandate of the Department.

Respondents note that the Department's decision in the preliminary results is consistent with previous proceedings. In support of their position, respondents cite *Preliminary Results of Antidumping Duty Administrative Review of High-Tenacity Rayon Yarn from Germany*, 59 FR 32181, 32182 (June 22, 1994), and *Final Results of Antidumping Duty Administrative Review of Industrial Belts and Components and Parts Thereof, Whether Cured of Uncured, From Italy*, 57 FR 8295, 8296 (March 9, 1992). Respondents note that in reaching its determination in the *Yarn* case, the Department clearly stated its practice "not to include ESP sales that were not subject to the antidumping duty order in the calculation of U.S. price, regardless of when the sale occurred." The Department further stated that "such ESP sales would be excluded from the administrative review if [respondent] could provide adequate documentation, on a sale-by-sale basis, proving that the individual entries of merchandise prior to the preliminary determination could be traced to individual sales during the POR." Respondents note that the Department precisely followed this practice in the preliminary results of this review.

Respondents also not that petitioners' counsel has previously advised the Department that respondents can and should link entries of merchandise subject to an antidumping order to sales. Respondents claim that petitioners have not explained their change of position on this issue.

Department's Position: We disagree with petitioners. Sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department. Merchandise that entered the United States prior to the suspension of liquidation (and in the absence of an affirmative critical circumstances finding) is not subject merchandise within the meaning of section 771(25) of the Act.

As we stated in our preliminary results, under Section 751 of the Act, the Department is required to determine the normal value and export price (EP) or constructed export price (CEP) of each entry of subject merchandise during the relevant review period. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review. *Gray Portland Cement and Clinker from Japan, Final Results of Antidumping Duty Administrative Review*, 58 FR 48826 (September 20, 1993) (the Department did not consider ESP (now CEP) merchandise entered during the POR but sold after the POR). The proposed regulation cited by petitioners (section 361.221) recognizes this practice.

However, the Department has a well established exception to its practice of examining CEP sales during the period of review. That exception applies when a respondent is able to demonstrate, to the satisfaction of the Department, that the merchandise covered by a particular sale entered prior to the suspension of liquidation pursuant to the Department's preliminary determination in the LTFV investigation. *See, High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review*, 59 FR 32181 (June 22, 1994). In that review, the Department determined that because merchandise was entered prior to the date of the preliminary determination, it was not covered by the antidumping order. Therefore, the Department excluded these sales from the review. In contrast, in *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 42507 (August 16, 1995), the respondent was unable to link POR sales to specific pre-suspension entries and, therefore, the Department did not exclude those sales.

In this review, respondents claimed that certain merchandise was not subject to review because it entered prior to the period of review for sale by Metalimphy Alloys Corporation (MAC), an affiliated U.S. company during the period of review. The Department verified that respondents were able to link specific sales during the period to entries of merchandise prior to the suspension of liquidation. In the preliminary results, we excluded those sales from our analysis because respondent had demonstrated that the

merchandise entered prior to the suspension of liquidation.

Petitioners' cite of *Ad Hoc Committee* and *NSK* is not appropriate in this case. *Ad Hoc Committee* differed because, in that case, respondent argued the dumping margins and the assessment of duties on entries made during a review period should have been based on sales of merchandise entered after the review period. The approach advocated by respondent in that case raised the possibility of double counting or missing sales in future reviews, as noted by the Court. The Department's practice, as reflected in the present case, does not involve the danger of inconsistent future reporting. The *NSK* case did not involve a situation in which the respondent could link specific sales and entries. Further, in that case, the Department determined dumping margins based on sampling and not a review of all sales and entries.

Comment 2: Petitioners also contend that respondents' ability to link CEP sales with entries does not permit the Department to examine all entries during the POR, leaving the Department with an incomplete review of sales. Petitioners note that in the preliminary results, the Department did not examine either all sales or all entries during the POR but some very limited hybrid of the two, leading to an incomplete examination of subject merchandise. Petitioners contend that because respondents enter CEP merchandise in one POR and sell it in another POR, the Department cannot examine those entries because the sale has not been made. Specifically, petitioners contend that certain scenarios exist where CEP sales take place during the review but are not reviewed by the Department.

First, petitioners contend that CEP sales made during the POR but where the entry occurs after the POR are not being reviewed by the Department. Petitioners assert that these sales should be included in the Department's final results as the date of sale is in the POR.

Likewise, petitioners contend that CEP sales entered during the POR but sold after the POR are not included in the Department's analysis in this review. Petitioners contend that respondents have not reported the sales linked to these entries at all in their U.S. sales databases. Petitioners note that respondents also have pressed the Department to exclude POR sales with pre-POR entry dates because respondents can link sales with entries. Petitioners assert that the logical consequence of this exclusion is that all entries within the current POR with subsequent (post-POR) dates of sales should be examined in this review by the Department. However, they assert that respondents have not reported CEP entries with post POR sale dates.

Petitioners also noted that the Department included in its preliminary those CEP sales where the entry occurs during the POR but the sale pre-dates the POR. Petitioners contend that the Department has provided no explanation as to why it has included these sales in its analysis.

Petitioners contend that the only practical way to ensure coverage of subject merchandise is by examining all CEP sales. Petitioners argue that the Department include in its final results all sales that fall within the POR.

Respondents state that there is no merit to petitioners' suggestion that the Department's preliminary results lead to a non-comprehensive review of respondents' sales. They contend that petitioners' argument is irrelevant to the issue of whether sales of demonstrably non-subject merchandise are appropriately subject to review. Also, respondents assert that petitioners' position completely ignores the Department's instructions regarding what sales should be reported in an administrative review.

Respondents note that they reported all CEP sales consistent with the instructions of the Department's questionnaire. Respondents assert that the Department's questionnaire instructions ensure that reviews are comprehensive and that no sales of subject merchandise go unreviewed.

Further, respondents contend that petitioners' arguments regarding which sales are included and excluded from the Department's review is inaccurate. They state that in accordance with the Department's reporting instructions, all CEP sales of subject merchandise are included in the Department's initial review or in subsequent reviews.

Respondents argue that petitioners' position on the reporting of CEP transactions includes types of sales that are not covered by the Department's questionnaire as they involve neither POR entries nor post-importation POR sales. Respondents state that the Department will review these sales in the period in which entered. They also argue that the Department's questionnaire instructions do not cover CEP entries made during the POR but with a date of sale after the POR. Respondents contend that these are precisely the type of transactions, as recognized in *Gray Portland Cement*, for which the data required to calculate CEP are not necessarily available at the time of responding to a questionnaire for the period in which the merchandise entered.

Finally, respondents argue that petitioners have no basis for alleging that the sales will not be examined because the corresponding entries will have been liquidated at the time of the second administrative review. They argue under a master-list approach, the entries in the prior review period will not be liquidated until the sale occurs and, even if they are liquidated on a simplified assessment basis, the sale of subject merchandise could be pertinent to a subsequent review for purposes of determining a duty assessment rate and duty deposit rate.

Department's Position: The Department disagrees with petitioners that the Department did not make a comprehensive examination of all relevant sales or entries in the preliminary results. The Department closely examined respondents' submission of sales/entries data in this review, including specifically addressing this issue in its December 1, 1995 supplemental questionnaire and conducting verifications in both the home market and the United States. The Department verified that respondents correctly reported the quantity and value of subject merchandise pursuant to the Department's questionnaire instructions. The questionnaire instructed that respondents were to "[r]eport each U.S. sale of merchandise entered for consumption during the POR except (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a *date of sale* within the POR" (emphasis in original). The Department found that respondents correctly reported the quantity and value of their home market and U.S. sales consistent with the questionnaire instructions.

CEP sales made after importation will be examined by the Department in the POR in which they are sold consistent with the questionnaire instructions. As indicated in *Gray Portland Cement* and *NSK*, these are the type of CEP transactions for which the data required to calculate CEP may not be available at the time of responding to the Department's questionnaire because the sale occurs after the period of review. We also disagree with petitioner's claim that CEP sales made during the POR but entered after the POR (*i.e.*, after sale) will not be examined. These sales are not covered by the Department's questionnaire instructions for this review, as they do not involve POR entries or post-importation POR sales. The Department will review these sales in the POR in which they are entered

into the United States, if a review is requested. While the Department has some latitude to examine POR sales in lieu of examining POR entries, it is not necessary to do so when the sale occurs prior to entry. For example, respondents reported, and the Department included in this review, CEP transactions in which the merchandise entered during the POR but was sold before the POR (*i.e.*, prior to entry) pursuant to the Department's questionnaire instructions.

Consequently, the Department disagrees with petitioners' view that there has been an incomplete examination of sales and entries during this review. Respondents accurately reported their U.S. sales during the POR pursuant to the questionnaire instructions issued by the Department and the information was fully verified. Petitioners' scenarios of CEP sales and entries not examined in this review were either non-subject merchandise under section 771(25) of the Act or are subject merchandise that will be examined by the Department in any future reviews.

Comment 3: Petitoners argue that the Department's decision in the preliminary results to exclude sales during the POR where the entries preceded the POR would invite manipulation of the dumping laws. In addition, petitioners contend that if respondents can avoid a finding of dumping on sales following issuance of an antidumping order merely by linking those sales with entries made prior to the POR, linkage will become common as a way to avoid dumping duties. Consequently, petitioners argue that the linkage of values and entries would invite respondents to send in as much merchandise as possible before a preliminary determination and sell that merchandise during future years at dumped prices without recourse.

Petitioners note that in their letter to the Department of February 21, 1996, they indicated that there was price discrimination by respondents on CEP sales that entered the U.S. prior to suspension of liquidation when compared to POR sales. Petitioners assert that the Department's policy of linking sales with entries permits dumping practices that would cause a domestic manufacturer to lose business because of price discrimination during the POR. Consequently, petitioners contend that the purpose of the antidumping laws in remedying price discrimination taking place during the POR would be effectuated by the imposition of an antidumping margin that took account of the unfair pricing, even if the duties applied only to POR entries and were used to establish future cash deposit rates.

Petitioners assert that the critical circumstances provision of the statute would not prohibit manipulation. They contend that by law, a finding of critical circumstances is predicated on a number of statutory factors, including not only massive imports of the merchandise, knowledge that dumping is occurring, and a finding by the International Trade Commission (ITC) that the imports are likely to undermine the antidumping order. Thus, petitioners contend that critical circumstances findings go not only to the question of import surges prior to a preliminary decision but to resultant serious injury—a finding that, petitioners assert, is rarely made by the ITC. Petitioners also contend that the critical circumstances provision does not have anything to do with dumping practices in sales that occur after the investigation. Accordingly, petitioners claim that the Department cannot rely on the critical circumstances provision as a means of addressing this price manipulation problem with its approach in the preliminary results.

Petitioners contend that the Department should recognize that examination of CEP sales is critical not only to assessment of duties on past entries, but also to the establishment of a cash deposit rate. Petitioners argue that the cash deposit rate should reflect respondent's pricing practices during the POR. Petitioners state that failure to examine sales that relate to pre-POR entries will ignore potentially significant price discrimination during the POR merely because respondents beat the preliminary determination by their shipments.

Respondents contend that there is no manipulation of the antidumping laws, as all subject merchandise is reviewed by the Department, in accordance with its reporting instructions.

Respondents assert that the exclusion from review of sales of pre-suspension entries requires a rigorous demonstration of verifiable linkage between the particular entries being excluded and their subsequent sale. Respondents believe that linkage will not become the rule because the majority of respondents do not and cannot maintain the necessary information and records to do so. Respondents claim that the Department has recognized this situation citing *Proposed Regulations* at 7316.

Respondents also point out that the critical circumstances provision of the statute is designed to prevent manipulation. Furthermore, respondents note that the Department did not find critical circumstances in the LTFV investigation (see *Final Determination of Sales at Less than Fair Value: Certain Stainless Steel Wire Rods from France*, 58 FR 68865, 68868 (December 29, 1993)).

Respondents argue that petitioners' assertions that the Department's approach will invite price manipulation have nothing to with this case. Respondents claim that petitioners failed to establish any price discrimination between subject and non-subject merchandise (*i.e.* those sales that entered prior to suspension of liquidation) during this review. Respondents assert that the prices charged for all CEP sales examined by petitioners were virtually identical. Consequently, respondents contend that they did not engage any price discrimination.

Respondents also urge the Department to reject petitioners' suggestion that dumping margins should be calculated on non-subject merchandise for purposes of establishing a cash deposit rate for future entries. Respondents assert that it is inappropriate to use sales of non-subject merchandise for deposit rate purposes, in that such sales do not represent a fair, reasonable or accurate basis to gauge estimated duties which is the very purpose of the cash deposit.

Finally, respondents argue that the remedial purpose of the antidumping law in no way supports the examination of non-subject merchandise. Respondents contend that they changed their behavior as a consequence of the LTFV investigation. They argue that the law contemplates that the dumping margins (if any) calculated by the Department should accurately reflect respondent's behavior regarding subject merchandise, not the pricing practices during the POR that include non-subject merchandise.

Department's Position: We disagree with petitioners that the Department's decision in the preliminary results would invite manipulation of the dumping law. We do not agree with petitioners' contention that linkage would encourage other respondents to flood the U.S. market with merchandise prior to a preliminary determination. As we stated in our preliminary results, the exclusion of sales of merchandise entered prior to suspension of liquidation requires that a respondent must demonstrate, to the satisfaction of the Department, the linkage between the entry and the sale. This stringent requirement, coupled with the provisions on critical circumstances, eliminates a significant risk of manipulation. *See, e.g. Certain*

Corrosion-Resistant Carbon Steel Flat Products from Australia; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 42507 (1995) (the Department did not exclude certain sales because the respondent was unable to link the sales to specific pre-suspension entries).

We disagree with petitioners' contention that linkage would encourage dumping as most producers would not have the necessary linkage information that would meet the Department's requirement in a verification. In fact the necessary linkage has been demonstrated in only one case. (See *High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review*, 59 FR 32181, (June 22, 1994)).

We examined the issue of potential manipulation throughout the proceeding as well as at our sales verifications of respondents. We found no evidence of "paired sales," where the price of that sale that entered prior to suspension of liquidation was priced lower than the simultaneous sales of the same merchandise to the same customer. We reviewed petitioners' February 21, 1996 submission to the Department concerning alleged price manipulation by respondents as well as respondents' rebuttal submission of February 22, 1996. After examining the issue, we found no evidence that respondents were engaged in price manipulation with sales of pre-POR entries (see Final Analysis Memorandum).

We also disagree with petitioners' arguments concerning critical circumstances in this review. The requirements of the critical circumstances provision demonstrate that Congress only intended that entries made prior to the LTFV preliminary determination be covered under very specific circumstances. In the LTFV investigation, the Department found no critical circumstances warranting inclusion of such entries.

We also disagree with petitioners' assertion that the Department's approach results in an inappropriate cash deposit rate. As discussed above, merchandise proven to have entered the United States prior to the suspension of liquidation (and in the absence of an affirmative critical circumstances finding) is not subject to merchandise within the meaning of section 771(25) of the Act. Sales of non-subject merchandise are not an appropriate basis for the Department to estimate the duties that will be due on future entries of subject merchandise.

Comment 4: Petitioners contend that the Department should not segregate home market channels of distribution for purposes of product group averaging. Petitioners state that the statute and proposed regulations provide for the derivation of averaging groups only for U.S. sales in investigations. Petitioners note that Section 777A(d) of the statute was modified by the Uruguay Round Agreement Act (URAA) to require the averaging of U.S. prices of investigations (see, 19 U.S.C. 1677A(d)(1)). Petitioners also state that under the Statement of Administrative Action (SAA), the averaging of U.S. price with respect to groups of comparable merchandise is limited only to the investigation phase of the proceeding (see, SAA at p. 843). In addition, petitioners state that the statutory section pertaining to averaging in reviews says nothing about the averaging of comparable merchandise in the home market based on factors relating to regions or customers.

Petitioners argue that the Department has erroneously extended this concept to averaging of home market prices in administrative reviews. Petitioners state that neither the plain language of the statute nor the Statement of Administrative Action contemplates extension of the product averaging concept to reviews.

Petitioners argue that the Department has already determined in this review that sales in the home market comprise a single level of trade based on common functions in both channels. Thus, petitioners contend that the Department cannot distinguish between its channels of distribution as different levels of trade for product group averaging. Petitioners also state that the channels of distribution are not distinct based on the class of customer, as all home market sales are to end users. Petitioners argue that the manner in which the sales are made—either from inventory or direct from factory—provide no basis to distinguish these alleged "channels," as all sales are shipped direct from the factory. Consequently, petitioners allege that there is no basis to segregate home market sales in product group averaging based on these "channels of distribution."

Petitioners also assert that the Department cannot rely on the "class of customer" to distinguish averaging groups. They claim that all sales are to end users and do not involve different points in the claim of distribution of the product. Petitioners note that in past cases, the Department has differentiated between sales to distributors and end-users, recognizing that sales at different points in a chain of commerce may reflect different functions and/or different pricing practices. In support of their position, petitioners cite *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553 (June 5, 1995) and *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18794 (April 20, 1994).

Petitioners argue that the "channels" of trade are not, in fact, different channels of distribution but merely reflect different sales entities that undertake the same role. In the past, petitioners contend that the Department has differentiated between different sales entities that undertake the same role (see, *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Spain*, 59 FR 66931, 66936 (December 28, 1994)).

Consequently, petitioners state that there is no legal or factual justification for segregating averaging groups based on whether the sale was made by Imphy/Ugine-Savoie or by an agent of the wholly-owned joint venture, Ugine-Service. Accordingly, petitioners argue that the Department should eliminate channels of distribution as a factor in its product averaging groups.

Respondents agree that the Department inappropriately included a preference for matching U.S. sales to home market sales in the channel of distribution which the Department deemed "most comparable to that in which the U.S. transaction was made." Respondents contend that having determined that all home market sales were at the same level of trade, the Department should not have truncated its analysis of sales of the foreign like product. Respondents assert that the Department should have conducted its matching exercise on the basis of contemporaneous sales within the level of trade, without excluding sales based upon distribution channel. Respondents contend that the Department's approach subordinated physical comparability to a criterion (distribution channel) which has no foundation in the statute and, hence, which should not have been employed. They state that the Department's elevation of distribution channel over physical characteristics is inappropriate under the antidumping law. Respondents assert that the courts have made clear that selecting proper product matches based on physical characteristics lies at the heart of a fair dumping comparison (see *Timkpin Co. v. United States*, 630 F. Supp. 1327, 1336 (CIT 1986) and *Hussey Copper, Ltd. v. United States*, No. 95–145 at 6 (CIT 1995)). Respondents argue that in making its comparison, the Department's matching of U.S. and home market sales must be based on the closest identity of physical

characteristics (see *Hussey Copper, Ltd.* v. *United States*, No. 95–145 at 6 (CIT 1995)). Respondents state that any channel of distribution choice is irrelevant to the proper selection. Consequently, respondents contend that the Department's final results should be based on comparisons of contemporaneously sold, identical merchandise within the level of trade being compared and, if identical merchandise was not sold, the most similar merchandise contemporaneously sold within that level of trade should be utilized.

However, if the Department should regard EP sales as more comparable to sales by Imphy/Ugine-Savoie.

Department's Position: We agree with petitioners and respondents that the Department should not use home market channels of distribution for purposes of product group averaging in its calculation of normal value in this administrative review. The Department indicated in the SAA that in determining which sales to include with a particular average, "Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, the region of the country in which the merchandise is sold, the time period, and class of customer involved." SAA at 842. See also, *Proposed Regulations* at 7349. However, that section of the SAA is discussing the average-to-average methodology in investigations. With the exception of the contemporaneity rule in section 777A(d)(2), neither the statute nor the SAA provides any guidance of what, if any, factors should be considered when averaging in reviews. The facts of this case do not warrant averaging by channel of distribution.

Consequently, for the final results, we have not segregated home market channels of distribution for purposes of product group averaging of normal values to compare to U.S. prices. Instead, after correcting the model match program (see comment 6), we have taken the identical and similar merchandise matches generated by the model match program and attempted to match with contemporaneous sales within the same level of trade. If we found no contemporaneous identical merchandise within the same level of trade, we matched without regard to level of trade.

Comment 5: Petitioners allege the Department's level of trade analysis and decision to grant a CEP offset is fundamentally flawed and not consistent with the law. They assert that the Department was incorrect in analyzing CEP sales for level of trade purposes with an adjusted price that deducts U.S. selling expenses. Petitioners contend that there is no legal justification for adjusting the CEP to deduct actual U.S. selling expenses incurred in selling the merchandise prior to determining at what level of trade the sale is made. They claim that the statute says nothing about an adjusted CEP for level of trade purposes, but that the statute merely sets forth the factors the agency must consider in determining whether an adjustment for differences in levels of trade is appropriate.

Petitioners note that the Department, in its preamble to the *Proposed Rules*, stated that we will look at the CEP as adjusted but will look at the EP and normal value (NV) price as unadjusted for levels of trade. Petitioners assert that by making the U.S. CEP level of trade a "constructed" or "adjusted" level of trade but NV sales "unconstructed" or unadjusted, the Department is beginning its analysis with an apples-and-oranges comparison that is inconsistent with law and longstanding agency practice to "make a fair comparison of sales in the two markets by reconstructing prices at a specific common point in the chain of commerce, when the merchandise is leaving the factory gates." (See *Porcelain-on-Steel Cooking Ware from Mexico*, 58 FR 43327, 43330 (August 16, 1993) and *AOC International, Inc.* v. *United States*, 713 F.2d 1568, 1572 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984)).

Petitioners note that by law, the starting price for a CEP sales is the price offered to an unaffiliated purchaser in the United States and they contend that the Department cannot alter the statutory definition of CEP sales merely to ease its ability to make a level of trade adjustment.

Petitioners also assert that if the Department does not use the unadjusted starting price for CEP sales just as it does for EP and normal value sales, the Department will establish a system whereby sales that are made in the same fashion in both the U.S. and home markets will not be regarded as the same level of trade. Petitioners contend this approach is unreasonable and illogical. They note that the Department used the same alleged incorrect CEP deduction methodology in *Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 15766, 15768 (April 9, 1996).

Petitioners also contend that the Department should not rely solely on selling functions as the determinant of whether different levels of trade exist. Petitioners state that the statute sets forth two factors—selling functions and price distinctions—as the basis for determining whether an adjustment for differences in levels of trade should be granted (see 19 U.S.C. 1677b)(a)(7)). Petitioners argue that the statute does not, however, state that levels of trade themselves are based on selling functions. Petitioners continue that the term "level of trade" is not new, but has been subject to much litigation and has consistently been defined as the point in the chain of commerce that a sale is made, such as the wholesale, retail or end-user level. In support of their position, petitioners cite *NAR S.p.A.* v. *United States*, 13 CIT 82, 707 F. Supp. 553, 556 (1989). Petitioners argue that based on this definition and the facts of record, the Department should treat all U.S. sales as a single level of trade.

Petitioners argue that if the Department persists in its assumption that section 772(d) adjustments to CEP must be made to place CEP on an equal basis as EP, then the Department cannot conclude that having made these adjustments the CEP and EP sales reflect different levels of trade, as the entire purpose of the adjustment was to render the CEP and EP prices as comparable.

Respondents contend that petitioners' challenges to the Department's methodology for analyzing level of trade and the decision to grant a CEP offset are without merit. Respondents assert that the methodology used by the Department for analyzing level of trade is consistent with, and required by, the law. They contend that the Department properly conducted its examination of the CEP level of trade based on the price after adjustments under section 772(d), i.e., looking at the selling functions performed by the foreign exporters in selling to MAC, an affiliated U.S. super-distributor, and to end-users in the home market. Respondents argue that the Department conducted a careful and thorough analysis of selling functions and properly determined that Imphy and Ugine-Savoie assumed significantly different and more selling functions for home market sales to end-users, which constitutes a more advanced level of trade than the CEP sales. Respondents state that pursuant to section 773(a)(7)(b), the Department appropriately granted a CEP offset.

Department's Position: We agree with respondents. As described in our recent *Preliminary Results of Antidumping Duty Administrative Reviews of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom*, 61 FR 35713 (July 8, 1996), the Department's position

is that it will, to the extent practicable, calculate normal value (NV) based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sales used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the difference levels of trade in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP "offset" may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In implementing these principles in this review, we issued a supplemental questionnaire on December 13, 1995 concerning level of trade. We asked respondents to explicitly state what specific differences and similarities there were in selling functions and/or support services between all channels of distribution in the home market and the United States.

In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling activities associated with each channel of distribution claimed by the respondents. However, the starting point for our analysis was the separate channels. Therefore, we did not rely solely on selling activities.

Pursuant to section 773(a)(7)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the constructed price, i.e. after the expenses and profit were deducted under section 772(d) of the Act. Whenever sales were made by or through an affiliated company or agent, we considered all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act in CEP situations.

In reviewing the selling functions reported by the respondents, we examined all types of selling functions and activities reported in respondents' January 18, 1996 supplemental response on level of trade. In analyzing whether separate levels of trade existing in this review, we found that no single selling function was sufficient to warrant a separate level of trade in the home market (see *Proposed Regulations* at 7348).

In determining whether separate levels of trade existed in or between the U.S. and home market, the Department considered the level-of-trade claims of respondents. To test the claimed levels of trade, we analyzed the selling activities associated with the channels of distribution respondents reported. We determined that fewer and different selling functions were performed for CEP sales to MAC than for home market sales to end-users. In addition, we found that the home market sales involved a more advanced stage of distribution (to end-users) as compared to respondents' CEP sales in the United States (distributor).

In this review there were no sales of the foreign like product in the home market at the same level of trade as that of the CEP sales. Therefore, we examined whether a level-of-trade adjustment was appropriate.

We disagree with petitioners that there is no evidence of any commercial differences or distinct selling functions between the claimed two levels of trade in the U.S. market. For the U.S. market, respondents reported two levels of trade: (1) sales to end users through MAC (EP sales); and (2) sales to distributors through MAC, Techalloy and US&A (CEP sales). The Department examined and verified the selling functions performed for both levels of trade. As we indicated in our *preliminary results*, we found that the selling functions were sufficiently different in customer sales contacts, technical services, inventory maintenance, computer systems and administrative functions to warrant two levels of trade in the United States.

We disagree with petitioners' contention that the Department should base the level of trade on the starting price of CEP sales. As we discussed in the commentary of the *Proposed Regulations* at 7347, the Department believes that this position is not supported by the statute or the SAA, and that it is neither reasonable nor logical. First, the statue clearly defines CEP as a U.S. price "as adjusted" (Section 772(b) of the Act). Moreover, if the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. Using the starting price to determine the level of trade of both EP and CEP sales would result in a finding of different levels of trade for an EP an EPA and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the Department will follow the commentary of the proposed regulations which specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

Comment 6: Petitioners contend that the Department's product concordance computer program is flawed and does not compare U.S. sales to the most similar merchandise in accordance with the methodology that the Department intended to use. Petitioners note that they do not disagree with the proposed comparisons or the hierarchy and they agree that a focus on a hierarchy of grade, diameter and further processing is consistent with the approach adopted in the underlying investigation.

However, petitioners allege that the program had the following errors: (1) The program failed to search for differences in further processing before searching for different grades; (2) the product match program failed to search for differences in diameters before searching for different grades; (3) the program ignored similar grade comparisons and substituted non-similar grade comparisons; (4) where similar grade comparisons were not possible, the program selected dissimilar merchandise rather than relying on constructed value; and (5) the program improperly rejected similar comparison sales because the Department compared home market variable manufacturing costs stated in cost per kilogram to U.S. variable manufacturing costs stated in cost per pound for purposes of the 20 percent difference-in-merchandise analysis.

Respondents agree that the Department's model match computer program did not properly match U.S. sales to the identical or most similar merchandise sold in the home market. Respondents agree with petitioners that the Department should use the same model matching methodology that the Department used in the LTFV investigation. Respondents contend that

the Department should match identical U.S. and home market products by control number (CONNUM), before matching similar products. Respondent notes that to identify identical products, Imphy used its internal product code and Ugine-Savoie used its commercial grade and internal product code, in addition to the Department's specified characteristics (i.e., grade, diameter, and further processing). Therefore, respondents urge the Department to correct the ministerial error in the model match program and rely on CONNUMs to identify and match identical products.

Department's Position: We agree with both petitioners and respondents, in part, that the Department's model computer program did not match products as we intended. We have corrected the errors for the final results. For the final results, we have used the model match methodology used by the Department in the LTFV investigation and are therefore using respondents' CONNUMs to match identical products. The Department confirmed the accuracy of respondents' reported home market and U.S. CONNUMs, product codes and physical characteristics of the products at verification.

For those U.S. sales that do not have an identical match in the home market, the model match program identifies similar matches using the following three physical criteria: the grade of the wire rod, the diameter and whether the product was further processed or not. The Department's model match program matches similar products by grade using the identical or most similar grade as indicated in Appendix 3 of the January 11, 1996 supplemental response and the product matching hierarchy as described in Appendix 4 of the same January 11, 1996 supplemental response.

We disagree with petitioners that the Department's model match program failed to search for differences in further processing or diameters before searching for different grades. The program did search for differences in further processing or diameters; however, the error in the difference in merchandise portion of the program resulted in erroneous comparisons in the model match that made it appear that the program did not search for differences in further processing or diameters before searching for different grades. We have corrected this error for the final results.

Comment 7: Petitioners contend that the Department should apply facts available to recalculate imputed credit for certain U.S. sales with unreported payment dates, by relying on the date of the final results of this review as the date of payment, as the Department did in the underlying investigation. Petitioners also assert that when date of payment is not reported because payment has not been made, the Department's long-standing practice has been to use the date of the final determination as the surrogate for the date of payment. In support of their position, petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083 (July 9, 1993) and *Final Determination of Sales at Less Than Fair Value Certain Stainless Steel Wire Rod from France*, 58 FR 68865, 68871 (December 29, 1993).

Department's Position: We agree with petitioners and we have used the date of the final results as date of payment for those U.S. sales when there is no reported date of payment, consistent with Department practice. (See *Carbon Steel Flat Products from Belgium* and *Certain Stainless Steel Wire Rods from France*).

Comment 8: Petitioners allege that the Department erroneously treated marine insurance expenses as an indirect selling expense. Petitioners contend that these expenses should be treated as movement charges, as the Department did in the underlying investigation and consistent with the Department's normal practice.

Department's Position: We agree with petitioners and have corrected the error for the final results.

Comment 9: Petitioners allege that the Department made the following ministerial errors: (1) The Department failed to include cost of manufacture in calculating constructed value; (2) the Department failed to convert the CEP offset from French francs to U.S. dollars; (3) the Department failed to cap the CEP offset by the amount of indirect selling expenses incurred in the United States; (4) the Department failed to include inventory carrying expenses in its calculation of total U.S. indirect selling expenses; (5) the Department failed to subtract respondents' repacking expenses from U.S. price; (6) the Department failed to subtract movement expenses from net home market price for its sales below-cost analysis; and (7) the Department failed to subtract home market indirect selling expenses from home market prices in conducting its arm's length test.

Department's Position: We agree with petitioners with the exception of point seven (subtraction of home market indirect selling expenses from home market prices for the arm's length test). In calculating the net home market price used for the arm's length test, the Department deducts direct selling expenses, discounts and rebates, movement expenses and packing from the home market gross unit price. There is no deduction for indirect selling expenses in the arm's-length test.

Comment 10: Respondents allege that the Department incorrectly converted the quantity fields for U.S. sales by dividing the quantity when it should have multiplied the quantity field by the pounds to kilogram conversion factor.

Department's Position: We agree and have corrected this error for the final results.

Comment 11: Respondents allege that the Department should not have deducted indirect selling expenses incurred in France in its calculation of CEP. Respondents claim that Section 772(d)(1) of the antidumping law does not provide for the deduction of indirect selling expenses incurred in the home market as they do not represent expenses "associated with economic activities occurring in the United States." Respondents also note that the Department's proposed antidumping regulations confirm that indirect selling expenses incurred in the home market for sales to an affiliated importer are not expenses within the meaning of section 772(d)(1). Respondents claim the commentary makes a clear distinction between expenses associated with selling to the affiliated reseller in the United States and those expenses made to the affiliated reseller's unaffiliated customer.

Petitioners disagree with respondents' comment that the Department incorrectly calculated CEP by deducting all selling expenses, regardless of where incurred. Petitioners argue that the plain language of section 772(d)(1) requires the Department to deduct all expenses that relate to U.S. sales. Petitioners contend that this provision has been interpreted by the courts to require the deduction of the types of indirect selling expenses incurred by the foreign producer outside of the United States. In support of their position, petitioners cite *Silver Reed America, Inc.* v. *United States*, 683 F. Supp. 1393, 1397 (CIT 1988). Petitioners allege that the new statute did not change this fundamental requirement and, indeed, the legislative history and the SAA show clear legislative intent not to change the calculation of CEP from prior law (see, SAA at 823–4; S. Rep. No. 412, 103d Cong. 2d Sess. At 63 (1994). Petitioners argue that based on the plain language of the statute, the agency may not construe another, ambiguous sentence

in the SAA to limit CEP deduction to those incurred in the United States.

Department's Position: We agree with respondents in part. The Department does not deduct indirect expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30352 (June 14, 1996). As stated clearly in the SAA, and as required by the WTO antidumping agreement, that provision only permits deduction of expenses associated with economic activities occurring in the United States. *See SAA* at 823: Antidumping Agreement, article 2.4. However, some of the respondents' indirect expenses incurred in the home market are actually associated with economic activities in the United States. Specifically, liability insurance purchased in France is associated with U.S. economic activities to the extent it covers subject merchandise while warehoused in the United States. On the other hand, some indirect expenses involved in this case relate solely to the sale to the affiliated importer. For example, inventory carrying costs incurred prior to exportation relate solely to the sale to the affiliated importer. Further, unlike the situation in *Pasta from Italy*, the inventory carrying costs in the present case were not verified to relate exclusively to the product sold to the unaffiliated purchaser in the United States. Finally, contrary to petitioners' contention, the URAA changed the deductions in CEP situations. SAA at 823. Therefore, cases addressing pre-URAA practice are not applicable.

Comment 12: Respondents allege that the Department erroneously failed to take into consideration freight charges borne by customers in the U.S. market in the calculation of EP and CEP. Respondents claim that the Department should correct this apparent ministerial error by adding freight revenue to price.

Department's Position: We agree with respondents and have corrected this error for the final results.

Comment 13: Respondents claim that the Department overstated total profit by failing to take into account imputed expenses (credit expenses and inventory carrying costs) in total expenses used to calculate total actual profit. Respondents note that the Department took imputed expenses into account in its calculation of CEP and normal value. They argue that, to the extent that imputed expenses are considered expenses for that purpose, by definition, they are also expenses within total expenses pursuant to section 772(f)(2)(C). Consequently, respondents argue that the Department should correct this error in its final results of review and either include imputed expenses in the total expenses deducted from total revenue used in calculating total actual profit or eliminate their deduction in determining CEP and normal value.

Petitioners argue that the Department correctly calculated excluded expenses from the expenses used to calculate total actual profit. Petitioners note that the Department based its profit calculations on the actual total revenues and the actual expenses reported by respondents for subject merchandise. Petitioners contend where the Department relies on actual expenses in its calculation, the use of imputed expenses is unnecessary and unwarranted. Also, petitioners argue that including the imputed credit and inventory carrying expenses as respondents requested, would double-count interest expenses.

Department's Position: We agree with petitioners. It is the Department's policy to base the calculation of profit for CEP sales on actual revenues and expenses that are listed on the company's audited financial statements. Section 772(f)(1) and 772(f)(2)(D) state that the profit shall be an amount determined by multiplying the total actual profit by the applicable percentage and that the total actual profit means the total profit earned by the foreign producer, exporter, and affiliated parties. In calculating the per unit cost figures, the Department has included net interest expense. Therefore, the Department does not need to include imputed interest expenses in the profit calculation since we have already accounted for actual interest in computing "actual profit" under section 772(f)(1). When the Department allocates a portion of the actual profit to each U.S. CEP sale, we have included imputed credit and inventory carrying costs as part of the total U.S. expenses allocation factor. This methodology is consistent with Section 772(f)(1) of the statute which defines "total United States Expenses" as the total expenses described under section 772(d) (1) and (2). Such expenses include both imputed credit and inventory carrying costs.

Comment 14: Respondents contend that the Department should not have included indirect selling expenses incurred in France in the total United States expenses used to calculate CEP profit. Respondents state that indirect selling expenses incurred in the home market are not expenses encompassed within section 772(d)(1) of the antidumping law. Accordingly, respondents argue that for the same reasons that these expenses should also not be deducted from CEP (see Comment 11), they should also not be treated as U.S. expenses to which profit is to be allocated pursuant to section 772(d)(3).

Petitioners argue that the relevant expenses under section 772(d)(1) are all selling expenses related to U.S. sales, regardless of where incurred. Consequently, petitioners contend that the Department's decision in the preliminary results to account for all direct and indirect selling expenses in the CEP profit calculations is correct and should be maintained for the final result.

Department's Position: We agree with respondents in part to the extent these expenses are not part of the 772(d)(1) adjustment (see comment 11), they should also not be included in U.S. expenses for purposes of calculating CEP profit.

Comment 15: Respondents allege that the Department inadvertently overstated normal value by double-counting U.S. commissions in its circumstances of sale adjustment to normal value for EP sales. Respondents also contend that the Department double-counted selling and packing expenses and that the Department neglected to apply the CEP offset when basing NV on constructed value.

Petitioners agree with respondents that the Department double-counted commissions and should correct the ministerial error.

Department's Position: We agree and have corrected these errors for the final results.

Comment 16: Respondents contend that the Department's proposed duty assessment methodology is impractical and unnecessarily burdensome. Respondents claim in view of their verified linkage of entities to sales, the Department is in a position to issue assessment instructions on a master list approach in this review. Respondents note that the Department's commentary to the Proposed Regulations acknowledged that linking sales to entries results in the most precise determination/assessment of antidumping duties.

At the same time, respondents state that they recognize that the Department may prefer not to proceed with a master list approach, for its own convenience and that of the U.S. Customs Service. In that event, respondents state that they would not object to the ad valorem assessment rate approach set forth in the Department's proposed regulations provided that the rate is not constructed based on transactions involving entries of non-subject merchandise (i.e.,

merchandise outside the scope of the SSWR order because it entered prior to the suspension of liquidation). Respondents assert that encompassing sales of entities which are not subject to the antidumping duty order in this review in the calculation of the duty assessment rate would grossly distort the margin calculation and resultant duties.

Respondents assert that the proposed methodology contemplates calculating an individual duty assessment amount for EP transactions and a duty assessment rate for CEP transactions. Respondents argue that the proposed duty assessment rate methodology for EP transactions is entirely unnecessary since MAC is the only importer. Therefore, respondents argue there is no need to distinguish between EP and CEP sales. They contend that the Department should either compute a uniform duty assessment amount or rate, based upon the sales quantity or the entered value of the sale reviewed, as applicable, if it opts for a simplified assessment approach.

Petitioners state that the assessment instructions are consistent with the Department's past practice of assessing duties on entered values and also consistent with the proposed regulations. In support of their position, petitioners cite *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31693–5, and 31698—701 (July 11, 1991); and *Proposed Regulations* at 7316 and 7364. Petitioners contend that the only justifiable reason to rely on entries rather than sales is if the Department can tie all entries with sales and assess sale-specific duties on POR entries. Petitioners claim that where respondents cannot derive dumping margins on all POR entries as is true in this review, the use of a uniform assessment rate in lieu of sales-specific rates is a reasonable alternative for the Department. However, petitioners state that given this approach, the most accurate manner of determining the magnitude of dumping during the POR is based on an examination of all CEP sales, not entries, which petitioners claim is consistent with the Department's normal practice and its proposed regulations.

Department's Position: We agree with petitioners that our assessment instructions are consistent with those described in our *Proposed Regulations* at 7316. As the Department discusses in its commentary in the *Proposed Regulations*, section 351.212(b)(1) of the proposed regulations provides that the Department normally will calculate a duty assessment rate based on sales reviewed, and will apply those rates to entries made during the review period. This is consistent with past practice and has been upheld by the courts. See, *Antifriction Bearings from France, et al.*, 60 FR 10900, 10902 (1995); *Koyo Seiko v. United States*, 796 F. Supp. 1526, 1529 (CIT 1992). In all cases, this will result in the assessment of duties on merchandise entered during the review period. To the extent possible, these assessments will be specific to each importer, because the amount of duties assessed should correspond to the degree of dumping reflected in the price paid by each importer. In this review, all subject merchandise was imported by MAC, an affiliated distributor of the respondents.

We disagree with petitioners' contention that the only reason to rely on entries rather than sales is if the Department can tie all entries with sales. As we stated in our *Proposed Rule*, it is the Department's belief that, except in unusual situations, it should not abandon the objective of assessing duties on the basis of entries. In most antidumping proceedings, it is necessary to assess duties on the basis of entries in order to maintain continuity with periods of no review and to avoid the over- or under-collection of duties.

Final Results of Reviews

As a result of our review, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Imphy/Ugine-Savoie	8/5/93–12/31/94	10.06

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that if the rate for a particular product is *de minimis i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigations. See *Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France*, (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial

protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 3, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23234 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–M

AURA, Inc.; Notice Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–074. *Applicant:* The Association of Universities for Research in Astronomy, Inc., Washington, DC 20036. *Instrument:* (2) 8M Optical Telescope Primary Mirrors. *Manufacturer:* REOSC Optique, France. *Intended Use:* See notice at 61 FR 41774, August 12, 1996. *Reasons:* The foreign instrumentation consists of two eight-meter mirrors with (1) image resolution approaching 0.1 arcsec at 2.2μm wavelength, with near diffraction limited imaging at longer wavelengths, (2) optical images of < 0.3 arcsec in size and (3) a contribution to total IR emissivity of ≤ 4%.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, is being manufactured in the United States.

The National Optical Astronomy Observatories advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–23106 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

The Pennsylvania State University et al.; Notice of Consolidated Decision on Applications, for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–025. *Applicant:* The Pennsylvania State University, State College, PA 16804–0030. *Instrument:* Mach-Zehnder Interferometer, Model OP35–I/O. *Manufacturer:* UltraOptec Inc., Canada. *Intended Use:* See notice at 61 FR 28175, June 4, 1996. *Reasons:* The foreign instrument provides a dual beam configuration for in- and out-of-plane displacement in the 10Khz—35Mhz frequency range. *Advice received from:* The National Aeronautics and Space Administration, July 29, 1996.

Docket Number: 96–046. *Applicant:* Smithsonian Institution, Washington, DC 20560. *Instrument:* Electron Microprobe, Model JXA–8900R. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 61 FR 28175, June 4, 1996. *Reasons:* The foreign instrument provides a high accuracy element analysis of microareas with (1) a depth of focus of ±1mm at magnification of x 100 and (2) secondary electron image resolution to 5mm. *Advice received from:* The National Institute of Standards and Technology, July 25, 1996.

Docket Number: 96–054. *Applicant:* University of Georgia, Trifton, GA 31794. *Instrument:* Ground Conductivity Meter, Model EM38. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 61 FR 30221, June 14, 1996. *Reasons:* The foreign instrument provides: (1) rapid survey of soil conductivity patterns by not using ground electrodes and (2) georeferencing using GPS. *Advice received from:* The Department of Agriculture, July 24, 1996.

Docket Number: 96–058. *Applicant:* American Museum of Natural History, New York, NY 10024–5192. *Instrument:* Electron Microprobe, Model SX 100. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 61 FR 33902, July 1, 1996. *Reasons:* The foreign instrument provides high accuracy element analysis of microareas with precise point analysis electron imaging, x-ray mapping and cathodoluminescence. *Advice received from:* The National Institute of Standards and Technology, July 25, 1996.

Docket Number: 96–064. *Applicant:* University of California, Davis, Davis, CA 95616. *Instrument:* Magnetometer and Demagnetizer. *Manufacturer:* Molspin Instruments, United Kingdom. *Intended Use:* See notice at 61 FR 33903, July 1, 1996. *Reasons:* The foreign instrument provides portability and operability in harsh environments to measure remanent magnetism in rock samples in Antarctica. *Advice received from:* The U.S. Geological Survey, August 5, 1996.

The National Aeronautics and Space Administration, the National Institute of Standards and Technology, the Department of Agriculture and the U. S. Geological Survey advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–23104 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

The Pennsylvania State University, et al; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–048. *Applicant*: U.S. Department of Agriculture, Corvallis, OR 97331–7102. *Instrument*: Mass Spectrometer System, Model Europa 20–20. *Manufacturer*: Europa Scientific, Inc., United Kingdom. *Intended Use*: See notice at 61 FR 30220, June 14, 1996. *Reasons*: The foreign instrument provides a 120° extended geometry magnetic sector analyzer and a 120 position autosampler for solid and liquid samples. *Advice received from*: The National Institutes of Health, June 11, 1996.

Docket Number: 96–060. *Applicant*: University of Minnesota, St. Paul, MN 55108. *Instrument*: EPR Spectrometer. *Manufacturer*: Bruker, Germany. *Intended Use*: See Notice at 61 FR 33902, July 1, 1996. *Reasons*: The foreign instrument provides: (1) a standard rectangular resonation with s/n 330:1 using weak pitch under standard conditions, (2) field accuracy better than 800 mG over the full range and (3) a liquid helium cryostat variable between 3.8—300 K. *Advice received from*: The National Institutes of Health, July 23, 1996.

Docket Number: 96–062. *Applicant*: University of Oklahoma, Norman, OK 73019. *Instrument*: ESR Spectrometer System. *Manufacturer*: Bruker Instruments, Germany. *Intended Use*: See notice at 61 FR 33902, July 1, 1996. *Reasons*: The foreign instrument provides: (1) a cavity capable of temperature regulation to 4°K by a liquid helium cooling system and (2) acceptance of a TM 110 cavity that is optimized for aqueous solutions in 200 μ flat cells. *Advice received from* The National Institutes of Health, July 23, 1996.

Docket Number: 96–063. *Applicant*: University of Georgia, Athens, GA 30602–2022. *Instrument*: SIR Mass Spectrometer, Model Delta C. *Manufacturer*: Finnigan MAT, Germany. *Intended Use*: See notice at 61 FR 33902, July 1, 1996. *Reasons*: The foreign instrument provides: (1) sensitivity of 1500 molecules CO_2 per mass 44 ion under He flow conditions, (2) a viscous flow dual gas inlet and (3) a multi-element multiple collector system with 6 Faraday cups for ^{13}C, ^{15}N, ^{18}O and ^{34}S analysis. *Advice received from*: The National Institutes of Health, July 23, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–23106 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–M

University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–044. *Applicant:* University of California at Los Angeles, Los Angeles, CA 90095–1547. *Instrument:* Ti:Sapphire Laser. *Manufacturer:* MBP Technologies, Inc, Canada. *Intended Use:* See notice at 61 FR 28175, June 4, 1996. *Reasons:* The foreign instrument provides: (1) a pulse energy of 500 mJ/pulse at 10 Hz, (2) a tunable band width of 650 nm to 1000 nm and (3) a repetition rate of 10 Hz (maximum). *Advice received from:* A university-based optical science research center, August 2, 1996.

Docket Number: 96–059. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Electronic Speckle Pattern Interferometry System, Model SD–10–S. *Manufacturer:* Newport Instruments AG, Switzerland. *Intended Use:* See notice at 61 FR 33902, July 1, 1996. *Reasons:* The foreign instrument provides measurement of structural deformations as small as .05 mm over a surface ranging from 30 x 40 mm to 500 x 600 mm for use in an active noise supression system. *Advice received from:* A domestic manufacturer of similar equipment, August 1, 1996.

Docket Number: 96–050. Applicant: University of Michigan, Ann Arbor, MI 48109–2150. Instrument: (1) Infrared Headway Sensor Systems, Model ODIN 4F MS. Manufacturer: Leica AG, Switzerland. Intended Use: See notice at 61 FR 30220, June 14, 1996. Reasons: The foreign instrument provides long and short range infrared sensors, a control algorithm and a driver interface for an "intelligent" cruise control system for automobiles. Advice received from: A private highway safety research organization, August 1, 1996.

The private organizations we consulted with on these dockets advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–23105 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–401]

Cotton Shop Towels From Peru: Determination Not To Terminate Suspended Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Determination Not To Terminate Suspended Investigation.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to terminate the suspended countervailing duty investigation of cotton shop towels from Peru.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1996, the Department published in the **Federal Register** (61 FR 40408) its intent to terminate the suspended investigation on cotton shop towels from Peru. In accordance with section 355.25(d)(4)(iii) of the Department's regulations, the Secretary of Commerce will conclude that a

suspension agreement is no longer of interest to interested parties if no domestic interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to terminate a suspended investigation.

Within the specified time frame, we received from a domestic interested party (Milliken & Company) an objection to our intent to terminate the suspended investigation. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not terminate the suspended investigation.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: September 5, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–23233 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–421–601]

Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Reviews.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 20406) its preliminary results of administrative reviews of the countervailing duty order on standard chrysanthemums from the Netherlands for the periods January 1, 1992 through December 31, 1992 and January 1, 1993 through December 31, 1993. We have completed these reviews and determine the net subsidies to be 0.43 percent *ad valorem* for the period January 1, 1992 through December 31, 1992, and 0.80 percent *ad valorem* for the period January 1, 1993 through December 31, 1993. The Department will instruct the Customs Service to assess countervailing duties as detailed in the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1996, the Department published in the **Federal Register** (61 FR 20406) the preliminary results of its administrative reviews of the countervailing duty order on standard chrysanthemums from the Netherlands (*Preliminary Results*). We invited interested parties to comment on the preliminary results. The Floral Trade Council, petitioner, and the Government of the Netherlands (GON), respondent, submitted both case and rebuttal briefs. The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

The periods covered by the reviews were January 1, 1992 through December 31, 1992 and January 1, 1993 through December 31, 1993. These reviews were conducted on an aggregate basis and involve 13 programs.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Act. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of the Reviews

Imports covered by these reviews are shipments of Dutch standard chrysanthemums. Such merchandise is classifiable under item number 0603.10.70 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Based on our analysis of questionnaire responses, verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined To Confer Subsidies

1. Aids for the Creation of Cooperative Organizations

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is 0.07 percent *ad valorem* for 1992 and 0.04 percent *ad valorem* for 1993.

2. Glasshouse Enterprises Program

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is 0.17 percent *ad valorem* for 1992 and 0.09 percent *ad valorem* for 1993.

3. Aids for the Reduction of Glass Surface

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is less than 0.005 percent *ad valorem* for 1992 and less than 0.005 percent *ad valorem* for 1993.

4. Steam Drainage System

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is less than 0.005 percent *ad valorem* for 1992 and less than 0.005 percent *ad valorem* for 1993.

B. New Program Found to Confer Subsidies Stimulation for the Innovation of Electric Energy Program

In the preliminary results, we found that this program conferred benefits on the subject merchandise. Our analysis of

the comments submitted by the interested parties, summarized below, has not led us to modify our findings from the preliminary results for this program. On this basis, the net subsidy for this program is 0.18 percent *ad valorem* for 1992 and 0.66 percent *ad valorem* for 1993.

II. Programs Found Not to Confer Subsidies

In the preliminary results, we found the following programs to be non-countervailable.

1. Arrangement for Stimulation of Innovation Projects
2. Arrangement for Structural Improvements and the Complementary Scheme for Investment in Agricultural Holdings
3. Natural Gas Provided at Preferential Rates
4. Income Tax Deduction
5. Value Added Tax (VAT) Reduction of 6 Percent for Natural Gas Users and Partial Restitution of VAT for Mineral Oils, Fuels, Bulk or Bottled Gas
6. Guarantee Fund for Agriculture

Our analysis of the comments submitted by interested parties, summarized below, has not led us to modify our findings from the preliminary results.

III. Programs Found to be Not Used

We determine that producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Investment Incentive (WIR)—Regional Program
2. Loans at preferential interest rates

Analysis of Comments

Comment 1: Respondent contends that the Department improperly determined the Stimulation for the Innovation of Electric Energy (SES) program to be countervailable. Respondent states that the Uruguay Round Agreement Act (URAA) exempts from countervailability assistance to promote adaptation of existing facilities to new environmental requirements.

Petitioner disagrees that there is a general exemption for subsidies which provide environmental benefits. Instead, the petitioner notes that Article 8(c) of the Agreement on Subsidies and Countervailing Measures lists certain non-actionable subsidies benefitting the environment and that one of the criteria necessary for the exemption is that the new environmental requirements are imposed by law or regulation. Petitioner argues that the GON program encouraging the installation of cogeneration equipment is not pursuant to a new environmental requirement imposed by law or regulation.

Department's Position: The Department disagrees with respondent. The URAA amendments to the Act, including amendments pursuant to 8.2(c) of the Agreement on Subsidies and Countervailing Measures, apply to reviews initiated pursuant to requests for administrative reviews filed after January 1, 1995. As such, the provisions of the URAA referenced by respondent do not apply to these reviews because these reviews were initiated prior to the enactment of the URAA. Therefore, the Department properly determined the SES program to be countervailable.

Comment 2: Respondent argues that, if the Department continues to find the SES program countervailable, the Department should change the calculation methodology. Respondent alleges that the Department's decision to allocate the total value of all grants provided under the SES program in 1993 to that year was entirely arbitrary and contends that the Department should, instead, allocate those grants over the average useful life of assets in the industry.

Petitioner, on the other hand, argues that the Department properly expensed the benefits received in 1993 in the year of receipt in conformance with its prior practice.

Department's Position: The Department followed its practice, in accordance with the Proposed Regulations, of expensing non-recurring grants in the year of receipt when the sum of grants provided under a particular program is less than 0.50 percent of total sales in the year in which the grant was received. In this case, the amount of SES grants provided to greenhouse growers in 1993 was less than 0.50 percent of total greenhouse sales in that year. Therefore, under long-standing, established Department practice, these grants were expensed in the year of receipt, 1993. *See, e.g., Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Austria* (60 FR 33534, 33535; June 28, 1995).

Comment 3: Petitioner argues that the Department should reverse its determination that the reduced VAT rate and VAT rebates, applicable to purchases of mineral oils, fuels, or gas for greenhouses are not countervailable. Petitioner argues that the VAT reduction and rebates provide greenhouse growers with preferential gas prices and that these benefits are targeted to greenhouse growers and, therefore, are countervailable. Other reasons noted in support of its argument are that recipients must produce affidavits attesting that the gas is used only to heat greenhouses and that inspection programs ensure that the reduced rate only benefits greenhouse production. Petitioner further contends that, absent this program, flower growers would pay the higher VAT. Therefore, according to petitioner, the program is specifically targeted to greenhouse growers. In support of its arguments, petitioner cites *Bicycle Tires and Tubes from Taiwan*, 46 FR 53201 (October 28, 1981) (tax ceiling for bicycle manufactures); *Certain Steel Products from Belgium*, 58 FR 32273 (July 9, 1993) (exemptions for companies in development zone); *Certain Steel Products from Brazil* (58 FR 37295; July 9, 1993) (tax rebates to a specific industry); and *Certain Steel Products from Italy*, 58 FR 37327; July 9, 1993) (increased VAT deduction for a firm in a specific region).

Respondent disputes petitioner's argument that the special VAT regime is countervailable. Respondent argues that the special regime is available to the entire agricultural sector and that the administrative procedures that reduce the VAT on oil and natural gas are necessary to arrive at the reduced VAT level and rebates to which the recipients in the entire agricultural sector are entitled.

Department's Position: Section 771.5 of the Act and section 355.43(b)(1) of the *Proposed Regulations* require the Department to countervail a subsidy that is limited, in law, or in fact, to an enterprise or industry or group thereof. However, section 355.43(b)(8) provides that the Department "will not regard a program as being specific, within the meaning of paragraph (b)(1) of this section, solely because the program is limited to the agricultural sector." (*See Proposed Regulations* at 23380.) In the final determination of the original investigation, the Department found that if a program is available to virtually all agriculture and is not limited to flower growers or otherwise limited to a specific enterprise or industry, or group of enterprises or industries, within agriculture, then the program is not countervailable. *See Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From the Netherlands* (52 FR 3303; February 3, 1987) (*Final Determination*). *See also, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat from New Zealand* (50 FR 37708; September 17, 1985). In *Lamb Meat*, we found that the examined program was not limited to a specific enterprise or industry, or group thereof, because it was available to and used by a wide variety of agricultural producers.

In the preliminary results of these reviews, we found that under the Dutch National Tax Law, farmers in the Netherlands pay the reduced VAT rate on purchases of virtually all the goods and services required in agriculture, including natural gas and oil. The application procedure, noted by petitioner, for obtaining the reduced VAT rate and rebates is merely a mechanism which enables farmers to receive the reductions to which they are entitled under the Dutch National Tax Law.

The cases cited by petitioner in its brief are not relevant to the issue at hand. The issue in those cases dealt with benefits limited to specific industries or to specific zones or regions. The issue in these reviews is whether the reduced VAT rates are applied to virtually all of the goods and services used within the agricultural sector and whether there is any limitation within agriculture to provide benefits to specific commodities under this program. The issue is not whether the agricultural sector pays lower VAT rates on its purchases than the other industries in the Netherlands. We found that the reduced VAT rate is applied to a wide variety of goods in the agricultural sector; such as, foodstuffs, cereals, seeds, cattle, sheep, goats, pigs, horses, breeding eggs, veterinary medicines, water, gas and mineral oil, beetroot, agricultural seeds, fertilizer, feed, round wood, flax, wool, agricultural tools, bulbs and plants, as well as to services in the agricultural sector; such as, contracting, repairs, breeding, inspections, accounting, drying, cooling, cleaning and packaging of agricultural products. Therefore, since virtually all goods purchased by and required in the agricultural sector receive the reduced VAT rate, we determine that this program is not specific. As such, the reduced VAT rate for agriculture does not provide a countervailable benefit.

Comment 4: Petitioner argues that the Department understated the benefits derived from the SES program by allocating the grants received over estimated greenhouse sales, rather than floricultural sales. Petitioner claims that because the GON did not provide data regarding disbursements to flower growers or chrysanthemums growers, the Department must apply best information available.

Respondent, on the other hand, agrees with the Department's allocation methodology. Respondent argues that aid from the program is spread over the entire horticultural sector and is not specific to flowers or standard chrysanthemums.

Department's Position: Petitioner incorrectly asserts that the Department understated the benefits from the SES program. We are conducting this review on an aggregate basis due to the large number of growers of the subject merchandise. Therefore, we collected information on program usage from the government rather than from individual producers. The GON does not maintain records on the grants provided under this program on a product-specific basis. However, the grants under this program were provided to greenhouse growers, and we allocated the value of the grants over the value of greenhouse sales. Therefore, the Department has not understated the benefits under this program attributable to the subject merchandise.

Final Results of Reviews

For the period January 1, 1992 through December 31, 1992, we determine the net subsidy to be 0.43 percent *ad valorem*. For the period January 1, 1993 through December 31, 1993, we determine the net subsidy to be 0.80 percent *ad valorem*. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise exported on or after January 1, 1992 and on or before December 31, 1992, and to assess countervailing duties of 0.80 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise exported on or after January 1, 1993 and on or before December 31, 1993.

Because this notice is being published concurrently with the final results of the 1994 administrative review, the 1994 administrative review will serve as the basis for setting the cash deposit rate, as provided for under section 751(c)(1) of the Act.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.43(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23230 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–421–601]

Standard Chrysanthemums From the Netherlands; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On May 6, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 20411) its preliminary results of administrative review of the countervailing duty order on standard chrysanthemums from the Netherlands for the period January 1, 1994 through December 31, 1994. We have completed this review and determine the net subsidies to be *de minimis* for all exports of the subject merchandise to the United States. The Department will instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from the Netherlands exported on or after January 1, 1994, and on or before December 31, 1994.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Anne D'Alauro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1996, the Department published in the **Federal Register** (61 FR 20406) the preliminary results of its administrative review of the countervailing duty order on standard chrysanthemums from the Netherlands (*Preliminary Results*). We invited interested parties to comment on the preliminary results. The Floral Trade Council, petitioner, and the Government of the Netherlands (GON), respondent, submitted both case and rebuttal briefs. The Department has now completed this administrative review in accordance

with section 751 of the Tariff Act of 1930, as amended (the Act).

The period covered by the review was January 1, 1994 through December 31, 1994. This review was conducted on an aggregate basis and involves 13 programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). References to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366; May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80 (Jan. 3, 1995).

Scope of the Review

Imports covered by this review are shipments of Dutch standard chrysanthemums. Such merchandise is classifiable under item number 0603.10.70 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Country-Wide Rate

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. In the original investigation of this order, it was determined that there were over 8,000 flower growers in the Netherlands. Therefore, we requested that the GON provide information on an aggregate basis. *See Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From the Netherlands* (52 FR 3301; February 3, 1987). Consistent with the decision made in the investigation, administrative reviews of this order have been conducted on an aggregate basis. In accordance with section 777A(e)(2)(B) of the Act, we have also conducted this administrative review on an aggregate basis because of the large number of producers and exporters, and on the basis of the aggregate information submitted by the GON, we have determined a single country-wide subsidy rate to be applied to all producers and exporters of the subject merchandise.

Analysis of Programs

Based upon our analysis of the questionnaire responses and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Aids for the Creation of Cooperative Organizations

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is 0.03 percent *ad valorem* for 1994.

2. Glasshouse Enterprises Program

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is 0.05 percent *ad valorem* for 1994.

3. Aids for the Reduction of Glass Surface

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is less than 0.005 percent ad valorem for 1994.

4. Steam Drainage System

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results, and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is less than 0.005 percent ad valorem for 1994.

B. New Program Found to Confer Subsidies Stimulation for the Innovation of Electric Energy Program

In the preliminary results, we found that this program conferred benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our findings from the preliminary results for this program. On this basis, the net subsidy for this program is 0.35 percent ad valorem for 1994.

II. Programs Found to be Not to Confer Subsidies

In the preliminary results, we found the following programs to be non-countervailable:

1. Arrangement for Stimulation of Innovation Projects
2. Arrangement for Structural Improvements and the Complementary Scheme for Investment in Agricultural Holdings
3. Natural Gas Provided at Preferential Rates
4. Income Tax Deduction
5. Value Added Tax (VAT) Reduction of 6 Percent for Natural Gas Users and Partial Restitution of VAT for Mineral Oils, Fuels, Bulk or Bottled Gas
6. Guarantee Fund for Agriculture

Our analysis of comments submitted by interested parties, summarized below, has not led us to modify our findings from the preliminary results.

III. Programs Found to be Not Used

We determine that producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Investment Incentive (WIR)—Regional Program
2. Loans at preferential interest rates.

Analysis of Comments

Comment 1: Respondent contends that the Department improperly determined the Stimulation for the Innovation of Electric Energy (SES) program to be countervailable. Respondent states that the URAA exempts from countervailability assistance to promote adaptation of existing facilities to new environmental requirements.

Petitioner disagrees that there is a general exemption for subsidies which provide environmental benefits. Instead, the petitioner notes that Article 8(c) of the Agreement on Subsidies and Countervailing Measures lists certain non-actionable subsidies benefitting the environment and that one of the criteria necessary for the exemption is that the new environmental requirements are

imposed by law or regulation. Petitioner argues that the GON program encouraging the installation of cogeneration equipment is not pursuant to a new environmental requirement imposed by law or regulation.

Department's Position: We disagree with the respondent. While section 771(5B) of the Act does describe subsidies which are non-actionable if certain conditions are met, the GON has not provided any timely factual information to support its claim, which was raised for the first time in its May 28, 1995 case brief.

In our August 28, 1995 questionnaire, the Department provided the GON with the opportunity to claim "green light" status under section 771(5B) for eligible programs, and stated that the GON "may also claim that certain subsidies for research activities, disadvantaged regions and/or the adaptation of existing facilities to new environmental requirements are not countervailable. If you wish to do so, then please notifiy the official in charge * * * " (*see*, section II–3, page 2 of the Questionnaire). This request for parties to notify the Department if they wish to claim "green light" status has been a standard question in the Department's questionnaire since January 1, 1995, the effective date of the URAA. In its questionnaire response filed on October 20, 1995, the GON did not request "green light" consideration for any of its programs. Moreover, the GON did not provide any factual information which the Department could use to determine whether the SES program meets the criteria outlined in section 771(5B)(D) of the Act.

Since the GON raised this issue for the first time in its case brief, which is well past the deadline for submitting factual information in the review, and since no information supporting its claim otherwise exists on the record, the Department determines that the SES program does not qualify as a noncountervailable subsidy pursuant to section 771(5B) of the Act.

Comment 2: Petitioner argues that the Department should reverse its determination that the reduced VAT rate and VAT rebates, applicable to purchases of mineral oils, fuels, or gas for greenhouses are not countervailable. Petitioner argues that the VAT reduction and rebates provide greenhouse growers with preferential gas prices and that these benefits are targeted to greenhouse growers and are, therefore, countervailable. Other reasons noted in support of its argument are that recipients must produce affidavits attesting that the gas is used only to heat greenhouses and that inspection programs insure that the reduced rate only benefits greenhouse production. Petitioner further contends that absent this program flower growers would pay the higher VAT. Therefore, according to petitioner, the program is specifically targeted to greenhouse growers. In support of its arguments, petitioner cites *Bicycle Tires and Tubes from Taiwan*, 46 FR 53201 (October 28, 1981) (tax ceiling for bicycle manufacturers); *Certain Steel Products from Belgium*, 58 FR 32273 (July 9, 1993) (exemptions for companies in development zone); *Certain Steel Products from Brazil* (58 FR 37295; July 9, 1993) (tax rebates to a specific industry); and *Certain Steel Products from Italy*, 58 FR 37327; July 9, 1993) (increased VAT deduction for a firm in a specific region).

Respondent disputes petitioner's argument that the special VAT regime is countervailable. Respondent argues that the special regime is available to the entire agricultural sector and that the administrative procedures that reduce the VAT on oil and natural gas are necessary to arrive at the reduced VAT level and rebates to which the recipients in the entire agricultural sector are entitled.

Department's Position: Section 771.5 of the Act and section 355.43(b)(1) of the *Proposed Regulations* require the Department to countervail a subsidy that is limited, in law, or in fact, to an enterprise or industry or group thereof. However, section 355.43(b)(8) provides that the Department "will not regard a program as being specific, within the meaning of paragraph (b)(1) of this section, solely because the program is limited to the agricultural sector." (*See Proposed Regulations* at page 23380.) In the final determination of this case, the Department found that if a program is available to and used by virtually all of agriculture and is not limited to flower growers or otherwise limited to a specific enterprise or industry, or group of enterprises or industries, within agriculture, then the program is not countervailable. *See Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From the Netherlands* (52 FR 3303; February 3, 1987) (*Final Determination*). *See also, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat from New Zealand* (50 FR 37708; September 17, 1985). In *Lamb Meat*, we found that the examined program was not limited to a specific enterprise or industry, or group thereof, because it was available to and used by a wide variety of agricultural producers. In the preliminary results of this review, we found that under the Dutch National Tax Law, farmers in the Netherlands pay the reduced VAT rate on purchases of virtually all the goods and services required in agriculture, including natural gas and oil. The application procedure, noted by petitioner, for obtaining the reduced VAT rate and rebates is merely a mechanism which enables farmers to receive the reductions to which they are entitled under the Dutch National Tax Law.

The cases cited by petitioner in its brief are not relevant to the issue at hand. The issue in those cases dealt with benefits limited to specific industries or to specific zones or regions. The issue in this review is whether the reduced VAT rates are applied to virtually all of the goods and services used within the agricultural sector and whether there is any limitation within agriculture to provide benefits to specific commodities under this program. The issue is not whether the agricultural sector pays lower VAT rates on its purchases than the other industries in the Netherlands. We found that the reduced VAT rate is applied to a wide variety of goods in the agricultural sector; such as, foodstuffs, cereals, seeds, cattle, sheep, goats, pigs, horses, breeding eggs, veterinary medicines, water, gas and mineral oil, beetroot, agricultural seeds, fertilizer, feed, round wood, flax, wool, agricultural tools, bulbs and plants, as well as to services in the agricultural sector; such as, contracting, repairs, breeding, inspections, accounting, drying, cooling, cleaning and packaging of agricultural products. Therefore, since virtually all goods purchased by and required in the agricultural sector receive the reduced VAT rate, we determine that this program is not specific. As such, the reduced VAT rate for agriculture does not provide a countervailable benefit.

Comment 3: Petitioner argues that the Department understated the benefits derived from the SES program by allocating the grants received over estimated greenhouse sales, rather than floricultural sales. Petitioner claims that because the GON did not provide data regarding disbursements to flower growers or chrysanthemums growers, the Department must apply best information available.

Respondent, on the other hand, agrees with the Department's allocation methodology. Respondent argues that aid from the program is spread over the entire horticultural sector and is not specific to flowers or standard chrysanthemums.

Department's Position: Petitioner incorrectly asserts that the Department understated the benefits from the SES program. We are conducting this review

on an aggregate basis due to the large number of growers of the subject merchandise. Therefore, we collected information on program usage from the government rather than from individual producers. The GON does not maintain records on the grants provided under this program on a product-specific basis. However, the grants under this program were provided to greenhouse growers, and we allocated the grants over greenhouse sales. Therefore, the Department has not understated the benefits under this program attributable to the subject merchandise.

Comment 4: Petitioner argues that the Department should recalculate the 1994 subsidy flowing from the SES program. Petitioner contends that the amount calculated for the 1994 review was based on the grant amount reported in the original questionnaire response, which was smaller than the total amount reported in the supplemental response.

Department's Position: The Department used the correct amount in calculating the benefit for the review period, which was the amount reported in the original response. The amount reported in the supplemental response was actually the total amount of grants earmarked for the horticultural industry, while the actual amount of grants disbursed was what was reported in the original response. The Department's practice is to countervail the amount of grants actually provided, not the amount awarded. (*See* section 355.44(a) of the *Proposed Regulations*.)

Final Results of Review

In accordance with section 777A(e)(2)(B) of the Act, we calculated a country-wide rate to apply to all producers and exporters of the subject merchandise. For the period January 1, 1994 through December 31, 1994, we determine the net subsidy to be 0.43 percent *ad valorem*. As provided for in the Act, any rate less than 0.5 percent *ad valorem* is *de minimis*.

Accordingly, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of the subject merchandise exported on or after January 1, 1994 and on or before December 31, 1994. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties of zero on all shipments of subject merchandise from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.43(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–23231 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 960801215–6215–01]

RIN 0693–XX22

Laboratory Accreditation Working Group: Proceedings of Open Forum

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of availability.

SUMMARY: A single copy of NIST Special Publication SP–902, "Proceedings of the Open Forum on Laboratory Accreditation" may be requested from the NIST Office of Standards Services. Multiple copies may be purchased from the Superintendent of Documents.

DATES: Request for a single copy will be honored by NIST until the supply is exhausted.

ADDRESSES: At NIST: Office of Standards Services, National Institute of Standards and Technology, Building 820, Room 282, Gaithersburg, Maryland 20899, telephone 301–975–4000, e-mail jbaker@nist.gov, or facsimile 301–963–2871. At Superintendent of Documents: P.O. Box 371954, Pittsburgh, PA 15250, telephone 202–512–1800.

FOR FURTHER INFORMATION CONTACT: Judith Baker, Office of Standards Services, National Institute of Standards and Technology, Building 820, Room 282, Gaithersburg, Maryland 20899, telephone 301–975–4000.

SUPPLEMENTARY INFORMATION: NIST SP–902, "Proceedings of the Open Forum on Laboratory Accreditation" includes presented papers and discussions at a meeting on the proposed development of a U.S. laboratory accreditation infrastructure, held at NIST on October 13, 1995.

The American National Standards Institute (ANSI) and ACIL (formerly American Council of Independent Laboratories) requested that the National Institute of Standards and Technology (NIST) work with them in an informal Laboratory Accreditation Working Group (LAWG) to evaluate the current situation in laboratory accreditation in the United States. This group sponsored a Forum on October 13, 1995, to hear reports from various sectors and to arrive at some consensus on the need to improve the current situation and infrastructure for laboratory accreditation in the United States. Sectors included laboratories, accreditors, manufacturers, government (both federal and states), standards organizations, and international trade experts.

In the Forum, reports from the different sectors focused on the need for agreement on common procedures, reduction of overlap and duplicate programs, and development of coordination among sectors. The invited speakers presented examples of the high price in both time and money, as well as in lack of domestic (and international) acceptance of accreditation, resulting from the multiple, often duplicative accreditation required by organizations in government and the private sector. Examples given by many of the speakers included:

—Multiple assessments of a single laboratory with similar testing protocols applied each time, increased total cost, and frequent conflicts among requirements;
—Programs tailored to narrow customer demands but lacking recognition by other bodies;
—Non-uniformity of requirements and lack of reciprocity among accreditors and those requiring accreditation;
—Failure to recognize U.S. accreditation in international trade; and
—Problems stemming from the need for compliance with regulatory programs without consideration of comparable private sector accreditation.

Keynote addresses provided:

—Historical review of prior efforts to streamline the laboratory accreditation infrastructure;
—An overview of the effect of failure to accept testing by accredited laboratories on commercial trade relations, especially limits on the free trade of products designed for acceptance in overseas markets due to lack of common procedures and mutual recognition agreements; and
—A description of procedures used by both the United Kingdom Accreditation Service (UKAS) and

European Council on Accreditation of Laboratories (EAL) organizations.

The LAWG Steering Group presented a "Vision" statement. This informal group consists of the three sponsoring organizations and representatives of each of the stakeholders: Laboratories, accreditors, and the government and private sector entities that require accreditation of laboratories for their own purposes. The Vision statement was intended to provide a philosophy for developing broad cooperation on accreditation procedures and infrastructure that would be much more effective than the present chaotic system and which would meet the needs of all those affected by laboratory accreditation. A set of "Principles" was also offered as a guide for developing a possible infrastructure. These principles include recognition of competent organizations that accredit laboratories, use of procedures and requirements based on international standards and guides, elimination of domestic barriers, and improved access to foreign markets for U.S. products.

Throughout the Forum, speakers supported the opportunity to achieve a coordinated, cost effective system for unified procedures for determining the competency of laboratories by qualified accreditors.

Dated: September 15, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–23188 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Transshipment and Misclassification Charges for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

September 5, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments and misclassified merchandise to 1996 limits.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on May 3, 1995 (60 FR 21792), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in certain categories, produced or manufactured in China and entered into the United States with the incorrect country of origin or with the incorrect classification, were entered in circumvention of the Bilateral Textile Agreement, effected by exchange of notes dated March 29, 1995 and June 8, 1995, between the Governments of the United States and the People's Republic of China. Consultations were held between the Governments of the United States and the People's Republic of China on this matter March 25 through March 27, 1996. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1996 quota levels for the categories listed below. The quota levels for Categories 339–S, 348, 351, 641 and 840 have been triple charged in accordance with paragraph 13(E) of the Bilateral Textile Agreement between the Governments of the United States and the People's Republic of China.

Category	Amounts to be charged
200	2,268 kilograms.
335	136 dozen.
338–S [1]	73,420 dozen.
339	16,983 dozen.
339–S [2]	5,120 dozen.
347	19,360 dozen.
348	37,699 dozen.
351	18,000 dozen.
369–D [3]	15,511 kilograms.
369–S [4]	116,250 kilograms.
433	520 dozen.
641	22,680 dozen.
840	1,083 dozen.

[1] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023.

[2] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these investigations will be published in the **Federal Register**.

The U.S. Government is taking this action pursuant to U.S. letter dated February 6, 1996, and the Bilateral Textile Agreement, effected by exchange of notes dated May 29, 1995 and June 8, 1995, between the Governments of the United States and the People's Republic of China.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 65292, published on December 19, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 5, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Textile Agreement, effected by exchange of notes dated May 29, 1995 and June 8, 1995, between the Governments of the United States and the People's Republic of China, I request that, effective on September 11, 1996, you charge the following amounts to the following categories for the 1996 restraint period (see directive dated December 13, 1995):

Category	Amounts to be charged
200	2,268 kilograms.
335	136 dozen.
338–S [a]	73,420 dozen.
339	16,983 dozen.
339–S [b]	5,120 dozen.
347	19,360 dozen.
348	37,699 dozen.
351	18,000 dozen.
369–D [c]	15,511 kilograms.
433	520 dozen.
641	22,680 dozen.
840	1,083 dozen.

[a] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023.

[b] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[c] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

Also, you are directed to deduct 116,250 kilograms from the charges made to Category 369–D for the 1996 quota period. This same

amount should be charged to the 1996 limit for Category 369–S [1].

This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–23054 Filed 9–10–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Monday, September 30, 1996.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–23387 Filed 9–9–96; 12:34 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Monday, September 30, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–23388 Filed 9–9–96; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Public Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation) announces the convening of a meeting to be held on September 19, 1996, at 11:00 a.m. in the Corporation's Washington Office. Members of the public are invited to participate.

The purpose of this meeting is to provide information regarding the following initiatives: (1) the new AmeriCorps Education Awards Program; (2) the new National Service Scholarship Program.

DATES: The meeting will be held on September 19, from 11:00 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Corporation for National Service, 1201 New York Avenue, NW, 8th Floor, Room 8410, Washington, DC 20525. Please RSVP to (202) 606–5000 ext. 260.

FOR FURTHER INFORMATION CONTACT: For further information, contact Rhonda Taylor, Associate Director of Special Projects and Initiatives, Corporation for National Service at (202) 606–5000, ext. 282. TTD Number: (202) 606–5256. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION: The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

The Corporation seeks to expand opportunities for individuals to serve as AmeriCorps Members and earn educational benefits, broaden the network of national service programs and strategies, and increase the number of communities joining with AmeriCorps to better meet their needs. Accordingly, the Corporation announced the availability of up to 5,000 education awards from the National Service Trust through a simplified application process for community service programs that can support all or most other program and Member support costs through other sources of funding. The education awards being made available may be earned by AmeriCorps Members successfully completing Full-time or Part-time terms in a community service program approved through the application process. Additional information about this program is contained in the Corporation's Notice of Availability of Educational Awards in the **Federal Register** of Wednesday, September 4, 1996.

The National Service Scholarship Program was created to recognize high school juniors and seniors engaged in outstanding community service. Students selected for recognition will receive locally-funded scholarships, matched or supplemented with federal funds provided by the Corporation. Of the National Service Scholars, a small number selected at the State level will receive special recognition and larger scholarships, and an even smaller number selected at the national level will receive special recognition and still larger scholarships. The Corporation's goal in this effort is to highlight the outstanding community service performed by high school students across the country, to recognize the particularly noteworthy service accomplishments of outstanding young individuals, and to assist those individuals in pursuing higher education. In order to accomplish this, the Corporation is interested in selecting an organization to provide administrative and technical support related to this program. Additional information about this program is contained in the Corporation's Notice of Availability of Funds in the **Federal Register** of Wednesday, September 4, 1996.

Dated: September 3, 1996.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 96–23079 Filed 9–10–96; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[FAR Case 95–307]

Submission for OMB Review Entitled Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR)

[1] Category 369–S: only HTS number 6307.10.2005.

Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification (FAR case 95–307). This request is pursuant to the emergency processing provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13).

DATES: *Comment Due Date:* November 12, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4035, Washington, DC 20405. Please cite FAR case 95–307, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Shari Kiser, Federal Acquisition Policy Division, GSA (202) 501–2164.

SUPPLEMENTARY INFORMATION:

A. Purpose

The interim rule amends the Federal Acquisition Regulation to implement changes in the numbering system used by the Government to identify contractors in reporting to the Federal Procurement Data System. The rule substitutes the Data Universal Numbering System (DUNS) number for the current Contractor Establishment Code.

Concerns have been raised that the same numbering system should be used for reporting to the Federal Procurement Data System (FPDS) and identifying vendors in the FACNET vendor registration database. The Office of Federal Procurement Policy has determined that the DUNS number will be used for Federal Procurement Data System reporting purposes and to identify vendors in the FACNET vendor registration database. Beginning with FY 1996 first quarter submissions to the Federal Procurement Data Center, agencies may report the DUNS number.

The Federal Procurement Data System (FPDS) provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center which collects, processes, and disseminates official statistical data on Federal contracting. The Data Universal Numbering System (DUNS) number is replacing the current Contractor Establishment Code as the primary contractor identification number used to identify contractors in the Federal Procurement Data System. Changes to the FPDS reporting requirements are currently in process to conform to the requirements of Section 10004 of the Federal Acquisition Streamlining Act.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5 minutes* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents *50,400*; responses per respondent, *4*; total annual responses, *201,600*; preparation hours per response, *.0166* hours; and total response burden hours, *4,147*.

Obtaining Copies of Justifications: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 501–2164. Please cite FAR case 95–307, Use of Data Universal Numbering System (DUNS) as Primary Contractor Identification, in all correspondence.

Dated: September 5, 1996.

Shari Kiser,

FAR Secretariat.

[FR Doc. 96–23170 Filed 9–10–96; 8:45 am]

BILLING CODE 6820–EP–P

Department of the Army

Military Traffic Management Command; Security Rules and Accessorial Service Governing the Movement of Department of Defense Freight Traffic by Rail Carrier

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command is proposing to change Items 85, 95, 100, and 180 in the Military Traffic Management Command Freight Traffic Rules Publication 10 (MFTRP 10). This proposed change combines two existing transportation protective services into a new service. Also, the change clarifies where and under what circumstances Arms, Ammunition and Explosives, Tanks, Wheeled Vehicles, and other Sensitive Items are protected while being shipped by rail.

DATES: Comments must be submitted on or before November 15, 1996.

ADDRESSES: All comments concerning the proposed change should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP–T, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gerade, e-mail geradem@baileys-emh5.army.mil or Mr. Robert Jones, jonesr@baileys-emh5.army.mil, Headquarters, Military Traffic Management Command, ATTN: MTOP–OP, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 681–6109/6089.

SUPPLEMENTARY INFORMATION: The proposed changes read as follows:

Item 85—Application

1. The Transportation Protective Service (TPS) set forth in this section apply to rail carriers offering to transport military arms; Division 1.1, 1.2, and 1.3, ammunition, explosives, fireworks, chemical munitions, and other commodities which may require physical security protection while in transit.

2. When this service is required on shipments moving in TOFC/COFC service, rail carriers will insure the appropriate motor TPS applicable to the highway portion incident to the TOFC/COFC movement is provided. The motor TPS is set forth in Section 2 of Motor Freight Rules Publication No. 1A (MFTRP No. 1A). Only MTMC approved munitions motor carriers may be used to transport shipments over the highway.

3. Carriers which provide TPS without charge will enter on the Tender in Section F(2) two-character alpha code for this service in the "service" field and place zeros in the "charge" column. This will indicate that the service is offered without charge.

4. To simplify tender filing procedures, carriers may file one tender containing charges applicable to the TPS named in this section.

Item 95—Rail Armed Guard Service (RG) (Note)

1. *Definition.* Rail Armed Guard Service (RG). RG is a transportation protective service that provides one armed guard to maintain constant and specific 24 hour surveillance on a DOD shipment consisting of one or more cars in the same train.

2. *Requirement.* Carriers providing RG must:

a. Perform all functions of Rail Inspection Service (RI) as specified in item 100.

b. Maintain surveillance at all rail stops as well as in yards and terminals where train stops. All security seals and/or locks will be checked at all stops shown in NOTE of this item.

c. Guards will be augmented as required to maintain continuous observation on railcars transporting shipment(s).

d. Guards will not leave shipment until properly relieved by another guard or consignee at destination.

e. On shipments in environmentally controlled cars, trailers or containers, the refrigeration/heating units must be inspected in transit at least twice during each 24-hour period for the purpose of maintaining temperature requirements. Inspections must be at least 10 hours apart. The temperature requirement of each shipment will be annotated on the bill of lading by the shipper. Immediately following each required inspection, an authorized carrier representative will make a report by telephone to the consignee and the appropriate toll free 800-Hotline telephone number (see Item 180), furnishing the information called for in the sample format shown in NOTE of this item. The cost of telephone calls to other than toll free numbers will not be borne by the Government.

f. Annotation. RG will only be furnished upon request of the shipper by annotation on the bill of lading as follows:

"Rail Armed Guard Surveillance Service (RG) Requested"

g. If suspicion of tampering or sabotage exists at any point during the movement of the shipment, the railroad special agents office will immediately notify the consignee, HQMTMC at (703)681–6125, or one of the 24-hour MTMC 800-Hoteline telephone numbers (See ITEM 180). If necessary, the carrier will solicit the aid of local, state or federal law enforcement officials to secure the shipment.

3. *Charges.* When requested by the shipper, the rail carrier(s) will provide RG on shipments of single car loads or shipments of multiple car loads in the same train at a charge of RG(1) $_____ per highway mile or in lieu thereof a flat charge of RG(2) $_____ per car. The charges will apply from point of origin to point of destination, and will be in addition to all other charges for transportation of shipments requiring this service.

In Section F(1) of the tender, carriers will complete either RG(1) or RG (2), but not both.

Note: Information to be furnished per instructions in paragraph 2e above:

1. Person and carrier reporting:

_____

2. City or place of inspection:

_____

3. Local arrival time at checkpoint:

_____

4. Local time inspection was performed:

_____

5. Interior temperature of the equipment:

_____

6. Approximate outside temperature:

_____

7. Government seals intact: Yes ( ) No ( )

_____

8. Replaced by seal number:

_____

9. Air conditioning unit working: Yes ( ) No ( )

_____

10. Arrangement made for repair:

_____

11. Entries made on log attached to equipment: Yes ( ) No ( )

_____

12. Estimated or actual time or departure from checkpoint:

_____

13. Estimated time of arrival at next checkpoint or destination:

_____

Item 100—Rail Inspection Service (RI) (Notes 1 through 8)

Rail Inspection Service (RI) replaces two rail security services, Rail Surveillance Service (RS) and Tank Surveillance Service (TS). Greater Security Service (GS), as defined in item 90, will still be maintained for all other shipments under RI service. GS automatically includes Military Traffic Expediting Service (MTX) (See Note 5). It is intended that RI service incorporate the inspection and/or surveillance requirements of each of the services RI replaced.

1. *Definition.* Rial Inspection Service (RI) is performed by rail carriers for in-transit protection of sensitive and pilferable items; RI automatically includes MTX (See Note 5). Inspection under RI is external only to assure the integrity of the shipment (container or vehicle) and the seals/locking devices. RI is required for the movement of Abrams tanks, and other ground vehicles with sensitive armor Categories II through IV, and uncategorized (at DOD component headquarters direction); arms, ammunition, and explosives (AA&E); and night vision devices (NVD). RI is optional for vehicle movements and unit or other movements involving pilferable items, such as high value communications and electronics.

2. *Requirements.* Carriers providing RI must:

a. For all Shipments Under RI:

(1) Perform Military Traffic Expediting Service (MTX) (NOTE 5).

(2) Annofation. RI will only be furnished upon request of the shipper by annotation on the bill of lading as follows:

"Rail Inspection Service (RI) Requested."

(3) Inspect each rail car containing shipments requiring RI. Inspection will be performed by railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained) which could be contract security firms designated by the carrier within one hour after train has entered a rail terminal. Reinspection will take place every hour thereafter until the train departs (NOTE 3). For shipments located at a working terminal, where carrier personnel are present and can provide continuous observation, hourly inspections are waived provided the train is on an inside track. When hourly inspections are performed, they will be documented.

(4) Inspection records will be required at terminals on arrival and departure and at all interchange points between railroads.

(5) Inspection made by railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firms, will be available within 24 hours.

(6) While in-transit and not in terminal, railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firms designated by the carrier will inspect the railcar(s) containing the shipment every hour when a delay is more than 90 minutes.

(7) Assure complete interchange security procedures are in effect, and recorded when transferring the shipment to another railroad, or intermodal carrier, or with the government (NOTE 6).

(8) Where feasible, place shipments transiting rail yards in well-lighted areas, on an inside track, near the tower, and/or otherwise under the general observation of railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firms designated by carrier (NOTE 1).

(9) Notify the consignee in a timely manner of arrival at destination and maintain inspection until physical hand-off has occurred (NOTES 2 and 4).

(a) Name of carrier reporting.

(b) Name of Inspector and his/her signature.

(c) Time of each inspection or acceptance for continuous observation.

(d) Actual arrival time at terminal.

(e) Actual departure time from terminal.

(f) Condition of conveyance(s) and seals/locking devices.

b. For Arms, Ammunition, and Explosives (AA&E), and containerized Night Vision Device (ND):

(1) Inspection of container locks/seals. If found broken, reseal with same or equivalent device. Report broken locks/seals, or other security problems with containers to one of the 24-hour MTMC 800-Hotline numbers listed in item 180, page 8.

(2) Ensure containers are positioned door to door or otherwise placed with door inaccessiable.

(3) If an add number of containers/MILVANs, other than one, is loaded on an individual rail car, loading is "door to door" and the remaining container is loaded with the door facing the end of another container/MILVAN.

c. For M1 Abrams Tanks:

(1) Inspection calls for external observation and inspection by railroad police officer, railroad employees (trained) other than policy, or instructed personnel (trained), which could be contract security firms, of each vehicle within one hour after it has stopped and at least once each hour during each stop. Documentation supporting hourly checks is subject to review.

(2) In addition to the requirements in paragraph 2a above, the following inspections will be performed by the carrier to ensure the integrity of the shipment and will be conducted from the ground unless exceptions are noted.

(a) Ensure tank armor plate, tie downs, or other parts are secure and intact.

(b) Ensure tank skirts and transloc bolts are secure and undamaged.

(c) Inspect vehicle openings (drivers, hatch, loading hatch) to ensure they are adequately secured (locked and sealed, or welded).

(d) Inspect equipment boxes to ensure exterior integrity of the boxes and that seals/locking devices and tie downs are intact.

(3) If the armor is penetrated, the shipment will continue to be protected by the carrier in conjunction with an on-the-scene investigation by military representatives.

(4) A diagram of the M1 Abrams Tank is found at the end of this section and depicts those areas of the vehicle that railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firms, will concentrate their physical inspection.

d. For Non-Sensitive Armored/Wheeled Vehicle Inspections (Optional):

(1) This service may be used at the shipper's option for the movement of armored and wheeled vehicles (excluding the M1 Abrams Tank family of vehicles and certain ground vehicles tracked with sensitive armor, for which RI is mandatory. Inspection calls for the external observation and inspection by railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firms of each railcar transporting military vehicles, IAW paragraph a above.

(2) The following inspections will be performed by the carrier to ensure the integrity of the shipment and will be conducted from the ground unless exceptions are noted.

(a) Inspect wheeled vehicles for glass damage and all vehicles for signs of pilferage, theft, or serious damage.

(b) Ensure tie downs are secure and intact.

(c) Inspect vehicle openings of tanks and tactical vehicles (driver's hatch, loading hatch) to ensure they are adequately secured (locked, and sealed, or welded).

(d) Sensitive or pilferable items shipped along with thanks and other tracked vehicles should be in separate, approved containers. The shipper is responsible for securing a vehicle's opening and all containers. The seals/locking devices will be inspected by railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firms, to ensure that they are adequately secured.

3. *Reporting Procedures.*

a. The shipper must report shipment information to the appropriate MTMC area command in advance of movement and must include the GS or RI number on GBL. MTMC area commands will be responsible for furnishing this information to Manager, Military Transportation Section, AAR, at (703) 681–6117 in a timely manner.

b. In the event of any serious accident or incident, suspected or actual tampering and if the carrier believes a threat exists, the carrier will immediately notify the consignee and MTMC on one of the twenty-four hour MTMC 800–Hotline numbers provided below. If necessary the carrier will solicit the aid of local state or federal law enforcement officials to secure the shipment. Notification will also be furnished to the Manager, Military Transportation Section, AAR, at (703) 681–6117. Damage reporting of serious accidents or incidents will be reported within two hours following occurrence (NOTE 2 and 4).

c. If evidence of forced entry or tampering with seals has occurred, the carriers will immediately notify the consignee and MTMC 800-Hotline numbers listed below.

4. *Charges.* In addition to all rates and charges for transportation, shipment of:

a. Arms, Ammunition and Explosives (AA&E) and containerized Night Vision Devices (NVD) for which RI is provided by carrier at shipper's request will be subject to a charge of RI(1) $_____ per highway mile per car or in lieu thereof a flat charge of RI(2) $_____ per car.

b. M1 Abrams Tanks for which RI is provided by carrier at shipper's request will be subject to a charge of RI(3) $_____ per highway mile per car or in lieu thereof a flat charge of RI(4) $_____ per car.

c. Non-Sensitive Armored/Wheeled Vehicle Inspections (Optional) for which RI is provided by carrier at shipper's request will be subject to a charge of RI(5) $_____ per highway mile per car or in lieu thereof a flat charge of RI(6) $_____ per car.

Note 1: Lighting illuminating the railcar(s) containing the military shipment is beneficial for supporting inspections and should be used when feasible.

Note 2: Timely is defined in terms of immediate notification of delivery and advising the government not later than two hours after a serious accident or incident.

Note 3: Inspectors should be a railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firms designated by the carrier to inspect the railcar(s).

[A person is considered "trained and instructed" when he or she is employed by the railroad or the terminal involved in the handling of shipments, has been trained by the railroad/terminal to inspect railcar(s), is aware of the sensitivity of material moving under RI, and knowledgeable of safety, security and emergency procedures that must be followed. Trained and instructed contract personnel may be used to conduct inspection of railcar(s), but must meet the same criteria as personnel designated by the carrier to inspect railcar(s).]

Note 4: Damage reporting is required for any serious accident or incident.

Note 5: MTX is an expediting service provided by the Association of American Railroads (AAR) for military carload shipments. This automated service uses a central computer file electronically linked with member railroads and is capable of reporting on single line and joint-line movements. Passing or progress reports are controlled by an MTX number assigned by the Area Command.

Note. 6: Interchange procedures between railroads, intermodal carriers, and with the government are vital to ensure continuity of security. Where needed, complete formal

Memorandum of Agreement between parties to ensure continuous protection is provided.

Note 7: For performance of RG, it may be more advantageous in some circumstances to have a railroad police officer, railroad employees (trained) other than police, or instructed personnel (trained), which could be contract security firm personnel, ride in a separate motor vehicle paralleling the train, rather than on the train. The railroad has the opinion to decide which is more secure.

Note 8: When carrier has identified areas, which are known trouble spots, shipments will be routed to avoid these areas or, if unavoidable, be expedited through these areas.

Item 180—MTMC Emergency Notification Numbers

1. The following toll-free (800) MTMC Hotline telephone numbers are for commercial transportation notification only. These numbers are to be used for reporting:

a. The holding of DOD shipments that cannot be delivered because the shipper or consignee cannot be adequately identified (astray freight).

b. In-transit serious accidents, incidents, delays or other emergencies involving DOD shipments.

2. Carriers located within the geographical jurisdiction of MTMC Easter Area Command shall telephone the following toll-free numbers to report:

Accidents, Incidents, Delays, or Other Emergencies—(800) 524–0331.

3. Carriers located within the geographical jurisdiction of MTMC Western Area Command shall telephone the following toll-free numbers to report:

Accidents, Incidents, Delays, or Other Emergencies—(800) 435–4566.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–23171 Filed 9–10–96; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Randleman Lake, Guilford and Randolph Counties, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Piedmont Triad Regional Water Authority (PTRWA) has applied for a Department of the Army permit to discharge fill material for the construction of a dam to impound water to form Randleman Lake. The dam would be about 15 miles south of the city of Greensboro, North Carolina, and would be located on the Deep River, a tributary of the Cape Fear River. Projected regional water demands indicate that existing water supplies are inadequate for future needs and that water shortages will occur shortly after the year 2000. The proposed lake would meet the projected water supply needs of the PTRWA member governments for approximately 50 years.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. John C. Meshaw, Environmental Resources Section; or Mr. E. David Franklin, Regulatory Branch, both at the U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402–1890; telephone: (910) 251–4175 or (910) 251–4952, respectively.

SUPPLEMENTARY INFORMATION: Construction of the dam for Randleman Lake will require a permit pursuant to Section 404 of the Clean Water Act, as amended, for the discharge of dredged or fill material into waters of the United States and their contiguous wetlands. The project would inundate 121 acres of jurisdictional wetlands and approximately 28 miles of rivers and streams.

1. The proposed 6,000-acre project would consist of a 3,000-acre lake and a 3,000-acre perimeter buffer strip. Randleman Lake would be constructed at the same dam site and conservation pool elevation which was authorized by the U.S. Congress in 1968 for the proposed Federal Randleman Lake multipurpose reservoir. Three major aspects of the currently proposed project which are different from the previously proposed Federal project include the following:

a. The project purpose is water supply only, not multipurpose.

b. Land requirements total approximately 6,000 acres rather than 10,000 acres.

c. Treated wastewater from the Highpoint Eastside Wastewater Treatment Plant would be released directly into the upstream portion of the lake rather than discharging through a sewer bypass to a point downstream from Randleman dam.

2. Alternatives to the proposed project include other water supply reservoirs, purchase of water from other municipalities, development of groundwater wells, water conservation, a combination of groundwater wells with a smaller reservoir, and no action. Other reservoir sites considered include Upper Deep River Lake, Altamahaw Lake, and a combination of two smaller sites at Benaja Lake and Polecat Creek Lake.

3. Public and agency review and input for the proposed project have been ongoing since 1988. An environmental impact statement (EIS) was prepared by the State of North Carolina in order to satisfy the requirements of the North Carolina Environmental Policy Act and North Carolina General Statutes 162A–7 and 153–285 concerning the use of the power of eminent domain and the interbasin transfer of water. The State's Draft EIS was circulated for review in July 1989; a public hearing was conducted on February 6, 1991; and the State's Final EIS was published on October 23, 1991. Subsequently, issues and concerns were discussed at an interagency scoping meeting conducted January 22, 1992, and at a meeting with the Deep River Citizens Association on February 25, 1992.

a. The public involvement program will continue through public announcements, letters, report review periods, telephone conversations, and meetings. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified that their participation is invited.

b. The significant issues to be addressed in the DEIS are the impacts of the project on wetlands, hydrology, water quality, aquatic resources, fish and wildlife habitat, cultural resources, transportation, and the social and economic conditions of the project area.

c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

d. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. No formal scoping meetings are planned at this time, but based on the responses received, meetings may be held with specific agencies or individuals as required.

5. The Draft EIS is currently scheduled for distribution to the public in fall 1996.

Dated: August 27, 1996.

Terry R. Youngbluth,

Lieutenant Colonel, U.S. Army District Engineer.

[FR Doc. 96–23172 Filed 9–10–96; 8:45 am]

BILLING CODE 3710–GN–M

Corps of Engineers

Inland Waterways Users Board

AGENCY: Corps of Engineers, Army Department, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on 8 October 1996 at the Edgewater Hotel in Seattle, Washington (Tel. 206–443–4300 or 800–426–9280). Registration will begin at 12:30 PM and the meeting is scheduled to adjourn at 5:00 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norma T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, DC 20314–1000.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–23174 Filed 9–10–96; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Construction of a Replacement Outfall for the Wastewater Treatment Plant at Fort Kamehameha, Pearl Harbor, Oahu, Hawaii

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed construction of a replacement outfall for the existing wastewater treatment plant (WWTP) at Fort Kamehameha, Pearl Harbor, Oahu, Hawaii.

The action covered by the EIS is replacement of the existing outfall, which discharges into the entrance channel of a Class 2 inland estuary, with a multiport deep ocean outfall which will discharge into Class A open coastal marine waters. The proposed outfall will reduce nutrient mass loading on the Pearl Harbor estuary. The proposed action is consistent with the State of Hawaii's management plan for the Pearl Harbor estuary, pursuant to Section 304(1) of the Clean Water Act. The EIS will analyze reasonable alternatives for disposal of secondary treated effluent and will assess their direct and cumulative environmental impacts.

Navy will initiate a scoping process to identify significant issues for study in the EIS and to identify and notify parties interested in and affected by the proposed action. It is important that interested agencies, individuals, and organizations take this opportunity to identify environmental concerns and feasible alternatives that should be addressed in the EIS. Public scoping meetings will be held on 1 and 2 October 1996, during which oral comments may be presented. To allow all views to be shared, each speaker will be asked to limit comments to five minutes.

Interested parties are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meetings. Scoping comments should clearly describe specific issues or topics that the EIS should address. The scoping period for receipt of comments will end on 18 October 1996.

DATES/LOCATIONS: Two public scoping meetings will be held on Oahu: (1) Honolulu, Oahu: October 1, 1996, 7:00 - 10:00 pm, Washington Intermediate School, 1633 South King Street, and (2) Pearl Harbor, Oahu: October 2, 1996, 7:00 - 10:00 pm, Makalapa Elementary School, 4435 Salt Lake Boulevard.

FOR FURTHER INFORMATION CONTACT: Written statements and/or questions regarding the scoping process should be mailed no later than October 18, 1996 to Mr. Melvin Kaku (Code 23), Pacific Division, Naval Facilities Engineering, Pearl Harbor, HI 96860, telephone (808) 471–9338; fax (808) 474–4890.

SUPPLEMENTARY INFORMATION: The proposed action consists of constructing a 12,000-foot long, 42-inch diameter wastewater outfall extension, which will discharge through a multiport diffuser at a water depth of between 70 and 150 feet.

Construction activities include excavating an underwater trench across the shallow offshore limestone reef and in the Pearl Harbor entrance channel, installing pipe in the trench, and covering pipe with protective material. Construction equipment and supplies will be staged in the immediate vicinity of the treatment plant. Construction on the reef will require installation of a temporary earthen berm for equipment access; the berm will be removed after pipe installation. Construction in the channel will be carried out from one or more barges. Approximately 30,000 cubic yards of excavated material will be disposed at an approved offshore dredged material discharge site. Outfall piping will be assembled on land and floated to the outfall alignment. Piping in the trench will be supported by gravel beds and capped with concrete mats or tremie concrete. In shallow water, the top of the protective concrete mats will be approximately even with or just below the existing bottom contour. In deep water, the protective layer will be one meter below the design maintenance dredge depth. Construction activities will occur over a period of approximately 18 months. The existing outfall will be retained for emergency operations.

Alternatives to be evaluated include (1) no action, (2) several outfall alignments with variations of construction methodology, dredged material disposal, and diffuser depth and length, and (3) upland disposal of wastewater effluent, either by reuse or disposal through underground injection wells. The alternative outfall alignments all exit the existing WWTP discharge pump station and terminate at a depth of between 70 and 150 feet; they differ in the locations at which they cross the shoreline reef flat and enter deeper water. Construction method options include use of barges, use of a temporary berm across the reef flat, and possibly directional drilling. Dredged materials may be used to construct a temporary berm, disposed at the existing approved offshore disposal site, or disposed at an undetermined upland location. The upland disposal/reuse alternative for wastewater consists of constructing infrastructure to further treat WWTP effluent and redirect it to an undetermined upland site. The upland/underground injection alternative consists of constructing underground injection wells at suitable locations for effluent disposal.

Environmental issues to be addressed will include, but not be limited to, effects on surface and ground water quality, terrestrial and aquatic habitats, threatened or endangered species, cultural resources, infrastructure, traffic, noise and the socioeconomic environment. Direct, indirect, and cumulative impacts will be analyzed, and mitigation measures will be developed as required. Related regulatory processes will include a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA), a Department of the Army permit under Section 404 of the CWA, and a Section 401 Water Quality Certification by the State of Hawaii Department of Health.

Dated: September 6, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–23198 Filed 9–10–96; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

The Delaware River Basin Commission will hold a special 35th Anniversary meeting on Thursday, September 19, 1996 beginning at 11:00 a.m. in the Concert Hall located in the Independence Seaport Museum at 211 South Columbus Boulevard and Walnut Street, Penn's Landing, Philadelphia, Pennsylvania. The meeting, which is open to the public, will commemorate the Commission's 35th year under the interstate-federal Delaware River Basin Compact.

Following a luncheon recess, the meeting will reconvene at 2:30 p.m. at the same location and will include the following subjects for public hearing:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Palmer Water Company D–81–24 CP RENEWAL 3.* Application for the renewal of a ground water withdrawal project to supply up to 35 million gallons (mg)/30 days of water to the applicant's distribution system for Well Nos. 4, 6, 7, Foundry Well and Well A. Commission approval on May 22, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 35 mg/30 days. The project is located in Palmerton Borough, Carbon County, Pennsylvania.

2. *Broad Run Valley, Inc. D–85–27 CP RENEWAL 2.* All application for the renewal of a ground water withdrawal project to supply up to 24 mg/30 days of water to the applicant's Wilkinson Farm water supply project from Well No. W–3. Commission approval on June 19, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 24 mg/30 days. The project is located in New Garden Township, Chester County, Pennsylvania.

3. *Woodloch Pines, Inc. D–89–57 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 9 mg/30 days of water to the applicant's potable distribution system and golf course irrigation system from Well Nos. 5, 6 and 9. Commission approval on August 8, 1990 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 9 mg/30 days. The project is located in Lackawaxen Township, Pike County, Pennsylvania.

4. *Evesham Municipal Utilities Authority D–93–38 CP.* An application for approval of a ground water withdrawal project to supply up to 29 mg/30 days of water to the applicant's distribution system from new Well No. 13 screened in the Mt. Laurel Aquifer, and to increase the existing withdrawal limit of 136 mg/30 days from all wells to 149 mg/30 days. The project is located in Evesham Township, Burlington County, New Jersey.

5. *Resorts USA, Inc. D–94–28–CP.* An application for approval of a ground water withdrawal project to supply up to 1.73 mg/30 days of water to the applicant's Country Club of the Poconos at Big Ridge distribution system from new Well No. 2, and to retain the existing withdrawal limit from all wells of 3.7 mg/30 days. The project is located in Middle Smithfield Township, Monroe County, Pennsylvania.

6. *Warwick Township Water and Sewer Authority D–94–72 CP.* An application for the approval of a ground water withdrawal project to supply up to 5.0 mg/30 days of water to the applicant's distribution system to serve the proposed Country Crossing residential development and the High Pointe industrial complex from new Well Nos. 9, 10 and 11. The applicant requests that the total withdrawals from all wells remain limited to 22.0 mg/30 days. The project is located in Warwick Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Mantua Township Municipal Utilities Authority D–95–36 CP.* An application for an increased withdrawal of water from previously approved Well Nos. 2 through 8 in the applicant's water supply system. The applicant requests that the withdrawal from Well Nos. 2 through 8 be increased from 37 mg/30 days to 47 mg/30 days. The project is located in Mantua Township, Gloucester County, New Jersey.

8. *Borough of Clayton D–95–45 CP.* An application for approval of a ground water withdrawal project to supply up to 15 mg/30 days of water to the applicant's distribution system from new Well No. 6, and to increase the existing withdrawal limit of 27.7 mg/30 days from all wells to 31 mg/30 days. The project is located in Clayton Borough, Gloucester County, New Jersey.

9. *Township of Medford D–95–55 CP.* An application for approval of a ground water withdrawal project to supply up to 28 mg/30 days of water to the applicant's distribution system from new Well Nos. 14, 15 and 16, and to increase the existing withdrawal limit of 68.7 mg/30 days from all wells to 77 mg/30 days. The project is located in Medford Township, Burlington County, New Jersey.

10. City of Millville D–96–5 CP. An application for approval of a ground water withdrawal project to supply up to 43.2 mg/30 days of water to the applicant's distribution system from new Well No. 17, and to retain the existing withdrawal limit from all wells of 200 mg/30 days. The project is located in the City of Millville, Cumberland County, New Jersey.

11. *Borough of Pemberton D–96–7 CP.* An application for approval of a ground water withdrawal project to supply up to 10.5 mg/30 days of water to the applicant's distribution system from new Well Nos. 4 and 5, and to limit the withdrawal limit from all wells to 10.5 mg/30 days. The project is located in Pemberton Borough, Burlington County, New Jersey.

12. *Keystone Hollow Corporation D–96–14.* An application for approval of a ground water withdrawal project to supply up to 12 mg/30 days of water to the applicant's Great Bear Golf and Country Club irrigation system from new Well Nos. 1, 2 and 3, and to limit the withdrawal from all wells and ponds to mg/30 days. The project is located in Middle Smithfield Township, Monroe County, Pennsylvania.

13. *Borough of Bowmanstown D–96–22 CP.* A project to construct a 0.2 mgd sewage treatment plant (STP) to serve the Borough of Bowmanstown in Carbon County, PA. The proposed STP will provide secondary biological treatment utilizing the activated sludge sequencing batch reactor process. The STP will be located just off Lincoln Avenue on the east side of the Lehigh River to which the treated effluent will discharge after chlorination.

14. *Pennsylvania Department of Conservation and Natural Resources D–96–23 CP.* A project to modify the applicant's existing 0.2 mgd STP serving the Nockamixon State park in Bedminster, East Rockhill, Haycock and Nockamixon Townships, all in Bucks County, PA. The existing extended aeration activated sludge secondary biological treatment process will be changed to a sequencing batch reactor type activated sludge process. The STP is situated downstream of the Tohickon Dam and will continue to discharge to Tohickon Creek just downstream of the

dam after tertiary filtration and chlorine disinfection.

15. *Warwick Township Water & Sewer Authority D–96–24 CP.* A project to construct a 0.12 mgd STP to serve residential and industrial development in an area currently served only by on-lot systems. The STP will be located just north of the intersection of Bristol and Mearns Roads and west of an unnamed tributary of Little Neshaminy Creek, to which it will discharge, in Warwick Township, Bucks County, PA. The STP will utilize the sequencing batch reactor activated sludge process to provide secondary biological treatment. Ultraviolet disinfection will be provided prior to discharge.

16. *Tobyhanna Township D–96–29 CP.* A proposed municipal STP that will provide 0.3 mgd of treatment capacity to serve the Blakeslee Corners area of Tobyhanna Township which has experienced failure of on-lot disposal systems. The new STP will provide advanced secondary biological treatment, tertiary filtration, and ultraviolet disinfection prior to discharge to Tobyhanna Creek, approximately 1,000 feet upstream of State Route 115 in Tobyhanna Township, Monroe County, PA.

17. *Middletown Township D–96–32.* An application for approval of a ground water withdrawal project to supply up to 4 mg/30 days of water to irrigate the applicant's Middletown Country Club golf course from new Well No. 1G, and to limit the withdrawal from all sources to 4 mg/30 days. The project is located in Middletown Township, Bucks county in the Southeastern Pennsylvania Ground Water Protected Area.

18. *Burlington Township D–95 35 CP.* A project to upgrade and expand the applicant's Central Avenue STP from 1.65 mgd to 3.65 mgd, and to relocate the outfall from Tanners Run, a tidal tributary of the Delaware River, to the mainstream of the Delaware River in Water Quality Zone 2. The STP will continue to serve Burlington Township and is located on Central Avenue in Burlington Township, Burlington County, NJ.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: September 3, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–23117 Filed 9–10–96; 8:45 am]

BILLING CODE 6360–01–P–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 12, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 5, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Extension.
Title: The Direct Loan Quality Assurance Planning Guide (Phase 1).
Frequency: Semi-annually and annually.
Affected Public: Business or other for-profit; Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 450.
Burden Hours: 7,200.
Abstract: Student Financial Aid, Federal Aid Programs, Financial Aid Administrators, and their staffs will evaluate the full scope of their delivery systems and office procedures in the context of Federal Student Aid requirements as outlined in the *Direct Loan Quality Assurance Planning Guide (Phase 1).*

[FR Doc. 96–23161 Filed 9–10–96; 8:45 am]

BILLING CODE 23161

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 11, 1996.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 5, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.
Title: William D. Ford Federal Direct Loan Program, Loan Discharge Application Documents.
Frequency: On Occasion.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 3,000.
Burden Hours: 1,500.
Abstract: These forms will serve as the means of collecting the information that the Department of Education requires in order to determine whether a direct loan borrower qualifies for a loan discharge based on school closure, false certification of student eligibility, or unauthorized signature.

Office of Postsecondary Education

Type of Review: Revision.
Title: Student Aid Report (SAR).
Frequency: Annually.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 9,395,776.
Burden Hours: 3,882,726.
Abstract: The Student Aid Report is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Office of Management

Type of Review: Reinstatement.
Title: Education Department General Administrative Regulations (EDGAR) for grants, 34 CFR Parts 74, 75, 76, and 80.
Frequency: Annually.
Affected Public: Business or other for-profit; Not for profit institutions; State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 36,000.
Burden Hours: 690,000.
Abstract: These collections are necessary for the award and administration of discretionary and formula grants. The collections specific to ED forms are part of the reinvented process ED uses for awarding multi-year discretionary grants. The new process substantially increases flexibility of the grant process by enabling all years of multi-year budgets to be negotiated in at the time of initial award, (ED Form 524), and to submit only performance report (ED Form 524–B) instead of an entire noncompeting continuation (NCC) package to receive NCC funding. This clearance also includes government-wide common rules for Institutions of Higher Education, Non-Profits (A–110), and State and Local Governments (A–102).

[FR Doc. 96–23160 Filed 9–10–96; 8:45 am]
BILLING CODE 4000–01–M

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: September 26, 1996, 8 a.m. to 5 p.m.; September 27, 1996, 8 a.m. to 3:30 p.m.

ADDRESS: First Floor Conference Room, 80 F St., N.W., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., N.W., Washington, D.C. 20208–7564. *Telephone:* (202) 219–2065; Fax: (202) 219–1528. *Internet:* John Christensen@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Act directs the Board to provide guidance to the Congress in its overnight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public.

The agenda for September 26 will center on the Board's by-laws and budget for FY 97 and its review and approval of a long-term Educational Research Priorities Plan. On September 27, the Board will give further consideration to the implementation of the Research Priorities Plan, and to Phase Three of the Standards for the Conduct and Evaluation of Research, Assessing Performance on Contracts, Grants, and Cooperative Agreements. A

final agenda will be available from the Board's office on September 19.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., NW Washington, D.C. 20208–7564.

Dated: September 5, 1996.

Eve M. Bither,

Executive Director.

[FR Doc. 96–23055 Filed 9–10–96; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education; Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the requirement that an institution shall use at least 5 percent of the total amount of its Federal Work-Study (FWS) Federal funds granted for the 1996–97 award year to compensate students employed in community service jobs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the statutory requirement that an institution shall use at least 5 percent of its total FWS Federal funds granted for the 1996–97 award year (July 1, 1996 through June 30, 1997) to compensate students employed in community service jobs.

DATES: Closing Date for submitting a Waiver Request and any Supporting Information or Documents: October 18, 1996. An institution must mail or hand-deliver its waiver request and any supporting information or documents on or before October 18, 1996. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Institutional Financial Management Division at one of the addresses indicated below.

ADDRESSES: Waiver Request and any Supporting Information or Documents Delivered by Mail. The waiver request and any supporting information or documents delivered by mail must be addressed to Ms. JoAnn Pease, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781.

An applicant must show proof that the applicant mailed its waiver request by October 18, 1996. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail. Institutions that submit waiver requests and any supporting information or documents after the closing date will not be considered for a waiver.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. A waiver request and any supporting information or documents delivered by hand must be taken to Ms. JoAnn Pease, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

Hand-delivered waiver requests will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. A waiver request for the 1996–97 award year that is hand-delivered will not be accepted after 4:30 p.m. on October 18, 1996.

SUPPLEMENTARY INFORMATION: Under section 443(b)(2)(A) of the Higher Education Act of 1965, as amended (HEA), an institution must use at least 5 percent of the total amount of its FWS Federal funds granted for an award year to compensate students employed in community service. The Secretary may waive this requirement if the Secretary determines that enforcing it would cause hardship for students at the institution. The institution must submit a written waiver request and any supporting information or documents by the established October 18, 1996 closing date.

The waiver request must be signed by an appropriate institutional official and above the signature the official must include the statement: "I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education." If the institution submits a waiver request and any supporting information or documents after October 18, 1996, the request will not be considered.

To receive a waiver, an institution must demonstrate that complying with the 5 percent requirement would cause hardship for students at the institution. To allow flexibility to consider factors that may be valid reasons for a waiver, the Secretary is not specifying the specific circumstances that would support granting a waiver. However, the Secretary does not foresee many instances in which a waiver will be granted. The fact that it may be difficult for the institution to comply with this provision of the HEA is not a basis for granting a waiver.

Applicable Regulations

The following regulations apply to the Federal Work-Study program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Work-Study Programs, 34 CFR Part 675.

(3) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(4) New Restrictions on Lobbying, 34 CFR Part 82.

(5) Government Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(6) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: To receive information, contact Ms. JoAnn Pease, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. Telephone (202) 708–9797. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 42 U.S.C. 2753).

(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program)

Dated: August 30, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–23214 Filed 9–10–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to section 131.a.(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160(a)(1)), notice is hereby given of a proposed "subsequent arrangement" for the "storage or disposition of irradiated fuel elements" within the meaning of subsection 131.a.(2)(E). The subsequent arrangement to be carried out involves the acceptance and management in the United States of up to 19.2 metric tons of heavy metal (MTHM) of foreign research reactor spent nuclear fuel in up to approximately 22,700 individual spent fuel elements, and up to an additional 0.6 MTHM of target material. The subject spent nuclear fuel and targets contain highly enriched (weapons-usable) uranium that was enriched in the United States.

In a Record of Decision published on May 17, 1996 (61 Fed. Reg. 25092), the Secretary of Energy announced a decision to implement a new foreign research reactor spent fuel acceptance program as specified in the Preferred Alternative contained in the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS–218F, February 1996) subject to additional stipulations specified in section VII of the Record of Decision. The Department of Energy (DOE) will implement the program over the next 13 years by entering into specific contracts with individual research reactor operators in the countries listed below.

The spent fuel and target material would come from the listed countries, provided that the affected research reactor operators enter into contracts with DOE to govern the shipment of the material and its acceptance by DOE. While the requirements of section 131.a.(1) apply only to a subsequent arrangement under an agreement for cooperation as defined by section 11.b. of the Atomic Energy Act (42 U.S.C. 2014(b)), the Department has decided as a matter of discretion to publish this notice with respect to all shipments to be received in the United States from the listed countries regardless of whether the nuclear material is being transferred under or outside of an agreement for cooperation.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Table 1

Argentina
Australia
Austria
Bangladesh
Belgium
Brazil
Canada
Chile
Colombia
Denmark
Finland
France
Germany
Greece
Indonesia
Iran
Israel
Italy
Jamaica
Japan
Malaysia
Mexico
Netherlands
Pakistan
Peru
Philippines
Portugal
Romania
Slovenia
South Korea
South Africa
Spain
Sweden
Switzerland
Taiwan
Thailand
Turkey
United Kingdom
Uruguay
Venezuela
Zaire

Dated: September 5, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–23179 Filed 9–10–96; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BPI which establishes the procedures BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, and the Bonneville Financial Assistance Instructions (BFAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $15 and $10 each, respectively.

ADDRESSES: Copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CD, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: The Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes; pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services which it requires. The BPI is available on two 3½ inch diskettes in Microsoft's Word for Window's format in addition to the printed version. Please specify which is desired when placing the order. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.*, and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21: Cost principles applicable to grants, contracts, and other agreements within institutions of higher education.

A–87: Cost principles applicable to grants, contracts, and other agreements with State and local governments.

A–102: Uniform administrative requirements for grants in aid to State and local governments, and the common rule.

A–110: Grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.

A–12: Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–128: Audits of State and local governments. BPA's solicitations include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on August 29, 1996.

Steven C. Kallio,

Manager, Contracts and Property Management.

[FR Doc. 96–23186 Filed 9–10–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM97–1–20–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Algonquin Gas Transmission Company (Algonquin) filed to update its Annual Charge Adjustment (ACA). Algonquin tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, and Original Volume No. 2, of the following revised tariff sheets, with a proposed effective date of October 1, 1996:

Fourth Revised Volume No. 1

Thirteenth Revised Sheet No. 21
Thirteenth Revised Sheet No. 22
Tenth Revised Sheet No. 23
Tenth Revised Sheet No. 24
Tenth Revised Sheet No. 25
Tenth Revised Sheet No. 27
Ninth Revised Sheet No. 29
Ninth Revised Sheet No. 31
Ninth Revised Sheet No. 35
First Revised Sheet No. 36
First Revised Sheet No. 37

Original Volume No. 2

Tenth Revised Sheet No. 259
Ninth Revised Sheet No. 343
Seventh Revised Sheet No. 431

Algonquin states that this filing decreases its current ACA charge by $.0003 per MMBtu to $0.0020 per MMBtu.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.10 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23139 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–373–000, RM96–14–001]

Boston Gas Company and Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Filing

September 5, 1996.

Take notice that on August 30, 1996, Boston Gas Company tendered for filing in Docket No. RM96–14–001 an application to participate in the Commission's Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions. Boston Gas is a local distribution company that serves approximately 40,000 commercial and industrial customers and 480,000 residential customers in the metropolitan Boston area. Its public utility activities are subject to regulation by the Massachusetts Department of Public Utilities ("MassDPU").

On May 17, 1996, Boston Gas on its own initiative filed proposed tariff sheets with the MassDPU to unbundle its firm transportation service and to withdraw entirely from the merchant business. Hearings on the proposal have concluded, and the MassDPU will act on the proposal no later than November 29, 1996. Boston Gas states that it is willing to accept contingent approval of its application subject to action taken by the MassDPU.

Boston Gas submits that its unbundling proposal is consistent with the pilot program and that its phased departure from the merchant business will remove the potential to exercise market power within Boston Gas' service territory. Under Boston Gas' timetable, unbundled sales and transportation service will be available to all of its commercial and industrial customers effective December 1, 1996, and to all residential customers effective November 1, 1997. The proposal includes a capacity assignment program which will enable customers to choose their own marketers and permit these marketers to offer competitive prices for gas supply delivered to the Company's city-gate stations. Boston Gas states that thirteen gas marketers are currently competing for this business.

Any person desiring to comment on or to protest Boston Gas's application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 and with the Commission's notice in Docket No. RM–96–14–001. All such motions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Boston Gas' application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23154 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–120–000]

Carnegie Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing and acceptance the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1996:

Ninth Revised Sheet No. 7

CIPCO states that the above tariff sheet has been revised to reflect a modification to the Annual Charge Adjustment fee. CIPCO was not assessed any annual charges this year and, therefore, reduced its ACA to zero. CIPCO reserved all rights to refile its ACA in the event that it is assessed ACA charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations.

All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23150 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–371–000]

Cleveland Electric Illuminating Company; Notice of Filing

September 5, 1996.

Take notice that on July 29, 1996, Cleveland Electric Illuminating Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23138 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

September 5, 1996.

Take notice that on August 30, 1996, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 11A, with a proposed effective date of October 1, 1996.

CIG states that the tariff sheet reflects an increase in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.58% to 0.62%, reflecting an increase in the fuel retention percentage for Transportation Fuel Gas from 2.32% to 2.39%, and reflecting a decrease in the fuel retention percentage for Storage Fuel Gas from 1.36% to 1.25% effective October 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must give a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23133 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–2–32–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Colorado Interstate Gas Company, (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Eighteenth Revised Sheet No. 11, with an effective date of October 1, 1996.

CIG states that the tariff sheet reflects an ACA rate of $0.0020 per Dth based on CIG's 1996 ACA billing.

CIG requests that the new $0.0020 cent per Dth ACA charge be effective October 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23140 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–355–000, RP96–356–000, RM96–14–001]

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application to Participate in Experimental Pilot Program and of Proposed Changes in FERC Gas Tariffs

September 5, 1996.

Take notice that on August 30, 1996, Columbia Gas Transmission Corporation (Transmission) and Columbia Gulf Transmission Company (Gulf) [together Columbia] each filed the following revised tariff sheets to their FERC Gas Tariffs, Second Revised Volumes No. 1 bearing a proposed effective date of November 1, 1996:

Columbia Gas Transmission Corporation

Second Revised Sheet No. 295
Third Revised Sheet No. 352
Third Revised Sheet No. 353
Third Revised Sheet No. 354

Pro Forma Tariff Sheets

Sheet No. 262
Sheet No. 485
Sheet No. 486
Sheet No. 487
Sheet No. 488

Columbia Gulf Transmission Company

Fourth Revised Sheet No. 154
Original Sheet No. 154A
Fifth Revised Sheet No. 192
Second Revised Sheet No. 193
Fourth Revised Sheet No. 194
Second Revised Sheet No. 194A
Third Revised Sheet No. 195

Pro Forma Tariff Sheets

Sheet No. 125
Sheet No. 281
Sheet No. 282

Sheet No. 283
Sheet No. 284

Transmission and Gulf state that the purpose of their filing is to implement the necessary tariff changes so that Transmission and Gulf can each participate in the Commission's Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions (Pilot Program) issued in Docket No. RM96–14–001 on July 31, 1996.

The non-pro forma tariff sheets have an effective date of November 1, 1996, and they contain changes to reflect early implementation on a permanent basis of the capacity release timeline proposed by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587. Transmission and Gulf request a waiver of 18 CFR 154.207 to permit the filing of these tariff sheets at this time to be effective November 1, 1996. The pro forma tariff sheets contain changes to reflect Transmission's and Gulf's participation in the Pilot Program. All of the tariff changes are explained in detail in the filing.

Gulf's Fourth Revised Sheet No. 154 requires some explanation. The new changes reflected on that sheet are being made on the version of that tariff sheet (Third Revised Sheet No. 154) which Gulf filed with other tariff sheets initiating Docket No. RP96–283. Revised Sheet No. 154—while accepted (to be effective January 1, 1997)—remains subject to the outcome of technical conference proceedings in that docket. However, Gulf states that the changes reflected on Third Revised Sheet No. 154 in Docket No. RP96–283 were not protested, and reflect a proposed implementation of more liberal nomination deadlines and intra-day nomination changes. Consequently, in this filing, Gulf has made further revisions to Third Revised Sheet No. 154 to reflect the early implementation of GISB's capacity release timeline, and respectfully requests that Fourth Revised Sheet No. 154 submitted with this filing be accepted and suspended to be effective November 1, 1996. In order to grant this request, Gulf requests a waiver of 18 CFR 154.205.

Transmission and Gulf state that copies of their filing have been mailed to all firm customers, affected state commissions and interruptible customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed within 15 days and comply with the requirements of Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23127 Filed 9–10–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM97–1–127–000]

Cove Point LNG Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Cove Point LNG Limited Partnership (Cove Point LNG) tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1996:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7

Cove Point LNG states that the listed tariff sheets set forth the adjustment to its rates applicable to the Annual Charge Adjustment (ACA), pursuant to the Commission's Regulations and Section 23 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Cove Point LNG states further that it has recalculated the Commission's revised ACA rate per Mcf of $0.0020 to a rate per Dth of $0.0020. The adjusted ACA Unit Surcharge will be billed for the fiscal year commencing October 1, 1996.

Cove Point LNG states that copies of the filing were served upon Cove Point LNG's affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Cove Point LNG's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23146 Filed 9–10–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM97–1–33–000]

El Paso Natural Gas Company; Notification of Annual Charge Adjustment

September 5, 1996.

Take notice that on August 30, 1996, El Paso Natural Gas Company (El Paso), tendered for filing pursuant to Subpart E of part 154 of the Commission's Regulations Under the Natural Gas Act, a notice that El Paso's Annual Charge Adjustment (ACA) will remain $0.0023 per dth as reflected on its currently effective Statement of Rates Sheets.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23151 Filed 9–10–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM97–1–113–000]

Gasdel Pipeline System, Inc.; Notice of Change in Annual Charge Adjustment

September 5, 1996.

Take notice that on August 30, 1996, Gasdel Pipeline System, Inc. (Gasdel) tendered for filing and acceptance to be

a part of its FERC Gas Tariff, First Revised Volume No. 1–A, Fifth Revised Sheet No. 5, with a proposed effective date of October 1, 1996.

Gasdel states that the purpose of this filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1996 fiscal year.

Gasdel states that copies of the filing have been mailed to all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23149 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–370–000, RM96–14–001]

Kern River Gas Transmission Company and Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application to Participate in Experimental Pilot Program

September 5, 1996.

Take notice that on August 30, 1996, Kern River Gas Transmission Company (Kern River) filed with the Commission an application to participate in the experimental pilot program announced by the Commission in Docket No. RM96–14–000. The markets proposed by Kern River for inclusion in the program are California and Nevada.

According to its application, Kern River lacks market power in its origin market of Southwestern Wyoming and its destination markets in Nevada and California. Kern River states that, at the interstate level, it competes with El Paso Natural Gas Company, Transwestern Pipeline Company, Pacific Gas Transmission Company and Mojave Pipeline Company for California services. Kern River states that it serves California markets through twenty-seven (27) delivery points, including 25 connections serving end-use markets and two connections (one each) with Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal). Kern River states that of the 25 direct connection delivery facilities, all are connected to Mojave (in addition to Kern River) and 20 are dually connected to either PG&E or SoCal. Kern River further states that the current regulatory and market climate within the state qualify the California delivery points under the experimental program.

According to Kern River, the Nevada markets are also sufficiently competitive to permit certain cap-free services. Most of Kern River's Nevada deliveries are off-loaded into the facilities of Southwest Gas Company, a local distribution company offering unbundled, open-access transportation to non-core customers. Kern River states that, in relative terms, its contractual service obligations account for less than 24% of the daily (contract) requirements of that market.

Kern River propose to provide short-term firm, interruptible and authorized overrun services free of price cap constraints. In addition, Kern River proposes to include in the program capacity released by its firm shippers. Kern River states that it will treat all secondary market transactions on a comparable basis in terms of scheduling and administration. Kern River proposes an effective date of October 1, 1996 with a termination date of September 30, 1997, or one year after the program's inception.

Any person desiring to comment on or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 8788 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such interventions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23156 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–25–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Mississippi River Transmission Corporation (MRT), tendered for filing to become part of its FERC Gas Tariff, Third Revision Volume No. 1, Ninth Revised Sheet No. 10, with a proposed effective date of October 1, 1996.

MRT states that the purpose of the instant filing is to report the currently effective ACA charge in MRT's rates based on the new FERC approved surcharge of $0.0023 per Mcf effective October 1, 1996 in accordance with Section 23 of MRT's FERC Gas Tariff. The Mcf rate of $0.0023 divided by MRT's system Btu factor for the 12 months ended December 31, 1995 of 1.029 converts to a MMBtu rate of $0.0022 which is the same as MRT's currently effective ACA surcharge.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23134 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–92–000]

Mojave Pipeline Company; Notification of Annual Charge Adjustment

September 5, 1996.

Take notice that on August 30, 1996, Mojave Pipeline Company (Mojave), tendered for filing pursuant to Subpart E of Part 154 of the Commission's Regulations Under the Natural Gas Act, a notice that Mojave's Annual Charge Adjustment (ACA) will remain $0.0023 per dth as reflected on its currently effective Statement of Rates Sheets.

Mojave states that copies of the filing were served upon all of Mojave's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23148 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–372–000, RM96–14–001]

Mountaineer Gas Company and Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application

September 5, 1996.

Take notice that on August 30, 1996, Mountaineer Gas Company (Mountaineer) filed and application to participate in the Commission's experimental pilot program for capacity release transactions. Mountaineer requests authorization to release capacity on Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) at prices in excess of the pipelines' maximum tariff rates. According to Mountaineer, the company provides open access transportation on its local distribution facilities and does not exercise market power in its service territory. Mountaineer also states that both Columbia pipelines have agreed to implement the Business Practices Rule and provide the required reporting data. Mountaineer also agrees to provide the necessary reporting data.

Any person desiring to comment on or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such interventions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Mountaineer's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Louis D. Cashell,

Secretary.

[FR Doc. 96–23155 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–353–000; RM96–14–001]

National Fuel Gas Distribution Corporation; Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application to Participate in Pilot Program

September 5, 1996.

Take notice that on August 30, 1996, National Fuel Gas Distribution Corporation (National Fuel Distribution) tendered for filing an application to participate in the "Proposed Experimental Pilot Program To Relax The Price Cap for Secondary Market Transactions" (Pilot Program), promulgated in Docket No. RM96–14–001.

Through its application, National Fuel Distribution seeks a finding that it lacks market power on its upstream pipelines in the relevant area and that those upstream pipelines likewise lack market in the relevant area.

National Fuel Distribution seeks permission for itself and the majority of its upstream pipelines to participate in the Pilot Program for the period of the 1996–1997 winter season with the opportunity to extend the program. The pipelines agreeing to participation in the Pilot Program with National Fuel Distribution for the 1996–1997 winter period are Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Company, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Corporation.

National Fuel Distribution requests that CNG Transmission Corporation's and Tennessee Gas Pipeline Company's participation at some future date be conditioned upon their complying with the comparability and reporting requirements provision of the Pilot Program.

Further, National Fuel Distribution requests that the reporting requirements be modified so as: (1) to provide only aggregated information, or in the alternative to preserve the identity of shippers in filed reports; (2) to provide National Fuel Distribution and its participating upstream pipelines with at least six months in which to file the requisite information; and (3) to require annual reporting, or in the alternative, quarterly reporting rather than monthly.

Any person desiring to comment on or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23128 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–367–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets to become effective October 1, 1996:

Third Revised Volume No. 1

Ninth Revised Sheet No. 5
Seventh Revised Sheet No. 5–A
Fourth Revised Sheet No. 6
Fourth Revised Sheet No. 7
Eighth Revised Sheet No. 8
Third Revised Sheet No. 8.1
First Revised Sheet No. 34
Second Revised Sheet No. 65
First Revised Sheet No. 95
Fourth Revised Sheet No. 200
Fourth Revised Sheet No. 271
Second Revised Sheet No. 272

Third Revised Sheet No. 273

Original Volume No. 2

Twenty-Second Revised Sheet No. 2
Eighteenth Revised Sheet No. 2.1
Twenty-First Revised Sheet No. 2–A

Northwest states that the proposed changes would increase revenues from jurisdictional services by approximately $28.1 million based on the 12-month period ending May 31, 1996, as adjusted.

Northwest states that its revenue requirement has increased due to increased cost of service, primarily as a result of (1) the sale of a significant undivided interest in Northwest's South End facilities and the corresponding effect of the removal of facility costs from rate base and the elimination of the South End revenue credit, (2) increased depreciation expenses related to proposed increases in depreciation rates, the implementation of negative net savage allowances and the construction of new facilities, and (3) increased operating and maintenance expenses.

Northwest states that its proposed tariff sheets are submitted to revise its statement of rates tariff sheets and to eliminate tariff provisions that require 90/10 sharing of interruptible transportation service revenues over the allocated cost level.

Northwest states that it has served copies of its filing on all affected customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23125 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–751–000]

Panhandle Eastern Pipe Line Company; Notice of Application

September 5, 1996.

Take notice that on August 28, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642 filed in Docket No. CP96–751–000 a request for authorization pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to operate certain existing facilities located in Darke and Shelby Counties, Ohio as NGA jurisdictional facilities and to provide NGA jurisdictional service on the subject facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it constructed facilities pursuant to Section 311(a)(1) of the Natural Gas Policy Act (NGPA) and Subpart B of Part 284 of the Commission's Regulations in Darke and Shelby Counties, Ohio in order to provide transportation services for various firm transportation and storage customers. Panhandle now requests that these facilities (the Glen Karn Pipeline and the Shelby County Pipeline) be certificated as jurisdictional and that it be authorized to provide NGA jurisdictional services under Section 284 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 26, 1996, file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 or Section 385.214) and the Regulations under the Natural Gas Act (18 CFR Section 157.10). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23129 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No.; TM97–1–55–000]

Questar Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Questar Pipeline Company, (Questar) pursuant to Section 154.402(c) and Section 382.201 of the Commission's Regulations, tendered for filing and acceptance to become of its FERC Gas Tariff, the following sheets, to be effective October 1, 1996:

First Revised Volume No. 1

Sixth Revised Sheet No. 5
Fifth Revised Sheet No. 5A
Sixth Revised Sheet No. 6
Fourth Revised Sheet No. 6A

Original Volume No. 3

Seventeenth Revised Sheet No. 8

Questar states that this filing incorporates into its storage and transportation rates the annual charge unit rate of $0.00203 per Mcf as adjusted by Questar's Btu factor of 1.062.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests

must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23132 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–8–000]

South Georgia Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheets, with a proposed effective date of October 1, 1996:

Fifth Revised Sheet No. 5
Fifth Revised Sheet No. 6
Second Revised Sheet No. 91

South Georgia states that the aforesaid tariff sheets implement the Commission's revised Annual Charge Adjustment (ACA) of .20¢ per MMBtu. This represents a decrease of .03¢ per MMBtu in the ACA charge from the current level of .23¢ per MMBtu.

South Georgia states that copies of South Georgia's filing were served upon all of South Georgia's customers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214, 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23145 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–376–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

September 5, 1996.

Take notice that on August 30, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of September 1, 1996:

Thirteenth Revised Sheet No. 14
Thirty Fifth Revised Sheet No. 15
Thirteenth Revised Sheet No. 16
Thirty Fifth Revised Sheet No. 17
Twenty Third Revised Sheet No. 29

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, due to an increase in GSR billing units effective September 1, 1996, a credit for excess firm transportation reservation quantities and the removal of a credit for excess firm transportation reservation quantities included in its July 31, 1996 filing in the above referenced dockets.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23141 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–7–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Southern Natural Gas Company (Southern) tendered for filing to become part its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets, with a proposed effective date of October 1, 1996:

Fourteenth Revised Sheet No. 14
Fifth Revised Sheet No. 14a
Thirty-six Revised Sheet No. 15
Twelfth Revised Sheet No. 15a
Fourteenth Revised Sheet No. No. 16
Fifth Revised Sheet No. 16a
Thirty-six Revised Sheet No. 17
Twelfth Revised Sheet No. 17a
Twentieth Revised Sheet No. 18
Fifth Revised Sheet No. 18a
Fourth Revised Sheet No. 194

Southern states that the aforesaid tariff sheets implement the Commission's revised annual charge adjustment of .20¢ per MMBtu of October 1, 1996.

Southern states that copies of Southern's filing were served upon all of Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214, 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23144 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–375–000]

Southern Natural Gas Company; Notice of GSR Cost Recovery Filing

September 5, 1996.

Take notice that on August 30, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised

Volume No. 1, the following tariff sheets with the proposed effective date of October 1, 1996:

Tariff Sheets Applicable to Contesting Parties:

Fifteenth Revised Sheet No. 14
Thirty-Seventh Revised Sheet No. 15
Fifteenth Revised Sheet No. 16
Thirty-Seventh Revised Sheet No. 17
Twenty-First Revised Sheet No. 18
Twenty-Fourth Revised Sheet No. 29

Tariff Sheets Applicable to Supporting Parties:

Sixth Revised Sheet No. 14A
Thirteenth Revised Sheet No. 15A
Sixth Revised Sheet No. 16A
Thirteenth Revised Sheet No. 17A

Southern sets forth in the filing its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under unrealigned gas supply contracts or contract buyout costs associated with continuing realignment efforts as well as sales function costs during the period May 1, 1996 through July 31, 1996. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23152 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–756–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

September 5, 1996.

Take notice that on August 29, 1996, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed a request with the Commission in Docket No. CP96–756–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct a delivery point in Shelby County, Texas, to provide interruptible transportation service deliveries for Four Square Gas Company, Inc. and the City of Chireno, collectively referred to as (Customers), herein. The Commission granted Texas Eastern a blanket construction certificate issued on November 5, 1982 in Docket No. CP82–535–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and install a 2-inch tap valve and 2-inch check valve on Texas Eastern's 24-inch Line No. 11, located approximately at Mile Post 225.70 in Shelby County, Texas (Tap). The Customers would install a single 2-inch turbine meter (Meter Station), approximately 50 feet of 2-inch pipeline which would extend from the Meter Station to the Tap (Connecting Pipe), and the electronic gas measurement equipment (EGM). Texas Eastern states that the Customers have agreed to reimburse Texas Eastern for 100% of the costs and expenses that Texas Eastern would incur for installing the Tap and for reviewing and inspecting the installation of the Meter Station and Connecting Pipe and EGM to be done by the Customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23135 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–378–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

September 5, 1996.

Take notice that on September 3, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, tariff sheets listed on Appendix E to the filing, to become effective November 1, 1996.

Texas Eastern states that the purpose of the filing is (1) to modify Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1 to remove the voluminous tables of data representing Texas Eastern's Segment Capacity Entitlements and Firm Receipt Point Entitlements, which are reflected on its electronic bulletin board, the LINK system and (2) to make its report pursuant to Section 9.1 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1 of recalculated November 1, 1996 Operational Segment Capacity Entitlements, along with supporting documentation explaining the basis for changes.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 an d385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23143 Filed 9–10–96; 8:45 a.m.]

BILLING CODE 6717–01–M

[Docket No. TM97–2–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC GAS Tariff, First Revised Volume No. 1, the following tariff sheet, with a proposed effective date of November 1, 1996:

Fourth Revised Sheet No. 14

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 "Fuel Retention" as found in the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1. Texas Gas states that the revised EFRP may be in effect for the annual period November 1, 1996, through October 31, 1997.

Texas Gas states that copies of the tariff sheets are being mailed to Texas Gas's affected customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23131 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–365–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice on August 30, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of the tariff sheets is October 1, 1996.

Transco states that the purpose of the instant filing is to revise Transco's FERC Gas Tariff in order to comply, in part, with the regulations adopted pursuant to Order No. 582 et seq. Specifically, the revised tariff sheets submitted therein are intended to bring Transco's tariff into compliance with the requirements of Section 154.107 of the Commission's Regulations.

Transco is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23126 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–368–000; Docket No. RM96–14–001]

Washington Gas Light Company; Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application of Washington Gas Light Company to Participate in Proposed Experimental Pilot Program To Relax the Price Cap for Secondary Market Transactions

September 5, 1996.

Take notice that on August 30, 1996, Washington Gas Light Company (Washington Gas) filed an Application to Participate in the "Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions" pursuant to the Commission's notice issued July 31, 1996, in Docket No. RM96–14–001. Washington Gas states that it qualifies for participation in the proposed pilot program.

Washington Gas states that copies of its filing are available for inspection at its offices at 1100 H Street, NW., Washington, DC.

Any person desiring to comment on or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23124 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–377–000]

West Texas Gas, Inc.; Notice of Restatement Filing

September 5, 1996.

Take notice that on August 30, 1996, West Texas Gas, Inc. (WTG), tendered for filing a restatement of its base tariff rates pursuant to its proposed Section 19.3(e) of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. WTG states that

a new Section 19.3(e), incorporating into WTG's tariff former Section 154.303(e) of the Commission's Purchased Gas Adjustment Regulations, which were removed by Order No. 582, has been submitted for Commission approval concurrently herewith. WTG states that the base rate restatement supports its currently effective weighted averaged transmission rates of $0.3491 per Mcf.

WTG states that copies of the filing were served upon WTG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23142 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–748–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

September 5, 1996.

Take notice that on August 27, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–748–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install measurement and appurtenant facilities to deliver gas to Western Resources, Inc. (WRI), at the Fairfax Bridge Town Border located in Wyandotte County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that with the sale of WRI's Missouri distribution facilities to Missouri Gas Energy, it is now necessary to measure the Missouri and the Kansas volumes separately. The projected volume of delivery with the new facilities, it is said, would not exceed the current delivered volume. WNG estimates the cost of construction to be approximately $258,649.

WNG states further that this change is not prohibited by any existing tariff and the WNG has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23130 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–43–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifteenth Revised Sheet No. 6A. The proposed effective date of this tariff sheet is October 1, 1996.

WNG states that pursuant to Article 26 of the General Terms and Conditions of its FERC Gas Tariff, and FERC Annual Charges Billing under 18 CFR Part 382, dated July 29, 1996, it is filing to reflect a decrease in the FERC Annual Charge Adjustment from $.0023 to $.0020 per Dth for the fiscal year beginning October 1, 1996.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23147 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–374–000]

Wyoming Interstate Company, Ltd., Notice of Proposed Changes in FERC Gas Tariff

September 5, 1996.

Take notice that on August 30, 1996, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised No. 2, revised tariff sheets included in Appendix A to the filing, with a proposed effective date of October 1, 1996.

WIC states that the purpose of the filing is to convert WIC's tariffs and rates from a volumetric to a thermal basis pursuant to the Commission's Order No. 582 issued September 28, 1995 at Docket No. RM95–3–000. WIC states that it used a Btu conversion ratio of 1053 Btu to 1 Mcf. This conversion ratio was determined on the basis of a system average gas thermal content for the three months April 1996 through June 1996.

WIC states that copies of the filing are being served on all its jurisdictional customers and affected state government agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules or Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96-23153 Filed 9-10-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER96-1618-001, et al.]

Progress Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 5, 1996.

Take notice that the following filings have been made with the Commission:

1. Progress Power Marketing, Inc.

[Docket No. ER96-1618-001]

Take notice that on August 16, 1996, Progress Power Marketing, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Docket No. ER96-1888-001]

Take notice that on August 16, 1996, Illinois Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Midwest Energy, Inc.

[Docket No. ER96-2027-001]

Take notice that on August 15, 1996, Midwest Energy, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Edison Source

[Docket No. ER96-2150-001]

Take notice that on August 14, 1996, Edison Source tendered for filing its compliance filing in the above-referenced docket.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Sandia Energy Resources Company

[Docket No. ER96-2538-000]

Take notice that on August 14, 1996, Sandia Energy Resources Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER96-2838-000]

Take notice that on August 28, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *East Texas Electric Cooperative, Inc.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *East Texas Electric Cooperative, Inc.* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *East Texas Electric Cooperative, Inc.*

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER96-2839-000]

Take notice that on August 28, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *East Texas Electric Cooperative, Inc.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *East Texas Electric Cooperative, Inc.* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *East Texas Electric Cooperative, Inc.*

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER96-2840-000]

Take notice that on August 28, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Tenneco Packaging, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 12, 1996.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96-2841-000]

Take notice that on August 28, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Aquila Power Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 5, 1996.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER96-2842-000]

Take notice that on August 28, 1996, PECO Energy Company (PECO) filed a Service Agreement dated June 5, 1996 with TransCanada Power Corporation (TransCanada) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds TransCanada as a customer under the Tariff.

PECO requests an effective date of July 31, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to TransCanada and to the Pennsylvania Public Utility Commission.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER96-2843-000]

Take notice that on August 28, 1996, PECO Energy Company (PECO), filed a Service Agreement dated August 20, 1996 with Coral Power, L.L.C. (Coral) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Coral as a customer under the Tariff.

PECO requests an effective date of August 20, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Coral and to the Pennsylvania Public Utility Commission.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–2845–000]

Take notice that on August 29, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–2846–000]

Take notice that on August 29, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 22, 1996 with Seminole Electric Cooperative, Inc. (Seminole) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Seminole as a customer under the Tariff.

PECO requests an effective date of August 1, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Seminole and to the Pennsylvania Public Utility Commission.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER96–2847–000]

Take notice that on August 29, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing: (1) A notice for terminating transmission service under the "Superseding Agreement for Transmission Service for the Coldwater Creek Geothermal Power Plant between Pacific Gas and Electric Company and CCPA No. 1 Member Utilities," PG&E Rate Schedule FERC No. 174; (2) a notice for termination of transmission service under the "Superseding Agreement for Coldwater Creek Geothermal Power Plant Backbone Transmission Service between Pacific Gas and Electric Company and Sacramento Municipal Utility District," PG&E Rate Schedule FERC No. 175; (3) a revised Appendix E to PG&E Rate Schedule FERC No. 136, the PG&E–SMUD Interconnection Agreement, reflecting the requested reduction; (4) a revised Exhibit A–4 to PG&E Rate Schedule FERC No. 85, the PG&E-City of Santa Clara (Santa Clara) Interconnection Agreement, reflecting the requested reduction; (5) annual adjustments to transmission rates under PG&E Rate Schedule FERC Nos. 88, 91, 138 and 176 with SMUD and PG&E Rate Schedule FERC No. 116, the PG&E-Modesto Irrigation District (MD) Interconnection Agreement; and (6) Amendment No. 5 to PG&E Rate Schedule FERC No. 136, the PG&E–SMUD Interconnection Agreement.

PG&E has also requested a waiver of the Commission's notice requirements to allow a July 1, 1996 effective date for all of these rate schedule changes except Amendment No. 5 to PG&E Rate Schedule FERC No. 136.

Copies of this filing have been served upon SMUD, MD, Santa Clara, CCPA and the California Public Utilities Commission.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Nevada Power Company

[Docket No. ER96–2848–000]

Take notice that on August 29, 1996, Nevada Power Company (Nevada Power), tendered for filing a Letter Agreement between Nevada Power and the Colorado River Commission (CRC), providing for the sale of additional capacity to the CRC for the month of September, 1996.

Copies of this filing have been served on the CRC and the Nevada Public Service Commission.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Montaup Electric Company

[Docket No. ER96–2849–000]

Take notice that on August 29, 1996, Montaup Electric Company (Montaup), filed a revised Appendix B to a contract dated September 25, 1987 providing for the sale of capacity and energy from Montaup's Canal No. 2 generating unit to the Braintree Electric Light Department (Braintree) (Rate Schedule FERC No. 86). The revised Appendix B increases Montaup's capacity charge to cover the cost of converting Canal No. 2 to burn gas instead of oil and is to become effective November 1, 1996 in accordance with an August 23, 1996, letter agreement between Montaup and Braintree.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Sierra Pacific Power Company

[Docket No. ER96–2850–000]

Take notice that on August 29, 1996, Sierra Pacific Power Company (Sierra), tendered for filing, pursuant to section 205 of the Federal Power Act and 18 CFR Part 35, an Electric Service Agreement between Sierra and City of Fallon (Fallon).

Sierra asserts that the filing has been served on Fallon and on the regulatory commissions of Nevada and California.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Tampa Electric Company

[Docket No. ER96–2851–000]

Take notice that on August 29, 1996, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with the Utility Board of the City of Key West, Florida, InterCoast Power Marketing Company, Sonat Power Marketing, Inc. and Florida Power & Light Company, for the non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of August 29, 1996, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the other parties to the service agreements and the Florida Public Service Commission.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2852–000]

Take notice that on August 29, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with Commonwealth Edison Company, Inc. (CE) to provide for the sale of energy and capacity. For energy the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon CE.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2853–000]

Take notice that on August 29, 1996, Consolidated Edison Company of New York,, (Con Edison), tendered for filing an agreement with Noram Energy Services, Inc. (NES) to provide for the sale of energy and capacity. For Energy the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt per hour. Energy and capacity

sold by NES will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon NES.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER96–2854–000]

Take notice that on August 29, 1996, The Dayton Power and Light Company (Dayton), tendered for filing, an executed Master Electric Interchange Agreement between Dayton and CNG Power Services Corporation (CNG).

Pursuant to the rate schedules attached as Exhibit B to the Agreement, Dayton will provide to CNG power and/or energy for resale.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Electric Power Company

[Docket No. ER96–2855–000]

Take notice that on August 30, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a transmission service agreement between itself and Dairyland Electric Power Cooperative (Dairyland). The agreement establishes Dairyland as a customer under Wisconsin Electric's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

Wisconsin Electric respectfully requests an effective date sixty days after filing. Wisconsin Electric is authorized to state that Dairyland joins in the requested effective date.

Copies of the filing have been served on Dairyland, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. North Carolina Utilities Commission

[Docket No. IR–188–001]

On August 19, 1996, the North Carolina Utilities Commission (NCUC) filed a supplement to its petition for waiver in this docket.

The supplement notes that NCUC has duly implemented the Commission's PURPA Regulations by filing a notice of this petition for waiver in newspapers of general circulation within the service area of Nantahala Power and Light Company.

Any person who wishes to be heard or to object to granting of the petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. A motion or protest must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. A person who wishes to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23199 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL79–8–007, et al.]

Texas Utilities Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 4, 1996.

Take notice that the following filings have been made with the Commission:

1. Texas Utilities Electric Company

[Docket No. EL79–8–007]

Take notice that on August 14, 1996, Texas Utilities Electric Company tendered for filing revised copies to its August 4, 1995, compliance filing in the above-referenced docket.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. MidAmerican Energy Company and MidAmerican Energy Holding Company

[Docket No. EC96–33–000]

Take notice that on August 26, 1996, MidAmerican Energy Company (MidAmerican) and MidAmerican Energy Holding Company (Holdings) (collectively, the Applicants), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b and Part 33 of the Rules and Regulations of the Federal Energy Regulatory Commission, filed an application for authorization and approval of a proposed merger of IES Industries Inc. (Industries) with and into MidAmerican as the surviving corporation and public utility. In the alternative, Applicants request approval of a proposed merger of Industries with and into Holdings as the surviving corporation and holding company and, simultaneously therewith, a proposed merger of IES Utilities Inc. (IES), a public utility and wholly-owned subsidiary of Industries, with and into MidAmerican as the surviving corporation, public utility and wholly-owned subsidiary of Holdings. Approval of the alternative form of the proposed merger is requested in anticipation of the implementation of Applicants' holding company structure.

Applicant state that MidAmerican submitted a merger proposal to Industries on August 4, 1996. Under the proposal each share of Industries common stock would be exchanged, at the option of the Industries shareholder, for 2.346 shares of MidAmerican common stock (with a market value of $37.83 based on the August 16, 1996 closing price of MidAmerican common stock) in a tax-free exchange or $39.000 in cash, subject to a provision that if more than 40% of the total Industries shares elect to receive cash then a proration procedure agreed to by the merging companies would be applied and persons electing all cash would receive a part cash and part stock based upon such proration procedure. Concurrently with the proposed merger of Industries with and into MidAmerican, all of the common stock of IES will be canceled and IES will be immediately merged with and into MidAmerican.

Comment date: September 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. EL96–73–000]

Take notice that on August 23, 1996, PSI Energy, Inc. (PSI) tendered for filing a petition for waiver of the Commission's fuel adjustment clause

regulations to permit the recovery from its customers through its jurisdictional fuel adjustment clauses a jurisdictional share of the costs associated with a buy out of a long-term coal supply agreement pursuant to which PSI purchases 3 million tons of high-sulfur coal from Exxon Coal USA each year through the year 2002. PSI states that the buy out will provide numerous benefits to PSI's customers, including net cumulative savings of at least $30 million, and potentially up to $80 million on a net present value basis through the year 2002. The waiver is proposed to be made effective August 23, 1996.

Comment date: September 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. CRSS Power Marketing, Inc. RIG Gas Inc., Alliance Strategies, Enerserve, L.C. and Kiner-G Power Marketing, Inc.

[Docket Nos. ER94–142–010, ER95–480–006, ER95–1381–003, ER96–182–003, and ER96–1139–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 23, 1996, CRSS Power Marketing, Inc., filed certain information as required by the Commission's December 30, 1993, order in Docket No. ER94–142–000.

On July 31, 1996, RIG Gas Inc., filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–480–000.

On August 5, 1996, Alliance Strategies, filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1381–000.

On July 29, 1996, Enerserve, L.C. filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–182–000.

On July 26, 1996, Kiner-G Power Marketing, Inc. filed certain information as required by the Commission's April 30, 1995, order in Docket No. ER96–1139–000.

5. Maine Public Service Company

[Docket Nos. ER96–370–001 and ER96–561–000]

Take notice that on August 21, 1996, Maine Public Service Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Cumberland Power, Inc.

[Docket No. ER96–2624–000]

Take notice that on August 21, 1996, Cumberland Power, Inc. tendered for filing an amendment to its August 5, 1996, filing in the above-referenced docket.

Comment date: September 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Power & Light Company

[Docket No. ER96–2625–000]

Take notice that on August 27, 1996, Wisconsin Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER96–2660–000]

Take notice that on August 6, 1996, Southern California Edison Company tendered for filing a corrected page 3 of Amendment No. 2 to the Integrated Operations Agreement with the Cities of Azusa, Anaheim, Colton, and Riverside.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER96–2701–000]

Take notice that on August 13, 1996, Western Resources, Inc. tendered for filing a change to its Open Access Transmission Tariff (Original Volume No. 5). Western Resources states that the change is to permit customers additional flexibility in consolidating loads in order to meet the requirement that schedules be stated in increments of 1,000 Kw. Western Resources has requested an effective date for the change of October 11, 1996.

A copy of this filing was served upon all parties that were served with a copy of Western Resources' Open Access Transmission Tariff filing made in compliance with FERC Order No. 888, all wholesale customers to whom Western Resources has provided transmission service since March 29, 1995, and to the state agencies that regulate public utilities in the states where those customers are located.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. USGen Power Services, L.P.

[Docket No. ER96–2710–000]

Take notice that on August 14, 1996, USGen Power Services, L.P. tendered for filing a letter stating that effective April 9, 1996 its membership with the Western Systems Power Pool became effective.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER96–2795–000]

Take notice that on August 23, 1996, MidAmerican Energy Company tendered for filing Firm Transmission Service Agreements with PanEnergy Power Services, Inc. (PanEnergy), dated July 30, 1996, WPS Energy Services, Inc. (WPS), dated July 30, 1996, and VTEC Energy, Inc. (VTEC), dated August 6, 1996, and Non-Firm Transmission Service Agreements with PanEnergy, dated July 30, 1996, WPS Dated July 30, 1996, and VTEC dated August 6, 1996, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER96–2806–000]

Take notice that on August 26, 1996, Arizona Public Service Company (APS) tendered for filing revised Exhibit I to Service Schedule A to the Service Agreement between APS and the City of Williams (APS–FERC Rate Schedule No. 192).

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Oklahoma

[Docket No. ER96–2815–000]

Take notice that on August 26, 1996, Public Service Company of Oklahoma (PSO) submitted for filing four Service Agreements, each dated June 1, 1996, establishing Duke/Louis Dreyfus LLC (Duke), Electric Clearinghouse, Inc. (ECI), Sonat Power Marketing (Sonat), and Valero Power Services Company (Valero) as customers under the terms of PSO's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff). PSO also filed a Service Agreement, dated August 21, 1996, establishing The Southern Company (Southern) as a CST–1 customer.

PSO requests an effective date of July 27, 1996, and, accordingly, seek waiver of the Commission's notice requirements. Copies of this filing were served upon Duke, ECI, Sonat, Southern, Valero and the Oklahoma Corporation Commission.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Electric Power Company

[Docket No. ER96–2816–000]

Take notice that on August 26, 1996, Southwestern Electric Power Company (SWEPCO) submitted four service agreements, each dated June 1, 1996 establishing Duke/Louis Dreyfus LLC (Duke), Electric Clearinghouse, Inc. (ECI), Sonat Power Marketing (Sonat), and Valero Power Services Company (Valero) as customers under the terms of SWEPCO also submitted a Service Agreement, dated August 21, 1996, establishing the Southern Company (Southern) as a CST–1 customer.

SWEPCO requests an effective date of July 27, 1996, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Southern, Duke, ECI, Sonat, Valero, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Montaup Electric Company

[Docket No. ER96–2817–000]

Take notice that on August 26, 1996, Montaup Electric Company tendered for filing an executed Service Agreement for the sale of power and energy to Duke/Louis Dreyfus Energy Services under the rates, terms and conditions set forth in its FERC Electric Tariff Original Volume No. 4.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Upper Peninsula Power Company

[Docket No. ER96–2818–000]

Take notice that on August 26, 1996, Upper Peninsula Power Company (UPPCO), tendered for filing a proposed Power Service Agreement for sales of electricity to the City of Negaunee, Michigan. UPPCO states that the rates established in the Power Service Agreement for 1996 will result in a decrease in revenues from sales to Negaunee of approximately 10% annually. UPPCO has asked for waiver of the notice provisions of the Commission's Regulations in order to make the Power Service Agreement effective in accordance with its terms beginning October 1, 1996.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER96–2819–000]

Take notice that on August 27, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Morgan Stanley Capital Group, Inc. (MORGAN), dated August 7, 1996. This Service Agreement specifies that MORGAN has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and MORGAN to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of August 7, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota)

[Docket No. ER96–2820–000]

Take notice that on August 26, 1996, Northern States Power Company (Minnesota)(NSP), tendered for filing Amendment No. 5 to the original Interconnection and Interchange Agreement between NSP and North Central Power Co., Inc. (NCP). This Amendment No. 5 replaces the existing Service Schedule A, System Power and the existing Service Schedule D, Supplemental Energy. This Amendment No. 5 also eliminates Service Schedule A–1 and Service Schedule D–1.

NSP requests that the Commission accept for filing this Amendment No. 5 effective as of September 1, 1996, and requests waiver of Commission's notice requirements in order for the Amendment to be accepted for filing on that date. NSP requests that this filing be accepted as a Amendment to Rate Schedule No. 459, the rate schedule for previously filed agreements between NSP and NCP.

Comment date: September 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota)

[Docket No. ER96–2821–000]

Take notice that on August 26, 1996, Northern States Power Company (Minnesota)(NSP), tendered for filing Amendment No. 2 to the original Interconnection and Interchange Agreement between NSP and Northwestern Wisconsin Electric Company (NWE). This Amendment No. 2 replaces the existing Service Schedule A, System Power and the existing Service Schedule D, Supplemental Energy. This Amendment No. 2 also eliminates Service Schedule A–1 and Service Schedule D–1.

NSP requests that the Commission accept for filing this Amendment No. 2 effective as of September 1, 1996, and requests waiver of Commission's notice requirements in order for the Amendment to be accepted for filing on that date. NSP requests that this filing be accepted as an Amendment to Rate Schedule No. 451, the rate schedule for previously filed agreements between NSP and NWE.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER96–2822–000]

Take notice that on August 23, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company

[Docket No. ER96–2823–000]

Take notice that on August 23, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company

[Docket No. ER96–2824–000]

Take notice that on August 23, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc., under Rate GSS.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER96–2825–000]

Take notice that on August 26, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Southern Company Services, Inc.

[Docket No. ER96–2827–000]

Take notice that on August 27, 1996, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) submitted a filing providing that the service agreements which had been filed with the Commission for non-firm service under their Point-to-Point Transmission Tariff will be considered as service agreements under their Open Access Transmission Tariff. In addition, SCS filed a service agreement for non-firm service between SCS, as agent for Southern Companies, and PanEnergy Power Services, Inc. This service agreement was executed under the PTP Tariff prior to its being superseded by the OAT Tariff and is to be considered a service agreement under the OAT Tariff.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. West Texas Utilities Company

[Docket No. ER96–2828–000]

Take notice that on August 27, 1996, West Texas Utilities Company (WTU) submitted for filing five Service Agreements, each dated June 1, 1996, establishing Delhi Energy Services Inc. (Delhi), Duke/Louis Dreyfus LLC (Duke), Electric Clearinghouse, Inc. (ECI), Valero Power Services Company (Valero) and Sonat Power Marketing (Sonat) as customers under the terms of WTU's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff). WTU also submitted a Service Agreement, dated August 21, 1996, establishing the Southern Company (Southern) as a CST–1 customer.

WTU requests an effective date of July 28, 1996 for the five service agreements dated June 1, 1996 and of August 21, 1996 for the Service Agreement with Southern and the revised Index. Accordingly, WTU seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Delhi, Duke, ECI, Valero, Sonat, Southern and the Public Utility Commission of Texas.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Central Power and Light Company

[Docket No. ER96–2829–000]

Take notice that on August 27, 1996, Central Power and Light Company (CPL) submitted five Service Agreements, dated June 1, 1996, establishing Delhi Energy Services Inc. (Delhi), Duke/Louis Dreyfus LLC (Duke), Electric Clearinghouse, Inc. (ECI), Valero Power Services Company (Valero) and Sonat Power Marketing (Sonat) as customers under the terms of CPL's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff). CPL also submitted a Service Agreement establishing The Southern Company (Southern) as a CST–1 customer.

CPL requests an effective date of April 30, 1996, for the Service Agreement with Valero, of July 3, 1996, for the Service Agreement with Delhi, of July 10, 1996, for the Service Agreement with ECI, of July 11, 1996, for the Service Agreement with Duke, of July 28, 1996, for the Service Agreement with Sonat and of August 21, 1996 for the Service Agreement with Southern. Accordingly, CPL seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Delhi, Duke, ECI, Valero, Southern, Sonat and the Public Utility Commission of Texas.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Washington Gas Energy Services, Inc.

[Docket No. ER96–2830–000]

Take notice that on August 27, 1996, Washington Gas Energy Services, Inc. tendered for filing an Application for Blanket Authorizations, Certain Waivers and Order Approving Rate Schedule.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Boston Edison Company

[Docket No. ER96–2831–000]

Take notice that on August 28, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Southern Electric Marketing, Inc. (Southern). Boston Edison requests that the Service Agreement become effective as of August 1, 1996.

Edison states that it has served a copy of this filing on Southern and the Massachusetts Department of Public Utilities.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Electric and Gas Company

[Docket No. ER96–2832–000]

Take notice that on August 28, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing agreements to provide non-firm transmission service to Baltimore Gas and Electric Company, and Cinergy Services, Inc., pursuant to PSE&G's Open Access Transmission Tariff presently on file with the Commission in Docket No. OA96–80–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreements can be made effective as of August 27, 1996.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Virginia Electric and Power Company

[Docket No. ER96–2833–000]

Take notice that on August 28, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between Carolina Power & Light Company (CP&L) and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to CP&L as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Virginia Electric and Power Company

[Docket No. ER96–2834–000]

Take notice that on August 28, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between South Carolina Public Service Authority and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to South Carolina Public Service Authority as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Virginia Electric and Power Company

[Docket No. ER96–2835–000]

Take notice that on August 28, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between PanEnergy Power Services, Inc. (PanEnergy) and Virginia Power under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide non-firm point-to-point service to PanEnergy as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. UtiliCorp United Inc.

[Docket No. ER96–2836–000]

Take notice that on August 28, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Sam Rayburn G&T Electric Cooperative, Inc.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Sam Rayburn G&T Electric Cooperative, Inc.* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Sam Rayburn G&T Electric Cooperative, Inc.*

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. UtiliCorp United Inc.

[Docket No. ER96–2837–000]

Take notice that on August 28, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Sam Rayburn G&T Electric Cooperative, Inc.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Sam Rayburn G&T Electric Cooperative, Inc.* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Sam Rayburn G&T Electric Cooperative, Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Northwest Public Service Company

[Docket No. OA96–222–000]

Take notice that on August 28, 1996, Northwest Public Service Company tendered for filing a request for waiver of Part 37 of the requirements of the regulations of the Federal Energy Regulatory Commission.

Comment date: September 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23136 Filed 9–10–96; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of February 5 Through February 9, 1996

During the week of February 5 through February 9, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 958

Personnel Security Hearings

Albuquerque Operations Office, 2/5/95, *VSO–0063*

An Office of Hearings and Appeals Hearing Officer issued an opinion in a personnel security case involving a contractor employee at Los Alamos National Laboratory. Based upon the record, the opinion recommends against granting the employee an access authorization. In particular, the opinion concludes that neither the testimony of lay witnesses nor generally applicable published material is sufficient to rebut the informed, first-hand medical testimony of two board certified DOE-consultant psychiatrists, i.e., that the individual is a habitual user of alcohol to excess without adequate evidence of rehabilitation or reformation.

Oak Ridge Operations Office, 2/7/96, *VSO–0059*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because he had abused family members and because he was diagnosed as alcohol dependent by a DOE consultant psychiatrist. The Hearing Officer found that incidents of child abuse by the individual demonstrated a lack of judgment and reliability. The Hearing Officer further found that in view of the fact that the individual continued to use significant amounts of alcohol in the face of family and health problems, he was alcohol dependent. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Appeal

A. Victorian, 2/7/96, LFA–0387

A. Victorian (Victorian) filed an Appeal from a determination issued to him by the Deputy Assistant Secretary for Military Application and Stockpile Support of the Department of Energy (DOE/MA). In his Appeal, Victorian asserted that DOE/MA improperly withheld portions of a document identified as responsive to Victorian's Freedom of Information Act (FOIA) Request. In his Request, Victorian requested copies of all documents containing information pertaining to the DOE's FALCON program. In its determination letter, DOE/MA provided Victorian with one document in its entirety and a redacted copy of another document entitled "DOE Reactor-Pumped Laser Research Program" (Laser Document). DOE/MA stated in its determination letter that the withheld portions of the Laser Document contained classified information and were being withheld pursuant to Exemptions 1 and 3 of the FOIA. In his Appeal, Victorian asserted that the information withheld in the Laser Document had been inappropriately classified and should be provided to him. The DOE determined that almost all of the withheld information in the Laser Document had been properly withheld under Exemptions 1 and 3. However, the DOE also found that a small portion of the previously withheld material could now be declassified and released to Victorian. Consequently, the DOE granted, in part, Victorian's Appeal.

Requests for Exception

Martin Petroleum Corporation, 2/5/96, LEE–0153

Martin Petroleum Corporation filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Martin argued that the amount of time it took the firm to prepare the required forms constituted a burden. However, the DOE determined that Martin was not suffering a special hardship, inequity or unfair distribution of burdens. Accordingly, exception relief was denied.

Pitcher Sales, Inc., 2/5/96, VEE–0004

Pitcher Sales, Inc., filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B and Form EIA–863, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" and "Petroleum Product Sales Identification Survey," respectively. Pitcher argued that filing these surveys was time consuming and onerous. However, the DOE determined that Pitcher was not suffering a special hardship, inequity or unfair distribution of burdens. Accordingly, exception relief was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Arnold Heiden et al	RK272–368	02/05/96
Charles W. Combs et al	RK272–2671	02/05/96
County Line School District et al	RF272–95402	02/05/96
Crude Oil Supple. Refund Dist	RB272–66	02/05/96
Farmers Cooperative Assn. et al	RK272–2475	02/05/96
Gulf Oil Corporation/Aranki Gulf #1 et al	RF300–14990	02/05/96
Gulf Oil Corporation/Woods & Helton Gulf et al	RF300–18298	02/07/96
Gulf Oil Corporation/Zachary Gulf et al	RF300–13978	02/07/96
Harkins & Company et al	RK272–3209	02/07/96
Heyman Truck, Inc. et al	RF272–77606	02/05/96
Rogers Transportation Co., Inc	RK272–71	02/07/96
Floyd Mining Co., Inc	RK272–72	.....
American Jet Aviation	RK272–73	.....
W.V. Wall Legging et al	RK272–1141	02/07/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Allied Towing Corp	RF300–19784
Anchor Pointe Boat	RF300–18070
Balcones Gulf	RF300–20992
Bubb's Gulf	RF300–19967
C.M. Bullock Gulf	RF300–18186
Camargo Gulf	RF300–19741
Carolina Moving & Storage, Inc	RF300–18535
Chris A. Schaefer	VFA–0114
Dee's Fuel Service	RF304–15002
Florida East Coast Highway Dispatch	RF272–78177
Florida East Coast Railway Company	RF272–78175
J. Preston Moore	RF300–19923
Mac's ARCO	RF304–15040
Orsid Realty	RF272–78572

Name	Case No.
Piper Aircraft Corp.	RF300–19993
Radiant Oil Company	RF300–19988
Repetz Brothers ARCO	RF304–13134
Repetz Brothers ARCO	RF304–12910
Richard's Gulf Service	RF300–18709
Shahum Service Station	RF304–15060
Stratford ARCO	RF304–15050
Thor Lieungh	RF304–13536
Thrifty Oil Company	RF300–19922
Walt's ARCO	RF304–14667
Woodautomatic Gas Co	RF304–14998

[FR Doc. 96–23180 Filed 9–10–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of July 1 through July 5, 1996

During the week of July 1 through July 5, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 979

Week of July 1 through July 5, 1996

Appeals

Marlene Flor, 7/2/96, VFA–0175

The Department of Energy (DOE) issued a Decision and Order granting a Freedom of Information Act Appeal that was filed by Marlene Flor. In her Appeal, Ms. Flor contested the accuracy of a cost estimate provided to her by the DOE's Albuquerque Operations Office for processing her request for information under the Freedom of Information Act. In the Decision, the OHA found that Ms. Flor fell into the "all other requesters" category of FOIA requesters, and that she could not be charged for time spent by DOE employees in reviewing responsive documents for exempt material. The DOE therefore remanded her request to the Albuquerque Office for the formulation of a new estimate.

Tenaska Washington Partners II, L.P., 7/2/96, VFA–0176

Tenaska Washington Partners II, L.P. (TWP) filed an Appeal from a determination issued to it on May 21, 1996 by the Deputy Inspector General for Audit Services of the Office of Inspector General (IG) of the Department of Energy (DOE). In that determination, the IG partially denied a request for information that TWP filed pursuant to the Freedom of Information Act (FOIA). In its Appeal, TWP contends that the IG improperly withheld factual information pusuant to FOIA Exemption 5 and that the IG "waived" its ability to withhold a document pursuant to FOIA Exemptions 6 and 7. In considering the Appeal, the DOE confirmed that the redacted information does not contain any factual information and that the IG properly withheld the requested information pursuant to Exemption 5. The DOE also found that there is no merit to TWP's argument that the IG "waived" its ability to withhold a document pursuant to FOIA Exemptions 6 and 7. Accordingly, the DOE denied the appellant's request.

Refund Applications

Moore Brothers, 7/2/96, RR272–232

Moore Brothers was a trucking company that filed an Application for Refund in the Subpart V crude oil refund proceeding. In its original application (Case No. RF272–4527), Moore Brothers was denied a refund due to a lack of adequate documentation (January 26, 1990). On February 20, 1996, Moore Brothers filed a Motion for Reconsideration, requesting that the DOE reconsider its 1990 Decision. In the Motion for Reconsideration, Moore Brothers provided documentation adequate to substantiate the applicant's estimate of petroleum products consumed during the price control period. Accordingly, the Motion for Reconsideration was granted.

Perry Gas Processors, Inc./Alabama, RQ183–604, Charter Company/Alabama, RQ23–605, National Helium Corp./Alabama, RQ3–606, Coline Gasoline Corp./Alabama, 7/2/96, RQ2–607

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Alabama. Alabama requested that all remaining funds allocated to it in the Perry Gas Processors, Charter Company, National Helium Corp. And Coline Gasoline special refund proceedings be used to fund the state's Energy Conservation Loan Program. As of May 31,1996, the amount of those funds totaled $370,540 ($102,445 in principal and $268,095 in interest). The DOE found that Alabama's proposal would provide timely restitutionary benefits to injured consumers of refined petroleum products. Accordingly, Alabama's second-stage refund application was granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Allied-Signal, Inc	RF272–77990	07/01/96
Bronaugh Motor Express, Inc. et al	RF272–89203	07/05/96
Crude Oil Supple. Ref	RB272–00082	07/01/96

First Piedmont Corp. et al	RF272–89011	07/03/96
Gulf Oil Corporation/Dearman's Grovery & Service Stationet al	RF300–13743	07/02/96
Gulf Oil Corporation/Union Petroleum	RF300–17257	07/03/96
Kimbob, Inc. et al	RG272–00607	07/02/96
Montgomery Farmers Coop et al	RF272–94512	07/01/96
Virgin Air, Inc. et al	RF272–97969	07/03/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Allied Oil Company	RF339–14
Darigold, Inc.	RG272–368
Denholm Ship Management Ltd.	RG272–618
Heber Elementary	RF272–87065
Valley Materials Transport	RF272–98118

[FR Doc. 96–23181 Filed 9–10–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of April 8 through April 12, 1996

Office of Hearings and Appeals

During the week of April 8 through April 12, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.,Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 30, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Decision List No. 967

Week of April 8 through April 12, 1996

Appeals

A. Victorian, 4/11/96, VFA–0142

Dr. A. Victorian filed an Appeal from a denial by the Office of Defense Programs of a request for information that he filed under the Freedom of Information Act. Defense Programs responded by stating that it could neither confirm nor deny the existence of records responsive to Dr. Victorian's request. Based on its review of the nature of the request, and after considering the arguments that Dr. Victorian raised on appeal, the DOE determined that Defense Programs' Glomar response was appropriate. Accordingly, the Appeal was denied.

Petrucelli & Nadler, 4/11/96, VFA–0143

Petrucelli & Nadler (Petrucelli) filed an Appeal from a denial by the Oak Ridge Operations Office (DOE/OR) of the Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the documents requested by Petrucelli, information on all persons involved in radiation experiments performed on students at the Fernald State School in Massachusetts, could possibly have been located in a search of either another relevant DOE office or the DOE Archives. Thus, the Appeal was granted.

Personnel Security Hearing

Pittsburgh Naval Reactors Office, 4/12/96, VSA–0048

The Director of the Office of Hearings and Appeals issued an Opinion regarding a Request for Review of a Hearing Officer Opinion which recommended against restoring the level "L" access authorization of the Respondent seeking review of the matter. The Respondent had requested that the Director examine two issues: (1) Whether the Respondent's failure to file state and federal income taxes and pay miscellaneous local taxes raises a legitimate security concern; and (2) whether promises to repay loans to the Respondent and the Respondent's opportunity to satisfy his mortgage mitigate some of the DOE's security concerns. With regard to the first issued, after reviewing the record regarding the Respondent's tax situation and considering the Respondent's purported efforts to take corrective action with respect to some of his tax liabilities, the Director found no reason to disturb the Hearing Officer's Opinion. As for the second issue raised on review, the Director first opined that the new evidence suggesting that some of the Respondent's relatives might repay the Respondent some time in the future is not sufficient to overcome the security concern raised by the DOE regarding the Respondent's financial problems. Moreover, the Director observed that the Respondent has not demonstrated that he will be able to satisfy his entire mortgage debt within the time frame prescribed by the Respondent's lending institution. In sum, the Director refused to conclude that the new evidence tendered by the Respondent regarding his attempt to redress his mortgage problems mitigates the DOE's security concerns regarding the Respondent's judgement in managing his financial affairs.

After carefully considering the record, the Director opined that the Respondent's access authorization should not be restored.

Refund Applications

Charter Co./Mississippi—RQ23–601
Standard Oil Co. (Indiana)/
Mississippi—RQ251–602

OKC Corp./Mississippi, 4/11/96, RQ13–603

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Mississippi. Mississippi requested that all remaining funds allocated to it in the Charter Company, Standard Oil Co. (Indiana), and OKC Corp. Special refund proceedings be used to fund the state's Energy-Efficient, Affordable Housing and Energy in Agriculture Programs. As

of March 31, 1996, the allocation totaled $856,829 ($372,150 in principal and $484,679 in interest), but the allocation will be slightly higher at the time of disbursement due to interest earned between March 31, 1996 and the date of disbursement. The DOE found that Mississippi's proposal would provide timely restitutionary benefits to injured consumers of refined petroleum products. Accordingly, Mississippi's second-stage refund application was granted.

Gulf Oil Corp./Victoria Guernsey, Inc., 4/11/96, RF300–18821

The DOE issued a Decision and Order granting a refund application filed by Victoria Guernsey, Inc. in the Gulf Oil Corporation special refund proceeding. The DOE found that Victoria Guernsey made a reasonable demonstration that it purchased the claimed amount of Gulf product through two suppliers, Parton Oil Co. and Armour Oil Co. Because there was no affirmative evidence that either supplier absorbed the alleged Gulf overcharges, the DOE determined that Victoria Guernsey should be considered for a refund under the standards applicable to direct purchasers. Accordingly, the DOE granted Victoria Guernsey a $23,981 refund based on the medium range presumption of injury.

Valley Line Co., 4/12/96, RC272–337

The DOE issued a Decision and Order rescinding a refund granted to The Valley Line Co. in the Subpart V crude oil refund proceeding. The DOE was informed by The Valley Line that Chromalloy American Corporation, the former parent company of The Valley Line, had received a refund from the Rail & Water Transporters Escrow, one of the eight escrows established by the final Settlement Agreement in the Stripper Well Exemption Litigation. In order to receive a refund from a Stripper Well escrow, a claimant was required to waive its right and the rights of its affiliates to participate in any future refund proceeding based on crude oil overcharges. Therefore, The Valley Line was ineligible to receive a refund in the crude oil proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/Ed & Ray's Gulf et al	RF300–13549	04/08/96
Heartland Co-op et al	RK272–03205	04/11/96
Hereford Independent School District et al	RF272–86302	04/09/96
Mueller Industries, Inc	RC272–00336	04/08/96
Rick Rush	RJ272–9	04/11/96
Ricky Timmons Estate et al	RK272–01106	04/08/96
Woods Research & Development Corp. et al	RK272–03328	04/11/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Air Ontario Limited	RF272–98755
Arundel Asphalt Products	RD272–74858
Arundel Asphalt Products, Inc.	RF272–74858
Bouchard Transportation Co., Inc.	RF272–74311
Bouchard Transportation Co., Inc.	RD272–74311
Dianna McNew	VFA–0146
Dispatch Distribution Line, Inc.	RF272–77995
Leotal, Inc. for Northeast Tool and Engineering	RG272–00102
Liberty Express	RF272–98705

[FR Doc. 96–23182 Filed 9–10–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of April 1 through April 5, 1996

During the week of April 1 through April 5, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 966

Week of April 1 through April 5, 1996

Appeal

David K. Hackett, 4/3/96, VFA–0135

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by David K. Hackett. In the Decision, the DOE found that the Oak Ridge Operations Office properly applied Exemption 4 of the FOIA in withholding portions of one of the documents provided to Mr. Hackett. The DOE further found that the

search for responsive documents was adequate.

Personnel Security Hearing

Oak Ridge Operations Office, 4/5/96, VSA–0057

The Director of the Office of Hearings and Appeals issued an Opinion regarding an individual's request for review of a Hearing Officer's adverse decision regarding his eligibility for access authorization under the provisions of 10 C.F.R. Part 710. After considering the individual's arguments and the record, the Director found that: (i) the Hearing Officer had not showed bias and/or prejudice, (ii) the Hearing Officer had made a comprehensive, common-sense judgment, and (iii) the Hearing Officer did not incorrectly examine the case retrospectively to determine the possibility of coercion. Further, the Director upheld the Hearing Officer's refusal to give weight to letters submitted by the individual's former co-workers, under the circumstances presented in the case. Accordingly, the Director recommended that the individual's access authorization should not be reinstated.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Gulf Oil Corporation/White Brothers, Inc. et al	RF300–15269	04/04/96
Wisener Farms	RJ272–0010	04/04/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Chey Anthony Temple	VFA–0133
Howeard Sober, Inc.	RF272–77539

[FR Doc. 96–23183 Filed 9–10–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of March 4 Through March 8, 1996

During the week of March 4 through March 8, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 30, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Decision List No. 962

Week of March 4 Through March 8, 1996

Appeal

Kenneth H. Besecker, 3/4/96, VFA–0124

The Department of Energy (DOE) issued a Decision and Order granting a Freedom of Information Act Appeal that was filed by Kenneth H. Besecker. In his Appeal, Mr. Besecker contested the adequacy of the search for documents responsive to his request. In his request, Mr. Besecker sought access to the contract under which the investigation of a particular EEOC complaint was carried out. In his Appeal, Mr. Besecker contended that a portion of the contract called the "Statement of Work" was not included in the documents provided to him. In the Decision, the DOE found that there were two statements of work generated in connection with the contract in question, and that Mr. Besecker had been provided with only one. The DOE examined the second statement of work, found it to be responsive to the request and not exempt from mandatory disclosure under the FOIA, and released it to Mr. Besecker.

Personnel Security Hearings

Albuquerque Operations Office, 3/7/96, VSX–0020

Upon remand from the Director, an Office of Hearings and Appeals Hearing Officer issued an Opinion concerning the eligibility of an individual to hold an access authorization under 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material. The DOE had charged that the individual had (i) deliberately omitted significant information (concerning use of illegal drugs) from a Personnel Security Questionnaire, (ii) used illegal drugs, and (iii) engaged in conduct showing that he was not reliable (due to use of illegal drugs to allay panic attacks and anxiety). The individual failed to testify at his hearing or provide any other evidence to rebut the derogatory evidence of the DOE. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Pittsburgh Naval Reactors Office, 3/7/96, VSA–0041

Upon review, the Director, Office of Hearings and Appeals, concurred with the Hearing Officer's recommendation in Case No. VSA–0041 that access authorization not be restored to the appellant employee. The Director found that the employee had failed to mitigate valid security concerns raised by his pattern of financial irresponsibility.

Richland Operations Office, 3/7/96, VSA–0044

An individual whose access authorization had been suspended filed a request for review of a DOE Hearing Officer's recommendation against its restoration. The individual's access authorization had been suspended by the Department of Energy's (DOE) Richland Operations Office (Richland) upon its receipt of derogatory information indicating that the individual was a habitual user of alcohol to excess, used illegal drugs and had deliberately provided DOE security officials with false or misleading information.

Upon review, the individual claimed that he had been rehabilitated. The Director found that while he might have been rehabilitated from his prior substance abuse, he had not demonstrated the high degree of candor expected of a holder of a DOE access authorization. Accordingly, the Director recommended that the individual's security clearance not be restored.

Refund Applications

American Synthetic Rubber Corp., 3/7/96, RF272–61843; RD272–61843

The DOE issued a Decision and Order granting an Application for Refund filed by American Synthetic Rubber Corporation (ASR) in the crude oil overcharge refund proceeding. The DOE rejected the firm's claims for refunds based on purchases of butadiene, styrene, and gear compounds, finding that ASR had not shown that these products were purchased from a crude oil refinery. The DOE approved refunds for a number of other products purchased by the firm, which were products that were regulated during the refund period. These products included toluene, gasoline, staining and non-staining oils, and lubricating oils. ASR's total refund was $47,077. The DOE denied a Motion for Discovery filed by a consortium of States.

GS Roofing Products Co., Inc., 3/7/96 RR272–213

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by GS Roofing Products Co. in the Subpart V crude oil refund proceeding. GS Roofing had been granted an earlier refund based on all of the firm's purchases of petroleum products. GS later submitted additional information pertaining to other purchases after the filing deadline in the crude oil proceeding. Since these purchases were not included in its original claim and the firm did not have a good reason for omitting these purchases, the Motion was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

138 Scap, Inc. et al	RK272–01153	03/04/96
Crude Oil Supple. Ref. Dist.	RB272–0089	03/04/96
Department of the Army—Corps of Engineers, Memphis	RF272–92574	03/04/96
Elizabethtown Gas Co.	RF272–78134	03/04/96
Fergus High School #1 et al	RF272–96231	03/04/96
Gulf Oil Corporation/Corkle & Fox Gulf et al	RF300–15046	03/04/96
Gulf Oil Corporation/Hodgson Gulf et al	RF300–16666	03/04/96
Gulf Oil Corporation/Road Builders, Inc.	RF300–21831	03/07/96
James T. Bolton et al	RK272–2464	03/04/96
P & G Motor Freight, Inc	RF272–97085	03/07/96
Silveria Land Leveling	RK272–0450	03/04/96
Steinberger Oil Company	RF272–78164	03/04/96
Suburban Mobility Authority for Regional Transportaion et al	RK272–02957	03/07/96
The Gilbert Spruance Co. et al	RK272–03214	03/04/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Bass Petroleum Co., Inc	RF300–20361
Bob's Gulf	RF300–17570
Burns Concrete, Inc	VFA–0127
Dewey Jackson, Inc	RF300–20450
Ellsworth Freight Lines	RR272–228
Gulf Tri City Oil Company	RF300–20301
Hiram Castilleja S.S	RF300–15283
Larry's Gulf	RF300–13326
Larry's Gulf	RF300–13327
Mystic Fuel, Inc	RF300–20396
Parton Oil Company	RF300–16768
Yates Gulf No. 1	RF300–17883
Yates Gulf No. 2	RF300–17884

[FR Doc. 96–23184 Filed 9–10–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of February 12 through February 16, 1996

During the week of February 12 through February 16, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 29, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Decision List No. 959

Appeals

ITECH, Inc., 2/13/96, VFA–0113

ITech, Inc. filed an Appeal from a determination by the Western Area Power Administration (WAPA) under the Freedom of Information Act (FOIA). Itech sought a copy of a technical proposal that had been submitted to WAPA. WAPA released to ITech responsive documents, but withheld portions of the material requested pursuant to FOIA Exemption 4. In its Appeal, Itech objected to being charged $147.38 for WAPA's processing of the request. In considering the Appeal, the DOE found that the fees imposed were reasonable and necessary to recoup the cost of the processing the request. Accordingly, the Appeal was denied.

Knolls Action Project, 2/14/96, VFA–0112

The Knolls Action Project (KAP) filed an Appeal from a determination issued to it by the Department of Energy's Office of Naval Reactors (NR) on November 29, 1995. In that determination, NR provided information to KAP under the terms of a fee waiver originally sought in a request for information filed by KAP under the Freedom of Information Act (FOIA). In its Appeal, KAP asserted that NR did not provide two categories of information which it argued are encompassed by the scope of the fee waiver granted by the Office of Hearings and Appeals in a previous decision. In considering the Appeal, the Office of Hearings and Appeals found that NR properly provided relevant information within the scope of the fee waiver granted to KAP. Therefore, the Department of Energy denied KAP's Appeal.

Stand of Amarillo, Inc., 2/12/96, VFA–0115

On January 16, 1996, STAND of Amarillo, Inc. (STAND) filed an Appeal from a determination issued to it on December 5, 1995, by the FOIA Officer of the Department of Energy's Albuquerque Field Office. In that determination, the FOIA Officer stated that the legal files sought by STAND are "records in the possession and control of Mason & Hanger, Silas Mason Co., Inc., and are therefore not 'agency records' subject to the provisions of the FOIA." In considering the Appeal, the DOE discovered the possible existence of "agency records" responsive to the appellant's request and subject to the FOIA. Accordingly, the DOE remanded the case to the FOIA Officer for a new search for responsive documents.

Williams & Trine, P.C., 2/10/96, VFA–0110

Williams & Trine, P.C. (Williams) filed an Appeal from a denial issued by the FOIA/Privacy Act Division (DOE/HQ) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the information requested by Williams, documentation of the shipment of hazardous or radioactive material from any DOE facility to any facility of Williams' client, Cotter Corporation, did not exist because no shipments of such material were ever made. Therefore, the Appeal was denied.

Personnel Security Hearing

Albuquerque Operations Office, 2/13/96, VSO–0061

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual to maintain a level "Q" access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found that the individual had consciously failed to submit federal income tax returns, thereby violating commonly understood federal tax requirements. The Hearing Officer further found that the individual had not chosen to resolve his disagreements with the Internal Revenue Service through the refund process, but instead had required the IRS to bring an enforcement action against him. The Hearing Officer also found that the individual's conduct in submitting a substitute form to his employer and thereby ending his withholding was also a violation of commonly understood tax requirements. Finally, the Hearing Officer found that the individual's recent contacts and correspondence with the IRS indicate that his actions and positions on tax matters have not been mitigated by any effort on his part to cooperate with the IRS and resolve his tax problems. The Hearing Officer concluded that the individual's conduct in these matters was not reliable or trustworthy for purposes of access authorization. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Refund Applications

Dayco Products, Inc., 2/15/96, RJ272–5; RC272–332

The DOE issued a Decision and Order in the crude oil refund proceeding concerning Dayco Products, Inc. (Dayco). In the course of processing supplemental crude oil refunds, the DOE discovered that Dayco had submitted one application on behalf of its headquarters and another application for a subsidiary. It was further discovered that the subsidiary's volume claim was duplicative of its headquarters claim but that both had been granted. Therefore, the DOE notified Dayco and Dayco's representative for the headquarters application that in the supplemental proceeding, the subsidiary would not receive a supplemental refund, and Dayco headquarters' volume would be reduced by the amount of duplicative gallonage. However, through an oversight, Dayco headquarters received an unreduced refund. In order to correct the error, the OHA determined that both the representative and Dayco were jointly and severally responsible for repaying the DOE the amount of $2,308. Further, the Dayco subsidiary's original refund was rescinded.

Perry Gas Processors, Inc./State of Missouri—RQ183–598

Vickers Energy Corp./State of Missouri—RQ1–599

Coline Gasoline Corp./State of Missouri, 2/15/96, RQ2–600

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Missouri. Missouri requested that all remaining funds allocated to it in the Perry Gas Processors, Vickers Energy, and Coline Gasoline special refund proceedings be used to fund the state's low-income home weatherization assistance program. As of January 31, 1996, the allocation totaled $264,409 ($92,564 in principal and $171,845 in interest), but the allocation will be slightly higher at the time of disbursement due to interest earned between January 31, 1996 and the date of disbursement. The DOE found that Missouri's proposal would provide timely restitutionary benefits to injured consumers of refined petroleum products. Accordingly, Missouri's second-stage refund application was granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Hoist & Derrick Co	RK272–01851	02/13/96
Crude Oil Supple. Ref. Dist	RB272–00061	02/13/96
Crude Oil Supple. Ref. Dist	RB272–00065	02/13/96
Frank Thompson Transport, Inc	RR272–230	02/15/96
Gulf Oil Corporation/Corey Bros. et al	RF300–18002	02/15/96
Gulf Oil Corporation/Goodhew Ambulance Co. et al	RF300–16556	02/15/96
Kraft Food Service et al	RK272–01156	02/13/96
Lahoma-Imo Farmers Co-op et al	RF272–99108	02/12/96
Mooro's Inc	RF272–78065	02/12/96
Newport Hospital et al	RF272–86523	02/12/96
The BOC Group, Inc	RF272–72861	02/15/96
Airco Industrial Gases	RF272–75518	
Theisen Supply, Inc	RF272–77994	02/12/96
Transportation & Material Handling Div. of Natl Steel	RF272–78119	02/12/96
Vigoro Industries, Inc. et al	RK272–1627	02/15/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Adeline Blumhorst	RK272–2422
Carmany's Gulf	RF300–16655
Crosstown Arco	RF304–15178
East Valley Arco	RF304–15182
Eaton Bulk Plant	RF304–15183
Franklin Park Gulf	RF300–16777
Gasp Realty Assoc	RR272–215
Goval Realty Assoc	RR272–216
Jeffrey R. Leist	VFA–0119
Joe Manchac Grocery and Service Station	RF300–16806
Kew Towers Co	RR272–217
Ohio Barge Lines, Inc	RF272–91401
Paul Yesik	RF300–16766
Point Bay fuel, Inc	RF304–15041
Rubel Fuel	RF304–15064
Shackdette Oil Co	RF304–15068
Spag Realty Assoc	RR272–214
Spicer Gas Co., Inc	RF304–15067
Transco, Inc	RF272–98658
Tri State Gas and Appliance Co., Inc	RF300–16600
V.G. Mullins	RF300–16968
Ward Air Canada	RF300–18145
Warrior & Gulf Navigation Co	RF272–91402
Zapata Coal	RF300–16830

[FR Doc. 96–23185 Filed 9–10–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5606–5]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of proposals for and request for comment on Project XL.

SUMMARY: EPA is today augmenting its continuing solicitation of proposals for the Project XL (excellence and leadership) program with a specific request for proposals that feature innovative environmental technologies.

DATES: The period for submission of proposals began on May 23, 1995 with the publication of a solicitation in the **Federal Register** at (60 FR 27282) [FRL–5197–9]. It is an open solicitation with no set end date, and project proponents may submit more than one project proposal. The period for submission of comments on aspects of the program discussed here shall extend for at least sixty (60) days from the date of publication of this notice. However, as the issues discussed in this notice will not necessarily be resolved by these comments, the docket will remain open to additional comments until further notice.

ADDRESSES: Project proposals and all comments should be sent to: Regulatory Reinvention Pilot Projects, FRL–5197–9, Water Docket, Mail Code 4101, US EPA, 401 M Street, S.W., Washington, DC 20460. The docket accepts no faxes. Project proponents should submit four (4) copies of all materials sent to the docket. In addition to providing general information about the proposed project, project proponents are encouraged to comment on the relationship of their proposals to the criteria for project selection described in the **Federal Register** on May 23, 1995 [FRL–5197–9] and on November 1, 1995 [FRL–5322–9]. Proponents of projects are invited, but by no means required, to submit other useful materials in paper or other audio/visual or electronic formats.

FOR FURTHER INFORMATION CONTACT: For information on projects featuring environmental technology, contact Pasky Pascual. For information on Project XL and all other aspects of this notice contact Christopher Knopes. Both can be reached at the following address: Emerging Sectors and Strategies Division; United States Environmental Protection Agency; 3202 Mail; 401 M Street, S.W.; Mail Code 2129; Washington, DC 20460. The telephone number for the Division is (202) 260–2220. The facsimile number is (202) 401–6637. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the internet at "http://www.epa.gov/ProjectXL" and via an automated fax-on-demand menu at (202) 260–8590.

SUPPLEMENTARY INFORMATION:

Background

Since publication of the Clinton Administration's Bridge to a Sustainable Future in April, 1995, the Federal government has been committed to strengthening incentives for technological innovation within its regulatory, permitting, compliance and enforcement programs. EPA's regulatory reinvention efforts—replacing prescriptive regulations with performance-based environmental management strategies, building partnerships, setting priorities based on sound science, cutting red tape, improving access to environmental information, ensuring better accountability, compliance and enforcement—are part of this commitment. Project XL, created by President Clinton on March 16, 1995, as part of his Reinventing Environmental Regulation initiative, provides a limited number of companies and other regulated entities an opportunity to test performance-based alternatives to current requirements that achieve superior environmental performance, cost savings, and greater accountability to the local community. EPA has committed to implement a target of 50 XL projects in four categories: XL for Facilities, XL for Sectors, XL for Federal Facilities and XL for Communities. Solicitation of proposals in the first three XL categories was announced in the **Federal Register** on May 23, 1995 [FRL–5197–9]. A similar notice for XL for Communities proposals appeared on November 1, 1995 [FRL–5322–9]. EPA has received over 50 XL proposals, has selected 15 for project development, and on July 8, 1996, approved its first XL Final Project Agreement.

In an effort to improve the potential demonstration value of XL projects, EPA is for the first time issuing an XL "request for proposals" (RFPs) of a specific type—in this case proposals that encourage innovative environmental technologies. The Agency will periodically issue additional XL RFPs for other kinds of projects that in more specific ways address the basic XL criteria laid out in the May 23, 1995, **Federal Register**. XL RFPs should provide a sense of the types of proposals that are of greatest interest to EPA and other participants in national dialogue on the future of environmental policy. With this notice, EPA brings together more formally its commitment to strengthen incentives for innovative environmental technologies and its commitment to test alternative environmental management strategies in Project XL. This notice solicits proposals for the demonstration of innovative technologies in the XL program.

Areas of Greatest Interest

Environmental technologies include any technology that helps control, monitor, reduce, or remediate the environmental impact associated with economic activity. This definition covers products used for exclusively environmental purposes as well as infrastructural changes or products that ultimately minimize the impacts of industry and federal facilities on the environment. Examples of such technologies include:

- Equipment that controls, mitigates, or remediates environmental pollution;
- Tools that improve the ability to monitor environmental conditions, emissions and discharges more accurately and more frequently and that make this information available and understandable to communities and the general public;
- Information systems that facilitate the collection, analysis, and distribution of environmental data in a way that optimizes economic and environmental performance; and
- operational or process changes that reduce material inputs, reduce the use of toxic substances, or reduce energy use while maintaining equal or better productivity levels and environmental protection.

How Can An XL Project Help?

An XL project can spur the development of innovative environmental technology by.

- Removing a specific regulatory or other barrier to the development, testing or deployment of a technology;
- Creating a general regulatory climate for a facility (e.g., a performance-based system with ambitious targets) that provides incentives for innovation;
- Fostering a test-bed for monitoring requirements that go beyond or are different from conventional requirements that favor existing measurement concepts;

• Creating cost savings through regulatory efficiency that are reinvested in innovative technology development and deployment.

XL provides the climate in which technical innovation can thrive and flourish. A company or federal facility seeking to develop processes that minimize the impact of its activities and products or other technologies that help in the monitoring of these impacts may be thwarted by a legal requirement, regulatory infrastructure, policy or other procedure that treats individual environmental problems in isolation, or that imposes a particular solution based on prior technological constraints. Project XL can provide an innovative industrial or federal facility with the site-specific flexibility needed to surmount these barriers.

By facilitating discussions among various stakeholders during project development, Project XL provides the innovative industrial or federal facility with a forum to dialogue with technology suppliers, regulators, users and customers to exchange information and generate ideas that simulate new approaches to environmentally-responsible manufacturing.

EPA is soliciting proposals that prototype technological applications that lower compliance costs, that minimize the risk of environmental liability, or that enhance operational flexibility. By demonstrating the competitive advantage that facilities obtain through the use of innovative environmental technologies, Project XL can strengthen the demand for those technologies while allowing the collective wisdom or individual facilities to determine which technology options best optimizes the twin objectives of economic and environmental performance.

Procedures for Application

Basic procedures for submission and review of an XL for Facilities, Sectors, or Federal Facilities proposal and for submission of an XL for Communities proposal are contained in the May 23, 1995, and November 1, 1995, **Federal Register**, respectively. Additionally, project proponents are encouraged to state why they believe the projects they are submitting are particularly innovative. EPA intends to work cooperatively with project proponents to develop and refine acceptable approaches. At the same time, the Agency and its partners in the State and Tribal environmental agencies must retain the ultimate authority to select projects based on a qualitative consideration of the project relative to XL selection criteria. Moreover, given the limited and pilot nature of XL, projects that satisfy many or all of the criteria may nonetheless not be selected if, in the Agency's judgment, other proposed projects better serve the objectives of the program. Moreover, no person is required to submit a proposal or obtain approval as a condition of commencing or continuing a regulated activity. Accordingly, there will be no formal administrative review available for proposals that are not selected, nor does EPA believe there will be a right to judicial review.

Supplementary Information on Process Streamlining

Project XL, since its inception on March 16, 1996 by President Clinton, has been implemented by a process developed by EPA with the help of potential sponsors, stakeholders, and state and tribal environmental agencies. This process was outlined in the May 23, 1995, **Federal Register** and further explained in EPA's December 1, 1995, draft Principles for Development of Project XL Final Project Agreements. That process has five stages: solicitation, selection, development, implementation and evaluation. Today EPA is announcing its intent to revise the process to respond to many concerns voiced during the initial round of project negotiations. While the Agency is not yet prepared to provide a detailed account of these changes, EPA believes is important to signal our willingness to make some mid-course corrections designed to streamline and improve the XL process. These changes will be aimed at several different aspects of the process, but will include:

• Improving the quality of XL project proposals by asking project proponents to include a clear statement how the proposal meets the XL criteria, including a discussion of the regulatory flexibility requested, the environmental benefits to be achieved, and the proposed plan for stakeholder involvement;

• Defining some principles of superior environmental performance to consider when developing proposals;

• Defining some principles for including local community members and other stakeholders in the project development process;

• Management of the XL program and the project development process;

• Strengthening internal EPA management of the XL program and the project development process;

• Promoting internal cultural change among regulators toward a new, more participatory approach to environmental protection; and

• Providing national and local level stakeholders with expanded opportunities for participation and input through greater access to information and resources.

Dated: September 6, 1996.

Jon Kessler,

Acting Assistant Administrator for Policy, Planning, and Evaluation.

[FR Doc. 96–23218 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTON AGENCY

[FRL–5607–8]

Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On September 11, 1995 (60 FR 47172), the EPA announced the establishment of the Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee under the Clean Air Act Advisory Committee (CAAAC). The CAAAC was established on November 8, 1990 (55 FR 46993) pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app I). The purpose of the Subcommittee is to provide advice and recommendations on integrated approaches for implementing potentially new national ambient air quality standards (NAAQS) for ozone and particulate matter, as well as a regional haze program.

OPEN MEETING: Notice is hereby given that the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs will hold its next public meeting on Thursday, September 26, 1996 (from 2:00 p.m. to 7:00 p.m.) and Friday, September 27 (from 8:00 a.m. to 2:00 p.m.).

ADDRESSES: The public meeting will be held at the Norfolk Waterside Marriott, 235 East Main Street, Norfolk, Virginia 23510.

FOR FURTHER INFORMATION CONTACT: For further information on the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs, please contact Mr. William F. Hamilton, Designated Federal Officer, at 919–541–5498, or by mail at U.S. EPA, Office of Air Quality Planning and Standards,

MD–12, Research Triangle Park, NC 27711. When a draft agenda is developed, a copy can be downloaded from the Ozone/Particulate Matter/Regional Haze FACA Bulletin Board, which is located on the Office of Air Quality Planning and Standards Technology Transfer Network (OAQPS TTN) or by contacting Ms. Denise M. Gerth at 919–541–5550.

Dated: August 29, 1996.

John S. Seitz,

Director, Office of Air Quality Planning and Standards

[FR Doc. 96–23221 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5608–6]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a two-day public meeting on September 26 and 27, 1996, for the purpose of informal information exchange on issues related to the development of rules to address microbial contaminants and disinfectants/disinfection by-products in drinking water. Topics at the meeting will include: (1) a discussion of Microbial/Disinfection By-products (M/DBP) policy alternatives, and (2) a review of current and future health effects research for disinfectants/disinfection by-products. The meeting will be preceded by a one-day technical meeting on September 25, 1996, to discuss identification of data sub-sets to be developed from sample collection and analytical activities under the Information Collection Rule issued on May 14, 1996. These will be used to help support future M/DBP rule development.

EPA is inviting all interested members of the public to participate in these and subsequent information exchange meetings on microbial contaminants and disinfectants/disinfection by-products in drinking water. The September 26 and 27 meeting will be held at the Center for Environmental Dispute Resolution (RESOLVE), 2828 Pennsylvania Avenue, Northwest, Washington, D.C. A limited number of phone lines will be available for this meeting to enable attendance by teleconference. The technical meeting on September 25 will also be held in Washington D.C. at the Sheraton City Center Hotel, 1143 New Hampshire Avenue, Northwest. Because of limitations on conference room seating, members of the public who are interested in attending on any of these days are requested to contact Elizabeth Corr of EPA's Office of Ground Water and Drinking Water at (202) 260–8907 prior to the day of the meeting.

Members of the public who wish to be notified of future meetings should also contact Elizabeth Corr.

Dated: September 6, 1996.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 96–23219 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5607–8]

Extension of Comment Period for the Notice of Availability and Request for Comments on the Permit Improvement Team's Concept Paper on Environmental Permitting and Task Force Recommendations

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and request for comments; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is extending the comment period for the Permit Improvement Team's Concept Paper on Environmental Permitting and Task Force Recommendations, which appeared in the **Federal Register** on July 19, 1996 (see 61 FR 37744). The public comment period was to end on September 3, 1996. The purpose of this notice is to extend the comment period an additional 30 days beyond that, to end on October 3, 1996. This extension of the comment period is provided to allow commenters an opportunity to comment further on the concept paper.

DATES: EPA will accept public comments on the concept paper and recommendations until October 3, 1996. Comments postmarked after the close of the comment period will be stamped "late."

ADDRESSES: The public must send an original and two copies to Docket Number F–96–PT2A–FFFFF, located at the RCRA Docket. The official address is: RCRA Information Center, U.S. Environmental Protection Agency (5035W), 401 M Street, S.W., Washington, D.C. 20460. Although the mailing address for the RCRA Information Center has not changed, the office was physically moved in November 1995. Therefore, hand-delivered comments should be taken to the new address: 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. (Also see the section under "Supplementary Information" regarding the paperless office effort for submitting public comments.) The RCRA Information Center is open for public inspection and copying of supporting information from 9:00 am to 4:00 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: Lance Miller, PIT Executive Director at Permits Improvement Team, Mail Stop 100, 2890 Woodbridge Ave., Edison, NJ 08837, phone: (908) 321–6782.

SUPPLEMENTARY INFORMATION:

Availability of Document

The PIT Concept Paper on Environmental Permitting and Task Force Recommendations can be obtained via the Internet at 'gopher://gopher.epa.gov' or 'http://www.epa.gov'. After reaching either of these Internet sites, locate the search function and type 'Permit Improvement Team' to locate the Concept Paper on Environmental Permitting and Task Force Recommendations.

Background Information

The PIT was established in July 1994 and is composed of representatives from EPA Headquarters and Regional offices and state, tribal and local permitting agencies. The PIT held numerous stakeholder meetings to solicit input on the most critical permitting issues as well as to obtain feedback on the PIT's initial recommendations. Although significant input on the PIT's recommendations has been received through the stakeholder meetings, a final opportunity to review and comment on the recommendations is being provided to ensure that all stakeholders have an opportunity to participate in the development of significant change in direction for permitting programs that is being contemplated. The Agency intends to use the concept paper on environmental permitting as an overall guide for reforms to permit programs, where appropriate. The individual recommendations contained in the document will be considered by program and regional offices as they develop specific plans in response to the concepts discussed in the PIT recommendations. These plans will include providing assistance to states

and tribes that choose and implement appropriate permit reform. As specific program changes are developed, opportunities for stakeholder input will be provided. It is anticipated that stakeholders will use the final concept paper, as well as other relevant documents and authorities such as applicable statutes, in their review of specific permit program changes. This will help to provide all stakeholders with a common context when commenting on these specific changes. For some permitting programs, minor changes may be needed to implement many of the concepts specified in the document; while other programs may require more significant modifications. Some of these modifications may also require changes to statutes and regulations and could necessitate technical research and analysis prior to revising permit programs to conform with the recommendations. Therefore, the time-frame to implement the recommendations could range from several months to many years. The Agency notes that the current permitting systems were developed over the last three decades, and that changes need to be made within the existing systems while they evolve to the approach envisioned in the concept paper. Furthermore, as implementation proceeds, it is likely that some of the concepts will require revision based on new information.

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ACSII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure as an attempt to expedite our internal review and response to comments. This expedited procedure is in conjunction with the Agency "Paperless Office" campaign.

James Mathews,

Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 96–23220 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5604–7]

State Program Requirements; Approval of Application by Louisiana To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Approval of the Louisiana Pollutant Discharge Elimination System Under CWA.

SUMMARY: On August 27, 1996, the Regional Administrator for the Environmental Protection Agency, Region 6, approved the application by the State of Louisiana to administer and enforce the National Pollutant Discharge Elimination System (NPDES) for regulating discharges of pollutants into waters within the state. The authority to approve state programs is provided to EPA in Section 402(b) of the Clean Water Act (CWA). The Louisiana Pollutant Discharge Elimination System (LPDES) program will operate in lieu of the EPA administered NPDES program pursuant to Section 402 of the CWA. In making its decision, EPA has considered all comments and issues raised during the publicly noticed comment period.

EFFECTIVE DATE: Because CWA § 301(a) prohibits new discharges until they are authorized by an NPDES permit, this action is effective August 27, 1996 to avoid futher suspension of permitting actions in Louisiana and the unnecessary burden such a suspension would impose on new dischargers.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell at U.S. EPA, Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, Texas 75202, or by calling (214) 665–7513, or electronically at CALDWELL.ELLEN@EPAMAIL.EPA.GOV; or Ms. Barbara Bevis at the Office of Water Resources, LDEQ, P.O. Box 82215, Baton Rouge, Louisiana, 70884–2215, or by calling (504) 765–2740, or electronically at BARBARA_B@DEQ.STATE.LA.US.

SUPPLEMENTARY INFORMATION: Louisiana's application was described in the **Federal Register** (61 FR 15258) on April 5, 1996, in which EPA requested comments. Notices of EPA's proposal to approve the LPDES program were also published on April 8, 1996, in The Advertiser (Layfayette, La.); The Alexandria Daily Town Talk (Alexandria, La.); The Shreveport Times (Shreveport, La.); The Times-Picayune (New Orleans, La.); The Lake Charles American Press (Lake Charles, La.); The Courier (Houma, La.); The News Star (Monroe, La.); and The Baton Rouge Advocate (Baton Rouge, La.). Copies of the application were made available at the addresses below and could also be purchased from the state for the cost of $108.00. EPA provided copies of the public notice to permitted facilities, Indian tribes, and other federal and state agencies.

Both a public meeting and hearing were held in Baton Rouge, Louisiana, on May 9, 1996. The meeting (provided as an informal question and answer session), began at 3:00 pm and ended at 4:30 pm. The hearing started at 7:00 pm and lasted until 8:17 pm. Oral comments were recorded during the hearing and entered into EPA's official record. Written comments were accepted by EPA through May 27, 1996 (the original comment period, which was to end May 20, 1996, was extended to May 27, 1996, at the request of commenters). EPA's response to the issues raised during the comment period are contained in the Responsiveness Summary contained in this notice. A copy of EPA's decision and its Responsiveness Summary has been sent to all commenters and interested parties.

The LPDES program description and agency agreements continue to be available to the public at the following internet address: http://WWW.DEQ.STATE.LA.US—select Office of Water Resources.

Copies of the final program documents for the LPDES program are also available to the public during normal business hours, Monday through Friday, excluding holidays, at:

EPA Region 6, 12th Floor Library, 1445 Ross Avenue Dallas, Texas 75202, (214) 665–7513

LDEQ Headquarters, 7290 Bluebonnet, Baton Rouge, LA 70884–2215, (504) 765–2740

LDEQ Acadiana Regional Office, 100 Asma Blvd., Suite 151, Lafayette, LA 70508, (318) 262–5584

LDEQ Bayou Lafourche Regional Office, 104 Lococo Drive, Raceland, LA 70394, (504) 532–6206

LDEQ Capitol Regional Office, 11720 Airline Highway, Baton Rouge, LA 70817–1720, (504) 295–8583

LDEQ Kisatchie Central Regional Office, 402 Rainbow Drive, Bldg. 402, Pineville, LA 71360, (318) 487–5656

LDEQ Northeast Regional Office, 804 31st Street, Suite D, Monroe, LA 71211–4967, (318) 362–5439
LDEQ Northwest Regional Office, 1525 Fairfield, Room 11, Shreveport, LA 71101–4388, (318) 867–7476
LDEQ Southeast Regional Office, 3501 Chateau Boulevard-West Wing, Kenner, LA 70065, (504) 471–2800
LDEQ Southwest Regional Office, 3519 Patrick Street, Room 265A, Lake Charles, LA 70605, (318) 475–8644

The Regional Administrator has notified the State and notice of EPA's final decision has been published in the same newspapers in which the public notice of the proposed program appeared (listed above). As of August 27, 1996, EPA suspended issuance of NPDES permits in Louisiana (except for those permits which EPA retained jurisdiction as specified below). The State's LPDES program will implement federal law and operate in lieu of the EPA-administered NPDES program. EPA does, however, retain the right to object to LPDES permits proposed by LDEQ, and if the objections are not resolved, to issue the permit itself.

Scope of the LPDES Program and Clarifications on EPA Authority and Oversight

All NPDES files under the jurisdiction of LDEQ will be transferred from EPA to the state within 30 days. NPDES permits under LDEQ's jurisdiction will become state administered LPDES permits and will be reissued (upon expiration) or modified by the state agency. All permits brought to public notice by LDEQ after this authorization and under its LPDES authority will be LPDES permits providing NPDES coverage to those dischargers. [NOTE: Until otherwise notified by the State, all Notices of Intent and Termination (NOIs and NOTs) for coverage under EPA's general permits for storm water (only) should continue to be sent to the EPA NOI processing center (4203), 401 M Street, S.W., Washington, D.C. 20460. Discharge Monitoring Reports (DMRs) under those general permits should be sent to LDEQ.]

A. EPA Authority

Louisiana's LPDES program generally covers all discharges of pollutants subject to the federal NPDES program, with some exceptions and clarifications. EPA will retain the permitting authority for the following discharges in the State of Louisiana:

1. Municipal Sewage Sludge: LDEQ has not elected to not seek authorization for the municipal sewage sludge regulatory program at this time. EPA will thus continue to regulate municipal sewage sludge disposal in Louisiana in accordance with Section 405 of the Act and 40 CFR Part 503.

Since EPA desires all treatment works treating domestic sewage (TWTDS) in the State of Louisiana to be covered under a permit, EPA is currently preparing a draft general permit to cover eligible TWTDS. TWDTS includes facilities generating sewage sludge or otherwise effectively controlling the quality of sewage sludge or the manner in which it is disposed.

Enforcement for sludge management and reporting authority as defined by 40 CFR Part 503 will be retained by EPA Region 6 until such time as the State of Louisiana is authorized to run the sludge disposal program.

2. Jurisdiction over Discharges in Indian Country: As noted in EPA/LDEQ MOA (§ II.C.2.b, at page 7), LDEQ does not seek to administer the LPDES program in Indian Country. EPA will thus issue NPDES permits for discharges in Indian Country within the geographic boundaries of Louisiana, i.e., the reservations of the Chitimacha, Coushatta, and Tunica-Biloxi tribes. Until they are deleted by regulatory amendment, the references to "an Indian tribe or an authorized Indian tribal organization" in the definition of "municipality" and to "an Indian tribe" in the definition of "state" at L.A.C. 33:IX.2313 should thus be regarded as mere surplusage. They do not suggest that LDEQ will seek to regulate discharges from POTWs or other facilities on Indian lands in Louisiana. The LDEQ will work with EPA Region 6 to identify any potential discrepancies having to do with Indian Lands or Tribes, and will address them in the first revision to the LPDES regulations.

3. Discharges to U.S. Waters Beyond the Territorial Seas: EPA retains the permanent NPDES authority for discharges seaward of the 3 mile territorial seas limit and within the jurisdiction of the United States. Many of these discharges are from oil and gas exploration and production operations in the Outer Continental Shelf area of the Western Portion of the Gulf of Mexico, currently regulated under NPDES general permit No. GMG290000.

4. Discharges from Cleanup of Petroleum UST Systems: In the July 22, 1996, **Federal Register**, EPA proposed a general NPDES permit (LAG280000) authorizing discharges resulting from the implemention of Corrective Action Plans for the cleanup of Petroleum UST Systems in Louisiana. A Petroleum UST System is an undergound storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oil, etc. In accordance with the EPA/LDEQ MOA, EPA will retain authority to issue the final decision on this permit. Once the permit is final it will be transfered to the State for administration.

5. Status of applications, proposed permits, contested permit actions, and unresolved EPA enforcement actions: Except for the files listed below, all pending NPDES permit applications and issued NPDES permits under jurisdiction of LDEQ will be transferred to Louisiana within 30 days of the approval of the LPDES program. In accordance with the signed Memorandum of Agreement, EPA will retain temporary authority for all proposed permits until final issuance; permits contested under evidentiary hearing proceedings until those are resolved; and compliance files and authority for all open enforcement orders until such time as LDEQ has issued parallel orders or EPA has resolved the enforcement action.

Proposed Permits: EPA shall retain permit decision-making authority over permits which are currently public notice until they are final issued and effective. Once these permits are effective, they will be transferred to LDEQ unless contested. The permit files will be transferred to the state as the permits become effective.

Contested Permit Actions: EPA will retain permits for which variances or evidentiary hearings have been requested until such time as they are resolved. As each request is resolved, EPA will notify LDEQ and transfer jurisdiction of the permit to LDEQ. EPA shall also maintain enforcement lead over discharge permits with a pending evidentiary hearing request; these will be transferred to the state upon resolution of the issue for which the hearing was requested.

Enforcement Actions: EPA Region 6 will retain primary enforcement authority after the date the LPDES program is approved for a number of facilities which have unresolved compliance issues. These permittees will continue to report to EPA on all compliance issues including regular submittals of Discharge Monitoring Reports for their NPDES permits. Authority for these permits can subsequently be transferred to the State one of two ways: 1) The outstanding compliance issue can be resolved and the permittee has returned to compliance, or, 2) the State can issue a parallel administrative action to address the outstanding compliance issue. As a practical consideration, enforcement authority for municipal or parish

facilities that are operated by the same governmental entity will not be transferred to the State as long as one of its major facilities has an unresolved compliance issue. NOTE: EPA in coordination with LDEQ will inform *all* permittees in writing of their reporting responsibilities. Permittees should continue to report as specified by both their State and Federal permits until otherwise notified.

B. Penalty Policy Status and Regulation Corrections

In a letter dated March 29, 1996, J. Dale Givens, LDEQ Secretary, committed to developing and promulgating a penalty policy by April 1, 1997. The State is in the process of drafting the policy. EPA will work with the State in an effort to assure that policy is consistent with Federal policies.

The definition of "Waters of the State" is not included in the definition section of the LPDES regulations. The definition of "Waters of the State" for LPDES purposes is in La. R.S. 30:2073(7). This definition will be added to the LPDES regulations at the first opportunity.

C. Consultation Agreements Under the Endangered Species Act and the National Historic Preservation Act

1. Agreement with U.S. Fish and Wildlife Service: Consultation under Section 7 of the Endangered Species Act has been completed on EPA's approval of the LPDES program. An agreement has been reached between EPA Region 6 and the U.S. Fish and Wildlife Service (FWS) to provide EPA oversight of LPDES permit actions with respect to federally listed species. The conditions of the agreement signed by EPA and FWS are listed below:

a. EPA Region 6 will oversee activities conducted by the Louisiana Department of Environmental Quality to ensure that the conditions in the EPA/LDEQ Memorandum of Agreement are followed (particularly Sections III.E.1.b and III.E.1.d pertaining to provisions and agreements in the LDEQ/FWS Memorandum of Understanding).

b. U.S. Fish and Wildlife Service will work with LDEQ in the development of permits and provide comments on draft permits in accordance with LDEQ/FWS Memorandum of Understanding (hereby incorporated by reference).

c. When the FWS and LDEQ cannot agree on appropriate actions for the protection of listed or proposed species or critical habitat associated with a LPDES permit, and EPA is notified of FWS concerns by LDEQ, EPA will determine whether to make a formal objection to the issuance of the permit (in accordance with 40 CFR 123.44). EPA will formally object to the issuance of the draft permit if FWS determines that the action is likely to jeopardize the continued existence of a listed or proposed species or destroy designated critical habitat. Procedures for an EPA formal objection are outlined in the EPA/LDEQ MOA.

d. EPA will work with LDEQ and FWS to resolve issues of concern. Should EPA be able to facilitate a resolution of the issues that prompted the formal objection, the objection may be withdrawn, and LDEQ may proceed with the issuance of the permit.

e. If EPA determines to issue the permit, they will consult with FWS, prior to permit issuance, when it is determined that the permit action may have an effect on a federally listed species or may jeopardize the continued existence of a proposed species or adversely modify critical habitat, in accordance with Section 7 of the Endangered Species Act (regulations found at 50 CFR Part 402).

The U.S. Fish and Wildlife Service and U.S. EPA Region 6 agree that the provisions in the LDEQ/FWS MOU and the above-listed procedures describing EPA's oversight activities of the Louisiana program are appropriate mechanisms for the protection of federally listed or proposed species for LDEQ issued LPDES permits; and thus the authorization of the Louisiana State permitting program under NPDES is not likely to adversely affect listed species or adversely modify critical habitat, nor is likely to jeopardize the continued existence of a proposed species in the state of Louisiana. Signed by William B. Hathaway, Director, Water Quality Protection Division, U.S. EPA Region 6 [date: June 12, 1996]; and David Fruge, Field Supervisor, Louisiana Field Office, U.S. Fish and Wildlife Service [date: June 20, 1996].

2. Agreement with National Marine Fisheries Service: Consultation under Section 7 of the Endangered Species Act has been completed on EPA's approval of the LPDES program (letters dated August 16, 1996 and August 19, 1996). Informal consultation produced agreement between EPA Region 6 and the National Marine Fisheries Service (NMFS) that transfer of authority for permitting point source discharges to LDEQ would not be likely to adversely affect federally listed marine species. The conditions agreed upon by EPA and NMFS are listed below:

a. EPA Region 6 will oversee activities conducted by the Louisiana Department of Environmental Quality (LDEQ) to ensure that the conditions in the EPA/LDEQ Memorandum of Agreement are followed.

b. Annually, the National Marine Fisheries Service (NMFS) will provide LDEQ with a list of federally-listed threatened, endangered, and proposed species under NMFS jurisdiction, as well as proposed critical habitat, that occur in Louisiana and that are dependent upon marine habitat for all or part of their existence. NMFS will provide comments on draft permits in accordance with LDEQ/NMFS Memorandum of Understanding.

c. When the Service and LDEQ cannot agree on appropriate actions for the protection of listed or proposed species associated with a LPDES permit, and EPA is notified of NMFS concerns by LDEQ, EPA will work with NMFS and LDEQ to resolve the issue, and will determine whether to make a formal objection to the issuance of the permit (in accordance with 40 CFR 123.44). Procedures for an EPA formal objection are outlined in the EPA/LDEQ MOA.

d. EPA will work with LDEQ and NMFS to resolve issues of concern. Should EPA be able to facilitate a resolution of the issues that prompted a formal objection, the objection may be withdrawn, and LDEQ may proceed with the issuance of the permit.

e. If EPA determines to issue the permit, it will consult with NMFS when it is determined that the permit action is likely to adversely affect a federally listed species or may jeopardize the continued existence of a proposed species or adversely modify critical habitat, in accordance with Section 7 of the Endangered Species Act.

f. Where NMFS or LDEQ believes a State-drafted permit is likely to adversely affect a federally listed species or designated critical habitat, but EPA determines a formal objection to the permit is not justified, EPA will work with LDEQ and NMFS to try to find a resolution to the expressed concerns.

The National Marine Fisheries Service and U.S. EPA Region 6 agree that the above-listed procedures are appropriate mechanisms for the protection of federally listed or proposed species for LDEQ issued LPDES permits; and that the authorization of the Louisiana State permitting program under NPDES, will not be likely to adversely affect listed species or adversely modify critical habitat, nor is likely to jeopardize the continued existence of a proposed species. [Letter signed by William B. Hathaway, Director, Water Quality Protection Division, U.S. EPA Region 6 [date: August 16, 1996]; and concurrence letter from Dr. Andrew Kemmerer, Director, Southeast Region,

National Marine Fisheries Service dated: August 17, 1996.]

3. Agreement with State Historic Preservation Officer: Consultation under Section 106 of the National Historic Preservation Act has been completed on EPA's approval of the LPDES program. An agreement has been reached between EPA Region 6 and the Louisiana State Historic Preservation Officer (SHPO) to provide EPA oversight of LPDES permit actions with respect to properties listed or eligible for listing in the National Register of Historic Places. The conditions of the agreement signed by EPA and the SHPO are listed below:

a. EPA Region 6 will oversee activities conducted by the Louisiana Department of Environmental Quality to ensure that the conditions in the EPA/LDEQ Memorandum of Agreement are followed.

b. The Louisiana State Historic Preservation Officer will work with LDEQ in the development of permits and provide comments on draft permits in accordance with LDEQ/LSHPO Memorandum of Understanding.

c. When LSHPO and LDEQ cannot agree on appropriate actions for the protection of historic properties associated with a LPDES permit, and EPA is notified of LSHPO's concerns by LDEQ, EPA will determine whether to make a formal objection to the issuance of the permit (in accordance with 40 CFR 123.44). Procedures for an EPA formal objection are outlined in the EPA/LDEQ MOA.

d. EPA will work with LDEQ and the LSHPO to resolve issues of concern. Should EPA be able to facilitate a resolution of the issues that prompted the formal objection, the objection may be withdrawn, and LDEQ may proceed with the issuance of the permit.

e. If EPA determines to issue the permit, they will consult with the LSHPO and the Advisory Council on Historic Preservation (ACHP) when it is determined that a permit action will have an effect on a historic property listed, or eligible for listing in the National Register of Historic Places, in accordance with Section 106 of the National Historic Preservation Act.

The Louisiana State Historic Preservation Officer and U.S. EPA Region 6 agree that the above-listed procedures are appropriate mechanisms for the protection of historic properties listed or eligible for listing on the National Register of Historic Places for LDEQ issued LPDES permits; and that the authorization of the Louisiana State permitting program under NPDES, will not effect the above mentioned properties. Signed by William B. Hathaway, Director, Water Quality Protection Division, U.S. EPA Region 6 [date: March 20, 1996]; and Gerri Hobdy, Louisiana State Historic Preservation Officer, Office of Cultural Development, Louisiana Department of Culture, Recreation and Tourism [date: March 25, 1996].

Responsiveness Summary

The following is a summary of the issues raised by persons commenting on EPA's proposed approval and EPA's response to those issues.

1. *Comment Summary:* Some commenters favoring approval of the LPDES program cited *Union Electric Co. v. EPA*, 427 U.S. 246 (1976), claiming EPA is required to approve the LPDES program as long as it meets CWA's minimum requirements. Others, who oppose such approval, suggest EPA has far more discretion in its program approval decisions and that it should disapprove the LPDES program.

Response: In *Union Electric*, the Supreme Court essentially held that EPA had limited discretion to disapprove a State Implementation Plan under Section 110 of the Clean Air Act. The case has no direct application to EPA actions under the Clean Water Act, but might be instructive in determining EPA obligations in reviewing state water quality standards. Nevertheless, EPA "shall approve" state NPDES programs that conform to the requirements of CWA and 40 CFR Part 123. In implementing this requirement, EPA does not merely look to the state program's theoretical or "paper" conformity; it also examines the state's capacity to implement a conforming program. EPA Region 6 has examined the resources LDEQ will devote to the LPDES program and supports (via the CWA grant process) the development of LDEQ expertise and skills necessary for a successful program. In the judgment of EPA Region 6, LDEQ is now capable of undertaking primary responsibility for administration of the NPDES program in Louisiana.

2. *Comment Summary:* Some commenters expressed support for program authorization, pointing out LDEQ staff was "knowledgeable and experienced." They note that LDEQ has historically issued permits for minor discharges in more timely fashion than EPA and suggest LDEQ may thus devote more staff resources to permitting tasks than EPA. Others, however, claimed the Program Description lacked sufficient information on program costs and sources of funding. They also claimed LDEQ will necessarily be understaffed because the Program Description (Section 6, p. 12) states that "workload analysis of the anticipated number of enforcement actions the LDEQ will prepare over the next two years is difficult to project."

Response: Chapters 4, 6, and Appendix H of the Program Description provide detailed information on LDEQ's organization, positions, projected costs, and sources of funding, including a projection of enforcement resource needs. EPA Region 6 agrees with LDEQ that it is "difficult" to project enforcement resource needs for the next two years, but finds the State's estimate of 600 enforcement actions consuming 5280 workdays reasonable. Based on its review of the Program Description, Region 6 found the LPDES program adequately staffed and funded.

3. *Comment Summary:* Commenters provided anecdotal information on LDEQ's implementation of EPA-approved programs under the Clean Air Act (CAA) and Resource Conservation and Recovery Act (RCRA), and state Louisiana Water Discharge Permit System (LWDPS) program in support of LPDES program approval. Some contended that the State's adoption of new regulations consistent with EPA's NPDES regulations showed LDEQ understood the program and was capable of administering it. Other commenters providing anecdotal information on LDEQ's implementation of RCRA and CAA programs contended it showed the State was incapable or unwilling to administer an effective NPDES program. Some pointed to the number of Louisiana's waters which have not attained applicable water quality standards. They claimed LDEQ is likely to render decisions affecting water quality on the basis of political considerations and expressed concern that federal "monitoring" of the LDEQ program would be insufficient to avoid attendant declines in water quality. They pointed out that water quality is important to the State's fishing, recreation, and tourism industries.

Response: Whether or not anecdotal examples show Louisiana's implementation of the CAA and RCRA programs to be exemplary or deficient, it is not an issue which EPA can weigh heavily in its decision to approve or disapprove a state program. EPA can not appropriately withhold approval of a state NPDES program to coerce improvements to a state RCRA program, nor can EPA appropriately approve a state NPDES program just because it was satisfied with that state's RCRA program. Each state program must be approved or disapproved on its own merit and oversight decisions on each program must stand on their own. EPA does not believe past administration of a state program accurately indicates

how it will administer the NPDES program. As EPA has previously stated, "the Agency does not intend to disapprove all State programs which have had problems in the past. It views the decision on whether or not to approve as being forward looking; the Agency is primarily concerned that the program be effective in the future." 98 Fed. Reg. 33290, 33377 (May 19, 1980). Because the State's new LPDES regulations replicate the decisional criteria of EPA's own NPDES regulations, LPDES permits will be as least as stringent as NPDES permits issued by EPA, and therefore, will provide equivalent protection of water quality. LDEQ's permitting process will be subject to federal oversight and public participation.

4. *Comment Summary:* Some commenters argued EPA should not approve the LPDES program unless and until LDEQ adopts a penalty policy similar to EPA's. Citing a decline in State-imposed penalties since 1992, they claimed that LDEQ abuses its enforcement discretion in assessing penalties and that the lack of a written State penalty policy leaves EPA without a necessary oversight tool. Others suggested penalties are a poor indicator of program effectiveness, claiming LDEQ's enforcement program appropriately emphasizes compliance instead of penalties.

Response: EPA encourages, but does not require, that states implementing the NPDES program adopt penalty policies equivalent to EPA's. In a letter dated March 29, 1996, from LDEQ Secretary Dale Givens, the State has committed to developing and promulgating a penalty policy by April 1, 1997. EPA will work with the State in an effort to assure that policy is consistent with federal policies.

5. *Comment Summary:* Some commenters requested that EPA delay approval of the LPDES program until an ongoing FBI investigation into influence peddling by State officials is completed.

Response: If the ongoing FBI investigation reveals criminal wrongdoing by anyone currently associated with the LPDES program, it seems likely that association will end. Further discussion of an ongoing law enforcement investigation would be inappropriate here.

6. *Comment Summary:* Some commenters opposed approval on the grounds that Louisiana law does not provide minimum ("not less than") penalties for program violations. Some also expressed concern that the Louisiana Legislature might pass an environmental audit statute inhibiting LDEQ's ability to penalize violators.

Response: Neither CWA § 402 nor 40 CFR Part 123 require that state law mandate minimum penalties to obtain NPDES approval. The regulation instead requires that states possess authority to assess civil penalties of at least $5,000 per day, per violation and criminal penalties of at least $10,000 per day, per violation. Louisiana law authorizes assessment of both civil and criminal penalties exceeding these amounts. *See* La. R.S. 30:2025. Post-approval changes to Louisiana law, if any, will be subject to review by EPA (in accordance with 40 CFR § 123.62). If any changes render the LPDES program noncompliant with federal requirements, EPA may withdraw program approval in accordance with 40 CFR § 123.63.

7. *Comment Summary:* Some commenters contended LDEQ must have the Permits Compliance System (PCS) in place before EPA approves the LPDES program.

Response: 40 CFR Part 123.26(e)(1) requires states to maintain a "comprehensive inventory of all sources covered by NPDES permits and a schedule of reports required to be submitted by permittees to the State agency." EPA strongly encourages states to use the PCS system for compliance with this requirement. LDEQ is currently connected to PCS and EPA is actively training LDEQ staff in its use.

8. *Comment Summary:* One commenter suggested EPA should not approve the LPDES program until it revises its own system of determining significant noncompliance (SNC) and penalty assessment. The commenter apparently believes EPA's present system precludes assessment of penalties for more than one day's violation of a daily maximum limitation.

Response: Nothing in its current system precludes EPA from seeking penalties for each day a daily maximum effluent limitation is exceeded. As pointed out in a recent General Accounting Office report, however, EPA's existing compliance tracking system does not take such violations into proper account in targeting enforcement actions against facilities in SNC and the Agency is thus expanding its systemic definition of SNC to better address such violations. That EPA is updating and improving its own enforcement system, however, has no bearing on whether or not it should approve the LPDES program. The MOA between EPA and LDEQ commits LDEQ to address SNC in a timely manner. If EPA's definition of SNC is expanded, there will simply be more facilities in SNC for EPA and LDEQ to address.

9. *Comment Summary:* Some commenters claimed EPA has inappropriately waived its right to oversight review of many of the State's permitting actions.

Response: CWA § 402(e) authorizes EPA to waive oversight review of state permit actions on categories of point sources, thus allowing the Agency to concentrate its oversight resources on actions which may have the greatest effect on water quality or in which there is a paramount federal interest. These "must review" categories of discharges are generally described at 40 CFR § 123.24(d). In the MOA with LDEQ, EPA has retained its oversight of those categories and added to them, requiring that LDEQ submit proposals to permit discharges from sanitary sewer overflows, discharges from municipal separate storm sewers, discharges which may adversely affect endangered or threatened species, and discharges which may adversely affect historic sites. In addition, EPA has retained its right to add to the classes of permitting actions it will review and to require review, on a case-by-case basis, of permits for which it has waived review.

10. *Comment Summary:* Some commenters contended EPA should retain jurisdiction over all permits for which applications are currently pending.

Response: Pursuant to CWA § 402(c) and 40 CFR § 124.15(a), EPA may not unilaterally retain jurisidiction over NPDES permits for which it has not yet issued a final permit decision in accordance with 40 CFR § 124.15. *See generally Central Hudson Gas & Electric Corp.* v. *U.S. EPA*, 587 F.2d 549 (2d Cir. 1978). To render programmatic transition more efficient and less confusing for permit applicants and the public, EPA and LDEQ have agreed that EPA will retain jurisdiction over permitting actions it has already proposed. The far broader jurisdictional retention suggested by the commenters would extend the transition period indefinitely and thus indefinitely delay the benefits of program authorization. Therefore, all permit applications which were submitted to EPA (except for those designated in Scope of the LPDES program part A.5. above) will be transferred within 30 days to the State for permitting action.

11. *Comment Summary:* Some commenters claimed that EPA should not approve LDEQ's use of general permits or should restrict it to instances in which EPA has already issued general permits. They expressed concern that general permits allow permit coverage for discharges without public notice or review. They also

claimed such general permits may not include monitoring or reporting requirements, depriving the public of access to effluent data. Other commenters supported LDEQ's use of general permits as a streamlining mechanism for both LDEQ and dischargers.

Response: EPA agrees that regulation of large numbers of similar discharges, for which similar effluent limitations are appropriate, is often more efficient with general permits. *See generally* 40 CFR § 122.28. Although LDEQ and EPA procedures for developing general permits are different, LDEQ's procedures provide for equivalent public notice and review. When it proposes general permits, LDEQ provides notice to interested parties on mailing lists and in newspapers of general circulation throughout the State, soliciting comments on those proposals. Copies of draft general permits and fact sheets are available for public review in the same manner as for individual permits. Louisiana Administrative Code (L.A.C.) 33:IX.2369 requires that all LPDES permits, including general permits, impose monitoring and reporting requirements as needed to assure compliance with permit conditions. Discharge monitoring reports submitted to LDEQ by general permittees will be maintained in individual facility files which are available for public review.

12. Comment Summary: Some commenters claim LDEQ has authority to grant broader variances than allowed by 40 CFR § 124.62.

Response: LDEQ's authority to grant variances to LPDES program requirements is not broader than EPA's corresponding NPDES authority. The Louisiana Attorney General (AG) has explained in the AG's Statement that the words "as appropriate" in the law which gives LDEQ the authority to grant variances [La. R.S. 30:2074(B)(4)] does not allow for variances which would not be allowed by the CWA. This statement by the AG is consistent with Louisiana regulation L.A.C. 33.IX.2317(A) which prohibits LDEQ from granting variances "which under federal law may only be granted by EPA"; and L.A.C. 33.IX.2317(A) which prohibits issuance of permits "when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA * * *" This would also be a violation of the EPA/LDEQ MOA.

13. Comment Summary: Some commenters expressed concern that LPDES program approval would eliminate environmental protection afforded by the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). They requested that EPA not approve the LPDES program until the State adopts equivalent statutes. Others claimed the LPDES program would provide equivalent protection as a result of the Louisiana Supreme Court's decision in *Save Ourselves, Inc.* v. *Louisiana* Environmental Control Commission, 452 So.2d 1152 (La. 1984) and the EPA/LDEQ MOA.

Response: Because state permit actions under EPA-approved programs are not federal actions, neither NEPA nor ESA apply to them. *See, e.g., Chesapeake Bay Foundation* v. *United States,* 453 F.Supp. 122 (E.D. Va. 1978). Nor does CWA or 40 C.F.R. Part 123 require that states adopt equivalent statutes to obtain NPDES program approval. EPA's approval of state NPDES programs is itself moreover excluded from NEPA requirements by CWA § 511(c)(1). Although it is thus immaterial to its program approval decision, EPA Region 6 hopes the *Save Ourselves* decision provides a degree of environmental protection comparable to NEPA's, but believes it may be too early to tell.

In *Save Ourselves,* the Louisiana Supreme Court reversed a hazardous waste permit decision of the Louisiana Environmental Control Commission (an LDEQ predecessor), finding the Commission had failed to explain or document its decisions on issues raised by public commenters. The Court's decision was based in part on a public trust doctrine established by the Natural Resources Article of the Louisiana Constitution. At 452 So.2d 1156–57, the Court stated:

> The Constitutional standard requires environmental protection "insofar as possible and consistent with the health, safety, and welfare of the people." La. Const. art. IX § 1. This is a rule of reasonableness which requires an agency or official, before granting approval of a proposed action affecting the environment, to determine that adverse impacts have been minimized or avoided as much as possible consistently with the public welfare. Thus, the constitution does not establish environmental protection as an exclusive goal, but requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors.

Because the Court's decision was also grounded in provisions of Louisiana statutory law, some may interpret its public trust doctrine discussion as nonprecedential *dictum.* Others may read the *Save Ourselves* case as authorizing or requiring LDEQ to consider a broader range of environmental issues in permit actions than are specifically encompassed by its permit regulations. Under the latter reading, the decision's effect on the development of Louisiana environmental law may be considered comparable to the effect of *Calvert Cliff's Coordinating Committee* v. *U.S. Atomic Energy Commission,* 449 F.2d 1109 (D.C. Cir. 1971) on development of federal NEPA jurisprudence. Recent Louisiana judicial decisions have referenced the public trust doctrine of *Save Ourselves,* but none have yet provided clear direction on LDEQ's authority to consider or act in response to environmental issues not otherwise addressed by its regulations. *See, e.g., In the matter of Cytec Industries, Inc.,* 94 1693 (La. App. 1st Cir. 02/23/96), 672 So.2d 179.

Regardless of the scope of LDEQ authority, however, it appears the public trust doctrine imposes no specific "action forcing" mechanism equivalent to NEPA's environmental impact statement requirement and thus does not assure LDEQ will ferret out unforeseen issues not otherwise addressed by requirements specific to its various programs. To obtain LDEQ consideration of specific environmental problems and potential alternatives in LPDES permit actions, interested parties would thus be well advised to raise their concerns and suggest specific alternatives in comments submitted for LDEQ's administrative record in those actions.

EPA's approval of the LPDES program should not diminish the federal protection ESA affords threatened and endangered species. Because Louisiana law does not specifically require LDEQ to provide the same protection, EPA and LDEQ have developed procedures, in consultation with the U.S. Fish & Wildlife Service and National Marine Fisheries Service, to assure program approval is unlikely to adversely affect listed species or critical habitat. *See* Consultation Agreements Nos. 1 and 2, Section C, Scope of the LPDES Program, above. Region 6 anticipates that LDEQ and the appropriate Service(s) will usually avoid such harm without the need for EPA intervention, but will not hesitate to use its oversight authority to provide protection due under ESA.

14. Comment Summary: Some commenters urge EPA not to approve the LPDES program because the protection now provided by the National Historic Preservation Act (NHPA) to historic sites would be altered. These commenters claimed the procedures outlined in the EPA/LDEQ MOA and associated consultation agreements are insufficient protection for historic properties in Louisiana. These commenters additionally express

the opinion that EPA is responsible for making determinations of "affect" in consultation with the State Historic Preservation Officer (SHPO) on all permits issued by the authorized program (citing the 1992 Congressional redefinition of "undertaking"). They viewed the MOA provisions on consultations between LDEQ, the SHPO, and EPA Region 6 as an unauthorized attempt to evade the procedural requirements of the consultation regulations under Section 106 of the NHPA.

Response: EPA Region 6 agrees that the 1992 amendments to the NHPA revised the statutory definition of "undertaking" for purposes of the section 106 consultation process. However, the Advisory Council on Historic Preservation has not yet amended its implementing regulations to interpret the effect of that statutory change. In consultation with the SHPO on LPDES program approval, the Region and LDEQ have thus developed procedures for protecting historic properties, as documented in agreements among EPA Region 6, LDEQ, and the SHPO. Under those procedures, the Region and SHPO agree that LPDES program approval will have no effect on historic properties. When the Advisory Council promulgates regulations implementing the 1992 NHPA amendment, it may be necessary to review the procedures/agreements and possibly amend them.

In view of the agreements among Region 6, LDEQ, and the SHPO, Region 6 does not agree with the commenters' suggestion that EPA must itself consult each time LDEQ proposes action on an LPDES permit application. Even as federal NPDES permit actions, many of those proposals (e.g., most permit renewals) would have no potential adverse effect on historic properties; and LDEQ may tailor others to avoid such potential effects after coordination with the SHPO under the outlined procedures. If LDEQ, the SHPO, or the Advisory Council requests its assistance to resolve issues concerning adverse effects to such properties, EPA Region 6 will consult and, when appropriate, use its program oversight authority to resolve potential adverse effects to historic properties.

15. Comment Summary: Some commenters opposed approval of the LPDES program on "environmental justice" grounds, contending that LDEQ may issue permits to facilities in economically depressed areas or areas primarily populated by minorities, while denying permits or requiring more stringent limitations in more affluent neighborhoods. They request that EPA Region 6 withhold approval of the LPDES program until an ongoing investigation by EPA's Office of Civil Rights is completed.

Response: EPA is not at this time investigating any civil rights violations by LDEQ. EPA headquarters is reviewing a complaint to determine if that complaint meets the criteria for an investigation. Both EPA and LDEQ are firmly committed to environmental justice and will work together to address it in permitting actions. Current EPA regulations provide little room for consideration of such factors in NPDES permitting (except in EPA's permitting actions involving "new sources" to which NEPA applies). Possibly, the Louisiana public trust doctrine (see response number 13) provides LDEQ greater ability to respond to environmental justice concerns than EPA possesses.

16. Comment Summary: Commenters both supporting and opposing program approval encouraged EPA to review LDEQ's new rules for protecting confidential business information for conformity with federal requirements. Some expressed concern the rules might inhibit citizen access to information necessary to effective public participation in the LPDES program.

Response: Like CWA § 308(b), La. R.S. 30:2074 (D) provides trade secrecy protection for confidential business information submitted to LDEQ, but contains an "effluent data" exclusion for information relating to discharges. Both federal and Louisiana statutes thus strike a balance between protection of competitive business interests and of the public's right to participate in important governmental decisions of public effect. LDEQ's new rules [L.A.C. 33:I.Chapter 5], are functionally equivalent to EPA's [40 CFR Part 2, Subpart B], as they both rely on similar procedures and substantive elements for evaluating business confidentiality claims. LDEQ's regulations do not define "effluent data," but there is little reason to believe LDEQ and EPA would reach different decisions on public access to information given the common purpose of the federal and State statutory exclusions, i.e., promoting public participation in permitting and enforcement actions. It is more likely EPA's regulatory interpretation [at 40 CFR § 2.302(a)(2)] would be accorded persuasive weight in State confidentiality proceedings. Louisiana's regulations also provide confidential treatment to documents in investigatory files if necessary to "prevent impairment of an ongoing investigation or prejudice to the final decision regarding a violation." L.A.C. 33:I.501(1). This regulation appears comparable to 5 U.S.C. § 552(b)(7)(A) and 40 CFR § 2.118(a)(7)(i)(A), allowing LDEQ to avoid disclosure of sensitive information, e.g., privileged predecisional staff recommendations or evaluations, to the targets of potential or proposed enforcement actions. It may not, consistent with the intent underlying La. R.S. 30:2074(D), be applied to the objective effluent data necessary to establish a violation in enforcement proceedings. Although the public may have to obtain independent analysis of such data (instead of relying on written LDEQ evaluations) to effectively participate in enforcement proceedings, that burden is consistent with EPA's own regulations and practices.

17. Comment Summary: Some commenters opposed program approval on the basis of claims that LDEQ copying charges unduly inhibit access to public information needed for effective public participation in the LPDES program. They claimed the State should provide copies of public records free of charge, consistent with EPA practices. Others claimed LDEQ does not respond to requests for public information.

Response: Although the federal Freedom of Information Act and EPA regulations allow it to provide document copies at reduced or no charge to public interest requestors, neither CWA nor EPA's regulations impose such a requirement on states with approved NPDES programs. Unless state information access practices frustrate the mandate of CWA § 101(e) or conflict with controlling EPA regulations, they provide no reason for disapproval of a state program. Louisiana's practices are consistent with that mandate and with EPA's regulations. Consistent with 40 CFR § 124.10(d), for instance, LDEQ notices of proposed permitting actions provide the name, address, and phone number of the person from whom a copy of the draft permit, fact sheet or statement of basis, and application may be obtained. Charges LDEQ assesses reflect its cost for providing the requested documents and should not greatly inhibit public access. Even citizens unable to pay the indigent rate of 5 cents a page copy cost may freely examine such information at LDEQ offices during normal business hours, taking notes or rendering hand-written copies. Additionally, LDEQ no longer charges those who use personal copiers in such onsite examinations. Commenters claiming LDEQ has been nonresponsive to information requests provided no specific examples. EPA Region 6 notes that La. R.S. 44:35

provides for expedited judicial review of a Louisiana agency's failure to produce requested records and authorizes award of reasonable attorney's fees for prevailing parties.

18. Comment Summary: Some commenters contended EPA should disapprove the LPDES program for inconsistency with CWA § 402(b)(3), which requires that states provide opportunity for public hearing before permit issuance. The commenters pointed out that L.A.C. 33:IX.2419 requires that LDEQ provide a hearing only if it finds "a significant degree of public interest" in a permit action; and claim such a provision is insufficient for compliance with the statute's mandate.

Response: The statute requires only an "opportunity" for public hearing; it does not require that a hearing be convened merely because there is a single request. The minimum requirements for providing such opportunity are reflected by 40 CFR § 124.12(a) (i.e. when there is sufficient public interest or at the discretion of the Director). L.A.C. 33:IX.2419 is almost a verbatim copy of that federal regulation.

19. Comment Summary: Some commenters claimed the Program Description's explanation of the judicial review process on LDEQ permitting decisions was inadequate and misleading. They claimed an applicant's request for *de novo* review pursuant to La. R.S. 30:2024(A) would result in the Nineteenth Judicial District Court rendering final permit decisions independent of LDEQ. They also claimed this was unfair inasmuch as citizens adversely affected by permit actions were limited to seeking judicial review under La. R.S. 30:2024(C)(1) in which the review is normally limited to the administrative record.

Response: These commenters appear to confuse the standard of review with scope of review under La. R.S. 30:2024(C). As explained in the Program Description, controlling State jurisprudence limits the scope of judicial review under that provision to LDEQ's decision (or indecision) on whether to grant an adjudicatory hearing requested under LRS 30:2024(A); the merits of LDEQ's permit decisions are not subject to review in such proceedings. *See In the matter of Carline Tank Services, Inc.*, 623 So.2d 669 (La. App. 1st Cir. 1993). The *de novo* (i.e., new evidence) review standard presumably allows LDEQ to interpose reasons for denying a hearing which do not appear on the administrative record when, for instance, it has rendered no formal decision within the 30 days provided by the statute.

The commenters claim *Pardue* v. *Stevens*, 558 So.2d 1149 (La. App. 1st Cir. 1989) shows that Louisiana law allows a reviewing court to "issue its own permits" following *de novo* review. *Pardue* involved review of a Coastal Use Permit under La. R.S. 49:213.16(F), a statute which does not apply to the LPDES program. Indeed, Louisiana's legislature has specifically excluded the LPDES program from a similar State statutory provision which would otherwise allow judicial issuance of permits in "show cause" proceedings. *See* La. R.S. 49:962.1(D). It is difficult to imagine a clearer manifestation of legislative intent that the judiciary is not to "issue" LPDES permits.

Simply stated, the State court reviews LDEQ's decision to grant a hearing, not the conditions or requirements of the final permit under consideration. The only issue on which *de novo* review is allowed is whether LDEQ should have granted a permit applicant's request for adjudication. Following such review, the court will presumably either find no hearing was required or remand the matter for adjudication. "Aggrieved parties," whether permit applicants or citizens with potentially affected aesthetic or recreational interests, may obtain judicial review of final decisions on LPDES permit terms only in accordance with La. R.S. 30:2024(C)(1), which provides for summary review in accordance with La. R.S. 49:964, i.e., on the administrative record. *See generally In the Matter of Recovery I, Inc.*, 635 So.2d 690 (La. App. 1st Cir. 1994); *In the matter of Carline Tank Services, supra.*

20. Comment Summary: Some commenters requested that EPA disapprove the State's program submission until the State enacts a statute providing for State court jurisdiction over citizen suits equivalent to federal district court jurisdiction under CWA § 505. These commenters were concerned that, under La. R.S. 30:2026, LDEQ could preempt State court jurisdiction over a citizen suit by issuing a compliance order and requested EPA "reassurance" that CWA § 505 would continue to apply in Louisiana.

Response: Neither CWA nor 40 CFR Part 123 requires that a state provide its courts with jurisdiction over citizen suits to obtain EPA approval of its NPDES program. La. R.S. 30:2026, however, provides such jurisdiction in Louisiana. That State statute is comparable to CWA § 505, but differs in several respects, one of which appears to be the basis for the comment. In contrast to corresponding CWA provisions, the Louisiana statute prohibits citizen suits if, within 30 days of notice, the alleged violator "is * * * under any order issued * * * to enforce any provision of this Subtitle." La. R.S. 30:2026(B)(3)(a).

EPA approval of a State NPDES program does not divest the federal courts of jurisdiction over citizen suits under CWA § 505. Pursuant to CWA § 309(g)(6)(A)(ii), however, state proceedings "comparable to" EPA administrative penalty assessments preempt subsequent penalty actions, including actions under CWA § 505, for the same violations. EPA does not believe that non-punitive compliance orders issued by state agencies are comparable to EPA administrative penalty actions under CWA § 309(g). The federal courts, however, have reached differing conclusions on that issue. Compare *Citizens for a Better Environment* v. *Union Oil Co. of California*, 83 F.3d 1111 (9th Cir. 1996) *with North & South Rivers Watershed Ass'n* v. *Scituate*, 949 F.2d 552 (1st Cir. 1991).

21. Comment Summary: Some commenters submitted a petition raising concerns on alleged pollution from Hunt Correctional Center and the Louisiana Correctional Institute for Women. The petition urged public officials to bring these facilities into compliance.

Response: The petition raises no issues of direct relevance to EPA's program approval decision. EPA has recently received a notice of intent to file suit against these State correctional facilities from Sierra Club Legal Defense Fund. EPA is currently discussing the matter with LDEQ and the Louisiana Department of Corrections.

22. Comment Summary: Some commenters supporting LPDES program approval noted that it is both inconvenient and expensive to obtain permits for surface water discharges from two separate agencies. They claimed that program oversight is a more appropriate role for EPA and that EPA retains the right to withdraw the program if LDEQ does not implement it appropriately.

Response: "It is the policy of Congress that the States * * * implement the permit programs under sections 402 and 404 of this [Clean Water] Act." CWA § 101(b). Today's program approval is also consistent with that policy and with the goal of preventing "needless duplication of paperwork" under CWA § 101(f).

Other Federal Statutes

A. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. Regulatory Flexibility Act

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this authorization will not have a significant impact on a substantial number of small entities. The approval of the Louisiana NPDES permit program merely transfers responsibilities for administration of the NPDES permit program from Federal to State government. This change will allow small entities more convenient access to the regulatory process.

I hereby authorize the LPDES program in accordance with 40 CFR part 123.

Dated: August 27, 1996.

Jane N. Saginaw,

Regional Administrator.

[FR Doc. 96–23067 Filed 9–10–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 96–1405]

FCC Establishes North American Numbering Council Advisory Committee, Announces Members and Sets Initial Meeting Date

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 5, 1996, the Commission released a public notice announcing the establishment of the North American Numbering Council (NANC) as a Federal Advisory Committee and announcing the members of the committee and the committee's first meeting on October 1, 1996. The intended effect of this action is to make the public aware of the NANC's establishment, members and first meeting.

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Designated Federal Official of the North American Numbering Council, (202) 418–2337 or Mary DeLuca, Alternate Designated Federal Official of the North American Numbering Council, (202) 418–2334. The address for both is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number for both is: (202) 418–2345. The TTY number for both is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

Released: September 5, 1996.

The Federal Communications Commission (FCC) has established the North American Numbering Council (NANC or Council). The NANC is established under the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988) (FACA).

The initial Council meeting will be held on Tuesday, October 1, 1996, at 9:30 A.M. EDT at the Federal Communications Commission, 1919 M Street, NW., Room 856, Washington, D.C. 20554.

On July 13, 1995, the Commission adopted a new model for administration of the North American Numbering Plan (NANP) and announced the establishment of the NANC. *See Administration of the North American Numbering Plan*, CC Docket No. 92–237; 60 FR 38737, July 28, 1995; Report and Order, 11 FCC Rcd 2588, 2591 (1995). The NANP is the basic numbering scheme for the telecommunications networks located in Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands). The new model is guided by several principles, including maintaining and fostering an integrated approach to number administration throughout portions of North America and providing a structure for number administration that is impartial and pro-competitive. The NANC will advise the Commission on numbering issues (such as number portability implementation), select and guide a neutral NANP Administrator, apply Commission policy to resolve issues arising in the administration of the NANP, and conduct initial dispute resolution. The NANP Administrator will process number resource applications and maintain administrative numbering databases. Operational details and additional activities of the NANP Administrator are to be determined by the NANC. The Commission, with other NANP member countries, will oversee the NANC. The establishment of this Council is necessary and in the public interest. In carrying out its responsibilities, the Council shall assure that NANP administration supports the following policy objectives: (1) That the NANP facilitates entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications service providers; (2) that the NANP does not unduly favor or disfavor any particular industry segment or group of consumers; (3) that the NANP gives due regard to state and local interests; (4) that the NANP does not unduly favor one technology over another; (5) that the NANP gives consumers easy access to the public switched telephone network; and (6) that the NANP ensure that the interests of all NANP member countries are addressed fairly and efficiently, fostering continued integration of the NANP across NANP member countries.

The FCC requested nominations for membership on the NANC. See Public Notice in CC Docket No. 92–237, DA 95–1721, 60 FR 42158 (August 15, 1995). The FCC considered all applications and nominations for membership filed in response to the Notice and selected members named in the list attached to this Public Notice. Because the Council includes representatives from every sector of the telecommunications industry, as well as members representing NANP member countries, the states, and consumers, the Council's membership will be impartial and well balanced.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written statements to the Council. The statements must be submitted two business days before the meeting in which the commenter desires his/her comments to be distributed. In addition, statements at the meeting by parties or entities not represented on the Council will be permitted to the extent time permits. Statements will be limited to five minutes in length by any one party or entity, and requests to make such statements to the Council in person must be received two business days before the meeting in which the commenter desires to be heard. Requests for comment opportunity, and written comments, should be sent to Marian Gordon or Mary DeLuca, at the address

under FOR FURTHER INFORMATION CONTACT stated above.

Agenda: The planned agenda for the first meeting is as follows:

1. Welcoming Remarks
2. Introductions
3. NANC Organizational Protocols
4. NANC Objectives and Tasks
5. Development of NANC Work Plan
6. Meeting Summary/Agenda for Next Meeting
7. Other Business

North American Numbering Council Membership

Designated Federal Official—Marian Gordon

Alternate Designated Federal Official—Mary DeLuca

Voting Members

1. Heather Gold—ALTS
2. Raymond Cline—American Petroleum Institute
3. Brian Deobald—AMSC
4. To be announced—APCC
5. Ellwood Kerkeslager—AT&T
6. Dennis Hinkel—Cincinnati Bell
7. Genevieve Morelli—Comptel
8. Dr. Brian Fontes—CTIA
9. Richard Murphy—Eastern TeleLogic Corp.
10. To be announced—Frontier
11. Bernard Harris—GTE
12. Susan Drombetta—Matrixx Communications (formerly Scherer Com.)
13. Peter Guggina—MCI
14. Brian O'Shaughnessy—Mobility Canada
15. Hon. Julia Johnson—NARUC
16. Hon. Kenneth McClure—NARUC
17. Paul Jones—NCTA
18. Lawrence Krevor—Nextel
19. Ray Strassburger—Northern Telecom
20. Casimir Skrzypczak—NYNEX
21. Anna Miller—Omnipoint
22. Greg Rise—OPASTCO
23. Mark Golden—PCIA
24. Danley Hubbard—SBC Communications
25. Michael Robinson—Sprint Spectrum (formerly Sprint Telecom. Venture)
26. Jacques Sarrazin—Stentor Resource Centre
27. Kenneth Shulman—Teleport
28. Dan Bart—TIA
29. David Whyte—Unitel
30. Paul Hart—USTA

Special Members (Non-Voting)

1. Susan Miller—ATIS
2. Ron Conners—Bellcore (NANPA)
3. Larry Irving—U.S. NTIA
4. Vonya McCann—U.S. State Department

Ex-Officio Participants

1. Industry Canada—Canada
2. To be announced—Caribbean Representatives
3. To be announced—Bermuda Representative

Federal Communications Commission

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 96–23389 Filed 9–10–96; 8:45 am]

BILLING CODE 6712–01–P

Sunshine Act Meeting; FCC To Hold Open Commission Meeting Thursday, September 12, 1996

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 12, 1996, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Office of General Counsel—Title: Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as added by Section 103 of the Telecommunications Act of 1996 (GC Docket No. 96–101). Summary: The Commission will consider rules to implement Section 103 of the Telecommunications Act of 1996.

2—Office of Engineering and Technology—Title: Amendment of Parts 2, 25 and 90 of the Commission's Rules to Allocate the 13.75–14.0 GHz Band to the Fixed-Satellite Service (ET Docket No. 96–20, RM–8638). Summary: The Commission will consider the allocation of the 13.75–14.0 GHz to the fixed-satellite (Earth-to-space) service.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and video tapes for this meeting can be purchased from Telspan International at (301) 731–5355. This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100.

Dated September 5, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–23411 Filed 9–9–96; 2:44 pm]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Affordable Housing Advisory Board Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published of the Affordable Housing Advisory Board (AHAB) meeting. The meeting is open to the public.

DATES: The Federal Deposit Insurance Corporation, Affordable Housing Advisory Board will hold its third meeting on Thursday, September 26, 1996 in Boston, Massachusetts, from 9:00 a.m. to 12 Noon.

ADDRESSES: The meeting will be held at the following location: The Federal Reserve Bank of Boston, New England, Room 600 Atlantic Avenue, Fourth Floor, Boston, Massachusetts 02106.

FOR FURTHER INFORMATION CONTACT: Danita M.C. Walker, Committee Management Officer, Federal Deposit Insurance Corporation, 801 17th Street, NW, Room 736, Washington, D.C. 20429, (202) 416–4086.

SUPPLEMENTARY INFORMATION: The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the General Deputy Assistant Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the Resolution Trust Corporations Regional Advisory Boards. The AHAB's original charter was issued March 9, 1994, and a re-charter was issued on February 26, 1996.

Agendas: An agenda will be available at the meeting. At the general session, the AHAB will have a presentation on the New FDIC Affordable Housing Program, Status of the Monitoring and Compliance Program and, as presentation of the FDIC Foreclosure Prevention Project. The AHAB will develop recommendations at the conclusion of the Board meeting. The AHAB's chairperson or its Delegated Federal Officer may authorize a member or members of the public to address the AHAB during the public forum portion of the session.

Statements: Interested persons may submit, in writing, data, information or views on the issues pending before the

Affordable Housing Advisory Board prior to or at the general session of the meeting. Seating for the public is available on a first-come first-served basis.

Dated: September 9, 1996.

Danita M.C. Walker,

Committee Management Officer, Federal Deposit Insurance Corporation.

[FR Doc. 96–23440 Filed 9–10–96; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011519–001

Title: Tricon/Hanjin Transpacific Agreement

Parties:

Cho Yang Shipping Co. Ltd.

DSR-Senator Lines

Hanjin Shipping Co., Ltd.

Synopsis: The proposed modification deletes the authority for the parties to discuss policy and, on a voluntary and non-binding basis, reach accord with respect to items arising under other agreements in the trade to which they, or any of them, may be a party to. The parties have requested a shortened review period.

Dated: September 5, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–23158 Filed 9–10–96; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 25, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Thompson Family Trust, Steven A. Chandler, Trustee, Eldorado, Texas; to acquire a total of 11.95 percent of the voting shares of First Eldorado Bancshares, Inc., Eldorado, Texas, and thereby indirectly acquire First National Bank, Eldorado, Texas.

Board of Governors of the Federal Reserve System, September 5, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23202 Filed 9-10-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Community Bank Shares of Indiana, Inc., New Albany, Indiana; to acquire 100 percent of the voting shares of Community Bank of Southern Indiana, New Albany, Indiana, currently operates as Community Bank of Southern Indiana, FSB, New Albany, Indiana.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BERCO, Inc., Bennington, Kansas; to acquire 10.99 percent of the voting shares of Front Range Bancshares, Littleton, Colorado, and thereby indirectly acquire Front Range Bank-Green Mountain, Inc., Lakewood, Colorado.

2. UMB Financial Corporation, Kansas City, Missouri; to acquire 100 percent of the voting shares of UMB Bank Omaha, N.A. (in organization), Omaha, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200

North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Country Bancshares, Inc., Brady, Texas; to acquire 100 percent of the voting shares of The First National Bank of Ballinger, Ballinger, Texas.

2. TCB Delaware, Inc., Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Ballinger, Ballinger, Texas, and to acquire 99.633 percent of the voting shares of Brady National Bank, Brady, Texas.

Board of Governors of the Federal Reserve System, September 4, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23036 Filed 9-10-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Taylor Capital Group, Inc., Wheeling, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Cole Taylor Bank, Chicago, Illinois.

In connection with this application, Applicant also has applied to acquire CT Mortgage Company, Inc., Altamonte Springs, Florida, and thereby engage in lending activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Flencher Family Corp., Somerville, Texas; to become a bank holding company by acquiring 1.00 percent of the voting shares and EBF-HRF Family Limited Partnership, Somerville, Texas, to become a bank holding company by acquiring 27.3 percent of CSB Bancshares, Inc., Somerville, Texas, and thereby indirectly acquire Citizens State Bank, Somerville, Texas.

Board of Governors of the Federal Reserve System, September 5, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23201 Filed 9-10-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Peoples Heritage Financial Group, Inc., Portland, Maine; to acquire 100 percent of the voting shares of Family Bancorp, Haverhill, Massachusetts, and thereby indirectly acquire Family Bank, F.S.B., Haverhill, Massachusetts, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Family Bancorp, would be merged into Peoples Heritage Merger Corp., a newly-formed, wholly-owned subsidiary of Peoples Heritage Financial Group, Inc. These activities will be conducted throughout the state of Massachusetts.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Citizens Corporation, Franklin, Tennessee; and Harrison Group, Inc., Franklin, Tennessee; to acquire Financial Data Technology Corporation, Franklin, Tennessee, and thereby engage

directly in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y and, through Financial Data Technology Corporation to engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted throughout the state of Tennessee.

2. SouthTrust Corporation, Birmingham, Alabama; and SouthTrust of Florida, Inc., Jacksonville, Florida; to acquire Preferred Bank, a Federal Savings Bank, Palmetto, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted throughout the state of Florida.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Fremont Bancorporation, Fremont, California; to engage *de novo* in commercial lending and loan servicing pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. National Bancorp of Alaska, Inc., Anchorage, Alaska; to engage *de novo* in investing in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 4, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23037 Filed 9-10-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Cardinal Bankshares Corporation, Floyd, Virginia; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire CLG, Inc., Raleigh, North Carolina, and thereby engage in leasing computer and technology equipment to various companies, pursuant to § 225.25 (b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Franklin National Bankshares, Inc., Mt. Vernon, Texas; to engage *de novo* through its subsidiary, Franklin National Mortgage Corporation, Mt. Vernon, Texas, in mortgage banking activities, specifically, originating and processing loan applications, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. Funding for the loans will be underwritten by various mortgage companies, not the notificant. The geographic scope for these activities will be Northeast Texas.

2. South Central Texas Bancshares, Inc., Flatonia, Texas, and South Central Texas Bancshares-Delaware, Inc., Wilmington, Delaware; to acquire 18 percent of the voting shares of Fayette Savings Association, La Grange, Texas, and thereby engage in operating a savings association, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 5, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23200 Filed 9-10-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

TIME AND DATE: 10:30 a.m., Monday, September 16, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23323 Filed 9–6–96; 4:54 pm]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisition during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081296 AND 082396

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Profitt's, Inc., Parisian, Inc., Parisian, Inc	96-2419	08/14/96
North Shore Health System, S.I.U.H. Systems, Inc., S.I.U.H. Systems, Inc	96-2475	08/14/96
Halliburton Company, Landmark Graphics Corporation, Landmark Graphics Corporation	96-2522	08/14/96
Estate of Phoebe F. Connor, Mary Snyder Trust, Roy J. Maier Products	96-2562	08/14/96
Estate of Phoebe F. Connor, Roy J. Maier Living Trust, Roy J. Maier Products	96-2565	08/14/96
Jones Medical Industries, Inc., Galen Drugs of Florida, Inc., Galen Drugs of Florida, Inc	96-2573	08/14/96
Hologic, Inc., FluoroScan Imaging Systems, Inc., FluoroScan Imaging Systems, Inc	96-2590	08/14/96
Kelso Investment Associates V, L.P., Masada Cable Partners, L.P., Masada Cable Partners, L.P	96-2613	08/14/96
Charterhouse Equity Partners II, L.P., Masada Cable Partners, L.P., Masada Cable Partners, L.P	96-2617	08/14/96
Equifax Inc., Rick L. Rozar, CDB Infotek	96-2623	08/14/96
TPG Partners, L.P., Sather Realty Company, Sather Realty Company	96-2552	08/15/96
TPG Partners, L.P., Sathers, Inc., Sathers Inc	96-2553	08/15/96
Thermo Electron Corporation, Julia Worden, Continental X-Ray Corporation, Advanced Medical Imaging	96-2441	08/16/96
OrthoLogic Corp., Columbia/HCA Healthcare Corporation, Sutter Corporation	96-2557	08/16/96
Odyssey Partners, L.P., Aviall, Inc., Aviall Services, Inc. and Aviall (Canada) Ltd	96-2572	08/16/96
The Sherwin-Williams Company, Voting Trust Agreement (Brod-Dugan Company), Brod-Dugan Company	96-2575	08/16/96
HA-LO Industries, Inc., Market U.S.A., Inc., Market U.S.A., Inc	96-2587	08/16/96
OrNda Healthcorp, Fallon Clinic, Inc., Fallon Clinic, Inc./St. Vincent Healthcare System, Inc	96-2601	08/16/96
GC Companies, Inc., Global TeleSystems Group, Inc., Global TeleSystems Group, Inc	96-2612	08/16/96
Cisco Systems, Inc., Telebit Corporation, Telebit Corporation	96-2614	08/16/96
Tyco International Ltd., BTR plc, The Rochester Corporation	96-2619	08/16/96
Odyssey Partners, L.P., Richard P. Small, Tri-Star Aerospace, Inc	96-2624	08/16/96
Living Centers of America, Inc., Cardinal Health Inc., Allied Pharmacy Management, Inc	96-2625	08/16/96
Cardinal Health, Inc., PCI Services, Inc., PCI Services, Inc	96-2626	08/16/96
Masayoshi Son, QWIZ Inc., QWIZ, Inc	96-2636	08/16/96
Collins Holding Company, John M. Rudey, U.S. Timberlands Holdings Company, L.L.C	96-2638	08/16/96
Golder, Thoma, Cressey, Rauner Fund IV, L.P., Living Centers of America, Inc., Living Centers-Devcon, Inc	96-2641	08/16/96
Georg Fisher AG, Etex, S.A., R&G Sloane Manufacturing Company, Inc	96-2644	08/16/96
Jose Cutrale, Jr., The Coca-Cola Company, The Coca-Cola Company	96-2647	08/16/96
Quorum Health Group, Inc., Doctors Hospital, Inc. of Stark County, Doctors Hospital, Inc. of Stark County; Comp Care, Incor	96-2650	08/16/96
Public Service Company of Colorado, T. Pat Harrison, Texas-Ohio Gas, Inc. and Texas-Ohio Pipeline, Inc	96-2654	08/16/96
Public Service Company of Colorado, Brett Thomas, Texas-Ohio Gas, Inc. and Texas-Ohio Pipeline, Inc	96-2655	08/16/96
JP Foodservice, Inc., Donald Daren, Arrow Paper and Supply Co., Inc	96-2567	08/19/96
US Province of Congregation-Sisters Bon Secours-Paris, Liberty Health System, Inc., Liberty Health System, Inc	96-2604	08/16/96
RWE AG, AM International, Inc., AM International, Inc	96-2620	08/19/96
Bell & Howell Company, The Oklahoma Publishing Company, DataTimes Corporation	96-2631	08/19/96
Morgan Stanley Group, Inc., The Clayton & Dubilier Private Equity Fund IV L.P., VK/AC Holding, Inc	96-2634	08/20/96
The St. Paul Companies, Inc., Richard P. Davis, Flagship Resources Inc	96-2642	08/20/96
Maurice J. Cunniffe, Triboro Electric Corporation, Triboro Electric Corporation	96-2656	08/20/96
Laboratory Corporation of America Holdings, Genzyme Corporation, Genetic Design, Inc	96-1996	08/21/96
Darling International Inc., International Processing Corporation, International Processing Corporation	96-2509	08/21/96
St. Luke's Health Network, Inc., Allentown Osteopathic Medical Center, Allentown Osteopathic Medical Center	96-2541	08/21/96
Tenet Healthcare Corporation, The Lloyd Noland Foundation, Inc., Tenet HealthSystem Lloyd Noland Medical, Inc	96-2581	08/21/96
American Home Products Corporation, Stryker Corporation, Stryker Corporation	96-2627	08/21/96
American Home Products Corporation, Creative BioMolecules, Inc., Creative BioMolecules, Inc	96-2628	08/21/96
Stryker Corporation, American Home Products Corporation, Genetics Institute, Inc	96-2632	08/21/96
Creative BioMolecules, Inc., American Home Products Corporation, Genetics Institute, Inc	96-2633	08/21/96
General Electric Company, Michael H. Polaski, the TEC Division of Specialty Underwriters, Inc	96-2637	08/21/96
World Financial Network Holding Corporation, Welsh, Carson, Anderson & Stowe VII, L.P., Business Services Holdings, Inc	96-2672	08/21/96
GENICOM Corporation, Texas Instruments Incorporated, Texas Instruments Incorporated	96-2496	08/23/96
Transamerica Corporation, Trans Ocean Ltd., Trans Ocean Ltd	96-2561	08/23/96
Howard Gilman, Perry Lumber Company, Perry Lumber Company	96-2578	08/23/96
Bill A. Gilliland, Lynn Hickey, Lynn Hickey Dodge, Inc	96-2583	08/23/96
Bell Atlantic Corporation, NYNEX Corporation, Catskills RSA Limited Partnership	96-2615	08/23/96
Greencore Group plc, Imperial Holly Corporation, Imperial Holly Corporation	96-2622	08/23/96
Foundation Health Corporation, FPA Medical Management, Inc., FPA Medical Management, Inc	96-2639	08/23/96
FPA Medical Management, Inc., Foundation Health Corporation, Foundation Health Medical Services	96-2640	08/23/96
Suiza Foods Corporation, Swiss Dairy, A Corporation, Swiss Dairy, a Corporation	96-2646	08/23/96
Louis J. Appell Residuary Trust, George F. Gardner, Raystay Co	96-2652	08/23/96
Compagnie Generale des Eaux, Air & Water Technologies Corporation, Air & Water Technologies Corporation	96-22658	08/23/96
Adaptech, Inc., Raymond J. Noorda and Lewena Noorda, Data Kinesis, Inc	96-2663	08/23/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 081296 AND 082396—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
ReliaStar Financial Corp., Successful Money Management Seminars, Inc., Successful Money Management Seminars, Inc	96-2666	08/23/96
TPG Partners, L.P., Claudio Castiglioni, Cagiva S.p.a., Cagiva Motorcycles S.p.a., Ducati Motorc	96-2669	08/23/96
Robert F.X. Sillerman, Multi-Market Radio, Inc., Multi-Market Radio, Inc	96-2671	08/23/96
BE&K, Inc., T.H. Suitt, Suitt Construction Co., Inc	96-2673	08/23/96
Tractebel, S.A., Kamiche Company, Simpson Paper Company	96-2674	08/23/96
VISA U.S.A., Inc., Plus System, Inc., Plus System, Inc.,Plus System, Inc	96-2681	08/23/96
TPG Partners, L.P., Gianfranco Castiglioni, Ducati Motorcycles S.p.a., Cagiva S.p.a., Cagiva Motorc	96-2684	08/23/96
Neil and Debra Komewiet, Aames Financial Corporation, Aames Financial Corporation	96-2689	08/23/96
Regis Corporation, Supercuts, Inc., Supercuts, Inc	96-2694	08/23/96
Coach USA, Inc., George D. Kamins, Yellow Cab Services Corporation	96-2698	08/23/96
George D. Kamins, Coach USA, Inc., Coach USA, Inc	96-2699	08/23/96
Maple Leaf Foods Inc., Pioneer French Banking Co. Inc., Pioneer French Banking Co. Inc	96-2701	08/23/96
Summit Ventures IV, L.P., Robert D. Harris, Harris Research, Inc	96-2703	08/23/96
Northland Telecommunications Corporation, Marcus Cable Company, L.P., Marcus Cable Associates, L.P	96-2707	08/23/96
Alliance Entertainment Corp., Wasserstein Perella Group, Inc., Red Ant LLC	96-2711	08/23/96

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–23238 Filed 9–10–96; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulation—HHSAR Part 324—Protection of Privacy and Freedom of Information—Extension no change—0990–0136—The confidentiality of information requirements are needed to prevent improper disclosure of confidential data. *Respondents:* State or local governments, Business or other for-profit, non-profit institutions; *Annual Number of Responses:* 638; Average Burden per *Response:* 8 hours; *Estimated burden:* 5,104 hours.

2. HHS Acquisition Regulation—HHSAR Part 316—Types of Contracts—Extension no change—0990–0138—The Negotiated Overhead Rate—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). *Respondents:* business or other for-profit, non-profit institutions; State, Local or Tribal government; *Annual Number of Responses:* 520; *Average Burden per Response:* 10 hours; *Estimated Burden:* 5,200 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Officer Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: August 30, 1996.

Dennis P. William,

Deputy Assistant Secretary, Budget.

[FR Doc. 96–23114 Filed 9–10–96; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

[ORD–091–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act

July 1996.

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice identifies proposals submitted during the month of July 1996 under the authority of section 1115 of the Social Security Act and those that were approved, disapproved, pending, or withdrawn during this time period. (This notice can be accessed on the Internet at HTTP://WWW.HCFA.GOV/ORD/ORDHP1.HTML.)

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Susan Anderson, Office of Research and Demonstrations, Health Care Financing Administration, Mail Stop C3–11–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Susan Anderson (410) 786–3996.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to a grant solicitation or other competitive process are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, and Withdrawn Proposals for the Month of July 1996

A. Comprehensive Health Reform Programs

1. New Proposals

No new proposals were received during the month of July.

2. Pending Proposals

We have included a complete listing of pending proposals.

Demonstration Title/State: Better Access for You (BAY) Health Plan Demonstration—Alabama.

Description: Alabama proposes to create a mandatory managed care delivery system in Mobile County for non-institutionalized Medicaid beneficiaries and an expansion population of low-income women and children. The network, called the Bay Health Network, would be administered by the PrimeHealth Organization, which is owned by the University of South Alabama Foundation. The State also proposes to expand family planning benefits for pregnant women whose income is less than 133 percent of the Federal poverty level.

Date Received: July 10, 1995.

State Contact: Vicki Huff, Director, Managed Care Division, Alabama Medicaid Agency, P.O. Box 5624, Montgomery, AL 36103–5624, (334) 242–5011.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations. Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Arizona Health Care Cost Containment System (AHCCCS)—Arizona.

Description: Arizona proposes to expand eligibility under its current section 1115 AHCCCS program to individuals with incomes up to 100 percent of the Federal poverty level.

Date Received: March 17, 1995.

State Contact: Mabel Chen, M.D., Director, Arizona Health Care Cost Containment System, 801 East Jefferson, Phoenix, AZ 85034, (602) 271–4422.

Federal Project Officer: Joan Peterson, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26. 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Georgia Behavioral Health Plan—Georgia.

Description: Georgia proposes to provide behavioral health services under a managed care system through a section 1115 demonstration. The plan would be implemented by regional boards that would contract with third party administrators to develop a network of behavioral health providers. The currently eligible Medicaid population would be enrolled in the program and would have access to a full range of behavioral health services. Once the program realizes savings, the State proposes to expand coverage to individuals who are not otherwise eligible for Medicaid.

Date Received: September 1, 1995.

State Contact: Margaret Taylor, Coordinator for Strategic Planning, Department of Medical Assistance, 1 Peachtree Street, NW, Suite 27–100, Atlanta, GA 30303–3159, (404) 657–2012.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Title/State: Community Care of Kansas—Kansas.

Description: Kansas proposes to implement a "managed cooperation demonstration project" in four predominantly rural counties, and to assess the success of a non-competitive managed care model in rural areas. The demonstration would enroll persons currently eligible in the Aid to Families with Dependent Children (AFDC) and AFDC-related eligibility categories, and expand Medicaid eligibility to children ages 5 and under with family incomes up to 200 percent of the Federal poverty level.

Date Received: March 23, 1995.

State Contact: Karl Hockenbarger, Kansas Department of Social and Rehabilitation Services, 915 Southwest Harrison Street, Topeka, KS 66612, (913) 296–4719.

Federal Project Officer: Jane Forman, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Louisiana Health Access—Louisiana.

Description: Louisiana proposes to implement a fully capitated statewide managed care program. A basic benefit package and a behavioral health and pharmacy wrap-around would be administered through the managed care plans. The State intends to expand Medicaid eligibility to persons with incomes up to 250 percent of the Federal poverty level; those with incomes above 133 percent of the Federal poverty level would pay all or a portion of premiums.

Date Received: January 3, 1995.

State Contact: Carolyn Maggio, Executive Director, Bureau of Research and Development, Louisiana Department of Health and Hospitals, P.O. Box 2870, Baton Rouge, LA 70821–2871, (504) 342–2964.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Maryland Medicaid Reform Proposal—Maryland.

Description: A statewide section 1115 demonstration proposal has been developed to: provide a patient-focused system through managed care entities; build on the strengths of the current Maryland health care system; provide comprehensive, prevention-orientated systems of care; hold Managed Care Organizations (MCOs) accountable for high-quality care; and achieve better value and predictability for State expenditures.

Date Received: May 3, 1996.

State Contact: Mary Mussman, M.D., M.P.H., Acting Executive Director, Center for Health Program Development and Management, Social Sciences Building, Room 309A, 5401 Wilkens Avenue, Baltimore, MD 21228–5398, (410) 455–6804.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Office of State Health Reform Demonstrations, Mail Stop C3–18–36, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Missouri.

Description: Missouri proposes to require Medicaid beneficiaries to enroll in managed care delivery systems, and extend Medicaid eligibility to persons with incomes below 200 percent of the Federal poverty level. As part of the program, Missouri would create a fully capitated managed care pilot program to serve non-institutionalized persons with permanent disabilities on a voluntary basis.

Date Received: June 30, 1994.

State Contact: Donna Checkett, Director, Division of Medical Services, Missouri Department of Social Services, P.O. Box 6500, Jefferson City, MO 65102–6500, (314) 751–6922.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Community Care Systems—New Hampshire.

Description: The State submitted a revised proposal for "Community Care Systems." This system will provide capitated, managed acute care services not included in the health plan service package. The State proposed to implement this program in three phases: Phase 1 will enroll AFDC and AFDC-related children and families; Phase 2 will enroll the elderly population; and Phase 3 will enroll disabled adults and disabled children. The current waiver request is for Phase 1 only.

Date Received: June 5, 1996.

State Contact: Lorrie Lutz, Planning and Policy Development, State of New Hampshire, Department of Health and Human Services, 6 Hazen Drive, Concord, NY 03301–6505, (603) 271–4478.

Federal Project Officer: Cindy Shirk, Health Care Financing Administration, Office of Research and Demonstrations, Office of State Health Reform Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: The Partnership Plan—New York.

Description: New York proposes to move most of the currently eligible Medicaid population and Home Relief (General Assistance) populations from a primarily fee-for-service system to a managed care environment. The State also proposes to establish special needs plans to serve individuals with HIV/AIDS and certain children with mental illnesses.

Date Received: March 17, 1995.

State Contact: Richard T. Cody, Deputy Commissioner, Division of Health and Long Term Care, 40 North Pearl Street, Albany, NY 12243, (518) 474–9132.

Federal Project Officer: Debbie Van Hoven, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: State of Texas Access Reform (STAR)— Texas.

Description: Texas is proposing a section 1115 demonstration that will restructure the Medicaid program using competitive managed care principles. A focal point of the proposal is to utilize local governmental entities (referred to as Intergovernmental Initiatives (IGIs)) and to make the IGI responsible for designing and administering a managed care system in its region. Approximately 876,636 new beneficiaries would be served during the 5-year demonstration in addition to the current Medicaid population. Texas proposes to implement the program in June 1996.

Date Received: September 6, 1995.

State Contact: Cathy Rossberg, State Medicaid Office, P.O. Box 13247, Austin, TX 78711, (512) 502–3224.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Section 1115 Demonstration Waiver for Medicaid Expansion—Utah.

Description: Utah proposes to expand eligibility for Medicaid to all individuals with incomes up to 100 percent of the Federal poverty level (subject to limited cost sharing) and to enroll all Medicaid beneficiaries in managed care plans. The State also proposes to streamline eligibility and administrative processes and to develop a subsidized small employer health insurance plan.

Date Received: July 5, 1995.

State Contact: Michael Deily, Acting Division Director, Utah Department of Health, Division of Health Care Financing, 288 North 1460 West, P.O. Box 142901, Salt Lake City, UT 84114–2901, (801) 538–6406.

Federal Project Officer: David Walsh, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Proposals

No conceptual proposals were approved nor grant proposals awarded during the month of July. The following comprehensive health reform proposal was approved during the month of July:

Demonstration Title/State: MediPlan Plus—Illinois.

Description: Illinois' section 1115 demonstration program, "MediPlan Plus" seeks to increase access and quality of health care for 1.1 million of the State's Medicaid beneficiaries and limit rising costs through the increased use of managed care. Illinois intends to contract with a mix of health maintenance organizations (HMOs), managed care community networks (MCCNs), and enrolled managed care providers that incorporate Federally Qualified Health Centers, Rural Health Clinics, and physicians who agree to provide primary care case management services. In addition, as a transition to managed care, for a limited period, community providers who are interested in forming a MCCN will be permitted to participate as a Prepaid Health Plan in order to gain incremental experience in operating a managed care delivery system. MediPlan Plus will be implemented statewide. In areas where MCCN capacity exists, the State will be given a waiver of HMO freedom-of-choice and exemptions from the lock-in provisions and the 75/25 composition provision. In areas where there is not sufficient MCCN access, only the waivers permissible through the 1915(b) program (freedom-of-choice) will be granted.

Date Received: September 14, 1994.

Date Approved: July 12, 1996.

State Contact: George Hovanec, Medicaid Director, Medical Operations, Department of Public Aid, 201 South Grand Avenue, East, Third Floor, Springfield, IL 62763–0001, (217) 782–2570.

Federal Project Officer: Gina Clemons, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. Disapproved Proposals

No comprehensive health reform proposals were disapproved during the month of July.

5. Withdrawn Proposals

No comprehensive health reform proposals were withdrawn during the month of July.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

The following new proposals were received during the month of July:

Demonstration Title/State: Continuing Care Networks (CCN)

Demonstration—Monroe County, New York.

Description: The CCN project is designed to test the efficiency and effectiveness of financing and delivery systems which integrate primary, acute and long term care services under combined Medicare and Medicaid capitation payments. Participants will be both Medicare only, and dually eligible Medicare/Medicaid beneficiaries, who are 65 or older. Enrollment will be voluntary for all participants.

Date Received: July 1, 1996.

State Contact: C. Christopher Rush, Assistant Bureau, Director, Bureau of Long Term Care, Division of Health and Long Term Care, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243–0001, (518) 473–5507.

Federal Project Officer: Kay Lewandowski, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–23–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. Pending Proposals

We have included a complete listing of pending proposals.

Demonstration Title/State: Alternatives in Medicaid Home Care Demonstration—Colorado.

Description: Colorado proposes to conduct a pilot project that eliminates the restriction on provision of Medicaid home health services in locations other than the beneficiary's place of residence. The proposal would also permit nursing aides to perform functions that historically have been provided only by skilled nursing staff. Medicaid beneficiaries participating in the project will be adults (including both frail elderly clients and younger clients with disabilities) who can live independently and self-direct their own care. The project would provide for delegation of specific functions from nurses to certified nurses aides, pay nurses for shorter supervision and monitoring visits, and allow higher payments to aides performing delegated nursing tasks. Currently, home health agency nursing and nurse aide services are paid on a per visit basis. Each visit is approximately 2–4 hours in duration, and recipients must require skilled, hands-on care.

Date Received: June 3, 1995.

State Contact: Dann Milne, Director, Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, CO 80203–1714, (303) 866–5912.

Federal Project Officer: Phyllis Nagy, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration/Title: Integrated Care and Financing Project Demonstration—Colorado.

Description: Colorado proposes to conduct an Integrated Care and Financing Project demonstration. Specifically, the Colorado Department of Health Care Policy and Financing proposes to add institutional and community-based long-term care services to a health maintenance organization (HMO) and make the HMO responsible for providing comprehensive medical and supportive services through one capitated rate. The project would include all Medicaid eligibility groups, including individuals with dual eligibility.

Date Received: September 28, 1995.

State Contact: Dann Milne, Office of Long-Term Care System Development, State of Colorado Department of Health Care Policy and Financing, 1575 Sherman Street, Denver, Co 80203–1714, (303) 866–5912.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Georgia's Children's Benefit Plan—Georgia.

Description: Georgia submitted a section 1115 proposal entitled "Georgia Children's Benefit Plan" to provide preventive and primary care services to children aged 1 through 5 living in families with incomes between 133 percent and 185 percent of the Federal poverty level. The duration of the project is 5 years with proposed project dates of July 1, 1995 to June 30, 2000.

Date Received: December 12, 1994.

State Contact: Jacquelyn Foster-Rice, Georgia Department of Medical Assistance, 2 Peachtree Street Northwest, Atlanta, GA 30303–3159, (404) 651–5785.

Federal Project Officer: Maria Boulmetis, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Section 1115 Waiver Request—Michigan.

Description: Michigan seeks to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level, and to provide an additional benefit package consisting of home visits, outreach services to identify eligibility, and reinforced support for utilization of services. The duration of the project is 5 years.

Date Received: March 27, 1995.

State Contact: Gerald Miller, Director, Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909, (517) 335–5117.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Montana Mental Health Access Plan—Montana.

Description: Montana proposes to provide all mental health services for current Medicaid-eligible individuals through managed care and to expand Medicaid eligibility to persons with incomes up to 200 percent of the Federal poverty level. Newly eligible individuals would receive only mental health benefits, and would not be eligible for other health services under the demonstration. A single statewide contractor would provide the mental health services and also determine eligibility, perform inspections, and handle credentialing.

Date Received: June 16, 1995

State Contact: Nancy Ellery, State Medicaid Director, Department of Social and Rehabilitation Services, P.O. Box 4210, 111 North Sanders, Helena, MT 59604–4210, (406) 444–4540.

Federal Project Officer: Nancy Goetschius, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Proposal—New Mexico.

Description: New Mexico proposes to extend Medicaid eligibility for family planning services to all women of childbearing age with incomes at or below 185 percent of the Federal poverty level.

Date Received: November 1, 1994.

State Contact: Bruce Weydemeyer, Director, Division of Medical Assistance, P.O. Box 2348, Santa Fe, NM 87504–2348, (505) 827–3106.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: CHOICES—Citizenship, Health, Opportunities, Interdependence, Choices and Supports—Rhode Island.

Description: Rhode Island proposes to consolidate all current State and Federal funding streams for adults with developmental disabilities under one program using managed care/managed competition.

Date Received: April 5, 1994.

State Contact: Susan Babin, Department of Mental Health, Retardation, and Hospitals, Division of Developmental Disabilities, 600 New London Avenue, Cranston, RI 02920, (401) 464–3234.

Federal Project Officer: Melissa McNiff, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Family Planning Services Eligibility Requirements Waiver—South Carolina.

Description: South Carolina proposes to extend Medicaid coverage for family planning services for 22 additional months to postpartum women with monthly incomes under 185 percent of the Federal poverty level. The objectives of the demonstration are to increase the number of reproductive age women receiving either Title XIX or Title X funded family planning services following the completion of a pregnancy, increase the period between pregnancies among mothers eligible for maternity services under the expanded eligibility provisions of Medicaid, and estimate the overall savings in Medicaid spending attributable to providing family planning services to women for 2 years postpartum. The duration of the proposed project would be 5 years.

Date Received: May 4, 1995.

State Contact: Eugene A. Laurent, Executive Director, State Health and Human Services Finance Commission, P.O. Box 8206, Columbia, SC 29202–8206, (803) 253–6100.

Federal Project Officer: Suzanne Rotwein, Ph.D., Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Wisconsin.

Description: Wisconsin proposes to limit the amount of exempt funds that may be set aside as burial and related expenses for SSI-related Medicaid beneficiaries.

Date Received: March 9, 1994.

State Contact: Jean Sheil, Division of Economic Support, Wisconsin Department of Health and Social Services, 1 West Wilson Street, Room 650, P.O. Box 7850, Madison, WI 53707, (608) 266–0613.

Federal Project Officer: J. Donald Sherwood, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3–16–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Wisconsin Partnership Program—Wisconsin.

Description: Wisconsin has submitted Medicare section 222 demonstration and Medicaid section 1115 waiver requests to implement the "Wisconsin Partnership Program" in specific counties of the State. This program will test two innovative models of care, one for frail elderly and one for persons with disabilities, utilizing a multi-disciplinary team to manage care. The team is to include the beneficiary, a nurse practitioner, the beneficiary's choice of primary care physician, and a social worker or independent living coordinator. Consumer choice of care, settings and the manner of service delivery is a key component of the program. The demonstration will test the use of consumer-defined quality indicators to measure and improve the quality of service provided to people who are elderly and people with disabilities.

Date Received: February 28, 1996.

State Contact: Mary Rowin, State of Wisconsin, Department of Health and Social Services, 1 West Wilson Street, P.O. Box 7850, Madison, WI 53707, (608) 261–8885.

Federal Contact: William Clark, Health Care Financing Administration, Office of Research and Demonstrations, Office of Beneficiary and Program Research and Demonstrations, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

3. Approved Proposals

No conceptual or other proposals were approved during the month of July.

4. Disapproved Proposals

No proposals were disapproved during the month of July.

5. Withdrawn Proposals

No proposals were withdrawn during the month of July.

III. Requests for Copies of a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: August 15, 1996.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 96–23115 Filed 9–10–96; 8:45 am]

BILLING CODE 4120–01–P

[OPL–011–N]

Medicare Program; September 30, 1996, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for September 30, 1996, from 9 a.m. until 5 p.m. E.D.T. (The winter meeting is scheduled on December 16, 1996, in Washington, DC.)

ADDRESSES: The meeting will be held in the Auditorium, 1st Floor, Health Care Financing Administration Building, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Samuel Shekar, M.D., Executive Director, Practicing Physicians Advisory Council, Room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 260–5463.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, effective on November 5, 1990), to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and under served urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Kenneth D. Hansen, M.D.; Mary T. Herald, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Katherine L. Markette, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; and Kenneth M. Viste, Jr., M.D. The chairperson is Kenneth M. Viste, Jr., M.D.

The next meeting of the Council will be held on September 30, 1996. The Council agenda will provide for discussion and comment on the following three items:

- Dual Eligibles (Individuals eligible for both Medicare and Medicaid) Issues
- Medicare Transaction System (MTS)
- Utilization and Quality Control Peer Review Organizations (PRO) Quality Improvement Initiatives

Council members will also receive legislative, Managed Care and Medicaid updates. Any individual or organization that wishes to make a 5-minute oral presentation on any one or more of the three issues listed should contact the Executive Director by 12:00 noon, September 16, 1996, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12:00 noon, September 20, 1996. For the name, address, and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. Anyone who is not scheduled to speak may also submit written comments to the Executive Director by 12:00 noon, September 20, 1996. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 3, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–23116 Filed 9–10–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of Dietary Effects on Lipoproteins and Thrombogenic Activity (DELTA) and Dietary Intervention Study in Children (DISC) cooperative agreements.

Date: October 8–9, 1996.

Time: 7:30 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate cooperative agreement applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.838, Heart and Vascular Diseases Research; 93,838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23056 Filed 9–10–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closing Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: September 13, 1996.

Time: 1:00–3:00 pm.

Place: 6120 Executive Blvd, Rockville MD 20892 (telephone conference call).

Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPA Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8693.

Purpose Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23057 Filed 9–10–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse Special Emphasis panel meeting:

Name of Committee: Center Review.

Date: September 26, 1996.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with provisions set forth in secs. 552b(c)(4)

and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: September 5, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23058 Filed 9–10–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on October 9–11, 1996, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the subcommittee will be in Conference Room 7, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on October 9 from 2 p.m. until 3 p.m. for the discussion of policy issues. The meeting of the full Council will be open to the public on October 10 from 8:30 a.m. until 4:30 p.m. for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on October 11 from 8:30 a.m. until approximately 10:00 a.m. for a report on extramural programs of the Division of Human Communication. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and Section 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on October 9 will be closed to the public from 3 p.m. to adjournment. The meeting of the full Council will be closed to the public on October 10 from 4:30 p.m. to 5 pm and on October 11 from approximately 10 a.m. until adjournment. The meetings will include the review, discussion, and evaluation of individual grant applications and a report on the Division of Intramural Research. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meeting may be obtained from Dr. Craig A. Jordan, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400C, 6120 Executive Blvd., MSC7180, Bethesda, Maryland 20892, 301–496–8693. A summary of the meeting and rosters of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Jordan at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 4, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–23059 Filed 9–10–96; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 61 FR 25234, May 20, 1996), is amended to reflect a reorganization within the National Eye Institute (NEI) (HNW). The reorganization consists of the following: (1) establish the Division of Extramural Research (DER) (HNW3); (2) transfer the functions of the Division of Extramural Activities (DEA) (HNW5), the Division of Basic Vision Research (DBVR) (HNW6), and the Division of Collaborative Clinical Research (DCCR (HNW7) to the DER; and (3) abolish DEA, DBVR, and DCCR and all associated fourth- and fifth-echelon organizational components.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *National Eye Institute (HNW),* delete the titles and functional statements for *Division of Extramural Activities (HNW5), Division of Basic Vision Research (HNW6),* and *Division of Collaborative Clinical Research (HNW7)* in the entirety and substitute the following:

Division of Extramural Research (HNW3).

(1) Plans and directs programs of grant, cooperative agreement, and R&D contract support for basic and applied clinical research, training, and career development, concerning the blinding eye diseases, visual disorders, mechanisms of visual function, preservation of sight, and the special health problems and needs of individuals who are partially-sighted or blind; (2) plans and directs the grants and contracts management activities of the Institute, ensuring that all awards are made in accordance with applicable statutes, regulations, and policies; (3) provides the initial scientific merit review of research and training applications and proposals assigned to the Institute; (4) provides the Institute's committee management services, and provides logistical support for the National Advisory Eye Council; (5) provides advice to the Director on all issues relating to extramural program activities; and (6) participates in the planning, development, formulation, evaluation, and administration of the overall programs, policies, and operating procedures of the Institute.

Dated: August 28, 1996.

Harold Varmus,

Director, NIH.

[FR Doc. 96–23060 Filed 9–10–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR-3857-N-04]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 12, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing and Urban Development, 451 7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available documents: Patricia Mason, 202–708–3226, Extension 4588. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HOPE for Homeownership of Single Family Homes (HOPE 3).

OMB Control Number, if applicable: 2506–0128.

Description of the need for the information and proposed use: This information is needed to assist HUD in monitoring applicants previously awarded HOPE 3 Program Implementation Grants. The Department does not anticipate additional awards for the HOPE 3 Program. This program provides Federal grants to develop and implement homeownership programs for low income people under the Homeownership Opportunities for People Everywhere (HOPE 3) Program.

Agency form numbers, if applicable: SF–424, HUD–40086, 40102–A, 40102–B, 40103, 40104, and 40105.

Members of affected public: State and local governments, nonprofit organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: number of respondents—258; frequency of response—once; hours per response—40.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 4, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–23168 Filed 9–10–96; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3998–N–02]

Public Housing Lease and Grievance Procedures; Notice of HUD Due Process Determinations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of HUD due process determinations.

SUMMARY: Under section 6(k) of the United States Housing Act of 1937, a housing agency (HA) is generally required to provide a public housing tenant with the opportunity for an administrative hearing before commencement of eviction proceedings in court. The statute and HUD's implementing regulations provide that the HA may bypass the administrative hearing for evictions involving: any activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or employees of the HA; or any drug-related criminal activity on or off such premises. HUD must first make a determination that local law requires a pre-eviction court hearing that provides the basic elements of due process (a "due process determination"). This notice lists the judicial eviction procedures in three States for which HUD has recently issued a due process determination.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, Assisted Housing Division, Room 8166, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–2140. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Individuals may arrange to inspect and copy the documents detailing the legal analysis on which the due process determinations are based by contacting the Assisted Housing Division.

SUPPLEMENTARY INFORMATION:

I. Background

On March 26, 1996 (61 FR 13272), HUD published a final rule in the **Federal Register** amending its regulations governing public notice and comment rulemaking requirements (24 CFR part 10) and public housing lease and grievance procedures (24 CFR part 966). The final rule added a new paragraph (a)(2)(iii) to § 966.51 which states that "[f]or guidance to the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination." Also on March 26, 1996 (61 FR 13276), HUD published a notice in the **Federal Register** implementing 24 CFR 966.51(a)(2)(iii). The notice provided a State-by-State listing of the due process determinations issued by HUD. Each listing provided a brief description of the judicial eviction procedures required by local law which HUD has determined are consistent with the basic elements of due process as further defined in 24 CFR 966.53(c).

Since publication of the March 26, 1996 notice, HUD has issued two new due process determinations covering the

States of Connecticut and Mississippi. Additionally, HUD has expanded the coverage of its previously issued determination for the State of Massachusetts to account for a recent change in State law. This notice supplements the March 26, 1996, notice by providing a brief description of the judicial eviction procedures in these three States.

II. Judicial Eviction Procedures in the States of Connecticut, Mississippi, and Massachusetts for Which HUD Has Issued a Due Process Determination

Connecticut

A summary process action in the Civil and Housing Divisions of Superior Court under chapter 832 of the Connecticut General Statutes Annotated.

Mississippi

An unlawful entry and detainer action in the County and Circuit Courts under § 89–7–1 *et seq.* of the Mississippi Code Annotated.

Massachusetts

An action for eviction in the Housing, District, and Superior Courts (Trial Courts) under Chapter 239 of the Massachusetts General Laws, and a nuisance eviction action in the Trial Courts under Chapter 139 of the Massachusetts General Laws.

Dated: September 4, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–23167 Filed 9–10–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science

Central Utah Project Completion Act; Notice of Intent To Negotiate a Contract Between the Central Utah Water Conservancy District and Department of the Interior To Amend Contract No. 14–06–400–4286 Dated December 28, 1965, and its Supplementary Contract Dated November 26, 1985 Pertaining to the Central Utah Project, UT

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract between the Central Utah Water Conservancy District (CUWCD), and Department of the Interior (DOI) to amend Contract No. 14–06–400–4286 dated December 28, 1965, and its supplementary contract dated November 26, 1985.

SUMMARY: The United States and the CUWCD entered into Contract No. 14–06–400–4286 on December 28, 1965, which was supplemented by contract on November 26, 1985. These contracts provide among other things the terms and conditions whereby Colorado River Storage Project (CRSP) power will be made available for Central Utah Project (CUP) purposes. The enactment of P.L. 102–575, of which titles II through VI comprise the Central Utah Project Completion Act (CUPCA), expanded the purposes of the CUP to include, irrigation water, municipal and industrial water, water conservation, water efficiency improvements, fish and wildlife, recreation, and to provide replacement water for the Daniels Irrigation Company. Since the CRSP power is reserved by the Bureau of Reclamation (Reclamation) for participating project purposes and the CUP is a participating project of the CRSP, the enactment of CUPCA necessitates that amendments to Contract No. 14–06–400–4286 and its supplement be made. It is the intent of the DOI and CUWCD to amend the contracts to be consistent with the provisions of CUPCA, to clarify the procedures whereby CRSP power may be used for project purposes, and to amend such other provisions the parties deem appropriate.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, Internet: rmurray@uc.usbr.gov.

Dated: September 4, 1996.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 96–23026 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–RK–U

Bureau of Land Management

[OR–958–0777–54; GP6–0222; OR–50858]

Public Land Order No. 7215; Proposed Withdrawal for the Pacific Ocean Coastline, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,009.48 acres of public lands from mining for a period of 50 years for the Bureau of Land Management to protect the unique natural resources along the Oregon coastline. The lands have been and will remain open to mineral leasing and to surface entry except to the agricultural land laws.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not the mineral leasing laws, to protect the unique natural resources along the Oregon coastline:

Willamette Meridian

T. 3 S., R. 10 W.,
  Sec. 30, lot 15.
T. 4 S., R. 10 W.,
  Sec. 19, lots 1, 17 and 18;
  Sec. 29, lot 3.
T. 5 S., R. 10 W.,
  Sec. 5, unnumbered lot in NE¼NW¼SW¼ and unnumbered lot in NW¼SE¼SW¼;
  Sec. 6, lot 8;
  Sec. 20, SE¼NE¼.
T. 8 S., R. 11 W.,
  Sec. 3, lot 8.
T. 9 S., R. 11 W.,
  Sec. 4, SW¼SW¼.
T. 13 S., R. 11 W.,
  Sec. 28, lot 9.
T. 14 S., R. 12 W.,
  Sec. 35, SE¼NE¼.
T. 18 S., R. 12 W.,
  Sec. 2, lot 1.
T. 19 S., R. 12 W.,
  Sec. 1, lots 1 and 2.
T. 41 S., R. 13 W.,
  Sec. 6, lot 9;
  Sec. 7, lot 2.
T. 26 S., R. 14 W.,
  Sec. 28, NW¼NE¼.
T. 27 S., R. 14 W.,
  Sec. 29, lot 3.
T. 33 S., R. 14 W.,

Sec. 31, lots 2, 6, and 7, and NE¼SE¼.
T. 34 S., R. 14 W.,
Sec. 6, lot 1;
Sec. 33, lots 1, 2, 3, and 7;
Sec. 34, NW¼NW¼.
T. 38 S., R. 14 W.,
Sec. 4, SE¼SW¼;
Sec. 5, SW¼NE¼;
Sec. 34, SE¼NW¼.
T. 39 S., R. 14 W.,
Sec. 23, NW¼NW¼.
T. 30 S., R. 15 W.,
Sec. 12, NW¼SW¼.
T. 32 S., R. 15 W.,
Sec. 4, lots 1, 2, 3, and 4, S½NE¼NE¼, N½SE¼NE¼, and SW¼SE¼NE¼.
T. 34 S., R. 15 W.,
Sec. 1, lot 1.

The areas described aggregate 1,009.48 acres in Coos, Curry, Lane, Lincoln, and Tillamook Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines the withdrawal shall be extended.

Dated: September 5, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–23248 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–33–P

National Park Service

Public Notice

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued soft drink vending sales through machines at Jefferson National Expansion Memorial National Historic Site, St. Louis, Missouri, for a period of five (5) years from April 1, 1996, through March 31, 2001.

EFFECTIVE DATE: November 12, 1996.

ADDRESSES: Interested parties should contact the Superintendent, Jefferson National Expansion Memorial NHS, 11 North Fourth Street, St Louis, Missouri 63102–1882, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on March 31, 1996, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. *et seq*), is entitled to be given preference in the renewal of the contract and in the negotiation of a new proposed contract providing that the existing concessioner submits a responsive offer which meets the terms and conditions of the Prospectus. This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 19, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–23164 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–70–M

Dayton Aviation Heritage Commission; Meeting

ACTION: Notice of Meeting

AGENCY: National Park Service, Interior

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Tuesday, October 1, 1996; 5:15 p.m. to 6:30 p.m.

ADDRESSES: Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

Dated: September 4, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–23235 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–70–P

Keweenaw National Historical Park Advisory Commission; Meeting

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Tuesday, October 29, 1996; 8:30 a.m. until 4:30 p.m.

ADDRESSES: Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471 (telephone 906–337–3168).

This meeting is open to the public. We will begin with the Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, William O. Fink, P.O. Box 471, Calumet, Michigan 49913–0471.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

Dated: September 4, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–23236 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–70–P

Missouri National Recreational River Advisory Group; Meeting

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Thursday, September 26, 1996; 1:30 p.m.

ADDRESSES: Saint Mary's Catholic Church, Spencer, Nebraska.

AGENDA: (1) Review of public comments received regarding the 39-mile draft general management plan and environmental impact statement; (2) Discussion of National Park Service responses to the public review period written comments; (3) The opportunity for public comment and proposed agenda, date, and time, of the next Advisory Group meeting. The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

FOR FURTHER INFORMATION CONTACT: Superintendent Warren Hill, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, or at 402–336–3970.

SUPPLEMENTARY INFORMATION: The Advisory Group was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the Recreational River. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

Dated: September 4, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–23237 Filed 9–10–96; 8:45 am]

BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Republic of Chile, acting through its Ministry of Housing and Urban Development ("Borrower") as part of USAID's development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Chile. At this time, the Ministry of Finance of the Republic of Chile has authorized USAID to request proposals from eligible lenders for a loan under this program of $26 Million U.S. Dollars (US$26,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Republic of Chile

Project No: 513–HG–010, Housing Guaranty Loan No: 513–HG–010 B01, Amount: $26,000,000, Attention: Mr. Jose Pablo Arellano Marin, Director de Presupuestos, Ministry of Finance, Teatinos 120, piso 12, Santiago, Chile, Telefax No.: (562) 671–3814 (preferred communication), Telephone No.: (562) 696–1368 or (562) 671–0672

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by *Tuesday, September 24, 1996,* at *12:00 Noon* Eastern Daylight Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Thomas Nicastro, USAID Representative/Chile, Embassy of the United States of America, Ava. Andres Bello 2800, Las Condes, Santiago, Chile, Telefax No: (562) 638–0931 (preferred communication), Telephone No: (562) 330–3708

and

Mr. Kraig Baier, Director, RHUDO, South America, USAID/Quito, Ecuador, c/o American Embassy, Unit 5330, APO AA 34039–3420, Telefax No.: (593) 2–561–228 (preferred communication), Telephone No.: (593) 2–544–365

Mr. Peter Pirnie, U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, D.C. 20523–1822, Telex No.: 892703 AID WSA, Telefax No.: 703/875–4639 or 875–4384 (preferred communication), Telephone No.: 703/875–4510/4300

For your information the Borrower is currently considering the following terms:

(1) *Amount:* US$26 million.

(2) *Term:* 21 years.

(3) *Grace Period:* Ten years on the repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 11-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 11-year life of the loan.

(4) *Interest Rate:* Alternatives of *fixed rate,* and *variable rate* are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6.0% U.S. Treasury Bond due February 15, 2026. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include options for prepayment and mention prepayment premiums, if any.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the lorn (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, and Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* As early as practicable, but not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by USAID. The Republic of Chile reserves the right to not accept any bid which, in its estimation, is non-competitive. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from: Ms. Viviann Gary, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, DC 20523–1822, Telephone: 703–875–4300.

Dated: September 6, 1996.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 96–23359 Filed 9–10–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–741, 742, & 743 (Final)]

Melamine Institutional Dinnerware From China, Indonesia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–741, 742, & 743 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China, Indonesia, and Taiwan of melamine institutional dinnerware, provided for in subheadings 3924.10.20, 3924.10.30, and 3924.10.50 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: August 22, 1996.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of melamine institutional dinnerware from China, Indonesia, and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on February 6, 1996, by the American Melamine Institutional Tableware Association (AMITA).[2]

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of these investigations need not file an additional notice of appearance during this final phase of the investigations. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

[1] For purposes of these investigations, "melamine institutional dinnerware" is defined as all items of dinnerware (e.g., plates, cups, saucers, bowls, creamers, gravy boats, serving dishes, platters, and trays, but not including flatware products such as knives, forks, and spoons) that contain at least 50 percent melamine by weight and have a minimum wall thickness of 0.08 inch.

[2] The members of AMITA are Continental/Silvite International Co., Oklahoma City, OK; Lexington United Corp. (National Plastics Corp.), Port Gibson, MS; and Plastics Manufacturing Co., Dallas, TX.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 13, 1996, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on January 9, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 16, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 18, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 20, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 17, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 17, 1997. On February 3, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 5, 1997, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: September 3, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–23223 Filed 9–10–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–376]

Certain Variable Speed Wind Turbines and Components Thereof; Notice of Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.45 and 210.50).

This patent-based section 337 investigation was instituted by the Commission on May 30, 1995 (60 FR 28167) based on a complaint filed by Kenetech Windpower, Inc., of Livermore, CA. Complainant alleged violation of section 337 in the importation, sale for importation, and/or the sale within the United States after importation, of certain variable speed wind turbines and components thereof, by reason of infringement of claim 131 of U.S. Letters Patent 5,083,039 ("the '039 patent") and claim 51 of U.S. Letters Patent 5,225,712 ("the '712 patent"), both patents owned by complainant. Enercon GmbH of Aurich, Germany and The New World Power Corporation of Lime Rock, Connecticut were named as respondents.

The presiding administrative law judge (ALJ) held an evidentiary hearing on the merits beginning on January 31, 1996, and issued his final initial determination (ID) finding a violation of section 337 on May 30, 1996. The ALJ found that there had been a sale for importation of the accused products; that claim 131 of the '039 patent has been literally infringed; that claim 51 of the '712 patent was not infringed, either literally or under the doctrine of equivalents; and that complainant's activities with respect to the '039 and '712 patents satisfied the domestic industry requirements of section 337. Respondents filed a petition for review of the ID and the Commission investigative attorney (IA) filed an opposition to the petition for review. On July 17, 1996, the Commission issued a notice of its determination to review certain portions of the ID and requested written submissions on the issues under review and on remedy, the public interest, and bonding. 61 FR 38473 (July 24, 1996).

Submissions on remedy, the public interest, and bonding and the issues under review were received from complainant, respondents, and IA. Complainant, respondents, and the IA also filed reply submissions on those issues. On August 30, 1996, the Commission determined to affirm the ALJ's conclusions on claim interpretation and infringement, thereby finding a violation of section 337.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission also made determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicenced entry for consumption of variable speed wind turbines and components thereof manufactured and/or imported by Enercon GmBH of Aurich, Germany and/or The New World Power Corporation of Lime Rock, Connecticut, and that infringe claim 131 of U.S. Letters Patent 5,083,039.

The Commission also determined that the public interest factors enumerated in

subsections 1337(d) and (f) do not preclude the issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

Copies of the Commission's order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 30, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–23224 Filed 9–10–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

JTPA Section 402 Migrant and Seasonal Farmworker Standardized Participants Information Reporting (SPIR) System; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement collection of the Standardized Participant Information Reporting system (SPIR). A copy of the proposed information collection request (ICR) may be obtained by contacting the addressee listed below.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 12, 1996. The Department of Labor is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–5500 (VOICE) (this is not a toll-free number) or INTERNET: MAYRANDP@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration of the Department of Labor is reinstating its approved JTPA, title IV–A, section 402 Migrant and Seasonal Farmworker Standardized Participant Information Reporting system for a period of three program years (July 1, 1996 to June 30, 1999). This decision stems from favorable experience during both the pilot test year (ending June 30, 1995 with 19 grantees participating) and the first program year (ending June 30, 1996) since the system was fully implemented for all grantees.

II. Current Actions

The proposed ICR will be a continuation of an existing system currently in place and used by all Section 402 grantees as the primary reporting vehicle for individuals enrolled and terminated, their demographic characteristics, training and services provided and outcomes including job placement and employability enhancements. This is a request for a reinstatement of an existing collection from a previously approved ICR.

Type of Review: Reinstatement.

Agency: Employment & Training Administration.

Title: Standardized Participant Information Reporting system for the JTPA Section 402 Migrant and Seasonal Farmworker Programs.

OMB Number: 1205–0350.

Recordkeeping: Grantees shall retain supporting and other documents necessary for the compilation and submission of the SPIR for three years.

Affected Public: Not-for-Profit organizations.

Cite/Reference/Form/etc: The collection instrument is the Standardized Participant Information Record (SPIR) and Instructions. A SPIR Form is provided for optional use in gathering information at the grantee field office level. The SPIR itself is a computer file in a specified form which is submitted by grantees via diskette, modem or INTERNET.

Total Respondents: 53.

Frequency: Quarterly and One-Time Report.

Total Responses: 265 (53 times 5) (There are four quarterly submissions per year plus a fifth submission which includes the 13-week followup data obtained for individuals terminating in the last quarter of the program year.

Average Time per Response: 3.6 additional burden hours. The average time per response varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully developed MIS, the response time is limited to one-time programming plus processing time for each response. All efforts are being directed towards this end, so that response time for reporting will eventually sift down to an irreducible minimum with little human intervention. Currently, it is estimated at 3.6 hours per response.

Estimated Total Burden Hours: 954 hours. (53 respondents times 5 submissions times 3.6 hours each=954 total hours).

Total Burden Cost (capital/startup): No additional Burden Cost for capita/startup as all grantees are currently reporting using the SPIR.

Total Burden Cost (operating/maintaining): $265,000 (53 grantees times $5,000). As noted these costs will vary widely among grantees, from nearly no additional cost to some higher figure depending on the state of

automation attained by each grantee. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 3, 1996.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

[FR Doc. 96–23049 Filed 9–10–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 10:00 a.m., Monday, August 5, 1996.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b (c)(2) (internal personnel rules and practices); (c)(6) (personal information where disclosure would constitute a clear invasion of personal privacy), and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action * * *).

MATTERS TO BE CONSIDERED: Personnel.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated: Washington, D.C.

By direction of the Board: September 6, 1996.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96–23397 Filed 9–9–96; 1:34 pm]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Division of Environmental Biology: Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Panel for Ecological Studies #1751.

Date & Time: October 2–4, 1996, 8:00 am–5:00 pm each day.

Place: Room 390, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. James Callahan and Dr. Gaius Shaver, Program Directors, Ecological Studies, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1479.

Agenda: To review and evaluate Ecosystem Studies proposals as part of the selection process for awards.

Name: Advisory Panel for Ecological Studies #1751.

Date & Time: October 9–11, 1996, 8:30 am–5:00 pm each day.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Scott L. Collins and Dr. Taber Allison, Program Directors, Ecological Studies, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone (703) 306–1479.

Agenda: To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Panel For Systematic and Population Biology#1753.

Date & Time: October 9–11, 1996, 8:00 am–5:00 pm each day.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Mark W. Courtney, Program Director, Systematic and Population Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone (703) 306–1479.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Name: Advisory Panel for Long Term Projects in Environmental Biology #1752.

Date & Time: October 21–22, 1996, 8:00 am–5:00 pm each day.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Meredith Lane, Program Director, Research Collection in Systematics and Ecology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone (703) 306–1483.

Agenda: To review and evaluate Research Collections in Systematics and Ecology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology #1753.

Date & Time: October 22–25, 1996, 8:00 am–5:00 pm each day.

Place: Rooms 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. James Rodman, Program Director, Systematic and Population Biology, Room 635, Division of Environmental Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone (703) 306–1479.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23203 Filed 9–10–96; 8:45 am]

BILLING CODE 7555–01–M

Proposed Data Collection: Comment Request

Title of Proposed Collection: Evaluation of the Instructional Materials Development Program.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call the NSF Clearance Officer on (703) 306–1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility,and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Abstract: Evaluation of the Instructional Materials Development Program classroom practice in elementary and secondary schools is closely linked with curriculum and instructional materials. Consequently, those who seek to improve educational opportunities and attainment appropriately include a focus on instructional materials development. The national science Foundation (NSF) has long recognized the importance of instructional materials through its support for curriculum development. Recent attention to standards-based systemic reform raises new questions about instructional materials, including attention to development, marketing

and distribution, adoption and implementation, and impact. The purpose of this study is to provide answers to questions related to these topics by gathering information from developers, marketers, school and district decision makers, and teachers.

Respondents and burden hours;

	Number of respondents	Number of responses/respondents	Average burden/responses (in hours)
Developers	180	1	1
Marketers	90	1	1
Customers	135	1	1.5
Teachers	200	1	2

Send written comment to Herman Fleming, Clearance Office, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Written comments should be received by November 4, 1996.

Dated: November 5, 1996.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 96–23113 Filed 9–10–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–263, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) submitted to the Phase I Small Business Innovation Research Program in the areas of Chemical and Transport Systems, Fluid, Particulate, and Hydraulic Systems and Chemical Characterization. In order to review the large volume of proposals, panel meetings will be held on September 26 and 27, 1996 in rooms 375, and 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA. from 8:30 a.m. to 5:00 p.m. each day.

Contact Person: Joseph Hennessey, SBIR Program Manager, SBIR Office, (703) 306–1391, Francis J. Wodarczyk, Program Officer, MPS/CHE, (703) 306–1856, Mihail C. Roco, Program Officer, CTS/ENG, (703) 306–1371, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23204 Filed 9–10–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1994).

Date and Time: September 26, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 2072, NCAR—Foothills Laboratory, 3450 Mitchell lane, Boulder, CO.

Type of Meeting: Closed.

Contact Person: Ritchie Coryell, SBIR Program Manager, SBIR Office, (703) 306–1391, Pamela Stephens, Program Officer, Atmospheric Sciences/GEO, (703) 306–1528, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Atmospheric Sciences as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23206 Filed 9–10–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) submitted to the Phase I Small Business Innovation Research Program in the areas of Next Generation Vehicles, Membranes and Catalysis for Fuel Cells, Gas Storage Technologies, and Microelectronics Manufacturing, Flat Panel Displays. In order to review the large volume of proposals, panel meetings will be held on September 30, 1996 in rooms 310, 320, and 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 a.m. to 5:00 p.m. each day.

Contact Person: Yousef Hashimi, SBIR Program Manager, SBIR Office, (703) 306–1391, Anthony Centodocati, SBIR Program Manager, SBIR Office, (703) 306–1391, Syed Outubuddin, Program Officer, ECS/ENG, (703) 306–1371, Liselotte Schioler, Program Officer, Materials Research/DMR (703) 306–1836, Virginia Ayres, Program Officer, ECS/ENG, (703) 306–1339, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 5, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23205 Filed 9–10–96; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, September 17, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first item is open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

6739 Safety Study: The Performance and Use of Child Restraint Systems, Seatbelts, and Air Bags for Children in Passenger Vehicles.

6717 Opinion and Order: *Administrator* v. *Smith*, Docket SE–13796; Disposition of Administrator's Motion to Dismiss Respondent's Untimely Appeal.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 6, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–23320 Filed 9–6–96; 4:54 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 issued to Arizona Public Service Company (the licensee) for operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, located in Maricopa County, Arizona.

The proposed amendment would modify the technical specifications (TS) to increase the minimum required amount of anhydrous trisodium phosphate (TSP) in the containment baskets. TSP is used to ensure that, following a postulated design basis loss of coolant accident (LOCA), the containment sump pH is maintained greater than or equal to 7.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve any change to the method of operation of any plant equipment or modify any plant equipment. The proposed amendment only affects a passive component that mitigates the consequences of a design basis LOCA, and does not affect the event initiation scenarios for accidents previously evaluated. Furthermore, the proposed amendment ensures that the correct volumes and mass of anhydrous TSP are used such that the post-LOCA emergency core cooling system (ECCS) solution is maintained at a pH above 7, which is the current basis for use of TSP. This basis maintains the existing analysis of consequences, which is that maintaining the ECCS solution above a pH of 7 ensures that the radiological consequences are minimized by preventing significant amounts of iodine released from fuel failures, and subsequently dissolved in the recirculating water, from converting to a volatile form and evolving into the containment atmosphere. Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not modify the plants' configuration, involve any change to plant equipment, or change the method of plant operation. The proposed amendment does not affect any equipments that are currently assumed as accident initiators. The proposed amendment only increases the amount of TSP, which is a passive component used to mitigate the consequences of an accident, thus no new failure modes are introduced by the proposed amendment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The current margin of safety is defined by assuring that the ECCS circulating water is maintained above a pH of 7 following a LOCA. The proposed change continues to ensure this condition, therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By _____, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the

Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 28, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 6th day of September 1996.

For the Nuclear Regulatory Commission

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23194 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 issued to Arizona Public Service Company (the licensee) for operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, located in Maricopa County, Arizona.

The proposed amendment would modify the technical specifications (TS) to change (1) The reference method for calculating dose conversion factors (DCFs) to be used in dose calculations, and (2) the upper and lower limits for operating pressurizer pressure to account for new instrument uncertainties and to reduce the allowed operating band.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed

amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve any change in the method of operation of any plant equipment or modify any plant equipment. The proposed change to the allowed pressurizer pressure operating band does not add any operating range not previously allowed, nor does it affect the nominal operating pressure. Thus the proposed change does not represent a new or more frequent initiating event or transient. Based on a review of historical plant operating data for pressurizer pressure, limiting the allowed operating band for pressure will not require additional operator action or create additional burden on the operators. Nominal operating pressure is approximately 2250 psia, and pressure deviates only approximately 10 psi from this pressure during normal operation. Additionally, the reactor trip setpoints remain unchanged, thus the proposed change will not affect the probability of a reactor trip. The proposed change to the DCFs would allow use of a more accurate method for determining thyroid dose consequence resulting from postulated accident conditions. This portion of the proposed change does not involve any changes to plant operation or equipment. Therefore, the proposed changes do not involve a significant increase in the probability of an accident.

The proposed change to the allowed pressurizer pressure band would be used in transient and accident analyses for each core reload. The proposed change does not affect the acceptance criteria for the analysis results, thus this portion of the proposed change would not affect the consequences of accidents previously analyzed.

The proposed change to DCFs does not affect the calculated off-site doses to postulated accidents. The new DCFs would only provide more accurate estimates of the potential effects to the thyroid based on the calculated off-site doses.

Based on the above, the proposed changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments do not modify the configuration of the units, involve any change to plant equipment, or change the methods of plant operation. Thus, the proposed changes do not result in any new failure modes for any plant system or component. Therefore, the amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change associated with operating pressurizer pressure limits will implement more restrictive acceptance criteria in surveillance procedures to ensure that safety analysis assumptions are maintained. The more restrictive range of operation has been analyzed and is bounded by the existing safety analyses. The use of new DCFs in dose effects calculations do not change any of the safety limits for existing analyses. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 11, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the

nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 17, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 6th day of September 1996.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23195 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8902]

Atlantic Richfield Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Finding of no significant impact, Notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–1470 to allow the licensee, Atlantic Richfield Company, to dispose of mill waste contaminated by polychlorinated biphenyls (PCBs) at its Bluewater uranium mill and tailings site in Cibola County, New Mexico. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Hooks, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–7777

SUPPLEMENTARY INFORMATION:

Background

Atlantic Richfield Company (ARCO) is reclaiming its Bluewater Mill site under a reclamation plan approved by the U.S. Nuclear Regulatory Commission on August 10, 1990. The plan covers the Main Tailings Pile (about 250 acres), the Carbonate Tailings Pile (about 50 acres), the Acid Tailings Pile (about 25 acres) and seven synthetically lined evaporation ponds. The tailings piles contain roughly 25 million tons of tailings. Modifications to the reclamation plan were approved January 30, 1992; May 27, 1994; July 20, 1994; July 20, 1995; July 8, 1996; and July 18, 1996. The groundwater Corrective Action Plan for the Bluewater Mill site was approved by the NRC on August 18, 1989 and groundwater Alternate Concentration Limits were approved by the NRC on February 22, 1996.

Summary of the Environmental Assessment

Identification of the Proposed Action

By letter dated May 25, 1995, ARCO requested NRC approval of the disposal of mill waste containing PCBs at the Bluewater Mill site. ARCO characterized the waste as being composed primarily of spillage of ore residues from the mill ore crushing and milling circuit, and PCBs from electrical transformers in or adjacent to the mill. The waste is in 145 drums (less than 1200 cubic feet or 100 tons), and would be disposed of in a special disposal cell, backfilled with soil cement, with a clay cap and liner each a minimum of 3 feet thick and designed for 1000 year containment, within Disposal Area No. 1. Disposal Area No. 1 has an additional 1 foot of compacted engineered fill as a bottom liner and 2 feet as a top cover. There are no free liquids in the drums. The Ra-226 content of the waste material varies up to about 200 pCi/gram, with an average of about 10 pCi/gram. Based on samples taken during cleanup of the waste, the PCB concentration within the drums is estimated by ARCO to be greater than 50 ppm but less than 500 ppm.

Need for the Proposed Action

There are presently no commercial waste disposal sites in the United States licensed to accept radioactive waste contaminated with PCBs. The only current alternatives to permanent onsite disposal are relocation to a separate disposal area (which would have to be licensed by the NRC and permitted by the EPA), or temporary storage onsite or in another location (again requiring licensing and permitting) until a permanent disposal site is available.

Environmental Impacts of the Proposed Action

The ARCO Bluewater Mill site is licensed by the NRC under Materials License SUA–1470 to possess byproduct material in the form of uranium waste tailings as well as other radioactive wastes generated by past milling operations. Except for the PCBs, the waste could have been disposed of in the tailings piles as was done with other mill debris and windblown cleanup material, or with other drummed waste which was disposed of in a similar cell in Disposal Area No. 1 (ARCO Letter to NRC, February 3, 1995; NRC letter to ARCO, July 8, 1996). The PCB-contaminated waste is in drums, and would make a negligible contribution to the radon releases or groundwater contamination from the tailings impoundments even in the event of failure of the drums.

Disposal of PCB-contaminated material at the Bluewater site was evaluated by EPA Region 6. ARCO submitted documentation concerning its disposal plans to the EPA in letters dated October 9, 1995; January 26, 1996; and July 8, 1996. The EPA published a copy of its proposed approval to permit land dispose of PCBs at ARCO's Bluewater Mill site for a 45-day public comment period on April 30, 1996 in the Albuquerque (New Mexico) Journal newspaper. By letter dated June 24, 1996, the EPA notified ARCO that no comments were received during the public comments period and the EPA was issuing final approval of the disposal. DOE notified ARCO that it would accept the site, subject to certain conditions including EPA approval, in a letter dated February 23, 1996.

Alternatives to the Proposed Action

Based on its review of the request, the NRC staff has concluded that from the radiological standpoint there are no significant environmental impacts associated with the proposed action. The principal alternative to the proposed action would be to deny the requested action. The NRC staff has determined that the environmental impacts of the proposed action are less than the alternative actions. Therefore, there is no need to further evaluate alternatives to the proposed action.

Agencies and Persons Consulted

In preparing this Environmental Assessment, the NRC staff held discussions with personnel of EPA Region 6 and the New Mexico Environment Department, which has discharge permits pertaining to the Bluewater site. The staff also attended meetings between ARCO and EPA Region 6 on November 1, 1995 and December 7, 1995.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of NRC Source Material License SUA–1470. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this day of September 1996.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material, Safety and Safeguards

[FR Doc. 96–23193 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–39 and DPR–48 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendments would modify Technical Specification Section 4.3.1.B.4.A.10.a which provides the acceptance criteria for steam generator tube repairs by adding a footnote which references the cleanliness and nondestructive examination requirements as described in CEN–629–P, Revision 00, "Repair of Westinghouse Series 44 and 51 Steam Generator Tubes Using Leak Tight Sleeves."

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment continues to allow the ABB/CE Tungsten Inert Gas (TIG) welded tubesheet sleeves to be used as an alternate tube repair method for Zion Units 1 and 2 Steam Generators along with the process improvements which are proposed to be footnoted within the Technical Specifications. The sleeve configuration was designed and analyzed in accordance with the criteria of Regulatory Guide (RG) 1.121 and Section III of the ASME Code and is unaffected by the enhancements that will be implemented. Fatigue and stress analyses of the sleeved tube assemblies as described in the currently approved Topical Report, CEN–331–P are unaffected by the enhancements being proposed.

Mechanical testing which has shown that the structural strength of the sleeves under normal, faulted, and upset conditions is within the acceptable limits is unaffected by the enhancements being proposed. Leakage rate testing for the tube sleeves which has demonstrated that primary to secondary leakage is not expected during any plant condition is unaffected by the enhancements being proposed. The consequences of leakage through the sleeved region of the tube, including the proposed enhancements, is bounded by the existing steam generator tube rupture (SGTR) analysis included in the Zion Updated Final Safety Analysis Report.

The proposed TS change reflects enhancements to the installation/inspection process which is identified in the currently licensed Topical Report CEN–331–P, Revision 1–P. These enhancements do not increase the probability or consequences of an accident previously evaluated. The new Topical Report specifies that proper cleaning and inspection of the weld zone be performed prior to sleeve installation and eddy current testing has been added as part of the sleeve acceptance criteria to ensure the structural integrity of the tube sleeve weld joint.

The proposed TS change which supports the installation and NDE enhancements of the ABB/CE TIG welded sleeves does not adversely impact any previously evaluated design basis accident. Installation of the sleeves, with the proposed enhancements, can be used to repair degraded tubes by returning the condition of the tubes to their original design basis condition for tube integrity and leak tightness during all plant conditions. Therefore the currently approved sleeving process with the proposed enhancements will not increase the probability of occurrence of an accident previously evaluated.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The implementation of the proposed sleeving process will not introduce significant or adverse changes to the plant design basis. The current stress and fatigue analyses of the repair identified in Topical Report CEN–331–P have shown the ASME Code and RG 1.121 allowable values are met and are unaffected by the proposed enhancements. The current TIG welded sleeving design with the proposed enhancements will continue to maintain overall tube bundle structural and leakage integrity at a level consistent with that of the originally supplied tubing. Leak and mechanical testing of the sleeves, are unaffected by the proposed enhancements and continue to support the conclusions that the sleeve retains both structural and leakage integrity during all operating and accident conditions. Repair of a tube with a sleeve, utilizing the proposed enhancements, does not provide a mechanism that results in an accident outside of the area affected by the sleeve.

The proposed change to implement specific sections from Topical Report CEN–629–P will not create a new or different type of accident. The change only reflects enhancements to the currently licensed installation/inspection process and would not change or impact any hypothetical accident previously discussed.

Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing SGTR analysis. The sleeve design does not affect any other component or location of the tube outside of the immediate area repaired.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The currently licensed TIG welded sleeving repair of degraded steam generator tubes has been shown by analysis to restore the integrity of the tube bundle to its original design basis condition. By implementing the proposed enhancement the consistent quality of the upper sleeve weld has increased reducing the potential for rework and reducing the potential for leaving a weld indication in service.

The proposed change does not involve a reduction to the margin of safety. These enhancements which are identified from specific sections of the Topical Report CEN–629–P reflect enhancements to the installation/inspection process which is currently licensed by the staff. These enhancements would not have any adverse effects on the previously evaluated design transient or accident analysis. The enhancements simply specify cleaning and inspection methods of the sleeve-tube upper weld zone which will ensure the integrity of the pressure boundary.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on the preceding analysis it is concluded that operation of Zion Units 1 and 2, in accordance with the proposed amendment, does not increase the probability of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, nor reduce any margins to plant safety. Therefore, this proposed amendment does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 11, 1996, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a

petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 3, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 5th day of September 1996.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Acting Project Manager Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23196 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–295 AND 50–304]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–39 and DPR–48 issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

The proposed amendments would remove the uncertainty term from the specified distance and remove the footnote which specifies the time frame it is applicable.

Before issuance of the proposed license amendments, the Commission will have made findings required by the

Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed change is to provide clarification as to how the F* Distance is ensured at Zion Station. The associated footnote which details the applicable timeframe is being deleted. The discussion added to the Bases section of Technical Specifications will clarify the application of eddy current uncertainty when sizing a new hard roll region and when locating indications within the F* Distance. These changes are administrative in nature and have no impact of the probability or consequences of an accident.

Application of the F* Distance to degraded steam generator tubes will not affect any of the initiators or precursors of any accident previously evaluated. Application of the proposed change will not increase the likelihood that a transient initiating event will occur because transients are initiated by equipment malfunction and/or catastrophic system failure.

As previously discussed in the ComEd submittal (ComEd letter to the NRC dated October 6, 1995, transmitting the Licensing Amendment Request Modifying the F* Distance Definition for Zion Units 1 and 2), the proposed change will allow an F* Distance of 1.05 inches to be applied to disposition steam generator tubes that are degraded in the tubesheet roll transition region. The F* Distance specifies a minimum length of tubing which must be free from any indication of degradation. Below the F* Distance, any type or size of indication, including complete circumferential through wall cracking, will not impact the structural integrity of the tube with respect to pull out forces during normal operation or accident conditions, and does not significantly affect the leakage behavior of the tube.

The Feedwater Line Break (FLB) accident was used as the limiting event in the evaluation of the F* Distance. The FLB pressure differential of 2650 psi maximizes the axial loading on the tube for pull out considerations and is bounding. In addition, the close proximity of the tubesheet to the tube will prevent tube rupture or collapse of the tube in the tubesheet span. Because application of the F* Distance will ensure that degraded tubes will provide the same structural integrity as an original undegraded tube during normal operation and accident conditions, the probability of occurrence of an accident previously evaluated is not significantly increased.

Application of the F* Distance will not significantly increase the consequences of any accident previously evaluated. The F* Distance ensures that sufficient length of undegraded tube exists to maintain structural integrity and preclude significant leakage. Due to the proximity of the tubesheet to the tube, any leakage from degradations below the F* Distance would be negligible and would be well below the Technical Specification limits established for steam generator leakage. Tube rupture as a result of indications below the F* Distance is precluded because the tubesheet prevents outward expansion of the tube in response to internal pressure.

The relationship between the tubesheet region leak rate at the most limiting postulated accident conditions relative to that for normal plant operating conditions has been assessed. For the postulated leak source within the roll expansion, increasing the differential pressure on the tube wall increases the driving head for the leak; however, it also increases the tube to tubesheet loading.

For a leak source below the F* Distance, the maximum assumed pressure differential results in an insignificant leak rate relative to that which could be associated with normal plant operation. This is a result of the increased tube to tubesheet loading associated with the increased differential pressure. Thus for a circumferential indication within the roll expansion that is left in service in accordance with the F* Distance, any leakage under accident conditions would be less than that experienced under normal operating conditions. Therefore, any leakage under accident conditions would be less than the existing Technical Specification leakage limit, which is consistent with accident analysis assumptions.

Steam generator tube integrity must be maintained under the postulated loss of coolant accident condition of secondary-to-primary differential pressure. Based on tube collapse strength characteristics, the constraint provided to the tube by the tubesheet gives a margin between the tube collapse strength and the limiting secondary-to-primary differential pressure condition, even in the presence of circumferential or axial indications. The maximum secondary-to-primary differential pressure during a postulated LOCA is 1005 psid. This value is significantly below the residual preload between the tubes and the tube sheet. Therefore, no significant secondary-to-primary leakage would be expected to occur.

Application of the F* Distance will not affect the ability to safely shut down the operating unit and/or mitigate the consequences of an accident. Additionally, the proposed revisions will not necessitate changes to plant operating procedures during normal operation or the emergency procedures governing accident conditions and plant recovery.

Since the proposed change only clarifies how the F* Distance is ensured at Zion Station, the proposed change will not increase the probability of occurrence or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not involve the addition of any new or different types of safety related equipment nor do they involve the operation of any equipment required for safe operation of the facility in a manner different from those addressed in the UFSAR. No safety related equipment or function will be altered as a result of the proposed changes. Also, the procedures governing normal plant operation and recovery from an accident are not changed by the application of the F* Distance.

As previously discussed in ComEd's submittal (ComEd letter to the NRC dated October 6, 1995, transmitting the Licensing Amendment Request Modifying the F* Distance Definition for Zion Units 1 and 2), the F* Distance will allow the use of an alternate method to plugging or sleeving to repair steam generator tubes with degradation in the tubesheet region. The F* Distance ensures that the structural integrity of the steam generator tube will be equivalent to the original tube.

The proposed revised F* Distance definition is consistent with the original analysis performed to justify the acceptability of the F* Distance in dispositioning steam generator tubes with degradation in the tube sheet region. Because the size of a new hard roll joint will depend on the effective size of the mechanical roller used to install the joint, no eddy current uncertainty need be considered. For inspections following the new hard roll, the eddy current uncertainty will not be required since Zion will repair all tubes with indications in the mechanical roll region.

Therefore, it has been concluded that the proposed revision does not create the possibility of a new or different type of accident is created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Plant safety margins are established through Limiting Conditions for Operation (LCOs), limiting safety system settings, and safety limits specified in Technical Specifications. There will be no changes to the LCOs, limiting safety system settings, or the safety limits as a result of the proposed changes. Application of the F* Distance will allow degraded steam generator tubes to be repaired by an alternative method to plugging or sleeving. Steam generator tube plugging decreases the total primary reactor coolant flow rate and heat transfer capability of the steam generator. While steam generator tube sleeving only slightly reduces the reactor coolant flow rate, large numbers of sleeves can have a measurable effect on flow rate and

can complicate steam generator tube inspection activities.

Application of the F* Distance will allow a repair method that will restore the integrity of degraded steam generator tubes and will not adversely affect primary system flow rate or heat transfer capability. Application of the F* Distance will preserve the heat transfer capability of the steam generators and will maintain the design margins assumed in the analyses contained in the UFSAR. The proposed revised F* Distance definition is consistent with the original analysis performed to justify the application of the F* criteria in the dispositioning of steam generator tubes with degradation in the tube sheet region. The revision of the F* Distance is administrative in nature.

Based on the above discussion it is concluded that the proposed changes will not significantly reduce a margin of safety.

Based upon the preceding analysis it is concluded that the proposed amendment does not increase the probability of an accident previously evaluated, does not create the possibility of a new or different kind of accident from that previously evaluated, nor reduces any margin to plant safety. Therefore, this proposed amendment does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 11, 1996, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective,

notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 16, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 5th day of September 1996.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Acting Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23197 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

[DOCKET NO. 50–416]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Entergy Operations, Inc. (the licensee) for operation of Grand Gulf Nuclear Station, Unit 1 (GGNS) located in Claiborne County, Mississippi.

The proposed amendment would allow the licensee to perform the surveillance of the relief mode of operation of each of the 20 safety/relief valves (S/RVs) on the four main steam lines without physically lifting the disk of the valve off the seat at power. The proposed changes are to Surveillance Requirements (SRs) 3.4.4.3, Safety/Relief Valves, 3.5.1.7, Automatic Depressurization System Valves, and 3.6.1.6.1, Low-Low Set Valves, of the Technical Specifications, and the changes would state that the required operation of the valve to verify is that the relief-mode actuator strokes when the valve is manually actuated and the frequency of the SRs would be in accordance with the inservice testing program for the valves.

Each S/RV is a Dikkers, 8 × 10, direct-acting, spring loaded, safety valve with attached pneumatic actuator for relief-mode operation. Eight of the S/RVs use the relief mode to perform the Automatic Depressurization System (ADS) function. Also, six S/RVs, two of which are also ADS S/RVs, use the relief mode to perform the Low-Low Valve set function.

The licensee submitted an application for amendment dated May 9, 1996, as supplemented by letter August 27, 1996. A Notice of Consideration of Issuance of an Amendment to the license was issued in the **Federal Register** on June 19, 1996 (61 FR 31177), for the letter of May 9, 1996. The modification to the application in the letter of August 27, 1996, is to (1) state that the frequency of performing the SRs will be "in accordance with the inservice testing program" for the valves and (2) delete the word "required" for SRs 3.5.1.7 and 3.6.1.6.1.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No Significant Increase in the Probability or Consequences of an Accident Previously Evaluated Results From This Change

Each refueling outage, a test sample of the population of S/RVs is removed from the plant to perform testing as required by ASME Boiler and Pressure Vessel Code, Section XI. These S/RVs will be stroked in the relief mode during as-found testing, and are therefore verified to operate properly when each S/RV stem is raised by the relief-mode pneumatic actuator. This proposed surveillance verifies proper S/RV relief-mode operation of all installed S/RVs based upon this test sample. This testing, in conjunction with replacement of each S/RV prior to the end of its expected service life, provides reasonable assurance that the installed S/RVs will perform as well as the test population of S/RVs.

After the S/RVs have been replaced in the plant, and after all controls are reconnected, the relief-mode actuator on each newly-installed S/RV will be uncoupled from the S/RV stem, and stroked. This actuator stroke will verify that no damage has occurred to the relief-mode actuator during S/RV transportation from its storage location to its operating location. The direct coupling of the valve stem to disk provides assurance that proper relief actuation will occur when the actuator is operated. The safety-mode components are completely encased within the valve body and bonnet, which provides a rugged structure to prevent damage to these components. The remaining installed S/RVs will continue to be tested for proper control system function as previously required by Technical Specifications. The direct coupling of the S/RV stem to disk provides assurance that proper relief-mode actuation will occur when the actuator is operated. The safety mode of the GGNS S/RVs is not affected by a malfunction of the relief-mode components.

Blockage of each S/RV discharge line will be prevented by the same Foreign Material

Exclusion (FME) controls that exist for other reactor vessel and support systems. These FME controls, combined with the horizontal orientation of the S/RV discharge piping mating surfaces, provide reasonable assurance that discharge line blockage will not occur.

Therefore, no significant increase in the probability or consequences of an accident previously evaluated results from this proposed change.

b. This Change Would Not Create the Possibility of a New or Different Kind of Accident From Any Previously Analyzed

The proposed change demonstrates that each S/RV will perform its intended relief-mode function, which is the intent of the present surveillance. The relief mode of S/RV operation is demonstrated to be operable based upon successful performance of a test population, S/RV component service life, and existing Technical Specification surveillances. No new failure mechanisms to the relief-mode of operation are introduced, as the proposed surveillance verifies relief actuator operability. Plant FME controls, combined with the horizontal orientation of the S/RV discharge piping mating flange, provides reasonable assurance that discharge line blockage will not occur.

This proposed change does not add any new systems, structures, or components, nor does it introduce new S/RV operating modes.

Therefore, this change would not create the possibility of a new or different kind of accident from any previously analyzed.

c. This Change Would Not Involve a Significant Reduction in the Margin of Safety

This proposed change will verify that the relief mode of all installed S/RVs will operate properly based upon demonstrated relief mode performance of a sample of S/RVs. The failure mode of the S/RV relief function would require a failure of either the pneumatic actuator, lifting linkage, or solenoid block. Each of these items has been verified to have a service life exceeding the replacement cycle of each S/RV. Therefore, proper operation of a sample population of S/RVs provides reasonable assurance that the remaining S/RVs would perform identically, within the original margin of expected S/RV operability. In addition, each S/RVs solenoid block and control functions will continue to be tested and cycled each refueling outage. The removal of the valve stroke surveillance for all S/RVs does not increase the possibility of valve malfunction, since valve stroke is verified during the as-found testing of the sample population of S/RVs. This proposed surveillance test reduces the number of S/RV actuations, and therefore, reduces challenges to the system both mechanically and thermally. Also, the proposed alternative method of testing reduces the possibility of a stuck-open S/RV, since this proposed method will not stroke the S/RVs with the reactor pressurized during reactor power operations.

Therefore, this change would not involve a significant reduction in the margin of safety.

Based on the above evaluation, Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 11, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi (39120). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC (20005–3502), attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 9, 1996, as supplemented by letter dated August 27, 1996, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Dated at Rockville, Maryland, this 4th day of September, 1996.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23192 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

National State Liaison Officers' Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will sponsor a national meeting on October 8 and 9, 1996 with the State Liaison Officers to discuss items of mutual regulatory interest. The State Liaison Officers are appointed by the Governors of the fifty States and the Commonwealth of Puerto Rico to provide a communication channel between the States and the NRC.

DATES: The public meeting will be held on Tuesday, October 8, 1996 from 8:00 a.m. to 5:00 p.m.; Wednesday, October 9, 1996 from 8:30 a.m. to 12:00 noon.

ADDRESSES: The meeting is to be held at the NRC's Two White Flint Building Auditorium, 11554 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Spiros C. Droggitis, Office of State Programs, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 415–2367, FAX (301) 415–3502 & Internet (SCD@NRC.GOV).

SUPPLEMENTAL INFORMATION: Potential topics of discussion will include: status of NRC's Strategic Assessment and Rebaseling effort; current nuclear power plant issues; electric utility industry restructuring and economic deregulation; regulatory reform of radiation in medicine; external regulation of the U.S. Department of Energy; high-level radioactive waste, spent fuel storage and transportation issues; NRC's enforcement policy; and emergency planning and response issues.

The meeting will be conducted in a manner that will expedite the orderly conduct of business. The following procedures apply to public attendance at the meeting:

1. Questions or statements from attendees other than participants, i.e., other participating representatives of States and participating NRC staff will be entertained as time permits; and

2. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 5th day of September, 1996.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 96–23191 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and

make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 19, 1996, through August 29, 1996. The last biweekly notice was published on August 28, 1996 (61 FR 44353).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 11, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective,

notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: August 1, 1996

Description of amendments request: The amendment will allow use of blind flanges during MODES 1-4 in the Calvert Cliffs Units 1 and 2 Containment Purge Systems. These flanges will establish integrity in Mode 5, prior to entering Mode 4, and maintain it in Modes 1-4, functions presently served by the valve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the Containment Purge System is to provide ventilation for the containment while in a shutdown condition. Valves, which are disabled in the shut position in Modes 1-4, may be opened in Modes 5 and 6 to allow air flow, are provided in the supply and exhaust piping, and are automatically shut on a Containment Radiation Signal to prevent release of radioactive material in the event of a fuel handling incident. Manual operation is also provided. In Modes 1-4, the valves are kept shut to provide containment integrity to withstand a presumed increase in containment pressure in the event of a loss-of-coolant accident. The proposed change will allow blind flanges to serve in place of the purge valves in Modes 1-4 by blocking off the purge penetration on both the supply and exhaust sides. The blind flanges will provide the same level of containment integrity previously provided by the purge valves. The revised Technical Specifications will continue to verify containment building leakage is maintained within the allowable limits by requiring the performance of a 10 CFR Part 50, Appendix J, Type B, leakage test on the blind flanges. The outside valve in each containment purge penetration will be removed and the inside valves will be left in place. The remaining inside valves will no longer by required to provide containment integrity in Modes 1-4. Only one of each pair of valves was credited for containment closure (Modes 5 and 6); therefore, removing the outside valves and the associated automatic closure signals is not a modification of the required capability to close the penetration. The inside valves will maintain their current safety function to close containment (if needed) by closing either on a Containment Radiation Signal (Mode 6) or manually (Modes 5 and 6). The Technical Specification surveillances associated with the purge valves will be changed to reflect the proposed modification to the plant. Since the blind flanges will limit radiological releases in Modes 1-4, and the purge valves will limit radiological releases in Modes 5 and 6, the proposed change will not increase the consequences of an accident previously evaluated.

The Containment Purge System is not an accident initiator but acts to limit the consequences of accidents. The system will provide containment isolation in Modes 1-4 as before, and the inside valves will still be available to close in Modes 5 and 6. Therefore, the proposed change does not increase the probability of an accident previously evaluated.

As stated above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requested change does not involve a significant alteration of the operation of the plant, and no new accident initiation mechanism is created by the modification. Four purge valves per unit currently provide containment closure in Modes 5 and 6. The outside valve in the supply and the exhaust lines will be removed to allow for installation of a blind flange in each line. The remaining supply and exhaust valves inside containment will continue to provide containment closure. The function currently performed by the four purge valves in Modes 1, 2, 3 and 4 will be performed by the blind flanges. Other, similar, blind flanges have been in service in the plant for a number of years, and have proven reliable. The Technical Specification surveillances associated with the testing of the purge valves and flanges will be changed to reflect the proposed modification to the plant. Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The valves in the Containment Purge System currently provide containment integrity during Modes 1, 2, 3 and 4, and containment closure during Modes 5 and 6. The function currently performed by the purge valves in Modes 1, 2, 3 and 4 will be performed by the blind flanges. Because of their design and mounting method, the blind flanges will perform the containment integrity function as well as, or better than, the purge valves. In Modes 1-4, the double o-rings in the blind flanges will provide single-failure protection similar to the other existing Type B penetrations. The established allowable containment building leakage rate will be maintained by the implementation of a requirement to perform 10 CFR Part 50, Appendix J, Type B, leakage rate on the installed blind flanges. The outside valve in each purge containment penetration will be removed. Single failure is not assumed in the fuel handling accident analysis, therefore, removing the outside valves and their Containment Radiation Signal channels is not a modification of the required capability to close the penetration. The remaining inside valves will continue to provide automatic and manual containment closure in Mode 6 to mitigate the effects of a fuel handling accident. The Technical Specification surveillances associated with purge valve testing will be changed to reflect the proposed modification to the plant. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request

involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 7, 1996

Brief description of amendment: The amendment proposes revising the Technical Specifications (TSs) to allow the use of 10 CFR Part 50, Appendix J, Option B, Performance-Based Containment Leakage Rate Testing. This performance-based Option B may be used as an alternative to the requirements in Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," of 10 CFR Part 50. To implement Option B to Appendix J, the amendment proposes modifying TSs to eliminate reference to the prescriptive Appendix J requirements and instead reference NRC Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program." The amendment also proposes an editorial correction to the mathematical formula minimum testing frequency in the basis for TS 4.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

For Indian Point Unit No. 2, the integrated leak rate testing [ILRT] as-found measured leakage rate acceptance criteria is changed from 0.75 La to 1.0 La. This change is consistent with the revised 10 CFR 50 Appendix J, NEI 94-01, "Industry Guidelines for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J." In addition, an as-found leakage rate acceptance criteria of 1.0 LA for Type A tests is consistent with the design basis and accident analysis assumptions. The as-left acceptance criteria remains unchanged at 0.75 La in accordance with the NEI guidance. Therefore, prior to entering an operating mode where containment integrity is required the as-left leakage rate will not exceed 0.75 La. The combined leakage rate for containment isolation valves listed in Technical Specification Table 4.4-1 subject to gas or nitrogen pressurization testing, air lock testing, and portions of the sensitive leakage rate test which pertain to containment penetrations and double-gasketed seals shall be less than 0.6 La. The extensive operations and testing experience derived from industry show that risk to the general population is generally insensitive to changes in the allowable leakage rate. It has been determined that the allowable containment leakage can be increased by one to two orders of magnitude without significantly impacting the estimates of population dose in the event of an accident. Furthermore, the Indian Point Unit No. 2 ILRT test history provides substantial justification for the proposed changes.

Test results demonstrate that IP2 [Indian Point 2] has a low leakage containment and that the proposed changes would not jeopardize the ability of the containment to maintain the leakage rate at or below the required limits. The proposed change to Technical Specification 4.1 Basis represent a minor editorial correction to the mathematical formula for minimum testing frequency which does not change the formula. Therefore, the probability and the consequence of a design basis accident are not being increased by the proposed changes.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Plant systems and components will not be operated in a different manner as a result of the proposed Technical Specification change. The proposed change permits a performance-based approach to determining the leakage-rate test frequency for the containment and containment penetrations (Type A, B, and C tests). There are no plant modifications, or changes in methods of operation. Therefore, the changes in testing intervals for the containment and containment penetrations have no affect on the probability of occurrence of a LOCA [loss-of-coolant-accident]. The Limiting Conditions for Operation are not being changed. Changing the as-found leakage-rate acceptance criterion to 1.0 La does not increase the probability or consequences of an accident. Changing the test interval for the containment and containment penetrations does not create any new accident precursors or methods of operation. The proposed change to Technical Specification 4.1 Basis represent a minor editorial correction to the mathematical formula for minimum testing frequency which does not change the formula. Therefore, the possibility for an accident of a different type than was previously evaluated in the safety analysis report is not created by the proposed Technical Specification.

3. The proposed change does not involve a significant reduction in a margin of safety.

While the proposed changes do increase the probability for malfunction of equipment important to safety due to the longer intervals between leakage tests, it has been estimated that the longer test intervals will have an insignificant increase in the overall accident risk to the public. This increase has been reviewed and found to be acceptable by the NRC as documented in NUREG-1493 and the recent rulemaking to 10 CFR 50 Appendix J. We also agree that this increase in accident risk is insignificant. Changing the as-found acceptance criterion to 1.0 La does not increase the consequences of an accident, since the accident analysis assume a leakage rate of La for design basis accidents. The as-left Type A test acceptance criterion remains at less than 0.75 La. Given that the Indian Point Unit No. 2 ILRT test history show no failures during plant life, the proposed changes should not lead to a significant probability of creating new leakage paths or increased leakage rates. The proposed change to Technical Specification 4.1 Basis represent a minor editorial correction to the mathematical formula for minimum testing frequency which does not change the formula. Therefore, the accident analysis assumptions for design basis accidents are unaffected and the margin of safety is not decreased by the proposed Technical Specification change.

Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: January 18, 1996

Description of amendment request: The proposed amendment would delete the requirement to perform inservice inspections of the primary coolant pump (PCP) flywheels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change to the Technical Specifications would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Technical Specifications would delete the requirement to perform non-destructive examination of the upper flywheel on the PCPs. The fracture mechanics analyses conducted to support the change show that a preexisting crack sized just below detection level will not grow to the flaw size necessary to result in flywheel failure within the life of the plant. This analysis conservatively assumes minimum material properties, maximum flywheel accident speed, location of the flaw in the highest stress area and a number of startup/shutdown cycles eight times greater than expected. Since an existing flaw in the flywheel will not grow to the allowable flaw size under normal operating conditions or to the critical flaw size under LOCA [loss-of-coolant accident] conditions over the life of the plant, elimination of inservice inspection for such cracks during the plant's life will not involve a significant increase in the

probability of an accident previously considered.

The proposed changes do not increase the amount of radioactive material available for release or modify any systems used for mitigation of such releases during accident conditions. Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the Technical Specifications would not change the design, configuration, or method of operation of the plant and therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the Technical Specifications would not result in a significant reduction in the margin of safety. Significant conservatisms have been used for calculating the allowable flaw size, critical flaw size and crack growth rate in the PCP flywheels. These include minimum material properties, maximum flywheel accident speed, location of the postulated flaw in highest stress area and a number of startup/shutdown cycles eight times greater than expected. Since an existing flaw in the flywheel will not grow to the maximum allowable flaw size under normal operating conditions or to the critical flaw size under LOCA conditions over the life of the plant, elimination of inservice inspections for such cracks during the plant's life will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: John Hannon

Duke Power Company, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 8, 1996

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) of each unit to reference updated or recently approved methodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature, and do not affect any system, procedure, or manipulation of any equipment which could affect the probability or consequences of any accident.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, and cannot introduce any new failure mode or transient which could create any accident.

(3) The proposed changes will not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature, and will not affect any operating parameters or limits which could result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 21, 1996

Description of amendment request: The proposed amendments would revise the term "lifting loads" used in Technical Specification 3.9.6b.2, Manipulator Crane, to "lifting force." This revision will clarify that the static loads associated with the lifting tool, drive rod and control rod weights are not included in the lifting force limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change is administrative in nature and does not represent any changes to the refueling process in the field. It more accurately describes the components for which the LCO's [Limiting Condition for Operation] protection is intended as well as giving a more accurate description of the auxiliary hoist's minimum capacity. It also broadens the domain of activities for which protective measures are taken by including drag load testing into monitored activities. At CNS [Catawba Nuclear Station], the auxiliary hoists and the manipulator cranes are rated at [greater than or equal to] 3000 pounds and are surveillance tested to greater than 1000 pounds. This brackets the limit force lifting value change from 600 to 1000 pounds in the amendment proposal.

Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This proposed administrative change reflects no changes in the refueling processes, or any systems, structures or components connected with the refueling process.

Will the change involve a significant reduction in a margin of safety?

No. The proposed administrative change has no impact on refueling processes, systems, structures or components, and does not result in any significant reduction in a margin of safety. The subject change only clarifies the original intent of the specification and more accurately describes the involved components, component capacities and the domain of activities for which measures are taken to protect the reactor internals.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: August 23, 1996 (TSCR 245)

Description of amendment request: The amendment request proposes new pressure-temperature (P-T) limits up to

22, 27, and 32 effective full power years (EFPY). The new sets of P-T curves would be used beyond 17 EFPY in the future as the corresponding EFPY of operation is completed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have determined that this change request with respect to P-T limits involves no significant hazards considerations in that operation of the Oyster Creek Plant in accordance with the proposed amendment, will not:

1. Involve a significant increase in the probability of an accident because the new limits account for the increase in RT $_{NDT}$, including statistical uncertainty, due to neutron irradiation of the reactor vessel as well as establishing initial RT $_{NDT}$ on the basis of current Code requirements, also including statistical uncertainty, in accordance with Reg. Guide 1.99, Rev. 2. The new P-T curves will assure that brittle fracture of the reactor vessel is prevented.

2. Create the probability of a new or different kind of accident from any accident previously evaluated. These new limits are the result of the calculation methodology in Reg. Guide 1.99, Rev. 2 [Radiation Embrittlement of Reactor Vessel Materials], as required by Generic Letter 88-11 [NRC Position on Radiation Embrittlement of Reactor Materials and its Impact on Plant Operations]. Primary system configuration and function remain unchanged.

3. Involve a significant reduction in margin of safety because the bases for the margin of safety remain the same as current limits, i.e., ASME [American Society of Mechanical Engineers], Sect. XI, App. G for available fracture toughness and applied stress intensity, Reg. Guide 1.99, Rev. 2 for calculating applied stress intensity, Reg. Guide 1.99, Rev. 2 for calculating adjusted RT $_{NDT}$ and 10 CFR 50, App. G, for criticality conditions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: August 15, 1996

Description of amendment request: The proposed amendment would modify the Clinton Power Station Technical Specifications to incorporate the revised Safety Limit Minimum Critical Power Ratio (SLMCPR) as calculated by General Electric (GE) for Cycle 7 operation. The need to change the SLMCPR resulted from the 10 CFR Part 21 condition reported by GE in their letter to the NRC dated May 24, 1996.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) This change does not involve a significant increase in the probability or consequences of any accident previously evaluated. In lieu of utilizing a potentially nonconservative generic value, this change revises the SLMCPR to be appropriately conservative as it has been specifically calculated on a plant- and cycle-specific basis. Although the SLMCPR does not apply (i.e., is not assumed or required to be met) during any analyzed accident, the MCPR fuel cladding Safety Limit ensures that during normal operation and during anticipated operational occurrences (AOOs), at least 99.9% of the fuel rods in the core do not experience transition boiling. The revised value for the SLMCPR is determined using the same methodology as the previous SLMCPR with the exception that it utilizes plant specific conditions to determine the safety limit. The revised SLMCPR, therefore, accounts for actual expected power distributions in the Clinton Power Station (CPS) core as well as CPS-specific uncertainties. This provides a more conservative SLMCPR than the generic value used previously.

The proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. In addition, the proposed change does not affect the ability of any plant systems or equipment to operate as assumed in the safety analyses. The revised SLMCPR will continue to ensure that the fuel cladding integrity is not lost as a result of over-heating during normal plant operation or any AOO. As a result, the proposed change will not result in a significant increase in the consequences of any accident previously evaluated.

(2) The proposed change does not involve any new modes or operation, any changes to setpoints, or any plant modifications. Further, the incorporation of a revised MCPR safety limit, which has been determined to be acceptable for CPS Cycle 7 operation, does not result in the creation of any new failure modes or potential precursors to an accident. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) The proposed SLMCPR has been evaluated to ensure that during normal operation and during AOOs, at least 99.9% of the fuel rods in the core do not experience transition boiling. As noted above, the revised SLMCPR has been determined using the same methodology as used previously with the exception of using CPS Cycle 7 specific core and fuel design data. This change ensures that the margin of safety for fuel cladding integrity is maintained by providing a CPS specific MCPR safety limit as opposed to utilizing a potentially less conservative generic limit. Therefore, the implementation of the proposed change to the SLMCPR does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525

NRC Project Director: Gail H. Marcus

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: May 8, 1996

Description of amendment requests: The licensee proposes to revise improved Technical Specifications (TS) 3.9.4 and 3.9.5 to facilitate testing of low pressure safety injection system components and permit additional flexibility in scheduling maintenance on the shutdown cooling system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Limiting Conditions for Operation (LCO) in Technical Specifications (TSs) 3.9.4 and 3.9.5 define the operability requirements for the Shutdown Cooling (SDC) system during refueling operations (Mode 6) while the water level above the top of the reactor vessel

flange is at least 23 feet and less than 23 feet, respectively. The objective of these TSs is to ensure that 1) sufficient cooling is available to remove decay heat, 2) the water in the reactor vessel is maintained below 140°F, and 3) sufficient coolant circulation is maintained in the reactor core to minimize boron stratification leading to a boron dilution incident.

The proposed TS changes affect the current limits imposed while ensuring adherence to the bases of the TS. No plant modifications are being made. The reactor cavity water level limitations and SDC system required operating times are being changed based on plant specific calculations and the objectives of the TSs are being maintained.

1) Reduce the water level where two loops of SDC are required from 23 feet to 20 feet above the reactor vessel flange,

Prior to the approval of Unit 2 Amendment No. 127 and Unit 3 Amendment No. 116, Technical Specification Bases Section 3/4.9.8 has stated that "With the reactor vessel head removed and 23 feet of water above the reactor vessel flange, a large heat sink is available for core cooling, thus in the event of a failure of the operating shutdown cooling loop, adequate time is provided to initiate emergency procedures to cool the core."

In the Bases for the New Standard Technical Specifications, "NUREG 1432, Revision 0, dated September 30, 1992, Section B 3.9.4 it is stated that; "The 23 ft level was selected because it corresponds to the 23 ft requirement established for fuel movement in LCO 3.9.6, "Refueling Water Level."

Southern California Edison (Edison) calculations show that there is an insignificant difference in the time to boil due to the 3-foot change in required water level. Therefore, adequate water is still available to mitigate the consequences of losing SDC.

2) Increase the time a required loop of the SDC system may be removed from service from up to 1 hour per 8-hour period to up to 2 hours per 8-hour period, provided the upper guide structure has been removed from the reactor vessel,

The proposed TS changes the time the SDC loop may be removed from operation from up to 1 hour per 8-hour period to up to 2 hours per 8-hour period, and allows removal of the SDC loop from operation for testing of the Low Pressure Safety Injection (LPSI) system components as well as for core alterations in the vicinity of the hot legs. The proposed TS change also imposes certain restrictions to ensure operating the SDC system in accordance with this proposed TS change is of no safety significance. These [r]estrictions are discussed separately below.

Specifically stating that the upper guide structure will be removed assures that natural heat transfer is not impeded.

When securing the only operating loop of the SDC system the maximum Reactor Coolant System (RCS) temperature is maintained [less than or equal to] 140°F. The initial conditions and heatup rate are selected such that the RCS temperature remains [less than or equal to] 140°F during the test. Therefore, there is ample margin to boiling. Typical initial temperatures are less than 100°F.

The water being injected by the LPSI system test is cool water from the Refueling Water Storage Tank (RWST) and will increase the reactor cavity water level by several inches, providing more cool water to the heat sink. The two hours is sufficient time to align the system to test, perform the test, and restore the loop of SDC to operation prior to exceeding 140°F.

No operations are permitted that would cause a reduction of the RCS boron concentration. This minimizes the probability of an inadvertent boron dilution event. The use of adequately borated water for injection into the RCS during the test provides assurance that the test itself cannot lead to a boron dilution event. When the SDC system is operating, the minimum SDC flow rate of 2200 gpm imposed by Surveillance Requirements SR 3.9.4.1 and SR 3.9.5.1 is sufficient to ensure complete mixing of the boron within the RCS.

Securing SDC flow is only allowed when the reactor cavity water level is maintained greater than or equal to 20 feet above the reactor vessel flange. This level ensures an adequate heat sink to perform the LPSI pump suction header check valve test.

3) Allow for running 1 loop of shutdown cooling with additional requirements when the water level is less than 20 feet but greater than or equal to 12 feet above the reactor vessel flange,

4) Add an action to be taken when operating 1 loop of SDC with less than 20 feet of water above the reactor vessel flange when the specified requirements are not met,

In the event of a loss of SDC the time to boil is reduced from approximately 4.0 hours when the water level is 23 feet above the reactor vessel flange to approximately 2.3 hours at 12 feet, assuming the reactor has only been shutdown for 6 days. However, this is ample time to close containment (less than 1 hour) and to restore SDC or initiate alternative cooling (e.g., add water to the cavity (approximately 1 hour)). The reactor pressure vessel flange is approximately 11' above the top of the fuel. Therefore, the water level will be a minimum of 23' above the fuel, which still maintains a large volume of water to provide a heat sink.

Requiring the reactor to be shutdown for at least 6 days to have only one loop of SDC operable when the reactor cavity level is between 20 feet and 12 feet above the reactor vessel flange ensures that the time to boil is greater than twice the time it would take to establish containment closure and to commence reactor cavity fill with the required standby equipment.

One loop of SDC operating with a containment spray pump allows for the high capacity LPSI pump to be the main standby pump capable of filling the reactor cavity to at least 20 feet above the reactor pressure vessel flange in the event SDC is lost. The high pressure safety injection pump will also be maintained OPERABLE to increase the water level if needed. In support of this contingency the RWST will be required to contain the volume of water needed to raised [raise] the level to 20 feet above the reactor pressure vessel flange. As discussed above, the reactor cavity can be filled at a rate of approximately 4.0 inches per minute with the LPSI pump.

If operating one loop of the SDC system with less than 20 feet of water above the reactor vessel flange and any of the required conditions are not met, requiring immediate action to establish greater than or equal to 20 feet of water above the reactor vessel flange ensures no time is wasted trying to restore the required condition not met. By taking action to restore the level to 20 feet above the reactor vessel flange the plant will be placed in TS 3.9.4, which only requires one loop of SDC to be operable. Additionally, the core will not heat up while the water level in the reactor cavity is being raised with cool water from the RWST. This will provide additional time to either restore the one loop of SDC or take other actions to provide core cooling as required by TS 3.9.4.

A Probabilistic Risk Assessment (PRA), with a) one loop of the SDC system operable with the reactor cavity water level greater than or equal to 12 feet above the reactor vessel flange, and b) one loop of the SDC system operable with the reactor cavity water level greater than or equal to 20 feet above the reactor vessel flange, showed that the operations in accordance with the proposed TS would not significantly increase the probabilities of inventory boiling and core damage.

5) Item 6 adds wording to the notes in LCOs 3.9.4 and 3.9.5 that was unintentionally deleted by the Unit 2 Amendment No. 127 and Unit 3 Amendment No. 116.

This is an editorial change.

Therefore, proposed changes 1 through 5 do not involve a significant increase in the probability or consequences of an accident.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

1) Reduce the water level where two loops of SDC are required from 23 feet to 20 feet above the reactor vessel flange,

2) Increase the time a required loop of the SDC system may be removed from service from up to 1 hour per 8-hour period to up to 2 hours per 8-hour period, provided the upper guide structure has been removed from the reactor vessel,

3) Allow for running 1 loop of shutdown cooling with additional requirements when the water level is less than 20 feet but greater than or equal to 12 feet above the reactor vessel flange,

4) Add an action to be taken when operating 1 loop of SDC with less than 20 feet of water above the reactor vessel flange when the specified requirements are not met,

The Limiting Conditions for Operation (LCO) in Technical Specifications (TSs) 3.9.4 and 3.9.5 define the operability requirements for the SDC system during refueling operations (Mode 6) while the water level above the top of the reactor vessel flange is at least 23 feet and less than 23 feet, respectively. The objective of the proposed TS changes is to ensure that the intent of the Bases is maintained. (i.e., 1) sufficient cooling is available to remove decay heat, 2) water in the reactor vessel is maintained below 140°F, and 3) sufficient coolant

circulation is maintained in the reactor core to minimize boron stratification leading to a boron dilution incident.]

The proposed TS changes affect the current limits imposed while ensuring adherence to the bases of the TS. No plant modifications are being made. The reactor cavity water level limitations and SDC system required operating times are being changed based on plant specific calculations, and the objective of the TSs are being maintained. The added requirements and action statement facilitate safe operation.

5) Item 6 adds wording to the notes in LCOs 3.9.4 and 3.9.5 that was unintentionally deleted by the Unit 2 Amendment No. 127 and Unit 3 Amendment No. 116.

This is an editorial change.

Therefore, the operation of the facility in accordance with proposed changes 1 through 5 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

Limiting Conditions for Operation (LCO) in TSs 3.9.4 and 3.9.5 define the operability requirements for the SDC system during refueling operations (Mode 6) while the water level above the top of the reactor vessel flange is at least 23 feet and less than 23 feet, respectively. The objectives of these TSs are to ensure that 1) sufficient cooling is available to remove decay heat, 2) the water in the reactor vessel is maintained below 140°F, and 3) sufficient coolant circulation is maintained in the reactor core to minimize boron stratification leading to a boron dilution incident.

1) Reduce the water level where two loops of SDC are required from 23 feet to 20 feet above the reactor vessel flange.

Prior to the approval of Unit 2 Amendment No. 127 and Unit 3 Amendment No. 116, Technical Specification Bases Section 3/4.9.8 has stated that "With the reactor vessel head removed and 23 feet of water above the reactor vessel flange, a large heat sink is available for core cooling, thus in the event of a failure of the operating shutdown cooling loop, adequate time is provided to initiate emergency procedures to cool the core."

In the Bases for the New Standard Technical Specifications, NUREG 1432, Revision 0, dated September 30, 1992, Section B 3.9.4 it is stated that "The 23 ft level was selected because it corresponds to the 23 ft requirement established for fuel movement in LCO 3.9.6, "Refueling Water Level."

Edison calculations show that there is a minimal difference in the time to boil due to the 3-foot change in required water level. Therefore, the margin of safety has not been significantly reduced.

2) Increase the time a required loop of the SDC system may be removed from service from up to 1 hour per 8-hour period to up to 2 hours per 8-hour period, provided the upper guide structure has been removed from the reactor vessel.

The proposed TS changes the time the SDC loop may be removed from operation from up to 1 hour per 8-hour period to up to 2 hours per 8-hour period, and allows removal of the SDC loop from operation for testing of the LPSI system components as well as for core alterations in the vicinity of the hot legs. The proposed TS change also imposes certain restrictions to ensure operating the SDC system in accordance with this proposed TS change is of no safety significance. These restrictions are discussed separately below.

Specifically stating that the upper guide structure will be removed assures that natural heat transfer is not impeded.

When securing the only operating loop of the SDC system, the maximum RCS temperature is maintained [less than or equal to] 140°F. The initial conditions and heatup rate are selected such that RCS temperature remains [less than or equal to] 140°F during the test. Therefore, there is ample margin to boiling. Typical initial temperatures are less than 100°F.

The water being injected by the LPSI system test is cool borated water from the RWST and will increase the level of the reactor cavity by several inches. The two hours is sufficient time to align the system to test, perform the test, and restore the loop of SDC to operation prior to exceeding 140°F.

No operations are permitted that would cause a reduction of the RCS boron concentration. This minimizes the probability of an inadvertent boron dilution event. The use of adequately borated water for injection into the RCS during the test provides assurance that the test itself cannot lead to a boron dilution event. When the SDC system is operating, the minimum SDC flow rate of 2200 gpm is sufficient to ensure complete mixing of the boron within the RCS.

Securing SDC flow is only allowed when the reactor cavity water level is maintained greater than or equal to 20 feet above the reactor vessel flange. This level ensures an adequate heat sink to perform the LPSI pump suction header check valve test.

The added requirements and the nature of the test provide assurances that the water temperature will be maintained less than 140°F and that boron stratification is prevented.

3) Allow for running 1 loop of shutdown cooling with additional requirements when the water level is less than 20 feet but greater than or equal to 12 feet above the reactor vessel flange.

4) Add an action to be taken when operating 1 loop of SDC with less than 20 feet of water above the reactor vessel flange when the specified requirements are not met.

In the event of a loss of SDC, the time to boil is reduced from approximately 4.0 hours when the water level is 23 feet above the reactor vessel flange to approximately 2.3 hours at 12 feet, when the reactor has only been shutdown for 6 days. However, this is ample time to close containment (less than 1 hour), and to restore SDC or initiate alternative cooling (e.g., add water to the cavity (approximately 1 hour)).

Requiring the reactor to be shutdown for at least 6 days to have only one loop of SDC operable when the reactor cavity level is between 20 feet and 12 feet above the reactor vessel flange ensures that the time to boil is greater than twice the time it would take us to establish containment closure and to commence reactor cavity fill with the required standby equipment.

One loop of SDC operating with a containment spray pump allows for the high capacity LPSI pump to be the main standby pump capable of filling the reactor cavity to at least 20 feet above the reactor pressure vessel flange in the event SDC is lost. The high pressure safety injection pump will also be maintained OPERABLE to increase the water level if needed. In support of this contingency the RWST will be required to contain the volume of water needed to raised [raise] the level to 20 feet above the reactor pressure vessel flange. As discussed above, the reactor cavity can be filled at a rate of approximately 4.0 inches per minute with the LPSI pump.

If operating one loop of the SDC system with less than 20 feet of water above the reactor vessel flange and any of the required conditions are not met, requiring immediate action to establish greater than or equal to 20 feet of water above the reactor vessel flange ensures no time is wasted trying to restore the required condition not met. By taking action to restore the level to 20 feet above the reactor vessel flange the plant will be placed in TS 3.9.4, which only requires one loop of SDC to be operable. Additionally, the core will not heat up while the reactor cavity water level is being raised with cool water from the RWST. This will provide additional time to either restore the one loop of SDC or take other actions to provide core cooling as required by TS 3.9.4.

A PRA showed that operations in accordance with the proposed TS did not significantly increase the probabilities of inventory boiling and core damage.

5) Item 6 adds wording to the notes in LCOs 3.9.4 and 3.9.5 that was unintentionally deleted by the Unit 2 Amendment No. 127 and Unit 3 Amendment No. 116.

This is an editorial change.

Therefore, operation of the facility in accordance with proposed changes 1 through 5 do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. Temporary

Local Public Document Room location: Science Library, University of California, Irvine, California 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: William H. Bateman

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: May 9, 1996, as supplemented by letter dated June 27, 1996.

Description of amendment requests: The licensee proposes to add a requirement to maintain a Barrier Control Program to Section 5 of the improved Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow a passive support system, plant barriers, to be taken out of service for a specific allowed outage time. Since the allowed outage times are to limit the average annual cumulative increase in fuel damage risk to less than 1.0E-6, there will not be a significant increase in either the probability or consequences of any accident previously evaluated. Additionally, the proposed change will allow barrier impairments if allowed by a 10 CFR 50.59 evaluation and also if the equipment is declared inoperable or is not needed. Since these two conditions are already a part of the San Onofre Units 2 and 3 Licensing Basis, there will be no change in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Barriers have been analyzed for specific hazards. The nature of these hazards will not change due to this amendment, and therefore no new or different kind of accident will be created from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Since allowing barrier impairments in accordance with 10 CFR 50.59 or declaring affected equipment inoperable is part of the SONGS Units 2 and 3 Licensing Basis, there will be no reduction in the margin of safety from these two criteria.

Allowing allowed outage times for barrier impairments does not have a significant effect on a margin of safety because the average annual cumulative increase in fuel damage risk is limited to less than 1.0E-6/yr. This small increase is about 3% of the San Onofre Units 2 and 3 core damage risk as reported in the Individual Plant Examination (IPE).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. Temporary

Local Public Document Room location: Science Library, University of California, Irvine, California 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: William H. Bateman

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: May 29, 1996

Description of amendment requests: The licensee proposes to revise the acceptance criteria for the Agastat time delay relays used in the engineered safety features (ESF) load sequencer in Surveillance Requirement (SR) 3.8.1.18, "A.C. Sources - Operating" of Technical Specification (TS) 3.8.1, "A.C. Sources - Operating."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change would expand the current surveillance acceptance criteria to more accurately reflect the characteristics of the installed plant equipment. The diesel generators (DG's) have sufficient capacity to maintain adequate voltage and frequency during load sequencing with the expanded tolerance. The overall Engineered Safety Features (ESF) response times in the Technical Specifications and safety analyses are maintained even though the timer tolerance is increased, therefore, the consequences of any accident previously evaluated are not increased. The DG load sequence timers are not of themselves a credible initiator of any accident, so the probability of an accident has not been increased. The timers will function acceptably to support the equipment needed for accident mitigation, so the consequences of an accident are not increased. Therefore, the probability or consequences of any accident previously evaluated is not increased.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not involve any change to plant equipment or operation. In the event of a loss of preferred power, the ESF electrical loads are automatically connected to the DG's in sufficient time to provide for safe reactor shutdown and to mitigate the consequences of a Design Basis Accident (DBA) such as a loss of coolant accident (LOCA). Increasing the timer tolerance will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

This amendment does not change the manner in which safety limits, limiting safety settings, or limiting conditions for operations are determined. The actual response times have not been altered by this amendment, therefore, operations will not be affected. Accordingly, this amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. Temporary

Local Public Document Room location: Science Library, University of California, Irvine, California 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: William H. Bateman

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: May 30, 1996

Description of amendment requests: The licensee proposes to revise Surveillance Requirements (SR) 3.6.1.1, 3.6.2.1, and 3.6.3.6, of the improved Technical Specifications. The proposed change will allow implementation of the recently approved Option B to 10 CFR Part 50, Appendix J. This new rule allows for a performance-based option for determining the test frequency for containment leakage rate testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the interval between containment leakage rate tests is not related in any way to conditions which cause accidents, and plant structures, systems, and components

will not be operated in a different manner as a result of the proposed Technical Specification (TS) change, the proposed changes will not increase the probability of an accident previously evaluated.

Containment leakage may result from accidents which are evaluated in the Updated Final Safety Analysis Report. The proposed TS changes may result in an acceptably small increase in post-accident containment leakage. Using a statistical approach, NUREG-1493 determined that the increase in hypothetical dose to the public resulting from extending the testing interval is extremely small. NUREG-1493 concluded that such small hypothetical dose increases to the public are justifiable due to the real reduction in occupational exposure resulting from interval extension. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only incorporates the performance based approach for containment leak rate testing authorized in the new Option B to Appendix J of 10 CFR Part 50. The interval extensions allowed, through this approach, do not have the potential for creating the possibility of new or different kinds of accidents from those previously evaluated because plant structures, systems, and components will not be operated in a different manner as a result of the TS change and, therefore, will not introduce any new or different failure modes or initiators. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed Technical Specification does not alter the allowable containment leakage rate. The proposed change replaces the current, prescriptive testing requirements with a new performance based approach for establishing the testing intervals. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration. Temporary

Local Public Document Room location: Science Library, University of California, Irvine, California 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: William H. Bateman

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 23, 1996

Description of amendments request: The proposed amendments would revise the Technical Specifications to allow installation of laser welded elevated tubesheet sleeves in Farley, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Farley Nuclear Plant Units 1 and 2 steam generators in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The installation of elevated tubesheet laser welded sleeves as described below, can be used to repair degraded tubes by returning the condition of the tubes to their original design condition (for tube integrity, stress and fatigue considerations, and leaktightness during all plant conditions). Tube bundle overall structural and leakage integrity will be increased with the installation of the laser welded sleeves. The performance history of Westinghouse sleeves has shown that, to date, no domestic laser welded sleeves have been removed from service due to corrosion degradation of the sleeve or parent tube in the joint area.

Any hypothetical sleeve failure is bounded by the consequences of a postulated steam generator tube rupture event. The use of elevated tubesheet laser welded sleeves will not increase the amount of primary-to-secondary leakage anticipated during a postulated steam linebreak and other analyzed accidents. Leak rate tests show only negligible primary-to-secondary leakage through the non-welded elevated tubesheet sleeve lower joints during normal or accident conditions such that any consequences are insignificant with regard to offsite doses. Sleeve installation will result in an increase in resistance to primary coolant flow through the tube. Depending on the assumed steam generator tube rupture location, the primary coolant flow through the ruptured tube is reduced by the influence of sleeves installed below the break location, thereby reducing the consequences to the public due to a steam generator tube rupture event. Steam generator tube sleeving has as a basis that the analyzed steam generator tube plugging level and associated minimum measured flow rate, is not exceeded. Therefore, primary coolant flow area assumptions in the accident analyses are not affected and any consequences of a postulated loss of coolant accident would not be increased.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Installation of elevated tubesheet laser welded sleeves will increase the leaktightness of the tube bundle in addition to enhancing overall steam generator tube bundle integrity by isolating localized tube wall degradation. Isolation of the tube degradation is provided by attachment between the tube and sleeve at each end of the sleeve. Following the installation of the sleeves, steam generator tube integrity is restored to its original design bases.

Testing has shown that once installed, there is no mechanism for the sleeves to affect any portion of the steam generator other than the tubes in which they are installed. No other system or component connecting with the steam generator is adversely affected by the operation of the steam generator following installation of laser welded tube sleeves.

Structural analyses of the tube, sleeve and sleeve joints show the stress limits defined in the ASME [American Society of Mechanical Engineers] Code are not exceeded during all plant conditions. The effect of any hypothetical failure of the sleeve would be bounded by existing tube rupture analyses. No increase in leakage is anticipated during a postulated steam line break event. Therefore, operation of the steam generators following installation of elevated tubesheet laser welded sleeves in the tubes of the Farley steam generators will not result in an accident previously not analyzed in the FSAR [Final Safety Analysis Report].

Therefore, SNC [Southern Nuclear Operating Company] concludes that the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The margin of safety with respect to maintenance of the integrity of the tube bundle is provided, in part, by the safety factors included in the ASME Code, and is not reduced. Nondestructive examination of the sleeve and non-sleeved tube length still can be performed; therefore, the recommendations of Regulatory Guide 1.83, Revision 1 can be implemented. The installation process of the elevated tubesheet laser welded sleeves has been shown to provide an essentially leaktight bond between the sleeve and the tube during all plant conditions, and, as such, would not significantly contribute to the radiological consequences of a postulated steam line break event. Any combination of sleeving and plugging utilized at Farley Units 1 and 2 up to the level that analyzed minimum measured reactor coolant flow rate is maintained per Technical Specification requirements, will be bounded by the accident analyses supporting the analyzed flow level.

Therefore, SNC, concludes that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the Farley technical specifications.

Based on the preceding analysis, it is concluded that operation of the Farley

Nuclear Plant steam generators in accordance with the proposed amendment does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Tennessee Valley Authority, Docket Nos. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 29, 1996 (TS 5.2.2.f)

Description of amendment request: The proposed amendment would revise the Watts Bar (WBN) Unit 1 Technical Specification (TS) requirements to delete the first sentence of TS Section 5.2.2.f which reads, "The Operations Manager shall hold or have held an SRO [Senior Reactor Operator] license on a similar unit." The remaining sentence of this section is being revised to indicate that the Operations Superintendent will hold an SRO license for WBN Unit 1. This change is consistent with the Tennessee Valley Authority's (TVA) commitment to ANSI N18.1-1971 regarding the qualification of this position and is consistent with the Standard TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

Operation of the plant in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

As explained in the June 29, 1996 submittal, the proposed change is considered to be administrative in nature. The proposed change affects an administrative control, which was based on the guidance of ANSI N18.-1971. ANSI N18.1-1971 recommended that the Operations Manager hold an SRO license. The ANSI N18.1-1971 Standard defines the positions of Plant Manager, Operations Manager, Supervisors and Operators. A subsequent update of this standard, ANSI/ANS 3.1-1987, also defines the position of Operations Middle Manager. The correlating named positions in the TVA management structure at WBN are: WBN Operations Manager correlates to ANSI Plant Manager, WBN Operations Superintendent correlates to ANSI Operations Manager or Operations Middle Manager, WBN Shift Operations Supervisor correlates to ANSI Shift Supervisor, and WBN Senior and Licensed Operators correlate to ANSI operators. The guidance in Section 4.2.2 of ANSI/ANS 3.1-1987 recommends that "If the Operations Manager does not hold an NRC License, then the Operations Middle Manager shall hold an NRC Senior Operator's License. This would be consistent with TVA's proposal that the WBN Operations Superintendent (ANSI Operations Middle Manager) continue to be required to maintain an SRO license.

The proposed change does not alter the design of any system, structure, or component, nor does it change the way plant systems are operated. It does not reduce the knowledge, qualifications, or skills of licensed operators. The control room operators will continue to be supervised by the licensed Shift Supervisors and the first level of off-shift WBN managemet directing the activities of licensed operators will continue to hold an SRO license. In summary, the proposed change does not affect the ability of the Operations Superintendent to provide the plant oversight required of his position. Thus, it does not involve a significant increase in the probability or consequence of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to TS 5.2.2.f does not affect the design or function of any plant system, structure, or component, nor does it change the way plant systems are operated. It does not affect the performance of NRC licensed operators. Operation of the plant will continue to be supervised by personnnel who hold an NRC SRO license. Based on the above, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed change involves an administrative control. The proposed change does not reduce the level of knowledge or experience required of an individual who fills the Operations Superintendent position. The control room operators will continue to be supervised by personnel who hold an SRO license. Thus, the proposed change does not ivnolve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 17, 1995, as supplemented July 29, 1996

Description of amendment request: The proposed amendment would revise Technical Specification Section 15.6.3, "Facility Staff Qualifications." The title of the responsible health physicist would be changed, and a requirement for this individual to be a supervisor would be added.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of an accident previous evaluated.

The proposed changes separate the qualifications requirements of the Technical Specifications from the Health Physics Manager, while requiring that the same qualifications be fulfilled by a designated Health Physicist position within the organization. This change maintains the present knowledge requirements of the PBNP [Point Beach Nuclear Plant] staff. The personnel holding the health physics qualifications are not considered in the probability of any accident. By ensuring the appropriate expertise remains on the staff to advise management on issues related to radiological safety, appropriate action is assured during analyzed events to assess and mitigate the radiological consequences. Therefore, this change does not affect the probability or consequences of any accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a new or different kind of accident from any accident previously evaluated.

The proposed change separates the Health Physics Manager qualifications from the position while maintaining the requirements for that expertise to be maintained within the organization. This is an administrative change only and does not affect any plant structures, systems or components. Therefore, a new or different kind of accident from any accident previously evaluated cannot result.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant reduction in a margin of safety.

The proposed changes are administrative only. The required levels of expertise and experience will be maintained within the Health Physics organization. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: January 5, 1996, as supplemented July 12, 1996

Description of amendment request: The proposed amendment would revise the requirements of technical specification 3.1.9.3 to permit a filled refueling cavity to serve as a back-up means of decay heat removal.

Date of individual notice in the **Federal Register:** August 28, 1996 (61 FR 44348)

Expiration date of individual notice: September 27, 1996

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: March 15, 1995, as supplemented June 29, 1995, May 1, 1996 and May 15, 1996.

Brief description of amendments: The amendments revise the Technical Specification (TS) Section 6.0, "Administrative Controls" to be consistent with the guidance provided in the Improved Standard Technical Specifications (STSs) for Combustion Engineering Plants. Additionally, the amendments (a) allow the Shift Technical Advisory to perform dual roles, (b) establishes a TS Bases Control Program, (c) provides for a reduction in the reporting requirements, and (d) provides an option for estimating occupational doses.

Date of issuance: August 26, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 216 and 193

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 1995 (60 FR 42598) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated August 26, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County and Northeast Nuclear Energy Company, et al., Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Units 1, 2, and 3, New London County, Connecticut

Date of application for amendments: November 22, 1995

Brief description of amendments: The amendments replace the title-specific designation of members representing specific functional areas on the Plant Operating Review Committee (PORC) for the Haddam Neck Plant and Millstone Units 1, 2, and 3 with a functional area-specific designation that stipulates membership qualification and experience requirements. The amendments also clarify the composition of the Site Operations Review Committee (SORC) at Millstone.

Date of issuance: July 16, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 190, 95, 200, 130

Facility Operating License Nos. DPR-61, DPR-21, DPR-65, AND NPF-49: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 28, 1996 (61 FR 7549) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 16, 1996 No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street Middletown, Connecticut 06457, for the Haddam Neck Plant, and the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385, for Millstone 1, 2, and 3.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: June 6, 1996; supplemented August 1, 1996

Brief description of amendments: The amendments revise the Technical Specification requirements related to testing of the Low Pressure Service Water pumps and valves, LPSW-4 and LPSW-5, to reflect a design change to remove the Engineered Safeguards signal from the valves.

Date of Issuance: August 19, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 217, 217, 214

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1996 (61 FR 37298) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 31, 1996, as supplemented by letter dated May 2, 1996

Brief description of amendment: The amendment revised the schedule for withdrawing capsules with reactor vessel material specimens in accordance with the reactor vessel material surveillance program for the Grand Gulf Nuclear Station, Unit 1 and Section III.B.3 of Appendix H, "Reactor Vessel Material Surveillance Program Requirements," of 10 CFR Part 50.

Date of issuance: August 21, 1996

Effective date: August 21, 1996

Amendment No: 127

Facility Operating License No. NPF-29: Amendment revises the license.

Date of initial notice in **Federal Register:** June 19, 1996 (61 FR 31179) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: May 17, 1995, as supplemented July 15, 1996.

Brief description of amendments: These amendments improve consistency between the Technical Specifications (TS) and the improved Combustion Engineering Standard Technical Specifications (STS) and resolve other inconsistencies in the TS.

Date of Issuance: August 14, 1996

Effective Date: August 14, 1996

Amendment Nos.: 146 and 85

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32363). The July 15, 1996, letter made a minor change to the proposed definition of core alteration which made it more closely match the wording in the STS and did not change the scope of the May 17, 1995, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: August 16, 1996

Brief description of amendments: Relocates selected Technical Specifications (TS) related to instrumentation to the Updated Final Safety Analysis Report, in accordance with the Commissions Final Policy Statement on TS Improvement for Nuclear Power Reactors (58 FR 39132, July 22, 1993). Also relocates review requirements related to the Emergency Plan and the Security Plan from the TS to the respective plans.

Date of Issuance: August 20, 1996

Effective Date: August 20, 1996

Amendment Nos.: 147 and 86

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 1995 (60 FR 49938) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: June 17, 1996

Brief description of amendments: The amendments revise Technical Specification 5.3.1, Fuel Assemblies, to remove the restriction on the number of fuel rods clad with ZIRLO™ that can be loaded into the core.

Date of issuance: August 19, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 94, 72

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1996 (61 FR 37299)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: June 17, 1996

Brief description of amendments: The amendments revise Technical Specification 3/4.8.1, A.C. Sources, and its associated Bases, by changing Surveillance Requirement 4.8.1.1.2.j(2) to limit the 10-year pressure test of certain portions of the diesel fuel oil system to the isolable portions of the fuel oil piping.

Date of issuance: August 28, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 95 and 73

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1996 (61 FR 37300) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 15, 1996, as supplemented July 18, 1996.

Brief description of amendment: The amendment revised TS 4.6.2.1 "Containment Systems - Depressurization Systems - Suppression Pool" to extend the time interval for performing the containment drywell-to-suppression chamber bypass leakage tests consistent with schedules for containment integrated leak rate testing under Option B to 10 CFR Part 50, Appendix J.

Date of issuance: August 27, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 75

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20851) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1996 No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 20, 1996

Brief description of amendment: The amendment revises Technical Specification 3/4.3.1 "Reactor Protection System Instrumentation" to modify operability requirements for the Average Power Range Monitor for operational conditions 3, 4, and 5.

Date of issuance: August 28, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 76

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20852) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1996 No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: April 25, 1996

Brief description of amendment: The amendment modifies the calibration requirement for the source range monitors and intermediate range monitors by noting that the sensors are excluded.

Date of issuance: August 19, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 96

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1996 (61 FR 31183) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 14, 1994, as supplemented by letters dated December 7, 1995, February 2, 1996, May 28, 1996, and July 30, 1996.

Brief description of amendments: The amendment revised the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, for the slave relay test frequency from quarterly (Q) to refueling (R). The request also removed table notation 4 from Table 4.3-2. The associated Bases were revised.

Date of issuance: August 19, 1996

Effective date: August 19, 1996, to be implemented within 30 days of date of issuance.

Amendment Nos.: Unit 1 - 115; Unit 2 - 113

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 6, 1995 (60 FR 62495). The supplemental letters provided additional clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: June 13, 1996, as supplemented by letter dated August 7, 1996.

Brief description of amendment: This amendment will permit a one time performance of TS surveillance requirement 3.3.1.1.12 for the Average Power Range Monitor Flow Biased High Scram function with a delayed entry into associated TS Conditions and Required Actions for up to six hours provided core flow is maintained at or above eighty-two percent. This change is in effect until the end of refueling outage 2R11.

Date of issuance: August 16, 1996

Effective date: Unit 2, as of the date of issuance, to be implemented within 30 days.

Amendment No.: 216

Facility Operating License No. DPR-44: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 3, 1996 (61 FR 34895) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of applications for amendment: June 15, September 15, October 25, and November 30, 1995.

Brief description of amendment: The amendments change the Technical Specifications regarding the Control Rod System, the Auxiliary Electrical Systems, the Containment Systems and the Standby Liquid Control System to reflect changes to the length of the operating cycle of 24 months.

Date of issuance: August 16, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 232

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 13, 1995 (60 FR 47623), January 22, 1996 (61 FR 1633, 61 FR 1634, 61 FR 1635) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 4th day of September 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96-23032 Filed 9-10-96; 8:45 am]

BILLING CODE 7590-01-F

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 2 to Regulatory Guide 1.160, and it is temporarily identified as DG–1051, "Monitoring the Effectiveness of Maintenance at Nuclear Power Plants." The guide will be in Division 1, "Power Reactors." This regulatory guide is being revised to endorse Revision 2 of NUMARC 93–01, "Industry Guideline for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants" (April 1996), which is an update of a Nuclear Energy Institute document. This regulatory guide will provide current guidance on methods acceptable to the NRC staff for structuring a maintenance program in accordance with the safety significance of the structures, systems, and components covered by the maintenance rule, 10 CFR 50.65.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by November 15, 1996.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you

may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact T.A. Bergman at the NRC, telephone (301) 415–1021; e-mail TAB@nrc.gov.

Regulatory guides, as well as Revision 2 of NUMARC 93–01 that is endorsed by this guide, are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301) 415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of August 1996.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 96–23031 Filed 9–10–96; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. on Friday, September 20, 1996.

PLACE: The Commission's National Office at One Lafayette Centre, 1120 20th St., N.W.–9th Floor, Washington, DC 20036–3419.

STATUS: This oral argument will be open to the public.

MATTERS TO BE CONSIDERED: The Commission will be hearing oral argument in the case of *Secretary of Labor* v. *Pepperidge Farm, Inc.*, Docket No. 89–0265.

CONTACT PERSON FOR MORE INFORMATION: Earl R. Ohman, Jr., General Counsel, (202) 606–5410.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 96–23391 Filed 9–9–96; 1:12 pm]

BILLING CODE 7600–01–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 18, 1996, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Charter of the Actuarial Advisory Committee
(2) Draft Consolidated Operations Plan for Fiscal Years 1996–1998 and FTE Allocations at the 1,292 OMB Ceiling Level
(3) Recommendations for the Establishment of Field Office Co-Location Pilots
(4) regulations, Claims Manuals, Rulings, and Procedures
(5) Regulations:
  A. Part 211. Pay for Time Lost
  B. Parts 211. 230 and 255 (Memos to Office of Management and Budget)
(6) Coverage Determinations:
  A. CSX Intermodal
  B. Southern Pacific Transportation Company—Data Processing Services provided by Integrated Systems Solutions Corporation
  C. National Railroad Passenger Corporation (Amtrak)—Data Processing Services provided by Integrated Systems Solutions Corporation
(7) Proposed Occupational Disability Standards (PRODS) Testing Status
(8) MetraHealth FY 1997 Budget Proposal
(9) Labor Member Truth in Budgeting Status Report

Portion Closed to the Public

(A) Request for Change in Position Index (Bureau of Hearings and Appeals)

The person to contact for more information is Beatrice Ezerski. Secretary to the Board, Phone No. 312–751–4920.

Dated: September 6, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–23335 Filed 9–9–96; 9:35 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22198; 812–10310]

The ARCH Fund®, Inc., et al.; Notice of Application

September 4, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Arch Fund®, Inc. (the "Fund"), Mississippi Valley Advisors, Inc. (the "Adviser"), and Clay Finlay Inc. ("CF").

RELEVANT ACTION SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The order would permit the implementation, without shareholder approval, of a new sub-advisory contract for a period of up to 120 days following the date of the change in control of CF, a sub-adviser to the Fund (but in no event later than December 31, 1996). The order also would permit CF to receive from the Fund fees earned under the new sub-advisory contract following approval by the Fund's shareholders.

FILING DATE: The application was filed on August 22, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: the Fund, 3435 Stelzer Road, Columbus, Ohio 43219; the Adviser, One Mercantile Center, Seventh and Washington Streets, St. Louis, Missouri 63101; and CF, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end, management investment company registered under the Act. The Fund consists of 11 series including the International Equity Portfolio (the "Portfolio"). The Adviser, a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as the investment adviser to the Fund pursuant to an advisory agreement with the Fund. CF, also a registered investment adviser under the Advisers Act, provides sub-advisory services to the Portfolio pursuant to a sub-advisory agreement (the "Existing Sub-Advisory Agreement") among the Portfolio, the Adviser, and CF.

2. On July 17, 1996, CF and United Asset Management ("UAM") entered into an agreement pursuant to which a wholly-owned subsidiary of UAM will be merged with and into CF (the "Merger"), with CF to be the survivor and wholly-owned subsidiary of UAM. Pursuant to the Merger, shares of CF's common stock will be exchanged for shares of UAM's common stock.

3. The parties to the Merger anticipate that the Merger will be consummated by August 29, 1996 (the "Effective Date"). Upon consummation of the Merger, 100% of the outstanding voting securities of CF will be owned by UAM and CF will become a wholly-owned subsidiary of UAM. Thus, the Merger will result in a change of control of CF. Accordingly, the change of control will result in the assignment of the Existing Sub-Advisory Agreement and the determination of such agreement according to its terms.

4. Applicants seek an exemption to permit the implementation, without shareholder approval, of a new sub-advisory agreement (the "New Sub-Advisory Agreement") to be entered into by the Portfolio, the Adviser, and CF. The requested exemption would cover an interim period of not more than 120 days (the "Interim Period") beginning on the Effective Date and continuing through the date the new sub-advisory agreement is approved or disapproved by the Fund's shareholders (but in no event later than December 31, 1996). During the Interim Period, that portion of the advisory fees paid by the Adviser to CF for sub-advisory services would be paid into an escrow account.

5. The New Sub-Advisory Agreement is identical to the Existing Sub-Advisory Agreement, except for the effective date, escrow provisions, and as described below. The New Sub-Advisory Agreement will introduce fee "break points" that lower the amount of compensation to CF as the size of the Portfolio grows and will eliminate a provision that provides for fee waivers by CF when the Portfolio was in a start-up mode.

6. In accordance with section 15(c) of the Act,[1] the board of directors (the "Board") of the Fund met on August 21, 1996 and determined that the New Sub-Advisory Agreement would be in the best interests of the Fund and its shareholders. At this meeting, the Board, including a majority of the disinterested directors (the "Independent Directors"), voted to approve the New Sub-Advisory Agreement.

7. Applicants propose to enter into an escrow arrangement that would provide that: (a) the fees payable to CF during the Interim Period under the New Sub-Advisory Agreement would be paid into an interest-bearing escrow account maintained by the escrow agent; (b) the amounts in the escrow account (including interest earned on such paid fees) would be paid to CF only upon approval of the Fund's shareholders of the New Sub-Advisory agreement or, in the absence of such approval, to the Portfolio; and (c) the escrow agent would release the monies to CF only upon approval of the New Sub-Advisory Agreement by the Fund's shareholders in accordance with section 15 of the Act or to the Fund if the Interim Period has ended and the New Sub-Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Board would be notified. Any and all fees escrowed during the Interim Period will be less than or equal to the fees under the Existing Sub-Advisory agreement and, in addition, will be in accordance with the fee break points established in the New Sub-Advisory Agreement for the benefit of shareholders (after waiver by the Adviser of its portion of the fee) and will not be subject to the fee waivers of the Existing Sub-Advisory Agreement.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c), exempting them from section 15(a) of the Act, to the extent necessary (i) to permit the implementation during the Interim Period, without prior shareholder approval, of the New Sub-Advisory Agreement and (ii) to permit CF to receive from the Adviser upon approval by the Portfolio's shareholders any and all fees earned under the New Sub-Advisory Agreement implemented during the Interim Period.

2. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. Upon consummation of the Merger, CF will become a wholly-owned subsidiary of UAM. Applicants state that the Merger therefore will result in an "assignment" of the Existing Sub-Advisory Agreement within the meaning of section 2(a)(4), terminating such agreement according to its terms.

3. Rule 15a–4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. Applicants cannot rely on rule 15a–4 because of the benefits to the CF shareholders arising from the Merger.

4. Applicants state that a proxy solicitation to the shareholders of the Fund is a complicated and time consuming task. The task will include the preparation, clearance, and mailing of proxy materials, and the solicitation efforts required to obtain the requisite votes. Because of the complexity of the proxy solicitation and the imposition of a confidentiality requirement that prevented CF from contacting the Fund and the Adviser in advance of the Merger, applicants state that it was not possible for the Fund to obtain shareholder approval of the New Sub-Advisory Agreement in accordance with section 15(a) of the Act prior to the Effective Date.

5. Applicants submit that the requested relief would permit CF to provide continuity of investment management to the Portfolio during the Interim Period without a disruption of advisory services. In addition, the requested relief would also preserve the profitability of CF during the Interim Period by ensuring that investment advisory fees will continue to accrue to it from the Portfolio, subject to shareholder approval. These fees are an important part of CF's total revenue and are important to maintaining its ability to provide services to the Portfolio.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the pubic interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreement will have the same terms and conditions as the Existing Sub-Advisory Agreement, except for the effective and termination dates, the introduction of fee break points and the elimination of a provision providing for fee waivers by CF when the Portfolio was in a start-up mode.

2. Fees earned by CF and paid by the Adviser during the Interim Period in accordance with the New Sub-Advisory Agreement will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid to CF only after the requisite shareholder approval is obtained, or in the event such approval is not obtained, to the Portfolio.

3. The Fund will hold a meeting of its shareholders to vote on the approval of the New Sub-Advisory Agreement on or before the 120th day following the termination of the Existing Sub-Advisory Agreement on the Effective Date (but in no event later than December 31, 1996).

4. CF and/or UAM will pay the costs of preparing and filing this application. CF and/or UAM will pay the costs relating to the solicitation of the Fund shareholder approval, to the extent such costs relate to approval of the New Sub-Advisory Agreement necessitated by the Merger.

5. CF will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Portfolio under the New Sub-Advisory Agreement will be at least equivalent, in the judgment of the Fund's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Sub-Advisory Agreement caused by the Merger, CF will apprise and consult with the Board of the Fund to assure that the Board, including a majority of the Independent Directors members, is satisfied that the services provided by CF will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23120 Filed 9–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22197; 812–10312]

Lincoln National International Fund, Inc., et al.; Notice of Application

September 4, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Lincoln National International Fund, Inc. (the "Fund"), Lincoln Investment Management, Inc. (the "Adviser"), and Clay Finlay Inc. ("CF").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The order would permit the implementation, without shareholder approval, of a new sub-advisory contract for a period of up to 120 days following the date of the change in control of CF, a sub-adviser to the Fund (but in no event later than December 31, 1996). The order also would permit CF to receive from the Fund fees earned under the new sub-advisory contract following approval by the Fund's shareholders.

FILING DATE: The application was filed on August 22, 1996. Applicants have agreed to file and amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1996 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: the Fund and the Adviser, 1300 South Clinton Street, Fort Wayne, Indiana 46803; and CF, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end, management investment company registered under the Act. The Adviser, a registered investment adviser under

the Investment Advisers Act of 1940 (the "Advisers Act"), serves as the investment adviser to the Fund pursuant to an advisory agreement with the Fund. CF, also a registered investment adviser under the Advisers Act, provides sub-advisory services to the Fund pursuant to a sub-advisory agreement (the "Existing Sub-Advisory Agreement") among CF, the Adviser, and the Fund.

2. On July 17, 1996, CF and United Asset Management ("UAM") entered into an agreement pursuant to which a wholly-owned subsidiary of UAM will be merged with and into CF (the Merger"), with CF to be the survivor and a wholly-owned subsidiary of UAM. Pursuant to the Merger, shares of CF's common stock will be exchanged for shares of UAM's common stock.

3. The parties to the Merger anticipate that the Merger will be consummated by August 29, 1996 (the "Effective Date"). Upon consummation of the Merger, 100% of the outstanding voting securities of CF will be owned by UAM and CF will become a wholly-owned subsidiary of UAM. Thus, the Merger will result in a change of control of CF. Accordingly, the change of control will result in the assignment of the Existing Sub-Advisory Agreement and the termination of such agreement according to its terms.

4. Applicants seek an exemption to permit the implementation, without shareholder approval, of a new sub-advisory agreement (the "New Sub-Advisory Agreement") to be entered into by the Fund, the Adviser, and CF. The requested exemption would cover an interim period of not more than 120 days (the "Interim Period") beginning on the Effective Date and continuing through the date the new sub-advisory agreement is approved or disapproved by the Fund's shareholders (but in no event later than December 31, 1996). During the Interim period, that portion of the advisory fees paid by the Adviser to CF for sub-advisory services would be paid into an escrow account.

5. The New Sub-Advisory Agreement is identical to the Existing Sub-Advisory Agreement, except for the effective date and escrow provisions. The fee levels for sub-advisory services will remain the same as in the Existing Sub-Advisory Agreement.

6. In accordance with section 15(c) of the Act,[1] the board of directors (the "Board") of the Fund met on August 13, 1996 and determined that the New Sub-Advisory Agreement would be in the best interests of the Fund and its shareholders. At this meeting, the Board, including a majority of the disinterested directors (the "Independent Directors"), voted to approve the New Sub-Advisory Agreement.

7. Applicants propose to enter into an escrow arrangement that would provide that: (a) the fees payable to CF during the Interim Period under the New Sub-Advisory Agreement would be paid into an interest-bearing escrow account maintained by an escrow agent; (b) the amounts in the escrow account (including interest earned on such paid fees) would be paid to CF only upon approval of the Fund's shareholders of the New Sub-Advisory Agreement or, in the absence of such approval, to the Fund; and (c) the escrow agent would release the monies to CF only upon approval of the New Sub-Advisory Agreement by the Fund's shareholders in accordance with section 15 of the Act or to the Fund if the Interim Period has ended and the New Sub-Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Board would be notified.

Applicant's Legal Analysis

1. Applicants request an order pursuant to section 6(c), exempting them from section 15(a) of the Act, to the extent necessary (i) to permit the implementation during the Interim Period, without prior shareholder approval, of the New Sub-Advisory Agreement and (ii) to permit CF to receive from the Adviser upon approval by the Fund's shareholders any and all fees earned under the New Sub-Advisory Agreement implemented during the Interim Period.

2. Section 15(a) of the Act prohibits an investment adviser from providing investment advisory services to an investment company except under a written contract that has been approved by a majority of the securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. Upon consummation of the Merger, CF will become a wholly-owned subsidiary of UAM. Applicants state that the Merger therefore will result in an "assignment" of the Existing Sub-Advisory Agreement within the meaning of section 2(a)(4), terminating such agreement according to its terms.

3. Rule 15a–4 provides, in relevant part, that if an investment adviser's investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company and if neither the investment adviser nor a controlling person thereof directly or indirectly receives money or other benefit in connection with the assignment. Applicants cannot rely on rule 15a–4 because of the benefits to the CF shareholders arising from the Merger.

4. Applicants state that a proxy solicitation to the shareholders of the Fund is a complicated and time consuming task. The task will include the preparation, clearance, and mailing of proxy materials, and the solicitation efforts required to obtain the requisite votes. Because of the complexity of the proxy solicitation and the imposition of the confidentiality requirement that prevented CF from contacting the Fund and the Adviser in advance of the Merger, applicants state that it was not possible for the Fund to obtain shareholder approval of the New-Sub Advisory Agreement in accordance with section 15(a) of the Act prior to the Effective Date.

5. Applicants submit that the requested relief would permit CF to provide continuity of investment management to the Portfolio during the Interim Period without a disruption of advisory services. In addition, the requested relief would also preserve the profitability of CF during the Interim Period by ensuring that investment advisory fees will continue to accrue to it from the Portfolio, subject to shareholder approval. These fees are an important part of CF's total revenue and are important to maintaining its ability to provide services to the Portfolios.

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of

[1] Section 15(c) provides, in relevant part, that it shall be unlawful for any registered investment company to enter into an investment advisory contract unless the terms of such contract have been approved by the vote of a majority of directors, who are not parties to such contract or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval.

the Act. For the reasons stated above, applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreement will have the same terms and conditions as the Existing Sub-Advisory Agreement, except for the effective and termination dates.

2. Fees earned by CF and paid by the Fund during the Interim Period in accordance with the New Sub-Advisory Agreement will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid to CF only after the requisite shareholder approval is obtained, or in the event such approval is not obtained, to the Fund.

3. The Fund will hold a meeting of its shareholders to vote on the approval of the New Sub-Advisory Agreement on or before the 120th day following the termination of the Existing Sub-Advisory Agreement on the Effective Date (but in no event later than December 31, 1996).

4. CF and/or UAM will pay the costs of preparing and filing this application. CF and/or UAM will pay the costs relating to the solicitation of the Fund shareholder approval, to the extent such costs relate to approval of the New Sub-Advisory Agreement necessitated by the Merger.

5. CF will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Fund under the New Sub-Advisory Agreement will be at least equivalent, in the judgment of the Fund's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Sub-Advisory Agreement caused by the Merger, CF will apprise and consult with the Board of the Fund to assure that the Board, including a majority of the Independent Directors members, is satisfied that the services provided by CF will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23121 Filed 9–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37633; File No. SR–CBOE–96–36]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Deactivation of RAES During Unusual Market Activity

September 4, 1996.

I. Introduction

On June 12, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to allow the interruption of the Exchange's Retail Automatic Execution System ("RAES") due to unusual market activity. The proposed rule change was published for comment and appeared in the **Federal Register** on July 3, 1996.[3] No comments were received regarding the proposal. This order approves the Exchange's proposal.

II. Description of the Proposal

The Exchange proposes to add a new paragraph (e) to CBOE Rule 6.6 that will authorize Order Book Officials ("OBOs") and, in the case of options traded at Designated Primary Market Maker ("DPM") stations, Post Directors to deactivate RAES for a period not to exceed five minutes in specified classes of options traded at the posts where such persons are stationed when in their judgement such action is warranted by an influx of orders or other unusual market conditions in such options or their underlying securities and the OBO or Post Director determines that such action is appropriate in the interests of maintaining a fair and orderly market. Whenever such action is taken, notice thereof shall immediately be given to two Floor Officials who may continue the deactivation of RAES, provided that the necessary conditions provided for in Rule 6.6 have been met.[4]

The Exchange believes that this proposed rule change should allow a more immediate response to temporary order imbalances related to market disruptions in stocks that underlie options traded on CBOE caused by certain events, such as significant news announcements. The Exchange believes that in these situations stock prices may move sharply, and Exchange market-makers may not have time to adjust their options quotes in the numerous series of options that overlie these stocks. The Exchange notes that this may result in published options quotes that do not reflect current stock prices. Because orders sent to RAES are executed automatically at published quotations, the Exchange believes that customers may receive executions at stale prices, which may be more favorable, or less favorable, than fair market price.

Exchange Rule 6.6 currently authorizes two Floor Officials to respond to this situation by declaring the market in particular classes of options to be "fast," and then turning off RAES (and taking other action) until there has been time for prices to be adjusted. The Exchange believes that because of the speed with which computerized order routing systems can direct orders to RAES, and because RAES itself provides for instantaneous automatic executions, there can be a significant number of executions at prices that do not reflect the current state of the market during the several minutes that it could take for two Floor Officials to declare a fast market. The Exchange believes that by authorizing OBOs and Post Directors to turn off RAES for up to five minutes during unusual market activity, the response time to such a situation will be considerably shortened, and the number of executions at inaccurate prices should be reduced accordingly. Currently, Post Directors or OBOs are authorized to suspend trading in specific classes of options for up to five minutes when there is a trading halt of suspension of trading in the underlying security in the primary market pursuant to CBOE Rule 6.3. The Exchange notes that the OBOs and Post Directors, in those situations, are able to deal quickly and on an interim basis when an immediate response is necessary, pending further consideration of the matter by two Floor Officials.

The Exchange anticipates that in most instances where RAES is deactivated by

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37364 (June 25, 1996), 61 FR 34911.

[4] The Exchange represents that two Floor Officials will promptly exercise their authority under Rule 6.6 once notified of the RAES deactivation by the OBO or Post Director. The proposal also provides that the two Floor Officials will make all further determinations pursuant to Rule 6.6 regarding the particular options class once they arrive at the particular trading post, but until such time the OBO or Post Director can reactivate RAES if they determine such action is in the interest of a fair and orderly market. Telephone conversation between Michael Meyer, Schiff Hardin & Waite, and John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on August 27, 1996.

an OBO or Post Director, the period of time when RAES is unavailable should be very brief, lasting fewer than five minutes. Even then, orders will continue to be delivered to the trading crowd via the Exchange's electronic order routing system ("ORS") and the trading crowd will remain obligated to fill customer orders in accordance with Exchange rules, including the firm quote rule.[5] Accordingly, orders that would have been routed to RAES will be automatically re-routed to a Public Automated Routing System ("PAR") workstation,[6] a floor broker printer in the trading crowd, or to the appropriate member firm booth, where they can be immediately executed at the then current price.

Members will be notified of any deactivation of RAES in particular classes of options by an OBO or a Post Director pursuant to proposed Rule 6.6(e) by means of a message that is printed to each trading post on the floor and is transmitted to terminals throughout the floor over the Exchange's TextNet system.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[7] Specifically, the Commission finds that the Exchange's proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that the proposed rule change is reasonable in that it provides Post Directors and OBOs the limited authority to suspend RAES for no more than five minutes in a particular options classes during unusual market conditions. The Commission believes that Post Directors and OBOs are appropriate parties, to exercise this limited authority, in part, because of (1) their knowledge of assigned options classes, (2) their close proximity with the trading crowd, and (3) their clearly defined administrative role with the Exchange. Accordingly, the Commission believes that Post Directors and OBOs should be able to initially assess market conditions and deactivate RAES for this limited period, thereby reducing the potential for orders being executed at inaccurate prices until Floor Officials can further assess the market conditions. The Commission notes that the standard for OBOs and Post Directors to deactivate RAES is the same standard used by Floor Officials to declare a fast market, which in turn, authorizes Floor Officials to deactivate RAES if they determine that such action is in the interest of maintaining a fair and orderly market.

The Commission notes that two Floor Officials, once immediately notified by the OBO or the Post Director of the RAES deactivation, must promptly determine whether to (1) immediately reactivate RAES pursuant to Rule 6.6(c); or (2) declare a fast market pursuant to Rule 6.6(b) in order to continue the deactivation of RAES for that particular options class.[8] Under no circumstances, can the deactivation of RAES continue for more than five minutes, unless two Floor Officials declare a fast market pursuant to Rule 6.6(b).[9]

Additionally, the Commission believes that the proposed rule change is reasonable because during this limited five-minute period when RAES is deactivated by the Post Director or OBO, orders that would have been routed to RAES will be automatically re-routed to a PAR workstation, a floor broker printer in the trading crowd, or to the appropriate member firm booth, where they can be immediately executed at the then current price. Accordingly, the Commission believes that the Exchange's electronic ORS should provide small investors an efficient and effective method for order execution in circumstances where RAES is turned off pursuant to this proposed rule change.

The Commission expects that such authority as proposed herein, will only be exercised when unusual market conditions exist, and for the shortest time possible. As a general matter, the commission prefers that automated systems such as RAES remain operational at all times. While extreme circumstances may call for the deactivation of the system, it should only be done when absolutely necessary.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–CBOE–96–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23123 Filed 9–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37640; File No. SR–Phlx–96–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Universal Trading System's Morning Session

September 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On July 26, 1996, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to implement a daily pre-opening order matching session

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[5] The firm quote rule, which obligates the trading crowd to fill public orders for up to 10 contracts at published quotes, remains in effect unless suspended by two Floor Officials acting under Rule 6.6(b) in the event of a fast market. The proposed rule change would not authorize an OBO or DPM to declare a fast market or suspend the firm quote rule.

[6] A PAR workstation is an automated, computer-based workstation that provides users with the ability to execute trades, transmit trade reports, and enter other data and commands at the touch of a screen, thereby eliminating the delay inherent in a keyboard-based system.

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission understands that if two Floor Officials declare a fast market, they have the authority to, among other things, continue the deactivation of RAES, suspend the firm quote requirement of Rule 8.51(a), or take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market. *See* CBOE Rule 6.6(b).

[9] The Commission notes that the five-minute period is an absolute time limit imposed by the Exchange on Post Director and OBO directed RAES deactivations. Accordingly, the Commission expects that in most situations, two Floor Officials should be able to exercise their authority under Rule 6.6 before the five-minute period has expired.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] *See* letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading, Operations, Phlx, to Jennifer Choi, Division of Market Regulation, SEC, dated July 26, 1996. The Exchange clarifies that it does not propose to trade Nasdaq securities through the Universal Trading System ("UTS") without a computer-to-computer interface to the National Association of Securities Dealers for reporting purposes.

("Morning Session" or "session") for the execution of large-sized stock orders on a volume weighted average price ("VWAP") basis on its equity floor. The VWAP shall be derived from transactions executed during the trading day and reported to the appropriate reporting authority. The Morning Session has been designed to provide institutional investors with the means to execute large-sized stock orders in Exchange securities anonymously and at fair market prices approximately 15 minutes prior to the opening of the "regular trading session" (*i.e.*, 9:30 A.M.–4:00 P.M. (ET)). The price of Morning Session transactions will be determined at approximately 4:15 P.M. (ET). At that time, the Exchange shall assign the applicable VWAP and report each such trade to the appropriate reporting authority, the Consolidated Tape or other, as VWAP trades.

The receipt and matching of orders for the Morning Session will be handled electronically through the Exchange's Universal Trading System ("UTS" or "System"). The UTS is a system that was devised for facilitating the operational aspects of the Morning Session.

Each of the approximately 2,500 equity securities currently available for trading on the Exchange, both listed and traded pursuant to Unlisted Trading Privileges ("UTP") (including over-the-counter securities) will be eligible for the Morning Session.

The present proposal consists of changes to existing Exchange rules to accommodate the Morning Session and the adoption of a new rule applicable solely to the Morning Session, Rule 237—UTS Morning Session. In addition, Rule 101 is proposed to be amended to add the Morning Session as an exception to regular trading hours.[2]

Proposed Rule 237 is organized as follows: an introductory paragraph, followed by paragraphs: (a) explaining reporting; (b) defining the UTS; (c) governing who the participants are; (d) explaining order entry; (e) specifying order priority; (f) defining the VWAP; (g) governing short sales in the UTS; (h) concerning disputes; (i) containing provisions relating to limitation of liability; and (j) pertaining to trading halts.

UTS trades will be subject to transaction fees as established in the Exchange's fee schedule.

[2] The Exchange also proposes several minor amendments to Rule 101, including placing A.M. and P.M. in capital letters, adding a heading to each commentary, and deleting reference to two specific index options.

The Universal Trading System

The UTS will operate as a separate Exchange system made available to Phlx member organizations and their non-member customers for the purpose of participating in the Morning Session. UTS will link off-floor and on-floor computer terminals to an Exchange communications base unit. UTS access is accomplished through dial-up into the UTS system, utilizing software provided to users and a log-on procedure dependent upon whether the user is accessing UTS through a personal computer or main-frame system.

The UTS base unit will: (i) accept orders and commitments, (ii) match buyers with sellers, (iii) give execution reports to matched participants (iv) calculate the VWAP for each traded security, (v) report trades to the central processor for tape reporting, and (vi) create the necessary audit trail, recording order entry and execution of Morning Session orders.

The UTS was developed by Universal Trading Technologies Corporation ("UTTC"), who will assist the Exchange in its operation of the System in accordance with its agreement with the Exchange.

Participation and Clearing Requirements

Participation in the Morning Session may occur by way of a commitment from a Committer or an order from a User (collectively, "Participants").

Phlx Floor Traders and Off-Floor Liquidity Providers (collectively, "Committers") will each day commit on a proprietary basis to provide contra-side liquidity in eligible securities for the execution of Morning Session orders placed by non-committer members and their customers (collectively, "Users"). UTS commitments may only be made by Exchange members. Committers may be either Phlx Floor Traders or Off-Floor Liquidity Providers, who must register with the Exchange in a prescribed manner prior to acting in the capacity of a Committer. Phlx Floor members qualify as Floor Traders if they are either the Specialist or Alternate Specialist in the security on the Phlx. Off-Floor Liquidity Providers must be members and may only engage as Committers for their proprietary accounts. Committers will be able to choose which, if any, issues they wish to make commitments, but for each chosen issue must provide a minimum volume guarantee of 2,500 shares on each side of the market.

Commitments may be entered and modified in the UTS during the Order Entry Time Period and also during any other periods which the Exchange may make available for that purpose. Committers may make such contra-side liquidity commitments through the UTS as day-commitments or good-till-cancelled ("GTC") commitments.

UTS orders may only be placed by approved Users. Users may be either members or non-members; however, individual orders placed directly by non-members will require a Stock Clearing Corporation of Philadelphia ("SCCP") member's give-up to ensure that a Phlx clearing member, who must also be a Phlx member, has assumed responsibility for the order. Specifically, the Exchange member must agree to be jointly and severally liable for actions of the non-member through the UTS and the non-member must agree to adhere to all applicable by-laws and rules of the Exchange. Give-up agreements with non-members must be approved in advance by the Exchange, including a delineation of the credit limits for the respective customer.[3] The "three way agreement" between the Exchange, the member and the non-Member User is in addition to the give-up agreement.[4]

UTS Order Entry

Users will enter orders directly and anonymously into the UTS from computer terminals, which may include various types of computer hardware and handheld devices. Only those orders and commitments placed through UTS will be eligible for execution during the Morning Session and orders entered into the UTS are only eligible for execution through UTS.[5] UTS orders will only be accepted during the UTS order entry time period, 5:00 a.m. to 9:15:00 a.m. (ET), and will only be eligible for a UTS execution on the day the order has been placed. UTS orders and commitments may be cancelled (order condition CXL) until 9:15 a.m. (ET). Confirmation of order placement and cancellation is electronically confirmed throughout the UTS.

[3] A draft of a sample three way agreement was submitted to the Commission by letter dated February 7, 1996. Since that time, the Exchange has added a provision relating to the Exchange's ability to terminate a User's access to the System. The draft, including this new provision, will be re-submitted to the Commission.

[4] Telephone conversation between Jennifer S. Choi, Division of Market Regulation, SEC, and Edith Hallahan, Special Counsel, Regulatory Services, Phlx, on August 15, 1996.

[5] Commitments also are only eligible for execution through UTS and do not migrate to any other trading session. Telephone conversation between Jennifer S. Choi, Division of Market Regulation, SEC, and Edith Hallahan, Special Counsel, Regulatory Services, Phlx, on May 22, 1996.

Morning Session trading interest may be entered into UTS in the form of either: (i) An order to trade as a User; or (ii) as a commitment to provide contra-side liquidity to User orders. The minimum order size for individual User orders shall be 5,000 shares, while Committers will be permitted to commit in sizes of 2,500 or greater.

In placing orders and commitments on the System, Participants will be required to provide order/commitment description and account identification information necessary for UTS to establish the priority and eligibility of orders on the System. Specifically UTS orders and commitments are to be placed with the following designations:

(i) buy/sell;
(ii) volume;
(iii) stock symbol;
(iv) Participant status: C (Committer) or U (User);
(v) Committer account "commit" status: T (Floor Trader) or L (Off-Floor Liquidity Provider); and GTC or Day;
(vi) User account "order" status: F (member firm), C (public customer or Registered Investment Adviser); order type (basic, cross, facilitation, etc.);
(vii) Exchange clearing member organization number;
(viii) give-up of Phlx floor broker (required for each User order);
(ix) User identification number; and
(x) restrictions, if any, on matching against member accounts.

Order Types

Eligible order types for the Morning Session include the following: basic, all-or-none, minimum size, facilitation, facilitation-only, facilitation-if-necessary, facilitation-minimum and cross.

In addition to the size-related order types—including basic orders (*i.e.*, fill-order-to-extent-possible), all-or-none orders and minimum size orders—the UTS also permits Users to place orders with "cross" and "facilitation" instructions. A cross order is a two-sided order, with both sides comprised of non-member interest, placed by one User with instructions to match the identified buy-side with the identified sell-side. Facilitation orders, on the other hand, are two-sided orders where one side is comprised of non-member interest and the other side of member interest, with the instruction to cross the non-member interest with the facilitating member interest; a facilitation order may also consist of both sides comprised of member interest with the instruction to cross the members' orders.

Participants may place simple-facilitation orders or may attach contingency instructions on facilitation orders, whereby certain conditions must be met for execution, as indicated below:

—Simple-facilitation: match the facilitator as contra-side to the accompanying order to the full extent permissible for the facilitator under the Morning Session's priority rule for facilitation-cross orders, but to also, nonetheless, allow any other order(s) with priority over the facilitator to be matched as the contra-side to the accompanying order.
—Facilitation-only: only execute the cross if the facilitator can be completely matched with the accompanying order; otherwise both sides of the facilitation-only order are cancelled.
—Facilitation-minimum: only execute if the facilitator can be matched on a specified minimum number of shares with the accompanying order.
—Facilitation-if-necessary: only match the facilitator to the accompanying order if no other orders or commitments can be matched with the order.

Execution and Priority of Orders

Orders for the Morning Session will be matched at approximately 9:16 A.M. (ET). Trades executed through the UTS are printed and cleared as Phlx transactions, executed on the Exchange and cleared through SCCP. In matching VWAP orders for execution during the Morning Session, the following execution priority will apply:

(1) Match non-member User orders (public customers and Registered Investment Advisers acting on behalf of non-member accounts) with other non-member User orders;

(2) Match non-member User orders (not matchable with other non-member User orders) with Member User orders;

(3) Match non-member User orders (not matchable with each other or with member User orders) with commitments;

(4) Match member User orders (not matchable with non-member User orders) with other member User orders; and

(5) Match member User orders (not able to be matched with other User orders) with commitments.

The System will not, however, match commitments with other commitments.

User orders are afforded priority as follows: first by account type, in accordance with the five steps described above; then by order size (largest first, etc.); and then, for orders of the same size and account type, on a chronological basis by time-of-entry. Similarly, commitments are prioritized, as follows: first, on the basis of sub-account types, with Off-Floor Liquidity Providers receiving priority over Floor Traders; then, on the basis of commitment size (largest first, etc.); and finally, on a rotational basis among those of the same size and sub-account type.[6]

Notwithstanding the above, cross orders for the accounts of non-members have absolute priority to trade with each other regardless of size or time priority considerations respecting other orders in the security. The non-member side to a facilitation order will have absolute priority to participate regardless of size or time priority of other orders (other than customer-to-customer cross orders), but the member firm side to a facilitated cross, though it will have priority to trade with its customer over other member firm interest, will not have priority over non-member orders.

Participants are allowed to place instructions stipulating that their orders and commitments only be matched with non-member account orders. Orders and commitments must, however, be available for matching against all non-member orders.

VWAP

The VWAP that the Exchange shall assign to each eligible security, which shall be derived daily and publicly disseminated promptly following calculation at 4:15 P.M. (ET) for each of the Exchange's 2,500 eligible equity issues, will be calculated on the basis of those transactions reported during the regular trading session to the appropriate reporting authority, Consolidated Tape or other reporting authority. Generally, consistent with Rule 111, all UTS matches create a binding contract. However, in the case where a transaction occurs in the Morning Session in a security that has not opened for trading by 3:00 P.M. (ET) on the primary market, the respective Morning Session transaction will be voided and a report to that effect will be sent immediately to all matched Participants.

In general, the VWAP for each eligible security shall be calculated by: (i) utilizing all regular way trades (including sold sales and late sales[7])

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[6] For commitments of the same subaccount type and size, the System will choose commitments to be matched on a random basis. Telephone conversation between Jennifer S. Choi, Division of Market Regulation, SEC, and Edith Hallahan, Special Counsel, Regulatory Services, Phlx, on May 22, 1996.

[7] A late sale is an option transaction that is a correct last sale but is publicly disseminated later than is generally required. Generally, each option transaction is required to be publicly disseminated

Continued

effected from the opening of the regular trading session and printed prior to 4:15:00 P.M. (ET) by the appropriate reporting authority,[8] (ii) multiplying each respective reported price by the total number of shares traded at that price; (iii) adding together each of these calculated values, compiling an aggregate sum, and (iv) dividing the aggregate sum by the total number of reported shares for that day in the security. The resulting VWAP will be reported in the form of a fraction, rounded to the nearest 1/128th.

Reporting

Although the UTS will become available for all Exchange securities, different reporting schemes will be employed for exchange-listed securities and for Nasdaq National Market securities. All UTS transactions will first be reported to the respective reporting authorities at approximately 9:20 A.M. (ET) as a single volume print including all matches in all securities. The morning print for listed securities will occur by way of an administrative message over the Consolidated Tape reflecting total volume in exchange-listed securities. The morning print for Nasdaq securities will occur in similar fashion by way of a direct linkage to the National Association of Securities Dealers, Inc. ("NASD"). The morning prints are intended to notify investors regarding pre-opening volume.

Paritcipants, under normal circumstances, will also be notified of their levels of participation by 9:20 A.M. (ET). UTS transactions will be reported to the User and the Committer in the form of automated reports reflecting the number of shares traded by the Participant through the UTS in each issue.

Promptly following calculation of the final VWAP, at approximately 4:20 P.M. (ET), trades are assigned that day's VWAP for that security and will, at that time, be reported to the appropriate reporting authority. The Exchange will continuously calculate the VWAP throughout the trading day, on a minute-by-minute basis, for each issue available for trading. The intra-day VWAP as well as the final VWAP will be available to all UTS Participants through the UTS. Each Morning Session match, once a VWAP is assigned, constitutes a completed transaction for the purpose of reporting the trade to the appropriate reporting authority.

End-of-day prints will normally be reported promptly following calculation of the final VWAP at 4:15 P.M. (ET) and, unlike the morning prints, the end-of-day prints will be printed on a trade-by-trade basis for each individual interested which was matched that morning. Each print will reflect a matched trade and the corresponding VWAP. These trades will be reported to the Consolidated Tape with the sale condition "B" indicating average weighted pricing, which will distinguish VWAP trades from other transactions that may possibly be reported after the close (such as after-hours, crossing session or late sales transactions). With respect to Nasdaq National Market securities, the "W" indicator will likewise be utilized to indicate average weighted pricing. Reporting to the NASD will occur automatically via computer interface once such interface is completed. The Exchange states that it does not propose to trade Nasdaq securities through the UTS without a computer-to-computer interface to the NASD for reporting purposes.[9]

The UTS will not disseminate orders or commitments, including UTS bid/ask sizes, prior to the Morning Session match or UTS imbalances remaining after the Morning Session match. The purpose of this anonymity is to safeguard against dissemination to any other participant the existence of executed or unexecuted block orders, which, in turn, could, if disseminated, influence the market after the opening of the regular trading day.

Other Provisions

Pursuant to proposed paragraph (h), disputes respecting UTS Morning Session participation, or eligibility of orders or participants, are to be resolved by the Exchange. The Exchange's liability respecting the UTS is limited pursuant to By-Law Article 12–11. Thus, the Exchange is not liable for any damage arising from the use of the UTS. With respect to trading halts, Rule 237 is not intended to limit the ability of the Exchange to otherwise halt or suspend trading in any stock traded through the UTS. The Exchange may determine, due to extraordinary circumstances to adjust or modify any of the times referenced by this rule respecting the order entry period, order matching period or any aspect of the transaction reporting procedures. Lastly, short sales are governed by proposed paragraph (g), which states that UTS Morning Session orders and commitments are not subject to the short sale restrictions of Rule 455.[10] Further, positions resulting from UTS Morning Session transactions are effective for the purpose of determining long or short status, immediately upon notification tot he participant of a UTS execution, notwithstanding that the VWAP has not yet been determined.

The specific text of the proposed rule change is available at the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

During the past ten years, listed equities trading volume has experienced explosive growth, from 31.9 billion shares in 1985 to 98 billion shares in 1995. At the same time, Nasdaq volume grew at an even greater pace, from 20.6 billion shares in 1985 to 102 billion shares in 1995. Together, for 1995, the listed exchange markets and Nasdaq (collectively, "the markets") traded in excess of 200 billion shares. A contributing factor to this volume surge is the increasing presence of institutional trading. The Exchange expects that over ten million trades of 5,000 shares or more will be executed in the markets during this year.

Although institutional trading of block orders often consists of member firms trading for their proprietary accounts, the vast majority of such trading is for the benefit of non-member accounts. The common thread among most of these non-member block orders is that the investment focus is long-term, rather than short-term. When the investment focus is long-term, intra-day

within 90 seconds after the execution. A sold sale designates a transaction appearing on the tape out of its proper sequence.

[8] However, prints representing trades executed after regular trading hours (9:30 A.M. to 4:00 P.M. (ET)), such as the Phlx's Post Primary Session ("PPS") as well as the Pacific Stock Exchange, Inc. ("PSE"), will not be utilized in the VWAP calculation after 4:02 P.M. (ET).

[9] The Exchange notes that Nasdaq issues traded on the Exchange during regular trading hours would currently be reported directly to the NASD utilizing Nasdaq terminals.

[10] For short sales, orders will be marked pursuant to Rule 455. *See proposed Phlx Rule 237(g).*

price drops occurring when positions are purchased or sold are problematic "bumps" in the road. Many long-term investors prefer to avoid such drops, even though an opportunity to buy at the low or sell at the high may be lost. Smoothing over these bumps would be beneficial to long-term investors. In this vein, long-term investors often link the ability to secure fair prices to the ability to retain anonymity while "working" large orders.

On the other hand, member firms typically use intra-day volatility as an opportunity to trade in the short term. Such firms do so either as facilitators for their customer orders, arbitrageur or as registered floor traders. Many of these traders welcome the opportunities presented by additional volume and volatility. Thus, diverting such intra-day risks from long-term investors (who seek to avoid such risks) to proprietary traders (who seek to assume such risks) is the primary goal of the Phlx's proposal to adopt a Morning Session for the execution of large-sized securities on a VWAP basis.

By placing intra-day price risks on those most willing, and most suited, to accept such risks, the Morning Session will serve both institutional investors and proprietary traders. The advantages of the Morning Session will be available to all qualified market participants for eligible sized orders. Institutions, which will particularly benefit from the session, however, include corporate pension funds, state and municipal pension funds, major money managers and mutual funds. In addition to offering fair pricing, the session will also be cost effective, as it will often replace the costs of "working" an order over the course of a day or longer, with the ease of a single execution and single transaction charge.

The Phlx believes that the UTS is an innovative new automated system, which complements the existing auction market. By integrating order entry functions for customer orders into an automated matching system with floor traders as well as off-floor traders serving as facilitators, and then executing such orders on a VWAP basis in a manner designed to facilitate customer interests first, the UTS incorporates the principles of an auction market with the automation benefits of an electronic execution system. Thus, the Exchange believes that the UTS, as a new data processing and communication technique, creates the opportunity for more efficient and effective market operations, consistent with Section 11A(a)(1)(B) of the Act, by providing increased execution alternatives to investors. By combining pricing in terms of a VWAP with the ability to access block-sized liquidity commitments, and by providing the ability to anonymously effect such block-sized orders prior to the opening of the regular session, the Exchange's Morning Session should particularly accommodate institutional customer interests.

The Exchange proposes to adopt Rule 237 to establish and govern the UTS. In general, the UTS will accept orders and commitments of established minimum volumes (*i.e.*, 5,000 shares for orders and 2,500 shares for commitments), executing orders against other orders and commitments at the VWAP. The VWAP will be assigned to each matched trade and reported to the appropriate reporting authority, Consolidated Tape or directly to the NASD, including trade-by-trade volume and the VWAP. Consistent with Rule 11Aa3–1 under the Act, the Exchange will thereby provide for the collection and dissemination of transaction reports containing, among other things, the price of the security. Because the System's matching process should be completed prior to the time of the opening of the Phlx market at 9:30 A.M. (ET), the issue of the integration of UTS orders into the auction market is not raised by the proposal.

The Exchange recognizes that Section 11Ac1–1 under the Act bids/offers will not be utilized in the UTS within the meaning of the rule because all orders are executable only at the VWAP, rendering bids/offers meaningless.[11] Further, UTS orders do not raise price priority issues because all orders have been entered for execution at the VWAP. The UTS will executive orders bases on the priority principles enumerated in Rule 237, which is consistent with Section 11(a) of the Act, in that members yield priority to non-members. Off-Floor Liquidity Providers receive priority over Floor Traders to encourage commitments. Because Floor Traders' priority is last-in-line, no issue of Specialists trading ahead of customers is raised by the UTS.

The Exchange believes that the proposed reporting scheme provides transparency to Morning Session executions, specifically identifying the total volume executed before the opening, first as a single print and, once the VWAP is calculated, trade-by-trade. With respect to Nasdaq National Market securities, the Exchange believes that reporting UTS transactions to the NASD by computer interface is consistent with the Joint Industry Plan[12] ("Plan") adopted pursuant to Section 12(f) of the Act, which governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq National Market securities listed or traded pursuant to UTP on an exchange. The Exchange does not believe that the Plan precludes VWAP trading, but rather that the Plan focuses on assuring adequate reporting of covered securities. The Exchange's proposal to report directly to the NASD is thus consistent with the Plan.

The UTS will operate as a facility of the Exchange within the meaning of Section 3(a)(2) of the Act, in that the UTS utilizes Phlx equipment and personnel, floor trader participation, and SCCP to clear UTS trades. Thus, Morning Session trades will be appropriately regulated and reported as Exchange trades. The Phlx notes that this is similar to the regulatory treatment afforded to after-hours trading sessions on the Exchange as well as other exchanges.[13]

As previously stated, the VWAP will be calculated on the basis of those transactions reported by the appropriate reporting authority for the respective security from the beginning of the regular trading session to 4:15 P.M. (ET). In the case where a transaction occurs in the Morning Session in a security that has not opened for trading that day for any reason in the primary market by 3:00 P.M. (ET), the respective Morning Session transaction will be voided and a report to that effect will be immediately sent. The Exchange believes that establishing a specific time frame by which a security must trade givers further assurance that the VWAP will consist of a representative sample of trades from which to derive a calculation. Additionally, this provision will also serve the important function of prompt notice that the Morning Session transaction will be voided if the primary market has not yet opened in a particular issue. Although written confirmation will follow, Users will be aware that this rare exception to the creation of a binding contract through the UTS may occur by observing that an issue failed to open on its primary market. The 3:00 P.M. (ET) cut-off provides an objective limitation on the

[11] The Exchange has requested exemptive relief from the requirements of this Rule. *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Larry E. Bergmann, Assistant Director, Division of Market Regulation, SEC, dated February 28, 1996. In this letter, the Exchange has also requested interpretive relief regarding Rule 11A2–2(T) under the Act.

[12] This Plan was recently amended and extended by the Commission. *See* Securities Act Release No. 36481 (Nov. 13, 1995) (File No. S7–24–89).

[13] *See e.g.*, Securities Exchange Act Release No. 29237 (May 24, 1991) (File No. SR–NYSE–90–52 and SR–NYSE–90–53 establishing an off-hours trading facility).

VWAP calculation, which notifies the User that a representative VWAP cannot be calculated for that day. The Exchange has determined that the 3:00 P.M. (ET) provision is preferable to calculating a VWAP based on the previous day's pricing, because an important purpose of the VWAP is to incorporate and average that day's price movement.

With respect to trading halts, if a security opens for trading but is the subject of a halt and does not resume trading for the remainder of the day, the Morning Session transaction is based on the prints that occurred before the halt. The Exchange realizes that a security may only be open for a short time before it is halted; however, the Exchange believes that for the purposes of the UTS VWAP calculation, trading that occurs prior to a halt forms a reasonable basis for calculating a VWAP for that day, even if the security does not reopen that day. A significant amount of price discovery is involved in an opening print, such that it provides an appropriate VWAP measure, which is preferable to voiding that day's UTS trades.

Nevertheless, the Exchange maintains that the Morning Session execution is an executed Exchange contract, with only one unusual circumstance enumerated above. The Exchange notes that although utilizing the VWAP as a pricing mechanism is new to exchange trading, block trades as well as certain Nasdaq trades are currently reported as average weighted pricing trades.

With respect to access to the System, as stated above, Participants may be either Users, who may enter orders, or Committers, who must be Exchange members. Because Users may be non-members of the Exchange, limited non-member access to the UTS is proposed. The Exchange believes that the UTS provides adequate controls regarding limited non-member access to the System. Specifically, orders placed directly by non-members will require a give-up agreement between the non-member and a SCCP member, which must be approved in advance by the Exchange, including a delineation of the credit limits for the respective customer. Thus, the clearing member will agree to clear trades for the non-member User up to specified dollar amount.

In addition, a separate "three way agreement" concerning disciplinary jurisdiction is also required. The purpose of this arrangement is to ensure that a Phlx clearing member, who must also be a Phlx member, has assumed responsibility for the order. The Exchange member must agree to be jointly and severally liable for all actions of the non-member through the UTS and the non-member must acknowledge its responsibility to all applicable by-laws and rules of the Exchange to the same degree as if the order were placed directly with the give-up firm, providing a jurisdictional basis for disciplinary action against such non-member. The required agreement with the non-member User provides that the Exchange has the right to terminate the User's access to the UTS, without prior notice for any reasons, or no reason whatsoever. In addition, termination of the agreement or clearing arrangement necessarily results in the Exchange's ability to terminate access to the UTS. The Exchange believes that these requirements ensure adequate controls over non-member access, including Exchange supervision of and jurisdiction over non-member Users. The Exchange notice that similar non-member access has been afforded to other exchange systems.[14] Utilizing SCCP facilities and requiring Exchange-approved agreements with non-members are intended to facilitate coordination with persons engaged in clearing and settling these transactions, consistent with Section 6(b)(5).

The Exchange notes that Section 10(a) of the Act governs short sales in securities, while Rule 3b–3 defines the term "short sale" as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." Further, Rule 3b–3 provides that if a person has "purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase" a security, then that person shall be deemed to own that security.[15] Separately, the Exchange has requested exemptive relief from the "tick test" of Section 10(a) of the Act.[16] Thus, pursuant to Rule 237(g), UTS Morning Session orders and commitments are not subject to the short sale restrictions of Rule 455. Specifically, because a long position creates an irrevocable contract, a purchase during the UTS Morning Session may be followed by sales during the regular trading session in that security, without such sales deemed short sales.

Lastly, the Exchange proposes to amend Rule 101 to adopt Commentary .03 reflecting the UTS Morning Session and providing reference to Rule 237. The Exchange also proposes minor changes to Rule 101 for clarity and correction. Specifically, A.M. and P.M. would appear in capital letters consistently throughout the rule, and there would be a heading for each commentary. In addition, reference to two specific index options, the Value Line Index Options and National Over-the-Counter Index Options, would be replaced with the language "broad-based (market) index options," which shall freely trade until 4:15 P.M. (ET) each business day. Thus, each Exchange market index option would not have to be listed in this rule; Rule 1101A currently provides such a list of market index options, all of which trade until 4:15 P.M. (ET). The Exchange believes that these changes to Rule 101 should both correct and clarify its provisions.

2. Statutory Basis

For the reasons stated above, the Phlx believes that the proposal to operate a Morning Session utilizing the UTS is consistent with the Act, and particularly with Sections 6, 11 and 11A. Specifically, the proposal is consistent with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, by providing an automated order entry and execution system for securities traded during the Morning Session.

The Exchange anticipates that significant institutional volume could be attracted to the Phlx, which should, in turn, add liquidity to both the Morning Session as well as to the Phlx's regular trading session. The Exchange believes that the UTS provides an important new pricing mechanism for exchange trades—the VWAP. Further, the Exchange believes that the Morning Session should provide a unique opportunity to electronically submit block-sized orders for automatic matching before the regular opening at

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[14] *See* Securities Exchange Act Release No. 35030 (Nov. 30, 1994) (File No. SR–CHX–93–19) (Order approving Chicago Match and, at note 70, reference to the New York Stock Exchange's SuperDOT).

[15] The Exchange also understands that amendments to these provisions propose that if the ownership of a security is claimed by virtue of having entered into a contract to purchase it, the contract must involve a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price. Separately, the Exchange requested that an exemption for the Morning Session be incorporated into these amendments. *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Larry E. Bergmann, Assistant Director, Division of Market Regulation, SEC, dated November 9, 1995.

[16] *Id.*

9:30 A.M. (ET). Thus, the UTS should perfect the mechanism of a free and open market and a national market system. The proposal at hand employs specific procedures and safeguards designed to protect investors and the public interest, prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. These procedures include specific execution priority parameters, order entry specifications and Exchange surveillance procedures (separately submitted) designed to monitor UTS transactions. The Exchange also believes that because the UTS Morning Session is limited to a once-per-day session and adequately provides for transparency, despite the requested limited exemptive relief, the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–14 and should be submitted by October 2, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23122 Filed 9–10–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

National Advisory Council Public Meeting

The U.S. Small Business Administration, National Advisory Council, located in the geographical area of Washington, DC will hold a public meeting at 8:00 a.m. on Thursday and Friday, September 12–13, 1996, in the East Room of the Mayflower Hotel, located at 1127 Connecticut Avenue, NW., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Toy Tolson, U.S. Small Business Administration, 409 3rd St. SW., Washington, DC 20416, (202) 205–7648.

Dated: September 4, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–23176 Filed 9–10–96; 8:45 am]

BILLING CODE 8025–01–P

Maine District Advisory Council Meeting

The U.S. Small Business Administration, Maine District Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 9:00 a.m. on Monday September 23, 1996, in the Business Information Center of Maine, located at The Bates Mill Complex, 35 Canal Street, Lewiston, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8242.

Dated: September 4, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–23177 Filed 9–10–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2440]

Advisory Committee on Private International Law; Meeting of Study Group on Electronic Commerce

The Study Group on Electronic Commerce will hold its next meeting from 3:00–8:00 p.m. on Wednesday, September 18 in Dallas, Texas. The purpose of the meeting will be to review legal issues and possible standards or guidelines concerning the establishment of electronic registries to facilitate the recording of interests in moveable commercial property involved in international transactions.

The need for this review arises from the work on draft multilateral treaties involving international commercial finance at two international organizations, the United Nations commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT). The United States is actively participating in both projects. Preliminary decisions may now need to be taken in both organizations whether to base their respective treaties on registry systems, which will involve issues similar to those dealt with under the Uniform Commercial Code, as well as registry systems involving vessels, certain commodities, etc. In addition, both organizations will need to consider whether such registries would be computer-based, and in what manner systems and standards in different countries can be harmonized for purposes of transactions covered by each respective treaty. The establishment of one or more internationally-based registry systems will also need to be considered, which could serve to establish or monitor standards, provide coordination and linkage with nationally-based systems, or provide direct registry services.

In addition, documents are available on the two multilateral commercial law treaty projects from the office designated below; the UNCITRAL project involves international rules for assignment of accounts receivable; the

UNIDROIT project involves rules for international secured interests for mobile equipment.

Requesters may also be interested in the recently completed UNCITRAL rules on electronic commerce, which cover the legal effect and validity of computer messages in commercial transactions, functional equivalents of signatures, writings, etc., attribution of messages, time and place where communications are deemed to have taken place, and other matters.

The meeting of the Advisory Committee Study Group is open to the public up to the capacity of the meeting room. Members of the public who cannot attend are welcome to comment on the referenced documents, including any recommendations for possible U.S. positions on these matters. The meeting will take place at the Southern Methodist University School of Law, 3315 Daniels Avenue, Dallas, Texas in the Thomas Seminar Room at Storey Hall. Persons who expect to attend should advise either the Office of the Legal Adviser (L/PIL), Suite 357 South Building, 2430 E Street, NW., Washington, DC 20037–2800, fax (202) 776–8482 or Professor Peter Winship at SMU at (214) 768–2575 or by fax (214) 768–4330. Documents can be requested from the Office of the Legal Adviser; for further information please contact Harold S. Burman of that office or Professor Winship.

Harold S. Burman,

Advisory Committee, Executive Director.

[FR Doc. 96–23211 Filed 9–10–96; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 3, 1996 [FR 61, page 34921].

DATES: Comments must be submitted on or before October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard

Title: Ballast Water Management for Vessels Entering the Great Lakes.

OMB Control Number: 2115–0598.

Affected Public: Owners/operators of vessels who entar the Great Lakes.

Abstract: The collection of information requires vessels entering the Great Lakes through the Saint Lawrence Seaway after operating outside the Exclusive Economic Zone of the United States to keep records of their ballast water management.

Need: Under Title 33 U.S.C. 4711 the Coast Guard has the authority to check and monitor vessels entering the Great Lakes regarding their management of ballast water.

Burden Estimate: The estimated burden is 228 hours annually.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention OST Desk Officer.

Issued in Washington, DC, on September 5, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23165 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ending 8/30/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1671.

Date filed: August 30, 1996.

Parties: Members of the International Air Transport Association.

Subject:

TC23 Telex Mail Vote 825
Iran-TC3 fares—r-1
TC3 Telex Mail Vote 826
Taiwan-Japan fares
Telex-Correction—r-2
Intended effective date: October 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–23069 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Updates to Advisory Circular 27–1, Certification of Normal Category Rotorcraft, and Advisory Circular 29–2A, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Advisory Circular (AC) updates; request for comments.

SUMMARY: This notice announces the availability of and request for comments on updates to AC 27–1, Certification of Normal Category Rotorcraft, and AC 29–2A, Certification of Transport Category Rotorcraft. The updates contain guidance material to bring the AC's up to date with the most recent amendments to 14 Code of Federal Regulations (CFR) parts 27 and 29. Consolidated versions of AC 27 (renumbered as AC 27–1A) and AC 29 (renumbered as AC 29–2B) are scheduled to be published in the summer of 1997. In addition to the updates, AC 27–1A will include changes 1 through 4 to AC 27–1. Likewise, AC 29–2B will include the updates and changes 1 through 3 to AC 29–2A.

DATES: Comments must identify Updates to AC 27–1, or Updates to AC 29–2A, and must be received by October 9, 1996.

ADDRESSES: Submit comments to FAA, Rotorcraft Standards Staff, ASW–110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110.

FOR FURTHER INFORMATION CONTACT: Kathy Jones, Rotorcraft Standards Staff, ASW–110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5359; facsimile (817) 222–5961.

SUPPLEMENTARY INFORMATION: Copies of the updates have been mailed to all known affected industry and government entities, both foreign and domestic. Any interested person not receiving these updates may obtain a copy by contacting the person named under the caption **FOR FURTHER INFORMATION CONTACT.**

Interested persons are invited to submit comments on these updates. Comments received may be inspected at the office of the Rotorcraft Standards Staff, FAA, 4th floor, 2601 Meacham Boulevard, Fort Worth, Texas.

Issued in Fort Worth, Texas on August 22, 1996.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–23090 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues.

DATES: The meeting will be held on September 26, 1996, beginning at 1:00 p.m., and continue on September 27, 1996, from 8:30 a.m. to 4:00 p.m. Arrange for presentations by September 16, 1996.

ADDRESSES: The meeting will be held at the Air Transport Association of America, Suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Higginbotham, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3498; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on September 26, 1996, at the Air Transport Association of America, Suite 1100, 1301 Pennsylvania Avenue, NW., Washington, DC 20004. The agenda will include:

- Opening remarks.
- Committee Administration.
- New business.
- A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 16, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on September 5, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–23094 Filed 9–10–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 33007]

Laidlaw Transit, Inc., et al.–Control and Merger Exemption–National School Bus Service, Inc., Charterways Transportation Limited, Enterprise Transit Corp., and MCS Interstate, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of petition for exemption.

SUMMARY: Laidlaw Transit, Inc. (Laidlaw Transit), a noncarrier, and its direct and indirect corporate affiliates (collectively petitioners) [2] seek an exemption under 49 U.S.C. 13541 from the prior approval requirements of 49 U.S.C. 14303(a)(1) and (a)(4) for Laidlaw Transit to acquire control of, and subsequently merge with, four motor carriers of passengers. Expedited action has been requested.

DATES: Comments must be filed by September 26, 1996. Petitioners may file a reply by October 1, 1996.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 33007 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioners' Representative: Mark J. Andrews, Barnes & Thornburg, 1401 Eye Street, N.W., Suite 500, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Laidlaw Transit holds a 100% beneficial interest in the stock of two of the carriers it seeks to acquire: Enterprise Transit Corp. (ETC), a motor common carrier of passengers (MC–161299) [3]; and MCS Interstate, Inc. (MCSI), a motor common and contract carrier of passengers (MC–200701). The stock of ETC and MCSI is currently held in separate, independent voting trusts that are to terminate when this exemption is granted.[4]

Laidlaw Transit seeks to acquire control of the other two carriers, National School Bus Service, Inc. (NSBS) (MC–69623), and Charterways Transportation Limited (Charterways) (MC–102189), and has purchased more than 99% of the stock of their corporate parent, Scott's Hospitality Inc. (Scott), a noncarrier.[5] According to petitioners, NSBS primarily provides school transportation services within the United States and holds both interstate authority as a motor common and contract carrier of passengers in regular route service and charter and special operations and intrastate authorities to transport passengers in eight states. Charterways primarily provides school transportation services within Canada and holds interstate authority as a motor common carrier of passengers in regular route service and charter and special operations.[6]

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board) effective on January 1, 1996. This notice relates to a motor carrier passenger acquisition of control and merger transaction that is subject to Board jurisdiction under 49 U.S.C. 13541 and 14303.

[2] Laidlaw Transit is a wholly owned subsidiary of Laidlaw Transportation, Inc., a noncarrier and wholly owned subsidiary of Laidlaw Investments Ltd., a noncarrier and a wholly owned subsidiary of Laidlaw Inc. (Laidlaw). A controlling interest in Laidlaw is held by Canadian Pacific Railway Company (CP Rail), a wholly owned subsidiary of Canadian Pacific Limited, a publicly held noncarrier holding company. CP Rail operates as CP Rail System, a Class I rail carrier, on the lines of the former Soo Line Railroad Company.

[3] According to the records of the Federal Highway Administration, Office of Motor Carrier Records (FHWA), ETC's authority under this docket was revoked on April 26, 1996.

[4] Petitioners state that, as a CP Rail affiliate, Laidlaw Transit was barred from acquiring or becoming a regulated motor carrier unless the special rail-motor acquisition criteria of former 49 U.S.C. 11344(c) could be satisfied. Under the criteria, it had to be shown that the rail carrier could use the acquired motor carrier "to public advantage in its operations." Thus, the stock of ETC and MCS had to be held in separate, independent voting trusts because they primarily engaged in non-regulated school bus transportation and, as a consequence, Laidlaw Transit was unable to make the required showing. Because the intermodal acquisition restrictions of former 49 U.S.C. 11344(c) were repealed by the ICCTA, petitioners state that the proposed exemption will remove the final impediment to terminating the voting trusts.

[5] NSBS's stock is owned indirectly by a wholly owned subsidiary of Scott, and Charterways' stock is owned directly by Scott. Scott also has subsidiaries that are engaged in food services. The food service businesses are to be sold to third parties.

[6] According to petitioners, Charterways does not operate from, to, or within the United States. FHWA records indicate that the authority under this docket was revoked on September 1, 1995. Petitioners also state that, through a special division, Charterways

Continued

After the acquisition is completed, the four carriers will be wholly owned subsidiaries of Laidlaw Transit, and will subsequently be merged upstream into Laidlaw Transit.[7]

Petitioners state that the proposed transactions will have only an incidental effect on regulated transportation because they primarily concern carriers providing non-regulated school transportation services. Laidlaw Transit is the largest provider of school transportation in North America;[8] only 5% of its revenues allegedly are derived from regulated operations. Petitioners anticipate that the acquisition of NSBS and Charterways will not appreciably change this percentage.[9]

Petitioners state that the proposed transaction will permit the use of their buses to perform regulated charter and special operation services when the buses would otherwise be idle (i.e. during the school day, in the evenings, and on weekends and vacations). Additionally, they state that the proposed exemption will also reduce their administrative burdens, including those associated with duplicative regulatory filings for multiple corporate entities, and those related to unnecessary trustee arrangements and fees.

Petitioners certify that they plan no significant changes in operations or employment levels as a result of the transaction. Moreover, they assert that the validity of all collective bargaining agreements to which the involved carriers are party will be recognized.

Additional information may be obtained from petitioners' representatives.

Decided: August 28, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23216 Filed 9–10–96; 8:45 am]

BILLING CODE 4915–00–P

holds inactive authority to transport property (MC–134301).

[7] Petitioners state that Laidlaw has two other motor carrier affiliates that hold common and contract property authority: Corsan Trucking, Inc. (Corsan) (MC–200565); and PPM Canada Inc. (PPM) (MC–241369). They assert that the stock of Corsan is 100% beneficially owned by Laidlaw Environmental Services, Inc., a wholly owned Laidlaw subsidiary, and legal title is currently held in an independent voting trust. PPM is described as inactive; it does not currently provide motor carrier service within the United States. Petitioners state that they intend to terminate the voting trust for Corsan, but, before they do, they request that continued control of Corsan and PPM be included within the requested exemption or that jurisdiction over these affiliations be disclaimed.

Although petitioners acknowledge that it is not within our jurisdiction, they request that the MC number currently assigned to ETC (MC–161299) be assigned to Laidlaw Transit after the merger is completed. They contend that this would be more economical because the ETC number appears on the great majority of vehicles that will be designated for use in regulated operations, and, as a consequence, repainting costs would be minimized.

[8] According to petitioners, Laidlaw Transit holds intrastate operating authority as a motor carrier of passengers in 17 states; it holds no interstate operating authority.

[9] Because Laidlaw Transit holds no interstate operating authority, its regulated revenues presumably are derived from the regulated operations (charter and special operations) of its affiliates, but MCSI is described as inactive, and ETC's authority appears to have been revoked.

[STB Finance Docket No. 33014]

Modesto and Empire Traction Company, Beard Land and Investment Co., Beard Land Improvement Company, and New Modesto and Empire Traction Company—Corporate Family Transaction Exemption

Modesto [1] and Empire Traction Company (MET), Beard Land and Investment Co. (BI), Beard Land Improvement Company (BL), and New Modesto and Empire Traction Company (NMET), have filed a joint notice of exemption to undertake a corporate family transaction. MET, a short line rail carrier, will merge into its parent BI, a noncarrier. BI and BL, a noncarrier subsidiary of MET, will concurrently transfer certain rail properties to NMET, a noncarrier company, in exchange for its common stock. The name of the surviving corporation will then be changed to Modesto and Empire Traction Company. The proposed transaction was to be consummated on the date of final agreement of parties but not sooner than August 19, 1996, the effective date of the exemption.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside applicants' corporate family. The purpose of the transaction is to simplify corporate structure to achieve certain economies and efficiencies in the surviving corporation.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33014, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: John B. Lowry, McCutchen, Doyle, Brown & Enersen, Three Embarcadero Center, 18th Floor, San Francisco, CA 94111.

Decided: September 5, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23215 Filed 9–10–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

DEPARTMENT OF THE TREASURY

[Treasury Order Number 107–06]

Alternative Dispute Resolution, Authority Delegation

1. Pursuant to the authority vested in the Secretary of the Treasury, including the authority in 5 U.S.C. 301 and 31 U.S.C. 321(b), I hereby designate the General Counsel to be the Department's Dispute Resolution Specialist and delegate to the General Counsel authority over all matters that are commonly referred to, and related to, alternative dispute resolution, including negotiated rulemaking.

2. The authority delegated by this Order includes but is not limited to:

a. the promulgation of Departmentwide policy and the promulgation of regulations; and

b. the development of guidance necessary to comply with applicable law and Executive Orders.

3. With respect to the exercise of authority delegated pursuant to paragraph 2.a., the General Counsel shall consult with other concerned offices in the Departmental Offices and the Treasury bureaus, as appropriate.

4. The authority delegated by this Order may be redelegated by the General Counsel, or the General Counsel's delegate, to any attorney within the Legal Division of the Department. Any such redelegation shall be in writing.

5. Nothing in this Order shall be construed to affect the authority of any officer or employee of the Department of the Treasury.

6. This Order shall be effective immediately and shall remain in effect until rescinded in writing.

Dated: August 30, 1996.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 96–23157 Filed 9–10–96; 8:45 am]

BILLING CODE 4810–25–P

Fiscal Service

Proposed Collection of Information: Trace Request for EFT Payment; Correction

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Correction.

SUMMARY: In notice document 96–16661 beginning on page 33960 in the issue of Monday, July 1, 1996, make the following correction:

On page 33960, in the second column, in the **SUPPLEMENTARY INFORMATION** section, the form number should be "FMS–150."

Dated: September 6, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–23189 Filed 9–10–96; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, "Queen Nefertiti and the Royal Women: Images of Beauty from Ancient Egypt" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States; are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art from on or about October 7, 1996, through February 2, 1997, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: September 5, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–23162 Filed 9–10–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

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federal register

Wednesday
September 11, 1996

Part II

Department of Energy

41 CFR Ch. 109

Property Management Regulations; Proposed Rule

DEPARTMENT OF ENERGY

41 CFR Ch. 109

RIN 1991–AA28

Department of Energy Property Management Regulations

AGENCY: Department of Energy.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is publishing a Notice of Proposed Rulemaking to reissue the Department of Energy Property Management Regulation (DOE–PMR) in its entirety. This action is being taken to update the DOE–PMR by deleting obsolete/unnecessary material and incorporating policy and procedure changes issued previously by the Department through Personal Property Letters and DOE–PMR Bulletins. This action will provide DOE organizations and DOE contractors an up-to-date, single source for guidance on personal property matters peculiar to the Department.

DATES: Written comments on the proposed rulemaking must be received on or before November 12, 1996.

ADDRESSES: Comments (3 copies) on the proposed rulemaking should be addressed to the U.S. Department of Energy, Office of Contractor Management & Administration (HR–55), Attention: Julia Harman, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Julia Harman, Office of Contractor Management & Administration (HR–55), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202–586–1435.

SUPPLEMENTARY INFORMATION:

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III. Public Comments.
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F. Review Under Executive Order 12988.
G. Public Hearing Determination.

I. Background.

The DOE–PMR published at 41 CFR ch. 109 has not been updated since 1984 and consequently does not fully reflect interim changes in policy and procedures that were issued in Personal Property Letters and DOE–PMR Bulletins affecting the Department's direct operations and its contractors. These changes, made to comply with Executive Orders, statutory requirements, and commitments made to Congress regarding weaknesses identified the Department's personal property management practices, are being incorporated to bring the DOE–PMR up to date.

While the Department firmly supports the President's initiative to bring about significant regulatory reform and reduction, the DOE–PMR presents a unique challenge because it has not been attended to for years. In tackling that challenge, the Department has committed to a two-stage approach:

1. Bring the DOE–PMR up to date, thereby creating a baseline for regulatory reform. That is being done by this rulemaking.

2. Significantly reduce the baseline DOE–PMR over the next eighteen months. Because the DOE–PMR deals primarily with internal property management matters and has limited public impact, we intend to use other internal mechanisms to disseminate future Departmental personal property management direction.

II. Section-by-Section Analysis

The following is an analysis of the sections being added, deleted, or changed under this proposed rule:

A. Subchapter A—General

1. Section 109–1.100–51 "Definitions and Acronyms" is moved from § 109–1.5101 and adds definitions for administratively controlled items, designated contractors, and high-risk property; replaces § 109–1.103–50 on Bulletins with an explanation on the use of Personal Property Letters and Bulletins; and contains a list of frequently used acronyms.

2. Section 109–1.5103 "Loan of personal property" requires use of the DOE loan form for all loans.

3. Section 109–1.5108 "Personal property records requirements" and subsections are added.

4. Section 109–1.5110 "Physical inventories of personal property" designates the Organizational Property Management Officer (OPMO), in lieu of the Director of Administration and heads of field offices, as the reviewing and approving official for physical inventory methods (statistical sampling and inventory by exception) and procedures; changes the requirement for precious metals physical inventories from semiannual to annual; and adds requirements for administratively controlled items.

5. Section 109–1.5148 "Personal property management reports" is revised to reflect new reporting requirements.

6. Section 109–1.5202 "Establishment of a personal property holdings baseline" is added to establish a personal property baseline for new contractors through the use of the previous contractors' property records or by performing complete physical inventories.

7. Section 109–1.5203 "Management of subcontractor-held personal property" is added to establish requirements for subcontractor property management systems.

8. Section 109–1.5204 "Review and approval of a designated contractor's personal property management system" is added, setting follow-up appraisals at three-year intervals after system approval in lieu of contract execution date; stating that contracting officers shall approve, conditionally approve, or disapprove a system; requiring the maintenance and ready availability of copies of appraisals and approvals; and removing the requirement for another initial review on extended contracts.

9. Section 109–1.5205 "Property management system changes" is added, requiring property administrators to review and approve all proposed changes to a contractor's approved system.

10. Section 109–1.5205 "Reporting" is deleted, considered not required.

11. Subpart 109–1.53 "Management of high risk personal property" is added, based on interim guidance issued in Personal Property Letter 970–3, dated March 25, 1996.

12. Subpart 109–6.4 "Official Use of Government Passenger Carriers Between Residence and Place of Employment" contains information formerly found in subpart 109–38.54.

13. Section 109–6.400–50 "Instructions to DOE passenger carrier operators" adds use of seat belts and income tax liability and prohibits smoking in GSA–IFMS vehicles.

14. Section 109–6.402 "Policy" clarifies the authority for home-to-work use by DOE officials and employees and adds sharing of space in vehicles.

B. Subchapter C—Defense Materials

15. Part 109–14 "National Defense Stockpile" is deleted as a result of the discontinuance of FPMR Part 101–14, National Defense Stockpile

C. Subchapter E—Supply and Procurement

16. Section 109–25.101–1–50 "Definitions" is deleted.

17. Section 109–25.103 "Promotional materials, trading stamps, and bonus goods" adds new requirement for establishing procedures for receipt and disposition of this property.

18. Section 109–25.109 "Laboratory and research equipment" is modified to limit controls to equipment directly associated with the conduct of laboratory research, development, and testing.

19. Section 109–25.109–1 "Identification of idle equipment" no longer requires a report of walk-throughs to be submitted to the head of the facility; requires the maintenance of documentation on walk-throughs; and designates the OPMO, in lieu of heads of field offices and contracting officers, as the individual who reviews walk-throughs and practices.

20. Section 109–25.302–6 "Electronic office machines" requires DOE offices and designated contractors, in lieu of the Director of Administration and heads of field offices, to establish utilization procedures and standards.

21. Subpart 109–25.48 "Reports" is deleted. The Supply Activity Report is no longer required to be submitted by those offices not reporting under the DOE financial reporting system.

22. Section 109–26.501 "Purchase of new motor vehicles" requires that the acquisitions of motor vehicles be accomplished in accordance with this section. The requirements were removed from the DOE Acquisition Regulation Part 908.

23. Section 109–26.501–50 "Authority and allocations for the acquisition of passenger motor vehicles" (formerly §§ 109–38.5101 and 109–38. 5102) deletes the requirement for field offices to report unused allocations, unless requested by the Departmental Property Management Officer or designee.

24. Section 109–26.501–51 "Used vehicles" is added to establish policy for purchasing used vehicles where justified by special circumstances.

25. Section 109–26.501–52 "Justification for purchase" is added to require that a written justification for purchase of a motor vehicle must accompany the requisition.

26. Section 109–27.102–50 "Systems contracting" is added as an alternate method for stock inventory replenishment.

27. Section 109–27.5004–2 "Construction inventories" is deleted.

28. Section 109–27.5005 "Guide levels for construction inventories" is deleted.

29. Section 109–27.5009 "Control of hypodermic needles and syringes" is modified, adding syringes as a control item.

30. Section 109–27.5012–3 "Federal standards applicable to marking" is deleted.

31. Subpart 109–27.51 "Management of Equipment Held for Future Projects" is moved to subpart 109–28.50, "Management of Equipment Held for Future Projects."

32. Subpart 109–27.52 "Management of Spare Equipment" is moved to subpart 109–28.51, "Management of Spare Equipment."

33. Section 109–27.5104–4 "Physical inventories" revises the precious metals physical inventory requirement from semiannual to annual.

34. Section 109–27.5104–5 "Control and issue of stock" formerly was § 109–27.5304–6 "Stock issue."

35. Section 109–27.5106–3 "Returns" strengthens the requirement for returning excess precious metals to the precious metals pool by substituting the word "must" for "should."

36. Section 109–28.000–51 "Storage guidelines," formerly § 109–28.001–51, is revised and condensed to eliminate unneeded material. Guidance is added to address hazardous, contaminated, nuclear-related, and proliferation sensitive property.

37. Section 109–28.306–3 "Limitations on use," formerly § 109–28.308–3, requires DOE offices and designated contractors, in lieu of the Director of Administration and heads of field offices, to establish controls for use of customer supply center (CSC) accounts.

38. Section 109–28.306–5 "Safeguards," formerly § 109–28.308–6, requires DOE offices and designated contractors, in lieu of the Director of Administration and heads of field offices, to establish controls on customer access codes for CSC accounts.

39. Subpart 109–28.50 "Management of Equipment Held for Future Projects" formerly was subpart 109–27.51.

40. Section 109–28.5005 "EHFFP program review," formerly § 109–27.5106 "Field organization review", requires OPMOs, in lieu of heads of field offices and contracting officers, to conduct reviews of equipment held for future projects (EHFFP) programs.

41. Subpart 109–28.51 "Management of Spare Equipment" formerly was subpart 109–27.52.

42. Part 109–29 "Federal Specifications and Standards", is deleted.

D. Subchapter F—ADP and Telecommunications

43. Part 109–35 "Telecommunications", is deleted.

44. Part 109–36 "ADP Management", is deleted.

E. Subchapter G—Aviation, Transportation, and Motor Vehicles

45. Part 109–37 "Government aviation administration and coordination" added, expanding guidance formerly found in subpart 109–38.52.

46. Section 109–38.000–50 "Policy" (aircraft portion only) is moved to part 109–37 since aircraft management responsibility has been transferred to the Assistant Secretary for Environment, Safety, and Health.

47. Subpart 109–38.3 "Official Use of Government Motor Vehicles" applies only to designated contractors. Official use for DOE employees is covered in subpart 109–6.4.

48. Section 109–38.301–1.50 "Authorization for transportation between residence and place of employment" states that such use is to be provided for under terms of the contract, and is to be approved by DOE contracting official.

49. Section 109–38.301–1.51 "Emergency use" clarifies what is emergency use, including unscheduled overtime.

50. Section 109–38.301–1.52 "Maintenance of records" requires the maintenance of logs for home-to-work use of motor vehicles.

51. Section 109–38.301–1.53 "Responsibilities of motor vehicle operators" references for contractor employees the same motor vehicle operator responsibilities in § 109–6.400–50 that apply to Federal employees. Use of seat belts and potential tax liability are also added.

52. Section 109–38.1306 "Acquisition of fuel-efficient passenger automobiles" is deleted since acquisition plans are no longer to be submitted to Headquarters.

53. Subpart 109–38.51 "Utilization of Motor Equipment," formerly subpart 109–38.50, adds utilization requirements for motor equipment other than motor vehicles.

54. Section 109–38.5101 "Policy" adds motor equipment and GSA Interagency Fleet Management System motor vehicles.

55. Section 109–38.5102 "Utilization controls and practices" adds charge-back provisions and use of dual-purpose vehicles, motor scooters, motorcycles, and electric vehicles.

56. Section 109–38.5103 "Motor vehicle utilization standards" requires annual usage reviews of other trucks,

ambulances, buses, and motor equipment other than motor vehicles to justify retention.

57. Section 109–38.5106 "Application of motor vehicle use goals" is added requiring annual reviews of vehicle utilization statistics, identification of vehicles not meeting goals, justification of their retention by users, or reassignment or disposition.

58. Former subpart 109–38.51 "Acquisition of Motor Vehicles" is now subpart 109–26.5 "GSA Procurement Programs".

59. Policy and procedures on the official use of motor vehicles, formerly found in subpart 109–38.54 "Official Use of Motor Vehicles and Aircraft", is now found in 109–6.4 "Official Use of Government Carriers Between Residence and Place of Employment" and subpart 109–38.3 "Official Use of Government Motor Vehicles".

60. Section 109–38.5410 "Use of motor vehicles by the Postal Service" is deleted.

61. Subpart 109–39.3 "Use and Care of GSA Interagency Fleet Management System Vehicles" prohibits smoking in these vehicles and requires a review of utilization statistics to justify their retention.

F. Subchapter H—Utilization and Disposal

62. Part 109–42 "Utilization and disposal of hazardous materials and certain categories of property" is added setting forth policies and procedures for radioactively or chemically contaminated excess and surplus personal property.

63. Part 109–42 "Property Rehabilitation Services and Facilities" is moved to subpart 109–45.10.

64. Section 109–43.304–1.50 "DOE reutilization screening", formerly § 109–43.311–1–50, is modified to include the Used Energy-Related Laboratory Equipment Grant Program in the DOE screening cycle.

65. Section 109–43.304–4 "Property at installations due to be discontinued", formerly § 109–43.311–5, adds new requirements for developing site utilization and disposal programs for installations to be closed.

66. Section 109–43.305–50 "Nuclear-related and proliferation-sensitive property" is added to define non-reporting/screening requirements.

67. Section 109–43.307 "Items requiring special handling" is added to include the monitoring of hazardous property; designates accepting officials for gifts for defense purposes, conditional gifts, and unconditional gifts; and addresses the disposal of unsafe personal property.

68. Section 109–43.307–50 "Export controlled property" adds requirements for export controls, licenses and authorizations.

69. Section 109–43.307–52 "Nuclear-related or proliferation-sensitive property" is added to include policy on identification and disposition of this type of property.

70. Section 109–43.307–53 "ADPE", formerly § 109–43.313–51, is changed to include requirements for sanitizing ADPE prior to disposal.

71. Section 109–43.313–53 "Naval gun mounts" is deleted.

72. Section 109–43.313–54 "Precious metals" is deleted, covered by subpart 109–27.51.

73. Section 109–43.313–55 "Shielding material" is deleted.

74. Section 109–43.313–57 "Lead" is deleted.

75. Section 109–43.4701 "Performance Reports" adds the use of form 85–2 and adds fields for the Utilization and Disposal of Excess and Surplus Personal Property report.

76. Section 109–44.702–3 "Hazardous materials" is added, making the Director, OAS and the OPMOs responsible for safeguards in the donation of hazardous materials to public bodies.

77. Section 109–45.301–51 "Export/import clause" is added as new clause to be added to all sales documents.

78. Section 109–45.304–2.50 "Negotiated sales and negotiated sales at fixed prices by designated contractors" criteria in this section is changed from reasonable recovery value of property to be sold not to exceed $1,000 to the fair market value not to exceed $15,000.

79. Section 109–45.309 "Special classes of property" is added to address the sale of gold, hazardous property, export controlled property, classified property, nuclear-related or proliferation-sensitive property and ADPE.

80. Section 109–45.309–50 "Unserviceable Property" is deleted.

81. Section 109–45.316 "Report of identical bids" is deleted.

82. Section 109–45.317 "Noncollusive bids and proposals" is added to designate the Heads of field organization to make determinations regarding sale terms and conditions.

83. Former subpart 109–45.5 "Abandonment or destruction of personal property" is now subpart 109–45.9.

84. Subpart 109–45.6 "Debarred, suspended, and ineligible contractors" is added to require that procedures be established to ensure that listed contractors are not offered solicitations, etc.

85. Subpart 109–45.9 "Abandonment or destruction of personal property," formerly subpart 109–45.5, is changed to allow abandonment or destruction of property if the property has no commercial value or its continued care and handling would cost more than the proceeds from its sale.

86. Subpart 109–45.10 "Recovery of Precious Metals," former subpart 109–42.3 "Recovery of precious metals and strategic and critical metals," is modified to address the recovery of precious metals from items in other than pure form and use of the DoD Precious Metals Recovery Program.

87. Most of subpart 109–45.50 "Excess and surplus radioactively and chemically contaminated personal property" is now included in subpart 109–1.53 "Management of high-risk property."

88. Part 109–50 "Programmatic disposal of DOE property" is renamed to "Special DOE disposal authorities."

89. Former subpart 109–50.3 "Used Energy-Related Laboratory Equipment Grant Program" is redesignated subpart 109–50.1 and former §§ 109–50.305–5 "Excess used energy-related laboratory equipment holding organizations" and 109–50.305–6 "Screening locations" are deleted.

90. Subpart 109–50.2 "Support to Math and Science Education" is added to provide guidance on providing property to schools with math and science programs.

91. Subpart 109–50.3 "Economic development" is added to provide guidance on providing property to community economic development groups.

G. Subchapter I—Industrial Plant Equipment

92. Part 109–51 "Loans of Industrial Plant Equipment from the Defense Industrial Plant Equipment Center" is deleted as a result of the discontinuance of FPMR part 101–51.

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DOE–PMR amendments set forth in this rule. The public's participation is especially encouraged with respect to (a) the definition of terms used throughout the DOE–PMR and (b) part 109–50, Special DOE Disposal Authorities since the guidance contained in this part has significant public impact. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this rule. All comments received will be available for public inspection during normal work

hours. All written comments received by the date indicated in the "DATES" section of this notice will be carefully assessed and fully considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination in accordance with 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department of Energy has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or recordkeeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300. No new information collection is proposed by this rule.

D. Review Under the Regulatory Flexibility Act

These proposed regulatory amendments were reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., which requires preparation of an initial regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. With one exception, the proposed amendments impose compliance requirements only on management and operating contractors who are large businesses. The exception involves requirements to account for and control high risk property. In some instances, these requirements may apply to small business subcontractors. The cost of compliance will be minimal because such subcontractors already have property systems to handle high risk property without costly adjustments. Therefore, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department of Energy has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

G. Public Hearing Determination

DOE has concluded that this proposed rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, DOE has not scheduled a public hearing.

List of Subjects in 41 CFR Chapter 109

Government property management.

Issued in Washington, DC, on August 23, 1996.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

For the reasons set forth in the preamble, 41 CFR Chapter 109 is proposed to be revised as set forth below:

CHAPTER 109—DEPARTMENT OF ENERGY

PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER A—GENERAL

Part

109–1 Introduction.

109–6 Miscellaneous regulations.

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—[RESERVED]

SUBCHAPTER D—[RESERVED]

SUBCHAPTER E—SUPPLY AND PROCUREMENT

109–25 General.

109–26 Procurement sources and program.

109–27 Inventory management.

109–28 Storage and distribution.

109–30 Federal catalog system.

SUBCHAPTER F—[RESERVED]

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

109–37 Government aviation administration and coordination.

109–38 Motor equipment management.

109–39 Interagency fleet management systems.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

109–42 Utilization and disposal of hazardous materials and certain categories of property.
109–43 Utilization of personal property.
109–44 Donation of personal property.
109–45 Sale, abandonment, or destruction of personal property.
109–46 Utilization and disposal of personal property pursuant to exchange/ sale authority.
109–48 Utilization, donation, or disposal of abandoned and forfeited personal property.
109–50 Special DOE disposal authorities.

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Subpart 109–1.1—Regulation System

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109–1.100–50 Scope of subpart.
109–1.100–51 Definitions and acronyms.
109–1.101 Federal Property Management Regulations System.
109–1.101–50 DOE–PMR System.
109.1.102 Federal Property Management Regulations.
109–1.102–50 DOE–PMRs.
109–1.103 FPMR temporary regulations.
109–1.103–50 DOE–PMR temporary regulations and bulletins.
109–1.104 Publication and distribution of FPMR.
109–1.104–50 Publication and distribution of DOE–PMR.
109–1.106 Applicability of FPMR.
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109–1.107 Agency consultation regarding FPMR.
109–1.107–50 Consultation regarding DOE–PMR.
109–1.108 Agency implementation and supplementation of FPMR.
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Subpart 109–1.50—Personal Property Management Program

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109–1.5001 Policy.
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Subpart 109–1.51—Personal Property Management Standards and Practices

109–1.5100 Scope of subpart.
109–1.5101 Official use of personal property.
109–1.5102 Maximum use of personal property.
109–1.5103 Loan of personal property.
109–1.5104 Borrowing of personal property.
109–1.5105 Identification marking of personal property.
109–1.5106 Segregation of personal property.
109–1.5107 Physical protection of personal property.
109–1.5108 Personal property records requirements.
109–1.5108–1 Capital equipment.
109–1.5108–2 Sensitive items.
109–1.5108–3 Stores inventories.
109–1.5108–4 Precious metals.
109–1.5108–5 Administratively controlled items.
109–1.5109 Control of sensitive items.
109–1.5110 Physical inventories of personal property.
109–1.5111 Retirement of property.
109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.
109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.
109–1.5114 Use of non-Government-owned property.
109–1.5148 Personal property management reports.

Subpart 109–1.52—Personal Property Management Program for Designated Contractors

109–1.5200 Scope of subpart.
109–1.5201 Policy.
109–1.5202 Establishment of a personal property holdings baseline.
109–1.5203 Management of subcontractor-held personal property.
109–1.5204 Review and approval of a designated contractor's personal property management system.
109–1.5205 Personal property management system changes.

Subpart 109–1.53—Management of High Risk Personal Property

109–1.5300 Scope of subpart.
109–1.5301 Applicability.
109–1.5302 Definitions.
109–1.5303 Policies.
109–1.5304 Procedures.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254)

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Subpart 109–1.1—Regulation System

§ 109–1.100–50 Scope of subpart.

This subpart describes the Department of Energy (DOE) Property Management Regulations (DOE–PMR) system which establishes uniform property management policies, regulations, and procedures for use throughout the DOE.

§ 109–1.100–51 Definitions and acronyms.

(a) Definitions. As used in this chapter, the terms *personal property* and *property* are synonymous. In addition, the following definitions apply:

Administratively controlled items means personal property controlled at the discretion of individual DOE offices, but for which there is no DOE requirement to maintain formal records.

Capital equipment means any item of personal property having a unit acquisition cost of $5,000 or more and having the potential for maintaining its integrity (i.e., not expendable due to use) as an item.

Designated contractors means those on-site DOE contractors to which the DOE–PMR is made applicable when included as a contractual requirement. The contractors to which these regulations may be made applicable include management and operating (M&O) contractors, environmental restoration and management contractors, and other major prime contractors located at DOE sites.

Direct operations means operations conducted by DOE personnel.

Disposal means the process of redistributing, transferring, donating, selling, abandoning, destroying, or other disposition of Government-owned personal property.

Especially designed or prepared property means equipment or materials that are especially designed or prepared for nuclear application and listed in the Nuclear Suppliers Group "trigger list" published by the International Atomic Energy Agency.

Export controlled property means property the export of which is subject to licensing by the U.S. Department of Commerce or the U.S. Department of State, or authorized by the U.S. Department of Energy.

Hazardous property means any personal property, including scrap or waste but excluding property involving a radiological hazard, that is ignitable, corrosive, reactive, or toxic because of its quantity, concentration, or physical, chemical, or infectious characteristics, or that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act, or the Toxic Substances Control Act. Such property may be in solid, liquid, semi-liquid, or contained gas form and may cause or significantly contribute to an increase in mortality or illness, or pose present or potential hazard to human health or the environment when improperly used, treated, stored, transported, disposed of, or mismanaged.

Heads of field organizations means the heads of any Departmental office located outside the Washington, DC metropolitan area. In addition, the Federal Energy Regulatory Commission, and the Office of Headquarters Procurement Operations, shall be considered a field organization for purposes of these regulations.

High risk personal property means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. The categories

of high risk property (defined separately in this subpart) are proliferation sensitive property, special nuclear material, hazardous property, radioactive property, and especially designed or prepared property.

Personal property means property of any kind, except for real estate, interests therein (such as easements and rights-of-way), and permanent fixtures which is Government-owned, chartered, rented, or leased from commercial sources by and in the custody of DOE or its designated contractors; source, byproduct, special nuclear materials, and atomic weapons as defined in section 11 of the Atomic Energy Act of 1954, 42 U.S.C. 2014; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Personal property management means the development, implementation, and administration of policies, standards, programs, practices and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements, maintenance of related operating records, and disposal of personal property (exclusive of the property accounting records).

Proliferation-sensitive property means nuclear-related or dual-use equipment, material, or technology as described in the Nuclear Supplier Group's "Trigger" List and Dual-Use List; and equipment, material or technology used in the research, design, development, testing, or production of nuclear or other weapons.

Radioactive property means any item or material that is contaminated with radioactivity and which emits ionizing radiation in excess of background radiation as measured by appropriate instrumentation.

Sensitive items means those items of personal property which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: Firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, portable power tools, portable computers, and portable communications equipment.

Special nuclear material means:

(1) Plutonium, uranium enriched in the isotope of 233 or 235, and any other materials so designated pursuant to section 51 of Atomic Energy Act of 1954, 42 U.S.C. 2071, and

(2) Materials artificially enriched by any of the foregoing.

(b) Acronyms. As used in this chapter, the following acronyms apply:

ADPE—Automatic Data Processing Equipment
CFR—Code of Federal Regulations
CPPSR—Contractor Personal Property System Review
CRO—Community Reuse Organization
CSC—Customer Supply Center
DEAR—Department of Energy Acquisition Regulation
DOD—Department of Defense
DOE—Department of Energy
DOE–PMR—Department of Energy Property Management Regulations
DPMO—Departmental Property Management Officer
ECCN—Export Control Classification Number
ECI—Export Controlled Information
EHFFP—Equipment Held For Future Projects
EOQ—Economic Order Quantity
ERLE—Energy-Related Laboratory Equipment
FAA—Federal Aviation Administration
FAMIS—Federal Aviation Management Information System
FIRMR—Federal Information Resources Management Regulation
FPMR—Federal Property Management Regulations
FSC—Federal Supply Classification
FSCG—Federal Supply Classification Group
GAO—General Accounting Office
GSA—General Services Administration
GVWR—Gross Vehicle Weight Rating
HR—High Risk
IFMS—Interagency Fleet Management System
M&O Management and Operating
MCTL Military Critical Technologies List
NTSB National Transportation Safety Board
OCMA Office of Contractor Management and Administration
OPMO Organizational Property Management Officer
OPSEC Operations Security
PPL Personal Property Letter
REAPS Reportable Excess Automated Property System
SNM Special Nuclear Material
UCNI Unclassified Controlled Nuclear Information
U.S.C United States Code

§ 109–1.101 Federal Property Management Regulations System.

§ 109–1.101–50 DOE–PMR System.

The DOE–PMR system described in this subpart is established to provide uniform personal property management policies, standards, and practices within the Department.

§ 109–1.102 Federal Property Management Regulations.

§ 109–1.102–50 DOE–PMRs.

The DOE–PMRs (41 CFR Ch. 109) implements and supplements the FPMR (41 CFR Ch. 101) issued by the General Services Administration (GSA), Public Laws, Executive Orders, Office of Management and Budget directives, and other agency issuances effecting the Department's personal property management program.

§ 109–1.103 FPMR temporary regulations.

§ 109–1.103–50 DOE–PMR temporary regulations and bulletins

(a) Subject to applicable procedural requirements in 42 U.S.C 7191 and 5 U.S.C 553, Personal Property Letters are authorized for publication when time or extraordinary circumstances will not permit promulgation of an amendment to the Code of Federal Regulations (CFR) affecting DOE direct operations only and if the PPL will be effective for a period of 12 months or less. These PPLs will be codified before the designated expiration date or their effective period will be extended if it is determined that conversion to permanent form cannot be accomplished within the specified time frame.

(b) DOE–PMR Bulletins are used to disseminate information concerning personal property management matters not affecting policy or to clarify instructions in actions required by the FPMR or DOE–PMR.

§ 109–1.104 Publication and distribution of FPMR.

§ 109–1.104–50 Publication and Distribution of DOE–PMR.

The DOE–PMR will be published in the **Federal Register** and will appear in the CFR as Ch. 109 of Title 41, Public Contracts and Property Management. Looseleaf publications will be distributed to DOE offices.

§ 109–1.106 Applicability of FPMR.

§ 109–1.106–50 Applicability of FPMR and DOE–PMR.

(a) The FPMR and DOE–PMR apply to all direct operations.

(b) The DOE–PMR does not apply to facilities and activities conducted under Executive Order 12344 and Pub. L. 98–525.

(c) Unless otherwise provided in the appropriate part or subpart, the FPMR and DOE–PMR apply to designated contractors.

(d) The Procurement Executive or head of a contracting activity may designate contractors other than designated contractors to which the FPMR and DOE–PMR apply.

(e) The FPMR and DOE–PMR shall be used by contracting officers in the administration of applicable contracts, and in the review, approval, or appraisal of such contractor operations.

(f) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulation (FAR), 48 CFR part 45, and in the DOE

Acquisition Regulation (DEAR), 48 CFR part 945.

(g) Regulations for the management of personal property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR part 600) and DOE Order 534.1, Accounting.

§ 109–1.107 Agency consultation regarding FPMR.

§ 109–1.107–50 Consultation regarding DOE–PMR.

The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

§ 109–1.108 Agency implementation and supplementation of FPMR.

(a) The DOE-PMR shall include basic and significant Departmental personal property management policies and standards which implement, supplement, or deviate from the FPMR. In the absence of any DOE–PMR issuance, the basic FPMR material shall govern.

(b) The DOE–PMR shall be consistent with the FPMR and shall not duplicate or paraphrase the FPMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations, provided that the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

§ 109–1.110–50 Deviation procedures.

(a) [Reserved]

(b) Requests for deviations from applicable portions of the FPMR and DOE–PMR (except aviation related portions) shall be forwarded with supporting documentation by the Organizational Property Management Officer (OPMO) to the Departmental Property Management Officer (DPMO).

(c)(1) Requests for deviations from aviation related portions of the FPMR and DOE–PMR concerning aviation operations shall be forwarded by the OPMO with supporting documentation to the DOE Senior Aviation Management Official.

(2) Each request for deviation shall contain the following:

(i) A statement of the deviation desired, including identification of the specific paragraph number(s) of the DOE–PMR;

(ii) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(iii) If applicable, the name of the contractor and identification of the contractor affected;

(iv) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(v) A description of the intended effect of the deviation;

(vi) A statement of the period of time for which the deviation is needed; and

(vii) Any pertinent background information which will contribute to a full understanding of the desired deviation.

(d) The Deputy Assistant Secretary for Procurement and Assistance Management is authorized to grant deviations to the DOE–PMR.

(e) Requests for deviations from the FPMR will be coordinated with GSA by the DPMO.

Subpart 109–1.50—Personal Property Management Program

§ 109–1.5000 Scope of subpart.

This subpart supplements the FPMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an effective personal property management program in DOE.

§ 109–1.5001 Policy.

It is DOE policy that a program for the management of personal property shall be established and maintained to meet program needs economically and efficiently and in accordance with applicable Federal statutes and regulations.

§ 109–1.5002 Personal property management program objectives.

The objectives of the DOE personal property management program are to provide:

(a) A system for effectively managing personal property in the custody or possession of DOE organizations and designated contractors; and

(b) Uniform principles, policies, and standards for economical and efficient management of personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

Subpart 109–1.51—Personal Property Management Standards and Practices

§ 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of personal property. The standards and practices that apply to capital equipment shall be based on the unit acquisition cost threshold specified in the definition of capital equipment contained in § 109–1.100–51 of this part. No other acquisition cost threshold shall apply.

§ 109–1.5101 Official use of personal property.

Personal property shall be used only in the performance of official work of the United States Government, except:

(a) In emergencies threatening loss of life or property;

(b) As otherwise authorized by law and approved by the Director, Office of Administrative Services; heads of field organizations for their respective organizations; or a contracting officer for contractor-held property.

§ 109–1.5102 Maximum use of personal property.

Personal Property management systems shall assure that the best possible use is made of personal property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE effectively.

§ 109–1.5103 Loan of personal property.

(a) Personal property which is not excess and would otherwise be out of service for temporary periods may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. The loan request shall be in writing, stating the purpose of the loan and period of time required. The loan shall be executed on DOE Form 4420.2, Personal Property Loan Agreement or computer generated equipment when approved in writing by the OPMO. When approved, a memorandum transmitting the loan agreement shall be prepared identifying the loan period, delivery time, method of payment and transportation, and point of delivery and return, to ensure proper control and protect DOE's interest. The loan period shall not exceed one year, but may be renewed in one year increments. Second renewals of loan agreements shall be reviewed and justified at a level of management at least two levels above that of the individual making the determination to loan the property. Third renewals shall be approved by the head of the field organization or designee.

(b) Requests for loans to foreign Governments and other foreign organizations shall be submitted to the Deputy Assistant Secretary for International Energy Policy for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5104 Borrowing of personal property.

(a) DOE organizations and designated contractors are encouraged to borrow personal property within DOE to further DOE programs. Property classified as Equipment Held For Future Projects (EHFFP) or as In Standby should be reviewed by those receiving availability inquiries for short-term use (one year or less). Borrowing of Government personal property from other Federal agencies is also encouraged when required for short periods of time. Such transactions shall be covered by written agreements which include all terms of the transaction.

(b) In determining whether it is practical and economical to borrow personal property, consideration shall be given to suitability, condition, value, extent and nature of use, extent of availability, portability, cost of transportation, and other similar factors.

(c) Adequate records and controls shall be established and maintained for borrowed property to ensure its proper control and prompt return to the lender.

§ 109–1.5105 Identification marking of personal property.

(a) Personal property shall be marked "U.S. Government property" subject to the criteria below. The markings shall be securely affixed to the property, legible, and conspicuous. Examples of appropriate marking media are bar code labels, decals, and stamping.

(1) Capitalized property and sensitive items shall be marked "U.S. Government property" and numbered for control purposes.

(2) Administratively controlled property and other personal property susceptible to unauthorized personal use should be marked "U.S. Government property" and numbered for control purposes.

(b) Personal property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or, if removal is impractical, additional permanent markings may be added to indicate such disposal.

§ 109–1.5106 Segregation of personal property.

Ordinarily, contractor-owned personal property shall be segregated from Government personal property. Commingling of Government and contractor-owned personal property may be allowed only when:

(a) The segregation of the property would materially hinder the progress of the work (i.e., segregation is not feasible for reasons such as small quantities, lack of space, or increased costs); and

(b) Control procedures are adequate (i.e., the Government property is specifically marked or otherwise identified as Government property).

§ 109–1.5107 Physical protection of personal property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, and/or perimeter fencing shall be established as appropriate to prevent loss, theft, or unauthorized removal of property from the premises on which such personal property is located.

§ 109–1.5108 Personal property records requirements.

The contractor's property control records shall provide the following basic information for every accountable item of Government personal property in the contractor's possession and any other data elements required by specific contract provisions:

(a) Contract number or equivalent code designation.

(b) Asset type.

(c) Description of item (name, serial number, national stock number (if available)).

(d) Property control number (Government ownership identity).

(e) Unit acquisition cost (including delivery and installation cost, when appropriate, and unit of measure).

(f) Acquisition document reference and date.

(g) Manufacturer's name and model number.

(h) Quantity received, fabricated, issued or on hand.

(i) Location (physical area)

(j) Custodian name and organization code.

(k) Use status (active, storage, excess, etc.)

(l) High risk designation.

(m) Disposition document reference and date.

§ 109–1.5108–1 Capital equipment.

An individual property record will be developed and maintained for each item of capital equipment.

§ 109–1.5108–2 Sensitive items.

Individual item records will be maintained for each sensitive item. Minimum dollar value thresholds for controlling sensitive items, if used, will be determined by the OPMO for each DOE organization in consultation with appropriate management officials. This threshold may be applied organization-wide or by individual contractors or location. Identification of types of property meeting the DOE–PMR definition of sensitive property should be the primary determinant of sensitive category with dollar thresholds, if any, considered as a guideline only. Sensitive items which are also capital equipment will be controlled as both sensitive items and capital equipment.

§ 109–1.5108–3 Stores inventories.

Perpetual inventory records are to be maintained for stores inventory items.

§ 109–1.5108–4 Precious metals.

Perpetual inventory records are to be maintained for precious metals.

§ 109–1.5108–5 Administratively controlled items.

No formal property management records are required to be maintained for this category of personal property, which includes such items as those controlled for calibration or maintenance purposes, contaminated property, tool crib items, and equipment pool items. Various control records can be employed to help safeguard this property against waste and abuse, including purchase vs. use information, tool crib check-outs, loss and theft reports, calibration records, disposal records, and other similar records. Control techniques would include physical security, custodial responsibility, identification/ marking, or other locally established control techniques.

§ 109–1.5109 Control of sensitive items.

(a) A list of types of personal property considered to be sensitive shall be developed and maintained by each DOE activity/site, taking into consideration value, costs of administration, need for control, and other factors that management determines should apply.

(b) Items of capital equipment which are also designated as sensitive items will be controlled as sensitive items and as capital equipment.

(c) Written procedures shall be established for control of sensitive items and shall address:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level;

(2) Establishment of controls in the central receiving and warehousing

department, such as extraordinary physical protection, handling, and maintenance of a current listing of sensitive items;

(3) Establishment and maintenance of appropriate records;

(4) Requirement for tagging and identification;

(5) Use of memorandum receipts or custody documents at time of assignment or change in custody;

(6) Establishment of custodial responsibilities describing:

(i) Need for extraordinary physical protection;

(ii) Requirement for effective physical and administrative control of sensitive items assigned for general use within an organizational unit as appropriate to the type of property and the circumstances;

(iii) Requirement for prompt reporting and investigation of loss, damage or destruction; and

(iv) Requirement for promptly reporting changes in custody.

(7) Requirement for an annual physical inventory;

(8) Requirement for an employee transfer or termination check-out procedure and examination and adjustment of records;

(9) Reminder of prohibition of use for other than official purposes and penalties for misuse;

(10) A clear statement of the extent of responsibility for financial accountability depending upon contractor policy; and

(11) Other procedures which have demonstrated effective physical and administrative control over sensitive items.

§ 109–1.5110 Physical inventories of personal property.

(a) Physical inventories of those categories of personal property as specified in paragraph (f) of this section shall be conducted at all DOE and designated contractor locations.

(b) Physical inventories shall be performed by the use of personnel other than custodians of the property. Where staffing restraints or other considerations apply, the inventory may be performed by the custodian with verification by a second party.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE office and designated contractor. The OPMO shall review and approve the DOE office and contractor procedures.

(d) The conduct of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property personnel, to the extent deemed necessary to assure that approved procedures are being followed and results are accurate. These observations or audits shall be documented and the documentation retained in the inventory record file.

(e) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(f) The frequency of physical inventories of personal property shall be as follows:

(1) Capital equipment—biennial.

(2) Sensitive items—annual.

(3) Stores inventories—annual.

(4) Precious metals—annual.

(5) Administratively controlled items—There is no formal Department requirement for the performance of physical inventories of this property. However, OPMOs should determine such requirements based on management needs.

(g) Physical inventories shall be performed at intervals more frequently than required when experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control.

(h) Physical inventories of capital equipment may be conducted by the "inventory by exception" method. The system and procedures for taking physical inventories by this method must be fully documented and approved in writing by the OPMO.

(i) The results of physical inventories shall be reconciled with the property records, and with applicable financial control accounts.

(j) The results of physical inventories shall be reported to the OPMO within 30 days after the reconciliation required above.

(k) Physical inventories of capital equipment and stores inventories may be conducted by using statistical sampling methods in lieu of the normal wall-to-wall method. The sampling methods employed must be statistically valid and approved in writing by the OPMO. If use of the statistical methods of physical inventory does not produce acceptable results, the wall-to-wall method shall be used to complete the inventories.

§ 109–1.5111 Retirement of property.

When Government property is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be supported by an investigation, if necessary, as to the date and circumstances surrounding the wear, loss, theft, destruction, abandonment, or damage. The retirement work order shall be signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory level above the official initiating the report.

§ 109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.

DOE offices shall establish procedures to provide for the reporting, documentation, and investigation of instances of loss, damage, or destruction of personal property including:

(a) Notification to appropriate DOE organizations and law enforcement offices;

(b) Determination of cause or origin;

(c) Liability and responsibility for repair or replacement; and

(d) Actions taken to prevent further loss, damage, or destruction, and to prevent repetition of similar incidents.

§ 109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.

(a) Designated contractors shall report any loss, damage, or destruction of personal property in its possession or control, including property in the possession or control of subcontractors, to the property administrator either as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of property considered unreasonable by the property administrator; or loss, damage, or destruction of personal property not previously reported by the contractor, the property administrator shall require the contractor to investigate the incidents and submit written reports.

(c) Reports of physical inventory results and identified discrepancies shall be submitted to the property administrator within 90 days of completion of physical inventories. An acceptable percentage of shrinkage for stores inventories shall be determined by the property administrator on a location-by-location basis, based on type and cost of materials, historical data, and other site-specific factors. This determination shall be in writing and be supported by appropriate documentation.

(d) The contractor's report referenced above shall contain factual data as to the circumstances surrounding the loss, damage, destruction or excessive consumption, including:

(1) The contractor's name and contract number;

(2) A description of the property;

(3) Cost of the property, and cost of repairs in instances of damage (in event

actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent), and cause or origin; and

(5) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption, and to prevent repetition of similar incidents.

(e) The property administrator shall ensure that the corrective actions taken by the contractor under paragraph (d)(5) of this section satisfactorily address system weaknesses.

(f) The contracting officer shall make a determination of contractor liability with a copy of the determination furnished to the contractor and the property administrator. Costs may be assessed against a contractor for physical inventory discrepancies or other instances of loss of Government property within the terms of the contract. Credit should only be applied if specific items reported as lost can be uniquely identified. General physical inventory write-ons are not to be used as a credit.

(g) If part of a designated contractor's personal property management system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, destruction or unreasonable consumption of personal property. The property administrator shall give special attention to reasonably assuring that any loss, damage, destruction or unreasonable consumption occurring during a period when a contractor's personal property management system is not approved is identified before approval or reinstatement of approval.

§ 109–1.5114 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part of any Government-owned personal property when such action will adversely affect the operation or condition of the Government property.

§ 109–1.5148 Personal property management reports.

Reports to be submitted to the DPMO are listed in Table 1:

TABLE 1

Report Title	Due at DOE Headquarters	References	Form No.
(1) Report of Exempted Motor Vehicles	On request	FPMR 101–38.204–4, DOE-PMR 109–38.204–4	Letter.
(2) Precious Metals	Oct. 31	FPMR 101–45.1002–2, DOE-PMR 109–45.1002–2	Letter.
(3) Agency Report of Motor Vehicle Data	Oct. 31	FPMR 101–38.903, DOE-PMR 109–38.903	SF 82.
(4) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101–43.4701(c), DOE-PMR 109–43.4701(c)	Letter.
(5) Utilization and Disposal of Excess and Surplus Personal Property.	Nov. 15	FPMR 101–44.4701, and FPMR 101–45.4701	85–2.
(6) Negotiated Sales	Nov. 15	FPMR 101–45.4702, DOE-PMR 109–45.4702	Letter.
(7) Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority.	Nov. 30	FPMR 101–46.305, DOE-PMR 109–46.305	Letter.

Subpart 109–1.52—Personal Property Management Program for Designated Contractors

§ 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, and appraisal of designated contractors' programs for the management of personal property.

§ 109–1.5201 Policy.

(a) Designated contractors shall establish, implement, and maintain a system that provides for an effective personal property management program. The system shall be consistent with the terms of the contract; prescribed policies, procedures, regulations, statutes, and instructions; and directions from the contracting officer.

(b) Designated contractors' personal property management systems shall not be considered acceptable until reviewed and approved in writing by the cognizant DOE contracting office in accordance with section 109–1.5205 of this subpart.

(c) Designated contractors shall maintain their personal property management systems in writing. Revisions to the systems shall be approved in writing by the cognizant DOE contracting office in accordance with section 109–1.5205 of this subpart.

(d) Designated contractors shall include their personal property management system in their management surveillance or internal review program in order to identify weaknesses and functions requiring corrective action.

(e) Designated contractors are responsible and accountable for all Government personal property in the possession of subcontractors, and shall include appropriate provisions in their subcontracts and property management systems to assure that subcontractors establish and maintain effective systems for the management of Government personal property in their possession in accordance with § 109–1.5204 of this subpart.

§ 109–1.5202 Establishment of a personal property holdings baseline.

(a) If the contractor is a new designated contractor, the contractor may accept the previous contractor's personal property records as a baseline or may perform a complete physical inventory of all personal property. This physical inventory is to be performed within the time period specified by the contracting officer or the contract, but no later than one year after the execution date of the contract. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will be considered as the baseline.

(b) If any required physical inventories have not been accomplished within the time periods prescribed in § 109–1.5110(f) of this part, the new contractor shall either perform such physical inventories within 120 days of contract renegotiation, or accept the existing property records as the baseline.

§ 109–1.5203 Management of subcontractor-held personal property.

(a) Designated contractors shall require those subcontractors provided Government-owned personal property to establish and maintain a system for the management of such property. As a minimum, a subcontractor's personal property management system shall provide for the following:

(1) Adequate records.

(2) Controls over acquisitions.

(3) Identification as Government-owned personal property.

(4) Physical inventories.

(5) Proper care, maintenance, and protection.

(6) Controls over personal property requiring special handling (i.e., nuclear-related, proliferation-sensitive, hazardous, or contaminated property).

(7) Reporting, redistribution, and disposal of excess and surplus personal property.

(8) Accounting for personal property that is lost, damaged, destroyed, stolen, abandoned, or worn out.

(9) Periodic reports, including physical inventory results and total acquisition cost of Government property.

(10) An internal surveillance program, including periodic reviews, to ensure that personal property is being managed in accordance with established procedures.

§ 109–1.5204 Review and approval of a designated contractor's personal property management system.

(a) An initial review of a designated contractor's personal property management system shall be performed by the property administrator within one year after the execution date of the contract, except for contract extensions or renewals or when an existing contractor has been awarded a follow-on contract. The purpose of the review is to determine whether the contractor's system provides adequate protection, maintenance, utilization, and disposition of personal property, and reasonable assurance that the Department's personal property is safeguarded against waste, loss, unauthorized use, or misappropriation, in accordance with applicable statutes, regulations, contract terms and conditions, programmatic needs, and good business practices. If circumstances preclude completion of the initial review within the "within one year" initial review requirement, the property administrator shall request a deviation from the requirement in accordance with the provisions of § 109–1.110–50 of this part.

(b) If a designated contractor is the successor to a previous designated contractor and the contract award was based in part on the contractor's proposal to overhaul the existing personal property management system(s), the "within one year" initial review requirement may be extended based on:

(1) The scope of the overhaul; and

(2) An analysis of the cost to implement the overhaul within a year versus a proposed extended period.

(c) When an existing contract has been extended or renewed, or the designated contractor has been awarded a follow-on contract, an initial review of the contractor's personal property management system is not required. In such cases, the established appraisal schedule will continue to be followed as prescribed in paragraph (d) of this section.

(d) At a minimum of every three years after the date of approval of a designated contractor's property management system, the OPMO shall make an appraisal of the personal property management operation of the contractor. The purpose of the appraisal is to determine if the contractor is managing personal property in accordance with its previously approved system and procedures, and to establish whether such procedures are effective and efficient. The appraisal may be based on a formal comprehensive appraisal or a series of formal appraisals of the functional segments of the contractor's operation.

(e) A designated contractor's property management system shall be approved, conditionally approved, or disapproved in writing as specified in § 109–1.5004–5(c) of this part. When a system is conditionally approved or disapproved, the property administrator or contracting officer shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of corrective actions.

(f) Appropriate follow-up will be made by the property administrator to ensure that corrective actions have been initiated and completed.

(g) When a determination has been made by the property administrator that all major system deficiencies identified in the review or appraisal have been corrected, the head of the field organization shall withdraw the conditional approval or disapproval, and approve the system with the concurrence of the OPMO. The approval shall be in writing and addressed to appropriate contractor management.

(h) The property administrator shall maintain a copy of all designated contractor personal property management system appraisals and approvals in such manner as to be readily available to investigative and external review teams.

§ 109–1.5205 Personal property management system changes.

Any proposed significant change to a designated contractor's approved personal property management system shall be reviewed by the property administrator at the earliest possible time. Such changes should then be approved in writing on an interim basis, or disapproved in writing, by the property administrator as appropriate.

Subpart 109–1.53—Management of High Risk Personal Property

§ 109–1.5300 Scope of subpart.

This subpart provides policy and guidance for the identification and responsible disposition of high risk personal property to ensure that its disposition does not adversely affect public safety, the environment, national security, or nuclear nonproliferation objectives of the United States.

§ 109–1.5301 Applicability.

This subpart is applicable to all DOE organizations which purchase, manage or dispose of Government personal property, or contract for the management of Government facilities, programs, or related services, which may directly or indirectly require the purchase, management, or disposal of Government-owned personal property. Using the high risk property control requirements in this subpart as guidance, heads of field organizations or OPMOs shall assure that designated contractors and financial assistance recipients are responsible for developing a cost effective high risk property management system, covering all operational responsibilities enumerated in this subpart.

§ 109–1.5302 Definitions.

Automatic data processing equipment means, as used in this subpart and to the extent that such equipment is used to process export controlled information or unclassified controlled nuclear information, any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

Export controlled information (ECI) means unclassified U.S. Government information under DOE cognizance that, if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license or a DOE authorization for export under U.S. laws or regulations. ECI includes nuclear, nuclear-related, and other types of information which, if released, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives.

Unclassified controlled nuclear information (UCNI) means U.S. Government information pertaining to atomic energy defense activities as

defined in section 148 of the Atomic Energy Act. Such information can relate to aspects of nuclear weapons design, development, testing, physical security, production, or utilization facilities.

§ 109–1.5303 Policies.

(a) It is the responsibility of DOE organizations and designated contractors to manage and control Government-owned high risk property in an economical, efficient, and environmentally sound manner. However, to the extent that other previously approved systems are in place and the head of the field organization has determined, in writing, that they are operating effectively to manage and control certain categories of high risk property, such systems may continue to be utilized.

(b) When items of property are no longer needed by a Departmental organization or a designated contractor, it is generally the Government's policy to dispose of that property through the prescribed FPMR mechanisms for treatment of excess and surplus property.

(c) The disposition of certain types of property, such as high risk property, are subject to other considerations. Items of high risk property may present significant risks to the public, the environment, or to the national security and nuclear nonproliferation objectives of the Government which must be evaluated. It is, therefore, DOE policy to:

(1) Effectively balance its interest in maximizing value and effective utilization with the need to safeguard public safety, the environment, or the national security; and

(2) Ensure the accomplishment of nuclear nonproliferation objectives.

(d) Property management should provide for the assessment and identification of high risk property at the earliest stage of its life-cycle use unless the head of a field organization determines, in writing, that it is not cost effective or is otherwise inappropriate to do so. A decision by the head of a field organization not to provide life-cycle control should take into account:

(1) The nature and extent of high risk property typically purchased or otherwise brought to a DOE or designated contractor facility or site;

(2) The projected stability of DOE and designated contractor operations; and

(3) The degree of confidence in the property control measures available at disposition.

(e) A determination not to provide life cycle control consistent with this subpart shall be made in writing by the head of the field organization, with a copy sent to the Deputy Assistant Secretary for Procurement and Assistance Management. Property shall not be transferred or disposed of unless it has been subjected to a high risk property assessment.

§ 109–1.5304 Procedures.

(a) *Identification.* Generally, the earlier in its life cycle that an item of personal property is assessed for identification as high risk property, the greater the availability of information to assist in such identification and appropriate categorization. Accordingly, to help ensure the appropriate treatment of property at its disposal and to prevent inadvertent, uncontrolled release of high risk property, it is recommended that property be assessed and evaluated as high risk property as early in its life cycle as is practical.

(b) *Inventories.* This subpart does not require special inventories for the identification of high risk property. It is, however, required that DOE and designated contractors use the inventory process as a means to identify high risk property as early in its life cycle as possible. Inventories shall be conducted in accordance with the schedules established in this regulation, the DEAR, and the Financial Assistance Rule.

(c) *Disposition of high risk property.*—(1) *General.* (i) Prior to its disposition an item of personal property, materials or data will be assessed to determine whether it should be characterized as high risk.

(ii) The DOE or designated contractor property management organization may not process high risk property into a reutilization/disposal program unless all reviews are properly documented and all appropriate certifications and clearances have been received, in accordance with the approved site or facility personal property management program.

(2) Special requirements.

(i) Nuclear-related, proliferation-sensitive, radioactive property, hazardous property and unclassified controlled nuclear information (UCNI) shall be dispositioned in accordance with approved procedures and systems or with the prior approval of the cognizant program office. Disposition and handling of the first four categories of property are subject to applicable provisions of subchapter H in the FPMR and this regulation and UCNI is subject to section 148 of the Atomic Energy Act.

(ii) DOE organizations and designated contractors shall take measures to ensure that proliferation-sensitive or other export controlled property and information is not directly exported to countries on the DOE Sensitive Country List (Attachment 1 of the *Interim Guidelines for Export Control and Nonproliferation, dated November 3, 1994* or any subsequent amendments adopted and issued by the Department) except in accordance with Government nonproliferation and national security policy and objectives.

(iii) Surplus nuclear weapons components and equipment and materials especially designed or prepared for nuclear use as identified in the Nuclear Suppliers Group "Trigger" List, shall either be sold for scrap after being made useless for their originally intended purpose or shall be destroyed and verified unless an alternative disposition option appears to be in the best interest of the Government. Requests for an approval of alternative disposition may be made through the cognizant Assistant Secretary to the Director of the Office of Nonproliferation and National Security.

(iv) Automatic data processing equipment shall be sanitized before being turned in for disposition to ensure that all data, information, and software have been removed from the equipment.

(d) *Transfer documentation.* Property transfer records should include all available documentation concerning the subject property's categorization as high risk, use, and special handling instructions, including any warnings, safety instructions, and information pertaining to future disposition, as appropriate. Such documentation shall be included with all transfers external to DOE and DOE contractor organizations as well as transfers external to those organizations. Nuclear materials safeguard and security concerns shall be addressed in accordance with DOE Order 5633.3B, Control and Accountability of Nuclear Materials.

(e) *Export Restriction Notice.* The following Export Restriction Notice shall be included in all sales, transfers or other offerings:

Export Restriction Notice

The use, disposition, export and reexport of this property is subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 USC 2751 et seq.); the Export Administration Act of 1979 (560 USC Append 2401 et seq.); DOE Regulations (10 CFR part 810); International Traffic in Arms Regulations (22 CFR part 120 et seq.); Export Administration Regulations (15 CFR part 730 et seq.); Foreign Assets Control Regulations (31 CFR part 500 et seq.); and the Espionage Act (37 USC 791 et seq.) which among other things, prohibit:

a. The making of false statements and concealment of any material information regarding the use or disposition, export or reexport of the property; and

b. Any use or disposition, export or reexport of the property which is not

authorized in accordance with the provisions of this agreement.

PART 109–6—MISCELLANEOUS REGULATIONS

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

Sec.
109–6.400 Scope and applicability.
109–6.400–50 Instructions to DOE passenger carrier operators.
109–6.402 Policy.
109–6.450 Statutory provisions.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 109–6.400 Scope and applicability.

(a) With the exception of § 109–6.400–50, the provisions of this subpart and 41 CFR 101–6.4 do not apply to designated contractors. Official use provisions applicable to these contractors are contained in § 109–38.3 of this chapter.

(b) When an employee on temporary duty is authorized to travel by Government motor vehicle, and in the interest of the Government, is scheduled to depart before the beginning of regular working hours, or if there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day. Similarly, when scheduled to return after the close of working hours, the motor vehicle may be returned the next regular working day. This use of a Government motor vehicle is not regarded as prohibited by 31 U.S.C. 1344 (25 Comp. Gen. 844).

§ 109–6.400–50 Instructions to DOE passenger carrier operators.

DOE offices shall ensure that DOE employees operating Government motor vehicles are informed concerning:

(a) The statutory requirement that Government motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of Government motor vehicles, and for compliance with Federal, state, and local laws and regulations, and all accident reporting requirements;

(c) The need to possess a valid state, District of Columbia, or commonwealth operator's license or permit for the type of vehicle to be operated and some form of agency identification;

(d) The penalties for unauthorized use of Government motor vehicles;

(e) The prohibition against providing transportation to strangers or hitchhikers;

(f) The proper care, control and use of Government credit cards;

(g) Mandatory use of seat belts by each employee operating or riding in a Government motor vehicle;

(h) The prohibition against the use of tobacco products in GSA-Interagency Fleet Management System (IFMS) motor vehicles;

(i) Any other duties and responsibilities assigned to operators with regard to the use, care, operation, and maintenance of Government motor vehicles;

(j) The potential income tax liability when they use a Government motor vehicle for transportation between residence and place of employment; and

(k) Protection for DOE employees under the Federal Tort Claims Act when acting within the scope of their employment.

§ 109–6.402 Policy.

(a) It is DOE policy that Government motor vehicles operated by DOE employees are to be used only for official Government purposes. Official use does not include use of vehicles between residence and place of employment unless provided for in accordance with paragraph (b) of this section. The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall establish appropriate controls to ensure that the use of a Government motor vehicle for transportation between an employee's residence and place of employment is in accordance with the provisions of 41 CFR 101–6.4 and this subpart.

(b) The use of Government motor vehicles between an employee's residence and place of employment is limited to:

(1) The Secretary of Energy and the Deputy Secretary of Energy; and

(2) Those persons engaged in field work as determined by the Secretary of Energy in accordance with 41 CFR 101–6.403(b) and paragraph (b) of § 109–6.403.

(c) It is DOE policy that space in a Government motor vehicle used for home-to-work transportation may be shared with a spouse, relative, or friend in accordance with the restrictions contained in 41 CFR 101–6.402(f).

§ 109–6.450 Statutory provisions.

(a) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of a Government passenger motor vehicle for other than official purposes shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(b) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (including Government motor vehicles) may be subject to criminal prosecution and, upon conviction, to fines or imprisonment.

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109–25—GENERAL

Subpart 109–25.1—General Policies

Sec.
109–25.100 Use of Government personal property and nonpersonal services.
109–25.103 Promotional materials, trading stamps, or bonus goods.
109–25.103–1 General.
109–25.104 Acquisition of office furniture and office machines.
109–25–109 Laboratory and research equipment.
109–25–109–1 Identification of idle equipment.
109–25–109–2 Equipment pools.

Subpart 109–25.3—Use Standards

109–25.302 Office furniture, furnishings, and equipment.
109–25.350 Furnishing of Government clothing and individual equipment.

Subpart 109–25.4—Replacement Standards

109–25.401 General.
109–25.401–50 Replacement approvals.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Subpart 109–25.1—General Policies

§ 109–25.100 Use of Government personal property and nonpersonal services.

The Director, Office of Administrative Services and heads of field organizations shall ensure to restrict the use of Government property/services to officially designated activities.

§ 109–25.103 Promotional materials, trading stamps, or bonus goods.

§ 109–25.103–1 General.

DOE offices and designated contractors shall establish procedures for the receipt and disposition of promotional materials, trading stamps, or bonus goods consistent with the provisions of 41 CFR 101–25.103.

§ 109–25.104 Acquisition of office furniture and office machines.

DOE offices and designated contractors shall make the determination as to whether requirements can be met through the utilization of DOE owned furniture and office machines.

§ 109–25.109 Laboratory and research equipment.

The provisions of 41 CFR 101–25.109 and this section apply to laboratory and research equipment in the possession of DOE field organizations and designated contractors.

§ 109–25.109–1 Identification of idle equipment.

(a) As a minimum, management walk-throughs shall be conducted to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The submission to the head of the laboratory or facility of a report of walk-throughs conducted shall be at the discretion of the laboratory or facility management. However, DOE field organizations may require designated contractors to submit a report of walk-throughs to the OPMOs. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in equipment pools, or excessed, as appropriate. All walk-throughs shall be documented to include, as a minimum, identity of the participants, areas covered, findings, recommendations, corrective action plans, and results achieved. The documentation shall be made available for review by appropriate contractor management, DOE offices, and audit teams.

(b) Members of management walk-through inspection teams should be coordinated with the property administrator and the OPMO.

(c) OPMOs shall periodically review walk-through procedures and practices of DOE offices and designated contractors to determine their effectiveness.

§ 109–25.109–2 Equipment pools.

(a)—(c) [Reserved]

(d) The report on the use and effectiveness of equipment pools shall be submitted to the head of the DOE office at the discretion of that official. However, documentation of evaluations of pools shall be maintained and made available for review by appropriate contractor management, DOE offices, and audit teams.

(e) Heads of field organizations shall require periodic independent reviews of equipment pool operations.

Subpart 109–25.3—Use Standards

§ 109–25.302 Office furniture, furnishings, and equipment.

The Director, Office of Administrative Services, heads of field organizations, and designated contractors shall establish criteria for the use of office furniture, furnishings, and equipment.

§ 109–25.350 Furnishing of Government clothing and individual equipment.

(a) Government-owned clothing and individual equipment may be furnished to employees:

(1) For protection from physical injury or occupational disease; or

(2) When employees could not reasonably be required to furnish them as a part of the personal clothing and equipment needed to perform the regular duties of the position to which they are assigned or for which services were engaged.

(b) This section does not apply to uniforms or uniform allowances under the Federal Employees Uniform Allowance Act of 1954, as amended.

Subpart 109–25.4—Replacement Standards

§ 109–25.401 General.

§ 109–25.401–50 Replacement approvals.

The Director, Office of Administrative Services and heads of field organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment.

PART 109–26—PROCUREMENT SOURCES AND PROGRAM

Subpart 109–26.2—Federal Requisitioning System

Sec.

109–26.203 Activity address codes.

Subpart 109–26.5—GSA Procurement Programs

109–26.501 Purchase of new motor vehicles.
109–26.501–1 General.
109–26.501–4 Submission of orders.
109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.
109–26.501–51 Used vehicles.
109–26.501–52 Justification for purchase.
109–26.501–53 Acquisitions by transfer.
109–26.501–54 Communications equipment.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Subpart 109–26.2—Federal Requisitioning System

§ 109–26.203 Activity address codes.

(a) DOE field organizations designated by OCMA are responsible for processing routine activity code related transactions for specified groupings of field organizations. Each field organization in a specified grouping will forward their activity address code related transactions to the grouping's lead organization for processing. Each lead organization shall designate a point of contact who will:

(1) Verify the need, purpose, and validity of each transaction; and

(2) Be the specified grouping's authorized point of contact for dealing directly with GSA.

(b) OCMA is responsible for:

(1) All policy matters related to the issuance and control of activity address codes within DOE; and

(2) Furnishing the identify of the lead field organization points of contact to GSA.

Subpart 109–26.5—GSA Procurement Programs

§ 109–26.501 Purchase of new motor vehicles.

§ 109–26.501–1 General.

(a) [Reserved]

(b) Motor vehicles may be purchased directly rather than through GSA when a waiver has been granted by GSA. The waiver request should be submitted directly to GSA and a copy forwarded to the DPMO. However, where GSA refuses to grant a waiver and it is believed that procurement through GSA would adversely affect or otherwise impair a program, the DPMO may, upon written request of the head of the DOE field organization, grant the authority for direct purchase of general purpose motor vehicles. Upon receipt of written authorization from the DPMO, the head of the field organization may authorize direct purchase of special purpose vehicles. The purchase price for passenger motor vehicles shall not exceed any statutory limitation in effect at the time the purchase is made.

§ 109–26.501–4 Submission of orders.

An original and two copies of requisitions for passenger motor vehicles and law enforcement motor vehicles shall be forwarded with justification for purchase to the DPMO, for approval and submission to GSA. Requisitions for all other types of motor vehicles shall be submitted directly to GSA.

§ 109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.

(a) Authority for the acquisition of passenger motor vehicles is contained in the Department's annual appropriation act.

(b) DOE offices shall include in their budget submissions the number of passenger motor vehicles to be purchased during the fiscal year. The procurements will be identified as either additions to the motor vehicle fleet or replacement vehicles. A copy of the motor vehicle portion of the submission should be submitted to the DPMO.

(c) To assure that DOE does not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Deputy Assistant Secretary for Procurement and Assistance Management or designee shall allocate to and inform the field organizations in writing of the number of passenger motor vehicles which may be acquired under each appropriation. These allocations and the statutory cost limitations imposed on these motor vehicles shall not be exceeded.

(d) The motor vehicle fleet manager shall provide written certification to the OPMO that disposition action has been taken on replaced passenger motor vehicles. Such certification shall be provided no later than 30 days after the disposition of the vehicle. Replaced passenger motor vehicles shall not be retained in service after receipt of the replacement vehicle.

§ 109–26.501–51 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used motor vehicles. However, the Director, Office of Administrative Services and heads of field organizations may authorize the purchase of used motor vehicles where justified by special circumstances, e.g., when new motor vehicles are in short supply; motor vehicles are to be used for experimental or test purposes; or motor vehicles are acquired from exchange/sale. The statutory passenger motor vehicle allocation requirements shall apply to any purchase of used passenger motor vehicles except in the case of motor vehicles to be used exclusively for experimental or test purposes.

§ 109–26.501–52 Justification for purchase.

(a) Requisitions for additions to the passenger motor vehicle fleet must contain adequate written justification of need. Such justifications shall be prepared by the motor vehicle fleet manager and approved by the OPMO, and should include:

(1) A statement as to why the present fleet size is inadequate to support requirements;

(2) Efforts made to achieve maximum use of on-hand motor vehicles through pool arrangements, shuttle buses, and taxicabs;

(3) The programmatic requirement for the motor vehicles and the impact on the program/project if the requisitions are not filled;

(4) The established DOE or local utilization objectives used to evaluate the utilization of passenger motor vehicles and whether the objectives have been approved by the OPMO; and

(5) The date of the last utilization review and the number of passenger motor vehicles which did not meet the established utilization objectives and the anticipated mileage to be achieved by the new motor vehicles.

(b) Requisitions for replacement passenger motor vehicles should include a statement that utilization, pools, shuttle buses and taxicabs have been considered by the motor vehicle fleet manager and the OPMO. Specific information on the identification, age and mileage of the motor vehicles should be included. When a passenger motor vehicle being replaced does not meet Federal replacement standards, a description of the condition of the vehicle should also be provided.

§ 109–26.501–53 Acquisitions by transfer.

(a) The acquisition of passenger motor vehicles by transfer from another Government agency or DOE organization shall be within the allocations prescribed in § 109–26.501–50 of this subpart.

(b) Passenger motor vehicles may be acquired by transfer provided they are:

(1) Considered as an addition to the motor vehicle fleet of the receiving office;

(2) Acquired for replacement purposes and an equal number of replaced motor vehicles are reported for disposal within 30 days;

(3) For temporary emergency needs exceeding three months and approved in writing by the DPMO; or

(4) For temporary emergency needs of three months or less in lieu of commercial rentals. These transfers will not count toward the allocation.

§ 109–26.501–54 Communications equipment.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of 41 CFR 101–26.501. The Fleet Manager shall approve the installation of communications equipment in motor vehicles.

PART 109–27—INVENTORY MANAGEMENT

Sec.

109–27.000–50 Scope of part.
109–27.000–51 Definitions.

Subpart 109–27.1—Stock Replenishment

109–27.102 Economic order quantity principle.
109–27.102–1 Applicability.
109–27.102–50 Systems contracting.
109–27.102–51 Policy.
109–27.102–52 Implementation.

Subpart 109–27.2—Management of Shelf-Life Materials

109–27.202 Applicability.

Subpart 109–27.3—Maximizing Use of Inventories

109–27.302 Applicability.

Subpart 109–27.4—Elimination of Items from Inventory

109–27.402 Applicability.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

109–27.5001 Objectives.
109–27.5002 Stores inventory turnover ratio.
109–27.5003 Stock control.
109–27.5004 Sub-stores.
109–27.5005 Shop, bench, cupboard or site stock.
109–27.5006 Stores catalogs.
109–27.5007 Physical inventories.
109–27.5007–1 Procedures.
109–27.5007–2 Inventory adjustments.
109–27.5008 Control of drug substances and potable alcohol.
109–27.5009 Control of hypodermic needles and syringes.
109–27.5010 Containers returnable to vendors.
109–27.5011 Identification marking of metals and metal products.
109–27.5011–1 General.
109–27.5011–2 Exception.

Subpart 109–27.51—Management of Precious Metals

109–27.5100 Scope of subpart.
109–27.5101 Definition.
109–27.5102 Policy.
109–27.5103 Precious Metals Control Officer.
109–27.5104 Practices and procedures.
109–27.5104–1 Acquisitions.
109–27.5104–2 Physical protection and storage.
109–27.5104–3 Perpetual inventory records.
109–27.5104–4 Physical inventories.
109–27.5104–5 Control and issue of stock.
109–27.5104–6 Control by using organization.
109–27.5105 Management reviews and audits.
109–27.5106 Precious metals pool.
109–27.5106–1 Purpose.
109–27.5106–2 Withdrawals.
109–27.5106–3 Returns.
109–27.5106–4 Withdrawals/returns forecasts.
109–27.5106–5 Assistance.
109–27.5107 Recovery of silver from used hypo solution and scrap film.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–27.000–50 Scope of part.

This part excludes atomic weapons or byproducts and source or special nuclear materials as defined in the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

§ 109–27.000–51 Definitions.

As used in this part the following definitions apply:

Inventories mean stocks of stores, construction, supplies, and parts used in support of DOE programs.

Inventory management means the effective use of methods, procedures and techniques for recording, analyzing, and adjusting inventories in accordance with established policy. The following related functions are included:

(1) Providing adequate protection against misuse, theft, and misappropriation.

(2) Providing accurate analyses of quantities to determine requirements so that only minimal obsolescence losses will be encountered, while ensuring adequate inventory levels to meet program schedules.

(3) Providing adequate and accessible storage facilities and services based upon analyses of program requirements so that a minimum and economical amount of time is required to service the program.

Stock record means a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory.

Sub-store means a geographically removed part of the main store's operation conducted as a subordinate element of it and subject to the same management policies and inventory controls.

Systems contracting means a materials management purchasing technique for the purchase of general, common-use, and repetitive supply items in a particular product family. An example is office supplies, purchased from a commercial vendor, that are needed for immediate use instead of purchasing in bulk for future use, storing in warehouses, and issuing to customers by use of a requisitioning system. Systems contracting and just-in-time contracting are synonymous.

Subpart 109–27.1—Stock Replenishment

§ 109–27.102 Economic order quantity principle.

§ 109–27.102–1 Applicability.

Replenishment of inventories of stock items having recurring demands will be by use of the economic order quantity (EOQ) principle. However, when considered more suitable, designated contractors may use other generally accepted approaches to EOQ.

§ 109–27.102–50 Systems contracting.

Systems contracting may be used instead of or along with EOQ once a determination is made that such a system is feasible and cost effective, and that adequate controls are in place to ensure proper use.

§ 109–27.102–51 Policy.

Systems contracting for supply operations is a proven cost-effective approach to meeting procurement needs and may be implemented in DOE offices and designated contractors wherever significant cost savings to the Government will result. Impacts on local suppliers and small and disadvantaged business concerns should be considered in the overall business strategy.

§ 109–27.102–52 Implementation.

(a) DOE OPMOs shall establish required property management controls relative to the implementation of systems contracting.

(b) DOE offices and designated contractors operating a materials management function who have not performed an initial feasibility study for the implementation of systems contracting shall perform such a study for selected commodity groups. The study may be accomplished over a period of time, until all commodity groups have been considered. The study should address functional requirements, activity levels of commodity groups and individual items, and potential impacts on local suppliers and small and disadvantaged businesses. An industrial relations analysis on existing labor relations and union contracts may also be necessary.

(c) As required in the DEAR, DOE offices and designated contractors are required to consider the use of GSA supply sources when economically advantageous to the Government. These sources must be considered in the conduct of the feasibility study.

(d) DOE contracting offices shall evaluate the initial cost benefit studies performed by contractors to verify the savings and other benefits of systems contracting, and shall approve its implementation. In those instances where a cost benefit study has previously been performed, the DOE contracting office shall ensure that those studies have been evaluated and the approval to proceed with systems contracting has been provided to the contractor in writing.

(e) DOE offices shall periodically reevaluate systems contracting operations conducted by their office and designated contractors to ensure that required property management controls are being followed.

Subpart 109–27.2—Management of Shelf-Life Materials

§ 109–27.202 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to the management of shelf-life materials.

Subpart 109–27.3—Maximizing Use of Inventories

§ 109–27.302 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to maximizing use of inventories.

Subpart 109–27.4—Elimination of Items From Inventory

§ 109–27.402 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to determine which items should be eliminated from inventory.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109–27.5001 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with DOE requirements, applicable laws and regulations, and the following objectives:

(a) The maintenance of adequate stock levels through accurate analyses of quantities to determine requirements and stock replenishments so that only minimal obsolescence losses will be encountered while ensuring adequate inventory levels to meet program schedules;

(b) The protection of materials against misuse, theft, and misappropriation;

(c) The maintenance of an economical operation; and

(d) The standardization of inventories to the greatest extent practicable.

§ 109–27.5002 Stores inventory turnover ratio.

Comparison of investment in stores inventories to annual issues shall be made to assure that minimum inventories are maintained for the support of programs. This comparison may be expressed either as a turnover ratio (issues divided by dollar value of inventory) or in the average number of month's supply on hand. Turnover or number of month's supply is calculated only on current-use inventory. Performance goals, i.e., a six months investment or a turnover ratio of 2.0, shall be established for each stores using

activity. It is recognized, however, that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109–27.5003 Stock control.

(a) Stock control shall be maintained on the basis of stock record accounts of inventories on hand, on order, received, issued, and disposed of, and supported by proper documents in evidence of these transactions. Stock record accounts shall be available for review and inspection.

(b) Personal property under stock control for greater than 90 days shall be maintained in stock record accounts.

§ 109–27.5004 Sub-stores.

(a) Sub-stores shall be established when necessary to expedite delivery of materials and supplies to the users, serve emergencies, provide economy in transportation, reduce shop and site stocks, and enable stores personnel to provide assistance in obtaining materials and supplies as needed.

(b) Items stored for issue in the sub-stores shall be treated as inventory items for control and reporting purposes. Stock records shall be integrated with central stock records so that the total amount on hand of any item at all locations is known.

§ 109–27.5005 Shop, bench, cupboard or site stock.

Shop, bench, cupboard or site stocks are an accumulation of small inventories of fast-moving materials at the point of use. Normally, these inventories are expensed at time of issue from controlled stores. However, when stocks of such inventories are not consumed or do not turn over in a reasonable period of time, which normally should not exceed 90 days, these items should be subject to the required physical controls and recorded in the proper inventory account.

§ 109–27.5006 Stores catalogs.

A stores catalog for customer use that lists items available from stock shall be established for each stores operation. Exceptions to this requirement are authorized where establishment of a catalog is impracticable or uneconomical because of small total value or number of items involved, or temporary need for the facility.

§ 109–27.5007 Physical inventories.

§ 109–27.5007–1 Procedures.

The following procedures shall be established for taking physical inventory of stocks subjected to quantity controls as well as those under financial control:

(a) Completion of a physical inventory not less frequently than every twelve months.

(b) Reconciliation of inventory quantities with the stock records.

(c) Preparation of a report of the physical inventory results.

§ 109–27.5007–2 Inventory adjustments.

Discrepancies between physical inventories and stock records shall be adjusted and the supporting adjustment records shall be reviewed and approved by a responsible official at least one supervisory level above the supervisor in charge of the warehouse or storage facility. Items on an adjustment report which are not within reasonable tolerances for particular items shall be thoroughly investigated before report approval. Adjustment reports shall be retained on file for inspection and review.

§ 109–27.5008 Control of drug substances and potable alcohol.

Effective procedures and practices shall provide for the management and physical security of controlled substances and potable alcohol from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations. Controls and records of potable alcohol shall be maintained on quantities of one quart and above.

§ 109–27.5009 Control of hypodermic needles and syringes.

Effective procedures and practices shall provide for the management and physical security of hypodermic needles and syringes to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the items useless prior to disposal.

§ 109–27.5010 Containers returnable to vendors.

Containers furnished by vendors shall be administratively and physically controlled before and after issuance. Prompt action shall be taken to return such containers to vendors for credit after they have served their intended use.

§ 109–27.5011 Identification marking of metals and metal products.

§ 109–27.5011–1 General.

Metals and metal products shall be identified and marked in accordance with applicable Federal standards. This requirement applies to direct charges as well as to items procured for store, shop or floor stock, or for use on construction projects. Additional markings not covered by Federal standards should be used to show special properties, corrosion data, or test data as required. The preferred process is for the marking to be done in the manufacturing process, but it may be applied by suppliers when circumstances warrant.

§ 109–27.5011–2 Exception.

Exceptions to the marking requirement may be made when:

(a) It is necessary to procure small quantities from suppliers not equipped to do the marking;

(b) It would delay delivery of emergency orders; or

(c) Procurement is from DOE or other Federal agency excess.

Subpart 109–27.51—Management of Precious Metals

§ 109–27.5100 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of purchased and recovered precious metals used to meet research, development, production, and other programmatic needs.

§ 109–27.5101 Definition.

Precious metals means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

§ 109–27.5102 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

§ 109–27.5103 Precious Metals Control Officer.

Each DOE organization and contractor holding precious metals shall designate in writing a Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Assuring that the organization's precious metals activities are conducted in accordance with Departmental requirements.

(b) Maintaining of an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Insuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performing periodic unannounced inspections of a custodian's precious metals inventory and records.

(g) Conducting an annual review of precious metals holdings to determine excess quantities.

(h) Preparing and submitting of the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conducting a program for the recovery of silver from used hypo solution and scrap film in accordance with 41 CFR 101–45.10 and 109–45.10 of this chapter.

(j) Preparing and submitting of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–45.1002–2 of this chapter.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals from stockrooms.

§ 109–27.5104 Practices and procedures.

§ 109–27.5104–1 Acquisitions.

DOE organizations and contractors shall contact the DOE Precious Metals Pool Manager to determine the availability of precious metals prior to acquisition on the open market.

§ 109–27.5104–2 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious metals not in use shall be stored in a noncombustible combination locked repository with access limited to the designated custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately. All combinations used for precious metals protection shall be changed at least on an annual basis.

§ 109–27.5104–3 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of DOE Order 534.1, Accounting.

§ 109–27.5104–4 Physical inventories.

(a) Physical inventories shall be conducted annually by custodians, and witnessed by the Precious Metals Control Officer or his designee.

(b) Precious metals not in use shall be inspected and weighed on calibrated scales. The inventoried weight and form shall be recorded on the physical inventory sheets by class of metal. Metals in use in an experimental process or contaminated metals, neither of which can be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle metals shall be required from the custodian and approved one level above the custodian, or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

§ 109–27.5104–5 Control and issue of stock.

Precious metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with effective and economical support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metals, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated annually. Issues of metals will be made only to authorized persons.

(c) Accurate records of all receipts, issues, returns, and disposals shall be maintained in the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

§ 109–27.5104–6 Control by using organization.

(a) After receipt, the using organization shall provide necessary controls for precious metals. Materials shall be stored in a non-combustible, combination locked repository at all times except for quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Departmental managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

(e) Employee termination and transfer procedures shall include clearance for precious metals possession.

§ 109–27.5105 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if the quantity is in excess of program requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE precious metals pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

§ 109–27.5106 Precious metals pool.

§ 109–27.5106–1 Purpose.

The purpose of the precious metals pool is to recycle, at a minimum cost to pool participants, DOE-owned precious metals within the Department and to dispose of DOE-owned precious metals that are excess to DOE needs. However, if the pool is unable to accept any potential precious metal return, the using activity will dispose of the precious metals through the normal disposal process.

§ 109–27.5106–2 Withdrawals.

Pure metals, parts, fabricated products, catalysts, or solutions, are generally available and the DOE pool contractor can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109–27.5106–3 Returns.

All excess precious metals must be returned to the precious metals pool except as noted in § 109–27.5106–1 of this subpart. The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals must be returned to the pool for recycling. With the exception of silver, this includes precious metals in any form, including shapes, scrap, or

radioactively contaminated. Only high grade nonradioactively contaminated silver should be included. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

§ 109–27.5106–4 Withdrawals/returns forecasts.

The precious metals pool contractor will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109–27.5106–5 Assistance.

The precious metals pool is operated by a private firm under a contract with DOE. DOE organizations and contractors may obtain specific information (operating contractor's name, address, telephone number, and processing charges) regarding the operation of the pool by contacting the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109–27.5107 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109–45.1003 of this chapter.

PART 109–28—STORAGE AND DISTRIBUTION

Sec.

109–28.000–50 Policy.
109–28.000–51 Storage guidelines.

Subpart 109–28.3—Customer Supply Centers

109–28.306 Customer supply center (CSC) accounts and related controls.
109–28.306–3 Limitations on use.
109–28.306–5 Safeguards.

Subpart 109–28.50—Management of Equipment Held for Future Projects

109–28.5000 Scope of subpart.
109–28.5001 Definition.
109–28.5002 Objective.
109–28.5003 Records.
109–28.5004 Justification and review procedures.
109–28.5005 EHFFP program review.
109–28.5006 Utilization.

Subpart 109–28.51—Management of Spare Equipment

109–28.5100 Scope of subpart.
109–28.5101 Definition.
109–28.5102 Exclusions.
109–28.5103 Management policy.

Authority: 42 U.S.C. 7254.

§ 109–28.000–50 Policy.

DOE offices and designated contractors shall:

(a) Establish storage space and warehousing services for the receipt, storage, issue, safekeeping and protection of Government property;

(b) Provide storage space and warehousing services in the most economical and efficient manner consistent with program requirements; and

(c) Operate warehouses in accordance with generally accepted industrial management practices and principles.

§ 109–28.000–51 Storage guidelines.

(a) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(b) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(c) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property, with entrance to such areas restricted to authorized personnel only.

(d) Property in storage must be protected from fire, theft, deterioration, or destruction. In addition certain items require protection from dampness, heat, freezing, or extreme temperature changes. Other items must be stored away from light and odors, protected from vermin infestation, or stored separately because of their hazardous characteristics.

(e) Hazardous or contaminated property, including property having a history of use in an area where exposure to contaminated property may have occurred, shall not be commingled with non-contaminated property, but stored separately in accordance with instructions from the environmental, safety, and safety officials.

(f) Nuclear-related and proliferation-sensitive property shall be identified as such by use of a certification tag signed by an authorized program official (designated in writing with signature cards on file in the personal property management office). Such personal property shall not be commingled with other personal property, but stored separately in accordance with instructions from the cognizant program office.

Subpart 109–28.3—Customer Supply Centers

§ 109–28.306 Customer supply center (CSC) accounts and related controls.

§ 109–28.306–3 Limitations on use.

DOE offices and designated contractors shall establish internal controls for ensuring that the use of CSC accounts is limited to the purchase of items for official Government use.

§ 109–28.306–5 Safeguards.

DOE offices and designated contractors shall establish internal controls for ensuring that the customer access codes assigned for their accounts are properly protected.

Subpart 109–28.50—Management of Equipment Held for Future Projects

§ 109–28.5000 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of equipment held for future projects.

§ 109–28.5001 Definition.

Equipment held for future projects (EHFFP) means items being retained, based on approved justifications, for a known future use, or for a potential use in planned projects.

§ 109–28.5002 Objective.

The objective of the EHFFP program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained where economically justifiable for retention, considering cost of maintenance, replacement, obsolescence, storage, deterioration, or future availability; made available for use by others; and promptly excessed when no longer needed.

§ 109–28.5003 Records.

Records of all EHFFP shall be maintained by the holding organization, including a listing of items with original date of classification as EHFFP; initial justifications for retaining EHFFP; rejustifications for retention; and documentation of reviews made by higher levels of management.

§ 109–28.5004 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of the initial classification EHFFP shall be reviewed

by management at a level above that of the individual making the initial determination.

(c) Retention of EHFFP must be rejustified annually to ensure that original justifications remain valid. The rejustifications will contain sufficient detail to support retention.

(d) Annual rejustifications for retention of EHFFP for longer than one year shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the EHFFP. EHFFP retained for periods longer than three years should be approved by the head of the DOE field organization.

§ 109–28.5005 EHFFP program review.

OPMOs shall conduct periodic reviews to ensure that the EHFFP program is being conducted in accordance with established procedures and this subpart. Included in the review will be proper determination of property as EHFFP, the validity of justifications for retaining EHFFP, and the inclusion of EHFFP in management walk-throughs as prescribed in § 109–25.109–1 of this subchapter.

§ 109–28.5006 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition.

Subpart 109–28.51—Management of Spare Equipment

§ 109–28.5100 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109–28.5101 Definition.

Spare equipment means items held as replacement spares for equipment in current use in DOE programs.

§ 109–28.5102 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment installed for emergency backup, e.g., an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment items properly classified as stores inventory.

§ 109–28.5103 Management policy.

(a) Procedures shall require the maintenance of records for spare equipment, cross-referenced to the location in the facility and the engineering drawing number. The purpose for retention shall be in the records.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. The reviews should be held biennially. In addition, individual item levels shall be reviewed when spare equipment is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide for the identification and reporting of unneeded spare equipment as excess property.

PART 109–30—FEDERAL CATALOG SYSTEM

Sec.

109–30.001–50 Applicability.

Authority: 42 U.S.C. 7254.

§ 109–30.001–50 Applicability.

The provisions of 41 CFR part 101–30 do not apply to designated contractors.

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

PART 109–37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

Sec.

109–37.000 Scope of part.

Subpart 109–37.1—Definitions

109–37.101 Definitions.

Subpart 109–37.4—Use of Government-Owned and Operated Aircraft

109–37.400 General.

Subpart 109–37.5—Federal Aviation Management Information System (FAMIS)

109–37.507 Reports.

Subpart 109–37.12—Federal Agency Aviation Safety Program

109–37.1202 Agency aviation safety responsibilities.
109–37.1207 Inspections and evaluations.
109–37.1208 Hazard reporting.
109–37.1209 Aircraft accident and incident investigation and reporting.
109–37.1213 Aircraft accident and incident database.

Subpart 109–37.50—Authority, Registration, Maintenance, and Records

109–37.5000 Pilot in command responsibility and authority.
109–37.5001 Authority required for the acquisition, hire, or borrowing of aircraft.
109–37.5002 Aircraft authorization.
109–37.5003 Management responsibility.
109–37.5004 Registration and identification.
109–37.5005 Airworthiness.
109–37.5006 Maintenance.
109–37.5007 Operation.
109–37.5008 Records.

Authority: 42 U.S.C. 7254.

§ 109–37.000 Scope of part.

This part supplements 41 CFR part 101–37, and establishes basic policies and procedures that apply to the management of aircraft operated by DOE organizations and designated contractors, excluding aircraft owned and operated by other Federal entities for DOE.

Subpart 109–37.1—Definitions

§ 109–37.101 Definitions.

Military aircraft means aircraft on loan from the Department of Defense (DOD).

Crewmember means a person(s) on board an aircraft that is essential to the accomplishment of the aircraft mission.

Senior Aviation Management Official means the person responsible for developing, promoting, monitoring, administering, coordinating, and evaluating, the Department-wide aviation personal property management program.

Subpart 109–37.4—Use of Government-Owned and Operated Aircraft

§ 109–37.400 General.

Department-wide policies, standards, procedures, guidelines, necessary staff assistance for the management of aircraft, (except for security helicopters managed by the Office of Safeguards and Security), aviation services, and general liaison with other Federal agencies are provided by the Senior Aviation Management Official.

Subpart 109–37.5—Federal Aviation Management Information System (FAMIS)

§ 109–37.507 Reports.

(a) Organizations operating aircraft shall complete and forward as appropriate the reports designated by the Senior Aviation Management Official for management and other purposes.

(b) Reports shall be submitted, as required, by the Federal Aviation Administration (FAA), the National Transportation Safety Board (NTSB), the GSA, and other responsible agencies. Heads of field organizations shall establish the requirements for other reports that may be needed for management or other purposes.

(c) Heads of field organizations shall provide the Senior Aviation Management Official with reports as changes occur for:

(1) Facilities inventories—Additions, deletions, and changes shall be submitted using GSA Form 3549, Government-Owned/Leased

Maintenance, Storage, Training, Refueling Facilities (per facility) or FAMIS file structures;

(2) Aircraft inventories—Additions, deletions, and changes shall be submitted using GSA Form 3550, Government Aircraft Inventory (per aircraft) or FAMIS file structures. Any aircraft operated or held in a non-operational status must be reported to FAMIS regardless of its ownership category; and

(3) Aviation support services cost data—This data shall be submitted using GSA Form 3554, Aircraft Contract/Rental/Charter Support Services Cost Data or FAMIS file structures, as support service agreements become effective.

(d) Heads of field organizations shall provide the Senior Aviation Management Official with reports annually for the previous fiscal year ending September 30 according to the following:

(1) On or before December 15 for contract, rental, and charter aircraft cost and utilization data. Each form or FAMIS database record shall contain only one aircraft for each type of mission performed. The data shall be submitted using GSA Form 3551, Contract/Charter/Rental Aircraft Cost and Utilization, or FAMIS file structures;

(2) On or before December 15 for Government aircraft cost and utilization data. The cost and utilization information shall be tracked by serial number and shall reflect the actual use and expenditures incurred for each individual aircraft. These reports are to be submitted using GSA Form 3552, Government Aircraft Cost and Utilization, or FAMIS file structures; and

(3) A report semi-annually on or before April 30 for the period October 1 through March 30, and on or before October 30 for the period April 1 through September 30 for senior Federal official and special category travel. These reports are to be submitted using the FAMIS file structures or GSA Form 3641, Senior Federal Travel. If no senior Federal officials or special category travelers were transported during the relevant time frame, Heads of field organizations shall submit a written response that acknowledges the reporting requirements and states that they have no travel to report. For a detailed explanation see 41 CFR 101–37.408.

Subpart 109–37.12—Federal Agency Aviation Safety Program

§ 109–37.1202 Agency aviation safety responsibilities.

The Assistant Secretary for Environment, Safety and Health is responsible for establishing the DOE aviation safety program, developing aviation safety policy and standards, and conducting overviews of the safety of aviation operations. Heads of field organizations may establish higher safety standards, criteria, and procedures when they have determined that it is necessary to assure the safety of specific operations under their jurisdiction.

§ 109–37.1207 Inspections and evaluations.

The Assistant Secretary for Environment, Safety and Health is responsible for establishing an evaluation program to determine the safety of aviation operations. Each field office manager is responsible for an independent internal evaluation program.

§ 109–37.1208 Hazard reporting.

The Assistant Secretary for Environment, Safety and Health shall establish a program for reporting and tracking aviation hazards. The Assistant Secretary also is responsible for identifying hazardous trends within the aviation program of the Department. Heads of field organizations will track and resolve hazards within their organizations.

§ 109–37.1209 Aircraft accident and incident investigation and reporting.

The Assistant Secretary for Environment, Safety and Health shall establish and maintain the DOE Aviation Incident Reporting System. All Department aviation accidents and incidents shall be reported promptly to the system by the appropriate Heads of field organizations.

§ 109–37.1213 Aircraft accident and incident database.

The Assistant Secretary for Environment, Safety and Health shall establish and maintain a database of aircraft accidents and incidents, within the DOE Aviation Incident Reporting System.

Subpart 109–37.50—Authority, Registration, Maintenance, and Records

§ 109–37.5000 Pilot in command responsibility and authority.

(a) It shall be the responsibility of the pilot in command to be aware of, and conform to, Federal Aviation Regulations and other requirements of the FAA, Department policies and directives, and the regulations and directives of other applicable authority, including those relating to use for official purposes only.

(b) The pilot in command is responsible for insuring that all necessary maintenance, repairs, and FAA inspections are accomplished for determining that the aircraft is airworthy.

(c) The pilot in command is at all times responsible for the safe operation of the aircraft and for the safety of the crew and passengers. Insofar as the loading of the aircraft, weather, mechanical, and other safety conditions are concerned, the pilot in command shall have final authority for determining whether a particular flight shall be continued or terminated and how it shall be made.

§ 109–37.5001 Authority required for the acquisition, hire, or borrowing of aircraft.

(a) Authority for the purchase of aircraft is contained in the annual appropriation act for DOE.

(b) The acquisition of aircraft by permanent transfer from another Government agency shall be considered as an addition to the DOE aircraft fleet and requires authority in the annual appropriations act.

(c) Aircraft shall not be bought, leased, or acquired by transfer or loan unless they are:

(1) Specifically authorized by the Senior Aviation Management Official pursuant to the appropriations concerned or other laws (except for temporary rentals or loans of 30 days or less); or

(2) Temporary rental or loans (30 days or less) approved by the head of the field organization.

§ 109–37.5002 Aircraft authorization.

(a) Field organizations shall submit all requests (with appropriate documentation) for new and replacement aircraft to the Senior Aviation Management Official. To assure that acquisitions do not exceed the number of aircraft authorized to be acquired in any fiscal year, the Senior Aviation Management Official shall inform DOE field organizations each fiscal year of the number of aircraft which may be acquired. These authorizations shall not be exceeded.

(b) The acquisition of specific aircraft by type shall be coordinated with the Senior Aviation Management Official to assure that the selected aircraft type can perform the mission requirements safely and meet all applicable safety standards.

§ 109–37.5003 Management responsibility.

The Senior Aviation Management Official and Head of each field organization having an aircraft operation shall establish procedures to ensure:

(a) That the acquisition of aircraft, including military aircraft, is controlled to ensure that authorizations are not exceeded;

(b) That because of the statutory limitations on the number of aircraft which DOE may acquire, replaced aircraft are removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both aircraft;

(c) That each aircraft is equipped with the appropriate avionics and accessories required by its FAA type certification, military department, or DOE field office operators manual for the type of mission intended. Aviation life support and personal protective equipment shall be provided and readily available for all occupants of aircraft to meet the applicable requirements of 14 CFR. Aircraft on flights into isolated areas shall be equipped with emergency rations and appropriate survival gear.

(d) Conformance with FAA requirements for the registration, certification, maintenance, and operation of aircraft, engines, and component equipment;

(e) Selection of qualified pilots, crewmembers, maintenance technicians, and repairmen, and the continuation of their competence commensurate with their job requirements through training and recurrent training programs;

(f) Establishment of dispatching and tracking procedures or other controls that will assure knowledge of aircraft location;

(g) Overall safe, efficient, and economical operation, maintenance, utilization, and replacement of aircraft;

(h) That cross-program utilization is encouraged and managed to obtain maximum, efficient use of assets;

(i) That contract and charter pilots are duly certified to meet all requirements and regulations established by the FAA for the particular aircraft;

(j) That chartered, leased, or rented aircraft are operated and maintained in compliance with all rules, regulations, and minimum standards of the FAA;

(k) That any charter, rental or hire of aircraft and operators shall meet the applicable requirements of 14 CFR and other requirements specified by the Senior Aviation Management Official; and

(l) That DOE-owned, leased, and borrowed aircraft are used for official purposes only and that all flight and operational personnel, including the pilots, are aware of the provisions of § 109–38.51 of this subchapter.

§ 109–37.5004 Registration and identification.

(a) Department-owned aircraft shall be registered with the FAA or other appropriate agency. The certificate of registration shall be displayed in the aircraft in accordance with FAA requirements. A similar requirement shall be included in any arrangement for the charter, rent, hire, loan, or lease of aircraft.

(b) All aircraft shall display markings as required by Federal Aviation Regulations for registered aircraft of the United States.

§ 109–37.5005 Airworthiness.

With the exception of public use aircraft being operated under special missions for the Department, all aircraft shall have a current FAA Airworthiness Certificate appropriate to the mission of the aircraft. This certificate shall be displayed in the aircraft.

§ 109–37.5006 Maintenance.

(a) Aircraft maintenance programs (for aircraft under the operational control of the Department) shall be submitted to the Senior Aviation Management Official for approval per the following:

(1) As a minimum, aircraft type certificated for nine or less passenger seats excluding any pilot seat shall be maintained in accordance with 14 CFR part 91, part 43, § 135.415, § 135.417, and § 135.421; a Departmental element may maintain an aircraft in accordance with 14 CFR 135.419.

(2) Aircraft type certificated for ten or more passenger seats excluding any pilot seat and conducting non-scheduled on-demand charter operations shall be maintained in accordance with 14 CFR 135.415, 135.417, and 135.423 through 135.443.

(3) Aircraft type certificated for ten or more passenger seats excluding any pilot seat and conducting scheduled air carrier operations shall be maintained in accordance with 14 CFR part 121, subpart L and subpart V.

(4) Aircraft type certificated for twenty or more passenger seats excluding any pilot seat or having a maximum payload capacity of 6,000 pounds or more when common carriage is not involved or operations not certificated under 14 CFR parts 121, 129, 135, or 137 shall be maintained in accordance with 14 CFR part 125, subpart G and L, and appendix A.

(b) Rotorcraft operations conducted under 14 CFR part 133 shall comply with the airworthiness requirements of Title 14 CFR parts 43, 91, and 133.

(c) Organizations having maintenance facilities located at a DOE facility or conducting contracted maintenance/inspection operations shall adhere to 14 CFR part 145 or 14 CFR part 121, subpart L and subpart V.

§ 109–37.5007 Operation.

(a) Flight operations must comply with Federal Aviation Regulations, DOE orders, and directives. The pilot in command is responsible for ensuring that flight operations are conducted in accordance with the regulations, orders, and directives, and is directly responsible for and is the final authority as to the operation of an aircraft.

(b) In an in-flight emergency requiring immediate action, the pilot in command may deviate from any regulation, order, or directive to the extent required to meet that emergency.

(c) Each pilot in command who deviates from a regulation, order, or directive shall send a written report of that deviation to the Senior Aviation Management Official within 72 hours of the event, excluding holidays or weekends.

§ 109–37.5008 Records.

As a minimum, flight, aircraft, engine logs records, and training records shall be maintained in accordance with FAA requirements, and records of operations, maintenance, and costs shall be maintained as required for management, budgetary, and reporting purposes. Heads of field organizations shall establish requirements for other records needed.

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.

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109–38.001 Definitions.

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109–38.5200 Scope of subpart.
109–38.5201 Definition.
109–38.5202 Watercraft operations.
109–38.5203 Watercraft identification and numbers.

Authority: 42 U.S.C. 7254.

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

§ 109–38.000 Scope of part.

§ 109–38.000–50 Policy.

Motor vehicles and watercraft shall be acquired, maintained, and utilized in support of DOE programs in the minimum quantity required and in the most practical and economical manner consistent with program requirements, safety considerations, fuel economy, and applicable laws and regulations.

Subpart 109–38.0—Definition of Terms

§ 109–38.001 Definitions.

Experimental vehicles means vehicles acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services unless required as part of a testing/evaluation program, and they are not subject to statutory price limitations or authorization limitations.

Motor equipment means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, and watercraft.

Motor vehicle means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on highways in the transportation of property or passengers.

Special purpose vehicles means vehicles which are used or designed for specialized functions. These vehicles include, but are not limited to: trailers, semi-trailers, other types of trailing equipment; trucks with permanently mounted equipment (such as aerial ladders); construction and other types of equipment set forth in Federal Supply Classification Group (FSCG) 38; material handling equipment set forth in FSCG 39; and fire fighting equipment set forth in FSCG 42. For reporting purposes within DOE, motorcycles and motor scooters will also be reported as special purpose vehicles.

Subpart 109–38.1—Fuel Efficient Motor Vehicles

§ 109–38.104 Fuel efficient passenger automobiles and light trucks.

(a) [Reserved]

(b) All requests to purchase passenger automobiles larger than class IA, IB, or II (small, subcompact, or compact) shall be forwarded with justification to the DPMO for approval and certification for compliance with the fuel economy objectives listed in 41 CFR 101–38.104.

(b)(1)–(b)(4) [Reserved]

(5) Requests to exempt certain light trucks from the fleet average fuel economy calculations shall be forwarded with justification to the DPMO for approval.

§ 109–38.105 Agency purchase and lease of motor vehicles.

(a) DOE activities shall submit a copy of all motor vehicle leases and purchases not procured through the GSA Automotive Commodity Center to GSA.

(b)–(c) [Reserved]

(d) DOE activities desiring to renew a commercial lease shall submit the requirement in writing to the DPMO for approval prior to submission by field offices to GSA.

(e) DOE activities shall submit a copy of all lease agreements to GSA.

§ 109–38.106 Leasing of motor vehicles.

(a) All new requirements for leased motor vehicles for 60 consecutive days or more shall be submitted with justification to the DPMO for approval.

Subpart 109–38.2—Registration, Identification, and Exemptions

§ 109–38.200 General requirements.

(a)–(e) [Reserved]

(f) Requests made pursuant to 41 CFR 101–38.200(f) for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles, except for those vehicles exempted in accordance with section 109–38.204–1 of this subpart, shall be submitted through normal administrative channels to the DPMO for approval. Each approved exemption must be renewed annually, and the DPMO shall be notified promptly when the need for a previously authorized exemption no longer exists. Copies of certifications and cancellation notices required to be furnished to GSA pursuant to 41 CFR 101–38.200(f) will be transmitted to GSA by the DPMO.

(g) Requests for temporary removal and substitution of Government markings shall be submitted with justification to the DPMO for review and approval. Copies of the determination and justification required to be furnished to GSA will be transmitted to GSA by the DPMO.

§ 109–38.201 Registration and inspection.

§ 109–38.201–50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned. The person responsible for a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

§ 109–38.202 Tags.

§ 109–38.202–2 Outside the District of Columbia.

The Director of Administrative Services and heads of field organizations shall make the determination concerning the use of tags outside the District of Columbia.

§ 109–38.202–3 Records.

(a) The DPMO assigns "blocks" of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional "blocks" will be assigned upon request.

(b) Each DOE direct operation and designated contractor shall maintain a current record of individual assignments of license tags to the motor vehicles under their jurisdiction.

§ 109–38.202–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet, or storage area with restricted access to prevent possible fraud or misuse. Tags which are damaged or unusable will be safeguarded until destroyed.

§ 109–38.203 Agency identification.

Standard DOE motor vehicle window decals (DOE Form 1530.1), and door decals to be used only on vehicles without windows (DOE Form 1530.2), are available from the Office of Administrative Services, Logistics Management Division, Headquarters, using DOE Form 4250.2, "Requisition for Supplies, Equipment or Services", or as directed by that office.

§ 109–38.204 Exemptions.

§ 109–38.204–1 Unlimited exemptions.

(a)–(f) [Reserved]

(g) The Director, Office of Administrative Services and heads of field organizations for their respective organizations may approve exemptions from the requirement for the display of U.S. Government license tags and other official identification for motor vehicles used for security or investigative purposes.

§ 109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.

The Director, Office of Administrative Services is designated to approve requests for regular District of Columbia license tags, and furnishes annually the name and specimen signature of each representative authorized to approve such requests to the District of Columbia Department of Transportation.

§ 109–38.204–4 Report of exempted motor vehicles.

DOE offices shall provide upon request the necessary information to the DPMO to enable that office to submit a report of exempted vehicles.

§ 109–38.204–50 Records of exempted motor vehicles.

The Director, Office of Administrative Services and heads of field organizations shall maintain records of motor vehicles exempted from displaying U.S. Government license tags and other identification. The records shall contain a listing, by type, of each exempted motor vehicle operated during the previous fiscal year, giving information for each motor vehicle on hand at the beginning of the year and each of those newly authorized during the year, including:

(a) Name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemption and limitation on use of the exempted motor vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemptions for motor vehicles continuing in use.

Subpart 109–38.3—Official Use of Government Motor Vehicles

§ 109–38.300 Scope.

This subpart prescribes the requirements governing the use of Government motor vehicles for official purposes by designated contractors.

§ 109–38.301 Authorized use.

The use of Government motor vehicles by officers and employees of the Government is governed by the provisions of 41 CFR 101–6.4 and 109–6.4 of this chapter.

§ 109–38.301–1 Contractors' use.

Heads of field organizations shall ensure that provisions of the FPMR concerning contractor use of Government motor vehicles are complied with by their designated contractors.

§ 109–38.301–1.50 Authorization for transportation between residence and place of employment.

(a) Government motor vehicles shall not be used for transportation between residence and place of employment by designated contractor personnel except under extenuating circumstances specifically provided for under the terms of the contract. Examples of circumstances eligible for prior approval of home-to-work motor vehicle use which would be appropriate to include in the terms of the contract: use related to safety or security operations, use related to compelling operational considerations, and use determined as cost effective to DOE's interest. Under no circumstances shall the comfort and convenience, or managerial position, of contractor employees be considered justification for authorization of use.

(b) The use of Government motor vehicles for transportation between residence and place of employment (including sporadic use) by designated contractor personnel shall be approved in writing by the Head of the field organization or designee, with delegation no lower than the Assistant Manager for Administration at the Operations Offices or the equivalent position at other DOE contracting activities provided that the individual is a warranted contracting officer. The contractor's request for approval shall include the name and title of the employee, the reason for the use, and the expected duration of the use. Each authorization is limited to one year, but can be extended for an unlimited number of additional one-year periods.

§ 109–38.301–1.51 Emergency use.

(a) Procedures for authorization of designated contractor use of Government motor vehicles in emergencies, including unscheduled overtime situations at remote sites where prior approval is not possible, shall be included in a contractor's approved property management procedures. The procedures shall include examples of emergency situations warranting such use. Records detailing instances of emergency use shall be maintained and review of all such emergency or overtime use must be certified through established audit procedures on at least an annual basis by the OPMO.

(b) In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property. Such use shall be documented

and the documentation retained for three years.

§ 109–38.301–1.52 Maintenance of records.

Designated contractors shall maintain logs or other records on the use of a Government motor vehicle for transportation between an employee's residence and place of employment. As a minimum, these logs shall indicate the employee's name, date of use, time of departure and arrival, miles driven, and names of other passengers. Cognizant finance offices shall be provided with applicable data on employees who utilize Government motor vehicles for such transportation for purposes of the Deficit Reduction Act of 1984 concerning the taxation of fringe benefits.

§ 109–38.301–1.53 Responsibilities of motor vehicle operators.

Designated contractors shall assure that their employees are aware of their responsibilities, identical to those listed in § 109–6.400–50 of this chapter for DOE employees, concerning the use and operation of Government motor vehicles.

Subpart 109–38.4—Use and Replacement Standards

§ 109–38.401 Use standards.

§ 109–38.401–2 Use of self-service pumps.

It is DOE policy that motor vehicle operators shall use self-service pumps in accordance with the provisions of 41 CFR 101–38.401–2.

§ 109–38.402 Replacement standards.

(a) [Reserved]

(b) Motor vehicles may be replaced without regard to the replacement standards in 41 CFR 101–38.402 only after certification by the Director of Administrative Services or the Head of the field organization for their respective organizations that a motor vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§ 109–38.402–50 Prompt disposal of replaced motor vehicles.

A replaced motor vehicle shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement motor vehicle to avoid concurrent operation of both motor vehicles.

§ 109–38.403 Responsibility for damages.

§ 109–38.403–1 Policy.

The policy for assigning responsibility for vehicle damage is to recover from users the costs for damages which would adversely affect the vehicle's resale.

§ 109–38.403–2 Responsibility.

The designated contractor will charge the using organization all costs resulting from damage, including vandalism, theft and parking lot damage to a DOE vehicle which occurs during the period that the vehicle is assigned to an employee of that organization. The charges recovered by the designated maintenance operation will be used to repair the vehicle. Other examples for which organizations will be charged are as follows:

(a) Damage caused by misuse or abuse inconsistent with normal operation and local conditions: or

(b) Repair costs which are incurred as a result of user's failure to obtain required preventative maintenance; or

(c) Unauthorized purchases or repairs, including credit card misuse, provided this is a clear, flagrant, and documented pattern of such occurrences.

§ 109–38.403–3 Exceptions.

Exceptions to § 109–38.403–2 of this subpart are as follows:

(a) As the result of the negligent or willful act of a party other than the organization or it's employee, and the responsible party can be determined; or

(b) As a result of mechanical failure and the employee was not otherwise negligent. Proof if the failure must be provided; or

(c) As a result of normal wear comparable to similar vehicles.

Subpart 109–38.5—Scheduled Maintenance

§ 109–38.502 Guidelines.

§ 109–38.502–50 DOE guidelines.

(a) Whenever practicable and cost effective, commercial service facilities shall be utilized for the maintenance of motor vehicles.

(b) Individual vehicle maintenance records shall be kept to provide records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by the motor equipment fleet manager. To exceed repair limitations, approval of the motor equipment fleet manager is required.

(d) Warranties.

(1) Motor vehicles under manufacturer's warranty shall be repaired under the terms of the warranty.

(2) When motor vehicles are maintained in Government repair facilities in isolated locations that are distant from franchised dealer facilities, or when it is not practical to return the vehicles to a dealer, a billback agreement shall be sought from manufacturers to permit warranty work to be performed on a reimbursable basis.

Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

§ 109–38.701 Transfer of title for Government-owned motor vehicles.

§ 109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

The Standard Form (SF) 97 shall be signed by an appropriate contracting officer. The Director, Office of Administrative Services and heads of field organizations for their respective organizations may delegate the authority to sign SF 97 to responsible DOE personnel under their jurisdiction.

Subpart 109–38.8—Standard Form 149, U.S. Government National Credit Card

§ 109–38.800 General.

(a)–(c) [Reserved]

(d) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall be responsible for establishing procedures to provide for the administrative control of fleet credit cards. Administrative control shall include, as a minimum:

(1) A reconciliation of on-hand credit cards with the inventory list provided by GSA,

(2) Providing motor vehicle operators with appropriate instructions regarding the use and protection of credit cards against theft and misuse,

(3) The taking of reasonable precautions in the event an SF 149 or SF 149A is lost or stolen to minimize the opportunity of purchases being made by unauthorized persons, including notffication to the paying office of the loss or theft,

(4) Validation of credit card charges to ensure they are for official use only items, and

(5) Being on the alert for any unauthorized bills.

§ 109–38.801 Obtaining SF 149, U.S. Government National Credit Card.

DOE offices electing to use national credit cards shall request the assignment of billing address code numbers from the DPMO. Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with the instructions provided by GSA.

Subpart 109–38.9—Federal Motor Vehicle Fleet Report

§ 109–38.902 Records.

The Director, Office of Administrative Services and OPMOs for their respective organizations shall establish adequate records for accounting and reporting purposes.

§ 109–38.903 Reporting of data.

§ 109–38.903–50 Reporting DOE motor vehicle data.

(a) DOE offices and designated contractors operating DOE-owned or commercially-leased motor vehicles shall prepare the following reports using SF 82, Agency Report of Motor Vehicle Data or DOE approved equivalent, for the entire fleet including security vehicles.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Designated contractors shall submit the reports to the DOE contracting office for review and approval. DOE offices shall submit reports, including designated contractor reports, to the DPMO by November 15 of each year.

(c) Copies of the report forms may be obtained by contacting the DPMO.

(d) Personal computer generated reports are acceptable provided that the standard report format is followed.

Subpart 109–38.51—Utilization of Motor Equipment

§ 109–38.5100 Scope of subpart.

This subpart prescribes policies and procedures concerning the utilization of motor equipment.

§ 109–38.5101 Policy.

It is DOE policy to keep the number of motor vehicles and other motor equipment at the minimum needed to satisfy programmatic requirements. To attain this goal, controls and practices shall be established which will achieve the most practical and economical utilization of motor equipment. These controls and practices apply to all DOE-owned and commercially leased motor equipment and to GSA Interagency Fleet Management System motor vehicles.

§ 109–38.5102 Utilization controls and practices.

Controls and practices to be used by DOE organizations and designated contractors for achieving maximum economical utilization of motor equipment shall include, but not be limited to:

(a) The maximum use of motor equipment pools, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of motor equipment to individuals, groups, or specific organizational components;

(c) The maintenance of individual motor equipment use records, such as trip tickets or vehicle logs, or hours of use, as appropriate, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use of a motor vehicle is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the motor vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage;

(d) The rotation of motor vehicles between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy;

(e) The charging, if considered feasible, to the user organization for the cost of operating and maintaining motor vehicles assigned to groups or organizational components. These charge-back costs should include all direct and indirect costs of the motor vehicle fleet operation as determined by the field organization and contractor finance and accounting functions;

(f) The use of dual-purpose motor vehicles capable of hauling both personnel and light cargo whenever appropriate to avoid the need for two motor vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid statutory limitations on the number of passenger motor vehicles which may be acquired;

(g) The use of motor scooters and motorcycles in place of higher cost motor vehicles for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic; and

(h) The use of electric vehicles for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109–38.5103 Motor vehicle utilization standards.

(a) The following average utilization standards are established for DOE as objectives for those motor vehicles operated generally for those purposes for which acquired:

(1) Sedans and station wagons, general purpose use—12,000 miles per year.

(2) Light trucks (4x2's) and general purpose vehicles, one ton and under (less than 12,500 GVWR)—10,000 miles per year.

(3) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 23,999 GVWR)—7,500 miles per year.

(4) Heavy trucks and general purpose vehicles, three ton and over (24,000 GVWR and over)—7,500 miles per year.

(5) Truck tractors—10,000 miles per year.

(6) All-wheel-drive vehicles—7,500 miles per year.

(7) Other motor vehicles—No utilization standards are established for other trucks, ambulances, buses, law enforcement motor vehicles, and special purpose vehicles. The use of these motor vehicles shall be reviewed at least annually by the motor equipment fleet manager and action shall be taken and documented to verify that the motor vehicles are required to meet programmatic, health, safety, or security requirements.

(b) When operating circumstances prevent the above motor vehicle utilization standards from being met, local use objectives must be established and met as prescribed in § 109–38.5105 of this subpart.

§ 109–38.5104 Other motor equipment utilization standards.

No utilization standards are established for motor equipment other than motor vehicles. Each DOE office should establish through an agreement between the fleet manager and the OPMO utilization criteria for other motor equipment including heavy mobile equipment and review, adjust, and approve such criteria annually. Utilization of various classifications of other motor equipment can be measured through various statistics including miles, hours of use, number of trips, and fuel consumption. A utilization review of other motor equipment shall be performed at least annually by the motor equipment fleet manager to justify retainment or disposition of excess equipment not needed to fulfill Departmental, programmatic, health, safety, or security requirements.

§ 109–38.5105 Motor vehicle local use objectives.

(a) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. For example, light trucks specifically fitted

for use by a plumber, welder, etc., in the performance of daily work assignments, would have uniquely tailored use objectives, different from those set forth for a truck used for general purposes. Accordingly, efficient and cost effective local use objectives, which represent practical units of measurement for motor vehicle utilization and for planning and evaluating future motor vehicle requirements, must be established and documented by the Organizational Motor Equipment Fleet Manager. The objectives should take into consideration past performance, future requirements, geographical disbursement, and special operating requirements.

(b) These objectives shall be reviewed and adjusted as appropriate, but not less often than annually, by the motor equipment fleet manager. The reviews shall be documented. The Organizational Motor Equipment Fleet Manager is responsible for reviewing and approving in writing all proposed local use objectives.

§ 109–38.5106 Application of motor vehicle use goals.

(a) At least annually, the motor equipment fleet manager will review motor vehicle utilization statistics and all motor vehicles failing to meet the applicable DOE utilization standard or local use objective must be identified.

(b) Prompt action must be initiated to:

(1) Reassign the underutilized motor vehicles;

(2) Dispose of the underutilized motor vehicles; or

(3) Obtain a special justification from users documenting their continued requirement for the motor vehicle and any proposed actions to improve utilization. Any requirement for underutilized motor vehicles which the motor equipment fleet manager proposes to continue in its assignment, must be submitted in writing to the Organizational Motor Equipment Fleet Manager for approval.

(c) Both Department-wide standards and local use objectives should be applied in such a manner that their application does not stimulate motor vehicle use for the purpose of meeting the objective. The ultimate standard against which motor vehicle use must be measured is that the minimum number of motor vehicles will be retained to satisfy program requirements.

Subpart 109–38.52—Watercraft

§ 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of watercraft operated by DOE organizations and designated contractors. The head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the effective and efficient use and management of watercraft.

§ 109–38.5201 Definition.

As used in this subpart the following definition applies:

Watercraft means any vessel used to transport persons or material on water.

§ 109–38.5202 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation and basic watercraft knowledge have been demonstrated.

(b) Operators of watercraft shall check the vessel to ensure that necessary equipment required by laws applicable to the area of operation are present, properly stowed, and in proper working order.

(c) Operators shall comply with all applicable Federal, state, and local laws pertaining to the operation of watercraft.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109–38.5203 Watercraft identification and numbers.

Watercraft in the custody of DOE or designated contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, State, or local field organization, in accordance with applicable requirements.

PART 109–39—INTERAGENCY FLEET MANAGEMENT SYSTEMS

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

Sec.

109–39.101 Notice of intention to begin a study.
109–39.101–1 Agency cooperation.
109–39.103 Agency appeals.
109–39.105 Discontinuance or curtailment of service.
109–39.105–2 Agency requests to withdraw participation.
109–39.106 Unlimited exemptions.
109–39.107 Limited exemptions.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

109–39.300 General.
109–39.301 Utilization guidelines.

Authority: 42 U.S.C. 7254.

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

§ 109–39.101 Notice of intention to begin a study.

§ 109–39.101–1 Agency cooperation.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate representatives to coordinate with GSA concerning the establishment of a GSA fleet management system to serve their organization.

§ 109–39.103 Agency appeals.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations may appeal, or request exemption from, a determination made by GSA concerning the establishment of a fleet management system. A copy of the appeal or request shall be forwarded to the DPMO.

§ 109–39.105 Discontinuance or curtailment of service.

§ 109–39.105–2 Agency requests to withdraw participation.

Should circumstances arise that would tend to justify discontinuance or curtailment of participation by a DOE organization of a given interagency fleet management system, the participating organization should forward complete details to the DPMO for consideration and possible referral to the Administrator of General Services.

§ 109–39.106 Unlimited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall make the determination that an unlimited exemption from inclusion of a motor vehicle in a fleet management system is warranted. A copy of the determination shall be forwarded to GSA and to the DPMO.

§ 109–39.107 Limited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall seek limited exemptions from the fleet management system.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

§ 109–39.300 General.

(a)–(c) [Reserved]

(d) Motor equipment fleet managers shall ensure that operators and passengers in GSA Interagency Fleet Management System (IFMS) motor vehicles are aware of the prohibition against the use of tobacco products in these vehicles.

109–39.301 Utilization guidelines.

DOE activities utilizing GSA IFMS motor vehicles will receive and review vehicle utilization statistics in order to determine if miles traveled justify vehicle inventory levels. Activities should retain justification for the retention of vehicles not meeting DOE utilization guidelines or established local use objectives, as appropriate. Those vehicles not justified for retention shall be returned to the issuing GSA interagency fleet management center.

PART 109–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Subpart 109–40.1—General Provisions

Sec.
109–40.000 Scope of part.
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109–40.103 Selection of carriers.
109–40.103–1 Domestic transportation.
109–40.103–2 Disqualification and suspension of carriers.
109–40.103–3 International transportation.
109–40.104 Use of Government-owned transportation equipment.
109–40.109 Utilization of special contracts and agreements.
109–40.110 Assistance to economically disadvantaged transportation businesses.
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Subpart 109–40.3—Traffic Management

109–40.301 Traffic management functions administration.
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109–40.304 Rate tenders to the Government.
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Subpart 109–40.50—Bills of Lading

109–40.5000 Scope of subpart.
109–40.5001 Policy.
109–40.5002 Applicability.
109–40.5003 Commercial bills of lading.
109–40.5004 Government bills of lading.
109–40.5005 Description of property for shipment.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

109–40.5100 Scope of subpart.
109–40.5101 Policy.

Authority: Sec. 161, as amended, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, as amended, 63 Stat. 390; 40 U.S.C. 486; sec. 644, 91 Stat. 585, 42 U.S.C. 7254.

Subpart 109–40.1—General Provision

§ 109–40.000 Scope of part.

This part describes DOE regulations governing transportation and traffic management activities. It also covers arrangements for transportation and related services by bill of lading. These regulations are designed to ensure that all transportation and traffic management activities will be carried out in the manner most advantageous to the Government in terms of economy, efficiency, service, environment, safety and security.

§ 109–40.000–50 Applicability to contractors.

DOE–PMR 109–40, Transportation and Traffic Management, should be applied to cost-type contractors' transportation and traffic management activities. Departure by cost-type contractors from the provisions of these regulations may be authorized by the contracting officer provided the practices and procedures followed are consistent with the basic policy objectives in these regulations and DOE Order 460.2, Departmental Materials Transportation and Packaging Management, except to the extent such departure is prohibited by statute or executive order.

§ 109–40.102 Representation before regulatory bodies.

Participation in proceedings related to carrier applications to regulatory bodies for temporary or permanent authority to operate in specified geographical locations shall be confined to statements or testimony in support of a need for service and shall not extend to support of individual carriers or groups of carriers.

§ 109–40.103 Selection of carriers.

§ 109–40.103–1 Domestic transportation.

(a) Preferential treatment, normally, shall not be accorded to any mode of transportation (motor, rail, air, water) or to any particular carrier when arranging for domestic transportation services. However where, for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered. Examples of valid reasons for considering only a particular mode or carrier are:

(1) Where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and

(2) Where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation.

(b) The following factors are considered in determining whether a carrier or mode of transportation can meet DOE's transportation service requirements for each individual shipment:

(1) Availability and suitability of carrier equipment;

(2) Carrier terminal facilities at origin and destination;

(3) Pickup and delivery service, if required;

(4) Availability of required or accessorial and special services, if needed;

(5) Estimated time in transit;

(6) Record of past performance of the carrier; and

(7) Availability and suitability of transit privileges.

§ 109–40.103–2 Disqualification and suspension of carriers.

Disqualification and suspension are measures which exclude carriers from participation, for temporary periods of time, in DOE traffic. To ensure that the Government derives the benefits of full and free competition of interested carriers, disqualification and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

§ 109–40.103–3 International transportation.

See 4 CFR 52.2 for a certificate required in nonuse of U.S. flag vessels or U.S. flag certificated air carriers.

(a) U.S.-flag ocean carriers. Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) concerning the use of privately owned U.S.-flag vessels.

(b) U.S.-flag certificated air carriers. Arrangements for international air transportation services shall be made in accordance with the provisions of section 5(a) of the International Air Transportation Fair Competition Practices Act of 1974 (49 U.S.C. 1517), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the

extent that services by these carriers is available.

§ 109–40.104 Use of Government-owned transportation equipment.

The preferred method of transporting property for the Government is through use of the facilities and services of commercial carriers. However, Government vehicles may be used when they are available to meet emergencies, and accomplishment of program objectives which cannot be attained through use of commercial carriers.

§ 109–40.109 Utilization of special contracts and agreements.

From time to time special transportation agreements are entered into on a Government-wide or DOE-wide basis and are applicable, generally, to DOE shipments. The HQ DOE Manager, Transportation Operations and Traffic, will distribute information on such agreements to field offices as it becomes available.

§ 109–40.110 Assistance to economically disadvantaged transportation businesses.

§ 109–40.110–1 Small business assistance.

Consistent with the policies of the Government with respect to small businesses, DOE shall place with small business concerns a fair proportion of the total purchases and contracts for transportation and related services such as packing and crating, loading and unloading, and local drayage.

§ 109–40.110–2 Minority business enterprises.

Minority business enterprises shall have the maximum practical opportunity to participate in the performance of Government contracts. DOE shall identify transportation-related minority enterprises and encourage them to provide services that will support DOE's transportation requirements.

§ 109–40.112 Transportation factors in the location of Government facilities.

Transportation rate, charges, and commercial carrier transportation services shall be considered and evaluated prior to the selection of new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

§ 109–40.113 Insurance against transportation hazards.

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in 41 CFR 1–19.107.

Subpart 109–40.3—Traffic Management

§ 109–40.301 Traffic management functions administration.

The DOE traffic management functions are accomplished by established field traffic offices under provisions of appropriate Departmental directives and Headquarters' staff traffic management supervision.

§ 109–40.302 Standard routing principle.

(a) Shipments shall be routed using the mode of transportation, or individual carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

(b) When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost the traffic shall be distributed as equitably as practicable among the modes and among the carriers within the modes.

§ 109–40.303–3 Most fuel efficient carrier/mode.

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient will be selected. In determining the most fuel efficient carrier/mode, consideration will be given to such factors as use of the carrier's equipment in "turn around" service, proximity of carrier equipment to the shipping activity, and ability of the carrier to provide the most direct service to the destination points.

§ 109–40.304 Rate tenders to the Government.

Under the provisions of section 10721 of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit to the Government tenders which contain rates lower than published tariff rates available to the general public. In addition, rates tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (323 ICC 347 and 332 ICC 161).

§ 109–40.305–50 Negotiations involving national security.

Title 49 U.S.C., section 10721(b)(2) provides that rate tenders to the Government must be filed by the carriers within the Interstate Commerce Commission unless a carrier is advised by the U.S. Government that disclosure of a quotation or tender of a rate established . . . for transportation provided to the U.S. Government would endanger the National security. Carriers will be informed by the negotiating official if any quotation or tender to the Department of Energy involves such information.

§ 109–40.306–1 Recommended rate tender format.

Only those rate tenders which have been submitted by the carriers in writing shall be considered for use. Carriers should be encouraged to use the format "Uniform Tender of Rates and/or Charges for Transportation Services" when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government.

§ 109–40.306–2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee;

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement:

> Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government.

(b) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following endorsement shall be used on covering commercial bills of lading:

> Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable contract number (insert contract number). This may be confirmed by contacting the agency representative at (name and telephone number). See 332 ICC 161.

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of

lading covering such shipments the applicable rate tender number and carrier identification, such as: "Section 10721 tender, ABC Transportation Company, ICC No. 374." In addition, if commercial bills of lading are used, they shall be endorsed as specified above.

§ 109–40.306–3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy to the Transportation and Public Utilities Service (WIT), General Services Administration, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TA), Chester A. Arthur Building, Washington, DC 20406.

Subpart 109–40.50—Bills of Lading

§ 109–40.5000 Scope of subpart.

This subpart sets forth the requirements under which commercial or Government bills of lading may be used.

§ 109–40.5001 Policy.

Generally DOE cost-type contractors will use commercial bills of lading in making shipments for the account of DOE. Cost-type contractors may be authorized by the contracting officer to use Government bills of lading if such use will be advantageous to the Government. Such authorizations shall be coordinated with the HQ DOE Manager, Transportation Operations and Traffic.

§ 109–40.5002 Applicability.

The policy and procedures set forth in this subpart shall be applied when DOE's cost-type contractors use commercial bills of lading.

§ 109–40.5003 Commercial bills of lading.

(a) DOE's cost-type contractors using commercial bills of lading in making shipments for the account of DOE shall include the following statement on all commercial bills of lading:

> This shipment is for the account of the U.S. Government which will assume the freight charges and is subject to the terms and conditions set forth in the standard form of the U.S. Government bills of lading and to any available special rates or charges.

(b) The language in paragraph (a) of this section may be varied without materially changing its substance to satisfy the needs of particular cost-type contractors for the purpose of obtaining the benefit of the lowest available rates for the account of the Government.

(c) Where practicable, commercial bills of lading shall provide for consignment of a shipment to DOE c/o the cost-type contractor or by the contractor "for the DOE."

(d) Commercial bills of lading exceeding $10,000 issued by cost-type contractors shall be annotated with a typewritten, rubber stamp, or similar impression containing the following wording:

> Equal Employment Opportunity. All provisions of Executive Order 11246, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor are incorporated herein.

§ 109–40.5004 Government bills of lading.

In those instances where DOE cost-type contractors are authorized to use Government bills of lading, specific employees of cost-type contractors will be authorized by the contracting officer to issue such Government bills of lading (see Title V, U.S. Government Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies).

§ 109–40.5005 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as "Foamite" or "Formica," or general terms such as "vehicles," "furniture," or "Government supplies," shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, radioactive materials, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulation, 49 CFR, parts 100–189.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

§ 109–40.5100 Scope of subpart.

This subpart sets forth the policy for issuance of certifications regarding Price-Anderson coverage of particular shipments of nuclear materials.

§ 109–40.5101 Policy.

Upon request of a carrier, an appropriate certification will be issued by an authorized representative of the DOE to the carrier regarding the applicability of Price-Anderson indemnity to a particular shipment. Copies of such certifications, if performed by a Field Manager or a DOE cost-type contractor, shall be provided to the HQ DOE Manager, Transportation Operations and Traffic.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

Sec.

109–42.1101.50 Scope of subpart.
109–42.1101.51 Policy.
109–42.1102.50–1 Suspect personal property.
109–42.1102.50–2 Low level contaminated personal property.

Authority: 40 U.S.C. 486(c).

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

§ 109–42.1101.50 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

§ 109–42.1101.51 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, it shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure and environmental contamination. In special cases where Federal regulations do not exist or apply, appropriate state and local regulations shall be followed.

§ 109–42.1102.50–1 Suspect personal property.

(a) Excess personal property (including scrap) having a history of use in an area where radioactive or chemical contamination may occur shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) With due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of excess or surplus personal property to the lowest practicable level. Contaminated personal property that exceeds applicable contamination standards shall not be utilized or disposed outside DOE.

(c) If contamination is suspected and the property is of such size,

construction, or location as to make testing for contamination impossible, the property shall not be utilized or disposed outside of DOE.

§ 109–42.1102.50–2 Low level contaminated personal property.

If monitoring of suspect personal property indicates that contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated personal property, provided the guidance in § 109–45.5005–1(a) of this subchapter has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations (49 CFR parts 171–179) for shipment of radioactive personal property. In addition, when any contaminated personal property is screened within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

PART 109–43—UTILIZATION OF PERSONAL PROPERTY

Sec.

§ 109–43.001 Definition.

Subpart 109–43.1—General Provisions

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109–43.307–53 Automatic Data Processing Equipment (ADPE).
109–43.307–54 Unsafe personal property.
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Subpart 109–43.5—Utilization of Foreign Excess Personal Property

109–43.502 Holding agency responsibilities.

Subpart 109–43.47—Reports

109–43.4701 Performance reports.

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

109–43.5000 Scope of subpart.
109–43.5001 Definition.
109–43.5002 Reviews to determine need for retaining items.

Authority: 40 U.S.C. 486(c).

§ 109–43.001 Definition.

DOE screening period means the period of time that reportable excess personal property is screened throughout DOE for reutilization purposes and, for selected items, through the Used Energy-Related Laboratory Equipment (ERLE) Grant Program.

Subpart 109–43.1—General Provisions

§ 109–43.101 Agency utilization reviews.

DOE offices and designated contractors are responsible for continuously surveying property under their control to assure maximum use, and shall promptly identify property that is excess to their needs and make it available for use elsewhere.

§ 109–43.103 Agency utilization officials.

The DPMO is designated as the DOE National Utilization Officer.

Subpart 109–43.3—Utilization of Excess

§ 109–43.302 Agency responsibility.

§ 109–43.302–50 Utilization by designated contractors.

Heads of field organizations may authorize designated contractors to perform the functions pertaining to the utilization of excess personal property normally performed by a Federal agency, provided the designated contractors have written policies and procedures.

§ 109–43.304 Reporting requirements.

§ 109–43.304–1 Reporting.

§ 109–43.304–1.50 DOE reutilization screening.

(a) Prior to reporting excess personal property to GSA, reportable personal property shall be screened for reutilization within DOE through the Reportable Excess Automated Property System (REAPS) for a 30-day period. REAPS also provides for a 15-day expedited screening period for certain categories of personal property for economic development and to satisfy urgent conditions.

(b) An additional 30-day screening period shall be allocated for items eligible for screening by educational institutions through ERLE.

(c) In exceptional or unusual cases when time is critical, screening of excess property may be accomplished by telegram or facsimile with due consideration given to the additional costs involved. Examples of situations when this method of screening would be used are when there is a requirement for quick disposal actions due to unplanned contract terminations or facilities closing; to alleviate the paying of storage costs; when storage space is critical; to process exchange/sale transactions; property dangerous to public health and safety; property determined to be classified or otherwise sensitive for reasons of national security (when classified communications facilities are used); or for hazardous materials which may not be disposed of outside of the Department.

(d) Concurrent DOE and Federal agency screening generally shall not be conducted.

§ 109–43.304–1.51 Transfers within DOE.

Transfers within DOE generally shall be effected by completion of a SF–122, Transfer Order Excess Personal Property. Except for those designated contractors authorized by the DOE contracting office to execute transfer orders, transfers to DOE contractors must be approved by the cognizant DOE property administrator for the contractor receiving the property.

§ 109–43.304–2 Form and distribution of reports.

Reportable property will be electronically reported by REAPS directly to GSA following internal DOE and ERLE screening.

§ 109–43.304–4 Property at installations due to be discontinued.

When closing installations, DOE offices shall work with the appropriate

GSA regional offices to develop site utilization and disposal programs:

(a) In developing a disposal program, property shall be determined to be excess to DOE needs before reporting it to GSA.

(b) If a deviation from DOE policy or procedures is required, prior written approval of the Deputy Assistant Secretary for Procurement and Assistance Management shall be obtained.

(c) When deviation from existing GSA regulations is involved, approval by the appropriate GSA regional office will be sufficient to validate the disposition. A copy of the GSA approval should be forwarded for information to the DPMO.

§ 109–43.305 Property not required to be formally reported.

(a) [Reserved]

(b) Equipment, parts, accessories, jigs and components which are of special design, composition, or manufacture and which are intended for use only by specific DOE installations (such as spare parts for equipment used in atomic processes) are not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.305–50 Nuclear-related and proliferation-sensitive personal property.

Nuclear-related and proliferation-sensitive property is not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.307 Items requiring special handling.

§ 109–43.307–2 Hazardous materials.

§ 109–43.307–2.50 Monitoring of hazardous personal property.

To provide assurance that hazardous personal property is not being inadvertently released from the site by transfer or sale to the public, all hazardous or suspected hazardous personal property shall be checked for contamination by environmental, safety, and health officials. Contamination-free personal property will be tagged with a certification tag authorizing release for transfer or sale. Contaminated personal property will be referred back to the program office for appropriate action.

§ 109–43.307–2.51 Holding hazardous personal property.

Excess or surplus hazardous personal property shall not be commingled with non-hazardous personal property while waiting disposition action.

§ 109–43.307–3 Conditional gifts for defense purposes.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–4 Conditional gifts to reduce the public debt.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–50 Export controlled personal property.

(a) When personal property that is subject to export controls is being exported directly by DOE (e. g., a transfer of nuclear equipment or materials as part of a program of cooperation with another country), DOE or the DOE contractor must obtain the necessary export license.

(b) When personal property subject to export controls is transferred under work-for-others agreements, co-operative agreements, or technical programs, the recipients will be informed in writing that:

(1) The property is subject to export controls;

(2) They are responsible for obtaining export licenses or authorizations prior to transferring or moving the property to another country; and

(3) They are required to pass on export control guidance if they transfer the property to another domestic or foreign recipient.

§ 109–43.307–51 Classified personal property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified, as determined by the cognizant program office, prior to any disposition action. The cognizant program office shall certify that appropriate action has been taken to declassify the personal property as required. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

§ 109–43.307–52 Nuclear-related or proliferation-sensitive personal property.

(a) Recognizing that property disposal officials will not have the technical knowledge to identify nuclear-related and proliferation-sensitive personal property, all such personal property shall be physically tagged with a certification signed by an authorized program official at time of determination by the program office of the personal property as excess. Such an authorized official should be designated in writing with signature cards on file in the property office.

(b) Nuclear-related and proliferation-sensitive personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be nuclear-related or proliferation-sensitive personal property, as determined by the cognizant program office, prior to disposal. The cognizant program office shall certify that appropriate actions have been taken to strip the personal property as required, or shall provide the property disposal office with adequate instructions for stripping the items. Such action shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

(c) Heads of field organizations shall determine demilitarization requirements regarding combat material and military personal property.

§ 109–43.307–53 Automatic Data Processing Equipment (ADPE).

All ADPE shall be sanitized before being transferred into excess to ensure that all data, information, and software has been removed from the equipment. Designated computer support personnel must indicate that the equipment has been sanitized by attaching a certification tag to the item. ADPE will be utilized and disposed in accordance with the provisions of 41 CFR 201–23.

§ 109–43.307–54 Unsafe personal property.

Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

§ 109–43.312 Use of excess personal property on cost-reimbursement contracts.

(a) [Reserved]

(b) It is DOE policy for designated contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in 41 CFR 101–43.312(b) does not apply to such contracts, and a DOE official is not required to execute transfer orders for authorized designated contractors. The procedures prescribed in 41 CFR 101–43.309–5 for execution of transfer orders apply.

§ 109–43.313 Use of excess personal property on cooperative agreements.

(a)–(c) [Reserved]

(d) Heads of field organizations shall ensure that required records are maintained in a current status.

§ 109–43.314 Use of excess personal property on grants.

(a)–(e) [Reserved]

(f) Heads of field organizations shall ensure that the records required by 41 CFR 101–43.314(f) are maintained.

§ 109–43.315 Certification of non-Federal agency screeners.

(a)–(c) [Reserved]

(d) Contracting officers shall maintain a record of the number of certified non-Federal agency screeners operating under their authority and shall immediately notify the appropriate GSA regional office of any changes in screening arrangements.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

§ 109–43.502 Holding agency responsibilities.

(a) [Reserved]

(b) Property which remains excess after utilization screening within the general foreign geographical area where the property is located shall be reported to the accountable field office or Headquarters program organization for consideration for return to the United States for further DOE or other Federal utilization. The decision to return property will be based on such factors as acquisition cost, residual value, condition, usefulness, and cost of transportation.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a) The annual report of the utilization of domestic excess personal property is submitted to GSA by the DPMO. Field office feeder reports shall be submitted to the DPMO by November 15 of each year in the form of the Utilization and Disposal of Excess and Surplus Personal Property (85–2). The report shall include data on excess and surplus personal property provided to educational institutions in support of kindergarten through twelfth grade programs and non-profit organizations as provided by the American Technology Preeminence Act of 1991 and Executive Order 12821, Improving Mathematics and Science Education in Support of the National Education Goals dated November 16, 1992. The data will appear as adjustments on the 85–2 report.

(b) [Reserved]

(c) The annual report of personal property furnished (e.g., transfers, gifts, loans, leases, license agreements, and sales) to non-Federal recipients, including elementary and secondary schools, is furnished to GSA by the DPMO. Feeder reports, using the format illustrated below, shall be submitted to the DPMO by November 15 of each year.

(1) Field office feeder reports shall include the following:

(i) Data for all excess personal property obtained from other Federal agencies and furnished to any DOE offsite or designated contractor or financial assistance recipient;

(ii) Data for all DOE personal property no longer needed by a DOE direct operation and subsequently furnished to any DOE offsite or designated contractor or financial assistance recipient.

(iii) Data for all personal property furnished to elementary and secondary schools and non-profit organizations under initiatives to support science and mathematics education.

(2) Field office feeder reports shall not include data for contractor inventory which is declared excess and subsequently redistributed through REAPS (or other means within DOE) to other DOE contractors or designated contractors' subcontractors.

(3) The feeder report from the Office of Science Education Programs, using the following format, will include data for all personal property furnished to non-federal recipients and institutions of higher learning under the ERLE Grant Program:

Name and Address of Recipient
Recipient's Status
Original Cost of Property
2 Digit Federal Supply Classification Group

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5000 Scope of subpart.

This subpart supplements 41 CFR part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5001 Definition.

Facility in standby means a complete plant or section of a plant, which is neither in service or declared excess.

§ 109–43.5002 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established start-up criteria; periodic reviews (no less than biennially) to determine need for continued retention of property; and special reviews when a change in start-up time is made or when circumstances warrant. Such procedures should recognize that:

(a) Equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant;

(b) Where practicable, common-use stores should be removed and used elsewhere; and

(c) Uninstalled equipment and other personal property not required should be utilized elsewhere on-site or be disposed of as excess.

PART 109–44—DONATION OF PERSONAL PROPERTY

Subpart 109–44.7—Donations of Property to Public Bodies

Sec.
109–44.701 Findings justifying donation to public bodies.
109–44.702 Donations to public bodies.
109–44.702–3 Hazardous materials.

Subpart 109–44.47—Reports

109–44.4701 Reports.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 109–44.7—Donations of Property to Public Bodies

§ 109–44.701 Findings justifying donation to public bodies.

The Director, Office of Administrative Services and heads of field organizations shall appoint officials to make required findings and reviews.

§ 109–44.702 Donations to public bodies.

§ 109–44.702–3 Hazardous materials.

The Director, Office of Administrative Services and heads of field organizations shall be responsible for the safeguards, notifications, and certifications required by 41 CFR part 101–42 and part 109–42 of this subchapter, as well as compliance with all other requirements therein.

Subpart 109–44.47—Reports

§ 109–44.4701 Reports.

The annual report of the donation of surplus personal property is furnished to GSA by the DPMO in combination with the report of the utilization of excess personal property. Field office feeder reports shall be submitted to the DPMO by November 15 of each year.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 109–45.1—General

Sec.
109–45.105 Exclusions and exemptions.
109–45.105–3 Exemptions.

Subpart 109–45.3—Sale of Personal Property

109–45.300–50 Sales by designated contractors.
109–45.301–51 Export/import clause.

109–45.302 Sale to Government employees.
109–45.302–50 Sales to DOE and designated contractor employees.
109–45.303 Reporting property for sale.
109–45.303–3 Delivery.
109–45.304 Sales methods and procedures.
109–45.304–2 Negotiated sales and negotiated sales at fixed prices.
109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and awarding of contracts.
109–45.304–51 Documentation.
109–45.309 Special classes of property.
109–45.309–2.50 Hazardous property.
109–45.309–51 Export controlled property.
109–45.309–52 Classified property.
109–45.309–53 Nuclear-related or proliferation-sensitive property.
109–45.309–54 Automatic Data Processing Equipment (ADPE).
109–45.310 Antitrust laws.
109–45.317 Noncollusive bids and proposals.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

109–45.601 Policy.
109–45.602 Listing debarred or suspended contractors.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

109–45.901 Authority to abandon or destroy.
109–45.902 Findings justifying abandonment or destruction.
109–45.902–2 Abandonment or destruction without notice.

Subpart 109–45.10—Recovery of Precious Metals

109–45.1002 Agency responsibilities.
109–45.1002–2 Agency reporting requirements.
109–45.1002–3 Precious metals recovery program monitor.
109–45.1003 Recovery of silver from precious metals bearing materials.
109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

Subpart 109–45.47—Reports

109–45.4701 Performance reports.
109–45.4702 Negotiated sales reports.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5005 Disposal.
109–45.5005–1 General.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

109–45.5100 Scope of subpart.
109–45.5101 Authority.
109–45.5102 General.
109–45.5103 Definitions.
109–45.5104 Disposal.
109–45.5104–1 General.
109–45.5104–2 Methods of disposal.
109–45.5105 Reports.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), para. 101–45.400—45.405 also issued under sec. 307, 49 Stat. 880; 40 U.S.C. 304*l*.

Subpart 109–45.1—General

§ 109–45.105 Exclusions and exemptions.

§ 109–45.105–3 Exemptions.

GSA, by letter dated May 28, 1965, exempted contractor inventory held by DOE designated contractors from the GSA conducted sales provisions of 41 CFR part 101–45.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.300–50 Sales by designated contractors.

Sales of surplus contractor inventory will be conducted by designated contractors when heads of field organizations determine that it is in the best interest of the Government. OPMOs and appropriate program officials shall perform sufficient oversight over these sales to ensure that personal property requiring special handling or program office certification is sold in accordance with regulatory requirements.

§ 109–45.301–51 Export/import clause.

The following clause shall be included in all sales invitations for bid:

Personal property purchased from the U.S. Government may or may not be authorized for export/import from/into the country where the personal property is located. If export/import is allowed, the purchaser is solely responsible for obtaining required clearances or approvals. The purchaser also is required to pass on DOE's export control guidance if the property is resold or otherwise disposed.

§ 109–45.302 Sale to Government employees.

§ 109–45.302–50 Sales to DOE and designated contractor employees.

(a) DOE employees and employees of designated contractors shall be given the same opportunity to acquire Government personal property as is given to the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly:

(1) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the personal property, or

(2) Participated in:

(i) The determination to dispose of the personal property;

(ii) The preparation of the personal property for sale; and

(iii) Determining the method of sale.

(b) Excess or otherwise unusable special, fitted clothing and other articles of personal property, acquired for the exclusive use of an individual employee, may be sold to the employee for the best price obtainable when the property is no longer required by the holding organization or the employee is terminated.

§ 109–45.303 Reporting property for sale.

§ 109–45.303–3 Delivery.

(a)–(b) [Reserved]

(c) Guidelines for signature authorization and control of blank copies of Standard Form 97, United States Government Certificate to Obtain Title to a Vehicle are contained in subpart 109–38.7 of this chapter.

§ 109–45.304 Sales methods and procedures.

§ 109–45.304–2 Negotiated sales and negotiated sales at fixed prices.

(a)(1) [Reserved]

(2) The head of each field organization shall designate a responsible person to approve negotiated sales by DOE direct operations.

(3) Requests for prior approval of negotiated sales by DOE direct operations shall be submitted with justification to the OPMO for review and forwarding to GSA for approval.

§ 109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.

(a) Negotiated sales by designated contractors of surplus contractor inventory may be made when the DOE contracting officer determines and documents prior to the sale that the use of this method of sale is justified on the basis of the circumstances enumerated below, provided that the Government's interests are adequately protected. These sales shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the personal property was offered for competitive sale. Specific conditions justifying negotiated sales include:

(1) No acceptable bids have been received as a result of competitive bidding under a suitable advertised sale;

(2) Personal property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to a state, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the personal property and other satisfactory terms of disposal are obtained by negotiation;

(4) The specialized nature and limited use potential of the personal property would create negligible bidder interest;

(5) Removal of the personal property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) When determined to be in the best interests of the Government, heads of field organizations may authorize fixed-price sales of surplus contractor inventory by designated contractors provided:

(1) The fair market value of the item to be sold does not exceed $15,000;

(2) Adequate procedures for publicizing such sales have been established;

(3) The sales prices are not less than could reasonably be expected if competitive bid sales methods were employed and the prices have been approved by a reviewing authority designated by the head of the field organization; and

(4) The warranty prescribed in § 109–45.302–50(a) of this subpart is obtained when sales are made to employees.

§ 109–45.304–6 Reviewing authority.

The reviewing authority may consist of one or more persons designated by the head of the field organization.

§ 109–45.304–50 Processing bids and awarding of contracts.

The procedures established in 48 CFR 14.4 and 48 CFR 914.4 shall be made applicable to the execution, receipt, safeguarding, opening, abstraction, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor.

§ 109–45.304–51 Documentation.

Files pertaining to surplus property sales shall contain copies of all documents necessary to provide a complete record of the sales transactions and shall include the following as appropriate:

(a) A copy of the request/invitation for bids if a written request/ invitation for bids is employed. A list of items or lots sold, indicating acquisition cost, upset price and sales price indicated.

(b) A copy of the advertising literature distributed to prospective bidders.

(c) A list of prospective bidders solicited.

(d) An abstract of bids received.

(e) Copies of bids received, including Standard Form 119, Contractor's Statement of Contingent or Other Fees, together with other relevant information.

(f) A statement concerning the basis for determination that proceeds constitute a reasonable return for property sold.

(g) When appropriate, full and adequate justification for not advertising the sale when the fair market value of property sold in this manner in any one case exceeds $1,000.

(h) A justification concerning any award made to other than the high bidder.

(i) The approval of the reviewing authority when required.

(j) A copy of the notice of award.

(k) All related correspondence.

(l) In the case of auction or spot bid sales, the following additional information should be included:

(1) A summary listing of the advertising used (e.g., newspapers, radio, television, and public postings).

(2) The names of the prospective bidders who attended the sale.

(3) A copy of any pertinent contract for auctioneering services and related documents.

(4) A reference to files containing record of deposits and payments.

§ 109–45.309 Special classes of property.

§ 109–45.309–2.50 Hazardous property.

Hazardous property shall be made available for sale only after the review and certification requirements of § 109–43.307–2.50 of this subpart have been met.

§ 109–45.309–51 Export controlled property.

Export controlled property shall be made available for sale only after the export license requirements of § 109–43.307–50 of this subpart have been met.

§ 109–45.309–52 Classified property.

Classified property shall be made available for sale only after the declassification requirements of § 109–43.307–51 of this subpart have been met.

§ 109–45.309–53 Nuclear-related or proliferation-sensitive property.

Nuclear-related or proliferation-sensitive property shall be made available for sale only after the stripping and certification requirements of § 109–43.307–52 of this subpart have been met.

§ 109–45.309–54 Automatic Data Processing Equipment (ADPE).

ADPE shall be made available for sale only after the sanitizing and certification requirements of § 109–43.307–53 of this subpart have been met.

§ 109–45.310 Antitrust laws.

DOE offices shall submit to the Deputy Assistant Secretary for Procurement and Assistance Management any request for a proposed sale of a patent, process, technique, or invention, regardless of cost; or of surplus personal property with a fair market value of $3,000,000 or more.

§ 109–45.317 Noncollusive bids and proposals.

(a) [Reserved]

(b) The head of the field organization shall make the determination required in 41 CFR 101–45.317(b). This authority cannot be redelegated.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

§ 109–45.601 Policy.

(a)–(b) [Reserved]

(c) The Director, Office of Administrative Services and heads of field organization shall make the compelling reason determination when entering into a contract for the purchase of surplus Government personal property by a debarred or suspended contractor.

(d) The Deputy Assistant Secretary for Procurement and Assistance Management shall make the determination for simultaneously debarring and suspending a contractor from the purchase of surplus Federal personal property and the award of sales contracts.

§ 109–45.602 Listing debarred or suspended contractors.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations shall establish procedures to ensure that listed contractors are not awarded contracts.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

§ 109–45.901 Authority to abandon or destroy.

Personal property in the possession of DOE offices or designated contractors may be abandoned or destroyed provided that a written determination has been made by the OPMO that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

§ 109–45.902 Findings justifying abandonment or destruction.

§ 109–45.902–2 Abandonment or destruction without notice.

The head of the field organization shall designate an official to make the

findings justifying abandonment or destruction without public notice of personal property. The OPMO shall review and coordinate on the findings.

Subpart 109–45.10—Recovery of Precious Metals

§ 109–45.1002 Agency responsibilities.

The Director, Office of Administrative Services and heads of field organizations are responsible for establishing a program for the recovery of precious metals.

§ 109–45.1002–2 Agency reporting requirements.

Each DOE organization and designated contractor generating precious metals scrap shall prepare the report on precious metals recovery. Negative reports are required. Contractors shall submit reports to the DOE contracting office for review and approval. DOE organizations shall submit reports, including contractor reports, to the DPMO not later than 30 days after the end of the fiscal year.

§ 109–45.1002–3 Precious metals recovery program monitor.

The DPMO shall be the precious metals recovery program monitor.

§ 109–45.1003 Recovery of silver from precious metals bearing materials.

The Director, Office of Administrative Services and heads of field organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film.

§ 109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

DOE operates its own precious metals pool and therefore does not participate in the DOD Precious Metals Recovery Program. See § 109–27.5106 of this chapter for guidance on operation of the DOE precious metals pool.

Subpart 109–45.47—Reports

§ 109–45.4701 Performance reports.

The report of the sale or other disposition of surplus personal property is furnished to GSA by the DPMO. The required data is taken from the Utilization and Disposal of Excess and Surplus Personal Property (85–2) report required by § 109–43.4701 of this subchapter.

§ 109–45.4702 Negotiated sales reports.

The report of negotiated sales shall be submitted by DOE offices to the DPMO by November 15 of each year for furnishing to GSA.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109–45.5005 Disposal.

§ 109–45.5005–1 General.

(a) Nuclear-related, proliferation-sensitive, low level contaminated property, and classified personal property shall not be transferred, sold, exchanged, leased, donated, abandoned, or destroyed without approval of the cognizant program office. Disposal of this personal property is subject to the restrictions contained in applicable sections of part 109–42 and §§109–43.307–50, 109–43.307–51, and 109–43.307–52 of this subchapter, and applicable sections of 41 CFR part 101–42.

(b) Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

§ 109–45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

§ 109–45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of 40 U.S.C. 471, Federal Property and Administrative Services Act of 1949, as amended. Title IV of the Act entitled "Foreign Excess Property" provides that, except where commitments exist under previous agreements, all excess personal property located in foreign areas shall be disposed of by the owning agency, and directs that the head of the agency conform to the foreign policy of the United States in making such disposals.

§ 109–45.5102 General.

Disposal of Government-owned personal property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

§ 109–45.5103 Definitions.

As used in this subpart, the following definitions apply:

Foreign means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Foreign service post means the local diplomatic or consular post in the area where the excess personal property is located.

§ 109–45.5104 Disposal.

§ 109–45.5104–1 General.

Foreign excess personal property which is not required for transfer within DOE or to other U.S. Government agencies, except for the personal property identified in § 109–45.5005–1(a) of this part, shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such personal property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2(c) of this subpart. Most foreign governments have indicated to the U.S. State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these issues. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in Washington, DC. If the issue is to be presented to the State Department in Washington, DC, it shall be referred through appropriate administrative channels to the Deputy Assistant Secretary for Procurement and Assistance Management for review, coordination, and handling.

§ 109–45.5104–2 Methods of disposal.

(a) Sales of foreign surplus personal property shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of foreign surplus personal property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any personal property be sold in foreign areas without a condition which states that its importation into the United States is

forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, cotton, or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against personal property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the personal property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipts prior to the release of the personal property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Certain categories of personal property, including small arms and machine guns; artillery and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordinance vehicles; chemical and biological agents, propellants and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is included in the United States Munitions List, 22 CFR 121.01, and is subject to disposal restrictions. Advance approval must be obtained from the State Department for the sale of all such articles. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) Prior to the sale of personal property which has a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the DPMO with ample time to allow consideration of possible foreign policy issues and advice thereon from the State Department (see § 109–45.5106(a) of this subpart). All proposed sales, regardless of the total acquisition cost of the personal property involved, which the head of the DOE foreign office believes might have a significant economic or political impact in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus personal property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under section 109–45.5105–2(a) of this subpart.

(c) (1) Foreign excess or surplus personal property (including salvage and scrap) may be donated, abandoned, or destroyed provided:

(i) The property has no commercial value or the estimated cost of its care and handling would exceed the estimated proceeds from its sale; and

(ii) A written finding to that effect is made and approved by the Deputy Assistant Secretary for International Energy Policy.

(2) No personal property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health, or charitable nonprofit organizations.

(3) Foreign excess personal property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by these means and approval by the Deputy Assistant Secretary for International Energy Policy is required.

(4) Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

§ 109–45.5105 Reports.

(a) Proposed sales of foreign surplus personal property having an acquisition cost of $250,000 or more shall be reported to the DPMO and should include all pertinent data, including the following:

(1) The description of personal property to be sold, including:

(i) Identification of personal property (description should be in terms understandable to persons not expert in technical nomenclature). Personal property covered by the U. S. Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly identified;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (e.g., sealed bid, negotiated sale, etc.)

(3) Any currency to be received and payment provisions (i.e., U.S. dollars, foreign currency, or credit, including terms of the proposed sale).

(4) Any restrictions on use of personal property to be sold (such as resale of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms or conditions of sale.

(6) The categories of prospective purchasers (e.g., host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc., will be handled.

(b) Instructions for reporting foreign excess utilization and disposal transactions are contained in Chapter III of DOE Order 534.1, Accounting.

PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.

109–46.000 Scope of part.
109–46.000–50 Applicability.

Subpart 109–46.2—Authorization

109–46.202 Restrictions and limitations.
109–46.203 Special authorizations.

Subpart 109–46.3—Exchange and Sale Procedures

109–46.305 Reports.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 109–46.000 Scope of part.

§ 109–46.000–50 Applicability.

(a) Except as set forth in paragraphs (a)(1)–(a)(5), the requirements of FPMR Part 101–46 and this part are not applicable to designated contractors. Designated contractors shall comply with the following FPMR requirements:

(1) 101–46.200

(2) 101–46.201–1

(3) 101–46.202(b) (2), (3), (4), (5), (6), and (7)

(4) 101–46.202(c) (1), (2), (4), (5), (6), (7), (10), (11), and (12)

(5) 101–46.202(d)

(b) Items in the following Federal Supply Classification Groups (FSCG) are not eligible for processing under the exchange/sale provision. Requests for waivers must be processed through the DPMO to GSA.

FSCG	Description
10	Weapons.
11	Nuclear ordnance.
12	Fire control equipment.
14	Guided missiles.
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing, and ground handling equipment.
20	Ship and marine equipment.
22	Railway equipment.
41	Firefighting, rescue, and safety equipment.

Subpart 109–46.2—Authorization

§ 109–46.202 Restrictions and limitations.

(a), (b), (c)(1)–(c)(9) [Reserved]

(c) * * *

(10) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification that a continuing valid requirement exists for excess personal property acquired and placed in official use for less than one year but no longer required and is to be disposed of under the exchange/sale provisions.

(11) [Reserved]

(12) Heads of field organizations shall make the determination concerning demilitarization of combat material.

§ 109–46.203 Special authorizations.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification concerning the exchange of historic items for historical preservation or display.

Subpart 109–46.3—Exchange and Sale Procedures

§ 109–46.305 Reports.

The report of exchange/sale transactions by DOE offices shall be submitted through normal administrative channels to the DPMO within 60 days after the close of the fiscal year. Property exchanged or traded in by designated contractors is not considered as exchange/sale transactions under this part, and are not to be included in field office submissions. Written negative reports are required.

PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.

109–48.000 Scope of part.
109–48.000–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101 Forfeited or voluntarily abandoned property.
109–48.101–6 Transfer to other Federal agencies.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 109–48.000 Scope of part.

§ 109–48.000–50 Applicability.

This part is applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government that are managed and operated by designated contractors.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

§ 109–48.101 Forfeited or voluntarily abandoned property.

§ 109–48.101–6 Transfer to other Federal agencies.

(a)–(e) [Reserved]

(d) Transfer orders for forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages for medicinal, scientific, or mechanical purposes or any other official purposes for which appropriated funds may be expended by a Government agency shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for release.

(f) Transfer orders for reportable forfeited drug paraphernalia shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for approval.

PART 109–50—SPECIAL DOE DISPOSAL AUTHORITIES

Sec.

109–50.000 Scope of part.
109–50.001 Applicability.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

109–50.100 Scope of subpart.
109–50.101 Applicability.
109–50.102 General.
109–50.103 Definitions.
109–50.104 Equipment which may be granted.
109–50.105 Equipment which may not be granted.
109–50.106 Procedure.

Subpart 109–50.2—Math and Science Equipment Gift Program

109–50.200 Scope of subpart.
109–50.201 Applicability.
109–50.202 Definitions.
109–50.203 Eligible equipment.
109–50.204 Limitations.
109–50.205 Procedure.
109–50.206 Reporting.

Subpart 109–50.3—Economic Development

109–50.300 Scope of subpart.
109–50.301 Applicability.
109–50.302 General.
109–50.303 Authority.
109–50.304 Procedure.

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

109–50.400 Scope of subpart.
109–50.401 Definitions.
109–50.402 Submission of proposals.
109–50.403 Need to establish DOE program benefit.

Subpart 109–50.48—Exhibits

109–50.4800 Scope of subpart.
109–50.4801 Equipment Gift Agreement.
109–50.4802 Personal property eligible for disposal processing under economic development procedures.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254); sec. 31, Atomic Energy Act, as amended; Department of Energy Reorganization Act, secs. 103 and 107; Title III, Department of Energy Organization Act; E.O. 12999; Sec. 3710(i), Stevenson-Wydler Technology Innovation Act, as amended (15 U.S.C. 3710(i)); Pub. L. 101–510, Department of Energy Science Education Enhancement Act; Pub. L. 102–245, American Technologies Preeminence Act of 1991 (15 U.S.C. 3701); Sec. 3155, Pub. L. 103–160 (42 U.S.C. 7274l); Office of Energy Research Financial Assistance Regulations (10 CFR part 605).

§ 109–50.000 Scope of part.

This part provides guidance on the policies, practices, and procedures for the disposal of DOE property under special legislative authorities.

§ 109–50.001 Applicability.

The provisions of this part apply to direct DOE operations and to designated contractors only when specifically provided for in the appropriate subpart.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

§ 109–50.100 Scope of subpart.

This subpart provides guidance on the granting of used energy-related laboratory equipment to universities and colleges and other nonprofit educational institutions of higher learning in the United States for use in energy-oriented educational programs.

§ 109–50.101 Applicability.

This subpart is applicable to DOE offices and designated contractors.

§ 109–50.102 General.

DOE, to encourage research and development in the field of energy, awards grants of excess energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment (ERLE) Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and designated contractors may be made to eligible institutions prior to reporting the equipment to GSA for reutilization screening.

§ 109–50.103 Definitions.

As used in this subpart the following definitions apply:

Book value means acquisition cost less depreciation.

DOE Financial Assistance Rules (10 CFR part 600) means the DOE regulation which establishes a uniform administrative system for application, award, and administration of assistance awards, including grants and cooperative agreements.

Eligible institution means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented education programs.

Energy-oriented education program means one that deals partially or entirely in energy or energy-related topics.

§ 109–50.104 Equipment which may be granted.

Generally, equipment items classified in FSCG 66, Instruments and Laboratory Equipment, are eligible for granting under this program. Other selected items designated by the Office of Laboratory Policy and Infrastructure Management and approved by the DPMO, are made available under the program.

§ 109–50.105 Equipment which may not be granted.

Equipment which will not be granted includes:

(a) Any equipment determined to be required by DOE direct operations or DOE designated contractors; or

(b) General supplies, such as Bunsen burners, hoods, work benches; office equipment and supplies; furniture; drafting supplies; refrigerators; tools; presses; lathes; furnaces; hydraulic and mechanical jacks; cranes; and hoists.

§ 109–50.106 Procedure.

(a) After DOE utilization screening through REAPS, items eligible for ERLE grants are extracted from the REAPS system and provided to the Office of Energy Research on an ADPE tape or by electronic means.

(b) The Office of Energy Research provides this information to prospective grantees through an automated system and/or a printed catalog.

(c) The following periods have been established during which time equipment will remain available to this program prior to reporting it to GSA for reutilization by other Federal agencies:

(1) Thirty days from the date DOE utilization screening is completed to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional thirty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(d) Upon approval of the proposal, a grant will be issued to the institution upon completion.

(e) A copy of the completed grant, shall be used to transfer title and drop accountability of the granted equipment from the financial records.

(f) The cost of care and handling of personal property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

Subpart 109–50.2—Math and Science Equipment Gift Program

§ 109–50.200 Scope of subpart.

This subpart provides guidance on providing gifts of excess and/or surplus education related and Federal research equipment to elementary and secondary educational institutions or nonprofit organizations for the purpose of improving math and science curricula or conducting of technical and scientific education and research activities.

§ 109–50.201 Applicability.

The provisions of this subpart are applicable to DOE offices and designated contractors.

§ 109–50.202 Definitions.

As used in this subpart the following definitions apply:

DOE Field Organizations means the DOE Federal management activities, including Operations Offices, Field Offices, Area Offices, Site Offices, Energy Technology Centers, and Project Offices staffed by Federal employees.

Education-related and Federal research equipment includes but is not limited to DOE-owned property in FSCG 34, 36, 41, 52, 60, 61, 66, 67, 70, and 74 (See 41 CFR 101–43.4801(d)), and other related equipment, which is deemed appropriate for use in improving math and science curricula or activities for elementary and secondary school education, or for the conduct of technical and scientific education and research activities.

Eligible recipient means local elementary and secondary schools and nonprofit organizations.

Elementary and secondary schools means individual public or private educational institutions encompassing kindergarten through twelfth grade, as well as public school districts.

Facilities under DOE Field Organization cognizance means national laboratories, production plants, and project sites managed and operated by DOE contractors or subcontractors.

§ 109–50.203 Eligible Equipment.

(a) Education-related and research equipment will include, but is not limited to the following FSCGs:

FSCG	Description
34	Metalworking Machinery.
36	Special Industry Machinery.
41	Refrigeration, Air Conditioning and Air Circulating Equipment.
52	Measuring Tools.
60	Fiber Optics Materials, Components, Assemblies and Accessories.
61	Electric Wire, and Power and Distribution Equipment.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
70	General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment.
74	Office Machines, Text Processing Systems and Visible Record Equipment.

(b) Other related equipment may be provided if deemed appropriate and approved by the Director, Office of Laboratory Policy and Infrastructure Management.

§ 109–50.204 Limitations.

(a) Excess and/or surplus education-related and Federal research equipment at DOE Field Organizations and cognizant facilities is eligible for transfer as a gift under this program. However, safety, environmental, and health matters must be considered.

(b) Title to the equipment will transfer upon the recipient's written acknowledgement of receipt.

(c) The Director, Office of Laboratory Policy and Infrastructure Management may authorize gifts of excess and/or surplus education-related and Federal research equipment by signature on the appropriate gift instrument where the book value of an item of equipment exceeds $25,000 or the cumulative book value of the gifts under this program to any one institution exceeds $25,000. HCA or designee may authorize gifts of excess and/or surplus education-related and Federal research equipment of lesser individual and cumulative book value by signature on the appropriate gift instrument. Delegations by the HCA to authorize gifts of excess and/or surplus education related and Federal research equipment shall be in writing to a specific individual, for a specified period of time, and for a specified (or unlimited) level of authority.

(d) Gifts shall be serviceable and in working order. Disposal Condition Codes 1 and 4, as defined in 41 CFR 101–43.4801(e), meet this criteria. Serviceability of equipment should be verified before the gift is made to the eligible recipient.

§ 109–50.205 Procedure.

(a) The DOE facility will set aside an appropriate amount of excess and/or surplus education-related and Federal research equipment for transfer under this program as determined by the HCA.

(b) A list of available education-related and Federal research equipment will be prepared and distributed to eligible recipients.

(c) Precollege institutions with partnership arrangements with the DOE or its facilities (e.g., an adopted school) may receive gifts of equipment in support of the partnership.

(d) Precollege institutions not in a partnership with DOE may receive equipment at the recommendation of the local education agency.

(e) Eligible recipients will have 30 days to select and freeze the items desired and submit a request for selected items stating:

(1) Why the gift is needed; and

(2) How the gift will be used to improve math and science curricula or in the conduct of technical and scientific education and research activities.

(f) The Chief State School Officer will determine which schools will receive equipment within their state. Consideration for placement of the equipment should be based on:

(1) The elementary or secondary schools determined to have the greatest need; or

(2) Recipients of federally funded math and science projects where the equipment would further enhance the progress of the project.

(g) The cost of shipping should be minimal and not more than the actual equipment value.

(h) An Equipment Gift Agreement will be prepared and used to provide the gift to eligible recipients. The gift agreement will be in the format provided in § 109–50.4801 of this subchapter. The agreement shall be numbered for control purposes, and signed by the Director, Office of Laboratory Policy and Infrastructure Management or the HCA or designee, as appropriate, and an appropriate official representing the eligible recipient.

§ 109–50.206 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and § 109–43.4701(c) of this subchapter.

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

Subpart 109–50.3—Economic Development

§ 109–50.300 Scope of subpart.

This subpart provides guidance concerning the transfer of DOE personal property identified as necessary for local economic development to communities adversely affected by the downsizing or closure of a DOE site.

§ 109–50.301 Applicability.

(a) The provisions of this subpart apply to DOE sites and facilities that are undergoing closure, reconfiguration, or other significant transition due to the downsizing of the Department's nuclear weapons production mission.

(b) The provisions of this subpart do not apply to weapons, nuclear ordnance, ammunition and explosives, guided missiles, aircraft and aircraft components, ships and marine equipment, and space vehicles.

§ 109–50.302 General.

(a) Before transfer to other DOE or external users, all personal property subject to these provisions will be reviewed to determine if DOE high risk personal property controls, specified in subpart 109–1.53 of this chapter, apply.

(b) All personal property identified as necessary for non-nuclear reconfigurations will be shipped to other DOE sites to reestablish key technologies for National Defense programs. Such personal property will not be made available for local economic development.

(c) All personal property that is excess to DOE needs and which has been identified as having possible application to local economic development projects will be so identified in a local personal property inventory database.

(d) Communities affected by the reconfiguration or closure of nearby DOE sites or facilities are required to establish a Community Reuse Organization (CRO) to determine and sponsor economic development actions that the community may take to offset the local effects of DOE downsizing. DOE intends to only work with the CRO.

§ 109–50.303 Authority.

The Secretary of Energy is authorized under Pub. L. 103–160 to transfer, for consideration, Government rights, title, and interest in and to excess and, under certain circumstances, non-excess personal property and equipment to local communities if the Secretary determines that such transfers will mitigate the adverse economic consequences that might otherwise arise from the closure, reconfiguration, or other significant transition of DOE sites and facilities due to the downsizing of the Department's nuclear weapons production mission.

§ 109–50.304 Procedure.

(a) The Operations Offices, Field Offices, or Area Offices, as appropriate, shall assist the local CROs in the development of local economic development program plans. The plans should describe any personal property needed for specific economic development projects to be accomplished.

(b) The CRO shall determine and sponsor the actions that the local community may take to offset the consequences of the downsizing or closure of the DOE site.

(c) In carrying out the provisions of this subpart, the decision matrix in § 109–50.4802(a) of this subchapter will be used. In addition, the following guidance is provided to assist in carrying out the reutilization determination:

(1) Determination and screening of excess.

(i) An inventory of the personal property identified for potential local economic use will be provided to the CRO. Transfer of possession or conveyance of title to property will not

occur, however, until the property is determined to be excess to DOE needs.

(ii) The determination that items of personal property designated as Group 1 items (i.e., items in the FSCGs listed in § 109–50.4802(b) of this subchapter having an acquisition cost of less than $5,000) are excess to DOE needs may be made by the local activity where the property is located. Group 1 property will not be subject to Departmental screening through REAPS.

(iii) Personal property items designated as Group 2 items (items in the FSCGs listed in § 109–50.4802(c) of this subchapter having an acquisition cost of less than $5,000) will receive Departmental screening through REAPS for 15 days only.

(iv) All other personal property items not designated as either Group 1 or Group 2 items will undergo REAPS screening for 30 days. Procedures for REAPS processing of personal property identified for economic development are included in § 109–50.4802(d) of this subchapter.

(2) Transfer of excess for economic development.

(i) When it is determined that there are no DOE requirements, the excess personal property may be offered to the CRO for use in economic development in exchange for reasonable consideration.

(ii) If the CRO and DOE agree on the amount of consideration, the property will be transferred to the CRO and moved to a CRO-controlled area.

(iii) All Government rights, title, and interests in personal property that is transferred to the CRO under this initiative will convey at the time of transfer.

(iv) The amount of consideration received by the Government for the transfer of excess property to the CRO will be determined by the HCA. The amount received may be less than the fair market value of the property if the HCA, acting on behalf of the Secretary, determines that the receipt of a lesser amount by the Government is in accordance with the purpose of such transfer under Pub. L. 103–160.

(3) Transfer of non-excess personal property. Personal property which is not excess, as determined by the property manager, may also be transferred to the CRO for consideration if it has a replacement cost not exceeding 110 percent of the cost to relocate the property to another DOE facility. Relocation costs may include storage, protection, removal, transportation, insurance, and other associated costs.

(4) Other.

(i) When an item has been identified for both economic development and a DOE program, a program need determination may be made by the manager of the cognizant Operations or Field Office. If the manager elects not to make the determination, the issue will be forwarded to the Associate Deputy Secretary for Procurement and Assistance Management for a coordinated final decision with the Associate Deputy Secretary for Field Management. Government property will not be transferred until the appropriate program need determination has been made.

(ii) When the CRO declines to accept property that has been offered, DOE will proceed with disposal in accordance with applicable provisions of the FPMR and this regulation.

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains policy to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

§ 109–50.401 Definitions.

As used in this subpart, the following definitions apply:

Contractor means the operator of the mixed facility.

DOE property means DOE-owned personal property located in a mixed facility.

Mixed facility means a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

§ 109–50.402 Submission of proposals.

Proposals involving programmatic disposals of DOE personal property located in mixed facilities to contractors operating that facility shall be forwarded through the appropriate program organization to the DPMO, for review and processing for approval. Each such request shall include all information necessary for a proper evaluation of the proposal. The proposal shall include, as a minimum:

(a) The purpose of the mixed facility;

(b) The description, condition, acquisition cost, and present use of the DOE personal property involved.

(c) The programmatic benefits which could accrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE personal property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal including:

(1) Price;

(2) Priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items;

(3) Recapture of the property if DOE foresees a possible future urgent need; and

(4) Delivery of the property, whether "as is-where is," etc.).

§ 109–50.403 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on showing that:

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage entry into the field.

Subpart 109–50.48—Exhibits

§ 109–50.4800 Scope of subpart.

This subpart exhibits information referenced in the text of part 109–50 of this subchapter that is not suitable for inclusion elsewhere in that part.

§ 109–50.4801 Equipment Gift Agreement.

(a) The following Equipment Gift Agreement format will be used to provide gifts of excess and/or surplus equipment to eligible recipients under the Math and Science Equipment Gift Program (see subpart 109–50.2 of this subchapter).

EQUIPMENT GIFT AGREEMENT

(Reference Number)

Between The U.S. Department of Energy and

(Name of Eligible Recipient)

I. Purpose

The Department of Energy shall provide as a gift, excess and/or surplus education-related and Federal research equipment to (Name of Eligible Recipient) , hereafter referred to as the Recipient, for the purpose of improving the Recipient's math and science education curricula or for the Recipient's conduct of technical and scientific education and research activities.

II. Authority

Executive Order 12821, November 16, 1992, directed all Federal agencies, to the maximum extent permitted by law, to give highest preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment, at the lowest cost permitted by law. Furthermore, subsection 11(i) of the Stevenson Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710(i)), authorizes the Director of a laboratory, or the head of any Federal agency or department to give excess research equipment to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities.

III. Agreement

A. The Department of Energy agrees to provide the equipment identified in the attached equipment gift list, as a gift for the purpose of improving the Recipient's math and science curricula or for the Recipient's conduct of technical and scientific education and research activities.

B. Title to the education-related and Federal research equipment, provided as a gift under this agreement, shall vest with the Recipient upon the Recipient's written acknowledgement of receipt of the equipment. The acknowledgement shall be provided to (Name of the DOE signatory) at (address).

C. The Recipient will be responsible for any repair and modification costs to any equipment received under this gift.

D. The Recipient hereby releases and agrees to hold the Government, the Department of Energy, or any person acting on behalf of the Department of Energy harmless, to the extent allowable by State law, for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, use, and maintenance of the education-related and Federal Research equipment provided as a gift under this agreement.

E. The Recipient agrees to use the gift provided herein for the primary purpose of improving the math and science curricula or for the conduct of technical and scientific education and research activities.

F. The Recipient agrees to provide for the return of the equipment if such equipment, while still usable, has not been placed in use for its intended purpose within one year after receipt from the Department of Energy.

_____
(U.S. Department of Energy Office)

_____
(Name and Address of Recipient)

_____
(Signature of HCA or Designee)

_____
(Signature of Official)

_____
(Typed Name)

_____
(Typed Name)

_____
(Typed Title)

_____
(Typed Title)

_____
(Date)

_____
(Date)

(b) The list of gifts that accompanies the Equipment Gift Agreement shall contain the Gift Agreement reference number, name of the eligible recipient, and the name of the DOE office. In addition, the following information shall be provided for each line item provided as a gift: DOE ID number, description (name, manufacturer, model number, serial number, etc.), FSC code, quantity, location, acquisition date, and acquisition cost.

§ 109–50.4802 Personal property eligible for disposal processing under economic development procedures.

The following decision matrix, group listings and REAPS procedures will be used to determine eligibility and to process items of personal property under the economic development procedures set forth in subpart 109–50.3 of this subchapter:

(a) Decision matrix:

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EXPEDITED REUTILIZATION PROCEDURES FOR THE TRANSFER OF PERSONAL PROPERTY FOR ECONOMIC DEVELOPMENT

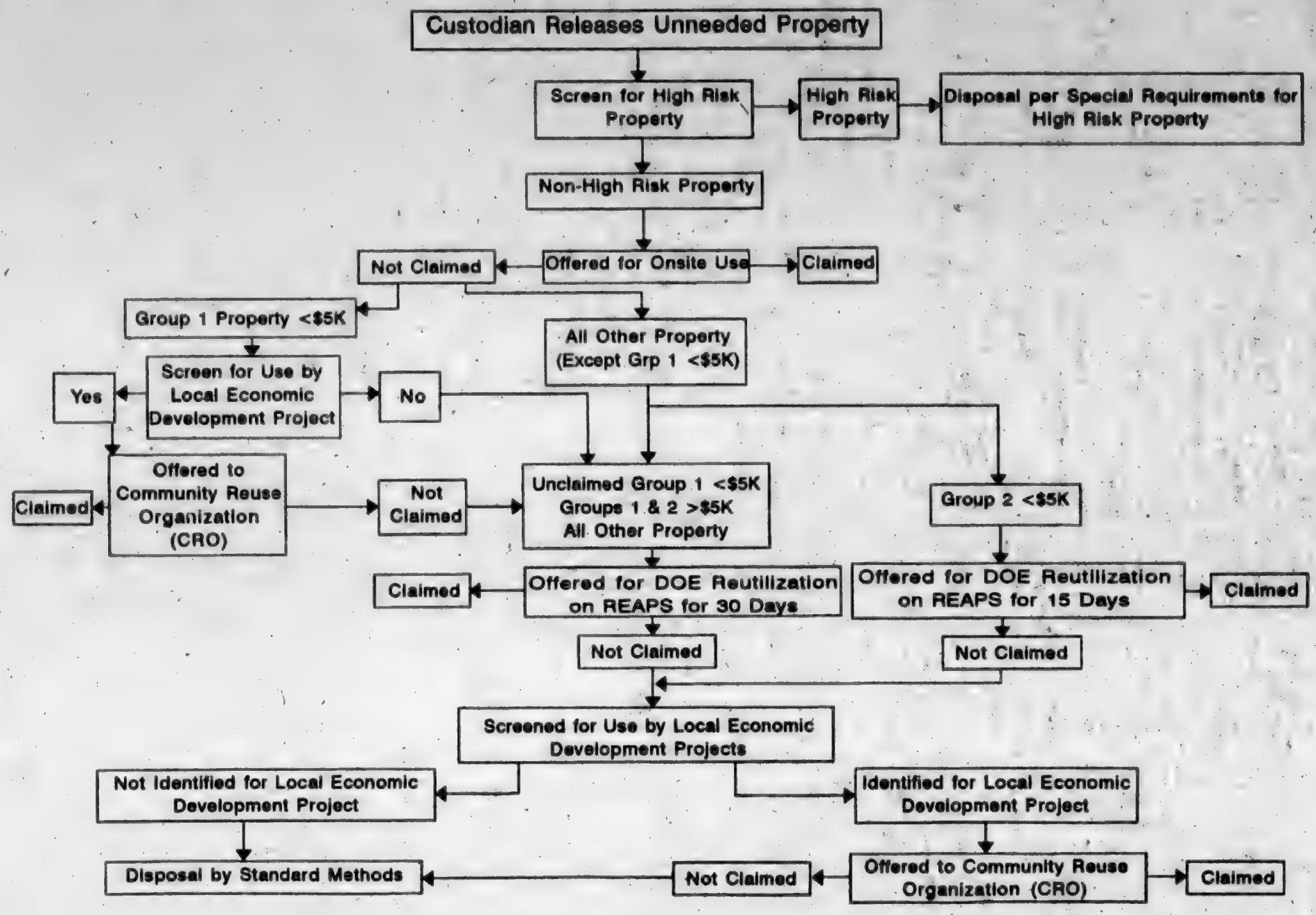

(b) Group 1 Items—Items of personal property which fall in the following FSCGs and have an acquisition cost of less than $5,000 may be determined to be excess by local DOE authority. These items may be transferred, after completion of local screening under REAPS, for economic development under the procedures set forth in subpart 109–50.3 of this subchapter.

FSCG	Description
25	Vehicular Equipment Components.
26	Tires and Tubes.
28	Engines, Turbines, and Components.
29	Engine Accessories.
31	Bearings.
32	Woodworking Machinery and Equipment.
40	Rope, Cable, Chain, and Fittings.
43	Pumps and Compressors.
47	Pipe, Tubing, Hose, and Fittings.
48	Valves.
51	Hand Tools.
52	Measuring Tools.
53	Hardware and Abrasives.
54	Prefabricated Structures and Scaffolding.
55	Lumber, Millwork, Plywood, and Veneer.
56	Construction and Building Materials.
59	Electrical and Electronic Equipment Components.
60	Fiber Optics Materials, Components, Assemblies, and Accessories.
61	Electric Wire, and Power and Distribution Equipment.
62	Lighting Fixtures and Lamps.
67	Photographic Equipment.
69	Training Aids and Devices.
72	Household and Commercial Furnishings and Appliances.
73	Food Preparations and Serving Equipment.
75	Office Supplies and Devices.
76	Books, Maps, and Other Publications.
77	Musical Instruments, Photographs, and Home-Type Radios.
78	Recreational and Athletic Equipment.
79	Cleaning Equipment and Supplies.
80	Brushes, Paints, Sealers, and Adhesives.
81	Containers, Packaging, and Packing Supplies.
83	Textiles, Leather, Furs, Apparel and Shoe Findings, Tents and Flags.
84	Clothing, Individual Equipment and Insignia.
85	Toiletries.
87	Agricultural Supplies.
88	Live Animals.
89	Subsistence.
91	Fuels, Lubricants, Oils, and Waxes.
93	Nonmetallic Fabricated Materials.
94	Nonmetallic Crude Materials.

(c) Group 2 Items—Items of personal property which fall in the following FSCGs and have an acquisition cost of less than $5,000 are subject to a 15-day DOE reutilization screening period before being eligible for transfer for economic development. These items will be entered in REAPS for 15 calendar days. All items considered for transfer for economic development will be in condition code 4 or better.

FSCG	Description
19	Small Craft, Pontoon, and Floating Docks (*Does not include Ships*).
23	Ground Effect Vehicles, Motor Vehicles, Trailers, and Cycles.
24	Tractors.
30	Mechanical Power Transmission Equipment.
34	Metalworking Equipment.
35	Service and Trade Equipment.
36	Special Industry Machinery.
37	Agricultural Machinery and Equipment.
38	Construction, Mining, Excavating, and Highway Maintenance Equipment.
39	Materials Handling Equipment.
41	Refrigeration, Air Conditioning, and Air Circulating Equipment.
42	Fire Fighting, Rescue, and Safety Equipment.
44	Furnace Steam Plant, and Drying Equipment (*Does not include Nuclear Reactors*).
45	Plumbing, Heating, and Sanitation Equipment.
46	Water Purification and Sewage Treatment Equipment.
47	Pipe, Tubing, Hose, and Fittings.
48	Valves.
49	Maintenance and Repair Shop Equipment.
54	Prefabricated Structures and Scaffolding.
56	Construction and Building Materials.
63	Alarm, Signal, and Security Detection Equipment.
65	Medical, Dental and Veterinary Equipment and Supplies.
68	Chemicals and Chemical Products.
70	General Purpose Automatic Data Processing Equipment (including Firmware), Software, Supplies and Support Equipment.
71	Furniture.
72	Household and Commercial Furnishings and Appliances.
73	Food Preparation and Serving Equipment.
74	Office Machines, Text Processing Systems and Visible Record Equipment.
95	Metal Bars, Sheets, and Shapes.
99	Miscellaneous.

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federal register

Wednesday
September 11, 1996

Part III

Department of Housing and Urban Development

24 CFR Parts 582 and 882

Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 582 and 882

[Docket No. FR–3929–F–03]

RIN 2506–AB75

Office of the Assistant Secretary for Community Planning and Development; Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals; Final Rule

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule represents the final rulemaking for three interim rules implementing the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals. The interim rules clarified program definitions and requirements, conformed the regulations with statutory and other changes, and simplified the application selection and tenant outreach processes by conforming them with the processes used in other HUD-administered competitive McKinney Act programs. This final rule adopts the interim rules as final and includes a discussion of the public comments received on the interim rules. This final rule also further streamlines the regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary, in accordance with the President's regulatory reform initiatives.

EFFECTIVE DATE: October 11, 1996.

FOR FURTHER INFORMATION CONTACT: Maggie H. Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; (202) 708–4300 (this number is not toll-free). Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals is to provide rental assistance to homeless individuals in rehabilitated SRO housing. Under this program HUD awards assistance through a national competition that focuses on filling gaps identified in locally-developed continuum of care systems for assisting persons who are homeless. The program is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) (the McKinney Act). HUD published its first final rule for the program in the **Federal Register** on November 7, 1989 (54 FR 46832).

Since that time, HUD has amended these regulations through three interim rules. Regulations that HUD publishes in interim rules become effective like final rules—30 days after publication in the **Federal Register**. Unlike final rules, however, interim rules invite the public to comment on their provisions.

The purpose of today's final rule is to adopt as final the provisions of the SRO regulations that were the product of the three interim rules. The preamble of this final rule summarizes the public comments HUD received on each of the three interim rules and provides HUD's responses to the comments as appropriate. This final rule also improves the SRO regulations by clarifying and further streamlining the provisions, as described below.

II. March 15, 1993 Interim Rule

HUD published an interim rule amending the SRO regulations on March 15, 1993 (58 FR 13828). The March 15, 1993 interim rule adopted a standardized funding award process for competitively awarded assistance under the McKinney Act. This process consisted of two stages under which HUD would, after conditionally selecting applicants, require those applicants to submit additional technical information, such as project rent calculations (see § 882.805 (c) and (d) of the interim rule).

The March 15, 1993 interim rule also conformed the SRO program with other McKinney Act programs by removing the provisions requiring that units be leased to homeless individuals referred from a housing authority (HA) waiting list. Instead, the interim rule provided flexibility to HAs and owners by allowing them to engage in outreach efforts to bring homeless individuals into the program, and it provided that vacant units be rented directly to homeless individuals located through these outreach efforts (see § 882.808).

Additionally, the March 15, 1993 interim rule amended the SRO regulations to reflect a statutory amendment permitting an HA to contract with itself to receive SRO assistance for a project that it owns. The rule provided that HA-owners are subject to the same requirements that apply to other owners in the program, and that HUD must approve the base and contract rent calculations for these projects prior to execution of the agreement to enter into a housing assistance payments (HAP) contract and prior to the execution of the HAP contract (see § 882.803(e)).

The March 15, 1993 interim rule also amended §§ 882.802 and 882.805(f)(6) to reflect section 127 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235; approved December 15, 1989), which raised the minimum amount of rehabilitation necessary to qualify a unit for assistance under the program to $3,000 per unit, and which limited the size of projects to no more than 100 assisted units.

Lastly, the interim rule clarified the definition of "*Single Room Occupancy (SRO) housing*" in § 882.802, the requirements for using SRO assistance in conjunction with the rehabilitation of efficiency units in the program, and HUD's right to require recipients of assistance to maintain any records and make any reports that HUD requires (see § 882.808(p)).

Summary of Public Comments

The deadline for submitting public comments on the March 15, 1993 interim rule was May 14, 1993. By that date, HUD received comments from three organizations. After considering these comments, which are described below, HUD decided not to make any changes based on these comments in this final rule.

Two-Stage Application Process

All three commenters supported the new two-stage application process (see § 882.805(c) and (d) of the interim rule). As HUD stated in the preamble to the interim rule, under the new process, applicants submitting proposals that were not conditionally selected for funding would not have to incur the costs of addressing technical issues, such as securing financial commitments from other sources, only to have HUD reject their applications.

HUD Response: The two-stage application process has been in effect for three years, and HUD believes the process has been successful in reducing the burden on applicants and in providing conditionally selected applicants with the opportunity to receive ongoing HUD assistance in meeting the technical submission requirements.

Conformance with Other McKinney Act Programs

The commenters supported the provisions of the March 15, 1993 interim rule that conformed the SRO program with the other McKinney Act

programs. The commenters especially supported the interim rule's requirement that HAs or owners engage in outreach efforts to bring homeless individuals into the program, rather than using HA waiting lists (see § 882.808). One commenter noted that the new outreach process would be a more efficient process for locating homeless individuals.

HUD Response: As indicated in the preamble to the interim rule, private nonprofit organizations, HAs, and project owners had expressed to HUD that the HA waiting list was an impractical method of locating homeless individuals for participation in the program, given the transient nature of many of these individuals. HUD is pleased that commenters supported the increased flexibility that the rule provided to them.

Records and Reports

The commenters supported the interim rule's requirement in § 882.808(p) that each recipient of assistance under this program maintain any records and make any reports that HUD may require.

HUD Response: HUD has used this authority to implement annual progress reporting requirements in the SRO program similar to those used in other HUD-administered McKinney Act programs. The goal of these reports is to provide recipients the opportunity to demonstrate the progress they are making in areas such as increasing the skills and income of program participants.

Private Nonprofit Organizations as Direct Applicants

The preamble to the March 15, 1993 interim rule noted that section 1405 of the Housing and Community Development Act of 1992 (42 U.S.C. 11399) amended the SRO program, providing in part that private nonprofit organizations could apply directly for SRO assistance. Although the interim rule did not change the regulations to reflect this amendment, one commenter questioned whether HUD would scrutinize these nonprofit organizations as thoroughly as it scrutinizes housing authorities. This commenter also expressed concern that HUD was leading these organizations to believe they could apply for public housing administration or Section 8 program administration funds.

HUD Response: HUD has used the ability of the applicant to develop and operate a project as a rating criterion for applications. Under this criterion, HUD subjects HAs and private nonprofit applicants to the same scrutiny. Additionally, the statutory provision allowing private nonprofit organizations to apply for assistance, and HUD's subsequent implementation of this provision (see the discussion of the February 14, 1996 interim rule, below), clearly only apply to the SRO program.

Definition of "Single Room Occupancy (SRO) Housing"

All of the commenters supported the March 15, 1993 interim rule's revision of the definition of *"Single room occupancy (SRO) housing"* in § 882.802 to include units with or without food preparation or sanitary facilities. One commenter suggested that HUD expand the program to include units that could accommodate more than one person, since families are now a large proportion of the homeless population.

HUD Response: According to section 441 of the McKinney Act, HUD may only provide assistance for SRO units occupied by single homeless individuals. The legislative history of section 441 of the McKinney Act, which HUD recounts in the first final rule for the SRO program published in the **Federal Register** on November 7, 1989 (54 FR 46828), clearly indicates that Congress intended that assistance under this program only be used for single homeless individuals, and not multiperson families.

While there is no statutory authority to provide assistance to homeless families under the SRO program, these families can receive assistance under other McKinney Act programs, including the Supportive Housing program (24 CFR part 583) and the Shelter Plus Care program (24 CFR part 582).

Efficiency Units

The March 15, 1993 interim rule amended § 882.805(g)(4) to clarify that SRO program assistance may be used for efficiency units, but the gross rent for these units will be no higher than for SRO units. One commenter recommended that HUD amend the paragraph even further to provide that contract rents should include service-related hard costs, such as those related to the creation of office and meeting space. The commenter also suggested HUD include in this paragraph a list of reasonable service-related hard costs that could be included in contract rents.

HUD Response: HUD has described in detail the provisions on eligible and ineligible costs in the technical assistance book on the SRO program that HUD issues each year. HUD believes that repeating these detailed provisions in the regulations would unnecessarily complicate the regulations, and that such repetition would be inconsistent with the President's regulatory reform initiatives (described below in this preamble, under the heading "Regulatory Reform").

On a substantive level, the technical assistance book indicates that rehabilitation of space that will be used to provide supportive services to program participants is an eligible program cost. The costs of providing the supportive services, however, is not an eligible cost.

III. May 10, 1994 Interim Rule

HUD published an interim rule on May 10, 1994 (59 FR 24252) that amended the SRO program application and funding award provisions by removing some of the descriptive information and providing that this information will appear in the annual notices of funding availability (NOFAs). The interim rule also amended the regulations to clarify when Comprehensive Housing Affordability Strategy (CHAS) certifications must be made. The deadline for public comments on the May 10, 1994 interim rule was July 11, 1994. HUD has not received any comments on the rule. Today's rule will adopt as final these amendments to the SRO program regulations, as well as similar amendments to the Shelter Plus Care program in § 582.200 that also were included in the May 10, 1994 interim rule. (The May 10, 1994 interim rule also amended the Supportive Housing program in § 583.200; this portion of the interim was adopted as final in a rule published on July 19, 1994 (59 FR 36886)). However, while this rule adopts these amendments as final, it also streamlines the regulations as part of the President's regulatory reform initiatives. This streamlining is described below, in the "Regulatory Reform" section of this preamble.

IV. February 14, 1996 Interim Rule

HUD published a third interim rule amending the SRO regulations on February 14, 1996 (61 FR 5850). The February 14, 1996 interim rule eliminated most of the remaining provisions on the required use of HA waiting lists, in conformance with the March 15, 1993 interim rule, described above. The February 14, 1996 interim rule also clarified the role of HAs in helping to identify homeless individuals during the outreach process (§ 882.808(a)(1)).

The February 14, 1996 interim rule also conformed the regulations with section 1405 of the Housing and Community Development Act of 1992,

which amended the Stewart B. McKinney Homeless Assistance Act. This statutory amendment included a requirement for the participation of homeless individuals in considering and making policies and decisions regarding rehabilitation of structures receiving assistance under the SRO program, and for the involvement of homeless individuals in the rehabilitation and operation of these structures. The interim rule included this requirement in § 882.808(q).

The statutory amendment also provided that private nonprofit organizations can apply directly for SRO assistance. Prior to this amendment, HAs were the only eligible applicants under the program. To implement this change, the interim rule added definitions of *"Applicant"* and *"Private nonprofit organization"* in § 882.802.

The February 14, 1996 interim rule also conformed the program regulations with the environmental review procedures in 24 CFR part 58. The Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233; approved April 11, 1994) made these procedures applicable to the SRO program, and HUD published implementing regulations in the **Federal Register** on March 13, 1995 (60 FR 13518). Under part 58, HAs (including HAs that administer programs for nonprofit applicants) must obtain an agreement with the responsible entity designated under part 58 for the performance of environmental reviews.

Additionally, the interim rule revised the provision on project eligibility in § 882.803(a)(2) to provide that housing is ineligible for assistance under this program if it is receiving Federal funding for rental assistance or operating costs under other HUD programs. Under this revised standard, there is no restriction on the use of other Federal funding for acquisition and rehabilitation costs. HUD has successfully used this clearer, less restrictive standard in its Shelter Plus Care program.

The February 14, 1996 interim rule also eliminated an obsolete date reference in the provision for determining the maximum amount of rehabilitation allowable in the program (§ 882.805(g)(1)(ii)(A) of the interim rule) so that more recent data can be used.

Finally, the interim rule corrected an error in a final rule on relocation and displacement requirements published in the **Federal Register** on June 6, 1994 (59 FR 29326). The June 6, 1994 rule, which conformed HUD's regulations with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and its implementing regulations in 49 CFR part 24, added § 882.810 and intended to remove much of § 882.803(d). However, the most recent codification of part 882 (April 1, 1995) included all of § 882.803(d). Therefore, in order to correct the error, the February 14, 1996 interim rule removed much of § 882.803(d).

Summary of Public Comments

The deadline for submitting public comments on the February 14, 1996 interim rule was April 15, 1996. By that date, HUD received comments from two organizations. After considering these comments, which are described below, HUD has decided not to make any changes to the interim rule.

Start-Up Costs

A commenter that administers this program for units owned by a nonprofit organization remarked that start-up costs can be an obstacle, primarily because filling all the units is difficult when the individuals to be served by the program are transient. The commenter stated that until a project reaches 100 percent occupancy, the owners have to rely on the maximum allowable rents for the occupied units, plus 80 percent of the contract rent for vacant units. The commenter maintained that this is insufficient to cover start-up costs, and that HUD should provide another way for nonprofit organizations to survive early cash flow problems.

HUD Response: Under § 882.808(f), if a unit that has been rehabilitated in accordance with HUD requirements is not leased within 15 days of the effective date of the HAP contract, owners may receive housing assistance payments in the amount of 80 percent of the contract rent for the unit for a vacancy period not exceeding 60 days from the effective date of the HAP contract. Maintaining this 60-day provision is reasonable. The SRO program is designed to serve homeless individuals, many of whom are living on the streets and in shelters. These individuals need the permanent housing the SRO program provides as quickly as possible. The current regulations provide assistance to owners who need a reasonable period of time to lease the SRO units, while simultaneously creating an incentive to lease the units at the earliest possible date.

Elimination of Waiting Lists

Another commenter remarked on the February 14, 1996 interim rule's removal of most of the remaining provisions for waiting lists, requiring instead that HAs or owners engage in outreach efforts. This commenter requested additional guidance for situations in which the outreach efforts fail to produce eligible individuals. This commenter also worries that discarding waiting lists could have a disparate impact on the young, the aged, or the disabled.

HUD Response: The SRO regulations (§ 882.808(a)(2)) require that if the outreach procedures the HA or owner intends to use are unlikely to reach persons of any particular age, physical or mental handicap, race, color, religion, sex, or national origin, the HA or owner must establish additional procedures that will ensure such persons are made aware of the availability of the program. Additionally, § 882.808(a)(1) requires owners to notify HAs when they conduct the outreach effort, so that the HA may provide referrals of homeless individuals (including referrals from any waiting list maintained by the HA). These provisions ensure that all individuals, including those individuals listed by the commenter, are treated equally in the program. Lastly, additional guidance on the tenant outreach process is contained in the SRO technical assistance book.

This final rule also removes one last reference to the procedures for establishing waiting lists, which was included in the contents of the Administrative Plan (§ 882.805(b)(1)(ii)).

Participation of Homeless Individuals

Although the February 14, 1996 interim rule required that private nonprofit applicants include at least one homeless individual or formerly homeless individual in their decisions regarding the rehabilitation of the SRO housing, one commenter remarked that the rule still reflects an underrepresentation of homeless individuals in the decisionmaking process, especially since HAs are exempt from even this minimal requirement. The commenter expressed concern about HAs or other entities that focus on the interests of suburbia or business, rather than those of homeless individuals.

This commenter applauded the involvement of homeless individuals in the rehabilitation efforts and in providing services to the occupants, and requested HUD to encourage any such employment initiative by HAs, especially within the SRO facility.

HUD Response: Section 1405 of the Housing and Community Development Act of 1992 provides that each approved applicant that is not an HA must provide for the participation of not less than one homeless individual or

formerly homeless individual on its board of directors or other equivalent policymaking entity to the extent that such entity considers and makes policies and decisions regarding the rehabilitation of any SRO housing. Thus, the statute specifically exempts HAs from this requirement.

HUD shares the commenter's view that homeless individuals should be involved in the SRO decisionmaking process. Thus, the 1996 Continuum of Care application (which covers assistance under the SRO, Shelter Plus Care, and Supportive Housing programs) requires that applicants describe how they will involve homeless participants in project decisionmaking and operations. Additionally, the application requires that an applicant describe the involvement of homeless and formerly homeless individuals in the development of a jurisdiction's continuum of care strategy (see Fiscal Year 1996 Continuum of Care NOFA, published on March 15, 1996 (61 FR 10866)).

Private Nonprofit Organizations as Eligible Applicants

One commenter applauded the eligibility of private nonprofit organizations as applicants under the SRO program. The commenter explained that nonprofit organizations may be better equipped in some areas to serve the homeless population, because they are community-based and may have stronger neighborhood support.

HUD Response: HUD agrees that providing for private nonprofit applicants in the SRO program enhances the critical role these organizations play in developing a continuum of care strategy for assisting homeless individuals and in implementing that strategy.

V. Regulatory Reform

In response to Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. While the interim rules described above were successful in eliminating many obsolete provisions, and in updating and significantly streamlining certain requirements, HUD determined that the SRO regulations can be further streamlined.

This final rule, in addition to adopting the previous interim rules as final, further streamlines and clarifies the SRO regulations as follows:

(a) It streamlines the definition of *"Homeless individual"* in § 882.802. This definition simply repeated the language contained in section 103 of the McKinney Act. This rule also revises the definition of *"Statement of family responsibility"*, by changing the term "family" to "individual." Since HUD can only serve eligible individuals under this program, using the term "individual" will help eliminate confusion.

(b) It removes the definition of *"Supportive services,"* which largely consisted of a listing of items that may be considered supportive services. HUD can more appropriately provide such guidance in the SRO technical assistance book.

(c) It eliminates § 882.803(b)(5). This provision is repetitive of the definition of *"Single room occupancy (SRO) housing"* in § 882.802—a unit for occupancy by one person, which need not but may contain food preparation or sanitary facilities, or both.

(d) It revises and updates § 882.804 regarding other Federal requirements. Part of this section repeats information already provided in 24 CFR part 5. This rule will provide a cross-reference to part 5, and it will also refer to the Americans with Disabilities Act, compliance with which is required under the SRO program.

(e) It removes information from § 882.805 regarding the application requirements and criteria for rating applications, which HUD will more appropriately provide in the annual NOFA.

(f) It removes the obsolete reference in § 882.805(b) to the requirement of submitting an Equal Opportunity Housing Plan. In July 1995, HUD merged the contents of this plan into the Administrative Plan, which is also listed in § 882.805(b). Therefore, while HAs must still submit the contents of an Equal Opportunity Housing Plan as part of the Administrative Plan, it is inaccurate for the regulations to list it as a separate requirement.

(g) It consolidates the lengthy description of displacement and relocation requirements in § 882.810. These requirements are nearly identical to those in § 882.406. Since it is unnecessary to duplicate these requirements within the same part of the Code of Federal Regulations, this rule amends § 882.406 so that it also applies to the SRO program. This rule then removes the provisions of § 882.810 and replaces them with a reference to § 882.406. In this streamlining of §§ 882.406 and 882.810, HUD is not making any substantive changes to the requirements, but is merely eliminating unnecessary provisions.

As part of HUD's regulatory reform efforts, HUD consolidated some of the requirements in § 882.102 (which contains definitions for the Section 8 Certificate and Moderate Rehabilitation programs) and the provisions in 24 CFR part 812 (which contained the definition of "Family" and the restrictions on assistance to noncitizens) into 24 CFR part 5. Part 5 now contains most of HUD's general program requirements. HUD also consolidated the requirements in 24 CFR part 12 regarding accountability in the provision of HUD assistance into 24 CFR part 4. This final rule updates the references to all these requirements in the SRO regulations.

VI. Other Matters

Environmental Impact

This rule does not in itself have an environmental impact. This rule merely adopts effective interim regulations as final and amends existing regulations by streamlining provisions; it does not alter the environmental effect of the regulations being amended. At the time of development of regulations in part 882, subpart H, and for each of the three interim rules discussed above, Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 and section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Executive Order 12606, The Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. This rule merely adopts effective interim regulations as final and eliminates unnecessary provisions, and does not change the substance of the program's regulations. Therefore, this rule is not subject to review under the order.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has

determined that the policies in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is limited to adopting effective interim regulations as final and eliminating unnecessary provisions. Therefore, the rule is not subject to review under the order.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it does not have a significant economic impact on a substantial number of small entities. Specifically, the rule is limited to adopting effective interim regulations as final and eliminating unnecessary provisions.

List of Subjects

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the interim rule amending 24 CFR part 882, which was published at 58 FR 13828 on March 15, 1993; the interim rule amending 24 CFR parts 582 and 882, which was published at 59 FR 24252 on May 10, 1994; and the interim rule amending 24 CFR part 882, which was published at 61 FR 5850 on February 14, 1996; are adopted as final rules, with the following changes:

PART 882—SECTION 8 CERTIFICATE AND MODERATE REHABILITATION PROGRAMS

1. The authority citation for 24 CFR part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Section 882.406 is revised to read as follows:

§ 882.406 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, owners must assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the project upon its completion.

(2) Whenever a building/complex is rehabilitated, and some but not all of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section apply to the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations in 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the HA's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the HA. A person who is dissatisfied with the HA's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) *Responsibility of HA.* (1) The HA must certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations in 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the HA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may be paid for with local public funds or funds available from other sources. The cost of HA advisory services for temporary relocation of tenants to be assisted under the program also may be paid from preliminary administrative funds.

(3) The HA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The HA must maintain data on the racial, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term *displaced person* includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date the owner submits to the HA the owner proposal that is later approved;

(ii) A person, including a person who moves from the property before the date the owner submits the proposal to the HA, if the HA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex

permanently after the execution of the Agreement between the owner and the HA (or, for projects assisted under subpart H of this part, after the "initiation of negotiations" (see paragraph (h) of this section)), if the move occurs before the tenant is provided a written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions must include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before the execution of the agreement and estimated average monthly utility costs; or

(B) Thirty percent of gross household income.

(C) For projects assisted under subpart H of this part, the amount cannot exceed the greater of the tenant's monthly rent before the "initiation of negotiations" and estimated average monthly utility costs; or (if the tenant is low-income) the total tenant payment, as determined under 24 CFR 813.107, or (if the tenant is not low-income) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a displaced person (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and the HA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal), and before signing a lease and commencing occupancy, received written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a displaced person (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The HA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the owner and the HA.

(Approved by Office of Management and Budget under OMB control number 2506–0121).

3. Subpart H is revised to read as follows:

Subpart H—Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals

Sec.

882.801 Purpose.
882.802 Definitions.
882.803 Project eligibility and other requirements.
882.804 Other Federal requirements.
882.805 HA application process, ACC execution, and pre-rehabilitation activities.
882.806 Agreement to enter into housing assistance payments.
882.807 Housing assistance payments contract.
882.808 Management.
882.809 Waivers.
882.810 Displacement, relocation, and acquisition.

Subpart H—Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals

§ 882.801 Purpose.

The purpose of the Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is to provide rental assistance for homeless individuals in rehabilitated SRO housing. The Section 8 assistance is in the form of rental assistance payments. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.).

§ 882.802 Definitions.

In addition to the definitions set forth in 24 CFR part 5 and § 882.102 (except for the definition of "*Single Room Occupancy (SRO) Housing*" therein) the following will apply:

Agreement to enter into housing assistance payments contract (Agreement). A written agreement between the owner and the HA that, upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the HA will enter into a housing assistance payments contract with the owner.

Applicant. A public housing agency or Indian housing authority (collectively referred to as HAs), or a private nonprofit organization that applies for assistance under this program. HUD will require private nonprofit applicants to subcontract with public housing agencies to administer their rental assistance.

Eligible individual (individual). An individual who, taking into account the supportive services available to the individual, is capable of independent living and is authorized for admission to assisted housing under subparts D and E of 24 CFR part 5, and 24 CFR part 813.

Homeless individual. An individual as described in section 103 of the McKinney Act (42 U.S.C. 11302).

McKinney Act. The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.).

Moderate rehabilitation. Rehabilitation involving a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards (improvements being of a modest nature and other than routine maintenance).

Private nonprofit organization. An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of assistance.

Single room occupancy (SRO) housing. A unit for occupancy by one person, which need not but may contain food preparation, sanitary facilities, or both.

Statement of individual responsibility. An agreement, in the form prescribed by HUD, between the HA and an individual to be assisted under the program, stating the obligations and responsibilities of the two parties.

§ 882.803 Project eligibility and other requirements.

(a) *Eligible and ineligible properties.* (1) Except as otherwise provided in paragraph (a) of this section, housing suitable for moderate rehabilitation is eligible for inclusion under this program. Existing structures of various types may be appropriate for this program, including single family houses and multifamily structures.

(2) Housing is not eligible for assistance under this program if it is receiving Federal funding for rental assistance or operating costs under other HUD programs.

(3) Nursing homes and related facilities such as intermediate care or board and care homes; units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services are not eligible for assistance under this program.

(4) No Section 8 assistance may be provided with respect to any unit occupied by an owner.

(5) Housing located in the Coastal Barrier Resources System designated under the Coastal Barriers Resources Act is not eligible.

(6) Single-sex facilities are allowable under this program, provided that the HA determines that because of the physical limitations or configuration of the facility, considerations of personal privacy require that the facility (or parts of the facility) be available only to members of a single sex.

(b) *Housing quality standards.* Section 882.404 (including its incorporation by reference of § 882.109) applies to this program, except as follows:

(1) The housing quality standards in §§ 882.109(i) and 882.404(c) concerning lead-based paint do not apply to this program, since these SRO units will not house children.

(2) In addition to the performance requirements contained in § 882.109(p) concerning SRO units, a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require must be installed in each building. The term "*major spaces*" means hallways, large common areas, and other areas specified in local fire, building, or safety codes.

(3) Section 882.109(q), concerning shared housing, does not apply to this program.

(4) Section 882.404(b), concerning site and neighborhood standards, does not apply to this program, except that § 882.404(b) (1) and (2) applies. In addition, the site must be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

(c) *Financing.* Section 882.405 applies to this program.

(d) *Relocation.* Section 882.406 applies to a project assisted under this program.

(e) *HA-owned housing.* (1) A unit that is owned by the HA that administers the assistance under the ACC (including a unit owned by an entity substantially controlled by the HA) may only be assisted if:

(i) The unit is not ineligible under § 882.803(a); and

(ii) HUD approves the base and contract rent calculations prior to execution of the Agreement and prior to execution of the HAP contract.

(2) The HA as owner is subject to the same program requirements that apply to other owners in the program.

§ 882.804 Other Federal requirements.

(a) Participation in this program requires compliance with the Federal requirements set forth in 24 CFR 5.105, and with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).

(b) For agreements covering nine or more assisted units, the following requirements for labor standards apply:

(1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a through 276a–5), must be paid to all laborers and mechanics employed in the development of the project, other than volunteers under the conditions set out in 24 CFR part 70;

(2) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333); and

(3) HAs, owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.

(c) The environmental review requirements of 24 CFR part 58, implementing the National Environmental Policy Act and related environmental laws and authorities, apply to this program.

§ 882.805 HA application process, ACC execution, and pre-rehabilitation activities.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of funding availability (NOFA) in the **Federal Register** in accordance with the requirements of 24 CFR part 4. HUD will review and screen applications in accordance with the guidelines, rating criteria, and procedures published in the NOFA.

(b) *ACC Execution.* (1) Before execution of the annual contributions contract (ACC), the HA must submit to the appropriate HUD field office the following:

(i) Estimates of Required Annual Contributions, Forms HUD–52672 and HUD–52673;

(ii) Administrative Plan, which should include:

(A) Procedures for tenant outreach;

(B) A policy governing temporary relocation; and

(C) A mechanism to monitor the provision of supportive services.

(iii) Proposed Schedule of Allowances for Tenant-Furnished Utilities and Other Services, Form HUD–52667, with a justification of the amounts proposed;

(iv) If applicable, proposed variations to the acceptability criteria of the Housing Quality Standards (see § 882.803(b)); and

(v) The fire and building code applicable to each structure.

(2) After HUD has approved the HA's application, the review and comment requirements of 24 CFR part 791 have been complied with, and the HA has submitted (and HUD has approved) the items required by paragraph (b)(1) of this section, HUD and the HA must execute the ACC in the form prescribed by HUD. The initial term of the ACC must be 11 years. This term allows one year to rehabilitate the units and place them under a 10-year HAP contract. The ACC must give HUD the option to renew the ACC for an additional 10 years.

(3) Section 882.403(a) (Maximum Total ACC Commitments) applies to this program.

(4) Section 882.403(b) (Project account) applies to this program.

(c) *Project development.* Before execution of the Agreement, the HA must:

(1)(i) Inspect the structure to determine the specific work items that need to be accomplished to bring the units to be assisted up to the Housing Quality Standards (see § 882.803(b)) or other standards approved by HUD;

(ii) Conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added;

(iii) Ensure that the owner prepares the work write-ups and cost estimates required by § 882.504(f); and

(iv) Determine initial base rents and contract rents;

(2) Assure that the owner has selected a contractor in accordance with § 882.504(g);

(3) After the financing and a contractor are obtained, determine whether the costs can be covered by initial contract rents, computed in accordance with paragraph (d) of this section; and, if a structure contains more than 50 units to be assisted, submit the base rent and contract rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement in a timely manner;

(4) Obtain firm commitments to provide necessary supportive services;

(5) Obtain firm commitments for other resources to be provided;

(6) Determine that the $3,000 minimum amount of work requirement and other requirements in § 882.504(c)(2) and (3) are met;

(7) Determine eligibility of current tenants, and select the units to be assisted, in accordance with § 882.504(e);

(8) Comply with the financing requirements in § 882.504(i);

(9) Assure compliance with all other applicable requirements of this subpart; and

(10) In the event that the HA determines that any structure proposed in its application is infeasible, or the HA proposes to select a different structure for any other reason, the HA must submit information for the proposed alternative structure to HUD for review and approval. HUD will rate the proposed structure in accordance with procedures in the applicable notice of funding availability. The HA may not proceed with processing for the proposed structure or execute an Agreement until HUD notifies the HA that HUD has approved the proposed alternative structure and that all requirements have been met.

(d) *Initial contract rents.* Section 882.408 (Initial contract rents), including the establishment of fair market rents for SRO units at 75 percent of the O-bedroom Moderate Rehabilitation Fair Market Rent, applies to this program, except as follows:

(1)(i) In determining the monthly cost of a rehabilitation loan, in accordance with § 882.408(c)(2), a loan term of a least 10 years (instead of 15 years) may be used. The exception in § 882.408(c)(2)(iii) for using the actual loan term if the total amount of the rehabilitation is less than $15,000 continues to apply. In addition, the cost of the rehabilitation that may be included for the purpose of calculating the amount of the initial contract rent for any unit must not exceed the lower of:

(A) The projected cost of rehabilitation; or

(B) The per unit cost limitation that is established by **Federal Register** notice, plus the cost of the fire and safety improvements required by § 882.803(b)(2). HUD may, however, increase the limitation in paragraph (d)(1)(i)(B) of this section by an amount HUD determines is reasonable and necessary to accommodate special local conditions, including high construction costs or stringent fire or building codes. HUD will publish future cost limitation changes in the **Federal Register** in the Notice of Funding Availability issued each year.

(ii) If the Federal Housing Administration (FHA) believes that high construction costs warrant an increase in the per unit cost limitation in paragraph (d)(1)(i)(B) of this section, the HA must demonstrate to HUD's satisfaction that a higher average per unit amount is necessary to conduct this program, and that every appropriate step has been taken to contain the amount of the rehabilitation within the published per unit cost limitation established at that time, plus the cost of the required fire and safety improvements. These higher amounts will be determined as follows:

(A) HUD may approve a higher per unit amount up to, but not to exceed, an amount computed by multiplying the HUD-approved High Cost Percentage for Base Cities (used for computing FHA high cost area adjustments) for the area, by the current published cost limitation plus the cost of the required fire and safety improvements.

(B) HUD may, on a structure-by-structure basis, increase the level approved in paragraph (d)(1)(i) of this section to up to an amount computed by multiplying 2.4 by the current published cost limitation plus the cost of the required fire and safety improvements.

(2) In approving changes to initial contract rents during rehabilitation in accordance with § 882.408(d), the revised initial contract rents may not reflect an average per unit rehabilitation cost that exceeds the limitation specified in paragraph (d)(1) of this section.

(3) If the structure contains four or fewer SRO units, the Fair Market Rent for that size structure (the Fair Market Rent for a 1–, 2–, 3–, or 4–bedroom unit, as applicable) must be used to determine the Fair Market Rent limitation instead of using the separate Fair Market Rent for each SRO unit. To determine the Fair Market Rent limitation for each SRO unit, the Fair Market Rent for the structure must be apportioned equally to each SRO unit.

(4) Contract rents must not include the costs of providing supportive services, transportation, furniture, or other nonhousing costs, as determined by HUD. SRO program assistance may be used for efficiency units selected for rehabilitation under this program, but the gross rent (contract rent plus any Utility Allowance) for these units will be no higher than for SRO units (i.e., 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent).

(Approved by the Office of Management and Budget under control number 2506–0131)

§ 882.806 Agreement to enter into housing assistance payments.

(a) *Rehabilitation period.* (1) *Agreement.* Before the owner begins any rehabilitation, the HA must enter into an Agreement with the owner in the form prescribed by HUD.

(2) *Timely performance of work.* Section 882.506(a) applies to this program. In addition, the Agreement must provide that the work must be completed and the contract executed within 12 months of execution of the ACC. HUD may reduce the number of units or the amount of the annual contribution commitment if, in HUD's determination, the HA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify reducing the number of units.

(3) *Inspections.* Section 882.506(b) applies to this program.

(4) *Changes.* Section 882.506(c)(1) applies to this program. Contract rents may not be increased except in accordance with §§ 882.408(d) and 882.805(d)(2).

(b) *Completion of rehabilitation.* (1) *Notification of completion.* Section 882.507(a) applies to this program.

(2) *Evidence of completion.* Section 882.507(b) applies to this program, except that § 882.507(b)(2)(iv), concerning lead-based paint requirements, does not apply.

(3) *Actual cost and rehabilitation loan certifications.* Section 882.507(c) applies

to this program, except that contract rents must be established in accordance with § 882.805(d).

(4) *Review and inspections.* Section 882.507(d) applies to this program.

(5) *Acceptance.* Section 882.507(e) applies to this program.

(Approved by the Office of Management and Budget under control number 2502–0367)

§ 882.807 Housing assistance payments contract.

(a) *Time of execution of contract.* Section 882.508(a) applies to this program.

(b) *Term of contract.* The contract for any unit rehabilitated in accordance with this program must be for a term of 10 years. The contract must give the HA the option to renew the contract for an additional 10 years.

(c) *Changes in contract rents from agreement.* The contract rents may be higher or lower than those specified in the Agreement, in accordance with § 882.805(d).

(d) *Unleased units.* Section 882.508(c) applies to this program.

(e) *Contract rents at end of rehabilitation loan term.* For a contract in which the initial contract rent was based upon a loan term shorter than 10 years, the contract must provide for reduction of the contract rent effective with the rent for the month following the end of the term of the rehabilitation loan. The amount of the reduction will be the monthly cost of amortization of the rehabilitation loan. This reduction should result in a new contract rent equal to the base rent plus all subsequent adjustments.

(Approved by the Office of Management and Budget under control number 2502–0367)

§ 882.808 Management.

(a) *Outreach to homeless individuals and appropriate organizations.* (1) The HA or the owner must undertake outreach efforts to homeless individuals so that they may be brought into the program. The outreach effort should include notification to emergency shelter providers and other organizations that could provide referrals of homeless individuals. If the owner conducts the outreach effort, the owner must notify the HA so that it may provide referrals of homeless individuals.

(2) *Additional outreach concerns.* If the procedures that the HA or owner intends to use to publicize the availability of this program are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, or mental or physical disability who may qualify for admission to the program, the HA or owner must establish additional procedures that will ensure that such persons are made aware of the availability of the program. The HA or owner must also adopt and implement procedures to ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to persons with disabilities.

(3) *First priority for homeless individuals.* Homeless individuals must have the first priority for occupancy of housing rehabilitated under this program.

(b) *Individual participation.* (1) *Initial determination of individual eligibility.* Section 882.514(a) applies to this program.

(2) *Owner selection of individuals.* The owner must rent all vacant units under contract to homeless individuals located through HA or owner outreach efforts and determined by the HA to be eligible. The owner is responsible for tenant selection and may refuse any individual, provided the owner does not unlawfully discriminate. If the owner rejects an individual, and the individual believes that the owner's rejection was the result of unlawful discrimination, the individual may request the assistance of the HA in resolving the issue and may also file a complaint with HUD's Office of Fair Housing and Equal Opportunity in accordance with 24 CFR 103.25. If the individual requests the assistance of the HA, and if the HA cannot resolve the complaint promptly, the HA should advise the individual that he or she may file a complaint with HUD, and provide the individual with the address of the nearest HUD Office of Fair Housing and Equal Opportunity.

(3) *Briefing of individuals.* Section 882.514(d) applies to this program, except that § 882.514(d)(1)(vi) does not apply.

(4) *Continued participation of individual when contract is terminated.* Section 882.514(e) applies to this program, except that the HA may issue a Housing Voucher instead of a Certificate.

(5) *Individuals determined by the HA to be ineligible.* Section 882.514(f) applies to this program. In addition, individuals are not precluded from exercising other rights if they believe they have been discriminated against on the basis of age.

(c) *Lease.* (1) *Contents of lease.* Section 882.504(j) applies to this program. In addition, the lease must limit occupancy to one eligible individual.

(2) *Term of lease.* Section 882.403(d) applies to this program.

(d) *Security and utility deposits.* Section 882.112 applies to this program.

(e) *Rent adjustments.* Section 882.410 applies to this program.

(f) *Payments for vacancies.* Section 882.411 applies to this program.

(g) *Subcontracting of owner services.* Section 882.412 applies to this program.

(h) *Responsibility of the individual.* Section 882.413 applies to this program.

(i) *Reexamination of individual income.* (1) *Regular reexaminations.* The HA must reexamine the income of all individuals at least once every 12 months. After consultation with the individual and upon verification of the information, the HA must make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR part 813, and verify that only one individual is occupying the unit. The HA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At each regular reexamination, the HA must follow the requirements of 24 CFR part 5, subpart E concerning verification of immigration status of any new family member.

(2) *Interim reexaminations.* The individual must supply such certification, release, information, or documentation as the HA or HUD determines to be necessary, including submissions required for interim reexaminations of individual income and determinations as to whether only one person is occupying the unit. In addition, the second and third sentences of § 882.515(b) apply. At any interim reexamination when there is a new family member, the HA must follow the requirements of 24 CFR part 5, subpart E concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) *Continuation of Housing Assistance Payments.* Section 882.515(c) applies to this program.

(j) *Overcrowded units.* If the HA determines that anyone other than, or in addition to, the eligible individual is occupying an SRO unit assisted under this program, the HA must take all necessary action, as soon as reasonably feasible, to ensure that the unit is occupied by only one eligible individual.

(k) *Adjustment of utility allowance.* Section 882.510 applies to this program.

(l) *Termination of tenancy.* Section 882.511 applies to this program. For provisions requiring termination of assistance when the HA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR part 5, subpart E for provisions concerning certain assistance

for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.

(m) *Reduction of number of units covered by contract.* Section 882.512 applies to this program.

(n) *Maintenance, operation, and inspections.* Section 882.516 applies to this program.

(o) *HUD review of contract compliance.* Section 882.217 applies to this program.

(p) *Records and reports.* Each recipient of assistance under this subpart must keep any records and make any reports that HUD may require within the timeframe required.

(q) *Participation of homeless individuals.* (1) Each approved applicant receiving assistance under this program, except HAs, must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of such applicant, to the extent that the entity considers and makes policies and decisions regarding the rehabilitation of any housing with assistance under this subpart. This requirement is waived if the applicant is unable to meet this requirement and presents a plan that HUD approves to consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(2) To the maximum extent practicable, each approved applicant must involve homeless individuals and families, through employment, volunteer services, or otherwise, in rehabilitating and operating facilities assisted under this subpart, and in providing services for occupants of such facilities.

(Approved by the Office of Management and Budget under control number 2506–0131)

§ 882.809 Waivers.

Section 5.405(b) of this title does not apply to this program.

§ 882.810 Displacement, relocation, and acquisition.

Section 882.406 applies to this program.

Dated: September 3, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

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H.R. 3845/P.L. 104–194

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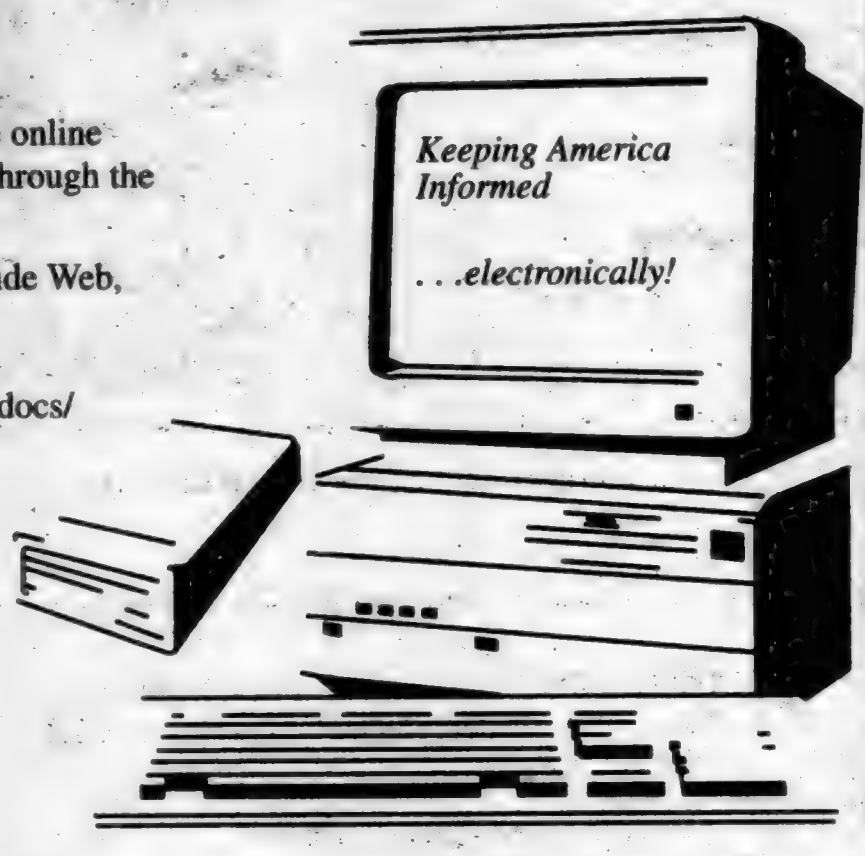

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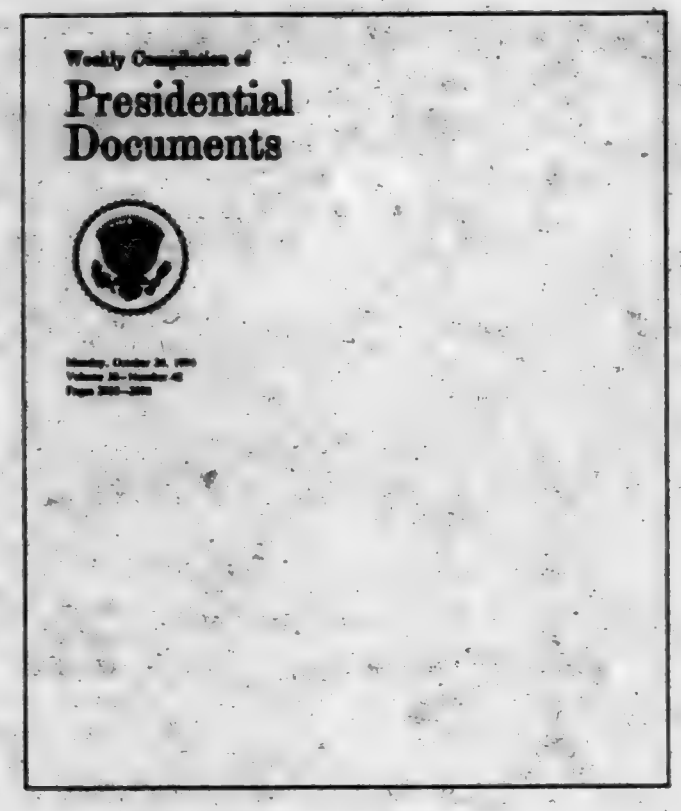

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Presidential Documents

Title 3—

The President

Proclamation 6915 of September 9, 1996

America Goes Back to School, 1996

By the President of the United States of America

A Proclamation

Education is the foundation of our economy and society as we stand at the dawn of the 21st century. Education provides every American with the tools to make the most of their own lives and to seize the tremendous opportunities of economic growth and change. Education also passes along to our young people the most fundamental American values: family, responsibility, and community. To make the next century another American century—and to help all of our communities to become prosperous and strong—more parents and community members must become involved in improving our local schools and colleges. Better education is everybody's business. When families, educators, and communities work together, we can truly build a bridge to a better, stronger 21st century.

The American people want the best for their children. Our schools should be safe, disciplined, and drug-free environments where parents are involved and children can learn. Our educators and administrators should continue to aim for the highest standards of academic excellence and professional accountability. Together we must rebuild the Nation's schools for the 21st century. We must make the investments needed to allow our children to learn about the computers and technology that are the building blocks of the future. We must make college more accessible. We must expand public school choice and competition. And we must make it easier to move from school to work.

Children are our greatest natural resource: Although they are only 20 percent of our population, they are 100 percent of our future. From safe schools to better training for our teachers, from raising standards in our schools to increasing financial aid for college for middle-income and working families, from literacy for children to retraining for adults, we must ensure that all of our children get a chance to fulfill the American Dream.

I urge all Americans to be meaningfully involved in their local schools and colleges and to make a commitment to support educational improvement throughout the year. I applaud the Partnership for Family Involvement in Education, a joint effort involving the Department of Education and more than 700 schools, family organizations, community groups, religious communities, family-oriented businesses, and the men and women of our Armed Forces, for sponsoring "America Goes Back to School: Get Involved!" I hope that this observance will foster grass-roots support for better education by engaging parents, educators, and community groups as active partners in strengthening schools and strengthening families. When Americans come together as a community, we can make real progress. By taking a more active role, we as a Nation will raise our expectations for both our children and ourselves.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 8 through September 14, 1996, as a time when America Goes Back to School. I invite parents, schools, community and State leaders, businesses, civic and religious organizations, and the people of the United States to observe this week

with appropriate ceremonies and activities expressing support for high academic standards and family and community involvement in schools and colleges, and to continue their active involvement on behalf of America's children throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 96-23548
Filed 9-11-96; 8:45 am]
Billing code 3195-01-P

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–95–328]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, with change, the provisions of the interim final rule that amends the existing U.S. standards for Frozen Okra by removing references to trimmed pods. This change will allow producers of frozen okra the option to pack whole and cut okra without trimming.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (2) 720–4693.

SUPPLEMENTARY INFORMATION: This rule is issued under the United States Standards for Grade of Frozen Okra (7 CFR Part 52) to improve grade standards.

The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627), hereinafter referred to as the Act.

The USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

Further, no additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers.

The American Frozen Food Institute (AFFI) petitioned for emergency relief from a requirement in the United States Standards for Grades of Frozen Okra.

AFFI is a trade association representing over 560 food industry companies that account for over 90 percent of frozen food production in the United States.

The frozen okra industry requested that USDA revise the grade standards for frozen okra so that producers of frozen okra will have the option to pack whole an cut okra without trimming and still meet the requirements of the United States Standards for Grades of Okra. The U.S. grade standards are voluntary standards. However, there is widespread use of the standards for frozen okra in contract requirements.

When the United States grade standards were first issued, okra was cut by hand. With the advent of mechanical harvesting, the techniques of harvesting have changed. Also processing equipment, including electronic sorters, has improved the quality such that the frozen okra industry can control quality more effectively without extensive handling.

Moreover, AFFI stated in its petition to revise the standards that since the frozen okra standards were last revised in 1969, new varieties have been established which leave the stems edible and tender when harvested with pods of the desirable length for freezing. AFFI noted that all other forms of whole okra including fresh, pickled, etc., are marketed untrimmed.

AFFI also stated that the cost associated with trimming frozen whole okra was approximately $.0625 per pound of okra. Based on 1994 United States production of 65,114,000 pounds of frozen okra sold, trimming okra costs U.S. processors of frozen okra approximately $4,069,625 each year.

AFFI claimed that in the time it takes to revise the frozen okra standard through ordinary channels, frozen okra processors could incur costs of more than $8 million.

Based on all the information received, USDA revised the grade standards by amending the product description in § 52.1511 and § 52.1512, Styles, in the United States Standards for Grades of Frozen Okra. Also, in § 52.1517(c)(5)(i), "apparent untrimmed pods" was removed from the standards as a defect since it no longer applies.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers. This change is expected to facilitate marketing of frozen okra.

The interim final rule became effective when it was published in the **Federal Register** (60 FR 62708) on December 7, 1995, with a 30-day comment period. In response to the interim final rule the only comment received was from AFFI, which agreed with this revision.

This action will finalize the interim final rule. In addition, in the interim final rule, corrections are made to the authority citation.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

Accordingly, the interim final rule amending 7 CFR part 52, which was published at 50 FR 62709 on December 7, 1995, is adopted as a final rule with the following change.

PART 52—[AMENDED]

The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

Dated: September 6, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23317 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 52

[FV–95–329]

United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule with change the provisions of an interim final rule amending U.S. grade standards for Frozen Field Peas and Frozen Black-Eye Peas. The change would allow producers of frozen field peas and frozen black-eye peas the option to pack black-eye peas and cream peas without the requirement that these peas have an "obvious green color." In addition, this rule enables the frozen food industry to produce frozen black-eye peas and frozen field peas more efficiently.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This rule is issued under the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas (7 CFR Part 52) to improve grade standards. The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627), hereinafter referred to as the Act. The USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. Therefore, a small entity may avoid incurring any additional economic impact by not employing the standards. Further, no additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers.

The American Frozen Food Institute (AFFI) petitioned for emergency relief from a requirement in the United States grade standards for frozen field peas and frozen black-eye peas. AFFI is a trade association representing over 560 food industry companies that account for over 90 percent of frozen food production in the United States. The frozen food industry requested USDA revise the grade standards to bring it in line with current harvesting and marketing practices. This would give economic relief to the frozen field pea and black-eye pea industry. The U.S. grade standards are voluntary standards. However, there is widespread use of the standards in contracts.

When these grade standards were promulgated in 1976, it included a "Grade A" color requirement for frozen black-eye peas and cream peas that approximately 14 percent of these type peas have an obvious green color.

This requirement was applicable when hand harvesting techniques forced growers to harvest their crops earlier in the growing season which allowed for a high percentage of immature peas. Today, modern mechanical harvesting techniques allow growers to harvest these types of peas with more mature pods that are easily shelled.

The requirement for these types of peas to have an obvious green color has caused undue economic stress on the industry.

Frozen field pea and black-eye pea processors must purchase imported, hand-harvested peas and blend them with domestic crops to meet the "Grade A" color requirement. AFFI estimates that 10 million pounds of imported peas must be purchased by U.S. processors per year at an approximate annual cost of more than $2 million.

Based on all the information received, USDA amended Section 52.1669 in the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas by removing the color attribute requirements for frozen black-eye peas and frozen cream peas from the text and Table III of this section.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers. This change is expected to facilitate marketing of frozen field peas and frozen black-eye peas.

The interim final rule became effective when it was published in the **Federal Register** (60 FR 62709) on December 7, 1995, with a 30-day comment period. In response to the interim final rule the only comment received was from AFFI, which agreed with this revision.

This action will finalize the interim final rule. An editorial change will be made for clarity in Section 52.1669 (b)(2) to specify that in the classification of color for "field peas" and "mixed types", "black-eye peas" and "cream peas" are not considered. In addition, in the interim final rule, corrections are made to the authority citation.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

Accordingly, the interim final rule amending 7 CFR part 52, which was published at 60 FR 62710 on December 7, 1995, is adopted as a final rule with the following change.

PART 52—[AMENDED]

1. The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 52.1669, paragraph (b)(2) is revised to read as follows:

§ 52.1669 Classification of color and grade compliance.

* * * * *

(b) * * *

(2) *"Field peas" and "mixed types".* Each unit with a color that is characteristic of very young peas ("black-eye peas" and "cream peas" are not considered.)

Dated: September 6, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23318 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–10–AD; Amendment 39–9753; AD 96–19–05]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 95–19–07, which currently requires the following on Fairchild Aircraft SA226 and SA227 series airplanes equipped with certain main landing gear (MLG) and nose landing gear (NLG): repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and, if any cracked yokes are found that exceed certain limits, replacing either the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly. This action also supersedes priority letter AD 95–19–07 R1, which was issued to incorporate revised service information. Reports of landing gear failures on the affected airplanes prompted the original AD action. This action requires the same inspections, but requires replacing any MLG and NLG assembly with any cracks instead of allowing flight until certain crack limits are exceeded. The inability to determine or predict crack growth on areas where stress corrosion occurs on primary structure with a single-load path (MLG and NLG assemblies are considered such structure) prompted this action. The actions specified by this AD are intended to prevent MLG or NLG failure caused by stress corrosion cracking in the yokes, which could result in loss of control of the airplane during landing operations.

DATES: Effective October 1, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1996.

Comments for inclusion in the Rules Docket must be received on or before November 7, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of AD 95–19–07

Several reports of main landing gear (MLG) and nose landing gear (NLG) failure on Fairchild Aircraft SA226 and SA227 series airplanes prompted the FAA to issue Airworthiness Directive (AD) 95–19–07, Amendment 39–9369 (60 FR 47687, September 14, 1995). AD 95–19–07 required the following on Fairchild Aircraft SA226 and SA227 series airplanes equipped with certain MLG and NLG: repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and, if any cracked yokes are found that exceed certain limits, replacing either the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly. Accomplishment of the inspections required by AD 95–19–07 was required in accordance with Fairchild Service Bulletin (SB) 226–32–065, Fairchild SB 227–32–039, or Fairchild SB CC7–32–007, all Issued: August 16, 1995, as applicable.

The airplanes in the above-referenced incidents are equipped with at least one part number (P/N) OAS5453 MLG assembly and P/N OAS5451 NLG assembly. Metallurgical analysis of the yokes of the right-hand and left-hand MLG assemblies and NLG assemblies on several of these airplanes revealed that the failure was initiated by stress corrosion cracking of the yokes.

Explanation of the Relevant Service Information

The service bulletins incorporated into AD 95–19–07 contain some incorrect procedures that could prevent an owner/operator from correctly accomplishing the actions required by that AD. For this reason, Fairchild Aircraft revised SB 226–32–065, SB 227–32–039, and SB CC7–32–007, each of which incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

These service bulletins specify improved procedures for ultrasonically inspecting the left-hand and right-hand Ozone Industries, Inc. MLG yoke (reference: MLG assembly P/N OAS5453, all dash numbers up to and including –19), and Ozone Industries, Inc. NLG yoke (reference: NLG assembly P/N OAS5451, all dash number up to and including –17), on Fairchild Aircraft SA226 and SA227 series airplanes.

The Need to Revise AD 95–19–07

The FAA determined that the revised service information should be incorporated into AD 95–19–07 to allow for proper inspection of the MLG and NLG yokes of the affected airplanes, and issued priority letter AD 95–19–07 R1 to prevent MLG or NLG failure caused by stress corrosion cracks in the yokes, which could result in loss of control of the airplane during landing operations. The priority letter revised AD 95–19–07 by (1) retaining the repetitive inspections and possible replacement required by AD 95–19–07; and (2) incorporating the revised service bulletins to require accomplishment of the actions in accordance with corrected and clarified procedures.

Reason for This Action

After in-depth analysis, the FAA has established a policy to not allow airplane operation when known cracks exist in primary structure (MLG and NLG assemblies are considered such structure). The FAA makes allowances on this policy to account for parts availability provided analysis shows that an interim, acceptable level of safety can be maintained through a short-term, repetitive inspection program.

For this reason, the FAA has determined that the crack limits in priority letter AD 95–19–07 R1 and AD 95–19–07, Amendment 39–9369, should be eliminated and that AD action should be taken to require immediate replacement of any cracked MLG or NLG assembly. Because analysis shows that a repetitive inspection program can provide an interim acceptable level of safety, the FAA will allow a grace period for those owners/operators with airplanes where a crack is found in the MLG or NLG yoke during the initial inspection required by this action.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, this AD supersedes both priority letter AD 95–19–07 R1 and AD 95–19–07, Amendment 39–9369, with a new AD that retains the requirement of repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and

requires replacing either the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly, if any crack is found. Accomplishment of the required inspections is in accordance with Fairchild SB 226–32–065, Fairchild SB 227–32–039, or Fairchild SB CC7–32–007, as applicable. Each of these service bulletins incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

Accomplishment of the replacement is in accordance with the applicable maintenance manual.

Since a situation exists (possible loss of control of the airplane during landing operations) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Compliance Time Criteria

The compliance time of this AD is presented in both calendar time and hours time-in-service (TIS). Cracking of certain MLG yokes and NLG yokes on the affected airplanes is caused by stress corrosion, which starts as a result of high local stress (in the area where the piston was shrink fitted to the yoke) incurred through operation. Corrosion can then develop regardless of whether the airplane is in flight or on the ground. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations or temperature changes could then cause rapid crack growth. In order to ensure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time (whichever occurs first) is utilized.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–10–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–19–07, Amendment 39–9369 (60 FR 47687, September 14, 1995), and by adding a new AD to read as follows:

96–19–05 Fairchild Aircraft: Amendment 39–9753, Docket No. 96–CE–10–AD. Supersedes both AD 95–19–07, Amendment 39–9369, and priority letter AD 95–19–07 R1.

Applicability: Models SA226–T, SA226–AT, SA226–TC, SA226–T(B), SA227–AC, SA227–AT, SA227–BC, SA227–TT, SA227–CC, and SA227–DC airplanes (all serial numbers), certificated in any category, that are equipped with one or more of the following:

1. Ozone Industries, Inc. main landing gear (MLG) yoke (reference: MLG assembly part number OAS5453, all dash numbers up to and including –19); or

2. Ozone Industries, Inc. nose landing gear (NLG) yoke (reference: NLG assembly part number OAS5451, all dash numbers up to and including –17).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required initially as follows and thereafter as indicated in the body of this AD:

1. Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first; and

2. Upon the installation of one of the affected MLG or NLG assemblies or yokes.

To prevent MLG or NLG failure caused by stress corrosion cracks in the yokes, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect, using ultrasonic methods, both sides of the left-hand and right-hand MLG and NLG yokes for stress corrosion cracking in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin (SB) 226–32–065, Fairchild SB 227–32–039, or Fairchild SB CC7–32–007, as applicable. Each of these service bulletins incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

(b) If no cracks are found during the initial inspection required by paragraph (a) of this AD, accomplish the following:

(1) Prior to further flight after the initial inspection required by this AD, clean the MLG and NLG yoke and piston in accordance with FIGURE 2 of the service bulletins referenced in this AD, unless already accomplished;

(2) Prior to further flight after the initial inspection required by this AD, apply a small bead of Products Research and Chemical Corporation PR–1422 or PR–1435 sealant to the MLG and NLG yoke as shown in FIGURE 2 of the service bulletins referenced in this AD, and as described in the SA226/227 Series Service Repair Manual, Chapter 51–30–03, Standard Practices—Sealing, unless already accomplished; and

(3) Reinspect the MLG and NLG yokes at intervals not to exceed 2,500 hours TIS or 12 months, whichever occurs first, provided no cracks are found. If cracks are found, prior to further flight, replace the cracked part with a new or serviceable part in accordance with the applicable maintenance manual, and accomplish the cleaning of and sealant application to the MLG and NLG yoke and piston as specified in paragraphs (b)(1) and (b)(2) of this AD. The replacement may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination.

(c) If a crack is found during the initial inspection of this AD, replace the cracked part with a new or serviceable part in accordance with the applicable maintenance manual, and accomplish the cleaning of and sealant application to the MLG and NLG yoke and piston as specified in paragraphs (b)(1) and (b)(2) of this AD. The replacement may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination. Replace any cracked part in accordance with the following schedule:

(1) With a crack found with a length more than 1.5 inches in length: PRIOR TO FURTHER FLIGHT;

(2) With a crack found with a length more than 1 inch but not more than 1.5 inches: WITHIN THE NEXT 300 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 60 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST;

(3) With a crack found with a length more than .75 inch but not more than 1 inch: WITHIN THE NEXT 400 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 80 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST;

(4) With a crack found with a length more than .50 inch but not more than .75 inch: WITHIN THE NEXT 500 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 100 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST; and

(5) With a crack found with a length less than 0.50 inch: WITHIN THE NEXT 600 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 120 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST.

(d) Replacing a MLG or NLG yoke with either Ozone Industries, Inc. MLG yoke (reference: MLG assembly part number OAS5453, all dash numbers up to and including—19), or Ozone Industries, Inc. NLG yoke (reference: NLG assembly part number OAS5451, all dash numbers up to and including—17) re-establishes the effectivity of this AD.

(1) Repetitive inspections are required upon installation and at intervals not to exceed 2,500 hours TIS or 12 months, whichever occurs first, provided no cracks are found.

(2) If cracks are found, prior to further flight, replace the cracked part with a new or serviceable part in accordance with the applicable maintenance manual, and accomplish the cleaning of and sealant application to the MLG and NLG yoke and piston as specified in paragraphs (b)(1) and (b)(2) of this AD. The replacement may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination.

(3) The crack limit replacement compliance times specified in paragraph (c) of this AD only apply when cracks are found during the initial inspection required by this AD. If any crack of any length is found during a subsequent (any repetitive) inspection, the part must be replaced PRIOR TO FURTHER FLIGHT.

(e) The MLG and NLG yokes to which this AD applies are manufactured by Ozone Industries, Inc. Replacing these yokes with approved parts, other than the following Ozone Industries, Inc. MLG and NLG yokes eliminates the repetitive inspection requirements of this AD:

(1) Ozone Industries, Inc. MLG yoke (reference: MLG assembly part number OAS5453, all dash numbers up to and including—19).

(2) Ozone Industries, Inc. NLG yoke (reference: NLG assembly part number OAS5451, all dash numbers up to and including—17).

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO. Alternative methods of compliance approved in accordance with either priority letter AD 95–19–07 R1 or AD 95–19–07, Amendment 39–9369 (both superseded by this action), are not considered approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(h) The inspections required by this AD shall be done in accordance with Fairchild Service Bulletin 226–32–065, Fairchild Service Bulletin 227–32–039, or Fairchild Service Bulletin CC7–32–007, as applicable. Each of these service bulletins incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment (39–9753) supersedes AD 95–19–07, Amendment 39–9369, and priority letter AD 95–19–07 R1.

(j) This amendment (39–9753)1 becomes effective on October 1, 1996.

Issued in Kansas City, Missouri, on September 3, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22951 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 95–ASW–15]

Revision of Class E Airspace; Gainesville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal**

Register on June 4, 1996 (61 FR 28037), Airspace Docket No. 95–ASW–15.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT:

Chuck Frankenfield, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–13929, Airspace Docket No. 95–ASW–15, published on June 4, 1996 (61 FR 28037), revised the description of the Class E airspace area at Gainesville, TX. An error was discovered in the geographic coordinates for the Gainesville Municipal Airport, Gainesville, TX, and for the Gainesville Radio Beacon (RBN). The coordinates for the Gainesville Municipal Airport were published as latitude 33°38′57″N., longitude 97°11′43″W.; they should have been published as latitude 33°39′05″N., longitude 97°11′49″W. The coordinates for the Gainesville RBN were published as latitude 33°42′24″N., longitude 99°10′19″W.; they should have been published as latitude 33°43′07″N., longitude 97°11′55″W. This action corrects the geographic coordinates that were published in error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the description of the Class E airspace area at Gainesville, TX, as published in the **Federal Register** on June 4, 1996 (61 FR 28037), (**Federal Register** Document 96–13929: page 28037, column 3), are corrected as follows:

§71.1 [Corrected]

* * * * *

ASW TX E5 Gainesville, TX [Corrected]

Gainesville Municipal Airport, TX

Removing "(Lat. 33°38′57″N., long. 97°11′43″W.)" and substituting "(Lat. 33°39′05″N., long. 97°11′49″W.)"

Gainesville RBN

Removing "(Lat. 33°42′24″N., long. 99°10′19″W.)" and substituting "(Lat. 33°43′07″N., long. 97°11′55″W.)"

* * * * *

Issued in Fort Worth, TX, on September 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–23367 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS FALCON (MHC 59) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 21, 1996.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400. Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS FALCON (MHC 59) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations; and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2 is amended by adding the following entry for USS FALCON to Table Four, paragraph 18:

§706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

* * * * *

18. * * *

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
*	*	*	*
USS FALCON	MHC 59	65.0° to 75.6°	284.1° to 294.6°

* * * * *

Dated: August 21, 1996.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 96–23163 Filed 9–11–96; 8:45 am]

BILLING CODE 3810–FF–P

POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth additional Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Nonprofit Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, Nonprofit Periodicals, and Within County Periodicals, Docket No. MC96–2, Classification Reform II.

EFFECTIVE DATE: October 6, 1996.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On April 4, 1996, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on several mail classification reform proposals for nonprofit Periodicals and Standard Mail (Classification Reform II). The PRC designated the filing as Docket No. MC96–2. On April 11, 1996, the PRC published a notice of the filing, with a description of the Postal Service's proposals, in the **Federal Register** (61 FR 16129–16146). The PRC issued its Opinion and Recommended Decision on Docket No. MC96–2 on July 19, 1996. In that document, the PRC favorably recommended what the Postal Service had proposed, with the exception of those provisions in the Classroom Periodicals rate schedule; the PRC reopened the record in Docket No. MC96–2 for further proceedings on that category of mail. On August 6, 1996, the Governors of the Postal Service accepted the Recommended Decision and the Board of Governors set October 6, 1996, as the date on which the provisions of Docket No. MC96–2 would take effect. A notice of the Decision of the Governors was published on August 15, 1996 (61 FR 42464–42476).

The DMM standards that were proposed to take effect to implement Docket No. MC96–2 were published for public comment in the **Federal Register** on June 24, 1996 (61 FR 32606–32616). Because no comments were received on the proposed rule, it was adopted without change as the final rule, except as noted therein to reflect the absence of rate provisions for Classroom Periodicals in the PRC's Recommended Decision that was accepted and implemented by the Governors, and published on August 15, 1996 (61 FR 42478–42489).

Because the PRC's Recommended Decision, as accepted and implemented by the Governors, excluded rate changes for Classroom Periodicals that had been proposed by the Postal Service, the rate schedule for Classroom Periodicals was unchanged, retaining ZIP+4 Classroom rates. Because of this difference from what the Postal Service had proposed in its request and in the proposed rule, the August 15 final rule also proposed standards for ZIP+4 Classroom rate mail that were different from those published in DMM Issue 50. (In general, the Postal Service proposed to establish eligibility standards for ZIP+4 Classroom rate mail that parallel those for other automation rate Periodicals. Mail preparation standards for ZIP+4 Classroom rate mail would be essentially similar to those for upgradable mail in other classes, except a ZIP+4 code would be required in the address. The Postal Service anticipated minimal adverse impact from this proposal on the mailing community, given the applicability of ZIP+4 rates to only letter-size pieces and the likely absence of a significant volume of letter-size mail in the Classroom Periodicals subclass.) Because those specific standards were not part of the June 24 proposed rule, the Postal Service accepted further comments on those standards from interested parties for an additional 21 days (i.e., through September 5, 1996).

No comments were received on the proposed rule for ZIP+4 Classroom Periodicals rate eligibility and mail preparation. Therefore, the Postal Service adopts the corresponding DMM standards as the final rule.

These relevant standards are shown below for the information of readers, but are the same as the corresponding standards published in the August 15 final rule.

All references to DMM sections shown in this rule are based on DMM Issue 50 (July 1, 1996) as amended by the August 15 final rule.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

C CHARACTERISTICS AND CONTENT

* * * * *

C800 Automation-Compatible Mail

C810 Letters and Cards

* * * * *

2.0 DIMENSIONS

* * * * *

[Revise the heading of 2.3 to read as follows:]

2.3 Maximum Weight

[Revise 2.3a to read as follows:]

Maximum weight limits are as follows:

a. 2.5 ounces: upgradable Presorted First-Class Mail, ZIP+4 Classroom Periodicals, and upgradable nonautomation Standard Mail.

* * * * *

C840 Barcoding Standards

* * * * *

2.0 BARCODE LOCATION—LETTER-SIZE PIECES

2.1 Barcode Clear Zone

[Amend 2.1 by revising the first sentence to read as follows:]

Each letter-size piece in an automation rate mailing, each piece of ZIP+4 Classroom Periodicals, and each piece of upgradable Presorted First-Class Mail or upgradable Standard Mail (A) must have a barcode clear zone unless the piece bears a DPBC in the address book. * * *

* * * * *

E ELIGIBILITY

* * * * *

E200 Periodicals

* * * * *

E240 Automation Rates

1.0 BASIC STANDARDS

1.1 All Pieces

[Amend 1.1 by revising the introductory text to read as follows:]

Except for Classroom Periodicals under 3.0, all pieces in an automation Periodicals mailing must:

* * * * *

[Revise the heading of 2.0 to read as follows:]

2.0 RATE APPLICATION—EXCEPT CLASSROOM PERIODICALS

* * * * *

[Add new 3.0 to read as follows:]

3.0 RATE APPLICATION—CLASSROOM PERIODICALS ONLY

3.1 ZIP+4 Rates

ZIP+4 Classroom Periodicals must meet the basic standards in 1.1a through 1.1f and 1.2, except each piece must meet the physical standards for letter-size mail in C810 and the standards for OCR processing in C830, must bear the correct ZIP+4 code in the address, and must have address elements in the standardized format placed in the OCR read area, under A010. ZIP+4 rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit or unique 3-digit trays qualify for the 3/5 ZIP+4 rate.

b. Groups of fewer than 150 pieces in origin/entry 3-digit trays and groups of 150 or more pieces in other 3-digit or AADC trays, and all pieces in mixed AADC trays qualify for the Basic ZIP+4 rate.

3.2 Barcoded Rates

Barcoded Classroom Periodicals must meet the basic standards in 1.00 Barcoded rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit trays qualify for the 5-Digit Barcoded rate.

b. Groups of 150 or more pieces in *unique* 3-digit trays qualify for the 3-Digit Barcoded rate.

c. Pieces for unique 3-digit destination that is part of a 3-digit scheme group in L003 qualify for the 3-Digit Barcoded rate when placed in a 3-digit scheme tray if grouped separately from pieces for other 3-digit areas.

d. Groups of fewer that 150 pieces in origin/entry 3-digit/scheme trays and groups of 150 or more pieces in other 3-digit, 3-digit scheme, or AADC trays and all pieces in mixed AADC trays qualify for the Basic Barcoded rate.

* * * * *

M MAIL PREPARATION AND SORTATION

* * * * *

M800 All Automation Mail

[Revise the heading of M810 to read as follows:]

M810 Letter-Size Mail

1.0 BASIC STANDARDS

1.1 Standards

[Amend 1.1 by replacing the term "Regular Periodicals" with "Periodicals" in the first sentence to read as follows:]

Letter-size automation rate First-Class Mail, Periodicals, and Standard Mail (A) must be prepared under M810 and the eligibility standards for the rate claimed.* * *

1.2 Mailings

[Amend 1.2 by adding the following sentence to the end of the section to read as follows:]

* * *A Periodicals mailings may not contain both ZIP+4 Classroom pieces and any other automation rate Periodicals.

* * * * *

1.6 Scheme Sortation

[Amend 1.6 by adding the following sentence to the end of the section to read as follows:]

* * *Scheme sortation is not available for ZIP+4 Classroom Periodicals.

* * * * *

3.0 PREPARATION—PERIODICALS

3.1 Tray Preparation

[Amend 3.1 by revising 3.1b to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 3-digit/scheme (3-digit only for ZIP+4 Classroom Periodicals): required (150-piece minimum except no minimum for required origin/optional entry 3-digit(s)/scheme); overflow allowed; for Line 1, use L002, Column B (*except* use L002, Column A, for ZIP+4 Classroom Periodicals).

* * * * *

3.2 Line 2

[Revise 3.2 to read as follows:]

Line 2: PER or NEWS (as appropriate), LTRS BC (except LTRS UPGR for ZIP+4 Classroom Periodicals), and:

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–23394 Filed 9–11–96; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 960126016–6121–04; I.D. 090396B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closures from the Oregon-California Border to Humboldt South Jetty, CA, and from the U.S.-Canadian Border to Leadbetter Point, WA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closures.

SUMMARY: NMFS announces that commercial salmon fisheries were closed in the following areas: from the Oregon-California border (42°00'00" N. lat.) to Humboldt South Jetty, CA (40°45'53" N. lat.), at midnight, August 22, 1996; and from the U.S.-Canadian border to Leadbetter Point, WA (46°38'10" N. lat.), at midnight, August 24, 1996. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quotas of 2,500 chinook salmon and 20,800 coho salmon for the respective areas have been reached. This action is necessary to conform to the preseason announcement of the 1996 management measures and is intended to ensure conservation of chinook and coho salmon.

DATES: Closure from the Oregon-California border to Humboldt South Jetty, CA, is effective at 2400 hours local time, August 22, 1996, through 0001 hours local time, September 1, 1996, at which time the season reopens under the terms of the preseason announcement of the 1996 management measures. Closure from the U.S.-Canadian border to Leadbetter Point, WA, is effective at 2400 hours local time, August 24, 1996, through 2400 hours local time, September 30, 1996, at which time the season remains closed under the terms of the preseason announcement of the 1996 management measures. Comments will be accepted through September 26, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, or Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this action

has been compiled in aggregate form and is available for public review during business hours at the Northwest Regional Office or Southwest Regional Office.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 310–980–4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by notice issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996), NMFS announced that the 1996 commercial fishery in the area between the Oregon-California border and Humboldt South Jetty, CA, would open on August 15 and continue through August 31 or attainment of the 2,500 chinook salmon quota, whichever occurred first. NMFS also announced that a 1996 commercial fishery contingency season in the area between the U.S.-Canadian border and Leadbetter Point, WA, would open on July 26 and continue through September 30 or attainment of the 18,800 chinook salmon quota, whichever occurred first. An inseason action at 61 FR 40157, August 1, 1996, announced implementation of the contingency season. A further inseason action at 61 FR 43472, August 23, 1996, increased the commercial coho salmon quota for the area to 20,800 fish.

The best available information on August 21 indicated that catch and effort data and projections supported closure of the commercial fishery in the area between the Oregon-California border and Humboldt South Jetty, CA, at midnight, August 22, and closure of the commercial fishery in the area between the U.S.-Canadian border and Leadbetter Point, WA, at midnight, August 24.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the California Department of Fish and Game, and the Washington Department of Fish and Wildlife regarding these closures. The States of California and Washington will manage the commercial fishery in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 2400 hours local time, August 22, 1996 (closure from the Oregon-California border to Humboldt South Jetty, CA) and 2400 hours local time, August 24, 1996 (closure from the U.S.-Canadian border to Leadbetter Point, WA) by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 1996

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23253 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 090696D]

Fisheries of the Exclusive Economic Zone Off Alaska; Sharpchin and Northern Rockfish in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting retention of Atka mackerel in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent overfishing of the sharpchin/northern rockfish species group.

DATES: 1200 hrs, Alaska local time (A.l.t.), September 7, 1996, until 2400 hrs, A.l.t., December 31, 1996. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 23, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Magnuson Act requires that conservation and management measures prevent overfishing. The 1996 overfishing level for the sharpchin/northern rockfish species group in the Aleutian Islands subarea of the BSAI is established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 5,810 metric tons (mt) and the acceptable biological catch as 5,810 mt. As of August 24, 1996, 6,578 mt of sharpchin/northern rockfish have been caught.

NMFS closed directed fishing for sharpchin/northern rockfish on May 30, 1996 (61 FR 28072, June 4, 1996) and prohibited retention of sharpchin/northern rockfish on July 27, 1996 (61 FR 40158, August 1, 1996). Substantial trawl fishing effort will be directed at remaining amounts of Atka mackerel in the Aleutian Islands subarea during 1996. This fishery can have a significant bycatch of sharpchin/northern rockfish.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.25(a)(1)(i) and (a)(2)(iii), that closing the season by prohibiting retention of Atka mackerel by vessels using trawl gear is necessary to prevent overfishing of the sharpchin/northern rockfish species group, and is the least restrictive measure to achieve that purpose. Without this prohibition of retention, significant incidental catch of sharpchin/northern rockfish would occur by trawl vessels targeting Atka mackerel.

Therefore, NMFS is requiring that further catches of Atka mackerel by vessels using trawl gear in the Aleutian Islands subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b)(2).

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent overfishing of sharpchin/northern rockfish in the Aleutian Islands subarea of the BSAI. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 23, 1996.

Classification

This action is taken under § 679.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 6, 1996.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23321 Filed 9–6–96; 5:02 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 090696F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Using Nonpelagic Trawl Gear in the Bering Sea and Aleutian Island Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by trawl vessels using nonpelagic trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the BSAI bycatch allowance of halibut specified for the trawl pollock/Atka mackerel/"other species" fishery category.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 7, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 600 and 679.

The 1996 bycatch allowance of halibut specified for the trawl pollock/Atka mackerel/"other species" fishery category which is defined at § 679.21(e)(3)(iv)(F), was established as 430 metric tons by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996).

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.21(e)(7), that the bycatch allowance of halibut specified for the trawl pollock/Atka mackerel/"other species" fishery category has been reached. Therefore, NMFS is closing the directed fishery for pollock by trawl vessels using nonpelagic trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 6, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23322 Filed 9–6–96; 5:02 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 178
Thursday, September 12, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1780

RIN 0572–AB20

Streamlining the Rural Utilities Service Water and Waste Program Regulations

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency; USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends the regulations utilized to administer the water and waste loan and grant programs. The proposed rule will combine the water and waste loan and grant regulations into one regulation. Unnecessary and burdensome requirements for entities seeking financial assistance under the programs will be eliminated. The streamlining of the regulation will allow RUS to provide better service to rural entities needing assistance in correcting and alleviating health and sanitary problems in their communities, and in general improve the quality of life in rural areas. This rule will also incorporate changes in the water and waste loan and grant program mandated by the 1996 Farm Bill. This rule could impact the amount of loan and grant an applicant could receive. Therefore, RUS will honor all written commitments of loan and grant amounts issued prior to the effective date of this rule.

DATES: Comments on the proposed rule must be received on or before October 15, 1996.

ADDRESSES: Submit written comments on the proposed rule. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.30(e)) to the Program Support and Regulatory Analysis Group, Rural Utilities Service, 14th & Independence Avenue SW., AG Box 1522, Washington, DC 20250, Telephone: (202) 720–0736.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Division, Rural Utilities Service, USDA, South Agriculture Building, Room 6328, AG Box 1548, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866 and the Office of Management and Budget has determined that it is a "significant regulatory action".

Intergovernmental Review

These programs are listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Systems For Rural Communities and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It has been determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 11 must be exhausted prior to filing suit.

Information Collection and Paperwork Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For further information contact Jerry W. Cooper, Loan Specialist, Water and Waste Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1548, Washington, DC 20250–1548, telephone: (202) 720–9589.

Title: Water and Waste Disposal Loan and Grant Program.

OMB Control Number: 0575–0015.

Type of Request: Addendum to a previously approved information collection.

The program provides loan and grant funds for water and waste disposal projects serving the most financially needy rural communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less. Communities seeking financial assistance through the program must provide certain detailed information to RUS that is used to determine eligibility and the credit worthiness of the applicant. Additional information is needed to assure that proposed projects will meet the needs of the community, are properly constructed, and that the financial interest of the Government is protected. All the information collected is used by RUS to manage and account for Government resources. The reports and forms are required to ensure the proper and judicious use of public funds.

This proposed rule eliminates the pre-application procedures which were previously required under 7 CFR part 1940 subpart A. The addendum will reflect the reduction in reporting burden by 8,726 hours due to the elimination of this reporting requirement.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 2.7 hours per respondent.

Respondents: Non-profit institutions and state, local or tribal governments.

Estimated Number of Respondents: 10,520.

Estimated Number of Responses: 85,182.

Estimated Total Annual Burden on Respondents: 227,128 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522. Telephone: (202) 720–0812. Fax: (202) 720–4120.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, STOP 1522, Washington, DC 20250–1522. Telephone: (202) 720–0812. Fax: (202) 720–4120.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

All comments will become a matter of public record.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Unfunded Mandate Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

Cross References of Regulations

The Rural Utilities Service is an Agency resulting from a reorganization of programs administered by the former Farmers Home Administration, the former Rural Development Administration, and the former Rural Electrification Administration. Dual-references or cross-references to former Farmers Home Administration regulations and forms are provided for by the Department of Agriculture Reorganization Act of 1994.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule.

Background

The water and waste loan and grant programs are authorized by various sections of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1921 *et seq.*), as amended. The regulations for these programs, particularly the loan program, have not been completely reviewed for many years. The recent streamlining and reorganization of the Department of Agriculture provided an opportunity to review and rewrite the water and waste loan and grant regulations. A task force, was formed to review and rewrite the regulations. The aim of the task force was to make the regulations easier to understand, eliminate unnecessary requirements, and continue to protect the interest of the U.S. taxpayer.

The program provides loan and grant funds for water and waste disposal projects serving the most financially needy rural communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less.

The proposed rule will divide the regulation into four subparts: A, B, C, and D. Subpart A contains the general policies and requirements of the loan and grant program. Subpart B contains the loan and grant application processing requirements. Subpart C contains all the requirements for planning, designing, bidding, contracting, constructing, and inspections. Subpart D has information required in the preparation of notes or bonds and bond transcript documents for public body applicants.

Major changes are:

1. Redirects additional grant funds to communities that truly need the assistance in order to construct a project. Communities with incomes over 100 percent of the State nonmetropolitan median household income will not qualify for any grant funds as in the current regulations.

2. Stretches the grant dollars appropriated by Congress to help more communities by changing the maximum percentage of grant funds that a higher income community can receive from 55 percent to 45 percent of RUS's share of the project costs. This change could have an indirect effect of having an incentive for development of regional projects.

3. The process used to select projects for funding has been revised to direct funds to low income, small communities that need to correct health problems. Also, the priority points awarded for regional systems have been increased.

4. The application process has been streamlined to reduce unnecessary paperwork and improve service to the rural communities. There will be less regulations and the number of pages will be greatly reduced.

5. The application process has been shortened by eliminating the preapplication process.

6. A preliminary engineering report (PER) must be submitted earlier in the application process. The requirement of submitting a PER earlier in the process will assist the staff in making better decisions. Also, applicants have to have this type of document to help them determine what, where, and how they are going to build needed facilities. This change will force applicants to have a clear picture of what they want to construct prior to applying for assistance. A majority of applicants have a PER at the preapplication stage now, therefore the change will tend to put all applicants on a level field.

The major 1996 Farm Bill changes are:

1. Funds made available for these programs may be made available for a water system that is making significant progress toward meeting the Safe Drinking Water Act standards.

2. Funds made available for water treatment discharge or waste disposal system must meet applicable Federal and State water pollution control standards.

3. Not earlier than 60 days before filing an application for loan or grant assistance, a notice of intent shall be published in a general circulation newspaper.

4. When applicants hire outside engineers, the selection of an engineer for a project design shall be done by a request for proposals.

5. Assistance under any rural development program administered by the Secretary or any agency of the Department of Agriculture shall not be conditioned on any requirement that the recipient of the assistance accept or receive electric service from any particular utility, supplier, or cooperative. This is being implemented for the water and waste loan and grant programs.

List of Subjects in 7 CFR Part 1780

Community development, Community facilities, Grant programs-Housing and community development, Rural areas, Waste treatment and

disposal-Domestic, Water supply-Domestic.

Therefore, RUS proposes to amend chapter XVII, title 7, Code of Federal Regulations as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

1. Part 1780, is added to read as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

Subpart A—General Policies and Requirements

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1780.2 Purpose.
1780.3 Definitions and grammatical rules of construction.
1780.4 Availability of forms and regulations.
1780.5 [Reserved]
1780.6 Application information.
1780.7 Eligibility.
1780.8 [Reserved]
1780.9 Eligible loan and grant purposes.
1780.10 Limitations.
1780.11 Service area requirements.
1780.12 [Reserved]
1780.13 Rates and terms.
1780.14 Security.
1780.15 Other Federal, state, and local requirements.
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1780.17 Selection priorities and process.
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1780.23 [Reserved]
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Subpart B—Loan and Grant Application Processing

1780.31 General.
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1780.44 Actions prior to loan or grant closing or start of construction, whichever occurs first.
1780.45 Loan and grant closing and delivery of funds.
1780.46 [Reserved]
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1780.48 Regional commission grants.
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Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections

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1780.70 Owner's procurement regulations.
1780.71 [Reserved]
1780.72 Procurement methods.
1780.73 [Reserved]
1780.74 Contracts awarded prior to applications.
1780.75 Contract provisions.
1780.76 Contract administration.
1780.77–1780.79 [Reserved]

Subpart D—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

1780.80 General.
1780.81 Policies related to use of bond counsel.
1780.82 [Reserved]
1780.83 Bond transcript documents.
1780.84–1780.86 [Reserved]
1780.87 Permanent instruments for Agency loans.
1780.88 [Reserved]
1780.89 Multiple advances of Agency funds using permanent instruments.
1780.90 Multiple advances of Agency funds using temporary debt instruments.
1780.91–1780.93 [Reserved]
1780.94 Minimum bond specifications.
1780.95 Public bidding on bonds.
1780.96–1780.100 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

§ 1780.1 General.

(a) This part outlines the policies and procedures for making and processing direct loans and grants for water and waste projects. The Rural Utilities Service (RUS) shall cooperate fully with State and local agencies in making loans and grants to assure maximum support to the State strategy for rural development. Agency officials and their staffs shall maintain coordination and liaison with State agency and substate planning districts.

(b) The income data used in this part to determine median household income must be that which most accurately reflects the income of the service area. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the RUS National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

(c) RUS debt instruments will require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness to the Government then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(d) Funds allocated for use under this part are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Native Americans residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this part that affect applicant eligibility, the adequacy of RUS's security, or the adequacy of service to users of the facility and all other requirements of this part must be met.

(e) RUS financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

(f) Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Agency employees, members of their

families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants for assistance are required to identify any known relationship or association with a RUS employee.

(g) Water and waste facilities will be designed, installed, and operated in accordance with applicable laws which include but are not limited to the Safe Drinking Water Act, Clean Water Act and the Resource Conservation and Recovery Act.

(h) RUS financed facilities will be consistent with any current development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.

(i) Each RUS financed facility will be in compliance with appropriate State or Federal agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water.

(j) Water and waste applicants must demonstrate that they possess the financial, technical, and managerial capability necessary to consistently comply with pertinent Federal and State laws and requirements. In developing water and waste systems, applicants must consider alternatives of ownership, system design, and the sharing of services.

(k) Applicants should be aware of and comply with other Federal statute requirements including but not limited to:

(1) Section 504 of the Rehabilitation Act of 1973. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RUS financial assistance;

(2) Civil Rights Act of 1964. All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 and subpart E of part 1901 of this title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by § 1901.202(e) of this title;

(3) The Americans with Disabilities Act (ADA) of 1990. This Act prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by State and local public entities which provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public; and

(4) Age Discrimination Act of 1975. This Act provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 1780.2 Purpose.

Provide loan and grant funds for water and waste projects serving the most financially needy communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users.

§ 1780.3 Definitions and grammatical rules of construction.

(a) Definitions. For the purposes of this part:

Agency means any United States Department of Agriculture (USDA) employee acting on behalf of the Rural Utilities Service in accordance with appropriate delegations of authority.

Approval official means the USDA official at the State level who has been delegated the authority to approve loans or grants.

Equivalent Dwelling Unit (EDU) means the level of service provided to a typical rural residential dwelling.

Parity bonds means bonds which have equal standing with other bonds of the same Issuer.

Poverty line means the level of income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Processing office means the office designated by the State program official to accept and process applications for water and waste disposal assistance.

Project means all activity that an applicant is currently undertaking to be financed in whole or part with RUS assistance.

Protective advances are payments made by a lender for items such as insurance or taxes in order to preserve and protect the security or the lien or priority of the lien securing the loan.

Rural and Rural Areas means any area not in a city, or town with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

Rural Development means the mission area of the Under Secretary for Rural Development. Rural Development State and local offices will administer this water and waste program on behalf of the Rural Utilities Service.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), successor to the Farmer's Home Administration and the Rural Development Administration with respect to certain water and waste disposal loan and grant programs.

Service area means the area reasonably expected to be served by the project.

Servicing office means the office designated by the State program official to service water and waste disposal loans and grants.

Similar system cost means the average annual EDU user cost of a system within a community having similar economic conditions and being served by the same type of established system. Similar system cost shall include all charges, taxes, and assessments attributable to the system including debt service, reserves and operation and maintenance costs.

State program official means the USDA official at the State level who has been delegated the responsibility of administering the water and waste disposal programs under this regulation for a particular State or States.

Statewide nonmetropolitan median household income means the median household income of all rural areas of a state.

(b) Rules of grammatical construction. Unless the context otherwise indicates, "includes" and "including" are not limiting, and "or" is not exclusive. The terms defined in paragraph (a) of this section include the plural as well as the singular, and the singular as well as the plural.

§ 1780.4 Availability of forms and regulations.

Information about the availability of forms, regulations, bulletins and publications cited in this part is available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500.

§ 1780.5 [Reserved]

§ 1780.6 Application information.

(a) The Rural Development State Director in each State will determine the office and staff that will be responsible for delivery of the program (processing office) and designate an approving

office. Applications will be accepted by the processing office.

(b) The applicant's governing body should designate one person to act as contact person with the Agency during loan and grant processing. Agency personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants or agents.

§ 1780.7 Eligibility.

Facilities financed by water and waste disposal loans or grants must serve rural areas.

(a) *Eligible applicant.* An applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision of a State, territory or commonwealth,

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community, or

(3) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(b) *Eligible facilities.* Facilities financed by RUS may be located in non-rural areas. However, loan and grant funds may be used to finance only that portion of the facility serving rural areas, regardless of facility location.

(c) *Eligible projects.* (1) Projects must serve a rural area which, if such project is completed, is not likely to decline in population below that for which the project was designed.

(2) Projects must be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable. Water systems should have sufficient capacity to provide for reasonable fire protection to the extent practicable.

(3) Projects must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area.

(d) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources, through commercial credit at reasonable rates and terms, or other funding sources.

(e) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for owning, constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. Guidance for preparing a management agreement is available from the Agency. Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(f) *Economic feasibility.* All projects financed under the provisions of this section must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

(g) *Federal Debt Collection Act of 1990.* An outstanding judgment obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan or grant until the judgment is paid in full or otherwise satisfied.

(h) *Expanded eligibility for timber-dependent communities in Pacific Northwest.* In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, "Forest Plan for a sustainable Economy and a Sustainable Environment," dated July 1, 1993, the population limits contained in section 1780.3(a) of this part are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(1) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, "Forest Plan for a Sustainable Economy and a Sustainable Environment," dated July 1, 1993; and

(2) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

§ 1780.8 [Reserved]

§ 1780.9 Eligible loan and grant purposes.

Loan and grant funds may be used only for the following purposes:

(a) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities;

(b) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section;

(c) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section;

(d) For payment of other utility connection charges as provided in service contracts between utility systems; and

(e) When a necessary part of the project relates to those facilities authorized in paragraphs (a), (b), (c) or (d) of this section the following may be considered:

(1) Loan or grant funds may be used for:

(i) Reasonable fees and costs such as: legal, engineering, administrative services, fiscal advisory, recording, environmental analyses and surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights;

(ii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(iii) Purchasing or renting equipment necessary to install, operate, maintain, extend, or protect facilities;

(iv) Cost of applicant labor necessary to install and extend service; and

(v) In unusual cases, the cost for connecting the user to the main service line.

(2) Only loan funds may be used for:

(i) Interest incurred during construction in conjunction with multiple advances or interest on interim financing;

(ii) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the applicant is unable to pay such expenses;

(iii) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service; and

(iv) Refinancing debts incurred by, or on behalf of, an applicant when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts were incurred for the facility or service being financed or any part thereof;

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan; and

(v) Prepayment of costs for which RUS grant funds were obligated.

(3) Grant funds may be used to restore loan funds used to prepay grant obligated costs.

(f) Construction incurred before loan or grant approval.

(1) Funds may be used to pay obligations for construction incurred before loan or grant approval if such requests are made in writing by the applicant and the Agency determines that:

(i) Compelling reasons exist for incurring obligations before loan or grant approval;

(ii) The obligations will be incurred for authorized loan or grant purposes; and

(iii) The Agency's authorization to pay such obligations is on the condition that it is not committed to make the loan or grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan or grant approval requirements, including environmental and contracting requirements.

(2) If construction is started without Agency approval, post-approval in accordance with this section may be considered, provided the construction meets applicable requirements including those regarding approval and environmental matters.

(g) Water or sewer service may be provided through individual installations or small clusters of users within an applicant's service area. The approval official should consider items such as: Quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(1) Applicants providing service through individual facilities must meet the eligibility requirements in § 1780.7.

(2) The Agency must approve the form of agreement between the applicant and individual users for the installation, operation, maintenance and payment for individual facilities.

(3) If taxes or assessments are not pledged as security, applicants providing service through individual facilities must obtain security necessary to assure collection of any sum the individual user is obligated to pay the applicant.

(4) Notes representing indebtedness owed the applicant by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the RUS loan, whichever is shorter. The interest rate will not exceed the interest rate charged the applicant on the RUS indebtedness.

(5) Applicants providing service through individual or cluster facilities must obtain:

(i) Easements for the installation and ingress to and egress from the facility if determined necessary by RUS; and

(ii) An adequate method for denying service in the event of nonpayment of user fees.

§ 1780.10 Limitations.

(a) Loan and grant funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost;

(2) Loan or grant finder's fees;

(3) The construction of any new combined storm and sanitary sewer facilities;

(4) Any portion of the cost of a facility which does not serve a rural area;

(5) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment, etc.;

(6) Rental for the use of equipment or machinery owned by the applicant;

(7) For other purposes not directly related to operating and maintenance of the facility being installed or improved; and

(8) A judgment which would disqualify an applicant for a loan or grant as provided for in § 1780.7(g) of this part.

(b) Grant funds may not be used to:

(1) Reduce EDU costs to a level less than similar system cost;

(2) Pay any costs of a project when the median household income of the service area is and more than 100 percent of the nonmetropolitan median household income of the State;

(3) Pay project costs when other loan funding for the project is not at reasonable rates and terms; and

(4) Pay project costs when other funding is a guaranteed loan obtained in accordance with subpart I of part 1980 of this chapter.

(c) Grants may not be made in excess of the following percentages of the RUS funded project development costs. Facilities previously installed will not be considered in determining the development costs.

(1) 75 percent when the median household income of the service area is below the higher of the poverty line or 80% of the state nonmetropolitan median income and the project is necessary to alleviate a health or sanitary problem.

(2) 45 percent when the median household income of the service area exceeds the 80 percent requirements described in paragraph (c)(1) of this section but is not more than 100 percent of the statewide nonmetropolitan median household income.

(3) Applicants are advised that the percentages contained in paragraph (c)(1) and (c)(2) of this section are maximum amounts and may be further limited due to availability of funds or the grant determination procedures contained in § 1780.35 (d) of this part.

§ 1780.11 Service area requirements.

(a) All facilities financed under the provisions of this part shall be for public use. The facilities will be installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served. This does not preclude:

(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

(b) Should the Agency determine that inequities exist within the applicants service area for the same type service proposed (i.e., water or waste disposal) such inequities will be remedied by the applicant prior to loan or grant approval or included as part of the project. Inequities are defined as unjustified variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions do not necessarily constitute inequities.

(c) Developers are normally expected to provide utility-type facilities in new or developing areas in compliance with appropriate State statutes. RUS financing will be considered to an eligible applicant only in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of a current area development plan; and loan repayment can be assured by:

(1) The applicant already having sufficient assured revenues to repay the loan; or

(2) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in § 1780.39(c)(4)(ii); or

(3) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or

(4) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(5) The loan is to a public body evidenced by a pledge of tax revenue or assessments; or

(6) The user charges can become a lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

§ 1780.12 [Reserved]

§ 1780.13 Rates and terms.

(a) *General.* (1) Each loan will bear interest at the rate prescribed in FmHA Instruction 440.1, exhibit B. The interest rates will be set by the Agency for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of one per centum. The rate will be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing unless the applicant otherwise chooses.

(2) If the interest rate is to be that in effect at loan closing on a loan involving multiple advances of RUS funds using temporary debt instruments, the interest rate charged shall be that in effect on the date when the first temporary debt instrument is issued.

(b) *Poverty rate.* The poverty interest rate will not exceed 5 per centum per annum. All poverty rate loans must comply with the following conditions:

(1) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards; and

(2) The median household income of the service area is below the higher of the poverty line, or 80 percent of the Statewide nonmetropolitan median household income.

(c) *Intermediate rate.* The intermediate interest rate will be set at the poverty rate plus one-half of the difference between the poverty rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty rate and for which the median household income of the service area is not more than 100 percent of the nonmetropolitan median household income of the State.

(d) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (b) or (c) of this section.

(e) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note or bond, whichever is less. Where RUS grant funds are used in connection with an RUS loan, the loan will be for the maximum term permitted by this part, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an RUS loan for less than the maximum term permitted. In such cases, the reasons must be fully documented.

(1) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the Agency may authorize such deferment. Deferments of principal will not be used to:

(i) Postpone the levying of taxes or assessments;

(ii) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as those services become available;

(iii) Create reserves for normal operation and maintenance;

(iv) Make any capital improvements except those approved by the Agency which are determined to be essential to the repayment of the loan or to maintain adequate security; and

(v) Make payment on other debt.

(2) Payment date. Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(3) In all cases, including those in which RUS is jointly financing with another lender, the RUS payments of principal and interest should approximate amortized installments.

§ 1780.14 Security.

Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of RUS during the repayment period of the loan. Specific security requirements for each loan will be included in a letter of conditions.

(a) *Public bodies.* Loans to such borrowers, including Federally recognized Indian tribes as appropriate, will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant laws and by borrower's documents, resolutions, and ordinances. Security, in the following order of preference, will consist of:

(1) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(2) Pledges of taxes or assessments; and/or

(3) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interests, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds.

(b) *Other-than-public bodies.* Loans to other-than-public body applicants and Federally recognized Indian tribes, as appropriate, will be secured in the following order of preference:

(1) Assignments of borrower income will be taken and perfected by filing, if legally permissible; and

(2) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales

contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not legally permissible or feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the approval official determines that the interest of RUS is otherwise adequately secured, the lien requirement may be omitted as to such land rights. For existing borrowers where the Agency already has a security position on real property, the approval official may determine that the interest of the Government is adequately secured and not require additional liens on such land rights. When the subsequent loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the approval official determines that the loan is adequately secured.

(c) *Joint financing security.* For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with RUS taking another type. For projects utilizing joint financing with the same security to be shared by RUS and another lender, RUS will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the approval official:

(1) It is not necessary for loans to have the same repayment terms. Loans made by other lenders involved in joint financing with RUS should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(2) The use of a trustee or other similar paying agent by the other lender in a joint financing arrangement is acceptable to RUS. A trustee or other similar paying agent will not normally be used for the RUS portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include RUS funds must be clearly specified by written agreement and approved by the State program official and the Office of the General Counsel (OGC). RUS must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(3) In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(4) Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount outstanding; provided, however, funds obtained from such sale or liquidation for a project that included RUS grant funds will be apportioned as required by the grant agreement.

(5) Protective advances must be charged to the borrower's account and be secured by a lien on the security property. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

§ 1780.15 Other Federal, State, and local requirements.

Proposals for facilities financed in whole or in part with RUS funds will be coordinated with appropriate Federal, State and local agencies. If there are conflicts between this part and State or local laws or regulatory commission regulations, the provisions of this part will control. Applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

(a) Organization of the applicant and its authority to own, construct, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;

(c) Land use zoning; and

(d) Health and sanitation standards and design and installation standards unless an exception is granted by RUS.

§ 1780.16 [Reserved]

§ 1780.17 Selection priorities and process.

When ranking eligible applications for consideration for limited funds, Agency officials must consider the priority items met by each application and the degree to which those priorities are met. Points will be awarded as follows:

(a) *Population priorities.* (1) The proposed project will primarily serve a rural area having a population not in excess of 1,000—20 points;

(2) The proposed project primarily serves a rural area having a population between 1,001 and 2,500—15 points;

(3) The proposed project primarily serves a rural area having a population between 2,501 and 5,500—5 points.

(b) *Health priorities.* The proposed project is:

(1) Needed to alleviate an emergency situation, correct unanticipated diminution or deterioration of a water supply, or to meet Safe Drinking Water Act requirements which pertain to a water system—25 points;

(2) Required to correct inadequacies of a wastewater disposal system, or to meet health standards which pertain to a wastewater disposal system—25 points;

(3) Required to meet administrative orders issued to correct local, State, or Federal solid waste violations—15 points.

(c) *Income priorities.* The median household income of the population to be served by the proposed project is:

(1) Less than the poverty line if the poverty line is less than 80% of the statewide nonmetropolitan median income—30 points;

(2) Less than 80 percent of the statewide nonmetropolitan median household income—20 points;

(3) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income—15 points.

(d) *Other priorities.* (1) The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service—15 points;

(2) The proposed project will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural areas—10 points;

(3) Applicant is a public body or Indian tribe—5 points;

(4) Amount of other than RUS funds committed to the project is:

(i) 50% or more—15 points;

(ii) 20% to 49%—10 points;

(iii) 5%—19% —5 points.

(5) Projects that will serve Agency identified target areas—10 points;

(6) Projects that primarily recycle solid waste products thereby limiting the need for solid waste disposal—5 points;

(7) The proposed project will serve an area that has an unreliable quality or supply of drinking water—10 points.

(e) *In certain cases the State program official may assign up to 15 points to a project.* The points may be awarded to projects in order to improve compatibility and coordination between RUS's and other agencies' selection

systems, to ensure effective RUS fund utilization, and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time these points are assigned.

(f) *Cost overruns.* An application may receive consideration for funding before others at the State or National Office level when it is a subsequent request for a previously approved project which has encountered construction cost overruns. The cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will not be considered under this paragraph.

(g) *National office priorities.* In selecting projects for funding at the National Office level State program official points may or may not be considered. The Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds, the highest priority projects within a State, and emergency conditions caused by economic problems or natural disasters. The Administrator may delegate the authority to assign up to 15 of the administrator's points to appropriate National Office staff.

§ 1780.18 Public information.

(a) *Public notice of intent to file an application with the Agency.* Within 60 days of filing an application with the Agency the applicant must publish a notice of intent to apply for a RUS loan or grant. The notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

(b) *General public meeting.* Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, must hold at least one public information meeting. The public meeting must be held after the application is filed and not later than loan or grant approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by the Agency. To the extent possible, this meeting should cover items necessary to satisfy all public information meeting requirements for the proposed project. To minimize duplication of public notices and public involvement, the applicant shall, where possible, coordinate and integrate the public involvement activities of the environmental review process into this requirement. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify the Agency. The applicant will provide the Agency a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans or grants which are needed to complete the financing of a project.

§§ 1780.19–1780.23 [Reserved]

§ 1780.24 Approval authorities.

Appropriate reviews, concurrence, and authorization must be obtained for all loans or grants in excess of the amounts indicated in RUS Staff Instruction 1780–1.

(a) *Redelegation of authority by State Directors.* Unless restricted by memorandum from the RUS Administrator, State Directors can redelegate their approval authorities to State employees by memorandum.

(b) *Restriction of approval authority by the RUS Administrator.* The RUS Administrator can make written restrictions or revocations of the authority given to any approval official.

§ 1780.25 Exception Authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§§ 1780.26–1780.30 [Reserved]

Subpart B—Loan and Grant Application Processing

§ 1780.31 General.

(a) Applicants are encouraged to contact the Agency processing office early in the planning stages of their project. Agency personnel are available to provide general advice and assistance regarding RUS programs, other funding sources, and types of systems or improvements appropriate for the applicant's needs. The Agency can also provide access to technical engineering and environmental assistance and information resources for other project development issues such as public information, income surveys, developing rate schedules, system operation and maintenance, and environmental compliance requirements. Throughout the planning, application processing and construction of the project, Agency personnel will work closely and cooperatively with the applicant and their representatives, other State and Federal agencies and technical assistance providers.

(b) The processing office will handle initial inquiries and provide basic information about the program. They are to provide the application, SF 424.2, "Application for Federal Assistance (For Construction)," assist applicants as needed in completing SF 424.2, and in filing a request for intergovernmental review. Federally recognized Indian tribes are exempt from intergovernmental review. The processing office will explain eligibility requirements and meet with the applicant whenever necessary to discuss application processing.

(c) Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(d) Starting with the earliest discussions with prospective applicants or review of applications and continuing throughout application processing, environmental issues must be considered. Throughout the application process the State Environmental Coordinator will discuss with the applicant and their engineer, environmental review requirements for evaluating a project's potential for environment impacts. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified adverse environmental impacts. The environmental review requirements shall be performed simultaneously and concurrently with the project's engineering design and mitigation measures integrated into the design to minimize any adverse environmental impacts.

§ 1780.32 Timeframes for application processing.

(a) The processing office will determine if the application is properly assembled. If not, the applicant will be notified within fifteen days as to what additional submittal items are needed.

(b) The processing and approval offices will coordinate their reviews to ensure that the applicant is advised about eligibility and anticipated fund

availability within 45 days of the receipt of a completed application.

§ 1780.33 Application requirements.

An initial application consists of the following:

(a) One copy of a completed SF 424.2;

(b) A copy of the State intergovernmental comments or one copy of the filed application for State intergovernmental review; and

(c) Two copies of the preliminary engineering report (PER) for the project. The PER should be completed in accordance with RUS Bulletins 1780–2 through 1780–5.

(1) The PER may be submitted to the processing office prior to the rest of the application material if the applicant desires a preliminary review.

(2) The processing office will forward one copy of the PER with comments and recommendations to the State staff engineer for review upon receipt from the applicant.

(3) The State staff will consult with the applicant's engineer as appropriate to resolve any questions concerning the PER and any environmental concerns. Written comments will be provided by the State staff engineer and State Environmental Coordinator to the processing office to meet eligibility determination time lines.

(d) Written certification that other credit is not available.

(e) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, organizational documents, or existing debt instruments. The processing office will advise applicants regarding the required documents. Applicants that are indebted to RUS will not need to submit documents already on file with the processing office.

(f) Form FmHA 1940–20, "Request for Environmental Information." The applicant should consult with the processing office to determine what information should be included with this form.

(g) The applicants Internal Revenue Service Taxpayer Identification Number (TIN). The TIN will be used by the Agency to assign a case number which will be the applicant's or transferee's TIN preceded by State and County Code numbers. Only one case number will be assigned to each applicant regardless of the number of loans or grants or number of separate facilities, unless an exception is authorized by the National Office.

(h) Other Forms and certifications. Applicants will be required to submit the following items to the processing office, upon notification from the processing office to proceed with further development of the full application:

(1) Form FmHA 442–7, "Operating Budget";

(2) Form FmHA 1910–11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts";

(3) Form FmHA 400–1, "Equal Opportunity Agreement";

(4) Form FmHA 400–4, "Assurance Agreement";

(5) Form AD–1047, "Certification Regarding Drug-Free Workplace requirements (Grants) Alternative I for Grantees Other Than Individuals';

(6) Form AD–1049, Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I For Grantees Other Than Individuals;

(7) Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

(8) Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under these regulations to accept electric service as a condition of receiving assistance.

§ 1780.34 [Reserved]

§ 1780.35 Processing office review.

Review of the application will usually include the following:

(a) *Nondiscrimination.* Boundaries for the proposed service area must not be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin. This does not preclude construction of the project in phases as noted in § 1780.11 as long as it is not done in a discriminatory manner.

(b) *Grant determination.* Grants will be determined by the processing office in accordance with the following provisions and will not result in EDU costs below similar system user cost.

(1) *Maximum grant.* Grants may not exceed the percentages in § 1780.10(c) of this part of the eligible RUS funded project development costs listed in § 1780.9 of this part.

(2) *Debt service.* Applicants will be considered for grant assistance when the debt service portion of the average annual EDU cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) 0.5 percent when the median household income of the service area is equal to or below 80% of the statewide nonmetropolitan median income.

(ii) 1.0 percent when the median household income of the service area exceeds the 0.5 percent requirement but is not more than 100 percent the statewide nonmetropolitan household income.

(3) *Similar system cost.* If the grant determined in paragraph (b)(2) of this section results in an annual EDU cost that is not comparable with similar systems, the Agency will determine a grant amount based on achieving EDU costs that are not below similar system user costs.

(4) *Wholesale service.* When an applicant provides wholesale sales or services on a contract basis to another system or entity, similar wholesale system cost will be used in determining the amount of grant needed to achieve a reasonable wholesale user cost.

(5) *Subsidized cost.* When annual cost to the applicant for delivery of service is subsidized by either the State, commonwealth, or territory, and uniform flat user charges regardless of usage are imposed for similar classes of service throughout the service area, the Agency may proceed with a grant in an amount necessary to reduce such delivery cost to a reasonable level.

(c) *User charges.* The user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. The planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and if appropriate, additional revenue for facility replacement of short lived assets without building a substantial surplus. Ordinarily, the total debt reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

§ 1780.36 Approving official review.

Projects may be obligated as their applications are completed and approved.

(a) *Selection of applications for further processing.* The application and supporting information submitted will be used to determine the applications selected for further development and funding. After completing the review, the approval official will normally select those eligible applications with the highest priority scores for further processing. When authorizing the development of an application for funding, the following will be considered:

(1) Funds available in State allocation;

(2) Anticipated allocation of funds for the next fiscal year; and

(3) Time necessary for applicant to complete the application.

(b) *Lower scoring projects.* (1) In cases where preliminary cost estimates indicate that an eligible, high scoring application is unfeasible or would require an amount of funding from RUS that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower scoring application for further processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file.

§ 1780.37 Applications determined ineligible.

If at any time an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The notification to the applicant will state that an appeal of this decision may be made by the applicant under 7 CFR part 11.

§ 1780.38 [Reserved]

§ 1780.39 Application processing.

(a) *Processing conference.* Before starting to assemble the full application and after the applicant selects its professional and technical representatives, it should arrange with the processing office for an application conference to provide a basis for orderly application assembly. The processing office will explain program requirements, public information requirements and provide guidance on preparation of items necessary for approval.

(b) *Professional services and contracts related to the facility.* Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when RUS financing is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to RUS concurrence.

(1) *Engineering services.* Applicants selection of engineering services for project design shall be done by publishing a request for proposal in a newspaper of general circulation. Guidance on entering into an agreement for engineering services is available from the Agency.

(2) *Other professional services.* Professional services of the following may be necessary: Attorney, bond counsel, accountant, auditor, appraiser, environmental professionals, and financial advisory or fiscal agent (if desired by applicant). Guidance on entering into an agreement for legal services is available from the Agency.

(3) *Bond counsel.* Unless otherwise provided by subpart D of this part, public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to the Agency for review and concurrence. Guidance on entering into an management agreement is available from the Agency.

(c) *User estimates.* Applicants dependent on users fees for debt payment or operation and maintenance expenses shall base their income and expense forecast on realistic user estimates. For users presently not receiving service, consideration must be given to the following:

(1) An estimated number of maximum users should not be used when setting user fees and rates since it may be several years before all residents will need service by the system. In establishing rates a realistic number of users should be employed.

(2) Meaningful user cash contributions. The amount of cash contributions required will be set by the applicant and concurred in by the approval official. Contributions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a loan requirement under this section. A meaningful user cash contribution is not required when:

(i) The Agency determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or

(ii) State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(3) An enforceable user agreement with a penalty clause is required (RUS Bulletin 1780–9 can be used) except:

(i) For users presently receiving service; or

(ii) Where mandatory use of the system is required.

(4) Individual vacant property owners will not be considered when determining project feasibility unless:

(i) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(ii) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the United States of America.

(5) Applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and concurrence by the processing office before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

(i) An aggressive information program to be carried out during the construction period. The applicant should send written notification to all signed users in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin;

(ii) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local

plumbing companies, or local contractors;

(iii) Aggressive action to see that all signed users can finance their connections.

(d) *Interim financing.* For all loans exceeding $500,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing may be obtained so as to preclude the necessity for multiple advances of RUS loan funds. However, the approval official may make an exception when interim financing is cost prohibitive or unavailable. Guidance on informing the private lender of RUS's commitment is available from the Agency. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the RUS loan would normally be closed, that is immediately prior to the start of construction. The RUS loan should be closed as soon as possible after the disbursal of all interim funds.

(e) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service.

(2) Other than general obligation or special assessment bonds. Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. Borrowers issuing bonds or other evidences of debt pledging facility revenues as security will plan their reserve to provide for a annual reserve equal to one-tenth of an average annual loan installment each year for the life of the loan unless prohibited by state law.

(f) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing. Form FmHA 1942–8, "Resolution of Members or Stockholders" may be used for this authorization. The approval official may, with the concurrence of OGC, accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

(1) The organization is well established and is operating with a sound financial base; or

(2) The members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution.

(g) *Insurance.* The purpose of RUS's insurance requirements is to protect the government's financial interest based on the facility financed with loan funds. It is the responsibility of the applicant and not that of RUS to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained. The requirements below apply to all types of coverage determined necessary. The approval official may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant and will not adversely affect the government's interest.

(1) Insurance requirements proposed by the applicant will be accepted if the processing office determines that proposed coverage is adequate to protect the government's financial interest. Applicants are encouraged to have their attorney, consulting engineer, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions.

(2) The use of deductibles may be allowed by RUS providing the applicant has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(3) *Fidelity or employee dishonesty bonds.* Applicants will provide coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees. An exception may be granted by the approval official when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected. The amount of coverage required by RUS will normally approximate the total annual debt service requirements for the RUS loans.

(4) *Property insurance.* Fire and extended coverage will normally be maintained on all structures except as noted below. Ordinarily, RUS should be listed as mortgagee on the policy when RUS has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(i) Reservoirs, pipelines and other structures if such structures are not normally insured;

(ii) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(5) General liability insurance, including vehicular coverage.

(6) Flood insurance required for facilities located in special flood- and mudslide-prone areas.

(7) *Worker's compensation.* The borrower will carry worker's compensation insurance for employees in accordance with State laws.

(h) The processing office will conduct appropriate environmental reviews in accordance with RUS requirements.

(i) The processing office will assure that appropriate forms and documents listed in RUS Bulletin 1780–6 are complete. Letters of conditions will not be issued unless funds are available.

§ 1780.40 [Reserved]

§ 1780.41 Loan or grant approval.

(a) The processing office will submit the following to the approval official:

(1) Form FmHA 1942–45, "Project Summary";

(2) Form FmHA 442–7, "Operating Budget";

(3) Form 442–3, "Balance Sheet" or a financial statement or audit that includes a balance sheet;

(4) Form FmHA 442–14, "Association Project Fund Analysis";

(5) Letter of Conditions";

(6) Form FmHA 1942–46, "Letter of Intent to Meet Conditions";

(7) Form FmHA 1940–1, "Request for Obligation of Funds";

(8) Completed environmental review documents including copies of required publication evidence; and

(9) Grant determination, if applicable.

(b) Approval and applicant notification will be accomplished by mailing to the applicant on the obligation date a copy of Form FmHA 1940–1. The date the applicant is notified is also the date the interest rate at loan approval is established.

§ 1780.42 Transfer of obligations.

An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant is eligible and has the authority to receive

the assistance approved for the original applicant; and

(b) The need, purpose(s) and scope of the project for which RUS funds will be used remain substantially unchanged.

§ 1780.43 [Reserved]

§ 1780.44 Actions prior to loan or grant closing or start of construction, whichever occurs first.

(a) Applicants must provide evidence of adequate insurance and fidelity or employee dishonesty bond coverage.

(b) *Verification of users and other funds.* In connection with a project that involves new users and will be secured by a pledge of user fees or revenues, the processing office will authenticate the number of users. Ordinarily each signed user agreement will be reviewed and checked for evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system.

(c) *Initial compliance review.* An initial compliance review should be completed under subpart E of part 1901 of this chapter.

(d) *Applicant contribution.* An applicant contributing funds toward the project cost shall deposit these funds in its project account before start of construction. Project costs paid with applicant funds prior to the required deposit time shall be appropriately accounted for.

(e) *Excess RUS loan and grant funds.* If there is a significant reduction in project cost, the applicant's funding needs will be reassessed. Decreases in RUS funds will be based on revised project costs and current number of users, however, other factors including RUS regulations used at the time of loan or grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated. Any reduction will be applied to grant funds first. In such cases, applicable forms, the letter of conditions, and other items will be revised.

(f) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with RUS funds will present evidence of the commitment of these funds from such other sources. An agreement should be reached with all funding sources on how funds are to be disbursed before the start of construction. RUS funds will not be used to pre-finance funds committed to the project from other sources.

(g) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. RUS may require an appraisal by an independent appraiser or Agency employee.

(1) *Rights-of-way and easements.* Applicants will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility.

(i) The applicant must provide a legal opinion relative to the title to rights-of-way and easements. Form FmHA 442–22, "Opinion of Counsel Relative to Rights-of-Way," may be used. When a site is for major structures such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any.

(ii) For user connections funded by RUS, applicants will obtain adequate rights to construct and maintain the connection line or other facilities located on the users property. This right may be obtained through formal easement or user agreements.

(2) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Preliminary and final title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form FmHA 1927–9, "Preliminary Title Opinion," and Form FmHA 1927–10, "Final Title Opinion," may be used to provide the required title opinions.

(i) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide the Agency a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to the Agency prior to requesting closing instructions. The Agency will be provided a title insurance policy which will insure RUS's interest in the property without any title defects or restrictions which have not been waived by the Agency.

(ii) The approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility.

(3) *Water rights.* The following will be furnished as applicable:

(i) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(ii) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(4) *Lease agreements.* Where the right of use or control of real property not owned by the applicant is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner of the property and the applicant. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses. Lease agreements shall provide for the right to transfer, encumber, assign and sub-lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the approval official with the advice and counsel of OGC, as necessary.

(h) *Obtaining loan closing instructions.* The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of closing instructions, the processing office will discuss with the applicant and its engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing. State program officials have the option to work with OGC to obtain waivers for closing instructions in certain cases. Closing instructions are not required for grants.

§ 1780.45 Loan and grant closing and delivery of funds.

(a) *Loan closing.* Notes and bonds will be completed on the date of loan closing except for the entry of subsequent RUS multiple advances where applicable. The amount of each note will be in multiples of not less than $100. The

amount of each bond will ordinarily be in multiples of not less than $1,000.

(1) Form FmHA 440–22, "Promissory Note (Association or Organization)," will ordinarily be used for loans to nonpublic bodies.

(2) Forms FmHA 1942–47, "Loan Resolution (Public Bodies)," or FmHA 1942–9, "Loan Resolution (Security Agreement)" will be adopted by public and other-than-public bodies. These resolutions supplement other provisions in this part.

(3) Subpart D of this part contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(b) *Loan disbursement.*

(1) *Multiple advances.* Multiple advances will be used only for loans in excess of $100,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period.

(i) Subpart D of this part contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The borrower may use Form FmHA 440–11, "Estimate of Funds Needed for 30 Day Period Commencing XXX," to show the amount of funds needed during the 30-day period.

(2) RUS loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under § 1780.9(e)(2)(iv). If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(i) Deposited in an appropriate borrower account, such as debt service or construction accounts, or

(ii) Deposited in a joint bank account under paragraph (e)(3) of this section.

(c) *Grant closing.* RUS Bulletin 1780–12 "Water or Waste System Grant Agreement" of this part will be completed and executed in accordance with the requirements of grant approval. The grant will be considered closed when RUS Bulletin 1780–12 has been properly executed. Processing or approval officials are authorized to sign the grant agreement on behalf of RUS. For grants that supplement RUS loan funds, the grant should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing, as provided in paragraph (d)(1) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds.

(d) *Grant disbursements.* RUS policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Applicant funds will be disbursed before the disbursal of any RUS grant funds. RUS loan funds will be disbursed before the disbursal of any RUS grant funds except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged, and

(2) All interim funds have been disbursed, and

(3) RUS grant funds are needed before the RUS loan can be closed.

(e) *Use and accountability of funds.*—(1) Arrangements will be agreed upon for the prior concurrence by the Agency of the bills or vouchers upon which warrants will be drawn. Form FmHA 402–2, "Statement of Deposits and Withdrawals," or similar form will be used by the Agency to monitor funds. Periodic reviews of these accounts shall be made by the Agency.

(2) Pledge of collateral for grants to nonprofit organizations. Grant funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. Also, if the balance in the account containing grant funds exceeds the FDIC insurance coverage, the excess amount must be collaterally secured. The pledge of collateral for the excess will be in accordance with Treasury Circular 176.

(3) *Joint RUS/borrower bank account.* RUS funds and any funds furnished by the borrower including contributions to purchase major items of equipment, machinery, and furnishings will be deposited in a joint RUS/borrower bank account if determined necessary by the approval official. When RUS has a Memorandum of Understanding with another agency that provides for the use of joint RUS/borrower accounts, or when RUS is the primary source of funds for a project and has determined that the use of a joint RUS/borrower bank account is necessary, project funds from other sources may also be deposited in the joint bank account. RUS shall not be accountable to the source of the other funds nor shall RUS undertake responsibility to administer the funding program of the other entity. Joint RUS/borrower bank accounts should not be used for funds advanced by an interim lender. When funds exceeds the FDIC insurance coverage, the excess must have a pledge of collateral in accordance with Treasury Circular 176.

(4) *Payment for project costs.* Project costs will be monitored by the RUS processing office. Invoices will be approved by the borrower and their engineer, as appropriate, and submitted to the processing office for concurrence. The review and acceptance of project costs, including construction pay estimates, by RUS does not attest to the correctness of the amounts, the quantities shown or that the work has been performed under the terms of the agreements or contracts.

(f) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Funds remaining, may be considered in direct proportion to the amounts obtained from each source. Remaining funds will be handled as follows:

(1) Remaining funds may be used for eligible loan or grant purposes, provided the use will not result in major changes to the facility design or project scope and that the purpose of the loan or grant remains the same;

(2) RUS loan funds that are not needed will be applied as an extra payment on the RUS indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute; and

(3) Grant funds not expended under paragraph (f)(1) of this section will be cancelled. Prior to the actual cancellation, the borrower, its attorney and its engineer will be notified of RUS's intent to cancel the remaining funds. The applicant will be given appropriate appeal rights.

(g) *Post-review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by OGC. The State program official has the option to consult with OGC to obtain waivers of this review.

§ 1780.46 [Reserved]

§ 1780.47 Borrower accounting methods, management reporting and audits.

(a) Borrowers are required to provide RUS an annual audit or financial statements.

(b) Method of accounting and preparation of financial statements. Annual organization-wide financial statements must be prepared on the accrual basis of accounting, in accordance with generally accepted accounting principles (GAAP), unless State statutes or regulatory agencies provide otherwise, or an exception is granted by the Agency. An organization

may maintain its accounting records on a basis other than accrual accounting, and make the necessary adjustments so that annual financial statements are presented on the accrual basis.

(c) *Record retention.* Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit or management reports. Upon request, this material will be made available to RUS, Office of the Inspector General (OIG), United States Department of Agriculture (USDA), the Comptroller General, or to their assignees.

(d) *Audits.* All audits are to be performed in accordance with the latest revision of the generally accepted government auditing standards (GAGAS), developed by the Comptroller General of the United States. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars. The type of audit each borrower is required to submit will be designated by RUS. Further guidance on preparing an acceptable audit can be obtained from RUS. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. Audits shall be annual unless otherwise prohibited and supplied to the processing office as soon as possible but in no event later than 150 days following the period covered by the audit. OMB Circulars are available in any USDA/RUS office.

(e) *Borrowers exempt from audits.* All borrowers who are exempt from audits, will, within 60 days following the end of each fiscal year, furnish the RUS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms FmHA 442–2, "Statement of Budget, Income and Equity," and 442–3 may be used.

(f) *Management reports.* These reports will furnish management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial strategies. In those cases where revenues from multiple sources are pledged as security for an RUS loan, two reports will be required; one for the project being financed by RUS and one combining the entire operation of the borrower. In those cases where RUS loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues is acceptable. The following management data will be submitted by the borrower to the processing office. These reports at a minimum will include a balance sheet and income and expense statement.

(1) *Quarterly reports.* A quarterly management report will be required for the first year for new borrowers and for all borrowers experiencing financial or management problems for one year from the date problems were noted. If the borrower's account is current at the end of the year, the processing office may waive the required reports.

(2) *Annual management reports.* Prior to the beginning of each fiscal year the following will be submitted to the processing office. (If Form FmHA 442–2 is used as the annual management report, enter data in column three only of Schedule 1, and complete all of Schedule 2.)

(i) Two copies of the management reports and proposed "Annual Budget".

(ii) Financial information may be reported on Form FmHA 442–2 which includes Schedule 1, "Statement of Budget, Income and Equity" and Schedule 2, "Projected Cash Flow" or information in similar format.

(iii) A copy of the rate schedule in effect at the time of submission.

(g) Substitute for management reports. When RUS loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State program official may authorize an annual audit to substitute for other management reports if the audit is received within 150 days following the period covered by the audit.

§ 1780.48 Regional commission grants.

Grants are sometimes made by regional commissions for projects eligible for RUS assistance. RUS has agreed to administer such funds in a manner similar to administering RUS assistance.

(a) When RUS has funds in the project, no charge will be made for administering regional commission funds.

(b) When RUS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535). A fee of 5 percent of the first $50,000 of a regional commission grant and 1 percent of any amount over $50,000 will be paid RUS by the commission.

(1) *Appalachian Regional Commission (ARC).* RUS Bulletin 1780–23 of this part will be followed in determining the responsibilities of RUS. The ARC Federal Co-chairman and the State program official will provide each other with the necessary notification and certification.

(2) *Other regional commissions.* Title V of the Public Works and Economic Development Act of 1965 authorizes other commissions similar to ARC. RUS Bulletin 1780–23 of this part will be used to develop a separate project management agreement between RUS and the commission for each project. The agreement should be prepared by the State program official as soon as notification is received that a commission grant will be made and the amount is confirmed.

(c) Regional commission grants should be obligated as soon as possible in accordance with § 1780.41 of this part, except that the announcement procedure referred to in § 1780.41(c) is not applicable. Regional commission grants will be disbursed from the Finance Office in the same manner as RUS funds.

§ 1789.49 Rural or Native Alaskan villages.

(a) *General.*—(1) This section contains regulations for providing grants to remedy the dire sanitation conditions in rural Alaskan villages using funds specifically made available for this purpose.

(2) Unless specifically modified by this section, grants will be made, processed, and serviced in accordance with this subpart.

(b) *Definitions.*—(1) *Dire sanitation condition.* For the purpose of this section a dire sanitation condition exists where:

(i) Recurring instances of a waterborne communicable disease has been documented; or

(ii) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies.

(2) *Rural or Native Alaskan village.* A rural or Native Alaskan community which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(c) *Eligibility.*—(1) The applicant must be a rural or Native Alaskan village.

(2) The median household income of the village cannot exceed 110 percent of the statewide nonmetropolitan household income.

(3) A dire sanitation condition must exist in the village.

(4) The applicant must obtain 50 percent of project development costs from State or local contributions. The local contribution can be from loan funds authorized under subpart A of this part.

(d) *Grant amount.* Grants will be made for up to 50 percent of the project development costs.

(e) *Use of funds.* Grant funds can be used to pay reasonable costs associated with providing potable water or waste disposal services to residents of rural or Native Alaskan villages.

(f) *Construction.* (1) If the State of Alaska is contributing to the project costs, the project does not have to meet the construction requirements of this subpart.

(2) If a loan is made in accordance with this part for part of the local contribution, all of the requirements of this part apply.

§§ 1780.50–1780.52 [Reserved]

Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections.

§ 1780.53 General.

This subpart is specifically designed for use by owners including the professional or technical consultants or agents who provide assistance and services such as engineering, environmental, inspection, financial, legal or other services related to planning, designing, bidding, contracting, and constructing water and waste disposal facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this subpart, an owner is defined as an applicant, borrower, or grantee.

§ 1780.54 Technical services.

Owners are responsible for providing the engineering and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's "in house" engineer or through contract, subject to Agency concurrence. Engineers must be licensed in the State where the facility is to be constructed.

§ 1780.55 Preliminary engineering reports.

Preliminary engineering reports (PER)s must conform with customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency.

§ 1780.56 [Reserved]

§ 1780.57 Design policies.

Facilities financed by the Agency will be designed and constructed in accordance with sound engineering practices, and must meet the requirements of Federal, State and local agencies.

(a) *Environmental review.* Facilities financed by the Agency must undergo an environmental impact analysis in accordance with RUS requirements. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental impacts of the proposed project. Facility designs shall incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review.

(b) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by 41 CFR 101–19.6, section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR, parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990.

(c) *Energy conservation.* Facility design should consider cost effective energy saving measures.

(d) *Fire protection.* Water facilities should have sufficient capacity to provide reasonable fire protection to the extent practicable.

(e) *Growth capacity.* Facilities should have sufficient capacity to provide for reasonable growth to the extent practicable.

(f) *Water conservation.* Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(g) *Conformity with state drinking water standards.* No funds shall be made available under this regulation for a water system unless the Agency determines that the water system will make significant progress toward meeting the standards established under title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.).

(h) *Conformity with federal and state water pollution control standards.* No funds shall be made available under this regulation for a water treatment discharge or waste disposal system unless the Agency determines that the effluent from the system conforms with applicable Federal and State water pollution control standards.

(i) *Combined sewers.* New combined sanitary and storm water sewer facilities will not be financed by the Agency. Extensions to existing combined systems can only be financed when separate systems are impractical.

(j) *Dam safety.* Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, must comply with the provisions for dam safety as set forth in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041–001–00187–5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(j) *Pipe.* All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(k) *Water system testing.* For new water systems or extensions to existing water systems, leakage shall not exceed limits set by either ASTM or AWWA whichever is the more stringent.

(l) *Metering devices.* Water facilities financed by the Agency will have metering devices for each connection. An exception to this requirement may be granted by the State program official when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices. Sanitary sewer projects should incorporate water system metering devices whenever practicable.

(m) *Economical service.* The facility's design must provide the most economical service practicable.

§§ 1780.58–1780.60 [Reserved]

§ 1780.61 Construction contracts.

Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(a) *Standard construction contract documents.* If the construction contract documents utilized are not in the format previously approved by the Agency, OGC's review of the construction contract documents will be obtained prior to their use.

(b) *Contract review and concurrence.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these

documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred in by the Agency. The State program official or designee is responsible for concurring in construction contracts with the legal advice and guidance of the OGC when necessary.

§ 1780.62 Utility purchase contracts.

Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and concurred in by the Agency. To the extent practical, the Agency review and concurrence of such contracts should take place prior to their execution by the owner. OGC advice and guidance may be requested. Form FmHA 442–30, "Water Purchase Contract," may be used when appropriate. If the Agency loan will be repaid from system revenues, the contract will be pledged to the Agency as part of the security for the loan. Such contracts will:

(a) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages.

(b) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(c) Specify the initial rates and provide a type of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(d) Cover period of time which is at least equal to the repayment period of the loan. State program officials may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) The contract contains adequate provisions for renewal; or

(3) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(e) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless the Agency determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(f) Provide for a pledge of the contract to the Agency as part of the security for the loan.

(g) Not contain provisions for:

(1) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(2) *Options for the future sale or transfer.* This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(h) If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and concurred in provided adequate evidence is furnished to enable the Agency to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(3) Concurrence in the proposed contract is obtained from the National Office.

§ 1780.63 Sewage treatment and bulk water sales contracts.

Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to the Agency concurrence. Section 1780.62 of this part should be used as a guide to prepare such contracts.

§§ 1780.64–1780.66 [Reserved]

§ 1780.67 Performing construction.

Owners are encouraged to accomplish construction through contracts with qualified contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by § 1780.76 of this part. Inspection services may be provided by individuals as approved by the State staff engineer. Payments for construction will be handled under § 1780.76(d) of this part.

§ 1780.68 Owner's contractual responsibility.

This part does not relieve the owner of any responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, or Federal authority.

§ 1780.69 [Reserved]

§ 1780.70 Owner's procurement regulations.

Owner's procurement requirements must comply with the following standards:

(a) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Agency funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Agency funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(1) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of

monetary value from contractors, potential contractors, or parties to subagreements.

(2) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(b) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying materials, the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency shall consider fully any recommendation made by the owner concerning the technical design and choice of materials to be used for a facility. If the Agency determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, the Agency shall provide such owner with a comprehensive justification for such a determination. The justification will be documented in writing.

(c) *Owner's review.* Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(d) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific feature of the name brands which must be met by the offeror shall be clearly stated; and

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) Affirmative steps should be taken to assure that small, minority, and women businesses are utilized when possible as sources of supplies, equipment, construction and services.

(f) *Contract pricing.* Cost plus a percentage of cost method of contracting shall not be used.

(g) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(1) An engineer as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(2) Any firm or corporation in which the owner's engineer is an officer, employee, or holds or controls a substantial interest;

(3) The governing body's officers, employees, or agents;

(4) Any member of the immediate family or partners in the entities referred to in paragraphs (g)(1), (g)(2) or (g)(3) of this section; or

(5) An organization which employs, or is about to employ, any person in the entities referred to in paragraph (g)(1), (g)(2) or (g)(3) or (g)(4) of this section.

(h) *Contract award.* Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred by any Agency of the United States Government.

§ 1780.71 [Reserved]

§ 1780.72 Procurement methods.

Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $100,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be requested from at least three qualified sources.

(b) *Competitive sealed bids.* In competitive sealed bids (formal advertising), an invitation for sealed bids is publicly advertised and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(1) The invitation for bids shall be publicly advertised at a sufficient time prior to the date set for opening of bids. The invitation shall comply with the requirements in § 1780.70(d). Bids shall be solicited from an adequate number of qualified sources;

(2) All bids shall be opened publicly at the time and place stated in the invitation for bids;

(3) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest; and

(4) Any or all bids may be rejected by the owner when it is in its best interest.

(c) *Competitive negotiation.* Competitive negotiation is required for the procurement of engineering services for project design. In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching

agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable;

(2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance;

(3) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award;

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified; and

(5) Owners may utilize competitive negotiation procedures for procurement of other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(d) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase or competitive sealed bids. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(1) The item is available only from a single source; or

(2) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate; or

(4) No acceptable bids have been received after formal advertising; or

(5) The procurement is for professional services other than design engineering; or

(6) The aggregate amount does not exceed $100,000.

§ 1780.73 [Reserved]

§ 1780.74 Contracts awarded prior to applications.

Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(a) *Modifications.* The contract shall be modified to conform with the provisions of this part. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (d) of this section.

(b) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(c) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing for construction already performed.

§ 1780.75 Contract provisions.

In addition to provisions required for a valid and legally binding contract, any recipient of Agency funds shall include the following contract provisions in all contracts.

(a) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(b) *Termination.* All contracts exceeding $10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) *Surety.* In all contracts for construction or facility improvements exceeding $100,000, the owner shall require bonds or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will be in the form of performance bonds and payment bonds. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form FmHA 1924–10, "Release by Claimants," and Form FmHA 1924–9, "Certificate of Contractor's Release," may be used for this purpose. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located.

(d) *Equal Employment Opportunity.* All contracts awarded in excess of $10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR part 60.

(e) *Anti-kickback.* All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to the Agency.

(f) *Records.* All negotiated contracts (except those of $10,000 or less) awarded by owners shall include a provision to the effect that the owner, the Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan or grant program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after making final payment and all other pending matters are closed.

(g) *State Energy Conservation Plan.* Contracts shall incorporate mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(h) *Change orders.* The construction contract shall require that all contract change orders be concurred in by the Agency.

(i) *Agency concurrence.* All contracts must contain a provision that they shall not be effective unless and until the State program official or designee concurs in writing.

(j) *Retainage.* All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 5 percent of an approved partial payment estimate until the project is substantially complete and accepted by the owner, consulting engineer and Agency. The contract must provide that additional amounts may be retained if the job is not proceeding satisfactorily.

(k) *Other compliance requirements.* Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the Agency and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR 15.4(c) as set forth in RUS Bulletin 1780–14 of this part.

§ 1780.76 Contract administration.

Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(a) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where the consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA 1924–16, "Record of Preconstruction Conference," and the discussions and agreements will be documented.

(b) *Monitoring reports.* The owner is required to monitor construction and provide a report to the Agency giving a full explanation under the following circumstances:

(1) Reasons why approved construction schedules were not met.

(2) Analysis and explanation of cost overruns and how payment is to be made for the same; and

(3) If events occur which have a significant impact upon the project.

(c) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by the Agency upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting engineer. Prior to the preconstruction conference, the consulting engineer will submit a resume of qualifications of the resident inspector to the owner and to the Agency for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project engineer and the Agency for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the technical supervision of the project engineer and the role and responsibilities will be defined in writing.

(d) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports. The daily entries shall be made available to the Agency personnel and will be reviewed during project inspections. The original complete set will be furnished to the owner upon completion of construction. RUS Bulletin 1780–18 is available from the Agency for preparing daily inspection reports.

(e) *Payment for Construction.* Form FmHA 1924–18, "Partial Payment Estimate," or other similar form may be used for construction payments. If Form 1924–18 is not used, prior concurrence by the State staff engineer must be obtained.

(1) Payment of contract retainage will not be made until such retainage is due and payable under the terms of the contact.

(2) Invoices for the payment of construction costs must be approved by the owner, project engineer and concurred in by the Agency.

(3) The review and acceptance of project costs, including construction payment estimates by the Agency shall not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(f) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project engineer, contractor, representatives of other agencies involved, and Agency representative (preferably the State staff engineer or designee). The inspection results will be recorded by the project engineer and a copy provided to all interested parties.

(g) *Final inspection.* A final inspection will be made by the Agency before final payment is made.

(h) *Changes in development plans.* (1) Changes in development plans shall be reviewed and approved by the Agency provided:

(i) Funds are available to cover any additional costs; and

(ii) The change is for an authorized loan or grant purpose; and

(iii) It will not adversely affect the soundness of the facility operation or the Agency's security; and

(iv) The change is within the scope of the contract,

(2) Changes will be recorded on Form FmHA 1924–7, "Contract Change Order," or other similar form if approved by the State program official or designee. Regardless of the form, change orders must be approved by the State program official or designee.

(3) Changes should be accomplished only after Agency approval and shall be authorized only by means of contract change order. The change order will include items such as:

(i) Any changes in labor and material;

(ii) Changes in facility design;

(iii) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule; and

(iv) Any increase or decrease in the time to complete the project.

(4) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

§§ 1780.77–1780.79 [Reserved]

Subpart D—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

§ 1780.80 General.

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds) and other necessary loan documents.

§ 1780.81 Policies related to use of bond counsel.

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of $100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

(a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;

(b) It must be established that not using bond counsel will produce significant savings in total legal costs;

(c) The local attorney must be able and experienced in handling this type of legal work;

(d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;

(e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in section 1780.94; and

(f) Closing instructions must be issued by OGC.

§ 1780.82 [Reserved]

§ 1780.83 Bond transcript documents.

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

(a) Copies of all organizational documents;

(b) Copies of general incumbency certificate;

(c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;

(d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;

(e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;

(f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;

(g) Specimen bond, with any attached coupons;

(h) Attorney's no-litigation certificate;

(i) Certified copies of resolutions or other documents pertaining to the bond award;

(j) Any additional or supporting documents required by bond counsel;

(k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§ 1780.84 and 1780.86 [Reserved]

§ 1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) *First preference—Form FmHA 440–22, "Promissory Note".* Refer to paragraph (b) of this section for methods of various frequency payment calculations; and

(b) *Second preference—single instruments with amortized installments.* A single instrument providing for amortized installments which follows Form FmHA 440–22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) *Monthly payments.* Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) *Semiannual payments.*—Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) *Annual payments.* Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) *Third preference—single instruments with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of § 1780.94 of this part. Provisions for application of payments will be the same as those set forth in paragraphs (c)(2)(ii) of this section.

(e) *Coupon bonds.* Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of § 1780.94 of this part.

§ 1780.88 [Reserved]

§ 1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

§ 1780.90 Multiple advances of Agency funds using temporary debt instruments.

When none of the instruments described in § 1780.87 of this part are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(a) The date from which each advance will bear interest;

(b) The interest rate as determined by § 1780.13 of this part;

(c) A payment schedule providing for interest on outstanding principal at least annually; and

(d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

§§ 1780.91–1780.93 [Reserved]

§ 1780.94 Minimum bond specifications.

The provisions of this paragraph are minimum specifications only and must be followed to the extent legally permissible.

(a) *Type and denominations.* Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.

(b) *Bond registration.* Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of "United States of America" and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

(c) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(d) *Date of bond.* Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(e) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(1) If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(2) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(3) If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(f) *Extra payments.* Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(1) For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

(2) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(3) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

(4) For assessment bonds, see paragraph (m) of this section.

(g) The place of payments on bonds purchased by the Agency will be determined by the Agency.

(h) *Redemptions.* Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120

percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

(j) *Precautions.* The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than the Agency, may post the date and amount of each advance or repayment on the instrument.

(3) Provisions that amend covenants contained in Forms FmHA 1942–47 or FmHA 1942–9.

(4) *Defeasance provisions in loan or bond resolutions.* When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) *Assessment bonds.* When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) *Multiple debt instruments.* The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

§ 1780.95 Public bidding on bonds.

Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.

§§ 1780.96–1780.100 [Reserved]

Dated: September 4, 1996.

Inga Smulkstys,

Acting Under Secretary for Rural Development.

[FR Doc. 96–23082 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–12]

Establishment of Class E Airspace; Gettysburg, SD, Gettysburg Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Gettysburg, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 31 has been developed for Gettysburg Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 4, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provides the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of

Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Gettysburg, SD; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 31 SIAP at Gettysburg Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Gettysburg, SD [New]

Gettysburg Municipal Airport, SD
(Lat. 44°59'16"N, long. 99°57'11"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Gettysburg Municipal Airport and within 4 miles each side of the 323 course extending from the 6.4-mile radius to 10 miles southeast and that airspace extending upward from 1,200 feet above the surface bounded on the west by V–71, on the north by V–344, on the east by V–561, and on the south by the 30.5-mile arc of the Pierre VORTAC, and that airspace east of Gettysburg Municipal Airport bounded on the west by V–561, on the north by latitude 450000N, on the east by longitude 993000W, and thence south to V–263, and thence southeast to the 30.5-mile arc of the Pierre VORTAC.

* * * * *

Issued in Des Plaines, Illinois on August 20, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–22836 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

RIN 1515–AB89

Electronic Request for Confidential Treatment of Export Manifest Data

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations concerning export manifest data to enable shippers to request confidential treatment of their name and address information on the Automated Export System (AES). The changes proposed will also provide for the availability of AES export manifest data on magnetic tapes.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., NW, suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: AES Team, Office of Information and Technology, (202) 927–0280. If you have a fax machine, phone (202) 927–3555 to receive a menu of AES topics on which specific information is available via fax.

SUPPLEMENTARY INFORMATION:

Background

The filing and public disclosure requirements applicable to vessel inward manifests are contained at Section 431 of the Tariff Act of 1930, as amended (19 U.S.C. 1431). While the filing requirements applicable to vessel outward manifests are contained at Section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. App. 91), the public disclosure requirements applicable to such manifests are contained at Section 431 of the Tariff Act of 1930, as amended (19 U.S.C. 1431). (It is noted regarding the filing of manifest information that while the Secretary of Commerce, pursuant to 13 U.S.C. 301, is required to collect information from all persons engaged in foreign commerce or trade, it is Customs that collects the actual manifest information, see 13 U.S.C. 303.) Regarding the public disclosure of

manifest data, Section 431(c) provides that the information to be made available shall include the name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification—in writing—to the Disclosure Law Officer, Headquarters, U.S. Customs Service, claiming confidential treatment of such information.

The Customs Regulations implementing the public disclosure of manifest information requirements are found at § 103.31(c) (19 CFR 103.31(c)) (formerly § 103.14(c), but redenominated May 3, 1996, in T.D. 96–36 (61 FR 19838)); the confidentiality provisions are found at § 103.31(d) (19 CFR 103.31(d)). Section 103.31 was last amended in 1992 by T.D. 92–92 (57 FR 44089), to make inbound manifest data acquired from the Automated Manifest System (AMS) available to the public on magnetic tapes.

On February 24, 1994, the Commissioner of Customs directed Customs to develop an Automated Export System (AES) in cooperation with the Bureau of the Census. The AES was implemented on an initial and voluntary basis on July 3, 1995, at five ports: Charleston, SC, Baltimore, MD, Houston, TX, Norfolk, VA, and Los Angeles-Long Beach, CA. At this time all exporters, forwarders, and carriers transmitting information into AES are still required to file paper Shippers Export Declarations and outward manifests as required by existing regulations. See, 19 CFR 4.63.

Changes in procedures are planned that will allow approved participants in AES to meet these requirements solely through the electronic filing of information into AES.

AES was designed to create, to the maximum extent possible, a paperless environment in export reporting. It is anticipated that this will result in significant private-sector savings by reducing the need for document preparation, routing, and submission.

Further, AES was designed and developed with the input and advice of affected private-sector parties. Because much of the manifest data will be made available to the news media and public, several requests were made that AES be programmed to accommodate an on-line request for confidential treatment of the shipper's name and address data on outward manifests. Such a procedure, if implemented, would provide cost savings and efficiencies similar to those described above and encourage greater utilization of the AES.

Accordingly, this document proposes to amend the Customs Regulations at §§ 103.31(d)(2) and (e) (1) and (3). Section 103.31(d)(2) will be revised to provide that those shippers that use the AES may request confidential treatment of their name and address information via the AES, as an alternative to the written certification procedures delineated at § 103.31(d)(1). Electronic requests for confidential treatment via AES will be treated in the identical manner as a request in writing. Section 103.31(e)(1) will be revised to provide that outward manifest data acquired from the AES is available to the public on magnetic tape and § 103.31(e)(3) will be revised to list the 11 data elements (two elements for which confidentiality may be requested) that will be provided to the public.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, Franklin Court, 1099 14th St., NW, Suite 4000, Washington, D.C.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. Accordingly, the proposal is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects in 19 CFR Part 103

Administrative practice and procedure, Confidential business information, Exports, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 103 of the Customs Regulations (19 CFR part 103) as set forth below:

PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for part 103 continues to read, and a specific authority citation for § 103.31 is added to read, as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431 and 46 U.S.C. App. 91;

* * * * *

2. In § 103.31, paragraph (d)(2); the first sentence of paragraph (e)(1); and paragraph (e)(3) are revised to read as follows:

§ 103.31 Information on vessel manifests and summary statistical reports.

* * * * *

(d) *Confidential treatment—*

(2) *Outward manifest.* A shipper, authorized employee, official, or authorized agent of the shipper may request confidential treatment of its name and address contained in outward manifests by following the written certification procedures provided in paragraphs (d)(1)(ii)–(iv) of this section or, if authorized to transmit information on the Automated Export System (AES), by submitting a certification request on-line in that system. In the latter situation, the format and routing of such request will be as designated in the AES Users Guide.

* * * * *

(e) *Availability of manifest data on magnetic tapes.*

(1) *Availability.* Inward manifest data acquired from the Automated Manifest System (AMS) and outward manifest data acquired from the Automated Export System (AES) are available to interested members of the public on magnetic tape. * * *

* * * * *

(3) *Data elements.* The following are the data elements from the designated manifest (AMS/AES) which will be provided to the public via magnetic tape:

(i) *AMS manifest:*

(A) Carrier code;
(B) Vessel country code;
(C) Vessel name;
(D) Voyage number;
(E) Port of unlading;
(F) Estimated date of arrival;
(G) Bill of lading number;
(H) Foreign port of lading;
(I) Manifest quantity;
(J) Manifest units;
(K) Weight;
(L) Weight unit;
(M) Shipper's name [1];
(N) Shipper's address [1];
(O) Consignee's address [1];

(Q) Notifying party's name [1];
(R) Notifying party's address [1];
(S) Piece count;
(T) General description of goods;
(U) Container number(s); and
(V). Seal number(s).
(ii) *AES manifest:*
(A) Carrier code;
(B) Vessel country code;
(C) Vessel name;
(D) Voyage number;
(E) Port of lading;
(F) Foreign port of unlading;
(G) Manifest quantity;
(H) Manifest units;
(I) General description of goods;
(J) Shipper's name [1]; and
(K) Shipper's address [1].

Michael H. Lane,
Acting Commissioner of Customs.
Approved: June 5, 1996.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 96-23360 Filed 9-11-96; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 123

RIN 1515-AB90

Port Passenger Acceleration Service System (PORTPASS) Program

AGENCY: Customs Service, Treasury.
ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reference certain Immigration and Naturalization Service (INS) Regulations that provide for land-border inspection programs jointly developed with Customs. These land-border inspection programs—collectively known as Port Passenger Acceleration Service System (PORTPASS)—are designed to facilitate the processing of certain identified, pre-registered, low-risk travelers along the United States border who frequently cross at certain areas by exempting them from normal report of arrival and presentation for inspection requirements, while still safeguarding the integrity of the United States land border. Participation in PORTPASS is voluntary and annual application fees are charged by the INS.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Field Operations, Passenger Operations Division, (202) 927-0543.

SUPPLEMENTARY INFORMATION:

Background

Reporting and Inspection Requirements

Except as otherwise authorized by the Secretary, all individuals arriving in the United States are required to (1) Enter only at designated border crossing points, (2) immediately report their arrival to Customs (and other Federal inspection agencies, such as the Immigration and Naturalization Service (INS), that have reporting requirements), and (3) present themselves and their vehicle, and all persons and merchandise (including baggage) on board, for inspection, and may not depart from the designated customs border crossing point until authorized to do so. 19 U.S.C. 1433 and 1459. Failure to report such arrival and make such presentation for inspection may result in the individual being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law, see, 19 U.S.C. 1436 and 1497. Customs reporting and inspection requirements applicable to individuals entering the U.S. at land border crossings are delineated at § 123.1, Customs Regulations (19 CFR 123.1).

Low-Risk Border-Crossing Facilitating Programs

At certain remote locations along the U.S. land border, these reporting and inspection requirements often burden low-risk local residents needing to cross the international border by requiring them to travel to a land border crossing which may be located a considerable distance away. Further, the hours of the most convenient land-border crossing may be limited to 8 hours during the day. To facilitate the entry processing of such low-risk travelers, Customs and the Immigration and Naturalization Service (INS) have developed certain technologically-innovative land-border inspection programs, collectively known as the Port Passenger Accelerated Service System (PORTPASS). (See INS document at 60 FR 50386, September 29, 1995, implementing land border facilitating programs, codified at 8 CFR 235.13). Two land border entry facilitation programs have been developed thus far under the PORTPASS: One concerns travellers that enter the U.S. through designated lanes at busy Port of Entry (POE) crossings (the Dedicated Commuter Lane (DCL) program); the other concerns local residents who enter the U.S. at remote land border crossings (the Automated Permit Port (APP) program).

The Dedicated Commuter Lane Program

The DCL program is designed to expedite the entry of low-risk travelers in privately-owned vehicles through a staffed POE by use of dedicated express lanes, without inhibiting Customs mandate to enforce the customs laws of the U.S. and those laws enforced or administered by Customs, including the prevention of illegal entry of both aliens and controlled substances into the U.S. The DCL program was implemented as a pilot program in 1991 at the Peace Arch crossing in Blaine, Washington. See, 8 CFR 286.8. Program specifics and eligibility requirements for participation in the DCL program are delineated at § 235.13 of the INS Regulations (8 CFR 235.13).

The Automated Permit Port Program

The APP program is designed to facilitate border crossings in remote areas by local residents identified as low-risk who are pre-authorized to enter the U.S. at designated APPs during periods when the port is closed, i.e., unstaffed by Customs and INS personnel, while still safeguarding the integrity of the U.S. border through the use of automated technology. Although it is anticipated that APPs may be established wherever there exists identifiable groups of low-risk local residents along the U.S. border, at present the first of these APPs are expected to be established at Scobey, Montana, and at Forest City and Orient, Maine. For program specifics and eligibility requirements for participation in the APP program, again see § 235.13 of the INS Regulations.

Although it is only proposed in this document to amend § 123.1 of the Customs Regulations (19 CFR 123.1) to reference §§ 235.13 and 286.8 of the INS regulations (8 CFR 235.13 and 286.8), which provide for the PORTPASS program, a general description of the PORTPASS program requirements follows.

PORTPASS Requirements in General

(1) *Eligibility.* Participation in PORTPASS is voluntary. Currently, applicants must be either citizens of the U.S., legal permanent residents of the U.S., citizens of Canada, landed immigrants of Canada who are citizens of the Commonwealth countries, or

other non-immigrants as determined by the Commissioner of the U.S. Immigration Service.

(2) *Application.* Application for participation in either or both facilitated-entry programs under PORTPASS—DCL and APP—is made by completing INS Form I–823 (Application—Inspections Facilitation Programs) and paying a non-refundable, annual application fee to the INS, which is authorized to be collected under their user-fee legislation. The fee is US$25 per applicant, with the maximum amount payable by a family (husband, wife, and minor children under 18 years of age) set at US$50. These fees may be waived for APP applicants. If fingerprints are required, a separate fingerprinting processing fee will be charged. Applications must be supported by evidence of citizenship and, in the case of lawful permanent residents of either the U.S. or Canada, evidence of legal permanent resident status in the U.S. or Canada. Evidence of residency must be submitted by all applicants. Alien applicants requiring a valid visa must be in possession of such documentation and any other documentation required by the Immigration and Nationality Act (see, 8 U.S.C. 1201 *et seq.*, as amended) at the time of the application, at the time of each entry, and at all times while present in the United States. Applications can be mailed or submitted, during regular working hours, to Customs/INS personnel at the POE having jurisdiction over the particular border crossing for which the applicant requests PORTPASS participation. Each applicant must present him/herself for inspection by a Customs/Immigration Officer prior to approval of the application and agree to abide by the conditions specified at paragraph (4) below. Further, regarding the DCL program, each vehicle registered by a PORTPASS participant must be inspected and approved prior to its use in that program.

Once accepted into a PORTPASS program, an identity card, decal, or other appropriate identifying device is issued to identify the participant—and vehicle, in the case of the DCL program—authorized to participate in a program. However, such identification items remain the property of the U.S. Government and will be removed/surrendered when participation is revoked or upon expiration of the authorized period of use. Authorization to participate in PORTPASS is valid for one year from the date of acceptance; however, participation may be renewed annually upon reapplication and payment of the required application fee.

(3) *Denial of application.* An application may be denied at the discretion of either Service—Customs or INS—having jurisdiction over the land border crossing point. The specific reason(s) for denying an application will be personally explained to the applicant. While there will be no appeal from a denial, because the denial will be without prejudice, the applicant may reapply immediately.

(4) *Conditions for participation in PORTPASS.* Because participation in the PORTPASS programs constitutes an exception to the normal reporting and presentation for inspection requirements contained at 19 CFR 123.1, participants must agree to abide by the following conditions:

(i) Facilitated entry into the U.S. is authorized only at the land-border crossing approved. Participants who wish to enter the U.S. through other land-border crossings must make separate application for each land-border crossing and comply with all applicable program requirements.

(ii) Whenever an authorized vehicle carries passengers, each passenger must be individually authorized under the same PORTPASS program to make facilitated entry into the U.S. at that land-border crossing.

(iii) Participants must be in possession of all documents issued that authorize participation in the PORTPASS program and any other entry documents as required by regulation each time facilitated entry is made into the U.S. For example, alien applicants requiring either a valid visa or Nonresident Alien Border Crossing Identification Card must be in possession of such documentation each time facilitated entry into the U.S. is made.

(iv) Participants shall not import merchandise in excess of applicable personal duty exemptions (see generally, subparts D (for residents) and E (for nonresidents) of 19 CFR Part 148), negotiable instruments in amounts subject to reporting requirements, commercial merchandise, or prohibited/restricted merchandise. Importation of such merchandise precludes facilitated entry into the U.S. under PORTPASS and requires the application of normal entry procedures established under the Customs laws and regulations and the laws and regulations administered by other Federal inspection agencies.

(v) Participants agree to abide by all Federal, state, and local laws regarding the importation of alcohol or agricultural products or the importation or possession of controlled substances, as defined at section 101 of the Controlled Substance Act (21 U.S.C. 802).

(vi) Participants agree that Customs retains the right to conduct inspections within its legal authority to ensure compliance with PORTPASS requirements.

Violation of any of the conditions applicable to facilitated entry or other Customs laws and regulations and other laws and regulations administered by Federal inspection agencies will result in revocation of PORTPASS participation authorization and may lead to other applicable sanctions, such as administrative and/or criminal prosecution, deportation (if applicable), as well as possible seizure of the goods and/or the vehicle.

As stated above, it is only proposed in this document to amend § 123.1 of the Customs Regulations (19 CFR 123.1) to reference the INS regulations at §§ 235.13 and 286.8, which provide the program specifics for the PORTPASS.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., NW., 4th floor, Washington, DC.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, as the proposed amendments concern the entry status of individuals. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information: The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 123

Administrative practice and procedure, Aliens, Canada, Customs duties and inspection, Fees, Forms, Immigration, Imports, Mexico, Reporting and recordkeeping requirements, Test programs.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend part 123 of the Customs Regulations (19 CFR part 123), as set forth below:

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

* * * * *

2. In § 123.1, it is proposed to amend the first sentence in paragraph (a) by adding the words ", unless excepted by voluntary enrollment in and compliance with PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.13)," after the words "Individuals arriving in the United States"; and, to amend paragraph (b) by removing the second and third sentences and adding, in their place, the sentence that reads as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

* * * * *

(b) *Vehicles.* * * *. Upon arrival of the vehicle in the U.S., the driver shall, unless he or she and all of the vehicle's occupants are excepted by enrollment in, and in compliance with, PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.1 and 286.8), immediately report such arrival to Customs, and shall not depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

* * * * *

Approved: July 29, 1996.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–23361 Filed 9–11–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 71, 80, 101, 107, 170, 172, 173, 174, 175, 177, 178, 184, and 1250

[Docket No. 96N–0149]

RIN 0910–AA69

Reinvention of Regulations Needing Revisions; Request for Comments on Certain Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period on the advance notice of proposed rulemaking to reinvent certain regulations; the advance notice appeared in the **Federal Register** of June 12, 1996 (61 FR 29701). The agency is taking this action in response to several requests for an extension of the comment period. This extension is intended to allow interested persons additional time to submit comments to FDA on the proposed reinvention of certain regulations.

DATES: Written comments by October 10, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Corinne L. Howley, Center for Food Safety and Applied Nutrition (HFS–24), 200 C St., SW, Washington, DC 20204, 202–205–4272.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 12, 1996 (61 FR 29701), FDA issued an advance notice of proposed rulemaking to reinvent certain regulations that appear to need revision. These regulations were identified by FDA as candidates for revocation following a page-by-page review of its regulations that the agency conducted in response to the Administration's "Reinventing Government" initiative. Interested person were given until September 10, 1996, to comment on the advance notice.

FDA received several requests for an extension of the comment period on its advance notice of proposed rulemaking to reinvent certain regulations. After careful consideration, FDA has decided to extend the comment period to October 10, 1996, to allow additional time for the submission of comments on whether the regulations discussed in the advance notice should be revised.

Interested persons may, on or before October 10, 1996, submit to Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 9, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–23481 Filed 9–10–96; 11:02 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 96N–0244]

Food Labeling; Declaration of Free Glutamate in Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering establishing requirements for label information about the free glutamate content of foods. The recent finding of the Federation of American Societies for Experimental Biology (FASEB) that oral ingestion of 3 or more grams (g) of monosodium glutamate (MSG) without food can cause adverse reactions in certain otherwise healthy individuals has prompted the agency to consider what action is necessary to protect consumers from inadvertently ingesting levels of MSG or other forms of free glutamate that could cause an adverse reaction. Thus, the agency seeks public comment on whether additional labeling requirements are necessary to protect glutamate-intolerant consumers from adverse reactions, and, if so, how such labeling requirements should be implemented. The agency also solicits comment on establishing formal criteria for the use of claims about the absence of MSG to ensure that labels bearing such claims are not misleading. The agency solicits comment on whether such criteria should be based on a defined threshold level of free glutamate in a finished food, on the ingredients used in the food, or both.

DATES: Written comments by November 12, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Glutamic acid, one of the amino acids found in nature, is a building block of virtually all proteins and is a normal component of the human body. In the human body and in most foods, glutamic acid exists primarily in its salt form, glutamate. Glutamate is a naturally occurring component of many foods, including tomatoes, cheese, meat, mushrooms, and milk. "Free" glutamate is glutamate that is not incorporated into a protein; "bound" glutamate is glutamate that is a component of an intact protein. Meat and milk contain primarily bound glutamate, while tomatoes, mushrooms, and certain cheeses contain, in addition to bound glutamate, relatively high levels of free glutamate.

It is the free form of glutamate that has been shown to have flavor-enhancing properties in food. As noted previously, some foods contain relatively high levels of naturally occurring free glutamate. Free glutamate may be introduced into foods as a component of various food ingredients, such as tomato sauce and hydrolyzed protein products, or it may be added in one of its various salt forms, such as MSG.

MSG is the most commonly used form of free glutamate added to food for flavor-enhancing purposes. It is a white, practically odorless, free-flowing crystalline powder (Ref. 1), similar in appearance to salt or sugar. MSG has been used for many years as a flavor enhancer for a variety of foods prepared in homes and restaurants and by food processors. MSG is manufactured commercially by a fermentation process using starch, beet sugar, cane sugar, or molasses. The American food processing industry has used MSG widely since the late 1940's (Ref. 2), and consumption in the United States is estimated to be 28,000 tons per year. As a food ingredient, MSG is used to enhance the flavor of meat, poultry, vegetables, and many processed foods. MSG is described in 21 CFR 182.1 as an example of a common food ingredient that is generally recognized as safe (GRAS) under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). When used as an ingredient in a food, MSG must be declared in the ingredient statement by its common or usual name, in accordance with section 403(i) of the act (21 U.S.C. 343(i)) and 21 CFR part 101. Thus, "monosodium glutamate" must appear in the ingredient list of any food to which MSG has been added (21 CFR 101.22(h)(5)). This is true even when MSG has been added indirectly as part of another ingredient to which MSG has been added (e.g., a spice blend that includes MSG).

While MSG is the most well-known and widely used form of free glutamate used to enhance the flavor of foods, other salts of free glutamate, such as monopotassium glutamate and monoammonium glutamate also have flavor-enhancing properties. GRAS uses of glutamic acid, glutamic acid hydrochloride, monoammonium glutamate, and monopotassium glutamate are codified in 21 CFR 182.1045, 182.1047, 182.1500, and 182.1516, respectively. Like MSG, these substances must be declared in the ingredient statement of any food to which they are added.

Free glutamate occurs naturally in various foods and in food substances that are used as ingredients in finished foods, or it can be produced by hydrolysis of proteins; in such cases, the presence of free glutamate in the food is not required to be declared on the label under existing regulations. Naturally occurring free glutamate is not required to be declared in the ingredient statement because it is not an added ingredient; rather, it is a natural constituent of the food, like protein or a vitamin. Similarly, when a food that contains naturally occurring free glutamate is used as an ingredient in another food, the free glutamate is not required to be declared in the ingredient statement of the finished food. Rather, the ingredient containing the free glutamate is declared in the ingredient statement by its common or usual name. The principle that it is the ingredients and not the constituents of a food that must be declared also applies when a food that contains free glutamate produced by protein hydrolysis is used as an ingredient in another food. In that situation too, the glutamate-containing ingredient must be declared in the ingredient statement of the finished food, but free glutamate need not be declared as an ingredient. Because the average consumer is not aware that ingredients like hydrolyzed soy protein, autolyzed yeast extract, tomato paste, and parmesan cheese contain free glutamate or that free glutamate is essentially equivalent to MSG, declaration of these ingredients by their common or usual names does not indicate to the consumer that an MSG-like substance is present in the food.

A number of consumers, particularly consumers who report adverse reactions to MSG, have stated to FDA (Ref. 3) their belief that manufacturers use ingredients such as hydrolyzed proteins and autolyzed yeast extracts for the express purpose of adding free glutamate to a food while hiding its presence. These consumers report the same types of adverse reactions to foods containing hydrolyzed proteins, autolyzed yeast extracts, and forms of "manufactured" glutamate (other than MSG) that they experience when they inadvertently consume foods that have MSG declared in the ingredient list. Consequently, FDA has received numerous requests that labels of all foods containing these ingredients be required to declare the presence of free glutamate in the finished food, on the ground that free glutamate presents a health concern to consumers. Some consumers have also requested that FDA require that the amount of free glutamate be declared on the label. Until recently, the agency's response has been that the scientific literature does not provide a public health basis on which to impose special labeling requirements for such ingredients or for foods that contain free glutamate. However, in light of the recent findings of the Life Sciences Research Office (LSRO) of FASEB, the agency is reconsidering the need for labeling to inform individuals who experience adverse reactions to glutamate about its presence in a food. (The agency notes that in the **Federal Register** of January 6, 1993 (58 FR 2950), it proposed to require the term "(contains glutamate)" as part of the common or usual name for autolyzed yeast extracts and highly hydrolyzed proteins. That proposal was not based on any health concern regarding the use of these ingredients in food; therefore, the comments to that proposal and the agency's decision with respect to those comments will not be addressed in this document.)

B. Previous Safety Reviews

Until the recent findings of the FASEB report (discussed in section I.C. of this document) that a subgroup of otherwise healthy individuals experiences a complex of symptoms following ingestion of 3 or more (g) of MSG without food, FDA relied on

previous safety review studies in deciding that special labeling for free-glutamate-containing (hereinafter referred to as "glutamate-containing") foods was not warranted. These studies indicated that while anecdotal reports of adverse reactions to MSG and other glutamate-containing ingredients existed, there were no verifiable scientific data establishing that the levels of these ingredients used in the food supply could cause adverse reactions in the general population. Historically, the agency has not issued labeling requirements on the basis of anecdotal reports alone because such reports do not by themselves establish a cause-and-effect relationship between the suspected substance and the occurrence of an adverse reaction.

MSG and other glutamate-containing ingredients have been the subject of numerous safety reviews during the past decade. In 1969, largely as a result of a recommendation by the White House Conference on Food, Nutrition and Health, FDA proceeded to reevaluate the safety of all GRAS substances for food use. The Select Committee on GRAS Substances (SCOGS), convened by FASEB in 1972 under a contract with FDA, independently reviewed the health aspects of MSG and of glutamate-containing protein hydrolysates in 1978 and 1980 (Refs. 4, 5, 6, and 7). Although protein hydrolysates are not listed as GRAS food ingredients by regulation, they are described as GRAS in a number of FDA opinion letters (Refs. 8, 9, 10, and 11). SCOGS concluded that MSG and hydrolyzed proteins were safe for the general population at then-current levels of use but recommended additional evaluation to determine their safety at significantly higher levels of consumption.

In 1986, FDA's Advisory Committee on Hypersensitivity to Food Constituents (Ref. 12) concluded that MSG posed no threat to the general public but that reactions of brief duration might occur in some people. Other reports gave similar findings. A 1991 report by the European Community's (EC) Scientific Committee for Foods (Ref. 13) reaffirmed the safety of MSG and other forms of free glutamate and classified the "acceptable daily intake" for MSG as "not specified," the most favorable designation for a food ingredient. In addition, the EC committee said, "infants, including prematures, have been shown to metabolize glutamate as efficiently as adults and, therefore, do not display any special susceptibility to elevated oral intakes of glutamate."

A 1992 report from the Council on Scientific Affairs of the American Medical Association (Ref. 14) stated that glutamate in any form has not been shown to be a "significant health hazard." Also, the 1987 Joint Expert Committee on Food Additives of the United Nations Food and Agriculture Organization and the World Health Organization (Ref. 15) placed MSG and other glutamate salts in the safest category of food ingredients.

Although the general consensus of the many safety reviews that have been done on the use of MSG and other glutamate-containing ingredients in foods is that they are safe for the general population, the use of these ingredients has been very controversial. FDA has received many anecdotal reports of adverse reactions following ingestion of glutamate-containing foods. Between 1980 and 1995, the Adverse Reaction Monitoring System in FDA's Center for Food Safety and Applied Nutrition received 661 reports of complaints about adverse reactions to MSG (Ref. 16). Headache was the most frequently reported symptom. However, other symptoms, such as a "burning sensation" on the back of the neck, forearms, and chest, facial pressure or tightness, neck and chest pain, palpitations, numbness, nausea, and vomiting, were also reported. These symptoms were transient, typically beginning within 25 minutes after consumption of MSG or of a glutamate-containing food and subsiding within about 2 hours. Initially many of these symptoms became known popularly as "Chinese Restaurant Syndrome." As discussed in section I.C. of this document, FASEB refers to these symptoms collectively as the "MSG symptom complex."

C. The FASEB Report

Because of the agency's concern regarding the continued reports of adverse reactions to MSG and other glutamate-containing ingredients and because of the expanding base of scientific knowledge on the role of glutamate in brain function, FDA decided that an up-to-date review of the safety of MSG and other glutamate-containing ingredients was warranted. Thus, as part of its ongoing evaluation of GRAS ingredients and in response to the concerns raised by consumers, FDA contracted with FASEB in 1992 to do an up-to-date scientific safety review of the effects of the use of MSG and hydrolyzed protein products as food ingredients. The agency announced the study in the **Federal Register** of December 4, 1992 (57 FR 57467). As discussed in that document, the objectives of the review were to: (1) Determine whether MSG and hydrolyzed protein products, as used in the American food supply, contribute to the presentation of a complex of symptoms (initially described as the Chinese Restaurant Syndrome) after oral ingestion of levels up to or beyond 5 g per eating occasion (i.e., a meal or snack), and/or the elicitation of other reactions, including more serious adverse reactions that have been reported to occur following ingestion of 25 to 100 milligrams per eating occasion; (2) to determine whether MSG and hydrolyzed protein products, as used in the American food supply, have the potential to contribute to brain lesions in neonatal or adult nonhuman primates and whether there is any risk to humans ingesting dietary MSG; (3) to assess whether hormones are released from the pituitary of nonhuman primates following ingestion of MSG or hydrolyzed protein products and whether any comparable risk to humans ingesting food containing these substances exists; and (4) to define the metabolic basis that might underlie any adverse reactions to MSG and hydrolyzed protein products.

FASEB convened an ad hoc expert panel to perform a comprehensive review of the scientific literature and adverse report submissions to both FDA and LSRO. The expert panel also considered oral and written testimony received at a 2-day open meeting held in 1993. The expert panel used a weight of evidence approach in reaching its conclusions about the evidence of adverse effects of MSG. In other words, the expert panel analyzed the data by considering the totality of the scientific evidence in a given area rather than weighing one interpretation against another.

The expert panel reported its findings to FASEB, which reviewed the expert panel's work and prepared a report entitled "Analysis of Adverse Reactions to Monosodium Glutamate (MSG)" (Ref. 17). The FASEB report was submitted to FDA on July 31, 1995. While FASEB found no scientifically verifiable evidence of adverse effects in most individuals exposed to high levels of MSG, it concluded that there is sufficient documentation to define an acute, temporary, and self-limiting "MSG symptom complex" in a subgroup of the population. The symptoms characteristic of the complex include: (1) A burning sensation of the back of the neck, forearms, and chest; (2) facial pressure or tightness; (3) chest pain; (4) headache; (5) nausea; (6) upper body tingling and weakness; (7) palpitation; (8) numbness in the back of neck, arms and back; (9) bronchospasm, i.e., constriction of the bronchial tubes

resulting in difficulty in breathing (observed in asthmatics only); and (10) drowsiness. These symptoms were judged to be related to the amount of MSG consumed and whether the MSG was consumed with or without food. FASEB identified this group of symptoms as the "MSG symptom complex," stating that the previously used term, "Chinese restaurant syndrome," was pejorative and did not reflect the extent or nature of the symptoms that have been associated with the myriad of exposure scenarios. FASEB concluded that "Based on scientifically verifiable evidence, there is a subgroup of presumably healthy individuals within the general population that responds, generally within one hour of exposure, with manifestations of the MSG Symptom Complex to an oral bolus [dose] of MSG ≥ 3 g in the absence of food."

FASEB also identified a subgroup of asthmatics reported to respond to oral doses of MSG with bronchospasm. The study conducted by Allen, Delohery, and Baker (Ref. 18) described severe bronchospasm in individuals with unstable asthmatic conditions in conjunction with symptoms of the MSG symptom complex following an oral dose of MSG. In addition, the study reported that some asthmatic subject experienced a 6 to 12 hour delayed bronchospasm without other MSG-related symptoms. While FASEB recognized and described limitations in the study design used by Allen, et al., it concluded that the study was a reasonably well-designed scientific oral dose study in asthmatic subjects, and that the study provided evidence to support the existence of a subgroup of asthmatic responders to MSG.

With regard to hydrolyzed proteins, FASEB identified no scientific reports of glutamate-related adverse effects of ingesting protein hydrolysates, whether microbial, vegetable, or animal in origin. Protein hydrolysates are used at very low levels, typically constituting only a small percentage (less than 1 percent) of a finished food.

Because of glutamate's role as a stimulatory neurotransmitter in the brain, the scientific community has speculated about the potential influence of dietary glutamate on brain glutamate metabolism and the potential role of dietary glutamate in provoking or exacerbating long-term illnesses. At FDA's request, FASEB reviewed the scientific literature on these issues. Although FASEB acknowledged the neurotoxic potential of glutamate produced in the body (as opposed to glutamate consumed in food), it found no studies or corroborating evidence linking adverse effects associated with consuming free glutamate in food to changes in brain function or to levels of glutamate in the bloodstream. Consequently, FASEB concluded that no evidence exists to support a role for dietary MSG or other forms of free glutamate consumed in food in causing or exacerbating serious, long-term medical problems resulting from degenerative nerve cell damage, such as Alzheimer's disease, Huntington's chorea, or amyotrophic lateral sclerosis, or to any other long-term or chronic illness. However, FASEB recommended that future efforts to explain reported adverse effects from ingested MSG be designed to test potential relationships between dietary glutamate and the physiological functions of the central nervous system.

FASEB also reviewed the chemical characteristics of various forms of free glutamate to determine if there was some structural or chemical difference in free glutamate occurring in the form of MSG or hydrolyzed protein products, as compared to free glutamate that naturally occurs in foods. FDA asked FASEB to include this issue in its review because of the contention by some consumers that manufactured forms of glutamate, such as MSG and hydrolyzed protein products, are in some way different from naturally occurring glutamates, and that the manufactured forms of glutamate are the only forms that trigger adverse reactions.

Free glutamate can exist in two possible stereoisomeric forms: D-glutamate and L-glutamate. L-glutamate is the predominant natural form and the only form with flavor-enhancing activity. FASEB concluded that MSG symptom complex reactions are related to L-glutamate exposure and that the chemical nature of L-glutamate is the same regardless of the source, i.e., whether manufactured or naturally occurring in the food. Thus, FASEB found no evidence to support the contention that adverse reactions occur with manufactured but not naturally occurring glutamate.

FASEB further concluded that with regard to determining glutamate levels and assessing risk from consumption of specific foods, a clear distinction must be made between free glutamate and glutamate as a component of protein (i.e., bound glutamate). Free glutamate is readily available for use in the body, whereas bound glutamate becomes available to body tissues more slowly, as the intestines chemically break down foodstuffs. FASEB also noted that the presence of food, as when MSG is consumed as part of a meal, attenuates the rise in blood glutamate levels and perhaps the effect, at least with regard to the potential for any direct central nervous system effect. However, FASEB was unable to identify any studies that have effectively compared blood glutamate levels between responders (i.e., persons who experience adverse reactions following exposure to MSG) and nonresponders, or any studies in which responders have been given a dose of MSG with a meal or 20 to 30 minutes before a meal.

FDA has reviewed the findings and conclusions contained in the FASEB report (Ref. 19). Based on FASEB's findings, FDA has tentatively concluded that requirements for label information about glutamate content may be warranted under certain conditions.

II. The Agency's Response

FASEB's conclusion that oral ingestion of 3 or more grams of MSG without food can cause adverse reactions in certain otherwise healthy individuals has prompted the agency to consider what action is necessary to protect these consumers from inadvertently ingesting levels of free glutamate that could trigger an adverse reaction. The agency believes that it may be appropriate to establish labeling requirements to alert free-glutamate-intolerant (hereinafter referred to as "glutamate-intolerant") consumers to the presence of free glutamate in a food.

The agency has carefully evaluated FASEB's findings and has reached several tentative conclusions regarding the basis on which any labeling policy to alert glutamate-intolerant consumers should be established.

A. Total Free Glutamate

Based on FASEB's findings that it is the free glutamate component of MSG that appears to be linked to the occurrence of the MSG symptom complex, that free glutamate is the same chemically in both its natural and manufactured forms, and that free glutamate has the same function regardless of source, i.e., free glutamate in MSG functions the same as free glutamate in hydrolyzed proteins or tomato products, the agency tentatively finds that any labeling policy it establishes should be based on the total amount of free glutamate in a serving of food, rather than on the number or kind of glutamate-containing ingredients in the food.

FDA has received correspondence suggesting that adverse reactions result only from exposure to manufactured free glutamate in food (Ref. 3). Based on FASEB's findings, the agency rejects this view. As previously discussed,

FASEB reported that all free glutamate found in food is the same regardless of the source. Further, in examining the scientific reports relating to physiological mechanisms of action, FASEB found no evidence indicating that manufactured free glutamate functions differently in the body than free glutamate naturally occurring in foods. The agency agrees with FASEB that all forms of free glutamate are chemically and functionally the same. Moreover, the agency notes that the available analytical methodology measures the total amount of free glutamate in a finished food and does not distinguish among free glutamate occurring in the form of MSG, as a constituent of ingredients such as hydrolyzed proteins, or as a natural constituent of food such as cheese, mushrooms, or meat. Accordingly, the agency tentatively finds that any labeling requirement for glutamate-containing foods should apply to foods that contain free glutamate from any source.

B. Food Matrix

Although FASEB noted that the presence of food may attenuate the rise of blood glutamate levels, the FASEB report cited no scientific evidence establishing a relationship between the occurrence of MSG symptom complex reactions and metabolic responses to ingestion of MSG, such as changes in blood glutamate levels. The agency requests data describing the effect of the food matrix (i.e., the food in which free glutamate is present or with which it is eaten) on the occurrence of the MSG symptom complex. If the food matrix does have an effect, does the effect vary depending on the type of food?

In the absence of sound scientific data demonstrating that the food matrix reduces the risk or severity of adverse effects following ingestion of free glutamate, the agency's likely approach would be to assume that the food matrix has no predictable mitigating effect on the occurrence of the MSG symptom complex and to develop a labeling policy based on the level of free glutamate reported to cause reactions when consumed without food. Because the agency does not yet have such data, this assumption is adopted for purposes of the preliminary discussion in this document.

C. Materiality

Section 403(a) of the act (21 U.S.C. 343(a)) states that a food is misbranded if its labeling is false or misleading in any particular. Under section 201(n) of the act, labeling is misleading if it "fails to reveal facts material * * * with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling * * * or under such conditions of use as are customary or usual." Thus, a food label is misleading if it does not disclose consequences that may result from consumption of the food.

The agency believes that information on the presence of free glutamate in a food becomes a material fact for the glutamate-intolerant consumer in the decision to purchase a food (and in the subsequent use of the food) when free glutamate is present at a level such that a glutamate-intolerant person who consumes the food alone or as part of a meal that includes other glutamate-containing foods may suffer an adverse reaction. The presence of free glutamate below this level is not material because it would not cause a reaction or contribute significantly toward a total intake of free glutamate that might cause a reaction. Moreover, special glutamate labeling on products that contain levels of free glutamate below the material level could cause the label statement to lose its significance for glutamate-intolerant consumers, especially if such labeling appeared on products previously consumed by such consumers without subsequent occurrence of any adverse reaction.

The level shown to elicit adverse reactions in glutamate-intolerant individuals is 3 g of MSG, according to the FASEB report. Based on this data, the agency tentatively finds that the presence of free glutamate in a serving of the food in an amount such that consumption of the food as part of a meal may expose the consumer to the equivalent of 3 g of MSG is a material fact under section 201(n) of the act. Using a conversion factor of 0.787 to correct for the inactive portion of the MSG molecule (MSG consists of free glutamate plus sodium and water), 3 g of MSG converts to approximately 2.4 g of free glutamate. Accordingly, an effective labeling policy should assist glutamate-intolerant consumers in restricting their consumption of free glutamate during a meal or snack to levels below 2.4 g.

As discussed in section I. of this document, FASEB identified a subgroup of asthmatics reported to respond to oral doses of MSG at levels of 0.5 to 2.5 g. The agency believes that the limitations of the Allen study cited by FASEB in reaching this conclusion are considerable, however (Ref. 19). For example, the study design included: (1) A 5-day pretest diet excluding chemicals known to provoke asthma (not otherwise defined), but lacked data with regard to patient compliance with the pretest diet; (2) ingestion of unidentified substances other than MSG; (3) limited placebo-control testing; and, most importantly, (4) the withdrawal of asthma medication that could have prevented or delayed an asthmatic response. Because of the questions raised by the study design and the limited data in this area, FDA's current view is that a cause-and-effect relationship has not been established between exposure to MSG at levels of 0.5 to 2.5 g and adverse reactions in this subgroup of asthmatics. The agency requests comments on this aspect of the FASEB report, as well as any new data demonstrating a relationship between exposure to free glutamate at levels below 2.4 g (3 g of MSG) and adverse reactions in asthmatics. If such data are received, FDA will be better able to evaluate the need for a labeling policy to enable glutamate-intolerant asthmatics to protect themselves from adverse reactions.

FDA's preliminary view is that a policy requiring glutamate labeling should be based on the amount of free glutamate in a serving of a food. Foods are labeled individually to reflect the nutrient content and other characteristics of the particular food. Because a food's contribution to the diet is based on an individual serving of the food, current regulations require foods to be labeled with nutrition information on a per-serving basis. Since the regulations implementing the Nutrition Labeling and Education Act (Pub. L. 101–445) became effective in 1994, consumers have become adept at using label information to monitor their intake of certain nutrients (Ref. 20). A glutamate labeling policy based on the amount of free glutamate in a serving of a food would be consistent with current labeling regulations, and FDA tentatively finds that such a policy would be useful to consumers who wish to avoid intake of free glutamate at levels that may cause an adverse reaction.

D. Labeling Threshold Approach

Applying these principles, the question then becomes how to calculate an appropriate labeling threshold, i.e., the level of free glutamate in a serving of an individual food that should trigger a labeling requirement because consumption of the food as part of a meal that may include other glutamate-containing foods could result in overall intake of free glutamate at levels that have been demonstrated to cause an adverse reaction. That is, what is the appropriate mechanism to relate a total

intake of 2.4 g of free glutamate (from all servings of foods consumed at the meal) to the contribution of an individual food?

One possible approach is to assume that the average daily consumption of a U.S. consumer is 20 servings per day, spread over approximately 3 meals and a snack. A snack is considered roughly two servings and a meal five to six servings. (The agency used a similar approach in determining disclosure levels for nutrient content claims and disqualifying levels for health claims. (56 FR 60426, 56 FR 60543–60544, 58 FR 2492, and 59 FR 24239)). Assuming that a meal consists of approximately six servings, the glutamate-intolerant consumer would be at risk if the total amount of free glutamate from all six servings in the meal were equal to or greater than 2.4 g. Spreading this amount equally over each of the six servings would suggest that each serving of food should contain no more than 0.4 g of free glutamate. Thus, one approach could be to require any food containing 0.4 g or more free glutamate per serving to bear a label statement about its free glutamate content. Such labeling would alert the glutamate-intolerant consumer to foods that contribute significant levels of free glutamate to a meal. With such information, the consumer could avoid foods with significant levels of free glutamate or, as an alternative, include limited quantities of a labeled food in the meal while being careful not to eat other glutamate-containing foods. Using 0.4 g as a labeling threshold would require foods like tomato juice and some soup mixes and canned soups to bear glutamate labeling (Ref. 21).

Although a labeling threshold or "trigger" of 0.4 g per serving based on average consumption estimates would adequately protect most glutamate-intolerant consumers, it might not be sufficient to protect those whose food intake is in the high range, that is, at or above the 90th percentile. According to food consumption and food frequency surveys (Refs. 22 and 23) conducted in the United States, intake at the 90th percentile for most commonly consumed foods is roughly 2 times the mean intake for that food (Ref. 24). Thus, a high-intake consumer could be exposed to levels close to 0.8 g from a single food if a regular-size serving of the food contained just under 0.4 g of free glutamate. In such a case, the food would not be required to bear a glutamate content statement, yet the amount eaten by high-intake consumers would contain a significant level of free glutamate. Taking into consideration the number of products that may contain free glutamate and the acute nature of the effects of free glutamate exposure for certain individuals, the agency is concerned that a label trigger of 0.4 g would not sufficiently protect high-intake consumers. The agency believes, therefore, that it is prudent to build in a safety factor to ensure that high-intake consumers are adequately informed of any potential risk.

Allowing for intakes up to twice the mean intake, to provide an additional margin of safety, would result in a labeling threshold of 0.2 g free glutamate (0.4 divided by 2) per serving of food. If the agency were to take this approach and require a glutamate label statement for foods that contain 0.2 or more grams free glutamate per serving, additional foods such as blue cheese, spaghetti sauce, and some brands of soy sauce and tomato paste would be required to bear a label statement about free glutamate content (Ref. 21).

FDA notes that the use of labeling thresholds is not new. Existing regulations establish labeling thresholds for certain ingredients that have been identified as causing adverse reactions either in sensitive individuals or in the general population. These regulations require special labeling for foods that exceed the labeling threshold. For example, the statement "Excess consumption may have a laxative effect" is required on foods that contain sorbitol when "reasonably foreseeable" consumption of the food could result in a daily sorbitol intake of 50 g or more (21 CFR 184.1835). To cite another example, the label statement "Sensitive individuals may experience a laxative effect from excessive consumption of this product" is required when a single serving of a food contains more than 15 grams of polydextrose (21 CFR 172.841). To the best of the agency's knowledge, the use of a labeling threshold has worked well in protecting consumers from adverse reactions caused by excessive consumption of sorbitol and polydextrose.

E. Request for Comments

FDA is soliciting comments on all aspects of this advance notice of proposed rulemaking (ANPRM), and specifically requests comments on the following:

1. The agency invites comments on whether additional labeling requirements should be established to protect glutamate-intolerant consumers from adverse reactions. The agency also solicits comments on the effectiveness of the regulatory approach described previously, as well as suggestions for other approaches that would adequately inform and assist glutamate-intolerant consumers to avoid exposure to levels of free glutamate that might cause a reaction. Suggestions for other approaches should include data or other information to substantiate the effectiveness of the approach. In particular, the agency solicits comments on whether the labeling threshold should be set higher or lower than 0.2 g free glutamate per serving, and on the costs and benefits of labeling policies using different possible labeling thresholds. The agency notes that regulations based on this ANPRM may have a significant impact on a substantial number of small entities. Therefore, the agency particularly requests information on the costs to small businesses of alternative MSG labeling policies and on policy options that would reduce the burden on small businesses while meeting the objectives of MSG labeling. Recognizing that foods would have to be chemically analyzed to determine the free glutamate content and that labels would have to be changed for some foods, the agency solicits data and comments on the economic impact associated with various labeling policies.

2. The agency solicits data on the levels of glutamate in foods to assist it in determining how many and what kinds of foods would be affected by various regulatory approaches.

3. The agency also solicits comments on the advantages or disadvantages of a simple label statement that the food contains free glutamate, as compared to a quantitative statement of the amount of free glutamate in a serving of the food either in absolute terms (i.e., g) or as a percentage of the intake level that might lead to adverse reactions in some consumers. As a preliminary matter, FDA's view is that quantitative labeling is not necessarily any more useful than a general label statement alerting the glutamate-intolerant consumer to the presence of free glutamate in the food when the level is significant. The agency notes that because almost all foods contain trace levels of free glutamate, quantitative labeling for all foods with detectable levels of free glutamate might cause confusion among glutamate-intolerant consumers about which foods could be consumed without risking a reaction. Consumers might unnecessarily limit their food choices by assuming that they should not eat any food labeled to contain any amount of free glutamate, however small. FDA's preliminary view is that, if quantitative labeling is required, a labeling threshold should be established to prevent this problem. The agency solicits comments on this view and on whether the optimal threshold for quantitative free glutamate labeling

would be the same as the optimal threshold for a label statement that the food contains free glutamate.

4. Finally, the agency solicits comments on the following questions regarding the content, wording, and placement of labeling for glutamate-containing foods, and on any other aspects of such labeling:

(a) What information should be included in labeling for glutamate-containing foods? How should any required label statement be worded? Should the scientifically accurate term "free glutamate" be used in such labeling, or should the term "MSG" be used for all forms of free glutamate because consumers are more familiar with it?

(b) Should a label statement such as "contains free glutamate" be included in the ingredient list because consumers traditionally use the ingredient list to determine if the food contains ingredients they wish to avoid? Alternatively, should such a label statement be placed adjacent to the ingredient list or elsewhere on the information panel, or should the label statement be placed on the principal display panel? Suggestions for placement of the label statement should include the comment's rationale for choosing one location over another.

(c) Is a separate label statement about free glutamate content necessary when MSG is an ingredient in the food and is therefore declared in the ingredient list? Current information in the agency's possession suggests that glutamate-intolerant consumers already identify and avoid foods that declare MSG as an ingredient, although they often fail to recognize the presence of free glutamate when it occurs in forms other than MSG (Ref. 3). Thus, the agency solicits comments on the need for a statement about free glutamate content in foods that contain MSG as a declared ingredient.

III. The "No MSG" Labeling Policy

A. Current Label Claims

The controversy over the use and safety of MSG in foods has prompted some food manufacturers to make label claims such as "No MSG" or "No added MSG" when MSG is not used as an ingredient in the food. Several manufacturers have opted to reformulate their products to remove MSG as an ingredient, or to substitute for MSG other ingredients that have similar flavor-enhancing properties. Many of these reformulated foods bear label claims about the absence of MSG. In some cases manufacturers replace MSG with ingredients like hydrolyzed proteins, autolyzed yeast extracts, or other flavor-enhancing ingredients that contain substantial amounts of free glutamate.

Based on correspondence submitted to the agency and arguments raised in a citizen petition submitted on behalf of Jack L. Samuels, Adrienne Samuels, John Olney, et al., (Docket No. 94P–0444), FDA recognizes that many consumers, especially those who report having adverse reactions to MSG, refer to all forms of manufactured glutamate as MSG. As previously discussed, the scientific evidence does not support the assertion that manufactured free glutamate functions differently in the body than naturally occurring free glutamate. Moreover, even though FDA has attempted to clarify the distinction between the ingredient monosodium glutamate (MSG) and other ingredients that contain free glutamate in correspondence and other FDA documents, such as FDA's Backgrounder on MSG (Ref. 25), consumers either do not fully understand or do not acknowledge this distinction. Consequently, consumers continue to use the term "MSG" to mean all forms of free glutamate that are added to food. For example, FDA has received numerous written and oral complaints (Ref. 3) charging manufacturers with hiding the presence of "MSG" by declaring the substance under other names such as "flavorings," "hydrolyzed protein," "autolyzed yeast extract," and similar terms.

FDA tentatively finds that consumers are likely to perceive a "No MSG" or "No added MSG" claim on a label as indicating the absence of all forms of free glutamate in the food. Such claims encourage consumers wishing to avoid free glutamate to purchase a food by representing the food as free of MSG. Moreover, manufacturers of hydrolyzed proteins and other glutamate-containing ingredients often promote them to manufacturers of finished foods as functional substitutes for MSG that permit a "clean" ingredient statement and a "No MSG" claim on the label of the finished food. In this context, "clean" means an ingredient list that does not include "monosodium glutamate." Thus, while technically such foods bearing a claim about the absence of MSG do not contain the ingredient monosodium glutamate, they frequently contain levels of free glutamate that cause claims like "No MSG" and "No added MSG" to be misleading. Some manufacturers attempt to evade the ingredient declaration requirement for MSG by reformulating their products with MSG-containing ingredients (for example, certain spice blends) that are added to the product in lieu of MSG itself. They then modify the ingredient list on the product label to delete MSG and replace it with a generic term such as "spices." (As noted in section I. of this document, this practice violates existing ingredient labeling requirements; when MSG is added to a food as an ingredient of a spice blend, MSG must still be declared in the ingredient statement by its common or usual name, monosodium glutamate.) In some cases, these manufacturers also add a "No MSG" claim to the label.

A related problem is the use of claims such as "No MSG" and "No added MSG" on foods that contain substantial amounts of naturally occurring free glutamate, such as tomato paste and certain cheeses. Although such foods do not contain MSG itself, they contain ingredients with concentrations of free glutamate that function as flavor enhancers like MSG. Because of their free glutamate content, these foods are as likely to cause or contribute to an MSG symptom complex reaction as a food that contains a comparable amount of MSG. A claim such as "No MSG" is misleading because it implies that the food may be consumed by glutamate-intolerant consumers without risk of a reaction.

A food that bears a false or misleading claim about the absence of MSG is misbranded under section 403(a) of the act. FDA has repeatedly advised consumers and industry that it considers such claims as "No MSG" and "No added MSG" to be misleading when they are used on the labels of foods made with ingredients that contain substantial levels of free glutamate (Refs. 25, 26, and 27). FDA has authority to take action against such misbranded foods under existing law, but because of the proliferation of such claims on products made with ingredients that contain substantial levels of free glutamate, the agency believes that formal criteria would be useful to define more precisely the circumstances under which labels bearing claims about the absence of MSG are misleading. While such criteria are being developed, however, FDA will continue to take regulatory action as appropriate against false or patently misleading claims about the absence of MSG, such as "No MSG" claims on products made with MSG-containing ingredients, hydrolyzed proteins, or autolyzed yeast extracts.

B. Approaches Under Consideration

The agency is considering a variety of approaches to address misleading claims about the absence of MSG. As a

starting point, a food that contains MSG, or ingredients to which MSG has been added, is misbranded if it bears a "No MSG" or similar claim. Such claims are false and, therefore, their regulatory status needs no further clarification. The discussion below concerns the development of criteria to prevent misbranding because of misleading "No MSG" and "No added MSG" claims on foods that contain free glutamate but to which MSG itself has not been added, directly or indirectly.

1. Cutoff levels

One strategy the agency is considering involves establishing a "cutoff level" for claims about the absence of free glutamate. If the finished food contains free glutamate above the cutoff level, a "No MSG" or similar label statement would be prohibited. There are several ways in which such a level could be defined:

a. Quantitation limit for free glutamate. One approach would be to use the analytical limit of quantitation (LOQ) for free glutamate as the cutoff level. The enzymatic procedure of Hattula and Wallin (Ref. 28), a commonly used, collaboratively studied analytical method for determining free glutamate content, has an estimated quantitation limit of 100 parts per million (ppm) (Ref. 29). Under this approach, any food with a level of free glutamate above the LOQ, i.e., a level above 100 ppm using the Hattula and Wallin method, would be disqualified from bearing a "No MSG" claim. However, because glutamate is ubiquitous in the food supply and low levels of free glutamate typically occur in many raw or minimally processed foods, using the LOQ as the cutoff level would disqualify almost all foods from bearing a "No MSG" claim. For example, typical levels of free glutamate in canned peas and canned corn are 320 ppm (.032 g) and 470 ppm (.047 g) respectively (Ref. 30). Although these levels are lower than the level generally associated with flavor-enhancing function (500 ppm) and lower than the amount of free glutamate found in most foods containing monosodium glutamate, hydrolyzed proteins, or yeast extracts, they are above the LOQ of 100 ppm. Consequently, relying on a "limit of quantitation" criterion would disqualify foods like canned peas and canned corn from bearing a "No MSG" claim.

b. Functional level. According to the scientific literature (Ref. 31), free glutamate has a flavor-enhancing effect at levels as low as 500 ppm. Using 500 ppm as the cutoff level for claims about the absence of MSG would allow a "No MSG" label statement on most raw or minimally processed foods that naturally contain free glutamate, while prohibiting such claims on MSG substitutes like protein hydrolysates and autolyzed yeast extracts. Under this approach, foods such as canned peas and canned corn would be permitted to bear a "No MSG" claim. However, tomato sauce and fresh tomatoes, because of their relatively high natural free glutamate content, would be prohibited from bearing such a claim, as would parmesan cheese.

c. Labeling threshold. As discussed in section II. of this document, the agency is considering whether to require a label statement about free glutamate content on foods that contain 0.2 g or more free glutamate per serving. For consistency, the cutoff for claims about the absence of MSG could be set at the same level. Under this approach, a "No MSG" claim would be permitted on foods like canned peas and canned corn. However, bacon flavored toppings made from hydrolyzed vegetable protein would also qualify to bear a "No MSG" claim because the serving size for toppings is so small. Claims about the absence of MSG would be prohibited on any food required to bear a label statement about the presence of free glutamate.

The agency solicits comment on whether an approach based on a cutoff level of free glutamate in the finished food should be adopted to determine whether a food may bear a "No MSG" or "No added MSG" claim. Further, the agency solicits comment on whether such a cutoff level should be: (a) The analytical limit of quantitation for free glutamate; (b) the level at which free glutamate functions as a flavor enhancer; (c) the level of free glutamate that would trigger a label statement about the food's glutamate content; or (d) some other level.

2. Ingredients

The second approach the agency is considering would prohibit "No MSG" and similar claims on foods made from ingredients that contain substantial amounts of free glutamate. In the agency's opinion, ingredients like hydrolyzed vegetable proteins, autolyzed yeast extracts, soy sauce, parmesan cheese, and tomato paste contain enough free glutamate to cause a "No MSG" label claim to be misleading. To adopt this approach, the agency would have to define what constitutes a "substantial" amount of free glutamate in an ingredient. Should a "substantial" amount of free glutamate be defined as the amount reported to have flavor-enhancing properties, i.e., 500 ppm (Ref. 31), or in some other way?

Further, is an approach that prohibits a "No MSG" claim if an ingredient in a food contains a "substantial" amount of free glutamate equitable in all cases, or should the amount of an ingredient added to a food also be considered in determining whether a claim is misleading? For example, could ingredients like tomato paste or soy protein isolate be added to a food in trace amounts without rendering a "No MSG" claim misleading?

3. Combination or Other Approaches

The agency also invites comments on possibilities for combining any of the approaches described in this section to develop a comprehensive labeling policy to ensure that "No MSG" claims are truthful and not misleading. For example, would a labeling policy that allowed a "No MSG" or similar claim only on foods that: (1) Contain no ingredients that have a "substantial" amount of free glutamate, and (2) contain levels of total free glutamate per serving below a cutoff level of 0.2 g, be more desirable than a policy that relied on one criterion alone? This approach would permit claims about the absence of MSG on foods like canned peas and canned corn, but prohibit such claims on foods like bacon flavored toppings made with hydrolyzed protein and on foods that have a relatively high natural free glutamate content, including tomato sauce and parmesan cheese. Alternatively, is there another combination of approaches that would be more effective in ensuring that label claims about the absence of MSG are not misleading? Suggestions for other approaches or combinations of approaches should include data or other information to substantiate the effectiveness of the approach.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Academy of Science, "Food Chemicals Codex," 4 ed., 1996, p. 260.

2. Taliaferro, P. T., "Monosodium Glutamate and the Chinese Restaurant Syndrome: A Review of Food Additive Safety," *Journal of Environmental Health*, vol. 57, No. 10, pp. 8–12, 1995.

3. Satchell, F. B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file: "Consumer Correspondence to FDA Regarding the Use and Labeling of MSG in Foods," July 3, 1996.

4. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, "Evaluation of the Health Aspects of Certain Glutamates as Food Ingredients-Report 37a," (PB 283–475/A$), 1978.

5. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, "Evaluation of the Health Aspects of Protein Hydrolysates as Food Ingredients- Report 37b," (PB 283–440/AS), 1978.

6. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, "Evaluation of the Health Aspects of Certain Glutamates as Food Ingredients, Supplemental Review and Evaluation-Report 37a-Suppl.," (PB 178635), 1980.

7. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, "Evaluation of the Health Aspects of Protein Hydrolysates as Food Ingredients, Supplemental Review and Evaluation-Report 37b-Suppl.," (PB80–178643), 1980.

8. FDA opinion letter from Einar T. Wulfsberg, Food and Drug Officer to Mr. Ratton B. Rogers, the Nestle Co., November 12, 1959.

9. FDA opinion letter from Einar T. Wulfsberg, Food and Drug Officer to Mr. J. Ter Marsch, August 25, 1961.

10. FDA opinion letter from D. R. Kleber, Jr., Division of Advisory Opinions Bureau of Enforcement to Yeast Products, Inc., January 22, 1962.

11. FDA opinion letter from Virgil O. Wodicka, Director, Bureau of Foods to Mr. William H. Hoastead, The ESU Research Foundation, Kansas State University, 1972.

12. Advisory Committee on Hypersensitivity to Food Constituents—Proceedings Ad Hoc, May 8, 1986, pp. 13–28.

13. Reports of the Scientific Committee for Food on a First Series of Food Additives of Various Technological Functions, Commission of the European Communities, Reports of the Scientific Committee for Food, 25th series, 1991.

14. Report of the Council on Scientific Affairs, American Medical Association, "Food and Drug Administration Regulations Regarding the Inclusion of Added L-Glutamic Acid Content on Food Labels," Report: D (A–92), 1992.

15. The Joint Food Agriculture Organization/World Health Organization Expert Committee on Food Additives, "L-Glutamic Acid and its Ammonium, Calcium, Monosodium and Potassium Salts-Toxicological Evaluation of Certain Food Additives," WHO Food Additive Series, No. 22, pp. 97–161, 1988.

16. Gray, D., FDA memorandum, May 23, 1996.

17. Life Sciences Research Office, Federation of American Societies for Experimental Biology, "Analysis of Adverse Reactions to Monosodium Glutamate (MSG)," Report, 1995.

18. Allen, D. H., J. Delohery, and G. Baker, "Monosodium L-Glutamate-Induced Asthma," *Journal of Allergy and Clinical Immunology*, vol. 80, pp. 530–537, 1987.

19. FDA memorandum concerning evaluation of the Federation of American Societies for Experimental Biology (FASEB) (July 1995 Report) from the Director, Division of Health Effects Evaluation to Lawrence Lin, "Analysis of Adverse Reactions to Monosodium Glutamate (MSG)," August 30, 1996.

20. Levy, A. S., B. M. Derby, Consumer Studies Branch, Center for Food Safety and Applied Nutrition, FDA, "The Impact of the NLEA on Consumers: Recent Findings From FDA's Food Label and Nutrition Tracking System," 1996.

21. Warner, C., and D. Daniels, FDA memorandum, August 14, 1996.

22. United States Department of Agriculture, "Continuing Survey of Food Intake by Individuals" (1989–90, 1990–91, 1991–92), Nationwide Food Consumption Survey, 1987.

23. Market Research Corporation of America (1992), 5-Year Menu Census, 1982–87, FDA Contract No. 223–87–2088.

24. DiNovi, M., FDA memorandum, "Basis for High-Intake Estimates," July 1, 1996.

25. FDA Backgrounder (BG95–16), "Monosodium Glutamate (MSG)," August 31, 1995.

26. FDA Warning Letter from Elaine C. Messa, District Director, Irvine, CA to Patricia Bragg, President, Live Food Products, May 29, 1996.

27. FDA correspondence from John E. Thomas to Sonja L. Valiulis, October 14, 1992.

28. Hattula, M. T., and H. C. Wallin, "Enzymatic Determination of Free Glutamic Acid in Dried Soups and in Minced Sausages: NMKL1 Collaborative Study," *Journal of the Association of Official Analytical Chemists*, vol. 74, No. 6, pp. 921–925, 1991.

29. Facsimile from H. C. Wallin to C. Warner, May 6, 1996.

30. Daniels, D. H., F. L. Joe, and G. W. Diachenko, "Determination of Free Glutamic Acid in a Variety of Foods by High-Performance Liquid Chromatography," *Food Additives and Contaminants*, vol. 12, No. 1, pp. 21–29, 1995.

31. Yamaguchi, S., and A. Kimizuka, "Psychometric Studies on the Taste of Monosodium Glutamate," Glutamic Acid: Advances in Biochemistry and Physiology, Raven Press, New York, pp. 35–54, 1979.

V. Comments

Interested persons may, on or before November 12, 1996, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This advance notice of proposed rulemaking is issued under sections 5 and 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1454, 1455), sections 201, 301, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 343, 371), and under the authority of the Commissioner of Food and Drugs.

Dated: August 29, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–23159 Filed 9–5–96; 4:43 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–106–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; notice of opportunity for hearing or public meeting.

SUMMARY: OSM is announcing a hearing (or public meeting if only one person requests a hearing) on a portion of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment for which the hearing is being announced concerns the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. The amendment is intended to revise the State program to be consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16772).

DATES: The hearing is scheduled for Wednesday, September 18, 1996, at 7:00 p.m. at the Big Stone Gap Field Office. Requests to speak at the hearing must be received by 4:00 p.m., on September 16, 1996. If a public meeting is held instead of a hearing, it will be held on Wednesday, September 18, 1996, at the Big Stone Gap Field Office at a time to be determined.

ADDRESSES: Request to offer testimony at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of the scheduled public hearing (or public meeting if only one person wishes to provide testimony), and all written comments received in response to the

amendment will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100

FOR FURTHER INFORMATION CONTACT: Mr. Robert A Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated May 21, 1996 (Administrative Record No. VA–882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1–243 and 45.1–258 of the Code of Virginia.

The proposed amendments were announced in the June 11, 1996, **Federal Register** (61 FR 292506). In that notice, however, OSM did not specifically point out that, at § 480–03–19.817.121(c)(4), Virginia proposes to normally use a 28-degree angle of draw presumption for the rebuttable presumption of causation by subsidence provision. The counterpart Federal provisions at 30 CFR 817.121(c)(4) provides that a 30-degree angle of draw will normally apply.

30 CFR 817.121(c0(4) also authorizes the use of a different angle of draw (other than 30 degrees) if the regulatory authority shows in writing that the proposed angle has a more reasonable basis than the 30-degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State.

OSM reopened the public comment period on July 24, 1996 (61 FR 38422) for fifteen days. One person requested a public hearing on the 28-degree angle of draw provision.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 731.17(h), OSM is seeking comment on whether the amendment identified above satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will be come part of the Virginia program.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on September 16, 1996.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at the hearing, a public meeting, rather than a public hearing, will be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend the public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Procedural Determinations.

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a

significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 28, 1996.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–22968 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Cooper River and Tributaries, Charleston, South Carolina, Danger Zones and Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to amend the regulations which establish several danger zones and restricted areas in the waters of the Cooper River and its tributaries in the vicinity of Charleston, South Carolina by establishing a new danger zone for a small arms range at the Naval Weapons Station. The small arms firing range is to be used for training by the U.S. Border Patrol Training Academy. The Corps is also correcting a coordinate that defines the boundaries of an existing danger zone and making minor editorial amendments to the regulations to clarify that persons, as well as vessels, are not allowed within the danger zones and restricted areas. This clarification would not affect the size, location or further restrict the public's use of the areas. The danger zones and restricted areas continue to be essential to the safety and security of Government facilities, vessels and personnel and protect the public from the hazards associated with the operations at the Government facilities.

DATES: Comments must be submitted on or before October 15, 1996.

ADDRESS: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or Ms. Tina Hadden of the Charleston District at (803) 727–4607.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR Part 334.460. The Commanding Officer, Naval Weapons Station Charleston, South Carolina, has requested an amendment to the regulations in 33 CFR 334.460(a)(2), to correct a coordinate which establishes a boundary of a danger zone in Foster Creek. The coordinate which presently reads "Latitude 31 59'17" N" is corrected to read "32 59'16" N". The Navy has also requested that a new danger zone be established in an unnamed tributary and associated marsh of Back River and Foster Creek to prohibit public entry into the new area ((a)(13)), and to also prohibit entry into the existing danger zone (a)(12). The purpose of the danger zone is to protect the public from the dangers associated with a small arms firing range nearby and the potential for an errant round to impact into the water. It is not the intent of the Navy to use the waters of the danger zone as an impact area for the range. The Navy proposes to erect post-mounted signs at intervals across the marsh to identify the area as a danger zone. It is believed that closure of the water area for the new danger zone will have minimal impact or no impact on the public's use of the area which is described as a marsh area not navigable by conventional watercraft nor frequented by fishermen. We also propose an editorial change to clarify that these restricted area and danger zone regulations apply to personnel as well as vessels. Other minor changes to the regulations are editorial in nature and since the revisions do not change the boundaries or increase the restrictions on the public's use or entry into the designated areas, the changes will have practically no effect on the public. In addition to the publication of this proposed rule, the Corps Charleston District Engineer is concurrently soliciting public comment on these proposed changes to the danger zone rules by distribution of a public notice to all known interested parties.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the danger zones would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional danger zone and other editorial changes that these amendments to danger zones and restricted areas will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

For the reasons set out in the preamble, we propose to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.460 is amended by revising paragraphs (a)(12), (b) (1), (2), (3), (4), (5), (6), (7), (9), and (11), and adding a new paragraph at (a)(13), to read as follows:

§ 334.460 Cooper River and tributaries at Charleston, SC.

(a) The areas:

(12) *Danger zone.* That portion of Foster Creek beginning at the point of the southern shoreline of an unnamed tributary of Foster Creek at its intersection with Foster Creek at latitude 32°59′16″N, longitude 79°57′23″W; thence back proceeding along the eastern shoreline to the terminus of the tributary at latitude 32°59′49″N, longitude 79°57′29″W; thence back down the western shoreline of the unnamed tributary to latitude 32°59′15″N, longitude 79°57′26″W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(13) *Danger zone.* Those portions of unnamed tributaries and associated marshes of Back River and Foster Creek that are generally described as lying south of the main shoreline and extending southward to the northern shoreline of Big Island (U.S. Naval Reservation). Specifically, the area beginning at a point on the main shoreline which is the northern shore of an unnamed tributary of Back River at latitude 32°59′19″N, longitude 79°56′52″W, southwesterly to a point on or near the northern shoreline of Big Island at latitude 32°59′11″N, longitude 79°56′59″W; thence northwesterly to a point on the main shoreline, which is the northern shore of an unnamed tributary of Foster Creek, at latitude 32°59′16″N, longitude 79°57′11″W; thence easterly along the main shoreline, which is the northern shore of the unnamed tributaries of Foster Creek and Back River, back to the point of beginning at latitude 32°59′19″N, longitude 79°56′52″W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(b) The regulations:

(1) Unauthorized personnel, vessels and other watercraft shall not enter the restricted areas described in paragraphs (a)(1), (a)(2), and (a)(4) of this section at any time.

(2) Personnel, vessels and other watercraft entering the restricted area described in paragraph (a)(5) of this section, shall proceed at normal speed and under no circumstances anchor, fish, loiter, or photograph until clear of the restricted area.

(3) Personnel, vessels and other watercraft may be restricted from using any or all of the area described in paragraphs (a)(3) and (a)(6) of this section without first obtaining an escort or other approval from Commander, Naval Base, Charleston, when deemed necessary and appropriately noticed by him/her for security purposes or other military operations.

(4) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the restricted area described in paragraph (a)(8) of this section shall proceed at normal speed, and under no circumstances anchor, fish, loiter, or photograph in any way until clear of the restricted area.

(5) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the areas described in paragraphs (a)(9) and (a)(10) of this section, are prohibited from entering within one-hundred (100) yards of the west bank of the Cooper River, in those portions devoid of any vessels or manmade structures. In those areas where vessels or man-made structures are present, the restricted area will be 100 yards from the shoreline or 50 yards beyond those vessels or other man-made structures, whichever is the greater. This includes the area in paragraph (a)(10) of this section.

(6) In the interest of National Security, Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, may at his/her discretion, restrict passage of persons, watercraft and vessels in the areas described in paragraphs (a)(7) and (a)(11) of this section until such time as he/she determines such restriction may be terminated.

(7) All restricted areas and all danger zones and the approaches leading to the danger zones will be marked with suitable warning signs.

* * * * *

(9) The regulations in this section for the danger zones described in paragraphs (a)(12) and (a)(13) of this section and the regulations described in paragraphs (b) (4), (5) and (6) of this section, shall be enforced by the Commanding Officer, Naval Weapons Station Charleston, SC, and such agencies as he/she may designate.

* * * * *

(11) The unauthorized entering or crossing of the danger zones described in paragraphs (a)(12) and (a)(13) of this section by all persons, watercraft and vessels is prohibited at all times unless specifically authorized by the Commanding Officer of the U.S. Naval Weapons Station Charleston, SC.

Dated: August 29, 1996.

John P. D'Aniello,

Deputy Director of Civil Works.

[FR Doc. 96–23173 Filed 9–11–96; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960830240–6240–01; I.D. 082796A]

RIN 0648–AH28

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Closure to Protect Red King Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and supplemental proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 37 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This rule would implement trawl closure areas in portions of Bristol Bay, adjust the prohibited species catch limit for red king crab in Zone 1 of the Bering Sea, and increase observer coverage in specified areas related to the trawl closures. These measures are necessary to protect red king crab in Bristol Bay, which has declined to a level that presents a serious conservation problem for this stock. They are intended to accomplish the objectives of the North Pacific Fishery Management Council (Council) with respect to fishery management in the Bering Sea and Aleutian Islands Management area (BSAI).

DATES: Comments must be submitted by October 28, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory

Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Bering Sea crab stocks are currently at relatively low levels based on 1995 NMFS bottom trawl survey data, which indicated that exploitable biomass of Bristol Bay red king crab is at about one-fifth record levels. The red king crab stock is at its lowest level since the fishery was closed after the first stock collapse in 1983. In 1994 and 1995, Bristol Bay was closed to red king crab fishing because the number of female red king crab had declined below the threshold of 8.4 million crab. Under the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (Crab FMP), the commercial red king crab fishery is closed entirely when a red king crab stock component is at or near the threshold. In addition, the annual trawl surveys indicated little prospect for increased recruitment of mature males or females, and low female spawning biomass. Also, the area east of 163° W. long. was closed to Tanner crab fishing to minimize the bycatch of female red king crab.

In view of the declining red king crab stock and the need to further protect and conserve red king crab in the Bristol Bay area of the Bering Sea, NMFS issued an emergency rule in 1995 (60 FR 4866, January 25, 1995), which established and closed the Red King Crab Savings Area (RKCSA) to all trawling. At its September 1995 meeting, the Council adopted Amendment 37 to the FMP to close the RKCSA from January 20 to March 31 each year. In 1996, NMFS closed the RKCSA by inseason adjustment (60 FR 63451, December 11, 1995) from January 20 to March 31, 1996. Continued low abundance of crab stocks caused the Council to express additional concerns about opening the RKCSA and resulted in a recommendation at the January 1996 Council meeting for an extension to the 1996 inseason adjustment to close the RKCSA until June 15, 1996 (61 FR 6889, March 6, 1996), to further protect red king crab during the molting and mating period.

The Council then notified the public that it intended to revisit the previous action on Amendment 37 and requested staff to prepare additional information on potential impacts of modifying the closure time to 6 months or to a year-round closure. Based on information provided at its June 1996 meeting, the Council recommended the following expanded management measures under Amendment 37 to protect the declining stocks of red king crab in Bristol Bay:

1. A year-round closure in the RKCSA to directed fishing for groundfish by vessels using non-pelagic trawl gear. A subarea of the RKCSA between 56° and 56°10 N. lat. would open if a guideline harvest level for Bristol Bay red king crab is established. A portion of the annual red king crab prohibited species catch (PSC) limit would be specified for the RKCSA subarea (RKCSS) that, when reached, would result in closure of the RKCSS to vessels fishing with non-pelagic trawl gear;

2. A year-round closure to all trawling in the nearshore waters of Bristol Bay, with the exception that a portion of this area, between 159° and 160° W. long. and between 58° and 58°43' N. lat. would remain open to trawling during the period April 1 to June 15 each year. Existing regulations at § 679.22(a) would be removed. These regulations authorize opening the Port Moller area of reporting areas 512 and 516 to fishing for Pacific cod with trawl gear; and

3. Adjustments to the Zone 1 PSC limit for red king crab taken in trawl fisheries. The PSC limit would be specified annually based on the abundance and biomass of Bristol Bay red king crab.

Increased observer coverage is proposed on all vessels, including vessels using pot, jig, and longline gear, fishing for groundfish in the RKCSA and on trawl vessels fishing in the seasonal open area of the Bristol Bay nearshore waters closure.

Details of and justification for these measures follow:

RKCSA

Based on NMFS' survey data, the 1994 abundance index for legal-sized male Bristol Bay red king crab was 5.5 million crab compared to 7.3 million in 1993. The abundance index for mature female crab declined from 14.2 million crab in 1993 to 7.5 million crab in 1994. The number of mature female red king crab is below the threshold value of 8.4 million crab established pursuant to the Crab FMP.

The 1995 NMFS trawl survey indicated reduced numbers of large red king crab of both sexes in Bristol Bay. Additionally, the abundance of mature females was at or below threshold, and consequently, no fishery was permitted in 1995. Survey indices of abundance for juvenile males and small females were the highest observed in many years. These crab represent the cornerstone of stock rebuilding, as protection of these crab through maturity may result in increased spawning and recruitment in future years.

Analysis of crab distribution data indicates that the RKCSA provides substantial habitat for red king crab. Various size-sex-maturity groups that have been vulnerable to trawling or other commercial fishing gear have been found in the process of molting or in a soft shell condition from the last week of January through the end of June or sometimes later. The timing of molting for various groups varies considerably from year to year, which indicates the need for increased protection of red king crab.

The dates adopted by the Council in September 1995 for the RKCSA closure (January 20–March 31) do not encompass the entire molting and mating period of red king crab. Additionally, unobserved impacts of trawling on softshell crab may impact crab rebuilding and future crab harvests by pot fisheries. Therefore, extended duration of the closure period provides for increased protection of adult red king crab and their habitat.

As a result, at its June 1996 meeting, the Council recommended a year-round closure of the RKCSA to ensure conservation of the red king crab resource in the Bristol Bay area of the Bering Sea. NMFS would prohibit directed fishing for groundfish by vessels using trawl gear, other than pelagic trawl gear, in the RKCSA, that portion of the Bering Sea that is bounded by a straight line connecting the following coordinates in the order listed below:

Latitude Longitude
56°00' N., 162°00' W.
56°00' N., 164°00' W.
57°00' N., 164°00' W.
57°00' N., 162°00' W.
56°00' N., 162°00' W.

The Council also recommended that a portion of the above-described area, between 56°00' N. lat. and 56°10' N. lat. remain open to non-pelagic trawling for groundfish if a guideline harvest level for Bristol Bay red king crab is established. The RKCSS has been

productive for the rock sole fishery, and an opening of the RKCSS would allow some of the rock sole to be harvested. From 1990 through 1994, the RKCSS accounted for 13 percent to 35 percent of the annual groundfish harvest in the rock sole fishery in Zone 1. However, the RKCSS also has accounted for a relatively high percentage of the Zone 1 red king crab bycatch, ranging from 12 percent to 47 percent during the same period.

If the RKCSS reopened, an amount of the annual Zone 1 red king crab PSC limit would be specified for the RKCSS that, when reached, would result in closure of the RKCSS to vessels fishing with non-pelagic trawl gear. The amount of the Zone 1 red king crab PSC limit specified for the RKCSS would be equivalent to no more than 35 percent of the amount of the red king crab PSC limit apportioned to the rock sole fishery. Trawl vessels fishing in the RKCSS would continue to accrue any associated king crab bycatch against the red king crab bycatch allowance specified for the fishery the vessel is participating in. The RKCSS would be closed to vessels fishing with non-pelagic trawl gear when either the Zone 1 red king crab bycatch limit is reached or the amount of the PSC limit specified for the RKCSS is reached.

Determination of the actual amount of the Zone 1 red king crab bycatch limit for the RKCSS would be specified by NMFS, after consultation with the Council, and based on the need to optimize the groundfish harvest relative to red king crab bycatch.

Further details on the high fishing effort in the RKCSA and the associated high bycatch of red king crab, especially in the rock sole/other flatfish category can be found in the preamble to the 1995 emergency rule (60 FR 4866, January 25, 1995).

Nearshore Bristol Bay Trawl Closure

With the declining crab resource, the Council is also concerned about the protection of juvenile red king crab and critical rearing habitat. Therefore, the Council recommended in addition to the RKCSA closure, that all trawling be prohibited on a year-round basis in the nearshore waters of Bristol Bay in the area east of 162° W. long., which essentially encompasses all of Bristol Bay. Such a closure would also benefit juvenile halibut, seabirds, marine mammals, and spawning herring stocks. The area within 3 mi (4.83 km) of shore within Bristol Bay has been closed to trawling year-round under state regulations (5 AAC 39.165) since 1993.

The area bounded by 159°00' to 160°00' W. long. and 58°00' to 58°43' N. lat. would remain open to trawling during the period April 1 to June 15 each year. Harvest information indicates that allowing trawling in this area could yield high catches of flatfish and low bycatch of other species. The April 1 to June 15 time period is proposed to reduce bycatch rates of halibut, which move into the nearshore area in June. Sea ice generally prevents fishing operations in northern Bristol Bay before April 1.

The trawl closure north of 58°43' N. lat. is proposed to reduce the potential for high bycatch rates of Pacific herring, a prohibited species in the groundfish fisheries. Increased bycatch rates of herring could increase the potential for reaching trawl fishery bycatch allowances of herring and closure of the Herring Savings Areas under regulations at § 679.21(e)(7)(v). Increased bycatch rates of herring also would precipitate public concern within Western Alaska communities that rely on herring stocks to support subsistence fisheries.

The Council anticipates that the trawl closure area designed to protect juvenile red king crab habitat will maintain and possibly increase recruitment of red king crab. Young-of-the-year red king crab require cobble substrate or epifaunal life forms on which to settle and provide protection from predators. Much of this habitat is already protected by the Area 512 trawl closure. Additional habitat for age–0 red king crab has been found to occur in the shallow waters (<50 m) of Area 508, and in the area north of 58° N. lat.

In addition to establishing the nearshore trawl closure area, the Council also recommended that NMFS remove regulations at § 679.22(a)(1)(ii), (a)(2)(ii), and (a)(3) that allow trawling for Pacific cod in the Port Moller area. The Port Moller exemption area for trawl gear was established in 1987 by Amendment 10 to the FMP. These regulations originally provided an opportunity to fish for Pacific cod with trawl gear in portions of BSAI reporting areas 512 and 516, provided that such fishing was in compliance with a scientific data collection and monitoring program. A separate PSC limit of 12,000 red king crab applied to this area in the advent that trawl operations were allowed. Fisheries for Pacific cod occurred within these areas in 1986 to 1990. Although these regulations provide the authority to open these areas, the authority has not been invoked since 1990.

In light of the current status of red king crab and the fact that a fishery has not occurred in these areas in recent years, the Council recommended that these regulations be removed.

In addition, to maintain consistency with the Council's intent for implementation of Amendment 1 to the Fishery Management Plan for the Scallop Fishery off Alaska (Scallop FMP), NMFS also proposes to amend regulations at § 679.62(d). The Council recommended Amendment 1 to the Scallop FMP in June of 1995 and the final rule implementing this amendment was published on July 23, 1996 (61 FR 38099). Under section 2.5.5 of the Scallop FMP, the Council intended that areas closed to vessels fishing for groundfish with non-pelagic trawl gear to protect red king crab or red king crab habitat would also be closed to scallop dredging to ensure protection of red king crab. Therefore, NMFS is proposing to amend regulations at § 679.62(d), to include the RKCSA and the Nearshore Bristol Bay Trawl Closure area as areas that would also be closed to scallop dredging. Historical data indicate that scallop fishing has not occurred in the RKCSA and the Nearshore Bristol Bay Trawl Closure area; therefore, operators of scallop vessels should not be affected by these closures.

Observer Coverage

All vessels, including vessels using pot, jig, and longline gear, that fish for groundfish in the RKCSA would be required to carry an observer during 100 percent of their fishing days. This provision for increased observer coverage also would apply to vessels using non-pelagic trawl gear to fish for groundfish in the RKCSS when this subarea of the RKCSA is open to non-pelagic trawling. This increased observer requirement is necessary to ensure that operators of vessels using pelagic trawl gear adhere to the current crab performance standard for pelagic trawl gear set out at § 679.7(c)(4) and to more fully monitor crab bycatch in non-pelagic trawl and other gear fishing operations.

For the same reason, the Council also recommended 100 percent observer coverage for trawl vessels fishing for groundfish in the area of the Nearshore Bristol Bay Trawl Closure bounded by 159° and 160° W. long. and 58° and 58°43' N. lat. when this area is open to trawling from April 1 to June 15 each year. The number of vessels that may be affected by the requirement for increased observer coverage is not known and would depend on the current level of observer coverage for individual vessels as well as a vessel operator's decision on whether to fish in the areas subject to increased observer coverage. However, for those vessels that would require increased observer

coverage, the cost per vessel per day is approximately $200.

The term "fishing days" is defined at § 679.2 for purposes of observer coverage requirements and does not include days during which a vessel only delivers unsorted codends to a processor. Therefore, catcher vessels used only for this purpose would be exempt from increased observer coverage requirements.

The proposed increase in observer coverage outlined above is a supplement to a previous proposed rule published on August 2, 1996 (61 FR 40353), that, if approved by NMFS, would establish 1997 observer coverage levels. Pending their approval, NMFS anticipates the August 2 proposed rule will be effective prior to the effective date of increased observer coverage requirements proposed under this action.

Zone 1 PSC limit

The Council adopted a modification to the 200,000 red king crab PSC limit currently established for Zone 1 and recommended that the PSC limit be annually specified based on the population indicators of Bristol Bay red king crab outlined as follows:

a. When the number of mature female red king crab is equal to or below the threshold number of 8.4 million crab, or the effective spawning biomass (ESB) is less than 14.5 million lb (6,577 mt), the Zone 1 red king crab PSC limit would be 35,000 crabs;

b. When the number of mature female red king crab is above threshold, and the ESB is equal to or greater than 14.5 million lb (6,577 mt) but less than 55 million lb (24,948 mt), the Zone 1 red king crab PSC limit would be 100,000 crab; and

c. When the number of mature female red king crab is above threshold, and the ESB is equal to or greater than 55 million lb (24,948 mt) the Zone 1 red king crab PSC limit would be 200,000 crab.

Crab are caught incidentally during harvest operations for groundfish. One objective of the FMP is to minimize the impact of BSAI groundfish fisheries on crab and other prohibited species while providing for rational and optimal use of the region's fishery resource. All gear types used to catch groundfish have some potential to catch crab incidentally, but most of the crab bycatch occurs in trawl fisheries.

A PSC limit of 135,000 red king crab was established in 1987 for the domestic yellowfin sole/other flatfish fishery in Zone 1. This PSC limit was based on a negotiated agreement between crab and groundfish industry representatives. In 1989, the Zone 1 red king crab PSC limit was extended to the remaining trawl fisheries and increased to the current level of 200,000 crab. This PSC limit is apportioned among trawl fisheries during the annual specification process as fishery specific bycatch allowances. When a fishery attains its specified bycatch allowance, Zone 1 is closed to that fishery.

The bycatch of red king crab in BSAI groundfish fisheries totaled 48,191 in 1995, which was down significantly from a recent high of 281,023 in 1994. Most red king crab bycatch is taken in the trawl fisheries (97 percent). The rock sole/flathead sole/"other flatfish" fishery accounts for most of the red king crab trawl bycatch. Approximately 80 percent of the red king crab bycatch has been taken from the area encompassed by the existing crab protection Zone 1.

The Council's proposed adjustment to the red king crab PSC limit is an effort to protect further the stocks of Bristol Bay red king crab by limiting the incidental take of this species when the stock is depressed. The proposed criteria for the annual specification of the PSC limit were developed by the BSAI Crab Plan Team, based on input from the Council's Scientific and Statistical Committee, and use the mature female crab threshold number established in the Crab FMP plus the effective spawning biomass annually derived by NMFS and the Alaska Department of Fish and Game as a basis for establishing an annual red king crab PSC limit.

In addition to the above, the EA/RIR/IRFA for Amendment 37 also includes information on and alternatives for bycatch limits for Tanner and snow crab. However, the Council made no recommendations, other than the status quo, on bycatch limits for Tanner and snow crab at this time. The Council indicated that action, other than status quo, may be taken in September 1996. If measures are adopted at that time, they would proceed as a separate FMP amendment.

Economic considerations

Estimates based on the Bering Sea simulation model indicate that the proposed management measures would lead to a slight decrease in the net benefits to the Nation over the status quo based on both the 1993 and 1994 data. The approximately $1.1 million decrease in net benefits (1993 data) and $1.3 million decrease in net benefits (1994 data) result in approximately a 0.4 percent and a 0.5 percent decrease of the net benefits to the Nation under status quo from 1993 and 1994 data, respectively. However, given a certain level of uncertainty inherent in the data, and in the model procedures, these predicted changes in net benefits to the Nation are probably not great enough to indicate an actual change from the status quo.

In general, time area closures cause shifts in groundfish fishery effort. With each additional bycatch restriction, options for the groundfish trawl fleets are reduced and these effort shifts could increase the bycatch of other prohibited species. To some extent, this situation occurred in the rock sole trawl fishery as a result of implementing the RKCSA in 1995 and 1996. However, these tradeoffs will occur with any protection closure that may be implemented.

Other proposed changes to the regulations

NMFS proposes to correct the regulations at § 679.21(e)(7)(iii) to remove an incorrect reference to a Zone 2 red king crab PSC limit. NMFS also proposes to clarify the regulations by rearranging regulatory text. The paragraph that closes the Chum Salmon Savings Area was originally placed in the Prohibited Species management section of regulations at § 679.21. NMFS proposes to redesignate this paragraph from the Prohibited Species Management section at § 679.21(e)(7)(vi)(A)(1) to § 679.22(a)(10), the Closure section. This redesignation would simply move an existing paragraph from one section to another more applicable section to maintain consistency in the placement of closure restrictions.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Many trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this proposed action. Potentially, scallop vessels could also be affected by the closure areas in this action. However, historical data indicate that scallop vessels have not fished in the closed areas; therefore, they are unlikely to be affected by this action. Most

catcher vessels harvesting groundfish off Alaska are considered small entities and would be affected by the trawl closure areas. The economic impact on small entities that would result from closures could result in a reduction in annual gross revenues by more than 5 percent and would have a significant economic impact on a substantial number of small entities. The 132 catcher vessels that harvested groundfish off Alaska in 1993 are considered small entities. That many vessels could be affected by the trawl closure areas and the changes to the Zone 1 red king crab PSC limits, based on the best available information. A copy of this analysis is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: September 4, 1996.

N. Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.2, definitions of the "Nearshore Bristol Bay Trawl Closure Area", the "Red King Crab Savings Area", and the "Red King Crab Savings Subarea" are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Nearshore Bristol Bay Trawl Closure Area of the BSAI (see § 679.22(a)(9))

* * * * *

Red King Crab Savings Area (RKCSA) of the BSAI (see § 679.22(a)(3))

Red King Crab Savings Subarea (RKCSS) of the BSAI (see § 679.21(e)(3)(ii)(B))

* * * * *

3. In § 679.7, paragraph (c)(1) is removed and paragraph (c)(2) is redesignated as paragraph (c)(1), paragraph (c)(3) is redesignated as paragraph (c)(2) and paragraph (c)(4) is redesignated as paragraph (c)(3).

4. In § 679.21 the heading of paragraph (e)(7)(vi)(A) and paragraph (e)(7)(vi)(A)(*2*) are removed, paragraph (e)(7)(vi)(A)(*2*) is redesignated as paragraph (e)(7)(vi)(A), paragraph (e)(3)(ii)(B) is redesignated as paragraph (e)(3)(ii)(C), paragraphs (e)(1)(i), (e)(6), (e)(7)(ii), (e)(7)(iii), are revised, and paragraph (e)(3)(ii)(B) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e)* * * (1) * * * (i) *Red king crab in Zone 1*—The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified annually by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(i) (A) through (C) of this section.

(A) When the number of mature female red king crab is at or below the threshold of 8.4 million mature crab or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 35,000 red king crab.

(B) When the number of mature female red king crab is above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 14.5 but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 100,000 red king crab.

(C) When the number of mature female red king crab is above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 200,000 red king crab.

* * * * *

(3)* * * (ii) * * * (B) *Red King Crab Savings Subarea (RKCSS).* (*1*) The RKCSS is the portion of the RKCSA between 56° 00' and 56° 10' N. lat. Notwithstanding other provisions of this part, vessels using non-pelagic trawl gear in the RKCSS may engage in directed fishing for groundfish in a given year if the ADF&G had established a guideline harvest level the previous year for the red king crab fishery in the Bristol Bay area.

(*2*) When the RKCSS is open to vessels fishing for groundfish with non-pelagic trawl gear under paragraph (e)(3)(ii)(B)(*1*) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(i) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the RKCSS will not exceed an amount equivalent to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/"other flatfish" fishery category under this paragraph (e)(3) and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

* * * * *

(6) *Notification*—(i) *General.* NMFS will publish annually in the **Federal Register** the annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the **Federal Register**.

(7) * * *

(ii) *Red king crab or C. bairdi Tanner crab, Zone 1, closure.* (A) *General.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the **Federal Register** the closure of Zone 1, including the RKCSS, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) *RKCSS.* If during the fishing year the Regional Director determines that the amount of the red king crab PSC limit that is specified for the RKCSS under § 679.21(e)(3)(ii)(B) of this section will be caught, NMFS will publish in the **Federal Register** the closure of the RKCSS to directed fishing for groundfish with non-pelagic trawl gear for the remainder of the year.

(iii) *C. bairdi Tanner crab, Zone 2, closure.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs

(e)(3)(iv)(B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the **Federal Register** the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

* * * * *

5. In § 679.22, paragraphs (a)(1), (a)(2), and (a)(3) are revised and paragraphs (a)(9) and (a)(10) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(1) *Zone 1 (512) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 512 of Zone 1 in the Bering Sea subarea.

(2) *Zone 1 (516) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 516 of Zone 1 in the Bering Sea Subarea during the period March 15 through June 15.

(3) *Red King Crab Savings Area.* Directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear is prohibited at all times, except as provided at § 679.21(e)(3)(ii)(B) of this section, in that part of the Bering Sea subarea defined by straight lines connecting the following coordinates, in the order listed:

Latitude	*Longitude*
56°00' N.	162°00' W.
56°00' N.	164°00' W.
57°00' N.	164°00' W.
57°00' N.	162°00' W.
56°00' N.	162°00' W.

* * * * *

(9) *Nearshore Bristol Bay Trawl Closure.* Directed fishing for groundfish by vessels using trawl gear in Bristol Bay, as described in the current edition of NOAA chart 16006, is closed at all times in the area east of 162°00' W. long., except that the area bounded by a straight line connecting the following coordinates in the order listed below is open to trawling from 1200 hours (A.l.t.) April 1 to 1200 hours (A.l.t) June 15 of each year:

Latitude	*Longitude*
58°00'N.,	160°00'W.
58°43'N.,	160°00'W.
58°43'N.,	159°00'W.
58°00'N.,	159°00'W.
58°00'N.,	160°00'W.

(10) Trawling is prohibited from August 1 through August 31 in the Chum Salmon Savings area defined at § 679.21(e)(7)(vi)(B).

* * * * *

6. The proposed rule published at 60 FR 40380, August 2, 1996, proposing to amend 50 CFR part 679, is further proposed to be amended by adding paragraphs (c)(1)(viii) and (c)(1)(ix) to §679.50 to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(c) * * *

(1) * * *

(viii) *Red King Crab Savings Area.* (A) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings area must carry a NMFS-certified observer during 100 percent of its fishing days in which the vessel uses pelagic trawl gear, pot, jig, or longline gear.

(B) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings Subarea and subject to this subarea being open to vessels fishing for groundfish with non-pelagic trawl gear under § 679.21(e)(3)(ii)(B) of this part, must carry a NMFS-certified observer during 100 percent of its fishing days in which the vessel uses non-pelagic trawl gear.

(ix) *Nearshore Bristol Bay Trawl Closure.* Any catcher/processor or catcher vessel used to fish for groundfish in the Nearshore Bristol Bay Trawl Closure area must carry a NMFS-certified observer during 100 percent of its fishing days in which the vessel uses trawl gear.

* * * * *

7. In § 679.62, paragraph (d) is revised to read as follows:

§ 679.62 General limitations.

* * * * *

(d) *Closed areas.* It is unlawful for any person to dredge for scallops in any Federal waters off Alaska that are closed to fishing with trawl gear or non-pelagic trawl gear under

§ 679.22(a)(1)(i), (a)(2)(i), (a)(3), (a)(4), (a)(6), (a)(7), (a)(9), and (b).

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Notices

Federal Register
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Thursday, September 12, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 6, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- **Rural Utilities Service**

Title: 7 CFR 1789, Use of Consultants Funded by Borrowers.

Summary: Section 18(c) of the RE Act (7 U.S.C. 918(c)) authorizes RUS to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. The consultants may be used to facilitate timely action on applications by borrowers for financial assistance and for approvals required by RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

Need and Use of the Information: The information will be used by RUS to determine whether it is appropriate to use a consultant voluntarily funded by the borrower to expedite a particular borrower application.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 12.

- **Food Safety and Inspection Service**

Title: Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems.

Summary: FSIS is establishing requirements applicable to meat and poultry establishments designed to reduce the occupance and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a new framework for modernization of the current system of meat and poultry inspection.

Need and Use of the Information: The HACCP process will help reduce or eliminate the presence of pathogenic microorganisms in meat and poultry products.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 9,079.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Daily.

Total Burden Hours: 7,904,222.

- **Forest Service**

Title: State and Private Forestry Accomplishment Reporting.

Summary: USDA Forest Service through its State and Private Forestry Branch conducts a number of cooperative programs within State agencies. These cooperative programs in Forest Management, Watershed Management, Insect and Disease Control, Forest Fire Control, Rural Community Fire Protection, and Resource Conservation and Development operate in all 50 states, Guam, Puerto Rico and the Virgin Islands.

Need and Use of the Information: Information is utilized for management reviews and audits of grant recipients and to determine that funds are being expended in a non-discriminatory manner.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 524.

- **Farm Service Agency**

Title: Annual Certification Requirements (7 CFR Parts 12 and 718), Assignment of Payments (7 CFR Part 1404, and Power of Attorney 7 CFR Part 720)—Addendum II.

Summary: These are new requirements enacted under the Federal Agriculture Improvement and Reform Act of 1996.

Need and use of the Information: The information is needed in order for the county and state committee to determine benefits available to the producer(s).

Description of Respondents: Farms.

Number of Respondents: 1,400,250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,779,710.

- **Food and Consumer Service**

Title: 7 CFR Part 220—School Breakfast Program.

Summary: The School Breakfast Program provides for the appropriation of "such sums as are necessary to enable the Secretary of Agriculture to carry out a program to assist in initiating, maintaining or expanding nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this Act."

Need and Use of the Information: Serious legal and accountability questions would be raised if this collection was not conducted.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government

Number of Respondents: 66,272.

Frequency of Responses: Recordkeeping; Reporting; Monthly; Quarterly; Semi-annually; Annually; Daily.

Total Burden Hours: 3,667,170.

- **Food and Consumer Service**

Title: 7 CFR Part 210—National School Lunch Program.

Summary: The National School Lunch Program provides for safeguarding the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States in providing an adequate supply of food and other facilities for the establishment,

maintenance, operation , and expansion of nonprofit school lunch programs.

Need and Use of the Information: Serious legal and accountability questions would be raised if the collection of information was not collected.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 114,169.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Semi-annually; Annually; Biennially; Daily.

Total Burden Hours: 9,136,382.

• **Animal and Plant Health Inspection Service**

Title: National Animal Health Monitoring System (NAHMS).

Summary: Data will be collected from individuals and organizations involved in the dairy, beef, poultry, aquaculture, sheep, and equine industries, as well as from individuals or groups with knowledge of the scope, causes, and public health and/or economic consequences of new and emerging animal health issues.

Need and Use of the Information: The information collected will be used to identify baseline trends; to determine risks and consequences of new and emerging animal health issues; and to determine the economic consequences of animal diseases management and environmental practices.

Description of Respondents: Farms; State, Local, or Tribal Government.

Number of Respondents: 7,240.

Frequency of Responses: Reporting: On occasion; Monthly; Quarterly.

Total Burden Hours: 5,280.

• **Agricultural Marketing Service**

Title: Reporting and Record Keeping Requirements under Regulations (other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

Summary: The Perishable Agricultural Commodities Act establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables. It protects growers, shippers, and distributors by prohibiting unfair practices.

Need and Use of the Information: The Perishable Agricultural Commodities Act requires nearly all commission merchants, dealers, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce to be licensed. The information collected is used to administer licensing provisions under the Act.

Description of Respondents: Business or other for-profit; Individuals or households; Farms;

Number of Respondents: 15,550.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 118,476.

• **Forest Service**

Title: Visitor Permit and Visitor Registration Card

Summary: The visitor permit is used only where public use levels must be managed to prevent resource damage, preserve quality of the experience, or for public safety. The visitor registration card is for use as mandated by management plans.

Need and Use of the Information: Not having the permit and registration card could cause overuse and site deterioration in some environmentally sensitive areas. Not having the registration card would mean special studies to collect use data or management decisions based on little data.

Description of Respondents: Individuals or households.

Number of Respondents: 329,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,500.

• **National Agricultural Statistics Service**

Title: 1997 Census of Agriculture

Summary: The Census of Agriculture is conducted every 5 years. It covers all agricultural operations in each state, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands that meet the farm definition. Detailed benchmark data are provided every 5 years for the agricultural sector of the economy.

Need and Use of the Information: The Census of Agriculture provides the only source of periodic, comparable, detailed county data descriptive of the structure of the agricultural production sectors of the United States and its territories.

Description of Respondents: Farms.

Number of Respondents: 3,586,880.

Frequency of Responses: Reporting: Every 5 years.

Total Burden Hours: 1,319,438.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96–23402 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–0–M

Agricultural Marketing Service

[DA–93–06]

Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document amends the recommended manufacturing milk requirements (Recommended Requirements) by reducing the maximum allowable bacterial estimate and somatic cell count in producer herd milk and by reducing the maximum allowable bacterial estimate in commingled milk. In addition, this amendment modifies the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. The amendment to reduce somatic cell count and bacterial estimate was initiated at the request of the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA, dairy trade associations, and producer groups.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/ Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202)720–7473.

SUPPLEMENTARY INFORMATION: Under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), the U.S. Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These Recommended Requirements are available for adoption by the various States. The purpose of the model requirements is to promote, through State adoption and enforcement, uniformity in State dairy laws and regulations relating to manufacturing grade milk.

On July 22, 1992, the Dairy Division of NASDA passed a resolution recommending that certain milk quality requirements be tightened. The Dairy Division of NASDA requested that the maximum allowable bacterial estimate in producer herd milk be reduced from 1,000,000 per ml. to 500,000 per ml. and that the maximum allowable somatic cell count in producer herd milk be

reduced from 1,000,000 per ml. to 750,000 per ml. (The changes for somatic cell count only apply to milk from cows, not milk from goats.) The Dairy Division of NASDA also requested that the maximum allowable bacterial estimate in commingled milk be reduced from 3,000,000 per ml. to 1,000,000 per ml.

Their desire to have these changes were further reinforced in a resolution passed on July 18, 1994. In this resolution, the Dairy Division of NASDA requested that USDA expedite the printing of this amendment.

In addition, certain State regulatory agencies have requested modifications to the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. Changes are made that increase uniformity with producer herd milk bacteria and somatic cell follow-up procedures. This modified follow-up program is more adaptable to computer-based recordkeeping.

In order to align the bacterial estimate and somatic cell count requirements contained in the Recommended Requirements with the resolution passed by NASDA, USDA is amending this document as follows:

1. *Reduce the maximum somatic cell count permitted in producer herd milk (no change for goat milk).* The number of leukocytes (somatic cells) present in milk increases as a result of mammary gland infection (mastitis) and provides information regarding the health of the dairy herd. The National Mastitis Council (NMC) is an organization that promotes research and provides educational materials to help dairy producers reduce the incidence of mastitis and thus enhance milk quality. In their publication entitled *Current Concepts of Bovine Mastitis* [1], the NMC states that "Presence of more than 500,000 leukocytes per milliliter of mixed herd milk suggests a significant incidence of mastitis in a given herd." Changes in the Recommended Requirements will reduce the maximum somatic cell count permitted in producer herd milk (cows milk only) from 1,000,000 to 750,000 per ml. Through effective herd management, many dairy farmers have reduced the number of somatic cells well below this maximum limit. Since the number of somatic cells found in milk produced from healthy goats is normally higher than the number found in cows milk, similar reductions have not been made for goat milk.

2. *Delete the laboratory screening tests for somatic cells in producer herd milk samples (no change for goat milk).* The California Mastitis Test (CMT) and the Wisconsin Mastitis Test (WMT) were used as screening tests for somatic cells. These screening tests are accurate for samples containing 1,000,000 or more somatic cells per ml. Since this action reduces maximum somatic cell count to 750,000 per ml., the CMT and WMT tests are not accurate enough to screen cow milk at the reduced level. Since the maximum somatic cell count for goat milk remains at 1,000,000 per ml., the CMT and WMT tests may continue to be used to screen goat milk. This amendment identifies those tests that may be used for somatic cell counting and makes provisions for additional methods that may later be added to the latest edition of "Standard Methods for the Examination of Dairy Products."

3. *Reduce the maximum bacterial estimate permitted in producer herd milk.* The number of bacteria present in milk increases when the equipment and utensils used to collect and store the milk are improperly cleaned and sanitized. This number increases rapidly in milk that is not cooled promptly or is not maintained at refrigerated temperatures throughout storage. Enhanced milk quality can be attained when dairy equipment is properly cleaned and sanitized, and when milk is promptly cooled and stored at refrigerated temperatures. Improvements in sanitation practices and milk cooling equipment has resulted in enhanced milk quality. Changes in the Recommended Requirements reduce the maximum permissible bacteria count in producer herd milk from 1,000,000 to 500,000 per ml.

4. *Modify the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate.* Changes have been made that modify the follow-up procedures when producer herd milk exceeds the maximum permitted bacterial estimate. These changes now require dairy plant personnel to notify the appropriate State regulatory authority when two of the last four consecutive bacterial estimates exceed the maximum permitted. The State regulatory authority would then send a written warning letter to the producer. After 3 days but within 21 days, an additional sample of herd milk is tested. If this sample also exceeds the maximum permitted, that producer's herd milk is excluded from the market until satisfactory compliance is obtained.

These changes increase uniformity with producer herd milk bacteria and somatic cell follow-up procedures and provide greater adaptability to computer-based recordkeeping.

5. *Reduce the maximum permitted bacterial estimate in commingled milk.* Commingled milk is the combined milk from more than one producer. Reductions in the maximum bacterial estimate for producer herd milk should result in improved commingled milk quality. Changes in the Recommended Requirements are made to reflect this improved milk quality by reducing the maximum permissible bacterial estimate in commingled milk from 3,000,000 to 1,000,000 per ml.

6. *In order to provide consistency throughout the Recommended Requirements, changes in terminology and formatting have been made.* The amendment: (a) Revises the definitions for "acceptable milk" and "probational milk" by deleting the reference to bacterial estimate; (b) revises the requirements for "excluded milk" by incorporating provisions for milk with a history of excessive bacteria counts; (c) revises the terms of quality testing of milk from producers by including bacterial requirements; and (d) instructs dairy plant management to provide field assistance to farmers concerning excessive bacteria counts.

Public Comment

On October 6, 1994, the Department published (59 FR 50894) a notice of intent to amend the "Milk for Manufacturing Purposes and Its Production and Processing; Recommended Requirements for Adoption by State Regulatory Agencies." The public comment period closed December 5, 1994. Comments were received from 52 commenters: 27 manufacturing grade milk producers, 12 dairy plant personnel, 6 State regulatory agencies, 2 private individuals, 1 national dairy trade associations, 1 national association representing State regulatory agencies, 1 veterinary association, 1 national goat association, 1 goat research center, 1 county commissioner office, and 1 State dairy association.

Discussion of Comments

1. Fifteen Commenters Stated That Current Somatic Cell Counts Do Not Pose a Public Health Hazard

Milk is defined in 21 CFR 131.110 as "* * * the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows." Somatic cell levels in some milking herds (cattle) have been

[1] R.W. Brown, Current Concepts of Bovine Mastitis, Washington: National Mastitis Council, 1965, pp. 30–34.

maintained at or below 200,000. These levels indicate a healthy milking herd. Research by the National Mastitis Council (NMC) states somatic cell levels above 500,000 generally indicate the presence of mastitis in the milking herd. Mastitis is caused by an infection of the milk-producing tissue in the udder.

Somatic cell counts are a measure of the health of the lactating dairy animal and provide an indirect measure of the public health safety of the raw milk. The level at which somatic cells pose a public health hazard is not known. While the previous level of 1,000,000 somatic cells per ml. is not considered to be a public health concern, a lower level is readily obtainable and improves the milk production of the dairy cow and the quality of the dairy products.

2. Fourteen Commenters Felt That Milk Containing 1,000,000 Somatic Cells Does Not Affect Product Quality

Research published by National Mastitis Council [2] and the *Journal of Dairy Science* [3] has shown that milk protein content and cheese yield are reduced as somatic cell counts increase. Studies in these two publications also showed a corresponding increase in the frequency of quality defects in Cheddar cheese with somatic cell counts over 500,000. Research indicates that higher somatic cell counts affect product quality.

3. Twenty-Seven Commenters Expressed Concern That the Reduction in the Somatic Cell Count Requirement Would Cost the Producer More for Rejected Milk, Medication Costs and Veterinarian Fees

The effort to lower somatic cell levels in a dairy herd is primarily one of management, not cost. Some management practices which have been found effective in reducing somatic cell count include:

—proper nutrition
—maintaining a clean and safe housing and milking environment
—proper udder preparation prior to milking
—post-milking teat dipping
—maintenance, cleaning and sanitizing of milking equipment
—a regular individual cow monitoring program which includes dry cow treatment.

Better management will reduce the cost of medication, veterinarian fees, and rejected milk and will increase production because overall herd health will improve. In addition, lower somatic cell counts can also translate into price incentives for the dairy producer from the buyer of the milk. While there may be added costs to maintain a dairy herd's somatic cell count below 750,00 per ml., an increase in production and price incentives should more than offset the additional expense.

4. Eleven Commenters Expressed Dissatisfaction With the Same Somatic Cell Count Regulations for Manufacturing Grade Milk as Are Required for Higher-Priced Grade A Milk

The definition of milk in 21 CFR 131.110 does not distinguish between different grades of milk. It requires that all milk offered for sale must be obtained from "* * * the milking of one or more healthy cows." Somatic cell counts are one measure of the health status of a lactating dairy animal. A healthy cow should be the basis for the production of all grades of milk. Somatic cell levels of 1,000,000 for a dairy herd indicate production of milk is originating from one or more animals with mastitis.

Somatic cell levels in international markets for products which use manufacturing grade milk influence our ability to effectively compete. The International Dairy Federation (IDF) published information from 23 countries [4] which showed the average dairy herd somatic cell count at less than 500,000 per ml. In order to have access to these international markets, it will be necessary for the United States dairy industry to establish somatic cell counts which, through effective dairy herd management, are readily attainable.

5. Four Commenters Felt That Extremely Cold Weather Results in Increased Incidence of Mastitis

The increase in somatic cell counts tends to increase under any type of stress, including environmental stress. Temperature extremes, both hot and cold, may increase somatic cell counts. Cold weather conditions require adequate housing for the milking herd and an increased management focus on environmental cleanliness. Freezing of teat ends caused by cold weather and injury to teat ends caused by close confinement need special management attention. Inadequate housing and lack of attention to the special needs of the dairy herd during cold weather periods can result in increased incidence of mastitis.

6. One Commenter Suggested the Reduction in the Bacteria Count for Producer Herd Milk Be Reduced to 750,000 per ml., Instead of 500,000 per ml.

The Department feels that a bacterial level of 500,000 per ml. is representative of the manufacturing milk produced today utilizing good management practices, adequate milking equipment, and proper cooling of the milk at the farm. A single failure to maintain bacterial levels below 500,000 per ml. will not result in regulatory action against a producer. Only after bacterial counts exceed 500,000 per ml. for three of the last five samples, does the regulatory agency begin action to exclude that milk from the market. This approach allows the dairy producer time to trouble shoot the problem and begin corrective action.

7. Three Commenters Recommended that the Implementation of These Revisions be Delayed

Twenty-three States have already established State laws to meet the bacterial and somatic cell levels proposed in this amendment. The Department understands that those States that have not already approved these changes will need some time to modify their rules, regulations, State laws and testing procedures (somatic cell count). Time will also be required by State regulatory agencies and the dairy industry to become familiar with the new requirements. Some dairy producers may need time to adapt their management practices to these new levels. For these reasons, the Department has selected the effective date for the amended manufacturing milk requirements to be 60 days after publication in the **Federal Register**.

8. Three Commenters Expressed Concern that if this Amendment is put into Effect, State Laws will have Tighter Requirements than USDA in the Approved Plant Program

The USDA approved plant program is a voluntary plant inspection program that establishes minimum standards in order for a plant to qualify. The changes made in this action affect the recommended requirements that state regulatory agencies utilize to regulate manufacturing grade raw milk. This action will improve the quality of manufacturing grade milk throughout the country and result in milk quality which exceeds the requirements for voluntary USDA-approved plants. Once

[2] "Udder Topics", National Mastitis Council Newsletter, Volume 17, No. 4, August 1994.

[3] R.J. Verdi, D.M. Barbano, Journal of Dairy Science, "Effect of coagulants, somatic cell enzymes, and extracellular bacterial enzymes on plasminogen activation", American Dairy Science Association, March 1991, v. 74 (3) p. 772–782.

[4] "Mastitis Cell Count Data", Newsletters of the International Dairy Federation No. 134, Mastitis Newsletter 18, April 1993.

the dairy industry adapts to this new level, the Department may initiate similar changes in the USDA-approved plant program.

9. One Commenter Suggested that the Specific Testing Protocols for Bacteria were not Listed in Section C11(c) of the Proposed Amendment

An inadvertent error was made in the printing of the notice of intent to amend the recommended requirements. This action has corrected that printing error.

10. One Commenter Suggested that the Direct Microscopic Clump Count be Deleted as a Method to Determine Bacterial Estimate

The direct microscopic clump count is officially recognized and published in Standard Methods for the Examination of Dairy Products, 16th Edition.[5] As such, it is an acceptable test for evaluating the bacterial count along with all other tests listed in Section C4(b).

11. One Commenter Requested that all States Adopt the Current Recommended Manufacturing Milk Requirements

The USDA Recommended Manufacturing Milk Requirements were established as minimum standards for adoption by States. The Department and the National Association of State Departments of Agriculture (NASDA) encourages all States with manufacturing grade milk production and/or processing to adopt these requirements into State law or regulation. There has been good cooperation in State adoption of past changes in the manufacturing milk requirements.

For the reasons set forth in the preamble, the Recommended Requirements which were published in the **Federal Register** issued April 7, 1972 (37 FR 7046) and amended August 27, 1985 (50 FR 34726) and May 6, 1993 (58 FR 86) are amended as follows:

1. Sec. B2. is amended by revising paragraphs (n) and (o) to read as follows:

* * * * *

(n) Acceptable milk. Milk that qualifies under sec. C2. as to sight and odor and that is classified No. 1 or No. 2 for sediment content (sec. C3.).

(o) Probational milk. Milk classified No. 3 for sediment content that may be accepted by plants for not over 10 days (sec. C3.).

* * * * *

[5] Standard Methods For The Examination Of Dairy Products, 16th Edition, 1992, published by American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

2. Sec. C4. is revised to read as follows:

Sec. C4. Bacterial estimate classification

(a) A laboratory examination to determine the bacterial estimate shall be made on each producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory approved by the State regulatory agency.

(b) Milk shall be tested for bacterial estimate by using one of the following methods or by any other method approved by "Standard Methods for the Examination of Dairy Products":

(1) Direct microscopic clump count
(2) Standard plate count
(3) Plate loop count
(4) Pectin gel plate count
(5) Petrifilm™ aerobic count
(6) Spiral plate count
(7) Hydrophobic grid membrane filter count
(8) Impedance/conductance count

(c) Whenever the bacterial estimate indicates the presence of more than 500,000 bacteria per ml., the following procedures shall be applied:

(1) The producer shall be notified with a warning of the excessive bacterial estimate.

(2) Whenever two of the last four consecutive bacterial estimates exceed 500,000 per ml., the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two of the last four consecutive samples exceed 500,000 per ml.

(d) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (c)(2) of this section. If this sample also exceeds 500,000 per ml., subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer shall be assigned a full reinstatement status when three out of four consecutive bacterial estimates do not exceed 500,000 per ml. The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

3. Sec. C7. is amended by revising paragraphs (a), (c) and (d) to read as follows:

Sec. C7. Excluded milk

A plant shall not accept milk from a producer if:

(a) The producer's initial milk shipment to a plant is classified as No. 3 for sediment content;

(b) * * *

(c) Three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml. (sec. C4.);

(d) Three of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml. (1,000,000 per ml. for goat milk) (sec. C11.);

* * * * *

4. Sec. C8. is amended by: revising paragraph (a)(1)(i), adding a new paragraph (a)(1)(ii), and redesignating present paragraphs (a)(1)(ii) and (iii) as (a)(1)(iii) and (iv); revising paragraph (b)(1)(i), adding a new paragraph (b)(1)(ii), and redesignating present paragraphs (b)(1)(ii) and (iii) as (b)(1)(iii) and (iv); and revising paragraph (b)(3)(i), adding a new paragraph (b)(3)(ii),and redesignating present paragraphs (b)(3)(ii), (iii), and (iv) as (b)(3)(iii), (iv) and (v) as follows:

Sec. C8. Quality testing of milk from producers

New Producers.

(1) * * *

(i) "Acceptable milk" (sec. C2. and C3.);

(ii) Bacterial estimate (sec. C4.);

(iii) Somatic cell count (sec. C11.); and

(iv) Drug residue level (sec. C12.).

(2) * * *

(b) Transfer producers.

(1) * * *

(i) "Acceptable milk" (sec. C2. and C3.);

(ii) Bacterial estimate (sec. C4.);

(iii) Somatic cell count (sec. C11.); and

(iv) Drug residue level (sec. C12.).

(2) * * *

(3) * * *

(i) The milk is currently classified "acceptable" for sediment;

(ii) Three of the last five consecutive milk samples do not exceed the maximum bacterial estimate;

(iii) Three of the last five consecutive milk samples do not exceed the maximum somatic cell count level requirements;

(iv) The last shipment of milk received from the producer by the former plant did not test positive for drug residue; and

(v) Milk shipments currently are not excluded from the market due to a positive drug residue test.

* * * * *

5. Sec. C10. is revised to read as follows:

Sec. C10. Field service

A representative of the plant shall arrange to promptly visit the farm of each producer whose milk tests positive for drug residue, exceeds the maximum somatic cell count level, exceeds the maximum bacterial estimate, or does not meet the requirements for acceptable milk. The purpose of the visit shall be to inspect the milking equipment and facilities, to offer assistance to improve the quality of the producer's milk, and eliminate any potential cause of drug residue. A representative of the plant should routinely visit each producer as often as necessary to assist and encourage the production of high quality milk.

6. Sec. C11. is revised to read as follows:

(a) A laboratory examination to determine the level of somatic cells shall be made on each producer's milk at least four times in each 6-month period at irregular intervals. Samples shall be analyzed at a laboratory approved by the State regulatory agency.

(b) A screening test may be conducted on goat herd milk. When a goat herd screening sample exceeds either of the following screening test results, a confirmatory test shall be conducted.

(1) California Mastitis Test—Weak Positive (CMT 1).

(2) Wisconsin Mastitis Test—WMT value of 18 mm.

(c) Milk shall be tested for somatic cell content by using one of the following procedures (confirmatory test for somatic cells in goat milk):

(1) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-Methyl green stain or "New York" modification shall be used for goat milk.

(2) Electronic Somatic Cell Count.

(3) Flow Cytometry/Opto-Electronic Somatic Cell Count.

(4) Membrane Filter DNA Somatic Cell Count.

(d) The results of the confirmatory test on goat milk for somatic cells shall be the official results.

(e) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,000,000 somatic cell per ml. for goat milk), the following procedures shall be applied:

(1) The producer shall be notified with a warning of the excessive somatic cell count.

(2) Whenever two of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,000,000 per ml. for goat milk), the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two of the last four consecutive samples exceed 750,000 per ml. (1,000,000 per ml. for goat milk).

(f) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (e) (2) of this section. If this sample also exceeds 750,000 per ml. (1,000,000 per ml. for goat milk), subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer shall be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,000,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

7. Sec. E1.8 is amended by revising paragraph (b) to read as follows:

Sec. E1.8 Raw Product Storage.

(a) * * *

(b) The bacteriological estimate of commingled milk in storage tanks shall be 1 million per ml. or lower.

Authority: 7 U.S.C. 1621–1627.

Dated: September 6, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–23319 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Oil and Gas Leasing Analysis; Helena & Deerlodge National Forests, MT

Counties: Lewis and Clark, Powell, Jefferson, Broadwater, and Meagher.

State: Montana.

AGENCIES: Forest Service, USDA & Bureau of Land Management, USDI.

ACTION: Intent to prepare a supplement to the Final Environmental Impact Statement (FEIS) for the Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Analysis.

SUMMARY: USDA Forest Service and USDI Bureau of Land Management will prepare a supplement to the FEIS to disclose the potential cumulative impacts of oil and gas leasing and other reasonably foreseeable projects that have arisen since the FEIS was completed in April, 1995. A year elapsed between completion of the FEIS and publication of the Record of Decision (ROD), and new project proposals had arisen in the interim. The cumulative effects of these reasonably foreseeable projects have not been fully disclosed. This information will be added to previous information for the decision makers as they reconsider their decisions. The area covered by this supplement includes National Forest and split estate lands with Federal mineral ownership within the Helena National Forest and the Elkhorn Mountains portion of the Deerlodge National Forest.

The original Notice of Intent to prepare an Environmental Statement was published in the **Federal Register**, December 1, 1992, Volume 57, No. 231 page 55900. An amendment to this Notice of Intent was published in the **Federal Register**, August 19, 1993, volume 58, No. 159 page 44159. The Record of Decision was signed on February 12, 1996 by Forest Supervisor Thomas J. Clifford; and February 14, 1996 by BLM State Director Larry E. Hamilton. The Notice of availability of the Oil & Gas leasing decisions for the Helena Forest and Elkhorn Mountain portions of the Deerlodge National Forest was filed March 5, 1996. This decision was appealed through both the Forest Service and Bureau of Land Management administrative appeals processes. The BLM filed a motion for remand on June 27, 1996 and the BLM decisions were set aside by Administrative Judge John H. Kelly on July 9, 1996. Acting Helena Forest Supervisor Jim Guest withdrew the Forest Service decisions on July 30, 1996. This will allow the potential cumulative impacts of oil and gas leasing and other reasonably foreseeable projects that have arisen since the FEIS was published to be analyzed and considered.

The purpose of the project remains the same as stated in the 1995 FEIS. The Forest Service will decide which lands are available for lease and what mitigating stipulations apply for oil and gas exploration and development. The Forest Service proposes to make minor modifications from the preferred alternative displayed in the February 14, 1996 decision. The modifications include increasing the administratively unavailable acres in the Tenmile area (Helena municipal water supply) and increasing the No Surface Occupancy acres within the Black Mountain area. These changes are proposed following discussions with appellants as part of the administrative appeals process. Other Than the above, issues and alternatives remain the same as disclosed in the 1995 FEIS.

No additional scoping to identify issues and concerns is planned prior to the release of the supplement to the

Environmental Impact Statement. However, the Forest Service and Bureau of Land Management would like to receive information relating to possible changed conditions that may affect leasing decisions and were not considered during the analysis disclosed in the original document.

The agencies are aware of the following reasonably foreseeable proposals and projects which may affect the area under consideration for leasing.

Mining/Mine Reclamation

—Diamond Hill T7N, R1W
—Santa Fe Gold T6N, R2–3N
—Charter Oak Rehabilitation, T9N, R7W
—Vosberg Reclamation T7N, R1W

Vegetation Manipulation

—Poorman T13N, R7–8N
—North Elkhorns T8–9N, R2W
—Bull Sweats T11–12N, R1–2W
—Jericho Salvage T8N, R6W
Elkhorn Travel Plan T6–9N, R1E, R1–3W
Tizer/Park Lake Exchange T8N, R5W; T7N, R2W

DATE: Written comments and suggestions on new circumstances, or new information relevant to environmental concerns with a bearing on this proposed project, or its impacts, should be received by no later than October 15, 1996. A Draft Supplement is scheduled for release in November, 1996. A Final Supplement to the EIS is scheduled for release in February, 1997.

ADDRESSES: Submit written comments and suggestions to Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601.

FOR FURTHER INFORMATION CONTACT: Tom Andersen, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601; phone (406) 449–5201 ext 277.

SUPPLEMENTARY INFORMATION: The Forest Supervisor for the Helena National Forest has been assigned the task of completing the Supplement. The responsible officials who will make the leasing decisions are: Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601; and Larry E. Hamilton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, PO Box 36800, Billings, Mt 59107–6800.

They will decide on this proposal after considering comments, responses, and environmental consequences discussed in the FEIS (released March 4, 1996), information contained in this Supplement, (scheduled for release January, 1997) and applicable laws, regulations, and policies. The decision, rationale for the decision, and responses to comments received, will be documented in the FEIS supplement, and in a Record of Decision (ROD).

The comment period on the draft supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service and Bureau of Land Management believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplements must structure their participation on the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft supplement stage but that are not raised until after completion of the final supplement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wilson Heritages, Inc.* v. *Harris,* 490 F. Suppl 1334, 1338 (E.D.Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement.

To assist the Forest Service and Bureau of Land Management in identifying and considering concerns on the proposed action, comments on the draft supplement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Comments may also address the adequacy of the draft supplement. Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 21, 1996.

James E. Guest,

Acting Forest Supervisor, Helena National Forest.

[FR Doc. 96–23337 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302 (a). Notice was given to the stockyard owners and to the public as required by section 302 (b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.).

Facility number, name, and location of stockyard	Date of posting
AR–171—Roden's Auction Service, DeQueen, Arkansas.	May 1, 1996.
FL–137—Hidden Creek Auction, Jacksonville, Florida.	July 25, 1996.
NC–160—Boone Stockyard, Inc., Boone, North Carolina.	August 22, 1989.
NC–169—North Carolina Horse Auction, Goldston, North Carolina.	May 9, 1996.
NC–171—Foothills Livestock Auction, Inc., Cliffside, North Carolina.	August 2, 1996.
MD–119—Kolb's Sale Barn, Woodsboro, Maryland.	June 3, 1996.
OH–150—Smokey Lane Stables, Inc., Sugarcreek, Ohio.	July 22, 1996.
OH–151—Producers Livestock Association, Gallipolis, Ohio.	June 12, 1996.
TX–345—Giddings Livestock Commission Co., Giddings, Texas.	July 9, 1996.

Done at Washington, D.C., this 4th day of September 1996.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 96–23307 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–20–P

Natural Resources Conservation Service

Upper Tioga River Watershed, Pennsylvania; Notice of Intent To Deauthorize Federal Funding

AGENCY: USDA—Natural Resources Conservation Service.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service (formerly Soil Conservation Service) Guidelines (7 CFR part 622); the Natural Resources Conservation Service (formerly the Soil Conservation Service) gives notice of the intent to deauthorize Federal funding for the Upper Tioga

River Watershed project, Tioga County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, Natural Resources Conservation Service, Suite 340, One Credit Union Place, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: A determination has been made by Janet L. Oertly, State Conservationist, that the proposed works of improvement for the Upper Tioga River Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Janet L. Oertly, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects is applicable)

Dated: September 4, 1996.

Janet L. Oertly,

State Conservationist.

[FR Doc. 96–23379 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

September 9, 1996.

DATE AND TIME: Friday, September 20, 1996, 8:00 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Announcements
IV. Staff Director's Report
V. "Equal Educational Opportunity Project Series: Volume I" Report
VI. State Advisory Committee Report
The Impact of the *City of Richmond* v. *J.A. Croson* Decision Upon Minority and Female Business Programs in Selected Cities in Ohio.
VII. State Advisory Committee Appointments for District of Columbia, Maryland, Michigan, Nevada, New York, Washington, and California (interim)
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–23450 Filed 9–9–96; 4:24 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip (BSS) From Germany; Antidumping Duty Administrative Review; Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of this antidumping duty administrative review of BSS from Germany. The review covers the period March 1, 1994 through February 28, 1995.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the final results until September 17, 1996, in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. (See Memorandum to the file.)

This extension is in accordance with section 751(a)(3)(A)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(A)(3)(a)).

Dated: September 5, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–23395 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–815]

Certain Welded Stainless Steel Pipe from Taiwan, Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the third administrative review of the antidumping duty order on welded stainless steel pipe from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, Ta Chen Stainless Pipe Company, Ltd., and the period December 1, 1994 through November 30, 1995.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limit for completion of the preliminary results until December 30, 1996. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: September 2, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–23396 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 960719198–6248–02]

RIN 0625.XX08

Announcement of Best Global Practices Award

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces the implementation of the Best Global Practices Award by the International Trade Administration (ITA) of the Department of Commerce to recognize the programs and practices of U.S. companies that have exhibited extraordinary leadership and accomplishment in corporate citizenship in overseas activities. This notice sets forth the criteria for the award, who may apply, how companies may apply, the procedures by which the Secretary of Commerce will decide on who will receive the award, and the expected timetable.

DATES: The closing date for applications is October 11, 1996. The Department of Commerce expects to announce the winner or winners of the award in the fall of 1996.

ADDRESSES: Request for Applications: Application forms will be available from ITA starting on the day this notice is published. To obtain a copy of the application form please telephone (202) 482–4501, or facsimile (202) 482–1999 (these are not toll free numbers); or send a written request with two self-addressed mailing labels to the Office of Export Promotion Coordination, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2003, Washington, D.C. 20230. You may call 1–800–USA-TRADE and follow the voice prompt to have the application faxed directly to you. You also may go to the International Trade Administration Internet Home Page http://www.ita.doc.gov/itahome.html, click on Best Global Practices and down load the application form. You can use any of these methods to access sample codes of conduct donated by international companies and organizations interested in furthering good corporate citizenship worldwide. Only one copy of the application form will be provided to each organization requesting it, but it may be reproduced by the requester. An original and two copies of the application and supplemental material are to be sent to the Office of Export Promotion Coordination, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2003, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: David C. Bowie, Deputy Director, Office of Export Promotion Coordination, tel. (202) 482–4501. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On May 26, 1995, President Clinton announced the adoption of Model Principles for U.S. firms in their oversees operations, as follows:

Model Business Principles

Recognizing the positive role of U.S. business in upholding and promoting adherence to universal standards of human rights, the Administration encourages all businesses to adopt and implement voluntary codes of conduct for doing business around the world that cover at least the following areas:

1. Provision of a safe and healthful workplace.

2. Fair employment practices, including avoidance of child and forced labor and avoidance of discrimination based on race, gender, national origin or religious beliefs; and respect for the right of association and the right to organize and bargain collectively.

3. Responsible environmental protection and environmental practices.

4. Compliance with U.S. and local laws promoting good business practices, including laws prohibiting illicit payments and ensuring fair competition.

5. Maintenance, through leadership at all levels, of a corporate culture that respects free expression consistent with legitimate business concerns, and does not condone political coercion in the workplace; that encourages good corporate citizenship and makes a positive contribution to the communities in which the company operates; and where ethical conduct is recognized, valued and exemplified by all employees.

In adopting voluntary codes of conduct that reflect these principles, U.S. companies should serve as models, encouraging similar behavior by their partners, suppliers, and subcontractors.

Adoption of codes of conduct reflecting these principles is voluntary. Companies are encouraged to develop their own codes of conduct appropriate to their particular circumstances. Many companies already apply standards or codes that incorporate these principles. Companies should find appropriate means to inform their shareholders and the public of actions undertaken in connection with these principles. Nothing in the principles is intended to require a company to act in violation of host country or U.S. law. "This statement of principles is not intended for legislation."

The Best Global Practices award will be presented to a company that has established programs that show leadership and accomplishment in meeting the goals of one or more of these five Model Principles during the company's last three years of operations.

Who may apply: Any U.S. company may apply for the award. For purposes of this award, a U.S. company is defined as one that is incorporated in the United States. A U.S. company may apply on its own behalf, and outside organizations and individuals may apply on behalf of an eligible company (with that company's consent).

Selection of award winners: The Secretary of Commerce will select a winner or winners with the advice of an interagency group consisting of representatives from the Departments of Justice, State, Labor, and the Environmental Protection Agency. The Secretary may also seek the advice of private sector experts in the fields covered by the Model Business Principles.

How to Apply: Completed applications should be sent to the Office of Export Promotion Coordination, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2003, Washington, D.C. 20230, postmarked not later than October 11, 1996.

Each item set forth in the application form should be addressed. Failure to submit all applicable information may delay processing of the application. Supplemental materials (annual reports, documentary material, etc.) are encouraged. Inquiries regarding the application process should also be forwarded to this office. Applicants will be notified by mail of the receipt of their applications and also any deficiencies in the application. When the award process is complete, all applicants will be notified by mail.

Information collection: The information is being collected in order to allow the Department of Commerce to judge applicants for the Best Global Practices Award. The information submitted by applicants will be used by the Department and the panel of judges drawn from government agencies to select the applicant whose conduct best exemplifies the Best Global Practices. The information called for in the application is voluntary, but must be submitted in order to be considered for the Best Global Practices Award. Applicants are advised not to include business confidential information because confidentiality cannot be guaranteed.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork

Reduction Act unless that collection of information displays a currently valid OMB Control Number.

OMB Control Number 0625–0226, expiration date November 30, 1996.

Dated: September 5, 1996.

David C. Bowie,

Deputy Director, Office of Export Promotion and Coordination.

[FR Doc. 96–23250 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DR–P

Minority Business Development Agency

Solicitation of Business Development Center Applications for Louisville

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice; Solicitation of Business Development Center Applications for Louisville.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Louisville Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Louisville, Kentucky Metropolitan Area. The award number of the MBDC will be 04–10–97003–01.

DATES: The closing date for applications is *October 16, 1996.* Applications must be received in the MBDA Headquarters' Executive Secretariat on or before *October 16, 1996.* A pre-application conference will be held on *October 2, 1996,* at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516, Telephone Number: (404) 730–3300. Proper identification is required for entrance into any Federal building.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, Telephone Number: (202) 482–3763.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from January 1, 1997 to January 31, 1998, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combination thereof.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key

individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: September 6, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–23336 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Application: State of South Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate a Statewide Minority Business Development Center (SMBDC) for approximately a 3-year period, subject to agency priorities, recipient performance and the availability of funds.

The SMBDC will provide business development services to both South Carolina's urban and rural minority business communities to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of rural minority individuals and firms; to offer a full range of management and technical assistance to both urban and rural minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

The SMBDC will operate throughout the State of South Carolina. The headquarters of the SMBDC will be located in Columbia, South Carolina. The award number for this SMBDC will be 04–10–97002–01.

DATES: The closing date for applications is October 15, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before October 15, 1996. A pre-application conference to assist all interested applicants will be held on October 2, 1996, at 9:00 a.m., at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, N.W., Room 1715, Atlanta, Georgia 30308–3516.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., room 5073, Washington, D.C. 20230, telephone number (202) 482–3763.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson, Regional Director, Atlanta Regional Office, (404) 730–3300. Proper identification is required for entrance into any Federal Building.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from January 1, 1997 to January 31, 1998, is estimated at $818,277. A 30-day start-up period will be added to the first budget period, making it a 13-month award. The application must include a minimum cost-share of $122,742, (15%) of the total project cost, through non-Federal contributions. The Federal share, to be in the amount of $695,535, includes $17,388 for an annual audit fee. Cost-sharing may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American

Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points); the resources available to the firm in providing both rural and urban business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDC program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The SMBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the SMBDC may charge client fees for management and technical assistance (M&TA) rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

If an application is selected for funding, DOC has no obligation to provide any additional future funding beyond the initial award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Awards under this program shall be subject to all Federal laws, Federal and Departmental regulations, policies and procedures applicable to Federal assistance awards.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the SMBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, or a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance Number: 11.800 Minority Business Development Center)

Dated: September 9, 1996.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–23400 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 090396A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that two letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on August 23 and 30, 1996, respectively, to the Amerada Hess Corporation and The Louisiana Land and Exploration Company, both of Houston, TX.

EFFECTIVE DATE: These letters of authorization are effective for 1 year from the date of issuance.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Summary of Request

NMFS received requests for letters of authorization on August 21, 1996, from the Amerada Hess Corporation, and August 28, 1996, from The Louisiana Land and Exploration Company. These letters requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of these letters of authorization is based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: September 6, 1996.

Rennie S. Holt,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–23403 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 090696A]

Atlantic Large Whale Take Reduction Team Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The first meeting of the Atlantic Large Whale Take Reduction Team (TRT) will be held to address bycatch of large baleen whales, specifically the northern right whale (*Eubalaena glacialis*) and the humpback whale (*Megaptera novaeangliae*) in the following fisheries: The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery, the mid-Atlantic coastal gillnet fishery, the southeastern U.S. Atlantic shark gillnet fishery, and the Gulf of Maine sink-gillnet fishery. The bycatch of minke whales (*Balaenoptera acutorostrata*), fin whales (*Balaenoptera physalus*), and other large whales in these fisheries will also be discussed.

DATES: The first meeting of the team will be held on September 16–17, 1996 from 9 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at Tara's Ferncroft Conference Resort, 50 Ferncroft Road, Danvers, MA, 01923, (508) 777–2500.

FOR FURTHER INFORMATION CONTACT: Dr. Kathy Wang, Southeast Regional Office, NMFS, (813) 570-5312, or Dr. Sal Testaverde, Northeast Regional Office, NMFS, (508) 281-9368, or Michael Payne, Office of Protected Resources, NMFS, (301) 713-2322.

SUPPLEMENTARY INFORMATION: On August 6, 1996, NMFS published notice of the establishment of the Atlantic Large Whale TRT (61 FR 40819). Section 118(f) of the Marine Mammal Protection Act (MMPA) requires NMFS to establish a TRT to prepare a draft Take Reduction Plan designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries.

NMFS has scheduled the first meeting (see **DATES** and **ADDRESSES**). The TRT will be facilitated by Abby Dilley, The Keystone Center, Washington, DC. The TRT will hold at least four meetings to develop a TRP focusing on reducing bycatch in these fisheries.

TRTs are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). This meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Wang at (813) 570–5312 by September 12, 1996.

Dated: September 6, 1996.

Rennie S. Holt,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–23252 Filed 9–6–96; 3:01 pm]

BILLING CODE 3510–22–F

[I.D. 090496A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish

Management Team will hold a public meeting.

DATES: The meeting will be held on September 16 beginning at 1 p.m. and may go into the evening until business for the day is completed, and on September 17, 18 and 19 from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the draft stock assessments, prepare the annual stock assessment and fishery evaluation document, prepare final recommendations for management of the groundfish fisheries in 1997, including review of sablefish and Pacific whiting management plans.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 5, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23255 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 090596C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council will convene a public meeting of its salmon stock review team for Puget Sound chinook and Strait of Juan de Fuca coho salmon stocks.

DATES: The meeting will be held on September 25, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Conference Center of the Northwest Indian Fisheries Commission, 6700 Martin Way East, Olympia, WA; telephone: (360) 438–1180.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to complete a review of the status of some Puget Sound chinook and Strait of Juan de Fuca coho stocks as required under the Council's salmon fishery management plan when a stock fails to meet its spawning escapement objective for 3 consecutive years. This is expected to be the final meeting of the group.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 6, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23404 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 090696I]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 5 to permit 848 (P507D) and modification 7 to permit 825 (P513).

SUMMARY: Notice is hereby given that NMFS has issued modifications to two permits that authorize takes of Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein, to the Washington Department of Fish and Wildlife (WDFW) at Olympia, WA and the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The modifications to permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on July 19, 1996 (61 FR 37722) that an application had been filed by WDFW (P507D) for modification 5 to scientific research/enhancement permit 848. Modification 5 to permit 848 was issued to WDFW on September 6, 1996. Permit 848 authorizes WDFW annual takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at the Tucannon River Fish Hatchery. For Modification 5, WDFW is authorized an increase in the number of hatchery smolts to be released annually in the upper watershed of the Tucannon River. Also for modification 5, WDFW is authorized to retain all of the adult, ESA-listed, natural-origin salmon that return to the hatchery adult trap each year for broodstock if the total annual adult returns to the trap is less than 105 fish. If the total annual adult returns to the trap is greater than or equal to 105 fish, WDFW is authorized to retain up to 70 percent of the adult, ESA-listed natural-origin salmon that return to the hatchery adult trap each year for broodstock and to release the remaining percentage of ESA-listed adult salmon above the hatchery trap for natural spawning. Modification 5 to permit 848 is valid for the duration of the permit. Permit 848 expires on March 31, 1998.

Notice was published on July 3, 1996 (61 FR 34800) that an application had been filed by CRITFC (P513) for modification 7 to scientific research permit 825. Modification 7 to permit 825 was issued to CRITFC on August 30, 1996. Permit 825 authorizes an annual take of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with several scientific research studies. For modification 7, CRITFC is authorized an annual take of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to monitor the extent of dissolved nitrogen gas supersaturation effects on outmigrating juvenile anadromous fish in the Snake and Columbia Rivers in the Pacific Northwest. Modification 7 is valid for the duration of the permit. Permit 825 expires on December 31, 1997.

Issuance of the permit modifications, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-

listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: September 6, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–23405 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

September 5, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

On the request of the Government of the Dominican Republic, the U.S. Government agreed to increase the 1996 Guaranteed Access Level for Category 444.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 1359, published on January 19, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 5, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 11, 1996, you are directed to increase the Guaranteed Access Level for Category 444 to 230,000 numbers.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–23251 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

September 9, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62399, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 9, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 16, 1996, you are directed to amend the directive dated November 29, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month Level [1]
218	14,055,844 square meters.
313	41,144,053 square meters.
314	5,678,026 square meters.
315	13,332,512 square meters.
317	32,644,657 square meters.
326	7,606,828 square meters.
334/634	135,821 dozen.

Category	Adjusted twelve-month Level [1]
335/635	461,513 dozen.
336/636	837,398 dozen.
338/339	3,807,699 dozen.
340/640	1,869,892 dozen.
341	4,085,343 dozen of which not more than 2,346,540 dozen shall be in Category 341–Y [2].
342/642	1,333,793 dozen.
345	160,606 dozen.
347/348	656,234 dozen.
351/651	258,829 dozen.
363	39,420,106 numbers.
641	1,170,973 dozen.
647/648	428,188 dozen.
Group II	
200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O [3], 666, 669, 670, and 831–859, as a group.	104,339,969 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 665–O: all HTS numbers except 5702.10.9060, 5702.42.2020, 5702.92.0010 and 5703.20.1000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–23393 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden on the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 12, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Personnel Support, Families and Education/Office of Family Policy), ATTN: Ms. Ollie M. Smith, Ballston Towers #3, Room 917, 4015 Wilson Blvd., Arlington, VA 22203–5190.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 696–1702.

Title, Associated Forms, and OMB Number: Defense Outplacement Referral System (DORS) and the Public and Community Service (PACS) Registry Programs; DD Forms 2580/2580C, 2581 and 2581–1; OMB Number 0704–0324.

Needs and Uses: This information collection is used to enroll separating Service members, their spouses, and DoD civilian personnel in the Defense Outplacement Referral System (DORS). In accordance with 10 U.S.C. 1143 and 1144, the information is provided to private and public employers, including local, state, and Federal employment and outplacement agencies, as notice of available individuals with interest in potential employment. In accordance with 10 U.S.C. 1143(c), the Public and Community Service (PACS) Registry provides registered PACS organizations with information regarding the availability of individuals with interest in working in a PACS organization. The forms associated with this information collection, DD Forms 2580/2580C, 2581, and 2581–1, are used in support of the Department of Defense Programs for employment assistance.

Affected Public: Individuals or households; state, local, or tribal government, businesses or other for-profit, Federal government; not-for-profit institutions.

Annual Burden Hours: 7,767 hours.

Number of Respondents: 26,000.

Responses Per Respondent: 1.46.

Average Burden Per Response: 12.26 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection is needed to satisfy Public Law 101–510, the Defense Department's Fiscal Year 1991 Authorization Act, November 5, 1990, which directed that the Secretary of Defense release to civilian employers, organizations and other appropriate entities, the names (and other pertinent information) of separating members of the Armed Forces, their spouses, and civilian employees who are seeking employment in the civilian sector. The Defense Outplacement Referral System (DORS) has been developed to assist in meeting this need. DD Form 2580/2580C are used to support this effort. This collection is also required to satisfy Public Law 102–484, the Defense Department's Fiscal Year 1993 Authorization Act, October 23, 1992, which directed the Secretary of Defense to maintain a public and community service registry in which separating Service members would be encouraged to enter. DD Forms 2581 and 2581–1 are used to support this effort.

Dated: September 5, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23268 Filed 9–11–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity, Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: October 27–November 2, 1996.

ADDRESSES: The meeting will be preceded by visits to DoD overseas schools in Okinawa, Japan, and Korea, October 27–31. The formal meeting will be held November 1–2 at the New Sanno Hotel in Tokyo, Japan.

FOR FURTHER INFORMATION CONTACT: Ms. Marilee Fitzgerald or Ms. Amy Huffman, DoD Education Activity, 4040 N. Fairfax Drive, Arlington, Virginia 22203–1635; Telephone number: 703–696–4235, extension 101/extension 100.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Departments, 12 members are appointed jointly by the Secretaries of Defense and Education. Members include representatives of educational institutions and agencies, professional employee organizations and unions, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDEA, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes update on DoDEA math curriculum, minority recruitment, student achievement, and implementation of national standards.

Dated: September 6, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23270 Filed 9–10–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the Military Health Care Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Military Health Care Advisory Committee. This is the fifth meeting of the Committee. The purpose of the meeting is to advise the Assistant Secretary of Defense (Health Affairs) and the Military Services on opportunities as well as potential solutions and strategies for the challenges facing the Military Health Services System.

A meeting session will be held and will be open to the public.

DATES: October 7, 1996.

ADDRESSES: Andrews Air Force Base, Garden Room in the Andrews Officers' Club, Bldg. 1352, Andrews Air Force Base, (Allentown Road), Washington, DC, unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Christopherson, Senior Advisor, or Commander Sidney Rodgers, MSC, USN, Special Assistant to PDASD (HA), Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 8:00 am and 5:00 pm, on Monday, October 7, 1996. Contact Elaine L. Powell, CMP in the MHCAC Conference Support Office at (703) 575–5024, at least 24 hours prior to the meeting to gain access to the base.

Dated: September 5, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23269 Filed 9–10–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Amendment to Notice of Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Amendment to notice of meeting.

SUMMARY: This amends the notice of an open meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans published on August 14, 1996, in Vol. 61, No. 158, page 42235. The meeting scheduled for September 4 and 5, 1996, has been postponed. The new meeting dates and times are September 26, 1996, form 9 a.m. (EDT) until 5 p.m. (EDT), and September 27, 1996, from 9 a.m. (EDT) until 5 p.m. (EDT). The new location is not yet available, but you may call Alfred Ramirez on (202) 401–1411 closer to the date of the meeting for that information.

Dated: September 9, 1996.

Edward M. Augustus, Jr.,

Acting Assistant Secretary.

[FR Doc. 96–23484 Filed 9–11–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Certification of the Radiological Condition of the C.H. Schnoor Site, Springdale, Pennsylvania

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed remedial action to decontaminate the C.H. Schnoor site in Springdale, Pennsylvania. Formerly, the property was found to contain quantities of residual radioactive material resulting from activities conducted at the site by the owner under contract to DOE's predecessors. Radiological surveys show that the property now meets applicable requirements for use without radiological restrictions.

ADDRESSES: The certification docket is available at the following locations:

Public Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831,

Springdale Free Public Library, 331 School Street, Springdale, Pennsylvania 15144.

FOR FURTHER INFORMATION CONTACT: John C. Lehr, Acting Director, Office of Eastern Area Programs, Office of Environmental Management, U.S. Department of Energy, Washington, D.C. 20585, (301) 903–2328 Fax: (301) 903–2385.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE), Office of Environmental Management, has conducted remedial action at the C.H. Schnoor site in Springdale, Pennsylvania, as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and clean up or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District/Atomic Energy Commission, during the early years of the nation's atomic energy

program. In 1992, the C.H. Schnoor site was designated for remediation as part of FUSRAP.

During the 1940s, the property was owned by C.H. Schnoor and Company and was used to machine extruded uranium for the Hanford Pile Project, a project with the objective of producing an alternate charge for the Hanford Reactor in the State of Washington. The uranium operation may have continued until the spring of 1951, when the building was sold to a manufacturer of toys and coat hangers. In 1967, the property was acquired by the Unity Railway Supply Company, which founded the Premier Manufacturing Company and used the site to manufacture journal lubricators for railroad cars. The current occupant, Conviber, Inc., uses the site for the fabrication of industrial drive and conveyor belts. In October 1980, a radiological scanning survey was conducted by DOE and Argonne National Laboratory. Because much of the floor was inaccessible for surveying and because of the lack of definitive records documenting the use of the site, DOE directed that an additional more comprehensive survey be performed. This survey was conducted by Oak Ridge National Laboratory in 1989 and 1990. From October through December 1993, Oak Ridge National Laboratory and Bechtel National Inc. performed additional radiological surveys of the interior of the concrete building to thoroughly characterize the building before remediation efforts began. Most of the contamination was in the soil beneath the concrete slab, and isolated areas of surface contamination were detected on a portion of the concrete floors. Based on these characterization data, DOE conducted remedial action at the C.H. Schnoor site from August to October 1994.

Post-remedial action surveys have demonstrated and DOE has certified that radiological conditions at the subject property comply with DOE radiological decontamination criteria and standards. The standards are established to protect members of the public and occupants of the property and to ensure that future use of the property will result in no radiological exposure above applicable guidelines. Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays) in the DOE Public Reading Room, located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee 37831 and at the Springdale Free Public Library, 331 School Street, Springdale, Pennsylvania 15144.

The Department, through the Oak Ridge Operations Office, Former Sites Restoration Division, has issued the following statement:

Statement of Certification: C.H. Schnoor Site in Springdale, Pennsylvania

DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the C.H. Schnoor Site, 644 Garfield Street [Parcel 733–A–182, filed in Deed/Plat Book (Colfax Plan 117), Page 281 in the records of Allegheny County, Pennsylvania]. Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination which remains onsite falls within current guidelines for use without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the property will result in no radiological exposure above current radiological guidelines established to protect members of the general public as well as occupants of the site.

Property owned by Mr. and Mrs. Frank Pucciarelli, 644 Garfield Street, Springdale, Pennsylvania 15144.

Issued in Washington, D.C., on September 4, 1996.

James M. Owendoff,

Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 96–23353 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM97–1–48–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets to become effective October 1, 1996:

Second Revised Volume No. 1

Fifteenth Revised Sheet No. 17
First Revised Sheet NO. 162C

Original Volume No. 2

Eighth Revised Sheet No. 14

ANR states that the above-referenced tariff sheets are being filed to reflect a decrease in the Annual Charge Adjustment (ACA) rate as permitted by Section 24 of its Second Revised Volume No. 1 FERC Gas Tariff. Pursuant to Order No. 472, the Commission has assessed ANR its ACA unit rate of $0.0020 per Dth. The new ACA rate to be charged by ANR will be effective October 1, 1996.

In addition, ANR submits in this filing First Revised Sheet No. 162C, which contains two appropriate ACA-related tariff changes to GT&C Section 24. ANR has updated its tariff to reference the new section number of the Commission's Rules and Regulations related to ACA expenditures. Also, due to the termination of several X-Rate schedules, ANR has updated the ACA reference to applicable Original Volume No. 2 sheets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Inspection Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23288 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–20–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

First Revised Sheet No. 68G
Original Sheet No. 68G.1

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's August 2, 1996 Order Authorizing Abandonment and Determining Jurisdictional Status of

Facilities, in the captioned proceeding. ANR states that the revised tariff sheets address "Standards of Conduct" regarding ANR's affiliate, ANR Field Services Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23306 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–369–000, RM96–14–001]

The Brooklyn Union Gas Company and Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application of the Brooklyn Union Gas Company to Participant in Pilot Program

September 6, 1996.

Take notice that on August 30, 1996, The Brooklyn Union Gas Company (Brooklyn Union) tendered for filing an application requesting (1) blanket authorization to release Part 284 firm transportation capacity it holds on Transcontinental Gas Pipe Line Corporation (Transco) at market-based rates, including prices which may exceed Transco's maximum tariff rates when competitive conditions in secondary markets for pipeline capacity permit or require, and (2) a limited waiver of certain terms, conditions and reporting requirements set forth in the Commission's July 31, 1996 "proposed Experimental Pilot Program To Relax The Price Cap For Secondary Market Transactions" in Docket No. RM96–14–001.

Any person desiring to comment on or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 (18 CFR 385.211 and 385.214). All such motions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23299 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–371–000 and RM96–14–001]

Central Hudson Gas & Electric Corporation and Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application of Central Hudson Gas & Electric Corporation to Participate in Pilot Program

September 6, 1996.

Take notice that on August 30, 1996, Central Hudson Gas & Electric Corporation (Central Hudson) filed an application in the above docket for permission to participate in the Commission's Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions (Pilot Program) issued in Docket No. RM96–14–001 on July 31, 1996.

Central Hudson states that it meets the Commission's requirements for participation in the Pilot Program. First, Central Hudson has filed information with the Commission showing why it cannot exercise market power in the relevant geographic area. Second, Central Hudson offers open access transmission service on its local distribution facilities pursuant to a State-required program. Finally, Central Hudson has agreed to provide the Commission with certain information required for participation in the Pilot Program.

Any person desiring to comment on or to protest the Applicants' filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or wishing to participate as a party in any hearing, must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23298 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1996:

Second Revised Volume No. 1

11th Revised Sheet No. 31
20th Revised Sheet No. 32
20th Revised Sheet No. 33
11th Revised Sheet No. 35
11th Revised Sheet No. 36

Original Volume No. 2

Ninth Revised Sheet Nos. 250 and 290

Original Volume No. 2A

Ninth Revised Sheet Nos. 28 and 35

CNG states that the purpose of this filing is to update CNG's ACA unit surcharge, consistent with its ACA clause (General Terms and Conditions, Section 14). As provided by Section 154.402 of the Commission's regulations, CNG asserts that it may adjust its ACA unit surcharge each year, to reflect the calculation of annual charge bills for the subsequent fiscal year. The effect of the proposed revision in this instance is to reduce CNG's usage-related surcharge, from the current level of $0.0022 per Dt, to $0.0020 per Dt.

CNG states that copies of its filing are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23293 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1996:

Sixteenth Revised Sheet No. 25
Sixteenth Revised Sheet No. 26
Sixteenth Revised Sheet No. 27
Seventeenth Revised Sheet No. 28

On July 29, 1996 Columbia received an Annual Charge billing from the Commission for the fiscal year 1996 in the amount of $2,311,622, consisting of a computed fiscal year 1996 charge of $2,332,879 and a credit adjustment of $21,257 for decreased costs experienced by the Commission during fiscal year 1995. Said billing also indicated that the Annual Charge Adjustment (ACA) to be applied to rates commencing October 1, 1, 1996 is $0.00203 per Mcf. By the instant filing, in accordance with Section 34 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, Columbia proposes to track the ACA Unit Surcharge for fiscal year 1996, as adjusted. The adjusted ACA Unit Surcharge, which gives effect to the Commission's prior fiscal year adjustment, is $0.00203 per Mcf or $0.0020 per Dth on Columbia's system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23294 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–70–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1996.

Fourteenth Revised Sheet No. 018
Fifteenth Revised Sheet No. 019

On July 29, 1996 Columbia Gulf received an Annual Charge billing from the Commission for the fiscal year 1996 in the amount of $1,694,737, consisting of a computed fiscal year 1996 charge of $1,711,217 and a credit adjustment of $16,480 for decreased costs experienced by the Commission during fiscal year 1995. Said billing also indicated that the Annual Charge Adjustment (ACA) to be applied to rates commencing October 1, 1996 is $0.00203 per Mcf. By the instant filing, in accordance with Section 32 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, Columbia Gulf proposes to track ACA Unit Surcharge for fiscal year 1996, as adjusted. The adjusted ACA Unit Surcharge, which gives effect to the Commission's prior fiscal year adjustment, is $0.00203 per Mcf or $0.0020 per Dth on Columbia Gulf's system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23287 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–2–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, East Tennessee Gas Transmission Company (East Tennessee) tendered for filing its current Annual Charge Adjustment (ACA).

East Tennessee states the purpose of the filing is to reflect that there is no change to the ACA surcharge to its commodity rates for the period October 1, 1996 through September 30, 1997. The ACA surcharge is currently $.0022/Dth and will remain at this level through September 30, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23280 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA97–1–23–000 and TM97–3–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised

tariff sheets, with a proposed effective date of November 1, 1996.

Eastern Shore states the subject filing is Eastern Shore's annual PGA filing as required by Section 21 of the General Terms and Conditions (GT & C) of Eastern Shore's FERC Gas Tariff and consists of the calculation of a current adjustment for the commodity purchased gas cost component of Eastern Shore's jurisdictional sales rates and calculations of Eastern Shore's annual demand and commodity surcharges to amortize its Account No. 191 Unrecovered Purchased Gas Cost.

Eastern Shore further states that pursuant to Section 23 of the GT & C of Eastern Shore's FERC Gas Tariff, Eastern Shore has also calculated current adjustments for the demand and commodity transportation cost component of its jurisdictional sales rates and the annual demand and commodity surcharges to amortize its Account No. 191 Unrecovered Transportation Cost.

Eastern Shore states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23302 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–741–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 26, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–741–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point for West Florida Natural Gas Company (WFNG) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, FGT proposes to construct, operate, and own a new delivery point at or near mile post 487.8 on its existing 30-inch mainline in Lafayette County, Florida, to accommodate natural gas deliveries to the State of Florida Mayo Prison. FGT also proposes to add the delivery point to an existing firm gas transportation service agreement by and between FGT and the State of Florida, Department of Corrections under FGT's FTS–1 Rate Schedule. FGT indicates that the delivery point will consist of a 2-inch tap, minor connecting pipe, electronic flow measurement equipment, and any related appurtenant facilities necessary for FGT to deliver gas up to 60 MMBtu per hour at line pressure. WFNG will reimburse FGT for the $57,000 estimated construction costs. FGT further states that WFNG will construct, own, and operate the meter and regulation station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23279 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–110–000]

Iroquois Gas Transmission System, L.P.; Notice of Annual Charge Adjustment Filing

September 6, 1996.

Take notice that on August 30, 1996 Iroquois Gas Transmission System, L.P. tendered a letter to the Federal Energy Regulatory Commission advising that the Annual Charge Adjustment surcharge for the Fiscal Year commencing October 1, 1996 would remain unchanged. Iroquois states that the ACA surcharge will remain at $0.0023 per Dth

Iroquois states that copies of the filing were served upon all jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23283 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–99–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective October 1, 1996:

First Revised Volume No. 1

Sixth Revised Sheet No. 5
Sixth Revised Sheet No. 6

Kern River states that the purpose of this filing is to update Kern River's tariff to reflect the Commission approved Annual Charge Adjustment (ACA) surcharge of $.0020 per Mcf to be

effective for the twelve-month period beginning October 1, 1996.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23284 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–137–000]

Midwest Gas Storage Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Midwest Gas Storage Inc., tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, with a proposed effective date of October 1, 1996:

First Revised Sheet No. 4

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and flow through to their customers the Annual Charge Adjustment (ACA), as determined each year by the Commission. Midwest seeks to revise its tariff to reflect the 1996 ACA unit charge approved by the Commission of $0.0020 per Mcf; under Midwest's tariff, this equates to an ACA unit charge of $0.0020 per Dth.

Midwest further states that it has served a copy of this application upon all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23282 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–5–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing of its FERC Gas Tariff, Second Revised Volume No. 1, Sixth Revised Sheet No. 5. Midwestern requests an effective date of October 1, 1996.

Midwestern states that the tariff sheet reflects a decrease of $.0001 per Dth in the Annual Charge Adjustment (ACA) surcharge, resulting in a new ACA surcharge of $.0022/Dth.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23300 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–16–00]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996 National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 1996:

Seventeenth Revised Sheet No. 5
Twelfth Revised Sheet No. 5A
Fourteenth Revised Sheet No. 6
Eighth Revised Sheet No. 6A
Alt. Eighth Revised Sheet No. 6A

National declares that the purpose of this filing is to state the Annual Charge Adjustment (ACA) unit surcharge authorized by the Commission for Fiscal 1997 is $.0023 per Mcf or $.0023 per Dth when converted to National's measurement basis.

National states that copies of this filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 96–23296 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–8–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 6, 1996.

Take notice that on August 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eleventh Revised Sheet No. 5A, with a proposed effective date of September 1, 1996.

National states that under Article II, Section 2, of the approved settlement in the above-captioned proceedings, National is required to recalculate monthly the maximum Interruptible Gathering ("IG") rate and charge that rate on the first day of the following month if the result is an IG rate 2 cents above or below the IG rate. The recalculation produced an IG rate of 12 cents per dth.

National further states that pursuant to Article II, Section 4, National is required to file a revised tariff sheet in a Compliance Filing each time the effective IG rate is revised within 30 days of the effective date of the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23301 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–200–009]

NorAm Gas Transmission Company; Notice of Filing

September 6, 1996.

Take notice that on September 3, 1996, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective September 1, 1996:

Fifth Revised Sheet No. 7

NGT states that this tariff sheet is filed herewith to reflect specific negotiated rate transactions for the month of September, 1996.

Any person desiring to protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23303 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–200–008]

NorAm Gas Transmission Company; Notice of Compliance Filing

September 6, 1996.

Take notice that on August 30, 1996, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective as shown:

Effective April 1, 1996:

Second Substitute First Revised Sheet No. 7

Effective May 1, 1996:

Substitute Second Revised Sheet No. 7

Effective June 1, 1996:

First Revised Substitute Second Revised Sheet No. 7

NGT states that these revised tariff sheets are filed herewith to comply with the Commission's order dated August 21, 1996, in Docket No. RP96–200–005.

Any person desiring to protest the proposed tariff sheets should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23304 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–753–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 29, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–753–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a delivery point for Enron Capital and Trade Resources (ECT) in Pecos County, Texas under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate a delivery point for ECT in order to provide up to 500 MMBtu on a peak day and 40,000 MMBtu annually, under currently effective agreements, to a commercial customer in Pecos County, Texas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23276 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–73–000]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Ozark Gas Transmission System (Ozark) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume

No. 1, the following revised tariff sheet, with a proposed effective date of October 1, 1996:

Fourteenth Revised Sheet No. 4

Ozark states that it is amending its transmission rate schedules to reflect the Commission-authorized Annual Charge Adjustment unit charge of $.0020 per MMBtu. Ozark states that this is a $.003 reduction from the currently effective ACA unit charge. Ozark states that its filing is submitted pursuant to Section 154.38(d) of the Commission's Regulations and Section 11 of the General Terms and Conditions of Ozark's FERC Gas Tariff, First Revised Volume No. 1.

Ozark states that copies of this filing were served on Ozark's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23286 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–352–000; Docket No. RM96–14–001]

Pacific Gas and Electric Company, Southern California Gas Company, Transwestern Pipeline Company; Secondary Market Transaction on International Natural Gas Pipelines; Notice of Application of Pacific Gas and Electric Company, Southern California Gas Company, and Transwestern Pipeline Company to Participate in Pilot Program

September 6, 1996.

Take notice that on August 30, 1996, Transwestern Pipeline Company, Southern California Gas Company, and Pacific Gas and Electric Company, pursuant to the Commission's July 31, 1996 Order in the above-referenced docket, submitted an application to participate in the pilot program lifting the price cap for release capacity, and interruptible and short-term firm capacity.

Any person desiring to comment on or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23281 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–41–000]

Paiute Pipeline Company; Notice of Change in Annual Charge Adjustment

September 6, 1996.

Take notice that on August 30, 1996, Paiute Pipeline Company (Paiute) tendered for filing and acceptance to be a part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, with a proposed effective date of October 1, 1996:

2nd Rev. Third Revised Sheet No. 10

Paiute states that the purpose of this filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1996 fiscal year.

Paiute states that copies of this filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211, 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23290 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–28 000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective October 1, 1996.

Panhandle states that the purpose of this filing, which is made in accordance with Section 154.402 of the Commission's Regulations, is to reflect the Federal Energy Regulatory Commission's change in the unit rate for the Annual Charge Adjustment surcharge to be applied to rates for recovery of 1996 Annual Charges pursuant to order No. 472 in Docket No. RM87–3–000. This filing complies with the provisions of Section 18.2 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The surcharge attributable to fiscal year 1996 program costs is $0.0020 per Mcf ($0.0020 per Dt. to reflect Panhandle's billing unit) of natural gas transported.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23292 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–18–000]

Richfield Gas Storage System; Notice of Filing

September 6, 1996.

Take notice that on August 30, 1996, Richfield Gas Storage System submitted standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

Richfield states that it served copies of its standards of conduct on all of its firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 23, 1996. Protests will be considered by the Commission in determining the appropriation action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23275 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. MT96–28–000]

Richfield Gas Storage System; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Richfield Gas Storage System (Richfield) submitted for filing as part of its FERC Gas Tariff, Substitute Volume No. 1, the following revised tariff sheets, with a proposed effective date of September 29, 1996:

First Revised Sheet No. 32
Original Sheet No. 41A

Richfield states that the above listed tariff sheets are being filed to make the language in Richfield's tariff consistent with Richfield's Statement of Standards of Conduct which is being filed concurrently herewith. Richfield also states that it is filing a Statement of Standards of Conduct to reflect that Richfield has one marketing affiliate. Richfield also states that Richfield and its marketing affiliate function independently of each other. Richfield also states that other than telephone equipment, a mainframe computer system and a Local Area Network, Richfield does not share any facilities or operating personnel with its marketing affiliate.

Richfield states that copies of the filing were served on all firm customers of Richfield and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23305 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–6–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Sea Robin Pipeline Company (Sea Robin) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheet, with a proposed effective date of October 1, 1996:

Third Revised Sheet No. 7
Third Revised Sheet No. 8
Third Revised Sheet No. 9

Sea Robin states that the aforesaid tariff sheets implement the Federal Energy Regulatory Commission's (Commission) revised Annual Charge Adjustment (ACA) of .20¢ per MMBtu. This represents a decrease of .03¢ per MMBtu in the ACA charge from the current level of .23¢ per MMBtu.

Sea Robin states that copies of Sea Robin's filing were served upon all of Sea Robin's customers, affected commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214, 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23297 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–27–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

September 6, 1996.

Take notice that on August 30, 1996, Tennessee Gas Pipeline Company (Tennessee), submitted for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective on September 30, 1996:

Third Revised Sheet No. 401

Tennessee states that the purpose of this filing is to update the listing of shared operating personnel between Tennessee and its marketing affiliates.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23274 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–750–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 28, 1996, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 43201 filed in Docket No. CP96–750–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for approval and permission to replace and relocate an existing delivery point in Hancock County, Kentucky, under the blanket certificate issued in Docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it proposes to replace and relocate its Hawesville No. 1 delivery point which is used to serve customers of Western Kentucky Gas (WKG), a local distribution company in the Hawesville, Kentucky area. Texas Gas further states that the delivery point Texas Gas proposes to replace and relocate was originally constructed in 1931 by the Missouri-Kansas Pipe Line Company, a predecessor company of Texas Gas. It is asserted that the proposed relocation of this delivery point will correct certain operational and maintenance problems as the location of the side valve which serves this delivery point is subject to flooding.

Any person or Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23277 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets contained in Appendix A, to the filing.

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 23 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0018/Mcf ($.0018/MMBtu converted) as set forth on Texas Gas's Annual Charges Bill for fiscal year 1996, to be effective October 1, 1996.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23295 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–42–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1996:
117th Revised Sheet No. 5
22nd Revised Sheet No. 5A
14th Revised Sheet No. 5A.02
14th Revised Sheet No. 5A.03
19th Revised Sheet No. 5B

Transwestern states that the referenced tariff sheets are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to Section 23 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23289 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective October 1, 1996.

Trunkline states that the purpose of this filing, which is made in accordance with Section 154.402 of the Commission's Regulations, is to reflect the Federal Energy Regulatory Commission's change in the unit rate for the Annual Charge Adjustment surcharge to be applied to rates for recovery of 1996 Annual Charges pursuant to Order No. 472 in Docket No. RM87–3–000. This filing complies with the provisions of Section 21 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The surcharge attributable to fiscal year 1996 program costs is $0.0020 per Mcf ($0.0019 per Dt. to reflect Trunkline's billing unit) of natural gas transported.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23291 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–745–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 26, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–745–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon by sale in place to Williams Energy Services Company approximately 52.8 miles of 12-inch pipeline located in Kay and Osage Counties, Oklahoma, and to abandon in place approximately 4.1 miles of 2-inch pipeline located in Osage County, Oklahoma, in accordance with the authority granted to WNG in its blanket certificate issued in Docket No. CP82–479–000 pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

WNG states that customers affected by the abandonment of the pipelines have been transferred to an adjacent 16-inch pipeline or converted to propane. It is stated that the costs associated with the abandonments are estimated to be $1,000. WNG indicates that the sales price of the 12-inch pipeline is $40,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23278 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–76–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, Wyoming Interstate Company, Ltd. (WIC) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1996:

First Revised Volume No. 1

Fifth Revised Sheet No. 5

Second Revised Volume No. 2

Fifth Revised Sheet No. 4
Seventh Revised Sheet No. 5

WIC states that the tariff sheets reflect a decrease in the ACA adjustment charge, resulting in a new ACA rate of $0.0019 per Dth based on WIC's 1996 ACA billing.

WIC requests that the new $0.0019 cent per Dth ACA charge be effective October 1, 1996.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23285 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders for the Week of October 16 Through October 20, 1995

During the week of October 16 through October 20, 1995, the decisions and orders summarized below were issued with respect to appeals,

applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 29, 1996

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585

Decision List No. 942

Week of October 16 through October 20, 1995.

Appeals

Cohen & Cotton, 10/18/95, VFA–0082

Cohen & Cotton filed an Appeal from a denial by the Western Area Power Administration (WAPA) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the document requested by Cohen & Cotton, a Preliminary Real Estate Plan, did not exist because it was not WAPA's customary practice to prepare such a document. Since no responsive document exists, the Appeal was denied.

Portland General Electric Company, 10/20/95, VFA–0084

Portland General Electric Company (PGE) filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a Request For Information that it had submitted under the Freedom of Information Act. PGE maintained that additional responsive documents must exist. In considering the Appeal, the DOE found that BPA had misconstrued the scope of PGE's request. Accordingly, the Appeal was granted in part and the matter was remanded to BPA with directions to issue a new determination after consulting with PGE concerning the scope of its request.

Personnel Security Hearing

Albuquerque Operations Office, 10/17/95, VSO–0040

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. After carefully considering the record of the proceeding in view of the standards set forth in Part 710, the Hearing Officer found that the individual uses alcohol habitually to excess, based on his long history of alcohol dependence and evidence that he continues to drink heavily, and that his alcohol use constitutes a mental illness that causes a significant defect in judgment and reliability. The Hearing Officer also found that the individual has engaged in unusual conduct, particularly with respect to willfully breaching the terms of a plea bargain agreement, that tends to show that he is not honest, trustworthy, or reliable. The DOE's security concerns regarding these behaviors were not overcome by any evidence mitigating the derogatory information underlying the DOE's charges. Accordingly, the Hearing Officer found that the individual should not be granted access authorization.

Refund Application

Texaco Inc./L & R Texaco, 10/17/95, RF321–17243

The Department of Energy (DOE) issued a Decision and Order granting in part an application that was filed by L & R Texaco (L & R). L & R was a partnership, and the application was filed by the surviving partner and three children of the other partner, who died intestate. The DOE granted the application as it pertained to the surviving partner, but denied the application as it pertained to the children of the deceased partner, finding that, under the applicable state law, the deceased partner's refund should go to his widow, and not to the children.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Adams County Co-Op, et al	RF272–94118	10/17/95
LTV Energy Products, et al	RF272–78116	10/20/95
Racine County, WI, et al	RF272–97545	10/17/95
Simeone Corporation	RF272–77896	10/17/95
Statler Tissue Co., et al	RK272–518	10/17/95
Texaco Inc./Donald E. Foster	RF321–12205	10/20/95
Chain Oil Co	RF321–12208	
Texaco Inc./Pattersons's Texaco	RF321–20746	10/20/95
Van Brunt Texaco	RF321–20766	
Wolk Properties, et al	RF272–77655	10/17/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Crane, TX	RF272–86292
Goodhue Lumber Company	RF300–21437
Government Accountability Project	VFA–0090
Hill Brothers Atlantic	RF304–15055
Kenville Bus Co., Inc	RF300–21357
Leonard's Texaco Service	RF321–20630
Penry's Texaco	RF321–16247
Rutland, MA	RF272–86322
Snow's Texaco	RF321–20602

[FR Doc. 96–23354 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders for the Week of November 27 Through December 1, 1995

During the week of November 27 through December 1, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585

Decision List No. 948

Week of November 27 Through December 1, 1995

Appeals

Burlin McKinney, *11/28/95*, VFA–0094

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by Burlin McKinney. In his Appeal, Mr. McKinney sought access to the deleted portions of a memorandum concerning an interview of an individual with the Office of the Inspector General (OIG). Portions of the memorandum which tended to identify the individual were deleted pursuant to Exemptions six and seven of the FOIA. In the Decision, the DOE stated that the individual's interest in remaining anonymous outweighed the public interest in disclosure. The DOE therefore concluded that the OIG properly withheld the deleted portions of the document.

National Security Archive, *11/30/95*, VFA–0095

The National Security Archive (NSA) filed an Appeal from a determination issued by the Office of Policy (Policy) of the Department of Energy (DOE) in response to a request from NSA under the Freedom of Information Act (FOIA). NSA requested documents concerning the US-Mexico oil negotiations during 1977–78. In considering the Appeal, the Office of Hearings and Appeals found that the scope of the search performed by Policy was not broad enough and that responsive documents may exist within the Office of General Counsel. Moreover, a new search was performed with additional information provided by NSA on appeal. This new search located possibly responsive documents. Accordingly, the Appeal was remanded to the Freedom of Information and Privacy Act Division of the DOE to (1) coordinate a search of the Office of General Counsel and (2) issue a determination with respect to the newly discovered documents.

Paul W. Fox, 11/30/95, VFA–0096

Paul W. Fox filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a Request For Information that he had submitted under the Freedom of Information Act (FOIA). The request concerned negotiations between the U.S. and Canada concerning delivery of electric power pursuant to the Columbia River Treaty.

The documents at issue were withheld pursuant to the deliberative process privilege of Exemption 5, which applies to inter- or intra-agency documents.

The DOE rejected the argument that documents could not be inter- or intra-agency if they were between BPA and the Mid-Columbia Partners (MCPs), a coalition of private power companies. The DOE found that the matter should be remanded to BPA to consider the purpose for which those documents were created, as the MCPs could be government consultants (and therefore intra-agency) where the documents were created primarily for the benefit of BPA. The DOE further noted that documents created by the MCPs might fall within the scope of Exemption 4. The DOE also rejected the contention that DOE waived any privilege for documents that it provided to the MCPs, since limited disclosure to outside parties with a common interest does not waive a privilege. In addition, the DOE noted that release of certain documents could undermine BPA's negotiation position with the Canadian authorities, and consequently, they could be withheld pursuant to Exemption 5's qualified privilege for commercial information. Finally, the DOE found that certain purely factual information, such as reports of meeting between the MCPs and Canadian officials could not be withheld pursuant to Exemption 5. Accordingly, the Appeal was granted in part and the matter was remanded to BPA.

Supplemental Order

National Recovery Aide, 12/1/95, VFX–0005

The DOE issued a Decision and Order concerning National Recovery Aide. The DOE determined that National Recovery Aide will be denied the privilege of receiving refund checks on behalf of its applicants in all proceedings before the Office of Hearings and Appeals of the Department of Energy. Accordingly, refund checks will be made payable to, and sent directly to, the applicants.

Refund Applications

Georgia Kraft Company, 12/1/95, RK272–313

The DOE issued a Decision and Order granting a supplemental crude oil refund to two companies, The Mead Corporation (Mead) and Inland Container Corporation (Inland). Mead and Inland were joint owners of the original applicant company, Georgia Kraft Company (GKC), which ceased to exist in 1993. The joint venture consisted of three mills, one of which was sold to a third party, Pratt Industries (Pratt), in 1987. When submitting their Application for Supplemental Refund, the three companies also submitted a contractual agreement in which they requested that the DOE distribute the crude oil supplemental refund monies among them based on a mutually agreed upon percentage breakdown. The DOE determined that complying with the agreement between the companies would mean abdicating its statutory responsibility to identify injured parties and provide restitution. In accordance with applicable procedure, the DOE granted the supplemental refund for GKC to Mead and Inland.

Quantum Chemical Corp., 11/28/95, RF272–64273, RD272–64273, RF272–93712

Quantum Chemical Corporation applied for a crude oil overcharge refund based on purchases of gasoline, diesel fuel, fuel oils, kerosene, cyclohexane, lube oils, propane, butane, isobutylene and ethane. The DOE found that the cyclohexane and isobutylene are petrochemicals and therefore not eligible for refunds. The DOE further found that Quantum had not demonstrated that the ethane that it purchased came from a crude oil refinery. Accordingly, Quantum's request for refunds based on its purchases of that product was denied. Quantum was granted a refund of $2,734,470 for the remaining eligible products. The DOE denied a Motion for Discovery filed by a group of States and dismissed a duplicate refund application inadventently filed by Quantum.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Jimmy's Arco	RF304–15484	12/01/95
Fremont Farmers Union Corp., et al	RF272–86307	11/28/95

Globe Union, Inc	RF272–77429	12/01/95
Gulf Oil Corporation/Chief Freight Lines Co. et al	RF300–12744	11/28/95
Radcliffe Community School Distict et al	RF272–95901	11/28/95
Tajon, Inc	RF272–97076	12/01/95
Texaco Inc./Fairlawn Oil Service, Inc	RF321–20700	12/01/95
Waybec Ltd. et al	RK272–00001	12/01/95
Wise Aviation	RF272–98001	12/01/95
Zenda Grain Supply et al	RF272–97571	11/28/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Air East, Inc	RF272–98019
Pantasote, Inc	RF272–78081
The Pasha Group	RF272–97413

[FR Doc. 96–23355 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of December 4 Through December 8, 1995

During the week of December 4 through December 8, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 949 for the Week of December 4 Through December 8, 1995

Refund Applications

Ellsworth Freight Lines, Inc., 12/7/95, RF272–97361

The DOE issued a Decision and Order denying an Application for Refund filed by Ellsworth Freight Lines, Inc. in the Subpart V crude oil refund proceeding. Ellsworth had filed an earlier claim for a refund from the Surface Transporters (ST) Escrow and signed a waiver which made the firm ineligible to file in the crude oil proceeding. Ellsworth's ST claim was dismissed because it lacked sufficient documentation to verify its gallonage claim. Since Ellsworth had signed a waiver in the ST proceeding, it was bound by the waiver even though the claim was dismissed. Therefore, Ellsworth's Application for Refund was denied.

Trans-Continental Express, Inc., 12/7/95, RF272–212

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Trans-Continental Express, Inc. in the Subpart V crude oil refund proceeding. Trans-Continental had failed to submit documents verifying its gallonage claim in support of its original refund application, and it was therefore denied. However, since Trans-Continental subsequently submitted those documents, and showed good cause for delay in providing the material, its refund claim was granted in the amount of $13,183.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Matt's ARCO	RF304–14389	12/04/95
Berman Moving & Storage, Inc. et al	RK272–572	12/06/95
Brentwood Union School District et al	RF272–96243	12/07/95
Halko Farms et al	RK272–692	12/06/95
Jeffrey Management Co. et al	RK272–2743	12/06/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Albuquerque Operations Office	VSA–0019
Consequential Holding Corp	RK272–00230
Ethyl Corp	RF300–21567
Federal Aviation Administration	RF300–21313
J&R Cartage	RF272–89122
Williams Energy Company	RF304–15076

[FR Doc. 96–23356 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of December 11 Through December 15, 1995

During the week of December 11 through December 15, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 29, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Appeals

Butler, Vines and Babb, P.L.L.C., 12/13/95, VFA–0098

Butler, Vines and Babb, P.L.L.C. filed an Appeal from a determination issued to it on November 2, 1995 by the Freedom of Information Act Officer (FOIA Officer) of the Oak Ridge Operations Office of the Department of Energy (DOE). In that determination, the FOIA Officer stated that no responsive documents could be found pursuant to a Freedom of Information Act request. Specifically, the FOIA Officer stated that there were no documents relating to Armstrong Contracting and Supply's sale of asbestos-containing material for use at the Oak Ridge Reservation or pertaining to contracts governing performance by Armstrong Contracting and Supply at Oak Ridge from 1958 through 1975. In considering the Appeal, the DOE discovered that there is a reasonable possibility that responsive documents may exist at a repository in Atlanta and remanded the case for a search of that repository.

Linda P. Yeatts, 12/13/95, VFA–0101

Linda P. Yeatts filed an Appeal of a determination issued by the DOE's Oak Ridge Operations Office under the Freedom of Information Act. The appellant contended that the Operations Office had not conducted an adequate search. After considering the matter, the DOE determined that the Operations Office had conducted a reasonable search for responsive documents. Accordingly, the Appeal was denied.

U.S. Ecology, 12/13/95, VFA–0099

U.S. Ecology, Inc. filed an Appeal from a partial denial by the Richland Operations Office of the U.S. Department of Energy (DOE/RL) of a Request for Information which the organization had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that one of the documents requested by U.S. Ecology related to an on-going procurement at DOE/RL and was properly labeled source selection information by DOE/RL. Because release of source selection information is prohibited by the Procurement Integrity Act, the document was properly withheld from disclosure to the requester under Exemption 3 of the FOIA. Accordingly, the Appeal was denied.

Personnel Security Hearings

Oak Ridge Operations Office, 12/13/95, VSA–0029

An individual whose access authorization was suspended filed a request for review of a DOE Hearing Officer's recommendation against restoring the authorization. The individual's access authorization had been suspended by the Department of Energy's (DOE) Oak Ridge Operations Office (Oak Ridge) upon its receipt of derogatory information indicating that the individual had been or was a user of alcohol habitually to excess, or that he had been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In his request for review, the individual claimed that he had been successfully rehabilitated from alcohol dependence. The Director of the Office of Hearings and Appeals found that: (i) The individual had not established that he had been sufficiently rehabilitated from alcohol dependence; and (ii) the nexus established between the behavior of the individual and the risk to the national security easily met the standard set forth by the federal courts. Accordingly, the Director found that the individual's access authorization should not be restored.

Rocky Flats Field Office, 12/13/95, VSA–0032

An individual whose request for access authorization was denied filed a request for review of a DOE Hearing Officer's recommendation against granting the authorization. The individual's request for access authorization had been denied by the Department of Energy's (DOE) Rocky Flats Field Office upon its receipt of derogatory information indicating that the individual had an illness or mental condition of a nature which causes or may cause a significant defect in judgment or reliability.

Upon review, the individual claimed that she did not have any illness or mental condition of the aforementioned type, and vigorously evaded any serious discussion of the derogatory information at the hearing. The Director of the Office of Hearings and Appeals found that the individual had not established that she did not suffer from an illness or mental condition causing a significant defect in judgment or reliability, and that her request for access authorization should not be granted.

Request for Exception

F.L. Baker Dist., Inc., 12/13/95, VEE–0010

F.L. Baker Dist., Inc. (Baker) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied Baker's Application for Exception.

Refund Applications

Perry Gas Processors, Inc./State of Washington, 12/13/95, RQ183–597

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Washington. Washington requested that all remaining funds allocated to its Federally-Recognized Indian Tribes in the Perry Gas Processors special refund proceeding be used to fund the installation of a computer network. As of November 30, 1995, the allocation totaled $2,755 ($675 in principal and $2,080 in interest), but the allocation will be slightly higher at the time of disbursement. The network, to be used by the Western Washington Indian Employment and Training Program, will allow the Indian Tribes to track energy usage in tribal facilities. The DOE found that the computer network would produce timely restitutionary benefits to injured consumers of refined petroleum products. Accordingly, Washington's second-stage refund application was granted.

Marine Corps Exchange 0231 Marine Corps Exchange Service, 12/13/95, RF272–67557, RF272–70220

The DOE issued a Decision and Order denying refunds to Marine Corps Exchange 0231 and Marine Corps Exchange Service, (collectively "the Exchange") in the crude oil overcharge refund proceeding conducted under 10 C.F.R. Part 205, Subpart V. The Exchange applied for a refund for petroleum products it sold through retail gasoline stations on Marine Corps bases. In denying a refund, the DOE found that the Exchange was retailer of these products and was required to submit a detailed demonstration of injury from crude oil overcharges. Instead of submitting such a demonstration, the Exchange argued that (1) It suffered reduced profits because of the overcharges; (2) its prices were set lower than other gasoline retail outlets; and (3) the Exchange is similar to a cooperative because the refund would be shared with local Marine Corps recreation and morale support funds. The DOE rejected all three arguments based on its findings in earlier cases. Since the Exchange failed to submit a demonstration of injury, the DOE denied its Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple Ref Dist	RB272–00080	12/13/95
Crude Oil Supplemental Refund Distribution	RB272–00054	12/13/95
Crude Oil Supplemental Refund Distribution	RB272–00035	12/13/95
E & R Trucking Co., Inc. et al	RF272–77434	12/13/95
Electric Energy, Inc	RF272–65878	12/13/95
Enron Corp./Geiger Bottled Gas Company	RF340–0170	12/13/95
Southern States Utilities, Inc	RF340–0202	
Flasher Farmers Union Oil Co.	RR272–0199	12/13/95
George R. Brown Lease Service	RF272–78648	12/13/95
Phoenix Industries, Inc. et al	RF272–92015	12/11/95
Ranger Fuel Corporation	RF272–77226	12/13/95
Jewell Ridge Coal Corporation	RF272–77227	
Virginia Chemicals, Inc	RF272–77387	12/13/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Birchwood Air Service	RF272–98027
On Site Fuel Oil Co., Inc.	RF300–16898
State of Wyoming	RF272–95217

[FR Doc. 96–23357 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of January 22 Through January 26, 1996

During the week of January 22 through January 26, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Appeals

David R. McMurdo, 1/25/96, VFA–0109

David R. McMurdo (Appellant) filed an Appeal under the Privacy Act of a December 7, 1995 determination issued to him by the DOE's Richland Operations Office (Richland). The Appellant, who had been employed by a sub-contractor on the Hanford Reservation, had requested all medical and personnel records held by Richland concerning him. On Appeal, the Appellant contended that the DOE's search for responsive documents was inadequate. After considering his Appeal, the DOE found that Richland's search for responsive documents was adequate. Accordingly, the Appeal was denied.

Nathaniel Hendricks, 1/26/96, VFA–0106

Nathaniel Hendricks (Appellant) filed an Appeal from a determination issued by the DOE's Office of Human Radiation Experiments (OHRE) in response to a request under the Freedom of Information Act (FOIA). The request related to the alleged release of radiation in the Chicago area in the early 1940s. The Chicago Operations Office (COO) and the OHRE conducted searches for responsive documents. The Appellant did not appeal the COO's determination, but appealed the OHRE determination, claiming that the OHRE had not performed an adequate search for responsive documents. In the interests of a factually complete determination, the DOE investigated the searches of the COO and the OHRE. With respect to the COO search, conducted by its contractor, Argonne National Laboratory (Argonne), the DOE discovered that Argonne possessed 5,000 notebooks of possibly responsive material, which had been determined likely to be radioactive. According to Argonne, the notebooks had never been examined due to the high costs of conducting the

necessary radioactivity study and examination of such a large quantity of material. In its Decision, the DOE determined that it was unreasonable to require the COO to review the notebooks and concluded that the COO's search was adequate. However, the DOE concluded that the OHRE's search of the two databases available to it was inadequate because of the failure to search for certain prominent terms used in the Appellant's request. Accordingly, the DOE granted the Appeal and remanded the matter to the OHRE for further action.

Terrence Willingham, 1/22/96, VFA–0100

Terrence Willingham (Appellant) filed an Appeal from a determination issued to him by the DOE's Office of the Executive Secretariat (ES). The Appellant asserted that the ES failed to conduct an adequate search for documents responsive to two Freedom of Information Act (FOIA) requests. The Appellant requested copies of all documents containing information pertaining to various job announcements concerning the Director and Deputy Director of the DOE's Office of Civil Rights. In its determination letter, the ES produced 42 documents. The Appellant asserted that the ES conducted an inadequate search. The DOE found that the ES conducted an adequate search with regard to almost all of categories of information. The DOE further found, however, that the search concerning several of the requested categories of information was inadequate. Finally, the DOE found that a portion of one of the documents provided to the Appellant, minutes of a meeting (Minutes Document), had been deleted without providing the Appellant a statement of the reasons for the withholding. Consequently, the DOE remanded the matter for a (i) further search for responsive documents and (ii) a determination concerning whether the withheld portion of the Minutes Document was releasable.

Williams & Trine, P.C., 1/25/96, VFA–0108

William & Trine, P.C. (Appellant) filed an Appeal from denials issued by the Ohio Field Office (DOE/OH) and the FOIA/Privacy Act Division (DOE/HQ) of a Request of Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the requested information, documentation of the shipment of hazardous or radioactive material from any DOE facility to a facility of the Appellant's client, Cotter Corporation in Colorado, did not exist because no shipments of such material were ever made. Accordingly, the Appeal was denied.

Personnel Security Hearing

Oak Ridge Operations Office, 1/25/96, VSO–0057

An OHA Hearing Officer issued an opinion concerning the eligibility for restoration of access authorization of an individual who untruthfully stated on a Questionnaire for Sensitive Positions and in two Personnel Security Interviews that he had a college degree. The Hearing Officer found that due to this falsification the individual was untrustworthy. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Easy Times ARCO	RF304–13145	01/22/96
ARCO Mini Market	RF304–15479	
Crude Oil Supple. Refund Dist	RB272–62	01/22/96
Crude Oil Supple. Refund Dist	RB272–64	01/22/96
Crude Oil Supple. Refund Dist	RB272–63	01/22/96
Crude Oil Supple. Refund Dist	RB272–42	01/22/96
Crude Oil Supplemental Refund Dist	RB272–00033	01/24/96
Elmer Hendrix, Jr., et al	RK272–00110	01/24/96
Libby Rink, et al	RK272–01616	01/22/96
Northern Ohio Trucking, et al	RF272–85025	01/22/96
St. Patrick's Church, et al	RF272–99107	01/22/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Americair, Inc	RF272–97954
Amerijet International	RF272–97948
Aviation Associates, Inc	RF272–98721
Boston and Maine Corporation	RF272–97248
Executive Airlines	RF272–97988
Flight International, Inc	RF272–97992
I.E. Miller & Company	RF272–98429
Long Island Airlines	RF272–97989
Maine Central Railroad	RF272–97251
Maxair, Inc	RF272–97990
Portland Terminal Company	RF272–97249
Springfield Terminal Railway	RF272–97250
Tanana Air Service	RF272–97994
Taylor's ARCO	RF304–14251
Wellen Oil and Chemical	RF300–18517

[FR Doc. 96–23358 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-00165; FRL-5393-7]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections described below. The ICRs are: (1) A continuing ICR entitled "Polychlorinated Biphenyls (PCBs): Manufacturing, Processing and Distribution in Commerce Exemptions," EPA ICR No. 0857, OMB No. 2070-0021, and (2) a continuing ICR entitled "Lead-Based Paint Abatement and Repair and Maintenance Study in Baltimore," EPA ICR No. 1603, OMB No. 2070-0123. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before November 12, 1996.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Rm. NE-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-7099. All comments should be identified by the respective administrative record numbers: comments on ICR No. 0857 should reference administrative record number 163, and comments on ICR No. 1603 should reference administrative record number 164. These ICRs are available for public review at, and copies may be requested from, the docket address and telephone number listed above.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form with respect to ICR No. 0857 must be identified by the administrative record number AR-163 and ICR 0857. All comments and data in electronic form with respect to ICR No. 1603 must be identified by the administrative record number AR-164 and ICR 1603. No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-554-1404, TDD: 202-554-0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact the following individuals:

For ICR No. 0857 contact Geraldine Hilton, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-3992, Fax: 202-260-1724, e-mail: hilton.geraldine@epamail.epa.gov.

For ICR No. 1603 contact Benjamin Lim, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-1509, Fax: 202-260-3453, e-mail: lim.benjamin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under "Rules and Regulations."

I. Background

Entities potentially affected by this action are: with respect to ICR No. 0857, those persons who petition EPA for exemptions from the prohibition on the manufacture, processing and distribution in commerce of polychlorinated biphenyls, and with respect to ICR No. 1603, those private households in Baltimore, Maryland, that are participating in an ongoing EPA-sponsored survey to investigate abatement practices and low-cost, practical repair and maintenance approaches with respect to lead-based paint and lead-contaminated dust in residential housing. For the collection of information addressed in this notice, EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collections

EPA is seeking comments on two ICRs, which are identified and discussed separately below.

Title: Polychlorinated Biphenyls (PCBs): Manufacturing, Processing and Distribution in Commerce Exemptions, EPA ICR No. 0857, OMB No. 2070-0021, expires May 31, 1997.

Abstract: Section 6(e)(3)(A) of the Toxic Substances Control Act (TSCA) prohibits the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). TSCA section 6(e)(3)(B) provides that any person may petition EPA for an exemption from these prohibitions and that EPA may grant such an exemption for a 1-year period if (1) An unreasonable risk of injury to health or environment would not result, and (2) good-faith efforts have been made to develop a substitute chemical substance for PCBs that does not present an unreasonable risk of injury to health or the environment.

Interim Procedural Rules at 40 CFR part 750, subparts B and C outline the procedures for filing exemption petitions, the procedures that EPA will follow when a petition is submitted and the procedures for filing a request to renew an exemption previously granted. Under these rules, EPA may request information from each petitioner to determine whether the petitioner meets the statutory requirements to qualify for an exemption.

Responses to the collection of information are mandatory (see 40 CFR part 750). Respondents may claim all or part of a notice confidential. However, if a petition is claimed confidential, a sanitized version must also be provided

for inclusion in the public docket. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 15 hours per year, with an annual cost of $746. These totals are based on an average burden ranging from 2 to 8 hours per response for an estimated three respondents making one response annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Title: Lead-Based Paint Abatement and Repair and Maintenance Study in Baltimore, EPA ICR No. 1603, OMB No. 2070-0123, expires January 31, 1997.

Abstract: Prevention of childhood lead poisoning is a high priority for EPA. EPA's lead abatement program is predicated on the need for a comprehensive national approach to reducing exposure to and hazards from lead, particularly among children. Children are uniquely susceptible to permanent and irreversible neurological damage from exposure to lead. Although lead poisoning is one of the most serious environmental threats to children in this country, it is also one of the most preventable.

The EPA is sponsoring a study of private households in Baltimore, Maryland, to investigate lead-based paint abatement practices. Low-cost practical repair and maintenance approaches to the problem of lead-based paint and lead-contaminated dust in U.S. housing will also be examined. Repair and maintenance practices may provide a means of reducing lead exposure for future generations of children who occupy older housing that cannot be fully abated or rehabilitated.

From each study household EPA is periodically collecting both environmental and biological samples as well as questionnaire data over a 3-year period. EPA is collecting samples of interior surface dust, exterior soil, and drinking water from study dwellings for lead analysis, as well as collecting blood for lead analysis from children living in study dwellings. A structured questionnaire is being used to collect relevant data on occupational, behavioral, and housing characteristics that can influence lead exposure.

EPA will use this study to evaluate low-cost lead abatement strategies. The study findings will also be used by the Department of Housing and Urban Development (HUD) in preparing a report to Congress. The Centers for Disease Control (CDC) will use the study findings to help provide guidance to state and local childhood lead poisoning prevention programs. The final report may also be used directly by state and local agencies, private property owners, and managers of public and Indian housing to decide on cost-effective methods of addressing lead poisoning and lead abatement concerns.

Responses to the collection of information are voluntary. The information collected under this ICR is not considered to be confidential.

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 683 hours per year, with an annual cost of $6,825. These totals are based on an average burden of approximately 6.5 total hours for 105 respondents responding to approximately four requests for information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record

A record has been established for this action under docket number "OPPTS-00195" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: August 28, 1996.

Susan H. Wayland,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96-23398 Filed 9-11-96; 8:45 am]

BILLING CODE 6560-50-F

[FRL-5608-6]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee and Electronic Submission Workgroup; Series of Conference Call Meetings—September 1996–May 1997

Background

The Clean Air Act Section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, state and local governments. On June 20, 1996 EPA published the final rule for risk management programs to address prevention of accidental releases.

An estimated 66,000 facilities are subject to this regulation based on the quantity of regulated substances they have on-site. Facilities that are subject will be required to implement a risk management program at their facility, and submit a summary of this information to a central location specified by EPA. This information will be helpful to state and local government entities responsible for chemical emergency preparedness and prevention. It will also be useful to

environmental and community organizations, and the public in understanding the chemical risks in their communities. In addition, we hope the availability of this information will stimulate a dialogue between industry and the public to improve accident prevention and emergency response practices.

Notice

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public teleconference on September 24, 1996 from 1:00 p.m. to 4:00 p.m. Eastern Time. The Accident Prevention Subcommittee will advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on chemical accident prevention issues, specifically, Section 112(r) of the Clean Air Act. During the September 24th teleconference, the Subcommittee will discuss: (a) Potential FY97 Subcommittee activities; and (b) the charge of its first working group, the "Electronic Submission (of Risk Management Plans) Workgroup". The Electronic Submission Workgroup will make recommendations on how electronic submission of "risk management plans" (RMPs) can be accomplished and how the public can best access and utilize the data. The Electronic Submission Workgroup plans to hold the following teleconference meetings:

(1) September 24, 1996—2:30–4:30
(2) October 9, 1996—2:30–4:30
(3) October 23, 1996—2:00–4:00
(4) November 5, 1996—2:00–4:00
(5) November 19, 1996—2:00–4:00
(6) December 5, 1996—2:00–4:00
(7) January 8, 1997—2:00–4:00
(8) January 22, 1997—2:00–4:00
(9) February 5, 1997—2:00–4:00
(10) February 20, 1997—2:00–4:00
(11) March 5, 1997—2:00–4:00
(12) March 20, 1997—2:00–4:00
(13) April 2, 1997—2:00–4:00
(14) April 17, 1997—2:00–4:00
(15) April 30, 1997—2:00–4:00
(16) May 14, 1997—2:00–4:00
(17) May 28, 1997—2:00–4:00

Members of the public desiring additional information about these meetings, including agendas, should contact Karen Shanahan, Designated Federal Official, US EPA (5101), 401 M. St., SW, Washington DC 20460, by telephone at (202) 260–2711 or FAX at (202) 260–7906, or via the Internet at: shanahan.karen@epamail.epa.gov.

Members of the public who wish to make a brief oral presentation to the Subcommittee at the September 24th meeting, must contact Karen Shanahan in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, September 18, 1996 in order to be included on the Agenda. Written comments of any length may be submitted to the Accident Prevention Subcommittee or the Electronic Submission Workgroup up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

Providing Oral and Written Comments at Accident Prevention Subcommittee Meetings

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the Subcommittee up until the time of the meeting.

Dated: September 6, 1996.

Jim Makris,

Chairman, Accident Prevention Subcommittee.

[FR Doc. 96–23399 Filed 9–11–96; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2151]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 6, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed, September 27, 1996. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services. (CC Docket No. 94–54)
Number of Petition Filed: 7
Subject: Telephone Number Portability. (CC Docket No. 95–116)
Number of Petition Filed: 22
Subject: Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services. (CC Docket No. 96–21)
Number of Petition Filed: 1

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–23338 Filed 9–11–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

"FEDERAL REGISTER" NUMBER: 96–22841.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, September 10, 1996, 10:00 a.m., closed to the public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Procurement Contract.

DATE AND TIME: Tuesday, September 17, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 19, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–23555 Filed 9–10–96; 2:47 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parities may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011170–006.

Title: RO-Ro Chartering Agreement.

Parties: Wilhelmsen Lines AB NOSAC ANS.

Synopsis: The proposed modification deletes language from Article 5.3 which provides authority for the parties to discuss and agree upon rates.

Agreement No.: 232–011401–002.

Title: TMM/H–L Space Charter and Sailing Agreement.

Parties: Transportacion Maritima Mexicana, S.A. de C.V. Hapag-Lloyd AG.

Synopsis: The proposed amendment would delete the authority of the parties to agree to charge rates and other items fixed by conferences of which they are members. The parties have requested a shortened review period.

Dated: September 6, 1996.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–23272 Filed 9–11–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-22743) published on pages 47127 and 47128 of the issue for September 6, 1996.

Under the Federal Reserve Bank of Dallas heading, the entry for Rayford Holley Reily, Groveton, Texas, is revised to read as follows:

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Rayford Holley Reily*, Livingston, Texas; to acquire an additional 5 percent, for a total of 28.82 percent, and Martha Lou Reily, also of Livingston, Texas, to acquire an additional .21 percent, for a total of 1.22 percent, of the voting shares of Citizens State Financial Corporation, Corrigan, Texas, and thereby indirectly acquire Citizens State Bank, Corrigan, Texas, and First Bank, Groveton, Texas.

Comments on this application must be received by September 19, 1996.

Board of Governors of the Federal Reserve System, September 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23325 Filed 9–11–96; 8:45 am]

BILLING CODE 6210–01–F

Caisse Nationale de Credit Agricole, S.A. and Banque Indosuez; Application to Engage in Nonbanking Activities

Caisse Nationale de Credit Agricole, S.A., Paris, France (CNCA), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(2) of the Board's Regulation Y (12 CFR 225.23(a)(2)) to retain its interest in Daniel Breen & Company, L.P., Houston, Texas (DBC), and thereby engage indirectly in providing investment advisory services pursuant to § 225.25(b)(4) of Regulation Y, and its interest in Indosuez Carr Futures, Inc., Chicago, Illinois (ICF), and thereby engage indirectly in acting as a futures commission merchant (FCM) and providing related investment advisory services for financial futures contracts and options on futures contracts pursuant to § 225.25(b)(18) and (19) of Regulation Y. CNCA and Banque Indosuez, Paris, France (BI) (together, Notificants) also have given notice pursuant to section 4(c)(8) of the BHC Act and § 225.23(a)(2) of Regulation Y to acquire 100 percent of the voting shares of Breen Trust Company, Houston, Texas (BTC) and thereby engage indirectly in providing trust services pursuant to § 225.25(b)(3) of Regulation Y, and pursuant to section 4(c)(8) and § 225.23(a)(3) of Regulation Y to engage indirectly through ICF in acting as a FCM and providing related investment advisory services for non-financial futures contracts and options on non-financial futures contracts.

Notificants propose to conduct the activities of DBC and BTC on a nationwide basis and the activities of ICF on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed service, that banks generally provide services that are operationally or functionally similar to the proposed service so as to equip them particularly well to provide the proposed service, or that banks generally provide services that are so integrally related to the proposed service as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Notificants maintain that the Board previously has determined by regulation that several of the proposed activities, when conducted within limitations established by the Board, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(3) (performing certain functions or activities of a trust company); 12 CFR 225.25(b)(4) (providing investment and financial advice); 12 CFR 225.25(b)(18) (providing FCM services on a discount and full-service basis); and 12 CFR 225.25(b)(19) (providing investment advice on financial futures contracts and options on financial futures contracts). *See also The Bessemer Group, Incorporated*, 82 Fed. Res. Bull. 569 (1996); *Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994) (serving as general partner of and investing in an unregistered limited partnership).

Notificants assert that the Board has determined by order that the remaining proposed activity of ICF (acting as a FCM and providing related investment advisory services for non-financial futures contracts and options on financial futures contracts), when conducted within limitations established by the Board in previous orders, also is closely related to banking. *See J.P. Morgan & Company Incorporated*, 80 Fed. Res. Bull. 151 (1994); *Bank of Montreal*, 79 Fed. Res. Bull. 1049 (1993). Notificants have stated that they would engage in these activities in accordance with the limitations and conditions established by the Board in prior cases.

In order to approve the proposal, the Board must determine that the proposed activities "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Notificants state that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Notificants maintain that the proposal will enhance competition and enable it to offer its customers a broader range of services. In addition, Notificants state that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 19, 1996. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, September 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23324 Filed 9–11–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Westamerica Bancorporation, San Rafael, California; to engage *de novo* through its subsidiary, Westamerica Commercial Credit, Inc., Fairfield, California, in making, acquiring, and servicing loans and other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 6, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23326 Filed 9–11–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96M–0217]

Diagnostic Products Corp.; Premarket Approval of Coat-A-Count® PSA IRMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Diagnostic Products Corp., Los Angeles, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Coat-A-Count® PSA IRMA. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 15, 1995, of the approval of the application.

DATES: Petitions for administrative review by October 15, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd. Rockville, MD 20850, 301–594–1294.

SUPPLEMENTARY INFORMATION: On August 10, 1993, Diagnostic Products Corp., Los Angeles, CA 90045, submitted to CDRH an application for premarket approval of Coat-A-Count® PSA IRMA. The device

is an immunoradiometric assay intended for the quantitative measurement of prostate-specific antigen (PSA) in serum to aid in the management of prostate cancer patients.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 15, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 15, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated

Dated: August 30, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–23408 Filed 9–11–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–190]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Hospital Standard for Potentially HIV Infectious Blood and Blood Products; *Form No.:* HCFA-R–190; *Use:* Hospitals must establish policies/procedures and document patient notification efforts if they have administered potentially HIV infectious blood and blood products. *Frequency:* On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours Requested:* 16.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 5, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff Office of Financial and Human Resources

[FR Doc. 96–23381 Filed 9–11–96; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–588, 43, 116, 668A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Authorization Agreement for Electronic Funds Transfer; *Form No.:* HCFA–588; *Use:*

This information is needed to allow providers to receive funds electronically in their bank. *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions; *Number of Respondents:* 78,550; *Total Annual Hours:* 9,819.

2. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Application of Health Insurance Under Medicare for Individuals with Chronic Renal Disease; *Form No.:* HCFA–43; *Use:* This form is used as a standard method of eliciting information necessary to determine entitlement to Medicare under the end stage renal disease provision of the law. *Frequency:* On occasion; *Affected Public:* Individuals and households, Federal government; *Number of Respondents:* 80,000; *Total Annual Hours:* 34,400.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments Application Form; *Form No.:* HCFA–116; *Use:* This application is completed by entities performing laboratory testing on human specimens for health purposes. *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal Government, and State, Local or Tribal Governments; *Number of Respondents:* 16,000; *Total Annual Hours:* 20,000.

4. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Post Laboratory Survey Questionnaire-Surveyor; *Form No.:* HCFA–668A; *Use:* This survey provides the surveyor with an opportunity to evaluation the survey process. The form is completed in conjunction with the HCFA form 668B. This information will help HCFA evaluate the entire survey process from the surveyor's prospective. *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal Government, and State, Local or Tribal Governments; *Number of Respondents:* 1,560; *Total Annual Hours:* 390.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov , or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Date: September 4, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–23327 Filed 9–11–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Eye Institute; Notice of the Meeting of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 12, 1996, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, Maryland.

The NAEC meeting will be open to the public on September 12 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on September 12 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Council Assistant, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistant Program No. 93.867, Vision Research: National Institutes of Health)

Dated: September 9, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–23563 Filed 9–11–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4126–D–01]

Designation

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of designation.

SUMMARY: This notice designates the Office of Lead-Based Paint Abatement and Poisoning Prevention, located in the Office of the Secretary, as the Office of Lead Hazard Control.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Jacobs, Director of the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–1785, ext. 102. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under HUD's Appropriations Act for 1992, enacted in 1991, Congress required the establishment of an "Office of Lead-Based Paint Abatement and Poisoning Prevention" located in the Office of the Secretary of the Department of Housing and Urban Development. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992, at 105 Stat. 753 (Pub. L. 102–139, October 28, 1991).

Subsequently, under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*), Congress broadened considerably the scope of HUD's responsibilities for lead-based paint beyond abatement. Under

the Act, HUD became responsible for a range of lead-based paint and lead-based paint hazard evaluation and control activities including risk assessment and interim controls of lead-based paint hazards in dust and soil. As a result of this expansion of HUD's responsibilities, the name of the Office of Lead-Based Paint Abatement and Poisoning Prevention no longer fully describes HUD's lead-based paint functions.

Therefore, the Office of Lead-Based Paint Abatement and Poisoning Prevention is hereby designated as the Office of Lead Hazard Control. The Office is still located in the Office of the Secretary.

Accordingly, the Secretary designates as follows:

Section A. Designation

The Secretary of Housing and Urban Development designates the Office of Lead-Based Paint Abatement and Poisoning Prevention, located in the Office of the Secretary, as the Office of Lead Hazard Control.

Section B. Appropriated Funds

All funds appropriated for lead-based paint functions of the former Office of Lead-Based Paint Abatement and Poisoning Prevention will be administered by the Office of Lead Hazard Control.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: August 29, 1996.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 96–23259 Filed 9–11–96; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Anthony's Riversnail for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for Anthony's riversnail (*Athearnia anthonyi*). This rare freshwater snail currently has a very fragmented, relict distribution but historically was once fairly widespread in the Tennessee River system, where it was associated with shoal areas in the main stem of the Tennessee River and lower reaches of some of its tributaries in eastern Tennessee, northern Alabama, and northwestern Georgia. Many of the historic occurrences of the species have been lost as a result of impoundments and the general deterioration of water quality from siltation and other pollutants contributed by past mining activities, poor land-use practices, and waste discharges. Only two populations of Anthony's riversnail are known to survive—one in the Tennessee River in Jackson County, Alabama, and Marion County, Tennessee, extending into the lower Sequatchie River, Marion County, Tennessee; and one that is restricted to the lower reaches of Limestone Creek, Limestone County, Alabama. The potential for degradation of the water and substratum quality in the two areas where Anthony's riversnail exists is the most significant threat to the species' continued survival. Unless new populations are found or reestablished and existing populations are maintained, this species will remain in jeopardy of extinction for the foreseeable future. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 12, 1996 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell, Fish and Wildlife Biologist, at the address and telephone number shown in the **ADDRESSES** section (Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Anthony's riversnail (*Athearnia anthonyi*). The area of emphasis for recovery actions is the Tennessee River system in eastern Tennessee, northern Alabama, and northwestern Georgia. Habitat protection, reintroduction, and preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the final plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 6, 1996.

Brian P. Cole,

State Supervisor.

[FR Doc. 96–23334 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–020–4191–03]

Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a mining Plan of Operations (POO) for the Trenton Canyon Mine project, Humboldt and Lander Counties, Nevada; and notice of scoping period and public meeting.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and to 43 CFR 3809, the Bureau of Land Management (BLM) will be directing the preparation of an EIS for the proposed gold mine expansion in Humboldt County and Lander County, Nevada. This EIS will be prepared by contract and funded by the proponent, Santa Fe Pacific Gold Corporation. A public meeting will be held to identify issues to be addressed in the EIS, and to encourage public participation in the review process. Representatives of the BLM and Santa Fe Pacific Gold Corporation will be summarizing the POO and accepting comments from the audience. The BLM invites comments and suggestions on the scope of the analysis.

DATES: A scoping meeting will be held September 24, 1996 at the Office of the Bureau of Land Management, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada from 7–9 p.m. Written comments on the Plan of Operations and the scope of the EIS will be accepted until October 15, 1996. The Draft EIS is expected to be completed by the end of May, 1997, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: District Manager, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445; ATTN. Rod Herrick, Project Manager.

FOR FURTHER INFORMATION CONTACT: Rod Herrick, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: Santa Fe Pacific Gold Corporation of Albuquerque, New Mexico has submitted to the Winnemucca District Office of the BLM, a POO for expansion of the Trenton Canyon Mine. The POO describes proposed expansion of Trenton Canyon Project mining operations onto public land in Humboldt and Lander Counties, Nevada. The mining operation was previously permitted on fee land by permit from the Nevada Division of Environmental Protection, Department of Conservation and Natural Resources. About 122 million tons of oxide overburden and interburden will be removed to mine about 30 million tons of oxide ore. The proposed expansion would result in additional disturbance to public and private lands of approximately 1,872 acres. Future key production facilities would include mine pits, waste rock disposal piles, heap leach pads, solution/overflow ponds, access and haul roads, and a carbon-column circuit. Loaded carbon will be transported to the nearby Lone Tree Mine for gold stripping. Nonprocessing ancillary facilities to support the mine would include an office, shop, warehouse, water supply system, sewage system, electrical distribution system, propane system, bioremediation cells, barrel handling facilities, and explosives magazine, and various materials storage areas.

The EIS will address the issues of geology, minerals, soils, water resources, vegetation, wildlife, grazing management, air quality, aesthetics, cultural resources, paleontological resources, land use, access, recreation, social and economic values related to the mine expansion.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the POO are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR part 4.

Dated: September 5, 1996.

Ronald B. Wenker,

District Manager, Winnemucca, Nevada.

[FR Doc. 96–23369 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–HC–P

[CA–010–1430–01; CAS 1198, CACA 23586]

Termination of Recreation and Public Purposes Classification and Opening Order; California

August 23, 1996.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice terminates the existing recreation and public purposes classification CAS 1198. The land will be opened to the operation of the public land laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregation of record and the requirements of applicable law. The land has been and remains open to the operation of the mineral leasing laws. It should be noted however, that the subject tract shall remain segregated in support of exchange proposal CACA 36926FD.

EFFECTIVE DATE: Termination of the classification is effective on September 12, 1996. The land will be open to entry at 10 a.m. on the same date.

FOR FURTHER INFORMATION CONTACT: Folsom Resource Area Office, 63 Natoma St, Folsom, CA. 95630 (916) 985–4474.

SUPPLEMENTARY INFORMATION: On April 9, 1976, the lands described below were classified as suitable for lease or sale pursuant to the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869, 869–1 to 969–4) and the land was segregated from appropriation under the public land laws and the general mining laws:

Mount Diablo Meridian, California

T. 14N., R. 9E.,
Sec. 25, portion of lot 5 (SW¼NE¼, E½SW¼, W½SE¼), and W½NE¼NW¼SW¼, NW¼NW¼SW¼ (the subject land is now a portion of lot 14 per supplemental plat of survey approved August 22, 1996)

Capital Mountain Camp, Inc. is voluntarily relinquishing their R&PP lease CACA 23586, effective September 12, 1996, for the above described public lands.

Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 CFR 2091.7–1(B)(1). Recreation and Public Purposes Classification CAS 1198 is hereby terminated in its entirety September 12, 1996.

At 10 a.m. on September 12, 1996, the above described land will become open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law. Because this property is included in exchange proposal CACA 36923, the subject land shall continue to be segregated. Notation to the public land law records on May 21, 1996, segregated the above tract form appropriation under the public land laws and the mineral laws for a period of five (5) years from the date of notation; said segregation is in accordance with regulations in 43 CFR 2001.1–2.

At 10 a.m. on September 12, 1996, the above described land will become open to location under the mining laws, subject to the valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law. Any such attempted appropriation including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with federal law. The bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land will remain open to the mineral leasing laws.

Dated: August 23, 1996.
Ron Fellows,
District Manager.
[FR Doc. 96–22140 Filed 9–11–96; 8:45 am]
BILLING CODE 4310–40–M

[UT–060–96–1040–06]

Notice: Notice of Intent To Amend Diamond Mountain Resource Management Plan and Price River Management Framework Plan, Vernal and Price Field Offices, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Diamond Mountain Resource Management Plan, Vernal Field Office, and the Price River Management Framework Plan, Price field Office, Utah to provide management of acquired lands in the Nine Mile Canyon area and prepare the associated Environmental Assessment.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.5–5), notice is given that the Bureau of Land Management (BLM) will consider proposed amendments to the 1994 Diamond Mountain Resource Management Plan and the 1983 Price River Management Framework Plan.

The proposed plan amendment would address future management of acquired lands within the Nine Mile Canyon area of the Vernal and Price Field Offices. An environmental assessment would be prepared to identify the environmental consequences of this action and determine whether an Environmental Impact Statement is needed. Public comment will be actively solicited throughout the planning and environmental assessment processes.

SUPPLEMENTARY INFORMATION: In 1993 BLM received as a donation 762.44 acres, more or less, from Pacific Enterprises Oil Company, Dallas, Texas. These lands are situated in Townships 11 and 12 South, Range 18 East, Salt Lake Base and Meridian, sections 26, 27, 33, 34, 35, and section 3, respectively. Generally these lands are located near the confluence of Nine Mile Creek and the Green River, in northeastern Utah. All but 40 acres of the involved acres are within Uintah County; the remaining acreage is within Carbon County, Utah. This proposed amendment is necessary to update and expand the decisions in existing plans to include these donated lands. Decisions generated during this planning process would address the acquired land and could supersede some affected land use planning decisions presented in the RMP and MFP. At this time general planning issues to be addressed include:

1. Should the area, especially the riparian areas, be grazed, and if so, to what extent?
2. What special management is needed within the Desolation Canyon National Historic Landmark?
3. What amount and type of access should be allowed, including access to private minerals?
4. Are these lands suitable for inclusion as wilderness?
5. What is the functionality and condition of riparian lands within these acquired lands? What management should be determined to maintain and/or enhance the riparian resource?

Public scoping meetings will be held in Price and Roosevelt, Utah. These meetings will be announced in local newspapers and through other local media. Formal public participation will be requested for review of the preliminary and final RMP and MFP in 1997. Notice of availability of these documents will be published at the appropriate times.

These documents will be prepared by an interdisciplinary team which includes specialists in vegetation, cultural resources, recreation, wildlife/fisheries habitats, realty, and minerals. Other disciplines may be represented as necessary.

FOR FURTHER INFORMATION CONTACT: Ron Trogstad, Project Leader, Vernal Office, 170 South, 500 East, Vernal, Utah 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, telephone (801) 781–4460, fax (801) 781–4410.

Dated: September 4, 1996.
David E. Little,
Associate State Director, Utah.
[FR Doc. 96–23330 Filed 9–11–96; 8:45 am]
BILLING CODE 4310–DQ–M

[OR–957–00–1420–00: G6–0251]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 28 S., R. 4 W., accepted July 25, 1996
T. 4 S., R. 6 W., accepted July 1, 1996
T. 36 S., R. 7 W., accepted July 26, 1996
T. 9 S., R. 10 W., accepted August 2, 1996
T. 13 S., R. 10 W., accepted August 13, 1996
T. 14 S., R. 10 W., accepted August 13, 1996
T. 36 S., R. 14 W., accepted August 2, 1996

Washington

T. 3 N., R. 12 E., accepted August 8, 1996
T. 31 N., R. 10 W., accepted June 28, 1996

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: September 3, 1996.
Robert D. DeViney, Jr.,
Chief, Branch of Realty and Records Services.
[FR Doc. 96–23329 Filed 9–11–96; 8:45 am]
BILLING CODE 4310–33–M

[CA–930–1430–01; CACA 37272]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 230 acres of National Forest System land in

Tuolumne County to protect the Rainbow Pool Recreation Area. This notice closes the land for up to 2 years from mining. The land will remain open to mineral leasing and the Materials Act of 1947.

DATES: Comments and requests for a public meeting must be received by December 11, 1996.

ADDRESSES: State Director, BLM (CA–931), 2135 Butano Drive, Sacramento, California 95825–1889.

FOR FURTHER INFORMATION CONTACT: Duane Marti or Kathy Gary, BLM California State Office, 916–979–2858, or Bill Ferrell, Stanislaus National Forest, Forest Service, 209–532–3671, extension 320.

SUPPLEMENTARY INFORMATION: On August 28, 1996, the Stanislaus National Forest, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Mount Diablo Meridian

T. 1 S., R. 18 E.,
Sec. 28, W½SW¼, W½SE¼SW¼;
Sec. 29, E½SE¼;
Sec. 32, NE¼NW¼NW¼, W½NE¼NW;

The area described contains approximately 230 acres in Tuolumne County.

The purpose of the proposed withdrawal is to protect the Rainbow Pool Recreation Area, which is located approximately half a mile northeast of Sweetwater.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the land by Forest Service.

Dated: September 4, 1996.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 96–23380 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2) notice is hereby given that a proposed consent decree in *United States* v. *Collins & Aikman Products Co., et al.*, Civil Action No. 6:96–2659–21 was lodged on August 30, 1996, with the United States District Court for the District of South Carolina. This agreement resolves a judicial enforcement action brought by the United States against the settling defendants pursuant to Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607. The settling defendants include the past and present owners and operators of the Beaunit Circular Knit and Dyeing Superfund Site ("Beaunit Site" or "Site") and Site facilities in Greenville County, South Caroline.

The consent decree requires the settling defendants to pay 100 percent of all past and future response costs which the United States has incurred and will incur at the Site, and which EPA documents are not inconsistent with the National Contingency Plan. The settling defendants have also agreed under the decree to perform the final remedy for the Site which EPA set forth in its Record of Decision ("ROD") dated September 29, 1995, and which provides for the containment of soils and sediments through placement of a cap over the lagoon area, and additional monitoring of the groundwater and soils on a regular schedule to determine the effectiveness of the cap. The ROD also provides for institutional controls as part of the remedy.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Collins & Aikman Products Co., et al.*, DOJ Ref # 90–11–3–1420.

The proposed consent decree may be examined at the office of the United States Attorney, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina, 29201; the Region 4 office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia, 30365; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check for the reproduction costs. If you want a copy of the Consent Decree without attachments, which attachments include the ROD, Statement of Work, Site Maps, and lists of Settling Defendants, then the amount of the check should be $22.75 (91 pages at 25 cents per page). If you want a copy of the Consent Decree with the above stated attachments, then the amount of the check should be $85.75 (343 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23371 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Partial Consent Decree in *United States* v. *Consolidated Rail Corp. et al.*, Case No. S90–56M, was lodged with the United States District Court for the Northern District of Indiana, on August 2, 1996. The United States filed separate Complaints, later consolidated, against the Consolidated Rail Corp. and Penn Central Corp. to recover response costs incurred by the United States in connection with releases or threatened releases of hazardous substances at the Conrail Superfund site in Elkhart, Indiana, pursuant to Section 107 of the Comprehensive Environmental

Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, and for a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2). Under the Partial Consent Decree, the defendants will place $6,726,237.71 into escrow in reimbursement of the United States' past costs, pending resolution of two remaining aspects of the remedial action being undertaken at the site.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Consolidated Rail Corp. et al.*, D.J. Ref. 90–11–3–594.

The proposed Partial Consent Decree may be examined at the offices of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.50 for the Decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Consolidated Rail Corp. et al.*, D.J. Ref. No. 90–11–3–594.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23376 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree; Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Cornell-Dubilier Electronic, Inc., et al.*, Civil Action No 92–11865–REK, was lodged on August 23, 1996, with the United States District Court for the District of Massachusetts. The proposed decree resolves the United States' claims under CERCLA against defendants Coaters, Inc. and Fibre Leather Manufacturing Corporation with respect to the Sullivan's Ledge Superfund Site, in New Bedford, Massachusetts. The Defendants are alleged generators that arranged for the disposal of hazardous substances at the Site. Under the terms of the proposed decree, the Coaters, Inc. will pay $418,000 and Fibre Leather Manufacturing Corporation will pay $190,000 to the United States in reimbursement of past and future response costs incurred and to be incurred by the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cornell-Dubilier Electronic, Inc., et al.*, DOJ Ref. #90–11–2–388A.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23370 Filed 9–11–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on August 30, 1996, a proposed Consent Decree was lodged with the United States District Court for the District of Alaska in *United States* v. *MAPCO Alaska Petroleum, Inc.*, Civil Action No. F96–0051CIV. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency ("EPA") in a Complaint filed on the same day. The United States filed its complaint pursuant to Section 113(b) of the Clean Air Act ("the Act"), 42 USC 7413(b), requesting the assessment of civil penalties and injunctive relief against Defendant MAPCO Alaska Petroleum, Inc. ("Mapco") for violations of Section 111 of the Act, 42 U.S.C. § 7411, and of the provisions of the New Source Performance Standards ("NSPS") codified at 40 CFR Part 60, Subparts J, Kb, UU, GGG, QQQ, and XX. The United States alleges that the violations occurred in connection with certain equipment at Mapco's North Pole, Alaska refinery which is subject to the "Standards of Performance for Petroleum Refineries," codified at 40 CFR Part 60, Subpart J; the "Standards of Performance for Volatile Organic Liquid Storage Vessels," codified at 40 CFR Part 60, Subpart Kb; the "Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacturers," codified at 40 CFR Part 60, Subpart UU; the "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries," codified at 40 CFR Part 60, Subpart GGG; the "Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems," codified at 40 CFR Part 60, Subpart QQQ; and the "Standards of Performance for Bulk Gasoline Terminals," codified at 40 CFR Part 60, Subpart XX.

Under the proposed Consent Decree, Mapco will pay a civil penalty of $425,000 to the United States. Mapco will also purchase equipment and devices that will be installed and operated at Mapco's North Pole facility as Supplemental Environmental Projects ("SEPs"). Mapco will also be subject to injunctive relief provisions governing the apsphalt storage tanks at its North Pole facility that are subject to the NSPS provisions codified at 40 CFR Part 60, Subpart UU. In return for the commitments made by Mapco under the Decree, the proposed Consent Decree provides that Mapco's payment of the civil penalty and performance of the other terms of the Consent Decree shall constitute full satisfaction of the claims alleged in the Complaint.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *MAPCO Alaska Petroleum, Inc.*, D.J. Ref. No. 90–5–2–1–1977. The proposed Consent Decree may be examined at the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decreee Library, 1120 G Street,

NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23375 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Sherwood Medical Company*, Civ. No. 8:96CV486, was lodged on August 30, 1996 with the United States District Court for the District of Nebraska. The proposed Consent Decree requires Sherwood Medical Company ("Sherwood") to implement a remedial action consistent with the Record of Decision and the Explanation of Significant Differences issued by the Environmental Protection Agency for the Sherwood Medical Company site ("site") located in Norfolk, Nebraska. The Consent Decree also requires Sherwood to reimburse the United States for all outstanding response costs incurred and to be incurred at the site. Contemporaneously with lodging the Consent Decree, the United States filed a complaint alleging that Sherwood is an owner or operator of the site within the meaning of Sections 107(a)(1) and 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a)(1) and 9607(a)(2), and that Sherwood arranged for the disposal of hazardous substances at the site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3); and thus, is liable for cleanup and response costs incurred in remediating the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sherwood Medical Company*, DOJ Reference Number 90–11–2–993.

The proposed Consent Decree may be examined at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $31.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23377 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Brush Fibers, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in the above-captioned case.

On August 29, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Brush Fibers, Inc., from conspiring to lessen and eliminate competition for tampico fiber sold in the United States in violation of Section 1 of the Sherman Act (15 U.S.C. 1). Tampico fiber is a vegetable fiber grown in Mexico and used as a filler in industrial and consumer brushes. The complaint alleges that the defendant agreed with its co-conspirator supplier to resell tampico fiber at prices fixed by the supplier and other co-conspirators.

The proposed Final Judgment would prohibit the defendant from directly or indirectly agreeing with a supplier to fix the price at which tampico fiber may be resold by the defendant or any other distributor. The proposed Final Judgment also would prohibit the defendant from entering into any agreement or understanding with any other distributor or with any supplier of tampico fiber for (1) raising, fixing, or maintaining the price or other terms or conditions for the sale or supply of tampico fiber; (2) allocating sales, territories, or customers for tampico fiber; (3) eliminating or discouraging new entry into the tampico fiber market; and (4) eliminating or otherwise restricting the supply of tampico fiber to any customer. Finally, the proposed Final Judgment would also prohibit the exchange of current and future price information, information regarding sales volume, or the location or identity of customers with any other distributor of tampico fiber or with any supplier other than its own.

Public comment is invited within the statutory sixty (60) day period. Such comments will be published in the **Federal Register** and filed with the Court. Comments should be addressed to Robert E. Connolly, Chief, Middle Atlantic Office, U.S. Department of Justice, Antitrust Division, The Curtis Center, 6th and Walnut Streets, Suite 650 West, Philadelphia, PA 19106, (telephone number 215–597–7405).

Rebecca P. Dick,

Deputy Director of Operations.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provide by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(3) In the event the plaintiff withdraws its consent hereto, this stipulation shall be of no effect whatever in this or any other proceeding and the making of this stipulation shall not, in any manner, prejudice any consenting party to any subsequent proceedings.

Dated:

Respectfully submitted,

For the Plaintiff:
Joel I. Klein,
Acting Assistant Attorney General.
Rebecca P. Dick,
Deputy Director of Operations.
Robert E. Connolly,
Chief, Middle Atlantic Office.
Edward S. Panek
Michelle A. Pionkowski
Roger L. Currier
Joseph Muoio,
Attorneys, Antitrust Division, U.S. Department of Justice, Middle Atlantic Office, The Curtis Center, Suite 650W, 7th & Walnut Streets, Philadelphia, PA 19106, Tel.: (215) 597–7401.

For the Defendant:
Ian Moss,
President, Brush Fibers, Inc.

Final Judgment

Plaintiff, the United States of America, filed its complaint on Plaintiff and defendant, by their respective attorneys, have consented to the entry of this final judgment without trial or adjudication of any issue of fact or law. This final judgment shall not be evidence against or an admission by any party to any issue of fact or law. Defendant has agreed to be bound by the provisions of this final judgment pending its approval by the Court.

Therefore, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows.

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this final judgment:

A. "Agreement" means any contract, agreement or understanding, whether oral or written, or any term or provision thereof.

B. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

C. "Tampico fiber" is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported to the United States and worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

D. "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to tampico fiber sold by distributors.

III

Applicability

A. This final judgment applies to the defendant and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this final judgment by personal service or otherwise.

B. The defendant shall require, as a condition of any sale or other disposition of all, or substantially all, of its stock or assets used in the manufacture or sale of tampico fiber, that the acquiring party or parties agree to be bound by the provisions of this final judgment, and that such agreement be filed with the Court.

IV

Prohibited Conduct

As to tampico fiber imported into or sold in the United States, the defendant is enjoined and restrained from:

A. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, arrangement, understanding, plan, program, combination or conspiracy with any other distributor or with any supplier of tampico fiber to:

(1) raise, fix, or maintain the prices or other terms or conditions for the sale or supply of tampico fiber;

(2) allocate sales volumes, territories or customers for tampico fiber;

(3) discourage or eliminate any new entrant into the tampico fiber market; and

(4) restrict or eliminate the supply of tampico fiber to any customer;

B. communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber any current or future price, price change, discount, or other term or condition of sale charged or quoted or to be charged or quoted to any customer or potential customer for tampico fiber, whether communicated in the form of a specific price or in the form of information from which such specific price may be computed;

C. distributing to any distributor or supplier (other than its own supplier) of tampico fiber price lists or other pricing material that is used, has been used, or will be used in computing prices or terms or conditions of sale charged or to be charged for tampico fiber;

D. communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber information regarding the volume of sales of tampico fiber or the location or identity of customers;

E. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any supplier to fix or maintain the prices at which tampico fiber may be resold or offered for sale by defendant or any other distributor; and

F. participating or engaging directly or indirectly through any trade association, organization or other group in any activity which is prohibited in Section IV (A)–(E) above.

V

Permitted Conduct

A. Other than Section IV(A) of this final judgment, nothing contained in this final judgment shall prohibit the defendant from negotiating or communicating with any distributor or supplier of tampico fiber or with any agent, broker or representative of such distributor or supplier solely in connection with *bona fide* proposed or actual purchases of tampico fiber from, or sale of tampico fiber to, that distributor or supplier.

B. Nothing contained in this final judgment shall prohibit the defendant from unilaterally deciding to resell tampico at prices suggested by its supplier. However, any instance in which a supplier suggests the prices at which the defendant should resell tampico shall be reported in writing with a copy to the defendant's Antitrust Compliance Officer. This report shall state the date, time and place of the communication, whether it was oral or written, the name and title of the other person or persons involved in the communication, briefly describe the pricing information provided, and if the communication was written, have attached a copy of the document containing the reference to the suggested resale prices. Such reports shall be retained in the files of the defendant, and copies thereof shall be delivered to the Antitrust Division by the defendant on or about such anniversary date of this final judgment.

VI

Compliance Program

The defendant shall establish within thirty (30) days of entry to this final judgment and shall, thereafter, maintain a program to insure compliance with this final judgment, which program shall include at a minimum the following:

A. designating an Antitrust Compliance Officer responsible, on a continuing basis, for achieving compliance with this final judgment and promptly reporting to the Department of Justice any violation of the final judgment;

B. within sixty (60) days after the date of entry of this final judgment, furnishing a copy thereof to each of its own, its subsidiaries' and its affiliates' (1) officers, (2) directors, and (3) employees or managing agents who are engaged in, or have responsibility for or authority over, the pricing of tampcio fiber; and advising and informing each such person that his or her violation of this final judgment could result in a conviction for contempt of court and imprisonment and/or fine;

C. within seventy five (75) days after the date of entry of this final judgment, certifying to the plaintiff whether it has designated an Antitrust Compliance Officer has been distributed the final judgment in accordance with Sections VI (A) and (B) above;

D. within thirty (30) days after each such person becomes an officer, director, employee or agent of the kind described in Section VI(B), furnishing to him or her copy of this final judgment together with the advice specified in Section VI(B);

E. annually distributing the final judgment to each person described in Sections VI (B) and (D);

F. annually briefing each person described in Sections VI (B) and (D) as to the defendant's policy regarding compliance with the Sherman Act and with this final judgment, including the advice that defendant will make legal advice available to such persons regarding any compliance questions or problems;

G. annually obtaining (and maintaining) from each person described in Sections (VI) (B) and (D) a certification that he or she:

(1) has read, understands, and agrees to abide by the terms of this final judgment;

(2) has been advised of and understands the company's policy with respect to compliance with the Sherman Act and the final judgment;

(3) has been advised and understands that his or her non-compliance with the final judgment may result in conviction for criminal contempt of court and imprisonment and/or fine; and

(4) is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer; and

H. on or about each anniversary date of the entry of the final judgment, submitting to the plaintiff an annual declaration as to the fact and manner of its compliance with this final judgment, including any reports responsive to Section V of this final judgment.

VII

Inspection and Compliance

For the purpose of determining or securing compliance with this final judgment and subject to any legally recognized privilege, from time to time:

A. duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) access, during the defendant's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which have counsel present, relating to any matters contained in this final judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters;

(B) upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this final judgment, as may be requested;

C. no information or documents obtained by the means provided in this Section VII of the final judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this final judgment, or as otherwise required by law;

D. if at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party; and

E. nothing set forth in this final judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. 1311–1314 or a federal grand jury, to determine if the defendant has complied with this final judgment.

VIII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this final judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this final judgment, for the modification of any of the provisions hereof, for this enforcement of compliance herewith, and for the punishment of violations hereof.

IX

Ten-Year Expiration

This final judgment will expire on the tenth anniversary of its date of entry.

X

Public Interest

Entry of this final judgment is in the public interest.

Dated:

UNITED STATES DISTRICT JUDGE

Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b), the United States files this Competitive Impact Statement relating to the proposed final judgment as to *United States* v. *Brush Fibers, Inc.*, submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

On , the United States filed a civil antitrust complaint alleging that under Section 4 of the Sherman Act, as

amended, 15 U.S.C. 4, certain companies and individuals, including the above-named defendant, combined and conspired from at least as early as January 1990 to April 1995, to lessen and eliminate competition in the sale of tampico fiber in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

Specifically, BFI agreed with its supplier to fix and maintain resale prices for tampico fiber in the United States at amounts set by the supplier. Moreover, the complaint alleges, BFI continued to adhere to the resale price agreement even after learning that it was part of a larger agreement involving its supplier and other co-conspirators, including the only other major United States distributor of tampico fiber. The overall conspiracy, which also included an allocation of sales and production levels, had the effect of cartelizing nearly all sales of tampico fiber in the United States and artificially inflating the price of tampico fiber.

The complaint seeks a judgment by the Court declaring that the defendant engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also seeks an order by the Court to enjoin and restrain the defendant from any such activities or other activities having a similar purpose or effect in the future.

The United States and the defendant have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed final judgment will terminate this civil action against the defendant, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

II

Description of The Practices Giving Rise to the Alleged Violations of the Antitrust Laws

As defined in the complaint, tampico fiber is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

The complaint further alleges that the defendant accounted for aggregate United States sales of tampico fiber of approximately $10 million during the period from January of 1990 through April of 1995. During this time, the defendant obtained from a Mexican processor, through an intermediary company, substantial quantities of tampico fiber. The defendant, acting as the Mexican processor's exclusive United States distributor, sold this tampico fiber to its customers throughout the United States, including those located in the Eastern District of Pennsylvania, in a continuous and uninterrupted flow of interstate commerce. Similarly, the complaint alleges that non-defendant co-conspirators sold and shipped additional substantial quantities of tampico fiber in a continuous and uninterrupted flow of interstate commerce from another processing facility in Mexico through their exclusive United States distributor to customers throughout the United States, including some located in the Eastern District of Pennsylvania.

The complaint alleges that the defendant and co-conspirators engaged in an agreement, the effect of which was to fix the resale prices of tampico fiber sold in the United States. Resale price sheets were provided to the defendant and another co-conspirator United States distributor by their respective co-conspirator suppliers. As a condition of becoming and remaining a United States distributor of tampico fiber, the defendant agreed by written contract with its supplier to sell at the prices listed on the price sheet. From at least January 1990 on, the defendant and the other United States' distributor of tampico fiber had identical price sheets prepared by their respective co-conspirator suppliers, and the majority of sales were made by the distributors at these list prices or other agreed-upon prices.

The defendant continued to observe the resale price maintenance scheme even after learning of collusive agreements between the two Mexican suppliers of tampico fiber. The resale price scheme had the effects of fixing and stabilizing the resale prices of tampico fiber. The defendant's conduct also lessened or eliminated competition between the two principal United States distributors of tampico fiber. The anticompetitive effects of the defendant's conduct were heightened because it was one of only two significant United States distributors of tampico fiber. The defendant's adherence to the resale price maintenance scheme together with other acts of its co-conspirators had the effect of cartelizing nearly all sales of tampico fiber in the United States and artificially inflating the prices of tampico fiber.

BFI's supplier in this scheme has already plead guilty and agreed to enter a consent decree in response to criminal and civil charges relating to the entire agreement.

III

Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that a final judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. 16 (b)–(h). The proposed final judgment provides that the entry of the final judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed final judgment contains two principal forms of relief. First, the defendant is enjoined from repeating the conduct it undertook in connection with the tampico fiber conspiracy and from certain other conduct that could have similar anticompetitive effects. Second, the proposed final judgment places affirmative burdens on the defendant to pursue an antitrust compliance program directed toward avoiding a repetition of the tampico fiber conspiracy.

A. Prohibited Conduct

Section IV of the proposed final judgment broadly enjoins the defendant from conspiring to fix prices, allocate sales, discourage new entrants, or otherwise restrict or eliminate the supply of tampico fiber sold to any customer in the United States, or from communicating certain pricing or sales information that could further such a conspiracy (IV (A), (B), (C) and (D)); from agreeing with a supplier to set or control the resale prices of defendant or any other distributor to its customers (IV (E)); and from joining any group whose aims or activities are prohibited by Sections IV (A)–(E) of the final judgment (IV (F)).

Specifically, as regards tampico fiber sold in the United States, Sections IV (A)–(F) of the proposed final judgment provides as follows. Section IV (A) of the proposed final judgment enjoins the defendant from directly or indirectly agreeing with any other distributor or with any supplier of tampico fiber to (1) raise, fix or maintain the prices or other terms or conditions for the sale or supply of tampico fiber; (2) allocate sales volumes, territories or customers for tampico fiber; (3) discourage or

eliminate any new entrant into the tampico fiber market; and (4) restrict or eliminate the supply of tampico fiber to any customer.

Section IV(B) of the proposed final judgment enjoins the defendant from communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber any current or future price, price change, discount or other term or condition of sale charged or quoted, or to be charged or quoted to any customer or potential customer for tampico fiber, whether communicated in the form of a specific price or in the form of information from which such specific price may be computed.

Section IV(C) of the proposed final judgment enjoins the defendant from distributing to any distributor or supplier (other than its own supplier) of tampico fiber price lists or other pricing material that is used, has been used, or will be used in computing prices or terms or conditions of sale charged or to be charged for tampico fiber.

Section IV(D) of the proposed final judgment enjoins the defendant from communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber information regarding the volume of sales of tampico fiber or the location or identity of customers.

Section IV(E) of the proposed final judgment enjoins the defendant from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any supplier to fix or maintain the prices at which tampico fiber may be resold or offered for sale by defendant or any other distributor.

Section IV(F) of the proposed final judgment enjoins the defendant from participating or engaging, directly or indirectly, through any trade association, organization or other group, in any activity which is prohibited in Sections IV (A)–(E) of the proposed final judgment.

B. Permitted Conduct

Two exceptions to the broad prohibitions of Section IV of the proposed final judgment are contained in Section V. Section V(A) permits any necessary negotiations or communications with any distributor or supplier, or any agent, broker or representative of such distributor or supplier in connection with *bona fide* proposed or actual purchases of tampico fiber from or sales of tampico fiber to that distributor or supplier. Section V(B) makes it clear that the final judgment does not prohibit the defendant from unilaterally deciding to resell tampico fiber at prices suggested by its supplier. However, the defendant is obliged to make and retain written reports as to any suggestion by its supplier as to appropriate resale prices and deliver copies of the written reports to the Antitrust Division on or about each anniversary date of the final judgment.

C. Defendant's Affirmative Obligations

Section VI requires that within thirty (30) days of entry of the final judgment, the defendant adopt or pursue an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. More specifically, the program must include the designation of an Antitrust Compliance Officer responsible for compliance with the final judgment and reporting any violations of its terms. It further requires that the defendant furnish a copy of the final judgment to each of its officers and directors and each of its employees who is engaged in or has responsibility for or authority over pricing of tampico fiber within sixty (60) days of the date of entry, and to certify that it has distributed those copies and designated an Antitrust Compliance Officer within seventy-five (75) days. Copies of the final judgment also must be distributed to anyone who becomes such an officer, director or employee within thirty (30) days of holding that position and to all such individuals annually.

Furthermore, Section VI requires the defendant to brief each officer, director and employee engaged in or having responsibility over pricing of tampico fiber as to the defendant's policy regarding compliance with the Sherman Act and with the final judgment, including the advice that his or her violation of the final judgment could result in a conviction for contempt of court and imprisonment, a fine, or both, and that the defendant will make legal advice available to such persons regarding compliance questions or problems. The defendant annually must obtain (and maintain) certifications from each such person that the aforementioned briefing, advice and a copy of the final judgment were received and understood and that he or she is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer. Finally, the defendant must submit to the plaintiff an annual declaration as to the fact and manner of its compliance with the final judgment, including any reports responsive to Section V of the final judgment.

Under Section VII of the final judgment, the Justice Department will have access, upon reasonable notice, to the defendant's records and personnel in order to determine defendant's compliance with the judgment.

D. Scope of the Proposed Judgment

(1) Persons Bound by the Decree

The proposed judgment expressly provides in Section III that its provisions apply to the defendant and each of its officers, directors, agents and employees, subsidiaries, successors and assigns and to all other persons who receive actual notice of the terms of judgment.

In addition, Section III of the judgment prohibits the defendant from selling or transferring all or substantially all of its stock or assets used in its tampico fiber business unless the acquiring party files with the Court its consent to be bound by the provisions of the judgment.

(2) *Duration of the Judgment*

Section IX provides that the judgment will expire on the tenth anniversary of its entry.

E. Effect of the Proposed

Judgment on Competition

The prohibition terms of Section IV of the final judgment are designed to ensure that the defendant will act independently in determining the prices and terms and conditions at which it will sell or offer to sell tampico fiber, and that there will be no anticompetitve restraints (horizontal or vertical) in the tampico fiber market. The affirmative obligations of Sections VI and VII are designed to insure that the corporate defendant's employees are aware of their obligations under the decree in order to avoid a repetition of behavior that occurred in the tampico fiber industry during the conspiracy period. Compliance with the proposed judgment will prevent price collusion, allocation of sales, markets and customers, concerted activities in restricting new entrants and customers, and resale price restraints by the defendant with other tampico fiber distributors and such distributors' suppliers.

IV

Remedies Available to Potential Private Plaintiffs

After entry of the proposed final judgment, any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which he or she may have had if the proposed judgment had not been

entered. The proposed judgment may not be used, however, as *prima facie* evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

V

Procedures Available for Modification of the Proposed Consent Judgment

The proposed final judgment is subject to a stipulation between the government and the defendant which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the APPA (15 U.S.C. 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the **Federal Register**, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Robert E. Connolly, Chief, Middle Atlantic Office, Suite 650 West, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106. Such comments and the government's response to them will be filed with the Court and published in the **Federal Register**. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI

Alternative to the Proposed Final Judgment

The alternative to the proposed final judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the complaint.

VII

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed final judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Joel I. Klein,

Acting Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Robert E. Connolly,

Chief, Middle Atlantic Office.

Edward S. Panek,

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[FR Doc. 96–23378 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; HDP User Group International, Inc.

Notice is hereby given that, on August 20, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), HDP User Group International, Inc., an Arizona non-profit corporation, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change of membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alcatel, Zaventom, BELGIUM; International Business Machines, Hopewell Junction, NY; and MCC, Austin, TX have left the group.

No other changes have been made in either the membership or planned activities of this joint venture.

On September 14, 1994, the HDP User Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** on March 23, 1995 (60 FR 15306–7).

The last notification was filed on April 23, 1996. A notice was published in the **Federal Register** on May 14, 1996 (61 FR 24331).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23374 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Minnesota Mining and Manufacturing Company

Notice is hereby given that, on August 12, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Minnesota Mining and Manufacturing Company ("3M") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a research and development venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are 3M, St. Paul, MN and Actuarial Sciences Associations, Inc. ("ASA"), Somerset, NJ.

The purpose of the venture is to develop technology to define episodes of treatment for the diseases and conditions found in the enrolled population of typical managed care organizations (MCOs). By utilizing episode definitions, MCOs will better understand and evaluate physician performance in terms of care provided to a patient for a particular set of problems, leading to better control of costs of individual services, days of care, and hospital admissions.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23373 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on August 16, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Continental Cement Company, Chesterfield, MO has resigned from PCA and Hawaiian Cement, Honolulu, Hawaii will resign

from PCA effective September 1, 1996. Additionally, Roan Industries Inc., Holly Hill, SC has become an Associate Member of PCA.

No other changes have been made in either the membership or planned activities of the PCA.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015). The last notification was filed with the Department on July 3, 1996. A notice was published in the **Federal Register** on July 30, 1996 (61 FR 39667).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23372 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Indian and Native American Employment and Training Programs; Solicitation for Grant Application: Final Designation Procedures for Grantees for Program Years 1997–98

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of final designation procedures for grantees.

SUMMARY: This document contains the procedures by which the Department of Labor (DOL) will designate potential grantees to receive two-year grants for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA), and to exempt grantees participating in the Public Law 102–477 Demonstration Project from designation cycle competition. The designations will be for JTPA Program Years (PYs) 1997 and 1998 (July 1, 1997 through June 30, 1999). This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

DATES: Optional Advance Notices of Intent must be postmarked no later than October 11, 1996. Final Notices of Intent must be postmarked no later than January 1, 1997.

ADDRESSES: Send an original and two copies of the Advance and Final Notices of Intent to Mr. Thomas Dowd, Chief, Division of Indian and Native American Programs, Room N–4641 FPB ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: The procedures are basically the same as the previous procedure used for PYs 1995 and 1996, except that the waiver of competition provisions of Sec. 401(l) of the Act will not be utilized for this designation cycle. JTPA section 401 grantees who are presently operating under Pub. L. 102–477, Indian Employment, Training, and Related Services Demonstration Act of 1992, must submit a Final Notice of Intent for redesignation under this procedure in order to maintain their service area designation and eligibility for funds under this title. They are, however, exempt from competition for the current service areas covered in their "477 Plan", assuming all other designation requirements continue to be met.

Job Training Partnership Act: Indian and Native American Programs; Final Designation Procedures for Program Years 1997–98

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Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the JTPA and in the regulations at 20 CFR Part 632. The specific organization eligibility and application requirements for designation are set forth at 20 CFR 632.10 and 632.11. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under section 401. It designates such entities as potential Native American section 401 grantees which will be awarded grant funds contingent upon all other grant award requirements being met. This notice describes how DOL will designate potential grantees who may apply for grants for Program Years 1997 and 1998. A designated entity may apply for grant funds for PY 1997 and PY 1998 without further competition.

The designation process has two parts. The Advance Notice of Intent (see Part II, below) is optional although strongly recommended. The Final Notice of Intent (see Part III, below) is mandatory for all applicants. Any organization interested in being designated as a Native American section 401 grantee should be aware of and comply with the procedures in these parts.

The amount of JTPA section 401 funds to be awarded to designated Native American section 401 grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The grant application process is described at 20 CFR 632.18 through 632.20.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR Part 632, Subpart B, regardless of their apparent standing in the preferential hierarchy (see Part IV, Preferential Hierarchy For Determining Designations, below). The basic eligibility, application and designation requirements are found in 20 CFR Part 632, Subpart B.

(2) The nature of this program is such that Indians and Native Americans are entitled to program services and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. The JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or Federally-recognized tribe, band or group *on its reservation* is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. Such "reservation" organization which may have its service area given to another organization will be given a future opportunity to reestablish itself as the "preference" grantee.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers, as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When it

is necessary to select alternative service deliverers, the Grant Officer will continue to utilize input and recommendations from the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American section 401 grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in Part VIII (1) *Indian or Native American-Controlled Organization* of this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input and recommendations from DINAP when designating alternative service deliverers.

(5) Incumbent and non-incumbent applicants seeking additional areas must submit evidence of significant support from other Native American-controlled organizations within the communities (geographic service areas) which they are currently serving or requesting to serve. See Part III, Final Notice of Intent, below, for more details.

(6) The Grant Officer will make the designations using a two-part process:

(a) Those applicants described in Part IV(1) of the Preferential Hierarchy For Determining Designations will be designated on a noncompetitive basis *if* all preaward clearances, responsibility reviews, and regulatory requirements are met.

(b) All applicants described in Part IV, (2), (3), and (4) of the Preferential Hierarchy for Determining Designations will be *considered on a competitive basis* for such areas, and only information submitted with the Final Notice of Intent, as well as preaward clearances, responsibility reviews, and all regulatory requirements will be considered.

(7) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past 22 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with the present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established geographic service area. Such preference will be determined through input and recommendations from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this Notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(8) In preparing application for designation, applicants should bear in mind that the purpose of JTPA, as amended, is "to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation."

II. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a Final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive request at the local level prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a complete Final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance notice process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential incumbent and non-incumbent competitors, to resolve conflicts if possible and to prepare a Final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change geographic service area requests in the Final Notice of Intent. Therefore, as noted above, submissions should be prepared with these possibilities in mind. Although the regulations permit incumbents to submit no Advance Notice of Intent and to submit as a Final Notice of Intent no more than a Standard Form 424 "Application for Federal Assistance" (SF 424) for their existing geographic service areas, *this choice may not be in the incumbent's best interests in the event of unanticipated competition.*

The SF 424 is not to be used for the advance notification process. As in the PY 1995–1996 designation process, DOL will utilize the Advance Notice of Intent to expedite the identification of potentially competitive applicants.

All organizations interested in being designated as section 401 grantees should submit an Advance Notice of Intent. The Advance Notice is to be postmarked no later than October 11, 1996, or 15 calendar days after the date of publication of this **Federal Register** Notice, whichever occurs later. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. The Advance Notice of Intent is to be sent to the Chief, Division of Indian and Native American Programs, at the address cited above. Incumbents will receive a description of their present geographic service area as cited above.

DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants (including incumbents who have not submitted Advance Notices of Intent) with copies of all Advance Notices submitted for their requested areas. The notification will state that organizations are encouraged to work out any conflicting requests among themselves, and that a final Notice of Intent should be submitted by the required postmark deadline of January 1, 1997 (see Part III, Final Notice of Intent, below).

Under the Advance Notice of Intent process, it is DOL policy that, to the extent possible within the regulations, a geographic service area and the applicant which will operate a section 401 program in that area are to be determined by the Native American community to be served by the program. In the event the Native American community cannot resolve differences, applicants should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice of Intent is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice of Intent. Although tribes and organizations participating in the employment and training demonstration project under Pub. L. 102–477 qualify for exemption from designation competition under Sec. 401(l) of JTPA, they still must submit a Final Notice of Intent to continue to receive funds under the JTPA.

III. Final Notice of Intent

Even though an ANOI has been submitted, all applicants must submit an original and two copies of a Final Notice of Intent, postmarked not later than January 1, 1997, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. Exclusive of charts or graphs and letters of support, the Notice of Intent should not exceed *75* pages of double-space unreduced type.

Final Notices of Intent are to be sent to the Chief, Division of Indian and Native American Programs (DINAP), at the address cited above.

Final Notice of Intent Contents: (as outlined at 20 CFR 632.11)

- A completed and signed SF–424, "Application for Federal Assistance";
- An indication of the applicant's legal status, including articles of incorporation or consortium agreement as appropriate;
- A clear indication of the territory being applied for, in the same format as the ANOI;
- Evidence of community support from Native American-controlled organizations; and
- Other relevant information relating to capability, such as service plans and previous experience which the applicant feels will strengthen its case, including information on any unresolved or outstanding administrative problems.

Final Notices of Intent must contain evidence of community support. Incumbent and non-incumbent State and Federally-recognized tribes need not submit such evidence regarding their own reservations. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries.

The regulations permit current grantees requesting their existing geographic service areas to submit an SF 424 in lieu of a complete application, including those grantees currently participating in the demonstration under Public Law 102–477 who are exempt from designation cycle competition. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Final Notice of Intent (even if their geographic service area request has not changed) in the event that competition occurs. Tribes, bands or groups (including Alaskan Native entities) should consider submitting a full Final Notice of Intent if they currently serve areas beyond their reservation boundaries.

Applicants are encouraged to modify the geographic service area requests identified in their Advance Notice of Intent to avoid competition with other applicants. Applicants are discouraged from adding territory to the geographic service area requested and identified in the Advance Notice of Intent. Any organization applying by January 1, 1997, for non-contiguous geographic service areas shall prepare a separate, complete Final Notice of Intent for each such area unless currently designated for such area(s).

It is DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand-delivered deadlines (see Part V, Use of Panel Review Procedure, below). All information provided before the deadline must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

IV. Preferential Hierarchy for Determining Designation

In cases in which only one organization is applying for a clearly identified geographic service area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same area (in whole or in part), DOL will utilize the order of designation preference described in the hierarchy below. The organization will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands or groups on Federal or State reservations for their reservation; Oklahoma Indians only as specified in Part VII, Special Designation Situations, below; and Alaskan Native entities only specified in Part VII, Special Designation Situations, below.

(2) Native American-controlled, community-based organizations as defined in Part VIII (1) of the glossary in this notice, with significant support from other Native American-controlled organizations within the service community. This includes tribes applying for geographic service areas other than their own reservations.

When a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent, a formal competitive process will be utilized which may include a panel review. Such potential will be determined by the consideration of such factors as the following: completeness of the application and quality of the contents; documentation of relevant experience; Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. If there is no incumbent, new applicants qualified for this category would compete against each other.

(3) Organizations (private nonprofit or units of State or local governments) having significant Native American control, such as a governing body or administration chaired or headed by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations. In the event such an organization is designated, it must develop a Native American advisory process as a condition for the award of a grant.

The Chief, DINAP, will make determinations regarding hierarchy, geographic service areas, eligibility of new applicants and the timeliness of submissions. He may convene a task force to assist in making such determinations. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the designation hierarchy. Within the regulatory time constraints of the designated process, the Chief, DINAP, will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is

appropriate and must adequately support that assertion.

V. Use of Panel Review Procedure

A formal competitive process may be utilized under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not reapplied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy, when there are no applicants qualified for the first and second categories.

When competition occurs, the Grant Officer may convene a review panel of Federal Officials to score the information submitted with the Final Notice of Intent. The purpose of the panel is to evaluate an organization's capability, *based on its application,* to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the Final Notice of Intent. The panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, e.g., supporting references must contain the name of the contact person, an address and telephone number.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Final Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.10 and 632.11)

(a) previous experience in successfully operating an employment and training program serving Indians and Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(c) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points. (20 CFR 632.11)

(a) Private sector involvement—10 points.

(b) Community support as defined in Part VIII (1), Designation Process Glossary, and documentation as provided in Part I (5), General Designation Principles—10 points. (4) Administrative Capability—20 points. (20 CFR 632.11)

(a) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(b) Experience of senior management staff to be responsible for a DOL grant—5 points.

VI. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of Special Targeted Programs, the DOL Employment and Training Administration's Office of Grant and Contracts Management and Office of Management Services, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer will make decisions by March 1, 1997, and will provide them to all applicants as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographical service area requested in the Final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *NONDESIGNATION Letter.* Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the NONDESIGNATION and given the basic reasons for the determination. An applicant for designation which is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, and subsequently, may appeal the NONDESIGNATION to an administrative law judge under the provisions of 20 CFR Part 636.

If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situations

(1) *Alaskan Native Entities.* DOL has established geographic service areas for Alaskan Native employment and training based on the following: (a) The boundaries of the regions defined in the Alaskan Native Claims Settlement Act (ANCSA); (b) the boundaries of major subregional areas where the primary provider of human resource development related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized tribal councils, and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 1997 and 1998.

(2) *Oklahoma Indians.* DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, geographic service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction(s) of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information contained in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas have been

honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1997 and 1998, to preserve continuity and prevent unnecessary fragmentation.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian or Native American-Controlled Organization.* This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of hierarchy determinations, the governing board must have decision-making authority for the section 401 program.

(2) *Service Area.* This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) *Community Support.* This is evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic service area for which designation is requested.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC, this 29th day of August, 1996.

Thomas M. Dowd,

Chief, Division of Indian and Native American Programs.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

James C. DeLeca,

Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.

[FR Doc. 96–23386 Filed 9–11–96; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–111]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: September 26, 1996, 8 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters Room 9H40 (9th Floor Program Review Center), 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Room 9K70, 300 E Street SW, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Call to Order
—Reading of Minutes
—Update on NASA SDB Program
—Report from the Chairman
—Public Comment
—Proposed MBRAC Recommendations
—Subcommittee Reports
—New Business
—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 6, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–23407 Filed 9–11–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–112]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that UbiquiTex Technologies Corporation, of 2200 Space Park Drive, Suite 200, Houston, Texas 77058, has requested an exclusive license to practice the invention disclosed in NASA Case No. MSC–21487–4, entitled "Atomic Oxygen Reactor Having At Least One Side Arm Conduit," for which a U.S. Patent Application was filed on July 26, 1994, and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Hardie R. Barr, Patent Attorney, Johnson Space Center.

DATE: Responses to this notice must be received by November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696; telephone (713) 483–1003.

Dated: September 9, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–23406 Filed 9–11–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9 (50–267)]

Notice of Issuance of Amendment to Materials License SNM–2504; Public Service Company of Colorado, Fort St. Vrain Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 3 to Materials License No. SNM–2504 held by the Public Service Company of Colorado (PSCo) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI), located in Weld County, Colorado. The amendment is effective as of the date of issuance.

By application dated June 27, 1996, PSCo requested an amendment to its ISFSI license to add an action statement to the seismic instrumentation specification, Technical Specification 3.4, for the ISFSI.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules

and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(10)(ii), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Weld Library District, Lincoln Park Branch, 919 7th Street, Greeley, Colorado 80631.

Dated at Rockville, Maryland, this 29th day of August 1996.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Deputy Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–23363 Filed 9–11–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would delete License Condition 2.C.(24)(a) for Unit 2, which required establishment by June 3, 1981, of regularly scheduled 8-hour shifts without reliance on routine use of overtime. The proposed amendment also modifies Technical Specification 6.2.2 for both units to incorporate limits on overtime.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change does not involve a physical or procedural change to any structure, system, or component that significantly affects the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed changes will permit the use of 12-hour shifts which average 40 hours per week and also satisfy the guideline in Generic Letter 82–12 for operating shifts.

This change is administrative in nature and has no significant impact on the probabilities or consequences of any evaluated accident or malfunction of safety important equipment.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision involves no physical changes in the plant or to the manner in which plant systems are operated. The change modifies the working hours per shift for operating personnel without significantly changing the hours worked per week and retains the current limitations on excessive overtime. The proposed changes are administrative in nature; therefore, no new or different accident is created.

3. The proposed change does not involve a significant reduction in a margin of safety.

This is an administrative change and does not affect any margins of safety. Plant operation with the proposed revision to shift working hours has been found to improve operator morale and performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 15, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the

Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 27, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Rockville, Maryland, this 6th day of September 1996.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23365 Filed 9–11–96; 8:45 am]

BILLING CODE 7590–01–P

Meeting on DG–1053

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff with its contractors will meet to discuss DG–1053, "Calculational and Dosimetry Methods for Determining Pressure Vessel Fluence," including changes made from earlier issuance as DG–1025 and discussion of submitted public comments.

DATES: Wednesday, September 18, 1996.

TIME: 9:00 a.m.–3:00 p.m.

ADDRESSES: National Institute for Standards and Technology, 270 & Quince Orchard Road, Administration Building—Green Auditorium, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Carolyn Fairbanks, Electrical, Materials, and Mechanical Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6719.

Dated at Rockville, Maryland, this 6th day of September, 1996.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Chief, Electrical, Materials, and Mechanical Engineering Branch.

[FR Doc. 96–23364 Filed 9–11–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

New

Proposed Rule 10A–1 SEC File No. 270–425 OMB Control No. 3235–NEW

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission or SEC) has submitted to the Office of Management and Budget a request for approval of proposed Rule 10A–1 under the General Rules and Regulations under the Securities Exchange Act of 1934.

Proposed Rule 10A–1 would implement the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Under section 10A (and proposed Rule 10A–1) reporting would occur only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board. It is expected that satisfaction of these conditions precedent to the reporting requirements will be rare. It is estimated that the proposed amendments, if adopted, may result in an aggregate additional reporting burden of 10 hours.

General comments regarding the estimated burden hours should be directed to the OMB Clearance Officer at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 26, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23314 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26568]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

September 6, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 30, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–8895)

Northeast Utilities, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, and five subsidiary companies, The Connecticut 06037, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, Public Service Company of New Hampshire, 1000 Elm Street, Manchester, New Hampshire 03101, North Atlantic Energy Corporation ("NAEC"), 1000 Elm Street, Manchester, New Hampshire 03101 and Holyoke Water Power Company, 1 Canal Street, Holyoke, Massachusetts 01040, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 thereunder.

The applicants request authority to enter into, and perform the obligations arising under, agreements for various interest rate management instruments, including interest rate swaps, caps, floors, collars and forward rate agreements or any other similar instruments ("Interest Rate Management Instruments" or "IRMI"), from time to time through the period ending December 31, 2001, in connection with existing and future debt. The applicants propose that the term of the IRMI would not exceed the maximum maturity of the underlying debt or the maturity of anticipated specific future debt issuances, proportionate to the amount of debt at each maturity level.

Each applicant, other than NAEC, undertakes that the total notional principal amount of its IRMI will not exceed 25% of its total outstanding debt at any one time. NAEC would make the identical undertaking, but subject to a 65% debt limitation. In no case would the notional principal amount of any IRMI exceed that of the underlying debt instrument and related interest rate exposure.

Each applicant would enter into IRMI transactions with each proposed counterparty pursuant to a separate written agreement. The applicants will enter into IRMI with counterparties whose senior secured debt ratings, as published by Standard & Poor's Corporation ("S&P"), are greater than or equal to "BBB+" or an equivalent rating from another rating agency, and at least 75% of the outstanding principal amount of IRMI will be held by counterparties with S&P credit ratings of "A" or higher, or an equivalent rating.

New England Electric System (70–8901)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed an declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

NEES proposes to issue and sell up to a maximum aggregate outstanding principal amount of $100 million of short-term notes to banks from time-to-time through October 31, 2001. The notes will mature in less than one year from the date of issuance. NEES will negotiate with banks the interest costs of such borrowings. The effective interest cost of borrowings will not exceed the effective interest cost of borrowings at the greater of the bank's base or prime lending rate, or the rate published by the Wall Street Journal as the high federal funds rate plus, in either case, 1%. NEES pays fees to the banks in lieu of compensating balance arrangements. Certain of the borrowings may be without prepayment privileges. Based upon the current base lending rate of 8.25% and an equivalent or lower federal funds rates, the effective interest cost would not exceed 9.25% per annum.

NEES currently does not expect to incur short-term borrowings under this authority. However, NEES believes the requested authority in necessary in order for it to act quickly in response to an emergency affecting it or more or more of its subsidiaries.

Entergy Corporation (70–8903)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 53 thereunder.

By prior Commission order (HCAR No. 26343; July 27, 1995), Entergy was authorized to enter into a credit agreement with one or more banks to effect borrowings and reborrowings from time-to-time, for a period not to exceed three years, in an aggregate principal amount outstanding at any one time not to exceed $300 million. Entergy was to use the proceeds of the credit agreement for general corporate purposes, including the acquisition of the outstanding common stock and investments in "exempt wholesale generators" ("EWGs") and "foreign utility companies" ("FUCOs"), as those terms are respectively defined in sections 32 and 33 of the Act, and related non-utility businesses, subject to any required Commission approvals.

Entergy entered into a $300 million credit agreement ("Credit Agreement"), dated as of October 10, 1995, among Entergy, as borrower, certain banks named therein as lender banks, and Citibank, N.A., as agent. The indebtedness currently outstanding under the Credit Agreement is approximately $270 million, which was drawn to complete the acquisition of CitiPower Limited.

Entergy now proposes to enter into an amendment, modification or supplement of the Credit Agreement and/or one or more additional credit facilities (collectively, "Credit Facilities") with one or more banks that would permit Entergy to effect borrowings and reborrowings, from time-to-time no later than December 31, 2002, of not more than $500 million at any one time outstanding, by issuing to participating banks ("Banks") its unsecured promissory notes payable no later than December 31, 2002. The names of the Banks, the maximum amount of the aggregate commitment of such Banks, (which will not exceed $500, million and the maximum amounts of their respective participations (collectively, the "Commitments") in the proposed borrowings by Entergy will be supplied by filing under rule 24.

Entergy proposes that each borrowing could either be made *pro rata* among the Banks according to their respective Commitments, or be allocated among one or more of the Banks in such proportions as the Banks and Entergy shall agree. Each payment by Entergy with respect to a borrowing would be made *pro rata* among the Banks according to their respective ratable portions of such borrowings. The Commitments would remain in effect until no later than December 31, 2002, subject to the right of Entergy at any time upon proper notice to terminate the Commitments or from time-to-time to reduce the Commitments then in effect. Any such reduction of the Commitments would be accompanied by prepayment of the outstanding borrowings and accrued interest to the extent that the aggregate principal amount then outstanding exceeded the reduced Commitments of the Banks.

Under the proposed arrangements, each borrowing would bear interest from the date thereof on the unpaid principal amount at a rate per annum selected by Entergy, from time-to-time, from a number of specified interest rate options. Such interest rate options will include but not be limited to some or all of the following: (1) The prime commercial loan rate of a specified Bank (or an average of such rates of some or all of the Banks) ("Prime Rate") from time-to-time in effect; (2) the sum of (A) specified offered rates for certificates of deposit of a specified Bank (or an average of such rates of some or all of the Banks) for amounts equivalent to such borrowing and for selected interest periods, appropriately adjusted for the cost of reserves and F.D.I.C. insurance and (B) a margin not in excess of 1% per annum ("CD Rate"); (3) the sum of (A) specified rates offered for U.S. dollar deposits by or to a specified Bank (or an average of such rates of some or all of the Banks) in the interbank eurodollar market for amounts equivalent to such borrowing and for selected interest periods, appropriately adjusted for the cost of reserves and (B) a margin not in excess of 1% per annum ("LIBOR Rate"); or (4) a rate negotiated at the time of borrowing with one or more Banks, which would not in any event exceed a maximum rate of the Prime Rate plus 2% per annum, appropriately adjusted for the cost of bidding or negotiation ("Auction Advance Rate").

In general, interest on Prime Rate borrowings would be payable quarterly, and interest on CD Rate and LIBOR Rate borrowings would be payable at the end of selected interest periods for such borrowings, or, depending upon the length of such selected interest periods, at specified intervals within such periods and at the end of such periods. Interest on Auction Advance Rate borrowings would be payable on such dates as are agreed to by Entergy and Banks funding such borrowings.

Entergy has stated that it may agree to pay to each Bank a facility fee for the period from the commencement of the borrowing arrangements to and including December 31, 2002, or any earlier date of termination of the Commitments, computed at a rate not in excess of ¼ of 1% per annum of the total Commitments in effect during the period for which payment is made. Entergy may also agree to pay to the agent Bank, if any, an agent fee for the period from the commencement of the borrowing arrangements to and including December 31, 2002, or any earlier date of termination of the Commitments, not in excess of $200,000 per annum. The facility fee and agent fee would be payable on an annual or a quarterly basis and on the date upon which Entergy shall terminate the Commitments. Entergy may also agree to pay to the Banks an up-front fee not in excess of 1% of the total Commitments.

Entergy presently intends to repay the proposed borrowings out of internally generated funds and/or the proceeds of such forms of financing as are hereafter approved by the Commission and/or other funds that become available to Entergy. The proposed borrowings

would be prepayable upon proper notice in whole or in part.

The proceeds of the borrowings under the proposed arrangements will be used by Entergy for general corporate purposes, including, among other things: (1) The acquisition of shares of Entergy's outstanding common stock; (2) further investments by Entergy in related non-utility businesses, subject to receipt of any further Commission approval, if necessary, under the Act in separate filings made at an appropriate time, and (3) investments in existing or future exempt wholesale generators and foreign utility companies as permitted by sections 33 and 34 of the Act or otherwise approved by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23351 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22200; File No. 811–8554]

UST Master Variable Series, Inc.

September 5, 1996.

AGENCY: The Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: UST Master Variable Series, Inc. ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company, as defined by the 1940 Act.

FILING DATES: The application was filed on July 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, UST Master Variable Series, Inc., 114 West 47th Street, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Veena K. Jain, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Applicant, incorporated in Maryland, is an open-end management company designed as a funding vehicle for variable annuity contracts and variable life insurance policies offered by the separate accounts of certain life insurance companies. All portfolios of Applicant, except for the International Bond Portfolio, are diversified under the 1940 Act.

2. Applicant filed a notification of registration under Section 8(a) of the 1940 Act, and a registration statement pursuant to Section 8(b) of the 1940 Act and under the Securities Act of 1933, registering an indefinite number of shares on June 7, 1994. The registration statement became effective October 14, 1994, and Applicant commenced an initial public offering on January 17, 1995.

3. On February 9, 1996, Applicant's Board of Directors approved the liquidation and deregistration of Applicant.

4. On March 26, 1996, Applicant had 2,166,111 shares outstanding, having an aggregate net asset value of $12,040,561. On March 26, 1996, dividends were declared and capital gains and income distributions were made to the Applicant's security holders. The liquidation of Applicant was effected by April 26, 1996, when all security holders of Applicant had voluntarily redeemed their shares at net asset value. No brokerage commissions were paid in connection with the liquidation.

5. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

6. The expenses incurred by the Applicant in connection with the liquidation have been or will be paid by Applicant's investment adviser, U.S. Trust Company of New York.

7. At the time of the application, Applicant had no shareholders, assets or liabilities, and Applicant is not a party to any litigation or administrative proceeding.

8. Within the last 18 months, Applicant has not transferred its assets to a separate trust, the beneficiaries of which were or are the shareholders of Applicant.

9. Upon being granted an order to deregister as an investment company under the 1940 Act, Applicant will terminate its existence as a Maryland corporation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23316 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37842; File No. SR–CBOE–96–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Incorporated Related to Tolling of the Time Period for Settlement of Disciplinary Cases Pursuant to Interpretation and Policy .01(d) Under Exchange Rule 17.8

September 5, 1996.

On July 23, 1996,[1] the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposed rule change would amend Interpretation and Policy .01(d) under CBOE Rule 17.8 ("Interpretation .01(d)") to allow the Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period. The proposed rule change also would amend Interpretation .01(d) to provide that in no event will a Respondent have less than seven days after the receipt of requested documents within which to submit an offer of settlement.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release

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[1] The proposed rule change was originally filed with the Commission on July 10, 1996. The CBOE subsequently submitted Amendment No. 1 to the filing. Amendment No. 1 was a minor technical amendment. *See* Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Karl Varner, Staff Attorney, Division of Market Regulation, SEC, dated July 23, 1996.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1993).

No. 37496, July 30, 1996) and by publication in the **Federal Register** (61 FR 40689, August 5, 1996). No comment letters were received. This order approves the proposed rule change.

One purpose of the change to Interpretation .01(d) is to allow the Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period. Pursuant to CBOE Rule 17.8, after a Respondent is served with a statement of charges for an alleged rule violation, that Respondent has 120 days to attempt to resolve the charges by submitting a written offer of settlement. Pursuant to CBOE Rule 17.4(c), within 60 days after a statement of charges has been served, a Respondent may make a written request for access to all documents concerning the case that are in the investigative file of the Exchange except for staff investigation and examination reports and materials prepared by the staff in connection with such reports or in anticipation of a disciplinary hearing or other privileged materials. If a Respondent requests access to the investigative file, Interpretation .01(d) currently provides that the 120-day time period for submitting a written offer of settlement shall be tolled during the number of days in excess of seven calendar days that it takes staff to provide access to documents in response to the Respondent's request.

The Exchange staff has found that, in most cases, it needs longer than seven days to respond to a request. Before providing access to documents, Exchange staff must review and organize the investigative file to remove privileged documents or information that is not discoverable and to remove information that may identify the complainant. There have been occasions where Exchange staff has spent more than 7 days preparing the investigative file for access, but after gaining the benefit of tolling, the Respondent submits an offer of settlement without ever reviewing the file. The rule change approved today reduces this potential for delay in concluding a disciplinary case by limiting a Respondent's ability to toll the 120-day settlement period.

The rule change also amends Interpretation .01(d) to deal with the situation where a Respondent has elected to proceed in an expedited manner pursuant to Rule 17.3 in an effort to resolve a matter by entering into a letter of consent prior to the issuance of charges, but is unsuccessful in negotiating a letter of consent.

Interpretation and Policy .01(b) under Rule 17.8 provides that if a Respondent is unsuccessful in an effort to reach agreement with Exchange staff upon a letter of consent and charges are issued, any time in excess of 30 days spent in attempting to negotiate a letter of consent is deducted from the 120-day settlement period, but that in any event a Respondent will always have at least 14 days after service of charges within which to submit an offer of settlement. The existing provision of Interpretation .01(d) tolls the settlement period after seven days when a document request has been made. Therefore, if a Respondent makes a document request on the first day of the 14-day settlement period, that Respondent currently has at least seven days remaining of the 14-day settlement period after the documents are provided within which to submit an offer of settlement.

However, Interpretation .01(d) as amended would not toll the settlement period until 30 days elapsed from the time that the respondent makes a document request. Thus, the settlement period could expire even though the Exchange has not yet responded to the document request. To assure that the settlement period does not expire before the Exchange has responded to the document request, and to further assure that a Respondent has a meaningful opportunity to review the requested documents, the rule change approved today also amends Interpretation .01(d) to provide that in no event will a Respondent have less than seven days after the receipt of requested documents within which to submit an offer of settlement.

The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(7) of the Act in that it improves the Exchange's procedures for the discipline of members and persons associated with members. The Commission believes the proposed change will make the review process more fair and efficient by reducing the potential for delay in concluding a disciplinary case resulting from Respondents, or their attorneys, requesting access to documents solely to gain an extension of the 120-day settlement period through tolling.

As noted above, the 120 day settlement period is frequently tolled under Interpretation .01(d) while Exchange staff responds to the Respondent's request for documents. The Commission believes that, by tolling the 120 day settlement period only if exchange staff takes more than 30 days to respond to a Respondent's request, the proposed change provides a Respondent with access to a documents in accordance with Rule 17.4(c) while discouraging access requests made for the purpose of extending the 120 days settlement period.[4]

The Commission also believes that it is consistent with the objectives of Section 6(b)(7) of the Act to amend Interpretation .01(d) to provide that in no event will a Respondent have less than seven days after the receipt of requested documents within which to submit an offer of settlement. The Commission believes that the proposed amendment to Interpretation .01(d) will make the review process more fair and efficient by continuing to provide a Respondent with a minimum of seven days after Respondent's receipt of requested documents within which to submit an offer of settlement.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–CBOE–96–46 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23311 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37648; File No. SR–CBOE–96–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating To Permitting a Subject of an Exchange Investigation To Submit a Videotaped Response in Lieu of or in Addition to a Written Response

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[4] The CBOE believes that, under the proposed rule change, access requests by Respondents typically should not extend the 120-day settlement period because the Exchange staff generally will be able to respond within 30 days to an access request.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to permit the subject of an Exchange investigation ("Subject") to submit a videotaped presentation to the Exchange's Business Conduct Committee ("BCC") in response to Exchange staff's notice given pursuant to Rule 17.2(d). That notice describes the general nature of allegations and specific rules that appear to have been violated by the Subject. This videotaped presentation could be submitted by the Subject to the BCC in lieu of, or in addition to, submitting a written statement as permitted by Rule 17.2(d).

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit subjects of Exchange investigations to submit a videotaped presentation to the BCC in response to Exchange staff's notice given pursuant to Rule 17.2(d). That notice describes the general nature of allegations against, and of specific rules that appear to have been violated by, the Subject of the Exchange investigation. This videotaped presentation could be submitted to the BCC in lieu of, or in addition to, submitting a written statement as permitted by Rule 17.2(d).

Under existing Rule 17.2, if, after conducting an investigation, Exchange staff finds that there are reasonable grounds to believe that a rule violation has been committed, the Exchange staff submits a written report to the BCC.[1] Prior to submitting the report to the BCC, the Exchange staff notifies the Subject of the general nature of the allegations and the specific provisions of the rules or regulations that appear to have been violated. Pursuant to Rule 17.2(d), except when the BCC determines that expeditious action is required, the Subject then has fifteen (15) days from the date of the Exchange staff's notice to submit a written statement to the BCC explaining why no disciplinary action should be taken.

The proposed rule change would permit the Subject's statement to be made in a videotaped format instead of, or in addition to, submitting a written response. The Exchange decided to propose this change because a number of members have indicated that they would be more comfortable presenting their position orally, rather than attempting to draft a persuasive response letter. The Exchange believes that permitting a Subject of an investigation to respond on videotape, which could then be viewed by BCC members at their convenience, would be beneficial to the BCC and the Subject.

The proposal grants the Exchange the discretion to set a time limit on the videotaped response. Initially, the Exchange will set a time limit of fifteen minutes on a videotaped response. The videotaped response would also have to be submitted in a format approved by the Exchange. Initially, the Exchange will require that a videotaped response be in a VHS format. The Exchange may change the foregoing time limit and format requirements from time to time, and will publish the applicable time limit and format requirements in a regulatory circular to the Exchange membership.

2. Statutory Basis

By permitting Subjects of Exchange investigations to submit a response in a videotaped format, the Exchange believes the disciplinary process can be enhanced by giving Subjects more flexibility in responding to a Rule 17.2(d) notice. For this reason, this policy furthers the objectives of Section 6(b)(7) of the Act in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–47 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23315 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Exchange staff may draft and submit a report to the BCC if it finds that there are not reasonable grounds to believe a violation has been committed; however, such a report is not required under Exchange rules.

[2] 17 CFR 200.30–3(a)(12).

[Release No. 34-37651; File No. SR-CBOE-96-24]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to As of Add Submissions

September 5, 1996.

On April 15, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to terminate its fee program for members who, for more than a prescribed percentage of transactions, submit trade information pursuant to CBOE Rule 6.51 ("Reporting Duties") after the date on which the trade is executed. (These post-trade date submissions are commonly referred to as "as of adds.") In conjunction with the foregoing, the Exchange also proposes to revise the structure of its as of add summary fine program.

Notice of the proposal was published for comment and appeared in the **Federal Register** on May 17, 1996.[3] No comment letters were received on the proposal. This order approves the CBOE's proposal.

I. Description of the Proposal

CBOE Rule 6.51 requires, among other things, that (i) a participant in each transaction to be designated by the Exchange shall immediately report the transaction to the Exchange and (ii) each business day, each clearing member shall file with the Exchange trade information covering each Exchange transaction made by it or on its behalf during the business day.

On October 1, 1993, the Exchange instituted an as of add fee program to collect fees from members who, for more than a prescribed percentage of transactions, submit trade information pursuant to Rule 6.51 after the date on which the trade is executed. This program is set forth in CBOE Rule 2.26 and currently functions in the following manner. Each individual member is assessed a $10.00 fee for each as of add submitted by the member during a given month that is in excess of 2.4% of the member's trade submissions during that month. Similarly, each clearing member is assessed a $3.00 fee for each as of add submitted by the clearing member during a given month that is in excess of 1.2% of the clearing member's trade submissions during that month. In addition, the total fees under the program that may be assessed against a member in a given month are capped at $500 for individual members and at $1,000 for clearing members.

The reason the Exchange implemented the as of add fee program was to allocate the costs borne by the Exchange in processing as of add submissions to those members most responsible for generating those costs and thereby to encourage the submission of information with respect to a trade on the date the trade is executed by creating an economic incentive to submit the information on that day. The Exchange represents that during the first year of the program, the percentage of as of add submissions declined by 10% even though the Exchange experienced a 37% increase in trading volume. Based on past experience, the Exchange estimates that had the program not been in effect during that time period, the percentage of as of add submissions would have doubled. Since November, 1994, however, the percentage of as of add submissions has remained relatively constant. Therefore, although the program has clearly been effective in reducing the percentage of as of add submissions, it no longer appears to be causing a reduction in the rate of those submissions.

Accordingly, the Exchange is proposing to terminate the as of add fee program and to seek further reductions in the percentage of as of add submissions by revising the structure of the Exchange's as of add summary fine program.[4]

The Exchange institute its as of add summary fine program on February 1, 1995. The program is a part of the Exchange's minor rule violation plan ("Minor Rule Plan") and is set forth in CBOE Rule 17.50(g)(7). Under the program, any individual member whose monthly percentage of as of add submissions exceeds 7.2% for two consecutive months or any clearing member whose monthly percentage of as of add submissions exceeds 3.6% for two consecutive months is subject to a fine of $250 for the first offense, $500 for the second offense, and $1,000 for each subsequent offense occurring during any 12-month period.

The Exchange is proposing to revise the structure of the as of add summary fine program in four primary respects in order to encourage further change in as of add behavior, and to the extent the Exchange collects fines under the program, to help the Exchange defray the additional costs it incurs in processing as of add submissions.

First, the Exchange is proposing to replace the current as of add summary fine schedule for individual members. The proposed fine schedule would be stricter in two respects: (i) Action against an individual member under the fine schedule would be triggered when the member exceeds the maximum allowable as of add submission percentage in a given month instead of when the member exceeds that percentage in two consecutive months as is the case under the current fine schedule and (ii) the maximum allowable as of add submission percentage for individual members under the fine schedule would be reduced from its current level of 7.2% to 5%. Specifically, the current fine schedule for individual members would be replaced with the following fine schedule. Any individual member whose percentage of as of add submissions in any month exceeds 5% would receive a letter of information for the first offense, a letter of caution for the second offense, a $500 fine for the third offense, a $1,000 fine for the fourth offense, and would be referred to the Exchange's Business Conduct Committee for each subsequent offense occurring during any 12 month period.[5]

In addition, as is currently the case, the Exchange would retain the discretion to initiate a formal disciplinary proceeding against an

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 37201 (May 10, 1996), 61 FR 24986 (May 17, 1996).

[4] The Exchange now believes that the costs to the Exchange of administering a program that imposes small fees or fines on occasional late-reporting members is not justified. Instead, the focus of the new program is on a small number of chronic late reporters who appear to be willing to accept fines as a cost of doing business. The proposed program would permit the Exchange to bring these chronic violators of trade reporting requirements before the CBOE's Business Conduct Committee much sooner than would be permitted under the existing program. This could result in formal charges being brought against such violators, which could lead to very severe sanctions such as major fines and suspensions of membership. *See* Letter from Michael L. Meyer, Esq., Schiff, Hardin & Waite, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 6, 1996 ("Clarification Letter").

[5] In some respects the proposed fine schedule is less strict. Under the proposed fine schedule, a member would not receive any monetary sanction for the first two offenses, as compared to the existing schedule where a member is fined $250 and $500 for the first and second offenses, respectively. Moreover, because the Exchange is proposing to eliminate the as of add fee program, the monetary disincentive for as of adds will be reduced for all individual members except those relatively small number of chronic late reporters whom the Exchange has chosen to target. This is consistent with the Exchange's stated purpose of focusing on the chronic late reporters who appear to be willing to accept fines as a cost of doing business. See Clarification Letter, *supra* note 4.

individual member pursuant to Chapter XVII of the Exchange's rules in the event the Exchange determines that any violations of Rule 6.51 are not minor in nature.

Second, the current as of add summary fine schedule for clearing members would be deleted and going forward as of add summary fines would only be assessed against individual members. The Exchange believes that such a fine structure is appropriate because individual members have primary control over the timing of trade submissions, and in the Exchange's experience, most as of adds are caused by delays and errors of individual members. Moreover, the Exchange believes that clearing members generally have a greater economic incentive than individual members to reduce as of adds because clearing members incur personnel and systems costs due to the extra work necessary to process as of adds whereas individual members do not incur such costs. Therefore, the Exchange believes that the most effective manner in which to achieve a reduction in the percentage of as of adds is to direct the as of add summary fine program toward individual members. Of course, notwithstanding the foregoing, the Exchange would still have the ability to initiate a formal disciplinary proceeding against a clearing member for violations of Rule 6.51.

Third, the Exchange is proposing to implement a verification procedure under Rule 17.50 pursuant to which any member who receives an as of add summary fine would be able to request verification of that fine by the Exchange. Under this procedure, the Exchange would attempt to serve any member who incurs an as of add summary fine with a disciplinary notice on or before the 10th day of the month immediately following the month in which the fine is incurred. The member would then have until the 25th day of the month in which the disciplinary notice is served to request verification. After the Exchange's verification process is completed, it would notify the member in writing of the Exchange's determination, and if the member so desired, the member could appeal the fine within 30 days after the date of such notice in accordance with the appeal procedures under Rule 17.50(d). In addition, any member who incurs an as of add summary fine and does not request verification would be able to appeal the fine under Rule 17.50(d) within 30 days after the Exchange's service of the disciplinary notice informing the member of the fine. The above-described verification procedures would function in the same general manner as the verification procedures that are currently in place under Rule 17.50 for fines imposed for failure to submit accurate trade information and for failure to submit trade information to the price reporter, and these procedures would serve to replace the current as of add verification procedures under Rule 2.26(c) which would be eliminated under the proposed rule change along with the remainder of Rule 2.26.

Finally, the current procedures set forth in Rule 2.26(d) which permit the Exchange to suspend the as of add fee program would also be eliminated along with the remainder of Rule 2.26, and instead, would be restated in Rule 17.50 and made applicable to the as of add summary fine program. As is currently the case with respect to the as of add fee program, these procedures would permit the Exchange's Clearing Procedures Committee, with the approval of the President of the Exchange, or his designee, to suspend the as of add summary fine program for periods no greater than seven calendar days, plus extensions, when unusual circumstances affect the ability of a significant number of members to submit trade information on a timely basis.

The Exchange proposes to implement the proposed rule change within 45 days after its approval by the Commission. The purpose of this time interval is to give the Exchange the opportunity to inform members of the approval of the proposed rule change in the Exchange's Regulatory Bulletin before the rule change is put into effect. The Exchange will publish the effective date of the rule change in the Exchange's Regulatory Bulletin and will notify the Commission of the effective date by letter.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[6] Specifically, the Commission believes that the proposed rule change may serve to further reduce the total number of monthly as of add submissions by providing a clear sanction in those circumstances in which disciplining is clearly appropriate. As a result, the Commission believes that the proposal should benefit all Exchange members, and ultimately investors, by reducing the Exchange's processing costs, making the CBOE more efficient in terms of the time involved in trade processing, and reducing the risk exposure to investors and Exchange member firms.

The Commission believes that an exchange's ability to effectively enforce compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. In this regard, the Commission finds that the CBOE's proposal also is consistent with Section 6(b)(6)[7] of the Act in that it provides for the appropriate disciplining of the CBOE's members for violation of Exchange rules. Indeed, the Commission previously urged the CBOE to incorporate the as of add fee program into the Minor Rule Plan contained in Rule 17.50.[8] The Commission continues to believe that fining and instituting disciplinary proceedings against members to encourage compliance with exchange rules is generally preferable to assessing fees.[9]

The Commission finds that the proposed schedule of penalties pursuant to CBOE Rule 17.50(g)(7) is consistent with the Act.[10]

Further, the Commission does not believe that the fact that the new fine schedule will apply to individual members and not clearing members raises significant regulatory concerns. First, the Exchange represents that most as of adds are the result of late submissions by individual members, not clearing firms. Second, in its present form as previously approved by the Commission, both the as of add fee program and the summary fine program distinguish between clearing members and individual members. Accordingly,

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[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] While the CBOE did not completely incorporate the as of add fee program into Rule 17.50, it did create the current summary fine program for the most egregious violations of Rule 6.51. See Securities Exchange Act Release No. 35297 (January 30, 1995), 60 FR 7091 (February 6, 1995).

[9] See Securities Exchange Act Release No. 35190 (January 3, 1995), 60 FR 3006 (January 12, 1995). Fines levied pursuant to the Minor Rule Plan provide for an appropriate response to minor violations of Exchange rules, while preserving the due process rights of the party accused through specified, required procedures.

[10] The Commission notes that under certain circumstances the new schedule of penalties pursuant to the Minor Rule Plan may be too lenient in that referral to the Business Conduct Committee takes a minimum of five months. However, the Commission's concerns in this regard are alleviated by the fact that at any time the Exchange has the discretion to initiate a formal disciplinary proceeding against a member pursuant to Chapter XVII of the CBOE's rules in the event the Exchange determines that any violations of Rule 6.51 are not minor in nature. Moreover, the Exchange has represented to the Commission that the new schedule of penalties was the subject of extensive consideration by the Exchange's Clearing Procedures and Financial Planning Committees as well as its Floor Directors Committee. See Clarification letter, *supra* note 4.

the Commission believes that the difference in treatment between clearing members and individual members is reasonable and consistent with the Act.

Additionally, the Commission believes that including a verification procedure under Rule 17.50, pursuant to which any member who receives an as of add summary fine would be able to request verification of that fine by the Exchange, provides adequate due process rights to the fined member and is consistent with the Act. The Commission notes that even if the accused fails to request verification, the member may appeal the fine under Rule 17.50(d) within 30 days after the Exchange's service of the disciplinary notice informing the member of the fine.

Moreover, the Commission believes that the procedures currently set forth in Rule 2.26(d), which permit the Exchange to suspend the as of add fee program, are just as appropriate for inclusion in the as of add summary fine program. The Commission believes that when unusual circumstances exist that affect the ability of a significant number of members to submit trade information to the Exchange in a timely manner it may not be appropriate to assess fines against such members. These procedures will permit the CBOE's Clearing Procedures Committee, with the approval of the President of the Exchange, or his designee, to suspend the as of add summary fine program for periods no greater than seven calendar days, plus extensions, when unusual circumstances so warrant. The Commission notes, however, that it expects the CBOE to use its power to waive as of add fines only in highly unusual circumstances.

Finally, the Commission believes that the Exchange will be providing adequate notice of the rule change to its members by publication in the Exchange's Regulatory Bulletin 45 days in advance of the effective date of the change. The Commission believes this is particularly important with rule changes such as this which affect members' susceptibility to disciplinary sanctions.

Accordingly, the Commission finds that the CBOE's proposal is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–96–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96–23350 Filed 9–11–96; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–37644; File No. SR–CHX–96–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to "Stop" Orders and "Stopped" Orders

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 22, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 thereto from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 28 and Article XX, Rule 37 of the Exchange's Rules and add Article XX, Rule 28A to the Exchange's Rules. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Article XX

Liability for ["Stop"] *"Stopped"* Orders

Rule 28 An agreement by a member or member organization to *have an order "stopped"* ["stop" securities]] at a specified price shall constitute a guarantee of the purchase or sale by him or it of the security[ies] at the *stopped* price or its equivalent in the amount specified*; but in no event shall the guarantee be greater than the greater of (i) the size disseminated in the primary market at the time the order was stopped, or (ii) the size disseminated by the Exchange at the time the order was stopped.* If an order is executed at a *price* less favorable [price than that agree upon] *than the stopped price*, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

Rule 28A. Stop Orders.

(a) Stop Orders.

A "stop" order to buy shall only be entered at a price above the current primary market offer. A "stop" order to sell shall only be entered at a price below the current primary market bid. Once entered, a "stop" order may not be executed until a trade (the "effective trade") occurs in the primary market that is at or through the price of the "stop" order. Once the effective trade occurs, the "stop" order shall be executed based upon the next primary market trade, but at a price no better than the effective trade (i.e. the "stop" order shall be executed on a next-no better basis).

(b) Stop Limit Orders.

(1) Buy Stop Limit Orders. A buy stop limit order shall only be entered at a price above the current primary market offer and shall become a limit order when a round-lot transaction takes place in the primary market at or above the stop price. The order shall then be filled in the manner prescribed for handling a limit order to buy.

(2) Sell Stop Limit Orders. A sell stop limit order shall only be entered at a price below the current primary market bid and shall become a limit order when a round-lot transaction takes place in the primary market at or below the stop price. The order shall then be filled in the manner prescribed for handling a limit order to sell.

Article XX

Rule 37(a)

1.–5. No change in text.

6. Since executions are guaranteed on the basis *of the size and price* of the best bid or offering, the order may be executed out of the primary market range for the day, but in a Dual Trading System issue a stop must be granted if requested.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission,the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The primary purpose of the proposed rule change are to clarify that the existing Rule 28 of CHX Article XX relates to "stopped" orders and not "stop" orders, and to add a provision to the Exchange's Rules relating to "stop"

[1] See Letter from David T. Rusoff, Attorney, Foley & Lardner, to Jon Kroeper, Attorney, SEC, dated August 27, 1996 ("Amendment No. 1"). Amendment No. 1 added language clarifying the manner by which sell stop limit orders would be elected under proposed CHX Article XX, Rule 28A(b)(2) and corrected the text of the proposed amendment to CHX Article XX, Rule 37(a)6.

orders, among other things. With regard to "stop" orders, proposed CHX Article XX, Rule 28A permits such orders only to be entered at a price above (for buy orders) or below (for sell orders) the current primary market offer or bid, respectively.

In addition, the Exchange's rules on "stopped" orders are being clarified to make it clear that the execution guarantee of the "stopped" order is limited to the size displayed in the primary market when the "stopped" order is entered. This is consistent with the execution guarantee on orders that are subject to the BEST Rule that are not stopped, which are guaranteed an execution on the lesser of the size displayed in the primary market or 2099 shares.[2]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[2] *See* CHX Article XX, Rule 37. The Exchange's BEST System specifies certain conditions under which CHX specialists are required to accept and guarantee executions of market and limit orders from 100 up to and including 2099 shares.

[3] 15 U.S.C. 78f(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–21 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23310 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37653; File No. SR–CSE–96–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange Relating to Day Trading Margin Requirements

September 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 15, 1996, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its rules concerning day trading margin requirements. The text of the proposed rule change is set forth below [New text is italicized; deleted text is bracketed]:

Rule 6.2. Day Trading Margin

(a) The term "day trading" means the purchasing and selling of the same security on the same day. A "day trader" is any customer whose trading shows a pattern of day trading.

(b) Whenever day trading occurs in a customer's margin account the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first. When day trading occurs in the account of a day trader, the margin to be maintained shall be the margin on the "long" or "short" transaction, which ever occurred first.

(c) No member shall permit a public customer to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No member shall permit a public customer to make a practice of selling securities with them in a cash account which are to be received against payment from another broker-dealer where such securities were purchased and are not yet paid for.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance the financial protections and therefore the integrity of the Exchange's markets by ensuring that customers maintain adequate margin reserves in their accounts. The proposed rule change requires day traders to maintain margins sufficient to cover their intraday "long" or "short" positions, depending upon which occurred first, for a particular day.

Because the proposed rule change will enhance the financial protections and the integrity of the exchange's markets, the Exchange believes that the proposed rule change is consistent with

Section 6 of the Act in general and with Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–96–05 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23348 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37636; File No. SR–DCC–96–09]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of Proposed Rule Change Regarding Securities Eligible as Margin

September 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 2, 1996, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. On August 16, 1996, DCC filed an amendment to its proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend DCC's rules to allow participants the option of posting margin with DCC in the form of U.S. Treasury notes or U.S. Treasury bonds to amend the haircuts applicable to securities deposited as margin.

II. Self-Regulatory Organization's Statement of the Terms of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DCC participants may post margin in either U.S. Treasury bills or in central bank funds (*e.g.*, Federal funds).[4] The purpose of the proposed rule change is to amend DCC's procedures for the clearance and settlement of over-the-counter options and of repurchase and reverse repurchase agreements to allow participants the option of posting margin either in central bank funds or in U.S. Treasury bills, notes, or bonds.

DCC participants trade and maintain inventories in a wide range of U.S. Treasury securities. However, participants do not always maintain inventory in U.S. Treasury bills that are eligible as DCC margin collateral. Consequently, participants incur additional costs in order to satisfy DCC's requirement that margin collateral be supplied in U.S. Treasury bills.

DCC also believes that expanding the allowable margin collateral to include U.S. Treasury notes and bonds will improve participants' ability to meet margin calls in a timely fashion because they will be able to select from a greater portion of the securities in their securities inventories to meet their margin requirements. DCC also believes that because the U.S. Treasury securities markets is extremely liquid that DCC's acceptance of U.S. Treasury notes and bonds as collateral will not impede DCC's ability to liquidate if necessary and thus not increase the risk to DCC or to the national clearance and settlement system.

Furthermore, DCC believes that with the appropriate "haircut" margin calls met using U.S. Treasury notes and bonds will pose no additional risk to the system. As its haircuts, DCC is proposing to use the Commission's schedule for valuation of government securities as set forth in the Commission's uniform net capital rule.[5] DCC believes that this approach is conservative because the Commission's schedule provides for a larger percentage reduction in the valuation of U.S. Treasury securities with greater maturities. The magnitude of the reduction in value is consistent with DCC's methodology of assuming a three standard deviation movement in the

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[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1996).

[2] Letter from John Grebenstein, Executive Director, DCC, to Michele Bianco, Division of Market Regulation, Commission (August 16, 1996).

[3] The Commission has modified parts of these statements.

[4] With respect to options, participants also can post margin in the form of cover (*i.e.*, Treasury securities that would be deliverable upon exercise of an option).

[5] 17 CFR 240.15c–1 (1996). The schedule for valuation of government securities is set forth in paragraph (c)(2)(vi)(A) of Rule 15c3–1.

yield of the security based on the last one hundred day period's closing prices. DCC's clearing bank, Bank of New York, will accept these securities without further haircut. However, if the Bank of New York alters its haircut schedule such that this proposed rule change is not acceptable to it, DCC will submit a proposed rule change seeking Commission approval to amend its rule to conform to the Bank of New York haircut schedule.

DCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder applicable to DCC. In particular, Section 17A(b)(3)(F) of the Act[6] which requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. DCC believes the proposed rule change will permit wider utilization of the system by providing participants with the opportunity to meet efficiently margin requirements consistent with DCC's obligations to safeguard funds and securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of DCC. All submissions should refer to the file number SR–DCC–96–09 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23312 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37652; International Release No. 1017; File No. SR–DTC–96–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Admission of Foreign Entities As Depository Participants

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on July 12, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–96–13) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to amend its current participants admissions policy to permit entities that are organized in a foreign country and are not subject to U.S. federal or state regulation ("foreign entities") to become DTC participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC Rules 2 and 3 set forth the basic standards for the admission of DTC participants. The admission of an entity that is unable to meet the financial obligations arising from its depository transactions can directly affect all other participants. Accordingly, DTC's rules provide that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Furthermore, DTC's rules require all participants to demonstrate to DTC that these standards are met on an ongoing basis.

In determining whether to grant access to its services, DTC's 1990 "Policy Statement on the Admission of Participants" ("1990 Policy Statement") considers whether the applicant is subject to comprehensive U.S. federal or state regulation to be a critical factor.[3] Such regulation includes, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct of the applicant. Under the 1990 Policy Statement, an applicant not subject to

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The 1990 Policy Statement is set forth in Securities Exchange Act Release No. 27808 (March 16, 1990), 55 FR 11279 (SR–DTC–90–01) (notice of filing of proposed rule change). For a complete discussion of the 1990 Policy Statement, refer to Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (order approving proposed rule change).

state of federal regulatory oversight generally would not be eligible to become a participant.[4] However, since 1990 DTC has admitted a small number of foreign entities as participants if their obligations to DTC are guaranteed by participants deemed creditworthy by DTC.

Recently, certain participants have requested that DTC consider changes in the admissions policy that would allow foreign affiliates of DTC participants to become direct participants without first obtaining financial guarantees. The purpose of the proposed rule change is to establish, in lieu of requiring foreign entities to obtain such guarantees, admissions criteria that will permit a well-qualified foreign entity to obtain direct access to DTC's service while assuring that the unique risks associated with the admission of foreign entities are adequately addressed.[5]

The admission of foreign entities as participants raises a number of unique risks and issues, including, without limitation, (i) the level of state and federal regulation to which the foreign entity would be subject, (ii) whether the operation of the laws of the entity's home country and time zone differences[6] may impede the successful exercise of DTC's rights and remedies, particularly in the event of the entity's failure to settle, and (iii) whether the financial information regarding the foreign entity made available to DTC for monitoring purposes would be less adequate than information received from U.S. domestic entities.

In an effort to address these issues and concerns, the proposed rule change will require that the foreign entity, in addition to executing the standard DTC Participants Agreement, enters into a series of undertakings and agreements that are designed to address jurisdictional concerns, sufficiency of collateral, and to assure that DTC is provided with audited financial information that is acceptable to DTC. With regard to the undertakings and agreements between the foreign entity and DTC, jurisdictional issues, and waivers of rights or immunity with regard to all collateral of the foreign entity deposited with or pledged to DTC, DTC will require an opinion of counsel satisfactory to DTC that states, among other things, that all such undertakings, agreements, and waivers are legal and enforceable against the foreign entity and will be recognized and given effect under the laws of the foreign entity's home country.

The proposed rule change also will require that the foreign entity (i) be subject to regulation in its home country, (ii) be in good standing with its home country regulator, and (iii) if there is a central securities depository established in the foreign entity's home country, be eligible to become a member of that depository. Furthermore, the proposed rule change will require that the home country regulatory of the foreign entity have entered into a memorandum of undertaking with the Commission to share or exchange information.

The proposal also sets forth special financial conditions for foreign entities. Under the proposed rule change, foreign entities will be required to have and maintain excess net capital equal to 1000% of the excess net capital required of U.S. participants.[7] Foreign entities also will be required to deposit with or pledge to DTC special collateral having a value equal to fifty percent of the entity's net debit cap after the imposition of specified haircuts. Except for U.S. Treasury securities, securities included in the special collateral account will receive a haircut of fifty percent. In addition, securities for which the foreign entity is the sole or a principal market maker would not be acceptable as special collateral. Most importantly, the foreign entity will not receive credit for the special collateral in DTC's Collateral Monitor. Any net debit must be supported by the value of other, non-special collateral (including any securities received by the participant) reflecting DTC's customary haircuts. The effect of these special collateral requirements will help to assure that DTC does not suffer a loss even if the foreign entity fails to settle and the market value of the collateral supporting its net debit decreases by fifty percent or less.

The central purpose of the special financial conditions is to compensate for the fact that foreign entities are not subject to regulatory oversight in the U.S. As such, information concerning impending insolvency of foreign entities will not be available to DTC through the information-sharing network that has been established among U.S. self-regulatory organizations.[8] After receipt of an early warning from a domestic participant's regulator or from another clearing agency of which the participant is a member, DTC can take early measures to protect itself. For example, DTC can demand additional collateral or permit the participant to effect transactions on a "cash and carry" basis only. Because such information-sharing will not necessarily be available for a foreign entity, DTC's proposed financial conditions will require foreign participants to deposit this special collateral before such participants are permitted to create a net debit in DTC's settlement system.

DTC believes that the proposed rule changes is consistent with the requirements of Section 17A of the Act[9] because the proposal does not unfairly discriminate against foreign entities seeking admission as participants. Instead, DTC believes the proposed rulechange appropriately accounts for the unique risks to the depository raised by their admission.

(B) Self-Regulatory Organization's Statement on Burden on Competition

While DTC acknowledges that the proposed rule change may impose an additional burden for foreign entities due to the modified admissions criteria, DTC believes that any such burden is necessary and appropriate in furtherance of the purposes of the Act.

[4] However, DTC recognizes that any person designated by the Commission pursuant to Section 17A(b)(3)(B)(vi) of the Act even if not subject to such regulatory oversight could be eligible for admission.

[5] Certain of these criteria could be waived where inappropriate to a particular applicant or class of applicants (*e.g.*, certain foreign governments or international or national central securities depositories).

[6] Time zone differences could complicate communications between foreign participants and their correspondent U.S. settling banks with respect to the timely payment of participants' net debit to DTC or intraday demands for payment. These differences also could delay DTC's receipt of information concerning a participant's financial condition thereby placing DTC at a potential disadvantage relative to other foreign creditors that already have received the information because actions subsequently taken by DTC to protect itself or its participants could be limited or foreclosed by the prior actions of the foreign creditors.

[7] To qualify to be a DTC participant, DTC currently requires that U.S. broker-dealers have and maintain a minimum of $500,000 excess net capital and that banks must have and maintain minimum equity of $2 million. Therefore, under the proposal, foreign broker-dealers would be required to have and maintain excess net capital of $5 million and foreign banks would be required to have and maintain equity of $20 million to qualify for admission. Telephone conversation between Richard B. Nesson, Executive Vice President and General Counsel, DTC, and Mark Steffenson, Special Counsel, Division of Market Regulation, Commission (August 15, 1996).

[8] In 1968, DTC and other U.S. clearing agencies created the Securities Clearing Group ("SCG"). The primary purpose of the SCG was to establish formal procedures for the sharing of appropriate financial, operational, and clearing information about common members. For a complete description of SCG, refer to Securities Exchange Act Release No. 27044 (July 18, 1989), 54 FR 30963 [File Nos. SR-DTC-88-20, SR-MCC-88-10, SR-MSTC-88-07, SR-NSCC-88-09, SR-OCC-89-02, SR-PHILADEP-89-01, and SR-SCCP-89-01].

[9] 15 U.S.C. 78q-1 (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–13 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23342 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37647; File No. SR–GSCC–96–8]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Repurchase Agreement Netting Service

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 1, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–96–8) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. On August 9, 1996, GSCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to reimburse two costs related to interdealer broker netting members' ("IDBs") participation in GSCC's netting system for repurchase and reverse repurchase transactions ("repo") involving government securities as the underlying instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently, the Commission approved File No. SR–GSCC–96–04 to allow IDB netting members to participate in GSCC's netting service for repos.[4] Under the rule, IDB and non-IDB netting members can submit data on brokered repos to GSCC in the same manner as they do for cash transactions.[5] GSCC compares, nets, and settles repo close legs and repo start legs submitted prior to start date (*i.e.*, non-same-day-settling start legs) pursuant to GSCC's existing procedures for the netting and settlement of repos. The member parties to brokered repos assume the responsibility for the intraday settlement of start legs outside of GSCC.

This filing will amend GSCC's rules to accommodate IDB participation in repo netting and, more particularly, the ineligibility of intraday settling start legs for netting and settlement through GSCC. The first change relates to the clearance charges incurred by participating IDBs for the settlement of the start legs of brokered repos. The term clearance charges is a commonly used term that refers to costs charged by a clearing agent bank to a broker-dealer customer related to the settlement by that customer of its securities movement obligations. Such costs many include both fixed charges and pass through charges such as the costs of Fed Wire.

As GSCC stated in its prior rule filing,[6] its long-range plans for repo services entail the full and complete automation of all aspects of start and close leg processing, including the intraday settlement of repo start legs. GSCC believes that intraday settlement of start legs will be introduced next year. Once intraday settling start legs are netted by GSCC, participating IDBs will not incur any clearance cost for them because no movements of securities between IDBs and their dealer customers will be required. Rather, IDB's settlement obligations will be satisfied through the netting process.[7] In order to not disadvantage IDBs that wish to participate in the repo netting process immediately, GSCC will absorb IDBs' clearance charges related to the settlement of intraday repo start legs. To protect itself from being obligated to pay for clearance charges that are significantly higher than those that are customary in the industry, GSCC will reserve the right to absorb such charges

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Jeffrey Ingber, General Counsel and Secretary, GSCC, to Christine Sibille, Division of Market Regulation, Commission (August 6, 1996).

[3] The Commission has modified the text of the statements GSCC submitted.

[4] Securities Exchange Act Release No. 37482 (August 1, 1996), 61 FR 40275 ("Release No. 37482").

[5] IDBs are restricted to submitting to GSCC data on offsetting repo transactions done with GSCC repo netting participants in order to ensure that the IDB will net out of the repo transaction.

[6] Release No. 37482.

[7] Because IDBs will be permitted only to submit to GSCC data on offsetting repo transactions done with GSCC netting participants, their settlement obligations for the start legs will net out as they do with the close legs.

only up to a dollar amount deemed reasonable by it.

Also in order to not disadvantage IDBs participating in the initial brokered repo netting service, if an IDB incurs or causes GSCC to incur an overnight financing cost resulting solely from securities delivered late in the day that the IDB is not able to redeliver before the close of the Fed Wire, the IDB may submit a bill for this financing cost to GSCC. If GSCC determines that such cost was incurred unavoidably and without fault by the IDB, GSCC will absorb or reimburse the IDB for this cost and will allocate it as it normally allocates financing costs under its fee structure. The term "overnight financing cost" is a commonly used term that refers to the costs charged by a clearing agent bank to a broker-dealer customer related to the financing by the bank of securities held from one business day until the next business day in the customer's clearing account. To protect itself from being obligated to pay for overnight financing charges that are significantly higher than those that are customary in the industry, GSCC will reserve the right to absorb such charges only up to a dollar amount deemed reasonable by it.

The Board of Directors of GSCC also has determined it appropriate to make these fee reimbursement provisions applicable to a division of a dealer netting member that: (1) Operates in an overall manner as a broker; (2) participates in the repo netting service through a separate GSCC account; and (3) abides by the restrictions imposed on IDBs that participate in the repo netting process.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should facilitate the prompt and accurate clearance and settlement of securities transactions.[8]

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

GSCC has not solicited or received comment on the proposed rule change. Members will be notified of the rule change filing, and comments will be solicited by an Important Notice.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–8 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23309 Filed 9–11–96; 8:45 am]

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[8] 15 U.S.C. 78q–1 (1988).

[9] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37555; File No. SR–GSCC–96–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Amendments to a Proposed Rule Change Relating to the Rights and Responsibilities of Interdealer Broker Netting Members

September 6, 1996.

On July 2, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–96–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to the rights and responsibilities of interdealer broker ("IDB") netting members. GSCC amended the filing on July 23, 1996.[2] Notice of the proposed rule change, as amended, was published in the **Federal Register** on August 20, 1996.[3] On August 16, 1996, and on August 21, 1996,[4] GSCC filed amendments No. 2 and 3 to the filing. Amendment 2 and amendment No. 3 are described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of amendment No. 2 is to clarify that Category 1 IDB have no liability for losses resulting from nonmember brokered transactions. The purpose of amendment No. 3 to the proposed rule change is to require that at least thirty percent of a Category 1 IDB's clearing fund deposit consist of cash or eligible netting securities and that no more than seventy percent of its clearing fund deposit be met by pledging eligible letters of credit.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen Walraven, Vice President and Associate General Counsel, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (July 18, 1996).

[3] Securities Exchange Act Release No. 37565 (August 14, 1996), 61 FR 43103.

[4] Letters from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry W. Carpenter, Division, Commission (August 12, 1996, and August 15, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, GSCC's rules provide that if a loss resulting from a defaulting member relates to brokered transactions, ten percent of the loss is allocated collectively to IDBs regardless of their activity with the defaulting member. The proposed rule change as initially filed proposed amending GSCC's rules to eliminate the collective loss allocation and instead to allocate fifty percent of the loss from either a member or nonmember brokered transactions to Category 1 and Category 2 IDBs based on the level of their trading activity with the defaulting member.[6] However, pursuant to GSCC's rules, only Category 2 IDBs may enter into nonmember brokered transactions. Amendment No. 2 clarifies that the loss from a nonmember brokered transaction will be allocated among Category 2 IDBs pro rata based on the level of their trading activity with the defaulting member.

The purpose of amendment No. 3 to the proposed rule change is to require that at least thirty percent of a Category 1 IDB's clearing fund deposit consist of cash or eligible netting securities and that no more than seventy percent of the clearing fund deposit be met by pledging eligible letters of credit. Unlike other participants which are required to deposit ten percent of their clearing fund requirement in cash, Category 1 IDBs need only deposit $100,000 in cash which is two percent of their proposed fixed $5,000,000 deposit requirement. As originally filed, GSCC's proposed rule change permitted Category 1 IDBs to meet the non-cash component of their required clearing fund deposit (*i.e.*, $4.9 million) all or in part by pledging eligible letters of credit to GSCC. However, in amendment No. 3 GSCC states that for Category 1 IDBs, the non-cash component of their clearing fund requirement should be consistent with the composition requirements of other netting members, and therefore, no more than seventy percent of a Category 1 IDB's required clearing fund deposit may be met by pledging eligible letters of credit. At least thirty percent of their clearing fund requirement must consist of cash or eligible netting securities.

Both Category 1 IDBs, because of their increased volumes due to the implementation and expansion of repo brokering services, and Category 2 IDBs, because they may enter trades with nonmembers, present increased risk to GSCC and its other members. Therefore, GSCC believes that IDBs should be subject to the same clearing fund deposit composition requirements as other netting members, with the exception of the lower cash requirement for Category 1 IDBs.

GSCC believes the proposed rule change, as amended, is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because the proposal should facilitate the prompt and accurate clearance and settlement of securities transactions by IDBs in GSCC's netting system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change as amended will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not solicited with respect to the proposed rule change as amended, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–07 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23343 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37656; File No. SR–GSCC–96–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Permitting All Netting Members To Receive Credit Forward Mark Adjustment Payments

September 6, 1996.

On June 15, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–96–06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to allow all netting members to receive credit forward mark adjustment payments. Notice of the

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[5] The Commission has modified the text of the summaries submitted by GSCC.

[6] A member brokered transaction is a brokered transaction where both the buyside and sellside counterparties to the IDB are netting members. A nonmember brokered transaction is a brokered transaction where either the buyside or sellside counterparty to the IDB is a nonmember.

[7] 15 U.S.C. 78q–1 (1988).

[8] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

proposal was published in the Federal Register on July 29, 1996.[2] One comment letter was received.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends GSCC Rule 13 to permit all netting members to receive credit forward mark adjustment payments from GSCC pursuant to GSCC's funds-only settlement process.[4] Currently, GSCC collects forward mark adjustment payments from those netting members with a negative forward mark adjustment on a particular business day with regard to a particular CUSIP and remits forward mark adjustment payments to eligible category one dealer and bank netting members that are in a positive forward mark position with regard to such CUSIP. Each member's forward mark adjustment is recalculated each day with any debit or credit from the previous day reversed, and a new forward mark adjustment payment obligation is established. Only cash can be used to fund forward mark adjustment payments because GSCC passes through credit forward mark adjustment payments.

Section 1 of GSCC Rule 13 previously provided that only category one dealer netting members and bank netting members that have been members for at least sixty calendar days are entitled to receive credit forward mark adjustment payments. This limitation was put into effect in connection with the implementation of GSCC's netting service for repurchase transactions ("repo").[5] Under the rule change, all netting members are eligible to receive credit forward mark adjustment payments, and the sixty day waiting period has been eliminated.

Although all netting members are now eligible to receive credit forward mark adjustment payments, special provisions apply to category two dealer netting members and category two futures commission merchant ("FCM") netting members. Under GSCC's current rules, category two dealer netting members and category two FCM netting members are required to provide GSCC with additional clearing fund margin protection[6] in part because of the more modest minimum net worth requirements for these types of netting members.[7]

Accordingly, the rule change provides that each category two dealer netting member and category two FCM netting member now have an option as to whether it wishes to (i) receive credit forward mark adjustment payments and have the haircut applicable to its clearing fund deposit raised from the current levels to levels that are based on historical two day volatility designed to cover ninety-five percent of price movements, as determined by using the greater of the price movements from the last quarter or the last year, or (ii) not receive credit forward mark adjustment payments and retain its current clearing fund margin level.

II. Comment Letters

One comment letter was received with regard to the proposed rule change from Refco Securities, Inc. ("Refco").[8] In its letter supporting the proposed rule change, Refco stated that it is an active participant in the government securities market and wants to participate in the repo netting process in the same manner as other dealers but as a category two dealer netting member it is unable to do so because it is not eligible to receive credit forward mark adjustment payments.

III. Discussion

Section 17A(b)(3)(F)[9] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with GSCC's obligations under Section 17A of the Act.

The rule change should permit GSCC to deliver credit forward mark adjustment payments to all netting members while still assuring the safeguarding of securities and funds within its custody or control. GSCC has gained some experience with the new forward mark adjustment process since the implementation of the process in November 1995 and is now better able to assess its liquidity needs. Furthermore, GSCC will only permit category two dealer and FCM netting members to receive credit forward mark adjustment payments if such netting members maintain additional clearing fund margin. If any such netting member elects to receive credit forward mark adjustment payments, the increase in the netting member's margin factors should help ensure that GSCC has sufficient collateral if such netting member defaults on its settlement obligations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23344 Filed 9–11–96; 8:45 am]

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[2] Securities Exchange Act Release No. 37461 (July 19, 1996), 61 FR 39492.

[3] Letter from Santo C. Maggio, President, Refco Securities, Inc., to Jonathan Katz, Secretary, Commission (July 12, 1996).

[4] The forward mark adjustment is a daily mark-to-market process for all net settlement positions designed to account for GSCC's ongoing exposure on each forward net settlement position. Because GSCC novates and guarantees forward settling trades prior to the settlement of such trades, GSCC incurs multi-day settlement exposure on such trades. To mitigate this risk, GSCC collects from each netting member on a daily basis an amount equivalent to the difference between the contract value of the netting member's positions and GSCC's system value based on current market values ("collateral mark"). GSCC also collects a financing mark based on the rate for all forward repurchase and reverse repurchase transactions ("repos") which is equal to the product of the market value of the repo, GSCC's system repo rate, and the repo term. A member's forward mark adjustment payment is the sum of all collateral marks and all financing marks.

[5] GSCC believed that limiting credit pass throughs in connection with the implementation of the netting service for repos was a prudent measure to ensure that the revised forward mark adjustment process did not pose undue risk to GSCC. For a complete description of GSCC's repo netting system, refer to Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 49649 (File No. SR–GSCC–95–02) (order approving proposed rule change implementing GSCC's netting services for non-same-day-settling aspects of next-day and turn repo transactions).

[6] Category two dealer and FCM netting members have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-nine percent of historical one day price volatility. All other GSCC members have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-five percent of historical one day price volatility.

[7] For example, category two dealer netting members and FCM netting members must maintain a net worth of $25 million, but category one banks and category one dealers and FCMs must maintain a minimum net worth of $100 million and $50 million, respectively.

[8] *Supra* note 3.

[9] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[10] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37650 File No. SR–MBSCC–96–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Relating to Eliminating the Monthly Audit Package Requirements.

September 5, 1996.

On June 18, 1996, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MBSCC–96–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published on July 17, 1996, in the **Federal Register** to solicit comments on the proposed rule change.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

MBSCC is modifying its rules and procedures to eliminate the requirement that it provide a monthly audit package to each participant and the requirement that such participant review and respond to the package. MBSCC currently provides each participant with the participant's Open Commitment Report on a daily basis pursuant to its rules. Participants have a duty under the rules to review each report for errors and discrepancies and to report any error or discrepancy to MBSCC. MBSCC's rules and source book also require MBSCC to send each participant a monthly audit package which consists of a copy of the participant's Open Commitment Report dated the last business day of the previous month and an Audit Exception Reporting Form which must be completed by the participant and returned to MBSCC whether or not any exceptions are found.

In connection with this rule change, MBSCC will eliminate the late audit confirmation penalties from its schedule of penalty fees.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[3] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MBSCC's rule change meets this requirement because by eliminating the monthly audit package and the participants' requirement to review it, the administrative and economic burdens on participants' resources due to the duplicative nature of the requirements should be eliminated without any substantive effect. Such elimination should facilitate efficiencies in the administration of participant operations thereby promoting the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–96–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23347 Filed 9–11–96; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37420 (July 11, 1996), 61 FR 37307.

[3] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[Release No. 34–37655; File No. SR–OCC–96–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Exercise of Certain Foreign Currency Options

September 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 18, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit the exercise of certain foreign currency options on the business day immediately preceding the expiration date of such options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summarizes, sent forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend its results to permit the exercise of American-style [3] foreign currency and cross-rate foreign currency options ("currency options") on the business day immediately preceding their expiration date. Currently, OCC Rule 801(c) prohibits the exercise of option contracts on the business day immediately preceding their expiration unless such options are American-style flexibly structured options. At the time this restriction was incorporated into OCC's rules, all option contracts expired on Saturday. The restriction ensured that there was adequate time for all unmatched transactions to be resolved and for OCC to receive and process exercise notices for the preliminary and final exercise by exception ("ex-by-ex") processing cycles that were then in effect. Subsequently, OCC has replaced the preliminary and final processing cycles for currency options with a single ex-by-ex processing procedure.

With the conversion to Friday night as the expiration date for all standardized currency options,[4] Rule 801(c) has

[4] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] The term "American" or "American-style" option contract means the option contract may be exercised at any time from its commencement time until its expiration. In contrast, a European style option may only be exercised on its expiration.

[4] For a complete description of the conversion of the expiration date for all standardized currency options from Saturday to Friday, refer to Securities Exchange Act Release Nos. 32458 (June 11, 1993), 58 FR 3384 [File No SR–OCC–93–09] (notice of filing and order granting accelerated approval on a temporary basis of a proposed rule change that changed the expiration day for American-style foreign currency options from Saturday to Friday) and 32830 (July 14, 1993), 58 FR 38800 [File No.

Continued

operated to preclude the exercise of currency options on Thursday. OCC clearing members have requested that OCC lift the restriction with respect to currency options since their non-U.S. customers have expressed a desire to submit exercises on Thursday due to time zone differences with the United States. OCC believes that the protections afforded by the Rule 801(c) exercise restriction are no longer necessary for currency options because of the single cycle expiration processing procedures that are in effect and because currency options expire on Friday instead of Saturday.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] because it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–96–08 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23345 Filed 9–11–96; 8:45 am]

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SR–OCC–93–15) (order granting permanent approval on an accelerated basis of a proposed rule change that changed the expiration day for American-style foreign currency options and cross-rate foreign currency options from Saturday to Friday).

[5] 15 U.S.C. 78q–1 (1988).

[Release No. 34–37645; File No. SR–OCC–96–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Valuation of Government Securities

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on July 18, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. On August 22, 1996, OCC filed an amendment to the proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify OCC's valuation of government securities used by clearing members as margin clearing fund deposits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to modify the valuation methodology on deposits of government securities for margin and clearing fund purposes. The valuation rules for government securities for margin and clearing fund purposes have remained largely unchanged since the mid-1970's when OCC only valued such collateral at the time of deposit. Government securities are currently valued at either: (1) The lesser of par value or 100% of the current market value for maturities less than one year or (2) the lesser of par value or 95% of the current market value for maturities between one and ten years.[4]

The par value limitation was initially included in the valuation methodology because the security could be carried to its maturity, when it would reach par value, without any subsequent valuations after its initial deposit with OCC. The restriction of maturities to less than ten years was initially implemented as a risk control device because it precluded the deposit of longer, more volatile securities which were not subject to revaluation after their initial deposit with OCC.

Since the early 1980's, OCC has revalued government securities on a monthly basis. However, OCC is now prepared to revalue government securities on a daily basis and to

[6] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Michael G. Vitek, Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division, Commission (August 19, 1996).

[3] The Commission has modified parts of these statements.

[4] Government securities are currently defined as securities issued or guaranteed by the United States or Canadian government or by any other foreign government acceptable to OCC and that matures within ten years. The term "short-term government securities" means securities maturing within one year. The term "long-term government securities" means all other government securities. The proposed rule change will amend the definition to delete the ten year restriction.

include such valuation in its overall daily assessment of clearing member margin and clearing fund deposits. OCC believes that the par value valuation methodology and the restriction on greater than ten year maturities are overly conservative and are no longer necessary to protect OCC from the risk of collateral value changes. Instead, the proposed rule change will impose new haircut levels on the values of government securities.

Specifically, the rule change proposes that Section 3 of Article VIII of OCC's By-Laws and Rule 604 of OCC's Rules be amended to establish a new schedule of haircuts. Government securities deposited as either clearing fund or margin will be valued at: (1) 99.5% of the current market value for maturities less than one year; (2) 98% of the current market value for maturities between one and five years; (3) 96.5% of the current market value for maturities between five and ten years; and (4) 95% of the current market value for maturities in excess of ten years.

OCC reviewed the haircut policies of other derivative clearing houses and analyzed recent historical volatilites of government securities before assessing the proposed haircut levels. Specifically, OCC collected daily data since 1990 on government securities of various maturities across the yield curve and analyzed this historical volatility in the same manner in which OCC analyzes volatility for the setting of margin intervals within OCC's Theoretical Intermarket Margin System. The proposed haircut levels provided adequate coverage for more than 99% of all days since 1990. In addition, OCC reviewed the extreme volatility in the U.S. government security market that occurred on March 8, 1996, and found that the proposed haircut levels would not have been breached. Finally, OCC compared its proposed haircut levels with those of other derivative clearing organizations and found that the proposed haircut levels are consistent with the haircut policies of those clearing houses and that they provide prudent protection from market volatility.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended.[5] Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

[5] 15 U.S.C. 78q–1 (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–96–09 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23346 Filed 9–11–96; 8:45 am]

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[Release No. 34–37648; International Series Release No. 1016; File No. SR–PSE–96–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Listing and Trading of Equity-Linked Notes

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 24, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization ("SRO"). On July 25, 1996, the Exchange submitted Amendment No. 1 to the Commission.[2] On September 4, 1996, the Exchange submitted Amendment No. 2 to the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing rules to provide for the listing

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 clarified that the requisite trading volume levels concerning the linked security must occur in the United States. In addition, Amendment No. 1 removed the unnumbered paragraph in proposed PSE Rule 3.1(j)(3)(D)(i) that referenced proposed PSE Rule 3.1(j)(3)(C)(iii)(b)(2) because the language in that paragraph did not take into consideration the provisions contained in proposed PSE Rule 3.1(j)(3)(C)(iii)(b)(3). *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Anthony P. Pecora, Attorney, Office of Market Supervision, Division of Market Regulation, SEC, dated July 24, 1996.

[3] Amendment No. 2 conforms the definition of ELNs contained in PSE Rule 3.1(b)(16) with the other rules in this proposal concerning ELNs in that the use of American Depositary Receipts ("ADRs") is limited to sponsored ADRs. *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Anthony P. Pecora, Attorney, Office of Market Supervision, Division of Market Regulation, SEC, dated September 3, 1996.

and trading of Equity-Linked Notes ("ELNs"). The text of the proposed rule change is available for inspection and copying at the PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to list for trading Equity-Linked Notes, which are notes that are linked, in whole or in part, to the market performance of common stocks, non-convertible preferred stocks, or sponsored ADRs[4] overlying such equity securities. The proposal states that the Exchange will consider for listing ELNs that meet the Exchange's issuer listing standards, ELN listing standards, minimum standards applicable to linked securities, and limits on the number of ELNs linked to a particular security, as set forth below.

a. Issuer Listing Standards

Under the proposal, the issuer of ELNs must be an entity that: (a) Is listed on a national securities exchange or the Nasdaq National Market or is an affiliate of a company listed on a national securities exchange or the Nasdaq National Market; and (b) has a minimum net worth of $150 million. In addition, the market value of an ELN offering, when combined with the market value of all other ELN offerings previously completed by the issuer and currently traded on a national securities exchange or the Nasdaq National Market, may not be greater than 25% of the issuer's net worth at the time of issuance.

b. ELN Listing Standards

The proposal states that the issue must have: (a) A minimum public distribution of one million ELNs; (b) a minimum of 400 holders of the ELNs (provided, however, that if the ELN is traded in $1,000 denominations, there is no minimum number of holders); (c) a minimum market value of $4 million; and (d) a term of two to seven years, provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR, the issue may not have a term of more than three years.

c. Minimum Standards Applicable to the Linked Security

The proposed new rules state that the underlying security must have: (a) A market capitalization of at least $3 billion and trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the ELNs; or (b) a market capitalization of at least $1.5 billion and trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the ELNs; or (c) a market capitalization of at least $500 million and trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the ELNs.[5]

In addition, the notes must be issued by a company that has a continuous reporting obligation under the Act, as amended, and the security must be listed on a national securities exchange or the Nasdaq National Market and be subject to last sale reporting.

Furthermore, the notes must be issued by either: (a) A U.S. company; or (b) a non-U.S. company[6] (including a company that is traded in the United States through sponsored ADRs) provided that one of the following three criteria is met: First, the Exchange must have a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the linked security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded).

Second, as an alternative, the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which the Exchange has in place a comprehensive surveillance sharing agreement must represent (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing.

Third, an alternate trading volume test would permit an ELN on a non-U.S. security if: (a) The combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of listing of the non-U.S. security for an ELN listing; (b) the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of listing of the non-U.S security for an ELN listing is 100,000 or more shares; and (c) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for an ELN listing.[7]

In addition, if the underlying security to which the ELN is to be linked is the stock of a non-U.S. company that is traded in the U.S. market as a sponsored

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[4] ADR programs may be "sponsored" or "unsponsored." A sponsored ADR is established by a single U.S. depository bank at the request, or with the consent, of the foreign issuer of the underlying security.

With a sponsored ADR program, a single depository bank, working closely with the issuer, acts as the central source of information for buyers, sellers, and intermediaries. In addition, the depository generally is required to distribute notices of shareholder meetings and voting instructions to ADR holders, thereby ensuring the ADR holders will be able to exercise voting rights through the depository with respect to the underlying securities.

ELNs may be linked only to sponsored ADRs. Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, and Anthony P. Pecora, Attorney, Office of Market Supervision, Division of Market Regulation, SEC (Sept. 3, 1996).

[5] If an issuer proposes to list an offering of ELNs that does not satisfy the market capitalization or trading volume requirements discussed above, the PSE, with the concurrence of the staff to the Commission, may evaluate the trading volume, public float, and market capitalization of that security, as well as other relevant factors, and determine on a case-by-case basis that it is appropriate to list ELNs overlying that security. However, depending on the proposed facts, the Commission may require the PSE to submit a rule filing pursuant to Section 19(b) of the Act that addresses the pertinent regulatory issues. In this regard, the Commission notes that any proposal to list an ELN that is linked to a security with a market capitalization of less than $500 million would raise significant regulatory concerns for which a Section 19(b) rule filing would be required. *See* Securities Exchange Act Release No. 34758 (Sept. 30, 1994), 59 FR 50943 (approving listing of Selected Equity-Linked Debt Securities ("SEEDS") by the National Association of Securities Dealers, Inc. ("NASD")).

[6] For the purposes of this rule, a non-U.S. company is any company formed or incorporated outside of the United States.

[7] The Commission notes that volume in foreign markets with which the Exchange has a comprehensive surveillance information sharing agreement in place is not included in these calculations. *See* Securities Exchange Act Release no. 37405 (July 7, 1996), 61 FR 36596, at n.8.

ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying security shall be 2,000.

d. Limits on the Number of ELNs Linked to a Particular Security

The proposal provides that the issuance of ELNs relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. In addition, the issuance of ELNs relating to any underlying non-U.S. security or sponsored ADR may not exceed: (a) Two percent of the total shares outstanding worldwide if at least 20 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or (b) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or (c) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.[8]

In addition, if an issuer proposes to issue ELNs that relate to more than the allowable percentages of the underlying security specified above, then the Exchange, with the concurrence of the staff of the Division of Market Regulation of the SEC, will evaluate the maximum percentage of ELNs that may be issued on a case-by-case basis.[9]

Finally, the proposed rule states that prior to the commencement of trading of particular ELNs listed pursuant to PSE Rule 3.1(j)(3), the Exchange will distribute a circular to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[10] of the Act in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–23 and should be submitted by October 3, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[12] Specifically, the Commission believes that providing for the listing and trading of ELNs will offer a new and innovative means for investors to participate in the securities markets. In particular, the Commission believes that the availability of ELNs will permit investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.[13] Accordingly, for these reasons, as well as for the reasons stated in the Commission's prior approval orders concerning equity-linked debt securities,[14] the Commission finds that the PSE's standards for the listing and

[8] *Id.* at n.9.

[9] As with the market capitalization and trading volume requirements, the Commission notes that the Exchange may be required to submit a rule filing to the Commission pursuant to Section 19(b) of the Act to address regulatory issues raised by any Exchange proposal to list an ELN related to more than the allowable percentages of outstanding shares of the underlying security. *See supra* note 4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] Pursuant to Section 6(b) of the Act, the Commission must predicate approval of trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging, or other economic function because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[14] The Commission notes that it previously has approved the listing of equity-linked debt securities by the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the NASD, the New York Stock Exchange, Inc. ("NYSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). *See* Securities Exchange Act Release Nos. 32343 (May 20, 1993), 58 FR 30633 (order originally approving the listing of ELNs by the Amex); 33328 (Dec. 13, 1993), 58 FR 66041 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 33468 (Jan. 13, 1994), 59 FR 3387 (order originally approving the listing of Equity-Linked Debt Securities ("ELDS") by the NYSE); 34545 (Aug. 18, 1994), 59 FR 43877 (order approving the listing of ELDS by the NYSE linked to securities issued by non-U.S. companies); 34549 (Aug. 18, 1994), 59 FR 43873 (order approving the listing of ELNs by the Amex linked to securities issued by non-U.S. companies); 34758 (Sept. 30 1994), 59 50943 (order originally approving the listing of SEEDS by the NASD); 34759 (Sept. 30, 1994), 59 FR 50939 (order originally approving the listing of ELNs by the CBOE); 34765 (Sept. 30, 1994), 59 FR 51220 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 34766 (Sept. 30, 1994), 59 FR 51220 (approving revised market capitalization and trading volume requirements for the listing of SEEDS by the NASD); 34985 (Nov. 18, 1994), 59 FR 60660 (order approving alternative market capitalization and trading volume requirements for the listing of ELDS by the NYSE); 35479 (Mar. 13, 1995), 60 FR 14993 (order originally approving the listing of ELNs by the Phlx); 36578 (Dec. 13, 1995), 60 FR 65700 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 36990 (Mar. 20, 1996), 61 FR 13545 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 36993 (Mar. 20, 1996), 61 FR 13557 (approving revised market capitalization and trading volume requirements for the listing of ELDS by the NYSE); 36994 (Mar. 20, 1996), 61 FR 13553 (approving revised market capitalization and trading volume requirements for the listing of SEEDS by the NASD); 36995 (Mar. 20, 1996), 61 FR 13550 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the CBOE); 37405 (July 3, 1996), 61 FR 36596 (approving revised market capitalization and trading volume requirements for the listing of ELDS by the NYSE) (collectively, "Equity-Linked Note Approval Orders"). The discussions articulated in the Equity-Linked Note Approval Orders are incorporated herein.

trading of ELNs are consistent with the Act.

As with previously approved ELNs, ELDS, and SEEDS, the ELNs, the PSE is proposing to trade are not leveraged instruments. Their price, however, will be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase and sale of an ELN is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering other SROs' respective proposals to list and trade ELNs, ELDS, and SEEDS, the Commission had several specific concerns with this type of product because the final rate of return of an ELN is derivately priced (*i.e.*, based on the performance of the underlying security). The concerns included: (1) Investor protection concerns, (2) dependence on the credit of the issuer of the instrument, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked security.[15] The Commission concluded, however, that the SROs' proposals adequately addressed each of these issues such that the Commission's regulatory concerns were minimized adequately.[16] Similarly, in this proposal, the PSE has proposed safeguards, as described above, that the Commission finds to be equivalent to those approved for the trading of equity-linked debt securities in other markets. In particular, by imposing the listing standards, suitability, disclosure, and compliance requirements noted above, the PSE has adequately addressed the potential public customer concerns that could arise from the hybrid nature of ELNs. Further, the Commission believes that the listing standards and issuance restrictions should help to reduce the likelihood of any adverse market impact on the securities underlying the ELNs.

The Commission finds good cause for approving the amended proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order to allow the PSE to begin listing ELNs without delay. As discussed above, the proposal merely provides the PSE with the ability to list equity-linked debt securities on the same basis as other SROs. Moreover, the Commission notes that the prior proposals by other SROs to list and trade equity-linked debt securities were published by the Commission for the full statutory comment period without any comments being received by the Commission. In light of the Commission's approval of the listing and trading equity-linked debt securities by other SROs, accelerating approval of this proposal does not raise any new regulatory issues and will allow the PSE to compete on an equal basis with other markets with regard to these equity-linked products.[17] Therefore, the Commission there is good cause to grant accelerated approval to the proposed rule change, as amended, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act.[18]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–PSE–96–23), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23308 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[15] *See* Equity-Linked Note Approval Orders, *supra* note 14.

[16] *See* Equity-Linked Note Approval Orders, *supra* note 14.

[17] *See* Equity-Linked Note Approval Orders, *supra* note 14.

[18] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–37635; File No. SR–Phlx–96–19]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Establish a Firm Facilitation Exemption

September 4, 1996.

I. Introduction

On June 3, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a firm facilitation exemption[3] for all non-multiply-listed Exchange options by adding new Commentary .08 to Exchange Rule 1001 and new Commentary .02 to Exchange Rule 1001A. The exemption would be available to equity and index options, including customized options.[4]

The proposed rule change appeared in the **Federal Register** on July 10, 1996.[5] No comments were received on the proposed rule change. The Phlx subsequently filed Amendment No. 1 to the proposed rule change on July 26, 1996.[6] This order approves the Phlx's proposal.

II. Background and Description

The Phlx is proposing to establish a firm facilitation exemption for all non-multiply-listed Exchange options. Under the proposal, the procedures in Exchange Rule 1064(b) for crossing a customer order with a firm facilitation order must be followed. Moreover, only after all market participants in the trading crowd have been given a reasonable opportunity to accept the terms, may the representing Floor Broker cross all or any remaining part of such order in accordance with the rule. According to the Phlx, the purpose of this procedure is to ensure that the trading crowd cannot first facilitate the order before resorting to a position limit exemption for the facilitating firm. Thus, only after it is determined that the trading crowd will not fill the order may the firm's customer order be crossed with the firm's facilitation order pursuant to the exemption.

The Phlx notes that the firm facilitation provision will be in addition to and separate from the standard limit, as well as other exemptions available under Exchange position limit rules. For example, if a member organization decides to facilitate customer orders in

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a facilitation trade is defined as a transaction that involves crossing an order of a member firm's public customer with an order for the member firm's proprietary account.

[4] *See* Securities Exchange Act Release No. 37048 (March 29, 1996), 61 FR 15549 (April 8, 1996) (File No. SR–Phlx–96–08).

[5] *See* Securities Exchange Act Release No. 37398 (July 2, 1996), 61 FR 36410 (July 10, 1996).

[6] In Amendment No.1, the Phlx amended its proposed rule filing to: (1) require that a member organization submit to the Exchange's Market Surveillance Department appropriate forms substantiating the basis for the exemption within two business days or the time specified by the Exchange when approval is granted on the basis of verbal representations; (2) clarify that the proposal does not apply to multiply-listed options; (3) add language prohibiting the use of the exemption with respect to "all or none" or "fill or kill" orders; and (4) state that violations of the exemptive requirements, absent reasonable justification or excuse, shall result, in addition to any disciplinary action, in the withdrawal of the exemption, and may form the basis for subsequent denial of an application for an exemption under this rule. *See* letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading Operations, Phlx, to Matthew Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated July 26, 1996 ("Amendment No. 1").

ABC options, which is assumed not to be multiply-listed and also assumed to have a 10,500 contract standard position limit, the member organization may qualify for a firm facilitation exemption of up to twice that limit (21,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (21,000 contracts), in addition to the 10,500 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 52,500 ABC contracts on the same-side of the market.[7]

The Phlx notes, however, that the firm facilitation exemption would not presently extend to all options listed on the Exchange. Rather, until coordinated intermarket procedures are developed, the firm facilitation exemption will be extended only to non-multiply-listed options.

Under the proposal, the facilitation exemption requires prior approval from two Floor Officials and submission of a Firm Facilitation Form.[8] Although approval may be granted on the basis of verbal representation, the facilitation firm is required to furnish to the Market Surveillance Department, within two business days or such other time period designated by the Exchange, appropriate forms substantiating the basis for the exemption.[9]

Within five business days after the execution of a facilitation exemption order, a facilitation firm must hedge all exempt option positions that have not previously been liquidated, and furnished to the Market Surveillance Department documentation reflecting the resulting hedged positions. In meeting this requirement, and to ensure fair and orderly markets, the facilitation firm must establish and liquidate its own as well as its customer's option and stock positions (or their equivalent) in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

In addition, a facilitation firm is not permitted to use the facilitation exemption with a view toward taking advantage of any differential in the price between a group of securities and an overlying stock index option. According to the Phlx, this prohibition against index arbitrage should prevent undue market impact on the options or any underlying stock positions by preventing the increased positions from being used in a leveraged manner. Moreover, to facilitate surveillance and to ensure an accurate audit trail, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted and hedged positions, to furnish copies of the relevant order tickets to the Market Surveillance Department on the day of execution, and to notify the Exchange of any material change in the exempted options position or the hedge.

The Exchange is also proposing several minor changes to its rules. First, the introductory paragraph to Exchange Rule 1001 is to be amended to list the 20,000 and 25,000 contract position limit tiers, which were inadvertently omitted when Commentary .05(a) was amended to adopt these limits.[10] Second, Exchange Rule 1064(b) is to be amended to eliminate the incorrect limitation to "equity" options, as this provision applies to index options as well. Third, the equity option hedge exemption contained in Commentary .07 to Exchange Rule 1001 is to be amended to state that the exemption is available up to "two times above" existing limits, as opposed to "three times" the limits, as currently stated. The maximum size of the exemption is not being changed, just rephrased in terms of the excess number of contracts above the applicable position limit. In this manner, the provision will be consistent with the index option hedge exemption of the Phlx as well as other exchanges.[11] Fourth, the equity option hedge exemption is to be amended to state that it is separate from any other exemption available under Exchange rules.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[12] Specifically, the Commission believes that the Phlx's proposal is reasonably designed to accommodate the needs of investors and other market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses. The Commission also believes that the proposed rule change has the potential to enhance the depth and liquidity of the options market by providing Exchange members greater flexibility in executing large customer orders. Accordingly, as discussed below, the Commission believes that the rule proposal is consistent with the requirements of Section 6(b)(5) that exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.

The Phlx proposal contains several safeguards that will serve to minimize any potential disruption or manipulation concerns. First, the facilitation firm must receive approval from the Exchange prior to executing facilitation trades. Although Exchange approval maybe granted on the basis of verbal representations, the Commission believes that trading abuses are unlikely because the facilitation firm is required to furnish to the Exchange's Market Surveillance Department, within two business days or such other time period designated by the Exchange, forms and documentation substantiating the basis for the exemption.

Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange's Market Surveillance Department documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions (or their equivalent) in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage.

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[7] In addition, exercise limits will continue to correspond to position limits, such that investors may exercise the number of contracts set forth as the position limit as well as those contracts exempted by this proposal, during five consecutive business days. *See* Exchange Rules 1002 and 1002A.

[8] According to the Phlx, the purpose of the Firm Facilitation Form is to detail the terms of the customer order and the resulting facilitation, as well as to ensure compliance with the exemption. In addition, pursuant to the existing requirements of Exchange Rule 1064(b), facilitation orders must be marked with an "F" prior to executing facilitating trades. Lastly, Firm Facilitation Forms will be made available at the Exchange's Surveillance Post.

[9] The Exchange also notes that the facilitation firm need not have the customer order in hand when requesting the exemption, as long as the exemption is properly used to facilitate a customer order pursuant to the rule. Because the provision states the position "will facilitate" a customer order, a firm approaching the limit may request an exemption prior to receiving an order, in response to customer interest.

[10] *See* Securities Exchange Act Release No. 36409 (October 23, 1995), 60 FR 55399 (October 31, 1995) (File No. SR–Phlx–95–71).

[11] *See* Phlx Rule 1001A, Commentary .01. *See also* CBOE Rule 4.11, Interpretations and Policies .04(b).

[12] 15 U.S.C. 78f(b)(5) (1988).

The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or any underlying stock positions.

Third, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options positions or the hedge.

Fourth, neither the member's nor the customer's order may be contingent on "all or none" or "fill or kill" instructions, and the orders may not be executed until the procedures in Exchange Rule 1064(b) have been satisfied and crowd members have been given a reasonable time to participate in the trade.

Fifth, in no event may the aggregate exempted position exceed two times the applicable standard limit, in addition to the standard position limit.[13]

Sixth, the facilitation firm may not increase the exempted options position once it is liquidated, unless approval from the Exchange is again received pursuant to a reapplication.

In summary, the Commission believes that the safeguards built into the facilitation exemption process discussed above should serve to minimize the potential for disruption and manipulation, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. This structure substantially mirrors the firm facilitation exemption processes that were recently approved for other option exchanges.[14] Accordingly, the Commission believes it is appropriate to extend the benefits of a firm facilitation exemption to non-multiply-listed Phlx options.

In addition, because the other minor rule changes that the Exchange is proposing will make the Phlx's rules clearer and are non-substantive in nature, the Commission believes that they are consistent with Section 6(b)(5) of the Act.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 conforms the Exchange's firm facilitation exemption to the relief recently approved for the other options exchanges. Accelerated approval of the proposed rule change will thereby provide for the desired uniformity of the exchanges' position limit exemptions. Any other course of action could lead to unnecessary investor confusion. In addition, the Chicago Board Options Exchange's proposal was noticed for the entire twenty-one day comment period and generated no responses.[15] Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–19 and should be submitted by October 3, 1996.

IV. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal to establish a firm facilitation exemption, as well as the other non-substantive changes to the Phlx's rules, are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2)[16] of the Act, that the proposed rule change (File No. SR–Phlx–96–19), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23313 Filed 9–11–96; 8:45 am]

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[13] The Commission notes, however, that the firm facilitation exemption is in addition to any other exemption available under the Exchange's rules.

[14] *See* Securities Exchange Act Release Nos. 36964 (March 13, 1996), 61 FR 11453 (March 20, 1996) (File No. SR–CBOE–95–68); 37178 (May 8, 1996), 61 FR 24523 (May 15, 1996) (File No. SR–PSE–96–10); 37179 (May 8, 1996), 61 FR 24520 (May 15, 1996) (File No. SR–Amex–96–11).

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12).

[Release No. 34–37843; File No. SR–Phlx–96–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Options Specialist Evaluations

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act,[1] proposes to update its Options Specialist Evaluation program by adopting a new questionnaire and revising Exchange Rules 509, 511 and 515 regarding the evaluation procedure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 21, 1995, the Exchange submitted a proposed rule change to the Commission requesting approval for a new options specialist evaluation questionnaire and review procedure.[2] The proposed rule change was withdrawn on March 29, 1996 after Commission staff had requested that the Exchange reconsider its proposed evaluation review procedures.[3] Pursuant to the present filing, the Exchange is resubmitting the same new evaluation questionnaire and is proposing revised procedures for the review process.

Since at least 1978, the Exchange has been evaluating its options specialists based on the same questionnaire in use today. This quarterly survey is a subjective series of questions answered by floor brokers that have traded with the particular specialists over the last quarter. One of the purposes of this filing is to propose a new updated survey which requests information that the Exchange believes is more relevant to a specialist's performance in this day and age. The results of these evaluations are used by the Allocation, Evaluation and Securities Committee ("Committee") when making allocation and reallocation decisions regarding option specialist privileges.

The new survey has 15 all-new questions and will be answered by floor brokers who, Exchange records show, have traded at least a minimum number of times in the specialist's issues over the subject quarter.[4] Only specialist units (not individual specialists) would now be graded as allocations are made to units, not individual specialists; however, separate evaluations will be conducted for each quarter or half turret post at which a unit has a specialist operation. Thus, a large specialist unit which is spread out over the floor may receive two or three separate evaluation scores so that the Committee can focus on exactly where a problem may be occurring. The same questionnaire will be used for equity option specialists, index option specialists[5] and foreign currency option specialists. The survey would only be answered every six months instead of every three months, which is the current procedure.

Each question must be answered by giving the unit a score of 1 through 9 (very poor to excellent). Any question that is answered with a score of 4 or less must be accompanied by a written explanation. Floor brokers who submit negative comments about a particular specialist unit will be invited to speak directly with a representative of the specialist unit in order to try to resolve any problems that may exist and Exchange staff may attend such a meeting. Floor brokers who do not complete and return the surveys still will be subject to fines pursuant to Options Floor Procedure Advice C–8.

The questions asked will cover a wide range of specialist responsibilities such as the degree of liquidity provided, the tightness of quotes, timeliness of quote updates, ability to fill small lot orders, timeliness of reports, ability to conduct opening rotations, maintenance of crowd control, and clerical staffing.

The second purpose of this filing is to revise the process by which the Committee uses the questionnaires to evaluate the specialists' performance. Currently, there is a very complicated review system in place that the Exchange has determined needs to be simplified in order to be effective. The evaluations are now scored on a scale of 1 through 10, and any unit with an overall score below 5 on the questionnaire in one quarter, a score of below 5 for three or more questions in one quarter, or a score below 5 on the same question for three consecutive quarters is deemed to have performed below minimum standards and is subject to review by the Committee.

Under the proposed new language in Supplementary Material .02 to Rule 515, the Committee[6] would review the survey as well as regulatory history, written complaints, timeliness of openings, trading data, and any other relevant information in order to determine if minimum performance standards as to, among other things, quality of markets, observance of ethical standards, and administrative responsibilities have been met. If a specialist unit is ranked by score in the bottom 10% of all units as a result of a semi-annual review, it will be presumed to have failed to meet the minimum performance standards.[7] The Committee may also make such a presumption if the information on the survey or the other information review by the Committee supports such a finding.

If the Committee makes such a presumption of failure to meet minimum performance standards, it may elect to hold an informal meeting with the specialist unit or it may elect to hold a formal hearing in accordance with Rule 511(e). The Committee may only impose sanctions such as removal of specialist privileges in one or more options classes or a prohibition from new allocations as the result of a formal hearing. Rules 511(c) and 515 will be amended to reflect these changes. The hearing procedures set forth in Rule 511(e) will not change and decisions will still be subject to appeal to the Board of Governors as provided for under By-Law Article XI, Section 11–1.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[8] in general, and in particular, with Section 6(b)(5 , in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or

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[2] This proposal was noticed for comment in Securities Exchange Act Release No. 36776 (January 26, 1996), 61 FR 3748 (February 1, 1996) (File No. SR–Phlx–95–91).

[3] See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, SEC, dated March 29, 1996 (withdrawing File No. SR–Phlx–95–91).

[4] The number of trades is variable but will be predetermined by the Committee.

[5] Currently, all of the specialist units that have been allocated index options are also equity option specialists; however, if a unit only traded index options, the survey would be equally applicable.

[6] The Committee may conduct such reviews or it may delegate that responsibility to the Quality of Markets Subcommittee. Exchange Rule 509 is being amended to note this function as a specific responsibility of this subcommittee.

[7] Under the current procedure, a specialist unit that receives an average score under 5.00 in any one quarter would be deemed to have performed below minimum standards.

[8] 15 U.S.C. 78f(b).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–23 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23349 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Senior Executive Service Performance Review Board; Appointments of Members

Announcement is made of the appointment of the following persons as members of the SES Performance Review Board for the Selective Service System: Richard M. McKee, Director, Dairy Division, Agricultural Marketing Service, USDA; Roger R. Rapp, Director, Field Operations, National Cemetery System, Department of Veterans Affairs; Harry H. Zimmerman, Director, Base Closure Office, Naval Facilities Engineering Command, Department of the Navy.

The announcement of July 12, 1990, 55 FR 28709 is cancelled.

Dated: September 5, 1996.

Gil Coronado,

Director.

[FR Doc. 96–23368 Filed 9–11–96; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice 2437]

Inspector General; State Department Performance Review Board Members (Office of Inspector General)

In accordance with section 4314 (c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Office of Inspector General of the Department of State has appointed the following individuals to its Performance Review Board register:

Kenneth Hunter, Deputy Assistant Secretary of Passport Services, Bureau of Consular Affairs, Department of State

Donald Mancuso, Assistant Inspector General for Investigations, Department of Defense

Everett L. Mosley, Assistant Inspector General for Audit, Agency for International Development

Michael G. Sullivan, Assistant Inspector General for Auditing, Department of Veterans Affairs

Dated: August 29, 1996.

Jacquelyn L. Williams-Bridgers,

Inspector General.

[FR Doc. 96–23328 Filed 9–11–96; 8:45 am]

BILLING CODE 4710–42–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–044]

Documentation and Marine Safety for an International, Private-Sector Tug of Opportunity System

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is conducting a public meeting to receive views on the documentation and marine safety criteria to be used in assessing a private-sector initiated, international, tug of opportunity system plan.

DATES: The meeting will be held on Thursday, October 17, 1996, from 9 a.m. until 5 p.m. Written statements and requests to make oral presentations should reach the Coast Guard on or before October 10, 1996. Other comments should reach the Coast Guard on or before October 30, 1996.

ADDRESSES: The meeting will be held on the fourth floor North Auditorium, Jackson Federal Building, 915 Second Avenue, Seattle, Washington. Written materials may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant W. M. Pittman, Office of Response (G–MOR–1), telephone (202) 267–0426, fax (202) 267–4085. The telephone number is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: The Alaska Power Administration Asset Sale and Termination Act (Pub. L. 104–58) was signed into law on November 28, 1995. A Presidential directive and subsequent DOT Action Plan requires the Coast Guard to assess and provide a report to Congress on the most cost effective means of implementing a private-sector initiated, international, tug of opportunity system for vessels in distress operating within the Olympic Coast National Marine Sanctuary and the Strait of Juan de Fuca. A system plan will be considered at future public meetings once available.

Agenda of Meeting

The agenda includes the following:

Documentation

(1) Core concepts.
(2) Organizational and functional structure.
(3) Technology issues.
(4) Communications.
(5) Tracking vessels.
(6) Tug issues.
(7) Other equipment.
(8) Crew qualifications to crew a system tug.
(9) Crew training to meet qualifications.
(10) Testing requirements for crew.
(11) Certification of qualified crew.
(12) Legal requirements which should be addressed.
(13) Fiscal administration which should be addressed.

Marine Safety

(1) Concept of tug of opportunity.
(2) Calling area description.
(3) Calling fleet description.
(4) Risk.

(5) Definition of accident.
(6) Likely accident locations.
(7) Events with potential for significant impacts.
(8) Areas with most significant impacts of accident.
(9) Potential utility of tugs.
(10) Two means to save.
(11) Tug criteria.
(12) Define adequate assist vessel.
(13) Use of coverage approach.
(14) Tug equipment.
(15) Crew criteria.
(16) Skills.
(17) Training.
(18) Substance abuse standards.
(19) System goals.
(20) Coverage goals.
(21) Response goals.

Procedural

The meeting is open to the public. Persons wishing to make oral presentations at the meeting should notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than October 10, 1996.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 9, 1996.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–23366 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received requests from:

1. Mayer, Brown & Platt (WB461—8/15/96),
2. Covington & Burling (WB462—8/14/96), and
3. Association of American Railroads (WB463—7/30/96), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23385 Filed 9–11–96; 8:45 am]

BILLING CODE 4915–00–M

Surface Transportation Board[1]

[STB Finance Docket No. 33045]

Perry County Port Authority d/b/a Hoosier Southern Railroad—Acquisition and Lease Exemption—Norfolk Southern Railway Company

The Perry County Port Authority d/b/a Hoosier Southern Railroad ("HSR"), a Class III railroad, has filed a notice of exemption under 49 CFR 1150.41 to acquire by donation and to lease and operate certain lines of railroad located in the State of Indiana, which are currently owned by the Norfolk Southern Railway Company ("NS"). First, HSR will lease and operate, and will subsequently acquire by donation, an approximately 2.6-mile line of railroad, extending from milepost 19.8, near Santa Claus, IN, to milepost 22.4, at Lincoln City, IN (Santa Claus Line). Second, HSR will lease and operate a separate 16.2 mile line of railroad extending from milepost 0.0, at Rockport Junction, IN, to milepost 16.2, at Rockport, IN (Rockport Line), over which NS will retain the right to exercise local trackage rights. In addition, HSR will obtain from NS incidental overhead trackage rights over approximately 1.1 miles of NS main line, between milepost 33.2–EB (HSR milepost 22.4—Santa Claus Line), at Lincoln City, IN, and milepost 32.1–EB (HSR milepost 0.0—Rockport Line), at Rockport Junction, IN, for purposes of connecting the two newly-operated lines[2] and consolidating railcar interchange with NS at Lincoln City, IN.

HSR expected to consummate the proposed lease and incidental trackage rights transactions on September 1, 1996, and to consummate the proposed acquisition of the Santa Claus Line on or before December 31, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33045, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036. Telephone: (202) 785–3700.

Decided: September 4, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23384 Filed 9–11–96; 8:45 am]

BILLING CODE 4915–00–M

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] Prior to September 1, 1996, the Indiana Hi-Rail Corporation (IHR) leased and operated both the Santa Claus Line and the Rockport Line. HSR will replace IHR as the new operator. HSR has certified that it has served a copy of its notice of exemption upon all shippers located on both the Santa Claus Line and the Rockport Line.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Specific Transportation Bond, Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse, Class Six.

DATES: Written comments should be received on or before November 12, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form(s) and instructions should be directed to Mary Lou Blake, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Specific Transportation Bond, Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse, Class Six.

OMB Number: 1512–0144.

Form Number: ATF F 2736 (5100.12).

Abstract: ATF F 2736 (5100.12) is a specific bond which protects the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bond identifies the shipment, the parties, the date, and the amount of the bond coverage.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: August 30, 1996.

John W. Magaw,

Director.

[FR Doc. 96–23339 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the ATF Distribution Center Contractor Survey.

DATES: Written comments should be received on or before November 12, 1996 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20026, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dirck Harris, Document Services Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: ATF Distribution Center Contractor Survey.

OMB Number: 1512–0002.

Form Number: ATF F 1600.7.

Abstract: ATF F 1600.7 provides users of the Bureau's forms and publications an opportunity to comment on the Bureau's Distribution Center contractor and the services it provides. The users can evaluate and comment on the services of the Distribution Center contractor.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 2100.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 168.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: August 30, 1996.

John W. Magaw,

Director.

[FR Doc. 96–23340 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Power of Attorney.

DATES: Written comments should be received on or before November 12, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney.

OMB Number: 1512–0079.

Form Number: ATF F 1534 (5000.8).

Abstract: ATF F 1534 (5000.8) delegates authority to a specific individual to sign documents on behalf of an applicant or principle (alcohol and tobacco permittees). Many of the documents that are submitted to ATF entail binding legal commitments by the

applicant/permittee and any omission or falsification may subject the applicant/permittee to penalties provided in the law.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 3,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: August 30, 1996.

John W. Magaw,

Director.

[FR Doc. 96–23341 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–31–P

Office of the Comptroller of the Currency

Proposed Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comments concerning an information collection titled (MA)—Securities Exchange Act Disclosure Rules (12 CFR Part 11).

DATES: Written comments should be submitted by November 12, 1996.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0106, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202)874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557-0106), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: (MA)—Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557–0106.

Form Number: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.

Abstract: This information collection covers the OCC's Securities Exchange Act Disclosure Rules (12 CFR 11) which require national banks to make public disclosures and file with the OCC certain Securities Exchange Commission forms. Publicly owned national banks make disclosures and filings to comply with applicable banking and securities law and regulatory requirements. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed. Investors, depositors, and the public use the information to make informed investment decisions.

Type of Review: Renewal of OMB approval.

Affected Public: Businesses or other for-profit.

Number of Respondents: 131.

Total Annual Responses: 636.

Frequency of Response: Occasional.

Total Annual Burden Hours: 5,360.

Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: September 5, 1996.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 96–23383 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–33–P

Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review an information collection titled Interpretive Rulings (12 CFR part 7).

DATES: Comments regarding this information collection are welcome and should be submitted to the OMB Reviewer and the OCC Clearance Officer. Comments are due on or before October 15, 1996.

ADDRESSES: A copy of the of the submission may be obtained by calling the OCC Clearance Officer listed.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557–0204.

Form Number: None.

Type of Review: Reinstatement of previously approved collection without change.

Title: Interpretive Rulings (12 CFR part 7).

Description: National banks use the information to insure compliance with applicable Federal banking law and regulations. The collections of information evidence bank compliance with various regulatory requirements and provide needed information for examiners and provide protections for banks.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,430.

Estimated Burden Hours Per Respondent: 1.7 hours.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden: 4,156.

Clearance Officer: Jessie Gates or Dionne Walsh, (202)874–5090, Legislative and Regulatory Activities Division (1557–0200), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202)395–7340, Paperwork Reduction Project 1557–0200, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1996.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 96–23271 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–33–P

Customs Service

Application for Recordation of Trade Name: "A. J. & W. Incorporated"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "A. J. & W. INCORPORATED.," used by A. J. & W. Incorporated, a corporation organized under the laws of the State of Hawaii, located at 565 Kokea Street, Building G2–4, Honolulu, Hawaii 96817.

The application states that the trade name is used in connection with towels, footwear, bags, luggage, mugs, straw beach mats, kitchen accessory sets, luggage accessories, jewelry bags, ornamental wood stands, bath gift sets, pua shell souvenir line, fans, ashtrays, and general souvenir items.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington D.C. 20229 (202–482–6960).

Dated: September 6, 1996.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 96–23362 Filed 9–11–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305–SEP

Editorial Note: Federal Register Document 96–22515 was inadvertently printed with the wrong text at page 46679 in the issue of Wednesday, September 4, 1996. The correct document is printed below.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305–SEP, Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before November 12, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinsen, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–0499.

Form Number: Form 5305–SEP.

Abstract: Form 5305–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 53 min.

Estimated Total Annual Burden Hours: 88,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22515 Filed 9–3–96; 8:45 am]

BILLING CODE 1505–01–M

federal register

Thursday
September 12, 1996

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63
National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD-FRL-5606-6]

RIN 2060-AE37

National Emissions Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) from existing and new plant sites that emit organic hazardous air pollutants (HAP) identified on the EPA's list of 189 HAP. The organic HAP are emitted during the manufacture of one or more of the following Group IV polymers and resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin.

In the production of thermoplastics, a variety of organic HAP are used as monomers or are created as by-products. Some of these organic HAP are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation; liver and kidney toxicity, and neurotoxicity. There effects can range from mild to severe. The standards are estimated to reduce organic HAP emissions from existing affected sources by 3,550 megagrams per year (Mg/yr).

The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of organic HAP from new and existing major sources. The emissions reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act (Act) as amended in 1990.

EFFECTIVE DATE: September 12, 1996. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A-92-45, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday at the following address in room M-1500, Waterside Mall (ground floor) U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC-6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260-7549. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations contact:

Region I—Greg Roscoe, Air Programs Compliance, Branch Chief, U.S. EPA, Region I, SEA, JFK Federal Building, Boston, MA 02203, (617) 565-3221.

Region II—Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007-1866, (212) 637-4000.

Region III—Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III, 3AT10, 841 Chestnut Building, Philadelphia, PA 19107, (205) 597-3989.

Region IV—Jewell A. Harper, Air Enforcement Branch, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 347-2904.

Region V—George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V, 5AE-26, 77 West Jackson Street, Chicago, IL 60604, (312) 353-2088.

Region VI—John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202-2733, (214) 665-7220.

Region VII—Donald Toensing, Chief, Air Permitting and Compliance Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551-7446.

Region VIII—Douglas M. Skie, Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466, (303) 312-6432.

Region IX—Colleen W. McKaughan, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1198.

Region X—Air and Radiation Branch Chief, U.S. EPA, Region X, AT-092, 1200 Sixth Avenue, Seattle, WA 98101, (206) 533-1152.

For information concerning the analyses performed in developing this rule, contact Mr. Robert Rosensteel at (919) 541-5410, organic Chemicals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those facilities which manufacture one or more of the 7 thermoplastic products identified in the rule and listed below:

Category	Examples of regulated entities
Industry	Facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate acrylonitrile butadiene styrene resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly (ethylene terephthalate) resin, or nitrile resin.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1310 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding FOR FURTHER INFORMATION CONTACT section.

Response to Comment Document

The response to comment document for the promulgated standards contains: (1) A summary of all the public comments made on the proposed rule and the Administrator's response to the comments; and (2) A summary of the changes made to the rule since proposal. The document may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777; or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 487-4650. Please refer to "Hazardous Air Pollutant Emissions from Process Units in the Thermoplastics Manufacturing Industry—Basis and Purpose Document for Final Standards, Summary of Public Comments and Responses" [EPA-453/R-96-001b; May 1996]. This document is also available for downloading from the Technology Transfer Network. The Technology Transfer Network is one of the EPA's electronic bulletin boards. The Technology Transfer Network provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541-5472 for up to a 14,400 bps modem. If more information on the Technology Transfer Network is needed, call the HELP line at (919) 541-5384.

Previous Background Documents

The following is a listing of background documents pertaining to this rulemaking. The complete title,

EPA publication number, publication date, docket number, and the abbreviated descriptive title used to refer to the document throughout this notice are included.

(1) Hazardous Air Pollutant Emissions from Process Units in the Thermoplastics Manufacturing Industry—Supplementary Information Document for Proposed Standards. EPA–453/R–95–003a. March 1995. Docket item A–92–45: II–A–9. Supplementary Information Document.

(2) Hazardous Air Pollutant Emissions from Process Units in the Thermoplastics Manufacturing Industry—Basis and Purpose Document for Proposed Standards. EPA–453/R–95–004a. March 1995. Docket item A–92–45: II–A–10. Basis and Purpose Document for Proposed Standards.

Judicial Review

National emission standards for organic HAP for Group IV polymers and resins were proposed in the **Federal Register** (FR) on March 29, 1995 (60 FR 16090). This **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Act, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading the preamble to the final rule.

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I. Background

Section 112(b) of the Act lists 1989 HAP and directs the EPA to develop standards to control all major sources and some area sources emitting HAP. On July 16, 1992, the EPA published a list of major and area source categories for which NESHAP are to be promulgated (57 FR 3156). Six of the seven source categories regulated by this rule were included on that list as major source categories. The other source category, nitrile resins production, has since been added to the source category list. On December 3, 1993, the EPA published a schedule for promulgating standards for the listed major and area source categories (58 FR 63941). Standards for these seven major source categories were proposed on March 29, 1995, under this rulemaking.

II. Summary of Considerations Made in Developing These Standards

A. Purpose of Standards

The Act was created in part "to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population [the Act, section 101(b)(1)]. Title I of the Act establishes a control technology-based program to reduce stationary source emissions of HAP. The goal of the section 112(d) Maximum Achievable Control Technology standards (MACT) is to apply such control technology to reduce emissions and thereby reduce the hazard of pollutants emitted from stationary sources.

The Act strategy avoids dependence on a detailed and comprehensive risk assessment hampered by (but not limited to) the following caveats, as prerequisites for control of air toxics: (1) Some of the HAP emitted from stationary sources are unknown; and (2) Many of the HAP with emissions information have incomplete data in which to describe health hazard. In addition, these standards are not "significant" as defined by Executive Order 12866, and a specific benefits analysis is not required. Because of these issues, a detailed and intensive risk assessment of potential effects from the organic HAP emitted from stationary sources is not included in this rulemaking.

The EPA does recognize that the degree of adverse effects to health resulting from the most significant emissions identified can range from mild to severe. The extent to which the effects could be experienced is dependent upon the ambient concentrations and exposure time. The latter is further influenced by source-specific characteristics such as emission rates and local meteorological conditions. Human variability factors also influence the degree to which effects to health occur: genetics, age, pre-existing health conditions, and lifestyle.

The organic HAP listed in section 112(b)(1) of the Act emitted by the thermoplastic facilities covered by these standards include styrene, acrylonitrile, butadiene, ethylene glycol, methanol, acetaldehyde, and dioxane. Available emission date gathered, in conjunction with development of these MACT standards, show that these organic HAP are those which have the potential for reduction by the implementation of the standard.

Some of the effects of the pollutants whose emissions are reduced by these standards include central nervous system effects (e.g., drowsiness, dizziness, headaches, impairment of vision, peripheral nervous system effects expressed as numbness of the extremities, fatigue, and coma and death at lethal levels), respiratory irritation expressed as labored breathing and impaired lung function, eye irritation, reproductive and developmental effects, gastrointestinal effects, blood effects (e.g., anemia and leukocytosis), and liver and kidney toxicity. In addition, butadiene exposure to humans has been associated with increased risk of cardiovascular disease and effects on the blood. In regard to carcinogenicity, some of the organic HAP controlled under these standards are either probable (i.e., acetaldehyde, dioxane, acrylonitrile, and butadiene) or possible (i.e., styrene) human carcinogens.

These standards will result in a minimum organic HAP emission reduction of 3,550 Mg/yr for existing affected sources and 6,870 Mg/yr for new affected sources. The majority of the organic HAP regulated by these standards are also volatile organic compounds (VOC). In reducing emissions of organic HAP, emissions of VOC are also reduced. No other criteria pollutant ambient levels will be affected by these standards. The emission reductions achieved by these standards, when combined with the emission

reductions achieved by other standards mandated by the Act, will achieve the primary goal of the Clean Air Act.

B. Technical Basis of Regulation

National emission standards for sources of HAP established under section 112(d) of the Act reflect MACT:

> * * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * * [42 U.S.C. § 7412(d)(2)].

The amended Clean Air Act contains requirements for the development of regulatory alternatives for sources of HAP emissions. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as MACT. The amended Clean Air Act also provides guidance on determining the least stringent level allowed for a MACT standard; this level is termed the "MACT floor."

For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" [section 112(d)(3) of the Act]. Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for source categories or subcategories with fewer than 30 sources [section 12(d)(3) of the Act]. These two minimum levels of control define the MACT floor for new and existing sources.

Two interpretations have been evaluated by the EPA for representing the MACT floor for existing sources. One interpretation is that the MACT floor is represented by the 88th percentile source. The second interpretation is that the MACT floor is represented by the "average emission limitation achieved" by the best performing sources, where the "average" is based on a measure of central tendency, such as the arithmetic mean, median, or mode. This latter interpretation is referred to as the "higher floor interpretation." In a June 6, 1994 **Federal Register** notice [59 FR 29196], the EPA presented its interpretation of the statutory language concerning the MACT floor for existing sources. Based on a review of the statute, legislative history, and public comments, the EPA believes that the "higher floor interpretation" is a better reading of the statutory language. The determination of the MACT floor for existing sources under the proposed and final rule followed the "higher floor interpretation."

The regulatory alternatives considered in the development of this rule, including those regulatory alternatives selected as standards for new and existing affected sources, are based on process and emissions data received from the existing plant sites known by the EPA to be in operation.

Regulatory alternatives more stringent than the MACT floor were selected when they were judged to be reasonable "taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts, and energy requirements" (42 U.S.C. § 7412(d)(2)).

Potential regulatory alternatives were developed based on the Hazardous Organic NESHAP (HON) (i.e., subparts F, G, H, and I of 40 CFR part 63), the Polymer Manufacturing New Source Performance Standards (NSPS) (subpart DDD of 40 CFR part 60), and the Batch Processes Alternative Control Techniques (ACT) document [EPA 453/R–93–017; November 1993]. The HON was selected as a basis for regulatory alternatives because: (1) the characteristics of the emissions from storage vessels, continuous process vents, equipment leaks, and wastewater at Group IV thermoplastic facilities are similar or identical to those addressed by the HON; and (2) The levels of control required under the HON were already determined through extensive analyses to be reasonable from a cost and impact perspective.

The Polymer Manufacturing NSPS, which covers certain process emissions at polystyrene and PET facilities using a continuous process, and cooling tower emissions at PET facilities, was selected for the same basic reasons as the HON. Although the Polymer Manufacturing NSPS was developed under section 111 of the Clean Air Act and was targeted to control VOC emissions, the requirements for setting standards under section 111 are very similar to the requirements under section 112 of the Clean Air Act Amendments of 1990, and all of the organic HAP identified from polystyrene and PET affected sources are also VOC.

Finally, the Batch Processes ACT was selected to identify regulatory alternatives for batch process vents, which are not addressed by either the HON or Polymer Manufacturing NSPS. As with the Polymer Manufacturing NSPS, the Batch Processes ACT addresses the control of VOC emissions, and all of the organic HAP identified for the Group IV thermoplastics facilities are also VOC. Unlike the HON and Polymer Manufacturing NSPS, the Batch Processes ACT is not a regulation and, therefore, does not specify a level of control that must be met. Instead, the Batch Processes ACT provides information on emissions estimation techniques and potential levels of control and their environmental, energy, and cost impacts. Based on the review of the Batch Processes ACT, the EPA selected a level of control equivalent to 90 percent reduction for batch process vents. This level of control was selected for regulatory analysis purposes.

C. Stakeholder and Public Participation

In the development of these standards, numerous representatives of the thermoplastics industry were consulted. Industry representatives have included trade associations and thermoplastic producers responding to section 114 questionnaires and information collection requests (ICR). Representatives from other interested EPA offices, Regional offices, and State environmental agency personnel, participated in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and is given opportunities to review and comment on the standards before proposal and promulgation. Therefore, the EPA believes that the implication to order EPA offices and programs has been adequately considered during the development of these standards. In addition, the EPA has met with members of industry concerning these standards. Finally, industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed standards and to provide additional information during the public comment period that followed the proposal.

The standards were proposed in the **Federal Register** on March 29, 1995 (60 FR 16090). The preamble to the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one

was not held. The public comment period was from March 29, 1995 to May 30, 1995. Twenty-seven comment letters were received. Commenters included industry representatives and State agencies. The comments were carefully considered, and changes were made in the proposed standards when determined by the EPA to be appropriate. A detailed discussion of these comments and responses can be found in the Basis and Purpose Document for Final Standards (EPA–453/R–96–001b; May 1996), which is referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses in the Basis and Purpose Document for the Final Standards (EPA–453/R–96–001b; May 1996) serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Section V of this preamble discusses these major changes.

III. Summary of Promulgated Standards

Emissions of specific organic HAP from the following types of emission points (i.e., emission source types) are being covered by the final standards: Storage vessels, continuous process vents, batch process vents, equipment leaks, wastewater operations, heat exchange systems, and some process contact cooling towers associated with the manufacture of PET. The organic HAP emitted and required to be controlled by these standards vary by subcategory. Each of the nineteen thermoplastic products constitutes a separate subcategory (i.e., affected source) that is regulated by these standards.

The existing affected source is defined as each group of one or more TPPUs that manufacture the same thermoplastic product as their primary product, and (1) are located at a major source plant site, (2) are not exempt, and (3) are not part of a new affected source. This means that each plant site will have only one existing affected source in any given subcategory.

New affected sources are created under various circumstances. If a plant site with an existing affected source producing thermoplastic A as its primary product constructs a new TPPU also producing thermoplastic A as its primary product, the new TPPU is a new affected source if the new TPPU has the potential to emit more than 10 tons per year of a single HAP or 25 tons per year of all HAP. In this situation, the plant site would have an existing affected source producing thermoplastic A and a new affected source producing thermoplastic A. Each subsequent new TPPU with potential HAP emissions above major source levels (i.e., 10/25 tons per year) would be a separate new affected source. New affected sources are also created when a TPPU is constructed at a major source plant site where the thermoplastic product was not previously produced, with no regard to the potential HAP emissions from the TPPU. This approach to defining new affected source was selected in order to make this subpart more consistent with the HON.

Another instance where a new affected source is created is if a new TPPU is constructed at a new plant site (i.e., green field site) that will be a major source. The final manner in which a new affected source is created is when an existing affected source undergoes reconstruction, thus making the previously existing affected source subject to new source standards.

This standard differs from the HON, however, in that it applies to multiple source categories. Thus, unlike the HON, a newly added TPPU at a facility is covered by this rule even if that TPPU is in a different source category from the existing TPPUs at the facility. It is the EPA's position that the addition of a process unit in a different source category is a new source and must meet the requirements for new sources even though the TPPU has the potential to emit less than 10 tons per year of a single HAP or 25 tons per year of all HAP. Indeed, if a source covered by another MACT standard (i.e., a different source category) were built at a HON facility, that source would be subject to new source requirements under that MACT standard.

Also, each affected source includes the following emission points and equipment that are associated with each group of TPPU: (1) Each wastewater stream; (2) each wastewater operation; (3) each heat exchange system; (4) each process contact cooling tower used in the manufacture of PET that is associated with a new affected source; and (5) each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

With relatively few exceptions, the final standards for storage vessels, continuous process vents, equipment leaks, wastewater streams, and heat exchange systems are the same as those promulgated for the corresponding types of emission points at facilities subject to the HON. As shown in Tables 1 and 2, some subcategories have requirements that differ from the HON; these cases are designated by "MACT Floor." These different requirements are specified in the final standards.

As in the HON, if an emission point within an affected source meets the applicability criteria and is required to be controlled under the standards, it is referred to as a Group 1 emission point. If an emission point within the affected source is not required to apply controls, it is referred to as a Group 2 emission point.

TABLE 1.— SUMMARY OF FINAL STANDARDS FOR EXISTING AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
ABS, continuous emulsion.	HON	HON	HON	HON	HON.
ABS, continuous mass	HON	Continous process vents: HON batch process vents: 90 percent reduction or complaint flare.	HON	HON	HON.
ABS, batch emulsion	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
ABS, batch suspension	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
ABS, latex	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.

TABLE 1.— SUMMARY OF FINAL STANDARDS FOR EXISTING AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT—Continued

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
MABS	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
MBS	HON	Continuous process vents: MACT floor batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
SAN, continuous	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
SAN, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
ASA/AMSAN	MACT floor	MACT floor	HON	No control	HON.
Polystyrene, continuous	MACT floor	Continuous process vents from material recovery sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
Polystyrene, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
Expandable polystyrene	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
PET–TPA, continuous	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
PET–TPA continuous high viscosity multiple end finisher.	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	No control	HON	HON.
PET–TPA, batch–DMT, batch.	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
PET–DMT, continuous	HON	Continuous process vents from material recovery and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
Nitrile	MACT floor	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.

ASA/AMSAN = acrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin.
TPA = terephthalic acid.
DMT = dimethyl terephthalate.

TABLE. 2.—SUMMARY OF FINAL STANDARDS FOR NEW AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT

Subcategory	Type of emission point					
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems	Process contact cooling towers
ABS, continuous emulsion	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
ABS, continuous mass	Regulatory alternative 2[1].	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
ABS, batch emulsion	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
ABS, batch suspension	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.

TABLE. 2.—SUMMARY OF FINAL STANDARDS FOR NEW AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT—Continued

Subcategory	Type of emission point					
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems	Process contact cooling towers
ABS, Latex	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
MABS	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
MBS	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
SAN, continuous	MACT floor.	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
SAN, batch	HON	MACT floor	HON	No control	HON	NA.
ASA/AMSAN	MACT floor.	MACT floor	HON	No control	HON	NA.
Polystyrene, continuous	MACT floor.	Continuous process vents from material recovery sections: same as polymer manufacturing NSPS, other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
Polystyrene, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
Expandable polystyrene	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
PET–TPA, continuous	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as Polymer Manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.
PET–TPA, continuous multiple end finisher.	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as Polymer Manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	No control	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.
PET–TPA, batch –DMT, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.

TABLE. 2.—SUMMARY OF FINAL STANDARDS FOR NEW AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT—Continued

Subcategory	Type of emission point					
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems	Process contact cooling towers
PET–DMT, continuous	HON	Continuous process vents from material recovery and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.
Nitrile	MACT floor.	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.

[1] The final standard is stringent than the MACT floor, which is more stringent than the HON.
NA = Not applicable, not part of affected source.
ASA/AMSAN = acrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin.
TPA = terephthalic acid.
DMT = dimethyl terephthalate.

A. Storage Vessel Provisions

The standards require owners and operators to first determine whether or not a storage vessel is required to be controlled. For those storage vessels determined to require control, the standards specify the appropriate level of control.

For most existing and new storage vessels, the criteria for determining which storage vessels must be controlled are identical to the criteria in the HON storage vessel provisions and are based on storage vessel capacity and vapor pressure of the stored material. Typically, applicability criteria are different for existing and new affected sources.

For most storage vessels, the level of control required is either technical modification to the tank (e.g., the installation of an internal floating roof) or the use of a closed vent system and control device that is generally required to achieve at least 95 percent emission reduction.

Note: This is the same level of control as required under the HON.

As shown in Tables 1 and 2, some subcategories also have requirements that differ from the HON. These requirements are specified in the final standards. For those subcategories not applying the HON level of control, the level of control varies depending on the subcategory. For example, the standards may require 90 or 98 percent emission reduction, as opposed to the 95 percent emission reduction required by the HON. Finally, to simplify the final rule, some chemicals with extremely low vapor pressure (e.g., ethylene glycol) have been exempted from the storage vessel provisions.

B. Process Vent Provisions

Similar to the standards for storage vessels, the standards for process vents require owners and operators to first determine whether or not a process vent, or set of process vents, requires control and, if so, then specifies the level of control required. The standards regulate both continuous and batch process vents.

Except for certain PET and polystyrene continuous process vents, the group status of a continuous process vent is determined by comparing the total resource effectiveness (TRE) value for each continuous process vent to a TRE value. The TRE value is a reflection of the cost effectiveness of controlling an individual continuous process vent. There are different TRE coefficients for continuous process vents depending on whether the affected source is new or existing. The TRE equations for new and existing continuous process vents differ because the standards for new affected sources are more stringent than the standards for existing affected sources. With one exception, continuous process vents with TRE values of 1.0 or less are Group 1 continuous process vents. For continuous process vents at existing MBS facilities, the TRE value for each continuous process vent is compared to a TRE value of 3.7. The proposed and final standards refer to the procedures in the HON for determination of the TRE value.

For continuous process vents associated with the material recovery section from *existing* PET affected sources using a continuous dimethyl terephthalate (DMT) process, the set of continuous process vents are designated as Group 1 continuous process vents if the combined uncontrolled emission rate is greater than the threshold emission rate. For other sets of continuous process vents associated with the raw material preparation section or polymerization reaction section at existing and new polystyrene and PET facilities, there are no applicability criteria. These sets of continuous process vents are considered to be Group 1 and must meet the specified emission limits. Continuous process vents associated with the material recovery section at *new* PET affected sources using a continuous DMT process are also designated as Group 1 and must meet the specified emission limits.

The group determination procedure for batch process vents differs from the procedure used for continuous process vents. First, the estimated annual emissions for an individual batch process vent are entered into the flow rate regression equation and a calculated flow rate is determined. Second, the actual flow rate for the batch process vent is compared to the calculated flow rate. If the actual flow rate is less than the calculated flow rate, then the batch process vent is designated as Group 1 and control is required. The batch process vent group determination procedure is the same for existing and new batch process vents.

There are exceptions to the procedures described above. For new SAN affected sources using a batch process, the standards require an overall emission reduction of 84 percent from all process vents (i.e., continuous and batch process vents), and a group determination is not required. For new and existing acrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin (ASA/AMSAN) affected sources, the standards require that emissions from all process vents (i.e., continuous and batch process vents) be controlled by 98 percent, and a group determination is not required.

Another exception concerns a batch process vent that is combined with a continuous process vent prior to a control or recovery device. Said batch process vent is not required to comply with the batch process vent provisions if there are no emissions to the atmosphere up until the point the batch process vent is combined with the continuous process vent. The combined vent stream would be required to comply with the continuous process vent provisions. The presence of a batch process vent in a continuous process vent emission stream would necessitate that all applicability tests and performance tests be conducted while the batch process vent is emitting (i.e., maximum operating conditions for the combined vent stream).

The level of control required for most continuous process vents is the same as the level of control required by the HON: 98 percent emission reduction or an organic HAP concentration limit of 20 ppmv. If a flare is used, it must meet the design and operating requirements of § 63.11(b) of subpart A of 40 CFR part 63. Exceptions to this level of control are described in the following paragraphs.

For continuous process vents associated with material recovery sections at polystyrene affected sources using a continuous process, raw material preparation sections and polymerization reaction sections at PET affected sources using a continuous terephthalic acid (TPA) process, and material recovery sections and polymerization reaction sections at PET affected sources using a continuous DMT process, the standards require continuous process vents associated with these process sections to meet emission limits expressed as kilogram organic HAP per megagram of product. Depending on the process section, the standards provide several compliance options including limiting the outlet gas temperature from each final condenser or reducing emissions from each process section by 98 weight percent or to an organic HAP concentration limit of 20 ppmv. These are the same control requirements as specified in the Polymer Manufacturing NSPS, which serve as the basis for these specific provisions.

For batch process vents, the standards require Group 1 batch process vents to achieve emission reductions of 90 percent or greater for the batch cycle.

There are three subcategories where the standards are based on the MACT floor. These subcategories are existing MBS affected sources, existing and new ASA/AMSAN affected sources, and new SAN affected sources using a batch process. As described earlier, the applicability criteria and level of control differ from the HON for all three subcategories.

For existing MBS affected sources, the standards require continuous process vents at affected sources to either: (1) meet an emission limit of 0.000590 kilogram of emissions per megagram of product for all continuous process vents associated with the affected source; or (2) control emissions from continuous process vents with a TRE of 3.7 or less by 98 percent. The development of the MACT floor level of control and applicability criteria for MBS existing affected sources is documented in Docket Item II–B–21 of A–92–45 and in the Supplementary Information Document (SID) for Proposed Standards [EPA–453/R–95–003a; March 1995].

For both existing and new ASA/AMSAN affected sources, the standards require all continuous and batch process vents to achieve emission reductions of 98 percent.

For new SAN affected sources using a batch process, the standards require an overall emission reduction of 84 percent for all process vent emissions.

C. Heat Exchange Provisions

The standards apply to each heat exchange system that is associated with the affected source. The standards require a monitoring program to detect leakage of organic HAP from the process into the cooling water. The standards refer to the monitoring program in the HON.

D. Process Contact Cooling Tower Provisions

The standards require that owners or operators of new affected sources manufacturing PET not send contact condenser effluent associated with a vacuum system to a process contact cooling tower. For existing PET affected sources using a continuous TPA high viscosity multiple end finisher process, the owner or operator is required to keep the concentration of ethylene glycol in the process contact cooling tower water to 4 percent or less by weight provided the TPPU is or has become subject to 40 CFR part 60, subpart DDD. Process contact cooling towers at existing PET affected sources using other processes (e.g., DMT process) are not regulated.

Note: The standards treat the contact condenser effluent at existing affected sources as wastewater.

E. Wastewater Provisions

Except for ASA/AMSAN affected sources, the standards require owners and operators to comply with the wastewater provisions in the HON. Owners and operators are required to make a group determination for each wastewater stream based on the applicability criteria in the HON: flow rate and organic HAP concentration. The level of control required for Group 1 wastewater streams is dependent upon the organic HAP constituents in the wastewater stream. The standards do not require control of wastewater emissions from existing or new ASA/AMSAN affected sources.

The standards also require owners and operators to comply with the maintenance wastewater requirements in § 63.105 of subpart F of this part. These provisions require owners and operators to include a description of procedures for managing wastewaters generated during maintenance in their start-up, shutdown, and malfunction plan.

F. Equipment Leak Provisions

Except for one subcategory, both existing and new affected sources are required to comply with the equipment leak standards specified in subpart H of 40 CFR part 63. For PET affected sources using a continuous TPA high viscosity multiple end finisher process, the final rule does not require an equipment leak program. The final rule also exempts from the equipment leak standards any PET TPPU in which all of the components are either in vacuum service or in heavy liquid service.

In general, subpart H requires owners and operators to implement a leak detection and repair (LDAR) program, including various work practice and equipment standards. The subpart H standards are applicable to equipment in volatile HAP service for 300 or more hours per year (hr/yr). The standards define "in volatile HAP service" as being in contact with or containing process fluid that contains a total of 5 percent or more total HAP. Equipment subject to the standards are: valves, pumps, compressors, connectors, pressure relief devices, open-ended

valves or lines, sampling connection systems, instrumentation systems, agitators, and closed-vent systems and control devices.

A few differences to the subpart H standards are contained in the final rule. These differences include: exempting indications of liquids dripping from bleed ports on pumps and agitators at facilities producing polystyrene resins from the definition of a leak; not requiring the submittal of an Initial Notification; and allowing 150 days, rather than 90 days, to submit the Notification of Compliance Status. In addition, PET facilities are not required to provide a list of identification numbers for components in heavy liquid service, pressure relief devices in liquid service, and instrumentation systems. The final rule also clarifies that for these components the presence of a leak is to be determined exclusively through the use of visual, audible, olfactory, or any other detection methods, but that Method 21 is not to be used. Finally, bottoms receivers and surge control vessels are not regulated under the equipment leak provisions, but instead are regulated as storage vessels.

Affected sources subject to this rule currently complying with the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks [40 CFR part 63, subpart I] or with the equipment leak provisions in § 60.562–2 of 40 CFR part 60, subpart DDD, are required to continue to comply with subpart I or subpart DDD, as applicable, until the compliance date of the final rule, at which point in time they must comply with this rule and are no longer subject to subpart I and subpart DDD. Further, affected sources complying with subpart I through a quality improvement program are allowed to continue these programs without interruption as part of complying with this rule. In other words, becoming subject to this rule does not restart or reset the "compliance clock" as it relates to reduced burden earned through a quality improvement program.

G. Emissions Averaging Provisions

The EPA is allowing emissions averaging among continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, and wastewater streams, within an existing affected source. New affected sources are not allowed to use emissions averaging. Emissions averaging is not allowed between subcategories; it is only allowed between emission points within the same affected source. Under emissions averaging, a system of "credits" and "debits" is used to determine whether an affected source is achieving the required emission reductions. Twenty emission points per plant site are allowed in the emissions averaging plan submitted for the plant site, with an additional 5 emission points allowed if pollution prevention measures are used.

H. Compliance and Performance Test Provisions and Monitoring Requirements

Compliance and performance test provisions and monitoring requirements contained in the standards are very similar to those found in the HON. Each type of emission point included in the standards is discussed briefly in the following paragraphs. Significant differences from the continuous parameter monitoring requirements found in the HON are discussed in Section 8.

1. Storage Vessels

Monitoring and compliance provisions for storage vessel improvements include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a control device is used, the owner or operator must identify the appropriate monitoring procedures to be followed in order to demonstrate compliance. Monitoring parameters and procedures for many of the control devices likely to be used are identified in the standards. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the standards.

2. Continuous Process Vents

The standards for continuous process vents require the owner or operator to either calculate a TRE index value to determine the group status of each continuous process vent or to comply with the control requirements. The TRE index value is determined after the last recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations specified in the standards.

Performance test provisions are included for Group 1 continuous process vents to verify that control or recovery devices achieve the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the standards.

Compliance provisions for continuous process vents at polystyrene and PET affected sources are included in the standards. For owners or operators electing to comply with a kilogram organic HAP per megagram of product emission limit, procedures to demonstrate compliance are provided.

3. Batch Process Vents

Similar to the provisions for continuous process vents, there is a procedure for determining the group status of batch process vents. This procedure is based on annual emissions and annual average flow rate of the batch process vent. Equations for estimating and procedures for measuring annual emissions and annual average flow rates are provided in the standards. The use of engineering assessment is also allowed under certain circumstances.

Performance test provisions are included for Group 1 batch process vents to verify that control devices achieve the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the standard.

For Group 2 batch process vents, the standard requires owners and operators to establish a batch cycle limitation. The batch cycle limitation restricts the number and type of batch cycles that can be accomplished per year. This enforceable limitation ensures that a Group 2 batch process vent does not become a Group 1 batch process vent as a result of running more batch cycles than anticipated when the group determination was made. The determination of the batch cycle limitation is not tied to any previous production amounts. As affected source may set the batch cycle limitation at any level it desires as long as the batch process vent remains a Group 2 batch process vent. Alternatively, an owner or operator may declare any Group 2 batch process vent to be a Group 1 batch process vent. In such cases, control of the batch process vent is required.

Procedures are included in the standards to demonstrate compliance with the requirement to reduce overall process vent emissions (i.e., continuous and batch process vents) by 84 percent for new SAN affected sources using a batch process.

4. Heat Exchange Systems

Monitoring of cooling water is required to detect leaks in heat exchange systems. If a leak is detected, the heat exchange system must be repaired.

5. Process Contact Cooling Towers

Owners and operators of new affected sources manufacturing PET are prohibited from sending contact condenser effluent associated with a vacuum system to a process contact

cooling tower. Owners and operators of existing PET affected sources using a TPA continuous high viscosity multiple end finisher process are required to monitor ethylene glycol concentration in the cooling tower water and to ensure that the levels do not exceed 4 percent by weight. Procedures for sampling cooling tower water and measuring the ethylene glycol concentration are included in the standards.

6. Wastewater

For demonstrating compliance with the various requirements, the standards allow the owners or operators to either conduct performance tests or to document compliance using engineering calculations. Appropriate compliance and monitoring provisions are included in the standards.

7. Equipment Leaks

Except for certain components at PET affected sources, the final rule retains the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A "leak" is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (i.e., the calibration gas) in air. The rule allows the use of engineering assessment to determine that equipment is not in organic HAP service. If there is disagreement between an owner or operator and the Administrator, the rule specifies that Method 18 or Method 25A be used to determine the organic HAP or total organic compounds (TOC) content of a process stream. To test for leaks in a batch system, test procedures using either a gas or a liquid for pressure testing the batch system are specified.

8. Continuous Parameter Monitoring

The final standards require owners or operators to establish parameter monitoring levels. The standards provide the owner or operator the flexibility to establish the levels based on site-specific information. Site-specific levels can best accommodate variation in emission point characteristics and control device designs. Three procedures for establishing these levels are provided in the final standards. They are based on performance tests; performance tests, engineering assessments, and/or manufacturer's recommendations; and engineering assessments and/or manufacturer's recommendations. While the establishment of a level based solely on performance tests is preapproved by the Administrator, values determined using the last two procedures, which may or may not use the results of performance tests, must be approved by the Administrator for each individual case.

The final standards require the availability of at least 75 percent of monitoring data to constitute a valid days worth of data for continuous and batch process vents. Failure to have a valid day's worth of monitoring data is considered an excursion. The criteria for determining a valid day's or hour's worth of data are provided in the standards.

A certain number of excused excursions have been allowed in the final standards; these provisions are the same as the provisions in the HON. The standards allow a maximum of 6 excused excursions for the first semiannual reporting period, decreasing by 1 excursion each semiannual reporting period. Starting with the sixth semiannual reporting period (i.e., the end of the third year of compliance) and thereafter, one excused excursion is allowed each semiannual reporting period. As is always the case, a State has the discretion to impose more stringent requirements than the requirements of NESHAP and other federal requirements and could choose not to allow the excused excursion provisions contained in these standards.

I. Recordkeeping and Reporting Provisions

The standards require owners or operators of affected sources to maintain required records and reports for a period of at least 5 years. The final standards require that the following reports be submitted, as applicable: (1) Precompliance Report, (2) Emissions Averaging Plan, (3) Notification of Compliance Status, (4) Periodic Reports, and (5) other reports (e.g., notifications of storage vessel internal inspections).

Specific recordkeeping and reporting requirements are specified in each section that addresses an individual emission point (e.g., 63.1321 for batch process vents). The recordkeeping and reporting provisions related to the affected source as a whole (e.g., Notification of Compliance Status) are found in § 63.1335. Requirements found in an individual emission point section and the requirements in § 63.1335 are complementary. For example, § 63.1326 requires an owner or operator to record the batch cycle limitation for each Group 2 batch process vent. § 63.1327 goes on to require the owner or operator to submit this information in the Notification of Compliance Status, as specified in § 63.1335. Finally, § 63.1335 requires submittal of the information specified in § 63.1327.

IV. Summary of Impacts

This section presents impacts resulting from the control of organic HAP emissions under these standards. Because many organic HAP are also VOC, a reduction in VOC emissions will also result from controls imposed by the standards. The standards are estimated to reduce organic HAP emissions from all existing affected sources by 3,520 Mg/yr from a baseline level of 18,120 Mg/yr. For new affected sources, the standards are estimated to reduce organic HAP emissions by 6,870 Mg/yr from a baseline level of 11,610 Mg/yr. At baseline, the EPA found that many affected sources already had some controls in place. These standards generally achieve an emission reduction by meeting the MACT floor level of control. [Note: Costs and other impacts are not considered when the selected standard is based on the MACT floor.] In some cases, these standards achieve additional emission reduction, beyond the floor, that was determined to be cost effective.

Under the final standards, energy use is expected to increase by approximately 29,800 barrels of oil per year for existing affected sources and 43,600 barrels of oil per year for new affected sources. The emissions of secondary air pollutants associated with this energy increase are 70 Mg/yr for existing affected sources and 80 Mg/yr for new affected sources. At the same time, energy credits attributable to the prevention of organic HAP emissions from equipment leaks are approximately 7,000 barrels of oil per year for existing affected sources and 3,800 barrels of oil per year for new affected sources. This results in a net increase in energy usage equivalent to approximately 22,500 barrels of oil per year for existing affected sources and 39,700 barrels of oil per year for new affected sources.

These figures are related to the control of process vents, wastewater operations, and equipment leaks. Energy impacts related to storage vessels were not estimated because many storage vessels would be controlled through the use of internal floating roofs which do not have any associated energy impacts. Data are not available for the EPA to estimate energy impacts for the elimination of emissions from process contact cooling towers for new PET affected sources or the control of ethylene glycol concentration in the process contact cooling tower water for existing PET affected sources using a continuous TPA high viscosity multiple end finisher process.

Cost impacts include the capital costs of new control equipment, the cost of energy (i.e., supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with the standards.

Under the standards, it is estimated that total capital costs for existing affected sources would be $10.7 million (1989 dollars), and total annual costs would be $3.3 million (1989 dollars) per year. Total capital costs for new affected sources would be $6.5 million (1989 dollars), and total annual costs would generate a savings of $5.2 million (1989 dollars) per year. It is expected that the actual compliance cost impacts of the standard would be less than presented because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices would be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

The economic impact analysis for the selected regulatory alternatives at proposal showed that the estimated price increases for the affected chemicals ranged from 0.1 percent for nitrile to 2.8 percent for SAN. Estimated decreases in output ranged from 0.1 percent for polystyrene to 4.6 percent for SAN. Net annual exports (i.e., exports minus imports) were predicted to decrease by an average of 2.5 percent. These impacts were judged, at proposal, to be acceptable. Because estimated costs of the final standards have decreased, the economic impacts determined at proposal will decrease as well. Therefore, the EPA finds the economic impacts associated with the final standards are less than at proposal and are judged to be acceptable.

V. Significant Comments and Changes to the Proposed Standards

In response to comments received on the proposed standards, changes have been made to the final standards. While several of these changes are clarifications designed to make the EPA's intent clearer, a number of them are significant changes to the requirements of the proposed standards. A summary of the substantive comments and/or changes made since the proposal are described in the following sections. The rationale for these changes and detailed responses to public comments are included in the Basis and Purpose Document for the Final Standards [EPA–453/R–96–001b; May 1996]. Additional information on the final standards is contained in the docket for this rulemaking (see **ADDRESSES** section of this preamble).

A. Applicability Provisions and Definitions

1. Designation of Affected Source and the Definition of TPPU

Commenters expressed confusion about the definitions of "affected source" and "TPPU" in the proposed standards. The EPA reviewed both definitions and agreed that they needed clarification. In response, the EPA has revised the language describing "affected source" and "TPPU" for the final standards.

The definition of "affected source" included in § 63.502 of the proposed standards was revised and the definition now references § 63.1310(a) of the final rule, and § 63.1310(a) describes the affected source. The provisions in § 63.1310(a), which at proposal were in § 63.500(a) and defined applicability in terms of the existence of one or more TPPUs, have been revised to define applicability in terms of the affected source. As part of this revision, the provisions in proposed § 63.500(b), which described the affected source, were removed. [Note: In the proposed standards, the definition of TPPU attempted to describe all the equipment and operations that would be included in an affected source. In the final standards, the description of what the affected source includes is contained in § 63.1310(a).]

As discussed in section II, an existing affected source is defined as each group of one or more TPPUs that manufacture the same thermoplastic product as their primary product, and (1) are located at a major source plant site, (2) are not exempt, and (3) are not part of a new affected source. A new affected source can be a single TPPU located at major source plant site or a group of TPPUs that manufacture the same thermoplastic product as their primary product at a major source plant site. The situations when a new affected source are created are discussed under A.3 of this section.

The affected source also includes the following emission points and equipment that are associated with each group of TPPU: (1) each wastewater stream; (2) each wastewater operation; (3) each heat exchange system; (4) each process contact cooling tower used in the manufacture of PET that is associated with a new affected source; and (5) each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

For the final standards, the number of existing affected sources present at a plant site will equal the number of thermoplastic products manufactured at that plant site. A plant site manufacturing 3 different thermoplastic products has 3 existing affected sources.

Note: Each different thermoplastic product represents a different subcategory, and each subcategory comprises a separate existing affected source.

The number of existing affected sources at a plant site could range from 1 to 19.

The definition of TPPU was revised and now includes a list of the collection of equipment that comprises a TPPU. This equipment includes process vents from process vessels, storage vessels, and equipment subject to the equipment leaks provisions. Because wastewater streams, wastewater operations, heat exchange systems, and process contact cooling towers are equipment that are often used by more than one TPPU, these items are not included as part of the definition of TPPU. Instead, said items are included in the definition of affected source. Because the portion of each wastewater stream attributable to an individual TPPU can be determined, each wastewater stream can be associated with an affected source. On the other hand, wastewater operations may service wastewater streams associated with more than one affected source, just as heat exchange systems and PET process contact cooling towers could service multiple affected sources. Therefore, for wastewater operations, heat exchange systems, and PET process contact cooling towers, the final rule requires that said emission points and equipment are subject to all applicable requirements associated with each affected source that said emission points and equipment may service. In a simple example, a heat exchange system is associated with two affected sources that are both subject to the final rule. The owner or operator must comply with the provisions for heat exchange systems contained in the final rule. In a more complex example, a piece of wastewater operations equipment services wastewater streams from two affected sources subject to the final rule and from one source subject to the HON.

This piece of wastewater operations equipment must comply with both the final rule and the HON.

2. Definition of Organic HAP

Numerous commenters recommended that the EPA restrict the list of organic HAP in the final standards to those that are used or are present in significant quantities at TPPUs or those that are listed in the HON, subpart F, Table 2. The EPA agreed with the commenters suggestion that a table providing a listing of the specific organic HAP expected to be regulated for each subcategory covered by the standards should be added to the final standards. Therefore, the definition of organic HAP was revised to specify those organic HAP that are known to be used or present in significant quantities for each subcategory, thereby restricting the organic HAP regulated by the final standards. This list is provided in Table 2 of the final standards.

The revised definition of organic HAP was developed using available process description information received from industry and gathered from available literature. Because there may be additional organic HAP present at an affected source, the final standards require owners or operators to identify the presence of any additional organic HAP based on the following criteria: (1) the organic HAP is knowingly introduced into the manufacturing process other than as an impurity, or has been or will be reported under any Federal or State program, such as Title V or the Emergency Planning and Community Right-To-Know Act (EPCRA) Section 311, 312, or 313; and (2) the organic HAP is listed in Table 2 of subpart F.

3. Determining New Source Status

The EPA received comments regarding the procedure for determining if new or existing source requirements would apply to a particular TPPU. In response to those comments, the EPA has revised the provisions in the final standards.

Under the final standards, new affected sources are created under each of the following four situations: (1) if a plant site with an existing affected source producing a thermoplastic product as its primary product constructs a new TPPU also producing the same thermoplastic product as its primary product, the new TPPU is a new affected source if the new TPPU has the potential to emit more than 10 tons per year of a single HAP or 25 tons per year of all HAP; (2) when a TPPU is constructed at a major source plant site where the thermoplastic product was not previously produced as the primary product of an existing affected source; (3) if a new TPPU is constructed at a new plant site (i.e., green field site) that will be a major source; and (4) when an existing affected source undergoes reconstruction, thus making the previously existing affected source subject to new source standards.

These revisions reflect the EPA's intent that new source requirements apply if the added TPPU has the potential to emit major quantities, as in the HON, or the added TPPU is a new affected source. The HON applied to only one source category, and it was not possible to add a process unit subject to the HON that was in a new source category. Therefore, the only differentiation to be made under the HON was between process units emitting major quantities of organic HAP and those not emitting major quantities of organic HAP. On the other hand, the thermoplastics standards apply to multiple source categories/subcategories, and it is possible to add a TPPU subject to the thermoplastics standards that is in a new source category/subcategory. For this reason, if a TPPU is added to an existing plant site and said TPPU manufactures a thermoplastic product as its primary product not previously produced at the plant site as the primary product of an existing affected source, that TPPU, regardless of emissions, is a new affected source at that plant site.

4. Solid State PET Processes

Commenters contended that all PET solid state polymerization units, including collocated units, should be exempted from regulation. They stated that PET solid state polymerization units are a vastly different technology than DMT and TPA processes and have different emission characteristics. The EPA has concluded that PET solid state processes are distinct from DMT or TPA processes. The EPA did not collect data on PET solid state processes, and it was not possible to conduct the required analyses for regulating PET solid state processes. Therefore, the final standards do not regulate these processes. However, these processes may be regulated in a future standard.

5. Flexible Operation Units

The flexible operation unit provisions included in the proposed standards, which were modelled after the HON, have been retained in the final standards. Under these provisions, an owner or operator of a process unit that is designed and operated as a flexible operation unit will commit to being subject to this rule or not being subject to this rule based on a five-year projection of products to be manufactured and production quantities.

These provisions were modified to provide clarification of the EPA's intent and flexibility in complying with the provisions. Under the final rule, once an owner or operator commits to being subject to this rule, there are two options for complying. Under the first option, an owner or operator shall determine the group status (i.e., Group 1 or Group 2) of each emission point based on the production of the expected primary product (i.e., the thermoplastic product that convinced the owner or operator to commit to being subject to this rule). Once the group status of each emission point is determined, the owner or operator shall comply with the applicable emission standards for the primary product at all times, regardless of what product is being manufactured. Under the second option, an owner or operator shall determine the group status of each emission point each time a different product is being manufactured, regardless of whether or not said product is a thermoplastic product. Then, for each Group 1 emission point, the owner or operator shall comply with the applicable standards for the primary product. The EPA recognizes that neither option is an ideal situation. Under the first option, an owner or operator may find themselves operating a control device to control a Group 1 emission point that has none to negligible emissions when a different product is being manufactured. Under the second option, an owner or operator may find themselves performing multiple group determinations. Again, the EPA recognizes that neither option is an ideal situation, but believes the tradeoff between these inconveniences and flipping in and out of separate MACT standards is worthwhile.

As part of demonstrating compliance with the rule, an owner or operator required to operate a control device must establish parameter monitoring levels and conduct monitoring. Under either compliance option discussed above an owner or operator must establish parameter monitoring levels to reflect the manufacture of different products. These provisions allow an owner or operator to demonstrate that the parameter monitoring levels established for the primary product are appropriate for the manufacture of other products. If this is not the case, the provisions require that unique parameter monitoring levels be established.

6. Coordination With Other Clean Air Act Requirements

At proposal, the EPA has proposed to amend subpart DDD of 40 CFR part 60 by removing all references to polystyrene and PET facilities. This action was being taken because the proposed thermoplastics standards would supersede the requirements in subpart DDD for polystyrene and PET affected sources after the compliance date of the thermoplastics standards. Commenters also suggested that subpart I of 40 CFR part 63 be amended by removing all references to MBS and MABS affected sources after the compliance date of the thermoplastics standards. Other commenters requested that the EPA further clarify that after the compliance date of the thermoplastics standards, affected sources will no longer be subject to certain NSPS.

The EPA clarified the relationship between the thermoplastics standards and existing applicable standards in § 63.1311 of the final rule. The final rule was revised to state that affected sources subject to both the thermoplastics standards and another subpart are to comply with the provisions of the thermoplastic standards only after the compliance date for the thermoplastic standards, for those standards listed in § 63.1311 (g) through (l) of the final rule. Further, after the compliance date for these standards, these affected sources will no longer be subject to the other subparts. The EPA determined that a clear understanding can be provided in these standards without making modifications to other subparts. Thus, the proposed amendments to subpart DDD were not made as part of the final rulemaking, nor were the suggested amendments made to subpart I. For subpart DDD, the language in the final rule is more specific than for the other subparts. Because subpart DDD regulates multiple emission points (i.e., process vents, equipment leaks, and process contact cooling towers), the EPA needed to consider if it was desired or necessary to continue requiring portions of subpart DDD to apply. In fact, it is necessary to leave the provisions for controlling the ethylene glycol concentration in process contact cooling towers for the PET TPA continuous high viscosity multiple end finisher subcategory intact. This is because the provisions in the thermoplastics rule for the degree of control required for emissions from process contact cooling towers for this subcategory depend on whether or not an existing affected source is subject or becomes subject to subpart DDD for this emission point.

B. Continuous Process Vent Provisions

1. Reorganization of the Standards To Distinguish Between Continuous Process Vents Subject to Provisions From the HON and Continuous Process Vents Subject to Provisions Adapted From the Polymer Manufacturing NSPS

To better distinguish between the various requirements for continuous process vents, the proposed standards were reorganized. In the final standards, separate sections of the rule apply to the following subcategories: those required to comply with subpart G of the HON and those producing PET or polystyrene using a continuous process. In the final standards, § 63.1315 references subpart G; § 63.1316 through § 63.1320 apply to select continuous process vents at affected sources producing polystyrene and PET using a continuous process. Further, because not all process vents at affected sources producing polystyrene and PET using a continuous process are subject to § 63.1316 through § 63.1320, the provisions of § 63.1316 designate which process vents are subject to § 63.1316 through § 63.1320, which are subject to § 63.1315 (i.e., the HON), and which are subject to § 63.1321 (i.e., the batch process vent provisions). This reorganization is one way the EPA changed the standards to reduce complexity and eliminate potential confusion.

2. Applicability of the Polymer Manufacturing NSPS Adapted Provisions to the Collection of Process Sections at an Affected Source

Commenters stated that the regulatory construction of the proposed standards implied that the process vent emission limits adapted from the Polymer Manufacturing NSPS [proposed § 63.505 (b) and (c)] apply to each collection of material recovery sections, raw material preparation sections, and polymerization sections, respectively, within an affected source and not to each individual process section (e.g., material recovery section), as under the Polymer Manufacturing NSPS.

At proposal, the EPA has intended for each individual process section to meet the emission limits in proposed § 63.505 (b) and (c), as applicable. However, since proposal, the EPA has determined that revising the proposed standards to allow each collection of process sections within an affected source to meet the applicable emission limit would simplify compliance while achieving the same emission reductions. Therefore, the final standards apply the emission limits adapted from the Polymer Manufacturing NSPS to each collection of material recovery sections, raw material preparation sections, or polymerization reaction sections, as appropriate, within an affected source.

3. Clarification of Compliance Demonstration Provisions for Final Condenser Temperature Limits

Commenters suggested modifying the provisions adapted from the Polymer Manufacturing NSPS that provide for a demonstration of compliance by limiting the final condenser outlet temperature. Commenters explained that the reporting provisions in the Polymer Manufacturing NSPS state that the temperature limit is only exceeded when the average condenser outlet temperature for a 3-hour period is more than 6 °C above (i.e., warmer) the average operating temperature established during the most recent performance test at which compliance was demonstrated. Commenters requested that the final standards incorporate those monitoring, test method, and recordkeeping and reporting requirements from the Polymer Manufacturing NSPS that provide this flexibility (i.e, the six degree window).

The EPA intended for the proposed standards to be equivalent to the Polymer Manufacturing NSPS in this regard and have revised the final standards to provide the desired flexibility (i.e., the six degree window). In addition, the EPA has disassociated the six degree window from the results of the performance test and has instead associated it with the applicable temperature limit in the standard. The final standards allow all owners or operators complying with the final condenser operating temperature limits to be 6 °C warmer than the applicable temperature limit for the 3-hour averages. The EPA considered that the proposed provisions did not achieve an even-handed implementation of the requirements because some affected sources would be allowed to have 3-hour averages at warmer temperatures than others because their performance test results indicated a temperature closer to the applicable temperature limit.

C. Batch Process Vent Provisions

1. Exemption of Certain Batch Process Vents

Commenters supported the use of cutoffs for the group status determination for batch process vents as found in proposed § 63.506–2(d). Specifically, commenters agreed that low annual organic HAP emissions and low flow rate cutoffs are suitable. Commenters explained that batch

processes are, by nature, suited to low volume production and the manufacture of specialty products, and as such, low flow, low emitting process vents are likely in batch operations.

These provisions were retained in the final rule with one exception. The EPA removed the requirement to determine the volatility class (i.e., low, medium, or high) for batch process vents. As a result, there is a single minimum emission level cutoff in the final provisions of § 63.1323(d). In addition, the EPA chose to add a minimum emission level of 225 kilograms per year (kg/yr) to the definition of batch process vent. This modification made the batch process vent more consistent with the continuous process vent provisions which have a minimum organic HAP concentration level as part of the definition of continuous process vent. An emission point with emissions equal to or less than 225 kg/yr is not considered a batch process vent. At proposal, the 225 kg/yr level was part of the batch process vent group determination procedures; Group 2 batch process vents with annual emissions less than 225 kg/yr were subject to reporting requirements related to process changes.

2. Revisions to Group Determination Procedures

Commenters suggested changing the group determination provisions to only utilize emissions data from a TPPU's primary product. In addition, it was requested that batch process vent group determinations be performed on an annual basis instead of for every process change. Commenters stated that the proposed group determination provisions were considerably more complex than the continuous process vent group determination provisions. Commenters felt that, not only did the batch process vent group determination provisions require an owner or operator to obtain emissions data for every product that it manufactured, but even the most minor process changes (i.e., lengthening cycle times, altering process temperatures and pressures, etc.) triggered the need for a new group determination to be performed. Given the inherent process variability associated with batch operations, commenters contended that it would be very difficult to perform a group determination. Furthermore, because batch units often need to implement sudden process changes in response to customer demands, the proposed provisions could potentially require repeating the group determination exercise several times in a single year. Commenters explained that such a situation would not only serve to complicate a batch unit's compliance status, but could also adversely impact its ability to remain competitive in the marketplace.

Four issues related to the group determination procedures were reviewed by the EPA: (1) a request to perform the group determination on the primary product, (2) a request to perform the group determination on an annual basis, (3) an objection that the group determination procedures require a new group determination to be made whenever minor process changes occur, and (4) an objection to the requirement to perform the group determination when a sudden process change is required.

The EPA has considered the request to perform the group determination on the primary product and agrees that this would provide acceptable results from an environmental perspective while simplifying the compliance requirements for and improving the enforceability of the batch process vent standards. The final rule contains provisions allowing the owner or operator of an affected source to perform the group determination for batch process vents based on annualized production of a single product. To ensure protection to the environment, the final rule specifies that the highest organic HAP emitting product must be used when determining the group status based on a single product.

In addressing the request that the group determination be required on an annual basis instead of for every process change, the EPA believes the proposed rule was clear on this point. The proposed rule required that emissions and average flow rate be determined on an annual basis and describe how to account for the production of different products throughout the year. In this way, the group determination is done on an annual basis and can account for expected changes in the product being produced. The final rule does not reflect any changes related to this specific issue.

The third issue raised was an objection to the requirement that a new group determination be performed whenever minor process changes occur (e.g., lengthening cycle times, altering process temperatures and pressures, etc.). The proposed rule addressed the issue of minor process changes as they affect Group 2 batch process vents. If a process change affecting a Group 2 batch process vent occurs, a group determination must be made. However, the group determination provisions state that "changes that are within the range on which the original group determination was based" are not considered process changes. This allows an owner or operator to perform the initial group determination considering the potential for minor process changes. The EPA believes that the proposed provisions were clear that minor process changes (i.e., variations in operating conditions) do not require that a new group determination be performed. Addressing this concern as it relates to Group 1 batch process vents, the proposed provisions do not require a redetermination of group status for Group 1 batch process vents under any circumstances. Therefore, if minor process changes were to occur, the owner or operator would not be required to perform another group determination. The final rule does not reflect any changes related to this specific issue.

The fourth issue raised was an objection to the requirement to perform a new group determination when a sudden process change is required. In light of the third issue raised, EPA interpreted "sudden process change" to potentially mean (1) that a new product is being made, (2) that the same product is being made in a fundamentally different way (e.g., with different raw materials), or (3) that the same mix of products is being made but in a different proportion. In the first two cases, the EPA desires and intends that a new group determination be made. In the third case, the owner or operator has the flexibility to consider this situation when performing the initial group determination. If this situation was not considered, then a new group determination would be required. The EPA feels that these types of process changes warrant a new group determination to ensure that the emission standards are being met. The final rule does not reflect any changes related to this specific issue.

3. Emissions Testing and Performance Testing

Commenters requested that more flexibility should be allowed in designing an emissions testing scheme for batch process vents. Commenters cited an example, provided as part of the proposed definition of batch emission episode, where the charging of a vessel and the heating of the same vessel are considered two distinct batch emission episodes. In this example, the definition of batch emission episode would necessitate that separate emissions measurements be made for the charging and the heating of the vessel. This would require that a large number of samples be taken to characterize processes that have

multiple, short duration process steps. Commenters felt that the flexibility to test the emissions from several steps as a single batch emission episode would reduce testing costs without jeopardizing the quality of the emissions data. It was suggested that three or more batch cycles could be tested to obtain a representative average emission rate for the batch cycle.

After consideration of this comment, the EPA chose to leave the provisions related to emissions testing of batch process vents unchanged as they relate to this specific comment. The EPA felt adequate data were not presented to warrant changing these provisions. However, the emissions testing provisions in § 63.1323(b) and § 63.1325(c) have been modified to provide flexibility and reduce the burden of testing, while continuing to ensure that results are satisfactory for applicability determinations and performance tests. The final provisions allow an owner or operator to test just a portion of the batch emission episode selected to be controlled when the owner or operator can demonstrate that emissions during the period to be tested represent emissions for the entire batch emission episode or are greater than the average emission rate for the batch emission episode.

4. Flow Rate Estimation Procedures

Commenters asserted that the equations and test methods for calculating annual average flow rate in the proposed rule were not warranted. Commenters felt that the volumetric flow rate testing methods and the requirement to measure flow every 15 minutes specified in proposed § 63.506–2(e) were overly burdensome and would not always provide representative measurements. It was suggested that average flow rates for a batch emission episode are better defined by calculations of displacement volumes with respect to the durations of the displacement episodes or by other more simplified methods.

The EPA agrees that there are more simplified and potentially more accurate techniques for estimating flow rate for batch process vents. The final rule contains provisions that allow engineering assessment, as well as testing, to be used for estimating flow rate.

5. Emissions Estimation Procedures

Commenters recommended removing the emissions estimation equations in proposed § 63.506–2(b) from the rule. Commenters recommended that measurements or engineering estimates be allowed in place of the equations. It was felt the emissions estimation equations would not allow the flexibility necessary to account for differences in process technologies and operating methods.

Commenters also supported the provisions that allowed owners or operators to use direct measurement or engineering assessment to estimate emissions in cases where the emissions estimation equations are inappropriate for a particular type of operation or where, speaking to direct measurement, a more refined estimate of emissions is necessary. However, commenters objected to the requirement to demonstrate that the emissions estimation equations and direct measurement methods are not appropriate before engineering assessment can be used.

In response to the first issue raised, the emissions estimation equations have been retained in the final rule. The EPA found noting in the public comments that would warrant removing these procedures.

In response to the second issue, the EPA believes the data required to use the emissions estimation equations should be obtainable with reasonable effort. Further, specific comments regarding the inaccuracy or inappropriateness of the equations were not made. Given this, the EPA favors a more consistent estimation technique which is provided by the use of the emissions estimation equations, and the final rule requires the owner or operator to demonstrate that the emissions estimation equations are inappropriate before the use of engineering assessment is allowed.

However, independent of the comments provided, the EPA has concluded that direct measurement of emissions may prove to be difficult and may or may not provide an increased assurance of accuracy over the use of engineering assessment. Therefore, if an owner or operator can demonstrate that the emissions estimation equations are not appropriate, the final provisions allow the use of either direct measurement or engineering assessment.

6. Other Changes Resulting From EPA Review

In addition to changes made to the proposed rule as a result of public comment, changes were made as a result of EPA independently reviewing the rule between proposal and promulgation. Because the batch process vent provisions included in the rule are among the EPA's first attempts to regulate batch process vents, the EPA felt an ongoing, independent review of these provisions after proposal was warranted. Changes resulting from this review are listed below:

(1) Allow applicability determinations and compliance demonstrations (i.e., performance tests) to be based on TOC or organic HAP. Allow the use of Method 25A to compliment the use of TOC as a potential basis for applicability determinations and compliance demonstrations.

(2) Allow the establishment of parameter monitoring levels to be based on performance tests or a combination of performance tests and engineering assessment (discussed in more depth in Section H, Monitoring). To accommodate this change, modifications to the batch process vent testing provisions were required.

(3) Add provisions specifying how the batch cycle limitation is to be determined.

(4) Change the reporting requirement for batch cycle limitation records from quarterly to annually.

These changes are discussed in the paragraphs below.

In the final rule, the EPA has allowed the use of TOC as the basis for applicability and compliance demonstrations (i.e., performance tests) as an alternative to organic HAP. The EPA has done this to provide flexibility to the regulated community and to reduce the overall burden of the rule. The EPA considered the impacts of allowing TOC to serve as a surrogate for organic HAP in applicability and compliance demonstrations and did not find any negative impacts. Further, allowing the use of Method 25A as a complement to the use of TOC as a surrogate to organic HAP reduces the burden of implementing the final rule with little to no adverse impact on the measurement of pollutants in the regulated batch process vents. To the best of the EPA's knowledge, the batch process vents regulated by this rule are predominantly organic HAP. Also, with one exception (i.e., ethylene glycol), the regulated organic HAP, which are listed in the definition of organic HAP found in the final rule, have response factors to Method 25A adequate to ensure satisfactory measurement of TOC in the batch process vents. For certain emission points where the EPA considered the presence of ethylene glycol and its corresponding poor response factor to call into question the results that would be obtained using Method 25A, the use of Method 25A is not allowed. For all other emission points, the EPA has allowed the use of TOC for applicability and compliance demonstrations as an alternative to organic HAP in the final rule.

In the final rule, the EPA allows the establishment of parameter monitoring levels to be based on either performance tests, as in the proposed rule, or a combination of performance tests, engineering assessment, and manufacturer's recommendations. This change affects all emission points which are required to establish parameter monitoring levels, including batch process vents. The rationale for this change is discussed in detail in Section H, monitoring, of this document. For batch process vents, this change in the procedures for establishing parameter monitoring levels necessitated changes to the performance test provisions. When an owner or operator chooses to establish parameter monitoring levels based exclusively on performance tests, the final rule directs that the performance test must include the entire batch emission episode selected to be controlled. As discussed earlier, an owner or operator may choose to control just a portion of a batch emission episode; in such a scenario, the performance test must include the entire portion of the batch emission episode selected to be controlled. Alternatively, when an owner or operator chooses to establish parameter monitoring levels based on a combination of performance tests, engineering assessment, and manufacturer's recommendations, the final rule allows an owner or operator to test either the entire batch emission episode, or portion thereof, selected to be controlled or to test only the entire batch emission episode, or portion thereof, selected to be controlled.

Note: The flexibility to test a period of the batch emission episode that is less than the entire batch emission episode, or portion thereof, selected to be controlled is discussed earlier in this section.

The final rule includes provisions specifying how the batch cycle limitation, required for Group 2 batch process vents, is to be established. The EPA felt that the proposed rule was ambiguous concerning the establishment of the batch cycle limitation and added these provisions to make the rule complete. The added provisions provide additional description of the purpose of the batch cycle limitation and describe what documentation is required as part of establishing the batch cycle limitation.

In the final rule, the EPA changed the requirement for reporting the number and type of batch cycles accomplished for a Group 2 batch process vent from quarterly to annually. The EPA felt that quarterly reporting was unwarranted given that the compliance requirement (i.e., the batch cycle limitation) was on an annual basis.

D. Wastewater Provisions

1. Steam Stripping Styrene-Containing Wastewater Streams

Numerous commenters claimed that the selection of steam stripping as the basis of the standards for the treatment of styrene-containing wastewater streams was inappropriate due to polymerization problems. The EPA acknowledges that steam stripping styrene-containing wastewaters may prove to be impractical in some cases due to issues raised by the commenters. However, steam stripping is not required by the standards. Both the proposed and final wastewater provisions provide several options for complying with the standards. If the owner or operator judges steam stripping to be impractical for their process, one of the other wastewater compliance options may be used. The EPA considers one of these compliance options, the use of enclosed sewers to a biological treatment operation unit, a favorable option because styrene is highly biodegradable. Further, because the organic HAP emitted from the subcategories regulated by this rule are highly biodegradable, the EPA has determined that it is not necessary to require affected sources to demonstrate that 95 percent of the mass of organic HAP listed in Table 9 of the HON are removed when using a biological treatment unit, as required by the HON. Therefore, the final thermoplastic rule does not require an owner or operator to make this demonstration.

2. Elimination of Regulations Pertaining to Wastewater From Polystyrene Affected Sources

In addition to considering the comments made concerning the impracticality of steam stripping styrene-containing wastewaters, the EPA evaluated the need to regulate wastewater from polystyrene affected sources. Because the water solubility of styrene is limited to approximately 300 ppm and styrene is the only known organic HAP emitted during the production of polystyrene, it is not possible for a wastewater stream that only contains styrene to meet the Group 1 applicability criteria (i.e., 1,000 ppm minimum concentration). Therefore, because, to the best of EPA's knowledge, there can be no Group 1 wastewater streams at a polystyrene affected source, the final standards do not regulate wastewater from this subcategory.

E. Process Contact Cooling Tower Provisions

1. Ethylene Glycol Jet Retrofit for PET Existing Affected Sources

Commenters disagreed with the EPA's position that ethylene glycol jets are the vacuum systems technology of choice for a retrofit application and with the EPA determination that ethylene glycol jets are cost effective. Commenters contended that the EPA had failed to consider numerous costs factors and design considerations.

Note: While the proposed standards did not require the use of ethylene glycol jets, they were the technology on which the prohibition of process contact cooling towers was based.

Based on the data available at proposal, the costs and emission reductions achievable through the use of ethylene glycol jets in retrofit situations were acceptable. The EPA knew that the proposed standards for ethylene glycol jets were based on limited data and limited knowledge obtained from one manufacturer of PET. The EPA took special effort to make this clear and to solicit comments on the installation and operation of ethylene glycol jets in the preamble to the proposed standards (see pages 16104 and 16107 of the preamble). Based on the comments provided, the EPA agrees that ethylene glycol jets are not a suitable retrofit technology for existing affected sources, either technically or economically, for meeting the provisions of the proposed standards that prohibit the use of process contact cooling towers. These comments are presented and discussed in detail in the Basis and Purpose Document for the Final Standards [EPA–453/R–96–001b; May 1996].

As explained in chapter 6.0 of the Basis and Purpose Document for the Final Standards [EPA–453/R–96–001b; May 1996], steam jet vacuum systems can be used to create a vacuum on the process vessels, contact condensers can be used to condense steam, and the contact condenser effluent can be recirculated to the process contact cooling tower. In the process contact cooling tower, stripping and drift may occur, resulting in organic HAP emissions to the atmosphere. Volatilization of organic HAP from the vacuum system may also occur. The following paragraphs describe some of the public comments on this issue and the EPA's responses.

Given that the EPA was convinced by the commenters' arguments that ethylene glycol jets are not a suitable retrofit technology for existing affected sources, the EPA considered alternate

options for controlling emissions from the vacuum system. Both volatile organic HAP (VOHAP) and ethylene glycol are emitted from the vacuum system, and the EPA chose to approach each of these emissions separately.

To address VOHAP emissions from the vacuum system at existing sources, the final standards treat the contact condenser effluent as wastewater and apply the same provisions to it as are applied to process wastewater. Contact condenser effluent is considered process wastewater based on the proposed wastewater provisions, and without any special provisions or specific mention, the wastewater provisions will apply. The EPA judged that treating the contact condenser effluent prior to any significant opportunity for volatilization protects the environment. Further, the HON wastewater provisions, which are the basis for the wastewater provisions in the proposed and final standards, have been judged to be environmentally effective and cost effective overall. Therefore, if the wastewater provisions deem a wastewater stream to be Group 2 (i.e., not requiring control), that means it is not cost effective to control any VOHAP that may be contained in that wastewater stream.

Addressing emissions from the process contact cooling tower was more complex.

Note: The HON did not specifically address process contact cooling towers because they are not used extensively in the synthetic organic chemical manufacturing industry (SOCMI).

Given that the emissions of VOHAP would be dealt with through the use of the wastewater provisions at existing affected sources, the key issue related to cooling towers became the emissions of ethylene glycol. Between proposal and promulgation, the EPA spent considerable effort gathering information on PET vacuum systems and their emissions. Much of this effort focused on emissions from the cooling towers, specifically emissions of ethylene glycol. In addition to gathering information on emissions, the EPA investigated control options aimed at reducing emissions of ethylene glycol from cooling towers. Possible control options, not considering ethylene glycol jets, included treating a slipstream of the cooling tower water to reduce the concentration of ethylene glycol or installing a large heat exchanger to isolate the cooling tower from the process. None of these control options were shown to be cost effective. All of the factors discussed above have led the EPA to conclude that, with one exception discussed below, specific provisions for controlling emissions from process contact cooling towers are not warranted for existing affected sources. Instead, the EPA is requiring that the wastewater provisions be applied to all vacuum system wastewater.

The one exception where it was found to be cost effective to control emissions from existing process contact cooling towers was for affected sources manufacturing PET using a continuous TPA high viscosity multiple end finisher process. Based on industry reported emissions, total ethylene glycol emissions for all PET subcategories are approximately 340 Mg/yr, and approximately 230 Mg/yr are being emitted from the single plant site that is part of this subcategory. This subcategory is required to keep the concentration of ethylene glycol in the process contact cooling tower water to 4 percent by weight or less.

As at proposal, the final standards require that owners or operators of new affected sources manufacturing PET not send contact condenser effluent associated with a vacuum system to a process contact cooling tower.

2. Vacuum System Wastewater

Many commenters objected to the proposed provision designating all contact condenser effluent as Group 1 wastewater streams. Commenters stated that the EPA had not provided adequate rationale explaining why the standards for contact condenser effluent were more stringent than the standards for other wastewater streams. Because the automatic designation of contact condenser effluent as Group 1 wastewater was done in an effort to make the use of noncontact condensers within steam-based vacuum systems equivalent to ethylene glycol jets, and that need no longer exists for existing affected sources, there is no longer a need or justification to designate all contact condenser effluent from existing PET affected sources as Group 1 wastewater. As a result, the EPA has changed the final standards to implement the group determination procedure (i.e., Group 1 or Group 2) for contact condenser effluent from existing PET affected sources.

On the other hand, the final standards continue to prohibit the use of process contact cooling towers for new PET affected sources.

Note: This requirement is equivalent to the MACT floor.

However, the provisions designating all contact condenser effluent streams from new PET affected sources as Group 1 wastewater have been dropped from the final standards. Like existing PET affected sources, the final standards implement the group determination procedure for contact condenser effluent from new PET affected sources. As described earlier, the purpose for designating all contact condenser effluent streams as Group 1 wastewater was to ensure equivalency between the use of ethylene glycol jets and the use of noncontact condensers. At the time of proposal, the EPA considered ethylene glycol jets to be pollution free because there was no wastewater stream produced. The automatic designation of all contact condenser effluent as Group 1 wastewater was meant to address the absence of wastewater when ethylene glycol jet systems are used. Since proposal, the EPA has come to understand that the use of ethylene glycol jets does not eliminate emissions because the additional loading to the glycol recovery unit can create additional emissions from process vents or wastewater streams or both.

Realizing that ethylene glycol jets are not pollution free, the EPA considered the additional emissions at the glycol recovery unit when ethylene glycol jets are used and the emissions from the contact condenser effluent when noncontact condensers are used.

Note: The use of ethylene glycol jets would still achieve more control than using steam jets and subjecting the contact condenser effluent to the wastewater provisions.

In either case, an equivalent quantity of VOHAP is introduced to the vacuum system from the process. Process vents and wastewater streams at the glycol recovery unit are subject to the appropriate provisions of the standards. For example, a wastewater stream at the glycol recovery unit would be subject to a group determination and, based on the results, would be controlled if required. The EPA judged that to require the same action for the contact condenser effluent from noncontact condensers would ensure equivalency between a new affected source using ethylene glycol jets and one using noncontact condensers.

F. Equipment Leak Provisions

1. Polystyrene

A number of commenters stated that the EPA had overestimated the emissions from equipment leaks at polystyrene affected sources in general and, in particular, from components containing styrene as the organic HAP. The commenters claimed that the use of the average SOCMI emission factors to estimate emissions was inappropriate because the vapor pressure of styrene at typical operating conditions in

polystyrene affected sources equates to a concentration of less than 10,000 ppm and no leaks would be detected using a leak definition of 10,000 ppm. The commenters also stated that the effect of using the average SOCMI emission factors was to justify the HON equipment leak program (i.e., subpart H) and that, if the EPA used a more realistic estimate of emissions (e.g., the emission factor for components with concentrations less than 10,000 ppm), a re-evaluation of the costs and emission reductions would likely result in a conclusion that the HON is not cost effective. The commenters recommended that if any program was to be implemented for polystyrene affected sources and especially for components in styrene service, it should either be a visual-only program or, at most, a program based on a State Reasonably Achievable Control Technology (RACT) program.

In response to these comments, the EPA re-evaluated the analysis that served as the basis for proposing the equipment leak provisions from the HON for polystyrene and other styrene-based resin affected sources.

Note: The results of this re-evaluation are contained in Item IV–B–2, Docket A–92–45.

In re-evaluating that analysis, the EPA determined the MACT floor for each subcategory. Because a MACT floor was determined to exist and the Clean Air Act does not allow the EPA to set a standard less stringent than the MACT floor, the EPA determined that some standard must be set for these subcategories.

The EPA agrees with the commenters that the average SOCMI emission factors are likely to overestimate emissions from components containing or contacting styrene. Therefore, the EPA lowered the emission factors used to estimate the emissions from these components. The EPA also adjusted leak rate factors based on additional data and comments from the industry. Adjustments to the emission factors and leak rates had the effect of reducing both the overall emission estimates and the emission reductions associated with the current industry programs, the MACT floor programs, and the HON program.

In addition, the EPA re-evaluated the costing program used to estimate the costs for the various equipment leak programs. Errors were discovered in the costing program. The net effect of correcting these errors was to lower the estimated costs for all of the various equipment leak programs. The incremental differences between the various programs decreased as well, but not by as much as the overall costs.

To determine whether or not the subpart H provisions were cost effective, the EPA examined the incremental costs and emission reductions between the HON program and the MACT floor program for each of the subcategories.

[**Note:** In the original analysis, the EPA examined the cost between the HON program and each facility's specific current program.]

Based on the incremental differences between the HON and the MACT floor programs, the EPA determined that the HON requirements are cost effective for each of the styrene-based resin subcategories, including the three polystyrene subcategories. Therefore, the EPA has retained the HON requirements in the final rule.

2. PET

Many commenters objected to the imposition of the HON equipment leak requirements on PET affected sources, especially those using the TPA process. These commenters stated that, due to the preponderance of components in heavy liquid service, no program should be imposed or, if a program is required, it should simply be a visual-only program. Some of the commenters referred to the rationale in the development of the Polymer Manufacturing NSPS [40 CFR part 60, subpart DDD], which exempted PET affected sources using a continuous TPA process from equipment leak regulation.

As was done for the styrene-based resin subcategories, the EPA re-evaluated the emission estimates and cost estimates for all of the PET subcategories. The results of this re-evaluation are found in Item IV–B–3, Docket A–92–45. The following actions were taken as part of the re-evaluation. First, the EPA lowered the emission factors used to estimate emissions from components in heavy liquid service to take into account the properties of ethylene glycol. Second, the EPA limited the re-evaluation of costs and emission reductions to only those facilities that provided specific component profiles (i.e., component counts and types of service). The results of the re-evaluation showed that, except for one PET subcategory, the HON requirements are cost effective. Thus, the final rule retains, for the most part, the HON requirements for the PET subcategories.

Note: Modifications to the HON requirements are discussed below.

The re-evaluation of the proposed equipment leak provisions showed that the provisions were not cost effective for PET affected sources using a continuous TPA high viscosity multiple end finisher process. Thus, this subcategory, which currently contains only one affected source, is exempt from the equipment leak requirements in the final rule.

With regard to exempting PET affected sources altogether based on the exemption contained in the Polymer Manufacturing NSPS, the EPA does not agree with the commenters. During the development of the Polymer Manufacturing NSPS, information available to the EPA indicated that all components at PET TPA continuous facilities were in heavy liquid service. Information provided by the industry during the development of this rulemaking, however, shows the presence of components in gas/vapor service and in light liquid service at some PET TPA facilities. The decision to require an equipment leak program for this rulemaking is based on this newer information. However, the EPA continues to agree that, if a PET TPPU consists solely of components in heavy liquid service, or in vacuum service, then said TPPU should be exempt from the equipment leak standards. The final rule contains this provision.

Many commenters were concerned about the recordkeeping and reporting requirements, especially for PET TPA affected sources where the vast majority of components are in heavy liquid service. While the EPA believes the original requirements were the minimum required to ensure compliance with the overall program, the EPA has reduced the burden of the recordkeeping and reporting requirements for these subcategories in light of the preponderance of components in heavy liquid service. The most significant change is the elimination of the requirement to initially list the identification numbers of components in heavy liquid service.

Finally, several commenters expressed concern with the use of Method 21 to detect leaks from components in ethylene glycol (i.e., heavy liquid) service, stating in part that Method 21 would not detect an ethylene glycol leak based on the properties of ethylene glycol and the operating conditions of the process. The EPA agrees that Method 21 is inappropriate for determining ethylene glycol leaks where the leaking component is in heavy liquid service. However, § 63.169 of subpart H does not require the use of Method 21; it is one of two alternatives for determining the presence of leaks from components in heavy liquid service. The other alternative is to use a sensory-based detection method. The final rule has been revised to clarify that leaks are to be determined exclusively through the use of visual, audible,

olfactory, and any other detection methods; Method 21 is not to be used to determine leaks from components in heavy liquid service at PET facilities.

G. Emissions Averaging Provisions

1. Number of Emission Points Allowed in Emissions Averaging

Numerous commenters requested that the number of emission points allowed in an emissions average be increased to 20 points from the 5 points allowed at proposal. If pollution prevention measures are used, commenters requested that an additional 5 emission points be allowed from the 3 emission points allowed at proposal. The commenters stated that this would be consistent with the HON.

In response to comments and to be more consistent with the HON and the proposed Group I Polymers and Resins NESHAP, the number of emission points allowed in emissions averaging at a plant site has been increased to 20 points, with an additional 5 points allowed if pollution prevention measures are used. These values (i.e., 20/25) are the maximum allowed for all emissions averages at a plant site, regardless of the number of affected sources present at a plant site or the number of emissions averaging programs implemented.

2. Including Batch Process Vents in Emissions Averaging

Several commenters requested that batch process vents be included in the emissions averaging provisions. The EPA had not allowed emissions averaging of batch process vents at proposal. The proposal preamble stated that the accuracy and consistency of emissions estimates needed for emissions averaging were considered to be greater than those needed for applicability determinations. However, upon review, the EPA has determined that having the same procedures to estimate emissions for applicability determinations and emissions averaging is reasonable. The final standards allow emissions averaging of existing batch process vents as well as aggregate batch vent streams.

H. Compliance and Performance Test Provisions and Monitoring Requirements

1. Excused Excursions

Many commenters requested that the proposed standards allow excused excursions in the same way that the HON allows excused excursions. In the final standards, the EPA included provisions to excuse a certain number of excursions for each reporting period. These provisions are identical to the HON provisions. The decision to include excused excursion provisions was based on data and information presented in public comments received on the proposed standards and received during industry meetings held after proposal. The commenters contended that by not allowing excused excursions in these standards, the EPA has made these standards more stringent than the HON, which the proposed standards and the costs of the proposed standards were modelled after. The commenters requested that the EPA justify the increased cost of imposing the more stringent "no excused excursion" provisions. The EPA agreed with the commenters that not allowing excused excursions could impose significant additional capital and operating costs on the affected source for only negligible corresponding reductions in air emissions. As is always the case, a State has the discretion to impose more stringent requirements than the requirements of NESHAP and other federal requirements and could choose not to allow the excused excursion provisions contained in these standards.

The EPA considered the number of excused excursions that would be most appropriate for these standards and determined that the number of excursions allowed in the HON is reasonable. Therefore, the final standards allow a maximum of 6 excused excursions for the first semiannual reporting period, decreasing by 1 excursion each semiannual reporting period. Starting with the sixth semiannual reporting period (i.e., the end of the third year of compliance) and thereafter, affected sources are allowed one excused excursion per semiannual reporting period.

2. Parameter Monitoring Levels

Commenters requested that more flexibility be permitted for establishing compliance levels for parameter monitoring. The commenters asked the EPA to allow the use of the HON range concept, which recognizes that a process or control device operates properly over a range of conditions.

The EPA revised the requirements for establishing parameter monitoring levels to incorporate the concepts included in the HON range concept.

Note: The final standards continue to use the term level.

Under the final rule, the owner or operator can choose between three procedures for establishing parameter monitoring levels. By providing the flexibility to establish parameter monitoring levels based on one of the three procedures, site-specific levels can be chosen which best accommodate variation in emission point characteristics and control device designs. These three procedures for establishing parameter monitoring levels are based on: (1) performance tests; (2) performance tests, engineering assessments, and/or manufacturer's recommendations; and (3) engineering assessments and/or manufacturer's recommendations. The establishment of a parameter monitoring level based solely on performance tests is preapproved by the Administrator; however, parameter monitoring values determined using the last two procedures, which may or may not use the results of performance tests, must be approved by the Administrator for each individual case.

3. Other Changes Resulting from EPA Review

In addition to changes made to the proposed rule as a result of public comment, changes were made as a result of EPA independently reviewing the rule between proposal and promulgation. In the final rule, the EPA has allowed the use of TOC, minus methane and ethane, as the basis for compliance demonstrations (i.e., performance tests) as an alternative to organic HAP for continuous process vents, batch process vents, storage vessels, and wastewater streams.

Note: The term "TOC," as used in the remainder of this discussion and as defined in the final rule, denotes "TOC, minus methane and ethane."

The final rule also allows the use of TOC as an alternate basis for applicability determinations for batch process vents; TOC is not allowed as an alternate basis for applicability determinations for continuous process vents. In addition, the final rule allows the use of Method 25A to measure TOC in these instances were TOC serves as an alternative basis for compliance demonstrations or applicability determinations.

These changes were made to provide flexibility to the regulated community and to reduce the overall burden of the rule. The EPA considered the impacts of allowing TOC to serve as a surrogate for organic HAP in compliance demonstrations and did not find any adverse impacts. Further, in allowing the use of Method 25A as a complement to the use of TOC as a surrogate to organic HAP, the EPA judged that the burden of implementing the final rule would be reduced with no adverse impacts.

As proposed, the provisions concerning applicability determinations and compliance demonstrations allowed an owner or operator to measure total organic HAP *or* TOC; however, the proposed rule required Method 18 for measurement of organic compounds in both cases. In light of this, the major difference between the proposed and final rule is the flexibility to use Method 25A in measuring TOC. In deciding to allow the use of Method 25A, the EPA considered the composition of the emission streams and considered provisions that could be implemented to safeguard against inappropriate uses of Method 25A. To the best of the EPA's knowledge, the emission streams regulated by this rule are predominantly organic HAP. Also, with one exception (i.e., ethylene glycol), the regulated organic HAP, which are listed in the definition of organic HAP found in the final rule, have response factors to Method 25A adequate to ensure satisfactory emissions measurements. To safeguard against inadequate emissions measurements that might result from the inappropriate use of Method 25A, the final rule specifies the calibration gas to be used (i.e., the organic HAP representing the largest percent by volume) and what is an acceptable response for the calibration gas (i.e., 20 times the standard deviation of the response from the zero calibration gas).

In considering the use of TOC as an alternate basis for applicability determinations, and the complementary use of Method 25A to measure TOC, the EPA evaluated applicability determinations for continuous process vents and batch process vents.

[Note: The applicability determination procedures for storage vessels and wastewater streams do not use airborne organic HAP concentration values. Therefore, the use of Method 25A for these emission points is not applicable.]

The applicability determination procedure for continuous process vents (i.e., the TRE equation) requires an owner or operator to estimate the concentration and emission rate for both organic HAP and TOC. Because both of these values are required and were the basis for the original TRE analysis, the EPA judged that it was inappropriate to use TOC as an alternate basis to organic HAP for the applicability determinations for continuous process vents. On the other hand, the original analysis for batch process vents (i.e., the Batch Processes ACT) was based on the control of TOC; thus, the EPA considered the use of TOC as an alternate basis for the applicability determinations for batch process vents to be satisfactory.

I. Recordkeeping and Reporting

Several commenters stated that the recordkeeping and reporting requirements of the proposed standards were extremely burdensome. These commenters requested that the EPA reduce unnecessary recordkeeping and reporting requirements in the final standards. Commenters requested that the frequency with which records must be retained be reduced. The commenters also contended that records should only be required if an excursion has occurred. The commenters contended that records showing compliance with the standards were unnecessary.

The EPA has made every effort to reduce the recordkeeping requirements of the final thermoplastics rule. The EPA recognizes that unnecessary recordkeeping and reporting requirements would burden both the affected source and EPA enforcement agencies.

The EPA reviewed the recordkeeping required by the proposed rule and has made reductions in the amount of information that is required to be recorded. The final rule has been changed to require recording and retention of hourly average values of continuously monitored values. The proposal required that 15-minute averages be calculated and recorded. Under the proposal, if the daily average value was above the minimum or below the maximum established parameter monitoring levels (i.e., excess emissions occurred), the 15-minute values had to be retained; if the daily average value did not exceed the established parameter monitoring level, the 15-minute values could be converted to hourly averages, and the hourly averages could be retained instead of the 15-minute averages. Upon reconsideration, the EPA found that hourly average values provide a sufficient record to support the calculation of the daily average value. Therefore, to reduce the recordkeeping burden, the rule has been changed to specify that only hourly averages must be calculated and recorded. The rule no longer requires calculating or recording of 15-minute average values.

For emission points where continuous parameter monitoring is required, the value of the parameter must still be measured at least once every 15 minutes, but only the hourly average must be calculated and recorded. Many facilities already have computerized systems and monitor parameters more frequently than once every 15 minutes for process control purposes. The 15-minute monitoring frequency is consistent with the General Provisions and previous NSPS and NESHAP for emission points from similar industries.

In addition, the EPA added provisions [§ 63.1335(h)] that allow an owner or operator to implement a reduced recordkeeping program provided that certain criteria related to the monitoring system and the performance of the process, as it relates to maintaining compliance with the monitoring provisions, are met. Under these provisions it is possible for an owner or operator to retain only daily average values or, after a period of 6 consecutive months without an excursion, to retain no daily records.

The EPA believes that the recordkeeping requirements of the final rule are necessary to show compliance. The EPA will continue to require owners or operators to keep records, regardless of whether there was an excursion or not. These records are necessary to prove compliance when no excursion has occurred and are used to determine the severity of a violation, and, thus, how much of a penalty should be assessed once an excursion has occurred.

The EPA has made every effort to reduce the reporting requirements of the final rule. The EPA reviewed each report required at proposal, and determined that two of these reports, the Initial Notification and the Implementation Plan, contained many requirements that were duplicative with the existing operating permit program. For this reason, the EPA has removed the requirements for the Initial Notification and Implementation Plan from the final rule.

The EPA considers the recordkeeping and reporting requirements of the final rule to be the minimum necessary to ensure compliance.

Upon further review, the EPA decided to add a new report, the Precompliance Report, to the final rule to allow the owner or operator of an affected source to request an extension of compliance or to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, or alternative controls. At proposal, these items were submitted in the Implementation Plan. Overall, these changes, deleting the Initial Notification and the Implementation Plan and adding the Precompliance Report, result in a reduction of the reporting burden for the affected source.

VI. Administration Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of the final standards. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review, except for interagency review materials as provided for in section 307(d)(7)(A).

B. Executive Order 12866

Under Executive Order 12866 [58 FR 5173, October 4, 1993], the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers that a "significant regulatory action" within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

C. Paperwork Reduction Act

The information collection requirements for this NESHAP have been submitted for approval to the OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR. No. 1737.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, or by calling (202) 260–2740.

The public recordkeeping and reporting burden for this collection of information is estimated to average approximately 4,000 hours per respondent, at approximately 1,000 hours per response for 4 responses each, for each of the first 3 years following promulgation of the rule. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information.

Sent comments regarding the recordkeeping and reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2137), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a final regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent (percentage points) higher for small entities, or

(3) Capital cost of compliance represent a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A "substantial number" of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Consistent with Small Business Administration (SBA) size standards, a thermoplastic producing firm is classified as a small entity if it has less than 750 employees and is unaffiliated with a larger entity. Based upon this criterion, only one firm, an MBS producer, employs less than 750 workers.

Data were available to examine two of the criteria; these were the potential for closure, and comparison of compliance costs as a percentage of sales.

For criterion one, the affected source is not expected to fall at risk of closure from the regulations, thus this criterion is not met. Also, the compliance costs were only 0.001 percent of total sales for the affected source, and this does not meet criterion two. Because the economics analysis lead to the conclusion that not MBS facilities at risk of closure, this criterion is not met.

In conclusion, and pursuant to section 605(b) of the RFA, the Administrator certifies that these standards will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information package (see **SUPPLEMENTARY INFORMATION** section).

E. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA Subtitle D requires more rigorous regulatory flexibility analyses. It also requires the EPA to undertake a small entity stakeholder process involving the Small Business Administration (SBA) and the OMB prior to proposing a rule for which a regulatory flexibility analysis is required. In addition, it subjects agency compliance with many aspects of the amended Regulatory Flexibility Act (RFA) to judicial rule. Subtitle D of the SBREFA takes effect to rulemakings proposed as of June 28, 1996. Therefore, it does not apply to this rulemaking.

Subtitle E of SBREFA establishes opportunity for Congress to review and potentially disapprove nonmajor rules promulgated on or after March 29, 1996. With limited exceptions, it provides that no rule promulgated on or after March 29, 1996, may take effect until it is submitted to Congress and the Comptroller General along with specified supporting documentation. Different requirements apply to major rules. This rule, which is nonmajor, is being submitted to Congress in accordance with these requirements.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final standards that include a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the standards and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the standards.

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this section.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 15, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories[3]	
63.1311	2060–0351
63.1314	2060–0351
63.1315	2060–0351
63.1319	2060–0351
63.1320	2060–0351
63.1325–1332	2060–0351
63.1335	2060–0351

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart JJJ to read as follows:

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

Secs.

63.1310 Applicability and designation of affected sources.
63.1311 Compliance schedule and relationship to existing applicable rules.
63.1312 Definitions.
63.1313 Emission standards.
63.1314 Storage vessel provisions.
63.1315 Continuous process vents provisions.
63.1316 PET and polystyrene continuous process affected sources—emissions control provisions.
63.1317 PET and polystyrene continuous process affected sources—monitoring provisions.
63.1318 PET and polystyrene continuous process affected sources—testing and compliance demonstration provisions.
63.1319 PET and polystyrene continuous process affected sources—recordkeeping provisions.
63.1320 PET and polystyrene continuous process affected sources—reporting provisions.
63.1321 Batch process vents provisions.
63.1322 Batch process vents—reference control technology.
63.1323 Batch process vents—methods and procedures for group determination.
63.1324 Batch process vents—monitoring provisions.
63.1325 Batch process vents—performance test methods and procedures to determine compliance.
63.1326 Batch process vents—recordkeeping provisions.
63.1327 Batch process vents—reporting provisions.
63.1328 Heat exchange systems provisions.
63.1329 Process contact cooling towers provisions.
63.1330 Wastewater provisions.
63.1331 Equipment leak provisions.
63.1332 Emissions averaging provisions.
63.1333 Additional test methods and procedures.
63.1334 Parameter monitoring levels and excursions.
63.1335 General recordkeeping and reporting provisions.

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

§ 63.1310 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(6) of this section, and new affected source is defined in paragraph (a)(7) of this section. The affected source also includes the emission points and equipment specified in paragraphs (a)(1) through (a)(5) of this section that are associated with each group of TPPU.

(1) Each wastewater stream.

(2) Each wastewater operation.

(3) Each heat exchange system.

(4) Each process contact cooling tower used in the manufacture of PET that is associated with a new affected source.

(5) Each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

(6) Except as specified in paragraphs (b) through (d) of this section, an existing affected source is defined as each group of one or more thermoplastic product process units (TPPUs) that is not part of a new affected source as defined in paragraph (a)(7) of this section, that is manufacturing the same primary product, where each TPPU uses as a reactant, or uses as a process solvent, or produces as a by-product or co-product any organic hazardous air pollutant (organic HAP), and that is located at a plant site that is a major source.

(7) Except as specified in paragraphs (b) through (d) of this section, a new affected source is defined as a source meeting the criteria of paragraph (a)(7)(i), (a)(7)(ii), or (a)(7)(iii) of this section:

(i) At a plant site previously without HAP emissions points, each group of one or more TPPUs manufacturing the same primary product that is part of a major source on which construction commenced after March 29, 1995;

(ii) A TPPU meeting the criteria in paragraph (i)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(b) *TPPUs exempted from the affected source.* For a TPPU to be excluded from the designation of affected source due to the fact that it does not use as a reactant, or use as a process solvent, or produce as a by-product or co-product any organic HAP, the owner or operator shall comply with the requirements of paragraph (b)(1) of this section and shall comply with the requirements of paragraph (b)(2) of this section if requested to do so by the Administrator.

(1) Retain information, data, and analysis used to document the basis for the determination that the TPPU does not use as a reactant or use as a process solvent, or manufacture as a by-product or a co-product any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, or engineering calculations.

(2) When requested by the Administrator, demonstrate that the TPPU does not use as a reactant, or use as a process solvent, or manufacture as a by-product or co-product any organic HAP.

(c) *Emission points exempted from the affected source.* The affected source does not include the emission points listed in paragraphs (c)(1) through (c)(6) of this section:

(1) Stormwater from segregated sewers;

(2) Water from fire-fighting and deluge systems in segregated sewers;

(3) Spills;

(4) Water from safety showers;

(5) Vessels and equipment storing and/or handling material that contain no organic HAP and/or organic HAP as impurities only; and

(6) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(d) *Processes exempted from the affected source.* The processes specified in paragraphs (d)(1) through (d)(5) of this section are exempted from the affected source:

(1) Research and development facilities;

(2) Polymerization processes occurring in a mold;

(3) Processes which manufacture binder systems containing a thermoplastic product for paints, coatings, or adhesives;

(4) Finishing processes including equipment such as compounding units, spinning units, drawing units, extruding units, and other finishing steps; and

(5) Solid state polymerization processes.

(e) *Applicability determination of nonthermoplastic equipment included in a TPPU producing a thermoplastic product.* If a polymer that is not subject to this subpart is produced within the equipment (i.e., collocated) making up a TPPU and at least 50 percent of said polymer is used in the production of a thermoplastic product manufactured by said TPPU, the unit operations involved in the production of said polymer are considered part of the TPPU and are subject to this rule except as specified in this paragraph (e). If said unit operations are subject to another MACT standard regulating the same emission points, said unit operations are not subject to this subpart.

(f) *Primary product determination and applicability.* The primary product of a process unit shall be determined according to the procedures specified in paragraphs (f)(1) through (f)(2) of this section. Paragraphs (f)(3) through (f)(4) of this section describe whether or not a process unit is subject to this subpart. Paragraphs (f)(5) through (f)(7) of this section discuss compliance for those TPPUs operated as flexible operation units, as specified in paragraph (f)(2) of this section.

(1) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(2) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(2)(i) or (f)(2)(ii) of this section based on the anticipated operations for the 5 years following September 12, 1996 for existing affected sources and for the first 5 years after initial start-up for new affected sources.

(i) If the flexible operation unit will manufacture one product for the greatest operating time over the five year period, then that product shall represent the primary product of the flexible operation unit.

(ii) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest production on a mass basis over the five year period shall represent the primary product of the flexible operation unit.

(3) If the primary product of a process unit is a thermoplastic product, then said process unit is considered a TPPU. If said TPPU meets all the criteria of paragraph (a) of this section, it is either an affected source or is part of an affected source comprised of other TPPU subject to this rule at the same plant site with the same primary product. The status of a process unit as a TPPU and as an affected source or part of an affected source shall not change regardless of what products are produced in the future by said TPPU, with the exception noted in paragraph (f)(3)(i) of this section.

(i) If a process unit terminates the production of all thermoplastic products and does not anticipate the production of any thermoplastic product in the future, the process unit is no longer a TPPU and is not subject to this rule after notification is made as specified in paragraph (f)(3)(ii) of this section.

(ii) The owner or operator of a process unit that wishes to remove the TPPU designation from the process unit, as specified in paragraph (f)(3)(i) of this section, shall notify the Administrator. This notification shall be accompanied by rationale for why it is anticipated that no thermoplastic products will be produced in the process unit in the future.

(iii) If a process unit meeting the criteria of paragraph (f)(3)(i) of this section begins the production of a thermoplastic product in the future, the owner or operator shall use the procedures in paragraph (f)(4)(i) of this section to determine if the process unit is re-designated as a TPPU.

(4) If the primary product of a process unit is not a thermoplastic product, then said process unit is not an affected source nor is it part of any affected source subject to this rule. Said process unit is not subject to this rule at any time, regardless of what product is being produced. The status of a process unit as not being a TPPU, and therefore not an affected source nor part of an affected source subject to this subpart, shall not change regardless of what products are produced in the future by said TPPU, with the exception noted in paragraph (f)(4)(i) of this section.

(i) If, at any time beginning September 12, 2001, the owner or operator determines that a thermoplastic product is the primary product for the process unit based on actual production data for any preceding consecutive five-year period, then the process unit shall be designated as a TPPU. If said TPPU meets all the criteria of paragraph (a) of this section and is not subject to another subpart of 40 CFR part 63, it is either an affected source or part of an affected source and shall be subject to this rule.

(ii) If a process unit meets the criteria of paragraph (f)(4)(i) of this section, the

owner or operator shall notify the Administrator within 6 months of making this determination. The TPPU, as the entire affected source or part of an affected source, shall be in compliance with the provisions of this rule within 3 years from the date of such notification.

(iii) If a process unit is re-designated as a TPPU but does not meet all the criteria of paragraph (a) of this section, the owner or operator shall notify the Administrator within 6 months of making this determination. Said notification shall include documentation justifying the TPPU's status as not being an affected source or not being part of an affected source.

(5) Once the primary product of a process unit has been determined to be a thermoplastic product and it has been determined that all the criteria of paragraph (a) of this section are met for said TPPU, the owner or operator of the affected source shall comply with the standards for the primary product. Owners or operators of flexible operation units shall comply with the standards for the primary product as specified in either paragraph (f)(5)(i) or (f)(5)(ii) of this section, except as specified in paragraph (f)(5)(iii) of this section.

(i) Each owner or operator shall determine the group status of each emission point that is part of said flexible operation unit based on emission point characteristics when the primary product is being manufactured. Based on this finding, the owner or operator shall comply with the applicable standards for the primary product for each emission point, as appropriate, at all times, regardless of what product is being produced.

(ii) Alternatively, each owner or operator shall determine the group status of each emission point that is part of said flexible operation unit based on the emission point characteristics when each product produced by the flexible operation unit is manufactured, regardless of whether said product is a thermoplastic product or not. Based on these findings, the owner or operator shall comply with the applicable standards for the primary product for each emission point, as appropriate, regardless of what product is being produced.

Note: Under this scenario it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being produced.

(iii) Whenever a flexible operation unit manufactures a product that meets the criteria of paragraph (b) of this section (i.e., does not use or produce any organic HAP), all activities associated with the manufacture of said product shall be exempt from the requirements of this rule, to include the operation and monitoring of control or recovery devices.

(6) The determination of the primary product for a process unit, to include the determination of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status required by § 63.1335(e)(5) when the primary product is determined to be a thermoplastic product. The Notification of Compliance Status shall include the information specified in either paragraph (f)(6)(i) or (f)(6)(ii) of this section. If the primary product is determined to be something other than a thermoplastic product, the owner or operator shall retain information, data, and analysis used to document the basis for the determination that the primary product is not a thermoplastic product.

(i) If the TPPU manufactures only one thermoplastic product, identification of said thermoplastic product.

(ii) If the TPPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(6)(ii)(A) through (f)(6)(ii)(C) of this section, as appropriate.

(A) Identification of the primary product.

(B) Information concerning operating time and/or production mass for each product that was used to make the determination of the primary product under paragraph (f)(2)(i) or (f)(2)(ii) of this section.

(C) Identification of which compliance option, either paragraph (f)(5)(i) or (f)(5)(ii) of this section, has been selected by the owner or operator.

(7) To demonstrate compliance with the rule during those periods when a flexible operation unit that is subject to this subpart is producing a product other than a thermoplastic product or is producing a thermoplastic product that is not the primary product, the owner or operator shall comply with either paragraphs (f)(7)(i) through (f)(7)(ii) or paragraph (f)(7)(iii) of this section.

(i) Establish parameter monitoring levels, as specified in § 63.1334, for those emission points designated as Group 1, as appropriate.

(ii) Submit the parameter monitoring levels developed under paragraph (f)(7)(i) of this section and the basis for them in the Notification of Compliance Status report as specified in § 63.1335(e)(5).

(iii) Demonstrate that the parameter monitoring levels established for the primary product are also appropriate for those periods when products other than the primary product are being produced. Material demonstrating this finding shall be submitted in the Notification of Compliance Status report as specified in § 63.1335(e)(5).

(g) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(8) of this section to determine to which process unit a storage vessel shall belong.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said storage vessel shall belong to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall belong to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall belong to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., said process unit has the predominant use of the storage vessel).

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if one of those process units is a TPPU subject to this subpart, the storage vessel shall belong to said TPPU.

(5) If predominant use cannot be determined for a storage vessel that is shared among process units and if more than one of the process units are TPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the storage vessel to any one of the said TPPUs.

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is more representative of the expected operations for said storage vessel, and based on the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status required by § 63.1335(e)(5). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If the storage vessel begins receiving material from (or sending material to) another process unit; or ceasing to receive material from (or send material to) a process unit; or if the

applicability of this subpart to a storage vessel has been determined according to the provisions of paragraphs (g)(1) through (g)(6) of this section and there is a significant change in the use of the storage vessel that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(8) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm, the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(8)(i) through (g)(8)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw materials, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraph (g)(7) of this section. The predominant use shall be determined among only those thermoplastic product process units that meet the criteria of paragraph (g)(8)(i) of this section.

(h) *Recovery operation equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (h)(1) through (h)(7) of this section to determine to which process unit recovery operation equipment shall belong.

(1) If recovery operation equipment is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said recovery operation equipment shall belong to the process unit subject to the other subpart.

(2) If recovery operation equipment is used exclusively by a single process unit, the recovery operation shall belong to that process unit.

(3) If recovery operation equipment is shared among process units, then the recovery operation equipment shall belong to that process unit located on the same plant site as the recovery operation equipment that has the greatest input into or output from the recovery operation equipment (i.e., said process unit has the predominant use of the recovery operation equipment).

(4) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if one of those process units is a TPPU subject to this subpart, the recovery operation equipment shall belong to said TPPU.

(5) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if more than one of the process units are TPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the recovery operation equipment to any one of said TPPUs.

(6) If the predominant use of recovery operation equipment varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is the more representative of the expected operations for said recovery operations equipment, and based on the first 5 years after initial start-up for new affected sources. This determination shall be reported in the Notification of Compliance Status required by § 63.1335(e)(5). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If there is an unexpected change in the utilization of recovery operation equipment that could reasonably change the predominant use, the owner or operator shall redetermine to which process unit the recovery operation belongs by reperforming the procedures specified in paragraphs (h)(2) through (h)(6) of this section.

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(4) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(5) of this section provides examples of what are and are not considered process changes for purposes of paragraph (i) of this section.

(1) *Adding a TPPU to a plant site.* The provisions of paragraphs (i)(1)(i) through (i)(1)(ii) of this section apply to owners or operators that add TPPUs to a plant site.

(i) If a TPPU is added to a plant site, said addition shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by September 12, 1996, whichever is later, if said addition meets the criteria specified in paragraphs (i)(1)(i)(A) through (i)(1)(i)(B) and either (i)(1)(i)(C) or (i)(1)(i)(D) of this section:

(A) Said addition meets the definition of construction in § 63.2;

(B) Such construction commenced after March 29, 1995; and

(C) Said addition has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and the primary product of said addition is currently produced at the plant site as the primary product of an affected source; or

(D) The primary product of said addition is not currently produced at the plant site as the primary product of an affected source and the plant site meets, or after the addition is completed will meet, the definition of major source.

(ii) If a TPPU is added to a plant site, said addition shall be subject to the requirements for an existing affected source in this subpart upon initial start-up or by 3 years after September 12, 1996, whichever is later, if said addition does not meet the criteria specified in paragraph (i)(1)(i) of this section and the plant site meets, or after the addition is completed will meet, the definition of major source.

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (i)(2)(i) through (i)(2)(ii) of this section apply to owners or operators that add emission points or make process changes to an existing affected source.

(i) If any process change is made or emission point is added to an existing affected source, or if a process change creating one or more additional Group 1 emission point(s) is made to an existing affected source, said affected source shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by September 12, 1996, whichever is later, if said process change or addition meets the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section:

(A) Said process change or addition meets the definition of reconstruction in § 63.2; and

(B) Such reconstruction commenced after March 29, 1995.

(ii) If any process change is made or emission point is added to an existing affected source, or if a process change creating one or more additional Group 1 emission point(s) is made to an existing affected source and said process change or addition does not meet the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section, the resulting emission point(s) shall be subject to the requirements for an existing affected source in this subpart. Said emission point(s) shall be in compliance upon initial start-up or by 3 years after September 12, 1996, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making said process change or addition. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section to establish a compliance date.

(iii) To establish a compliance date for an emission point or points specified in paragraph (i)(2)(ii) of this section, the procedures specified in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section shall be followed.

(A) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(B) The compliance schedule shall be submitted within 180 days after the process change or addition is made or the information regarding said change or addition is known to the owner or operator, unless the compliance schedule has been previously submitted to the permitting authority. The compliance schedule may be submitted in the next Periodic Report if the process change or addition is made after the date the Notification of Compliance Status report is due.

(C) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(3) *Existing source requirements for Group 2 emission points that become Group 1 emission points.* If a process change or addition that does not meet the criteria in paragraph (i)(1) or (i)(2) of this section is made to an existing plant site or existing affected source, and the change causes a Group 2 emission point to become a Group 1 emission point, for said emission point, the owner or operator shall comply with the requirements of this subpart for existing Group 1 emission points. Compliance shall be achieved as expeditiously as practicable, but in no event later than 3 years after said emission point becomes a Group 1 emission point.

(4) *Existing source requirements for some emission points that become subject to the requirements of subpart H of this part.* If a compressor becomes subject to § 63.164, the owner or operator shall be in compliance upon initial start-up or by 3 years after September 12, 1996, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section to establish a compliance date.

(5) *Determining what are and are not process changes.* For purposes of paragraph (i) of this section, examples of process changes include, but are not limited to, changes in production capacity, feedstock type, or catalyst type, or whenever there is a replacement, removal, or the addition of recovery equipment. For purposes of paragraph (i) of this section, process changes do not include: process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.1335(e)(5).

(j) *Applicability of this subpart except during periods of start-up, shutdown, and malfunction.* Each provision set forth in this subpart or referred to in this subpart shall apply at all times except during periods of start-up, shutdown, and malfunction if the start-up, shutdown, or malfunction precludes the ability of a particular emission point of an affected source to comply with one or more specific provisions to which it is subject. Start-up, shutdown, and malfunction is defined in § 63.1312 for all emission points except equipment leaks subject to subpart H of this part, which shall follow the provisions for periods of start-up, malfunction, and process unit shutdown, as defined in § 63.161. Only then shall an emission point not be required to comply with all applicable provisions of this subpart.

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (l) of this section discuss the relationship of this subpart to subpart A of this part and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (m) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or September 12, 1996, whichever is later, as provided in § 63.6(b).

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than 3 years after September 12, 1996, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(d) Except as provided for in paragraphs (d)(1) through (d)(5) of this section, existing affected sources shall be in compliance with § 63.1331 no later than March 12, 1997 unless a request for a compliance extension is granted pursuant to Section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6).

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than September 12, 1997 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iii) of this section if the work can be accomplished without a process unit shutdown, as defined in § 63.161:

(i) The seal system will be replaced;

(ii) A barrier fluid system will be installed; or

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system.

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than February 12, 1998 for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(ii) of this section:

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i)(A) through (d)(1)(i)(B) of this section:

(A) The work can be accomplished without a process unit shutdown as defined in § 63.161; or

(B) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator.

(ii) The owner or operator submits the request for a compliance extension to the Environmental Protection Agency

(EPA) Regional Office at the addresses listed in § 63.13 no later than 45 calendar days before March 12, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i) (A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 calendar days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161, the owner or operator shall achieve compliance no later than September 14, 1998. The owner or operator who elects to use this provision shall submit a request for a compliance extension in accordance with the requirements of paragraph (d)(2)(ii) of this section.

(4) If compliance with the compressor provisions of § 63.164 cannot be achieved without replacing the compressor or recasting the distance piece, the owner or operator shall achieve compliance no later than September 13, 1999. The owner or operator who elects to use this provision shall submit a request for a compliance extension in accordance with the requirements of paragraph (d)(2)(ii) of this section.

(5) Compliance with the provisions of § 63.170 shall occur no later than September 13, 1999.

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the operating permit authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than the date the Precompliance Report is required to be submitted in § 63.1335(e)(3)(i). The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i) (A),(B), and (D).

(2) The requirements in § 63.6(i)(8) through § 63.6(i)(14) shall govern the review and approval of requests for extensions of compliance with this subpart.

(f) Table 1 of this subpart specifies the provisions of subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(g)(1) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of subpart I of this part, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said affected source shall no longer be subject to subpart I of this part.

(2) Said affected sources that elected to comply with subpart I of this part through a quality improvement program, as specified in § 63.175 or § 63.176 or both, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the "compliance clock" as it relates to reduced burden earned through a quality improvement program.

(h) After the compliance dates specified in this section, a storage vessel that belongs to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(i)(1) Except as provided in paragraph (i)(2) of this section, after the compliance dates specified in this section, affected sources producing PET using a continuous terephthalic acid process, producing PET using a continuous dimethyl terephthalate process, or producing polystyrene resin using a continuous process subject to this subpart that are also subject to the provisions of 40 CFR part 60, subpart DDD, are required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said sources shall no longer be subject to 40 CFR part 60, subpart DDD.

(2) Existing affected sources producing PET using a continuous terephthalic acid high viscosity multiple end finisher process shall continue to be subject to 40 CFR 60.562–1(c)(2)(ii)(C). Once said affected source becomes subject to and achieves compliance with § 63.1329(c) of this subpart, said affected source is no longer subject to the provisions of 40 CFR part 60, subpart DDD.

(j) Affected sources subject to this subpart that are also subject to the provisions of subpart Q of this part shall comply with both subparts.

(k) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart VV, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said source shall no longer be subject to 40 CFR part 60, subpart VV.

(l) After the compliance dates specified in this section, a distillation operation that belongs to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart NNN, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said distillation operation shall no longer be subject to 40 CFR part 60, subpart NNN.

(m) All terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (m)(i) or (m)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each multiple successive period, an owner or operator may perform the required task at any time during the specified period, provided

that the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 63.1312 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in § 63.2, § 63.101, § 63.111, and § 63.161 as specified after each term:
Act (§ 63.2)
Administrator (§ 63.2)
Automated monitoring and recording system (§ 63.111)
Average concentration (§ 63.111)
Boiler (§ 63.111)
Bottoms receiver (§ 63.161)
By compound (§ 63.111)
By-product (§ 63.101)
Car-seal (§ 63.111)
Chemical manufacturing process unit (§ 63.101)
Closed-vent system (§ 63.111)
Co-product (§ 63.101)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Compliance schedule (§ 63.2)
Connector (§ 63.161)
Construction (§ 63.2)
Continuous monitoring system (§ 63.2)
Continuous record (§ 63.111)
Continuous recorder (§ 63.111)
Cover (§ 63.111)
Distillation unit (§ 63.111)
Emission standard (§ 63.2)
Emissions averaging (§ 63.2)
EPA (§ 63.2)
Equipment (§ 63.161)
Equipment leak (§ 63.101)
Existing source (§ 63.2)
External floating roof (§ 63.111)
Fill (§ 63.111)
Fixed roof (§ 63.111)
Flame zone (§ 63.111)
Flexible operation unit (§ 63.101)
Floating roof (§ 63.111)
Flow indicator (§ 63.111)
Group 1 wastewater streams (§ 63.111)
Group 2 wastewater streams (§ 63.111)
Halogens and hydrogen halides (§ 63.111)
Hazardous air pollutant (§ 63.2)
Impurity (§ 63.101)
In organic hazardous air pollutant service (§ 63.161)
Incinerator (§ 63.111)
Instrumentation system (§ 63.161)
Internal floating roof (§ 63.111)
Lesser quantity (§ 63.2)
Major source (§ 63.2)
Malfunction (§ 63.2)
Mass flow rate (§ 63.111)
Maximum true vapor pressure (§ 63.111)
New source (§ 63.2)
Open-ended valve or line (§ 63.161)
Operating permit (§ 63.101)
Organic HAP service (§ 63.161)
Organic monitoring device (§ 63.111)
Owner or operator (§ 63.2)
Performance evaluation (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)
Plant site (§ 63.101)
Point of generation (§ 63.111)
Potential to emit (§ 63.2)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Process unit shutdown (§ 63.161)
Process wastewater (§ 63.101)
Process wastewater stream (§ 63.111)
Product separator (§ 63.111)
Reactor (§ 63.111)
Reconstruction (§ 63.2)
Recovery device (§ 63.111)
Reference control technology for process vents (§ 63.111)
Reference control technology for storage vessels (§ 63.111)
Reference control technology for wastewater (§ 63.111)
Relief valve (§ 63.111)
Research and development facility (§ 63.101)
Residual (§ 63.111)
Run (§ 63.2)
Secondary fuel (§ 63.111)
Sensor (§ 63.161)
Shutdown (§ 63.2)
Specific gravity monitoring device (§ 63.111)
Start-up (§ 63.2)
Start-up, shutdown, and malfunction plan (§ 63.101)
State (§ 63.2)
Surge control vessel (§ 63.161)
Temperature monitoring device (§ 63.111)
Test method (§ 63.2)
Total resource effectiveness index value (§ 63.111)
Treatment process (§ 63.111)
Unit operation (§ 63.101)
Visible emission (§ 63.2)
Waste management unit (§ 63.111)
Wastewater (§ 63.101)
Wastewater stream (§ 63.111)

(b) All other terms used in this subpart shall have the meaning given them in this section. If a term is defined in §§ 63.2, 63.101, 63.111, or 63.161 and in this section, it shall have the meaning given in this section for purposes of this subpart.

Acrylonitrile butadiene styrene latex resin (ABS latex) means ABS produced through an emulsion process, however the product is not coagulated or dried as typically occurs in an emulsion process.

Acrylonitrile butadiene styrene resin (ABS) means styrenic terpolymers consisting primarily of acrylonitrile, 1,3-butadiene, and styrene monomer units. ABS is usually composed of a styrene-acrylonitrile copolymer continuous phase with dispersed butadiene derived rubber.

Acrylonitrile styrene acrylate resin (ASA) means a resin formed using acrylic ester-based elastomers to impact-modify styrene acrylonitrile resin matrices.

Aggregate batch vent stream means a gaseous emission stream containing only the exhausts from two or more batch process vents that are ducted together before being routed to a control device that is in continuous operation.

Affected source is defined in § 63.1310(a).

Alpha methyl styrene acrylonitrile resin (AMSAN) means copolymers consisting primarily of alpha methyl styrene and acrylonitrile.

Average flow rate, as used in conjunction with wastewater provisions, is determined by the specifications in § 63.144(c); or, as used in conjunction with batch process vent provisions, is determined by the specifications in § 63.1323(e).

Batch cycle means the operational step or steps, from start to finish, that occur as part of a batch unit operation. Batch cycle limitation means an enforceable restriction on the number of batch cycles that can be performed in a year for an individual batch process vent.

Batch emission episode means a discrete emission venting episode associated with a single batch unit operation. Multiple batch emission episodes may occur from a single batch unit operation.

Batch process means a discontinuous process involving the bulk movement of material through sequential manufacturing steps. Mass, temperature, concentration, and other properties of the process vary with time. Addition of raw material and withdrawal of product do not typically occur simultaneously in a batch process. For the purposes of this subpart, a process producing polymers is characterized as continuous or batch based on the operation of the polymerization reactors.

Batch process vent means a point of emission from a batch unit operation having a gaseous emission stream with annual organic HAP emissions greater than 225 kilograms per year. Batch process vents exclude relief valve discharges and leaks from equipment regulated under § 63.1331.

Batch unit operation means a unit operation operated in a batch process mode.

Compounding unit means a unit operation which blends, melts, and resolidifies solid polymers for the purpose of incorporating additives, colorants, or stabilizers into the final thermoplastic product. A unit operation whose primary purpose is to remove residual monomers from polymers is not a compounding unit.

Continuous process means a process where the inputs and outputs flow continuously through sequential manufacturing steps throughout the duration of the process. Continuous processes typically approach steady-state conditions. Continuous processes typically involve the simultaneous addition of raw material and withdrawal of product. For the purposes of this subpart, a process producing polymers is characterized as continuous or batch based on the operation of the polymerization reactors.

Continuous process vent means a point of emission from a continuous unit operation within an affected source having a gaseous emission stream containing greater than 0.005 weight percent total organic HAP. Continuous process vents exclude relief valve discharges and leaks from equipment regulated under § 63.1331.

Continuous unit operation means a unit operation operated in a continuous process mode.

Control device is defined in § 63.111, except that the term "process vents" shall be replaced with the term "continuous process vents subject to § 63.1315" for the purpose of this subpart.

Drawing unit means a unit operation which converts polymer into a different shape by melting or mixing the polymer and then pulling it through an orifice to create a continuously extruded product.

Emission point means an individual continuous process vent, batch process vent, storage vessel, wastewater stream, equipment leak, heat exchange system, or process contact cooling tower.

Emulsion process means a process carried out with the reactants in an emulsified form (e.g., polymerization reaction).

Expandable polystyrene resin (EPS) means a polystyrene bead to which a blowing agent has been added using either an in-situ suspension process or a post-impregnation suspension process.

Extruding unit means a unit operation which converts polymer into a different shape by melting or mixing the polymer and then forcing it through an orifice to create a continuously extruded product.

Group 1 batch process vent means a batch process vent releasing annual organic HAP emissions greater than the level specified in § 63.1323(d) and with a cutoff flow rate, calculated in accordance with § 63.1323(f), greater than or equal to the annual average flow rate.

Group 2 batch process vent means a batch process vent that does not fall within the definition of a Group 1 batch process vent.

Group 1 continuous process vent means a continuous process vent releasing a gaseous emission stream that has a total resource effectiveness index value, calculated according to § 63.115, less than or equal to 1.0 unless the continuous process vent is associated with existing thermoplastic product process units that produce methyl methacrylate butadiene styrene resin, then said vent falls within the Group 1 definition if the released emission stream has a total resource effectiveness index value less than or equal to 3.7.

Group 2 continuous process vent means a continuous process vent that does not fall within the definition of a Group 1 continuous process vent.

Group 1 storage vessel means a storage vessel at an existing affected source that meets the applicability criteria specified in Table 2 or Table 3 of this subpart, or a storage vessel at a new affected source that meets the applicability criteria specified in Table 4 or Table 5 of this subpart.

Group 2 storage vessel means a storage vessel that does not fall within the definition of a Group 1 storage vessel.

Halogenated aggregate batch vent stream means an aggregate batch vent stream determined to have a total mass emission rate of halogen atoms contained in organic compounds of 3,750 kilograms per year or greater determined by the procedures specified in § 63.1323(h).

Halogenated batch process vent means a batch process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 3,750 kilograms per year or greater determined by the procedures specified in § 63.1323(h).

Halogenated continuous process vent means a continuous process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 0.45 kilograms per hour or greater determined by the procedures specified in § 63.115(d)(2)(v).

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water) designed and operated to not allow contact between the cooling medium and process fluid or gases (i.e., a noncontact system). A heat exchange system can include more than one heat exchanger and can include recirculating or once-through cooling systems.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the TPPU into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewater include descaling of heat exchanger tubing bundles, cleaning distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, reactor and equipment washdown, and draining of portions of the TPPU for repair.

Mass process means a process carried out through the use of thermal energy (e.g., polymerization reaction). Mass processes do not utilize emulsifying or suspending agents, but can utilize catalysts or other additives.

Material recovery section means the equipment that recovers unreacted or by-product materials from any process section for return to the TPPU, off-site purification or treatment, or sale. Equipment used to store recovered materials are not included. Equipment designed to separate unreacted or by-product material from the polymer product are to be included in this process section, provided that at the time of initial compliance some of the material is recovered for reuse in the process, off-site purification or treatment, or sale. Otherwise, such equipment are to be assigned to one of the other process sections, as appropriate. If equipment are used to recover unreacted or by-product material and return it directly to the same piece of process equipment from which it was emitted, then said recovery equipment are considered part of the process section that contains the process equipment. On the other hand, if equipment are used to recover unreacted or by-product material and return it to a different piece of process equipment in the same process section, said recovery equipment are considered part of a material recovery section. Equipment that treats recovered materials are to be included in this process section, but equipment that also treats raw materials are not to be included in this process section. The latter equipment are to be included in the raw materials preparation section. Equipment used for the on-site recovery of ethylene glycol from PET plants, however, are not included in the material recovery section; they are to be included in the polymerization reaction section. Equipment used for the on-site recovery of ethylene glycol *and* other materials (e.g., methanol) from PET plants are not included in the material recovery section; these equipment are to be included in the polymerization reaction section.

Methyl methacrylate acrylonitrile butadiene styrene resin (MABS) means

styrenic polymers containing methyl methacrylate, acrylonitrile, butadiene, and styrene. MABS is prepared by dissolving or dispersing polybutadiene rubber in a mixture of methyl methacrylate-acrylonitrile-styrene and butadiene monomer. The graft polymerization is carried out by a bulk or a suspension process.

Methyl methacrylate butadiene styrene resin (MBS) means styrenic polymers containing methyl methacrylate, butadiene, and styrene. Production of MBS is achieved using an emulsion process in which methyl methacrylate and styrene are grafted onto a styrene-butadiene rubber.

Nitrile resin means a resin produced through the polymerization of acrylonitrile, methyl acrylate, and butadiene latex using an emulsion process.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 6 of this subpart or any other chemical which is:

(1) Knowingly introduced into the manufacturing process other than as an impurity, or has been or will be reported under any Federal or State program, such as Title V or the Emergency Planning and Community Right-To-Know Act section 311, 312, or 313; and

(2) Listed in Table 2 of subpart F of this part.

PET using a dimethyl terephthalate process means the manufacturing of PET based on the esterification of dimethyl terephthalate with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate that is subsequently polymerized to form PET.

PET using a terephthalic acid process means the manufacturing of PET based on the esterification reaction of terephthalic acid with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate that is subsequently polymerized to form PET.

Poly(ethylene terephthalate) resin (PET) means a polymer or copolymer comprised of at least 50 percent bis-(2-hydroxyethyl)-terephthalate by weight.

Polymerization reaction section means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer chains (e.g., oligomers or low polymers), but not including equipment designed to prepare raw materials for polymerization (e.g., esterification vessels). For the purposes of these standards, the polymerization reaction section begins with the equipment used to transfer the materials from the raw materials preparation section and ends with the last vessel in which polymerization occurs. Equipment used for the on-site recovery of ethylene glycol from PET plants, however, are included in this process section, rather than in the material recovery process section.

Polystyrene resin means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or para-methylstyrene by weight.

Primary product is defined in and determined by the procedures specified in § 63.1310(f).

Process contact cooling tower system means a cooling tower system that is designed and operated to allow contact between the cooling medium and process fluid or gases.

Process section means the equipment designed to accomplish a general but well-defined task in polymers production. Process sections include, but are not limited to, raw materials preparation, polymerization reaction, and material recovery. A process section may be dedicated to a single TPPU or common to more than one TPPU.

Process unit means a collection of equipment assembled and connected by pipes or ducts to process raw materials and to manufacture a product.

Process vent means a point of emission from a unit operation having a gaseous emission stream. Typical process vents include condenser vents, dryer vents, vacuum pumps, steam ejectors, and atmospheric vents from reactors and other process vessels, but do not include pressure relief valves.

Product means a compound or material which is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Raw materials preparation section means the equipment at a polymer manufacturing plant designed to prepare raw materials, such as monomers and solvents, for polymerization. For the purposes of these standards, this process section begins with the equipment used to transfer raw materials from storage and/or the equipment used to transfer recovered material from the material recovery process sections, and ends with the last piece of equipment that prepares the material for polymerization. The raw materials preparation section may include equipment that is used to purify, dry, or otherwise treat raw materials or raw and recovered materials together; to activate catalysts; and to promote esterification including the formation of some short polymer chains (oligomers). The raw materials preparation section does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw materials.

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation unit, condensers, etc. Equipment used for wastewater treatment shall not be considered recovery operations equipment.

Solid state polymerization unit means a unit operation which, through the application of heat, furthers the polymerization (i.e., increases the intrinsic viscosity) of polymer chips.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values can occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP and that has been assigned, according to the procedures in § 63.1310(g), to a TPPU that is subject to this subpart. Storage vessels do not include:

(1) vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) pressure vessels designed to operate in excess of 204.9 kilopascals and without breathing or working losses to the atmosphere;

(3) vessels with capacities smaller than 38 cubic meters;

(4) vessels and equipment storing and/or handling material that contains no organic HAP and/or organic HAP as impurities only; and

(5) wastewater storage tanks.

Styrene acrylonitrile resin (SAN) means copolymers consisting primarily of styrene and acrylonitrile monomer units.

Suspension process means a process carried out with the reactants in a state of suspension, typically achieved through the use of water and/or suspending agents (e.g., polymerization reaction).

Thermoplastic product means one of the following types of products:

(1) ABS latex;

(2) ABS using a batch emulsion process;

(3) ABS using a batch suspension process;

(4) ABS using a continuous emulsion process;

(5) ABS using a continuous mass process;

(6) ASA/AMSAN;

(7) EPS;

(8) MABS;

(9) MBS;

(10) nitrile resin;
(11) PET using a batch dimethyl terephthalate process;
(12) PET using a batch terephthalic acid process;
(13) PET using a continuous dimethyl terephthalate process;
(14) PET using a continuous terephthalic acid process;
(15) PET using a continuous terephthalic acid high viscosity multiple end finisher process;
(16) polystyrene resin using a batch process;
(17) polystyrene resin using a continuous process;
(18) SAN using a batch process; or
(19) SAN using a continuous process.

Thermoplastic product process unit (TPPU) means a collection of equipment assembled and connected by process pipes or ducts, excluding gas, sanitary sewage, water (i.e., not wastewater), and steam connections, used to process raw materials and to manufacture a thermoplastic product as its primary product. This collection of equipment includes process vents from process vessels; storage vessels, as determined in § 63.1310(g); and the equipment (i.e., pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are associated with the thermoplastic product process unit) that are subject to the equipment leak provisions as specified in § 63.1331.

Total organic compounds (TOC) means those compounds excluding methane and ethane measured according to the procedures of Method 18 or Method 25A, 40 CFR part 60, appendix A.

Year means any consecutive 12-month period or 365 rolling days. For the purposes of emissions averaging, the term year applies to any 12-month period selected by the facility and defined in its Emissions Averaging Plan. For the purposes of batch cycle limitations, the term year applies to the 12-month period defined by the facility in its Notification of Compliance Status.

§ 63.1313 Emission standards.

(a) Except as allowed under paragraphs (b) and (c) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:
(1) Section 63.1314 for storage vessels;
(2) Sections 63.1315 or 63.1316 through 63.1320, as appropriate, for continuous process vents;
(3) Section 63.1321 for batch process vents;
(4) Section 63.1328 for heat exchange systems;
(5) Section 63.1329 for process contact cooling towers;
(6) Section 63.1330 for wastewater;
(7) Section 63.1331 for equipment leaks;
(8) Section 63.1333 for additional test methods and procedures;
(9) Section 63.1334 for parameter monitoring levels and excursions; and
(10) Section 63.1335 for general recordkeeping and reporting requirements.

(b) Instead of complying with §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330, the owner or operator of an existing affected source may elect to control any or all of the storage vessels, batch process vents, continuous process vents, and wastewater streams within the affected source to different levels using an emissions averaging compliance approach that uses the procedures specified in § 63.1332. An owner or operator electing to use emissions averaging must still comply with the provisions of §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330 for affected source emission points not included in the emissions average.

(c) A State may decide not to allow the use of the emissions averaging compliance approach specified in paragraph (b) of this section.

§ 63.1314 Storage vessel provisions.

(a) This section applies to each storage vessel that belongs to an affected source, as determined by § 63.1310(g). Except as provided in paragraphs (b) through (d) of this section, the owner or operator of said storage vessels shall comply with the requirements of §§ 63.119 through 63.123 and 63.148, with the differences noted in paragraphs (a)(1) through (a)(16) of this section for the purposes of this subpart.

(1) When the term "storage vessel" is used in §§ 63.119 through 63.123 and 63.148, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term "Group 1 storage vessel" is used in §§ 63.119 through 63.123 and 63.148, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term "Group 2 storage vessel" is used in §§ 63.119 through 63.123 and 63.148, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(4) When the emissions averaging provisions of § 63.150 are referred to in §§ 63.119 and 63.123, the emissions averaging provisions contained in § 63.1332 shall apply for the purposes of this subpart.

(5) When December 31, 1992, is referred to in § 63.119, March 29, 1995 shall apply instead, for the purposes of this subpart.

(6) When April 22, 1994, is referred to in § 63.119, September 12, 1996 shall apply instead, for the purposes of this subpart.

(7) Each owner or operator shall comply with this paragraph (a)(7) instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the control device used to comply with this section is also used to comply with §§ 63.1315 through 63.1330, the performance test required for these sections is acceptable for demonstrating compliance with § 63.119(e) for the purposes of this subpart. The owner or operator is not required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i) for the purposes of this subpart if the performance test meets the criteria specified in § 63.120 (d)(1)(ii)(A) and (d)(1)(ii)(B).

(8) When the term "operating range" is used in § 63.120(d)(3), the term "level" shall apply instead, for the purposes of this subpart. This level shall be established using the procedures specified in § 63.1334.

(9) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(10) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120, 63.122, and 63.123, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(11) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.1335(e)(7) shall apply for the purposes of this subpart.

(12) When the Implementation Plan requirements contained in § 63.151(c) are referred to in § 63.120 and § 63.122, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(13) When the Initial Notification Plan requirements contained in § 63.151(b) are referred to in § 63.122, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(14) When the determination of equivalence criteria in § 63.102(b) is referred to in § 63.121(a), the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(15) When a performance test is required under the provisions of § 63.120(d)(1)(ii), the use of Method 18 or Method 25A, 40 CFR part 60, appendix A is allowed for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(15)(i) and (a)(15)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(16) The compliance date for storage vessels at affected sources subject to the provisions of this section is specified in § 63.1311.

(b) Owners or operators of Group 1 storage vessels that belong to a new affected source producing SAN using a continuous process shall control emissions to the levels indicated in paragraphs (b)(1) and (b)(2) of this section.

(1) For storage vessels with capacities greater than or equal to 2,271 cubic meters (m^3) containing a liquid mixture having a vapor pressure greater than or equal to 0.5 kilopascal (kPa) but less than 0.7 kPa, emissions shall be controlled by at least 90 percent relative to uncontrolled emissions.

(2) For storage vessels with capacities less than 151 m^3 containing a liquid mixture having a vapor pressure greater than or equal to 10 kPa, emissions shall be controlled by at least 98 percent relative to uncontrolled emissions.

(c) Owners or operators of Group 1 storage vessels that belong to a new or existing affected source producing ASA/AMSAN shall control emissions by at least 98 percent relative to uncontrolled emissions.

(d) The provisions of this subpart do not apply to storage vessels containing ethylene glycol at existing or new affected sources and storage vessels containing styrene at existing affected sources.

§ 63.1315 Continuous process vents provisions.

(a) Except as provided in paragraphs (b) through (d) of this section, the owner or operator of continuous process vents shall comply with the requirements of §§ 63.113 through 63.118, with the differences noted in paragraphs (a)(1) through (a)(15) of this section for the purposes of this subpart.

(1) When the term "process vent" is used in §§ 63.113 through 63.118, apply the term "continuous process vent," and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term "Group 1 process vent" is used in §§ 63.113 through 63.118, apply the term "Group 1 continuous process vent," and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term "Group 2 process vent" is used in §§ 63.113 through 63.118, apply the term "Group 2 continuous process vent," and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(4) When December 31, 1992, (i.e., subpart G of this part proposal date) is referred to in § 63.113, apply the date March 29, 1995 (i.e., proposal date for this subpart) for the purposes of this subpart.

(5) When § 63.151(f), alternative monitoring parameters, and § 63.152(e), submission of an operating permit, are referred to in §§ 63.114(c) and 63.117(e), § 63.1335(f), alternative monitoring parameters, and § 63.1335(e)(8), submission of an operating permit, respectively, shall apply for the purposes of this subpart.

(6) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.114, 63.117, and 63.118, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(7) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.117 and 63.118, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(8) When the definition of excursion in § 63.152(c)(2)(ii)(A) is referred to in § 63.118(f)(2), the definition of excursion in § 63.1334(f) of this subpart shall apply for the purposes of this subpart.

(9) Owners and operators shall comply with § 63.1334, parameter monitoring levels and excursions, instead of § 63.114(e) for the purposes of this subpart. When the term "range" is used in §§ 63.117 and 63.118, the term "level" shall be used instead for the purposes of this subpart. This level is determined in accordance with § 63.1334.

(10) If a batch process vent is combined with a continuous process vent prior to being routed to a control device, the combined vent stream shall comply with either paragraph (a)(10)(i) or (a)(10)(ii) of this section, as appropriate.

(i) If the continuous process vent is a Group 1 continuous process vent, the combined vent stream shall comply with all requirements for a Group 1 continuous process vent stream in §§ 63.113 through 63.118, with the differences noted in paragraphs (a)(1) through (a)(9) of this section, for the purposes of this subpart.

(ii) If the continuous process vent is a Group 2 continuous process vent, the total resource effectiveness (TRE) index value for the combined vent stream shall be calculated at the exit of any recovery device and prior to the control device at maximum representative operating conditions. For combined vent streams containing continuous and batch process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the control device, resulting in the highest concentration of organic HAP in the combined vent stream.

(11) If a batch process vent is combined with a continuous process vent prior to being routed to a recovery device, the TRE index value for the combined vent stream shall be calculated at the exit of the recovery device at maximum representative operating conditions for the purposes of this subpart. For combined vent streams containing continuous and batch process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the recovery device, resulting in the highest concentration of organic HAP in the combined vent stream.

(12) When reports of process changes are required under § 63.118 (g), (h), (i), and (j), paragraphs (a)(12)(i) through (a)(12)(iv) of this section shall apply for the purposes of this subpart.

(i) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent to become a Group 1 continuous process vent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(ii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with a TRE greater than 4.0 to become a Group 2 process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(iii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with a flow rate less than 0.005 standard cubic meter per minute to become a Group 2 process vent with a flow rate of 0.005 standard cubic meter per minute or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(iv) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with an organic HAP concentration less than 50 parts per million by volume to become a Group 2 process vent with an organic HAP concentration of 50 parts per million by volume or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(13) When the provisions of § 63.116 (c)(3) and (c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(13)(i) and (a)(13)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(14) When the provisions of § 63.116(b) identify conditions under which a performance test is not required, for purposes of this subpart, the exemption in paragraph (a)(14)(i) shall also apply. Further, if a performance test meeting the conditions specified in paragraph (a)(14)(ii) of this section has been conducted by the owner or operator, the results of said performance test may be submitted and a performance test, as required by this section, is not required.

(i) An incinerator burning hazardous waste for which the owner or operator complies with the requirements of 40 CFR part 264, subpart O.

(ii) Performance tests done for other subparts in 40 CFR part 60 or part 63 where total organic HAP or TOC was measured, provided the owner or operator can demonstrate that operating conditions for the process and control or recovery device during the performance test are representative of current operating conditions.

(15) The compliance date for continuous process vents subject to the provisions of this section is specified in § 63.1311.

(b) Existing affected sources producing MBS shall comply with either paragraph (b)(1) or (b)(2) of this section.

(1) Comply with paragraph (a) of this section, as specified in paragraphs (b)(1)(i) and (b)(1)(ii).

(i) As specified in § 63.1312, Group 1 continuous process vents at MBS existing affected sources are those with a total resource effectiveness value less than or equal to 3.7.

(ii) When complying with this paragraph (b), the term "TRE of 4.0", or related terms indicating a TRE value of 4.0, referred to in § 63.113 through § 63.118 shall be replaced with "TRE of 6.7," for the purposes of this subpart. The TRE range of 3.7 to 6.7 for continuous process vents at existing affected sources producing MBS corresponds to the TRE range of 1.0 to 4.0 for other continuous process vents, as it applies to monitoring, recordkeeping, and reporting.

(2) Not allow organic HAP emissions from the collection of continuous process vents at the affected source to be greater than 0.000590 kg organic HAP/Mg of product. Compliance with this paragraph (b)(2) shall be determined using the procedures specified in § 63.1333(b).

(c) New affected sources producing SAN using a batch process shall comply with the applicable requirements in § 63.1321.

(d) Affected sources producing PET or polystyrene using a continuous process are subject to the emissions control provisions of § 63.1316, the monitoring provisions of § 63.1317, the testing and compliance demonstration provisions of § 63.1318, the recordkeeping provisions of § 63.1319, and the reporting provisions of § 63.1320.

§ 63.1316 PET and polystyrene continuous process affected sources—emissions control provisions.

(a) The owner or operator of an affected source producing PET using a continuous process shall comply with paragraph (b) of this section. The owner or operator of an affected source producing polystyrene using a continuous process shall comply with paragraph (c) of this section.

(b) Each owner or operator of an affected source producing PET using a continuous process shall comply with the requirements specified in paragraphs (b)(1) or (b)(2) of this section, as appropriate, and not with any of the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) Each owner or operator of an affected source producing PET using a continuous dimethyl terephthalate process shall comply with paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(i) For existing affected sources with organic HAP emissions from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source greater than 0.12 kg organic HAP/Mg of product, as determined by the procedure specified in § 63.1318(b) and for all new affected sources, limit organic HAP emissions from continuous process vents in the collection of material recovery sections within the affected source by complying with one of the following:

(A) Not allow emissions to be greater than 0.018 kg organic HAP/Mg of product; or

(B) Not allow the outlet gas stream temperature from each final condenser in a material recovery section to exceed +3° C (+37° F).

(ii) Limit organic HAP emissions from the continuous process vents in the collection of polymerization reaction sections within the affected source (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) to 0.02 kg organic HAP/Mg of product or less.

(iii) Limit organic HAP emissions from continuous process vents not included in a material recovery section, as specified in paragraph (b)(1)(i) of this section, or not included in a polymerization reaction section, as specified in paragraph (b)(1)(ii) of this section, by complying with § 63.1315.

(iv) Limit organic HAP emissions from all batch process vents by complying with § 63.1321.

(2) Each owner or operator of an affected source producing PET using a continuous terephthalic acid process shall comply with paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) Limit organic HAP emissions from the continuous process vents associated with the esterification vessels in the collection of raw materials preparation sections within the affected source to 0.04 kg organic HAP/Mg of product or less. Limit organic HAP emissions associated with other continuous process vents in the collection of raw materials preparation sections within the affected source by complying with § 63.1315.

(ii) Limit organic HAP emissions from the continuous process vents in the collection of polymerization reaction sections within the affected source (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) to 0.02 kg organic HAP/Mg of product or less.

(iii) Limit organic HAP emissions from continuous process vents not included in a raw materials preparation section, as specified in paragraphs (b)(2)(i) of this section, or not included in a polymerization reaction section, as specified in paragraph (b)(2)(ii) of this section, by complying with § 63.1315.

(iv) Limit organic HAP emissions from all batch process vents by complying with § 63.1321.

(c) Each owner or operator of an affected source producing polystyrene resin using a continuous process shall comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section, as appropriate, and not with any of the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) Limit organic HAP emissions from continuous process vents in the collection of material recovery sections within the affected source by complying with one of the following:

(i) Not allow emissions to be greater than 0.0036 kg organic HAP/Mg of product;

(ii) Not allow the outlet gas stream temperature from each final condenser in a material recovery section to exceed −25°C (−13°F); or

(iii) Comply with one of the following:

(A) Reduce emissions by 98 weight percent or to a concentration of 20 parts per million by volume (ppmv) on a dry basis, whichever is less stringent. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the emissions;

(B) Combust the emissions in a boiler or process heater with a design heat input capacity of 150 million Btu/hr or greater by introducing the emissions into the flame zone of the boiler or process heater; or

(C) Combust the emissions in a flare that complies with the requirements of § 63.11(b).

(2) Limit organic HAP emissions from continuous process vents not included in a material recovery section, as specified in paragraph (c)(1)(i) of this section, by complying with § 63.1315.

(3) Limit organic HAP emissions from all batch process vents by complying with § 63.1321.

§ 63.1317 PET and polystyrene continuous process affected sources—monitoring provisions.

Continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable monitoring provisions specified for continuous process vents in § 63.1315(a), except as specified in paragraphs (a) and (b) of this section.

(a) For the purposes of paragraph (a) of this section, owners or operators shall ignore references to group determinations (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) The monitoring period for condenser exit temperature when complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall be each consecutive 3-hour continuous period (e.g., 6 am to 9 am, 9 am to 12 pm). Each owner or operator shall designate said monitoring period in the Notification of Compliance Status required by § 63.1335(e)(5).

§ 63.1318 PET and polystyrene continuous process affected sources—testing and compliance demonstration provisions.

(a) Except as specified in paragraphs (b) through (d) of this section, continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable testing and compliance provisions for continuous process vents specified in § 63.1315, except that, for the purposes of this paragraph (a), owners or operators shall ignore references to group determination (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) *PET Affected Sources Using a Dimethyl Terephthalate Process—Applicability Determination Procedure.* Owners or operators shall calculate organic HAP emissions from the collection of material recovery sections at an existing affected source producing PET using a continuous dimethyl terephthalate process to determine whether § 63.1316(a)(1)(i) is applicable using the procedures specified in either paragraph (b)(1) or (b)(2) of this section.

(1) Use Equation 1 of this subpart to determine mass emissions per mass product as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

$$ER = \sum_{i=1}^{n} \frac{E_i}{\left(0.001\ P_p\right)} \qquad \text{[Eq. 1]}$$

where:

ER=Emission rate of total organic HAP or TOC, kg/Mg product.

E_i=Emission rate of total organic HAP or TOC in continuous process vent i, kg/hr.

P_p=The rate of polymer produced, kg/hr.

n=Number of continuous process vents in the collection of material recovery sections at the affected source.

0.001=Conversion factor, kg to Mg.

(i) The mass emission rate for each continuous process vent, E_i, shall be determined according to the procedures specified in § 63.116(c)(4). The sampling site for determining whether § 63.1316(a)(1)(i) is applicable shall be before any add-on control devices (i.e., those required by regulation) and after those recovery devices installed as part of operating the material recovery section. When the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of

Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section.

(A) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(B) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(ii) The rate of polymer produced, P_p (kg/hr), shall be determined by dividing the weight (kg) of polymer pulled from the process line during the performance test by the number of hours taken to perform the performance test. The weight of polymer pulled shall be determined by direct measurement or by an alternate methodology, such as materials balance. If an alternate methodology is used, a description of the methodology, including all procedures, data, and assumptions shall be submitted as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(2) Use engineering assessment, as described in § 63.1323(b)(6)(i), to demonstrate that mass emissions per mass product are less than or equal to 0.07 kg organic HAP/Mg product. If engineering assessment shows that mass emissions per mass product are greater than 0.07 kg organic HAP/Mg product and the owner or operator wishes to demonstrate that mass emissions per mass product are less than the threshold emission rate of 0.12 kg organic HAP/Mg product, the owner or operator shall use the procedures specified in paragraph (b)(1) of this section.

(c) *Compliance with Mass Emissions per Mass Product Standards.* Owners or operators complying with § 63.1316 (b)(1)(i)(A), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), and (c)(1)(i) shall demonstrate compliance with the mass emissions per mass product requirements using the procedures specified in paragraph (b)(1) of this section, except that the sampling site specified in paragraph (b)(1)(i) of this section shall be at the outlet of the last control or recovery device.

(d) *Compliance with Temperature Limits for Final Condensers.* Owners or operators complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall perform an initial performance test as specified in paragraph (d)(1) of this section to demonstrate initial compliance with the temperature limit requirements and shall demonstrate continuous compliance as specified in paragraph (d)(2) of this section.

(1) Using the temperature monitoring device specified by the applicable monitoring provisions specified for continuous process vents in § 63.1315, an average exit temperature shall be determined based on the average exit temperature for three performance tests. The average exit temperature for each 3-hour performance test shall be based on measurements taken at least every 15 minutes for 3 hours of continuous operation under maximum representative operating conditions for the process. For emissions streams containing continuous and batch process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the control device resulting in the highest concentration of organic HAP in the emissions stream.

(2) As specified in § 63.1317(b), continuous compliance shall be determined based on an average exit temperature determined for each consecutive 3-hour continuous period. Each 3-hour period where the average exit temperature is more than 6 °C (10 °F) above the applicable specified temperature limit shall be considered an exceedance of the monitoring provisions.

§ 63.1319 PET and polystyrene continuous process affected sources—recordkeeping provisions.

(a) Except as specified in paragraphs (b) and (c) of this section, owners or operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable recordkeeping provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), owners or operators shall ignore references to group determinations (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) *Records Demonstrating Compliance With the Applicability Determination Procedure for PET Affected Sources Using a Dimethyl Terephthalate Process.* Each owner or operator, as appropriate, shall keep the following data, as appropriate, up-to-date and readily accessible:

(1) Results of the mass emissions per mass product calculation specified in § 63.1318(b).

(2) If complying with § 63.1316 by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(a)(1)(i), the information specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) Each process operation variable (e.g., pressure, temperature, type of catalyst) that may result in an increase in the mass emissions per mass product should said variable be changed.

(ii) Records of any change in process operation that increases the mass emissions per mass product.

(c) *Records Demonstrating Compliance with Temperature Limits for Final Condensers.* Owners or operators of continuous process vents complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall keep the following data, as appropriate, up-to-date and readily accessible:

(1) Records of monitoring data as specified in § 63.1315, except that the monitoring period shall be each consecutive 3-hour continuous period.

(2) Results of the performance test specified in § 63.1316(d)(1) and any other performance test that may be subsequently required.

§ 63.1320 PET and polystyrene continuous process affected sources—reporting provisions.

(a) Except as specified in paragraphs (b) and (c) of this section, owners and operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable reporting provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), owners or operators shall ignore references to group determinations (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) *Reporting for PET Affected Sources Using a Dimethyl Terephthalate Process.* Each owner or operator complying with § 63.1316 by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(a)(1)(i) shall comply with paragraphs (b)(1) through (b)(3) of this section.

(1) Include the information specified in § 63.1319(b)(2)(ii) in each Periodic Report, required by § 63.1335(e)(6), as appropriate.

(2) Include the information specified in § 63.1319 (b)(1) or (b)(2) in the Notification of Compliance Status, required by § 63.1335(e)(5), for the initial determination and in the appropriate Periodic Report, required by § 63.1335(e)(6), for any subsequent determinations that may be required.

(3) Whenever a process change, as defined in § 63.115(e), is made that causes emissions from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source to be greater than 0.12 kg organic HAP/Mg of product, the owner or operator shall submit a report within

180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(i) A description of the process change; and

(ii) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii(D)(*2*).

(c) *Reporting for Affected Sources Complying With Temperature Limits for Final Condensers.* Each owner or operator complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall comply with paragraphs (c)(1) and (c)(2) of this section.

(1) Report periods when the 3-hour average exit temperature is more than 6° C (10° F) above the applicable specified temperature limit in each Periodic Report, required by § 63.1335(e)(6), as appropriate.

(2) Include the information specified in § 63.1319(c)(2) in the Notification of Compliance Status, required by § 63.1335(e)(5), for the initial performance test and in the appropriate Periodic Report, required by § 63.1335(e)(6), for any subsequent performance tests that may be required.

(3) Include the information specified in § 63.1317(b) in the Notification of Compliance Status, required by § 63.1335(e)(5).

§ 63.1321 Batch process vents provisions.

(a) *Batch process vents.* Except as specified in paragraphs (b) and (c) of this section, owners and operators of new and existing affected sources with batch process vents shall comply with the requirements in §§ 63.1322 through 63.1327. The batch process vent group status shall be determined in accordance with § 63.1323. Batch process vents classified as Group 1 shall comply with the reference control technology requirements for Group 1 batch process vents in § 63.1322, the monitoring requirements in § 63.1324, the performance test methods and procedures to determine compliance requirements in § 63.1325, the recordkeeping requirements in § 63.1326, and the reporting requirements in § 63.1327. All Group 2 batch process vents shall comply with the applicable reference control technology requirements in § 63.1322, the recordkeeping requirements in § 63.1326, and the reporting requirements in § 63.1327.

(b) *New SAN batch affected sources.* Owners and operators of new SAN affected sources using a batch process shall comply with the requirements of § 63.1322 through § 63.1327 for batch process vents and aggregate batch vent streams except as specified in paragraphs (b)(1) through (b)(2) of this section. For continuous process vents, owners and operators shall comply with the requirements of § 63.1322 through § 63.1327 except as specified in paragraph (b)(3) of this section.

(1) For batch process vents, the determination of group status (i.e., Group 1/Group 2) under § 63.1323 is not required.

(2) For batch process vents and aggregate batch vent streams, the control requirements for individual batch process vents or aggregate batch vent streams (e.g., 90 percent emission reduction) as specified in § 63.1322(a)(1), (a)(2), (b)(1), and (b)(2) shall not apply.

(3) Continuous process vents using a control or recovery device to comply with § 63.1322(a)(3) are subject to the applicable requirements in § 63.1315(a), as appropriate, except as specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) Said continuous process vents are not subject to the group determination procedures of § 63.115 for the purposes of this subpart.

(ii) Said continuous process vents are not subject to the reference control technology provisions of § 63.113 for the purposes of this subpart.

(c) *Aggregate batch vent streams.* Aggregate batch vent streams, as defined in § 63.1312, are subject to the control requirements for individual batch process vents, as specified in § 63.1322(b), as well as the monitoring, testing, recordkeeping, and reporting requirements specified in § 63.1324 through § 63.1327.

§ 63.1322 Batch process vents—reference control technology.

(a) *Batch process vents.* The owner or operator of a Group 1 batch process vent, as determined using the procedures in § 63.1323, shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section, except as provided for in paragraph (a)(3) of this section. Compliance can be based on either organic HAP or TOC.

(1) For each batch process vent, reduce organic HAP emissions using a flare.

(i) The flare shall comply with the requirements of § 63.11(b).

(ii) Halogenated batch process vents, as defined in § 63.1312, shall not be vented to a flare.

(2) For each batch process vent, reduce organic HAP emissions for the batch cycle by 90 weight percent using a control device. Owners or operators may achieve compliance with this paragraph (a)(2) through the control of selected batch emission episodes or the control of portions of selected batch emission episodes. Documentation demonstrating how the 90 weight percent emission reduction is achieved is required by § 63.1325(c)(2).

(3) The owner or operator of a new affected source producing SAN using a batch process shall reduce organic HAP emissions from the collection of batch process vents, aggregate batch vent streams, and continuous process vents by 84 weight percent. Compliance with this paragraph (a)(3) shall be demonstrated using the procedures specified in § 63.1333(c).

(b) *Aggregate batch vent streams.* The owner or operator of an aggregate batch vent stream that contains one or more Group 1 batch process vents shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, except as provided for in paragraph (b)(3) of this section. Compliance can be based on either organic HAP or TOC.

(1) For each aggregate batch vent stream, reduce organic HAP emissions using a flare.

(i) The flare shall comply with the requirements of § 63.11(b).

(ii) Halogenated aggregate batch vent streams, as defined in § 63.1312, shall not be vented to a flare.

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent on a continuous basis using a control device.

(3) The owner or operator of a new affected source producing SAN using a batch process shall comply with paragraph (a)(3) of this section.

(c) *Halogenated emissions.* Halogenated Group 1 batch process vents, halogenated aggregate batch vent streams, and halogenated continuous process vents that are combusted as part of complying with paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section, as appropriate, shall be controlled according to either paragraph (c)(1) or (c)(2) of this section.

(1) If a combustion device is used to comply with paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section for a halogenated batch process vent, halogenated aggregate batch vent stream, or halogenated continuous process vent, said emissions shall be ducted from the combustion device to an additional control device that reduces overall emissions of hydrogen halides and halogens by 99 percent before said emissions are discharged to the atmosphere.

(2) A control device may be used to reduce the halogen atom mass emission

rate of said emissions to less than 3,750 kg/yr for batch process vents or aggregate batch vent streams and to less than 0.45 kilograms per hour for continuous process vents prior to venting to any combustion control device, and thus make the batch process vent, aggregate batch vent stream, or continuous process vent nonhalogenated. The nonhalogenated batch process vent, aggregate batch vent stream, or continuous process vent must then comply with the requirements of either paragraph (a) or (b) of this section, as appropriate.

(d) If a boiler or process heater is used to comply with the percent reduction requirement specified in paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section, the batch process vent, aggregate batch vent stream, or continuous process vent shall be introduced into the flame zone of such a device.

(e) *Combination of batch process vents or aggregate batch vent streams with continuous process vents.* A batch process vent or aggregate batch vent stream combined with a continuous process vent is not subject to the provisions of §§ 63.1323 through 63.1327, providing the requirements of paragraphs (e)(1), (e)(2), and either (e)(3) or (e)(4) of this section are met.

(1) The batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to routing the continuous process vent to a control or recovery device. In this paragraph (e)(1), the definitions of control device and recovery device as they relate to continuous process vents shall be used.

(2) The only emissions to the atmosphere from the batch process vent or aggregate batch vent stream prior to being combined with the continuous process vent are from equipment subject to and in compliance with § 63.1331.

(3) If the batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to being routed to a control device, the combined vent stream shall comply with the requirements in § 63.1315(a)(10). In this paragraph (e)(3), the definition of control device as it relates to continuous process vents shall be used.

(4) If the batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to being routed to a recovery device, the combined vent stream shall comply with the requirements in § 63.1315(a)(11). In this paragraph (e)(4), the definition of recovery device as it relates to continuous process vents shall be used.

(f) *Group 2 batch process vents with annual emissions greater than or equal to the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d) shall comply with the provisions of (f)(1) and (f)(2) of this section.

(1) Establish a batch cycle limitation that ensures the Group 2 batch process vent does not become a Group 1 batch process vent.

(2) Comply with the recordkeeping requirements in § 63.1326(d)(2), and the reporting requirements in § 63.1327 (a)(3) and (b).

(g) *Group 2 batch process vents with annual emissions less than the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) shall comply with either paragraphs (g)(1) and (g)(2) of this section or with paragraphs (f)(1) and (f)(2) of this section.

(1) Establish a batch cycle limitation that ensures emissions do not exceed the level specified in § 63.1323(d).

(2) Comply with the recordkeeping requirements in § 63.1326(d)(1), and the reporting requirements in § 63.1327 (a)(2), (b), and (c).

§ 63.1323 Batch process vents—methods and procedures for group determination.

(a) *General requirements.* Except as provided in paragraph (a)(3) of this section and in § 63.1321(b)(1), the owner or operator of batch process vents at affected sources shall determine the group status of each batch process vent in accordance with the provisions of this section. This determination may be based on either organic HAP or TOC emissions.

(1) The procedures specified in paragraphs (b) through (h) of this section shall be followed for the expected mix of products for a given batch process vent, as specified in paragraph (a)(1)(i) of this section, or for the worst-case HAP emitting product, as specified in paragraphs (a)(1)(ii) through (a)(1)(iv) of this section. "Worst-case HAP emitting product" is defined in paragraph (a)(1)(iii) of this section.

(i) If an owner or operator chooses to follow the procedures specified in paragraphs (b) through (h) of this section for the expected mix of products, an identification of the different products and the number of batch cycles accomplished for each is required as part of the group determination documentation, as specified in § 63.1326(a)(1).

(ii) If an owner or operator chooses to follow the procedures specified in paragraphs (b) through (h) of this section for the worst-case HAP emitting product, documentation identifying the worst-case HAP emitting product is required as part of the group determination documentation, as specified in § 63.1326(a)(1).

(iii) Except as specified in paragraph (a)(1)(iii)(B) of this section, the worst-case HAP emitting product is as defined in paragraph (a)(1)(iii)(A) of this section.

(A) The worst-case HAP emitting product is the one with the highest mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle.

(B) Alternatively, when one product is produced more than 75 percent of the time, accounts for more than 75 percent of the annual mass of product, and the owner or operator can show that the mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle can reasonably be expected to be similar to the mass emission rate for other products having emissions from the same batch process vent, said product may be considered the worst-case HAP emitting product.

(C) An owner or operator shall determine the worst-case HAP emitting product for a batch process vent as specified in paragraphs (a)(1)(iii)(C)(*1*) through (a)(1)(iii)(C)(*3*) of this section.

(*1*) The emissions per batch emission episode shall be determined using any of the procedures specified in paragraph (b) of this section. The mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle shall be determined by summing the emissions for each batch emission episode making up a complete batch cycle and dividing by the total duration in hours of the batch cycle.

(*2*) To determine the worst-case HAP emitting product as specified under paragraph (a)(1)(iii)(A) of this section, the mass emission rate for each product shall be determined and compared.

(*3*) To determine the worst-case HAP emitting product as specified under paragraph (a)(1)(iii)(B) of this section, the mass emission rate for the product meeting the time and mass criteria of paragraph (a)(1)(iii)(B) of this section shall be determined, and the owner or operator shall provide adequate information to demonstrate that the mass emission rate for said product is similar to the mass emission rates for the other products having emissions from the same batch process vent. In addition, the owner or operator shall provide information demonstrating that the selected product meets the time and

mass criteria of paragraph (a)(1)(iii)(B) of this section.

(iv) The annual production of the worst-case HAP emitting product shall be determined by ratioing the production time of said product up to a 12 month period of actual production. It is not necessary to ratio up to a maximum production rate (i.e., 8,760 hours per year at maximum design production).

(2) The annual uncontrolled organic HAP or TOC emissions and average flow rate shall be determined at the exit from the batch unit operation. For the purposes of these determinations, the primary condenser operating as a reflux condenser on a distillation column, the primary condenser recovering monomer or solvent from a batch stripping operation, and the primary condenser recovering monomer or solvent from a batch distillation operation shall be considered part of the batch unit operation. All other devices that recover or oxidize organic HAP or TOC vapors shall be considered control devices as defined in § 63.1312.

(3) The owner or operator of a batch process vent complying with the flare provisions in § 63.1322(a)(1) or § 63.1322(b)(1) or routing the batch process vent to a control device to comply with the requirements in § 63.1322(a)(2) or § 63.1322(b)(2) is not required to perform the batch process vent group determination described in this section, but shall comply with all requirements applicable to Group 1 batch process vents for said batch process vent.

(b) *Determination of annual emissions.* The owner or operator shall calculate annual uncontrolled TOC or organic HAP emissions for each batch process vent using the methods described in paragraphs (b)(1) through (b)(8) of this section. Paragraphs (b)(1) through (b)(4) of this section present procedures that can be used to calculate the emissions from individual batch emission episodes. Emissions from batch processes involving multicomponent systems are to be calculated using the procedures in paragraphs (b)(1) through (b)(4) of this section. Individual HAP partial pressures in multicomponent systems shall be determined by the following methods: If the components are miscible in one another, use Raoult's law to calculate the partial pressures; if the solution is a dilute aqueous mixture use Henry's law constants to calculate partial pressures; if Raoult's law or Henry's law are not appropriate (or available) use experimentally obtained activity coefficients, Henry's law constants, or solubility data; if Raoult's law or Henry's law are not appropriate use models, such as the group-contribution models, to predict activity coefficients; and if Raoult's law or Henry's law are not appropriate assume the components of the system behave independently and use the summation of all vapor pressures from the HAP's as the total HAP partial pressure. Chemical property data can be obtained from standard reference texts. Paragraph (b)(5) of this section describes how direct measurement can be used to estimate emissions. If the owner or operator can demonstrate that the procedures in paragraphs (b)(1) through (b)(4) of this section are not appropriate to estimate emissions from a batch emission episode, emissions may be estimated using engineering assessment, as described in paragraph (b)(6) of this section. Owners or operators are not required to demonstrate that direct measurement is not appropriate before utilizing engineering assessment. Paragraph (b)(6)(ii) of this section describes how an owner or operator shall demonstrate that the procedures in paragraphs (b)(1) through (b)(4) of this section are not appropriate. Emissions from a batch cycle shall be calculated in accordance with paragraph (b)(7) of this section, and annual emissions from the batch process vent shall be calculated in accordance with paragraph (b)(8) of this section.

(1) TOC or organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 2 of this subpart. Equation 2 of this subpart does not take into account evaporation of any residual liquid in the vessel.

$$E_{episode} = \frac{(V_{ves})(P)(MW_{wavg})}{RT}\left(1-0.37^{m}\right) \quad \text{[Eq. 2]}$$

where:

$E_{episode}$=Emissions, kg/episode.

V_{ves}=Volume of vessel, m^3.

P=TOC or total organic HAP partial pressure, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section, kg/kmol.

R=Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot K$.

T=Temperature of vessel vapor space, K.

m=Number of volumes of purge gas used.

(2) TOC or organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 3 of this subpart.

$$E_{episode} = \frac{(y)(V_{dr})(P^2)(MW_{wavg})}{RT\left(P-\sum_{i=1}^{n} P_i x_i\right)}(T_m) \quad \text{[Eq. 3]}$$

where:

$E_{episode}$=Emissions, kg/episode.

y=Saturated mole fraction of all TOC or organic HAP in vapor phase.

V_{dr}=Volumetric gas displacement rate, m^3/min.

P=Pressure in vessel vapor space, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section, kg/kmol.

R=Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot K$.

T=Temperature of vessel vapor space, K.

P_i=Vapor pressure of TOC or individual organic HAP i, kPa.

x_i=Mole fraction of TOC or organic HAP i in the liquid.

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated.

T_m=Minutes/episode.

(3) Emissions from vapor displacement due to transfer of material into or out of a vessel shall be calculated using Equation 4 of this subpart.

$$E_{episode} = \frac{(y)(V)(P)(MW_{wavg})}{RT} \quad \text{[Eq. 4]}$$

where:

$E_{episode}$=Emissions, kg/episode.

y=Saturated mole fraction of all TOC or organic HAP in vapor phase.

V=Volume of gas displaced from the vessel, m^3.

P=Pressure in vessel vapor space, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T=Temperature of vessel vapor space, K.

(4) Emissions caused by the heating of a vessel shall be calculated using the procedures in either paragraphs (b)(4)(i), (b)(4)(ii), or (b)(4)(iii) of this section, as appropriate.

(i) If the final temperature to which the vessel contents is heated is lower than 50 K below the boiling point of the HAP in the vessel, then emissions shall be calculated using the equations in paragraphs (b)(4)(i)(A) through (b)(4)(i)(D) of this section.

(A) Emissions caused by heating of a vessel shall be calculated using Equation 5 of this subpart. The assumptions made for this calculation are atmospheric pressure of 760 millimeters of mercury (mm Hg) and the displaced gas is always saturated with volatile organic compounds (VOC) vapor in equilibrium with the liquid mixture.

$$E_{episode} = \left[\frac{\sum_{i=1}^{n} (P_i)_{T1}}{101.325 - \sum_{i=1}^{n} (P_i)_{T1}} + \frac{\sum_{i=1}^{n} (P_i)_{T2}}{101.325 - \sum_{i=1}^{n} (P_i)_{T2}} \right] \frac{(\Delta^n)(MW_{wavg})}{2} \quad \text{[Eq. 5]}$$

where:

$E_{episode}$=Emissions, kg/episode.

$(P_i)T1$, $(P_i)T2$=Partial pressure (kPa) of TOC or each organic HAP i in the vessel headspace at initial (T1) and final (T2) temperature.

n=Number of organic HAP in stream. Note: Summation not required if TOC emissions are being estimated.

Δ^n=Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (b)(4)(i)(B) of this section.

101.325=Constant, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

(B) The moles of gas displaced, Δ^n, is calculated using Equation 6 of this subpart.

$$\Delta^n = \frac{V_{fs}}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \quad \text{[Eq. 6]}$$

where:

Δ^n=Number of kg-moles of gas displaced.

V_{fs}=Volume of free space in the vessel, m^3.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

Pa_1=Initial noncondensible gas pressure in the vessel, kPa.

Pa_2=Final noncondensible gas pressure, kPa.

T_1=Initial temperature of vessel, K.

T_2=Final temperature of vessel, K.

(C) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using Equation 7 of this subpart.

$$Pa = 101.325 - \sum_{i=1}^{n} (P_i)_T \quad \text{[Eq. 7]}$$

where:

Pa=Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325=Constant, kPa.

$(P_i)T$=Partial pressure of TOC or each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T1 or T2).

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated.

(D) The weighted average molecular weight of TOC or organic HAP in the displaced gas, MW_{wavg}, shall be calculated using Equation 8 of this subpart.

$$MW_{wavg} = \frac{\sum_{i=1}^{n} (\text{mass of C})_i \, (\text{molecular weight of C})_i}{\sum_{i=1}^{n} (\text{mass of C})_i} \quad \text{[Eq. 8]}$$

where:

C=TOC or organic HAP component

n=Number of TOC or organic HAP components in stream.

(ii) If the vessel contents are heated to a temperature greater than 50 K below the boiling point, then emissions from

the heating of a vessel shall be calculated as the sum of the emissions calculated in accordance with paragraphs (b)(4)(ii)(A) and (b)(4)(ii)(B) of this section.

(A) For the interval from the initial temperature to the temperature 50 K below the boiling point, emissions shall be calculated using Equation 5 of this subpart, where T_2 is the temperature 50 K below the boiling point.

(B) For the interval from the temperature 50 K below the boiling point to the final temperature, emissions shall be calculated as the summation of emissions for each 5 K increment, where the emissions for each increment shall be calculated using Equation 5 of this subpart.

(*1*) If the final temperature of the heatup is lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

(*2*) If the final temperature of the heatup is higher than 5 K below the boiling point, the final temperature for the last increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(*3*) If the vessel contents are heated to the boiling point and the vessel is not operating with a condenser, the final temperature for the final increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(iii) If the vessel is operating with a condenser, and the vessel contents are heated to the boiling point, the primary condenser, as specified in paragraph (a)(2) of this section, is considered part of the process. Emissions shall be calculated as the sum of emissions calculated using Equation 5 of this subpart, which calculates emissions due to heating the vessel contents to the temperature of the gas existing the condenser, and emissions calculated using Equation 4 of this subpart, which calculates emissions due to the displacement of the remaining saturated noncondensible gas in the vessel. The final temperature in Equation 5 of this subpart shall be set equal to the exit gas temperature of the condenser. Equation 4 of this subpart shall be used as written below in Equation 4a of this subpart, using free space volume, and T is set equal to the condenser exit gas temperature.

$$E_{episode} = \frac{(y)(V_{fs})(P)(MW_{wavg})}{RT} \quad \text{[Eq. 4a]}$$

where:

$E_{episode}$=Emissions, kg/episode.

y=Saturated mole fraction of all TOC or organic HAP in vapor phase.

V_{fs}=Volume of the free space in the vessel, m^3.

P=Pressure in vessel vapor space, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T=Temperature of condenser exit stream, K.

(5) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. If direct measurement is used, the owner or operator shall either perform a test for the duration of a representative batch emission episode or perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options must develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions. Performance tests shall follow the procedures specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section. The procedures in either paragraph (b)(5)(iv) or (b)(5)(v) of this section shall be used to calculate the emissions per batch emission episode.

(i) Method 1 or 1A, 40 CFR part 60, appendix A as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate.

(ii) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in paragraph (e) of this section.

(iii) Method 18 or Method 25A, 40 CFR part 60, appendix A, shall be used to determine the concentration of TOC or organic HAP, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B) of this section.

(A) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(B) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) If an integrated sample is taken over the entire batch emission episode to determine TOC or average total organic HAP concentration, emissions shall be calculated using Equation 9 of this subpart.

$$E_{episode} = K\left[\sum_{j=1}^{n}(C_j)(M_j)\right]AFR(T_h) \quad \text{[Eq. 9]}$$

where:

$E_{episode}$=Emissions, kg/episode.

K=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j=Average concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j=Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR=Average flow rate of gas stream, dry basis, scmm.

T_h=Hours/episode.

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(v) If grab samples are taken to determine TOC or average total organic HAP concentration, emissions shall be calculated according to paragraphs (b)(5)(v)(A) and (b)(5)(v)(B) of this section.

(A) For each measurement point, the emission rate shall be calculated using Equation 10 of this subpart.

$$E_{point} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR \qquad [Eq. 10]$$

where:

E_{point}=Emission rate for individual measurement point, kg/hr.

K=Constant, 2.494 × 10–6 (ppmv)$^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j=Concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j=Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR=Flow rate of gas stream for the measurement point, dry basis, scmm.

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(B) The emissions per batch emission episode shall be calculated using Equation 11 of this subpart.

$$E_{episode} = (DUR)\left[\sum_{i=1}^{n} \frac{E_i}{n}\right] \qquad [Eq. 11]$$

where:

$E_{episode}$=Emissions, kg/episode.

DUR=Duration of the batch emission episode, hr/episode.

E_i=Emissions for measurement point i, kg/hr.

n=Number of measurements.

(6) If the owner or operator can demonstrate that the methods in paragraphs (b)(1) through (b)(4) of this section are not appropriate to estimate emissions for a batch emissions episode, the owner or operator may use engineering assessment to estimate emissions as specified in paragraphs (b)(6)(i) and (b)(6)(ii) of this section. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(i) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the tests are representative of current operating practices;

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions;

(C) Flow rate, TOC emission rate, or organic HAP emission rate specified or implied within a permit limit applicable to the batch process vent; and

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances;

(*2*) Estimation of flow rate based on physical equipment design such as pump or blower capacities; and

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions.

(ii) The emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section shall be considered inappropriate for estimating emissions for a given batch emissions episode if one or more of the criteria in paragraphs (b)(6)(ii)(A) through (b)(6)(ii)(B) of this section are met.

(A) Previous test data are available that show a greater than 20 percent discrepancy between the test value and the estimated value.

(B) The owner or operator can demonstrate to the Administrator that the emissions estimation equations are not appropriate for a given batch emissions episode.

(C) Data or other information supporting a finding that the emissions estimation equations are inappropriate as specified under paragraph (b)(6)(ii)(A) of this section shall be reported in the Notification of Compliance Status, as required in § 63.1335(e)(5).

(D) Data or other information supporting a finding that the emissions estimation equations are inappropriate as specified under paragraph (b)(6)(ii)(B) of this section shall be reported in the Precompliance Report, as required in § 63.1335(e)(3).

(7) For each batch process vent, the TOC or organic HAP emissions associated with a single batch cycle shall be calculated using Equation 12 of this subpart.

$$E_{cycle} = \sum_{i=1}^{n} E_{episode_i} \qquad [Eq. 12]$$

where:

where:

E_{cycle}=Emissions for an individual batch cycle, kg/batch cycle

$E_{episode_i}$=Emissions from batch emission episode i, kg/episode

n=Number of batch emission episodes for the batch cycle

(8) Annual TOC or organic HAP emissions from a batch process vent shall be calculated using Equation 13 of this subpart.

$$AE = \sum_{i=1}^{n} (N_i)(E_{cycle_i}) \qquad [Eq. 13]$$

where:

AE=Annual emissions from a batch process vent, kg/yr.

N_i=Number of type i batch cycles performed annually, cycles/year

E_{cycle_i}=Emissions from the batch process vent associated with a single type i batch cycle, as determined in paragraph (b)(7) of this section, kg/batch cycle

n=Number of different types of batch cycles that cause the emission of TOC or organic HAP from the batch process vent

(c) (Reserved)

(d) *Minimum emission level exemption.* A batch process vent with annual emissions less than 11,800 kg/yr is considered a Group 2 batch process vent and the owner or operator of said batch process vent shall comply with the requirements in § 63.1322 (f) or (g). The owner or operator of said batch process vent is not required to comply with the provisions in paragraphs (e) through (g) of this section.

(e) *Determination of average flow rate.* The owner or operator shall determine the average flow rate for each batch emission episode in accordance with one of the procedures provided in paragraphs (e)(1) through (e)(2) of this section. The annual average flow rate for a batch process vent shall be calculated as specified in paragraph (e)(3) of this section.

(1) Determination of the average flow rate for a batch emission episode by direct measurement shall be made using the procedures specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The volumetric flow rate for a batch emission episode, in standard cubic meters per minute (scmm) at 20° C, shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(ii) The volumetric flow rate of a representative batch emission episode shall be measured every 15 minutes.

(iii) The average flow rate for a batch emission episode shall be calculated using Equation 14 of this subpart.

$$AFR_{episode} = \frac{\sum_{i=1}^{n} FR_i}{n} \quad \text{[Eq. 14]}$$

where:

$AFR_{episode}$ = Average flow rate for the batch emission episode, scmm.

FR_i = Flow rate for individual measurement i, scmm.

n = Number of flow rate measurements taken during the batch emission episode.

(2) The average flow rate for a batch emission episode may be determined by engineering assessment, as defined in paragraph (b)(6)(i) of this section. All data, assumptions, and procedures used shall be documented.

(3) The annual average flow rate for a batch process vent shall be calculated using Equation 15 of this subpart.

$$AFR = \frac{\sum_{i=1}^{n} (DUR_i)(AFR_{episode,i})}{\sum_{i=1}^{n} (DUR_i)} \quad \text{[Eq. 15]}$$

where:

AFR = Annual average flow rate for the batch process vent, scmm.

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

$AFR_{episode,\ i}$ = Average flow rate for type i batch emission episode, scmm.

n = Number of types of batch emission episodes venting from the batch process vent.

(f) *Determination of cutoff flow rate.* For each batch process vent, the owner or operator shall calculate the cutoff flow rate using Equation 16 of this subpart.

$$CFR = (0.00437)(AE) - 51.6 \quad \text{[Eq. 16]}$$

where:

CFR = Cutoff flow rate, scmm.

AE = Annual TOC or organic HAP emissions, as determined in paragraph (b)(8) of this section, kg/yr.

(g) *Group 1/Group 2 status determination.* The owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (f) of this section, with the annual average flow rate, determined in accordance with paragraph (e)(4) of this section. The group determination status for each batch process vent shall be made using the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average flow rate of the stream, the batch process vent is classified as a Group 1 batch process vent.

(2) If the cutoff flow rate is less than the annual average flow rate of the stream, the batch process vent is classified as a Group 2 batch process vent.

(h) *Determination of halogenation status.* To determine whether a batch process vent or an aggregate batch vent stream is halogenated, the annual mass emission rate of halogen atoms contained in organic compounds shall be calculated using the procedures specified in paragraphs (h)(1) through (h)(3) of this section.

(1) The concentration of each organic compound containing halogen atoms (ppmv, by compound) for each batch emission episode shall be determined based on any one of the following procedures:

(i) Process knowledge that no halogens or hydrogen halides are present in the process may be used to demonstrate that a batch emission episode is nonhalogenated. Halogens or hydrogen halides that are unintentionally introduced into the process shall not be considered in making a finding that a batch emission episode is nonhalogenated.

(ii) Engineering assessment as discussed in paragraph (b)(6)(i) of this section.

(iii) Concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A, 40 CFR part 60, appendix A.

(iv) Any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part.

(2) The annual mass emissions of halogen atoms for a batch process vent shall be calculated using Equation 17 of this subpart.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}(C_{avg\,j})(L_{j,i})(M_{j,i})\right]AFR \quad \text{[Eq. 17]}$$

where:

$E_{halogen}$ = Mass of halogen atoms, dry basis, kg/yr.

K = Constant, 0.022 $(ppmv)^{-1}$ (kg-mole per scm) (minute/yr), where standard temperature is 20°C.

AFR = Annual average flow rate of the batch process vent, determined according to paragraph (e) of this section, scmm.

$M_{j,\ i}$ = Molecular weight of halogen atom i in compound j, kg/kg-mole.

$L_{j,\ i}$ = Number of atoms of halogen i in compound j.

n = Number of halogenated compounds j in the batch process vent.

m = Number of different halogens i in each compound j of the batch process vent.

$C_{avg\,j}$ = Average annual concentration of halogenated compound j in the batch process vent as determined by using Equation 18 of this subpart, dry basis, ppmv.

$$C_{avg_j} = \frac{\sum_{i=1}^{n}(DUR_i)(C_i)}{\sum_{i=1}^{n}(DUR_i)} \quad \text{[Eq. 18]}$$

where:

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

C_i = Average concentration of halogenated compound j in type i batch emission episode, ppmv.

n = Number of types of batch emission episodes venting from the batch process vent.

(3) The annual mass emissions of halogen atoms for an aggregate batch vent stream shall be the sum of the annual mass emissions of halogen atoms for all batch process vents included in the aggregate batch vent stream.

(i) *Process changes affecting Group 2 batch process vents.* Whenever process changes, as described in paragraph (i)(1)

of this section, are made that affect one or more Group 2 batch process vents, the owner or operator shall comply with paragraphs (i) (2) and (3) of this section.

(1) Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation as specified in paragraph (a)(2) of this section. An increase in the annual number of batch cycles beyond the batch cycle limitation constitutes a process change. For purposes of this paragraph (i), process changes do not include: process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(2) For each batch process vent affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (g) of this section, as applicable; alternatively, engineering assessment, as described in paragraph (b)(6)(i) of this section, can be used to determine the effects of the process change.

(3) Based on the results from paragraph (i)(2) of this section, owners or operators shall comply with either paragraph (i)(3) (i), (ii), or (iii) of this section.

(i) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent has become a Group 1 batch process vent as a result of the process change, the owner or operator shall submit a report as specified in § 63.1327(b) and shall comply with the Group 1 provisions in § 63.1322 through § 63.1327 in accordance with the compliance schedule described in § 63.1335(e)(6)(iii)(D)(*2*).

(ii) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent with annual emissions less than the level specified in paragraph (d) of this section, that is in compliance with § 63.1322(g), now has annual emissions greater than or equal to the level specified in paragraph (d) of this section but remains a Group 2 batch process vent, the owner or operator shall submit a report as specified in § 63.1327(c) and shall comply with § 63.1322(f) in accordance with the compliance schedule required by § 63.1335(e)(6)(iii)(D)(*2*).

(iii) If the redetermination described in paragraph (i)(2) of this section indicates no change in group status or no change in the relation of annual emissions to the levels specified in paragraph (d) of this section, the owner or operator is not required to submit a report, as described in § 63.1327(e).

(j) *Process changes to new SAN affected sources using a batch process.* Whenever process changes, as described in paragraph (j)(1) of this section, are made to a new affected source producing SAN using a batch process, the owner or operator shall comply with paragraphs (j) (2) and (3) of this section.

(1) Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; replacement, removal, or addition of recovery equipment considered part of a batch unit operation, as specified in paragraph (a)(1) of this section; replacement, removal, or addition of control equipment associated with a continuous or batch process vent or an aggregate batch vent stream. For purposes of this paragraph (j)(1), process changes do not include process upsets or unintentional, temporary process changes.

(2) The owner or operator shall redetermine the percent emission reduction achieved using the procedures specified in § 63.1333(c). If engineering assessment, as described in paragraph (b)(6)(i) of this section, can demonstrate that the process change did not cause the percent emission reduction to decrease, it may be used in lieu of redetermining the percent reduction using the procedures specified in § 63.1333(c).

(3) Where the redetermined percent reduction is less than 84 percent, the owner or operator shall submit a report as specified in § 63.1327(d) and shall comply with § 63.1322(a)(3) and all associated provisions in accordance with the compliance schedule described in § 63.1335(e)(6)(iii)(D)(*2*).

§ 63.1324 Batch process vents—monitoring provisions.

(a) *General requirements.* Each owner or operator of a batch process vent or aggregate batch vent stream that uses a control device to comply with the requirements in § 63.1322(a) or § 63.1322(b), shall install the monitoring equipment specified in paragraph (c) of this section.

(1) This monitoring equipment shall be in operation at all times when batch emission episodes, or portions thereof, that the owner or operator has selected to control are vented to the control device, or at all times when an aggregate batch vent stream is vented to the control device.

(2) The owner or operator shall operate control devices such that monitored parameters remain above the minimum level or below the maximum level, as appropriate, established as specified in paragraph (f) of this section.

(b) *Continuous process vents.* Each owner or operator of a continuous process vent that uses a control device or recovery device to comply with the requirements in § 63.1322(a)(3) shall comply with the applicable requirements of § 63.1315(a) as specified in § 63.1321(b).

(c) *Batch process vent and aggregate batch vent stream monitoring parameters.* The monitoring equipment specified in paragraphs (c)(1) through (c)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 7 of this subpart.

(1) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, the temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, a device (including but not limited to a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting the presence of a pilot flame is required.

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, a temperature monitoring device in the firebox equipped with a continuous recorder is required. Any boiler or process heater in which all batch process vents or aggregate batch vent streams are introduced with the primary fuel or are used as the primary fuel is exempt from this requirement.

(4) Where a scrubber is used with an incinerator, boiler, or process heater in concert with the combustion of halogenated batch process vents or halogenated aggregate batch vent streams, the following monitoring equipment is required for the scrubber.

(i) A pH monitoring device equipped with a continuous recorder to monitor the pH of the scrubber effluent.

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent to monitor the scrubber liquid flow rate.

(5) Where an absorber is used, a scrubbing liquid temperature

monitoring device and a specific gravity monitoring device are required, each equipped with a continuous recorder.

(6) Where a condenser is used, a condenser exit temperature (product side) monitoring device equipped with a continuous recorder is required.

(7) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

(8) As an alternate to paragraphs (c)(5) through (c)(7) of this section, the owner or operator may install an organic monitoring device equipped with a continuous recorder.

(d) *Alternative monitoring parameters.* An owner or operator of a batch process vent or aggregate batch vent stream may request approval to monitor parameters other than those required by paragraph (c) of this section. The request shall be submitted according to the procedures specified in § 63.1335(f). Approval shall be requested if the owner or operator:

(1) Uses a control device other than those included in paragraph (c) of this section; or

(2) Uses one of the control devices included in paragraph (c) of this section, but seeks to monitor a parameter other than those specified in Table 7 of this subpart and paragraph (c) of this section.

(e) *Monitoring of bypass lines.* Owners or operators of a batch process vent or aggregate batch vent stream using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with § 63.1322(a) or § 63.1322(b) shall comply with either paragraph (d)(1), (d)(2), or (d)(3) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (e).

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.1326(e)(3). The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the control device and to the atmosphere; or

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 63.1326(e)(4).

(3) Continuously monitor the bypass line valve position using computer monitoring and record any periods when the position of the bypass line valve has changed as specified in § 63.1326(e)(4).

(f) *Establishment of parameter monitoring levels.* Parameter monitoring levels for batch process vents and aggregate batch vent streams shall be established as specified in paragraphs (f)(1) through (f)(3) of this section. For continuous process vents complying with § 63.1322(a)(3), parameter monitoring levels shall be established as specified in § 63.1315(a), except as specified in paragraph (f)(4) of this section.

(1) For each parameter monitored under paragraph (c) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 8 of this subpart, that indicates proper operation of the control device. The level shall be established in accordance with the procedures specified in § 63.1334.

(i) For batch process vents using a control device to comply with § 63.1322(a)(2), the established level shall reflect the control efficiency established as part of the initial compliance demonstration specified in § 63.1325(c)(2).

(ii) For aggregate batch vent streams using a control device to comply with § 63.1322(b)(2), the established level shall reflect the control efficiency requirement specified in § 63.1322(b)(2).

(iii) For batch process vents and aggregate batch vent streams using a control device to comply with § 63.1322(a)(3), the established level shall reflect the control efficiency established as part of the initial compliance demonstration specified in § 63.1325(f)(4).

(2) The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application as required in § 63.1335(e)(5) or § 63.1335(e)(8), respectively.

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (f)(2) of this section. The definition of operating day shall specify the times at which an operating day begins and ends. The operating day shall not exceed 24 hours.

(4) For continuous process vents using a control or recovery device to comply with § 63.1322(a)(3), the established level shall reflect the control efficiency established as part of the initial compliance demonstration specified in § 63.1325(f)(4).

§ 63.1325 Batch process vents—performance test methods and procedures to determine compliance.

(a) *Use of a flare.* When a flare is used to comply with §§ 63.1322 (a)(1), (a)(3), (b)(1), or (b)(3), the owner or operator shall comply with the flare provisions in § 63.11(b).

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (b)(1) through (b)(5) of this section is used to comply with § 63.1322 (a)(2) or (a)(3). Further, if a performance test meeting the conditions specified in paragraph (b)(6) of this section has been conducted by the owner or operator, the results of said performance test may be submitted and a performance test, as required by this section, is not required.

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater where the vent stream is introduced with the primary fuel or is used as the primary fuel.

(3) A control device for which a performance test was conducted for determining compliance with a New Source Performance Standard (NSPS) and the test was conducted using the same procedures specified in this section and no process changes have been made since the test. Recovery devices used for controlling emissions from continuous process vents complying with § 63.1322(a)(3) are also eligible for the exemption described in this paragraph (b)(3).

(4) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(5) An incinerator burning hazardous waste for which the owner or operator complies with the requirements of 40 CFR part 264, subpart O.

(6) Performance tests done for other subparts in 40 CFR part 60 or part 63 where total organic HAP or TOC was measured, provided the owner or

operator can demonstrate that operating conditions for the process and control device during the performance test are representative of current operating conditions.

(c) *Batch process vent testing and procedures for compliance with § 63.1322(a)(2).* Except as provided in paragraph (b) of this section, an owner or operator using a control device to comply with § 63.1322(a)(2) shall conduct a performance test using the procedures specified in paragraph (c)(1) of this section in order to determine the control efficiency of the control device. An owner or operator shall determine the percent reduction for the batch cycle using the control efficiency of the control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and the procedures specified in paragraph (c)(2) of this section. Compliance may be based on either total organic HAP or TOC. For purposes of this paragraph (c) and all paragraphs that are part of this paragraph (c), the term "batch emission episode" shall have the meaning "period of the batch emission episode selected for control," which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(1) Performance tests shall be conducted as specified in paragraphs (c)(1)(i) through (c)(1)(v) of this section.

(i) Except as specified in paragraph (c)(1)(i)(A) of this section, a test shall be performed for the entire period of each batch emission episode in the batch cycle that the owner or operator selects to control as part of achieving the required 90 percent emission reduction for the batch cycle specified in § 63.1322(a)(2). Only one test is required for each batch emission episode selected by the owner or operator for control. The owner or operator shall follow the procedures listed in paragraphs (c)(1)(i)(B) through (c)(1)(i)(D) of this section.

(A) Alternatively, an owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options must develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions.

(B) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate. Inlet sampling sites shall be located as specified in paragraphs (c)(1)(i)(B)(*1*) and (c)(1)(i)(B)(*2*) of this section. Outlet sampling sites shall be located at the outlet of the control device prior to release to the atmosphere.

(*1*) The control device inlet sampling site shall be located at the exit from the batch unit operation before any control device. § 63.1323(a)(2) describes those recovery devices considered part of the unit operation. Inlet sampling sites would be after these specified recovery devices.

(*2*) If a batch process vent is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all batch process vents and primary and secondary fuels introduced into the boiler or process heater.

(C) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in § 63.1323(e).

(D) Method 18 or Method 25A, 40 CFR part 60, appendix A shall be used to determine the concentration of organic HAP or TOC, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (c)(1)(i)(D)(*1*) and (c)(1)(i)(D)(*2*) of this section.

(*1*) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(*2*) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(ii) If an integrated sample is taken over the entire test period to determine TOC or average total organic HAP concentration, emissions per batch emission episode shall be calculated using Equations 19 and 20 of this subpart.

$$E_{episode,inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \quad \text{[Eq. 19]}$$

$$E_{episode,outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \quad \text{[Eq. 20]}$$

where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Average inlet or outlet concentration of TOC or sample component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of TOC or sample component j of the gas stream, gm/gm-mole.

AFR = Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h = Hours/episode

n = Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(iii) If grab samples are taken to determine TOC or total organic HAP concentration, emissions shall be calculated according to paragraphs (c)(1)(iii) (A) and (B) of this section.

(A) For each measurement point, the emission rates shall be calculated using Equations 21 and 22 of this subpart.

$$E_{point,inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \qquad [Eq. 21]$$

$$E_{point,outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \qquad [Eq. 22]$$

where:

E_{point} = Inlet or outlet emission rate for the measurement point, kg/hr.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR = Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n = Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(B) The emissions per batch emission episode shall be calculated using Equations 23 and 24 of this subpart.

$$E_{episode,inlet} = (DUR)\left[\sum_{i=1}^{n} \frac{E_{point,inlet,i}}{n}\right] \qquad [Eq. 23]$$

$$E_{episode,outlet} = (DUR)\left[\sum_{i=1}^{n} \frac{E_{point,outlet,i}}{n}\right] \qquad [Eq. 24]$$

where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

DUR = Duration of the batch emission episode, hr/episode.

$E_{point,\ i}$ = Inlet or outlet emissions for measurement point i, kg/hr.

n = Number of measurements.

(iv) The control efficiency for the control device shall be calculated using Equation 25 of this subpart.

$$R = \frac{\sum_{i=1}^{n} E_{inlet,i} - \sum_{i=1}^{n} E_{outlet,i}}{\sum_{i=1}^{n} E_{inlet,i}}(100) \qquad [Eq. 25]$$

where:

R = Control efficiency of control device, percent.

E_{inlet} = Mass rate of TOC or total organic HAP for batch emission episode i at the inlet to the control device as calculated under paragraph (c)(1)(ii) or (c)(1)(iii) of this section, kg/hr.

E_{outlet} = Mass rate of TOC or total organic HAP for batch emission episode i at the outlet of the control device, as calculated under paragraph (c)(1)(ii) or (c)(1)(iii) of this section, kg/hr.

n = Number of batch emission episodes in the batch cycle selected to be controlled.

(v) If the batch process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC across the device shall be determined by comparing the TOC or total organic HAP

in all combusted batch process vents and primary and secondary fuels with the TOC or total organic HAP exiting the combustion device, respectively.

(2) The percent reduction for the batch cycle shall be determined using Equation 26 of this subpart and the control device efficiencies specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section. All information used to calculate the batch cycle percent reduction, including a definition of the batch cycle identifying all batch emission episodes, must be recorded as specified in § 63.1326(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control.

$$PR = \frac{\sum_{i=1}^{n} E_{unc} \sum_{i=1}^{n} E_{inlet,con} - (1-R) \sum_{i=1}^{n} E_{inlet,con}}{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con}} (100) \quad \text{[Eq. 26]}$$

where:

PR = Percent reduction

E_{unc} = Mass rate of TOC or total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet,con}$ = Mass rate of TOC or total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R = Control efficiency of control device as specified in paragraphs (c)(2) (i) through (c) (2)(iii) of this section.

n = Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

(i) If a performance test is required by paragraph (c) of this section, the control efficiency of the control device shall be as determined in paragraph (c)(1)(iv) of this section.

(ii) If a performance test is not required by paragraph (c) of this section for a combustion control device, as specified in paragraph (b) of this section, the control efficiency shall be 98 percent. The control efficiency for a flare shall be 98 percent.

(iii) If a performance test is not required by paragraph (c) of this section for a noncombustion control device, the control efficiency shall be determined by the owner or operator based on engineering assessment.

(d) *Batch process vent and aggregate batch vent stream testing for compliance with § 63.1322(c) [halogenated emission streams].* An owner or operator controlling halogenated emissions in compliance with § 63.1322(c) shall conduct a performance test to determine compliance with the control efficiency specified in § 63.1322(c)(1) or the emission limit specified in § 63.1322(c)(2) for hydrogen halides and halogens.

(1) Sampling sites shall be located at the inlet and outlet of the scrubber or other control device used to reduce halogen emissions in complying with § 63.1322(c)(1) or at the outlet of the control device used to reduce halogen emissions in complying with § 63.1322(c)(2).

(2) The mass emissions of each hydrogen halide and halogen compound for the batch cycle or aggregate batch vent stream shall be calculated from the measured concentrations and the gas stream flow rate(s) determined by the procedures specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section except as specified in paragraph (d)(5) of this section.

(i) Method 26 or Method 26A, 40 CFR part 60, appendix A, shall be used to determine the concentration, in Mg per dry scm, of total hydrogen halides and halogens present in the emissions stream.

(ii) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in § 63.1323(e).

(3) To determine compliance with the percent reduction specified in § 63.1322(c)(1), the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other control device shall be summed together. The mass emissions of any hydrogen halides or halogens present at the outlet of the scrubber or other control device shall be summed together. Percent reduction shall be determined by subtracting the outlet mass emissions from the inlet mass emissions and then dividing the result by the inlet mass emissions.

(4) To determine compliance with the emission limit specified in § 63.1322(c)(2), the annual mass emissions for any hydrogen halides and halogens present at the outlet of the control device and prior to any combustion device shall be summed together and compared to the emission limit specified in § 63.1322(c)(2).

(5) The owner or operator may use any other method to demonstrate compliance if the method or data has been validated according to the applicable procedures of Method 301 of appendix A of this part.

(e) *Aggregate batch vent stream testing for compliance with § 63.1322 (b)(2) or (b)(3).* Owners or operators of aggregate batch vent streams complying with § 63.1322 (b)(2) or (b)(3) shall conduct a performance test using the performance testing procedures for continuous process vents in § 63.116(c). For the purposes of this subpart, when the provisions of § 63.116(c) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (e)(1) and (e)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(2) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(f) *Compliance with § 63.1322(a)(3) [new SAN batch affected sources].* Except as provided in paragraph (b) of this section, an owner or operator using a control or recovery device to comply with the percent reduction requirement in § 63.1322(a)(3) shall conduct performance tests as specified in either paragraph (f)(1), (f)(2), or (f)(3) of this section, as applicable. Compliance with § 63.1322(a)(3) shall be determined as specified in paragraph (f)(4) of this section.

(1) For batch process vents, performance tests shall be conducted using the procedures specified in paragraph (c) of this section, except that the owner or operator is not required to determine the percent reduction for the batch cycle as specified in paragraph (c)(2) of this section.

(2) For continuous process vents, performance tests shall be conducted as required by the applicable requirements

of § 63.1315(a) as specified in § 63.1321(b).

(3) For aggregate batch vent streams, performance tests shall be conducted as specified in paragraph (e) of this section.

(4) Compliance with the percent reduction requirement of § 63.1322(a)(3) shall be demonstrated using the procedures specified in § 63.1333(c) and the control device efficiencies specified in either paragraph (f)(4)(i) or (f)(4)(ii) of this section. Emissions for uncontrolled continuous process vents and aggregate batch vent streams shall be determined based on the direct measurement procedures specified in paragraph (f)(2) and (f)(3) of this section, respectively, or based on engineering assessment, as specified in § 63.1323(b)(6)(i). At the discretion of the owner or operator, emissions for uncontrolled batch process vents shall be determined based on any of the procedures in § 63.1323(b).

(i) For noncombustion devices, the control efficiency shall be as determined by the performance test required by paragraph (f)(1), (f)(2), or (f)(3) of this section. Alternatively, if a performance test is not required by paragraph (c) of this section, the control efficiency shall be determined by the owner or operator based on engineering assessment.

(ii) For combustion devices, the control efficiency shall be as determined by the performance test required by paragraph (f)(1), (f)(2), or (f)(3) of this section. Alternatively, if a performance test is not required, the control efficiency shall be 98 percent. The control efficiency for a flare shall be 98 percent.

(g) *Batch cycle limitation.* The batch cycle limitation required by § 63.1322 (f) and (g) shall be established as specified in paragraph (g)(1) of this section and shall include the elements specified in paragraph (g)(2) of this section.

(1) The batch cycle limitation shall be determined by the owner or operator such that annual emissions for the batch process vent remain less than the level specified in § 63.1323(d) when complying with § 63.1322(g). Alternatively, when complying with § 63.1322(f), the batch cycle limitation shall ensure that annual emissions remain at a level such that said batch process vent remains a Group 2 batch process vent, given the actual annual flow rate for said batch process vent determined according to the procedures specified in § 63.1323(e). The batch cycle limitation shall be determined using the same basis, as described in § 63.1323(a)(1), used to make the group determination (i.e., expected mix of products or worst-case HAP emitting product). The establishment of the batch cycle limitation is not dependent upon any past production or activity level.

(i) If the expected mix of products serves as the basis for the batch cycle limitation, the batch cycle limitation shall be determined such that any foreseeable combination of products which the owner or operator desires the flexibility to manufacture shall be allowed. Combinations of products not accounted for in the documentation required by paragraph (g)(2)(iv) of this section shall not be allowed within the restrictions of the batch cycle limitation.

(ii) If, for a batch process vent with more than one product, a single worst-case HAP emitting product serves as the basis for the batch cycle limitation, the batch cycle limitation shall be determined such that the maximum number of batch cycles the owner or operator desires the flexibility to accomplish, using the worst-case HAP emitting product and ensuring that the batch process vent remains a Group 2 batch process vent or that emissions remain less than the level specified in § 63.1323(d), shall be allowed. This value shall be the total number of batch cycles allowed within the restrictions of the batch cycle limitation regardless of which products are manufactured.

(2) Documentation supporting the establishment of the batch cycle limitation shall include the information specified in paragraphs (g)(2)(i) through (g)(2)(v) of this section, as appropriate.

(i) Identification that the purpose of the batch cycle limitation is to comply with § 63.1322 (f)(1) or (g)(1).

(ii) Identification that the batch cycle limitation is based on a single worst-case HAP emitting product or on the expected mix of products for said batch process vent as allowed under § 63.1323(a)(1).

(iii) Definition of operating year for purposes of determining compliance with the batch cycle limitation.

(iv) If the batch cycle limitation is based on a single worst-case HAP emitting product, documentation specified in § 63.1323 (a)(1)(ii) through (a)(1)(iv), as appropriate, describing how the single product meets the requirements for worst-case HAP emitting product and the number of batch cycles allowed under the batch cycle limitation.

(v) If the batch cycle limitation is based on the expected mix of products, the owner or operator shall provide documentation that describes as many scenarios for differing mixes of products (i.e., how many batch cycles for each product) that the owner or operator desires the flexibility to accomplish. Alternatively, the owner or operator shall provide a description of the relationship among the mix of products that will allow a determination of compliance with the batch cycle limitation under an infinite number of scenarios. For example, if a batch process vent has two products, each product has the same flow rate and emits for the same amount of time, and product No. 1 has twice the emissions as product No. 2, the relationship describing an infinite number of scenarios would be that the owner or operator can accomplish two batch cycles of product No. 2 for each batch cycle of product No. 1 within the restriction of the batch cycle limitation.

§ 63.1326 Batch process vents—recordkeeping provisions.

(a) *Group determination records for batch process vents.* Except as provided in paragraphs (a)(7) through (a)(9) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (a)(1) through (a)(6) of this section for each batch process vent subject to the group determination procedures of § 63.1323. Except for paragraph (a)(1) of this section, the records required by this paragraph (a) are restricted to the information developed and used to make the group determination under § 63.1323(b) through § 63.1323(g), as appropriate. The information required by paragraph (a)(1) of this section is required for all batch process vents subject to the group determination procedures of § 63.1323. If an owner or operator did not need to develop certain information (e.g., annual average flow rate) to determine the group status, this paragraph (a) does not require that additional information be developed.

(1) An identification of each unique product that has emissions from one or more batch emission episodes venting from the batch process vent.

(2) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle for each unique product identified in paragraph (a)(1) of this section that was considered in making the group determination under § 63.1323.

(3) Total annual uncontrolled TOC or organic HAP emissions, determined at the exit from the batch unit operation before any control device, determined in accordance with § 63.1323(b).

(i) For Group 2 batch process vents, said emissions shall be determined at the batch cycle limitation.

(ii) For Group 1 batch process vents, said emissions shall be those used to determine the group status of the batch process vent.

(4) The annual average flow rate for the batch process vent, determined in accordance with § 63.1323(e).

(5) The cutoff flow rate, determined in accordance with § 63.1323(f).

(6) The results of the batch process vent group determination, conducted in accordance with § 63.1323(g).

(7) If a batch process vent is in compliance with § 63.1322 (a) or (b) and the control device is operating at all times when batch emission episodes are venting from the batch process vent, none of the records in paragraphs (a)(1) through (a)(6) of this section are required.

(8) If a batch process vent is in compliance with § 63.1322 (a) or (b), but the control device is operated only during selected batch emission episodes, only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(9) If the total annual emissions from the batch process vent are less than the appropriate level specified in § 63.1323(d), only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(b) *Compliance demonstration records.* Each owner or operator of a batch process vent or aggregate batch vent stream complying with § 63.1322 (a) or (b), shall keep the following records, as applicable, up-to-date and readily accessible:

(1) The annual mass emissions of halogen atoms in the batch process vent or aggregate batch vent stream determined according to the procedures specified in § 63.1323(h);

(2) If a batch process vent is in compliance with § 63.1322(a)(2), records documenting the batch cycle percent reduction as specified in § 63.1325(c)(2); and

(3) When using a flare to comply with § 63.1322 (a)(1), (a)(3), (b)(1), or (b)(3):

(i) The flare design (i.e., steam-assisted, air-assisted or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.1325(a); and

(iii) All periods during the compliance determination required by § 63.1325(a) when the pilot flame is absent.

(4) The following information when using a control device to achieve compliance with § 63.1322 (a)(2), (a)(3), (b)(2), or (b)(3):

(i) For an incinerator or non-combustion control device, the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.1325(c) for batch process vents and § 63.1325(e) for aggregate batch vent streams;

(ii) For a boiler or process heater, a description of the location at which the vent stream is introduced into the boiler or process heater;

(iii) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.1325(c) for batch process vents and § 63.1325(e) for aggregate batch vent streams; and

(iv) For a scrubber or other control device following a combustion device to control halogenated batch process vents or halogenated aggregate batch vent streams, the percent reduction of total hydrogen halides and halogens as determined under § 63.1325(d)(3) or the emission limit determined under § 63.1325(d)(4).

(c) *Establishment of parameter monitoring level records.* For each parameter monitored according to § 63.1324(c) and Table 7 of this subpart, or for alternate parameters and/or parameters for alternate control devices monitored according to § 63.1327(f) as allowed under § 63.1324(d), maintain documentation showing the establishment of the level that indicates proper operation of the control device as required by § 63.1324(f) for parameters specified in § 63.1324(c) and as required by § 63.1335(e) for alternate parameters. Said documentation shall include the parameter monitoring data used to establish the level.

(d) *Group 2 batch process vent continuous compliance records.* The owner or operator of a Group 2 batch process vent shall comply with either paragraph (d)(1) or (d)(2) of this section, as appropriate.

(1) The owner or operator of a Group 2 batch process vent complying with § 63.1322(g) shall keep the following records up-to-date and readily accessible:

(i) Records designating the established batch cycle limitation required by § 63.1322(g)(1) and specified in § 63.1325(g).

(ii) Records specifying the number and type of batch cycles accomplished for each three month period.

(2) The owner or operator of a Group 2 batch process vent complying with § 63.1322(f) shall keep the following records up-to-date and readily accessible:

(i) Records designating the established batch cycle limitation required by § 63.1322(f)(1) and specified in § 63.1325(g).

(ii) Records specifying the number and type of batch cycles accomplished for each three month period.

(e) *Controlled batch process vent continuous compliance records.* Each owner or operator of a batch process vent that uses a control device to comply with § 63.1322(a) shall keep the following records, as applicable, up-to-date and readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.1324(c) as applicable, and listed in Table 7 of this subpart, or specified by the Administrator in accordance with § 63.1327(f) as allowed under § 63.1324(d). Said records shall be kept as specified under § 63.1335(d), except as specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) For flares, the records specified in Table 7 of this subpart shall be kept rather than averages.

(ii) For carbon adsorbers, the records specified in Table 7 of this subpart shall be kept rather than averages.

(2) Records of the batch cycle daily average value of each continuously monitored parameter, except as provided in paragraph (e)(2)(iii) of this section, as calculated using the procedures specified in paragraphs (e)(2)(i) through (e)(2)(ii) of this section.

(i) The batch cycle daily average shall be calculated as the average of all parameter values measured for an operating day during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has selected to control.

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages.

(iii) If all recorded values for a monitored parameter during an operating day are above the minimum or below the maximum level established in accordance with § 63.1324(f), the owner or operator may record that all values were above the minimum or below the maximum level established rather than calculating and recording a batch cycle daily average for that operating day.

(3) Hourly records of whether the flow indicator for bypass lines specified in § 63.1324(e)(1) was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the vent is diverted from the control device or the flow indicator specified in § 63.1324(e)(1) is not operating.

(4) Where a seal or closure mechanism is used to comply with § 63.1324(e)(2) or where computer monitoring of the position of the bypass valve is used to comply with § 63.1324(e)(3), hourly records of flow are not required.

(i) For compliance with § 63.1324(e)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(ii) For compliance with § 63.1324(e)(3), the owner or operator shall record the times of all periods when the bypass line valve position has changed.

(5) Records specifying the times and duration of periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments. In addition, records specifying any other periods of process or control device operation when monitors are not operating.

(f) *Aggregate batch vent stream continuous compliance records.* In addition to the records specified in paragraphs (b) and (c) of this section, each owner or operator of an aggregate batch vent stream using a control device to comply with § 63.1322(b) shall keep records in accordance with the requirements for continuous process vents in § 63.118 (a) and (b), as applicable and as appropriate, except that when complying with § 63.118(b), owners or operators shall disregard statements concerning TRE index values for the purposes of this subpart.

§ 63.1327 Batch process vents—reporting requirements.

(a) The owner or operator of a batch process vent or aggregate batch vent stream at an affected source shall submit the information specified in paragraphs (a)(1) through (a)(4) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.1335(e)(5).

(1) For each batch process vent complying § 63.1322(a) and each aggregate batch vent stream complying § 63.1322(b), the information specified in § 63.1326 (b) and (c), as applicable.

(2) For each Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d), the information specified in § 63.1326(d)(1)(i).

(3) For each Group 2 batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d), the information specified in § 63.1326(d)(2)(i).

(4) For each batch process vent subject to the group determination procedures, the information specified in § 63.1326(a), as appropriate.

(b) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent to become a Group 1 batch process vent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change; and

(2) A schedule for compliance with the provisions of § 63.1322 (a) or (b), as appropriate, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(c) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) that is in compliance with § 63.1322(g) to have annual emissions greater than or equal to the level specified in § 63.1323(d) but remains a Group 2 batch process vent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change;

(2) The results of the redetermination of the annual emissions, average flow rate, and cutoff flow rate required under § 63.1323(i) and recorded under § 63.1326 (a)(3) through (a)(5); and

(3) The batch cycle limitation determined in accordance with § 63.1322(f)(1).

(d) Whenever a process change, as defined in § 63.1323(j)(1), is made that causes the percent reduction for all process vents at a new SAN affected source using a batch process to be less than 84 percent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change; and

(2) A schedule for compliance with the provisions of § 63.1322(a)(3), as required under § 63.1335(e)(6)(iii)(D)(*2*).

(e) The owner or operator is not required to submit a report of a process change if one of the conditions specified in paragraphs (e)(1) and (e)(2) of this section is met.

(1) The process change does not meet the description of a process change in § 63.1323 (i) or (j).

(2) The redetermined group status remains Group 2 for an individual batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d), a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) complying with § 63.1322(g) continues to have emissions less than the level specified in § 63.1323(d), or the achieved emission reduction remains at 84 percent or greater for new SAN affected sources using a batch process.

(f) If an owner or operator uses a control device other than those specified in § 63.1324(c) and listed in Table 7 of this subpart or requests approval to monitor a parameter other than those specified § 63.1324(c) and listed in Table 7 of this subpart, the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.1335(f), as part of the Precompliance Report required under § 63.1335(e)(3). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

(g) Owners or operators complying with § 63.1324(e), shall comply with paragraph (g)(1) or (g)(2) of this section, as appropriate.

(1) Reports of the times of all periods recorded under § 63.1326(e)(3) when the batch process vent is diverted from the control device through a bypass line.

(2) Reports of all occurrences recorded under § 63.1326(e)(4) in which the seal mechanism is broken, the bypass line valve position has changed, or the key to unlock the bypass line valve was checked out.

§ 63.1328 Heat exchange systems provisions.

(a) This section applies to each affected source with the exception of each process contact cooling tower that is associated with an affected source manufacturing PET. The owner or operator of said affected source shall comply with § 63.104, with the differences noted in paragraphs (b)

through (d) of this section, for the purposes of this subpart.

(b) When the Periodic Report requirements contained in § 63.152(c) are referred to in § 63.104(b), the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(c) When an owner or operator invokes the delay of repair provisions as specified in § 63.104(b)(3), the information required by § 63.104 (b)(4)(i) through (b)(4)(v) shall be included in the next semi-annual Periodic Report required under § 63.1335(e)(6), for the purposes of this subpart. If the leak remains unrepaired, the information shall also be submitted in each subsequent Periodic Report, until the repair of the leak is reported.

(d) The compliance date for heat exchange systems subject to the provisions of this section is specified in § 63.1311.

§ 63.1329 Process contact cooling towers provisions.

(a) This section applies to each new affected source that manufactures PET and each existing affected source that manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process. The owner or operator a new affected source shall comply with paragraph (b) of this section. The owner or operator of an existing affected source that manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process shall comply with paragraph (c) of this section. The compliance data for process contact cooling towers subject to the provisions of this section is specified in § 63.1311.

(b) *New affected source requirements.* The owner or operator of a new affected source subject to this section shall comply with paragraphs (b)(1) through (b)(2) of this section.

(1) The owner or operator of a new affected source subject to this section shall not send contact condenser effluent associated with a vacuum system to a process contact cooling tower.

(2) The owner or operator of a new affected source subject to this section shall indicate in the Notification of Compliance Status, as required in § 63.1335(e)(5), that contact condenser effluent associated with vacuum systems is not sent to process contact cooling towers.

(c) *Existing affected source requirements.* The owner or operator of an existing affected source subject to this section who manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process, and who is subject or becomes subject to 40 CFR part 60, subpart DDD, shall maintain an ethylene glycol concentration in the cooling tower at or below 4.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days. Compliance with this paragraph (c) shall be determined as specified in paragraphs (c)(1) through (c)(4) of this section.

(1) To determine the ethylene glycol concentration, owners or operators shall follow the procedures specified in 40 CFR 60.564(j)(1), except as provided in paragraph (c)(2) of this section.

(i) At least one sample per operating day shall be collected using the procedures specified in 40 CFR 60.564(j)(1)(i). An average ethylene glycol concentration by weight shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average ethylene glycol concentration so calculated constitutes a performance test. Exceedance of the standard during the reduced testing program specified in paragraph (b)(1)(ii) of this section is a violation of these standards.

(ii) The owner or operator may elect to reduce the sampling program to any 14 consecutive day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 1.2 weight percent ethylene glycol. If the average concentration obtained over the 14 day sampling during the reduced test period exceeds the upper 95 percent confidence interval calculated from the most recent test results in which no one 14-day average exceeded 1.2 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. The 95 percent confidence interval shall be calculated as specified in paragraph (b)(1)(iii) of this section. A reduced program may be reinstituted if the requirements specified in this paragraph (c)(1)(ii) are met.

(iii) The upper 95 percent confidence interval shall be calculated using the Equation 27 of this subpart:

$$CI_{95} = \frac{\sum_{i=1}^{n} X_i}{n} + 2\sqrt{\frac{n\sum x^2 - \left(\sum x\right)^2}{n(n-1)}} \qquad [Eq. 27]$$

where:

X_i = daily ethylene glycol concentration for each day used to calculate each 14-day rolling average used in test results to justify implementing the reduced testing program.

n = number of ethylene glycol concentrations.

(2) Measuring an alternative parameter, such as carbon oxygen demand or biological oxygen demand, that is demonstrated to be directly proportional to the ethylene glycol concentration shall be allowed. Such parameter shall be measured during the initial 14-day performance test during which the facility is shown to be in compliance with the ethylene glycol concentration standard whereby the ethylene glycol concentration is determined using the procedures described in paragraph (b)(1) of this section. The alternative parameter shall be measured on a daily basis and the average value of the alternative parameter shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average value of the alternative parameter constitutes a performance test.

(3) During each performance test, daily measurement and daily average 14-day rolling averages of the ethylene glycol concentration in the cooling tower water shall be recorded. For the initial performance test, these records shall be submitted in the Notification of Compliance Status report.

(4) All periods when the 14-day rolling average exceeds the standard shall be reported in the Periodic Report.

§ 63.1330 Wastewater provisions.

(a) The owner or operator of each affected source shall comply with the requirements of §§ 63.131 through 63.148, with the differences noted in paragraphs (a)(1) through (a)(12) of this section for the purposes of this subpart.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply.

(2) When the storage tank requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.148, §§ 63.119 through 63.123 are applicable, with the exception of the differences referred to in § 63.1314, for the purposes of this subpart.

(3) When the owner or operator requests to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions referred to in § 63.151(g), or the owner or operator submits an operating permit application instead of an Implementation Plan as specified in § 63.152(e), as referred to in § 63.146(a)(3), § 63.1335(g) and § 63.1335(e)(8), respectively, shall apply for the purposes of this subpart.

(4) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.146 and 63.147, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(5) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.146 and 63.147, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(6) When the Initial Notification Plan requirements in § 63.151(b) are referred to in § 63.146, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(7) When the Implementation Plan requirements contained in § 63.151 are referred to in § 63.146, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(8) When the term "range" is used in § 63.143(f), the term "level" shall be used instead for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.1334.

(9) For the purposes of this subpart, owners or operators are not required to comply with the provisions of § 63.138(e)(2) which specify that owners or operators shall demonstrate that 95 percent of the mass of HAP, as listed in Table 9 of subpart G of this part, is removed from the wastewater stream or combination of wastewater streams by the procedure specified in § 63.145(i) for a biological treatment unit.

(10) For the purposes of this subpart, owners or operators are not required to comply with the provisions of § 63.138(j)(3) which specify that owners or operators shall use the procedures specified in appendix C of this part to demonstrate compliance when using a biological treatment unit.

(11) When the provisions of § 63.139(c)(1)(ii) or the provisions of § 63.145(e)(2)(ii)(B) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (a)(11)(i) and (a)(11)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(12) The compliance date for the affected source subject to the provisions of this section is specified in § 63.1311.

(b) For each affected source, the owner or operator shall comply with the requirements for maintenance wastewater in § 63.105, except that when § 63.105(a) refers to "organic HAPs," the definition of organic HAP in § 63.1312 shall apply for the purposes of this subpart.

§ 63.1331 Equipment leak provisions.

(a) Except as provided for in paragraphs (b) and (c) of this section, the owner or operator of each affected source shall comply with the requirements of subpart H of this part, with the differences noted in paragraphs (a)(1) through (a)(9) of this section.

(1) For an affected source producing polystyrene resin, the indications of liquids dripping, as defined in subpart H of this part, from bleed ports in pumps and agitator seals in light liquid service shall not be considered to be a leak. For purposes of this subpart, a "bleed port" is a technologically-required feature of the pump or seal whereby polymer fluid used to provide lubrication and/or cooling of the pump or agitator shaft exits the pump, thereby resulting in a visible dripping of fluid.

(2) The compliance date for the equipment leak provisions contained in this section is provided in § 63.1311.

(3) Owners and operators of an affected source subject to this subpart are not required to submit the Initial Notification required by § 63.182(a)(1) and § 63.182(b).

(4) The Notification of Compliance Status required by paragraphs § 63.182(a)(2) and § 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.1311 for the equipment leak provisions. Said notification can be submitted as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(5) The Periodic Reports required by § 63.182(a)(3) and § 63.182(d) may be submitted as part of the Periodic Reports required by § 63.1335(e)(6).

(6) For an affected source producing PET, an owner or operator shall comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section instead of with the requirements of § 63.169 for pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems.

(i) A leak is determined to be detected if there is evidence of a potential leak found by visual, audible, olfactory, or any other detection method except that Method 21, 40 CFR part 60, appendix A shall not be used to determine if a leak is detected.

(ii)(A) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 63.171.

(B) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(C) Repaired shall mean that the visual, audible, olfactory, or other indications of a leak have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(7) For each affected source producing PET, an owner or operator is not required to develop an initial list of identification numbers for the equipment identified in paragraph (a)(6) of this section (i.e., pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems) as would otherwise be required under § 63.181(b)(1)(i).

(8) When the provisions of subpart H of this part specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (a)(8)(i) and (a)(8)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(9) For purposes of this subpart, bottoms receivers and surge control vessels are not considered equipment for purposes of this section and are not subject to the requirements of subpart H of this part.

(b) The provisions of this section do not apply to each TPPU producing PET using a process other than a continuous terephthalic acid (TPA) high viscosity multiple end finisher process that is part of an affected source if all of the components in the TPPU are either in vacuum service or in heavy liquid service.

(1) Owners and operators of a TPPU exempted under paragraph (b) of this section shall retain at the facility information, data, and analyses used to demonstrate that all of the components in the exempted TPPU are either in vacuum service or in heavy liquid service. Such documentation shall include an analysis or demonstration that the process fluids do not meet the criteria of "in light liquid service" or "in gas or vapor service." Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) If changes occur at a TPPU exempted under paragraph (b) of this section such that all of the components in the TPPU are no longer either in vacuum service or in heavy liquid service (e.g., by either process changes or the addition of new components), the owner or operator shall comply with the provisions of this section for all of the components at the TPPU. The owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in paragraph (a)(5) of this section. The following information shall be submitted:

(i) A description of the process change; and

(ii) A schedule for compliance with the provisions of § 63.1331(a), as specified in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this section.

(A) The owner or operator shall submit to the Administrator for approval a compliance schedule and a justification for the schedule.

(B) The Administrator shall approve the compliance schedule or request changes within 120 operating days of receipt of the compliance schedule and justification.

(c) The provisions of this section do not apply to each affected source producing PET using a continuous TPA high viscosity multiple end finisher process.

§ 63.1332 Emissions averaging provisions.

(a) This section applies to owners or operators of existing affected sources who seek to comply with § 63.1313(b) by using emissions averaging rather than following the provisions of §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330.

(1) The following emission point limitations apply to the use of these provisions:

(i) All emission points included in an emissions average shall be from the same affected source. There may be an emissions average for each affected source located at a plant site.

(ii)(A) If a plant site has only one affected source for which emissions averaging is being used to demonstrate compliance, the number of emission points allowed in the emissions average for said affected source is limited to twenty. This number may be increased by up to five additional emission points if pollution prevention measures are used to control five or more of the emission points included in the emissions average.

(B) If a plant site has two or more affected sources for which emissions averaging is being used to demonstrate compliance, the number of emission points allowed in the emissions averages for said affected sources is limited to twenty. This number may be increased by up to five additional emission points if pollution prevention measures are used to control five or more of the emission points included in the emissions averages.

(2) Compliance with the provisions of this section can be based on either organic HAP or TOC.

(3) For the purposes of these provisions, whenever Method 18, 40 CFR part 60, appendix A is specified within the paragraphs of this section or is specified by reference through provisions outside this section, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(b) Unless an operating permit application has been submitted, the owner or operator shall develop and submit for approval an Emissions Averaging Plan containing all of the information required in § 63.1335(e)(4) for all emission points to be included in an emissions average.

(c) Paragraphs (c)(1) through (c)(5) of this section describe the emission points that can be used to generate emissions averaging credits if control was applied after November 15, 1990, and if sufficient information is available to determine the appropriate value of credits for the emission point. Paragraph (c)(6) of this section discusses the use of pollution prevention in generating emissions averaging credits.

(1) Storage vessels, batch process vents, aggregate batch vent streams, continuous process vents subject to § 63.1315, and process wastewater streams that are determined to be Group 2 emission points. The term "continuous process vents subject to § 63.1315" includes continuous process vents subject to § 63.1316 (b)(1)(iii), (b)(2)(iii), and (c)(2), which reference § 63.1315.

(2) Continuous process vents located in the collection of material recovery sections within the affected source at an existing affected source producing PET using a continuous dimethyl terephthalate process subject to § 63.1316(b)(1)(i) where the uncontrolled organic HAP emissions from said continuous process vents are equal to or less than 0.12 kg organic HAP per Mg of product. These continuous process vents shall be considered Group 2 emission points for the purposes of this section.

(3) Storage vessels, continuous process vents subject to § 63.1315, and process wastewater streams that are determined to be Group 1 emission points and that are controlled by a technology that the Administrator or permitting authority agrees has a higher nominal efficiency than the reference control technology. Information on the nominal efficiencies for such technologies must be submitted and approved as provided in paragraph (i) of this section.

(4) Batch process vents and aggregate batch vent streams that are determined to be Group 1 emission points and that

are controlled to a level more stringent than the applicable standard.

(5) Continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections within the affected source, as specified in paragraphs (c)(5)(i) through (c)(5)(ii) of this section. The continuous process vents identified in paragraphs (c)(5)(i) through (c)(5)(ii) of this section shall be considered to be Group 1 emission points for the purposes of this section.

(i) Continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections within the affected source where the uncontrolled organic HAP emissions for said continuous process vents are greater than 0.12 kg organic HAP per Mg of product and said continuous process vents are controlled to a level more stringent than the applicable standard.

(ii) Continuous process vents subject to § 63.1316(b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections within the affected source where the uncontrolled organic HAP emissions from said continuous process vents are controlled to a level more stringent than the applicable standard.

(6) The percent reduction for any storage vessel, batch process vent, aggregate batch vent stream, continuous process vent, and process wastewater stream from which emissions are reduced by pollution prevention measures shall be determined using the procedures specified in paragraph (j) of this section.

(i) For a Group 1 storage vessel, batch process vent, aggregate batch vent stream, continuous process vent, or process wastewater stream, the pollution prevention measure must reduce emissions more than if the applicable reference control technology or standard had been applied to the emission point instead of the pollution prevention measure, except as provided in paragraph (c)(6)(ii) of this section.

(ii) If a pollution prevention measure is used in conjunction with other controls for a Group 1 storage vessel, batch process vent, aggregate batch vent stream, continuous process vent, or process wastewater stream, the pollution prevention measure alone does not have to reduce emissions more than the applicable reference control technology or standard, but the combination of the pollution prevention measure and other controls must reduce emissions more than if the applicable reference control technology or standard had been applied instead of the pollution prevention measure.

(d) The following emission points cannot be used to generate emissions averaging credits:

(1) Emission points already controlled on or before November 15, 1990, cannot be used to generate credits unless the level of control is increased after November 15, 1990. In this case, credit will be allowed only for the increase in control after November 15, 1990.

(2) Group 1 emission points, identified in paragraph (c)(3) of this section, that are controlled by a reference control technology cannot be used to generate credits unless the reference control technology has been approved for use in a different manner and a higher nominal efficiency has been assigned according to the procedures in paragraph (i) of this section.

(3) Emission points for nonoperating TPPU cannot be used to generate credits. TPPU that are shutdown cannot be used to generate credits or debits.

(4) Maintenance wastewater cannot be used to generate credits. Wastewater streams treated in biological treatment units cannot be used to generate credits. These two types of wastewater cannot be used to generate credits or debits. For the purposes of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

(5) Emission points controlled to comply with a State or Federal rule other than this subpart cannot be used to generate credits, unless the level of control has been increased after November 15, 1990, to a level above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the emission point is subsequently made subject to a State or Federal rule other than this subpart, the emission point can continue to generate emissions averaging credit for the purpose of complying with the previously approved emissions average.

(e) For all emission points included in an emissions average, the owner or operator shall perform the following tasks:

(1) Calculate and record monthly debits for all Group 1 emission points that are controlled to a level less stringent than the reference control technology or standard for those emission points. Said Group 1 emission points are identified in paragraphs (c)(3) through (c)(5) of this section. Equations in paragraph (g) of this section shall be used to calculate debits.

(2) Calculate and record monthly credits for all Group 1 and Group 2 emission points that are over-controlled to compensate for the debits. Equations in paragraph (h) of this section shall be used to calculate credits. Emission points and controls that meet the criteria of paragraph (c) of this section may be included in the credit calculation, whereas those described in paragraph (d) of this section shall not be included.

(3) Demonstrate that annual credits calculated according to paragraph (h) of this section are greater than or equal to debits calculated for the same annual compliance period according to paragraph (g) of this section.

(i) The owner or operator may choose to include more than the required number of credit-generating emission points in an emissions average in order to increase the likelihood of being in compliance.

(ii) The initial demonstration in the Emissions Averaging Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debits from the debit-generating emission points must be made under representative operating conditions. After the compliance date, actual operating data will be used for all debit and credit calculations.

(4) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (g) of this section are not more than 1.30 times the credits for the same period calculated according to paragraph (h) of this section. Compliance for the quarter shall be determined based on the ratio of credits and debits from that quarter, with 30 percent more debits than credits allowed on a quarterly basis.

(5) Record and report quarterly and annual credits and debits in the Periodic Reports as specified in § 63.1335(e)(6). Every fourth Periodic Report shall include a certification of compliance with the emissions averaging provisions as required by § 63.1335(e)(6)(vi)(D)(*2*).

(f) Debits and credits shall be calculated in accordance with the methods and procedures specified in paragraphs (g) and (h) of this section, respectively, and shall not include emissions during the following periods:

(1) Emissions during periods of start-up, shutdown, and malfunction, as described in the Start-up, Shutdown, and Malfunction Plan.

(2) Emissions during periods of monitoring excursions, as defined in § 63.1334(d). For these periods, the calculation of monthly credits and debits shall be adjusted as specified in

paragraphs (f)(2)(i) through (f)(2)(iii) of this section.

(i) No credits would be assigned to the credit-generating emission point.

(ii) Maximum debits would be assigned to the debit-generating emission point.

(iii) The owner or operator may demonstrate to the Administrator that full or partial credits or debits should be assigned using the procedures in paragraph (l) of this section.

(g) Debits are generated by the difference between the actual emissions from a Group 1 emission point that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard and the emissions allowed for the Group 1 emission point. Said Group 1 emission points are identified in paragraphs (c)(3) through (c)(5) of this section. Debits shall be calculated as follows:

(1) Source-wide debits shall be calculated using Equation 28 of this subpart. Debits and all terms of Equation 28 of this subpart are in units of megagrams per month.

$$\text{Debits} = \sum_{i=1}^{n}\left(\text{ECPV}_{i\text{ACTUAL}} - (0.02)\text{ECPV}_{iu}\right) + \sum_{j=1}^{n}\left(\text{ECPVS}_{j\text{ACTUAL}} - \text{ECPVS}_{j\text{STD}}\right) + \sum_{i=1}^{n}\left(\text{ES}_{i\text{ACTUAL}} - (b)\text{ES}_{iu}\right) + \sum_{i=1}^{n}\left(\text{EWW}_{i\text{ACTUAL}} - \text{EWW}_{ic}\right) + \sum_{i=1}^{n}\left(\text{EBPV}_{i\text{ACTUAL}} - (0.10)\text{EBPV}_{iu}\right) + \sum_{i=1}^{n}\left(\text{EABV}_{i\text{ACTUAL}} - (0.10)\text{EABV}_{iu}\right) \quad \text{[Eq. 28]}$$

where:

$\text{ECPV}_{i\text{ACTUAL}}$=Emissions from each Group 1 continuous process vent i subject to § 63.1315 that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $\text{ECPV}_{i\text{ACTUAL}}$ is calculated according to paragraph (g)(2) of this section.

$(0.02)\text{ECPV}_{iu}$=Emissions from each Group 1 continuous process vent i subject to § 63.1315 if the applicable reference control technology had been applied to the uncontrolled emissions. ECPV_{iu} is calculated according to paragraph (g)(2) of this section.

$\text{ECPVS}_{j\text{ACTUAL}}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source that are uncontrolled or controlled to a level less stringent than the applicable standard. $\text{ECPVS}_{j\text{ACTUAL}}$ is calculated according to paragraph (g)(3) of this section.

$\text{ECPVS}_{j\text{STD}}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions. $\text{ECPVS}_{j\text{STD}}$ is calculated according to paragraph (g)(3) of this section.

$\text{ES}_{i\text{ACTUAL}}$=Emissions from each Group 1 storage vessel i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard. $\text{ES}_{i\text{ACTUAL}}$ is calculated according to paragraph (g)(4) of this section.

$(\text{BL})\text{ES}_{iu}$=Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. ES_{iu} is calculated according to paragraph (g)(4) of this section. For calculating emissions, BL=0.05 for each Group 1 storage vessel i subject to § 63.1314(a); and BL=0.02 for each storage vessel i subject to § 63.1314(c).

$\text{EWW}_{i\text{ACTUAL}}$=Emissions from each Group 1 wastewater stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $\text{EWW}_{i\text{ACTUAL}}$ is calculated according to paragraph (g)(5) of this section.

EWW_{ic}=Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. EWW_{ic} is calculated according to paragraph (g)(5) of this section.

$\text{EBPV}_{i\text{ACTUAL}}$=Emissions from each Group 1 batch process vent i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $\text{EBPVi}_{i\text{ACTUAL}}$ is calculated according to paragraph (g)(6) of this section.

$(0.10)\text{EBPV}_{iu}$=Emissions from each Group 1 batch process vent i if the applicable reference control technology had been applied to the uncontrolled emissions. EBPV_{iu} is calculated according to paragraph (g)(6) of this section.

$\text{EABV}_{i\text{ACTUAL}}$=Emissions from each Group 1 aggregate batch vent stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $\text{EBPVi}_{i\text{ACTUAL}}$ is calculated according to paragraph (g)(7) of this section.

$(0.10)\text{EABV}_{iu}$=Emissions from each Group 1 aggregate batch vent stream i if the applicable reference control technology had been applied to the uncontrolled emissions. EBPV_{iu} is calculated according to paragraph (g)(7) of this section.

n=The number of emission points being included in the emissions average.

(2) Emissions from continuous process vents subject to § 63.1315 shall be calculated as follows:

(i) For purposes of determining continuous process vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be after the final product recovery device, if any recovery devices are present; before any control device (for continuous process vents, recovery devices shall not be considered control devices); and before discharge to the atmosphere. Method 1 or 1A, 40 CFR

part 60, appendix A, shall be used for selection of the sampling site.

(ii) $ECPV_{iu}$ for each continuous process vent i shall be calculated using Equation 29 of this subpart.

$$ECPV_{iu} = \left(2.494 \times 10^{-9}\right) Qh \left(\sum_{j=1}^{n} C_j M_j\right) \quad [Eq. 29]$$

where:

$ECPV_{iu}$=Uncontrolled continuous process vent emission rate from continuous process vent i, megagrams per month.

Q=Vent stream flow rate, dry standard cubic meters per minute, measured using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present in the continuous process vent, hours per month.

Cj=Concentration, parts per million by volume, dry basis, of organic HAP j as measured by Method 18, 40 CFR part 60, appendix A.

Mj=Molecular weight of organic HAP j, gram per gram-mole.

n=Number of organic HAP in stream.

(A) The values of Q and Cj shall be determined during a performance test conducted under representative operating conditions. The values of Q and Cj shall be established in the Notification of Compliance Status and must be updated as provided in paragraph (g)(2)(ii)(B) of this section.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q and Cj are no longer representative, a new performance test shall be conducted to determine new representative values of Q and Cj. These new values shall be used to calculate debits and credits from the time of the change forward, and the new values shall be reported in the next Periodic Report.

(iii) The following procedures and equations shall be used to calculate $ECPV_{iACTUAL}$:

(A) If the continuous process vent is not controlled by a control device or pollution prevention measure, $ECPV_{iACTUAL}$=$ECPV_{iu}$, where $ECPV_{iu}$ is calculated according to the procedures in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(B) If the continuous process vent is controlled using a control device or a pollution prevention measure achieving less than 98 percent reduction, calculate $ECPV_{iACTUAL}$ using Equation 30 of this subpart.

$$ECPV_{iACTUAL} = ECPV_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [Eq. 30]$$

(*1*) The percent reduction shall be measured according to the procedures in § 63.116 if a combustion control device is used. For a flare meeting the criteria in § 63.116(a), or a boiler or process heater meeting the criteria in § 63.116(b), the percent reduction shall be 98 percent. If a noncombustion control device is used, percent reduction shall be demonstrated by a performance test at the inlet and outlet of the device, or, if testing is not feasible, by a control design evaluation and documented engineering calculations.

(*2*) For determining debits from Group 1 continuous process vents, product recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating $ECPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final product recovery device. However, as provided in § 63.113(a)(3), a Group 1 continuous process vent may add sufficient product recovery to raise the TRE index value above 1.0 or, for Group 1 continuous process vents at an existing affected source producing MBS, above 3.7, thereby becoming a Group 2 continuous process vent. Such a continuous process vent would not be a Group 1 continuous process vent and would, therefore, not be included in determining debits under this paragraph (g)(2)(iii)(B)(*2*).

(*3*) Procedures for calculating the percent reduction of pollution prevention measures are specified in paragraph (j) of this section.

(3) Emissions from continuous process vents located in the collection of process sections within the affected source subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) shall be calculated as follows:

(i) The total organic HAP emissions from continuous process vents located in the collection of process sections j within the affected source, $ECPVS_{jACTUAL}$, shall be calculated as follows. The procedures in paragraph (g)(2)(iii) of this section shall be used to determine the organic HAP emissions for each individual continuous process vent, except that paragraph (g)(2)(iii)(B)(*2*) of this section shall not apply and the sampling site shall be after those recovery devices installed as part of normal operation; before any add-on control devices (i.e., those required by regulation); and prior to discharge to the atmosphere. Then, individual continuous process vent emissions shall be summed to determine $ECPVS_{jACTUAL}$.

(ii)(A) ECPVSjstd shall be calculated using Equation 31 of this subpart.

$$ECPVS_{jstd} = \left(EF_{std}\right)\left(PP_j\right) \quad [Eq. 31]$$

where:

$ECPVS_{jstd}$=Emissions if the applicable standard had been applied to the uncontrolled emissions, megagrams per month.

EF_{std}=0.000018 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316(b)(1)(i).

=0.00002 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316 (b)(1)(ii) or (b)(2)(ii).

=0.00004 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316(b)(2)(i).

=0.0000036 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316(c)(1).

PPj=Polymer produced, Mg/month, for the collection of process sections j within the affected source, as calculated according to paragraph (g)(3)(ii)(B) of this section.

(B) The amount of polymer produced, Mg per month, for the collection of process sections j within the affected source shall be determined by determining the weight of polymer pulled from the process line(s) during a 30-day period. The polymer produced shall be determined by direct measurement or by an alternate methodology, such as materials balance. If an alternate methodology is used, a description of the methodology, including all procedures, data, and assumptions shall be submitted as part of the Emissions Averaging Plan required by § 63.1335(e)(4).

(C) Alternatively, $ECPVS_{jad}$ for continuous process vents located in the collection of process sections within the affected source subject to § 63.1316(c)(1) may be calculated using the procedures in paragraph (g)(2)(i) and (g)(2)(ii) of this section to determine the organic HAP emissions for each individual continuous process vent, except that the sampling site shall be after recovery devices installed as part of normal operation; before any add-on control devices (i.e., those required by regulation); and prior to discharge to the atmosphere. Then, individual continuous process vent emissions shall be summed and multiplied by 0.02 to determine $ECPVS_{jad}$.

(4) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(g)(3).

(5) Emissions from wastewater streams shall be calculated using the procedures in § 63.150(g)(5).

(6) Emissions from batch process vents shall be calculated as follows:

(i) $EBPV_{iu}$ for each batch process vent i shall be calculated using the procedures specified in § 63.1323(b).

(ii) The following procedures and equations shall be used to determine $EBPV_{iACTUAL}$:

(A) If the batch process vent is not controlled by a control device or pollution prevention measure, $EBPV_{iACTUAL}=EBPV_{iu}$, where $EBPV_{iu}$ is calculated using the procedures in § 63.1323(b).

(B) If the batch process vent is controlled using a control device or a pollution prevention measure achieving less than 90 percent reduction for the batch cycle, calculate $EBPV_{iACTUAL}$ using Equation 32 of this subpart, where percent reduction is for the batch cycle.

$$EBPV_{iACTUAL} = EBPV_{iu}\left(1-\frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 32]}$$

(1) The percent reduction for the batch cycle shall be calculated according to the procedures in § 63.1325(c)(2).

(2) The percent reduction for control devices shall be calculated according to the procedures in § 63.1325 (c)(2)(i) through (c)(2)(iii).

(3) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(7) Emissions from aggregate batch vent streams shall be calculated as follows:

(i) For purposes of determining aggregate batch vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be before any control device and before discharge to the atmosphere. Method 1 or 1A, 40 CFR part 60, appendix A, shall be used for selection of the sampling site.

(ii) $EABV_{iu}$ for each aggregate batch vent stream i shall be calculated using Equation 33 of this subpart.

$$EABV_{iu} = \left(2.494\times10^{-9}\right)Qh\left(\sum_{j=1}^{n} C_j M_j\right) \quad \text{[Eq. 33]}$$

where:

$EABV_{iu}$=Uncontrolled aggregate batch vent stream emission rate from aggregate batch vent stream i, megagrams per month.

Q=Vent stream flow rate, dry standard cubic meters per minute, measured using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present from the aggregate batch vent stream, hours per month.

C_j=Concentration, parts per million by volume, dry basis, of organic HAP j as measured by Method 18, 40 CFR part 60, appendix A.

M_j=Molecular weight of organic HAP j, gram per gram-mole.

n=Number of organic HAP in the stream.

(A) The values of Q and C_j shall be determined during a performance test conducted under representative operating conditions. The values of Q and C_j shall be established in the Notification of Compliance Status and must be updated as provided in paragraph (g)(7)(ii)(B) of this section.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q and C_j are no longer representative, a new performance test shall be conducted to determine new representative values of Q and C_j. These new values shall be used to calculate debits and credits from the time of the change forward, and the new values shall be reported in the next Periodic Report.

(iii) The following procedures and equations shall be used to calculate $EABV_{iACTUAL}$:

(A) If the aggregate batch vent stream is not controlled by a control device or pollution prevention measure, $EABV_{iACTUAL} = EABV_{iu}$, where $EABV_{iu}$ is calculated according to the procedures in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(B) If the aggregate batch vent stream is controlled using a control device or a pollution prevention measure achieving less than 90 percent reduction, calculate $EABV_{iACTUAL}$ using Equation 34 of this subpart.

$$EABV_{iACTUAL} = EABV_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 34]}$$

(1) The percent reduction for control devices shall be determined according to the procedures in § 63.1325(e).

(2) The percent reduction for pollution prevention measures shall be calculated according to the procedures specified in paragraph (j) of this section.

(h) Credits are generated by the difference between emissions that are allowed for each Group 1 and Group 2 emission point and the actual emissions from that Group 1 or Group 2 emission point that has been controlled after November 15, 1990 to a level more stringent than what is required by this subpart or any other State or Federal rule or statute. Said Group 1 and Group 2 emission points are identified in paragraphs (c)(1) through (c)(5) of this section. Credits shall be calculated using Equation 35 of this subpart.

(1) Sourcewide credits shall be calculated using Equation 35 of this subpart.

$$\begin{aligned}
\text{Credits} = {} & D\sum_{i=1}^{n}\left((0.02)ECPV1_{iu} - ECPV1_{iACTUAL}\right) \\
& + D\sum_{j=1}^{n}\left(ECPVS1_{jSTD} - ECPVS1_{jACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(ECPV2_{iBASE} - ECPV2_{iACTUAL}\right) \\
& + D\sum_{j=1}^{m}\left(ECPVS2_{jBASE} - ECPVS2_{jACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((BL)ES1_{iu} - ES1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ES2_{iBASE} - ES2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left(EWW1_{ic} - EWW1_{iACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(EWW2_{iBASE} - EWW2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((0.10)EBPV1_{iu} - EBPV1_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((0.10)EABV1_{iu} - EABV1_{iACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(EBPV2_{iBASE} - EBPV2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(EABV2_{iBASE} - EABV2_{iACTUAL}\right)
\end{aligned} \quad \text{[Eq. 35]}$$

Credits and all terms of Equation 35 of this subpart are in units of megagrams per month, the baseline date is November 15, 1990.

where:

D=Discount factor=0.9 for all credit generating emission points except those controlled by a pollution prevention measure; discount factor=1.0 for each credit generating emission point controlled by a pollution prevention measure (i.e., no discount provided).

$ECPV1_{iACTUAL}$=Emissions for each Group 1 continuous process vent i subject to § 63.1315 that is controlled to a level more stringent than the reference control technology. $ECPV1_{iACTUAL}$ is calculated according to paragraph (h)(2) of this section.

$(0.02)ECPV1_{iu}$=Emissions from each Group 1 continuous process vent i subject to § 63.1315 if the applicable reference control technology had been applied to the uncontrolled emissions. $ECPV1_{iu}$ is calculated according to paragraph (h)(2) of this section.

$ECPVS1_{jSTD}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions. $ECPVS1_{jSTD}$ is calculated according to paragraph (h)(3) of this section.

$ECPVS1_{jACTUAL}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source that are controlled to a level more stringent than the applicable standard. $ECPVS1_{jACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ECPV2_{iACTUAL}$=Emissions from each Group 2 continuous process vent i subject to § 63.1315 that is controlled. $ECPV2_{iACTUAL}$ is calculated according to paragraph (h)(2) of this section.

$ECPV2_{iBASE}$=Emissions from each Group 2 continuous process vent i subject to § 63.1315 at the baseline date. $ECPV2_{iBASE}$ is calculated according to paragraph (h)(2) of this section.

$ECPVS2_{jBASE}$=Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source at the baseline date. $ECPVS2_{jBASE}$ is calculated according to paragraph (h)(3) of this section.

$ECPVS2_{jACTUAL}$=Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source that are controlled. $ECPVS2_{jACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ES1_{iACTUAL}$=Emissions from each Group 1 storage vessel i that is controlled to a level more stringent than the applicable reference control technology or standard. $ES1_{iACTUAL}$ is calculated according to paragraph (h)(4) of this section.

(BL)$ES1_{iu}$=Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (h)(4) of this section. For calculating these emissions, BL=0.05 for each Group 1 storage vessel i subject to § 63.1314(a); and BL=0.02 for each storage vessel i subject to § 63.1314(c).

$ES2_{iACTUAL}$=Emissions from each Group 2 storage vessel i that is controlled. $ES2_{iACTUAL}$ is calculated according to paragraph (h)(4) of this section.

$ES2_{iBASE}$=Emissions from each Group 2 storage vessel i at the baseline date. $ES2_{iBASE}$ is calculated according to paragraph (h)(4) of this section.

$EWW1_{iACTUAL}$=Emissions from each Group 1 wastewater stream i that is controlled to a level more stringent than the reference control technology. $EWW1_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW1_{ic}$=Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. $EWW1_{ic}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iACTUAL}$=Emissions from each Group 2 wastewater stream i that is controlled. $EWW2_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iBASE}$=Emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iBASE}$ is calculated according to paragraph (h)(5) of this section.

(0.10)$EBPV1_{iu}$=Emissions from each Group 1 batch process vent i if the applicable reference control technology had been applied to the uncontrolled emissions. $EBPV1_{iu}$ is calculated according to paragraph (h)(6) of this section.

$EBPV1_{iACTUAL}$=Emissions from each Group 1 batch process vent i that is controlled to a level more stringent than the reference control technology. $EBPV1_{iACTUAL}$ is calculated according to paragraph (h)(6) of this section.

(0.10)$EABV1_{iu}$=Emissions from each Group 1 aggregate batch vent stream i if the applicable reference control technology had been applied to the uncontrolled emissions. $EABV1_{iu}$ is calculated according to paragraph (h)(7) of this section.

$EABV1_{iACTUAL}$=Emissions from each Group 1 aggregate batch vent stream i that is controlled to a level more stringent than the reference control technology. $EABV1_{iACTUAL}$ is calculated according to paragraph (h)(7) of this section.

$EBPV2_{iBASE}$=Emissions from each Group 2 batch process vent i at the baseline date. $EBPV2_{iBASE}$ is calculated according to paragraph (h)(6) of this section.

$EBPV2_{iACTUAL}$=Emissions from each Group 2 batch process vent i that is controlled. $EBPV2_{iACTUAL}$ is calculated according to paragraph (h)(6) of this section.

$EABV2_{iBASE}$=Emissions from each Group 2 aggregate batch vent stream i at the baseline date. $EABV2_{iBASE}$ is calculated according to paragraph (h)(7) of this section.

$EABV2_{iACTUAL}$=Emissions from each Group 2 aggregate batch vent stream i that is controlled. $EABV2_{iACTUAL}$ is calculated according to paragraph (h)(7) of this section.

n=Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

m=Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

(i) Except as specified in paragraph (h)(1)(iv) of this section, for an emission point controlled using a reference control technology, the percent reduction for calculating credits shall be no greater than the nominal efficiency associated with the reference control technology, unless a higher nominal efficiency is assigned as specified in paragraph (h)(1)(ii) of this section.

(ii) For an emission point controlled to a level more stringent than the reference control technology, the nominal efficiency for calculating credits shall be assigned as described in paragraph (i) of this section. A reference control technology may be approved for use in a different manner and assigned a higher nominal efficiency according to the procedures in paragraph (i) of this section.

(iii) For an emission point controlled using a pollution prevention measure, the nominal efficiency for calculating credits shall be as determined as described in paragraph (j) of this section.

(iv) For Group 1 and Group 2 batch process vents and Group 1 and Group 2 aggregate batch vent streams, the percent reduction for calculating credits shall be the percent reduction determined according to the procedures in paragraphs (h)(6)(ii) and (h)(6)(iii) of this section for batch process vents and paragraphs (h)(7)(ii) and (h)(7)(iii) of this section for aggregate batch vent streams.

(2) Emissions from continuous process vents subject to § 63.1315 shall be determined as follows:

(i) Uncontrolled emissions from Group 1 continuous process vents ($ECPV1_{iu}$) shall be calculated according to the procedures and equation for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(ii) Actual emissions from Group 1 continuous process vents controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction ($ECPV1_{iACTUAL}$) shall be calculated using Equation 36 of this subpart.

$$ECPV1_{iACTUAL} = ECPV1_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right) \quad [Eq. 36]$$

(iii) The following procedures shall be used to calculate actual emissions from Group 2 continuous process vents ($ECPV2_{iACTUAL}$):

(A) For a Group 2 continuous process vent controlled by a control device, a recovery device applied as a pollution prevention project, or a pollution prevention measure, where the control achieves a percent reduction less than or equal to 98 percent reduction, use Equation 37 of this subpart.

$$ECPV2_{iACTUAL} = ECPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [Eq. 37]$$

(*1*) $ECPV2_{iu}$ shall be calculated according to the equations and procedures for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section, except as provided in paragraph (h)(2)(iii)(A)(*3*) of this section.

(*2*) The percent reduction shall be calculated according to the procedures in paragraphs (g)(2)(iii)(B)(*1*) through (g)(2)(iii)(B)(*3*) of this section, except as provided in paragraph (h)(2)(iii)(A)(*4*) of this section.

(*3*) If a recovery device was added as part of a pollution prevention project, $ECPV2_{iu}$ shall be calculated prior to that recovery device. The equation for $ECPV_{iu}$ in paragraph (g)(2)(ii) of this section shall be used to calculate $ECPV2_{iu}$; however, the sampling site for measurement of vent stream flow rate and organic HAP concentration shall be at the inlet of the recovery device.

(*4*) If a recovery device was added as part of a pollution prevention project, the percent reduction shall be demonstrated by conducting a performance test at the inlet and outlet of that recovery device.

(B) For a Group 2 continuous process vent controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent reduction, use Equation 38 of this subpart.

$$ECPV2_{iACTUAL} = ECPV2_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right) \quad [Eq. 38]$$

(iv) Emissions from Group 2 continuous process vents at baseline shall be calculated as follows:

(A) If the continuous process vent was uncontrolled on November 15, 1990, $ECPV2_{iBASE}=ECPV2_{iu}$ and shall be calculated according to the procedures and equation for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(B) If the continuous process vent was controlled on November 15, 1990, use Equation 39 of this subpart.

$$ECPV2_{iBASE} = ECPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad [Eq. 39]$$

(*1*) $ECPV2_{iu}$ is calculated according to the procedures and equation for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(*2*) The percent reduction shall be calculated according to the procedures specified in paragraphs (g)(2)(iii)(B)(*1*) through (g)(2)(iii)(B)(*3*) of this section.

(C) If a recovery device was added as part of a pollution prevention project initiated after November 15, 1990, $ECPV2_{iBASE}=ECPV2_{iu}$, where $ECPV2_{iu}$ is calculated according to paragraph (h)(2)(iii)(A)(*3*) of this section.

(3) Emissions from continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) shall be determined as follows:

(i) Emissions from Group 1 continuous process vents located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions ($ECPVS1_{jstd}$) shall be calculated according to paragraph (g)(3)(ii) of this section.

(ii) Actual emissions from Group 1 continuous process vents located in the collection of process sections j within the affected source controlled to a level more stringent than the applicable standard ($ECPVS1_{jACTUAL}$) shall be calculated using the procedures in paragraphs (g)(3)(ii)(A) and (g)(3)(ii)(B) of this section, except that the actual emission level, Mg organic HAP/Mg of product, shall be used as EF_{std} in Equation 31 of this subpart. Further, $ECPVS1_{jACTUAL}$ for continuous process vents subject to § 63.1316(c)(1) controlled in accordance with § 63.1316(c)(1)(iii) shall be calculated using the procedures in paragraph

(h)(2)(ii) of this section for individual continuous process vents and then summing said emissions to get $ECPVS1_{iACTUAL}$, except that the sampling site shall be after recovery devices installed as part of normal operation; before any add-on control devices (i.e., those required by regulation); and prior to discharge to the atmosphere.

(iii) Actual emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source ($ECPVS2_{jACTUAL}$) shall be calculated using the procedures in paragraphs (g)(3)(ii)(A) and (g)(3)(ii)(B) of this section, except that the actual emission level, Mg organic HAP/Mg of product, shall be used as EF_{aij} in Equation 31 of this subpart.

(iv) Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source at baseline ($ECPVS2_{jBASE}$) shall be calculated using the procedures in paragraphs (g)(3)(ii)(A) and (g)(3)(ii)(B) of this section, except that the actual emission level, Mg organic HAP/Mg of product, at baseline shall be used as EF_{aij} in Equation 31 of this subpart.

(4)(i) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(h)(3).

(ii) Actual emissions from Group 1 storage vessels at an existing affected source producing ASA/AMSAN subject to § 63.1314(c) using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction shall be calculated using the procedures specified in § 63.150(h)(3)(ii).

(5) Emissions from wastewater streams shall be calculated using the procedures specified in § 63.150(h)(5).

(6) Emissions from batch process vents shall be determined as follows:

(i) Uncontrolled emissions from Group 1 batch process vents ($EBPV1_{iu}$) shall be calculated using the procedures § 63.1323(b).

(ii) Actual emissions from Group 1 batch process vents controlled to a level more stringent than the reference control technology ($EBPV1_{iACTUAL}$) shall be calculated using Equation 40 of this subpart, where percent reduction is for the batch cycle.

$$EBPV1_{iACTUAL} = EBPV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 40]}$$

(A) The percent reduction for the batch cycle shall be calculated according to the procedures in § 63.1325(c)(2).

(B) The percent reduction for control devices shall be determined according to the procedures in § 63.1325(c)(2)(i) through (c)(2)(iii).

(C) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(iii) Actual emissions from Group 2 batch process vents ($EBPV2_{iACTUAL}$) shall be calculated using Equation 41 of this subpart and the procedures in paragraphs (h)(6)(ii)(A) through (h)(6)(ii)(C) of this section. $EBPV2_{iu}$ shall be calculated using the procedures specified in § 63.1323(b).

$$EBPV2_{iACTUAL} = EBPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 41]}$$

(iv) Emissions from Group 2 batch process vents at baseline ($EBPV2_{iBASE}$) shall be calculated as follows:

(A) If the batch process vent was uncontrolled on November 15, 1990, $EBPV2_{iBASE} = EBPV2_{iu}$ and shall be calculated using the procedures specified in § 63.1323(b).

(B) If the batch process vent was controlled on November 15, 1990, use Equation 42 of this subpart and the procedures in paragraphs (h)(6)(ii)(A) through (h)(6)(ii)(C) of this section. $EBPV2_{iu}$ shall be calculated using the procedures specified in § 63.1323(b).

$$EBPV2_{iBASE} = EBPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 42]}$$

(7) Emissions from aggregate batch vent streams shall be determined as follows:

(i) Uncontrolled emissions from Group 1 aggregate batch vent streams ($EABV1_{iu}$) shall be calculated according to the procedures and equation for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(ii) Actual emissions from Group 1 aggregate batch vent streams controlled to a level more stringent than the reference control technology ($EABV1_{iACTUAL}$) shall be calculated using Equation 43 of this subpart.

$$EABV1_{iACTUAL} = EABV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 43]}$$

(A) The percent reduction for control devices shall be determined according to the procedures in § 63.1325(e).

(B) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(iii) Actual emissions from Group 2 aggregate batch vent streams ($EABV2_{iACTUAL}$) shall be calculated using Equation 44 of this subpart and the procedures in paragraphs (h)(7)(ii)(A) through (h)(7)(ii)(B) of this section. $EABV2_{iu}$ shall be calculated according to the equations and procedures for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

$$EABV2_{iACTUAL} = EABV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 44]}$$

(iv) Emissions from Group 2 aggregate batch vent streams at baseline shall be calculated as follows:

(A) If the aggregate batch vent stream was uncontrolled on November 15, 1990, $EABV2_{iBASE}=EABV2_{iu}$ and shall be calculated according to the procedures and equation for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(B) If the aggregate batch vent stream was controlled on November 15, 1990, use Equation 45 of this subpart and the procedures in paragraphs (h)(7)(ii)(A) through (h)(7)(ii)(B) of this section. $EABV2_{iu}$ shall be calculated according to the equations and procedures for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

$$EABV2_{iBASE} = EABV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 45]}$$

(i) The following procedures shall be followed to establish nominal efficiencies for emission controls for storage vessels, continuous process vents, and process wastewater streams. The procedures in paragraphs (i)(1) through (i)(6) of this section shall be followed for control technologies that are different in use or design from the reference control technologies and achieve greater percent reductions than the percent efficiencies assigned to the reference control technologies in § 63.111.

(1) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology, and the different control technology will be used in more than three applications at a single plant-site, the owner or operator shall submit the information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this section to the Director of the EPA Office of Air Quality Planning and Standards in writing:

(i) Emission stream characteristics of each emission point to which the control technology is or will be applied including the kind of emission point, flow, organic HAP concentration, and all other stream characteristics necessary to design the control technology or determine its performance.

(ii) Description of the control technology including design specifications.

(iii) Documentation demonstrating to the Administrator's satisfaction the control efficiency of the control technology. This may include performance test data collected using an appropriate EPA Method or any other method validated according to Method 301 of appendix A of this part. If it is infeasible to obtain test data, documentation may include a design evaluation and calculations. The engineering basis of the calculation procedures and all inputs and assumptions made in the calculations shall be documented.

(iv) A description of the parameter or parameters to be monitored to ensure that the control technology will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) The Administrator shall determine within 120 operating days whether an application presents sufficient information to determine nominal efficiency. The Administrator reserves the right to request specific data in addition to the items listed in paragraph (i)(1) of this section.

(3) The Administrator shall determine within 120 operating days of the submittal of sufficient data whether a control technology shall have a nominal efficiency and the level of that nominal efficiency. If, in the Administrator's judgment, the control technology achieves a level of emission reduction greater than the reference control technology for a particular kind of emission point, the Administrator will publish a **Federal Register** notice establishing a nominal efficiency for the control technology.

(4) The Administrator may grant permission to take emission credits for use of the control technology. The Administrator may also impose requirements that may be necessary to ensure operation and maintenance to achieve the specified nominal efficiency.

(5) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology and the different control technology will be used in no more than three applications at a single plant site, the information listed in paragraphs (i)(1)(i) through (i)(1)(iv) of this section can be submitted to the permitting authority for the affected source for approval instead of the Administrator.

(i) In these instances, use and conditions for use of the control technology can be approved by the permitting authority as part of an operating permit application or modification. The permitting authority shall follow the procedures specified in paragraphs (i)(2) through (i)(4) of this section except that, in these instances, a **Federal Register** notice is not required to establish the nominal efficiency for the different technology.

(ii) If, in reviewing the application, the permitting authority believes the control technology has broad applicability for use by other affected sources, the permitting authority shall submit the information provided in the application to the Director of the EPA Office of Air Quality Planning and Standards. The Administrator shall

review the technology for broad applicability and may publish a **Federal Register** notice; however, this review shall not affect the permitting authority's approval of the nominal efficiency of the control technology for the specific application.

(6) If, in reviewing an application for a control technology for an emission point, the Administrator or permitting authority determines the control technology is not different in use or design from the reference control technology, the Administrator or permitting authority shall deny the application.

(j) The following procedures shall be used for calculating the efficiency (percent reduction) of pollution prevention measures for storage vessels, continuous process vents, batch process vents, aggregate batch vent streams, and wastewater streams:

(1) A pollution prevention measure is any practice that meets the criteria of paragraphs (j)(1)(i) and (j)(1)(ii) of this section.

(i) A pollution prevention measure is any practice that results in a lesser quantity of organic HAP emissions per unit of product released to the atmosphere prior to out-of-process recycling, treatment, or control of emissions, while the same product is produced.

(ii) Pollution prevention measures may include: substitution of feedstocks that reduce organic HAP emissions; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; housekeeping measures; and in-process recycling that returns waste materials directly to production as raw materials. Production cutbacks do not qualify as pollution prevention.

(2) The emission reduction efficiency of pollution prevention measures implemented after November 15, 1990, can be used in calculating the actual emissions from an emission point in the debit and credit equations in paragraphs (g) and (h) of this section.

(i) For pollution prevention measures, the percent reduction used in the equations in paragraphs (g)(2) through (g)(7) of this section and paragraphs (h)(2) through (h)(7) of this section is the percent difference between the monthly organic HAP emissions for each emission point after the pollution prevention measure for the most recent month versus monthly emissions from the same emission point before the pollution prevention measure, adjusted by the volume of product produced during the two monthly periods.

(ii) Equation 46 of this subpart shall be used to calculate the percent reduction of a pollution prevention measure for each emission point.

$$\text{Percent reduction} = \frac{E_B - \frac{(E_{pp})(P_B)}{P_{pp}}}{E_B} 100\% \qquad \text{[Eq. 46]}$$

where:

Percent reduction=Efficiency of pollution prevention measure (percent organic HAP reduction).

E_B=Monthly emissions before the pollution prevention measure, megagrams per month, determined as specified in paragraphs (j)(2)(ii)(A), (j)(2)(ii)(B), and (j)(2)(ii)(C) of this section.

E_{pp}=Monthly emissions after the pollution prevention measure, megagrams per month, as determined for the most recent month, determined as specified in either paragraphs (j)(2)(ii)(D) or (j)(2)(ii)(E) of this section.

P_B=Monthly production before the pollution prevention measure, megagrams per month, during the same period over which E_B is calculated.

P_{pp}=Monthly production after the pollution prevention measure, megagrams per month, as determined for the most recent month.

(A) The monthly emissions before the pollution prevention measure, E_B, shall be determined in a manner consistent with the equations and procedures in paragraphs (g)(2) and (g)(3) of this section for continuous process vents, paragraph (g)(4) of this section for storage vessels, paragraph (g)(6) of this section for batch process vents, and paragraph (g)(7) of this section for aggregate batch vent streams.

(B) For wastewater, E_B shall be calculated using Equation 47 of this subpart.

$$E_B = \sum_{i=1}^{n}\left[\left(6.0 * 10^{-8}\right) Q_{Bi}\, H_{Bi} \sum_{m=1}^{s} Fe_m\, HAP_{Bim}\right] \qquad \text{[Eq. 47]}$$

where:

n=Number of wastewater streams.

Q_{Bi}=Average flow rate for wastewater stream i before the pollution prevention measure, defined and determined according to § 63.144(c)(3), liters per minute, before implementation of the pollution prevention measure.

H_{Bi}=Number of hours per month that wastewater stream i was discharged before the pollution prevention measure, hours per month.

s=Total number of organic HAP in wastewater stream i.

Fe_m=Fraction emitted of organic HAP m in wastewater from Table 9 of subpart G of this part, dimensionless.

HAP_{Bim}=Average concentration of organic HAP m in wastewater stream i, defined and determined according to paragraph (g)(5)(i) of this section, before the pollution prevention measure, parts per million by weight, as measured before the implementation of the pollution measure.

(C) If the pollution prevention measure was implemented prior to September 12, 1996 records may be used to determine E_B.

(D) The monthly emissions after the pollution prevention measure, E_{pp}, may be determined during a performance test or by a design evaluation and documented engineering calculations. Once an emissions-to-production ratio has been established, the ratio can be

used to estimate monthly emissions from monthly production records.

(E) For wastewater, E_{pp} shall be calculated using Equation 48 of this subpart and n, Q_{ppi}, H_{ppi}, s, Fe_m, and HAP_{ppim} are defined and determined as described in paragraph (j)(2)(ii)(B) of this section, except that Q_{ppi}, H_{ppi}, and HAP_{ppim} shall be determined after the pollution prevention measure has been implemented.

$$E_{pp} = \sum_{i=1}^{n}\left[\left(6.0*10^{-6}\right)Q_{ppi}\ H_{ppi}\sum_{m=1}^{s}Fe_m\ HAP_{ppim}\right] \quad \text{[Eq. 48]}$$

(iii) All equations, calculations, test procedures, test results, and other information used to determine the percent reduction achieved by a pollution prevention measure for each emission point shall be fully documented.

(iv) The same pollution prevention measure may reduce emissions from multiple emission points. In such cases, the percent reduction in emissions for each emission point must be calculated.

(v) For the purposes of the equations in paragraphs (h)(2) through (h)(7) of this section used to calculate credits for emission points controlled more stringently than the reference control technology, the nominal efficiency of a pollution prevention measure is equivalent to the percent reduction of the pollution prevention measure. When a pollution prevention measure is used, the owner or operator of an affected source is not required to apply to the Administrator for a nominal efficiency and is not subject to paragraph (i) of this section.

(k) The owner or operator must demonstrate that the emissions from the emission points proposed to be included in the emissions average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330.

(1) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the Administrator.

(i) The Administrator may require owners and operators to use specific methodologies and procedures for making a hazard or risk determination.

(ii) The demonstration and approval of hazard or risk equivalency shall be made according to any guidance that the Administrator makes available for use.

(2) Owners and operators shall provide documentation demonstrating the hazard or risk equivalency of their proposed emissions average in their operating permit application or in their Emissions Averaging Plan if an operating permit application has not yet been submitted.

(3) An Emissions Averaging Plan that does not demonstrate hazard or risk equivalency to the satisfaction of the Administrator shall not be approved. The Administrator may require such adjustments to the Emissions Averaging Plan as are necessary in order to ensure that the emissions average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled according to §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330.

(4) A hazard or risk equivalency demonstration must:

(i) Be a quantitative, bona fide chemical hazard or risk assessment;

(ii) Account for differences in chemical hazard or risk to human health or the environment; and

(iii) Meet any requirements set by the Administrator for such demonstrations.

(l) For periods of parameter monitoring excursions, an owner or operator may request that the provisions of paragraphs (l)(1) through (l)(4) of this section be followed instead of the procedures in paragraphs (f)(3)(i) and (f)(3)(ii) of this section.

(1) The owner or operator shall notify the Administrator of monitoring excursions in the Periodic Reports as required in § 63.1335(e)(6).

(2) The owner or operator shall demonstrate that other types of monitoring data or engineering calculations are appropriate to establish that the control device for the emission point was operating in such a fashion to warrant assigning full or partial credits and debits. This demonstration shall be made to the Administrator's satisfaction, and the Administrator may establish procedures of demonstrating compliance that are acceptable.

(3) The owner or operator shall provide documentation of the excursion and the other type of monitoring data or engineering calculations to be used to demonstrate that the control device for the emission point was operating in such a fashion to warrant assigning full or partial credits and debits.

(4) The Administrator may assign full or partial credit and debits upon review of the information provided.

(m) For each emission point included in an emissions average, the owner or operator shall perform testing, monitoring, recordkeeping, and reporting equivalent to that required for Group 1 emission points complying with §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330, as applicable. The specific requirements for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, and wastewater operations that are included in an emissions average for an affected source are identified in paragraphs (m)(1) through (m)(7) of this section.

(1) For each continuous process vent subject to § 63.1315 equipped with a flare, incinerator, boiler, or process heater, as appropriate to the control technique:

(i) Determine whether the continuous process vent is Group 1 or Group 2 according to the procedures specified in § 63.1315;

(ii) Conduct initial performance tests to determine percent reduction according to the procedures specified in § 63.1315; and

(iii) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in § 63.1315.

(2) For each continuous process vent subject to § 63.1315 equipped with a carbon adsorber, absorber, or condenser but not equipped with a control device, as appropriate to the control technique:

(i) Determine the flow rate, organic HAP concentration, and TRE index value according to the procedures specified in § 63.1315; and

(ii) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in § 63.1315.

(3) For continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1):

(i) Determine whether the emissions from the continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections within the affected source are greater than, equal to, or less than 0.12 kg organic HAP per Mg of product according to the procedures specified in § 63.1318(b);

(ii) Determine the emission rate, ER_{HAP}, for each collection of process sections within the affected source according to the procedures specified in § 63.1318(b); and

(iv) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in § 63.1317, § 63.1319, § 63.1320.

(4) For each storage vessel controlled with an internal floating roof, external roof, or a closed vent system with a control device, as appropriate to the control technique:

(i) Perform the monitoring or inspection procedures according to the procedures specified in § 63.1314;

(ii) Perform the reporting and recordkeeping procedures according to the procedures specified in § 63.1314; and

(iii) For closed vent systems with control devices, conduct an initial design evaluation and submit an operating plan according to the procedures specified in § 63.1314.

(5) For wastewater emission points, as appropriate to the control technique:

(i) For wastewater treatment processes, conduct tests according to the procedures specified in § 63.1330;

(ii) Conduct inspections and monitoring according to the procedures specified in § 63.1330;

(iii) Implement a recordkeeping program according to the procedures specified in § 63.1330; and

(iv) Implement a reporting program according to the procedures specified in § 63.1330.

(6) For each batch process vent and aggregate batch vent stream equipped with a control device, as appropriate to the control technique:

(i) Determine whether the batch process vent or aggregate batch vent stream is Group 1 or Group 2 according to the procedures in § 63.1323;

(ii) Conduct performance tests according to the procedures specified in § 63.1325;

(iii) Conduct monitoring according to the procedures specified in § 63.1324; and

(iv) Perform the recordkeeping and reporting procedures according to the procedures specified in §§ 63.1326 and 63.1327.

(7) If an emission point in an emissions average is controlled using a pollution prevention measure or a device or technique for which no monitoring parameters or inspection procedures are required by §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, or 63.1330, the owner or operator shall submit the information specified in § 63.1335(f) for alternate monitoring parameters or inspection procedures in the Emissions Averaging Plan or operating permit application.

(n) Records of all information required to calculate emission debits and credits shall be retained for 5 years.

(o) Precompliance Reports, Emission Averaging Plans, Notifications of Compliance Status, Periodic Reports, and other reports shall be submitted as required by § 63.1335.

§ 63.1333 Additional test methods and procedures.

(a) Performance testing shall be conducted in accordance with § 63.7(a)(3), (d), (e), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (a)(4) of this section and the additions specified in paragraphs (b) through (d) of this section. Sections 63.1314 through 63.1330 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e), except that performance tests shall be conducted at maximum representative operating conditions for the process.

(2) References in § 63.7(g) to the Notification of Compliance Status requirements in § 63.7(h) shall refer to the requirements in § 63.1335(e)(5).

(3) Because the site-specific test plans in § 63.7(c)(3) are not required, § 63.7(h)(4)(ii) is not applicable.

(4) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present during the test.

(b) Each owner or operator of an existing affected source producing MBS complying with § 63.1315(b)(2) shall determine compliance with the mass emission per mass product standard by using Equation 49 of this subpart.

$$ER_{MBS} = \frac{\sum_{i=1}^{n} E_i}{PP_M} \qquad \text{[Eq. 49]}$$

where:

ER_{MBS}=Emission rate of organic HAP or TOC from continuous process vents, kg/Mg product.

E_i=Emission rate of organic HAP or TOC from continuous process vent i as calculated using the procedures specified in § 63.116(c)(4), kg/month.

PP_M=Amount of polymer produced in one month as determined by the procedures specified in § 63.1318(b)(1)(ii), Mg/month.

n=Number of continuous process vents.

When determining E_i, when the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (b)(1) and (b)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume.

(2) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(c) The owner or operator of an affected source, complying with § 63.1322(a)(3) shall determine compliance with the percent reduction requirement using Equation 50 of this subpart.

$$PR = \frac{\left[H_j \sum_{j=1}^{n} (E_i - E_o)j\right] + \sum_{k=1}^{n} H_k E_{ku} + \sum_{l=1}^{n} AE_{unc}}{\left(H_j \sum_{j=1}^{n} E_i\right) + \sum_{k=1}^{n} H_k E_{ku} + \sum_{l=1}^{n} AE_{unc}} (100) \qquad \text{[Eq. 50]}$$

where:

PR=Percent reduction

H_j=Number of operating hours in a year for control device j.

E_i=Mass rate of TOC or total organic HAP at the inlet of control device

j, calculated as specified in § 63.1325(f), kg/hr. This value includes all continuous process vents, batch process vents, and aggregate batch vent streams routed to control device j.

E_o=Mass rate of TOC or total organic HAP at the outlet of control device j, calculated as specified in § 63.1325(f), kg/hr.

H_k=Number of hours of operation during which positive flow is present in uncontrolled continuous process vent or aggregate batch vent stream k, hr/yr.

E_{ku}=Mass rate of TOC or total organic HAP of uncontrolled continuous process vent or aggregate batch vent stream k, calculated as specified in § 63.1325(f)(4), kg/hr.

AE_{unc}=Mass rate of TOC or total organic HAP of uncontrolled batch process vent l, calculated as specified in § 63.1325(f)(4), kg/yr.

n=Number of control devices, uncontrolled continuous process vents and aggregate batch vent streams, and uncontrolled batch process vents. The value of n is not necessarily the same for these three items.

(d) Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301 of appendix A of this part.

§ 63.1334 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each measured parameter using the procedures specified in paragraph (b), (c), or (d) of this section. The procedures specified in paragraph (b) of this section have been approved by the Administrator. The procedures in paragraphs (c) and (d) of this section have not been approved by the Administrator and determination of the parameter monitoring level using the procedures in paragraph (c) or (d) of this section is subject to review and approval by the Administrator. Said determination and supporting documentation shall be included in the Precompliance Report, specified in § 63.1335(e)(3).

(1) The owner or operator shall operate control and recovery devices such that monitored parameters remain above the minimum established level or below the maximum established level.

(2) As specified in § 63.1335(e)(5) and § 63.1335(e)(8), all established levels, along with their supporting documentation and the definition of an operating day, shall be approved as part of and incorporated into the Notification of Compliance Status or operating permit, respectively.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subpart A, F, or G of this part.

(b) *Establishment of parameter monitoring levels based on performance tests.* The procedures specified in paragraphs (b)(1) through (b)(3) of this section shall be used, as applicable, in establishing parameter monitoring levels. Level(s) established under this paragraph (b) shall be based on the parameter values measured during the performance test.

(1) *Storage tanks and wastewater.* The maximum and/or minimum monitoring levels shall be based on the parameter values measured during the performance test, supplemented, if desired, by engineering assessments and/or manufacturer's recommendations.

(2) *Continuous process vents.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour runs. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(3) *Batch process vents.* The monitoring level(s) shall be established using the procedures specified in paragraphs (b)(3)(i) through (b)(3)(ii) of this section, as appropriate. The procedures specified in this paragraph (b)(3) may only be used if the batch emission episodes, or portions thereof, selected to be controlled were tested, and monitoring data were collected, during the entire period in which emissions were vented to the control device, as specified in § 63.1325(c)(1)(i). If the owner or operator chose to test only a portion of the batch emission episode, or portion thereof, selected to be controlled, as specified in § 63.1325(c)(1)(i)(A), the procedures in paragraph (c) of this section must be used.

(i) If more than one batch emission episode or more than one portion of a batch emission episode has been selected to be controlled, a single level for the batch cycle shall be calculated as follows:

(A) During initial compliance testing, the appropriate parameter shall be monitored continuously at all times when batch emission episodes, or portions thereof, selected to be controlled are vented to the control device.

(B) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(C) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled.

(D) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled.

(E) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values measured during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (b)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section.

(iii) The batch cycle shall be defined in the Notification of Compliance Status, as specified in § 63.1335(e)(5). Said definition shall include an identification of each batch emission episode and the information required to determine parameter monitoring compliance for partial batch cycles (i.e., when part of a batch cycle is accomplished during two different operating days).

(4) *Aggregate batch vent streams.* For aggregate batch vent streams, the monitoring level shall be established in accordance with paragraph (b)(2) of this section.

(c) *Establishment of parameter monitoring levels based on performance tests, engineering assessments, and/or manufacturer's recommendations.* As required in paragraph (a) of this section,

the information specified in paragraphs (c)(2) and (c)(3) of this section shall be provided in the Precompliance Report.

(1) Parameter monitoring levels established under this paragraph (c) shall be based on the parameter values measured during the performance test supplemented by engineering assessments and manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(2) The specific level of the monitored parameter(s) for each emission point.

(3) The rationale for the specific level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control or recovery device.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* If a performance test is not required by this subpart for a control or recovery device, the maximum or minimum level may be based solely on engineering assessments and/or manufacturer's recommendations. As required in paragraph (a) of this section, the determined level and all supporting documentation shall be provided in the Precompliance Report.

(e) *Compliance determinations.* The provisions of this paragraph (e) apply only to emission points and control or recovery devices for which continuous monitoring is required under this subpart.

(1) The parameter monitoring data for storage vessels, process vents, process wastewater streams, and emission points included in emissions averages that are required to perform continuous monitoring shall be used to determine compliance for the monitored control or recovery devices.

(2) Except as provided in paragraphs (e)(3) and (g) of this section, for each excursion, as defined in paragraph (f) of this section, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

(3) If the daily average value of a monitored parameter is above the maximum level or below the minimum level established, or if monitoring data cannot be collected during monitoring device calibration check or monitoring device malfunction, but the affected source is operated during the periods of start-up, shutdown, or malfunction in accordance with the affected source's Start-up, Shutdown, and Malfunction Plan, then the event shall not be considered a monitoring parameter excursion.

(f) *Parameter monitoring excursion definitions.*

(1) For storage vessels, continuous process vents, aggregate batch vent streams, and wastewater streams, an excursion means any of the three cases listed in paragraphs (f)(1)(i) through (f)(1)(iii) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (f)(1)(i) through (f)(1)(iii) of this section, this is considered a single excursion for the control or recovery device.

(i) When the daily average value of one or more monitored parameters is above the maximum level or below the minimum level established for the given parameters.

(ii) When the period of control or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient, as defined in paragraph (f)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (f)(1)(iv) of this section.

(iv) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (f)(1)(ii) and (f)(1)(iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 63.1335(g)(3), monitoring data are insufficient to calculate a valid hour of data if there are less than four data measurements made during the hour.

(2) For batch process vents, an excursion means one of the two cases listed in paragraphs (f)(2)(i) and (f)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in either paragraph (f)(2)(i) or (f)(2)(ii) of this section, this is considered a single excursion for the control device.

(i) When the batch cycle daily average value of one or more monitored parameters is above the maximum or below the minimum established level for the given parameters.

(ii) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the 15-minute periods when batch emission episodes, or portions thereof, selected to be controlled are being vented to the control device during the operating day.

(g) *Excused excursions.* A number of excused excursions shall be allowed for each control or recovery device for each semiannual period. The number of excused excursions for each semiannual period is specified in paragraphs (g)(1) through (g)(6) of this section. This paragraph (g) applies to affected sources required to submit Periodic Reports semiannually or quarterly. The first semiannual period is the 6-month period starting the date the Notification of Compliance Status is due.

(1) For the first semiannual period—six excused excursions.

(2) For the second semiannual period—five excused excursions.

(3) For the third semiannual period—four excused excursions.

(4) For the fourth semiannual period—three excused excursions.

(5) For the fifth semiannual period—two excused excursions.

(6) For the sixth and all subsequent semiannual periods—one excused excursion.

§ 63.1335 General recordkeeping and reporting provisions.

(a) *Data retention.* Each owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, unless otherwise specified in this subpart.

(b) *Requirements of subpart A of this part.* The owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in subpart A of this part as specified in Table 1 of this subpart. These requirements include, but are not limited to, the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. The affected source shall keep this plan onsite and shall incorporate it by reference into their operating permit. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section.

Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section.

(A) Records of the occurrence and duration of each malfunction of air pollution control equipment or continuous monitoring systems used to comply with this subpart.

(B) For each start-up, shutdown, or malfunction, a statement that the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed; alternatively, documentation of any actions taken that are not consistent with the plan.

(C) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks and maintenance of continuous monitoring systems that are specified in the manufacturer's instructions.

(D) Records specified in paragraphs (b)(1)(i)(B) and (b)(1)(i)(C) of this section are not required if they pertain solely to Group 2 emission points that are not included in an emissions average or to Group 2 continuous process vents subject to § 63.1315(a) with a total resource effectiveness value greater than 4.0 or, for Group 2 continuous process vents subject to § 63.1315(b), with a total resource effectiveness value greater than 6.7.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of the schedule specified in § 63.10(d)(5)(i). Said reports shall include the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 regarding construction and reconstruction, excluding the provisions specified in § 63.5 (d)(1)(ii)(H), (d)(2), and (d)(3)(ii).

(c) *Requirements of subpart H of this part.* Owners or operators of affected sources shall comply with the reporting and recordkeeping requirements in subpart H of this part, except as specified in § 63.1331.

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(8) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) or (h) of this section. Documentation requirements are specified in paragraphs (d)(9) and (d)(10) of this section.

(1) The monitoring system shall measure data values at least once every 15 minutes.

(2) The owner or operator shall record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. Owners or operators of batch process vents must record each measured data value.

(3) Daily average (or batch cycle daily average) values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraph (d)(6) of this section.

(i) The daily average value or batch cycle daily average shall be calculated as the average of all parameter values recorded during the operating day. As specified in § 63.1326(e)(2)(i), only parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period the owner or operator specifies in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another 24-hour period.

(4) *Records required when out of compliance.* If the daily average (or batch cycle daily average) value of a monitored parameter for a given operating day is below the minimum level or above the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall retain the data recorded that operating day under paragraph (d)(2) of this section.

(5) *Records required when in compliance for daily average value or batch cycle daily average value.* If the daily average (or batch cycle daily average) value of a monitored parameter for a given operating day is above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall either:

(i) Retain block average values for 1 hour or shorter periods for that operating day; or

(ii) Retain the data recorded in paragraph (d)(2) of this section.

(6) *Records required when all recorded values are in compliance.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average (or batch cycle daily average) for that operating day. For these operating days, the records required in paragraph (d)(5) of this section shall also be retained for 5 years.

(7) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods.

(8) In addition to the periods specified in paragraph (d)(7) of this section, records shall be kept of the times and durations of any other periods during process operation or control device operation when monitors are not operating. For batch process vents, this paragraph (d)(8) only applies during batch emission episodes, or portions thereof, that the owner or operator has selected to control.

(9) For each TPPU that is not part of the affected source because it does not use as a reactant or process solvent, or produce as a by-product or co-product any organic HAP, the owner or operator shall maintain the documentation specified in § 63.1310(b)(1).

(10) For each flexible operation unit in which the primary product is determined to be something other than a thermoplastic product, the owner or operator shall maintain the documentation specified in § 63.1310(f)(6).

(e) *Reporting and notification.*

(1) In addition to the reports and notifications required by subparts A and H of this part, as specified in this

subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable.

(2) All reports required under this subpart shall be sent to the Administrator at the addresses listed in § 63.13. If acceptable to both the Administrator and the owner or operator of an affected source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Affected sources requesting an extension for compliance, or requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls, shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(vi) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than 12 months prior to the compliance date. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section.

(ii) A request for an extension for compliance must be submitted in the Precompliance Report, if it has not been submitted to the operating permit authority as part of the operating permit application. The request for a compliance extension will include the data outlined in § 63.6(i)(6)(i) (A), (B), and (D), as required in § 63.1311(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the information requested in paragraph (e)(3)(iv)(A) or (e)(3)(iv)(B) of this section must be submitted in the Precompliance Report.

(A) The owner or operator must submit notification of the intent to use the provisions specified in paragraph (g) of this section; or

(B) The owner or operator must submit a request for approval to use alternative continuous monitoring and recordkeeping provisions as specified in paragraph (g) of this section.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart. Alternative controls must be deemed by the Administrator to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g).

(vi) If an owner or operator demonstrates that the emissions estimation equations contained in § 63.1323(b) are inappropriate as specified in § 63.1323(b)(6)(ii)(B), the information required by § 63.1323(b)(6)(ii)(D) shall be submitted.

(vii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in § 63.1334 (c) or (d), the information specified by § 63.1334 (c) or (d), as appropriate.

(4) *Emissions Averaging Plan.* For all existing affected sources using emissions averaging, an Emissions Averaging Plan shall be submitted for approval according to the schedule and procedures described in paragraph (e)(4)(i) of this section. The Emissions Averaging Plan shall contain the information specified in paragraph (e)(4)(ii) of this section, unless the information required in paragraph (e)(4)(ii) of this section is submitted with an operating permit application. An owner or operator of an affected source who submits an operating permit application instead of an Emissions Averaging Plan shall submit the information specified in paragraph (e)(8) of this section. In addition, a supplement to the Emissions Averaging Plan, as required under paragraph (e)(4)(iii) of this section, is to be submitted whenever alternative controls or operating scenarios may be used to comply with this subpart. Updates to the Emissions Averaging Plan shall be submitted in accordance with paragraph (e)(4)(iv) of this section.

(i) *Submittal and approval.* The Emissions Averaging Plan shall be submitted no later than 18 months prior to the compliance date, and it is subject to Administrator approval. The Administrator shall determine within 120 operating days whether the Emissions Averaging Plan submitted presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 operating days.

(ii) *Information required.* The Emissions Averaging Plan shall contain the information listed in paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(K) of this section for all emission points included in an emissions average.

(A) The required information shall include the identification of all emission points in the planned emissions average and, where applicable, notation of whether each storage vessel, continuous process vent, batch process vent, aggregate batch vent stream, and process wastewater stream is a Group 1 or Group 2 emission point, as defined in § 63.1312 or as designated under § 63.1332 (c)(3) through (c)(5).

(B) The required information shall include the projected emission debits and credits for each emission point and the sum for the emission points involved in the average calculated according to § 63.1332. The projected credits must be greater than or equal to the projected debits, as required under § 63.1332(e)(3).

(C) The required information shall include the specific control technology or pollution prevention measure that will be used for each emission point included in the average and date of application or expected date of application.

(D) The required information shall include the specific identification of each emission point affected by a pollution prevention measure. To be considered a pollution prevention measure, the criteria in § 63.1332(j)(1) must be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator must identify each of these emission points.

(E) The required information shall include a statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in § 63.1332 (m), (n), and (o) that are applicable to each emission point in the emissions average will be implemented beginning on or before the date of compliance.

(F) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(F)(*1*) through (e)(4)(ii)(F)(*5*) of this section for each storage vessel and continuous process vent subject to § 63.1315 included in the average.

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2. Where TRE index value is used for continuous

process vent group determination, the estimated or measured values of the parameters used in the TRE equation in § 63.115(d) and the resulting TRE index value shall be submitted.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) The required documentation shall include the estimated percent reduction if a control technology achieving a lower percent reduction than the efficiency of the applicable reference control technology or standard is or will be applied to the emission point.

(*4*) The required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.1332(i) shall be followed to apply for a nominal efficiency.

(*5*) The required documentation shall include the operating plan required by § 63.1314, as specified in § 63.122 (a)(2) and (b) for each storage vessel controlled with a closed-vent system with a control device other than a flare.

(G) The information specified in paragraph (f) of this section shall be included in the Emissions Averaging Plan for:

(*1*) Each continuous process vent subject to § 63.1315 controlled by a pollution prevention measure or control technique for which monitoring parameters or inspection procedures are not specified in § 63.114; and

(*2*) Each storage vessel controlled by pollution prevention or a control technique other than an internal or external floating roof or a closed vent system with a control device.

(H) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(H)(*1*) through (e)(4)(ii)(H)(*5*) of this section for each collection of continuous process vents located in a process section within the affected source subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) included in the average.

(*1*) For continuous process vents subject to § 63.1316(b)(1)(i), the required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2. Continuous process vents subject to § 63.1316 (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) are considered Group 1 emission points for purposes of emissions averaging, as specified in § 63.1332(c)(5).

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) For process sections generating debits or credits by comparing actual emissions expressed as kg HAP emissions per Mg of product to the applicable standard, the required documentation shall include the actual emission level expressed as kg HAP emissions per Mg of product.

(*4*) For process sections using combustion control devices, the required documentation shall include the estimated percent reduction if a control technology achieving a lower percent reduction than the efficiency of the applicable reference control technology or standard is or will be applied to the emission point.

(*5*) For process sections using combustion control devices, the required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.1332(i) shall be followed to apply for a nominal efficiency.

(I) For each pollution prevention measure or control device used to reduce air emissions of organic HAP from each collection of continuous process vents located in a process section within the affected source subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) and for which no monitoring parameters or inspection procedures are specified in § 63.114, the information specified in paragraph (f) of this section, Alternative Monitoring Parameters, shall be included in the Emissions Averaging Plan.

(J) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(J)(*1*) through (e)(4)(ii)(J)(*3*) of this section for each batch process vent and aggregate batch vent stream included in the average.

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) For batch process vents, the required documentation shall include the estimated percent reduction for the batch cycle. For aggregate batch vent streams, the required documentation shall include the estimated percent reduction achieved on a continuous basis.

(K) For each pollution prevention measure or control device used to reduce air emissions of organic HAP from batch process vents or aggregate batch vent streams and for which no monitoring parameters or inspection procedures are specified in § 63.1324, the information specified in paragraph (f) of this section, Alternative Monitoring Parameters, shall be included in the Emissions Averaging Plan.

(L) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(L)(*1*) through (e)(4)(ii)(L)(*4*) of this section for each process wastewater stream included in the average.

(*1*) The required documentation shall include the data used to determine whether the wastewater stream is a Group 1 or Group 2 wastewater stream and the information specified in Table 14b of subpart G of this part for wastewater streams at new and existing affected sources.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) The required documentation shall include the estimated percent reduction if:

(*i*) A control technology that achieves an emission reduction less than or equal to the emission reduction that would otherwise have been achieved by a steam stripper designed to the specifications found in § 63.138(g) is or

will be applied to the wastewater stream;

(*ii*) A control technology achieving less than or equal to 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes; or

(*iii*) A pollution prevention measure is or will be applied.

(*4*) The required documentation shall include the anticipated nominal efficiency if the owner or operator plans to apply for a nominal efficiency under § 63.1332(i). A nominal efficiency shall be applied for if:

(*i*) A control technology that achieves an emission reduction greater than the emission reduction that would have been achieved by a steam stripper designed to the specifications found in § 63.138(g), is or will be applied to the wastewater stream; or

(*ii*) A control technology achieving greater than 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes.

(M) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.143, the information specified in paragraph (f) of this section, Alternative Monitoring Parameters, shall be included in the Emissions Averaging Plan.

(N) The required information shall include documentation of the data required by § 63.1332(k). The documentation must demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(iii) *Supplement to Emissions Averaging Plan.* The owner or operator required to prepare an Emissions Averaging Plan under paragraph (e)(4) of this section shall also prepare a supplement to the Emissions Averaging Plan for any alternative controls or operating scenarios that may be used to achieve compliance.

(iv) *Updates to Emissions Averaging Plan.* The owner or operator of an affected source required to submit an Emissions Averaging Plan under paragraph (e)(4) of this section shall also submit written updates of the Emissions Averaging Plan to the Administrator for approval under the circumstances described in paragraphs (e)(4)(iv)(A) and (e)(4)(iv)(B) of this section unless the relevant information has been included and submitted in an operating permit application or amendment.

(A) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 operating days prior to making the change.

(*1*) An Emissions Averaging Plan update shall be submitted whenever an owner or operator elects to achieve compliance with the emissions averaging provisions in § 63.1332 by using a control technique other than that specified in the Emissions Averaging Plan or plans to monitor a different parameter or operate a control device in a manner other than that specified in the Emissions Averaging Plan.

(*2*) An Emissions Averaging Plan update shall be submitted whenever an emission point or a TPPU is added to an existing affected source and is planned to be included in an emissions average, or whenever an emission point not included in the emissions average described in the Emissions Averaging Plan is to be added to an emissions average. The information in paragraph (e)(4) of this section shall be updated to include the additional emission point.

(B) The owner or operator who has made a change as defined in paragraph (e)(4)(iv)(B)(*1*) or (e)(4)(iv)(B)(*2*) of this section shall submit an Emissions Averaging Plan update within 90 operating days after the information regarding the change is known to the affected source. The update may be submitted in the next quarterly periodic report if the change is made after the date the Notification of Compliance Status is due.

(*1*) An Emissions Averaging Plan update shall be submitted whenever a process change is made such that the group status of any emission point in an emissions average changes.

(*2*) An Emissions Averaging Plan update shall be submitted whenever a value of a parameter in the emission credit or debit equations in § 63.1332 (g) or (h) changes such that it is below the minimum or above the maximum established level specified in the Emissions Averaging Plan and causes a decrease in the projected credits or an increase in the projected debits.

(C) The Administrator shall approve or request changes to the Emissions Averaging Plan update within 120 operating days of receipt of sufficient information regarding the change for emission points included in emissions averages.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted within 150 operating days after the compliance dates specified in § 63.1311. The notification shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(viii) of this section.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, and any other information required to be included in the Notification of Compliance Status under § 63.122 for storage vessels, § 63.117 for continuous process vents, § 63.146 for process wastewater, § 63.1316 through § 63.1320 for continuous process vents subject to § 63.1316, § 63.1327 for batch process vents, § 63.1329 for process contact cooling towers, and § 63.1332 for emission points included in an emissions average. In addition, each owner or operator shall comply with paragraph (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, and process section applicability determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other required information shall be submitted, but a complete test report is not required.

(B) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.120(d)(3) for storage vessels, § 63.114(e) for continuous process vents, § 63.1324 for batch process vents and aggregate batch vent streams, § 63.143(f) for process wastewater, § 63.1332(m) for emission points in emissions averages,

paragraph (e)(8) or (f) of this section, the Notification of Compliance Status shall contain the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section, unless this information has been established and provided in the operating permit.

(A) The required information shall include the specific maximum or minimum level of the monitored parameter(s) for each emission point.

(B) The required information shall include the rationale for the specific maximum or minimum level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control device.

(C) The required information shall include a definition of the affected source's operating day, as specified in paragraph (d)(3)(ii) of this section, for purposes of determining daily average values or batch cycle daily average values of monitored parameters.

(D) For batch process vents, the required information shall include a definition of each batch cycle that requires the control of one or more batch emission episodes during the cycle, as specified in § 63.1325(c)(2) and § 63.1334(b)(3)(iii).

(iii) For emission points included in an emissions average, the Notification of Compliance Status shall contain the values of all parameters needed for input to the emission credit and debit equations in § 63.1332 (g) and (h), calculated or measured according to the procedures in § 63.1332 (g) and (h), and the resulting calculation of credits and debits for the first quarter of the year. The first quarter begins on the compliance date specified.

(iv) The determination of applicability for flexible operation units as specified in § 63.1310(f)(6).

(v) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.1310(f)(7).

(vi) The results for each predominant use determination for storage vessels belonging to an affected source subject to this subpart that is made under § 63.1310(g)(6).

(vii) The results for each predominant use determination for recovery operation equipment belonging to an affected source subject to this subpart that is made under § 63.1310(h)(6).

(viii) For owners or operators of Group 2 batch process vents establishing a batch cycle limitation as specified in § 63.1325(g), the affected source's operating year for purposes of determining compliance with the batch cycle limitation.

(6) *Periodic Reports.* For existing and new affected sources, each owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (e)(6)(xi) of this section.

(i) Except as specified in paragraphs (e)(6)(x) and (e)(6)(xi) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or containing the information in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section, as appropriate, shall be submitted semiannually no later than 60 operating days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due. Subsequent reports shall cover each preceding 6-month period.

(ii) If none of the compliance exceptions specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that the affected source was in compliance for the preceding 6-month period and no activities specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the preceding 6-month period.

(iii) For an owner or operator of an affected source complying with the provisions of §§ 63.1314 through 63.1330 for any emission point or process section, Periodic Reports shall include:

(A) All information specified in § 63.122 for storage vessels; §§ 63.117 and 63.118 and § 63.1320 for continuous process vents, as applicable; § 63.1327 for batch process vents and aggregate batch vent streams; § 63.104 for heat exchange systems; and § 63.146 for process wastewater;

(B) The daily average values or batch cycle daily average values of monitored parameters for both excused excursions, as defined in § 63.1334(g), and unexcused excursions, as defined in § 63.1334(f). For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified;

(C) The periods when monitoring data were not collected shall be specified;

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*3*) of this section, as applicable:

(*1*) Any supplements to the Emissions Averaging Plan, as required in paragraph (e)(4)(iii) of this section;

(*2*) Notification if a process change is made such that the group status of any emission point changes. The information submitted shall include a compliance schedule, as specified in paragraphs (e)(6)(iii)(D)(*2*)(*i*) and (e)(6)(iii)(D)(*2*)(*ii*) of this section, for emission points that are added or that change from Group 2 to Group 1 as specified in § 63.1310(i)(2)(ii); for continuous process vents under the conditions listed in § 63.1315(a)(12) or § 63.1320(b)(3), as applicable; or for batch process vents under the conditions listed in § 63.1327(b) or § 63.1327(d). This information may be submitted in a separate report, as specified in § 63.1315(a)(12), § 63.1320(b)(3), § 63.1327(b), or § 63.1327(d); and

(*i*) The owner or operator shall submit to the Administrator for approval a compliance schedule and a justification for the schedule.

(*ii*) The Administrator shall approve the compliance schedule or request changes within 120 operating days of receipt of the compliance schedule and justification.

(*3*) Notification if one or more emission point(s) or one or more TPPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*iii*) of this section:

(*i*) A description of the addition to the affected source;

(*ii*) Notification of the group status of the additional emission point or all emission points in the TPPU; and

(*iii*) A compliance schedule, as required under paragraph (e)(6)(iii)(D)(*2*) of this section.

(E) The information in paragraph (b)(1)(ii) of this section for reports of start-up, shutdown, and malfunction.

(iv) For each batch process vent with a batch cycle limitation, every second Periodic Report shall include the type and number of batch cycles accomplished during the preceding 12-month period and a statement that the batch process vent is either in or out of compliance with the batch cycle limitation.

(v) If any performance tests are reported in a Periodic Report, the following information shall be included:

(A) One complete test report shall be submitted for each test method used for a particular kind of emission point tested. A complete test report shall contain the information specified in paragraph (e)(5)(i)(B) of this section.

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information required shall be submitted, but a complete test report is not required.

(vi) The Periodic Report shall include the results for each change made to a primary product determination for a thermoplastic product made under § 63.1310(f)(6).

(vii) The Periodic Report shall include the results for each change made to a predominant use determination for a storage vessel belonging to an affected source subject to this subpart that is made under § 63.1310(g)(6).

(viii) The Periodic Report shall include the results for each change made to a predominant use determination for recovery operation equipment belonging to an affected source subject to this subpart that is made under § 63.1310(h)(6).

(ix) The Periodic Report required by § 63.1331(a)(5) may be submitted as part of the Periodic Report required by paragraph (e)(6) of this section.

(x) The owner or operator of an affected source shall submit quarterly reports for all emission points included in an emissions average.

(A) The quarterly reports shall be submitted no later than 60 operating days after the end of each quarter. The first report shall be submitted with the Notification of Compliance Status no later than 150 days after the compliance date.

(B) The quarterly reports shall include the information specified in paragraphs (e)(6)(x)(B)(*1*) through (e)(6)(x)(B)(*7*) of this section for all emission points included in an emissions average.

(*1*) The credits and debits calculated each month during the quarter;

(*2*) A demonstration that debits calculated for the quarter are not more than 1.30 times the credits calculated for the quarter, as required under § 63.1332(e)(4);

(*3*) The values of any inputs to the debit and credit equations in § 63.1332(g) and (h) that change from month to month during the quarter or that have changed since the previous quarter;

(*4*) Results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point as described in paragraph (e)(6)(v) of this section;

(*5*) Reports of daily average (or batch cycle daily average) values of monitored parameters for excursions as defined in § 63.1334(f);

(*6*) For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified; and

(*7*) Any other information the affected source is required to report under the operating permit or Emissions Averaging Plan for the affected source.

(C) § 63.1334 shall govern the use of monitoring data to determine compliance for Group 1 and Group 2 emission points included in emissions averages.

(D) Every fourth quarterly report shall include the following:

(*1*) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.1332(e)(3); and

(*2*) A certification of compliance with all the emissions averaging provisions in § 63.1332.

(xi) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections not included in an emissions average as specified in paragraphs (e)(6)(xi)(A) through (e)(6)(xi)(E) of this section.

(A) If requested by the Administrator, the owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section that is not included in an emissions average if either condition in paragraph (e)(6)(xi)(A)(*1*) or (e)(6)(xi)(A)(*2*) of this section is met.

(*1*) An emission point has any excursions, as defined in § 63.1334(f), for a semiannual reporting period.

(*2*) A process section subject to § 63.1316 is out of compliance with its applicable standard.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(xi)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 operating days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year, the owner or operator may return to semiannual reporting for the emission point or process section unless the Administrator requests the owner or operator to continue to submit quarterly reports.

(E) § 63.1334 shall govern the use of monitoring data to determine compliance for Group 1 emission points.

(*7*) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (e)(7)(ii) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.1314 shall be submitted as specified in § 63.122 (h)(1) and (h)(2).

(ii) For owners or operators of affected sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.1332(i) shall be submitted.

(8) *Operating permit.* An owner or operator who submits an operating permit application instead of an Emissions Averaging Plan or a Precompliance Report shall submit the following information with the operating permit application:

(i) The information specified in paragraph (e)(4) of this section for points included in an emissions average;

(ii) The information specified in paragraph (e)(5) of this section, Notification of Compliance Status, as applicable; and

(iii) The information specified in paragraph (e)(3) of this section, Precompliance Report, as applicable.

(f) *Alternative monitoring parameters.* The owner or operator who has been directed by any section of this subpart to set unique monitoring parameters, or who requests approval to monitor a different parameter than those specified in § 63.1314 for storage vessels, § 63.1315 or 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

(1) The required information shall include a description of the parameter(s) to be monitored to ensure the recovery device, control device, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) The required information shall include a description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation, the schedule for this demonstration, and a statement that the owner or operator will establish a level for the monitored parameter as part of the Notification of Compliance Status report required in paragraph (e)(5) of this section, unless this information has already been included in the operating permit application.

(3) The required information shall include a description of the proposed

monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

(i) If monitoring and recordkeeping is not continuous; or

(ii) If reports of daily average values will not be included in Periodic Reports when the monitored parameter value is above the maximum level or below the minimum level as established in the operating permit or the Notification of Compliance Status.

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the provisions listed in § 63.1315 or 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, § 63.1314 for storage vessels, or § 63.1330 for wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in § 63.8(f)(5)(i) shall govern the review and approval of requests.

(2) An owner or operator of an affected source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and that does not generate continuous records may request approval to use a nonautomated system with less frequent monitoring, in accordance with paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average (or batch cycle daily average) values shall be calculated from these hourly values and recorded.

(ii) The request shall contain:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected source does not have an automated monitoring and recording system;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control or recovery device operating conditions, considering typical variability of the specific process and control or recovery device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) The requested system shall be designed to:

(A) Measure the operating parameter value at least once every 15 minutes;

(B) Except for the monitoring of batch process vents, calculate hourly average values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident;

(E) Calculate daily average (or batch cycle daily average) values of the monitored operating parameter based on all measured data; and

(F) If the daily average is not an excursion, as defined in § 63.1334(f), the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain:

(A) A description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained;

(B) The method for calculating daily averages and batch cycle daily averages; and

(C) A demonstration that the system meets all criteria in paragraph (g)(3)(i) of this section.

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f).

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements specified in paragraph (h)(1) or (h)(2) of this section as alternatives to the provisions specified in § 63.1314 for storage vessels, § 63.1315 or 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for wastewater. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section.

(1) The owner or operator may retain only the daily average (or batch cycle daily average) value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns, or malfunctions (e.g., a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) through (h)(1)(ii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour periods; and

(C) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns, or malfunctions, except in circumstances where the presence of unchanging data is the expected

operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (h)(1) of this section, at the times specified in paragraphs (h)(1)(v)(A) through (h)(1)(v)(C). The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(C) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (h) of this section.

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (h)(1) of this section.

(2) If an owner or operator has elected to implement the requirements of paragraph (h)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator is no longer required to record the daily average (or batch cycle daily average) value for any operating day when the daily average (or batch cycle daily average) value is less than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average (or batch cycle daily average) values, the owner or operator shall notify the Administrator in the next Periodic Report. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily average (or batch cycle daily average) values as provided in paragraph (h)(2) of this section, there is an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average (or batch cycle daily average) value for each operating day and shall notify the Administrator in the next Periodic Report. The owner or operator shall continue to retain each daily average (or batch cycle daily average) value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i), (h)(1)(ii), and (h)(1)(vi) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) For purposes of paragraph (h) of this section, an excursion means that the daily average (or batch cycle daily average) value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section.

(A) The daily average (or batch cycle daily average) value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3).

(B) An excused excursion, as described in § 63.1334(g), shall not be considered an excursion for purposes of paragraph (h)(2) of this section.

Tables to Subpart JJJ of Part 63

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Comment
63.1(a)(1)	Yes	§ 63.1312 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)–63.1(a)(3)	Yes.	
63.1(a)(4)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(a)(5)	No	Reserved.
63.1(a)(6)–63.1(a)(8)	Yes.	
63.1(a)(9)	No	Reserved.
63.1(a)(10)	No	Subpart JJJ and other cross-referenced subparts specify calendar or operating day.
63.1(a)(11)	Yes.	
63.1(a)(12)–63.1(a)(14)	Yes.	
63.1(b)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(b)(2)	Yes.	

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Comment
63.1(b)(3)	No	§63.1310(b) provides documentation requirements for TPPUs not considered affected sources.
63.1(c)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(c)(2)	No	Area sources are not subject to subpart JJJ.
63.1(c)(3)	No	Reserved.
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications overridden by this table.
63.1(d)	No	Reserved.
63.1(e)	Yes.	
63.2	Yes	§63.1312 specifies those subpart A definitions that apply to subpart JJJ.
63.3	Yes	Subpart JJJ specifies those units of measure that apply to subpart JJJ.
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)	Yes.	
63.5(b)(1)	Yes.	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes.	
63.5(b)(4)	No	Area sources are not subject to subpart JJJ.
63.5(b)(5)	Yes.	
63.5(b)(6)	No	§63.1310(i) specifies requirements.
63.5(c)	No	Reserved.
63.5(d)(1)(i)	No.	
63.5(d)(1)(ii)	Yes	Except that for affected sources subject to subpart JJJ, emission estimates specified in §63.5(d)(1)(ii)(H) are not required.
63.5(d)(1)(iii)	Yes	Except that §63.1335(e)(5) specifies Notification of Compliance Status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except §63.5(d)(3)(ii) does not apply.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where §63.5(d)(1) is referred to, §63.5(d)(1)(i) does not apply.
63.6(a)	Yes.	
63.6(b)(1)	Yes.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	Yes.	
63.6(b)(5)	Yes.	
63.6(b)(6)	No	Reserved.
63.6(b)(7)	Yes.	
63.6(c)(1)	Yes	§63.1311 specifies the compliance date.
63.6(c)(2)	Yes.	
63.6(c)(3)	No	Reserved.
63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes.	
63.6(d)	No	Reserved.
63.6(e)	Yes	Except the plan, and any records or reports of start-up, shutdown and malfunction do not apply to Group 2 emission points, unless they are included in an emissions average.
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except §63.7(c), as referred to in §63.6(f)(2)(iii)(D), does not apply.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart JJJ does not require opacity and visible emission standards.
63.6(i)	Yes	Except for §63.6(i)(15), which is reserved.
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§63.1335(e)(5) specifies submittal dates.
63.7(a)(3)	Yes.	
63.7(b)	No	§63.1333(a)(4) specifies notification requirements.
63.7(c)	No.	
63.7(d)	Yes.	
63.7(e)	Yes	Except that performance tests must be conducted at maximum representative operating conditions. In addition, some of the testing requirements specified in subpart JJJ are not consistent with §63.7(e)(3).
63.7(f)	Yes.	
63.7(g)	Yes	Except that references to the Notification of Compliance Status report in §63.9(h) are replaced with the requirements in §63.1335(e)(5).

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Comment
63.7(h)	Yes	Except §63.7(h)(4)(ii) is not applicable, since the site-specific test plans in §63.7(c)(3) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart JJJ specifies locations to conduct monitoring.
63.8(b)(3).		
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No.	
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§63.1334 specifies monitoring frequency.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in §63.1335(e).
63.8(f)(4)(ii)	No.	
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart JJJ does not require continuous emission monitors.
63.8(g)	No	Data reduction procedures specified in §63.1335(d).
63.9(a)	Yes.	
63.9(b)	No	Subpart JJJ does not require an initial notification.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No.	
63.9(f)	No	Subpart JJJ does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§63.1335(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)	Yes.	
63.10(b)(3)	No	§63.1310(b) requires documentation of sources that are not affected sources.
63.10(c)	No	§63.1335 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No.	
63.10(d)(3)	No	Subpart JJJ does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by §63.10(d)(5)(i) may be submitted at the same time as Periodic Reports specified in §63.1335(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
63.10(e)	No.	
63.10(f)	Yes.	
63.10(d)(4)	Yes.	
63.12	Yes.	
63.13	Yes.	
63.14	Yes.	
63.15	Yes.	

TABLE 2.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor pressure [a] (kilopascals)
75 ≤ capacity < 151	≥13.1
151 ≥ capacity	≥5.2

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 3.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES PRODUCING THE LISTED THERMOPLASTICS

Thermoplastic	Chemical[a]	Vessel capacity (cubic meters)	Vapor pressure[b] (kilopascals)
ASA/AMSAN[c]	Styrene/acrylonitrile mixture	≥3.78	≥0.47
	Acrylonitrile	≥75.7	≥1.62
Polystyrene, continuous processes		≥38 and <75.7	≥14.2
		≥75.7	≥1.9
Nitrile[c]	Acrylonitrile	≥ 13.25	≥ 1.8

[a] Vessel capacity and vapor pressure criteria are specific to the listed chemical. When chemical not listed (i.e., —), vessel capacity and vapor pressure criteria apply to all chemicals regulated by this rule for a given subcategory.
[b] Maximum true vapor pressure of total organic HAP at storage temperature.
[c] The applicability criteria in Table 2 of this subpart shall be used for chemicals not specifically listed in this table (i.e., Table 3).

TABLE 4.—GROUP 1 STORAGE VESSELS AT NEW AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor pressure[a] (kilopascals)
38 ≤ capacity < 151	≥13.1
151 ≤ capacity	≥0.7

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 5.—GROUP 1 STORAGE VESSELS AT NEW AFFECTED SOURCES PRODUCING THE LISTED THERMOPLASTICS

Thermoplastic	Chemical[a]	Vessel capacity (cubic meters)	Vapor pressure[b] (kilopascals)
ASA/AMSAN[c]	Styrene/acrylonitrile mixture	≥3.78	≥0.47.
	Acrylonitrile	≥75.7	≥1.62.
SAN, continuous		≥2,271	0.5≤vp<0.7.
		≥151	0.7≤vp≥10.
		≥30 and <151	vp≥10.
		≥151	vp≥10.
Nitrile[c]	Acrylonitrile	≥13.25	≥1.8.
Polystyrene, continuous processes		≥19.8 and <45.4	vp≥7.48.
		≥45.4 and <109.8	vp≥0.61.
		≥109.8	vp≥0.53.
ABS, continuous mass	Styrene	≥45.43	≥0.078.
		≥38 and <45.43	vp≥13.1.
		≥45.43	vp≥0.53.

[a] Vessel capacity and vapor pressure criteria are specific to the listed chemical. When chemical not listed (i.e., —), vessel capacity and vapor pressure criteria apply to all chemicals regulated by this rule for a given subcategory.
[b] Maximum true vapor pressure of total organic HAP at storage temperature.
[c] The applicability criteria in Table 4 of this subpart shall be used for chemicals not specifically listed in this table (i.e., Table 5).

TABLE 6.—KNOWN ORGANIC HAZARDOUS AIR POLLUTANTS FROM THERMOPLASTIC PRODUCTS

Thermoplastic product/subcategory	Organic HAP/chemical name (CAS No.)						
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4–Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Styrene (100–42–5)
ABS latex		✔	✔				✔
ABS using a batch emulsion process		✔	✔				✔
ABS using a batch suspension process		✔	✔				✔
ABS using a continuous emulsion process		✔	✔				✔
ABS using a continuous mass process		✔	✔				✔
ASA/AMSAN		✔	✔				✔
EPS							✔
MABS		✔	✔				✔
MBS			✔				✔
Nitrile resin		✔					
PET using a batch dimethyl terephthalate process	✔			✔	✔	✔	
PET using a batch terephthalic acid process	✔			✔	✔		
PET using a continuous dimethyl terephthalate process	✔			✔	✔	✔	
PET using a continuous terephthalic acid process	✔			✔	✔		

TABLE 6.—KNOWN ORGANIC HAZARDOUS AIR POLLUTANTS FROM THERMOPLASTIC PRODUCTS—Continued

Thermoplastic product/subcategory	Organic HAP/chemical name (CAS No.)						
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4–Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Styrene (100–42–5)
PET using a continuous terephthalic acid high viscosity multiple end finisher process	✔			✔	✔		
Polystyrene resin using a batch process							✔
Polystyrene resin using a continuous process							✔
SAN using a batch process		✔					✔
SAN using a continuous process		✔					✔

CAS No.–Chemical Abstract Service Number.
ABS–Acrylonitrile butadiene styrene resin.
ASA/AMSAN–Acrylonitrile styrene resin/alpha methyl styrene acrylonitrile resin.
EPS–expandable polystyrene resin.
MABS–methyl methacrylate acrylonitrile butadiene styrene resin.
PET–poly(ethylene terephthalate) resin.
SAN–styrene acrylonitrile resin.
MBS–methyl methacrylate butadiene styrene resin.

TABLE 7.—GROUP 1 BATCH PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature[a]	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in §63.1326(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in §63.1326(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream temperature established in the NCS or operating permit—PR.[d e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d e] 6. Report all instances when monitoring data are not collected.[e]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch process vents or aggregate batch vent streams are *not* introduced with or used as the primary fuel.	Firebox temperature[a]	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in §63.1326(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light.	1. Hourly records of whether the monitor was continuously operating during batch emission episodes, or portions thereof, selected for control and whether the pilot flame was continuously present during said periods. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when a pilot flame is absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all pilot flames of a flare are absent—PR.[d]

TABLE 7.—GROUP 1 BATCH PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Scrubber for halogenated batch process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent, and.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating pH established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Do	Scrubber liquid flow rate.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the scrubber liquid flow rate measured during the performance test—NCS.[c] 3. Record the batch cycle daily average scrubber liquid flow rate as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average scrubber liquid flow rates that are below the minimum flow rate established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Absorber[f]	Exit temperature of the absorbing liquid, and.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in § 63.1326(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Do	Exit specific gravity for the absorbing liquid.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit specific gravity as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Condenser[f]	Exit (product side) temperature.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average exit temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Carbon Adsorber[f]	Total regeneration stream mass flow during carbon bed regeneration cycle(s), and.	1. Record the total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is above the maximum mass flow rate established in the NCS or operating permit—PR.[d e]
Do	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycles(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum temperature established in the NCS or operating permit—PR.[d e]
All Control Devices	Presence of flow diverted to the atmosphere from the control device *or*.	1. Hourly records of whether the flow indicator was operating during batch emission episodes, or portions thereof, selected for control and whether flow was detected at any time during said periods as specified in § 63.1326(e)(3). 2. Record and report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when emissions are diverted through a bypass line or the flow indicator is not operating—PR.[d]
Do	Monthly inspections of sealed valves.	1. Records that monthly inspections were performed as specified in § 63.1326(e)(4)(i). 2. Record and report all monthly inspections that show the valves are not closed or the seal has been changed—PR.[d]

TABLE 7.—GROUP 1 BATCH PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Absorber, Condenser, and Carbon Adsorber (as an alternative to the requirements previously presented in this table).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device.	1. Continuous records as specified in §63.1326(e)(1).[b] 2. Record and report the average concentration level or reading measured during the performance test—NCS.[c] 3. Record the batch cycle daily average concentration level or reading as specified in §63.1326(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum concentration or reading established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d,e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in §63.111.
[c] NCS = Notification of Compliance Status described in §63.1335(e)(5).
[d] PR = Periodic Reports described in §63.1335(e)(6).
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in §63.1335(e)(6)(iii)(C).
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 8.—OPERATING PARAMETERS FOR WHICH LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS

Device	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Scrubber for halogenated vents	pH of scrubber effluent; and scrubber liquid flow rate	Minimum pH; and minimum flow rate.
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Minimum temperature; and minimum specific gravity.
Condenser	Exit temperature	Maximum temperature.
Carbon absorber	Total regeneration stream mass flow during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum mass flow; and maximum temperature.
Other devices (or as an alternate to the requirements previously presented in this table)[a].	HAP concentration level or reading at outlet of device	Maximum HAP concentration or reading.

[a] Concentration is measured instead of an operating parameter.

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Part III

Securities and Exchange Commission

17 CFR Part 240
Order Execution Obligations; Final Rule; Proposed Quote Rule Amendment

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-37619A; File No. S7-30-95]

RIN 3235-AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting a new rule requiring the display of customer limit orders and amending a current rule governing publication of quotations to enhance the quality of published quotations for securities and to enhance competition and pricing efficiency in our markets. These rules have been designed to address growing concerns about the handling of customer orders for securities.

Specifically, the Commission is adopting new Rule 11Ac1–4 ("Display Rule") under the Securities Exchange Act of 1934 ("Exchange Act") to require the display of customer limit orders priced better than a specialist's or over-the-counter ("OTC") market maker's quote or that add to the size associated with such quote. The Commission also is adopting amendments to Rule 11Ac1–1 ("Quote Rule") under the Exchange Act to require a market maker to publish quotations for any listed security when it is responsible for more than 1% of the aggregate trading volume for that security and to make publicly available any superior prices that a market maker privately quotes through certain electronic communications networks ("ECNs") ("ECN amendment"). Finally, the Commission is deferring action on proposed Rule 11Ac1–5 ("Price Improvement Rule").

EFFECTIVE DATE: January 10, 1997. For specific phase-in dates for the Display Rule, see section III.A.3.d of this Release.

FOR FURTHER INFORMATION CONTACT: Elizabeth Prout Lefler or Gail A. Marshall regarding amendments to the Quote Rule and David Oestreicher regarding the Display Rule at (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

On September 29, 1995, the Commission issued a release[1] proposing for comment new Rules 11Ac1–4 and 11Ac1–5 and amendments to Rule 11Ac1–1[2] under the Exchange Act.[3] As proposed, new Rule 11Ac1–4 would require the display of customer limit orders that improve certain OTC market makers' and specialists' quotes or add to the size associated with such quotes. The proposed amendments to the Quote Rule would require OTC market makers and specialists who place priced orders with ECNs to reflect those orders in their published quotes. The proposed Quote Rule amendments also would require OTC market makers and specialists that account for more than 1% of the volume in any listed security to publish their quotations for that security ("Mandatory Quote Rule"). The Price Improvement Rule would have required OTC market makers and specialists to provide their customer market orders an opportunity for price improvement; it also would have included a non-exclusive safe harbor to satisfy the price improvement obligation.

The Commission received 152 comment letters (from 145 commenters) in response to the Proposing Release.[4] Commenters generally supported the Display Rule and the Mandatory Quote Rule, with some commenters suggesting specific modifications or alternatives to the proposed rules. Commenters also supported the objectives of the ECN amendment, but many expressed concerns that diminishing the anonymity of such systems would threaten their viability. Most commenters believed the Price Improvement Rule would be costly to implement and would not be necessary if the other proposals were adopted.

After considering the comments and relevant economic research, and based on the Commission's experience with the development of the national market system ("NMS") and its knowledge of current market practices, the Commission is adopting the Display Rule and the proposed amendments to the Quote Rule, with certain modifications. The Commission believes that these modifications are consistent with the proposals and responsive to many of the concerns voiced by the commenters.

The Display Rule adopted today requires OTC market makers and specialists to display the price and full size of customer limit orders when these orders represent buying and selling interest that is at a better price than a specialist's or OTC market maker's public quote. OTC market makers and specialists also must increase the size of the quote for a particular security to reflect a limit order of greater than *de minimis* size when the limit order is priced equal to the specialist's or OTC market maker's disseminated quote and that quote is equal to the national best bid or offer.

The Commission has modified the proposed Display Rule in some respects in response to comments. The proposal included an exception to permit a specialist or OTC market maker to deliver a limit order to an exchange or registered national securities association ("association") sponsored system that complies with the Display Rule. This exception has been expanded to permit delivery to ECNs that display and provide access to these orders. Additionally, with regard to implementation of the rule, the Commission has provided for a phase-in over a one year period for non-exchange-traded securities covered by the Display Rule.

Today, the Commission also is adopting two significant amendments to the Quote Rule. These amendments are designed to ensure that more comprehensive quotation information is made available to the public. The first amendment requires a specialist or OTC market maker to make publicly available the price of any order it places in an ECN if the ECN price is better than the specialist's or OTC market maker's public quotation. The Commission has adopted this amendment as proposed, with an alternative ("ECN display alternative") that deems OTC market makers and specialists in compliance with the Quote Rule if prices these OTC market makers and specialists enter into an ECN are publicly disseminated and the ECN provides access to other broker-

[1] Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995) ("Proposing Release").

[2] 17 CFR 240.11Ac1–1.

[3] 15 U.S.C. 78a to 78ll (1988).

[4] The comment letters and a summary of comments have been placed in Public File No. S7–30–95, which is available for inspection in the Commission's Public Reference Room. The Commission received comments on the proposals from 77 individual investors, ten industry associations, seven exchanges and the National Association of Securities Dealers ("NASD"), eight academics, 41 market participants and the United States Department of Justice. In addition, the Commission met with representatives of broker-dealers, self-regulatory organizations ("SROs"), industry associations, and the U.S. Department of Justice to discuss the proposals. The Commission has conducted its own economic analysis of the likely economic effects of the various proposals.

dealers to trade at those prices.[5] Thus, OTC market makers and specialists may comply directly with the ECN amendment by changing their public quote to reflect their ECN order, or by using an ECN that facilitates their compliance with the rule as described above.

Implementation of the ECN display alternative requires the cooperation of the SROs in order to include the ECN prices in the public quotation system and to provide equivalent access to these quotations. The Commission expects the SROs to work expeditiously with ECNs that wish to avail themselves of this alternative to develop rules or understandings of general applicability. The Commission is prepared to act if necessary to ensure implementation of the ECN display alternative prior to the effective date of the Quote Rule.

The second amendment to the Quote Rule expands the categories of securities covered by the Mandatory Quote Rule. As amended, the Quote Rule will require that OTC market makers and specialists publish quotes in any listed security if their volume in that security exceeds 1% of the aggregate volume during the most recent calendar quarter. Previously, these requirements applied only to certain listed securities.[6]

The Commission is deferring final action on the Price Improvement Rule at this time. The Commission will consider the effect of the new Display Rule and the amendments to the Quote Rule adopted today before determining the appropriate course of action on that proposal.

In a parallel action, the Commission today is proposing for comment an additional amendment to the Quote Rule. The proposed amendment would require OTC market makers and specialists that account for more than 1% of the volume in any Nasdaq security to publish their quotations for that security.[7]

II. Basis and Purpose of the Display Rule and Quote Rule Amendments

Twenty years ago, Congress directed the Commission—having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets—to use the Commission's authority granted under the Exchange Act to facilitate the establishment of a national market system for securities.[8] Congress further determined that the public interest, investor protection and the maintenance of fair and orderly markets required the NMS to feature:

(i) Economically efficient executions;

(ii) Fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) Public availability of quotation and transaction information;

(iv) An opportunity to obtain best execution; and

(v) An opportunity to obtain execution without dealer intervention to the extent consistent with economically efficient executions and the opportunity to obtain best execution.[9]

The years since the 1975 Amendments have witnessed dramatic developments in the U.S. securities markets. Last sale reporting, which enables investors to determine the current market for a security, has been extended to OTC-traded securities. The Consolidated Quotation System ("CQS"), which allows investors to view in a single source quotes disseminated from dispersed market centers, did not exist in 1975. The Intermarket Trading System ("ITS"), which permits investors' orders in certain exchange-listed securities to be routed to the market center displaying the best quotation, has greatly facilitated quote competition. Moreover, technological developments not envisioned twenty years ago have enabled market centers to handle volume levels many times greater than those that led to the "back office" crisis of the late 1960s and early 1970s. Taken together, these and other developments have made it possible for investors' orders to be executed much more rapidly and at far lower cost.

The Commission recognized that U.S. equity markets had undergone significant changes since passage of the 1975 Amendments and were likely to undergo further changes of equal magnitude.[10] Accordingly, the Commission announced in July 1992 that its Division of Market Regulation ("Division") would undertake a study of the structure of the U.S. equity markets and of the regulatory environment in which those markets operate.[11]

In January 1994, the Division published a study,[12] which reviewed, among other things, market practices and structures that could affect the ability of customers to obtain opportunities for better prices. The Market 2000 Study noted that U.S. equity markets had evolved since 1975 to provide a much wider array of trading venues to meet the diverse needs of investors and made a series of recommendations intended to facilitate the further development of a national market system. As expected, U.S. equity markets have continued to evolve since the Market 2000 Study was published.

This evolution of the markets is reflected in part by comparing trading volumes and the venues in which orders are executed. In 1976, the New York Stock Exchange ("NYSE") average daily trading volume was approximately 21.2 million shares.[13] By 1995, average daily trading volume exceeded 346 million shares.[14] Third market trading, *i.e.*, OTC trading of listed securities, in NYSE-listed issues accounted for 4.57% of consolidated volume in 1976.[15] By 1995, third market trading increased to 7.94% of consolidated volume.[16] In 1987, the NYSE handled almost 74% of trades of NYSE-listed issues reported on the consolidated tape; in 1995, it handled 70.22% of such trades.[17]

Comparable figures for The Nasdaq Stock Market ("Nasdaq") are even more

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[5] This alternative means of compliance with the ECN amendment is referred to hereinafter as the "ECN display alternative".

[6] Additional amendments to the Quote Rule adopted today provide that certain Quote Rule provisions that previously applied to market makers that elected to quote a Nasdaq National Market security now also will apply to market makers electing to quote a Nasdaq SmallCap security. See section III.B.d.iii.

[7] See Securities Exchange Act Release No. 37620 (August 28, 1996) ("Companion Release").

[8] Pub. L. No. 94–29, 89 Stat. 97 (1975) ("1975 Amendments").

[9] Exchange Act section 11A(a)(1), 15 U.S.C. 78k–1(a)(1). This Section also recites the Congressional findings that: The securities markets are an important national asset which must be preserved and strengthened; and new data processing and communications techniques create the opportunity for more efficient and effective market operations.

[10] *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 (July 22, 1992) ("Market 2000 Concept Release").

[11] *Id.*

[12] Division of Market Regulation, Market 2000: An Examination of Current Equity Market Developments (January 1994) ("Market 2000 Study" or "Study").

[13] 1982 NYSE Fact Book.

[14] 1995 NYSE Annual Report.

[15] 1982 NYSE Fact Book.

[16] 1995 NYSE Fact Book.

[17] Regional exchanges, namely, the Boston Stock Exchange ("BSE"), the Philadelphia Stock Exchange ("Phlx"), the Cincinnati Stock Exchange ("CSE"), the Chicago Stock Exchange ("CHX"), and the Pacific Stock Exchange ("PSE"), have captured a significant share of volume in NYSE-listed issues, particularly with respect to smaller investor orders. In 1995, the regional exchanges accounted for 9.96% of consolidated volume in NYSE-listed issues but accounted for 19.01% of trades of NYSE-listed issues reported on the consolidated tape. *Id.* They also accounted for approximately 35% of share volume in trades of 100 to 2,099 shares. Shapiro, *U.S. Equity Markets: Recent Equity Developments*, in Global Equity Markets: Technological, Competitive, and Regulatory Challenges 21 (R. Schwartz ed. 1995). In January 1996, trades of 100–499 shares represented between 65–72% of all trades in NYSE-listed issues on regional exchanges; such trades represented only 37% of all trades on the NYSE. Ross, Shapiro and Smith, *Price Improvement of SuperDOT Market Orders on the NYSE* (NYSE Working Paper 96–01) (March 11, 1996 draft) (prepared for the NYSE Conference for the Search for Best Price) ("Ross, Shapiro and Smith").

dramatic. In 1975, Nasdaq annual volume was approximately 1.39 billion shares.[18] By 1995, Nasdaq annual volume increased to 101.2 billion shares,[19] which means that more shares traded hands on three average trading days in 1995 than in all of 1975. In 1993, volume in all proprietary trading systems combined represented 13% of the total volume in Nasdaq/National Market securities;[20] by January 1996, volume on Instinet alone represented approximately 15% of total Nasdaq volume and 20% of total volume for the 250 Nasdaq stocks with the highest median dollar volume.[21]

The Study addressed the development of certain practices, such as internalization,[22] payment for order flow[23] and the non-disclosure of certain customer trading interest to all market participants, that raise a variety of market structure and customer order handling concerns. For example, brokers today may quote one price publicly to retail customers, while showing a better price privately to other investors and dealers on an ECN. In addition, the quotes displayed to public investors may not accurately reflect the best price for a security because limit orders, which specify the price at which customers will buy or sell a security, are not uniformly required to be included in the quote.

The Study recommended that the exchanges and the NASD consider taking action to respond appropriately to certain of these developments. Since that time, Nasdaq market makers holding customer limit orders have been prohibited from trading ahead of those orders,[24] and some market makers have begun to offer price improvement opportunities in OTC transactions to their retail customers.[25] In addition, the NYSE now requires almost all limit orders transmitted through SuperDOT to be displayed to the market.[26] Further, Commission rules require enhanced disclosure of payment for order flow practices on customer confirmations and account statements, as well as upon opening new accounts.[27]

Notwithstanding the progress achieved in this period, the Commission believes that further regulatory initiatives are warranted at this time. These changes, as indicated in the Proposing Release, are intended to address current market practices that inhibit opportunities for order interaction and that are inconsistent with Congress's vision of the national market system. These changes also address certain problems in Nasdaq. The Commission recently reported that, among other things: (i) Nasdaq market makers widely followed a pricing convention concerning the increments they used to adjust their displayed quotes; (ii) adherence to the pricing convention was not the result of natural economic forces, often impacted the fairness and accuracy of public quotation information and interfered with the economically efficient execution of customer transactions; (iii) the pricing convention impaired the ability of investors to ascertain the best market for their trades, increased the costs of transactions, and resulted in unfair discrimination among classes of market participants; (iv) numerous market makers collaborated in ways that misled and disadvantaged their customers and other market participants and frequently failed to honor their price quotations; and (v) many market makers have not consistently reported their trades on time or appropriately designated them as late as required by NASD rules.[28]

The Commission has taken specific regulatory and enforcement actions to address these problems.[29] The Display Rule and Quote Rule amendments adopted today should bring about other, significant changes in the operation of Nasdaq, by ensuring the disclosure of customer and market maker buying and selling interest that heretofore has been hidden from many market participants. At the same time, the new rules will benefit investors in the exchange markets by increasing transparency in those markets and improving opportunities for the best execution of customer orders.

The Commission firmly believes that the actions it is taking today are consistent with the regulatory framework for a national market system established by Congress in the 1975 Amendments. Congress envisioned a national market system supported by accurate and reliable public quotation and transaction information, and fair competition among market centers. Congress also believed that linking all markets for qualified securities through communication and data processing facilities would foster efficiency, enhance competition, increase information available to market participants and contribute to the best execution of customer orders.[30]

The Commission recognizes that investors will lose confidence in the fairness of the markets unless market structures and practices treat all investors fairly. The regulatory initiatives adopted today address current market practices that hinder competition among markets and affect the prices at which customer orders are executed. The Display Rule and Quote Rule amendments enhance transparency and facilitate best execution of customer orders in a manner that preserves maximum flexibility for the markets to design and implement trading and communication systems that are consistent with the objectives of the national market system. These rules contribute to the achievement of the full potential of the national market system as envisioned by Congress. They represent one more step to facilitate the development of an efficient, competitive and transparent national market system in which all market participants can achieve best execution of their orders.

III. Discussion

A. Display of Customer Limit Orders

1. Introduction

As discussed above, the 1975 Amendments contain an explicit statutory mandate for the establishment of a national market system. Congress considered mandating certain minimum

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[18] 1992 Nasdaq Fact Book.

[19] 1995 NASD Annual Report.

[20] Market 2000 Study at Appendix IV–2.

[21] The Introduction of NAqcess into the Nasdaq Stock Market: Intent and Expectation, NASD Economic Research Staff, June 6, 1996 ("NASD Study"), Exhibit D to Securities Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574 (June 20, 1996) (Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers Relating to the NAqcess System and Accompanying Rules of Fair Practice)("NAqcess Release 2").

[22] Internalized orders are customer orders routed by a broker-dealer to an affiliated specialist or executed by that broker-dealer as a market maker.

[23] The Commission now requires enhanced disclosure of payment for order flow practices on customer confirmations and account statements, as well as upon opening new accounts. Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006 (November 2, 1994) (adopting rules requiring enhanced disclosure of payment for order flow practices on customer confirmations, and account statements, as well as upon opening new accounts) ("Payment for Order Flow Release"). *See also* Securities Exchange Act Release No. 35473 (March 10, 1995), 60 FR 14366 (March 17, 1995).

[24] Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994) ("Manning I"); Securities Exchange Act Release No. 35751 (May 22, 1995), 60 FR 27997 (May 26, 1995) ("Manning II").

[25] *See, e.g.*, Louis, *Schwab Debuts New Trading System*, San Francisco Chronicle, October 17, 1995, at D1.

[26] Securities Exchange Act Release No. 36231 (September 14, 1995), 60 FR 48736 (September 20, 1995).

[27] *See* Payment for Order Flow Release *supra* note 23.

[28] Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD, the Nasdaq Market, and Nasdaq Market Makers, Securities Exchange Act Release No. 37542 (August 8, 1996) ("21(a) Report").

[29] *See id.*

[30] *See* Exchange Act section 11A(a)(1)(D), 15 U.S.C. 78k–1(a)(1)(D).

components of the national market system, but instead created a statutory scheme granting the Commission broad authority to oversee the implementation, operation and regulation of the national market system.[31] At the same time, Congress charged the Commission with the responsibility to assure that the national market system develop and operate in accordance with specific goals and objectives.[32] The Commission believes that the adoption of a limit order display rule furthers these goals and objectives determined by Congress.

Specifically, the display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation. The enhanced transparency of such orders increases the likelihood that limit orders will be executed because contra-side market participants will have a more accurate picture of trading interest in a given security. Further, this increased visibility will enable market participants to interact directly with limit orders, rather than rely on the participation of a dealer for execution.

Moreover, as noted in the Proposing Release, the display of limit orders that are priced better than current quotes addresses at least three regulatory concerns. First, displaying customer limit orders in the quotation can increase quote competition. If the quotes from a market or market maker represent only market maker buying and selling interest in a given security, the market or market maker faces less price competition than if customer buying and selling interest is made public. As a result, the price discovery process may be constrained. Second, the display of limit orders can narrow quotation spreads. Third, because many markets and market makers offer automatic executions of small orders at the best displayed quotes, the display of limit orders that improve the best displayed quotes can result in improved executions for these orders.

Limit orders currently are handled differently in the various auction and dealer markets. Generally, the rules of most exchanges require that a limit order be displayed in the quotation for a security when it improves the best bid or offer. NYSE specialists, for example, must reflect a customer limit order in their quotations at the limit price when requested to do so.[33] In addition, the NYSE's order handling procedures assume that all limit orders routed to a specialist through SuperDOT contain a display request.[34] Therefore, except in the unusual and infrequent circumstance where a specialist believes market conditions suggest the likelihood of imminent price improvement, a limit order received by a specialist through SuperDOT should be reflected in the specialist's quote as soon as practicable following receipt of the order.[35] According to the NYSE, 93% of all SuperDOT limit orders that improve the best bid or offer displayed are reflected in the specialist's quote within two minutes of receipt, while 98% of such limit orders are reflected within five minutes of receipt.[36]

A recent NYSE policy statement requires specialists to display the full size of all orders received through SuperDOT as well as orders received by specialists manually that are subsequently entered into the electronic book.[37] When a member requests that less than the full size of the order be shown, the specialist is obligated to show the size requested. Specialists must display as soon as practicable any order that, in relation to current market conditions in a particular security, represents a material change in the supply or demand for that security. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer. If the quotation already reflects significant supply or demand, and the specialist receives an order that is *de minimis* in relation to such supply or demand, the specialist may take a reasonable time (generally not more than two minutes) before updating the size of the quotation.[38]

Currently in the OTC market, the quote for any security typically represents a dealer's own bid and offer. The rules of the NASD do not require market makers to display customer limit orders, whether or not they better the best bid or offer for the security.[39] Generally, customer limit orders in OTC securities either will be routed to a broker-dealer's market making desk or to another market maker for execution if the customer's firm does not make a market in the security. In the past, market makers typically did not execute limit orders until the best bid (for sell orders) or offer (for buy orders) displayed on Nasdaq reached the limit price. This practice has changed, however, in recent years. In June 1994, the Commission approved a rule change filed by the NASD that prohibits broker-dealers from trading ahead of their customers' limit orders.[40] This rule was expanded in May 1995, to prohibit broker-dealers from trading ahead of customer limit orders they accept from other brokers.[41] The NASD also has filed a proposed rule change that would require, in certain circumstances, the display of customer limit orders for exchange-listed securities traded OTC.[42]

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[31] S. Rep. No. 75, 94th Cong., 1st Sess. 6–9 (1975) ("Senate Report").

[32] *Id.* at 9. Among other things, Congress found it in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure an opportunity for investors' orders, in both dealer and auction markets, to be executed without the participation of a dealer, to the extent that this was consistent with economically efficient executions of such orders in the best market. Exchange Act Section 11A(a)(1(c), 15 U.S.C. 78k-1(a)(1)(C).

[33] *See* NYSE Rule 79A.10 (when a limit order is presented to the specialist by a floor broker, the floor broker must affirmatively request that the specialist display the limit order; failure to so request leaves the decision whether to display the limit order to the discretion of the specialist); *see also* NYSE Rule 60 (requiring specialists to promptly report, inter alia, the best bid and offer in the trading crowd in each reported security in which the specialist is registered).

[34] NYSE Information Memo 93–12 (Mar. 30, 1993).

[35] *Id.*

[36] Telephone Conference between Edward A. Kwalwasser, Executive Vice President, NYSE, and Holly H. Smith, Associate Director, Division of Market Regulation, SEC, January 9, 1995.

Other exchanges also have rules regarding dissemination of bids and offers. However, no uniform standard has been adopted among the exchanges. Generally, the rules either cite, in whole or in part, language from the Quote Rule, or are drafted in such a manner as to allow for broad interpretation with respect to the display of limit orders. *See, e.g.*, BSE Guide, Rules of the Board of Governors, Chapter II, Sec. 7, (CCH) ¶ 2020; PSE Guide, Rules of the Board of Governors, Rule 5.6(f), (CCH) ¶ 3979; American Stock Exchange Guide, General and Floor Rules, Rule 115, (CCH) ¶ 9265; CHX Guide, Article XX, Rule 7, (CCH) ¶ 1688; Phlx Guide, Rules 105 and 229 (CCH) ¶ 2105 and 2229; Cincinnati Stock Exchange Rules, Rule 11.9.

[37] *See supra* note 26.

[38] The NYSE provides the following example of when a specialist may take a reasonable time to update the size of the quotation: If the market in XYZ security is 20 (5,000)—20¼ (50,000), and the specialist receives an order to sell 200 shares at 20¼, such order would be considered *de minimis* and the specialist would be permitted to wait a reasonable period of time (but not more than two minutes) before changing the size of the offer to 50,200.

[39] *See NASD Manual*, Rule 4613.

[40] *See* Manning I, *supra* note 24.

[41] *See* Manning II, *supra* note 24.

[42] *See* Securities Exchange Act Release No. 35471 (March 10, 1995), 60 FR 14310 (March 16, 1995). The NASD proposal, applicable to exchange-listed securities traded OTC, generally would require a market maker either to execute immediately a limit order of less than the minimum quotation size priced better than the market maker's quotation, or display the order in its quotation for an amount equal to the minimum quotation size. Market makers would have to display a limit order greater than the minimum quotation size for that security but would not have to display the full size of the order. Any portion of the order not displayed, however, would have to be executed at a price at least as favorable as the displayed price if the displayed portion is executed in its entirety. At the NASD's request, the Commission has postponed

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The exchanges and the NASD use automated trading systems to route and, in some instances, execute orders up to a predetermined size. Some of these systems accept limit orders. Each system, however, may differ in its handling of limit orders that are not executed immediately upon receipt. For example, the NYSE's SuperDOT system routes limit orders to the specialists' posts where they are handled in accordance with NYSE rules governing specialist representation of such orders. The American Stock Exchange's ("Amex") PER system routes limit orders in the same manner as SuperDOT and the orders are handled in accordance with Amex rules. The NASD's Small Order Execution System ("SOES") treats limit orders priced at the current inside market as market orders that are immediately executed.[43] All other limit orders reside in a limit order file that can be viewed only by market makers.[44] SOES does not provide an opportunity for limit orders to interact with incoming market orders. The Commission has published for comment an NASD proposal to replace SOES with "NAqcess," a system that would include a limit order file designed to display certain customer limit orders.[45]

The disparate treatment of limit orders across markets was raised as an issue in the Market 2000 Study. The Commission received numerous comments concerning whether the optimal degree of pre-trade disclosure of limit orders was being achieved within the U.S. equity markets. Some commentators alleged that specialists and third market dealers sometimes fail to display limit orders priced better than the displayed quotation.[46] Questions also were raised about the lack of limit order exposure on Nasdaq. After considering these comments, the Division recommended in the Study that the securities exchanges consider whether to encourage the display of all limit orders in listed stocks priced better than the best intermarket quotes, unless the ultimate customer requests that the order not be displayed. The Market 2000 Study also recommended the display of limit orders in Nasdaq stocks when the orders are at prices better than the best Nasdaq quotes, unless the customer requests that the order not be displayed.[47]

2. Discussion

a. Basis for Adoption of the Rule

After carefully considering all of the comments as well as economic research regarding the Display Rule, and based on the Commission's experience and knowledge of current market practices and conditions, the Commission believes that adoption of the Display Rule will promote transparency and enhance execution opportunities for customer orders, and encourage liquidity.[48]

The Commission stresses, however, that the rule is not meant to displace any SRO rules that provide additional order handling protections to customer limit orders. Instead, the Commission rule represents only a minimum display standard.

The Commission believes that limit orders are a valuable component of price discovery. The uniform display of such orders will encourage tighter, deeper, and more efficient markets. Limit orders convey buying and selling interest at a given price. The display of limit orders can be expected to narrow the bid-ask spread when this buying and selling interest is priced better than publicly disclosed prices.[49] Both large and small orders stand to benefit from the Display Rule's effect on price discovery.[50] In fact, the importance of

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final action on the NASD's proposal in order to permit the NASD to evaluate its proposal in light of the Commission's actions on the proposals it is adopting today.

[43] Preferenced orders (*i.e.*, orders routed to a specific market maker pursuant to a pre-existing agreement) are executed immediately at the inside quote. Unpreferenced orders are executed against market makers in a security in rotation. SOES, however, does not execute an unpreferenced order against a single market maker more than once every 15 seconds.

[44] The current SOES rules have been extended, with certain changes that do not affect the handling of limit orders, through January 31, 1997. Securities Exchange Act Release No. 37502 (July 30, 1996), 61 FR 40869 (August 6, 1996).

[45] *See* Securities Exchange Act Release No. 36548 (December 1, 1995), 60 FR 60392 (December 8, 1995) ("NAqcess Release 1"); NAqcess Release 2, *supra* note 21. As proposed, NAqcess would act as an order delivery system with a limited public limit order file.

Limit orders up to 9,900 shares would be permitted in NAqcess for the top 250 Nasdaq National Market securities, defined by median daily dollar volume, and for 1,000 shares for all other Nasdaq securities. Market makers would be allowed to query the entire limit order file. All other market participants would be limited to viewing the top of the NAqcess limit order file (*i.e.*, the best priced buy and sell limit orders, and the size associated with those orders—the NAqcess inside market). This inside market would be factored into the calculation for the inside quote for each Nasdaq security. Although use of NAqcess would be voluntary, limit orders not entered in NAqcess would be provided with market-wide price protection under the proposal.

[46] *See generally* Thomas H. McInish & Robert A. Wood, *Hidden Limit Orders on the NYSE*, 21 J. Portfolio Mgmt. 19 (No. 3, Spring 1995) ("McInish & Wood Study"). The authors asserted that NYSE specialists only display about 50% of limit orders that better existing quotes. In their opinion, this practice represents a serious policy issue because it places both public investors and regional exchanges at a disadvantage. They asserted that hiding limit orders impedes strategic decisions on order placement; results in publicly submitted market orders receiving inferior prices; hampers the monitoring of order executions; reduces the probability of a limit order being executed; results in a delay in reporting limit order executions; interferes with the ability of the regional exchanges to execute public orders; and artificially improves NYSE performance relative to the regional exchanges using a common benchmark. The authors also claimed that NYSE Rule 60 is ambiguous in that the specialists may have some leeway in choosing what to disclose in their quotes.

In its comment letter to the Market 2000 Study, however, the NYSE asserted that its publicly disseminated best bid or offer includes all firm trading interest announced on the floor as required by the exchange's rules. *See* Letter from William H. Donaldson, Chairman and Chief Executive Officer, NYSE, to Jonathan G. Katz, Secretary, SEC at 25–26 (November 24, 1992). In addition, the NYSE issued a policy statement that reiterates that specialists have an obligation to reflect in their quotes certain limit orders received manually or via SuperDOT that are not executed on receipt. *See supra* note 26.

[47] Market 2000 Study, at IV–6.

[48] *See, e.g.*, Letter from Thomas F. Ryan, Jr., President and Chief Operating Officer, Amex, to Jonathan G. Katz, Secretary, SEC, dated February 1, 1996 ("Amex Letter"); Letter from David E. Shaw, Ph.D., Chairman, D.E. Shaw & Co., to Jonathan G. Katz, Secretary, SEC, dated January 9, 1996 ("D.E. Shaw Letter") (rule will promote transparency); Letter from Paul A. Merolla, Vice President, Associate General Counsel, Goldman, Sachs & Co., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 ("Goldman Sachs Letter") (rule would benefit marketplace); Letter from Craig S. Tyle, Vice President and Senior Counsel, Securities and Financial Regulation, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 ("ICI Letter") (increased transparency of customer limit orders in all markets could produce benefits to the markets and investors); Letter from Donald L. Crooks, Managing Director, Lehman Brothers, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 26, 1996 ("Lehman Letter") (rule promotes transparency and results in improved opportunities for execution of customer orders); Letter from Bernard L. Madoff and Peter B. Madoff, Bernard L. Madoff Investment Securities, to Jonathan G. Katz, Secretary, SEC, dated January 12, 1996 ("Madoff Letter") (rule will help achieve true price discovery and fairness to investors); Letter from Andrew E. Feldman, Director and Associate General Counsel, Smith Barney Inc., to Jonathan G. Katz, Secretary, SEC, dated January 29, 1996 ("Smith Barney Letter") (rule will promote transparency and assist in achieving best execution of orders). *But see* Letter from Charles R. Hood, Senior Vice President and General Counsel, Instinet, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 ("Instinet Letter") (exceptions to rule eliminate potential positive impact on transparency).

[49] For example, limit order trading allows investors the opportunity to trade at prices superior to those represented by the prevailing inside bid and offer. See NASD Study, *supra* note 21.

[50] According to SuperDOT trade data analyzed by the Commission's Office of Economic Analysis ("OEA"), customer limit orders account for 50% of all NYSE customer trades originating from orders routed through SuperDOT ("customer trades") of 100–500 shares; 66% of all customer trades of 600–1,000 shares; 71% of all customer trades of 1,100–3,000 shares; and 74% of all customer trades of 3,100–9,900 shares. The Commission believes that these high percentages are based, at least in part, on the fact that limit orders routed through SuperDOT are required to be displayed in the

limit orders in the trading process was documented in recent studies.[51] The author quantified the impact of exposing limit orders on quoted spreads and effective transaction costs. Using NYSE data, he determined that the quote spreads resulting from participation of the limit order book were approximately 4 to 6 cents smaller than the spreads not set by the limit order book. Further, trading costs on the NYSE were approximately 3–4 cents less per share on a "round trip" transaction when both the purchase and the sale were executed against the limit order book.[52]

The uniform display of limit orders also will lead to increased quote-based competition. Market makers will not only be competing amongst themselves, but also against customer limit orders represented in the quote. The Commission believes that this result will reduce the possibility of certain trading behavior on Nasdaq that was recently the subject of a Commission investigation.[53] As reported in the 21(a) Report, Nasdaq market makers widely adhered to a "pricing convention," whereby Nasdaq market makers maintained artificially inflexible quotations and as a result often traded with the public at prices unduly favorable to such market makers.[54] In addition, the Commission determined that Nasdaq market makers adhered to a "size convention" that deterred Nasdaq market makers from narrowing their quotes to create a new inside market unless the market makers were willing to trade at least 2,000 to 5,000 shares at that price, rather than the minimum quotation size as determined by NASD rules.[55] This practice prevented the dissemination of improved quotes when a trader sought to trade stock only at a size equal to the minimum quotation size. Thus, the true buying and selling interest in a given security was not reflected in the published quotes.

In addition to the Commission's actions, and those of the Department of Justice in connection with its investigation of the Nasdaq market, the Commission believes the requirement to display customer limit orders in market maker quotes would inhibit market makers from engaging in the conduct described above. Moreover, the display of limit orders reduces the potential for certain other conduct described in the 21(a) Report, including market maker collaboration and coordination of trade and quote activities. Market makers will be less able to improperly coordinate such behavior due to the display of competing customer order flow and the resulting transparency of ultimate buying and selling interest. The Commission believes that the display requirement will both foster renewed quote-based competition among market makers and introduce new competition from customer limit orders.

The Commission also believes that overall market liquidity should be enhanced due to the increased trading volume that is expected to result from the display of limit orders.[56] As noted previously, customer limit orders account for a significant percentage of total customer orders on the NYSE, where customer limit orders generally are required to be displayed when they represent a better price.[57] Moreover, previous Commission initiatives designed to enhance transparency have resulted in increased competition and liquidity for the markets.[58]

Customers also will be better able to monitor the quality of their executions. Currently, the failure to display limit orders often results in inferior or missed executions for these orders. The Commission has received frequent complaints from customers whose limit orders have not been filled while other executions are reported at prices inferior to their limit order prices. Requiring the display of customer limit orders in specialist and market maker quotes, although not guaranteeing that such limit orders will be executed, will help ensure that other orders are not executed at inferior prices until better priced limit orders are executed. Similarly, customers entering market orders will be able to determine whether their orders are receiving the best price available. Customers also will be in a better position to compare the execution quality provided by different broker-dealers.[59]

The absence of a uniform limit order display requirement across all markets has contributed to the controversy among market participants regarding the availability of true price improvement

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specialist's quote. The Commission believes that these percentages help demonstrate the benefits associated with limit order display for both large and small order sizes. In addition, OEA data shows that NYSE customer limit orders routed through SuperDOT narrow the NYSE quote 22% of the time and match the quote 39% of the time for customer limit orders of 100–1,000 shares; narrow the quote 17% of the time and match the quote 43% of the time for customer limit orders of 1,100–3,000 shares; and narrow the quote 14% of the time and match the quote 46% of the time for customer limit orders of 3,100–9,900. OEA data also shows that, when the NYSE bid-ask spread was ¼ point or more, customer limit orders routed through SuperDOT narrow the NYSE spread between 41% and 50% of the time, depending on the size of the customer order.

[51] *See* Jason T. Greene, *The Impact of Limit Order Executions on Trading Costs in NYSE Stocks* (An Empirical Examination), December 1995 ("Greene Study"); *see also* Jason T. Greene, *Limit Order Executions and Trading Costs for NYSE Stocks*, June 1996 ("Greene Study II").

[52] The Commission further believes that the display requirement will improve price transparency in securities with diverse trading characteristics. Based on SuperDOT trade data, the Commission's OEA has determined that for NYSE securities with an average daily trading value ("ADTV") of under $100,000, customer limit orders account for 57% of all NYSE customer trades originating from orders routed through SuperDOT ("customer trades") of 100–500 shares; 69% of all customer trades of 600–1,000 shares; 76% of all customer trades of 1,100–3,000 shares; and 83% of all customer trades of 3,100–9,900 shares. Limit orders also are frequently used for securities with higher ADTVs. For example, for NYSE securities with an ADTV of over $5,000,000, customer limit orders account for 48% of all NYSE customer trades of 100–500 shares; 68% of all customer trades of 600–1,000 shares; 72% of all customer trades of 1,100–3,000 shares; and 73% of all customer trades of 3,100–9,900 shares. Moreover, OEA data shows that for NYSE securities with an ADTV of under $100,000, customer limit orders routed through SuperDOT narrow the NYSE quote 30% of the time and match the quote 32% of the time. For less liquid securities, therefore, the display of customer limit orders narrows spreads, improves price discovery, and increases market depth. For NYSE securities with an ADTV of $5,000,000 or more, customer limit orders routed through SuperDOT narrow the NYSE quote 18% of the time and match the quote 41% of the time.

The NASD has suggested that the greater the size of the displayed spread, the greater the use of limit orders. *See* NASD Study, *supra* note 21.

[53] *See* 21(a) Report, *supra* note 28. The investigation identified a number of practices in the Nasdaq market that are similar to practices identified in the 1963 Special Study. *See* SEC, Report of Special Study of Securities Markets (1963). For example, the 1963 Special Study discussed cooperation and information sharing between traders, as well as other non-competitive practices. *Id.* at pt. 2, 576–577.; *See also* Competitive Impact Statement of the U.S. Department of Justice Antitrust Division, United States v. Alex. Brown & Sons, *et. al.*, (S.D.N.Y. 1996).

[54] As a result of this convention, most Nasdaq stocks were quoted only in increments of ¼. Under the convention, stocks with a dealer spread of ¾ or more would only be quoted in even-eighths (*i.e.*, ¼, ½, ¾), thereby giving rise to a minimum inside spread of ¼. Stocks with dealer spreads less than ¾ would be quoted in both even and odd-eighths, thereby allowing a minimum inside spread of ⅛. The pricing convention significantly limited the flexibility and competitiveness of price quotations in the Nasdaq market.

[55] *See* 21(a) Report, *supra* note 28.

[56] *See* Greene Study and Greene Study II, *supra* note 51 (limit orders affect the quoted spread, provide liquidity to traders that demand immediacy of execution, and may contribute to reduced trading costs); NASD Study, *supra* note 21 (the liquidity supplied by limit orders reduces trading costs of market participants); OEA Data, *supra* notes 50 and 52 (limit orders narrow spreads, improve price discovery, and increase market depth).

[57] *See* OEA Data, *supra* notes 50 and 52.

[58] *See* Market 2000 Study at Study IV. *See also* discussion at section III.A.b.iii., *infra*; Simon & Colby *The National Market System For Over-The-Counter Stocks* ("Simon and Colby"), 55 Geo. Wash. L. Rev. 17 (1986).

[59] The Commission notes that if the Display Rule leads some market makers to charge commissions for handling limit orders, Commission rules require disclosure of such charges. *See* 17 CFR 240.10b–10.

opportunities. Many claim that "hidden" limit orders in exchange markets contribute to distorted price improvement figures for these markets.[60] This potential distortion also hinders a customer's ability to monitor execution quality. Pursuant to the Display Rule, the vast majority of limit orders will be publicly disclosed, thus enabling a more accurate comparison of price improvement opportunities, and enabling customers and broker-dealers to make more informed order routing decisions.[61]

Moreover, the Commission believes that the display of limit orders will benefit orders routed to automated execution systems. To the extent these systems execute orders at prices based on the best displayed quotation for a particular security,[62] customers whose orders are executed through these systems will receive the benefit of prices that more accurately reflect buying and selling interest in the market.

In sum, the Commission believes the adoption of the Display Rule is an important step in furthering the goals expressed by Congress in the 1975 Amendments. The Display Rule will provide enhanced opportunities for public orders to interact with other public orders, consistent with congressional goals.[63] In addition, the display requirement will, among other things, narrow quotes, enhance market liquidity, and improve an investor's ability to monitor the quality of its executions.[64] This will create a better environment for execution of both limit and market orders without the participation of a dealer. The increased order interaction will result in quicker and more frequent executions of customer limit orders. The Display Rule, therefore, will increase the likelihood that limit orders will be executed, a result that the Commission believes is consistent with the duty of best execution.

b. Response to Comments[65]

The Commission proposed Rule 11Ac1–4 to establish minimum display requirements for customer limit orders that improve a specialist's or OTC market maker's best bid or offer for a particular security as well as the size of such orders. In addition, the rule requires the display of the size of certain limit orders priced at the national best bid or offer ("NBBO"). Although the rule generally would mandate the display of limit orders, market makers and specialists still would retain some flexibility in handling limit orders accepted for execution.

Specifically, the rule allows an OTC market maker or specialist, immediately upon receipt of a limit order, to: (1) Change its quote and the size associated with its quote to reflect the limit order; (2) execute the limit order; (3) deliver the limit order in an exchange- or association-sponsored system that complies with the requirements of the rule; or (4) send the limit order to another market maker or specialist who complies with the requirements of the rule. The rule would require a specialist or OTC market maker to display a customer limit order when the order was "held" by the specialist or OTC market maker. If the specialist or OTC market maker immediately sends the order to a system or to another specialist or OTC market maker that complies with the rule, the specialist or OTC market maker that routed the order would have satisfied its obligation to display the order. These alternatives are intended to allow market makers, specialists, and market centers an opportunity to continue to provide their valuable services while offering customers the best available execution opportunities.

The Display Rule as adopted maintains these alternatives as proposed. Additionally, to better achieve its aims and to respond to comments, the Commission has made some modifications to the proposed rule. For example, the Commission has decided to permit a specialist or OTC market maker to deliver a limit order to certain ECNs as an alternative to representing the limit order in its quote. This change is an extension of the proposed exception that permits a specialist or OTC market maker to deliver a limit order to an exchange- or association-sponsored system that complies with the Display Rule. Moreover, with regard to implementation of the rule, the Commission is providing for a four-stage phase-in over a one year period for non-exchange-traded securities.

Of the commenters who specifically addressed the proposed Display Rule, an overwhelming majority strongly support the inclusion of customer limit orders in the quote.[66] One commenter

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[60] *See* James J. Angel, *Who Gets Price Improvement on the NYSE?*, Working Paper, December 1994. In studying the availability of price improvement on the NYSE, the author noted that over 18% of the market orders that were price improved were filled by SuperDOT limit orders. Based on this percentage, the author estimated the percentage of orders price improved by "hidden" limit orders and determined that if such limit orders were represented in the specialist's quote rather than "hidden," spreads would have been narrower and NYSE price improvement statistics would have declined. *See also*, McInish & Wood Study, *supra* note 46; Mitchell A. Petersen & David Fialkowski, *Posted Versus Effective Spreads: Good Prices or Bad Quotes*, 35 J. Fin. Econ. 269 (1994) (the fact that so many orders execute inside the posted spreads indicates that quotes do not represent the true supply and demand of a given security, and may be based, in part, on the failure to display public limit order interest in the quote). *Cf.* Ross, Shapiro and Smith, *supra* note 17 (although the authors did not examine limit orders in detail, and discounted the effect of "hidden" limit orders on their statistics, the authors found that limit orders provide 27% of the price improvement afforded to SuperDOT market order volume).

[61] *See, e.g.*, Amex Letter (rule would help eliminate hidden limit orders); Letter from Frederick Moss, Chairman of the Board, CSE, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 ("CSE Letter") (elimination of hidden limit orders will eliminate illusion of superior price improvement); Letter from Harold S. Bradley, Vice President and Director of Trading, Investors Research Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 13, 1996 ("Investors Research Letter") (hidden limit orders are not justified).

[62] *Compare* discussion of best execution at section III.C.2.

[63] *See* 15 U.S.C. 78k–1(a)(1)(C)(v).

[64] The Commission notes that a few commenters are concerned about the potential effects of the Commission's proposals on institutional customers. *See* Goldman Sachs Letter; Letter from Howard J. Schwartz, Chairman and Chief Executive Officer, and James Hanrahan, Managing Director—Trading, Lynch, Jones & Ryan, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 9, 1996 ("LJR Letter"); Letter from A.B. Krongard, Chairman, SIA Board of Directors, and Bernard L. Madoff and Robert Murphy, Co-Chairmen, Order Execution Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC, dated February 28, 1996 ("SIA Letter"). The Commission believes that the Display Rule will benefit both retail and institutional customers, while preserving the access to the markets that institutional customers have today. For example, an institutional customer's block size limit order would not be subject to the rule unless such customer requests that the order be displayed. Moreover, any customer, whether individual or institutional, can request that its non-block size limit order not be displayed. The Commission also notes that increased quote competition and enhanced transparency should improve the prices at which institutions and market makers begin their negotiations for the execution of institutional orders. *See also* 21(a) Report, *supra* note 28.

[65] For further discussion of the views of commenters, see the Summary of Comments, *supra* note 4.

[66] *See, e.g.*, Amex Letter; Letter from Marshall E. Blume, Director, Howard Butcher Professor of Financial Management, The Wharton School of the University of Pennsylvania, to Jonathan G. Katz, Secretary, SEC, dated January 11, 1996 ("Blume Letter"); Letter from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 ("BSE Letter"); Letter from Robert H. Forney, CHX, to Jonathan G. Katz, Secretary, SEC, dated January 23, 1996 ("CHX Letter"); D.E. Shaw Letter; Letter from Antitrust Division, U.S. Department of Justice, to SEC, dated January 26, 1996 ("DOJ Letter"); Letter from Preston Estep, Estep Trading Partners L.P., to Jonathan Katz, Secretary, SEC, dated December 21, 1995 ("Estep Letter"); Goldman Sachs Letter; ICI Letter; Lehman Letter; Madoff Letter; Letter from William A. Lupien, Chairman and Chief Executive Officer, Mitchum, Jones & Templeton, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 8, 1996 ("MJT Letter"); Letter from Joseph R. Hardiman, President, National

notes that true price discovery and fairness for public investors can only be achieved when limit orders are reflected in the NBBO.[67] Other commenters, expressing strong support for the proposed rule, believe that market-wide limit order procedures will improve the markets by enhancing overall market transparency[68] and eliminating the advantages derived by some markets from hidden limit orders.[69] The Department of Justice states that the proposed rule encourages quote competition, which is likely to reduce spreads,[70] and allows customer orders to interact with one another.[71] In this regard, several commenters recognize that the proposed rule would assist in achieving best execution of customer orders[72] by increasing the opportunities for execution of limit orders, and improving the prices for market orders.[73] Another commenter states that the proposed rule is consistent with investor expectations and will act to protect retail customer interests.[74]

Other commenters oppose the proposal. Several commenters in this group have raised the following general concerns regarding the proposed rule.

i. Distinction Between Markets

Several commenters argue that the Display Rule does not take into account distinctions between auction and dealer markets. Some of these commenters, discussing the Proposing Release as a whole, argue that the Commission's proposals would "auctionize" the dealer market.[75] One commenter warns that, because auction and dealer markets are fundamentally different, a single set of rules for both auction and dealer markets would reduce quote quality and damage overall market integrity in dealer markets.[76] Although the SIA reports that the consensus view of its Ad Hoc Committee on Order Execution is to require a market maker to reflect customer limit orders in the quote, the SIA argues that the adoption of the proposed rule, without suggested modifications, could adversely affect the dealer market so as to weaken competition between dealer and auction markets.[77]

The Commission believes that the application of the principles underlying the limit order display rule to the dealer market is neither a new nor radical concept. In 1975, Congress envisioned an NMS in which public limit orders in qualified securities would have a central role.[78] Congress anticipated that the NMS would make all specialists and market makers aware of public customer limit orders held anywhere in the system, and provide enhanced protection and priority for limit orders in stocks qualified for trading in a national market system.[79] The Commission has consistently recognized since 1975 that, in order to satisfy this Congressional vision, multiple-market display of limit orders was an important component for qualified securities.[80] More recently, the Market 2000 Study recommended that the SROs, including the NASD, consider requiring the display of customer limit orders,[81] and the NASD, in a proposed rule change filed with the Commission, proposed that CQS market makers display in their quotes certain customer limit orders for exchange-listed securities traded OTC.[82] The NASD also has proposed a mechanism for the display and protection of customer limit orders in Nasdaq securities.[83]

Although some commenters claim that the Commission is attempting to "auctionize" the dealer market, the display requirement is based on transparency and agency concerns, including a broker-dealer's obligation to provide its customers with best execution.[84] The display of customer limit orders will act to narrow spreads, improve price discovery, and increase market depth. The enhanced transparency resulting from the Display Rule will increase the likelihood that customer limit orders will be executed, improve the execution prices of market orders, and strengthen an investor's ability to monitor the quality of executions.[85] These results further several Congressional goals.

In keeping with Congressional intent, the Commission believes the treatment of limit orders should reflect the very real changes in market structure that have taken place since the enactment of the 1975 Amendments. These changes include the development of a robust, liquid OTC dealer market that attracts significant investor trading interest, that trades at many multiples of the volume extant in 1975, and that is characterized by the inclusion of thousands of securities that meet the NMS designation.[86] In addition, the

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Association of Securities Dealers, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 ("NASD Letter"); Letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 ("NYSE Letter"); Letter from David S. Pottruck, President and Chief Operating Officer, The Charles Schwab Corporation, to Jonathan G. Katz, Secretary, SEC, dated May 7, 1996 ("Schwab Letter II"); SIA Letter; Letter from William R. Rothe, Chairman, and John L. Watson III, President, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 ("STA Letter"); Letter from John F. Luikart, President and Chief Executive Officer, Sutro & Co., to Jonathan Katz, Secretary, SEC, dated January 16, 1996 ("Sutro Letter").

[67] Madoff Letter.

[68] *See, e.g.*, Amex Letter; CHX Letter; CSE Letter; D.E. Shaw Letter; ICI Letter; Investors Research Letter; Lehman Letter; Smith Barney Letter.

[69] *See, e.g.*, Amex Letter (rule would help eliminate hidden limit orders); CSE Letter (elimination of hidden limit orders will eliminate illusion of superior price improvement); Investors Research Letter (hidden limit orders are not justified).

[70] DOJ Letter.

[71] *Id; see also* Amex Letter; Lehman Letter.

[72] *See, e.g.*, Lehman Letter; Smith Barney Letter.

[73] Lehman Letter.

[74] D.E. Shaw Letter.

[75] *See, e.g.*, Letter from R. Steven Wunsch, President, AZX, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 ("AZX Letter"); Goldman Sachs Letter; Letter from David Rich, Vice President, Jefferies & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 25, 1996 ("Jefferies Letter"); Letter from Robert W. Murphy, President, RPM Specialist Corporation, to Jonathan G. Katz, Secretary, SEC, dated February 26, 1996 ("RPM Letter"); Letter from Robert A. Schwartz, Professor of Finance and Economics, and Yamaichi Faculty Fellow, Leonard N. Stern School of Business, New York University, and Robert A. Wood, Distinguished Professor of Finance, Fogelman College of Business and Economics, University of Memphis, to Jonathan G. Katz, Secretary, SEC, dated January 23, 1996 ("Schwartz & Wood Letter"); SIA Letter.

[76] RPM Letter.

[77] SIA Letter. *Cf.* Letter from A.B. Krongard, Chairman, SIA Board of Directors, and Bernard L. Madoff, Chairman, Trading Committee, to Jonathan G. Katz, Secretary, SEC, dated August 1, 1996 ("SIA NAqcess Letter") (the SIA, in its letter to the Commission regarding the NASD's NAqcess proposal, states that the Commission's Order Execution Obligations proposal would narrow quotation spreads, improve transparency, and provide customers with best execution of their orders, consistent with the 1975 Amendments).

[78] Senate Report, *supra* note 31.

[79] *Id.* The Senate Report stressed the need to establish a mechanism by which specialists and market makers could be made aware of customer orders within the NMS. The Senate Report was "satisfied that [the legislation] grant[ed] the Commission complete and effective authority to implement a system for the satisfaction of public limit orders." *Id.* at 18.

[80] *See* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360 (April 4, 1979) (Development of a National Market System Status Report). *See also* Securities Exchange Act Release No. 18738 (May 13, 1982), 47 FR 22376 (May 24, 1982) (proposing limit order display requirement for Rule 19c-3 securities).

[81] Market 2000 Study, at IV–6.

[82] *See supra* note 42.

[83] *See supra* note 45.

[84] *See* NASD Study, *supra* note 21 (enhancements to limit order handling, within the dealer market structure, will create significant benefits for investors). *See also* Manning II, *supra* note 24 (Commission's extension of limit order protection to Nasdaq does not suggest an intention to "auctionize" the dealer market).

[85] *See* Senate Report, *supra* note 31 at 16–18 (discussing desirability of incorporating certain auction market principles, such as limit order display and protection, for certain qualifying securities in dealer markets).

[86] To date, approximately 4,000 Nasdaq securities have qualified for the NMS designation. In order to qualify as an NMS security, transaction reports are required to be reported on a real-time basis pursuant to an effective transaction reporting plan

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Commission believes that application of the Display Rule should also benefit investors in those securities that do not yet meet the NMS designation.[87] As noted earlier, the Commission believes that the increased use of limit orders in these securities will lead to a narrowing of spreads and ameliorate certain anti-competitive practices that have developed in the Nasdaq market.[88] The Commission has determined that certain practices on Nasdaq have contributed to artificially wide spreads for OTC securities.[89] The display of customer limit orders in all Nasdaq securities will promote accurate pricing and convey the true buying and selling interest in such securities.

A few commenters believe that the Display Rule was proposed solely to address problems in the OTC market, and accordingly there is no need for a uniform rule applicable to exchange markets.[90] As noted previously, the Commission's intention is to create a minimum standard for the handling of limit orders across all markets, consistent with market transparency, competition, and best execution principles. Currently, the national securities exchanges do not handle limit orders uniformly, and in fact the non-display of retail-size limit orders is permitted under certain circumstances. The rule will ensure that investors benefit from the display of limit orders, no matter where an order is sent for execution.[91] A minimum standard also addresses concerns regarding the prevalence of hidden limit orders.[92] The Commission believes, therefore, that a market-wide limit order display requirement is most consistent with the duty of best execution and the expectations of investors.

ii. Distinction Between Quotes and Orders

Some commenters maintain that the rule blurs the distinction between quotations and orders.[93] One commenter states that limit orders represent only a finite trading interest while quotes represent the "actual" market for a security; thus, displaying limit orders would not reflect the "true" state of the market and impair the quality of quotation information.[94] The commenter suggests that a separate limit order file would be more appropriate in light of these distinctions.[95] In this vein, several commenters mention the NASD's proposed NAqcess system,[96] suggesting that the Commission postpone implementation of the Display Rule until the Commission has an opportunity to assess the effects of NAqcess.[97] A few commenters suggest the implementation of an industry-wide consolidated limit order book as an alternative or a logical outgrowth of the Display Rule.[98]

The Commission believes that the display of limit orders is an essential component of accurate price discovery. A quote provides market participants with information regarding a market maker's or specialist's trading interest at a given price. A market maker or specialist could be willing to purchase or sell additional shares above its quoted size.[99] Entry of a customer limit order that improves the quote serves a similar purpose. A limit order accurately represents trading interest for a specific volume of a security at the limit price. There are few practical differences between customer limit orders and a market maker's quotation that is firm only for its quoted size. Nonetheless, the proposed rule was not intended to equate customer limit orders with market maker quotes. Instead, the proposed rule was designed to facilitate greater transparency of customer trading interest, with the expectation that orders would have an increased opportunity for best execution without the interaction of a dealer. In the Commission's opinion, these objectives are more difficult to achieve if customer trading interest is not routinely represented in publicly displayed quotes. The Commission notes that the Display Rule provides other means by which a market maker or specialist may comply with the requirements of the rule in the event a specialist or market maker elects not to display customer trading interest in its quote.[100]

Further, the Commission does not agree with the suggestion that the Commission postpone the adoption of the Display Rule until the Commission has had an opportunity to evaluate the NASD's NAqcess proposal.[101] Although

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approved by the Commission. *See* 17 CFR 240.11Aa2–1 and 11Aa3–1.

[87] As discussed below, the Display Rule will apply only to "covered securities." At the present time, the Commission does not believe the rule should be extended to securities for which market makers are not required to quote continuous firm two-sided markets, such as OTC Bulletin Board securities.

[88] *See supra* discussion at section III.A.2.a.

[89] 21(a) Report, *supra* note 28.

[90] *See, e.g.*, BSE Letter; NYSE Letter; RPM Letter; Letter from David R. Humphreville, Executive Director, The Specialist Association, to Jonathan G. Katz, Secretary, SEC, dated February 2, 1996 ("Specialist Assoc. Letter").

[91] *See, e.g.*, Greene Study & Greene Study II, *supra* note 51.

[92] *See generally* McInish & Wood Study, *supra* note 46 (hidden limit orders result in, among other things, artificial price improvement statistics and inferior order executions); *Traders Accuse Specialists of Holding Back Limit Orders*, Investment Dealers' Digest, 8, (February 14, 1994) (some traders have continued to accuse NYSE specialists of hiding limit orders even after the NYSE issued an Information Memo reminding specialists of their duties); Greene Study and Greene Study II, *supra* note 51 (one explanation for the significantly lower bid-ask spreads in the 1994–95 sample than in the 1990 sample, and the increase in the percentage of transactions at the quoted prices from the 1990 sample to the 1994–95 sample, may be that NYSE specialists were more diligent in reflecting the limit order book in their quotes as per Information Memo 93–12); Amex Letter (rule would help eliminate hidden limit orders); CSE Letter (elimination of hidden limit orders will eliminate illusion of superior price improvement); Investors Research Letter (hidden limit orders are not justified).

[93] *See, e.g.*, Letter from Raymond L. Aronson, Senior Managing Director, Bear, Stearns & Co. Inc., to Jonathan G. Katz, Secretary, SEC, dated February 1, 1996 ("Bear Stearns Letter"); Instinet Letter; Letter from Carol L. Cunniff, Executive Vice President, Ruane, Cunniff & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated February 23, 1996 ("Ruane Letter"); Letter from Charles R. Schwab, Chairman and Chief Executive Officer, The Charles Schwab Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 25, 1996 ("Schwab Letter"). *But see* Schwab II Letter (supporting the Display Rule).

[94] Ruane Letter.

[95] *Id. See also* Bear Stearns Letter (discussion of proposed central limit order file for The Nasdaq Stock Market so as to preserve distinction between dealer quotes and agency or proprietary orders).

[96] *See supra* note 45.

[97] *See, e.g.*, Letter from A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 29, 1996 ("Alex. Brown Letter"); Letter from Albert G. Lowenthal, Chairman of the Board, Fahnestock & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 ("Fahnestock Letter"); Jefferies Letter; Letter from Gerard S. Citera, Deputy General Counsel, First Vice President, PaineWebber Incorporated, to Jonathan G. Katz, Secretary, SEC, dated February 9, 1996 ("PaineWebber Letter"); Schwab Letter; STA Letter; Letter from Charles Snow, Counsel, Securities Traders Association of New York, to Jonathan G. Katz, Secretary, SEC, dated January 30, 1996 ("STANY Letter"); *see also* Letter from C. Robert Paul, III, Associate General Counsel, Dean Witter Reynolds, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 31, 1996 ("Dean Witter Letter"); Goldman Sachs Letter.

[98] *See, e.g.*, DOJ Letter; MJT Letter; Schwab Letter; Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, University of Northern Colorado, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 ("Peake Letter"); Letter from Jeffrey P. Ricker, CFA, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 ("Ricker Letter"); Letter from Peter W. Jenkins, Chairman, and Holly A. Stark, Vice Chairman, Institutional Committee, Securities Traders Association, to Jonathan G. Katz, Secretary, SEC, dated January 19, 1996 ("STAIC Letter").

[99] Under Commission rules, the market maker's quote is only required to be firm up to its published size. *See* 17 CFR 240.11Ac1–1(c)(2).

[100] For example, a market maker or specialist may deliver a customer limit order immediately upon receipt to another market maker or specialist, or to an ECN or an exchange or association sponsored system pursuant to the rule. Section 240.11Ac1–4(c)(5) and (6).

[101] The Commission notes that the proposed NAqcess system is a significant and controversial proposal which has generated approximately 1,100 comment letters. The Commission is in the process

the NASD has argued that limit orders entered into NAqcess, as proposed, would result in greater display of OTC limit order prices, there is no assurance that market makers will enter such orders into NAqcess rather than hold the orders internally.[102] Therefore, the Commission believes that the Display Rule is necessary to ensure display of these orders in the OTC market.[103] If approved, NAqcess can assist in compliance with the Display Rule to the extent that the system incorporates customer limit orders in the consolidated quote stream, thereby allowing market makers to enter limit orders in NAqcess rather than displaying limit orders in their quotes.[104] As noted earlier, the Commission has identified important benefits associated with limit order display. Accordingly, the Commission believes that it is not necessary to observe the effects of NAqcess in order to determine the benefits of the limit order display requirement.

iii. Liquidity

Several commenters assert that application of the Display Rule to Nasdaq securities could reduce liquidity in the Nasdaq market.[105] These commenters believe that market maker profits may decline due to narrowed spreads or increased compliance costs, with the result that many firms will decide not to make the necessary capital commitment to continue their market making operations. The commenters conclude that as the number of market makers in a security declines, liquidity will be adversely affected, leading to wider spreads. Moreover, some commenters believe that the decrease in liquidity will impair the capital formation process, especially for securities that are not mature enough for auction trading.[106]

At least one commenter states that the usefulness of limit orders could be diminished by the refusal of some market makers to accept such orders, or by the imposition of high commission costs charged to recoup lost profits on spreads.[107] Other commenters believe, however, that it will be difficult for market makers to increase their commissions for limit orders.[108] They believe commission charges would not compensate for lost trading profits or prevent the ebb of market liquidity.[109]

Other commenters believe the proposed rule will not have a negative impact on market liquidity. One commenter explicitly states that the benefits of the proposed rule would outweigh any potential adverse effects on liquidity.[110] Another commenter says that the proposed rule would not result in any significant reduction in market making activity.[111] The CSE notes that it has not noticed any negative effects on market liquidity as a result of the implementation of its own limit order display rule.[112] Yet another commenter states that although it currently does not trade OTC securities, it expects that many market participants, including the commenter, would begin trading such securities if the proposed rule was adopted, thereby increasing market liquidity.[113]

The display of limit orders is designed, among other objectives, to publicize accurate market interest and increase quote competition.[114] The Commission understands that certain costs, including a diminution in market maker profits, are associated with this increased market transparency. For example, a market maker that holds a customer limit order has, in effect, a private "option" to execute the order as principal. The longer this "option" remains open, the more time the market maker has to determine whether it can profit from executing the order as principal.[115] This private market maker "option," however, is potentially detrimental to the execution opportunities for the limit order. The Display Rule will limit this "option" and expose the order to market-wide trading interest. Moreover, increased price competition from limit orders may reduce market maker profits through the narrowing of spreads.[116] As a result, the Display Rule may force less efficient competitors to stop making markets in some of the securities they now quote.

Although the rule could lead to a reevaluation by some market makers of the services they wish to provide, after considering the available evidence, and in light of its experience, the Commission does not believe that there will be a significant negative impact on the markets for covered securities. The Commission is not convinced that the loss of some market competitors in securities with many market makers would impair liquidity in these securities.[117] The Commission believes that customer orders are the ultimate source of liquidity to the markets, and that adoption of a rule that improves the handling of such orders will have the effect of enhancing market liquidity.[118] The Commission believes that a limit order display requirement will encourage new limit orders in securities to be entered, thus providing additional liquidity to the market from customers.[119] The potential of limit orders to narrow quotes also may encourage the entry of additional market

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of reviewing the comments and has yet to decide what action to take on the proposal.

[102] *See* NAqcess Releases, *supra* note 45. As noted above, limit orders not entered in NAqcess would be provided with market-wide price protection.

[103] In any event, NAqcess will not address at all the issues of disparate limit order handling practices or hidden limit orders in the exchange markets.

[104] *See* Section 240.11Ac1–4(c)(5).

[105] *See, e.g.*, Alex. Brown Letter; Bear Stearns Letter; Dean Witter Letter; Letter from Robert F. Mercandino, Senior Vice President, Dillon, Read & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated March 15, 1996 ("Dillon Letter"); Jeffaries Letter; Lehman Letter; Letter from Robert J. McCann, Managing Director, Co-Head, Global Equity Markets, Merrill Lynch, Pierce, Fenner & Smith Incorporated, to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 ("Merrill Letter"); NASD Letter; PaineWebber Letter; Letter from David P. Semak, Vice President Regulation, PSE, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 ("PSE Letter"); SIA Letter.

[106] *See, e.g.*, NASD Letter; SIA Letter.

[107] Letter from David K. Whitcomb, Professor of Finance and Economics, Rutgers University Graduate School of Management, to Secretary, SEC, dated January 12, 1996 ("Whitcomb Letter").

[108] *See, e.g.*, Letter from Irving M. Pollack, Alan B. Levenson, and Robert H. Rosenblum, Fulbright & Jaworski L.L.P., on behalf of Herzog, Heine and Geduld, Inc., to Jonathan Katz, Secretary, SEC, dated January 16, 1996 ("HHG Letter"); STA Letter.

[109] *Id.*

[110] Lehman Letter.

[111] Letter from Daniel G. Weaver, Ph.D., Assistant Professor of Finance, Marquette University, to Jonathan G. Katz, Secretary, SEC, dated January 10, 1996 ("Weaver Letter").

[112] CSE Letter.

[113] The commenter noted further that it does not currently trade OTC securities because it cannot be sure that its order will be represented to the whole market. Estep Letter.

[114] *See* Market 2000 Study, at Study IV.

[115] The Commission recognizes that there is also a cost associated with holding that limit order, because a market maker is required to execute that limit order if it has engaged in a transaction for its own account that would have satisfied the limit order. *See* Manning I & II, *supra* note 24.

[116] *See supra* notes 53–55 and accompanying text (display of customer limit orders in market maker quotes will act to eliminate certain trading behavior on Nasdaq and foster quote competition).

[117] *See, e.g.*, STAIC Letter (limit orders are critical to market liquidity).

[118] The Commission does not thereby denigrate the contribution OTC market makers provide in a dealer market. The Commission notes, however, that most market makers provide primarily intra-day liquidity to customers, and generally seek to end the trading day with a limited inventory position in order to minimize inventory risk. Customer limit orders represent buying or selling interest at specified prices for their stated duration, which may be longer than intra-day. Market makers holding customer limit orders rely in part on these limit orders in quoting their own prices to buy and sell securities.

[119] *See* Greene Study & Greene Study II, *supra* note 51 (limit orders affect the quoted spread and provide liquidity); NASD Study, *supra* note 21 (limit orders, like market maker quotes, supply liquidity to the markets); OEA Data, *supra* notes 50 and 52.

orders.[120] The Commission believes that the additional liquidity due to narrower spreads and increased customer orders will outweigh any potential loss of liquidity provided by market makers.

As noted above, some commenters expressed concern regarding the effect of the Display Rule on the availability of liquidity to small issuers.[121] In response to these comments, the Commission's OEA examined market maker participation in 4,839 Nasdaq issuers over a one month period in 1996. The findings indicate that: (1) the median number of market makers in a security is not appreciably lower for initial public offering ("IPO") issuers or for securities with the smallest market capitalization; (2) broker-dealers that participated in IPO underwriting syndicates were active participants in aftermarket trading, but were not alone in providing significant market maker liquidity; and (3) in Nasdaq securities with the smallest market capitalization ($2 million or less), the single most active market maker in an issue typically participated in one-third or fewer trades. Thus, there is no convincing evidence that Nasdaq issuers, including IPO issuers, are dependent for liquidity on any one market maker. The pattern of market making activity indicates that significant liquidity is provided by market makers who are not the "most active" market makers in a security. Because there does not appear to be high concentration in market making, and because of the Commission's belief that customer order flow is a critical source of market liquidity, the Commission believes that the proposals adopted today will not unduly impact liquidity for small or new issuers.

Furthermore, Commission experience has been that enhancements to transparency result in improved liquidity.[122] The Commission believes that these improvements are attributable, at least in part, to the impact of transparency on market integrity and investor confidence. In addition, while market maker profits per trade may be reduced as spreads are narrowed, increased volume over time may result in stable profit levels.[123]

It also may become feasible for market makers to charge customers commissions for handling limit orders, even if that is not the current practice today. As noted earlier, some commenters claim that the Display Rule will have a disparate impact on wholesale Nasdaq market makers in that such market makers would not be able to offset the increased costs associated with limit order display through charges or commissions.[124] The Commission believes, however, that the systems costs associated with the Display Rule should not be overly burdensome,[125] nor should systems costs or any reduced market maker profitability from declining spreads be more extensive for wholesale market makers than for integrated market makers. Although exchange specialists and integrated firms may find it easier than wholesale firms to charge commissions initially, the Commission notes that wholesale firms are not prohibited from attempting to compensate for handling limit orders, either through negotiated fee arrangements, or reducing any payment made for order flow for limit orders.[126]

iv. Discretion

Several commenters are concerned that the Display Rule would eliminate their discretion to determine the best way in which to execute a customer's order. The commenters also claim that customers rely on the judgment of a market professional in choosing whether to display a limit order.[127] For example, the NYSE believes that its current procedures allow broker-dealers to achieve the best prices for their customers.[128] Other commenters suggest that if the rule were amended to require the display of representative size, a dealer would retain some discretion on

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[120] *See* NASD Study, *supra* note 21 (those investors that demand immediate execution, *e.g.* those entering market orders, will pay less for executions due to the augmented liquidity supplied by limit orders); Greene Study and Greene Study II, *supra* note 51 (limit orders provide liquidity to traders that demand immediacy of execution and may contribute to reduced trading costs); OEA Data, *supra* notes 50 and 52 (display of limit orders narrows spreads, improves price discovery, and increases market depth for a variety of securities, including those NYSE securities that are thinly traded).

[121] This concern also was raised in the context of the ECN Amendment to the Quote Rule.

[122] In several instances in the past, commenters have claimed that other Commission initiatives to increase transparency would act to reduce liquidity; others have warned that such initiatives would decrease the competitiveness of the U.S. markets in relation to foreign counterparts. These claims, however, have not been borne out. For example, many industry participants argued that the NASD's adoption of its "Manning" rules would severely impact market liquidity. *See* Market 2000 Study. However, there has been no evidence offered to the Commission of adverse liquidity consequences caused by these limit order protections, and the Commission is not aware of any significant diminution in liquidity. Further, as discussed in the Market 2000 Study, other transparency initiatives, such as the adoption of real-time transaction and quotation reporting, have resulted in increases in the competitiveness and liquidity of both listed and OTC equity markets despite market maker protestations to the contrary prior to adoption of these initiatives. *See Id.* at Study IV. *See also* Simon & Colby, *supra* note 58. Even the creation of Nasdaq itself was met with much opposition. The result of this major structural change was far from the predicted "death knell" of the OTC market. Rather, OTC market strength and liquidity have flourished since Nasdaq's inception. Based on the Commission's experience with other market structure initiatives, therefore, the Commission believes that improvements in order handling, market transparency, and efficiency will likely improve market liquidity.

[123] Although the display requirement may decrease a market maker's per trade profit due to narrowed spreads, the Commission believes that this decrease will be made up for in part by expected increases in trading volume attributable to enhanced liquidity and pricing efficiency. *See supra* note 24. The Commission believes this potential impact on market maker profits is justified in light of the benefits that will accrue to investors and the markets as a whole. Moreover, even if market makers' profits from trading do decline, market makers may be able to obtain increased revenues from commissions or other fees charged directly to customers. Because these other revenue sources are more transparent to customers than are revenues from market maker trading with customers on a proprietary basis, increased reliance on these other revenue sources will enable customers to make more informed trading decisions.

[124] *See, e.g.*, HHG Letter.

[125] *See* Memorandum from Stephen L. Williams, S.L. Williams Co. to Richard R. Lindsey, Director, Division of Market Regulation, SEC (July 29, 1996) ("Williams Study").

[126] The level of these fees, of course, would be determined by competitive forces in the marketplace. Any fees passed on to non-broker-dealer customers would have to be disclosed in a clear fashion to the customer, and otherwise comply with applicable law. For example, NASD Rule 2440 states, in part, that if a member acts as agent for a customer in a transaction, the customer shall not be charged more than a fair commission or service charge, taking into consideration all relevant circumstances. *See also* NASD Regulatory & Compliance Alert Vol. 7, No. 4 (December 1989). At least one commenter argued that because spreads are ascertainable from public quotations and commissions are not, a rule that encourages charging commissions does not satisfy the goal of increased transparency. *See* Letter from Bruce C. Hackett, Managing Director, Salomon Brothers Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 ("Salomon Letter"). The Commission notes, however, that Rule 10b–10 under the Exchange Act requires customer confirmations to disclose commissions and, for listed and Nasdaq securities, the difference between the reported price and the price to the customer. Based on this disclosure, execution costs could actually become better known to customers if explicit fees are charged. Therefore, the Commission believes that the Display Rule will allow a customer to more easily monitor the execution quality of its limit orders, even if subject to fees for limit order executions. In addition, this situation should foster competition with respect to the amount, if any, firms will charge for the execution of a customer limit order.

[127] *See, e.g.*, NYSE Letter; RPM Letter; Specialist Assoc. Letter.

[128] *See, e.g.*, NYSE Letter; Specialist Assoc. Letter. According to the NYSE, a customer can choose to benefit from the display of its order or to benefit from relying on the specialist's discretion, depending on whether the order is sent to the post via SuperDOT, or is manually submitted. The NYSE also notes that enabling a specialist to use discretion in the handling of limit orders is important in light of the fact that the NYSE defines a limit order as an order to buy or sell at a specified price, or at a better price, if obtainable after the order is represented in the trading crowd. *See* NYSE Rule 13.

how best to execute the order.[129] To preserve discretion, at least one commenter argues that the rule should apply only when the customer requests that its order be displayed.[130]

The Commission believes that the rule appropriately establishes a presumption that limit orders should be displayed, unless such orders are of block size, the customer requests that its order not be displayed, or one of the exceptions to the rule applies. The exception allowing a customer to request that its limit order not be displayed gives the customer ultimate control in determining whether to trust the display of the limit order to the discretion of a market professional, or to display the order either in full, or in part, to other potential market interest.[131]

v. Systems Burdens

Based on their belief that compliance with the Display Rule would result in a large increase in quotation traffic, a number of commenters maintain that the rule would require major overhauls of the order handling systems used by brokers, market makers and markets. For example, one commenter believes that it would be impossible to comply with the rule without additional automated systems.[132] The commenter concludes that the costs associated with new systems and additional staff necessary to monitor a more volatile market would contribute to wider spreads and higher commissions.[133] In addition, one SRO claims that quotation traffic must be kept at manageable levels in order to allow entities to continue to manually process limit orders, thus eliminating the need for entities to bear the costs associated with automation of such orders.[134] Other commenters also note their concern over the potential operational costs associated with the rule.[135] The STA states that an in-depth review is needed to determine the costs for new equipment and technology necessary to comply with the rule.[136]

A few commenters are concerned that the increased quotation traffic that may be associated with the rule could pose a threat to the integrity of the central quotation system.[137] One commenter suggests that the rule be suspended for the first 30 minutes of trading.[138] Another commenter argues that modifying the rule to require only the display of representative size could act to alleviate some of the traffic concerns.[139]

The Commission recognizes that achieving greater transparency for limit orders depends upon the existence of systems that are capable of the smooth and efficient display of trading interest. The Commission believes that the Display Rule will not substantially increase the quotation burden for exchange markets, where systems currently exist for the display of quotes.[140] In the OTC market, the Display Rule will result in additional quotation entries for market makers that display customer limit orders in their quotes. The Commission believes, however, that current systems can handle the additional volume, or can be expanded at moderate cost to handle the additional volume.[141] Further, the Commission notes that the Display Rule contains an exception to the display requirement for limit orders of *de minimis* size priced at the NBBO when the market maker's or specialist's quote matches the NBBO.[142] The Display Rule also allows a specialist or OTC market maker several ways to comply with the rule by routing the order elsewhere without displaying the limit order in its own quote by transmitting a customer limit order to an exchange or association-sponsored system or to a qualifying ECN.

Additionally, a few commenters believe that the Commission should give more consideration to the Display Rule's impact on automatic execution systems.[143] These commenters express concern that a market maker could be exposed to multiple transactions from its own customers in the firm's automatic execution system, which executes orders at the NBBO, even if the NBBO represents a customer limit order as opposed to the price at which a market maker is willing to trade. They claim this result is unfair, especially if the automatic system has a minimum share requirement that exceeds the customer limit order.

The Commission acknowledges the concern of some commenters regarding the rule's interaction with automated execution systems. However, because customer limit orders reflect actual trading interest, it has been the Commission's intention to enhance customer order executions throughout the markets by requiring the display of these customer limit orders.[144] Where a limit order represents the best quote, a

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[129] *See, e.g.*, Madoff Letter; NASD Letter; SIA Letter.

[130] Jeffaries Letter.

[131] See discussion of the exceptions to the Display Rule at section III.A.3.c., *infra*. *See also* § 240.11Ac1–4(c)(2); § 240.11Ac1–4(c)(4) (permitting a customer with a block size limit order to request that the order be displayed pursuant to the Display Rule). The Commission does not mean to imply that a specialist or OTC market maker that is not displaying a limit order pursuant to the request of its customer may not change its quotation in that security based on the specialist's or market maker's own trading interest.

[132] PaineWebber Letter.

[133] *Id.*; *see also* Bear Stearns Letter (noting that the display rule would increase the volatility of quotes and, as a result, market makers would have a difficult time keeping up with the rapid changes in bids, offers, and quote sizes).

[134] PSE Letter.

[135] *See, e.g.*, Alex. Brown Letter; Bear Stearns Letter; Jeffaries Letter.

[136] STA Letter.

[137] *See, e.g.*, Letter from Thomas J. Jordan, Financial Information Forum, to Jonathan G. Katz, Secretary, SEC, dated January 12, 1996 ("FIF Letter"); PaineWebber Letter; PSE Letter. This concern was expressed with respect to the proposal that the Commission adopt both the Display Rule and Price Improvement Rule. The fact that the Commission has deferred action on the Price Improvement Rule, as discussed below, should substantially diminish any system capacity concerns. Moreover, the Commission's decision not to require display of *de minimis* orders also should minimize system capacity concerns.

[138] FIF Letter. According to FIF, the heaviest traffic volume usually occurs within the first 30 minutes of trading.

[139] PSE Letter. The PSE notes, however, that the rule, even if modified, still may result in an increase in staffing costs. *Id.*

[140] For example, SuperDOT data indicates that 57% of all customer trades originating from orders routed through SuperDOT are limit orders. Of these limit orders, 20% narrowed the NYSE quote. *See supra* note 52. According to the NYSE, 93% of such orders are reflected in the NYSE quote within two minutes of receipt. *See supra* note 36 and accompanying text (teleconference). *See also* CSE Letter (costs associated with implementing such a system are minimal, especially in light of the benefits to the public); Paperwork Reduction Act discussion at section VII, *infra*.

[141] The Commission notes that many small to medium broker-dealers utilize shared trading systems that enable such broker-dealers to streamline their OTC market making and back office responsibilities. Subscribers to such systems benefit by sharing costs associated with the application of improved technologies, rather than creating and updating systems of their own. Therefore, it is assumed that any changes deemed necessary to these shared systems to facilitate efficient compliance with the Display Rule also would be shared by all subscribers.

In addition, the Commission specifically evaluated the costs associated with implementation of the Display Rule. Based on this evaluation, the Commission concluded that most market makers will not be required to invest substantial amounts of money in systems development in order to comply with the Display Rule as adopted. *See* Williams Study, *supra* note 125. *See also* CSE Letter (costs of implementing a system for display of limit orders are minimal).

[142] *See*, § 240.11Ac1–4(b)(1)(ii). *See also* § 240.11Ac1–4(b)(2)(ii).

[143] *See, e.g.*, Dillon Letter; HHG Letter; Merrill Letter; PaineWebber Letter; Schwab Letter.

[144] The Commission recognizes that SROs may have rules regarding the minimum quotation sizes associated with a specialist's or market maker's quote. The Commission believes that SROs should consider amending such rules and modifying certain systems to allow a specialist or market maker to quote in sizes smaller than the minimum quotation size when such quote represents a customer limit order. With these changes, a specialist or market maker that displays a customer limit order in its quote pursuant to the Display Rule would not be responsible for executing as principal any additional shares at the limit price where the size of the customer limit order is less than the minimum quotation size set by the SRO.

market maker can respond by sending its customer order to the market maker displaying the limit order at the NBBO, thereby attempting to execute the limit order setting that price and removing it as the NBBO.[145] Moreover, where the size of a limit order represented in the best quote is smaller than the size eligible for execution in an automated execution system, the Commission believes that it is not inconsistent with best execution principles for market makers and specialists using automated execution systems to take into account the size of the limit order quote in determining the price at which an order, or portions thereof, should be automatically executed. The Commission believes, however, that in such a case the market maker or specialist should provide the customer order an execution at the displayed price at least up to the displayed size of the limit order.[146] For example, if customer limit orders compose the NBBO of 10 ⅛–10 ⅛ (100 × 300), and a market maker receives a market order to sell 1,000 shares via an automatic execution system, the market maker may automatically execute 100 shares of the order at 10 ⅛, and the remaining portion of the order at the next best bid.

3. The Operation of the Rule as Adopted[147]

The rule as adopted applies to: (i) every member of an exchange that is registered by that exchange as a specialist or has been authorized by an exchange to perform functions substantially similar to that of a specialist ("specialist"); and (ii) OTC market makers.[148] The rule as adopted applies to specialists that trade on the floor of an exchange;[149] third market makers;[150] members of a national securities association that are OTC market makers;[151] and specialists that trade an OTC security pursuant to unlisted trading privileges ("UTP").[152] These market makers are required to reflect immediately in their bid or offer the price and the full size of each customer limit order they hold at a price that would improve their bid or offer in the security.[153] In addition, all market makers covered by the rule are obligated to reflect in their quotes the full size of a customer limit order that: (1) is priced equal to their bid or offer; (2) is priced equal to the national best bid or offer for the security; and (3) represents more than a *de minimis* change in relation to the size associated with their bid or offer.[154]

a. "Covered Securities" and "Customer Limit Orders"

Rule 11Ac1–4 applies to "customer limit orders" in "covered securities." A covered security is defined as any reported security and any other security for which transaction reports, last sale data or quotation information is disseminated through an automated quotation system that is sponsored by a registered securities association. This definition is designed to encompass all exchange-listed securities, Nasdaq National Market securities and Nasdaq SmallCap securities.[155]

The Commission received several comments regarding the application of the rule to Nasdaq securities. Some commenters believe that the rule should not extend to all Nasdaq securities, and that some measure of liquidity should be used to determine which Nasdaq securities should be subject to the rule.[156] For example, one commenter suggests limiting the rule's application to the top 250 Nasdaq National Market securities with the highest average daily trading volume over the previous calendar quarter.[157] In contrast, another commenter favors the inclusion of Nasdaq SmallCap securities within the definition of "covered security."[158] Further, at least one commenter suggests that the rule apply not only to all Nasdaq securities, but also to OTCBB securities.[159]

As noted above, the Commission believes that the Display Rule should apply equally to exchange-traded as well as non-exchange-traded securities. In addition, the Commission believes it is appropriate to include all Nasdaq securities within the definition of "covered security." The Commission believes that, regardless of the current trading volume of a particular security, the investors in any security can benefit from the uniform display of customer buying and selling interest if all quotations in that security are required to be firm. As noted previously,[160] data analyzed by the Commission shows that limit orders are used frequently for transactions in NYSE securities with ADTVs under $100,000. On average, 63% of customer orders in such securities are limit orders. Of those limit orders, 30% narrowed the NYSE quote and 32% matched the quote. This data indicates that the display requirement may lead to increased customer trading interest in securities that are currently thinly traded.[161]

The Commission reiterates that limit order display is not solely an issue of improved transparency. The Display Rule will improve the handling of customer orders across all markets and increase the probability that a customer limit order will be executed. Therefore, the Commission believes that a uniform limit order display requirement is

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[145] The Commission notes that the NASD's NAqcess system, as proposed, would permit market makers to send orders, including proprietary orders, to other market makers through the system. *See supra* note 45. *See also* ITS Plan. Moreover, the Commission believes that the NASD should consider modifying its SOES system to allow OTC market makers to route customer orders for execution against limit orders displayed by another market maker in the same security.

[146] If the market maker or specialist attempted but was unable to execute the displayed limit order through a reasonable and efficient means, such as sending an order through an automated system for an OTC security, the market maker or specialist would not be expected to give that limit order price to its customer.

[147] SRO rules that impose more stringent standards would continue to apply.

[148] Although the Commission consolidated certain sections of the proposed rule for clarity, the rule as adopted applies to the same entities identified in the proposed rule.

[149] Section 240.11Ac1–4(b)(1).

[150] Section 240.11Ac1–4(b)(2).

[151] Section 240.11Ac1–4(b)(2).

[152] Section 240.11Ac1–4(b)(1).

[153] Section 240.11Ac1–4(b)(1)(i) and (b)(2)(i). The Commission wants to clarify that reference to a specialist's or OTC market maker's bid or offer include instances where the bid or offer is a proprietary quote, as well as instances where the bid or offer represents a customer limit order. Further, if a market maker is not quoting publicly (*e.g.*, a market maker that does not meet the 1% threshold of the Quote Rule), it still must publish a quotation that displays the limit order, or avail itself of one of the exceptions. Moreover, the Commission notes that some commenters suggest that the rule should require broker-dealers that are not specialists or OTC market makers to immediately transmit limit orders they receive to an entity or system that will display the orders in a manner consistent with the rule. *See, e.g.*, CSE Letter; Madoff Letter; Whitcomb Letter. Also, at least one commenter believes that institutional firms trading in block size should be considered "OTC market makers" for purposes of the rule and subject to the display requirement. Amex Letter. *See generally infra* notes 191–193 and accompanying text. The fact that the Commission has not adopted these suggestions as part of the Display Rule does not relieve broker-dealers which receive such orders from compliance with their obligation to obtain best execution for those orders.

[154] Section 240.11Ac1–4(b)(1)(ii) and (b)(2)(ii).

[155] Securities listed on regional exchanges that do not substantially meet NYSE or Amex original listing criteria do not satisfy the definition of "covered security." Such securities are not "reported securities" as that term is defined, nor do they meet the other elements of the definition of covered security. OTC Bulletin Board ("OTCBB") securities also do not satisfy the definition of covered security. The Commission has determined not to extend the display requirement to any of those securities at the present time.

[156] *See, e.g.*, Bear Stearns Letter; Lehman Letter; Merrill Letter; NASD Letter; SIA Letter.

[157] SIA Letter.

[158] PSE Letter.

[159] Ricker Letter.

[160] *See supra* notes 50 and 52.

[161] As stated previously, because dealers are not required to register as OTC market makers in OTCBB securities and are not required to enter and maintain continuous firm two-sided quotations in OTCBB securities, the Commission does not believe that the Display Rule should be extended to such securities at this time.

closely related to a broker-dealer's ability to obtain best execution for limit orders.

The Commission recognizes, however, that the rule represents a significant change for the OTC market. The Commission, therefore, has determined to provide a phase-in period for application of the rule to customer limit orders in Nasdaq securities.[162] The Commission believes that the phase-in period will allow the Commission to monitor the effects of the rule on the most liquid Nasdaq securities first, while ensuring that customer limit orders in all Nasdaq securities will receive the benefits of the rule within one year of its adoption. This schedule also will provide OTC market makers with time to adjust their systems to comply with the rule's requirements.[163]

Under the rule, a customer limit order includes any order to buy or sell a covered security at a specified price not for the account of a broker or dealer. Customer limit orders transmitted from one broker-dealer to another for execution are included in the definition. Although some commenters believe that the rule should be extended to orders for the account of a broker or dealer, the Commission does not believe such extension is appropriate at this time. The Commission acknowledges that the display of all limit orders, including those of a broker or dealer, would further enhance transparency.[164] Requiring the display of broker-dealer limit orders, however, would be a significant extension of the rule that could change its impact on market maker participation and increase its operational burdens. Therefore, the Commission believes that the effects of the rule should be observed, and additional comment should be solicited, before the rule is expanded.[165]

b. Size

As noted above, some commenters expressed concern regarding the requirement that specialists and OTC market makers display the full size of a customer limit order. These commenters suggest that the rule only require the display of representative size.[166] They argue that the use of representative size would preserve the ability of a specialist or OTC market maker to exercise some discretion in determining the best execution of the order.[167]

Other commenters, however, believe that the full size of a customer limit order should be required to be displayed.[168] Such commenters argue that the display of full size is an important element in the Commission's effort to improve transparency and, therefore, no dealer discretion should be permitted unless a customer expressly requests that its order not be displayed, or expressly grants discretion, pursuant to the Display Rule.[169]

The Commission continues to believe that the display of full size is important to improved transparency. The display of full size will provide the most accurate picture of the depth of the market at a particular price.[170] The Commission believes that size, as well as price, is a factor in attracting order flow and that the display of full size increases the likelihood that a limit order will be executed. The Commission, however, understands that there may be instances where a customer would not want its order displayed, or does not want the full size of its order displayed. The Display Rule, therefore, still contains an exception for a customer that decides to rely on the discretion of a broker-dealer rather than to take advantage of the display requirement for its limit order.[171] The Display Rule also permits a customer to state explicitly what portion, if any, the customer wants displayed.[172] Furthermore, the Display Rule contains other exceptions to the display requirement that will ease any potential operational burdens associated with the display of full size.[173]

The following example illustrates the application of the Display Rule where a customer limit order improves the price of a specialist's or market maker's quote. Assume that a market maker covered by the rule is quoting 10–10½ (2,000×2,000) when it receives a customer limit order in a covered security to buy 4,000 shares at 10¼. Under the rule, the market maker must change the price and size associated with its quote to 10¼–10½ (4,000×2,000). If this new quote represents the NBBO, the Display Rule would require the market maker to increase the size associated with the quote upon the receipt of additional customer limit orders. For example, if the market maker subsequently accepts another customer limit order to buy 4,000 shares at 10¼, the market maker must change its quote to 10¼–10½ (8,000×2,000).

The rule as adopted contains a *de minimis* standard applicable in situations where a customer limit order equals a specialist's or market maker's displayed price and that price is equal to the NBBO. One commenter states that the use of representative size would eliminate the Commission's need to rely on a *de minimis* standard.[174] Another commenter believes that the rationale underlying the *de minimis* standard demonstrates that the display of size does not benefit public customers.[175] Some commenters also believe that the *de minimis* standard should be clarified or even eliminated.[176]

The Commission proposed the *de minimis* standard to strike a balance

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[162] *See* description of the phase-in at section III.A.3.d., *infra*.

[163] *See, e.g.*, Amex Letter.

[164] The Commission also is sensitive to the fact that providing suitable opportunities for broker-dealers, including options market makers, to lay off risk is an important component of overall market liquidity and efficiency. *See* Manning II, *supra* note 24.

[165] The Commission notes that other actions recently taken by the Commission address certain anti-competitive behavior in the Nasdaq market that heretofore may have negatively impacted the ability of some broker-dealers, including options market makers, to efficiently perform their market making function. *See* 21(a) Report, *supra* note 28.

[166] *See, e.g.*, BSE Letter; CSE Letter; Madoff Letter; NASD Letter; NYSE Letter; PSE Letter; SIA Letter; Specialists Assoc. Letter; *see also* LJR Letter (questioning whether the display of size, at least with respect to institutional orders, would be consistent with best execution obligations).

[167] *See, e.g.*, Madoff Letter; NASD Letter; NYSE Letter; SIA Letter; Specialists Assoc. Letter.

[168] *See, e.g.*, Amex Letter; CHX Letter; D.E. Shaw Letter.

[169] *See, e.g.*, Amex Letter; CHX Letter; D.E. Shaw Letter; ICI Letter.

[170] A few commenters believe that all customer limit orders should be displayed, including the size of those orders that equal the specialist's or OTC market maker's bid or offer, but are not equal to the NBBO. *See, e.g.*, CHX Letter; Letter from Edward J. Johnsen, Vice President and Counsel, Morgan Stanley & Co., to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 ("Morgan Stanley Letter"); Peake Letter; Weaver Letter. The Commission believes, however, that the burden associated with the commenters' suggestion would outweigh the corresponding benefit to market transparency. Of course, the rule represents a floor, rather than a ceiling. An exchange, association, or broker-dealer may determine to adopt more stringent display requirements. Requiring display of size when the limit order is away from the NBBO and equals the market maker's or specialist's quote would provide some additional market information but also would require market makers not quoting at the NBBO to change their quote size on an ongoing basis. Although some market makers or specialists may choose to do so to be prepared if their quotation becomes the NBBO, on the whole the Commission believes the increased transparency that would result from this updating would not outweigh the burdens imposed by a display requirement.

[171] Section 240.11Ac1–4(c)(2).

[172] *Id.*

[173] As noted above, a specialist or OTC market maker has the ability to execute a customer limit order upon receipt; transmit the order to another exchange member or OTC market maker that will display the limit order in accordance with the rule; or transmit the order to an exchange or association sponsored system pursuant to the rule. Additionally, a specialist or OTC market maker may transmit an order to an ECN that provides for public display of limit orders and provides access to these orders. Moreover, the rule contains an exception to the display requirement for certain orders of *de minimis* size.

[174] CSE Letter.

[175] Dean Witter Letter.

[176] *See, e.g.*, Amex Letter; CHX Letter; Schwab Letter.

between the benefits of increased transparency and operational burdens that might arise under the display requirement in displaying limit orders irrespective of size. The *de minimis* standard was intended to reduce the burdens of displaying the smallest of limit orders where the frequent updating of the quote for smaller orders would not result in significant improvements in quotation size. The Commission believes that the size of a customer limit order should be considered *de minimis* if it is less than or equal to 10% of the displayed size associated with a specialist's or OTC market maker's bid or offer.[177]

The Commission believes that this *de minimis* standard will ease potential operational burdens associated with the display of additional size in a specialist's or OTC market maker's quote. The following example illustrates the application of the *de minimis* standard.

Assume a market maker's quote is 10–10⅛ (1,000×1,000), and the NBBO is 10–10¼ when the market maker receives a customer limit order to buy 2,000 shares at 10. Under the rule, the market maker is obligated to change the size of its quote immediately to 10–10⅛ (3,000×1,000).[178] In this case, the 2,000 share order size is more than *de minimis* in relation to the size associated with the market maker's quote. If the limit order was for 100 shares, however, the market maker would not be required to change its quotation size because the order is *de minimis* in relation to its quote.[179] Alternatively, the market maker could voluntarily display the additional 100 shares.

c. Exceptions

The rule requires the "immediate" display of certain customer limit orders. To satisfy this requirement, a specialist or OTC market maker must display the limit order immediately upon receipt unless there exists an applicable exception to the display requirement. Some commenters have asked for clarification of the "immediate" display requirement.[180] The Commission is mindful that some measure of time is needed for specialists or market makers to display limit orders in the quote. Assuming that a specialist or OTC market maker does not rely on one of the exceptions to the Display Rule, however, such specialist or OTC market maker must display the order as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt.[181]

There are seven exceptions to the general requirements of the rule. The first exception applies to any customer limit order that is executed upon receipt of the order.[182] If the order is executed upon receipt, then no duty arises under the rule.

The second exception applies to any limit order that is placed by a customer who expressly requests that the order not be displayed.[183] This request may take place on an order by order basis, or may be agreed to prospectively. Most commenters that addressed the issue were in favor of the exception.[184] The Commission included this exception because there could be instances in which a customer prefers to exclude its order from public display. For example, a customer with a large limit order could wish to let its broker work the order rather than display the entire order. This exception gives the customer the right to decide if the order should be displayed in its entirety, in part, or not at all.[185] The Commission notes that under this exception, a customer may leave the decision to display an order to the discretion of a broker-dealer. Therefore, rather than instructing a broker-dealer not to display an order, a customer, consistent with this exception, may instruct the broker-dealer to use its discretion in determining whether to display the order. Although allowing some orders to not be displayed or to be displayed partially in the system reduces transparency, the Commission believes this exception is appropriate to give investors flexibility in deciding how their orders should be handled.

The exception to the rule requires a customer to expressly request that an order *not* be displayed.[186] A customer request that an order be placed in a particular non-public trading system would not, by itself, be deemed to be a non-display request. The Commission expects that most retail customers will want their limit orders displayed pursuant to the rule. Thus, the Commission has written the rule to require specialists and OTC market makers to assume that retail customers wish to have their orders displayed unless the customer specifically requests that the order not be displayed.

The exception also permits any customer to negotiate with its broker-dealer an individual agreement regarding the display of its limit orders either on an order-by-order basis or prospectively. Standardized disclaimers or contractual language in broker-dealer new account agreements, however, would not be deemed to be an individual request by a customer that its order or orders not be displayed.

The third exception applies to odd-lot orders.[187] The rule does not require the display of an order for less than a unit of trading as established by the rules of the exchange or association. In the event that a round-lot limit order represented in the quote is partially filled and, as a result, the remainder of the order would then be deemed an odd-lot order, the remainder of the order may be treated as an odd-lot for purposes of this exception. For example, assume a

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[177] Any SRO may set more stringent display requirements through its own rules.

[178] If the original 1,000 shares displayed represents the market maker's proprietary quote and, consistent with Rule 11Ac1–1, the market maker no longer wishes to trade for its own account at 10, the market maker may quote at 10–10⅛ (2,000×1,000).

[179] The Commission stresses that all other orders previously considered *de minimis* and not displayed must be added to the order under consideration for purposes of the *de minimis* calculation. Therefore, in the case of a 100 share limit order to buy at 10, where the market maker had a previous 100 share limit order to buy at 10 that was not displayed pursuant to the *de minimis* standard, both orders must be considered together for purposes of making the *de minimis* calculation. Because 200 shares is more than 10% of the displayed size of 1,000, the market maker must include the 200 shares in its quote.

The Commission notes that if an OTC market maker chooses not to display a *de minimis* limit order, the NASD's interpretation regarding limit orders would prohibit the market maker from trading ahead of the limit order. *See* Manning I & II, *supra* note 24. In addition, the NASD has indicated that market makers must establish and consistently follow policies regarding the priority in which limit orders received from customers, which would include *de minimis* orders, will be executed. *See* Special NASD Notice to Members 95–43 (June 5, 1995).

[180] *See, e.g.*, Amex Letter; D.E. Shaw Letter; NYSE Letter; PSE Letter.

[181] The Commission stresses that specialists and OTC market makers still are under an obligation to protect the customer limit order even during the time the limit order is not displayed. *See, e.g.*, Manning I & II, *supra* note 24 (prohibiting trading ahead of customer limit orders). It should also be noted that this standard would supersede SRO rules that are less stringent with regard to the time in which limit orders are to be displayed. Those rules that impose more stringent standards may continue to apply.

[182] Section 240.11Ac1–4(c)(1).

[183] Section 240.11Ac1–4(c)(2).

[184] *But see, e.g.*, Madoff Letter; Morgan Stanley Letter.

[185] Any portion of a customer limit order that is not displayed pursuant to this exception shall not be included in the calculation for determining whether any other limit order is *de minimis*. *See supra* note 179.

[186] At least one commenter believes that documentation of such customer requests should be required. CHX Letter. Although the Commission does not believe it necessary to mandate a particular method of record keeping, the Commission expects the compliance departments of individual firms to discharge their responsibilities in such a manner as to allow adequate supervision of compliance with the customer's request not to display or to display pursuant to discretionary authority provided by the customer.

[187] Section 240.11Ac1–4(c)(3).

market maker is quoting at the NBBO (10¼–10⅜ (200×1000)) and is representing a 200 share customer limit order to buy when a market order to sell 150 shares is received. Upon execution of 150 shares of the 200 share customer limit order, the market maker is not required to display the remaining 50 shares of the order at 10¼.[188]

The fourth exception applies to block size orders.[189] Orders of at least 10,000 shares or for a quantity of stock having a market value of at least $200,000 need not be displayed in accordance with the rule, unless the customer so requests.[190] The Commission recognizes that the display of block size orders would add to market transparency. In practice, however, the handling of block size orders differs from other orders. For example, in the OTC market, market makers often negotiate terms and conditions with respect to the handling of block size orders, and display of block size orders may impact market maker quotations in a security more than would smaller limit orders.[191] Further, one of the major objectives in proposing the Display Rule was to improve the handling and execution opportunities afforded to customers that lack the power to negotiate better terms. Because most investors that trade in block size have such power, the Commission has chosen not to mandate the display of block size orders, unless the customer so requests.[192] The Commission is satisfied that the current definition strikes an appropriate regulatory balance by requiring a presumption in favor of display for those orders requiring enhanced protection, while not extending the presumption to those orders less likely to need such protection. Of course, the Commission may reevaluate its treatment of block size orders at a later date.

As proposed, the fifth exception would have applied to a limit order that is delivered immediately to an exchange or association sponsored system that displays limit orders and complies with the requirements of the rule with respect to that order.[193] This exception did not relieve a specialist or OTC market maker from its display obligation for orders it received through exchange or association facilities, unless the facility itself displayed the order.[194]

In the Proposing Release, the Commission requested comment on whether to extend this exception from display to instances where customer limit orders are sent to ECNs or PTSs by a specialist or OTC market maker.[195] As discussed below in connection with the amendments to the Quote Rule, the Commission is amending the Quote Rule to require specialists and OTC market makers to include priced orders they enter into ECNs in the bids and offers they communicate to their exchange or association for reflection in their published quotations, when such orders improve their published quotations.[196] In recognition of the concerns raised by commenters, the Commission also has included an alternative to the amendment designed to preserve the anonymity of specialists and OTC market makers that is currently provided by certain ECNs, while still publicizing in the public quotation stream better prices entered into ECNs. The ECN display alternative in the Quote Rule is available only if the ECN provides for public dissemination of the price and full size of the orders entered by specialists and OTC market makers to an exchange or association and provides access to other broker-dealers to trade at those prices which is equivalent to that provided in the market where the prices are disseminated.[197]

The Commission believes that ECNs that provide their best specialist and market maker prices to the public quotation system and provide ready access to their prices can provide an effective means for specialists and OTC market makers to ensure that customer limit orders are handled in a manner consistent with the Display Rule. In view of the ECN display alternative in the Quote Rule, the Commission believes it is appropriate to extend the exception in the Display Rule to orders entered into ECNs that comply with the Quote Rule alternative.[198] Accordingly, a specialist or OTC market maker that delivers a customer limit order to an ECN will be deemed to have satisfied its display obligation with regard to that order if the ECN complies with the requirements of the new alternative in the Quote Rule.[199] The proposed exception for limit orders entered into exchange or association sponsored systems contemplated that such orders would be transparent and accessible. Therefore, expanding the exception to include the use of ECNs that provide for the requisite transparency and accessibility is consistent with the rule as proposed.

The Commission notes that this exception to the Display Rule maintains the benefits, including increased transparency, provided to customer limit orders under the rule. The

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[188] The market maker still will have best execution obligations with respect to the remaining odd-lot portion of the customer limit order.

[189] Section 240.11Ac1–4(c)(4).

[190] This block definition is consistent with the current definition used in NYSE Rule 127.10. Some commenters, however, suggest that the parameters for such orders be increased or made flexible depending on the liquidity of a particular security. *See, e.g.*, D.E. Shaw Letter; PSE Letter; Schwab Letter. Still others believe that there should be no exception for orders of block size. Instead, these commenters want such orders to be included within the scope of the rule so as to add to market transparency. *See, e.g.*, Amex Letter; ICI Letter; Lehman Letter; Peake Letter; Ricker Letter. One commenter suggests the use of a "block indicator" to give a specialist or OTC market maker the option of displaying the full size of the order or using the indicator to identify the quote as representing a block size order. Lehman Letter.

[191] *See, e.g.*, Manning II, *supra* note 24.

[192] Customers placing block orders, however, may request that the order be displayed in accordance with the requirements of the rule; a specialist or OTC market maker that accepts the order will be obligated to honor such a request. Section 240.11Ac1–4(c)(4). The Commission expects that adequate procedures will be developed to ensure compliance with a customer request. *See supra* note 186.

[193] Section 240.11Ac1–4(c)(5). A facility would not be deemed to comply with the requirements of the Display Rule if the highest priced buy orders and lowest priced sell orders entered by a specialist or OTC market maker in the facility for a particular security were not included in calculating the best bid and offer for the market and incorporated in the consolidated quote.

[194] One commenter argues that the exception permits specialists and OTC market makers to become "fair weather dealers," effectively allowing them to selectively withdraw from the national market system, which creates a misleading picture of liquidity. Madoff Letter. The Commission believes, however, that the exception provides a specialist or OTC market maker with an appropriate amount of discretion in handling a customer limit order while ensuring that orders at the best price are displayed to the marketplace.

[195] *See, e.g.*, Letter from James Lynch, General Counsel, ITG, Inc., to Jonathan G. Katz, Secretary, SEC, dated, January 15, 1996 ("POSIT Letter") (not supporting the extension of the exception); PSE Letter (extension of exception should be contingent on access provided by ECNs); Whitcomb Letter (doubtful that exception could be extended in today's environment); *see also* Madoff Letter (market makers and specialists should be able to represent a portion of the size of a customer limit order in other markets or ECNs, but the best price and some size should be reflected in their quote).

[196] *See* § 240.11Ac1–1(c)(5)(i)(A); *see also* Amendments to the Quote Rule discussion at section III.B.2.c.ii., *infra*.

[197] As discussed, the Commission expects the SROs to work expeditiously with ECNs that wish to avail themselves of this alternative, and is prepared to act if necessary to ensure the effectiveness of the ECN display alternative, prior to the effective date of the Quote Rule amendments. *See* Introduction and Summary, *supra; see also* § 240.11Ac1–1(c)(5)(ii); Amendments to the Quote Rule discussion at section III.B.2.c.iii., *infra*.

[198] *See* Amendments to the Quote Rule discussion at section III.B.2.c.i., *infra*, for a description of the ECN definition; *see also* § 240.11Ac1–1(a)(8); § 240.11Ac1–4(a)(8).

[199] Section 240.11Ac1–4(c)(5). *See also*, Amendments to the Quote Rule discussion on accessibility at section III.B.2.c.iii., *infra*. Additionally, a specialist or OTC market maker may be relieved of its display obligation if it delivers the customer limit order to an exchange or association sponsored system that complies with the new alternative in the Quote Rule. Section 240.11Ac1–4(c)(5).

exception ensures that customer limit orders will have equivalent public disclosure whether they are sent to an ECN that complies with the alternative or displayed directly in a specialist's or OTC market maker's quote.[200]

The sixth exception applies to a limit order that is delivered to another exchange member or OTC market maker that complies with the display requirements of the rule with respect to that order.[201] For example, a market maker that receives a limit order subject to the display requirement under the rule may immediately send the order to another market maker in the security if the other market maker will display the order in accordance with this rule.[202]

The seventh exception applies to "all-or-none limit orders." An "all-or-none limit order" is an order accompanied by the customer's instruction that the order is to be executed in its entirety or not at all.[203] Although this exception was not included in the proposed rule, the Commission believes that exempting all-or-none limit orders is necessary to avoid operational difficulties regarding partial executions at the public quote.[204] In this regard, all-or-none limit orders typically are not displayed in the exchange markets today.[205] The Commission believes, therefore, that this exception is consistent with the goals and objectives of the Display Rule.

Finally, a new provision has been included that enables the Commission to exempt, conditionally or unconditionally, any transactions that it may determine are not encompassed within the purposes of the Display Rule. The Commission believes that this exemptive authority provides flexibility in applying the Display Rule.[206]

d. Effective Date and Phase-In

The Display Rule will become effective on January 10, 1997. As of this date, the Display Rule will apply to exchange-traded securities. Moreover, this date will mark the beginning of the first phase-in for Nasdaq securities. As of this date, the Display Rule will apply to the 1,000 Nasdaq securities with the highest average daily trading volume in the previous quarter.

The second phase-in date will be on March 28, 1997. From this date forward, the Display Rule will apply to the next 1,500 Nasdaq securities with the highest average daily trading volume over the previous quarter.[207]

The third phase-in date will be on June 30, 1997. From this date forward, the Display Rule will apply to the next 2,000 Nasdaq securities with the highest average daily trading volume over the previous quarter.

The final phase-in date will be on August 28, 1997. From this date forward, the Display Rule will apply to all remaining Nasdaq securities.

Although the Commission believes that the Display Rule should apply equally to exchange-traded and non-exchange-traded securities, the Commission understands that the Display Rule will more significantly impact current order handling procedures for Nasdaq securities in light of existing practices in that market. The phase-in period will allow the Commission to monitor the effects of the Display Rule on successive groups of Nasdaq securities while ensuring that all covered securities receive the benefits of the display requirement within one year of the Display Rule's adoption.

B. Amendments to the Quote Rule

1. Background

Public quotation reporting for equity securities is governed by the Commission's Quote Rule,[208] as well as by exchange and NASD rules. These rules require registered exchanges and securities associations to file quotation reporting plans with the Commission that provide for the collection and transmission of quotation information on a real-time basis for securities covered by the Quote Rule.[209] Market makers and exchange specialists communicate their quotes to the NASD or to an exchange pursuant to these plans and the NASD and exchanges in turn make this information available to vendors for dissemination to the public.[210]

The Quote Rule requires the collection and public dissemination of the best bid, best offer, and size for each market quoting any security covered by the Quote Rule, as well as the consolidation of those markets' quotations and public dissemination of the national "consolidated" best bid and offer ("NBBO").[211] These quotations must be firm, and a market maker or specialist generally is obligated to execute an order at a price at least as favorable as its published bid or offer up to the size of its published bid or offer.[212] Broker-dealers covered by the Quote Rule, including dealers trading listed securities in the OTC market (*i.e.*, third market makers), must supply quotations to their exchange or association for dissemination to quotation vendors.

The 1975 Amendments identified the need for a prompt, accurate and reliable

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[200] An OTC market maker or specialist choosing to enter customer limit orders for display through an ECN must still evaluate whether the customer order is likely to obtain best execution through display in that ECN. *See* section III.C.2., *infra*.

[201] Section 240.11Ac1–4(c)(6).

[202] One commenter believes that the rule should require a specialist or OTC market maker to obtain assurances that a customer's limit order will be displayed in accordance with the rule before such an order is sent. MJT Letter. *But see* PSE Letter; Salomon Letter. As noted earlier, the Commission believes that it is best left to a firm's compliance department to decide on the necessary assurances that the order will be displayed in conformance with the rule.

[203] *See, e.g.*, NYSE Rule 13.

[204] For example, if an all or none order to buy 1,000 shares at 10¼ were displayed in the quote and represented the NBBO, a subsequent market order to sell 500 shares could not be matched against the all or none order.

[205] *See, e.g.*, NYSE Rule 13.

[206] Section 240.11Ac1–4(d).

[207] Any security already covered by the rule will not be included as part of the calculation of the securities to be included in any subsequent group. Therefore, if a security is included as one of the 1,000 securities in the first group, such security will not be counted as one of the next 1,500 securities in the second group (even if such security's average daily trading volume over the previous calendar quarter would otherwise place it in the second group).

[208] 17 CFR 240.11Ac1–1. *See also* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978) ("Quote Rule Adopting Release").

[209] Rule 11Ac1–1(b)(1), 17 CFR 240.11Ac1–1(b)(1) (dissemination requirements for exchanges and associations).

[210] Rule 11Ac1–2, 17 CFR 240.11Ac1–2 ("Vendor Display Rule") requires vendors of market information to display quotation information in a non-discriminatory manner.

[211] Rule 11Ac1–1(b)(1), 17 CFR 240.11Ac1–1(b)(1). Pursuant to the Quote Rule and the Joint Consolidated Quotation Plan ("CQS Plan"), the inside quotations collected and calculated by the exchanges and Nasdaq for exchange-listed securities are consolidated and disseminated to vendors by SIAC, the exclusive processor for consolidated quotations in listed securities. Similarly, Nasdaq is the exclusive processor for quotations in Nasdaq National Market ("Nasdaq NMS") securities. Nasdaq collects and consolidates inside quotations furnished by OTC market makers and by exchanges pursuant to a Joint Self-Regulatory Organization Plan that provides for exchange trading of Nasdaq securities. Nasdaq then disseminates to vendors the inside bid and offer in Nasdaq NMS securities, and disseminates to various subscribers more specific information concerning the individual market maker and exchange quotes in each Nasdaq security. The terms "consolidated quote" and "publicly available quotation," when used with respect to information disseminated by exchanges and Nasdaq via their exclusive processors, refer to the quotes that SIAC or Nasdaq furnishes to vendors for dissemination to the public. The terms "public quote" or "publicly available quote," when used with respect to a specialist or market maker, refer to the bid and offer that the specialist or market maker has furnished to its exchange or association for inclusion in the consolidated quote. The term "public quotation system" refers to this entire structure through which SROs collect quotations from market participants, and the exclusive processors collect, process, and disseminate those quotations to vendors.

[212] Rule 11Ac1–1(c)(1), 17 CFR 240.11Ac1–1(c)(1). This is referred to as the broker-dealer's "firmness" requirement.

central quotation reporting system.[213] The Quote Rule, in particular, was designed to facilitate the NMS by requiring specialists and market makers publishing quotes to provide these quotes to a central system so they could be made available to the public. Congress considered the public availability of quotation information to be critical to fair and competitive markets because published quotations provide investors, their brokers, and other market participants with essential information about the condition of the market. This information assists investors in making investment decisions and in finding the best market for a security, while making it possible for investors to evaluate the quality of their executions.

Since the 1975 Amendments and the adoption of the Quote Rule, there have been dramatic changes in the markets and the technologies used by market participants. To ensure that the Quote Rule keeps pace with the evolution of the securities markets and continues to ensure the public availability of accurate, reliable, and comprehensive quotation information, the Commission has determined that certain amendments to the Quote Rule are necessary and appropriate in furtherance of the objectives of the Exchange Act.

The Commission proposed an amendment to the Quote Rule to require specialists and market makers to reflect in their public quotes any better priced orders they place in certain systems that are not currently integrated into the NMS. In particular, the ECN amendment is intended to incorporate within the public quotes any better priced orders broadly displayed by market makers and specialists through ECNs. This amendment is being adopted with modifications to address concerns raised by some commenters. Specifically, in order to provide specialists and market makers with an alternative method to meet the ECN display requirement, the Commission is adopting an alternative suggested in the proposing release that deems a specialist or market maker in compliance with the ECN amendment if the ECN provides the best prices entered into the ECN by market makers or specialists for each covered security to an exchange or association for inclusion in the public quotation system and provides access to those prices equivalent to the access currently available to other quotes published by the exchange or association. In addition, the Commission is amending the Quote Rule to expand the categories of securities covered by certain existing Quote Rule provisions. The quotation requirements that previously applied to substantial specialists and market makers in only certain exchange-listed securities now will apply to substantial specialists and market makers in all exchange-listed securities. Further, certain Quote Rule provisions that previously applied to market makers electing to quote particular Nasdaq securities now will apply to market makers electing to quote any Nasdaq security. The Commission is adopting these amendments substantially as proposed, along with minor technical amendments to the Quote Rule that are discussed more fully below.

2. Public Dissemination of Market Maker and Specialist Prices in ECNs

a. Basis for the ECN Amendment

Over 20 years ago, the Commission noted that an essential purpose for the establishment of the NMS was "to make information on prices, volume, and quotes for securities in *all* markets available to *all* investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell, or not sell for less than the highest price a buyer is prepared to offer."[214] At the time, the lack of consolidated quote information made it difficult to ascertain the different prices that were often available in the various markets for a particular security. This lack of transparency as to the best prices among competing markets was widely recognized as preventing investors and their brokers from ascertaining accurate trading interest for a security and obtaining the best prices for their orders.[215] To address these concerns, Congress directed the Commission to facilitate the creation of a national market system that would link the various markets trading a security. The price and quotation transparency resulting from the Commission's ensuing NMS initiatives has produced extremely liquid, successful, and, in most cases, competitive markets.

As discussed in the Proposing Release, the Commission for many years has been concerned that the development of so-called "hidden markets," in which a market maker or specialist publishes quotations at prices superior to the quotation information it disseminates on a general basis, impedes these NMS objectives.[216] Over the course of the last decade, certain trading systems that allow market makers and specialists to widely disseminate significant trading interest to certain market participants without making this trading interest available to the public market at large have become significant markets in their own right. Although offering benefits to some market participants, widespread participation in these hidden markets has reduced the completeness and value of publicly available quotations contrary to the purposes of the NMS. Because these systems are not registered as exchanges or associations, they are currently not required to integrate into the public quote the prices at which their subscribers, including subscribing market makers and specialists, are willing to trade.[217] The use of these systems by market makers and specialists to quote prices not incorporated into the NMS has resulted in fragmented and incomplete dissemination of quotation information.

Certain markets, in particular ECNs that allow subscribers[218] to enter priced orders that are widely disseminated to third parties[219] and permit such orders to be executed in whole or in part through the system, communicate orders that are closely analogous to quotations. These ECNs, in effect, allow market makers and specialists to display different prices to different market participants.

Although these ECNs can facilitate the execution of their subscribers' orders and allow institutions to participate

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[213] Senate Report, *supra* note 31. *Cf.* H.R. Rep. No. 229, 94th Cong., 1st Sess. 29 (1975) ("Conference Report") (noting that the conference committee adopted the Senate's provisions on the NMS with minor revisions).

[214] Securities and Exchange Commission, *Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets* (February 2, 1972) ("Future Structure Statement") at 9–10, 37 FR 5286, 5287 (February 4, 1972) (emphasis added). *See also* Securities and Exchange Commission, *Policy Statement of the Securities and Exchange Commission on the Structure of a Central Market System* (1973) at 25–28.

[215] *See* Senate Report, *supra* note 31.

[216] *See* Proposing Release at 4.

[217] Certain ECNs may be registered with the Commission as broker-dealers and indeed perform various brokerage functions. Nevertheless, the Commission recognizes that in providing a mechanism by which system subscribers can (1) broadcast prices to other system subscribers and (2) trade with one another at those prices, these systems also function as securities markets.

[218] ECN subscribers may include institutional investors, broker-dealers, and market makers. ECNs provide their services to subscribers for a fee or commission equivalent. Some ECNs (such as SelectNet) have been available only to broker-dealers and not to investors generally.

[219] "Third parties" in this context refers to subscribers or any other entities (such as customers of subscribers) that receive information from the ECN concerning any priced order entered into the ECN by another subscriber.

directly in price discovery, the display of better prices privately in ECNs reduces the reliability and completeness of consolidated quotations, the accuracy of which continues to be an essential element of the NMS. These private markets have resulted in fragmented quotations and a reduction in the reliability of public quotations as an accurate indicator of market makers' and specialists' best prices, the identical situation that prompted Congress to adopt the NMS amendments in 1975. The unavailability of full market maker and specialist quotation information prevents investors and their brokers from ascertaining the true trading interest for a security, and obtaining the best price for market orders, and prevents investors from monitoring the efforts of their brokerage firms to obtain best execution for their orders.

The Commission's analysis of the trading activity in these ECNs has produced clear evidence of the existence of a two-tiered market in which market makers routinely trade at one price with retail customers and at better prices with ECN subscribers.[220] For example, analysis of trading activity in the two most significant ECNs in the Nasdaq market, Instinet and SelectNet, reveals that approximately 85% of the bids and offers displayed by market makers in Instinet and 90% of the bids and offers displayed on SelectNet were at better prices than those posted publicly on Nasdaq.[221] Furthermore, approximately 77% of the trades executed on Instinet and 60% of the trades executed on SelectNet occurred at prices between the Nasdaq best bid and offer. Market makers participated on at least one side of approximately 90% of the trades in these ECNs. The trading activity in Instinet, which comprised approximately 17% of trades and 15% of the volume in Nasdaq securities, represents a significant portion of the overall market for Nasdaq securities.[222]

The Commission's recent investigation into various trading practices in Nasdaq stocks revealed that the existence of this two-tiered market facilitated the maintenance of wide spreads on Nasdaq. As discussed in the 21(a) Report, Nasdaq market makers engaged in a widespread course of conduct that resulted in artificially wide spreads in a large percentage of Nasdaq stocks. The maintenance of wide spreads was made possible at least in part by the fact that ECNs like Instinet and SelectNet did not affect the prices at which market makers traded with the general public, thus allowing market makers to attract trading interest at prices inside the spread without adjusting their Nasdaq quotes. Integrating the better prices market makers quote in ECNs should significantly limit the types of uncompetitive practices identified in the investigation without limiting the usefulness of these systems as efficient alternative mechanisms for negotiating transactions.

The Commission firmly believes that *all* investors should have an opportunity to have their orders filled at the best prices made available by market makers. Consistent with Congress's goals for a NMS, these opportunities must be made available to *all customers*, not just those customers who, due to size or sophistication, may avail themselves of prices in ECNs not currently linked with the public quotation system. The vast majority of investors may not be aware of the better prices widely disseminated by market makers or specialists through ECNs and many do not have the ability to route their orders directly or indirectly to such systems. As a result, many customers, both institutional and retail, do not always obtain the benefit of the better prices entered by a market maker or a specialist into an ECN.

Brokers frequently use the consolidated quote as the benchmark for automated execution of customer orders and for the starting point in negotiating execution prices with institutional investors.[223] Consolidated quotations in listed stocks are provided by CQS to vendors, who then provide this information to the public. In approving the CQS as the mechanism to serve this vital function, the Commission stressed that it would expect broker-dealers to take into account pricing information made available through the CQS in fulfilling their best execution obligations.[224] Similarly, for OTC securities, Nasdaq disseminates to market makers, vendors, and investors multiple market maker quotations, and a "best" bid and offer derived from these quotations. As broker-dealers and markets have developed automated order-routing and order execution systems, they have relied on these consolidated quotes in pricing and executing customer orders routed through their systems.[225] Including the prices entered into ECNs by market makers and specialists in the consolidated quotation will help broker-dealers using these automated systems to provide their customers' orders with improved executions, and will improve institutions' ability to ascertain true market prices.

In light of the stated fundamental purposes of the 1975 Amendments and clear evidence of a two-tiered market, the Commission believes it is imperative to amend the Quote Rule to ensure the public dissemination of accurate quotes that represent the *best* prices that market makers and specialists widely disseminate. Thus, the ECN amendment is intended to integrate into the public quote the prices of market makers and specialists that are now widely disseminated to ECN subscribers but are not available to the rest of the market.[226]

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[220] For example, a market maker with a public offer constituting the best public offer of 20¼ might offer to sell shares in an ECN at 20⅛. If the market maker did not change its public offer to reflect this improved selling price, public customers buying from the market maker would pay the higher price of 20¼ for the security because they do not have access to the market maker's price in the ECN.

[221] The Commission's analysis is based on Instinet and SelectNet data for the months April through June 1994. *See* 21(a) Report at notes 48–52 and accompanying text and Appendix at notes 18–20 and accompanying text.

[222] More trading volume now occurs on Instinet than on any of the organized U.S. stock markets other than the NYSE and Nasdaq. In 1994, trading volume on Instinet totalled approximately 10.6 billion shares with an approximate dollar volume of $282 billion. In comparison, Nasdaq traded approximately 74 billion shares, with an approximate dollar volume of $1,449 billion. *Id.* at note 50 and accompanying text.

[223] Some commenters argue that the ECN amendment focuses on expanding the availability of these systems to small investors, and ignores the fact that small investors already benefit from these systems in that institutional subscribers in ECNs primarily represent the collective interests of small investors, *e.g.*, through mutual funds and 401(k) plans. *See, e.g.*, CALpers Letter; Dillon Letter; Instinet Letter; LJR Letter; Northern Trust Letter; SIA Letter; STAIC Letter. The objectives of the ECN amendment, however, are not limited to improving market transparency and accessibility for small investors. Comprehensive and transparent information about market conditions is critical to efficient and competitive markets for all investors, whether retail or institutional. Indeed, while large institutional investors often have access to ECNs, the public quotes nevertheless frequently serve as a benchmark for their negotiations with market makers. In any event, while retail investors directly account for a significantly smaller percentage of trading volume than institutional investors, they still account for half of the direct equity investment in U.S. markets. *NYSE 1995 Fact Book* at 57. The Commission recognizes that direct retail participation provides critical liquidity and therefore limited access and transparency to the best prices available undermines the efficiency of our markets and jeopardizes public confidence in their fairness.

[224] *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851 (declaring the CQS Plan temporarily effective); Securities Exchange Act Release No. 16518 (Jan. 22, 1980), 45 FR 6521 (permanently approving the CQS Plan).

[225] *See* discussion of best execution principles, *infra* section III.C.2.

[226] Several commenters characterize ECNs as "wholesale" markets, and argue that the ECN rule would require market makers to trade with retail customers at wholesale prices. *See, e.g.*, Davis Letter; Instinet Letter; LJR Letter; Merrill Letter. The Commission notes that market makers are compensated by the spread between their bid and offer prices, and nothing in the ECN rule prevents

Most commenters support the Commission's goal of improving the quality of quotation information made available to the public, although many raise questions, discussed below, about the proposal. In particular, and as discussed below, some commenters expressed concern about the potential impact of the rule on benefits provided to the market as a whole by ECNs. Upon review of the comments received, the Commission has determined that it is appropriate to adopt the proposed ECN amendment. Furthermore, in response to the concerns noted, and to facilitate compliance with the ECN amendment, the Commission has included the ECN display alternative that permits a market maker or specialist to comply with the amendment through an ECN that meets two conditions. First, the ECN into which the market maker or specialist enters its order must ensure that the best prices market makers and specialists have entered therein are communicated to the public quotation system. Second, the ECN must provide brokers and dealers access to orders entered by market makers and specialists into the ECN, so brokers and dealers that do not subscribe to the ECN can trade with those orders. The ECN display alternative therefore allows a market maker or specialist to comply with the ECN amendment directly by changing its quote, or alternatively by using an ECN that meets the above two conditions.

As discussed above, the Commission expects the SROs to work expeditiously with ECNs that wish to avail themselves of the ECN display alternative to develop rules or understandings of general applicability. The Commission is prepared to act as necessary to ensure implementation of the ECN display alternative prior to the effective date of the Quote Rule.

b. Response to Comments [227]

The Commission solicited comment on whether the proposed amendment achieves the goals of deterring fragmented markets and promoting improved quotations. The Commission also invited comment on whether there are any feasible alternatives to the rule, and on possible business or economic justifications for permitting market makers and specialists to publish prices in ECNs that differ from their public quotations. The Commission requested comment on the competitive effects of the proposal on existing ECNs, subscribers, and users.[228] In addition, the Commission solicited comment on alternatives to the proposal that would minimize any negative effects, yet still achieve the Commission's goals. The Commission specifically asked whether ECNs should, as an alternative, furnish market makers' and specialists' best prices to the applicable exchange or association for further dissemination, and provide access to those prices through some form of linkage.[229]

i. General Comments

The Commission received numerous comments on the ECN proposal. Many commenters support the proposal as an important initiative designed to further investor protection by improving publicly available quotation information and assuring best execution of customer orders.[230] Some commenters recognize that a number of brokers and dealers have adopted the practice of placing superior priced orders in ECNs without including these better prices in their public quotes.[231] These commenters agree that the Commission should be concerned that some retail investors may have neither knowledge nor access to the best available prices under these circumstances.[232] They voice general support for the rule, and recommend one or more mechanisms [233] by which the Commission could ensure that public quotes contain the best prices otherwise widely disseminated by market makers and specialists.

ii. Impact on ECNs, Market Makers and Specialists, and Institutions

Some commenters express concern that the amendment could negatively impact services provided by ECNs and caution the Commission not to diminish the benefits provided by ECNs to the market as a whole. Some commenters argue that, under the proposal, market makers and specialists that use ECNs would lose the anonymity that these commenters believe is crucial to successfully execute large trades for institutional investors.[234] Some commenters anticipate the adoption of the ECN amendment prompting a potential decline in the use of certain ECNs.[235] In addition, some commenters contend that this amendment, because of the impact on ECNs and their subscribers, will lead to a loss of liquidity in both ECNs and the public markets [236] and to a decline in the variety of available trading options which could be detrimental to all investors.[237] Other commenters argue that the proposal would effectively double the risk of a specialist or market maker that enters orders into an ECN because the specialist or market maker could be simultaneously responsible for multiple executions based on its disseminated quote as well as its ECN order.[238] Moreover, at least one commenter argues that quotes, bids, offers, and orders have historically had different meanings and that the proposal's treatment of priced orders as quotes confuses the essence of the terms, thereby resulting in inadvertent anti-competitive effects.[239] Some commenters also argue that the better prices frequently available in ECNs reflect the lower costs of doing business in those systems, and therefore, it would be inappropriate to require market

market makers from buying at the bid from one customer and selling at the offer to another.

[227] This section includes a discussion of the principal arguments advanced by the commenters. A more detailed discussion of the comments is provided in the Summary of Comments.

[228] The Commission also specifically solicited comment on whether exceptions to the rule would be appropriate, particularly if a customer requests that the market maker refrain from publicly disseminating its order. The Commission also solicited comment on whether market makers should be required to disseminate publicly the full size of orders placed in ECNs. The Commission received only minimal response to these questions, which is discussed in the Summary of Comments.

[229] *See* Proposing Release at 28–29.

[230] *See, e.g.*, DOJ Letter; Lehman Letter; Madoff Letter; Amex Letter; NASD Letter.

[231] *See, e.g.*, Amex Letter; DOJ Letter; Madoff Letter; RPM Letter.

[232] *See, e.g.*, Letter from Gerri Detweiler, Policy Director, National Counsel of Individual Investors, to Jonathan G. Katz, Secretary, SEC, dated January 22, 1996 ("NCII Letter"); Goldman Sachs Letter; PaineWebber Letter; SIA Letter; Madoff Letter; Lehman Letter; DOJ Letter.

[233] *See* discussion of alternative approaches, *infra* at section III.B.2.b.iv.

[234] *See* AZX Letter; Instinet Letter; ICI Letter; Investors Research Letter; NASD Letter; Ruane Letter; STAIC Letter; Letter from Edward G. Shufro, Partner, Shufro, Rose & Ehrman, to Jonathan G. Katz, Secretary, SEC ("Shufro Letter"); Sutro Letter.

[235] *See* Goldman Sachs Letter; STA Letter; AZX Letter; Instinet Letter; Schwartz and Wood Letter; Ruane Letter.

[236] *See* DOJ Letter; STA Letter; Alex. Brown Letter; Letter from Jeffrey L. Davis, Economists Incorporated, to Jonathan G. Katz, Secretary, SEC, dated October 25, 1995 ("Davis Letter"); Dillon Letter; Instinet Letter; Merrill Letter. (citing the "deleterious effects concerning liquidating inventory and replacing necessary capital" at pp. 7–8); Schwartz and Wood Letter; Letter from Mary Kay Wright, Second Vice President and Senior Equity Trader, The Northern Trust Company, to Jonathan G. Katz, Secretary, SEC, dated February 26, 1996 ("Northern Trust Letter").

[237] *See* Letter from Anthony R. Gray, Chairman and CIO, STI Capital Management, to Jonathan G. Katz, Secretary, SEC, dated February 12, 1996 ("STI Capital Letter"); Ruane Letter; DOJ Letter; and LJR Letter.

[238] *See, e.g.*, Merrill Letter.

[239] *See* Instinet Letter. Instinet also bases much of its arguments on its regulatory identification as a broker-dealer. Instinet argues that the proposal targets its ECN operations for treatment different from other broker-dealers. The Commission notes that Instinet (and similar systems) provides to its customers ECN services that are significantly different from the services provided by other broker-dealers to their customers. Specifically, Instinet, without discretion, publicizes subscriber orders and enables other subscribers to trade with these orders at their stated price.

makers and specialists to match their ECN prices in their public quotes.[240]

The Commission agrees with commenters that ECNs provide certain valuable benefits to their subscribers. It also recognizes the benefits competing systems bring to the market as a whole, particularly systems that take advantage of new technologies to offer improved trading opportunities. The Commission, therefore, has adopted an alternative method of compliance with the ECN requirement discussed in the proposing release to reduce the amendment's potential impact on existing ECNs and their subscribers, and to maintain incentives and opportunities for new ECNs to enter the marketplace.[241] The Commission continues to believe it is important that the best prices of orders entered into these markets by market makers and specialists are properly integrated into the public market so that all market participants can benefit from the price discovery taking place within these markets.

In its comment letter, the NASD stated its view that the proposal could discourage market makers' use of ECNs because a market maker placing an order in an ECN at a better price would have to simultaneously change its quote, thereby telegraphing its interest. In proposing a solution to this situation, the NASD specifically referred to the ECN alternative noting "* * * this problem can be addressed without discouraging market maker use of ECNs through the approach suggested by the Commission as a possible alternative, *i.e.*, by reflecting the better ECN prices in the *inside market* display, rather than in individual quotes."[242]

In response to the concerns raised by the NASD and other commenters, the ECN display alternative is designed to preserve the benefits associated with the anonymity that some ECNs currently offer to subscribing market makers and specialists and their customers.[243] This alternative will ensure that the best prices of market makers and specialists are publicly disseminated and that non-ECN-subscribing brokers and dealers can trade with the ECN orders represented by those prices. Under the display alternative, the best prices and sizes of orders entered into an ECN by specialists and market makers would be publicly disseminated while the specialists and market makers themselves would remain anonymous. This alternative not only preserves anonymity, but also eliminates the risk that a market maker or specialist could be exposed to multiple executions at the ECN price.[244]

The ECN amendment, as proposed, sought to minimize the potential impact on market makers, specialists, and ECNs by requiring a market maker or specialist to display in its public quote only the size required by its exchange or association, rather than the actual size of any order the firm places into an ECN. This part of the amendment is being adopted as proposed for orders for the accounts of market makers and specialists. However, for customers' orders entered into an ECN by a market maker or specialist that are smaller than the quote size required by the market maker's or specialist's exchange or association, the Commission has amended the rule to allow market makers and specialists to display only the customer's order size.[245] The requirement to display no more than the required size for market makers' and specialists' own orders should reduce any disincentives to use ECNs that could otherwise result from the ECN amendment, and responds to the concern that disclosure of the full size of the order in the market maker's or specialist's quote could impede its ability to execute the order.[246] Moreover, permitting the display of customer orders of less than the minimum quote size should reduce the potential burden on a specialist or market maker of having to publish a public quote for more than the customer's order size when the customer's order is for less than the minimum quotation size required by the specialist's or market maker's exchange or association.

Market makers and specialists who avail themselves of the ECN display alternative will be required to furnish to the public quotation system the full size of the best buy and sell orders they enter into the ECN. The Commission believes that the display of full size by the ECN will help inform the public market of the true trading interest entered by specialists and market makers, without impeding the execution of these orders by disclosing the identity of the specialist or market maker placing the order. Under the ECN display alternative, the market maker or specialist will be able to continue to represent the order on an anonymous basis both in the ECN and in the public

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[240] *See, e.g.*, Dillon Letter; HHG Letter; LJR Letter; Merrill Letter; STA Letter; Goldman Sachs Letter.

There appear to be counter arguments. For example, there is no reason to suppose that adverse selection costs—that is, the risks of trading with an informed trader—are any lower in ECNs, whose subscribers typically can include market makers, other broker-dealers, institutional money managers, hedge funds, momentum traders, and options market makers. Second, because traders can more easily mask their identities and thus their trading motives in ECNs than in the primary market, informed traders may prefer to trade in ECNs. These higher information asymmetries would be expected to lead to higher, rather than lower, trading costs. Finally, ECNs often impose transactions charges that may not otherwise be incurred by dealers trading in the primary market.

Furthermore, it does not appear that the better prices available in ECNs can be explained by differences in the size of orders and transactions given that the average order size and trade size in one ECN (Instinet) is substantially similar to the average size of quotes and trades in the primary market. In any event, the Commission generally would not expect larger size orders to receive better prices in view of the considerable literature suggesting that in equities markets, larger orders tend to get worse prices because of the risk of trading with an informed trader. *See, e.g.*, David Easley and Maureen O'Hara, 19 J. Fin. Econ. 69, (No. 1, September 1987).

[241] The Commission believes that although the ECN amendment may marginally reduce the incentive of some subscribers to participate in an ECN, on the whole the effect on ECNs should not be so significant as to affect their viability. Moreover, given the availability of the ECN display alternative, which is designed to minimize any potentially detrimental effects of the rule on ECNs, the Commission believes that the benefits of the amendment to investors of publicizing the better prices entered by market makers and specialists outweigh the limited likely costs to ECNs. Many of the comments received that addressed the ECN proposal raised concern about the importance of preserving the anonymity offered by these systems. *See, e.g.*, Alex. Brown Letter; AZX Letter; Dillon Letter; Estep Letter; ICI Letter; Instinet Letter; NASD Letter.

[242] NASD Letter at 14.

[243] The Commission recognizes that in certain securities, specific market makers or specialists may be viewed as price leaders for those securities. Therefore, if the market knows that one of those firms has changed its quote, other market makers or specialists are likely to follow that price change and frustrate the first's firms ability to obtain an execution at the improved price. The ability to place an anonymous order in an ECN allows the firm to change its price without triggering corresponding price changes from other market makers or specialists and thereby increases its potential to obtain an execution at the improved price.

[244] Certain commenters fear that, as originally proposed, the amendment would have an adverse impact on institutional investors which currently subscribe to ECNs. These commenters appeared to believe that the ECN amendment would seriously harm ECNs, and thus harm institutional users. *See, e.g.*, ICI Letter; Ruane Letter. The Commission does not believe that the amendments will significantly interfere with the operations of ECNs. Moreover, the Commission believes that as adopted, particularly with the addition of the ECN display alternative, ECNs will continue to be able to provide services to institutional investors of similar value to those they provide today. The Commission also believes that the benefits of the amendments, including increased market maker competition and decreased fragmentation, will flow to all investors, institutional as well as retail. *See* 21(a) Report.

[245] As discussed *supra* in footnote 144, SROs may wish to allow market makers or specialists to quote in sizes smaller than the minimum quotation increment when the quote represents a customer limit order.

[246] The Commission received several comments that support this aspect of the proposal. *See, e.g.*, Lehman Letter; and Smith Barney Letter. These commenters believe that display of full size in a market maker's quote could impair the quality of an execution obtained for a customer because the display in the public quotation system is broader than the display in the ECN.

quote, substantially reducing any negative impact of the amendment on ECN users.

Where the order entered by the market maker or specialist is on behalf of a customer, the display of full size under the ECN display alternative is consistent with the requirement under the Display Rule, which requires market makers and specialists to display the full size of their customer limit orders. Therefore, the full size of customer limit orders will be displayed whether the specialist or market maker displays the order itself or enters the order into an ECN complying with the ECN display alternative.[247]

The Commission believes that the concerns expressed by some commenters about a potential loss of liquidity resulting from the proposal have been substantially addressed by the alternative adopted today. Because this alternative preserves the anonymity some ECNs afford to the users of their systems, the proposal maintains incentives for subscribers to continue participating in such systems. In fact, a market maker or specialist, who presumably wants its orders executed at prices it is widely displaying through the ECN, should benefit from attracting greater trading interest by having the prices of its orders displayed to the entire market.

Finally, under the proposal, priced orders of institutions and other non-market makers entered directly into ECNs would not be required to be reflected in the public quote. Some commenters criticized the proposal because it did not require the inclusion of all better priced orders in the public quote. This result, however, is consistent with existing quotation principles. Institutional bids, offers, and orders handled independent of a market maker historically have been outside the scope of the Quote Rule, and the Commission's proposal was not intended to expand the scope of the Quote Rule in this respect.[248] Furthermore, the Commission believes that, although institutional investors' direct orders in ECNs provide valuable liquidity, the amendments will substantially strengthen the public quotation system by publishing orders entered by market makers and specialists without creating new requirements for orders not controlled by market makers or specialists.[249] Nevertheless, the Commission will continue to monitor closely issues involving the display of prices published by institutions in light of the Quote Rule and its objectives.

iii. Technology and Innovation

Some commenters predict that the proposal may have a chilling effect on technological innovation, primarily because the proposal applies only to ECNs and not to all available communication technologies that may be used for disseminating interest to buy and sell a particular number of shares at a specified price.[250] Some commenters argue that the proposal is anti-competitive and otherwise antithetical to the purposes of the Exchange Act because it will deter future technological advances in automated trading environments by favoring less automated trading methods (*e.g.*, telephone transactions).[251]

The Commission is cognizant of the importance of the continued development of innovative trading systems and services. New technologies have expanded the ways in which investors' buying and selling interest can be brought together and have fostered additional competition in the securities markets. The Commission believes that this competition should be encouraged. Nonetheless, to promote competition, efficiency, and transparency in the securities markets, and insure the integrity of publicly available information, the Commission believes it is appropriate to set minimum standards that apply to the entry of the functional equivalent of quotations by market makers and specialists in trading systems.[252] Indeed, consistent with the Commission's experience with previous NMS initiatives,[253] these minimum standards will permit and foster the development of new technologies that improve the public availability of trading information, while discouraging practices that are inconsistent with the purposes of the 1975 Amendments. The Commission believes that the Quote Rule as amended will not unduly diminish the beneficial services provided by existing ECNs, nor will it stifle the development of new trading technologies or new ECNs.

iv. Alternative Approaches

In the Proposing Release, the Commission suggested alternatives to the proposal, and solicited comment on these alternatives. The Commission also invited commenters to suggest possible alternatives. The Commission specifically asked whether it should require ECNs to furnish prices to the applicable exchange or association for public dissemination and to provide some access, such as a linkage, to the prices in the ECN.[254] A number of commenters supported this approach.

The NASD recommended, as an alternative to the proposed rule, that the better ECN price be reflected in the inside market, rather than in individual quotes. Under the alternative described by the NASD, an ECN would report its best market maker or specialist inside prices to the SRO that is the primary market in the security. The NASD also recognizes that more assured access to orders in the ECNs would be necessary under this option.[255] Similarly, one commenter agreed that the inside market available to the public should reflect the best bid and offer prices whether in a market maker's quote or in a market maker's order on an ECN. The Commenter suggested that this could be accomplished by requiring quotations in ECNs to be made part of the public quotation and by separately identifying the ECN into which the order is entered rather than the market maker that

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[247] The Commission notes that the exceptions under the Display Rule for limit orders of block size and for limit orders that a customer has asked not to be displayed will not apply to customer limit orders entered by a market maker or specialist into an ECN. If entered into an ECN, these orders must either be reflected in the market maker's or specialist's own quote or displayed via the ECN alternative. As discussed previously, the Commission believes that a customer should have discretion to permit a market maker or specialist to handle its limit order without public display, and large limit orders should not be required to be displayed unless the customer makes a request. However, the Commission does not believe these orders should be withheld from public display if they are being displayed in an ECN. The Commission believes that if these orders, when handled by market makers or specialists, are displayed widely through an ECN to the ECN's subscribers, then they should also be displayed to the public generally. Moreover, limiting display to only one market would be inconsistent with Congress's goal for a NMS in which trading interest in disparate markets would be consolidated and publicly disseminated.

[248] The fact that ECNs will continue to contain institutional investors' orders priced better than the public quotes will provide another incentive for market participants to continue to participate in these systems.

[249] The Commission notes that, as described in the Commission's 21(a) Report, institutions trading with dealers or others accounted for less than 20% of trades in one ECN (Instinet). *See* Appendix to the 21(a) Report at A–11.

[250] *See* DOJ Letter; SIA Letter; Instinet Letter; Schwab Letter; STI Capital Letter; Sutro Letter.

[251] *See, e.g.*, Instinet letter.

[252] The Commission notes that the focus of the proposal is not on any particular system or systems but, rather, on the types of orders that are the fundamental equivalent of quotations, and the fragmented market that results when the prices of these orders are not integrated into publicly available quotations.

[253] *See* Simon and Colby, *supra* note 58. The Commission also notes the growth in technologies over the past twenty years, including broker-dealer and exchange automated execution systems, that clearly rely on, and were facilitated by, successful operation of NMS and joint industry initiatives such as the Quote Rule, CTA, and the ITS Plan.

[254] *See* Proposing Release and *e.g.*, NASD Letter.

[255] *See* NASD Letter.

placed the order.[256] Finally, certain commenters state that expanding ITS to include orders entered into ECNs would be a better alternative to the proposal.[257]

The Commission believes that the ECN display alternative adopted today is consistent with these suggested alternatives and will minimize many of the asserted negative effects of the rule. The adopted provision provides an alternative to an ECN that disseminates specialists' and market makers' best prices to the public quotation system. Thus, the amendment enables a market maker or specialist to comply with the Quote Rule either directly by sending to its exchange or association the prices of orders it places into ECNs that improve the market maker's or specialist's public quote, or indirectly by using an ECN that transmits the best prices entered therein by market makers and specialists for publication in the public quotation system.

The ECN display alternative is consistent with the alternative recommended by the NASD because the adopted provision enables the specialists' or market makers' best prices in ECNs to be consolidated with the exchange's or association's best prices for dissemination within the consolidated quotes. In addition, the adopted amendment requires the ECNs to provide an equivalent means of access to those best prices.

The Commission recognizes that this alternative may reduce the content of information that is publicly available because under the ECN display alternative, the identity of the market maker or specialist that entered the better priced order in the ECN will be withheld.[258] The Commission believes this result is justified because the inside prices and full sizes of orders entered by market makers and specialists will be in the public quotation system to inform the entire market of these prices and ECNs will provide equivalent access to those prices. Moreover, the Commission believes the benefits of facilitating the use of ECNs, by permitting the continued anonymity of market makers and specialists, more than offset the reduced information available on the identity of a particular market maker or specialist.

As an alternative to the ECN amendment, certain commenters suggested that enforcement of best execution principles would be sufficient to protect public investors.[259] As discussed in more detail in section III.C.2., the Commission does not believe this is a practical alternative because ECNs do not provide broker-dealers with automated links and thus may not be reasonably available for the handling of retail orders on an automated basis. Furthermore, investors and their brokers cannot efficiently ascertain if they have received the best prices for their orders if publicly available prices do not reflect the best prices at which specialists and market makers are willing to trade. Under these circumstances, providing customers the best executions available can be achieved most effectively by ensuring that the consolidated quotes systematically include the better prices that market makers and specialists have entered into an ECN.

Finally, certain commenters argue that, as an alternative to adopting the ECN proposal, the Commission should defer any action until further study is completed on the use of ECNs because the Proposing Release provides insufficient data regarding whether customers currently get the best available price, or market maker and specialist use of ECNs results in harm to customers.[260] The Commission has determined to go forward with the amendments now because of compelling concerns presented by two-tiered markets. Many of the commenters to the proposed rules also recognize these concerns. Furthermore, as part of its recently concluded Nasdaq investigation, the Commission has conducted an extensive analysis since the proposals were published that supports the Commission's proposal and clearly evidences the existence of a "two-tiered" market in which customer orders are executed at publicly available prices inferior to prices contemporaneously available in existing ECNs.[261] Moreover, Commission data shows that the pricing opportunities available in at least two ECNs (Instinet and SelectNet) are not limited to block trades, but extend to smaller orders executed in the system.[262] The Commission believes, therefore, that further study is not necessary to address a structural disparity in market information that disadvantages investors who lack access to ECNs.

c. Operation of the Rule Amendment

i. Definition of the Term "Electronic Communications Network"

The proposed amendment did not specifically define the term "electronic communications network." The Commission did state, however, that priced orders that market makers and specialists enter into certain ECNs are bids and offers for the purposes of the Quote Rule.[263] The proposal applied to systems that widely disseminate priced orders to third parties and permit such orders to be executed against in whole or in part. The Commission further explained that the term "electronic communications network" was intended to include continuous auction trading systems, but was not intended to include crossing systems or broker-dealer internal order routing systems.

Several commenters suggested the need for a definition of the term "electronic communications network."[264] The Commission agrees that it is appropriate to define the term in the Quote Rule and has decided to adopt a definition that reflects the fundamental characteristics of an ECN as discussed in the Proposing Release.

As discussed earlier, the objective of the ECN amendment is to incorporate within the consolidated public quote firm prices quoted by market makers and specialists in securities markets that widely disseminate those prices but are not registered as exchanges or associations and thus are not integrated

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[256] Morgan Stanley Letter. *See also*, PaineWebber Letter (recommending that priced orders in ECNs be included in the NBBO).

[257] *See, e.g.*, STAIC Letter; ICI Letter.

[258] The Commission also notes that under the alternative, a specialist or market maker that puts an order into an ECN that is priced better than that specialist's or market maker's public quote, but is not the best priced quote from any specialist or market maker in the ECN, will not have its better priced order reflected in the public quote. The prices will be displayed, however, if the better price in the ECN is executed or withdrawn and the lower specialist's or market maker's priced quote then becomes the best priced quote.

[259] *See, e.g.*, Instinet Letter.

[260] *See, e.g.*, Instinet Letter, asserting that the Commission should obtain and study data on this matter and that, absent such data, adoption of the proposed amendment is unwarranted.

[261] As discussed previously, the Commission believes the data it has reviewed supports the need for prompt adoption of the ECN amendment to the Quote Rule. *See supra* notes 222 and 223, and accompanying text. Given the strong evidence that investors would benefit from public dissemination of the hidden prices that are broadly disseminated to subscribers in these systems, the Commission believes that it is appropriate to adopt the amendments to the Quote Rule.

[262] As noted above, the Appendix to the 21(a) Report states that average trade size for Nasdaq NMS securities on Instinet was approximately 1,600 shares for the period studied, while the average trade size generally in the securities was approximately 1,900 shares. *See* Appendix to the 21(a) Report at A–6.

[263] As a result, relevant provisions of the Quote Rule, such as the obligation on exchanges and associations to disseminate quotes, and the firmness requirement placed on a market maker or specialist who furnishes the quotes, become operative with respect to a security when a market maker or specialist enters an order for that security into an ECN. *See* section III.B.2.c.v., *infra*.

[264] *See* Goldman Sachs Letter; Instinet Letter; Schwab Letter. In addition, one commenter argues that ECNs should include SRO stock crossing systems and all non-market-maker broker-dealers. NYSE Letter.

into the NMS. Therefore, the Commission has defined the term "ECN" as an electronic system that widely disseminates to third parties[265] orders entered therein by a market maker or specialist, and permits such orders to be executed against in whole or in part. The definition specifically excludes any system that crosses multiple orders at one or more specified times at a single price set by the system and that does not allow orders to be crossed or executed against directly by participants outside of such times. This exclusion is consistent with statements made in the Proposing Release that it was not the Commission's intention to cover crossing systems because these systems do not communicate to multiple market participants the prices at which system subscribers are willing to trade. Rather, the excluded crossing systems themselves establish an internal trading price for subscribers on an episodic basis.[266]

The ECN definition also excludes any system operated by, or on behalf of, a market maker or specialist that executes customer orders primarily for its own account as principal, other than as riskless principal. This exclusion is intended to ensure that, as discussed in the Proposing Release, internal broker-dealer order routing systems in which the market maker trades primarily with customer orders on a principal basis are not ECNs within the scope of the amendment. The exclusion would not except from the ECN definition systems that involve multiple market makers or specialists competing as principal in a security or that cross multiple market maker and customer orders.

Furthermore, the Commission believes the definition should be read broadly to include systems that match orders internally and deliver the matched order to some other market for execution. Thus, the term "permits such orders to be executed against" should not be read to exclude systems where a narrow technical reading of "executed" is the only reason that the system would not fall within the ECN definition. For example, if a system puts buy orders and sell orders together for execution, completes all necessary elements of the trade, and then sends the matched pair to an exchange or association merely to print the terms of the trade on the Consolidated Tape, the system would be an ECN.

ii. "Priced Orders" in ECNs

Under this definition, the Commission intends to include in the public quotation system firm prices for securities entered by market makers or specialists, whether such firm prices are labeled as "quotes" or "orders." The Commission believes that priced orders entered by market makers or specialists into ECNs where the orders are widely disseminated and executable are the functional equivalent of market maker or specialist quotations, and like quotations, play a key role in the price discovery process. The Commission thus believes that these "quotation-equivalents" should be made part of the public quote.

Although some commenters argue that priced orders entered into ECNs are more closely parallel to prices communicated over the telephone to other market makers than to market quotes, the Commission recognizes a fundamental distinction between limited communication of price in bilateral telephone negotiations and broad exposure of firm prices to multiple participants in a market.[267] Accordingly, prices communicated by telephone are excluded because these prices generally are not widely disseminated to other parties for execution. The rule also would not cover indications of interest that do not constitute firm prices.

In this connection, the Commission intended the term "priced order," which is deemed under the ECN amendment to be a bid or offer, to encompass commitments to buy or sell a security at a particular price for a particular number of shares. The Commission also does not intend the term "priced orders" to include interest to buy or sell a security where price or the number of shares is not specified to system subscribers, unless the price or size is otherwise understood as part of the system's operation.[268] The ECN amendment would, however, include priced orders entered into an ECN by a market maker or specialist that are visible only to *some* system subscribers if these orders can be executed against in the ECN. The ECN amendment is intended to require the public display of priced orders entered into ECNs by market makers and specialists where these priced orders are similar to quotations. Accordingly, the Commission does not intend the ECN amendment to apply to a priced order that is entered into an ECN by a market maker or specialist merely in order to execute against an existing order visible in the ECN, and not entered to elicit other buying or selling interest. If, however, the order entered by the market maker or specialist does not in fact execute immediately in full against an existing order but rather is itself disseminated as an open order in the ECN, the market maker or specialist must comply with the requirements of the ECN amendment with respect to the order.

In order to ensure that customers consistently receive the benefit of better prices entered into ECNs, a market maker or specialist entering an all-or-none or minimum size order for its own account into an ECN would be required to include this price in its public quote, or disseminate the price via the ECN display alternative, and thereby publicly display the order for the full number of shares for execution in whole or in part. Although the execution of an all-or-none order is typically conditioned on execution of the entire size of the order, the Commission believes that allowing market makers to avoid public display of an unconditional quote when using this type of order could seriously undermine the purposes of the rule.[269] The rule will permit, however, a market maker or specialist to enter an all-or-none customer order into an ECN without requiring public display of the quote for that order where the customer specifically requests that the order be executed on an all-or-none basis. This latter provision accommodates the desire of some customers to trade only at a specific size associated with a specific price.

iii. ECN Display Alternative

Pursuant to the amendment as adopted, a priced order entered by a market maker or specialist into an ECN that widely disseminates the order is deemed to be a bid or offer for the

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[265] The Commission intends the term "third parties" to refer to subscribers to the ECN, other than the ECN and the market maker or specialist that is entering its priced order into the ECN. The ECN also may disseminate to others, including non-subscribers.

[266] The Commission notes that broker-dealers that publish quotes through a vendor are already covered by the rule.

[267] The Commission recognizes that market makers and specialists may be willing to trade with certain customers at better, negotiated prices, such as when market makers negotiate with customers over the telephone. In contrast, however, the prices quoted by market makers and specialists in ECNs are widely disseminated to market participants. In adopting the ECN amendment, the Commission is reaffirming the NMS principle that prices advertised in one market must be integrated into the national market—that is, the consolidated public quote.

[268] The definition of an ECN specifically excludes any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by subscribers outside of such times. *See* 11Ac1–1(a)(8).

[269] All-or-none and minimum size orders are rarely used by market makers and specialists in ECNs and are prohibited from being included in the public quotes by the registered exchanges and Nasdaq.

purposes of the market maker's or specialist's quotation reporting obligations under the Quote Rule. As a result, specialists and market makers are required to include such orders in the bids and offers they communicate to their exchange or association for inclusion in the published quotations made available by the exchange or association.[270]

As discussed above, in response to the concerns of some commenters, the adopted amendment includes an alternative to the specialist or market maker itself revising its public quotation to reflect its better priced order entered in an ECN. This alternative allows the ECN to act as an intermediary in communicating to the public quotation system the best price and size of orders for each security that have been entered into the ECN by a specialist or market maker. To communicate the quotations publicly, the ECN must submit the best price entered by a specialist or market maker to an exchange or association, or to a securities information processor acting on behalf of one or more exchanges or associations.

The alternative reduces the impact of the amendment on specialists and market makers because they have a choice regarding how to comply with their obligation. This alternative also reduces the impact of the amendment on ECNs by offering these systems an opportunity to provide additional services to their subscribers, and creating an opportunity to generate additional order flow from non-subscribers. At the same time, more accurate prices are provided through public quotation systems than are currently available.

Under this alternative, consistent with the goals of the initial proposal, the ECN must comply with two conditions. First, the ECN must provide the best prices and sizes that market makers or specialists have entered in the ECN to the public quotation system for inclusion in the consolidated quotation. The market maker or specialist responsible for the price does not have to be identified.[271] The ECN must, however, at a minimum, publicly identify itself as the originating system for these prices. Accordingly, if a market maker puts an order that improves the NBBO into an ECN and the ECN disseminates that price to the public quotation system, the disseminated price must either be identified as originating from the market maker or from the ECN.

Second, the ECN must provide non-subscriber brokers and dealers with a means of access to those prices entered in the ECN by market makers and specialists. This access must be equivalent to the access that would have been available for the relevant security if these prices had been published in the market makers' or specialists' quotation.[272] The extent and form of this access will depend on the form(s) of access available in the market to which the ECN supplies the bids and offers for public dissemination.[273]

For example, market makers in Nasdaq NMS and SmallCap securities typically can be reached through the telephone and through the NASD's Small Order Execution System. Therefore, an ECN that chooses, pursuant to the alternative, to act as an intermediary for its market maker and specialist subscribers for Nasdaq NMS and Smallcap securities would have to be prepared to receive and execute telephone orders from broker-dealers against those market makers' and specialists' orders entered in the ECN. The ECN will have to execute these orders promptly at the prices the market makers and specialists have entered into the ECN. In addition, because a market maker with the best price in a Nasdaq NMS security is subject to SOES executions, this equivalent access condition would require the ECN to provide broker-dealers who use SOES with equivalent automated access to the best priced market maker orders in the ECN. This could be accomplished either through an electronic linkage to SOES or by other means agreed upon with the NASD. For example, the ECN could supply the NASD with an identifier for the market maker who entered the best priced order, which the NASD could use in assigning SOES executions to that market maker.[274]

Similarly, in exchange-listed securities, the degree of access that the ECN must offer would depend on the current access that the market receiving the information from the ECN offers to broker-dealers in the relevant type of security. If the ECN communicates prices for exchange-listed securities to an exchange, the specialist or market maker orders in the ECN must be accessible to broker-dealers in the same manner as quotes on that exchange. This access would include any automated execution features offered to broker-dealers by the exchange. The ECN must provide to the exchange, or to the exchange specialist in each security, access to the market maker or specialist orders in the ECN. Such access must provide broker-dealers with the ability to enter and obtain executions for their orders at least as promptly as that exchange offers to its own members through its order-routing and execution systems. Because the ITS Plan applies to exchange-trading of listed securities, orders received from other markets through ITS must have the same ability to trade with ECN orders whose prices are displayed through the exchange as they have with the exchange's own quotations. For instance, if the exchange specialist typically receives incoming ITS commitments and executes them manually, the ECN must at a minimum enable the incoming ITS commitment to be manually entered into the ECN for execution.

If the ECN instead provides orders in exchange-listed securities to the NASD for inclusion in the public quotation system, the orders must be as accessible to broker-dealers as the quotes published by third market makers in

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[270] An OTC market maker that places priced orders for execution into any ECN will in effect be making an election to communicate quotations to its association bids, offers and quotation sizes in the security. *See* 17Ac1–1(a)(25)(ii)(B).

[271] An ECN that does not offer the option of anonymity to its subscribers could choose to include the identity of the market maker or specialist with the prices furnished to the SRO for public dissemination. As discussed below, the ECN also must provide access to these prices.

[272] For access to be "equivalent", the ECN must enable non-subscribing broker-dealers to execute against the ECN's published best price to the same extent as would be possible had that best price been reflected in the public quote of a specialist or market maker. The ECN, however, may impose charges for access to its system, similar to the communications and systems charges imposed by various markets, if not structured to discourage access by non-subscriber broker-dealers.

[273] The extent and form of the access will not necessarily be the same as the access available in the market to which the specialist or market maker would otherwise supply its bid and offers.

[274] As discussed *supra* section II., the NASD has proposed a new facility, NAqcess, which, as part of its proposed services, would widely disseminate priced orders for execution in whole or in part. *Supra* note 45. As proposed, Naqcess would publish its best prices in the Nasdaq quotation system stream and would be accessible to all NASD members for order entry and execution against those orders. Thus, NAqcess, as proposed, would appear to make prices entered by market makers into NAqcess available, and provide equivalent access under the alternative. Therefore, a market maker that entered its best priced order into NAqcess would comply with the requirements of the ECN amendment without reflecting the order in the market maker's own quote. Moreover, a market maker that entered an order into another ECN at a price better than its quote could satisfy the requirements of the ECN amendment by entering an order reflecting this price into NAqcess, even if the other ECN does not directly provide the price to the public quotation system, because this use of NAqcess, as proposed, would meet the requirements of the amendment. Similarly, an ECN availing itself of the ECN display alternative could provide prices directly to NAqcess. The ECN and the NASD also could develop mechanisms to ensure public anonymity of market makers that use ECNs, while providing to the NASD the identity of the market makers that are at the inside quote solely for the purpose of direct order-routing between NAqcess and the market maker.

exchange-listed securities. At a minimum, these prices must be included as part of the third market quotation display and identified as originating from a named market maker or from a named ECN. For non-Rule 19c-3 securities, broker-dealers must be able to contact the ECN by telephone and have an order promptly entered into the ECN for execution. For Rule 19c-3 securities, the ECN also must be accessible through the ITS/CAES linkage, operated by the NASD, in the same manner as other third market maker quotes in those securities.[275]

Under the ECN display alternative, the ECN must furnish to an exchange or association the full size associated with the best priced orders placed in the ECN by market makers and specialists to buy and to sell a security. This full size requirement under the alternative is intended to give the public information about the depth of the market at the ECN prices, while maintaining the anonymity of market makers and specialists. For example, if an ECN is furnishing quotation information to Nasdaq under this alternative, and a market maker enters a 4,000-share order into the ECN at a price that is better than other market maker or specialist prices for that security in the ECN, the ECN will be required to provide Nasdaq that price and size of 4,000 shares as a quotation for public dissemination. If 2,500 shares of this order is executed, the ECN must display the remaining 1,500 shares. If two market makers enter 4,000-share orders for a security at the same price, which is the best price in the ECN for that security, the ECN is required to show all 8,000 shares publicly. In contrast, if a market maker enters a 100-share order for a Nasdaq security at the best price in the ECN for that security, the alternative requires the ECN to furnish the price for only 100 shares, even though NASD rules require Nasdaq market makers to display no less than 1000, 500, or 200 shares in Nasdaq, depending on the characteristics of that security.

The Commission recognizes that the means of providing equivalent access will vary for different markets, and that ECNs operating under the ECN display alternative that currently do not provide access to their systems to non-subscribers will have to develop methods to provide this access. Meeting this requirement may be achieved in a variety of ways, including a linkage between ECNs and one or more of the SROs. The Commission believes an SRO that accepts the prices provided by an ECN for publication should be authorized to impose reasonable rules related to the public dissemination of those prices upon market makers and specialists who avail themselves of this alternative. The rules an SRO imposes in this regard, however, may not establish standards for the dissemination of these prices that are more burdensome for market makers and specialists using ECNs than the SRO rules that apply to quotations delivered directly to the SRO by specialists and market makers.

The Commission looks forward to working closely with all market participants to effect the necessary market developments to ensure that this alternative method of compliance with the Quote Rule is made possible. In order to ensure prompt implementation of the necessary changes before the effective date of the rule amendments, the Commission requests each SRO, individually or jointly as signatories to the CQS Plan, to notify the Commission in writing by October 28, 1996 regarding its willingness and its plan to afford ECNs the opportunity to communicate, for inclusion in the public quotation system, the prices of market makers and specialists.

In order to implement the changes to the Quote Rule under new subsection (c)(5), the prices sent to an ECN by market makers and specialists will have to be displayed in the public quotations disseminated by SROs, and order routing or access linkages will have to be in place. After hearing from the SROs, the Commission will determine whether it will be necessary to use its authority under Section 11A(a)(3)(B) of the Exchange Act to require the SROs to act jointly to provide means to accomplish these objectives.

iv. Minimum Price Variations

In the Proposing Release the Commission recognized that there may be different minimum price variations in any given security between the SROs providing a market for the security and ECNs through which the security is also traded. Currently most exchange-listed securities tend to be quoted and traded with a minimum price variation of ⅛ point or 1/16 point.[276] Nasdaq securities can be publicly reported in variations as low as 1/64, and can be quoted in minimum variations as low as 1/32, depending on the price at which the security trades.[277] Some ECNs allow priced orders in variations as low as 1/256; other systems provide for orders priced in decimals as small as one cent.

Most commenters did not address the issue of ECN minimum price variations. Some commenters that did address the issue, however, recommended that the ECN quote be rounded for public dissemination either downward from or upward to better prices in increments of 1/16 or smaller.[278] Other commenters recommended rounding in decimals,[279] while still others strongly opposed the use of decimals.[280] One commenter asserted that non-standard increments (*i.e.*, increments not approved by the primary market for the relevant security) should be prohibited in non-primary markets.[281] To address situations where the priced order in an ECN is at a non-standard increment, the Commission has determined that it is appropriate to interpret the ECN amendment to allow market makers and specialists to comply with the amendment (either individually or through the ECN) by rounding up or down to the nearest fraction accepted by the market disseminating the quote provided by the ECN.[282] The Commission believes, however, that rounding is appropriate only if the rounded public quotes are accompanied by an identifier that marks the quote as rounded.[283] Market makers, specialists, and ECNs will be permitted to round the prices of ECN buy orders

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[275] As discussed below concerning expansion of the ITS/CAES linkage, currently non-Rule 19c-3 securities may not be traded via the ITS/CAES linkage.

[276] NYSE Rule 62 provides that bids or offers in stocks selling above one dollar per share may not be made at a variation of less than one-eighth of a dollar or twelve and a half cents; Amex Rule 127 allows for one-sixteenth spreads for stocks priced under ten dollars, and one-eighth spreads for stocks priced ten dollars and over.

[277] The NASD does not have a minimum variation policy for Nasdaq stocks. Nasdaq, however, is designed to process quotes and trades in particular minimum variations.

[278] *See, e.g.*, NASD Letter; Lehman Letter; Instinet Letter.

[279] *See, e.g.*, Letter from Leslie M. Marx, Assistant Professor of Economics and Management, and Eugene Kandel, William E. Simon Graduate School of Business Administration, University of Rochester, to Commissioner Steven Wallman, SEC, dated November 27, 1995 ("Marx and Kandel Letter"), concluding that the markets should move toward decimal pricing.

[280] *See* CHX Letter.

[281] *See* Madoff Letter.

[282] The Commission believes this alternative is preferable to imposing particular trading increments on the markets. At the same time, however, this alternative will provide the markets with an incentive to voluntarily move towards finer trading increments.

[283] In order to facilitate compliance with the rule, it will be necessary for SROs to provide a means for rounded prices to include a "rounded" identifier that makes clear that a better price is available in the ECN. The Commission notes that SROs, and the public quotation system, may not currently have such a field available for identifying quotations as rounded. The Commission, therefore, requests that the SROs work jointly to modify the public quotation system to ensure that specialists, market makers, and ECNs that are disseminating rounded prices have the ability to distinguish those rounded quotes.

down to the nearest quote increment, and round the prices of ECN sell orders up to the nearest increment. For example, under this interpretation, if a market maker or specialist enters a priced buy order into an ECN at 10⅝₁₆ and the market receiving the price from the ECN for dissemination has a minimum quote increment of ⅛, a bid of 10¼ will be displayed in the public market and identified as a rounded price. This result reflects an SRO rule that prohibits dissemination of quotes in ₁⁄₁₆ variations. If the market maker or specialist already is bidding publicly at 10¼ when it enters the 10⅝₁₆ buy order in an ECN, the market maker or specialist publishing a quote must reflect the ECN order by identifying its 10¼ bid as rounded.

In addition, market makers and specialists entering orders into ECNs that are reflected at rounded prices in the public quote will be expected to give their customers an execution at the superior non-rounded price. Thus, the market maker or specialist quoting a rounded price of 10¼ to reflect a 10⅝₁₆ buy order must give a customer sell order an execution at 10⅝₁₆ up to the published size. Similarly, an ECN providing market maker or specialist prices pursuant to the rounding alternative must execute an incoming order at the non-rounded price. The Commission recognizes that it may not be feasible for market makers or specialists that have not entered the rounded order into an ECN to determine, in an efficient manner, the actual price of the better order in the ECN. This may particularly be true with respect to market makers or specialists operating automated execution systems. The Commission believes that it is appropriate in such instances for such market makers and specialists that did not enter the rounded order to execute orders at the displayed rounded price.[284]

The Commission recognizes that this interpretation will allow prices in ECNs that are denominated in non-standard quotation increments not to be fully displayed, but believes this interpretation is appropriate to accommodate ECN prices in the existing public quotation system without imposing uniform trading increments.[285] The rounding identifier will inform investors that a better price is behind the rounded quote. Thus, even though the actual price cannot be readily displayed, investors will be aware of, and will be able to obtain, the better price in the ECN or from the market maker or specialist.

v. Effect on the Voluntary Aspect of the Quote Rule

If an OTC market maker uses an ECN that does not rely on the alternative of communicating that market maker's best prices to the public quotation system, then the market maker must publish in its own quote that better priced order entered into the ECN. Once a market maker publishes a quote through its association to reflect a priced order it entered into an ECN, pursuant to Rule 11Ac–1(c)(5)(i)(A), it will be deemed to have elected to publish quotations in that security,[286] and will therefore be subject to the quotation provisions of the Quote Rule. Moreover, pursuant to certain existing SRO rules,[287] withdrawal of that quotation after the ECN order has been executed or withdrawn prevents the market maker from immediately reinstating quotes in that security.[288] As a practical matter, once electing to quote, a withdrawal then precludes the market maker from continuing to enter priced orders for the security in an ECN because of the SRO prohibition on re-entering quotes after withdrawal.

The Commission solicited comment on this aspect of the ECN proposal. Although most commenters were silent concerning this issue, certain comments indicate confusion as to the effect on market makers who currently use ECNs but who do not voluntarily quote under the existing Quote Rule.[289] The Commission, therefore, reiterates that the combined operation of the ECN amendment and SRO rules may require a market maker or specialist who enters an order into an ECN that does not rely on the ECN display alternative, and publishes a quote reflecting that price, to continue to publish quotes in the public market regardless of the number of shares traded by the market maker or specialist in the security during the previous quarter.

In determining whether a market participant will be required to publish quotes after entering orders in an ECN, the Commission notes that, with respect to any given security, the quote rule requirements only apply if the market participant falls within the definition of the term "OTC market maker" for that security. To be an OTC market maker, the participant must hold itself out as willing both to buy and sell on a regular or continuous basis.[290]

The "OTC market maker" definition is not intended to capture subscribers who enter orders into ECNs on one side of the market to limit or offset their risk, such as options market makers who use ECNs to hedge their positions in the securities underlying the options they trade. They would not be required to publish public quotes in a security simply because they had entered an order for the security into an ECN, unless they regularly or continuously hold themselves out as willing to buy and sell the security. An entity that holds itself out via contract, marketing, or other communications with its customers, as being willing both to buy *and* sell a specific security on a regular or continuous basis would be an "OTC market maker" for the security. This latter market maker's entry of a superior priced order into an ECN for a security that itself does not publish quotes would compel the market maker to publish a quote and potentially, depending on SRO rules, trigger on-going quotation obligations.

vi. Exemptive Relief

Finally, the Commission is amending Section (d) of the Quote Rule concerning exemptive relief. Under that section, the Commission previously could exempt from the provisions of the Quote Rule, either conditionally or on specified terms and conditions, any responsible broker or dealer (which now will include a specialist or market

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[284] *See also*, section III.C.2. for a discussion of best execution, *infra*.

[285] If primary markets in the future allow narrower quotation increments, these ECN prices between the existing quotation increments could be more accurately displayed in the public quote.

[286] 17 CFR 240.11Ac1–1(b)(5), as amended. *See also*, 17 CFR 240.11Ac1–1(a)(25), 17 CFR 240.11Ac1–1(c)(4)(ii), and 11Ac1–1(c)(5)(ii), as amended, acting jointly to ensure that OTC market makers publish quotations pursuant to the Quote Rule in securities they trade via ECNs.

[287] *See NASD Manual*, Marketplace Rules, Rule 4600 *et. seq.*, Nasdaq Market Maker Requirements (requiring members to maintain continuous two-sided quotations in the Nasdaq securities for which they are registered as market makers). *See also*, ITS Plan, Section 6(A)(i)(B), Furnishing Quotations (requiring each ITS Participant to furnish the current bid-asked quotation emanating from its floor or, in the case of the NASD, the best bid and offer emanating from ITS/CAES market makers in eligible securities). Unexcused withdrawal of quotations violates these NASD rules and ITS provisions.

[288] This will be true even if the market maker traded less than 1% of the share volume in the security in the previous quarter because the 1% threshold of the Quote Rule for mandatory quotes would not exempt the market maker from disseminating quotes once the market maker has "elected" to quote the security by using the ECN.

[289] *See, e.g.*, Madoff Letter; Instinet Letter. In its comment letter, Instinet notes that some market makers that make a continuous market in a security, but do not normally publish quotations in that security, will now be required to disseminate quotations for that security if the market maker places a priced order for that security on an ECN. The Commission recognizes this result, but notes the ECN display alternative of allowing such market makers to continue to place orders in a security into an ECN without having to directly publish quotes in that security.

[290] Rule 11Ac1–1(a)(8), as amended.

maker under the ECN amendment), exchange, or association if the Commission determined that such an exemption was consistent with the public interest, the protection of investors and the removal of impediments to and perfection of an NMS. The Commission is adding a provision allowing it to exempt an ECN from the definition in the rule. The Commission did not solicit comment on expanding its authority to grant exemptive relief in this manner. The Commission believes, however, that the added exemptive authority is appropriate because it provides flexibility in applying the ECN amendment.

3. Amendments to the Quote Rule Concerning Definitions

a. Introduction

In the Proposing Release the Commission proposed to expand the Quote Rule's existing requirements to include quotation information from broker-dealers that, while internalizing order flow, hold themselves out as willing to buy and sell on a regular or continuous basis. This expansion of the Quote Rule would be accomplished by amending the definition of OTC market maker. The Proposing Release also recommended that quotation requirements be imposed on substantial broker-dealers in non-Rule 19c–3 securities by amending the definition of subject security, and on broker-dealers in Nasdaq SmallCap securities by amending the definition of covered security.[291] In putting forward this proposal, the Commission noted that some dealers quote on a selective basis, choosing not to display quotes for securities that they actively trade because these securities are subject only to the voluntary quote provisions of the Quote Rule.

The amendments adopted by the Commission today are substantially the same as those proposed.[292] The Commission believes these amendments will benefit investors by improving price discovery and liquidity, and increasing competition between OTC market makers and specialists. The Commission further believes that these amendments are in keeping with Congress's directive that the Commission use its rulemaking authority to remove impediments to competition.

b. Basis for Amendments to Rule 11Ac1–1(a)

i. Amendment to 11Ac1–1(a)(25) (Definition of a "Subject Security")

The Commission is amending the Quote Rule's definition of subject security to require continuous two-sided quotations from OTC market makers and exchanges that are responsible for more than 1% of the volume in a non-Rule 19c–3 security. The Commission believes that this amendment removes an impediment to competition that exists under the current rule. Broker-dealers that held themselves out as willing to buy and sell non-Rule 19c–3 securities on a regular or continuous basis were not previously required to disseminate quotation information unless they transacted the largest percentage of the aggregate trading volume in a particular security. Consequently, regardless of the volume transacted by other exchanges or OTC market makers, the primary market, which was the market responsible for transacting the largest percentage of the aggregate trading volume, was the only market participant required to disseminate quotations in these securities.[293]

As noted in the Proposing Release, third market trading in non-Rule 19c–3 securities has increased considerably since the Quote Rule was last amended.[294] Third market trading in Rule 19c–3 securities now accounts for a greater number of stocks and a more substantial percentage of U.S. trading volume than it did when the Commission initially established disparate regulatory treatment under the Quote Rule for Rule 19c–3 securities and non-Rule 19c–3 securities.[295] In view of the growth of third market trading volume, the Commission believes that requiring all broker-dealers trading more than 1% of the volume in a listed security to publish quotations will provide more accurate and comprehensive quotation information for non-Rule 19c–3 securities.

The Commission believes that disparate regulatory requirements for Rule 19c–3 and non-Rule 19c–3 securities can no longer be justified by differences in the trading of the two types of securities. Moreover, the Commission finds that differences in regulatory treatment have impaired transparency. Because of the growth of third market trading in non-Rule 19c–3 securities, the absence of quotes revealing the substantial third market makers in a security and the prices they are prepared to publicly quote results in the consolidated quotations in the security being incomplete.[296] The Commission therefore believes that significant dealers in non-Rule 19c–3 securities should become subject to the same standards required for trading

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[291] OTC market makers and specialists are not required by the Quote Rule to provide continuous two-sided quotations for any Nasdaq security. As amended, an OTC market maker or specialist may make an election, pursuant to paragraph (b)(5)(i) of the Quote Rule, to collect, process, and make available quotations for Nasdaq NMS or Nasdaq SmallCap securities. The Commission is soliciting comment on a proposed amendment which would require continuous two-sided quotations from OTC market makers and specialists responsible for more than 1% of the aggregate transaction volume for a Nasdaq security. *See* Companion Release.

[292] The only substantive difference between the amendments as adopted today and as proposed is the definition of the term "OTC market maker." The definition as proposed read "* * * sell to a customer * * *" but has been modified to read "* * * sell to its customers * * *." Rule 11Ac1–1(a)(13), 17 CFR 240.11Ac1–1(a)(13). *See infra* note 308.

In addition to the amendments discussed in detail herein, the Commission is making technical, non-substantive amendments to the Quote Rule. The terms "association", "revised bid or offer", and "revised quotation size" will be separately defined in the rule. The definition of "exchange-traded security" has been revised to exclude OTC securities traded on an exchange pursuant to unlisted trading privileges. The definition of "plan processor" has been amended to reflect the appropriate cross-reference. The definition of "principal market" has been removed from the Quote Rule because it is no longer applicable. In addition, the definitions have been arranged in alphabetical order.

Paragraph (b)(1)(i) of the rule has been reorganized to separately set forth the exclusions in subparagraphs (A) and (B). Paragraph (b)(1)(iii) has been eliminated and the substance of the provision has been incorporated into paragraphs (b)(1)(i) and (b)(1)(ii).

The Commission is also amending the definition of the term "reported security" as it appears in Rule 11A3–1(a)(4). The amendment alters the form but not the meaning of the term or its application. The amendment will make the term consistant with the definition of "reported security" in the Quote Rule.

The amendments to Rule 11Ac1–1(a) are being adopted prospectively. Outstanding Quote Rule interpretations and no-action letters continue to be operative, to the extent that the positions taken therein are not materially in conflict with the amendments adopted today. Persons seeking clarification regarding the status of outstanding no-action letters should contact the Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission.

[293] An OTC market maker or specialist, although not the principal market for a listed security, could elect to disseminate quotes for the security. Under the amended 11Ac1–1(a)(25) an OTC market maker or specialist may still elect to disseminate quotations if it is responsible for 1% or less of the volume in that security.

[294] Third market maker trading interest is more concentrated in non-Rule 19c–3 securities, as evidenced by the fact that the percentage of third market quotes in non-Rule 19c–3 securities (36%) is greater than that for Rule 19c–3 securities (28%). *See Fragmentation* vs. *Consolidation* of Securities Trading: Evidence of the Operation of Rule 19c–3, Office of Economic Analysis, SEC, at 5 (March 29, 1995) ("*Fragmentation* vs. *Consolidation*").

[295] Third market trading volume has grown, at least in part, because the universe of securities subject to Rule 19c–3 has increased considerably. For example, nearly 60% of the stocks listed on the NYSE are subject to Rule 19c–3, accounting for approximately 48% of the total NYSE volume. *See Fragmentation* vs. *Consolidation* at 4–5.

[296] *See, e.g., supra* note 294.

Rule 19c–3 securities.[297] As a result of this amendment, market participants will have more complete information about significant OTC market makers and specialists in a security and the prices at which they are willing to trade. The majority of commenters who addressed the amendment to Rule 11Ac1–1(a)(25) endorse the Commission's proposal to end the disparity between Rule 19c–3 securities and non-Rule 19c–3 securities, noting that there is no basis for continuing to draw a regulatory distinction between Rule 19c–3 and non-Rule 19c–3 securities, and that the extension of the Quote Rule will provide meaningful information about significant market makers in listed securities.[298] One commenter asserts that requiring quotations from all significant OTC market makers will succeed in improving the quality of the NMS for all listed securities while at the same time leveling the playing field for all market makers.[299]

Nevertheless, many commenters suggest modifications to the 1% volume threshold. Some commenters suggest that Nasdaq, on behalf of all third market makers, should be viewed as one market participant, and that once its volume exceeds 1% for a listed security, all OTC market makers in that security should be required to maintain continuous two-sided quotations.[300] Other commenters believe that the Commission should adopt a "continuousness of execution" standard rather than a rigid 1% volume threshold.[301] This suggestion would require a dealer to quote if it executes orders on a regular or continuous basis, even if it accounts for less than 1% of the volume, while excluding from quotation requirements a dealer that executes a few large trades that account for more than 1% of the volume. The NYSE suggests an additional threshold, to be used in the alternative with the 1% of volume threshold.[302] This alternative would have the effect of requiring public quotations from market makers who, while not accounting for more than 1% of the aggregate transaction volume, have an active retail business in small-sized trades.

The Commission believes that extending the 1% threshold based on quarterly aggregate trading volume to non-Rule 19c–3 securities is a reasonable method to improve the scope of quotation information to include significant OTC market makers and specialists. This 1% threshold, currently in effect for Rule 19c–3 securities, has proved effective in supplying comprehensive quotation information to the market at large. Moreover, based on the increase in third market trading volume for these securities, the Commission does not believe this standard is unduly burdensome on OTC market makers or specialists.[303] Rather, the Commission believes this threshold strikes a balance between requiring the dissemination of all quotation interest and accommodating those specialists and OTC market makers that are small entities. The Commission believes that OTC market makers and specialists that account for 1% or less of the aggregate volume are not active enough to justify the additional expense of providing continuous quotation display.[304]

Similarly, the Commission believes that applying the 1% threshold to the total over-the-counter volume in a listed security would extend the quotation requirements to inactive market makers. The Commission questions whether the added quotation information would justify the added burden.[305] The Commission also believes that reliance on something other than a numerical standard in this circumstance would lead to confusion in the marketplace. Accordingly, the Commission believes the "greater than 1% aggregate trading volume" threshold for mandatory quotations continues to be appropriate.

ii. Amendment to 11Ac1–1(a)(13) (Definition of an "OTC Market Maker")

Amended Rule 11Ac1–1(a)(13)[306] revises the definition of "OTC market maker" to include any dealer who holds itself out as willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size.[307] Accordingly, dealers that internalize customer order flow in particular stocks, by holding themselves out to customers as willing to buy and sell on an ongoing basis, would fall within the definition even though they may not hold themselves out to all other market participants. In addition, dealers

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[297] OTC market makers that trade a significant volume in non-Rule 19c–3 securities have not been subject to the same requirements as third market makers that meet the 1% threshold for Rule 19c–3 securities. For example, an OTC market maker meeting the 1% threshold is required to quote in a Rule 19c–3 security and therefore must register as a CQS market maker with the NASD. *NASD Manual*, Rule 6320. CQS market makers are subject to the NASD's CQS market maker rules, which include firm and continuous two-sided quote obligations and mandatory participation in the ITS through Nasdaq's Computer Assisted Execution System. *NASD Manual*, Rules 6320 and 6330.

[298] *See, e.g.*, Amex Letter; Blume Letter; BSE Letter; CHX Letter; CSE Letter; NASD Letter; PSE Letter; Alex. Brown Letter; Schwab Letter; D.E. Shaw Letter; Dean Witter Letter; Lehman Letter; Madoff Letter; Merrill Letter; PaineWebber Letter; Salomon Letter; Smith Barney Letter; STA Letter.

There were some commenters who did not support the extension of the Quote Rule's requirements to non-Rule 19c–3 securities. *See, e.g.*, NYSE Letter; and Specialists Assoc. Letter, which note that the Commission, rather than expanding the Quote Rule to include non-Rule 19c–3 securities, should re-examine the validity of Rule 19c–3. *See, e.g.*, Letter from Alexander H. Sivka, Executive Vice-President, National Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 25, 1995 ("NSC Letter"); Fahnestock Letter; Letter from Samuel Lieberman, President, Rothschild Lieberman Ltd., to Jonathan G. Katz, Secretary, SEC ("Rothschild Letter"); Letter from Mark T. DePolice, Vice President, Roosevelt & Cross, Inc., to Jonathan G. Katz, SEC, dated January 24, 1996 ("Roosevelt Letter"), which note that the extension of the quotation requirements to include non-Rule 19c–3, will have an impact on small firms. *See infra* note 307.

[299] Madoff Letter.

[300] *See* PSE Letter; Specialists Assoc. Letter.

A comparable alternative is to require quotations from all OTC market makers who account for more than 1% of the Nasdaq-reported volume in a security. *See* Investors Research Letter.

In the same vein, two commenters suggest that once an OTC market maker or specialist displays a quotation in a listed security, it should be subject to the requirements of the rule. *See* BSE Letter; CSE Letter.

The NYSE and CSE suggest further application of the rule to include brokers and their private trading systems. *See* NYSE Letter; CSE Letter.

[301] *See* CHX Letter; Fahnestock Letter; Jefferies Letter; Salomon Brothers Letter; STA Letter. *See also* Rothschild Letter.

[302] NYSE Letter. *See also* RPM Letter; Specialists Assoc. Letter.

[303] The Commission seeks to avoid imposing burdens on market participants that are not necessary to achieve the Quote Rule's objective of reliable public quotations from all significant markets in a security. The Commission notes that the 1% threshold for quotations in Rule 19c–3 securities has not impaired trading in these securities. Since the Quote Rule was amended, OTC market makers' volume in Rule 19c–3 securities has increased. *See Fragmentation* vs. *Consolidation* at 4–5. The Commission has no reason to believe that imposing mandatory quotations on specialists and OTC market makers that are responsible for more than 1% of the volume in a non-Rule 19c–3 security will affect market making in these securities.

[304] A few commenters expressed concern that the amendment to the Quote Rule would have a detrimental impact on small firms. *See* Fahnestock Letter; NSC Letter; Roosevelt Letter; Rothschild Letter. The Commission believes the requirement that a dealer must transact greater than 1% of the volume in a security before quotations are mandated prevents the rule from becoming unnecessarily burdensome on small firms. For example, a firm would not have to publish continuous two-sided quotations in AT&T unless it transacted more than 1% of the aggregate transaction volume, which the Commission considers more than modest volume.

[305] In a related release issued today, the Commission is proposing an amendment that would require continuous two-sided quotations from OTC market makers and specialists provided that the OTC market maker or specialist is responsible for more than 1% of the aggregate transaction volume for a security included on the Nasdaq Stock Market. *See* Companion Release for a detailed discussion on the proposed amendment to the Quote Rule.

[306] 17 CFR 240.11Ac1–1(a)(13).

[307] The definition, as proposed, read "* * * sell to a customer * * *" but has been modified to read "* * * sell to its customers * * *."

that hold themselves out to particular firms as willing to receive customer order flow, and execute those orders on a regular or continuous basis, also would fall within the definition of an OTC market maker.

This change was in response to the requests of commenters for consistency in the definition of OTC market maker between proposed Rule 11Ac1–1(a)(13) and proposed Rule 11Ac1–4(a)(9). *See, e.g.*, NASD Letter. Additionally, the Commission stated in the Proposing Release that "[a]s in the past, broker-dealers will not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request." Proposing Release at 24. The Commission believes the new language more accurately reflects that premise.

Most commenters addressing this issue assert that it is appropriate to include in the definition of OTC market maker those dealers who internalize customer order flow because they believe that dealers that hold themselves out to their customers as willing to buy and sell securities on a continuous basis should be required to publish quotations.[308] One commenter asserts that the amendment will broaden the definition of who should be required to provide transparency and liquidity to the NMS to include dealers that transact business with other firms' order flow and with their own customers, thus ensuring a minimum level of quotation commitment from those NMS participants vying for public order flow.[309] Some commenters, however, advocate that more than internalization of order flow should be required before a dealer is deemed an OTC market maker. These commenters suggest the Commission adopt some form of a "holding itself out" standard, so that the rule would capture the quotations of professional liquidity providers but not dealers that occasionally accommodate a customer's request.[310] Other commenters, deeming the definition too inclusive, suggest the Commission add an exception for broker-dealers that act solely as agents.[311]

One commenter believes that excluding firms that transact primarily block size orders and therefore account for significant volume is inconsistent with the Commission's goals for increased transparency.[312] However, several commenters note that block size orders are excluded from the existing definition of OTC market maker and argue strongly that it is consistent with the purposes of the rule to continue to exclude them.[313]

The Commission believes that adoption of the amendment is warranted to ensure the availability of quotation information that accurately reflects the interests of all significant market participants. Increased transparency is fundamental to the fairness and efficiency of the securities markets. As noted in the Market 2000 Study, enhanced transparency helps link various market segments.[314] Currently, a dealer can receive order flow from internalization or pre-existing order routing arrangements but avoid publishing quotations, even when it accounts for more than 1% of the volume in a non-Rule 19c–3 security, because it is not currently deemed to be an OTC market maker.[315] Allowing significant market makers that deal actively in securities without publicizing their activity or making available their prices undermines the NMS goal of transparency. The Commission believes that those dealers should be classified under the rule as market makers and be required to publicize their quotations so that investors may know of, and trade on similar terms with, those market makers.

The Commission has considered commenters' suggestions regarding alternative definitions. In fact, in response to the suggestions of some commenters, the Commission has modified the proposed amendment to make clear that more than an isolated transaction is necessary before a dealer is designated an OTC market maker.

The Commission, in regard to orders of block size, has determined to continue to exclude dealers that hold themselves out as only willing to deal in orders equal to or greater than 10,000 shares. Orders of block size are generally negotiated with the dealer and exposed upon execution. Block positioners usually do not maintain prices at which they are willing to buy and sell a particular security; rather, they make known their role of assisting in the purchase and sale of large positions in securities at some price. Consequently, these dealers do not function as typical dealers that maintain a regular or continuous price quote. The Commission has concluded that requiring quotations from these dealers would not provide useful price information and therefore a dealer that acts solely as a block positioner should remain excluded from the definition.

iii. Amendment to 11Ac1–1(a)(6) (Definition of a "Covered Security")

As amended, Rule 11Ac1–1(a)(6)[316] defines "covered security" to include any security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Exchange Act.[317] This amendment would extend the Quote Rule provisions to OTC market makers and exchange specialists quoting in Nasdaq SmallCap securities.

The Proposing Release noted that the Quote Rule presently does not reflect certain developments in the Nasdaq market, including the large number of securities included on the Nasdaq SmallCap market. Only one commenter addressed this amendment. That commenter, MJT, expressed strong support for the proposal, noting that it is both fair and equitable to apply the Quote Rule to Nasdaq SmallCap securities.[318] The Commission believes it is appropriate to extend coverage of the Quote Rule to these securities in recognition of the development of a liquid trading market and increased investor demand for these securities. NASD rules concerning quotations already require firm quotations for both Nasdaq SmallCap securities and Nasdaq/National Market securities.[319] Thus, the amendment simply extends coverage of the Quote Rule requirements to the same range of securities as

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[308] *See* Amex Letter; BSE Letter; CHX Letter; CSE Letter; D.E. Shaw Letter; Madoff Letter; NYSE Letter; PSE Letter; RPM Letter; SIA Letter; STA Letter.

[309] Madoff Letter.

[310] *See* NASD Letter; Jefferies Letter; SIA Letter; PaineWebber Letter; STA Letter. It should be noted that the amended definition includes a requirement that the broker-dealer hold itself out to, at a minimum, its customers on a regular and continuous basis in order to be an OTC market maker.

[311] *See* Fahnestock Letter; Salomon Brothers Letter; Rothschild Letter; Investors Research Letter.

[312] Amex Letter.

[313] *See* Fahnestock Letter; Dillon Letter; Goldman Sachs Letter; Merrill Letter; Salomon Brothers Letter.

[314] See Market 2000 Study at III–7.

[315] Although NASD rules require dealers who are registered as CQS market makers to provide quotations, registration is not mandated. A dealer in reported securities may elect to disseminate quotations by registering as a NASD market maker and "communicating" its best bids and offers to the association by entering two-sided quotations in the Nasdaq System. *See NASD Manual*, Rule 4611.

[316] Rule 11Ac1–1(a)(6), 17 CFR 240.11Ac1–1(a)(6).

[317] 15 U.S.C. 78c(a)(51)(A)(ii).

[318] MJT Letter.

[319] *See NASD Manual*, Rule 4613.

existing NASD firm quote requirements.[320]

c. Response to Other Specific Requests for Comments

In addition to the Quote Rule amendments discussed above, the Proposing Release solicited comment on whether: (1) revisions are necessary to an NASD rule that restricts certain computer generated quotations;[321] and (2) whether the ITS linkage should be expanded to allow NASD CAES members access to the linkage in non-Rule 19c–3 securities.

i. Automatic Generation of Quotations

Requiring active third market makers in non-Rule 19c–3 securities to quote also raises the issue of whether NASD members should continue to be prohibited from using computer systems to generate quotations automatically.[322] Currently, exchange specialists may use automated mechanisms to track the NBBO in a security if they maintain a quotation size of no more than 100 shares.[323] OTC market makers, however, are prohibited by NASD requirements from using automated quotation tracking systems.

The Commission requested comment on whether computer generated quotations should be permitted if active third market makers are required to quote in non-Rule 19c–3 securities, and if so, under what conditions. Commenters in favor of lifting the NASD's automated quotation ban believe that worthwhile computer generated quotes should be permitted.[324] For example, one commenter stresses that a ban on all computer generated quotations impedes technological innovation, protecting the franchise of inefficient market makers at the expense of the investing public. Moreover, the commenter asserts, given the same regulatory environment, there is no reason to believe that firms that make automated markets will quote away from the market any more than firms posting quotes manually.[325]

Certain commenters, including the NASD, believe that the ban should continue in effect. In general, these commenters believe that lifting the ban could create systems capacity and data traffic problems, and result in useless quotations that are automatically maintained away from current market prices.[326]

Even commenters in favor of lifting the ban tend to believe that, while some types of computer generated quotes are appropriate, others, such as quotations automatically maintained away from the best market quotation, should not be permitted. The NASD, which generally favors the ban on automated quotes, believes it may be appropriate to revise its autoquote policy to permit a market maker to automatically update its quote to match either the best bid or best offer, provided liquidity is not withdrawn from the contra-side of the quotation. In this situation, the NASD believes a market maker will be exposed to an execution and will be genuinely contributing to market liquidity.

The Commission believes that a total prohibition on the use of computer generated quotes is not appropriate. Such an approach excessively limits the use of sophisticated trading strategies that rely on automation in the quotation process for their success, and it also may act as a competitive disadvantage to market makers and specialists that would otherwise rely on technology to meet their quotation obligations more efficiently. In the latter instance, broad prohibitions on the use of computer generated quotes may cause some market makers and specialists to restrict the number of stocks in which they are willing to make markets.

While the Commission recognizes traditional concerns related to the accessibility of computer generated quotes and the impact of such quotes on systems capacity, it believes that more can and should be done in this area. This is particularly true given the enhanced quotation obligations that will be imposed on some market participants under the revised Quote Rule. The Commission urges the NASD, ITS Participants,[327] and other interested market participants to develop revised standards that would permit the use of computer generated quotes that contribute value to the market. Specifically, the Commission requests that the NASD and ITS Participants resolve this issue before the effective date of the Quote Rule amendments. In the absence of such progress, the Commission recognizes that it will consider invoking its own authority to address this issue.

ii. Expansion of ITS/CAES Access

As discussed in the Proposing Release, the uniform application of the Quote Rule to all exchange-listed securities raises the issue of the disparate treatment of Rule 19c–3 and non-Rule 19c–3 securities under the ITS Plan. The Commission solicited comment on this disparate treatment. The same issue arises with the provision allowing the use of an ECN as an intermediary in communicating quotes to the public quotation system if equivalent access is provided.

Currently, the ITS Plan provides access to the ITS System to any Participant in any Rule 19c–3 security in which the Participant disseminates continuous two-sided quotations, but excludes OTC market makers from ITS access for non-Rule 19c–3 securities. In the past, market makers in non-Rule 19c–3 securities were not subject to mandatory quote requirements. The amendments to the Quote Rule adopted today will subject OTC market makers and exchange specialists to the same quotation requirements for all exchange-listed securities.

The Commission requested comment on whether the Quote Rule amendments justify an expansion of the linkage between ITS and the NASD's CAES interface to provide ITS access to and from any market maker for any exchange-listed security in which that market maker disseminates continuous two-sided quotations. Numerous commenters support expanding the linkage in this manner because they believe an expansion will enhance fair competition and increase opportunities

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[320] Section 11A(c)(1) of the Exchange Act grants the Commission the authority to prescribe, among other matters, rules and regulations to assure accurate and reliable quotations "with respect to any security other than an exempted security." The Commission believes that extending the requirements of the Quote Rule to Nasdaq SmallCap securities will further these interests. No new costs should be imposed on market participants because the NASD rules concerning quotations already treat Nasdaq/National Market and SmallCap securities similarly.

[321] *NASD Manual*, Rule 6330. The NASD, however, provides an automated quotation update capability ("auto-refresh") as part of the Small Order Execution System which market makers may elect to use. Specifically, the quote of a market maker using auto-refresh will be automatically updated when the market maker exhausts its exposure limit in the NASD's Small Order Execution System.

[322] *See supra* note 288, concerning the impact of the ECN amendment to the 1% rule.

[323] The 100-share limitation follows the ITS Plan requirement that no ITS Participant may use an automated computer tracking system to generate quotes for more than 100 shares in any security the Participant trades through the ITS system.

[324] *See, e.g.*, BSE Letter; CSE Letter; D.E. Shaw Letter; Investors Research Letters; Lehman Letter; Madoff Letter; Merrill Letter; NSC Letter; NYSE Letter; Smith Barney Letter.

[325] D.E. Shaw Letter.

[326] *See, e.g.*, Dean Witter Letter; NASD Letter; PSE Letter; RPM Specialist Letter.

[327] The ITS Plan also places certain restrictions on the use of computer generated quotes. *See supra* note 323. Given the technologies that have developed during the nearly 20 years that these ITS Plan restrictions have been in place, the Commission requests that the ITS Participants review these limitations and whether they continue to be appropriate, in whole or in part, and whether new limitations should replace the existing provisions or whether there should be any ITS Plan limitations on automated quotes.

for best execution.[328] Several commenters also assert that arguments previously made to exclude OTC market maker quotes in non-Rule 19c–3 securities from ITS are no longer valid.[329]

One commenter specifically argues that adoption of the Commission's proposals should end any objection to the NASD's full participation in ITS because the operation of the Quote Rule will reduce opportunities for OTC market makers to trade in ECNs while simultaneously availing themselves of the voluntary aspect of the Quote Rule, and therefore, will expand the imposition of NASD quotation requirements upon OTC market makers. These requirements, according to the commenter, are equal to those of any other market and add greater transparency and liquidity to the markets for exchange-listed securities as well as the NMS.[330]

Those commenters opposed to the expansion generally believe that the existing limitation on ITS access is justified in view of disparities in customer protections afforded by exchanges and exchange members when compared to customer protections mandated by NASD rules.[331]

The Commission recognizes that the expansion of ITS/CAES is a significant issue of concern to many market participants. The Commission therefore encourages a continuing dialogue among the ITS Participants to solve this issue on a timely basis and in a manner beneficial to the market as a whole.

d. Operation of the Rule With Amended Definitions

i. Amendment to 11Ac1–1(a)(25) (Definition of a "Subject Security")

As a result of the amendment adopted today, OTC market makers and exchange specialists who hold themselves out as willing to buy and sell non-Rule 19c–3 securities on a regular or continuous basis, and that account for more than 1% of the quarterly aggregate trading volume, will be subject to the Quote Rule and required to make continuous two-sided quotations available to the public, even if they have not previously elected to register as CQS market makers with the NASD. This amendment will close a significant gap in the quotation information that has been available heretofore to market participants and investors. In a parallel action, the Commission is proposing for comment an additional amendment to the Quote Rule.[332] The Commission believes that the additional proposal, if adopted, would further improve transparency by providing investors with quotation information on Nasdaq securities from significant OTC market makers and specialists.

ii. Amendment to 11Ac1–1(a)(13) (Definition of an "OTC Market Maker")

The definition of OTC market maker now includes any dealer holding itself out as willing to transact business for its own account on a regular or continuous basis, whether it transacts exclusively with its own customers or with the customers of other dealers. Those dealers that hold themselves out to customers as willing to execute orders on a regular or continuous basis, whether by the internalization of customer order flow in particular stocks or through arrangements with particular firms to execute their customer order flow, now fall within the definition of OTC market maker. Therefore, obligations under the Quote Rule will now apply to dealers that internalize customer order flow or hold themselves out to particular firms as willing to execute their customer order flow, and that execute those orders on a regular or continuous basis. As in the past, broker-dealers will not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request.

iii. Amendment to 11Ac1–1(a)(6) (Definition of a "Covered Security")

The amendment extends the coverage of the Quote Rule to all Nasdaq securities where the rule had previously applied only to Nasdaq/National Market securities. As noted previously, NASD rules already require a dealer that makes a market in a Nasdaq SmallCap security to provide quotations.[333] The Commission, therefore, does not believe extending the Quote Rule to include securities covered by an existing NASD rule will result in additional burdens on OTC market makers. Although the definition of covered security has been amended to include Nasdaq SmallCap securities, an exchange specialist or OTC market maker still must make an election, pursuant to paragraphs (b)(5)(i) and (ii), respectively, of the Quote Rule.[334] Accordingly, although the definition has been amended, an OTC market maker or specialist is not mandated by the Quote Rule to provide quotations on Nasdaq SmallCap securities. If, however, an exchange specialist or OTC market maker makes an election to make available quotations, the firmness obligations under paragraph (c) of the Quote Rule become operative.

e. Effective Date

The amendments to Rule 11Ac1–1 adopted by the Commission today will become effective on January 10, 1997.

C. Price Improvement for Customer Market Orders

1. Proposed Rule

In the Proposing Release, the Commission sought comment on a market-wide Price Improvement Rule for customer market orders. The proposed rule was designed to apply across exchange and OTC markets to promote the execution quality of orders by providing increased opportunities for customer orders to interact at better prices without the intervention of a dealer. The proposal included a non-exclusive safe harbor as one means by which a specialist or OTC market maker could be assured that an order received a sufficient opportunity for price improvement for purposes of the rule.

The proposed rule was intended to encourage market participants to take advantage of current technologies and provide customer market orders with improved access to price improvement opportunities, regardless of where such orders are routed for execution. Although the proposed rule would have required specialists and OTC market makers to provide price improvement opportunities for customer orders, the Commission did not prescribe any particular method of achieving price improvement in recognition of the fact that competition can produce innovative price improvement mechanisms. The Commission proposed a non-exclusive safe harbor, however, to provide certainty regarding one alternative by which a specialist or OTC market maker would be deemed to have satisfied its price improvement obligation.

Under the safe harbor, a specialist or OTC market maker would have been deemed in compliance with the

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[328] *See, e.g.* D.E. Shaw Letter; Investors Research Letter; Lehman Letter; NASD Letter; NSC Letter; Madoff Letter; Rothschild Letter; Schwab Letter; STA Letter.

[329] *See, e.g.*, Madoff Letter.

[330] *Id.* Madoff states that the NASD now requires every OTC market maker to conform with NMS principles, respect all other NMS quotations in listed securities, and not trade through better quotes in the NMS. Madoff further notes that, in contrast, exchanges do not impose similar restrictions with respect to trading through off-exchange quotations.

[331] *See* Amex Letter; BSE Letter; CHX Letter; CSE Letter; PSE Letter; Specialists Assoc. Letter.

[332] *See* Companion Release.

[333] *See* NASD Rule 4613.

[334] 17 CFR 240.11Ac1–1(b)(5)(i)

proposed price improvement rule if it exposed, in its quote, a customer market order at an improved price and provided the customer with a guaranteed execution at the "stop" price.[335] This procedure was designed to promote the interaction of exposed orders at prices better than the NBBO with orders or trading interest in other markets. The safe harbor also was intended to lead to increased competition by encouraging specialists and OTC market makers to compete more actively for order flow on the basis of their published quotations. The Commission made clear, however, that the order exposure procedures set out in the proposed safe harbor neither would be mandatory, nor the exclusive means by which to satisfy the obligation to provide an opportunity for price improvement.

Many of the 145 commenters discussed the proposed Price Improvement Rule. The commenters raise numerous questions and concerns regarding the proposed rule. For example, some commenters claim that an absolute rule would reduce the broker-dealer's fiduciary obligation of best execution to an algorithm, eliminating the exercise of professional judgment in identifying price improvement opportunities.[336] Instead, the commenters argue that customers and market professionals should be able to use discretion in deciding when and how price improvement should be sought.[337]

In addition, several commenters are concerned that the proposed safe harbor would become the industry standard. These commenters believe that, although non-exclusive, the proposed safe harbor would dictate the minimum acceptable standard to follow, thereby stifling innovation and competition.[338] Many commenters also are troubled by various technical aspects regarding the application of the safe harbor. For example, some commenters believe the 30-second exposure period would be insufficient to allow other market participants to respond to the exposed order, even with today's technology.[339] Other commenters are concerned with the mechanics of the "stopping" procedures.[340] At least one commenter argues that the requirement to stop stock blurs the distinction between price guarantees and price improvement opportunities.[341]

The potential costs associated with the proposed rule also concern many commenters. They claim that necessary systems upgrades would be expensive.[342] In addition, several commenters claim that the number of quotes generated as a result of the safe harbor would pose a serious threat to system capacity.[343] Many commenters warn that the increased traffic would reduce trading efficiency, decrease transparency and increase overall risk.[344] Some commenters also state that market price integrity would be reduced due to the proliferation of flickering, ephemeral quotations.[345]

A common suggestion from the commenters is that the Commission not adopt the proposed rule prior to evaluating the effects of the other initiatives contained in the proposal.[346] Some commenters believe that the amendments to the Quote Rule and the proposed Limit Order Display Rule should act to narrow spreads by eliciting the true market for a given security, thereby decreasing the utility and necessity of seeking better prices for customer orders. According to these commenters, if such results are achieved through the other initiatives, the potential costs and significant market operations changes associated with the proposed Price Improvement Rule would far outweigh any potential benefit.

Although the Commission continues to believe that the opportunity for price improvement can contribute to providing customer orders with enhanced executions, the Commission has determined to defer action on the proposed Price Improvement Rule for the present time. The Commission believes that the other initiatives adopted today will greatly improve the price discovery process and the opportunity for customer orders to receive enhanced execution prices. These initiatives should act to narrow spreads by making available to all market participants the true buying and selling interest in a given security. The Commission believes, therefore, that the most appropriate course of action is to monitor the operation of the initiatives adopted today, and assess their impact on spreads, the quality of markets, and the quality of executions. This assessment will enable the Commission to better determine the need for further Commission action regarding specific price improvement obligations.

2. Best Execution Obligations

The proposed Price Improvement Rule was designed to complement the long-standing duties of broker-dealers to seek to obtain best execution of their customer orders; the Commission did not intend for the proposed rule to modify this existing best execution obligation.[347] Therefore, the Commission's decision to defer consideration of the proposed rule in no way should be taken as an indication that the duty of best execution has been altered.

A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated both in SRO rules and, through judicial and Commission decisions, in the antifraud provisions of the federal securities laws.[348] This duty of best execution requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's transaction.[349] The scope of this duty of best execution must evolve as changes occur in the market that give rise to improved executions for customer orders, including

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[335] The proposed safe harbor provided for an order to be "stopped" at the national best bid (for a sell order) or offer (for a buy order) for the lesser of either the full size of the order, or the size associated with the national best bid (for a sell order) or offer (for a buy order).

[336] *See, e.g.*, Goldman Sachs Letter; Jefferies Letter; Madoff Letter; Merrill Letter; NYSE Letter; PaineWebber Letter; PSE Letter.

[337] *See, e.g.*, CSE Letter; Goldman Sachs Letter; Madoff Letter; Merrill Letter; NSC Letter; NYSE Letter; PSE Letter.

[338] *See, e.g.*, AZX Letter; Blume Letter; HHG Letter; Lehman Letter; Merrill Letter; Morgan Stanley Letter; NASD Letter; Salomon Letter; Schwab Letter; Smith Barney Letter; PaineWebber Letter; Ruane Letter.

Some commenters believe their current operations would satisfy the rule and, therefore, they would not need to utilize the safe harbor procedures. *See, e.g.*, Amex Letter; BSE Letter; CHX Letter; NYSE Letter; PSE Letter.

[339] *See, e.g.*, Amex Letter; Blume Letter; BSE Letter; CHX Letter; CSE Letter; NYSE Letter; PSE Letter; Schwab Letter;. *But see, e.g.*, Letter from Raymond E. Wooldridge, Chief Executive Officer, Southwest Securities, to Mr. Jonathan G. Katz, Secretary, SEC, dated January 9, 1996 ("Southwest Letter"); STANY Letter.

[340] *See, e.g.*, Madoff Letter; MJT Letter; Smith Barney Letter.

[341] *See* Sutro Letter.

[342] *See, e.g.*, Blume Letter; Dean Witter Letter; Fahnestock Letter; Goldman Sachs Letter; LJR Letter; NASD Letter; PaineWebber Letter; Ruane Letter; Salomon Letter; Schwab II Letter; SIA Letter.

[343] *See, e.g.*, Bear Stearns Letter; FIF Letter; Merrill Letter; PSE Letter; STANY Letter.

[344] *See, e.g.*, Amex Letter; Bear Stearns Letter; Blume Letter; FIF Letter; LJR Letter; Madoff Letter; Merrill Letter; Morgan Stanley Letter; NASD Letter; PSE Letter; Salomon Letter; STA Letter; STANY Letter; Specialist Assoc. Letter.

[345] *See, e.g.*, Dean Witter Letter; ICI Letter; Merrill Letter; Morgan Stanley Letter; NASD Letter; NYSE Letter; PSE Letter; Salomon Letter; Schwab II Letter; Specialist Assoc. Letter; STANY Letter.

[346] *See, e.g.*, Bear Stearns Letter; Dean Witter Letter; DOJ Letter; Goldman Sachs Letter; Lehman Letter; Madoff Letter; Morgan Stanley Letter; NASD Letter; NSC Letter; Schwab II Letter; SIA Letter; Sutro Letter.

[347] Proposing Release at 49.

[348] *See* Market 2000 Study, Study V at V–1, 2 and sources cited therein.

[349] *See* Market 2000 Concept Release, *supra* note 10; Market 2000 Study, Study V.

opportunities to trade at more advantageous prices. As these changes occur, broker-dealers' procedures for seeking to obtain best execution for customer orders also must be modified to consider price opportunities that become "reasonably available."[350]

In the past the Commission has recognized the practical necessity of automating the handling of small orders, and has indicated that automated routing or execution of customer orders is not necessarily inconsistent with best execution.[351] At the same time, the Commission has emphasized that best execution obligations require that broker-dealers routing orders for automatic execution must periodically assess the quality of competing markets to assure that order flow is directed to markets providing the most beneficial terms for their customers' orders.[352] While in the past quote-based executions in OTC securities were generally recognized as satisfying best execution obligations, the development of efficient new facilities has altered what broker dealers must consider in seeking best execution of customer orders.[353] The Commission thus noted the importance of the opportunity for price improvement as a factor in best execution, speaking in the context of aggregate order handling decisions for both listed and OTC stocks.[354] Therefore, the Commission believes that routing order flow for automated execution, or internally executing order flow on an automated basis, at the best bid or offer quotation, would not necessarily satisfy a broker-dealer's duty of best execution for small orders in listed and OTC securities.[355]

Both the rule and the amendments adopted today should further improve a broker-dealer's ability to obtain improved executions for customer orders. These changes will enhance the public quote by including in the public quotation system many superior prices not currently reflected there. The ECN amendment is intended to publicize superior market maker ECN prices in the public quote, which should make these prices more easily accessible. Similarly, the Display Rule will include more customer prices in the public quote through requiring the display of customer limit orders.

Nonetheless, various markets and market makers may continue to provide opportunities for executions at prices superior to the enhanced national best bid and offer for their customer orders.[356] For example, some markets or market makers may continue to offer price improvement opportunities, based on internal order flow or execution algorithms. The Commission believes that broker-dealers deciding where to route or execute small customer orders in listed or OTC securities must carefully evaluate the extent to which this order flow would be afforded better terms if executed in a market or with a market maker offering price improvement opportunities. In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from the different markets or market makers trading a security.[357] If different markets may be more suitable for different types of orders or particular securities, the broker-dealer will also need to consider such factors.

Where material differences exist between the price improvement opportunities offered by markets or market makers, these differences must be taken into account by the broker-dealer. Similarly, in evaluating its procedures for handling limit orders, the broker-dealer must take into account any material differences in execution quality (*e.g.*, the likelihood of execution) among the various markets or market centers to which limit orders may be routed. The traditional non-price factors affecting the cost or efficiency of executions also should continue to be considered;[358] however, broker-dealers must not allow an order routing inducement, such as payment for order flow or the opportunity to trade with that order as principal, to interfere with its duty of best execution.[359] Of course, as the Commission has previously noted, in light of a broker-dealer's obligation to assess the quality of the markets to which it routes packaged order flow absent specific instructions from customers, the Commission does not believe that a broker-dealer violates its best execution obligation merely because it receives payment for order flow or trades as principal with customer orders.[360]

Prices superior to the public quote may at times be available in ECNs, even after adoption of the ECN amendment, based, for example, on orders of institutional participants and others not covered by the ECN amendment. Superior prices also may be available in other systems not classified as ECNs. As the Commission noted in the Proposing Release in September, 1995, and reiterates today, where reliable, superior prices are readily accessible in such systems, broker-dealers should consider these prices in making decisions regarding the routing of customer orders.[361] The Commission recognizes that many of these systems are less accessible and involve higher costs for broker-dealers than the public markets. In addition, in many cases it is not currently feasible to efficiently obtain price information from these systems or link to these systems on an automated basis. The Commission is not suggesting that broker-dealers must engage in manual handling of small orders if necessary to access these systems.[362] Nonetheless, the Commission believes that because technology is rapidly making these systems more accessible, broker-dealers must regularly evaluate whether prices or other benefits offered by these systems are reasonably available for purposes of seeking best execution of these customer orders. For example, if an ECN provides an automated link that makes it cost effective for a broker-dealer to access these systems for its retail orders on an automated basis, the broker-dealer must take the prices and other relevant costs in that system into account in handling these customer orders.

Pursuant to the Display Rule, most customer limit orders at superior prices will be required to be displayed and

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[350] Proposing Release at 7–10.

[351] *Id.* at 8.

[352] Payment for Order Flow Release, *supra* note 23, at n. 30 and accompanying text; *See* Securities Exchange Act Release No. 37046 (March 29, 1996), 61 FR 15322 (April 5, 1996) ("CSE Approval Order"); Securities Exchange Act Release No. 37045 (March 29, 1996), 61 FR 15318 (April 5, 1996) ("BSE Approval Order").

[353] Proposing Release at 10.

[354] *Id.*; *see also* Payment for Order Flow Release, *supra* note 23 at text accompanying notes 31–33. *See* CSE Approval Order, *supra* note 352; BSE Approval Order, *supra* note 352.

[355] Proposing Release at 9–10; *see also* note 360 and accompanying text (factors relevant to best execution).

[356] *Id.*

[357] CSE Approval Order, 61 FR at 15329. "Price improvement" in this context is defined as the difference between execution price and the best quotes prevailing in the market at the time the order arrived at the market or market maker. Any evaluation of price improvement opportunities would have to consider not only the extent to which orders are executed at prices better than the prevailing quotes, but also the extent to which orders are executed at inferior prices.

[358] *See* Market 2000 Study, Study V at V–2, 3.

[359] Payment for Order Flow Release, *supra* note 23.

[360] *Id.*

[361] Proposing Release at 10.

[362] The Commission has recognized that it may be impractical, both in terms of time and expense, for a broker that handles a large volume of orders to determine individually where to route each order it received. Proposing Release at 8.

included in the public quote.[363] The display of a limit order by a market maker directly affects its responsibilities in handling other customer orders. The Commission has long said that broker-dealers must consider quotation information contained in the public quotation system in seeking best execution of customer orders.[364] In executing customer market orders, a market maker must give no less consideration to the price of its own displayed customer limit order than any other public quotation price. Therefore, under the new Display Rule, a market maker that has displayed a customer limit order would be expected to provide an offsetting customer market order an execution at that limit price at least up to the size of the limit order.

In addition, the Commission notes that currently, some market makers that hold a customer limit order on one side of the market, priced better than the market maker's own quote, and a customer market order on the other side of the market, will execute both orders as principal rather than crossing the two orders. As a result, the market order customer receives the best bid and offer rather than receiving the benefit of a better limit order price. In light of the increased opportunities for price improvement now available and the rules the Commission is adopting today, the Commission believes that going forward this practice is no longer appropriate given the broker-dealer's obligation, as part of its duty of best execution, to its market order customer.[365]

In conclusion, although the Commission has determined for the present to defer final action on the proposed Price Improvement Rule, the Commission's adoption of the Display Rule and the Quote Rule amendments should substantially improve public quotations. Moreover, the Commission firmly believes that broker-dealers, when deciding where to route or execute customer orders, must carefully consider and evaluate opportunities for obtaining improved executions.

IV. Authority

As discussed above, the 1975 Act Amendments to the Exchange Act set forth Congress' goals for a national market system. Several commenters argue that the proposed rules violate Congress's direction that the Commission facilitate the establishment of, rather than design, a national market system.[366] Many of these comments were directed at the proposed Price Improvement Rule and in particular the proposed price improvement safe harbor. The Commission today is deferring action on that rule proposal. To the extent that the comments relate to the rule and amendments adopted today, however, they reflect a fundamental misunderstanding regarding the purpose of the rules and the Commission's role in facilitating a national market system.

The Commission's adoption of these rules is fully consistent with the role that Congress envisioned in 1975 for the Commission. Congress's direction to the Commission to "facilitate" the establishment of a national market system for securities that implemented Congressionally enumerated objectives was not intended as a limitation on the Commission's authority but rather was "designed to provide maximum flexibility to the Commission and the securities industry in giving specific content to the general concept of the national market system."[367] Congress granted the Commission broad rulemaking authority over the national market system and market participants and this grant of specific rulemaking authority was not conditioned on the expectation that the Commission refrain from using it.

Although Congress expressed a preference that where possible the national market system evolve through the interplay of competitive forces, it recognized that "competition may not be sufficient" and that in such cases, the Commission should act "promptly and effectively to insure that the essential mechanisms of an integrated secondary trading system [be] put into place * * *."[368] Congress specifically identified in 1975 some of the concerns addressed today and the Commission has examined these issues on several occasions over the intervening years in response to evolving market conditions and technologies. In view of the caution and deliberation with which the Commission has proceeded over the past 21 years, its actions today cannot fairly be viewed as arresting natural competitive forces, but rather should be regarded as an attempt to foster efficiency and redress shortcomings in the national market system that have developed since then, or that the securities industry on its own has been unable to resolve over this time.

The subject matter of these rule and rule amendments is an area of the national market system in which Congress itself recognized that the Commission's expertise and authority were paramount. Indeed, Section 11A was specifically enacted to eliminate "arguments about the SEC's authority" in this area. For that reason, the Commission was given "pervasive rulemaking power" with respect to the business of collecting, processing, or publishing information relating to quotations for and transactions in securities.[369] The rules adopted today implement Congress' goals as to dissemination of trading information: "to insure the availability of prompt and accurate trading information, to assure that these communications networks are not controlled or dominated by any particular market center, to guarantee fair access to such systems by all brokers, dealers and investors, and to prevent any competitive restriction on their operation not justified by the purposes of the Exchange Act."[370]

It bears noting that the standards adopted by the Commission today are intended to allow markets to adapt and evolve in meeting the objectives of the national market system; the rules establish performance standards but do not dictate market structure. With regard to the Quote Rule, the rules do not determine how non-Rule 19c–3 market makers may make markets or how electronic communications networks may operate. Non-Rule 19c–3 market makers are free to operate as they please so long as they report their quotations to the extent they execute a certain level of volume in a security. Likewise, market makers and specialists may place priced orders in ECNs of many different designs as long as they change their quotes to reflect the orders in the ECN or the ECNs publicly report the quotes and provide access to such

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[363] The Commission notes that the NASD's interpretation prohibiting market makers from trading ahead of customer limit orders applies both to displayed and nondisplayed customer limit orders held by the market maker. *See* NASD Conduct Rule IM 2110–2 (Trading Ahead of Customer Limit Orders).

[364] *See* Quote Rule Adopting Release, *supra* note 208.

[365] *Cf.*, NASD Notice to Members 96–10 (February, 1996) at 43; NASD Notice to Members 95–87 (August, 1995) at 417.

[366] *See, e.g.*, ABA Letter; Fahnestock Letter; HHG Letter; LJR Letter; NSC Letter; PaineWebber Letter; RPM Letter; Ruane Letter; SIA Letter.

[367] Conference Report, *supra* note 213, at 92. *See* Senate Report, *supra* note 31, at 8–9 ("the sounder approach appeared * * * to be to establish a statutory scheme clearly granting the Commission broad authority to oversee the implementation, operation, and regulation of the national market system and at the same time to charging it with the clear responsibility to assure that the system develops and operates in accordance with Congressional determined goals and objectives."). The Conference Committee report on the 1975 Act Amendments indicates that the conferees adopted with minor revisions the Senate's provisions concerning the national market system. Conference Report, *supra* note 213, at 92.

[368] Conference Report, *supra* note 213 at 92.

[369] Conference Report, *supra* note 213, at 93.

[370] Senate Report, *supra* note 31.

priced orders. With regard to the Limit Order Display Rule, the rule does not seek to create a central limit order book or central limit order file. Broker-dealers are free to satisfy the rule in several different ways, so long as the result is that customer limit orders priced at or better than the NBBO are publicly displayed.

Some commenters also argue that the proposed rules are contrary to Congress' direction to assure fair competition between auction and dealer markets as structures for the trading of securities [371] and inappropriately introduce auction market principles into dealer markets. Although requiring display of superior-priced customer limit orders could be viewed as an auction market principle, such a requirement does not supplant the basic features of a dealer market or undermine competition between the exchange and OTC markets. Congress clearly intended that dealer markets would benefit from use of some auction market principles [372] and the 1975 Amendments specifically announce as a goal of the national market system that customer orders be able to interact without the intervention of a dealer to the extent that such a goal is consistent with other national market system objectives.[373] At a minimum, where feasible, customer limit orders should have a meaningful opportunity to interact with customer market orders.[374]

One of the main benefits contemplated by Congress was that the national market system would enable investors in dealer markets to execute against another limit order or market order at a better price than currently being quoted by a dealer for his own account.[375] Display of superior-priced limit orders would permit investors to compete in some cases with market makers and specialists, thereby increasing the competitiveness of dealer markets in these securities and enhancing the quality of customer limit order execution. Display of customer limit orders, however, would not compromise the essential features of dealer markets. In the absence of any superior-priced customer limit orders, dealers would continue to compete for market orders at their published quotations and would be able to execute against customer limit orders that would otherwise prevent the market maker from trading with a market order. Further, the widespread use by OTC dealers of ECNs to trade at prices better than the dealers' published quotes is of such recent vintage that it can hardly be viewed as a necessary part of a dealer market structure.[376]

V. Summary of Final Regulatory Flexibility Act Analysis

This following discussion summarizes the Commission's analysis of the rules adopted today under the Regulatory Flexibility Act. A complete final copy of the Final Regulatory Flexibility Act is available in the Public File.

The rules adopted today by the Commission are intended to allow markets to adapt and evolve in meeting the objectives of the national market system. In this regard, the rules establish performance standards but do not dictate market structure. The Quote Rule does not dictate how market makers or specialists that trade non-Rule 19c–3 securities may conduct their market making activities or how ECNs may service their subscribers. Market makers will be able to continue their regular market making activities so long as they report their quotations if they trade more than 1% of the transaction volume in a security. Likewise, market makers and specialists may place priced orders in ECNs of many different designs as long as they change their quotes to reflect better priced orders they have entered in ECNs or, alternatively, such ECNs provide for the public reporting of these prices and provide access to such priced orders. Moreover, broker-dealers are free to satisfy the Display Rule in several different ways, so long as the result is that customer limit orders priced at or better than the NBBO are publicly displayed in accordance with the rule.

A. Display Rule

The Commission considered several significant alternatives to Rule 11Ac1–4 consistent with the Rule's objectives and designed to minimize the impact of the rule on small entities. The Commission solicited comment on, among other things: (i) Whether the display requirement should be based on a *de minimis* threshold; (ii) the classes of securities to which the Rule should apply; (iii) whether to permit limit orders to be delivered to an exchange- or association-sponsored system that displays limit orders in accordance with the rule; and (iv) whether to permit limit orders to be delivered to an ECN or a PTS. The Commission believes that the rule as adopted imposes a smaller burden upon small brokers and dealers than do other alternatives considered.

The Commission believes that the ability of brokers and dealers to send a limit order to another party or system that will display that order provides all brokers and dealers, including small brokers and dealers, with the greatest possible flexibility to satisfy the NMS objectives embodied in the rule in the most economical manner. In this regard, the Commission decided to expand one of the exceptions to the display requirement that will permit market makers to comply with the rule by delivering customer limit orders to an ECN that complies with the ECN amendment to the Quote Rule. Furthermore, the Commission added a new exemptive provision that enables the Commission to exempt any responsible broker or dealer, ECN, exchange, or association from the requirements of the Display Rule.

The Commission considered allowing display of a representative size of a limit order rather than the full size, but concluded that display of the full size will provide the most accurate picture of the depth of the market at a particular price. The Commission does not believe that it is practicable to exempt small entities from the Display Rule because to do so would be inconsistent with the Commission's statutory mandate to protect investors. In that regard, the Commission believes that the pricing and size conventions documented in the 21(a) Report referenced above make it imperative that the requirements of the Display Rule apply to all market participants with equal force. The Commission notes that any exception for small brokers and dealers could create an incentive for Nasdaq market makers to create special market making subsidiaries qualifying as small broker-dealers which would be free to engage in the anti-competitive practices identified in the 21(a) Report.

B. Quote Rule

Allowing market makers that deal actively in securities without publicizing their activity or making available their prices undermines the NMS goal of transparency. The Commission believes that those dealers should be recognized as market makers and their quotations publicized so that investors may know of, and trade on similar terms with, those market makers. Therefore, the definition of OTC

[371] *See, e.g.*, Goldman Sachs Letter; Jefferies Letter; Merrill Lynch Letter; RPM Letter; Schwab I Letter; Schwartz & Wood Letter; SIA Letter; Specialist Assoc. Letter; *see also* Exchange Act Section 11A(a)(1)(C)(ii), 15 U.S.C. 78k–1(a)(1)(C)(ii).

[372] Senate Report, *supra* note 31, at 16.

[373] Exchange Act Section 11A(a)(1)(C)(v).

[374] Exchange Act Section 11A(a)(1)(C)(v).

[375] Senate Report *supra* note 31, at 16.

[376] While the rule and rule amendments adopted today function as an integrated response to the problems the Commission has identified in the implementation of a NMS, each separately advances the Congressional goals of market efficiency, fair competition, transparency, and best execution, and accordingly the Commission intends that they be treated as severable for purposes of review.

market maker now includes any dealer holding itself out as willing to transact business for its own account on a regular or continuous basis, whether it transacts exclusively with its own customers or with the customers of other dealers. Thus, those dealers that internalize customer order flow in particular stocks or through arrangements with other firms to execute that order flow, now fall within the definition of OTC market maker and are subject to the obligations under the Quote Rule. As in the past, broker-dealers will not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request. In response to the suggestions of some commenters, the Commission has modified the amendment to make clear that more than one isolated transaction is necessary before a dealer is designated an OTC market maker.

In addition, the Commission believes that extending the 1% threshold based on quarterly aggregate trading volume to non-Rule 19c–3 securities is a reasonable method to improve the scope of quotation information to include significant OTC market makers and specialists. This 1% threshold, currently in effect for Rule 19c–3 securities, has proved effective in supplying comprehensive quotation information to the market at large. Moreover, based on the increase in third market trading volume for these securities, the Commission does not believe this standard is unduly burdensome on OTC market makers. Rather, the Commission believes this threshold strikes a balance between requiring the dissemination of all quotation interest and accommodating those specialists and OTC market makers that may be small entities. The Commission believes that OTC market makers and specialists that account for 1% or less of the aggregate volume are not active enough to justify the additional expense of providing continuous quotation display. Accordingly, the Commission believes the "greater than 1% aggregate trading volume" threshold for mandatory quotations continues to be appropriate. To limit a possible inconsistency in the treatment of exchange-listed and Nasdaq securities, the Commission today is proposing that the 1% test be extended from all exchange-listed securities to all Nasdaq-listed securities.

The Commission considered several significant alternatives to the proposed amendments to the Quote Rule consistent with the Rule's objectives and designed to minimize the impact of the amendments on small entities. The Commission solicited comment on numerous alternatives to the amendments proposed to ensure that investors receive consolidated quotations that truly reflect the best prices available for a security. The Commission solicited comment on, among other issues: (i) Whether the Commission should require SROs to amend their rules to permit computer-generated quotations; (ii) whether there existed alternatives to the ECN proposal that minimized certain consequences of the rule while assuring public dissemination of the best priced orders in such systems; (iii) whether there should be exceptions to the ECN proposal and under what circumstances; and (iv) whether the objectives of the Quote Rule and the ECN amendment could be achieved by allowing ECNs to furnish prices to the applicable SRO, while providing access to the prices in their ECN. The Commission believes that the amendments as adopted impose a smaller burden upon small brokers and dealers than does any other alternative considered.

In recognition of the concerns raised by some commenters, the ECN display alternative is designed to preserve the benefits associated with the anonymity that certain ECNs currently offer to subscribing market makers and specialists. This alternative also ensures that the best market maker and specialist prices in the ECN are publicly disseminated and that non-subscribing brokers and dealers may trade with the orders represented by those prices. Under the display alternative, the price of a specialist's or market maker's order entered into an ECN would be publicly disseminated while the specialist or market maker remains anonymous. This alternative not only preserves anonymity, but also eliminates the risk that a market maker or specialist may be exposed to multiple executions at the ECN price. With the addition of the alternative, the ECN amendment permits the display of the best price either in the specialist's or market maker's quote or through an ECN that provides for the dissemination of the best market maker and specialist prices entered into the ECN.

The Commission also notes that the ECN display alternative reduces the compliance burden on broker-dealers, including small entities, by permitting specialists and market makers to comply with the ECN amendment if the ECN into which the market maker's order is entered ensures that the best market maker prices entered therein are communicated to an exchange, association or securities information processor and the ECN provides a means for brokers and dealers to trade with the orders market makers and specialists put in the ECN.

The Commission recognizes that the ECN display alternative may reduce the content of information that is publicly available because under this alternative, the identity of the market maker or specialist that entered the better priced order in the ECN will be withheld. The Commission believes this result is justified because the inside prices and full sizes of orders entered by market makers and specialists will be in the public quotation system to inform the entire market of these prices and ECNs will provide equivalent access to those prices. Moreover, the Commission believes the benefits of facilitating the use of ECNs, by permitting the continued anonymity of market makers and specialists, more than offset the reduced information available on the identity of a particular market maker or specialist.

The Commission believes the data it has reviewed supports the need for prompt adoption of the ECN amendment to the Quote Rule. As discussed more fully in the Appendix to the 21(a) Report, an analysis of data for April through June 1994 shows that approximately 85% of bids and offers displayed by market makers on Instinet and 90% of bids and offers displayed on SelectNet (an ECN sponsored by the NASD) were at better prices than those disseminated to the public via Nasdaq. In addition, approximately 77% of trades executed on Instinet and 60% of trades executed on SelectNet were at prices superior to the Nasdaq inside spread. Given this strong evidence that investors would benefit from public dissemination of these hidden prices that are broadly disseminated to subscribers in these systems, the Commission believes that it is appropriate to adopt the amendments to the Quote Rule.

The Commission does not believe that it is practicable to exempt small entities from the Quote Rule amendments because to do so would be inconsistent with the Commission's statutory mandate to protect investors. In this regard, the Commission notes the clear evidence of a two-tiered market, in which market makers routinely trade at one price with customers and at better prices with ECN participants. The Commission believes that it is imperative to further the long-standing objectives of the 1975 Amendments to ensure reliable and accurate quotes by making these prices available to the public. The Commission believes that any exception for small brokers and

dealers could create an incentive for Nasdaq market makers to create special market making subsidiaries qualifying as small broker-dealers which would be free to engage in the anti-competitive practices identified in the 21(a) Report.

A final copy of the Final Regulatory Flexibility Act analysis is available in the Public File.

VI. Paperwork Reduction Act

As set forth in the Proposing Release,[377] the proposed amendments to Rule 11Ac1–1 and proposed Rule 11Ac1–4 contain collections of information within the meaning of the Paperwork Reduction Act ("PRA"). Accordingly, proposed amendments to Rule 11Ac1–1 and proposed Rule 11Ac1–4 were submitted to the Office of Management and Budget ("OMB") for review pursuant to Section 3507 of the PRA (44 U.S.C. 3507), and were approved by OMB which assigned the following control numbers: Amendments to Rule 11Ac1–1, control number 3235–0461; Rule 11Ac1–4, control number 3235–0462. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. This is the final notice regarding the collection of information under Rule 11Ac1–4, the Display Rule. A new notice regarding the collections of information under Rule 11Ac1–1, the Quote Rule, may be found in the Companion Release (published elsewhere in the **Federal Register** today) which proposes an additional amendment to the Quote Rule. The PRA section in the preamble of the Companion Release provides new estimates of the burden in responding to the collections of information under the Quote Rule as a whole.

The reporting requirement in Rule 11Ac1–4 is found in 17 CFR 240.11Ac1–4. The collection of information is mandatory and responses are not confidential. The respondents are OTC market makers, as defined under the rule. (Although exchange specialists are also required to follow the rule, as noted in the Proposing Release the Commission does not anticipate any significant additional burden on exchange specialists in light of current exchange order handling practices.) The Rule requires market makers to change their published quotation to reflect the price and/or size of a customer limit order that would improve their published bid or offer or otherwise ensure that such limit order is displayed. The burden on market makers will depend on the extent and variety of their market-making activities and their choice of the various compliance options offered by the regulations. The ability of market makers to utilize facilities of national securities exchanges, registered national securities associations, and ECNs to comply with the reporting requirement should ease the compliance burden. The proposed rule would have permitted market makers to execute a limit order or send a limit order to another market maker or exchange or association facility that would ensure display of such orders in lieu of the market makers' own display. Rule 11Ac1–4 as adopted maintains these alternatives and also permits respondents to send a limit order to an ECN meeting certain criteria. The information reported will be displayed to all persons who have access to a quotation montage as that term is defined in 17 CFR 240.11Ac1–2(a)(16).

The Commission carefully considered comments received from the NASD and SIA concerning the Commission's burden estimates.[378] The NASD stated that the Commission underestimated the number of limit orders to be displayed per trading day, given the NASD's view that Rule 11Ac1–4 will lead to increased limit order exposure. After considering the NASD's comment, and based upon further review of the market data, the Commission is revising its burden estimate for Rule 11Ac1–4 as follows. There are approximately 570 respondents. Each respondent on average will respond to the collection of information 42,000 times per year, based on a 252 trading day year. The total time burden for each respondent per year is estimated to be 35 hours, based on an estimate of 3 seconds per response (*i.e.*, the time it takes to update a quote to reflect a limit order, or to transmit the order for display elsewhere).[379] The total annual aggregate burden for all respondents is estimated to be 19,950 hours.

VII. Effects on Competition

Section 23(a)(2) of the Exchange Act[380] requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, and to balance them against the benefits that further the purposes of the Act. As discussed above, several commenters raised concerns regarding the competitive implications of the order handling proposals.[381] The foregoing discussion contains extensive analysis of the competitive effects of both the rule and rule amendments; this section summarizes the Commission's conclusions. The Commission has considered the proposals in light of the comments and the standard embodied in Section 23(a)(2) and has concluded any burdens on competition imposed by the Display Rule and the amendments to the Quote Rule are necessary and appropriate in furtherance of the purposes of the Exchange Act, in particular, the purposes of Section 11A.

The Commission notes that the primary burden imposed by the Display Rule will be to require exchange specialists and OTC market makers to ensure that customer limit orders improving their quotes are displayed. The Commission believes that if systems upgrades are necessary, those systems upgrades reflect one-time charges. The Commission also notes that ensuring public dissemination of limit orders enhances market transparency, increases pricing efficiency, and quote-based competition, and permits investors' orders to interact with all available market interest. Moreover, the limit order display rule will provide an opportunity for investors to compete directly in the market. This additional competition should limit certain anticompetitive practices identified in the 21(a) Report and discussed supra. For the reasons discussed above, the Commission does not believe the Display Rule will have a significantly different effect on wholesale and retail market makers.[382] The Commission notes that the Antitrust Division of the U.S. Department of Justice similarly concluded that the Display Rule will promote competition and will thereby benefit the investing public.

Similarly, the Commission notes that the primary burden imposed by the ECN Amendment to the Quote Rule will be to require exchange specialists and OTC market makers to add personnel or upgrade systems to ensure that their quotes reflect priced orders entered into those ECNs that do not disseminate

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[377] Proposing Release at 70.

[378] The SIA noted that they join in the concerns expressed by the NASD that the Commission's estimates under the PRA are too low, and need to be revised and extended to include the proposed safe harbor under Rule 11Ac1–5. SIA Letter at 4. As noted above, the Commission is not adopting the Price Improvement Rule at this time.

[379] The NASD commented that it believes the PRA burden estimate should include the time market makers spend analyzing market trends and following quotation and last sale information. The Commission has determined not to revise its burden estimate based on this comment, because market makers otherwise engage in such activities apart from the collection of information requirement. For example, market makers are already required to monitor the markets to ensure that they do not trade ahead of customer limit orders.

[380] 15 U.S.C. 78w(a)(2).

[381] *See* ABA Letter; HHG Letter; NASD Letter.

[382] *See supra* note 124 and accompanying text.

order information to the relevant exchange or association. The Commission believes that such systems upgrades reflect one-time charges. The Commission believes that the ECN amendment to the Quote Rule will impose only limited competitive burdens on ECNs. ECNs which have attributes that differentiate them from other types of electronic order routing and order execution systems, will have a choice whether to disseminate order information to the relevant exchanges or association. While choosing this alternative will result in some system costs, the Commission believes that the alternative will provide ECNs with additional business opportunities, including increased order flow. The ECN amendment should allow ECNs to function as valuable facilities for their subscribers, and should not harm ECNs significantly in their competition with other order execution systems.[383] The Commission also notes that ensuring public dissemination of market makers' and specialists' priced orders entered into ECNs enhances market transparency, pricing efficiency, price competition, and allows investors' orders to interact with all available market interest.

Finally, with respect to the amendments extending the Mandatory Quote Rule to non-Rule 19c–3 securities, the primary burden imposed will be to require certain brokers and dealers to register as CQS market makers and make continuous two-sided quotes available to the public. The Commission believes that the benefit to the investing public of ensuring that available market interest is disseminated to the public will enhance competition by facilitating the routing of investor orders to the market center displaying the best quotation for a security. The Commission believes that the added transparency resulting from the amendment outweighs any burden to competition that may be imposed.

List of Subjects in 17 CFR Part 240

Broker-dealers, Confidential business information, Reporting and recordkeeping requirements, and Securities.

Text of the Rules

For the reasons set out in the preamble, the Commission amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.11Aa3–1 is amended by revising paragraph (a)(4) to read as follows:

§ 240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) *Definitions.* * * *

(4) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

* * * * *

3. Section 240.11Ac1–1 is revised to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* For the purposes of this section:

(1) The term *aggregate quotation size* shall mean the sum of the quotation sizes of all responsible brokers or dealers who have communicated on any exchange bids or offers for a covered security at the same price.

(2) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. 78*o*–3).

(3) The terms *best bid* and *best offer* shall mean the highest priced bid and the lowest priced offer.

(4) The terms *bid* and *offer* shall mean the bid price and the offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent, but shall not include indications of interest.

(5) The term *consolidated system* shall mean the consolidated transaction reporting system.

(6) The term *covered security* shall mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(7) The term *effective transaction reporting plan* shall have the meaning provided in § 240.11Aa3–1(a)(3).

(8) The term *electronic communications network*, for the purposes of § 240.11Ac1–1(c)(5), shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part; except that the term electronic communications network shall not include:

(i) Any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or

(ii) Any system operated by, or on behalf of, an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

(9) The term *exchange market maker* shall mean any member of a national securities exchange ("exchange") who is registered as a specialist or market maker pursuant to the rules of such exchange.

(10) The term *exchange-traded security* shall mean any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange; *provided, however*, That securities not listed on any exchange that are traded pursuant to unlisted trading privileges are excluded.

(11) The term *make available*, when used with respect to bids, offers, quotation sizes and aggregate quotation sizes supplied to quotation vendors by an exchange or association, shall mean to provide circuit connections at the premises of the exchange or association supplying such data, or at a common location determined by mutual agreement of the exchanges and associations, for the delivery of such data to quotation vendors.

(12) The term *odd-lot* shall mean an order for the purchase or sale of a covered security in an amount less than a round lot.

(13) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size.

[383] Although the Antitrust Division of the U.S. Department of Justice expressed concerns about the effects of the ECN amendment as originally proposed, the Commission believes that with the quote dissemination alternative, the amendment will not impose any unnecessary or inappropriate burdens on competition.

(14) The term *plan processor* shall have the meaning provided in § 240.11Aa3–2(a)(7).

(15) The term *published aggregate quotation size* shall mean the aggregate quotation size calculated by an exchange and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

(16) The terms *published bid* and *published offer* shall mean the bid or offer of a responsible broker or dealer for a covered security communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(17) The term *published quotation size* shall mean the quotation size of a responsible broker or dealer communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(18) The term *quotation size*, when used with respect to a responsible broker's or dealer's bid or offer for a covered security, shall mean:

(i) The number of shares (or units of trading) of that covered security which such responsible broker or dealer has specified, for purposes of dissemination to quotation vendors, that it is willing to buy at the bid price or sell at the offer price comprising its bid or offer, as either principal or agent; or

(ii) In the event such responsible broker or dealer has not so specified, a normal unit of trading for that covered security.

(19) The term *quotation vendor* shall mean any securities information processor engaged in the business of disseminating to brokers, dealers or investors on a real-time basis, bids and offers made available pursuant to this section, whether distributed through an electronic communications network or displayed on a terminal or other display device.

(20) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(21) The term *responsible broker or dealer* shall mean:

(i) When used with respect to bids or offers communicated on an exchange, any member of such exchange who communicates to another member on such exchange, at the location (or locations) designated by such exchange for trading in a covered security, a bid or offer for such covered security, as either principal or agent; *provided, however,* That, in the event two or more members of an exchange have communicated on such exchange bids or offers for a covered security at the same price, each such member shall be considered a "responsible broker or dealer" for that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; and further provided, That for a bid or offer which is transmitted from one member of an exchange to another member who undertakes to represent such bid or offer on such exchange as agent, only the last member who undertakes to represent such bid or offer as agent shall be considered the "responsible broker or dealer" for that bid or offer; and

(ii) When used with respect to bids and offers communicated by a member of an association to another broker or dealer or to a customer otherwise than on an exchange, the member communicating the bid or offer (regardless of whether such bid or offer is for its own account or on behalf of another person).

(22) The term *revised bid or offer* shall mean a market maker's bid or offer which supersedes its published bid or published offer.

(23) The term *revised quotation size* shall mean a market maker's quotation size which supersedes its published quotation size.

(24) The term *specified persons*, when used in connection with any notification required to be provided pursuant to paragraph (b)(3) of this section and any election (or withdrawal thereof) permitted under paragraph (b)(5) of this section, shall mean:

(i) Each quotation vendor;

(ii) Each plan processor; and

(iii) The processor for the Options Price Reporting Authority (in the case of a notification for a subject security which is a class of securities underlying options admitted to trading on any exchange).

(25) The term *subject security* shall mean:

(i) With respect to an exchange:

(A) Any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such exchange has in effect an election, pursuant to paragraph (b)(5)(i) of this section, to collect, process, and make available to quotation vendors, bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of an association:

(A) Any exchange-traded security for which such member acts in the capacity of an OTC market maker unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to paragraph (b)(5)(ii) of this section, to communicate to its association bids, offers and quotation sizes for the purpose of making such bids, offers and quotation sizes available to quotation vendors.

(b) *Dissemination requirements for exchanges and associations.* (1) Every exchange and association shall establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors, as follows:

(i) Each exchange shall at all times such exchange is open for trading, collect, process and make available to quotation vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges which is communicated on any exchange by any responsible broker or dealer, but shall not include:

(A) Any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication; and

(B) Any bid or offer communicated during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange.

(ii) Each association shall, at all times that last sale information with respect to reported securities is reported pursuant to an effective transaction reporting plan, collect, process and make available to quotation vendors the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each member of such association acting in the capacity of an

OTC market maker for each subject security and the identity of that member (excluding any bid or offer executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended.

(2) Each exchange shall, with respect to each published bid and published offer representing a bid or offer of a member for a subject security, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (c)(2) of this section, the identity of the responsible broker or dealer who made such bid or offer and the quotation size associated with it.

(3)(i) If, at any time an exchange is open for trading, such exchange determines, pursuant to rules approved by the Securities and Exchange Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers that are members of that exchange shall be relieved of their obligation under paragraph (c)(2) of this section and such exchange shall be relieved of its obligations under paragraphs (b) (1) and (2) of this section for that security: *provided, however,* That such exchange will continue, to the maximum extent practicable under the circumstances, to collect, process, and make available to quotation vendors data for that security in accordance with paragraph (b)(1) of this section.

(ii) During any period an exchange, or any responsible broker or dealer that is a member of that exchange, is relieved of any obligation imposed by this section for any subject security by virtue of a notification made pursuant to paragraph (b)(3)(i) of this section, such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing, and making available to quotation vendors the data for that security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange. Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the prior notification shall again be subject to such obligation.

(4) Nothing in this section shall preclude any exchange or association from making available to quotation vendors indications of interest or bids and offers for a subject security at any time such exchange or association is not required to do so pursuant to paragraph (b)(1) of this section.

(5)(i) Any exchange may make an election for purposes of paragraph (a)(25)(i)(B) of this section for any covered security, by collecting, processing, and making available bids, offers, quotation sizes, and aggregate quotation sizes in that security; except that for any covered security previously listed or admitted to unlisted trading privileges on only one exchange and not traded by any OTC market maker, such election shall be made by notifying all specified persons, and shall be effective at the opening of trading on the business day following notification.

(ii) Any member of an association acting in the capacity of an OTC market maker may make an election for purposes of paragraph (a)(25)(ii)(B) of this section for any covered security, by communicating to its association bids, offers, and quotation sizes in that security; except that for any other covered security listed or admitted to unlisted trading privileges on only one exchange and not traded by any other OTC market maker, such election shall be made by notifying its association and all specified persons, and shall be effective at the opening of trading on the business day following notification.

(iii) The election of an exchange or member of an association for any covered security pursuant to this paragraph (b)(5) shall cease to be in effect if such exchange or member ceases to make available or communicate bids, offers, and quotation sizes in such security.

(c) *Obligations of responsible brokers and dealers.* (1) Each responsible broker or dealer shall promptly communicate to its exchange or association, pursuant to the procedures established by that exchange or association, its best bids, best offers, and quotation sizes for any subject security.

(2) Subject to the provisions of paragraph (c)(3) of this section, each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to its published quotation size.

(3)(i) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation if:

(A) Prior to the presentation of an order for the purchase or sale of a subject security, a responsible broker or dealer has communicated to its exchange or association, pursuant to paragraph (c)(1) of this section, a revised quotation size; or

(B) At the time an order for the purchase or sale of a subject security is presented, a responsible broker or dealer is in the process of effecting a transaction in such subject security, and immediately after the completion of such transaction, it communicates to its exchange or association a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation size.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section if:

(A) Before the order sought to be executed is presented, such responsible broker or dealer has communicated to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; or

(B) At the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; *provided, however,* That such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (c)(2) of this section at its revised bid or offer in any

amount up to its published quotation size or revised quotation size.

(4) Subject to the provisions of paragraph (b)(4) of this section:

(i) No exchange or OTC market maker may make available, disseminate or otherwise communicate to any quotation vendor, directly or indirectly, for display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size for any covered security which is not a subject security with respect to such exchange or OTC market maker; and

(ii) No quotation vendor may disseminate or display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size from any exchange or OTC market maker for any covered security which is not a subject security with respect to such exchange or OTC market maker.

(5)(i) Entry of any priced order for a covered security by an exchange market maker or OTC market maker in that security into an electronic communications network that widely disseminates such order shall be deemed to be:

(A) A bid or offer under this section, to be communicated to the market maker's exchange or association pursuant to paragraph (c) of this section for at least the minimum quotation size that is required by the rules of the market maker's exchange or association if the priced order is for the account of a market maker, or the actual size of the order up to the minimum quotation size required if the priced order is for the account of a customer; and

(B) A communication of a bid or offer to a quotation vendor for display on a display device for purposes of paragraph (c)(4) of this section.

(ii) An exchange market maker or OTC market maker that has entered a priced order for a covered security into an electronic communications network that widely disseminates such order shall be deemed to be in compliance with paragraph (c)(5)(i)(A) of this section if the electronic communications network:

(A) Provides to an exchange or association (or an exclusive processor acting on behalf of one or more exchanges or associations) the prices and sizes of the orders at the highest buy price and the lowest sell price for such security entered in, and widely disseminated by, the electronic communications network by exchange market makers and OTC market makers for the covered security, and such prices and sizes are included in the quotation data made available by the exchange, association, or exclusive processor to quotation vendors pursuant to this section; and

(B) Provides, to any broker or dealer, the ability to effect a transaction with a priced order widely disseminated by the electronic communications network entered therein by an exchange market maker or OTC market maker that is:

(*1*) Equivalent to the ability of any broker or dealer to effect a transaction with an exchange market maker or OTC market maker pursuant to the rules of the exchange or association to which the electronic communications network supplies such bids and offers; and

(*2*) At the price of the highest priced buy order or lowest priced sell order, or better, for the lesser of the cumulative size of such priced orders entered therein by exchange market makers or OTC market makers at such price, or the size of the execution sought by the broker or dealer, for the covered security.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

4. Section 240.11Ac1–4 is added to read as follows:

§ 240.11Ac1–4 Display of customer limit orders.

(a) *Definitions.* For purposes of this section:

(1) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. 78*o*–3).

(2) The terms *best bid* and *best offer* shall have the meaning provided in § 240.11Ac1–1(a)(3).

(3) The terms *bid* and *offer* shall have the meaning provided in § 240.11Ac1–1(a)(4).

(4) The term *block size* shall mean any order:

(i) Of at least 10,000 shares; or

(ii) For a quantity of stock having a market value of at least $200,000.

(5) The term *covered security* shall mean any "reported security" and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(6) The term *customer limit order* shall mean an order to buy or sell a covered security at a specified price that is not for the account of either a broker or dealer; *provided, however,* That the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer.

(7) The term *electronic communications network* shall have the meaning provided in § 240.11Ac1–1(a)(8).

(8) The term *exchange-traded security* shall have the meaning provided in § 240.11Ac1–1(a)(10).

(9) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(10) The term *reported security* shall have the meaning provided in § 240.11Ac1–1(a)(20).

(b) *Specialists and OTC market makers.* For all covered securities:

(1) Each member of an exchange that is registered by that exchange as a specialist, or is authorized by that exchange to perform functions substantially similar to that of a specialist, shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer of such specialist in such security; and

(ii) The full size of each customer limit order held by the specialist that:

(A) Is priced equal to the bid or offer of such specialist for such security;

(B) Is priced equal to the national best bid or offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the specialist's bid or offer.

(2) Each registered broker or dealer that acts as an OTC market maker shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the OTC market maker that is at a price that would improve the bid or offer of such OTC market maker in such security; and

(ii) The full size of each customer limit order held by the OTC market maker that:

(A) Is priced equal to the bid or offer of such OTC market maker for such security;

(B) Is priced equal to the national best bid or offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the OTC market maker's bid or offer.

(c) *Exceptions.* The requirements in paragraph (b) of this section shall not apply to any customer limit order:

(1) That is executed upon receipt of the order.

(2) That is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed.

(3) That is an odd-lot order.

(4) That is a block size order, unless a customer placing such order requests that the order be displayed.

(5) That is delivered immediately upon receipt to an exchange or association-sponsored system, or an electronic communications network that complies with the requirements of § 240.11Ac1–1(c)(5)(ii) with respect to that order.

(6) That is delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirements of this section with respect to that order.

(7) That is an "all or none" order.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

Dated: September 6, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23210 Filed 9–11–96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–37620; File No. S7–22–96]

RIN 3235–AH00

Proposed Quote Rule Amendment

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") today is proposing an amendment to Rule 11Ac1–1 ("Quote Rule") under the Securities Exchange Act of 1934. The proposed amendment reinforces the Commission's recent initiatives to foster market liquidity, transparency and efficiency. The amendment to the Quote Rule will mandate continuous two-sided quotations from over-the-counter ("OTC") market makers and exchange specialists that account for more than 1% of the transaction volume in a security included on the Nasdaq Stock Market ("Nasdaq security").

DATES: Comments should be submitted on or before November 12, 1996.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–22–96; this file number should be included on the subject line if E-mail is used. Comment letters will be made available for public inspection at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Gail A. Marshall, 202/942–7129, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mailstop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The commission is publishing for comment proposed amendment to Rule 11Ac1–1[1] under the Securities Exchange Act of 1934 ("Exchange Act").[2]

[1] 17 CFR 240.11Ac–1.

[2] 15 U.S.C. 78a to 78*ll* (1988).

I. Introduction and Background

Today in a related release,[3] the Commission adopted the Display Rule and amendments to the Quote Rule under the exchange Act.[4] The new rule and amendments are designed to reduce the effects of hidden markets and enhance transparency, further permitting investors to evaluate the execution quality of their orders.[5] The Commission received 152 comment letters on the aforementioned proposals[6] and has determined to propose an additional amendment to the Quote Rule in response to an issue raised by some commenters.

Congress, in the Securities Acts Amendments of 1975 ("1975 Amendments"),[7] authorized the Commission to facilitate the development of a national market system ("NMS") for U.S. equity securities by improving price discovery, liquidity, and competition among OTC market makers[8] and exchange specialists. Moreover, the Commission is authorized, under Sections 11A(c)(1)(B) and (F) of the Exchange Act,[9] to assure the prompt, accurate and reliable distribution of quotation information and to assure the fairness and usefulness of the form and content of such information.

The Quote Rule requires all national securities exchanges and associations[10] to establish and maintain procedures for collecting from their members, bids, offers, and quotation sizes with respect to any subject security,[11] and for making such bids, offers, and sizes available to quotation vendors. It also requires every exchange specialist and OTC market maker to promptly communicate to its exchange or association, pursuant to procedures established by the exchange or association, its bids, offers and quotation sizes.[12] In addition, the Quote Rule requires that, subject to certain exceptions, the broker or dealer responsible for communicating a quotation for a security shall be obligated to execute any order presented to it, other than an odd-lot order, by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable as its published bid or offer in any amount up to its published quotation size.[13]

The Commission proposes to amend the Quote Rule to require exchange specialists and OTC market makers to publish quotations for any Nasdaq security when the exchange specialist or OTC market maker is responsible for more than 1% of the aggregate trading volume for that security for the most recent calendar quarter.[14] Upon the effective date of the most recent amendment of the Quote Rule, the mandatory quotation requirement will apply to exchange specialists and OTC market makers that trade more than 1% of the aggregate trading volume for an exchange-listed security for the most recent calendar quarter.

II. Discussion

Since the Quote Rule was adopted in 1978,[15] transaction volume on the Nasdaq Stock Market ("Nasdaq") has grown substantially. In 1985 there were 20.7 billion shares traded on Nasdaq[16] compared with the more than 100

[3] *See* Securities Exchange Act Release No. 37619 (August 29, 1996) ("Adopting Release").

[4] The Commission proposed the new rule and the amendments to the Quote Rule for public comment in October 1995. *See* Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995) ("Proposing Release"). The Commission subsequently extended the comment period. *See also* Securities Exchange Act Release No. 36716 (January 16, 1996), 61 FR 1545 (January 22, 1996).

[5] *See* Adopting Release, *supra* note 3.

[6] The comment letters and a summary of comments have been placed in Public File No. S7–30–95, which is available for inspection in the Commission's Public Reference Room. Commenters included 77 individual investors, 10 industry associations, 7 self-regulatory organizations, 8 academics, 41 market participants, and the United States Department of Justice.

[7] Pub. L. No. 94–29, 89 Stat. 97 (1975).

[8] As used in this release, the term OTC market maker includes any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size. *See* section 240.11Ac1–1(a)(12).

[9] 15 U.S.C. 78k–*1*.

[10] Section 15A of the Exchange Act defines the requirements to become a national securities association registered with the Commission. The National Association of Securities Dealers ("NASD") is the only association of brokers and dealers that is registered as a national securities association. 15 U.S.C. 78*o*-3.

[11] Paragraph (a)(25) of the Quote Rule, as amended, defines "subject security" to include exchange-listed securities for which an OTC market maker or exchange specialist trades more than 1% of the aggregate trading volume, as well as any other security for which an OTC market maker or specialist has in effect an election to provide quotes.

[12] This is referred to as the "mandatory participation" requirement of the Quote Rule. *See* § 240.11Ac1–1(c)(1).

[13] This is referred to as the "firmness" requirement of the Quote Rule. *See* § 240.11Ac1–1(c)(2).

[14] NASD rules already require OTC market makers in Nasdaq securities, once they elect to disseminate quotations, to register and maintain continuous two-sided quotations. *See* NASD Rule 4613. The Commission believes the proposed amendments are consistent with the existing NASD requirements.

[15] *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978).

[16] *See The Nasdaq Stock Market 1986 Fact Book* at 4.

billion shares traded in 1995.[17] Today Nasdaq is home to many companies that meet the listing requirements of the primary exchanges, whereas in 1978 securities listed on exchanges and those quoted on Nasdaq had more disparate trading characteristics and the Quote Rule reflected those disparities. The Commission questions whether disparate treatment of market makers in OTC and listed securities within the Quote Rule is still warranted in light of the considerable growth in the Nasdaq market in the last decade.

The Commission adopted today an amendment to the Quote Rule that broadens the definition of subject security to include any exchange-listed security for which an OTC market maker or exchange specialist accounts for more than 1% of the aggregate transaction volume for the most recent calendar quarter.[18] An effect of this amendment is to require OTC market makers and exchange specialists to provide continuous two-sided quotations for any exchange-listed security when they are responsible for more than 1% of the aggregate transaction volume in that security. Prior to this amendment, mandatory quotations were only required from OTC market makers and exchange specialists who transacted more than 1% of the volume in a Rule 19c–3 security.[19] The Commission adopted the amendment to the definition to improve transparency and provide investors with information about significant market participants.

Some commenters, in response to the Proposing Release, suggested the Commission further improve transparency by extending the quotation requirements of the Quote Rule to Nasdaq securities.[20] The Commission, consistent with the objectives of the 1978 Amendments and the amendments adopted today, is proposing to amend the definition of "subject security" further to include any covered security[21] for which the volume executed during the most recent calendar quarter by an exchange specialist or an OTC market maker in the security constitutes more than 1% of the aggregate trading volume for such security.[22] The effect of this proposed amendment would be to require any OTC market maker or exchange specialist in a covered security responsible for more than 1% of the transaction volume in that security to disseminate continuous two-sided quotations publicly.

Presently, the Quote Rule permits, but does not require, an OTC market maker or exchange specialist trading Nasdaq securities to quote a two-sided market.[23] Consequently, there could be OTC market makers and exchange specialists whose trading constitutes more than a *de minimis* percentage of the volume in a particular Nasdaq security that do not provide continuous two-sided quotations. The Commission believes this potentially reduces transparency, thereby depriving the public of meaningful information about the buying and selling interest of significant market participants. The proposed amendment is intended to enhance transparency by mandating continuous two-sided quotations from OTC market makers and exchange specialists that account for more than 1% of the transaction volume for a Nasdaq security. The proposed amendment also would eliminate artificial regulatory distinctions between Nasdaq securities and exchange-listed securities.

III. Request for Comment

The Commission invites comment on the issues raised in this release, specifically, expanding the definition of subject security to include a 1% volume threshold for Nasdaq securities. The Commission requests comments on the practical implications of the amendment, including the anticipated costs and benefits associated therewith.

The Commission requests comments generally on whether, upon implementation of other initiatives adopted today, OTC markets, exchange specialists, and investors would benefit from the new proposal. The Commission also requests comment concerning whether sufficient similarities exist among trading of Nasdaq securities and exchange-listed securities to warrant extension of the 1% rule to Nasdaq securities when previously applicable only to exchange-listed securities. In addition, the Commission requests comment on whether the 1% threshold is an appropriate threshold with respect to Nasdaq securities.

The Commission also is interested in alternatives to this proposal that would better meet the aforementioned objectives.

Finally, the Commission requests comment on whether the proposed amendment, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on the proposal will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed amendments to Rule 11Ac1–1 and Rule 11Ac1–4. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small entities" adopted by the Commission for purposes of the Regulatory Flexibility Act. In the IRFA, the Commission states that the amendment to the Quote Rule is proposed to ensure that exchange specialists and OTC market makers in covered securities adhere to the firm quote reporting obligations. The IRFA notes that the proposed Quote Rule

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[17] *See The Nasdaq Stock Market 1996 Fact Book* at 35. In addition, with unlisted trading privileges extending to Nasdaq securities, pursuant to temporary Commission approval of a joint industry plan, exchange specialists may ultimately transact significant volume in these securities. *See* Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996).

[18] *See* § 240.11Ac1–1(a)(25).

[19] *See* § 240.19c-3. Exchange Act Rule 19c-3 prohibits the application of off-board trading restrictions to securities that: (1) Were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19–3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-Rule 19c–3 securities.

[20] *See* Letter from Andrew E. Feldman, Director and Associate General Counsel, Smith Barney, to Jonathan G. Katz, Secretary, SEC, dated January 29, 1996 ("Smith Barney Letter") and Letter from Joseph R. Hardiman, President, The National Association of Securities Dealers, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 ("NASD Letter").

[21] The term "covered security" is defined in the Quote Rule to mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in section 3 (a)(51)(A)(ii) of the Exchange Act (15 U.S.C. 78c(a)(51)(A)(ii). The term "reported security" is defined in the Quote Rule to mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective reporting plan. *See* Paragraphs (a)(6) and (a)(20) of Rule 11Ac1–1.

[22] The Commission first proposed amending the Quote Rule to require OTC market makers responsible for more than 1% of the aggregate trading volume in NMS securities to disseminate continuous two-sided quotations over ten years ago. *See* Securities Exchange Act Release No. 17583 (February 27, 1981), 46 FR 15713 (March 9, 1981). The Commission did not adopt the proposal because, at that time, it believed that there were sufficient economic incentives to mandate meaningful quotation dissemination from OTC market makers. Moreover, the Commission believed that meaningless quotations would only burden already taxed vendor quotation systems. *See* Securities Exchange Act Release No. 18482 (February 11, 1982), 47 FR 7399 (February 19, 1982).

[23] *See* § 240.11Ac1–1(b)(5)(ii).

amendment would require OTC market makers and exchange specialists to communicate quotes if they trade more than 1% of a security included on the Nasdaq Stock Market, thus improving transparency in Nasdaq securities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Gail Marshall, Division of Market Regulation, SEC, 450 Fifth Street, NW., Washington, DC 20549.

V. Paperwork Reduction Act

Certain provisions of Rule 11Ac1–1, as amended (the "Quote Rule"), contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 and 1320.12. The title for the collection of information is: "Rule 11Ac1–1." Providing information in response to the collections of information, as discussed below, is mandatory, and such responses are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

In September 1995, the Commission proposed amendments to the Quote Rule as part of its proposal to improve the handling and execution of customer orders.[24] The preamble of that release included a PRA section describing, in part, how the proposed amendments would affect the number of respondents and the collections of information already contained in the Quote Rule. Those proposed amendments, as modified in part in response to comments received, have been adopted and are published elsewhere in the **Federal Register** today.[25] This release provides new estimates of the overall burden in responding to collections of information under the Quote Rule as a whole, both as amended and in light of the additional amendment proposed today.[26]

The Quote Rule contains two related collections of information necessary to disseminate to the public market makers' published quotations to buy and sell securities. The first collection of information is found in 17 CFR 240.11Ac1–1(c). This reporting requirement obligates each "responsible broker or dealer," as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in 17 CFR 240.11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[27] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

For the reporting obligation under Rule 11Ac1–1(c), the likely respondents are OTC market makers and exchange specialists. The Commission estimates that there are approximately 180 exchange specialists and 570 OTC market maker respondents to this collection of information. Each exchange specialist will respond (*i.e.*, report or update bids, offers, and quotation sizes) on average approximately 806,000 times per year (including customer limit orders reflected in the quotes), while each OTC market maker will respond on average approximately 124,000 times per year. These figures are based on a 252 trading day year. The total annual time burden for each exchange specialist is estimated to be 672 hours, while the total annual time burden for each OTC market maker is estimated to be 103 hours. These figures are based on an estimate of three seconds per response (*i.e.*, the time it takes to update a quote). The annual aggregate burden for all respondents combined is estimated to be 120,960 hours for exchange specialists, and 58,710 hours for OTC market makers.[28]

The Commission notes that the rules of the various exchanges and the NASD generally already require exchange specialists and market makers to publish quotations in those securities for which they act as market makers and publish two-sided quotations.[29]

The new amendment to the Quote Rule proposed by this release, specifically the change to the definition of "subject security" under paragraph (a)(25) of Rule 11Ac1–1, would require an exchange specialist or OTC market maker to fulfill the reporting obligation under paragraph (c) if such specialist's exchange or market maker accounts for more than one percent of the aggregate trading volume for any covered security during the most recent calendar quarter. This amendment of the collection of information requirement is necessary to expand the coverage of existing broker-dealer quotation requirements to include all substantial market participants in securities on the Nasdaq Stock Market and to improve the public information about the prices at which market makers are willing to buy and sell covered securities. The Commission estimates that this change will affect approximately 10 OTC market makers. These OTC market makers are included in the above estimates of the number of respondents and burden hours. The Commission also notes that most, if not all, of these respondents already are required under NASD rules to report their bids, offers, and quotation sizes for dissemination to the public.

For the reporting obligation under Rule 11Ac1–1 (b), the likely respondents are the eight stock exchanges and the NASD.[30] The Commission estimates that each exchange or association on average will respond (*i.e.*, disseminate and update

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[24] 60 FR at 52809.

[25] *See supra* note 3.

[26] When originally promulgated, the collections of information contained in the Quote Rule were not required to be submitted for OMB review under the version of PRA that was in effect before October 1995. *See* 5 CFR 1320.12(b).

[27] A third reporting requirement under the Quote Rule, as amended at 17 CFR 240.11Ac1–1(c)(5), will give ECNs the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the PRA.

[28] The Commission also estimates that each OTC market maker on average will display in its own quotation, or transmit to another market participant for display, approximately 42,000 limit orders per year. This translates into an additional annual time burden per OTC market maker respondent of 35 hours and an additional aggregate time burden for all OTC market maker respondents of 19,950 hours. The Commission has included these figures in its PRA burden estimate for the collection of information udner the Display Rule, 17 CFR 240.11Ac1–4.

[29] In comments submitted in response to the Commission's September 1995 release proposing amendments to the Quote Rule, the NASD stated its view that the Commission's burden estimates were too low. The revised burden estimates provided above are the Commission's current burden estimates for the Quote Rule as a whole. The NASD also commented that it believes the PRA burden estimate should include the time market makers spend analyzing market trends and following quotation and last sale information. The Commission has determined not to include such activities in its estimate because market makers engage in them for reasons apart from the collection of information requirement. For example, market makers already are required to monitor the markets to ensure that they do not trade ahead of customer limit orders.

[30] Technically, under the PRA the Commission is not required to submit a collection of information to OMB for review unless it applies to ten or more persons. Because the collection of information under Rule 11Ac1–1(b) applies to the entire securities market industry, the Commission has determined to solicit comments on the requirement from the public and to include the collection of information in its submission to OMB.

bids, offers, and quotation sizes to quotation vendors) approximately 24,226,000 times per year (including customer limit orders reflected in the quotes). These figures are based on a 252 trading day year. Because the reporting and dissemination of quotation information is computerized, automatic, and continuous, and because the systems that accomplish the reporting obligation function have long been in place, the Commission believes that it is not feasible or realistic to provide a burden estimate in terms of either person hours or costs for this collection of information.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to—

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments directly to the Commission. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Statutory Basis

The amendments to Rule 11Ac1–1 are being proposed pursuant to 15 U.S.C. 78 *et seq.*, particularly sections 11A, 6, 10(b), 11(a)(2), 11(b), 15A, 15(c) and 23(a)(1); 15 U.S.C. 78k–1, 78f, 78j(b), 78k(a)(2), 78k(b), 78o–3, 78o(c), and 78w(a)(1) (1988).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Reporting and recordkeeping requirements, Securities.

Texts of the Proposed Rule Amendments

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITY EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Amending § 240.11Ac1–1 by revising paragraph (a)(25) to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* * * *

(25) The term *subject security* shall mean:

(i) With respect to an exchange:

(A) Any covered security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system or by a national security association; and

(B) Any other covered security for which such exchange has in effect an election, pursuant to paragraph (b)(5)(i) of this section, to collect, process, and make available to quotation vendors, bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of an association:

(A) Any other covered security for which such member acts in the capacity of an OTC market maker unless the executive volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system or by a national securities association; and

(B) Any other covered security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to paragraph (b)(5)(ii) of this section, to communicate to its association bids, offers and quotation sizes for the purpose of making such bids, offers and quotation sizes available to quotation vendors.

* * * * *

By the Commission.

Dated: August 29, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22624 Filed 9–11–96; 8:45 am]

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Thursday
September 12, 1996

Part IV

Department of the Treasury

17 CFR Parts 400 and 420
Government Securities Act Regulations: Large Position Rules; Final Rule

DEPARTMENT OF THE TREASURY

17 CFR Parts 400 and 420

RIN 1505–AA53

Office of the Assistant Secretary for Financial Markets; Government Securities Act Regulations: Large Position Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") is publishing final rules that establish a new Part 420 providing recordkeeping and reporting requirements pertaining to very large positions in certain Treasury securities. The regulations are promulgated pursuant to the Government Securities Act Amendments of 1993, which authorized the Secretary of the Treasury to prescribe rules requiring persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and file reports of such large positions. The proposed rules were published to solicit public comment on December 18, 1995.

The recordkeeping rules require any person or entity that controls a position equal to or greater than $2 billion in a specific Treasury security to maintain and preserve certain records that enable the entity to compile, aggregate and report large position information. If the Treasury requests large position information, the reporting rules require entities to file a large position report with the Federal Reserve Bank of New York if their reportable position equals or exceeds the large position threshold in a particular Treasury security as specified by the Treasury in the notice requesting the large position information. The Department's large position rules are intended to provide the Treasury and other securities regulators with information on concentrations of control that will enable them to understand better the possible reasons for apparent significant price distortions and the causes of market shortages in certain Treasury securities. Requests by the Treasury for this information are expected to be very infrequent.

DATES: The effective date is October 15, 1996. Further dates: See §§ 420.4(a) and 420.5.

FOR FURTHER INFORMATION CONTACT: Ken Papaj, Director, or Kerry Lanham, Government Securities Specialist, Bureau of the Public Debt, Department of the Treasury, at 202–219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The Government Securities Act Amendments of 1993 (GSAA)[1] included a provision granting the Department the authority to write rules for large position recordkeeping and reporting in certain Treasury securities. Specifically, Section 104 of the GSAA, which amended Section 15C of the Securities Exchange Act of 1934,[2] authorizes the Treasury to adopt rules requiring specified persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to maintain records and file reports regarding such positions.[3] The provision was in response to certain market events in 1990–91 and is designed to improve the information available to the Treasury and other regulators regarding very large positions of recently-issued Treasury securities held by market participants and to ensure that regulators have the tools necessary to understand unusual conditions in the Treasury securities market.

The GSAA gives the Department wide latitude and discretion in determining several key features and conditions that would form the underpinnings of the large position recordkeeping and reporting rules. Among the most significant of these features are: defining which persons (individually or as a group) hold, maintain or control large positions; determining the minimum size of positions to be reported; determining what constitutes "control" for the purposes of the rules; prescribing the manner in which positions and accounts are to be aggregated; identifying the types of positions to be reported; determining the securities that would be subject to the rules; and developing the form, manner and timing of reporting. Both the proposed and final rules address these points.

B. Participation in Rulemaking Process/ Solicitation of Comments

Throughout the process of developing large position rules, the Department has sought the views of the market participants who would be directly affected by such regulations. We believed that market participant involvement in the rulemaking initiative from its outset would facilitate greater understanding of, and support for, the final rules when implemented. Due to the potential complexity of the rules and the myriad of ways to approach them, we sought advice and initial comment on a variety of conceptual approaches to designing a large position recordkeeping and reporting system.

Accordingly, the Department issued an Advance Notice of Proposed Rulemaking (ANPR) on January 24, 1995.[4] The ANPR addressed several key issues, concepts and approaches to be considered in developing large position recordkeeping and reporting rules and solicited comments, suggestions and recommendations regarding how the requirements should be structured. The ANPR also contained a detailed historical background that provides a fuller understanding of the events and circumstances that resulted in the establishment of this regulatory authority, the purposes and objectives to be achieved from large position rules, and the Congressional intent behind this legislation. The comment period on the ANPR ran through May 24, 1995.[5] In response to the ANPR, the Department received seven comment letters which were summarized in the preamble to the proposed rules.[6] Rather than repeating that information here, readers are referred to the proposed rules for a discussion of the comments.

C. The Proposed Rules

The Department published for comment proposed large position recordkeeping and reporting rules on December 18, 1995.[7] The proposed rules were designed to strike a balance between achieving the purposes and objectives of the statute and minimizing costs and burdens to those entities affected by the regulations. The proposed rules required reports to be submitted only in response to a specific request by the Treasury for large position information on a particular Treasury security issue. Using this approach, reporting would be an infrequent event required primarily in response to pricing anomalies in a specific Treasury security rather than a regular, on-going process resulting from a certain pre-determined large position threshold being exceeded in a broader range of securities.

The proposed rules provided a minimum large position threshold of $2 billion, below which the Treasury would not request large position reports.

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[1] Pub. L. 103–202, 107 Stat. 2344 (1993).
[2] 15 U.S.C. 78o–5.
[3] Pub. L. 103–202, Sec. 104; 107 Stat. 2344, 2346–2348; 15 U.S.C. 78o–5(f).
[4] 60 FR 4576 (January 24, 1995).
[5] 60 FR 20065 (April 24, 1995).
[6] 60 FR 65214 (December 18, 1995).
[7] Ibid.

As a result, very few entities would be required to file large position reports. The proposed recordkeeping requirements would generally not apply to any reporting entity (as defined in the rules) that did not control a position that equalled or exceeded $2 billion in a Treasury security. For those entities currently subject to recordkeeping rules of the Securities and Exchange Commission (SEC), the Treasury or the bank regulatory agencies, the proposed rules would have imposed only minor additional recordkeeping requirements and only if certain conditions were present. Finally, the proposed rules incorporated several concepts from the Treasury's auction rules (e.g., positions to be included in a reportable large position, definition of a reporting entity and method of aggregating positions) which have been in effect since March 1993 and are understood by many of the major participants in the Treasury securities market.[8]

In addition to considering the views expressed by the commenters to the two rulemaking proposals, Department staff has also consulted with various regulatory agencies (i.e., staff of the SEC, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York (FRBNY)) in developing the ANPR, the proposed rules and these final rules.

D. Scope of Large Position Rules

It is important for all market participants to recognize that large position rules create a requirement to maintain records and report information about such positions. However, these requirements apply only to entities that hold or control (i.e., exercise investment discretion over) very large positions, as determined by the Department, in specific Treasury security issues. Accordingly, there is no obligation on executing brokers and dealers to report large trades nor is there an affirmative duty to inform their customers of the large position recordkeeping and reporting requirements prescribed by this rulemaking.

The Department emphasizes that large positions are not inherently harmful and there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because a position is large enough to be subject to these rules. In addition, the rules do not establish trading or position limits or require the identification of large traders or the reporting of large trades. Finally, the GSAA specifically provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempt from disclosure under the Freedom of Information Act (FOIA).[9]

II. Comments Received in Response to Proposed Rules

As discussed in the ANPR[10] and the proposed rules,[11] the Department made the decision, early on, to obtain the views of the market participants who would be directly affected by such regulations. In the proposed rules, which addressed and incorporated those comments received in response to the ANPR, the Department strongly encouraged market participants to submit comments, including any suggestions for reducing burdens on the industry while still achieving the objective of the rules.

In response to the proposed rules, the Department received thirteen comment letters. The letters were submitted by four trade associations, three primary government securities dealers, four bank holding companies (including two primary dealers), and one mutual fund manager.[12] The Department has carefully considered the comments that were received, which generally supported the approach and process adopted in the proposed rules. Each comment letter did not necessarily address all aspects of the proposed rules.

The comments have been summarized and organized into the following eight basic categories: Control and the Definition of a Reporting Entity; Reporting Threshold; Time Frame for Submitting Reports; Reportable Position Components; Report and Recordkeeping Certifications; Recordkeeping; Announcement of a Request for Reports; and General Commentary.

A. Control and the Definition of a Reporting Entity

Eight comment letters specifically addressed this issue. While the comments were generally in agreement with the definition of control as proposed, the concept of control premised on an entity's investment discretion, and defining a reporting entity or a separate reporting entity under a requested "carve out" in conformity with the single bidder process in the uniform offering circular, four letters had specific recommendations.

One commenter expressed concern about the timing and aggregation requirements given the definitions of "control" and "entity" and believed that it would be difficult to aggregate all of its holdings within the proposed reporting time frame. This commenter recommended that the definition of "reporting entity" be limited to a legal entity that exercises independent investment discretion, believing that if a narrower definition were adopted then their concerns would be eliminated. The second commenter, while agreeing with the concept of control premised on investment discretion, suggested that a participant be allowed to exclude from its reportable position those securities for which the entity has investment discretion but which do not exceed a minimum threshold. This approach, which would be similar to the net long position reporting requirement in the uniform offering circular, permits bidders to exclude amounts in non-bidding controlled accounts under a certain threshold from their reporting requirement. This commenter asserted that this exclusion would significantly alleviate the burden in tracking amounts of the security subject to investment discretion.

The third letter, in specifically commenting on the application for separate reporting status, similar to the separate bidder application incorporated in the uniform offering circular, recommended that Appendix A of the rules be changed to encompass organizational components previously recognized under the uniform offering circular's definition. The fourth commenter expressed concern with the various distinctions being drawn among reporting entities, aggregating entities and separate reporting entities, stating that this will cause a myriad of problems for complex and changing financial services businesses. The commenter proposed that a narrower reporting population be defined, such as those business units which are the primary bidders for, and proprietary traders in, U.S. government securities. Within these groups, the commenter suggested excluding those securities that are not held for proprietary trading. This commenter further suggested an alternative approach which would not require the aggregation of positions, where the different business units within a firm are clearly independent,

[8] Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; 31 CFR Chapter II, Subchapter B, Part 356.

[9] 5 U.S.C. 552(b)(3)(B).

[10] See *supra* note 4.

[11] See *supra* note 6.

[12] Public Securities Association (two letters); Investment Company Institute; British Bankers' Association; London Investment Banking Association; Goldman, Sachs & Co.; J.P. Morgan Securities, Inc.; HSBC Securities, Inc.; Bank of America; Chemical Banking Corporation; Norwest Corporation; BANC ONE Corporation; and Fidelity Management & Research Co., respectively.

while excluding all business units where securities are held as long-term investments.

B. Reporting Threshold

Seven letters directly addressed the proposed $2 billion minimum large position threshold. Two of the seven commenters believed this threshold to be an appropriate level, with one of these commenters suggesting that the rules specifically provide that the threshold be raised from time to time based on market developments. Three other commenters stated that by including gross financing positions in the total reportable position, all primary dealers and large market participants would trigger the $2 billion threshold and effectively be required to report their positions in all instances, due to their matched repo book and other financing activity, thereby resulting in numerous reports. Given these large matched book positions, one of the three commenters advocated that this threshold be increased to $5 billion, while another suggested that the reportable position be based on the participant's net financing position. The third commenter, while also advocating a significant increase in the threshold, went further by recommending two other alternative approaches. In the first approach, the $2 billion threshold would be triggered by the aggregate of the net trading position and the net fails position, excluding the gross financing position. The second alternative approach would provide participants with the option of netting the gross par amounts of securities received in financing transactions against the gross par amount of securities delivered with the same term to the same counterparty. In both approaches, the commenter stated that this would only be to determine if a firm had crossed the threshold. Once it was determined that the firm was subject to reporting, then its gross financing positions would be reported to provide for a full range of large position information.

The sixth letter, focusing on those large firms that operate in foreign markets, represented that even if the normal activity of a participant was below the threshold, if the participant was a part of a group of affiliates, it may be subject to the reporting rules. The commenter went on to state that foreign affiliates, however minimal their activity, would need to report information to the designated filing entity unless they qualified for, and received, separate reporting status. This commenter, and a seventh commenter which supported increasing the minimum threshold, suggested that the process could be simplified by setting a minimum threshold for each aggregating entity below which the entity's position would not need to be included in the reporting entity's report.

C. Time Frame for Submitting Reports

Only one of the thirteen comment letters did not specifically address the subject of the proposed reporting time frame in which reports must be submitted once an announcement for large position information on a particular security is made by the Treasury. All twelve letters basically stated that the proposed one and one-half business day time frame was too short given the enormity of the data that would need to be gathered, reviewed and aggregated. These letters suggested that a longer period would seem more appropriate based on the effort required to compile the information, the fact that current requirements do not require holdings to be aggregated at a reporting level, and the time needed for participants with large international presences to gather the data from worldwide affiliates, especially given the different time zones. One commenter recommended extending this turnaround time to at least three business days. Others suggested four or five business days while several commenters recommended that a minimum of ten business days would be appropriate. Commenters noted that a turnaround time frame of ten business days is the same as that for large position rules in place for the equities securities market (i.e., 13d filings) and is the same as that for the SEC's proposed large trader reporting rules.

One of the commenters, while not recommending a specific time frame, suggested that even a ten business day turnaround would be insufficient. This letter proposed several alternatives to balance the need to collect information quickly and the burdens on the reporting entity. The commenter suggested that an initial or "first cut" report of summary positions be prepared which would contain less precise information. Possible alternatives would be to subsequently provide a breakdown of the various components upon request; or, accept an initial report with only trading, reverse repo, and securities borrowed positions, with additional information to follow in a longer time frame; or, permit U.S.-based entities to report first, with information regarding foreign holdings to follow upon request; or, permit filing of partial reports to address situations where an aggregating entity does not have its reportable position ready in time.

Another commenter, while recommending a time frame of not less than ten business days if the reportable position includes all securities received in pledge and in other collateralized transactions, also advocated the implementation of a phased reporting system where participants would provide certain information in less than ten business days, with the balance of the required information to be provided by the tenth business day. This commenter went on to state that many participants would be able to report their net trading positions for all aggregating entities within five to seven business days. One commenter requested that the final rule specifically provide that the reporting entities could amend a filing if the original reported information was inaccurate.

D. Reportable Position Components

Eleven of the thirteen comment letters addressed the subject of the composition of a reportable position. Certain commenters generally supported including in the total reportable position the selected components as proposed, such as net forward and net fails positions. However, the majority of commenters objected to how certain aspects of the net trading and gross financing positions were to be included or whether they should even be included in the total reportable position. For example, two commenters specifically objected to a separate reporting of the net trading position components since, as stated by one of these commenters, separate reporting serves no useful purpose because all these positions represent control. Both commenters stated that the positions should be reported as of trade date, not settlement date. These same commenters stated that those securities received under overnight repos should be excluded from the reporting and recordkeeping obligations since investment advisers do not exercise effective control over them, they are not rehypothecated, and a significant portion of these transactions are tri-party repos where the counterparties typically have the right of substitution.

The inclusion of securities received in pledge as collateral for margin loans, swap transactions, and other collateralized credit extended in the gross financing position generated the most comments from those that addressed the reportable position's components. Nine comment letters responded similarly that these pledged securities should be excluded from being reported in the gross financing position. The commenters stressed there are minimal policy benefits to be

derived by including them and that this information would be of marginal utility. The inclusion of these securities is based on the premise that the pledgee maintains control. However, the commenters stated that firms do not control those securities received in pledge since the pledgor often has the right to substitute them in accordance with the market practice of pledging general collateral rather than specific securities identified by particular CUSIPs (i.e., a unique identifying number assigned to each separate security issue and separate STRIPS component). The letters also stressed that most firms or market participants do not have a systematic method for aggregating these positions firm-wide and do not possess the operational capacity or systems to track those securities pledged by CUSIP. It was argued that it would be prohibitively expensive to design and implement systems and procedures to track these pledged securities by CUSIP. Two letters, in particular, stressed that if these securities received in pledge and securities in other collateralized transactions were to be included in the final rules then market participants should continue to be provided the option to exclude the securities collateral over which the pledgor retains the right to substitute or which is subject to third party custodial relationships. Further, the amount of such exclusions should not be required to be reported separately in a memorandum entry in the report. One letter stated that the rules should allow for the netting of repos and reverse repos when the counterparty is a primary government securities dealer.

Two commenters requested further clarification on different position components. One of the letters stated that while fails should be included in a reportable position, the rules should clarify that fails are not included in the calculation for the cash/immediate net settled position. The second letter requested clarification on the treatment of forward start repos and reverse repos, believing that they should be included in the gross financing position. This commenter also requested clarification that fails to receive or fails to deliver would not be included in the cash/immediate net settled position since this would avoid double counting in the reports. This letter suggested that fails be treated similarly to forwards and that fails should be able to be netted with other components as either a positive or negative number. This commenter suggested amending the proposed rules to permit net fails to be less than zero.

E. Report and Recordkeeping Certifications

Six letters specifically commented on the proposed report and recordkeeping certifications and essentially objected to, or would find problematic, the requirement that only certain senior executives would be permitted to sign the report and certify the adequacy of the reporting entity's recordkeeping system. It was recommended that the rules be broadened to provide that others, such as the chief legal or compliance officers, or individuals authorized by the designated filing entity, be able to sign the reports and recordkeeping certifications. This approach would be consistent with the requirement under Section 13 of the Securities Exchange Act of 1934.

Three letters, in particular, expressed concern about the obligations and responsibilities with respect to the certifications that must be given by the designated filing entity on behalf of the reporting entity and its aggregating entities. It was recommended that the certifications in the final rules specifically permit the designated filing entity to rely on certifications or other reasonable bases of evidence of the accuracy of the information as provided by the aggregating entities.

F. Recordkeeping

Five letters directly addressed the proposed recordkeeping requirements. Two of these letters objected to applying the rules to those entities that had a large position at any time during the two-year period ending ninety days after publication of the final rules since the reviews of records to determine whether a large position was held would be an extensive, time consuming, and very costly process and would amount to a retroactive application of a new requirement. It was recommended that if this requirement were retained, entities be given the option of certifying or notifying the FRBNY that the holding of a large position is based on the entity's general knowledge of past investment and trading activities, without actually reviewing their records to document this fact. Another two letters specifically commented on the imposition of a significant recordkeeping burden on unregulated aggregating entities. Both letters stressed the view that this additional compliance burden, with these unregulated firms having to design and implement recordkeeping systems, may cause certain entities to either re-evaluate or curtail their participation in the Treasury market. One letter suggested that these unregulated entities be excluded from these requirements.

G. Announcement of a Request for Reports

Five letters addressed the issue that the Treasury would annually test the reporting of large positions by requesting reports. Four letters recommended that when this request for large position information is made, the Treasury should notify market participants that it is a test. This is because some participants will assume that all such requests are real and their reactions may create price anomalies where none existed. One letter, in particular, stressed that advising market participants that the request is a test would not cause firms to be less diligent in complying with the rules and that firms would in every case have a legal obligation to submit the required information in a timely and accurate manner.

One letter recommended that the start of the response period, in which the reports would be required to be submitted, should be triggered by publication of the announcement in the **Federal Register**, which would provide more certainty than a press release, that the notice was received. Another letter, from a trade association, suggested that while they support the issuance of a press release and publication in the **Federal Register**, they would also like to be immediately notified when the release is provided to third party wire services so that they can redistribute the notice to their members.

H. General Commentary

Nine of the thirteen comment letters expressed general support for the proposed rules and the desired effect to prevent and detect market manipulation. Specifically, the letters supported the approach taken in providing for a $2 billion reporting threshold, an on-demand reporting system where reports are required to be submitted in response to infrequent requests, and relying on records that are already required to be maintained. Three of the nine letters stated that certain features of the proposed rules would be overly burdensome and pose compliance problems.

One commenter agreed that the proposed rules strike the appropriate balance between achieving the purposes of the statute and minimizing the costs to the affected entities. Another commenter, while generally supportive, strongly objected to the Treasury reserving the right to collect information on securities issues that are older than those specified, since accommodating

historical information requests would impose significant cost burdens and business disruptions. A third commenter suggested that the FRBNY adopt an appendix to the final rules that would identify acceptable submission methods. A fourth commenter reiterated the view it expressed in response to the ANPR that the particular features of the Treasury bill market make it difficult to accumulate a concentration in these issues. A fifth commenter stated that the final rules should explicitly include a provision providing that any information required to be kept or reported will be exempt from FOIA and provided confidential treatment given its concern that the Treasury, in following up on a report, would seek the names of its advisory clients. This same commenter also stated that it does not believe that the GSAA provides the Treasury with the authority to request information on securities issues older than those defined as recently-issued and, therefore, this provision should be eliminated.

Three commenters opposed the application of the large position rules to foreign firms. One letter expressed the commenter's belief that there are complications for those firms operating in foreign markets and that the proposed rules raise concerns about the potential effect on the liquidity of the government securities market. This commenter stated that the recordkeeping requirements and open-ended obligation to file large position reports could make Treasury securities less attractive to foreign participants, many of whom structure their business so as not to bring themselves under direct U.S. regulation. This letter further urged that the issuance of the final rules be delayed until the Treasury is absolutely certain that these rules meet the stated goal. Another commenter, in addition to expressing concerns with compliance costs (particularly for major European financial conglomerates), raised the issue of the extension of extra-territorial regulation by U.S. authorities. It was this commenter's belief that the extra-territorial application of the rules would be unwarranted in principle and unworkable in practice and would "aggravate problems over the trade in services." The commenter suggested that an alternative approach would be to rely more on memoranda of understanding (MOUs) with European supervisors and less on regulations. This letter further questioned the enforcement capacity with which U.S. authorities would have to enforce the regulations outside national jurisdiction, in the context of large foreign conglomerates. To this extent, the commenter recommended a narrower definition of the reporting population.

A third commenter stated that the extra-territorial scope of the large position rules should be modified, particularly with respect to firms domiciled in countries where foreign regulators have MOUs with U.S. authorities. This commenter stated that the Treasury should explore the possibility of obtaining large position information from the foreign regulatory authorities rather than directly from the firms. It was represented that this process would "build on * * * the increasing and important trend of enhancing cooperation between regulators in the securities markets * * *." This commenter further stated that large position reporting may not be needed at all for firms based in foreign jurisdictions which have rules in place to prohibit market manipulation.

III. Section-by-Section Analysis of Changes in Response to Comments

A. Section 420.1—Applicability

In preparing the applicability section of the final rules, one change was made from the proposed rules. The change provides a total exemption from the large position rules to foreign central banks, foreign governments and international monetary authorities (e.g., World Bank) (collectively, foreign official organizations). The proposed rules had provided these entities a partial exemption from the rules limited to the portion of their positions maintained at the FRBNY. In response to the ANPR, the Treasury had received comments (from the FRBNY and the Investment Company Institute) on the regulatory treatment of these organizations and public comment was specifically requested on the approach taken in the proposed rules. No further comments were received.

The Department has determined to grant the foreign official organizations a total exemption after careful consideration of the costs and benefits resulting from subjecting them to large position rules. The Treasury believes that attempting to regulate these entities would create significant potential legal and practical problems. Additionally, for the infrequent occasion when foreign official organizations may control a large position in a Treasury security, this information is likely to be available from other sources. Accordingly, the Treasury perceives very little benefit to be obtained from regulating the foreign official organizations in relation to the costs that would be incurred. It is for this reason that they are being granted a full exemption.

The exemption provided to foreign official organizations does have one limitation. To the extent that such an organization has an ownership interest in an entity that engages primarily in commercial transactions (e.g., a nationalized commercial bank), the exemption does not extend to that entity. This limitation is designed to provide equivalent treatment to all commercial market participants regardless of their ownership structure.

Three commenters objected to the applicability of the rules to foreign firms (i.e., foreign private financial enterprises). Two argued that the extra-territorial application of the rules by U.S. regulators would be either unwarranted in principle and unworkable in practice or unnecessary for many foreign firms since they are already subject to the rules of their domestic supervisor prohibiting market manipulation. The commenters recommended that, in lieu of an extra-territorial application of the rules, Treasury: (1) Rely more on MOUs with foreign regulators to obtain needed information, and (2) define a narrower reporting population for the rules (e.g., only business units that are primary bidders for, and proprietary traders in, Treasury securities).

Treasury has considered the problems related to the ability of U.S. regulators to obtain large position information from foreign investors. As a result, Treasury expects that U.S. regulators will continue to cooperate with foreign securities regulators through MOUs and other means when and if such actions become necessary. It is impractical to exempt foreign investors from the large position rules since the potential exists for these entities to amass large positions in Treasury securities, and further, the granting of such an exemption could cause U.S.-based entities to move their securities holdings overseas to foreign firms. Accordingly, the Treasury has decided to retain the requirement that foreign private financial enterprises be subject to the large position rules.

The commenters also asserted that compliance costs for foreign firms—especially European financial conglomerates—would be considerable. The Treasury believes that the changes made to the proposed rules, as explained in the remainder of this section of the preamble, together with the fact that the on-demand reporting system does not require aggregation of positions on a daily basis, will facilitate the ability of affected firms, including foreign firms, to comply with the rules

without incurring substantial compliance costs.

B. Section 420.2—Definitions

Comments were received on paragraph 420.1(d) of the proposed rules, which reserves the Treasury's right to collect information on certain Treasury securities which do not meet the regulatory definition of "recently-issued" but reporting on them would be consistent with the purposes of the GSAA. The commenters believed that such a reservation of rights was beyond the scope of the Treasury's authority. The purpose of the provision was to provide notice to market participants that, while the definition of "recently-issued" narrowed the routine coverage of the large position rules to a small universe of securities, the authority provided to the Treasury by the GSAA is broad enough to be applied to a larger group of securities and that, in certain rare circumstances, the Treasury may choose to invoke this broader authority. Treasury continues to hold this view.

After consideration of these comments, and to make clear that "recently-issued" is not limited by statute to the two or three most recent issues of a security, the Department has removed paragraph 420.1(d) but revised the definition of "recently-issued" in paragraph 420.2(g) of the final rules. The revision adds a new subparagraph (5) to the definition of "recently-issued" to include Treasury security issues older than those specified in subparagraphs 420.2(g)(1) and (2) where the large position information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities. As discussed in the preamble to the proposed rule,[13] the Treasury believes that this authority to request large position information on older security issues would only be used in exceptional circumstances. One example is the April and May 1991 two-year Treasury note squeeze situations in which these securities remained of concern to the Treasury beyond the time that would otherwise have been covered by the definition of "recently-issued" in subparagraphs 420.2(g) (1) and (2). It is not the Department's intention to gather information on securities that have been outstanding for an extended period of time.

The definition of gross financing position, paragraph 420.2(c), was the subject of a number of comments principally on two different aspects of the proposed definition; the inclusion of securities collateral and the scope of the optional exclusion. As previously described in Section II.D., many commenters were particularly concerned about the broad scope of the definition of the gross financing position. As proposed, the gross financing position included amounts of a security received from any financing transaction, including collateral for commercial loans or financial derivatives. Commenters represented that compliance with the extensive reach of this position component would be unduly burdensome and for a large, diversified reporting entity could not be calculated within the provided reporting time frame. Some of the commenters stated that in order to calculate the gross financing position they would have to develop automated systems at substantial cost. The commenters did not object to the treatment of security financing transactions such as reverse repurchase agreements and bonds borrowed.

After reviewing the comments, the Department has determined to limit the scope of the gross financing position. Specifically, all commercial lending transactions that include Treasury securities as collateral will be excluded from the gross financing position. These transactions include financings such as lines of credit, general purpose business loans and other securitized loans unrelated to activities in the financial markets. This change should greatly simplify the computation of the gross financing position for entities such as large commercial banks that extend secured commercial credit from a large number of locations and do not maintain a centralized register of the specific collateral for these transactions.

In preparing the final rules, the Treasury carefully considered the commenters' further objections to the inclusion of securities received as collateral for financial derivatives such as swap agreements. The commenters represented that since these activities are generally conducted in unregulated affiliates of regulated entities, there are few standardized systems for tracking the specific collateral obtained and that creating an obligation to determine whether a specific security is held as collateral in a very short time frame, even on an on-demand basis, would require the development of extremely expensive automated systems. The Department weighed these arguments against the potential importance of this information in ascertaining control of a particular security and decided that the benefits of including them were greater than the burdens to market participants. Factors affecting this decision were the growing popularity of collateral structures for financial derivatives, the practical similarities between these structures and reverse repos and bonds borrowed transactions, as well as the fact that large market participants that would be affected by the large position rules already have non-integrated systems for tracking this collateral to conduct daily mark-to-market calculations and to determine the sufficiency of the collateral. Additionally, as is discussed later in the preamble, the Department has also determined to extend the reporting time frame. Accordingly, a Treasury security that has been received as collateral for a financial derivative transaction or other securities transaction (e.g., margin loan) must be included in the gross financing position.

In response to the proposed rules, commenters also noted that the optional exclusion provided in the definition of gross financing position for transactions in which securities were transferred without effective control was restricted to only some financing transactions. The Department is sympathetic to this concern and is revising the definition in paragraph 420.2(c) in the final rules to permit the optional exclusion to be available on the same terms for any collateral transaction in which securities are received. The circumstances in which control is deemed to not exist—the right to substitute securities, a third party custodial relationship or hold-in-custody agreements—remain unchanged from the proposal. Extension of the exclusion to all components of the gross financing position should further mitigate the impact of including financial derivatives collateral in the definition since many of these agreements provide for the right to substitute securities.

As a clarifying point in response to one commenter, the Department notes that forward start reverse repo transactions are to be included in the gross financing position just as forward settling trades are in the net trading position.

While the Department is not revising the definition in paragraph 420.2(d) of large position threshold, it emphasizes that the $2 billion level is only an absolute minimum reporting level. The Treasury wishes to reiterate that, while the $2 billion threshold triggers the recordkeeping requirements pursuant to section 420.4, no reporting burden is created until the Treasury issues a notice for information on a specific security. The Treasury envisions that the level specified in any actual request for large position information would most likely be significantly in excess of $2 billion and would, therefore, affect

[13] 60 FR 65214, 65217 (December 18, 1995).

only a small number of entities. Accordingly, no change is being made to the definition.

Comments were specifically requested on the treatment of fails in the composition of a reportable position. The only negative comments received on this component suggested that the net fails position be permitted to be a negative number. The Department has decided to retain the current restriction that the net fails position should be reported as zero if it is negative. Fails to deliver that exceed fails to receive should not be used to reduce the size of a reportable position because their size is, to a great extent, controllable by the reporting entity. The Department also wishes to clarify that fails are not to be included in the net trading position and, therefore, are not double counted in computing a reportable position.

In paragraph 420.2(f), the definition of net trading position, the Department requested comment on the proposed treatment of forward settling positions. The comments that were received on this issue were supportive of the proposed treatment. Accordingly, no change has been made to the treatment of forward settling positions in the net trading position. As a reminder, all the components of a reportable position are to be computed on a trade date basis.

One commenter requested that the criteria for designation of a separate reporting entity within the definition of a reporting entity, paragraph 420.2(i) and Appendix A, be modified to parallel more closely the criteria for designation as a separate bidder in the uniform offering circular.[14] Specifically, the commenter asked that organizational components within an entity be permitted to establish themselves as separate reporting entities as they are permitted to be separate bidders in the uniform offering circular. To ensure consistency between the uniform offering circular and the large position rules, the Department has made a clarifying change to the term aggregating entity as defined in paragraph 420.2(a) and as used in Appendix A of the large position rules. These revisions clarify that an organizational component (e.g., a bank trust department) falls within the definition of aggregating entity and may be recognized as a separate reporting entity. Appendix A has been further revised to clarify that any entity, including an organizational component thereof, that has already received recognition from the Treasury as a separate bidder in Treasury auctions pursuant to the uniform offering circular is also recognized as a separate reporting entity without requesting such status. However, the separate reporting entity must continue to abide by the conditions set out in the uniform offering circular that are required for recognition as a single bidder, which parallel the conditions set out in Appendix A of the large position rules for recognition as a separate reporting entity.

C. Section 420.3—Reporting

1. On-Demand Reporting System

The on-demand reporting system approach that the Treasury proposed for filing large position reports received overwhelming support from the commenters. In an on-demand reporting system, large position reports are required to be prepared and filed only in response to a notice from the Treasury requesting large position information on a specific issue of a Treasury security by those reporting entities whose positions exceeded the large position reporting threshold specified in the notice.

Nine of the twelve organizations that submitted comment letters addressed the on-demand reporting requirement and all of them supported the proposed reporting method in which large position reports would be submitted only in response to a specific, infrequent request by the Treasury. The commenters agreed with the Treasury's assessment that an on-demand reporting system would be significantly less costly and burdensome than a regular reporting system. An on-demand system would target the reporting to a specific issue of a Treasury security in response to price distortions or market anomalies, while still achieving the legislative and policy goals of strengthening the ability of the regulatory agencies to deter possible manipulation of the Treasury securities market. Thus, the on-demand approach is essential to the Treasury's overall commitment to design rules that strike an appropriate balance between achieving the purposes and objectives of the statute and minimizing costs and burdens to those entities affected by the regulations. Accordingly, the on-demand reporting requirement in paragraph 420.3(a) is being adopted without change from the proposed rules.

2. Notice Requesting Large Position Reports

Another of the provisions of paragraph 420.3(a) identifies the information that will be provided in the notice that will be issued by the Treasury (i.e., press release and subsequent **Federal Register** notice) requesting the preparation and submission of large position reports. Paragraph 420.3(a) is being modified to indicate that the notice will also contain, where applicable, identification of the STRIPS principal component that is related to the specific Treasury security issue for which large position information is being requested. This information is being added because the STRIPS principal component, which must be reported as part of the net trading position, has a different security description and CUSIP number from the related Treasury note or bond that would be the subject of the Treasury's request for information.

The preamble discussion to the proposed rules indicated that the Treasury notice requesting large position information would be provided to major news and financial publications and electronic financial wire services for subsequent dissemination, and published in the **Federal Register**.[15] This procedure was proposed because we believe that the press release requesting large position information would be given wide and timely distribution without undue delay in the same manner as Treasury offering announcements and auction results. However, the Public Securities Association (PSA) has expressed concern about relying on the press for notification of the large position information request and that some entities may not have access to the particular wire service carrying the notice. For these reasons, the PSA has requested that the Treasury provide it with a facsimile copy of the notice so that the PSA can immediately notify its members of the reporting obligation. To facilitate broad and timely dissemination of the notice, Treasury will provide the PSA with a copy of the press release at the time it is issued. The Treasury will similarly make a copy of the notice available to other industry or trade associations at their request.

3. Information Required in Large Position Reports

—Net Trading Position

Paragraph 420.3(c), together with Appendix B, details the specific information that must be provided in the large position information reports. In the proposed rules, paragraph 420.3(c)(1) identified the specific component positions of the total reportable position that must be reported by the reporting entity. For the

[14] 31 CFR 356 Appendix A.

[15] Since the **Federal Register** is the designated federal publication for providing official notice, publishing the Treasury notice in that publication is legally sufficient for "constructive notice" of the request.

net trading position, which is one of three positions that constitute the total reportable position, the proposed rules required each of the following five components to be listed in the large position report: (1) Cash/immediate net settled positions; (2) net when-issued positions for to-be-issued and reopened issues; (3) net forward settling positions, including next day settling positions; (4) net positions in futures contracts that require delivery of the specific security; and (5) net holdings of STRIPS principal components of the security.

Two commenters objected to the requirement that each of the five components of the net trading position be reported separately since the only difference among these items is their settlement date. One of these commenters also stated that the separate reporting of the net holdings of STRIPS principal components of a security does not appear to be necessary. In response to the comments and also to reduce the amount of information that must be included in the large position report, we are revising the final rules to eliminate the separate reporting of the five components that comprise the net trading position. Reporting only the total net trading position, rather than each of the five components, is also consistent with the way the net long position is reported under the Treasury's auction rules.[16] Accordingly, paragraph 420.3(c)(1) has been revised to require a reporting entity to report only its net trading position, gross financing position, net fails position and the total reportable position, which is the sum of the three positions. However, Treasury or FRBNY staff may require, as a follow-up inquiry pursuant to paragraph 420.3(e), a reporting entity to provide the amount of each component that constitutes the net trading position. Reporting entities must make good faith efforts to respond to such inquiries and provide any additional information requested in a timely manner.

—Gross Financing Position

The gross financing position is the second of three positions constituting the total reportable position that must be included in the large position report pursuant to paragraph 420.3(c)(1) of the final rules. As discussed at length in Sections II.D. and III.B. of this preamble, the gross financing position was the subject of extensive comments regarding the inclusion of securities collateral in the position, the scope of the voluntary exclusion that permitted firms to reduce the gross financing position by the amount of securities received over which they did not have effective control, and the requirement to report the amount of the voluntary exclusion as a memorandum entry. Section III.B. discusses how the definition of gross financing position is being modified to narrow the scope of transactions that are covered and how the voluntary exclusion is being expanded to cover all components in the gross financing position. No changes to paragraph 420.3(c)(1) are necessary to address these issues.

However, the Treasury has changed the provision in paragraph 420.3(c)(2) of the proposed rules that would have required the amount of the voluntary exclusion to be reported. Entities that would have taken advantage of the voluntary exclusion would have been required to report the amount of the exclusion in Memorandum #2. The Treasury agrees with the commenters who stated that requiring this memorandum entry would impose additional burdens, thus negating the benefits that would be derived from exercising the voluntary exclusion. As a result, the Treasury is revising paragraph 420.3(c)(2) in the final rules by deleting the requirement to report Memorandum #2—the amount excluded from the gross financing position—in the large position report.

—Net Fails Position

Regarding the net fails position, which is the third component of the total reportable position, two commenters requested clarification that fails should not be included in the cash/immediate net settled position component of the net trading position. The Department concurs with the views expressed by the commenters and reiterates the clarification it made in the preamble to the proposed rules that positions remaining unsettled after their scheduled settlement date are not to be included in the computation of the net trading position. As discussed earlier, the final rules adopt without change the treatment of the net fails position as proposed, i.e., net fails must be reported either as a positive number or zero.

—Trade Date Reporting

Paragraph 420.3(c)(3) has been revised with technical and conforming changes. Language has been added to this provision to state explicitly that all position amounts on the large position report should be reported on a trade date basis. Since two commenters stated that positions should be reported as of trade date rather than settlement date, we believe this revision to the final rules will eliminate any confusion or misunderstanding regarding this issue.

A conforming change is also being made to paragraph 420.3(c)(3) to reflect that the net trading position should be reported as one net number rather than reporting each of the five net trading position elements. See the discussion above in the section entitled Net Trading Position.

—Supplemental Information

As described in the proposed rules, paragraph 420.3(e) requires that a reporting entity provide, in response to a request from the FRBNY or the Treasury, information in support of its large position report. Such a request could include the detail on the five components of a net trading position. Examples of other information that may be requested include the terms of repurchase agreements involving the security, such as rate and maturity, as well as transaction volume for the reported security.

4. Report Signatories and Certifications

In the proposed rules, paragraph 420.3(c)(5) provided a listing of the administrative information that must be included in the large position report, the individuals authorized to sign the report, and the required certification language attesting to the accuracy and completeness of the report and to compliance by the reporting entity with the large position rules under this part. A number of commenters recommended that the list of those individuals authorized to sign the large position reports be expanded to include other officials and further that authority to sign be permitted to be delegated to other individuals. Additionally, many commenters requested that the certification language be changed to permit the designated filing entity to rely on certifications or other reasonable bases of evidence received from the aggregating entities regarding the accuracy and completeness of the large position information provided by the aggregating entities.

In response to these comments, the Department is liberalizing and providing greater flexibility for the signatory and certification requirements. Paragraph 420.3(c)(5) as it appeared in the proposed rules is being separated into two paragraphs. New paragraph 420.3(c)(5) lists the specific administrative information that must be provided in the large position report without any substantive change from the proposal.

New paragraph 420.3(c)(6) lists the individuals authorized to sign the large position reports and provides the specific certification language that must be included in each report. This

[16] 31 CFR 356.13(b).

provision is being revised in the final rules by adding the chief compliance officer and chief legal officer to the list of officials authorized to sign the large position reports. In broadening the list of authorizing officials, the Department believes affected firms will have greater flexibility to determine the appropriate signatory for a particular report.

New paragraph 420.3(c)(6) also contains a provision requiring two certification statements. The first certification statement requires the person signing the large position report to certify that the information contained in the report with respect to the designated filing entity is accurate and complete. This is consistent with the certification in the proposed rules. However, the certification language regarding (i) the accuracy and completeness of the large position information related to the other aggregating entities and (ii) compliance by the reporting entity, including all aggregating entities, with the large position recordkeeping and reporting rules has been modified to permit such certifications based on lesser standards of assurance. The final rule language will enable the signatories to make the required certifications based on a standard of reasonable inquiry and best knowledge and belief. Such an approach permits the authorized official to rely on certifications, schedules or other reasonable bases of evidence that the aggregating entities provide to the designated filing entity pertaining to their holdings of large positions and compliance with the rules.

This certification approach adopted in the final rules is similar to that used by the SEC regarding reports filed under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934.[17]

5. Reporting Time Frame

Twelve of the thirteen comment letters objected to the one and one-half business day reporting time frame in the proposed rules and recommended longer time frames ranging from three to ten business days. In addition, two commenters recommended a phased reporting approach with staggered deadlines for different types of positions.

The Department is extending the time frame for filing the large position reports from one and one-half to three and one-half business days as prescribed in new paragraph 420.3(c)(7). Accordingly, reports must be received by 12:00 noon Eastern time at the FRBNY, Market Reports Division, on the fourth business day after the issuance of the Treasury press release requesting large position information.

The Department is sympathetic to the concerns expressed by the commenters regarding the time and effort that will be needed to compile, aggregate and file the large position reports, particularly where reporting entities have a large number of aggregating entities, including foreign affiliates. To be weighed against these concerns is the need that the report be filed relatively quickly in order to accomplish its purpose. However, we believe that the significant changes that have been made in the final rules—revising the definition of gross financing position to exclude securities received as collateral for commercial loans; expanding the voluntary exclusion for the gross financing position to cover securities received on any component of the position; eliminating the requirement to report as a memorandum entry the amount of the voluntary exclusion; eliminating the need to report separately each of the five components of the net trading position; and expanding the flexibility regarding the signatory and certification requirements—will reduce the burdens associated with meeting the three and one-half business day reporting requirement.

The Department also wants to clarify a misunderstanding on the part of some commenters that the large position rules impose an on-going aggregation requirement. Neither the proposed rules nor these final rules impose a daily aggregation requirement for large position information. The Department adopted the on-demand method of reporting specifically to avoid requiring entities to redesign or develop systems that would summarize, compile and aggregate large position information on a daily basis. While all aggregating entities subject to the rules must make records of their transactions on a daily basis, only the designated filing entities are required to have a process to aggregate the large position information on behalf of the reporting entity, and then only in response to a specific request from the Treasury for large position reports. The Department is not persuaded that the rules require firms to develop system interfaces or integrated systems to compile and aggregate the required large position information.

The Department did not adopt the recommendation for a phased reporting system. We believe such a system would impose unnecessary administrative burdens and add unneeded complexity to the reporting process.

6. Report Media

In response to a request for clarification, paragraph 420.3(d) has been revised to indicate that facsimile and delivered hard copy reports are the acceptable media for the large position reports. Reporting entities should contact the FRBNY staff to work out arrangements if they wish to submit the reports in a different type of media.

7. Testing of Large Position Reporting System

The Department reiterates its intention to test the accuracy and reliability of the large position reporting system by requesting large position reports at least annually, regardless of market conditions for a particular security. Many commenters expressed concerns that, by the Treasury not disclosing that a request for large position information is a test, the market will assume the request is real and may react negatively, thus creating price anomalies where none existed. While the Department may announce a test as such, we intend to preserve our policy prerogative to request large position information without stating that the request is a test. The Department appreciates and understands these concerns but believes that the market should be able to discern, based on the market prices for the security issue selected for the test, that the request for large position information is only a test.

D. Section 420.4—Recordkeeping

The recordkeeping rules require large position holders to make and preserve records related to large position reporting requirements. The final recordkeeping rules contain minor modifications to the proposed rules, reflecting the Treasury's review of issues raised in the comment letters.

The proposed recordkeeping rules required, among other things, that each designated filing entity, in instances where its reporting entity controlled a reportable position of at least $2 billion in any Treasury security during the prior two-year period ending 90 days after publication of the final rule, submit a letter to the FRBNY "certifying" that the designated filing entity had or would have by the effective date a recordkeeping system capable of making, verifying the accuracy of, and preserving the requisite records. (A technical change has been made in these final rules regarding this letter. Pursuant to section 420.4(a)(2) of the final large position rules, the letter must now be submitted to the Treasury's Bureau of the Public Debt, rather than to the FRBNY.)

[17] 17 CFR 240.13d-1; 240.13d-101; 240.13d-102, item 10; 15 U.S.C. 78m(d), 78m(g).

Four commenters objected to this requirement. Three commenters asserted that the provision, which effectively required certain firms to review positions dating back two years, was unduly time-consuming and costly since such information could not be readily collected and aggregated. The third commenter objected on the grounds that certain entities, particularly banks, are not required to maintain securities-related records that cover all Treasury securities held as collateral (e.g., collateral received to secure extensions of credit) and are not required to maintain records by CUSIP. In addition, three commenters stated that the designated filing entity should not be expected to certify the accuracy of the records of other aggregating entities within the reporting entity.

The Treasury believes that relatively few entities will be subject to the recordkeeping rules because few entities hold, have held, or expect to hold reportable positions equal to or greater than $2 billion. Nevertheless, in order to ease the burden on, and costs to, the firms that will be subject to the rules when they become effective, the final recordkeeping rules eliminate the requirement that an affected designated filing entity make a certification in its letter to the Bureau of the Public Debt. Instead, paragraph 420.4(a)(2) of the final rules requires the designated filing entity to "state" in its letter that it has in place or will have in place a recordkeeping system to meet the requirements of the rules. Further, the final rules clarify the distinction between the designated filing entity's recordkeeping system requirements and those of the other aggregating entities in the reporting entity; each letter to the Bureau of the Public Debt now must also contain a statement that, after reasonable inquiry and to the best of its knowledge and belief, the designated filing entity "represents" that its aggregating entities also have in place or will have in place specified recordkeeping systems. In determining whether to submit a letter and to have the required recordkeeping systems in place by the effective date, a designated filing entity can now make such determinations as a result of a reasonable bases of evidence, or its general knowledge, of the magnitude of its own positions and those of its aggregating entities over the two-year time frame. These changes allow firms to avoid the time and cost of conducting a detailed review of their positions covering the prior two-year time period.

Further, as described in Section III.C. of this preamble, the final rules substantially reduce the amount of information required to be reported pertaining to certain kinds of collateral received to secure extensions of credit (e.g., collateral for commercial loans). This change obviates the need to maintain information on some of the securities collateral about which one commenter expressed concerns.

Section III.C. also discussed the reasons for incorporating into the final reporting rules an expansion of categories of officials who are authorized to sign and certify the reports. Using the same rationale, the final recordkeeping rules in paragraph 420.4(a)(3) provide that the same expanded list of officials of the designated filing entity are authorized to sign the letter to the Bureau of the Public Debt.

The final recordkeeping rules include two additional changes from the proposed rules. In the event that a designated filing entity obtains any certifications or schedules from its aggregating entities pertaining to their holdings of a reportable position, paragraphs 420.4(b)(2) and 420.4(c)(2)(ii) require the designated filing entity to maintain copies of such certifications or schedules.

The Treasury emphasizes that, although the final recordkeeping rules impose a modest amount of new requirements, particularly with regard to entities that are not currently subject to federal securities recordkeeping rules, the new requirements are not expected to necessitate significant automation or administrative expenses for the affected firms. As discussed in the preamble to the proposed rules, Treasury places a great deal of importance on minimizing the compliance burden on all affected entities, including unregulated ones. As a result, Treasury intentionally avoided imposing the vast majority of the requirements contained in SEC Rule 17a–3 [18] on the unregulated entities. Instead, Treasury selected the most basic record (similar to the blotter requirement of SEC Rule 17a–3) that would be crucial to documenting and preparing large position reports without imposing a burden on the few unregulated firms that are likely to be subject to the recordkeeping requirements. It is our understanding that such investors already maintain records capturing most or all of the information required by the recordkeeping rules.

E. Section 420.5—Effective Date

Section 420.5 sets out the effective date for both the recordkeeping and reporting provisions of the large position rules. The rules provide for a delayed effective date approximately six months after the date of this publication. This period of time is provided to give affected entities sufficient time to make the necessary preparations for compliance. Only paragraph 420.4(a) is not subject to this date but instead contains its own specific dates for compliance.

F. Appendix B to Part 420—Sample Large Position Report

The sample large position report in Appendix B has been shortened to conform to the changes in paragraph 420.3(c) of the final reporting rules. Refer to Section III.C. of this preamble for an explanation of the changes.

IV. Special Analysis

The rules do not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

In the preamble to the proposed rules, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department certified that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. The proposed and final rules establish a minimum large position threshold of $2 billion which assures market participants that the Treasury would not request large position reports below that minimum amount. The Department continues to believe that there are no small entities that will control positions of $2 billion or greater in any Treasury security. Based on this fact and its review of the final rules being adopted herein, and since no comments were received related to this particular issue, the Department has concluded there is no reason to alter the previous certification.

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under Control Number 1535–0089. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The information is being collected by the Department to enable the Treasury and other regulators to understand better the possible reasons for any apparent significant price distortions and the possible causes of market shortages in certain Treasury securities. The collection of information will help

[18] 17 CFR 240.17a–3.

ensure that the Treasury securities market remains liquid and efficient, and is not viewed as subject to manipulation. The final rules apply to nearly all market participants controlling large positions as defined in the rules. Per paragraph 420.3(c), it is a mandatory requirement that reporting entities with reportable positions that equal or exceed the specified threshold in a Treasury notice respond through their designated filing entities by filing a report in the required format and within the specified reporting time frame. The GSAA provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. Such information is exempt from disclosure under FOIA.[19]

Estimated total annual reporting and recordkeeping burden: 4,940 hours.

Estimated annual number of recordkeepers: 100.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C., 20503; with copies to the Government Securities Regulations Staff, Bureau of the Public Debt, Room 515, 999 E Street, NW., Washington, D.C. 20239–0001.

List of Subjects

17 CFR Part 400

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 420

Foreign investments in U.S., Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR Chapter IV, subchapter A is amended as follows:

PART 400—RULES OF GENERAL APPLICATION

1. The authority citation for part 400 is revised to read as follows:

Authority: 15 U.S.C. 78o–5.

2. In § 400.1, paragraph (e) is added as follows:

[19] *See supra* note 9.

§ 400.1 Scope of regulations.

* * * * *

(e) Section 104 of the Government Securities Act Amendments of 1993 (Pub. L. 103–202, 107 Stat. 2344) amended Section 15C of the Act (15 U.S.C. 78o–5) by adding a new subsection (f), authorizing the Secretary of the Treasury to adopt rules to require specified persons holding, maintaining or controlling a large position in to-be-issued or recently-issued Treasury securities to report such a position and make and keep records related to such a position. Part 420 of this subchapter contains the rules governing large position reporting.

3. Part 420 is added to read as follows:

PART 420—LARGE POSITION REPORTING

Sec.

420.1 Applicability.
420.2 Definitions.
420.3 Reporting.
420.4 Recordkeeping.
420.5 Effective Date.
Appendix A to Part 420—Separate Reporting Entity.
Appendix B to Part 420—Sample Large Position Report.

Authority: 15 U.S.C. 78o–5(f).

§ 420.1 Applicability.

(a) This part, including the Appendices, is applicable to all persons that participate in the government securities market, including, but not limited to: government securities brokers and dealers, depository institutions that exercise investment discretion, registered investment companies, registered investment advisers, pension funds, hedge funds and insurance companies that may control a reportable position in a recently-issued marketable Treasury bill, note or bond as those terms are defined in § 420.2.

(b) Notwithstanding paragraph (a) of this section, foreign central banks, foreign governments and international monetary authorities are exempt from this part. This exemption is not applicable to a broker, dealer, financial institution or other entity that engages primarily in commercial transactions and that may be owned in whole or in part by a foreign government.

(c) Notwithstanding paragraph (a) of this section, Federal Reserve Banks are exempt from this part for the portion of any reportable position they control for their own account.

§ 420.2 Definitions.

For the purposes of this part:

(a) "Aggregating entity" means a single entity (e.g., a parent company, affiliate, or organizational component) that is combined with other entities, as specified in paragraph (i) of this section, to form a reporting entity. In those cases where an entity has no affiliates, the aggregating entity is the same as the reporting entity.

(b) "Control" means having the authority to exercise investment discretion over the purchase, sale, retention or financing of specific Treasury securities. Only one entity should be considered to have investment discretion over a particular position.

(c) "Gross financing position" is the sum of the gross par amounts of a security issue received from financing transactions, including reverse repurchase transactions and bonds borrowed, and as collateral for financial derivatives and other securities transactions (e.g., margin loans). In calculating the gross financing position, a reporting entity may not net its positions against repurchase transactions, securities loaned, or securities pledged as collateral for financial derivatives and other securities transactions. However, a reporting entity may elect to reduce its gross financing position by the par amount of the security received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements.

(d) "Large position threshold" means, with respect to a reportable position, the dollar par amount such position must equal or exceed in order for a reporting entity to be required to submit a large position report. The large position threshold will be announced by the Department and may vary with each notice of request to report large position information and with each specified Treasury security. However, under no circumstances will a large position threshold be less than $2 billion.

(e) "Net fails position" is the net par amount of "fails to receive" less "fails to deliver" in the same security. The net fails position, as reported, may not be less than zero.

(f) "Net trading position" is the net sum of the following respective positions in the specific security issue:

(1) Cash/immediate net settled positions;

(2) Net when-issued positions;

(3) Net forward positions, including next-day settling;

(4) Net futures contract positions that require delivery of the specific security; and

(5) Net holdings of STRIPS principal components of the security.

(g) "Recently-issued" means:

(1) With respect to Treasury securities that are issued quarterly or more frequently, the three most recent issues of the security (e.g., in early April, the January, February, and March 2-year notes).

(2) With respect to Treasury securities that are issued less frequently than quarterly, the two most recent issues of the security.

(3) With respect to a reopened security, the entire issue of a reopened security (older and newer portions) based on the date the new portion of the reopened security is issued by the Department (or for when-issued securities, the scheduled issue date).

(4) For all Treasury securities, a security announced to be issued or auctioned but unissued (when-issued), starting from the date of the issuance announcement. The most recent issue of the security is the one most recently announced.

(5) Treasury security issues other than those specified in paragraphs (g)(1) and (2) of this section, provided that such large position information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities.

(h) "Reportable position" is the sum of the net trading positions, gross financing positions and net fails positions in a specified issue of Treasury securities collectively controlled by a reporting entity.

(i) "Reporting entity" means any corporation, partnership, person or other entity and its affiliates, as further provided herein. For the purposes of this definition, an affiliate is any: entity that is more than 50% owned, directly or indirectly, by the aggregating entity or by any other affiliate of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the aggregating entity; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the aggregating entity or any affiliate of the aggregating entity.

(1) Subject to the conditions prescribed in Appendix A, one or more aggregating entities, either separately or together with one or more other aggregating entities, may be recognized as a separate reporting entity.

(2) Notwithstanding this definition, any persons or entities that intentionally act together with respect to the investing in, retention of, or financing of, Treasury securities are considered, collectively, to be one reporting entity.

§ 420.3 Reporting.

(a) A reporting entity is subject to the reporting requirements of this section only when its reportable position equals or exceeds the large position threshold specified by the Department for a specific Treasury security issue. The Department shall provide notice of such threshold by issuance of a press release and subsequent publication of the notice in the **Federal Register**. Such notice will identify the Treasury security issue to be reported (including, where applicable, identification of the related STRIPS principal component); the date or dates (as of close of business) for which the large position information must be reported; and the applicable large position threshold for that issue. It is the responsibility of a reporting entity to take reasonable actions to be aware of such a notice.

(b) A reporting entity shall select one entity from among its aggregating entities (i.e., the designated filing entity) as the entity designated to compile and file a report on behalf of the reporting entity. The designated filing entity shall be responsible for filing any large position reports in response to a notice issued by the Department and for maintaining the additional records prescribed in the applicable paragraph of § 420.4.

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position in the order specified, as follows:

(i) net trading position;

(ii) gross financing position;

(iii) net fails position; and

(iv) total reportable position.

(2) The large position report should include the following additional memorandum item: a total that includes the amounts of securities delivered through repurchase agreements, securities loaned, and as collateral for financial derivatives and other securities transactions. This total should not be reflected in the gross financing position.

(3) An illustration of a sample report is contained in Appendix B. The net trading position shall be one net number and reported as the applicable positive or negative number (or zero). The gross financing position and net fails position should each be reported as a single entry. If the amount of the net fails position is zero or less, report zero. All position amounts should be reported on a trade date basis and at par in millions of dollars.

(4) All positions must be reported as of the close of business of the reporting date(s) specified in the notice.

(5) Each submitted large position report must include the following administrative information in addition to the reportable position: the name of the reporting entity, the address of the principal place of business, the name and address of the designated filing entity, the Treasury security that is being reported, the CUSIP number for the security being reported, the report date or dates for which information is being reported, the date the report was submitted, the name and telephone number of the person to contact regarding information reported, and the name and position of the authorized individual submitting this report.

(6) The large position report must be signed by one of the following: the chief compliance officer; chief legal officer; chief financial officer; chief operating officer; chief executive officer; or managing partner or equivalent. The designated filing entity must also include in the report, immediately preceding the signature, a statement of certification as follows:

> By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify: (i) That the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) that the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR Part 420.

(7) The report must be filed before noon Eastern time on the fourth business day following issuance of the press release.

(d) A report to be filed pursuant to paragraph (c) of this section will be considered filed when received by the Federal Reserve Bank of New York, Market Reports Division. The report may be filed with the Federal Reserve Bank of New York by facsimile or delivered hard copy. The Federal Reserve Bank of New York may in its discretion also authorize additional means of reporting.

(e) A reporting entity that has filed a report pursuant to paragraph (c) of this section shall, at the request of the Department or the Federal Reserve Bank of New York, timely provide any supplemental information pertaining to such report.

(Approved by the Office of Management and Budget under control number 1535–0069)

§ 420.4 Recordkeeping.

(a)(1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, an aggregating entity must make and maintain records pursuant to this part as of its effective date, but only if the aggregating entity has controlled a portion of its reporting entity's reportable position in any Treasury security when such reportable position of the reporting entity has equaled or exceeded the minimum large position threshold specified in § 420.2(d) (i.e., $2 billion) during the prior two-year period ending December 11, 1996. Subsequent to the effective date, an aggregating entity that controls a portion of its reporting entity's reportable position in a recently-issued Treasury security, when such reportable position of the reporting entity equals or exceeds the minimum large position threshold, shall be responsible for making and maintaining the records prescribed in this section.

(2) In the case of a reporting entity whose reportable position in any Treasury security has equaled or exceeded the minimum large position threshold during the prior two-year period ending December 11, 1996, each such reporting entity's designated filing entity shall submit a letter to the Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street, N.W., Room 515, Washington, DC 20239, stating that the designated filing entity has in place, or will have in place by the effective date, a recordkeeping system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the records required pursuant to this section. The letter shall further state that, after reasonable inquiry and to the best of its knowledge and belief, the designated filing entity represents that all other aggregating entities have in place, or will have in place by the effective date, a system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the records required pursuant to this section.

(3) The letter specified in paragraph (a)(2) of this section must be signed by one of the following: the chief compliance officer; chief legal officer; chief financial officer; chief operating officer; chief executive officer; or managing partner or equivalent. The letter must be received by the Bureau of the Public Debt no later than January 21, 1997.

(b) *Records to be made and preserved by entities that are subject to the recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions.* As an aggregating entity, compliance by a registered broker or dealer, registered government securities broker or dealer, noticed financial institution, depository institution that exercises investment discretion, registered investment adviser, or registered investment company with the applicable recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions shall constitute compliance with this section, provided that if such entity is also the designated filing entity it:

(1) Makes and keeps copies of all large position reports filed pursuant to this part;

(2) Makes and keeps supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of a reportable position;

(3) Makes and keeps a chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position; and

(4) With respect to recordkeeping preservation requirements that contain more than one retention period, preserves records required by paragraphs (b)(1)-(3) of this section for the longest record retention period of applicable recordkeeping provisions.

(c) *Records to be made and kept by other entities.* (1) An aggregating entity that is not subject to the provisions of paragraph (b) of this section shall make and preserve a journal, blotter, or other record of original entry containing an itemized record of all transactions that fall within the definition of a reportable position, including information showing the account for which such transactions were effected and the following information pertaining to the identification of each instrument: the type of security, the par amount, the CUSIP number, the trade date, the maturity date, the type of transaction (e.g., a reverse repurchase agreement), and the name or other designation of the person from whom sold or purchased.

(2) If such aggregating entity is also the designated filing entity, then in addition, it shall make and preserve the following records:

(i) Copies of all large position reports filed pursuant to this part;

(ii) Supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of a reportable position; and

(iii) A chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position.

(3) With respect to the records required by paragraphs (c) (1) and (2) of this section, each such aggregating entity shall preserve such records for a period of not less than six years, the first two years in an easily accessible place. If an aggregating entity maintains its records at a location other than its principal place of business, the aggregating entity must maintain an index that states the location of the records, and such index must be easily accessible at all times.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.5 Effective Date.

The provisions of this part, except for § 420.4(a), shall be first effective on March 31, 1997.

Appendix A to Part 420—Separate Reporting Entity

Subject to the following conditions, one or more aggregating entity(ies) (e.g., parent, subsidiary, or organizational component) in a reporting entity, either separately or together with one or more other aggregating entity(ies), may be recognized as a separate reporting entity. All of the following conditions must be met for such entity(ies) to qualify for recognition as a separate reporting entity:

(1) Such entity(ies) must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of information related to transactions in Treasury securities with any other aggregating entity;

(2) Such entity(ies) must not be created for the purpose of circumventing these large position reporting rules;

(3) Decisions related to the purchase, sale or retention of Treasury securities must be made by employees of such entity(ies). Employees of such entity(ies) who make decisions to purchase or dispose of Treasury securities must not perform the same function for other aggregating entities; and

(4) The records of such entity(ies) related to the ownership, financing, purchase and sale of Treasury securities must be maintained by such entity(ies). Those records must be identifiable—separate and apart from similar records for other aggregating entities.

To obtain recognition as a separate reporting entity, each aggregating entity or group of aggregating entities must request such recognition from the Department pursuant to the procedures outlined in paragraph 400.2(c) of this title. Such request must provide a description of the entity or group and its position within the reporting entity, and provide the following certification:

"[Name of the entity(ies)] hereby certifies that to the best of its knowledge and belief it meets the conditions for a separate reporting entity as described in Appendix A to 17 CFR Part 420. The above named entity also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the entity or group of entities from:

"(1) Exchanging any of the following information with any other aggregating entity (a) positions that it holds or plans to trade in a Treasury security; (b) investment strategies that it plans to follow regarding Treasury securities; and (c) financing strategies that it plans to follow regarding Treasury securities, or

"(2) In any way intentionally acting together with any other aggregating entity with respect to the purchase, sale, retention or financing of Treasury securities.

"The above-named entity agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate reporting entity status changes or when this certification is no longer valid."

Any entity, including any organizational component thereof, that previously has received recognition as a separate bidder in Treasury auctions from the Department pursuant to 31 CFR Part 356 is also recognized as a separate reporting entity without the need to request such status, provided such entity continues to be in compliance with the conditions set forth in Appendix A of 31 CFR Part 356.

Appendix B to Part 420—Sample Large Position Report

Formula for Determining a Reportable Position

[$ Amounts in millions at par value as of trade date]

Security Being Reported	_____
Date For Which Information is Being Reported	_____
1. Net Trading Position (Total of cash/immediate net settled positions; net when-issued positions; net forward positions, including next day settling; net futures contracts that require delivery of the specific security; and net holdings of STRIPS principal components of the security.)	_____
2. Gross Financing Position (Total of securities received through reverse repos (including forward settling reverse repos), bonds borrowed, financial derivative transactions and as collateral for other securities transactions which total may be reduced by the optional exclusion described in § 420.2(c).)	+ $ _____
3. Net Fails Position (Fails to receive less fails to deliver. If equal to or less than zero, report 0.)	+ $ _____
4. Total Reportable Position	= $ _____

Memorandum: Report one total which includes the gross par amounts of securities delivered through repurchase agreements, securities loaned, and as collateral for financial derivatives and other securities transactions. Not to be included in item #2 (Gross Financing Position) as reported above.

$ _____

Administrative Information To Be Provided in the Report

Name of Reporting Entity:
Address of Principal Place of Business:
Name and Address of the Designated Filing Entity:
Treasury Security Reported on:
CUSIP Number:
Date or Dates for Which Information Is Being Reported:
Date Report Submitted:
Name and Telephone Number of Person to Contact Regarding Information Reported:
Name and Position of Authorized Individual Submitting this Report (Chief Compliance Officer; Chief Legal Officer; Chief Financial Officer; Chief Operating Officer; Chief Executive Officer; or Managing Partner or Equivalent of the Designated Filing Entity Authorized to Sign Such Report on Behalf of the Entity):
Statement of Certification: "By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify: (i) that the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) that the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR Part 420."
Signature of Authorized Person Named Above:

Dated: August 14, 1996.

Darcy Bradbury,

Assistant Secretary (Financial Markets).

[FR Doc. 96–23331 Filed 9–11–96; 8:45 am]

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federal register

Thursday
September 12, 1996

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, et al.
Federal Acquisition Regulation; Certification Requirements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53

[FAR Case 96–312]

RIN 9000–AH28

Federal Acquisition Regulation; Certification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Administrator of the Office of Federal Procurement Policy has requested that the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issue a proposal to amend the Federal Acquisition Regulation (FAR) to remove particular certification requirements for contractors and offerors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before November 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th and F Streets, NW., Room 4037 Washington, DC 20405.

Please cite FAR case 96–312 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–312.

SUPPLEMENTARY INFORMATION:

A. Background

The Administrator of the Office of Federal Procurement Policy has reviewed the certifications in the FAR. The Federal Acquisition Regulatory Council (FARC) has made recommendations as to the retention of certain certifications and the Administrator has approved the retention of certifications discussed herein. As a result, the Administrator has issued a proposal which we are now publishing on behalf of the Administrator of Federal Procurement Policy as a proposed rule.

This proposed rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53 to remove particular certification requirements for contractors and offerors. The proposed rule implements Section 4301b of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). Section 4301b requires the Administrator, Office of Federal Procurement Policy, to issue for public comment a proposal to remove from the FAR those certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification only if (1) The FAR Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (2) the Administrator approves in writing the retention of the certification requirement.

The proposed rule implements Section 4301b by removing certification requirements for contractors and offerors not specifically imposed by statute. A separate FAR case 96–013 has been initiated to identify and delete any representations that place an unnecessary burden on contractors and offerors.

Review of certifications imposed by the Small Business Administration revealed that representations, not certifications, were imposed by the Small Business Act (15 U.S.C. 645(d)). Therefore, in the FAR text at 19.001, 19.301, 19.703 and the provisions at 52.219–1, 52.219–15, 52.219–18, 52–219–19, and 52–219–21, representations have been substituted for certifications. These representations will be reviewed under FAR case 96–013.

Review of certifications contained in the FAR, revealed that several certifications are required by outside source documents. For example, the following certifications are required by Department of Labor regulations: FAR 52.222–8, Payrolls and Basic Records; FAR 52.222–15, Eligibility under the Davis Bacon Act; FAR 52.222–41 (n) and (p), Service Contract Act; FAR 52.222–48 Exemption from the Service Contract Act for ADP services; and FAR 52.222–21, Certification of Nonsegregated Facilities. Also, the following certifications are required by Executive order: FAR 22.1020, Seniority Lists; and FAR 52.223–13, Toxic Chemical Release Reporting. The following certifications are required by regulations issued by the Cost Accounting Standards Board: FAR Provision 52.230–1, Appendix B; FAR 30.201–3, 30.201–4, 30.202–6, and 30.602–1. The disposition of these certifications will not be covered by this proposal, but in accordance with section 4301(b)(1)(B) of the Federal Acquisition Reform Act, and under the authority of the Department of Labor with regard to the labor certifications; and by the Office of Management and Budget, with regard to those required by Executive order and the Cost Accounting Standards Board.

The FAR certifications for contractors and offerors proposed for elimination are summarized below:

FAR CERTIFICATION REQUIREMENTS RECOMMENDED FOR DELETION

FAR cite	Clause/provision No.	Title	Remarks
3.502–2(i)(1)		Subcontractor kickbacks	Revise language to delete certification.
4.102(d)		Joint ventures	Revise language to delete certification.
1.106 6.302–3(b)(1)(viii)	52.208–1	Required Sources for Jewel Bearings and Related Items.	Delete clause.
8.002 8.2 12.504(a)(16)	52.208–2	Jewel Bearing and Related Items Certificate.	Delete provision.
9.505–4(c)	52.209–7	Organizational Conflicts of Interest Certificate—Marketing Consultants.	Revise language to delete certification.
9.506(a)		Procedures (Organizational Conflict of Interest).	Revise language to delete certification.

FAR CERTIFICATION REQUIREMENTS RECOMMENDED FOR DELETION—Continued

FAR cite	Clause/provision No.	Title	Remarks
9.506(d)(4)		Procedures (Organizational Conflict of Interest).	Revise language to delete certificate.
1.106 9.507–1	52.209–7	Organizational Conflict of Interest—Marketing Consultant.	Delete provision.
1.106 9.507–1	52.209–8	Organizational Conflict of Interest—Advisory/Assistance Services.	Delete provision.
9.507–1(d)		Organizational Conflict of Interest	Delete language—Language refers to FAR clauses 52.209–7 and –8.
12.503	52.212–3	Offeror Representations and Certifications—Commercial Items Minor informalities or irregularities in bids.	Revised language to reflect revisions in this proposal.
14.405(f)			Revise language to specify representations in lieu of certifications. FAR 52.222–22 and 52.222–25 are representations as required by statute, not certifications.
16.306(d)(2)		Level of effort	Revise language to delete certification requirement.
19.001 19.301	52.219–1	Small Business Program Representation	Revise language to delete certification requirement and substitute representations as required by law.
19.703	52.219–18	Notification of Competition Limited to Eligible 8a Concerns.	
	52.219–19	SB Concern Representation for SB Competitiveness Demonstration Program.	
	52.219–21	SB Size Representation for Targeted Industry Categories Under the SB Competitiveness Demonstration Program.	
19.303(c)(2) 19.303(c)(3)		Determining Product or Service Classifications.	Revise language to delete certification requirement.
9.501(h)(1)		General (self-certification)	Revise language to delete certification requirement.
	152.219–15 (b) & (c)	Notice of Participation by Organizations for the Handicapped.	Delete clause.
23.105 23.106	52.223–1	Clean Air and Water Certification	Revise language to delete certification requirement.
23.302(d)(1)		Policy—Hazardous material	Revise language to delete certification requirement.
	52.223–3	Hazardous Material Identification and Material Safety Data.	Revise language to delete certification requirement.
23.601(c)	52.223–7	Notice of Radioactive Materials	Revise language to delete certification if prior conditions are not changed.
25.109(a)	52.225–1	Buy American Certificate	Revise language to delete certification requirement.
25.305	52.225–6	Balance of Payments Program Certificate.	Revise language to delete certification requirement.
	52.225–7	Balance of Payment Program.	
25.408(a)(1)	52.225–8	Buy American Act—Trade Agreements—Balance of Payments Program Certificate.	Revise language to delete certification requirement.
25.408(a)(2)	52.225–9	Buy American Act—Trade Agreements—Balance of Payments Program.	Revise language to delete certificate requirement.
25.408(a)(4)	52.225–21	Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program.	Revise language to delete certification requirement.
25.408(b)		Solicitation provisions and contract clauses.	Revise language to delete certification requirement.
27.303(e)		Patent Rights—Retention by the Contractor (Short form).	Revise language to delete certification requirement.
27.406 27.409(q)	52.227–12	Patent Rights—Retention by the Contractor.	Revise language to require declaration in lieu of certification, as required by statute.
	52.227–13	Patent Rights—Acquisition by the Government.	
	52.227–21	Technical Data Certification, Revision, and Withholding of Payment—Major Systems.	
29.305(b)(3)		State and local tax exemptions	Revise language to delete certification requirement.
31.110 42.703–2	52.242–4	Certification of Indirect Costs	Revise language to delete nonstatutory certification.

FAR CERTIFICATION REQUIREMENTS RECOMMENDED FOR DELETION—Continued

FAR cite	Clause/provision No.	Title	Remarks
31.205–22(d) and (e)		Legislative Lobbying costs	Revise language to delete certification requirement.
32.805		Procedures (Assignments)	Revise language to delete certification requirement.
36.205(b)(3)		Statutory cost limitations	Revise language to delete certification requirement.
37.402	52.237–7	Indemnification and Medical Liability Insurance.	Revise language to require evidence in lieu of certification.
45.606–1		Submission	Revise language to delete certification requirement.
	52.245–8	Liability for the Facilities	Revise language to delete certification requirement.
47.303–17(d)(3)(ii)		Contractor-prepaid commercial bills of lading, small package shipments.	Revise language to delete certification requirement.
47.305–11(b)	52.247–54	Diversion of Shipment under F.o.b. Destination Contracts.	Delete clause.
47.403–3		Disallowance of expenditures	Revise language to delete certification requirement.
	52.247–2	Permits, Authorities, or Franchises	Revise language to delete certification requirement.
47.404	52.247–63	Preference for U.S.-Flag Air Carriers	Revise language to delete certification requirement. 49 U.S.C. 40118 directs agencies to ensure transportation is by U.S. carriers.
49.108–3(b)		Settlement procedures	Revise language to delete certification requirement.
	52.209–3	First Article Approval (Alt I)	Revise language to delete certification requirement.
	52.209–4	First Article Approval (Alt I)	Revise language to delete certification requirement.
	52.215–35	Annual Representations and Certifications—Negotiation.	Revise language to require acknowledgment in lieu of certification.
	52.216–2	Economic Price Adjustment—Standard Supplies.	Revise language to delete certification requirement.
	52.216–3	Economic Price Adjustment—Semistandard—Supplies.	Revise language to delete certification requirement.
	52.216–4	Economic Price Adjustment—Labor/Material.	Revise language to delete certification requirement.
	52.228–5	Insurance—Work on a Government Installation.	Revise language to delete certification requirement.
	52.228–6	Liability and Insurance—Leased Motor Vehicles.	Revise language to delete certification requirement.
	52.228–9	Cargo Insurance	Revise language to delete certification requirement.
Part 53		SF 129	Revise form to delete certification requirement.
		Part 22 Form—SF 1445	Revise form to delete certification requirement.
		Part 29 Form—SF 1094, SF 1094A	Revise forms to delete certification requirement.
		Part 45 Forms—SFs 1423, 1426, 1428, 1430, 1432, 1434.	Revise forms to delete certification requirement.

The FAR certifications specifically imposed by statute are summarized below:

FAR CERTIFICATION REQUIREMENTS REQUIRED BY STATUTE

FAR cite	Clause/provision No.	Title	Remarks
3.802(b)	52.203–11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	Required by 31 USC 1352.
3.803 3.804 3.806	52.212–3(e)		
9.204(a)(2)		Certification for testing and evaluation costs.	Required by 10 USC 2319(d)(2) and 41 USC 253c(d)(2).
	52.214–27	Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	Required by 10 USC 2306a(a)(2) and 41 USC 254b.

FAR CERTIFICATION REQUIREMENTS REQUIRED BY STATUTE—Continued

FAR cite	Clause/provision No.	Title	Remarks
	52.214–28	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	Required by 10 USC 2306a(a)(2) and 41 USC 254b.
15.804–4	52.215–22, –23, –24, –25	TINA	Required by 10 USC 2306a and 41 USC 254b.
22.407	52.222–6	Certified Payroll and Basic Records	Required by 40 USC 276.
23.404(b)(2)(iii)	52.223–8	Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.	Required by 42 USC 6962(c)(3).
23.405(a)	52.223–4	Recovered Material Certification	Required by 42 USC 6962(c)(3)(A)(I).
23.404(b)(4) 23.405(c)	52.223–9	Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.	Required by 42 USC 6962(c)(3).
29.304(d)	52.229–2	North Carolina State and Local Sales and Use Tax.	Required by North Carolina State Law.
	52.232–33	Mandatory Information for Electronic Funds Transfer.	Required by 31 USC 3332
	52.232–34 (Optional)		
33.201 33.202 33.207 33.208 33.211(c)(2) 33.211(e) 33.214(a)(5)	52.233–1	Disputes	Required by 41 USC 605(c)(1).
42.703–2	52.242–4	Certificate of Indirect costs	Required by 10 USC 2324(h) and 41 USC 256(h).
50.303–2		Contractor certification	Required by 10 USC 2410 and 41 USC 605(c)(1).

The FAR certifications approved in writing for retention by the Administrator for Federal Procurement Policy are summarized below:

FAR CERTIFICATION REQUIREMENTS WHICH OFPP HAS GIVEN APPROVAL TO RETAIN

FAR cite	Clause/provision No.	Title	Remarks
3.103	52.203–2	Certificate of Independent Price Determination.	See following justification.
9.408 9.409	52.209–5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.	See following justification.
	52.213–1	Fast Payment Procedure	See following justification.
32.202–4(b)(3)		Security for Government financing	See following justification.
32.304–6		Other borrowing	See following justification.
32.503–4		Approval of progress payment requests	See following justification.
32.503–5		Administration of progress payments	See Justification under 32.503–9.
32.503–9(a)(9)		Liquidation rates-alternate method	See following Justification.
32.503–14 (a) and (c)		Protection of Government title (progress payment).	See following Justification.
	52.232–4	Payments under Transportation Contracts and Transportation Related Service Contracts.	See following Justification.
32.905(c)(1)	52.232–5	Payments Under Fixed-Price Construction Contracts.	See following Justification.
32.1009 (a) and (c) and 32.1010(c).	52.232.32	Performance-Based Payments	See following Justification.
	52.232–12 (a), (o)	Advance Payments	See following Justification.
	52.232–16(g)	Progress Payments	See following Justification.
42.1204		Agreement to recognize a successor in interest (novation agreement).	See following Justification.
42.1205		Agreement to recognize contractor's change of name.	See following Justification.
46.315 46.504	52.246–15	Certificate of Conformance	See following Justification.
49.108–4(a)(1)(iii) 49.602–1(a)		Authorization for subcontract settlements without approval or ratification.	See following Justification.
49.112–1(h)		Certification and approval of partial payments.	See following Justification.
49.302		Discontinuance of vouchers	See following Justification.

FAR CERTIFICATION REQUIREMENTS WHICH OFPP HAS GIVEN APPROVAL TO RETAIN—Continued

FAR cite	Clause/provision No.	Title	Remarks
49.304–2		Submission of settlement proposal (fee only).	See following Justification.
49.603–1		Fixed-price contracts-complete termination.	See following Justification.
49.603–2		Fixed-price contracts-partial termination	See following Justification.
49.603–3		Cost-reimbursement contracts-complete termination, if settlement includes cost.	See following Justification.
49.603–6		Fixed-price contracts-settlements with subcontractors only.	See following Justification.
	52.249–2 (c), (d)	Termination for Convenience of the Government (Fixed-Price).	See following Justification.
	52.249–3 (c), (d)	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	See following Justification.
	52.249–5(c)	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	See following Justification.
	52.249–6 (d), (e)	Termination (Cost-Reimbursement)	See following Justification.
	52.249–11 (c), (d)	Termination of Work (Consolidated Facilities or Facilities Acquisition).	See following Justification.
Part 53, Forms		Part 49 Forms-SFs 1435, 1436, 1437, 1438, 1439, and 1440.	See following Justification.

FAR Provision 52.203–2 and the prescription at 3.103 require that offerors certify that proposed prices were arrived at independently without, for the purpose of restricting competition, consultation with other competitors. This certification is required to continue to maintain the integrity of the Government procurement process by insuring fair access to all interested contractors. The requirement that Certificates of Independent Price Determination (CIPDs) be submitted by offerors for Government contracts is being retained. First, CIPDs require the disclosure, by offerors, of with whom prices were discussed or to whom prices were disclosed, so that contracting officers can determine whether offers have been prepared according to the bid requirements set out in Government Requests for Proposals. Unlike private contracting situations, important public policy concerns may dictate in some instances that only independently prepared bids are acceptable, while in other circumstances teaming agreements may be acceptable or even actively solicited. Second, certain types of pre-bid conduct or communications among competitors, such as attempting to induce another firm to submit, or not to submit, an offer or disclosing price information, may adversely affect the competitiveness of their offers and yet not constitute an unlawful "agreement" under Federal antitrust laws. With taxpayer dollars at stake, the public deserves the price and quality benefits of vigorous competition. CIPDs are necessary to preclude conduct and communications that diminish the competitiveness of the Federal contracting process. The Government must be able to hold those who seek to obtain public monies to the highest standards of conduct at all times, and public funds must be protected from unlawful collusion in the bidding process. These policy considerations justify retaining the requirement for the submission of CIPDs. The Department of Justice has concluded that this certification will not place a significant burden on most offerors. The continued preparation of CIPDs will not place a significant burden on most offerors. For many businesses, and particularly for small businesses, very few officials are responsible for determining the prices being offered on Government contracts. The Department relies on the certificate in trials of bid rigging conspiracies because the certificate demonstrates that the defendant was put on notice of antitrust prohibitions against collusive bidding and, in turn, responded fraudulently when asked to certify the independent and non-collusive nature of its bid.

FAR Provision 52.209–5 and the prescriptions at 9.408 and 9.409 require certified information from offerors regarding debarment, suspension, and other responsibility matters. This information is crucial to contracting officers in evaluating the responsibility of prospective contractors. Not all the information that an offeror submits under the provision at 52.209–5 is available from the General Services Administration's (GSA) List of Parties Excluded from Federal Procurement and Nonprocurement Programs. While the list is updated by GSA to reflect suspensions and reinstatements by other Federal agencies, the list can not be precisely correct at all times. Consequently, the certification required by this provision is necessary to afford protections to both the Government and contractors by providing contracting officers with accurate information at all times on which to evaluate contractor responsibility. The alternative is extensive preaward surveys.

FAR clause 52.213–1 provides for contractor payment prior to the Government's receipt, inspection and acceptance of supplies. This certification is being retained because it expedites payment to contractors without formal acceptance thereby improving cash flow. The alternative to the fast pay invoice certification would be to delay contractor payment until the Government actually received the supplies shipped.

FAR 32.202–4(b)(3) requires contractors to certify that, when the Government's security for contract financing is in the form of a lien on contractor assets, the assets subject to the lien are free from any prior encumbrances. This certification is being retained because it represents good business practice to ascertain that no other encumbrances have been attached to assets pledged by contractors to secure Government financing. The alternative to the use of a certification would be to conduct an exhaustive search of contractor records to ensure no other liens on pledged assets exist.

FAR 32.304–8 requires contractors to certify to the amount of their unliquidated unguaranteed borrowings. This certification is being retained because the Government must be aware of and have strong confidence in the amount of outstanding unguaranteed borrowing before it can prudently consent to contractor requests for additional borrowing during the guaranteed loan period. The alternative would be to obtain this financial information from the contractor's ledgers which is more burdensome. The contractor would still be required to submit status reports in writing regardless of the requirement for a certification. Thus, the underlying burden would not be removed even if the certificate were.

There are several certifications required when contractors are requesting progress payments. These certifications and associated documentation are required when the Government is providing payments without receiving goods or services. FAR clauses 52.232–5, 52.232–12, 52.232–32 and the prescriptions at 32.503–4, 32.503–5, 32.503–9, 32.503–14, 32.905, 32.1009, and 32.1010 require contractor certifications when submitting requests for progress payments. Progress payments are a form of contract financing which benefit contractors. For this benefit to accrue, the contracting officer relies on information submitted with the certification to establish the amount to be paid and to ensure that the contractor has met certain safeguards necessary to protect taxpayer funds. Because progress payments can involve large sums of money, requiring these certifications is a prudent business practice. Even if a certification were not required, the contractor must still submit written requests with appropriate documentation for payment. Elimination of the certification will not eliminate that underlying burden. The only alternative would be an audit of the contractor's records.

FAR 42.1204 and 42.1205 require contractors to certify that a novation or contractor change of name was authorized by the corporation's governing body and was within the scope of its corporate powers. These certifications are being retained because they are necessary to enable contracting officers to maintain and enforce contracts with entities that had their contractual interest transferred or assigned. The alternative to the use of certified statements would be to obtain this information by reviewing and analyzing the contractor's legal documentation in support of the name change or novation.

FAR clause 52.246–15 and the prescriptions at 46.315 and 46.504 require contractors to certify that supplies have met the requirements of the contract in lieu of Government source inspection, thereby allowing the Government to eliminate on-site inspections. This certification is being retained because it reduces administrative burden for both the Government and contractors. The alternative would be increased source inspections.

FAR clauses 52.249–2, 52.249–3, 52.249–5, 52.249–6, 52.249–11 and the prescriptions at 49.108–4, 49.112–1, 49.302, 49.304–2, 49.602–1, 49.603–1, 49.603–2, 49.603–3, and 49.603–8 contain procedures for settling contracts terminated for the convenience of the Government. Because these certifications apply to final settlement proposals, the indirect costs must be certified in accordance with 10 U.S.C. 2324(h). Strict application of only the statutorily mandated certification would leave areas in the overall settlement proposal that would not be certified. Requiring contractors to certify all claimed costs as a condition to settle a termination claim against the Government is a prudent safeguard of taxpayer funds and is less burdensome than requiring one settlement form for indirect costs that must be certified and one settlement form for all other costs.

B. Regulatory Flexibility Act

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 602, *et seq.*, because it reduces the number of certifications that offerors and contractors must provide to the Government. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows: This rule proposes to amend the FAR to remove particular certification requirements for contractors and offerors that are not specifically imposed by statute, and which have not been approved for retention by the Administrator for Federal Procurement Policy. The objective of the rule is to implement the Federal Acquisition Reform Act of 1996 (Public Law 104–106). Section 4301b requires that all certifications not specifically required by statute be eliminated from the FAR unless otherwise approved for retention by the Administrator for Federal Procurement Policy. The rule will apply to all businesses, large and small, who are interested in receiving Government contracts. The rule imposes no reporting, recordkeeping, or other compliance requirements, but, rather, deletes existing certification requirements that are not required by statute and which have not been approved for retention by the Administrator for Federal Procurement Policy. The rule does not duplicate, overlap, or conflict with any other Federal rules. A copy of the IRFA may be obtained from the FAR Secretariat. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small business and other interested parties. Comments from small entities concerning the affected FAR parts will be considered in accordance with Section 610 of the Act. Such comments should be submitted separately and cite FAR case 96–312 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) is deemed to apply because the proposed rule eliminates certain information collection requirements found at FAR 52.208–2, 52.209–7, 52.209–8, and 52.222–21. Accordingly, a request for elimination of the information collection requirement concerning Certification Requirements will be submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53

Government procurement.

Dated: September 5, 1996.

Edward C. Loeb,

Director, Office of Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the table following the text by removing the following entries along with their control numbers: 8.203–2, 9.5, 52.208–1, and 52.222–21.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.502–2(i)(1) is revised to read as follows:

3.502–2 General.

* * * * *

(i) * * *

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.102 is amended by revising the last sentence of paragraph (d) to read as follows:

4.102 Contractor's signature.

* * * * *

(d) *Joint ventures.* * * * When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.302–3 [Amended]

5. Section 6.302–3 is amended by removing paragraph (b)(1)(viii).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.002 [Amended]

6. Section 8.002 is amended by removing paragraph (a), and redesignating paragraphs (b) through (f) as (a) through (e).

Subpart 8.2—[Removed and reserved]

7. Subpart 8.2 is removed and reserved.

PART 9—CONTRACTOR QUALIFICATIONS

9.505–4 [Amended]

8. Section 9.505–4(c) is amended by removing the last sentence.

9. Section 9.506 is amended in paragraph (a) by revising the first sentence; by adding "and" after the semicolon in (b)(1); by removing (b)(2); by redesignating (b)(3) as (b)(2); and by revising (c)(1) and (d). The revised text reads as follows:

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers should first seek the information from within the Government or from other readily available sources. * * *

* * * * *

(c) * * *

(1) Review the contracting officer's analysis and recommended course of action, including any proposed clause.

* * * * *

(d) The contracting officer shall—

(1) Include any approved clause(s) in the solicitation or the contract;

(2) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations;

(3) Before awarding the contract, resolve the conflict or the potential conflict in a manner consistent with the approval or other direction by the head of the contracting activity.

* * * * *

9.507–1 [Removed and reserved]

10. Section 9.507–1 is removed and reserved.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

11. Section 12.503 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) * * *

(1) 33 U.S.C. 1368, Requirement for a clause under the Federal Water Pollution Control Act (see 23.105).

* * * * *

(5) 42 U.S.C. 7606, Requirements for a clause under the Clean Air Act (see 23.105).

12.504 [Amended]

12. Section 12.504 is amended by removing paragraph (a)(16).

PART 14—SEALED BIDDING

14.405 [Amended]

13. Section 14.405(f) is amended by removing "certifications" and inserting "representations" in its place.

PART 16—TYPES OF CONTRACTS

16.306 [Amended]

14. Section 16.306 is amended in paragraph (d)(2) by removing "certification" and inserting "statement" in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.001 [Amended]

15. Section 19.001 is amended in the introductory text of paragraph (b) of the definition "Small disadvantaged business concern" by removing "certify" and inserting "represent".

16. Section 19.301 is amended by revising the first sentence of paragraph (a) to read as follows:

19.301 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation.

* * *

* * * * *

17. Section 19.303 is amended by revising the introductory text of paragraph (c)(2); in paragraph (c)(2)(vi) by removing "certifying" and inserting "acknowledging" in its place; and by revising the second sentence of paragraph (c)(3) to read as follows:

19.303 Determining product or service classifications.

* * * * *

(c) * * *

(2) The appeal shall be in writing and shall be addressed to the Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416. No particular form is prescribed for the appeal. However, time limits and procedures set forth in SBA's regulations at 13 CFR 121.11 are strictly enforced. The appellant shall submit an original and one legible copy of the appeal. In the case of telegraphic appeals, the telegraphic notice shall be confirmed by the next day mailing of a written appeal, in duplicate. By signing the submission, a party or its attorney

attests that the statements and allegations in the submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment. The appeal shall include—

* * * * *

(3) * * * The contracting officer's response, if any, to the appeal must include appropriate argument and evidence, and must be filed with the Office of Hearings and Appeals no later than 5 business days after receipt of the appeal. * * *

19.501 [Amended]

18. Section 19.501 is amended by removing paragraph (h).

19.508 [Removed]

18a. Section 19.508 is removed.

19. Section 19.703 is amended in paragraph (a)(2) by revising the second and fourth sentences to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2) * * * Individuals who represent that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) may also represent themselves as socially and economically disadvantaged. * * * Concerns who are tribally-owned entities or Native Hawaiian Organizations may represent themselves as socially and economically disadvantaged if they qualify under the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. * * *

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

20. Section 22.810(a) is revised to read as follows:

22.810 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.222–22, Previous Contracts and Compliance Reports, in solicitations when a contract is contemplated that will include the clause at 52.222–26, Equal Opportunity.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.102 [Amended]

21. Section 23.102 is amended in paragraph (d) by removing the reference "40 CFR Part 15" and inserting "40 CFR Part 32" in its place.

22. Section 23.105 is amended by revising paragraph (a) to read as follows:

23.105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the solicitation provision at 52.223–1, Notification of Clean Air Act and/or Clean Water Act Convictions, in solicitations containing the clause at 52.223–2, Clean Air and Water (see paragraph (b) of this section).

* * * * *

23. Section 23.106 is amended by revising paragraph (a) to read as follows:

23.106 Delaying award.

(a) If an otherwise successful offeror informs the contracting officer that EPA is considering listing a facility proposed for contract performance (see the provision at 52.223–1, Notification of Clean Air Act and/or Clean Water Act Convictions), the contracting officer shall promptly notify the EPA Administrator or a designee, in writing, that the offeror is being considered for award.

* * * * *

24. Section 23.302 is amended by revising paragraph (d)(1) to read as follows:

23.302 Policy.

* * * * *

(d) * * *

(1) By the apparently successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.

* * * * *

25. Section 23.601 is amended by revising paragraph (c) to read as follows:

23.601 Requirements.

* * * * *

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

* * * * *

PART 25—FOREIGN ACQUISITION

25.109, 25.305, and 25.408 [Amended]

26. Part 25 is amended in the following sections by removing "Certificate" and inserting "Provision" in its place: 25.109(a), 25.305(a); and 25.408(a)(1).

26b. In addition to the amendment set forth above, section 25.408 is further amended by revising paragraph (b) to read as follows:

25.408 Solicitation provision and contract clause.

* * * * *

(b) The contracting officer shall rely on the information submitted by the offeror.

* * * * *

PART 27—PATENT, DATA, AND COPYRIGHTS

27. Section 27.303(e) is amended by revising the first sentence to read as follows:

27.303 Contract clauses.

* * * * *

(e) For those agencies excepted under paragraph (a)(1)(i), only small business firms or non-profit organizations qualify for the clause at 52.227–11.

* * * * *

28. Section 27.406 is amended by revising paragraph (c); in paragraph (d)(1) and (d)(2), and twice in (d)(3) by removing (C) certification and inserting "(D) declaration"; and in paragraph (d)(2) by removing certify and inserting "declare" in its place. The revised text reads as follows:

27.406 Acquisition of data.

* * * * *

(c) *Acceptance of data.* As required by 41 U.S.C. 418a(d)(7), acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract clause as required by Subpart 46.3, and the clause at 52.227–21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, when it is included in the contract. (See paragraph (d) of this section.)

* * * * *

27.409 [Amended]

29. Section 27.409 is amended in paragraph (q) by removing "Certification" and inserting "Declaration" in its place.

PART 29—TAXES

30. Section 29.305 is amended by revising paragraph (b)(3) to read as follows:

29.305 State and local tax exemptions.

* * * * *

(b) * * *

(3) Under a contract or purchase order that contains no tax provision, if:

(i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor

consents to a reduction in the contract price.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31. Section 31.110 is amended by revising the first sentence of paragraph (a) to read as follows:

31.110 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes.

* * * * *

31.205–22 Legislative lobbying costs.

32. Section 31.205–22 is amended by revising the section heading as set forth above; by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e), respectively; and in the newly designated (d) by adding "(See 42.703–2)" after "unallowable".

PART 32—CONTRACT FINANCING

32.805 [Amended]

33. Section 32.805 is amended in paragraph (a)(1)(iii) by removing "certified" and inserting "true".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

34. Section 36.205 is amended by revising paragraph (b)(3) to read as follows:

36.205 Statutory cost limitations.

* * * * *

(b)* * * (3) that the price on each schedule shall include an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

* * * * *

PART 37—SERVICE CONTRACTING

35. Section 37.402 is revised to read as follows:

37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain evidence of insurance demonstrating the required coverage prior to commencement of performance.

PART 42—CONTRACT ADMINISTRATION

36. Section 42.703–2 is amended by revising paragraph (a); in paragraph (c)(1) by removing "billing rates or" and inserting "final" in its place; and by revising paragraph (f) to read as follows:

42.703–2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

* * * * *

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242–4, Certification of Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in is agency supplement for its management and operating contracts.

PART 45—GOVERNMENT PROPERTY

45.606–1 [Amended]

37. Section 45.606–1 is amended by removing the designation of paragraph (a); and by removing paragraph (b).

PART 47—TRANSPORTATION

38. Section 47.303–17 is amended by revising paragraph (d)(3)(ii) to read as follows:

47.303–17 Contractor-prepaid commercial bills of lading, small package shipments.

* * * * *

(d) * * *

(3) * * *

(ii) The contractor agrees to furnish evidence of payment when requested by the Government.

* * * * *

47.305–11 [Amended]

39. Section 47.305–11 is amended by removing the designation of paragraph (a) and adding the text to the end of the undesignated paragraph which precedes it; by removing paragraph (b); and redesignating paragraphs (a)(1) through (3) as (a) through (c).

40. Section 47.403–3 is amended in paragraph (a) by removing certificate or; and by revising paragraph (c) to read as follows:

47.403–3 Disallowance of expenditures.

* * * * *

(c) The justification requirement is satisfied by the contractor's use of a statement similar to one contained in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers. (See 47.405.)

41. Section 47.404 is amended by revising paragraph (b)(2) to read as follows:

47.404 Air freight forwarders.

* * * * *

(b) * * * (2) justification for the use of foreign-flag air carriers similar to the one shown in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers.

PART 49—TERMINATION OF CONTRACTS

42. Section 49.108–3 is amended by revising paragraph (b) to read as follows:

49.108–3 Settlement procedure.

* * * * *

(b) Except as provided in 49.108–4, the TCO shall require that:

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with Part 45; and

(2) The prime contractor submit for approval or ratification, all termination settlements with subcontractors.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–1 and 52.208–2 [Removed and reserved]

43. Sections 52.208–1 and 52.208–2 are removed and reserved.

44. Section 52.209–3 is amended in Alternate I by revising the date and paragraph (i) to read as follows:

52.209–3 First Article Approval—Contractor Testing.

* * * * *

Alternate I (Date). * * *

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

45. Section 52.209–4 is amended by revising the date and paragraph (j) of Alternate I to read as follows:

52.209–4 First Article Approval—Government Testing.

* * * * *

Alternate I (DATE). * * *

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

52.209–7 and 52.209–8 [Removed]

47. Sections 52.209–7 and 52.209–8 are removed.

46. Section 52.212–3 is amended—

a. By revising the provision date, paragraph (c)(2), the introductory text of (c)(6), and the last sentence of the introductory text of (c)(6)(ii);

c. By revising the introductory text of (d), and by removing (d)(1) and the undesignated paragraph following it, and redesignating (d)(2) and (d)(3) as (d)(1) and (d)(2), respectively; and

c. In the introductory text of (f) by removing "Certificate" and inserting "Provision" in its place, and by revising (f)(1) and (f)(3). The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (DATE)

* * * * *

(c) * * *

(2) *Small disadvantaged business concern.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.

* * * * *

(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [*Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.*]

* * * * *

(ii) * * * Offeror represents as follows:

* * * * *

(d) Representations required to implement provisions of Executive Order 11246—

* * * * *

(f) * * *

(1) Each end product being offered, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program"). Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

* * * * *

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and list below those excluded end products that are designated country end products or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and listed below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must insert the applicable line item numbers in the following:

(i) The following supplies qualify as "designated country end products" or "NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program":

_____

_____

_____

(Insert line item numbers)

(ii) The following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program":

_____

_____

_____

(Insert line item numbers)

* * * * *

48. Section 52.214–30 is revised to read as follows:

52.214–30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201–6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (DATE)

The bidder has (check the appropriate block): ☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*Insert date of signature of submission*], which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows [*insert changes that affect only this solicitation; if "none," so state*]: _____

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

49. Section 52.215–35 is revised to read as follows:

52.215–35 Annual Representations and Certifications—Negotiation.

As prescribed in 15.407(i), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATION (DATE)

The offeror has (check the appropriate block):

☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*] which are incorporated herein by reference and are current, accurate, and complete as of the date of this bid, except as follows [*insert changes that affect only this solicitation; if "none," so state*]: _____

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

52.216–2 [Amended]

50. Section 52.216–2 is amended by revising the clause date to read "(DATE)"; and in paragraph (b) by removing the last sentence.

52.216–3 [Amended]

51. Section 52.216–3 is amended by revising the clause date to read "(DATE)"; and in paragraph (b) by removing the last sentence.

52.216–4 [Amended]

52. Section 52.216–4 is amended by revising the clause date to read "(DATE)"; and by removing paragraph (d) and redesignating paragraph (e) as (d).

52.219–1 [Amended]

53. Section 52.219–1 is amended by revising the provision date to read "(DATE)"; and in paragraph (b)(1) by removing "and certifies".

52.219–15 [Removed and Reserved]

54. Section 52.219–15 is removed and reserved.

52.219–18 [Amended]

55. Section 52.219–18 is amended by revising the clause date to read "(DATE)"; and in paragraph (b) by removing "certifies" and inserting "represents".

56. Section 52.219–19 is amended by revising the date and paragraph (b) of the provision to read as follows:

52.219–19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

* * * * *

SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (DATE)

* * * * *

(b) [*Complete only if the Offeror has represented itself under the provision at 52.219–1 as a small business concern under the size standards of this solicitation.*]

The offeror ☐ is, ☐ is not an emerging small business.

* * * * *

52.219–21 [Amended]

57. Section 52.219–21 is amended by revising the clause date to read (XXX);

in the parenthetical following the provision heading by removing "certified" and inserting "represented"; and in the first paragraph of the provision by removing "and certifies".

52.222–21 [Reserved]

58. Section 52.222–21 is removed and reserved.

59. Section 52.223–1 is revised to read as follows:

52.223–1 Notification of Clean Air Act and/or Clean Water Act Convictions.

As prescribed in 23.105(a), insert the following provision in solicitations containing the clause at 52.223–2, Clean Air and Water:

NOTIFICATION OF CLEAN AIR ACT AND/OR CLEAN WATER ACT CONVICTIONS (DATE)

(a) If a facility owned or leased by the offeror is proposed to be used in the performance of the contract, and the facility owner, lessee, or supervisor was convicted of a violation at that facility of Section 113 of the Clean Air Act (CAA), 42 U.S.C. 7413, or Section 309(c) of the Clean Water Act (CWA), 33 U.S.C. 1319(c), the offeror shall notify the Contracting Officer whether such facility is presently owned, leased or supervised by the convicted person. The notification shall be submitted with the offer; if the conviction occurs on or after the date the offer was submitted, the offeror shall promptly submit a separate notification to the Contracting Officer.

(b) After receiving notification of a CAA or a CWA conviction, the Contracting Officer may make award only if the Contracting Officer obtains confirmation that the Environmental Protection Agency has certified that the condition giving rise to the conviction has been corrected, or that the agency head has excepted the contract or subcontract from the CAA or CWA ineligibility.

(End of provision)

60. Section 52.223–3 is amended by revising the clause date and paragraphs (c) and (e) to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

* * * * *

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (DATE)

* * * * *

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

* * * * *

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

* * * * *

61. Section 52.223–7 is amended by revising the clause date and paragraph (b)(2) to read as follows:

52.223–7 Notice of Radioactive Materials.

NOTICE OF RADIOACTIVE MATERIALS (DATE)

* * * * *

(b) * * *

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

* * * * *

62. Section 52.225–1 is amended by revising its heading; and by revising the provision heading and the first paragraph to read as follows:

52.225–1 Buy American Provision.

* * * * *

BUY AMERICAN PROVISION (DATE)

The offeror shall list below each end product that is not a domestic end product (as defined in the clause entitled "Buy American Act-Supplies"). Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded end products	Country of origin

* * * * *

(End of provision)

63. Section 52.225–6 is amended by revising the heading; and by revising the heading and date and paragraph (a) of the provision to read as follows:

52.225–6 Balance of Payments Program Provision.

BALANCE OF PAYMENTS PROGRAM PROVISION (DATE)

(a) The offeror shall list below each end product or service that is not a domestic end product or service (as defined in the clause entitled "Balance of Payments Program"). Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

52.225–7 [Amended]

64. Section 52.225–7 is amended by revising the date of the provision heading to read "(DATE)"; and in paragraph (b) by removing "Certificate" and inserting "Provision".

65. 52.225–8 is amended by revising the section and provision headings; and by revising paragraphs (a) and (c) of the provision to read as follows:

52.225–8 Buy American Act—Trade Agreements—Balance of Payments Program Provision.

* * * * *

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM PROVISION (DATE)

(a) Each end product being offered, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program"). Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and list below those excluded end products that are designated country end products or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and listed below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must insert the applicable line item numbers in the following:

(1) The following supplies qualify as "designated country end products or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program:"

[Insert line item numbers]

(2) The following supplies qualify as "Caribbean Basin country end products" as that term is defined in the

clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program":

[Insert line item numbers]

* * * * *

66. Section 52.225–9 is amended by revising the clause date to read "(DATE)"; and by revising the third and fourth sentences of paragraph (b) to read as follows:

52.225–9 Buy American Act—Trade Agreements—Balance of Payments Program.

* * * * *

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (DATE)

* * * * *

(b) * * * The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—Trade Agreements—Balance of Payments Program Provision". An offer stating that a designated, NAFTA, or Caribbean Basin country end product will be supplied requires the Contractor to supply a designated, NAFTA, or Caribbean Basin country end product or, at the Contractor's option, a domestic end product. * * *

* * * * *

52.225–21 [Amended]

67. Section 52.225–21 is amended by revising the clause date to read "(XXX)"; in the third sentence of paragraph (c) by removing "Certificate" and inserting "Provision" in its place; in Alternate I by revising the date to read "(XXX)"; and in paragraph (c) by removing "Certificate" and inserting "Provision" in its place.

52.227–12 [Amended]

68. Section 52.227–12 is amended by revising the clause date to read "(DATE)"; and in paragraph (f)(7)(ii) by removing "certifying" wherever it appears and inserting "stating".

52.227–13 [Amended]

69. Section 52.227–13 is amended by revising the clause date to read "(DATE)"; and in paragraph (e)(3)(ii) by removing "certifying" wherever it appears and inserting "stating".

70. Section 52.227–21 is amended by revising the section and clause headings, the clause date, paragraph (b)(1), the first sentence of (b)(2), and (d)(1)(ii) to read as follows:

52.227–21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

* * * * *

TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (DATE)

* * * * *

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (DATE)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data. (End of declaration)

(2) The Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. * * *

* * * * *

(d) * * *

(1) * * *

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

* * * * *

(End of clause)

71. Section 52.228–5 is amended by revising the clause date and the first sentence of paragraph (b) to read as follows:

52.228–5 Insurance—Work on a Government Installation.

* * * * *

INSURANCE—WORK ON A GOVERNMENT INSTALLATION (DATE)

* * * * *

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. * * *

* * * * *

72. Section 52.228–8 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.228–8 Liability and Insurance—Leased Motor Vehicles.

* * * * *

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (DATE)

* * * * *

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained.

* * * * *

73. Section 52.228–9 is amended by revising the clause date, the second sentence of paragraph (b), and paragraph (c)(2) to read as follows:

52.228–9 Cargo Insurance.

* * * * *

CARGO INSURANCE (DATE)

(a) * * *

(b) * * * As evidence of insurance maintained, an authenticated copy of the cargo liability insurance policy or policies shall be furnished to _____ [*insert name of contracting agency*]. * * *

(c) * * *

(2) An authenticated copy of any renewal policy to _____ [*insert name of contracting agency*] not less than 15 days prior to the expiration of any current policy on file with _____ [*insert name of contracting agency*].

(End of clause)

74. Section 52.237–7 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.237–7 Indemnification and Medical Liability Insurance.

* * * * *

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (DATE)

* * * * *

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. * * *

* * * * *

75. Section 52.242–4 is amended by revising the clause date and paragraph (a)(1); and in paragraph 2 of the Certificate following paragraph (c) by removing "billing or". The revised text reads as follows:

52.242–4 Certification of Indirect Costs.

* * * * *

CERTIFICATION OF INDIRECT COSTS (DATE)

(a) * * *

(1) Certify any proposal to establish final indirect cost rates;
* * * * *

52.245–8 [Amended]

76. Section 52.245–8 is amended by revising the clause date to read "(DATE)"; and in paragraph (f) by removing "a certificate" and inserting "documentation" both times it appears; the first instance should be capitalized.

77. Section 52.247–2 is amended by revising the introductory paragraph, the clause date and paragraph (a) to read as follows:

52.247–2 Permits, Authorities, or Franchises.

As prescribed in 47.207–1(a), insert the following clause:

PERMITS, AUTHORITIES, OR FRANCHISES (DATE)

(a) The offeror does ☐, does not ☐, hold authorization from the Federal Highway Administration (FHWA) or other cognizant regulatory body. If authorization is held, it is as follows:

(Name of regulatory body)

(Authorization No.)
* * * * *

[End of clause]

52.247–54 [Removed and Reserved]

78. Section 52.247–54 is removed and reserved.

79. Section 52.247–63 is amended by revising the clause date and the definition "U.S.-flag air carrier"; in paragraph (b) by removing "49 U.S.C. 1517" and inserting "49 U.S.C. 40118"; and by revising paragraph (d) to read as follows:

52.247–63 Preference for U.S.-Flag Air Carriers.

* * * * *

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (DATE)

* * * * *

(a) * * *

U.S.-flag air carrier, as used in this clause, means an air carrier holding a certificate under Chapter 411 of Title 49 of U.S.C.

* * * * *

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

(End of statement)
* * * * *

PART 53—FORMS

80. Section 53.214(e) is amended by revising the paragraph heading to read as follows:

53.214 Sealed bidding.

* * * * *

(e) *SF 129 (REV. XX/XX), Solicitation Mailing List Application.* * * *

* * * * *

81. Section 53.215–1(f) is amended by revising the paragraph heading to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

* * * * *

(f) *SF 129, Solicitation Mailing List Application.* * * *

* * * * *

82. Section 53.222(g) is amended by revising the paragraph heading to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH–347).

* * * * *

(g) *SF 1445 (REV. XX/XX), Labor Standards Interview.* * * *

* * * * *

83. Section 53.229 is amended by revising the paragraph heading to read as follows:

53.229 Taxes (SF's 1094, 1094–A).

SF 1094 (REV. XX/XX, U.S. Tax Exemption Certificate, and SF 1094–A (REV XX/XX), Tax Exemption Certificates Accountability Record. * * *

84. Section 53.245 is amended in paragraphs (c), (f), (g), (h), (i), and (j) by revising the paragraph headings to read as follows:

53.245 Government property.

* * * * *

(c) *SF 1423 (REV. XX/XX), Inventory Verification Survey.*

* * * * *

(f) *SF 1426 (REV. XX/XX), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (REV. 7/89), Inventory Schedule A-Continuation Sheet (Metals in Mill Product Form.* * * *

(g) *SF 1428 (REV. XX/XX), Inventory Schedule B, and SF 1429 (REV. 7/89), Inventory Schedule B-Continuation Sheet.* * * *

(h) *SF 1430 (REV. XX/XX), Inventory Schedule C (Work-in-Process) and SF 1431 (REV. 7/89), Inventory Schedule C-Continuation Sheet (Work-in-Process).* * * *

(i) *SF 1432 (REV. XX/XX), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (REV. 7/89), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment).* * * *

(j) *SF 1434 (REV. XX/XX), Termination Inventory Schedule E (Short Form for Use with SF 38 Only).* * * *

BILLING CODE 6820–EP–P

85. Section 53.301–129 is revised to read as follows:

53.301–129 Standard Form 129, Solicitation Mailing List Application.

SOLICITATION MAILING LIST APPLICATION

1. TYPE OF APPLICATION ☐ INITIAL ☐ REVISION | 2. DATE | OMB NO.: 9000-0002 Expires: 10/31/97

NOTE: Please complete all items on this form. Insert N/A in items not applicable. See reverse for instruction.

Public reporting burden for this collection of information is estimated to average .58 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

3. SUBMIT TO
a. FEDERAL AGENCY'S NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

4. APPLICANT
a. NAME
b. STREET ADDRESS | c. COUNTY
d. CITY | e. STATE | e. ZIP CODE

5. TYPE OF ORGANIZATION *(Check one)*
☐ INDIVIDUAL ☐ NON-PROFIT ORGANIZATION
☐ PARTNERSHIP ☐ CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF:

6. ADDRESS TO WHICH SOLICITATIONS ARE TO BE MAILED *(If different than Item 4)*
a. STREET ADDRESS | b. COUNTY
c. CITY | d. STATE | e. ZIP CODE

7. NAMES OF OFFICERS, OWNERS OR PARTNERS
a. PRESIDENT | b. VICE PRESIDENT | c. SECRETARY
d. TREASURER | e. OWNERS OR PARTNERS

8. AFFILIATES OF APPLICANT

NAME	LOCATION	NATURE OF AFFILIATION

9. PERSONS AUTHORIZED TO SIGN OFFERS AND CONTRACTS IN YOUR NAME *(Indicate if agent)*

NAME	OFFICIAL CAPACITY	TELEPHONE NUMBER AREA CODE	TELEPHONE NUMBER NUMBER

10. IDENTIFY EQUIPMENT, SUPPLIES, AND/OR SERVICES ON WHICH YOU DESIRE TO MAKE AN OFFER *(See attached Federal Agency's supplemental listing and instruction, if any)*

11a. SIZE OF BUSINESS *(See definitions on reverse)*
☐ SMALL BUSINESS *(If checked, complete Items 11B and 11C)* ☐ OTHER THAN SMALL BUSINESS

11b. AVERAGE NUMBER OF EMPLOYEES *(Including affiliates)* FOR FOUR PRECEDING CALENDAR QUARTERS

11c. AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS
$

12. TYPE OF OWNERSHIP *(See definitions on reverse) (Not applicable for other than small businesses)*
☐ DISADVANTAGED BUSINESS ☐ WOMAN-OWNED BUSINESS

13. TYPE OF BUSINESS *(See definitions on reverse)*
☐ MANUFACTURER OR PRODUCER ☐ CONSTRUCTION CONCERN ☐ SURPLUS DEALER
☐ SERVICE ESTABLISHMENT ☐ RESEARCH AND DEVELOPMENT

14. DUNS NO. *(If available)*

15. HOW LONG IN PRESENT BUSINESS?

16. FLOOR SPACE *(Square Feet)*
a. MANUFACTURING | b. WAREHOUSE

17. NET WORTH
a. DATE | b. AMOUNT
$

18. SECURITY CLEARANCE *(If applicable, check highest clearance authorized)*

FOR	TOP SECRET	SECRET	CONFIDENTIAL	c. NAMES OF AGENCIES GRANTING SECURITY CLEARANCES	d. DATES GRANTED
a. KEY PERSONNEL					
b. PLANT ONLY					

The information supplied herein *(including all pages attached)* is correct and that neither the applicant nor any person *(or concern)* in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from making offers for furnishing materials, supplies, or services to the Government or any agency thereof.

19a. NAME OF PERSON AUTHORIZED TO SIGN *(Type or print)* | 20. SIGNATURE | 21. DATE SIGNED

19b. TITLE OF PERSON AUTHORIZED TO SIGN *(Type or print)*

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition usable

STANDARD FORM 129 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.214(a)

PROPOSED

INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed Solicitation Mailing List Application, together with such other lists as may be attached to this application form, with each procurement office of the Federal agency with which they desire to do business. If a Federal agency has attached a Supplemental Commodity list with instructions, complete the application as instructed. Otherwise, identify in item 10 the equipment, supplies, and/or services on which you desire to bid. (Provide Federal Supply Class or Standard Industrial Classification codes, if available.) The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.

After placement on the bidder's mailing list of an agency, your failure to respond (submission of bid, or notice in writing, that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item) to solicitations will be understood by the agency to indicate lack of interest and concurrence in the removal of your name from the purchasing activity's solicitation mailing for items concerned.

SIZE OF BUSINESS DEFINITIONS
(See Item 11A.)

a. Small business concern - A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or the other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

b. Affiliates - Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship. (See Items 11B and 11A.)

c. Number of employees - (Item 11B) In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary or other basis during each of the pay periods of the preceding 12 months. If a concern has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business.

TYPE OF OWNERSHIP DEFINITIONS
(See Item 12.)

a. "Disadvantaged business concern" - means any business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

b. "Women-owned business" - means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

TYPE OF BUSINESS DEFINITIONS
(See Item 13.)

a. "Manufacturer or producer" means a person (or concern) owning, operating, or maintaining a store, warehouses, or other establishment that produces, on the premises, the materials, supplies, articles or equipment of the general character of those listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached.

b. "Service establishment" - means a concern (or person) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (but not limited to) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as a part of the services performed.

DRAFT

• COMMERCE BUSINESS DAILY: The Commerce Business Daily, published by the Department of Commerce, contains information concerning proposed procurements, sales, and contract awards. For further information concerning this publication, contact your local Commerce Field Office.

85. Section 53.301–1094 is revised to read as follows:

53.301–1094 Standards Form 1094, U.S. Tax Exemption Certificates.

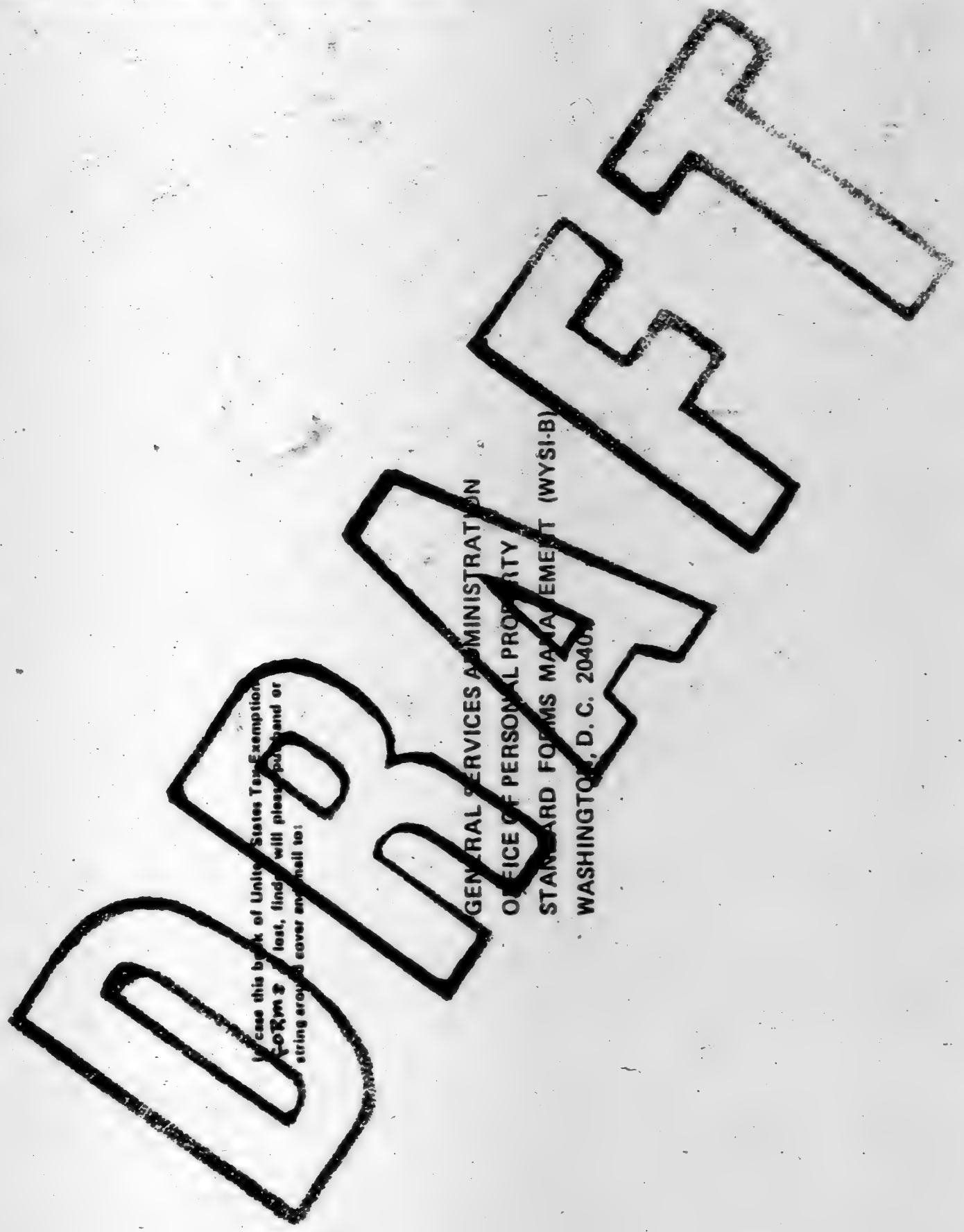

U.S. TAX EXEMPTION FORM — Read the instructions on the reverse side.		DEPARTMENT, AGENCY, OR OFFICE	SERIAL NO.
ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT *(Describe)*			QUANTITY / UNIT PRICE $
VENDOR FROM WHICH PURCHASED — NAME		A tax exemption Form has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to:	Amount of Tax Excluded
ADDRESS *(No., Street, City, State, and ZIP Code)*			State $
The information on this form is true and correct to the best of my knowledge and belief.		P.O. OR CONTRACT NO.	Local $
PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS ▶	DATE	DATES	For Administrative Office
			D.O. SYMBOL NO.
SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE ▶	DATE		VOUCHER NO.
			DATE

STANDARD FORM 1094 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

FREE

INSTRUCTIONS

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.

2. This form shall NOT be used for:
(a) Purchases of quarters or subsistence made by employees in travel status.
(b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
(c) Merchandise purchased which is subject only to Federal Tax.

3. If the space provided on the face of this form is inadequate, attach a separate statement containing the required information.

4. If both State and Local taxes are involved, use a separate form for each tax. The form will be provided to the vendor when the prices exclude State or Local tax.

5. The serial number of each form prepared will be shown on the payment voucher.

THE FRAUDULENT USE OF THIS FORM FOR THE PURPOSE OF OBTAINING EXEMPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.

STANDARD FORM 1094 BACK (REV. 10-83)

86. Section 53.301–1094 is revised to read as follows:

53.301–1094A Standard Form 1094A, Tax Exemption Certificates Accountability Record.

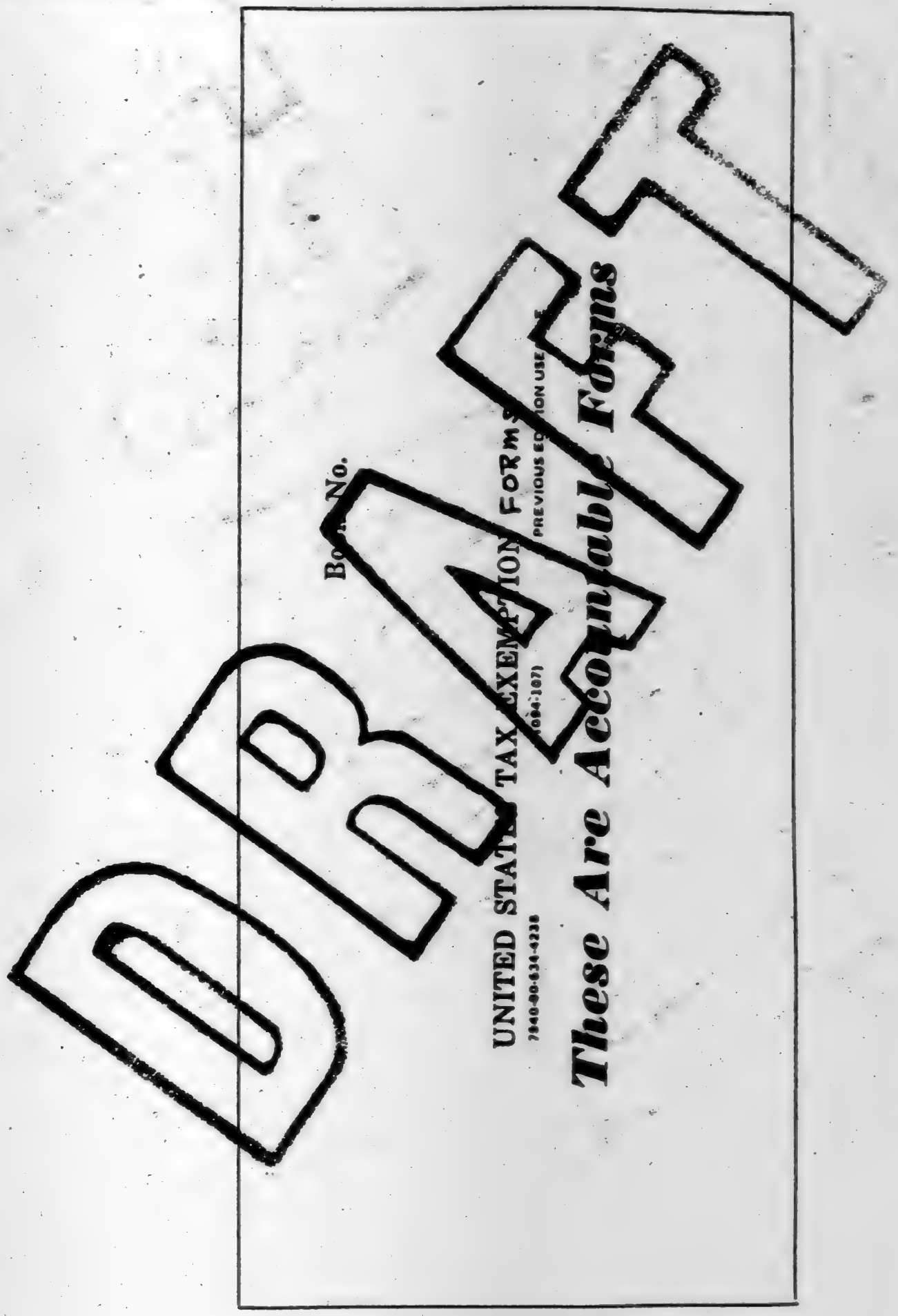

TAX EXEMPTION FORMS ACCOUNTABILITY RECORD	To be used for convenience of the issuing agency for maintaining a control record of tax exemption issued

TAX EXEMPTION FORM IN THIS BOOK NUMBERED ▶	THROUGH	TAX EXEMPTION FORM RETURNED UNUSED FOR REISSUE ▶	THROUGH

ISSUED TO		REISSUED TO	
NAME		NAME	
TITLE		TITLE	
OFFICE DESIGNATION		OFFICE DESIGNATION	
ISSUING OFFICER — SIGNATURE	DATE ISSUED	ISSUING OFFICER — SIGNATURE	DATE ISSUED
ISSUING OFFICER — TITLE AND OFFICE DESIGNATION		ISSUING OFFICER — TITLE AND OFFICE DESIGNATION	

STANDARD FORM 1094-A (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

FORM NO. / DATE	Mark "X" in appropriate column to indicate type of tax — VENDOR AND PURCHASE		TAX EXCLUDED (Amount)	S / O / C	TRANSACTION REFERENCE
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$		Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED			Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED			Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$		Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$		Voucher No. / Voucher Date / PO/Cont. No.

STANDARD FORM 1094-A BACK (REV. 10-83)

SPECIMEN

87. Section 53.301–1423 is revised to read as follows:

53.301–1423 Standard Form 1423, Inventory Verification Survey.

INVENTORY VERIFICATION SURVEY
(See FAR 45.606-3)

DATE

OMB No.: 9000-0015
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

SECTION I - GENERAL

1. FROM: *(Include ZIP Code)*

2. CONTRACT NUMBER

3. TO: *(Include ZIP Code)*

4. CONTRACT/SUBCONTRACTOR

5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

SF 1426 pages ____ through ____ ▼

SF 1428 pages ____ through ____ ▼

SF 1430 pages ____ through ____ ▼

SF 1432 pages ____ through ____ ▼

SF [illegible] pages ____ through ____ ▼

SECTION II - TECHNICAL VERIFICATION

	YES	NO
6. IS PROPERTY LISTED ON THE INVENTORY SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?		
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY SCHEDULES?		•
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?		•
9. IS THE PROPERTY PROPERLY TAGGED?		•
10. ARE THE CONDITION CODES ACCURATE?		•
11. ARE THE ITEMS LISTED ON SF 1432 CORRECTLY CATEGORIZED AS SPECIAL TOOLING OR SPECIAL TEST EQUIPMENT?		•

	YES	NO
12. ARE THE WEIGHTS OF SCRAP ITEMS RECOMMENDED AS SCRAP APPROXIMATE? CORRECT?		•
IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT:		
13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?		•
14. ARE THE ITEMS AGENCY-OWNED?		•
15. DO ANY ITEMS REQUIRE SPECIAL PROCESSING *(Fire arms, drugs, hazardous or explosive items, or precious metals, etc.)*?		•
16. ARE COMMON ITEMS EXCLUDED ON THE INVENTORY SCHEDULE?		•

SECTION III - TERMINATION INVENTORY

COMPLETION OF THIS SECTION ☐ IS ☐ IS NOT REQUIRED *(Requestor, check one)*

	YES	NO
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE?		•
DATE TO NOTICE:		
18. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT?		•
CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?	•	
19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?		•

	YES	NO
20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.	•	
21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?		•
b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?		•
c. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?		•

22. REQUESTING OFFICE REMARKS *(Where the answer to any question is "No", a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)*

23. SIGNATURE OF REQUESTER

INVENTORY VERIFICATION

The above information is based on a physical Verification of Inventory listed under Item 5.

24. NAME AND TITLE	25. SIGNATURE OF VERIFIER	26. DATE

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previous edition is not usable

STANDARD FORM 1423 (REV.)
Prescribed by GSA-FAR (48 CFR 53.245(c))

DRAFT

STANDARD FORM 1004-A BACK (REV. 10-83)

88. Section 53.301–1426 is revised to read as follows:

53.301–1426 SF 1426, Inventory Schedule A (Metals in Mill Product Form).

INVENTORY SCHEDULE A
(METALS IN MILL PRODUCT FORM)
(See FAR Section 45.606 for instructions)

☐ PARTIAL ☐ FINAL

TYPE: ☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT | DATE

OMB No.: 9000-0015
Expires: 05/31/96

PROPERTY CLASSIFICATION | PAGE | NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME | STREET ADDRESS

CITY | STATE | ZIP CODE

CITY | STATE | ZIP CODE

LOCATION OF MATERIAL

PRODUCT COVERED BY CONTRACTOR'S ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: FORM, SHAPE, ROLLING TREATMENT (When applicable, type of edge. Example: HR coiled strip, CR flat sheets bar rod, tubing in straight length, etc.) (b)	HEAT TREATMENT, TEMPER, HARDNESS FINISH, ETC. (Example: Annealed and pickled, 1/2 hard, polished, etc.) (b1)	SPECIFICATION, AND ANY OR OTHER VARIATION FROM SPECIFICATION (Example: QQ-T-951-D 510-42 Alloy 7 Grade III) (b2)	DIMENSIONS: THICKNESS (Wall for tubing, diameter for pipe, type designation for wire) (b3)	WIDTH (Wall for tube, diameter of rod, also for pipe, nominal size no. for extruded shapes) (b4)	LENGTH FT (b5)	LENGTH IN/CM (b5)	CONDITION (new or used) (c)	QUANTITY (d)	UNIT OF MEASURE (e)	COST: UNIT (f)	COST: TOTAL (g)	CONTRACTOR'S OFFER (g1)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This Inventory Schedule has been examined, and to the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free of all liens and encumbrances.

NAME OF CONTRACTOR	NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	
BY (Signature of Authorized Official)	NAME OF AUTHORIZED OFFICIAL	TITLE	DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

STANDARD FORM 1426 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.246(i)

89. Section 53.301–1428 is revised to read as follows:

53.301–1428 SF 1428, Inventory Schedule B.

INVENTORY SCHEDULE B
(See FAR Section 45.606 for instructions)

☐ PARTIAL ☐ FINAL

TYPE: ☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT

DATE

OMB No.: 9000-0015
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

TYPE OF INVENTORY
☐ RAW MATERIALS (Other than metals) ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS
☐ FINISHED PRODUCT ☐ PLANT EQUIPMENT ☐ MISCELLANEOUS

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ A SUBCONTRACT OR PURCHASE ORDER

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

PROPERTY CLASSIFICATION | PAGE NO. | NO. OF PAGES

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	DESCRIPTION: GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	DESCRIPTION: TYPE OF PACKING (Bulk, bbls, crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost): UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE B

This Inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY (Signature of Authorized Official) | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1428 (REV.)
Prescribed by GSA-FAR (48 CFR 53.245(g))

90. Section 53.301–1430 is revised to read as follows:

53.301–1430 SF 1430, Inventory Schedule C (Work-In-Process).

INVENTORY SCHEDULE C
(WORK-IN-PROCESS)
(See FAR Section 45.606 for instructions)

☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION
☐ NONTERMINATION

TYPE OF CONTRACT

DATE

OMB No.: 9000-0015
Expires: 05/31/98

PAGE NO. | NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT
☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	ESTIMATED WEIGHT	CONDITION (See code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST: UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE CERTIFICATE

This Inventory Schedule has been examined, and to the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY (Signature of Authorized Official)	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1430 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.245(h)

91. Section 53.301–1432 is revised to read as follows:

53.301–1432 SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).

INVENTORY SCHEDULE D
(SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT)
(See FAR Section 45.606 for instructions)

☐ PARTIAL ☐ FINAL

TYPE
☐ TERMINATION
☐ NONTERMINATION

TYPE OF CONTRACT | DATE

OMB No.: 9000-0018
Expires: 05/31/98

PROPERTY CLASSIFICATION | PAGE NO. | NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 2040.

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT
☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	CONDITION (Use code) (c)	QUANTITY (d)	COST UNIT (e)	COST TOTAL	COST APPLICABLE TO THIS CONTRACT: TO ENTIRE CONTRACT (f1)	COST APPLICABLE TO THIS CONTRACT: TO PORTION NOT TO BE COMPLETED (f2)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This Inventory Schedule has been examined, and to the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory described in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY (Signature of Authorized Official) | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1432 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.245(b)

92. Section 53.301–1434 is revised to read as follows:

53.301–1434 SF 1434 Termination Inventory Schedule E (Short Form For Use With SF 1439 Only).

TERMINATION INVENTORY SCHEDULE E
(SHORT FORM FOR USE WITH SF 1438 ONLY)
(See FAR Section 45.606 for instructions)

DATE	PAGE NO.	NO. OF PAGES	OMB No.: 9000-0015 Expires: 05/31/98

☐ PARTIAL ☐ FINAL

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

THIS SCHEDULE APPLIES TO (Check one)
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS (Include ZIP Code)

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE (Include ZIP Code)

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost): UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

TERMINATION INVENTORY

This Inventory Schedule has been examined, and to the excesses of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY (Signature of Authorized Official)	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1434 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.245(d)

93. Section 53.301–1445 is revised to read as follows:

53.301–1445 SF 1445, Labor Standards Interview.

LABOR STANDARDS INTERVIEW

FORM APPROVED
OMB NO. 9000–0088

CONTRACT NUMBER

EMPLOYEE'S NAME (Last, First, MI)

NAME OF PRIME CONTRACTOR

EMPLOYEE'S ADDRESS (Street, City, State, ZIP Code)

NAME OF EMPLOYER

WORK CLASSIFICATION

WAGE RATE

SUPERVISOR'S NAME (Last, First, MI)

(Check Below)

	YES	NO
DO YOU WORK OVER 8 HOURS PER DAY?		
DO YOU WORK OVER 40 HOURS PER WEEK?		
ARE YOU PAID AT LEAST TIME AND A HALF FOR OVERTIME HOURS?		
ARE YOU RECEIVING ANY CASH PAYMENTS FOR FRINGE BENEFITS REQUIRED BY THE POSTED WAGE DETERMINATION DECISION?		

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORKDAY BEFORE THIS INTERVIEW?

HOURS | WHAT DATE (YYMMDD) WAS THAT?

WHAT TOOLS DO YOU USE?

WHEN DID YOU BEGIN WORK ON THIS PROJECT (YYMMDD)?

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE.

EMPLOYEE'S SIGNATURE | DATE (YYMMDD)

INTERVIEWER'S SIGNATURE | DATE (YYMMDD)

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED

IS EMPLOYEE PROPERLY CLASSIFIED AND PAID (If additional space is needed, use comments section)

☐ YES ☐ NO

ARE WAGE RATES AND POSTERS DISPLAYED?

☐ YES ☐ NO

FOR USE BY PAYROLL CHECKER

DO ABOVE INFORMATION AND COMMENTS AGREE WITH PAYROLL DATA?

☐ YES ☐ NO

COMMENTS

DATE OF CHECK (YYMMDD)	NAME OF CHECKER (Last, First, MI)	JOB TITLE	SIGNATURE

NSN 7540-01-389-0830

1445-101

STANDARD FORM 1445 (10-87)
Prescribed by GSA
FAR (48 CFR) 53.229(a)

DRAFT

[FR Doc. 96–23169 Filed 9–11–96; 8:45 am]

BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 14, 15, 36, 52, and 53

[FAR Case 95–029]

RIN 9000–AH21

Federal Acquisition Regulation; Part 15 Rewrite—Phase I

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule and notice of public meeting.

SUMMARY: This proposed rule contains the Phase I rewrite of Federal Acquisition Regulation Part 15, Contracting by Negotiation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below starting at 10 a.m. to 5:00 p.m., local time, on October 17, 1996.

Evening Session: Requests for an evening meeting should be made on or before September 27, 1996.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to the GSA address below on or before October 8, 1996.

Comments: Comments should be submitted on or before November 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: *Comments:* Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95–029 in all correspondence related to this case.

Public Meeting: The location of the public meeting is the National Aeronautics and Space Administration Auditorium, 300 E Street, SW, First Floor, Washington, DC 20546. Use the entrance at 4th & E Streets.

Evening Session: Send requests for an evening meeting to: Ms. Melissa Rider, DAR Council, Attn: IMD 3D139, PDUSD(A&T)DP/DAR, 3062 Defense Pentagon, Washington, DC 20301–3062; fax (703) 602–0350.

Internet Access: This proposed rule will also be posted on the Acquisition Reform Network (ARNET) at www.Arnet.gov. Comments may be submitted electronically at that address and will be considered official public comments.

FOR FURTHER INFORMATION CONTACT: Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topic scheduled for discussion, should contact the Part 15 Rewrite Committee Chair, Ms. Melissa Rider (703) 602–0131; fax (703) 602–0350. For general information, contact Ms. Victoria Moss at (202) 501–4764, or the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–029.

SUPPLEMENTARY INFORMATION:

A. Background

On January 29, 1996, the FAR Council tasked an ad hoc interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite will be accomplished in two phases. Phase I consists of rewriting FAR Subparts 15.0, 15.1, 15.2, 15.3, 15.4, 15.6, and 15.10 covering acquisition techniques and source selection.

The FAR Council and the Part 15 Rewrite Committee are providing a forum for the exchange of ideas and information with Government and industry personnel by holding a public meeting and soliciting comments. The goal is to ensure an open dialogue between the Government and the general public on this important initiative. Interested parties are invited to present statements or comments on the Phase I proposed rewrite at the public meeting.

An evening session is also being considered to allow small businesses and other interested parties a greater opportunity to attend and present comments. Those who would find an evening session easier to attend should contact Ms. Melissa Rider at the address listed above. If there is sufficient interest, an evening session will be scheduled and announced in a separate **Federal Register** notice.

B. Case Summary

The proposed rule revises fundamental concepts and processes in the current FAR Part 15 and introduces new policies. In addition, a more appropriate sequencing of information has been adopted to facilitate use. The proposed rule does not alter the full and open competition provisions of FAR Part 6. The proposed rule is Phase I of a two-phase rewrite of FAR Part 15. Phase II will cover pricing-related issues in FAR Subparts 15.7, 15.8, and 15.9 and unsolicited proposals in FAR Subpart 15.5.

The committee believes that the spirit of the National Performance Review, the Federal Acquisition Streamlining Act of 1994, and the Federal Acquisition Reform Act of 1995 support an aggressive approach to the rewrite. The committee reviewed the history of the current regulation, including archive copies of the Armed Services Procurement Regulation (ASPR), Defense Acquisition Regulation (DAR), Defense Acquisition Regulations Council files documenting previous changes to the regulations, GAO and Boards of Contract Appeals decisions, statutes and supporting legislative histories, the archives of the Acquisition Law Advisory Panel to the United States Congress ("Section 800 Panel"), SWAT team recommendations, results of a 1990 GSA survey on improving the FAR, and recommendations of the Second Hoover Commission and the Packard Commission. Comments considered in drafting this rule were received—

1. During a public meeting held on January 25, 1996, and public comments received in response to three **Federal Register** notices (60 FR 63023, December 8, 1995; 60 FR 65360, December 19, 1995; and 60 FR 67113, December 28, 1995);

2. Over the Acquisition Reform Network (an Internet forum);

3. From other Government agencies, the DAR Council, the CAAC, and the Office of Federal Procurement Policy;

4. In response to other notices of the rewrite in various print media and conferences; and

5. From Government fora such as the Front-line Professional's Forum and the Federal Procurement Executive Association.

C. Summary of Changes

Major policy shifts in this proposed rule include—

- A narrower definition of "discussions" limited to communications after establishment of the competitive range;
- A shift in competitive range policy to encourage retaining only the offerors with the greatest likelihood of award and allowing the contracting officer to further limit the competitive range in the interest of efficiency;
- Encouragement of communication with industry throughout the solicitation process to ensure competitive range determinations are informed decisions. The rule allows disclosure of perceived deficiencies

before establishment of the competitive range to resolve ambiguities and other concerns. These communications are not "discussions."

• Elimination of "minor clarifications" except for use in award without discussions; and

• Revision of the rules governing late proposals for negotiated acquisitions to make the offeror responsible for timely delivery of its offer, and to allow late offers to be considered if doing so is in the best interests of the Government.

The proposed rule also specifically authorizes practices currently in use at some agencies including—

• Comparison of one offer to another; and

• Release of the Government estimate to all offerors;

Changes made to support streamlined source selections include—

• Additional discussion of the concept of fairness in the guiding principles at FAR 1.102–2(c);

• A new definition of "best value" at FAR Part 2;

• A description of the two most common source selection processes—award to the low price technically acceptable offeror, and tradeoffs among cost and other factors;

• Authorization to use techniques such as multiphase proposals or oral presentations. These processes and techniques are addressed at 15.2 and comply with Section 18 of the Office of Federal Procurement Policy (OFPP) Act and Sections 8(e), (f), and (g) of the Small Business Act;

• Guidance on communications between the Government and industry prior to release of the solicitation. Agencies are encouraged to share available information freely with industry, within the constraints of the prohibition on giving information necessary to prepare a proposal to one interested party without sharing the information with all other interested parties; and

• A new Model Contract Format (MCF), based on a joint Army/Air Force proposal, that is proposed to replace the uniform contract format. The MCF format has only six sections. The new format will require a change to existing automated systems.

The greatest challenge to the committee was addressing the concerns that traditionally have been raised under the concept of fairness, while maintaining an acquisition process that promotes best value to the taxpayers. This challenge was perhaps most evident in deliberations regarding the treatment of "discussions." The committee believes that the requirement in the Competition in Contracting Act (CICA) that discussions be held with all offerors in the competitive range does not require that such discussions be held an equal number of times with all offerors. In the past, discussions were conducted as "rounds of discussions," with submissions of revised proposals signaling the end of each round. Under that approach, the Government was compelled to reopen discussions with all offerors in the competitive range, even when discussions were only needed with some of those offerors. That process is burdensome, expensive, and time consuming for both the Government and industry. The committee abandoned the concept of rounds of discussion and eliminated that portion of the current definition which provided for best and final offers, so that both industry and Government could rely more on agreements reached during discussions without requiring offerors to develop revised proposals. However, the contracting officer may request proposal revisions as often as needed, during discussions.

Refining the definition of "discussions" resulted in a disconnect with the concept of communications prior to establishment of the competitive range. In this area, the committee believed increased communications with industry could be particularly beneficial. However, it is necessary to provide guidelines for those communications in order to preserve fairness in the contracting process. The committee decided that those communications should be used to obtain information to understand fully the offeror's intent and to facilitate the Government's decision either to award without discussions or to determine the competitive range. In order to make the communications effective, the committee determined that the information obtained could be used in proposal evaluation. However, changes to the offeror's proposal, other than correction of mistakes, would not be permitted.

Additionally, the committee reaffirmed the flexibility available to the contracting officer for determining what past performance information should be included as part of the proposal. The committee believes the contracting officer is in the best position to determine whether and when to obtain information regarding corrective actions taken to remedy poor past performance. To that end, the existing regulation provides the contracting officer with the greatest amount of flexibility in exercising discretion. While, as a general matter, it is usually a more accurate indicator to look at trends in an offeror's actual performance rather than on promises or otherwise untested changes (the effectiveness of which is yet unknown), the rule allows the contracting officer to ask the offerors to submit corrective action information as part of their proposals or to request the information at any time following receipt of proposals.

D. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule revises fundamental concepts and processes in the current FAR Part 15 and introduces new policies. The goals of this rewrite are to infuse into the source selection process innovative techniques designed to simplify the process and produce better value, and to eliminate regulations that impose unnecessary burdens on industry and Government contracting officers.

The proposed rule will apply to all large and small entities (including educational and nonprofit entities), that offer supplies or services to the Government in competitive negotiated acquisitions. Aspects of the proposed rule which may impact small entities are: Making a shift in competitive range policy to encourage retaining only those offerors with the greatest likelihood of award rather than all those with a reasonable chance of award; allowing the contracting officer to limit the competitive range in the interest of efficiency; prohibiting cost analysis when contracting on a fixed-price basis without cost incentives, unless the contracting officer has reason to believe that the proposed prices are not reasonable; requiring that evaluation factors established for solicitations provide for meaningful evaluations of competing proposals; rewriting past performance requirements using plain English; allowing for increased communication between the Government and industry earlier in the acquisition process to ensure industry's understanding of Government requirements and the Government's understanding of firms' proposals; eliminating the need for firms to prepare revised proposals reflecting agreements reached during discussions; allowing discussions to remain open until a contract is awarded to simplify making minor adjustment to successful offerors' proposals; allowing the Government to reveal the cost or price that its analysis, market research, and other reviews have identified for an acquisition; and simplifying the process used to amend solicitations after proposals have been

received. The rule proposes to streamline source selection procedures, thereby creating a more efficient process that benefits both private and public sectors.

OFPP believes the proposed rule reduces Government regulations that establish requirements for the way Government deals with those seeking to do business with it. Such deregulation reflects the spirit and intent of the Regulatory Flexibility Act. OFPP further believes that the changes are good for small businesses; that there are many small businesses that do not do business with the Government because of the complexity of offering, evaluation and award, that will benefit from these changes.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 95–029), in correspondence.

E. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule revises existing information collection requirements. Accordingly, a request for amendments of information collection requirements under Office of Management and Budget (OMB) control numbers 9000–0037, 9000–0044, and 9000–0048 will be submitted to OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53

Government procurement.

Dated: September 9, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

2. Section 1.102–2 is amended by adding paragraph (c)(3) to read as follows:

1.102 Performance standards.

* * * * *

(c) * * *

(3) All offerors and contractors are entitled to fair treatment. Fair treatment requires that the members of the acquisition team abide by the solicitation and acquisition plan (if any) and not act in an arbitrary or capricious manner when dealing with offerors and contractors. Fairness does not mean that offerors and contractors of differing capabilities, past performance, or other relevant factors, must be treated the same.

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Section 2.101 is amended by inserting, in alphabetical order, the definition "Best value" to read as follows:

2.101 Definitions

* * * * *

Best value means an offer or quote which is most advantageous to the Government, cost or price and other factors considered.

* * * * *

PART 14—SEALED BIDDING

4. Section 14.404–1 is amended by adding paragraph (f) to read as follows:

14.404–1 Cancellation of invitations after opening.

* * * * *

(f) When the agency head has determined, in accordance with 14.404–1(e)(1), that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate and make award without issuing a new solicitation, provided, each responsible bidder in the sealed-bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations.

PART 15—CONTRACTING BY NEGOTIATION

5. The Table of Contents for Part 15 is revised to read as follows:

Sec.

Subpart 15.0—General

15.000 Scope of part.
15.001 Definitions.
15.002 Negotiated acquisition.

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.
15.101 Lowest price technically acceptable process.
15.102 Tradeoff process.
15.103 Multiphase acquisition technique.
15.104 Oral presentations.

Subpart 15.2—Solicitation and Receipt of Proposals and Quotations

15.200 Scope of subpart.
15.201 Presolicitation exchanges with industry.
15.202 Requests for proposals.
15.203 Model contract format.
15.203–1 Section I, Cover sheet/supplemental information.
15.203–2 Section II, Acquisition description.
15.203–3 Section III, Financial and administrative information.
15.203–4 Section IV, Contract clauses.
15.203–5 Section V, Performance requirements.
15.203–6 Section VI, Proposal evaluation and submission information.
15.204 Issuing solicitations.
15.205 Amending the solicitation.
15.206 Receipt of proposals and requests for information.
15.207 Submission, modification, revision, and withdrawal of proposals.
15.208 Solicitation provisions and contract clause.
15.209 Forms.

Subpart 15.3—Unsolicited Proposals

15.300 Scope of subpart.
15.301 Definitions.
15.302 Policy.
15.303 General.
15.304 Advance guidance.
15.305 Content of unsolicited proposals.
15.306 Agency procedures.
15.306–1 Receipt and initial review.
15.306–2 Evaluation.
15.307 Contracting methods.
15.308 Prohibitions.
15.309 Limited use of data.

Subpart 15.4—Source Selection

15.400 Scope of subpart.
15.401 Definitions.
15.402 Source selection objective.
15.403 Responsibilities.
15.404 Evaluation factors and subfactors.
15.405 Proposal evaluation.
15.406 Competitive range.
15.407 Communications with offerors.
15.408 Award without discussions.
15.409 Proposal revisions.
15.410 Source selection.

Subpart 15.5—Make-or-Buy Programs

15.500 Scope of subpart.
15.501 Definitions.
15.502 General.
15.503 Acquisitions requiring make-or-buy programs.
15.504 Items and work included.
15.505 Solicitation requirements.
15.506 Evaluation, negotiation, and agreement.
15.507 Incorporating make-or-buy programs in contracts.
15.508 Contract clause.

Subpart 15.6—Price Negotiation

15.600 Scope of subpart.
15.601 Definitions.
15.602 Policy.
15.603 General.
15.604 Cost or pricing data and information other than cost or pricing data.
15.604–1 Prohibition on obtaining cost or pricing data.

15.604–2 Requiring cost or pricing data.
15.604–3 [Reserved]
15.604–4 Certificate of Current Cost or Pricing Data.
15.604–5 Requiring information other than cost or pricing data.
15.604–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.
15.604–7 Defective cost or pricing data.
15.604–8 Contract clauses and solicitation provisions.
15.605 Proposal analysis.
15.605–1 General.
15.605–2 Price analysis.
15.605–2 Cost analysis.
15.605–4 Technical analysis.
15.605–5 Field pricing support.
15.606 Subcontract pricing considerations.
15.606–1 General.
15.606–2 Prospective subcontractor cost or pricing data.
15.606–3 Field pricing reports.
15.607 Prenegotiation objectives.
15.608 Price negotiation memorandum.
15.609 Forward pricing rates agreements.
15.610 Should-cost review.
15.610–1 General.
15.610–2 Program should-cost review.
15.610–3 Overhead should-cost review.
15.611 Estimating systems.
15.612 Unit prices.
15.612–1 General.
15.612–2 Contract clause.
15.613 [Reserved]
15.614 Unbalanced offers.

Subpart 15.7—Profit

15.700 Scope of subpart.
15.701 General.
15.702 Policy.
15.703 Contracting officer responsibilities.
15.704 Solicitation provision and contract clause.
15.705 Profit-analysis factors.
15.705–1 Common factors.
15.705–2 Additional factors.

Subpart 15.8—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.801 Definition.
15.802 Applicability.
15.803 Notifications to unsuccessful offerors.
15.804 Award to successful offeror.
15.805 Preaward debriefing of offerors.
15.806 Postaward debriefing of offerors.
15.807 Protests against award.
15.808 Discovery of mistakes.
15.809 Forms.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

6. Subpart 15.0, is added, consisting of 15.000, which is revised, and 15.001 and 15.002 which are added to read as set forth below. Subpart 15.1 is revised and Subpart 15.2 is added to read as follows:

Subpart 15.0—General

15.000 Scope of part.

This part prescribes policies and procedures governing acquisitions that do not use sealed bid or simplified acquisition procedures, including both competitive and sole source acquisitions.

15.001 Definitions.

As used in this part—

Proposal modification is a change made to a proposal before the solicitation is closing date and time; made in response to an amendment; or made to correct a mistake at any time before award.

Revision is a change to a proposal requested by a contracting officer as the result of discussions.

15.002 Negotiated acquisition.

This part covers negotiated acquisition processes for competitive and sole source acquisitions (see Part 6.303–1).

(a) *Sole source acquisitions.* When contracting in a sole source environment, contracting officers are encouraged to follow the procedures in this part to the maximum practicable extent, consistent with an efficient process. Sole source acquisitions should rely on detailed communications with offerors rather than formal procedures. The RFP should be tailored to remove unnecessary information and requirements (e.g. evaluation criteria, voluminous proposal preparation instructions); however, the Model Contract Format should be used, whenever practicable.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, evaluation, the source selection decision to the greatest practicable extent, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the offer representing the best value to the Government.

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.

This subpart describes some acquisition processes and techniques which may be used, singly or in combination with others, to design acquisition strategies suitable for the complexity of the Government's requirement and the amount of Government resources available to conduct the source selection. These alternatives should be considered during acquisition planning. The source selection authority (SSA) should select the process most appropriate to the particular acquisition that is expected to result in the best value.

15.101 Lowest price technically acceptable process.

(a) This process permits communications with offerors and requires fewer resources than a tradeoff process (see 15.102).

(b) If the Source Selection Authority elects to use a lowest price technically acceptable process, the following evaluation considerations apply:

(1) The threshold(s) of technical acceptability shall be set forth in the solicitation. The solicitation must specify that award will be made on the basis of lowest evaluated price of proposals meeting or exceeding the threshold(s).

(2) This process does not permit tradeoffs between price and non-cost factors/subfactors. The non-cost evaluation is done on a pass/fail basis.

(3) If discussions are necessary, the Government's concerns shall be discussed with offerors and a revised proposal may be requested as described in 15.409(c).

15.102 Tradeoff process.

(a) A tradeoff acquisition process is more flexible, but also more resource intensive, than a low price technically acceptable acquisition process. This process is appropriate when the SSA believes that the best value may not be the lowest price offer.

(b) If the SSA elects to use a tradeoff process, the following evaluation considerations apply:

(1) All factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation.

(2) The solicitation shall state whether all evaluation factors other than cost or price when combined are significantly more important, approximately equal or significantly less important than cost or price.

(3) This process requires tradeoffs between cost or price and non-cost factors/subfactors and permits the Government to accept other than the lowest priced technically acceptable offer. Specific tradeoffs need not be described in terms of cost or price impacts nor do the tradeoffs need to be quantified in any other manner.

15.103 Multiphase acquisition technique.

(a) *General.* Multiphase source selection may be appropriate when the submission of full proposals at the beginning of a source selection would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, agencies may seek limited information initially, make one or more down-selects, and request full proposals from a limited number of offerors.

(b) *First phase notice.* In the first phase, the Government shall publish a notice (see 5.205) that provides a general description of the scope or purpose of the acquisition, identifies the criteria that will be used to make the initial down-select decision, and solicits responses. Alternatively, the Government may issue a solicitation that provides a more specific description of the supplies or services to be procured. The notice or solicitation may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice or solicitation shall contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice or solicitation shall advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases.

(c) *First phase responses.* Offerors shall submit the information requested in the notice or solicitation described in paragraph (b) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(d) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the criteria in the notice or solicitation and make either a mandatory or advisory down-select decision.

(1) The Government may make a "mandatory" down-select if it identified the criteria or process that will be used to evaluate offers in all phases and requested sufficient information (including cost information) for there to be binding offers. A mandatory down-select allows the Government to prohibit offerors from participating in subsequent phases based on the evaluation criteria set forth in the notice or solicitation.

(2) If the Government did not request sufficient information for there to be binding offers that the Government could accept without further submissions, the Government must make an "advisory" down-select. In conducting an advisory down-select, the Government shall—

(i) Request selected offerors provide a proposal for the next phase of the acquisition;

(ii) Inform offerors not selected that, based on the offeror's initial submission, they are unlikely to receive an award and provide them supporting rationale. Such offerors may, at their option, submit a proposal for the second phase which the Government must evaluate; and

(iii) Debrief offerors as required by 15.805 and 15.806 only when they have been formally excluded from the competition. Advisory down-selects do not constitute such exclusion.

(e) *Subsequent phases.* Additional information shall be sought in the second phase so that a mandatory down-select or competitive range determination can be performed or an award made without discussions. If the criteria to be used in making decisions in the second phase were not stated in the original notice or the solicitation, they shall be identified to all remaining offerors at the start of this phase. If desired, the Government may conduct additional phases.

15.104 Oral presentations.

(a) Except for certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions), the SSA may require offerors to submit all, or part of, their proposals through oral presentations. Oral presentations may occur either before or after a competitive range (if any) is established. Generally, oral presentations are most beneficial when they substitute for, rather than augment, written information.

(b)(1) In deciding which information to obtain through an oral presentation, consider the following:

(i) Whether the information can be reasonably and adequately presented to permit evaluation by the Government.

(ii) Whether there is a need to incorporate any of the information into the resultant contract, and if so, the ease of incorporation; and

(iii) The impact oral presentations will have on the efficiency of the competition.

(2) Information pertaining to such areas as an offeror's capability, work plans or approaches, staffing resources, transition plans, sample tasks or other tests may be suitable for oral presentations.

(c) Where oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The scope of the presentations, including the types of information to be presented orally and the associated evaluation criteria that will be used;

(2) The personnel that will be required to provide the oral presentation(s);

(3) The requirements for, any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The impact oral presentations will have on the small businesses;

(5) The location at which the oral presentations will be made;

(6) The restrictions governing the time permitted for each oral presentation; and

(7) The extent of communication that may occur between the Government's participants and the offeror's representatives as part of the oral presentations (e.g. will communications encompass discussions).

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Preparing and issuing requests for proposals (RFP's) and requests for information (RFI's); and

(b) Receiving proposals and information.

15.201 Presolicitation exchanges with industry.

(a) Exchange of information by all interested parties involved in an acquisition from the earliest identification of a requirement through release of the solicitation is encouraged. Interested parties include potential offerors, end users, Government acquisition and supporting personnel and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements, thereby enhancing the Government's ability to obtain quality products and services at reasonable prices, and increase the efficiency in proposal preparation, proposal evaluation, negotiation and contract award.

(c) Agencies are encouraged to promote early exchange of information about future acquisitions. An early exchange of information can efficiently and effectively identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work and data requirements; the suitability of the proposal instructions and evaluation criteria; the availability of reference documents and information exchange approaches; and any other industry concerns or questions. Techniques to promote early exchange of information include—

(1) Industry or small business conferences;
(2) Public hearings;
(3) Market research, as described in FAR Part 10;
(4) One on one meetings with potential offerors (see paragraph (f));
(5) Presolicitation notices;
(6) Draft RFPs;
(7) Requests for information (RFIs);
(8) Presolicitation or preproposal conferences; and
(9) Site visits.

(d) The special notices of procurement matters at 5.205(c) or electronic notices may be used to publicize the Government's requirement or solicit information from industry.

(e) *Requests for Information (RFIs).* This method may be used when the Government does not intend to award a contract on the basis of the solicitation but needs to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract.

(f) Government personnel may disclose general information about agency mission needs and future requirements. If Government personnel disclose specific information about a proposed acquisition which is necessary for the preparation of proposals, that information shall be made available to the public as soon as possible, but no later than the next release of information in order to avoid creating an unfair competitive advantage. When a presolicitation or preproposal conference is conducted, distributed materials should be made available to potential offerors, upon their requests.

15.202 Requests for Proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs shall only be used when there is a definite intention to award a contract, and therefore, shall not be used as a solicitation for information or planning purposes. RFPs shall, at a minimum, describe the—
(1) Government's requirement;
(2) Anticipated terms and conditions that will apply to the contract;
(i) Contracting officers may allow offerors to propose alternative terms and conditions, including a contract line item number (CLIN) structure that is different from the model in the solicitation.
(ii) Since CLIN structure is often dictated by considerations such as place of performance, or payment and funding requirements, the potential impact of a changed CLIN structure shall be determined before accepting any proposed alternative.
(3) Information requirements of the offeror's proposal;
(4) Factors and significant subfactors that will be used to evaluate the proposal.

(b) An RFP may be issued for OMB Circular A–76 studies. See Subpart 7.3 for additional information regarding cost comparisons between Government and contractor performance.

(c) In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for RFPs and receipt of proposals. If electronic proposals are authorized, the RFP shall specify the electronic commerce method(s) that offerors may use.

(d) Contracting officers may issue RFPs or receive proposals by facsimile.
(1) In determining whether or not to use these methods, the contracting officer shall consider such factors as—
(i) Anticipated proposal size and volume;
(ii) Urgency of the requirement;
(iii) Availability and suitability of electronic commerce methods; and
(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.
(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used, when appropriate (e.g., a sole source follow-on procurement). Use of a letter RFP does not relieve the contracting officer from complying with other requirements of this regulation. Letter RFPs should be as clear and concise as possible and, as a minimum, contain the following:
(1) RFP number and date;
(2) Name, address, and telephone number of contracting office;
(3) Type of contract contemplated;
(4) Quantity, description, and required delivery dates for the item;
(5) Applicable certifications and representations;
(6) Contract terms and conditions (reference to prior contract or updates should be provided, as applicable);
(7) Instructions to offerors and evaluation criteria (for other than sole-source actions);
(8) Offer due date; and
(9) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support, and different data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government (e. g., perishable items and support of contingency operations or other emergency situations).
(1) Use of an oral solicitation does not relieve the contracting officer from complying with other requirements of this regulation.
(2) The contract files supporting oral solicitations shall include—
(i) A justification for use of an oral solicitation;
(ii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and
(iii) The solicitation number provided to the prospective contractors.
(3) The information furnished to potential offerors under oral solicitations should include that set forth in paragraph (e), to the maximum extent practicable.

15.203 Model contract format.

(a) Contracting Officers should prepare solicitations and contracts using the model contract format (MCF) outlined in Table 15–1 to the maximum extent practicable. The use of the MCF facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The MCF need not apply to the following acquisitions:
(1) Construction and Architect-engineer contracts (see FAR Part 36).
(2) Subsistence items.
(3) Supplies or services requiring special contract formats prescribed elsewhere in this regulation that are inconsistent with the MCF.
(4) Letter Request for Proposals (see 15.203(e)).
(5) Contracts exempted by the agency head or designee.

TABLE 15–1A—MODEL CONTRACT FORMAT

Section	Title
I	Cover sheet/supplemental information.
II	Acquisition description.
III	Financial and administrative information.
IV	Contract clauses.
V	Performance requirements.
VI	Proposal evaluation and submission information.

§ 15.203–1 Section I, Cover sheet/supplemental information.

The solicitation cover sheet summarizes essential details about the solicitation. The cover sheet is the first

page of the solicitation. The cover sheet shall include, as a minimum, the following information:

(a) Brief description of the acquisition.

(b) Whether or not the acquisition is restricted to small business.

(c) Name, address and location of issuing activity, including room and building where proposals must be submitted.

(d) Solicitation number.

(e) Date of issuance.

(f) Closing date and time.

(g) Number of pages.

(h) A Government point of contact and telephone number.

(i) Government designated period for acceptance of offers (in days).

§ 15.203–2 Section II, Acquisition Description.

This section includes a summary description of the supplies and/or services, and anticipated contract type, e.g., quantities, prices, item number, national stock number/part number, title or name identifying the supplies or services, and options.

§ 815.203–3 Section III, Financial and Administrative Information.

This section includes any required accounting and appropriation data and information affecting payment and contract administration, e.g., the small business subcontracting plan, tailored instructions and/or special tailored requirements for property management, packaging, packing, preservation, marking, inspection, acceptance, or quality assurance.

15.203–4 Section IV, Contract Clauses.

This section includes all contract clauses not tailored specifically for the acquisition that are incorporated by reference (i.e., all standard clauses incorporated by reference, including those with minimal fill-ins) or are not tailored but are required to be inserted in full text. The text of clauses incorporated by reference shall be available through the Internet or from the contracting officer. If the contracting officer elects to include a clause in full text, the clause shall be treated as if it were tailored (e.g., placed in the financial and administrative information section). The restrictions in 52.104 on use of standard clauses still apply.

15.203–5 Section V, Performance Requirements.

This section includes more detailed information as to what and when the contractor is to deliver, e.g., the statement of work or its equivalent, process requirements, data requirements or special requirements for time and place of delivery.

15.203–6 Section VI, Proposal Evaluation and Submission Information.

(a) This section includes information on how the Government will evaluate the proposal and what the proposal must include, e.g., representations and certifications, instructions to offerors, and evaluation criteria.

(b) Upon award, the contracting officer shall not include section VI in any resultant contract but shall retain it in the contract file.

15.204 Issuing solicitations.

(a) The contracting officer shall furnish copies of unclassified solicitations to any party upon request.

(b) A master solicitation (see 14.203–3) may be used for negotiated acquisitions.

15.205 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements, the contracting officer shall issue an amendment to the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation, and should be issued in the same manner as the solicitation.

(c) Amendments issued after the established time and date for receipt of proposal should be issued—

(1) To all offerors still eligible for award; and

(2) In the same manner as the solicitation.

(d) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment.

(e) If a change is so substantial that it warrants a complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) If the proposal considered to be most advantageous to the Government (determined according to the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements; *provided,* that this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection (see 15.206(b) and 15.409(d)).

(g) At a minimum, the following information should be included at the beginning of each amendment:

(1) Name and address of issuing activity.

(2) Solicitation number and date.

(3) Amendment number and date.

(4) Number of pages.

(5) Short description of the change being made.

(6) Government point of contact and phone number.

(7) Revision to solicitation closing date, if applicable.

15.206 Receipt of proposals and requests for information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to an RFI shall be marked with the date and time of receipt and be transmitted to the appropriate source selection officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. See 3.104 for statutory requirements and regulations related to the disclosure of proposal information and source selection information (41 U.S.C. 423(d)). Information received in response to an RFI shall also be safeguarded from unauthorized disclosure.

(c) If a proposal received by the contracting officer in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and request retransmission of the proposal or, at the contracting officer's discretion, resubmittal of the proposal in another format. If the retransmitted proposal is still unreadable, it may be rejected.

15.207 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for timely submission of proposals, and any requested revisions or modifications to them, to the Government office designated in the solicitation. Unless the solicitation states another specific time, the time for receipt is 4:30 p.m., local time, at the designated Government office on the date that proposals, requested revisions or modifications are due.

(b) Proposals, modifications, and revisions received in the designated Government office after the exact time specified are "late" but may be considered if doing so is in the best interests of the Government. Government mishandling or fault need not be established in order to accept a

late offer. The contracting officer shall promptly notify any offeror if its proposal, modification, or revision was received late and whether or not it will be considered, unless contract award is imminent and the notice prescribed in 15.803(b) would suffice.

(c) Offerors may not revise proposals unless requested by the contracting officer.

(d) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon receipt by the contracting officer of a written notice of withdrawal. Oral offers in response to oral solicitations are withdrawn by the offeror's statement of withdrawal made to the contracting officer, who then shall document the contract file. Withdrawn proposals will be destroyed or returned to the offeror at the offeror's request and expense.

15.208 Solicitation provisions and contract clause.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215–1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions:

(1) If the Government intends to make award after discussions with offerors within the competitive range, use the basic provision with its Alternate I; and

(2) If the Government wishes to reserve the right for purposes of efficiency to limit the competitive range to no more than a specific number, use the basic provision with its Alternate II, or the basic provision with both Alternates I and II.

(b) The contracting officer shall insert the clause at 52.215–2, Audit and Records—Negotiation, in solicitations and contracts except—

(1) Acquisitions not exceeding the simplified acquisition threshold in Part 13;

(2) Acquisitions for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133); or

(3) Facilities acquisitions, where the contracting officer shall use the clause with its Alternate I;

(4) Cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II; or

(5) When the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215–3, Solicitation for Information or Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) The contracting officer shall insert the provision at 52.215–4, Type of Business Organization, in all solicitations.

(e) The contracting officer shall insert the provision at 52.215–5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215–6, Place of Performance, in solicitations except those in which the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215–7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are utilized (see 14.213).

(h) The contracting officer shall insert the clause at 52.215–8, Order of Precedence, in all solicitations and contracts.

15.209 Forms.

Forms are not needed to prepare solicitations described in this subpart. The following forms may be used at the discretion of the contracting officer:

(a) Optional Form XX, Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFQs.

(b) Optional Form XY, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Standard Forms 30 and 33 may be used, if appropriately modified (e.g., substitute the MCF for the Uniform Contract Format Table of Contents). If so modified, the contracting officer shall remove the form designation (i.e., standard form number).

(d) To promote identification and proper handling of proposals, Optional Form 17, Offer Label, may be furnished with each request for proposals. The form may be obtained from the General Services Administration (see 53.107).

Subpart 15.3—[Redesignated as Subpart 15.5]

7. Subpart 15.5 is redesignated as Subpart 15.3

8. Subpart 15.4 is revised to read as follows:

Subpart 15.4—Source Selection

15.400 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

15.401 Definitions.

Deficiency, as used in this subpart is a single material failure to meet a Government requirement or a single flaw that appreciably increases the risk of unsuccessful contract performance.

Discussion, as used in this subpart, means communication after establishment of the competitive range between the contracting officer and an offeror in the competitive range.

15.402 Source selection objective.

The objective of source selection is to select the offer which represents the best value. Typically, the best value would be achieved through—

(a) A tradeoff process used to select the most advantageous offer by evaluating and comparing factors in addition to cost or price. A best value decision in these acquisitions reflects the Government's willingness to accept other than the lowest priced acceptable offer if the perceived benefits of the higher priced offer merit the additional cost; or

(b) A lowest price technically acceptable process is used where it has been determined that the Government's interests are best served by selection of the lowest price offer that is evaluated (on a pass/fail basis) as technically acceptable used to select the most advantageous offer where proposals are evaluated on a pass/fail basis, and award is made to the lowest cost (price) technically acceptable offeror. Proposals need not be ranked under this process nor are communications precluded.

§ 15.403 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular procurement or class of procurements.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular procurement, that includes an appropriate mix of contracting, legal, logistics, technical, and other expertise to assure a comprehensive evaluation of offers;

(2) Approve the source selection plan before solicitation release, if agency procedures require a plan;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(2));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government (10 U.S.C. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(2));

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control and conduct communications with offerors in accordance with 15.409; and

(3) Award the contract(s).

15.404 Evaluation factors and subfactors.

(a) The criteria upon which the award decision is based consist of evaluation factors and subfactors. The selected factors and subfactors shall be tailored to the acquisition.

(b) Use factors and subfactors that—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision, and

(2) Support meaningful discrimination and comparison between and among competing proposals.

(c) If a multiphase solicitation technique will be used, the factors and subfactors (if any) that apply to the initial phase shall be set forth in the notice or solicitation.

(d) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)).

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(B).

(3)(i) Except as set forth in paragraph (ii) of this paragraph, past performance shall be evaluated in all source selections for competitive acquisitions issued on or after—

(A) July 1, 1995, for acquisition expected to exceed $1,000,000;

(B) July 1, 1997, for acquisitions expected to exceed $500,000; or

(C) January 1, 1999, for acquisitions expected to exceed $100,000.

(ii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92–5).

(e) All factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.205–5(c)). The rating method need not be disclosed in the solicitation.

(f) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price. (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

15.405 Proposal evaluation.

(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability to accomplish the prospective contract successfully. An agency shall evaluate competitive proposals solely on the factors (including any subfactors) specified in the solicitation. In evaluation of competitive proposals against the evaluation factors specified in the solicitation, an agency should compare their relative qualities. Agencies may use any method or combination of methods to evaluate proposals, including color/adjectival ratings, numerical weights, and ordinal rankings. If preaward testing or product demonstration is required, it need not be accomplished in accordance with a formal test plan, provided all offerors are evaluated against the same criteria. The evaluation method used by the agency need not be disclosed in the solicitation.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm fixed price or fixed price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis; do not perform a cost analysis unless the price of the otherwise successful offeror is determined to be unreasonable (see 15.604–1(b)(1)(i)(B)). When contracting on other than a firm fixed price or fixed price with economic price adjustment basis, the evaluations should include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The age and relevance of the information, source of the information, subjectivity of the data and general trends in contractor's performance should be considered. This assessment of past performance information is separate from the responsibility determination required under Subpart 9.1.

(ii) The solicitation shall provide offerors an opportunity to identify past contracts (including Federal, State, and local Governments and private) for efforts similar to the Government requirement. At the discretion of the contracting officer, the solicitation may also request offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government may use this information as well as information obtained from any other sources to evaluate the offeror's past performance.

(iii) Firms lacking relevant past performance history shall receive a neutral evaluation for past performance. A neutral evaluation means any assessment that neither rewards nor penalizes firms without relevant performance history.

(3) *Technical evaluation.* If a technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking of each technical proposal against the evaluation criteria.

(4) Cost information may be provided to members of the technical evaluation team if the source selection authority concurs.

(b) All proposals received in response to a solicitation may be rejected if the source selection authority determines that doing so is in the best interests of the Government.

15.406 Competitive range.

(a) The contracting officer shall establish a competitive range for the purpose of conducting written or oral discussion (see 15.409(c)). The

competitive range shall include proposals having the greatest likelihood of award based on the factors and subfactors in the solicitation.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the competitive range is expected to exceed the number at which an efficient competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar supplies and services, and the resources available to conduct the source selection. Alternate II of 52.215–1, Information to Offerors—Competitive Acquisition, may be used to indicate the Government's estimate of the greatest number or proposals that will be included in the competitive range for purposes of conducting an efficient competition among the most highly rated proposals.

(c) After evaluating offers, the contracting officer may determine that the number of proposals that would otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, the contracting officer may limit the number or proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The solicitation provision at 52.215–1, Instruction to Offerors-Competitive Acquisition, reserves the contracting officer's right to limit the competitive range for purposes of efficiency.

(d) If the contracting officer determines that an offeror's proposal is no longer in the competitive range the proposal shall no longer be considered for award. Written notice of this decision shall be provided to unsuccessful offerors at the earliest practicable time (see 15.803(a)(1)).

(e) Offerors excluded from the competitive range may request a debriefing. When a debriefing is requested, see 15.805.

15.407 Communications with offerors.

(a) Competition on other than price alone and the source selection process necessarily involve communications between the Government and competing offerors. Open communications support the goal of efficiency in Government procurement (10 U.S.C. 2304(j) and 41 U.S.C. 253(h)) by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of communications between the Government and offerors is a matter of contracting officer judgment.

(b) *Communication with offerors prior to establishment of the competitive range.* Communication with offerors after receipt of proposals, but prior to establishment of the competitive range (or award, if award is to be made without discussions), is encouraged to obtain information to facilitate the Government's decision either to award without discussions or determine the competitive range. Information received during this phase of communications may provide context to the proposal in that it allows the Government to understand the offeror's intent. Consequently, it may be used in proposal evaluation. Communications conducted pursuant to this paragraph—

(1) Are not "discussions" (see 15.409(c));

(2) Do not permit changes in an offeror's proposal other than correction of mistakes;

(3) Are conducted to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in the offeror's proposal. However, a willingness by the offeror to correct any perceived errors, perceived omissions, perceived deficiencies, or other concerns does not require that the offeror be placed in the competitive range;

(4) Shall only be initiated if authorized by the contracting officer; and

(5) Need not be conducted with all offerors. For example, when trying to determine the competitive range, the Government could limit communications to those offerors, whose proposals, on initial evaluation, would be neither clearly "in" nor clearly "out" of the competitive range. Similarly, when trying to decide whether or not to award without discussions, the Government could limit communications to the offeror(s), based on initial evaluation, deemed to have the greatest likelihood of award.

(c) *Communication with offerors after establishment of the competitive range.* Communication with offerors determined to be in the competitive range is accomplished through written and/or oral discussions (see 15.401). If a competitive range is established, the Contracting Officer shall conduct discussions at least once with all offerors in the competitive range (but see 15.410). All evaluated deficiencies in an offeror's proposal, except those relating to past performance on which the offeror has already had an opportunity to comment, and any other issues which, in the judgment of the contracting officer, should be brought to the offeror's attention shall be disclosed during the conduct of discussions. While the Government may rely upon agreements made during discussions for the purposes of proposal evaluations, such agreements shall be confirmed by proposal revision(s) before contract award (see 15.411).

(d) *Improper discussions and communications.* The contracting officer and other Government personnel involved in the procurement shall not engage in—

(1) Favoring one offeror over another by coaching, prompting, suggesting, or recommending ways in which an offeror must change its proposal to bring it up to the level of other proposals;

(2) Revealing an offeror's technical solution to another offeror;

(3) Advising an offeror of another offeror's price without that other offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high or unrealistic, and the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 423(h)(1)(2));

(4) Revealing the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishing source selection information or information about other offerors' proposals without permission of the source (see 3.104–4(j) and (k) and 41 U.S.C. 423(h)(1)(2)).

15.408 Award without discussions.

Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions, unless the contracting officer determines that discussions are considered necessary. However, if the solicitation contains such a notice and the Government later conducts discussions, the rationale for doing so shall be documented in the contract file (see 52.215–16 Alt III) (10 U.S.C. 2305(b)(4)(A)(ii) and 41 U.S.C. 253b(d)(1)(B)). The Contracting Officer may permit minor clarifications to allow proposal modifications that resolve ambiguities, or correct apparent mistakes.

15.408 Proposal revisions.

(a) The contracting officer may request proposal revisions as often as needed during discussions. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cut off date for receipt of proposal revisions.

(b) If an offeror in the competitive range is no longer considered to be among those most likely to receive award after discussions have begun, the offeror may be eliminated from the competitive range without being afforded an opportunity to submit a proposal revision.

(c) Requesting and/or receiving proposal revisions does not necessarily conclude discussions. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

15.410 Source selection.

An integrated comparative assessment of proposals shall be performed before source selection is made. The source selection authority shall independently determine which proposal(s) represents the best value, consistent with the factors and subfactors in the solicitation. The source selection authority may determine that all proposals should be rejected if it is in the best interests of the Government (see 15.407(b)).

(a) The source selection team, or advisory boards or panels, may conduct the comparative analysis(es) and make award recommendations, if the source selection authority requests such assistance.

(b) The basis for the source selection decision shall be documented and shall reflect the rationale for any tradeoffs among factors, subfactors, and business judgments. The perceived benefits to be received for any total additional cost should be specified. Specific tradeoffs need not be described in terms of cost/price impacts nor do the tradeoffs need to be quantified in any other manner.

Subpart 15.7—[Subpart 15.7 Redesignated as Subpart 15.5]

9. Subpart 15.7 is redesignated as new Subpart 15–5.

Subpart 15.6—[Removed]

Subpart 15.8—[Redesignated as Subpart 15.6]

10. Subpart 15.6 is removed and Subpart 15.8 is redesignated as new Subpart 15.6.

Subpart 15.9—[Redesignated as Subpart 15.7]

11. Subpart 15.9 is redesignated as new Subpart 15.7 .

12. Subpart 15.10 is redesignated as Subpart 15.8 and revised to read as follows:

Subpart 15.8—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.801 Definition.

Day, as used in this subpart, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

15.802 Applicability.

This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts, and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3).

15.803 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly when their proposals are excluded from the competitive range or otherwise excluded from competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides.* In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the offeror's proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(b) *Postaward notices.* (1) Within three days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)). The notice shall include-

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in FAR Part 13.

(3) Upon request, the contracting officer shall provide the information in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors who received a preaward notice of exclusion from the competitive range.

15.804 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(a) If award is made without discussions, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer.

(b) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer shall sign the contract award.

(c) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

(d) If the Optional Form YY (OF YY), Contract Award, is not used to award the contract, the first page of the award document shall contain the

Government's acceptance statement from block 15A of that form and the contracting officer's signature. In addition, if the award document includes information that is different than the latest signed offer, the first page shall include the contractor's agreement statement from block 14A of OF YY and the signature of the contractor's authorized representative.

15.805 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b (f)–(h)).

(a) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within three days after the receipt of notice of exclusion from the competition. If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer should provide a debriefing to the offeror as soon as practicable. If providing a preaward debriefing is not in the best interest of the Government at the time it is requested, the contracting officer may delay the debriefing, but shall provide the debriefing no later than the time postaward debriefings are provided under 15.806. In that event, the contracting officer shall include the information at 15.806(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offeror's proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.806(e)

(g) The contracting officer shall include an official summary of the debriefing in the contract file.

15.806 Postaward debriefing of offerors.

(a) An offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An offeror who was notified of exclusion from the competition (15.805(a)), but failed to submit a timely request, is not entitled to a debriefing. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award may be accommodated. However, accommodating untimely debriefing requests does not extend the time within which suspension of performance can be required, because this accommodation is not a "required debriefing" as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror (including unit prices);

(3) The overall ranking of all offerors when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) The contracting officer shall include an official summary of the debriefing in the contract file.

15.807 Protests against award.

(a) Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding (see Subpart 33.1). Use of agency protest procedures which incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for revised offers on the protested contract award, the agency shall make available to prospective offerors or original offerors still within the competitive range, respectively—

(1) Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.808 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.407–4.

15.809 Forms.

(a) Optional Form YY, Contract Award, may be used to award negotiated contracts. If the form is not used, the award document shall incorporate the agreement and award language from the form.

(b) Standard Form 26, Award/Contract, may be used, if appropriately modified (e.g., substitute the MCF for the Uniform Contract Format Table of Contents). If so modified, the contracting officer shall remove the form designation (i.e., standard form number).

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

13. Section 36.524 is revised to read as follows:

36.524 Contracting by Negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236–XX, Preparation of Offers—Construction, when contracting by negotiation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.215–1 is revised to read as follows:

52.215–1 Instructions to Offerors—Negotiated Acquisition.

As prescribed in 15.208(a), insert the following provision:

Instructions to Offerors—Negotiated Acquisition (Date)

(a) *Definitions.*

(1) *Time*, if stated as a number of days, will include Saturdays, Sundays, and Federal holidays.

(2) *In writing* or *written* means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) *Revision* means a revision of an offer requested by the contracting officer during discussions.

(4) *Discussion* means communication after establishment of the competitive range between the contracting officer and an offeror in the competitive range.

(5) *Communication* means interchanges with offerors which are not discussions. They may be conducted to obtain information which explains or resolves ambiguities or for minor clarifications.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions which are not modified remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, revision and withdrawal of offers.* (1) Unless other methods (*e.g.* electronic commerce, facsimile, etc.) are permitted in the solicitation, offers and modifications to offers shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(2) The first page of the offer must show—

(i) The solicitation number;

(ii) The name, address, and telephone number of the offeror;

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone numbers of persons authorized to negotiate on its behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Offerors are responsible for submitting offers, and any requested revisions to them, to the Government office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m., local time, at the designated Government office on the date that offers or requested revisions are due. Offers, and requested revisions to them, that are received in the designated Government office after the time for receipt are "late" and shall be considered at the Source Selection Authority's discretion.

(4) Unless otherwise specified in the solicitation, the offeror may propose any item or combination of items.

(5) Offers submitted in response to this solicitation shall be in the English language and shall be in terms of U.S. dollars, unless otherwise permitted in the solicitation.

(6) Offerors may not revise offers unless requested by the Contracting Officer.

(7) Offers may be withdrawn at any time prior to award. Withdrawals are effective upon receipt by the Contracting Officer.

(d) *Period for acceptance of offers.* Offers in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror.

(e) *Restriction on disclosure and use of data.* Offerors who include in their proposals data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation represent the best value.

(2) The Government may reject any or all offers if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in offers received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications). Therefore, each individual offer should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.

(6) Communications with offerors after receipt of an offer do not necessarily constitute a rejection or counteroffer by the Government.

(7) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than

cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

(8) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(9) Award of a contract is effective upon transmittal of the contract signed by the Government.

(10) The Government may disclose the following information in postaward debriefings to other offerors: (i) the overall evaluated cost or price and technical rating of the successful offeror; (ii) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (iii) a summary of the rationale for award; and (iv) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

Alternate I (Date). As prescribed in 15.208(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a contract after conducting discussions with responsible offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

Alternate II (Date). As prescribed in 15.208(a)(2), add the following to paragraph (f)(4):

(4) If the Contracting Officer exercises the Government's right to limit the number of proposals in the competitive range, the competitive range will be limited to no more than _____ (*insert number*).

15. Section 52.215–2 is amended by revising the introductory text to read as follows:

52.215–2 Audit and Records—Negotiation.

As prescribed in 15.208(b), insert the following clause:

* * * * *

16. Sections 52.215–3 through 52.215–8 are revised to read as follows:

52.215–3 Solicitation for Information or Planning Purposes.

As prescribed in 15.208(c), insert the following provision:

Solicitation for Information or Planning Purposes (Date)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205–18, Bid and proposal costs of the Federal Acquisition Regulation.

(b) Although "offer" and "offeror" are used in this Request for Information, your response will be treated as information only. It shall not be used as an offer.

(c) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

52.215–4 Type of Business Organization.

As prescribed in 15.208(d), insert the following provision:

Type of Business Organization (Date)

The offeror or quoter, by checking the applicable box, represents that—

(a) It operates as a corporation incorporated under the laws of the State of _____, ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

(b) If the offeror or quoter is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in _____ (country)

(End of provision)

52.215–5 Facsimile Proposals.

As prescribed in 15.208(e), insert the following provision:

Facsimile Proposals (Date)

(a) *Definition-Facsimile proposal,* as used in this solicitation, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile offers are subject to the same rules as paper proposals.

(c) Telephone number of receiving facsimile equipment:[insert telephone number]

(d) If the offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile proposal including, but not limited to, the following:

(1) Receipt of garbled or incomplete proposal.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of proposal.

(5) Failure of the offeror to properly identify the proposal.

(6) Illegibility of proposal.

(7) Security of proposal data.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete original signed proposal.

(End of provision)

52.215–6 Place of Performance.

As prescribed in 15.208(f), insert the following provision:

Place of Performance (Date)

(a) The offeror or quoter, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this proposal or quotation.

(b) If the offeror or quoter checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance

(Street Address, City, County, State, Zip Code)

_____

_____

Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror Quoter

_____

_____

(End of provision)

52.215–7 Annual Representations and Certifications—Negotiation.

As prescribed in 15.208(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Date)

The offeror certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated _____[*insert date of signature on submission*] that are incorporated herein by reference, have been submitted to the Contracting Office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this offer, except as follows [*insert changes that affect only this solicitation; if "none," so state*]:

☐ (b) Are enclosed.

(End of provision)

52.215–6 Order of Precedence.

As prescribed in 15.208(h), insert the following clause:

Order of Precedence (Date)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) The Acquisition Description (excluding the specifications); (b) tailored clauses; (c) Performance Requirements (including the specifications); (d) other contract clauses; and (e) other parts of the contract, including attachments.

(End of clause)

17. Section 52.236–XX is added to read as follows:

52.236–XX Preparation of Offers—Construction.

As prescribed in 36.524, insert the following provision:

Preparation of Offers—Construction (Date)

(a) Offers must be (1) Submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require offerors to submit offer prices for one or more items on various bases, including—

(1) Lump sum offer;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, offerors should insert the words "no offer" in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of provision)

PART 53—FORMS

18. Section 53.213 is amended by revising paragraph (a) to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(a) *SF 18 (Rev. 6/95), Request for Quotations.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).

* * * * *

19. Section 53.214 is amended by revising the first sentences of paragraphs (a) and (d) to read as follows:

53.214 Sealed bidding.

(a) *SF 26, Award/Contract.* SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.408–1(d)(1). * * *

* * * * *

(d) *SF 1447(5/88), Solicitation/Contract.* SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids.* * *

* * * * *

20. Section 53.215–1 is revised to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) *OF 307 (XX/96), Solicitation and Offer-Negotiated Acquisition.* OF XX may be used to support solicitation of negotiated contracts as specified in 15.210(a). Award of such contracts may be made by OF YY, as specified in 15.809(a).

(b) *OF 308 (XX/96), Amendment of Solicitation.* OF XY may be used to amend solicitations of negotiated contracts, as specified in 15.210(b).

(c) *OF 309 (XX/96), Contract Award.* OF YY may be used to award negotiated contracts as specified in 15.809(a).

(d) *SF 26 (REV. 4/85), Award/Contract.* SF 26 as prescribed in 53.214(a) may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.809(b).

(e) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for amending requests for proposals, and for amending requests for information, as specified in 15.210(c).

(f) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be by either OF YY, SF 33, or SF 26, as specified in 15.809(a) and (b), and 53.214(c).

(g) *OF 17 (REV. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(d).

21. Section 53.243 is amended by revising the introductory paragraph to read as follows:

53.243 Contract modifications.

SF 30 (REV 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in amending solicitations, as specified in 14.208, and 43.301, modifying purchase and delivery orders, as specified in 13.503(b), and modifying contracts, as specified in 42.1203(f), 43.301, 49.602–5, and elsewhere in this regulation. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.209(c). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date) is revised in paragraphs (3) and (5) as follows:

* * * * *

22. Sections 53.302–307, 53.302–308, and 53.302–309 are added to read as follows:

BILLING CODE 6820–EP–P

53.302–307 Optional Form 307 Contract Award.

CONTRACT AWARD

PAGE ___ OF ___ PAGES

1. CONTRACT NUMBER	2. EFFECTIVE DATE	3. SOLICITATION NUMBER	4. REQUISITION/PROJECT NUMBER

5. ISSUED BY CODE	6. ADMINISTERED BY (If other than Item 5) CODE
7. NAME AND ADDRESS OF CONTRACTOR CODE	8. PAYMENT WILL BE MADE BY
9. DUNS NUMBER	10 SUBMIT INVOICES (4 copies unless otherwise specified) TO ☐ ITEM 5 ☐ ITEM 6 ☑ ITEM 8 ☐ OTHER (Specify)

11. TABLE OF CONTENTS

(Insert the page number where each of the listed items is found in this package)

ITEM	PAGE	ITEM	PAGE
I SOLICITATION AND OFFER		IV CONTRACT CLAUSES	
II ACQUISITION DESCRIPTION		V PERFORMANCE REQUIREMENTS	
III FINANCIAL AND ADMINISTRATIVE INFORMATION			

12. BRIEF DESCRIPTION

13. TOTAL AMOUNT OF CONTRACT ▶

14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

☐ a. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. *(Check if applicable)*

b. SIGNATURE OF PERSON AUTHORIZED TO SIGN

c. NAME OF SIGNER

d. TITLE OF SIGNER

e. DATE

15. AWARD. The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

a. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*

b. NAME OF CONTRACTING OFFICER

c. DATE

OPTIONAL FORM 307 (REV.)

DRAFT

53.302–308 Optional Form 308 Solicitation and Offer—Negotiated Acquisition.

SOLICITATION AND OFFER - NEGOTIATED ACQUISITION

PAGE ___ OF ___ PAGES

I. SOLICITATION

1. SOLICITATION NUMBER	2. DATE ISSUED	3. OFFERS DUE BY	4. OFFERS VALID FOR 60 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE

5. ISSUED BY

6. ADDRESS OFFER TO (If other than item 5)

7. FOR INFORMATION CALL (No collect calls)

a. NAME	b. TELEPHONE AREA CODE	b. TELEPHONE PHONE NUMBER	c. E-MAIL ADDRESS

8. BRIEF DESCRIPTION

9. TABLE OF CONTENTS

(Insert the page numbers where each of the listed items is found in this package)

ITEM	PAGE	ITEM	PAGE
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II ACQUISITION DESCRIPTION		V PERFORMANCE REQUIREMENTS	
III FINANCIAL AND ADMINISTRATIVE INFORMATION		VI PROPOSAL EVALUATION AND SUBMISSION INFORMATION	

II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

10a. PERSONS AUTHORIZED TO NEGOTIATE	10b. TITLE	10c. TELEPHONE AREA CODE	10c. TELEPHONE NUMBER

11. NAME AND ADDRESS OF OFFEROR

12a. SIGNATURE OF PERSON AUTHORIZED TO SIGN

12b. NAME OF SIGNER

12c. TITLE OF SIGNER

12d. DATE	12e. TELEPHONE AREA CODE	12e. TELEPHONE NUMBER

OPTIONAL FORM 308 ●

DRAFT

53.302-309 Optional Form 309—Amendment of Solicitation

AMENDMENT OF SOLICITATION
(Negotiated Procurements)

PAGE OF PAGES

NOTICE: Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions or the date and time specified in Block 6, whichever is later. IF YOUR ACKNOWLEDGMENT IS NOT RECEIVED AT THE DESIGNATED LOCATION BY THE SPECIFIED DATE AND TIME, YOUR OFFER MAY BE REJECTED. If, by virtue of this amendment, you wish to change your offer, such change must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.

1. AMENDMENT

1. SOLICITATION NUMBER	2. SOLICITATION DATE	3. AMENDMENT NUMBER	4. AMENDMENT DATE
5. ISSUED BY		6. DUE DATE THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE UNLESS A DATE AMENDMENT IS INSERTED BELOW. a. DATE / b. TIME	

7. FOR INFORMATION CALL (No collect calls)

a. NAME	TELEPHONE AREA CODE	TELEPHONE NUMBER	c. E-MAIL ADDRESS

8. DESCRIPTION OF AMENDMENT

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

ACKNOWLEDGMENT OF AMENDMENT

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

9. NAME AND ADDRESS OF OFFEROR	10a. OFFEROR (Signature of person authorized to sign)
	10b. NAME OF SIGNER
	10c. TITLE OF SIGNER
	10d. DATE

OPTIONAL FORM 309 0

DRAFT

[FR Doc. 96–23392 Filed 9–10–96; 8:45 am]
BILLING CODE 6820–EP–C

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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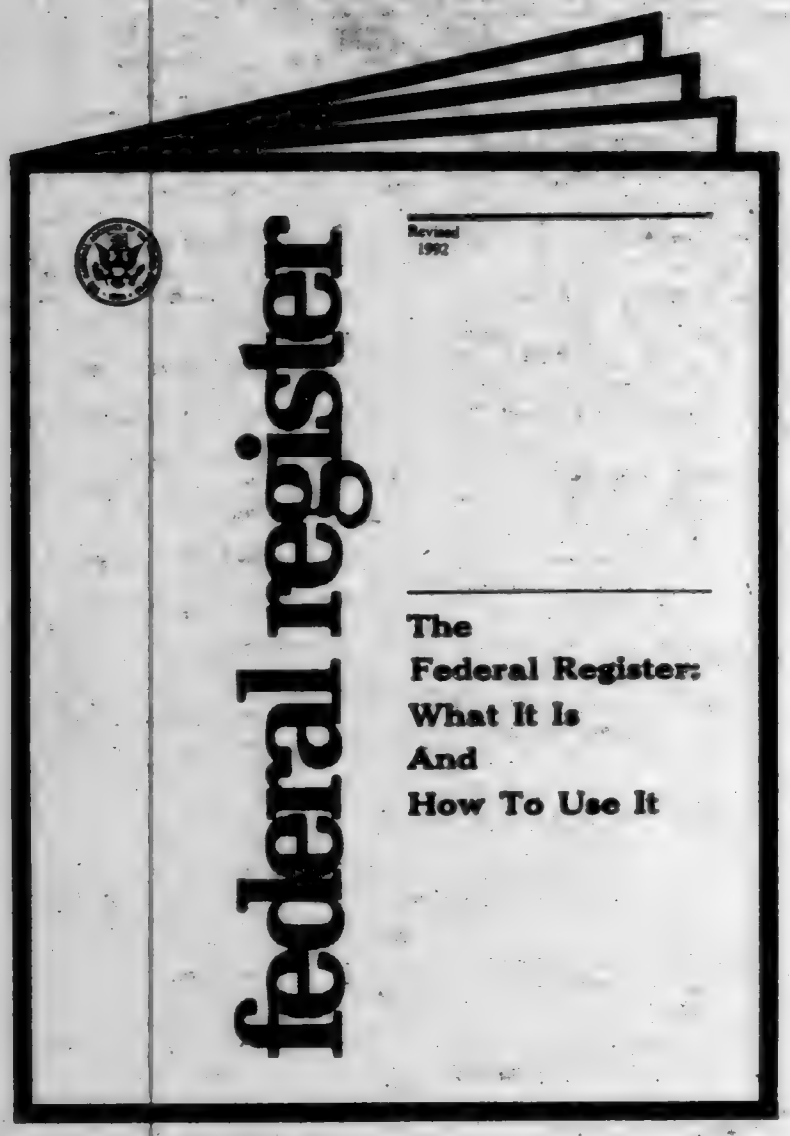

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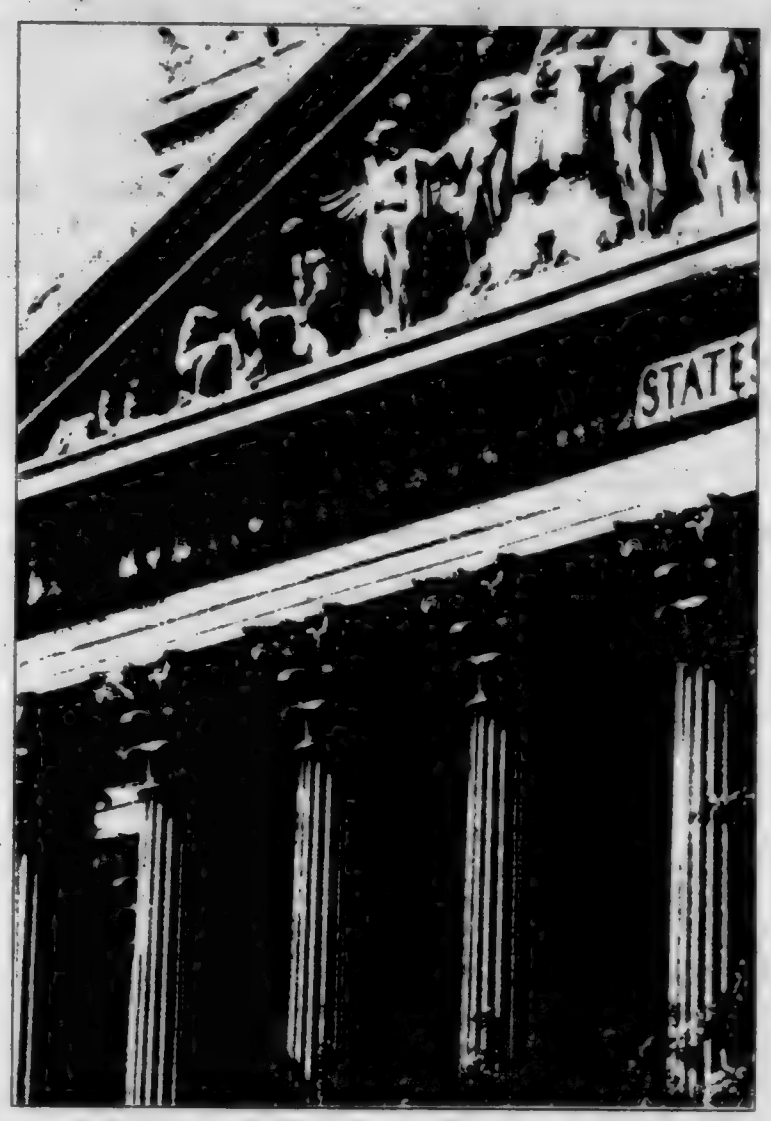

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